



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

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

February 20, 2014

Gary Eiland interviewing Alice Gosfield:

Gary: Good afternoon. This is Gary Eiland. This afternoon I am interviewing Alice Gosfield of Alice V. Gosfield and Associates as part of the AHLA History Project Audio Interview Series. Alice is the past President of one of the predecessor organizations of American Health Lawyers Association, the NHLA, having served as NHLA President in 1992-1993. Alice is also served multiple other roles for NHLA and AHLA that we'll likely touch on this afternoon. Welcome, Alice.

Alice: Thank you.

Gary: Well I know you have a special interest in discussing the American Health Lawyer's continuing focus on excellence. Before we go there, let's discuss your background, practice focus, and career accomplishments.

Alice: Okay.

Gary: Why don't you describe a bit your background from the time you graduated from law school and your entry into health law.

Alice: Okay. My dad was a solo practicing cardiologist and I grew up working as a candy striper in the hospital laboratory. And there was a really good argument to be made that when I graduated law school I knew a whole lot more about the practice of medicine than I did about the practice of law.

And when I was in law school one of my roommates who had gone to Antioch, which was a work study program, came back from her Christmas break and said, "There's a thing called the Health Law Project in Philadelphia. You should apply for a job." I said, "There is no such thing as health law." She said, "I know, and it's in Philadelphia. It's perfect for you." And so I worked the summer between my second and third year of law school at a war on poverty funded program to develop a consumer perspective on health law. Which, back in those days didn't really actually exist as a discipline.

From there, I met my husband, who's still my husband who was a staff attorney and likely would be fired today for what went on that summer but ... At any rate, we ended up forming a consulting firm. We actually wrote regulations for state and federal government agencies. So we

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wrote the hospital licensing regulations in Pennsylvania and I shudder to say that they've not changed one word of them since and we wrote them back in 1976.

I wrote HMO regulations in Pennsylvania. We did certificate of need regulations in Florida. We did Medicaid regulations in Wisconsin. And I always count when we started the real practice of law from when I wrote my first premium check to our professional liability carrier in 1978. And so he and I were in practice together until 1986 and we got hustled by all the downtown firms and I said, "I can't work in one of those places. I never played football." And so he went off and joined a big firm and I incorporated my own business and went merrily on my way being in 1986 and have been doing so ever since.

I've always been a nano firm. I think boutique is maybe even a little too large to describe what the setting is. I've never had more than one associate. My associate right now happens to be my son who has been working with me for, I think he's in his 13th year. And-

Gary: I've noticed, Alice, from your entry in the AHLA past President's memory book that you indicated that you attended your first meeting back in 1974. I assume that must have been NHLA meeting back in 1974.

Alice: Yes it was. And it was on the PSRO Program, about which no one knew anything.

Gary: Were you able to ... From that contact, obviously, you made some acquaintances and ultimately became more active in AHLA. Why don't describe a bit of that?

Alice: Well I think that one of the things that was possible in those days was to develop content mastery on various things. And there were not very many people who were interested in the PSRO Program. And I think I tried in on David Greenberg, I can't remember exactly, although I do remember what I was wearing, which is a little strange. At any rate, I was interested in the organization because it was about ... First of all it was very difficult to find information about health law. The CCH Medicare and Medicaid Guide was two tiny little 3-ring binders and maybe two little paperback things that went along with it.

So here was this place where there were people who came together to share this not very well known or wide spread information about what was really a very developing area of the law. And because I was interested in physicians, which made me a little peculiar, everybody else wanted to be general counsel to the hospital ... They were welcoming to me and the other thing that I find has been true, both at the health lawyers and most other organizations is that if you're willing to actually do work and dig in then people appreciate that. And so I think I spoke the first time, I'm not sure, I think maybe in 1978, something like that. And I was off and running from there. I counted up a couple years ago, that I think I've planned north of 30 programs for them.

Gary: So you certainly were very prolific both in planning and in speaking at programs over time, as I'm well aware.

Alice: That's true. But it also was ... For me it did a variety of things. The organization, because of the way it functioned, and it did have an emphasis on excellence and content, it gave me validity. In that a tiny little two person practice stuck in the wilds of Philadelphia, so to speak, would never have been able to manage in any other frame of reference. And I had connections that emerged out of that then turned into some of the most significant networking experiences I've ever had. Which, among other things, I was talking on utilization management, I think, and a guy who was

then working for the Institute of Medicine heard me and they had been looking for some lawyer that knew anything about the utilization management and I ended up participating in the first Institute of Medicine Committee.

I sat on and I ended up participating in four of those and that's just, it was just intellectually fascinating. The smartest people in the country come together and contend for months around a policy issue of one form or another. I did one on utilization management, I was on another committee to work on clinical practice guidelines. And they had me do some stuff on a Medicare tenure quality strategy. And as a result of those connections, I ended up being networked with people where I ended up going on the Board of NCQA and I was on that board for 12 years and I ended up being the Chairman of the Board for five.

Gary: Well that certainly is a very rewarding experience that you were involved with there. And again, just for those listening, the NCQA is the National Committee for Quality Assurance. And Alice, would you for our purpose, refresh my memory as to the affiliation of the NCQA?

Alice: So NCQA was actually created in part by Jim Daugherty who is one of the stalwarts in the creation of the AHLA as well during the beginning of the managed care era when he and several other folks realized that there was an inherent conflict in the incentives of paying on capitation and delivering quality. And so they thought that if there were an organization that would be independent, objective, and could assess the quality of the care that was delivered by managed care organizations that that would be a fail-safe for consumers in the long run, as well as employers and it was [inaudible 00:12:19] employers who were paying the dollars for the healthcare benefits. So it would give employers reassurance that there was not gonna be skimping on care because of the financial incentives that operated in the then new payment methodologies of capitation. So it went on from there to arrange other things but it still accredits HMO's and other managed care entities.

Gary: Okay. A little introduction to the background you've described. I've always known Alice Gosfield as unique among some of the members of AHLA in the sense of your emphasis on representation of physicians and physician group practices. Could you comment a bit on your experiences in the representation of physicians?

Alice: I'd love to. I mentioned that my dad was a cardiologist and I grew up around physicians. They're very smart. You know I tease them by often saying, "Oh, you don't want to read this, but you got an A in Organic Chemistry, I know you can read this." They're used to solving other people's problems and frequently in an emergency frame of reference and as clients they sometimes function that way in terms of how they relate to their lawyers. But I've loved working with physicians, because I believe that what they do is ultimately noble and that if I can help them do it better, which is what I think my business is about, then that is an ultimate social good.

I had a very brief period when I was like five years out of law school where I used to refer to it as. "The fever," where I thought maybe I wanted to go to medical school. I didn't want to actually be a doctor, I just wanted to know all that stuff. I managed to get beyond that but ... Working with physicians has been extraordinarily rewarding to me and I believe that today it's even more interesting that it was. I had to make my mark in some ways in the beginning because physicians didn't even know that they needed lawyers. I wasn't interested in doing the thing that other lawyers were working in the area which was the professional corporation's laws had recently become more widespread when I first started practicing. And I really wasn't interested in doing the basic corporate stuff. I was much more interested in the regulatory

environment and how you could use legal mechanisms to improve clinical decision making. And so between that as a focus and what I did in my practice as well as what I did from a public interest perspective, my life is today having a harmonic convergence because it's all coming together in the new payment models. And the shift of value based focus and the delivery of healthcare.

Gary: Certainly. Alice, you said earlier you mentioned you attended your first NHLA program in '74 and somewhere around 1978 or so you actually spoke. Why don't you just describe a bit your evolution into the leadership roles at NHLA and ultimately, as I mentioned before, serving as President of NHLA in 1992 to '93.

Alice: I had volunteered to speak and had spoken a couple of times, well more than a couple of times. And I went on the board in 1986. And the way that happened was that Lynn Homer, who was then the President, called me and he said, "How would you like to be on the board of the NHLA? You get to come to a meeting," I think in those days it was once a year, "You get to come to a meeting, we won't pay your travel." And I said, "And I get liability?" He said, "Yeah, but there's a DNO policy." I said, "Can I review the policy?" He said, "You wanna be on the board or you don't wanna be on the board?" I said, "Okay, I'll be on the board." And it was that informal in those days, which certainly is not the way the mechanism operates today because I've watched my husband, who had no interest in it when I was doing it 20 years later, go through the leadership of the AHLA. And now my son is doing it again.

So I was on the board and that was interesting. And it was in the days when they had what was referred to as, "The Educational Fund," which was the public interest arm of the AHLA. It wasn't as organized as it is today. And there came a point when they had longer even role up system than they use today, so that if you were named as the ... I think the Secretary was the first position, and then you rolled up into being the President. And so I went on the board in '86 and I think it was two years after that that asked me if I wanted to be on the Executive Committee so to speak, and the roll up. And you know, the rest is history I suppose. I did that and I gave an enormous amount of time to the organization. It was great fun and I had great friends. Sandy Teplitzky has been a really good friend and a wonderful colleague to share ideas with for years and years and years. And he was right behind me in the role up. We were friends anyway and so that just made it even better.

And it was a very collegial kind of an environment. There was far less careerism than there is now, there was far more focus on how the organization was really about what had compelled me in the very beginning, which was people who are willing to share their intellectual capital with each other for the betterment of the profession and betterment of the service to our clients. And I think some of that has gotten blunted a little bit in the much more enormous bureaucracy that's associate with the way the AHLA functions now. But there are lots more opportunities for people to get involved than there were certainly in olden, olden days and the carbon dating days when I was first involved.

Gary: Well Alice, you were President of NHLA I guess three or four years before the merger between NHLA and the American Academy of Hospital Attorneys. What were some of the motivating factors that prompted that merger and after that, what's your current assessment of how successful that merger has been.

Alice: Well it was interesting because the Academy was a very different kind of organization. I'd spoken for the Academy a number of times and they were far more social. They had a prom at

each of their events, I mean NHLA never did that sort of stuff. And the Academy was very focused around hospitals whereas the NHLA had a more diverse kind of participation. And I remember when Mary Lou King was talking to me about the merger and I said, "Well I don't get what this is all about. We've all been doing fairly well on our own." And she said, "Yeah, but just imagine how much more powerful it would be if everybody was under the same tent." And I thought, "Well oh no, the health lawyers, hospital lawyers, all more or less the same thing."

And I think there were some cultural differences in the very beginning. 'Cause as I said, I think the Academy was a far more social organization in a lot of ways than the NHLA had been but now some of that sociability has rubbed off on the NHLA as well where I think it is a more sociable organization now than certainly it was when it was in the very beginning. And I think that's been a good interchange. And I think in some ways the drive, what the NHLA was without the singular industry focus that the Academy had really has benefited the folks who were more narrowly focused and got the ability to expand their horizons as well because you know, it's the way in which you are a far more excellent health lawyer is with the breadth of what it is that you are exposed to even though it's not stuff that you actually do yourself.

Gary: Alice, on a slightly different focus, with your perception in the practice of law and the health laws since the mid 1970's, could you comment on what you think are a few of the key milestones in health law and in the development of health law as a practice specialty?

Alice: Well everybody would say it's a daring case when the hospital guy is held liable for the actions of its physicians. That was a pretty noteworthy event and that really is pretty recent. That was 1974. I think the HMO Act and the regulations that ensued there from with the funding of managed care plans all around the country was the beginning of a lot of what we're seeing today.

I think that the Affordable Care Act, for all of the hullabaloo around it right now really marks something extremely important in the history of healthcare in this country by making benefits available to 20 million people who didn't have them. And I always say to people that there were a thousand other pages in the legislation that were not about the individual mandates, that's the part of the law that I pay attention to, which is part of what is really motivating a lot of the change in terms of value driven healthcare.

I think that the irony of calling it Obamacare is lost on the general public, but my major complaint during the development of the legislation was that it's really [inaudible 00:22:45], it wasn't Obamacare. And he was doing the anti-Clinton thing, being hands off with the legislature and a lot of what is in the legislation is that that was in pilot's blooming. The ACO thing isn't even a pilot, it was just an opportunity that was made available. So I think it's certainly not a perfect piece of legislation but I think it was an incredibly important piece of legislation in the history of the development of healthcare in this country.

Gary: Alice would you, if given the chance, would you have done anything differently in your career?

Alice: Oh! I don't really think about life that way ... Well I knew I didn't want to work in a big firm, and I never have. And I started out thinking that I really wanted to do public interest work, which I did, but then I found a way to do public interest work while I had my own practice, so no. I think I designed my life and that there were the very early periods, I was not financially successful and you would ask me if I was an entrepreneur I would have said, "Oh no, I don't think so." But turns out I am. And that, in the same way that an entrepreneur has a very clear vision of what it is that

he or she wants to do and [inaudible 00:24:18] to the vision, not rigidly, but faithfully. I have done that for my entire career. And I've been very happy with the way it's worked out. It's a very self-determined life that I get to lead.

Gary: On the other side of the equation, what do you see as the future holding for health law, for the American Health Lawyers Association, and for yourself?

Alice: I think health law has a vibrant future. I think that the Baby Boomers are becoming the consumers of the system and not just the financiers of it. That's going to be tough on the Millennials but a lot of things are going to be tougher on the Millennials than they're expecting. I think that there's no way that there won't be regulation in the healthcare sector and AHLA has been very much focused around regulatory environment. I think as much as anything there are plenty of other organizations that focus on professional liabilities, a [inaudible 00:25:23], defense bar and all of that. I think that what's really distinguishes the health lawyers is that it speaks to a diversity of legal problems predominately emanating out of the regulatory context, both state and federal. And I think that distinguishes it from some of the other organizations that are around.

Gary: What message might you tell the current leaders of AHLA as to how to preserve the AHLA and best plan for its future advancement?

Alice: Well I'm going to say some things that maybe others wouldn't. I think that it was a period of time when I first got involved with the AHLA when a lot of people complained about the fact that there was too much control by embedded group of folks. I mean there were periods of time ... You know JD and Len chaired the Medicare, Medicaid Institute for decades. And they did a really good job but there came a point when that was not seen as being fair or open or making opportunities for other folks. I think the current AHLA has fallen into some of that and I think there's too much stuff going on where people who have been on the board go back and sit on program planning committees. I don't think that's right, I don't think it makes room for other folks and I don't think it looks open and inclusive.

I would also like to say that open and inclusive is fine as long as there's still an emphasis on excellence. And I don't think there's a strong enough evaluation component of what goes on at the AHLA. I think the programs need to be standardized in some ways with better accountability for the way in which they function. And I think that the leadership needs to be responsible for pulling up their socks and saying, "This is the way these things ought to be done." And I think that that would benefit the organization in the long run. It's gotten unwieldy as far as I can tell. I mean I'm not as involved in the mechanical workings of it now, but I can't keep straight the differences between affiliation groups and affinity groups and the list serves and the practice groups. It's good because it gives people a bunch of different ways of participating but I think it's important to have a very clear idea about what all these moving parts are about.

One of the things I did when I was the President ... I had only two things that I really cared about, which I told you in an email ... I wanted to do a real strategic plan. And when you do a real strategic plan, if most of the people in the room are not just a little bit nauseous you haven't actually done anything. And we did a real strategic plan.

And the other thing that I cared about was I wanted to see the word, "Excellence," embedded in the mission statement of the organization, which it is and has remained that way. I think the

organization would benefit from some serious strategic planning, the kind that makes people nauseous.

Gary: Okay. Well Alice, your comments have been very, very insightful. Anything else that you would like to add to the audio interview?

Alice: You know I know that we've been left with one of the guys who was behind and I said, "I've known him for a thousand years and I think he's a fabulous guy." I think this is a terrific thing that you guys are doing and putting effort into capture what folks like me can observe about the environment. I think that there are things that have changed a lot and I think that there are things that that have not changed very much at all. And I'll say that Julie Kass, who is much younger than I am, and actually was a summer student who worked with me, and I don't even hire summer students. She was instrumental in the creation of a women's council, which I said, "My God, I thought we were over this. Wasn't that 1973? I mean why are we dealing with those kinds of issues?" And after many conversations, she was able to convince me that for women who work in contexts that are not mine, that there really remain issues and I suspect that's probably the case for people of color and for people who come from diverse economic backgrounds. And I must say, I think the AHLA has done quite a good job at confronting those kinds of issues and welcoming people and I think it should continue to do so.

Gary: Well Alice, before we close, let me request and can remind that if you by chance have any NHLA or AHLA artifacts or memorabilia that can be shared with AHLA for the 50th anniversary celebration this summer, please do send those to Kerry Hoggard at AHLA.

Alice: I don't think I have anything. I was not big on collecting stuff.

Gary: I understand. Well Alice, thank you for your participation in the AHLA History Project Audio Interview Series and sharing your insights regarding the practice of health law and the AHLA's historical and continuing role in supporting health law practitioners. Thank you very much for being available this afternoon.