



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 21, 2017

Bob Leibenluft interviewing Dale Cowan:

Bob: Hi Dale, it's Bob Leibenluft here. Thanks for joining us this afternoon, we're doing our AHLA history project call and I appreciate the time that you're spending with us. Maybe I'd like to start by just asking a bit about your background. Your background is a little bit different from many of the other AHLA members that were getting taped and tell us a bit about your career in health law and elsewhere.

Dale: Certainly, my background of course is different than that. I started as a physician and was on a faculty of medical school, but was faced with a number of issues that were in both the legal and legal ethical domain. One dealing with utilization of services in a metropolitan hospital and the other dealing with the legal and ethics situation pertaining to use of human subjects in experimentation. Human subject experimentation. And both of these stimulated me to learn a little bit more about some of the legal considerations.

Then I went to the Case Western Reserve Law school Law and Medicine Center. Professor Schroeder at that time was chair of it and he graciously allowed me to sit in on a course of Medical Jurisprudence, which was the only course they had really that dealt with health law in any sense. Except there was a course in law and psychiatry. During that, while I was there, a law review of Case Western Reserve put on a symposium or wanted to put a symposium on the issues pertaining to human experimentation, and I was asked to write the paper. And at that time I was chairman of an institution review board and so I ended up writing an article for the law review in 1975 that dealt with the issues of and processes of institution review boards and how they reviewed proposals for human experimentation.

And one thing led to another, I ended up going through the full program at the Case Law School, finishing ...

Bob: So it sounds like you wrote a law review article before you were in law school.

Dale: Yes, well ...

Bob: Well at least as a full time student.

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Dale: I was not yet a full time student. I was just taking ... I was auditing this course in Medical Jurisprudence and they came to me because I was a physician. I was chair of this committee and Institution Review Boards and IRV's were relatively new and they thought it would be useful to have a description of how these things function, which is what I did. And that was 41 years ago, 42 years ago that came out.

In any event, after I completed my J.D. degree it was apparent that there was a lot beginning to happen in health law and it had not been occurring before. We had things like peer review, which was relatively new. There were organization and medical practice, public health issues, financing issues. And I went to the dean and the faculty at the law school and proposed a course in healthcare regulation. So I had the opportunity to start the first course in health care regulation at Case Law School, which I taught for two years and then the third year Professor Max Melman who came from a law firm in Washington. I think from your law firm actually.

Bob: I think he came from Arnold Porter I think.

Dale: That's correct, Arnold Porter.

Bob: Another good firm in D.C.

Dale: He co-taught the course with me the third year and then the dean at that time really was less interested in how [inaudible 00:04:48] on faculty. Max was really able to take over and he's done a beautiful job of expanding the law and medicine center having succeeded Doctor Professor Schroeder upon [inaudible 00:04:59] retirement. And it's just a terrific program.

But I kept my interest and got involved right after I finished my JD with a number of organizations. Most prominently at that time the National Health Lawyers Association, because I was not so much interested in the litigation aspect or even the forensic aspect so much, but really in the regulatory and transactional aspects and that's what the NHLA was focusing on. So I got involved and I had good fortune of being still academic and so it was a natural for me to participate in their programs, which I was given the opportunity to do beginning in 1983.

At that time I was starting programs on the suggestion of another member of the group Charles Weller, Chuck Weller, who was an anti-trust lawyer here in Cleveland. He said "Why don't we get an organization together to try to control costs and better control over the quality of care?". Which this is then in the early 1980's and so we started provider organizations. Their health maintenance organizations had been started maybe a couple years before that, but there were a lot of issues pertaining to them and they thought it would be more acceptable to more physicians if they had something that was a little bit less pre-scripted than the HMO's.

So we started preferred provider organizations and it became very [inaudible 00:06:47]. I had the opportunity to write a monograph published by Aspen Publishers on the organization operation of management preferred provider organizations that came out in 1984. Meanwhile, the NHLA put on its first program on PPO's in September 1983 and I had the opportunity to participate on that program. And a few weeks after that they had their first program on contracts in health care.

People now would think that it was rather bizarre to think that that was the first program, but it was because healthcare contracting was not a big issue before the 1980's. It is obviously now, but it was a tremendously exciting period to be involved, because firstly they are really bright

people, knowledgeable people and we were doing a lot of creating. There was a lot of creative thinking going on at that time and so Bob Bromberg, who was ... I think it was Bob. He was the tax law expert in health law and, I think he was from Cincinnati, and he kind of took me under his wing and he got me involved and he's one of the reasons that I ended up being on the board, because he was a really tremendous promoter.

Of course, I had some interesting experiences with some of the early people, like the very first health law and NHLA meeting I went to in 1981, I had just gotten my degree, was in Washington. Jack Woods of the old firm of Wood Lucksinger and Epstein from Texas was there and Jack was a classic tall thin Texan with a big hat and a long cigar. I went up to him afterwards and introduced myself and said "I'd like to be involved with this organization.", and he said "what are you interested in?". I said well I'm interested in the legal and ethical issues of health law. He said "Aww shit there's no money in ethics." And I thought "Well, that was good".

But turns out there probably is. I was relatively naïve at the time and so I wasn't so much worried about whether there was money in it, it was just that for me it was one of the reasons I had gotten into the area and the issues have clearly not gone away. If anything they have become more complicated, but he was very encouraging. As I said Bob Bromberg was and Bob's other great thing was he was a real connoisseur of wines. I remember being at a meeting, him having lunch and he selected some wines that were outstanding. Turns out that they were also very expensive, but that didn't seem to be the issue. The fact is that he knew his wines better than almost anybody I've ever known. And ...

Bob: So who was paying?

Dale: He paid for that one.

Bob: Okay.

Dale: This was in the mid 1980's and it was about a ninety dollar bottle of wine. That part I remembered. But he picked up the tab on that one. But the point is that they were marvelous individuals. People could talk to, you learn a lot from and the remarkable thing about the NHLA and now the NHLA was the congeniality, the fact that everybody was helping everybody else. Nobody had a sense of competition. Nobody was holding back on information because they feared that someone else would be a competitor and would take advantage of it. And it has been that way and I think that that's one of the beauties of the organization.

Plus it was inclusive, there was Henry Kaplan and I were both dual degree physicians and we happened to be on the board at the same time. In this respect I think that David Greenburg gets a lot of credit. Of course, he was the brains behind the whole thing in the first place. But he was really receptive to having people with different backgrounds participate actively, as long as individuals showed an interest and willingness to do it. Just step up to the plate and do it. And Henry and I tried to show that we were interested in doing it. And ...

Bob: So did ... go on sorry.

During this time and throughout have you been primarily a practicing physician or have you been also a practicing lawyer? Tell us a bit more about how you combine the two.

Dale: Well I never gave up my medical practice, but there was a period of time when I was also of council with a law firm here in Cleveland. At that time Burkhalter and Barrack, it no longer exists, but in any event I did that. And then after it looked like they were disintegrating for a variety of reasons, I ended up on my own counseling medical staffs and physician groups in organizing, so that they could contract with hospitals. Or I served as legal counsel of several medical staffs, I served as hearing officers on some disciplinary hearings at a number of hospitals.

As a matter of fact that got me involved with another interest of mine, which was the alternative dispute resolution. And when the NHLA, or now, AHLA initiated the committee to look into ADR in healthcare, I had the good fortune of participating on that initial committee with, I think it was Jim Hall and [inaudible 00:12:40] Emery. We were working out the whole operation and what this would look like and how it would work, and of course now it's been, my estimation, tremendously effective and widely accepted way of dealing with often very difficult disputes.

But it was here again an opportunity to participate in that and I was able to bring the bear I think to some perspective by having been and was at that time a practicing physician and a member of a medical staff. Actually subsequent, I was the president of a medical staff and so I found that my activities in law very much helped me in many aspects of my medical practice and medical involvement, and at the same time being a physician was a tremendous helpful in providing insight into how to address various of the legal issues and legal ethical issues that affected medical practice.

Bob: So are you seeing more individuals having like these dual degree backgrounds where they're using both medicine and law at the same time?

Dale: I think there are a fair number, although interestingly enough now that medical management has become such a popular thing, more physicians when they go for another degree are getting MBA's rather than JD, but ...

Bob: Maybe they are following up on Jack Woods' advice about where the money is.

Dale: Yeah, exactly. However, I must say that when I served for a period of time as the Vice president of medical affairs at one of the community hospitals here in the Cleveland area, that I found having the law degree was immensely helpful in all aspects. Both when it came to some of the credentialing issues and privileging issues that arose, but particularly with respect to some disciplinary issues and corrective actions that had to be taken.

So I think there are a fair number of people with dual degrees and I think there are more of them now. There are more programs, which provide both MD/JD degrees or JD/MD degrees. And I think that is recognized as a very important combination for people to have.

Bob: Do you think that there should be ... people in medical school have a lot to learn but do you think they, aside from those who don't want to become lawyers, but do you think there is more that they could be, more in terms of an educational role that lawyers could provide in medical schools in terms of either health law or how the healthcare system works?

Dale: Oh I think so. Particularly now, because things have become so complicated and there have been tremendous evolution in medical practice. Where during most of my career in medicine the majority of physicians were private practitioners, solo or small groups, relatively few were

employed physicians or faculty people. And now that's changing for a variety of reasons. And we see that more and more individuals are becoming employed physicians and I think that for physicians, for students coming thought they really need to understand what this means.

I think that there's some major issues in terms of the physician patient relationship. And what the legal issues pertain and the ethical issues have pertained is, physician patient relationship ... When one is a practicing physician, as opposed to one who is an employed physician working for an organization that may have arrangements, may have considerations of cost containment, or utilization that may or may not be consistent with what's in the best interest of the patient, from the perspective of the physician caring for that patient. That is a ... that's become a very, in my estimation, a very important consideration. Really hasn't paid much attention to, but I think physicians need to be made aware of that and if lawyers, people in health law who can help them understand the implications of what they are doing.

Bob: Yeah the melding of healthcare and business creates those kinds of issues.

Dale: Right.

Bob: No question. Well, in wrapping up any thoughts, you've been doing this for a long time, any advice you'd have for either younger lawyers or maybe even younger physicians who want to be lawyers?

Dale: Well I would think ... Yes, my suggestion is, whether a person is studying law or medicine if they're interested in the interface of law and medicine, definitely get degrees. It's not ... I mean yes it is a lot of schooling but at the same time I think that the value they can bring to it, in respect of where they are starting, but the value they can bring to it is tremendous. It's one and one equals three, not just one and one ... And I think that they can offer some tremendous insights into some of the issues, particularly now that there's more and more focus on utilization, on cost containment, and on controlling prices. And I think that they shouldn't be dissuaded by the fact that there is ... that were looking at what 7 years or maybe if it's combined degree program, could be conceivably done in 6 years. But that should not dissuade them.

I think what's important is that if they are going to do that they really need to get some background in medicine over and above just medical school. They really need to go through a residency, because it gives them more insight into medicine and the issues of medical practice and not everybody is going to be able to get in full grown practice and then make a leap. It's very difficult to do both well. I think one has to make a decision what one wants to do, but having the background provides great insight into how to address some of the issues that are arising. And I would think that it is a tremendous opportunity for anybody irrespective of whether they first go to law school or first go to medical school.

Bob: What I hear you say there was not just a matter of going to medical school, but also actually having some responsibility for patient care, which really gets you [inaudible 00:19:48]

Dale: Exactly, go to medical school ... Or it would be like going to law school and never having been with a firm. Never having gotten involved with ... there's no internship or residency per se after law school, but there certainly is kind of a similar way when one starts with a firm and works as an associate and gets some feeling for what the issues are and how to think like a lawyer.

- Bob: Right, Right. Well this was terrific talking to you. Are we going to see you in San Francisco? We hope.
- Dale: Well, I'm serious. See I haven't been to the last several meetings but this is the 50th anniversary and I'm probably one of the gray beards, probably one of the older members of the group now. And I think that I've seen such a change that I'm seriously thinking about getting out to San Francisco for it.
- Bob: Good. I hope you do. We need to uphold that demographic over there, so. Well good talking to you Dale, and I hope to see you in a few months.