



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 24, 2017

Gary Eiland interviewing Bob Leibenluft:

Gary: Good afternoon. This is Gary [Eiland 00:01:27]. This afternoon, I am interviewing Bob [Leibenluft 00:01:31] as part of the American Health Lawyers Association, history project, audio interview series. Bob is a past vice president of one of the predecessor organizations to the AHLA, the National Health Lawyers Association and has served multiple other roles for NHLA and AHLA that we'll likely touch on sometime this afternoon. Welcome Bob.

Bob: Hello. Glad to be here.

Gary: Well, I know, Bob, you have a special interest in how the practice of health law has evolved and changed over time and the AHLA role in that, both historically and in the future. Before we go there, let's discuss a bit your background, practice focus and career accomplishments starting first with some of your career background and your interest into health law.

Bob: Sure Gary. I graduated law school in 1980 and went right from there to working at the Federal Trade Commission at their Office of Policy Planning and we were looking at trying to lay out what should the FTC be involved in in the future in a big way and one of the things that I worked on at that point was health care and we're laying out an agenda for the FTC, this was back in 1980, to get more involved in health care, [00:03:05] just begun to do that.

I soon left the FTC. There's a change of administrations back then which was about as dramatic as we have here currently with President Reagan coming in and went to, what was that called, [inaudible 00:03:21] and soon thereafter began working in what was the beginning of a health practice there and that was basically founded by [inaudible 00:03:32] who had been chair of the House [inaudible 00:03:38] Health Subcommittee and a fellow named Duke Collier, who had been a deputy administrator at health care finance administration [inaudible 00:03:46] and what we did then and this may be a little bit different from what many of the other old timers are reporting.

Many of the other health lawyers back then had grown out of working for hospitals and we saw an environment where there were a decent number of firms that are beginning to specialize in what they called health law with a hospital base and we were trying to look for a different niche. What we began working on is with medical technology companies, drug, device and service companies that were trying to get coverage and reimbursement for new products and some of

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that might involve a change in the law or convincing [inaudible 00:04:33] at that time or private payers to pay.

We worked with a company that was originally called Home Health Care of America and they grew into Caremark eventually, involving very high tech home infusions. We worked with starting the national hospice organization giving the hospice [inaudible 00:04:55]. We were really doing a very, kind of Washington oriented practice around policy and regulatory issues, particularly around payment and interestingly we would talking to companies and saying "Hey, you have to be worried not just by getting through FDA approval but also about getting coverage for your drug or device." There's been a whole industry that's grown up since then, really working with the [inaudible 00:05:23] and medical device industries around those issues. Some are lawyers and some are consultants.

Anyway, I worked there at [inaudible 00:05:30], mostly on payment issues and then went back to the FTC in 1996 to head the health care division in the Bureau of Competitions, so my focus was on hospital mergers and physician joint negotiations. Did a lot of work there including the promulgation of the health anti-trust guidelines, in 1996. Then when I returned, I left government in 98 and went back to [inaudible 00:06:03] but decided after some thinking about trying to work in both areas that I would stick with the health care industry but do anti-trust work for them, so that's what I've been doing since. The firm is now called Hogan Lovells and my practice since the late 90's has been entirely devoted to anti-trust issues in the health care sector including hospitals, doctors, health plans and medical device and pharmaceutical companies.

Gary: Well, Bob, before we move to the more current focus of your practice, you mentioned your earlier involvement with life sciences company medical technology and the like. If I recalled, you had some involvement at National Health Lawyers Association and organizing a program dealing with new technologies. Could you provide a little background regarding that?

Bob: Sure and this may be something that maybe only a few people remember and I suspect [inaudible 00:07:05] in NHLA archives. We ran a program around 89 to 91 or 92, I believe it ran three years that was aimed at legal issues for new medical technology sector and was aimed at trying to expand the base of the NHLA focus [inaudible 00:07:28] programs reaching out to lawyers who work with drug companies, with device companies, with clinical trials, with research so there's a crossover. NHLA has done more of that, more recently. Back then it was [inaudible 00:07:45] reaching out to many lawyers who would not call themselves health lawyers. Might have called themselves FDA lawyers or university lawyers or drug company lawyers [inaudible 00:07:57]. It was quite successful for a couple of years. We had a very diverse faculty. It petered out, I'm not sure exactly why. We were trying to compete with some other bar associations that were really more focused on the life sciences.

What's interesting to see is the efforts over the last 15, 20 years to expand again NHLA's offerings aimed at lawyers working in those sectors as well as lawyers who are working for providers or payers who have dealings with new medical technology, whether it's involving clinical research or ways to commercialize technologies or off label promotion. There's a whole range of issues and the expanse of health law in a sense is as AHLA has looked at it has expanded during this time period.

Gary: Though certainly that program back in 89 through 91, 92 was certainly a harbinger of where things are today. [inaudible 00:09:12] life sciences an extremely important part of health law

practice. I know that you were also active in National Health Lawyers Association leadership moving into the board of directors and into the officer [inaudible 00:09:27]. Could you just comment about some of your activities there and also your recollections of the period leading up to the merger between National Health Lawyers Association and the American Academy of Health Care Attorneys to produce the American Health Lawyers Association?

Bob: Sure, I got involved in leadership the same way I think many people did and still do is I began speaking at programs. I began writing various pieces that were published by [inaudible 00:10:00] NHLA and found that I really liked the people and liked the contact at meetings, I think that was the biggest draw for me and I got on the board in the early 90's. We had to look for a new CEO to replace David Greenburg and I was involved in that process. David, by the way, was a tremendous force in the early years in the NHLA and I remember many times going to meetings and he would always be sitting off in the side and very intent and really asking me and just about everybody he could corner, "Tell me, what's the hot issues? What should we be focusing on? What more can we be doing? What do you think of this, what do you think of that?" He really had a very curious and inquisitive mind and really wanted to think of how to build the organization based on what it could do to serve its members.

I was on the board during the discussions about the merger. There was a lot of, on the NHLA side, I remember discussions who are these people at the academy and they do things differently. At their annual meeting, they have a big golfing thing and social thing in the evening. We don't dance and all music and we don't really do that and how are we going to deal with the culture. My thought back then and still was, was hey they're just health lawyers and probably serendipitous which organization people ended up in and many people were in both. There wasn't really a big cultural differences. People had different ways of historically doing things and putting them together would probably get us to be a better association.

One interesting thing was, I was at the FTC actually during when the merger went through and I remember I think I may have recused myself from some of the last vote. People wondered whether I would want to open up an investigation of the two leading health law associations combining but I concluded that that was not needed. That there was [inaudible 00:12:33] to be left nameless and [inaudible 00:12:38] and there was lots of other [inaudible 00:12:40] providing and would likely provide conferences and publications and so forth and we certainly see that. So, no anti-trust issue there on the merger, at least as far as I was concerned and things went very smoothly.

Gary: Well, thanks for those observations and after 1997 we did have the creation of the [inaudible 00:13:04] organization the American Health Lawyers Association. Why don't you chat for a bit concerning how you view health law as having evolved and changed over time and the AHLA role in that.

Bob: Obviously, one big difference is it's so much better recognized now. There's a number of law schools that, I think quite wisely, have put together health law programs and are attracting, I think, some very good students who want to do health law. I think, early on in my career when we used to get people out of law school who said they went through health law and what they really wanted to do, is they wanted to do bioethics and maybe some policy. It was hard to find people who wanted to do the kind of practice that you get paid for in a law firm of any sort.

I don't think that's the case now. I think we have a lot more people coming out of law schools, they've been either trained in law schools or they've had the opportunity to meet and know and

be mentored by health lawyers or they've had the opportunity to go maybe to AHLA meetings, so, they have a bit of sense of what practice is about. My sense is they still have a real interest in the policy issues which is so important and in a way distinguishes what I think health lawyers do from, maybe not all the lawyers but certainly from a large swath of lawyers are technical, they like aspects of the law but I find health lawyers really have a passion and an interest in the policy issues which are so clearly important.

That certainly has continued but I think the niche of what health lawyers can do, which was really not very well recognized 30, 40 years ago, is now very clear there's inside jobs, inside counsel positions that many entities and you have a lot of firms including Am Law, big firms as well all the way down to solo practitioners [inaudible 00:15:39] and doing really great work so I think the recognition of health law and being a health lawyer is very different now than what it was and I think I see AHLA and then its predecessor organizations deserve some credit for that or at least a lot of credit for that evolution.

Gary: Well, Bob you mentioned while you were at the FTC in 96, 98 that you were involved in supervising the drafting of the FTC and the DOJ health policies [inaudible 00:16:12]. Obviously, those were significant accomplishments. Would you comment on some of the, especially the anti-trust accomplishments within your career since the time you left the FTC?

Bob: Yes, so, my time at the FTC was actually just a wonderful exciting time with the drafting of the statements, which was still basically what's out there. They haven't really been revised since 96. I've had the opportunity since then to really be involved on both representing providers and plans on a host of merger investigations. Some of them are public, some not on conduct investigations and what's been really fascinating to me is seeing the range of anti-trust issues and seeing them from different perspectives. We all know that often health plans and health providers are opposite sides of the table on negotiations and they have maybe different views on anti-trust issues and who has market power.

My own view is that things are very complicated and very nuanced and this is not easy. They're very fact dependent and so what's been interesting to me is to have the opportunity to go into markets and really what anti-trust gives you is an opportunity to see the big pictures, see what is really going on in the market. It's rare that things are that black and white and the other side of this practice has been applying anti-trust law to markets that don't really work as classic competitive markets. We're not talking about people selling wheat and setting prices based on a simple supply and demand curves. There's a lot of things that make the production and sale and purchase of health care much more complicated. That's the challenge, we do have the anti-trust laws and they do apply to that. That's been, what I look back on, is that there's been a number of specific matters but I also have had the chance to really weigh in on what I think is the right policy and I try to do that in a objective way and I can keep my perspective, I hope, from being a former enforcer but also have the perspective of being somebody in the market, working for clients in the market on either side and trying to come to the what I hope is the right answer.

Gary: Well, thank you for those observations and why don't you chat for a moment as to where you see the practice of health law evolving to in the future and what the AHLA role should be with respect to that.

Bob: Sure, well, I think that's probably part of a much larger conversation which you won't be able to have about where is the practice of law going in the future. As many law firms get larger, I think, what's interesting to see is how some large firms are continuing their health law practice but

you also have, as I mentioned before, smaller firms. I think one thing is unclear is how long that will continue with large firms focusing on clients that may be more local and not being able to forge some of the large firm rates and whether we'll end up with practices that tend to be a bit more, particularly, on the provider side, local and regional.

I think there's, clearly, in terms of the association, we're dealing in an environment where there's so much now available on the internet and through webinars and there's so much cost pressures that I think there's a tendency for firms maybe or individuals that think, well I cannot go to that in person meeting. Maybe I don't need to, I get the information separately and it costs a lot to do that. I guess, I would urge lawyers to attend those meetings. I think the real advantage of association like the health lawyers association is the personal contact, people working together meeting each other. People gain things through sitting in seminars and conference presentations but I think the more, in a way, enduring things. People meeting other people, gaining contacts, networking, gaining friends who maybe friends for life, for their lifetimes. That's something that a publication can't give you and lots of other organizations can't give you but which the AHLA does and so I would really encourage lawyers, wherever they are in their careers to take the time out, do some non billable networking and get to these meetings.

Gary: Well, thank you for your comments. Are there any other subject matters you would like to comment on for the record this afternoon?

Bob: This is good. I look forward to, Gary, to hearing other interviews and reminiscences and seeing as many people as possible at the 50th anniversary.

Gary: Okay. Well, Bob, thank you for your participation and the AHLA history project audio interview series and for sharing your insights concerning the practice of health law and the AHLA's historical and continuing role in support of health law practitioners. Thank you very much for being available this afternoon.