



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.

March 10, 2017

Gary Scott Davis interviewing Tom Hyatt:

Gary: Let's talk a little bit, if you wouldn't mind, about I know one of your favorite topics about AHLA, which is all of the characters that you've met during your long and illustrious association with the association. Can you identify some of the characters and talk a little bit about your perspective on their influence on the association and also particularly your practice?

Tom: Oh, sure. Boy, it's so many, Gary, so many people that you and I have talked about before. We've stood on the shoulders of giants in creating this organization and growing it through the 50 years. Certainly I think, first of all, David Greenberg. David was such a gentle man, but such a supportive person to everyone in the association.

I know he was working very closely with me as a very young and green associate who he didn't need to spend a second with and he was always very thoughtful about my career, about how he could help, about how he could get me more involved in the association and in his quiet and graceful way, really stood connected to everyone in the association.

I think about certainly some of the early folks in our own law firm, Wood, Lucksinger, and Epstein, that we started out with. People like J.D. Epstein and Jack Wood, very involved in the association and people who you truly respected for their depth and breadth of knowledge. You wanted to hear what they had to say and fun people to be around as well.

I think about my former colleague at Ober Kaler, Len Homer, who again is not only one of the great Medicare and Medicaid lawyers in our association, but truly one of the great characters. Everybody I think at some level wants to be Len. We live vicariously through him. He's one of a kind. You think about people like Jim Hall, just as gracious and courtly a lawyer as you can ever imagine. I remember him once saying he really was a philosopher by heart, but it didn't pay very well so he became a lawyer instead. Just a terrific guy in the association.

People like Bob Bromberg, who in particular was very formative for me in my own career in the area of nonprofit tax-exempt organizations. Bob was it. He was former president of the association but the founding chair of the tax program. There are so few people that did that work, Gary, in the early years that he would often in that program do six or seven presentations because there weren't others out there to do it that knew the field.

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He was so kind to people like me and Jerry Peters and Todd [Greenwalt 00:04:26] and TJ Sullivan and others in helping to launch our careers and get more involved in that program. Always very supportive in what we were doing and really top of the line in terms of his knowledge of tax-exempt organization law. Others, again, too many to name. Phil Proger, Joel Michaels, others that just were such an important part of the association in those years.

Gary: Talking about Bob Bromberg and tax exemption, you're well-known in that area, have written, speak. Can you talk a little bit about the evolution of tax and tax-exemption and its growth as a subspecialty within the practice of healthcare law and the focus that the association historically has had in that space and how it's grown over time?

Tom: Absolutely. It really has changed quite a bit over the 50 years of the association. Much of what happened in the IRS in this area of healthcare law happened as so much of what happened in our area of the law did with the Medicare and Medicaid Acts in 1965 and subsequent development of the law there. Tax-exempt nonprofit organizational law was always an important driver.

It was one of those along with Medicare and Medicaid reimbursement, later Medicare and Medicaid, fraud and abuse, antitrust, and so on that were just always a key element of transactions, of initiatives that clients were involved in. In those early days of the association, the IRS was much more active. They didn't have the budget constraints they have now. They had more staff, they were much more aggressive on the audit side.

They had people like Jim McGovern and others who would speak and write and actively debated what was happening in the changing development of nonprofit organization law. The IRS was very active in those days. Marcus Owen's another fellow who was always good with the association in terms of sharing the IRS' viewpoints in those times.

Bob really helped to develop that and that side of the bar really helped to develop that as an important linchpin of overall analysis of any kind of a healthcare topic. It's really changed, Gary, over the years as the IRS has had more constraints. The audit rate is quite low now. They really focus on education and outreach and not so much on enforcement anymore and frankly feels as though exempt organization law isn't the concern that it was in the early years of the association.

Gary: You mentioned earlier David Greenberg as one of the iconic characters in health law. I know that you're one of about 24 or so people that have been recognized by the association with the awarding of the David J. Greenberg Service Award. Can you talk a little bit about the award and what that meant to you to become one of those recipients?

Tom: Yeah. It really is perhaps the most meaningful professional recognition in my career, Gary. It's something that comes from the support of your peers. It is recognition not only of the work that you've done in the field, but in particular your work in support of the association. That makes it of all the more import. It means a lot to me because it's David's award and I share that connection with him. I still share that fondness for him, good memories of him. To have that connection with David is great.

Terrific to have gotten that award from my peers as well and to have some recognition of a body of work and long time with the association and particularly found that night, Gary, that I received the award ... because Anne Hoffman Hoover had absolutely stonewalled me into

believing that the actual recipient that night was Sandy Teplitzky. I had come prepared with props and all ready to give speeches on behalf of Sandy. When they announced my name, you could have put a fishhook in it because my jaw just dropped. It was a fond memory of that night.

Gary: You and I both started together. We go back a long time at Wood, Lucksinger, and Epstein which is clearly recognized as one of the original and iconic healthcare law firms in the country. You've also had the opportunity and privilege to work at some of the other cornerstone healthcare law firms. Can you share some of your perceptions and experiences with those other firms beyond Wood Lucksinger?

Tom: Sure, so early involved with a firm called Powers, Pyles and Sutter, later Powers, Pyles, Sutter and O'Hare, which was a spin-off firm that Galen Powers launched off of what was then Weissberg and Aronson. It was one of the early boutique firms, Galen Powers, one of the true leaders in our bar and in the American Health Lawyers Association. That was an exciting time. It was a small boutique shop.

There were just maybe a dozen of us. Highest caliber of work being done and really a fun time to be involved with it at that level. Later had a very small spin-off, which was with Steve Schuster, formerly of Wood Lucksinger, Marilou King, I, and a couple of others to start a small boutique called Schuster and King. Did that for a few years. Marilou of course would later go on to become CEO of the association.

Moved from there onto Ober Kaler, which is just a wonderful firm. Very recently merged now with Baker Donaldson. It is also no more, but a terrific firm. 150 or so lawyers out of Baltimore. A nationally recognized healthcare practice. Then from there to this small boutique called Dentons, where I practice now. Over 7600 lawyers and the largest firm in the world. It's been an interesting ride, Gary, from among the very smallest health firms in the country to the very largest.

Gary: One of your comments there about boutiques and then moving to Dentons is one of the many changes I think that we've seen over the course of the last several decades in the manner and nature of how healthcare law is practiced. Can you talk from your perspective in addition of the transformation from a boutique focus to a more global law firm focus or regional law firm focus? Some of the other material and significant changes that have occurred with regard to the practice of healthcare law?

Tom: Yeah. I think substantively the biggest change has just been the amount of law and material and territory there is to cover now that has required immense specialization. In the early days, you could be a Medicare lawyer. You can't be a Medicare lawyer anymore. You're a Part A guy or a Part B guy or a C guy or a D guy. You can't cover the whole waterfront all by yourself. There are whole new specialties of law that didn't exist at the beginning of this association.

There were no Stark lawyers in the early 70s, there were no HIPAA lawyers in the 80s, whole new fields of law that simply didn't exist that require a lot more development. I had the good pleasure of talking with our colleague, Steve Blaes yesterday. He reminisced about the early part even further back in his career when much of health law was looking at things like informed consent and sovereign immunity and those sorts of things. You scarcely even get into those issues anymore because the amount of specialty and expansion in the field.

Gary: One of the biggest moments in healthcare law, and you and I were both there when it happened, was the decision to merge together the American Academy of Healthcare Attorneys and what was then the National Health Lawyers Association. Can you talk a little bit about the merger and the changes that occurred in the practice after the merger and some of the benefits that the healthcare lawyer of today is realizing because of the merger that took place, I guess, almost 20 years ago?

Tom: Sure. I was actually on the board of directors of the NHLA at that time and also on the executive committee, so I was very integrally involved in the discussions and in the transaction that took place to bring about the merger. It was an interesting time. It made so much sense on so many levels to bring together these two leading associations to combine economies of scale to bring all those great lawyers together.

It was not without its challenges, different cultures, different ways of coming about it. Those that came on the academy side were affiliated with the American Hospital Association and those folks have told us that that was a more board-driven association. They didn't have the staff. Very lean on that side. They were to their eternal credit a bit more willing to bring in the social side of meetings, particularly at the national conferences.

They would have the whole half of a Tuesday off to go and see the city and network and socialize with colleagues. I mean, what a crazy idea that was to us at the NHLA and what a wonderful thing it was. It has really become an important part of the socialization of our program. Different ways of doing things as opposed to the National Health Lawyers Association, which was very staff-driven. We had David Greenberg and his terrific staff, Anne and Jeannie and so many others that have been with us for so long that helped bring things along.

I think a terrific substance of expertise. There's some very good longstanding programs. It took a little while mostly at the governance level, I think, to bring the two organizations and integrate them. As with any merger, it took some doing that. I'm not sure it was much of a member issue at all, to be honest, but I think it took the boards a little while to sink in and get the best of the best. We have gotten there and it is just in my view been a terrific success ever since then.

Gary: Looking forward, what do you foresee in terms of both opportunities and challenges for the association based on your familiarity and personal deep involvement with the history of the association?

Tom: I think our biggest challenges are ones that are faced by a lot of associations, which is how to address the needs of our members, particularly our millennial members, going forward. If you look at the demographics of the millennials, now the largest part of our labor force rapidly becoming an important part of membership, those that study it tell us that their views of membership and associations are different.

They are more likely to acquire services a la carte rather than having an annual membership where everything was encompassed. They're a bit more interested in networking through online programs, webinars, that sort of thing rather than the face-to-face meetings. We have baby boomers that are retiring by the minute and very critical for our continued success to make sure that those are being replaced by millennials and their successors in the association.

I think transiting that demographic and making sure that we've gotten to the other end of it successfully, again, on the shoulders of all those before us but also developing the law and

expanding areas of need will be so critical. That being said, Gary, we've done some terrific things and have some terrific programs and substantive expertise. I'm excited about developing that for our next round.

Gary: You talked about today's younger lawyers. One of the questions that I didn't ask you at the start of our conversation was when you were the younger lawyer, how was it that you came to become a health law practitioner?

Tom: I had studied a bit of health law and health medicine in college and thought it was of some interest. I actually entertained some notions of maybe being a doctor, but decided I wasn't good enough in the sciences to make a go of that so I would pursue the law side instead. I actually had a gotten a summer job after my second year, a summer clerkship in Washington, clerking with the healthcare arm of the Bureau of Competition with the Federal Trade Commission.

About halfway into that, I got a call saying that I might have noticed that Ronald Reagan had been elected President. The first thing he did was slap on the executive hiring freeze and you don't have your summer job anymore and so that went away quickly. Came back to Washington, interviewed, and got my job with Weissberg and Aronson that summer, Wood, Lucksinger, and Epstein later, but with Weissberg and Aronson that summer.

Really learned firsthand with the greats like Galen and Ron Sutter and Patrick O'Hare and Guy Collier and others what health law was all about, again, even in its infancy as a bar and decided that I enjoyed that very much and that that was very attractive to me. Spent the first couple three years of my career, as many of us did, doing a lot of Medicare and Medicaid reimbursement work, which I loved enough to dive into it.

Really learned a lot about the medical field, but also enough to know that that wasn't what I wanted to do with the rest of my career. Ended up, because we were doing a lot of corporate reorganizations in the early 80s, picking up the tax-exempt organization stuff. I was the Mikey of the team, the young associate. "Give it to Mikey. He'll eat anything." They gave me the tax stuff that no one else wanted to do.

I discovered the secret I share with so many when we're teaching nonprofit exempt organizations law, which is that it has relatively little to do with traditional tax law and a lot to do with public policy. That's what makes it fascinating. It's such a great area to be involved in. I've picked it up from there and never looked back and have truly enjoyed this area of the law.

Gary: What would you describe as one of the most rewarding moments that you had, both in terms of your practice and with your involvement with the association?

Tom: Boy, so many to choose from, Gary. One of the things that I have very fond memories about is being involved in a Supreme Court argument. It was Georgetown v. Bowen. Ron Sutter at Powers Pyles then was arguing the case in front of the Supremes. He was so good about bringing folks in. I was, I think, a four or five-year lawyer and was on the team, helped write the brief, and sat a counsel's table at that Supreme Court argument.

I can remember to this day Ron being there arguing it and having this fear that he would drop dead on the podium. Chief Justice Rehnquist would say, "Sorry about that, Mr. Hyatt. Would you step up and finish the argument, please?" Happily, that did not happen, but it was terrifically a memorable moment for me and one that I'm very proud of. Beyond that, I think really it's just a

series of moments. Again, to have been involved with some of the greats and enjoy some of those successes both large and small has meant a lot to me and it continues to this day.

Gary: Looking back over your storied career, if you were sitting down with a young law student who wanted to pursue a career in healthcare law, what would you say to him or her?

Tom: I'd say, number one, it's an excellent choice. It is such a strong and robust area of the law today. I can remember, Gary, when I was at Pitt Law School and I was an editor of one of our law reviews. I was trying to convince our faculty advisor to do an entire issue of the review as a symposium on health law issues. He finally pushed back and said there just isn't enough to write about there. Maybe we could do an article or two, but certainly not enough to sustain a whole issue of the journal.

Now of course, there are entire journals devoted to health law and it's such a rich and robust area of the law that no one is going to be bored, I think, or disappointed in a career in healthcare law. It is also so broad and so widespread, so many different areas you can get into and be an expert in.

I encourage strongly young attorneys to be a bit of a generalist in the first couple of years anyway, to learn as much as you can from all fields from Medicare/Medicaid, fraud and abuse, tax, antitrust, HIPAA, you name it. Learn what you can and then build from that. I think if you have that strong base and then take a look at other areas that are a particular interest to you, that's a good way to go.

I still to this day practice with a recollection of things I learned from doing Medicare and Medicaid reimbursement work in the first couple of years because you were really learning the intricacies of the finances of hospitals and how they actually operated. That has proved to be such a strong foundation.

Our association offers so many opportunities to learn, to grow, to find out what those specialties are and very much encourage health lawyers to be involved in our association, to be active. You learn so much, the networking opportunities are terrific. I can't imagine you or I or any of us being the health lawyers we are today, Gary, without our association.

Gary: Can you talk a little bit more? You did talk quite a bit about the educational component and the excellence that the association brings to all of its members and even to its non-members. Can you talk a little bit more about the benefits and the focus that the association has on the networking component?

Tom: Yeah. The networking component is so critical because I think our bar, perhaps more than any other that I've encountered, is so good about sharing information. None of us keeps the cards too close to the vest. All are eager to help anyone from other firms, other practice areas that are looking for assistance. Sometimes people think we're giving away the store, but that's our culture at American Health Lawyers is sharing that information.

The presentations and the writings are very substantive, full of content, so just terrific opportunities there. I think the networking opportunities are huge. I think you learn from and you get to know people you'll work with your entire career. Gary, you and I go back well over 30 years when we were both first-year lawyers at Wood Lucksinger, but we've come to know each

other not through that, but through the association, through all the programs that we've done together.

You never know when that person that you're working with is going to teach you something new, is going to send you your next client, is going to encourage you to join their firm or simply going to be a friend throughout the duration of your professional career. It's such a key element of the association and really one of our very best sides of all.

Gary: As we come close to the end of our time together, Tom, if you were interviewing yourself, what question would you ask and what would the answer to that question be?

Tom: Boy, that's a loaded question. I'm not sure. I'll tell you one I'll just throw in there because it's high on my mind, which is simply, "Where is the next batch of tax-exempt nonprofit organization lawyers going to come from?" It's a subject obviously near and dear to my heart and it's one that I try to support. When we were earlier in our career, there were a lot of lawyers chomping at the bit to develop in that area and I don't see as much anymore.

I think I know why. I think it's because the IRS is less of a presence and less of a threat. Again, it's more about education than enforcement these days. It pales in comparison to the fraud and abuse folks that have criminal sanctions hanging over them, so there's always much, much work to be done there, but it's such an important part of health law and such an important part of public policy that I think there are terrific opportunities there.

I would love to see some of our younger lawyers develop that expertise, really take the lead, get more involved in our association's programming and writing on that. Writing is so critical. As you know, that's been an important part of my professional life. You learn so much from writing and from teaching and I've enjoyed that so much. My hope is that the answer to the question is we will see more folks getting interested in that and they'll continue to keep that torch lit brightly.