



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.

**March 14, 2017**

**Ann Bittinger interviewing Donna Fraiche:**

Ann: Well I had sent you a brief outline of what we wanted to focus on but we can diverge with anecdotes or stories or whatever, but just to recap we want to talk about you know kind of your career story, your entrance into health law, your age [inaudible 00:03:01] leadership, and your practice story. Overall over the next half an hour or so. And then I have some specific questions that can kind of help us guide through, but hopefully we have a little bit of a conversation too.

Donna: Sure I'm delighted, I'm happy to get started.

Ann: Super, super. Well tell me a little bit about how you got into what we now call health care law?

Donna: Well you know as in most cases it was serendipity, you have to kind of be at the right place or sometimes the wrong place at the right time. And in my particular case it was I had just started with a new law firm, I was just out of law school a couple of years, very young lawyer, and they were doing some interesting non profit taxation work. This was in the day that Medicare cost, cost reports where you could, the capital cost of a project, you could pass through your cost report. And so you'd see a lot of development in terms of hospital building plans and so nonprofit health systems, and back then it was hospitals, even before health systems, could expand their footprint. And so they would issue tax exempt bonds.

So I sort of got into it purely as serendipity because the law firm that I was with was doing this bond work, and they were working for somebody who would understand Medicare and Medicaid reimbursement.

Ann: Oh.

Donna: [inaudible 00:04:33]. A Young budding medical student at the time, actually was doing his residency at the time, and so was interested in health care and the delivery system but had no idea financially how it functioned. I learned about the then National Health Lawyers Association and the fact that they had meetings or seminars on the subject of Medicare and Medicaid. And I attended the Medicare and Medicaid program, oh it must have been I want to think back in 1976 or so, when I talk about 1976, it was the days of mag cards if you can imagine, we didn't have computers back then, and we barely had fax machines I think.

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So it's a long time ago, but I attended the meeting, I can still remember the brochure, I knew no one, but I met David Greenburg who was the executive director of the NHLA and he greeted every single person that came to the meeting as though he knew them forever and he would follow you around and if you were somebody that he enjoyed talking to or being with then, you could become frankly one of his pets. And if you were one of his pets you got to do things like write articles. And he was always asking everybody want to write an article, you want to do something? He was looking for volunteer help.

And of course I didn't know anything about this area of law at all it was sort of emerging, I think at the time there may have been less than 100 lawyers that were working on health care projects and they came mostly from the Washington DC area. Every now and then somebody from California would pop up or from Texas or wherever there were a few law firms that even then were sort of emerging in this space, in terms of substantive legal representation.

So that's, it was serendipity. That's how I found out about health law and I began to attend all of the programs that I could possibly attend of the NHLA to learn more about it. And I got meet people like Tom Fox, and then I met the Mike Bromberg who is now deceased who was one of the most incredible health care national policy people ever. I mean he was one of the greatest healthcare lobbyist. And so I learned a lot from them, and from their involvement with the NHLA.

And if you were around back then, and if you volunteered to do things and if you agreed to be on a program, and prepare presentations, it was pretty easy frankly because there wasn't a whole lot of competition in the field. Which allowed me to be able to differentiate my practice into an area that most people knew nothing about. Which again, serendipity. If you could do health law in the day when nobody else did, you didn't have a whole lot of competition to represent supreme credible clients. Which I was able to do so all over the United States.

And then I said some PRRB cases which again were a bit unique for that period. And I started really in Medicare and Medicaid and then from there branched into representing hospitals, hospital operational issues and medical staff issues including everything from early days of drafting bylaws for hospitals and improving upon those bylaws.

So I began the medical staff legal issues program. Which was kind of a trial program, we had it in the Miami area, probably, late I was think 70's early 80's I can't remember the exact date. And then from there I got involved in NHLA leadership and eventually became president. I think I was the first woman president of the NHLA. My counterpart, was the first women, what now is become the AHLA at the same time. So there were two women who sort of made our way in those two organizations at the same time to be the first women to lead or get a stations that had health law as the main mission.

Ann: That must have been a bit progressive for the time. We're talking early 80's then?

Donna: You know that would have been when I made it into the leadership succession track would have been early 80's.

Ann: Right.

Donna: And I think it was easier frankly for women to hold leadership roles in healthcare. In part because there were women who sort of organized and established health care systems in

hospitals and I blame that frankly on the nuns. You know the nuns and the Catholic, total association. They were women and they were very strong and very powerful leaders in religious orders and they also, part of their mission was the healing mission. And so they were involved in health care. So it did seem to be usual for a woman to be able to move up in the ranks of leadership and health care.

I was involved with the American Hospital Association, involved in a Catholic health association, but really involved in NHLA and never felt there was anything special in terms of whether or not I would be accepted as a woman. Whereas in law school, there were very few women when I made my through law school and graduated. And of course that number exponentially grows in the decades after I left law school and so for me it really was an interesting career to have a woman. I mean women were in fields like teaching a nursing and other professions, but there just weren't a lot of women, frankly, in the law profession at that point in time.

And so that was frankly a lot of fun. You know I got to have some attention I might not otherwise have today. My strengths and talents might not be equally considered today if they were then, because I was unique. And I'm sure that that made a difference back then.

Ann: Very interesting. I'm fascinated that you started out in health law doing bond related work and cost report first and then bond related work and then medical staff work. How does your career progression overlap with the coming of age hub health care law as a practice specialty?

Donna: Well I think part of that is driven by your clients needs. And if a client puts you into a particular project that you need to learn everything about or find whoever the person is who knows most about it, the, and I'm going to use AHLA to also include the NHLA because that's part of that history, would provide for you resources to be able to find the answers, develop the answers yourself, or, and become proficient in that particular area of health care law and practice, or find the experts who do.

And so back then if it was a non-profit tax issue in health care or if it was perhaps a health care litigation issue, or an ant-trust issue of some kind, you would likely stumble on the issue and I think the point was being able to identify the issue and know this was something, that there was special expertise about, that you needed to either learn more about or find people who did.

The AHLA was the resource for you. There was a people resource, there was publications resource, and it was a very valuable tool to be able to practice law outside of the say the west law system where you're just looking up and jeopardizing cases. Or trying to find [inaudible 00:12:54] regulations. This was a lot more real, and in real time, and there would be a development, the AHLA was on top of every development and would make sure that there were programs that were time sensitive to react to those particular developments, you know and this goes back to every time there was some kind of budget change.

Every year you'd get a budge and you'd have a different reconciliation bill that would have some policies in those bills that dealt with trying to reduce cost because Medicare and Medicaid cost were even, in appropriations were increasing even back in the 80's and so there were policy developments even then, that were attempts to try and weigh in or curtail those expenditures.

So you ended up learning a whole different set of language. You had to learn a whole different set of acronyms. And so AHLA, then NHLA would provide you the resources every year to learn more about those developments and to be able to integrate those in your practice.

Ann: Fantastic. As you look back, what key milestones would you point out in terms of the development of health care law? For example the implementation of the Stark regulations or the Stark law, or what, and I realize this is anecdotal for every lawyer based on what their clients need them to do, but what comes to mind for you Donna?

Donna: Well there were, there were Supreme Court cases that you know may have impacted a particular area that I was interested in, or that I had clients whose businesses would be impacted by. And of course I'm sure that they, and everybody would say the same thing, the biggest milestone of all was the Affordable Care Act. We were dealing with issues relative to the uninsured for many years. I mean EMTALA was an example of how we were trying to address the balance between not everyone having access to insurance to everyone having access to hospital when they needed it most in an emergency situation.

So the real precursor frankly to the Affordable Care Act was EMTALA I mean EMTALA was one of the first recognitions in terms of public policy, you know this is the Emergency Medical Treatment and Active Labor Act, where somebody had a safe harbor to go to if they needed a hospital and they were in an emergency situation or a condition or presumed to be, once they crossed that threshold, they needed to be looked at and reviewed and stabilized and perhaps transferred to another form of care. But in any event it didn't matter, and in fact it became almost illegal to ask whether or not they had any ability to pay or access to insurance or Medicare and Medicaid.

And so the uninsured problem as it began to be identified and as it grew, became part of the fabric of milestones, at least for me and in my practice because I was very very interested of course in the financing of health care and how that would impact from a policy perspective. The work that we did for clients and also the work that the AHLA did in terms of its educational resources in that regard. But if I had to pick one, I think it would be EMTALA as the precursor to ultimately the amount of public policy effort that went into the very complex way of addressing a system of access for all in the form of the affordable care act.

And we're not there yet, as we know, and possibly by the time any of this interview will air, in the early part of the summer time, when we really celebrate the 50th anniversary of AHLA, we're still talking about and debating the same thing, which is whether health care and access to health care is a right or a privilege and who's going to pay for it and how.

Ann: Donna that was a fantastic perspective, it's just, you're exactly right. Absolutely. Let's transition a little bit away from the law and AHLA, and maybe touching on AHLA services, but what meaningful career guidance do you give to younger health care attorneys today?

Donna: The same career guidance that I would have give to them back in the 1970's when I start practicing law, which is the first be a really good lawyer, be competent. And know what you know and know what you don't know. And don't put yourself in a position where you're having to guess, because there are just an awful lot of resources out there and more so today because with technology there's an expectation that theirs an instantaneous portal to any information that you need, and information that you should have and that you're presumed to know.

So my advice to young lawyers and law students is find something that you really like an industry perhaps that interests you, and make yourself an expert about that industry and that will include all of the laws regulations policies and developments of how that industry has to operate in the context of the rule of law.

The other things that I want to impart to young lawyers in particular is that law is, law is a jealous mistress. But also you're life has to be balanced in terms of what's going to make you happy, and how you spend your time and your resources. Whether it's billable or non billable, it's gonna define who you are. So for me, it wasn't just about practicing law, it was also about raising a family and giving back to the community. But giving back to the community in ways that I could better my ability to lead, and be a leader.

And I was able to do that because the AHLA gave me an opportunity, a leadership track, and trusted me to be able to do leadership activities which then translated later into serving on non profit board, which is something that is very special to me. And now, serving on for profit boards and so I've learned a lot about governance through being involved with originally, and I keep doing back to NHLA but that's where it all began for me in terms of my career, and in great part the impact on my life as a whole.

So I tell young lawyers or people that are progressing through their career, that if you like governance issues, if you like leadership opportunities, if you want to do more than sit in your office and look at a screen ten hours a day, and those that do it and enjoy that part of the technology of practice, you need to get outside of your office, outside of your comfort zone and interact with the community. And one of the best ways to do that is to find non profit giving responsibilities and leadership positions on boards. And assisting in your community in that way.

Ann: So AHLA and NHLA helped you not only to assign resources available to make you a competent and effective attorney, it also gave you the opportunity to develop your leadership skills and your community giving skills.

Donna: Absolutely. And welcomed to my family which is one of the most important I think roles that AHLA continues to timelessly play. It's the impact on social relationships in a world that's changing so very quickly. Back when I could bring my children, you know I wish they would still come with me but they're grown, and now I've grandchildren. But they would come to AHLA meetings with me. They were part of the family, everybody saw my young children grew up at an AHLA meeting or reception where they were warmly welcomed. They were part of my world and I needed to take them with me and so our family was part of the experience.

And so I think that goes to balancing life issues, where if you can associate with an organization that's open to bringing a family along with you and finding activities for them to do while you explore these opportunities for friendship. You know my family became friends with AHLA leaders' families, and so we been through generations of our own children and grandchildren together now. And so I think that's a part that people don't really talk a lot about. Which is the social side of living with the law and living with an organization like the AHLA. Where you see each others an annual meetings you look forward and ask well how is your child doing at such and such a university, or what are your grandchildren up to? And that sort of thing. It's really important, I think.

Ann: Oh absolutely and I've had a similar experience to with bringing my kids and that Christmas cards on the refrigerator, and [inaudible 00:22:44], that says it best it's all the families and my kids going oh yeah I remember that guy how's he doing? Yeah so it is an interesting dynamic, and you know what? It makes all the other things easier. I just had an issue that was a little outside of my comfort zone, and picked up the phone and called an AHLA friend and you know what I was kind of on the right track but if I didn't know him personally and spend his family at AHLA meetings, I might not have felt as comfortable about picking up the phone and calling.

- Donna: I bet there's also some exploration in the history of AHLA to find the pivotal point in not just careers but in law firms where we've seen law firm mergers as a result of AHLA associations and relations.
- Ann: Cool. Tell me about that.
- Donna: Oh well I joined Baker Donaldson for example because it Dick Cowart who was very active in AHLA circles was at Baker Donaldson and we ran into each other at a fraud and abuse meeting and started talking and I thought wouldn't this be a lot of fun to practice together. And then, now Baker Donaldson just merged with Ober, and Ober Kaler is a long time AHLA member and has many of the past presidents are Ober members and so that merger in great measure happened because of relationships that were deeply embedded and grounded in roots at AHLA.
- So I think that not only are individual careers impacted but the larger sort of industry wide law firm mergers have been impacted by this. I'm sure that you could ask questions and find out the connections by and between career moves that people have made. Or opportunities that perhaps young law students have had in coming to our programs and then getting a job with one of the firms that has participants at AHLA. And now AHLA has expanded beyond just lawyers to welcoming consultants in the group that have also I'm sure had and engaged in whether employment relationships or contractual relationships but it's certainly broadened ...
- Ann: Mm-hmm (affirmative).
- Donna: The, as I call it the environment of what AHLA means. Because it's more than just programs and educational materials, it's about life experiences that have ended up connecting along these lines. But for the fact that the connection was the AHLA, this is then, in somebody's life their practice, their career would never have happened.
- Ann: That's extremely insightful. Anecdotally I can think of a handful of mergers or collaborations of law firms that I'm sure are AHLA based that I never thought about it in that perspective, that's fantastic.
- Tell me is there a time in your leadership in AHLA that you had uh-oh moment that still stick in your mind 30 or so years later where it was kind of scary, or you met it with trepidation. Is there anything that comes to mind?
- Donna: Yes. At the annual meeting that I was president I got to introduce Senator Ted Kennedy and it was probably one of the most awesome things I've ever done in my life, because I was overwhelmed by the, not just the celebrity of introducing a Kennedy but particularly one that was so involved in health care, his whole career in the senate, and that was a very special moment at the AHLA meeting and it was in Washington DC, so it was a really ah-ha moment for me as it were and I still have pictures somewhere of that event and it was indeed quite special.
- Ann: Tell me more about it, how did Ted accept the invitation to come and was it even, I don't think there has been an annual meeting speaker of that stature right? Was it gutsy to say, Senator Kennedy will you come?
- Donna: I knew his wife, so that made it a little bit easier. I could just ask her to make this thing happen. She had been a law partner of mine along the way but I was still intimidated by the approach to try and get the senator to come. Even though I had sort of an inside track to that. We've had

other celebrities at the AHLA annual meeting. We've had secretaries of the department of HHS ...

Ann: Right.

Donna: And assistant secretary spoke I think a couple of years ago, and I think to be afraid to ask is to be afraid of the answer and what can you fear from no? If you don't ask, it's no to begin with so you know it's kind of like what would you do if you weren't afraid? There are all sorts of possibilities that can happen if you just ask. And AHLA has asked whether I've had the opportunity to ask personally for somebody of that stature to come, or whether it's because AHLA now has such recognition, as the premier institute for healthcare education and learning, healthcare law education and learning.

And so I think that again if you want to convert the answer to this ah-ha to advice the advice ask. The worst thing that can happen is no.

Ann: Right. Absolutely. So do you think that introduction is one of your more meaningful experiences in AHLA leadership?

Donna: Well I think it was one celebrity moment. But I think that there were other experiences that probably at AHLA lead to what I do today. And I think the example was of medical staff, legal issues program. Whenever AHLA puts a toe in the water, they do so not just because they're trying to please someone who's been a patron of theirs, or who has gone to a lot of their programs, or who you know, may have a leadership role, it's because they want to test to see whether or not that market place is real and has developmental possibilities. And so that's an example.

That first medical staff program has now evolved to a whole practice group series dealing with accreditation and you know in a list serve of people that exchange information about peer review and about medical staff disciplinary issues and that all sort of work in that world that's changing constantly, of how hospitals and physicians interact to now get on the same page with ACO's and the like so that may have been sort of an origin but AHLA doesn't step lightly into a particular development to set its, to invest in because you can have lost leaders when you decide you want to create a program in a certain area and if you look at the list of programs from the time I started going to the Medicare Medicare program, there were probably five programs a year. And then from five it went to ten, and then from ten it went to different interest group areas.

And so it's just massive If you look at the amount of programs versus publications versus interest areas from which to gain resources and opportunities but I can remember that the AHLA and the NHLA was extremely concerned about its budget and extremely concerned not only about making budget but making the developments that they would put resources in be able to meet the bottom line demand so that we could continue to extend over time.

Ann: Yes and that still [inaudible 00:31:23] today. That's for sure, making sure that the demands are met by the expenditures, yes.

Donna: One thing that I think was very interesting then if I could just add this one plug for public interest, when we started looking at not just the budget but the budget in terms of the strategy

of going forward. There was some vocal recognition and concern that we were just in this to make money, to turn it over the next peer.

So we really were in it as a non profit association that was committed to the education of health laws. And that as a resource for our so called profits, as minimal as they were, we felt that maybe the best thing we could do was put it back into some form of public interest. That concept of course became you know much more I think organized, but the idea was planted very early on that this was an organization that needed to be able to give back. And so I think public interest even before it was seated was born of this notion that health law education is [inaudible 00:32:43] and charitable in purpose. And that part of its nonprofit purpose would also be reflected on what is it that we do that could impact the public at large?

And so I think the first public interest programs were subsequently born, it may have been five ten years later, I mean I can't remember the exact year, but some of the first public interest tools along the lines of death and dying issues and what could be done in terms of livings wills, and how could we create something that we could give back to the communities in terms of a resource that everybody could use and utilize.

Ann: Absolutely. Thank you for sharing that, that's absolutely. Well what other thoughts did you have in preparing for this call that perhaps we haven't touched on.

Donna: Oh I think we need to talk about the humor, about the fun, about some of the great dinners we had together in the early days of NHLA when we could really sit around and joke and just kind of let our hair down and be ourselves. And I think that's the people side of it, I call it the People Magazine side of NHLA. The personalities that have come and some have gone and you know some that we mourn the loss but we have the memory. And so I think enclosing or wrapping up this discussion it's important that we not take ourselves so seriously, you know we've been there from the beginning and it's fifty years now, and we still keep going. It's a strong and vibrant organization that changes with the times but the people and the personalities are still there, and they're spiritual, they're part of who we are as an organization and who we might become.

And looking at fifty years past and looking at today, we may be very different because of technology and because people have aged out of the AHLA and there's generations of new people that are welcomed in and that really weren't even around during those days when we were sort of telling jokes and being friends. But I think if the future moves on, it's more important than ever that we are relevant to each others lives, and the way to do that is through a living organism, organization. Like AHLA that is more than just a portal to a website and access to information online. That more and more we're going to be so filled with technology and big data in our lives that we become starved for those times that we sat around the table and told jokes and visited and became friends.