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 June26 during AHLA's 2017 Annual Meeting in San Francisco, CA.

March 14, 2017

Donna Fraiche interviewing Edward Goldman:

Donna: I'm really excited to hear about your story and your involvement with AHLA and your history with AHLA and what all that means to you.

Edward: Sure. So I started before there was an AHLA, where there were the two competing groups. I became in-house counsel at University of Michigan in 1978, so the two separate organizations that ultimately merged and became AHLA. When I started, I was sort of one of the first generation in-house attorneys. The conferences, whether you went to AAHA or NHLA, were all run by the larger private practice firms. It was clear after a while that there was a community of interest among in-house counsel where we wanted to just get together and network and talk to each other.

So I met with the administrators of both groups, they said they were in the process of merging and could I wait a little bit. I did. AHLA was formed. I then talked to, I can't remember her last name, Shirley, the early administrator for AHLA. What she said was that in-house could have their own conference on Sunday morning as long as it ended before the year in review that really kicked off the AHLA annual conference.

The first year we had maybe three dozen people. We didn't have substantive topics so much as we had areas of concern: How do you get somebody out of the hospital who doesn't want to leave the hospital, what do you do about difficult patients who are threatening other patients, what do you do about patients in the hospital who appear to be using illegal drugs.

So we had a list of topics and we sent it out to everybody that we knew who was in-house and said, "If you're interested, please come Sunday morning. We're going to have, you know, an hour or half hour for each of these topics. We have designated leaders for the topics, but it's not because they're smarter than you are, it's because we all want to network and work together." We did that format for the first couple of years and moved from three dozen people, to a hundred people, to 300 people. Then we got more formal and more closely resembling the in-house program that you see today.

Private practice lawyers initially were concerned, but over time, as you know, there was the ability to say look, we need private practice for antitrust mergers and acquisitions, big deal things, but the day-to-day questions are the things that in-house handle more. We were able to

work together, and ultimately get some in-house into the actual main conference. But the in-house conference still had value, both in terms of the topics, and mainly in terms of networking.

After that had been going on for probably seven years, I was sitting at a dinner with Bonnie Brier who, at the time, was at Children's Hospital of Pennsylvania, and Nancy Forbes from Ropes & Gray, and we were all sort of bemoaning the fact that in-house had gotten too big. We had originally started it so that we could do networking with other in-house, but now it was so big that there was a subset, attorneys like Bonnie and I, who worked for academic institutions and were interested in human subject and research questions and other questions like that that many of the in-house lawyers were not interested in. It was that dinner that started the whole motion of having the Academic Medical Center conference.

Nancy was invaluable, because we ran into the same roadblock initially. "You in-house people, you already have one conference, now you want to have two conferences?" Nancy said, "Well, this is something that we can all do together." So Bonnie and Nancy and I were the originators of that conference which has, as you know, grown to be a more significant conference.

It was originally planned for, and for a number of years was conducted, in DC in January on the hope of being able to get people from the new administration in election years, and the administration in general in non-election years, to come and talk about what their program was going to be for the year. That was very successful, Jerry Menikoff from OHRP and other people would come and talk about their plans for the year.

The only problem with that was if DC had any kind of adverse weather at all, all the airports shut down. I remember one year where Bonnie and I did roughly half of the talks for the conference because all the other presenters couldn't get into DC because they had like a quarter of an inch of snow, which shuts down all of DC. Ultimately the conference moved to its current time. It was very interesting for me-

Donna: Let me stop you for just a minute if I could.

Edward: ... in-house colleagues to work that system. Sorry, go ahead.

Donna: No, no, not at all. I want to interject with a couple of comments and questions along the way so that I can better understand how this developed. Because at some point I think you talked about how there really wasn't a specific resource at the preexisting AHLA entities for educating in-house counsels that were working in the healthcare field. Then, ultimately, you got a place, as it were, at the annual meeting where you could convene this group of people. Over time that group of people obviously grew, and with it so did the opportunity to further specialize into academic healthcare issues for in-house counsel. I guess, from what I've heard you say, that developed over a period of, say, 30 years, right?

Edward: Yes.

Donna: How did those numbers grow? How did the word get out that this was really the single source for this group of people who have shared this similar professional need to get together in one place?

Edward: There were a core group, many of whom you know, Jeff Sconyers from University of Washington, Bonnie when she was at CHOP, University of Iowa, University of North Carolina,

who worked very hard to reach out to our colleagues. Back then, it sounds like my grandfather, it was harder to do because we didn't have the kind of computer and email that we have today. It was a lot of phone calls and a lot of reaching out to say to people, "Wouldn't it be nice if you had a cadre of colleagues that you knew, that you had, you know, eaten dinner with, that you shared time with, that you trusted, who you could call and ask questions and who, in turn, could call you and ask questions?" Really that's what happened. It was just a lot of work by people like Jeff Sconyers and others to convince folks that there was added value here.

Donna: I think that's really a very interesting question. In terms of the development of health law itself ... I think you teach health law, is that right?

Edward: Yes.

Donna: Maybe from the standpoint of a curricula for health law, how, if at all, did AHLA, in its resources and its programs, assist in the development of a health law curriculum?

Edward: If you look back at the agendas for the early programs, there were topics like informed consent, ethics at the edges of life, sort of the basic stuff. Then, as health law got more sophisticated, the topics got more sophisticated. But when I started I prided myself, foolishly, on the fact that I understood all of healthcare law because most of the things that happened with academic medical centers were exempt. There was antitrust immunity, there was malpractice immunity, there was governmental immunity, you name it there was an immunity from it, and it was also pay-for-service. Then as things started happening, you had to start rethinking. I mean, I was around when Quinlan was decided and, all of a sudden, lawyers were being asked ethical questions.

I sort of think about my syllabus for healthcare law as the levels of the Grand Canyon, one keeps getting piled on top of the other, Medicare, Medicaid, regulation, fee-for-service, HMOs, moving away from fee-for-service, the Affordable Care Act. The basics never go away, there are always informed consent problems, but there are always things that get piled on top. The '80s were a big merger and acquisition decade, so we had to start thinking about antitrust issues, we had to start thinking about a lot of financial reimbursement issues. But guardianship never went away. So I try to teach the basics and then move from there.

Donna: I see. The involvement with AHLA, did that impact how you proceeded to also develop your curriculum?

Edward: Yes, because for several years the in-house conference was, if you will, much more basic topics, while the main conference private practitioners started saying, "We don't need to talk about informed consent. We should talk about our own areas of expertise where we could be of value to our in-house counsel colleagues, because they simply don't have the depth or the experience." When the university built their new hospital and we wanted to float $200,000 of bonds, I wasn't going to do that on my own. I needed somebody with special expertise.

Donna: So did AHLA, or the entity now know as AHLA, help provide sources of people, consultants, lawyers, those with experience in those fields?

Edward: Yeah. Yeah, and over time, as we started working together, somebody like Nancy Forbes would say, "Well, we have these resources at Ropes & Gray." Or, "This firm has these antitrust resources." And those folks started talking at AHLA about their special areas of expertise.

Donna: Tell me a little bit about what you think a young lawyer that wants to be an in house lawyer should be interested in, learn more about, or get involved with.

Edward: I think they need to have a public health basis so that they understand how healthcare works. I think they need to understand regulations since we are so heavily involved in that. I mean, if you would have asked me 30 years ago I would have said informed consent, guardianship, how to write a good contract, but now a good contract means working with epic on a hundred million dollar electronic medical record. So I think you need to know a lot more in depth about the structure and function of your client. Does that make sense?

Donna: Yes. I think that's really very wise. Do you see that because of technology things have changed over time, since you first began your career and where we are now?

Edward: Absolutely. I mean, we went from paper medical records to electronic medical records. We went from fee-for-service to the kind of regulated healthcare that we have now. You can't understand that unless you understand a little bit about finance, a little bit about regulation and a little bit about the structure and function of the facility. My first year as a attorney for the university, I said to our CEO, "Tell me the five most respected doctors and nurses at this hospital." He said, "Why?" I said, "Because I'm going to make them part of the medical legal committee." He said, "What's the medical legal committee?" I said, "I have no clue. All I want is to put them in a room so that I can ask them stupid questions and trust them to not tell the rest of the faculty how uninformed I am, so that when I go to somebody and say, 'You can't do that,' I want to be able to say, 'The medical legal committee says you can't do that, not me.'" And that worked for the first year while I got educated about how hospitals worked, and then I didn't need the committee anymore.

Donna: Let me ask you a little bit more about that. You're seeing changes at AHLA, do you think AHLA has reflected quickly enough those changes that are also occurring in the industry itself, and in academia and in society?

Edward: There was some initial reluctance to kind of move with the times, because people had their topics that they wanted to talk about because they were interested in them. But I think, over time, AHLA has gotten a lot smarter about what people need and what they need to hear about. I think that's been a positive change. The Medicare Medicaid conference, when it was started I know some of my colleagues said, "Oh my god, three days of Medicare and Medicaid, I'll go crazy." And in fact it's a great conference, because it keeps you up-to-date without your necessarily having to pour through 4,000 pages of regulations. That may be a slight exaggeration, but only slight.

Donna: Let me ask you this, we've talked about the past, we've talked about the present, you've given us some advice you think might be important for younger lawyers as well as with the organization and its leadership going forward, but what do you think the future holds for health law?

Edward: I don't know, especially with this administration I don't know. I mean, if the current version of the healthcare plan goes through, I think every hospital in the United States is going to have to carefully look at its charity care policy because there's going to be a lot more uninsured. I think it would be important for AHLA to think seriously about things like drugs that are going to cost a million dollars a year where insurance companies may not provide coverage, or may provide coverage with a very significant copay that patients won't be able to afford. I don't see us as a

group of healthcare lawyers trying to get ahead of the problems that are coming our way. That make sense?

Donna: Yeah, sure. I think that what you're sort of trying to describe is that this is a time of uncertainty and we need to be in a position where, whether we can predict correctly or not, we need to have the right environment of information around us to be able to react.

Edward: Not even just react, I would like to try to get ahead of some of this stuff. Somebody asked me to describe my job once and I said, "Well, the health system's like the elephant and I'm like the guy behind it with the broom." I would like to be in front of the elephant every once in a while.

Donna: I understand. In getting ahead of that elephant, the big elephant in the room, do you have any final words of wisdom for the leadership of AHLA, its membership and its future members as we march forward?

Edward: I think it would be important to get people from the government involved. I know we try to do that, I know it's not easy, but I think not just describing what they do but picking a problem like having somebody from the FDA to talk with us about the increasingly high price of drugs and what can be done. We might want to, in light of what's happening, have a session where we talk about early approval of drugs and what that means if a facility isn't convinced that it is the right drug to use even though it has been approved by the FDA. There's malpractice implications there, there's regulatory implications. Those are all problems that I see coming up, and I'd love to have the smart minds in the AHLA start thinking proactively about them.