



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.

Conversations between AHLA leaders were conducted via audio interview as part of the Association's History Project. More than 60 of AHLA's Fellows and Past Presidents were interviewed. In addition, several were also videotaped. A documentary was prepared using content from the audio and video interviews and debuted on June 26 during AHLA's 2017 Annual Meeting in San Francisco, CA. This transcript is from a video interview conducted on x date.

**March 27, 2017**

**Dennis Woltering (videographer) interviewing Len Homer:**

**Dennis:** First, let's start with how you got involved in the health law. In your audio interview you talked about when you started in the practice in 1970, hospitals were appealing reimbursement issues and were represented by CPA's and consultants, not attorneys. Tell us about that and the role you played in getting attorneys involved.

**Len:** Well, the developments that were taking place at the time, with the CPA's were representing hospitals before the provider appeals committee, which was a Blue Cross arrangement. Blue Cross was there. Basically, I had the first case in 1973 in which a court took jurisdiction to review the provider appeals committee decisions. Then at that point the CPA firms realized that they had to have a record developed before the committees that would withstand scrutiny in federal court.

That's when the attorneys started getting involved in representing hospitals before the provider appeals committees. That's the initial part, and then as a result of that ... I was already involved in the American Society of Hospital Attorneys, but I became speaker at the various occasions. It was interesting, but I started switching my allegiance to the National Health Lawyers Association because the information that we were getting from the National Health Lawyers Association was more timely. It was a monthly newsletter that the executive director of the National Health Lawyers would pay two young attorneys to research cases and put out a monthly newsletter.

People were collegial with the Society of Hospital Attorneys and shared information. In fact, Jim Ludlum, the first president of that organization, had put out a guide for hospital contracts with hospital-based physicians. We all used that and cribbed from it and it was very, very useful. The NHLA then started having annual meetings just as the Society of Hospital Attorneys had annual meetings. Then NHLA started with a tax conference that people went to for non-profit institutions and that was very useful. In, say, 1978 or '77, I put together a program for NHLA on Medicare and Medicaid reimbursement.

**Dennis:** I want to get to that in a moment, but first let me ask you about ... One thing that was happening early on, as I understand it, reading your transcript, was that with the Hospitals Association ... Was it the Society of Hospital Attorneys or the Academy of Hospital Attorneys?

**Len:** The Academy came later.

**Dennis:** Okay. First it was the Society?

**American Health Lawyers Association**

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- Len: Society and that was a division of the American Hospital Association, just as the various other societies were.
- Dennis: Okay. I understand from your transcript that in the beginning, the attorneys representing these hospitals were really on the boards of their hospitals and-
- Len: Often the attorneys were on the board of the hospital, and often they did not charge for their services. For instance, Tom Barrowman, who organized a Pennsylvania hospital attorney group, I distinctly remember him lecturing people to please charge for your services so that this could become a profession that people can follow. Don't wait for a bond issue or a real estate deal to try to make it up. That was the practice. Law firms had the hospitals as prestigious clients, and they wanted to keep them.
- Dennis: They were not charging in some cases and lowballing in other cases.
- Len: They were. We were representing, at the time, Temple University and the hospital, and we were charging for partner's time, was \$44 an hour which was lowball even back in the 70's.
- Dennis: Okay, and then your focus really turned to the National Health Lawyers Association. What was the increased value of that? Why did you find that so important?
- Len: More educational programs, but even more importantly, more people outside of hospital attorneys would attend. You had the various programs. You'd have accountants, consultants, government attorneys. For instance, as I said, I started the Medicare/Medicaid institute. Just before it was going to go to print, David Greenberg, the Executive Director, said he wanted to joint venture that with the Society of Hospital Attorney, and that's when they accepted that.
- His reasoning was he wanted to try to get a merger between the two organizations, but that wasn't the truth because he really wanted somebody to share the loss in case it bombed. JD then and I were co-chairs of that institute for 20 or 21 years. What we would do with that is for every government speaker that we got, whether it's the Office of the General Counsel or, at the time, HCFA, for every speaker they got five free admissions. You had a lot of government people attending the institute, and it was very enriching. They would put their own people on the panels, and it was very useful information.
- Dennis: I'm told it was really a genius idea to have this in Baltimore because you had access to government attorneys, and there was a lot of interchange of ideas and that sort of thing.
- Len: Well, not only that, but the HCFA people would not even travel to D.C. to be on the panels because the headquarters was in Baltimore. They could come downtown and be on it, but they didn't go to D.C. That was another reason for having it in Baltimore.
- Dennis: Before I move on, I want to ask you about ... The Society was more limited, and the reason the Society was limited was why?
- Len: Well, one reason was that it was for hospital attorneys because it was a division of the American Hospital Association. At the time, many of the attorneys who went to the annual meeting of the Society would manage to get the hospital to pay for them to go. It was usually a family affair at some place like Camelback. I remember we had one there. Everybody went after school was out, the end of June, so that it could be more of a vacation. Whereas NHLA meetings were always in a city, not at a resort, and it was all work and not a lot of play.

- Dennis: Tell us about the Academy's meeting in Maui the year you were president of the NHLA. That was a significant moment.
- Len: We went to that, my wife Betsy and I on our way back from Hong Kong. Probably wouldn't have gone but for the fact we had to pass through Hawaii then anyway. It was rather stunning. The Society always had a prom at the last night with a band and dancing and it was always a very nice affair. This time, they had the tables around the dance floor where the board members and their families, and past board members, and insiders were all inside this area. It was all roped off with a gold cord, and you could not get to the dance floor without going all the way around this gold cord.
- At the time, when dinner was finished and they were going to start the prom, all of the people inside the gold cord got up and went to a private party, leaving all these empty tables and chairs, and the gold cord's still up so you still had to go around that. That later, I think, became the impetus for Bob Johnson, who was the president of the Society in 1990 or '91, to push for the merger of the two organizations. Because Bob was a client of mine and I told him about how this had happened, and he thought this was absolutely horrendous. He said, "That can't continue," and that's when he started pushing for that.
- Dennis: You didn't like it either. Tell us why you didn't.
- Len: No. Well, it was very cliquish and I never got involved. Maybe if I'd been inside the clique I might have liked it, but-
- Dennis: It wasn't good for the organization-
- Len: No. It was not good for the organization. Anybody sitting outside the cord was turned off by that.
- Dennis: Tell us about the merger and what that meant for the association. Were there concerns about merging these two associations?
- Len: Well, I think at the time there was probably concern on the part of the ... By then it was in Academy of American Hospital Attorneys. They were going to lose their funding from the AHA.
- Dennis: The Hospital Association?
- Len: Right, so that would be one concern right there. There wasn't much concern on the NHLA side. They thought it was a good idea. We already, at the time ... When I was president, we had 7,500 members. The AHA for the academy was pretty static in terms of the membership. At the time, we were in NHLA. We were even accepting accountants and consultants, non-lawyers as associate members and that further enriched the organization.
- Dennis: What was the impact of the merger?
- Len: More educational programs for everyone and more sharing of information. It worked very well.
- Dennis: Tell us about the cultures of the two organizations before they merged. How would you describe the culture of each one first?
- Len: The NHLA culture was really about education and getting information out to the members. The academy, I think they were a little more competitive in terms of the relationships between

attorneys. Good friends, they shared, but if it's somebody across the country that you didn't really know, there wasn't much sharing.

Dennis: When they merged, what was the culture that was created?

Len: I think the culture is what it is now. It's educational and a lot of sharing of information.

Dennis: Talking about the Association, I mentioned to you before, I've heard you have some incredible stories, some great stories. Tell us. You staged a mock funeral, at one point, for yourself.

Len: Well, that wasn't for me. I didn't want to miss a good party.

Dennis: Okay. Tell me about that night. Who was it for?

Len: For me.

Dennis: Okay.

Len: Yeah. It was my funeral. The opera company in Baltimore built a coffin for me. They had what they call arabbers, which would be a colorful cart pulled by a horse where they sold vegetables. That became the hearse, and we had two mounted policemen leading the parade. Then behind it we had a hundred mourners and a Dixieland band. We ended up, not surprisingly, at a bar, but that had a lot of room. The coffin was installed -

Dennis: Why did you do this? I'm sorry. I interrupted.

Len: Why did I do it? I didn't want to miss a good party. After I was gone, they had the party and I'd miss it.

Dennis: What was the occasion for this? Was there some reason why you had-?

Len: Oh that was my 70th birthday.

Dennis: Also, there was something involving Bromberg and an expensive bottle of wine that drove David Greenberg up the wall?

Len: Right. It was a bottle of ... It was at the Tax-It Institute in New Orleans, and we were at the Meridian Hotel having dinner with my wife, David, Bob Bromberg, and myself. Bob orders this bottle of 1929, which I didn't see what it cost, but even then it was probably several hundred dollars, particularly on a hotel wine list. Of course, David had no idea what it was until he got the bill and he went absolutely ballistic. Bob excused himself and had to leave, and I'm there stuck with David going berserk. It was quite an evening.

Dennis: Were there concerns about funding at that point or no?

Len: Well, the concerns about funding at that point, I think that might have even happened before or just after the Medicare Institute got going. NHLA was having a problem with funding. Since we were getting 800 people at the Medicare Institute that helped the funding through the summer. It was always in March, and that helped at the time. The organization was not in a position where it could afford 1929.

Dennis: Right. Okay. You have had some important cases in your life, and one involved the US Supreme Court justice Kennedy's first case. Tell us about that.

- Len: Right. I had a series of group appeals where hospitals would challenge the medical device manual provisions. This was a jurisdictional issue that went up to the Supreme Court. It was Justice Kennedy's first opinion. It was unanimous in my favor. Years later, I was at a reception when Justice Kennedy was there, and after everybody went up and said I ... that I clerked for so-and-so and that sort of thing, I was the last one in the room. I went up to him and said, "Justice Kennedy, I argued your first opinion." He said, "Oh my god, I couldn't believe it. They're asking you all these difficult questions and it was my opinion, and I thought they were going change their vote on it." They were just really pulling his chain so that it was very interesting. I thought that the questions were difficult at the time.
- Dennis: A jurisdictional meeting that ...
- Len: Whether the court would accept the case.
- Dennis: Oh I see. Okay. You also went to the second circuit and got them to declare provisions involving coverage of investigative medical devices.
- Len: Right.
- Dennis: Arbitrary and capricious. Tell us what's significant and what you-
- Len: Well, there are two ways they could have ruled. They could have said it was legislative rule making and it wasn't proper, and had to be in the code of federal regulations. The other way they could knock it out was arbitrary and capricious, which is what they found. It's very difficult to get the courts to rule on government rules as being arbitrary and capricious. They'll find out some other way to deal with it. I was very pleased with that. That was the Yale Newhaven case against Bowen, I think.
- Dennis: Another interesting thing you talked about in your audio interview were the unintended consequences of the Medicare program that led to escalating costs. Tell us about that.
- Len: Well, that started early in the program, like, for instance, with the physician fees. It was the reasonable charge which was the lesser of the physician's actual charge, their usual charge, or the customary charge in the community for that particular fee or particular service. The data that they used to determine whether there was a reasonable fee was 18 months old. As a physician, if you wanted to get paid more, you had to plan ahead 18 months and raise your fees now to expect to get an increase in your fees in 18 months. That was an automatic ratchet upwards.
- The other thing that was a real issue was cost reimbursement, and the hospitals, in this instance, get paid the interest and depreciation, the interest on the bonds that they issue to build a new building, and depreciation. They would not have put out that much money, but they're getting a lot of money coming in based on the Medicare payment that its share of interest and depreciation. All they had to do was meet the bond requirements. The efforts to halt that came at first through certificate of need, where the states had to have the certificate of need for a new wing or a new building, that sort of thing. Then they went in to the RG payment system after that.
- Dennis: What's an RG payment, roughly?
- Len: Well, that's where ... I think it was Yale put out a study on what it costs to treat a heart attack incidence.

- Dennis: So they weren't padding it with efforts to build a new hospital wing or something like that.
- Len: Right. That's when the hospitals started ... They knew they were going to get X dollars for that admission, and everything included in it. Then they started discharging people quicker and sicker, they called it, so that they put them out. All of this sort of thing benefited in terms of attorneys and practice and the AHLA Organization. More and more people got involved in representing hospitals because it became very complex and the lawyers got involved. Then again, with the sharing by the two organizations, it was really helpful to the attorneys practicing this sort of thing.
- Dennis: Another area that you talked about I found intriguing was the Justice Department found that billing errors could be considered fraud.
- Len: Right. Well, once they realized they could get treble damages for fraud, and what used to be just, truly would be billing errors. There was certainly fraud around but a billing error, they would claim that it would be fraud. The hospitals didn't want to litigate and be found guilty of fraud so they would settle, and settle maybe at double whatever the loss to the government was. That, again, got more and more members of the organization involved in representing the hospitals.
- Dennis: In the history of health law, what do you consider the milestones?
- Len: Well, my tendency is to look at ... There are two. One was the Medicare Program is probably one of the big things, but that's where my area of practice centered on. The other thing that was very big for a while was corporate reorganizations. That got attorneys in other parts of the law firms involved, the corporate people, and made for a much broader practice for a law firm to be involved in the health law.
- Dennis: How do the AHLA and the predecessor associations, what role did they play in these milestones?
- Len: Well, again, they would be putting on programs with, for instance, on corporate restructuring. That would be a large part of the tax seminars because it would always, usually be non-profit organizations. They'd have a parent holding company. Then you'd have the hospital. Then you'd have various organizations within that corporate family, and you'd have the draft documents and that sort of thing. A lot of the programs, the Medicare Program, we'd have stuff on it. The tax program would have stuff on it. The annual meeting would have stuff on corporate restructuring, so it became quite an important thing.
- Dennis: Health law has undergone an incredible evolution over the past 50 years. On this 50th anniversary of this association, how do you see the future?
- Len: I think it's probably the payment side of it is going to be even greater than the impact on practicing health law, because you've got the aging population with the government trying to hold them to costs. There will be pressure points and those pressure points are going to be litigated, and there will be a lobbying that will be involved. It's going to be a very broad area of practice.
- Dennis: What challenges, opportunities do you see in the future?
- Len: Well, the opportunities are endless in terms of the practice involving the Medicare/Medicaid Program. When you have things like the Affordable Care Act that will involve other parts of the profession. I think the opportunities and the challenges will all revolve about money and I think that's going to be an issue because there won't be enough of it.

Dennis: Right. What has your involvement in this association meant to you?

Len: Well, it basically built my career. I put together the Medicare Program as a result of speaking at it and being the co-chairman of it. It got all sorts of opportunities of representation. I had a group appeals with anywhere from 80 to 200 hospitals in the various appeals and it made a big difference in my career.

Dennis: The Medicare Program has been huge for all of the attorneys involved in this association. I mean what do you consider your greatest accomplishment?

Len: I think probably chairing the Medicare Program, coming up with programs that would be useful to the members of the organization.

Dennis: Okay.