



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.

**October 30, 2017**

**Katherine Benesh interviewing Bob Miller:**

Katherine: I am Katherine Benesch and I'm in Princeton, New Jersey and I'm talking to Bob Miller and you are where, Bob?

Bob: Atlanta.

Katherine: Atlanta. Okay, and as you know the AHLA is doing a history project so we're talking to a lot of leaders and former leaders of the AHLA and just asking, trying to get record of all the background and experience of people who were in leadership positions had in health law and with the organization. So, we have about 20 minutes to talk. So, would you tell us about your career and your specialty and how you got into health law and then your AHLA leadership experiences and in particular, is there anything you would do differently? What were the benefits and challenges of the work? And what would you tell current leaders and what do you think the future holds for health law? So, everything you know within 20 minutes

Bob: Yeah, okay. I'll watch ... this time I will watch the clock. I got in health law 1969, I did a two year corporate lawyer at what passed for a big firm in Atlanta in those days. I think we had about 35 lawyers. And worked on an acquisition by this small company of a proprietary hospital. I'd never heard of that idea. That was fine. And the acquisition was over. And about two days later I got a call from the emergency room from a nurse saying, "We've got a kid here, needs a transfusion and his parents are Jehovah's Witnesses and they're telling us not to transfuse. What do you do?" I did have the foggiest idea how a corporate lawyer would answer but I figured I couldn't let the kid bleed to death. So I said, "Give him a transfusion." Sounding like I knew the law, which I didn't. And then of course I raced back to the library, we went to libraries in those days, and frantically researched and it was pretty clear, pretty quick, you know, they don't have the right to refuse treatment for a minor that's needed to save your life. And I breathed a great sigh of relief and figured out well, "If they're gonna call me with health care questions..." and the next one came about 2 a.m. from the emergency room about two weeks later, "I better learn some of this stuff in advance." And that's how it happened.

Katherine: It's a good idea.

**American Health Lawyers Association**

1620 Eye Street, NW, 6th Floor • Washington, DC 20006-4010  
(202) 833-1100 • Fax (202) 833-1105 • [www.healthlawyers.org](http://www.healthlawyers.org)

- Bob: Well, you know, my first thought was I can't do this, when I got this call, I can't do this the way we normally do things. A client calls, they ask a question, we say, "Well, two weeks, we will send you a very nice eight page memo or opinion letter on the subject." This kid is bleeding to death. I figured I couldn't, you know, send him a memo in two weeks. And then I said, "You know, I kinda like this." You have to give what sounds like top of the head advice, and I was lucky the first time, but I won't be lucky next time, I better go learn this stuff.
- And then you actually advise a client when they call as opposed to writing long memos, which I'd gotten sick of in two years. And so, then when something else somewhere else in the firm, I don't know what it was, someone says, "I'll call Miller, he knows about health." And then something else happened and they said, "Oh, call Miller, he knows about health." Because I had been the flunky on the acquisition of a proprietary hospital for a small company and then I started getting calls from the hospital, I became the firm's health lawyer. Which, I wasn't. I'd never heard the term and there's certainly no health law courses in law school when I was in law school. And so, then I was a full-time healthcare lawyer in 1969 and never left it.
- A sheer total accident okay? But I accepted.
- Katherine: And did you, did you concentrate on any particular areas in health law?
- Bob: No, I was since in that firm, at that time, I was our health lawyer. And so then, the business office of somebody called with a Medicare question. I knew nothing about Medicare. I learned. And then I had a client with a predatory problem in the early 70's and I scratched my head and said, "You know, I took an antitrust course in college in law school and I don't think those people of your opponents can do what they are doing to you." [inaudible 00:10:19], early, wasn't even a [inaudible 00:10:21], this was before you were born. An old Section 1122 of the Social Security Act-
- Katherine: Actually not.
- Bob: Yeah. And so I filed an antitrust lawsuit against our opponents and then it went up to the Supreme Court. We lost the district court level, jurisdictionally, lost at the circuit court. This is like '73, '74 and then it went up to Supreme Court and my firm said, "Well you are not doing something at the Supreme Court, fella. But we'll let you sign the brief." So then the American Academy of Health Care Attorneys was hunting for somebody to give an antitrust speech at their 1977 annual meeting so they looked at the brief in the case that later was known as 'Trustees of Rex Hospital versus Hospital Building Company', the first Supreme Court case involving hospitals and antitrusts, and saw my name on the brief. So they said, "Why won't you come be one of our big speakers? And you're also a member." I had joined, but didn't know anything about it. Been a member two years.
- Katherine: That was the American Association of Hospital Attorneys?
- Bob: That's right. And so I gave this big antitrust speech knowing next to nothing about antitrust and then, oh just a year or two later, David Greenburg called me, and I knew who he was, but I didn't know him, said "We're gonna start an antitrust program, why don't you come be one of our speakers." And I had two choices, I could say-

Katherine: Now, is that still the American Association of-

Bob: No. He's now just started the National Health Lawyers Association, at this point.

Katherine: Oh okay, and what year was that, when they started that?

Bob: I ... don't hold me to this. He called me somewhere in the late 70's and National Health Lawyers Association was relatively new. Cause he probably saw my name on the brief and thought I knew what I was doing. And I was a member of the National Health Lawyers Association but that's where I got to meet David and got to speak at a couple of things and then some smart people who actually knew something about antitrust like Jeff Miles and Phil Proger figured out I didn't know what I was talking about, that I just walked into signing a brief on a major hospital antitrust case. Well, by now, I'm known as a health lawyer, which I never planned on being. Some people think I know a lot about antitrust which I didn't. I took one antitrust course in law school. Robert Bork was my law professor for antitrust and whatever you think of his political and social views, he was one of the best professors I had, if not the best and there's very strong agreement on that. That's an aside.

And so I became a health lawyer and I just kind of clouded the ranks on the American Academy side, probably because I started speaking for them first in 1977, that was my first annual meeting speech. And then I did a couple or three for National Health Lawyers Association, under David. And that's where I met David Greenburg. So I knew both organizations and here I am. And I think I-

Katherine: And then at some time, at some time they merged did they not?

Bob: Oh yes, yes they merged.

Katherine: And they became American Health-

Bob: Yeah, about 2000 I think.

I think about '89 or so I was president of the American Academy of Healthcare Attorneys by then. I was president in I think '88 or '89, right around there.

Katherine: Well didn't you come on the board of American Health Lawyers then? Also?

Bob: After the merger, no. No, I was considered, I was a has-been.

Katherine: Oh, you were a has-been. Okay.

Bob: I was has-been.

Katherine: But you still participated did you not?

Bob: Oh yes, yeah I still participated. And I did four years as editor-in-chief of the Journal of Health and Life Sciences Law and that forced my wonderful managing editor, when the Affordable Care Act was passed, called me up and said, "Bob, you know, we're doing this issue and you know, it will look bad if the editor-in-chief doesn't produce one of the

articles." And I said, "I can't write. I'm the worst writer that ever lived." She said, "Well, you gotta do it." So I picked a subject and then I found out that the ACA law was real long, there were no breaks or anything, it was real long and it didn't make any sense at all if you read it. But I got that sucker and read it. And I will ... I was retired by then so I was one of the few people that had time to sit down and actually read that law.

Katherine: Wait, wait. When did you retire?

Bob: I retired early. I retired '98. I was 57. Then I started teaching. Yeah, then I started teaching health law courses at Emory University Law School, I did that for 15 years.

Katherine: Oh, that's wonderful. That's wonderful.

Bob: So that kept me fairly current in health law and I served on, I think, eight health care company boards of directors after I retired too as sort of-

Katherine: My goodness, my goodness.

Bob: Semi-Professional healthcare director. I'm down to one now.

Katherine: Wow. So what do you ... you know, if you're talking to younger attorneys today, anybody who's new to AHLA, what do you think are the benefits and challenges of doing this kind of work?

Bob: Well, the benefit is, it's the benefits and the challenge are the same thing. The benefit is it keeps changing. And I know this, because I've talked 15 years and you just couldn't take a book that's say published in 2002 and try to teach health law out of it in 2008. You have to rewrite the thing every year. New regulations come out, the Affordable Care Law gets passed, part D of Medicare gets passed, EMTALA gets passed in '86 you know. And, so the benefit is, it doesn't get old cause there's always something incredible happening. But that's also the challenge if you're going to be any good, you have to learn the stuff, usually an enthronement where you can't charge the client, so you have to go do it, hide away at night, weekends.

So that, I'm going back to 1969 now, when I got my first call from the emergency room, so that when somebody calls, whether it's a business office, a vice-president, a medical director, you know, depending on the field, you give a current answer off the top of your head because these people aren't used to waiting two weeks for memos to be written for them.

And so you have to know the latest Medicare developments, act like it's off the top of your head. You fully learned it even though, nobody's asked you the question yet, you have to be ready for it. Those are the benefits and the challenges. It makes it very difficult field to stay current in. That's the challenge. The benefit is, you sound like you really are informed and a good lawyer and know what you're doing when you've learned the stuff, a lot of the stuff over client calls, you can immediately narrow in, no focus in on exactly what his question was, "Oh yeah, that regulation came out two months ago. I have to go study it, but I know exactly where that problem is, have to get answers or substantially answered or we'll find a loophole if that's what you're hunting for." That's what made it so great. And I never envied any other field of law once I accidentally

became a full time health lawyer because nobody else has that. You know tax has it maybe in regulations, but they don't have cases involving completely different stuff. Transfusions, forced chemotherapy, I mean you know, all this bioethics stuff that then just came flooding out [inaudible 00:18:49] bioethics law. And so, it's so broad and that leads to my next piece of advice.

Do it because the benefits and the challenges are the same and the next piece of advice is, and then I'll shut up. It behooves law departments and law firms to pigeon hole young lawyers. The brutal economics are you make more money off of young Miller if he's allowed to work within these narrow parameters and learn that particular area perfectly. They've got a quick resource, you can give them answers on everything. And it may be great for the law firm's economics, it might be great for the efficiency of the law department. It's terrible for the lawyer. You resist it at all costs. At all costs may mean they throw you out the window but, don't let them do it. Don't let them do it.

Katherine: You mean, don't let them pigeon hold you into a specialty.

Bob: Don't let them pigeon hole you, because I look at practicing law like an hour glass. If you want to be a really good lawyer say at when you 47 and 48, an advisor to major institutions and healthcare facilities, this kind of stuff, what you do is, at the base of that hour glass you learn everything. Everything. Just every subject. You work to find other subjects. Then to get really well known you have to go a little narrow. You'll have a period when you're kind of a technocrat of some field. You come up out of the base of that hourglass and into that narrower part. That's okay. But don't let them keep you there. And at some time at about 12 to 18 years of law practice, you start coming out of that narrow part of that hour glass, back to where you started and that's when you become the go to advisor to health care institutions, large physician practice and you name any kind of healthcare client and that's what they want. They don't always know that's what they want but if you can do that, I'm not saying I was good at it, I just theorize this is what you ought to do, the client will come to you.

Katherine: And actually if you have that broad knowledge and you're in a firm where you have some other people you can refer things to the younger people that have the particular specialty right?

Bob: You got it. Yes. So that's all of my healthcare advice to you.

Katherine: So you would have young lawyers, both be generalist and specialists to the extent that's possible?

Bob: That's right, or be generalists as long as they'll be a generalist and then to climb the ladder a little bit you can become a specialist but then branch back out to be hour glass. Once you become ... Make sure you keep your finger on everything else. It's hard to do, it's not easy. It was much easier when I did it in the 60's, late 60's, 70's, it was much easier, cause one, there wasn't as much stuff. You know. If you do medical staff bylaws, a little bit about medical malpractice and the basics of Medicare, you can consider yourself a fairly broad based health lawyer in 1973. Well you'd be laughed at today, if that's all you knew. So, what I'm saying was easy when I did it. It's hard today.

Katherine: Yeah, yeah. And so what do you think is in the future for health law?

- Bob: Well, it's still 17% of the American economy. Whatever happens, it's not gonna shrink much, probably. Unless we have a huge economic boom and it stays the same in terms of number of dollars or resources committed but they become a smaller percentage of the Gross Domestic Product. We know it's gonna change. There are attempts to change it in both house of Congress everyday, okay? So we know it's gonna change, we have no idea how. I may, within, you know, you name the time period, take all those hours I devoted to reading the entire Affordable Care Act and since once people heard you'd read it while you were writing an article they asked you to come talk about it. I may take that lobe of my brain that's up there and have to just throw it away. I can go through, and I'm not going to, I can just start reciting things that were hot in healthcare or something you had to worry about and now you don't. Reasonable compensation equivalents, you probably never heard of it, it was some rule that ... you have.
- Katherine: I have.
- Bob: Some rule. You have heard of it. It floated through Medicare for a few years in the 1980's, and it was very important and all practice physician contracts with hospitals. And it used to call massive problems in acquisitions and dispositions because you were working with somebody that's selling six hospitals as a unit that they've picked up in another acquisition as an unwanted asset and the buyer was very eager and all that until he found out we had 35 radiology, anesthesiology, pathology and a couple other specialty contracted physicians that did not reflect the reasonable compensation equivalent rules for Medicare. And they said, "Well we'll close, once you talk 35 positions into amending their contracts." That's a two year project did not expect. But that's fine you know, it's gonna change.
- Katherine: So, I've always thought, and from what you're saying it sounds like you would agree that one of the fun things about health law is that it really enables you to be creative, as a lawyer.
- Bob: Yes, even though I don't think I was creative. I just think I covered my lack of creativity by knowing a lot. And people thought it sounded creative. But -
- Katherine: But then you came up with ways to do things that-
- Bob: Oh to skin that cat. Yes, yes, in other words-
- Katherine: Yeah, ways to skin the cat, yeah.
- Bob: I convinced, I convinced the representative of the buyer, not his lawyer, that the economic effect of having some problems in that area was really not big enough to mess up the deal. Cause you have two answers. We'll go fix 35 contracts or we'll talk you out of it. We chose the, we'll talk you out of it approach.
- Katherine: Right right.
- Bob: We talked them out of it.
- Katherine: Right, so what do you think the future holds for an organization like American Health Lawyers?

- Bob: Oh my gosh, when I just described to you the benefits and challenges and how hard it is. If you don't have, if you don't have people that put on the kind of meetings AHLA puts on ... let's see I spoke at every annual meeting of the American Academy of Healthcare Attorneys from 1977 through 1997. I did 21 straight years.
- Katherine: Wow.
- Bob: Yeah, well. They probably were scared to throw me off for some reason. You know, if you don't have that-
- Katherine: Well you might have been good.
- Bob: No, no, well I don't know. If you don't have a particular annual meeting format where you can go pick up everything that's happened in the year and go into stuff you don't know much about but you know is coming. Like you know, that HIPAA board is a slope for me, but I better know some HIPAA, right? Did I try the health records and stuff like that, that's what so great about it. If you didn't have it, there was no way you could ... in a field this broad there's no way you keep up without AHLA's everything. You know, Connections, the whole works, the Journal, Connections, the annual meeting. But if you do those three, if you read the publications you get and you read Connections and you read the law journal and you go the annual meeting, you're never gonna look stupid in front of a client.
- Katherine: That's great, and you think that some of the in-house lawyers from your clients will be there.
- Bob: Oh sure, yes, yeah. Oh no, yeah, that's right. When I used client I mean, it may be the client you work for as an in house lawyer or a client you work for out in the law firm, or government, you got a client. With government you got a client, government law you got a client. Yes, it's whoever your client is. If you read this journal and if you read connections and you go to the annual meeting, it's going to be very difficult for you to look bad as a health lawyer
- Katherine: Well that's a great endorsement to the organization right? That's like, you remember the organization and you can really do your job much better. Isn't that so?
- Katherine: Yes, I thought it was excellent.
- Bob: I will add one more thing to the importance of it. It's not just go to the meeting, read AHLA Connections, read your Journal. It's the people you meet and you know. You know health lawyers from across America. I don't use the term network. I don't know what a network is but you hang around, you chit chat with people, you listen to a speaker you really like, you go talk to him or her after and you say, "You know, blah, blah, blah, blah." And you learn something but then they're nice people. If I have a problem come up, I don't want to take up a lot of somebody's time but I wouldn't hesitate to pick up the phone, talk to somebody I sat with over lunch, at an annual meeting and they knew that problem better than anyone I'd ever heard talk about it, they'll give you two minutes. You know they won't say, I'll bill ya. They'll give you two minutes.

And I slavishly used people like that. But they used me if they thought I knew something. You make so many friends.

Katherine: Well the camaraderie is one of the big benefits isn't it.

Bob: Well, but I'm talking about intellectual friends. Yeah, the camaraderie's fine, but there are also people, that you'll talk about it ... you know, you're standing there having a beer and you'll talk to somebody about something that just came up in a concurrent session and they'll tell you something about that particular ... so it's camaraderie but it's a discussion about a legal issue that's just come up in a session you were both in, and they'll tell you something about their views on it you never thought of and you just file it back in whatever the remaining brain cells you have are and you'll use it some day-

Katherine: Yeah, and that's a way of learning that you can't get anywhere else right?

Bob: But that's a really important aspect of AHLA, because they're very good about that. It is very important. If you just had those meetings all day long and then you talk about you have to scatter, you can't talk to anybody. You'd lose a lot and you'd lose a lot that affects your ability and your talent's as a lawyer. It's not just the pure social. Cause an awful lot of those conversations, I've been in them, I've heard them, at lunch and so forth, they're law conversations about some issue that's come up or that's just been discussed usually. So it's extremely valuable. I don't know how in the world I could have practiced health law without being a member.

Katherine: Yeah and health law is one of those-

Bob: And participated.

Katherine: Health law is one of those areas of law isn't it, where you really, it's not a question of just going to the books because it's moving too fast for the books right?

Bob: That's right, that's right. I mean, if you don't get these daily bulletins about ya know, somebody's thinking about rewriting this reg, and so you rely on the old reg, not knowing it's getting ready to change in a few months. I got, when I forced at gun point to right that article for the Journal follow after the Affordable Care Act was passed in March of 2010, I was just rocking along working basically just on what the statues said about an obscure little issue about the grandfather clauses, what plan for the grandfathered and did it have to change because of the Affordable Care Act and a little note popped up on something AHLA put out, I don't know whether it was the weekly or the something and said, "Oh they're getting ready to put out the interim regulations on grandfather clauses." And I would not have watched for that. I would have sent mine in. It would have gotten published with a set of regulations I didn't even know about. Would have made the article even worse than it already was. So, I'm a huge believer in the importance of AHLA if you're a health lawyer.

Katherine: Great, great. Well I think we probably all agree with that and that's why I'm here and that's why you're here and that's what makes the organization so great right?

Bob: Oh, I blew through my 25 minutes. I actually blew it.



- Katherine: So, yeah I think our time is about up, so is there anything else that you would like to add or that you would like to advise?
- Bob: Great organization. No, no. Great organization. The two organization separately back in the old days were great organizations and put together they're just dynamite.
- Katherine: I totally agree with you. That's why I'm here talking to you.
- Bob: Yup, no, they're absolutely fabulous.
- Katherine: Yeah, okay well listen, if there's nothing else that you would like to add, thank you very much for your time. It's really interesting ... no, no problem, no problem. Yeah. Okay, thank you very much
- Bob: Thank you, alright, bye.
- Katherine: Thank you, bye, bye.