



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.

October 20, 2017

Phil Pomerance interviewing Greg Luce:

Phil: So, this is October 20th, 2017. I'm Philip Pomerance, I'm a Fellow and past Director of AHLA, and I'm talking to Mr. Greg Luce, who is a partner at Skadden, Arps, Slate, Meagher & Flom, and resident in the Washington D.C. office. Hi Greg.

Greg: Good morning. Afternoon, rather. It's been a long day.

Phil: Good to answer your call, but it's been a long one and it's a Friday, right?

Greg: Definitely morning somewhere.

Phil: So I wanted to talk to you a little about your experience with AHLA, and your experience as a health lawyer. So I thought I'd start by asking you to tell me ... Give me a little rundown about what you do now and how you got there.

Greg: Well, Phil, I've always been a litigator first and a health lawyer second, probably, in that I am basically a court room lawyer and have been since I left law school. I started as an Assistant Attorney General in the Commonwealth of Virginia representing the Health Regulatory Agencies, and then later as a Lead Civil Litigator for the Commonwealth. In a number of cases, it included some of the early abortion rights cases and ... life. I left there to join a law firm that was looking to add a litigator, but also someone who could work in the healthcare area on regulatory and licensing and certificate of need matters, among others.

I basically progressed from various types of administrative litigation before boards and agencies, handling some early reimbursement appeals where one of my then partners, **Irv Poen**, was managing the substantive side of these appeals, and I was handling the litigation side. For about the last twenty-three or four years, my practice has been mostly focused on civil and criminal defense in the False Claims Act area.

Phil: I was going to say, so you're a litigator, obviously, and you're a trial lawyer as well? Not just a litigator, but you go into court and try cases.

Greg: I'm a courtroom lawyer, yes sir.

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- Phil: Right. How many ... What percentage of your work would you say, in the past five years, has been for healthcare or healthcare-related clients?
- Greg: 99%.
- Phil: Okay, interesting. I know that you've held a couple of different leadership roles at AHLA. Could you tell me about those?
- Greg: Well, I was ... I think one of my early contributions, I worked with Doug Hastings, and someone else, on the Health Law Digest. Not the Digest of Law, but we had an early iteration of the Healthcare Law Handbook. I was a director of the National Health Lawyers at the time that they merged with the Academy, so I joined that very large board when the two entities merged. I was on the planning committee for some of the healthcare fraud & abuse conference sessions in the early period. As you are, I'm a Fellow. I was in the first group of Fellows of the AHLA.
- Phil: Right. I didn't realize that you had been a director of the NHLA. You didn't come to it through the Academy then, you came on the NHLA side.
- Greg: On the Greenburg side.
- Phil: Say that again.
- Greg: That's right, on the David Greenburg side.
- Phil: Right, the David Greenburg side. But also, on what I also consider as the smaller firm physician non-hospital oriented side. I'm curious what was your ... Think back to those days, what was your encounter like? Or what was the encounter like when the two organizations merged? Do you recall ... Go ahead.
- Greg: Clash of Titans. Clash of Titans. That was actually like a reunion. I mean, the fact is that, particularly in those years, a lot of us would cross-fertilize along them both as I did, not on the board of both. The Academy, yes, had more of a focus on hospitals. But virtually my entire practice when I was on the National Health Lawyers board was for hospitals and healthcare systems. And that wasn't that unusual, what was unusual, both on that board and on the subsequently merged board, was the fact that I, and a few others, had a much more litigation-focused practice. Most of them were counselors and advisors or in-house counsel.
- Phil: Or, right, I was going to say a significant number of in-house hospital lawyers. Now, I'm trying to recall, I served on the board. I think my first three year term overlapped your last. I think, but maybe not. Do you recall? I know that we met through various conferences.
- Greg: I think you overlapped only for a year, I think.
- Phil: I think that's right. Your last year would have been my first year.
- Greg: I think that's correct.
- Phil: Yeah, because I remember more of a feeling, not a feeling of animosity at all, but a feeling of the different approaches. I was maybe more sensitive that I had not been a member of the Academy at any point. I had come up through NHLA and had really only known, as I was developing

professionally, the NHLA and a little bit of the ABA section. Well, it wasn't a section, it was an interest group on health law at the time.

Phil: So you did the hospital-oriented work and that type of work while serving. I'm just sort of summarizing, but while serving on first the NHLA board and then the merged organization board. Anything stand out in those years or that you recall in terms of projects you worked on, or specific ... You mentioned Doug Hastings, who I think mentored many of us. For me, he was a bit of a mentor, and of course David. Anyone, any projects, and any other people that you can recall that you want to talk about a little bit?

Greg: Well, when I was in the Attorney General's office, I decided I was going to at least try to at least concentrate in this area. I went to a program in Williamsburg, Virginia that Bob Miller was the head of, and that was very instructive and solidified my interest. So when I went into private practice, I, as I said, went to meetings at the Broadmoor for the Academy, the NHLA meetings tended to be here. I honestly didn't pay much attention, just sort of the origins of those organizations. This was a combination of learning and marketing, as you'll recall most days, and it hasn't changed then.

It was also a much smaller group of practitioners, and I remember one of the things that struck us as a board was when they did the demographic profile, something more than 50% of all the active members of the combined organizations were over 40, I would say, or whatever. They were all pretty much in five years plus or minus my age, because we were the vanguard of healthcare law practice as a distinct discipline. So we had that, and then we had some obviously important additions from government service like Sandy Teplitzky.

What I remembered is much smaller groups. Meetings were a bit more intimate. We generated two 3-inch binders, or 6-inch binders, at the last meeting before we finally started to find ways to use something than hard copy, which was a relief to even young backs.

Phil: Yeah, I remember going to some meetings, and when I would speak at a program, stepping up to the counter and being handed literally 40-pounds of paper towards the end there before we went to wifi or a flash drive. I think the people, the organization all was, the speakers at least, were always intensive researchers. I don't ever remember thinking that I heard someone talking off the top of their head in the many programs I attended.

Greg: I think that's right that there were certainly a few people were, particularly on the Academy side that I can remember but won't name, were sort of ... Just they over-viewed, and don't try this at home, call us to help you.

Phil: Right, and that was, I think ... I was just going to say that for me that was back in the day where the organization very much had a feel of I'm going to entertain you and educate you so you call me, because you're an in-house lawyer or a non-specialist, and I'm a specialist. Over the years, it became much more of a work colleague; in other words, it was more practicing lawyers teaching lawyers, or in-house lawyers teaching lawyers. It wasn't this emphasis on my firm is going to save you, or call me next time. I think that still happens, and it's a legitimate purpose, but a lot of the speakers now are trying to pass that direct obvious marketing, the "don't try this at home", and actually impart knowledge and hope you're going to call them. I think that's the way it goes. That's my two cents.

- Greg: Right, well, I think that there's always been a generosity of work and research among the members and the presenters. The methodology by which people now become presenters, I think, has become a little bit different because to my observation we have a lot of people doing a lot of research and talking about it, but not quite as many people that have actually done it.
- Phil: Yes.
- Greg: The other thing that I think changed was the increased sub-specialization. I saw this with managed care, where we started to see people that were really just did that like Gary Davis, really migrated very much into managed care for more generalized practice. The other thing that I saw was that people who were, particularly with the growth and the False Claims Act enforcement in the mid '90s, I would say for me really began about '93, was the difference that clients started to make as they were engaging counsel. And a lot of times the regulatory counsel would be responding to investigations that were really civil and criminal in nature, and called for a more, if you will, litigator approach on that. And I've seen that change, so that my own practice now, I rarely am requested to give an opinion on Stark or any kickback safe harbors or other things. But I litigate those on a daily basis.
- Phil: I found that the same time. That's interesting you say that, because at that same time period and at the same time, I found that I had a weird niche of being the lawyer that got hired alongside of a litigation team, not necessarily even from the same firm, because a client was in some trouble with a criminal investigator's demand or a significant civil problem. And the litigators, who were top-notch federal litigators, often said we need this guy who either designed the programs or who knows a lot to come in and help us understand the medical legal stuff.
- I had that role in several big cases in Chicago, where I was specifically hired at the request of a big litigation firm to help the client translate subpoenas or even strategize, sort of to bridge the gap between the strictly healthcare technical in-house lawyer and the civil litigator or criminal litigator.
- So I find that interesting that you saw that as narrowing your practice a little bit by making you the gun, the hired gun that got called in when they needed you. Is that a fair statement?
- Greg: Well, yeah, in the sense that I was a healthcare litigator, not just a federal, civil, or criminal litigator. But also I had to benefit, simply because we all did, of having practiced before Pete Stark decided that he was going to regulate healthcare, and practicing before the state harbors came out under the anti-kickback statute, which when you first explain it to clients, said "that can't possibly be a law, it makes no sense". And of course, they were right, it doesn't.
- Phil: Intuitively, they were right, but you showed them and said, "No, that is what the law says". And then you showed them things like the Miller case, and said people are being prosecuted for it, right?
- Greg: Well, precisely. But I would still say that there are a number of practitioners who still try to be both the regulator and the litigator, a regulatory expert and the litigator, and it's a little bit like, in my experience, most doctors who try to be lawyers or lawyers who try to be doctors. It's a right-brain left-brain conflict because yes, the government may be able to make the argument, the question is can they make the proof? And many times, our clients tend to look at "well, the government is going to say this", and the question is "yeah, but can they prove it? Where does it

go"? I think that still prevails, to a degree, but perhaps less so. Clients are starting to understand you, you have to have both disciplines in hand to respond.

Phil: I've got some questions I want to ask you about health law, generally, and the benefits and challenges of health law. But I've got a historical question to ask you that you triggered with your mention of the Broadmoor. Do you recall, or were you part of the somewhat famous in the organization debate over things like annual meeting, and how much would be devoted to formal dinners and how much would be devoted to education? Because I remember coming in where some of that was finally settled, but it still was clearly an issue that gave rise, I think, to the modern organization in some ways. That debate and that discussion. Where you part of that at all?

Greg: Well, yes. It was a long running thing. The issues were partly, as you described, it was a transition because it transitioned; and particularly, I think from the Academy, the older, then older, members and board of directors, this was an annual social event. Their wives and spouses were along. There was a dinner. There was a Past Presidents' cocktail party, and it was much more social event, which it could be because it was a much smaller group.

The other part that came out was the determination of the succession of officers, and that was often very much, perhaps still is, a social networking exercise. And what I particularly remember, Phil, was the question about whether or not we should have sponsors to help defray some of the expense of any of the programs. And a great thing about that, and ultimately we now have branded virtually everything from the cocktail napkins to the meeting room, might merit some reconsideration to some degree.

Then the third thing was the rise of the HCCA, which very much wanted to coordinate with and schedule their meetings around the Fraud & Abuse program for example, and as I understand it now that just recently they've chosen now to go separately, which I think it's probably wise because anybody that spoke at a compliance program, you would get two sets of reviews; one review would be great, good subject of the law, can't wait to talk to get back and talk to my team about it. The other one was, you didn't give me a checklist with the series of steps that I could apply, in order to make sure that I'm carrying out my compliance function.

Phil: Right, I remember getting that same review.

Greg: I wrote it about it.

Phil: Say that again? You wrote that party? Well it's funny that the ... I remember my first annual meeting. Now, the organizations had just merged. I was not at all near being on the board, I was still doing my journeyman work on some committees and doing a lot of speaking. But someone from, and I want to say, I'm trying to remember who it was, some very established person in the organization ... It might have been Sandy Teplitzky, mentioned to me in a phone call, "Well, you know you need, we've got a formal dinner. Make sure your wife knows there's a formal dinner". And I said "What?", because I had never done anything like that on that ground. And his comment was, "Hey, you should be relieved, this is the first year where men are not wearing tuxes", because apparently ...

Greg: I don't have any recollection. I don't ever remember a formal dinner.

Phil: Really? Because Sandy, I want to say it was Sandy. I remember being told there was a formal dinner meeting suit and tie at least, but there was a separate banquet dinner for that meeting, which was not a function of the NHLA gatherings, usually. There was either a buffet or a working dinner. But I remember the comment being made, "Well, at least you don't have to pack a tux this year". So I don't know if he was yanking my chain or if that was an honest statement.

Oh, you know who it was? It was a fellow out of Baltimore who hosted the Medicare program for many years, whose name is escaping me.

Greg: Len Homer.

Phil: Yes. It was Len Homer.

Greg: Yeah. He was jerking your chain.

Phil: He was? That was over 20 years later. If he had really wanted to jerk my chain, he'd have told me I had to wear a tux, and I would have shown up.

Greg: Yeah, there was never a formal dinner in my experience.

Phil: Not on the Academy side.

Greg: The coat and tie for the board of directors and spouses, certainly.

Phil: Right. But, yeah, no, that's interesting, I did not ... That's good to hear, actually. So let me ask you some general follow-up questions, and you definitely throw in anything you feel that is important on it. What would you do differently in your career? Is there anything you would do differently? Is there any area you'd concentrate on differently? Something you wouldn't have studied, or would have gotten into sooner?

Greg: Been a residential architect. Oh, you mean with the law?

Phil: I meant once you decided to work for the Commonwealth and cast your head in that one?

Greg: You know, I've been blessed. I think that I fell into precisely the right career for my set of qualifications, whatever those are. Even now, after 40 years of practice, what I like best is being in the court room. I'll be in one on Monday.

Phil: Interesting.

Greg: So, to say what would I have done differently? The usual litany of mistakes aside, I would say that the opportunities that I was afforded to grow up with an area practice, and to have a diversity of practice among providers, I really enjoyed. For the overwhelming majority, I really enjoyed my clients. So, in terms of something different? I think I was just better lucky than good with what I had, so it'd be hard for me to want to make a lot of changes. I had government service with the healthcare component. I had private law partnership service for a number of years with several very fine firms, including my practice with a firm that I think the best of any I've ever been associated with. I was just dumb-lucky, Phil.

Phil: I think that's a great answer. I don't think you need to come up with more. Is there anything you'd leave as a comment to a younger lawyer? Or a younger Greg Luce, who's coming out of government service and joining a big firm? Or is there any thought on that? Or would you just say "Let luck take you to where it does"?

Greg: Well, obviously, there's a certain degree of just following your muse. But you know, I think you have to decide what kind of law practice you want to have. There's two components to that; one is are you in it for the money, and you're prepared to practice in a way that is most effective for that? There's nothing wrong with that, it's a job. Or, is there something you find particularly rewarding about the practice, and your clients and the work that you do, that makes you want to stay with it?

I would say that, particularly because I see this and I've been in major law firms like Skadden, but the progression to partnership is extraordinarily difficult. The ladder is really more of a rope climb, and I think that what's important for a young person, or any person, but particularly as you're developing is focus on how you want to practice, and the rest will follow. If your focus is I've got to make partner at XYZ firm and do whatever's necessary to do it, it's fine. But you may find that at the end of the day, your pay is better, but the work is the same. If you don't like the work and you're spending 60 hours a week doing it, you're not going to be happy.

So I would say this is a profession. It's not a trade and it's not just a job. The opportunities to be independent as a partner, as a general counsel, as a valued member of a legal team, are really invaluable. I think it should be the focus, that personal professional satisfaction, and that can get lost in the climb for partnership or advancement in any organization.

Phil: I think that's great. I really appreciate that. I'm glad we got to do it though. I think it's a nice contribution to the file that they're building, I really do.

Greg: I'm delighted to, it's a great endeavor.