



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 John Lyncheski:

Phil: This is Philip. I'm a Fellow of the American Health Lawyers Association and it's my pleasure to interview John Lyncheski, who is also a Fellow of the AHLA and a former director of the AHLA. John serves as the chairman of the health care practice group and is a senior director in the labor and employment group at the law firm of Cohen and Grigsby. And he is currently resident to the Naples, Florida office.

John, good to talk to you.

John : Hi, good morning.

Phil: Morning ... So let's start out by talking a little bit about how you came generally to be a lawyer and specifically to be a health care lawyer.

John : Well, how I came to be a lawyer, that's pretty simple. I actually was a junior in college, undergraduate school, and I said, "Damn it. You gotta get some direction." And I decided on law. So off I went to law school.

I then went to work for Reed Smith in Pittsburgh, which was then, still is, their headquarters office. I went off to the Navy JAG Corps. When I came back, several of the acquaintances that I made before I went in the Navy asked me to jump into the labor group, because they had a need for help for somebody that could hit the ground running. At that point in time I had been a lawyer for four years.

That coincided with the National Labor Relations Act being amended to take jurisdiction over not-for-profit health care institutions. And Reed Smith had a lot of health care clients at the time, and still do. And there was, as you might guess, a real rush of union organizing at hospitals. And some of the organizing drives were successful, some weren't.

But we were involved in the organizing drives. I in particular was involved in a ... the Labor Board and it probably happened in '76, a year and a half or so after they asserted jurisdiction, issued a series of opinions on the major issues that were presented by the Amendment to the National Labor Relations Act.

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One of those cases was Children's Hospital of Pittsburgh. Not only was the Act amended, but the Labor Board was struggling with who was a professional employee, who was a technical employee, who was a non-professional, non-technical who qualified as a security guard. And who was an employee as opposed to an independent contractor of some sort and that applied mostly to the doctors.

One of the lead cases that they issued to help define who was and wasn't a technical employee was Children's Hospital of Pittsburgh. And I had handled that case. Shortly after I got out conducted the hearing on my own. Had 18 days of hearing. And became one of the lead decisions. Having been involved in that case and a lot of other cases where we were successful in keeping hospitals union free, the practice grew. And I grew with it.

Phil: So you came to health law by way of being a labor lawyer on the management side. A labor relations lawyer on the management side.

John : Correct.

Phil: Correct. That's interesting. Of the interviews I've conducted at least, that's unusual. That's kinda cool. It's another path into health law.

I know you continued to be a labor relations lawyer, but I also know you became a health care lawyer in many areas. Is that correct? Do you started doing -

John : Areas that related to employment, labor and employment, as wide as you might define that. But when I was involved with the labor and employment cases, I had to have some knowledge of health care law. Sort of a walking knowledge of matters that would pop up.

And I remember Jeff Sconyers describing himself as a general counsel, as being a mile wide and an inch deep in terms of his knowledge. And to some extent that would describe what I did outside of the labor and employment. Knowing a lot, but not knowing a lot about what I knew. That make sense?

Phil: Yeah, I think that's true of many of us. Being familiar with the field is part of being a health care lawyer I think. And understanding sort of the way a hospital operates. Whether you're conversant in aspects of risk management, or other related fields, you know a bit about it. But it's interesting that your specialty brought you into health law instead of for instance, classic manufacturing law, which is where you ... of labor work. So tell me about -

John : The majority of my practice time was devoted to health care clients. I represented a lot of suburban and rural hospitals. And in most cases they were the largest employer in their community or their county. Health care is labor intensive.

Phil: So a labor dispute of any sort in a small community, a labor dispute at the hospital is something that is notable. The press picks up on it. The community picks up on it. It's not a backroom area necessarily.

John : Nope, and I've been involved in a number of health care strikes. Those are even tougher in a small community.

- Phil: Yeah, you don't think of those really as happening as often, but they can. You also worked in the not-for-profit sector as counseling not-for-profit organizations in the form of hospitals. Religious organizations I assume as well?
- John : Some religious. A fair number of mental health type organizations -
- Phil: Interesting.
- John : That took care of the people that had severe mental health issues and in Pennsylvania where I spent most of my practice, pretty much county by county there was an organization ... what was it called ... Association of Retarded Citizens. Like there would be the Butler County ARC, Crawford County ARC. Some that covered more than one county and were larger or whatever, but they were devoted to caring for the severely mentally disabled.
- Phil: Now you would have started practice in 1970 correct, or '71?
- John : Well I graduated law school in '70. I think my admission year to the state court or the federal court came in late 1970 and the other one didn't ... I think by the end of '70 I had been admitted to the courts.
- Phil: And you had mentioned that a big, a contributing factor or sort of a kick in your career was the NLRB taking jurisdiction over hospitals and not-for-profits. And the same time ... Go ahead ... I was going to say at the same time you began practice there were some other critical legislation that came in in the mid '70s and late '70s that formed a lot of American health law. Did any of that impact you?
- John : Sure. A lot of those things impacted reimbursement and in dealing with the hospital's issues, particularly where they already had a union. I mean understanding that was key. I also got involved more than ... but a limited extent, in the hospital's relationships with their docs, but that wasn't a major part of my practice and I wasn't doing the whole piece. But again issues that came as a result of other changes in the law.
- And then in the late '80s there was another change to the National Labor Relations Act with respect to hospitals. Well, acute care hospitals. The '74 Amendments were hospitals, long term care facilities, whatever ... CCRCs. Anybody that was nonprofit that provided health care was brought in under the Act.
- But in the late '80s the Labor Board adopted a rule which defined the appropriate bargaining units in a health care institution. And it's something the unions pushed for. We were relatively successful. And I say "we," other lawyers like me that were labor attorneys who represented hospitals, in keeping the hospitals largely non-union and not organized.
- And one of the ways we did that is we were convincing the Labor Board that the appropriate bargaining unit was all nonprofessional employees or all professional employees, which made it more difficult for the union. So in the late '80s they convinced the Labor Board to issue a rule defining eight specific units as appropriate for collective bargaining in acute care hospitals.
- And the thrust of that was that they could get more homogenous and smaller groups, which are easier to organize. That was another flurry of activity following after that with respect ... that rule was challenged all the way up to the Supreme Court.

And I think the AHLA was in fact involved in it. May have been the organization that filed the challenge. A lot of labor lawyers, myself included, didn't agree with that. Let me just say it that way. Didn't think that that was the right thing to do and thought that the result where the Supreme Court approved these eight specific units was inevitable with the approach that was chosen.

But be that as it may, then labor law, health care labor law took another big jump in terms of activity and demands for my time and whatever. And at about the same time, my personal practice went from regional to national in health care. Which kept me busy as all get out for quite a few years.

Phil: I know that you have a national practice. When I got to know you on the Board, of the AHLA, I know that you had a practice that was beyond Pennsylvania at that point. Although you were still active in Pennsylvania, I remember that.

I want to touch on something that you referenced. More recently, with the move of hospitals acquiring physicians and the whole change in the landscape of how hospitals went from the sort of medical staff model to now direct employment model that has become so popular, did you get involved in that? Or did you say that was an area you hadn't been as involved in?

John : I was involved, but I was usually not the lead. There was usually someone whose practice was primarily on medical staff issues or business issues, would be in the lead, but I would frequently get involved at the hospital's request on issues that were part of the process. I was often involved with the issues with docs. If you will, the doctors, after they became employees.

Phil: Go ahead.

John : That model sort of happened twice. It happened once, I don't know if I can put a date on it. And then the hospitals decided that maybe this wasn't a good deal so they divested themselves of most of the docs. And then relatively recently, not in the last year or two, the hospitals started to go back to that model again. And I think at a majority of the hospitals, most of the docs are employed by a physician group, separate, but not really separate, from the hospital.

Phil: Right. In my career as a physician lawyer, predominantly representing the physician side, it definitely happened in two waves. Because I used to joke that right around the time my daughter, who is now 30, but around the time she was going to college, I had a huge influx of my practice of physician's selling their group practices or merging into hospitals. And then four or five years later, I had a boNus if you will of practice work of untangling those deals. That would have been in the early and mid '90s, 1990s.

Now as you say, it's become a major model. I have not directly worked in that area, because I've been running my company. But I wondered if as a labor lawyer, you got involved in the acquisition of practices. And I see where you're saying, you were not necessarily the lead business or medical staff lawyer, but you would have been involved in traditional labor issues, I suspect. Certainly in the white collar labor stuff that goes with acquiring white collar practices, white collar employees.

John : I would get involved. My clients would get me involved when they were acquiring. They'd also when ... mergers and acquisitions. I would get involved and in some cases very much involved. Because of the potential impact of employment relationships post-acquisition, post-merger.

And the more complex ones were ... at one of the institutions some of the employees were represented by unions and at the other institution, those employees weren't represented. And some fancy cases and issues revolving around that.

Phil: Interesting. Let me turn to AHLA for a little bit and get a little background from you of your work with AHLA and how did you get into the organization originally? Were you a member of the society? The Academy of Hospital Lawyers or not? Did you -

John : That's when I came in. The first conference, annual meeting I ever attended was in Toronto. I don't even remember when that was, but it was the Academy at that time.

Phil: Right. Right, I don't remember the year either because it also predated my involvement, but I remember that they did meet in Toronto and there was actually some blowback from that later as to whether they should go out of the United States for meetings.

John : Well, and part of the blow back was the fact that one of the receptions was at a museum and they ran out of food before a lot of people got there, okay.

Phil: So you came in as a member of the Academy and then when the merger took place, you obviously stayed on and stayed active. Did you do it through specialty areas? Did you do it through speaking? What was your sort of focus?

John : Well, when I became more active ... I well, first of all, attended a couple of conferences and listened to the people that were presenting and there weren't many on employment and labor issues. And I just sort of sat there and said, "You know, you can do that." And somewhere along the way I submitted a proposal and was accepted as a speaker.

When I about the same time became more active in the organization, became a member of what was then the Labor and Employment special interest committee. And I wasn't in that too long before I was asked to chair it. I might have only been a member for two years and I was asked to chair it. I was actually the chair I think when it went from being a Special Interest Group to a Practice Group.

I chaired it for three years. I think I was an assistant chair one year. I was just a member, then an assistant chair or whatever it was called, then the chair for three years.

Phil: And that was the labor and employment, what is now the labor and employment practice group right?

John : Right, correct. And two things under my leadership role is the labor and employment group was the smallest in terms of number of members at the time and during my tenor as the chair I think we more than doubled the membership and got out of the hole so to speak, and grew.

Our group was the poster child for webinars. There were other groups doing them, but we did more and did them well and got good participation. And I remember, Al Adelman was the President at one point and asked me if I would do a presentation to all of the chairs on webinars.

And it was running about that time that that part of the AHLA started to take off.

- Phil: And I remember that program actually. I think I was an assistant chair of the physician practice management or physician practice substantive law committee it was transforming into a practice group. And I remember that you did that program on how to do distance learning basically is what we'd call it now in retrospect. And that of course has become a huge part of the organization -
- John : And a nice moneymaker so to speak.
- Phil: Money maker and also tremendous contribution to the education component. Especially -
- John : And that too. Obviously that's the primary purpose, but it was also in our case sort of a recruiting tool as well. Because that's one of the reasons and one of the ways we grew. Lawyers getting the benefit of those webinars and liking what they heard and jumping on board.
- Phil: Did you find that as you grew and as the practice group for labor and employment grew, did you find that the mix changed also from ... I would think that more and more in-house lawyers started finding that they had a responsibility in that area and signed up.
- John : Yes. And in some cases, some of them who I got to know fairly well, it became a predominant part of their role. Lisa Vandecaveye for one. She used to call me and talk to me all the time because they had some unions and they had the organizing drives and they relied on her as their primary in-house resource and had her doing a lot more than a lot of in-house counsel did. And lots of e-mails and phones from her.
- And in terms of the programs and presentations I did, I did several for the in-house counsel annual meeting. And when I did them at our annual meeting, a lot of the attendees were in-house counsel. And that was sort of the target audience that I directed my presentations and efforts to. To those who were in-house counsel who had labor relations responsibilities and employment responsibilities and a lot of the health lawyers that were called upon by their clients sometimes to help them with labor and employment issues.
- And also, they wanted to have ... as I wanted to have walking around knowledge outside of labor and employment as it related to health care institutions, they wanted to have some walking around knowledge of labor laws as they applied to their clients.
- Phil: As in-house lawyers sort of all transitioned I think in the time you and I were doing this work, from being that mile wide and inch deep, they started needing it. With someone like Lisa for example, her organization kept growing and growing. And an in-house labor function was necessary. The general counsel role and the in-house counsel's office role changed so that the work you were doing, it was no longer that "I'm the counsel to a 400 bed community hospital." Now you'd meet people I assume that were counsel to seven of those that were all in some sort of network.
- John : Right.
- Phil: And I know that I saw that happening in AHLA, that the level of responsibility of in-house lawyers grew tremendously in the 20 years or so that we're talking about from the '70s.
- John : Oh absolutely.

- Phil: Let me turn to and sort of give you a chance to talk about the future in terms of closing the interview. What would you say to new lawyers interested in health care about a way to make a mark in getting involved and then what would you say to the leaders of AHLA? You served as a director. You're a fellow. You're certainly involved. So those two points, what would you give as sort of talking points?
- John : Let me address the second piece of your question first, okay. And the one thing I would say to leadership and I said it when I was on the Board. I had to fight for it that the Board should consider having non-Board members on the committees. And I said that for two reasons. Number one, as another way to get and identify future leaders. Get people involved. And I've been on a number of other Boards. I was actively involved in long term care and I was on the Board of the American College of Health Care Administrators and on the Assisted Living. I forget what they called themselves back then. On their national Board and on state boards for them. And none was anywhere near as demanding as being a director on the AHLA. If you wanted to do it right, okay?
- And you've been there. Okay?
- Phil: Yeah.
- John : I know how active you are and you were and you probably are a lot more active than I was.
- Phil: Not really. Go ahead.
- John : By reaching out to others, to be on committees. I mean have your board members chair them and have your board members on committees. But I was a chair of one committee and probably on two others for each of the years I was on the board. So you had your board activities and obligations and your committees and probably still somewhat involved with your practice group.
- And it was time I gave freely. Okay. But I think you could achieve two objectives if the board would consider that. You know, not being quite so demanding on its volunteers who have a life outside of the AHLA. I can't imagine what it's like when you're president. I know you can. But I can't imagine.
- Phil: No.
- John : Being in that position. Maybe you can.
- As to young lawyers ... The AHLA, and I have no idea how successful it is now, the mentoring program. What I would tell a young lawyer is to hitch on to whoever it is in your firm that has a practice in health care and get actively involved through them. And learn from them in that respect.
- And I think a lot of the young lawyers have come up just that way. But if there's somebody that has the interest, the best thing you can do is get yourself a horse and ride it.
- Phil: I think that's excellent advice. I think go with your natural interests, but find a mentor or a leader that you can hang onto their coattails. There's nothing wrong with that. We all did it.
- John : Well that's the way you learn.

Phil: Yeah.

John : And in the larger firms the beauty of it is ... and I was at Reed Smith after my Navy service for seven years before we split off and started our firm. But I had the benefit of working for some very bright people. Very good lawyers and in building my own persona, you could find pieces of every one of them.

I didn't replicate anybody totally. But the guy that I thought was the best negotiator, I modeled my negotiation skills somewhat after him. And so on and so forth with everything else you do. It's a tremendous learning experience that I benefited from.

But I did have sort of one lawyer whose coattails I rode, because he approached me back when I came back to Reed Smith after the Navy. And he happened to be the lawyer most directly involved with health care institutions in regard to the real surge in union organizing when the Act was amended. And I learned a lot from him. And that sort of got me to where I was.

Phil: And that came at a time in your career where you were ready and able to do that. Where you had just rejoined Reed Smith right?

John : Right. And you know the NLRA amendments were like the gift for me. Okay. It got me started so I could get to where I am.

Phil: In closing, it's always fascinated me the number of our peers, and not just through these interviews, but people I've known who will say it was the ... and I can tell you in our field John and broadly health care, I've had people say to me, "Oh, it was the ERISA Act. That was enacted two years before I graduated from law school and I joined the firm and they said, 'You've gotta learn this.'"

And of course the one that's made a lot of our younger colleagues is HIPAA.

John : Right. And compliance issues.

Phil: Right. And it's not unusual and I say that to young lawyers all the time is there's nothing wrong with being the go to person in your law firm on something that a lot of other lawyers think might be fairly mundane. Because it's not all that mundane when it starts growing.

John : Yep. And what you just said, not exactly in your words, when I chaired the labor practice in our firm, the firm that's now Cohen and Grigsby, one of the things that I did is I asked basically every lawyer in the group to become a PhD if you will in one area of the law, labor law or new development.

Like when the Family Medical Leave Act came out. One of our lawyers basically got into that as deep as you could get. And he was a resource. Another lawyer got into workers' comp. And she was a wonderful resource. And we have a really vigorous immigration practice. But that again was an area where "Get smart on immigration." And there were a bunch of areas. Had a whole bunch of PhDs that I can just either lateral the client to or just walk to their office and get an answer.

I mean you had to be familiar with that area of the law, but when you got down to the nuances that you didn't hear every day, we had somebody that was a resource. And I think that some of that is this in our AHLA.

I wanted to pass one thing along before we close and it's a little bit off from your interview, but one of the fondest memories I have of my AHLA involvement, and it wasn't about the education piece, it was about the receptions and those kinds of things. I was on the program committee the year we were doing the planning for Philadelphia.

And I'm sure you were in the group. We had a reception and it was on a rooftop somewhere. That was the year that we got Joel Hamme to dress up as Ben Franklin. And then on the program committee also did some other stuff to promote it. And Joel looked more like Ben Franklin than Ben Franklin did. I don't know if you remember that at all.

Phil: Vividly. Vividly. It was a great meeting and that was a great moment. I remembered when he came out. He was in the coat. And he did. He looked like, I mean it was like he stepped off the \$100 bill and became the vision that we all think of as Franklin as a kid. I remember that well.

John : And we had the practice group members, none of us who could sing, we did a song. And then we were handing out lapel pins and other trinkets and junk related to Philadelphia. That remains one of my fondest memories.

Phil: Interestingly enough. And it was. It was ... and I think it stresses it to people listening to these interviews, that the social aspect of the organization is phenomenal. It always has been. Both in terms of the people and also the venues.

John : It's a real strength. And I developed a lot of referral relationships with people I met at AHLA. They'd call me when they had a labor issue. And if I had a client in their area, I would contact them. Or if I needed an attorney I'd contact them. In fact, in my firm, because of all the people I got to know all over the country, through AHLA and through the other organizations I was involved with, it was, "If you need a referral somewhere, go see Lyncheski." A lot of that was through AHLA.

Phil: That's funny. Because when I practiced, that was the same thing. I would get lawyers in my firm coming into me saying "You know lots of guys throughout" and it wasn't just health care although it was usually health care. But they'd say, "We need a lawyer in Colorado" or "We need a lawyer in Pennsylvania." Because you form these relationships with people that you can pick up the phone. And I call you and say, "John I don't know if your firm does this, but I need someone who does x or y in Naples in Florida" and you'll know them. I agree.

One last thing, that same annual meeting. Your former firm. I don't know if you were at Reed Smith in that Pennsylvania meeting. Were you? Or had you formed Cohen and Grigsby?

John : No. Well, I left Reed Smith in '81.

Phil: Okay, so that Reed Smith held a reception at that meeting also at the Mutter museum. The museum of physician oddity. Which was one of the greatest museums I've ever been to in my life. For me at least in Philadelphia.

John : I'm sure I was there, but didn't make the impression on me that it did on you. I just wanted to know where the bar was.

Phil: I liked the weird corpses and surgical instruments. You liked Ben Franklin. I can live with that.

It's an opportunity that I wouldn't have had. They closed the museum and it was only AHLA members who had the chance to go through this incredible, for me incredible museum. I wouldn't have gotten that without the membership and the activity with the association.

John : There you go.

Phil: Well listen. I appreciate this. Great interview and I'll give you a call a little later this week and catch up with you otherwise.