



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 3, 2017

Larry Singer interviewing Mike Anthony:

Larry: Alright so good morning my name is Larry Singer. I'm an Associate Dean at Loyola Law School in Chicago and Director of the Beazley Institute for Health Law and Policy. I'm here today to talk with a great friend and colleague of mine, Mike Anthony. Mike is a leader in the field of health law both locally and nationally, and really a giant in health law, and I say that sincerely. He's been a friend and a mentor to many of us. He's been a leading advisor on many of the major transactions in the industry. Widely spoken, widely known. You can't go to a conference and not have someone bring up Mike, and conversely, if you say you know Mike Anthony or are a friend of Mike Anthony, doors just seem to open. So it's really a terrific honor to talk with Mike today about his career, about the health law field, about the role that the American Health Lawyers' Association has played in that and to get his words of wisdom. I'm just very appreciative Mike of having the time to spend with you this morning, and the opportunity to record your thoughts as well.

I thought what we would do, rather than giving a broad introduction of Mike, I'm going to ask him to talk about his career, and we'll learn more about the things he's done that way. So I guess the first question Mike just to start us out is to talk about how you got into healthcare, because you have a strong background in healthcare, and then I know you transitioned into health law. Talk a little bit about why the health care industry really attracted you and the switch to approaching it to from the legal side.

Mike: Okay Larry. Thank you for asking that question. It's a little hard to pin down when my interest developed in the health industry. My father was a podiatrist post-World War II who never really had an opportunity to practice his podiatric career. He worked as what they call the DTL man with Pfizer for most of his career. Of course, he was always talking about the industry and talking about particularly pharmaceuticals and that was his life, that was his professional role that allowed him to bring up a family.

When I entered college, I wasn't really too clear on where my future was going to go, but I was good in the sciences so I took a pre-med major and focused on that really for all four years that I was in college, but I was lucky to have been on the campus of University, where I attended in Cincinnati, a graduate program in health care administration which was really a rarity back in 1972 which is when I was coming out of college. It was a neat program in that it had an arrangement of taking classes for a year

American Health Lawyers Association

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

and then serving as an administrative resident for a year in a variety of different settings being made available for that opportunity. I was just so lucky to end up at Johns Hopkins for my residency, and it was just a great experience overall.

The legal overlay developed while I was there, and even at that time, Hopkins was one of the first participants in the health services clause review commission that was developed, and I had the opportunity to attend a number of hearings where the state of Maryland was going to set rates for their hospitals, and the rates would be keyed off of the cost for providing the services and there were the administrative hearings focused on what was reasonable, what wasn't reasonable, what was going to be paid for, what wasn't going to be paid for, and they were really administrative hearings that were engineered by attorneys. It was impressive what they did, it was new to me as to this kind of professional exercise in law practice. I never at that point in time was focusing intensely on it. So I took up night school and that led to ... I took up night school while I stayed at Hopkins, and that led to my first law firm job out of school which I'll talk about probably in a few minutes.

Larry: Since you raised that, why don't you talk a little bit because you had the advantage and opportunity to practice in a variety of settings from law firms in house and serve in various capacities. Can you share just a little bit about how your career started and the opportunities you did and even how those built on each other?

Mike: Yeah you learn a lot about how you're going to conduct your professional life in ways before you're even thinking about it when you go through a series of jobs as a teenage and through the college years. In my case it was I served as a welder, I served as a sewer construction guy for a while.

Larry: Very related to law.

Mike: Yeah, but each of these ... And as a janitor, a taxi driver, a bartender. Each one of those kind of opportunities, you learn that it's important to have mentors right away because you step into these positions and you don't really know where to take it and you find out you can't cut corners early in life. It's just not productive. Everyone that you work with that is your leader has a different leadership style so you have to be able to go with that.

I guess my first experience and exposure to health law as I talked about briefly was at Hopkins. Hopkins is just a great place to take up a professional career and learn from there. It's just a fabulous place and you learn their ... I was an administrative resident and an assistant administrator in the department of medicine and ended up my career there between '73 and '78 and ended up as the administrator of their psychiatric hospital and psychiatric program at the university. So you learn to take your shot at doing what they ask you to do and you make a lot of mistakes early in your career, and that was a great place to allow that to happen because even though they're the best in their business clinically and I would say from a management perspective, at an institution like Hopkins, they were true teachers. They were all academically inclined, but they were true teachers, and they allowed you to make mistakes and to learn from your mistakes.

You learn over time that you can achieve even among the best in the business. That's why working at a place like Hopkins was a unique opportunity. You don't try to be them. You're not going to be the greatest leader or the greatest clinician in the business at that stage of a career that's just starting out, but what you do is you try to complement what they do, and it became clear after the series of meetings with the health services cost review commission that there was something there on the legal side that you could specialize in and really make a mark.

The industry itself it was always from the moment I touched it, it's a dynamic industry, it's an important industry, it's flawed, it's exciting. It just is a place where you can thrive and is always going to be evolving and changing.

So you learn all that fairly early at a place like Hopkins, but I was fortunate enough when I came out of night school to have the opportunity to work at Ober, Grimes and Shriver. It's now Ober, Kaler Grimes, and Shriver. I worked with a small group. There weren't a whole lot of health law firms at the time. Maybe a handful, and some of our leaders have been in the business for awhile of health law have come through that small handful of law firms that were focusing at the time on an industry, and although Ober did many other things, they had a vibrant, small five person law practice they brought me into. They just immediately took me into positions I wouldn't have expected of a first year lawyer. They send me to Florida for a period of three years to work down there, and in working down there I worked on with Len Homer, who is just a fabulous mentor and also the leader of the NHLA in many respects, on group appeals and he was always pushing me to find ways to get yourself to think bigger and to think about what you needed to do to enhance your career. He was the guy that introduced me to the AHLA even though while in law school I was a student member from about 1975 on in the National Health Lawyer's Association.

So great opportunity, but then I for various reasons a year and a half out of law school I ended up moving to McDermott and Emory who was just starting up a practice. I had to move back to Chicago for other personal reasons, and they provided the opportunity to do that. Larry Gerber who was heading up the initiative to build a health practice was in the very, very early stages, and they needed someone with experience working in hospitals so there was a tie in already in my career early on to the fact that I served on the business side of health care, and that's really why they brought me in. It was just a different world for someone entering a health law practice back then or wanting to take up health law as their key area. I really didn't know anything else. Other than those things I did in high school and the things I mentioned in college and so forth, it was my life. It had become my life. It's all I knew, and I was being hired because of it, and that's why I was at McDermott.

Because there weren't a whole lot of ... There wasn't a lot of experience in the business of the industry of health in the roster of attorneys at McDermott at the time, they threw me into doing corporate restructurings, actually heading up corporate restructurings, this was a year and a half out of law school, and getting involved in managed care which I didn't touch a whole lot and certificate of need we had a few other people at other offices at McDermott at the time, and I'd have to go out and work with them on certificate of need type projects, which I didn't do a whole lot of at my first place at Ober.

Reimbursement projects. Just things you had to self-learn, and you had to find immediate mentors. You learned that you find them within a firm, and you have to find them. They're at your level or they're at a higher level in the firm to teach you things of corporate law and tax law, employee benefits, labor law, all of which if you're going to be a health attorney touch your practice. I had no exposure to any of that so being a bigger firm, you were able to find these people, but you had to find them. You had to find help in order to take on these big projects and take them on in a big way.

You also sort of learned at that stage you better have, after a couple opportunities and working at major health systems and working at a health care practice of a firm that was a medium sized firm at the time then moving to a big firm, you better have some idea early on what your mission is going to be and what it is you're trying to accomplish and look at something like a plan, a career plan, so you don't go way off track. That became pretty obvious early on when I was at McDermott, Will, and Emory.

At each of these places that I worked, and I continue to work at McDermott, Will, and Emory in a very different way now putting together programmatic initiatives for them in addition to doing some specialty client work, but every step of the way in your career, you have a different approach to things, and you have to play off of what you come out of in your prior, within the health industry, the prior job that you had.

Larry: I know Mike you were also General Counsel of the American Hospital Association. Just real briefly can you talk a little bit about takeaways that you have from that experience?

Mike: Yeah absolutely. Thank you for bringing me back to that. The American Hospital Association opportunity interestingly enough came to me through the American Academy of Hospital Attorneys which was leading the search for Dick Epstein, Richard Epstein's leadership of the legal group at the AHA. The committee that was working on the recruiting of candidates was the committee of leaders from the American Academy of Hospital Lawyers at the time really, but it developed into healthcare, the bigger picture of healthcare over time.

So I was brought in by Gail McCarthy who herself was an attorney, and she position was senior vice president and general counsel of legal and regulatory affairs which is a little bit ... On the regulatory side, yes we had regulatory work to do, but it had to be carved out within the way the AHA was structured at the time. The legal people at the time had been without leadership, other than interim leadership, for years so they sort of had a laissez faire approach to what they were focusing their time on, and it was pretty clear to me that coming into this role they wanted legal to be more involved in developing policy in areas that were best addressed by those with a legal background. Now that may seem clear to some, but it was pretty fuzzy what we were going to be responsible for and our incredibly competent policy group was going to be working on.

So it was a challenge in trying to get everybody rolling in the same direction and taking a group of 20 lawyers and instead of having them interfacing day to day with outside attorneys asking questions of them that affect their hospitals and their institutions, but more focus on becoming the leader in development of advocacy positions on things like tax exemption and reimbursement, Stark which was just starting to unfold at the time and helping to drive a consensus on industry policies that were maybe achievable but

frustrating to try to get to the point where you had to get the backing of everyone within the AHA on where you were going on these issues.

So you had to be very aggressive. This is when I obviously first met you and you came in and helped, but a fairly different culture to accomplish this change in what the general counsel's office was doing. It was an introduction to leaders of hospitals all over the country and the way that decisions are made on health policies that was eye opening to me. I think to all of us. But in a way it worked. In a way, it highlighted some of the inadequacies on trying to get consensus on change in huge areas of reimbursement policy and tax exemption policy and some of the other areas that we spent a lot of time on.

These conflicting objectives were not always pleasant, but they were part of a necessary process to get to yes and so you learn in a position like that there's a lot of attention on what you do. You have to be careful in how you approach things, you can't let your individual opinions speak for the industry because the industry is a very big place. So we learned to do what we needed to do in a way that I felt very good about. Very good about what we were able to accomplish.

Larry: Let me, Mike, if I can broaden you out just a little bit then and talk a little bit, if you had to pick let's say three ways or whatever that health law has change since you practiced. Are there things that are kind of signature moments to you or if you want to prognosticate a little bit, where do you see the practice of health law going?

Mike: Well you know as I described when I started with Ober and as I started with McDermott, we were coming in right at fairly green out of law school, and we were generalists. I guess you might say that all people that start in the practice of health law now are still generalists, but we stayed generalists, and that's how we were trained and we stayed for some period of time. We jumped around a little bit during that time of our careers, but we had background in areas very early in the career that allowed us to continue to work in the industry and with clients that wanted to work with us for a variety of different reasons.

It's getting to sort of super specialists. In our law firm we have people who are experts in the Stark law. Well yes. That's absolutely important, and it's such a complex area and needs that kind of specialty attention, but when we started practicing law, that was not something that we could do. We didn't have enough people in it. You had to understand these specialties, in these areas, complex areas, as best you can while juggling ten others. I think it has changed. It has created a ladder really for development of health lawyers that wasn't there. Our ladder was it was the first rung of the ladder and you were leading a corporate restructuring transaction, which is made up of so many different specialty areas. It's enormous.

So there are more attorneys now that want to get into the business, and they have a ladder with many rungs to move up and learn and be able to make decisions about what area of health law they want to focus on. I think that's a more positive vector. It's stratified, but I think brings with it a greater understanding of the area you're working in and brings greater sophistication to the decision making and creative aspects of trying to come to resolutions that make sense. The regulations have become so much more complex than they were when we entered the industry that they trip over each other.

People who are trying to find resolution in one area find that they've created problems, regulatory problems in other areas, and some of the areas seem to conflict with each other and conflict with common sense, but I think it had just changed dramatically so you need to, as you're coming into the profession, look at it in a different way and your whole career track is extended out further, and you may never touch some of the areas that we had to touch early on which is unfortunate, but in a lot of ways it's necessary. So that's changed very dramatically.

Another thing that's changed is who our client is. When we started practicing, our clients were CEOs, CFOs, and boards. There weren't a huge number of general counsel working within health care institutions. I've been pretty much involved in the provider side more than any side of health care, and even when I worked at Hopkins, they had a general counsel of Hopkins, and I tried to work with him often. He was a very bright guy, but he spent most of his time on negligent cases and issues that ended up in litigation and working with outside firms on those matters. He didn't really get too involved in the business, on the business side in a sense, and that's changed dramatically since I started practicing law so today whereas we were marketing, target marketing, the CEOs, CFOs on corporate restructurings and on managed care and physician hospital organizations, and the kinds of things that were big in our early practices and even working with boards directly.

Now most of our practice with, at least on the institutional side, goes through in house counsel. Now in house counsel programs have just become so much more sophisticated, have so many more opportunities to learn internally and be trained internally that it really has developed a whole new and different market from where we started in the field.

I think we now have a field that has more mentors and more coaches who can ... and more enhancement opportunities coming out of the box for students who want to get into the field and for early entrance into the field of health law, but you have to find them, and you have to work it to make sure that you get all of the opportunities you can which include finding the mentors and coaches in these kind of organizations and crossing over in a way with business principles that, for those who didn't have the opportunity to work on the business side of the industry, that you pick up. This is important for whether you're going into health industry litigation or transactional work, you have to know the business because if you're a health lawyer, you've elected to be a lawyer who is focused on an industry so you better know the business of the industry.

Where do you get that? Well you have to get that somehow, and you have to look outside of the health legal professional organizations to those that are broader and have as their members various types of consultants, various types of executives in a whole variety of areas ranging from acute care to post-acute care to laboratories and all of the other elements of the industry including the life sciences department of pharma and the products that are delivered and all of the supply chain aspects of it. You have to know those things to practice the law now, health law, in a way that allows you to understand how to put together creative combinations and how you deal with issues of employment.

I mean physicians are employed now in a way that wasn't even conceivable when we started practicing. Even though you started putting together PHOs and taking on risk

with insurers back in the early eighties, physicians weren't willing to be part of a health system, and they wanted independence. They didn't want any interference in the way that their practice was conducted, and the world is different now. Integration has gone up and down as an area of being focused on as an important policy of the policy element of the industry, but right now it's clear that this is always going to be the case now that integrated organizations are necessary for doing the things that the industry really hasn't been good at like measuring quality and getting compensated for quality. All of those things now have some promise for the future because of these changes in the way that the structure has evolved out of necessity.

Larry: Just listening too Mike because my history is a little bit shorter than yours, but it's still getting long and just thinking about the changes you've raised, it really has been such a dramatic shift in the types of clients, the issues. I resonate completely with you as far as how careers are developed and the good part I suppose of super-specialization but also the potential questions as far as really being able to have the broad breadth of knowledge that you need.

Let me switch you because I know we've got a couple minutes left and our friends at HOA are behind us are recording. You've been really instrumental in AHLA for many capacities. I didn't realize that you had joined as a student even one of the predecessors of it, but I know at your time at AHA, you had a very active role and had obviously been on the board and are now a fellow. Can you talk just briefly about the organization and what it's really meant to you because I know it's been an important part of your professional development?

Mike: Yeah. Well right out of the box being a student just gave me an opportunity because in working with general counsel Hopkins, there wasn't a whole lot beyond liability type cases that we had to discuss and talk about. It was helpful to know that, and part of what I had to do at the Department of Medicine was take in the complaints that would come in, and they were really reports on issues that had occurred on the units, clinical problems that resulted in things like that so it was somewhat helpful, but when I joined as a student a member of the NHLA, it was an interesting organization because it wasn't huge in number and the people that were in it were leaders in their respective fields of health industry law. There were people like Len Homer who pushed me further towards the NHLA when I started working with Ober Kaler. I mean the reimbursement side of the business, he was huge.

He took me along to a program in [inaudible 00:31:22] where I met David Greenburg. It was on reimbursement as I recall, and it was at that program and I sat down with them and just sort of listened to Homer and David Greenburg talking about what they can, how they can institutionalize the reimbursement program into something important for the training of all health lawyers because it was just a very big part of what health lawyers did back then. In fact, out of that came the reimbursement program that Len was a co-leader with J. D. Epstein on for 20 years. It just became one of the center pieces of programs that were made available to anyone interested in the health industry and especially members of the National Health Lawyer's Association.

When I started with the AHA, when I was first significantly I would say exposed to the Academy of I think it was Hospital Attorneys at the time, again I was a member of, when I started practicing, I became a member of the NHLA, and the Association of Hospital

Attorneys, and really got to know them more as I was working at the AHA and learned about ... at that time they were pushing for independence, and they had a right to do that, and I think it made sense to do that, but the AHA wasn't ready for that to happen, but I did become closer to their organization, attended many of their meetings, spoke at many of their meetings, and really gained a lot of respect.

When I left the AHA, it was pretty clear to me that at some point in time, it didn't really make sense to have two organizations that were competing. I don't think the competition, as it sometimes does, makes each organization greater. Here, it was clear that it would make more sense to have a combined organization.

Luckily at the NHLA, when I came out of the AHA, Michael Bromberg who headed up the proprietary association of hospitals in the country at the time and Galen Howards is a giant firm and one of the early leaders, they were the ones that asked me to become part of the board of the National Health Lawyer's Association, and that was an incredible experience. I loved working closely with David Greenberg even from the time I was a student you could stop by and see the guy and he would give you ... He was always giving you tips, and if he took to you, he would always recognize you at meetings and have some advice to give to you, but also being involved in the National Health Lawyers Association, we had two very brilliant, great leaders beyond the attorneys that were involved. Marilou King came in and succeeded David, and Jeanie Johnson was her assistant, and they just were very innovative and true leaders.

Eventually as they started to do all kinds of innovative things within the NHLA and the leadership structure was consisted of really the top people in the business, that's when the discussions started with the academy. Because of my role with AHA, I wasn't too involved in those discussions for a variety of reasons, and they made it happen. They made the two come together. They've made, at this point, I think it's developed to an organization that the best pieces of the culture of the two organizations have managed to weld them together, and it's created a dynamic organization that's really, if you go back to the early nineties, it's hard to conceive how sophisticated an organization could've been created, and in fact that's what's happened.

You know I was the president in 1999 of the combined organization, and each president tries to have a general theme of things they wanted to accomplish, and what really happened, it was odd, during the years of the incoming president, and the year after as well, it was a time when it was clear that we had to move away from just focusing as much as we did on programming, which was face to face programming which is terrific and you get to really know everybody in the business, but it was clear you had to start doing audio conferences which we were capable of doing that at the time, and we started doing it in a big way and that was a big part of what I helped push into that item of business. Of course, it's grown into the video side and podcasts and all kinds of different things now, but that's what happened during my brief one year stay as the president and also trying to link up with the various state associations that had developed at the time like the Illinois Academy of Hospital Attorneys, and now Healthcare Attorneys, and trying to set up a template that would allow for an anticipated and understood relationship between these local, state, and sometimes they're at the level of the city and then the state associations relate to the American Health Lawyers Association.

Yeah so it's been a huge part of my practice. It's been a huge part of my life. It's been an enjoyable part of it. It was a necessary part of it at every stage in learning new things and being face to face with and talking with and becoming friends with people who had insights that never would have been available in any other possible way from the day I stepped out of, started in law school and became interested in law school, and the current day where I have a very different role with my law firm.

Great organization. It helped me be a better student, it came with built in role models all along the way, and many friends, mentors, teachers, leadership challenges, you learn how to lead things in ways that are different that allowed you to be out of the box from those that you work with from day to day and really made you feel part of something much bigger than working for one law firm or one association or one hospital. It put you on the national stage, and anybody can get there today. It sometimes seems like a longer road, but there are people that are incoming leaders, presidents of the organizations that started outside of the area of health law in our firm and are now stepping into the role of we have a president this year, we have a new president coming in next year who is also a terrific partner of our firm at one time and was a corporate lawyer.

So yeah great organization. One thing about it that people probably, if you haven't been with it for 30, 40 years however long it is that I've been with it, there's always been a source of diversity and gender inclusion in this organization that was powerful. People might not remember Nancy Wynstra. She was the general counsel here at one time at Michael Reed Hospital. She worked her way up to the presidency of the National Health Lawyer's Association. Donna Fraiche is still very active in the association and she was the president at one time. Alice Gosfield has been around the industry for a long time and has been so influential on so many people. Brent Henry I just read today he moved from being the general counsel of Partners out in Boston to Mintz Levin and he's still at it. So these are all leaders with diversity, different ideas, and they were always at the fabric of the National Health Lawyers Association and then after the American Health Lawyers Association and some from the Academy as well. It's just been a terrific organization in the way that it's always been structured and all the things it can do for you if you know how to tap those resources.

Larry:

I think that's a wonderful thing to say, and for me Mike you've always been and continue to be such a strong representative of the best of what it means to be a health lawyer, to be a lawyer, to be a mentor, to be someone who gives opportunities. I kind of smiled as you were talking about the things that happened in your career and certainly the opportunities you've given me so I see the direct connection from the way you were mentored by Len Homer. So I think you are also one of those people that everyone talks about in the same affectionate way that you've done, and that just speaks so well of you.

So very grateful for the opportunity to speak with you and the opportunity to have this recorded for posterity, and the opportunity to really have you in my life and thank you for all you've done for the greater health law world. It's really deeply appreciated.

Mike:

I want everybody to know in the circle of the life and the circle of our profession, Larry invited me to lead a course on leadership in the law school at Loyola, and it's been a great experience for me, and it is something that I would never have been able to do

had he not been constantly asking me to try it out, and it's pretty great. So that's the circle of life.

Larry: Alright my friend well thank you so very much.

Mike: Thank you. Okay.

Larry: Thanks Mike. I'll talk to you later.

Mike: Alright Larry. Bye-bye.