



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.

February 14, 2017

Katherine Benesch interviewing Tom Mayo:

Katherine: Hi. This is Katherine Benesch and I am here. I'm from Benesch & Associates in Princeton, New Jersey. I'm here interviewing Tom and Tom, I can see that you have a number of wonderful titles. You're a university distinguished teaching profession and associate professor at SMU Dedman School of Law. You're also an adjunct associate professor in internal medicine at University of Texas Southwestern Medical School, as well as of counsel at Haynes and Boone. I think you're one of the few academics that we're going to interview, so that should be really interesting.

Tom: Good. I look forward to it.

Katherine: Yes, well we all do. To start this out, why don't you just tell us first of all something about your legal career and how your career progressed as health law was coming of age. How did you become an academic and get into health law and get involved with AHLA?

Tom: I was in private practice from '77 to '84 and as an associate in two different firms, I was working on nuclear power plant siting controversies and election law and communications law, security fraud, antitrust, kind of everything except health care. Both of those firms did have practitioners who were doing health law, but it was still pretty rare at those places, even as the health law practice was starting to grow around the country. When I got to SMU in 1984, I was hired to teach federal courts and civil procedure and anything else I wanted to teach and I chose land use law. I had done a lot of writing in the zoning field and thought I was pretty well prepared to teach.

Over the next four years, I started to realize that law and medicine, which is how we used to think about what's now health law, law and medicine was a field that I could really be passionate about. The problem was that although there had been people out there representing providers and representing the government in enforcement proceedings and folks making a living doing health law, there was no such thing as a health law course in American law schools. So, I started working on pulling together materials for that. My main interest was actually in medical ethics and law and there were very few published teaching materials on that for law schools either. I was sort of simultaneously collecting teaching materials for two courses that didn't exist at SMU and really didn't have much of a counterpart anywhere else.

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Then, low and behold in 1988, out came a West Casebook, West Publication, on health law and it had med mal in it and it had medical ethics in it and it had what I think all of us would recognize as actual mainstream health law. The kind of stuff that's of interest to providers and patients and others. My elevator speech to students is this is the federal and state regulation of the organization financing and delivery of health care goods and services. That Casebook was the first to really pull it all together and that was the year I started teaching a health law course and a separate course in bioethics.

Katherine: So, that's great. In conjunction with that, when did you get involved in AHLA?

Tom: Well, back in the day when it was NHLA, I think I joined pretty quickly after I committed to teaching the course. I joined up with a number of different organizations, but NHLA was the one that seemed to be the most dedicated to the steadiest supplier of professional legal education in the field and so it seemed like a natural that if I was going to be teaching this stuff I really needed to be plugged into NHLA. It was probably around 1989 or so that I joined. Then, started attending some meetings, gave a presentation in 1995 at the annual meeting of NHLA in San Francisco, 50-state survey of the illegal remuneration and self-referral laws. That was when, I think, the idea of having an academic on the board occurred to Marilou King and she put me up for membership a couple years later.

Katherine: Maryilou was a staff director at that time, is that right?

Tom: She was, yeah. She asked me to turn my talk into a monograph, which I did the next year, that was '96. Then in '97, I was nominated to the board and voted on. So, my six-year [inaudible 00:08:27] with the board started in '97, extended through 2003.

Katherine: Didn't you say that it was at that time that there was a merger between the Academy of Hospital Attorneys and National Health Lawyers?

Tom: Yeah. It was my first board meeting in '97. That summer was when the two boards voted on the merger and I remember it being a long meeting with lots of discussion. I was also acutely aware that a ton of work had gone into thinking through this merger and making it work. I don't know if there was any dissenting vote on the board, but it was a fascinating introduction to both the Academy and NHLA and what would, of course, become American Health Lawyers Association.

Katherine: Just for history's sake, how was the Academy of Hospital Attorneys different from NHLA at that time?

Tom: Well, I wasn't a member, but I had the impression that it was offshoot, a subsidiary of American Hospital Association. A lot of the members seemed, to me, were either in house or private-firm attorneys who did a lot of work with hospitals or wanted to do work with hospitals. It seemed to me that, other than that, most of the big names that I could recognize in the field were actually members of both organizations. Not everyone made that decision, but it was clear that the two organizations had a fair amount of overlap in terms of mission, but maybe the merger was inevitable. I think the Academy, and I'm not the one to really answer this question, but I think just in terms of personality and the sort of social aspects of association life that there were distinct personality differences between the two organizations. Gosh, having not been a member of the Academy, I can't really say first hand that those differences were there.

- Katherine: Then, when you started working in AHLA, you said that you chaired the Public Interest Committee. Is that right?
- Tom: Yeah. I think it was 2001 to 2003, my last couple of years on the board. I was on the executive committee and secretary. It was certainly during that time that I chaired public interest. I think it was both years, but it may have only been one. I was on the Public Interest Committee from the start of my service on the board. I think because it has such a strong educational mission that the idea was that somebody coming from an academic background might have something to contribute to the Association's thinking about where the greatest needs were for providing members and others who might be consumers of these publications with up-to-date stuff that would be hard to get any place else. I think it was a fabulous experience. Public interest was getting its own endowment starting around 1996 or so, '97 and that endowment grew and the activities grew and it became a real signature aspect of the American Health Lawyers experience.
- Katherine: That's great. I think you told me that you were probably the first academic on the board of AHLA. Is that correct?
- Tom: As far as I know. I'm willing to stand corrected, but I think I was the first.
- Katherine: Do you want to talk to us a bit now, because you're officially in the world of teaching and mentoring students? So, do you want to talk to us a bit about what you tell students who want to have careers in health law and particularly what the value is of joining AHLA for students and young lawyers?
- Tom: Sure. I get questions from students all the time and I had pretty consistently since 1988. My first question for them is what do they understand health law to be and I think if they haven't had the health law survey course, they're really thinking about either med mal or, often times, public health law, population health law rather than the kind of meat and potatoes sorts of things that our members are more concerned with, not the public health law isn't part of our agenda and our outreach to members. Most of it's going to be in the fraud and abuse area, it's going to be antitrust, it's going to be compliance work. I think most students don't know that until they take the course or hear it from me. Once I can get them oriented to the idea that this is a lot like a litigation practice or a transaction practice, accept it, focus is on a single industry, then we're off to the races. I always encourage them to join American Health Lawyers Association, which has steadily been decreasing in its fees for students to the point now where it's zero dollars a year for student memberships.
- Katherine: That's great.
- Tom: I think that's nearly full member benefits. There may be a few that we withhold until they start paying up. I don't know that the restrictions are significant. It gives the students a steady daily, weekly update about what's happening in the field, which I find to be extremely useful myself, and gives them a way of staying connected to developments. You start to develop an idea of what part of health law might really appeal to them.
- Katherine: So, you use AHLA and the AHLA materials and online communications kind of in conjunction with your teaching of health law in the law school. Is that right?

- Tom: I do. I don't print the stuff out for them, but I point them in the general direction and encourage them to follow practice groups that they may be specifically interested in as well. My hope is that by the time they go out and start networking with other health lawyers and looking for a health law job that they are going to be sufficiently conversant in different aspects of health law that they know what they're looking for and can present themselves as potentially valuable employees from day one. American Health Lawyers has been, I think, indispensable for that. It is the most recent casebook you use, the one that came out of the publisher last week, was researched probably two years ago, finalized a year to six months ago and then went into production. In order to really know what's happening there aren't that many places they can go and certainly not at that price and stay abreast of the field. So, Health Lawyers is really great for that.
- Katherine: And I think you said also that you found that Health Lawyers, that AHLA, the lawyers was just kind of an amazing group of lawyers that were happy to meet each other and help each other, help other health lawyers out and help in teaching.
- Tom: That's been great for me and it's been great, I think, for the students. The single most remarkable feature, to me, over what? now 20 years plus, 25 years of the association with this organization is how perfectly willing total strangers are to help you answer a question, analyze a problem, share what they know from their experience representing a particular provider in a deal or in a case. It's just a generous spirit that, I think, frankly has made it possible for me to be an effective health law teacher and part-time health law practitioner. From a student perspective, it's ideal because our members, it seems to me, love to get together and mentor younger lawyers, share what they have to offer, and the students need that most of all. It's a great marriage of ability and need.
- Katherine: It's a great organization for camaraderie, isn't it? I mean, I find that my colleagues in health law are the people I know from AHLA all around the country. I assume that you find that also.
- Tom: Yeah. My best friends from coast to coast are people that I've met over the last quarter century in American Health Lawyers. Some of them I don't see for years at a time and others I'm in contact with more regularly, but it's always like a long-lost friend. They're just fun, friendly people and super good at what they do.
- Katherine: It's hard to find a group of people, especially lawyers, that are like that, isn't it?
- Tom: Well, it is. We tend to try to, I don't know if competition's the right word, but just as a profession, folks are looking to build their practices and make sure that they can pass something on to the next generation coming up in their firms. To see people who are that willing to share that level of expertise is really, I think, kind of rare.
- Katherine: Yeah, it's really wonderful. So, what do you think the future of health law and particularly for AHLA is? What should AHLA be doing from now on?
- Tom: Well, one characteristic the Association has always had, I think, is an openness to evolve to meet changing aspects of health law practice in terms of both the needs of the clients and the way law firms in particular, but I'm sure other practice settings as well have evolved. I'm thinking back to when, for example, we expanded from a traditional health and hospital law sort of focus to include the life sciences, which seemed like a huge change at the time. It was really reflecting what was happening in a lot of firms who were cross selling their practices and then decided

that, you know, it would make all the sense in the world to just have a life science practice that includes health law and biotech or to have a health law practice that includes biotech.

In terms of the Association's response to all that, for a group of lawyers this big and with this long of track record, they're really kind of nimble about changing with the times and including new topics and materials in their publications and their programs. I think, as we look forward, that characteristic is going to be maybe the most important aspect of the Association's ability to flourish and to provide something of value to lawyers and their clients. Let's face it, health law is not going to stop changing because health care's not going to stop changing. We're seeing that right now with up and down immediate history of the Affordable Care Act and lots of question marks about what's going to emerge. Frankly, once you start performing health care law, it's a path, I think, that you never really get off and so we'll be seeing reforms of reforms of reforms for, I'm sure, the rest of our professional lives and after. Health Lawyers Association is, I think, the perfect vehicle for keeping track of that, documenting it, and preparing people to be more effective in that environment.

Katherine: That's what makes it such a fun practice, isn't it?

Tom: Yeah. Absolutely. There's always something new to learn.

Katherine: Is there anything else that you want to say something about that I haven't asked you about right now?

Tom: Not really. I could go on for hours about Health Lawyers Association and specific events and people. I think that has been a good opportunity for me to think back on the most significant aspects of my association with this group and what I feel I've taken from it and I hope given back to it over a couple of decades, going on almost three. I think this is a good way to wrap it up.

Katherine: Well, this is great. I've really enjoyed talking with you. It's been really interesting and fun. Thank you very much.