



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 24, 2017

Bob Leibenluft interviewing Jim Sheehan:

Bob: Jim, are you there? ... Hello?

Jim: Jim here.

Bob: Hey Jim, it's Bob Leibenluft. Thanks so much for agreeing to the interview here for the AHLA History Project. Everyone, this is Jim who's currently chief of the Charities Bureau of the New York State Department of Law and who has a career of, I guess, 37 years in government service in various capacities. Most of which has been with [inaudible 00:01:27] involving some of the cutting edge issues around false claims and related issues. Jim was also someone unique in being a government lawyer on the AHLA board, which he served 1996-2002. To maybe get started, if you could tell us a little bit more ... Give us a thumbnail sketch of your career and how you ended up serving on the health sector.

Jim: I grew up in a family where my father worked for Johnson and Johnson and Cordis Corporation, which make a variety of medical products and [inaudible 00:02:13] around the table he was new product development so I got to talk to a lot of people who were engaged in that, bringing your older son around to meet these people. I got out of law school and I started out doing environmental work. Then six months after I went to work for the federal government the environmental case really dried up. I talked to a friend of mine who was doing a healthcare fraud case, one of the first anti-kickback cases and didn't stop after that. From about 1981 I was involved in healthcare enforcement for the Department of Justice.

The nice thing about that is that I was at the beginning of the major false claims qui tam whistleblower litigation beginning in 1986. We established in Philadelphia a very relater friendly in the sense that we were welcoming to people who came to us with information about organization and potential fraud. I did for another 20 years. I became New York State's first Medicaid Inspector General in 2007. I became the Compliance Officer for New York City in 2011. I came here and worked for the Charities Bureau overseeing healthcare and other nonprofits in 2014.

Bob: You have a long history but also having positions of quite a bit of responsibility at the federal, state, and city level, which may be particularly unique.

Jim: It's unusual, yeah.

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Bob: Tell us a bit — from your perspective — how has healthcare law changed over the time that you've been practicing?

Jim: When I was in law school there was one course — this is Harvard Law in the seventies — one course on healthcare and that was Law Psychiatry, nothing else. The Medicare, Medicaid programs were very new. The payment rules were just being establish. The anti-fraud protections had really not come into play yet. We weren't exactly sure what we were looking for or how we were gonna find it. There was a lot of room for new lawyers because there were no old lawyers in health law, except for people in the hospital field. Law firms really didn't have a lot of interest in doing healthcare. You and I have talked about Len Homer who was an associate in a Philadelphia firm and, as the story has it, was told when he wanted to do nonprofit law involving hospital and they said, "There's no future in this. Those are discounted rates and why would we add a new partner to charge discounted rates?" He went on become the national leader in the field in Baltimore.

When you look at ease, what you see is as government again becomes much more active in not just regulating healthcare but also paying for healthcare. That the law accrues substantially more complex and requires much more sophisticated attorneys to figure it out and to apply it. From my perspective, because I was doing fraud and abuse cases, the sea change was in 1986 when the False Claims Act was amended to substantially encourage most of our cases to forward and provide certain protection for whistleblowers. I mean the statute had been around for a long time but that really was the major change. At first, it was only defense fraud but in 1991, '92, it was clearly moving in the direction that healthcare, Medicare, Medicaid would be the most important parts of that statute.

The application was challenging in some cases. There was a lot of legal theories and doctrines that had to be developed. What was happening was that the lawyers were American health lawyers and then academy lawyers were historically were either inhouse or transactional people on the academy side, and regulatory and administrative lawyers and reimbursement lawyers on the NHLA side. With the additional of the false claims work you had a huge influx of traditional courtroom litigators and discovery litigators and also a growth in the regulator bar who chose the NHLA programs even if they aren't members, and also in compliance. Establishing guidelines in 1991 plus the False Claim Acts materials really expanding the compliance rule of attorneys throughout the sector.

The next big thing that happened was the Stark Laws. Again, there's a significant growth in administrative and transaction work at that stage. We started a fraud and abuse program at NHLA in the late eighties. The attendants just came to grow by leaps and bounds each year because of the interest and the concern both in house and in the law firms about how these laws would be applied and what developments there were. Am I going on too long here?

Bob: No, you keep going.

Jim: Okay, then a big thing that has happened, the big change that I'm seeing now in the last five years is the range of reimbursement systems has expanded dramatically. The range of subsidized programs including both the Prescription Drug Program and now the Obamacare — whatever the Trump version's gonna be — each of changes imposes a significant obligation healthcare entities and providers to readjust their structures and their processes to deal with that. Lawyers are critical to that. As we move toward 20% of the GDP and significant government changes on a regular basis the lawyers become much more critical. The level of

knowledge and sophistication they have, not just in their own deals but learning from others is much more important.

Bob: Jim, we're gonna have in this audio history most of the people we're talking to are people who are in the private bar all or most of their careers. We'll talk about what the Association and most of their predecessors did and why it was important to them in their career. I'm curious, you were a very frequent speaker at NHLA and Academy and NHLA events and putting aside your board service, we'll get to in a minute, but I'm just curious about, you're invited to speak at these conferences. How did you view it? Did you view it as a chore or opportunity or something else?

Jim: I really enjoyed it. I like mixing it up with people and learning their ideas and hearing from them. I also found that one of the great thing about being an AHLA speaker is that it forces you to learn. You know, it's one thing to know your subject matter passively but to teach it you have to know it actively. You have to learn what the different perspectives are and what questions you're gonna get and what your audience is gonna find positive or problematic in your presentation.

I thought that was helpful to me, not just in becoming a better AHLA speaker but in thinking about what my opinions were in cases and thinking about how to explain to judges and conferences and pretrial why we were doing what we were doing and why it mattered. Dealing with relator's counsel. "This is what matters in your case and you may think this is terrible but this is not really what the case is gonna be about." In planning, a lot of our investigations go on for three and four years. What you do in the first two or three months is really critical to establishing what the case is about. Good lawyers will tell you they start planning their closing from the time they first get the file. What helped me was listening to lawyers with a wide variety of different perspectives, both when I attended and when I was the speaker and learning how their view differed from mine and what other points to make.

Bob: It's interesting you say that because I was an anti-trust enforcing in my career in the mid-1990s and head of the Healthcare Division at the FTC. One of the things I actually enjoyed was going into, my staff said, "How could you possibly enjoy it," but actually I did, groups of doctors who would say ... Their initial response was, "You guys don't know a clue about this industry what are you doing. Anti-trust and competition and all this. You have no idea what we're facing." I actually relished the prospect of actually trying to explain that we aren't totally crazy, there is a rational to what we're doing, and here's why we're doing it and here's why we're doing it and having exchange back and forth. I think that's very similar.

Jim: I think also I started with some credibility because my grandfather was an internist in Brooklyn and my father was in the healthcare field and interacted with people on a regular basis so I knew the language. I knew some of the attitudes.

Bob: My wife's father too. You try to see how far that can get you but it's helpful.

Jim: At least you're not coming to a call as just bureaucrat.

Bob: Exactly. You were on the beginning of the NHLA board, which became the AHLA board?

Jim: Right.

- Bob: Maybe tell us why you agreed to join the board. I assume this wasn't to get a lot of new business-
- Jim: New clients, right?
- Bob: New clients. Maybe new new matters but not too many new clients. Tell us why you decided to join and looking back on it, what do you think of the experience.
- Jim: I really like the people. The people on the board, and I'm sure this is still true, are leaders in the field of healthcare. Especially when I was there the field was still very new. I had served on one board before but I knew the executive director and I knew the chair and had a lot of confidence in their sophistication and their good faith. I wanted to add a government perspective — it's not an official government perspective because you have fiduciary duties as a board member to the organization and you just have to recognize when there's potential conflicts and address them — but I wanted to be on a good board for an organization I believed in.
- It was great experience because you got to see how a well run nonprofit works. That's basic building blocks like: How do you do budgets? What's the appropriate role of a director as compared with a professional staff? What kind of strategic planning process do you have? What kinds of decisions should be reserved for the board? Which ones should go to management? How you think about what the organization's gonna look like in five years?
- At that stage in my career, it may have not been obviously to some board members who were more senior, I was still learning how these things worked. That experience was great for NHLA for me. I really like the people that I knew and got to know. It served me good stead now that I'm in Charities Bureau at the Attorney General's office. I know how a good board should work, I know the processes, and I can imagine being in the room. As you can expect there are very good boards that run good organization and then there are very bad boards, ineffective boards, that don't do what their suppose to do. Not only was it challenging and interesting and fun to design what then was a new organization for its next generation of activity but was a great exposure to how to do things right.
- Bob: I think we've overlapped a little bit on that board. I was also that point in the government too. I think having that different perspective is extremely valuable from both sides. In terms of wrapping up here, any thoughts on more junior lawyers who may be considering a career whether it's in health law or government service or both?
- Jim: Let me try three things, the first is that it's interesting to watch the changes in people attending conferences now. There's an effort that is required when you go not just to be a passive listener but to engage people. I think one of the things that has gotten more difficult in the last 15 years is to come out from behind your phone. In receptions and after speakers speak introduce yourself to them, talk to them, learn from them, head off to dinner with them after the reception. Lawyers are, I think, to some degree more introverted then we realize but at NHLA my experience has been that people, once you engage them are very good and very supportive so getting out from behind the phone is an important thing.
- The second issue is, I'm gonna make a pitch for state government. I think the next four years, there are going to be significant changes on the federal level, but I think the response is, in terms of new program design and roles for attorneys are very much gonna to be in the stateside world. Obamacare, the Affordable Care Act, may or may not continue, whatever version it's

gonna be significantly changed and the states are gonna have to respond to that for their citizen population, for their Medicaid population subset, and thinking about how that's gonna work is an exciting opportunity.

The other thing about healthcare is that we're moving so much toward a population based assessment of how it should work. I think lawyers have an important role to play in that, which we don't exactly know how that's all gonna fit yet but we're talking about 20% of the national economy in this field and huge opportunities to make peoples' lives better. This is an opportunity for lawyers, I think in the state government and some private entities to really have a chance to participate in that.

Bob: If someone's coming out of law school now — I often get this question — would you suggest going to government first or going into the private sector first?

Jim: I started government and went to the private sector and then went to government. I think the good thing the private sector teaches is very effective writing and organizing skills. The good thing the public sector teaches is early responsibility and exposure to major issues. If you pick one you should make sure you're getting an experience with the other as well, sort of the broad experience and focusing on quality writing and quality analysis and attention to detail. In the government the opportunity, if you're good, early on to do challenging work and think about the intersection of regulation and support of effective organizations is important.

Bob: Yeah, I think to some extent it distinguishes ... A lot of people want to go into health law, they like that intersection of policy and doing good-

Jim: Right exactly.

Bob: It happens in other fields as well but I think particularly in health law.

Jim: It's interesting to me, Bob if I could, the number of people who have backgrounds in health sciences or other health areas who find this area challenging both because its complexity and cause the opportunity to make a difference.