



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 50<sup>th</sup> Anniversary, which was celebrated throughout 2017.

Conversations between AHLA leaders were conducted via audio interview as part of the Association's History Project. More than 60 of AHLA's Fellows and Past Presidents were interviewed. In addition, several were also videotaped. A documentary was prepared using content from the audio and video interviews and debuted on June 26 during AHLA's 2017 Annual Meeting in San Francisco, CA. This transcript is from a video interview conducted on x date.

**March 20, 2017**

**Dennis Woltering (videographer) interviewing Gary Scott Davis:**

Dennis: Tell us about those early days with the National Health Lawyers Association.

Gary: My first involvement with NHLA started when I was in law school in June of 1980. I was a law clerk for Joel Michaels then firm, which was Michaels & Wishner. Both Joel and NHLA were in their youngest of days and way before the internet and electronic communications. One of the things that Joel did for NHLA was to, literally, write out case summaries and David Greenburg, who was then the Executive Director of the National Health Lawyers Association, would send cases over to Joel that he would review and then write up in one or two paragraph summary forms, that I think he was paid a couple of dollars per case summary to prepare. One of my jobs was to then run them over to David's apartment, because David's apartment was not only his apartment or his condo, but also the offices of the National Health Lawyers Association, and conveniently, they were located around the corner from G. W. law school where I was going to school at the time. That was my first introduction to the National Health Lawyers Association, was through that process.

Dennis: He became a mentor for you, didn't he?

Gary: Yes. One of the founding principles of the National Health Lawyers Association was the willingness of health law practitioners to share their knowledge with everybody, including their competitors, and to help other people move into the field. When David found out not only that I was working for Joel Michaels, but that I was also interested in becoming a healthcare attorney, every time I would try to leave David's apartment and run back to the library, or run back to a class, or run back to Joel's office, David would grab me and say, "Sit down, we need to talk." He would never pass up an opportunity to mentor me, to encourage me, to ask me about what I was learning, what I was interested in. David was a very unique individual.

Dennis: It sounds like he was kind of a character a little bit.

Gary: David was definitely a character. If those old commercials on USA Network about characters, David would have been a character. You would not have imagined him to have been the Founding Executive Director of what became the most prestigious professional association for healthcare attorneys. He never took himself too seriously. He was always focused on the members. It really was never about him, it was always about health law. It was about the established practitioners, the younger practitioners. He was just really a lot of fun, at least for me, to be around. Particularly learning about health law and having this icon who takes an

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interest in you and in a way that wasn't intimidating, but really was nurturing. He was, definitely, a character.

Dennis: How would you describe the culture of the NHLA?

Gary: When I joined, I found it to be, and I think it still continues to be very welcoming. I always had opportunities, I always found everybody in the association willing to take you under their wing, to network with you, to become your friend. Most of my closest professional friends are all from my early days at NHLA.

Dennis: You were honored with a David J. Greenburg Award. Tell me what that meant to you.

Gary: That was really a pretty special award, and the whole process of how I received the award. Having been mentored by David, he was more than a name. He was a real person and a real influence in my career. In, I guess it was June of 2000, I had finished my six year term on the board of directors and I was rolling off and they had just started giving the award out. Maybe there were three or four ... maybe five recipients of the award before I received it. It was given out at the annual board dinner, which is different than the process that AHLA now has in terms of the board dinner and the whole annual meeting, but I wasn't going to go to the board dinner, even though it was my last year.

It was on a Saturday night in Virginia. The next morning, my two daughters were getting ready to leave for sleepaway camp and I had to go to the airport with them, it would just would have been wrong to not have been there when they left to go to camp, so I told Beth Schermer, who was, I believe, the incoming president that I wasn't going to be at the board dinner. Beth was, "No, you really need to be there, it's your last year on the board. You know, we're gonna say goodbye to all the current board members who are rotating off. You know, we really, really, really want you to be there." I said, "Beth, but I can't, my daughters are leaving to go to camp." She said, "All right, let me see what we can do."

I was so naïve. She came back and told me that they had made arrangements so I could be there, since it was going to be my last board dinner to have a car service pick me up where the board dinner was going to be held, that there was a late night flight out of Dulles airport that they checked that would get me back to Miami at 12:30 in the morning, or some weird hour like that, and that there was absolutely no reason for me not to be at the board meeting. I agreed, I said, "Fine, I'll stay. God, I hope this plane doesn't get canceled, or my wife and kids will kill me." I'm sitting there, watching my watch, knowing that I have to get picked up by this car in order to have enough time to make the airport, and they decide, "Okay, it's time to announce the winner of the David J. Greenburg Award."

I still, to this day, remember ... and Beth starts talking and she said, "The recipient of this year award would always encourage us to think outside of the box," which was one of my taglines, and I realized that that's why I was there. Surely thereafter, Beth announced that I was the recipient and I literally ran up, grabbed the award, said, "Thank you very much, but I have to go." I ran downstairs to get into the car. I did make the flight back to Miami and did see my kids off to camp the next day, but as I said, it was more than an award to me. A, I was honored because on whose shoulders I followed, the prior recipients of the award were just icons in the health law bar, and the fact that I knew David, and David had passed away by that point in time.

Somehow I knew that David was getting a kick out of the fact that this little runt that he raised from the time he was in law school received the award that was named for him, so it really meant a lot. I still have the award and I keep it on my desk in my office. For those people that

know me, seeing most things on my desk is very difficult, it's not really what you would call a clean and organized office, but that silver tray stands out prominently on my desk.

Dennis: Let's talk a little bit about healthcare law and how it has changed and matured over the years. You start ... so in the '80s is when you began practicing.

Gary: Yeah. I think when I started, as most people who started in my generation, almost everybody had some exposure to Medicare Reimbursement law. I started out as a Medicare reimbursement lawyer. There were, basically, just a few areas in healthcare at the time. There was Medicare reimbursement, there were hospital medical staff-related issues. A little bit of peer review, but not that much, an occasional contract here and there, but that was really it. I came on just at the very beginning stages of the proprietary hospital industry, so that was really the introduction of more deal making in healthcare.

Then you fast forward. I've been at this for 30 plus years now, and we've moved from a very narrow scope of services that people did, Medicare reimbursement, medical staff bylaws and so forth, to having real subspecialties now in managed care, fraud and abuse. Even within fraud and abuse, whether it's Stark, or it's Anti-Kickback. Telemedicine, digital health, IT. The exponential growth has been pretty incredible.

Dennis: It's grown exponentially, as you say. It was barely recognized as a specialty when you started, right?

Gary: Yeah. I'm a little bit of a freak of nature. My law school admission essay was, "I wanted to grow up to be a healthcare lawyer." I had gotten involved in healthcare policy when I was in college and really became very interested in the healthcare policy aspects. Always wanted to go to law school and thought, "Okay, here is a way that I can combine the two things that I was interested in doing. Going to law school and doing healthcare." My law school admission essay was, "I want to grow up to be a healthcare lawyer."

My parents couldn't understand it. They said, "You want to be a malpractice lawyer?" I said, "No, I want to be a healthcare lawyer." They said, "What's the difference?" I said, "Well, a healthcare lawyer deals with the business side of healthcare." My parents were like, "There is no such thing as the business side of healthcare. There is like medicine. That's what it is and you either do it right or you do it wrong." I said, "No, trust me, there is going to be a business side too," and unfortunately, my hunch was correct and it all turned out pretty well.

Dennis: You started here in Miami?

Gary: Yes. I did. I was in Washington D.C. Loved D.C., had a bad, terrible case of fever. Really wanted to stay in D.C. when I was graduating law school, but when I graduated in 1982, it was the height of Reagan Deregulation, and he was closing down a lot of the regulatory practices because of what he was doing in the aviation industry, so a lot of aviation and civil aeronautic board regulatory lawyers were being retold to become healthcare lawyers and couldn't really get a job that I wanted. I was being very picky. I only wanted to do healthcare in D.C.

Fortunately, I happened to interview with the D.C. office of Wood Lucksinger & Epstein, which was then the, if not one of the preeminent healthcare law firms in the country. They said, "you know, we think we've got our three hires for your class in D.C., but we just opened up a new Miami office, we'll send you materials down to Miami. Would you be interested in moving?" As it turned out, my girlfriend, at the time, was from Miami, so I was more than willing to move to Miami. Didn't turn out to be my wife, but every story has a silver lining, but I did get the job with Wood Lucksinger in Miami and the rest is, they say, is history.

- Dennis: How would you describe the American Health Lawyers Association's role in healthcare development and the way the laws have changed?
- Gary: The association is an educational group, so it's never really had an advocacy position, but it's always had a very strong presence, even with its public interest mission in disseminating non-partisan information relating to both the industry and, in particular, the laws that affect the industry. I don't think there's a single organization that has had more influence or more effect on educating and making people aware of the law, in either how it works to the advantage or disadvantage of the healthcare industry than the association has over its time in existence.
- Dennis: When you started here, as I understand that the law firm sent you the Medicare & Medicaid Institute in Baltimore?
- Gary: Yeah. Before I had my job with Wood Lucksinger & Epstein, the beginning of my third year in law school, I knew that after I graduated I would be moving down to Miami. It was one of the very first ones. It was not even at the present location, but it was in Baltimore. The Medicare & Medicaid Institute. They called me ... and as I said, almost everybody at that time started as a Medicaid reimbursement lawyer. They said, "Look, you're there, you might as well get a headstart. We'll pay for you, if you can take the time away from school, drive yourself up to Baltimore and spent two days at the Medicare & Medicaid Institute."
- It was really my first exposure to the educational programing that then that the National Health Lawyers Association did. Coming out, just getting ready to graduate law school and seeing the difference between how educational program, it is practical, on the one hand, versus the more theoretical presentation that you get in the law school classroom, was really informative. I do think it did help me when I started in June, once I graduated and came down to Miami to have had that experience with NHLA even before I graduated school and passed the Bar exam.
- Dennis: That's kind of what you're talking about, the educational aspect of the association, right?
- Gary: Yeah. Again, it has evolved from, as I've mentioned, the very early case studies that Joel would write, to the subject matter chat rooms that they have online now. The different interest groups that they have, the way information is delivered almost in realtime. Again, I'm sort of dating myself. I started practicing before, really, fax machines. Way before there was email. Everything that we did was hard copy. Everything that we did was snail mail. Even the case summaries that were then compiled into a monthly newsletter, a hard copy of which was mailed to all of the members of NHLA. You got a blue binder at the beginning of the year and you put each of those 12 editions into your binder by month, and then at the end of the year, somebody did a composite index by subject matter, by volume issue, by subject matter, by page to tell you where you could find all of the different cases on medical staff bylaws or managed care. That's how we practiced for a long time. There was no keyword searching or anything like that.
- Even at the very beginning, I think in large part because of David's interest and his focus and the early founders of the association, they found in each period of time that the association has operated, the most efficient and effective means of delivering information to the membership and providing those educational opportunities.
- Dennis: As you've mentioned, in addition to those educational briefings of one kind or another, publications and now webinars and that kind of thing, being able to talk to other lawyers about issues that you came across were important as well.
- Gary: Yeah. The association, I think, has always really promoted and fostered an environment of collegiality and collaboration. It has, for the longest time, differentiated itself in the market by

the quality of the written materials that the speakers are expected to prepare when they speak at one of the NHLA-sponsored seminars. The very essence of the association is the sharing of information, whether it's in person, or in network, whether it's through a webinar now. Whether it's through the written materials, contributing to books, newsletters. It remains, I think, the central focus and really the shining light at the association, is the educational sharing.

Dennis: You wrote presentations for Dennis Barry, and eventually presented those presentations yourself.

Gary: Yeah. Dennis was one of my mentors at Wood Lucksinger & Epstein. Fortunately, when I worked for Joel Michaels, when I was in law school, Joel's specialty was managed care. I learned the HMO industry way before most people even knew what the acronym HMO stood for. Then when I went to Wood Lucksinger & Epstein, Dennis was then and until the day he retired, was one of the most recognized, talented reimbursement lawyers in the country.

When the federal government changed the law to allow HMO's to participate in the Medicare program, NHLA turned to Dennis to give that first presentation on HMO's and what was then called Competitive Medical Plan. Dennis knew nothing about managed care and knew that I had some background in managed care and Dennis was one of my mentors, as I said, so he asked me if I would write the materials for him. I'm not quite sure I was asked, I'm sure it's translated I was told, but regardless, I did it. I did it for two or three years.

Dennis got to know me better over that period of time, and one year he came to me and he said, "You're gonna go to Baltimore and you're gonna give my presentation." I looked at him and I said, "What do you mean?" I think maybe I was a fourth year associate, fifth year associate ... probably a fourth year associate at the time. He goes, "Well, I spoke to the folks at NHLA and I told them this is silly, because I'm sitting there, reading your words. You might as well speak your own words, and they've agreed and you're gonna go to Baltimore and you're gonna give the Medicare HMO presentation," which I did for many years. That was really my stepping stone. I really leapfrogged. It's not that easy to get on the faculty of now AHLA programs, but I had a lucky break and took advantage of it and it was really a very key moment in my career development.

Dennis: You were on the board when the merger took place.

Gary: Yes.

Dennis: Tell us about that period.

Gary: I would characterize it as you know what the right thing to do is, but sometimes doing the right things makes everybody uncomfortable. That's really, I think, the environment that we were in. I only knew it from our side, from the NHLA side, and then ultimately got exposure to the academy side. We all understood the synergistic value of bringing the two groups together, knowing that there was going to be a compromise along the way, that it was ... In order for it would have happened, it really, truly needed to be a merger of equals. That is wasn't NHLA absorbing the academy, or vice versa, the academy absorbing NHLA. It was the two groups coming together on equal footing and finding shared values, and essentially, making one and one equal three. I think, through a lot of tenacity on the part of the leadership of both organizations, it was brought to fruition. While there were some hiccups along the way, and some bumps in the early years following the merger, it clearly, in hindsight, was absolutely 100% the right thing to do and that's what's made the association it is today.

Dennis: How has the culture changed?

Gary: How has the culture changed? See, to me, it's almost seamless. I don't know if it's really changed. That's an interesting question to consider. I think we have the best of both organizations. NHLA used to be almost business only, while there was some opportunity to network, those networking opportunities were really drawing the brakes. The annual meeting at the academy, although, I never went and I wasn't the member of the academy, I was through and through NHLA. At least, the NHLA people always understood it to be a little bit more relaxed, informal, family members went to their meetings. Their meetings tended to be at more resort locations. There was just a sense of a little less work, a little more play makes everybody happier. I think the intensity of the educational side of NHLA with the informal networking, be friends side of the academy, really came together in a special way through the merger.

Dennis: In the time of so much technology, do you think that that culture is still helping attorneys learn from each other?

Gary: I think technology ... Now I'm going to show my age. I think technology has its limitations, when it comes to interpersonal exposure and skills. There is a lot more text messaging. There is a lot more informality. There is a lot more we don't really need to get together because the perception is if you're texting, you are together. It's a challenge. The use of webinars, for example, has limited the ability of people to physically gather in a common spot, but technology has also facilitated the dissemination of information and addressed the cost issue that's related to people going to in person educational programs.

I think the association's done a really good job in that context of harnessing technology to try to make as much information as available to as many people as possible in as timely basis and also as cost-efficiently as possible. The one thing that, hopefully, will never be lost, as technology continues to evolve, is the primary function of the association, which is to bring people together. You could only do that in in person meetings, and you look now at the size of the annual meeting and I think one of the reasons why it continues to grow is that is the in person opportunity that many, many people now are looking to take advantage of. As long as you can continue to use technology as an adjunct to the in person, rather than a substitute for the in person, technology will be your friend.

Dennis: I want to circle back to the changes in health law. What would you describe as the milestones in those changes?

Gary: For me personally, I think the biggest ... well, the two biggest changes occurred was when the federal government decided to allow the managed care industry to participate in the Medicare program and then Medicaid. That was a career-changing moment for me.

The other, I think, career-changing moment, not only for me, but any health law practitioner who was practicing at the time was when the federal government criminalized certain behavior in the healthcare industry through the fraud and abuse laws. It made you think completely differently about how you were structuring transactions, about what the possible implications were of how you structured a deal, how, in hindsight, a federal prosecutor could try to recast what you did, even if you had the best of intentions when you did it, that depending upon how it played out over time, it could be recast.

I think those two things, in particular, in my career, and certainly, the second one, I think in most people's career were two of the biggest game changers. I think if you go down a little bit further, it was healthcare privacy and the passage of HIPAA and then, obviously, most recently was the Affordable Care Act and now what's going on in Washington D.C. with the possible repeal, replacement, repair, whatever you want to call it of the Affordable Care Act.

Just to put it into a historical context. I think the single biggest factor in the evolution of healthcare law was in 1965 was the passage of the Medicare Act, which, if you know the history of the Medicare Act, back in 1965, one of the largest groups opposing the passage of the Medicare Act was the American Medical Association.

Then you look at it today and you look how hard the AMA fights tooth and nail to preserve everything in Medicare, it's been quite a 40 plus year ride for Medicare. I think, really, the entirety of the healthcare law practice is really build on the backbone of the passage of the Medicare Act in 1965.

Dennis: As this activity goes on in Washington, where they're deciding what to do with the Affordable Care Act, what's your advice to young lawyers?

Gary: As I am fond of saying, healthcare represents about 20% of our economy, and right now, it only has one direction to move, which is up. It's never going to go away for better or for worse. I, honestly, don't believe that we will ever have a single payer system, certainly not in my lifetime, my children's lifetime. That I pretty much believe. There's huge opportunity. I think for many of us that have been at this for a number of years now, there was some moment in time in the course of our careers, where there was a new event that occurred in healthcare law. In my case, it was relating to managed care, where you see an opportunity and you need to seize it.

We see it today with younger lawyers dealing with digital healthcare issues and privacy. What we used to consider to be traditional healthcare was just hospitals. Now it's private equity. It's Wall Street traded companies. It's pharma, it's devices. It's technology companies that support the operations of all sorts of service providers. There's so many different entry points now into healthcare law that if you're a young lawyer coming into it, look at an opportunistic venue, avenue for you to take advantage of as health law continues to emerge and then just follow it relentlessly.

Dennis: Anything else you'd like to add?

Gary: No, I think we covered the ground pretty well. I do hope the association has another 50 years of success and wish everybody all the best.

Dennis: Hold on just a second. I'd like to get that award and maybe you can re-ask that question. You could just hold it and ...

Gary: It's my Roger Federer moment?

Dennis: That's good.

Gary: I'm going to say that, if you like.

Dennis: Yes. Tell me about what this award means to you.

Gary: This is my Roger Federer moment, I feel like I just won Wimbledon or the Australia Open. This is the version of the David J. Greenburg Award that I received. As I said earlier, of the many awards that I've been fortunate enough to receive over the course of my career, this one probably stands out first and foremost. For two reasons, again. Because it's named after David, who was my friend and my mentor, and because of the people that I know who received the award first before me, and the people who have received it subsequent to me. I feel that I am standing with the giants of the healthcare law bar, not quite sure how I got on the list, but I am honored that I am on the list and I'm able to share this award with so many other deserving recipients who

have contributed so much to the development of the association and to the practice of healthcare law.