



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 10, 2017

Gary Eiland interviewing Joel Michaels:

Gary: Well, thank you for joining. This is Gary Eiland with the King and Spalding law firm in Houston. It is my pleasure this afternoon to have the opportunity to interview Joel Michaels for the American Health Lawyers Association oral history project. Joel is with the law firm of McDermott, Will and Emery in Washington, D.C.; and, has been involved in NHLA, an AHLA predecessor for organization's activities for much of his career. With that background, welcome Joel.

Joel: Well, thank you. I'm delighted to be able to participate in the project.

Gary: Joel, would you please describe for the listeners your educational background, your introduction to health law and also your introduction in your case to the National Health Lawyers Association, one of the predecessors for the America Health Lawyers Association.

Joel: Sure. I went to law school at the American University of Washington College of Law here in Washington, D.C. I really knew nothing about the health law area; but, became a law clerk while I was in law school to, what was then, and is still in existence, the firm of Epstein and Becker. And, Steve Epstein's firm was probably the first firm that seemed to be focused on what we started to see that the emerging specialty known as Health Law. Because when we told people in those days, what I was doing, I was working at health law matters. They said, "Oh you do malpractice." And the answer was, "No". It really involved some of the changes that were occurring in the health care environment, the health care system.

In those days, it was the federal HMO Act of 1973. The professional standards review organization laws that had been formed to review the medical necessity of hospital admission under Medicare. There were the health planning laws, that were being passed, the Certificate of Need Laws, the statutes. And so, all of those federal attempts to manage the cost of health care and the resources of healthcare was the beginnings of the emerging health law field as I knew it. And, so, I worked on those issues until I was about 3 years in the firm I was with. And then, I started my own practice because I thought the firm and the health law field had a lot of potential for growth.

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And like a lot of young lawyers, I became a member of the, then, the National Health Lawyers Association to keep on top of developments in the field, Case law, regulations and so forth. And, in those days, the office, I think, was run out of a condo apartment that David Greenberg, the Executive Director at the time, had. And David, the newest member of NHLA, also knew I was starting out on my own, you know, by myself; and, offered one of my first paying tasks, which was to do summaries of cases for the Health Law Digest, which the NHLA put out each month. And was paid the grand amount of Ten Dollars per case.

And, I pretty much appreciated the opportunity, because not only the revenue, but it kept me in contact with the field and the developments in the field. And years later when I became much more established as a lawyer with my own clientele. Most of my work has always been in the health insurance field, David Greenberg would see me at conferences and say "Well, I still have cases, that you could do summaries for, Joel". And I used to laugh and say "I hope the rate was better than Ten Dollars an hour".

But I convey that story because you know my relationship with the organization was really critical to me as a young lawyer trying to get started in the field. And it became in many ways, a professional home for me. I got to meet other lawyers in the field. I got to have contact with the general counsels who were the buyers of legal services in health care companies; and it really over the years, between the visibility I got through presentations at conferences and the people I met, really played a fundamental role in facilitating the growth of my career.

Gary: And, Joel, your description of David Greenburg's involvement is really consistent with, we have heard in other interviews, that David was very supportive of young attorneys, especially young bright attorneys, and many times helped both them in evolving as health lawyers and really promoting their national presence.

Joel: Right. Absolutely. And I never felt like, "Gee, you had to be like with a larger firm in order to get a shot at a speaking engagement." It was very balanced. And I think David always had a sensitivity in the organization. Always had an awareness of small firms and the specialty be open to all kinds of folks. I think even unto this day, when you see how the AHLA organizes its programs and conferences, there's a great deal of balance among the different types of practices. It services the healthcare sector and that principle and philosophy has served the organization well; as well as, the Health Care Bar itself.

Gary: Joel, you mentioned that you began to make presentations for NHLA. Did you also evolve into leadership roles with NHLA?

Joel: I did. The ones that I recall, Gary, were, I chaired, I think the HMO planning committee. This is years ago, so as HMO's and health plans started to evolve and become a presence in their own right. You know, we did a lot of the issue identification and programming for matters that affected that industry. And, when I first started, HMOs and that form of financing were, I think, were referred to as alternative delivery systems. So, you had the health systems, which were people knew, and were very well established as part of the health law clientele, but the alternative delivery systems sounded like something that was a little suspicious. But, eventually, you know, the health insurance health plan piece grew as part of the programming, regular programming that NHLA, AHLA sponsored. And, I felt like I played a role in taking it out of the shadows of being alternative to being

sort of one of the major players in the health care sector that it is today. That role of both in terms of the programming and the planning for the healthcare financing piece ultimately led to a Board position that I held, I think from '93 to '96. But don't quote me on that.

But right around that time, and at that time, Marilou King, I think, was the Executive Director of, for the organization. But, it played a key role with, as a member of the Board, you know and obviously if the organization evolved and contemplated a merger with the Society of Hospital Attorneys. I think we all were in very much in favor of seeing that kind of consolidation because the issues, you know, that the health care systems were facing had a universality to them that went just beyond hospitals, that went to a lot of different areas and including the sector that I represented, which were the health plans. And so I think the merger reflected the appropriate consolidation of the Health Law Bar because the health law field was both complex and very much interactive in terms of the issues that were facing the healthcare industry.

Gary: Joel, thank you for those comments. And, following the merger, I see from your online Bio that you became Chair of the HMOs and Health Plans, Special Interest and Substantive Law Committees. What do you recall about that? And, I guess before you answer that, many of the listeners may not have heard of the acronym SISLC before, but what are today what the AHLA practice groups initially became, began as the Special Interest in Substantive Law Committees. We affectionately refer to those as the SISLCs at that time.

Joel: Right.

Gary: You were involved, Joel, in the HMOs and health plans. Tell us a bit about the evolution of that, what is now, a practice group.

Joel: Yeah. I mean, I think in those days, as I may have mentioned earlier, you know, it was the HMOs were almost viewed as more of an afterthought. Their legal issues were not as predominant maybe by at least by as viewed by many of the members of Health Law Bar. And so part of our job was to identify what the core issues were; not only affecting health plans, and health insurers, but that the rest of the Health Law Bar saw value in understanding and appreciating what those challenges were.

And so, I think over time, you know, the health plan piece became more well-defined, but began to attract a broader cross-section, you know, of the Health Law Bar to the programs and I think our involvement with the committee was instrumental in taking what was viewed as maybe a more narrow specialty; and, developing more of a mainstream appreciation for the issues the health plans were facing because they also impacted other major players in the healthcare system: doctors, hospitals, as well as others. And so, you know that work I think, the committee work, added to the validity of this being its own distinct subject matter but having a major impact on the other players in the healthcare system.

Gary: Joel, I guess I also see it from your online Bio that obviously you've continued to work involving plans and payors, in pharmaceutical plans and the like. And even today, you've emphasized some of your involvement with value based purchasing. Why don't you just

briefly describe how you see that process moving and where that aspect of your practice might be headed for, in the future.

Joel:

Well, when you look at health reform today I always say that there's just really three rails to it. One rail is providing access coverage, which certainly the Affordable Care Act, made some major changes in the environment in providing access. The second piece of it is how providers are compensated and moving away from volume based fee for service systems to what we now call value based payment, value based purchasing. And, the third part is consumer engagement and understanding of both the nature of the coverage and the nature of the delivery systems from where they are getting the services. So all three of those pieces have to kind of come together in order for meaningful reform to occur. If you only focus on one, and the other two aren't pretty close and pretty aligned, then it's gonna be a more difficult to have a meaningful health reform.

So, over the last several years, you know, apart from the Affordable Care Act tried to introduce with the CMS Innovation Center, you know, we've seen a lot of change in payment systems, introduced by the health plans and health insurers that we represent where fee for services becoming less of a way of focusing on how to pay for care and more introducing quality measurements in risk to control costs and improve patient outcomes.

And I think what's interesting about all of that, is that the law, as we as healthcare attorneys are so familiar with, in such areas as fraud and abuse, and false claims, anti kickback, all much of that was premised around the fee-for-service payment models where the next generation of legal issues are going to occur. And where healthcare lawyers, that will be part of that next generation are going to have to focus on is "OK, how does the law, yeah. These laws that were introduced and upon which presence were established on a fee for service basis, how will they be applied to these new forms of value based payments? What are the potential concerns that prosecutors, the government should care about? What are the considerations from a compliance perspective? Should the providers care about? And, I think it's, that change in environment that will represent a whole host of new challenges for the next generation of healthcare attorneys.

Gary:

With your now, I guess, approaching 40 year experience with the National Health Lawyer's Association, and the American Health Lawyers Association, what would your advice be to younger attorneys, or those that are new to the American Health Lawyers Association about how to use the Association to advance their career?

Joel:

Well, it's always been a great vehicle for me; and, I think you know it's in a couple ways. First of all, it gives younger attorneys a platform to display their knowledge and their skills. And in the past, most of those platforms, you know, were speeches at organized programs that people traveled to. Today, because of technology, there's so many programs that the AHLA sponsors where technology is the focus is on special subjects and where the timeliness of the discussion is really critical.

So, for younger lawyers, there's actually a greater array of options to use AHLA as a platform for demonstrating their expertise and their skills. And in fact, it's in some ways more suited and more tailored to the younger lawyer. Rather than having to worry

about, "Gee, am I ready for prime time in giving a presentation to three or four hundred people in a large room, I can start with a program that's very focused through a teleconference or some other form of electronic technology that's comfortable, timely, and allows me to begin to connect with my colleagues and establish my credentials as an expert in a particular area". So I would say that the platforms today are actually, in many respects more suitable, more broad based for the younger lawyers.

And then, the second thing obviously is networking. You know, one of the things you always caution the younger lawyers, in my firm, and elsewhere, is that sometimes you rely on technology too much in terms of marketing, in terms of relating to clients, in relating to colleagues. And, there are many times where it's so much more worthwhile and rewarding to have personal interaction with your colleagues at a program or with prospective clients at a program.

And so, those options still exist within AHLA. And I think my advice to the younger lawyers is to take advantage of those in person opportunities as well. Maybe more so than ever before, not because you can't get information otherwise. You can. You know electronically and so many other ways to get the outputs from the conferences, but to appreciate how important the personal interaction is with colleagues from the field and to use the program conferencing that NHLA sponsors to achieve that at.

Gary: Well, Joel with your background experience, what are some of your thoughts concerning what the future will hold for health law for the American Health Lawyers Association and for yourself?

Joel: Well, it's easier to speak about the Association. Myself, I guess, now it's been 42 years. The Association, I think has a bright future. You know, it's an industry that represents such a huge sector of the American economy. You know, 19, 20% whatever the figure is of the country's gross GNP is in healthcare services. And yet, you know, we still have extraordinary social issues to deal with in terms of people having access to coverage, the cost of coverage are major challenges. I don't see those going away in the near future. And, as a result of that, they'll be a continuous flow of legal issues.

And, the great thing about our field is that there's always this intertwining of social issues and law with what healthcare lawyers do. And, I actually see those social issues becoming, in some respects, more challenging, more severe. And, therefore, an organization that isn't a political, a politically charged environment, where lawyers can discuss and review those legal challenges that come out of those societal issues, it will be an important function that NHLA will continue, I know to perform.

For myself, you know, it's, you would like to think after 42 years, that the work you did, made a major contribution to improving the health system. I'm not sure I could conclude that. So you know, it may very well be, at least for me personally, to start to look at some other avenues outside of the private practice of law, which I have been in for so many years, to see if there's some other contributions I could make using the health law skills that I have, using the relationships that I have established over the years. But maybe making the contributions in other ways beyond the traditional private law firm environment that I know so well.

Gary: Well, given that healthcare is such a political hot potato at this time, I can understand your reluctance to take credit for having improved the healthcare system. But at least let me compliment you on your contributions on behalf of your many healthcare, health insurer clients in their evolution of their businesses within the healthcare industry.

Joel: Well, thank you very much. It's been a pleasure to be a member of AHLA, I enjoyed the interview today.

Gary: Well, thank you very much Joel for being available for this interview and for your participation in the AHLA history project. Your insights concerning the evolution of health law, the evolution of the American Health Lawyers Association and its predecessor, have been very meaningfully conveyed to our members and listeners. We appreciate it. Thank you very much.

Joel: You're welcome. Have a great day.

Gary: Thank you.

Joel: Bye. Yeah. Bye.