



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.

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**

**Dinetia Newman interviewing John Brennan:**

**Dinetia:** I'm Dinetia Newman with Bradley Arant Boult Cummings, and I'm joined this morning by John Brennan, who's a partner at Crowell & Moring in Washington D.C. and has a really interesting career that I think you're going to enjoy hearing about this morning; so John, if you don't mind I'll just kind of get started and pose a couple of questions I know we'll enjoy talking about. I'll mention that John and our beloved partner, Art Lerner, were golf partners for a number of years, and during our introductory conversation we reminisced a good bit about Art and his jokes and his dancing and his brilliant legal mind; so I want to mention him. So John, tell me ... I know you came in to help plow a different path from other ... give us a little bit of background on how you decided to become a health lawyer and eventually how you made your way to AHLA [crosstalk 00:04:55] or earlier organizations.

**John:** Thanks, thanks Dinetia. Good morning, it's great to be on the call and I'm happy to think about those great times over the span of 40 years. What a great contribution and help AHLA has been to my career and really an inspiration to me and to others; as I was saying a bit earlier, I actually was a hospital administrator before I went to law school. I had gone to GW and received my Master's in Hospital Administration back in the early '70's, and became a hospital administrator in the mid '70's, at which point I actually became interested in the rights of the mentally ill.

I was working at a psychiatric hospital at the time and it was sort of a burgeoning time for Supreme Court decisions and other changes in recognizing that those who are hospitalized or those who are potentially mentally ill or dangerous had rights as well, so I decided to leave my position as the administrator of a psychiatric hospital in upstate New York and go to law school; and went to Georgetown and graduated from Georgetown in 1978, Georgetown Law School. When I got out I wanted to do a couple of things that sounded sort of incongruous; one was I really enjoy criminal law and also wanted to maintain a very strong health care law expertise, as well and was fortunate enough to find a relatively small boutique firm here in town that actually had a very strong white collar presence and also had a health care capability, as well.

So in the late '70's became an attorney here in DC, representing primarily health care providers, while still doing a little white collar work. Then ultimately the health care practice became very busy and I became a health care attorney full time. That was at a time, Dinetia, when the NHLA and the AAHA were sort of growing up themselves and it was just a boom in health care law and I was just fortunate enough to be a health care attorney at that time.

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- Dinetia: Tell me about ... We talked about how health law was practiced earlier and how we got our information. I think that will be very interesting. [crosstalk 00:07:56]
- John: I remember when I was a hospital administrator there was a publication called Hospital Law Manual, and it was put out of Pittsburgh by a gentleman named I believe, Horthy. There were two volumes and that was it. If you owned these two lovely bound volumes of Hospital Law Manual and subscribed to their loose leaf service every month you'd get some new health law and I still remember the subject matter, I remember A was autopsy, and it would just go through the alphabet.
- Dinetia: Alphabetically?
- John: Alphabetically. Blood, emergency room, medical staff and there's probably about 30 tabs on it. I kind of like, after two weeks of reading that, as a hospital administrator, I knew everything there was to know about hospital law. I could handle anything, Dinetia, anything that came my way. I was prepared because I had my manual. And that was the time in our lives when health care started becoming much, much more complex and much more difficult and much more confusing; and the dollars involved in health care and the types of risks that not only health care providers, but health care payers and medical device manufacturers came to experience.
- The federal government became much more attuned to things like fraud and abuse. And thank God there was somebody or some entity like the AHLA that decided we need a larger platform here than just this Hospital Law Manual to convey and communicate across the country and even the world emerging issues in health care case law and I really felt like, Dinetia, that you and I and others were really at the vanguard of a new world back then and were fortunate enough to be part of it. The AHLA was up to the task and became the vehicle for our going forward and becoming certainly more expert and more knowledgeable health care attorneys.
- Dinetia: Yeah, I agree with you. It was a very exciting time. You made a comment when we spoke earlier about, and I'll get to this probably, we should discuss this later but, how different it was in that era, say the late '70's, '80's, and even early '90's, to become more advanced, confident in your skills or on more than just a local basis.
- John: Yeah, I think that's right and I think you mentioned Art Lerner before, my great friend and partner. We've talked about this often. I feel like I that era, as health care was emerging as a specialty, Dinetia, as there were specialties within a specialty anti-trust in Art's case, fraud and abuse in my case and on and on and on. The law was really being created and the new laws in my world, the kick back statute, the Stark law and False Claims Act were really dynamic and were coming to forefront as specialties.
- There weren't as many of us around then who were diverted from a more traditional civil litigation practice or a criminal practice or a commercial practice, to health care; but if you were interested and willing to put your trough in the health care arena, you were just being bombarded with opportunities to become an expert in laws that were just emerging, being decided by the courts, being created by the federal agencies; and the AHLA was small enough then that if you wanted to present on the false claims act at a conference, you raised your hand, you would have the opportunity to appear, the AHLA wanted you too. Sure enough, about two years later you could be viewed as a national expert on the False Claims Act. It didn't mean it was a free pass, but it meant that you had a chance. You had a chance to be one of the top

attorneys in the country on a particular issue, and I think the AHLA gave us great opportunities to do that.

Dinetia: Was it the material that you received? What was the valuable part of that?

John: Well, several things. On a very basic level, as we talked about earlier, I used to have three bookcases in my office and now I have one. When I had three bookcases they were filled, literally filled with AHLA notebooks. From conferences, from meetings, from symposia, my whole health care library really consisted of HLA materials. And those notebooks are kinda thick. So you needed room in your office and then the other thing about it, I'll just say, if you brought a client in to your office, and you showed them all of your AHLA stuff, they thought you were pretty smart.

So it had that part of it as well and now I'm looking at one bookcase, and it's got bunch of pictures of my kids, a lot younger. Some people up here, I don't even know. I probably knew them at one time. But the medium know that the materials are distributed by tape and computer, etc, don't lend themselves to having these great bookcases, but I'll tell you, I kept everything. I would have every annual conference meeting notebook for 15 straight years. They were almost like collecting collector's items for me. I didn't want to miss one. If I missed a conference I hardly ever did, but I'd call Ann and ask her if I could get a copy of the notebook because I didn't want to miss a set. And believe me, I used them. If you got a call on an issue that you didn't quite, might not have quite done before, you could find something about it. You couldn't complete a case, but you could find your way through those materials.

Dinetia: Sure. It's the basics of your search. Yeah.

John: I think beyond that, beyond just the basic materials, Dinetia and you know this as well, is that just the great camaraderie of being an AHLA member and being able to openly talk about ideas or admit that you didn't know something or ask a question or be on a conference and just having a lunch saying, "Let me ask you if this ever happened to you.". And I think the greatest takeaway that I have from the AHLA is just the great support that I've always felt, frankly among my peers and competitors. I know the folks that do the work that I do and I like them. We refer folks back and forth.

There were never sharp elbows, in terms of the things ... we were sort of learning things together. And there would be a revelation. And Mac Thornton would say something from the OIG back in the old days and we'd read his letter and call or Kevin McAnaney would call and say, "What do you think about this comment?" And he'd be looking at it in a way that I'd never looked at it. Never is a "I need to get a leg up on you" way, but more like in a sort of an intellectual, curiosity, thought provoking way. And I think that's the greatest contribution the AHLA has made to my career.

Dinetia: And I probably agree.

I know you're a leader in the Practice Group. When was that? How did that circumstance arise?

John: Yeah, I was lucky enough to lead the ... to make it simple, it has a longer name than this, but the Fraud and Abuse Practice Group for a number of years, I believe in the mid '90's. That's another example of a way that the AHLA helps you find your way. The Fraud and Abuse Practice Group back then, I think it still is the largest sort of sub specialty group the AHLA had. And it brought

together a lot of different kinds of people, False Claims specialists, Stark specialists, Anti-Kickback specialists, prosecutors, enforcement agency, so it was a pretty wide tent. Fraud and Abuse is a pretty wide tent.

Once again, I volunteered to get on the Fraud and Abuse Committee and we did a lot of writing back then. This was in the late '80's, early '90's, the Stark law was being changed ... seemed like every week, but it was only every 3 years. So we were attentive to Stark 1, Stark 2 and we would be proud of the guidance that we issued on the Stark law, and other things as well.

Tom Crane was my immediate successor, as chair. And he asked me if I'd be willing to take his spot when he left and I said that I would. I've always enjoyed sort of managing, whatever it might be, managing partner of firm or whatever. I thought it would be fun to get to know more of the people in the Fraud and Abuse specialty area, to help oversee the growth of what that group could do. And I don't know if I could claim any major milestones while I was chair or not. I do know that we emphasize it more heartily than every before the provision of practice support opportunities and techniques to our group. By that I mean we put out a lot of writings and we had a lot of speaking. We did a lot of speaking webinars, things like that. So that there was great additional benefit, in my view anyway, to being a member of this group. They said, I think it was 1700 members at one point.

Dinetia: I remember that.

John: That was a great, that was a great experience. Just one other thing and they've got me more in touch with the overall leadership of AHILA, and the board and the staff help me see sort of beyond my specialty area and how the association worked and how it contributed to the success of its members.

Dinetia: I know you were manager of your health care practice for years and you and Art were maybe co-managers and then you were also manager of your firm. So you have a lot of that experience. From that perspective, what guidance might you have for younger attorneys coming in to health care practice or maybe trying to figure out where they're going to land in terms of practice areas?

John: Great question. I did run our old firm, Michaels Bonner, from which Art and I came back from in 2000 to form the health care group at Crowell and Moring. I was the leader of the group for 15 years, just stopped last year. I've had the opportunity to be in a position where we wanted to create a deep knowledgeable cross generation health care group, where we have attorneys that know what they're doing. That started in the early days when we only had 18 attorneys in our entire firm to now, I think we've got maybe 45 attorneys in our health care group.

It is a requirement for any attorney that joins our group, that they join AHILA. We do it for them gladly, we do that for them eagerly. If you want to be an associate in the Health Care Group, you will be a member of the AHILA. Our associates embrace this and what we try to say to them is that we want them to be excited about the practice of health care law and one of the ways that you can be excited about that is if you really know it, if you really can get your teeth into it and understand it and not have it be a daunting morass for you.

From their earliest days we'll send our associates to the health care primer, the health care law, the fundamentals of health care law in Chicago every year. We'll send four or five each year. And then we will encourage our associates to do a couple things, one is to go to at least one

conference a year, most go to two; and then secondly to participate. And these days the AHLA has many ways for our associates to participate, through writing, speaking and through leadership opportunities.

We, as the AHLA, does honor and respect diversity. We want to make sure our diverse attorneys get as good a chance or better to be leaders than anyone else. And they are diverse attorneys have found the AHLA to be a great opportunity for them. Two points there quickly, one is we want them to know health care law so that they will stay in health care law, that they'll stay at the firm, that they'll see a future for themselves. And as you know, it's sometimes tough to keep young associates with you for more than three or four years. So, that's one thing we try to do there. And then the second thing, and then this is more an art than a science, just as we did in growing our practices, you grow your practice by meeting peers and meeting folks that are doing the same thing that you're doing, Or maybe a general counsel at a company that need your help.

As I used to say to my kids when I was coaching soccer, the more touches the better, the more you touch the ball the better you get with the ball; and the more touches you have in our world, the more opportunities you're likely to get. If you just met somebody at a conference on Sunday and they get a subpoena on Thursday, they might think to call you. It's not very scientific, but if you're the last person that they've spoken to ... "Ya know, it's funny I saw you on Sunday, because just on Wednesday I got this, I don't know, this CID, I can't even spell it, but can I send it to you?" You know, that kind of thing. So, the more touches the better, be a leader and know the law. I think those are three things that the AHLA can do very well. And then just the resources, just the flat out resources. Learning how to use a web page and to navigate around, to research-

Dinetia: Yes.

John: Oftentimes I'll bring in an associate and say "Look, here's what I need to know, this is probably going to take you six hours, but spend an hour on the AHLA website first. Spend that hour first and tell me where you are." Many times I get an answer. I think those are the things. Of course, I can't bill for the six hours then and I'm very disappointed, but an hour's fine.

Dinetia: That gives them the background. I go right to the archives. If it's something that I need to know and I'm sure I've heard it over the years, but again I don't have the binders, I go to the archives and odds are I'm going to find several and it's through various years. That's all wonderful. So for the future, we're always wanting to figure out how does AHLA continue to be viable and valid and exciting. What are your recommendations to AHLA for the future and then any challenges that you see on the horizon?

John: I think that you play to your strengths and focus on the elements that so many of us have been grateful for over the years. They might take different forms, but the elements are pretty simple. One is great content, great resource for the law. And the AHLA has to continue to provide that and be as it has been for forever that I can remember. You know, the most respectable source for health care law that I know of. Now the medium for that content is changing, that same associate that I talked to about going to the website and finding something, I probably couldn't do whatever that associate did. They refer to my computer as Mr. Brennan's Google Machine. "I found this on the Google Machine, Mr. Brennan.", in sort of a subservient way, but ... so the combination there that I would say, Dinetia, is that the content has to be available in the forms that are coming to maturity that attorneys can best use and I think that it is doing that.

And while I'm on that point I think that we talked about the clunky notebooks, I think that is a challenge, I think it's a challenge with regard to how to convey this information, the cost of conferences, whether attorneys that are bound to bill the enormous hours that we have them bill are able to take off maybe four or five days or six days a year for conferences. I think that is a challenge, it's not insurmountable, but it is a challenge. What it forces me to do, as head of a group, is be careful about how I budget and make sure that the conferences are meaningful and are worth it, so to speak. But the day to day stuff always is.

And then the second thing, I guess the second great values that we've talked about is the, I'll call it the camaraderie, but the intermingling of bright attorneys that are really interested in the same kind of health care work. They're going to be the next generation. I'm at meetings now where I recognize if we're planning on going to visit a client, if there's six or seven of us, they don't want to see me anymore. They want to see who's going to be with them for fifteen, twenty years. I get it, I've benefited from that. I wouldn't want to see myself for fifteen or twenty years. Nor would my wife, frankly, but that's another topic.

But I understand that this is a pass along culture, it's a pass along business. Folks gave me opportunities, so I want the HLA to give our attorneys opportunities and there are ways to do that through participating in practice groups, writing, etc. But I do feel like the conferences and the meeting in the hallway, the cup of coffee, sitting on panels like you and I did back in the old days, that does give you a chance to meet somebody from L.A. who might have a problem in D.C. That kind of thing, or vice versa. I think we can't underestimate the value of the face to face. But my advice to the AHLA is to recognize this new generation, recognize that folks like me are encouraging them to continue these relationships with the AHLA. I'm very grateful for the AHLA and the opportunities that I was provided through it. There must be six or eight attorneys in my group right now that I can see in the next five or ten years being AHLA leaders. So that's heartening.

Dinetia: That is and I totally agree with all the points that you made and so thankful that you were there to pave the way for so many of us and that you still are there because you have an amazing knowledge base that you can speak to your young associates and impart your wisdom of that health care and how it's developed, which always helps me understand the spirit of the law, the purpose of the law. In closing-

John: I'd like to say one more thing about ... I'm gonna say one more thing, That is what a great honor it was to asked or elected or whatever the word was, to be a Fellow in the AHLA. That was about the nicest thing that's ever happened to me in my professional career. It made me feel like maybe I did do things right for 25 years or at least that they were respected. And being in that group with you and with the others of my ilk and generation, it's an honor.

Dinetia: It is an honor.

John: I'm certainly grateful to the AHLA for that, along with all the other opportunities it provided me. I would be remiss if I didn't mention that and say thanks. I really appreciate it.

Dinetia: I'm glad you mentioned that. One of the highlights of my year is getting to visit with all the Fellows at the annual meeting, so I'm really looking forward to seeing you. I hope your wife is there and we'll swap pictures of grandchildren.

John: Well, I hope so. I'm looking forward to it. I missed this year, but it is always one of my favorite ...  
Actually, it's my favorite day I think, the Saturday, Saturday night part of the meeting.

Dinetia: Me too. I look forward to that.

John: I hope so. Dinetia, thank you, obviously for your great, great work for AHILA over the years. I know I served under your regime for quite a while, and I really do enjoy ...

Dinetia: We've always had a lot of fun. Thanks so much for taking the time to be interviewed. It was such a joy for me, and I look forward to seeing you soon.

Dinetia: Thank you, John. Bye-bye.

John: Okay, see ya, bye.