



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

Dinetia Newman interviewing Katherine Benesch:

Dinetia: My name is Dinetia Newman and I'm a senior counsel with Bradley Arant Boult Cummings in the Jackson, Mississippi office. Today, I'm interviewing, for the AHLA history project, Katherine Benesch. Katherine is the owner of Benesch & Associates, LLC and practices in Princeton, New Jersey and has had a wonderful career as a health lawyer and is also now a fellow with the American Health Lawyers Association.

Katherine and I have had a previous discussion and I'm really fascinated with her career. I really want to know, Katherine, today how did your legal career path coincide with or parallel the coming of age in health law?

Katherine: I think, Dinetia as we've discussed, when I first started working in health law I actually was a health planner and administrator. I got my Master in Public Health at Yale in 1970 and started working in healthcare before I was a lawyer. What we found was that I was always working and paying corporate lawyers to draw up documents for healthcare organizations and they really didn't understand what the basics were, and who the parties were, and how things worked in the healthcare field. The General Counsel at Yale suggested that I go to law school. This was back in 1972 and, at the time, there was really no field of healthcare law. The lawyers worked as corporate lawyers primarily and tried to apply their principles of corporate law to the healthcare field.

Eventually, I did go to law school and I went to law school with the idea of working in healthcare. I was in Pittsburgh at the time, I had moved to Pittsburgh by that time and actually during law school I worked with a firm that was the outside counsel for the University of Pittsburgh Medical Center. When I went to law school I did go with the idea of doing healthcare law, I would not have gone to law school otherwise. As I said, when I first started out really healthcare law was not a field. I started out working in a litigation firm and, ultimately, became inside counsel to Presbyterian University Hospital which, at the time, was the main tertiary care hospital of the University of Pittsburgh Medical Center. I was there at the time that Dr. Starzl started the liver transplant program so it was a really very exciting time.

As it turned out, healthcare was primarily a field where you had to be involved with law all the time. Eventually, it started to work out that people started using the phrase "healthcare law." People always asked me what it was because they always always thought that it was medical

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malpractice and while I did start out doing some medical malpractice defense work, at the time, that wasn't primarily what we did. I primarily was doing defense work for the University of Pittsburgh Medical School faculty. People asked me to describe, "Well, what is healthcare law?" I would always tell them and probably if they asked me today ... because people even today still ask the question, "Well, what is healthcare law?" I tell them that it's really two different things.

Number one, there's a lot of regulatory requirements, statutes, some black letter case law, judge made law, and that's one thing that pertains to the healthcare field and is unique to the healthcare field alone. That is Medicare/Medicaid, and a lot of areas of reimbursement law which, as you know, get into insurance and all kinds of insurance issues. There's a whole body of work that is nothing but work in the law that relates to health care. Then there's a whole other aspect of what we do which is that we apply general law, corporate law, litigation, employment law to healthcare issues, providers, and problems. I've spend a lot of time explaining what it is and that's what I say.

Dinetia: That's really interesting and I've had the same experience too. I got started a little bit later than you did but I've had that same experience. [crosstalk 00:06:12]. Go ahead.

Katherine: The other thing I would just say about health law is, that it used to be when you told people that you did healthcare law and you went to work in a law firm they didn't know where to put you because they didn't used to have a health law section or a health law group. Most likely they'd put you in corporate. Now, I had the somewhat unusual experience that I started out as a litigator working in a firm where, as I said, we represented the Pitt Medical Center. That was mostly what we did and it was a big job but we did a lot of litigation. That, in some ways, gave me a little bit of a different perspective than a lot of people who start out doing the regulatory or the corporate work.

Dinetia: How did you become involved in NHLA, I believe is what you told me, rather than the Academy of Hospital or Healthcare [crosstalk 00:07:15].

Katherine: Right. It was National Health Lawyers before it merged with the Academy of Hospital Lawyers and became American Health Lawyers. I don't actually really remember how I became involved initially but it just seemed that it was the right organization for me to join because it was an organization where I could meet other people that were doing the same kind of work. That were doing healthcare regulatory, and healthcare transactional work, as well as litigation and it just seemed like a logical organization to join.

Then when I did join I started speaking on various programs. I spoke on a lot of physician hospital programs because I've always done a lot of work in the intersection between physicians' relationships with hospitals including a lot of peer review, and medical staff credentialing, and that kind of thing. That's what I did a lot of in my earlier career. Then I became vice chairman of the Labor and Employment Practice Group and, more recently, I've moved my practice away from litigation and I'm doing much more work as an arbitrator and a mediator. I've been in AHLA on ... the ADR service of AHLA has a review board which I was appointed to by the president of AHLA several years ago and served my term on that. I've been a faculty on the mediation training program that AHLA ran last year which people seemed to really enjoy, it seemed to be quite successful.

- Dinetia: That's the beauty, I think, is health law that it's not static, that your practice over the years migrates with the focus; the focus of your practice migrates. There are always new areas that are cropping up that enable you to hone new skills.
- Katherine: Absolutely. That's what's exciting about it is that it's just never dull. It's always moving. If you are the kind of person that I am and you like a challenge it's just really intellectually challenging because there's always something new. It never gets to the point where you say, "Oh I've done this 100 times, I think it's boring." You never really get to that point but you may just say, "Well, here's some new area that I think is interesting and now I'd like to start working on that." That's what I did with the arbitration/mediation work. Now, it's really a very productive practice because far more cases in healthcare go to arbitration or mediation than go to court and so it's really very exciting.
- Dinetia: You're a spokesperson for the ADR, for AHLA's ADR I know you work in that area.
- Katherine: I really believe in it. I spent a lot of hours in the courtroom and I've tried jury trials. I worked on a medical staff privilege case that lasted 12 years and has a book written about it.
- Dinetia: Tell me about that. Tell me ... the Miller versus Indiana Hospital?
- Katherine: Miller versus Indiana Hospital which a lot of Pennsylvania lawyers are very familiar with that one. If you do medical staff privilege cases at all you'll probably run across that one. There are several reported opinions. The case, it went to every court there is. It went to state courts in Pennsylvania up to the Supreme Court and down and then it went to federal courts. As I remember Judge [Mansmann 00:11:30] who had been a professor of mine and was a federal district judge at the time decided that, yes the same claims that Dr. Miller had made in various guises were now antitrust claims and could be pursued separately in federal court so the case then went to the Third circuit and to the Supreme Court which turned it down.
- Dinetia: That must've really been interesting.
- Katherine: It was very interesting, yeah. Someone sent me the book. I didn't realize Dr. Miller wrote a book about the case.
- Dinetia: Oh for heavens sake.
- Katherine: Yeah.
- Dinetia: Do you have any particular advice? We have new associates coming in annually and they're trying to learn their craft and figure out which part of healthcare, on which part they want to focus. Do you have any particular advice for younger attorneys who are coming into the healthcare field? Or thinking about whether they should come into the healthcare field?
- Katherine: I think that first of all health care, as I said, is a very exciting and fast-moving field. If you like to be able to go to the books and find the law healthcare is not the place for you. It's also a field where you really do have to study a lot because there are a lot of regulations, there are a lot of different-
- Dinetia: Frequently changing.

Katherine: Frequently changing, yes and a lot of different kinds of aspects and attributes of the law that come into play in healthcare. I think for a new lawyer ... Also different kinds of legal work really have very different lifestyles. I know that I've talked to a number of young lawyers who tell me that they really want to be litigators, say they love the idea of being in the courtroom. That's a very different lifestyle than being a corporate lawyer. Those are the kinds of things, I think, for young lawyers you always have to find a good senior lawyer that is in a field that you want to learn more about and talk to that person as much as you can or work with that person as much as you can.

The other thing is it's really important to get good training. I was very lucky that I trained under some fantastic lawyers starting out. I can't say it was easy or even always fun but later on I really appreciate it because I learned to do things the right way. That meant that I, knock on wood, have had a lot of successes. I think that's real important. For younger lawyers you just need to talk to as many people with experience in as many different fields as you think you might be interested in and then, maybe, if you have the opportunity work in one or two of them or maybe three and see what you like.

The other thing is it's very important to work as a lawyer in something that you really enjoy because you spend a lot of your life doing it. I think there's just nothing worse than people who really don't enjoy the work that they do. You do better work when you're happy doing it.

Dinetia: Particularly, with regard to AHLA, how would you advise young lawyers that are wondering should they get involved-

Katherine: Oh absolutely. AHLA is a wonderful resource particularly for young lawyers. It's a wonderful resource for networking, for as I said getting to know more experienced lawyers in the field, networking if you're looking for ... if you maybe are in a job you don't like that much and want to look at something else. It's a wonderful resource for learning, it's really the best place to go of anywhere to learn about what are all the newest laws in healthcare, all the seminars, and webinars, and what have you are just invaluable.

The fact that the field itself is not a field where you can really go to the books and learn all the things you need to know it's just very important to have a resource like AHLA where you can go to the materials or you can go and talk to people. Especially if you have a particular problem it's really important. AHLA provides colleagues that we can all brainstorm with to help us with difficult problems. As you know, Dinetia, in healthcare many times the answer to a question, there isn't a black and white answer. Many times it's a judgment call. That's where it's just really valuable to be able to have experienced colleagues who may be more experienced in a particular area of law than you are to trade ideas with and get their thoughts on how you should proceed.

The other thing I want to say, I think we might've talked about this before, is that because of the fact that health care law has really gotten to be ... a lot of the statutes now are quasi-criminal statutes there is a lot at stake. If you really are not experienced in a field and you get a question that's a complicated question you really ought to go and seek help from somebody who has more knowledge in that particular area. You really shouldn't try to answer questions that you don't feel fairly comfortable with just because there's an awful lot at stake and you can have liability as a lawyer, I think, more than in some other fields. There have been actions against healthcare lawyers, criminal actions and that's just something to be concerned about and to keep in the back of your mind. Not to be cowed by it but just to be aware of it so that you don't

go out on a limb when you really should be getting some help. AHLA is the best place to go for that, it really is because the collection of people is equal to none in the country.

Dinetia: Also, and I know you and I have talked about this earlier, for women lawyers AHLA ... healthcare, health law is a wonderful field. There are so many opportunities. I know you can speak to that just of the ability, the opportunity that AHLA has offered to you as a female attorney.

Katherine: Oh absolutely. I think that health law is a field, more than some others, where women have been well-received for a long time. In fact, I had experiences in the earlier days where I remember when I worked in the law firm in Pittsburgh I was one of two or three women that were there. They used to have a softball league and ...

Dinetia: I remember those, yes.

Katherine: It was funny because most of the lawyers in the firm didn't want the women to know about the softball league because they thought if they put us on their team we would just do nothing but make the team worse. Then what started to happen was that the in-house counsel at hospitals and the claims representatives at insurance companies, who were all women, started to ask the law firm where all the women were? Why weren't they coming to the softball games?

Dinetia: That's interesting.

Katherine: Yeah. Actually, I had that experience in another law firm in this area. My office is in Princeton but I do a lot of work all up and down the east coast and actually all over the country. I remember a big law firm, where I was a partner, used to have a retreat every year with some of the clients and some of the clients started asking, "Well, where are all the women partners in this firm?"

Dinetia: "We want to see them."

Katherine: Healthcare, in some ways, it's been ahead of the curve because the clients have been asking plus there are just so many different opportunities in healthcare. You can work for any number of governments or you can work in-house at any number of different kinds of companies now [crosstalk 00:21:28].

Dinetia: Go ahead. I didn't mean to interrupt.

Katherine: Go ahead.

Dinetia: You made a very interesting comment I thought and it paralleled what I have found in my career particularly about women lawyers and practices. You mentioned your, I guess, top recommendation for how to develop business and this goes along with AHLA because you make a lot of contacts. You said one other thing, I'm not sure if you recall what that was but, you talked about you just have to do things a little differently if you're a female lawyer.

Katherine: Yes. That's what I found over the years. I think that that's not quite as much the case today as it was some years ago but I still do think that's true. That getting business, if you're in a private practice firm getting business is the name of the game. There are many firms now that have women's groups and have set up interactive organizations with the female lawyers in their client companies. AHLA, of course, is [crosstalk 00:22:56].

Dinetia: Sorry.

Katherine: I think healthcare has always had more women in it who were able to make their way to the top than some other areas so that's good. I think in any field where it's a good field and people feel that they can make a good living there's a lot of competition and you have to find a way to distinguish yourself. Often the ways that you can distinguish yourself aren't even obvious to you. Somebody else thinks of something about your history, or your resume, or something that you didn't even think was important.

Dinetia: Right. I found a lot of my clients want to know am I involved in a professional organization, is this important to me so I'm always pleased to say, "Yes." We looked at the past, let's look to the future. What do you see is AHLA's future? Do you have recommendations? If you were speaking to the board now what would you recommend to the leaders or others in AHLA?

Katherine: I think one of the big things now since we have no idea in the current administration what's coming down the pipe but, as we've said before, healthcare law is always changing very rapidly. I think that for AHLA or any organization in this field it's very important to be able to consistently meet the challenges of all that change. Another thing I forgot to mention about AHLA, which is a tremendous advantage, is that many of the programs at least half of the participants and speakers are representatives from the government and that's very important. I think, it will continue to be very important for AHLA to draw in those government people because, as we've all seen, many times Congress will draft a law, a statute and then regulations have to be written and it wasn't entirely clear what the intent of the statute was. Many times lawyers from AHLA will be asked to give their opinion to the government regulators who are trying to figure out how they should interpret a certain statute and that's advantageous to all of our clients.

I think, another thing about AHLA is the webinars, I think, are increasingly important because with costs as they are today even large law firms don't want to spend a lot of money to pay for their lawyers to travel. People are spending a lot more time getting their education by listening to webinars or just getting materials. AHLA has the wonderful resource library of all the materials which are really good too.

Then, I think, the other thing, as you said, I have to put in a plug for Alternate Dispute Resolution because it is ... I used to say, "It's the wave of the future." It's the wave of the present. There are many more cases in arbitration or mediation than there are in court. The federal courts and a lot of the state courts but the federal courts all try to have cases mediated before the judges spend a lot of their time. I've gotten huge cases that have been in discovery in federal court and after two or three years the judge will refer it to mediation. Contrary to what many people think, these cases are enormous cases. They are multimillion dollar cases in healthcare, they are often cases that involve national contracts with insurance carriers, or systems, or managed-care companies and so they're not small potatoes. They're very complex, very interesting work. I think that AHLA should put some more emphasis on that because they're not going away, they're getting to be more of them. It's a big source of business in healthcare.

Dinetia: Sure. Excellent point. I think I've ended the questions that I wanted to ask you but is there anything else that you would like to say for posterity?

Katherine: I think the only other thing I'd like to say for posterity is that, I have found that health care law is just a really fun area of practice. I don't necessarily think I would've otherwise been a lawyer if I

wasn't going to work in healthcare. I just think it's really fun, it's really challenging, and really interesting-

Dinetia: Constantly changing.

Katherine: Constantly changing, right. I would like to encourage people that they should stay in the field. Unless, of course, you don't like it and if you don't like it then you should do something else. That's the thing I tell many young lawyers, if they're not happy then try something else.

Dinetia: Same source. This has been wonderful. I've really enjoyed visiting with you Katherine.