



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 3, 2017**

**Dinetia Newman interviewing Bernadette Broccoli:**

**Dinetia:** My name is Dinetia Newman and I am interviewing Bernadette Broccoli as a partner at McDermott, Will and Emery and I'm so pleased to have the opportunity to speak with her today about AHLA's history and specifically her history in being involved with the American Health Lawyers Association. So Bernadette if you don't mind I'm going to start off with a really important question that is, when and how did you first become involved in HLA?

**Bernadette:** Thank you Dinetia. I'm pleased to be participating in the history project since AHLA has played such a key role in my history in healthcare. And I became involved as an attendee pretty much right out of the gate back in 1981, I believe I attended my first annual meeting. I became active in programming and leadership beginning in about, oh I would say, '86 or so in connection with the Healthcare Tax Law Institute which was co-sponsored with DePaul Law School. I believe at that time it was the American Academy of Healthcare Attorneys and I spoke at a program and thereafter was asked to be on the program planning committee.

**Dinetia:** Wow.

**Bernadette:** I did that for several years and then I was asked to be co-chair with a professor from DePaul and I believe I did that for about 12, 10 or 12 years. And in, probably in mid-course of that tenure, I was asked to become a member of the Board of Directors of ASHA or then, AAHA I guess it was, and I did. I served, I think for three years, maybe six, I can't remember. But it was a great experience.

**Dinetia:** Yes, tell us. What were the earlier programs like? How many attended, how were the attendees, generally, and what was your, sort of, experience in speaking like?

**Bernadette:** The programs back then were really a lot like there are today which I'm really pleased to say. And that is they're very substantive, very practical, very informative. That was a hallmark of the Academy's programs and something I know the leadership really stressed the need to retain when the Academy merged with NHLA. I think the programs, there were more live programs, of course, because that was the pre-Jurassic period and we didn't have, really have computers or webinars or web-exes or any of that.

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And the Tax Institute in particular - that and Fundamentals which I was also involved in. I forgot I was a regular speaker on tax for that. But in the Tax Institute we, it was a regular group, group of attendees who came year after year who had formed very close relationships in tax and that included representatives of the IRS. We reached out to them early on, invited them to not only speak at the program but also bring folks from the exempt organization team at the national office and they did that and we really developed a really great working rapport with the IRS in connection with that and were able to, not only have them keep us informed of new developments, but also have us help them understand the context in which they were applying the Code.

So it was a great collegial group and I also say, both in addition to the substance, the quality of the substance of the programs then and now, I think there's just a great sense of networking and collegiality that went on then and I think continues today.

Dinetia: That's wonderful and that was certainly my experience when I first attended an NHLA program. So once you were on the Board, I think you told me when we talked earlier, sort of, one reason you thought you were brought on the Board, that may have had to do with the Applebee's dinners.

Bernadette: Yeah that's correct. I'll tell that funny story. And this is probably a story that bears out what I call one of the golden rules of organizational behavior and that is, if you complain you get put on the committee or board. And the other is, if you don't go to the meeting you get all of the assignments.

But we had very traditionally, year after year, done a dinner after the program, or the night before the program I believe it was, for the faculty, and again that included us as co-chairs and all the speakers and representatives of the IRS who were also speaking and that became really a mainstay of the culture of the program. And one year after submitting the expenses for the dinner, I got a call from Tom Shields indicating that there was an issue with reimbursing because the Board had decided that there would no longer be funding for faculty dinners at programs. And I said, "Well that's great but no one told me that and I guess because I'm not on the Board I wouldn't have had the opportunity to know that that decision was made." And so, Tom said, in his always gracious way, "Oops, I guess we should have let you know so we'll reimburse you," and then shortly thereafter I got a call to be asked to be on the Board of Directors.

So then I had no excuse for not knowing what was going on.

Dinetia: That's always true. So you also were involved in the in-house counsel program, right?

Bernadette: Yes, actually I was on the Board at the time we started the in-house counsel program and also, I believe it's the practice groups. And actually with the founding chair of both the health information technology and the tax and finance practice groups. But we felt that at that time we needed to get more in-house counsel involved in coming to programs and begin to serve that population better because that, it was growing. I think many of us when we started out, there were very few hospitals who had in-house counsel and there were very few health systems. And we agreed that in-house counsel's needs were different than the out-house counsel needs. And so we started the program as a program that could be attended only by in-house counsel and no outside counsel interlopers-

Dinetia: Really?

Bernadette: Were allowed to attend. And I think the idea was they just wanted to be together, network, share ideas and frankly, not be bothered by law firms who were trying to market to them. But I think it's evolved now. I would just comment that I think that it's no longer a restriction but it's great and it's representative of the fact that I think there's a lot of partnering between in-house and outside counsel now. It's a great close symbiotic collegial relationship and I think the in-house counsel program really furthers that.

Dinetia: I would totally agree with you on that. You tickled me in talking about your experience on the Board, I think there were a number of gals whose first name began with a "B" and you were called "B to the Third Power".

Bernadette: That's right. We called ourselves "B to the Third Power" and a force to be reckoned. And that was myself, Bonnie Brier and Beth Schermer. And we often exchanged glances across the table and teamed up and advanced certain positions on certain issues. And, of course, all in professional and good spirited manner but we used to say, "Watch out, B to the Third Power is here."

Dinetia: When, in those years, was there an executive vice president of the organization and how did was the government, I guess, or the administration would be a better thing. How was that handled?

Bernadette: Well we had Shirley Worthy who I think had been involved with the organization since its founding as the American Society of Healthcare Attorneys and she was really an executive director administrator type. The office was based in Chicago, it was a very small staff and as the Board member who resided in Chicago, I frequently got calls from them with regard to certain stresses and issues and tensions and problems in the office and I began to feel a bit like the human resources department of the association.

And so at one of the meetings as I was sitting I looked around and I can't remember whether, I think the presidents during my tenure included Doug Mancino, Bob Johnson, Virginia Hackney and Phil Proger, I can't remember who else. And I remember thinking, sitting there thinking, the person sitting at the head of the table here is really not just the chair of the Board, they're the president and they are considered the chief executive officer and I think we've reached a point in our evolution where there's something wrong with that model.

And so I asked, I said ... I think Bob Johnson was president at the time and I said, or I remember him sitting across the table from me, in any case, and said, "It really seems like we're beyond the point where we can have the chief executive officer of the organization be a volunteer." They are someone who has a full-time day job otherwise and I think we need more for the organization. And I think that was listened to and I think it was factored in as a factor, just one of many. And I think it was Bob Johnson thought that we really should get bigger, better, we needed more infrastructure and the timing was right to pursue a merger with NHLA as a means of accomplishing that.

And I was not there at the time the merger was implemented but I was there during some of the discussion of it and I do believe that that is what helped because NHLA had

a much more robust staff and infrastructure in relative terms than we did and I think it was moved to Washington and the rest is history. It functions now like a very significant organization with a CEO leader who is full-time paid and it's just, there's just no stopping it and all that it accomplishes. So it's great.

Dinetia: Well that was a very wise comment to him and I think you're right. I think you're right, I think that perhaps was an impetus for the more expansive, more growth, expansion really of the organization.

I love hearing all of the stories of how each of us have gotten involved. What do you find has been the most valuable takeaway or asset or what of AHILA's membership ... What about that membership is the most valuable to you?

Bernadette: Well I think for me the membership coupled with the fact that the organization gives its membership opportunities to become involved in leadership positions and also in, you know, development of programs to serve the members. And from me, for me from that combination I have found that it has been the source of not only incredible CLE but a source of great fulfillment that I don't think you necessarily get from the day-to-day practice or from the day-to-day environment that you're in with the perspective of one organization.

And in a couple of respects, the planning of the program committees was so enriching not only because I had the chance to hear all the great minds speak about what are hot topics but also to observe that when, in that context, folks who otherwise in the day-to-day context might be competitors or even fierce competitors, the competitive lines would drop and the focus would be on sharing all that we all had with one another to come up with the best program for the members. And that plus the opportunity to interact with the leadership but also with attendees at the program has enabled me to form terrific professional relationships and friendships outside of my immediate world at McDermott or previously Gardner. And as I have told the younger attorneys who have come up behind me, getting involved with AHILA will feed your professional soul.

Dinetia: I love that statement. That is wonderful.

Bernadette: It does. The client work does too but that's something that you're paid to do. That's something that everybody is paid to do but when you form this true collegiality on a national scope, cutting across all kinds of law firms and in-house health systems and hospitals and other healthcare stakeholders, that's, to me, part of what is needed to maintain true professionalism in the legal profession. And I have just felt really blessed to have that. And it's provided me great energy and kept my mind and my heart nimble.

Dinetia: Oh, that is wonderful. I couldn't agree with you more. When we talked earlier, you shared with me some really interesting leadership experiences and one in particular, you mentioned, I'm not sure if it was the mid-year meeting or what, but you mentioned being at Captiva Island, Florida I really want you to tell that story.

Bernadette: Okay. If Phil Proger seeks me out, I'm going to blame you.

When I was an early Board member, actually it was right after I had my son, Brian, and, who is now 26, and he was about seven months old and they were planning the winter

Board meeting, Doug Mancino was president of the organization at that time and I think he will go ... One of his legacies will be always taking us to really fabulous places for the winter Board meeting. And they were ... When we went to Captiva, which is 'cause I discovered that that's where we and several families went year after year probably for about eight years.

But we were sitting, I believe we were at the Mad Hatter or the Mucky Duck, I know it wasn't the Bubble Room, and we waiting to get in ... We were sitting at dinner and Phil Proger took Brian into his lap and started talking to him and said, "Brian, you can call me Uncle Phil," and of course, Brian couldn't talk yet, so all of us said, "Whoa, Uncle Phil? You would never let us call you Uncle Phil." So I think for quite a while thereafter we called him Uncle Phil. But it was a very endearing moment watching a fierce anti-trust litigator and negotiator interacting with this little seven month old. So it was great.

And that's an example of the kinds of opportunities you have not only as a leader but as a member to, kind of, really get to know people beyond that immediate business context.

Dinetia: And that's a great story. So, I'm sure you're in the, with the other partners, you're involved in associate training or recruiting or just walking generally with associates on projects, what is your advice to those who are new lawyers in connection with AHLA?

Bernadette: Well I do always suggest that folks go to the Fundamentals program at the very beginning of their career path in healthcare even if they've done work in healthcare before and even if they're at a law firm. Like McDermott that has pretty much everything as opposed to being in-house, it's such a foundation that did not exist when I started. I mean nobody knew what healthcare law was and there were no resources and very few people out there writing, speaking and it's a complete package and it's, again, really quality but just at the right level.

And the other I give is that where you can become involved in the Association you really should because, again, it's an opportunity to hear others in your field who are applying the legal concepts and solving problems of different sorts in different contexts than you and you will always learn something substantively and get a new perspective. And, again, you start forming those relationships.

And the third is, really to try to get involved in the speaking and writing opportunities the AHLA offers which now are so many more than before it was. It was really just those onsite programs and there was just a handful of them each year and that was it. But we have the practice groups, we have webinars, we have all kinds of publications. Because for me the best CLE, the most effective CLE, is active CLE where I am speaking or writing as opposed to just, just sitting in a room listening to someone else. That's certainly essentially but if it's in your particular substantive area, there won't be any substitute for that as a means of getting a complete picture, getting totally caught up with the reading pile that has developed on your desk or now in your email folders. And also puts the pieces of the puzzle together in a cohesive way and fills in gaps that have not been covered because the nature of the particular client project didn't call for it. And always said that once I was finished writing or speaking for AHLA, I was ready for the next phone call.

Dinetia: You have just given the best explanation of how critically important it is to write and speak. It's like teaching. You learn so much just by virtue of just having to really dig down into all the details and then having to verbalize that. Something in the brain, I don't know what it is but that is right. Wonderful.

We're about at the end of what we had discussed and we're at 25 minutes. Do you have any closing comments Bernadette? This has been wonderful and all I can say is I want to hear you speak again. Next time I want to be at the meeting where you speak.

Bernadette: Well thank you very much. No, I just, I don't think I would say anything else other than I possibly would not have had the career that I have had if the AHLA had not played such a key role for me.

Dinetia: I agree. Well this has been wonderful. You've been the highlight of my day. I'm delighted that I had the opportunity to interview you and so we're going to sign off for now. Thank you so much Bernadette.

Bernadette: Thank you for the opportunity. Take care. Bye bye.

Dinetia: You too. Bye bye.