Programme OPERA – ENTRETIENS

Entretien – santé n°22

Pour citer cet entretien : Genieys, William, Guigner, Sébastien, Entretien santé n°22, Programme OPERA (*Operationalizing Programmatic Elite Research in America*), dirigé par W. Genieys (ANR-08-BLAN-0032) (*insérer hyperlien*).

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Interviewer 2: Just say a few words about your career (inaudible) just a few words about you?

Responder: I was a lawyer, am a lawyer, and did healthcare work, and I brought a lawsuit against wage and price controls under Nixon, actually, and then to try to stop the application of the wage and price controls to healthcare, to hospitals, and then a group got together and said, “We have to find a better way other than price controls,” and that was a group that I worked with for many years, and during that time, we developed the first legislation for government assistance for people to get healthcare but in a free market, a somewhat free market system, which was the Gephardt-Stockman Bill, 1981 or something.

So, then we defeated the Clinton bill in '93, and as far as my career, I then continued to work as a lawyer and policy guru, maven, wonk, and then went into the Bush Administration in the Department of Health and Human Services in 2001, and I was at ASPE in HHS, ASPE, you know ASPE, right? That's-- Sherry Glied is now the ASPE. Mike O'Grady was with Bobby Jindal, and then Mike O'Grady-- were the ASPEs under Bush.

Then, in '05, '04, '05, I went to Paris where I was HHS Health Attaché to the U.S. Mission to UNESCO and OECD-- or OCDE for a year. Then, I was kicked out in January of '09.

Interviewer 2: Kicked out?

Yeah, by the change in administration. Since then, I've been writing about the Obamacare. I don't think I sent you-- if you're interested, I sent you a piece I wrote about how it's-- this may not resonate with you, but how it's a takeover-- it requires the government to do impossible things, to make judgments that are impossible to make for every American, and then gives the HHS the power to control healthcare.

Interviewer 2: The new act?

The new act.

Interviewer 2: So, it improves the HHS's power?

I wouldn't use the word "improves." I would use the word "increases." Oh, by a huge factor. The HHS was required by the Act to list its new authorities, to make a submission to Congress on its new authorities, and it didn't do it. It hasn't done it, but there are hundreds of new authorities, and a lot of them are disguised. In other words, it will operate by controlling insurance companies and exchanges, and by doing that, will control how healthcare is delivered.

I will send you my paper, because-- you can find it-- it was published by Heritage as a backgrounder.

Interviewer 2: On the website?

Yes, it's on their website under healthcare. Do my name and Heritage and you'll find it.

Interviewer 2: Okay. Can we come back to this first law introducing the free market in healthcare that we're talking about, so, where did you find the ideas for this law?

Where did I find the ideas? That's actually really interesting. We didn't find them anywhere. We found them in our-- in the way we run the rest of the economy, on the general level. On the more specific level, on how you actually do it, it was just a bunch of us guys. You know, it was me, it was Paul Feldstein who was an economist.

Interviewer 2: Can you spell it?

Yeah, Feldstein. Paul Feldstein, F-e-l-d-s-t-e-i-n. He's at University of California at Irvine, but Bob Helms, that we've talked about, Bob Helms, Jack Meyer (ph), but mainly Bob Helms, back in those days. Bob Helms is at AEI now. He's now at AEI. No, I-- it's interesting that you ask that question, because it wasn't-- about the same time that we were doing our bill, there was one other person who was doing a different bill, which is Allen Enthoven.

Interviewer 2: Yes.

Allen Enthoven, at the same time, came up with what he called "managed competition," and we said that's an oxymoron, which is a French word, I gather, also, oxymoron, and he-- and also that it wouldn't work, that it had within it the seeds for government control.

Clinton, in '92, '93, said that his bill was based upon Enthoven and was "managed competition," and Enthoven, to his credit, said, "No, it's not, that you're using my label and my brand incorrectly," but my point was that I knew it was going to happen because-- with the Enthoven approach, it inevitably leads to what the Clintons were trying to do, and, I guess, that's-- nobody even thought about it in this time, with this bill, nobody even thought about that, but they were following somewhat the same path.

Interviewer 2: So, your bill was inspired by economists, or by health policy specialists?

What was the first? Inspired by what, by who--

Interviewer 2: By economists?

Yeah, and our own experience, and economists and political scientists and-- it was just a conservative general approach to how you solve problems, and the rest was a matter of details. The problem is not the free market, the problem is how you have a government subsidy without destroying the free market, and that was what was difficult about this.

Interviewer 2: Can you explain this?

Well, because when the government-- and that's the problem that the Obamacare has much worse. When the government starts to provide funding for people to buy something, it inevitably controls what it is that people can buy with the subsidy. Now-- so, especially in healthcare, where everybody thinks they have a good idea, so the government says, “Well, you'll only get the subsidy if you do the good idea.”

So, it immediately becomes government control. I mean, it can become government control very easily, unless you're careful, and that's the whole issue. Now, I don't know, in the European community, when you have a farm subsidy, they must keep-- there are controls that go with the farm subsidy on what you can-- I assume, every time you have a subsidy.

Interviewer 2: And there is no (inaudible) here?

Yes, there is. Same problem. Yeah. I think it's different because the subsidy works differently, but I'm not an expert. Yeah, they tell you how much you can plant, what you can sell it for, what you can grow. That's a whole-- but it's inevitable. When the government is going to subsidize, it's going to control. So, the trick is to have a market without-- and let the government subsidize the people it wants to subsidize without taking control of the section.

Interviewer 2: So, it's the idea of managed competition, isn't it? What's the difference?

That's Enthoven's phrase. What's the difference between-- managed competition would have many more rules for what the competition-- what the product is and what the competition is, and I cannot remember the Enthoven-- that was only 20 years ago. So, I cannot remember the details, but it was much more controlled on what the product could be than we were doing.

We were-- and I can't remember, again, but basically we would say that you can use the subsidy to buy any insurance if it's allowed-- if the insurance is legal. The problem comes that you have to decide how you're going to set the subsidy, and then it becomes easier to say, “Well, then there has to be a community--” in order for the subsidy to work, the premium has to be same for everybody, and as soon as you say the premium has to be the same for everybody, then you go down to all these regulatory questions, like the mandate.

Did you hear about the court today?

Interviewer 2: No.

The District Court in Virginia found the mandate unconstitutional, the individual mandate unconstitutional.

Interviewer 2: So it has been decided?

No, that's not-- it's not finished, that's just the District Court, so it's got-- the Court of Appeals-- it's got to go to the Supreme Court.

Interviewer 2: So, you will be involved in that? You are in the Supreme Court, yeah?

Yes, but I don't have this case. I'm a member of the bar of the Supreme Court, but I don't have this case. The-- back to the ideas, I'm trying to-- Paul Feldstein-- there were four of us that wrote a book back in 1991, 1992. Feldstein, Pat Danzon, Mark Pauly and me, and just for historical interest, we also had a mandate, an individual mandate in there, which we wouldn't do now, or some of us wouldn't do now. Some of us might.

But that was 20 years ago when things-- the whole experience of healthcare in this country is that every time somebody looks at it and tries to come up with a solution, over time, they go further and further conservative because of the difficulties of doing what they want to-- otherwise want to do.

This bill, the Obamacare, they would argue is more conservative than the Clinton bill.

Interviewer 2: (inaudible)

It is, on one level, but in reality, as it would play out over time, it isn't.

Interviewer 2: So, it's more conservative because there's not any more individual mandate?

No, no, Obamacare has an individual mandate.

Interviewer 2: There is?

Yes. That's what was declared unconstitutional.

Interviewer 2: That's the reason why--

The individual mandate was declared unconstitutional by the court today.

Interviewer 2: Yes. Why is it unconstitutional?

It goes into the intricacies of the Constitution, but it's a basis-- it's an absolutely fascinating issue, because the basic question of federalism here, which is, the Constitution gives the federal government only authority over certain areas, one of which is to control-- to regulate inter-state commerce, commerce between the states.

The mandate is a requirement for people to buy a product, and the question is, is that commerce, or are they imposing something simply because you exist? They are forcing-- does the power to regulate commerce include the power to force you, as an individual, to engage in the commerce? That's the issue.

And, if-- the real question is, if this is not declared unconstitutional by the Supreme Court, there is probably nothing-- there is probably no limitation left on the federal government, and that is why--

Interviewer 2: It could be a precedent--

It could be a precedent, and it would-- it's a precedent for what the commerce clause means, and the whole history of the United States is-- the background was that people-- it was-- the rights were reserved for the states and the people, and the federal government has taken over more and more things, and this is a-- people say this is the last straw, the ultimate, the most that they have exerted power over.

So, it's a basic question of what direction the country is going to go in. It may get-- it may also be fixed and changed by Congress, but it may not be changed by Congress before it acts. This is all going to come together in the election of 2012, because Congress can't fix it, because Reagan-- Reagan, because Obama will veto it, but if you have a Republican president and a Republican Congress, you can change it.

But, the court may have talked-- may have acted in the summer. The Supreme Court probably won't act, at the earliest, until the summer of 2012, so 2012 is going to be fascinating.

But that's-- it's really a basic question that goes far beyond healthcare, and it's a really important, constitutional question.

Interviewer 2: And it's only Virginia? That's where--

It's in Virginia.

Interviewer 2: It's only the Virginia state that has put the case in the court?

No, there have been several other cases, Florida, somewhere out West, and those courts have said that it was constitutional. Not sure-- not Florida. There is a case pending in Florida, and I can't remember which way it came out, but there have been two other courts that have said it is constitutional. The-- I started to make a different point and I'm now lost.

Interviewer 2: So, (inaudible).

Oh, I know. Virginia has a-- it's a really interesting legal twist. The Virginia legislature passed a law saying that the people of Virginia don't have to comply with this mandate. If the mandate is constitutional, that law is of no effect, but because they passed that law, it gave the state the ability to bring the case rather than individuals, but that's a wholly complex legal question of standing, so don't--

Interviewer 2: So, let's come back 20 years, 30 years ago. When you decided to pass-- propose that act, that new act, who were your allies and your opponents?

Who were the what?

Interviewer 2: Your allies and your opponents in the Congress or on the Hill?

Well, we had to-- we had to find people who would agree with us. Dick Gephardt, who became Minority or Majority Leader, anyway, Dick Gephardt, who was a Congressman from Missouri, St. Louis, had opposed the Carter-- God, I think it's Carter, price controls on healthcare. It wasn't Nixon, it was Carter.

And he said, "We've got to have a better way, there must be a better way of doing this, of organizing the healthcare system." So, Gephardt was the one who was our champion, and he brought on some others, including a Congressman named Dave Stockman, from Michigan, who became Director of the Budget under Reagan, and he brought on a Congressman from Arkansas, Henson Moore, and that was it.

The enemy was conventional wisdom, all of the existing interest groups, this was revolutionary.

Interviewer 2: Including conservative groups?

Well, no. Heritage and AEI I can't remember, but they either did or would-- they can't support legislation because of their tax status, but they agreed with the ideas that-- but, no, basically, we were on our own. That was the whole point. We were out there by ourselves, and then over the last 20 years, there have been many, many more people who were (inaudible). Although we lost, we lost the whole battle with Obamacare.

You have to understand, Obamacare is a very tenuous, fragile, unclear policy, so it's unlikely to last. That's the question. However, if Obama wins in '12, if the court doesn't knock it out, and if Obama wins in '12, 2012, then it may become U.S. policy. But, until-- it's going to be-- it's like a sinking ship, it's like a pendulum. It's going to be in flux until 2012.

But it is not the end of the game.

Interviewer 2: (inaudible) not the end of the world?

It's the end of the world, yes. I've got to move to France.

Interviewer 2: We wanted to talk a little bit about the Consensus Group, because you are one of the founders. So, could you explain to us the origin of the Consensus Group?

Yes, have you talked to Grace-Marie Turner?

Interviewer 2: No. No.

Okay, you said.

Interviewer 2: Grace Turner?

Grace-Marie Turner. There were three of us who were reading the Clinton Bill in '93, I guess it was, and my friend and client Marty McGeein, M-a-r-t-y, M-c-G-e-e-i-n, something like that. Grace-Marie, she was then Grace-Marie Arnett, Marty McGeein and I had lunch, and it

was basically, “Have you seen what's on page 873 of the Clinton Bill? This is absolutely outrageous.”

And then, so, we got together, and we said, “this is outrageous,” and Grace-Marie essentially got all of the conservative groups together to agree on those things that they could agree on. They couldn't agree on everything. It was like-- she always used the Venn Diagram. Venn Diagram?

Interviewer 2: (inaudible)

Let me show you.

Interviewer 2: Okay.

Overlapping policies. And so she started getting these people, AEI, Heritage, Americans for Tax Reform, John Goodman's NC-- NCPA-- National something of Policy Analysis, and so we met and kind of reached a consensus, and then she formed, and I was on the board, she formed an organization where she is now which is doing a lot of the work against Obamacare, as is AEI and Heritage, but something called the Galen Institute, so that came out of it.

But it was just people who knew each other who were introduced, it was intersecting circles like this, people who got together who were reading the Clinton Bill.

Interviewer 2: And how did you get together? How did you know each other?

Marty was my client at something called the National Council of Community Hospitals, who were the ones who got together and did the Gephardt-- said we've got to do a better thing, and they sponsored-- not sponsored, but they supported work on developing the Gephardt-Stockman Bill. So, I knew Marty, and Marty knew Grace-Marie I do not know how, and so she was the focus that brought us together.

I'm trying to remember when we introduced-- oh, Gephardt-Stockman was introduced in 1980, because Stockman was on the first Gephardt-Stockman Bill. Reagan won the election in 1980, and Stockman became Budget Director in January of '81, and he insisted on introducing the bill again in January of 1981, before he became Budget Director.

This is the reverse of France. You can't be both in Congress and in the administration, so-- but there's an overlap or an underlap between when the Congress-- the new Congress comes in January 3, or something like that, and the new administration comes in January 20, so, in other words, 17 days, two weeks before-- and he reintroduced the bill in that period.

Anyway, so that was 1981, and that's because I know when Reagan came in.

Interviewer 2: And what did the (inaudible)--

What is the consensus?

Interviewer 2: What is the core--

The consensus is that we should have market-driven, consumer-directed, well, market-- let me say-- the healthcare system that lets individuals (inaudible) that lets individuals choose their health insurance and reduces government regulation. Government regulation should mainly be on the quality, not on the economic price, but the main spike-- spike? Do you know that word?

Interviewer 2: No.

When you lay railroad tracks and you hammer them in, it's a spike, a big nail. The main spike of all this is the health treatment of health insurance. The tax treatment of health insurance. Do you know that tradition? No? Okay.

Interviewer 2: Clinton has-- no, no, I don't.

Alright. Starting with World War II, there was an exception to wage and price controls, which we had in World War II, for health insurance. It didn't count as a compensation subject to the limits of the wage controls. So, this was actually started by Henry Kaiser (ph) in an aluminum factory out in California during the-- aluminum and ships, concrete ships. Concrete and metal ships.

He-- that was transferred into the tax code right after the war and has stayed in the tax code ever since. And what this means is, if you're an employer, the employer pays the employee's health insurance. The value of the health insurance is not taxable to the employee, to the worker. So, it's in your interest as an employee to take compensation in the form of health insurance.

This has increased the amount of insurance, increased the cost of health care, insulated people, individuals, from the cost of health care, prevented them from having their own policy, because if they leave their employer, they don't have their policy, although we've tried to fix that with various fixes, and that is believed to be the wrong policy.

It also is a tax expenditure-- the taxes-- and this-- the taxes that are lost by this policy are about $200 billion a year. That's a lot of money. The recent debt commission, do you know about the-- the Simpson-Bowles Debt Commission? Okay.

Two weeks ago, three weeks ago, the President appointed this commission six months ago, X months ago kind of as a political move to show that he was doing something about our deficit, our debt and our deficit-- our deficit and our debt, and they just came out with a-- they couldn't make a recommendation because they couldn't get the required supermajority, but the two leaders, who are Alan Simpson, who is a former Senator, and Erskine Bowles, who has Chief of Staff under Clinton-- Carter, made some recommendations on the deficit. Some of them are no good, but one of the ones that they said was to do something about the tax expenditures.

The two main ones are health care, which is the exclusion from income of the costs of premium, and the other one is a deduction of home mortgage interest. Huge amounts of dollars, bad incentives, and so on. Anyway, that is the core-- that was the core and still is a core, that you have to fix the tax treatment by turning it into a-- instead of an open-ended

exclusion, turn it into a tax credit, or a voucher for people who need the assistance, not for everybody.

Under this system, the people with the highest income, buying the most expensive insurance, get the largest tax advantage, because if you're in the 39% bracket, the 35% bracket, the value of excluding the insurance from your taxable income is greater than if you're in the 12% bracket, and if you buy a $20,000-a-year policy, it's more value than if you buy a $2000 policy. So, it's just got all the wrong incentives and all the wrong social pull.

Interviewer 2: So, what's the position of the Consensus Group on that point?

The Consensus Group thinks tax exclusion should be changed or eliminated. Forget-- there are political judgments on what the solution is. One answer is to do a cap. You can only exclude up to a certain amount, but this is what-- the book that Mark Pauly and I wrote, the four people-- it was published by AEI in 1991, which argues for turning the exclusion into a tax credit based upon your income, a refundable tax credit, refundable so that if you don't owe any tax, you still get the credit. Make sense?

Interviewer 2: Makes sense.

Okay.

Interviewer 2: And that brings me to another question (inaudible) accounts. As far as I know, the Consensus Group has been one of the main proponents of this system. Is it true?

I would say since-- the members would support HSAs and MSAs, but it has not been-- it has not been driven by the Consensus Group. It has been driven by Heritage and John Goodman at NCPA, and one other guy, I don't even know his organization. But, no, it has not been the Consensus Group's thing.

Interviewer 2: But it's part of market-driven--

But it's consistent with-- exactly.

Interviewer 2: So, why don't you try to push it forward? Is there no need?

Well, no, it's not-- yeah, “no need” is one way of saying it. Other people are doing it, it's already in the statute, it's already a tax code, and it doesn't-- it doesn't fix the tax problem of the exclusion. Now, if you got rid of the exclusion and people have money, then-- have their own tax credit or whatever, then they would be able to put money into an HSA or-- they might be able to put money into an HSA, so if you changed it the way the Consensus Group wants to, it would build on HSAs and MSAs, but that's not the basic fix. It's something that would be helped by making the fix.

Interviewer 2: How do you do that?

Well, (inaudible) to say, again, this hasn't been written yet, but if you gave people a voucher or a tax credit, they would be able to use that money, or some of that money, to put into an HSA, and then they could buy a high-deductible policy at the back end.

Interviewer 2: So, John Goodman is an academic, right?

No, he's got his own think-tank, NCPA. If you go on his website-- I'm trying to think what NCPA-- National something of Policy Analysis, Council, Committee.

Interviewer 2: Because I saw papers in an economic journal from John Goodman, so I thought he was an academic.

No, he's not at a university, he's at a think-tank, he's got his own think-tank in Texas, but he's not-- he's not at any university. Mark Pauly is at a university, but Goodman is not. Mark Pauly is at Wharton, at the University of Pennsylvania, and Paul Feldstein is at the University of California Irvine, and Pat Danzon, who was the other one on our book, is at Wharton also.

Interviewer 2: So is there any specific university where we can find more conservatives than Democrats?

There are very few conservatives at universities in this country. Wharton-- Mark Pauly at Wharton, Feldstein-- not Paul Feldstein, but Marty-- Martin Feldstein, F-e-l-d-s-t-e-i-n, at Harvard. Also the woman, Regina Herzlinger, she's at Harvard Business School, and I cannot spell her name. H-e-- Regina, as in queen, H-e-r-z-l-i-n-g-e-r, or something like that.

I'm trying to think. There are no conservatives-- well, there's George Mason, but-- you raise a very interesting point. The whole intellectual background for this is mainly think-tanks, but the think-tanks require help-- use academia, but the number of conservative academics in healthcare is very low.

Interviewer 2: How do you explain that?

Because the whole percentage (inaudible), the whole orthodox wisdom is all liberal, especially in healthcare, and all the universities are liberal. Liberal in the U.S. sense, non-liberal in the European sense.

Interviewer 2: And is it the same for economists?

Yes, and that's what I'm talking about, is health economists. I'm trying to see who else there is who is conservative. Marty Feldstein was one of the first ones. Marty Feldstein, at Harvard, was one of the first ones to talk about the exclusion, problems about the exclusion, some taxation of the cost of health insurance premiums. But, it-- Mark Pauly has done a lot of insurance work, and I'm trying to think of any other academics- oh, there are two guys now, there wasn't then, at Minnesota.

There's a guy named Steve Parente, P-a-r-e-n-t-e, and then there's Feldman and something else, also at Minnesota. They are conservative. I mean, they weren't around when we were doing all this in 1980.

Interviewer 2: So, if your ideas do not come from the academic world, where do they come from?

Well, you keep-- you ask that question, it comes from the ether. It comes from academia, it comes from think-tanks, it comes from people like me, who are neither.

Interviewer 2: Sort of more from the think-tanks, then? Let's compare the Democrat side and the Republican side. Could we say that on the Democrat side, ideas come from-- mainly from the university or academic world, and in the Republican side--

No, I wouldn't make that distinction. The Democrats have more universities and more-- but they have think-tanks, too. They have lots of guys-- a lot of these ideas come from their think-tanks as well. And they do-- they have a larger university base than we do. No, I would not make that distinction. It's all the way American policy is done. It's this stew, this amalgamation of ideas from a bunch of different sources. Business, in our case, unions, in their case, unions have some of these ideas. Universities, think-tanks.

Interviewer 2: (inaudible) points of entry?

A lot of-- that's the point. There is not one point-- that's right. A lot of points of entry, a lot of chaos, the way we do everything. This is kind of a bubbling ideas.

Interviewer 2: So, and you didn't talk about the HHS. Is it a provider of ideas?

I think government usually adopts ideas-- remember, the government can't really do something unless Congress does it first, but HHS had the idea of DRGs, DRGs, Diagnostic Related Groupings in Medicare, which, by the way, some European healthcare systems have been adopting, but that came, first, from a guy at Yale who developed them. HHS was interested, they went to Congress and got it included in the 1986 legislation.

But I would not say that even-- I don't think even under this administration, whether it's Republican or Democrats, they do not-- they are more likely to be putting ideas into operation than they are to be developing the ideas.

Interviewer 2: They implement policies?

What?

Interviewer 2: They implement policies for--

Right, well, they can't implement something unless Congress gives them room to do it. Sherry Glied has got ideas-- by the way, she has written some of the best works on-- she was at Columbia-- on the exclusion. But she's not going to implement-- she knows the problems of the exclusion. That's one place where we agree.

She's not going to be able to do anything about it at HHS. It's-- Congress has got to do it, because it's tax law.

Interviewer 2: So, you're talking about Sherry Glied, and it reminds me that-- I heard that the Brookings is a member of the Consensus Group?

I left Brookings out.

Interviewer 2: Strange, because--

They very rarely show up. Also-- there is also the Urban Institute, a guy there named Gene Steuerle, who is part of the Consensus Group. Steuerle, S-t-e-u-r-l-e, or something like that. But, no, there's nobody from Brookings that shows up.

Interviewer 2: (inaudible) proves--

I want to see it, because Henry Aaron is at Brookings, and he disagrees with us.

Interviewer 2: I guess it was Mark McClellan.

Yeah, Mark-- that's where Mark is. First of all, yes, Mark is sometimes a member of the Consensus Group. Mark has been at AEI, he has been in the government, and now he's at Brookings, but--

Interviewer 2: So, you have in the Consensus Group some Democrat--

Who? Mark?

Interviewer 2: If he's a member of the Brookings--

You cannot assume that. They would say they have people from all different viewpoints. Brookings is mainly liberal. There is a guy named Henry Aaron there, A-a-r-o-n, who is part of the liberal part, but, remember, people who come to the Consensus Group are not there because of their organization, it's because of them, because of their ideas, and people at Brookings, although they are mainly liberal, they do have a little bit of diversity. And Mark is there because he's-- I don't know why, but that's where he's got his contract now. He does not represent Brookings, though. Mark is Mark.

Gail Wilensky is another member of the Consensus Group. Both Mark and Gail are former administrators of CMS. In fact, Gail was working on the book that Feldstein, Danzon-- Feldstein, Danzon and I and Pauly did, but she had to leave because she went into the administration in 1981.

Interviewer 2: She went to the administration?

Yeah. I think it was '81, yeah.

Interviewer 2: So, it's usual to work in that kind of (inaudible) and then to the administration, or first to the administration and then--

No, it's all back and forth.

Interviewer 2: But, okay, to have these different positions in your career?

Yeah. But Mark, Mark was at the treasury under Carter-- Clinton-- Carter. Who came before Bush? Clinton. Yeah, so he was at the treasury under Clinton, and then he-- I can't remember what he did under Bush I, but under Bush-- anyway, under Bush II, he was at the White House, he was economic-- the Council of Economic Advisors, he was head of the FDA, and then he became head of CMS.

Wait-- I know, this is not the way you do things. You have to understand, if you want to answer any question about America, just assume chaos. Confusion and chaos. Flexibility.

Interviewer 2: That's the different--

Yes, yes, yes, I'm sorry.

Interviewer 2: So, I wanted to ask you a question about the HSA but maybe it's not your business.

If you're asking me details about HSAs, no. But you know that in Obamacare, they restricted HSAs, I think this is right, yes. They also-- do you know what an FSA is? An FSA is a-- gee, I've forgotten what it stands for. Anyway, an employee can be given $5000 or $2500, I forget, once the child-- they can use the child tax-- for childcare, or for buying out-of-pocket healthcare costs.

Obamacare-- Obama-- and that's before taxes. In other words, that $5000 the employer gives them is not subject to taxation. So, again, that's another tax subsidy for healthcare. Obamacare-- the Obamacare bill lowered that amount, which I can't remember to what, and, this is a really strange condition, said that you cannot use your FSA, and I believe it also applies to HSAs, for non-prescription drugs. So, if you buy Tylenol, you previously could use your FSA money for the Tylenol. Now you can't, you've got to get a prescription, which makes absolutely no sense.

What does it mean to get a prescription for a drug that you do not have to get a prescription for to buy?

Interviewer 2: Why did it change?

Well, one, they think they're going to save some money, and I don't know how, because money that you don't spend for Tylenol you'll spend for something else, but they don't like FSAs and they don't like HSAs, they, the Democrats. Anything that-- that's the whole battle that's going on, and they are opposed to things that are individual, consumer-based as opposed to government-dictated health insurance, and that's the issue.

But it means you've got to go to the doctor to get a prescription.

Interviewer 2: So you pay twice.

It's crazy, if you wanted to lower healthcare costs. And then what do you do with the prescription? You've got a prescription for Tylenol, do you give it to the cashier at the

pharmacy? Do you keep it for your tax records for when somebody asks you why you spent your money for-- none of this is clear.

Interviewer 2: Impossible to implement.

Impossible to implement, exactly. I believe it applies to-- I know it applies to FSAs, and I think it applies to HSAs.

Interviewer 2: So, you have been in the health field for a long time, right?

Yes.

Interviewer 2: Is it okay for me to say that?

It's okay.

Interviewer 2: So, what are the major evolutions that you have seen in terms of policies, but also in terms of actors involved in it?

Revolution?

Interviewer 2: Evolution, or a major revolution, I guess.

Evolution. Oh, it has been a constant encroachment of the government, more and more, into healthcare and more and more into the details of healthcare. It has been-- starting-- the beginning-- starting with Medicare and going on until now. It's just unbelievable, the extent to which the government now controls every aspect of healthcare, including the criminal-- including criminal sanctions for a lot of conduct. Highly regulatory.

So, it has been a constant evolution, and there has been a constant fight against this evolution, and we lost the fight in Obamacare, but, as often happens, when people see what it really means to have the government control these things, they rebel, and the people have rebelled, and that's what the battle for the next two years is, to see whether the revolution by the people actually takes effect, or whether or not they are able to keep control.

Interviewer 2: Did that kind of evolution include the Bush career?

Correct, but Bush wasn't able to-- Bush didn't do anything except--

Interviewer 2: Passed two big bills.

Right. Well, there was the drug bill, and what's the other one?

Interviewer 2: I don't remember the name. There was one in 1999, and one in--

1999 is not Bush. 1999 is Clinton. The main thing that Bush did was the Medicare drug benefit, and we have to remember, there was a constant liberal pressure for that power, and what Bush did, and Mark McClellan was the main one on this, they did the drug benefit, and leave out the fact that it was not paid for, that's a mere detail, Mark did-- Congress did a

market-- there is more of a market structure in the drug benefit than there is in any other part of Medicare, the way you get kind of a constant subsidy and then there are competing plans competing to get you to sign up for those drug plans.

But that's all Bush did. The point is, he wasn't able to turn it back, to go the other way. We had efforts to develop a bill, a bill that would have been based on a tax credit. We couldn't get anywhere, because we didn't have control of the Congress, let alone the 60 votes that Obama had for that period, so it never went anywhere, just the way Social Security reform never went anywhere, because the Democrats wouldn't let it come up.

So, the reform efforts that Bush wanted to do never had a chance.

Interviewer 2: And you said that there is more and more government, but do you talk about the federal government or the states?

When I say "more and more government," I mean federal. In fact, Obamacare is really hard-- is-- also controls the states in many ways, state insurance commissioners, Medicaid-- you know about the mandatory Medicaid?

Interviewer 2: Yes.

That's a federal requirement on the states, and the federal government pays 100% of the cost of the newly-eligible, which is up to 133% of poverty for a number of years, and then it goes down to 90%, and the states can't even afford that 10%. That's another part of the evolution of the states. You know, there are 29, now, 29 Republican governors out of 50 states, which is highly-- nobody saw that coming.

Interviewer 2: That's why they sued the case--

They were suing anyway, even if it hadn't been 29. It was just some states that did it. They would have sued if they had only 15 states that had Republican governors.

Interviewer 2: But could Republican-- I imagine no Democrats--

There is no Democratic state-- I think that's right. Some of them-- in some states, there was a Republican governor and a Democratic attorney general, or vice versa, so there were fights within the state as to whether they would join the lawsuit. Not all the Democrats-- the Democrats are catching on-- there's a Senator, newly-elected senator from West Virginia who is a Democrat who has opposed Obamacare, Ben Nelson, from Nebraska voted for Obamacare, but he think he is cutting back-- changing his mind.

That's what's going to be interesting also this year. There are a lot of Democratic senators who are going to be up for re-election in 2012 who are going to be more and more conservative. There are 22-- 22 or 23 senators-- there are 22 or 23 Democratic senators in 2012-- up for re-election in 2012.

Interviewer 2: So, they will maybe change their mind?

Or try to.

Interviewer 2: And have you see any individuals playing a very important role during this-- during the last 20 years, any individual that is very, very important?

Teddy Kennedy-- Ted Kennedy, but he never got anything through during his life. There is a nursing home bill-- a nursing home provision in Obamacare which is a financial disaster which was a Kennedy idea, but, you know, it's going to break the budget.

But there is-- has there been an individual-- you almost are sounding like the Great Man theory of history. There has been no individual who has been able to (inaudible) the leaders, other than Teddy Kennedy, that I can think of.

Interviewer 2: So-- and groups of individuals, for instance, we know that there is a small group of actors that met during the Clinton period, and these people are (inaudible) Jeanne Lambrew--

Jeanne Lambrew?

Interviewer 2: And some others-- did they play a role, or is it overestimated?

It's overestimated. I can't remember where they were-- I can't remember where they were during the Clinton Bill in '93, but Jeanne Lambrew was in the White House under Clinton, I guess. Yes, she was the-- I mean, no, she hasn't-- I mean, for the Democrats, you've got Judy Feder, Jeanne Lambrew. There's a whole bunch of people.

It's all part of a big group of people thinking a certain way. There is no individual who is-- Nancy-Ann Min DeParle, no, there's not-- it's too complicated and it's too big for an individual-- even secretaries of HHS, no individual. Teddy Kennedy was the one who had political influence more than the others.

Interviewer 2: Because he was the only one who stood for such a long period in the Congress?

Because he was in for a long period, because of his personality, because he was Chairman of both committees, because of his personality, because he had money, all those things combined. As I say, he wasn't successful either, during his life. Obama has had more-- Nancy Pelosi, the people who got Obamacare through and the only ones who have had (inaudible), but that's because they had control of the Congress and control of the Senate, by 60 votes in the Senate.

So, the power of an individual depends on the political environment in which they are operating, and no Republican has ever had 60 votes in the Senate or that big, huge margin in the House, but Obama and Pelosi rammed this thing through, so, yes, they had power, and now they're seeing the consequences of this.

It's one of the main reasons that Republicans won in November, was because of this bill.

Interviewer 2: You say-- some people say that the Congress has increased its influence, compared to the White House.

During Obama?

Interviewer 2: And before. Over the 20 or 30 last years, there would have been such an evolution.

In healthcare, or more generally?

Interviewer 2: In healthcare, with the Congress developing more and more expertise, healthcare. What do you think?

Well, one of the reasons is because you have a permanent staff, like the Waxman people and the Kennedy people have been there for 25 years, and so has Kennedy, and no administration-- Congress has more continuity than does the administration, and on a complicated issue like healthcare, that is a benefit, and they have the control-- it's really back and forth depending on personalities, depending on conditions, so it's not like there's an institutional change in the relative balance of power, but there is-- they do have the benefit of continuity, and they have committees.

Clinton-- there is a good example. Clinton was developed by the administration-- Clintoncare was developed by the administration and killed-- and they couldn't get it through Congress. Obamacare was developed by Congress, and they got it through, but it wasn't just Congress, I mean, Jeanne Lambrew and Nancy-Ann Min DeParle and other people at the White House were working very closely on developing this bill.

But I would-- I don't think you can generalize the institutional shift because of that. Now, now, whereas, now, it's Congress, but Congress itself has divided itself. Is it the House?

Interviewer 2: And the courts.

The what?

Interviewer 2: Maybe the courts?

What's that word?

Interviewer 2: The healthcare policies are decided in the Congress and the White House, and maybe in the courts?

The courts? Yes, on this one issue, on the mandate.

Interviewer 2: That's--

If you want-- I have not read the opinion today, because it just came out three or four hours ago, but if you read the opinion, and I'm sure you can read it on the Web, it will be an interesting discussion of the Federalism issue.

Interviewer 2: Of course. Do you have any more questions?

Interviewer 1: No, no.

Interviewer 2: Jet lag. So, I guess it's okay. It won't be too long and abuse your time, so (inaudible).

I can't wait to see what you write.

Interviewer 2: We can send you your article-- your paper about the-- it's about the French case, the European case.

Interviewer 1: European case, France, UK, Spain and Germany on how-- the policy changes in healthcare and--

I would really like to see it. I would suggest that the policy changes in any of those countries, including the UK, are smaller-- they don't-- in no country do you have the dichotomized debate that we're having. I mean, the British-- the Conservatives aren't going to change-- what's the coalition government called in the UK? They're not going to change healthcare too much.

They play around with the extent to which the trusts have some kind of independence, but it's all within a much smaller spectrum than the U.S. debate is.

Interviewer 2: Okay, but we can send you this paper, and the next one will be about the U.S.

I'd like to see it. I just urge you when you do it, I don't think Europeans appreciate the extent of the difference in this country on how much more democratic, but how also much more chaotic the whole policy process is. It's not like some guys sit down in the Ministry, write a bill, and then get the assembly to pass it.

Interviewer 2: That's what we've seen.

Chaos.

Interviewer 2: And it's more complicated to work in the U.S. than on the EU.

Well, I don't know about the EU. The EU is a different question.

Interviewer 2: Yeah, but the European states.

Yeah. The EU has-- the issues that you see in this case are-- if the EU continues, will become EU issues in 20 years. It's the whole devolution of this question under the EU--

Interviewer 2: And the destabilization--

And healthcare-- remember, healthcare was not taken over by the EU, but-- these boundaries are very--

Interviewer 2: Officially, yes.

Right, right.

Interviewer 2: Okay, well, thank you.

Okay, well, thank you.

Interviewer 2: Once again--