Programme OPERA – ENTRETIENS

Entretien – santé n°24

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Interviewer: --now and when you worked in the Ways and Means?

Responder: Currently-- it's on?

Yes, it is.

I am the head of an association of investor-owned for-profit hospitals. We make up around 20% of the hospitals nationally. 60% of the hospitals, and these are rough numbers, 60% of the hospitals nationally are non-profit, tax-exempt, which means that-- it doesn't mean that they don't have to make a profit, but it means that they are (inaudible) organizations, either charitable trusts or something similar to a charitable trust, and then about another 25% of hospitals, I think that gets you-- did I say 60%? Yeah, so, I'm sorry, it's 20%, 65%, and 25%. The last 25% are government-- they're government hospitals, they're government-- veteran's hospitals, they're government-- local government hospitals, they're generally for the low-income.

And what's unique about my membership is that they make up some of the largest systems in the country, so that HCA, which is our largest company, has around 175 hospitals.

Okay.

So, it is the largest private system-- maybe the largest private system in the world, for all I know, but it is in the United States.

Sure.

Actually, in some of my companies, HCA does own some hospitals in London, and one in Switzerland. Universal actually did own hospitals in France, but they sold them. But we're primarily domestic, I mean, almost solely domestic, although I was with some people the other day who were getting-- they are traveling to India, and there are some people making deals in China, but that's not really relevant to the policymaking process here.

Okay.

And so that's who I work for, and there is-- of the American Hospital Association, that represents my members and all hospitals. Most of my members belong to AHA, too, and we work closely with them, but we both have unique-- we do have some unique issues to us, but also, what you find in the United States is that you tend to have these umbrella organizations like the American Hospital Association, and then groupings of hospitals or other entities that think they have their own interests so that you have the for-profit-- I mean, you have the Federation, you have-- there's a Catholic Healthcare Association that represents the Catholic hospitals, and there are-- and they're as big as we are, and there's a group that represents the Protestant Hospitals, and there's a group that represents the Children's Hospitals, and there's a group that-- there's a national association for the Public Hospitals, so you have an umbrella group, and then each of these sort of types of hospitals has tended to sort of aggregate and form their own group, too.

But we all work together, and, generally, on issues, we are together.

Okay, except when there is a very, very specific issue?

Yeah, there are some issues that are split. I would say what happens more commonly is that we may put more emphasis on an issue. We may focus on an issue. So, and just for-- so, that's sort of background, I have a small staff, just 20 people. AHA, for example, is-- I don't know how many people they have, they probably have 300 or 400 people, it's a huge organization.

And we both-- we do policy and we do lobbying, and we represent our members both in terms of policymaking on Capitol Hill, but also policymaking in the Administration, because from a health standpoint, the bureaucracy-- the Medicare bureaucracy, primarily, is extremely important, because Congress does take a heavy hand in setting Medicare law, but the implementation of the law, which obviously gets way into detail, beyond what legislative language would do, requires the regulations-- you know, the regulations, and those regulations become as critical as the law itself.

Although the law sets the boundaries for the regulations, so that the administration and the bureaucracy there can only do-- can only act within an interpretation of what the law tells them to do, in terms of Medicare payment, in terms of Medicare policy, for example.

Okay.

When I was on the Hill-- I was on the Hill for 13 years. I worked on the Senate side for Dan Quayle and Dave Durenberger, but what's important is, I did work, when I worked for Dave Durenberger from Minnesota, in the '80s, he was on the Finance Committee, and the Senate Finance Committee has jurisdiction over Medicare and Medicaid, and so in the Medicare and Medicaid legislation, I started in June of '83, so I don't know how much you know-- so, I came in a few months after there was a big Social Security bill that included the diagnostic-related groupings, payments systems for hospitals.

Yes, I have some background about that.

So, I wasn't there for two big bills, called-- one called TEFRA, and then the other called the Social Security Amendments, that included the DRGs. But I basically, from '83 on, until '93,

was on the Hill and was involved in all the major health legislation, either from the Senate side, I worked there for three years, and then I went to the House and worked for the minority, for the Republicans, from '86 to '93, and we were very-- we worked hand-in-hand with the Democrats on Medicare policy, so we worked on all the legislation, and then I went out and worked for the insurance industry for a couple of years, and then I went back when the Republicans took over, and that's when I was staff director on the Health Subcommittee of Ways and Means in '95, '96 and '97, and a little bit into '98.

Okay, it was-- so, you-- at that moment, you were here when a lot of very important things happened there?

Yeah, I think in the last three years, there were three big pieces of legislation that I was involved in, one that didn't pass, didn't get signed by the President. There was a Balanced Budget Act in '95, there was the Health Insurance Portability and Accountability Act which did pass and became law in '96, and then there was the Balanced Budget Act of '97, which also became law, and both HIPAA and the BBA in '97 were extremely important healthcare legislation.

HIPAA did private insurance reform, set rules on privacy, did many, many things, and then the Balanced Budget Act of '97 was a major Medicare-- was the major Medicare legislation that I worked on that actually was signed by the President, I mean, when I was Staff Director, and I was the one that sort of packaged it up. I worked on, I mean, a lot of legislation back here we can talk about, but that's what I've done more recently.

Yes. I'm very, very interested in these three legislation-- this (inaudible) process, and can you explain to me your role-- your personal role as the--

Well, do you know the basic process?

I think so, but maybe you can explain it to me more-- with more details.

Okay. Well, okay, the-- from a-- just from a structural standpoint, we'll start there, in the House, you have the Ways and Means Committee, and then you have the Energy and Commerce Committee. Now, and in the Senate you have the Finance Committee.

Yeah, just the Finance Committee.

And then you have the Health, Education, Labor--

Oh, Ted Kennedy's committee?

Yeah, Labor and Pension Committee, which is the health committee. Now, as far as I'm concerned, and they wouldn't appreciate this, they are not very important.

Okay.

Ted Kennedy has been important over time in health legislation, but his committee has always been very weak. They do have jurisdiction in some areas, like FDA, the Food and Drug

Administration, which is very significant in terms of health, but actually, when we talk about health, we have to sort of define what we're talking about.

If we're talking about healthcare delivery and financing, then that's where Medicare and Medicaid would come in, and the State Child Health Insurance Program become very important.

Sure.

Now, if we talk about health broadly, and public health, I should say, public health, then we can get into all kinds of areas, and that's where you get into the Food and Drug Administration, and you can even get into areas related to health education, both in terms of professional and in terms of consumer education, and you can get into all kinds of things.
So, when I started to look at my career, although I did, actually-- when I worked for Dan Quayle, he was on the-- it had a different name at the time, but he was on the health committee, and I got involved in food safety and some other things, but for our purposes, is it easier to nail it down to delivery and financing?

Sure, and my primary interests are just (inaudible).

So, it's important to make that differentiation. Now, ironically, today, I'm going to lunch with a fellow who is Kennedy's new staff director who is overseeing health reform for him, who was a state legislator in Massachusetts, although, now, with Kennedy being sick, I don't know what will happen with it, to do reform, and they see the health committee being in the center of it, this is next year.

Okay. So, this committee was very-- was strong because of the personal leadership of Ted Kennedy, and now it was quite strong, but--

I would say that Kennedy was quite strong. I think the committee is quite weak, and you know, if you look on the Republican side, it's sort of a trash committee, I mean, in the sense that it's the committee that no one wants to get on. So, they're all freshmen or new members, and on the Democratic side, Hillary Clinton is on it, and there are some other senior Democrats on it, but it's not the committee of choice. The committee of choice is the Finance Committee, because the Finance Committee is where the money is.

So, going back to your issue about real power, you know, there is something-- you know, Kennedy has such a long track record that he can be impactful. Particularly, in the Senate, in-- I mean, I guess, very different from Europe, where there even may be some bicameral-- you know, I guess you've got bicameral parliaments, you know, legislative bodies, but they're ones-- you know, it's like the House of Lords in Britain, you know, I guess they do some things, but they're not really very-- they don't have any power.

But, here, the two bodies both have incredible power, and it is equal power but, because they both have to pass the-- agree to the legislation, but the problem is-- not the problem, but both are very different organizations, structurally and culturally. The Senate is a body that the forefathers designed and has organically developed as a body that respects the minority, and actually, it gives tremendous power on any given day to single or coalitions of members, so

that it is-- yes, majority rules, and if we had hours, I could go into some of the procedural reasons why this plays out, but so-- the Senate, then, is really different from the House.

The Senate is-- and also, remember, you've got two members from every state, so that means California, which is a huge state, has two, and Rhode Island which just, you know, has two senators. North Dakota has two senators. They only have one House member, because the House is done-- so that you have-- it's just a much different nature, and so legislation tends to get slowed down, and is much-- is impacted in much different ways in the Senate.

Rural America is much more powerful in the Senate, because you've got all these Senators from rural states, and you've only got, you know, one Senator-- two Senators from New York. So, it behaves differently.

All that being said, the Finance Committee, in turn, is still the centerpiece for healthcare delivery and financing, because it has sole jurisdiction over the major Medicare-- the major federal pieces of legislation where money is spent, and where-- I mean, we don't have national health insurance on the one hand, on the other hand, we have these behemoth public programs that have tremendous effects on behavior in the healthcare system.

So, whereas politicians get up and say, "We will not have government-run healthcare." There was a joke that people used to tell during health reform. Are you familiar with health reform in '93, '94, when it failed?

Yes.

I actually worked for the health insurance industry then. Did you ever hear of Harry and Louise?

Sorry?

Harry and Louise?

Harry and Louise, yes.

I was the one that did that. See, there was a picture up there of Harry and Louise.

Oh, that's very interesting.

Yeah, that's Harry and Louise, and then the President and First Lady did a spoof on Harry and Louise, and that's when they did the spoof that was shown at a big, you know-- anyway.

But during health reform, there was sort of this joke that people-- members of Congress would get letters that said, "I don't want government-run healthcare, I want the government to stay out of my Medicare." Well, Medicare is a federal program, but seniors didn't want to have any change. Now, even though health reform didn't have that much effect on Medicare, it showed how there's sometimes sort of this dislocation between people understanding what actually is the case versus their perception of not wanting to have the government run healthcare.

And that's just a very critical point.

Yeah, and it's sort of a peculiar American phenomenon, I think. So, the Senate is a body that acts-- and I probably should have started with the House. It acts slowly, and each member has a lot of power, and that goes back-- and the reason I started down this road to say that's why somebody like Ted Kennedy, even though I would argue, for these programs, he is on the-- he doesn't have any power. He's not on the committee of jurisdiction. Because Senators have so much individual power, and because action on the floor is so open, you can have a lot more amendments and it's not controlled, like the other body I'll talk about in a minute.

There is no Rules Committee?

There is a Rules Committee, but there are no rules. I mean, I should say, there are rules, but the rules are designed to respect the minority, to allow the minority to have as much debate time as they want. So, that means there are all kinds of procedural mechanisms that a determined minority can use to slow down legislation, to amend legislation.

Now, in the last decades, that has been somewhat curtailed by the leaders of the majorities working with the parliamentarians to invent ways around it. And I would say that you could argue that the decline in the power of the individual Senator began in the '60s, and so it's been a 40-year. I mean, it's still very powerful, but it's been sort of a 40, 50-year decline because the-- when the Civil Rights legislation was passed, they found ways to bust the filibuster.

Are you familiar with what a filibuster is?

Yes.

Okay, so that's the Senate, and the Finance Committee, is the centerpiece. Now, the House is a completely different kind of body. The House is a majoritarian body. The House is a body in which the majority rules through running the Rules Committee and there, debate on the floor is very limited-- is limited to, for each legislation, although there's some ways to deal with legislation without a rule, but basically, for any legislation of any consequence, they have something called the Rule. The first thing they have to pass is the Rule.

So, the Rules Committee, and the leadership, design a rule, and then they expect their members to vote for it, and the Rule says, “There shall be three hours of debate, you know, two hours for majority and one hour for minority, or an hour and a half split between the two. There shall be three amendments, there shall be no amendments,” and once they pass that rule, then that's it, and so it guides the legislation through in a way that you don't have in the Senate.

You never have a rule passed, you have broad guidelines on how many hours of debate, and there's some ways that you can shut down the floor, but here, the majority has a firm hand on the process. No, that's not to say that the majority doesn't sometimes lose on a rule or lose on a vote for the body of the bill, or lose on amendments, there can be reasons for that, but it means that, as a normal process, it's much more like a two-party parliament.

I mean, other than the question period, my impression would be that, or a vote of confidence in the British Parliament, passing legislation is slam dunk, because if the Prime Minister's

party wants to do it, they just do it. The House is more comparable to that, and it also is a body that is represented by population, as you know, so that California or New York or some states have, you know, and there are times when there are state interests versus national interests, I mean, versus party interests, and that can have a big effect, too.

So, it's a much different body, and you also have 435, or whatever it is, so you've got a lot more members.

So, here, the caucus, the Democratic Caucus and the Republican Conference, which are the organizations of the two parties, are more-- I mean, there's more organizational power, whereas here, there is a Democratic Caucus and a Republican Conference, and they have sway over their members, and they have party discipline, but here, party discipline is the name of the game.

Now, the Ways and Means Committee and the Energy and Commerce Committee are the two committees that have jurisdiction over healthcare, financing and delivery. The Energy and Commerce Committee shares with HELP a lot of jurisdiction, like FDA and things like that. But, and this gets-- did you ever hear of Wilbur Mills, who was a very powerful Chairman of the Ways and Means Committee in the '60s and in the '70s? Well--

Wilbur Mills.

Wilbur Mills, very interesting man. He ended up badly. Yeah, he ended up in the '70s-- the early-- the middle '70s, him being an alcoholic, which nobody knew, and then he ended up swimming in the tidal basin, which is the area around the Jefferson Monument, with a stripper, and that sort of ended his career.

The reason this is important is because-- I know you wanted to talk about health, but historically, the Ways and Means Committee was the first committee in Congress. The Ways and Means Committee was the committee that, before the Civil War, did everything. They came up with the money, and it decided how the money was going to be spent, or proposed how the money was going to be spent to the whole money.

Actually, if you go back to the early days of the Ways and Means Committee, for decades, it, even as the government-- even as the United States added states, its members were generally from the 13 original colonies. Now, obviously, that broke down over time, but that was one way the original colonies kept control over the purse-strings of the government, was through the Ways and Means Committee.

I believe it was the Civil War when the Appropriations Committees were formed, because the government grew so rapidly with the needs of funding a war the size of the Civil War.

Okay.

I (inaudible) the Civil War, as you can see. I have some signatures I can show you, too, if you're interested. I have-- this is Ulysses S Grant, General Grant. This is General Sherman, you know, he marched to the sea. This is the guy that made (inaudible), you probably wouldn't know, but Butler was the Union General who was in the East, but he was also at one

point the General in charge of New Orleans, and he was called Beast Butler because they accused him of stealing from the people.

This is one I just got. This is Edwin Stanton, whom you may or may not have heard of. He was Secretary of War, and he was the one that was actually quite critical of Lincoln early. He was a Democrat, but he was brilliant, and his career sort of meshed with Lincoln's, because there was a point where he-- he was a famous lawyer, that he actually beat Lincoln in a court case in the '50s, but he actually is, probably, other than Lincoln, the reason the War was won by the North, because he was such a great manager.

And then this is a guy named Joshua Chamberlain, who you might not have heard of, who-- he saved the day at Gettysburg, and he also was Governor of Maine, a very famous man. And then this is James Longstreet, who was a Southern General.

This is amazing.

Yeah, at home I have-- my best one is at home, my wife won't let me bring it. I have a Lincoln, so that's-- it's a little note that says, "See the bearer of this package," it was obviously attached to something, "He was a messenger of mine," and it's dated August 30th, 1862-- 1864, and then "A. Lincoln." And I need to-- I could probably almost figure out, which I haven't done yet, what he was doing that day, and probably find out what the document might have been.

Because it was like put on top of a document.

Yeah, sure, that's--

Anyway, that's an aside, but the Ways and Means Committee, and the reason I bring up Wilbur Mills is that when Medicare and Medicaid were done, in 1965, the Ways and Means Committee had sole jurisdiction over it, just like the Finance Committee, because it was the place that the financing was done.

Also, prior to Wilbur Mills' problems, the Ways and Means Committee was also the most important committee in Congress for the Democrats, because historically, it had been the committee of committees. So, it was the Ways and Means Committee that recommended to the Speaker who the Chairman of committees would be for the Democrats. And they also recommended appointments to committees.

So, that's a very powerful function of the leadership, and the Ways and Means Committee served as part of the leadership in a sense. And I may have-- let's see if I have it here. I don't think I have it here. I actually have a few copies of a history of the Ways and Means Committee, but I don't think I have it here, that was written back in, for the 200th anniversary, which is actually quite good.

Maybe you can just tell me the name?

Yeah, I'll have to-- why don't you make a note to remind me, and I'll give you the site for it. It actually would be something worth you looking at, it's a very-- it's a pretty objective book.

Oh.

Anyway, so the Ways and Means Committee originally had total jurisdiction over Medicare and Medicaid. SCHIP wasn't passed until 1997, anyway. But, when Wilbur Mills had his problems and as a sort of a backdraft from the fights in the House over Civil Rights, and when Nixon, because of his problems, led to great anger and a backlash against the Democrats-- the Republicans, in 1974-- in 1975, you had this sweep of Democrats in, so there was a big Democratic majority.

The reason I bring that up is because that was the year that there was a decision made to take Medicaid away from Ways and Means and put it into Energy and Commerce, and to split Medicare up so that both committees have jurisdiction over Medicare.

This is-- and I could go into intricacies of the-- you would almost laugh if I went into the intricacies of how they determined who would have jurisdiction of which part, but it's important, because it means that in health legislation in the House, you have this complexity of two committees claiming jurisdiction over the same field, and Ways and Means, and I'm a Ways and Means partisan, because I worked there, we generally are the committee, just like Finance, that has to get things done, because you've got to run the government, and that was always the attitude of Ways and Means.

So, we were primary over Medicare de facto, but there were always these snipings and things, and it just meant that it was very complicated to get legislation through, because it wasn't just a matter of what you were going to do, it wasn't just a matter of the procedures, it wasn't just a matter of all the politics, but you also have this committee issue of who is going to call the shots in terms of developing the details of legislation.

That's the reason I went through all this because, in one hand, there are literal-- I mean, there are checks and balances that were meant by the Founding Fathers, and then there are checks and balances that have grown organically, so that it is very complicated to get health legislation through.

On the other hand, when they do health legislation, on Medicare, they do less on Medicaid, because, as you know, what they do Medicaid is different because with Medicaid, as you know, it's a shared program between the federal governments and the states, and there, there is-- the federal government steps back in terms of how the money is dispersed, its sets criteria for eligibility, it's much different. There's not direct control of how hospitals and physicians and providers and the system is dealt with.

I mean, it's sort of a hands-off, but I need to be careful with saying hands-off, because really there, we could go through Medicare-- pieces of Medicaid where the federal government has sort of a lot of impact, and some where it's hands-off, whereas with Medicare, it is a federal program, it is centralized, the money is dispersed, and they use-- I mean, there is a diffused way that it works through the-- are you familiar with how Medicare pays bills and things? It contracts with insurers and insurers-- but there's still a control-- it's still a controlled program where, still, everything emanates from the centerpiece.

Isn't the same on Medicaid and SCHIP, or--

SCHIP was designed-- SCHIP was birthed in compromise, and that's one of the reasons that it is not an entitlement program, it is sort of a block grant, and yet the states are obligated to-- somewhat obligated to have it, and the-- but the benefits are shaped using Medicaid rules, partly because they wanted to avoid the abortion issue, and there--

I mean, you get-- part of the problem is, Medicare and Medicaid were done so long ago, now, the base, that you can build on the base from a legislative standpoint. SCHIP was more difficult, even though it was this little, bitty program, in some ways, because now you have all these side issues. I mean, abortion wasn't that big an issue in '65, and there was such a big Democratic majority when they passed Medicare and Medicaid that they did whatever they wanted to do.

But today, a lot of these side issues affect what you can do, because if you're going to have benefit design, which you have a benefit package in Medicare that's basically designed in-- well, they did do the Medicare Modernization Act, so in '03, so we do have a drug benefit now, but basically, the benefit design was from '65, and also it deals with 65-year-olds, although there are some disabled-- Medicare does pay for around 2000 births a year, but, you know, that's peanuts.

But I'm getting off the track. Okay, is this helpful? I don't--

Yes, it's very helpful. You are very, very clear.

Okay.

I think-- just a question. You said that it was very weak-- so, Ways and Means has been weakened, but-- now, the relationship-- who maybe is (inaudible) by one party or another party?

First, both committees, this is a majoritarian body on the floor and in the committees, so both are-- so, whoever is in the majority controls the committees, so-- but, with Ways and Means and Energy and Commerce, you have, I mean, obviously you've got Democratic leadership and Republican leadership, but then you have the committee chairs, and the committee chairs, and then their subcommittees, so there's a health subcommittee on Ways and Means, they become very powerful, because they control the staff and they control the legislative language to some extent, and they control the process.

Now, they have to have a majority of their members on the committee to make sure that they will be successful, but for example, when Ways and Means or Energy and Commerce considers a big piece of Medicare legislation, or any kind of legislation, there usually is something called a Chairman's Mark, so the Chairman will have a bill drafted that does everything he wants to do, and he may do it in consultation with other members, or he may not, depending on what he or she thinks is the right procedure, they-- this isn't fixed, and they put that down, and then everything-- the consideration of the legislation is done relative to that.

So, you've got to amend this piece if you want to change something in it. So, the chairs become very powerful, and if you do a bill with something called Regular Order, meaning you're following all the process, then in Ways and Means, you would have the health

subcommittee mark it up, then the chairman would put down a mark, then they would mark up his bill, and mark up means amend, consider, and pass it to the full committee, then the full committee would consider it. The full committee can then mark it up, and then it goes to the Rules Committee for a rule, but the Rules Committee is really controlled by the Speaker and the Majority Leader.

So, the Rules Committee-- nobody gets on the Rules Committee unless they agree to just do whatever they're told. So, the Rules Committee then writes a rule which will say on a Medicare legislation, three hours of debate, no amendments, let's just say, so then it goes to the floor, and there's a vote on the Rule. If the Rule passes, then there's three hours of debate on the bill, and now--

There is always contentiousness on a rule that doesn't include amendments, because the minority says, "You're not giving us the option to make amendments," but there's a tendency on tax legislation and Medicare legislation to-- now, I haven't even gone into the budget process, because usually Medicare legislation-- maybe I should go into the budget process, but let's get to that in a second.

This legislation, they usually are able, for procedural reasons, not to have amendments, or to have very limited-- they may give the minority the option to make an amendment in the nature of substitute, and just have one bill that substitutes, and they'll lose on an up-or-down vote, but let me add something else, too, is there is a tendency to do legislating here in something called the budget process. And, are you familiar with the budget process?

I've read a quite old book from (inaudible).

Oh, that's old. Yeah, there's actually some newer stuff on the budget process. I'm trying to think of a good book. You know, I haven't looked at anything in so long.

But to understand health legislation, you have to understand the budget process, for this reason, particularly if you're interested in power, and why the Congress is so powerful, because in budget legislation, what happens is, in the Spring, I'm not going to give you all the details.

Well, first, at the beginning of the year, usually the very beginning of February, the President sends to the Congress a budget, and his Office of Management and Budget does, and the Congress then looks at that budget and comes up with its own budget which is called a budget resolution.

Yes, made by the CBO?

Well, the CBO scores-- comes up-- the CBO is the arbiter of what a program may or may not cost. So, when they put their budget together, they put a bunch of items in there, and CBO says, "These are the numbers for your budget." But the CBO is-- you've got to-- the CBO is a scorekeeper, it is not a policy organization.

It is an adjudicator, but not a policy organization. The budget committees in the House and the Senate are the policy organizations. And they decide-- and this is really affected by all the members of the-- but the budget committees come up with a framework for a budget. So,

they say-- I don't even know how much we spend any more, let's say $1 trillion, and of that $1 trillion, and the budget doesn't include a lot of details.

The budget will have, well, let's say, for Medicare-- and I can't remember the Medicare-- each line item has-- the budget will have numbered items, and I can't remember what the Medicare number is. So, for the Medicare number, they'll say "We want to save--" and CBO and OMB, but in this case, it's CBO that's important, but CBO has a base line. They have-- for five and ten years, they will look at all the laws and say "This is how much we're going to be spending for each year."

So, this budget is done relative to this baseline. So, if the budget committee decides we need to save money, we want to reduce-- we want to-- I mean, a balanced budget is silly now, but we want to reduce spending by $270 billion, which is actually the number that we wanted to reduce health spending in 1995, then they will have line items in the budget that basically say, "For Medicare, there are going to be $270 billion in savings," and then from a process standpoint, the House passes the budget, the Senate passes the budget, their own budget, they both have budget committees, then there's a conference between the two, and they come to a settlement, and this is different from other legislation, though, because the budget resolution, which they don't always come to every year, the conference-- then it's sent back and passed by both houses.

It's not signed by the President, this is a Congressional piece of legislation that provides, in a sense, the rules and railroad tracks for a budget reconciliation process. Now, did you read about budget reconciliation?

I think it's now, with the President and the Congress?

Yes, it will be. And why do they call it budget reconciliation? Because-- they call it that because you are reconciling current law to the instructions in the budget resolution, and what makes this important for health legislation-- as-- I mean, it's important for other kind of legislation, too, but for health legislation is that-- let me-- I've got to make one more diversion.

You know, with appropriations, are you familiar with appropriations? Appropriations are annual-- in theory, it never works this way, but in theory, annual expenditures so that defense, national parks, education, are done annually through the appropriations process, and the budget does set guidelines for appropriations.

It says, "For education, we're going to spend $50 billion next year." But they-- but taxes and Medicare and Medicaid, and we'll talk about Medicare because it's the easiest one, are different. They're not appropriated every year.

Medicare and Medicaid, not SCHIP, are something called appropriated entitlements.

Okay, I see. It's when-- until there is a reform, for a few years, for several years?

No, no, don't think about it that way. Think about it this way. I am, according to law, 65 years old, and I'm eligible for Medicare. I paid ten quarters, and I am eligible for Part A of Medicare, which is the hospital part of Medicare. That means, when I walk into the hospital

and they treat me and the hospital sends a claim to Medicare to pay for my hospital services, I just appropriated the money.

So, that's what it means. So, what it means is that there are a set of Medicare rules in the law that tell you how much-- who's eligible, and how the money can be spent, but the government is obligated, because of those rules, in the law, or because of the law, regardless of what any budget says, you can't just say "We're going to spend $100 billion on Medicare next year."

However, when CBO does its baseline, it tells Congress how much is going to be spent on Medicare, and if the budget committee says it wants to save $270 billion over ten years from the Medicare baseline, they have a baseline for Medicare, then how do you do it? Because you don't have annual appropriations. You don't have an appropriations committee. The Ways and Means Committee doesn't say "How much are we going to spend on Medicare next year?"

What do you do? You change the law and the rules of the law so that-- let me make it as easy as possible-- let's just say-- in the DRG law, or in the Medicare part that deals in DRGs, it says that annually, DRGs will be updated by an inflation factor. So, what Congress has done periodically to cut spending, it will come in and say, "Well, we're going to-- this year, or for the next three years, we're going to pay hospitals the inflation factor minus one point." Arbitrarily.

Now, this is where CBO becomes important. Because CBO will look at that proposal, and this is where the staff-- the staff writes these kind of proposals, the members say "We want to save $270 billion, how can we do it," off of this, you know, trillion-dollar baseline off of Medicare for ten years.

Well, this is how you do it. We would go in and say, instead of the DRGs, as is written by law getting an inflation factor based on a formula, we're going to say it's the inflation factor minus 1%, arbitrarily.

But, CBO then has to come in and say, "Oh, well, if you do that, we project that you will reduce the baseline this much and you'll save $50 billion over ten years." So, that's $50 billion of your $270 billion.

So, when you put together these budget bills, these reconciliation bills, you are changing law to reconcile with what you've been mandated by the budget legislation to do. That's why they call it reconciliation.

So you have more room for spending the money you've saved here, or--

Well, you can do it either way. If-- because sometimes the mandate will be, we want to save money here to spend money here, or sometimes it will be that they just want to save money to reduce federal spending.

But what it means is, you can go in and make policy, because let's say you want to change the way the DRGs work. Well, you can go in and write a provision that says-- I mean, and actually, they did this, they moved-- oh, sorry.

Unidentified Speaker:(inaudible)

Who is it? Oh, shit, on-- is he in there? Is Steve in there?

Unidentified Speaker:(inaudible)

Can you ask him if I can put it off for about 10 minutes?

Unidentified Speaker:(inaudible)

Okay. But, this is where it all sort of ties back together real quickly. In the House, when you take this budget bill and you push it through the Ways and Means Committee, and the Energy and Commerce Committee, if it's hospitals, it just goes through Ways and Means, but that goes into detail. You take it to the floor, and it follows the same process, and you can win.

In the Senate, though, the budget is different. Budget reconciliation only requires 51 votes. There are no-- it is a perceived-- it has limited debate, and you can not filibuster. You can't filibuster a reconciliation bill. So, you never have to get 60 votes, you only have to get 51.

That makes it completely different because, as you know, margins are generally fairly close in the Senate, and have been for decades, so if you only need 51 votes-- so, this is why-- I'm sure you were wondering, now, why, when Bush was elected, and had a narrow margin in the Senate and a narrow but healthy-- a good enough margin in the House, why did he do a 10-year tax cut. You know why he did a 10-year tax cut?

Because, in budget reconciliation, where tax legislation is done, Senator Byrd, who is an old Senator, he made sure that there was a rule that basically said that certain policies couldn't-- under the budget reconciliation, would be-- you could object to it if the policy went beyond the scope, which is ten years, of a budget resolution.

So, because Bush got 51 votes and got tax cuts, he never could have gotten 60 votes for tax cuts, but it meant that he was stuck with ten years. So, now, the Congress is looking at next year, having to consider whether billions of dollars in tax cuts are going to automatically go away so that my rate is going to go from 35% up to 38% or 39% automatically, which is pretty significant, and the estate tax is going to come back, and a bunch of other things, because he did it in budget reconciliation.

Now, on Medicare, you can set rules that have effect after 10 years, but there are idiosyncrasies as to why that happened to him, but that's why you're going to hear people talk about doing health reform inside a budget reconciliation next year, because it will avoid having to get 60 votes.

Boy, I haven't really covered that much. Are you going to be here-- how long are you here?

Oh, I'm here just until the 9th of September, and--

Well, if you want to meet again, I'd be happy to do that.

Oh, sure. I have some questions now, because you explained to me the procedure and how it worked, and I'm really, really interested in how it worked in concrete reform, in the reality.

Yeah, see I went over this first because it's hard to talk about that unless you grasp-- and I assume this is more than you understood before.

I think-- yes, it's much more clear in my head.

Okay, well, talk to Johanna, and you can set something else up if you want. I'm happy to meet again.

Yes, thank you very much.

And I'll look-- actually, if we do that, then I'll look at home--