

Programme OPERA – ENTRETIENS

Entretien – santé n°37

Pour citer cet entretien : Beaussier, Anne-Laure, Entretien santé n°37, Programme OPERA (*Operationalizing Programmatic Elite Research in America*), dirigé par W. Genieys (ANR-08-BLAN-0032) (*insérer hyperlien*).

1^{er} avril 2010, Washington D.C.

Interviewer: During the Health care reform, what were the relationships between the different House Committees? Was there an evolution?

Responder: Well there were 3 committees who had jurisdiction over the bill, the Ways and Means, the Energy and Commerce and the Education and Labor. They all marked up the bill in July. However, the W&M and the E&L were quicker than our committee to report the bill and vote for it.

In the E&C, it took several weeks because no clear majority supported the bill, even if we were all from the same party and all worked on the same bill (at that time it was the tricommittee bill, HR3200).

The W&M and the E&L made very few changes to this original bill, but the E&C made a lot of changes, it changed it in a more conservative way.

For instance, if you take the “public option” the tri committee bill wanted to make it kind of aggressive, with a strong control of the prices of physicians and hospitals. At the beginning, the idea was to say “you do not pay doctors and hospitals more than the Medicare rates”. However, medical providers were not happy with that, so they lobbied their representatives.

In the E&C, enough people opposed the measure so the Committee refused to report the bill out, unless we changed this measure. So, this was a big change, and we finally reported the bill, but it was really narrow, 31 votes out of 58 (28 no). All the Republicans opposed and, in the committee we had only 36 democrats, so we couldn’t afford to lose more than 5 democratic votes. So it took us several weeks to reach an agreement, actually, most of July.

After that, there was the August recess and in September and October we worked on merging the three bills (because then we had three different bills, the two other committees having made change as well. We sat down, worked... We can find traces of this work when you look at the different versions of the reform (different numbers). The bill passed finally in November. The floor vote was very close, the bill passed 220/435. We needed 218 votes to win, out of 256 democrats. We had one republican vote only, so we lost a lot of democrats, about 37 of them...

Meantime the Senate had not gotten beyond the Finance and Health Committee. They were still negotiating trying to reach a compromise. But you know, instead of working on their own bill or working on the House bill, they took HR3590 which is a tax bill the House passed early on and completely amended it to add the Senate committee bill. And this bill passed on Senate.

Why did they take a tax bill instead on working on their own bill?

Well they didn't like our bill, they refused to work on it. They opposed HR3200 qualifying it as an "evil bill". The House floor passed a different bill, but Senate didn't want it either. So they choose to recycle an old bill, not to deal with the House bill. House take up.

It seems that during this process there were of lot of conflict between the House and Senate?

Yes a lot. The Senate bill had no public option... Which was a deal cut measure. House and Senate didn't work together. We didn't work with the Help or the Senate before Christmas actually. Each body was really on their own. The White House strategy was to let the Speaker figure out by herself what can pass the House and let the Majority Leader figure out what can pass the Senate.

So you worked together during the Conference Committee, to merge the Senate and the House Bill?

You know the process was really unusual... Normally you would have the Senate appointing conferees and the House appointing conferees as well. Senate and House conferees then negotiate together to come to an agreement, which is the "Conference report". Then the report would go back to the Senate and House floor, to be voted... There, it was not traditional at all, we didn't do the regular process. The problem was for the Senate that they need 60 votes to appoint conferees... In the House as well there were some problems, even if the House still work with the simple majority rule. Indeed, the minority is allowed to offer "motion to instruct". That means the conferees have to explain some measures in the report. Republican would have ask motions to instruct to make democrats uncomfortable, on certain point difficult to agree, like abortion of immigration. And they would have had to vote on these issues, which would have broken the homogeneity of the democratic caucus even more.

It's kind of a trap...

Yes indeed. Moreover we are in the House in an election year, so republicans would have designed their motions to make members from unsafe districts uncomfortable. You know for members who have a safe district, like my boss, Henry Waxman, who comes from a very liberal district in Los Angeles, this is not a problem, but for members who come from districts where John McCain won in 2008, this would have been definitively a problem.

So to avoid all of that, the leadership in both Chambers, along with the White House just decided that there would not be a formal conference. In the Senate, it would have taken too much time and in the House, it was important to avoid motions to instruct. Instead we had a more informal process, not transparent, not public, mostly in the White House offices

Who was involved during the process?

The people at these negotiations were:

From the White House: the President himself, he actually was very involved personally, he was the main negotiator. Rahm Emmanuel, Phil Schiliro, the President lobbyist, Nancy Ann DeParle from the White House office of Health care reform, Peter Orzag, the director of the Budget. The secretary of HHS Sebelius was not really involved, the reform was mostly done by the White House, not by the HHS.

From the House, the main actors were the leadership Nancy Pelosi and Steny Hoyer, the Whip Clyburn and the Committees chairs: Henry Waxman, John Rangel, Miller, and Louise Slaughter from the rules committee.

From the Senate, the main negotiators were Harry Reid, Richard Durbin (the Whip), Max Baucus, Tom Harkin and Charles Schummer (the deputy whip I think)
(interessant car l'interviewe a systématiquement cité le leadership avant de citer les presidents des comités. cela montre à quel point a été important pour lui le leadership)

You mentioned only members, what about the staff level?

You know, meetings at this level were to resolve big and broad questions, like the question of the public option, or how much will we spend? How we pay for it?

For instance if we consider the Senate bill: the CBO estimate over 10 year that it will cost \$870 billions. The House bill was estimated \$1052 billions over 10 years. So the negotiators had to decide how much to spend: \$870, \$900, 1 trillion? And they negotiate a lot.

Our role and work, at the staff level was find ways to change policy to get to this targets.

Let me give you another example: Both bills wanted to expand coverage by expanding Medicaid and provided subsidies to low income people not eligible to Medicaid to purchase their health insurance in the exchange. The dividing line between the two bill was the maximum percentage of the federal poverty level to be eligible to Medicaid.

For the House, the dividing line was 150% of the FPL (\$33000 of income per year) and for the Senate, the dividing line was 133% (something like \$29400 a year). You probably know that Medicaid save more money than subsidies to private insurance, because Medicaid is more regulated... So, when we were asked to work on ways to save money, we came to the negotiators with a model transferring the dividing line of the House bill (150% of FPL max. to be eligible to Medicaid) to the Senate bill (133%). So we came back to the policy makers and suggest to increase the threshold in the Senate bill. This single measure would have reduced costs by \$60 billions over the next 10 years.

However, politically, it was just impossible to do that: we were told that the Senate would never accept a 150% dividing line. They would never accept, for ideological reasons that Medicaid cover that many persons, even if in fact this helped reduce the government spending.

So we had to find another option that would be able to get 60 votes in the Senate. It took us a lot of time to find it out...

So what did you do finally?

Sorry I can't talk about that...

However, let me tell you, we were very close to a agreement, it was just a matter of a couple of days. But then, you know what happen with the Senate race in Massachusetts: Scott Brown was elected and we lost the 60 votes. So in the House, we had to pass the Senate bill, with the reconciliation process to amend it.

What is interesting it that finally, we arrived to a solution that moved somehow the Medicaid dividing line from 133% in standard income to 138% in effective income.

What is an effective income? What does it mean?

Well, the standard income implies revenue of max. \$29400 (these are not the real number, just to give you an idea), but if you earn \$31000 you are still eligible to Medicaid.

It is a compromise. Members voted for the 133% line, but also to 138% because it lower costs. In fact, this little change makes million more people eligible to Medicaid.

This measure was meant to allow members to say they voted for 133%, but since they also wanted to drive cost down. It's one legislative trick, for the republicans... but you know both parties use these kind of strategies. We did kind of the same for different issues.

How would you describe the role of the leadership during this process?

I would say it was very very important. Unprecedented as far as I know. I've never seen a process like that. They spent immense time to work on this reform, which was the number one priority of the President, of Nancy Pelosi, as well as of Harry Reid. It reached an incredible level. We walked through all of that with the leadership staff.

You know, during Christmas, we just took 2 days off, and then we came back and the leadership came back to work with us as well. Even in the Senate, the leadership played a tremendous role and worked at the end of December. Right after the new year day members came back as well.

The leadership really wanted to finish it up. The process had already taken one year, and they were very concerned, they wanted a vote. On the other side of the aisle, the opposition wanted to savage up the bill. They attacked it every day and our margin of victory was very thin. If our opponents get one or two more votes, it was enough for us to lose.

Was the party discipline important?

You know, democrats don't have the same party discipline as republicans: republicans have more party discipline.

Health care reform is a classical example. Republicans made it very clear: none of them would vote for the reform. Even if in the media they claimed, "we want to be bipartisan", they clearly didn't want to go to vote. Only one republican from Louisiana voted for the House bill, but none of them voted for the rule.

In the Senate, Senator Baucus tried very hard to have some republican support, but in August, with all the town hall meetings, all these summer meetings it became very clear that the bill would not attract the vote of one republican. From the House side, it was very clear that the senate strategy was not realistic; we had to concentrate on negotiations among democrats, even in the Senate.

A turning point was in September, after this catastrophic summer, The Senate majority leader, Harry Reid took the lead of the process from then: he said to Baucus: "enough is enough. Now we need a bill, so we are just gonna negotiate between democrats". So Baucus was put aside of the process.

Max Baucus lost a lot of political clout with this process at that time.

Sure he lost a lot of credibility among democrats.

From the House side, it was clear for us that republican had absolutely no interest in voting for the bill. I knew some republican staff persons, and they told me their members will

oppose, whatever negotiation or compromise would have been made in the bill. They had just no incentive to work for the democrats and help them to claim credit for having enacted an historical bill... They just wanted to regain majority, so to kill the bill and then blame the democrats for their inaction...

So in early September, Harry Reid took it over.

What was the role of the Help committee in this process?

The Help committee was much more liberal than the Finance Committee. Baucus is a conservative democrat... It acted sooner than the Finance.

You know, there are big differences among democrats over several issues. For instance, if you take the public option, some democrats refused to vote for the bill if it didn't include a solid public option. But on the other side, some other democrats refused to vote for the bill if it included a public option...

So considering that the reform was the number one priority of the President and of the Congress leadership, and that we still lost 36 democrats... that is not what I call party discipline... At least in a European meaning.

After one year of negotiation, we had enough vote finally, we had enough party discipline, but this had never been a 100% party discipline.

Can you explain the process of the tri committee bill? What were your relationships with the other committees? What were your relationships with the leadership? Did you work in a "speaker task force"?

Well, to understand this process, you have to consider the 1993 reform. Back then, there were a lot of frictions among the different committees: about policy, about jurisdiction... This time, it didn't happen. It was partly because the three co-chairmen have known each other for many years. They were all liberals, they all had a lot of respect for each other. They all came from large urban state, from safe districts. All wanted to get this enacted.

Henry Waxman arrived here thanks to an unusual process, because he was not the most senior person of the Committee... his chairmanship played an important role in the success of the reform...

Yes... at the beginning of this Congress in 2009-2010, at the end of 2008, after the elections, Henry Waxman was the second most senior member of the Energy and Commerce Committee. But he decided to Challenge John Dingell for Chairmanship. It was highly unusual, Seniority is (still) very important.

Moreover Dingell arrived in 1964, he is the longest serving member ever. And his father was the original sponsor of the post WWII national health insurance legislation. Dingell came to Congress to enact health reform. He really wanted to be Chairman when this moment finally would have arrived.

But you know, now it's the democratic caucus who vote for the Chairs and Waxman won. Surprisingly enough, John Dingell accepted his defeat. He was however the lead sponsor of the House bill and his staff participated a lot to the negotiations during the tri committees process. His role decreased at Christmas, when the process became very leadership driven.

We were surprised of how smooth this transition was...

So back to the tri-committees process, it was not really a speaker task force. Wendell Primus and Liz Murray (Hoyer's counsel) were present to our meetings, but they let the committee staff working on the bill. It was really after that they took the lead, when it was about choosing what goes to the floor. The committee staff has most of the policy expertise. The leadership deals with matter involving the floor, with merging the different versions of the bills (after the three committees reported the tri-committee bill independently).

After that, more people got involved in the bill: Louise Slaughter (who had a master in public health) was very involved. But she came later on
Then, the White House was not involved at all before November. We just had meetings with them once or twice a week at the beginning of the process.

Where do ideas for the reform came from? What was the type of forum you worked with to put together the different parts of the Bill?

Well, a lot of ideas came from trade associations, the AHA, the American insurance plans, PhRMA. Actually everybody had a plan.

The administration didn't really give us directives or ideas. They refused (at least at the beginning) to tell us the right ways to go. So input mainly came from various committee staff. You know we have a lot of different experience within the committees: we have experts on Medicare, Medicaid, Insurance market, tax, drugs, public health.... For instance here, in the Energy and Commerce committee, we have Ruth Katz, who is the recent dean of the school of public health of George Washington University.

Also the CBO has a lot of expertise: they have tremendous health economist. The Department of HHS also has good experts.

Sometimes we talked with other experts at government, in some cases they would give us advice... but sometimes not, because they refused to make the same mistake as in 1993.

You are saying that your expertise is mostly internal?

We indeed have a lot of internal expertise. We have our Medicare expert, Tim Runniger, Tim Westmoreland is an expert in HIV/AIDS policy, but also in budget and abortion issues. We also have experts in Private health. I am myself an expert in Medicaid policy.

What about external expertise?

Well, even if I am an expert in Medicaid, I don't know everything about Medicaid. But the most important thing is that if I have a question, I know who knows the answer. And we call these persons, but on a very confidential basis. Every staff person would know some external expert, but it is very confidential.

Why is it so confidential?

You know the staff needs time to put things together out of the public focus. We passed the bill in July, but before Memorial day, we didn't want it out. We didn't want any leak. The opposition would have taken advantage of any information. For some conflictual pieces, for example abortion, it would have made the bill very hard to enact. So if we used advice from external persons, it was based on confidence and personal relationship. Our conversations were private. We didn't people know anything before the introduction of the bill in July.

A transparent process is something constructive, but it make things harder

I've heard about some experts having an important role in the process, for instance Judy Feder or Chris Jennings...

Well, these are typically the kind of persons some of my colleagues might want to call if they have a problem... Judy feder know a lot about long tern care. Chris Jennings knows a lot about private insurance, drug companies, class actions... So I would not be surprised if some of my colleagues call them, but I have no idea if they actually did that or not.

Washington seems to be a very small city, with strong interpersonal relations between key players. How and where these relationships are built? In France, most of our administrative experts come from one school, called the National Administration School, they get to know each other there in the first place. What would be your opinion about these socialization processes?

Well, here people came from so many different places... there is not just one school, neither just one degree. In the energy and Commerce for instance, we have lawers coming from Harvard, Yale, Penn. Moreover there is not only one generation: we have a large range of age, from 30 to 60 years old.

Lauren Aronson from the White House office of health care reform is in her late 20s. Wendell Primus is in his mid-60s, he's a law economist. Peter Orzag is from another school. I must confess that I had never paid a lot of attention to that...

Let's see... In the Senate, the staff key players were Liz Fowler, Mark Childress, David Bowen, the tax people, and Kate Leone, Reid advisor. In the House, the key players were Wendell Primus, an economist, Liz Murray from Steny Hoyer, Karen Nelson my boss, who is an undergraduate from Cornell, and then had a long carrier on the Hill (and in the HHS in the 1970s). You also have Cybele Bjorklund who has a Master of public health from John Hopkins, as well as Michele Vanhaggen (Miller) who's a labor lawyer, specialized in ERISA. In the White House, Nancy Ann DeParle ...

At least you can see that this reform is a major policy success for women... Who knows, maybe this had an impact on the reform? They may have a different decision making style... All the more, it was not the case in 1993, there were very few women.

So I guess the school is not the key point in building interpersonnel relations here... What about the think tanks, consulting firms, and lobbies... are they key places where policy communities are built? You were in the past in the Center for budget priorities, with Judy Feder...

The Center for budget priorities is a think tank liberal, its strength is to provide very quick responses to problem, to move very fast. When someone asked a question, it is able to provide a memo the next day, saying why it is good or not. It has a lot of credibility among politicians, because its papers are based on reliable sources, on facts... It is sure, it is quick. It is founded by foundations, you can go to their website to see which foundations, who want to make sure it is quick.

Some of my former colleagues from there now work for the government: for instance Cindy Mann is now at the CMS, she runs the Medicare program.

The area of expertise of this it is very narrow, focused on the budgetary process. For instance, they have very good knowledge about reconciliation language, they are a great source of outside expertise.

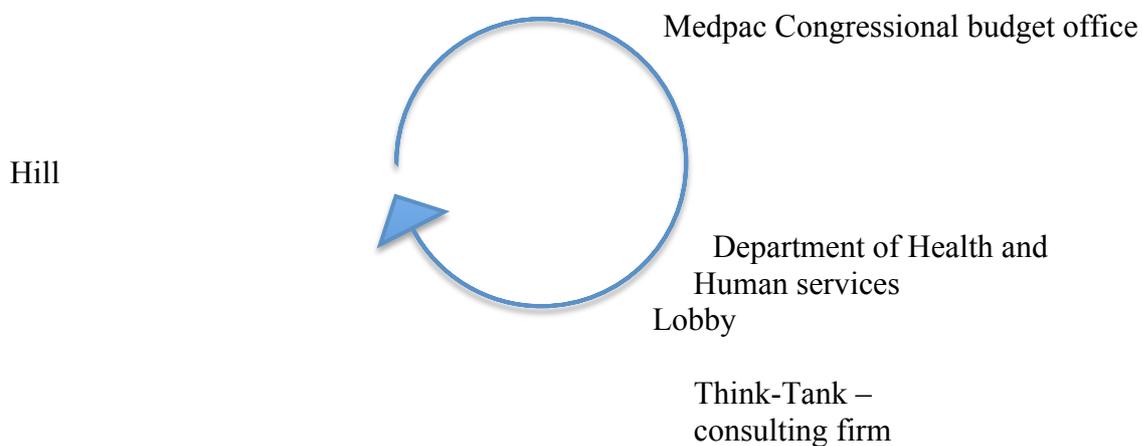
They don't focus in Health policy though, more on budget issues. It gathers a lot of people from the CBO, the OMB...

What are the forums specialized in health policy?

Well I would say MEDPAC is a very important place for the Medicare Community. It's an independent Congressional agency, which provides advice on the Medicare program. On here you will find people to/from the Hill, to/from the HHS...

A classical trajectory is medpac – cms – CBO- Hill (in different order though). Its kind of like a circle.

carrière type de la Medicare Community



For instance **AVALERE Health LLC** is an advisory company that provides a lot of politicians. Its founder worked for the OMB, then he was a ways and means staff, then he worked for Medpac.

You mentioned Chris Jennings before; well he has kind of a very classic career in the Washington circle: in 1990, he worked for the Senator Pryor (the father of the current Senator Mark Pryor), from Arkansas, and then he went to work for President Clinton.

In his case, the “Arkansas” connection worked pretty well...

So people who worked with him at that time would continue to rely on him. He now had his own consulting firm and he is very successful. This round, he was very influential for pharmaceutical issues, since he was representing the generic industry during the debate.

This is a very fragmented environment... and you know, I just know about the liberal organizations. They have the same kind on the right. Republicans also come from different schools...

These people have worked for Reagan, Bush, on the Hill, in the White House, in lobbying firms. I would say that the Heritage foundation is kind of the right counterpart of the Center for budget priorities.

You know, about the diversity of education trajectories... We also have a lot of doctors in this community, in the Energy and Commerce committee, our doctors come from Browns medical school... you met Steve Cha, who was a fellow at Yale. He was an intern of mine at the center for budget priorities (?). One physician who worked here in the 1980s is now working for the CMS as chief program integrity officer. He work at preserving the integrity of the different programs against fraud and abuse.
...Today, it seems that we have less doctors... but still.

What about academics? would you say that you use their expertise a lot?

Well, we have Ruth Katz and Timothy Westmoreland working for us in the Energy and Commerce, but I think this is quite unusual.

More broadly how would you assess the influence of academic people in the policy making process? (for instance Enthoven, Marmor, Oberlander)

Enthoven never worked on the Hill, he was a advisor to President Clinton , he's the father of the "managed competition theory".

I would say, they don't influence our work directly. We listen to what they do when we have time...

Jonathan Gruber is the only academic deeply involved in the policy making process... because he had an economical model that replicates the estimates of the CBO, but more quickly. He was able to tell the White House how much a specific reform will cost, very quickly, while it would have taken 7 to 10 days to the CBO to run the model. And he was being paid by the administration for the model....