



Interview with Nick Littlefield

Nick Littlefield, Partner and Co-Chair, Government Strategies Group, at Foley Hoag LLP, concentrates his practice in the areas of biotechnology, biomedical research and healthcare technology. He specializes in regulatory, administrative and legislative issues for large and small companies, non profit organizations and trade associations. For nine years until 1998, he served as Staff Director and Chief Counsel for Massachusetts Senator Edward M. Kennedy on the United States Senate Health, Education, Labor and Pensions Committee, where he worked extensively on biomedical research, health policy, regulatory issues and legislative initiatives. Nick Littlefield is currently the health policy advisor for John Kerry's Democratic Presidential campaign.

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HHPR: *You have had a successful career both as a lawyer and a professor. How did you become interested in health care?*

NL: When I got out of law school, I was very interested in public service, because I had gone to college during the 1960s, when President Kennedy was president, and was inspired, as so many of my generation were, by his call to public service. After law school, I did some work organizing against the Vietnam War, and I became a federal prosecutor in New York. Then I taught at Harvard in the areas of government law, particularly prosecution, investigations and criminal trials.

In 1988, I was asked by Senator Kennedy to go to Washington to be the chief counsel for the Health, Education, Labor,

and Pensions Committee in the Senate. While I worked for Senator Kennedy, I became very interested in health care, and I was deeply involved in healthcare policy. I was very much involved in the drafting and the preparation of the legislation that is called the Children's Health Insurance Program, as well as the Health Insurance Portability Act, the Ryan White AIDS Care Act, and NIH and FDA reform.

Then in 1998, ten years later, I came back to Massachusetts to be a lawyer in private practice again. This time I wanted to practice in the area relating to biomedical science and health care. When I went to work for Senator Kennedy, I became very deeply committed to making health care more accessible, making health care more affordable, making sure people had

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Conducted by Katherine M. Cembrola, a Junior Biochemical Sciences concentrator in Leverett House.

a decent wage and making sure that people with disabilities got civil rights. When I worked for the senator, I had the chance to fight all those fights on behalf of people who were so disadvantaged in these regards. That sort of became my passion working for Kennedy, and when I came back to Boston, that is what I tried to keep doing.

HHPR: *What is your position in the Kerry Campaign?*

NL: I have known Senator Kerry for almost 30 years. We worked together first in the anti-Vietnam War effort in the 1970s, and then again when I was working for Senator Kennedy and Senator Kerry was in the Senate as well. Kerry knew that I was involved with health care, and he asked me to put together his healthcare plan. I organized a group of people in Massachusetts, because there is a lot of healthcare expertise up here. We talked with Kerry about it all the way along, and he came up with his plan after working closely with us. He gave a speech in May where he rolled out the plan, and it has been very much a part of his campaign since then.

HHPR: *What are the most pressing issues you think the healthcare system needs to address?*

NL: When I worked for Kennedy, we were in the Senate while the Clinton healthcare plan was being developed, and when it collapsed in 1994. I learned something about how to advance the cause of health care, because I saw that how it was done by the Clinton Administration did not work. If a new president is going to take a big social program and move it through the process, he has to do it in the first one hundred

days of the administration. That is when a president has the power; that is when he has the opportunity.

In addition, the big lesson that I learned was, when you present a big healthcare bill to the country, you have to talk not only about the uninsured, but also about the 85% of the people who already have insurance. What I talked to Senator Kerry about, and he agreed with me, was that we should talk about helping the people who already have insurance to keep it – helping to make it better, helping to reduce the cost of it, to make it affordable. Then we could, in the same legislative effort, cover the uninsured.

We learned that a third of the cost of health care – 500 billion dollars of the total 1.6 billion dollars spent on health care – in this country is due to non-clinical costs. We also were aware that the administrative systems that are used are very archaic; they do not use the best of current information technology to manage the healthcare system today. We figured if we could come up with a streamlined system that could administer health care and keep track of everything, then we could come up with a big savings from using technology. We could save one third or more of the administrative costs that are already spent and wasted on archaic systems and excess paperwork. We came up with what we called the “technology bonus,” which would come from reducing administration costs. Then we came up with a “quality bonus.” It turns out that if you emphasize preventive care, if you provide disease management or case management for people who have chronic illness, you can keep patients healthy, keep them out of the hospital and save money that way.

We came up with a three-part plan to

reduce costs: the government pays for the most serious cases; we use technology to reduce administrative costs; and we improve quality by putting into place disease management and other measures. That was how we dealt with the cost side.

For the coverage side, we have a very simple proposition. The members of Congress have a very good health plan, and if it is good enough for them, it is good enough for all Americans. The Kerry plan would allow every American to get insurance through the Federal Employees' Health Plan, if they chose to do so. We would also expand health insurance for children to cover all children, and shift the cost of Medicaid from the states to the Federal government level, which would save the states a considerable amount. The cost of the whole thing came out under \$75 billion a year, which is a drop in the bucket as compared to the cost of the president's tax cuts going to the rich. We figured that if you eliminate the tax cut for only the very wealthiest Americans who make over \$200,000 a year, you could pay for health care and provide better quality and affordability for everyone.

In terms of the most important health policy issues, I have talked about cost and accessibility. Another crucial issue is how to foster the biomedical research that we know we are capable of – we need to make sure that we are doing everything we can to encourage innovation in scientific research. We must not allow restrictions based on ideology, such as limiting stem cell research, to impede biomedical research. We are very concerned about the disparities in health care between racial and ethnic minorities and the majority. It is an incredible problem that has to be dealt with; you cannot have sectors in our

population getting substandard care based on their race. Those are some of the issues – cost, access, innovation and disparity.

HHPR: *Extending insurance coverage to nearly all Americans is a goal of the Kerry healthcare plan, yet a greater concern of the plan seems to be improving the affordability of healthcare insurance. What steps do you think will have the most effective results in bringing about this change?*

NL: In thinking about the plan with Senator Kerry, we realized that only a small percentage of people actually get sick and incur the great bulk of healthcare spending. When some member of a family insured by a small business gets very sick, the next year the cost of insurance for that small business goes way up, because the insurers base their premiums on the experience they have had with that group. This means that the small business cannot afford health care the next year, so they drop coverage for everybody or the price goes way up. Senator Kerry came up with the idea, well, why not provide, basically, extra insurance from the government for any case that costs over \$50,000 in the course of a year. For any individual whose healthcare needs go above \$50,000 in a year, the government will cover 75% of the cost above \$50,000, which will mean that the insurance rates for everybody can come down by \$1000 per family, because the insurance companies do not have to worry about paying for these very expensive cases. We worked with all the actuaries and the healthcare legislative drafters, designing what we called a “premium rebate,” and we talked to people all throughout the country about whether we could set up a system where the government would be the insurer for catastrophic cases. That is

the heart of the Kerry cost saving strategy for individuals and businesses.

HHPR: *With Senator Kerry's proposed "premium rebate" pool, healthcare coverage would be made more affordable for employers and employees by having the pool reimburse employee health plans for 75% of the cost of expensive cases (exceeding \$50,000 in costs). The savings would be distributed to reduce the cost of the employees' premiums. What incentive will insurance companies have to control costs if the high-risk beneficiaries will be covered by these reimbursements?*

NL: First off, the insurance companies are being reimbursed by the government. The government will have all sorts of incentives to reduce cost, and the government is the most powerful cost reducer in the system already. The government provides insurance for poor people through Medicaid and for seniors through Medicare, and they basically set the prices in all of those categories. So if the insurance companies are not paying, the government will still be paying, and the government will be driving the cost savings. Moreover, insurance companies will have incentives to keep the cost down for people whose expenses are under \$50,000, and they will still be paying 25% of the cost above \$50,000, so I think there will still be pressure to control costs.

HHPR: *Although the proposed healthcare plan would eventually extend insurance coverage to nearly 96% of Americans, the plan would have an average annual cost of \$72 billion. How will this cost be covered? Will tax cuts of the Bush administration be reconsidered?*

NL: I talked about the tax cuts for the rich that Bush passed. I have always believed that for what we are paying now as

a society for health care, we could actually cover everybody. Twelve or thirteen percent of our Gross Domestic Product goes to health care. Britain, Germany and other industrial countries pay about eight or nine percent of their Gross Domestic Product, and their healthcare outcomes are just as good as ours are, if not better.

To me, healthcare reform is all about leadership. Until there is a person in the White House or in a governor's office that wants to make healthcare reform a priority, it is going to be hard to make sure everyone has coverage. If we did have someone in power who was willing to do that, we could do it. We could get a lot more money made available to provide insurance for the uninsured, simply by rationalizing everything. For example, we now pay for people who do not have insurance when they go to the emergency room. The hospital has to get paid, so it gets it out of some free care pool or basically raises the costs of insurance to everybody who is insured. The hospital may also cover the cost in some other way and never be reimbursed. We are already paying for people's health care, and we are paying for it after they are sick, when it will be more expensive and when it may be too late to do anything. The costs are going to be so much greater because we waited: we did not provide prevention; we did not provide care management. We did not utilize advanced information technology to reduce medical errors and excessive administrative costs. If we could rationalize all of this, I think we would do much better.

HHPR: *The idea of universal healthcare coverage is one that appeals to many Americans. With the goals of the Kerry healthcare plan to extend coverage to such a high percentage of Americans,*

how will the Kerry administration best pitch this new policy to the general public so that Americans will be willing to pay for it?

NL: Throughout the run up to the primaries and since then, we have been watching the polls go up every month, in terms of the importance of health care as a big issue. Everybody is affected by the cost of health care, even if they have health care. Everybody worries about the comprehensiveness of their health plan. Kerry's approach focused first on the people who have insurance, to reduce the cost of it and strengthen it. A lot of the objections that people have and the worry they have is that if the government is going to cover the uninsured, then the people who already have insurance are going to see their costs go up. The Kerry plan deals with that by first focusing on the people who have insurance.

HHPR: *With one of the main goals of Senator Kerry's healthcare plan being to control spiraling costs of health care, making malpractice insurance more affordable has become an important point. However, will the proposed review of malpractice cases have high administrative costs?*

NL: Well, it is not clear to me that the malpractice system is as badly broken as people say it is. Clearly, in certain specialty areas, malpractice rates are impossibly high and driving providers out of these areas. But there is a lot of evidence that even when you put a cap on the amount that an individual can be forced to pay in a malpractice case for punitive damages or simple compensatory damages, you do not necessarily reduce the cost all that much of the insurance.

There is a strong sense that if you look

carefully at insurance companies, to see how they are using their proceeds, you see that a lot of the high cost comes from the way insurance companies are running their businesses. I am not an expert on this, but I do not believe that we should take away people's right to be made whole as best we can through money judgments when a doctor is proven to have engaged in malpractice. However, there have to be ways of reviewing cases so that frivolous cases do not get into the system, and I think that is what John Kerry is proposing. You cannot have the system abused by merit-less cases, or by lawyers who are just threatening doctors in cases when the facts are not there. There is a balancing act that we tried to capture in the Kerry plan on that issue.

HHPR: *Senator Kerry's plan also aims to insure every child in America, and one proposal to accomplish this feat is to have the Federal government cover the cost of children enrolled in Medicaid, with the states covering the cost of children in the Children's Health Insurance Program (CHIP). What will be the logistics of making this change, and how will it involve the interaction of the federal and state governments?*

NL: We have a different set of rules for the CHIP program than we do for the Medicaid program. The reimbursement rates of the federal and state governments are somewhat different, so it does make sense to somehow coordinate these two programs better. The problem is that the CHIP program gives families the right to pick from a series of private health plans to insure their children, whereas for Medicaid, basically the government is running the program. It might be very hard right now to switch people who are already in

CHIP into a government program. They would lose the doctor, or pediatrician, that they have been seeing from the time they were born. I guess I have not focused on this question about how difficult this change would be. The real need in the area of children's health care is to get children who are eligible for these programs to sign up, because there are many children who are still uninsured and should not be.

HHPR: *What do you see as the role of states? The role of the federal government?*

NL: Well, if the federal government were willing to step out in front and provide insurance for everybody, then the states could wait. But the federal government has not been willing to do that since 1994; they have not even been able to try. I think Senator Kerry, if he is elected president, will go right after this in his first 100 days. If Bush stays as president, then we are not going to have any leadership, meaningful leadership, at the federal level on health care, and it will be up to the states.

We have a whole series of initiatives in Massachusetts. We just collected 75,000 signatures to get a referendum on the ballot for 2006 that would amend the constitution to say that health care is a right for residents of Massachusetts, and the legislature has to figure out how to make that happen. In Maine, they have just come up with a complete universal healthcare program, which the new governor, Governor Baldacci, pushed through the legislature in the first three months of his term last year. In California, they now have an employer mandate requiring employers to provide their employees with health care. The states can act, and I think if the federal government does not, more and more

states will.

HHPR: *What do you think of the Medicare prescription drug bill? What are its flaws? Its benefits?*

NL: Well, I know a great deal about that. I was involved in trying to achieve a bipartisan bill, which would focus on Medicare drug coverage. That is the way the bill was when it passed the Senate in July. Unfortunately, the Senate bill went to a conference committee, and the Republicans shut the Democrats out. The Democrats opposed the final bill because they believed the Republicans in the conference changed it from a Medicare prescription drug coverage bill to a bill that imposes major changes in the underlying Medicare program. Democrats believe the Republicans put in place in the bill all sorts of incentives and inducements to get people out of Medicare, into private insurance. That is not what the Medicare drug bill was supposed to do, and in that respect, there is going to be a big battle over that bill. It is wonderful to get \$400 billion-plus dollars into a new social program to help seniors cover their drugs, which is an absolute moral imperative for the government to do. You cannot guarantee people health care and then leave out prescription drugs. To repeat, covering the cost of prescription drugs in Medicare is crucial, as is the innovative biomedical research that produces breakthrough treatment for seniors. What was not beneficial to seniors was the effort to privatize the underlying Medicare program, which pays for doctors and hospital costs. I think it is going to be played out during the election campaign over the course of the year just how popular that bill ends up being. 