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THE LEGISLATIVE PROCESS: A PRIMER ON PROCEDURES AND PITFALLS

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by

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I am really puzzled as to why I was picked for this task of discussing the basic steps in the passage of national legislation. Actually, I have about as much interest in legislation as has President Johnson. We both tend to approach the problem philosophically -- e.g., expound the issues, corral the votes and pass it right NOW.

I do believe there are certain necessary and sufficient conditions for the passage of legislation. Conversely, I know there are a number of platitudes and bromides about legislative techniques which enfeeble the efforts of many national organizations. Because of a severe limitation of time imposed upon me in the presentation of this paper, I will have to set down the ensuing observations more or less as obiter dicta. I hope you will realize and understand that most of these ruminations could be discussed at considerable length, allowing for various shadings and considerable documentation. But the clock on the wall runs without compassion. So on with the primer approach:

1. Most legislation is the end result of prolonged public discussion of an "issue". This public discussion can either be directed toward specific legislation, or it can continue in an amorphous, general way, producing nothing but technical papers for professional journals and ensuing public weariness. For example, for a number of years I read or heard papers by distinguished psychiatrists deploring the shortages of psychiatric manpower. They celebrated the obvious, but they proposed no solutions.

I felt the same way about some of the articles I was writing, and speeches I was delivering, about the bankruptcy of the custodial state mental hospital system. I had tried for a decade -- along with many others -- to lift the level of care in these institutions. We worked through the Council of State Governments, and two studies were published which were essentially broad indictments of existing conditions. However, despite the convening of a pioneer 1954 Governors' Conference on Mental Health, and many additional regional Governors' Conferences, we really only accomplished some patchwork on a rather tattered garment.

[There was a demonstrable need for a profound, incisive national study on why we were failing to cope with the problem of mental illness and what alternatives could be provided in lieu of long-time, tax-supported custody of mental patients. The clarion call for such an approach was sounded by Dr. Kenneth Appel, then President of the American Psychiatric Association, at the 5th Mental Hospital Institute in Little Rock in 1953. This speech, and other efforts, led to the formation of a non-governmental Joint Commission on Mental Illness and Health. It is important to note that there was deep Congressional involvement in this study from the very beginning, as there was involvement at the state level. I stress this point for a very simple reason -- I have seen too many of these studies prepared in a kind of broad vacuum with no impact other than that on already interested professionals.

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The very fact that the Congressional Mental Health Study Act of 1955 mandated a final report to the Congress, and to the Governors of the several states, meant that this report had to be taken seriously. There was a degree of ego investiture on the part of Congressional sponsors of the study which guaranteed continued interest.

This leads me to the main observation of this short paper -- there is no substitute for this kind of National Commission approach in developing the facts and reporting them to public officials. It is, as you know, the White Paper device which has been used so successfully in England for a number of years. Through this type of study, you develop the facts, you involve a great number of organizations previously not interested, and you hopefully create a militant consensus in support of the findings of such a Commission. The White Paper, or Commission report, is the foundation stone for legislation, and it provides an obvious answer to the familiar myriad of charges raised by hostile legislators -- you didn't study the problem long enough, your conclusions were hastily drawn, you didn't consult a broad enough segment of professional groups or of the American people at large, and so on.

2. There then follows a period of education -- of familiarizing key governmental officials, national organizations, and a segment of the public with the general findings and conclusions of the report. For example, I believe the early opportunity given Jack Ewalt and myself to address the Governors on this question -- we spoke to them at their annual conference in Honolulu in July, 1961, three months after the issuance of the report -- was an appreciable factor in leading to the special Governors' Conference on Mental Health later that year, and to the eventual support of the Commission's findings by most of the Chief Executives of the states.

During 1962 the National Leadership Conference in Washington, and the various regional leadership conferences sponsored by the National Association for Mental Health, were very useful in bringing the conclusions of the Commission report to many representatives of national organizations not previously identified with the mental health field. At that time, I expressed the opinion that there should have been more state legislators invited to these regional meetings, since I knew that they would be asked in the ensuing period to appropriate matching monies for the construction of community mental health centers.

3. After this period of hopefully diversified public education, you are then ready for the legislative mill. The first step, of course, after introduction of the necessary legislation, is the hearings before the Congress. The value of hearings is a most difficult subject to discuss in a short time, so I shall try to be very careful in the few points I can only enunciate and not document fully.

The quality of the hearings is of importance to the degree that, if you fail to make your case at the hearings, you are almost invariably through. Conversely, if you have excellent witnesses and a good committee turn-out for the hearings, you have gone only a small part of the way toward the passage of the legislation.

Frankly, the 1963 hearings on the community mental health legislation were far from top-notch. The Department of Health, Education and Welfare did a very poor job, and in the selection of witnesses did not even allow Dr. Robert Felix to testify. The Governors selected by the Council of State Governments were not those who had a deep commitment to, or a real understanding of, the new legislation; they represented states which were not pioneering in community mental health center activities.

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These deficiencies, particularly in the House hearings, plagued us through the long summer of 1963. They were not the only reason for the defeat of the staffing provisions that year -- I must, in all fairness, give the American Medical Association credit for this aspect of its massive program to repeal the 20th century. However, starting off with the handicap of a bad set of hearings is almost fatal to some parts, or all, of the legislation you are proposing.

But hearings are far from being the whole ball game. Most senior members of a committee fastidiously avoid public hearings. All members of the Congress who are not members of the particular committees involved do not attend the hearings, and it is nonsense to pretend that they read the hearings.

I am often amused -- and sometimes quite annoyed -- at the importance which most national organizations attach to these hearings. They send representatives down to Washington who deliver long, verbatim statements at hearings which run into the late afternoon and exasperate the patience of Congressmen.

A recent newsletter from a large organization in the mental health field -- whose name shall go unidentified -- claimed that it had "materially assisted" the National Institute of Mental Health in obtaining additional monies for training as a result of the testimony of its representatives this year before the House and Senate Appropriations Committees. I can only say in all frankness that all of the testimony before the Congressional committees, including my own, had little or no effect on the final decision made by the Senate to increase the NIMH training funds. This decision was reached after a number of meetings with key Senators which involved considerable lobbying, some hand-to-hand combat, and a delicate adjustment of the needs of the NIMH to the competitive needs of all the other Institutes. None of this, I assure you, was performed in a public forum.

Who reads the hearings? Well, the professional clerks of the committee to make sure that a particular Congressman has not cast aspersions on motherhood, or attacked the American Legion. Outside of that wide readership, Harry Schnibbe and I read the hearings, and sometimes I wonder about Harry.

4. With the conclusion of the hearings, the really decisive work begins -- the button-holing and pinpointing of members of the committee for votes. In theory, this is best done by people from the Congressman's home district, but in actual practice it doesn't often work that way. An uninformed lobbyist isn't worth very much; the Vote for Mental Health approach isn't very effective. Much more persuasive are specific, factual arguments highlighting the human needs which have spawned the legislation plus the pristine facts documenting and relating these needs to the Congressman's local district.

Let me cite one example -- among many I encountered during 1963 -- in the unsuccessful effort to include staffing provisions in the House version of the community mental health center legislation. Representative William Springer of Illinois is the ranking minority member of the House Interstate Commerce Committee. His vote is crucial because most Republican members on the committee tend to follow him. He was using the argument that Illinois, as proof positive of the vitality of States' Rights, had floated a bond issue guaranteeing the construction of eight community mental health centers in various parts of the state, including two in his own district. It was obvious, therefore, that the big pitch to Springer should revolve around the federal staffing support needed to aid these centers in the early years of their development.

I told this to a high ranking officer of the Illinois state mental health association, who knew Springer and had agreed to come to Washington and speak to him. The officer in

question had a long interview with Representative Springer and when she called me, she was ecstatic. She reported that Springer was all for the House approach to the legislation. This comment alerted my anxiety titre, and I asked her what Mr. Springer had said about staffing.

"Oh," she replied. "He didn't want to discuss that, but he said he was strongly in favor of the construction phases of the bill."

5. After the pulling and hauling and rumpling of Congressmen's clothing, there comes the moment of truth -- the need for a hard vote count indicating where you stand and very importantly, if you don't stand very well, exactly which Congressmen you have to pick up.

I learned the necessity for an accurate vote count the hard way. In 1949, during my first year in Washington, I was lobbying for federal aid to medical education. At one point in the process, the Administrative Assistant of a very powerful Senator showed me a poll which indicated that we had approximately 50 votes. The poll had been paid for by an anonymous proponent of the legislation, and had been conducted by a radio reporter for a fee of \$500. I looked at some of the affirmative votes on the poll, and I gagged. I then proceeded to do my own poll, talking only to Senators and not to Administrative Assistants, Legislative Assistants or bottle-washers in their offices. I came up with a hard 35 votes, which was unduly pessimistic -- we got 37 votes on the floor that year.

Perhaps I can sharpen up the foregoing observations in terms of the differences between the 1963 and 1965 efforts on behalf of the community mental health center legislation. Why did we lose the staffing provisions in 1963, but regain them in 1965?

First of all, we had infinitely better hearings. Some of us persuaded then Assistant Secretary for Legislation Wilbur Cohen to include Dr. Stanley Yolles, the Director

of the National Institute of Mental Health, in the testifying team. A major reason for including Dr. Yolles was that for the preceding year, under the strident urging of some of us, the NIMH had been digging and obtaining hard evidence of how many states and local communities were holding back on participation in the national community mental health center program because of the absence of operating funds. Dr. Yolles made a major impact on the committee with his factual testimony in this area.

Secondly, we picked the Governors this time, and we chose three who were knowledgeable, articulate and had pioneer community mental health center programs under way. Chairman Oren Harris, and many of the members of the committee, commented on the incisive quality of this testimony from the Governors.

Finally, two pivotal conferences, held in the Spring of 1965 in Washington, had considerable impact. The American Psychiatric Association Conference on Mental Health Planning was the more potent of the two because of its heavier Congressional representation. The banquet addresses by Senator Hill and Congressman Fogarty, both supporting the staffing provisions vigorously, and both ripping into the glacial negativism of the American Medical Association, had a major impact upon Congressman Harris, who also spoke, but who listened very carefully too.

The conference less than a month later, sponsored by the National Association for Mental Health, gave members of state and local mental health associations an opportunity to fan out and visit their individual Congressmen.

As a consequence of these two conferences, Congress really got the feeling of a mandate from the people; this played quite an important role in the successful passage of the staffing legislation.

This chronicle of legislative pitfalls and procedures has left out so many important points that I am quite unhappy about it. I must confess that it really requires book length treatment, and I contemplate doing such a volume -- when it is safe to do so.

In conclusion, may I just refer elliptically to a couple of very important points which I have elaborated upon elsewhere:

Be very frank and non-defensive about the cost of any proposed legislation. If you don't give your proposals a price tag, your enemies certainly will, and it will be an inflated one. The cost should not be given as a solo item; it should be related to existing expenditures for mental illness in this country.

The National Committee Against Mental Illness puts out a 50-page fact book during every Congressional session pointing out these costs, the savings due to the significant reduction of patients in state mental hospitals, examples of further savings achieved in existing community mental health programs, and other data which justify additional expenditures for mental health.

Outlining the costs is only part of the job. When you talk about increased expenditures in the mental health field, you run up against all the bromides about the confiscatory nature of present tax levels. These resistances must be overcome, and in a hard-hitting, factual way.

For example, in absolute terms state and local taxes have gone up enormously over the past twenty years. But when you relate these tax increases to comparable increases in average personal income, you find that state and local taxes consume about the same percentage of personal income as they did two decades ago. In quite simple terms, a man with an annual income of \$10,000 is in a much better position to handle a \$500 annual tax bill today than he was fifteen years ago when he had an annual income of \$3,000 and was confronted with a \$300 tax bill.

You must relate proposed tax increases to the ability to pay. As some of you know, I have been making this speech for the past decade, and I wish someone would relieve me of this lonely chore. The Council of State Governments, for one, is a likely candidate for the job -- it has sat back and seen some very fine Governors defeated because they have proposed additional taxes for necessary health, educational and welfare needs.

In summary:

1. Know the proposed legislation deeply and well.
2. See your Congressman or state legislator personally -- preferably when he is back home in the district and has some time. Be kind to him, even to the extent of buying him a lunch. And don't just talk at him -- listen to his reservations about increased taxes or whatever, and come up with some factual answers.
3. Tell your legislator what it will cost in terms of increased taxes, but relate these costs to other national expenditures -- \$40 billion for a national highway program, \$11 billion annually for liquor, etc. Make him fully aware that the legislation may necessitate additional taxes, but that you are willing to pay your share.

Then -- having done all this -- go to the church of your choice and pray.