

COMMENTARY

GOVERNMENT WILL RESPOND TO THOSE WHO SEEK INFLUENCE



Public frustration with the U.S. Congress is the result of lawmakers' attempts to respond to every demand that is made, rather than making difficult discriminating choices between those demands, argues Dan M. Berkovitz, legal counsel to the U.S. Senate Committee on Environment and Public Works. In this excerpt of a speech given on June 9, 1992 at the Annual Meeting of the Society of Nuclear Medicine, Mr. Berkovitz encourages faith in the political process and shows how efforts to inform legislators worked to overcome excessive regulation of airborne radionuclide emissions. The Environment Committee has jurisdiction over most of the nation's environmental laws, including the Clean Air Act, the Atomic Energy Act, and the Resource Conservation and Recovery Act.

CONTRARY TO CURRENT POPULAR BELIEF, the American political process is fundamentally sound, and the system can and does work on most occasions. The political process has worked in the past for the nuclear medicine community, and can work for you in the future. I will use the case of how the Congress considered a controversial measure of the Clean Air Act affecting the nuclear medicine community as an illustration of how the process still works. My goal is to strongly encourage the members of the nuclear medicine community to have faith in and to participate in the political process.

It's no news to anyone that at this time there is a lack of confidence in the traditional political process. The public's opinion of Congress is near all-time lows. Congress is commonly criticized as out of touch, unresponsive to the common people, and captive to special interests, and it is said that within the Congress there is a lack of leadership.

If lack of leadership means a failure to oppose the prevailing will of the public, then I would concede there is a lack of leadership within Congress. However, in a representative democracy it is very difficult—if not suicidal—for politicians not to follow the will of the people. If politicians don't respond to what their constituents want, then they won't be politicians for very long. As Sam Rayburn, who was speaker of the House for sixteen years, said, "You cannot be a leader, and ask other people to follow you, unless you know how to follow too."

Much of this criticism of Congress—that it is unresponsive, out of touch, and a captive to special interests—misses the

mark. In reality, the problem may be just the opposite. The public's frustration with Congress may be a result of Congress attempting to respond to every demand that is made, rather than attempting to make difficult discriminating choices between those demands. By trying to please everyone, Congress pleases no one.

Congress is very responsive. Congress responds not just to special interests—which is a rather fuzzy label that always seems to refer to the interests that other people want, not to the interests that we want—but Congress responds also to all sorts of persons or groups that choose to make their views known. Congress responds not just to big oil companies and banks, but also to farmers, teachers, minorities, the elderly, environmentalists, and whatever other groups lobby on specific issues. Congress even responds to the interests of nuclear medicine.

As Senator Warren Rudman, who in frustration is not running for re-election, puts it, Congress is "too much in touch." According to the *Washington Post*, Senator Richard Lugar describes Congress as a "hyper weather vane", "spinning feverishly in response to every poll that comes along."

The difficulty that popular government encounters in trying to say no to constituent and special interests, in the name of the greater good, is nothing new.

In 1788 James Madison warned of the destructive effect upon the public good of competing "factions," which was Madison's term for special interests. Factions, in Madison's view, were "sown into the nature of man." Madison believed that it would be very difficult for a democratically elected government to control these factions. Madison wrote "It is in vain to say that enlightened statesmen will be able to adjust these clashing interests and render them all subservient to the public good. Enlightened statesmen will not always be at the helm." The founding fathers' solution to the problem of competing factions was the form of limited and representative government created by the Constitution that we have today. Under this government, in Madison's words, "ambition would be made to counteract ambition." From this process would emerge the public good.

There's nothing new in the complaints about Congress today. Just as Madison observed, government will respond to those who seek to influence it. And Congress does a pretty good job of reflecting the interests of the various groups in American society that seek to influence the Congress. The Scottish philosopher Thomas Carlyle wrote in 1843 that "In the long-run, every Government is the exact symbol of its Peo-

ple, with their wisdom and unwisdom, we have to say, Like People like Government." If there is a lack of direction in American politics today, it is as much a failure of the public to provide a clear signal as to where it wants to go, as it is a failure of the Congress to lead it there.

What has this got to do with nuclear medicine, you may be wondering by now. Three points are important. First, the political system affects nuclear medicine in many ways. Regulations, licensing, and waste disposal, are a few of the environmental and regulatory issues that affect the practice and availability of nuclear medicine. I'm sure there are many more issues that affect you that you have more familiarity with than I do. Because of this pervasive presence, it is important for the nuclear medicine community that the political system be responsive to your legitimate concerns. Second, the system can and will respond to your interests. Maybe not always the exact way that you would like, but it will respond. Third, if you want the political process to advance the interests of nuclear medicine, and benefit the general welfare as a result, then you must participate in the process. The political system will benefit the public only to the extent that the public participates in the process. That's the way the system was designed, and that's the way it works.

Clean Air Act Amendments

Consider the following example of how Congress can respond to legitimate interests and create good public policy. The so-called "dual regulation" issue arose during debates over the Clean Air Act Amendments of 1990. Specifically, the question was whether the emissions of radionuclides from sources regulated by the Nuclear Regulatory Commission under the Atomic Energy Act should be exempt from regulation by the Environmental Protection Agency under the Clean Air Act.

This was not a headline issue. It was important, however, and could have severely increased regulatory costs to the nuclear medicine community. Although the public rarely hears about this type of issue, it is a good illustration of how Congress works on conflicts that are solvable, and of how, despite the competing interests we must deal with, Congress can do the right thing.

The Clean Air Act Amendments of 1990 were intended to address the problems of acid rain, air quality in American cities, emissions from cars, trucks, and buses, and airborne emissions of air pollutants that could cause cancer in humans, the so-called "air-toxics."

Under the earlier Clean Air Act of 1977, radionuclides were considered a hazardous air pollutant. In the late 1980s the federal courts ruled that this meant that the EPA was required to regulate the emissions of radionuclides from all sources. Although the EPA had argued in court that it made no sense for EPA to regulate radionuclide emissions from sources already regulated, such as sources that were subject to licensing by the NRC, the court found that the statute contained no

exceptions. The EPA was therefore required to regulate radionuclides in the same manner and under the same methodology that it was to regulate other hazardous air pollutants, such as benzene, asbestos, and coke oven emissions.

The Costs of Dual Regulation

The EPA and the NRC agreed that regulation under the Clean Air Act would not provide any health benefits to the American public. Dual regulation would cost money, however, since the methods of demonstrating compliance were different under the two statutes. Although the nuclear power industry could absorb the anticipated \$10,000-\$100,000 in additional expenses that dual regulation would impose, these types of costs would be very difficult for the smaller NRC licensees to bear. In the absence of any health benefits, dual regulation would be a waste of money and resources.

During the consideration of the Clean Air Act Amendments of 1990 the nuclear power industry and the Administration sought to amend the Clean Air Act so as to avoid this dual regulation. The environmentalists bitterly opposed these efforts. They argued that radionuclides should be treated the same as all other cancer-causing air pollutants. They did not trust the NRC. They opposed any special treatment for the nuclear industry. They viewed the elimination of dual regulation as a special exemption for the nuclear industry from regulation under the Clean Air Act. In Congress, radiation and nuclear safety issues create some of the most emotional and bitterly fought legislative battles. The dual regulation issue was no exception.

During the initial consideration of the bill in the Senate Environment Committee, in late 1989, the committee adopted an amendment offered by Senator John Breaux of Louisiana, who was then chairman of the Nuclear Regulation Subcommittee, and Senator Alan Simpson of Wyoming, that would have removed radionuclides from the list of hazardous air pollutants under the Clean Air Act.

When the bill was being considered on the floor of the Senate in April, 1990, Senator John Glenn of Ohio moved to strike the Environment Committee's provision. Senator Glenn based his motion on the environmentalists' arguments I just described. In addition, Senator Glenn argued that the Environment Committee's provision eliminating dual regulation would preclude yet another regulatory body—the states—from regulating radionuclides if they so chose. This is because the Clean Air Act allows the states to regulate hazardous air pollutants more stringently than the federal government, without any restrictions, whereas the Atomic Energy Act allows the states to regulate only under certain specified circumstances.

The Senate vote wasn't even close. Senator Glenn won by a vote of 61-36.

Two weeks later, however, Senator Simpson proposed another amendment to deal with the issue. This amendment became known as "Simpson II." Simpson II would let EPA defer to NRC's regulations if the EPA determined that the

NRC's regulations under the Atomic Energy Act provided the same level of protection to the public health and safety as would be provided by the EPA regulations under the Clean Air Act. Simpson II preserved state authority.

The environmentalists opposed Simpson II just as they opposed the original provision. They argued that this was an exemption from regulation for the nuclear industry.

Educating Law-Makers

This time, however, the medical community, as represented by the National Institutes of Health, weighed in. Dr. William Walker of NIH and a Department of Energy congressional affairs representative personally visited a large number of senators and staff, and explained the differences in the regulatory structures of the Atomic Energy Act and the Clean Air Act. They explained the detrimental consequences for public health if the use of radioisotopes had to be restricted because of new and unnecessary regulatory requirements or expenses. They literally stalked the halls of Congress for two weeks.

It worked. Simpson II prevailed 67-33. Nineteen Senators who voted against the original provision voted for Simpson II. What had been a major defeat had been turned into a victory.

The issue was not over, however. The bill had to go to a House-Senate conference. The House version of the clean air bill contained no provision on dual regulation. The environmentalists were pressuring the House to reject Simpson II in conference. The Administration was lobbying to retain Simpson II. The radiopharmaceutical manufacturers hired a well-respected lobbyist to work on the issue during the conference. The radionuclides dispute became one of the last issues left undecided on the entire bill.

Finally, at a lengthy meeting in late 1990, the congressmen and senators resolved the issue. Chairman John Dingell of the House Energy and Commerce Committee asked the Senate staff to give a primer on radiation—what it is, where it comes from, and in what amounts. We provided charts comparing the levels of exposures from natural background, such as cosmic radiation and terrestrial objects, with exposure levels from man-made sources, such as airplane travel, x-rays, and nuclear power plant emissions. We then provided comparisons of these exposure levels to the effective exposure levels that would result from minimum compliance with NRC's regulations, and demonstrated that no additional benefits would result from EPA regulation.

The Senate's case was persuasive. The House adopted the Senate provision, with an additional requirement that EPA had to seek public notice and comment prior to determining that NRC's regulations provided the same level of protection as would EPA's. This provision is now part of the Clean Air Act Amendments of 1990.

What were the reasons dual regulation was eliminated, despite strong environmental lobbying to the contrary? The most single important effort was education, both of staff and

of the members of Congress. Once people were educated, the policy objectives could be reached.

Getting there was not easy. Education took time and personal effort. Members of Congress and their staff are not experts in radiological protection issues—we get most of our information from newspapers and lobbyists. This information is not necessarily reliable or accurate.

There is a large need in Congress for credible information. Only a few professional staff—those of us that specialize in a particular area—have the luxury to learn about specific issues in detail, but even the specialized professional staff must rely on information being provided to them on many issues. Misinformation and the absence of information are some of the leading causes of bad public policy.

We desperately need reliable information on how various legislative proposals will affect various industries. One of the most effective ways for you to participate in the political process is to establish yourself as a credible resource, and to provide information as to how legislation or administrative policy will affect the nuclear medicine community.

I should also emphasize that while letters are helpful, personal interactions count for much more. Letters on technical subjects, such as nuclear medicine issues, are not easily understood by the non-specialist. The Clean Air Act experience demonstrates the effectiveness of personal visits.

Low-Level Radioactive Waste Disposal

Before I conclude I would like to mention one important issue that I am sure you are aware of: low-level radioactive waste disposal.

One of the most effective counters to the misinformation about low-level radioactive waste—and even to the absence of information about low level waste—is public education. An educated public, just like an educated Congress, will make more intelligent and rational decisions than a public or a Congress that is ill-informed. The knowledge and expertise within the nuclear medicine community is the best source of information about how various public policies affecting nuclear medicine will affect public health. During these next few crucial years, the public and government at all levels will need information about the importance of finding new low-level waste disposal facilities, and the consequences of being unable to do so. The personal participation of the members of the nuclear medicine community will be crucial to the effective dissemination of this information.

I believe that those of you who choose to participate in public education or the political process will find that you can make a significant difference. The system still can and does work. It may be frustrating, it may be slow, but it will be better than if you hadn't become involved.

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