The selling of Bush's Medicare plan: a case history of political gangsterism

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While official Washington was transfixed last week by the televised appearance of current and former top national security officials before the commission investigating the 9/11 attacks, another witness was appearing on Capitol Hill to describe a recent instance of the political skullduggery that characterizes the Bush administration.

Richard S. Foster, chief actuary for the Medicare program, testified March 24 before the House Ways and Means Committee about the manner in which officials of the White House and the Department of Health and Human Services (HHS) pressured him to withhold information from Congress concerning the likely cost of the prescription drug benefit that is the centerpiece of the Medicare "reform" bill passed by Congress last fall.

The appearance came two weeks after Foster released estimates that the cost of the Medicare prescription drug plan would be $534 billion over the next ten years, one third more than the $400 billion figure cited by the Bush administration. The White House and HHS knew of the higher cost estimates, he revealed, but kept them quiet in order to win the votes of two dozen conservative Republican congressmen, who would have balked at a more expensive program.

A career federal employee who has spent two decades as an actuary for the Social Security and Medicare programs, Foster is charged by law to provide estimates of the cost of legislative proposals when requested by any member of Congress. Last June, at a critical point in the effort by the Bush administration to push a Medicare prescription drug bill through the House of Representatives, Foster's boss, HHS official and Medicare chief Thomas Scully, ordered him not to answer requests from Democratic members of the House, and threatened to fire him if he did.

Foster told the congressional committee that he had shared the estimates with a White House official, Doug Badger, Bush's special assistant for health policy, and that Badger seemed to be directing Scully in imposing the gag. "There's evidence regarding Mr. Scully's comments about acting on direct White House orders," Foster said, without elaborating.

White House officials denied ordering the suppression of information, but they refused to release telephone logs that would show contacts with Foster or Scully during the period in question, citing the confidentiality of executive branch deliberations.

Foster said he felt the gag rule was "inappropriate and, in fact, unethical." He added, "I felt a very strong responsibility to the general public not to withhold technical information that could be helpful." He went on to say he had become so frustrated with Scully's instructions to withhold information from Congress that he decided to resign in protest, but was dissuaded by his own staff.

In response to this testimony, four Senate Democrats sent a letter to Attorney General John Ashcroft arguing that White House and HHS officials had violated at least two federal criminal laws. One of these, passed in 1997 law at the insistence of congressional Republicans after a previous conflict with the Clinton administration, stated that the Medicare actuary is legally required to supply Congress with cost estimates prepared on an objective and impartial basis.

The suppression of information is only one aspect of a campaign waged by the Bush administration to secure passage of the Medicare legislation, using tactics that can only be characterized as criminal: double bookkeeping, supplying false information under oath, bribery, coercive threats, violations of established congressional rules, and the use of federal funds to finance campaign propaganda.

Overall, the selling of the Medicare legislation resembles the methods employed by Enron and other corporate gangsters, one difference being that instead of enrolling the accountant as a co-conspirator, as Enron did with Arthur Andersen, the Bush administration imposed a gag order on its actuary when his estimates conflicted with their political requirements.

Congressional Republican leaders introduced the Medicare legislation early last year, after it was proposed in Bush's State of the Union speech as a $400 billion package that would establish, for the first time, a prescription drug benefit as part of Medicare, the federal program that pays for health care for the elderly. The administration was wedded to the $400 billion figure, using it both to reassure right-wing Republican congressmen hostile to any new government social program, and to beat back amendments that would have established a more generous or comprehensive prescription drug program.

This legislative strategy was threatened when, last June, the Medicare actuary concluded that the cost of the program then being debated in the House of Representatives was $551.5 billion over ten years. On June 17, an aide to Democratic Congressman Pete Stark e-mailed Foster to get an estimate of the cost of a major aspect of the Republican plan—a provision for federal subsidies for private, for-profit health plans to enroll Medicare recipients. Foster eventually told her on the phone that he could not supply the information for fear of being fired.

According to Foster's account in press interviews over the past two weeks, Scully directed him to "cease responding directly to Congress" and to route all cost estimates to Scully, who would decide which to release. "More than once, Tom said he was just following orders," Foster said, adding that he thought those orders came from the White House. A congressional aide told the *Washington Post* that Foster sometimes spoke with her on the telephone with White House aides on the same call, who occasionally interrupted to tell Foster not to answer specific questions.

Foster later released an e-mail, dated June 20, 2003, from Scully's top assistant, Jeffrey Flick, instructing him to answer a request for information from a Republican congressman, but not to respond to two inquiries from Democrats, and warning, "The consequences for insubordination are extremely severe."

A second e-mail on June 26, from Foster to co-workers in the actuary section, said, "This whole episode, which has now gone on for three weeks, has been pretty nightmarish. I'm perhaps no longer in grave danger of being fired, but there remains a strong likelihood that I will have to resign in protest of the withholding of important technical information from key policy makers for political reasons."

Foster's cost estimates were 25 to 50 percent higher than those the administration was using in discussions with Congress. They were highly sensitive politically, because they suggested that the overriding aim of the Medicare "reform," rather than helping the elderly meet their prescription bills, was to provide a boondoggle for the drug companies, HMOs and private insurance companies.

Foster projected, for instance, that the new plan would boost Medicare payments to private health plans by $46 billion over the ten-year period, more than triple the $14 billion projected by the Bush administration. He also estimated that the pharmaceutical makers would collect $100 billion more in revenues from the bill than the estimate provided to Congress.

After the House and Senate passed contrasting versions of the Medicare bill—the House version tailored to the privatization of Medicare, and the Senate plan, co-authored by Democrat Edward Kennedy, preserving the traditional plan—congressional Republican leaders scrapped longstanding parliamentary procedures. They excluded all but two of the Democrats from closed-door negotiating sessions on the final form of the legislation.

The resulting bill was rammed through the House of Representatives November 23 in an extraordinary pre-dawn session in which the bill was initially voted down by a margin of 216 for and 218 against. The Republican leadership refused to allow the outcome to stand, extending the roll call for an unprecedented three hours while they browbeat a handful of Republican holdouts who opposed the legislation because of its cost.

House Republican leaders used intimidation and bribery to sway the vote, according to public statements by Congressman Nick Smith, a Republican from Michigan who opposed the Medicare bill as too costly. Smith is retiring from Congress this year and his son Brad is seeking to succeed him. Smith said that other Republican congressmen, whom he has not publicly identified, offered to funnel campaign contributions to his son's campaign, or work to defeat him, depending on how the father voted on final passage of the Medicare bill. The sum of $100,000 was reportedly mentioned. Smith refused the bribe and defied the threats, and voted against the bill, but two other Republicans switched their votes. The bill ultimately passed by a 220 to 215 vote.

After nearly four months of stalling, on March 17, the House Ethics Committee announced it would conduct "a full and complete inquiry" into what Smith had called "bribes and special deals." The panel's chairman, Republican Joel Hefley of Colorado, and ranking Democrat Alan Mollohan of West Virginia said they had begun an informal investigation in December "concerning the statements made by Representative Nick Smith on communications he received linking his support for the Medicare Prescription Drug Act with support for the congressional candidacy of his son."

Congressional Republican leaders were not only offering bribes, but preparing to receive them too. At least one congressman who played a leading role in drafting the legislation, Billy Tauzin of Louisiana, chairman of the House Energy and Commerce Committee, was in private discussions over an offer to head the Pharmaceutical Research and Manufacturers of America (PhRMA), the drug industry lobby, at a multi-million-dollar salary.

Tauzin ultimately declined the PhRMA job offer, announced his retirement from Congress and quit his committee chairmanship after press reports surfaced suggesting a connection between the lucrative position and key provisions of the Medicare "reform" bill. The legislation explicitly bars Medicare from using its buying power to negotiate discount prices from drug manufacturers. According to one study, the drug companies will reap $139 billion in "windfall profits" from the new prescription drug benefit over the next eight years.

Another architect of the legislation was also planning to go on the corporate payroll, and actually carried it out: Medicare chief Thomas Scully, the lead negotiator for the Bush administration on the bill, left the government in December, as soon as the bill was signed into law, taking positions with a law firm and an investment company involved in the health care industry.

Scully was negotiating with Congress on the shape of the bill at the same time as he was in discussions with his prospective employers, who stand to profit from the legislation. While browbeating lower-level HHS employees into suppressing the cost estimates for the bill, Scully had HHS give him a waiver of the federal law that bars presidential appointees from discussing employment with companies conducting business with their own department or agency.

This shameless personal profiteering on the part of one individual reveals the character of the Medicare bill as a whole. Far from being a "reform," it is a measure to plunder the public treasury for the benefit of companies that are already among the most profitable in corporate America: drug companies, manufacturers of medical equipment, HMOs, for-profit hospitals, insurance companies. Drug company stock prices rose sharply after the bill was passed—a salute to their victory in the national capital, where, by one estimate, there are six drug company lobbyists for each US senator.

The Medicare bill also provides $70 billion in direct payments and $16 billion in new tax breaks for companies that already provide prescription drug coverage to their retirees. Scully told the *Washington Post* the day the bill passed that these employers "should be having a giant ticker-tape parade." There will be no such celebrations by the elderly, who get only a meager benefit, and are already being preyed on by door-to-door con-men selling bogus Medicare drug discount cards and the more sophisticated swindlers who will package the official HHS-approved plans.

The whole squalid spectacle began to unravel in January, when someone in Foster's office passed the actuary's estimated cost figures to a Democratic congressman and to the media, triggering a series of press reports. But not before one final episode that is a particularly crass demonstration of the depravity of the corporate-controlled US political system.

The Department of Health and Human Services launched an advertising campaign in early January to promote the new Medicare prescription plan. The government-financed print, radio and television ads use the slogan, "The same Medicare, plus more benefits," a gross distortion of a plan whose specific purpose, according to House Republicans, is to open the door to privatization of Medicare.

The use of federal money for "publicity or propaganda purposes" violates federal law. After Democratic Party complaints, an investigation was conducted by the General Accounting Office, an arm of Congress, which concluded that the advertising was not illegal, but did contain misinformation. In one case, HHS distributed videos for use on local television news programs that depict Bush receiving a standing ovation as he signs the Medicare bill into law, with the scene narrated by an actor purporting to be a television reporter.

In an Orwellian touch, the videos and other ads urge Medicare beneficiaries to call a toll-free telephone line where they must recite the words "Medicare improvement" in order to obtain information about the prescription drug benefit.

The HHS advertising campaign is budgeted for $123.6 million, of which $79.6 million will be expended before the November election, in what amounts to a series of political commercials for the Bush administration, paid for by the federal government. The latter sum is greater than the entire $75 million federal subsidy that the Republican and Democratic campaigns will be able to spend on the fall campaign, and nearly double the total amount of money raised so far by Democratic candidate John Kerry.

On March 16, Health and Human Services secretary Tommy Thompson asked the HHS inspector general to begin an inquiry into the withholding of the Medicare estimates from Congress, admitting, "There seems to be a cloud over the department because of this." But he blamed the now-departed Scully for the decision, declaring, "Tom Scully was running this. Tom Scully was making those decisions."

HHS Chief of Staff Scott Whitaker said he had rebuked Scully after learning last year of his threats to fire Foster. He told the press, "I called Tom, as I had the job of doing from time to time, to remind him those threats were not appropriate."

Foot-dragging and scapegoating will likely forestall any serious consequences from the Medicare scandal. Congressional Democrats can be relied on to make verbal protests and then drop the issue, as they did after November's House vote, when Democrat Barney Frank of Massachusetts described the Republican tactics as "the end of parliamentary democracy."

Liberal *Washington Post* columnist E. J. Dionne wrote at the time that the Medicare bill's passage "proves that Republicans are ruthless and determined and the Democrats are divided and hapless." He cited a Democratic congressional aide blaming the outcome on "a combination of political stupidity and substantive gutlessness" in his own party.

The methods employed in pushing through the Medicare plan demonstrate that the Republican Party is hostile to democratic forms of rule, and the Democratic Party is unwilling and unable to defend them.