

**THE TWENTY-SEVENTH CHARLES L. DECKER LECTURE
ON ADMINISTRATIVE AND CIVIL LAW***

THE HONORABLE DONNA E. SHALALA¹

* This lecture is an edited transcript of a lecture delivered on 28 April 2008 by The Honorable Donna E. Shalala to members of the staff and faculty, distinguished guests, and officers attending the 56th Graduate Course at The Judge Advocate General's Legal Ctr. & Sch., Charlottesville, Va. The lecture is named in honor of Major General Charles L. Decker, the founder and first Commandant of The Judge Advocate General's School and the 25th Judge Advocate General of the Army. Every year, The Judge Advocate General invites a distinguished speaker to present the Charles L. Decker Lecture on Administrative and Civil Law.

¹ Donna E. Shalala became Professor of Political Science and President of the University of Miami on 1 June 2001. President Shalala has more than twenty-five years of experience as an accomplished scholar, teacher, and administrator.

Born in Cleveland, Ohio, President Shalala received her A.B. degree in history from Western College for Women and her Ph.D. from The Maxwell School of Citizenship and Public Affairs at Syracuse University. A leading scholar on the political economy of state and local governments, she has also held tenured professorships at Columbia University, the City University of New York (CUNY), and the University of Wisconsin–Madison. She served as President of Hunter College of CUNY from 1980 to 1987 and as Chancellor of the University of Wisconsin–Madison from 1987 to 1993. One of the country's first Peace Corp volunteers, she served in Iran from 1962 to 1964.

In 1993, President Clinton appointed her U.S. Secretary of Health and Human Services (HHS) where she served for eight years, becoming the longest serving HHS Secretary in U.S. history. At the beginning of her tenure, HHS had a budget of nearly \$600 billion, which included a wide variety of programs including Social Security, Medicare, Medicaid, Child Care and Head Start, Welfare, the Public Health Service, the National Institute of Health (NIH), the Center for Disease Control and Prevention (CDC), and the Food and Drug Administration (FDA).

As HHS Secretary, she directed the welfare reform process, made health insurance available to an estimated 3.3 million children through the approval of all State Children's Health Insurance Programs (SCHIP), raised child immunization rates to the highest levels in history, led major reforms of the FDA's drug approval process and food safety system, revitalized the National Institute of Health, and directed a major management and policy reform of Medicare. At the end of her tenure as HHS Secretary, *The Washington Post* described her as "one of the most successful government managers of modern times." In 2007, President George W. Bush handpicked Shalala to co-chair with Senator Bob Dole the Commission on Care for Returning Wounded Warriors, to evaluate how wounded service members transition from active duty to civilian society.

As Chancellor of the University of Wisconsin–Madison, she led what was then the nation's largest public research university. She successfully strengthened undergraduate education and the university's research facilities, and spearheaded the largest fundraising drive in Wisconsin's history. In 1992, *Business Week* named her one of the top five managers in higher education.

She served in the Carter administration as Assistant Secretary for Public Development and Research at the U.S. Department of Housing and Urban Development. In 1980, she assumed the presidency of Hunter College of the City University of New

Thank you. I'm delighted to be here and to be joining all of you, particularly my old friend, Secretary Eagleburger,² who is one of the great public servants—a fellow Wisconsinite, who is totally supportive of my own long career. But we're lucky to have him here with us. He knows a lot more about the subject than I do.

You thought I've been invited really to talk about the President's commission on Wounded Warriors, which I co-chaired with Senator Bob Dole, whose long distinguished history with the military is well known,³ but I want to put it into context because I'm a political scientist, not a lawyer. And all of you, while you can study the law, you have to wonder every once in a while, how did we get this crazy law or this crazy regulation that you're trying to implement at one time or another? And usually the explanation is not as rational as sometimes the literature would suggest, nor is the process of getting there. And it's very important that you understand that because if you don't understand the context in which we make laws in this country, even though you know the role of government, the role of the Supreme Court, what the Congress does, it's hard to either administer those laws or, in fact, understand what's underlying the law or the regulation that you're trying to implement when you're trying to help an individual client or, in fact, help an agency to get where they need to get.

Let me start—and I'm going to tell you a number of stories because the way in which I teach I actually tell stories—my first government

York. She is a Director of Gannett Co., Inc., and the Lennar Corporation. She also serves as a Trustee of the Henry J. Kaiser Family Foundation.

President Shalala has more than three dozen honorary degrees and a host of other honors, including the 1992 National Public Service Award and the 1994 *Glamour* magazine Woman of the Year Award. In 2005, *U.S. News & World Report* and the Center for Public Leadership at Harvard University's Kennedy School of Government named Shalala one of "America's Best Leaders." She has been elected to the Council on Foreign Relations, National Academy of Education, the National Academy of Public Administration, the American Academy of Arts and Sciences, the National Academy of Social Insurance, the American Academy of Political and Social Science, and the Institute of Medicine of the National Academy of Sciences.

² Lawrence S. Eagleburger served as U.S. Secretary of State from 8 December 1992 to 19 January 1993. See Secretary of State Lawrence Sidney Eagleburger, <http://www.state.gov/secretary/former/40402.htm> (July 15, 2003).

³ Former U.S. Senator Bob Dole served as an officer in the 10th Mountain Division during World War II. He was gravely wounded in the right arm while attempting to assist a fellow Soldier during combat in Italy. As a result, Senator Dole was awarded two Purple Hearts and a Bronze Star. See Senator Bob Dole's Official Website, <http://www.bobdole.org/bio/wwII.php> (last visited Aug. 12, 2008).

assignment I was living in a mud village in southern Iran. There was very little government regulation when I was a Peace Corps volunteer; they sort of threw us in the mud villages and said, “Do something.” And two years later they came and picked us up. This was probably the most defining experience in my career because I was literally living in a mud village in southern Iran for two years trying to get some things done. And we got a lot done. But we got it done because we were very respectful of the local religion and the local culture. Many of the things that our military is doing now in Iraq and Afghanistan were lessons that the Peace Corps and our own development agency learned years ago in terms of understanding how you get things done in other cultures and in complex situations. My first experience of that actually was in that mud village. My family did not want me to go into the Peace Corps. They thought it was the craziest—every generation of my family has served in the military. Actually, my father would have been more comfortable if I had joined the military at that time. But I had wanted to go to the Peace Corps. And my grandmother—my family is Lebanese—said to my father, “You know, she’s going to the Old Country, it’s okay.” I’m not sure my grandmother knew exactly where I was going in the old country, but she thought I was going to the old country.

So as I was leaving Cleveland, my grandmother gave me this letter, and she said give it to the head man of the village. My grandmother was highly educated and wrote classical Arabic. And when I arrived at my little village, I took my little note out and handed it to the head man. And it actually was written in classical Arabic. And it said, “This is to introduce Donna Shalala, the daughter of a great sheik in Cleveland, Ohio. Please put her under your protection.”

And actually that worked out very well because I developed a relationship with the mullah of the village. One of our assignments was, in fact, to build a school; we were a bunch of liberal arts kids—there were five. Three of them were Aggies, and they were straightening out southern Iran at the time. We lived right next to the Marsh Arabs—very close to them. So I went to the head of the village and said, “You know, we’re here to build a school.” And he said, “We don’t need a school.” He said, “We need a mosque.” And for six months we went back and forth with the head of the village. And we got into a very philosophical debate among ourselves: Did the Constitution allow government authorities to build mosques? And, you know, we sent letters and never got a response. Sent letters up to Tehran to the people that were running

us—at the time it was USAID.⁴ And we sent letters to them. And they usually said, “Well, we don’t want to give you the answer to that question, but it’s not a good idea for government employees to build mosques,” even though they were only paying us \$100 a month. I mean it wasn’t like we were highly paid government employees. And finally I said, “You know, we’re not going to get anything done. We’re not going to sit around,”—we were doing some teaching—“so we’d better build this mosque.” So we all got together and we helped the villagers build a mosque. In fact, the Aggie guys had actually invented a new brick in which they mixed some straw with a brick, and would make it much stronger. We built the mosque. And we were at the dedication of the mosque, and the mullah turned to me and said, “It’s time we had a school.” A very important lesson, and I got that lesson at twenty-one. A very important lesson.

It’s an important lesson in management. It’s also an important lesson in terms of listening to the population that you’re working with, and understanding the context that you’re in.

The second story I want to tell you is about being with HUD in the 1970s. In the Carter Administration, I was appointed Assistant Secretary of HUD.⁵ The first secretary was Pat Harris. And Pat Harris actually was a very distinguished African-American secretary—the first African-American woman ever to be secretary—to be a member of the President’s cabinet. [Pat Harris was] a Washington lawyer and saw the world through Washington. And because she had been part of the civil rights movement, she believed in a strong Washington presence; she didn’t trust the states, she didn’t trust the city. She wanted—she believed in—government regulations. And everything she wanted was to see whether we got more control over the world out there so that we could get accountability in the programs we were managing. She was sent over to what became HHS.⁶ [She] asked me whether I wanted to go along and I actually remember saying to her, “No, I’m at the end of my tour here and I really don’t want to learn about healthcare.”

⁴ USAID stands for United States Agency for International Development. See U.S. Agency for International Development, <http://www.usaid.gov> (last visited 12 Aug. 2008).

⁵ The U.S. Department of Housing and Urban Development is commonly referred to as HUD. See Homes and Communities—U.S. Department of Housing and Urban Development (HUD), <http://www.hud.gov/> (last visited Aug. 13, 2008).

⁶ The U.S. Department of Health and Human Services is commonly referred to as HHS. See United States Department of Health and Human Services, <http://www.hhs.gov> (last visited Aug. 13, 2008).

So she went off to HHS and I stayed with the next secretary, Moon Landrieu, another liberal democrat, who came from the city of New Orleans; [he] was the first man actually ever to bring black [employees] into government. He had been a great state legislator. His daughter, Mary Landrieu, is a senator now from Louisiana. And Moon Landrieu saw the world completely differently. He asked the question, is this something the federal government should be doing? So you had two liberal democrats who saw the world in a different way. And for those who think federalism is kind of locked-in depending on the ideology of the party, those were two completely different liberal democrats—, who saw the world differently because of their background and because of where they sat.

And so Moon was constantly saying, should the federal government be doing this? Where Pat Harris said the exact opposite to it; the federal government should be doing it and we're not going to get equality or justice unless there's a strong federal government. Those lessons of those two were very important, but Moon taught me another lesson. He called me up one day and said, "I just got the new set of regulations on public housing." He said, "I've got to tell you something about these regs—I was in charge of regs and policy in the department—I was like thirty-one or something." And so he said to me, "Donna, the problem with you is you hire people that are too brilliant." And I said, "I beg your pardon?" He said, "You have to get rid of some of those Harvard people." He said, "You've got to write regulations for the people that are administering them in the field. And you've got to understand who your clients are and who you're writing these regulations for." He said, "They may be very clear to your Harvard educated people, including the people in the General Counsel's office, but we're writing for people of average or higher intelligence, that are of good heart, that have to administer these regulations. And before you write a subject regulation under my watch, you're going to understand your client, but, more importantly, you're going to understand who has to interpret and administer these regulations."

That was an important experience. It meant that we were going to think about and bring in those people who were going to administer the regulations, and those people that were going to have to interpret them for the clients we were serving.

Now why do I tell you those two stories? They come out of my government experience, but they actually deepened my understanding of

how government actually worked. And, in fact, the reason our laws and our regulations are so complex is because we rarely think about the client and who's going to get the services. But more importantly, we rarely think about those who have to interpret them or administer them. And if you're going to make changes in government, particularly if you want to make more than incremental changes—and even incremental changes, which I consider major steps when you're dealing with large complex bureaucracies—you had better understand the system in which you're going to have to interpret and administer the regulations or the laws in which you're going to write them. And more importantly, you'd better understand the Congress and who's going to interact with those people.

So I start out with that because before talking about the healthcare system or trying to understand what happened to our Wounded Warriors or the Walter Reed experience, I think it's important that we understand how regulations are made and often how these decisions are made.

In general, the reason the government is so complex and our regulations are so complex, and sometimes our laws overlap on top of each other, is because we never get rid of anything. We always layer on top. And it's because we often are reacting to a scandal or an emergency or a crisis of some kind, and, therefore, we always patch it up. We always find a way not to intervene in the system and to rethink what we're doing, but we always go for patches. And we go for patches because we're trying to clamp down on the scandal or on something that's revealed. And that's the common way in which government gets layers. So I suppose it won't help you when you're trying to figure out what idiot wrote this, that I have to try to explain to some poor officer or some poor enlisted person, but I just want to give you a sense of the mess here that either the literature or the books suggest in terms of how things are initiated and how they're fixed and how the decisions are made.

The most common way in which we handle a crisis at the national level, particularly if it's a big crisis, is we often punt on them. And Secretary Eagleburger will tell you that. In March of 2007, I was literally talking to my football coach and the phone rang. And the person on the other line said, "The President's Chief of Staff, Josh Bolton, would like to speak to you." And I said to my football coach, "It's the President's Chief of Staff." And he said, "What president?" He thought I was talking about the president of some other school, not the President of the United States. So I stepped out. And on the phone was Josh Bolton. He said, "The President would like to speak to you." So the

President says, “Donna, your country needs you.” This is typical President Bush. And I said, “Yes, sir.” I said, “I’ve heard that before. What is it that you have in mind?” And he was laughing. He had to tell everybody what I had just said to him. So he—while he was telling everybody what I had just said to him, then he got back on the phone and he explained that he would like to appoint me and Senator Dole. He said, “Your friend, Secretary Gates, and Senator Dole very much want you to do this. And I do, too. And I hope that you’ll do it.”⁷ And I, of course, said “Yes.” You don’t—when you’re asked for service, no matter what you’re doing, you do it. And he explained—I had read the Walter Reed stories out of *The Washington Post*.⁸ So I didn’t ask him a lot of detail. I figured that Senator Dole and I would get together and try to figure out what we were doing.

The common way of dealing the crisis when it’s considered at the national level of a major crisis is either you punt it to a committee or a commission, or you will appoint a couple of serious people and they take a couple of years or so and try to sort out the issues. But that’s the way; the use of a Blue Ribbon Commission has had a long and honored tradition in this country. And there have been many of them. The 9/11 Commission. You know about the Watergate Commission. But that’s the way in which major public figures, particularly Presidents, have taken issue and handed off to try to tap down a controversy. It’s not that they’re not good hearted and don’t want someone to sort it out, but they’re going to try to tap it down.

Now, Senator Dole and I, long experienced in government, went to see the President. And it’s sort of nice to work with someone like Senator Dole because he’s not afraid of anything. And certainly he’s not intimidated by a President of the United States. So he looks the President straight in the eye and says, “Mr. President, very respectfully, Secretary Shalala and I are very capable people. And if you’re not going to implement our recommendations—we don’t know what they are yet—but if you’re not going to implement them, we’re not going to do them. So you have to give us a promise that you’re going to take our recommendations seriously.” And the Secretary of Veterans Affairs and

⁷ Robert M. Gates currently serves as the U.S. Secretary of Defense. See <http://www.whitehouse.gov/government/gates-bio.html> (last visited Aug. 13, 2008).

⁸ In 2007, *The Washington Post* ran a series of articles that were highly critical of Walter Reed Army Medical Center’s facilities and care provided to injured Soldiers and their families. See generally *Walter Reed and Beyond*, <http://www.washingtonpost.com/wp-srv/nation/walter-reed/> (last visited Aug. 13, 2008).

the Secretary of Defense were sitting in the room, and the President said, “Nope.” And he said, “You bring me the recommendations and I’ll implement them.” And Secretary Gates made the same commitment. The Secretary of Veterans Affairs was close to the end of his tour, but he made the same commitment. So Senator Dole said, “Okay, we will do it.” But we made a very strategic decision. Because we were so knowledgeable about government, we decided we weren’t going to take a couple of years. We were actually going to take a shorter period of time. That’s the first decision we made. We said, “We’re going to do this in six months. You’re going to have to detail people to us because this issue can stay alive only for a short period of time. We’re happy to go look at what is needed, and that is the seamlessness of the system—from the time someone is injured until they either go back into the service or they go on to VA and we’ll take a look at the disability system.”

So we said, “Six months. You’re going to have to detail people from all the services to us to put this together; we’ll hire our own executive director”

The second decision we made, which turned out to be a much more important, is that we were going to produce a report of things that can be done by the Executive Branch. That is, we didn’t want to be that dependent on Congress. And, so, we were going to limit the number of things the Congress needs to do, so that if the President does what we recommend, and if he starts now making some investments, which he already was doing on Walter Reed, that we have a chance of putting this together and actually getting some changes in the system and making it more seamless.

The third thing we said to them was, don’t give us the usual suspects. We do not need constituency representatives and large interest groups on this group. We wanted the majority of people to be disabled themselves.

And, we wanted a couple of people that are experts in military health (I was hardly an expert in military health) we want to make sure that real Soldiers and Sailors and Marines are represented, who have actually gone through the system. We appointed people that were under thirty. We had a couple of people, one of whom had served in Afghanistan and Iraq, who were severely disabled, who were members of the commission, plus the wife of another Soldier who was on the commission, who understood the benefits and what was happening to families, and the

head of the National Rehab' Hospital, and an expert on information technology. I think only three of us were what you would consider the usual suspects—and it was a small group. It was only eight people. But it didn't have the major powerhouse constituency. It didn't have the American Legion, it didn't have the usual groups on the commission because we were to get in and out of our recommendation quickly.

We did as we went out and did the usual tours and hearings. We actually sat for hours and listened to people who had been injured and we looked into their families because what we wanted was a feel for what they perceived as the issue.

Now the Walter Reed issue aside, that was very much a housing issue. You'll remember the scandal was about Building 18. What happened at Walter Reed is we had a group of single, mostly young men that were in a building that was deteriorating. The authority over that building was not the commandant of Walter Reed. It was another branch of the service. And, as one of my people at [University of] Miami said, it looks like our dormitories after you put a bunch of eighteen year-olds in with not much supervision. But it was a building that was clearly in bad shape.

Senator Dole had been out there for years. He went out every week, but he had never seen that building. But the whole scandal came out of a deteriorating building, which is another lesson: Pay attention to the details. Because it's always going to be something in your command that's so small that it can be blown up. It's not going to usually be your system, it's going to be something that can be blown up and then used as a proxy for everything else.

A very important lesson in management is trying to anticipate what can blow up in your face. And it's often something like a Building 18, not the fundamental system. But we were charged with looking at the fundamental system and actually taking a look from beginning to end of what happened to our wounded warriors that were serving in Iraq and Afghanistan.

I have actually had a lot of contact with the Veterans Administration [VA]—a little bit with the military health part because I had helped the Defense Department while I was Secretary with the issue of Agent Orange. We had gotten the National Institute of Health and the National Academy of Sciences to take a look at the complexity of that issue. I

knew a lot about the VA and about their reforms in the VA and the IT systems that they had put together, and I had never looked at the system from beginning to end from the point at which someone was injured in the field. And that's what we went back to do; we actually talked to people that had had that experience. And here was my quick conclusion: The military and the VA health system were as fragmented and as disorganized as the rest of the health system in the United States.

For those people in this country who believe in the single payer system, that is a government is just writing the check for everything, we'd have a much better system, it looks exactly the same. Even if it's command and control, it's a highly disorganized, decentralized system that's not patient-centered.

And so looking at a system, particularly regarding those who were severely injured, was very important. And what were the complaints? The complaints were very few in the field; almost none in the field. In fact, all of the services worked together in a seamless way from the time that someone is injured until they're either fixed in the field—and most of them would go back to their previous post—or if they're severely injured, they're flown either directly to the United States or more likely to Germany. And, so, that trip is carefully orchestrated. There is world-class medicine going on at this moment in Iraq, in Afghanistan, in the major military facilities in Germany, and here in the United States. If you need an operation or if you're severely injured, that trauma is dealt with brilliantly by careful coordination between the services. You might be treated by a Navy corpsman, operated on by an Army surgeon, transported by an Air Force member, and, more likely than not, you were probably picked up initially by the Marines.

So there is no question that we know how to do that. The high-tech medical part of healthcare in the military is just brilliant. And the surgeons and nurses are world-class. They know what they're doing. We've made those kinds of investments. And while there are mistakes that are made, the number of mistakes are much lower than what you would see in the private sector.

The problem was what happened afterwards. It was a nightmare. It was a nightmare for families, whether they were spouses or grandparents or parents. It was a nightmare for the military itself. In World War II, the lives that were saved were much fewer if you got a real trauma in the field, than now. More importantly, medicine had changed dramatically.

When Robert Dole was severely injured, he was flown first to Miami and then to Kansas, where he stayed in the hospital for a year. Most of his generation who had severe trauma died. What happened is we improved medicine so dramatically that we were saving lives that we never could save in World War II or in Vietnam or in Korea. In fact, people had much more severe injuries than they did in those wars. They would have died in previous wars. So the three thousand plus Soldiers that were severely injured, most of them would have died in previous wars, but our healthcare had improved so much, we had actually saved their lives and stabilized them. And the challenge was, once you had done that, what else do you need to put together? So it was medicine itself that had fundamentally changed, which, in fact, was the underlying challenge to both the military as well as to the armed services, as well as to the VA. And, you know, major studies of this had been going on for years, but there's no question of the quality of medicine. Even the quality of medicine without the housing issues at Walter Reed was clearly world-class. And no one disputes that issue. The problem that occurred was once the operation was done and the patient became an outpatient. You weren't talking about outpatients in World War II. You were somewhat in the Vietnam War, but we know what we did—we created a lot of homeless people and a lot of complex issues. And we never really got our arms around it other than throwing money at the VA and improving some of their services substantially over a period of time.

So it was a different war and a different medicine that we were faced with. And the challenge was once members of the services got out of the hospital, what would happen to them, and whether there was coordination of the services. And that's where the system collapsed. But I keep reminding people where it collapses in the civilian system: it's the coordination of care, the number of outpatient visits, the appointments, and what happens to your family. Mothers and fathers and grandparents and spouses were clearly dropping their jobs and rushing out to wherever their loved ones were stationed to basically coordinate their care. It wasn't just a support system, they were going out to make certain. And we had something else to this war—we had brain traumas, we had TBI,⁹ and stress related problems that were happening to people. So it was as much psychiatric as it was physical in many cases. But you had the specter of parents and loved ones dropping what they were doing, not being able to make their mortgage payments, and rushing off to bases all over this country to try to coordinate essentially outpatient services. And

⁹ Traumatic brain injury.

that's what we found. That's basically what we found. We didn't find people that were ill-willed. We didn't even find a system that was overwhelmed. We found a system that was actually not ready to handle a very complex set of cases because it's one thing to lose an arm or a leg and have to go into rehab, it's another thing to have that combined with TBI or the post-traumatic stress disorder and have a set of complex injury related illnesses. The burn victims were horrible. And in San Antonio they're doing miracles out there. But it also was a pretty young generation that was being injured, and they were professional Soldiers, Sailors, and Marines—what I would describe as world-class athletes—who suddenly saw their lives changing before them. And so we had a lot of challenges we had to deal with.

And to deal with those challenges, we could have just told the military to spend more money and to get their act together in terms of coordinating. But what we did instead is we rethought the system. We actually sat down after talking with everybody and rethought the system. And you've actually never seen this before in government, we did a report that had a title: "Serve, Support, and Simplify." And, you know, you'll see the words serve and support in many instances, but you'll never see the word simplify when anyone's talking about government. But the reason simplify became important—of course, I'm a nut on this—is that when you take on an issue you've got to figure out a way to make it a little more straightforward. We had to come up with some ideas that would handle those issues. You're talking about a relatively small number—for the military at least—of people who were severely injured. And we thought about it, and I actually came up with an idea by reading in the newspaper in Miami that when a police officer in this country goes down, the police department assigns one person to him, an officer, that stays with him until he finishes his rehab. Then either he goes back into the police department or goes on disability. And even after he goes on disability, he has a single contact in the department that coordinates all those pieces. So we came up with the idea of a recovery coordinator and a recovery plan for each of these [wounded warriors] to substitute for his family running around. The Defense Department's in the process of training people with the VA to be a single recovery coordinator.

Now did the Defense Department already have case coordinators? You bet. In fact, the last group I met with was hysterical. They were a bunch of master sergeants back from Iraq. This was the easiest job they have ever had in their lives, trying to coordinate the care. They were

totally overqualified. But they also didn't know very much about the injuries. They didn't know very much about the science. And so their ability to do sensitive kind of coordination to change directions, to interact with some of the doctors and some of the therapists, wasn't as good. We suggested—in fact, I was giving a lecture like this at North Carolina State when someone stood up and said that her life had been changed and her husband had been severely wounded and had TBI, and she had a recovery coordinator who was an old Navy nurse, who had retired, who just wasn't afraid of anyone, and was totally coordinating all the services for her. And she says, "It's out of my hands now. She talks to me or she talks to him, but she has every piece coordinated now." So what we suggested was a pretty simple straightforward solution to get rid of all those individual case managers.

One of the members of our panel, a young man who's now at school at George Mason, who lost a leg and an arm and had all sorts of complicated issues, said he had so many case managers that he couldn't remember them all, and they kept getting deployed. He said they were all great people, but they were just responsible for one part of his body. So by recommending a single person, we recommended a kind of torpedo; a way of cutting through the bureaucracy and we recommended a plan at the same time. And we recommended a series of investments. This generation of young people does not want to just collect their checks and go home. They actually would like to work or go back to school. And we need to make deeper investments to make that possible. We recommended that people get to stay on Tricare for their families, which turned out to be important, as opposed to just [the servicemember]. That became important because it's possible to take a part-time job in this country if you don't have to work for benefits for your family. And our interviews with people indicated they would like to work—would like to do something. We recommended deeper educational benefits including a bonus if you stayed in school longer. The dropout rate in the VA's education programs looked like inner-city high school; no one stays in very long. And as I reminded everybody, some people do go in the military because they didn't like high school—they didn't want to go onto college. So you've got to have a different attitude about this and find out what people's interests are and make deeper investments.

We recommended family benefits in a different structure. All of these things are in the process of being implemented. And we recommended that we figure out a way to transfer records from the

Defense Department to the VA in a more seamless way so they weren't constantly lost. But we recommended against the Defense Department spending a billion dollars to build an IT system for that transfer because we argued that by the time that we got it, it would be out of date. And that what they needed to do was to build a couple of programs that allowed them to transfer the records.

We recommended that the disability system fundamentally be changed. That was the only recommendation that requires congressional action, which they haven't done yet, and I hope they'll do it. We suggested that the Defense Department get out of disability ratings, and that they, in fact, simply make a decision of whether someone's up or out, and give them an annuity based on their number of years of service and their rank. [The servicemembers then] leave there with their annuity, go over to the VA, and get their disability rating over there. But the Defense Department ought to be doing the physical exams based on an agreement between the VA and the DOD. But at least stop duplicating decisions and go back to a much simpler, more understandable system. Making the system understandable not simply for family members, but for the wounded warriors themselves became very important.

All of these things are in the process of being implemented, particularly the recommendation on recovery coordinators, which will become very important.

So the point is the context was a crisis, the crisis we looked at was very different than what was described in *The Washington Post*. But *The Washington Post* was basically focusing on the housing and some outpatients' concerns. We looked deeper at it. We put people on our panel that had actually experienced the system. We went out and looked at the people. We saw the system changing as we were going along, and made recommendations that were strategic that actually could be done in our lifetime. And then we got commitments from people responsible for making those kinds of changes.

Now that is one way to do public policy, and that is to take a look at the problem and jump into the problem, and then figure out some straightforward way of dealing with it in a way that doesn't wreck the current system except in the places where you're trying to simplify.

Another example [of doing public policy], when you have time, is the HIPAA regulation. I want to point out to you, even though

everybody gets upset about them, no one has ever been sued under the HIPAA regulation.¹⁰ Some people have tried to collect some money saying that their privacy had been violated—in that case the Congress is supposed to do it. And these are the major recommendations for healthcare really of our time. Congress couldn't agree on the specifics, and they wrote a little sentence into the law that said if they couldn't get it done in three years the Secretary of HHS ought to do it.

And so we waited a couple of years and finally my legislative person came in and said, "I don't think Congress is going to do it. I think you're going to have to write the privacy reg." I said, "Oh, my Lord. Write the privacy reg for the whole country." The truth is there were more federal protections on the privacy of your Blockbuster card than there were on your healthcare card in this country. Does anyone remember why we have protection from the Blockbuster card? This is the one group that must know the answer. Ah, who was that? Yes, tell me.

AUDIENCE: I don't know all the details, ma'am, but Judge Bork was going before Congress—

SHALALA: To be confirmed on the Supreme Court, correct?

AUDIENCE: Yes, ma'am. And they looked at some racy—not the videos themselves, but records of racy videos that he had rented.

SHALALA: That is exactly correct. The Republicans were so angry with that confirmation hearing that they did one of the few things they could do; they put federal protections on your Blockbuster card. Now the military may have different rules. They may be able to go back and look at your records, but they can't look at mine.

So there were more federal protections on the Blockbuster card than on your healthcare card. And we had a year—but what did we do to write the regulations? First of all, we followed the congressional hearings. It's very important to know where the consensus is when you're trying to write regulations about something so fundamental in health as privacy.

¹⁰ See Health Insurance Portability & Accountability Act, Pub. L. No. 104-91 (1996); Standards for Privacy of Individually Identifiable Health Information; Final Rule, 45 C.F.R. pts. 160 & 164 (2000).

Second, we sat for weeks and discussed what principles should underlie the regulation and arrived on one: healthcare records should only be used for healthcare purposes. And the regulations were entirely based on that principle because we had the time to think through what we wanted to do. Now the lawyers, the private lawyers in particular, had a field day on those regulations to scare people to death, but in the end all the private sector did was pay a lot of money for lawyers to tell them that there was simply an underlying principle and there was nothing more complex than that. That you could not use health records for anything other than healthcare purposes. That included research. Couldn't, in the private sector at least, use it to keep someone out of a job.

So there were pretty fundamental rules, or a fundamental principle, that underlie those. And that's another example of how major policy is made. And, in fact, we were so good at finding the consensus that a high official said to me, "You know, I took the regs to the President because some of the interest groups wanted us to change some of the regs after you had done them. And the President looked at me straight in the eye and said, 'Hey, you have to understand, I'm for privacy in the healthcare.' He said, 'I don't want to change these regulations.' And Congress, which had a chance to change the regulations, never changed a one. So we found the consensus of those regulations. We put them out for comment. Everybody commented on them, including the military. Lawyers commented on them. And then we put them out in final—actually in the Bush administration they went out in final. But there was a chance for us to fundamentally look at the rules."

And that's another example of how rules are made in healthcare.

The third example, which I'll end with and then I'll take some of your questions, is what happens when a President takes office? I've told you what happens when the President is long in an office and some crisis hits and they appoint a Blue Ribbon Commission, and then you try to get your arms around the issue. My other example is what happens in the beginning of an administration—and this is a good time to talk about it because we're about to have a beginning of another administration—and, of course, healthcare may or may not be on the President's agenda after Iraq and the economy, depending on who's President. As these candidates are running around the country, they're making all sorts of promises. And there actually is some little college dropout walking around writing them all down. And the day the President takes office and appoints his cabinet, someone pulls all those things together in a

book that's called "Promises, Promises." And then some other little college dropout rips the book apart and hands each cabinet officer their part of the book "Promises, Promises." And a cabinet officer takes a look at the book and says, "Why would they say that?" Right, Larry? How could they say that? It's easy. They're trying to get elected; they're trying to get the constituency.

So I took my copy of "Promises, Promises," and I went to talk to the President. And the only thing the President promised was to get every kid in the country immunized before they were three years old. Sounds easy? He thought it was easy. I mean, he was promising it all over the country. Only 40% of the kids in the country were getting their shots before they were three. And you're supposed to get them before you're three. Most of them were getting it by the time they went to school because that was the requirement of the schools. But to reduce the kids that got all these diseases, mumps, the measles, you really had to get your shots before you were three. So President Clinton called me in and we're talking. And he said, "You've got to get me something I can run on second term" We're talking about the first day in office, and he's talking about second term. And I said, "Yes, sir." He said, "You know, I've been looking through 'Promises, Promises.'" He said, "What do you think about immunization?" I said, "Mr. President"—in my first day in office, I'm not going to turn him down unless he asks me to do something illegal—I said, "Okay."

So I went back and assembled a group like this—the leading public health experts in the country—and they proceeded to spend an hour telling me why they couldn't do it. We didn't have universal healthcare. And we were all sure that Mrs. Clinton was going to get universal healthcare through, so they said why don't you wait a year until we have universal health care. Parents don't know the names of the diseases. It's too expensive for parents. They would have to go to public health clinics—that they couldn't afford it. It would cost about \$700. They don't know where the public health clinics are. It would be a disaster, Donna. You've got to go back to the President and take something else off the list. I said, "I don't think so. I don't think I can go back to the President." And they—every single public health expert in the United States told me you cannot do it. Absolutely cannot do it. And so there I was stuck. The President was down the street. He had told me to do it my first day in office, and the public health experts were telling me—so I reached down into my purse and I pulled out a postcard. And the postcard was addressed to my golden retriever. And it said, "Dear

Bucky, please tell your master to bring you in for the following shot.” And I held up the postcard and I said, “Look, if all the dogs and cats and sheep and cows in this country can get immunized on time and we have a notification system for all of them, we can figure out a way to get the kids in this country—and there’s no universal healthcare for animals in this country, so we’ve got to figure out a way to do it.” And today over 90% of the kids get their shots before they’re three years old.

Policy is made in a wide variety of ways and we just figured out a system to do it without a universal care system, we built a tracking system not unlike—how many of you have animals that get notifications? You get notifications from the vets, right? The dogs do or the cats do. Mine kind of likes the personal notes that she gets from the vet. But we built a tracking system not unlike that one so that we can remind parents and we made the shots almost free, and we gave them the pediatrician and we worked with the HMO. So we built a system in response.

My fundamental point here is that there are a wide variety of ways in which policy is made—in which regulations are written. Sometimes we get the time to do it in a more rational way, to consult with everyone so that we’re not challenged in the end. And sometimes it’s a crisis that you all have to respond to. Either way, it takes people who have their feet on the ground who understand their clients and are looking at it from the point of view of the people who are to be served. And every system in government has some kind of command and control. I used to say to people, “Running a university is far more complex than running a government agency because in a government agency I actually could say something and someone would sort of do it, unlike a university.” I mean I would rather take the United State Senate to a faculty senate any day; they’re much easier to understand.

But the point is that policy and regulations are written for different purposes and different ways. But what we all have to do as policy makers or as the people who deliver it, is constantly think about who we’re trying to serve. And it’s as difficult and as challenging for the Department of Defense and the Department of Veterans Affairs as it is for those of us that have served in the other agencies. So no matter where you go or whatever you do, you have to keep that in mind, that it’s the client that’s important. But you also have to make sure that you define the client because there’s often confusion It’s the people who are going to get the services. And that’s what I’ve built my career

about and around, my ability to be very careful about who we were trying to serve, whether we were writing regulations or writing laws or trying to get people to change their minds about something. You have to be very clear about who in the end you were trying to serve.

Thank you very much.