

JOHN HEINZ

A MASTER  
LEGISLATOR  
AT WORK:

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H. JOHN HEINZ III

AND THE U.S. SENATE  
SPECIAL COMMITTEE ON AGING



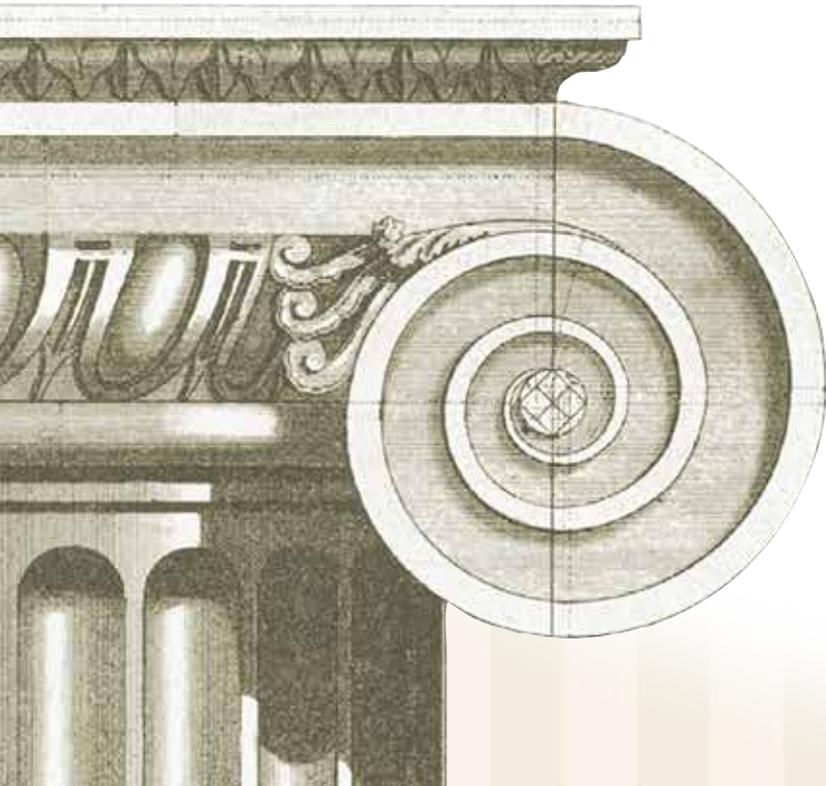
UNIVERSITY OF PITTSBURGH  
Institute of Politics

# case study

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COVER: SEVENTH ANNUAL CARING AWARDS DINNER, 1990



# JOHN HEINZ

WAS A DEMANDING, DATA-DRIVEN, TENACIOUS POLICYMAKER, DISTINGUISHED BY HIS COMPASSION FOR AGGRIEVED CITIZENS AND HIS EFFECTIVENESS IN ACHIEVING PASSAGE OF LEGISLATION. THE ISSUES HIGHLIGHTED IN THIS CASE STUDY REPRESENT ONLY A FEW OF THE MANY AREAS IN WHICH HIS WORK HAS HAD LONG-LASTING PUBLIC POLICY IMPACT. HEINZ'S CONSIDERABLE SUBSTANTIVE POLICY CONTRIBUTIONS ARE NOT THE ONLY MEMORABLE ASPECT OF HIS LEGACY, HOWEVER. HE WAS A PERSONAL INSPIRATION TO MANY WHO SERVED UNDER HIM AND WHO HAVE MOVED ON TO OTHER INFLUENTIAL ROLES IN THE LAST 20 YEARS, AND SOME BELIEVE THAT THE REASONED, BIPARTISAN LEGISLATIVE STYLE IN WHICH HE SPECIALIZED IS NEEDED TODAY MORE THAN EVER.





HEINZ HAS A CONVERSATION WITH A VOTER DURING HIS CAMPAIGN, 1976.

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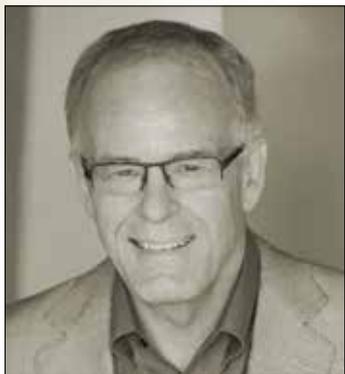
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# FOREWORD



I knew I liked John Heinz a minute or two into my first meeting with him, which was an interview for staff director of the U.S. Senate Special Committee on Aging he chaired. I didn't expect to like him and seriously doubted I could ever work for him. I softened a bit

as he made me feel immediately comfortable with that infectious smile and his famous charm and quick wit. And I suppose I was impressed by his intellect. But it was his forthrightness and his lack of guile and pretense that were most attractive. He cared about the issues, not about the politics or his image. About 20 minutes into the interview, as I warmed to the idea of actually working for him, but still having serious doubts, I blurted out, "I can do your aging committee work, but I'm not doing any of your political bidding. The fact that you're a Republican is your problem." After that outburst, I figured the interview would probably come to an abrupt end. Instead, he smiled and said, "That's fine with me. When can you start?"

Like many successful people, John Heinz was full of contradictions. A Republican who chaired his party's reelection committee in the Senate but who hired a lot of Democrats and Independents. The descendant of a very successful line of businessmen who instead devoted himself to public service. The list goes on.

What is clear from this account of his work on behalf of older Americans is that he used these contradictions to great effect. His desire to exceed expectations caused him to work harder than most of his colleagues and to inspire his staff to work toward the same standard. His willingness to reach across party lines was an effective strategy to find common ground and to achieve legislative results. His skill at using the media to challenge even the president—from his own party—and his persistence, even if it meant irritating his colleagues and friends, enabled him to break through barriers that thwarted other less determined elected officials.

Many things distinguish John Heinz from many of today's members of the U.S. Senate, but the most important is that quality I saw in my first encounter with him. He cared about his constituents' needs and interests, and that's what drove his work, rather than a commitment to an abstract ideology about private enterprise or the role of government. He certainly understood politics and the need to

be a member of a political party. But, as chair of the Senate Special Committee on Aging, he was all about the needs of his constituents, who were not only the elderly of the time but also future generations who would become old someday, those who today have parents and grandparents in need of help, and vulnerable individuals and families who deserve to be treated fairly.

Today, John Heinz would have trouble finding a comfortable place in either political party and would surely be frustrated by the reluctance in Congress to find common ground. The fact that compromise has become a four-letter word would surely frustrate John Heinz, who always defied easy labels as a conservative or liberal. He cared about getting things done, and even as a member of the majority party, he knew you still had to work across the aisle and to consider the other side's views and concerns if you wanted to find solutions to problems.

But John Heinz wasn't just a deal maker, a moderate in search of any solution. He was driven by a deeply held value proposition that while he was born to wealth and privilege, many Americans did not enjoy the same advantage, and they needed their public servants to ensure they got a fair shake. His work to protect social security and private pensions, his efforts to eliminate the last vestiges of institutionalized ageism in employment practices, and his commitment to a health care system that

was affordable and didn't push people into the "no care zone" all derived from a belief that the system should be fair and that society had a responsibility to ensure the health and economic security of its most vulnerable citizens.

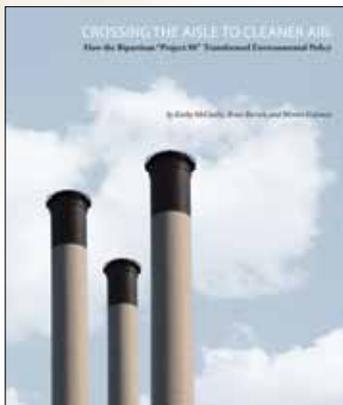
I often wonder what the world would be like if John Heinz were still alive and involved in politics. Might he have become a candidate for president someday? I actually asked him that question a few years before his death. He said, "I would consider running for president when I look around and none of the other potential candidates seems as good as I am." He then flashed a wry smile and said, "And I'm getting close to that point now."

As I look around, I don't see many public servants who are as "good" as John Heinz. He left a huge legacy of accomplishment and a large group of former staff members, volunteers, constituents, and friends who are devoted to carrying on his legacy. We miss him, but his work lives on in enduring public policies and in the lives of those who were privileged to be able to know him—contradictions and all.



Stephen McConnell  
The Atlantic Philanthropies

# ACKNOWLEDGMENTS



This is the second University of Pittsburgh Institute of Politics case study highlighting significant achievements by the late U.S. Senator H. John Heinz III (R-Pennsylvania). It follows *Crossing the Aisle to Cleaner Air*, which examined the role of “Project 88,” an

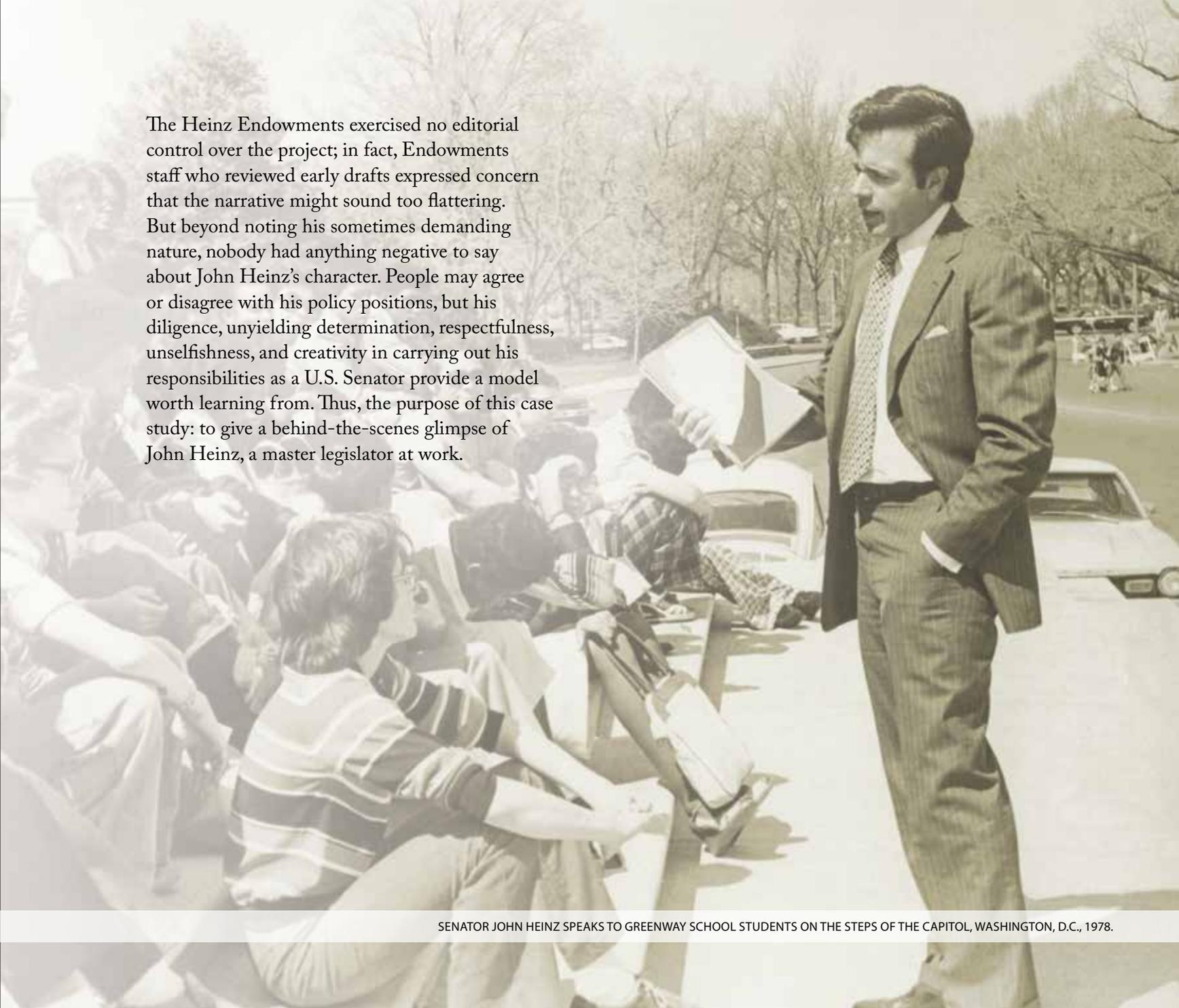
environmental policy initiative of Heinz and fellow Senator Tim Wirth (D-Colorado) that introduced widespread use of market-based incentives in U.S. environmental policy.

For both publications, the Institute is deeply indebted to the financial support and strategic guidance provided by the Heinz Endowments. In addition, the Senator H. John Heinz III Archives at Carnegie Mellon University assisted by making available dozens of relevant primary source documents.

There would have been no story to tell without the kind and enthusiastic participation of seven former Heinz staff members who graciously shared their recollections in personal interviews: Larry Atkins, Jeff Lewis, Frank McArdle, Stephen McConnell, Jim Michie, John Rother, and Cliff Shannon. Michie, Atkins, McConnell, and Rother also permitted us to draw from their previously unpublished written recollections, which were invaluable in providing accurate, detailed reconstructions of events now a quarter-century old.

This production was a team effort. Morton “Moe” Coleman, director emeritus of the Institute of Politics, and Kathy McCauley conceived the project, performed background and archival research, identified the issues to be covered, and conducted the first three interviews. Bruce Barron did additional research and interviewing and composed most of the first draft, drawing from unpublished material written by Rother, McConnell, and Atkins for Chapter 1 and by Michie for Chapter 5.

Finally, we owe considerable thanks to Patricia Hameister, chief clerk of the U.S. Senate Special Committee on Aging, for providing, in impeccably organized fashion, the committee’s published materials and every original source document she could track down.



The Heinz Endowments exercised no editorial control over the project; in fact, Endowments staff who reviewed early drafts expressed concern that the narrative might sound too flattering. But beyond noting his sometimes demanding nature, nobody had anything negative to say about John Heinz's character. People may agree or disagree with his policy positions, but his diligence, unyielding determination, respectfulness, unselfishness, and creativity in carrying out his responsibilities as a U.S. Senator provide a model worth learning from. Thus, the purpose of this case study: to give a behind-the-scenes glimpse of John Heinz, a master legislator at work.

SENATOR JOHN HEINZ SPEAKS TO GREENWAY SCHOOL STUDENTS ON THE STEPS OF THE CAPITOL, WASHINGTON, D.C., 1978.



HEINZ GREETES THE NEWLY ELECTED PRESIDENT OF THE UNITED STATES, RONALD REAGAN, IN 1980.

# CHAPTER 1

## PORTRAIT OF A SUCCESSFUL SENATOR

The 1980 elections, in which Ronald Reagan defeated Jimmy Carter for the presidency, also gave Republicans control of the U.S. Senate and its committees for the first time since 1954. Among the many previously inaccessible opportunities that thus became available to Republican senators, Pennsylvania's John Heinz focused on one that might have seemed incongruous for a 42-year-old: the chairmanship of the U.S. Senate Special Committee on Aging.

Though already chairman of the Republican Senatorial Campaign Committee (and thereby entitled to a good share of the credit for his party's electoral success), Heinz, according to the Senate's traditional seniority system, was not yet in line for a chairmanship. Moreover, the Special Committee on Aging is not usually a coveted assignment because it has no legislative authority; it has a staff and can hold hearings and issue reports, but it cannot move legislation onto the Senate floor.

But aging issues coincided well with both Heinz's personal and political interests. He had first entered this domain as a marketing executive with the H.J. Heinz Company, where he had been involved in creating a line of specialty food products aimed at seniors. While in the U.S. House of Representatives, he had worked with several other members to create its Select Committee on Aging. Politically, as he would be seeking reelection in 1982 in a state with a large elderly population, he certainly saw the value of being a national leader on issues like protecting social security and opposing mandatory retirement. Beyond that, he perceived an opportunity to combine the Aging Committee chairmanship with his seat on the influential U.S. Senate Committee on Finance to advance his legislative agenda. Virtually every major issue affecting seniors had something to do with social security, Medicaid, Medicare, and/or the Internal Revenue Code—all of which were issues within the Finance Committee's purview. Thus Heinz could use the bully pulpit of the Aging Committee to raise visibility of issues and then move his legislative remedies forward through Finance.

Members of Heinz's staff indicated that Heinz wanted this chairmanship enough that he engaged in intense behind-the-scenes negotiations to outmaneuver Kansas Senator Nancy Kassebaum for the assignment. For the next six years, he

maintained an ambitious program that included 34 legislative, investigative, or oversight hearings in Washington, D.C.; field hearings around the country; and production of more than 60 papers and reports. After the Democrats regained control of the Senate in the 1986 elections, Heinz became the committee's ranking minority member and held that post until his untimely death in 1991. During this time period, and especially during his 1981–86 chairmanship, he had a prolific, lasting impact on how older Americans are treated.

Chapters 2 through 7 of this study look at Heinz's actions on six specific legislative topics; Chapter 8 briefly describes the last, ambitious investigation in which he was involved; and Chapter 9 considers the lasting significance of Heinz's career. But first, this initial chapter illuminates what made Heinz effective, exemplary, and memorable as a senator by taking us on a fascinating trip behind the scenes at the Senate Special Committee on Aging. After Heinz's death, three men who had served him as Aging Committee staff director—John Rother, Stephen McConnell, and Larry Atkins—came together to assemble their recollections in a highly entertaining, heretofore unpublished memoir. With their permission, this first chapter and its insights on how a great senator actually did his work are drawn primarily from that document.

## BIPARTISAN

Aided by his largely centrist policy stances, Heinz was an effective bipartisan figure in the Senate, even during the contentious early Reagan years. Upon taking over the Aging Committee, he offered a fair split of budget and staffing resources to the Democrats, thereby gaining a strong alliance with the former chairman, ranking Democrat Lawton Chiles of Florida. At a time when the new Republican leadership was asking all Senate committees to cut at least 10 percent from their committee operations budgets, Heinz and Chiles together were able to secure a 50 percent increase for the Aging Committee.

Heinz selected staff members based on their experience, policy skills, and productivity, not their political affiliations or ideologies. In fact, most of the staff members he hired were registered Democrats or Independents. This unlikely arrangement led to a few awkward moments. When he was trying to get a new prescription drug benefit included in Medicare catastrophic care legislation in 1987, Heinz had to remind his staff that, because he was a Republican, they should be getting input from Reagan's Health and Human Services secretary. After the 1988 elections, when he sought positions for two of his senior staff members in the incoming George H.W. Bush administration, Bush aides were not happy to discover that both were Democrats.



Most of the time, however, Heinz's tendency not to think much about party affiliation was to his advantage, as he was able to build bridges across the aisle rather than alienating Senate colleagues. In preparations for the 1988 campaign, Heinz's staff found the fruit of this

approach in an impressive statistic: An unusually high 60 percent of the legislation introduced by Heinz had been passed.

### POLICY WONK

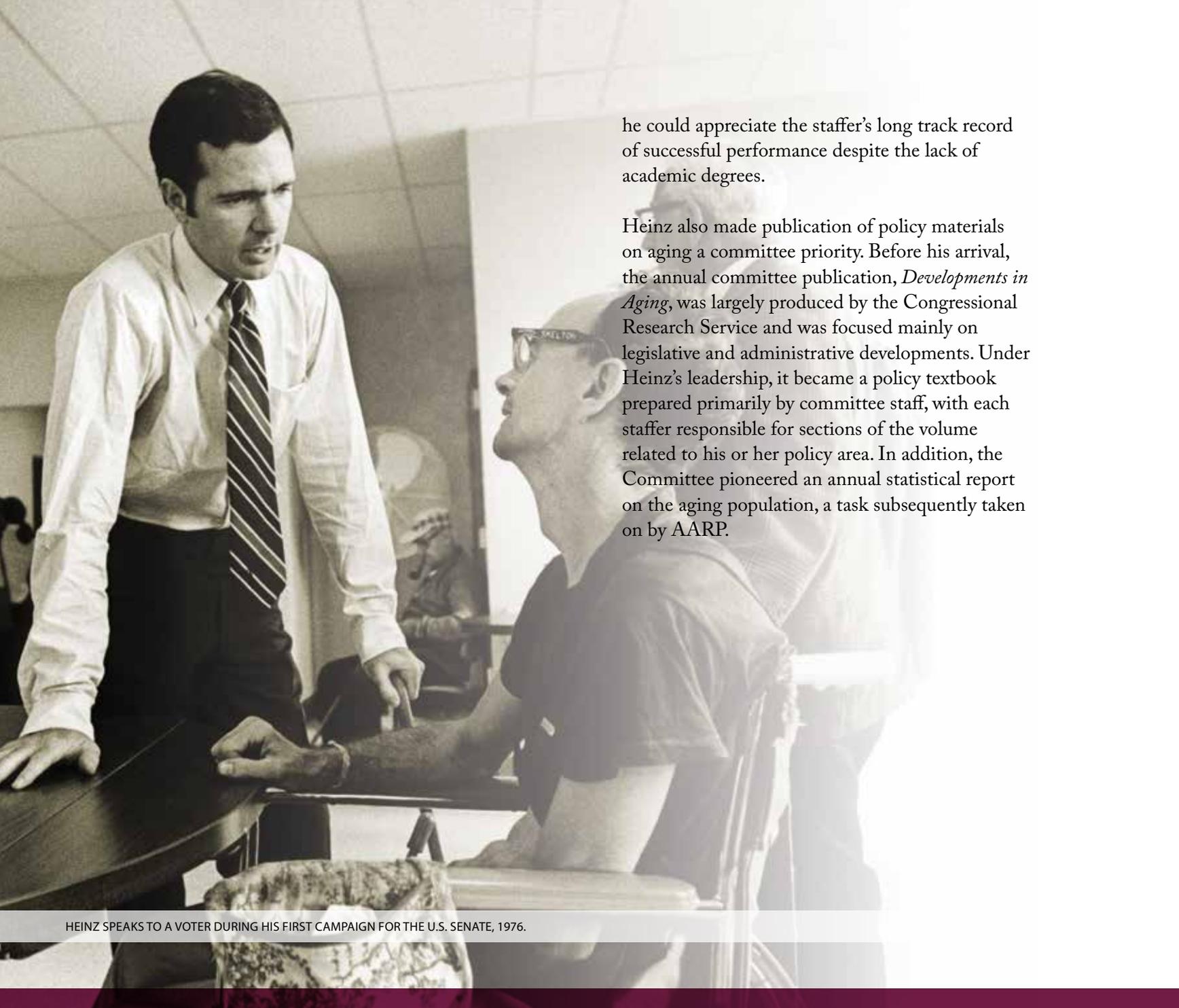
Most elected officials, constantly beleaguered by busy schedules, ask for one-page memos so that they can make decisions quickly. Heinz was different. Having taught public policy at Carnegie Mellon University and served as a staffer himself for U.S. Senator Hugh Scott, Heinz thrived on policy substance. He had a voracious appetite for briefing material, demanding well-reasoned arguments and seeking to absorb as much information as possible to guide his decisions.

On one occasion, an Aging Committee staffer, feeling that Heinz needed more detailed background on AIDS issues, prepared a 25-page

briefing memo that laid out the entire range of views held by interest groups and compared them to the perspectives of public health experts. Heinz read the memo thoroughly, marked it up with questions he wanted to have answered, and used the information to align his subsequent votes with sound public health policy.

Heinz's decision-making system depended on the Decision/Action Memo, a form his staff used to organize information relevant to a decision. On a typical day, five such memos from Aging Committee staff members and another five or so from his personal or other committee staff members went into his evening folder. Heinz returned them the next morning with his decisions or with further questions.

To make this system work, Heinz heavily valued academic capacity and credentials. For example, when a capable staff member was under consideration for promotion, Heinz asked to see the staffer's college transcript. This request posed a challenge, as the staffer had no college degree! But McConnell, then Aging Committee staff director, found a creative way to protect the candidate: He prepared a mock transcript, complete with invented course names and official-looking stamps, and sent it to Heinz. After probing some of the oddities of the phony transcript, Heinz caught on to the joke—and conceded that, in this case,



he could appreciate the staffer's long track record of successful performance despite the lack of academic degrees.

Heinz also made publication of policy materials on aging a committee priority. Before his arrival, the annual committee publication, *Developments in Aging*, was largely produced by the Congressional Research Service and was focused mainly on legislative and administrative developments. Under Heinz's leadership, it became a policy textbook prepared primarily by committee staff, with each staffer responsible for sections of the volume related to his or her policy area. In addition, the Committee pioneered an annual statistical report on the aging population, a task subsequently taken on by AARP.

HEINZ SPEAKS TO A VOTER DURING HIS FIRST CAMPAIGN FOR THE U.S. SENATE, 1976.

## DOGGED

Heinz may not have made enemies on Capitol Hill, but he did have the capacity to irritate people with his unflagging determination. Once he committed to doing something, he pursued the goal tenaciously. If he entered a Finance Committee meeting with a series of proposed amendments to a Medicare bill, he would not quit presenting them until all had been either approved or firmly rejected—even if it meant extending the session into the evening. The irritation sometimes shown by the committee chair or by other colleagues rarely deterred him.

Heinz tirelessly shepherded proposals through the legislative process—identifying issues, developing public and congressional awareness, drafting legislation, and working it painstakingly through the Senate and House. A 1982 effort to pass legislation

protecting the right of victims of federal crimes exemplifies his methodical, persistent approach. When he first raised the issue, Heinz was told that no major crime legislation would move through the U.S. Senate Committee on the Judiciary due to conflicts between its chairman and ranking

minority member. Unshaken by that caution, he and a committee staff member began framing the issue and educating Congress and the public anyway. The committees of jurisdiction eventually agreed to hold hearings, mark up a bill Heinz had introduced, and move it to the Senate and House floors. Within a year, the bill became law, giving Heinz his first chance to participate in a presidential signing ceremony in the White House Rose Garden.

Heinz was equally methodical in his treatment of witnesses at Aging Committee hearings. On one hand, he was endearing toward constituents, senior citizens, and “victim” witnesses who came before the committee, making a special effort to make them feel comfortable and appreciated. On the other hand, bureaucrats or company executives with anything to hide dreaded coming before him. His questioning was well informed, sharp, and often guided by an intent to highlight predetermined conclusions. Aging Committee hearings were not simply information-gathering sessions; they were publicity events, giving Heinz a chance to promote on the national stage concerns that he had already identified. Like a good lawyer, rarely did he ask a question without already knowing the answer. A U.S. Social Security Administration official given rough treatment at one hearing was caught by a nearby microphone whispering to an aide, “This is a setup.”

SENATE SEMINAR, 1980



Beginning in 1983, Heinz further bolstered his capacity for generating high-visibility, media-worthy oversight hearings by creating an Aging Committee investigative unit of four staff members who used highly aggressive, enterprising methods to uncover fraud, waste, and mismanagement in government programs.

### MEDIA MONGER?

Heinz was a master at using the media to his benefit, to the extent that some in the Senate viewed him as a showman. On one occasion, the Senate Majority Leader, stymied in moving a key piece of legislation by a Heinz amendment tactic, sent his staff to the Senate press galleries to circulate disparaging stories about Heinz's supposed media fixation. But, actually, media attention was never Heinz's goal; legislative achievement was the goal, and media coverage was a tool to get him there. Heinz didn't care whether the coverage was friendly as long as it was serving his legislative purpose. As he would frequently emphasize to his press secretary, "There is good press, bad press, and no press, in that order. Let's not ever have no press."

Under Heinz's meticulous leadership, Aging Committee hearings were carefully choreographed to secure the desired publicity results. Above all, they were solution driven. Heinz required that each hearing proposal include not just a legislative

or oversight purpose and a list of witnesses but a main story line, a media relations plan, and expected outcomes. A few days before the hearing, he intensified the scripting further, asking for specific objectives to be achieved through each witness and a detailed line of questioning (with anticipated responses and follow-up questions).

Heinz was equally sensitive to his visual presence. After sound technicians observed that the Senator's low chair made him look small on the dais, the Chief Clerk proposed putting an additional foam cushion in the chair so that he "would sit as tall as [he] stand[s]." Thereafter, if the extra cushion was absent, Heinz would tease the Chief Clerk about the oversight and ask for the cushion so that he could "sit tall."





One of Heinz's best performances on the Aging Committee stage was a hearing on administrative problems with social security. In 1983, having received a sea of complaints about processing delays and check disbursement errors, he called an oversight hearing. In advance, he had his staff collect and analyze beneficiary letters. Along the way, they found a wonderful star witness: a distinguished older gentleman from Ohio whose Social Security checks had been withdrawn from his bank account without prior notice after the Social Security Administration had determined he was dead. The witness, very much alive, appeared on all three network morning news shows on the morning of the hearing and then gave compelling testimony that appeared on the evening news. The negative publicity led quickly to a policy change at the U.S. Department of the Treasury on account withdrawals and spurred initiatives to streamline and automate Social Security procedures.

Heinz didn't just play to the media; he played along with them. In 1982, he teamed up with the media to investigate pacemaker marketing abuse. Aging Committee investigators used concealed video cameras to film pacemaker salesmen as they tried to persuade physicians to do unnecessary operations, replacing properly functioning old-model pacemakers with new, more expensive ones. After the footage was televised, Heinz held a hearing to interrogate witnesses from the companies caught in the act.

In 1983, frustrated with Reagan administration denials of social security disability payments to people with mental impairments, he coordinated an Aging Committee hearing with the development of a PBS *FRONTLINE* documentary on the topic. The following year, still dissatisfied with the pace of change, he got the President's attention by holding field hearings in Illinois and Texas, two important states in Reagan's 1984 reelection bid. The adverse media attention and outcry from state officials resulted in a complete capitulation by the Reagan administration on social security disability determinations. (See Chapter 3 for a more detailed examination of this issue.)

Heinz's supposed media mongering, just like his inexhaustible determination and long hours of policy study, was part of his drive to be an excellent and effective senator—a goal he unquestionably achieved. ✦



HEINZ DELIVERS REMARKS AT THE COMMISSION ON AFFAIRS OF THE ELDERLY, 1982.

# CHAPTER 2

## SAVING SOCIAL SECURITY (1981–83)

As John Heinz assumed the chairmanship of the U.S. Senate Special Committee on Aging in 1981, he faced a major crisis in aging policy. America's social security program, enacted in 1935 as the federal government's main way to ensure the financial stability of retired Americans, was in serious fiscal danger.

During the 1970s, a slow economy and an increasing number of beneficiaries eroded social security's healthy surplus. Cost-of-living adjustments (or COLAs) of benefit amounts, which were based on consumer price increases beginning in 1975, hastened that erosion; COLA was an all-time high of 9.9 percent in 1979, then soared to 14.3 percent in 1980 and a still-high 11.2 percent in 1981. By then, some experts were predicting that social security could slide into insolvency as soon as the following year. Congress raised the payroll tax rate (the amount withheld from an employee's income, with employers being required to contribute an equal amount) quite steeply, from 5.85 percent in 1977 to 6.65 percent in 1981, but this was still not enough.

The year 1981 also saw Ronald Reagan assume the presidency, with a limited-government philosophy not seen in the White House since before the New Deal. The administration's reform proposals provoked Democratic reactions that Reagan was interested in cutting social security, not saving it.<sup>1</sup> In December, the two sides okayed a stopgap measure that would permit the main social security trust fund, the Old-age and Survivors Insurance Trust Fund, to borrow from the other two trust funds for one year. They also agreed on the appointment of the bipartisan 15-member National Commission on Social Security Reform to examine the system's fiscal woes and make recommendations by the end of 1982.

Reagan tapped Alan Greenspan, who had chaired the Council of Economic Advisers for President Gerald Ford in 1974–77 and would later become Federal Reserve chair, to lead the commission. Heinz successfully lobbied Senate Majority Leader Howard Baker to become one of his five appointees. His interest was not surprising; social security's short-term financial problems had been the topic of the first Aging Committee hearing he chaired, on June 16, 1981, just five weeks after the Reagan administration had released its proposals.

In his introductory statement at that hearing, he displayed his preference for measured actions over what he perceived as overreactions or scare tactics (even if used by a president from his own party):

We meet today because of a problem in the social security system. It is a problem with financing the system over the next five years, and over the next 75 years. But most importantly, it is a problem with public confidence in the solvency of the system and in the commitment of Government to meet future benefit obligations. This erosion of public confidence is the most serious of all threats to the solvency of the social security system. Without the willingness of workers to contribute from earnings today to protect themselves in the future, there could be no social security program.

While the administration's recent pronouncements that the social security system is on the verge of collapse have helped to highlight the problems we face in financing the system, they have also furthered this erosion in public confidence. These warnings of imminent failure, accompanied by proposals for major, immediate changes in benefits, have unnecessarily caused extreme anxiety and anger among current beneficiaries and among those

nearing retirement age. The immediate problem with financing social security is critical but manageable. Older Americans and contributing workers should be reassured that the social security system can meet its obligations in the near future without major changes in the program.

Heinz did not wish to buck a popular Republican president during his first months in office, but he also wanted to use his Aging Committee chairmanship to become a statesman looking out for America's seniors. And he also was sensitive to how quickly social security's pay-as-you-go system could collapse politically if citizens began to fear that Congress might slash the benefits they were counting on.

As Larry Atkins recalled, "Senator Heinz was standing on a precipice between trying to be a good Republican on one hand and recognizing on the other hand that he was the leading spokesperson on the Senate side for older Americans and for everybody who would someday be an older American." While Senator Bill Armstrong (R-Colorado) and Representative Bill Archer (R-Texas) staked out the fiscally conservative positions on the Greenspan Commission, and while Democrats leaned toward tax increases, Heinz sought a more balanced solution.



Politically, Heinz's appointment was useful to the Republican Party, as his less hard-nosed nature and his emergence as a representative of older Americans could counter the presence of beloved octogenarian and House Aging Committee Chairman Claude Pepper

(D-Florida). But his moderate stance also made him an important bridge builder and deal maker on the commission.

"Heinz was without a doubt the best policy analyst on the committee," Atkins stated. "But, in this case, he was in with a lot of heavy hitters." Senate Finance Committee Chairman Bob Dole (R-Kansas) maintained close contact with the White House, while former Social Security Commissioner Robert Ball was the voice of House Speaker Tip O'Neill (D-Massachusetts). Without their support, no deal would happen.

The 1982 election season was too charged for compromise, as Pepper led Democratic campaign efforts to accuse Republicans of preparing to scuttle social security.<sup>2</sup> But when the commission met after Election Day, Heinz was well placed in the

strategic middle. As a November 8 memo to Heinz from staff member Kate Clarke stated, "You are generally regarded as a potential mediator in the upcoming Commission meeting."

Heinz promptly used his position to float a compromise solution, suggesting that social security reform should depend equally on increased taxes and reduced benefits to fill the financial hole. The Senator H. John Heinz III Archives at Carnegie Mellon University in Pittsburgh contain handwritten notes that Heinz apparently used when presenting his position:

We are not going to get anywhere—and neither will the Congress—if we all hold fast to our positions. I would like to make a two-part proposal: first, that both sides agree to split making up the shortfalls, half through revenue increases and half through benefit savings. Second, I will undertake to make the first proposal—simply as a basis of starting practical discussion, or, alternatively, each side agree to propose to the other the most acceptable (to them) means of doing what they don't really want to do.

Heinz's compromise proposal initially gained no traction. In December 1982, unable to reach agreement, the commission adjourned with no plan for additional meetings. The attempt at a bipartisan solution appeared to have failed.

But, as so often happens at the brink of a policy catastrophe, positions finally began to soften after Dole and fellow commission member Senator Daniel Patrick Moynihan (D-New York) talked on the Senate floor and agreed that they could not settle for failure. They resumed quiet discussions, bringing Ball and two other Greenspan Commission members into their meetings. In mid-January 1983, they reached agreement in principle on a package that the White House and congressional leaders of both parties could support. Although Heinz was not involved in these meetings, the template used to break the logjam—the principle that tax increases should equal benefit reductions—was his.

On January 15, 1983, the commission reconvened and provided political cover for O'Neill and Reagan with a 12–3 endorsement; only Armstrong, Archer, and one Democrat dissented. Heinz then cosponsored (with Dole and Moynihan) legislation in the Senate to enact the commission's recommendations, played a major role in Senate floor debate on the bill, and testified in support of the measure before the House Ways and Means

Committee. In his “Dear Colleague” letter supporting the bill, Heinz diplomatically captured the nature of this unpleasant but balanced compromise, calling it “an equitable and realistic effort to restore solvency to the Social Security system. None of the individual components are attractive by themselves, yet the recommendations taken as a whole fairly spread the financial burden between workers/employers and beneficiaries.”

The final legislation, signed by President Reagan in April 1983, combined payroll tax hikes with a six-month delay in cost-of-living adjustments and a very gradual increase in the retirement age. Would it have happened without Heinz's moderating presence on the Greenspan Commission? Possibly. But as the clearest middle-of-the-road voice on the commission, he likely made achieving a solution easier. ✧





HEINZ ASSISTS WITH CUTTING THE CEREMONIAL RIBBON AT THE ALLEGHENY VALLEY HOSPITAL DEDICATION, 1983.



HEINZ VISITS PITTSBURGH VETERANS HOSPITAL, 1982. AT RIGHT IS THEN PITT DEPARTMENT OF MEDICINE CHAIR GERALD LEVEY.

# CHAPTER 3

## WHO DECIDES DISABILITY? (1981–84)

For three years, John Heinz played the starring role in an unusually gripping battle against bureaucracy, demonstrating determination, creativity, and guts to publicize and eventually eliminate an injustice suffered by hundreds of thousands of social security recipients with disabilities.

From 1970 through 1978, the annual cost of the Social Security Disability Insurance (SSDI) program, created in 1956 to assist adults who could not work due to disability, quadrupled to \$13 billion a year. In 1980, Congress passed legislation designed to reduce spending both through benefit cuts (of up to 18 percent) and by offering incentives, such as ongoing eligibility for Medicaid, to people who did return to work. A less-prominent provision in the law (PL 96-265) required the U.S. Social Security Administration (SSA) to undertake, starting in 1982, a three-year review of state decisions declaring individuals to be disabled. Congress took this step in response to concerns that perhaps as many as 20 percent of the nation's 4 million beneficiaries of SSDI and Supplemental

Security Income (SSI) were continuing to receive federal paychecks even though their conditions had improved.

Shortly after taking office in 1981, the Reagan administration, spotting a chance to demonstrate efficiency and take a bite out of the social security financing problem as well, decided to initiate this review process 10 months early. Instructions were sent to the state welfare agencies that would actually carry out the reviews. During the 13-month period beginning March 1, 1981, SSA selected 368,500 cases for investigation; by the end of 1982, the total number of cases selected had risen to 748,000, and 340,000 people, or nearly half, had seen their eligibility revoked.<sup>3</sup>

“The way they did the reviews,” Larry Atkins explained colorfully, “was that they pulled the records, had a physician say something, and determined from a paper review whether [the recipient] was still eligible or not. [If the determination was unfavorable,] they sent a notice kicking them off the rolls ... and describing these appeal rights that people had if they weren't so freaked that they jumped out a window. It was kind of a screwy process in the sense that they were knocking people off the rolls without a lot of new information and then forcing them to crawl back on [by appeal] over an extended period of time.” More than 60 percent of those who

appealed the determination eventually regained their benefits, but they experienced great hardship and emotional turmoil along the way.

As complaints about the process began to reach Heinz in spring 1982, he acted quickly, requesting a study by the former General Accounting Office (GAO; now the U.S. Government Accountability Office) and directing his staff to carry out its own investigation. Aging Committee staff director John Rother assigned the issue to Frank McArdle, who had formerly worked for the Social Security Administration. McArdle “had good inside sources,” Rother noted, with the result that concerned staff members within SSA surreptitiously steered him toward egregious cases. A November 11, 1982, summary of staff activities described what they were finding:

Went with GAO to a secret meeting with disability examiners in Harrisburg, Pennsylvania. In a frank discussion, they admitted that the tremendous workload of CDIs [continuing disability investigations] is having an adverse effect on decisions, and that the changes in SSA's criteria are unjust. . . . GAO has accumulated a lot of evidence that a moratorium is desirable on psychiatric CDIs. They have found a shocking pattern of cutting people off the rolls on the flimsiest of bases. They also found that these result from signals sent by SSA's Office of Quality Assurance.

On his visit to Harrisburg, McArdle recalled later, he heard after-hours horror stories from state workers who were carrying out the reviews as directed but were frustrated by the policy guidelines. For example, one man suffering from mental illness was declared able to work because he could feed his dog.

A Philadelphia woman who had been on SSDI for years and suffered from serious mental health conditions committed suicide not long after her benefits were abruptly terminated. McArdle's review of the case file uncovered numerous breaches in standard disability investigation policy; for example, there was no explanation of why SSA disregarded the opinion of the treating psychiatrist that the woman remained severely disabled. Heinz documented the procedural flaws in a lengthy letter to U.S. Department of Health and Human Services (HHS) Secretary Margaret Heckler that also was released to the media.

In December 1982, Congress responded to the rising torrent of complaints by passing legislation that permitted people removed from the rolls to continue to receive benefits while on appeal. “While this is only a temporary measure, it is a significant step in the right direction toward reform of a process in serious disarray,” said Heinz.<sup>4</sup>



With a permanent solution not yet forthcoming, Heinz scheduled a special two-day Aging Committee hearing for April 7 and 8, 1983. The hearing focused on the treatment of recipients with mental disabilities, because the injustices perpetrated against this group were

poignant and easiest to demonstrate. Whereas the executive branch frequently testifies first at such hearings, Heinz instead scheduled the SSA deputy commissioner as the first witness on the second day, after the presentation of various cases and testimony from state employees on the first day.

Before the hearing, Heinz asked McArdle to prepare him for the challenge of questioning witnesses with mental impairments. After McArdle described what behaviors the senator could expect from them, Heinz responded: “Oh, that should be fine—it sounds a lot like some of my Senate colleagues.”

Heinz set the tone for the hearing in his well-documented and ominous opening statement, a portion of which follows:

I am concerned by evidence that severely disabled individuals have been terminated from the rolls because they can feed their dog, watch television, or play the piano. Individuals involuntarily committed to a state mental institution have been told they are able to work—even while they remain committed in such a mental institution, against their will, because of the danger they pose to themselves and to society. And severely disabled individuals, who don't wear their disabilities on their shirtsleeves, are not given a thorough and realistic evaluation of their ability to work, and are denied benefits because they make a neat, polite appearance.

I am concerned because such decisions are frequently made by personnel not qualified in psychiatry or psychology.

But most of all, I am concerned about the harsh human toll of the reviews on the estimated 600,000 to 700,000 individuals on the social security and SSI rolls whose primary disability is a severe mental illness.

Heinz first called on a representative from GAO, which had found that, among the mental disability denials processed under SSA's 1981 directives and subsequently appealed, an amazing 91 percent were overturned. GAO also unearthed information on the cursory reviews used to assess the severity of a claimant's mental illness. Heinz called GAO's findings "really damning evidence of a callously uncaring system that is unremittingly unfair." Various other professionals then described a host of disturbing cases, including many denials after which beneficiaries had deteriorated or even committed suicide. Officials from New York State spoke of their decision to sue the federal government over the direction they had received regarding how to conduct disability determinations.

The committee then recessed until the following morning, at which time Paul Simmons, an SSA deputy commissioner, was the featured witness. Upon observing the television cameras in the hearing room, Simmons remarked to an aide, "This is a setup." In a sense, he was right. Heinz had invited a crew from the Public Broadcasting Service's *FRONTLINE* documentary program to film the hearing. Simmons' remark was captured on a microphone and appeared when *FRONTLINE* aired a segment on SSA disability determinations two months later, on June 20.

Heinz proceeded to grill Simmons for approximately two hours, drawing on his detailed awareness of the SSA review system and its problems. He concluded by lambasting SSA for putting such vulnerable persons through a "meat grinder" and called for a moratorium on disability review until new guidelines could be established.

By spotlighting compelling cases of government-inflicted human suffering, Heinz turned an arcane bureaucratic squabble into a major media event. The April 8 summary memo of Aging Committee Communications Director Isabelle Claxton reported that all three television networks, the top two national news services, and numerous newspapers covered the event; Heinz also appeared on the *Good Morning America* television program.

*FRONTLINE* included clips of Heinz's performance at the hearing in its broadcast. *New York Times* writer John Corry, who previewed the program, described the impact in this way: "In a Senate hearing Senator Heinz conducts, the deputy commissioner of the Social Security Administration tries to explain the policy. Even the most sympathetic listener would find the explanation unintelligible. It is a devastating insight into bureaucracy."<sup>5</sup>

At Heinz's urging, the Senate easily passed an amendment requiring a six-month moratorium on reviews of beneficiaries with mental illness. Though this provision did not pass the House, the growing pressure from Heinz and others caused the Reagan administration, in June 1983, to announce several procedural changes and to place a temporary moratorium on reviews of most mental health disability cases. The administration's announcement came shortly after *The Washington Post*, assisted by McArdle's research, obtained and published a photo of President Reagan embracing a Congressional Medal of Honor winner who had subsequently suffered the cutoff of his disability benefits. Heinz expressed appreciation that "the Administration is finally acknowledging the carnage these reviews have inflicted on thousands of our most vulnerable citizens" but noted that the changes were "not a solution."<sup>6</sup>





As the presidential election year of 1984 dawned, a solution was still not in sight. SSA had stopped negotiating disability review changes with Congress in October 1983, and at a January 1984 Finance Committee hearing, SSA's acting commissioner testified that his agency opposed new legislation. Meanwhile, some influential senators, including Bob Dole and Russell Long (D-Louisiana), remained more focused on helping SSA to remove undeserving beneficiaries from the rolls than on the concerns Heinz had raised.<sup>7</sup> So Heinz upped the ante, hitting the administration in the best way he knew how. As Atkins recalled it, Heinz stated, "The only thing they're going to be paying attention to is the election and whether they can deliver Texas and Illinois. So let's go to Texas and Illinois."

The Aging Committee scheduled field hearings in Chicago (with Republican Illinois Senator Charles Percy) on February 16 and Dallas (with Texas House Democrats Jonas Martin "Marty" Frost and J.J. Pickle) on February 17. Atkins was sent to Texas to look for people who could testify at the hearing there. As he explained:

We needed to find people who were clearly and convincingly disabled. We had the names of a couple in Dallas. I was driving through well-manicured suburbs, trying to figure out how someone on disability insurance could be living here. But then the road suddenly came to an end and we hadn't hit our house number yet. You could see this little dirt road go down into a gully, and way in the back was a little cabin. Sure enough, we found a husband and wife who were sharing a respirator, both bedridden. We managed to arrange for medical transport so that they could tell their story.



A few weeks later, the man, John Roberts, sat before Heinz at the Dallas hearing. He explained that he had broken both legs in a 1972 steel industry accident, had heart disease, was a diabetic, and was caring for a bedfast wife besides but had received a letter in 1983 stating that he was up for termination because reviewers said he could stand for four hours and lift 20 pounds. Heinz guided Roberts through explaining that the reviewers never cited any evidence of what he could lift nor did they suggest what type of work he could possibly do—they just “said I would have to find something.”

While creating a media nightmare for the White House, Heinz deftly presented himself as doing the Reagan administration a favor, as recorded in his opening statement at the Chicago hearing:

Now, there is one other reason, and I speak somewhat personally about this, for us in Congress to act. As one American, I believe very deeply that this country happens to need Ronald Reagan’s leadership, and I want to see the President reelected. And although these disability reviews were set in motion by the previous administration, the Carter administration, the failure to correct a flawed system that daily creates more disaster for genuinely disabled persons who paid for this insurance lends credibility to the President’s opponents who talk about fairness.

The Democrats are going to make fairness the issue in the fall campaign, and I do not want to see my President hurt because of an insensitive bureaucracy that is running out of control.

When a few disabled people are rendered destitute and afraid, that is casework for a Member of Congress or a Senator. When it is tens of thousands, it is time to bring the problem forcefully and urgently to the President’s attention, and I believe these hearings will help to do exactly that.

The two hearings detailed seven specific cases, which were followed by testimony from state eligibility reviewers and other officials who objected to SSA’s guidelines for the reviews. The strategy worked.

“We got front-page stories in the Chicago and Texas press about how heartless, cruel, and unthinking the Reagan people were,” Atkins said. “They didn’t appreciate that. So they finally called Heinz and said, ‘Okay, we’re throwing in the towel on this one; we’ll back off this policy. You win. Just don’t do any more of these field hearings.’”





HEINZ VISITS WITH A PATIENT AT THE VA PITTSBURGH HEALTHCARE SYSTEM—UNIVERSITY DRIVE, JULY 19, 1982.

In March 1984, two weeks after the House had passed by a vote of 410–1 a bill to make it more difficult for SSA to cut a recipient’s benefits, HHS Secretary Heckler announced a nationwide moratorium on disability reviews. In September, the final bill (PL 98-460) passed unanimously in both houses; President Reagan quietly signed it in October.

“What Heinz brought to many issues like this one,” McArdle stated, “was a sense of outrage. He could channel his anger toward public policy that would correct the injustices that hurt vulnerable populations. When he seized upon a situation like that, he wouldn’t let go. His outrage over what was happening to defenseless people gave him an energy and a commitment to see it through.”

To Rother, Heinz’s involvement with the SSDI issue epitomized his dogged yet humble political style: “He was pushing for legislative change, not political advancement. He took on, almost as a solo project, a very tough issue that most people would have backed out of. The group of us staff members who worked with Heinz on this issue had never been more proud of a senator because of that combination of determination and not caring what the odds were. It was a Hollywood movie kind of experience, and the staff became more loyal to him as a result.” ✨





HEINZ WITH SENATOR JACOB JAVITS, 1980

# CHAPTER 4

## FINISHING HIS MENTOR'S WORK: HEINZ AND PENSION REFORM (1984–86)

Around 1984, former Senator Jacob Javits (R-New York) paid a poignant visit to John Heinz. Javits served four terms (1957–81) as one of the U.S. Senate's more liberal Republicans and was an important mentor to Heinz after the latter's entrance into the Senate in 1977. But Javits' diagnosis of amyotrophic lateral sclerosis (ALS, or Lou Gehrig's disease) contributed to his defeat by Alfonse D'Amato in the 1980 Republican Senate primary. By 1984, he was confined to a wheelchair and dependent on supplementary oxygen.

One of Javits' most significant achievements as a senator had been his role in the passage of the Employee Retirement Income Security Act (ERISA) in 1974. Before ERISA, businesses had free rein to establish pension eligibility rules, and many of them required employees to remain with the company for 20 years or until a certain age in order to become vested (i.e., entitled to receive benefits from employers' contributions to the pension fund).

ERISA required businesses to conform to one of the following vesting options. If a company chose "cliff vesting," under which employees jump from having no vesting rights to becoming fully vested all at once, the tenure required for an employee to become vested was 10 years. If employees received vesting rights gradually, the time period required for full pension eligibility could be extended to 15 years.

This was a significant change, as 72 percent of all pension plans were not compliant with ERISA's vesting standards before 1974.<sup>8</sup> But Javits was still disappointed. He had wanted to limit the cliff vesting period to five years rather than 10 and had conceded this point in final negotiations.

Now, in the Senators' private dining room, the ailing Javits addressed his protégé with a simple request: that Heinz fix this law for him.

Thus Heinz became a pension reformer. It was an area suited to his love for policy detail and his willingness to engage in unseen, unappreciated policymaking. As he commented later, pension regulations have "very little sex appeal and a lot of complexity. ... The people you help are never going to know that you helped them, and the people you have a direct and measurable impact on—employers—often find the reform unpalatable."<sup>9</sup>

Larry Atkins, who staffed this issue for Heinz, described how the strategy unfolded:

We started out by doing dinner meetings. We would have a big dinner downtown at one of the Chinese restaurants, and they'd bring out course after course. And we could have a couple guys from the Treasury Department there, and some Democratic and Republican staff who specialized in pension issues, and the insurance industry and the employer community were represented. We had several months of these dinners, and everybody put on the table their ideas about what needed to be done to improve the pension system. If you let people have a drink or two and you have camaraderie and a good time, and then you start talking about policy outside of your roles, you can get to pretty much the same place. And we did.

So then we said it wasn't going to do us any good to just keep drinking and eating—we were going to actually have to put pen to paper. So we started holding almost a year of meetings on the Hill, trying to design a comprehensive pension reform bill that could be broadly supported both outside and inside the Congress. It was an unusual process because we brought representatives of industry into the room to draft the legislation with us.

Heinz promoted his pension reform goals by holding an Aging Committee hearing in June 1985 titled “The Pension Gamble: Who Wins, Who Loses?” He repeated the pattern that had worked so well on social security disability, filling the opening panel with aggrieved citizens. The first witness was an Ohio woman who, upon retiring after 30 years with J.C. Penney Company, Inc., was informed that she would not be receiving a pension because her social security benefits were considered sufficient financial support. Next came a woman who was laid off six months before she could fulfill the 10-year vesting requirement, a 23-year bank employee who had no pension rights because she was classified as an hourly rather than a salaried employee, and an engineer who had accumulated virtually no pension over 22 years because of frequent job changes.

In October 1985, Heinz introduced Senate Bill 1784, the Retirement Income Policy Act. The legislation contained three main policy goals: (1) to reduce the standard vesting period from 10 years to five; (2) to require employers, if they operated a pension plan, to offer it to all their employees; and (3) to revise the rules governing the integration of pension benefits with social security benefits (thus fixing cases like that of the retiree from J.C. Penney). Representative Bill Clay (D-Missouri) introduced companion legislation in the House.

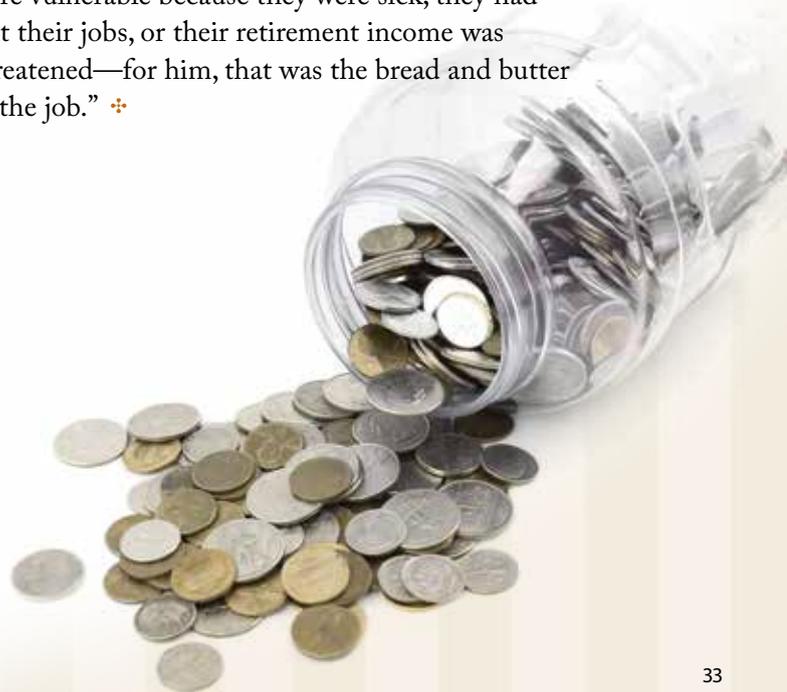
When the Tax Reform Act of 1986 began to move forward, Heinz decided to attempt to attach his pension provisions to that bill. The combination of worker-friendly pension proposals with a Reagan-inspired tax bill resulted in a battle in the Senate Finance Committee, where, Atkins recalled with a chuckle, “the Republicans were promoting progressive change and the Democrats were representing the business interests trying to stop it.” But Heinz prevailed, and his legislation, with minor modifications, became law in 1986.

If Heinz thought of pension policy as an obscure intellectual endeavor that few beneficiaries appreciated, a 1988 incident changed his mind. Seeking a third Senate term, he decided on a purely positive campaign, running ads strictly on his legislative accomplishments. On the day when the ad featuring his success in changing pension law appeared, Atkins recalled, daily tracking polls showed him getting a 2 percent boost.

While the 1986 pension amendments displayed Heinz’s skill in policy development and consensus building, they were not his first foray into pensions. Heinz had reacted with unusual determination when, in 1981, the Reagan administration proposed cutting benefits for a group of railroad retirees effective in December, right around the holiday season. “He went to the floor during debate on a defense bill and brought up an amendment

blocking the benefit cut, which under the rules of the Senate at that time you could definitely do,” said staff member Frank McArdle. “[White House budget director] David Stockman called him on it, but Heinz stood his ground and said, ‘You can beat me if you have the votes.’ Heinz had the votes, and the administration backed down and did not cut those benefits.”

Stated Cliff Shannon, a member of Heinz’s personal staff throughout his more than 14 years in the Senate: “I think he had a pretty consistent record of trying to look after ordinary Americans’ quality of life. Protecting people who were vulnerable because they were sick, they had lost their jobs, or their retirement income was threatened—for him, that was the bread and butter of the job.” ❖





HEINZ SPEAKS WITH THE MEDIA, 1986

# CHAPTER 5

## LET THEM WORK: THE END OF MANDATORY RETIREMENT (1984–86)

John Heinz waged with particular vigor a battle for a legal right central to older Americans' quality of life: the right to work.

As of the 1970s, about half of all Americans were covered by work rules that required them to retire at age 65. Many companies maintained a mandatory retirement age because they believed that older workers would become unreliable and unproductive and that the difficulties involved in trying to identify and dismiss aging workers individually exceeded the benefits of letting productive workers stay on the job longer.

In 1978, Congress, recognizing the effect of improved health care and longer life expectancy on older Americans' capacities (and the negative fiscal impact on social security of the growing number of retirees), raised the minimum permissible mandatory retirement age for most occupations to 70. But forcing people out of their jobs at 70 still seemed incongruous to Claude Pepper (D-Florida),

indefatigable chair of the House Select Committee on Aging, who was 80 and full of verve when Heinz became Senate Aging Committee chair in 1981.

Stephen McConnell, previously Pepper's staff member on age discrimination issues, became Senate Aging staff director for Heinz in 1984. Though Heinz—still in his 40s—could not be Pepper's equal as a symbol of the battle against age discrimination, McConnell found upon his arrival that mandatory retirement was already on Heinz's issue list.

“Heinz was driven by the notion that people ought to be treated fairly,” McConnell said. “Forced retirement was to him an example of discrimination. He viewed it as the Aging Committee's mission to root out inequities in the system.”

Heinz introduced legislation to abolish mandatory retirement for nearly all professions in the 97th, 98th, and 99th sessions of Congress (in 1982, 1983, and 1985). The third time around, he raised the issue's visibility by holding an Aging Committee hearing on June 19, 1986.

Heinz emphasized the economic benefits of eliminating forced retirement. He observed in his committee hearing's opening remarks that the poverty rate was three times as great among seniors who did not work as among those with

jobs; that, according to a recent survey, 90 percent of businesses found employing older workers to be cost-effective; and that eliminating mandatory retirement would save the social security and Medicare programs \$30 million a year by 1991.

In response to objections from business interests who felt that eliminating mandatory retirement would deny jobs to young people and advancement to middle-agers, Heinz noted that the American workforce already included 1.1 million people age 70 or older whose employers continued to welcome them, while the U.S. Department of Labor projected that 200,000 more people would remain in their jobs if permitted to do so.

But his most forceful argument was for equity, as vividly illustrated by the first four paragraphs of his June 1986 hearing remarks:

We are here today to address a Federal policy that really goes against the grain of our free enterprise system and undercuts the fundamental tenets of civil rights in this country. I am talking about the current Federal law permitting forced retirement of American workers solely on the basis of age.

Mandatory retirement at age 70, which is the law in this country today—or at least, it is permitted today under the law—like discrimination based upon race, religion, or sex, contradicts the well-established principles of freedom of choice and job opportunity based on individual ability. But for at least 51 percent of the Nation's workforce, mandatory retirement looms as an ominous shadow at the end of their careers.

Congress enacted the Age Discrimination in Employment Act, ADEA, to prohibit arbitrary age discrimination on the job and to promote employment based on ability rather than age. While the intent of the law is sound, it flounders on the provision which ends those Federal protections at age 70.

Today we are going to hear firsthand of the severe psychological and financial impact of forced retirement on thousands of human beings. This arbitrary policy will soon silence the strings of a concert violist and close the schoolbooks of a dedicated teacher, to name two.

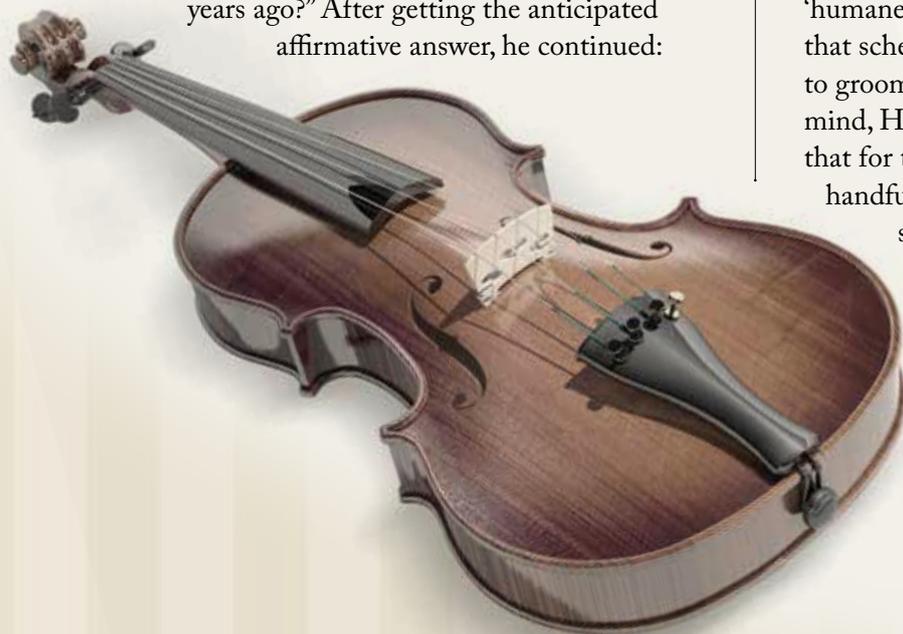


After Pepper, witnesses at the hearing included a Pittsburgh government employee forced to retire at age 73; a 70-year-old Connecticut public school teacher compelled to retire that month; Philadelphia Orchestra violist J. Wolfgang Granat, whose employer required musicians to retire at age 70; and the medical director of Grumman Corp., which had successfully eliminated its prior mandatory retirement policy. Actor Mickey Rooney was on the agenda, too, but had to cancel due to mechanical problems that caused his flight to return to Los Angeles.

Heinz was ready with effective leading questions for his witnesses. He asked the teacher, “Are you a better teacher today than you were 20 or 30 years ago?” After getting the anticipated affirmative answer, he continued:

“Are your students better off today than they were 20 or 30 years ago?” He then invited the 67-year-old Granat to perform a movement from a Bach suite; the impromptu performance was highlighted in a *Philadelphia Inquirer* news article on the hearing the next day.<sup>10</sup>

The hearing included one opponent of the legislation: Mark de Bernardo of the U.S. Chamber of Commerce. Heinz promptly described de Bernardo’s testimony as being in “amazing conflict” with the experiences of the preceding four witnesses. After recapitulating their plights, Heinz asked de Bernardo, “How can you sit there and say, as you did just a second ago, that mandatory retirement at age 70 is ‘humane?’” Later, after de Bernardo commented that scheduled retirements enabled companies to groom replacements with their promotion in mind, Heinz retorted: “So what you are saying is that for the convenience of the top managers of a handful of large corporations, we should force someone who works for the Allegheny County park system to retire, we should force a concert violist to retire, we should force a schoolteacher to retire, because it makes it easier for the people in the corporate suites to play their game of musical chairs.”



Heinz and Pepper eventually conceded a few exemptions. University presidents were especially alarmed at the havoc that tenured professors might wreak if guaranteed indefinite longevity; a seven-year phase-in period was granted for university employees, police, and firefighters. The bill cleared Congress in October 1986 and was signed into law—appropriately, by a 75-year-old president. Since 1993, the only remaining categories of workers upon whom mandatory retirement can be imposed are public safety employees, air traffic controllers, pilots, and high-level executives.

Heinz's public relations efforts on behalf of this bill survived one classic gaffe that McConnell will never forget:

I had two press people working for me, and they told me that Abe Rosenthal, then editor in chief of *The New York Times*, was turning 70 and being forced to retire. We got the idea that we would send a letter to newspapers across the country. Two days later, the front page of *The Wall Street Journal* carried the headline, "Heinz Eats Crow." The article pointed out that not only was Rosenthal not being forced to retire, he wasn't even turning 70!

When Heinz saw the article, he asked me who was responsible. Not wanting to blame the staffers, I said that the buck stopped with me. I figured that I was finished. He looked at the article, looked at me, and said, "You know, I always wanted to be on the front page of *The Wall Street Journal*."

Rosenthal sent Heinz a gracious letter of correction, dated March 3, 1986, in which he pointed out that he was still a "mere boy" of 63 years. Heinz replied with a letter of apology on March 24, in which he concluded, "Without doubt it is I who have aged the more prematurely. Perhaps this accounts for my ever greater interest in the age discrimination legislation." ❖



HEINZ PARTICIPATES IN THE PEPPER COMMISSION HEARINGS ON LONG-TERM CARE, 1990.

# CHAPTER 6

## TAKING THE GLOVES OFF: SENATOR HEINZ'S HEALTH CARE INVESTIGATIONS

Most members of Congress, when they want an in-depth investigation of a problem in the federal government, call on the U.S. Government Accountability Office (GAO) or the Inspectors General of the various federal agencies to do the dirty work. John Heinz, however, was not satisfied to rely on other entities' investigations. To confront agencies that dragged their feet or declined to comply when asked to produce documents needed for congressional oversight or program evaluation, Heinz hired his own Aging Committee investigative unit. Composed of two investigators (James Michie and David Schulke) and two lawyers (Terri Parker DeLeon and Michael Werner), this highly aggressive and enterprising unit had explosive impact as it uncovered fraud, waste, abuse, and mismanagement in federal programs affecting older Americans.

Michie, a former investigative reporter, was particularly skilled in finding ways to obtain documentation that federal agencies were reluctant

or unwilling to release. Not long after Michie's hiring, according to Steve McConnell (then staff director), calls began coming in from government agencies asking McConnell to put a stop to this "out-of-control" staffer's activities. McConnell would promise to look into the matter—and then did nothing more, because the investigative unit had his and Heinz's firm support.

During one of his investigations, Michie received a phone call summoning him to come immediately from the Aging Committee offices to Heinz's main Senate office. He rushed over to the Russell Senate Office Building and, upon arrival, was told to sit in the outer room while another staff member explained that Heinz was meeting with Robert Windom, U.S. Department of Health and Human Services (HHS) assistant secretary for health. "Windom asked for an appointment to complain about you and your investigative unit," the staff member explained. "In fact, he may even be looking to get Heinz to fire you."



Michie waited nervously. A few minutes later, Heinz exited with Windom and approached Michie directly. “I’d like to introduce you to my chief investigator, Jim Michie,” Heinz told Windom. “I wanted you to meet him so that you knew who was behind all that fine oversight of your department.”

### THE BATTLE FOR QUALITY NURSING CARE

Senator Heinz’s penchant for standing up for the most vulnerable was unmistakable in his determined efforts to ensure quality of care for America’s elderly and disabled. This concern moved him not just to hold hearings but also to authorize covert data gathering and to strongly oppose a Republican president.

In May 1982, the Reagan administration proposed new regulations on nursing home oversight that would have deleted a requirement for annual inspection of nursing homes and would have reassigned inspections from government agencies to the private Joint Commission on Accreditation of Hospitals (now called the Joint Commission). Just seven weeks later, on July 15, Heinz convened an Aging Committee hearing on nursing home quality. The head of the federal Health Care Financing Administration (HCFA, now Centers for Medicare & Medicaid Services) was the first witness. After thanking her for her testimony, Heinz observed,

“I would have to say that you have just about zero support for using the Joint Commission on Accreditation of Hospitals for what you have proposed. ... We hope you will take that under advisement and do the right thing.”

Public opposition caused the proposed regulations to be scrapped, but, due to the Reagan administration’s continuing interest in reducing federal oversight of nursing homes, HCFA funded the National Academy of Sciences’ Institute of Medicine to conduct an independent review of nursing home quality. After nearly four years of study, the Institute of Medicine concluded in 1986 that quality-of-care problems in the nursing care sector were widespread and that the federal government very rarely took action against substandard facilities.<sup>11</sup>

Much of the concern related to suspicions that nursing homes, which received Medicare and Medicaid reimbursement based on the number of days of care they provided, were cutting corners on quality in order to maximize profits. At a February 1983 committee hearing on alleged nursing home abuses, Heinz passionately deplored the apparent tolerance of inadequate nursing home care:

If half a dozen of my coal miners in the state of Pennsylvania were to die in a mine accident, it would be cause for an immediate investigation. ... Yet somehow when 56 people die needlessly in a nursing home it is largely ignored. I fear, frankly, that it is ignored, somehow, for no better reason than the horrible presumption that human life somehow has less value as it nears its end; that people who are old are going to die soon anyway, so who cares.

While the Institute of Medicine study was ongoing, Heinz directed his Aging Committee staff to do its own two-year investigation. Released in 1986, the committee staff report, *Nursing Home Care: The Unfinished Agenda*, stated that more than one-third of the nation's skilled nursing facilities failed to meet federal health, safety, and quality standards. The report further indicated that the problems were most likely understated, as, except when responding to a specific complaint, inspectors gave nursing homes advance notice of when they were coming. The report received prominent news coverage nationally, including a supportive editorial in *The New York Times*.<sup>12</sup>

In June 1986, Heinz, accompanied by John Glenn (D-Ohio), introduced the Nursing Home Quality Reform Act. The bill set forth a nursing home patients' bill of rights, established stronger conditions for nursing care facilities to receive Medicare

reimbursement, required that inspections of nursing facilities be unannounced, stipulated that the federal government would do a random sampling of inspections to verify state determinations, and directed HHS to develop sanctions for facilities that did not meet standards.

The bill gained sufficient momentum that, in 1987, after the Democrats took over control of the Senate, soon-to-be Majority Leader George Mitchell (D-Maine) became its prime sponsor. The legislation eventually became part of the Omnibus Budget Reconciliation Act (OBRA) of 1987. The Aging Committee's annual summary publication, *Developments in Aging*, stated that the provisions were written in great detail due to "congressional distrust of HCFA and the administration on this issue." It stipulated such details as staffing levels for nurses and training requirements for nursing assistants.



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 DONALD J. EVANS, M.D.  
 EDWARD B. HANCOCK, STAFF DIRECTOR  
 BARRA LEVY, ASSISTANT STAFF DIRECTOR

**United States Senate**  
 SPECIAL COMMITTEE ON AGING  
 WASHINGTON, D.C. 20510  
 January 29, 1985

Burton Fretz, Esq.  
 Executive Director  
 National Senior Citizens  
 Law Center  
 1302 Eighteenth Street, N.W.  
 Suite 701  
 Washington, D.C. 20036

Dear Mr. Fretz:

The Senate Special Committee on Aging is currently looking into the problem of unnecessary surgery as it affects the elderly recipients of Medicare and Medicaid. As you may know, a number of studies have shown that unnecessary surgery is a tragic fact of life. Ending unnecessary surgery would save human lives, save patients from unnecessary trauma, pain, and disability, and save money for federal medical programs and their beneficiaries.

In the private sector, most, if not all of the major insurance carriers are getting at this problem by applying mandatory second surgical opinion provisions in their group health insurance plans to a select number of elective surgical procedures, such as hysterectomies, laminectomies, bunionsctomies, and so on. Companies which use such plans are finding that they not only improve the quality of health care but also save money.

The Aging Committee is doing research to determine whether or not the federal government should take a lesson from the private sector and add mandatory second surgical opinion provisions to the Medicare and Medicaid programs. In order to do this, it is important that my staff speak with individuals who would have been surgical patients but for the second opinion they received which advised them that surgery was not necessary. It is also important that we speak with physicians who have provided the second non-confirming opinion which prevented unnecessary surgery. I would greatly appreciate any assistance you can give us in contacting these patients and physicians. Leslie Kramerich of the Aging Committee staff will be in touch with you to receive any recommendations or contacts you or your staff can give us. Thank you.

Sincerely,

*John Henry, Jr.*  
 JOHN HENRY, JR.  
 Chairman

JH:lkx

UNITED STATES SENATE  
 SPECIAL COMMITTEE ON AGING  
 WASHINGTON, D.C. 20510  
 January 31, 1985

**United States Senate**  
 SPECIAL COMMITTEE ON AGING  
 WASHINGTON, D.C. 20510  
 January 31, 1985

The Honorable Richard F. Kussow  
 Inspector General  
 Department of Health and Human Services  
 330 Independence Avenue, S.W.  
 Washington, D.C. 20213

Dear Mr. Kussow:

I am writing to request your assistance in the Committee's inquiry into overutilization of medical services and procedures in Medicare and Medicaid.

I am especially concerned over the longstanding problem and associated costs of unnecessary surgery that continue to threaten the health and welfare of America's elderly. My concern was heightened by your report to the Congress last November on this very subject, and, therefore, I initiated a Committee staff inquiry into the efforts of the Health Care Financing Administration (HCFA) to determine whether there is a need for second surgical opinion programs (SSOPs) in the Medicare and Medicaid systems.

HCFA recently completed a six-year study on this issue and has drafted a report, "Second Surgical Opinion Programs: Public Policy Alternatives." I would very much appreciate

your report. In particular, I am interested in knowing whether your previous recommendations for mandatory second surgical opinion programs in Medicare and Medicaid are still valid.

The fact that this legislation passed at all was testament to Heinz's determination and his effectiveness as a senator. But while he could write a bill that told the bureaucracy what to do and could move that bill through Congress to eventual passage, he still could not make the bureaucracy actually move. HCFA engaged in considerable foot-dragging with regard to implementation of the measure's provisions; for example, Congress had directed HCFA to establish requirements for nursing assistant training programs by September 1988, but HCFA did not even release proposed regulations until March 1990. The annual summary in the 1991 *Developments in Aging* report, published after Heinz's death, noted the slow progress and stated that "there was a general consensus among members of Congress who had been active on this issue that the implementation of OBRA 1987 would progress more successfully without further legislative intervention." Only posthumously did Heinz's labors for quality nursing care truly blossom.

### BREAKING DOWN THE WALLS OF CONCEALMENT

Getting information from HHS was a formidable challenge, but Heinz confronted it head on, sending his investigative unit to interview employees and meticulously search through agency files. When HHS staff attempted to block these visits, Heinz responded with a fusillade of letters and even subpoenas requesting documents and witness testimony.

According to Michie, in 1984, when Heinz initiated an inquiry into reports of unnecessary surgery being performed on Medicare and Medicaid recipients, HCFA management at first attempted to deny access to relevant files. Unbeknownst to these gatekeepers, however, Heinz's investigators had already cultivated confidential sources within HCFA and HHS. Several of these sources set up secret drop locations, including agreed-upon trash cans in agency photocopy rooms and a milk delivery box on the front porch of a cooperative HHS senior official's home. Early each Saturday morning, Michie would retrieve the week's treasures from the milk delivery box. Each time he visited a photocopy room, he would drop a pen in the trash can before rummaging through its contents; if someone entered and asked what he was doing, Michie would pull out the pen and explain that it had fallen into the can by accident.

The investigative unit received invaluable support from HHS Inspector General Richard Kusserow, who was instrumental in enabling Heinz to obtain internal documents showing both the need for a second surgical opinion program (SSOP) to curb unnecessary publicly funded surgeries and HCFA's refusal to consider this proposal. Ten states had prevented unnecessary medical procedures by successfully implementing their own SSOPs, and, according to Michie, HCFA was not anxious to admit that for years it had ignored

recommendations to establish a similar program within Medicare.

Following extensive research and preparation, Heinz convened a hearing, “Unnecessary Surgery: Double Jeopardy for Older Americans,” in March 1985. Kusserow, four private-sector authorities, and three elderly individuals threatened with unnecessary surgery all advocated for a mandatory national SSOP. Heinz criticized the Reagan administration for “spinning its wheels while millions of older Americans risk the scalpel unnecessarily.” He noted that individuals over age 75 were twice as likely as younger patients to die during such common elective procedures as gall bladder removal and hernia repair, and he cited evidence that mandated second opinions were reducing the frequency of surgery by up to 45 percent with no negative consequences for patient health and safety.

Despite HCFA’s continued objections, legislation requiring second surgical opinions for certain procedures covered by Medicare became law as part of the Consolidated Omnibus Budget Reconciliation Act of 1985.

In 1985, Heinz also returned to an issue he had first highlighted in 1982: pacemaker fraud. The 1982 hearing on this topic had revealed that defective pacemakers were endangering the lives

of elderly patients; that 30–50 percent of pacemaker implants were unnecessary; that physicians were accepting kickbacks from manufacturers in the form of cash payments, stock options, and travel excursions; and that markups on pacemaker prices were as high as 560 percent. In 1985, his investigation targeted fraudulent practices by Cordis Corporation, one of the nation’s largest pacemaker manufacturers. The company eventually pleaded guilty to 24 charges and agreed to pay \$124,000 in fines plus another \$141,000 to reimburse the government for the cost of its investigation.

### “QUICKER AND SICKER”

Senator Heinz capped his oversight agenda for 1985 with a comprehensive series of three hearings titled “Quality of Care under Medicare’s Prospective Payment System.” The prospective payment system (PPS) had been designed to identify a predetermined, standard reimbursement rate for each health care service provided to Medicare recipients. However, it had opened the door to various abuses, ranging from unnecessary admissions and procedures to premature discharges from hospitals. Heinz’s investigation found that HCFA had been consistently failing to carry out its oversight responsibilities.

At a hearing on September 26, 1985, Heinz blasted the introduction of diagnostic-related groups (DRGs) with assigned reimbursement rates for each procedure. He claimed that patients were being assessed as “DRG winners or losers,” depending on the profit potential they represented under the current payment system. “For physicians around the country,” Heinz declared, “DRGs have created a dilemma of medical ethics versus profitable practice. Basically, financial incentives provided by the DRGs result in hospitals pressuring doctors to violate their own medical judgment in treating patients.” He coined the phrase “quicker and sicker” to characterize the condition of some patients who were pushed out of the hospital after treatment thanks to ill-conceived DRG incentives for premature discharges.

Before the third hearing, on November 12, Heinz served a subpoena on Acting HCFA Administrator C. McClain Haddow, demanding that he provide the Aging Committee with a report on the PPSs’ impact, which the law had required him to submit to Congress by December 1984. Haddow showed up with the documents, but Heinz berated him anyhow, stating, “It is a sad state of affairs indeed when the U.S. Congress has to resort ... to a subpoena to obtain information due it under law from an agency of the executive branch.”

The hearings on Medicare PPS abuses guided Heinz’s development of corrective provisions that became law in 1985 and 1986, ensuring access to quality care for Medicare beneficiaries.

Finally, Heinz and his investigative unit ended the harm caused by hundreds of dialysis clinics whose reuse of disposable plastic medical devices had resulted in numerous deaths or serious injuries. An oversight investigation and a March 1986 hearing established that both the U.S. Food and Drug Administration and HCFA had shirked their responsibilities in protecting dialysis patients from the dangers of reuse and that the U.S. Public Health Service had consistently misled the U.S. Congress, dialysis patients, and the public as to the safety of reused devices. Provisions to protect Medicare beneficiaries with end-stage renal disease from substandard care were passed in 1987.

Reflecting on his demanding but productive years of service to Heinz and the Aging Committee, Michie recalled, “Working for Senator Heinz was no easy matter, but his work ethic, his philosophy, and his abiding concern for those Americans least able to care and fend for themselves earned the deep respect of all. And when it came to discovering the truth, it was politics be damned!” ❖



HEINZ SPEAKS AT A PRESS CONFERENCE ALONGSIDE SENATOR ARLEN SPECTER, 1987.

# CHAPTER 7

## A CATASTROPHE FOR CONGRESS: THE CATASTROPHIC CARE BILL (1987–89)

In the 1986 elections, the Democrats regained control of the U.S. Senate, reducing President Ronald Reagan's influence and ousting John Heinz from his chairmanship. Though demoted to ranking minority member of the Aging Committee, Heinz reaped the benefits of his frequent collaboration with Democrats, maintaining good relations with John Melcher (D-Montana), who chaired the committee in 1987–88, and David Pryor (D-Arkansas), who took over the gavel in 1989.

In 1987, the major issue in aging policy was how to help older Americans (and their families) with the often enormous costs of catastrophic illness. This time, the White House was not the antagonist; in the final analysis, the taxpaying public was. Along the way, Heinz identified for himself a tightly defined role with a clear policy justification but also revealed his prescience regarding the political minefield into which Congress was treading.

President Reagan highlighted the problem of catastrophic health care costs in his 1986 State of the Union address. On November 20 of that year, Health and Human Services (HHS) Secretary Otis Bowen proposed expanding Medicare to cover, beyond a \$2,000 deductible, lengthy hospital stays and long-term rehabilitation. At that time, Medicare paid a declining share of costs after 60 days and nothing after 150 days, leaving Medicare-dependent people with serious long-term illnesses at risk of financial ruin. But with other White House advisors urging reliance on incentives to help the insurance industry rather than a new government program, Reagan let Congress take the lead in developing legislation during 1987.<sup>13</sup>

Heinz kicked off 1987 with a January 26 hearing on catastrophic health care costs. At that hearing, he expressed the need for a wide-ranging but affordable approach to reform: “We should avoid stopping short of a solution that is truly comprehensive. We have to provide for a full range of services ... from catastrophic acute to long-term care. ... Most of all, we need a solution which includes incentives for cost containment which do not threaten quality.”



As the legislative wheels began to turn, Heinz chose to focus on a significant subset of the problem that was absent from Bowen's proposal: prescription drug costs. According to Larry Atkins, Heinz had previously considered trying to add prescription drug coverage to Medicare

so as to assist those who could stay healthy only by taking—and paying out of pocket for—expensive medications. Now Heinz had a chance to get a prescription drug benefit into the developing Medicare catastrophic care bill.

Heinz gained soon-to-be Senate Majority Leader George Mitchell's support for the proposal, but he faced firm opposition from Senate Finance Committee chairman Lloyd Bentsen (D-Texas), chief sponsor of the catastrophic illness bill, who refused to let the drug benefit be presented as an amendment at the committee level. Instead, Heinz would have to round up enough votes to pass a floor amendment when the bill hit the full Senate. Bentsen did not rush the bill forward, giving Heinz time to develop his plan.

In the midst of this process, Atkins recalled, one day “Heinz calls me and says, ‘Where’s HHS on this?’ [i.e., what is the HHS position on the proposed drug benefit]—because HHS had been pushing this catastrophic bill in the first place. I told him I didn’t know where HHS stood. And he said, ‘Larry, you know, those people down there in the [Hubert H.] Humphrey Building, they’re Republicans. And you know, Larry, I’m a Republican, too. Do you think it might make sense for you to pick up the phone and find out what they think?’”

Dutifully, he did. During the next months, Atkins served as liaison with the Reagan administration while Heinz and half a dozen Finance Committee members met twice a week in Mitchell's office to work out the bill's details. Meanwhile, the Congressional Budget Office began casting an ominous cloud over the process by raising its estimates of the bill's fiscal impact with each adjustment.

But by October 1987, Bentsen became tired of waiting and, according to Atkins, advised Heinz, “I’ve held this bill back long enough and we’re going to the floor tomorrow morning, with your amendment or not. So if you have an amendment, come offer it. You’ll be the first amendment up. If not, sorry, we’ve given you enough time.” Heinz reacted immediately by phoning Joe Wright,

director of the Office of Management and Budget, who happened to be one of his tennis partners. Heinz's request was simple: Let us announce that we have your support in concept, and we will pledge to come back and fix any remaining problems in the House-Senate conference. Wright agreed. The next day, October 27, Heinz's amendment was approved 88–9 on the Senate floor, after which the full catastrophic bill passed 86–11. The House had passed a similar bill in July.

PRESS CONFERENCE WITH LLOYD BENTSEN, 1987



The bill bogged down in House-Senate conference negotiations, partly over differences in how to fund the prescription drug benefit, but eight months later, both chambers approved the conference report and sent it to President Reagan, who signed it into law on July

1, 1988. According to the final legislation, coverage of all outpatient prescription drugs and insulin would begin in 1991, with an initial deductible of \$600; copayments for charges exceeding the deductible would begin at 50 percent but would drop to 20 percent beginning in 1993.<sup>14</sup>

There was just one problem: Congress had legislated new premiums on all Medicare payors for a benefit that would aid only some of them.

From a policy perspective, Heinz's proposal (and the catastrophic illness bill in general) looked like a prudent application of insurance principles, asking everyone to pay a little to share the burden that would otherwise fall disproportionately on a few. But the program could work only if it was mandatory. If it was optional, no one would pay the extra premium until he or she began incurring large health care costs; adding a preexisting condition clause would vitiate the bill's purpose by denying help to those who were uninsured when a catastrophe hit them.

But 62 percent of Medicare beneficiaries didn't need the help. They already had "medigap" insurance, often provided by their employer, that fully covered medical and drug costs beyond a manageable out-of-pocket limit. The new legislation would require them to pay more (initially about \$120 a year, but potentially increasing further in later years) for no new benefit.



Some believe that Heinz, even while he worked hard to get a viable prescription drug benefit into the Medicare catastrophic care bill, was keenly aware of the full bill's political vulnerabilities. Stephen McConnell, who handed Heinz a draft of the drug benefit legislation on one of his last days as minority staff director, recollected, "I can't say he was overly enthusiastic, in part because of the added costs. He always had a sense for what was good politics, and he wasn't sure this passed the test." According to Cliff Shannon, legislative director Rich Bryers observed before the bill's passage, "If the Congress enacts it, you're going to regret it, because seniors are going to rebel at the prospect of a new tax."

Atkins said that, after the bill became law, Heinz asked his staff to prepare a two-page explanation of the new benefits and how they would be financed for dissemination to Pennsylvania constituents. The staff spent several months trying to present the provisions in such a way that seniors would respond favorably but finally gave up. "Send this to Pennsylvanians and your goose is cooked," Atkins recalled telling Heinz.

As the 1989 version of the Senate Aging Committee's annual *Developments in Aging* report observed, "At the time of passage, most members were aware that some older Americans were not pleased with the beneficiary-only financing

provision, but they presumed that the largest expansion of Medicare since 1965 would be welcomed." They soon learned otherwise. Once higher-income (and generally more politically active) seniors came to understand that they were being taxed for a benefit they already had, a furor broke out, putting legislators on the defensive. Efforts to salvage the benefits by altering the financing mechanism reached no consensus. In November 1989, less than 18 months after passing the catastrophic illness bill, Congress, in "a retrenchment ... unprecedented in postwar social welfare policy," repealed it.<sup>15</sup>

Fourteen years would elapse between the repeal of the Medicare Catastrophic Coverage Act of 1988 and the passage of new prescription drug legislation in the 2003 act that established Medicare Part D, which became effective in 2006. Congress did not repeat its 1988 mistake. Instead of requiring seniors who already had drug coverage to pay for something they did not need, Congress created an incentive for beneficiaries to enroll at the first opportunity by establishing an age-graded premium penalty for seniors who decided to enter the program later. ❖



CONTACT SHEET OF PORTRAITS OF HEINZ SPEAKING ON THE PHONE IN HIS OFFICE, 1988

# CHAPTER 8

## THE LAST INVESTIGATION (1990–91)

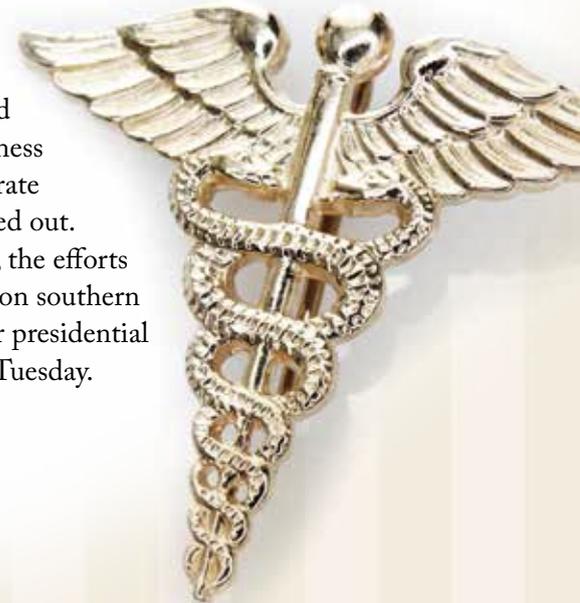
In 1989, when Jeff Lewis became John Heinz's last Aging Committee staff director, the senator's priorities were evolving, as illustrated by the fact that Lewis' business card was prominently partisan, referring to him as *Republican* staff director.

By this point, Heinz had become chairman of the Republican Senate Campaign Committee. Heinz still enjoyed excellent relationships across the aisle, but he also was significantly engaged in helping to elect and reelect Republicans. His actions demonstrated that he had become more sensitive to the possibility that he might become a viable candidate for higher office.

Thus, part of Lewis' job was, as he put it, "to build greater name identification beyond Pennsylvania and Ohio for a name everyone knew as associated with ketchup." The topic of Medicare fraud and abuse was selected as one through which a senator with seats on the Aging and Finance Committees could make a significant impact and gain national prominence.

In six months of investigation, beginning in fall 1990, Heinz and his staff (including Lewis) uncovered considerable evidence of fraud, particularly in the area of durable medical equipment. They found sellers claiming \$350 of Medicare reimbursement for "ulcer pads" that were actually egg crate packing material available in a standard department store for \$29. They discovered that, because reimbursement rates varied by geographic region, distributors based in southern states were obtaining a Philadelphia post office box and a phone number with a 215 area code in order to submit claims for greater amounts.

With Heinz's approval, staff investigators planned to set up a fake business in order to demonstrate how fraud was carried out. According to Lewis, the efforts would have focused on southern states that hold their presidential primaries on Super Tuesday.



An Aging Committee hearing was scheduled for April 5, 1991, with an anonymous witness set to give credible evidence of durable medical equipment fraud. On April 2, Heinz spent much of the day with Andrea Mitchell of *NBC Nightly News*, filming interviews for a feature story on Medicare fraud. Lewis then left for Washington, D.C., expecting to see Heinz again in Philadelphia on April 4.

On April 4, the pilot flying Heinz to Philadelphia believed that his landing gear was not functioning properly. A helicopter was sent up to inspect the plane's nose wheel. But the helicopter moved in too close and collided with the plane. Heinz, the four pilots of the two aircraft, and two children in an elementary school playground who were hit by falling debris were killed.

The April 5 hearing, the *NBC Nightly News* story, and the planned undercover investigation never happened, and a stellar political career that might have reached the White House was snuffed out. ✦

H. JOHN HEINZ III

OCTOBER 23, 1938–APRIL 4, 1991



HEINZ GREETS A GUEST AT THE CHAPIN AWARD DINNER IN PHILADELPHIA, WHERE HE RECEIVED THE WILLIAM CHAPIN AWARD FOR HIS WORK ON BEHALF OF THE BLIND AND ELDERLY, JUNE 18, 1980.

# CHAPTER 9

## A LASTING LEGACY

John Heinz was a demanding, data-driven, tenacious policymaker, distinguished by his compassion for aggrieved citizens and his effectiveness in achieving passage of legislation. The issues highlighted in this case study represent only a few of the many areas in which his work has had long-lasting public policy impact. Heinz's considerable substantive policy contributions are not the only memorable aspect of his legacy, however. He was a personal inspiration to many who served under him and who have moved on to other influential roles in the last 20 years, and some believe that the reasoned, bipartisan legislative style in which he specialized is needed today more than ever.<sup>16</sup>

### SUBSTANTIVE IMPACT

Heinz drove virtually the last nail into the coffin of mandatory retirement laws, and he was 15 years ahead of his time in seeking to include a prescription drug benefit within Medicare. In other areas, his legislative achievements pointed the way to further policy change or are still recognized as landmarks.

The Social Security Administration's periodic reviews of the medical status of beneficiaries with disabilities are not conducted in the draconian style that Heinz exposed and eventually deposed in 1984. In 2008, only 3.9 percent of the terminations of Social Security Disability Insurance were due to beneficiaries' alleged medical improvement, and today those who appeal a denial of eligibility continue to collect benefits while their appeals are reviewed.<sup>17</sup>

Heinz's success in enacting the pension vesting improvements that Jacob Javits had sought became one of the first of a series of several significant amendments to ERISA. Congress subsequently amended ERISA in 1985 to permit employees to continue their health care coverage for a period of time after leaving a job, in 1996 to restrict employers' ability to deny health care coverage due to preexisting conditions, and in 2006 to reduce further the vesting period for employer contributions to defined-contribution pension plans. The maximum time needed to become fully vested in those plans is now three years under cliff vesting or six years under a graduated plan.



Heinz's attempts to raise the quality of care in nursing homes, which seemed stalled by bureaucracy when he died, eventually bore rich fruit. Even though the U.S. Department of Health and Human Services did not complete its promulgation of final regulations to enforce the 1987 law until eight years later, a 1996 study found dramatic improvements that its author attributed to the 1987 reforms. For example, families and residents were significantly more involved in decisions regarding patient care, the use of psychotropic drugs had been reduced by about one-third, and the use of restraints on patients had decreased by 50 percent.<sup>18</sup> Even in 2011, a *New York Times* feature article on innovative efforts to deinstitutionalize nursing care pointed back to Heinz's legislation as the original impetus: "The movement has its roots in the 1987 Nursing Home Reform Act, which declared that residents of long-term care have the right to be free from abuse or neglect."<sup>19</sup>

Given Heinz's commitment to policy battles, it is most unfortunate that he and his investigative staff never had the chance to implement their bold plans to uncover Medicare fraud and abuse. Twenty years later, that problem continues to plague the country; the Centers for Medicare & Medicaid Services estimated that the total cost of improper Medicare payments in calendar year 2009 was \$24.1 billion.

## THE LOST STYLE: BIPARTISANSHIP AND PERSUASION

Stylistically, Heinz's approach to policymaking is greatly revered by those who remember him, though some question whether he could have maintained his legislative effectiveness at such a high level amidst today's environment of increased polarization, both in the media and on Capitol Hill.

Jeff Lewis believed that the Senate Finance Committee became more hamstrung by partisan deadlocks almost immediately after Heinz's death. Remembering a tie vote on a provision related to children's health, Lewis stated, "Heinz would have gone to [Democratic Senator Daniel Patrick] Moynihan and said 'We have to figure out a way to help these kids.'"

Frank McArdle, who still works in Washington, D.C., also bemoans the change. Twenty-five years ago, he said, "There was an underlying willingness that, despite all the partisan differences and positioning, in the end, members of Congress would sit down and reach a compromise that both sides could live with and do the right thing. That sense of compromise is now, alas, very elusive."



Cliff Shannon summarized the essence of Heinz’s approach as trying to work with colleagues on both sides of the aisle, experts, and constituents and to reach solutions through persuasion and compromise. “He really did believe,” Shannon stated, “that politics at its highest form was persuasion. I think that is a forgotten art these days.”

Several of Heinz’s former staffers wonder if he would have remained a Republican as party lines hardened and the number of moderates left in the middle dwindled. McArdle theorized that, if still in the Senate today, Heinz “would be one of the few left standing who would still

use bipartisan negotiations to increase their leverage on an issue.” John Rother speculated, “I don’t think he would have been a Democrat, but he might have become an Independent to have more freedom of action.” But Shannon, who was more involved with Heinz’s partisan activities than were most of the Aging Committee staff, expressed a different view: “He would not have changed parties—he would have changed the Republican Party.”

## A PERSONAL TOUCH

Rother, Stephen McConnell, and Larry Atkins concluded their memoir with the following reminiscences, which deserve to be the final words of this case study as well:

Senator Heinz’s legacy through the Aging Committee was more than his impressive policy and legislative achievements, though. His high standards of excellence for the work that was done, his strong commitment to well-considered policy, and his sensitivity to the human impact of the work of the Congress all had a lasting effect on the people who were privileged to work for him as staff on the Committee. Most of his staff have moved on to take his work ethic and high standards into influential positions in the aging and health policy community in Washington and across the country. His Aging staff today have lead roles in major aging organizations like AARP and the Alzheimer’s Association, in policy think tanks like the Kaiser Family Foundation and for-profit consulting firms, and in corporations.

All of us owe a debt to the Senator for the opportunity to work for him and the education we all gained in policy and how to shape it. It was a tough education. He tested the mettle of every staff person who worked for him, like an old-time bartender who has to bite each coin to check if it's real. Those who were confident in their command of their field and who could stand up to him when he challenged them did well. Those who wilted under pressure were gone. Many a staff earned their stripes by being "Heinzed."

But the value of a Heinz education did not go unnoticed. When a number of us were gathered to mourn the Senator's death, one former Aging Committee staffer from the other side of the aisle observed how envious other Committee staff were of those who worked for Heinz. "We always felt," he said, "that you Heinz staff came away from your time with him knowing more than anyone else on the Hill about your specialty. He had such a tremendous grasp of the issues that you had to really know your stuff to keep up with him." He was demanding, but it was that uncompromising quality that drove excellence on his staff.

For many of us, the experience reaffirmed our faith in democracy. Here was a gifted and privileged man who could have done almost anything else. What he chose to do was to serve the public good. He believed in government and the power of government to make people's lives better. He believed it was possible to determine the right thing to do and to do it, and he lived his beliefs. His pushed himself as hard as he pushed us.

It is easy to become cynical over the course of a career in Washington. Our personal antidote to cynicism is to remember how much John Heinz cared about our country and its potential, and how much of himself he was willing to give to help it realize that potential. ✦



HEINZ VISITS WITH PATIENTS AT ALLIED SERVICES, 1977.

# ENDNOTES

- <sup>1</sup> *Congressional Quarterly Almanac, 1981* (Washington, D.C.: Congressional Quarterly, 1982), 117.
- <sup>2</sup> Martin Tolchin, "Social Security: Compromise at Long Last," *New York Times*, January 20, 1983.
- <sup>3</sup> Beth S. Glassman, "Terminating Social Security Disability Benefits: Another Burden for the Disabled?" *Fordham Urban Law Journal* 12, no. 1 (1983): 195–217.
- <sup>4</sup> *Congressional Quarterly Almanac, 1982* (Washington, D.C.: Congressional Quarterly, 1983), 52-53.
- <sup>5</sup> John Corry, "TV: 'Disabled,' Budget-cut Casualties," *New York Times*, June 20, 1983.
- <sup>6</sup> Robert Pear, "Reagan Aide Hails Shift on Disability," *New York Times*, June 8, 1983.
- <sup>7</sup> *Congressional Quarterly Almanac, 1982* (Washington, D.C.: Congressional Quarterly, 1983), 52-53.
- <sup>8</sup> Avy D. Graham, "How Has Vesting Changed Since Passage of Employee Retirement Income Security Act?" *Monthly Labor Review* 111, no. 8 (August 1988), 20-25.
- <sup>9</sup> Christopher Howard, *The Hidden Welfare State: Tax Expenditures and Social Policy in the United States* (Princeton, N.J.: Princeton University Press, 1999), 127.
- <sup>10</sup> Gerald B. Jordan, "Senate Panel Serenaded in Fight on Forced Retirement," *Philadelphia Inquirer*, June 20, 1986.
- <sup>11</sup> Institute of Medicine Committee on Nursing Home Regulation, *Improving the Quality of Care in Nursing Homes* (Washington, D.C.: National Academy Press, 1986).

<sup>12</sup> “Rotting in Warehouses: People,” *New York Times*, June 15, 1986.

<sup>13</sup> *Congressional Quarterly Almanac, 1986* (Washington, D.C.: Congressional Quarterly, 1987), 260; Robert Pear, “Congress at Work on Catastrophic-Illness Plan,” *New York Times*, January 27, 1987.

<sup>14</sup> Congressional Budget Office, “The Medicare Catastrophic Coverage Act of 1988” (working paper, Congressional Budget Office, Washington, DC, 1988).

<sup>15</sup> Thomas Rice, Katherine Desmond, and Jon Gabel, “The Medicare Catastrophic Coverage Act: A Post-mortem,” *Health Affairs* 9, no. 3 (1990): 75–87.

<sup>16</sup> Jeffrey R. Lewis, “A Civil Senator,” *Pittsburgh Post-Gazette*, April 4, 2010.

<sup>17</sup> Scott Szymendera, “Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI),” Congressional Research Service Report to Congress, February 2, 2010.

<sup>18</sup> Catherine Hawes, “Assuring Nursing Home Quality: The History and Impact of Federal Standards in OBRA-87,” Commonwealth Fund, December 1996.

<sup>19</sup> Laurie Tarkan, “A Nursing Home Shrinks Until It Feels Like a Home,” *New York Times*, October 31, 2011.

Photo of Senator Heinz on page 5 is used courtesy of the Detre Library & Archives Division, Heinz History Center.

Photos of Senator Heinz on the cover; on the inside front cover; opposite the table of contents; and on pages 6, 9, 10, 11, 14, 17, 19, 20, 26, 28, 30, 34, 40, 48, 50, 54, 58, and 63 and the image of a letter on page 44 are used courtesy of the Carnegie Mellon University Archives.

“WORKING TOGETHER, WE CAN LAY THE GROUNDWORK  
FOR A SOCIETY THAT RESPECTS AGE AND THE ELDERLY  
AND THAT TRULY REALIZES THE BENEFITS OF THE EXPERIENCE,  
WISDOM, AND JUDGMENT OF OLDER AMERICANS.”

– JOHN HEINZ, MAY 10, 1983







University of Pittsburgh

*Institute of Politics*



