Penn Law
UNIVERSITY of PENNSYLVANIA LAW SCHOOL

Penn Program on Regulation

Cary Coglianese, *Director*
Edward B. Shils Professor of Law
and Professor of Political Science

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Via Email: oira_submission@omb.eop.gov

Mabel Echols
Office of Information and Regulatory Affairs
Records Management Center
Office of Management and Budget
Room 10102, NEOB
725 17th St., N.W.
Washington, DC 20503

Dear Ms. Echols:

On behalf of the Penn Program on Regulation (PPR), we would like to submit the attached edited transcript in response to your office's Request for Comments published in the *Federal Register* of February 26, 2009.

PPR convened a panel discussion on December 6, 2006, featuring extensive remarks by five of the eight individuals who at that time had previously served as OIRA Administrator – James Miller, Wendy Gramm, Sally Katzen, John Spotila, and John Graham.

In the *Federal Register* notice, your office solicited suggestions for revising the Executive Order on Federal Regulatory Review in eight areas, and we believe the attached panel dialogue sheds valuable light on several of these areas, as well as others not specifically mentioned in the notice. For example, the discussion addresses timely issues regarding:

- *The relationship between OIRA and the agencies*, including discussions of OIRA's coordinating role when regulatory issues cut across the domains of more than one agency;

- *Disclosure and transparency*, specifically mentioning the distinction between *ex parte* communications and internal Executive Branch deliberations;

- *Public participation*, including the possible implications of early OIRA involvement in scoping regulatory options; and

- *The role of distributional considerations*, addressing the possibility of quantifying distributional effects as part of agency cost-benefit analyses.

The transcript also features consideration of several issues raised in other comments filed in response to your recent call for comments on regulatory review, including OIRA's possible role in correcting agency inaction, the potential of a "regulatory budget," and the extent to which details of the regulatory review process should be codified in law or Executive Order at all.

We believe the interaction among these five past OIRA Administrators, each of whom has unique historical experience grappling with the issues raised in the recent Request for Comments, will be particularly valuable to OMB as it considers revising the regulatory review process. We appreciate the opportunity to make this transcript available and thank the participants for their participation in the panel and their cooperation in the creation of the transcript.

Sincerely,

Cary Coglianese
Director, PPR

Adam M. Finkel
Executive Director, PPR

Presidential Oversight: A Panel Discussion with Regulatory "Czars" from Reagan to Bush

University of Pennsylvania Law School
December 6, 2006

Introduction

Each year, federal administrative agencies issue thousands of new rules affecting important issues such as food and drug safety, environmental protection, homeland security, and economic growth. For the past quarter century, in both Republican and Democratic Administrations, the White House has scrutinized new proposals for major federal regulations through its Office of Information and Regulatory Affairs (OIRA). How well has the practice of White House review of rulemaking served the nation? How might the review process be improved so as to strengthen the effectiveness and efficiency of important federal regulations? To explore these questions, the Penn Program on Regulation convened, in December, 2006, the largest public gathering of the individuals who have served as OIRA Administrator, the Presidential appointee commonly referred to as the nation's "Regulatory Czar." This transcript from the panel discussion, modestly edited for clarity's sake, provides an illuminating, insider account of OIRA's role in the regulatory process from the following former OIRA Administrators:

- James C. Miller III (1981; Reagan Administration)
- Wendy Lee Gramm (1984-1985; Reagan Administration)
- Sally Katzen (1993-1998; Clinton Administration)
- John Spotila (1999-2000; Clinton Administration)
- John D. Graham (2001-2006; Bush Administration)

The panel was moderated by Professor Cary Coglianese, director of the Penn Program on Regulation.

Left to right:
John Spotila, John D. Graham, Sally Katzen,
Wendy Lee Gramm, James C. Miller

Coglianese: Good evening and welcome to tonight's panel discussion on presidential oversight of the regulatory process. My name is Cary Coglianese, and I'm on the faculty here at the Penn Law School, and I serve as the Director of the Penn Program on Regulation. It is my pleasure to welcome you to a unique and historic opportunity to have a conversation with five of the eight individuals who have served the nation by overseeing the federal government's regulatory process at the highest level.

Every year, thousands of new federal regulations are issued by hundreds of regulatory agencies, whether Cabinet level departments, like the Department of Transportation, or Department of Homeland Security, or Department of Agriculture; or by distinct agencies such as the Environmental Protection Agency, the EPA.

Collectively these regulations touch upon nearly every aspect of our lives, whether it's the air we breathe, the water we drink, the food we eat, the medicines we take, the quality of healthcare, the security of our airports, or the safety of our cars. And of course, together federal regulations also have an enormous impact in terms of costs on the economy.

Twenty-five years ago, President Reagan issued an executive order, Executive Order 12,291 to be exact. He created a new institionalized, centralized process to oversee the work of these hundreds of regulatory agencies and offices at the federal level. Executive Order 12,291 required that agencies perform a benefit-cost analysis of major regulations, those rules expected to impose costs on the economy of a $100-million a year or more. It also said that agencies needed to have their economic analyses, or what are called "regulatory impact analyses," reviewed by the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB). Basically, Reagan's executive order required OIRA to get involved in, and even to sign off on, the quality of the economic analysis underlying new regulations that will have these enormous impacts on society.

Presidents had taken an interest in government regulation before, going back to the Ford and Carter Administration. But Reagan took a major step toward systematizing and institutionalizing presidential oversight. His executive order turned out to be what political scientist Steven Balla has called "one of the most important institutional innovations of recent vintage in the national policy-making process."

In further testament to the important shift undertaken by Reagan, every presidential administration since then has retained basically the same institutional structure, whether in Democratic or Republican administrations. President Clinton issued Executive Order 12,866, which modified the Reagan and first Bush Administration's procedures – but only somewhat. Interestingly enough, the George W. Bush Administration retained the Clinton executive order in total.

Over the years, OIRA's regulatory review has generated enormous scholarly attention including, I might add, important work done by faculty here at Penn Law School, such as Dean Michael Fitts and Professors Matthew Adler and Jason Johnston, among others. But as much academic debate as OIRA review has spawned, it has sparked still greater political controversy. The president's selection of an OIRA administrator now calls for Senate confirmation, and in recent years that process has grown ever more controversial. Some in the audience undoubtedly know that the Bush Administration has selected regulatory expert Susan Dudley to fill a vacancy as the head of OIRA. The Dudley nomination has generated sufficient controversy that it appears, at least by some observers, that the Senate may well not confirm her nomination, at least at this point.

So we gather here tonight at a time of continued controversy over the regulatory review process, and indeed over the whole notion of centralized and expanded presidential authority in a broader range of areas. Our mission this evening is to find out how the process of OIRA review has worked. We will hear directly about that process from those who have served as the nation's "regulatory czars" and discuss how regulatory review might be made to work better still.

We're privileged to have an extremely distinguished panel of individuals who have served their presidents and their nation as OIRA administrator. I'm going to begin very briefly to introduce the panel members to you. Then I'll pose some questions and invite a response from our panel members. We will also allow plenty of time for you to pose your own questions as well.

Beginning on my immediate left and proceeding down the table, I'm pleased to introduce James C. Miller, III, who served as OIRA administrator at the founding of the Reagan Administration from January 1981 to October 1981. He also served as Director of the Office of Management and Budget, as a member of the National Security

Left to right:
John Spotila and John D. Graham

Council, and Chairman of the Federal Trade Commission. He's also been a candidate for the Republican nomination to the United States Senate from Virginia. He's currently a Senior Advisor at the Blackwell, Sanders, Pepper, Martin firm as well as a distinguished fellow at George Mason University and the Hoover Institution at Stanford. Following presidential appointment in 2003 and Senate confirmation, he is now serving the nation as Chairman of the Board of Governors of the U.S. Postal Service.

Our next panelist is Wendy Lee Gramm. Dr. Gramm served as OIRA administrator during the Reagan Administration from 1985 to 1988. She has also served as Executive Director of the Presidential Task Force on Regulatory Relief, the Director of the Federal Trade Commission's Bureau of Economics, and for five years as Chairman of the U.S. Commodity Futures Trading Commission. The *Wall Street Journal* has called her "the Margaret Thatcher of financial regulation," and in 1999 she founded the Regulatory Studies Program at the Mercatus Center at George Mason University, where she currently is a distinguished senior scholar.

Next is Sally Katzen who served as OIRA administrator for the first five years of the Clinton Administration. She then served as Deputy Director of the National Economic Council in the White House, and Deputy Director for Management at OMB. She previously served in the Carter Administration as the general counsel of the Council on Wage and Price Stability in the Executive Office of the President. She was a law clerk to Judge Skelly Wright of the U.S. Court of Appeals for the D.C. Circuit, and has been a partner at the law firm of Wilmer, Cutler and Pickering. She's currently a visiting professor at George Mason University Law School and a Lecturer at the University of Michigan in Washington Program. I am also pleased to say that we have had the honor of having her teach here at Penn Law, and I'm very pleased to welcome her back.

Next to Sally is the second lawyer on the panel, John Spotila, who served as OIRA administrator in the Clinton Administration, during which time he also played a key role in the "I" part of the OIRA acronym, specifically playing a key leadership role in the federal Y2K effort. Previously, Mr. Spotila served as General Counsel for the U.S. Small Business Administration. And earlier still, he represented small businesses and was a small business owner himself. He's currently the Chief Executive Officer of R3i Solutions, a government contracting firm in Fairfax, VA.

Last but not least is John Graham, OIRA administrator from 2001 to 2006 during the Bush Administration. Dr. Graham came to Washington from Harvard University, where he served on the faculty for more than fifteen years. At Harvard, he founded the Harvard Center for Risk Analysis, which under his leadership blossomed into an internationally recognized institution for the analysis of a variety of risks from environmental protection to medical technology. With nearly seven books and a hundred and fifty journal articles to his credit, Dr. Graham was also elected as President of the Society for Risk Analysis, and he is currently the Dean of the Frederick Pardee RAND Graduate School at the RAND Corporation in Santa Monica, CA.

My thanks to all of you for being here tonight. Each of you has served the nation in a position which is now commonly referred to as the nation's "Regulatory Czar," or sometimes the OIRA administrator is called "the ruler of rule-making." But none of you surely were working with the same kind of resources that say the Russian Czars had. In fact, OIRA has a staff of approximately fifty analysts at present. And that's even grown over the years. This is an extraordinarily tiny office, especially when you compare it with the resources and staff available to the regulatory agencies that OIRA is supposed to oversee. For example, the Department of Transportation has 53,000 employees, the EPA over 18,000.

So my first question to the panel members is, given this kind of vast asymmetry in staffing and resources between the regulatory agencies and OIRA, how does OIRA ever stand the chance of improving the regulations that these agencies issue? Jim, would you like to start?

Miller: Well Cary, first thank you for holding this. I think it's a very important thing. I'm not sure the 'czar' title is the appropriate one, given what happened to Czar Nicholas ... he came to rather an untimely end. It's good to be back in Philadelphia, I think. The last time I came to Philadelphia to give a talk I had appendicitis and didn't know it, and I had an appendectomy the next day. So who knows what's in store.

Coglianese: I guarantee you that won't happen again.

"It's the OMB process that looks at the various competing interests, the various conflicting views, and tries to figure out what makes sense for the agencies in light of presidential priorities." — Sally Katzen

Miller: No wonder you're a professor of law . . . a mind like a steel trap. The PRA, the Paperwork Reduction Act, by the way was the last bill signed into law by President Carter, over the objections of most of his cabinet members, save his OMB director – talking about self interest – Jim McIntyre. And of course the OIRA began on April 1st of 1981. I was there before that but then picked up with and became the Administrator of OIRA, or the first OIRAnian, on April 1 of 1981.

To answer your question, I've always analogized OMB's OIRA to an editorial board, or the editors, of a professional journal. Now do you have to know everything as a journal editor about what is written that you receive, every manuscript proffered to you? No. You make decisions. A judge, in making decisions, doesn't know everything that all the expert witnesses proffer to her or to him, but has to make decisions – an informed decision. And even though the size of the OMB cadre is much smaller than the size of the agency cadre, I think it does a marvelous job. And they are very high quality people, people that I recruited and that Wendy recruited, Sally recruited, and John and John on down the line. So these are very talented people. But you don't have to match the agencies person for person in order to do the job. Because you are a screen, you either accept the article for publication in the journal with some changes after you've sent it out to reviewers. You send it back to the author and say, subject to some changes, etc. etc. we'll accept it. And that's really the model; I don't think your law journal is inferior because the people editing it are small in number in comparison to the number of people who send you manuscripts.

Spotila: I would add to what Jim has said. I think Jim is very much on target here, but there's another dimension. Like Jim, I've never liked the notion of "Czar" as a title because it implies that the head of OIRA has some supreme knowledge about what all these regulations should be and that's really not the function of OIRA. If anything, the Administrator of OIRA is the President's representative, trying to figure out how to implement the President's policy as well as whatever statutory requirements have been created by law. And so, in many respects, the Administrator becomes an honest broker, something of a gatekeeper, responsible not just for stopping bad things, but for making sure that the process yields good things so that net benefits get into place and society benefits. And so you really are in a position of trying to run a good process, not being a Czar giving orders, telling everybody what to do, but rather leveraging all of the resources of an Administration to produce an end result that serves the American people.

Katzen: I would add to that, and I agree with both of them, that what OMB or OIRA does in reviewing regulations is very similar to what the rest of OMB does. For example, legislative proposals from various agencies are reviewed by OMB before they are sent up to the Hill. Or if the legislation originates on the Hill, before the administration takes a position, OMB will preside over a review, during which it canvasses all of the affected agencies, gets the different perspectives, takes a look at the whole picture, and then crafts an administration statement.

The biggest issues before OMB in this regard are resource allocations – the budget. Once again, the agencies present their wish list of what they'd like. It's the OMB process that looks at the various competing interests, the various conflicting views, and tries to figure out what makes sense for the agencies in light of presidential priorities. And again, it's a small staff compared to what the agencies have. But they are able to do it.

Thinking of it in those terms highlights for me a key aspect of OIRA. There's a lot of focus on OIRA's review of the economic analysis and the costs and the benefits. But there's a broader purpose, and that is to ensure that all of the agencies have a chance to speak to an issue. It provides the various perspectives for the president, who is the head of the Executive Branch and who should represent the national interest and all of the competing and conflicting claims. And these are aspects of the process that John talked about, all of which are aided by the fact that OIRA is in OMB, which is physically and psychologically closer to the president than any other agency, and has the stature, the prestige, or whatever it is that goes with being the president's representative for this purpose.

Coglianese: Sometimes we hear conflicting views about what OIRA does, particularly at the career staff level. Is this an office with a group of technocrats who are putting on their green eye shades and really scrutinizing regulation? Or is it a venue for presidential politics? Or maybe even interest group politics?

"Under 12,291 OMB did have the power to say 'no,' to say 'stop.' And we did. It was very traumatic for many agencies to have to deal with this new hurdle." —James C. Miller

Graham: One thing to keep in mind is that the staff of OIRA, and OMB generally, unlike most of the executive office of the president, is predominately populated by career civil servants. So it is the professionalization of OMB which is its comparative advantage within the Executive Office of the President. When the "politicos" get together for a meeting on a key issue in the White House, do they really want to start the meeting without the OMB staff? When the OMB staff arrives, at least they know something about the subject that's going to be discussed.

On the subject of the "czar," certainly the power to return a regulation is the important club that OIRA has. But often times it's just the more subtle maneuvers of taking a 500-page rule on a technology-based standard and adding the paragraph to the preamble stating that we are interested in public comments on whether a cap and trade program or an emissions free rule would be better than what the agency has put forward as their primary option. That preamble then sets in motion a notice and comment process, and now it's not fifty OIRA staff against 18,000 agency staffing; now it's the whole administrative dialogue and debate, and from then on lots of things can happen.

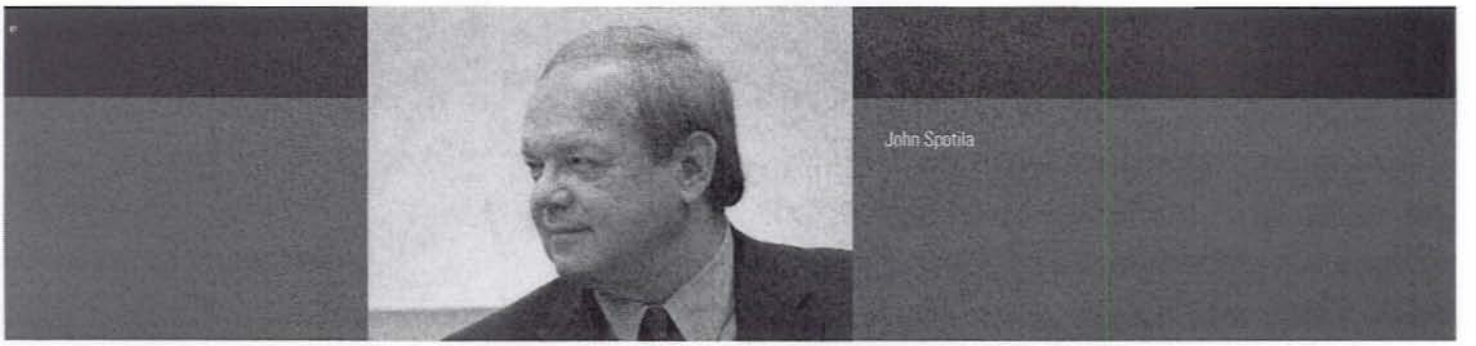
Gramm: I think it's important to stress what Sally has raised, and all of us are trying to raise, that the outside world thinks of OIRA, and the administrator in particular, as having a huge amount of power. And we really never did, or I don't think any of us did. But there is a very important role that OMB plays, and plays for the president on budget and all policy issues across the board, and that includes OIRA, and that is OMB is basically the president's special assistant, to help the president run the government. And there often are cross-cutting issues. As a matter of fact, most issues don't involve just one area. I remember when the immigration bill first was passed; the implementing regulations had to be signed off on and looked at by at least seven different agencies, because there were so many cross-cutting issues. In the modern world, cross-cutting issues are perhaps the norm, so the view of the Department of Agriculture, on, say, immigration, should be balanced against the view of the Treasury Department or INS, or the Department of Labor. So the role of OIRA is to make sure that everybody in government gets their point made, but also, again, as people have said before, to make sure that the rule itself is consistent with the president's views, is consistent with the law, and without conflicting elements. I think that's a very important aspect of the job.

Miller: Could I mention, I think that the role of OIRA has changed somewhat over time. Let me back up. The Executive Order 12,291 was drafted by Boyden Gray and me in the Reagan transition period. And, I mean literally, the first day on the job I had an OMB General Counsel person in and said, "put this in the right format; don't tell me whether it's good or bad, because that's what we're going to do." And so the President signed the Executive Order. Now that established very substantial tension among some very strong interests, because under 12,291 OMB did have the power to say "no," to stay "stop." And we did. It was very traumatic for many agencies to have to deal with this new hurdle. And it was traumatic for many committees on the Hill that thought they were running the agencies.

And so I would say the first half year, at least, of OIRA's work it was largely a matter of making sure the agencies understood the new rules of the game. And there were new rules of the game. And the agencies protested greatly. But once that system was understood, then people began to comport with it. Now, not everybody did. An assistant secretary of the Treasury went up to Capitol Hill and testified that the IRS was going to exempt itself from the Paperwork Reduction Act. Well you know about 80% of the paperwork burden is out of the IRS, right? So I got on the phone to him, and he had a letter on the desk of each member of that committee within an hour recanting that testimony. Now of course, as soon as I left OMB and went to the FTC, I got audited. But that's the cost of doing the right thing sometimes.

But there was that tension earlier on. And one of the things I've been quoted as saying is that "I'm mean as a junk-yard dog." But you had to establish the property right and to see that the program worked. And then it became easier to be more accommodating and more supportive, and become more of a catalyst for regulatory improvement, as John was saying, both Johns were saying.

Gramm: But also, you recall, Jim, and you said earlier, this kind of review or coordinating role, etc., whatever you want to call it, while it was tough at the beginning to be sure, was in existence beforehand as the Council on Wage and Price Stability. And remember, the Paperwork Reduction Act, as you said, was signed by Carter. Both Carter and Reagan ran in 1980 on a platform of getting the government regulatory apparatus under control. The Paperwork Reduction Act did establish procedures for the clearance of . . .



John Spotila

Miller: Right. . . . Especially paperwork . . .

Gramm: Exactly. Now what 12,291 did, which was different than what was actually a tougher requirement under the Paperwork Reduction Act, was to say we're going to review regulations even if they don't require a form or piece of paper that had to be filled in. But there were the seeds of presidential review of both regulations and paperwork that preceded Reagan by many years. And it wasn't just Carter; it was Nixon and Ford, too.

Miller: Right, exactly. What really hit home is something Sally said. There was, especially early on, some coordination between the OIRA people and the budget people. Sometimes when we were having trouble getting an agency's attention, when the OMB budget people would say, well I don't think we can back this until we work out the OIRA problem. So we got their attention – all part of establishing the rules of the game and laying them down.

Katzen: I think Jim is right that the role and the perspective of OIRA changed over time, certainly during Executive Order 12,291; the lean, mean junk-yard dog approach was in full view . . .

Miller: Full flower.

Katzen: Full flower, whatever. When President Clinton was elected there was discussion about what now? Where do we go? What do we do? As Cary said in his introductory statement, the Democrats in Congress didn't like this organization in OMB, they wouldn't confirm the administrator, they tried to zero it out at one point. And what were we now – the Democratic Administration – going to do?

The decision was made to continue with centralized review, for the reasons that I described earlier —the importance of inter-agency coordination, the importance of insuring that the regulations reflected presidential priorities, and because we thought the process would produce better decisions. But the tone changed. Executive Order 12,866 had a very different feel and very different message than 12,291. 12,291 started: "To reduce the burdens of regulation . . . ." 12,866 started with "The American people deserve a regulatory system that works for them, not against them." It was a recognition that regulation is a good thing, if done properly, that it had salutary effects, that the government had an important part to play in solving problems. There were other significant differences between the two Executive Orders that I think reflect not only the change in OIRA's position, but also the lessons learned from experience under 12,291.

For example, while we said that costs and benefits should be quantified and monetized to the maximum extent possible, we also recognized that there are some costs and there are some benefits that cannot be quantified, or cannot be monetized, that are nonetheless essential to consider. We introduced distributive effects. We made other changes in the openness of the process; Wendy had been the first administrator to think about having more transparency in the process . . .

Gramm: Well, let's put it this way, they were zeroing out the agency, so it was a matter of cutting a deal.

Katzen: We incorporated in 12,866 several provisions for openness and transparency, so it had a different flavor. And once it was established that we were there to stay, we didn't have to be so mean and lean and tough. Indeed, I was accused by Boyden Gray of being . . .

Miller: A wuss . . .

Katzen: He said I believed in the Jacuzzi theory or the sauna theory . . .

Miller: Hot tub theory . . .

Katzen: Yes, the hot tub theory of regulating the regulators. The idea was that agency and OIRA personnel would sit together in a hot tub and be nice to one another, and try to get what we wanted through persuasion and friendship and smiling and collegial warmth.

Miller: I thought the metaphor he was going to use is "drain the swamp."

Left to right:
Cary Coglianese and James C. Miller

Coglianese: I want to follow up on this shift that you mentioned, Sally, and ask John Graham about the Bush Administration's decision to retain the Clinton Executive Order. Why did it do so, given the shift from, if I could characterize it, the more regulation-friendly tone of the Clinton Administration's Executive Order to an administration that, at least from an outsider's perspective, was not necessarily friendly toward regulation?

Graham: I think it's a good question. One point I'd remind people of is that the regulatory relief agenda of the Reagan Administration arose during a time when the misery index was much talked about; double digit rates of inflation, unemployment and interest. And I think there was a sense that there needed to be a dramatic change in direction by putting the thumb on this regulatory excess.

The campaign between Vice President Gore and Governor Bush did not have regulation as a primary issue. And I think when we assumed the responsibility in the White House and we looked at the fundamental structure and the value judgments that were embedded in the Clinton Executive Order, I don't think this president felt, and I certainly didn't feel, that there were any real problems with the idea that we ought to be balancing qualitative benefits as well as quantitative ones, that we should consider both economic efficiency and fairness to various segments of the society. And I must say that in the four or five years I was at OIRA I don't think I ever felt I had a shortage of necessary authority in the Executive Order, even though you could certainly make a variety of modest edits to it.

I think one continuing pattern that you are seeing through the Clinton and George. W. Bush years is the evolution of OIRA from not just a break or a stopping point on certain regulations, but actually pointing to areas where we may need more public health or for environmental protection, additional regulation, and where agencies maybe aren't giving an issue adequate attention. Such examples would be the new trans fat labels on foods through FDA, and the EPA exhaust reductions from diesel engines.

So I think what you are finding over time is more professionalization and pluralism at OIRA. The question is now when to encourage the agency and nudge them along and when to exercise the muscle to slow them down or to consider alternatives. And that's the hard thing about the job of OIRA, to make sure you are making good choices as you review these packages, and as Jim says, be a good sound, fair judge on the merits on these rules.

Spotila: To build on another aspect of this and tie it into something John Graham had also mentioned earlier, there are two other important tasks which I think OIRA continues to perform well. OIRA knows that the devil is always in the details. We can argue about policy, we can have all kinds of sweeping intentions, but when you get to a rule the detail of how that rule is operating will have an enormous impact. And it also realizes that we should always fear unintended consequences. Part of OIRA's job, through the professionalism of its staff and the experience its people have gained through the years, is to identify things in the rules that are problematical, regardless of what the policy intent might have been.

To a President, this becomes extremely valuable because it is the staff of OIRA, under the Administrator's direction, that really understands what each rule would accomplish or not accomplish. You don't just have to have "theological" arguments about it.

There is a related function that we may see more of as we project forward and ask "Well, what might OIRA look like in the future? How might it evolve further?" There is an enormous amount of complexity in the regulatory field. In part, this arises because there are lots of statutory requirements. You have to assess the small business impact; you have to do a variety of things, not just the cost-benefit impact we talk a lot about. The reality is that in many agencies the expertise level in this area is uneven. So this small group at OIRA becomes a center for quality control, not just from the standpoint of enforcing policy or implementing policy, but from the standpoint of bringing up the overall quality of effort.

Going forward, I would suggest that this is going to be an increasing need; we are going to need more of this quality control. Someone is going to have to perform this role; it may well prove to be OIRA that does it.

"I think over time as the various public interest groups in various forms realize that there's a role for them in this process, I think that will reduce this visceral negative reaction." — John D. Graham

Coglianese: If you would indulge me for a moment, I want to read to you from a passage in a letter that each of you have recently signed urging the Senate to give fair consideration to Susan Dudley's nomination. You all agree, according to this letter, that "open, transparent and responsive regulatory procedures are necessary to avert policy mistakes and undue influence of narrow interest groups."

Yet there is a different perception that is shared by many people in the public, as well as in the agencies. In fact, a recent article in the *Michigan Law Review* by Lisa Bressman and Mike Vandenbergh, reports the results of interviews they held with senior EPA officials in both the George H.W. Bush Administration and the Clinton Administration. They state that their interviews "confirm the fears of critics that the White House frequently favors special interests when it gets involved in agency decision making."

So my question to you is: Are these fears founded? Even if not, can you tell us how or why OIRA has this reputation for opacity?

Gramm: I would like to say that I think that when OIRA was first founded, people realized that in fact there would be a great premium placed on careful analysis. And many of you have read all of the literature on public choice and policy that indicate that special interests very often control agency actions and capture agencies in many cases. And therefore there are a group of very vocal people who are opposed to OIRA in whatever form — and no matter who is there.

What I did during my time, that Sally referred to earlier on, occurred when there was a confluence of factors to eliminate the office. The information technology folks weren't sure that OIRA was spending enough time on the information side of the portfolio, and the anti-regulatory folks, who didn't like OIRA or any analysis at all — they would rather have Congress or other special interests, the iron triangle that everybody talks about, make decisions — got together to zero OIRA out. And what I did was to say, this is the president's own staff. We shouldn't have an executive order that outlines what the president's staff should or shouldn't do. That is really not appropriate. Neither is it appropriate to put such procedures into a law. But here's the deal I am going to make: There are procedures that OIRA was already following that would be outlined in a memo and which we would continue to follow.

There were some new things that were added, but in large part these were procedures about not visiting with outsiders during the rulemaking period, etc. We were very comfortable with these procedures, and by the time I was there, which was in the second part of the Reagan Administration, we were following these procedures, by and large. So we wrote a memo that said we will follow those procedures. And then we also agreed to have the administrator be a PAS, that is a presidential appointee with Senate confirmation. We were not going to have the procedures in law, but because the administrator was to be confirmed, you could ask this person, the nominee, will you follow these procedures. Well that was the deal, which I now conclude was a mistake because we now have a PAS, and ultimately, those procedures were put into an executive order. And now they are using the Senate confirmation as a way to make life very miserable for any kind of nominee, for no reason other than there are those who oppose the office no matter what.

Graham: Another thing to keep in mind is that Washington, D.C. sort of operates at multiple levels. So there's one level at which people have to engage in the ideological battle with the Republicans in favor of cost benefit analysis and Democrats in favor of rights, and you use things like the OIRA administrator's confirmation as a time to celebrate these different perspectives. But then at the same time there is Dr. Graham working with the Environmental Defense on raising CAFE standards for seven consecutive model years. And then there's Dr. Graham working with the Center for Science and Public Interest on the trans fat regulation. Certainly the business groups have felt that they have an opportunity to come in and make their case, but I think over time as the various public interest groups in various forms realize that there's a role for them in this process, I think that will reduce this visceral negative reaction. But it won't happen fast and it will take time.

Katzen: I want to go back to the special interests, national interests issue, because I think it depends on your definitions. One wag said a special interest is someone who opposes me, in that what I am talking about is clearly in the public interest and it's all these special interest types who want to resist what is clearly of some import. In fact, instead of the labels that have been used, let's think in terms of parochial interests versus broader interests. Then, take EPA, which is always the poster child. EPA cares very much about the environment. As it should.

"Rather than pop up in two years with 3,000 pages already done, why don't you let people know if you are going to be doing something significant in a regulatory arena?"
—Wendy Lee Gramm

It focuses like a laser on promoting and protecting the environment. That's its statutory mandate. That's its job. But in pursuing its statutory mandate, it may propose actions that have an effect on the statutory mandates of other departments or agencies, be it Energy, Transportation, Commerce, Treasury, Agriculture. Now, when the farmers react, are they a special interest?

I suspect that if you are at EPA and you think that what you are proposing is in the public interest, you could call the farmers a special interest. But it is also possible to think of EPA as the one that is focusing on its parochial, and that's not a bad term, interests. What OIRA is bringing to the table is all of the other agencies, as I said before, and together they make up the national interest. That's what the office does. That's what it purports to do. And to the extent that somebody on the outside says, "Ooh! This is industry. This is a special interest," I think they misperceive the force of the effect on the nation that one agency can have on our economy, on our quality of life.

Spotila: One other thing. I think we are obviously all very focused on OIRA, but the reality is that it is the President that the people elect. To some degree, OIRA's role is in highlighting issues, highlighting disagreements, highlighting policy choices. It may well not be OIRA that resolves significant disputes; that resolution may occur at a more senior level in the White House and could well reflect a political decision that political people make. When you look at the influence of parochial interests or other interests on a decision, you can't remove it from the overall political system. If the interests driving for a policy change are strong enough and have the ear of the President, then they may very well be successful in seeing their policy implemented.

Coglianese: We have a lot of people here who have interests in questions of their own. I'd like to turn it over now to the audience to pose your questions.

Matthew Adler: Let me go back to the theme of change from 12,291 to 12,866. And one of the changes that Sally Katzen talked about, and that John Graham also alluded to, had to do with the role for equity. 12,291 didn't talk about equity; 12826 does. Now what's interesting though is that while 12,866 with respect to overall benefits says quantify to the extent feasible, it doesn't say to quantify equity, even though in principle it could have, right? I mean it's possible to have a cost benefit analysis with distributional weights. And indeed the British government in its equivalent process has tried actually to do CBA with distributional weights. Why not try to quantify the distributional effects, perform an equity analysis? I suppose that cuts both ways. On the one hand if you don't like quantification, that's going to be troubling. On the other hand, that would be a way of making equity or distribution a more separate component of 12,866 and OIRA review. Should the agency do that? Should the Executive Order be amended? Would this be a valuable further kind of progress, namely to quantify equity and thereby make it more central?

Graham: I tend to think we probably shouldn't put technical instructions in executive orders. We should not mandate a tool until we are to the point in major universities around this country that we are teaching these approaches as established, well-understood ideas. On distributional weighing, economists have been interested in that for a while, but I don't really think, frankly, the basic intellectual work and a measurement program associated with it are quite there yet to justify doing that. Until we have that – I kind of like the more general kind of, it's sort of the "non-efficiency" box that the Executive Order opens up and allows the administrators to look at various quantitative or qualitative arguments. But there may come a time when we make enough progress on distributional weighting that we can actually bring it in to the mathematics of the cost benefit analysis.

Peter Strauss: One of the things that's been talked about a fair amount over the years since 12,291 is the idea of a regulatory budget. The conversation so far has been a conversation about OIRA in relationship to individual rules. There was also in the Reagan Administration an Executive Order 12,498, I think it was, which got brought into 12,866, that looks up front and is perhaps more process oriented. And from my perspective as an academic, it seems to have sunk without a trace. That is, I can find no evidence, and I kind of hope I'm wrong in a way, that this is a process that is seriously regarded in the agencies or in the White House. And the question I have for you is, what happened to 12,498? And where do you see it's going?

Sally Katzen

Gramm: I thought 12,498 was a great Executive Order. Basically it was an Executive Order that said: 12,291 deals with reviews of regulations ex post. What about letting people know what things you're working on? Rather than pop up in two years with 3,000 pages, already done, why don't you let people know if you are going to be doing something significant in a regulatory arena? And it also was a way for us, as administrators, to get involved at an earlier stage. I didn't like seeing some of the Executive orders swept together under 12,866 because I thought they had some good stand-alone features.

I believe that John alluded to prompt letters, about telling agencies, why don't you look at this? In fact, that is a vestige of the 12,498 process, because that's what we were trying to do with OIRA. To ask: why don't you look at, for example, allowing individuals with seriously life-threatening diseases for which there were no alternatives, who would likely die in 6 months, to use drugs that have passed safety but not the efficacy tests if everybody signed off? Some people will call it deregulatory, but in fact, that's the kind of thing that might be prompted by a letter, but it also was a 12,498 kind of issue.

Katzen: I have a slightly different take, and all these numbers must be driving some of you nuts. The concept of pulling together an agenda, which is what that was all about, setting out, as Wendy put it, what is it that you are going to be working on that's going to be coming up? That was all designed to bring greater management to the process. And it doesn't necessarily have to be managed by OMB or OIRA. It serves a useful purpose of instilling discipline in the agencies and of bringing to the political leadership within the agencies what's on the agency's plate.

Now you may not be happy with the consequences of that. When George W. Bush was elected, the Secretary of Labor was presented with all of the proposals the staff was working on. And her view was, let's get rid of 80% of them or whatever it was. But it nonetheless is a management tool that was intended to be enforced, if you will, by the agencies themselves. At the same time, the agendas are circulated to the other agencies. So there's a heads-up quality that may not appear to someone on the outside studying the issue. There won't be any little tracks left. Nonetheless the agencies will be aware of other things that are happening.

All of that to one side; I think there's a serious issue about when OIRA gets involved in rulemakings. This is something that Wendy alluded to and that John has alluded to. OIRA review had been traditionally conceived of as an end-of-the-pipe process. The agency drafts the notice of proposed rulemaking and sends it to OIRA and OIRA evaluates it. Then comes the comment period. The agency considers the comments, drafts the final rule and sends it to OMB. That's not the most productive way of getting input because, both at the notice stage and certainly at the final rule stage, the agency is invested. By that time, the agency has its own strongly held view of how it wants this thing to look. And OMB changes at that point are, I think, really at the margin rather than going to the heart of the matter.

There were, during my tenure, a few instances where the agency came forward at the very earliest stages. One of them was seafood HACCP – Hazard Analysis Critical Control Point – from the FDA. Another was when the Department of Transportation allowed car companies to decrease the rate of acceleration of airbags. The agencies approached OIRA when they just had the idea, but no details, and our people worked with the people in the agency. Those went swimmingly, and produced, I think, much better regulations. Would that happen if that were possible to do more often?. This goes back to Cary's original question, because OIRA doesn't have the resources to do that with all rulemakings. But I would encourage us for the future to think about ways in which OIRA can become more involved earlier on.

Coglianese: Jim, did you want to comment?

Miller: Yes, I want to comment on the broader issue of a regulatory budget. A lot of people have written about this. I have written about this. I have testified before Congress about this. I have tried to draw the analogy with the fiscal budget. Before 1920, agencies proffered their budgets to the Hill, and Congress basically passed budgets for agencies seriatim. There was no consolidated budget. Nobody wants to go back to that. But that's what we do by analogy with the regulatory agencies.

The cost imposed by and the benefits bestowed upon by regulatory agencies far exceed their budgets. Why not have a regulatory budget that Congress would appropriate each year, and you could have the analogy with budget outlays and budget authority. Here is a regulatory

"'Doing no harm' was an objective that we should always recommend in the regulatory field." —John Spotila

project; you can impose so much cost. Now somebody would say – probably Sally would say – well there's a bias, because you're controlling costs rather than benefits. But that's what we do in the fiscal budget when we tell agencies; you can spend this amount of money. It's not a budget based on benefits; it's a budget based on costs. And given the growth of the budget and given the public choice, literature suggests that we get too much government, not too little government, it seems to me that there is not an innate bias against regulation by having a regulatory budget. If you had one you'd get much more efficient regulations.

Gramm: Could I jump in . . .

Coglianese: We have a pent up demand for questions . . . but please go ahead . . .

Gramm: This goes to your other issue, and that is when the Bureau of the Budget was formed and you had a consolidated budget, people went crazy. They hated it but over time did come to accept it. I think the same thing will happen with OIRA maybe in 80 years.

Coglianese: Would we all live that long.

Steve Balla: When it comes to transparency in the disclosure of OIRA communications with outside parties, we've already laid out a deal that was struck in the 1980s, and Sally has articulated the philosophy, so to speak, behind the Clinton Executive Order, I won't use the number. So we have a history for transparency up to the current administration. And so my question is about the most recent innovation, so to speak, in terms of disclosure of outside communications occurred under John Graham's tenure, disclosure via the Internet. So electronic disclosure of meetings with outside parties, of written comments that were submitted of telephone conversations. So my question really is, why take that next step and think about transparency electronically?

Graham: Let me start by saying that one of the fascinating experiences I had in government was dealing with lawyers on the subject of transparency. Because I had a very kind of straightforward view that we ought to be maximally transparent. That was my instinct. And the lawyers were really a pain in the rear on this subject. And I felt I made some progress on the idea of that communications with outside parties, we should move in the direction of more transparency. And we actually did that in what's called the informal review process, not just the formal review process. But where I got my mind changed from listening to lawyers was on the subject of the interactions between the agents of the Executive Branch and the need for us to be able to collaborate, to email each other, to trade drafts, and things like that. And I got to the point where I said I really thought that maybe we were actually even too transparent. That there are provisions that require a variety of disclosures of internal documents. Now while I am sure scholars and reporters and interest groups love that sort of thing, I actually got to the point where I thought that it was questionable about whether the net value of that is positive.

Howard Kunreuther: I'd like to ask anyone on the panel if they could tell us about what they consider to be their greatest success while they were in their tenure as czar - and why they would view it that way. Or something that they would have liked to have achieved but weren't able to and why that happened. Just so we could get a little perspective on some of the things that came out of each of your administrations?

Gramm: Somebody should talk about lead phase out. Jim, were you there for lead phase out? Because that was something that wouldn't have occurred but for OMB.

Coglianese: Lead phase down, for those of you who don't know, was the removal of lead from gasoline. Oil refiners used to put lead in gasoline and it was spewing out all over the ambient air in huge quantities, probably the single largest source of exposure to lead to children across the country. In the early 1980s, EPA outlawed the lead in gasoline for almost all uses. And by all accounts, the economic analysis behind the decision made it move forward during the Reagan Administration. Without that, without the economic analysis and the White House pushing for it, it may never have happened – or certainly not as soon as it did. Looking back, it is heralded as one of the single most beneficial public health actions ever.

Anyone else have successes?

Wendy Lee Gramm

Spotila: We probably are all struggling up here as to how candid we should really be. I'll mention two aspects, one broad and one narrow.

I served, of course, at the end of the Clinton Administration. This was a time when, as we all recall, Congress was in control of the other party, the President knew he wasn't going to get laws passed, and there was a lot of turmoil. Therefore, from the standpoint of the Administration's desire to effect policy, they had to turn to regulations. This posed a risk which the President acknowledged and was concerned about, namely, that people would just try and shove everything out the door, not paying really much attention to those unintended consequences I referred to earlier.

Somehow we at OIRA had to manage a process, a high volume process. We had to do it in a way that would still accomplish the policy implementation that the President wanted, but hopefully in a rational and defensible manner. Running that process well was an administrative challenge and an important one if we were to avoid doing harm. And "doing no harm" was an objective that we should always recommend in the regulatory field.

In terms of our success, I actually think we did that pretty well. The rules that were turned out, in large measure because of the supreme professionalism of the career staff at OIRA, were well done. Now, they reflected a policy orientation which, candidly, the next Administration often changed. But the quality of the work showed OIRA's professionalism and experienced input, and that's important for our system.

I'll tell you a specific rule that involved a great deal of effort and a successful result. It was an airbag rule, one where various safety groups disagreed as to whether stronger airbags were a wise idea. After a very difficult process, we ultimately made what I believe was the right decision, essentially concluding that we needed to wait for better science, following the admonition to do no harm. Some of the safety advocates who were arguing for stronger airbags lacked true scientific support. They were arguing for stronger and stronger airbags on principle, without giving enough weight to the evidence that the bags might do more harm than good. This was a specific example in which OIRA played a key role in identifying and summarizing accurately the conflicting thought of experts in the field so that the issue could ultimately be resolved at a very high policy level. This was a level above even the OMB Director because the issue was so hot and politically charged.

So, these are two memorable accomplishments, OIRA's successful management of the broad regulatory process under pressure and its specific contribution in providing excellent analysis that led to a good policy decision on an important safety rule.

Katzen: I would mention with two different kinds of things that I recall vividly. One was working with the Department of Education, where there had been a mindset that every single thing had to be regulated. I remember meeting with Secretary Riley and his general counsel, and the Secretary said, "Maybe we can do this in ways other than through regulation." And I think that they issued no more than one or two regs in the five or six years that I was at OIRA because they did find other ways of achieving their objectives.

The second example I would cite was the seafood HACCP rule. I remember the first meeting and listening to what the agency was trying to accomplish and the traditional plans that the agency was considering. Then the OIRA staff began speaking and I thought how creative they were in suggesting different approaches. They worked together, and maybe it was a year, year and a half, 2 years later and we finally cleared the final rule, and a few days later I got a telephone call from someone at FDA, saying that , I think it was the Seattle newspaper had an editorial and the caption was "Sensible Regulation at Last". The person from FDA was so happy because this indicated that this rule was not going to be challenged. It was going to work. They had achieved their objective. And he said – I'm going to send you some smoked fish, or something. I said, no, no, no.

Graham: The example I'd like to give is in the do – no – harm spirit is the corporate average fuel economy standards for light trucks and SUVs. A big concern there was that if you tighten them stringently, you create safety problems for motorists because of the downsizing of vehicles. And building on some work that I had done with Jonathan Wiener, a professor from Duke who is, I'm very happy he's here this evening, we actually developed a revised regulatory scheme which has different

"OIRA review has been controversial . . . in large part because regulation has enormous consequences for society, for our economy." —Cary Coglianese

standards for different sizes of vehicles, so that it encourages manufacturers to comply with new technology rather than simply to downsize the vehicle. And I think that that has a very important effect on the technical defensibility and the safety effects of these rules.

The final point would be the idea of a prompt letter; we're prompting an agency to do something pro-regulation. That will probably go down in history as a big one for me.

Gramm: There are so many different stories to tell, because I was there at a time when there were very many regulations, that would regulate the size of the brooms that you could use to sweep grain elevators with, for example, and huge numbers of regulations that we had to go through to make sense of and to make them smarter as opposed to having all these side effects.

But one of the more satisfying regulations, because it was fun, was the one I mentioned earlier, that was by the FDA for people with seriously life-threatening diseases. I always wanted to write an article about how the Reagan regulators or deregulators and the AIDS activists got together, because the only pharmaceutical that could be allowed under this regime at that time would be one of the very early hopeful drugs for AIDS, and that was AZT. And so the AIDS activists were out demonstrating for FDA to push this forward. But it took a long time to get it done – to the second Reagan Administration. It was that difficult to get that particular regulation through FDA.

Miller: I would cite that the most important success was the signing of 12,291 by the president, because there was a lot of undercurrent of opposition to it, especially agency of general counsels.

Two losses I would identify. One was the loss of the National Highway Traffic Administration case before the Supreme Court – the airbags case. It didn't have that much legal effect, but it cast a pall on some of things we were doing.

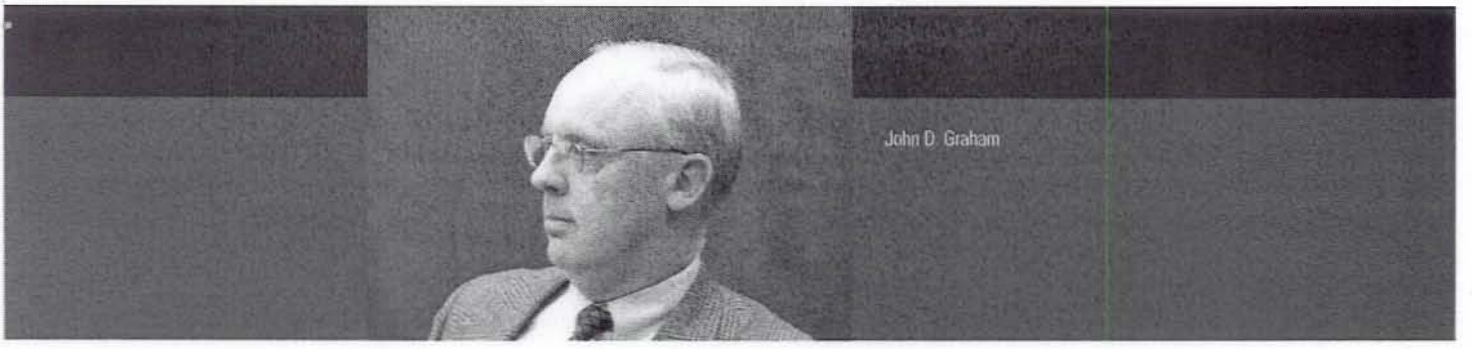
The other, and you will find this very surprising, was the loss of ketchup as a vegetable rule.

Let me tell you about the ketchup as a vegetable rule. The Department of Agriculture wanted to put out guidance to states and localities which had these various food programs. The idea was to maximize protein for kids, maximize the nutritional value of foods. And they put together these menus, like so-called Chinese menus – one from column one, one from column B, etc., trying to give guidance to local cafeterias, school cafeterias, etc. about the kinds of things to put together for kids, not just what they want – hot dogs every day – but nutritional food. And in one of the columns was ketchup. There were other things in that column, including vegetables. And so the war cry – "ketchup as a vegetable" emerged and it fit the time when budget cuts were being made. It just took a life on its own. And I defended – that's a long story – ketchup as a vegetable. OMB Director Dave Stockman stopped me and said, "We got to do something about this; this is awful." So I said, "Oh but David it's a really good rule. Because here's the way it works, etc." I went off to lunch and came back. I had a note waiting for me from Dave: "Come down and see me; I've got to pull this rule." I said, "David we had this discussion." He says, "The President's just decided to pull it. And you've got to call Jack Block and tell him." So I called Jack Block to tell him. But just think of the kids' health that might have been improved had the rule gone ahead.

Scott Farrow: What I was going to pick up on is that at times there are statements that the debates about OIRA focus too much on benefit-cost things; somehow that captures a lot of the debate. And then I have also heard from this panel that, well OMB has legislative review over things and the agencies, inter-agency comments on legislative review and we try to participate. And then there's regulatory review. For the sake of argument the benefit-cost component is a distinctive difference between legislative review and regulatory review. Let me ask you – if you were to pull benefit-cost entirely out of regulatory review, what would be different?

Katzen: I can't buy into the hypothetical.

Miller: I don't either. I don't buy into the notion that you set benefits and costs aside when you review budgets, which is what I think that's what you meant by "legislation . . ."



John D. Graham

Katzen: LRD [the Legislative Reference Division within OMB].

Miller: When we sat down to review budgets, it was the same drill. When I was at OMB I wore a hat that said "OIRA". Later, my new hat as OMB director fit the same way. When you engage in legislative review, you do the same thing: you assimilate all the pages of comments from the agencies and review them. You make some kind of judgment about what this proposed legislation would do in terms of benefits and in terms of costs.

Katzen: When I said I couldn't buy into the hypothetical, that's because, yes, there is the coordination function, but there is also the function of helping produce better decisions. And one measure of a better decision is to assess the costs and the benefits and see how they are arrayed. The debate that I have always heard is: is cost-benefit analysis an input or is it dispositive? To the extent that it's an input, I can't imagine life without it. We all do things every day where we do a very, very quick assessment of the costs, assessment of the benefits – whether you're going to walk to work or take a cab – it's going to depend on the weather, it's going to depend on the timing, it's going to depend on all sorts of things, but you instinctively think through the consequences of your choices many times a day, every day of your life. Why wouldn't you apply that tool in the regulatory field? If it's an input, then I think it's valuable. If it were dispositive, then I think it would block out some of the other values, like distributive effects, equities, etc., that we've talked about. That's where the debate has taken place, not whether we should get rid of cost/benefit analysis all together.

Coglianese: One last question.

Jonathan Weiner: I'd like to ask about the role of OMB/OIRA as the president's special assistant. And many of you have said, and many scholars have written about the essential consensus among presidents that the president needs tools to manage the regulatory state and that OMB/OIRA is a crucial element of that. And in the same debate in Europe occurring now, a key criticism of the European system of better regulation on impact assessment is that that process is not sufficiently connected to the presidency. And moreover, the presidency of the European Commission is far weaker institutionally than the President of the United States.

So my questions are: First, to what extent in your terms at OIRA, or how would you characterize the relationship of the OIRA administration to the president? And the interest of the president — the presidents for whom you served in these questions? And some presidents, I am sure, had different degrees and styles of interest and of working than others.

And secondly, we've talked a lot about, and people often talked about the relationship between OIRA and the agencies. But my recollection from working in the old executive office building was that there is a whole world of competition and collaboration and some conflict within the Executive Office of the President. So could you comment on the role of OMB/OIRA among the several special assistants to the president?

Graham: Just quickly, there's a really good paper on this that I was reading parts of that's in the packet of materials – I think it really conveys the very important point of how pluralistic the Executive Office of the Presidents is, and the tug and pull of trying to get issues to the president. And I found one of the most surprising things about my tenure at OIRA is how often I was making a case to the president and the vice president *on behalf* of a regulation, supporting a regulatory agency against other offices in the White House and other agencies who were opposing the regulation and wanting to take a different course. And I think that in my role in the White House I was used much more on the professional side: "Let's let Dr. Graham tell us, what do we know here about the facts." Okay, and then if it got really hot disagreement wise, then it used to bubble up and then who knows where it ends up.

On your point about Europe, they are requiring regulatory impact analysis on primary legislative proposals. So in that sense I think the Europeans are way out ahead of us.

Spotila: During my tenure, in many of the issues that went higher it was really the Chief of Staff that ultimately brokered the decision process – and, to the extent necessary, spoke to the President about it. Certainly in my experience, John Podesta played a very active role in that regard.

Now, in terms of the pluralism within the White House, I had one advantage that I didn't need to use openly, but I think that people were aware of. I had known Bill Clinton for a very long time; he was a very close personal friend; and so people assumed that I was wired. I didn't

Cary Coglianese

actually have to use my relationship, but they all knew I could use it if I had to. I mention this because the White House is very much a place where people with strong views and strong egos push back and forth to accomplish what they think is the right result. Having the perception of influence with the President is a very good thing for an OIRA Administrator.

Katzen: John points to something which I think is very important, and that is that there is no rule; it very much depends upon the personalities of the people involved and the relations that they have built or not built with other offices. This is an "all of the children are equal, but some children may be more equal than others" kind of concept. And I'll go back to what John Spotila said earlier about OMB and OIRA acting as an honest broker. I found that when there were differing views, that simply getting everyone in one room and having them sit down and discuss things with one another – if necessary, symbolically locking the door and not letting them out until they resolve their disagreements – led to a resolution. I believed that if a dispute was brought to the president or the vice president, I had not done my job. It was not my decision how it should come out. It was to ensure that the process was inclusive, that the agency and White House people be heard, and that decisions be made. If there was serious dissent, let's keep working on it. Keeping everyone at the table does really focus the mind and gets resolution. There were one or two seemingly intractable issues that were elevated, and here was no doubt in my mind that I had whatever access I needed and could use it whenever I needed to.

Coglianese: To conclude, I'm going to return to my earlier comments about how OIRA review has been controversial. I believe it's controversial in large part because regulation has enormous consequences for society, for our economy.

Yet we've also noted some scholarly research that suggests that OIRA hasn't always been very effective. There are still regulations that fail, and there are certainly still controversies. But the relevant question, the right question to ask is: Are we better off having had established OIRA review for the past 25 years? That, it seems to me is the critical question, whether or not we are fully where we ought to be with government regulation.

Tonight, we've had a unique opportunity to talk with people who have played an important role in the regulatory process. I want to thank each of these distinguished panel members for spending of their time to travel here today and speaking with us, and I also want to thank each of them for their service to our nation.