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WHITE HOUSE REVIEW OF REGULATION: MYTHS AND REALITIES

CASS R. SUNSTEIN

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CASS R. SUNSTEIN[†]

Many Americans have never heard of the Office of Information and Regulatory Affairs (OIRA), located within the White House. Yet OIRA is deeply involved in making federal regulations and has long been criticized by scholars, attorneys, and activists for overly politicizing rulemaking, allowing special interests to influence public policy, and impeding desirable governmental action. Cass Sunstein responded to these criticisms of OIRA as the honored speaker at the Penn Program on Regulation's annual regulation lecture held earlier this year at the University of Pennsylvania Law School. The Regulatory Review and the Penn Program on Regulation are grateful of Professor Sunstein for taking the time to visit Penn Law, sharing his insights on one of the most important institutions in the federal regulatory process, and allowing us to reproduce this lightly edited transcript of his remarks. -Editor.

THE BIG IDEAS BEHIND OIRA

I'm going to tell you a bit about the real world of the Office of Information and Regulatory Affairs (OIRA). And I'm just going to tell you facts. But it occurred to me as I looked over the remarks I had prepared that they have no ideas in them, so here are some things that are, if not ideas, at least quasi-ideas.

The first idea has to do with an oft-quoted statement by Felix Frankfurter about how the history of Anglo American liberty is in large part a history of procedural safeguards. I remember when I read that statement in law school, I wondered: How can the

[†] *Cass R. Sunstein is the Robert Walmsley University Professor at Harvard Law School. From 2009 to 2012, he served at the Administrator of the White House Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB). He delivered the Penn Program on Regulation's Second Annual Regulation Lecture held at the University of Pennsylvania Law School on January 16, 2013.*

history of liberty be a history of procedural safeguards? They're good, but they're kind of boring.

The role of OIRA is emphatically one of procedural safeguards. That's a first quasi-idea: OIRA sees itself as a guardian of what we might call *regulatory due process*. This little concept of regulatory due process means some kind of hearing for everybody: inside government and outside government, an opportunity to be heard. That's the Frankfurtarian idea.

The second idea is from John Stuart Mill, and here I'm thinking both of Mill, the dedicated utilitarian, and of Mill, the sharp critic of Jeremy Bentham, the founder of utilitarianism. Mill believed in consequences, and specifically in making sure the consequences are as good as possible. But Mill said that his kind of intellectual father, Bentham, was like a one-eyed person who was blind in one eye and could see further than anybody else, but couldn't see all the dimensions. In his great paper on Bentham, Mill said that there were qualitative differences among human goods. Bentham wasn't alert to the love of beauty, the love of mystery, the love of nature, but Mill saw that these were qualitatively different from other kinds of loves. The utilitarian framework, understood in a certain way, would run over them and call these diverse goods "utility producers." But if you love a beach or love a person or love money or love your job, it's not as if these are all part of the same good called *utility*. There are qualitative differences among them. That was Mill's critique of Bentham.

The Millian theme is captured in the idea of humanized cost-benefit analysis. What I tried to do at OIRA was to be, under the President's leadership and guidance, very focused on making sure the benefits justified the cost—that is, that the monetized benefits justified the monetized cost, especially in an economically difficult time—but also to notice that some regulations involved goods, like the prevention of rape and the reduction of discrimination on the basis of disability, that couldn't be adequately captured in monetary equivalents. Human dignity is actually called out in the President's executive order on regulation. That's completely original, and that is a Millian point. It is a fact that the net benefits of rules in the first three years of the Bush Administration were about \$3.4 billion. That's good: that's in the black, not the red. Under Clinton, the net benefits were approximately \$14 billion. That's really good, and a lot of that comes from air pollution regulation. Under Obama, the net benefits after three years are in excess of \$90 billion, which shows the intense focus on monetized benefits and monetized cost and a determined effort to make sure that if there is a costly rule, the benefits justify that rule.

It's no accident that after the first three years of the Obama Administration, the highest-cost year in the last decade was 2007, under President Bush. Obama had not hit the Bush high, and, in fact, Bush II had the lowest high since the numbers have been recorded. Bush II's high is lower than Clinton's high, lower than his father's high, and lower than Reagan's high. And Obama hadn't hit that. That's connected with the Millian theme.

The third theme is Hayekian, after the great University of Chicago economist, Friedrich Hayek, who, I think, had one great idea. He had a lot of good ideas and one *great* idea. And the great idea is that knowledge is dispersed in society, and that government planners, however well motivated, aren't going to know what people know. For Hayek, this idea was a critique of socialism and supported a plea for markets. He said the price system is a marvel because the price of a good aggregates information from lots and lots of people.

This is a great and true point, and what can be added is that while rulemaking can't really beat the price system, it can incorporate the dispersed knowledge of lots and lots of people. One of the things I learned—I didn't expect this at OIRA, but once I learned it, boy, did I take it as a fundamental part of my job—is that the rulemaking process depends critically, or even urgently, on the information provided by people outside of government. And that is a Hayekian point about dispersed knowledge and the central importance of incorporating it in the rulemaking process.

WHAT OIRA REALLY DOES

My three quasi-ideas—drawn from Felix Frankfurter, John Stuart Mill, and Friedrich Hayek—are a framework for my reflection on the myths and realities of OIRA, based on my time as OIRA Administrator. Now, here are four facts that I am going to tell you right now and then elaborate on a little bit. Each of them, I think, is inconsistent with widely-held views in the academic world, and certainly in the world of Washington and New York observers of the regulatory process. These four points are meant as correctives to myths.

Point number one: *OIRA helps to oversee a genuinely inter-agency process involving lots of specialists throughout the federal government.* I want to put that in italics, because the process is often referred to as only “OIRA Review.” A very good professor at another Ivy League institution said to me recently, “How can OIRA review thousands of rules? Surely, this is slipshod, or political, or something.” What he's missing is that the people who are reviewing the rules are predominantly *outside* of OIRA. There will be a rule from the Environmental Protection Agency that

might affect the agricultural sector. The Department of Agriculture is going to be all over that rule, trying to find out what the consequences are going to be for the agricultural sector. There will be a rule from the Department of Transportation that will have environmental implications. The EPA is going to be closely assessing that rule for bad environmental effects. There will be a rule from, let's say, the Department of Interior that depends on some scientific understandings. The Office of Science and Technology policy within the White House will be scrutinizing that rule and adding such information as it has.

OIRA's goal is often to identify and convey inter-agency reviews to try to seek a reasonable consensus. It's operating as a conveyor and a convener.

Point number two: When a proposed or final rule is delayed—which happens, and close observers know it happens not infrequently—and when the OIRA process proves very time consuming, it's often because a significant inter-agency concern hasn't been addressed, so there is not yet consensus within the administration about going forward.

I don't want to talk about particular rules because that would be violating a deliberative privilege. But if you go through what's happened in the last few years, you will find some rules that were held up for a long time. If they were held up, it's because somebody who matters had a reasonable concern that just had to be addressed. One possibility, which really mattered to me, is if there is a legal concern on the part of smart lawyers that a rule is transgressing a statute, and the agency that proposes the rule hasn't been able to satisfy the objections of, let's say, the Department of Justice, which is a legally authoritative entity within the Executive Branch. OIRA is going to help to work through that issue very carefully. Even to propose a rule that the Department of Justice believes is illegal is a real problem. Sometimes proposed rules can actually create dislocations. And if there is a technical policy problem—let's suppose it's not a legal problem, but it's that the agency hasn't adequately assessed the effects on small business, which could be very bad—that has to be worked through too. All this suggests that delay is often a process of a time consuming but, in its own way, really inspiring effort to tap the expertise of all the people who are concerned.

Point number three: Costs and benefits are important—the Millian point—and OIRA, along with others, prominently including the Council of Economic Advisors, does focus on them, but they're usually not the dominant issue in the OIRA process. I had thought, based on comments of outside observers, that OIRA is supposed to be the home of cost-benefit analysis. This isn't entirely off the mark, in the sense that this President and his

predecessors have placed a big emphasis on cost-benefit analysis, but it's not the daily work. It's occasional; it's not the dominant aspect of OIRA life. Most of the time is spent on carefully assessing public comments—that's the Hayekian point— and ensuring that alternatives are raised and discussed so that, for a proposed rule, the public has a sense of the options and can respond to comments in public. This way, we can be sure we're not making a mistake that the public anticipated. OIRA also spends substantial time on engaging lawyers throughout the Executive Branch to resolve questions of law. Those aren't cost-benefit questions; those are quite different questions and they are more central to what happens every day than cost-benefit analysis.

INSIDE BASEBALL: THE NATURE OF OIRA'S WORK

While my first three observations about how OIRA works shed light on what OIRA *does*, the fourth and last point sheds light on the *nature* of the work: Much of the OIRA process is highly technical, and it's very rarely political in the sense in which that word is used in ordinary language. For example, you might have a rule that has trade implications, and it might affect our relations with China or Korea or Brazil or Germany. The Office of the United States Trade Representative will have something to say about that rule, especially if it's legally problematic under international trade law, but also if the rule would compromise our trade relations with those nations. There might be a rule that an agency is issuing that is going to affect national security: it could be the State Department or it could be the Department of Transportation, which might have a rule that affects aircraft operations somewhere. In that case, I might be on the phone with others asking, "Is this okay?" We don't want to do anything on a rule from an agency that's going to raise a national security issue. Likewise, if the EPA is issuing a rule that some people fear will affect the energy supply, then the Department of Energy will be enlisted to see what the effect is going to be. These are efforts to engage, typically, career officials with technical expertise, not political officials. And the political officials are going to get involved only under a particular set of processes.

Here's how the operation basically works. OIRA has about 45 people. They're organized into branches. There's an environmental and natural resources branch, which mainly handles EPA rules but that also does Interior stuff too. There is a branch that does health care and food and drug stuff. There is a branch that does transportation and homeland security. Basically, there are a bunch of branches with assigned jurisdiction. There's someone who is called the desk officer who plays point guard.

They're like a point guard on a basketball team in the sense that a rule comes to them and they allocate it to multiple people throughout the government. If a rule comes in from, let's say, the Department of Transportation, it will be sent out to numerous White House offices, and they will be asked for their views. It will also go to other parts of the federal government that might have an interest in resolving any issues or controversy.

The number of people who may look at it will be very broad. In the White House itself, there's the Office of the Vice President; there's the Domestic Policy Council; there's the National Economic Council; there's the United States Trade Representative; there's the Council on Environmental Quality—that's just an incomplete, illustrative list. It is also a way of suggesting that the White House is, in an important respect, a "they," not an "it." There's a famous paper about Congress that says Congress is a "they," not an "it." It's a little more complicated for the Executive Branch because there's a boss: the President. But the President usually doesn't get involved, certainly not typically at the early stages, so there's truly a "they" who assesses rules. The desk officer's obligation is to make sure that this "they" reviews the rules.

Now, before the rule gets into OIRA, especially if it's a big deal, there might be White House involvement in advance. There's a recent paper by Dean Richard Revesz, who's one of the best in the business in administrative law, and his plea is that OIRA should be involved not just in scrutinizing rules that are coming in, but also in initiating agency action, particularly to overcome the risk of agency capture. There is a lot to be said about whether that's a good idea.

One thing to keep in mind is that it's actually the job of the White House policy offices to do exactly that. If the President has an idea about something that should be done—let's call it action involving gun control—then the White House will play a big role in initiating that action. For gun control in particular, the Domestic Policy Council and the Office of the Vice President may be natural allies that will work with the relevant agencies, and maybe the Department of Justice, to do something.

Typically, if there is a presidential priority—maybe it involves healthcare reform and how to implement it—there will be people who will be initiating action within the White House long before OIRA gets involved. If the rule is a big economic deal or a big public policy deal, there will be a degree of inter-agency coordination before OIRA even sees a proposed rule.

I've indicated that the White House is a "they" and not an "it." Know also that the range of parts of the federal government that have relevant information about rules submitted to OIRA is

very broad. I knew very little, before I got to OIRA, about the Office of Advocacy within the Small Business Administration. But it's an important office. The President is very concerned about small businesses: he actually has a memorandum on this point to make sure that regulation doesn't, without sufficient justification, impose costs and burdens on small businesses. It's the job of the Office of Advocacy, whose name isn't coincidental, to raise the concerns of small business. If there's a rule from one of the cabinet departments that the Small Business Administration's Office of Advocacy thinks is trouble because it's going to crush small business and make it hard for them to do what they should be doing, which is growing and helping the economy, then that opinion is going to be circulated and it's really going to matter.

To pick another example: if the White House Counsel's office has a view on a legal issue and thinks that the general counsel at a department has gotten it wrong, then White House lawyers are going to be engaged. The White House Counsel's office can be a central player in the process, along with the Department of Justice.

Now the range of participants, as I am describing it, typically includes career people, not necessarily people with political roles. I have no idea what the political affiliation of OIRA's staff is, and I don't care. Their job is, essentially, to circulate the rules, to develop their own sense of where the rules might be off the mark, and to work with the multiple inter-agency commentators to get a solution that everyone finds agreeable.

Sometimes, the OIRA Administrator, or other political types in OIRA, won't be involved, certainly not at the early stages. They will largely rely on the career people to work out the substantive concerns to make sure there are no legal problems, to make sure there isn't a scientific error, or to make sure that there isn't going to be an unanticipated bad consequence from a rule.

I'll share a little story that is relevant to this dynamic. Rules are often very long. If you haven't read them, you have some surprises in store: they can be over one thousand pages long. After a while at OIRA, I had read a large number of them, and I discovered on a few occasions that there was a provision on page 700 or 800 that I hadn't known about until I had read all 1,200 pages. That hidden provision, on occasion, seemed to me not clearly ideal, and I wouldn't have known about it except that I had been obsessive about reading all the pages. So with the support of others, I issued a memorandum saying that every long or complex rule had to be accompanied by a short executive summary of typically four to six pages, which basically says what the rule does, what the legal authority is, what all the important provisions say, and what the costs and benefits are so that everyone can see it. It's

a ridiculously small thing to do, but it's turned out to be extremely helpful in facilitating scrutiny of rules by career people and, as I am about to mention now, people who are more political.

If a rule can't be sorted out through this inter-agency process dominated by career staff, it's subject to something which is called *elevation*—a word that I really dislike and, at one point, resisted until I gave up. There's a U2 song called *Elevation*. It's a really happy song. I encourage you to listen to it. But elevation within the federal government doesn't have that kind of upbeat feeling.

What would typically happen to prompt elevation is that the staff at, say, the Department of Treasury and, hypothetically, the OIRA staff and the Council of Economic Advisors would have some disagreement that they couldn't work out. An assistant secretary of the Department of Treasury would call me and say, "We're stuck. Help." Then, typically, my number two would call a meeting with all the relevant people to talk through the substance and to try to sort it out.

I learned something about government and human nature through this process because the person who was my number two for two years—Michael Fitzpatrick, a Washington lawyer—is a genius at sorting through complex disagreements. He was (and is) a master. He was so good at figuring out things, such as, "Okay, what are you concerned about? Is there a way of meeting that concern in a way that doesn't disrupt the goals of the person who's issuing the rule?" He just had a kind of very precise sense for figuring it out in a way that wasn't a compromise, really—I don't like the idea of compromise because you're serving the American public, not the combatants—but in a way that would preserve the best arguments of the competing views and make sure they were reflected in the rule. He was quite great at that.

Sometimes it wouldn't work at his level, and it would be elevated further. What that meant in the vast majority of cases is that I and either the deputy secretary, the number two within the relevant agencies, or in some cases the cabinet head, would have to talk. Usually people did not exactly love those meetings: people are really busy, and to try to sort out a complex disagreement isn't always a joy. I would work with them to work it out. Going through the list in my head of the deputies with whom I worked on these meetings: Bob Perciasepe, who became the acting EPA Administrator, an agency where he was number two for a long time; Bill Corr, number two at the Department of Health and Human Services; I worked a lot with Ray LaHood, the Secretary of Transportation, and with Lisa Jackson at EPA. All of these people are phenomenal. When you talk to one of them—take Bob Perciasepe—he's going to talk about something with complete

understanding of all the details, he'll say, "The reason we have to do it this way is because of what the law requires or it is environmentally terrific and the science supports it." And then someone else who disagrees might take another view. Then we'd all talk it through in a way that would produce resolution.

And what was remarkable is the unfailingly substantive quality of these dialogues. I can make that clearest in the only well-known case where President Obama actually intervened in a very hard regulatory dilemma. EPA proposed a rule with respect to ozone. The EPA Administrator felt that the Bush Administration's ozone rule was not justified by the science, and she proposed to replace it in 2011 with a final rule. And the President believed that EPA should not finalize the rule for reasons that he directed me to spell out in a return letter to her.

There are a couple things to say about this situation. One is that it was widely said that this was a political judgment and that it was connected with electoral considerations. Really, nothing could be further from the truth. On both the President's part and the EPA's part it was completely substantive. It was entirely based on substantive questions about what was the right policy for the country.

In fact—and this was reported as kind of scandalous, but I think it's the opposite—there was one time there was a political argument made, and it was by an outside group. Because the ozone issue was so contested, so salient, and such a big economic deal in all respects, a lot of people were interested. Bill Daley, then the Chief of Staff, went to a couple of meetings, and there was one such meeting with environmental groups in which they made a lot of useful points, but one of their points was that they had poll figures that suggested that the American people, as a political matter, favored this rule. Bill Daley said something like "I don't care about polls." And that's completely true; he just wanted to know the merits. He didn't care about polls. It wasn't a scandalous moment. If the industry group had said that it had polls showing Americans don't want this kind of rule, he would have said exactly the same thing. He just wanted to know the merits.

OIRA AND THE PUBLIC

So far we have covered the internal process of the Office of Information and Regulatory Affairs (OIRA). There's also OIRA's external meetings, something that's gotten a lot of attention in academic circles and which actually bears on political life generally. OIRA will meet with anyone who wants to come in and talk about a rule under review. One thing that I did was to rework our web site, *RegInfo.gov*. I'm sure some of you probably already

go on it, but *RegInfo.gov* has all the rules under review, and it's extremely clear. You can see it all at a glance. If anyone wants to come in and talk to OIRA about a rule under review, please do.

It just so happens that on environmental rules, the people who come in are well *over* half industry, and that environmental groups, on an environmental rule, are well *under* half. And there's concern on the part of the progressive community that this practice of meeting with outside groups is a plea for, or a built-in invitation to, capitulation or capture by the people who come in. I didn't really see that and I think it's a baseless charge, but it can't be ruled out in theory. There is a possible risk of what we might call *epistemic capture*. This is not like caving to political pressure—that doesn't happen—but capture in the sense that government officials might develop rules the way they do because of the distinctive set of people with whom they're talking. There's a brilliant paper by a political scientist named Russell Hardin called "The Crippled Epistemology of Extremism," and his claim is that extremists, such as terrorists, aren't necessarily crazy or uneducated. It's just that what they know is crippled; it's based on what they hear. They're not nuts or illiterate. It's just that everything they hear supports and reinforces the view that they hold.

The reason I love Hardin's paper so much is that it's not just true of extremists; it's true, in some sense, of all of us. What we know depends on the people we're talking to, and it is possible that the federal government, if it's talking to a certain sub-class of people, will have a crippled epistemology and will be subject to epistemic capture.

I don't think this is an accurate portrayal of the OIRA process for a couple of reasons. The role of meetings in the OIRA process is not large. The review process relies, and I hope I've clarified this, on inter-agency comments and written comments from the public. It's extremely rare that a meeting discloses material that isn't already in the public comments. In fact, I went to a lot of meetings, and there wasn't a single one where I heard something I hadn't read before the meeting. I recently asked someone at OIRA who has been there a long time whether it ever happened that a meeting disclosed some information he didn't already know. He said that it didn't happen once.

A lot of the meetings—and I think this is relevant to any lawyers out there—have no effect at all because the presenters speak in vague and general terms and offer nothing new. Sometimes they offer the equivalent of boos and hisses, enthusiastic support or extreme skepticism, and that really is not helpful at all. I remember one meeting I had with a very impressive person in the progressive community—and I was there

because the guy is a big deal in Washington, and I thought he'd have something useful to say—who said, “You know, it is very important that we do this.” And I said, “I know that. There are seven comments made by the people who are skeptical of the rule and who don't want the rule to go forward in its proposed form. They have seven suggestions, and here they are. What do you think of them?” He didn't know what I was talking about. I could have been speaking in Greek to him. That was a completely unhelpful meeting, and if we had 80 meetings with progressive groups like that, they wouldn't have had any impact.

Industry was fully capable of those kinds of unhelpful meetings also. I remember one rule which was very, very controversial, and there were a bunch of meetings where industry came in and basically said, “This is just really bad and OIRA should write a return letter.” Those meetings had no impact because they didn't have content.

This observation does not mean that meetings never matter. They could matter if they highlight information that's in the comments already in a way that focuses people's attention on a particular provision that might be improved. That type of meeting can be helpful, but they're generally not a big deal or decisive.

COSTS, BENEFITS, AND THE NON-POLITICAL NATURE OF OIRA REVIEW

I want to conclude my discussion of the myths and realities of the Office of Information and Regulatory Affairs (OIRA) by saying something about costs and benefits – and about politics. Costs and benefits are really important. I went into OIRA being a fan of cost-benefit analysis. As with Bruce Springsteen, where the more you hear him the better he sounds, the same is true, I think, with cost-benefit analysis.

OIRA does focus a lot on costs and benefits, especially for economically significant rules. The Millian point is that while you usually shouldn't have rules where the monetized benefits don't justify the monetized costs, there may be something in the rule that makes it worthwhile if you consider the non-quantifiable benefits. For example, there's a rule involving prison rape that the Department of Justice developed that, I think, is a real achievement. It's going to reduce significantly the incidence of rape in America's prisons. There isn't a huge constituency for doing that, but there are a lot of human beings who aren't going to suffer as they otherwise would as a result of the rule. The Department tried to do a full economic analysis: it had an analysis of the cost and tried to monetize the benefits. There's a piece, I think, by a good law professor saying the cost-benefit analysis

jumped the shark on this one. I don't think so. I think that's the right thing to do. You should monetize everything you can.

But the Department did say that this analysis inevitably excludes benefits that are not monetizable but still must be included in the analysis. These include the values of equity, human dignity, and fairness. Such non-quantifiable benefits will be received by people who receive proper treatment after an assault, and importantly by people aren't subject to an assault in the first instance.

There are a bunch of other examples in the Obama Administration where non-quantifiable benefits were called out as justificatory, including the dignitary benefits of being able to use a bathroom if you're in a wheelchair, even if we couldn't monetize that humiliation reduction benefit for people.

The OIRA process, which involves careful focus on the agency's initial estimates, might produce an alteration in the numbers. Sometimes, the numbers did shift as a result of the review process. There are a couple rules I'm thinking of where relevant groups wanted the rules to come out, and the companies on whom the costs would be imposed understood that the rules were justified, and, all things considered, they were the right rules to do, but they still took a while to finish. The reason they took a while wasn't because anybody internally thought they were wrong, but because the numbers weren't right and we didn't want to go out with a rule, especially a very expensive rule such as these, when we didn't have confidence in our numbers. We're not going to tell the American people the costs are this and the benefits are that when the numbers may not be accurate. There was a lot of internal work done to try to make sure we actually understood the economic consequences of what we were doing, with the thought being that once we had the accurate numbers, maybe we'd go in a somewhat different direction. Maybe we'd still support the rule, but try making it more stringent or less stringent, or just different. And that really matters.

But most of the rules that OIRA sees aren't economically significant in the sense that they don't cost \$100 million or more a year, and that means they don't have to be subject to a full-dress cost-benefit analysis. For eighty percent or more of the rules, they're just not that big economic deals, and the economics of the rule isn't the central question.

What are the central questions? In a proposed rule, OIRA works really hard to make sure the agency offers to the public a bunch of alternatives and not just one. We really didn't like it if the agency just said that there's only a choice between inaction and the proposed rule. And the President of the United States said, in the mini-constitution that's Executive Order 13563, that agencies

should discuss alternatives -- because they might learn from the process that an alternative that they were not proposing was actually better than the one that they proposed.

Another thing that OIRA focuses a lot of attention on is making sure that public comment is sought on a range of issues. You don't want to freeze a preliminary judgment when the judgment might turn out to be erroneous. Sometimes an agency would think, "Look, we don't want to take comments on this particular issue because it would suggest more openness than we actually feel." That can be a good point if they would be seeking comment on something that is illegal: the agency shouldn't do that. Or it could be a good point if they're seeking comment on something that's preposterous: they'd be signaling openness to something crazy. Or they could reasonably not want to ask for comment on something that, while not quite preposterous, is, in the end, really bad. Again, they're not going to do it, and they don't want to gear up a machinery of fighting over what is essentially a non-issue.

Nonetheless, the effort to seek public comment on as much as you reasonably can is something that OIRA takes really, really seriously.

Science is often a key issue in federal rulemaking. There's been talk occasionally about OIRA interference with science. OIRA doesn't perceive itself as authorized to do that, but I certainly did think that it was important to consult with Tom Frieden, the head of the Centers for Disease Control, and John Holdren, the President's science advisor, to make sure the science was sound. We might say, "There's a scientific judgment here, what does the CDC think about that?" Or, "What does the President's science advisor think about that?"

To the extent that the OIRA process attracts unfavorable attention, it's often because people think politics, in a pejorative sense, is playing a large role. That is simply not the case. The OIRA process is highly technical in its focus on law and inter-agency concerns, and it does not involve consideration of electoral ramifications. Sometimes there's law, and even though OIRA isn't the law office, it tries to make sure the lawyers get involved.

If the issues aren't, strictly speaking, technical, but involve an issue of policy of the sort that gets elevated, that too is usually not a political issue. It's a substantive judgment. True, there are parts of the White House that do focus on politics. How could it be otherwise? The White House Office of Legislative Affairs and the OMB's Office of Legislative Affairs work closely with members of Congress. If they had a concern about a rule, I was perfectly happy to talk to them. In some cases they just say a rule is bad, which is no more useful than industry groups saying they

don't like a rule. But there were some cases where they said, "There's a particular problem with this rule that means it's going to hit our state hard. Is there a way that you can craft this rule so it doesn't adversely affect our constituents in this way?" In more than one case that turned out to be actually reasonable and really helpful.

If the members of the public are concerned—be they left, right, or center on the political spectrum—then the White House Office of Communications and OMB Communications Office are in charge of relations with the media. If proposed and final rules need to be explained to the public, those offices develop relevant materials. But they don't affect the content of the rules.

It is true that OIRA, like everybody else in the White House, works under the President. The Office of the Chief of Staff is very important, as it helps to oversee and coordinate all agency activity. Everybody works under the President and is subject to his supervision. I knew implementation of the Affordable Care Act was a big priority for the President, and we were going to implement the Affordable Care Act in accordance with his wishes. I knew also that economic growth was a great focus of his, and if we had a really expensive rule, it had better have a powerful justification. In a very real sense, you're following the boss. But politics, as such, is not part of OIRA's mission.

One thing that is a really important part of the mission of OIRA, and I hope this has been clarified, is that federal officials—most of them non-political—know a ton, and what OIRA is trying to do is to help ensure that what these officials know is incorporated in agency rulemaking. OIRA is really careful about making sure that regulatory due process, in the internal sense, is respected. People outside the government—and this was probably my biggest revelation on the job—are also adding, for countless rules, information that the experts inside the government don't have yet, and OIRA sees as one of its crucial tasks the encouragement, receipt, and careful consideration of that information.

OIRA is believed by many—and I guess I believe this as well—to be promoting centralized direction of regulatory policy. That's not false. OIRA does play a role in the process of White House oversight. But more important and more fundamental is OIRA's role in ensuring the incorporation of decentralized knowledge. That's what OIRA does every day. Notwithstanding its role as part of the process of White House oversight, a key part of what OIRA is doing, and part of the reason, I think, it's endured for decades, is that it's performing the modest—but absolutely indispensable—role of information aggregator.
