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THE POWER OF OPEN GOVERNMENT

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P R O C E E D I N G S

MR. GAYER: My name is Ted Gayer; I am the Co-Director of Economic Studies here at Brookings. Today it's my pleasure to introduce Cass Sunstein, who is the Administrator of the Office of Information and Regulatory Affairs, known as OIRA, within the Office of Management and Budget.

OIRA is one of those government agencies that very few people outside of this and maybe even outside of D.C. have heard of, but it is enormously influential, it is the overseer of our federal regulatory process, and thus, has enormous influence on the regulations that affect the every day lives of millions of Americans.

There's arguably no one better qualified to serve as OIRA Administrator than Cass. He's currently on leave from Harvard Law School, where he is the Felix Frankfurter Professor of Law. He may be, in fact, I'm pretty sure he is the most prolific legal scholar alive, so I won't go through listing all of his many publications.

I will point out, a little Google searching, there is an article called Six Degrees of Cass Sunstein, which crowns him, for you mathematicians out there, crowns him the legal Erdos of his time. You may not know, there is – mathematicians compute their Erdos number, which is the collaborative distance between themselves and the mathematician, Paul Erdos, who was a – wrote hundreds of articles with many, many co-authors in many different mathematical fields. So I, of course, had to look it up. My Sunstein number is two. I have yet to have the privilege to co-author with Cass, but I have co-authored with one of his many co-authors.

Among his many articles and books, of particular for note, for those of us interested in regulatory policy, are his recent writings on behavioral economics, on a precautionary principal, on the role of cost benefit analysis, and on risk regulation.

Today he will talk to us about the power of open government, and we will follow up with moderated Q and A, and then open it up to the audience for questions. So, Cass, welcome to Brookings, thanks for coming, and the floor is yours.

MR. SUNSTEIN: Thank you so much, Ted, for that kind introduction. It's great to be here. This is an institution with which I was not long ago affiliated. You do fabulous work here, and really, it's great to be back at Brookings. The Office of Information and Regulatory Affairs deals with a large number of issues, and I'm going to focus today on something in which we've been deeply involved over the last period, which is the President's Open Government Directive.

The authors of the American Constitution, I'm beginning with a little history, met behind closed doors in Philadelphia during the hot summer of 1787. When they finished their work, the American public was curious about what had been done. The large crowd gathered outside what is now known as Convention Hall, and one person in the crowd asked Benjamin Franklin, as he came out from the building, what have you given us.

Franklin answered with words that were hopeful, maybe a challenge, maybe even a dare, a republic if you can keep it. What the questioner showed was a distinctly American combination of humility and determination in that question. That combination of humility and determination provides a clue, I'll suggest, to our nation's character. And the challenge in Franklin's own response is central, key to the continuing work of improving our experiment in self-government. Franklin did help give us the republic, a charter that recognized the sovereignty of we, the people, and a charter that can be counted in a lot of ways, if you look through it, as the nation's first Open Government Directive. The nation that we have kept has lasted for well over two centuries. At the President's direction, this administration has been taking

unprecedented measures to increase open government and to promote transparency. We started, in a phrase, and if there's any phrase to be remembered here, this is a candidate, we have started to democratize data. We've used openness to promote accountability.

With government-wide efforts, we've provided people with new unprecedented access to information and analysis. Not only that, we've been reaching out to people for innovative, fresh, unprecedented ideas.

Government is being made a partner with the American people by breaking down long established barriers to public collaboration and participation. Better still, in domains ranging from nutrition and obesity, to automobile safety and energy efficiency; we've attempted to work with the public to use disclosure as a low cost, high impact regulatory tool.

Since January, 2009, the early days, the President has focused the nation's attention on openness. In January, 2009, he issued a memorandum calling for a presumption in favor of disclosure under the Freedom of Information Act. In the same period, very shortly after inauguration, he issued a memorandum on openness in general, calling for new measures to promote transparency, participation and collaboration.

Since then, the administration has taken numerous steps to promote the commitment to openness by putting into effect sweeping ethic standards and making new available data to everybody.

Just one example, today, for the first time in our history, the White House posts online the names of nearly every visitor and whom they visited. But the work we've done in the last year to open government responds to something much older than President Obama's charge to the Office of Management and Budget. Our work to make

government more transparent, to make our republic more accountable, is designed to help rise to Franklin's challenge and keep the republic.

The recent efforts are just the beginning of our open government efforts. We've made a lot of progress and they underline the commitment to transparency. Each new step is a small mark toward making the government more accountable to the public. Each new set of information making public in easy to read formats, and each removal of arcane barriers to participation helps to restore the confidence of the American people and their government and also to improve its management and operation.

The real world benefits are big. They're not headline news, but they are affecting people every day. Backlogs of constituent focused information and services are being erased. We're saving taxpayer dollars. Bureaucratic nightmares continue, but they are being replaced with streamlined plain language and often online resources.

Outmoded, anachronistic practices are being eliminated, and new open ones are taking their place, being informed by the collective wisdom of the American people. What we're doing is improving services and saving money and making regulation work better to boot.

The President has emphasized three independent reasons to support open government, and let me just suggest the importance of distinguishing, as the President has, among them. First, open government promotes accountability. Supreme Court Louis Brandeis said, sunlight is said to be the best of disinfectants, and the President quoted just those words. Second, transparency helps people to find information that they can readily find and use. That's why the President has asked that agencies harness new technologies and solicit public feedback to identify information of greatest use to the public; we're trying to do that.

Third, the President has said, harkening back for many centuries to a long tradition in political thought, that knowledge is widely dispersed in society and public officials benefit from having access to that dispersed knowledge. What we're trying to tap is collective wisdom and expertise.

With more accountable and open approaches, we're bridging the gap between the American people and the public. Government is being reshaped according to three core values; first, transparency, second, participation, and third, collaboration.

Open government is something we're committed to at OMB, but it's not the work of any single office or official. The entire administration is moving forward with broad measures to translate the values of openness into lasting improvements, a legacy in the way government makes decisions, solves problems, and addresses national challenges. When the President quoted Justice Brandeis' words, he referred to the idea of accountability. This is a central idea behind the Freedom of Information Act, and the reforms to FDA implementation that this administration has promoted are squarely about accountability.

The President has said that accountability is in the interest of government and the citizenry alike. Calling for a presumption in favor of disclosure, he's demonstrated his own commitment to that principal. In crucial language, he said the government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. Non-disclosure should never, never be based on an effort to protect the personal interests of government at the expense of those they're supposed to serve.

But the call to remove barriers and to ensure the availability of water for all, the call to remove barriers is only part of the reform. What we've established is a new

default setting from one that is closed and insular to one that is open and collaborative.

Agencies are asked to take affirmative steps to make information public, not just to wait

for requests from the public. This is an effort to make meaningful the Freedom of

Information Act which counts as, the President's words again, the most prominent

expression of a profound national commitment to suring an open government.

But this is just one example. Consider another, the new information

technology dashboard. If you're technical types, you already know about it. This

dashboard provides the public with an online window into the details of our information

technology investments and allows people, everyone, to track the progress of

investments over time.

You can see spending on information technology by each major

government department. Graphs display performance against schedule costs and an

informed assessment of how well these investments are doing in terms of meeting their

objectives.

What the dashboard has shown, in an early period, is the clear

relationship between transparency and accountability, in no small part because the status

of projects is available to everyone. The Veterans Administration announced the halt of

45 of its most problematic computer projects last summer so that they could be fixed. In

the next six months, they restarted 32 of the projects, stopped 12, and continued the

review of one. This resulted in a cost avoidance, cost savings to the taxpayers of $54

million by the Veterans Administration, a down payment for fiscal year 2010.

At OIRA, my office, we're also driving toward greater transparency. One

of our goals is to gather public opinion and expert advice to make rules better. And we

want to make sure we're doing that in a way that's as open and transparent as possible.

So we've launched the OIRA dashboard at reginfo.gov. With this, you can track regulations, you can see when they were submitted, you can see whether they're economically significant, you can get a capsule discussion of what's here.

With the help of intuitive graphical displays, you can identify the rule or the category of rules that you're interested in and monitor progress. This transparency invites participation to strengthen accountability and effectiveness.

Tim O'Reilly is a web 2.0 pioneer, one of the most important theorists behind the internet, and in his celebration of the IT dashboard, he marveled, this is a bit like allowing information to be shared with the public, it's like having your own performance review posted on the company bulletin board for all to see. That's a pretty strong incentive to get government to perform more effectively.

Transparency, the President has said, also provides people with access to information they need and use. In an open government, anecdotes and guess work, speculations and tales, can be replaced with hard – that's a big goal of transparency. We have a lot of examples, let me share just a few.

Just this September, the Consumer Product Safety Commission launched a new initiative, one that's making important information accessible to millions of consumers. Families can find the latest safety information on the agency's blog, which has articles, videos, pod casts and other information helping to keep children and families safe from a variety of product related hazards.

Among other tools there is a recall search which provides the latest updates on recalls effecting products that families are using every day. If you want to know, you can find it out in an instant. Of course, there's a lot of interest in promoting transparency in the domain of health care. The Director of OMB has referred to two reforms, expanding the use of health information technology and electronic medical

records, and second, expanding research on comparative effectiveness of different

options for treating a given medical condition, which could provide information on benefits

and costs.

A key challenge from a cost perspective is substantially broadening out

the base of information on a clinical basis, in terms, the Director's words, of what works

and what doesn't. These considerations are already being taken seriously.

Just recently, HHS has put out for comment a new rule on meaningful

use of health IT, a rule that could lead, is expected to lead to potential improvements in

health outcomes, to ease for both patients and doctors, and to significant savings in

money. If you go on to HHS' own web site, you can find a lot of information now on

hospital performance, and you can compare hospitals with one another, that's possible.

In multiple domains for private and public sectors alike, transparency is ensuring more

availability of data.

The third function of transparency draws on a simple idea. No one of us

knows what all of us know. I'm speaking here of access to dispersed information, of how

open government can encourage public participation and allow citizens not just to keep

the republic, but even to shape it.

To understand the origins of this idea, let's go back many centuries to the era of

the Greeks, where Aristotle was the first prominent theorist of the wisdom of crowds.

Aristotle claimed that when diverse people all come together, they may surpass,

individually and as a body, although not individually, the quality of the few best.

What Aristotle is pointing to is the potential value of groups deliberating

together. When we ask for ideas from many people, we are likely to do a lot better than

when we ask for ideas from just a few.

One example, the President's Save Award, which was charged with the goal of producing ideas to produce savings while also improving the way government operates. In a radio address on April 25th, the President asked for a process through which every government worker can submit their ideas for how their agency can both save money and perform better. We received not 1,000, not 2,000, not 5,000, not 10,000, but over 38,000 suggestions. We had a public vote in which not 10,000, not 20,000, not 40,000, but 84,000 Americans cast an online ballot. After the ballot, the President welcomed Nancy Victor from Colorado to the White House, the winner of the first annual Save Award.

What was her idea? Let veterans take unused medication home from the hospital. She said that veterans leaving VA hospitals should be able to take those medications that they've been using back to their homes and their families so it isn't just thrown away when they get discharged. It's just the case at many hospitals throughout the country, medicine that's used in the hospital is not given to the patients to be brought home, instead, it's thrown out, no more.

We're saving money not only for the VA, but also, and I really want to underline this, for the veterans who don't have to go to the pharmacy to buy the very same medicines that had been going into the trashcan. This outreach effort wasn't by any means just a one idea and done approach. We've already started to implement a host of additional suggestions made through the Save Award. A lot of these ideas are already included in the President's budget. While promoting electronic pay stubs, or scheduling social security appointments online, or repurposing unused government supplies may not be the most glamorous reforms in our nation's history, they're helping people and they're adding up. They're key to transforming how government works

effectively and efficiently. This is the power of open government, enlisting ideas that come from well beyond the borders of Washington, D.C.

To drive this approach, in December of 2009, OMB issued the Open Government Directive, focusing agencies on numerous ways to collect dispersed knowledge, to produce better outcomes, and to engage citizens in the continuing task of making government work better.

We started to shift fundamentally the culture of government, and those words are in the Open Government Directive, toward increased openness and accountability. What the directive requires is immediate deliverables and long time objectives. It recognizes that one size does not fit all, and the Peace Corps doesn't have the same mission as the State Department or the EPA or OMB. Each serves different members of the public differently.

Instead of a one size fits all strategy, the directive allows each agency in consultation with the public to create an open government plan to meet the President's goals. Already, agencies have done two things, they've published online previously unavailable high value data sets, and if you go on to data.gov, you will see a ton of information now available and being actively used by the American public.

Second, they've created web pages, open government web pages which go slash open, you can look at them today. These are just starts of our efforts. It's not easy to change the culture of a government when that culture has been cemented over decades. For a long period, for too long, prior administrations allowed bureaucratic barriers to be the rule, not the exception to government decisions, no more. The status quo is not acceptable. We are committed to changing the way Washington works for the people and with the people, not above the people.

Importantly, and a clue to our aspirations, the foundation for this very directive lay not in the second floor of OMB, but an unprecedented Open Government Initiative coordinated by the White House Office of Science and Technology Policy over the summer, in which the administration reached out directly to the American people for specific recommendations which are now embodied in the directive. Thousands of citizens participated in the forums online and offered helpful, sometimes remarkable ideas on how to transform the government into a more accountable and participatory operation. The American people know a lot about how to make government work better. Many of us work with government, even if we don't work for government, frequently.

Americans know how to save money and improve services. It's more than fitting that the Open Government Directive has been shaped in significant part by the collective wisdom of the American people. The sense in Aristotle's ancient insight is being amplified by the power of technology.

I now turn to the question of how openness can promote regulatory policy, an area of considerable interest to my office. We have two ideas; first, open government can promote regulatory goals simply by enlisting the power of accountability. Second, disclosure has to be well suited to how people actually process information.

Here's a significant story for sunlight that predated this administration. In 1986, Congress enacted the Emergency Planning and Community Right to Know Act in the aftermath of the Chernobyl Nuclear Plant disaster in the Soviet Union. At first glance, a key provision of this law seemed to be just a bookkeeping measure, requiring a toxic release inventory in which firms reported the pollutants they were releasing. The law has had significant beneficial effects well beyond reporting. It spurred, by virtue of the power of accountability, large reductions in toxic releases throughout the United States.

In March of 2009, this administration worked closely with Congress to strengthen the toxic release inventory by lowering the threshold for reporting releases of more than 650 toxic chemicals.

Recently, the EPA billed directly on this precedent and issued a greenhouse gas reporting rule requiring disclosure by the most significant emitters. What this data will do, and think now of some of the earlier initiatives that are in the same family, is to allow businesses to track their own emissions, to compare them to similar facilities, and it will provide assistance in identifying cost effective ways to reduce emissions in the future.

All this is just a start. The Department of Transportation has issued a passenger protection rule for people who are stuck maybe on the tarmac. It will, among other things, disclose clear available information about prolonged delays. The same department, DOT, an innovator in the domain of openness, has proposed a rule that will call for disclosure of information about the safety of tires, the durability of tires, and the fuel economy of tires. It's released a great deal of information on data.gov on car safety, and for the father of a ten month old boy, particular relevance, his mother in the front seat, same boy, also information about infant safety seats.

You've seen the First Lady's interest in combating childhood obesity. The FDA, with transparency as a goal, has taken a number of steps to police deceptive front of the package labeling, they have seen what's been done by the FDA, and have signaled its intention to investigate methods for ensuring accurate, clear labels so that people will have a clear, easy way to see key nutritional information, that's using accountability, too.

If you go onto ocea.gov, you will see front and center fatality information. If people are dying at the work place, OCEA is listing it, at least with respect to a

significant data set that it has. When workers die on the job, the public can learn about it,

a step that might well end up increasing safety, saving lives in the process. More

ambitiously still, data.gov is a new government web site that allows the public to

download all sorts of data bases, to build applications, conduct analyses, and undertake

research. Early you suggest that people are not only looking at the data, but they are

repurposing it. When data.gov was launched, the Sunlight Foundation started a parallel

competition to elicit from the public the most innovative applications based on the

available data. Within not weeks, days, there was a new application called Flyontime.us

which uses data from the Bureau of Transportation Statistics to allow consumers to see

estimated versus actual flight times for flights on major commercial carriers.

If you look at data.gov, you'll see countless examples of openness in

action and numerous opportunities for following the step I just described.

Let me now turn to a question relating to my role at OIRA, how does this

bare on cost benefit analysis; the answer is that, properly understood, a public

accounting of costs and benefits of the anticipated effects of regulatory interventions is

part and parcel of open government.

Some risks are small, other risks are large, some precautions are

burdensome, some aren't, some precautions have unintended bad consequences, others

have unintended good consequences. Before looking – before acting, it's very important

that regulators look before they leap in the sense of having a clear understanding of the

likely effects of what they propose to do. Science, including social science, is crucial in

the sense that it's very hard to know whether and how to proceed without having a sense

of what is known and what remains uncertain.

The President signed an executive order on environmental economic

and energy performance not long ago in which he stated it is the policy of the United

States that agencies shall prioritize actions based on a full accounting of both economic

and social benefits and costs and shall drive continuous improvement by annually

evaluating performance, extending or expanding projects that have net benefits, and

reassessing or discontinuing under performing projects.

Think if you would, of the link between those words and the dashboard's

that I spoke about a few moments ago, reassessing or discontinuing under performing

projects. What transparency does is to allow the public to see and to comment on what

are the easy cases, what are the hard cases, and how to think about the latter. Let me

give you just a few examples. The executive order just mentioned tries to track

improvements and progress. So if we're saving taxpayer money by reducing energy

costs that will be disclosed. If we're not doing such a great job, that will be disclosed, too.

Both cost and benefits will be disclosed to the public.

Our analysis of the social cost of carbon, recent analysis, ensures that

the harm from greenhouse gas emissions will be considered in regulatory decisions.

Candidly acknowledging uncertainty in terms of both science and economics, this is part

of public engagement. The analysis has asked for and welcomes public comments and

improvements as we learn more.

OMB recently released a report on federal regulation, a 2009 report. It

goes much further than these particular examples. The report catalogs by department or

agency the costs and benefits with an emphasis on what sometimes can't be quantified.

Of all major regulations between 1998 and 2008, discloses key information about all

major rules within the last year and allows the public to see differences across time and

areas and asks for public comments.

This is just the beginning, a very early stage. The report says careful

regulatory analysis, if transparent in its assumptions and subject to public scrutiny, should

be seen as part and parcel of open government. It helps to ensure that policies are not

based on speculation and guess work, but instead, on a sense of the likely

consequences of alternative courses of action. We believe that regulatory analysis

should be developed and designed in a way that fits with a commitment to open

government. Modern technologies should be enlisted to promote that goal. The OIRA

dashboard fits squarely within that commitment.

It's time for me to conclude. I've emphasized three functions of open

government; first, promoting accountability, second, providing material that people can

readily find and use in their daily lives, third, allowing access to and taking advantage of

the dispersed knowledge of the American public.

I have emphasized that promoting these three goals is delivering tangible

results for real people every day. I've sketched the ways in which we are holding

ourselves accountable, improving performance, and saving taxpayer money, disclosing

information that will lead to safer cars, safer work places, safer families, and healthier

lives, enlisting dispersed knowledge to provide fundamental improvements in what we do.

I began with some words from the Constitutional Convention; with your indulgence, I'm

going to end with a few more words from the same period. Federalist number one, in

some ways the inauguration of the nation, Alexander Hamilton fully conscience of the

nature of the occasion, wrote, it has been frequently remarked that it seems to have been

reserved to the people of this country, by their conduct and example, to decide the

important question whether societies of men are really capable or not of establishing

good government front reflection and choice or whether they are forever destined to

depend for their political constitutions on accident and force.

If there be any truth in the remark, the crisis at which we have arrived

may, with propriety, be regarded as the era in which that decision is to be made, and a

wrong election of the part we shall act may, in this view, deserve to be considered as the general misfortune of mankind.

The founders of this nation, the authors of our oldest Open Government Directive, made the right election. With humility and determination, let us continue their work. Thank you.

MR. GAYER: Thank you, thanks, Cass, again. I wanted to start it off with a question on how the regulatory process, per se, through OIRA, relates to the Open Government Directive. So I had a little bit of experience years back in the regulatory process, and usually hear kind of critiques from both sides, very passionate critiques both on the left and the right, and both have merit.

So one side you'll have a critique that OIRA is too weak. So you have the agencies go through the rulemaking proposal, but it doesn't come to ORIA until very late in the game, and there's a statutory or court deadline, and usually there's maybe two proposed options, and so you don't get a full vetting, and the public, at that point, hasn't got a full vetting, as well, and the timeline just kind of will lead to somewhat, in the extreme, an ex-post adoption of a rule that didn't quite get the full regulatory impact analysis and the full vetting.

Another side, you have the concern that OIRA is too strong, that it does have informal advisory role throughout the regulatory process, and that advisory role does not see the light of day, and there's not sunshine on that, and there is you know – and that the public isn't directly involved at that point. I wonder if you can just reflect on whether or not these are at all valid criticisms, and to the extent they are, whether or not the Open Government Directive is meant to direct them and how so.

MR. SUNSTEIN: There are a lot there, so thanks for that. I'll say a couple things. First, in terms of openness, an old statute that really is crucial is the

Administrative Procedure Act. So for rules, there is a period of public comment which is fully open in which the agency receives a ton of information and not infrequently comes out with something new and different.

I taught administrative law, or at least someone with my name taught administrative law, I'm not sure it was me, for many years, and there's a kind of cliché among administrative law teachers of the following form; once a rule goes out for public comment and it's gone through the internal process, it's basically cooked and the file is going to look a lot like the proposed rule.

Empirically, sometimes the final does look like the proposed rule, but in this administration, we are taking the public comment period extremely seriously. So that is – if you look at what's come out of the administration in final form, the public comments are playing a very significant role in making sure that the proposal is right and improving the rule. In terms of OIRA's own role, I'd say two things; first, we are part of a team, and we've worked with great, the word joy is probably too strong, but great collaboration with all of the agencies, and so this is a collaborative effort.

And the process that OIRA runs, and this is my second point, is interagency, not OIRA. So sometimes you've got a rule, I didn't fully appreciate before I was in government, rule come over that will – OIRA will have some views, but it'll be – the people really interested are other agencies, other offices, they'll have more.

And OIRA helps manage a process that makes the rule as good as it can possibly be. And what emerges from that is a rule that satisfies the concerns and then goes out if it's a proposed rule for public reactions.

So I guess I would say both of the criticisms, I understood the words, but in the context of the last 13 months, I don't quite recognize the sentiment, OIRA is too weak, OIRA is too strong, it's part of a collaborative process. And we've had 600 rules

come out, approximately, since the President became the President, and it's working well across government.

MR. GAYER: Okay. So this is Brookings, so excuse me for a wonkish question on this. But, okay, so the first question, your reply is very much in accord with – you talked about looking before you leap, and so this is the looking aspect and giving it a full vetting.

So the policy wonk in me or empirical analyst in me always feels a little frustration because analysis is always easier after the fact. So after the regulation is in place, so before you're trying to get an assessment of benefits and costs, it's awfully hard to do before there's a regulation in place. It's a little bit – so awfully hard, but a little bit easier after it's in place.

So my two questions, like I said, just to satisfy the empirical analyst in me is, one, what ability is there to do a retrospective analysis and actually have it mean something, in the sense that it could effect, you know, maybe rolling back or changing or making more strict the regulation; and two, I face the frustration of, every analysis has underlying data there, whether or not it's from a published article or wherever, and it's awfully hard to get that data. Might it be possible to make that conditional, and anybody who's going to submit a report or whatever has that eye, the kind of – the nerd sitting by a computer can get access to that data to do it?

MR. SUNSTEIN: Great questions; the second part about making data accessible, as the remark suggested, we are much interested in that. And so accessible data that underlies rules, that is something that – we understand the importance of that.

Generally, if you look over the rules, I can't flip through in my mind all of them, but the data is – generally you can find it, so no ball hiding. With respect to – what was the --

MR. GAYER: The retrospective –

MR. SUNSTEIN: -- the retrospective part that was a joke.

Retrospective, if you look at our 2009 cost benefit report, under chapter three, maybe you

haven't seen that yet or maybe – there's a discussion of exactly this point, and it is true,

we do the best we can on perspective analysis, but we're quite alert to its potential

inaccuracy. And we are interested in retrospective analysis and bringing it to bear on

rules. In terms of concrete action, the Council on Environmental Quality recently issued

draft guidance, which calls for analysis of – reanalysis of environmental impact

assessments that say there won't be a significant environmental impact, to make sure

that turned out to be right, so CEQ is talking your language.

When certain agencies are changing their rules, they are required to as

part of the change an analysis of the effects of the rule on the books, and there are

certain statutes that make look back obligatory. There's a reference to look back in OMB

Circular A4.

So we are much interested in ensuring accuracy, and we're aware that

sometimes perspective calculations can exaggerate costs or exaggerate benefits, and

there's good analysis of this, and we're thinking it through.

MR. GAYER: One other question; you mentioned a few times in your

speech, having government access to dispersed information, you quoted Aristotle; I

thought you were going to quote Hayek in there, it sounded very Hayekian. One question

I had related to that, and I haven't looked at your – I'm sure you wrote on this at some

point, is the role of information markets, because the whole premise of information

markets, things like E-trade, or essentially people putting their money where their mouth

is in order to use the dispersed information of a wide array of people, the premise of it is

exactly what you're talking about. I'm wondering, either your scholar hat or your lawyer

administrator hat is there a role for that within this process of using dispersed

information?

MR. SUNSTEIN: My scholar hat I think is back in Chicago, it hasn't been

recycled. So the information markets, I know a little bit about, I know there's a

controversy. At OIRA, we're – that's not an issue that we focused on.

MR. GAYER: Maybe I'll open it up for questions now. Go ahead, Darryl.

Please wait for the microphone.

DARRYL: First of all, thank you for coming to Brookings, and I want to

applaud you for all of your great work in terms of transparency, participation and

collaboration. And I want to go back to your very famous book, Republic.com, which you

wrote more than ten years, and there you talked about the various opportunities of the

internet, but you also pointed out a few risks, you know, the fragmentation of the

information system, of the danger of ideological segregation, and I'm wondering, with the

benefit of ten years of advance in the electronic world, are you still worried about those

things? Because in your speech, when you were kind of promoting the virtues of the

internet, it makes it sound like, you know, there are opportunities, but not so many risks,

and I'm just wondering what your position is on that now.

MR. SUNSTEIN: Well, I guess what I'm focusing now is on

implementing in this domain the Open Government Directive, and in working as hard as

we can to make sure we do the three things that the President has pointed toward, which

is accountability, material that people can find and use, and dispersed information. So

these academic debates in which someone with my name once participated I guess, not

really focusing on them.

MR. GAYER: Any questions? Let me just go back a few, right there on

the end.

SPEAKER: Hi; I'd also like to thank you for being here today and for your efforts to make our government more open. I'd like to ask you about a New York Times editorial from January which criticized your office for indefinitely stalling a public hearing on an EPA proposed rule to regulate the disposal of coal fly ash. Now, that seems to be a very strong criticism given the conversation today. And they even suggested that much of this debate is happening behind closed doors. So how do you respond to that in light of this conversation, and might there be advantages to some of these conversations happening behind closed doors?

MR. SUNSTEIN: Well, I can't comment on any rules under review, so if you'll permit, I'll just back at that. I will say the question suggests the limits of openness, and there are three domains that are worth a lot of thought. One involves the relationship between openness and privacy, one involves the relationship between openness and national security, and one involves the relationship between openness and the deliberative process.

If you look at the Open Government Directive itself, the OMB Open Government Directive, it recognizes the legitimacy and the importance of protecting privacy and national security.

So one thing we've done with the Open Government Directive has been very forward leaning in terms of openness, but in a way that ensures that if there's something in your life that you don't want the world to see, that's going to be protected, and if there's something that is important to national security, that will be protected, as well. So the President is very committed to openness, but these are two areas where there's a balance to be struck. On the deliberative process, there's also a balance to be struck. And we've moved the needle far in the direction of openness. But everyone is aware that there are conversations let's say between the President and his closest advisors or the

head of a Cabinet department and his or her closest advisors that are legitimately not

opened, and that's one, you know, with which we continue to struggle, and that's one with

which we continue to engage people outside of the government for their own views.

MR. GAYER: Do you want to just go right back there?

MR. LUBERAN: Hi, I'm Bernie Luberan with Four C Results. The Open

Government Directive depends heavily on citizen feedback and input from the public

about information, data.gov and so forth, and yet today more and more people are using

media and communication techniques that can bias the results.

We have a very polarized society, as well. How do you assure the

statistical reliability that you're getting a representative sample of opinions and not just a

very bias group?

MR. SUNSTEIN: That's a fabulous question, thank you for that. If

everyone heard it, the question is, representativeness of what you hear, and it may be

that you hear things that don't capture what actually Americans mostly think. In terms of

one domain of dispersed knowledge, think as maybe a partial answer of the Save Award,

where the notion wasn't that you ask the majority of people what they think ought to save,

you ask a ton of people what their favorite idea is, and then you check out the people

who have their own independent expertise, which ones are really good.

And so we have a bunch of finalists, terrific finalists that were – had

ideas that were very carefully brought into contact with people who work every day on the

issues on which the ideas bore.

So there are questions about representativeness. We have data quality

standards which were actually also built into Section 2 of the Open Government

Directive, the – direct role – supposed to ensure data quality. And so we're aware that –

to think you have a view of the majority of people when only a small proportion

participated wouldn't be very reliable.

What we think is really exciting and we're very excited about, the domain

you've identified, is that as we design, and something is coming up on April 7th, which is

the due date for the Open Government plans, we're going to have plans coming in which

have benefited not from saying what do 52 percent of people like, but instead, what does

everyone think who's willing to talk to us. And we've gotten great ideas, and so on April

7th, what you're going to see, it's going to be just the first crack, but for the first time there

are going to be Open Government plans from agencies and departments all over the

government, and they are going to reflect the very process that they're helping to

constitute, they're going to reflect openness in ideas, and they're going to invite further

openness in ideas.

Now, if it turns out there's a skewed sample, then probably some more

work to do in getting ideas for more people, but ideas, you know, the strength of ideas

depends on whether they're helpful, and past evidence over the last month suggests

we're going to get a lot that's really helpful.

MR. O'REAR: Hi, I'm Brendon O'Rear, I work for the software company

that does a lot of data work. I was wondering, in this initiative, you describe the goals

and also the limits, but I'm wondering how you measure the success of the initiative over

time, what are the empirical variables by which you assess how well you're succeeding?

MR. SUNSTEIN: That's great; Anese Chopra, who's worked a great

deal on information technology, is thinking of performance measures and is charged

actually with that in the Open Government Directive. Our first kind of simple goal is to

make sure that each of the targets is met. So they're very ambitious targets for delivering

high value data sets to the public, and the first one was met.

We had a ton of data sets from every agency in aggregate, three from some, we had to deliver three, and the slash open pages had to be – come up by a date certain, and they did, so we have dates.

Now, as a measure of how much the American people are benefiting, that's just the first cut. We're eventually going to be working with the public to see if people are getting information that they are benefiting from. And there's a working group that is thinking about this issue that is exploring ideas, that's heard already a great deal from the public about what data sets would be important to see.

A performance measure here is a little more difficult than in other domains, but there are qualitative performance measures. Is data getting out there that's making markets work better? Is there data getting out there that's going to help people know what products pose risks or not? Is data going out that's going to help consumers and investors? This is something which, as I noted, this isn't, though it's called the Open Government Directive, it isn't highly directive in the sense of a one size fits all, so it's really up to the agencies, in large part, engaging with relevant stakeholders to figure out what would suit their needs.

But think of it as having a quality of a boat that we're all building together, and peoples' ideas about performance, measuring performance, improving disclosure, to say it's welcomed is too weak.

MR. GAYER: Let's take one more; go ahead.

SPEAKER: Thank you very much for giving this presentation. The thought that occurs to me here is that there's tons and tons and tons of information, and I'm curious what thought process your staff and you are going through to figure out how to get to the information. I'm thinking of a couple of examples here. One would be say a large piece of legislation like the health care bills; another would be data. Do you create

these data sets and legislation with summaries of sub-parts of it? Do you have an overall

thought process about how to get at data that might be similar data, but in different

departments of the federal government, different – other parts of the country for that

matter? What kind of thought process did you go through to help people figure out how

to get to the data, or do you just let Google do it?

MR. SUNSTEIN: Okay. It's a large question and I'm going to give you a

piece of the answer. If you tried a couple of years ago to figure out what OIRA did, what

were the rules before, we wouldn't exactly fail, but if you were determined, but it was

complicated, and it wasn't – to find it wasn't so easy.

Now, if you go on the reginfo site, it's right there front and center, bold.

And suppose what you're interested in is EPA, then you can just click on EPA and find

what rules are there. It's just so clear. There are all different colors.

If you're interested in what – suppose you click on it, you're interested in

the EPA's rules involving water pollution, let's suppose, then you can click on that

particular rule and get a plain language summary right there. So what we try to do with

this particular dashboard, which is, I hope, exemplary of what has been done in other

domains, is, you go to the web site that interests you, and the information is just – it

matches human intuition, it's not something that you have to have relevant expertise to

navigate. And then just clicking on the relevant thing will eventually get you to a very

simple plain language summary of what you care about.

So if you look out at the slash open web pages, which I'd encourage you

to do, see whether what you find there enables you to get what you want. So we are very

alert to the fact that there's a ton of information out there and difficulties of navigation.

I guess I want to underline there a real pioneer who works at OMB, Vivek Kundra, who is the – runs the Office of E-Gov, and he is right on top of your point. And we work very closely together on the navigation and simplicity issue.

MR. GAYER: I'm going to take the moderator prerogative and ask the last question. You mention in your speech, I guess – I don't know if this is interagency, I assume it was an analysis of the social cost of carbon. So many of you might know the EPA had what's called an engagement finding which kind of sets up future regulation of greenhouse gases through the existing Clean Air Act. So my guess is the social cost of carbon will be probably the – bit of information in any cost benefit or regulatory impact analysis that comes from any proposed rule as it pertains to climate. What is the social cost of carbon? In other words, to kind of get the lingo down, what is one ton of carbon reduction worth?

MR. SUNSTEIN: Well, John Rawls, the greatest philosopher of the 20th century, wrote a footnote which he never published which said, we post a sign post, no deep thinking here, things are bad enough already, and so I don't think there is any, you know, any simple answer to this.

It is true that for doing regulatory impact analysis, agencies try to quantify, to the extent feasible, the various variables. And there's an interim value for the social cost of carbon that you can find in a DOE rule involving I think beverage vending machines, and any figure on this complicated issue will have an interim quality because the science and economics are changing. But there is – DOE has recently had a rule involving small motors, in which there is a very complex and elaborate discussion of that issue. And if you read the complex and elaborate discussion, you'll get a ton of numbers. But there's not one number that anyone should feel confident is the social cost of carbon.

MR. GAYER: I will say thank you for that, and there was some deep thinking here. So thank you very much for coming, and you're always welcome back, we'd love to have you again.

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