

THE BROOKINGS INSTITUTION

FALK AUDITORIUM

SIMPLER: THE FUTURE OF GOVERNMENT

Washington, D.C.

Friday, April 5, 2013

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P R O C E E D I N G S

MS. KAMARCK: Good morning, everyone. My name is Elaine Kamarck. I'm a Senior Fellow here at Governance Studies and Director of our newest Center for Management of the Federal Government. I have the privilege this morning to introduce and spend some time talking to Cass Sunstein, a Visiting Fellow here at Brookings who is also the Felix Frankfurter Professor of Law at Harvard Law School and a University Professor. For those of you who know something about Harvard, being a University Professor is about as good as it gets in faculty prestige. I am far, far, far from being a University Professor and probably won't ever be.

Cass left Harvard undergrad and Harvard Law School for a prestigious clerkship with the revered Supreme Court Justice Thurgood Marshall. Then he went into academia and he spent 25 years at the University of Chicago Law School where he happened to befriend another Professor named Barack Obama. As significantly perhaps as getting to know Barack Obama which is a pretty good thing to have done, Professor Sunstein and others developed the new field of Behavioral Economics, the study of how economic rationality is bounded and by what Professor Sunstein calls so persuasively in his book, *System One Thinking* and I suspect we'll hear a little bit about it.

It was no accident that many books and hundreds of articles later President Obama appointed Professor Sunstein to head OIRA, the Office of Information and Regulatory Affairs, I was going to say independent, the most important office in the federal government that no one has ever heard of to quote. There Professor Sunstein got to apply his work to the vexing problem of government regulation. His appointment was not without controversy. As anyone who does a great deal of provocative and cutting-edge writing and thinking can tell you, getting appointed to a high-level

government job makes everything you ever wrote vulnerable to be taken out of context as proof that you are a danger to the republic. Glenn Beck of "Fox News" certainly had a field day with Professor Sunstein, but to our great benefit, Professor Sunstein prevailed and served in the White House from 2009 to 2012 and he's here with us today.

To those of us who have been privileged for the last couple of months to sit near Cass in Governance Studies, we have been amazed by the fact that 4 months after leaving the White House he has a book, not a manuscript, a book. To those of us mere mortals, in 4 months we maybe would have gotten a table of contents done or maybe a proposal. We all discussed this, by the way, Cass, at a scholar's meeting and none of us would have gotten a book done. Our hats are off to you. It is in fact a wonderful book, readable, accessible to people who don't know much about regulatory policy, who aren't steeped in the workings of the federal government. Without ado I would like to introduce Professor Sunstein. He is going to spend a little time taking us through some pretty interesting things in the book, and then we'll have a discussion and some Q and A. Welcome him, please.

PROFESSOR SUNSTEIN: Thank you, Elaine. A special thanks to Brookings in general for amazing generosity and hospitality. Darrell West has been terrifically kind and made it really possible for me to do this.

I'm thrilled to be here for many reasons. One is this is the launch of this book. It's not out until next Tuesday but I think there are copies around the corner so that it's kind of out. The other is after being in government for so long, I thought a lot about my early exchanges with my now wife Samantha Power who is in the room. When we were pre-dating, is that what it's called, we were texting. Not that kind of texting. I thought it had a little flirt in it but maybe that was just wishful thinking. She was stuck in a

snow storm in Boston and I was stuck in a snow storm I think it was in Chicago and we were exchanging email messages. I was having the time of my life. I said to her, "Isn't this great?" Her response was, "You have to get out more." In government you don't get out a whole lot and it's great to be able to talk to people in this way. Here's a book. It's called "Simpler," and you see the cover. I think what I'm going to do is tell you a bit about the theory of the book and then give 10 ideas for simplification of life many of which involve government.

Elaine referred to two systems in the human mind. The first colorfully called System One is automatic and effortless and fast. If you see a tiger around the corner, you'll probably get scared immediately even though it's actually a friendly tiger and that's your System One going. Homer Simpson is a System One kind of a guy. When he was trying to purchase a gun in the not-too-distant past, the owner of the gun store said, "I'm sorry, Mr. Simpson.

We have a 5-day waiting period in this state." Homer responded, "A 5-day waiting period? I'm angry now." That's System One in action. System Two is the deliberative, calculative lower system. System Two is the kind that says I hear a loud noise it's probably okay. It's not a bomb. If I'm angry I should probably take a deep breath before acting on it. If I'm really scared of some risk, I should think about what the statistics are before taking really expensive precautions.

I don't know how many of you remember Larry Byrd, the basketball player, the greatest basketball player of all time. Okay, Michael Jordan. Okay. Larry Byrd tied with Michael Jordan. He was a terrific three-point shooter but not really the best three-point shooter. In the first three-point competition of the All Star Game, he was competing against people who just were unbelievable. He went up to one of the

unbelievable guys, I think the guy who he thought was going to win the competition unless something was done, and he said to him, "Your motion on your three-point is a little different now. You're shooting differently." The guy was rattled. His System One was under assault. His automatic system was caving to his deliberative system which is a disaster for an athlete or anyone who has to do something accurately and quickly. Then Byrd a few minutes later before the competition began took the balls that were being used in the competition and said, "These balls are slippery. It's hard to grip them." That wasn't at all true but greatly disturbed the competitor who finished last in the competition. Byrd won. That's a tribute to the power of System One and its automaticity and regularity and to the difficulty of maintaining it when you're deliberating.

Here is an empirical finding that bears directly on the topic of the book. It's emphasized in the book. Some of the errors that System One is prone to, some of our vulnerability to cognitive mistakes, actually disappear when we're speaking in a foreign language so that the rest of this talk is going to be in Serbo Croatian so that we will be error free for the rest of the time. The errors disappear. Why is that that people stop making cognitive errors when they are speaking in a language with which they're not completely familiar? I think the reason is intuitive actually. It's that in your native tongue your intuitions are in the forefront. You don't have to think. It's automatic. You're like a basketball professional shooting baskets. Intuitions are at work. When you're in a foreign language you're thinking hard. You're working. You're not Homer Simpson anymore. You're more like a computer. You're calculative abilities are moving to the fore. System One is basically atrophying. That I think is a clue about the value of cost-benefit analysis in government. It makes anecdotes and intuitions in System One recede and starts strengthening the hand of System Two. It makes us very deliberative and

calculative. If we are playing regulatory money ball which is theme of the book, our intuitions drop and we start being much more disciplined thus taking precautions against maybe risks that are not on our view screen, they don't scare us very much but they're real and people die as a result and thus taking weaker steps against risks that really scare us but that maybe aren't objectively threatening. Think of cost-benefit analysis as a way of overcoming System One and making a kind of analytic discipline rule the roost in government. In my capacity as Administrator of the Office of Information and Regulatory Affairs, under the president's direction I placed a great deal of emphasis on cost-benefit analysis and you can see it in the record. In the first 3 years of the Bush Administration the net benefits of federal rules. These are analyses compiled by civil servants, technical types. Some were ahead of \$3 billion. That's pretty good, net benefits of \$3 billion under Bush. Under President Obama, the net benefits in the first 3 years are north of \$90 billion, much higher, which is not a criticism of the Bush Administration, it's just a testimony to the potential importance of placing a great emphasis on quantitative factors. That \$90 billion by the way includes not just economic savings, but a lot of human lives saved and accidents and illnesses averted.

The two systems in the mind help explain the fact that human beings are capable of blundering when they don't get them a map that tells them exactly what to do. If they're told to do something but don't get the functional equivalent of a map, then they can get confounded because System One needs a map and System Two is often working on other things and it won't generate a map on its own. Salience is extremely important. Sometimes it seemed to me in government that those who devise regulations for all their expertise and goodwill are a little bit like locals in a town that you've just visited and you ask, "Where is the gas station?" and they say, "Go left. Go right. Then

go a mile and then go left. You can't miss it." I always miss it whenever they say that. "You can't miss it" is a promise of missing. The locals who say that aren't cruel or mischievous. They're not trying to mislead you. It's just that they're really familiar with the town. For them you can't miss it. So too in government when regulations are written. Often they are like the locals and they confuse people because of their familiarity. Their System One is like Larry Byrd's System One. It just completely knows the stuff but ordinary people find this unfamiliar. Complexity is exceedingly harmful. And to follow rules what happens when you do nothing at all turns out to matter a lot and I'll have something to say about that. That's a big theme of the book.

That's not my daughter. We have a daughter who's 9 or 10 months now. Samantha can say precisely. My System One says roughly 9 or 10 months. I'm not going to do the calculation. She can't use a table, our little boy who's approaching 4 rapidly can and has been able to for a while. It's because they're really intuitive. You don't have to work cognitively a whole lot. The question is why can't government be a lot more like that? The machinery underlying the device that the little girl is using is very complicated and it would be unfathomably complicated to someone who tried to understand it 12 years ago, but to the human user you don't even have to be 4 in order to grasp it. The question is why can't government be a bit more like that? Is that its future? In some respects I think so.

Four concepts for you and then we're going to get to the fun pretty soon. This is the work part. This is the System Two part. System One is on the way. Simpler. Complexity is really harmful. It's damaging. Often government fails to achieve its own purposes just because it is too overwhelming cognitively. A simple example is the application form for free student aid which has prevented a number of students from

getting such aid just because the form is defeating the applicants and a response that the Obama Administration has taken is radical simplification of the form. "Nudge," a title of a previous book which plays a significant role in this one is an approach that allows people to go the way that they want. It doesn't eliminate freedom, freedom of choice, privileges and prizes. But at same time it influences people's choices so that something good is given the benefit of the doubt. Google has used the idea of a nudge productively in designing its cafeterias. It had a cafeteria which was kind of unhealthy. People were gaining a lot of weight. So there is a kind of nudge cafeteria at Google where the healthy foods are easy to find, for the unhealthy ones a little more work has to be done to find them and that seems to be having a big effect. All of our choices have a kind of architecture behind them. Choice architecture is omnipresent. If you getting a cell phone plan there's an architecture in the plan and it will affect your decisions. With respect to energy choices, whether you have green or gray or somewhere in between, there's an architecture which determines that fact. On your printer do you have an automatic default in favor of single-sided printing such that you have to change it or is it double-sided? It turns out the amount of paper used depends crucially on what the default rule is. We know human beings err. They don't deal incredibly well with probability. But 90 percent of drivers have been found to believe that they are safer than the average driver and less likely to be involved in a fatal accident. The only category of people who don't suffer from unrealistic optimism are the clinically depressed. They have an accurate sense of their capacities and prospects. If you have a couple and ask them what percent of the household work they do and add up the percentages, if it isn't over 100 percent you have either a very unusual or very sad couple. Samantha, I do about 52 percent. Maybe not. People don't do great with the long term. Sometimes our future selves are

like strangers. There is concept neurological evidence that a significant percentage of the population thinks of their future selves in the same way they think of strangers, whereas in another percent of the population, those who really are willing to defer gratification, when they think of themselves, their brain treats that future person as themselves. Maybe I should explain this a little bit more. There's a little part of the brain that lights up when you think about yourself. Think about yourself for a moment. That part of the brain is lighting up. If we had a brain FMRI study, that part of the brain would be lighting up and it would be true for every one of you who's paying attention and willing to be narcissistic for a moment. But if you ask people to think about themselves a year from now, themselves on a beach for a year from now, in some percentage of the population that part of the brain is going to light up. There's a kind of neural signature of self-absorption and for some people that's going to light up. For other people in the population, that part won't light up. When they picture themselves a year from now when they think of themselves, that part of the brain is not active. It turns out that that part of the population for whom that part of the brain is not active tend to be impatient. They don't think about their long-term selves. They'll take a dollar today rather than \$5 in a month.

There's a lot of stuff we don't notice. There's a little movie that tries to show this. It's a movie where we're supposed to count basketball passes. If you haven't seen it, maybe have a look. It's called "The Invisible Gorilla." After 90 seconds of basketball pass counting, this is not a talk mostly about basketball but it's come up a couple of times, it turns out that people are asked, "Did you see the gorilla?" I was subject to this test and I thought that was the funniest question I ever heard. There's no gorilla. One person in my little group of about 35 professors raised his hand and said,

"Yes, I saw the gorilla" and I thought this is a very crazy person. But if you see the movie again and you're not counting passes, you see the gorilla. It was there. You miss it because System One is working on the pass counting as a System Two and System Two is not going to see something that's concept very important, the gorilla, if it's otherwise occupied. I think this bears on consumer choices in areas where EG fuel efficiency or risk might be like an invisible gorilla and the question is how can we make that more visible?

Now I'm going to give you 10 ideas for making the world simpler and they're going to go pretty quickly. You can save money for retirement or not. Under 401(k) plans people typically delay a lot signing up and there has been a lot of work recently on the fact that Americans aren't saving enough for retirement. In Denmark they tried to generate increases by giving people big tax incentives to sign up. It didn't have much of an impact. Tax incentives didn't work so much in overcoming inertia. Here is a little chart that shows you the effect of automatic enrolment at three different companies where it's jumping after a short period from somewhere between 30 percent and 45 percent to upwards of 80 percent. The key to automatic enrollment is you go to an employer, you're automatically in a savings plan and you can opt out if you want. There is no coercion. If you don't like the plan, you want the money to go home with, you can do that. People don't opt out even if they don't sign up so that automatic enrollment in a plan turns out to drive very large increases in savings behavior. I think there is a profound lesson there for many aspects of social life where there's a default rule in place which turns out to be sticky whether or not people like it. In Germany there's a study very recently suggesting that people are getting a form of energy relatively unclean, by default they're getting that, that defies their own judgment about what kind of energy they want

which is greener, but they don't sign up. They don't sign up not because they are irrational, but because they're busy and inertia is a very powerful force. President Obama has placed a great emphasis on automatic enrollment in savings plans as a cheap way of making people have a little bit more security at retirement. In fact, the Denmark work to which I referred has an astonishing finding. I nominate this as the economics paper of 2012, the best, because it shows that automatic enrollment which costs zero has a much bigger effect in promoting savings in Denmark than significant tax incentives which cost a lot. I think there's a profound lesson there for how to create simpler social improvements which involve not costing a lot of money but just switch the default rule. Rutgers University has saved over 5 million sheets of paper in a short time by switching from a single-sided to a double-sided default. It didn't charge people for single-sided printing. It didn't have a cap and trade program for printing. It switched the default. There are happy workers who like automatic enrollment. They're not opting out and they're going to be more secure.

Two. Here's the old USDA food pyramid. You may have seen it. There is a person male or female walking to the top of the pyramid. What is that white thing supposed to connote? Is that thinness? Is it heaven? Is it something delicious and white? What are those crowded foods at the bottom? There's one if you look on the bottom your right that looks a lot like a shoe. The person who's climbing lacks a shoe. Is it good to eat shoes? That's what's being recommended. Why are the foods all bunched together like this? Why is that yellow banana there? Is that dessert or the main course? One of the chapters of the book and something I took as kind of a mantra in my time in government is a plate not pyramid. Here's the second idea. That's replace the pyramids of the world which the private and public sectors do produce with plates. The USDA food

plate created in the Obama Administration is really simple. It says make half your plate fruits and vegetables and you're doing something which is probably going to be pretty healthy and you may see that the plate is basically pervasive in American culture now. You can find it for little kids and it's everywhere. It's simple and clear. A friend of mine who worked in the Obama Administration who was involved in a complicated international negotiation which was a few days before it started not promising. It looked like we weren't going to get anything in the negotiation. The person called me from "The Nation" very far away and I asked, "How did it go?" and the response was "Great" which was a big upset. I asked, "What happened?" and the answer was "Plate not pyramid." That is to say, once you're specific about what was sought, the negotiation could work. If you say something vague and general, not so much. If you tell kids eat healthy or your friends eat healthy, if you say use 2 percent milk rather than whole milk, the latter is plate and not pyramid, suggesting we need a lot more plates and a lot fewer pyramids.

Three. This is a taxi line. It's time consuming and difficult and often people get stuck in various places. I'm sorry. It's not a taxi line. You're going to see a taxi line. This is an air security line. You could see it better than I could. This is an airport. The U.S. government has created something called the Global Entry Program. If you haven't enrolled, I commend it to you. The Global Entry Program allows you basically to use a kiosk which is pictured here where when you're coming back into the country you just put in your passport, it takes a picture of you, asks you a couple questions and then you're through. It's really fast. It's extremely simple. You don't have to go through those lone lines. A lot of you I'm sure have seen the TSA Pre system which you're automatically in pretty much if you are through the Global Entry Program. That allows a very quick passage through the security line. You don't have to take off

your shoes. You don't have to take off your computer. It's passenger friendly. The basic idea where is that air travel needn't be like this. It can be like this. And expansions in the coverage of the TSA program meaning more airports and the use of the program meaning more people would be a great boon for many of us. It's not going to save lives unlike some of the thing we've done, but it does make life better and simpler.

Four. Now we've got the taxi line. It's long. That's the Batmobile. A company in San Francisco had the idea. There's a matching and searching program and this is I think pervasive in human life so that this is one idea, but I'm hoping you'll all think of applications which maybe will be visionary. The idea is there are people who have desires and there are searchers to get them satisfied and matches are often time consuming and difficult. That's what this picture is about, matching and searching and it's just hard. The Bat Man. It's cool to call him The Bat Man, by the way. Bat Man, that's not cool. The Bat Man has a Batmobile he can just call up. So does everyone else. If you want to have the equivalent of a Batmobile, download Uber. Uber is the application which will allow you basically to get a car and actually a pretty fancy one if you want in many cities basically in a manner of minutes. They'll come get you. You don't have to stand in line. Those pictures by the way are pictures of the cars and their locations so you can know if they're in the vicinity and when they're going to come. What I think is a deep fact about Uber and what's really interesting about it is that human life is pervaded by matching and searching problems. A Nobel Prize was recently given to some economists who've spent their life's work studying matching and searching. We can do a lot better about making it easy. Think about home repair, medical assistance, child care, these are all areas where something like Uber is possible.

Idea five. We're almost halfway done. Here is a confused person who's

just really puzzled and there is George Orwell. George Orwell wrote a great essay called "Politics in the English Language" in which he emphasized the use of government of terms that are so complicated and stupefying that people can't get them and they don't know what to do. It's in a way a version of pyramid not plate and we want to have jargon-free zones. President Obama signed The Plain Language Act of 2010 on which significant progress has already been made making sure that we have plain English when the government is communicating with citizens. Governments all over the world and certainly the United States need to do a lot more with that so you can save time. I'll tell you a little fact. If you took a city in the United States, you constructed a city, larger than Philadelphia or San Francisco and put a population in there of that size, not quite as big as New York but bigger than San Francisco and Philadelphia, and told them next year you have an assignment which is to spend 10 hours a day every day including Saturday and Sunday on government paperwork, by the end of that year those people in that large city will not have spent nearly as many hours as Americans spend every year filling out government paperwork. The amount of paperwork required in the United States is about 9 billion hours. That's monetized probably three times the entire budget of the State Department, and part of the reason the number is so high is the absence of sufficient efforts at trying to eliminate jargon and increase simplification for people.

Six. Here is a student trying to fill out an application and going a little bit hysterical about it because it's so complicated, and here is application EZ. The basic idea is that private and public institutions from college admissions offices to governments, and this bears on the health care exchanges, need to work very hard to make applications as simple and straightforward and navigable as possible. This has to be done in a way that isn't like the local who thinks you can't miss it. People are going to

miss it even of the people who designed the thing that's going to be missed find it completely navigable. In any domain in which a private or public institution, it may be a hospital, it may be let allowing people to fill out mortgages, reduce the number of questions and it so that people don't have to do this.

Idea seven. Here's someone drowning under red tape. That is supposed to represent regulatory overreach. President Obama initiated really an historic effort to eliminate outmoded regulations calling for a government-wide effort to get rid of regulations on the books that are not doing any good or maybe have been rendered obsolete by time passing. The idea of eliminating government regulations that aren't worthwhile, I don't think that's the blood -- it doesn't get people excited. System One doesn't think, man, that's great. Wow. But it's worth pausing over the human consequences of doing this right. There are human beings, actual human beings, some individuals, some little companies, who are trying to live their lives, maybe get their businesses going, maybe be better parents, who are struggling because they are confronted with regulatory requirements which if the regulators revisited them they would get rid of them. And no business has a practice from X years before, maintains the practice declares victory. They reassess them. That's what President Obama has required, continual reassessment of rules on the books. That's me I guess getting to talk to the president and that's a discussion in which he is emphasizing the importance of the regulatory look back. We've already been able to save billions of dollars in unjustified regulatory costs and I'm expecting that much will be done in the future.

Eight. Here is someone who is also drowning in paperwork. We have a theme about complicity and simplification. Does everyone know who that is? That's Bob Dylan, "Blowing in the Wind," "Like a Rolling Stone." Do you know your American

history? I guess there are three things that one would focus on. One is the Gettysburg Address. That's very central. The other is the American Revolution of course which gave birth to our country. And I guess you'd have to include the Constitution's ratification and when Bob Dylan went electric. Those are the four. Here he is going electric which was a very controversial thing but it worked out all right. What we need to do, and this is the idea, is get much more aggressive in allowing people to do things electronically rather than by paper. He didn't quite go electronic; he went electric, but close enough. This also might seem a bit dry, but there are millions of dollars in savings to be achieved by the movement toward electronic filing.

Nine. It's often very hard to manage receipts and it's often very hard even to know how much you've spent on things. I'm not going to ask you to raise your hands, but maybe think to yourself do you know how much you spent on health care last year either out of your own personal budget or your insurance company? Do you know how much you spent on energy last year? Do you have any idea how much your utility bills cost? Many people don't and that makes markets work less well than they might otherwise do. There are often hard comparisons, apples to be compared to apples to know what various things are costing. The Obama Administration has an initiative called Smart Disclosure which is an effort to promote disclosure to consumers in downloadable, machine-readable formats of their actual expenditures. Here I think is a terrific promise for the future where you can find out how much you've spent on various things, then maybe plug it into an app and see how much you'd spend if you'd made another choice. Suppose for example that you have an energy provider of one kind and there are other alternatives. How much money would you save? It's a way of making markets work better and helping people save money. If you're concerned about distributional

considerations, this is probably a winner because for people who are struggling economically this is a real recipe for providing some help.

The last idea, the tenth idea. Here is a family that's fighting. I know this family very well. That's my best friend. It's sad he doesn't have a lot of hair, but I forgive him. He's still my best friend and those kids. This is family found on the internet. I'm sure they're very nice people. They might even be actors, but they're unhappy with each other. The idea is that in our daily lives at home often the source of the problem isn't that people don't love each other and it isn't that they have irreconcilable differences. It's that they haven't laid out the ground rules that would make further negotiations unnecessary. They haven't established standard operating procedures that prevent this sort of situation. Samantha and I have so we never fight. And here's a happy family and they are happy because they have established the ground rules. Look at those kids. Look at how happy all of them are. Simpler begins at home. Simpler is an often overlooked but absolutely essential family value. Thanks.

MS. KAMARCK: Thank you very much. That was lots of fun. Thank you for the pictures. That always livens things up and for being able to present what are really a bunch a complicated ideas in a fun and enjoyable way. Before we start, I remind everyone that "Simpler" is for sale right outside and Professor Sunstein will be signing books as soon as we finish here in about 45 minutes.

I wanted to start with a kind of unusual question. That is you come into the government where they're used to NPR rems (?) and PMRPNs and all of this sort of legal process stuff. You come in talking about nudges. How did they react to you?

PROFESSOR SUNSTEIN: One thing actually I didn't do was come in talking about nudges and here's why. I kind of knew this though I learned a ton, but I

knew this. It's kind of in the air. If an academic comes in and says it's nudge time, they might say it's go back to Harvard time. To those of you who have had experience with government, an academic has a boss. OIRA works in the Office of Management and Budget as part of a team. The president is ultimately the boss. When I came in in 2009, the economic situation was actually very grim. It's interesting. Even now in 2013 when there is a lot more to be done to make it better, the extent of the potential catastrophe I don't think we focus on as much as might, but economics is very grim and the question was how can we move forward with sensible regulations in a way that doesn't compound the economic difficulty. The president's guidance to me was you want to think about ways of producing a balanced system that isn't unprotective of the American public and that also isn't going to compound the economic difficulty. I took my marching orders from him and I don't think I used the word nudge professionally in government at all. At home a little bit.

MS. KAMARCK: One of the most intriguing parts of this book and of your whole experience in Washington is this idea of retrospective analysis. It's a great idea looking back to see if in fact the regulations we've promulgated actually were doing what we thought they were going to do. It makes an enormous amount of sense. But even though it makes a lot of sense, this is very hard to do in the government context. I know that at the Food and Drug Administration they've tried for years to get that kind of analysis on drugs. The people in the bureaucracy have no time; they're overburdened with the day-to-day work. Do you think that this can become institutionalized? What do you see in the future of this?

PROFESSOR SUNSTEIN: I think there's a good chance that the regulatory look back will turn out to be the most important and structural development in

regulatory policy since President Reagan created the OIRA process in the early 1980s. The first step was very doable and here's how it went. The president said in a relatively short time you have to come out with preliminary plans for look back and it was clear that he meant not just we plan to plan, but here's what we're going to do and here are some of the things we're going to take away. Because it came from the President of the United States in an Executive Order and he made it very salient publicly, it was not that hard. Every agency came out with a plan. The economics savings turned out to be extraordinarily high. They continue to execute on their plans. The president followed that early Executive Order with a subsequent one that requires updating of the plans and sending them to the American public and in constant engagement with the public for the regulatory look back and this has been hard wired into the DNA of the process. It's not something that is headline news always. In fact, something pretty great happened, you might not find it as great as I with my parochial view do, but the information collection budget of the United States -- do you know of the information collect budget? Everyone knows that. It was released in January of this year and it announced that in response to something I had called for as part of the president's regulatory look back that there was going to be over 100 million hours in burden reduction. Again that's not something that gets excitement in the same way that a life-saving regulation does and that's completely understandable, but it's going to make people's lives a lot better. They're not going to have to struggle with stuff and that's a big look-back victory. I expect this is hard wired. With what degree of ambition will probably vary from period to period, but any Democratic or Republican president is likely to be committed to it.

MS. KAMARCK: Let me turn to complexity in general. Your campaign against complexity in regulation forms, et cetera, is terrific. Twenty years ago I remember

we launched a plain English campaign in the Clinton Administration and it takes a long time but it's definitely worth doing. Here is my question. Congress seems to be really into complexity. The health care bill came in at well over 1,000 pages. The cap and trade bill came in at over 1,000 pages. In contrast, the Social Security of 1935 was about 100 pages. Congress seems to be creating a complexity that then is foisted on the Executive Branch and I'm not sure how you get out of that.

PROFESSOR SUNSTEIN: That's a great question. Here is one way to think of it. Remember the little girl working on the tablet? If you look at the documents that were produced by those who produced the tablet, I bet they're really long and if they're short they probably have diagrams and math in them that would be impossibly complex for people who aren't specialists, but the thing with which you interact is simple. I recently renewed my driver's license in Massachusetts and this was a somewhat terrifying thought, I have to renew my driver's license. But they had done something that made the user experience in Massachusetts really easy. It was fast. It was simple. It was transparent. The user experience was simple even though the work done to produce it probably involved lots and lots of pages. Here is a little illustration for you of something that I worked on in the government. It's a very modest idea. Federal regulations are often very long, sometimes over 1,000 pages, and it's not easy for the American public or even people inside government to get a grasp on what their contents are. It's really long. I said every long or complex rule has to have a short executive summary at the beginning which says what the provisions are, what their rationale is, what the legal authority is and what the costs and benefits are. That's being done and makes the whole system much more transparent. I think there is reason to think that there may be a kind of pleasing disconnect between a very complicated rule and the

experience of the American public in dealing with the products of that rule. You can have a rule or a law that's really long, but the experience can be more like that kid on the table.

MS. KAMARCK: Let's turn to choice architecture for a minute. In the book you have some very good examples, one of them you showed which is food labeling, but there was another one on miles per gallon of how this works. Let me ask you a question that I know people having left government are somewhat reluctant to answer. What else would you have done? What would you tell your successor to do? What's the next target for a sort of reengineering of the choice architecture?

PROFESSOR SUNSTEIN: Obviously a real challenge is implementation of the Affordable Care Act. Obviously the people there are going to be working very hard on ways of making this so that the experience of getting into the exchange system is not overwhelming for people. In this domain that's a real priority.

MS. KAMARCK: How about in the environmental area? Let me turn to that for a minute because going back to your System One and System Two, System One really goes into overdrive in the business community when it comes to EPA. The business community is just in a sort of constant state of System One frothing in anger about EPA rules, whether it's fracking, whether it's pipelines, whatever, there is just a lot of energy out there. And there are bills now in Congress that would extend cost-benefit analysis to health and safety regulations and a lot of these bills are coming out of the Republican caucus. How would you respond to that and how would you using your analysis try to cope with particularly the environmental piece of this? Nobody is objecting to the plate or the food and what's good for you in terms of food. But the environmental area is where people really get wrought up.

PROFESSOR SUNSTEIN: There's a lot on that question. I worked very

closely with Lisa Jackson at the EPA. I think the world of her. She's fantastic. She did a sensational job. If you look at the EPA's record over the last years, it includes historic fuel economy standards for cars and for trucks. When I think of the business community and its relationship to the EPA, the regulated sector was extremely supportive of those rules and actually wrote a brief in the D.C. Circuit trying to explain that they were legal and not arbitrary so that a tremendous achievement of the EPA has been to extend the fuel economy standards in a way that's going to increase our energy security, save consumers money and clean the air. There's a mercury rule which is admittedly not cheap but the life-saving benefits are tremendous. The mercury rule on cost-benefit grounds is a huge winner, one of the biggest winners of recent years and it is expensive, but the benefits dwarf the costs. I mentioned the regulatory look back. The EPA has a terrific look-back program. It produced two things that are really relieving small businesses of unjustified burdens. One is some of the nozzles at gas stations have air-pollution control technology in them. They're outmoded because cars have the air-pollution control technology so that it's costing gas stations and small businesses many millions of dollars in aggregate to put on those nozzles. The EPA says you don't have to do that anymore. It's not justified. The EPA was the deregulator. The EPA also took away in the most twittered moment of the State of the Union Address a couple of years ago, I feel personally guilty about this because it wasn't a yea, President Obama twittering, it was more groan, not-a-funny-joke-President-Obama twittered moment. There was a rule that imposed on milk producers the same requirements that are imposed on oil producers in transporting across waters. The idea is that oil spills are a big problem, milk spills not so much, and the EPA to its credit took away that requirement saving hundreds of millions of dollars over the next few years, and the obvious joke, you

don't have to cry over -- you mentioned fracking. The EPA issued a very important rule on fracking which everybody worked very hard on. The environmental community applauded when it was done and so did the business community. It said you listened to us and came up with a reasonable accommodation. When I think of the business community's objections I think are real people being adversely affected by a rule? If it's the case that businesses large or small are affected by costs, that means real people are going to be affected. It might be consumers, it might be workers, it might be any number of people, but other things being equal in imposing significant costs, that's not good. But EPA has been very disciplined about cost-benefit analysis in the Obama Administration. That \$90 billion in net benefits, the EPA and Administrator Jackson deserve a lot of the credit for that. That's a lot of their rules. Any objection to rule that's proposed or under contemplation or even give the look back, a rule that's on the books, any objection is on the table but my hat's off really to the president and to Administrator Jackson for their work in the environmental area.

MS. KAMARCK: For a long time now the sort of Holy Grail in regulatory policy has been to increase voluntary compliance so that you don't have the enforcement costs, and of course enforcement is very expensive and it makes people pretty mad too. How does this help to increase voluntary compliance?

PROFESSOR SUNSTEIN: There's a lot there. One thing that I think is useful, and this happened with a number of our energy-efficiency standards, is that there were kind of careful discussions in advance with everyone who was interested, not like every human being, but if consumers were concerned or environmentalist were concerned or small businesses were concerned or large businesses were concerned, to get all of their ideas on the table and then to come up with a rule if you could like in the

fuel-economy case where all sides would feel their strongest arguments were listened to and kind of taken on board, then if you have a rule like that, the likelihood of compliance is very high because people think it's sensible and then you don't have to worry so much about enforcement. The enforcement problem gets more challenging when you issue a rule where some part of a regulated community finds not feasible or silly. There is a challenge. Their claim as a legal matter is there isn't a generalized silliness defense. A lot say you can void the law if your subjective view is it's silly. But to listen to people is really a good idea before you make the rule and tends to reduce the pressure at the enforcement side.

MS. KAMARCK: Finally, I mentioned in my introduction that you took a lot of heat from the right. I imagine that also you've got some heat from the left, that implicit in your theory is this kind of humility which I find very attractive about rule-making but which I suspect people who want to see environmental rules or health rules enforced might have been a little bit uncomfortable with. Can you talk about your discussions with the left wing of the political spectrum and how you dealt with them in the course of being in the administration?

PROFESSOR SUNSTEIN: Thank you for that. The OIRA administrator is mostly an internal person so that most of my discussions were with people within the government and I talked to them all the time. I think Deputy Secretary Merrigan is here from the Department of Agriculture. She's actually very front role which she deserves. She's a very close colleague and fantastic public servant. I talked to her all the time about what would be sensible to do and she's always right. Seth Harris is now the Acting Secretary of Labor and is a great colleague and I talked to him all the time. Bob Perciasepe who is now the Acting Administrator of the EPA, I think the world of him. He

was an unbelievable colleague. Gene Sperling, head of the National Economic Council. This might look what the acknowledgements of the book should have been so I won't bore you with all the details. Those were the people I talked to. Gina McCarthy who has been selected as the next Administrator of the EPA was someone I really talked to all the time. If she thought that the administration should do something in the environmental area, she's amazing and she's a specialist and she's great so that would be very important. If there was some tweet -- I now tweet -- if there was some tweet saying that something should be done, that might be right but the outside noise I think is not that important. One thing that I felt great about is that if you had a rule that would -- and I'm thinking of some. I won't call out my favorite friends meaning rules were my friends. Someone told me early in Washington if you want a friend, get a dog. That turns out not to be true. I have friends, but rules were my friends also. I think of them as my friends. I'm not going to single out my specialist friends. If you have a rule that's going to save a couple-hundreds lives a year and not be an economic hardship for compliance, to be able to participate in that, that's fantastic that there are a couple-hundred people that are going to be alive because of rule that you got to work on doing. If it's a good rule, the fact that someone let's say on the right would say it's regulatory tsunami here, if it saves a couple-hundred lives and didn't cost that much, the tsunami is just for now, so I tried not to listen to that. I listen to the people internally. The president was my boss so he's in charge of everything and I happen to think the world of him of course. So that made it easy.

MS. KAMARCK: Do we have some questions from the audience?

SPEAKER: Your comment about fracking. Was that an air rule or a water rule? That's the first question.

PROFESSOR SUNSTEIN: It's an air rule.

SPEAKER: Did you have any experience with any of the water rules or guidances and which ones?

PROFESSOR SUNSTEIN: Yes. I think probably it's not ideal for me to go into my own personal experience with particulars, but any rule that's significant in the sense that it costs \$100 million a year or more or otherwise had a big impact on a sector or raised novel issues of law and policy would go through OIRA and water rules, a number of them, satisfied those criteria.

SPEAKER: Did that include guidance?

PROFESSOR SUNSTEIN: Significant guidance under a memorandum issued by Peter Orszag in March 2009 I think was. Significant guidance documents would.

SPEAKER: I'm wondering if "Simple" can help with us sort of a -- problem which I've had for 25 years which is basically if you take the two different sort of mindsets of top down and -- or separated which most global professions still use or sort of bottom up and open, there's really no exponential connection between the two. You just get totally different analyses coming out. Brookings published a book -- Wealth in the year 2000 which got somewhere toward that. Obama's campaign language for the first campaign talked about bending the curve and saying we tried top down and it doesn't work in certain sectors, whether the sectors were banking or education or energy still seemed to be mainly ruled by the top down mindset or least as I perceive it not like your sort of -- on how to be more constructive.

PROFESSOR SUNSTEIN: I'm not sure I understand enough about what you mean by top down and bottom up, but I'll say a little bit about at least my

understanding of those ideas. You could think that a lot of the 20th century was a contest between the way of planning and the way of markets where maybe the great Hayek is the hero of the way of markets and I'm not sure there's a kind of hero of planning though you can think of figures, Roosevelt on occasion, who liked planning. Roosevelt sometimes spoke favorably about planning. Planning is more top down and markets are at least one version of bottom up. The way I think of the little domain I had experience with, that is the rule-making domain, and I know Deputy Secretary Merrigan thinks of it exactly this way, is that issuing rules often requires careful engagement with all of those who have expertise and vulnerability as a result of one or another form of the rules. One reason the fuel economy rule I think is such a success and very far from unique in this way is that the government didn't just slap a fuel economy rule on the American people. It listened to wide range of diverse voices in a kind of bottom-up way before it came up with the thing which is not crazily described as top down, it is a rule from Washington, but it depends on dispersed knowledge and not just the knowledge of the regulators. I think the biggest thing I learned bears directly on at least how I'm understanding your question which is in the world of administrative law professors it's long been thought that the process of notice and comment is basically a kabuki theater. It's not where the action is. The agency makes its view in a kind of top-down way, maybe in some cases it engages with people before it proposes the rule, but there is no action in the notice-and-comment process. At least in the Obama Administration that administrative law sophisticated wisdom couldn't be further from the truth. It could not possibly be further from the truth. The comments that come in, the bottom-up comments, bear very importantly on the ultimate judgments about the content of a rule. This is not about deference to politically powerful private interests. Nothing like that. It's instead learning from people who have

stuff to say. If someone says you have this fracking rule involving air and the business community is urging that it's not feasible to comply until 7 years out, they look at the data and they don't need those 7 years. That's bottom-up wisdom which is worth careful consideration. Or if someone says, and this happened, you've issued a proposed rule, you think it's clear, we have no idea what these words mean, that's very important to hear and it's bottom up. I'm thinking of a rule now from EEOC. This is not a unique experience and I hope that it's the future of government as well as some highlights of the recent past, a rule from EEOC involving discrimination against disabled people. When the EEOC proposed the rule, the Chamber of Commerce was very, very distressed which not the only time the Chamber of Commerce was distressed, but this I have a very acute memory of. They said two things. They said we can't understand the rule. We don't know what you're asking us to do. And some of it just overreaches. It overshoots the statute. The EEOC engaged very closely with the business community not because they were noisy but because they had some reasonable questions to ask, and when they came out, I don't know who went with the final -- I don't know who went first and I don't think it was orchestrated by the government or anything. I think just people saw the rule and they reacted. I don't know whether it was the disability community saying bless you for making this a fair and more equal society or the Chamber of Commerce saying bless you for making this something that's understandable and feasible. Both of them played a big role in helping to orient thinking in Washington and that's great. This rule did go through OIRA and there was no thought who's powerful. There was the thought who has dispersed knowledge that we can learn from.

MS. KAMARCK: Before I take another question, I opened by talking about OIRA as the most important government agency that nobody has ever heard of.

There's another one. It's the U.S. Pension and Benefit Guarantee Corporation and its director is here, Josh Gotbaum. Thank you, Josh. I neglected to welcome Josh here.

SPEAKER: Thanks. Charlie -- with Government Executive. I noticed that a lot of small business groups and large business groups lobby and do public relations campaigns and the Republicans in Congress often surveys talking about how burdensome regulations are. I'm wondering how in your job did you interpret that and how did you measure the accuracy of it.

PROFESSOR SUNSTEIN: We tried to play regulatory Money Ball so we were very conscious of the numbers and as a way of having a reality check on what the regulatory system was doing. There are two ideas in the president's Executive Order from 2011 that bear on this. One is that the benefits justify the costs, and the other is that you have to maximize net benefits. They're different ideas because you could have an energy efficiency rule let's say where the benefits are 300 billion and the costs are 100 billion, but you could have another option where the benefits would say be 500 million and the costs 150 million and you should chose the second. Net benefits are higher even though under both the benefits justify the costs. The highest-cost year of the ones for which we have numbers in the last decade was 2007 under President Bush and that's approximately \$10 billion. Bush's high, by the way, is the lowest high of the ones for which we have numbers. Bush's dad and Clinton and Reagan all had higher highs than Bush. Obama didn't match the Bush high and that's suggestive that the regulatory costs were not going crazy by any means. No one thought I don't think or it wasn't conventional wisdom that the defining feature of the Bush Administration was costly environmental health and safety regulation. That's not what it's historically famous for. And the Obama Administration didn't match that high in the years for which we have

numbers. I'm very conscious of the fact that it's an economically tough time and to impose costs on people who are struggling, small businesses for sure and large businesses too, the most costs on people who are struggling needs a justification. But the numbers don't bear out the idea that the Obama Administration went on some pro-regulation crusade. A number of things were done. There are fewer rules, by the way, in the first 4 years than in the Bush Administration. I don't think anyone really anticipated that in advance, but that discipline with respect to the numbers was reflective of the fact that this is a very tough economic time and rules had to be justified. There is a balance to be struck because while regulatory overreach and costly rules are -- maybe I should say a little bit about the numbers. The numbers are generated by technical people who don't work for any political party. They're not political documents. They are done often by the same people in different administrations and the fact that the costs are lower in the Obama Administration's first years than 2007, that reflects technocratic number crunching. It doesn't reflect anything political. There's a lot of Washington noise about regulatory costs. I can say I was kind of amazed coming from the academic community at the extent to which the number generation by partisans on either side wouldn't be reality checked. There's one document that got a lot of attention while I was there about regulatory costs going wild and it had in the upper right-hand side talking points. I was asked in my hearing what do you think about this document which was taken very seriously, and it shouldn't be. It was something that no academic journal would spend more than 45 seconds on before rejecting. There's a term desk reject. Probably a 10-second reject. If you have a document that has the word talking points in the upper right-hand corner, the likelihood that it's real is not that high. And I meant it as kind of a pointed, mildly funny thing to say, but it was not so received. It was received as a kind of

strange thing to say. I do understand and appreciate the concerns about regulatory costs. In a tough economic time, regulatory costs can be harmful. So that's fair and that helped account for a balance that the Obama Administration has struck that has I think revealingly not been received with joy on the far left or the far right.

SPEAKER: Cass, one area of regulatory activity that you haven't had a chance to discuss is financial services and Dodd-Frank. This is an area replete with charges of regulatory capture, huge investments by the industry. What can you tell us about the process there and the extent to which the efforts that you've been trying to make across the board are pertinent?

PROFESSOR SUNSTEIN: I have a couple of things to say about that and the most important is a disclaimer which is that OIRA oversees the Executive agencies. If it's an independent regulatory agency like the Fed or the SEC just by a practice that goes back to Reagan and has some legal foundation, those are not subject to OIRA review so I didn't see a lot of those rules. The thing I'd say, substantively I'd emphasize, is the consumer bureau which is a central part of Dodd-Frank really does see simplification as part of its heart. There's a great phrase, "Know before you owe" which is part of their defining philosophy. That is a helpful idea. It shouldn't be that before consumers are stuck with very high bills and fees, they just have no idea, and to try to discipline that is really good and I think the best financial institutions in the United States are on board seeing that simplicity often can be good practice as a business matter and even if complexity can get you a little money, you can take advantage of people, maybe that's not what business people with good consciences, and my dad was one and I know business people all over America do have good consciences. They want to do the right thing. They don't want to exploit people. This idea is actually a defining feature of the

consumer bureau's work. Transparency does play a big role in a number of provisions of Dodd-Frank. The simplest answer is we need more plate and less pyramid in the financial area.

SPEAKER: -- to me, user friendly you have to know your audience and I'm here to stick up on behalf of the -- live in a real participatory democracy and your chart going from pyramid to plate is brilliant. Do you have any focus groups when you do release such graphics to the general public such as suburban mommies? I just ran PTA mom for Congress in Northern Virginia and lost, though I had the best showing -- I used crystal clear graphics in order to communicate with the voters and what you just did that pyramid and the plate is just excellent.

PROFESSOR SUNSTEIN: Thank you. The idea of focus groups or other empirical testing is absolutely central I think to 21st century governance. I have a few associations with this. Elaine mentioned we replaced the old fuel economy label which is a little pyramid like. It has miles per gallon, the other one you remember, miles per gallon in big letters and then money savings in tiny letters you can't see. The miles-per-gallon metric has a couple of problems. One is to translate it into something you care about whether it's the environment or economics is not easy. The other thing which I think is more interesting and subtle is that it actually feeds into a cognitive allusion. If you go from 12 miles per gallon to 18 miles per gallon, you save a lot of money. If you from 70 miles per gallon to 84 miles per gallon, not that they are any such cars yet but for illustration purposes, you don't save much. It's at the low ends that -- it's not linear, the economic and environmental benefits, and just System One doesn't get that and System Two has to work really hard to see it. So the miles per gallon feeds into something that just baffles -- misleads people worse. So we changed the fuel economy label so it says,

if you've seen it, annual fuel costs, big letters, and compared to the average vehicle over 5 years you will save a number or you will spend a number. We tested that a ton with focus groups, we used experts, we used internet experiments a lot, and built into OMB guidance is you're really supposed to do that kind of focus group testing. Focus groups, by the way, while they're a lot better than nothing, they have a risk which is you give people in an artificial setting a question about what they like and that's not what you really want to focus on. You want to focus on what they understand or what they're going to do. The goal standard is a randomized controlled experiment like for medicine use. In a focus group you give people some medicine and on other medicines you get better. Randomized controlled experiments are the goal standard. They're coming. The U.K. is using them a lot. Our agencies as part of the look back, a number of them refer to randomized controlled tests as something they're going to do. That's a way of getting accurate information. We're very focused on that. I think it was my last act in government, one of them, says that before you use a complicated or a long form under the Paperwork Reduction Act to get approval you have to test it with consumers to see whether they understand it. That I think is going to make people's experience with the government much better. Again the idea of simplifying stuff and getting people to understand things might not seem like the stakes are very high, but whether people who are poor get to go to college depends importantly on the forms. Whether people are going to get into our health care system depends importantly on whether they can understand this stuff. Whether people who are struggling economically get to participate in federal benefits programs which may be designed to allow them to eat depends on whether this baffling and confusing or instead something that they can navigate, so I'm completely with you.

SPEAKER: As a current regulator and former regular T type, I am strongly in favor, but I'm curious about one of the implications of what you're saying which is simplicity to the user is obtained at the cost of complexity on the part of the provider of software applications, et cetera. The implications of this for the future of government I think are that you're changing the nature of the job of people in government, that you're changing the way they do their jobs. My question is have you thought about the implications for internal regulatory structures like personnel systems in government, like procurement systems in government and what's the second-order effects of your prescription?

PROFESSOR SUNSTEIN: That's interesting. That's great. Thank you for that. The title of the book is "Simpler" not simple. That's a kind of a bow in the direction of your question. Simplicity has a cost both in terms of internal work and in terms of you might if you get too simple allow evasion of the system so that there is that. I haven't thought a lot about this except in connection with plain language, what Elaine referred to. This is a work in progress which is really an effort at cultural change inside government. OIRA issued a couple of guidance documents on plain language, but it isn't the case that in 2013 governments' communications with the public are always fully navigable. To some of us it's complicated. I do think you're absolutely right that for plain language there has to be some increasing acculturation. For the executive summaries which seem in a way trivial, it really worked. It has changed the culture in the sense that the agencies are delivering things to OIRA with executive summaries which are short and they're a blessing really for people outside government and people internally. On the plate not pyramid stuff, I think this is something which the next generation has to work really hard on because pyramids to experts seem like plates and you have to kind of get

your head empathetically in the mind of the person who thinks a pyramid is a pyramid.

MS. KAMARCK: I must say that miles-per-gallon description, I had to read that three times. That really was a system to you mean that doesn't work the way I always thought it worked so that that really was a great example. I want to thank Cass for being with us today, for writing such an intriguing and accessible book and he will be right outside here with books and signing some books. Again, thank you and thank you for being here at Brookings.

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