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# OIRA INSIDE AND OUT

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## INTRODUCTION

I was at an academic conference a few years ago and the speaker, someone who had long argued against the role of the Office of Information and Regulatory Affairs (OIRA), made the following assertion:

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The way they make regulatory decisions in Washington . . . they do years of work, get comments, respond to them, make decisions . . . and then the economists go into a room, lock the door, and decide what the policy should be.

I turned to a former colleague of mine, an economist, and asked, “Have you ever seen that room?” He responded, “It’s a closet, and once you go in, they don’t let you out.”

I worked at OIRA for five years, spanning the Clinton and Bush Administrations. Since then, as an academic, I have written extensively on the regulatory process and been to numerous conferences and panels where OIRA was the primary focus or one of the main subjects. And with the exceptions of conferences like this one, where the speakers were all former administrators of OIRA, the disconnect between the conferences and my experience has been stark. When one reads the academic and legal literature on OIRA, the disconnect continues.

In this Article, I will discuss the various academic and press perspectives on OIRA. These can be simplified as OIRA as powerful decisionmaker, OIRA as antiregulation, and OIRA as analytical haven. I will then compare this with the perspectives the former administrators offered at this conference and my five years of experience at OIRA and point out the limited strengths and numerous weaknesses of these perspectives. Finally, I will point out a few academic exceptions to the prevailing norm and urge that future researchers on OIRA use these as guideposts, as there are many questions about OIRA yet to be answered and academics could play a valuable role in improving its effectiveness and understanding its limitations.

## I. OIRA FROM THE OUTSIDE

### A. *OIRA in the Press*

OIRA is an agency that prides itself on its obscurity. As such, its mentions in the popular press are few and far between, and those that do occur often mention its obscurity.<sup>1</sup> However, when OIRA does get mentioned, it is usually because it is at the center of some controversy. To

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1. See, e.g., Cindy Skrzycki, *Looking Back on the Presidents’ Policy Wonks*, WASH. POST, Nov. 1, 2005, at D1.

get a flavor of how OIRA is portrayed in the press, I searched the following databases for mentions of OIRA (using both its acronym and its full name):

- Google News
- Google Blogs
- *New York Times* archives
- *Washington Post* archives
- Westlaw News

I then proceeded to look through all of the “hits” returned for descriptions of OIRA. Many of the articles were merely reporting on some recent events which had involved the Office.<sup>2</sup> Only a small percentage attempted detailed descriptions of what OIRA does. Several themes were persistent throughout.

### 1. *The Power of OIRA*

When OIRA is mentioned, the portrait is usually of a powerful shadow agency controlling regulation throughout the Executive Branch. Recently, Glenn Beck has put forth this image in his descriptions of the current Administrator, Cass Sunstein:

It’s Cass Sunstein, the most dangerous man in America. Because it’s all under the radar. They can pass a law, but the guy who writes the regulation is the one that you have to worry about. This is the way it happens in every communist country. It’s the regulation that kills you. That’s where Cass Sunstein comes in.<sup>3</sup>

But it is not simply the rantings of Glenn Beck that put forth this image. The *New York Times* in 1988 described OIRA as having “immense powers” and the staff of OIRA as “wield[ing] the powers vigorously.”<sup>4</sup> Cindy Skrzycki, the regulatory expert at the *Washington Post*, called it one of Washington’s most powerful offices.<sup>5</sup> The *New Republic* called it, “the most important position that Americans know nothing about.”<sup>6</sup>

This notion of power is further captured in the description of the OIRA Administrator as the “Regulatory Czar.” The *New York Times* wrote about the nomination of John Graham with the headline “Regulations Czar

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2. For example, many recent articles focused on the implementation of Executive Order 13,563.

3. Glenn Beck, *Chaffetz vs. Sunstein*, GLENN BECK (May 26, 2011, 1:36 PM), <http://www.glennbeck.com/2011/05/26/chaffetz-vs-sunstein/>.

4. Robert D. Hershey Jr., *Office of Management and Budget: In Making National Policy, the Buck Starts Here*, N.Y. TIMES, Nov. 28, 1988, at A18.

5. See Skrzycki, *supra* note 1.

6. Michael A. Livermore, *Should Environmentalists Fear Cass Sunstein?*, NEW REPUBLIC (Jan. 12, 2009, 12:19 PM), <http://www.tnr.com/blog/the-vine/should-environmentalists-fear-cass-sunstein>.

Prefers New Path.”<sup>7</sup> Eight years later, the nomination of Cass Sunstein drew the headline “From Noodge to Regulatory Czar.”<sup>8</sup> A czar is someone without many limitations on his or her power, and the tenor of these articles and others is that the OIRA Administrator sets regulation according to his or her whim, without regard for the preferences of regulatory agencies (or maybe even the President).

## 2. *The Antiregulatory Preferences of OIRA*

OIRA is obscure and powerful according to popular accounts. And what does OIRA do when flexing its muscles behind closed doors? OIRA undermines efforts by agencies to regulate. This view is most prominent when the press is describing environmental issues. Typical articles include statements to the effect “that OIRA review process could be dominated by strong pushback against [Environmental Protection Agency (EPA)] action.”<sup>9</sup> OIRA is described as “the principal weapon in a drive by conservatives to ease the power of Federal regulatory agencies,”<sup>10</sup> and as having “a record of adopting language proposed by industry lobbyists, not environmentalists.”<sup>11</sup>

If one goes back to the Reagan and Bush I Administrations, this antiregulatory description is an even more prominent part of the limited coverage of OIRA. Quoting Senator Howard Metzenbaum, the *New York Times* described OIRA as “too powerful and out of touch with the people.” He complained about the “absurd and twisted thinking that less protection saves lives.”<sup>12</sup> Ironically, the rise of the blogosphere has made this meme more common again, even during the Democratic Obama Administration. A search of blogs revealed quotes like, “The standard probably would have been better if there were more balanced involvement in its formulation, but at least the industry acceded to some rules . . . only to be foiled by

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7. Douglas Jehl, *Regulations Czar Prefers New Path*, N.Y. TIMES, Mar. 25, 2001, at A1.

8. Editorial Board, *From Noodge to Regulatory Czar*, THE BOARD, N.Y. TIMES (Jan. 9, 2009, 5:45 PM), <http://theboard.blogs.nytimes.com/2009/01/09/from-noodge-to-regulatory-czar/?scp=34&sq=%22office%20of%20information%20and%20regulatory%20affairs%22&st=cse>.

9. Elana Schor, *As EPA Moves to Regulate Perchlorate, Groups Await Pentagon Response*, N.Y. TIMES, Oct. 4, 2010, <http://www.nytimes.com/gwire/2010/10/04/04greenwire-as-epa-moves-to-regulate-perchlorate-groups-aw-43754.html>.

10. Neil A. Lewis, *Regulatory Review Office in Dispute*, N.Y. TIMES, May 5, 1990, at A10.

11. Alex Fryer, *Bush's Gatekeeper Weighs Costs, Benefits of New Regulations*, SEATTLE TIMES, Sept. 29, 2004, at A1.

12. Adam Clymer, *Budget Office Retreats on Work Health*, N.Y. TIMES, Mar. 30, 1992, at A8.

ideologues at OMB,”<sup>13</sup> and, “In the recent past, OIRA has been a place where regulations to protect health, safety and the environment go to die, or at the very least be weakened.”<sup>14</sup>

### 3. *Errors About OIRA’s Role*

The regulatory process in general is not frequently covered in the press. Because of this unfamiliarity with the regulatory process, articles on regulations frequently make errors like omitting the distinction between proposed and final rules. Therefore, it is not surprising that errors also take place in the descriptions of OIRA. Errors tend to take one of two forms. One involves the scope of OIRA’s coverage. Newspapers are either overinclusive in describing the rules that OIRA reviews, saying that they review all rules,<sup>15</sup> or underinclusive, saying OIRA reviews only rules that have an impact of more than \$100 million.<sup>16</sup> The second common error is assuming that cost-benefit analyses are conducted by OIRA, not the agencies.

So if you learned about OIRA through reading the popular press (which is presumably how most people experience the agency, if they experience it at all), you would come away with the impression that the agency worked only under cover of darkness and had the power to stop any regulation that offended its deeply held antiregulatory sensibilities.

#### *B. OIRA in Academic Articles*

While OIRA generates little press coverage, it has been the subject of relatively extensive academic research and discussion. These articles appear most frequently in law reviews but also in political science journals and occasionally economics journals. The analysis of OIRA is more nuanced than in the press but some of the same themes persist. There is significant discussion about OIRA’s power and where it comes from and

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13. Frank Pasquale, *Heckuva Job, OIRA*, CONCURRING OPINIONS (Dec. 12, 2010, 12:09 PM), <http://www.concurringopinions.com/archives/2010/12/heckuva-job-oira.html> (alterations in original).

14. *Choices for OIRA*, CENTER FOR PROGRESSIVE REFORM, <http://www.progressivereform.org/sunsteinoira.cfm> (last visited Sept. 28, 2011).

15. See Jehl, *supra* note 7 (noting that the Office of Management and Budget (OMB) must review every regulation from some fifty agencies). The Office of Information and Regulatory Affairs (OIRA) did review all rules under Executive Order 12,291 but under Executive Order 12,866 reviews only significant rules.

16. See Gabriel Nelson, *OMB Reviews New Fuel-Economy Labels Crafted with Green Cars in Mind*, N.Y. TIMES, July 29, 2010, <http://www.nytimes.com/gwire/2010/07/29/29greenwire-omb-reviews-new-fuel-economy-labels-crafted-wi-93437.html>.

OIRA's antiregulatory role. A third consistent theme in the literature is the role of cost-benefit analysis in OIRA's management of the regulatory state.

### 1. *The Power of OIRA*

Much like the press coverage, academic examination of OIRA gives the agency credit for a great deal of power. OIRA is described as having "the power to decide whether and in what form a regulation will be issued,"<sup>17</sup> and simply as "powerful."<sup>18</sup> Much of the academic work on OIRA takes this power as a given and instead focuses on the source and legitimacy of OIRA's power. To some, largely supporters of OIRA, OIRA's power comes from the President and is therefore a legitimate exercise of democratic oversight on unaccountable agencies. To others, OIRA is a group of unelected bureaucrats with an antiregulatory agenda that is no more, and possibly less, accountable than the agencies they are overseeing.

William F. West, who based his work on interviews with OIRA officials<sup>19</sup> and hence may not fully qualify as an outside perspective, emphasizes the role of the President in OIRA decisionmaking. He describes how, while OIRA officials are believers in economic efficiency, they realize that they gain their credibility and sustenance from the President, and as such, they have adapted easily to changes in administration.<sup>20</sup> He cites the limited turnover at OIRA as further evidence that ideological preferences do not trump the mission of serving the President. Similarly, now-Justice Elena Kagan (also writing based on her experience in the Executive Branch) says that OIRA review, coupled with other presidential management techniques, "greatly enhanced presidential supervision of agency action, thus changing the very nature of administration."<sup>21</sup> Steven Croley, in an examination of OIRA public meetings, concludes that OIRA oversight often reflects White House priorities.<sup>22</sup>

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17. See Alan B. Morrison, *OMB Interference with Agency Rulemaking: The Wrong Way to Write a Regulation*, 99 HARV. L. REV. 1059, 1059 (1986) (affirming OMB's power over agency regulations).

18. See Joseph Cooper & William F. West, *Presidential Power and Republican Government: The Theory and Practice of OMB Review of Agency Rules*, 50 J. POL. 864, 874 (1988) (asserting that OMB review data confirms its power over to control agency regulation).

19. Including myself.

20. See generally William F. West, *The Institutionalization of Regulatory Review: Organizational Stability and Responsive Competence at OIRA*, 35 PRESIDENTIAL STUD. Q. 76 (2005) (analyzing the various factors and motivations affecting OIRA officials).

21. Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245, 2250 (2001).

22. See Steven Croley, *White House Review of Agency Rulemaking: An Empirical Investigation*, 70 U. CHI. L. REV. 821, 877 (2003) (concluding that the data of OIRA meetings reflect the White House's control over OIRA review of politically controversial issues).

A number of OIRA critics take the opposite view on OIRA's power. Lisa Schultz Bressman and Michael P. Vandenberg, who interviewed EPA officials, argue that the career civil servants at OIRA are too independent of the President and are able to impose their own views on policy decisions.<sup>23</sup> This view was also argued in the 1980s by Alan Morrison<sup>24</sup> and more recently by Nicholas Bagley and Richard L. Revesz,<sup>25</sup> and by Peter L. Strauss.<sup>26</sup> All of these scholars dismiss the argument that OIRA adds accountability to the regulatory process because its officials work for the President. Instead, all argue that their position as unelected bureaucrats decreases legitimacy compared with agencies that are accountable to Congress.

While there is considerable debate over the source and legitimacy of OIRA's power, all of these authors view OIRA as a force in regulatory decisionmaking. A rare dissenting voice comes from the former General Counsel of EPA, Donald Elliott. In a 1994 article, Elliott says that OIRA is not particularly powerful (and Elliott was at EPA during a Republican Administration). In fact, he argues that OIRA rarely reduces the cost of rules and stops them from taking effect even less frequently. He attributes this lack of success to an inherent information advantage held by the regulating entities. This information includes both technical information on the substance of the regulation and information on the political environment surrounding it.<sup>27</sup>

## 2. *The Antiregulatory Preferences of OIRA*

Just as there is widespread agreement that OIRA is powerful in the academic literature, there is also strong agreement that it acts as a brake on the regulatory ambitions of agencies. What disagreement does exist concerns whether this is a necessary corrective to agencies either captured by interest groups or driven by zealous adherence to mission, or whether this is an unreasonable barrier to agencies' statutorily defined missions.

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23. See Lisa Schultz Bressman & Michael P. Vandenberg, *Inside the Administrative State: A Critical Look at the Practice of Presidential Control*, 105 MICH. L. REV. 47, 73–75 (2006).

24. See Morrison, *supra* note 17, at 1059.

25. See Nicholas Bagley and Richard L. Revesz, *Centralized Oversight of the Regulatory State*, 106 COLUM. L. REV. 1260, 1308 (2006).

26. See Peter L. Strauss, *Overseer or "The Decider"? The President in Administrative Law*, 75 GEO. WASH. L. REV. 696, 753–54 (2006).

27. E. Donald Elliott, *TQM-ing OMB: Or Why Executive Review Under Executive Order 12,291 Works Poorly and What President Clinton Should Do About It*, 57 LAW. & CONTEMP. PROBS. 167, 178–79 (1994).

In either case, however, the references to antiregulatory attitudes at OIRA are legion. During the Reagan years, Morrison<sup>28</sup> and Erik D. Olson both wrote law review articles decrying the OIRA review process for its antiregulatory bias, with Olson saying that the Office of Management and Budget (OMB) was unfit to review rules because of its “anti-regulatory bias, lack of staff and expertise, broad array of ancillary powers, and propensity for secrecy.”<sup>29</sup> More recently, Bressman and Vandenberg,<sup>30</sup> and Bagley and Revesz<sup>31</sup> describe OIRA as inherently opposed to regulation. Revesz and Michael Livermore, in a book defending cost-benefit analysis, argue that OIRA has utilized analysis in a manner tilted against regulations by not analyzing deregulatory efforts or regulatory inaction. They also argue that agencies are not inherently disposed toward regulating so that a corrective at OMB is unnecessary.<sup>32</sup>

### 3. OIRA Review and Cost-Benefit Analysis

Many discussions of OIRA review are caught up in the academic debate over cost-benefit analysis. This debate has evolved considerably over the past few decades.<sup>33</sup> In the early years of OIRA, questions about the propriety of analysis took a back seat to questions of executive review. As executive control of regulatory agencies gained greater acceptance,<sup>34</sup> critics of OIRA turned their attention to the very nature of cost-benefit analysis, arguing that the technique was hopelessly biased against regulation and ethically problematic.<sup>35</sup>

With the acceptance of cost-benefit analysis by the Obama Administration, attention has instead turned to the implementation of cost-benefit analysis. Revesz and Livermore’s book suggests ways in which OIRA can apply its analysis more neutrally than it has in the past.<sup>36</sup>

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28. Morrison, *supra* note 17, at 1066–67.

29. Erik D. Olson, *The Quiet Shift of Power: Office of Management & Budget Supervision of Environmental Protection Agency Rulemaking under Executive Order 12,291*, 4 VA. J. NAT. RESOURCES L. 1, 5 (1984).

30. Bressman & Vandenberg, *supra* note 23, at 55–56.

31. See generally Bagley & Revesz, *supra* note 25.

32. RICHARD L. REVESZ & MICHAEL A. LIVERMORE, *RETAKING RATIONALITY: HOW COST-BENEFIT ANALYSIS CAN BETTER PROTECT THE ENVIRONMENT AND OUR HEALTH* 151–56 (2008).

33. See generally Stuart Shapiro, *The Evolution of Cost-Benefit Analysis in U.S. Regulatory Decisionmaking*, in *THE HANDBOOK OF THE POLITICS OF REGULATION* (forthcoming), available at <http://regulation.huji.ac.il/papers/jp5.pdf>.

34. See Kagan, *supra* note 21, at 2247–49.

35. See FRANK ACKERMAN & LISA HEINZERLING, *PRICELESS: ON KNOWING THE PRICE OF EVERYTHING AND THE VALUE OF NOTHING* 35–40 (2004).

36. See REVESZ & LIVERMORE, *supra* note 32, at 173.

Winston Harrington, Lisa Heinzerling (one of the sharpest critics of cost-benefit analysis), and Richard D. Morgenstern also suggest ways in which OIRA can reform the application of analysis.<sup>37</sup>

Many of these works conflate OIRA review and the application of cost-benefit analysis. If analysis is antiregulatory, then OIRA must be antiregulatory. Reform of analysis, therefore, means reform of OIRA. However, while analysis and OIRA review are fatefully intertwined, OIRA is also the eyes and ears of the President on regulatory issues. The interaction between these roles has not been examined in nearly the detail that either one has individually. One work that has looked at the interaction argues that analysis necessarily takes a backseat to the preferences of the President when the two roles of OIRA come into conflict.<sup>38</sup>

## II. OIRA FROM THE INSIDE

Just as one gets a more nuanced view of OIRA from the academic literature than from the press, one gets an even more nuanced view by listening to those who have worked there. It is not so much that the descriptions of OIRA given above are completely untrue. Rather, the reality of working at OIRA is much more complicated than can be captured by arguing that OIRA is powerful or that OIRA hates regulation.

On May 20, 2011, nearly everyone who has served as Administrator or Deputy Administrator gathered at a conference sponsored by the Regulatory Studies Center at The George Washington University. In the audience were a large number of the civil servants who had worked as managers or “desk officers” for OIRA. The administrators and deputy administrators took turns speaking about their recollections of their time at OIRA,<sup>39</sup> and their remarks shed light on the limited applicability of the stereotypes of OIRA. They also dwelled on several themes rarely mentioned when discussions of OIRA occur.

### A. *The Power of OIRA*

This is probably the area where there is the greatest disagreement between outside perceptions of OIRA and the impression of those who

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37. See generally REFORMING REGULATORY IMPACT ANALYSIS (Winston Harrington, Lisa Heinzerling & Richard D. Morgenstern eds., 2009).

38. See Stuart Shapiro, *Unequal Partners: Cost-Benefit Analysis and Executive Review of Regulations*, 35 ENVTL. L. REP. 10,433, 10,438-39 (2005), <http://www.elr.info/articles/vol35/35.10433.pdf>.

39. Former Administrators Douglas Ginsburg and John Graham and former Deputy Administrator Don Arbuckle also gave videotaped addresses.

work there. The agency's second Administrator expressed a view rarely heard outside of OIRA. Christopher DeMuth described the history of OIRA as one of "extreme contentiousness and marginal results." It was clear from his remarks (and those of the first Administrator, James Miller) that the aspirations for OIRA among those who created it were for it to be powerful and antiregulatory but that the reality had turned out quite differently.

While few expressed it in the stark terms voiced by DeMuth, other panelists agreed about the limitations of OIRA's power. Art Fraas, who served for more than a decade as the branch chief in charge of review of EPA regulations, commented that there is a "certain inevitability to EPA regulations." Former administrator John Spotila described OIRA's job as to "make things happen better when they are going to happen anyway." These are not the words of a regulatory czar or his deputies.

What about the debate in academic circles over whether OIRA's presumed power comes from the President or whether OIRA is a group of civil servants imposing their will on the agencies? The remarks at the conference make it clear that OIRA understands its role as first and foremost working for the President. All of the politically appointed administrators regardless of party emphasized the role of the President. Sally Katzen has mentioned this in written articles on OIRA, saying "OIRA and the White House offices all work for the president, staff the president, and answer to the president."<sup>40</sup> Susan Dudley also emphasized this at the conference.

This echoes my experiences as a desk officer. I have written before about how presidential preferences take priority over analytical outcomes when the two conflict.<sup>41</sup> While politically appointed agency officials can get "captured" by the agencies they work for,<sup>42</sup> civil servants located in the Executive Office of the President cannot replace their own policy preferences for those of the Chief Executive. To the extent that OIRA desk officers have power, it reaches only as far as they reflect the policy preferences of the President they serve.

### *B. The Antiregulatory Preferences of OIRA*

While not echoing the harsh rhetoric of OIRA from the outside, OIRA administrators and deputy administrators did acknowledge that the relationship between OIRA and regulating agencies was far from tension-

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40. Sally Katzen, *A Reality Check on an Empirical Study: Comments on "Inside The Administrative State"*, 105 MICH. L. REV. 1497, 1503 (2007).

41. See Shapiro, *supra* note 38, at 10,438-39.

42. See RICHARD P. NATHAN, *THE ADMINISTRATIVE PRESIDENCY* 2 (1983).

free. Republican appointees Christopher DeMuth and Susan Dudley discussed the need for balancing the agency tendency toward overregulation. This is a longstanding, but disputed,<sup>43</sup> argument supporting the need for OIRA. The clear voicing of this argument by former OIRA administrators does give support to the argument that the relationship between OIRA and regulating agencies is inherently contentious as OIRA tries to scale back the ambitions of agencies.

However, it was also clear that OIRA was not necessarily blindly hostile to agencies or to regulation. Administrators from the Reagan Administration (Gramm and Plager) cited regulations reducing the amount of lead in gasoline and regulations making it easier for patients to try experimental drugs as victories they were particularly proud of supporting. John Morrall mentioned the regulation requiring the labeling of trans-fatty acids as another regulatory initiative that garnered strong OIRA support. Plager and Katzen both cited the need for a cooperative relationship between agencies and OIRA, with Plager saying, "Agencies are not bad people."

William West has described OIRA desk officers as ideologues for efficiency (while also noting their willingness to subvert this to the need for carrying out the President's preferences).<sup>44</sup> This strikes me (and apparently many of the OIRA administrators) as a better description than being antiregulatory or antiagency. One thing that outsiders forget is that any desk officer who works at OIRA for a long period of time must repeatedly interact with the same agency officials. This repeated interaction is much less effective if the relationship between the desk officer and the agency is uniformly hostile. When OIRA was a new entity, agency officials hoped OIRA was a temporary creation and OIRA desk officers were new to their jobs. Therefore, the incentives for cooperation, or at least civility, were not understood on either side. While conflicts still exist, and should, an OIRA that all parties see as permanent naturally has a different relationship with agencies than it did in its early days.

Finally, OIRA clearly prides itself on the bipartisan support it has garnered over the years. Numerous speakers<sup>45</sup> at the conference described President Carter as a pivotal figure in the agency's creation both because he created the Council on Wage and Price Stability (CWPS), where many of the early OIRA officials began their government careers, and because he signed the Paperwork Reduction Act that created OIRA. This invoking of

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43. REVESZ & LIVERMORE, *supra* note 32, at 63.

44. See West, *supra* note 20, at 85.

45. Deputy Administrators Jim Tozzi and Thomas Hopkins were particularly emphatic on this point.

bipartisanship is further evidence that OIRA is first and foremost an agent of the President and reflects his preferences more strongly than any particular bias on regulation. Because presidents have clear incentives to maintain supervision over agencies,<sup>46</sup> tension between OIRA and agencies will occur naturally, whatever the ideology of OIRA desk officers.

### C. *The Quality of OIRA Desk Officers*

At the risk of self-aggrandizement, the quality of the OIRA staff was a consistent theme by OIRA administrators.<sup>47</sup> Former Deputy Administrator Jim Macrae described the OIRA philosophy as “having good staff and turning them loose.” Sally Katzen said that OIRA was “special because of its people,” and John Morrall described it as “truly a remarkable institution.” Numerous other administrators also praised the staff. Indeed, former desk officers have served as political appointees in both Democratic and Republican administrations, have founded policy consulting firms, and have become international experts on regulatory reform. At least one or two desk officers have become academics as well!

### D. *Other Aspects of OIRA*

Outside perspectives on OIRA focus on regulatory oversight and cost-benefit analysis. They virtually never discuss the Paperwork Reduction Act (PRA) or the various executive orders that OIRA is charged with enforcing. Former Branch Chief Jeff Hill described the role of the PRA as central to OIRA. In addition to being the statute that created OIRA, it continues to play a major role at OIRA.<sup>48</sup> OIRA reviews all information collections proposed by agencies, and all ongoing collections must be reviewed every three years. Reviewing information collections is a significant part of a desk officer’s job. For desk officers overseeing some agencies (Treasury, Education), PRA work is the vast majority of the workload. Discussions of OIRA’s workload often omit or minimize the role of the PRA, and this is a significant oversight.

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46. See Kagan, *supra* note 21, at 2335–36.

47. In this way, it to a degree reflects the vision laid out for it in STEPHEN BREYER, *BREAKING THE VICIOUS CIRCLE: TOWARD EFFECTIVE RISK REGULATION* 61–63 (1993).

48. See generally *Improving Implementation of the Paperwork Reduction Act*, 74 Fed. Reg. 55,269 (Oct. 27, 2009) (requesting comments on improving information collection activities under the Paperwork Reduction Act).

## CONCLUSION

William West's article,<sup>49</sup> in part because it relies upon interviews with career staff at OIRA, correlates well with the sentiments expressed by many of the administrators of OIRA. Justice Kagan's 2001 article, while focused on presidential administration more broadly than just OIRA, also offers insight to the nature of working in the Executive Office of the President.<sup>50</sup> Kagan's experience at the Domestic Policy Council during the Clinton Administration clearly informs her work. Donald Elliott, writing from his time working with OIRA at EPA, keenly describes the limitations on OIRA in a way few other scholars have.<sup>51</sup>

These works all have something in common. They are either by former insiders or based on interviews with insiders.<sup>52</sup> While inside perspectives inevitably suffer some from a lack of distance from the subject matter, the degree to which they add nuance to the outside perspective of OIRA is striking. It is, of course, an exaggeration to say that viewing OIRA as powerful, antiregulatory, and dedicated solely to the results of analysis are all completely untrue. But portrayals of OIRA in this manner serve neither the goal of an objective analysis of its role, nor the goal of improving OIRA's role in the regulatory process.

As Kagan<sup>53</sup> and James F. Blumstein<sup>54</sup> have noted, presidential oversight of the regulatory process is now a permanent institution. The Obama Administration's endorsement of cost-benefit analysis means that such analysis is also here to stay. Contesting the legitimacy of these institutions is, therefore, unlikely to be productive. However, that is not to say that OIRA review cannot be improved. Understanding the interaction between its various missions and better understanding its impact (including the very real limits on this impact) on regulations are valuable endeavors, and scholars should continue to pursue them. And in pursuing them, it wouldn't hurt to ask the people who worked there about their experiences.

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49. See generally West, *supra* note 20.

50. See generally Kagan, *supra* note 21.

51. See Elliott, *supra* note 27.

52. Accord Donald R. Arbuckle, *The Role of Analysis on the 17 Most Political Acres on the Face of the Earth*, 31 RISK ANALYSIS 884 (2011), available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1539-6924.2010.01573.x/full>; Susan E. Dudley, *Lessons Learned, Challenges Ahead*, REGULATION, Summer 2009, at 6; John D. Graham, *Saving Lives Through Administrative Law and Economics*, 157 U. PA. L. REV. 395 (2008); Katzen, *supra* note 40; Shapiro, *supra* note 38 (addressing the potentially conflicting roles played by the OMB in overseeing agencies' rulemaking).

53. See Kagan, *supra* note 21, at 2246.

54. See James F. Blumstein, *Regulatory Review by the Executive Office of the President: An Overview and Policy Analysis of Current Issues*, 51 DUKE L.J. 851, 854-55 (2001).

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