

PERSPECTIVES ON MODERN REGULATORY GOVERNANCE

ORAL HISTORY PROJECT

## **JOHN D. GRAHAM**

Administrator of the Office of Information and Regulatory Affairs, 2001-2006

Interviewed by Edward Balleisen, Ashton Merck, and Jonathan Wiener

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Kenan Institute for Ethics, Duke University, Durham, NC

## Interview 1: March 2, 2016<sup>1</sup>

**Ashton Merck:** This is an oral history interview of John D. Graham, here at the White Lecture Hall at Duke University. I'm Ashton Merck.

**Edward Balleisen:** I'm Edward Balleisen, a historian here at Duke University.

**Jonathan Wiener:** I'm Jonathan Wiener, professor at Duke University.

**John Graham:** I'm John Graham, Indiana University.

**Merck:** Today we're going to go over your early years and career before you made the transition from academia to OIRA, up to and including your senate confirmation hearing for OIRA.

**Balleisen:** OIRA being the Office of Information and Regulatory Affairs in the White House.

**Merck:** ...Where did you grow up, and, tell us about high school, your early years?

**Graham:** Born and raised in Pittsburgh, Pennsylvania, rabid Steeler/Pirate fan, son of a businessman in the steel industry -- perfectly appropriate for Pittsburgh. Two sisters, older brother, a kind of middle-class, suburban upbringing. My father came upon substantial wealth, but most of it was after I left the household, so I never thought of myself as being from a wealthy family. It's certainly a wealthy family today.

**Balleisen:** What kind of schooling did you attend?

**Graham:** Public school.

**Balleisen:** Which high school in Pittsburgh?

**Graham:** North Hills.

**Balleisen:** So what was that like?

**Graham:** Large. My class was 730. ...it was growing so much at the time that we ended up splitting -- I think it was my sophomore and junior year -- they had to have some people going from 7 until 12 and then the other going from 1 to 5, they had split days, if you understand what I'm saying. We were done with classes at noon, which was nice. Anyway, this big, nondescript, diverse high school.

**Balleisen:** Was there much engagement with politics or policy around the dinner table or was that not your family's...?

**Graham:** No. There was a lot of talk of steel industry and business. My father, who was very much in control of dinner conversations, had a disdain for politics. Politics was bad in my house.

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<sup>1</sup> Note: John Graham has reviewed the transcript of the interviews and furnished minor edits to clarify or improve flow for the reader.

**Balleisen:** What about policy?

**Graham:** Policy was bad, too.

**Graham:** He had other things he was more interested in. It's been fascinating for me to watch him, because now he's retired and he's 90 years old, and his biggest interest in life is politics. He's really, really interested in it. So, I think people evolve, right?

**Merck:** So...after high school, one must assume that you went to college.

**Graham:** I did. I was a golfer in high school. I even had little dreams that I might actually try to play golf in college. When I went to Wake Forest University, I did realize it was a good golf school, but I didn't realize how good Wake golfers really were, so I ended up on the debate team.

**Balleisen:** What led you to Winston-Salem for college from Pittsburgh?

**Graham:** Well, I had been a high school debater, and I went to Wake Forest for a summer debate institute. It was for three weeks in the summer before my senior year. I got to know the campus and got to know a bunch of the people there. I really enjoyed that experience.

My ... group leader was actually a very famous debater from the University of North Carolina, so I was hoping to go to the University of North Carolina, Chapel Hill. I applied but did not get admitted because I was an out-of-state student, and my standardized test scores were very low, I was not able to get into most of the highly competitive colleges. I had a similar problem with law schools and many graduate schools. I was rejected for admission to the PhD program in political science at Indiana University.

**Balleisen:** We'll circle back to that eventually. You came to Wake Forest. Did your interest in debate help to structure the sorts of courses you wanted to take or your choice of major?

**Graham:** I guess so. I was a double major in economics and politics.... It was at the time called Politics and not Political Science. This was a sensitive issue in the intellectual culture of that department. They considered themselves a humanities and not a social science. They believed politics was an art and not a science, and so forth.

I thought a lot of that was behind the times or something like that, I guess you would say. The politics department was not very friendly to debaters, because we missed a lot of classes. They didn't think that was appropriate. We were traveling around the country, debating instead of coming to classes. I wouldn't say it was very friendly, but it certainly reflected some interests that I had, so I sort of did it anyway. Economics,... my father wanted to be in business. He's always, "business is what people do." Economics, I had some interest in it, and it was like I could sort of keep him at bay.

I had a period from when I was about 15 to 20, where – I always had a very close relationship with my mother – but my father and I had a lot of differences. We just didn't communicate. It was pretty bad. I admired him too, but I just couldn't deal with him. Later in life, we became much closer.

**Balleisen:** Did you encounter regulatory institutions in your courses while you were an undergraduate?

**Graham:** Well, it was big in debate, but whether I encountered it in courses, I don't really have any recollection of that. Courses were not a big part of my life when I was in college. I did the minimum amount necessary in my classes to get B's and A's, and it was not important to me.

**Balleisen:** It sounds like debate was much more important.

**Graham:** Debate was my life, absolutely.

**Balleisen:** Were regulatory issues something that...?

**Graham:** They were at the heart of a lot of debates, absolutely.

**Balleisen:** Can you recall some examples?

**Graham:** Now, at the time, I don't know whether we processed them as regulatory issues. We talked about whether airbags should be in cars. We talked about other types of consumer product safety. We talked about environmental regulations a lot.... The concept of regulation per se was something that somebody was interested in. Nobody cared about regulation. It's boring. It's the things you're regulating, the issues that are rising in regulations, that were interesting to me. It was much later in my life that regulation became a focal point, for me.

**Wiener:** Do you recall the kind of debate that you did, it was the policy debate...?

**Graham:** Yes, I was in policy debate.

**Wiener:** Do you recall what the national topics were? Some of them...

**Graham:** When I was in high school?

**Wiener:** High school or college.

**Graham:** I remember, vividly, one of the topics was a poverty topic, that there should be a comprehensive program to reduce poverty in America, something like that. I used to come to the dinner table and try to get some of the conversation in that direction. It drove my father completely mad. It was a source of big conflict....

**Balleisen:** Your senior thesis focused on one of the issues that was vibrant in the 1970s. I think the title was a cost benefit analysis of the 55 mile an hour speed limit.

**Graham:** Right.

**Balleisen:** Was that a topic that you developed out of debate or...?

**Graham:** I wrote two theses. I wrote one in the politics department and one in the economics department.... The one that I was more interested in was the one that was in the politics department. It was about why we put people in prison, why we punish people, and it explored theories of deterrence, incapacitation and rehabilitation. That was closely connected to a lot of

the issues that were being debated my senior year. It was a crime and justice topic. The other thesis, on the speed limit, was not directly related to the debate topic but it was definitely connected in some ways.

I don't remember debating the speed limit issue directly, certainly automobile safety. I was very interested in debate. It got me interested in ideas about trade-offs. The speed limit was very interesting in that regard, because you had sort of a lifesaving benefit on the one side. Energy was a big deal at the time, because we had had those long gas lines, remember, that we have people...the gas prices not only shot up, and literally, people couldn't get gasoline. They would go to the gas station in the morning, and they would sit in line to get their gas.

**Balleisen:** You would have been 16, 17 when that was going on in 1973?

**Graham:** Right, it was very much...a remembrance. I was really intrigued by economists, the way they thought about things like the value of people's time. I remember spending a lot of time doing reading about how economists think about, how do you measure the value of people's time, and whether clumps of time like eight hours, should that be valued the same way as losing 16, 30-minute segments.

Those are the kinds of issues that the speed limit raises. ...They had put the speed limit all the way down to 55 miles per hour as a maximum on all these roads, even out to the west and so forth and so on. A lot of people who were spending minutes, hours, more traveling than they used to, to the same destination. So I was very interested in those issues.

It was kind of a precursor to my interest in measurement, whereas the politics one had more of a philosophical aspect to it. James Q. Wilson, I don't think I really realize it at the time, but he was a great debater in his own right.... I did a lot of reading of his stuff when I was an undergraduate. He was both in politics and in crime and justice.

**Balleisen:** You were at Wake Forest from 1974 to '78?

**Graham:** Correct.

**Balleisen:** Did you think about going into the work world immediately after finishing your degree?

**Graham:** I dreaded that. My father certainly thought about that, but no ... I'm trying to remember how this works. What happened was, the summers after my freshman year in college and sophomore year of college was source a big conflict between myself and my father. He wanted to get me jobs. He did it twice. He did it after I was a freshman and sophomore.

My freshman year, I worked for Bell Telephone Company. The location of telephone poles are all documented on engineering-like drawings. If you pull out any street, and you can find a drawing where this telephone pole is...Some of these documents that were older were becoming decrepit and needed to be re-done. I traced – literally – for an entire summer, the location of telephone poles, one document after the other. That was the one job he got for me.

And the other one was at Blue Cross, the health insurer. They had a bunch of documents. I don't even remember what they related to, I guess they would be reimbursement request for health care

or something. Some of them had been stapled. That made it difficult to put them through the machines that they were using. So I took staples out of these papers with a staple remover. I did that for another summer. So that was his concept of learning the value of work.

I was dating a girl at the time. I would be staying up until two or three in the morning romancing with this girl. I then had to go to this job at eight o'clock in the morning. I was literally falling asleep at Blue Cross trying to do this stuff. I was miserable those two summers.

The third summer, I was able to get my own job as an instructor in a debate camp, like the one I had gone to. That was an enormous relief to me that I was able to do what I wanted to do, and what I loved doing, and didn't have to worry about pleasing him, because I could say I had my own money....

**Balleisen:** Now it's 1978, and it's not summer between semesters, between years, but now it's what do I do after college?

**Graham:** I applied to law schools, and I applied to public affairs schools, but – I knew I didn't want to go to work, even though my parents would have liked me to do that.... I also applied to graduate schools in political science, law and public affairs, but my standardized test scores were very low. I got rejected at all of the law schools except two, where I was waitlisted. I was rejected at all the political science PhD programs that I applied to, including Indiana University. I got into Duke University. The first cohort of what were then MPA students, I think it's now called an MPP. I was in the first cohort of two-year students at Duke.

The program had already existed for a couple of years, but not for people who were exclusively admitted for the MPA degree. It was only available to those also studying law or medicine. I was really elated when I was admitted to the Duke program. I agreed to do that. I was also admitted to the Carnegie Mellon program. This is another great illustration of the influence of my father. It was considered to be, in some ways, a more established and stronger program than Duke's. Duke's was just getting started. My father found out that I was considering this Carnegie Mellon program, and he was involved in Carnegie Mellon. I forget whether he was on the board of trustees or something, but he certainly knew the president and provost.

He arranged a lunch with the provost of Carnegie Mellon University for me in the Duquesne Club, which is a very exclusive private club for business leaders in Pittsburgh. We had lunch, and the provost of Carnegie Mellon proceeded to tell me that this was a terrible program. It allegedly existed to fulfill Carnegie Mellon's affirmative action requirements. He had been the previous dean of the business school, and this was the public policy program that I was applying to. I said, "well, it's awful." This guy seemed very persuasive. He was a famous labor economist. He became president of Northwestern University and University of Colorado. Arnold Weber<sup>2</sup> I think his name was.

Weber just scared the daylight out of me on this Carnegie Mellon thing. I said, "Duke seems fine. I was going there. It seemed like a good place, a great university." And then I met several faculty at Duke, one who used to be at Carnegie Mellon. They told me a lot about what this Weber had been referring to, providing a different side of the story. I ended up going back and

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<sup>2</sup> Arnold R. Weber (b. 1929).

did my PhD at Carnegie-Mellon, in spite of Weber's opinions of it. It was a very interesting experience in my life, seeing different people talk about the same place. The other two people they thought it was a great place...

**Merck:** ...Did you have summer jobs or summer internships when you were in your master's program?

**Graham:** My master's program, I only spent two semesters at Duke, as I recall. What happened was I got very close to a professor named Jim Vaupel,<sup>3</sup> who was a Kennedy School graduate. He was very interested in the question of, why are there so many people in America who die young before the age of 65? ...I had been interested when I was a debater in lifesaving issues. He got me into this area, and then he was invited by the National Academy of Sciences to serve in Washington as the director of a committee of the National Academy of Sciences. He and his wife talked about it, and he wanted to do it. He liked the idea of doing this and going to the French restaurants in Washington and meeting interesting people.

But Vaupel didn't want to spend full time in Washington. He wanted to keep doing what he was doing at Duke and live in Durham. He negotiated a deal where he could do it one or two days a week, I don't remember exactly. I would come to Washington, and I would be full-time, and I would be his staff assistant. I moved to Washington, and then I finished my Duke degree at George Washington University, and they let me use courses I took at George Washington at night toward my Duke degree. At least this is my recollection of it. I was only at Duke I think it was either two or three semesters. I forget which.

So it was only one summer where I had the internship option. ...It was a very important decision for me. I remember it vividly because I had used my own connections to get myself an offer to a group called the Insurance Institute for Highway Safety (IIHS), which was a well-funded organization by the insurance industry that promotes the safety of automobiles. I was very interested in those issues. Then I had a professor who got me an internship at OMB. OMB appealed to my...

**Merck:** OMB being the Office of Management and Budget.

**Graham:** Right. In the Duke program OMB was considered the signature, "blue-chip" kind of thing to do. The really ambitious, good students go to OMB.... Most of my professors didn't know what IIHS was. My classmates weren't interested in auto safety either. So the peer pressures leaned toward OMB.

That was a very hard decision for me because I was very interested in the auto safety stuff, but I ended up choosing to go to the OMB thing, and it ended up being a pretty important decision.

**Wiener:** Is this 1980, or is it about that time?

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<sup>3</sup> James W. Vaupel (b. 1945), current Director of Max-Planck Odense Center on the Biodemography of Aging in Denmark. At the time (1978-80), Vaupel was a professor at the Institute for Policy Sciences and Public Affairs (now the Sanford School of Public Policy) at Duke University in Durham, NC.

**Graham:** That's a good question. It might have been '79. ' Summer of '79..

**Wiener:** I ask that because OIRA, Office of Information and Regulatory Affairs, was created in 1980, and I wondered if you were in OMB at that moment?

**Graham:** Right.... I was employed by OMB, but the project and assignment I got was actually not in the OMB building. It was on welfare reform at HHS, in the Hubert Humphrey building.

It was a really interesting project, because President Carter had proposed a legislative program to reform the welfare system, and it had been unsuccessful. They were regrouping and deciding, what could they do administratively without any legislation?

There was a very impressive woman. I wish I could remember her name. Pat Gwaltney<sup>4</sup> I think was her name. She was my supervisor. The task force had eight welfare programs -- food stamps, SSI Supplemental Security Income, Medicaid... HUD Section 8 Housing and Urban Development. There were longtime career officials of each program, and I was a research assistant for this group, and I would run around and go do things for them.

They would investigate the eligibility requirements for a low-income person who was trying to get into one of these programs. What were the requirements, and were they in the legislation or were they in the administrative guidance? Because the administration could change the administrative guidance. They had a sensible idea which was that one of these low-income families should be able to submit one application. Then if they submitted the one application then they could get into all of these programs..I was really lucky because the study started at the beginning of the summer and ended at the end of the summer, but it was by coincidence... The conclusion of the study was that the single application was impossible because of the way those statutes were written. It was very sad....

This built on a lot of my interest which I had in high school about poverty and about families that don't have income. I was very sensitive to the fact that my family had been middle class, and I had been with kids in high school who didn't have a lot of income and so forth. That was a very interesting experience to me. It was a good window into government and so forth.

**Balleisen:** In essence, though, you had a day job for the second year of your studies with the National Academy.

**Graham:** Yes. I worked full time during the day, and I worked for a very eminent Harvard Business School professor named Howard Raiffa.<sup>5</sup> Raiffa, he was a joint business school and Kennedy School professor. He had been Jim Vaupel's undergraduate thesis advisor when Vaupel was an undergraduate at Harvard College. That was the connection that got Vaupel into the NAS position.

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<sup>4</sup> Patricia Gwaltney McGinnis (b. 1947), Deputy Associate Director of the Office of Management and Budget 1977-1981.

<sup>5</sup> Howard Raiffa (1924-2016), one of the four founders of the Kennedy School of Government at Harvard University, joined the Harvard faculty in 1960 and retired in 1994.

Raiffa took a very strong interest in me, and encouraged me to consider PhD programs. What I vividly remember about that was that he kept telling me that I should get my PhD at the Kennedy School so that he could work with me. I tried to explain to him that, "I can't get into the Kennedy School." I had a 540, or a 550 in the math GRE. I may have had a 590 or something in the verbal. It wasn't like I was particularly bad in math. I just couldn't take these tests. I had low scores across the board.

Raiffa was an expert in probability theory and probability elicitation. As he describes the story to me, the Harvard admissions committee chair called him and said, "We have this Graham applicant, you have this very glorious letter of recommendation for this fellow. I want you to give me a probability distribution on what you think his – I think it was math GRE score – was." I had never told Raiffa exactly what my scores were, I just told him they were low. Raiffa responded "650 to 750 or something." Here I am at 540 or something like that. The guy just explained to Raiffa, "We can't possibly do this."

I ended up going to the Carnegie Mellon program and in hindsight I'm surprised that I got in. I've always wondered whether they sort of knew who my father was and that helped me get in, but I never had any hard evidence for it...It was humiliating to me to go through all that, because I had to talk to Raiffa about it, and I sensed that he felt sorry about it.

**Balleisen:** What kind of work did you do for the NAS committee? This was the committee on risk assessment.<sup>6</sup>

**Graham:** Excuse me, on risk! Yes! It was a fascinating committee. It had Charles Lindblom<sup>7</sup> as a member of the committee. He was a very eminent political scientist.

**Balleisen:** From Yale.

**Graham:** It had Eileen Serene who's a very famous philosopher, history kind of person.<sup>8</sup> It had Peter Schuck from Yale Law School.<sup>9</sup> It had from Bell Labs, Roy...and I can't remember his last name.<sup>10</sup> It had Richard Wilson who was a physicist from Harvard University who was big in energy.<sup>11</sup> It was just this fabulous committee. I was able for a year to work both with the

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<sup>6</sup> National Research Council. *Risk and Decision Making: Perspectives and Research*. Washington, DC: The National Academies Press, 1982. doi:10.17226/775.

<sup>7</sup> Charles E. Lindblom (b. 1917), currently Professor Emeritus in the Department of Political Science at Yale University, and past president of the American Political Science Association.

<sup>8</sup> At the time, Eileen Serene was a Professor of Philosophy at Yale University.

<sup>9</sup> Peter H. Schuck, currently Professor Emeritus at Yale Law School; prior to his academic career, he served as Director of the Washington Office of Consumers Union (1972-77) and Principal Deputy Assistant Secretary for Planning and Evaluation in the U.S. Department of Health, Education, and Welfare (1977-79).

<sup>10</sup> Roy Radner (b. 1927), is an economist and currently Professor Emeritus at NYU's Stern School of Business. He was a Distinguished Member of Technical Staff for AT&T's Bell Laboratories from 1985-1995.

<sup>11</sup> Richard Wilson (b. 1926), is a physicist who has been a Professor of Physics (now emeritus) at Harvard University since 1955. He founded Harvard's Energy and Environment Center in 1976.

committee as a group and with some members individually. I would also travel with Vaupel and carry his suitcase as we met and spoke with these eminent people.

Our committee was utterly unsuccessful by National Academy of Science standards, because we couldn't get the committee to agree to anything. We were barely able to get a report out, and it didn't say anything.

**Balleisen:** What was the prompt for the committee?

**Graham:** The prompt was from the National Science Foundation, which was establishing a new research program to fund university professors to do research on risk and decision-making. We were supposed to develop a research agenda for this program. Howard Raiffa refused to be chair of the committee unless they would broaden the agenda not to just to do research on risk and decision-making, but on how the country could improve its decision-making legislation and regulation toward risk and decision-making.

The NSF reluctantly agreed to broaden the mandate to include that. We spent 80 percent of our time working on that part of the agenda, but the committee couldn't come together. My immediate supervisor, Jim Vaupel, the Duke professor, he lost interest in it because he could tell it wasn't going anywhere. My interpretation is that he walked away from the project or he did the minimum amount necessary to get his paycheck as a study director, but he lost interest. So I was left working with Raiffa trying to salvage something of this thing.

**Balleisen:** What was the source of disagreement?

**Graham:** I didn't realize it, and Vaupel didn't realize it at the time, but this guy Lindblom, he was a socialist, basically. A lot of this was about business regulation, and he had this anti-capitalism view, and it's evident in his book *Politics and Markets*. I don't know if you guys have read it or not, Lindblom's a very famous guy. He was very sympathetic with the idea that if you were to take the profit motive out of the corporations by having government ownership of companies, then progress would be made on pollution and worker safety. In other words, on the risk issues, Lindblom felt the problems were rooted in the profit motive.

He was really articulate, but he was also gruff. He annoyed a bunch of the other committee members, so a bunch of them stopped participating. Oh, by the way, James Coleman,<sup>12</sup> the famous sociologist, was a member of this committee as well, the one who was involved in the desegregation issues and everything.

So, Lindblom also turned off Vaupel, the study director. So I was left with Lindblom and Raiffa, and Raiffa's from the Harvard Business School, and he's not going to sign some report about nationalizing businesses or something like that. It was a failure, but for me it was fascinating, because I saw the lifestyles of these professors pretty close and up front. I didn't have a clue about what I wanted to do at the time. I was thinking I was going to come out of Duke and I was going to go into federal government, go into OMB or something like that.

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<sup>12</sup> James S. Coleman (1926-1995), sociologist primarily based at the University of Chicago, known for his work on sociology of education and public policy.

But I also had both Vaupel and Raiffa encouraging me get a PhD. When I saw those professors, and I saw ...they had this tremendous independence. They did whatever they wanted to do. They flew around the world, and they gave these talks and all this sort of stuff.<sup>13</sup> All of them had a lot of influence, and they had a lot of influence on how young people were thinking. I thought that was really compelling. That was really for me the pivot point because, up until that point, being a college professor was not even plausible in my mind. Of course I had worries about whether I could ever get a PhD....

**Balleisen:** Did the experience on the committee shape what you ended up doing for your master's thesis?

**Graham:** No. What happened was I did work with Jim Vaupel during my first year at Duke which was the precursor to my master's thesis. It was something that he and I published together.... He wanted society to save as many lives of young people as possible, and he had this strong bias, which I developed a lot of sympathy with, which was everybody was focusing on old people. There were a lot of young people who were dying, African-American men from violence and teenage males from car accidents, and people were dying in their younger ages. Vaupel believed in measures like years of life saved, not numbers of lives saved.

When I worked for him, we got all the studies that we could find on the question of how much it would cost to save a life year in different programs in comparing anti-violence programs to bypass surgery to hypertension drugs and so forth. That formed the foundation of my master's thesis. I remember that I also presented that work to this NAS committee. They allowed me to do that, and I really enjoyed it. I got a whole bunch of questions and everything, and I got a lot of encouragement from that committee. They thought it was a really interesting and important line of work.

That's really rooted in Vaupel's influence on me, I think, that master's thesis. He was a great guy. He didn't last long in the US, he was only here a couple years. His wife is Danish. She wanted to go back to Denmark. He became a very accomplished demographer in a European, I forget what university he was at, but a great, great guy.

**Merck:** You were talking about how you were encouraged by Raiffa and others to get a PhD, but you hadn't originally envisioned that as your career?

**Graham:** Definitely not, right.

**Merck:** You did eventually go on to Carnegie Mellon. How did you choose to focus on automobile safety for your dissertation research in your PhD program? One can see a through line, but did you see it that way at that time?

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<sup>13</sup> Additional committee members not named by Graham in the interview: A. Karim Ahmed, David Cohen, Robert W. Kates, Glenn C. Loury, William D. Ruckelshaus, Jack P. Ruina, Amos Tversky, James H. Ware, and Rosalyn Yalow.

**Graham:** Yeah, I'm trying to remember how this went. I started at Carnegie Mellon in January 1981 in the PhD program. I think I only did two or three semesters at Carnegie Mellon and then I went to the Brookings Institution for my dissertation phase.

The Carnegie Mellon program was very unstructured, it had light course requirements.... You had to have two publishable school papers before you were allowed to propose your dissertation. Your dissertation would be a third paper. It was called a three-essay format, but there were no exams. There were no exams covering anything that you had to learn, like econometrics... It was a great setup for me because I couldn't take ... tests. Anything that was structured with a time limit like an hour or something like that. That was really bad for me, those kinds of tests.

I proceeded really quickly through that program because I could write papers. I had two different advisors I was working with and it was my interest in auto safety combined with their interests in methodology. One was a man named Granger Morgan,<sup>14</sup> who was very interested in decision analysis and expert judgment. The other one was an econometrician, a guy named Steve Garber,<sup>15</sup> who was a very good, a very well trained econometrician. I developed those interests.... Life-saving was an important part of it. I didn't process in my mind, it was just auto safety. It was part of this life-saving thing or, at least, that's the way I remember it.

**Balleisen:** So what kinds of classes did you take? This was a program in Urban and Public Affairs.

**Graham:** I wasn't interested in the urban part of it, that didn't mean anything to me. I considered it a public policy program. I took classes in statistics, econometrics, microeconomics, and decision analysis. It really frustrated me. All they had was this very mathematical, quantitative courses, but they didn't have any courses on politics. At the time, my father had a business associate ..., one of his suppliers, who ran for Congress in Pittsburgh. I got deeply interested in his campaign.

I ended up being his advisor in this political campaign for Congress in Pittsburgh.<sup>16</sup> This is right in the middle of my so-called doctoral training. I was not doing well in the classes at that time, because I was spending all my time with this guy. It was really an eye opener for me. I remember vividly, we hired this guy named Arthur Finkelstein<sup>17</sup> as our pollster, who was a very well-respected conservative Republican pollster. We were the challenger. The incumbent was a Democrat who had been there for several terms. This is a donut district of suburbs around Pittsburgh, kind of designed for a Republican because you don't have any of the city in the

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<sup>14</sup> Granger Morgan (b. 1941), current Professor of Engineering and Public Policy at Carnegie Mellon.

<sup>15</sup> Steven Garber, currently an adjunct economist at RAND; at the time, Garber was an assistant professor in the School of Urban and Public Affairs at Carnegie Mellon.

<sup>16</sup> Graham advised Ted Jacob, who (as will become clear in the interview) lost 45% to 54% to incumbent Democrat Doug Walgren, in the 1982 Congressional race for Pennsylvania's 18<sup>th</sup> district.

<sup>17</sup> Arthur Finkelstein (b.1945), current Republican pollster and consultant based out of New York; Finkelstein and his associates have been consulting for Republican candidates since the re-election campaign of Richard M. Nixon.

district. But it was held by a Democrat. This guy came in and we paid him \$50,000 and my candidate paid this money out of his pocket. He hadn't raised a lot of money.

Finkelstein came in from the airport and he gave a little presentation and basically he said, "Most people in this district don't know who you are, so your name recognition is 12 percent." He said, "Most people of this district, even most Republicans of this district, think that the incumbent, is a Republican." He said, "This is not worth my time, okay? If you can't get your name recognition above 60 percent, and if you can't get people in this district to understand that your opponent is a Democrat and you're the Republican, then, I'm not going to spend any more time with this campaign. I don't care how much you spend, or how much you want to pay me." That was a 20-minute presentation. He said, "That's it. I'm leaving, I'm going back to the airport." His practical recommendation was to put billboards up in the city, around the city of Pittsburgh. The hills were key features of the geography of Pittsburgh, and we would put those billboards up, "Ted Jacob, Republican for Congress." He wanted us to spend, I forgot how much money, he wanted us to spend on all these billboards. And he left.

We didn't talk about any issues with Finkelstein. In my mind we didn't talk about anything substantive. My candidate, he was very headstrong, former Polish steelworker guy. He was really pissed that he had spent all this money on Finkelstein. There was nonetheless a certain merit to what Finkelstein said actually.

**Balleisen:** And the outcome of the election?

**Graham:** We lost, I don't remember exactly, 54-46 was the margin. It was 1982 but we were still running on ... Kemp-Roth,<sup>18</sup> ..., running on some ideas that the Kemp had pioneered in previous years, ...the 33 percent tax cuts across the board... We lost, but it was a terrible year – '82 was a terrible year for Republicans because it was the Reagan recession. If you looked at all the challengers around the country, we actually did pretty well, compared to those challengers.

That was a district that's pretty favorable to a Republican. It was an important experience for me... We went to town hall meetings, he danced with the ladies, the Republican gals, and everything. I developed a good sense of what grassroots politics was all about from that experience.

**Balleisen:** To what extent was the national platform of the Republican Party communicated to a candidacy like the...?

**Graham:** We were trying to get our campaign designated, as a priority campaign at the National Republican Congressional Committee. We were never able to do that. They spent all their money trying to defend their incumbents. In the final analysis, they spent all their money trying to cut their losses and defend the existing seats. We were aware that ... they did have a recommended set of issues, and a program, and that sort of thing. But I spent most of my time researching the incumbent's votes on pay raises and permission for honorariums. We were trying to develop an argument that this guy was enriching himself. It was interesting to me to see how little interest my candidate had in the actual policy issues of the day.

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<sup>18</sup> The Economic Recovery Tax Cut of 1981, or the "Kemp-Roth Tax Cut," (Pub. L. 97-34) was the first of the "Reagan tax cuts."

**Balleisen:** So regulatory policy was not on his radar screen at all.

**Graham:** He wasn't interested in issues and the advice he was getting from the professionals that were involved were also that issues were not really very important. This is definitely one of the things that I come away with from that campaign experience. For the rest of my career, I harbored the feeling that the executive branch of the federal government is more evidence-based and issue-oriented than the legislative branch is. The legislative branch, a lot of it is just really pretty ugly and uninteresting from my point of view. Then later, when I worked for Mitch Daniels, he really believed this. He just really had no patience for the Congress, Republican or Democrat. laughs

I saw that and that definitely influenced me, in terms of my purpose, because there was definitely a period in there where I was thinking that I would run for Congress. I was going to try to win in Pittsburgh and my family was from Pittsburgh and so forth. Of course, my parents were just scared to death. They didn't want me to have anything to do with politics. For them, that would have so complicated their lives laughs...

**Balleisen:** What led you to the Brookings Institution as a place to do the final research for your thesis?

**Graham:** There was a man named Lester Lave,<sup>19</sup> who was a professor at Carnegie Mellon, the business school.

**Balleisen:** Did a lot of research on auto emissions, auto safety?

**Graham:** Mm-hmm. When I came to Carnegie Mellon, I was hoping to work with him. When I got to Carnegie Mellon, he went to Brookings. He or one of his students told me that there was a dissertation program where you could write your dissertation in Washington, via the Brookings Institution. I started developing an application. I was thinking I was going to work with Lester Lave, and then I found out that Lester Lave would be coming back to Carnegie Mellon at the same time that I would be going to Brookings. laughter

**Graham:** Lester connected me to another guy at Brookings, since I already had this momentum to do this. His name was Robert Crandall.<sup>20</sup> He was an economist who studied the auto industry. He was also a scholar of the steel industry. He took a strong interest in me and was very good to me. I also had lots of interesting conversations with him about my father because he had followed my father's career as a steel CEO. The Brookings stint, that was a very good time in my life.

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<sup>19</sup> Lester Lave (1940-2011), was an environmental economist and professor of economics at the Graduate School of Industrial Administration (now called the Tepper School), as well as professor of engineering and public policy, at Carnegie Mellon. He was a cofounder of Carnegie Mellon's Electricity Industry Center with Granger Morgan. He is best known for his work on air pollution, which provided the initial scientific basis for EPA regulations on air quality.

<sup>20</sup> Robert W. Crandall has been a fellow at the Brookings Institution since 1978 (currently listed as a "nonresident senior fellow"). From 1977-1978, Crandall served as the Deputy Director for the Council on Wage and Price Stability (COWPS).

**Balleisen:** Did you have the opportunity to interact with any of the regulatory agencies in DC while you were there at Brookings?

**Graham:** It wasn't part of my dissertation exactly, but what was happening is that the issue that I was very interested in, which was the requirement for airbags in cars, which I spent a lot of time on as a debater and it was part of my dissertation. It was actually being litigated in the United States, in the lower federal courts.

When I was at Brookings,<sup>21</sup> I did do some interviews with some of the regulatory agency people at NHTSA and the insurance industry. I also had a friend, who was a former debater,<sup>22</sup> who was finishing Georgetown Law School, and she agreed to write an article with me for a law journal. We made the case that it would be arbitrary and capricious for the Reagan administration to remove the requirement for airbags. We published that in – what journal is it? I think it was *Administrative Law Review* actually.<sup>23</sup>

**Balleisen:** I think it came out in 1983.

**Graham:** ... I remember meeting with another former Harvard debater, Mitch Dupler of a blue-chip DC law firm. Patty Gorham and I ran some of our arguments by Mitch. He said there was no hope for our arguments because the idea is that a president should be allowed to campaign on an issue and when, they get in, democracy says you're allowed to do what you campaigned to do, and the judges would respect that. That was his take on it.

Of course I was trying to argue that the cost-benefit analysis said that NHTSA's airbag requirement was a good regulation. You shouldn't be able to get rid of it just because you had an election change. There should have to be some evidence for the change. I spent a lot of time on that argument while at Brookings. In theory, I was working my dissertation, but in reality, I was spending a lot of time working on that. That's where my passion was at that time.

**Wiener:** Was that article cited in the litigation?

**Graham:** ... I don't think so at the Appeals Court, because I don't think it was out at the time of this thing. But the case was appealed to the Supreme Court and somebody advised us to send ... the pre-print or the galleys to the Court. We sent it to each of the nine Supreme Court justices with a letter, with a cover letter. It was not out yet, but it was in that form.

**Ed:** And the outcome of the case?

**Graham:** It was 9/0 on the airbag issue and 5/4 on another issue about automatic safety belts. I had a dear friend, Stuart Singer<sup>24</sup> who happened to be clerking for Justice White... He didn't

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<sup>21</sup> Graham clarified that he is referring to when he was at Brookings from 1982-1983.

<sup>22</sup> Graham clarified that he is referring to Patricia Gorham, who was his coauthor on the article (see *infra* note 23) and is currently a partner at Sutherland, Asbill and Brennan, LLP.

<sup>23</sup> Graham, John D., and Patricia Gorham. "NHTSA and Passive Restraints: A Case of Arbitrary and Capricious Deregulation." *Administrative Law Review*, 1983, 193–252.

<sup>24</sup> Stuart Singer, formerly president of the Harvard Law Review and later an accomplished attorney in Miami.

talk to me at all about any of this at the time. Afterwards, he told me the story about how my article with Patty was used by the Court. Apparently Justice Blackmun had received the article, and read it. He said something about it, ... whatever they call the time when the justices meet together and talk about the case. It wasn't White who brought it up, it was Blackmun who brought it up, because he thought that the arguments we were making were good arguments.

I remember Singer calling me that morning when the decision was announced. I was living in a Georgetown apartment. He said, "I have good news for you. It's 9-0. I can't believe it, you're cited." The *Administrative Law Review* article was cited in the Supreme Court decision, which we were very pleased about. That was interesting.<sup>25</sup>

**Balleisen:** How did that experience shape your thinking about where you would want to go for your career after you finished the PhD? ... I assume that suggested the possibility of making an impact on policy, which clearly I think was a goal for you? ...

**Graham:** ... I always thought after the National Academy of Sciences experience that I would either do academia or go to a think tank... I had seen a bunch of the people who I interacted with had found ways to go to the government. That's the thing about these academics, they can pick up, they go to the governments for two years and the university doesn't give them any hassle or anything, it's not a problem. It's probably good for their students and everything, because they get connections and so forth. It was already apparent to me that there should be a way to combine these interests from an academic base... I was pretty confident at that stage that I wanted to do the academic route.

**Balleisen:** What was the path from Brookings and Carnegie Mellon to Harvard?

**Graham:** Howard Raiffa. I think he's never said it, but he felt very guilty about the fact that he could not get me – He was an eminent, very well respected Harvard professor – He couldn't get me into the PhD program at the Kennedy School. I think he felt very guilty about that. He got me a post-doctoral fellowship after my PhD at the Harvard School of Public Health.

**Balleisen:** No GRE required for that?

**Graham:** No GRE required.

**Graham:** You didn't have to take any classes or pass any exams, which is a big part of it too. Actually, I did take some classes. I remember I went over and took Administrative Law from Chris Edley<sup>26</sup> at the Harvard Law School, the course I was really interested in as a post-doc.

**Balleisen:** You'd seen enough in Washington to know that the legal framework for decision-making actually had...

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<sup>25</sup> See *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 US 29 (Supreme Court 1983), note 11.

<sup>26</sup> Christopher Edley, Jr. (b. 1953), was a Harvard professor for over twenty years before becoming Dean of the University of California-Berkeley Law School. Edley also served as an economic advisor to Presidents Carter, (Bill) Clinton, and Obama.

**Graham:** I didn't understand a lot of what these lawyers were talking about. They had all these things about substantial evidence and arbitrary and capricious, and these different...If you get rid of a regulation, is the standard different than if you adopt a new regulation. It was clear to me that there was a whole body of thinking and precedents and so forth. I wanted to understand what was going on, because I really did not understand it. I thought a lot of it was pretty intellectually suspect... I was definitely interested in that. My law interest definitely got stimulated.

**Balleisen:** After this experience of taking the class, did your critique strengthen or weaken?

**Graham:** No...I thought the class was really interesting... I realized that there was more there than I appreciated. I also took classes at the Harvard School of Public Health on risk assessment. It's like if you take a laboratory animal experiment, like you administer contaminants to a treatment group and compare the adverse health effects to a control group. How they actually do the statistics of comparing those to see whether they really have a meaningful difference. I had never learned anything about randomized controlled experiments and how you actually design these sort of things because I had spent all my time as a social scientist. Scholars who do econometrics ... don't actually do experiments. That was an important part of my training when I was post-doctoral fellow, and then I was working with Jonathan Wiener.<sup>27</sup>

**Balleisen:** So say a little bit about that...

**Graham:** I spent a lot of time coaching informally the debate team at Harvard, because I had a dear friend, Dallas Perkins, who was the Harvard debate coach. But I was working with Dallas and Jonathan to try and help them pull their affirmative case together, the case that they would use in their debate rounds. I believe that was the year I was a post-doc at Harvard.

**Wiener:** My memory is that it was my senior year in college, which was 1983-'84 and the national debate topic that year was about environmental policy. You came to us and helped us with a case about air pollution about Section 112 of the Clean Air Act which...

**Graham:** That was my post-doc year, 83-84....

**Wiener:** ...I know we met with you, we met with you several times through the whole year....

**Balleisen:** Was there a research agenda that was attached to the courses that you were taking?

**Graham:** Yes, they were not attached to the courses, but I was assigned to a project. It was a very interesting project funded by the chemical industry and a couple foundations, and it related to risk assessment of industrial chemicals, and they were specifically studying benzene and formaldehyde.

**Balleisen:** The backdrop to the study, could you talk a little bit about why this was a significant issue?

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<sup>27</sup> Referring to Jonathan B. Wiener, Professor of Law at Duke University, who later co-authored several books with Graham. However, at this point in the conversation (1983-1984) Wiener is an undergraduate at Harvard University.

**Graham:** ....Under the Carter administration, there was a very impressive woman who was the head of OSHA, named Eula Bingham.<sup>28</sup> She was not a lawyer, she was a scientist. I forget whether she was an industrial hygienist. She developed a policy which said that, if a chemical was demonstrated to cause cancer in laboratory animals in a randomized experiment, that the industry automatically should be required to reduce exposures to that chemical to workers to the lowest levels that are feasible.

This position was not only threatening to industry, but it was kind of offensive to the risk analysis community, because you'll notice that, while there's the experiment, there's no actual risk assessment of, "How much risk does a worker experience at different dose levels?" Risk analysts believe that you should have to show not just that a risk exists, but that it's significant in some sense. Sure, you could have a chemical that caused cancer in laboratory animals at very high doses. But humans might be exposed to it in just minute concentrations. Maybe there wasn't any risk at all or maybe the risk was very tiny.

This was the thinking of the risk analysis community. This led to a Supreme Court decision called the Benzene decision, where the Supreme Court ruled in favor of industry.<sup>29</sup> The court relied on the strength of a Harvard professor's risk assessment that he did on benzene -- this is Richard Wilson -- who was another person who I was interacting with at the time, collaborating with.

This whole case had been developing. Eula Bingham was on our advisory committee for this project as well as people from industry. I met people from DuPont, from Shell, from Dow. These are people who are in the science and risk assessment divisions of these companies. I met people from OSHA and from EPA. They came to the meetings. We had workshops and conferences that year where I interacted with these people. This led to a book that we put together on benzene and formaldehyde, which was published by Harvard University Press. It was my first major scholarly publication.<sup>30</sup>

I remember it was very stressful for me because I was accused by one of my co-authors of plagiarism, ... a woman who I now have a wonderful relationship with, but I didn't really understand the issues well enough at the time. What happened was we were working on this book together, and then I started working on a paper that was unrelated to the book, but I was using a bunch of the ideas that I learned from her. She was a toxicologist. I remember this issue actually came to a head when I was in my first year as an assistant professor. The chair of my department, Fred Mosteller, came to me and he asked me about this paper I was working on and he said, "What did you learn from Laura Green about this?" I explained virtually everything I know is from her.

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<sup>28</sup> Eula Bingham, (b. 1929) is a scientist (she holds degrees in chemistry, biology, physiology, and zoology) best known for her role as Assistant Secretary of Labor of the Occupational Safety and Health Administration from 1977-1981. Under her tenure, OSHA promulgated comprehensive "right to know" regulations.

<sup>29</sup> *Industrial Union Department v. American Petroleum Institute*, 448 U.S. 607, argued October 10, 1979, and decided July 2, 1980.

<sup>30</sup> Graham, John D., Laura C. Green, and Marc J. Roberts. *In Search of Safety: Chemicals and Cancer Risk*. Harvard University Press, 1991.

I didn't understand that I should have just offered to add her as a co-author, because I had learned so much from her, even though she didn't do any of the actual writing. She didn't do the footnotes or anything, or the tables, but I had talked with her a lot and she had influenced my thinking a lot. Mosteller basically explained to me that the way you handle this is you offer her, since she has a lot of intellectual stake, co-authorship. Then she was fine with that.

The major product was the book, and the book was a big problem because our study director was a different Harvard professor named Marc Roberts.<sup>31</sup>

Laura and I had difficulty getting him to focus on it, so then he had taken all this money from all these people and then he wasn't putting the energy in. Laura Green and I had to pick up the slack...and it was not good. It dragged on for a couple of years. I saw how hard it was to actually get a book published too, because we went through round after round with Harvard Press and so forth, but that was an important project.

What that project did was it got my risk interest expanded outside of auto safety and into the world of chemicals. Chemicals at the time were a really growing area in the field of risk assessment, and the professional Society of Risk Analysis was launched somewhere around 1980. It was launched primarily by people interested in the questions of how to do risk assessments of chemicals and pesticides.. That was a big period in my life, since it draw me toward this new Society.

**Balleisen:** What do you see as the most important contribution of the book?

**Graham:** We were reacting, at the time, to this idea that ... that the courts should have scientific consensus panels that would advise the judges, or judges might have scientific masters. The theory was that if judges were assisted by the most qualified scientists, they could tell you what the truth is.

There was a National Academy of Sciences ... idea of ... consensus panels.... We were arguing in our book against this. We said that, when you are dealing with issues that are on the cutting edge of science, there will be different schools of thought, and issues would not be easily resolvable, and that these issues will intersect with the values of the law. It would not be that easy to separate out the science, and have a consensus on it, and have all the policy and politics somewhere else. We were arguing for what we called scientific mapping, which I don't know if that ever really got off in a practical way.

But, basically, the idea was you should try to explain to policy makers, not what the scientific truth is, unless it was really clear that there was only one truth. You should map scientific opinions, so that the policy makers would understand the different schools of thought, and why the scientists came to different conclusions. That was the key contribution of it. It ended up getting cited a decent amount, ...in science and technology studies, philosophy of science, and then definitely in the risk assessment domain.

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<sup>31</sup> Marc J. Roberts (1943-2014), was an economist and professor at the Harvard School of Public Health from 1979 until his retirement in 2013.

**Balleisen:** It strikes me that there was a bit of a continuity between your experience and that first National Academy of Sciences committee, and the impulse that you had in trying to make sense of this context....

**Graham:** Right. In both cases, it became apparent to me that this strict separation between science and policy, or science and the values and the politics, People who were striving to do that, it was not sustainable. People don't think that way, and things get more integrated both consciously and subconsciously.

**Wiener:** You mentioned Granger Morgan earlier, who was one of the people that worked at Carnegie Mellon. He...worked on a lot of expert elicitation trying to assemble the diverse use of different experts on complicated problems, just sounds very similar to that. Was he influential, at that time, for you on this part...?

**Graham:** Yes, and in my dissertation, I had actually done eight expert elicitations on airbag effectiveness. This was before airbags were put into cars. I had a lot of the similar challenges of taking laboratory experimental information, where engineers would study with cadavers and crash dummies.

You're trying to take information from those tests on airbags, and use that to project how much could you reduce the risk in a real world crash to a human being. You had a lot of the same kinds of extrapolation issues. We were eliciting those judgments from experts, and those are in my dissertation. I combined those experts, and made a projection of how many lives would be saved by air bags. I had the humbling experience of companies putting airbags in all these cars and the truth being revealed. As a professor of Harvard, in the 1990s, I developed with Kim Thompson an estimate on how many lives were actually saved by airbags, and it ended up being about one third of the center of my distribution. We were not highly accurate....

**Wiener:** When did you write the retrospective review paper?

**Graham:** I worked with Kim Thompson.<sup>32</sup> I'm going to guess it was 2007 or so, something like that...

**Balleisen:** Quite a ways after.

**Wiener:** 20 or 30 years later afterwards.

**Wiener:** Right, right. So, the hard part was, in the dynamics of the crash, a belted occupant, and remember at the time most occupants were not wearing safety belts. The air bag was being deployed to protect the un-belted person as well as the belted. The lap belt is very good for the airbag designer because, what it does is, it places the occupant in a predictable way so that the airbag designers know where to deploy the bag, how big the bag should be, and how it should shape as it comes out.

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<sup>32</sup> Kimberly M. Thompson, currently Professor of Preventive Medicine and Global Health at the University of Central Florida; from 1997-2010, she was an Assistant Professor of Risk Analysis and Decision Science at the Harvard School of Public Health.

The problem for the unbelted person was, in the dynamics of the crash, when the brakes are slammed on, the person starts moving around. Then the crush occurs, and then they are really moving. Airbag designers didn't realize how unpredictable the unbelted occupant's position would be... sometimes they would go over the bags. Sometimes they'd submerge the bag. They'd go around the bag. They'd be too close to the bag and be injured by the bag, or there would be passenger compartment intrusion, which would hurt the occupant even though the bag deployed.

Our estimates for the life-saving among the unbelted were wildly exaggerated. Our estimates for the belted ones were pretty much... accurate.

**Balleisen:** You mentioned already that you obtained a position as an assistant professor, might be helpful to talk a little bit about the process of moving from post-doctoral fellow to joining the professoriate... at Harvard.

**Graham:** ... I was a postdoc for just one year. Then Carnegie Mellon, where I got my PhD, they had a position open, and they encouraged me to apply to that. I talked to Howard Raiffa and Milt Weinstein, who was a professor in the Harvard School of Public Health,<sup>33</sup> and they discouraged me from taking the Carnegie Mellon position. They said, "We think we are going to create a position next year, and we think you could be a candidate for that position." I wasn't very convinced by this because these Harvard people, I'd had my experience in the past with that sort of thing. Howard was always well-intentioned, but I didn't think he could deliver necessarily. You never know who else was going to apply for a position like that.

My reasoning was that, if I went to Carnegie Mellon and if they really wanted me, they'd come and get me. I took the Carnegie Mellon position, and I was there only nine months. Then the Harvard position became available. They encouraged me to apply, I did, and I ended up driving my wife completely batty. We had bought a house in Pittsburgh, and then we sold it nine months later, it was a mess.

**Balleisen:** When did you get married?

**Graham:** ...we met as freshmen. She was in the debate team, ... from Baltimore.

**Balleisen:** Her name?

**Graham:** Susan. I was about to add in the Brookings part of the story that she was working at Rockwell International. She had an MBA. She's living in Pittsburgh while I'm a PhD student, and I'm traveling back and forth to Washington to go to Brookings. Then she was pregnant with our first child. Then she told me that I was going to finish this PhD. I was having a great time in Brookings. I wasn't eager to bring this thing to a conclusion. Anyway, we had our first child there, and then the second child. Both children were born in Pittsburgh, but the postdoc year was a year with a crawling infant in Somerville, the Portuguese neighborhoods of Somerville, Massachusetts.... She was very happy being in Pittsburgh. The Boston move wasn't really... it ended up the housing prices in Boston were off the charts at that time. We were lucky to get any

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<sup>33</sup> Milton Weinstein, currently Professor of Health Policy and Management at the Harvard School of Public Health.

kind of house at all. Then we raised our two daughters in Boston, that's 17 years we lived there in Boston.

**Balleisen:** So things worked out at Harvard?

**Graham:** They did. They absolutely worked out. It's interesting, when you think about it, the power of standardized testing is just amazing to me. You can understand that from a perspective of these universities, because they have so few bases on which they judge these huge applicant pools. They start thinking they are looking for something that's going to level the playing field. Highly imperfect. I am now really intrigued by the fact that a lot of colleges are starting trying to get rid of, they don't even require students to send in standardized test scores. Though Bowdoin College started it, Wake Forest now, for undergraduates, they don't require standardized test scores....

**Merck:** What was it like to be at Harvard at that time – is there a broader community of people that have been gathering, and working on risk analysis at this time? Can you talk about that...?

**Graham:** You have to understand the structure of Harvard. The Harvard Medical School and Harvard School of Public Health are near Jamaica Plain/Brookline in the city of Boston. Then Harvard College is in Cambridge. The Business School and the Kennedy School are over there. I'm over in the medical complex. I had a variety of collaborators on the risk issues that were in the Environmental Health Department in the School of Public Health.

... John Evans and then later Jim Hammitt, and a whole group of people at the School of Public Health. But then Richard Wilson, who I mentioned earlier, was in the Physics department, as was Raiffa in Cambridge. There were some other people at the Kennedy School, for example Richard Zeckhauser. It was really a great place to be at that time.

A lot of these scholars were all interested in risk. The dean of the Harvard School of Public Health, at the time, was a guy named Harvey Fineberg who himself was a risk analyst.<sup>34</sup> He also knew a former CEO of a chemical company from Philadelphia, Rohm and Haas Chemical Company, who was also a former Harvard College graduate. His name was Vincent Gregory, and he was advising Fineberg on development and fundraising for Harvard School of Public Health. Fineberg connected me to Gregory, and said, "You should try to develop some kind of program, or center and..."

**Balleisen:** Even though you were just out of the PhD almost?

**Graham:** No, what happened was I think I played publish or perish, both in injury prevention and in environmental risk from like '85 to '90. So I'm a ... recently promoted associate, and at Harvard, the tenure move is at full professor, not at associate. I was still an untenured associate professor. The Harvard School of Public Health was money poor, so you can't become a professor unless you have fundraising. You either have to have a lot of grants, so you have to

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<sup>34</sup> Harvey Fineberg (b. 1945), is a physician and former president of the Institute of Medicine from 2002 to 2014. As Graham mentions, at this time he was the dean of the Harvard School of Public Health, a position he held for thirteen years.

bring in money from outside sources in some way. It's very different from what would be standard in arts and sciences and “hard money” kind of places.

The dean connected me to Gregory, because he knew that there were a lot of people around Harvard who were interested in the risk thing. We could create some kind of center. Then I went around and persuaded a bunch of these faculty to let me use their name as part of a new center that would be created. Then I had, with a key collaborator, John Evans,<sup>35</sup> and we had a couple of great doctoral students at the time, all interested in these risk issues.

That became the seeds of the Harvard Center for Risk Analysis. It started around 1990. I spent a lot of my time going to companies and fundraising for that enterprise. Meanwhile, John Evans was working the government side. He got some big EPA grant money which we combined with the industry money. We were growing rapidly. We got to the point where we were hiring new faculty out of this money. We probably had eight new faculty positions within five years or so. I had the academic credentials I needed to be tenured at Harvard, but I had to show that I could actually build a fundable program.

Then somewhere in there I had offers from both Cornell and from Resources from the Future. The way Harvard works you can't get tenure unless you've got these outside offers. You've got to come in and tell them, "These are the outside offers I've got," and they decide whether they're good enough.

They don't put you up for tenure, if you understand what I'm saying. Oftentimes if they do a tenured position, then they'll do a search. If you hold them up with an outside offer, they do have the ability then to give you tenure without a search, and that's what happened in my case.

**Balleisen:** What sorts of projects did you bring into the center?...

**Graham:** A big range. We had projects in three areas. We had pharmaceuticals and medical devices, environmental protection policies -- a lot of that was chemicals, related to chemical risk assessment -- and then automotive safety and injury control.

**Balleisen:** Did you put a team together to tackle each one of these?

**Graham:** A lot of these were rooted around doctoral dissertations. We'd get a really good doctoral student. They'd be like the fulcrum of one of these projects. ... We didn't have very many projects where we pledged to do a specific project for the money. What we did instead was we said, "If you give us anywhere from \$25,000 to \$100,000 per year, then we would allow you to be on an advisory committee." Each year we'd get the advisory committee together and we'd decide what the projects are.

The advisory committee would have not just industry people on it. It would have people from government, and it would have people from other universities. The chair of our advisory committees were usually...they were either professors or they were accomplished practitioners...There was a guy named Tom Grumbly who was a chair for a number of years. He

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<sup>35</sup> John Evans is currently an adjunct professor of environmental health at the Harvard School of Public Health.

was a former government official.<sup>36</sup> We worked very hard at getting both disciplinary and philosophical and ideological balance in this advisory committee, because we knew we were going to have a lot of industry people. We wanted to have a balance with these other people.

**Balleisen:** You were trying to manage conflict of interest and perception of conflict of interest.

**Graham:** Absolutely, right. And I was doing this at the advice of the dean of the Harvard School of Public Health. He was coaching us on how to do this to make it as acceptable as possible to as many people. You have to remember the Harvard School of Public Health is politically a very liberal place. It has a strong Marxist element as well. It's very progressive and, so...these issues were pretty sensitive, but Harvard University, as a whole, certainly, industry money has a long history at Harvard University, but it needs to be handled carefully. Most of the money we had was in this form of the companies make these annual contributions and then we set up an agenda.

Usually we proceeded in terms of doctoral dissertations and the students would run with it. Then we have faculty advising them, and they publish from those studies and so forth. It was a very effective model and in part because the doctoral students were really good, well-motivated, and ambitious.

**Balleisen:** What were the range of disciplinary backgrounds that you would pull into the center -- either professors or doctoral students?

**Graham:** There were the full gamut of social science, engineering, physical science. We had the whole gamut. We had students and faculty interested in the physical science aspects of risk assessment. We also had statistically and mathematically-oriented people, engineers interested in the modeling aspects. We had social scientists interested in, why are some people freaking out about genetically modified foods and other people are worried about car crashes? Psychologist-oriented, sociology people interested in these types of questions. We had the full gamut.

**Balleisen:** How did you get them to talk to each other effectively?

**Graham:** I'm not sure we did.... But it was an environment where people were regularly seeing each other present projects to our advisory committee, and they saw the interaction, and the advisory committee itself had people from government, and industry, and they were themselves from these different disciplines. Some of them were from law, and some were from toxicology, or whatever. It was built into the structure of the center and the way it operated.

1990 to 2000, those were really exciting years for me. Then as the center grew and as its influence grew, not only in the United States but internationally, it gave me a lot of visibility through my professional society, the Society for Risk Analysis. Meanwhile in Washington the

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<sup>36</sup> Thomas Grumbly, currently the President of the Supporters of Agricultural Research (SoAR). Graham is referring to Grumbly's service as the Assistant Secretary for Environmental Management at the U.S. Department of Energy from 1993-1996(?), where he dealt primarily with the disposal of nuclear waste and nuclear material in the post-Cold War era.

interest in regulatory reform and risk analysis become an important – promoting the role of risk analysis and regulatory reform -- became a big part of the agenda.

**Balleisen:** You think that was more of the case in the '90 than in '80s?

**Graham:** Yes, because what happened in the '90s was that...I'm trying to remember how the politics of this worked. Even before the Gingrich revolution...when did they come in, '95, there were a bunch of Democrats in Congress who were working on risk such as Daniel Patrick Moynihan of New York and Bennett Johnston from Louisiana. We were working with Democrats on regulatory reform issues in the early '90s.

I was testifying in the House and Senate regularly through the the '90s and gaining a lot of visibility on those issues. I forgot one other little tidbit, ... way back in '92. You've got Herbert Walker Bush running for reelection. Bush starts talking about writing an executive order on risk assessment. We were in conversations with them. I don't remember the details of this...I vaguely remember they were thinking about actually hiring me to come for a period of time as a part of the administration to work on implementing an executive order they hadn't issued.

Ross Perot was a candidate at the time..., and they felt vulnerable around business issues, since those kinds of issues drove Ross Perot as a candidate. When Perot dropped out, their interest in the risk assessment issue dropped, and they never actually issued the draft executive order. We had started by working with some of the Republicans on risk assessment under Herbert Walker Bush, and then we were working with these Democrats who were important in Congress at the time.

**Balleisen:** Predominantly on the Senate side.

**Graham:** The House side – I think there were House people, too, but I don't remember them as well. I remember Moynihan and Bennett Johnston particularly. Do you remember more about this?

**Wiener:** To add to that, the EPA had issued major reports on risk and priority setting...

**Graham:** Comparing risks and ranking risks.

**Wiener:** Ranking risks in 1987 and 1990. I don't know if you were involved in those.

**Graham:** Not directly.

**Wiener:** Then in the 1990 report was led or commissioned by EPA administrator Bill Reilly,<sup>37</sup> and then as you mentioned Senator Moynihan had been eager to have risk guidance or language. I think you worked with him on a bill, standalone risk bill, and then that may not have gotten enacted. But then there was some language in the Clean Air Act amendments of 1990 that related

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<sup>37</sup> William K. Reilly (b.1940), was the Administrator of the EPA under President George H.W. Bush. He was a senior staff member in the President's Council on Environmental Quality (CEQ) during the Nixon administration under Russell Train. In 2010, Reilly was appointed by President Barack Obama as co-chair of the national commission to investigate the BP Deepwater Horizon oil spill.

to risk and also the cost-benefit analysis about the whole Clear Air Act, as put in the...I think that may have been related to Senator Moynihan as well. Then as you mentioned there was this draft. There was already an executive order on cost benefit analysis of regulation, but the new idea...

**Graham:** The new thing was risk assessment.

**Wiener:** ...was an executive order on risk assessment and when I was working as the President's science advisor in the Office of Science Technology Policy in 1992 working with the White House counsel's office and the council of economic advisors...

**Wiener:** There was an effort to draft this risk assessment executive order, and I think I...

**Graham:** You reached out to me, right.

**Wiener:** I had not only worked for you as a college debater but also in 1987, '88 you and Paul Portney<sup>38</sup> asked me to be your research assistant junior staffer on this project on hazardous air pollution rethinking the same issue section 112 Hazardous Air Pollution Strategy.

Then when you started the Harvard Center for Risk Analysis... 1990? You had that...the advisory board that you were just describing with all these different players on it, and I was working in the government and you invited me to be on that advisory board. That was a fascinating experience for me, too, to see all these different people from different walks of life and different sources of expertise talking about these issues.

Then they invited you to come in 1992 to advise this group working on the executive order. You're right that it was never issued, but I think I would be interested in your thoughts on how those ideas returned later.

This maybe gets to later in your chronology. You later issued a draft bulletin on risk assessment and in-between, OSTP, Office of Science and Technology Policy, and CEA issued guidance on best practices. There were the ideas...

**Graham:** The Clinton administration was also pushing. There was a good bit of bipartisan activity around this agenda. The agenda was very frightening to environmentalists and to labor union people, but nonetheless it still had a substantial segment of Democrats who were supporting it. It became more polarized later, and it became harder and harder to get Democrats to get interested in these issues but, at the time, there were a lot of Democrats who were in the lead on these issues.

**Balleisen:** There was a growing tempo of air travel – or maybe train travel – down to Washington to testify before Congress.

**Graham:** Absolutely. And meeting with various groups, Congressional staff, industry people, people in government who are working on these issues...it was cooking.

**Balleisen:** What about your interaction with agencies?

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<sup>38</sup> Paul R. Portney is known for his work at Resources for the Future from 1972 well into the mid-2000s (?). He was elected President of the organization in 1995.

**Graham:** There were a lot of conferences that were going on during this period about risk, and the agency people would come to the conferences. I'd have a lot of interaction with people from EPA, FDA, from OSHA, NHTSA. I always had a strong relationship with the people from NHTSA.

In fact, it will come later, but I was actually hoping that if I would be able to serve in the government, I would be able to serve as the regulator of automobiles for their safety. I was hoping to be the NHTSA administrator....I had much more mixed relationships with the EPA people because we were criticizing a lot of the way they were doing risk assessment and everything.

**Balleisen:** Could you talk about that a bit, one or two contexts in which you found EPA policy problematic?

**Graham:** They were arguing that ... as the exposure levels go down, that there's always some incremental risk. Can they get more precise? They were saying, "Since we don't know what the risk is at very low exposures, because we only study the animals in the experiment at very high doses, we have to make some assumption about what the risk is at the lower doses. Since we're a public health agency, or an environment protection agency, we're going to make a worst case assumption to make sure we protect people."

**Balleisen:** So a linear relationship?

**Merck:** Or there's a threshold.

**Graham:** Right, and since even if there is a threshold, we don't actually know where the threshold is, and the threshold might be very low, very close to zero. We are going to assume that there isn't any threshold. Then it's a linear relationship, and that we are going to make this same kind of assumption on all chemicals regardless of what the biological mechanisms are that are causing the laboratory animals to get tumors, and regardless of what the shape of the dose-response curve is within the range of observation on the animal experiment.

**Merck:** Pathway doesn't really matter--

**Graham:** Pardon?

**Merck:** So pathway of exposure doesn't really matter, then.

**Graham:** Right, and if it is dermal contact versus ingestion versus inhalation you should sort of use all the same model. We were arguing, and this rose from the initial work with the mapping project, we were arguing that, instead, what they should do is, they should do the risk assessment in several different ways, and then convey how much scientific opinion there was in support of the different ones. They didn't want to get into that complexity.

They wanted a standard approach that they could use. Then the lawyers in the agencies liked that better because they can then portray that as a standard operating procedure, and then they could defend that. A lot of public conferences were criticizing the way the government was doing these risk assessments.

**Balleisen:** The research costs would've been higher to do ...the way you are describing?

**Graham:** Absolutely. The way we thought about that is, we thought that the decisions that were being made on the basis of a risk assessment had huge stakes. Billions of dollars of industrial control costs, thousands of lives of people at stake. ... Even though the research cost for the government would be higher, that's a small price relative to the overall stakes of the decisions. Nonetheless, there was a lot of tension, but it was intellectual tension, it was not like, personal tension....

Meanwhile, we were publishing a bunch of papers demonstrating our type of approach and our doctoral students were publishing these, showing how you go about selecting experts, how you go about judging whether one expert is more informed than another expert? We had these procedures where you would test experts on how well they were able to convey how much they did not know, as well as know about various subjects. We didn't want highly overconfident experts. We also didn't want experts who would basically saying, "I don't know anything," when in fact, they actually knew things, but they were more humble in the way they talked about their science. They didn't want to overstate what they knew, so we worked on these problems of how you get scientists to convey what they know in a measured way.

**Wiener:** I remember one of the first meetings of the Advisory Committee of the Harvard Center for Risk Analysis. This might have been in 1990 or '91 at the Harvard Club in Boston. It is a big room and a lot of people assembled. You and John Evans gave a presentation on exactly these approaches. Also, at that meeting, you asked the advisory committee for its advice on which projects the Harvard Center for Risk Analysis should pursue. You did an expert elicitation of the members...

**Graham:** Of the members of the committee.

**Wiener:** ...advisory committee about that, and you had us put little red spot stickers on different project.

**Graham:** Green stickers were good ones, and red stickers were bad. We gave everybody a certain number of stickers.

**Wiener:** Especially, if we can vote our intensity of...

**Graham:** You could put all your stickers are one project, or run them around.

**Wiener:** Did that kind of input from the advisory committee, do you think that actually influenced your choice of which projects then to pursue?

**Graham:** I think so. I remember we had doctoral students and faculty members who had their own interests. They would want to make sure that theirs ... got a fair hearing and were part of the portfolio and that sort of thing. In some cases, we would go forward and do projects even if there wasn't anybody in the advisory committee supporting it, if the student was really interested in it....

But that advisory committee operation was much more closely involved in the development of priorities than would be typical of a lot of university-based operations, where the professors and the students just go out and decide what they're going to do and then they go do something.

**Balleisen:** The advisory committee framework that we've just been discussing was about setting the research agenda, which was a crucial element of the Center's work. But then there was also this emerging strategy of dissemination and influence. We've talked about a number of elements of that.

One being traditional academic publishing, but the second being informal engagement with policy makers at conferences, a third being congressional testimony. Were you pulled in any more formal way into the decision making process of agencies in the '90s, either in respect to specific issues or their internal processes for risk assessment?

**Graham:** I served on a couple advisory committees to EPA, and to the National Academy of Science Committees. So I was advising the government on these various issues. One other thing I wanted to mention, we had this little, it's almost like a newsletter publication, called "Risk in Perspective." What we would do is we would take an issue like benzene or airbags or something then we would frame what insights risk analysis could provide on that kind of a problem for a broad audience, not academics.

We had in our mind that the audience would be clerks working for judges or congressional staff on the Hill or policy analysts in the middle level of the agencies and this sort of thing. This newsletter got massive distribution, and it was not just in the US. It was distributed very quickly and we developed mailing lists of key people all around the world.

This is before the electronic world, so we were hard copy mailing all this stuff. In any event, I think that that proved to be a really important vehicle, and then these newsletter issues got passed around to a lot of people. Occasionally, we would make mistakes on one of those things. We had an elaborate peer review process on these, so we had named peer reviewers on the documents, not only authors, but then there were people responsible for peer reviewing it.

But occasionally, we would make mistakes, and then people would complain. They would write in, work on these issues and so forth. But it was apparent that the newsletters were being read, and they were influencing people's thinking, because they were definitely talked about a lot. This is not the journal publications. These were the communication materials of the Harvard Center for Risk Analysis.

**Balleisen:** One other piece of outward facing element of this center and your work there were public comments on rule making process. How important was that to the center and how did you organize those?

**Graham:** I don't think it was that— We did do it on several rulemakings, but I don't think that was a very important part of that because we didn't do that much of it. By the time the agencies got to the point where they were putting things out for comment, they usually had a pretty good sense of where they wanted to go. It was hard to move them.

**Balleisen:** So, in fact, earlier was more important?

**Graham:** Right....

We were trying to influence the development of the actual guidelines that define how the agencies do this work. We felt that was a more effective strategy than to try, one by one, on each issue, genetically modified foods, or benzene, or whatever it is, try to go into the public comment process and do that. We didn't have the resources or the scale of staffing to be engaging at that level.

**Balleisen:** What were the tactics that you used to try and engage earlier, and did you feel like those were effective or not?

**Graham:** We always felt that we weren't very effective. I think that our aspirations were unrealistic because we did not understand governmental processes very well. Remember, we're not the Kennedy School, we're over in the School of Public Health. We're a bunch of nerdy science oriented people.

I was among them, more governmentally and politically sophisticated than the whole group of them. But I think I was unrealistic. We ultimately came to the conclusion that we couldn't just accomplish our agenda by trying to persuade the agencies to do things. We felt we had to legislate, so we spent a lot of time trying to educate legislators and their staffs about why these issues -- they are very technical, they are kind of arcane, risk assessment, all the stuff like that -- these people, legislators, everybody, but we felt that we had to explain to them why it is the way things were being done. It was resulting in the government's spending enormous amounts of resources on tiny risks and ignoring huge risks. That was the basic theme. If we can get the government to re-order its priorities, that we could save a lot more lives, and save money, all at the same time.

**Balleisen:** Did that mean a strategy of focusing particularly on committee chairs and ranking members or ... and their staffs, or...?

**Graham:** To some extent, but we were looking for champions who would work with us, and then would introduce legislation, and work on these issues.... And the champions may or may not end up to be better if they were committee chair, but it wasn't always that orderly. We had certain people who had interest in these areas, like Johnston and the two that I'm remembering vividly. There was a third...

**Wiener:** Moynihan.

**Graham:** Moynihan, right. I'm trying to remember on the Republican side who we worked with. There was a guy named William V. Roth from Delaware that Paul Noe was working for at the time. Robert Dole of Kansas got interested very late, and we were worried that the way he got interested was going to make it harder for us. Because Dole was being very legalistic about it, and setting up all kinds of different ways for people to sue agencies and those kinds of stuff.

But in any event, we definitely were working both sides of the aisle....

**Wiener:** Roth you mentioned from Delaware, he was chair of the Government--?

**Graham:** Government Affairs Committee, right?

**Wiener:** Government Affairs Committee.

**Graham:** We were thinking about government-wide legislation and how to get jurisdiction in the Government Affairs Committee. Carl Levin was on the Government Affairs Committee, and he was a very influential Democrat.

In hindsight, it was a little unusual for me as an academic, working on these issues with my doctoral students and everything, and at the same time, I was on the airplane, in these meetings with these staffers, hearing about all these different members and what their angles were, and so forth and so on. I don't remember anybody else in our group being that active on the political side. I was kind of the person who was really out there on those issues.

I think a bunch of the students and the faculty kind of liked that because they liked to hear what's going on, but they didn't want to *do* that, laughs, you know what I mean. It was a nice combination. A lot of the students and faculty were much more involved in the actual intellectual work, and getting it out, and getting it in the journals and so forth.

I would work with them on manuscripts, and make suggestions and everything. A lot of this work was team work, and everybody co-authored everything. It was a true 'center' in every sense of the word....

break

**Ashton Merck:** We're back with John Graham.

**Edward Balleisen:** John, I was wondering if you could maybe offer us a bit of a reflection on what you learned about the dynamics of regulatory politics and policy making through the '90s.

You noted that this was a moment when the notion of regulatory reform was bubbling up from a variety of different angles, politically. How did you experience that evolution?

**John Graham:** The regulatory reform movement had one wave around the late '70s and early '80s. The Reagan administration tried to do a lot of it and that led to the presidential executive order that created OIRA. Then it wound down, and then it started to pick up again in the '90s.

My recollection of it was that there had always been a group of economists interested in trying to get cost-benefit analysis more central into the agency deliberations. What we were concerned about at the Harvard Center for Risk Analysis was that, without good risk analysis, the cost-benefit analyses were going to be suspect.

The information for risk assessment came from a wide variety of disciplines. We talked about that previously, and not in economics. We were trying to make sure that the risk aspects of this, both in the legislation and in the guidelines of the agencies, were given serious consideration. We were nervous that the economists in their brashness and brilliance were running into these other areas without adequate background and they were oversimplifying a lot of issues. Our center was well positioned because of its multi-disciplinary character to contribute to those debates.

We felt that the contribution we were trying to make was to broaden the discussion beyond cost-benefit analysis into comprehensive risk assessment and risk management processes. I think that there was a lot of receptivity to that, but the congressional politics or regulatory politics, for me, the key points in it were, one, the ability to get the Democrats interested in it in the Senate in the pre-Gingrich period.

Then after the Gingrich period, it got really adversarial. I vividly remember that Senator Dole actually ended up being the senator who picked up the big regulatory reform package in the Senate in July 1995, which was terrible for us because he was a presidential candidate. Our ability to try to get Democrats interested in that package was really harmed by that, because Democrats and their allies didn't want this big legislative victory to occur for the Republican presidential candidate. So the Democratic interest really diminished.

At the same time, the problem was that the Republicans came in, and they started slashing the budgets of all of these agencies. We didn't think that was a very good idea, because agencies need to have resources to do the kinds of analyses that we're talking about. You can't plausibly do that at the same time Congress is cutting all of these agency budgets. Things got very adversarial. It reached a pinnacle in July of '95 when the regulatory reform bill that we had been working on, one led by Dole, went to the Senate floor, and it was filibustered. I think the bill ended up being two votes short of cloture in July of 1995. This was a major setback, since the House had already passed a bill.

**Balleisen:** The provisions in that package?

**Graham:** It was a big, complicated bill. It had cost-benefit analysis, risk assessment, risk trade-off analysis. It had various judicial review provisions. A big, complicated piece of legislation, overly complicated, as Paul Noe would tell me... It had the unfunded mandate protections in it that were designed to protect states and localities from excessive federal regulation.

... When that defeat occurred, then the question was, "How do you pick up the pieces?" I began working with Carl Levin and Fred Thompson. Fred Thompson was the chairman of the Senate Committee on Oversight and Investigations, kind of Governmental Affairs, which had jurisdiction over any cross-cutting government initiative. Whereas, if it was just on the environment, it would go to the Environment Committee, if it was just on consumer protection, it would go to a different place.

We were working on a cross-cutting bill. The chair was Thompson, and the senior Democrat on the committee was Levin. Levin was from Michigan, which is an interesting state in this regard, because the auto industry and the chemical industry both had substantial interests. Organized labor, though they were worried about regulatory reform as it related to OSHA issues, they were sympathetic with industry about these issues as they related to the environment, because they were afraid that if you didn't analyze these issues carefully from a cost-benefit perspective, the plants could be shut down. They would lose their jobs, and so forth.

Michigan certainly has a significant environmental movement, but it's not like California or Massachusetts in the strength of the environmental movement. The organized interests who were most hostile to our agenda were the organized environmental advocacy groups. Levin emerges

as a pivotable person because he's now cosponsoring a more modest version of what was in the Dole bill, and Levin had voted against the Dole package. Levin told industry he wanted a more moderate bill.

Levin worked with Fred Thompson, and in that collaboration it was not an equal collaboration. Thompson you may know of him as a former actor, and he's a very smart guy and everything. But he wasn't that interested in legislative details. Levin, he had a razor mind. He was very interested in all the specifics of the issues and his staff was very good. We worked with him and his staff people intensively.

Remember, this is during the Clinton administration. We have to figure out a way to get this bill through the Clinton administration, and they're very sensitive to the environmental advocacy groups. We ended up working on this bill in hearings for two or three years and everything. Then Trent Lott was the majority leader in the Senate.

We spent all this time trying with Levin to get the administration to say that they wouldn't oppose this bill and Levin accomplished that. Whatever persuasive mechanisms he had, he persuaded them that they did not want to oppose this bill. Then they were ready to take this bill to the floor, and, we were so naïve at the time, we had no House strategy at this point.

Much to our dismay, Lott refused to bring it to the floor. He couldn't give Carl Levin a victory like that, it didn't make sense at all from a partisan perspective. Oh my God, so we talked to some of our industry collaborators etc. but the bill died, because we were unable to get it to the floor for consideration. During this period, I got to know Paul Noe, who was Thompson's staffer, who later emerges as the person responsible for getting my Senate confirmation done at OIRA.

In 2001 Levin was the senior Democrat on the committee that was overseeing my confirmation. The other senior Democrat was Joe Lieberman. Lieberman was chair, but Levin was always insistent that he was more senior than Lieberman.<sup>39</sup> Lieberman always kept his distance from regulatory reform because he was much more aligned with the concerns of the environmental advocacy groups, and they feared that reform would mean less regulation.

This 1997-1999 work on regulatory reform legislation was an important period for me because, I began to learn about the texture of this Senate committee, who its members were, where the power centers were and how the Committee worked. I also remember that Susan Collins from Maine had worked with us in 1997 on the legislation with Levin and with Thompson. Then she was attacked by some environmental groups in Maine for supporting this legislation, and I volunteered to write an op-ed piece defending her. It was published in a Maine newspaper.<sup>40</sup>

I wrote this op-ed piece saying that what she did was a good thing for public health and for environmental protection because we could save more lives with less resources. She was really

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<sup>39</sup> Graham notes that Lieberman became chair because Levin had taken over the chairmanship of the Armed Services Committee.

<sup>40</sup> Graham may be referring to a piece published in the Portland Press Herald: "Sen. Collins Right on Need to Reform Federal Regulations; Public Health Rules Should Reflect The Best Science Available." *Portland Press Herald (Maine)*. Date Accessed: 2016/10/07.

very grateful about that because these issues, when you're a senator and you are in a state like that, it's a "can go either way" kind of state. She doesn't like to get criticized on those kinds of issues so she was very pleased about that.

It was for me a good... experience. In hindsight, I ... I was thinking that if I were to be in the administration -- at the time it wasn't clear whether I was going to be a Democrat or Republican administration; I definitely was Republican in terms of my own politics and my own background, so it would have to be Republican -- I was thinking I'd be like a regulator, I'd be in NHTSA or something like that.

**Balleisen:** To what extent did you engage with the OIRA during the '90s? Did you have much of a relationship with Sally Katzen?

**Graham:** No, I did not know much about Sally or OIRA, and for a fascinating reason. The woman who covered both Sally and I for the "Washington Post" was a woman named Cindy Skrzycki. Cindy explained to me, after my service at OIRA, that it was a very different experience she had covering me versus Sally. Sally was much more politically connected inside the White House than I was. She was much more of an internal person, who worked the White House and the agencies, whereas, in the Bush Administration, ... I was a lot more open and transparent and accessible to reporters than Sally was. Cindy used to explain to me all the time how difficult it was for her to even talk to Sally Katzen. And, as a consequence, in the 1990s I did not realize how important a person Sally Katzen was on the issue of regulatory reform.

In addition, I did not know the OMB staff because they were not out there running to the conferences. It is a very small staff, and they work extremely hard and don't have time to be going out to academic meetings.

As a result, I didn't really know the OMB people very well. They knew about me, because I was visible, and I was doing testimony, and they would read that sort of thing. But I wasn't thinking that I was going to be going to be in OMB. I didn't know that much about OIRA.

**Balleisen:** You didn't focus on communications with people in OIRA in the '90s. It was much more ... the agencies and Congress.

**Graham:** Right, and remember, OMB at the time was part of the White House, which was President Clinton. President Clinton's position on the issues that we were working on was very elusive. These people, you're talking about at OMB are all -- except for Sally -- career civil servants. The people I knew at OMB and the agencies were career level people, and they are not going to speak on these matters, because they were legislative issues, and had become the political issues.

No, I didn't know many OMB people. I knew one, an economist named John Morrall,<sup>41</sup> I think a little bit, who was one of the career people there, but I didn't really know the OMB people very well. I certainly wasn't thinking of myself as going into the direction of OMB.

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<sup>41</sup> John Morrall is an economist, and scholar at the Mercatus Center since 2009. Morrall served as the Deputy Administrator of OIRA (the highest career level position) from 1989-2008.

**Balleisen:** You're imagining yourself as possibly a regulator of something like the National Highway Transportation Safety Administration, and then what happens next?

**Balleisen:** This is maybe the most contentious presidential election campaign...of the 20th century.

**Graham:** If any of five things had happened differently, I never would have been in the administration. Pure luck.

The first thing that I remember happening was, after the Florida recount, I was having reaching out, in some way I don't know how exactly, to people who I thought might be influential in the George W. Bush transportation transition team.

The way the setup is, the incoming administration sets up transition teams. People from the campaign or people they respect, who were going to help vet and nominate names to take various positions in the administration. I was doing that work. I had no idea whether it was having any impact or not. This is all kind of hush, hush.

Then I got a call, I think it was on December 30th, after the Florida recount, from the transition team. They wanted me to interview for a position in the administration. I can't remember whether they said specifically at the time ... no, I think they said explicitly. I was shocked, because they mentioned that this is the OIRA administrator. All along I've been thinking about something that would be a regulator.

Then they said that they wanted me to interview -- this is December 30th -- on New Year's Day with the director designate, Mitch Daniels,<sup>42</sup> who I had never heard of, then the day after that, with the campaign staff vetting the possible nominees, these are the political people -- they would help judge ... whether you're acceptable or not.

Literally, they wanted me to shove aside all my plans for New Year's Day and New Year's Eve, and run down to DC and do these two interviews. I did, I went down and I had a 12-minute interview with Mitch Daniels, and you have to know Mitch Daniels to appreciate this, because he's a very concise person. He asked a couple of questions and sort of took my temperature and then made no indications as to whether or how serious he was or anything. I had no idea what happened. Most job interviews that end after 12 minutes, you don't think you had a very good interview. I had that interview and I didn't hear anything until the end of January.

There was something odd that happened in the interim there, which was there was a guy at National Association of Manufacturers. He was upset that Christie Todd Whitman<sup>43</sup> was going to be nominated to be EPA administrator. Much to my dismay, because this was not what I would have wanted, but the manufacturer people were advocating that I should be the EPA administrator. They should get rid of Christie Todd Whitman and put me in there. These people

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<sup>42</sup> Mitch Daniels (b. 1949), currently the President of Purdue University and former Governor of Indiana, served as director of George W. Bush's Office of Management and Budget from 2001-2003.

<sup>43</sup> Christie Todd Whitman (b. 1946), first female governor of New Jersey and George W. Bush's EPA Administrator from 2001 to 2003.

had no idea, and I didn't really know where the OMB thing was at the time. I never had any confidence that these people were really that influential or important anyway. Remember, I had no connection to the Bush campaign.

I had actually written a check for Elizabeth Dole earlier in the 2000 GOP presidential race when she was a candidate. ... I liked her a lot. I thought it was important for the Republican Party to get a female candidate. I think she was a very impressive woman. She had worked the airbag issue when she was Secretary of Transportation. I had watched that very closely.

After I had interviewed with Mitch, I went to an interview with the political people.. They explained to me that this contribution to Dole, not to Mr. Bush, would not be an issue but if it had been to John McCain<sup>44</sup> it probably would have been a killer, I don't know. But they didn't mind.

Another thing to remember, which was interesting, is that Daniels had thought I was a Harvard-like Democrat, or he thought I might be a Democrat, which he kind of liked for this nomination. Then he found out I was a Republican, he said, "Well OK, let's go with that." So that was kind of amusing.

The one thing he did ask, which was very perceptive, is he said, "Now, do you know anybody that you think might try to see to it that you would not be confirmed?" When I had been at Harvard Center for Risk Analysis both Ralph Nader and Joan Claybrook<sup>45</sup> had written letters to the president of Harvard University protesting the work of the Harvard Center for Risk Analysis.

I also had been on national television on John Stossel's program.<sup>46</sup> He had a prime-time program on ABC. I had been on that. He had positioned me as saying that you have a bunch of these consumer advocacy groups who were spending all their time working on these speculative or tiny risks, and then these other risks that are much more important, which was our theme.

He really did a nice job of framing that theme. Then, he put the mike to Ralph Nader, and said, "No, what did he say about this?" This made Ralph Nader very uncomfortable. Claybrook was his disciple. She had served in the Clinton administration as administrator of NHTSA. I had followed her career quite closely.

I had written a book which characterized the evolution of policy toward airbags through several administrations.... She really did not like the way that I had characterized how she had handled the airbag issue when she was in the government. So I said to him, "Joan Claybrook would be an example of such a person." I remember him reflecting for a moment, and then saying, "I don't think she's got that kind of stroke," or something like that. He made some kind of comment like that. He was just assessing how much damage she could do....

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<sup>44</sup> John McCain (b. 1936), Senator from Arizona and George W. Bush's principal challenger in the 1999 primaries; McCain was the Republican presidential nominee in 2008.

<sup>45</sup> Ralph Nader founded Public Citizen in 1971. Joan Claybrook served as President of Public Citizen from 1982-2008.

<sup>46</sup> John Stossel, "[Are We Scaring Ourselves to Death?](#)" Graham appears around 23:00.

But the long delay proved to be an FBI check and Mitch did offer me the post and my nomination went to the Senate in March of 2001.

**Merck:** You were right in that assessment about Joan Claybrook, as we discover in the nomination process.

**Graham:** I think I said Nader and Claybrook. Really, it was Claybrook who really did it. I don't remember Nader being very much involved.

**Merck:** ... You went through this nomination process, and there was some degree of political controversy around not just you as in this position, but also just the role of regulation and regulatory issues, more generally....

**Graham:** Well, I'm trying to remember ... I don't know whether if the Public Citizen had a leak that I was going to be the nominee, or whether they thought ... They were able to launch a big attack piece on me that came out days after I was nominated.

The White House responded by putting together, or encouraging me to put together, a group of people to work on my confirmation. There was a DC firm, the same firm that had worked on Mitch Daniels' confirmation. I forget the name of the firm. As I would learn as we got into this, they were not very helpful because they were all connected to the Republicans. So I ended up having more connections to Democrats than my own little advisory team had, because of the work I had done previously.

Early on, I went and had courtesy interviews with a couple of the key senators. One of them was Carl Levin. Levin was, in the first conversation with him...I had worked with his staff a lot, but I had not worked directly a lot with Carl Levin himself. He said to me, he said, "well, John," he says, "Get your shoulder pads and your jock strap on, because that's where we're headed, here." He was sort of trying to signal to me, "This ... is going to be a little bit of a lift here."

Anyway, there was that Levin conversation. I also met with Ted Kennedy and John Kerry's staff. Kerry wouldn't meet with me, personally, but his staff people met with me, which was unusual. Most of the other senators, I was meeting with the senators themselves. Kerry's staff basically said, "Is there anything that we can do to help you, you know, with Senator Lieberman," who's the chair of the committee and this sort of thing. They were being very nice.

Kennedy didn't meet with me until late. I remember, vividly, that conversation, which was basically to the effect of, he said, "When you are confirmed, I will look forward to working with you." I didn't understand when he said this what it meant. The White House legislative affairs staff immediately picked up on it. To them, he was signaling that, number one, they felt that if he wanted to he could block this confirmation, Kennedy himself. He was signaling that he was not going to do so. Second of all, he signaled that I was going to be confirmed. They walked out of this Kennedy meeting really happy. I missed the whole point of the conversation. I didn't get it.

**Graham:** Because he didn't say, "I was going to vote for you," or, "I will support you," and ultimately he called Sally Katzen, as she later explained it to me, and he was not sure how he was going to vote ... and he ended up voting against me. He didn't put any energy into opposing me, either....

**Merck:** How the regulatory politics and concerns about the direction of OIRA and regulatory issues played into your confirmation hearing?...

**Graham:** We were trying in the confirmation process to reassure Democrats. In my little group that was working on this, we were trying to get as many Democrats as possible.... What really concerned them was the previous Republican administrations.

The OIRA had been used as a place where the administration, they get a regulatory proposal from one of these agencies that business groups don't like, they just sort of bury it within OIRA and it never comes out. They would just sit on it. There were rules that were there months and years that never came out. This was under Reagan and to a lesser extent under Herbert Walker Bush. The basic politics of the issue were that the environmental groups and to some extent the labor unions and the consumer groups, they didn't really believe in OIRA, even having the office. Because they didn't believe that the agency should have to be subjected to an OMB review for their rules.

They certainly didn't believe that OMB should be applying some kind of strict cost-benefit test. Again, they were really frightened about that. They viewed my confirmation, because I was aligned with all of these people trying to promote the role of cost benefit analysis and risk assessment, as being hostile to the health, safety, and environmental regulations that were their bread and butter.

That opposition was certainly not surprising, and indeed was expected. The labor union part of it was, I think, the more important part. We were able to splinter the labor unions. We had some industrial labor unions who were supporting us, and there were some labor unions who were opposing us. That was very reassuring for some of these Democrats.

The big challenge in the confirmation process ... is, you need to get enough Democrats to get you above the 60 vote threshold.<sup>47</sup> You're working one by one, and then what's fascinating to me was, I wanted to get 80 or 90 total votes out of 100. Once it was clear that we were beyond 60, though, most people didn't give a shit. I was the only one who cared at that point.

Then again, you're also afraid if you're at 60, whatever it is, maybe somebody will change their mind or something like that. You won't have a margin of safety. That was not the way those people thought. They had a lot of posts, a lot of people were being put up, and people's interest level just dissipates once they know it's going to happen.

**Balleisen:** What did you see as the most influential or persuasive arguments against your nomination?

**Graham:** ...They started by trying to make ethical issues that were related to my conduct at the Harvard Center for Risk Analysis, and my behavior as a professor and a director. ...At that point, Harvey Fineberg, my Dean of the Harvard School for Public Health had become the provost of Harvard University. He submitted a letter to the Senate which responded to a variety of these criticisms that went to the confirmation committee.

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<sup>47</sup> Graham notes: in this case, a simple majority vote is not enough because there can be a filibuster, and it takes 60 votes to overcome a filibuster threat.

.... What happened over time is that the opposition shifted from allegations of impropriety or unethical behavior to more philosophical and ideological issues around regulation. People are perfectly entitled to have those kinds of concerns, etc. That part was hardly surprising, that we got that kind of criticism.

You have to have a sense of perspective on this. The nominee for OIRA administrator under George Herbert Walker Bush never got a floor vote after a confirmation hearing. He never got a floor vote. He was a very eminent professor at Vanderbilt Law School. Jonathan might know him, James...Blumstein or Boonstein?

**Wiener:** Blumstein.

**Graham:** Blumstein, yeah.<sup>48</sup>

**Wiener:** B-L-U-M. I think it was around that time, also, that Congress added this Senate confirmation step for the OIRA...

**Graham:** Carl Levin was heavily involved in that. Carl Levin was very upset about the way Wendy Gramm,<sup>49</sup> the wife of Phil Gramm, the senator, who had been OIRA administrator under Reagan, had handled herself. He, and Lieberman, and others had insisted that the position be subject to Senate confirmation.

**Wiener:** Am I right in recalling that when you were confirmed, and at your swearing in, that Justice Breyer did your swearing in?

**Graham:** Yeah, he swore me in. I had met him when I was at Harvard, and he was a judge in Boston somewhere. He had written this book, *Breaking the Vicious Circle* and he came to the Harvard Center for Risk Analysis and spent a day with us. We provided him a whole bunch of materials for his book project.

**Wiener:** That's right. *Breaking the Vicious Circle* was 1993. He was a judge on the US Court of Appeals, the first circuit, in Boston from 1980, the end of 1980, until 1994, I think, would be his nomination to the Supreme Court.

He also had worked closely with Senator Ted Kennedy. In fact, he had been chief counselor of the Senate Judiciary Committee under Senator Ted Kennedy in 1979, '80, where they had done a lot of work on regulatory reform. He'd written an earlier book on regulatory reform, as well. I was curious whether your relationship with Justice Breyer had any relationship to your interview that you had just described with Senator Kennedy and the confirmation vote, there.

**Graham:** I don't know. I do know that, I think I had mentioned it, Sally Katzen told me later, that Kennedy had actually called her on my confirmation. She was supporting my confirmation.

**Balleisen:** In fact, several former OIRA administrators were.

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<sup>48</sup> James Blumstein joined the Vanderbilt law faculty in 1970, and is the director of Vanderbilt's Health Policy Center.

<sup>49</sup> Wendy Gramm (b. 1945), is an American economist affiliated with the Mercatus Center. She was the head of OIRA from 1985 to 1988.

**Graham:** Right, which I think, if I remember right, I think she was the only one who was a Democrat. No, I take it back. There was a second OIRA administrator under Clinton, after Sally . He supported me, as well. His name is slipping me right now.<sup>50</sup> That period of time after I was nominated, March until July of 2001. That was a brutal period because Mitch Daniels wouldn't let me work. He wouldn't let me do anything until I was actually confirmed.

He allowed me to go to meetings. There was a meeting every day at 8:15 a.m. where all the OMB senior staff got together with Mitch and they would go around the table and talk about what they were working on and, they would get to me and they would skip me, because I wasn't confirmed yet.

... I was traveling back and forth from DC to Boston. My younger daughter, Katie, was trying to decide whether she was going to stay in Boston for high school or whether she was going to move to Washington with us. She ultimately went to boarding school in Maryland..... There was all this uncertainty and everything. It was just awful....

**Balleisen:** Was there a sense in which cost-benefit analysis was on trial during your confirmation, do you think or not so much?

**Merck:** Maybe not just cost-benefit analysis, but expertise that is neither law nor natural science, that kind of expertise that you have?

**Graham:** ... I remember that in the committee hearing Senator Durbin, who was leading the opposition, I think he was trying to make a case that there was a corruption or connection of doing this type of analysis with the interest of the industry.

He wasn't just focused on the cost-benefit analysis. He was also focused on risk assessments. He used the example of dioxin and I'm trying to remember the other examples he used. That's the only part of the opposition I remember in the confirmation hearing. It actually ended up pretty well because we had Levin, who was already signaling where he was headed in the committee.

There was a senator from Delaware named...He's still actually a senator from there, his name is slipping me. He was kind of signaling that he had an open mind about the confirmation, which is – that's very bad news for the opposition.

**Wiener:** Was that Carper?

**Graham:** Yes....

In any event ... a lot of my team, ..., they were all of the view that the confirmation was going to happen, and it was only a matter of time. It could be a long time because they could sit on these things a long time.

The only way I ultimately got confirmed was Levin. Levin took a letter ... from Harvard Professor Cass Sunstein in favor of my confirmation and he went and talked to Senator Tom Daschle, who was the majority leader. He put this letter from Sunstein inside of his jacket pocket. He had told him that he really felt this fellow, this Harvard professor, had been

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<sup>50</sup> Graham is likely referring to John T. Spotila, who was OIRA Administrator from 1998-2000.

maltreated and that he deserved to have a floor debate and that, "I, Carl Levin, will stand on the Senate floor and I will advocate for him."

That caused Daschle to realize that he couldn't just let Durbin drive everything out inevitably, it was going to have to go to the floor. Right before July, I think it was the recess or whatever it is, they scheduled this debate.

**Balleisen:** Did you use that six-month period between when this first became a possibility in your mind, to when that confirmation vote actually happened, to think through a strategy or plans that you would have, or was it really focused on the tactics of navigating the confirmation process?

**Graham:** From January till March, ... I was under the FBI investigation part. March to July was the period that was frustrating for me. Actually, the part that was leading up to the committee hearing and everything, I was very busy getting prepared...My wife, Sue, was incredibly helpful in this. She pulled together everything I had ever written and put it in an organized hardcopy of, a set of folders and everything. All my tax returns – and in hindsight, my dean had advised me well on finances. I shall digress on an issue, as it was earlier, somewhere around 1996.

He said, "John, you have a significant amount of income from the speeches that you're doing outside of your Harvard work, and you might just consider not taking that money or giving it to the students or something because, given that you're running this center, there can be issues associated with people taking money from the outside." I took his advice and I actually continued to do the speeches and everything, but whenever I would get an honorarium, I would put it in an account at Harvard that was used for doctoral students. So my tax returns that they asked for – they covered the previous three years or four years – I had no outside income, which was, I think, almost exactly the opposite of what Joan Claybrook was expecting. She was expecting that I would have all this consulting income from industry of all this various sorts. So basically, I had my Harvard salary and that was it.

My wife was worried that they were going to go back ten years, because I have been taking a bunch of this money up until, I don't remember exactly whether it was '95 or '96 or something like that. The rules of the Senate, they have certain number of years that they ask for the tax returns, which ended up working in my favor.

Returning to the confirmation process, we were targeting the various Democratic senators, who's going to do what, who's going to work on what. I thought all that was fascinating. I really enjoyed working on trying to get your case to the people.

A lot of this is getting your colleagues in the professional community who are located in different states to weigh in and work this aggressively on the Democratic side. We also worked aggressively because we knew that Public Citizen was working on Susan Collins and Olympia Snowe of Maine....

That was the delay from the confirmation hearing, which, I think may have been May to July. That was the painful period when there was just, "When is this ever going to get done." I had stepped down. I was no longer teaching or anything. It was really a frustration.

**Wiener:** Having gone through that, if you had to do that again or if you were advising someone else that had to go through that again, do you think the nomination process and all these delays and frustrations you're describing is how discouraging is that for the people of high-quality, but we have to face it?

**Graham:** One of the things I fear is that some future Republican administration is going to try to make me an EPA administrator. I think that they have trouble finding people to do that job that they have confidence in.

I don't know whether I want to go through another one of those confirmation processes. I think it's possible that they could persuade me to work in the White House, work on some issues or something like that. It's just ... it's a pretty painful process, but on the other hand, I've been through it once before, you've taken your lumps and how much more could they yap about...I don't feel so badly about it that I think it's a mistake. I certainly would go through it again, no question. At the time it ... it didn't feel so good at the time. laughs

**Wiener:** John, thank you very much for this...

**Graham:** Thank you. You accomplished your goal! You got me confirmed. laughs

## Interview 2: April 21, 2016

**Ashton Merck:** This is an oral history interview of John D. Graham, Dean of the Indiana University School of Public and Environmental Affairs and former Administrator of Office of Information and Regulatory Affairs, OIRA. This interview will be conducted by Ashton Merck, a doctoral student in the History Department at Duke University.

**Edward Balleisen:** Edward Balleisen, a historian at Duke.

**Merck:** We are at the Kenan Institute for Ethics at Duke University on April 21, 2016.

The last time we spoke with Dr. Graham, we discussed his early life and career before entering government service as the Administrator of OIRA in 2001, up to and including the nomination and Senate confirmation process in July of that year.

In this interview we will discuss Graham's tenure as OIRA administrator, examining both the significant changes to OIRA's policies and practices, as well as the substance of several key regulations that were subjected to OIRA review during Graham's term in office.

We will conclude with a brief reflection on OIRA and regulatory review more generally. If time permits, we will also discuss Graham's transition from government service back into the academy as an administrator.

Generally speaking, what were your expectations going into the position of OIRA administrator - ... your post-confirmation expectations, once you knew you were going to be doing it?

**John Graham:** Right. I'll start by saying that I had no prior service in government, and I had only been in a university before my stint at OMB. My expectations were somewhat diffuse. I also had not served in the campaign for President Bush, unlike many of the people who I would then begin to work with. Many were connected one way or another to the campaign. I was in rapid learning mode without any political experience. In some ways I was expecting, based upon my confirmation process, that my service in OIRA would have the same character as my OIRA confirmation process had, which was a lot of partisan bickering and so forth and so on. I guess the single most significant thing I learned was that...I spent a lot of my time working to try to find consensus among conservative Republican colleagues of mine in the administration, rather than worrying about what Democrats thought about regulation.

**Balleisen:** It sounds like there was an initial period of engagement of getting to know people, building relationships. How would you characterize the balance between getting to figure out the landscape of the White House or OMB on the one hand, as opposed to the career civil servants in OIRA itself, as compared to reaching out to the agencies or Congress?

**Graham:** The process of getting to know the career civil servants within OIRA was for me in many ways the easiest and most satisfying. These were professionals who were graduates of programs like the one I had been a graduate of at Duke University where I got my MPA.

Also, they were similar to my graduate students at Harvard in the School of Public Health. Their training, their orientation, ... was pro-analysis, pro-good government in their orientation. Getting

to know the White House team, both the OMB team and of the White House team more generally, was much more complicated and difficult for me, because people came from such different professional subcultures.

On the one hand, there were a lot of lawyers who were in the administration, who approached these questions differently than I did. There were also some strictly political people who were there to make sure that the president remained as popular as possible, and could get reelected.

Then there were people who were experts on the Congress and representing the administration to the Congress, and they were very sensitive about individual members of Congress. This whole process for me was a big education.

**Merck:** .... How did you make the transition from your position at Harvard to administrator of OIRA? .... How did that play out?

**Graham:** Right. During my confirmation process, my boss, who is the administrator of OMB, Mitch Daniels, he instructed me that I was not allowed to participate in doing the work of OIRA during my confirmation process. This is not always the case. There are some situations where people actually end up doing the job until they get confirmed. But he did allow me to attend the 8:30 staff meeting that he held for the OMB principals each morning.

I would come and listen for – it was like four months. Day by day, what's going on all these issues and so forth and so on. Even though it was frustrating for me, because I wasn't allowed to do anything and participate in the conversation -- it was very helpful for me to understand the context of what was going on and who the players were, because different people at OMB would speak each morning. Daniels had this style where we would come in and there would not be an agenda for the meeting. He would just go around the table and each person would say a few things about what they're doing, what's hot in their area. Occasionally somebody would say, "Pass." They don't have anything that day, and other people would take up more time. You get a sense of what these issues were and who the players were. That was very helpful for me.

**Balleisen:** Did you speak with any former OIRA administrators...

**Graham:** I did.

**Balleisen:** -- in that interregnum?

**Graham:** Yes. I remember visiting with each of the previous OIRA administrators.

**Balleisen:** From both sides of the aisle?

**Graham:** From both sides of the aisle. At least that's my recollection of it, yes. I think I had those visits after my nomination was publicly announced, but before I was confirmed. .... I remember one of them was a federal judge. His name is slipping right now, but he had been a nominee to the United States Supreme Court.

**Balleisen:** Douglas Ginsburg,<sup>51</sup> perhaps?

**Graham:** Yes. He was a lot of fun to interact with. I had met Wendy Gramm before and enjoyed chatting with her. Sally Katzen, of course. I think that there was some interaction with Sally because the various OIRA administrators were coming together around a letter that was supporting my confirmation. She was pivotal in that, because she was one of only two, I think, Democratic administrators. She in fact...I had had some connection to her, then she got the other fellow on board. He was also a judge. His name is slipping me right now... But I did have some interactions with each of those OIRA administrators. But during that period I was also interacting with each of the members of my confirmation committee, and those were more prominent in my mind at the time than the meetings with the OIRA administrators.

**Balleisen:** Once you were confirmed and you could really roll up your sleeves and get to work, did you come in with any kind of priorities for an agenda, or was there a process by which you took time to survey the landscape and develop a strategic agenda for the first year or two?

**Graham:** I had a weekly one-on-one with Mr. Daniels, out of which our agenda evolved. I say that because different OIRA administrators, their political constituency within the White House varies. In some cases, an OIRA administrator will have somebody in the White House like the chief of staff or the domestic policy who's really their go-to person.

The OMB director is usually overwhelmed with the budgetary aspects of the job. There are a lot of OMB directors whose interest level in regulation is low. Mitch Daniels was not of that sort, so he was very interested. The two things that I remember him talking about early on we were working on was one, he wanted to position me and my office on transparency. That is, he had a very interesting view which played out very effectively.

His view was that OIRA had got in trouble in previous years, particularly in Republican administrations, because they had engaged in a very non-transparent way in a lot of their activities. Even the most basic things, like you're a reporter from the *Washington Post*, you want to talk to the OIRA administrator. In a lot of administrations they just shut that off. This person was this inside person who's doing these deals with these agencies but the reporters couldn't get a hold of and talk to the person. He completely inverted the thing... Cindy Skrzycki, ... the *Washington Post* reporter, who covered both Sally Katzen and me, ... marveled at how easy it was to get to me, and how difficult it was to get to Sally Katzen. Maybe that's because Sally Katzen was doing real work. Nonetheless, in a Republican administration where there's more suspicion around what OIRA is about, what it's doing, because of the idea that this is a place for pro-business deals of this sort of thing, Daniels' view was you become as open as possible.

If you become the source of information for reporters or people in Congress, rather than going to the public interest and environmental advocacy groups, then reporters can get their information from you, and it devalues these other stakeholders.

That to me was a real insight. I did not get that until he explained that to me. That was the first thing. There were a variety of ways we operationalized this transparency. It wasn't just

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<sup>51</sup> Douglas Ginsburg (b. 1946), was head of the Office of Information and Regulatory Affairs during the Reagan administration, from 1983-1986.

answering reporters' phone calls. ... We adopted this little procedure, where each day when we met with outside interest groups on regulations, we told them at the beginning of the meeting that within 48 hours we are going to put on the Internet their names and their organizations, and the topic of meeting. We weren't going to take minutes. We didn't do any tape recordings, because we wanted people to be able to be candid, free on their thoughts. It would be clear to everybody in the town who wanted to know who their OIRA administrator was meeting with. This was totally different than had ever been practiced before....

Daniels felt that he needed to insulate me in the office from criticism. Daniels was very sensitive about this, because he had served under President Reagan in the White House in the second term during, if you remember the period of the arms-for-hostages, Oliver North thing.<sup>52</sup> Daniels had the political role at the White House, which people associate now with Karl Rove in the George Bush administration. He was sort of the political advisor to Reagan, he was managing this arms-for-hostages thing. Then he later had a good friend who had worked for George Herbert Walker Bush, his name was Al Hubbard.

Because they could never get an OIRA administrator confirmed under Herbert Walker Bush, Bush 41 consolidated the power of OIRA in a separate office in the White House called the Council on Competitiveness. Al Hubbard ran this office. Al was a businessman from Indianapolis which is why Mitch Daniels knew him. He was a disciple of Dan Quayle, who was the Vice President of the United States. I remember, we may have discussed this previously, in my interview with Daniels before I was selected for the OIRA post, Mitch said, "What did you think of the Council on Competitiveness under Herbert Walker Bush?" I didn't know where that question was going, and I was kind of nervous, so I gave a "on the one hand, on the other hand" answer. And Mitch said, that's diplomatic, but it was a disaster, an unmitigated disaster. From the very beginning, the Council got all these accusations that it was being secret, that it was cutting pro-business deals, and all this bad press was heaped on the administration. Daniels was not going to let that happen to me under George W. Bush.

Then came an idea of a substantive annual report from OMB to the Congress. Now, by statute, we were required to have a report each year on our regulatory reform activities. These reports from OIRA were typically bureaucratic, apple pie, not the kind of reports that might say anything. Under my leadership, the reports began to have detailed substantive information. You can review them, they are on the Internet at the OMB website. They laid out what our agenda was going to be like for the next year, as well as what we had done in the previous year. We were telegraphing to everybody, "this is where we are going, no big surprise here." These are examples of this transparency agenda. It was not without its problems that created for us.

I remember, vividly, getting a call from the Vice President's general counsel. This is Mr. Cheney's general counsel. He called me over to his office, which was a couple of offices down in the Eisenhower building. Sat down. I had not worked with him on any other issues. We met at the White House mess.... He said, "Dr. Graham, you are creating a problem for the Vice President, and it's going to have to stop, OK? Because what you are doing is, you are putting all this information about who you are meeting with up on the White House website, and the vice president is trying to develop an energy policy for the country through his Energy Task Force,

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<sup>52</sup> Graham is referring to the Iran-Contra affair (~1985-1987).

and he's meeting with various outside groups. "The reporters are getting leaks of this and everything, and they are contrasting what you are doing with what the Vice President is doing, and so, it's embarrassing the Vice President. You should stop it. By the way, this compromises the flexibility of the White House to be thinking that they have to sort of put out their information on who they are meeting with. "The White House should be allowed to meet with people without having to put it on the Internet. This is not an appropriate practice. It weakens the Office of the President."

So I'm here, I'm a college professor. I have never been in politics, never been in the White House....

I walked back in Mitch Daniels' office, and I explained to him what the situation was. I vividly remember this, he listened all what I've described to you of this conversation. He said "Well." He said, "What you're doing is the best for our interests. You continue to do that, and force the Vice President to call me." Don't tell the lawyer that you are doing that, just continue to do it, ignore him, and make the Vice President call me." Sure enough, the call never happened.

**Balleisen:** So, that decision to develop annual reports that really had substance?

**Graham:** Yeah.

**Balleisen:** Once that decision had been taken, what would you say was the balance between input from the career staff about the issues they were seeing emerge from the agencies or ideas about how to reconfigure the basic process of regulatory review, ... and the conversations you were having with your boss, Mitch Daniels, and the attempt to execute a wider political and policy strategy representing the president?

**Graham:** Going back to your previous question because it circles to an answer to this one in part, the second priority that Mitch Daniels and I developed together, ... involved working to position me in a way that would strengthen me coming out of the confirmation process, which had been bruising.

So he said, "We're going to prompt some regulations." You have to understand who Mitch Daniels is. He's a conservative, almost libertarian, but seasoned pragmatic political person. His idea was that we would publicly take a couple pro-regulation initiatives, get a whole bunch of publicity for that. Then we would use that as cover for doing the basic bread and butter work of OIRA, which means making sure we get rid of all these unnecessary regulations or the less cost effective ones. For him it was part of a political strategy.

...I don't think he invented the word 'prompt letter,' I forget where it came from. But this led to several early actions in the administration where we publicly prompted agencies, Food Drug Administration on trans fats, OSHA on automatic defibrillators ... I forget all the examples we had. We rolled these out. Now these things got considerable attention, *Washington Post* and *Science* magazine and so forth and so on. They really pissed off the agencies. This is another illustration of Mitch Daniels at work. We talked about.... who do we consult with before we put these prompt letters out?

**Balleisen:** You might want to describe a prompt letter; that would be helpful.

**Graham:** Right. Typically, OIRA operates in a reaction mode. The agency proposes a regulation, OIRA evaluates it to determine whether it's reasonable or whether it needs to be revised. Then that typically leads to some negotiation with the agency. This occurs twice, once when a rule is proposed, and then once when it's proposed for final action.

This idea that OIRA would be suggesting regulations had never really been in any formal sense suggested. This is where the OMB career staff come in, because once Mr. Daniels opened this door, then I went to my career staff and I said, "What are some good examples of rules, things that we should be doing that we're just not getting our act together to do?" We would "prompt" the agencies to regulate.

The trans fats one was one of them, because the branch chief, John Morrall, who oversaw the Food and Drug Administration, knew that this labeling rule, which he thought was a very good rule based upon its cost-benefit analysis, had been languishing for years during the Clinton Administration. We had been slow in appointing or successfully confirming an administrator of the Food and Drug Administration, so two years into the administration we hadn't made any progress.

That's an example of one where we engaged in this activity. What's interesting about this is in theory all the president's people are supposed to be on the same team. Why would you publicly in a sense reprimand an agency for not doing a regulation and then issue a press release about it. This really pissed off the agencies.

Mitch's solution to this problem, insofar as it was a solution, was he had me go talk to whoever was the highest administration official in that agency, tell them what we were going to do, give them a draft of the prompt letter and say, "Would you like to edit it in any way?" so that it could be framed in a way that was as least embarrassing as possible.

But my message to them was that, "Mr. Daniels says, 'We're doing this.'" Then the question became, "Should we consult with anybody in the White House doing this?" Daniels just basically said, "No. They'll hate it beforehand, but when it goes out and the media stuff happens, they'll see that good media. They'll like it, and then we'll be fine. Just freeze them out." That was pretty ballsy. When we went out with the first several the game plan played exactly as Daniels predicted and the media just gobbled it up. You can read the stories if you want. They're all over the place.

But the ideas for those in some cases they came from the career staff, but in some cases we had...I don't remember how this happened. I think the way this happened is in our annual report we also put out a request for ideas for prompt letters. This may have been after the first set had gone out.

Then some liberal interest groups got a hold of this idea that they would come in and they would meet with me, which is exactly what Mr. Daniels wanted. What he didn't want was a pattern over several years of Dr. Graham's meeting with a bunch of business people about regulations. There were several of these groups who had opposed my confirmation. They had decided that they were not even going to deal with the office. They were just going to act like we didn't exist. I think they felt that that was probably to their advantage. But because this prompt letter thing started all of a sudden you have the Center for Science and the Public Interest and the Union of

Concerned Scientists and these groups were coming to meet with Dr. Graham. That's exactly what Mr. Daniels wanted. That worked very effectively for our advantage.

In some cases, they got something out of it, like the trans fat ones ... I remember how this worked now. My career civil servant, he said this FDA rule was a good idea, but I wasn't...I wanted to make really sure, if I was going to stick my foot into something I wanted to know what I was going to get my foot into. I reached out to this, what's it called, Center for Science and the Public Interest. I reached out to a Harvard professor colleague who is chair of the Department of Nutrition. Walt Willett was his name.<sup>53</sup> Then I reached out to the ILSI, International Life Sciences Institute, which was the food industry supported science organization that did research in this area. I had informal dialogues with each of these three around this issue. That increased my confidence level that while we weren't going to make everybody happy, that my career staff's advice was sound. This was one that had a strong case. The other group that I remember actually giving a hard time -- and they went to Daniels about it, they were mad -- were the bakers. I guess baking goods oftentimes they're using trans fats and they had to use a substitute or something like that.

In any event, that was a longwinded answer to your question, but it intersects with the priorities question because the priorities were transparency. Then you take pro-regulation action, you put the opponents off balance, then you circle back with the basic agenda, which is reduce the cost of regulation, etc. What's interesting about it was, we then went into a process where there were nominations for regulations to be reviewed and to be curbed in terms of their costs and everything. There were dozens of these across these different agencies. There were far fewer prompt letters.

What Daniels saw was the ability to use a couple prompts to create the ability to do dozens of reforms, and it also ... signaled after about a year or two the staying power that we had, that people were clear that this guy Graham and this operation, this is not going away. These people are here, they play ball, in a kind of political sense. These are things I could not have done by myself.

Now the other thing that was going on at the time is the House is majority Republican. The Senate was majority Republican, and then there was a senator from Vermont who shifted parties. I think his name is Jeffords.<sup>54</sup> It became a Democratic Senate. Now the committee that I'm reporting to in the Senate is chaired by a Democrat, not by a Republican, whereas the House is chaired by a Republican.

The reason I mention this is that in my first year I stumbled into this awful situation where there was a staff member working for my committee chair on the House so this is in theory my allied Republican committee chair. The staff member wants me to review a bunch of regulations that the chairman is allegedly concerned about.

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<sup>53</sup> Walter Willett is chair of the Department of Nutrition at the Harvard School of Public Health.

<sup>54</sup> Jim Jeffords (1934-2014), served as a Senator from Vermont from 1989 – 2007. He began his career as a Republican, but switched parties in 2001 to become an Independent who caucused with Democrats.

I said to the staffer: "Well, that's fine. Have the chairman send me a letter and a list of the regulations. You want me to look at it and then we'll do it." She says to me, "No, you do it. I'm telling you I want this done, you do it. I don't want to have to put anything in writing."

I forget the details of how this unfolded, but somehow the list that she was going to give me was a list that was also developed at the Chamber of Commerce in Washington D.C., and given to the committee. A *Washington Post* reporter gets information through the Chamber that this is what's happening. A *Washington Post* reporter writes this story about how there is this plot or this conspiracy to repeal these regulations that's not transparent, secret, all this kind of shit. This thing really annoyed the hell out of both me and Mr. Daniels. This is our own people. Then I get a letter from Lieberman.... He was the chair of my confirmation committee. Now's he the chair of my oversight committee.

**Balleisen:** This is Joseph Lieberman, Senator from Connecticut.

**Graham:** Right. He wants every one of my emails that I have done in the last...I don't know what it was, three months or six months, that's any way related to the regulations and this sort of thing. These kind of letters, you have to understand how harmful they are because we only have 50 staff members at OIRA.

Now some staff members of mine have to look through every one of my emails and identify the ones that meet certain key words, and then we're allowed to redact things that are not germane to what the question is. Of course I was doing way too much emailing at the time, which also irritated the hell out of our attorneys.

Then we had to send back this big thick packet to the Senate, and then they could have had a hearing, or they could have had an investigation, or whatever, and so forth and so on. What was fascinating about that process to me, going back to your question about the career staff, is they were so loyal. They just worked their ass off...on all these things that looked like they were total diversionary things. This is what the president wanted, this is what Mitch Daniels wanted, this is what John Graham wanted, and they were marching. It was just fascinating.

I saw in the other agencies, whether it be EPA or Labor or whatever it is, our people, the administration's people, were working at these agencies, they couldn't get their own troops to work for them. They would have all kinds of awful things be leaked. I never had any experience like that with my own staff. It fascinated me.

**Balleisen:** Do you have an explanation for that difference?

**Graham:** I'm not sure. I think the level of professionalization of OMB staff in general -- remember they're working in the executive office of the president, their sense of allegiance to the Administration, whoever it is; remember that the administrations come and go -- but my hypothesis, I can't prove it yet, you have to ask Sally Katzen or somebody else, but that they're this way with whoever their administrator is. It's a wonderful group of people. I don't know how to explain it exactly.

**Balleisen:** One of the early initiatives you undertook, as I understand it, was a ... change in the backgrounds that you were looking for as a part of the team at OIRA, in terms of their disciplinary training, and their base of knowledge and expertise. Would you talk about that...?

**Graham:** This one came from me, though Daniels loved it once it happened, he saw the value of it. OMB had a reputation – OIRA particularly – of being staffed by economists and financially-oriented people. Here we are, we're reviewing regulations on health and safety of workers, of food, environmental regulations, where there's a lot of public health science, environmental science behind these regulations. And at OIRA we didn't have the staffing that had expertise in those areas.

We did add some positions. I remember one in toxicology, one in epidemiology, one in engineering, and we strengthened the statistics group within OIRA. Some of the OIRA staff, they supported it, but some of the economists found it a little insulting. We did this on the grounds that this would both help the quality and substance of our reviews, which we think it did.

It also further undercut the story line of what the critics of the office have been trying to marshal for 20 years, which is that these are narrow-minded economic bean counters who don't care about lifesaving or the environment. Bringing those people in did change the culture of the place. You have 50 total staff, probably 30 or 25 of them are working on regulations. Then you have five of them now who have completely different backgrounds than people did previously....

**Balleisen:** Did that have an impact on the interactions with agencies where their expertise was also in these areas?

**Graham:** For the agencies it did have an impact, but it also was frightening to agencies because they felt this was a province that their folk could control. While they couldn't control, necessarily, cost-benefit questions that were in economics, that OMB would control, they started to fear they would lose control of these issues. In that sense it was threatening.

On the one hand, it was good for them in the sense they talked to people who spoke their language, they had their training, they understood their orientation, but it was going right at the heart of what they did.

**Balleisen:** So there could be a new critic.

**Graham:** Absolutely.

**Balleisen:** Did that require a strategy of communication or smoothing of ruffled feathers?

**Graham:** One of the things that we found was that, with science and engineering oriented people, we had to pick our initial battles pretty carefully. We didn't want to lose an early one on the grounds that we were totally off base on the science. I remember vividly working with my toxicologist, her name was Nancy Beck. She had come from EPA, actually. I hired her from EPA. She was really upset about how EPA was handling mercury and the way they were framing that science, the neurotoxicity of mercury.

I remember working with her on, well, you know, there were a lot of issues out there. "Mercury's sensitive, do we have to get into this one at the level you want to get into it?" She's got draft

documents from the EPA and FDA, and she's line-by-line editing these documents, so we had some interaction. I said to her, "Take three or four of the things that are most important and leave the other stuff alone, don't even do it. So it doesn't look like you completely rewritten their document.

"Also do more than, ... say, 'Here are the major concerns.' Put the burden back on them and see if they'll change some of it." This proved to be very wise because there ended up being a front page story in *The New York Times* based upon leaked drafts of what they sent us and how we edited it, about how OMB was rewriting the mercury rules of the United States.

It was interesting because then the whole staff were able to see, then they were aware of my interaction with her and the way we're trying to handle these issues. The reporter for *The New York Times* was a very good reporter, a fair reporter, but also insightful one. I'll never forget her name. It was Jennifer 8. Lee. Have you ever known somebody who has the number eight or any number as a middle initial?

**Graham:** ... It increased confidence that what we were doing, we were making careful choices, and then we were able to defend what we were doing, so that was a very good thing.....

**Merck:** We could keep talking about the relationship of this, the concern about mercury and how that relates to the CAMR and CAIR rules. Do you want to be more concrete about it, how you promulgated these two rules together, on purpose, because their cost-benefit analyses kind of interacted a little bit? Can you talk about that process and how that played out?...

**Graham:** I think I want to take it back, because before I was confirmed, there was a big dispute in the Bush Administration around the handling of carbon dioxide as a pollutant. It turns out, apparently there was a campaign pledge made by President Bush that he would support a 4P, four-pollutant control program in air pollution for power plants predominantly. Mercury, nitrogen dioxide, particulates, and carbon dioxide.

Within 8 or 10 weeks of the president being in office, the White House fired off a letter to the Congress saying that, "We're not going to regulate carbon dioxide as an air pollutant, period," which, to the environmental community, was seen to be an overt renege on a campaign pledge. It was tied to the president's refusal to seek Senate ratification of the Clinton-Gore Kyoto Protocol.

That was not a surprise. On national television in the presidential debates George W. Bush looked over at us and says that, "If I'm elected president we're not going to be doing Kyoto," so that part was not a surprise. The fact that he extended it to this other legislative program, that he wasn't going to regulate it, that created lots of waves mostly among the interest group crowd. I don't know how much of the public it did.

We have a four-pollutant, now it's a three pollutant program. Then we're having meetings on how we're going to handle the three. There's a pack of people at the White House who want to eliminate mercury from the program. Now they're trying to make it a two-pollutant program. In a lot of efforts that we worked on in that regard, we found that the control technologies that you use to control nitrogen dioxide and particulates, they also control mercury to a certain extent.

You get a substantial reduction in mercury in a sense for free, by buying the control technologies for the other two. My argument to that administration was it's stupid to just drop mercury. All the critics, they're going to say, "Look at these people. There they go again." We should just keep it in there. But we should frame it the way that we want to frame it, and control it the way we wanted to do it.

There were two kinds of mercury. Now you're pushing my memory on this. There was what's called elemental mercury and there's...

**Merck:** There's non-elemental mercury....

**Graham:** The control technologies were particularly effective against one kind of mercury. The other type was harder and more expensive to control.

**Merck:** And only one of the types affected pregnant women as I understand it.

**Graham:** Oh really? Well, you know a lot more than I do....

We designed a program to control mercury that used the same cap and trade mechanisms, where utilities had to meet a cap on their emissions. If they thought it was too expensive, then they could try to buy a permit from another facility. The idea was eventually that you would get the amount of control you wanted, the cap, but you got it in the least-cost way.

We had this big debate among the lawyers about whether or not we had the authority to do the cap and trade program. It was in a separate provision in the Clean Air Act, and you read that provision, a lot of people read it and said, "It doesn't look to me like you can do cap and trade on that." Whereas there appeared to be consensus based on what had been done earlier, that you could do this for the other two pollutants.

In the final analysis I was taking the position that we could lose in court, but let's at least try to get what we want. If we don't get what we want, they'll send it back to us, and then we'll rework it, fix it. In hindsight, one of the things I didn't realize was how weak our legal case was. I remember the court who wrote that opinion was basically accusing us of creating "fantasy land" legal rationales for why we could do this....

The other thing which was very frustrating to me about this was the cost benefit case was much better for control of the other two pollutants than mercury. I was aligned with EPA and the Council on Environmental Quality. We were trying to get 90 percent control on sulfur dioxide and lower percentage reductions on the other two. The communicators were arguing that it was too complicated to explain to people, that we should have exactly 70 percent control for all three pollutants. It's like equality, equal rights. 70 percent reduction in each pollutant is, it's easier to communicate and it's fair. It sounds more fair to do that than to do 90 on this one and 60 on that one. Believe it or not, that is the position that carried the day, without any cost-benefit support.

The reason it did was we weren't just developing this regulation. We were trying to propose legislation to Congress that would put this in statute. The legislative affairs people explained: "There's no way we can explain to them why one of them has to be 90 versus 70, there's no way they're going to understand this. If you were just talking about putting this into rulemaking that'd be different, but we have to take this to Congress."

The second argument, which I thought was a better argument, they said, "We can't put 90 percent up there, because if we put up 90 percent they might take it to 95. We have to start low and then we have to negotiate with them," so it was proposed at 70. The legislative program never went anywhere, never had any credibility, but the rulemaking did get through. Portions of it have now been reissued in the Obama Administration....

**Balleisen:** You alluded earlier to this balance between some "prompt" initiatives to establish the bona fides of the office as being an honest broker, and ... signals to agencies about the need to throttle back on the stringency of some regulations, or reconfigure regulations out of concern around cost. That process involved – at least in some contexts – a return letter as to the complement to the prompt letter. Could you talk about your use of that tool?

**Graham:** Right, and again, this is coming from Daniels as well in our early priority setting. He felt very strongly, and my career staff felt the same way -- I was getting this encouragement both from my boss and my career staff. They said, "We have got to, out of the box, within a month or two of your confirmation we've got to return a bunch of regulations and tell them these are unacceptable. You got to prove that you're a player."

Daniels said, "Go do it." Then the staff came forward with a whole bunch of them that they wanted to return. I don't remember exactly how many we did. Maybe a dozen or 15 within a relatively short period of time. Here is it again, this is this transparency thing.

We didn't just return a letter, return these rules. We wrote a letter, put it on the Internet and said, "This is why we're returning these rules." That was completely unprecedented, this idea you're going to put the reasons for it and embarrass the agencies with all their analytic problems with their regulations, and everything. Daniels loved that part.

The staff did it dutifully, but they knew. For them, because they have to deal with these same people in the agencies on issue after issue. This isn't necessarily making it easier for them. They would always look for other ways, "Let's persuade the agency to withdraw the rule." On a number of cases, the career staff came back and said, "We gave them a draft of the return letter," and they said, "Please don't send that. Let us withdraw it, be quiet about it."

When you withdraw you have to code that on the website. It goes up on the Internet that thing is withdrawn. That's nontransparent in the sense that, who's going to talk about what the reason for that is? We got to the point where – and I think this is particularly after Daniels left, he was there for two years, and then he left to go to Indiana to run for governor.

Then my new boss was Josh Bolten,<sup>55</sup> who had been the White House Chief of Staff. I say that because our return letters stopped after a period of time, in large measure quite frankly, because it was clear that what we were going to decide was going to stick, unless there were a way to elevate this to the White House somehow. Also Bolten, he did not have the interest in all this public stuff, with the return letters and the prompt letters.

I'm trying to think of how he would've characterized it. He thought it was not fair in a sense to the other players in the administration, that you should work out these problems and be low key.

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<sup>55</sup> Joshua Bolten (b. 1954), was Director of OMB from 2003-2006.

I think he felt, which I think was accurate, that once we established that we were strong and that we were a player we didn't need to do this anymore.

**Balleisen:** Then the informal interactions around a proposed rule would do the same trick.

**Graham:** Do the same trick, and therefore you don't have to embarrass your administration colleagues. You don't have to be in the newspaper all the time.

**Balleisen:** The point at which Daniels left and Bolten came in also roughly went along with the moment where you put forward Circular A-4.

**Graham:** 2003.

**Balleisen:** 2003. Could you describe what Circular A-4 was, what the rationale for it involved, how it came into being crucial structural element of OIRA's work with the agencies?

**Graham:** You have a basic setup by executive order that OMB and the agencies are going to interact on regulations, but the cost benefit analysis is an important part of the discussion between the agencies. Then the question becomes who gets to decide what a good cost-benefit analysis is?

**Balleisen:** This, of course, had been the crux of much of your research for well more than a decade.

**Graham:** This is what I had taught for 20 years. There was a previous document, I believe that the Clinton Administration had had it done, on guidelines for cost-benefit analysis, but it was very general. If you were a technical analyst it didn't go very far helping you actually do an analysis. It wasn't anywhere near like a guidebook or anything. We decided to take on the task of developing a Circular. You have to appreciate the bureaucracy a little bit here.

The term Circular sounds like a very bureaucratic term, but in that parlance of the federal government it's an important document. OMB's like this. They call things where the agencies know that they're important, but somebody on the outside is saying, "I'm not going to spend any time looking at circulars." OMB likes to be like that. They're trying to be below the radar. They're not trying to draw a lot of attention to what they're doing. I remember laughing when they told me that we were going to call this a circular. I said, "What's it called, a circular?"

We wrote this. One of the things that we did that was quite different... was that we actually had this document peer reviewed by a group of experts as well as do public comment on it. This is outside the personality of OMB. They don't behave this way. They don't ask the public to comment or have scientists review their work and all this kind of stuff. They ask the agencies to do that, of course. They have to have peer review on their work, but not OMB.

I think that was a healthy process in the sense that it got a lot of the people who were interested in regulatory reform in the academic world and the science world involved and interacting with OIRA in way that they had not previously.

...Maybe it wasn't wrapped up before Daniels left. I think it may have started before he left, but I don't remember exactly. We had another agenda at the same time on information quality, which

was a little broader than the circular. It had the potential to be a much more dramatic agenda item in terms of its long-term impact than the Circular, because the Circular was focused on cost-benefit analysis.

The Information Quality agenda was any form of information put out by a federal agency. It set some basic standards for the quality of that information that were scaled depending upon how important the issue was that they were using that information for. It had issues like, if it was a model that had to be replicable, data had to be transparent and publicly accessible.

These principles, while they seem like they're apple-pie and motherhood -- a lot of what goes on with the government, they don't necessarily meet these standards. We had a hard time getting the enforcement of that thing working in a way that was viable, but its aspiration has seeded a variety of efforts to do this in a more meaningful way.

**Balleisen:** Can you recall any aspects of either the Circular A-4 on cost-benefit analysis, the best practices there, or on this larger framework for the quality of information provision, where ... the public process improved the structure that ended up being this official framework.

**Graham:** Let's think about that for a minute. If you're talking about A-4 or information quality, I would actually have to go back and look at the public comments, because in both cases we made substantial revisions to our original proposal based upon peer review and public comments compared with what we put out finally.

In fact, a third initiative, which is of the same category, was a peer review bulletin we put out, which required that all significant agency information – scientific, technical information that's put out – be peer reviewed before it was put out for public purposes. I remember vividly there that we had this issue of who would serve as the peer reviewers. It intersected with not just who is qualified to serve as a peer reviewer, but how do you manage conflict of interest of peer reviewers. If you have got information that is related to a regulation, and it's going to affect the auto industry, you do have experts in the car industry, but you really don't want to have the peer reviewers be the experts in the car industry. That doesn't look right, that doesn't look right.

We were working on this, and we put out a proposal, and what we put out was a proposal I despised. It's my work product with my name on it. Remember, we're not a university, we're the government. In any event, it was because there was a lawyer who is the OMB general counsel, very conservative guy who was the nephew of the vice president of the United States, did I say that right...married to...however it is, I can find it....

**Balleisen:** A familial connection.

**Graham:** Right. He insisted that we get to say that not only did anybody who had industry money had a conflict of interest, but anybody who had government money had a conflict of interest, because the government was putting out money to try and make the government larger. They have a conflict of interest. There's a seed of merit in his argument, which is there's nobody has got completely immune from any interest or anything. But to characterize somebody who's getting a National Science Foundation grant or NIH grant is conflicted in the same way as somebody who's getting a grant from a profit-seeking cooperation. It doesn't seem to be either on the merits, or certainly not on a public relations aspect of it, they're not analogous. He was

potent enough at that time in that situation, this was after Daniels, this was at the beginning of the Bolten thing. We put this thing out and it was...the science community just trashed it.

We were able then, because of that review process, they basically gave me the authority to go in and fix the mess. That's an extreme example, there's lots of other cases that are more modest. What we did in that case was we took the criteria for conflict of interest that the National Academy of Sciences use when they construct the panels of the academy. Then we imported that into this process replacing what this lawyer had put in....When we went out in final form with it, it was clear we had that thing changed. The reception of it was very good. Here is again, an interesting point was, the people in the White House, they like good receptions. They like the result to be good. Now if you let them participate in the process, they get to completely bungle it up. If ... you can manage it in such a way that they let you do it, then if you know the issues, you know how to play the game, then they'll like the result. Whereas if you let people who don't really understand the issues very well get involved, there's potential for some big problems.

The very first thing I said when I started this conversation was, the biggest problems I had were not dealing with my adversaries outside the administration. The biggest problems I had were dealing with my own colleagues. People in the administration, not career civil servants, people in the administration. Well-meaning, loyalists for George W. Bush thought they were doing the work for him, but a lot of them were a big problem. I don't think this is unusual....

**Balleisen:** How did the circular, what kind of reception did you see it getting in the agencies? Was there up take, was there grouching, would it vary from agency to agency?

**Graham:** Yeah, I'm trying to remember now A-4, the agencies at the time, varied enormously in how much economics expertise they have. A-4 had a focus on cost-benefit analysis. So you had the agency like EPA, they have a lot of economists, they have their own guidelines that we had used in that document with intention. We'd actually taken a bunch of stuff from EPA's own guidance document and put it in the OIRA document. Not in all cases, but a number of cases. Then there were agencies, HUD and Labor, the department...

**Merck:** ...and HUD is Housing and Urban Development.

**Graham:** Yes, and they don't have a lot of expertise or experience with doing cost-benefit analysis at least in the regulatory context. I think that they found the document very detailed and prescriptive. I would say HHS was in the middle, Health and Human Services. Remember that this is not like legislation. There is nothing to legally bind you to buy anything here. It's a guidance document, and it has no more impact than what an OIRA desk officer or an OIRA analyst is able to enforce on an agency when they bring their stuff in. For example, if you are working in an administration where the OIRA desk officers are not allowed to change anything that the agencies are doing, then the OMB Circular doesn't mean anything.

Or, if you are in a case like you are working for me, trying to change the mercury rule, I think that's a good example. I'm sitting there saying, I don't like the PR implications of us mucking around in the mercury rule. Let's just not do this one or let's do it another way. That doesn't do any good. The Circular is not self-implementing. It's not self-enforcing. It has to have oomph behind it that unfolds from the work of the OIRA staff.

**Balleisen:** Did that happen in the aftermath of the Circular A-4? Was that then a framework that they could point to in specific places?

**Graham:** Yeah. I think ... it would be interesting to interview OIRA staff and ask them. I remember one of my veteran staff members, Art Fraas,<sup>56</sup> he felt a lot of the effort on A-4 wasn't worth the time. He says, "We all sort of know, we and the agencies know what good cost-benefit analysis is. You're not really informing that many people with your circular. The real issue is, are you going to stand behind me when I tell them what to do? If you're going to stand behind me, we're going to win. If you're not, we're going to lose. It doesn't matter whether there's an OMB Circular A-4." And there's an element truth to that that I can't deny. My hope over time was that ... that the Congress might get to the point where they would, in legislation, they would mandate it as all per se, but they might say something like, "That which is in OMB guidance should be given some deference in judicial litigation" or something like that. There have been efforts to do that. I don't think they've ever been passed, but that kind of thing.

Even Art would agree that, if that were the case, that would make a difference. How important the OMB Circular was...let me also make it clear that a lot the academics loved it. The academics loved the A-4 process. Guidelines, and principles, and peer review and all those kinds of stuff, but a lot of the more practically oriented people, I think that they...no, nobody was against it. You end up spending a significant amount of time and money.

**Balleisen:** A companion effort related to the general ambition of improving the quality of information was the launch of regulations.gov, which I believe also occurred in 2003. Where did that idea come from? Could you offer some thoughts about the process of setting that up?

**Graham:** Candid answer, I don't remember. There was an e-government initiative that was going on at OMB while I was OIRA administrator. Some of my staff were involved in it, but I was not the lead person. I'm trying to remember who that person was who was the lead on the e-government initiative ... I can't remember the person's name. But in any event, it comes out and it looks like it's all coming from OMB or from OIRA, but it doesn't necessarily mean they are not doing anything there. That's a good example of one, where I was not significantly involved.

**Balleisen:** You started with a bit of a rocky relationship with some members of Congress, especially on the Democratic side.... How would you describe your relations with Congress evolving...?

**Graham:** I never had an oversight hearing in the Senate, which by the standards of an OIRA administrator is good news. That's good news. The House, we had a regular house hearing, before the guy from California, his name is disappearing right now. They were basically forums where the conservative Republicans could beat up on Bush administration appointees about not doing enough on the conservative agenda. The Democrats would come to some of those hearings, but usually the Democrats just didn't show, unless they had some issue they would ask about. Usually there was a guy, that guy from Massachusetts, I forget his name. He showed up at

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<sup>56</sup> Arthur G. Fraas was a senior economist at the Council on Wage and Price Stability from 1977-1981, then served in the Office of Information and Regulatory Affairs from 1981-2008. In 2009, he joined Resources for the Future as a Visiting Fellow.

one or two of mine. This is what I said at the beginning, what I thought originally was I was going to spend a lot of time dealing with the Congress. The reality, I spent most of time dealing with the administration and dealing with the agencies.

I also had an international portfolio ..., not typical of OIRA administrators, that evolved for idiosyncratic reasons. This is the European-US regulatory cooperation agenda...

On occasion, there was a rule that a member of Congress would have a strong interest in and they would register that. It was not a big part of my life, dealing with the Congress. Remember, I was protected by a Republican House. And that's where, if it would've been a Democratic House, it would've been a totally different story.

**Balleisen:** What prompted the engagement with people from the EU? Did that overture come from Brussels, or was it a reflection of your international scientific and policy networks?

**Graham:** I'm not really sure I know the answer to this question.... The first meeting that I remember was I was invited by the German Marshall Fund, which is an NGO dedicated to fostering better relationships between Europe and the US. They were being advised by Jonathan Wiener. They said that we have so many problems between the US and European regulation that we should be doing something about this. They organized a meeting in Belgium, where I and some European Commission officials were invited to come and dialogue about the precautionary principle.

I don't know whether you guys have read much about precautionary principle, but it was a heavy, huge source of debate between the Clinton Administration and Europe, in particularly, agriculture. With hormone treated beef, and with genetically modified seeds, the US was trying to say that the stuff is proven safe, and should be allowed to be commercialized. It was widely commercialized in North America. All of these people were eating this stuff. As far as we know, people aren't keelling over. Europe would not permit these stuff, these products. They would lean on this idea that they were invoking the precautionary principle.

**Balleisen:** There was an interconnection here between regulatory analysis of one kind and trade?

**Graham:** Exactly. The business community, remember, I'm in a Republican administration and one of my biggest constituents is the business community. I think a lot of businesses, multinationals, based in the United States who wanted to do business in Europe and are doing business in Europe and the European Union guys are telling them, "Screw it. We're not taking this stuff." Prince Charles says it's dangerous. Genetically modified foods, that was his public position, and that seemed to be fine in Europe. That first meeting I had my first interaction with the European Commission officials and the US Mission in Brussels.

This is a State Department arm of the US government in Brussels. I think they decided, particularly, the US Mission and the State Department, they decided they liked the way I handled the Europeans at this conference, and that led to a whole series of activities that I did with the European Union. ... The State Department, and the US Trade Representative, and the National Security Council, they actually deployed me in these series of meetings with Europe. You have to remember that at the time, the relationships between the United States and Europe were terrible.

The Iraq War is sort of the signature thing going on right then. There were only two countries, if I'm remembering right, that supported the US position on the Iraq war. I think it was Spain and Britain. Unfortunately, all the rest were opposing us. The president had refused to ratify Kyoto, which was a top priority of the European Union. They were developing this very elaborate and expensive program to improve the safety of chemicals, called REACH, at that time. Which the US-based chemical industry was frightened about.

They thought it was framed as public health and environmental protection, but really a way to make it easier for BASF and Bayer, big German chemical companies, to dominate the business in Europe, rather than all the US companies to get involved in there. But, we were committing all kinds of sins at the time. I remember the European Union embassy, they have their US office, they would come in and talk to me about it. You remember the Enron accounting scandal.

Congress passed legislation called the Sarbanes-Oxley law, which is designed to bring more ethical integrity to accounting standards, and make it harder for companies like Enron to fudge the books, to make it look like they're profitable when they weren't. That whole activity that was done in Congress, not only they didn't consult with the Europeans, they didn't even acknowledge that European accounting standards existed. The legislation that was passed, in effect, if you're a European company trying to get on the New York Stock Exchange, they're basically saying, "We don't acknowledge any of your accounting information."

This is enormously irritating to the European officials. This led to a series of meetings and interactions I had with the Europeans on regulatory cooperation. It was fascinating, very difficult area to make tangible progress on. The one thing I took some pride in was, when I first started these activities, and I would go to the European Commission...If you remember now there's a Commission, a European Parliament, and the European Council.

The State Department had me persuaded -- I think they were right -- that the European Commission was the power center. There was no OMB in the European Commission. All there were, were regulators. My job is to oversee regulators. So I went over, who do I talk to? The State Department concluded from this that the solution was create an OIRA in the European Commission. This is incredibly bold. Think about it. Imagine something. People plotting in one country to redesign the government of another country. This is a region, I guess. European Union.

Now, the difference was -- and the European Commission people often said this to me -- they said, "You know, your Constitution? You're 200 years old. You're an established country and everything, and obviously changing your system of government is, like, a huge deal. "We learned to operate in a couple of decades, and this is a work in progress. Nobody really knows whether this thing is really working." It wasn't a totally outrageous thing to suggest, that maybe the thing could be reconfigured a little bit. We ended up, actually -- we, the US government, with me in the lead -- trying to persuade them to create an OIRA in the European Commission.

....They have done things. They have created something that's sort of like that. It's not exactly an OIRA, it doesn't have exactly the same powers, but it has some similar features. Call it an Impact Assessment Board. Now it's a Regulatory Scrutiny Board or something like that. But it has similar features to it. ...The whole process of regulation in Europe has already changed, and it can change even a lot more, because of it.

**Balleisen:** One of the features, globally, of the time that you were serving in Washington was a dramatic expansion of regulatory institutions and regulatory policy in emerging economies. Brazil, India, China. Did your pivot towards engagement with the international context and the theme of international regulatory cooperation extend beyond Europe to other parts of the world?

**Graham:** It did, to a certain extent. I spent a lot of time with OECD as an organization.

**Balleisen:** The Organization for Economic Cooperation and Development, based in Paris.

**Graham:** Right, and it's not aimed at developing countries, but I mentioned it because it's outside Europe. There were a lot of people in the Bush administration who didn't like OECD. They viewed, remember, from a funding point of view, a place like OECD, if the United States withdraws, the thing's going to collapse. There are other countries who were pitching in money, but the US is a big, big player. The frustration was, is we felt they were off doing their own thing, and the US didn't have any influence on what they did even though we were paying a big chunk of the bill.

I remember vividly that we, defending OECD.... They were actually doing good things and trying to get countries around the world to do regulatory impact analysis. To do peer review of information and regulation, and OECD sets standards for what's a good regulatory system. Then, developing countries would look to OECD even though they're not a member of OECD. This is credible, because there, all the major countries in the world are in OECD, developed countries. They would then take these things and run with it. We shouldn't pull out of something like this because in the long run it's going to help our businesses, because they're going to deal with all these countries, and they're going to have professional, honest regulatory systems.

The reason I mentioned all that is, it was just hilarious to me that they had a country review program in OECD, where each country agreed that they would have their system reviewed by international experts. The US regulatory system was reviewed. You can go read a report, see how they criticized us and how to make it better. Germany agreed to be peer reviewed. The UK was peer reviewed. The European Union refused to be peer reviewed. They said, "We're not a country. We're a region." In reality, they knew they were...it would be very, embarrassing if they had been reviewed. I don't know that they ever have been, even today. We tried to work the OECD network. Both for purposes of the emerging economies and also to further leverage against Europe.

Remember, the basic dynamic in the emerging economies is, the two big influencers are Europe and the US. Europe's trying to get them to view the world their way. The United States is trying to do it our way. That's why the efforts both to get some agreement with Europe can be helpful, because it's extremely confusing even the rest of the world, that we approach issues differently. Anything from a food label to an emission limit on a Diesel engine, to any of these things. I mean if you're in one of these developing countries, you look at these and think, these people don't talk to each other. In many cases, we don't.

That's why the European thing looks like it's just bilateral and it's about Europe, but if the US and Europe agree on something, it's highly likely the rest of the world's going to go do it. Then, you've got the whole emerging world, too. If they disagree, then it's a mess. Not only might they

not do what US or Europe is doing, there might do something else. Now you're trying to do business in these places, you've got these three different things going.

**Balleisen:** ...I'm curious to hear if the 2004 re-election campaign and the presidential election of that year impacted the work of OIRA at all. Whether by this point, you are on a course that was relatively insulated from some of those political pressures.

**Graham:** Daniels left, I don't remember exactly, it must have been around 2003 sometime. What's happening in late 2003, 2004, it's I'm learning a new boss. With the election campaign gearing up, White House communications is clamping down and they don't want any bad press. People would joke about OIRA -- they say in election years the OIRA Administrator goes and plays a lot of golf. To a certain extent, that's true, ...because the kinds of work that I was involved in, it can easily generate press....

We would certainly be working on issues on the back burner, internally, but the amount of stuff that we were doing that was going to create a lot of attention diminished dramatically in that year. I think that's standard operating procedure, and in government agencies in particular at OMB.

**Balleisen:** Did it re-accelerate in 2005?

**Graham:** That's right. 2005, we have the rollout of our -- so I'm chairing at the time, the administration task force on the auto industry as it relates to the mileage standards for cars and light trucks. We roll out our reform of the program for mileage standards. Also, we were working on ...a bulletin on risk assessment. Guidance for doing better risk assessment throughout the federal government.... We started a manufacturing initiative, which was a regulatory reform program to reduce the burdens on manufacturers, started I think late 2003, 2004.

Then we finalized after the election. Then we, the last leg of the European activities I did is right after the election, as well. I'm trying to remember exactly the year. 2005. I'm also looking for jobs somewhere in there. I'm getting to the point where I'm saying, "You know, I've done this thing four years or so," and it's awkward. It's hard to search for a job when you're in one of these jobs.

I remember being a finalist, to be the Dean of the School of Public Policy at the University of Maryland. Which would have made it easy for us. We were living in Bethesda. I end up being a finalist of three candidates. Lo and behold, my wife calls me one day. She says, "John," she says, "It's in the Style section of the Washington Post. They've got the three finalists listed in the Style section." They give you all these assurances they'll keep this in confidence and blah-blah-blah-blah, you know.

**Balleisen:** Could you talk a little bit more about your decision to think about moving out of OIRA? Was that a calculation that you had achieved what you wanted to achieve? Was it the grind? What led you to sort of feel like you had done your stint?

**Graham:** I was looking for either something to do in the government or I was looking for the right place to land outside of government. In my heart of hearts I knew I didn't want to go back to Harvard. I felt like I had done that thing. I knew that crowd. They didn't need me that much,

and I didn't want to go back there. I certainly could have. They would have loved to have had me back.

I remember having conversations with Bolten about the auto safety regulatory position opened up. It's called NHTSA. The Secretary of Transportation at the time had one of his deputies that he wanted to put in that position. If I was going to insert myself into that, that would ruffle some feathers. I think that Bolten was willing to do it, but it was clear that it was going to require a heavy lift.

We talked about that. I never saw anything else in the administration that I was that crazy about, but I think that it would've had to have been probably a regulatory position, which I would have enjoyed. I probably would have enjoyed EPA or NHTSA or...well...not FDA probably, in any event, but none of that aligned right. Then the RAND thing came, so then the timing looked good. I'm trying to think. At the time my older daughter, who is a Stanford graduate, was on the West Coast. That looked very attractive to my wife Sue as well.

**Balleisen:** To go work out at RAND?

**Graham:** ... in Santa Monica..., nine blocks from the ocean. It's beautiful. RAND is a really exciting place. Lots of things cooking, and it was a really interesting doctoral program. I was a dean in their graduate school, but it was just a PhD program. 25 PhD students per year from all around the world, and they pay for their own tuition by billing time on RAND projects. It's an apprenticeship working model for a doctoral program, so it was a very interesting experience....That opened up right after the Maryland thing flopped. They didn't even fill the position at Maryland. I think they ended up filling it with an internal candidate.

There I got my first real sense of the consequences of being in a Republican administration as an academic because when I was leaving the administration it was clear. That showed me that it's very hard to get positions of leadership at universities as a Republican, certainly somebody who's come out as pretty controversial in some sense. There were five or six faculty at the school that wrote a letter saying, "Dr. Graham is unacceptable, blah-blah-blah-blah," all this kind of stuff. Similar to the stuff I had to deal with in my confirmation process. I should've known that was going to happen, but that was the first time I actually felt it.

**Balleisen:** Can I take you back to one, I think quite important, engagement with a particular agency toward the end of your tenure? That has to do with the back-and-forth you had with the EPA over issues like the diesel fuel exhaust question which, as I understand it, led to maybe a greater degree of collaboration between OIRA and EPA. Could you perhaps talk about that a bit?

**Graham:** It occurs in stages. The first phase of it was in 2001 when we put out our request for regulations that should be streamlined or eliminated because they were overly costly. One of the nominations that came in was the Clinton administration's regulation to control diesel engine exhaust from highway vehicles.

A bunch of the conservative activist groups and think tanks lined up behind this thing. You had the Mercatus Center at George Mason -- I forget the other ones that wanted to do this -- as well as some of the industry groups. My team inside OMB, we analyzed it. We actually thought the benefit-cost case that the EPA had developed for the highway diesel rule was fairly strong,

certainly compared a lot of the other rules that we were dealing with from EPA and from other agencies.

We took a position on that one that the case wasn't there. My recollection is that we publicly wrote this out in one of those annual reports. We were signaling that the benefit-cost case for diesel engine exhaust control was pretty good. Then what happened, this was really interesting.

In 2003 or so there were a group of diesel engine manufacturers who signed a consent order during the Clinton administration to meet the nitrogen dioxide standard several years earlier than the regulation had planned because they were basically admitting that they had been engaging in inappropriate behavior in the design of their diesel engines in the 1990s. Basically, they were advertising they were controlling emissions more than they really were...A mini version of the Volkswagen thing.<sup>57</sup> Anyway what happened was so now the deadlines for these consent decrees are coming up. There were three or four companies, and some of them had decided to go forward and meet these standards as they agreed to.

Other ones were beginning to lobby the White House and Congress to allow them to delay the introduction of their cleaner engine because they weren't ready yet. They were framing it as, "The EPA is forcing us to do this, it's costly, it's not justified, blah-blah-blah-blah-blah." Daniels was my boss at the time, and he starts getting lobbied because...I guess his name was Hastert, the Speaker of the House...

**Balleisen:** Dennis Hastert from Illinois.

**Graham:** --from Illinois. One of these companies was either in his district or near his district. It was one of the ones that wanted to delay it. Cummins Engine is from Columbus, Indiana, and they had developed this new engine. They felt they were ahead competitively. They wanted the EPA to stand firm on this deadline. Daniels starts getting calls. You may remember Bill Ruckelshaus was the EPA administrator twice. He's on the board of Cummins Engine, so he calls me because I know him from when I worked in the academy. He calls Mitch and says, "You can't let these guys get away with this. This is overt. We spent all of this money developing this engine. We're ready to go. We hope to get business out of this as well as clean the environment. If you just delay it, you're basically rewarding people for the worst kind of behavior."

Meanwhile the guy who's running the EPA air office, a guy named Jeff Holmstead, a guy I worked with on a lot of issues. A tough job he's got. Hastert demands that he come to a meeting in the House of Representatives and speak to 10 Members of Congress, House of Representatives people, who were upset about this regulation all at the behest of these group of companies that want the thing delayed.

They start firing these questions at Holmstead. The way the thing is playing out is this one's called non-compliance penalty rule. If you're going to sell engines that don't meet the standard, you could still do it, but you have to pay a non-compliance penalty. The question becomes how big should the non-compliance penalty be? That's really what this thing was about.

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<sup>57</sup> Graham is referring to the Volkswagen diesel emissions scandal, which became public in September 2015.

I ended up having to defend Holmstead in this meeting, because they're just beating the shit out of him and say, "Well, you know. You got to look at this in terms of are you creating and writing the standards for people that innovate and blah-blah-blah-blah-blah." That was two or three sentences from me. It was really bad news for those people because they knew that I'm not going to be out there talking like that unless I'm trying to tell them something. I came back to the office. It was a day or two later we're working on the details of this non-compliance rule. We're just involved to make it very expensive for these people not to comply.

Mitch Daniels calls me into the office. He says, "I know you're working on this darn thing." He said, "I'm not going to get into the details of it, but get it done fast. The only people who are benefitting from this are these lobbyists who are billing big-time per hour. OK, just get it done, whatever you do." Of course, the longer it dragged out that just means more people have time to harass him and get him involved, etc., etc. So he wanted to extricate. That was the second involvement on these, so then the third was you have off-road engines that are used in construction and in mining, transportation equipment, and so forth.

They're basically the same diesel engines that are used in big trucks and so forth and so on, but they're not subject to the same emission controls. The cost-benefit analysis is pretty similar. It's not dramatically different. We ended up in a process collaborating with EPA on doing this. Then we end up getting opposition from inside the White House, which was very frustrating.

In the final analysis, when the smoke cleared, we were able to pull that one through. That was really foreshadowed by the previous involvements. I think from EPA's point of view it felt a lot better having OMB with them from the beginning than having to deal with OMB late in the game, but you can't do that on every rule.

**Balleisen:** I think with the time that we have left we'll pivot to just some final reflections on your time as OIRA administrator.

**Merck:** ... Thinking about broad trends in regulation - thinking first, having these health-and-safety agencies in the '70s, and then movements for de-regulatory initiatives ... and then now, this move to review, impact assessment, risk assessment. What do you think is coming next? What is after this retrospective review/impact assessment? What do you think might be the next big...?

**Graham:** Before I try to answer that, I just want to draw your attention to the use of language in this area, which is that in the Reagan Administration they explicitly used the phrase "regulatory relief" when they were referring to environmental and health and safety regulation. Mr. Daniels is not like that.

**Balleisen:** Because we don't want language. What I'm hearing you saying, that would connote removing burdens as this movement.

**Graham:** Removing burdens in cases where you're dealing with people's health and safety or the environment. He likes the idea that you're protecting health, safety, environment more cost-effectively. You're achieving the objective to lower cost and so forth. That's fine. That phrase, I think you used to word "deregulation." The word "deregulation" was used to some extent in the Reagan Administration as well, but you won't see the use of that language coming

from the administration when I was involved in the regulatory process. Now that was intentional. Now our critics said that's what we were doing, but we would never agree with that formulation of the language. It's an important part of the case for the better regulation movement and regulatory impact assessment. Sometimes it may lead to more regulation. Sometimes it leads to less regulation. It doesn't foreshadow the ultimate outcome of that. It's just saying you've got to look at it and make sure you know what you're doing from an evidence-based point of view.

Where are we headed in the future in the regulatory area? I think the combination of the Sarbanes-Oxley law and Dodd-Frank, which is the Wall Street regulatory reform thing that was passed for the Obama years. The combination of these has brought so-called "independent" regulatory agencies. And a lot of the financial agencies that oversee banks, hedge funds, so forth and so on, SEC is predominantly among them. They are not within OIRA's purview. They are in that sense "independent." I guess it's the way it's framed. The people who run those agencies, well, they're appointed by the President, confirmed by the Senate. They don't serve at the pleasure of the President.

If the President doesn't like something the SEC's doing, they can't just fire the SEC commissioners. That's what makes them independent. Lawyers may have more elegant ways to describe what makes them independent. That's the way I think of as independent whereas if you're the Secretary of Labor or you're the EPA administrator, the President could fire you tomorrow if they want to. That makes you pretty interested in what the White House thinks about what you're doing.

In any event I think there's a growing realization there's an enormous body of regulation that's developing out there in the financial world. A lot of it's very well-intentioned. These scandals and this awful stuff that occurred in 2009 with the downturn, and they were giving triple-A ratings to all this stuff that ended up being disastrous and so forth and so on.

It's also because you created a lot of stuff that was done -- this happens a lot in regulation -- when you get a lot of stuff written out of emotional crisis and tragedy. It's not because it's very effective or that it's cost-effective. I think what it's going to cause is a re-look at the question of whether these agencies really should be outside OMB oversight. They're not really subject to the same kinds of regulatory impact analysis requirements and OMB review procedures and so forth and so on that if the agency was inside. Some financial agencies are in Treasury, which is a cabinet agency, and they are subject to OMB. It's a very strange combination depending on who happens to have the authority of one aspect of financial regulation.

I think that will be a big change. The second thing that's going on right now in Congress...and you have to take this a little bit with a grain of salt because as you get near elections some Democrats from swing states want to get more in favor of regulatory reform and better regulation because it pleases the business community. You now have five or six Democratic senators who have lined up behind regulatory reform legislation that would codify a OIRA's role and require cost-benefit analysis and put some judicial review procedures in there. Now whether that stuff will ever really pass, I don't know. It's hard to tell whether it's for real or whether it's just election-positioning.

Then I think the whole international territory is only going to grow. It's fascinating. You look at both the Asian and the European-Pacific trade deals. These things are all about regulation. They're not about tariffs. Tariffs is the easiest part. They solve those issues upfront.... I think that regulation in trade is without question a big part of the future. International regulation, climate regulation. I think it's increasingly apparent that having each of these countries going out and doing their own thing doesn't really make a whole lot of sense for a bunch of these problems. Getting people together, whether it be informally, to collaborate, or whether having... I think the idea of do formal treaties on all these things is probably not really realistic, but I think there needs to be a lot more effort to get together, work things out, by regulators in different countries before they go, that it'd be before they decide what they're going to do.

**Merck:** Maybe one more, kind of more speculative question. Looking back at your own career and your movement in and out of the public sector and working in academia, what kind of advice would you have for students or younger people, I suppose, who are in that similar space where they have that choice between public and private sector, between government service, going into a sort of consulting or staying in academia or somehow trying to negotiate that movement between those spaces, based on your own experience?

**Graham:** It's interesting. What we're finding with our own students we found at Harvard, at Indiana, and at RAND is a lot of these students in the course of their career, they sector-shift. They have a satisfying experience in the government. Then they move for a while into the private sector, the profit sector, or the non-profit sector. I think that's to be encouraged.

The opportunity I had as an academic to serve five years in the federal government I wouldn't trade that for anything. I'm just delighted that I did it. In hindsight what I wish I had done early in my career is I had done a stint as a staff person in the House or the Senate worked on one of those committees or something like that.

Got a little better feel for the place rather than just being thrown in as a college professor into this whirlwind activity because it's a very different culture. One concrete example that I'll mention that Daniels was talking about. He said, "The difference between being a college professor and being a person at OMB is that as a college professor you say something provocative and it's a good thing. You stimulate people to think, and that's what universities are about." He says, "At OMB you don't open your mouth unless you're going to win."

The point is, you don't create controversy which has political costs to your team unless you're going to get something for it. I think that's a really interesting comparison to the difference between a university environment. For a lot of college professors who go into government, they are slow learners to that principle. On various occasions he would say to me, "OK, you're going to launch into this area. Now what's going to happen? Are you going to win, are you not? If you're not going to win, what's the point in it?" Maybe you can make some kind of educational argument for why you should go off and do these sort of things.

But you have to also be very sensitive to who else you're imposing these costs are with any of these types of enterprises. I was working for Daniels, who was working for the president of the United States. George W. Bush, he was elected on a fluke and he was almost not reelected. Obviously small things can make a big difference, whether somebody like that gets reelected, so

you've got to be pretty careful about if, in fact doing what you're doing is going to reflect well on the person you're working for.

The whole concept of the team, this is a team. We're in this game, we're trying to do it together. Which is why in hindsight I was lucky that Daniels was willing to support me on things like the prompt letters and the transparency. You can make a decent argument that a lot of that was not with the team. He would say it was, but I think you can see the argument on the other side of that.

**Balleisen:** You just referred to some of the challenges confronting academics who move into public service. What about some of the advantages of the background or what you feel like you were able to bring into the role that helped to make your time at OIRA, insofar as it was successful, successful?

**Graham:** I think it has enormous advantages. On the knowledge base and the analytics that are behind the OIRA job that are big advantages. There's a big advantage in getting confirmed. The OIRA administrators have a track record of having difficulty being confirmed. I mentioned George Herbert Walker Bush nominated a guy who was not confirmed. Then Professor Cass Sunstein under President Obama. He ended up getting only 58 votes. It's just terrible.

You can argue it the other way in the sense that people have this record of writings and that just gives the other side...they can just go through every paper, go through every line by line, and find the worst possible things you ever wrote, and then go after those things.

But my own feeling was, is that in the circumstances that I was in, if they had nominated a business-oriented campaign type as the OIRA administrator, they would never have gotten confirmed. It would have been a disaster. So it was an advantage there. But the other thing I would say in hindsight is that if you're involved in the campaign a little bit, it has a lot of advantages. Because you know a bunch of the players, and you know where people are coming from a little bit. Then when you get in there you can operate a little bit more sensitively. Where, if you don't know the players it takes...it's just a learning process.

Then the building part -- of other people you're working with trusting you -- it takes a while to develop that. Whereas if you've got a network in the campaign already that's a big advantage. Academics have the freedom. They can engage in some activities like that, still teach their classes, write the papers. Happens all the time. There are a lot of advantages.

**Balleisen:** John Graham, thank you so much for your time.