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To: Lorraine D. Hunt OIRA ECON GUIDE/OMB/EOP@EOP, random-bits@venice.essential.org

cc:

Subject: brief notes to OMB on cost benefit

To: OIRA_ECON_GUIDE@omb.eop.gov

From: James Love, james.love@cptech.org

Re: Cost benefit and value of Freedom, dignity and privacy

I believe it would be good to offer an extension on this public notice, since few persons are probably aware of the federal register notice. However, here are a few quick notes on the value of freedom, dignity and privacy.

Value of Freedom

Freedom is of course something we place a very high value on, so high in fact that people are willing to die to protect freedom. But in the course of protecting national security, there will be many individuals whose freedom is curtailed or eliminated. Policies designed to enhance national security should recognize that this is important. It is of course both difficult and problematic to assign a monetary "value" to freedom, but we can measure the amounts of money spent to protect freedom. Here are only a few examples:

The cost of wrongful incarceration

Persons accused of crimes are willing to spend considerable sums to retain legal representations to avoid incarceration, even when the incarceration lasts only for a short time. For the poor, governments spend money on public defenders. Despite investments in legal services, innocent persons are incarcerated. The losses of earnings are an easy-to-calculate measure of the "cost" of this mistake, and for most people, a low estimate of the cost.

US expenditures to protect liberty in foreign countries

In Iraq, the United States is likely to spend an initial \$100 billion and many US soldiers' lives to liberate citizens from a repressive regime, and the full cost could be much higher. If one only looks at the initial \$100 billion in outlays, this is about \$4,100 per resident of Iraq. There are many other data points one might look at. The full cost of the first Gulf war was by some accounts, \$61.1 billion, in 1991 dollars, or about \$29 thousand for every Kuwait citizen. In Somalia, the US government spent \$260 million through 1993, to benefit a country with a population of about 7.8 million, or about \$33 per Somalia resident. In Bosnia, the US spent an estimated \$10.6 billion to protect a minority Muslim population of nearly 1.6 million, or an estimated \$6,710 per Muslim in Bosnia.

Privacy

Privacy is something that nearly everyone values. We all cherish the

right to be left alone, and we know that privacy is related to many other things, such as the practical ability to communicate and associate with persons for personal, professional or political reasons. Repressive regimes often curtail privacy, in order to limit dissent or organization of opposition.

There is of course no single value assigned to privacy, but rather different values that one might assign for different problems. Individuals have very different outlooks on privacy; some are willing to pay a very high price to protect privacy, while others are not.

One can observe some measures of willingness to pay for privacy. For example:

- Local GAP stores recently offered a 15 percent discount on purchases if the consumer was willing to provide an email address for solicitations.
 - Supermarkets routinely offer discounts on groceries when customers use privacy reducing "loyalty" cards. These discounts are likely calculated to be large enough to obtain voluntary reductions in privacy.
 - Amazon books recently offered a 10 percent discount on book purchases for customers willing to provide names of friends to market products.
 - There is a market for private email services, and there are free email services that have reduced privacy, including target advertising.
 - Some peer to peer file sharing programs are distributed as either free versions, that feature ads and are distributed with "spyware," and paid versions that have no ads and no spyware. For example, Limewire charges \$9.95 for the version without ads or spyware.
- * Telephone companies charge extra for unlisted phone numbers. In Virginia, a non-listed telephone number is \$1.71 per month extra. In Maryland, the premium for a private telephone number is \$1.45. In Washington, DC, the price is \$.81. These rates are set by government regulators.

It might be useful for OIRA to gather some additional data on various "prices" associated with privacy.

These are issues we are only beginning to think about, and would like to follow this up with some more thoughtful comments. I am also attaching Edmund Andrews' excellent story on this topic from the March 11, 2003 issue of the New York Times. In that story, Mr. Ralph Nader is quoted saying: "'Even without coming to complete agreement on what we think the cost of lost freedom is, we would all agree that it's not zero.'" We support the efforts of OMB to introduce non-zero values for freedom and privacy in its cost benefit review of the war on terrorism.

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----- Original Message -----

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March 11, 2003, Tuesday

NATIONAL DESK

THREATS AND RESPONSES: LIBERTY AND SECURITY; New Scale for Toting Up

Lost Freedom vs. Security Would Measure in Dollars

By EDMUND L. ANDREWS (NYT) 1408 words

WASHINGTON, March 10 -- Civil liberties and privacy may be priceless, but they may soon have a price tag.

In an unusual twist on cost-benefit analysis, an economic tool that conservatives have often used to attack environmental regulation, top advisers to President Bush want to weigh the benefits of tighter domestic security against the ''costs'' of lost privacy and freedom.

''People are willing to accept some burdens, some intrusion on their privacy and some inconvenience,'' said John Graham, director of regulatory affairs at the White House Office of Management and Budget.. ''But I want to make sure that people can see these intangible burdens.''

In a notice published last month, the budget office asked experts from around the country for ideas on how to measure ''indirect costs'' like lost time, lost privacy and even lost liberty that might stem from tougher security regulations.

The budget office has not challenged any domestic security rules, and officials say they are only beginning to look at how they might measure costs of things like reduced privacy. But officials said they hoped to give federal agencies guidance by the end of the year. And even if many costs cannot be quantified in dollar terms, they say, the mere effort to identify them systematically could prompt agencies to look for less burdensome alternatives.

The issues are not always abstract. American universities are worried that ever-tighter scrutiny of foreign students will cause them to lose market share in foreign students to Australia, Canada and Europe.

Airlines, meanwhile, are eager to increase use of advanced passenger screening systems. Civil rights advocates say the systems would single out some people with particular ethnic backgrounds, but they might also help business fliers whisk through security checkpoints as seemingly low-risk ''trusted travelers.''

Jarring as it may seem to assign a price on privacy or liberty, the idea has attracted an unusual array of supporters, including Ralph Nader, the consumer advocate and former presidential candidate, who said the approach might expose wrong-headed security regulations.

''As long as they're going to deal with monetary evaluations, I told them they should start asking about the cost of destroying democracy,'' said Mr. Nader, who lobbied Mitchell E. Daniels Jr., the budget office director, on the issue. ''If the value assigned to civil rights and privacy is zero, the natural thing to do is just wipe them out.''

Lawyers at the American Civil Liberties Union also support the idea, as do some conservative Republicans who fret about ''big government.''

Skeptics abound, with some predicting that cost-benefit analysis will bog down domestic security decisions as badly as worries about the spotted owl once bogged down loggers in the Pacific Northwest.

''It may be a waste of time and resources,'' said Charles Peña, director of defense policy at the Cato Institute, a conservative research organization in Washington. ''The last thing you want to do with homeland security is to get mired down in typical bureaucratic debates.''

Supporters and critics alike say the effort could open up a new battlefield on domestic security.

The budget office has the power to challenge and sometimes to block regulations if they appear to fail the cost-benefit test.

And given the regulatory costs, whether in the form of mandatory spending on antiterrorist measures or lost customers, many business and organizational groups are likely to have their own reasons for caring about privacy, ease of movement and convenience.

'We already make these kinds of trade-offs all the time,' said Bruce Schneier, a security consultant in Sunnyvale, Calif., who is the author of a book due out in September titled 'The Security Puzzle.' 'What you need to know are the agendas of the different players.'

Mr. Graham, a passionate champion of cost-benefit analysis who taught at Harvard before joining the administration, stopped short of saying that government officials might somehow assign a price for costs like lost privacy or convenience.

But he said it was important to analyze such costs, even if they could not be translated into precise dollar amounts. 'We can all see that life has changed since Sept. 11,' he said in a recent interview in his office in the Old Executive Office Building. 'Simply identifying some of these costs will help understand them and get people to think about alternatives that might reduce those costs.'

Two of Mr. Graham's colleagues at Harvard have already taken a look at potential trade-offs in a recent paper titled 'Sacrificing Civil Liberties to Reduce Terrorism Risk.' The authors, W. Kip Viscusi of Harvard Law School and Richard J. Zeckhauser at the Kennedy School of Government, said Harvard law students surveyed were more willing to accept profiling of airline passengers if it meant they could save time in security checks.

While 44 percent of students said they favored profiling if it saved them 10 minutes, 74 percent were in favor if it saved them an hour.

'Clearly, people are willing to make trade-offs,' said Mr. Viscusi, who has been applying cost-benefit analysis to environmental regulations since the early 1980's. Weighing values like privacy or civil liberty against heightened security, he said, could help prevent the security goals from overtaking common sense.

'If you're the homeland security guy, that is the only thing you're going to be looking at and you're going to have tunnel vision,' Mr. Viscusi said. 'The last tightening of the standard may not have much of a payoff in security but it might have a big cost in civil liberties.'

Lawyers at the American Civil Liberties Union also see benefits in treating lost civil liberties as a cost.

'Many of the proposals coming out of the Department of Justice would fail the risk-benefit analysis if the costs of lost liberties are weighed in,' said Gregory Nojeim, associate director of the A.C.L.U.'s national office. 'We think it's necessary to assess the costs of counterterrorism proposals in terms of lost liberties.'

Since Sept. 11, 2001, universities have begun providing the government with more detailed information on foreign students and any changes that might invalidate their visas. The Bush administration is also proposing an elaborate new system, linked to security checks at the F.B.I. and C.I.A., under which the government would run background checks on foreign students or foreign teachers who want to do research in potentially sensitive scientific areas.

University officials are increasingly worried that ever-tighter scrutiny will cost them tens of thousands of students a year.

'For decades, we were getting them all, but there has been a sharp increase in competition from Australia, Canada and Europe,' said John Vaughn, executive vice president of the Association of American Universities. 'If we increase the monitoring of foreign students, with overtones of presumptive guilt, and we increase restrictions on foreigners doing research, these things will have an indirect chilling effect.'

The trade-offs are almost certain to escalate. Proposals are circulating for tighter rules on immigration, on customs inspections, on preparation against bioterrorist attacks and on scores of other issues.

Last month, the Justice Department set off a furor among civil rights advocates with the draft of a proposal to expand the powers of the law enforcement authorities.

Though administration officials said the draft was not a formal proposal, its recommendations included invalidating state laws against police spying and imposing a flat ban on using the Freedom of Information Act to identify people detained on suspicions of terrorist involvement.

The domestic security push has in many ways turned the battles of cost-benefit analysis on their head. In the 1980's, consumer advocates like Mr. Nader often denounced cost-benefit analysis as a tool conservatives used to swat down environmental and safety regulations.

But just as business groups once viewed cost-benefit analysis as a way to curb restrictions on their activity, Mr. Nader and civil rights groups see it as a way to curb restrictions on government authorities..

'Even without coming to complete agreement on what we think the cost of lost freedom is, we would all agree that it's not zero,' Mr. Nader said. 'They are developing dragnet systems of law enforcement that are very inefficient. I'm saying to O.M.B., you guys are the brake. You are the only ones who can bring these guys down to earth.'

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