1. My first job was as an assistant professor of international economics. So I believe in the principle of comparative advantage. In this group, my comparative advantage is clearly in the use of BCA rather than actually doing it! And on that subject I have reached three conclusions.

2. First, it is important to improve the technical quality of BCA.

3. Second, it is more important to improve the objectivity and credibility of BCA.

4. Third, it is most important to assure that policymakers actually pay attention to high quality, objective BCA.

5. My observation after over 40 years of analyzing hundreds of BCAs from dozens of agencies is that we have done a good job on the first, but the second and third need work. This is what my talk will focus on.

6. Work I have done since leaving government, including with Stuart Shapiro has failed to find robust statistical evidence that BCA has actually improved regulatory policy. This confirms work done by Scott Farrow, Bob Hahn and others. However, like most government workers I believe in anecdotes. I know of cases where the use of BCA improved policy. I was there. Let me discuss some examples, then offer some recommendations that aim to increase usage.

7. First, Carol, thank you for inviting me to talk about “Gov and BCA in the Trenches”. When I first saw the reference to “In the Trenches,” I got a little concerned. After all that term, according to Wikipedia, came to stand for the “futility of battle.”

8. As you heard, I spent 33 years in the middle of this battle reviewing BCAs and regulatory analyses at CWPS and OMB under Six Presidents. And almost every
time I stuck my head out of the foxhole, I got shot at. Fortunately the bullets were not real -- but they still hurt.

9. I first got shot at in 1975 when I testified on a filing I wrote as a Council on Wage and Price Stability (CWPS) economist at an OSHA public hearing. I testified in favor of using BCA to evaluate a proposed coke oven standard. A front page article in the WP the next day called me a “refugee from an academic institution”. I think we have since made significant progress and conferences like this and the SBCA have played an important part in reducing the number of mocking stories in news outlets.

10. That open government approach let’s call it “wide open government” (or WOG) was used by CWPS in both the Ford and Carter Administrations as an explicit strategy to promote better BCA and government. The idea of our public filings and testimony was to use the press, peer pressure, and the public’s common sense to promote better regulation through education of the public and the democratic process.

11. Many observers at the time thought, however, that this “advocacy-for-efficiency approach” wasn’t working. It certainly engendered political costs as the Washington Post article and others like it attested. Reporters like stories focused on agency disagreements, especially when one party is part of the White House, than stories that examine the analytics of evidenced based decision making.

12. In any case, President Reagan abolished CWPS and directed agencies to send BCAs to OMB for evaluation and approval—an approach that has been continued by four Presidents over the last 30 years.

13. Let’s call this approach “Half Open Government” or you got it the “HOG” approach. Now I am not opposed to HOGs (in fact I wish the Redskins would bring them back). In fact I think the HOG approach is necessary, just perhaps not sufficient.

14. I say “half open” because OMB, for good reason, does not normally comment in public on its recommendations to the President or its critiques of agency actions. Although all OIRA Administrators have supported open government and transparency, they have stopped at being open about internal WH deliberations. A trusted advisor must be trustworthy.
15. Thus, only half of the story is told, leaving agencies and outsiders to frame the debates. In my experience, OIRA staff did not leak or take positions in public on ongoing rulemakings. Agency staff and scientists sometimes did.

16. Moreover, OIRA staff and by association, BCA, were portrayed by regulatory advocates as villains. On the other hand the anti-regulation crowd are not great defenders of BCA either. And there are examples where President’s have overruled rules where Benefits exceeded the Costs. As we know, BCA was developed and used originally to make the case for government spending.

17. My first critique of a BCA came not in government but as an Assistant Professor at the University of Florida in 1970. The Army Corp had done a BCA with a 1.5 BC ratio for the Cross Florida Barge Canal. It showed costs being justified by the jobs created, the transportation cost reduced, and the new fishing and recreational areas produced.

18. It was pushed by Presidents Roosevelt, Kennedy and Johnson and was partially complete but opposed by Republicans in the Senate and conservationists and academics centered at the University of Florida, later joined by the Environmental Defense Fund. It was stopped by President Nixon by Executive Order. The authorizing legislation was finally rescinded by statute by President Bush in 1990.

19. Much of the debate was centered on the BCA. It was clear to us in Gainesville that the agency was over stating social benefits and under sting social costs and that rent seeking was going on. This was about Florida land values after all. Left out of the social costs were the danger of salt water seepage and the spoilage of wild rivers. I have cast a critical eye at agency cost and benefit estimates ever since.

20. The lessons I took from this is that it helps if debates on BCAs are non partisan and openly debated. There were many Ds and Rs on both sides of the canal issue.

21. An example from near the end of my OIRA government service illustrates in another way the importance of open debate about BCA and the half open or HOG model’s handicap.

22. This is the case of FDA’s 2007 dietary supplements current good manufacturing practices Rule. The only group opposed to the rule was OIRA. But the agency BCA was about $200 million in annual costs compared to $10 to 100 million in annual benefits. Even the upper estimate of benefits was below the
lower estimate of costs. Richard Williams and the FDA analysts should be congratulated for the honest estimates.

23. But the industry wanted to be regulated by FDA for the marketing boost and as a (NTB) non tariff barrier to imports from Asia. We actually held FDA off publication for over ten years. On October 25, 1994, the Dietary Supplement Health Act was passed. The industry petitioned for a rule in 1995 - ANPRM 1997, NPRM, 2003 and Final June 25, 2007. As we used to say in OIRA “a victory is a defeat deferred.” The Net Present Value of the cost – benefit savings of delay comes to about $150 million using 7%!!

24. **Lesson:** A public and two-sided BCA debate aired by a trustworthy independent agency might have been more successful.

25. The famous case of the **OSHA Ergonomics** rule also illustrates this lesson. It was issued as a Midnight rule by Clinton administration with benefits estimated at over $10 billion per year and costs of over $5 billion. But it was overturned under procedures of the Congressional Review Act after a public debate over costs and benefits. (We were also in a recession)

OMB later reported in BCA Report to Congress that according to BLS ergonomic injuries declined by 2003 without the standards by significantly more than OSHA predicted they would after ten years with the 2000 ergonomic standard.

**Lesson:** An objective BCA won out in public and Congressional debate when the objectivity of OSHA’s claimed benefits were closely examined.

26. Another example: **Trans Fatty acids.** Not a midnight rule but could have been (proposed in 1997) and new Administration was reluctant to pursue until John Graham the new Administrator pioneered “the prompt letter” whereby ORIA publically used BCA to recommend that agencies consider issuing a promising rule. It was the first prompt letter.

27. Made quite a splash. Pro-health advocates such as the Center for Science in the Public Interests embraced BCA. FDA estimated up to $3 billion of benefits (480 less heart attacks per year) and compared to only about $26 million in new labels costs. FDA issued final rule in 2003 and it is widely agreed that the follow on results by other governments and actual health benefits have far exceeded the early estimates.
Lesson: A semi independent review, a public BCA debate and bipartisan support led to success use of BCA.

But not used since 2006 perhaps due to desire to keep within-Administration debates out of the press.

28. Conclusion: we need both a HOG and WOG to advocate for efficiency. That is, in addition to an advocate for efficiency within the Office of the President who gives BCA advice in confidence, we need an independent agency that publishes its critique and findings and can engage in open two-sided debate.

29. Proposal: A BCA Commission modeled after the FTC. Independent from the President but bipartisan commission of experts with staggered terms. This group could be in addition to group such located at GAO or CBO or a super committee directly in Congress. I am supportive of these groups too. The more competition the better. But I hold out most hope for an independent agency staffed by professionals with BCA advocacy as its central mission.

30. Thank You