

*Small Group Discussion -- Interest Groups*  
*Group One -- September 5, 2003*

**M: Anything that you have to react to from this morning?**

CR: I think this is very exciting, that all of these like-minded individuals are in the same room, and I hope that we can continue the relationships outside of this particular forum.

MW: The technology, some of the things we talked about this morning were interesting. Our position is: As long as there is a way for people to comment on regulations, on issues and that there is an open way to do that – typically electronic. That was something we haven't really discussed – the standard way that all comments will be taken. One of the things we've seen in the past is that some of the comments they've wanted emailed, some faxed, some printed. Our interest would be in coming up with that standard way that all comments could be accepted.

JP: Just a general impression from what we had today and our discussion we had a couple of months ago: There's a renewed hope or optimism about how these comments that are received are used to make decisions and that the intentions of the people on the receiving end are good and not just politically motivated or dismissive toward public participation in rulemaking procedures.

MB: I'm really excited about this. I'm concerned because I've heard they are modeling all of the agencies' dockets after EPA's, and I think that has a lot of problems. So, I'm excited but also a little wary.

**M: I'll add the people in EPA think that the eDocket has systems as well.**

RB: This process has been interesting to me, because we do have people who identify themselves as activists who always try to participate in rulemaking; then we also, as a group, are concerned with public access to government in general as a policy thing. Groups have come to us to advocate on their behalf, so we are very interested in hearing what kinds of technical things you can count on, so that things like stamp ??? aren't added in an ad hoc fashion to a particular rulemaking.

DR: One of my concerns is that it seems that often people think that just by putting things on the Internet or Web that makes it accessible, and it really doesn't. I'm hoping that through this whole process, there will be some language translation that will truly make it accessible to people. What happens in small communities is that the local

elected official often has something like an 8<sup>th</sup> grade education, he's often working part time – could be the barber and the mayor kind of thing – very small amount of resources. I hope those kinds of considerations are included in this process.

BE: We also deal with rules from a lot of different agencies. The more standardized the process can be will make all of our lives a lot easier – to be able to comment effectively. The other comment is on resources: We are not quite as small as the barber/mayor, but I think there is a range of resources available, from very small communities to the nonprofit advocacy world to the industrial or corporate side of commentators. That needs to be kept in mind – that setting up very complicated systems and hoops may require resources that are not available across the whole spectrum. The Internet itself is limiting, because only some people have access to it. It is not universal; it is just universal in a certain segment of the population. While we are franchising people in one dimension, we don't want to be disenfranchising people in another way.

JK: I've been to the past two conferences where we had agency people talk, and I was really looking forward to hearing feedback from the other side. I think some good points have been brought up that line up with ?? research...making using electronic channels as sort of a regular reflex for people, and I think that ??? to make people think that's the most efficient kind of portal to help out with writing better rules.

JC: One thing that's been very interesting to me has been hearing the requests for standardization in the way you access the comments systems and also having API level access so that you can build systems on top of them, or have your portals connect directly in and have your comments processed effectively without hassle. That is something I hadn't thought of before. One thing to be aware of is that when we talk to agencies, that the IT guys would be just happy to have it standardized too, because it makes it easier for them. The agencies, of course, have very different cultures and very different histories in the way they handle comments and regulations, so a lot of the push-back comes from the other side, the rule-writers. They are going through a culture change as well.

MW: That's one of the things that excites me about regulations.gov – the idea of being able to work outside of those agency histories and have a central repository that everybody can depend upon talking to if they want to get public's comments to the government, and then the government agencies can decide how best to tap into that pool of comments that are waiting there for them.

JC: The challenge for them, and you can see it in regulations.gov, is that they start with the lowest common denominator, because that is the only thing everybody can agree

on, and from the comments from Oscar and those working with him, it is clear that as they move toward greater complexity in the system, in order to sell that it's going to be a more ala carte approach to accommodate the differences in the different agencies.

**M: One thing I'm curious about. Do your organizations have a sense of what the local agency culture is? And do you tailor the strategies and the campaign that you take toward that local culture at all?**

JP: I don't feel like I do. Maybe some of the higher ups in my organization may have a better sense because they've done more of the meetings directly with agency officials; however, I don't think that filters down to me very much. So, when we write an action alert and the message we send to our members, that's not really a consideration.

**M: So it's more of a "one size fits all" approach.**

JP: Yeah. We basically are reacting to a rule and how bad we think it is. It's always kind of an adversarial approach to something.

**M: from what we heard from agencies, they would probably love to get you to do an Action Alert when you agree with them.**

JP: Right. And if we had more money, we'd love to do that too. We just don't have money.

**M: Any other thoughts on that question?**

CR: We know when we are going to encounter resistance. The US court service has had a history about giving us a hard time about submitting comments on a mass level. So, we try to go around it by having members call instead of mass mail/e-mail. Some times we get a heads up from regional offices, and we know we need to find alternate ways of getting the message to them. Some times we've gone so far as to burn all of our comments onto a cd and send it to the regional office.

MW: But then you're taking a risk that they can do whatever they want with that cd, because you've gone outside the way they've said they'd accept comments.

CR: I guess it could backfire on us. On the other hand, we want to make sure we have proof that thousands of citizens have made a particular comment. Then we can go to the press and say we submit 150,000 comments, or whatever, because we've been ignored by whatever agency.

JP: Just to amend what I said, I think we need more of a sense of the political climate is. The bureaucratic environment of an agency isn't so well understood.

CR: I also wanted to add another thing about accountability. We do it more so on the Congressional side than the agency side. We do what we call "thank/spank" e-mails. We thank a congressman for voting right on a certain bill or we say "we're disappointed you voted a certain way." Accountability is good for both ways. It shows appreciation, because a lot of people on the Hill always complain we're just coming down hard on them as opposed to giving them appreciation. Also, for the members, we let them know how their representatives voted. We try to make it more real for them. Some times we have them call the regional office instead of DC.

**M: What are the main goals in this form of advocacy?**

DR: Our specific mission is to minimize the adverse effects of a rulemaking, in order that there is better compliance. So that's a specific reason we want the comments early on, so that we can figure out how the rule should be written to have the least adverse impact on small communities. So, we are looking for a very high-quality comment

BE: I think that a large part of a lot of advocacy groups - about 50% maybe on a good day - is about influencing the actual outcome. It's a lot about educating the public about what's going to happen, so they will take other action to try to influence it. All those technical reg writers are happy to read our comments, then their bosses told them to ignore every last one of them. And the examples of that are myriad; we don't have to list them again. It is half about influencing the process and to get the public involved and to feeling that they have some influence on the process. I think the reason there aren't more thank letters is because over the last 10 or so years, the outcomes are such that there aren't very many that we want to say thank you. So we're setting up another level of education and process and activism, because - at least at this point - there's not a lot of impact of all those comments in the actual final outcome of the rule.

RB: Part of that is probably how the comment procedure is structured: The way they are initiated, the way they are brought to fruition, because lobbying is something that a lot of the blue collar groups don't have on their field involved in rulemaking. There's another benefit also, which is to build a record that is public and reference-able. Then, when we go to Congress, we can say "Look, you have this procedure that is supposed to take into account the fact there is XY&Z; In the last rulemaking you had a preponderance of comments from the public which said XY&Z, and yet they ignored it

– that’s why it’s time to go forward with reform.” So, it’s important to have a really public record.

JP: It’s also part of your own PR and membership drives. You can say “we generated XX number of letters.” It can be useful when trying to sell your case through the press. As an example, the FCC media rules: every time you read a story about it, it says “the overwhelming number of comments were opposed to the rule change.” And that is a PR tool.

BE: It’s the way the comment period is set up. I think the reason some people are feeling much more positive and that you’re having an influence is because in that pre-proposal phase, there is more ability to influence the process and what the final outcome will be. However, it is very hard to get in at that point, as it is very resource intensive. If you’ve got a grant that can pay you to do that and provide that input, that is great, but most of us don’t have that kind of resource to be involved before the proposal. Once the proposal hits, the Agency has already staked out their position. So then they have political reasons as well as bureaucratic inertial reasons not to change that are play at the point in the process where we get to come in. That is different from where others get to come in at the process. I think that is substantively different: It means that we have different outcomes and different desires, because we don’t even have any hope that we can influence the outcome. We are about public education and then making a case for Congress or the public during elections later.

**M: Would that hold as well for the comments submitted by the legal or scientific staff in your organization? That there is really no hope that the scientific analysis you’ve done can help to shape the final rule?**

BE: A lot of what happens and the reason we had the discussion this morning about whether you want to have the dialogue about rules during the comment period or set up a sort of secondary process before the ex parte date comes down is that both sides are writing the first draft of their briefs. Who ever gets done first is going to court and that’s their brief. Whoever loses, it’s their brief, and whoever loses, it’s their first rebuttal. So you really don’t want to let out best arguments, because they could be rebutted in anybody’s first order. If you had a great idea, you don’t tell anyone until the deadline. Then you can have a discussion as in any official litigation – you get to rebut, they get to rebut, you get to have a conversation. However, in the first order, you don’t want to do that, because you are hoping you can influence the process. But, if you can’t, you’re staking out your territory for the positions you’re going to take in the process, with the courts, with Congress, wherever it goes and plays out. You’re hoping

to influence the process, but you are using that document used for number of other reasons at the same time.

RB: The fact is that these organizations are very busy. We have a lot of different kinds of work. We don't have the freedom 3 months in advance to just sit around and wait for input - we are busy working.

BE: Yeah, and that's a resource thing too.

RB: You'd actually have a real benefit to submitting early to work against that process, that I don't think is there at all.

JP: There are some that have very charged political support from the Administration or Congress or the Agency heads. They know when they get 10000 identical form letters, it is really easy to do a search to find out who sent the letters. When I worked on the Hill, I could just type in the first few words from the letter into Google and then check out the website that comes up and I could find out the organization behind the mailing. So I think that it would be naïve to assume that even 100,000 comments against something can overcome the will of the Administration when they really want something, but I think there are some less politically charged things that are proposed. For example, we recently had our members submit comments on some meat labeling standards and the Agency said they would reconsider their position. It took the public comment to open their eyes. It was not a high profile, politically charged issue.

BE: The reason we don't comment on the lower profile rules is because we have to save our resources for the big fights.

RB: In the big fights it becomes so highly politicized. They may get a ton of comments, but there is also more pressure politically to go a certain direction.

JP: Our members are going to wonder why we didn't send out something to them. When the issues are in the press, we have that obligation to our members to send out something. That means not so many resources for the others.

BE: For those of us who do not have the resources, it is also much harder to read Federal Register everyday. So then, unless some one tells you to look out for a particular ruling for some reason, most of those rules aren't heard about.

JP: That's why I really like the idea of using keyword searches to stay abreast of developing rules.

JC: Does Federal Register have something like that now?

JP: It's searchable.

DR: It seems that with this new technology, that capability will be there to have discussions pre-proposal. Are they talking about building that in?

**M: It is something we've brought up, but there doesn't seem to be a lot of interest.**

MW: I'm kind of selfish in my stance, but it's the kind of thing we could do fairly simply. In fact, we've done some of that, but when it's not in a real standardized format, it is a little trickier. That's why I keep coming back to the standardization issues.

**M: So interest in pesticides, but in the Federal Register, there could be nothing about pesticides, but plenty about Methyl bromide.**

MW: Exactly, so there are some issues there that make it tricky. However, I'm sure there are services out there that already provide some of that analyses?

**M: I think one fear some agencies have is being perceived as favoring one side or another – that they are reaching out to some groups but not others.**

DR: I think at the beginning of the day today, some one said yesterday's group was not really interested in the compliance end. They should be. They should be writing the best rule they can so that there will be more compliance.

JC: It's not that they don't care about it, it is that their responsibility ends at that point.

DR: Yeah, but they are writing the rules because they want compliance on a matter. And compliance should not be measured by litigation.

JC: They would agree, but the compliance of the rule would be someone else's responsibility.

**M: That's an interesting point. The organizational structure creates this dynamic where one office writes the rule, and then they are done.**

DR: Right, but if they were thinking holistically they'd be encouraging these kinds of comments, because it could help figure out where the issue area would be. That kind of information earlier on could save a lot of time in the long run.

BE: Sometimes it's a different part of the organization that writes the guidance. Sometimes it goes to the enforcement or implementing place and they have to guess what it means. It gets very convoluted and complicated and it is still not in plain English.

**M: what are things that agencies do that make it difficult to participate in this whole process? One obviously is the legal jargon used. Are there any other things?**

JP: I have a hard time even finding rules on website. Like they are in the press room, and I wouldn't think to look there, but ended up finding the area after looking all over.

RB: Some Congressman are starting to have randomly generated images with numbers on them so that if you want to submit a comment, you have to give them an authentication code. I find this extremely asinine from the standpoint of the advocacy groups. Here we are, trying to do their job for them by giving them a rundown on issues, but we can't get our comments in past the system.

BE: You can't get yours in, because the machine isn't reading the word.

RB: Exactly.

JC: It's set up to be a problematic process.

RB: We've been kind of alluding to the stuff the Forest service has been doing. The usage of things like SPAM filtering, while it might make it easier to get rid of SPAM, it also has other ill-effects, because it is not a purpose built tool. It is a clumsy tool. Any kind of placing bad technology between agency and public is an awful idea. That's why I've been impressed with the idea of having a simple, reliable, centralized way to get to eGov. Right now with the Forestry Service you have to call ahead. They suggest you call their Content Analysis Team in Utah to let them know you are about to send some bulk email. Then they say "ok" and they'll run a tail on it to make sure it doesn't get rejected. That is an ugly solution to the problem.

MW: I agree. I think there are certain things you can do. You mentioned that certain agencies are going to say "ours is different, so we need to have a slightly different form." And that's OK. We can certainly deal with those types of customizations.

That's sort of our business. Someone like RB can go out there and if it's very specific for him, do it himself. But with that type of blockage, in a sense, really trying to thwart what we are doing and what you guys are doing, that's the kind of thing that throws up a huge red flag. It tells me that you don't want to hear these comments.

JC: If it were me, I would do something differently. The question is are they incompetent or do they really not want your comments. One possible way around this, because there are legitimate SPAM issues here, would be to have organizations register with the Agency. Then stuff that comes in from you, they know where it is coming from and it bypasses that stuff. There are simple technology solutions here that would grant you the kind of access that you want, if they are interested in granting you that kind of access.

MW: I would say 95% of every office that we deal with, because we from time to time – maybe they are blocking our IP address because they think we are a SPAMer – we'll deal with them. We had problems with the White House. There are going to be those agencies and offices that are trying to block it. And I think that rather than blocking the submission of the comment, they should then be going to some of the technology we discussed this morning. If they are concerned about volume, and being able to parse out form letters, that's where technology comes in.

JC: If they set up a registration process, would that be a burden or welcomed?

RB: I think for vendors...

BE: For an advocacy group, if it was a one-time registration and then be permanently on a list.

Or even if you could do it once it is regulations.gov, you could check off the 10 agencies you are going to send comments to. You fill out a form and sign away that you're not SPAM, you'll only send legitimate comments. You do it once and you're done. It's an extra step in the bureaucratic process, but I can't imagine that would be difficult. Tell me if I'm wrong.

RB: I think that this falls squarely into the realm of technology which has political implications. I worry not so much for established groups, but for new groups. What would the registration process be like? Is it really as easy as calling them up. If that's all it is, then I don't believe it would be a robust protection against SPAM.

CR: I would like to second what BE said. Right now if you're getting bounce-backs because there is huge volume of email from one particular IP address, then you need to

call to let them know it is a legitimate source and not SPAM. So it is fine for this particular incident, but to have to do it repeatedly is very burdensome.

JC: I think if it were a yearly process it would be reasonable.

CR: Right.

DR: When you do the online commenting, do individual members not send it from their own emails? They send it to you and you send it collectively?

CR: Yes. It is sent from a central server in our office.

JP: When our members send an email, it goes through our website or vendor but still shows their email address. I know this, because we did a thing where we sent emails to McDonalds, and they sent replies to all the people directly.

JC: I think that if they want, they can see exactly where it came from.

JP: We've had the problem of it being blocked, even though it had their email address, because it showed that it was routed through us.

RB: I also worry about what sort of implications it has for comments later on down the rule making process. For instance, if they get used to the practice of being able to identify where every single message comes from, and if it becomes an efficiency matter and they just assume what the emails would say according to known political stances, that would then put greater pressure on having an accurate bucket-dropping technology that works. In reality, I think a lot of groups have different methods in which they get people to write. For instance, we have – sometimes when writing rule makers – a standard letter that people have the option to edit. We are likely to get 90-95% of the people just sending it in. In other instances, we have put out a call for substantive comments, where people write to us with a nugget of a comment. Then we set up a vault or editing program with editors who will go through the comments, make suggestions to individuals, and then we will send them to our server. So while both situations would get tagged as coming from us, the second situation would have very different comment result. So I worry that that sort of flag system would become and inaccurate efficiency mechanism.

JC: They are doing that today with paper, but they live in fear of the comments buried in those that people have added that would be the source of a lawsuit challenging the rule later on. So if anything, they are looking to alleviate that problem.

RB: For instance, vendor CTSG has a new tool where you can flag for an agency, whether a comment is the same as all the other comments, or whether the individual has edited the comments. So there are vendor sight solutions to this that are preferable in some ways than kind of centralizing that part of policy.

JC: They won't trust your vendor. Your vendor might think its lies, but then it's a law suit later on.

BE: But the technology where you can the exact duplicates and then the duplicates plus and flag the ones that are the same but different. So if that can go hand in hand with seeing that all the comments are from the same place, then they could see the nuance from the 10% who edited them, and I don't think it would matter.

**M: Are there any things agencies currently do that facilitate you achieving your goals or facilitate your efforts?**

JP: I think just providing the e-mail address as a way of submitting comments changed things enormously.

RB: This is more of a policy thing, I guess, but I like the comment processes where you have two phases – you have initial comments and then you can respond to comments afterwards, but that it's not a requirement. So, initially, you get a lot of people to respond, and then the second comment phase, the organizations can really go through the comments that were submitted, and then discuss afterwards.

BE: But that's very difficult with the Administrative Procedures Act. Once a comment period closes, theoretically they can't talk to any of us.

**M: Not only that, but is it a 45 or 90 day period before they have to produce the final rule?**

BE: They can take 45 days or they can take 7 years. There are no rules about when they have to respond.

MW: What are the rules about having to publish the comments that were submitted?

BE: At the moment they sign the final rule, they all have to be available, and theoretically, they all have to be responded to. The Agency just did one in 90 days that they got 200,000 comments on. It will be interesting to see that docket.

MW: How do they have to be responded to? To the individual?

**M: In the preamble to the final rule.**

BE: It's part of the final docket.

**M: And they don't literally respond to every single one. So the 20,000 that were form letters, there might be a single sentence that responds to all of them.**

RB: Then it's our turn to decide later on as to whether or not that response was adequate.

BE: That's why if you miss something that was added to a letter that was critical, that's where the opening is. That's why the agencies care about that, because getting a rule thrown out on procedural grounds is as good as any other reason to get one thrown out. So they care about that.

**M: There was an interesting court ruling, not too long ago, on the road less rule. The argument around it was an Indian tribe and a mining or something group. The initial court ruling had joined the proposed rule and the district appeals court overturned it, because the initial judge had ruled the public comment process wasn't sufficient. In the appeals court ruling, the judge actually said that while they had received over a million comments and the extent of the comment period was well over what they were required to by law. I haven't had a chance to propose this to too many folks in the agency, but it seems to me that that would be incentive to them to really embrace rulemaking for its potential to broaden the population that's actually commenting. That they would then stand up better in court if someone tries to challenge them on the basis that they didn't sufficiently hold a public meeting.**

DR: I think that the burden on them must be enormous, and I'm sure that they are not hiring more people to write the rules and analyze these comments.

**SZ: Maybe that's where these tools come in. If they feel confident enough in the tools that are available to them, then they would say "oh great, give us a million comments; we can handle it."**

BE: Especially if they come in 100,000 chunks, where the computer can very quickly say these 100,000 are all identical.

**M: I wanted to say earlier, but I shut my mouth, because I felt like I was talking to much. But, we are getting really mixed messages on that. Some of the lawyers will say “we read every single one,” and I believe them. We’ve also had people tell us there was no way they could read them all, and some they didn’t. So maybe this goes back to the agency culture. Maybe in some agencies it is understood that sometimes you just can’t read them all, so you don’t. So we need to get a better handle on that, before we tell the public that everything is going to be read.**

JC: Anybody associated with a powerful organization or interest group they do pay attention to, but stuff that I might submit via the website, if they are in a hurry they might not read it, because the odds are that it would not be something containing information they would rely on anyway. Industry groups go into one pile, and the general public into another.

**M: In our focus group, yesterday, one person from an agency said that they public comment period was ending. It was 4:00 on the day of the deadline, and they hadn’t heard from some groups that had expected to hear from. She got on the phone and was calling them up, saying “hey, we haven’t gotten a comment from you, what’s going on?” Also, other groups have said they will accept late comments, because some groups comments are so valuable that if they haven’t made it by the deadline, they’ll take it the next week; they don’t care. So there seems to be different norms across agencies. Maybe this goes back to a standardization issue. It’s not just standardizing the technology.**

*[tape break]*

**M: ...they’re worrying “well we didn’t get that comment from them that we were really hoping to get.”**

RB: I wonder if it could have been, that in addition to the normal avenues and that, for instance, if they got it in a manila envelope next week, that that’s at their discretion, and that regulations.gov is really just to simplify the cost utilization of the activism.

**M: My guess is that the big groups submitting the long documents are probably going to submit them multiple ways anyway. Were any of the tools described this morning seen as particularly useful in achieving some of the greater goals with respect to participation public participation with rule making?**

RB: The discussion about having a human-readable timeline about regulatory process really would be wonderful. We’ve done actions on rulemakings where we’ve generated

90% of the comments, and then afterwards we don't know what happens to it, because we have to call the agency every month. There's no way we can pull this out of the Federal Register, because every day it is so huge. We just have to keep on remembering to call on the issues, so it would be great to see where things are.

**M: Could you describe for me the specifics of what you'd like to see on that timeline?**

RB: From our constituency, and I think from most constituencies, I think it is the case that people don't understand what rulemakings are. They don't really know how they work, so having a timeline that not only has where the rule is along the timeline, but also having descriptions of the different steps in the process. For instance: "when it is in this purple section, that means they are considering it along with all the other comments they've received; in this blue section, that is when you have the opportunity to file a law suit if you wish; after this it is final." That sort of thing.

**M: So at the different stages, you can be sort of hyperlinked to descriptions of what that stage means.**

BE: Most of the rules get done in a year or two. You can have approximate timelines that can change, but then people can know that it is still within the agency and in the process. Sometimes an agency decides they will never issue a final ruling on something after receiving the public comments. If that happens, it would be nice if somewhere you could go to a place and find out that they to not go forward instead of that they are still working on it. At least you could then know at any given moment what's happening. It's a moving target for any rule at any time, so you can't put hard and fast dates on it, but you could offer guideposts.

**M: Other tools? Other ideas?**

CR: My question is about each individual who submits a comment. They fill out the fields with their name and address and all that. Once the rule's completed and all that information has supposedly been made available, can an individual go to the docket, download all these names and bring perhaps mail them solicitations for donations?

**M: Currently, most agencies have a docket room, with hard copies of all this. It makes it a little bit easier now that the docket is on the Internet. As far as the agencies are concerned, as I understand, once you've held that comment period, it becomes part of the public record.**

JC: I believe it is agency specific right now. Some agencies make that information available; some don't.

**M: There are also variations. Some agencies make it optional as to whether you want to include that identifying information.**

JC: Speaking as a member of the public, if I thought others would pick up my email address and start sending me stuff, I would just submit anonymously.

RB: You're allowed to.

JC: I wouldn't submit if I weren't allowed to. I already get way more SPAM than I need.

CR: So you'd have a way to address that.

JC: You can have my name and address, but you can't have my e-mail address.

BE: But my mailbox is full of trees that shouldn't be cut down, so I don't want you to have my address either.

MW: But the agency itself should not be giving out addresses any more than they should have to. But that's sort of the purpose for your sight in general, that you want people to come through your form and then you've got all that information.

BE: She wants my names and I want her names, and that's what this is about. It would be ideal if the agencies, when you're looking at the docket on the web, would not provide the names and addresses – it's none of my business. If I want to go someplace hard, where it's public information, that's one thing; but don't make it easy for me to get her names and for her to get mine.

**M: Would you like the affiliation, so that when you are looking at comments you can know which organizations they might be with?**

RB: If they choose to provide that.

CR: I think it is irrelevant. I mean, with our online activist network, they are not necessarily contributing members. They may just join our e-list, because they thought dolphins were cool and that was it – no other affiliation or anything.

RB: I'd say that is the case of every group. These groups get enormous email lists but only a small fraction actually give money. So the standard of what you call a member is questionable.

**M: Are there other tools you would find useful? Maybe we could focus it on the discussion about accountability: tools that may help to hold the agencies accountable.**

MB: This is not so much a tool, but a component having the OMB regulatory review information. For my job, it involves going two separate places when it is information on the same rule. Also, just to make going through these dockets easier. Right now, it may involve constantly clicking to go through 10 comments on a page when I just want to print out the whole index of a docket. I think they need to do a lot of user testing.

JC: So, do you want better tools to pull up comments of a particular kind, or do you want something that will allow you to download all of the comments into some local tool and then you'll analyze them yourself?

MB: Both.

BE: Recently, I was trying to find on an EPA docket the comments from a couple of particular groups that I was pretty sure had submitted comments, and it was really tough. There were 5 or 6 groups working on it together, and each one of us only found a few of them. It was quite tedious.

**M: That's actually something, that at EPA, they would like that same feature, because they get calls from people saying "I want to know if the state of Alaska commented." They have no way of finding that unless they go through and check every single one.**

JP: I think they are sorted by date, which isn't very helpful.

RB: The copyright office does actually type up the comments and they are really good about getting them online so that people can review them. There is no "view all" page. So if they had something that was more industrial strength that would be great.

BE: I know that most of us are responsible for this problem; however, when you do have 100 or 200 thousand comments, it would be really helpful if there were some way to separate out the 195,000 that are the short duplicates from the 5,000 that are individual letters from people or whatever. This would make it a more easily

searchable database for the agency as well as for us. Those two kinds of comments serve two different purposes. To not acknowledge that in some fiction that “every comment is saying...” doesn’t serve anyone’s purposes very well. So if there’s a way for the next generation of dockets to separate out those comments, even if it doesn’t do it perfectly – the agency will have to go through the whole thing any way – could functionally help with analyses of the comments. You wouldn’t have to search through the 100,000 comments to find the 10 that you’re really looking for.

**M: It is interesting, because right now, the way that edockets works, as I’ve been told, when they identify their 10,000 versions of the same form, they put “1” up on the docket. Or is there also a column that tells you there were 50,000 copies of this form?**

JC: I don’t know if they do it by form, but there is some place where they say “we’ve received a total of 190,000 comments and 50,000 were unique comments, and you’ll only see 50,000 in the docket.” I don’t know whether there is any place that actually has a count for “this form.”

**M: This gets to another question that also came up earlier. There are kind of two parallel processes going on: There’s kind of the political aspect of the rulemaking and some of the advocacy groups are focusing more on that by mobilizing large masses of people to send in comments. The rule writers will tell us that public comment is about collecting information. With the best information they can write the best rules. Do you think that those are two distinct processes that are happening simultaneously and that at the end of it all, the agency should be left to figure out how to tie them together? Currently, it seems to be all jumbled; there are a lot of people who comment, and they don’t really don’t understand that it is about information collection as well as this political aspect. Would it be better if it was clear out in front for everybody like “go ahead and send your 10,000 forms, because they will get counted, but we are also really interested in collecting information so that we can make the best rule.”**

JP: I think that would be too subjective of a process. Who would get to decide which are the political comments and which the substantive ones?

RB: I also think that the distinction is one that is easy to make in some situations and very difficult in others. Rulemakings frequently rely on economics and figures and facts, and in other cases they are very social issues. In those cases especially, the qualitative versus the quantitative information is really valuable, and that building tools to kind of separate them out could run into problems.

BE: I think the danger in calling them “substantive” and “non-substantive.” To use us as an example, the NEAT standards were a lot and identical and substantive comments.

JP: I guess I mean unique and more, for example, written by our program head that detail...

BE: Because we do both.

JP: Right. And we generally do as well. I guess I just meant the mass form letter.

BE: I think the distinction should be between mass form letter versus non; that you don't want to put the subjective decision of what's substantive and what's not substantive, because then you are instantly belittling any mass communications, which is I don't think what any of us want to do. On the other hand I think there is a distinction in sorting and reading mass comments versus other comments.

**M: Yeah, and I was thinking almost only in the realm of public awareness of the way the process works. At the level of the agencies actually processing the comments, there wouldn't be an attempt to make those distinctions. Something that has come up, in the research that I am familiar with, is that people need to feel that their participation has been meaningful in some way. So, if people are being told “send this email to this agency”, and they think they are having some meaningful effect on outcome, and then it turns out that they are not, they might be less likely in the future to participate again. But if they are told up front that their form letter might not have an effect, but if it is one of 50,000 it might, because there is a political component to this whole process. I don't know if that then would be too much information to give the public.**

JP: I think that might turn them away even more to say “we think this doesn't really have much effect, but it would be nice to have your tally”.

BE: I think, maybe not the John Q Publics who somehow just stumbled upon it, but maybe anyone who is responding to an activist alert know about whether it's the FCC rule or the Forest Service rule or any one of the ½ dozen others that have made big press where 200,000 people comment and the agency does the other thing anyway - they know what they're doing, and they know what it's about. And they know that the next alert will be for them to write their congressman instead, because writing the agency didn't work. I think it is all part of educating the public. That part of the

process is working just fine now. We don't have to say anything different to people than what we are saying now.

**M: What would be your major concerns with this whole e-rulemaking? I think a person brought up earlier the different levels of resources across different organizations and how this e-rulemaking would effect them. Are there other things of concern as regulations.gov moves forward with this initiative?**

RB: On a big picture level, the fact that it is structured in such a way that rules come about after 9 months of lobbying by invested industry groups. I don't want to be totally cynical, but rulemakings are put out there because they are looking to iron out details of something in the docket that they hope will get turned over in the courts or by legislature. We have to recognize going into this process that rulemaking is actually very late in the game of actually getting a rule passed. That's why I think it is so valuable to make the public's voice as easy to be heard as possible, because that's how the public fights back against vested interests, and how they participate before the rulemaking starts. When you get a million comments on a FCC ruling, they are all probably fighting for the same outcome and it will not be for the outcome that would allow CBS 40% of the tv stations on the market, because CBS has already done their lobbying 9-12 months before.

BE: One thing that I've been thinking about for the last half hour is the thing I've noticed about today is except for the gentleman next door from the Home Builders, there is like a whole group of people that aren't here. A couple just didn't come that are on the list, and I understand that you invited others who just chose to not participate. Maybe their being here would have made this a less open and free discussion – I'm not sure – but maybe you need to have a completely separate section with the other half of the stakeholders to get their input. I have some suspicions of how it might be different. But I think that is an important voice to hear and to include. Maybe at a later session, when you have some of the differences, to have a more joint mediated discussion. Maybe they are really the same – from a different slant – they have a lot of the same concerns. I'm really not sure, but I think that their absence is really noticeable.

CR: In this room it is.

BE: Next door there is just one. For whatever reasons they chose not to come, another session could be helpful. They need to be part of this discussion and this whole business about how we access and the information is available and how they feel about their information being instantly accessible, and all those other kinds of thing.

**M: One of my suspicions is that the current political climate is favorable to the other side, so they don't really need to come to this.**

BE: And they are getting in the process before, whether it's because you have a grant to be heard or it's because you know you have everybody's ear beforehand – they are not as concerned about the comment process. That could be a lot of it.

**M: I could be wrong too. I'll tell you the history of this: Two and a half months ago we actually had much more interest from the industry/economic interest side. We actually were really worried, because a lot of the progressive, sort of, activist/advocacy groups were saying they were too busy. And we started apparently trying to get more of you. Then all of a sudden, the business side started to drop out, and we wound up with what we have here. It was all sort of interesting, but that was how it worked out.**

DR: American University is having a conference like this in January. We'll see who goes to that.

**M: They are still working on an agenda for that. I don't know that the date's been set. I've heard January too.**

DR: I think January 7<sup>th</sup>.

**M: Once we have the information, we'll probably put that on the Internet site, so if anyone would like to find out. Because it is indeed a much bigger conference, I think there are going to have a much more diverse representation of people from groups and agencies involved.**

DR: I think they will be including people from academia.

**M: There will be more of them there. Are there any aspects of your organizations that you represent that would make a transition to erulemaking difficult? We ask this of the agencies, because they have issues regarding changing the current system.**

DR: I don't think anybody should underestimate the lack of IT in a lot of parts of the United States.

JC: Not just government.

DR: It's expensive. A lot of them are still dial-up. A lot of the governments don't have them; they are in the local library. We get responses like "my high school kid knows how to use the Internet." I think it is changing every year, but there is still a whole lot of the United States that just isn't hooked up. We can't forget that.

CR: Another thing is economics. In order for our communities to access egov efficiently and easily is going to take a significant investment in technology. Right now, these are very hard time for the non-profit communities. There has been a huge drop off in donations, and a lot of layoffs. And, doing these sorts of things is sometimes low on the priority list. We'll have to see what happens.

RB: As the standardization goes through and you actually have a published API or whatever to get into regulations.gov – and I don't want to put the vendors out of business – but having competition from community software developers could be a good thing for folks who may not have the funds to pay for individual systems. Leasing the legislative data for our organization costs \$50,000 a year I think – just to get the data, not including faxes and emails and stuff. The vendors can provide a ton more functionality and specialization, but for people who really just need to get a pathway into government, where they have an audience, making that easier for them, through the basis of competition, is a good thing.

MW: I agree. Everything we want things to be more open, so we are up for anything that is going to make it easier for people to participate. When we first building ??, we had people who said "what are you going to do, they are going to build THOMAS and that will make you obsolete". And we worried a little bit that it would, but it never did, because there is always going to be that need for you guys to say "this is what we think of this rule." You can make regulations.gov as user friendly as you want, but I still think there will always be the need for the advocacy group to be able to say "this is what the regulation needs" in a commonly understandable way. So, I agree with everything you said.

CR: I was curious that you said that about THOMAS, because I think the only thing you get in terms of like big information about congress is like downloading labels.

RB: This is a user interface thing: Because people don't really understand what rulemakings are - and I know that in the "request for rulemaking" stage, in the Federal Register and all the rulemaking sites, they will explain that they want information – explaining the process as often and as easily as possible is important. Currently, it is like three pages down in the Federal Register notice where they talk about what it actually is to comment – the 5 things they want.

**C: Let's revisit the question of which types of tools the rulewriters' will be using to analyze and what information should be available for the public to access through regs.gov. Earlier, it sounded like there was kind of a consensus: A lot of the things are fine, but they should always optional. The idea of typing in your comment and having similar comments pop up, previewing your comment; those all sound fine to you, but you wanted to make sure there would always be the option to just go in and submit a comment without looking at other emails.**

RB: Yeah, but I think that scenario, from ease-ability standpoint is a nightmare. It's really cool technology, and I can see how it would be extremely superb from the rulewriters' standpoint, but I would never send my sister there to take action on a rule. She'd eek out.

**M: Those tools would most likely to be used by policy staff at the advocacy organizations?**

RB: I don't think they would though. We comment on like technical things generally. I don't know that our attorneys, who draft those things, would be very amenable to going through a web form draw up their comments. I think there is probably a lot of detailed nuance structure in the arguments that they are bringing forth, that that would just be stifling, no matter how good the tools are.

**M: But if your attorneys are writing a brief, because the case has gone to court, and they use the tools that the rule-writers have to sort through all the comments to find things that had been overlooked, that could be useful.**

RB: Yeah, I think that pulling the additives out of the body could be very useful, but I think that the attorneys or policy people would not likely use those tools to initially generate comments.

**M: Are there other thoughts on that, either in terms of the guided form or in terms of tools to actually sort and categorize?**

RB: I think that being able to check out the near duplicates would be really interesting. That is where advocacy groups may have the biggest opportunity to tailor and fine tune its message. If, for instance, half the people have changed the letter to add this one position that we didn't pick up on, then that would be great – to know that they care about that.

BE: I thought some of the keyword tools that you guys talked about this morning were interesting. It would be nice to have that available for phrases, and things like that, to get a sense of the range of ideas in comments and keywords that were there. Then I could go back and forth and be persuaded the numbers were or weren't a good thing.

JC: They do or don't bias things.

BE: They do bias things; but whether that's still useful information or not. Whether it is more useful or more likely to be misused.

CR: Another way to find out where individuals came from who submitted comments could maybe come from your analysis of the comments submitted afterwards. We could then know if we have say limited support in a certain area of the country which could then lead to changes in our outreach to them. I guess you could only do that from the geographical standpoint, you couldn't do it from the socioeconomic standpoint.

JC: You just get the stakeholder stuff I showed in the Vendor CTSG graphic.

CR: That would be helpful, because we always grapple with who's not getting our message and how can we get it to them?

**M: MW, with the services that Capitol Advantage provides, you are capturing those comments before they actually go to the representatives of the agencies, so some of the questions like what CR was asking could probably be answered at that stage, rather than having to the agency after the comment period to get the comments back for analysis.**

MW: I think that as long as they come through the group site, you can do any analyses you want on the data that you've captured. But if they've gone straight to regulations.gov, which they most likely would do, then you have to wait.

BE: What that is arguing towards is as you, the collective research community, develop these tools, there are a number of users for them. One of them would be us. So that would mean packaging in an incredibly user-friendly manner. Not as you would for those who know what it all means, you are giving it to one of our groups who say "this is how you search it by zip code and do a frequency distribution by zip code of all the people who commented on your rule; so that that disc CR had that she took to the Forestry Service with 10,000 comments could be searched by zip code. But that means you push three buttons, and your graph comes out without having to be a computer

scientist. Some of the search and sorting tools that can give you a sense of how specific comments differ from the canned letters, with duplicates and duplicates plus, if they could be easy enough for us to use to do our own analyses on comments could be very helpful. We are another user for the types of tools you are developing if they can be made user-friendly enough.

RB: Our vendor can give us statistics like the number of action-generated comments from every congressional district in the United States, and that kind of rhetorical stuff. The other thing is that a given rulemaking, we are not the only people commenting, so being able to get it out of regulations.gov as opposed to just from our vendor which has our members' comments would allow us to correlate how our comments are similar to the others that other groups sent in. This may not be something that has a real tangible day one benefit, but it is interesting from a policy landscape perspective to see what other people are saying and how close it is to what you are saying.

JC: From a technology point of view this is all easy stuff. It is a policy issue whether they will choose to make this available to us, but to show the comments by district code or anything else, and to do that within subsets, like to say "of the people who sent in this form letter, what does it look like?" and "of the people who commented on genetic engineering, what does it look like?" – that stuff is all really easy to do.

DR: How are you thinking to get those zip codes.

JC: People have to provide those when they submit their comments, otherwise there is no way to do it.

DR: That would have to be like a web-based form then.

JC: Some of the forms do capture that. Some don't. Once you've got that information, you can do everything else. This raises a point: Where do you see differences between your needs and government needs? This is an area that could clear up a lot.

RB: Not to be cynical about it, but I think in some cases we are submitting the comments, but in reality we don't want the rule to be decided at all, because we are stalling for legislative or litigious intervention.

JC: We talked to them about that yesterday, because clearly once you know how the system works, you can game the system. But their reaction was "we can do that today." And if you've got the resources to generate a form letter and then generate 50,000 variations so that they will look somewhat different, you can do that to them today.

JP: So our goal is not necessarily to always to make things easier for the agencies. It might be to expressly agitate. It may be a tactic organizations can employ.

**M: Earlier we touched on the idea of having a set of guidelines that would help citizens right more informative comments. Is that good or bad? Would they be read anyway? Comments?**

BE: I would be really curious to know how many individuals actually right comments. Have 3 or 4 agencies each pick a rule and do a sort, or pay a vendor to do a sort, or whatever, to try to do some statistics. I don't think it is a near fiction to say that the public writes comments. I'm a fairly informed commentor, but the number of times I have actually sat down at my computer and drafted a letter, that wasn't just changing 10% of the words and adding my 2 sentences to the end of the letter that already existed, is pretty small. I don't think that in this day and age, talking about doing the system on the Web, that people are not writing comments. They are taking our letters, and if we are lucky they may adapt them to get them into the 10% of people who actually knew enough about the issue to add a sentence or two of their own thoughts. I would be really interested to know if the public really writes comments.

**M: We have an idea, and I can tell you anecdotally, because we have actually looked at three different rulings. From looking at those, on the bigger controversial rulings, probably on the average 70-80% are form letters. Then there is another 1-2% from the big associations and interest groups and so on. But we need to get a handle on just where the last 20-30% fall. Are they just the random Joe Smiths out in Nebraska who are submitting comments or are they individuals who saw an article or something that directed them to the website to comment on a particular ruling. Part of our research is to try to get a handle on that.**

BE: 20% is actually impressive to me. I'm interested to know who are those people.

JC: I know it's more than you want to look at, but consider the hours of service the DOT did. I looked into that just very briefly. There are letters in there handwritten on hotel stationery.

**M: Even though we are not doing this in ours, on other rulings I've looked more extensively at handwritten or faxed comments. It actually is pretty amazing the number of people who went to their local Kinko's and on Kinko letterhead, they actually wrote out their comment and faxed their letter from the Kinko's.**

DR: Was that the DOT rule?

**M: That was the Forest Service rule.**

DR: It would be interesting to correlate the public comments to the amount of outreach the agency does.

CR: And the outreach of the interest groups. The Road-less is like the number one priority for the environmental community. We invested millions of dollars and millions of man hours, and a lot of work got done on the grass roots level.

**M: So, in a way what we need is a better sense of if the advocacy groups are generating not only the massive form letter submittals, but maybe some people are also going to write a unique letter.**

RB: I'm curious about what the group rulewriters considered to be valuable. I think that is something that would help us. I understand that they consider "valuable" to be new scientific or substantive information that they can then address so they will not later be sued. But is there any sense, with the rulewriters, that so many people wrote with the same concerns, that that in itself is a valuable method - the idea that it is not only what is said, but that was said a million times, and that it represents a community of citizens who view the comment as valuable.

**M: You can't ignore when 80,000 people have spoken. They are constrained by the point there are other factors, but on a personal level, they are effected by the message that the public has spoken.**

JP: From a personal standpoint, I hope they don't put too much weight in that, because clearly it is a one-sided thing of people pushing that. So obviously they know, and it is hard in the face of those letters, that the people that may be in favor of the ruling probably aren't as being organized as much to write letters. And clearly the true representation of the public opinion on a ruling isn't 80,000 to 1.

BE: I think we also have to think of our comments. Sometimes rules are solely based on constraints that are in a law. For example, you are supposed to write the best available technology economically achievable, the best available control technology, pick a term. Even to some extent the jurisdiction question for the waters of the US is theoretically about the law. The Road-less rule is in a slightly different category in terms of the public opinion. It is much more an interpretation of what is a good use of the public lands. The fundamental law underpinning it doesn't have very definitive aspects. I

suspect the agencies have to or ought to consider the masses of comments differently, depending upon what are the underlying reasons or justifications in basis of law for the rule they are trying to produce. With some rulings we are talking about really nominally factual things, whereas with others we are more social value questions. There is a continuum.

**M: Would that be really useful for advocacy organizations? Let's say there were ten rules, and if you could plug those in to...**

[tape break]

JP: ...not a scientific representation, which is what they would say analyzing that volume of comments: these are people who have self-selected to put themselves into this anyway. At the same time, you can use those numbers and then go out to the press to generate more support and more outcry. You can build on what you've done through the comments process. Then it will seem like it is not just self-selected, but that there is a real majority of public opinion on their side out there in the real public, not just the response sample.

BE: I think it is actually a sign of the political times that we are the only ones doing this. I worked on a rule once in another life, where the postcards came in from Joe and Bob and Sue who worked with the variety of plants that we were talking about regulating, saying what a horrible thing this was and that it would put them all out of work, and that people needed these products. They were printed postcards, paid for the company for which they worked.

JP: I think they still do that. I just read recently about "astro-turf" instead of grassroots. The companies' are paying – giving rewards and time on the job to submit comments for congressional proceedings and maybe even for regulatory. Maybe we aren't as exposed to it.

BE: But you don't hear about the comments. You go to the docket, and find out there were 90,000 comments, and you can account for 80000 of them. You know what the answer is.

JP: Like you were saying, they helped write the rule in the first place.

BE: Right. It's a sign of the change in the political times. They used to have postcard writing campaigns on both sides. This was in the days when you only received

comments via postcard. You don't hear about this any more and I think, for the most part, the other side doesn't feel the need to do this.

RB: Maybe it depends upon what you are lobbying for. Look at the entertainment industry, which has been around for many years. They so far outclass the technology industry in a lot of ways, because the technology industry has all of a sudden, in the last 10 years, has come into buckets of money and believes they will continue to make this money regardless of what happens; however, the recording industry, the music industry has gone through ups and downs, and they realize how important regulation is to them, so they do their work before hand.

DR: I picked this up at a conference a couple of weeks ago. It is called The Art of Commenting Fact Sheet.

**M: which office of EPA does that come out from?**

DR: I can't tell. It's in small print.

**M: (concluding remarks regarding a break and the monitor preparing bullets of main points and conclusions discussed during this session)**