

Federal Election Commission

Public Hearing on Agency Practices and Procedures
January 14-15, 2009

Wednesday, January 14, 2009

9th Floor Meeting Room
999 E Street, N.W.
Washington, DC 20463

COMMISSION MEMBERS:

STEVEN T. WALTHER, Chairman
MATTHEW S. PETERSEN, Vice
Chairman
CYNTHIA L. BAUERLY, Commissioner
CAROLINE C. HUNTER, Commissioner
ELLEN L. WEINTRAUB, Commissioner
DONALD F. MCGAHN II, Commissioner

ALSO PRESENT:

THOMASENIA P. DUNCAN, General
Counsel
ANN MARIE TERZAKEN, Associate
General Counsel for Enforcement
JOSEPH F. STOLTZ, Acting Staff
Director

WITNESSES:

JAN WITOLD BARAN, Wiley Rein, LLP
ROBERT F. BAUER, Perkins Coie, LLP
JAMES BOPP, JR., James Madison Center
for Free Speech
JOSEPH M. BIRKENSTOCK, Caplin &
Drysdale
DAVID M. MASON, Former FEC
Chairman
SCOTT E. THOMAS, Dickstein Shapiro,
LLP; Former FEC Chairman
MARC E. ELIAS, Perkins Coie, LLP
WILLIAM J. MCGINLEY, Patton Boggs,
LLP
HANS A. von SPAKOVSKY, Former
Commissioner
BRIAN G. SVOBODA, Perkins Coie, LLP
LAURENCE E. GOLD, Lichtman Trister
& Ross, PLLC, AFL- CIO
ROBERT K. KELNER, Covington &
Burling, LLP

PROCEEDINGS

CHAIRMAN WALTHER: Good morning. The special session of the Federal Election Commission for Wednesday, January 14 and Thursday January 15, 2009, will please come to order. I'd like to welcome everyone to this hearing on the Commission's policies, practices and procedures.

I'm Steve Walther, Chairman of the Commission. I will begin by introducing my colleagues at the table.

On my left is Vice Chairman Matt Petersen. On my right is Commissioner Cindy Bauerly. Further on the left is Commissioner Caroline Hunter and further on the right is Commissioner Ellen Weintraub, who presided over our hearing in 2003 when she was Chair of the Commission. On the far left, or far right, however you want to look at it, is the immediate past chair, Commissioner Don McGahn.

Also sitting with us on the right, the far right, is General Counsel Tommie Duncan, and on her left is Ann Marie Terzaken, from our Office of General Counsel. And on my far left is Joseph Stoltz, who is our Acting Staff Director.

The issues we are discussing today were included in a notice of public hearing and request for comments published in the Federal Register on Monday, December 8, 2008. The notice was signed by our immediate past chairman, Don McGahn, who is a strong supporter of this initiative.

The Commission plays a unique role in administering and enforcing the federal campaign finance laws and is considering this review -- conducting this review to consider issues that require reexamination or adaptation of our policies, practices and procedures.

This hearing is the second of its kind. The Commission conducted a similar review of its procedures in 2003, although narrower in scope. That particular hearing was conducted, as I mentioned, by our

current commissioner, Ellen Weintraub. The comments received during the 2003 review were considered by the Commission and as a result, the Commission adopted a number of new policies and procedures, some of which are referenced in the Federal Register Notice for this hearing.

We are here today to continue that process, asking once again for feedback on how we have been fulfilling our mission and more importantly, how we can improve it going forward. The three basic questions for which we seek answers are, how can we make our process more transparent? How can we make it more fair? And how can we make it more efficient?

This hearing invites comment on the broadest scope of Commission activities since its inception over 30 years ago. It is fitting that we do this now. The Commission has the benefit of realizing how helpful a hearing can be from its previous experience in 2003.

But much has changed since then. With the passage of the Bipartisan Campaign Reform Act, the passage of the Honest Leadership and Openness in Government Act, the advent of new uses of the Internet and new ways of funding campaigns, and the welcome explosion in the number of contributors, we must constantly look at new ways to ensure our mission is being fulfilled.

The fact that we have the most new Commissioners at one time since the formation of the FEC is further reason to take a fresh look at all our operating components from A to Z. This is the start of such a process.

In addition to this exercise by which we hear from the public, I have asked Mr. Stoltz and Ms. Duncan to review our internal procedures in the areas of their respective jurisdictions within the agency so that we will contemporaneously have the benefit of our internal expertise on how to improve this agency. They readily agreed to do so and have already undertaken to form internal committees to accomplish a complete review of our

procedures. This will be done in time for consideration as part of this proceeding.

We appreciate all of the people who took the time and effort to comment and particularly those of you who are appearing here today as witnesses to give us the benefit of your expertise and experience. We are aware the timing of this initiative has been inconvenient for some and appreciate very much the time you have taken to be here today. It will make a difference.

In consideration of the issues of hardship and inconvenience, and to be assured we will be able to receive input from those who were unable to participate because of the holidays, I am asking for a re-opening of the time for written comment until midnight Wednesday, February 18, 2009. This will allow the commenters to have the benefit of the written comments received so far and an opportunity to review the transcript of these proceedings, which should be on our website by January 30.

So without objection from my colleagues, I will ask the Office of General Counsel to prepare a notice to that effect to be placed in the Federal Register as soon as possible.

We have already received pointed criticism and strong suggestions in written comments that precede this hearing and we will hear more of the same today, as we should, and we ask that no quarter be given. We also accept favorable comment whenever possible. I note that some was given, for which we express appreciation.

However, as we go forward today, let me note at the outset my view, one that I am confident is shared by all the Commissioners. We have the benefit of the most loyal, dedicated and professional staff members that any agency could ask for. There are people here who have been at the Commission their entire professional lives, ever since the days of the inception of this agency, such as Joe Stoltz. Also Scott Thomas, who only recently left the agency, is here today to help improve the Commission. Mary Dove, our Commission secretary, has been here for many years, but we are not counting them.

They love this agency. Any criticism, many of which are well deserved, or shortcomings, of which there are many,

are those of the Commissioners and the Commissioners alone, not those of the staff. They operate at the direction of the Commissioners and we take total responsibility for our operation. I ask your comments today will take that into consideration.

I would like to describe briefly the format we will be following today and tomorrow. We expect a total of 16 witnesses who have been divided into six panels. Each panel will have five to ten minutes to make an opening statement. We have a light system at the witness table to help keep track of your time, but we will not use it unless our internal discipline breaks down.

The balance of the time is reserved for questioning by the Commissioners, our General Counsel and our staff director. It is our hope that the panelists will have roughly an equal amount of time to provide their views. We have a busy day ahead of us and appreciate everyone's cooperation in helping us stay on schedule.

And with that, once again, I'd like to welcome you. Thanks for being here.

Thursday, January 15, 2009

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ANN MARIE TERZAKEN, Associate
General Counsel for Enforcement
JOHN GIBSON, Deputy Staff Director,
Chief Compliance Officer
ALEC PALMER, Deputy Staff Director,
Chief Intelligence Officer

WITNESSES:

REID ALAN COX, Center for Competitive
Politics
CLETA MITCHELL, Foley & Lardner,
LLP
CLAY JOHNSON, The Sunlight
Foundation

P R O C E E D I N G S

CHAIRMAN WALTHER: Good morning, everyone. We are now convening again the special session of the Federal Election Commission for Thursday, January 15. Today is a continuation of the hearing we began yesterday on the Commission's policies, practices and procedures.

I am Steve Walther, Chairman of the Commission, just to remind you of that. On the left is Matt Petersen, our Vice Chairman. To my right is Cynthia Bauerly, and to her right is Ellen Weintraub, the Chair of the 2003 hearing on evaluation of the policies and procedures. Second on the left is Commissioner Caroline Hunter, and after that left is former chairman, Don McGahn. On the far left we have John Gibson, who is sitting in for our acting staff director and head of compliance. To the far right is Ann Marie Terzaken and then

Tommy Duncan, both from the Office of General Counsel.

Thank you very much for being here today, we really do appreciate it. We are looking forward to ways that we can improve the agency and its operations. We received a number of very helpful comments yesterday. We had a very full day, and we appreciate it very much. I am sorry that Whitney Wyatt Burns is not here, but she announced that she will be unable to attend because she is feeling ill today.

For those of you who weren't here yesterday, we reopened the time for written comment until Wednesday, February 18, 2009, in order to allow comments and have the benefit of the written comments received so far, and the opportunity to review the transcript of these proceedings, which should be on the Web site by January 30.

then we will open it up for questions and comments.

Bear in mind, none of us are experts in this technological field, so feel free to bring it down to the eighth-grade level.

MR. JOHNSON: Bear in mind also that I am not an expert in the legal field, so bring it down to the eighth-grade level for me when it comes to election law.

CHAIRMAN WALTHER: Please proceed.

MR. JOHNSON: My name is Clay Johnson. I am from the Sunlight Foundation. We are a nonpartisan organization that is dedicated to facilitating ways to make use of the Internet to make information about Congress and the federal government more accessible to citizens.

Today I want to talk about two primary issues. First, I want to talk about how the FEC can make adjustments to its data and Web site to further fulfill the FEC's disclosure mandate; and second, I want to talk about ways the FEC itself can be more transparent to the American people.

My first point: Your number 1 priority in fulfilling your mandate to publicly disclose campaign finance information should be to provide high-quality and accurate data to citizens in a way that is comprehensive and understandable.

This involves three things:

- 1) Ensuring that the data that is being collected is accurate.
- 2) Publishing the data in a reliable way that is accessible.
- 3) Making the FEC's Web site itself more user-friendly.

The first point about ensuring that the data that is being collected is accurate can best be described as garbage in, garbage out. If you are getting bad data from campaigns, then you are going to publish bad data. As long as the FEC does not enforce strict guidelines on how it receives compliance data, it won't be able to publish reliable and accurate data itself.

Right now the FEC receives filings in what is called a non-standard format that has low versatility. What that means is that when rules change in the FEC, you have to change the file format

that campaigns and software vendors send data to you in.

So people who want to see those filings also have to change their stuff, and what that means is -- for instance, right now you have a vendor that we know that has been posting electronic filings erroneously to the FEC for over two years. This can be a problem for people who want to view this data.

What we recommend is a more standardized and more versatile format than the custom file format that the FEC accepts. I am happy to file, I don't know what the language is, but I can send you memos about what that stuff can be at a later time.

Second, and this is probably the most important, the FEC publishes data it receives in official versions after it has been received and gone through some form of internal process at the FEC. This is where the most need for improvement needs to come into play.

Presently there are multiple fields like name and occupation and employer, and the way you publish your data, each field has a certain number of characters that is allowed in that field, and if, say someone's occupation and employer, the length of their title and employer goes beyond the length of that field, that data is then lost. I personally take great offense to this because if you look for me in the FEC's database, it lists me as technology con, instead of technology consultant.

The answer to this is not to simply just increase the width of the fields. The answer is to use more standardized formats for publishing this data, like XML, extensible markup language, and I will give you whatever you want in terms of technical support and knowledge. My brain belongs to you as long as you want it.

COMMISSIONER

WEINTRAUB: Give it to him.

MR. JOHNSON: What is happening is that data is getting lost when it is being published, so it is nearly unusable. It is inaccurate and you can't make safe assumptions.

Finally, my third point is making the Web site more user friendly. As we have seen in the last three presidential election cycles, the use of the Internet to make contributions has surged cycle after

CHAIRMAN WALTHER: We will now reconvene.

We have before us Mr. Clay Johnson from the Sunlight Foundation. He has proffered comments that are more technical in nature on the enforcement process, but upon taking a look at your report, it is very important to us to consider some of the points that you made.

You have the luxury that no one else has had because you are all alone, and we have allocated for this panel an hour and twenty minutes. We had a more structured approach, but I will ask you to give us a short summary of some of the highlights you would like to make, and

cycle and, as such, so has the interest over your Web site and data.

Today the FEC's Web site has to be recognized as the most valuable strategic asset your agency has in fulfilling your disclosure mandate and, as such, that its Web team is more than just providing a support function. Just as attorneys are essential to the FEC's enforcement duties and accountants are critical to the FEC compliance mandate, the FEC's Web staff is instrumental to the core disclosure mission of the agency and must be provided with the skills and authority to make disclosure on its Web site equal to other critical agency functions.

Improving the Web site involves two significant changes. First, a shift in language that starts speaking to citizens and not just to lawyers and accountants. For instance, if I want to search the FEC database, my first option on the Web site right now is to search through candidate and PAC party summaries. Many people don't know what PACs are or what a summary is.

Some language -- the language on the Web site right now is highly specialized, and a recommendation is that you spend some time copywriting with a copywriter to tailor it to a broader audience.

Second, a change in technology to make the Web site itself more useful in spreading the information. For instance, right now if I do a Google search for Clay Johnson, I can take that link and then copy it and paste it in an e-mail or put it on a Web site or something like that. Right now when I search the FEC's Web site, I can't do that. I can't search for Clay Johnson as an individual contributor on FEC.gov and then e-mail that link to someone. I have to e-mail the search form to someone and tell them to type in Clay Johnson.

The second thing is to have what are called APIs, which are ways for other Web sites to query your database and put the information on their pages, so that they can say -- so that I can, say, run a Web site that says I will search for Clay Johnson and have the contributions listed on my Web site in line.

Those are my three big recommendations for you guys for your Web site.

And secondly, on a separate note, as part of the FEC's enforcement and compliance duties, senior staff and FEC commissioners routinely meet with individuals representing candidates, PACs, campaign committees, corporations or other entities that are being investigated or have possible knowledge of alleged campaign finance violations.

To address the appearance -- and I am not saying anything is going on wrong here. To address the appearance of undue influence or corruption, it is Sunlight's suggestion that the Commission should draft regulations that would require Commissioners and certain senior officials to report online within seventy-two hours any significant contact relating to a request for FEC action.

If the FEC finds that it does not have the ability to draft such regulations -- I don't know that you do -- it should design a system of voluntary reporting of significant contacts. In either case, a significant contact is one in which a private party seeks to influence any official actions, including any advisory, regulatory or enforcement action pending before the Commission.

Thank you. I will be happy to answer any questions.

COMMISSIONER WALTHER: Let's start with the commissioners. Commissioner Weintraub.

COMMISSIONER WEINTRAUB: I am completely incapable of engaging with you on the tech stuff.

MR. JOHNSON: That is not true. I am pretty charming. [Laughter.]

COMMISSIONER WEINTRAUB: I hope this will be the beginning of a dialogue between you and Alec Palmer, who is sitting at the table over there, who I am pretty confident is the only person in this room who really understands what you are talking about, and there are probably some staff people out there too. I hope -- I think you have made what sound like perfectly reasonable suggestions to me.

The only thing I really want to ask you about is the statement you said at the end: As part of our enforcement and compliance duties, senior staff and FEC commissioners routinely meet with all of these individuals that we are enforcing the law against.

What is that based on? Because we have what I consider to be pretty stringent ex parte rules that require disclosure of exactly those sorts of contacts, and as a result I think that commissioners try pretty hard to avoid doing that. Do you know something I don't?

MR. JOHNSON: No, no. Please don't take it as, hey, I know you guys are meeting with convicted felons and -- what I am saying is you meet with people about your issues, whether they are investigations or --

COMMISSIONER WEINTRAUB: No, not about investigations. We have rules against that.

MR. JOHNSON: How do you conduct investigations?

COMMISSIONER WEINTRAUB: Our staff attorneys do.

MR. JOHNSON: I see.

COMMISSIONER WEINTRAUB: I certainly would never meet with counsel to a party that had an ongoing investigation to talk about that, and if I did I would have to disclose it under our current rules. I am wondering if you know something I don't know.

MR. JOHNSON: Then you know something that I don't know. I will say that one of the things we say at the Sunlight Foundation is public means online. What that means is it is not okay to say that a document is public or that a schedule is public because it is in a three-ring binder somewhere in this building any more. Technology has required a shift and I think Americans are demanding a shift in the way they think. If it is public, it has to go online, and you might as well consider it confidential if it is in a document in the basement here.

COMMISSIONER WEINTRAUB: That is a very fair point and I agree with that. Do you have a definition of significant contact? Is that based on a regulation of another agency?

MR. JOHNSON: That is based on what my lobbyist told me to say.

COMMISSIONER WEINTRAUB: You know what people think about lobbyists here in Washington. It sounds like it is drawn from regulatory language. I was wondering if you are suggesting there is some agency that does

this, and we should be modeling ourselves on them?

MR. JOHNSON: No.
COMMISSIONER

WEINTRAUB: Okay. That is it.

CHAIRMAN WALTHER:
Former Chairman McGahn.

COMMISSIONER MCGAHN:
The fact that you looked at our Web site and you didn't understand what our ex parte rules were tells us that they are not prominently displayed on the Web site, which I think is the point you are making, if it is not there, someone who is not an FEC junkie is not going to know, which could raise perception issues, so maybe that should be more prominent on the Web site.

MR. JOHNSON: Sure.

COMMISSIONER MCGAHN:
Believe it or not, one of my degrees undergrad was in computer applications, and once upon a time I could actually program in COBOL C, Fortran -- I could actually do all that, and my father convinced me that computers were just a fad and I should go to law school. I made a lot of good life choices, and now here I am. [Laughter.]

I was once quoted by a British academic saying, I don't understand why anyone ever would want to go on the Federal Election Commission [laughter] and something about the fox guarding the hen house, which was of course taken out of context, which actually was submitted as a comment in the hearing five years ago. That is a way of saying I sort of understand some of this, but not really.

The question I have -- I think Alec Palmer has done a great job in the last several years with the Web site compared to what the agency used to be like. The font was smaller than even the footnotes I write, but it seems to me some of the search-engine analogy type stuff is a little tough. Search words like contributions, it will come up, there are no words on contribution. I will type a respondent's name in a case I knew existed and I couldn't find it. I don't really understand how search engines work and what we can and improve that so it may give the public a better sense of what we do here and how to get access to the information.

MR. JOHNSON: It is a tough problem to solve. I used to work for a

company called Ask.com or Ask Jeeves as it was known back in the day.

Right now the FEC Web site has several different ways of searching. You can search the FEC's Web site, there is a little box on the top where you can search for anything. You can search for me there. A PDF file of this meeting comes up, and then you can also go and click on search disclosure databases, and there are different methods of searching those databases, so you can search for individual contributors, committee filings and stuff like that.

The way that is done is actually fairly sufficient because you are basically limiting the scope of what things can be searched through, so because of that they are more accurate, the less needles in the haystack -- or the less hay in the haystack, the more needles you are going to find.

The problem is that the underlying data that is coming into the FEC and then the process that the FEC is using to scrub or clean up that data, you are losing data that is valuable, so when you are searching against stuff that the FEC has accidentally deleted or not publishing any more, it is the technology con problem. Who knows whether it is a technology contract or consultant?

It is worse when you have large companies and the company name comes first, so let's say the name of the company is Wal-Mart Stores Inc., and the title of the person is Director of Mid-Atlantic Stores. It is very relevant that this person is Director of the Mid-Atlantic region, but the FEC is only going to publish Director of, or Director "O," because that is the character limit. You run the problem of losing data that doesn't exist.

It is the same for names. People's names will often be truncated. Over twenty percent of occupation and employers' names that the FEC is publishing to date contains missing information, information that has been truncated in some way. That is the thing -- when it comes to search, you won't be able to search against that data because it doesn't exist any more.

COMMISSIONER MCGAHN:
That is all I have.

CHAIRMAN WALTHER: Ms.
Bauerly.

COMMISSIONER BAUERLY:
Thank you, Mr. Chairman, and thank you

for sharing your insight with us. I am sure that Mr. Palmer is gratified to hear you call on us to spend as many resources and devote as much attention to this aspect of our mission, what we do with the highly trained lawyers in OGC and the auditors as well. We do have an amazing IT staff, and one of the aspects of our Web site that you complimented us on was the map, one of those easy interfaces for the public to use.

I agree with you that adding plain language to some of the technical legal terms is an important step and perhaps a fairly easy one.

Knowing that given the budget constraints that this agency and the entire federal government is going forward, I wonder if you could prioritize what you think the first step should be in making these improvements, because I assure you that Mr. Palmer has a long list of things he would like us to spend resources on, and I think we all would like to give him as many as possible, but the Congress hasn't seen fit to give us all of the money we would like.

So, help us prioritize if you would, from your perspective, which of these changes that are identifiable would best help the public access this information?

MR. JOHNSON: Sounds like two questions. One is prioritize your list of things, and then two is what is the first step that you think we should take?

The first step you should take is to ask for help, and what that means, right, you don't have a massive budget to hire a zillion-person technology team to solve all your problems, but you do have a community of interested parties that have strong technical advice that are nonpartisan that want to help out, and opening up the process and asking for help, I think you could get a lot of expertise and maybe even some work done inside of the FEC for very little cost.

Two, in terms of the priorities, I think my second point, publishing the data in the most accurate way possible, where all of the data is published accurately and reliably is the most important point I have to make here today, the reason being, one of the organizations we give a grant to is opensecret.org, which takes FEC information and cleans it up and publishes it.

They spend a lot of time on this, but they also consistently, day after day, month after month, year after year get more eyeballs on this data than the FEC does, so one of the things we tell all branches of government is give people access to data in a reliable, secure, accurate way, make that your first point and people will generally get that data in interesting ways in front of people.

Another way you can use to -- and that is crazy, this might be crazy talk for the FEC -- but here in Washington, D.C., the CTO is named Vivek Kundra, and he came in and did something very interesting for the District of Columbia, which is he said, okay, the District of Columbia publishes all this data. The office of the CTO is going to put \$50,000 out on the Internet and say whoever can do something interesting with this data wins this money, and actually created a contest for people who competed to do interesting things with it.

The office of the CTO of the District of Columbia then was able to take all of that software that was generated as its own and incorporate it into the dc.gov Web site. That kind of radical thinking might not be up the FEC's alley, but it is a way of opening up the process and getting people's participation.

At the end of the day, I want to express how interested in this particular data set I think the American public is. You see it replicated on Web sites across the Internet, and people really want to get at it. It is a phenomenal service that the FEC provides to the American public to do it, and I do not envy your technology team because they have a difficult and trying job and that is why we want to help.

COMMISSIONER WALTHER: Commissioner Hunter?

MS. HUNTER: You mentioned there was a vendor who is posting incorrect information on the Web site. Could you explain what you mean by that?

MR. JOHNSON: I can. The way that incoming filings work is that software in some form of -- some campaign uses some software to manage its contributions and then file compliance information with the FEC.

If the FEC changes a rule, then sometimes that vendor needs to go back

and change their software and how it works in order to post to the Web site -- in order to post information back to the FEC, and sometimes vendors don't do that.

What is interesting is that because of the technology-con problem, most people now look to the unofficial filings that the FEC makes available before they get going through the process where there is a data loss, and then that data itself is actually not reliable because they are in different file formats over the years that require a huge burden on outside organizations in order to parse and reconcile with official FEC information. It is hard work. It is tough.

CHAIRMAN WALTHER: Mr. Vice chairman?

COMMISSIONER PETERSEN: Thank you, Mr. Chairman. My original question was going to be about recommendations that we use XML and -- but we will save that for another time.

You brought up that there are problems with the public linking to our data. In a prior life I worked up on the Hill and there were a number of times where you sent a link to somebody and then they would click on that link and it would say link expired, which would always be aggravating, so when you mentioned that I did clearly understand because I remember the frustration I had myself.

What needs to be done, how simple of a fix is that? Does that require an expensive or time-consuming overhaul?

MR. JOHNSON: I don't know. It is probably simple, but it could be not simple. It is sort of like asking me how to change the spark plugs on a car that I don't know or have never seen. I could probably figure it out, but I don't know if it has a sealed engine or not. I don't know how long I can continue with this metaphor, but the short answer is it is probably pretty easy.

I think everything that I have recommended, we are not talking about huge -- we may be talking about massive shifts in terms of technology. I don't know because I don't know much about how internally it works. I just know as a customer of your data I am not satisfied, and I want to help.

COMMISSIONER PETERSEN: I appreciated your suggestion that there

should be some method, for example, in our enforcement database for citizens to be easily access classes of case, this is an excessive contribution case, prohibited source case, and, again, just following up on what Commissioner McGahn said about -- asking you about, since you have an expertise on search engines, again, is making a change where you could have -- say you wanted to look under a certain classification of enforcement case, like an excessive contribution case, to have that field as a narrowing field so that you could then put a name in and see if there are any excessive contribution cases that came up under that person's name. That does seem like that would be a user-friendly tool -- maybe not for the person being searched, but for the public as a whole.

Again, how -- and maybe this is the same answer as before, that you just don't know without having had access, but is that something that is relatively -- could that be remedied fairly simply without too much effort expended?

MR. JOHNSON: Probably. Again, I can't give you a definitive answer, but probably.

COMMISSIONER PETERSEN: I don't have too many other questions. I did greatly appreciate your remarks, and I think what you have put forward are things we need to look at very seriously, and I think you brought up an excellent point that the Web site should not be just for the election law geeks who understand all the terminology and all the raw data, but this needs to be something that the public can use a whole, so I think that point is one I appreciate you making. So thanks.

CHAIRMAN WALTHER: Thank you.

Ms. Duncan?

MS. DUNCAN: Thank you. I appreciated your written submission and comments, but I don't have any questions.

CHAIRMAN WALTHER: We have Mr. Palmer with us who is head of our technology department, so he will probably have some questions for you that will be meaningful for you.

MR. PALMER: Thank you very much, Mr. Chairman.

Mr. Johnson, thank you very much for being here today, and I appreciate your comments. All of these are extremely

helpful because it gives us leverage to be able to try to fulfill the mission of the agency and move forward.

I want to also pass on my thanks to Ms. Miller for her taking the time to be able to put that document together. I thought it was very insightful and detailed.

I want to thank the Commission for their support. They have been extremely supportive of the IT initiatives here at the Federal Election Commission and that certainly makes our job easier and it is much appreciated.

Some of the questions I have, I have maybe two or three. You talked about the Web site and how we can make it easier and simpler. You mentioned the APIs and perhaps making the language easier to understand for the common citizen. Can you share other examples, whether it is navigation techniques or things of that nature that may help us?

MR. JOHNSON: Sure. Do you mind if I get a little technical?

CHAIRMAN WALTHER: Please do.

MR. JOHNSON: Doing something like using RSS, syndication technology, for search would be extremely valuable to the community.

I also think using -- giving people -- I am a fan of one big search box. People might not know -- people don't know the difference between a PAC and -- a citizen doesn't know the difference between a PAC and other entities, a corporation or even an individual. People don't know what PACs are. I know that is hard for us all to believe, but because of that, it is a high barrier to entry to get people to figure out what it is they should be searching for.

When they know what they want to search for is Wal-Mart, or I want to know -- I want to search for my neighbors, search for my ZIP code. That is a very popular one. We found that ninety percent of the searches on Open Secrets are -- that could be erroneous statistics, but a large portion is ZIP code searches. People plug in 20036 and they want to see all of the contributions coming from that particular ZIP code.

Providing services around particular legislators and candidates, as long as you treat them as the same entity, to summarize the information is also

particularly useful, and by providing summaries I mean show me a picture of Ted Kennedy and next to Ted Kennedy's name tell me the percentage of money he has received from in state and out state. Tell me the percentage of money he has received from PACs and from individuals, and start summarizing that information in ways that are easy to understand.

I always like to use the example of ESPN.com as a model for political information because at the end of the day, the sports industry is really good at providing statistics in a meaningful way. Basically what the FEC right now is providing is the play-by-play of every major league baseball game since 1975 without a single box score.

CHAIRMAN WALTHER: That is a good analogy.

MR. JOHNSON: That kind summarization I think would be really useful. I think paying attention to doing user testing, I don't know if you have done that before, but running -- I am not a huge proponent of too many focus groups because you can focus group your design to death, but running it through some audiences is also something that would be very useful.

Again, I want to stress that opening up the process can often be very rewarding, by saying, publicly, hey, we are going to redo the FEC Web site and we want some comments, not only in a hearing like this, but from people online, and I know you have taken feedback that way in the past, but to really make a big deal out of that being opened. I know Sunlight would be encouraged by that and would be excited by that.

MR. PALMER: Let me follow up on the API issue. Do you think it would of more value for us to focus on API, application program interface, rather than building multiple systems, have more APIs where people could get to the data and then use it as they see fit, do you think the effort would be better spent that way?

MR. JOHNSON: I do. It goes to my first point, one of the points, of look, the New York Times is always going to -- nytimes.com will always have more eyeballs on it than FEC.gov. I think it is your mandate, not to drive up traffic on

your Web site. It is your mandate to disclose information.

To fulfill that mandate you want to disclose that information and get as many eyeballs on that information in the best way possible, and that means making it easy for outside organizations and entities to take the data off of FEC.gov and provide it to their readership and whatnot. I think the API -- building an API for FEC.gov. would be useful.

More useful, though, would be changing from the global format that you are publishing data in. It doesn't support -- if I as a developer, when I first got my hands on that, I downloaded it, put it in my database software and said why on earth did someone give 20p dollars to a candidate? Why are there 20P dollars? It turns out that the file format, COBAL, that the FEC uses doesn't support negative numbers, and the P is a code for a way to recognize a negative number, but it is completely [unintelligible].

MR. PALMER: That is a good point. That is one of our top priorities now so we can make the APIs work.

Talking about RSS, right now we currently have two feeds, one for the treasurers and one for the press. Are there any others?

MR. JOHNSON: Search. You can power most of your APIs sometimes through RSS or through Jason or other things, but in particular with RSS because people use RSS to do things like subscribe to blogs and their feeder readers, it allows for non-technical users to interface with an API technology, so they can keep an eye on contributions as they are being filed through the FEC. I can tell how many contributions you have made -- not you, but somebody has made, and when there are new contributions coming in, I can see that on the Web and be notified of that just like it would be receiving an e-mail, basically. I think incorporating RSS into search is a very easy way to almost instantly turn on a virtual API on the FEC's Web site.

MR. PALMER: Thank you very much. That is all the questions that I have. Thank you.

CHAIRMAN WALTHER: I was curious to know about the losing of the data. In what way is it lost? I gather it is

still in the bowels of our computer system, but for the public they only get the thirty-five characters or whatever we allot to information. Is there an expert that can drill down into it?

MR. JOHNSON: We have the unofficial filings that are posted to the Web site that you all make available, and then you have the data that you are publishing, the official data that is truncated and missing, and basically what experts try to do is reconcile these two data sets, and it is really hard.

What we will do is we will say this person is Joseph Smith and he lives in 30092, and this unofficial filing is Joseph Smith and he lives in 30092. The probability is high they are the same person. Let's merge these two records such that we can get the occupation and employer information or whatever missing information is in one and put it in the other. You can appreciate the danger of doing things this way because it leads to false positives when it comes to identity, especially if your name is Jim Smith or your last name is Johnson.

CHAIRMAN WALTHER: So if somebody wants that data, or New York Times or Open Secrets, they have to go through that exercise every time?

MR. JOHNSON: Yes. People like Open Secrets and the Sunlight Foundation, and the Huffington Post has done stuff and the New York Times has done stuff, they have largely done some things algorithmically, so you can basically build on top of it every time and not have to do so much, but it is still problematic because it yields to data being inaccurate. People could associate two Joseph Smiths that are not the same Joseph Smith, and then for years that could exist without anyone knowing that it had happened.

There is a preservation element to transparency that is important. The ability to search back in the FEC's data -- 30 years is what Open Secrets is providing -- is significant because it starts telling a story. If we are layering -- let's say point one percent of that data from 30 years ago is erroneous and then another point one the next cycle, it begins to add up and become scary.

Does that answer your question?

CHAIRMAN WALTHER: It does. I know that Open Secrets and other entities figure out a way to sort this. Not to put them out of business, but it seems to me for the general public, I think if we could just focus on students, academics, people that don't live this life, if they are doing research, then if we could make it understandable and get all of the information, that has to be our charter. Disclosure is no good if it is just for the people that are in the election bar.

MR. JOHNSON: I wouldn't worry about putting Open Secrets out of business with upgrading your Web site or the New York Times out of business with upgrading your Web site. Specifically what Open Secrets does is it actually adds more value to the data that FEC puts out by doing things like applying industry codes to the data so you can see candidate X receives most of their money from the banking and finance industry. And I don't think those are things that the FEC should be doing or actually has the authority or the manpower to do.

CHAIRMAN WALTHER: Could be ways we are more facile in the ways we sort our data or even legislators on the Hill, when is it coming in, amounts coming in, and I do ZIP codes too. It is a matter of inquiry for a lot of people.

I guess the question I am coming to is how can we make it more accessible and easier to sort some of this information, whether by date or by person or amount or geography over a period of time and perhaps export it to XML or something like that?

MR. JOHNSON: The first thing is publish the full data in a reliable and accurate way, and bunches of people will figure that out for you. Sunlight will be one of them. We will take that and make it sortable and do things interesting ourselves.

On your side, I can't recommend strongly enough that your first priority should be to make the data as accurate and complete as they are in the official filings, but then also, you are right, to create interactive experiences on the Web site itself, to make it so people can easily access and manipulate this information. Viewing data on a map is particularly useful. I think being able to see an

individual donor and all the candidates and PACs that they have given to on a single page is particularly useful.

One thing that we really struggle with at the Sunlight Foundation, I know it would be difficult here too, would be name standardization. People are entering on a Web form or whatever their contribution and occupation from an employer. Wal-Mart is a great example, there could be so many ways to spell Wal-Mart. There is Wal-Mart Stores Inc., Wal Star Mart, Wal Star Mart Stores Inc., and then there are your casual misspellings. How do you standardize those names?

We all know everything I just said is Wal-Mart Stores Inc., that is the name of the legal entity that all of these people are employed by, but how do you make it so that you -- how do you standardize all those names so you can give me a page for Wal-Mart?

Those are really hard problems to solve. It is something we would love to think through with you guys as well. That occupation and employer field that you provide is, I think, one of the most important fields today. For citizen watchdogs to keep an eye on that, it is particularly useful.

CHAIRMAN WALTHER: The fixed formats you referred to, where we opened our comment up to February 18, and I am sure you would like to provide information on technical and non-technical matters now that you have heard some of the matters that are important to us.

We had an occasion where we had to digest a massive amount of data of contributions. We had 650,000 new contributions for just one candidate in one month, and I know that -- I don't know to what extent it strained our system, but do you have any input as to capacity?

MR. JOHNSON: I have sort of a unique perspective on that. Before going to Sunlight Foundations, I was one of the founders of Blue State Digital, which powered Barack Obama contribution system. I have been on both sides of this problem, oversight and collecting and sending, and it is not an easy problem to solve.

Our suggestion from the Sunlight Foundation is, again, come up with a standardized format to post this

information to the FEC Web site, rather than a proprietary and generally closed format that you have now, because it is difficult for vendors like Blue State Digital and others to manage that process and actually talk to the FEC. It is something that we avidly avoided because we couldn't figure out, so it was outsourced to other firms.

I am happy to discuss those problems from both sides of that issue with you and to make sure -- like I said, my brain is yours. You can use it however you like, but we are here to serve.

CHAIRMAN WALTHER: One more question from me. I was concerned about the competitors, other people in the industry who have software that may not be reporting it accurately. Is it because, from what you are saying, they are not getting information about the rule change, is it because they don't recognize it has an impact on their software, and are we -- should we --

MR. JOHNSON: It is probably all -- it is Murphy's law here, any way it can go wrong, it will go wrong. In this case some people don't update their software enough. If I was in your shoes, what I would be concerned about is if it is not coming to the FEC in the appropriate format, then it didn't come, and treat it as a missed filing. Like if I send my tax filings to the IRS on the back of a napkin, the IRS will probably audit me or assume I didn't pay my taxes.

The FEC should take, to an appropriate extent -- if you filed your campaign finance disclosure stuff electronically and didn't file it in the right format, then you didn't file it, and treat that as such. That will cause vendors to take very seriously whether or not their software is posting their stuff appropriately when the campaigns call and say why is the FEC on the phone with me saying I didn't send in my filings?

CHAIRMAN WALTHER: How do you know that twenty percent is inaccurate?

MR. JOHNSON: I opened up the database and counted and searched for every field -- I looked for every record in your database that had the maximum number of characters allotted and then looked through those and subtracted the

ones that looked like it was the full title of someone. So, if it was someone like director of Wal-Mart stores and then they had other stuff -- I could be wrong, it could be more than twenty percent, but a good estimate is twenty percent has been truncated like that. That was for this cycle only, though.

CHAIRMAN WALTHER: Are there questions from others?

Alec, do you have further follow-up?

MR. PALMER: I think we will get together for lunch one day.

CHAIRMAN WALTHER: Thank you very much. It is very helpful to us.

If there is nothing further, that is the end of our hearing on this matter. We will be adjourned except that we have a hearing this afternoon, and I don't know if it is appropriate to adjourn -- we are hereby adjourned.

(Whereupon, at 12:35 p.m., the hearing was adjourned.)

CERTIFICATE OF REPORTER

I, CATHY JARDIM, the officer before whom the foregoing testimony was taken, do hereby testify that the testimony of witnesses was taken by me stenographically and thereafter reduced to a transcript under my direction; that said record is a true record of the testimony given by the witness; that I am neither counsel for, nor related to, nor employed by any of the parties to the action in which this testimony was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto nor financially or otherwise interested in the outcome of the action.

CATHY JARDIM