

haven's status as a multiprogram lab led to many DOE offices accountable for its oversight.

The report called for better department coordination of environmental and safety issues "and more effective and efficient allocation of funding and resources" in those areas. It also said Brookhaven managers needed to develop a strong commitment to environmental, safety and health priorities. The strongest criticism was directed at AUI, where the commitment should have started and then should have "permeated downward through the entire organization." AUI was responsible in part for the "disintegration of public trust" in the lab, the report contended.



LYLE SCHWARTZ

Samios has acknowledged that "upper management should have done more" to respond to public concerns that the leak has poisoning drinking water on Long Island.

"We could have moved more aggressively" in informing the public. "Instead, we were considered unresponsive," said Samios.

After attending more than a dozen meetings with local activists and state and county politicians and officials, Tara O'Toole, DOE's assistant secretary for environment, safety and health, admitted that the community was "frightened, if not enraged, and extremely distrustful" of the lab in their midst. A decade ago, activists had succeeded in scuttling the Shoreham nuclear power plant, built seven miles from the lab, and a series of chemical and radionuclide spills at the lab, along with a fire at one of the HFBR's beam lines in 1994, heightened safety and health fears and soured

relations between the lab and its neighbors. "The problematic attitudes" of Brookhaven officials, said O'Toole, "destroyed the public's trust. To regain that trust, the secretary believes dramatic moves are essential."

The HFBR will not reopen until DOE and the local community are convinced it can run safely. Meanwhile, its 700 users will need to find other facilities for their research.

Although Peña's action has been described as unprecedented, DOE has a worse case in its records. In 1989, following an FBI raid on the Rocky Flats Plant near Denver, in connection with alleged violations of environmental laws, then Energy Secretary James D. Watkins terminated Rockwell International's contract at the nuclear weapons facility and brought in a new operator, EG&G Inc, practically overnight. Rockwell later pleaded guilty to several criminal charges and paid a penalty of \$18.5 million.

AUI's Schwartz told us he was "very disappointed that the secretary had chosen this route to achieve what we both believe are desirable end points." AUI, he said, was not given the opportunity to defend itself or respond directly to the secretary prior to his decision to cancel the contract. Schwartz lamented that "we won't have the opportunity to demonstrate how we would have achieved the goals" for improved environment, safety and health standards at Brookhaven. AUI had little recourse, he said, because its contract with DOE allows for unilateral termination by the department.

Peña has given Martha Krebs, DOE's energy research director, whose office is the largest overseer of Brookhaven, a month to come up with a plan to correct the problems and to address the department's failure to respond adequately to the Long Island community. Peña also has appointed John Wagoner, manager of DOE's operations office in Richland, Washington, to oversee the cleanup operations at Brookhaven, while the Envi-

ronmental Protection Agency and local authorities conduct an independent inspection of the facility's environmental and health problems. "I'm sending a message to Long Island—and to our facilities nationwide—that I will take appropriate action to rebuild trust and to make environment, safety and

health a priority," said Peña.

Because of the perceived necessity to get on with things, DOE plans to conduct a limited competition to select a new contractor to manage Brookhaven, which it figures may take about six



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months. Though the procurement plans are sketchy, DOE sources say the department may restrict the competition to nonprofit organizations such as universities or associations of schools, which is what AUI is. The possible bidders include Battelle Memorial Institute, which operates Pacific Northwest National Laboratory and was an unsuccessful bidder for Sandia National Laboratories in 1993; the University of Chicago, which runs Argonne National Lab; and AUI itself.

As for Brookhaven's anniversary, a series of reminiscences was delivered over three days last month by 34 scientists and engineers connected with the place, including former director (1961–73) Maurice Goldhaber, retired theorist Ernest Courant, reactor designer Lyle Borst and Gerald Tape, who served twice as AUI president (1962–63 and 1969–80) and was a member of the Atomic Energy Commission in the years in between. The talks were powerful and well attended, but the glitter and good feeling befitting Brookhaven's birthday party was missing.

IRWIN GOODWIN

Federal Court Rules National Academy of Sciences Must Open Advisory Panels, Threatening Its Independence

While much of the Federal government operates under the so-called sunshine law, especially in receiving advice from committees of outside experts, the National Academy of Sciences (NAS), chartered by Congress in 1863 to advise the government on scientific matters, has always worked in closed rooms. Now its way of operating has been ruled illegal by the US Court of Appeals for the District of

Columbia, and this is causing academy officials to rethink how it can function if its studies are accessible to the public.

The court's ruling was made as part of a legal battle over animal rights, in which the academy was dragged into the proceedings because it was advising a government agency, the Department of Health and Human Services (HHS). The lawsuit against HHS was originally filed in 1994 by the Animal

Legal Defense Fund and two other advocacy groups to prevent HHS from using proposed revisions to the government's *Guide for the Care and Use of Laboratory Animals*. The plaintiffs argued that the committee of the academy's National Research Council that was revising the guide should have been subject to the 1972 Federal Advisory Committee Act (FACA), which requires bodies that advise the govern-

ment to open their proceedings and to abide by strict regulations in selecting committees, conducting meetings and providing minutes, working papers, drafts and other documents to the public. The plaintiffs cited a passage buried in a Supreme Court decision eight years ago in a different FACA case, in which the court referred to the academy as an example of a "quasi-public" institution that would be subject to FACA if it formed a panel whose advice was "utilized" by a Federal agency.

In the original animal rights case, the plaintiffs lost their motion in the US District Court in Washington, DC, to stop the academy from revising the guidebook, but on 10 January a three-judge panel of the DC appeals court overturned the decision. The judges agreed that the animal guidelines committee "must be regarded as utilized by HHS because [the department] relies on the committee's work product and because [the panel] was formed by the NAS, a quasi-public entity." That seemed to contradict a 1976 ruling in the DC court, in which an environmental group sued the academy directly for access to committee documents and meetings, and Judge John Sirica found that an academy panel was not subject to FACA. In this year's case, the academy petitioned the full nine-member court to rehear the matter, but on 6 May the court denied the request, letting the January ruling stand.

Bruce M. Alberts, the academy's president, said in a statement that "we are deeply disappointed" by the court's action and that the academy complex (embracing the NAS, National Academy of Engineering, Institute of Medicine and National Research Council) is considering what to do to comply with the law without endangering its long-standing independence. The academy plans to petition the Supreme Court for a ruling on case, says Alberts. The Supreme Court isn't likely to decide on whether to hear the case until after it begins its next session in October.

Although the academy established the research council in 1916 to advise President Wilson on science and technology that might benefit military operations if the US entered World War I, the council didn't really become active in its advisory capacity to government agencies until the 1950s. Some of the academy's activities, such as its fellowship programs, workshops, studies undertaken on its own and the selection of academy members, are outside the mandate of FACA. But studies done at the request of government agencies would be in jeopardy of lawsuits if done the way academy committees have operated in the past. Meanwhile, the appeals court's ruling

will prevail.

Under FACA, officials of a government agency manage and control each advisory committee, approving its members and agenda and sometimes chairing the meetings and even passing on the findings and recommendations of the report. "The credibility of academy studies is based in large part on [the academy's] independence from the government and political considerations," said Alberts. The academy's work would be "severely compromised" if it operated under FACA rules, he noted. Opening deliberations to the glare of government officials, interest groups, lobbyists and news media would seriously undermine candid exchanges among committee members, he asserted.

Eric Glitzenstein, the Washington attorney who argued the case for the plaintiffs, said the decision of the appeals court may apply to any academy committee formed at the request of a Federal agency, except in matters involving national security, personal privacy or trade secrets. But if the academy refuses to open committee meetings on all other matters, he said "it's

virtually certain the academy will be sued on the basis of the ruling by the DC appeals court."

The court's decision leaves the NAS no other choice but to open the advisory process. William Colglazier, executive officer of the research council, said the academy plans to allow the public into committee meetings when members are gathering information and to require panelists to discuss publicly their potential biases on the issues at stake. Still, the NAS is considering other options for conducting studies. Colglazier observed that the research council may stop using committees for some studies and rely instead on volunteer principal investigators, outside experts and staff to collect information and prepare a draft report, which would then be subjected to rigorous review by a group of scientists, engineers and other scholars chosen by the academy. This procedure would avoid the public access requirement, said Colglazier, since FACA "only applies to studies performed by committees. The catch-22 we find ourselves in simply boggles the mind."

IRWIN GOODWIN

Rumors Denied on Gibbons and Deutch

Throughout the month of April, rumors ricocheted around Washington that John H. Gibbons would soon be replaced as President Clinton's science adviser and director of the Office of Science and Technology Policy (OSTP) by John M. Deutch, former director of the Central Intelligence Agency and currently a professor of chemistry at MIT. Gibbons was among the first of Clinton's appointees, named along with principal Cabinet members a month before the new Administration began in January 1993. Since Clinton's reelection, Gibbons has said repeatedly that he expects to leave the job by the end of this year. Word of Gibbons's imminent departure began to spread on April Fool's Day, when Gibbons played what he thought was an innocent prank on his staff by declaring that he intended to resign and leave government service within weeks. Though he laughed about it then, he soon learned that the joke was on him.

Within days, several "inside the beltway" newsletters heralded Gibbons's jest as serious news and went on to speculate that he would be succeeded by Deutch, supposedly favored by Vice President Gore as a "strong voice" for science and technology. Gibbons denied the gossip. He said he hadn't talked about resigning with either the President or Vice President, and he certainly hadn't spoken with Deutch on the succession. For his part,

Deutch told Daniel Greenberg, who writes *Science and Government Report*, a brash biweekly newsletter, that he hadn't heard the rumor, and if he had, he would have dismissed it as the kind of gossip Washington thrives on. But after a short pause, Deutch reflected with a chuckle: "I'm unwilling to confirm or deny." Then he told Greenberg: "Right now, I have no plans for returning to Washington at any time."

Still, to squelch the persistent scuttlebutt, Gibbons issued a brief statement on 28 April on OSTP stationery. It simply said: "Dr. John H. Gibbons continues to serve as the director of the Office of Science and Technology Policy and, as assistant to the President for Science and Technology, continues to advise the President and Vice President on policy and budget formulation in all matters in which science and technology are important elements. Any contemplation about his successor is premature speculation. Dr. Gibbons has indicated that he may desire to leave this post near the end of the year. When that time comes, a number of leaders in the US science and technology community will be considered for this critical position."

Washington wags seized on the statement. "That it was considered necessary to say something of this sort simply adds grist to the rumor mill," said one.

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