

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."

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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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