ty's concern for its workers' health or environmental quality.

In order to gain access to the information he wanted, Roberts needed the cooperation of the six utilities—cooperation that was secured with a written pledge that everything that was said to him would be held in strictest confidence.

When Roberts and his research assistant, Lane McIntosh, had completed the PG&E interviews, Roberts returned to Harvard to analyze the information that had been obtained. A preliminary assessment was published in a paper in the *American Economic Review*,† and Roberts is now at work on a book.

While Roberts was sitting at Harvard thinking scholarly thoughts, PG&E became the defendant in a lawsuit that led to the present confidentiality issue. It seems that a company called Richards of Rockford, Inc., had made 135 spray-cooling modules for use in PG&E's Pittsburg, California, power plant. After they were installed, PG&E refused to make final payment to Richards, claiming that the modules did not perform as guaranteed. Richards, countering that the cooling modules met contract specifications, sued PG&E for breach of contract.

In the course of preparing its case, Richards discovered that one aspect of Roberts' research dealt with PG&E's initial decision to install a cooling system at its Pittsburg plant. And it decided it wanted to know what Roberts had learned. In a pretrial proceeding, Richards subpoenaed Roberts to give a deposition revealing the identities of the PG&E employees he and McIntosh had interviewed, as well as the substance of what they had said.

Roberts, unwilling to comply, sought the opinion of Harvard counsel Steiner, who advised that he refuse to reveal any confidential information. Richards then sought a court order compelling Roberts to testify and to turn over his research notes.

Recognizing the potential ramifications of the case to broad areas of academic research, Steiner made an important decision that not every university would make. He decided that Harvard would represent Roberts (which meant it would pay the legal bill). The university then retained a California firm to handle certain aspects of the case, including the involvement of Roberts' assistant, McIntosh, who is a resident of California. (Richards directed one motion to obtain the notes at McIntosh, who like Roberts refused to yield. McIntosh's lawyers argued, and the court agreed, that it was Roberts who had "control" of the research notes and, therefore, only he could be ordered to hand them over.) A defense of Roberts' refusal to testify was prepared on First Amendment grounds.

To begin with, the lawyers noted the sharp distinction that courts have drawn between civil and criminal cases, saying, "*All* recent authority in civil cases" holds that when confidentiality of information must be weighed on one hand and the right of a plaintiff to gain access to evidence must be weighed on the other, the balance falls in favor of the "public's interest in the free flow of informed communications and the need for preserving the confidentiality of information. . . ." Although, as Steiner acknowledges, all of the cases cited in their brief involve the First Amendment freedoms of journalists, the point of it all was to convince the court that these freedoms must apply to scholars as well.

†"An evolutionary and institutional view of the behavior of public and private companies," *American Economic Review*, May 1975.

Recombinant DNA at White House

The issue of recombinant DNA research has been formally brought to the attention of the White House. In a letter of 19 July to President Ford, Senators Edward Kennedy and Jacob Javits urge him to make all such research, including that being conducted by industry, subject to federal control.

The implication of the letter is that if the White House fails to act, Congress will.

The research guidelines issued by the National Institutes of Health this June lack the full force of law and in any case apply only to NIH grantees. Kennedy and Javits, the chairman and prominent Republican member, respectively, of the Senate health subcommittee, are concerned that much recombinant DNA research would not be subject to any control.

"We urge you to implement these guidelines immediately wherever possible by executive directive and/or rulemaking, and to explore every possible mechanism to assure compliance with the guidelines in all sectors of the research community," runs the key passage of the senators' missive.

The proper scope of the guidelines is an issue that was raised at the public hearing convened in February by NIH director Donald S. Fredrickson. Fredrickson was urged by Peter Hutt, former general counsel for the Food and Drug Administration, to make the guidelines apply to everyone. If a significant loophole were left, Hutt implied, Congress would act to fill it.

One legal solution Hutt suggested was that the Secretary of Health, Education and Welfare should declare the guidelines universal in scope by invoking an obscure section of the Public Health Service Act, one which authorizes action to prevent the spread or introduction of communicable diseases.

In the event, Fredrickson decided to make the published guidelines applicable only to NIH, but recommendations have been sent up to the Secretary of HEW for extending their scope. The Secretary has not yet taken action, and there is some doubt that he will rush to do so. "In an election year, regulation of the private sector by government is not one of the things Republicans like to do," observes a Congressional staff aide.

The Kennedy-Javits letter praises the guidelines as such, saying that they are "a responsible and major step forward and reflect a sense of social responsibility on the part of the research community and the NIH." The "glaring problem" with them that caught Kennedy's interest, according to a staff member of the Senate health subcommittee, was their limited range of applicability. Kennedy's attention was first drawn to the problem by LeRoy Walters, a bioethicist at the Kennedy Institute, Georgetown University, who participated in the February hearing at NIH. Kennedy has been following the events in his home state of Massachusetts, where the city council of Cambridge recently resolved that there should be a moratorium on recombinant DNA research requiring physical containment conditions appropriate to experiments of high or moderate risk. Kennedy "doesn't disagree with the process going on at Cambridge," says a staff aide. The Senator feels, however, that what happens countrywide is different from legitimate local prerogatives, and that his concern with the issue should be on the national level.—NICHOLAS WADE