

not that important, he said, because the savings must ultimately depend on the efficiency of the motors themselves, which is low. Arnold Johnson, a colleague, agrees: "Their information sounds too good; some of it doesn't sound physically correct."

If the device is not in fact new, Exxon obviously had other motives for acquiring Reliance. B. Charles Ames, the president of Reliance Electric, said he thought this was the case. "I think there is more to it than simply the need to bring this device to the market," Ames told *Science*. "Exxon never asked us if we were interested in leasing it, and if they had, our engineers probably would have said we already had something about as good."

Even Baker in an interview acknowledged that Exxon was interested in acquiring Reliance "before it became interested in marketing my device through Reliance."

The reason this has outraged some senators is that for the \$1.2 billion Exxon is spending for Reliance, the company could have drilled roughly 11,000 on-shore oil wells, or constructed an oil shale plant producing more than 50,000 barrels of oil a day. Instead, the senators say, Exxon purchased a huge company that devotes only 10 percent of its business to the area cited as the target of acquisition (the marketing of electric motors). According to Metzenbaum, the industry has placed itself in a box by arguing that in order to maintain current oil reserves and develop alternatives, the big companies need all the money they can possibly lay their hands on.

Jerry McAfee, chairman of the Gulf Oil Company and the industry's point man on the need for price decontrol, recently advanced that argument. "Decontrol will help to supply the needed capital for the investments required to develop energy resources," he told the House Ways and Means Committee. "Insofar as this capital is diverted to other uses . . . the nation will either be forced to use less energy, which will cause economic hardship, or will be forced to import ever increasing quantities of oil, which will contribute to more rapid acceleration of foreign oil prices."

By "other uses" McAfee meant the windfall profit tax; supporters of the anti-acquisition legislation have a more general approach in mind. The bill's two sponsors, Metzenbaum and Senator Edward Kennedy (D-Mass.), hope that Exxon's action will be sufficient catalyst to get support from the Carter Administration and throughout the Congress.

—R. JEFFREY SMITH

The Proxmire Decision a Caution to Congress

The persistence of a Michigan research psychologist in making a federal case of his sense of injury at receiving one of Senator William Proxmire's Golden Fleece Awards has led to a Supreme Court decision in his favor that is causing controversy on a constitutional issue. The court found that congressional immunity against libel actions for what legislators say in Congress does not protect them if they repeat it outside. Congressional leaders say that the decision will curb the right of legislators to communicate with the public, and the press sees in it the threat of an erosion of First Amendment rights.

Scientists, who have been rankled by Proxmire's picking on research projects to receive his personal dubious achievement award, will be interested in another part of the opinion. The court found that merely receiving federal research support does not make a scientist a "public figure" in the legal meaning of libel law that renders it very difficult for them to sue for libel.

There is a long history of legislators treating federally funded research projects as objects of mirth or obloquy—often judging the projects by their formalistic titles—which has made many scientists feel that taking research federal money makes them unfair game. Lower court decisions on the "public figure" point had gone against psychologist Ronald L. Hutchinson and cumulative sentiment within the scientific community was expressed in a friend-of-the-court brief filed for the Supreme Court appeal by the American Psychological Association and AAAS.

The motivation stated for the brief, which focused exclusively on the public-figure issue, is that "APA and AAAS have direct interests in the outcome of this case because the decision of the Court of Appeals, if allowed to stand, could subject every one of their members to public harassment, slander, and libel without any meaningful remedy if they choose to accept public research funds and publish their experimental findings."

The 8-1 decision opens the way for Hutchinson to sue Proxmire and an

aide, Morton Schwartz, for defamation. Hutchinson in 1976 filed a suit asking for damages of \$6 million, later raised to \$8 million. A federal district court in Madison, Wisconsin, however, granted a summary judgment in Proxmire's favor on grounds that the senator enjoyed absolute immunity under the so-called Speech and Debate Clause of the Constitution. The Supreme Court also held Hutchinson was a public figure, which made it necessary that, in order to sue, he establish "actual malice." Primarily, this means proving that Proxmire knew what he said was untrue. The judgment was upheld by the Circuit Court of Appeals.

Proxmire established the Golden Fleece of the Month Awards in March of 1975 to dramatize what he regarded as examples of wasteful government spending. With the second such award, Proxmire cited the National Aeronautics and Space Administration (NASA), the National Science Foundation (NSF), and the Office of Naval Research (ONR) for spending about \$500,000 in support of Hutchinson's research during the preceding 7 years.

In most of his federally funded research Hutchinson was seeking an objective measure of aggression and concentrated on the behavior patterns of animals, particularly monkeys, in stressful situations. NASA and the Navy were interested in the research for its potential for resolving problems of humans confined in close quarters during space flight or on submarines.

In a speech prepared for delivery on the Senate floor on 18 April 1975 Proxmire said, "Dr. Hutchinson's studies should make the taxpayers as well as the monkey's grind their teeth. In fact, the good doctor has made a fortune from his monkeys and in the process made a monkey of the American taxpayer." In his conclusion he alluded to the "transparent worthlessness" of Hutchinson's study. The award was announced by Proxmire in a press release quoting from the speech and later was referred to in a newsletter distributed to some 100,000 persons and on a television interview show. Hutchinson claims that the award was also the subject of follow-up telephone calls made by Schwartz to agencies which sponsored Hutchinson's research.

In his suit, Hutchinson charged that

as a result of actions by Proxmire and Schwartz he suffered a loss of respect in his profession, "was held up to public scorn, and suffered a loss of income and ability to earn income in the future."

In the initial legal rounds the focus has been almost entirely on the "primary grounds" of the immunity and public figure issues. The main constitutional question revolves around interpretation of the Speech and Debate Clause which says that for a "speech or debate" in Congress a federal legislator "shall not be questioned in any other place" except in the House and Senate.

A key point of the court's opinion was that the clause does not protect transmittal of statements by legislators by press release, newsletters, or other means outside Congress. In Proxmire's defense it was argued that such are necessary for legislators to communicate with each other as part of the "legislative function" and also should be privileged as part of the "information function" of Congress in respect to the public.

The court narrowed the protection of the Speech and Debate Clause by ruling that newsletters, press releases, and other forms of comment outside Congress expressed only the views of individual members and were not protected by the clause.

Friend-of-the-court briefs filed in behalf of Proxmire by the House and Senate suggested that such an interpretation means an intrusion by the judiciary that threatens the balance between the three branches of government established by the Constitution.

The press is disturbed by the opinion's leaving open the question of whether news media could reproduce legislators' comments if they are thought to be potentially libelous even if made in Congress.

On the public-figure issue, the opinion found the lower courts in error on both major points on which they based their conclusions: first, Hutchinson's successful application for federal funds and reports in the local press of the grants; second, Hutchinson's access to the media as demonstrated in reporting by newspapers and wire services of his response to the Golden Fleece Award.

A key comment in the opinion was: "On this record Hutchinson's activities

and public profile are much like those of countless members of his profession. His published writings reach a relatively small category of professionals concerned with research in human behavior. To the extent the subject of his published writings became a matter of controversy it was a consequence of the Golden Fleece Award. Clearly those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure."

A major criterion was that Hutchinson "did not thrust himself or his views into the controversy to influence others."

Hutchinson at the time of the Golden Fleece Award was director of the research department of Kalamazoo State Hospital and an adjunct professor of psychology at Western Michigan University. The research program at the hospital was terminated shortly after the award was made. He then moved with his research group to establish a small, nonprofit research organization, the Foundation for Behavioral Research at Augusta, Michigan. Hutchinson is president and research director.

Hutchinson, 43, told *Science* that his income was cut "60 to 70 percent" in the year after the Golden Fleece Award. He says that several agencies which had supported his research "dropped me like a hot potato." Hutchinson expects that there will be testimony at the coming trial to the effect that pressure was exerted within some agencies to end his grants. He says he made no move to take legal action for nearly a year, but then realized that his income had been "drastically reduced" and saw "a clear pattern of harassment."

The foundation combines grant-supported research with a small clinical program. The budget this year is about \$150,000, "back about to where we were in 1973-74," he says. About two-thirds of the research grants are from federal agencies, the rest from private organizations.

So far, says Hutchinson, legal costs have amounted to about \$50,000. He decided not to accept contributions to help pay legal bills unless the Supreme Court agreed to hear the case. Now a Fund to Protect Scholars from Defamation has been formed and is making a national appeal for funds to help pay legal costs.

Test Tube Fertilization

Research Seen Acceptable

Research on test tube fertilization is ethically acceptable if several conditions are met, says the Ethics Advisory Board appointed by Secretary of Health, Education, and Welfare Joseph A. Califano, Jr. However, Califano wants public comment on the report before he makes a decision on whether federal money should be spent on such research.

A moratorium on support of research on in vitro fertilization has prevailed since 1974. Federal funding was prohibited until the advisory board advised the Secretary on the ethical acceptability of such research. After birth of a test tube baby in Britain intensified public interest in the matter, Califano last September asked the board to broaden its study to include all aspects of in vitro fertilization and embryo transfer.

Among the specific conditions recommended as prerequisites to HEW funding of human in vitro research were that informed consent be obtained from persons whose gametes (eggs and sperm) were used, and that no embryo "will be sustained beyond the stage normally associated with the completion of implantation (14 days after fertilization)."

The report added that if research involves embryo transfer, only gametes obtained from lawfully married couples should be obtained. This is to avoid the problem of surrogate mothers and other possible abuses.

The board also favors more research in animals to achieve a better understanding of the process and assess the risks for humans. HEW now spends \$1.5 million on research projects on in vitro fertilization in animals.

Invitation to the public to comment is a required penultimate step in federal rule-making, but Califano has pushed hard for public participation in the process. The board followed Califano's admonition by holding 11 public meetings which took the form of hearings around the country. More than 2000 pieces of correspondence were received and copies distributed to commission members. The report was published in the 17 June *Federal Register*. Comments are due by 17 August.

John Walsh