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# EDITORIAL

## Raiders of the Last Bastion?

The National Academy of Sciences (NAS), National Academy of Engineering, and Institute of Medicine (IOM) make up the Academy complex, which acts as an independent adviser to the U.S. government, enabling our scientific community to provide its best objective advice through a process controlled by scientists and engineers, not politicians. Yet the Academy faces a serious legal challenge regarding the way it goes about doing this. The U.S. Court of Appeals recently ruled that the Federal Advisory Committee Act (FACA) applies to committees of the Academy's National Research Council (NRC) and of IOM that are utilized by federal officials. The ruling is the result of a lawsuit filed by plaintiffs who were hoping to win access to the NRC's committee process. But it is the nature of that process that allows it to provide truly independent advice.

A particularly troublesome issue in interpreting FACA has been with regard to utilized committees, which are committees established by private organizations such as the Academy. In a 1989 decision, the Supreme Court included nonbinding language saying that Congress intended the word "utilize" in FACA to apply to committees established by quasi-public organizations such as NAS, even though the government does not manage or control Academy committees. The recent Court of Appeals decision was based on this Supreme Court language, which misinterprets the original congressional intent.

The Academy's independence—the hallmark of its credibility—would be severely compromised if it were subjected to FACA, which requires a long list of actions to ensure that a committee is controlled by an official of the funding agency. The law is also bureaucratic and cumbersome. It takes 4 or 5 months to get a charter for a FACA committee, which precludes fast-track studies to meet urgent decision needs. In addition, the government has set a cap on the total number of FACA committees that can be created, making it difficult to create even one new committee and impossible to create 400 new committees to replace existing Academy committees. The regulations implementing FACA also require the government to ensure the appropriate balance of a committee by considering individuals who are affected and interested as well as those who are expert, so that political considerations become a factor in committee membership.

The process by which the Academy now conducts its work is painstakingly separate from government, thus ensuring its independence from outside influences and political pressures from government officials, lobbying groups, or others. The Academy examines the scientific basis underlying difficult issues where the public mistrusts the government or where Congress and federal agencies have conflicting policy views. Recent studies include *Veterans and Agent Orange*, *Possible Health Effects of Exposure to Residential Electric and Magnetic Fields*, *The Evaluation of Forensic DNA Evidence*, and *Preventing HIV Transmission: The Role of Sterile Needles and Bleach*.

FACA's aim to make the advisory process more open to the public is a reasonable and important one. In fact, the Academy is opening up its process substantially, alerting the public through its World Wide Web site to almost all information-gathering meetings of committees and workshops, which will be open to all interested observers. However, this reasonable goal of increased openness cannot be carried to such an extreme that the Academy's independence is jeopardized. There are two good reasons why Academy committees meet in closed session to discuss draft findings and recommendations. The first is to ensure that the sponsors of studies cannot use their funding leverage to pressure the Academy or its committee members to make changes in the draft reports. The second is to ensure that draft recommendations are not made final and public until vetted through the Academy's rigorous review process, where changes are frequently made to satisfy the Academy's standards of evidence.

The Academy is the United States' most rigorous scientific review body, often the court of last resort for complex issues. It is time for those who care about scientific, not political advice, to speak out. If the Supreme Court does not fix the problem, then Congress should do so.

**M. R. C. Greenwood**

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