

Government Bows Out of Academy Case

The National Academy of Sciences (NAS) suffered a serious blow late last month in its battle to avoid government openness rules when the federal government declined to back its request for a hearing before the Supreme Court. The decision by the Justice Department makes it unlikely that the court will take up the case, say officials on both sides of the legal dispute. That would leave standing a lower court ruling that the academy is, in effect, no different from any other government advisory committee.

The fight involves interpretation of the Federal Advisory Committee Act (FACA), a 1972 law that mandates open meetings for government advisory groups. It pits the academy and its operating arm—the National Research Council (NRC)—against the Animal Legal Defense Fund, which argues that the academy illegally barred its representatives from attending meetings designed to update a National Institutes of Health animal care and use guide. Fund managers argue that the NRC is subject to FACA, but academy officials deny this and warn that abiding by those rules would give government officials undue influence over academy panels.

The courts so far have sided with the animal-rights activists against the academy and the government, a party to the suit, most recently in a 10 January decision by the U.S. Court of Appeals for the District of Columbia (*Science*, 17 January, p. 297). The last judicial hope for the NRC is to convince the Supreme Court to take the case. A host of government agencies wanted the government to file a petition backing the academy, but Justice Department officials determined that seeking a Supreme Court decision would jeopardize other rulings, such as a 1989 decision that the American Bar Association was exempt from FACA in its review of the competence of judicial appointments (*Science*, 25 July, p. 473). "There was a lot of pressure from the agencies [to join the case], but if we got a bad result from the court, the ramifications weren't limited to the academy," says a Justice source.

The lack of government support is a setback, admits Richard Meserve, a lawyer with the D.C. firm Covington & Burling who is representing the academy. "The odds [of the Supreme Court hearing the case] clearly would be better if the government said a case could be made," he says. "But they decided it was not important enough to be worthy of Supreme Court review." Adds William Colglazier, NRC executive officer: "The probability is low that the court will take this on."

A decision is expected by next month, and a rejection would send the case back to the

U.S. District Court in Washington to set the terms of its ruling. Valerie Stanley, Animal Legal Defense Fund counsel, says her organi-

zation has not decided what it wants. "But we clearly are entitled to the minutes of the meeting and to attend future meetings of the academy, as would everyone else." The group may also ask the court to order the government not

NONCOMMITTEE REPORTS UNDER WAY AT NRC	
Topic	Sponsor
Evaluation of Aluminum-Based Spent Nuclear Fuel Disposition Technology	Energy Dept.
Brucellosis in the Greater Yellowstone Area	Interior Dept.
Medical and Ethical Issues in Maintaining Viability of Organs for Transplantation	HHS, HRSA, Institute of Medicine
Medical Use of Marijuana: The Science Base	Office of National Drug Control Policy
Essential Meteorological Buoy and C-MAN System for U.S. Coasts	National Oceanic and Atmospheric Admin.

SOURCE: NATIONAL RESEARCH COUNCIL

to rely on the animal use and care guide.

Meanwhile, the academy is moving ahead with ways to conduct its work without violating FACA. One such option is to commission one or two principal investigators (PIs), rather than a committee, to conduct a study. Colglazier says five such studies are under way, with five more in the works (see table). The first of these, on the threat to cattle from brucellosis carried by bison (*Science*, 20 June, p. 1786), is being reviewed by an in-house panel that vets all NRC reports.

However, even top academy officials see drawbacks in this approach. NAS President Bruce Alberts says the biggest is the lack of a clear mechanism to resolve a conflict between the PI and the review panel. "That's where it could all blow up one day, and we could wind up issuing no report at all," says Alberts.

So far, the potential legal threats have not frightened away government customers, according to Colglazier. The NRC expects to receive about \$120 million next year from those clients, compared with \$114 million last year, he adds. And academy officials will turn to Congress if the high court refuses to bail them out, with the hope of winning a blanket exemption from the openness rules.

—Andrew Lawler

With additional reporting by Jeffrey Mervis.

AUSTRALIA

Scandal Claims Science Minister

MELBOURNE, AUSTRALIA—A multifaceted review of the country's R&D policies may be delayed by the resignation last Friday of Science Minister Peter McGauran, who got caught up in a governmentwide scandal over the misuse of travel expenses. McGauran, a 41-year-old lawyer, is one of three ministers and a total of six top officials who have lost their jobs because of allegations that they filed improper claims for expenses. "It's not the happiest day in the world for the science lobby; he was an excellent minister," lamented Gus Nossal, president of the Australian Academy of Science.

McGauran, who has been science minister for the past 18 months, says that incorrect claims totaling some U.S. \$1050 were "an honest mistake." His departure followed by a few days the resignations of Transport Minister John Sharp, who allegedly filed the improper claims, and David Jull, minister for administrative services, who was accused of failing to report them. Prime Minister John Howard has asked the auditor-general to conduct a full inquiry into the matter, and said he would name the replacement ministers by the end of

the week. However, some observers speculate that McGauran could return to government if he is cleared of any wrongdoing.

In the meantime, Peter Cullen, president-elect of the Federation of Australian Scientific and Technological Societies, worries that

McGauran's absence could hamper reform efforts. "It's a crucial time for science and technology and the interface with industry," says Cullen. In June, chief scientist John Stocker made a series of recommendations to improve the government's management of science and technology, and in July, transportation executive David Mortimer presented a report critical of existing policies affecting

industry and calling for major changes in the relationship. Last month McGauran's office received advice on what the country must do to keep pace with global developments in information technology.

—Elizabeth Finkel

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Traveling man. Peter McGauran loses his job.