Court of Appeals had in 1965 ordered the Federal Power Commission (FPC) to reconsider—in the light of esthetic values—its decision to license a pumped storage power facility at Storm King Mountain.

But, even in this case, the success was not so much that the power project might be blocked—indeed, that project is alive today and may finally be built in a modified form—as it was that the Scenic Hudson Preservation Conference had been granted *standing* to sue. In other words, it was deemed a breakthrough for the courts to have recognized the conference as a party to the FPC proceedings despite the fact that this group had made no conventional claim based on potential economic injury.

Simply to have standing to be in court is not much comfort unless one can find grounds for obtaining favorable judgments. And, in this critical regard neither EDF nor any other group bringing environmental lawsuits could, in the late 1960's, claim to have many satisfactory answers. There was the traditional law of nuisance, but, while this might sometimes be used effectively by parties directly suffering the effects of pollution from an industrial plant near their property, it lends itself poorly to efforts at coping with things such as hard pesticides and their diffuse and widespread effects. It also is difficult to apply in situations where an entire airshed or a large lake or river is polluted by emissions or effluents from numerous sources.

The strategy most favored by Yannacone was to argue that citizens have a constitutional right to protection from pollution and other environmental insults. The view that such a right can be inferred from the Constitution finds support here and there among legal scholars, but it has found little

Briefing

An Open but Shut Case

Last June President Nixon announced that the myriad advisory committees which assist the federal government would be "open to public observation." The President's order preceded, and was maybe meant to forestall, an act of Congress which said likewise that "each advisory committee meeting shall be open to the public."

The National Institutes of Health (NIH) has some 35 advisory committees meeting this month. Of the 67 days for which the committees are in session, only 14 days, or 21 percent, are fully open to the public. Of the meetings on other days, 24 percent have substantial portions open to the public, 22 percent are open briefly, and 33 percent are closed entirely.

NIH officials state that almost all the advisory meetings in question are closed for one reason, to preserve the confidentiality of grant applications. On what grounds should this suffice to close a meeting to the public?

The law as Congress wrote it (which supersedes the President's executive order) allows meetings to be closed for the same reasons as government officials may deny information to the public under the Freedom of Information Act. The Act has nine loopholes, collectively large enough to drive a truck through. According to lawyers in the Department of Health, Education, and Welfare, the two loopholes under which discussion of NIH grant applications are exempted are loophole No. 4, which protects trade secrets, and No. 6, covering "personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." In other words, an attorney at Health, Education, and Welfare told *Science*, the department considers a research proposal tantamount to a trade secret because, he said, it represents a scientist's stock-in-trade and his only means of deserving his salary and gaining promotion. HEW also claims that public access to grant applications would constitute an invasion of privacy because of the personal details—such as capability to perform research—that are discussed by advisory committees.

The HEW position has not yet been challenged in court. But it could run foul of court decisions holding that the exemptions of the Freedom of Information Act are to be narrowly interpreted. In a landmark case in which the Office of Science and Technology tried to suppress an uncomplimentary report on the SST, the judge ruled that the policy of the Act "requires that the disclosure requirement be construed broadly, the exemptions narrowly."

In as far as a research proposal is not manifestly identical with a trade secret, the HEW position would seem to constitute a broad rather than narrow interpretation of the exemptions.

Nor does the legislative record of the Freedom of Information Act, as excerpted in the Justice Department's guidebook for getting round the act (Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act), explicitly state that grant applications are covered under the invasion of privacy exemption.

Most of the NIH advisory committees that are closed to the public this month are institute councils, not the study sections that make the primary review of grant applications. It is probably fair to say that study sections could not frankly discuss in public the merits of an individual's research application. Does the same constraint apply to the second stage type of review conducted by institute councils? NIH officials say it does: although councils do not assess the merit of every grant application, or second guess the priority scores set by the study sections, they may discuss particular proposals at a level of detail that would be inhibited by public disclosure.

NIH's arguments for closing its committees may be reasonable, and HEW's arguments may even be legally sound, but the apparent intent of President and Congress to open all advisory committees is only 21 percent fulfilled at NIH this month.—N.W.

Colorado Dallies with "Pre" Dental School

A new dental school for the University of Colorado is having a hard time cutting its first tooth. The school has been planning to admit its first students in June, but whether it will open its doors then or ever depends on a

if any support where it counts—among judges. Another somewhat radical theory advanced by some was the public trust doctrine, which holds that no land, whether public or private, can lawfully be used in ways contrary to the public interest. This theory, though recognized by courts in certain cases involving submerged lands and publicly owned lands, has never been applied to lands generally.

The severity of the legal handicaps under which EDF and other groups interested in environmental law labored was all too apparent in those situations where government itself bore all or part of the responsibility for environmental degradation. Government at all levels—federal, state, and local—is of course responsible not only for public works projects which often have serious environmental impacts but also for the licensing and regulation of many environmentally destructive private activities. How, then, was relief to be obtained from the mistaken actions of government, whether it be a matter of a misguided pest control program of the U.S. Department of Agriculture or a misplaced dam of the Army Corps of Engineers? The difficulties here were immense.

Important as it was to marshall expert testimony by academicians with impressive credentials, this in itself generally would not be enough. The rule usually followed by the courts—and still followed by most judges today—was that an action by a government administrator should be countermanded only if plainly arbitrary or capricious or not supported by "substantial evidence," which need not be evidence that is preponderant or conclusive. Environmentally, the likely consequences of a proposed government project or regulatory decision can be very bad, yet to show that the

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go or no-go decision by the Colorado legislature.

In February, a letter was actually sent to dental school faculty and staff members terminating their employment as of early March, but on 1 March they got at least a reprieve when the university regents voted to rescind the notices. The fate of the school now hinges on the legislature's willingness to finance not only the operating budget, but also the major part of a new clinic building for the school.

Key to the situation is the action of the joint budget committee of the two houses of the legislature. The panel recently asked for more information from the dental school, and sources on the committee say the dental school request is not likely to be on the committee agenda until after the middle of the month. In any case, a final decision on the state's capital construction program, in which the dental school would figure, may be a month or more away.

As a result of the suspense, no applications from students have yet been accepted, although the school does have indications of interest from some 5000 people. Dean Leslie Burrows now says a decision has been made to send out letters to applicants telling them to submit information on themselves so that the evaluation process can begin. The school has planned to provide places for 25 first-year dental students and 16 students in a program to train dental hygienists. (There are nine full-time faculty members at present.)

The cliff-hanging really began last October with President Nixon's veto of the Health, Education, and Welfare Department's appropriations bill, which included $3.8 million in federal construction funds the dental school had been counting on. The school reacted by revising its plans and coming up with a "bare bones" budget. Under the new proposal, the state is asked to provide $1.67 million to add to the $1.08 million in state money and $1 million plus in private funds already on hand to finance construction of a building housing a clinic with supporting facilities and costing about $3.8 million. The proposed dental school building, which is to be located in the university medical center in Denver, is the result of a progressive scaling down of plans from an original design that would have cost nearly four times as much and required some $7 million in federal funds to build. The operating budget for the first year would be over $980,000, of which the state is asked to pay more than $817,000.

In asking for more information, the legislature's joint budget committee expressed interest in both financial questions and the state's need for dental manpower. Proponents of the school feel they have a good case since the new dental school would be the only one between Lincoln, Nebraska, and the West Coast. They also cite the scarcity of dentists in many areas of the state, the lack of openings in existing dental schools for Colorado students interested in dentistry, and the absence of opportunities for dentists in practice in Colorado to upgrade their training.

The dental school cause has been backed by the governor and the state's biggest newspapers, and the dental profession has lent solid support. Some $2 million in all has been raised from private sources, a substantial part of it from pledges from practicing dentists. However, ill luck and missed opportunities seem to have dogged the school since serious planning began in 1965. Several times, a start on construction seems to have been narrowly missed because the school had to satisfy so many masters—the medical center, the regents, the legislature, the American Dental Association's (ADA) council on dental education. Last year the school's accreditation was put in question when the council objected to the temporary location of an outpatient clinic at an Air Force base near Denver. The accreditation scare was used by opponents as a stick with which to beat the school. Plans were revised, and now, with a site visit pending, the school program seems to have ADA approval.

Those close to the school now pinpoint the loss of federal funds as the main source of current frustrations. The protracted squeeze on construction funds has prevented allocation of federal funds for what seems widely agreed to be a high-priority health manpower facility. And the veto of the HEW money bill in October has made it even harder for the financially hard-pressed Colorado legislature to appropriate funds for a new enterprise, since funds for other state programs have also been hit by the veto. So the dental school, as it awaits its fate, finds itself very much in the role of the protagonist of the old short story by Frank Stockton, "The Lady or the Tiger?"—J.W.