

CONDENSED
VERSION

REMARKS BY SENATOR BOB DOLE
GW DISTINGUISHED PUBLIC SERVICE AWARD
MARVIN CENTER, GEORGE WASHINGTON UNIVERSITY
WASHINGTON, D. C.
MAY 9, 1984

THANK YOU VERY MUCH, PRESIDENT ELLIOTT. NEEDLESS TO SAY,
I AM DELIGHTED TO BE HERE THIS EVENING, AND FLATTERED BY YOUR
INVITATION TO SPEAK TO SUCH A DISTINGUISHED GATHERING OF SCIENTISTS
AND ACADEMICS.

A CENTURY AGO, ANOTHER UNIVERSITY PRESIDENT NAMED ELIOT
-- IN THIS CASE, CHARLES WILLIAM ELIOT OF HARVARD -- WROTE TO A FRIEND
ABOUT A WORRISOME TREND. "THE FACT IS," HE TOLD HIS FRIEND, "THAT
THE ENLARGEMENT OF THE FUNCTIONS OF THE GENERAL GOVERNMENT IS THE
GREAT POLITICAL SIN ... OF OUR TIMES." WELL, EVEN ELIOT CHANGED HIS
MIND TO SOME DEGREE BY THE TIME THE 20TH CENTURY USHERED OUT ITS
SIMPLER, MORE PASTORAL PREDECESSOR. AND FEW AMONG US CAN QUESTION
THE CENTRAL ROLE ASSUMED BY MODERN GOVERNMENT IN GUIDING ECONOMIC
PROGRESS AND PROMOTING WHAT WE STILL LIKE TO CALL THE GENERAL
WELFARE. THE DEBATE THAT GOES ON -- INDEED, THAT GROWS MORE

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HEATED AS THE REAGAN ADMINISTRATION PURSUES FUNDAMENTAL CHANGES IN THE SIZE AND SCOPE OF GOVERNMENT, IS OVER HOW BEST TO ACHIEVE THOSE EXALTED AIMS.

THE ECONOMIC BATTLEGROUND

THE ECONOMY IS THE CHIEF BATTLEGROUND. CONSIDER A GOVERNMENT THAT DRAINS OFF TENS OF BILLIONS OF DOLLARS OF CAPITAL. HOWEVER NOBLE ITS STATED OBJECTIVESIS THAT GOVERNMENT PROMOTING SOCIAL JUSTICE, OR IS IT ACTUALLY UNDERCUTTING ITS GOAL BY DISCOURAGING PRIVATE INVESTMENT? THE ANSWER TO THAT QUESTION, IN MY OPINION, IS PAINFULLY OBVIOUS. YET, SOME TELL US THE ONLY SOLUTION TO GOVERNMENT'S PAST MISTAKES IS -- MORE GOVERNMENT. SPECIFICALLY, AN "INDUSTRIAL POLICY" TO BE HAMMERED OUT BY LABOR, BUSINESS, THE ACADEMIC COMMUNITY, ALL GATHERED AROUND THE FEDERAL TABLE BY A BENIGN UNCLE SAM.

WELL, BETTER A FEDERAL TABLE THAN A PUBLIC FEEDING TROUGH. BETTER -- BUT NOT GOOD ENOUGH. I BELIEVE THERE IS AN ALTERNATIVE:

NAMELY, MORE RELIANCE UPON INDIVIDUAL ENTREPRENEURS AND ACADEMIC EXPERIMENTATION. OTHER NATIONS MAY RELY ON CENTRAL PLANNING FOR THEIR ENTRY TICKET TO GLOBAL COMPETITION. I BELIEVE WE SHOULD ENTRUST THE FUTURE TO THOSE MOST NEARLY CAUGHT UP IN IT. THIS EVENING, I AM LOOKING AT A ROOM FULL OF SUCH PACESETTERS.

NEW JOBS AND NEW SCIENCE

INNOVATION PROVIDES THE BUILDING BLOCKS OF ANY TRULY LASTING PROSPERITY. BUT IT CAN HARDLY FLOURISH IF INTELLECTUAL PROPERTY RIGHTS TO A NEW PRODUCT OR PROCESS ARE CLOUDED. A GOVERNMENT EAGER TO SAMPLE THE ECONOMIC BENEFITS OF SCIENTIFIC RESEARCH HAS AN OBLIGATION TO CLEAR THE CROWDED PATH THAT LEADS FROM A TEST-TUBE OR DRAWING BOARD TO A PATENT OR COPYRIGHT.

FOUR YEARS AGO, WITH MY COLLEAGUE BIRCH BAYH, I WAS PLEASED TO JUMP INTO THIS PARTICULAR ARENA. IN THE ACT TO WHICH PRESIDENT ELLIOTT HAS SO GENEROUSLY REFERRED, WE SET OUT TO DISPEL AT LEAST SOME OF UNCLE SAM'S REPUTATION AS A BUREAUCRATIC INDIAN GIVER. WE CLEARED MUCH OF THE TANGLE OF BUREAUCRATIC BRAMBLES

THAT FRUSTRATED UNIVERSITY AND SMALL BUSINESS OWNERSHIP OF INVENTIONS ARISING FROM FEDERALLY ASSISTED RESEARCH. SINCE THEN, CORPORATE CONTRIBUTIONS TO CAMPUS RESEARCH HAVE GROWN TO NEARLY HALF A BILLION DOLLARS ANNUALLY. PERHAPS THE GREATEST SUCCESS STORY IS THE BIOTECHNOLOGY INDUSTRY, WHERE THIS COUNTRY HOLDS A COMMANDING LEAD OVER ITS FOREIGN COMPETITORS.

A CLEAR TITLE FOR INNOVATION

I'VE RETURNED TO THE FIELD TO PROPOSE THE NEXT LOGICAL STEP. THE SENATE BILL NUMBER IS S. 2171, AND IT WOULD ESTABLISH A CLEAR AND CONSISTENT PRESUMPTION IN FAVOR OF CONTRACTOR OWNERSHIP FOR ALL BUSINESSES, REGARDLESS OF SIZE. IT WOULD ALSO EXTEND THE OWNERSHIP PROVISIONS OF THE ORIGINAL BAYH-DOLE BILL TO NON-ACADEMIC CONTRACTORS WHO MANAGE GOVERNMENT-OWNED LAB FACILITIES. AND IT WOULD REPEAL CERTAIN EXISTING CONDITIONS PLACED ON UNIVERSITY LICENSING OF INVENTIONS, SUCH AS THE FIVE YEAR CAP ON THE GRANT OF ANY EXCLUSIVE LICENSE TO A LARGE BUSINESS.

PUBLIC INTEREST - PRIVATE INVESTMENT

I HAVE NOT LEFT OUT THE PUBLIC INTEREST IN ADDRESSING

THESE SEVERAL PRIVATE INTERESTS. FOR EXAMPLE, I WOULD DISALLOW CONTRACTOR OWNERSHIP OF AN INVENTION REQUIRED BY NATIONAL SECURITY, OR WHERE THE CONTRACTOR IS NOT LOCATED WITHIN THE UNITED STATES. WHAT'S MORE, I WOULD PERMIT, INDEED, URGE, AGENCIES TO GRANT LICENSES TO COMPETITORS IF NO EFFECTIVE STEPS ARE BEING TAKEN TOWARD COMMERCIALIZATION.

FOR A QUARTER OF A CENTURY -- JUST ABOUT AS LONG AS I'VE BEEN IN THIS CITY -- EFFORTS HAVE BEEN UNDERWAY TO DEVELOP SOME KIND OF UNIFORM PATENT POLICY. TODAY, AT LONG LAST, WE HAVE A VIABLE PROPOSAL. HEARINGS ON S. 2171 HAVE BEEN COMPLETED IN THE SENATE JUDICIARY COMMITTEE AND WILL BEGIN NEXT WEEK IN THE HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY. THERE IS A REALISTIC CHANCE THAT THE BILL COULD BECOME LAW THIS YEAR, AND I INVITE YOU TO LEND YOUR SUPPORT TO THIS LEGISLATIVE EFFORT.

*and help
with Senator
Metzger*

CONCLUSION

AMERICA'S FUTURE DEMANDS THE LIBERATION OF HER KEENEST INTELLECTS AND BROADEST IMAGINATIONS. OVER AND OVER, THROUGHOUT OUR HISTORY, THE ACADEMIC COMMUNITY HAS REPLACED WHAT WAS ADEQUATE

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FOR ONE GENERATION WITH WHAT IS SUPERIOR FOR THE NEXT, BUT IT
CANNOT COMPETE WITH ONE HAND TIED BEHIND ITS BACK. I PROPOSE TO
UNTIE A FEW KNOTS. I AM GRATEFUL FOR YOUR HELP AND SUPPORT,
NOW....IF ONLY SOMEONE HERE CAN INVENT A PILL THAT MAKES CONGRESSMEN
WANT TO BALANCE THE BUDGET

THANK YOU VERY MUCH.

TALKING POINTS -- S. 2171

-IT IS IMPOSSIBLE TO OVEREMPHASIZE THE IMPORTANCE OF INCREASED PRODUCTIVITY TO ECONOMIC GROWTH AND PROSPERITY. NEW TECHNOLOGY PROVIDES OUR ECONOMY WITH BETTER PRODUCTS AND SERVICES AT LOWER COST. IT REPRESENTS THE ONLY LONG-TERM SOLUTION TO INFLATION. AND, IT HELPS CREATE JOBS.

-IN RESPONSE TO THE WIDELY-ACKNOWLEDGED NEED TO STIMULATE PRODUCTIVITY, WE HAVE HEARD A LOT OF RHETORIC ABOUT "INDUSTRIAL POLICY." MOST OF THIS TALK HAS FOCUSED ON MORE GOVERNMENT BUREAUCRACY AND SPENDING. YET THERE ARE SPECIFIC STEPS WHICH CAN BE TAKEN NOW -- STEPS WE KNOW WILL STRENGTHEN AMERICA'S COMPETITIVE POSITION -- WHICH DO NOT INVOLVE MORE GOVERNMENT INTERFERENCE IN THE MARKET PLACE, AND WHICH DON'T COST A DIME.

-S. 2171 IS SUCH A MEASURE. THIS BILL WOULD BRING THE PATENT PROCUREMENT POLICIES OF ALL FEDERAL AGENCIES THAT SPONSOR RESEARCH AND DEVELOPMENT INTO CONFORMITY WITH THE PRINCIPLES OF THE BAYH-DOLE UNIVERSITY AND SMALL BUSINESS PATENT PROCEDURES ACT OF 1980.

-THE 1980 LAW PROVIDED FOR UNIVERSITY AND SMALL BUSINESS OWNERSHIP OF INVENTIONS ARISING FROM FEDERALLY ASSISTED RESEARCH, THUS ENDING YEARS OF BUREAUCRATIC RED TAPE WHICH HAD FRUSTRATED THE COMMERCIAL APPLICATION OF SUCH INVENTIONS. SINCE THIS LAW'S ENACTMENT, GOVERNMENT-UNIVERSITY-INDUSTRY COOPERATION HAS INCREASED SUBSTANTIALLY AND WHOLE NEW INDUSTRIES, SUCH AS BIOTECHNOLOGY, HAVE BEEN BORN.

-BY CREATING A PRESUMPTION IN FAVOR OF CONTRACTOR OWNERSHIP OF INVENTIONS ARISING FROM FEDERALLY ASSISTED RESEARCH REGARDLESS OF THE SIZE OF THE CONTRACTOR, S. 2171 WILL LIKEWISE ENCOURAGE LARGE BUSINESS TO INCREASE THEIR PARTICIPATION IN FEDERAL RESEARCH PROJECTS AND TO COMMERCIALIZE INVENTIONS RESULTING FROM SUCH ENDEAVORS. THE BILL WOULD ALSO ELIMINATE THE CURRENT HODGE-PODGE OF AGENCY PATENT REQUIREMENTS AND MAKE CERTAIN IMPROVEMENTS IN THE 1980 LAW, SUCH AS LIFTING RESTRICTIONS ON UNIVERSITY LICENSING.

-THE BILL HAS BEEN CAREFULLY DRAFTED TO PROTECT THE PUBLIC INTEREST. FOR INSTANCE, CONTRACTOR OWNERSHIP WOULD NOT BE PERMITTED WHERE THE INVENTION IS NEEDED BY NATIONAL SECURITY OR WHERE THE CONTRACTOR IS NOT LOCATED IN THE U.S. MOREOVER, AGENCIES COULD FORCE CONTRACTORS TO GRANT LICENSES TO COMPETITORS IF EFFECTIVE STEPS WERE NOT BEING TAKEN TOWARD COMMERCIALIZATION.

-S. 2171 IS THE END RESULT OF A 25 YEAR EFFORT TO DEVELOP A UNIFORM, CONCISE GOVERNMENT PATENT POLICY. IT WOULD REPLACE THE PRESENT BUREAUCRATIC MAZE WITH A SINGLE POLICY WHICH EMPHASIZES THE PRIVATE DEVELOPMENT AND MARKETING OF NEW INVENTIONS WHERE FEASIBLE. IN SHORT, IT WOULD LET THE PRIVATE ENTERPRISE SYSTEM DO WHAT IT DOES BEST -- PRODUCE NEW PRODUCTS AND JOBS THAT THE PUBLIC WANTS AND NEEDS.

SUMMARY OF UNIFORM PATENT PROCEDURES ACT OF 1983:

The bill would standardize agency patent procurement policies and procedures, and encourage private sector development of new discoveries made under a federal research and development contract, in the following specific ways:

- It creates a presumption in favor of contractor ownership of new inventions developed under federal R&D contracts;
- It prohibits agencies from requiring the surrender of so-called "background rights" as a pre-condition to obtainment of a federal R&D contract except where the agency head personally determines that such rights are essential to the accomplishment of agency purposes in the contract ;
- It streamlines the procurement procedures, establishes one policy for all government agencies, and conforms that policy to the principles of P.L. 96-517;
- It eliminates existing provisions of law that unnecessarily complicate the procurement process.

* "Background rights" refers to the contractor's interest in inventions and technical data which were not developed pursuant to a federal R&D contract, but which pre-dated that contract. It has been a common agency practice to automatically require federal contract participants to surrender such interests to the agency as a condition of obtaining a federal R&D contract.

Summary

Testimony before the Senate Judiciary Subcommittee
on Patents, Copyrights, and Trademarks
March 27, 1984

by
John S. Toll, President, University of Maryland

On behalf of the Association of American Universities, the American Council on Education, the Council on Government Relations, the National Association of State Universities and Land-Grant Colleges, and the University of Maryland

I speak in favor of S. 2171, the Uniform Patent Procedures Act of 1983. This bill is a logical and important extension of beneficial provisions contained in the landmark legislation of 1980, The University and Small Business Patent Procedures Act - now Public Law 96-517. That legislation cleared away many of the complicated ownership issues in regard to inventions that result from collaborations between federal agencies and universities or small business. Public Law 97-517 protects the government's rights to royalty-free use of the inventions, but by allowing universities and small businesses clear ownership, the law increased the likelihood that new discoveries will benefit American technology, and shortened the time from discovery to technological application.

America's universities have a long history of fruitful research collaboration with government agencies. Increasingly, universities and industries are establishing research relationships which stand to benefit the development and the application of advanced technology. Unfortunately, when these developments also involve federal agencies, as they often do, exclusion of large business firms from the provisions of Public Law 96-517 constitutes an impediment to commercial applications. Importantly, S. 2171 would preserve provisions that enhance universities' contributions to American technology, while it extends those provisions to all business.

Recently, the University of Maryland, the National Bureau of Standards, and Maryland's Montgomery County entered a formal agreement to establish a Center for Advanced Research in Biotechnology. It will be located in the Shady Grove tract that Montgomery County designated for the nation's first Biotechnology Research Park. High technology industrial firms, already committed to establishing laboratories in the park, enthusiastically plan collaborations with the Center. We anticipate great benefits to the University, to the government, and to industry from this arrangement, but without the provisions of S. 2171, progression of the fruits of university-government-industry collaboration to commercial applications will be slow and extremely complicated.

This example of university-government-industry research collaboration at Shady Grove illustrates the kind of partnerships that are developing throughout the country. Many institutions from the University's associations I represent are developing similar relationships, but their benefits will be slow to emerge unless impediments to technology transfer are cleared away. S. 2171 will go a long way toward removing impediments and I urge its adoption.

STATEMENT OF
JOHN S. TOLL
PRESIDENT, UNIVERSITY OF MARYLAND
BEFORE THE SENATE JUDICIARY SUBCOMMITTEE
ON PATENTS, COPYRIGHTS, AND TRADEMARKS
on behalf of
AMERICAN COUNCIL ON EDUCATION
ASSOCIATION OF AMERICAN UNIVERSITIES
NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND-GRANT COLLEGES
COUNCIL ON GOVERNMENT RELATIONS

March 27, 1984

Mr. Chairman, and members of the Senate Judiciary Subcommittee on Patents, Copyrights, and Trademarks

My name is John S. Toll, I am the President of the University of Maryland. I am here to testify in favor of Senate Bill 2171, the Uniform Patent Procedures Act of 1983. I do so, not only as a representative of the University of Maryland, but also on behalf of four prestigious national associations of universities. They are: the American Council on Education, the Association of American Universities, the National Association of State Universities and Land-Grant Colleges, and the Council on Government Relations.

The University and Small Business Patent Procedures Act of 1980, now Public Law 96-517, cleared away many of the impediments in the application of technological discoveries to commercial use. It was truly landmark legislation that resolved very complicated ownership issues that arose when an invention was made by university scientists in the performance of a federal grant or contract. It was extremely important legislation and the provisions which allow universities clear ownership to inventions have already eased some of the problems in developing collaborations with private firms. Small businesses under the 1980 legislation shared similar patent rights, but these rights were not extended to large businesses.

Senate Bill 2171, which I am here to support, is aimed at providing all performers of federally funded research with all the rights they need to deal with each other in collaborative arrangements. It does this, in large part, by creating uniform policies and procedures regarding patent rights and inventions developed with federal assistance, thus extending ownership rights to all businesses whether large or small.

The bill also allows ownership rights to contractors other than universities who manage government-owned laboratories. Senate Bill 2171 removes certain restrictions on universities in licensing of their inventions. For example, it removes a five year cap on granting an exclusive license to an industrial firm (other than a small business). The bill also permits federal agencies to waive conditions attached to the ownership of university inventions. Agencies may waive those conditions if it is the public interest to do so, and if the federally assisted university research involves co-sponsors, cost sharing, or joint venture research. Taken together, these provisions will create needed flexibility for universities and for other performers of federally-funded research to structure collaborative projects.

Let me give one example: Recently, the University of Maryland joined with Maryland's Montgomery County and the National Bureau of Standards in an undertaking that illustrates, not only the new kinds of research relationships that are being conceived across America, but also the kind of collaborations that would be fostered and enhanced by S. 2171. The University of Maryland, Montgomery County, and the National Bureau of Standards entered a formal agreement to establish a Center for Advanced Research in Biotechnology. The Center will be located in a tract at Shady Grove that Montgomery County has designated for the nation's first Biotechnology Research Park. The Center will be a research resource for biotechnology firms throughout the nation. Our goal is to encourage close collaboration with many industrial partners in this rapidly developing field. Several high technology

firms, already committed to establishing biotechnology laboratories in the park, enthusiastically support plans for the Center.

The development of agreements with industries for collaborating with the Maryland Center for Advanced Research in Biotechnology will be greatly assisted by the flexibility S. 2171 intends to provide. For example, Litton Industries manages a federally-owned laboratory for the National Institutes of Health. Under the bill, ownership rights to inventions would be extended to contractors such as Litton, who operates government-owned research facilities. With that provision, Litton could enter into new and useful kinds of collaborative projects with the Center.

As universities across the country develop new research arrangements with private enterprises, flexibility in structuring these relations will become increasingly important. These growing research collaborations will often involve government as well as universities and industry, and I am convinced that they will be very beneficial, not only to the participants, but also to the nation's technological base. Senate Bill 2171 provides a timely incentive to enhance these desirable trends in research. The bill also provides incentives for private performers who have not yet participated individually, or as collaborators, in federally assisted projects. With the passage of S. 2171, they will be able to do so without concern for the loss of proprietary positions.

I have emphasized our support for the provisions of the bill that will ease the development of research cooperation between universities and private industries. I must not fail to mention other improvements in the bill as well. For example, the bill would expand the definition of inventions to include certain novel plant varieties, and this would

assure university ownership of some inventions from agricultural research not previously covered by Public Law 96-517. We are pleased also that the bill will incorporate certain reporting provisions that universities favor and which are now only regulatory provisions.

In summary, the provision of S. 2171 will benefit American business, will benefit the nation's universities, and will foster research collaborations between universities and private firms. I believe that the bill will enhance collaborations in ways that will significantly shorten the time line from discovery to commercial application; in that way it will benefit American technology and the nation as a whole. I strongly urge adoption of S. 2171.

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THANK YOU VERY MUCH, PRESIDENT ELLIOTT. NEEDLESS TO SAY, I AM DELIGHTED TO BE HERE THIS EVENING, AND FLATTERED BY YOUR INVITATION TO SPEAK TO SUCH A DISTINGUISHED GATHERING OF SCIENTISTS AND ACADEMICS. PROFESSORS AND POLITICIANS HAVE LONG ENJOYED SIMILAR INTERESTS. FOR INSTANCE, WE ARE BOTH ACCUSTOMED TO THE EXPERIMENTAL. YOU USE THE IMPRECISE BUT QUANTITATIVE SLIDE RULE OF SCIENCE TO MEASURE PROGRESS AND ENHANCE FUTURE PROSPECTS. WE RELY ON THE BALLOT BOX AND THE LEADING ECONOMIC INDICATORS. YOU EXPAND THE BOUNDARIES OF KNOWLEDGE, AND THE TESTING RANGE OF CURIOSITY. WE TRY TO BROADEN THE SOCIAL MAINSTREAM WHILE PRESERVING THE INCENTIVES THAT ENCOURAGE INDIVIDUAL GENIUS.

A LABORATORY OF CHANGE

AMERICA IS BOTH A LABORATORY OF CHANGE AND A HOTHOUSE OF INNOVATION. THAT IS THE SECRET OF HER SPECIAL STATUS IN THE

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MARKETPLACE. IT IS ALSO THE HEART OF SOCIAL PHILOSOPHY AS OLD AS FREEDOM ITSELF. IN ECONOMICS, IN POLITICS - AND IN SCIENCE AS WELL - THIS NATION RESEMBLES A TREE, STRONGEST AT ITS GRASS-ROOTS. WHEN WE FORGET THAT FACT, WE INVITE MUCH MORE THAN A PAUSE IN PROSPERITY. WE RUN THE RISK OF DAMAGING, PERHAPS MORTALLY, THE INCENTIVES AND REWARDS WHICH SPELL THE DIFFERENCE BETWEEN FREE INQUIRY AND PRIORITIES IMPOSED FROM ABOVE.

IN OUR CLASSROOMS, WE DISSECT THE ORIGIN OF AMERICAN INSTITUTIONS AS FEARLESSLY AS WE SEEK THE BIRTHDATE OF ROCK AND THE COMPOSITION OF ORGANIC SUBSTANCES. WE DO NOT HESITATE TO CHALLENGE ORTHODOXY. INDEED, WE RECOGNIZE THAT THE STATUS QUO HAS BUT A SHORT LIFESPAN IN ANY DEMOCRACY. AS IT IS WITH SCIENTIFIC THEORIES, SO IT MUST BE WITH POLITICAL DOCTRINES. WHAT COUNTS MOST IS THAT WE HOLD TO THE BEST OF OUR OLD VALUES WHILE LOOKING FOR NEW APPLICATIONS.

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A CENTURY AGO, ANOTHER UNIVERSITY PRESIDENT NAMED ELIOT -
IN THIS CASE, CHARLES WILLIAM ELIOT OF HARVARD - WROTE TO A
FRIEND ABOUT A WORRISOME TREND. "THE FACT IS," HE TOLD HIS
FRIEND, "THAT THE ENLARGEMENT OF THE FUNCTIONS OF THE GENERAL
GOVERNMENT IS THE GREAT POLITICAL SIN...OF OUR TIMES...NOT A
WEEK PASSES WITHOUT THE PROMULGATION OF SOME NEW SCHEME FOR
ADDING TO THE ACTIVITIES AND POWERS OF THE CENTRAL GOVERNMENT.
MOST OF OUR PUBLIC MEN, INSTEAD OF HOLDING TO THE AMERICAN
DOCTRINE OF LEAVING THE PEOPLE TO TAKE CARE OF THEMSELVES, SEEM
TO BE THOROUGHLY INNOCULATED WITH THE EUROPEAN DOCTRINE THAT IT
IS THE DUTY OF GOVERNMENT TO HELP THE PEOPLE TO WHAT IS GOOD FOR
THEM - TO MORE RAILROADS, AND MORE CANALS, BETTER SAVINGS BANKS,
MORE VARIOUS INDUSTRIES AND BETTER SCHOOLS."

WELL, EVEN ELIOT CHANGED HIS MIND TO SOME DEGREE BY THE TIME
THE 20TH CENTURY USHERED OUT ITS SIMPLER, MORE PASTORAL PREDECESSOR.

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AND FEW AMONG US CAN QUESTION THE CENTRAL ROLE ASSUMED BY MODERN GOVERNMENT IN GUIDING ECONOMIC PROGRESS AND PROMOTING WHAT WE STILL LIKE TO CALL THE GENERAL WELFARE. THE DEBATE THAT GOES ON - INDEED, THAT GROWS MORE HEATED AS THE REAGAN ADMINISTRATION PURSUES FUNDAMENTAL CHANGES IN THE SIZE AND SCOPE OF GOVERNMENT - IS OVER HOW BEST TO ACHIEVE THOSE EXALTED AIMS.

THE ECONOMIC BATTLEGROUND

THE ECONOMY IS THE CHIEF BATTLEGROUND. CONSIDER A GOVERNMENT THAT DRAINS OFF TENS OF BILLIONS OF DOLLARS OF CAPITAL. WHATEVER ITS INTENTIONS, HOWEVER NOBLE ITS STATED OBJECTIVES...IS THAT GOVERNMENT PROMOTING SOCIAL JUSTICE, OR IS IT ACTUALLY UNDERCUTTING ITS GOAL BY DISCOURAGING PRIVATE INVESTMENT? THE ANSWER TO THAT QUESTION, IN MY OPINION, IS PAINFULLY OBVIOUS. CONFRONTED WITH EVIDENCE OF PAST MISMANAGEMENT, HOWEVER, SOME ECONOMIC THEORISTS TELL US THAT ONLY A RADICAL NEW SET OF POLICIES CAN REVERSE AMERICA'S ALLEGED DECLINE. THE ONLY SOLUTION TO GOVERNMENT'S PAST

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MISTAKES IS - MORE GOVERNMENT. SPECIFICALLY, AN "INDUSTRIAL POLICY" TO BE HAMMERED OUT BY LABOR, BUSINESS, THE ACADEMIC COMMUNITY, ALL GATHERED AROUND THE FEDERAL TABLE BY A BENIGN UNCLE SAM. THOSE WHO OPPOSE SUCH POLICIES ARE ACCUSED OF BEING ECONOMIC DINASOURS, OF SECRETLY FAVORING A RETURN TO LAISSEZ-FAIRE AND THE SOCIAL EQUIVALENT OF CAVEAT EMPTOR.

BETTER A FEDERAL TABLE THAN A PUBLIC FEEDING TROUGH. BETTER - BUT NOT GOOD ENOUGH. AND I TRUST IT WON'T COME AS ANY SURPRISE WHEN I SUGGEST THAT THERE IS AN ALTERNATIVE TO STILL MORE INTERVENTION BY FEDERAL PLANNERS -- NAMELY, MORE RELIANCE UPON INDIVIDUAL ENTREPRENEURS AND ACADEMIC EXPERIMENTATION. OTHER NATIONS MAY RELY ON CENTRAL PLANNING FOR THEIR ENTRY TICKET TO THE GLOBAL COMPETITION. WE PREFER TO ENTRUST THE FUTURE TO THOSE MOST NEARLY CAUGHT UP IN IT. THIS EVENING, I AM LOOKING AT A ROOM FULL OF SUCH PACESETTERS.

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ECONOMIC PRODUCTIVITY'S MUCH LIKE THE WEATHER. EVERYONE TALKS ABOUT IT. CORRECTIVE ACTION IS HARDER TO COME BY. IN FACT, INCREASED PRODUCTIVITY IS THE ONLY LONG-RANGE SOLUTION TO INFLATION. IT'S THE SUREST PATH TO INDUSTRIAL COMPETITIVENESS AT HOME AND ABROAD. YET SO LONG AS THE COST OF CAPITAL IS HIGH -- AND REGULATORY AND ANTITRUST BARRIERS ARE EVEN HIGHER -- TALK OF PRODUCTIVITY GAINS WILL REMAIN LITTLE MORE.

NEW JOBS AND THE NEW SCIENCE

LOWERING TAXES AND SHARPENING OTHER INVESTMENT INCENTIVES ARE HAVING A BENEFICIAL EFFECT. FIVE MILLION NEW JOBS IN THE LAST FIFTEEN MONTHS TESTIFIES TO THAT - NOT TO MENTION AN ALL-TIME RECORD LAST YEAR OF NEW BUSINESSES ESTABLISHED.

BUT WHAT OF THE INNOVATIVE IMPULSE WHICH PROVIDES THE BUILDING BLOCKS OF ANY TRULY LASTING PROSPERITY. IT CAN HARDLY FLOURISH IF INTELLECTUAL PROPERTY RIGHTS TO A NEW PRODUCT OR PROCESS ARE CLOUDED. A PRIME EXAMPLE OF THIS IS BIOTECHNOLOGY. I NEED HARDLY

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REMINDE YOU OF ITS EMERGING PROMISE, NOR OF THE DELICATE BALANCE THAT NOW EXISTS BETWEEN THE URGE TO REGULATE AND THE NEED TO EXPLORE. TOO MUCH RED TAPE, AND WE COULD DRIVE THE INDUSTRY FROM OUR SHORES ALTOGETHER, SACRIFICING THE BENEFITS OF SCIENCE AT ITS MOST IMAGINATIVE. TOO LITTLE OVERSIGHT, AND THERE ARE BOUND TO BE ALARMS SOUNDED AND PICTURES PAINTED OF PLANTS THAT EAT THEIR WAY FROM NEW YORK TO SAN FRANCISCO. NOR CAN THE INDUSTRY EXPECT ANY SIGNIFICANT INFLUX OF CAPITAL IF ITS INFANCY IS OVERSHADOWED BY DOUBTS ABOUT THE PROSPECT FOR SURVIVAL. ALL OF WHICH BRINGS ME TO THE CENTRAL POINT: NAMELY, THAT A GOVERNMENT EAGER TO SAMPLE THE ECONOMIC BENEFITS OF SCIENTIFIC RESEARCH HAS AN OBLIGATION TO CLEAR THE CROWDED PATH THAT LEADS FROM A TEST-TUBE OR DRAWING BOARD TO A PATENT AND A COPYRIGHT.

AS THE CONGRESS' OWN OFFICE OF TECHNOLOGY ASSESSMENT HAS CONCLUDED, THIS COUNTRY HOLDS A SUBSTANTIAL LEAD OVER ITS INDUSTRIAL COMPETITORS IN DEVELOPING AND APPLYING BIOTECHNOLOGY.

AT THE SAME TIME, AS A RECENT ISSUE OF SCIENCE MAGAZINE POINTED OUT, WE TRAIL BOTH EUROPE AND JAPAN IN FORGING LINKS BETWEEN PRIVATE INDUSTRY AND THE UNIVERSITIES WHICH SUPPLY SO MUCH OF THE INTELLECTUAL SPARK THAT IGNITES CHANGE AND ASSAILS THE CONVENTIONAL WISDOM.

FOUR YEARS AGO, WITH MY COLLEAGUE BIRCH BAYH, I WAS PLEASED TO JUMP INTO THIS PARTICULAR ARENA. IN THE ACT TO WHICH PRESIDENT ELLIOTT HAS SO GENEROUSLY REFERRED, WE SET OUT TO DISPEL AT LEAST SOME OF UNCLE SAM'S REPUTATION AS A BUREAUCRATIC INDIAN GIVER, AND WE CLEARED MUCH OF THE TANGLE OF REGULATORY BRAMBLES THAT FRUSTRATED CO-OPERATION BETWEEN THE UNIVERSITY AND AMERICAN INDUSTRY. SINCE THEN, IT'S BEEN ESTIMATED THAT CORPORATE CONTRIBUTIONS TO CAMPUS RESEARCH AND DEVELOPMENT HAVE GROWN TO NEARLY HALF A BILLION DOLLARS ANNUALLY. AND ROUGHLY A THIRD OF ALL UNIVERSITY CANDIDATES FOR PATENT STATUS ARE IN FACT BEING LICENSED.

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A YEAR AGO, PRESIDENT REAGAN FOLLOWED UP, WITH A MEMORANDUM INSTRUCTING ALL FEDERAL AGENCIES TO APPLY THE SAME CRITERIA TO ALL CONTRACTORS, WHEREVER POSSIBLE. AND I'VE RETURNED TO THE FIELD LONG ENOUGH TO PROPOSE THE NEXT LOGICAL STEP - THE REPEAL OF ALL EXISTING LAWS WHICH ARE THEMSELVES INCONSISTENT WITH THE PRESIDENT'S OWN DIRECTIVE.

A CLEAR TITLE FOR INNOVATION

THE SENATE BILL IS NUMBER 2171, AND IT WOULD, AMONG OTHER THINGS, ESTABLISH A CLEAR AND CONSISTENT PRESUMPTION IN FAVOR OF CONTRACTOR OWNERSHIP OF INVENTIONS ARISING FROM FEDERALLY ASSISTED RESEARCH PROGRAMS. IT WOULD ELIMINATE AT ONCE THE CURRENT HODGE-PODGE OF PATENT REQUIREMENTS, OF WHICH THERE SEEM TO BE AS MANY AS THERE ARE AGENCIES. IT WOULD, I AM PERSONALLY CONVINCED, HAVE A FURTHER EFFECT, THAT OF LURING INVESTMENT FROM LARGE BUSINESSES WITH THEIR SPECIALIZED SKILLS, THEIR TECHNOLOGICAL EXPERTISE - AND THEIR HEALTHY RESPECT FOR A DOLLAR.

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EXPERIENCE CONDUCTS ITS OWN SEMINAR. AND AFTER NEARLY FOUR YEARS IN WHICH THE ORIGINAL BILL HAS OPERATED, I BELIEVE WE NEED TO GO FURTHER. SPECIFICALLY:

WE NEED TO EXPAND THE TECHNICAL DEFINITION OF THE VERY WORD "INVENTION" TO INCLUDE - AND I QUOTE FROM THE BILL HERE - "ANY NOVEL VARIETY OF PLANT WHICH IS OR MAY BE PROTECTABLE UNDER THE PLANT VARIETY PROTECTION ACT." THIS HAS SPECIAL RELEVANCE FOR AGRICULTURAL RESEARCH - AND IN CASE YOU DIDN'T KNOW IT, AGRICULTURE HAS SPECIAL RELEVANCE FOR THE SENATOR FROM KANSAS!

WE ALSO NEED TO EXTEND OWNERSHIP PROVISIONS TO NON-ACADEMIC CONTRACTORS WHO NONETHELESS MANAGE GOVERNMENT-OWNED LAB FACILITIES... FOR INSTANCE, TO LITTON INDUSTRIES, WHICH MANAGES SUCH A LAB FOR THE NATIONAL INSTITUTE OF HEALTH. AND PERHAPS MOST CRUCIAL OF ALL, WE NEED TO REPEAL CERTAIN EXISTING CONDITIONS PLACED ON UNIVERSITY LICENSING OF INVENTIONS. TODAY, THERE IS A FIVE YEAR CAP ON THE

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GRANT OF ANY EXCLUSIVE LICENSE TO ANY INDUSTRIAL CONCERN OTHER THAN A SMALL BUSINESS. THE PRACTICAL EFFECT OF THIS IMPRACTICAL RESTRICTION IS TO RAISE BARRIERS TO INDUSTRY PARTICIPATION IN UNIVERSITY RESEARCH PROJECTS. FINALLY, I PROPOSE THAT WE DO A BETTER JOB OF MANAGING THE CHANGES IMPLEMENTED IN BOTH THE ORIGINAL LEGISLATION AND ITS SUCCESSOR. I WOULD ASSIGN COMPLETE OVERSIGHT RESPONSIBILITIES FOR THIS TO A CENTRAL OFFICE IN THE COMMERCE DEPARTMENT.

PUBLIC INTEREST - PRIVATE INVESTMENT

I HAVE NOT LEFT OUT THE PUBLIC INTEREST IN ADDRESSING THESE SEVERAL PRIVATE INTERESTS. FOR EXAMPLE, I WOULD DISALLOW ANY CONTRACTOR OWNERSHIP OF AN INVENTION REQUIRED BY NATIONAL SECURITY OR WHERE THE CONTRACTOR IS NOT ITSELF LOCATED WITHIN THE UNITED STATES. WHAT'S MORE, I WOULD PERMIT, INDEED, I WOULD URGE AGENCIES TO FORCE CONTRACTORS TO GRANT LICENSES TO COMPETITORS IF THERE ARE NO EFFECTIVE STEPS BEING TAKEN TOWARD COMMERCIALIZATION.

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INTERESTINGLY ENOUGH, I'VE BEEN TOLD THAT THE JAPANESE HAVE RAISED RESERVATIONS ABOUT THE BILL. APPARENTLY THEY FEAR IT WOULD CURTAIL FREE ACCESS TO PUBLICLY FUNDED DISCOVERIES. YET I, FOR ONE, CANNOT SEE EITHER LOGIC OR FAIRNESS TO SUCH ARGUMENTS. THE TRUTH IS THAT UNDER PRESENT LAW, AGENCIES CAN AND HAVE RETAINED OWNERSHIP OF INVENTIONS, ONLY TO DESTROY THEIR DOMESTIC VALUE BY OFFERING LICENSES TO THE FIRST CUSTOMER WHO KNOCKS ON THEIR DOOR. AT A TIME WHEN CONCERN OVER FOREIGN COMPETITION IS RAMPANT, ONE DOESN'T HAVE TO BE A PROTECTIONIST TO FAVOR STEPS SHORT OF TARIFFS OR QUOTAS THAT WOULD RESTRICT THE GIVEAWAY OF NEW IDEAS OR THE TECHNICAL INFORMATION THAT ATTENDS THEIR BIRTH.

FOR A QUARTER OF A CENTURY - JUST ABOUT AS LONG AS I'VE BEEN IN THIS CITY - EFFORTS HAVE BEEN UNDERWAY TO DEVELOP SOME KIND OF UNIFORM PATENT POLICY. TODAY, AT LONG LAST, WE HAVE A VIABLE

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PROPOSAL, ONE WHICH INVITES THE FREE ENTERPRISE SYSTEM TO DO WHAT IT DOES BEST: PRODUCE NEW PRODUCTS THE PUBLIC SEEKS, CREATE NEW JOBS THE PUBLIC REQUIRES. IT DESERVES AND HAS RECEIVED WIDESPREAD SUPPORT. THE BILL IS NOT, HOWEVER, ENTIRELY WITHOUT OPPOSITION. THERE ARE STILL A FEW LONE VOICES WHO CLAIM THAT THE GOVERNMENT SHOULDN'T "GIVE AWAY" INVENTIONS ITS MONEY HELPED DISCOVER, EVEN AS THE NUMBER OF UNUSED PATENTS STOCKPILED IN UNCLE SAM'S WAREHOUSES CLIMBS TO 28,000. OR THEY SAY THEY WILL GO ALONG WITH LETTING PRIVATE BUSINESS INVEST TIME, MONEY, AND RESOURCES INTO DEVELOPING AND MARKETING SUCH INVENTIONS, BUT ONLY IF THE GOVERNMENT GETS THE PROFITS. WELL, IT MAY BE THAT IF A MODERN-DAY EDISON COMES UP WITH THE TECHNOLOGICAL EQUIVALENT OF THE LIGHT BULB, GOVERNMENT SHOULD BE ABLE TO CLAIM SOME FAIR PART OF THE PROCEEDS BASED ON THE EXTENT OF ITS ORIGINAL CONTRIBUTION. BUT THE FACT IS NO ENTREPRENEUR IN HIS OR HER RIGHT MIND WILL

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GAMBLE ON THE NEW AND INNOVATIVE IF THE GAME IS RIGGED IN FAVOR OF GOVERNMENT WINNING THE POT. THIS NOTION LIES AT THE HEART OF S. 2171, INDEED, AT THE HEART OF OUR SYSTEM OF FREE ENTERPRISE.

HEARINGS ON S. 2171 HAVE BEEN COMPLETED IN THE SENATE JUDICIARY COMMITTEE AND WILL BEGIN NEXT WEEK IN THE HOUSE COMMITTEE ON SCIENCE AND TECHNOLOGY. SENATOR MATHIAS' SUBCOMMITTEE ON PATENTS, COPYRIGHTS, AND TRADEMARKS IS EXPECTED TO ACT ON THE BILL SOME TIME THIS MONTH. THERE IS A REALISTIC CHANCE THAT THE BILL COULD COME BECOME LAW THIS YEAR. BUT THAT CAN HAPPEN ONLY WITH YOUR HELP. MOST OF YOU CAN PERSONALLY BEAR WITNESS TO THE BENEFITS OF THE ORIGINAL BAYH-DOLE BILL. I URGE YOU TO LET THE PUBLIC AND THE CONGRESS KNOW OF THE TREMENDOUS BENEFITS TO BE FURTHER DERIVED BY EXPANDING THE BASIC PRECEPTS OF THAT LANDMARK PATENT LEGISLATION.

AMERICA'S FUTURE DEMANDS THE LIBERATION OF HER KEENEST INTELLECTS AND BROADEST IMAGINATIONS. OVER AND OVER, THROUGHOUT

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OUR HISTORY, THE ACADEMIC COMMUNITY HAS REPLACED WHAT WAS ADEQUATE FOR ONE GENERATION WITH WHAT IS SUPERIOR FOR THE NEXT. FAR BETTER THAN GOVERNMENT, IT CAN EXPLORE NEW REALMS OF POSSIBILITY. BUT IT IS NOT IMMUNE TO BASIC ECONOMIC LAWS. IT CANNOT COMPETE WITH FOREIGN CHALLENGERS WITH ONE HAND TIED BEHIND ITS BACK. I PROPOSE TO UNTIE A FEW KNOTS. I AM GRATEFUL FOR YOUR HELP AND SUPPORT. NOW...IF ONLY SOMEONE HERE CAN INVENT A PILL THAT MAKES CONGRESSMEN WANT TO BALANCE THE BUDGET...

THANK YOU VERY MUCH.