THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D. C. 20201

DEC 30 1977

MEMORANDUM TO: Assistant Secretaries
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We are entering a time of intensive consultation with the Congress on our 1978 legislative program and on the funding of HEW-administered programs and activities in the fiscal 1979 Budget.

It is absolutely essential that this consultation take place to assure the best possible reception for our proposals. It is equally essential that consultations be carried out in a coordinated fashion and that the proper persons be involved.

For this reason, all legislative and budget consultations with the Congress should be coordinated through the office of our Assistant Secretary for Legislation, Dick Warden. Please instruct your staff to adhere to this procedure. It will help us to avoid unnecessary problems in our relations with the Congress.

Thank you for your cooperation.

Joseph A. Califano, Jr.

Wisconsin

SENATOR GAYLORD NELSON

(202)224-5323

FOR IMMEDIATE RELEASE 77-167

WASHINGTON, D.C., DEC. 9 - For years the federal government has been playing Santa Claus to private companies by surrendering the rights to inventions developed with taxpayers' money, Sen. Gaylord Nelson (D-Wis.) charged today.

"The American people are being robbed blind," Nelson said. "Right now the government spends more than $26 billion a year for research and development, most of it going to private industry. This is two-thirds of all the money spent on research in this country.

"Then," Nelson continued, "the government often gives those companies exclusive rights to the processes and products that result from this government-financed research. All too frequently, those private companies then set exorbitant prices when they market these inventions they developed with taxpayers' money. In other words, the public pays twice: first for the research and then for the monopoly profits resulting from these government giveaways."

Nelson, chairman of the Senate Monopoly Subcommittee, said he would conduct hearings Dec. 19, 20 and 21 into what happens to the results of publicly-financed research.

"The government ends up not only playing Santa Claus all year round," Nelson said. "It also plays the Tooth Fairy, the Candy Man and Guardian Angel to these giant corporations.

"The American taxpayers are dealt a one-two punch," he continued. "First they are forced to pay through the nose for this risk-free, tax supported research and development. Then they pay dearly all over again, for the grossly-inflated prices these companies charge for the products they market under the patent rights given to them by the government."

Nelson's hearings will constitute the initial stage of an extensive study to be conducted by the Monopoly Subcommittee over the next two years into government agencies' policies on patents resulting from publicly financed research.

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Although Congress has written some laws that require certain governmental agencies to take title to the results of research and development paid for by the taxpayers, the rights to a vast amount of products and processes developed through government financed research do not legally have to revert to the public, Nelson noted.

For example, he said, the Defense Department, which accounts for well over half of the research contracts awarded by the government, has no such restriction. He said the Defense Department, like the National Science Foundation and the Commerce Department, in fact automatically give away almost all government rights to the firms that engage in government-supported research.

Nelson said the hearings would examine efforts by a highly placed group of Commerce Department employees -- most of them holdovers from the two previous administrations -- who are trying to persuade Congress to repeal laws that now require certain agencies to take title to the benefits of research paid for by the public.

The Commerce Department group, known as the Government Patent Policy Committee, has been circulating a draft report among government agencies aimed at drumming up Congressional support for repeal of laws that prohibit granting exclusive marketing rights to companies which oped inventions with government financed research.

"If this group of Commerce Department employees has its way, the government would end up giving away to a small number of companies the rights to every invention produced through government financed research," Nelson said.

"It seems clear from the record that the government did not intend for private companies to make exorbitant profits from products and processes developed under government-supported research," Nelson said. He said that as far back as 1924, then-Atty. Gen. Harlan Stone rendered an adverse opinion on the legality of exclusive grants of licenses under government-owned patents. And in 1958, then-Atty. Gen. William Rogers recommended to President Eisenhower:

> "The public interest will best be served by opening government-owned inventions to general public use, without discrimination or favoritism among users.
>
> "While opinions vary, the weight of experience is that government-owned technology can, for the most part, be exploited to a satisfactory extent under a system of nonexclusive licensing or public dedication. In the occasional situation where commercial use and exploitation of worthwhile inventions is discouraged by the need for a substantial investment in promotion, developmental and experimental work, with the attendant risk of loss, the

(MORE)

government should finance such operations, in whole or in part, to demonstrate or prove the commercial value of the invention. This method of encouraging the use of the invention is preferable to the grant of an exclusive license.

"As a basic policy, all government-owned inventions should be made fully, freely and unconditionally available to the public without charge, by public dedication or by royalty-free, nonexclusive licensing."

The hearings will begin each day at 10 a.m. in Room 1318, Dirksen Senate Office Building. A list of witnesses who will testify will be announced later.

The Monopoly Subcommittee is a subcommittee of the Senate Small Business Committee. Nelson is chairman of that committee as well.

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Wisconsin

SENATOR GAYLORD NELSON

(202)224-5323

FOR IMMEDIATE RELEASE 77-168

WASHINGTON, D.C., DEC. 13 - Sen. Gaylord Nelson (D-Wis.) today released a list of witnesses who will testify at next week's hearings on the federal government's patent policies.

The hearings will be held on Dec. 19, 20 and 21 by the Monopoly Subcommittee of the Senate Select Committee on Small Business, which Nelson chairs. They will begin at 10 a.m. each day in Room 1318 of the Dirksen Senate Office Building.

In announcing the hearings, Nelson accused the Defense Department, the Commerce Department, the National Science Foundation and some other government agencies with surrendering the rights to inventions that are developed with government-financed research. The hearings will examine government agencies' policies on awarding patents to firms that engage in government-financed research.

The witnesses:

Dec. 19

Admiral H. G. Rickover
Deputy Commander for
Nuclear Propulsion
Naval Sea System Command
Washington, D.C.

Hon. John F. Seiberling
House of Representatives
U.S. Congress
Washington, D.C.

Prof. Seymour Melmon
Department of Industrial and
Management Engineering
Columbia University
New York, New York

Prof. Walter Adams
Department of Economics
Michigan State University
East Lansing, Michigan

Dec. 20

Hon. John H. Shenefield
Assistant Attorney General
Antitrust Division
Department of Justice
Washington, D.C.

Stanley Clark
Patent Counsel
Firestone Tire and Rubber Company
Akron, Ohio

M. H. Douthitt
Corporate Patent Counsel
SCM Corporation
Cleveland, Ohio

Dec. 21

Hon. Russell B. Long
U.S. Senate
Washington, D.C.

Hon. Michael Pertschuk
Chairman
Federal Trade Commission
Washington, D.C.

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