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They concede that the biggest hurdle to overcome is the weight of conventional wisdom. It goes something like this. Such a bill would permit the founding of monopolies that can charge high prices for the fruits of tax-aided research. It's a free lunch, say the critics, and it's not fair. One Senate aide who was skeptical of the bill put it this way. "At the stroke of a pen," he said, "you are creating billions of dollars of property that did not exist before, property that is created with taxpayer support. We are not about to jump on the bandwagon. We have an obligation to the public and to other patent holders. We want to make sure this is good public policy before we start touting its wonders."

For more than 30 years, the government has operated on the assumption that the economic rewards from federally funded R & D should be captured by the government, or shared only grudgingly with others, since public funds were used. Hence, the government's collection of 30,000 patents. That policy, however, has not produced an astounding record of economic returns, and the conventional wisdom on public money and private gain may be in the midst of change. The innovation "lag," moreover, is becoming pop drama, as evidenced not only by the Administration's domestic policy review but by media coverage such as the 4 June *Newsweek* cover story on innovation, subtitled "Has America lost its edge?" The winds of opinion are shifting. It may no longer take a leap of logic to see that good public policy might include a modicum of private gain, especially when the alternative is patent portfolios that gather dust on government shelves.

—WILLIAM J. BROAD

Whistle Blower Reinstated at HEW

For more than a decade, Norman J. Latker, while working as patent counsel for HEW, urged the department to give the patents derived from HEW-funded research back to the universities that originally did the work. During this time, HEW patent policy became a model for many federal agencies. Then, last December, Latker was bounced out of government service after denouncing an attempt by his superiors to put a lid on patent transfers. He has now, however, been reinstated.

Latker returned to his post as HEW patent counsel at the end of July. The action was called for by a civil service review board that overturned Latker's firing on procedural grounds. HEW, which hedged for 1 month before commenting on the action of the review board, has decided not to appeal the ruling.

The reinstatement is timely. Support is now building for the Bayh-Dole patent bill, and Latker's return to HEW is seen by many university researchers and patent-transfer fans, to whom Latker is something of a hero, as a shot in the arm for their cause.

Latker is anything but a revolutionary. A 22-year veteran of government service, with 15 of them in HEW's patent office, he is credited with helping develop such mild-mannered innovations as Institutional Patent Agreements (IPA), which aid the flow of patent rights from government to universities. The story of their rise at HEW is simple. In 1968, the Government Accounting Office (GAO) investigated the pharmaceutical programs at the National Institutes of Health (NIH) and found no evidence that drugs developed with NIH support ever reached the public. GAO blamed the lack of technology transfer on HEW's practice of retaining all rights to inventions.

After a departmental shake-up in 1969, Latker helped develop a system whereby HEW automatically gave patent rights to the university where a discovery was made and allowed it to license the patent to a private company, which could then develop and market the product. Such IPA's were issued only to universities with a good track record of technology transfer. Latker, however, also urged the transfer of patent rights to universities without such an IPA, eventually releasing 30 to 40 patents a year on such a case-by-case basis. For some time everything sailed along smoothly. Then in August 1977, Latker was ordered to send all requests for patent waivers up to the HEW general counsel's office. And there they sat. Up until that time, Latker had final say on patent transfers. But no more. The public position of HEW was that all patent matters were "under study," and that no one in the general counsel's office was quite sure just when the review would be finished.

By the fall of 1978, more than 30 requests for individual patents and three requests for IPA's were gathering dust in the general counsel's office. Universities got upset and complained to Congress. So did Latker.

In September 1978, Senator Dole accused HEW of "pulling the plug" on biomedical research. To support the charge, he quoted an internal memorandum from the HEW general counsel's office. "Recent experience with the high cost of proliferating health care technology," it read, "suggests that there may be circumstances in which the Department would wish to restrict or regulate the availability and cost of inventions made with HEW support." HEW Secretary Califano and his advisers had decided to wage war on "runaway medical technology." One way to do so was apparently to deny universities the transfer of patent rights from government-funded research. On 13 September 1978 Dole and Bayh held a press conference and announced a bill that would cut through the backlog. HEW responded quickly. The next day Califano ordered his staff to transfer the patents back to the universities. Within weeks, HEW released 20 of the 30 patents. Soon afterward they also released Latker.

Departmental spokesmen now insist that Latker was not given the boot for blowing the whistle on HEW. Latker was dismissed, they say, because his superior, Richard Beattie said Latker did not meet "professional standards," and because of "specific instances" of misconduct including "forms of lobbying flat out forbidden by the government's codes of conduct."

Latker recently told *Science*, however, that official charges were never brought against him. He was simply fired. But now that the civil service has reinstated him and HEW has decided not to appeal the ruling, Latker says he is simply glad to be back. "It's been a difficult period in my life," he says. "I'm happy to once again have the chance to work with the department."—W.J.B.