A F F I D A V I T

My name is JOSEPH ALLEN. I am an employee of the Subcommittee on the Constitution of the Senate Committee on the Judiciary.

In the early months of 1978, constituents of Senator Bayh, the Chairman of the Subcommittee, informed him that the Agencies of the Executive Departments, including DHEW were taking an inordinate amount of time in acting on requests by universities for rights to inventions they had made with some government support. The failure to obtain timely decisions on ownership seriously affected the ability to obtain the cooperation of the commercial sector in bringing the inventions into public use. Many of the inventions were potential solutions to serious public health problems.

Review of the complaints by the Subcommittee, members of Senator Dole's staff, and the General Accounting Office confirmed the seriousness of the problem. Convinced of the need for relief, Senators Bayh and Dole instructed their staffs to draft legislation that would correct the situation. Since the bill fell within the jurisdiction of the Subcommittee on the Constitution, I was assigned the primary responsibility for coordinating activities leading to the bill's introduction.

In the early stages of the investigation, a number of university officials brought to our attention that Mr. Norman Latker, the Patent Counsel of the Department of Health, Education and Welfare (DHEW) had been over a number of years an active and effective Federal program manager in helping universities bring their inventions into commercial use. It was also called to our attention that he was the Chairman of the Interagency Committee on University Patent Policy which had just completed regulations for issuance by the General Services Administration intended to resolve the same problems of concern to the Subcommittee. These regulations were in turn fashioned after practices developed and administered by Mr. Latker at DHEW over a number of years.

Because of his identified expertise and knowledge of the University community, it was natural for the Committee to call on Mr. Latker for technical

advice and assistance on a solution to these problems.

Mr. Latker provided information to us about the delay on the part of the Department of Health, Education and Welfare officials in processing invention right applications. These delays in the judgment of the Subcommittee were unjustified and could impact on the health of the nation. Failure to process the applications expeditiously could in the Subcommittee's judgment create a health problem. All of the information provided to us by Mr. Latker and his technical assistance to the Subcommittee was provided on my request under the direction of Subcommittee leadership. The information about delays in the allocation of invention rights requests provided by Mr. Latker eventually led to the introduction of S.3469 (later S.414) and involved Mr. Latker's part in the documentation of the delays, identification of reference documents, suggestions of how the Subcommittee could gain imput from university officials with whom he had dealt over the years and comments on the provisions of the draft bill.

There is no question in my mind that Mr. Latker's action in providing information to the Subcommittee about the delays in processing the patent applications made those officials responsible for the delays angry at him. While Mr. Latker was properly providing information to the Subcommittee, information which in no way was confidential or otherwise restricted, there was a desire on the part of DHEW officials that this information not be provided to the Subcommittee. I believe that the action proposed by DHEW officials against Mr. Latker to remove him from the Federal service is the direct result of his having called to the Subcommittee's attention the delays and mismanagement of the patent program in the DHEW. The department officials who are now seeking to remove Mr. Latker are the same ones on whom he blew the whistle in regard to their actions in holding up and delaying the processing of invention rights requests.

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Joseph Allen

SUBSCRIBE and SWORN to before me this _____ day of October, 1979

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Notary Public, D.C.