GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

09 AUG 1988

Honorable James C. Miller III
Director, Office of Management
and Budget
Washington, D.C. 20503

Attn: Assistant Director
for Legislative Reference

Dear Mr. Miller:

At the last interagency meeting convened by OMB to develop an Administration position on legislation to promote technology transfer at the national laboratories of the Department of Energy, OMB suggested that DOE prepare a report on its various activities supporting technology transfer.

The resulting report does show many instances where aspects of the various technology transfer laws and Presidential policies we support are being implemented, and how well they work in those cases. However, the report fails to demonstrate that legislation along the lines of S. 1480 is unnecessary. Indeed, we believe it underscores our Department's position that legislation is the only way to bring about necessary changes.

oppose -- as inconsistent with existing tech... transfer laws and the President's policies -- ce... poli...es and practices, some of which are alluded to DOE ...port. For example, the report refers to DOE prop...ed class patent waiver regulations now und... ...w by your agency. We believe that DOE can and should ...ret its authority to permit larger, for-profit contrac... to elect to retain title on the same basis as nonprofit and small business firms under the Bayh-Dole Act. In our view, DOE's insistence on subjecting these institut...ons to different standards and conditions than those laid out the Bayh-Dole Act and Executive Order 12591 is plainly inconsistent with the express wishes of the President. Legislation like S. 1480 is needed to resolve this inconsistency.

Similarly inconsistent with established technology transfer laws and policies are such other DOE practices as its unduly



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burdensome proposed software policy (referred to on p. ii of the report), its overly restrictive interpretation of "exceptional circumstances" under the Bayh-Dole Act, and its policy of requiring laboratories to transfer ownership rights to contributing partners rather than allowing the parties to negotiate their respective rights. Again, S. 1480 would resolve these questions along the lines of President Reagan's Executive Order 12591.

If DOE proposes to release this report to the Congress, you should clear it as only DOE's view rather than that of the Administration, and only if it is agreed that Commerce may send its separate views to Congress concerning the need for legislation like S. 1490.

Sincerely,

Robert H. Brumley
General Counsel

Kephart Copyright Amendment for next year

In 15 U.S.C. 3703 renumber subparagraph (12) as (13) and add a new subparagraph (12):

(12)"Computer software" means a computer program and any associated documentation, supporting materials or user instructions."

Delete 15 U.S.C. 3710(g)(3). Add a new subparagraph 3710(h) as follows:

"(h) Notwithstanding the limitations contained in section 105 of Title 17, computer software and training technology prepared under cooperative research and development agreements works of the U.S. Government shall be eligible for protection under Title 17.

In (1) following "including licensing of inventions copyrighted works";

In 15 U.S.C. 3710a(a)(2) following "government owned inventions," add "copyrighted works," and following "and other inventions" add "or copyrighted works";

In 15 U.S.C. 3710a(b)(2) following "patent" add "or copyright", following "in any invention made" add "or in any computer software or training technology authored", following "practice the invention" add "to reproduce, adapt, translate, distribute and publicly perform or display the computer software or training technology", and following "or have the invention practiced" add "or have the computer software or training technology reproduced, adapted, translated, distributed, or publicly performed or displayed";

publicly perform or display the computer software or training technology", and following "or have the invention practiced" add "or have the computer software or training technology reproduced, adapted, translated, distributed, or publicly performed or displayed";

In 15 U.S.C. 3710a(b)(3) following "practice the invention" add "or reproduce, adapt, translate, distribute, or publicly perform or display the copyrighted work", and following "or to have the invention practiced" add "or to have the copyrighted work reproduced, adapted, translated, distributed, or publicly performed or displayed" and following "any subject invention" add "or copyrighted work";

In 15 U.S.C. 3710a(b)(4) following "inventions they made" add "or computer software or training technology they authored";

In 15 U.S.C. 3710a(c)(3)(A) following "titles to inventions" add "or copyrighted works";

In 15 U.S.C. 3710a(c)(4)(B) following "embodying inventions" add "or copyrighted works", and following "such inventions" add "or copyrighted works";

In 15 U.S.C. 3710b(1) following "innovations," add "computer software or training technology,";

In 15 U.S.C. 3710c(a)(1) following "assignments of inventions" add "or computer software or training technology" and following "produced the invention" add "or computer software or training technology";

In 15 U.S.C. 3710c(a)(1)(A)(i) following "any invention" add "or computer software or training technology", following each occurrence of "inventor" add "or author", following each

technology";

In 15 U.S.C. 3710c(a)(1)(A)(i) following "any invention" add "or computer software or training technology", following each occurrence of "inventor" add "or author", following each

occurrence of "co-inventor" add "co-author", and following "the invention was made" add "or the computer software or training technology was created";

In 15 U.S.C. 3710c(a)(1)(A)(ii) following "inventors" add "or authors", following "the invention was made" add "or the computer software or training technology was created" and following "licensed invention" add "or computer software or training technology";

In 15 U.S.C. 3710c(a)(1)(A)(ii)(I) following "each such inventor" add "or author", and following "inventor's invention" add "or that author's computer software or training technology";

In 15 U.S.C. 3710c(a)(1)(A)(ii)(II) following "inventor" add "or author" and following "inventor's invention" add "or that author's computer software or training technology";

In 15 U.S.C. 3710c(a)(1)(ii)(III) following "such inventors" add "or authors";

In 15 U.S.C. 3710c(a)(1)(A)(ii)(IV) following "invention" add "or computer software or training technology", following "patent application" add "or the time when the computer software or training technology was created" and following "licensing of the invention" add "or computer software or training technology";

In 15 U.S.C. 3710c(a)(1)(A)(iii) following "pay inventors" add "or authors";

training technology was created" and following "licensing of the invention" add "or computer software or training technology";

In 15 U.S.C. 3710c(a)(1)(A)(iii) following "pay inventors" add "or authors";

In 15 U.S.C. 3710c(a)(1)(B) following "from any invention" add "or computer software or training technology", and following "where the invention occurred" add "or where the computer software or training technology was created";

In 15 U.S.C. 3710c(a)(1)(B)(i) following "licensing of inventions" add "or computer software or training technology", following "inventions which occurred" add "or computer software or training technology which were created" and following "for invention" add "or copyright";

In 15 U.S.C. 3710c(a)(2) following "inventors" add "or authors";

In 15 U.S.C. 3710c(a)(3) following "inventor" add "or author";

In 15 U.S.C. 3710c(a)(4) following "of invention" add "or copyright" and following "inventors" add "or authors";

In 15 U.S.C. 3710c(b) following "invention" add "or copyright";

In 15 U.S.C. 3710c(c) following "including inventor" add "or author";

In 15 U.S.C. 3710d at the end of subparagraph (a) add "If a Federal agency which is the author of computer software or training technology under the provisions of this Act does not intend to register the copyright in the computer software or training technology or otherwise to promote commercialization of the software or training technology, the agency shall allow the

Federal agency which is the author of computer software or training technology under the provisions of this Act does not intend to register the copyright in the computer software or training technology or otherwise to promote commercialization of the software or training technology, the agency shall allow the

employee who created the program or training technology during the course of such employment to register the copyright in the software or training technology and to commercially exploit the computer software or training technology (subject to reservation by the Government of a non-exclusive, non-transferable, irrevocable, royalty-free license to reproduce, adapt, translate, distribute and publicly perform or display the computer software or training technology throughout the world by or on behalf of the Government)."

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DAVID BOIES
CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, D.C. 20510

February 7,

Dear Colleague:

We plan to introduce in early February the enclosed "University and Small Business Patent Procedures Act." Chairman Peter Rodino and other members of the House Judiciary Committee will be introducing a companion bill in the House of Representatives.

The purpose of the bill is to encourage utilization of inventions arising from government-supported university and small business research. We would like to have your support of this important effort as a cosponsor of the bill.

The bill addresses a serious and growing problem: hundreds of valuable medical, energy and other technological discoveries are sitting unused under government control, because the government, which cosponsored the research that led to the discoveries, lacks the resources necessary for development and marketing purposes, yet is unwilling to relinquish patent rights that would encourage and stimulate private industry to develop discoveries into products available to the public.

The cost of product development exceeds the funds contributed by the government toward the initial research by a factor of at least 10 to 1. This, together with the known failure rate for new products, makes the private development process an extremely risky venture, which industry is unwilling to undertake unless sufficient incentives are provided.

The consequences of our inadequate government patent policy have not gone unnoticed. In the energy area, bureaucratic delays caused by case-by-case review of each patent application are now running behind by almost two years, and have brought segments of the Department of Energy commercialization efforts to a virtual standstill. In addition, DOE's general policy of taking ownership of all inventions acts as a significant deterrent to the participation of many of our country's innovative scientists in high-technology industries.

The problem is substantial in HEW, the Department of Defense, the Department of Agriculture and the National Science Foundation. But nowhere is the patent situation more disturbing than in the biomedical research programs. Many people have been condemned to needless suffering because of the refusal of agencies to allow universities and small businesses

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sufficient rights to bring new drugs and medical instrumentation to the marketplace.

The exact magnitude of this situation is unknown, but we are certain that the cases we have uncovered to date are but a small sample of the total damage that has been done and will continue to be done if the Congress does not act.

Science Magazine described the dilemma as follows:

> "We see a prodigious R & D enterprise, fueled by tax dollars, constrained from diffusing its results because of a public policy barrier. Throughout the enterprise, discoveries sit stranded and aging. Meanwhile, we search for clues to what is wrong with U.S. technological innovation, and how it is that foreign industry can undercut American competition and employment."

The primary policy barrier identified in the Science article is the federal government's reluctance to grant patent rights.

The legislation we plan to introduce has broad support among the scientific, academic and small business communities, and it would cost the government nothing. Indeed, the government stands to have part of its research funds replenished under a provision of this bill which would require the patent holder to reimburse the federal research money out of royalties and income.

Specifically, this bill will allow universities, nonprofit organizations and small businesses to obtain limited patent protection on discoveries they have made under government-supported research, if they spend the additional private resources necessary to bring their discoveries to the public. Patent rights would not be available to large businesses for such inventions. The bill also will exclude private patent rights if the contract is for operation of a government-owned research or production facility, if the research is classified, or if patent rights would not be in the public interest.

We believe it is time to overcome the primary barrier to commercialization that now prevails, and to maximize the benefits anticipated from our federal R & D effort. The Congress must face this issue squarely and establish a federal patent policy that will encourage the movement of government-supported inventions to the people. To this end, we plan to introduce the "University and Small Business Patent Procedures Act" and seek your support as a cosponsor. If you would like to cosponsor, or if you have any questions, please see Senator Dole or Senator Bayh, or ask your staff to call Nels Ackerson or Joe Allen, 48191 or Brenda Levenson, 47563.

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(MORE)

Sincerely yours,

Birch Bayh

Bob Dole

Charles McC. Mathias, Jr.

Dennis DeConcini

oked down at his own hands. Dr. Ferris was the only one emed to be at ease.

"In the name of the general welfare," read Wesley Mouch, "to rotect the people's security, to achieve full equality and total sta- lity, it is decreed for the duration of the national emergency that—

"Point One. All workers, wage earners and employees of any kind hatsoever shall henceforth be attached to their jobs and shall not ave nor be dismissed nor change employment, under penalty of a rm in jail. The penalty shall be determined by the Unification oard, such Board to be appointed by the Bureau of Economic Plan- ing and National Resources. All persons reaching the age of wenty-one shall report to the Unification Board, which shall assign hem to where, in its opinion, their services will best serve the inter- sts of the nation.

"Point Two. All industrial, commercial, manufacturing and busi- ness establishments of any nature whatsoever shall henceforth re- main in operation, and the owners of such establishments shall not quit nor leave nor retire, nor close, sell or transfer their business, under penalty of the nationalization of their establishment and of any and all of their property.

"Point Three. All patents and copyrights, pertaining to any de- vices, inventions, formulas, processes and works of any nature whatsoever, shall be turned over to the nation as a patriotic emer- gency gift by means of Gift Certificates to be signed voluntarily by the owners of all such patents and copyrights. The Unification Board shall then license the use of such patents and copyrights to all applicants, equally and without discrimination, for the purpose of eliminating monopolistic practices, discarding obsolete products and making the best available to the whole nation. No trademarks, brand names or copyrighted titles shall be used. Every formerly patented product shall be known by a new name and sold by all manufacturers under the same name, such name to be selected by the Unification Board. All private trademarks and brand names are hereby abolished.

"Point Four. No new devices, inventions, products, or goods of any nature whatsoever, not now on the market, shall be produced, invented, manufactured or sold after the date of this directive. The Office of Patents and Copyrights is hereby suspended.

"Point Five. Every establishment, concern, corporation or person engaged in production of any nature whatsoever shall henceforth produce the same amount of goods per year as it, they or he produced during the Basic Year, no more and no less. The year to be known as the Basic or Yardstick Year is to be the year ending on the date of this directive. Over or under production shall be fined, such fines to be determined by the Unification Board.

"Point Six. Every person of any age, sex, class or income, shall henceforth spend the same amount of money on the purchase of goods per year as he or she spent during the Basic Year, no more and no less. Over or under purchasing shall be fined, such fines to be determined by the Unification Board.

"Point Seven. All wages, prices, salaries, dividends, profits, inter-



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est rates and forms of income of any nature whatsoever, shall be frozen at their present figures, as of the date of this directive.

"Point Eight. All cases arising from and rules not specifically provided for in this directive, shall be settled and determined by the Unification Board, whose decisions will be final."

There was, even within the four men who had listened, a remnant of human dignity, which made them sit still and feel sick for the length of one minute.

James Taggart spoke first. His voice was low, but it had the trembling intensity of an involuntary scream: "Well, why not? Why should they have it, if we don't? Why should they stand above us? If we are to perish, let's make sure that we all perish together. Let's make sure that we leave them no chance to survive!"

"That's a damn funny thing to say about a very practical plan that will benefit everybody," said Orren Boyle shrilly, looking at Taggart in frightened astonishment.

Dr. Ferris chuckled.

Taggart's eyes seemed to focus, and he said, his voice louder, "Yes, of course. It's a very practical plan. It's necessary, practical and just. It will solve everybody's problems. It will give everybody a chance to feel safe. A chance to rest."

"It will give security to the people," said Eugene Lawson, his mouth slithering into a smile. "Security—that's what the people want. If they want it, why shouldn't they have it? Just because a handful of rich will object?"

"It's not the rich who'll object," said Dr. Ferris lazily. "The rich drool for security more than any other sort of animal—haven't you discovered that yet?"

"Well, who'll object?" snapped Lawson.

Dr. Ferris smiled pointedly, and did not answer.

Lawson looked away. "To hell with them! Why should we worry about *them?* We've got to run the world for the sake of the little people. It's intelligence that's caused all the troubles of humanity. Man's mind is the root of all evil. This is the day of the heart. It's the weak, the meek, the sick and the humble that must be the only objects of our concern." His lower lip was twisting in soft, lecherous motions. "Those who're big are here to serve those who aren't. If they refuse to do their moral duty, we've got to force them. There once was an Age of Reason, but we've progressed beyond it. This is the Age of Love."

"Shut up!" screamed James Taggart.

They all stared at him. "For Christ's sake, Jim, what's the matter?" said Orren Boyle, shaking.

"Nothing," said Taggart, "nothing . . . Wesley, keep him still, will you?"

Mouch said uncomfortably, "But I fail to see—"

"Just keep him still. We don't have to listen to him, do we?"

"Why, no, but—"

"Then let's go on."

"What is this?" demanded Lawson. "I resent it. I most emphatically—" But he saw no support in the faces around him and stopped,



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his mouth sagging into an expression of pouting hatred.

"Let's go on," said Taggart feverishly.

"What's the matter with you?" asked Orren Boyle, trying not to know what was the matter with himself and why he felt frightened.

"Genius is a superstition, Jim," said Dr. Ferris slowly, with an odd kind of emphasis, as if knowing that he was naming the unnamed in all their minds. "There's no such thing as the intellect. A man's brain is a social product. A sum of influences that he's picked up from those around him. Nobody invents anything, he merely reflects what's floating in the social atmosphere. A genius is an intellectual scavanger and a greedy hoarder of the ideas which rightfully belong to society, from which he stole them. All thought is theft. If we do away with private fortunes, we'll have a fairer distribution of wealth. If we do away with genius, we'll have a fairer distribution of ideas."

"Are we here to talk business or are we here to kid one another?" asked Fred Kinnan.

They turned to him. He was a muscular man with large features, but his face had the astonishing property of finely drawn lines that raised the corners of his mouth into the permanent hint of a wise, sardonic grin. He sat on the arm of the chair, hands in pockets, looking at Mouch with the smiling glance of a hardened policeman at a shoplifter.

"All I've got to say is that you'd better staff that Unification Board with my men," he said. "Better make sure of it, brother—or I'll blast your Point One to hell."

"I intend, of course, to have a representative of labor on that Board," said Mouch dryly, "as well as a representative of industry, of the professions and of every cross-section of—"

"No cross-sections," said Fred Kinnan evenly. "Just representatives of labor. Period."

"What the hell!" yelled Orren Boyle. "That's stacking the cards, isn't it?"

"Sure," said Fred Kinnan.

"But that will give *you* a stranglehold on every business in the country!"

"What do you think I'm after?"

"That's unfair!" yelled Boyle. "I won't stand for it! You have no right! You—"

"Right?" said Kinnan innocently. "Are we talking about rights?"

"But, I mean, after all, there are certain fundamental property rights which—"

"Listen, pal, you want Point Three, don't you?"

"Well, I—"

"Then you'd better keep your trap shut about property rights from now on. Keep it shut tight."

"Mr. Kinnan," said Dr. Ferris, "you must not make the old-fashioned mistake of drawing wide generalizations. Our policy has to be flexible. There are no absolute principles which—"

"Save it for Jim Taggart, Doc," said Fred Kinnan. "I know what I'm talking about. That's because I never went to college."



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"I object," said Boyle, "to your dictatorial method of—"

Kinnan turned his back on him and said, "Listen, Wesley, my boys won't like Point One. If I get to run things, I'll make them swallow it. If not, not. Just make up your mind."

"Well—" said Mouch, and stopped.

"For Christ's sake, Wesley, what about us?" yelled Taggart.

"You'll come to me," said Kinnan, "when you'll need a deal to fix the Board. But I'll run that Board. Me and Wesley."

"Do you think the country will stand for it?" yelled Taggart.

"Stop kidding yourself," said Kinnan. "The country? If there aren't any principles any more—and I guess the doc is right, because there sure aren't—if there aren't any rules to this game and it's only a question of who robs whom—then I've got more votes than the bunch of you, there are more workers than employers, and don't you forget it, boys!"

"That's a funny attitude to take," said Taggart haughtily, "about a measure which, after all, is not designed for the selfish benefit of workers or employers, but for the general welfare of the public."

"Okay," said Kinnan amiably, "let's talk your lingo. Who is the public? If you go by quality—then it ain't you, Jim, and it ain't Orrie Boyle. If you go by quantity—then it sure is *me,* because quantity is what I've got behind me." His smile disappeared, and with a sudden, bitter look of weariness he added, "Only I'm not going to say that I'm working for the welfare of my public, because I know I'm not. I know that I'm delivering the poor bastards into slavery, and that's all there is to it. And they know it, too. But they know that I'll have to throw them a crumb once in a while, if I want to keep my racket, while with the rest of you they wouldn't have a chance in hell. So that's why, if they've got to be under a whip, they'd rather *I* held it, not you—you drooling, tear-jerking, mealy-mouthed bastards of the public welfare! Do you think that outside of your college-bred pansies there's one village idiot whom you're fooling? I'm a racketeer—but I know it and my boys know it, and they know that I'll pay off. Not out of the kindness of my heart, either, and not a cent more than I can get away with, but at least they can count on that much. Sure, it makes me sick sometimes, it makes me sick right now, but it's not me who's built this kind of world—*you* did—so I'm playing the game as you've set it up and I'm going to play it for as long as it lasts—which isn't going to be long for any of us!"

He stood up. No one answered him. He let his eyes move slowly from face to face and stop on Wesley Mouch.

"Do I get the Board, Wesley?" he asked casually.

"The selection of the specific personnel is only a technical detail," said Mouch pleasantly. "Suppose we discuss it later, you and I?"

Everybody in the room knew that this meant the answer *Yes.*

"Okay, pal," said Kinnan. He went back to the window, sat down on the sill and lighted a cigarette.

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"Don't be disturbed by oratory," said Dr. Ferris smoothly. "Mr. Kinnan is a fine speaker, but he has no sense of practical reality. He is unable to think dialectically."

There was another silence, then James Taggart spoke up suddenly. "I don't care. It doesn't matter. He'll have to hold things still. Everything will have to remain as it is. Just as it is. Nobody will be permitted to change anything. Except—" He turned sharply to Wesley Mouch. "Wesley, under Point Four, we'll have to close all research departments, experimental laboratories, scientific foundations and all the rest of the institutions of that kind. They'll have to be forbidden."

"Yes, that's right," said Mouch. "I hadn't thought of that. We'll have to stick in a couple of lines about that." He hunted around for a pencil and made a few scrawls on the margin of his paper.

"It will end wasteful competition," said James Taggart. "We'll stop scrambling to beat one another to the untried and the unknown. We won't have to worry about new inventions upsetting the market. We won't have to pour money down the drain in useless experiments just to keep up with overambitious competitors."

"Yes," said Orren Boyle. "Nobody should be allowed to waste money on the new until everybody has plenty of the old. Close all those damn research laboratories—and the sooner, the better."

"Yes," said Wesley Mouch. "We'll close them. All of them."

"The State Science Institute, too?" asked Fred Kinnan.

"Oh, no!" said Mouch. "That's different. That's government. Besides, it's a non-profit institution. And it will be sufficient to take care of all scientific progress."

"Quite sufficient," said Dr. Ferris.

"And what will become of all the engineers, professors and such, when you close all those laboratories?" asked Fred Kinnan. "What are they going to do for a living, with all the other jobs and businesses frozen?"

"Oh," said Wesley Mouch. He scratched his head. He turned to Mr. Weatherby. "Do we put them on relief, Clem?"

"No," said Mr. Weatherby. "What for? There's not enough of them to raise a squawk. Not enough to matter."

"I suppose," said Mouch, turning to Dr. Ferris, "that you'll be able to absorb some of them, Floyd?"

"Some," said Dr. Ferris slowly, as if relishing every syllable of his answer. "Those who prove co-operative."

"What about the rest?" said Fred Kinnan.

"They'll have to wait till the Unification Board finds some use for them," said Wesley Mouch.

"What will they eat while they're waiting?"

Mouch shrugged. "There's got to be some victims in times of national emergency. It can't be helped."

"We have the right to do it!" cried Taggart suddenly, in defiance to the stillness of the room. "We need it. We need it, don't we?" There was no answer. "We have the right to protect our livelihood!" Nobody opposed him, but he went on with a shrill, pleading insistence. "We'll be safe for the first time in centuries. Everybody will

know his place and job, and everybody else's place and job—and we won't be at the mercy of every stray crank with a new idea. Nobody will push us out of business or steal our markets or undersell us or make us obsolete. Nobody will come to us offering some damn new gadget and putting us on the spot to decide whether we'll lose our shirt if we buy it, or whether we'll lose our shirt if we don't but somebody else does! We won't have to decide. Nobody will be permitted to decide anything. It will be decided once and for all." His glance moved pleadingly from face to face. "There's been enough invented already—enough for everybody's comfort—why should they be allowed to go on inventing? Why should we permit them to blast the ground from under our feet every few steps? Why should we be kept on the go in eternal uncertainty? Just because of a few restless, ambitious adventurers? Should we sacrifice the contentment of the whole of mankind to the greed of a few non-conformists? We don't need them. We don't need them at all. I wish we'd get rid of that hero worship! Heroes? They've done nothing but harm, all through history. They've kept mankind running a wild race, with no breathing spell, no rest, no ease, no security. Running to catch up with them . . . always, without end . . Just as we catch up, they're years ahead. . . . They leave us no chance . . . They've never left us a chance. . . ." His eyes were moving restlessly; he glanced at the window, but looked hastily away: he did not want to see the white obelisk in the distance. "We're through with them. We've won. This is our age. Our world. We're going to have security—for the first time in centuries—for the first time since the beginning of the industrial revolution!"

"Well, this, I guess," said Fred Kinnan, "is the anti-industrial revolution."

"That's a damn funny thing for you to say!" snapped Wesley Mouch. "We can't be permitted to say that to the public."

"Don't worry, brother. I won't say it to the public."

"It's a total fallacy," said Dr. Ferris. "It's a statement prompted by ignorance. Every expert has conceded long ago that a planned economy achieves the maximum of productive efficiency and that centralization leads to super-industrialization."

"Centralization destroys the blight of monopoly," said Boyle.

"How's that again?" drawled Kinnan.

Boyle did not catch the tone of mockery, and answered earnestly, "It destroys the blight of monopoly. It leads to the democratization of industry. It makes everything available to everybody. Now, for instance, at a time like this, when there's such a desperate shortage of iron ore, is there any sense in my wasting money, labor and national resources on making old-fashioned steel, when there exists a much better metal that I could be making? A metal that everybody wants, but nobody can get. Now is that good economics or sound social efficiency or democratic justice? Why shouldn't I be allowed to manufacture that metal and why shouldn't the people get it when they need it? Just because of the private monopoly of one selfish individual? Should we sacrifice our rights to his personal interests?"



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"Skip it, brother," said Fred Kinnan. "I've read it all in the same newspapers you did."

"I don't like your attitude," said Boyle, in a sudden tone of rightousness, with a look which, in a barroom, would have signified a prelude to a fist fight. He sat up straight, buttressed by the columns of paragraphs on yellow-tinged paper, which he was seeing in his mind:

"At a time of crucial public need, are we to waste social effort on the manufacture of obsolete products? Are we to let the many remain in want while the few withhold from us the better products and methods available? Are we to be stopped by the superstition of patent rights?"

"Is it not obvious that private industry is unable to cope with the present economic crisis? How long, for instance, are we going to put up with the disgraceful shortage of Rearden Metal? There is a crying public demand for it, which Rearden has failed to supply."

"When are we going to put an end to economic injustice and special privileges? Why should Rearden be the only one permitted to manufacture Rearden Metal?"

"I don't like your attitude," said Orren Boyle. "So long as we respect the rights of the workers, we'll want you to respect the rights of the industrialists."

"Which rights of which industrialists?" drawled Kinnan.

"I'm inclined to think," said Dr. Ferris hastily, "that Point Two, perhaps, is the most essential one of all at present. We must put an end to that peculiar business of industrialists retiring and vanishing. We must stop them. It's playing havoc with our entire economy."

"Why are they doing it?" asked Taggart nervously. "Where are they all going?"

"Nobody knows," said Dr. Ferris. "We've been unable to find any information or explanation. But it must be stopped. In times of crisis, economic service to the nation is just as much of a duty as military service. Anyone who abandons it should be regarded as a deserter. I have recommended that we introduce the death penalty for those men, but Wesley wouldn't agree to it."

"Take it easy, boy," said Fred Kinnan in an odd, slow voice. He sat suddenly and perfectly still, his arms crossed, looking at Ferris in a manner that made it suddenly real to the room that Ferris had proposed murder. "Don't let me hear you talk about any death penalties in industry."

Dr. Ferris shrugged.

"We don't have to go to extremes," said Mouch hastily. "We don't want to frighten people. We want to have them on our side. Our top problem is, will they . . . will they accept it at all?"

"They will," said Dr. Ferris.

"I'm a little worried," said Eugene Lawson, "about Points Three and Four. Taking over the patents is fine. Nobody's going to defend industrialists. But I'm worried about taking over the copyrights. That's going to antagonize the intellectuals. It's a

spiritual issue. Doesn't Point Four mean that no new books are to be written or published from now on?"

"Yes," said Mouch, "it does. But we can't make an exception for the book-publishing business. It's an industry like any other. When we say 'no new products,' it's got to mean 'no new products.' "

"But this is a matter of the spirit," said Lawson; his voice had a tone, not of rational respect, but of superstitious awe.

"We're not interfering with anybody's spirit. But when you print a book on paper, it becomes a material commodity—and if we grant an exception to one commodity, we won't be able to hold the others in line and we won't be able to make anything stick."

"Yes, that's true. But—"

"Don't be a chump, Gene," said Dr. Ferris. "You don't want some recalcitrant hacks to come out with treatises that will wreck our entire program, do you? If you breathe the word 'censorship' now, they'll all scream bloody murder. They're not ready for it—as yet. But if you leave the spirit alone and make it a simple material issue —not a matter of ideas, but just a matter of paper, ink and printing presses—you accomplish your purpose much more smoothly. You'll make sure that nothing dangerous gets printed or heard—and nobody is going to fight over a material issue."

"Yes, but . . . but I don't think the writers will like it."

"Are you sure?" asked Wesley Mouch, with a glance that was almost a smile. "Don't forget that under Point Five, the publishers will have to publish as many books as they did in the Basic Year. Since there will be no new ones, they will have to reprint—and the public will have to buy—some of the old ones. There are many very worthy books that have never had a fair chance."

"Oh," said Lawson; he remembered that he had seen Mouch lunching with Ralph Eubank two weeks ago. Then he shook his head and frowned. "Still, I'm worried. The intellectuals are our friends. We don't want to lose them. They can make an awful lot of trouble."

"They won't," said Fred Kinnan. "Your kind of intellectuals are the first to scream when it's safe—and the first to shut their traps at the first sign of danger. They spend years spitting at the man who feeds them—and they lick the hand of the man who slaps their drooling faces. Didn't they deliver every country of Europe, one after another, to committees of goons, just like this one here? Didn't they scream their heads off to shut out every burglar alarm and to break every padlock open for the goons? Have you heard a peep out of them since? Didn't they scream that they were the friends of labor? Do you hear them raising their voices about the chain gangs, the slave camps, the fourteen-hour workday and the mortality from scurvy in the People's States of Europe? No, but you do hear them telling the whip-beaten wretches that starvation is prosperity, that slavery is freedom, that torture chambers are brother-love and that if the wretches don't understand it, then it's their own fault that they suffer, and it's the mangled corpses in the jail cellars who're to blame for all their troubles, not the benevolent leaders! Intellectuals? You might have to worry about any other breed of men, but not



blame for all their troubles, not the
You might have to worry about any other breed of men, but not

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about the modern intellectuals: they'll swallow anything. I don't feel so safe about the lousiest wharf rat in the longshoremen's union: he's liable to remember suddenly that he is a man—and then I won't be able to keep him in line. But the intellectuals? That's the one thing they've forgotten long ago. I guess it's the one thing that all their education was aimed to make them forget. Do anything you please to the intellectuals. They'll take it."

"For once," said Dr. Ferris, "I agree with Mr. Kinnan. I agree with his facts, if not with his feelings. You don't have to worry about the intellectuals, Wesley. Just put a few of them on the government payroll and send them out to preach precisely the sort of thing Mr. Kinnan mentioned: that the blame rests on the victims. Give them moderately comfortable salaries and extremely loud titles—and they'll forget their copyrights and do a better job for you than whole squads of enforcement officers."

"Yes," said Mouch. "I know."

"The danger that I'm worried about will come from a different quarter," said Dr. Ferris thoughtfully. "You might run into quite a bit of trouble on that 'voluntary Gift Certificate' business, Wesley."

"I know," said Mouch glumly. "That's the point I wanted Thompson to help us out on. But I guess he can't. We don't actually have the legal power to seize the patents. Oh, there's plenty of clauses in dozens of laws that can be stretched to cover it—almost, but not quite. Any tycoon who'd want to make a test case would have a very good chance to beat us. And we have to preserve a semblance of legality—or the populace won't take it."

"Precisely," said Dr. Ferris. "It's extremely important to get those patents turned over to us *voluntarily*. Even if we had a law permitting outright nationalization, it would be much better to get them as a gift. We want to leave the people the illusion that they're still preserving their private property rights. And most of them will play along. They'll sign the Gift Certificates. Just raise a lot of noise about its being a patriotic duty and that anyone who refuses is a prince of greed, and they'll sign. But—" He stopped.

"I know," said Mouch; he was growing visibly more nervous. "There will be, I think, a few old-fashioned bastards here and there who'll refuse to sign—but they won't be prominent enough to make a noise, nobody will hear about it, their own communities and friends will turn against them for their being selfish, so it won't give us any trouble. We'll just take the patents over, anyway—and those guys won't have the nerve or the money to start a test case. But—" He stopped.

James Taggart leaned back in his chair, watching them; he was beginning to enjoy the conversation.

"Yes," said Dr. Ferris, "I'm thinking of it, too. I'm thinking of a certain tycoon who is in a position to blast us to pieces. Whether we'll recover the pieces or not, is hard to tell. God knows what is liable to happen at a hysterical time like the present and in a situation as delicate as this. Anything can throw everything off balance. Blow up the whole works. And if there's anyone who wants to do it, he does. He does and can. He knows the real issue, he knows the

things which must not be said—and he is not afraid to say them. He knows the one dangerous, fatally dangerous weapon. He is our deadliest adversary."

"Who?" asked Lawson.

Dr. Ferris hesitated, shrugged and answered, "The guiltless man."

Lawson stared blankly. "What do you mean and whom are you talking about?"

James Taggart smiled.

"I mean that there is no way to disarm any man," said Dr. Ferris, "except through guilt. Through that which he himself has accepted as guilt. If a man has ever stolen a dime, you can impose on him the punishment intended for a bank robber and he will take it. He'll bear any form of misery, he'll feel that he deserves no better. If there's not enough guilt in the world, we must create it. If we teach a man that it's evil to look at spring flowers and he believes us and then does it—we'll be able to do whatever we please with him. He won't defend himself. He won't feel he's worth it. He won't fight. But save us from the man who lives up to his own standards. Save us from the man of clean conscience. He's the man who'll beat us."

"Are you talking about Henry Rearden?" asked Taggart, his voice peculiarly clear.

The one name they had not wanted to pronounce struck them into an instant's silence.

"What if I were?" asked Dr. Ferris cautiously.

"Oh, nothing," said Taggart. "Only, if you were, I would tell you that I can deliver Henry Rearden. He'll sign."

By the rules of their unspoken language, they all knew—from the tone of his voice—that he was not bluffing.

"God, Jim! No!" gasped Wesley Mouch.

"Yes," said Taggart. "I was stunned, too, when I learned—what I learned. I didn't expect that. Anything but that."

"I am glad to hear it," said Mouch cautiously. "It's a constructive piece of information. It might be very valuable indeed."

"Valuable—yes," said Taggart pleasantly. "When do you plan to put the directive into effect?"

"Oh, we have to move fast. We don't want any news of it to leak out. I expect you all to keep this most strictly confidential. I'd say that we'll be ready to spring it on them in a couple of weeks."

"Don't you think it would be advisable—before all prices are frozen—to adjust the matter of the railroad rates? I was thinking of a raise. A small but most essentially needed raise."

"We'll discuss it, you and I," said Mouch amiably. "It might be arranged." He turned to the others; Boyle's face was sagging. "There are many details still to be worked out, but I'm sure that our program won't encounter any major difficulties." He was assuming the tone and manner of a public address; he sounded brisk and almost cheerful. "Roughly spots are to be expected. If one thing doesn't work, we'll try another. Trial-and-error is the only pragmatic rule of action. We'll just keep on trying. If any hardships come up, remember that it's only temporary. Only for the duration of the national emergency."



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