THE WHITE HOUSE

WASHINGTON

September 19, 1983

MEMORANDUM FOR ROGER B. PORTER
WENDELL W. GUNN

FROM: LEHMANN K. LI

SUBJECT: Innovation Legislation Status

As the attached article indicates, it appears that legislation promoting joint R&D ventures is on a "fast track." This makes it all the more important that we push our bill vigorously now.

Attachment

23 SEP REC'D

Washington Watch

Robert D. Hershey Jr.

Coal Slurry Bill Gains in House

WASHINGTON

SUPPORTERS of legislation to guarantee rights-of-way for coal-slurry pipelines have been disappointed many times since the first bill was offered during the Kennedy Administration. But this may be the week when it finally clears the House of Representatives, which last Thursday sent it to the floor on a 7-5 vote by the Rules Committee.

Nine slurry pipelines to carry pulverized coal mixed with water are on sponsors' drawing boards. Utilities, coal interests and most consumer and labor groups support the legislation. The main opponents are the railroads — the main coal carriers — rail unions and some farmers.

Handicappers regard the outcome as a virtual tossup, but House passage would seem to make Senate approval, where the committee vote was 13-7, quite likely. The Senate, which passed a slurry bill once before, could vote within the next few weeks.

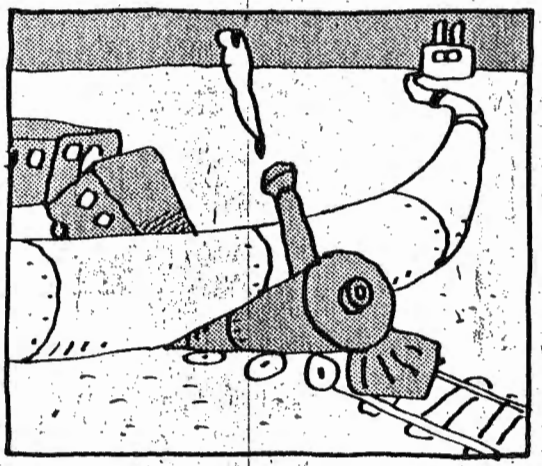
The Administration has mixed views about providing Federal authority of eminent domain for slurry lines. Its reservations are based on states rights' considerations, but President Reagan is thought unlikely to veto the bill.

Only two slurry lines have been built in this country. One, in Ohio, was quickly shut down by a railroad counterattack. The other one is the 273-mile Black Mesa line in Arizona, owned by the Southern Pacific Railroad.

Capital Reserve Requirements

The staff of a group drafting plans to consolidate Government banking regulations may propose common levels for the amount of capital that banks and thrift institutions must maintain.

Currently, commercial banks generally have a 5 percent capital requirement, while savings and loans are subject to a 3 percent standard.



Stuart Goldenberg

William Isaac, chairman of the Federal Deposit Insurance Corporation, has proposed merging the two Federal insurance funds that set the minimum capital requirements — the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation — but this idea has met with strong resistance from the thrift industry, and many banks are skeptical as well.

Another possibility being considered is to maintain two separate insurance agencies, but for Congress to mandate that they set joint capital standards. It's suggested, however, that any common standard would have to be phased in to give thrifts time to raise the additional capital to reach 5 percent.

F.T.C. Seeks Swifter Action

The Federal Trade Commission has ended its long-standing practice of allowing commissioners almost unlimited amounts of time to make decisions, a practice resulting not only in delay but also in a bias toward inaction and in giving priority to things that are time-sensitive when other matters may be more important.

Under streamlined procedures adopted last week, however, whenever a majority of the five commissioners has voted yea or nay on an issue, the others must promptly come to a decision or be recorded as not participating.

Although many issues are considered and voted on at formal meetings, the commission also votes by written circulations known as "walk arounds" and "nonagendas."

Aides say that all current commissioners have at various times been guilty of excessive delay, but the worst offender is thought to be David A. Clanton, whose term expires in a week.

Encouraging Joint Research

Congressional aides say legislation that would relax the nation's antitrust laws to encourage cooperative ventures in research and development are now on a "fast track." The idea is to facilitate production of high-technology goods to compete against Japan in international markets.

Although there are more than 10 versions of such bills, aides say committee passage of some formulation could come swiftly.

The key appears to be Peter W. Rodino Jr., a New Jersey Democrat who has been cautious in endorsing the idea but who now is said to have concluded that the issue has attracted too much political and popular support to be denied.

Briefcases

¶Recent court decisions have undermined Securities and Exchange Commission enforcement efforts by requiring it to notify the target of an investigation before it can issue subpoenas to a third party. The rulings, however, are so far limited to the Ninth Circuit, which includes California.

¶The National Advisory Committee on Oceans and Atmosphere recommends that the United States begin developing seabed mineral resources to minimize the risk of shortages in case foreign supplies are disrupted.

¶Irwin Borowski is leaving his post as counsel to the House subcommittee on oversight and investigations.

THE WHITE HOUSE

WASHINGTON

September 15, 1983

MEMORANDUM FOR WENDELL W. GUNN

FROM: LEHMANN K. LI

SUBJECT: Washington Post Op-Ed Piece on Innovation Legislation

Attached is a copy of today's Washington Post editorial commenting on the President's proposed innovation legislation. It is quite favorable. For example, it says, "With this bill, (the President) makes a valuable contribution to companies' capacity to undertake research. It deserves prompt consideration by Congress."

cc: Roger B. Porter

Attachment

How to Encourage R&D

WPost 9/15/83 p. A22

A VERY LARGE company in a field with high technological demands—IBM, for example—has the resources to run a sophisticated research program. But what about the companies that aren't quite so large? Last year a dozen of them set up a joint venture called MCC, the Microelectronics and Computer Technology Coroporation, to carry on research and development for all of them. But it may expose them to antitrust litigation.

Legal scholars say that this kind of joint venture has almost never been found in violation. But corporate lawyers are uneasy. The law is imprecise, and antitrust cases are notoriously unpredictable. The risks are increased by the rapidly growing practice of plaintiffs' lawyers' organizing civil antitrust suits in pursuit of the triple damages and fees that the law provides. Last week a federal judge awarded fees totaling $40.7 million to the plaintiffs' lawyers in a price-fixing case involving cardboard boxes; that worked out to $352 an hour for the lawyers. Where rewards are high, litigation will increase.

The Justice Department said last December that it would not challenge the organization of MCC, but specifically would not provide advance approval of its activities. The head of MCC, Adm. Bobby R. Inman, said that he interpreted that position as "an amber light" to proceed cautiously—but he added, not entirely in jest, that his own lawyer had advised him not to get involved.

Much of American antitrust law is now obsolescent, and it regularly produces anomalies like this one. As computer technology accelerates, development costs are rapidly rising. The goal of the antitrust tradition is presumably to maintain competition by, among other things, encouraging the largest possible number of competitors. But if joint research ventures are legally risky, the alternative is the familiar succession of mergers and takeovers until only a few big companies remain.

President Reagan has now proposed legislation that would explicitly declare this kind of joint venture to be legal as long as it does not engage in price-fixing or suppression of innovation. With this bill, he makes a valuable contribution to companies' capacity to undertake research. It deserves prompt consideration by Congress.

The president's bill is also an answer to the industrial policy plans currently being floated. Industrial policy, as the term is currently being used here in Washington, carries unappealing connotations of subsidy and protection for declining industries. Mr. Reagan, in contrast, is offering help to those who are willing to use their own resources in the most useful of ways to help themselves.

THE WHITE HOUSE

Office of the Press Secretary

EMBARGOED FOR RELEASE AT 3:30 PM EDT September 12, 1983

FACT SHEET

THE NATIONAL PRODUCTIVITY AND INNOVATION ACT OF 1983

I. Introduction

The National Productivity and Innovation Act of 1983 is part of the Administration's overall effort to encourage the creation and development of new technology. The proposed bill recognizes the important role of new technology in enhancing the competitiveness and productivity of American industry.

The Administration has already moved to strengthen research and development in the public sector by proposing in the FY 1984 budget an increase in Federal funding of R&D of 17 percent to $47 billion. The Administration has also already encouraged private sector R&D with a 25 percent tax credit.

After reviewing the laws that affect private sector R&D and after consulting with key members of Congress, the Administration has determined that several clarifications and modifications in the antitrust and intellectual property laws -- such as patent, copyright, and trademark laws -- could further improve the climate for private investment in R&D. The National Productivity and Innovation Act embodies those modifications, which together deal with all phases of the innovation process.

The bill contains the following four substantive titles. (Title I simply names the bill.)

II. Title II

Title II would ensure that the antitrust laws do not unnecessarily inhibit United States firms from pooling their resources to engage jointly in procompetitive R&D projects. Joint ventures often may be necessary to lower the risk and cost associated with R&D. So long as ventures do not facilitate price fixing (for example, through exchange of information on prices or production levels), or reduce innovation (for example, by a tacit agreement to underinvest in R&D), the ventures do not violate the antitrust laws.

Nevertheless, because an injured private party who wins an antitrust damage suit is automatically entitled to treble damages, the threat of such suits may inhibit the formation of joint R&D ventures that would improve the well-being of consumers.

Title II would reduce this threat by providing that the courts may not find a joint R&D venture to be illegal in and of itself under the antitrust laws. Specifically, it will prevent courts from finding that any joint R&D venture violates the antitrust laws without first finding that it actually has anticompetitive effects which outweigh its procompetitive effects.

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(OVER)

A second provision of Title II would provide that firms operating a joint R&D venture that has been fully disclosed to the Department of Justice and the Federal Trade Commission may be sued only for the amount of the actual damage caused by any anticompetitive conduct, plus prejudgment interest, and not for three times the damage. These changes should encourage the formation of additional procompetitive joint R&D ventures. And unlike some other proposals currently before Congress, they will do so with a minimal amount of bureaucratic interference.

III. Titles III and IV

To insure that our laws do not discourage procompetitive private sector R&D efforts, it is not enough to remove the adverse deterrent effect the antitrust laws may have on joint R&D. The antitrust and intellectual property laws must allow and even encourage those who create new technologies to bring their technology to the market in all of its useful applications.

Titles III and IV recognize that licensing can enable intellectual property owners to employ the superior ability of other enterprises to market new applications more quickly and at lower cost. Both titles would encourage procompetitive licensing of intellectual property.

Title III would prohibit courts from condemning under the antitrust laws an intellectual property licensing arrangement without first considering its procompetitive benefits. It also would eliminate the potential of treble damage liability under the antitrust laws for intellectual property licensing. Those who suffer antitrust injury as a result of licensing will still be able to sue for actual damages plus prejudgment interest.

Under Title IV, courts would be able to refuse to enforce a valid patent or copyright on the grounds of misuse only after meaningful economic analysis.

IV. Title V

Title V would close a loophole in the patent laws that has discouraged investment in efficiency-enhancing technologies. Creation of and improvements in the process of making products can be just as important as creating and improving the product itself. Currently, if someone practices a United States process patent outside this country without the owner's consent and then imports the resulting product into the United States, the importer is not guilty of patent infringement. Title V would enable owners of process patents to prevent such unauthorized use of their technology.

V. Conclusion

In sum, this legislative package proposes clarifications and modifications in the antitrust and intellectual property laws that should strongly encourage innovation in the United States, which in turn should enhance the competitiveness and productivity of American industry. By removing unnecessary deterrents and protecting the rights of innovators to their legitimate financial rewards, this proposal would strengthen incentives for Americans to create and develop new technologies. At the same time, the antitrust laws would continue to protect American businesses and consumers from anti-competitive activities. The President has urged all Members of Congress to give this proposal careful consideration and to work for its enactment during the 98th Congress.

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THE WHITE HOUSE

Office of the Press Secretary

EMBARGOED FOR RELEASE AT 3:30 PM EDT September 12, 1983

STATEMENT BY THE PRESIDENT

Today I am proposing legislation entitled the "National Productivity and Innovation Act of 1983." When enacted the bill will modify antitrust, patent, and copyright laws in a way that will greatly enhance this country's productivity and the ability of U.S. industry to compete in world markets.

Improving domestic industrial productivity and competitiveness will depend largely on our ability to create and develop new technologies. Technological advances provide our economy with the means to produce new or improved goods and services at lower cost than those already on the market. Over the last eighty years, the development of new technologies accounted for almost half of the growth in our real per capita income. New technology creates jobs and gives this country a competitive edge. The U.S. computer industry, for example, directly provides jobs for about 830,000 people, and is a leader in world markets.

New technologies are seldom created by luck; they are instead the result of private and public sector investments of time, money, and effort. With this in mind, we propose to increase Federal funding of research and development (R&D) by 17 percent to $47 billion in 1984 and to encourage private sector R&D by improving the economic and legal climate for such efforts.

A number of things have already been done to encourage private sector efforts. The Economic Recovery Tax Act of 1981, for example, provides a 25 percent tax credit to firms which invest in additional R&D. And by reducing inflation and interest rates our economic program has lowered substantially the cost of conducting research.

When enacted, the National Productivity and Innovation Act will improve the legal climate for technological advancement by clarifying and modifying the Federal antitrust and intellectual property laws. Those laws have a substantial effect on private investment in R&D. The antitrust laws are designed to protect consumers from anticompetitive conduct. Yet we must recognize that while vigorous competition among independent businesses generally serves the economy best, in some areas, like the creation and development of technology, cooperation is necessary if American industry is to compete internationally. Similarly, the intellectual property laws, such as those dealing with patents and copyrights, encourage competition by providing individuals with exclusive rights to their technology.

My proposed legislation will insure that the antitrust and intellectual property laws are fully compatible with efficient creation and development of technology, while, at the same time, maintaining strong safeguards against anticompetitive behavior.

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(OVER)

Title II of the bill will ensure that antitrust laws do not unnecessarily inhibit the formation of joint R&D ventures. Joint ventures often may be necessary to lower the risk and cost associated with R&D. So long as these ventures do not facilitate price fixing or reduce innovation, such ventures should not be considered a violation of antitrust laws. Nevertheless, the risk remains that some courts may overlook the beneficial aspects of joint R&D. This risk is unnecessarily magnified by the triple damages awarded to an injured private party who wins an antitrust damage suit.

Title II will reduce the adverse deterrent effect that triple damages have on procompetitive joint R&D ventures. The title mandates that the courts may not find a joint R&D venture in violation of the antitrust laws without first considering its procompetitive benefits. In addition, Title II provides that a joint R&D venture that has been fully disclosed to the Department of Justice and the Federal Trade Commission found in violation of antitrust laws may be sued only for the actual damage, plus prejudgment interest, caused by its conduct.

Title III will insure that antitrust laws encourage procompetitive intellectual property licensing, which greatly enhances our economy's ability to create and develop technology. Intellectual property owners often cannot obtain their legitimate reward from R&D unless they license their technology to others. Such licensing enables intellectual property owners to use the superior ability of other enterprises in the marketing of their technology. This can be particularly important for small businesses that do not have sufficient resources to develop the full range of applications of a new technology discovered through their research efforts.

Recognizing the significance of licensing, we have designed Title III to ensure intellectual property owners the fruits of their ingenuity. First, the title prohibits courts from condemning an intellectual property licensing arrangement without first considering its procompetitive benefits. Second, the title eliminates the potential of triple damage liability under the antitrust laws for intellectual property licensing. Although those who suffer antitrust injury as a result of licensing could still sue, Title III would minimize the deterrence that antitrust laws currently have on beneficial licensing.

Similarly, Title IV encourages the procompetitive use of intellectual property. Courts will be able to refuse to enforce a valid patent or copyright because of misuse only after considering the economic ramifications.

Title V of the Act increases Federal protection for process patents. Currently, if someone violates a process patent outside the country and then imports the resulting product into the United States, the importer is not guilty of violating patent law. Our bill closes this loophole, permitting the owners of process patents to obtain their rightful reward by preventing such unauthorized use of their technology.

This legislation will, if enacted, stimulate the creation and development of new technology, increase this country's productivity, and enable our industries to compete more effectively in world markets while continuing to protect the interests of American consumers. I strongly urge Congress to move forward on this proposed legislation, and by doing so, encourage innovation and increase the employment opportunities and standard of living for all Americans.

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THE WHITE HOUSE

WASHINGTON

September 13, 1983

MEMORANDUM FOR ROGER B. PORTER
WENDELL W. GUNN

FROM: LEHMANN K. LI

SUBJECT: Press Coverage of Innovation Legislation

Attached are articles in the New York Times, Wall Street Journal, Washington Post, and Washington Times covering the President's innovation legislation. On the whole, the coverage was favorable. One minor irritant, though, was the Washington Post's characterization of the proposal as part of a "Republican 'industrial policy'".

The placement in the papers was somewhat uneven. The New York Times carried its story on page 6 of the Business Section, the Wall Street Journal carried its story on page 4, the Washington Post carried its story on page 1, and the Washington Times carried its story deep in the business section. The Washington Times did not even have its own reporter covering it; it ran the UPI story.

Well, Act I, getting the bill out of the Administration, is over. Now on to Act II, getting it passed by Congress!

Attachments

Reagan Seeks Joint Research

By FRANCIS X. CLINES

Special to The New York Times

WASHINGTON, Sept. 12 — President Reagan asked Congress today to modify antitrust, patent and copyright law to encourage joint research and development ventures by corporations.

"Cooperation is necessary if American industry is to compete internationally," the President declared in a message to Congress.

The proposals would protect fully disclosed joint ventures in research and development from private antitrust suits and from damage suits by the Government. Joint ventures are necessary, Administration officials contend, to conduct the immensely expensive research projects required to produce breathroughs in modern technology.

In his message to Congress, the President said that existing laws could be effectively changed so that they still protected against price fixing but also did not "unnecessarily inhibit" the sort of joint reasearch under way in rival nations.

Would End Triple Damages

The proposals would revise present law so that joint research and development could be considered antitrust violations only if they restricted innovation or made price fixing easier. Mr. Reagan also proposed that joint ventures found to have violated antitrust law be liable only for actual damages, not the triple damages permitted under the law now.

The President's program joins several other Congressional proposals submitted by lawmakers to deal with increasing international competition in the high-technology, automobile and textile fields resulting from collaborative research in such countries as Japan, West Germany and France.

Joint research and development is not flatly banned under current American law, but it is subject to a "rule of reason" test that critics say leaves companies confused and cautious.

Other provisions of the President's program would end triple damage possibilities in the case of "intellectual property owners" who want to license their technology to others to reap larger benefits. They would also require courts to give greater weight to "procompetitive benefits" and economic ramifications than is now the practice in copyright and patent lawsuits.

What's News—

* * *

Business and Finance

CHRYSLER OUTBID three groups of securities firms, and agreed to pay the U.S. Treasury $311 million to retire 14.4 million warrants to buy Chrysler shares. The warrants were issued three years ago under a $1.2 billion federal bailout package. The auto maker earlier offered as much as $250 million for the warrants.

(Story on Page 3)

* * *

Williams Cos. sued to block a competing bid for Northwest Energy by an Allen & Co.-led group. The Allen group said it won't sweeten its offer but "will pursue the acquisition" of Northwest's biggest operation, its pipeline unit.

(Story on Page 3)

* * *

Occidental Petroleum agreed to sell for as much as $385 million nearly all assets of its Permian Corp. oil transportation unit to First City Financial Corp., which is controlled by Canada's Belzberg family. Occidental last month said it was asking more than $400 million for the unit.

(Story on Page 4)

* * *

The Reagan administration proposed a bill to spur investment in research and development mainly by reducing antitrust risks for R&D joint ventures, copyrights and patents.

(Story on Page 4)

* * *

Paradyne and the SEC are close to settling a suit that charges Paradyne with using "fraud and deceit" to win a government contract for microcomputers, sources say.

(Story on Page 5)

* * *

Chart House agreed to acquire Godfather's Pizza for stock valued at $306 million. The restaurant-chain operator said the chairman of Godfather's granted it an option to acquire his 40% stake in the pizza chain.

(Story on Page 6)

White House Offers Bill to Spur Investment In Research by Lowering Antitrust Risks

P-4

By Robert E. Taylor 9/13/83
Staff Reporter of The Wall Street Journal

WASHINGTON—The Reagan administration proposed legislation to encourage investment in research and development largely by reducing antitrust risks for R&D joint ventures, copyrights and patents.

The bill didn't contain provisions the administration originally planned that would have reduced antitrust liability on a much broader front, beyond areas marked by innovation. The broader limits, though supported by top administration officials, were viewed as too controversial. And in fact, even the bill's protection for R&D joint ventures is less absolute than in previous drafts.

Currently, liability in all civil antitrust cases is triple the damages caused by the violator. The administration bill would lower that to single damages, plus interest, for patent and copyright abuses and for antitrust violations by R&D joint ventures that file papers with the federal government outlining their efforts.

Last March, William Baxter, head of the Justice Department's antitrust division, said the administration would seek to reduce antitrust liability to single damages for all actions that are ruled illegal because they are more anticompetitive than procompetitive. Under that proposal, only clearly illegal conduct such as price fixing would continue to face triple-damage liability.

Patent licenses can be held to be illegal if they overly restrict competition by, for instance, tying the use of a patented product to an unpatented one. Joint ventures are illegal if they combine too large a portion of an industry in circumstances that might encourage them to prevent innovation, rather than stimulate it.

This narrower version of the bill was urged on the administration last June by several senators who insisted that the broader measure couldn't clear Congress. "When you attack triple damages," said Sen. Charles Mathias (R., Md.) in a Senate hearing, "you're attacking one of the historic bastions of antitrust laws."

Rick Rule, a special assistant to Mr. Baxter, said the administration decided to tailor its package to measures clearly aimed at incentives for innovation and with the "greatest political viability."

President Reagan said the proposed legislation would, if passed, "enhance this country's productivity and the ability of U.S. industry to compete in world markets." He said it would remove disincentives for investing in ventures aimed at developing technology.

Aside from the liability issue, the bill would bar courts from finding any research and development joint venture or patent copyright use to be illegal under antitrust laws without considering its procompetitive justifications. The measure also would make it illegal for foreigners who infringe on a U.S. patent for a manufacturing process to import their products into this country.

The bill appears to be framed as an administration alternative to legislation already offered by Sens. Paul Tsongas (D., Mass.), John Glenn (D., Ohio) and others aimed at giving high-technology ventures greater protection from antitrust lawsuits.

But even for registered research and development joint ventures, the bill offers less protection than the earlier version discussed by Mr. Baxter, the antitrust chief. He said last June that the bill would offer them complete immunity from private antitrust suits.

At that time, Mr. Baxter resisted suggestions that the cut in liability be limited to research and development ventures. He said that "does seem to me to solve a very minor problem while there are more important ones around."

Mr. Rule said the administration doesn't currently plan to offer any broader bill to limit antitrust liability.

Reagan Urges Permitting Joint R&D Activities

By Peter Behr P-A1
Washington Post Staff Writer 5/13/83

President Reagan yesterday offered a Republican "industrial policy" proposal, asking Congress to change antitrust, patent and copyright laws to help American firms cooperate in developing new industrial technologies.

The administration plan would permit competing companies in the same industry to establish joint research and development ventures without fear of antitrust lawsuits. The venture partners could be cited for violating antitrust laws only if their actions were found by the courts to be anticompetitive, and then would be liable only for actual damages and interest, rather than the triple-damage penalties now in the law.

D. Bruce Merrifield, assistant secretary of Commerce for technology, said a rapidly growing number of companies are forming such joint ventures, led by the electronics industry. Boeing Co., McDonnell Douglas and Lockheed Corp. are another example, he said. The development of the next generation of jetliners—a race by U.S., European and Japanese competitors—will require huge investments in research on new materials, electronics and engines, and "no one of those firms

See ANTITRUST, A4, Col. 1

Reagan Urges Allowing Joint Research by Firms

ANTITRUST, From A1

can bet their whole company on that," Merrifield said.

The proposal also would change copyright and patent laws to give innovators a greater opportunity to profit from new developments in an effort to speed the transfer of technological developments from laboratory to manufacturing and production.

Reagan announced the proposal after his initial meeting with his newly appointed National Commission on Industrial Competitiveness. Reagan said the legislation would "stimulate the creation and development of new technology, increase this country's productivity, and enable our industries to compete more effectively in world markets. . . ."

Two candidates for the Democratic presidential nomination, Sens. John Glenn (Ohio) and Gary Hart (Colo.), have introduced similar bills to encourage industrial research and development joint ventures. The House Judiciary Committee has scheduled hearings this week on the issue, and a broad array of business leaders support the idea.

The administration's move is seen as an effort to stake its claim to the joint research issue, which some congressional authorities believe will be an important part of the debate over the need for a national industrial policy.

It is one of the few industrial policy proposals with a good chance for passage by a politically divided Congress.

"The need for this hasn't been completely established, but it is clear no politician wants to be against joint R&D," said a House Democratic source.

Courts have not found joint research and development ventures to violate antitrust laws, said Rick Rule, a special assistant to the Justice Department's antitrust chief, William Baxter.

But the threat of triple-damage suits has discouraged many firms from attempting cooperative research, he said.

The administration's proposal says that, so long as such ventures do not involve price fixing or reduce innovation, they will not be held in violation of antitrust laws.

The second major element of the administration plan involves fast-paced developments in computer software and other information technologies. Often, holders of patents and copyrights—so-called "intellectual property"—must license their technology to other firms to assure rapid production and sale—particularly when the innovators are small, start-up firms.

The administration proposal prohibits courts from outlawing such licensing arrangements unless they are shown to be anticompetitive, and rules out triple damage liability in these cases. In addition, where companies are charged with misusing patents or copyrights, courts would have to consider the economic impact of such actions before refusing to enforce the patents or copyrights.

Reagan bill supports joint R&D ventures

United Press International WTimes 7/13/83, p. 5B

With an eye toward boosting American competitiveness in the world marketplace, President Reagan yesterday proposed legislation that would allow U.S. companies to band together in pursuit of technological advances.

Reagan, in a message to Congress, proposed a series of changes in federal antitrust, patent and copyright laws to encourage greater investments of time, effort and money in developing new technologies.

A White House background paper underscored the importance of "removing unnecessary deterrents and protecting the rights of innovators to their legitimate financial rewards."

In an apparent bid to defuse expected criticism, Reagan stressed the effort to loosen the reins on industry is coupled with a continuing commitment "to protect the interests of American consumers."

THE WHITE HOUSE

WASHINGTON

September 9, 1983

MEMORANDUM FOR JOHN A. SVAHN

FROM: LEHMANN K. LI

SUBJECT: Issue Paper on Innovation Legislation: Talking Points

Some points you might want to make in your presentation of the issue paper, "Encouraging American Innovation" include:

- Both Republicans and Democrats have called for amending the antitrust laws to encourage joint R&D ventures. The fact that courts can now find a joint R&D venture to be illegal in and of itself and the threat of treble damages discourages companies from getting together to conduct joint R&D.

- This legislation (National Productivity and Innovation Act of 1983) would one, require that courts consider how the venture helps competition, and two, detreble damages down to single damages.

- Less public attention has been focused on how current patent and copyright laws discourage innovation. These laws can discourage innovation because courts generally consider patents and copyrights to be restrictions on competition. However, patents and copyrights can promote competition and benefit society by protecting the rights of inventors to reap the rewards of their efforts.

- This legislation would require that courts consider how patent and copyright arrangements benefit competition before ruling whether they violate antitrust laws.

- The Administration should strongly support this proposed legislation because it would demonstrate how committed we are to encouraging innovation and thus industrial competitiveness.

- The timing of the introduction of this legislation is appropriate. With the Commission on Industrial Competitiveness meeting today (9/12) and the White House Conference on Productivity next week, an Administration initiative promoting innovation would show how we are taking some action in this area.

cc: Roger B. Porter
/Wendell W. Gunn

THE WHITE HOUSE

WASHINGTON

September 12, 1983

MEMORANDUM FOR WENDELL W. GUNN

FROM: LEHMANN K. LI

SUBJECT: Introducing Innovation Legislation

As we discussed, someone needs to call Bob McConnell, Assistant Attorney General for Legislative Affairs, about calling sponsors for the innovation legislation. The current situation is as follows.

McConnell has spoken to Thurmond personally. Thurmond will introduce the Administration bill tomorrow. Although Justice has spoken to Fish's staff, no one from the Administration has apparently spoken to Fish himself about introducing the bill. Fish will come into town tomorrow morning. No one has spoken to Senator Baker and Congressman Michel to touch base about the bill.

McConnell apparently will not speak to Fish until he receives a go-ahead from Duberstein because McConnell does not know whether he can call the bill a Presidential initiative. McConnell is out of town today but will return tomorrow. I think he can be reached out of town, though. His office number is 633-2141.

cc: Roger B. Porter

THE WHITE HOUSE

WASHINGTON

September 10, 1983

MEMORANDUM FOR WENDELL W. GUNN

FROM: LEHMANN K. LI

SUBJECT: Points to Raise with Craig Fuller re: Innovation Legislation

When you talk with Craig Fuller today, you might want to raise two particular points regarding the innovation legislation:

- o Legislative. Bob McConnell, Assistant AG for Legislative Affairs, has been reluctant to talk to people on the Hill about introducing the Administration bill because he has received cool signals from Ken Duberstein. Apparently, Duberstein does not believe that the bill should be pushed strongly by the White House. Any discussion between Fuller and Duberstein emphasizing the President's backing of the bill would be appreciated.

  It is important that this be cleared up soon because even though the bill should be introduced on Tuesday, September 13, McConnell or anyone else from the Administration has not spoken to Hamilton Fish (our House sponsor) or touched base with Howard Baker or Robert Michel about the legislation. McConnell has spoken to Thurmond who said that he would introduce the bill by request.

- o Press. Currently, there are no plans for press coverage of the President's remarks to the Commission on Industrial Competitiveness at 3:30. It is clearly important for the White House Press Corps to be there when the President announces that he is sending the innovation legislation to the Hill.

  I am told that senior staff decides during its morning meeting which events are going to be covered by the press corps. Fuller's support of press coverage in the meeting would be appreciated.

Just for your information, McNeil/Lehrer will be having a session on joint R&D on Wednesday night. The guests will be Bill Baxter, Bobby Inman, and Joseph Alioto (spelling?) the antitrust lawyer. Baxter will discuss the Administration bill then.

cc: Roger B. Porter

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

	RBP	WWG	MB Tom Collerman	LKL
MEESE	✓	✓	✓	
BAKER		✓	✓	
DEAVER				
DARMAN	✓	✓		
FULLER	✓	✓		
DUBERSTEIN		✓		
GERGEN	✓	✓		
SVAHN		✓		
CICCONI		✓		
BARODDY				✓
VIPOND				✓

THE WHITE HOUSE

WASHINGTON

September 6, 1983

MEMORANDUM FOR EDWIN MEESE III
CRAIG L. FULLER

FROM: ROGER B. PORTER

SUBJECT: Productivity and Innovation Legislation

The Administration has been developing draft legislation entitled "The National Productivity and Innovation Act of 1983." The proposed legislation primarily addresses two issues: 1) the deterrent effect that current antitrust laws may have on joint research and development ventures; and 2) the extent to which patent and copyright laws discourage innovation. By amending the antitrust, patent, and copyright laws, the proposed legislation would strongly encourage the creation and development of technology.

There has been widespread political support for changing these laws as a means of improving the productivity and competitiveness of American industry. Development of this legislation arose from the Midterm Planning Process. A strong Presidential initiative in this area would emphasize the President's commitment to enhancing American industry's ability to compete in world markets and reinforce his image of looking forward in the development of science and technology. This bill would represent one of the President's most important initiatives in encouraging innovation.

There will probably be some bill passed in this Congress amending the antitrust laws to encourage joint R&D ventures. The Administration's proposed joint R&D provision should have a good chance of passing. Our patent and copyright provisions should be received favorably.

The House Judiciary Committee is holding hearings on antitrust reform legislation on Wednesday, September 14. Since that hearing may be the only opportunity the Administration will have in the House to testify on the bill in this Congress, the Administration is planning to introduce the bill on Monday, September 12.

The Office of Policy Development recommends that the President in his weekly radio address on September 10 discuss the Administration's efforts to improve U.S. industrial competitiveness and enhance technological development and in that context announce that he is submitting to Congress the productivity and innovation legislation. A draft radio address, fact sheet, and Presidential Statement are attached.

OPD also recommends that we hold a press briefing on the legislation at the White House on Monday, September 12. Secretary Baldrige and Assistant Attorney General Baxter would be the most appropriate people to give the briefing.

cc: John A. Svahn

PRESIDENTIAL RADIO TALK: INNOVATION LEGISLATION
SATURDAY, SEPTEMBER 10, 1983

My fellow Americans:

You have heard a great deal of discussion in recent years about the need to improve our country's industrial competitiveness. We have faced some tough competition from abroad in industries ranging from traditional ones like steel to high technology ones like semiconductors. There are many factors making competition tough for a lot of our industries, including insufficient investment, a strong dollar, and the need for better labor-management relations.

One of the most important factors affecting our industrial competitiveness is our ability to create and develop new technologies. Advances in technology allow our economy to develop new or improved products and to make more cheaply those products already out on the market.

How does technology affect our daily lives? It means jobs, a better quality of life, and stronger national security. The development of the computer, for example, has created jobs for about 830,000 people in the computer industry. We can live longer and healthier lives because of new medical technologies. We can travel farther, faster, and more safely because of developments in aeronautics. Advanced defense technology enables us to keep the peace and to maintain our freedom.

Technology also means more competitive U.S. industries. While some other countries' competitive edge may lie in lower

labor costs, one of America's strongest competitive edges is our ability to come up with and apply new ideas.

New technologies sometimes come from luck. But they usually come from systematic research conducted in both the private and public sectors. We are doing more to improve public sector investment in research and development. For example, I proposed in my 1984 budget to increase Federal funding of R&D by 17 percent to $47 billion.

To encourage the private sector to expand its investment in R&D, we have done a number of things. The 1981 Economic Recovery Tax Act provides a 25 percent tax credit to encourage firms to invest in more R&D. Also, the lower inflation and interest rates resulting from our economic program have reduced substantially the cost of conducting research.

We have also been looking at two major areas of law affecting innovation -- the antitrust and intellectual property laws. The antitrust laws are designed to protect consumers from anticompetitive behavior. While the economy generally benefits most from strong competition among independent businesses, the antitrust laws recognize that in some areas, like the creation and development of technology, cooperation among producers can actually serve to maximize the benefits to consumers.

The intellectual property laws promote the interests of consumers by encouraging more innovation. When the rights of inventors to reap the rewards of their efforts are fully protected, they will take more risks to develop new technologies. However, the intellectual property laws, as currently

interpreted, often discourage people from taking these risks.

After reviewing the effect of the antitrust and intellectual property laws on innovation and consulting with key members in the House and the Senate, I have concluded that several modifications could greatly enhance the ability of the private sector to create and develop technology. Hence, I am proposing legislation entitled the National Innovation and Productivity Act of 1983.

An important aspect of the bill is the treatment of procompetitive joint R&D ventures under the antitrust laws. Research and development is becoming more complex and expensive. Many R&D projects are beyond the scope of any one company's ability to undertake. Especially in light of the R&D efforts of foreign competitors, it may very well be that allowing cooperation among U.S. companies to conduct joint R&D can enhance competition.

Nevertheless, there is a widespread perception in American industry that the antitrust laws discourage procompetitive joint R&D efforts. The risk of paying three times the amount of actual damages discourages some companies from forming procompetitive joint ventures.

My proposed bill would address this problem by first clarifying that the courts may not find that a joint R&D venture violates the antitrust laws without first considering how it helps competition. Second, it would provide that a joint R&D venture that has been fully disclosed to the Justice Department and the Federal Trade Commission may be sued only for the actual

damage caused by its conduct. Hence, the bill would eliminate the deterrent that antitrust laws may have on procompetitive joint R&D ventures, while still providing adequate legal remedy to those injured by anticompetitive joint ventures.

My proposed bill would also encourage those who create new technologies to bring their technology onto the market. By amending the antitrust, patent, and copyright laws, my proposed bill would make it more likely that owners of new ideas can reap the rewards of their hard work, and hence would encourage people to innovate. The net effect of this legislative package would be to enhance considerably the ability of the private sector to create and develop new technologies. This legislation would improve the ability of U.S. industry to compete in world markets. I strongly urge the Congress to pass this proposed legislation as a means of encouraging innovation, increasing opportunities for American workers, widening consumer choice, and improving the quality of life for all Americans.

Until next week, thank you and God bless you.

FACT SHEET

THE NATIONAL PRODUCTIVITY AND INNOVATION ACT OF 1983

I. Introduction

The National Productivity and Innovation Act of 1983 is part of the Administration's overall effort to encourage the creation and development of new technology. The proposed bill recognizes the important role of new technology in enhancing the competitiveness and productivity of American industry.

The Administration has already moved to strengthen research and development in the public sector by proposing in the FY1984 budget an increase in Federal funding of R&D of 17 percent to $47 billion. The Administration has also already encouraged private sector R&D with a 25 percent tax credit.

After reviewing the laws that affect private sector R&D and after consulting with key members of Congress, the Administration has determined that several clarifications and modifications in the antitrust and intellectual property laws -- such as patent, copyright, trade secret, and trademark laws -- could further improve the climate for private investment in R&D. The National Productivity and Innovation Act embodies those modifications, which together deal with all phases of the innovation process.

The bill contains the following four substantive titles. (Title I simply names the bill.)

II. Title II

Title II would insure that the antitrust laws do not unnecessarily inhibit United States firms from pooling their resources to engage jointly in procompetitive R&D projects. Joint ventures often may be necessary to lower the risk and cost associated with R&D. So long as ventures do not facilitate price fixing -- for example, through exchange of information on prices or production levels -- or to reduce innovation -- for example, by a tacit agreement to underinvest in R&D -- the ventures do not violate the antitrust laws.

Nevertheless, because an injured private party who wins an antitrust damage suit is automatically entitled to treble damages, the threat of such suits may inhibit the formation of joint R&D ventures that would improve the well-being of consumers.

Title II would reduce this threat by providing that the courts may not find a joint R&D venture to be illegal in and of itself under the antitrust laws. Specifically, it will prevent courts from finding that any joint R&D venture violates the antitrust laws without first finding that it actually has anticompetitive effects which outweigh its procompetitive effects.

A second provision of Title II would provide that firms operating a joint R&D venture that has been fully disclosed to the Department of Justice and the Federal Trade Commission may be sued only for the amount of the actual damage caused by any anticompetitive conduct, plus prejudgment interest, and not for three times the damage. These changes should encourage the

formation of additional procompetitive joint R&D ventures. And unlike some other proposals currently before Congress, they will do so with a minimal amount of bureaucratic interference.

III. Titles III and IV

To assure that our laws do not discourage procompetitive private sector R&D efforts, it is not enough to remove the adverse deterrent effect the antitrust laws may have on joint R&D. The antitrust and intellectual property laws must allow and even encourage those who create new technologies to bring their technology to the market in all of its useful applications.

Titles III and IV recognize that licensing can enable intellectual property owners to employ the superior ability of other enterprises to market new applications more quickly and at lower cost. Both titles would encourage procompetitive licensing of intellectual property.

Title III would prohibit courts from condemning under the antitrust laws an intellectual property licensing arrangement without first considering its procompetitive benefits. It also would eliminate the potential of treble damage liability under the antitrust laws for intellectual property licensing. Those who suffer antitrust injury as a result of licensing will still be able to sue for actual damages plus prejudgment interest.

Under Title IV, courts would be able to refuse to enforce a valid patent or copyright on the grounds of misuse only after considering meaningful economic analysis.

IV. Title V

Title V would close a loophole in the patent laws that has discouraged investment in efficiency-enhancing technologies. Creation of and improvements in the process of making products can be just as important as creating and improving the product itself. Currently, if someone practices a United States process patent outside this country without the owner's consent and then imports the resulting product into the United States, the importer is not guilty of infringement. Title V would enable owners of process patents to prevent such unauthorized use of their technology.

V. Conclusion

In sum, this legislative package proposes clarifications and modifications in the antitrust and intellectual property laws that should strongly encourage innovation in the United States, which in turn should enhance the competitiveness and productivity of American industry. By removing unnecessary deterrents and protecting the rights of innovators to their legitimate financial rewards, this proposal would strengthen incentives for Americans to create and develop new technologies. The President has urged all Members of Congress to give this proposal careful consideration and to work for its enactment during the 98th Congress.

DRAFT PRESIDENTIAL STATEMENT ON THE
NATIONAL PRODUCTIVITY AND INNOVATION ACT OF 1983

Today I am proposing legislation entitled the National Productivity and Innovation Act of 1983. The bill would modify antitrust, patent, and copyright laws in a way that should greatly enhance this country's productivity and the ability of U.S. industry to compete in world markets.

The ability of the United States to improve industrial productivity and competitiveness will depend largely on our ability to create and develop new technologies. Advances in technology provide our economy with the means to produce new or improved goods and services and to produce at lower cost those goods and services already on the market. Over the last eighty years, the development of new technologies has accounted for almost half of the growth in our real per capita income. New technology creates new jobs and gives this country a competitive edge in world markets. The U.S. computer industry, for example, directly provides jobs for about 830,000 people, and is a leader in world markets.

Although new technologies are sometimes created by luck, the public and private sectors must generally spend a great deal of time, money, and effort to discover and develop new technologies. With this in mind, I proposed in my FY1984 budget to increase Federal funding of research and development (R&D) by 17 percent to $47 billion.

It is also important to encourage private sector R&D by

improving the economic and legal climate.

We have already done a number of things to improve the economic climate. For example, the Economic Recovery Tax Act of 1981 provides a 25 percent tax credit to encourage firms to invest in additional R&D. Our economic program has helped reduce inflation and interest rates and thus, has lowered substantially the cost of conducting research.

When enacted, the National Productivity and Innovation Act will improve the legal climate by clarifying and modifying the Federal antitrust and intellectual property laws. Those laws have a substantial effect on private investment in R&D. The antitrust laws are designed to protect consumers from anticompetitive conduct. While vigorous competition among independent businesses generally serves the economy best, the antitrust laws recognize that in some areas, like the creation and development of technology, cooperation may be necessary to maximize the benefits to consumers. Similarly, the intellectual property laws, such as those dealing with patents and copyrights, encourage competition in the creation and development of new and useful technologies, by providing individuals with exclusive rights to their technology.

My proposed legislation would assure that the antitrust and intellectual property laws are fully compatible with the efficient creation and development of technology while maintaining strong safeguards to protect the economy against anticompetitive behavior.

Title II of the bill would insure that the antitrust laws do

not unnecessarily inhibit the formation of procompetitive joint R&D ventures. Joint ventures often may be necessary to lower the risk and cost associated with R&D. So long as these ventures do not facilitate price fixing or reduce innovation, such ventures do not violate the antitrust laws. Nevertheless, the risk remains that some courts may ignore the beneficial aspects of joint R&D. This risk is unnecessarily magnified by the fact that an injured private party who wins an antitrust damage suit is automatically entitled to three times the damages actually suffered.

Title II would reduce the adverse deterrent effect that this risk may have on procompetitive joint R&D ventures. The title provides that the courts may not find a joint R&D venture to violate the antitrust laws without first considering its procompetitive benefits. In addition, Title II provides that a joint R&D venture that has been fully disclosed to the Department of Justice and the Federal Trade Commission may be sued only for the actual damage, plus prejudgment interest, caused by its conduct.

Title III would assure that the antitrust laws encourage procompetitive intellectual property licensing, which greatly enhances our economy's ability to create and develop technology. Intellectual property owners often cannot obtain their legitimate reward from R&D unless they license their technology to others. Such licensing can enable intellectual property owners to utilize the superior ability of other enterprises to market their technology more quickly and at lower cost.

Recognizing the importance of licensing, we have designed Title III to assist intellectual property owners to enjoy fully the fruits of their ingenuity. First, the title would prohibit courts from condemning an intellectual property licensing arrangement without first considering its procompetitive benefits. Second, the title would eliminate the potential of treble damage liability under the antitrust laws for intellectual property licensing. Although those who suffer antitrust injury as a result of licensing could still sue for their actual damages plus prejudgment interest, Title III would minimize the deterrence that the antitrust laws currently may have on potentially beneficial licensing.

Similarly, Title IV would encourage the procompetitive use of intellectual property. Courts would be able to refuse to enforce a valid patent or copyright on the grounds of misuse only after considering meaningful economic analysis.

Title V of the Act would increase Federal protection for process patents. Currently, if someone practices a process patent outside the country without the owner's consent and then imports the resulting product into the United States, the importer is not guilty of violating patent law. Our bill would close this loophole so that owners of process patents could earn their rightful reward by preventing such unauthorized use of their technology.

The net effect of this proposed legislation would be to stimulate the creation and development of new technology, to increase this country's productivity, and to enable our

industries to compete more effectively in world markets. I strongly urge Congress to enact this proposed legislation as a means of encouraging innovation, and hence of increasing the employment opportunities and standard of living for all Americans.

THE WHITE HOUSE

WASHINGTON

September 4, 1983

MEMORANDUM FOR ROGER B. PORTER

FROM: LEHMANN K. LI

SUBJECT: Innovation Legislation

Attached is a memorandum from you to Messrs. Darman and Gergen, recommending that the President discuss the innovation legislation in his weekly radio address on September 10. The memorandum includes a draft radio address, fact sheet, and Presidential Statement. Baxter, Wendell, and I have worked on the above papers.

The timing on this bill is becoming very important. I would like to talk to you about the bill further before you leave for Japan. Thanks.

cc: Wendell W. Gunn

Attachments

THE WHITE HOUSE

WASHINGTON

September 4, 1983

MEMORANDUM FOR RICHARD G. DARMAN
DAVID R. GERGEN

FROM: ROGER B. PORTER

SUBJECT: Innovation Legislation

The Administration has been developing draft legislation entitled "The National Productivity and Innovation Act of 1983." The proposed bill would encourage the creation and development of technology by amending the antitrust, patent, and copyright laws. There has been widespread political support for changing these laws as a means of improving the productivity and competitiveness of American industry. A strong Presidential initiative in this area would emphasize the President's commitment to enhancing American industry's ability to compete in world markets and reinforce his image of looking forward in the development of science and technology.

The House Judiciary Committee is holding hearings on antitrust reform legislation on Wednesday, September 14. That hearing may be the only opportunity the Administration will have in the House to testify on the bill in the 98th Congress. For Justice to testify on the Administration bill, we will have to introduce the bill on Monday, September 12.

OMB has submitted the proposed bill to the White House for clearance. The Office of Policy Development and Justice have prepared a fact sheet and draft Presidential Statement on the bill, both of which are attached.

The Office of Policy Development recommends that the President in his weekly radio address on September 10 discuss the Administration's efforts to improve U.S. industrial competitiveness and enhance technological development and in that context announce that he is submitting to Congress the productivity and innovation legislation. A draft radio address is attached.

OPD also recommends that we hold a press briefing on the legislation at the White House on Monday, September 12. Secretary Baldrige and Assistant Attorney General Baxter would be the most appropriate people to give the briefing.

If there is any further information I can provide, please let me know. Thank you very much.

Attachments

PRESIDENTIAL RADIO TALK: INNOVATION LEGISLATION
SATURDAY, SEPTEMBER 10, 1983

My fellow Americans:

You have heard a great deal of discussion in recent years about the need to improve our country's industrial competitiveness. We have faced some tough competition from abroad in industries ranging from traditional ones like steel to high technology ones like semiconductors. There are many factors making competition tough for a lot of our industries, including insufficient investment, a strong dollar, and the need for better labor-management relations.

One of the most important factors affecting our industrial competitiveness is our ability to create and develop new technologies. Advances in technology allow our economy to develop new or improved products and to make more cheaply those products already out on the market.

How does technology affect our daily lives? It means jobs, a better quality of life, and stronger national security. The development of the computer, for example, has created jobs for about 830,000 people in the computer industry. We can live longer and healthier lives because of new medical technologies. We can travel farther, faster, and more safely because of developments in aeronautics. Advanced defense technology enables us to keep the peace and to maintain our freedom.

Technology also means more competitive U.S. industries. While some other countries' competitive edge may lie in lower

labor costs, one of America's strongest competitive edges is our ability to come up with and apply new ideas.

New technologies sometimes come from luck. But they usually come from systematic research conducted in both the private and public sectors. We are doing more to improve public sector investment in research and development. For example, I proposed in my 1984 budget to increase Federal funding of R&D by 17 percent to $47 billion.

To encourage the private sector to expand its investment in R&D, we have done a number of things. The 1981 Economic Recovery Tax Act provides a 25 percent tax credit to encourage firms to invest in more R&D. Also, the lower inflation and interest rates resulting from our economic program have reduced substantially the cost of conducting research.

We have also been looking at two major areas of law affecting innovation -- the antitrust and intellectual property laws. The antitrust laws are designed to protect consumers from anticompetitive behavior. While the economy generally benefits most from strong competition among independent businesses, the antitrust laws recognize that in some areas, like the creation and development of technology, cooperation among producers can actually serve to maximize the benefits to consumers.

The intellectual property laws promote the interests of consumers by encouraging more innovation. When the rights of inventors to reap the rewards of their efforts are fully protected, they will take more risks to develop new technologies. However, the intellectual property laws, as currently

interpreted, often discourage people from taking these risks.

After reviewing the effect of the antitrust and intellectual property laws on innovation and consulting with key members in the House and the Senate, I have concluded that several modifications could greatly enhance the ability of the private sector to create and develop technology. Hence, I am proposing legislation entitled the National Innovation and Productivity Act of 1983.

An important aspect of the bill is the treatment of procompetitive joint R&D ventures under the antitrust laws. Research and development is becoming more complex and expensive. Many R&D projects are beyond the scope of any one company's ability to undertake. Especially in light of the R&D efforts of foreign competitors, it may very well be that allowing cooperation among U.S. companies to conduct joint R&D can enhance competition.

Nevertheless, there is a widespread perception in American industry that the antitrust laws discourage procompetitive joint R&D efforts. The risk of paying three times the amount of actual damages discourages some companies from forming procompetitive joint ventures.

My proposed bill would address this problem by first clarifying that the courts may not find that a joint R&D venture violates the antitrust laws without first considering how it helps competition. Second, it would provide that a joint R&D venture that has been fully disclosed to the Justice Department and the Federal Trade Commission may be sued only for the actual

damage caused by its conduct. Hence, the bill would eliminate the deterrent that antitrust laws may have on procompetitive joint R&D ventures, while still providing adequate legal remedy to those injured by anticompetitive joint ventures.

My proposed bill would also encourage those who create new technologies to bring their technology onto the market. By amending the antitrust, patent, and copyright laws, my proposed bill would make it more likely that owners of new ideas can reap the rewards of their hard work, and hence would encourage people to innovate. The net effect of this legislative package would be to enhance considerably the ability of the private sector to create and develop new technologies. This legislation would improve the ability of U.S. industry to compete in world markets. I strongly urge the Congress to pass this proposed legislation as a means of encouraging innovation, increasing opportunities for American workers, widening consumer choice, and improving the quality of life for all Americans.

Until next week, thank you and God bless you.

FACT SHEET

THE NATIONAL PRODUCTIVITY AND INNOVATION ACT OF 1983

I. Introduction

The National Productivity and Innovation Act of 1983 is part of the Administration's overall effort to encourage the creation and development of new technology. The proposed bill recognizes the important role of new technology in enhancing the competitiveness and productivity of American industry.

The Administration has already moved to strengthen research and development in the public sector by proposing in the FY1984 budget an increase in Federal funding of R&D of 17 percent to $47 billion. The Administration has also already encouraged private sector R&D with a 25 percent tax credit.

After reviewing the laws that affect private sector R&D and after consulting with key members of Congress, the Administration has determined that several clarifications and modifications in the antitrust and intellectual property laws -- such as patent, copyright, trade secret, and trademark laws -- could further improve the climate for private investment in R&D. The National Productivity and Innovation Act embodies those modifications, which together deal with all phases of the innovation process.

The bill contains the following four substantive titles. (Title I simply names the bill.)

II. Title II

Title II would insure that the antitrust laws do not unnecessarily inhibit United States firms from pooling their resources to engage jointly in procompetitive R&D projects. Joint ventures often may be necessary to lower the risk and cost associated with R&D. So long as ventures do not facilitate price fixing -- for example, through exchange of information on prices or production levels -- or to reduce innovation -- for example, by a tacit agreement to underinvest in R&D -- the ventures do not violate the antitrust laws.

Nevertheless, because an injured private party who wins an antitrust damage suit is automatically entitled to treble damages, the threat of such suits may inhibit the formation of joint R&D ventures that would improve the well-being of consumers.

Title II would reduce this threat by providing that the courts may not find a joint R&D venture to be illegal in and of itself under the antitrust laws. Specifically, it will prevent courts from finding that any joint R&D venture violates the antitrust laws without first finding that it actually has anticompetitive effects which outweigh its procompetitive effects.

A second provision of Title II would provide that firms operating a joint R&D venture that has been fully disclosed to the Department of Justice and the Federal Trade Commission may be sued only for the amount of the actual damage caused by any anticompetitive conduct, plus prejudgment interest, and not for three times the damage. These changes should encourage the

formation of additional procompetitive joint R&D ventures. And unlike some other proposals currently before Congress, they will do so with a minimal amount of bureaucratic interference.

III. Titles III and IV

To assure that our laws do not discourage procompetitive private sector R&D efforts, it is not enough to remove the adverse deterrent effect the antitrust laws may have on joint R&D. The antitrust and intellectual property laws must allow and even encourage those who create new technologies to bring their technology to the market in all of its useful applications.

Titles III and IV recognize that licensing can enable intellectual property owners to employ the superior ability of other enterprises to market new applications more quickly and at lower cost. Both titles would encourage procompetitive licensing of intellectual property.

Title III would prohibit courts from condemning under the antitrust laws an intellectual property licensing arrangement without first considering its procompetitive benefits. It also would eliminate the potential of treble damage liability under the antitrust laws for intellectual property licensing. Those who suffer antitrust injury as a result of licensing will still be able to sue for actual damages plus prejudgment interest.

Under Title IV, courts would be able to refuse to enforce a valid patent or copyright on the grounds of misuse only after considering meaningful economic analysis.

IV. Title V

Title V would close a loophole in the patent laws that has discouraged investment in efficiency-enhancing technologies. Creation of and improvements in the process of making products can be just as important as creating and improving the product itself. Currently, if someone practices a United States process patent outside this country without the owner's consent and then imports the resulting product into the United States, the importer is not guilty of infringement. Title V would enable owners of process patents to prevent such unauthorized use of their technology.

V. Conclusion

In sum, this legislative package proposes clarifications and modifications in the antitrust and intellectual property laws that should strongly encourage innovation in the United States, which in turn should enhance the competitiveness and productivity of American industry. By removing unnecessary deterrents and protecting the rights of innovators to their legitimate financial rewards, this proposal would strengthen incentives for Americans to create and develop new technologies. The President has urged all Members of Congress to give this proposal careful consideration and to work for its enactment during the 98th Congress.

DRAFT PRESIDENTIAL STATEMENT ON THE
NATIONAL PRODUCTIVITY AND INNOVATION ACT OF 1983

Today I am proposing legislation entitled the National Productivity and Innovation Act of 1983. The bill would modify antitrust, patent, and copyright laws in a way that should greatly enhance this country's productivity and the ability of U.S. industry to compete in world markets.

The ability of the United States to improve industrial productivity and competitiveness will depend largely on our ability to create and develop new technologies. Advances in technology provide our economy with the means to produce new or improved goods and services and to produce at lower cost those goods and services already on the market. Over the last eighty years, the development of new technologies has accounted for almost half of the growth in our real per capita income. New technology creates new jobs and gives this country a competitive edge in world markets. The U.S. computer industry, for example, directly provides jobs for about 830,000 people, and is a leader in world markets.

Although new technologies are sometimes created by luck, the public and private sectors must generally spend a great deal of time, money, and effort to discover and develop new technologies. With this in mind, I proposed in my FY1984 budget to increase Federal funding of research and development (R&D) by 17 percent to $47 billion.

It is also important to encourage private sector R&D by

improving the economic and legal climate.

We have already done a number of things to improve the economic climate. For example, the Economic Recovery Tax Act of 1981 provides a 25 percent tax credit to encourage firms to invest in additional R&D. Our economic program has helped reduce inflation and interest rates and thus, has lowered substantially the cost of conducting research.

When enacted, the National Productivity and Innovation Act will improve the legal climate by clarifying and modifying the Federal antitrust and intellectual property laws. Those laws have a substantial effect on private investment in R&D. The antitrust laws are designed to protect consumers from anticompetitive conduct. While vigorous competition among independent businesses generally serves the economy best, the antitrust laws recognize that in some areas, like the creation and development of technology, cooperation may be necessary to maximize the benefits to consumers. Similarly, the intellectual property laws, such as those dealing with patents and copyrights, encourage competition in the creation and development of new and useful technologies, by providing individuals with exclusive rights to their technology.

My proposed legislation would assure that the antitrust and intellectual property laws are fully compatible with the efficient creation and development of technology while maintaining strong safeguards to protect the economy against anticompetitive behavior.

Title II of the bill would insure that the antitrust laws do

not unnecessarily inhibit the formation of procompetitive joint R&D ventures. Joint ventures often may be necessary to lower the risk and cost associated with R&D. So long as these ventures do not facilitate price fixing or reduce innovation, such ventures do not violate the antitrust laws. Nevertheless, the risk remains that some courts may ignore the beneficial aspects of joint R&D. This risk is unnecessarily magnified by the fact that an injured private party who wins an antitrust damage suit is automatically entitled to three times the damages actually suffered.

Title II would reduce the adverse deterrent effect that this risk may have on procompetitive joint R&D ventures. The title provides that the courts may not find a joint R&D venture to violate the antitrust laws without first considering its procompetitive benefits. In addition, Title II provides that a joint R&D venture that has been fully disclosed to the Department of Justice and the Federal Trade Commission may be sued only for the actual damage, plus prejudgment interest, caused by its conduct.

Title III would assure that the antitrust laws encourage procompetitive intellectual property licensing, which greatly enhances our economy's ability to create and develop technology. Intellectual property owners often cannot obtain their legitimate reward from R&D unless they license their technology to others. Such licensing can enable intellectual property owners to utilize the superior ability of other enterprises to market their technology more quickly and at lower cost.

Recognizing the importance of licensing, we have designed Title III to assist intellectual property owners to enjoy fully the fruits of their ingenuity. First, the title would prohibit courts from condemning an intellectual property licensing arrangement without first considering its procompetitive benefits. Second, the title would eliminate the potential of treble damage liability under the antitrust laws for intellectual property licensing. Although those who suffer antitrust injury as a result of licensing could still sue for their actual damages plus prejudgment interest, Title III would minimize the deterrence that the antitrust laws currently may have on potentially beneficial licensing.

Similarly, Title IV would encourage the procompetitive use of intellectual property. Courts would be able to refuse to enforce a valid patent or copyright on the grounds of misuse only after considering meaningful economic analysis.

Title V of the Act would increase Federal protection for process patents. Currently, if someone practices a process patent outside the country without the owner's consent and then imports the resulting product into the United States, the importer is not guilty of violating patent law. Our bill would close this loophole so that owners of process patents could earn their rightful reward by preventing such unauthorized use of their technology.

The net effect of this proposed legislation would be to stimulate the creation and development of new technology, to increase this country's productivity, and to enable our

industries to compete more effectively in world markets. I strongly urge Congress to enact this proposed legislation as a means of encouraging innovation, and hence of increasing the employment opportunities and standard of living for all Americans.

THE WHITE HOUSE

WASHINGTON

August 23, 1983

MEMORANDUM FOR ROGER B. PORTER

FROM: LEHMANN K. LI

SUBJECT: Innovation Legislation

I have just learned that we have an "action-forcing event" with respect to our proposed radio address on innovation legislation. Congressman Rodino is holding hearings on joint R&D bills on September 14th at which the Administration has been asked to testify. Bill Baxter says that the Administration needs to have the its bill introduced preferably September 12th. If the President is going to talk about the bill in a weekly radio address, the above factors would call for him to talk about the bill on either September 3rd or 10th. Since we would also want a press briefing on the bill the Monday after the radio address and since most people will be back during the week after Labor Day, a weekly radio address on Saturday, September 10th, and a press briefing at the White House on Monday, September 12th would be ideal.

What do you think about the above schedule?

cc: Wendell W. Gunn

Roger has a call into Duberstein

THE WHITE HOUSE

WASHINGTON

September 1, 1983

MEMORANDUM FOR ROGER B. PORTER

FROM: LEHMANN K. LI

SUBJECT: Innovation Legislation - Legislative Items

Following are the items that need to be discussed with Legislative Affairs.

- Justice would like a go-ahead to talk with Congressman Fish and Senator Thurmond about introducing the bill on Monday, September 12th. Baxter has been waiting for Duberstein's go-ahead. He needs to start talking with Fish and Thurmond by Tuesday of next week.

- Would someone from White House Legislative Affairs like to accompany Justice to these discussions?

- Who should touch base with Congressional leadership, Baker, Michel, et. al. about the bill?

- Should Justice try to get cosponsors for the bill? Potential cosponsors include: Mathias, Hatch, Laxalt, Moorhead, Hyde, Zschau. Some of these may be risky. It may be difficult to get cosponsors given the need to introduce the bill on September 12th.

- Justice needs to talk to Congressman Rodino. Would WH Legislative Affairs want to arrange a meeting between Schmults, Baxter, Rodino, and perhaps a White House person?

- Should we aim to have the bill referred jointly or sequentially to Judiciary and Science and Technology?

Can you stress to Nancy Risque the importance of this legislation?

Thanks.

cc: Wendell W. Gunn

THE WHITE HOUSE

WASHINGTON

August 30, 1983

MEMORANDUM FOR WENDELL W. GUNN

FROM: LEHMANN K. LI

SUBJECT: Points to Raise with Craig Fuller on Innovation Legislation

You might want to raise the following points with Craig Fuller in your conversation with him this afternoon:

o Timing of bill introduction. The House Judiciary Committee is holding a hearing on antitrust reform legislation on Wednesday, September 14th. This may be the only opportunity for the Administration to testify on the bill in the House in this Congress. For Justice to testify on the Administration bill, we need to have it introduced on Monday, September 12th.

  Although Justice has held tentative discussions with Hamilton Fish, ranking minority member of House Judiciary, and Strom Thurmond, Chairman of Senate Judiciary, Justice is waiting for Duberstein's office to take the lead in asking Fish and Thurmond to introduce the legislation.

o Radio address. Given the political credit that the President will be able to gain from the bill, we recommend that he give it high visibility. We recommend that he announce its introduction personally, preferably in a Saturday radio address. We have a draft ready.

  So far as timing is concerned, if the President wants to talk about the bill in a radio address, he should do so on Saturday, September 10th before the bill is introduced on Monday, September 12th.

o Press briefing. It would be useful to hold a press briefing at the White House following the Saturday address on Monday, September 12th. Baxter and Baldrige should give the briefing. You might want to ask Craig who should represent the White House.

It would be very helpful if Craig agrees to support our recommendation that the President give the radio address on September 10th. I am concerned that not enough people are aware of the timing urgency of this bill.

I briefed Larry Herbolsheimer about the bill. If Craig asks him about the radio address, he will recommend supporting us.