

Speech of Senator Birch Bayh to the Association of University Technology Managers

SAN ANTONIO, TEXAS

MARCH 4, 2004

It is quite an honor to have the opportunity to share my thoughts with you this afternoon. It is particularly meaningful to share the stage with the founders of your internationally recognized organization. If we had gathered together for the 1979 convention, the full membership of the Association of University Technology Managers totaled 113. Today it is 3000. I feel a kinship with those who started this new professional society these many years ago. They had a dream and a vision and today we are grateful that their vision has come true.

Tom Brokaw has recognized those American citizens of the World War II generation as what he rightly calls "The Greatest Generation." Today we are honoring the founders of AUTM who can be called the greatest generation of a technology-driven world. They not only founded AUTM, they also fundamentally changed the American economy when they laid the groundwork for coupling our research universities with innovative American companies. Today, with almost 25 years of hindsight, this relationship is too often taken for granted. This is a serious mistake. All too many Americans are unaware that the technology explosion which they take for granted, didn't just happen.

Like the generation that won both our political and economic freedom in World War II, succeeding generations also have a duty to defend these hard won freedoms, or they begin slipping away. This is also true of the technological inheritance that the founders of AUTM have given us. The need to protect this inheritance is the theme that I would like to share with you today.

When we began the struggle to pass what came to be known as the Bayh-Dole Act, I felt like the old Hoosier farmer I once heard about. It seems that a Chicago banker got lost on the back roads of Indiana on his way to an important meeting. Finally, realizing that he had no idea where he was and that his confusion was getting worse, the banker saw a farmer turning his cows out to pasture. Stepping out of his Cadillac, he hailed the farmer asking, "How do I get to Indianapolis?" Pausing for a good long minute the farmer replied, "Well, if I was you, son, I sure wouldn't start from here."

Like the banker, we didn't have any choice but to "start from here." "Here" in 1978 was not a very pleasant place. Joe Allen went over many of the economic

challenges we faced. It seemed to us as though many of our citizens had lost confidence in America's ability to right itself both politically and economically.

Our journey out of the wilderness began with a call to my office in the summer of 1978 from Ralph Davis of Purdue University. Like many other universities, Purdue was making cutting edge discoveries with federal dollars, but the Government's policy of taking patents away from universities killed the incentives necessary for innovative companies to develop new ideas. We invited Ralph to my office to discuss the problem. Ralph brought along Howard Bremer and Norman Latker, two individuals whose vision would be critical to our success.

One lesson we should underscore right here is don't underestimate your power in Washington. Your Senators and Congressmen take their constituent universities very seriously. Whenever Purdue contacted my office, we responded because I saw Indiana's universities as important cornerstones to our prosperity. The same is true for all states.

The result of that meeting with Howard, Norm and Ralph was the introduction of new legislation. I asked Bob Dole to join me and the battle began. While Bob and I didn't always see eye to eye, we both agreed that the U.S. could no longer afford to waste billions of dollars on university and small business research. Joe has walked you through some of the political barriers we faced. I would like to add a couple of additional thoughts.

My opening statement for the first hearing on Bayh-Dole is still timely:

The United States has built its prosperity on innovation. That tradition of unsurpassed innovation remains our heritage, but without continued effort it is not necessarily our destiny. There is no engraving in stone from on high that the US. shall remain No.1 in international economic competition. In a number of industries, we are no longer even No.2. New incentives and policies are needed to reverse this trend The University and Small Business Patent Procedures Act (this was the original name of Bayh-Dole) will be a step in the direction of encouraging innovation and productivity in the United States ...

It is in everyone's interest to insure that the fruits of American inventive genius are delivered to the marketplace as quickly as possible, and are not simply left to gather dust at the Patent & Trademark Office because of indifference or bureaucratic delays.

Standing squarely in our way was Admiral Hyman Rickover, father of the nuclear navy. To the Admiral, allowing universities and small businesses to own inventions made with Government support made no sense. Admiral Rickover asked to testify against our bill.

While we had strong backing on the Judiciary Committee because of the calls from the universities and small companies in support of our efforts, someone as formidable as the Admiral could shake that support. We needed effective counter witnesses. We turned to your

founders. Howard Bremer and Niels Reimers agreed to testify and did an outstanding job. They were our first pillar. The other essential pillar was equally strong testimony from our small business witnesses. Combining universities and small businesses was the key to our success.

Illustrating the power of this combination, I remember one afternoon when I was at my desk on the Senate floor, and an excitable Joe Allen, came bounding up to report some good news. "Senator, we just got two more sponsors. Senators Kennedy and Thurmond just signed on," he beamed. Well, getting Ted Kennedy and Strom Thurmond to agree was certainly an achievement, but I couldn't help but kid Joe by asking "Are you sure this bill makes sense?"

As you know, the task of enacting legislation, like making sausage, is not for the dainty. We would pass one hurdle, only to face an even greater one. What kept us going was a deep belief that what we were doing was important for the nation's future. The more we looked into the problem of renewing American innovation, the more vital it became to free our universities from mindless bureaucratic red tape. It was equally important to allow those who were really driving our economic growth, entrepreneurial small businesses, to secure federal funding without jeopardizing ownership of resulting products.

Another factor in our determination to press on was that the core group who started this organization never lost faith, even when it cost them personally. It is not every day that a civil servant risks his career for an ideal. Yet this is what happened to Norm Latker when he ran afoul of his political bosses because of his support of our efforts. He lost his job. Bob Dole and I were proud to stand by him in his time of need and to get his job restored.

We finally succeeded in passing the bill because of the active university and small business support we received. Through Howard Bremer's efforts, the University of Wisconsin made Rep Bob Kastenmeier aware of the impact Bayh-Dole could have on his district. Bob was chairman of the House Subcommittee with jurisdiction over patent policy and he offered to accept our patent policy in exchange for our accepting Administration proposals in other areas of intellectual property reform. We accepted.

Small businesses persuaded the White House to sign the bill. Even so, as you heard previously, bureaucratic resistance continued trying to undermine the law until two years after passage, Norm Latker succeeded in putting the administrative procedures of Bayh-Dole in place. The legal and policy framework was in place to help this bold experiment produce. And produce you did!

AUTM has done a great job of capturing the impact that Bayh-Dole has had over the years. At a time of significant job loss, universities should be proud that 450 new companies were formed from university technologies in your last survey, and more than 4,000 since

passage of the law. You also launched 569 new commercial products in FY '02 alone. Technology Transfer in FY 1999 involving the licensing of inventions from universities, teaching hospitals, research institutes and patent management firms added approximately \$40 billion to the domestic economy and was responsible for creating 260,000 jobs. Experts like Albert Berkeley here today see university technologies as significant drivers of the NASDAQ stock market.

I must admit that I was very proud to read the thoughts expressed in the **Economist Technology Quarterly** in December, 2002 that said:

Possibly the most inspired piece of legislation to be enacted in America over the past half century was the Bayh-Dole Act of 1980. Together with amendments in 1984 and augmentation in 1986, this unlocked all the inventions and discoveries that had been made in laboratories throughout the United States with the help of taxpayers' money. More than anything, this single policy measure helped to reverse America's precipitous slide into industrial irrelevance.

The just issued report of the President's Council of Advisors on Science and Technology lists as its first recommendation, "**Existing technology-transfer legislation works and should not be altered.**" To that I say, Amen!

However, it is being altered. We have seen that DARPA and now Homeland Security are consciously moving away from Bayh-Dole for their technology transfer practices. Articles are constantly appearing questioning whether Bayh-Dole is sophisticated enough for the current challenges facing R&D agencies. The old siren call of more centralized technology management schemes (that is bureaucrats in Washington) are once again being heard. This trend must be stopped and reversed.

Let me challenge you, the present and next generation of AUTM. Policy makers are sincerely trying their best to secure our future. They need and deserve your input. Never think that you can sit idly by and assume that someone is making your case for you. Don't assume that Members of Congress and their staffs understand the fragile structure that supports our current success. One of our biggest concerns in writing Bayh-Dole was selecting an agency to oversee and protect it. Frankly, today I do not see an effective counter measure in the Executive branch to those who are chipping away at the base of Bayh-Dole.

Let's be blunt. You must defend yourselves. We must say to the revisionists, stop! And, we must take the steps to see that they do. This is the task before you today if you hope to pass on the torch that these previous innovators have successfully handed to you. Don't underestimate your weapons. Don't fear the struggle. One advantage you have is that you now have a documented record that providing incentives to university and small business innovators works. You performed in the hard, cold light of day. You have succeeded year

after year, always reaching higher than before. You have proven again and again that while it may appear to be messy to some, relying on the entrepreneurial character of America remains our best bet. Decentralized technology management still runs rings around systems relying on centralized government bureaucracy.

Let me share another story. Twenty-five years after President Lincoln made the Gettysburg Address, a prominent minister was chosen to read the speech at the battlefield. Dignitaries were gathered from around the country. Fearful of making any mistake in the well-known text, the minister worked for weeks to memorize the Address.

Finally, the moment of truth came and he recited a letter-perfect rendition to the massed audience.

Later a crowd gathered around him offering their congratulations for a job well done. Out of the corner of his eye, the minister spied an old man who alone was not beaming. Finally, the man slowly approached the minister. "Son", he said, "You made an awful mess of Lincoln's talk." Taken aback, the minister replied, "Well, I'll have you know that I gave it line for line as President Lincoln did himself. What makes you think it was wrong?"

The old man replied: " You see, sir, I was right here when Lincoln spoke. You said the right words, but you still got it all wrong. You see, when you said 'Government by the people, of the people and for the people,' you emphasized *Government*. Son, Abe Lincoln emphasized *the people*."

Bayh-Dole didn't emphasize the Government, it emphasized the people. And you of AUTM are the people. The people of AUTM have made it possible for Bayh-Dole to exceed our wildest dreams. Let me challenge you here today, each of you, to stand up, join together, to combat those bureaucrats who threaten the future of Bayh-Dole. Let us send a clear message. Get back behind your desks and permit the American free enterprise system to insure that the future of Bayh-Dole is as glorious as its past. Together we can do this. We must.

One final thought. I have mentioned the Bayh-Dole bill several times. In all honesty, if we consider the countless efforts which made it possible to pass this legislation, it should be called the Joe Allen bill.

Thank you.