

## Time to Take a Stand March 13, 2013

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*First make sure you're right, then go ahead.*

 *- Davy Crockett*

(Adapted from my talk to the Association of University Technology Managers Annual Meeting in San Antonio, Texas. The meeting coincided with the anniversary of the siege of the Alamo which fell on March 6, 1836.)

The ancient Chinese saying: “May you live in interesting times” was meant as a curse. Well folks, we live in interesting times. We need to recognize it, roll up our sleeves, and get to work. If my parent’s generation could survive the Depression, fight and win World War II, and come home to build the most prosperous nation in history, surely we can meet our tests.

If you’re paying attention at all, you must have noticed that there are forces out there who just don’t like what you do. Some say you’re too focused on making money, some say you’re not focused enough (we really should introduce these folks to each other), some don’t believe it’s moral for universities to work with industry, and many have built very successful careers launching attack after attack on Bayh-Dole and the very patent system itself.

And they are not going away.

So here are just a few examples of the attacks we face:

* *Since the passage of the Bayh-Dole Act in 1980, the NIH has sought to avoid openly implementing safeguards to protect the public from unreasonable use of patented inventions. This failure to grant a single march-in request in more than 30 years has sent a signal that the NIH will permit almost anything, no matter how abusive that action is to the public that paid for the research.*  Request for March-In on Abbott Patents for Ritonavir(http://keionline.org/sites/default/files/2012\_Oct25\_Ritionavir\_march\_in\_complaint.pdf)
* *Empirical research suggests that among the few academic patents and licenses that resulted in commercial products, a significant share (including some of the most prominent revenue generators) could have been more effectively transferred by being placed in the public domain or licensed nonexclusively.* “Is Bayh-Dole Good for Developing Countries? Lessons from the US Experience”(http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2912&context=faculty\_scholarship)
* *It is less clear, however, whether this act* (Bayh-Dole) *has always been effective in directing public research into the public interest… Rather, it is quite possible that* ***one unforeseen consequence of Bayh-Dole allows for modes of commercialization that have and*** (sic) ***inflationary effect on the whole healthcare system, not just new products.* “**

Building an Innovation-Based Economy(http://www.brookings.edu/research/papers/2012/11/13-innovation-technology-west-friedman-valdivia)

The attacks are typically emotionally based with broad allegations devoid of supporting facts that can withstand serious scrutiny. However, the message is easily understood, resonating with the media and a public which doesn’t understand commercialization or the patent system.

Many in our community think that the critics are so obviously off the wall that no one will take them seriously. Others feel that it’s someone else’s job to speak up. These attitudes put us permanently on the defensive. Napoleon said that the only possible outcome to a purely defensive war is surrender. This is advice we ignore at our peril.

You win policy debates in two ways: you need an easily understood message with data and examples backing it up. This gives us a tremendous advantage. The university-industry tech transfer system has never been more important to our nation both for improving public health/welfare, and for supporting the economy than it is right now. We have solid data showing that Bayh-Dole is good for the taxpayer, good for the economy, and really does work:

* University patent licensing contributed approximately **$836 BILLION** to U.S. gross domestic output, **$388 BILLION** to our gross domestic products, while supporting **3 Million jobs** between 1996 and 2012**.**

The Economic Contribution of University/Nonprofit Inventions in the United States: 1996- 2010(http://www.bio.org/articles/economic-contribution-universitynonprofit-inventions-united-states-1996-2010)

* Under Bayh-Dole, 153 new drugs, vaccines, or new uses for existing drugs are fighting disease world-wide.

(Interestingly, *no new drugs were developed when agencies took patent rights away from contractors before Bayh-Dole was enacted in 1980*).

The Role of Public-Sector Research in the Discovery of Drugs and Vaccines**,** The New England Journal of Medicine, February 10, 2011.

* **591 new products** and **670 startup companies were created in one year** alone under Bayh-Dole**, and 3,927 university spinoffs are in operation** across the U.S.

FY 2011 Licensing Survey, Association of University Technology Managers (http://www.autm.net/FY\_2011\_Licensing\_Activity\_Survey/9920.htm)

It’s up to us to communicate this success to our political leaders, the media, and most importantly, to hard pressed American taxpayers who deserve to know how the dollars they entrust to the public sector are being managed.

We should take heart that in 30 years of attacks, the critics haven’t put a dent into Bayh-Dole because a small group has always risen to meet their challenge. *But remember, we have to win every time, and they just have to win once to undermine the law.*

Here’s a final thought. We didn’t pass Bayh-Dole to enrich universities or your inventors. We passed it because we felt that your profession is best positioned to serve as stewards of the public interest. *Stewardship is a biblical concept meaning managing the property of others for their greatest benefit*.

Right now there are many in this country working two or even three jobs struggling to make ends meet. Their taxes fund public research. You owe them your best efforts to turn that trust into new products, jobs and companies strengthening the nation. If our critics prevail those benefits will be denied. You have a moral responsibility to see that never happens. You have a professional responsibility to stand up and join the ranks defending Bayh-Dole.

When we clearly state our case the political system and the public responds because our message resonates with the American entrepreneurial spirit. But this doesn’t happen automatically and it doesn’t mean that it’s painless. Sometimes you have stand in your own defense. This is one of those times.

Step up, there’s room for you right in the front rank.

**Post Script**

During our stay, the original letter sent by Col. Travis from the Alamo was put on public display for the first time in years. Long lines quietly formed every day to briefly glimpse a document honoring a small band that stood up when it counted.

This is the last message from the Alamo:

Commandancy of the Alamo
Bexar, Feby. 24th, 1836

**To the People of Texas & all Americans in the World--
Fellow Citizens and Compatriots--**

I am besieged by a thousand or more of the Mexicans under Santa Anna--I have sustained a continual Bombardment & cannonade for 24 hours & have not lost a man--The enemy has demanded a surrender at discretion, otherwise the garrison are to be put to the sword, if the fort is taken--I have answered the demand with a cannon shot, & our flag still waves proudly from the walls--I shall never surrender or retreat. Then, I call on you in the name of Liberty, of patriotism & everything dear to the American character, to come to our aid with all despatch--The enemy is receiving reinforcements daily & will no doubt increase to three or four thousand in four or five days. If this call is neglected, I am determined to sustain myself as long as possible & die like a soldier who never forgets what is due to his own honor & that of his country--Victory or Death.

William Barret Travis Lt. Col. comdt.