RUSSELL B. LONG
LOUISIANA

United States Senate

WASHINGTON, D.C. 20510

April 13, 1978

Federico Welsch, M.D., Ph.D.
Executive Director
The Worcester Foundation for
Experimental Biology
Shrewsbury, Massachusetts 01545

Dear Dr. Welsch:

Thank you very much for a copy of your letter to President Carter in which you expressed your views on the disposition of the Government's rights to inventions and discoveries resulting from publicly-financed research. You state that: (1)Government retention of rights, that is, the widespread availability of the fruits of research "would seriously impede the transfer of the fruits of research to the marketplace and to the public;" and (2)it "would deny the investigator and/or his institution the intellectual property to which he/she is entitled."

No evidence is offered to support your views. The Department of Justice, which has been studying this problem for over three decades, recently affirmed that:

> "We do not believe that a factual basis exists for the belief that giving title to a contractor will generally achieve commercialization of Government-financed inventions more rapidly than leaving title in the Government. The only discernible general effect of giving such rights to private parties would be to confer a substantial private benefit without compensating public gain. There are no studies, statistics, or experiences that have demonstrated to our satisfaction the thesis that such an allocation of rights will protect the public investment in research and development by promoting the widespread utilization of inventions.
>
> "In fact, we believe that available evidence is to the contrary. . . ." (Testimony of Assistant Attorney General John Shenefield before U.S. Senate Small Business Committee, December 20, 1977, p. 189)

The Federal Trade Commission and independent economists hold the same view.

With respect to your second point, on the basis of law, tradition, or equity, there is no reason to believe that the investigator or his institution is entitled to retain the fruits of research if it is paid for by the public. It has been generally recognized under the common law, for example, that when an employee invents or discovers something on the employer's time or using the employer's facilities, the results of his work belong to the employer, and that is the practice followed by business. If inventors finance their own research, of course, they are entitled to the rewards arising out of a private patent. The same logic would require that, if the people of this country pay for the research, it ought to belong to all the people who paid for it, not to a mere middleman who somewhere managed to wedge himself in between the people's government and those who either directly or indirectly work for that government.

With every good wish, I am

Sincerely yours,

Russell Long