

DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON 25, D. C.

5 JUL 1951

JAGP

SUBJECT: Proposed bill for the relief of Mr. William F. Friedman -
Cryptographic Inventions

TO: Director, Armed Forces Security Agency
Washington 25, D. C.

1. Reference is made to the enclosed copies of letter dated 13 March 1951 to Honorable Lewis A. Johnson, Secretary of Defense, from Mr. Henry C. Fischer, attorney for Mr. William F. Friedman of your office, and of "Memorandum Concerning a Bill for the relief of William F. Friedman" dated 21 August 1950 from Mr. Fischer to Major James H. Lill, formerly Chief of this Division, together with the enclosures thereto.

2. By means of the proposed bill, Mr. Fischer would seek relief in the sum of \$100,000.00 for Mr. Friedman to compensate Mr. Friedman in connection with certain of his inventions in the cryptographic field which he has made while in the employment of the Government (i.e., the Signal Corps, the Army Security Agency, and the Armed Forces Security Agency) and as to which inventions, except for two hereinafter mentioned, U. S. patent applications were filed. Seven patent applications (one of which has gone to patent) are involved, and the inventions on which no applications were filed, as stated. The application which has gone to patent was at one time under secrecy under Public Law 700, i.e., the Act of October 6, 1917, as amended (35 U. S. C. 42). All of the remaining six applications are under the "three year rule" (35 U. S. C. 37) referred to, and all except one of these six applications are still the subject of secrecy orders under Public Law 700. In each of the seven cases the Government has at least a non-exclusive royalty-free license. Under the provisions of Public Law 700, Mr. Friedman, in connection with the secrecy orders, tendered to the Government for its use the inventions of all seven of the patent applications mentioned, except Serial No. 471,193 and Serial No. 300,212, which latter resulted in Patent No. 2,395,663. All seven of the applications are listed hereinafter and certain detailed comments made with respect to the individual cases; also the two Friedman inventions referred to by Mr. Fischer and upon which patent applications were not filed because of the high military classification of the subject matter.

3. Specifically, Mr. Fischer requests that he be informed on Mr. Friedman's behalf as to whether or not the Department of Defense has any objection to the introduction of the proposed bill to the Congress on its merits.

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4. It is the view of this office that any decision as to whether or not such a bill should be presented on Mr. Friedman's behalf is a decision which properly should be left to Mr. Friedman and Mr. Fischer to make, and that this office on behalf of the Department of Defense should so inform Mr. Fischer. At the same time, it should be stated that it is the policy of the Department of Defense not to express its views to private individuals with regard to the proposed introduction of legislation, or with regard to the desirability or undesirability of passage of proposed legislation except upon call from a committee of the Congress.

5. It is felt that irrespective of what reply is made by this office to Mr. Fischer's request, efforts will be made on behalf of Mr. Friedman to introduce the bill. Such efforts may well be successful, whereupon the committee to which the bill is referred will call upon the Department of Defense for its views upon the merits of the bill. Hence it is deemed desirable to investigate this matter fully on its merits at this time, and as expeditiously as possible, in order to be prepared to present the views of the Department of Defense on the bill when called upon.

6. As now informed, this office is of the view that any such bill, if introduced, should be opposed as lacking in merit in view of all of the circumstances of the case, including the nature of the inventions involved, Mr. Friedman's present position in the Government, the employer-employee relationship existing between Mr. Friedman and the Government at the time each of the inventions was made, the scope of Mr. Friedman's employment, and the duties assigned to him, etc. However, the view just stated is subject, of course, to possible change dependent upon the results of the investigation which it is requested below that your office undertake at this time, and the recommendations of your office based upon the results of such investigation.

7. It is desired that this office be furnished at the earliest practicable date with an interim reply to this communication, setting forth your recommendation as to whether a reply should be made by this office to Mr. Fischer's letter substantially as set forth in paragraph 4 above, and if not, what reply is recommended.

8. It is requested that this matter be thoroughly investigated by your office for the purpose above mentioned and a full report with recommendations made to this office thereon to aid in presenting to the Congress the views of the Department of Defense upon the question as to

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Whether or not it favors such bill as may be introduced, Mr. Henry B. Stauffer, patent counsel of our office, was present at several conferences with representatives of this office in connection with this matter. Mr. Stauffer is quite familiar with many aspects of the situation, including Mr. Friedman's inventive activity in the field of cryptography.

For obvious reasons, the requested investigation, insofar as possible should not be brought to Mr. Friedman's attention, nor the merits of the proposed bill discussed with him. It will no doubt be necessary however, to secure factual information from Mr. Friedman during the course of the investigation.

Various questions will have to be considered and answered before a final decision can be reached as to the views of the Department of Defense on the merits of the proposed bill. Among these questions are

a. Has Friedman accomplished anything in this situation which warrants further compensation in addition to what he has already received in the form of salary from the Government, the Presidential commendation and other commendations referred to in a somewhat similar situation the Secretary of War disapproved H. R. No. 77th Congress 1st Session, 1941, a Bill for the relief of John G. Garand, by letter dated 1 October 1941 to Honorable Andrew J. May, Chairman, Committee on Military Affairs. Garand unsuccessfully sought \$100,000.00 relief for his development of the Garand -1 semiautomatic rifle.

b. Is the Government entitled to full title to the several Friedman inventions in question instead of a non-exclusive license so that Friedman could not properly claim that any of his rights have been violated? This involves the question of the scope of his employment, his assigned duties, etc. at the time the above inventions were made, etc. See United States v. Dablicon Condenser Corporation, 29 S. 178; Solomon v. United States, 137 S. 322; Balzell v. Duober Manufacturing Company, 197 S. 315; Coughton v. United States, 23 Fed. 360.

c. What are the past, present and future commercial possibilities of the Friedman inventions here involved in this country and abroad, as they may affect the question of the damage which Friedman maintains he suffered because of the Government's retention of his inventions in secret?

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d What use if any, was made of Friedman's inventions in foreign countries (governmental and commercial) by reason of which it might be established that he was damaged and could not recover therefor because of the secrecy maintained by the U S Government? Is any Lend-Lease use which was taken place use for L S Governmental purposes and hence within the scope of the License which the U S Government has under each of the Friedman cases? See Opinion of the Comptroller General of the United States, 51 USPC 82, 24 March 1940, in the case of Harry L. Crow

11 Reference to previous correspondence reveals that the question of Dr. Friedman's recovery from the Government for the contemplated purchase of reversionary rights in his inventions as covered by his patent application 2,443,300, in secrecy was raised in a memorandum from the Office of the Director of Intelligence dated 29 December 1941. Such jurisdiction arose while a policy stated in G-2 memorandum dated 29 April 1946 relative to the purchase of reversionary rights of a Government employee not specifically directed to invent was in effect such policy being rescinded by letter dated 7 July 1950

12 Within conclusion in the present matter it is suggested that emphasis be placed on legal as distinguished from equitable or moral considerations

13 It is noted that Public Law 70 supra provides that the Secretary of War or the Secretary of the Navy may enter into an agreement with an inventor in full settlement and compromise for any damage accruing to him by reason of a secrecy order. However this statute does not specifically provide that the inventor may bring suit to recover for such alleged damage

FOR THE JUDGE ADJUTANT GENERAL

Handwritten signature

Chief, Patent Division



- 2 Incl
- 1 for ltr 10 ar 20
- 2 Copy memo 21 Au, 50 w/ ncls