SUBJ: Proposed Bill for the Relief of Dr. William F. Friedman - Cryptographic Inventions

TO: Director, Armed Forces Security Agency

Washington 25, D.C.

1. Reference is made to the enclosed copy of letter dated 19 March 1956 to Honorable Lewis A. Johnson, Secretary of Defense, from Dr. Henry C. Fischer, attorney for Dr. William F. Friedman or your office, and of "Executive Considerations Still for the Relief of William F. Friedman" dated 11 August 1950 from Dr. Fischer to Major James L. Lilly, formerly Chief of this Division, together with the enclosures thereto.

2. By means of the proposed bill, Dr. Fischer would seek relief in the sum of $100,000.00 for Dr. 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 inventions mentioned, U.S. patent applications were filed. Seven patent applications (6 of which have gone to patent) are involved, and the inventions on which 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 (55 Stat. 653), all of the remaining six applications are under the "three year rule" (35 Stat. 654, 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, Dr. 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. 476,193 and Serial No. 340,142, which latter resulted in Patent No. 2,593,450. All seven of the applications are listed hereafter and certain detailed comments made with respect to the individual cases; also the ten Friedman inventions referred to by Dr. Fischer and upon which patent applications were not filed because of the high military classification of the subject matter.

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

Approved for Release by NSA on 08-30-2013 pursuant to E.O. 13526
SUBL: Proposed Bill for the Relief of Dr. William J. Friedman - Cryptographic Inventions

4. It is the view of this office that any decision as to whether or not such a bill should be presented on Dr. Friedman's behalf is a decision which properly should be left to Dr. Friedman and Dr. Fischer to make, and that this office on behalf of the Department of Defense should, so inform Dr. 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 that reply is made by this office to Dr. Fischer's request, efforts will be made on behalf of Dr. Friedman to introduce the bill. Such efforts may well be successful, and, upon 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 advisable 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 to inform, 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, Dr. Friedman's position in the Government, the employment relationship existing between Dr. Friedman and the Government at the time each of the inventions was made, the scope of Dr. 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 Dr. 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
SITUATION: Proposed bill for the Relief of \textit{William F. Friedman} - Cryptographic Inventions

Whether or not it is wise such a bill be introduced, we, Henry S. Staniford, patent counsel in our offices, have presented several conferences with representatives of the office in connection with this matter. We are quite familiar with many aspects of the situation, including Mr. Friedman's inventive activity in the field of cryptology.

For obvious reasons, we requested investigation ad possible of the facts not be brought to public attention, nor the merits of the proposed bill discussed with him. It will be necessary, however, to secure factually informed views to Friedman on 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 Justice on the proposed bill. Upon these questions are

a. Has Friedman accomplished anything in the situation which warrants further consideration or addition to that he has already received in the form of salary, or the like by the President's Command? Where complaints have been referred to a similar situation in Secretary of War's disapproved bill in the 77th Congress, 1st Session, 1941. A bill for the relief of John J. O'Connell by a bill dated 1 October 1941 to Honorable Abraham Kuykendall, Committee on Military Affairs, who unsuccessfully sought, is on the record of the House of Representatives.

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? The question 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. Dulles - Consolidated Corporation, 292 U.S. 178, 54 S. Ct. 252 - Elizalde v. Duerber Manufacturing Company, 1947, 1 397 53 15 175 - Ogilby v. United States, 23 Fed. 350.

c. Are the past, present, and future commercial possibilities of the Friedman inventions involved in this country and abroad, as the tax map? The question of the damage which Friedman maintains he suffered because of the Government's retention of his inventions in secrecy?
SUBJECT: Proposed Bill for the Relief of Mr. William Friedman : Cryptographic Inventions

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 therefore because of the secrecy maintained by the U.S. Government? Is any land-lease use which we have taken place of for 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, E1 USPC 82, 24 March 1940, in the case of Harry A. F.

11 Reference to previous correspondence reveals that the question of Mr. Friedman's recovery from the Government for the completed purchase of re-issued rights in his invention as covered by his patent application 34,533, is now raised in connection with the Office of the Director of Intelligence, dated 14 December 14. Such question arose when a policy-statement in C-3 memorandum dated 29 April 1946 relating to the procedure of reversing any rights of a Government employee not specifically directed to invent was in effect. Such policy being rescinded by letter dated 21 July 1946.

12 The clothed conclusion in separate letters it is submitted that emphasis be placed on legal as distinguished from equitable or moral considerations.

13 It is noted that Public Law 767 provides that the Secretary or the Secretary of the Army may enter into an agreement with an inventor in full settlement and compromise for any amount a claim to have been wronged by reason of a secret order. However, this statute does not specifically provide that the inventor may bring suit to recover for such alleged damage.

For Mr. J. J. B. J.

[Signature]

[Stamp: [Date] 21 M.J.

2. Hand
1. Mr 10 or 20
2. Copy here 21 An. 50 w/ nols