



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 11 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 A. Mills, 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 two 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. 478,193 and Serial No. 300,212, which latter resulted in Patent No. 2,395,203. 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 we 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 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 a bill as may be introduced, Mr. Henry B. Stauffer, patent counsel for your office, was present at several conferences with representatives of this office in connection with this matter and is quite familiar with many aspects of the situation, including Mr. Friedman's inventive activities in the field of cryptography.

9. 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.

10. 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 that he has already received in the form of salary from the Government, the Presidential commendation and other commendations received to? In a somewhat similar situation the Secretary of War disapproved H. R. 1276, 77th Congress, 1st Session, 1941, A Bill for the Relief of John C. 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 M-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. Dubilier Condenser Corporation, 219 U. S. 173; Solomons v. United States, 137 U. S. 342; Dalzell v. Diebor Manufacturing Company, 149 U. S. 315; Foughton v. United States, 23 Fed. 300.

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

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u. 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 may have taken place, use for U. 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, 81 USPQ 82, 24 March 1948, in the case of Harry A. Moor.

11. Reference to previous correspondence reveals that the question of Mr. Friedman's recovery from the Government for the contemplated purchase of reversionary rights in his inventions, as covered by his patent application S. P. 44,320, in secrecy, was raised in Comment No. 1 from the Office of the Director of Intelligence dated 29 December 1945. Such question arose while a policy stated in C-2 memorandum dated 29 April 1946 relative to the purchasing of reversionary rights of a Government employee not specifically directed to invent was in effect, such policy being rescinded by C-2 letter dated 7 July 1950.

12. In reaching conclusions 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 700, 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.

TO: THE JUDGE IN CHIEF GENERAL:

1950
Department of the War
Lieutenant Colonel, JAGC
Chief, Patents Division

2 Incls

1. Copy ltr 10 Mar 50
2. Copy Memo 21 Aug 50 w/incls



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FISCHER, WILLIS & PANZER

March 10, 1950

Hon. Louis A. Johnson
Secretary of Defense
Washington 25, D. C.

Dear Sir:

This letter is written on behalf of Mr. William F. Friedman, Director of Communications Research, Defense Security Agency. He is ill and has received permission to retain us to pursue the matter about which this communication is concerned.

Mr. Friedman is responsible individually and in collaboration with others for the invention and development of systems and devices in the field of military communications which have proved to be of the utmost importance to the defense of our country. For his efforts in this direction, he has received the Medal for Merit from President Truman, and also the Commendation for Exceptional Civilian Service from Henry L. Stimson, Secretary of War. Copies of both are attached hereto.

In connection with these inventions, patent applications have been filed, the government allowing Mr. Friedman, alone with respect to some of the applications, and with collaborators with respect to others, to retain commercial and foreign rights. All of these patent applications have been placed in secrecy status; one of the inventions has been in secrecy now for over sixteen years and a second for over thirteen years. It is highly unlikely that any of the inventions will be released from secrecy, at least for a great many years to come.

It has already been indicated that Mr. Friedman is now ill and in the largest measure, his illness is due to the unusually severe strain imposed upon him by the nature of his work. Indeed, it is probable that his earning capacity has been permanently and heavily impaired. In the light of these facts, the question has arisen whether, in equity, an attempt is not warranted to obtain from the Congress an act authorizing the Department of Defense to purchase from Mr. Friedman all the rights he has been allowed to retain in the inventions which have been placed in secrecy status by the government for a token payment that would help in easing the concern he might have about his livelihood in the future, even though such a payment had little relation to the high value we understand such rights might have under different circumstances. There are precedents for such awards in the communications field, even in the absence of any property rights in the inventions.

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YTO: Hon. Louis A. Johnson
March 10, 1950

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It has occurred to us that the ordinary procedure in pursuing a matter such as this may not be available in this case because of the delicacy of the subject matter of the inventions involved. In any case, we believe it to be best to discuss the matter with a representative of your office before proceeding further. It is therefore the purpose of this letter to request that you designate a representative to whom we would be authorized to present the matter in full and who in turn would have authority to ascertain and inform us of the disposition of the Department of Defense in that connection.

Because we have no way of knowing whether the Department wishes to treat this request in a manner not routine, we are delivering this communication and attachments by hand to Major General Leven C. Allen in order that we will not be in the position of having embarrassed your decision on that score.

Very truly yours,

Henry G. Fischer