

(Basic ltr: JAG, D/A, of 13 Dec 1952, subj: H.R. 5728 "For The Relief of William F. Friedman.")

1st Ind

Serial: 88

National Security Agency, Washington 25, D. C.

TO: Judge Advocate General, Department of the Army, The Pentagon

1. Government time and materials and the aid of other Government employees were utilized in the development of Mr. Friedman's inventions.

2. Although the exact titles of Mr. Friedman's positions varied from time to time, it is fair to say that all of his inventions concerned in this matter were directly related to his Federal employment.

3. Since the inventions were made during the period from about 1933 to 1942, when Mr. Friedman was a civilian employee in the Office of the Chief Signal Officer, documentary evidence in the nature of laboratory records, conference notes, and the like, if still available, should be among the files of that Office, notwithstanding the files covering the applications for patent are in the custody of the National Security Agency. The official findings of the Signal Corps relative to the relations between Mr. Friedman's employment and his several inventions are to be found in the Signal Corps Patent Board minutes, copies of which you have. The findings (with the original evidence to the extent that it could be found) have been reviewed on several occasions by the Signal Corps and by you and have never been changed.

4. It is suggested that the Bureau of the Budget may have acted under a misapprehension in raising the questions at all since the language thereof relates them to Executive Order 10096 which by its terms covers only inventions made after 23 January 1950; furthermore, H. R. 5728 does not present Mr. Friedman as a claimant in the usual sense but rather as a petitioner.

FOR THE DIRECTOR:

ALFRED R. MARCY
Colonel, US Army
Chief of Staff

CC: C/S
AG
301C
302L

M/R: The indorsement is self-explanatory. The AG has in his files the background material relating to this matter. (See, for example, 1st Ind, 29 Feb 52, fm DIRAFSA to JAG, D/A, subject, in part, as above.)

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Henry B. Stauffer:R/D:60293

HBSTAUFFER:ILPASSA:293
302L:17237:7 Jan 53

1st Ind

Serial: 369

29 FEB 1957

Armed Forces Security Agency, Washington 25, D. C.

TO: Judge Advocate General, Department of the Army

1. An investigation of the background of the subject bills has been completed.

2. Reference is first made to the letter of 5 July 1951, from the Judge Advocate General, Department of the Army, to the Director, Armed Forces Security Agency, and particularly paragraph 10 thereof, and the information and comments below relate thereto.

a. Whether Mr. Friedman has accomplished anything which "warrants" compensation beyond what he has already received in the form of salary and commendations is impossible to say. It is this question that the Congress must determine. It can, however, be said

(Basic ltr: JAG, D/A, of 20 December 1951, subject: H. R. 5728,
82d Congress, 1st Session, a bill "For the Relief of
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Session, a bill, "For the Relief of William F. Friedman")
1st Ind (cont.) Serial: 369

29 FEB 1952

that his inventions over a period of years have been of very substantial value to this Government and its allies. It can also be said that this situation differs from the Garand case in its secrecy aspects; classification was not involved in the Garand matter.

b. The problem of ownership of the inventions has been in question on several occasions not only in the Army Security Agency, but in the Signal Corps and, it is believed, in your office as well, but no final determination has ever been made. During a large part of the employment of Mr. Friedman, he has been a party to various agreements declaring that he was "employed to invent" but seldom, if ever, has there been direction to invent any specific thing. His duties have, by and large, been those of a chief cryptologist.

c. Estimation of the commercial possibilities of the Friedman inventions is difficult. As far as is known here, relatively little commercial use is made of privacy systems in this country except in banks and other financial organizations, and their use of business codes is commonly dictated as much by economy considerations as security; nevertheless, it cannot be said that a market for high-grade ciphering machines could not have been developed. Moreover, in the absence of security considerations, it is likely that a substantial market for the inventions could have been developed among foreign governments. Future commercialization is subject to the same difficulties of evaluation.

d. So far as is known, there has been no commercial use abroad of Mr. Friedman's inventions, none at least by or in behalf of the United States Government. Foreign use, in other words, has been confined to the military services of the United States and its allies, and, thus, within the scope of the usual Government licenses.

3. Referring generally to compensation for Mr. Friedman on account of his inventions, I feel very strongly that it should not be in the nature of a reward, notwithstanding the virtues of his inventions and their unquestioned value to the United States and its allies over a period of many years. It does appear to me, on the other hand, that, if the inventor has been denied an opportunity to realize commercial benefit only because his inventions were in a sensitive field and, more significantly, only because they were important in that field, then his treatment, relative to the treatment of other Government inventors, has not been equitable.

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4. Considering especially the matters raised in paragraph 5 of the basic correspondence, I fail to see that the special agreement between Mr. Friedman and the Government has substantial bearing on the principle underlying the subject bills. Since certain of the inventions were made before the date of the agreement, it would, at most, influence the amount of the recovery.

5. Furthermore, if there is merit at all in the theory on which the bills are based, then it appears that exercise by the Chief Signal Officer of his rights under the 1936 contract would not bar compensation with respect to inventions made even after that date, but only with respect to loss of commercial rights after assignment might be requested (or accomplished). Except for security considerations, the inventor could have been attempting commercialization of his inventions for the past fifteen years. To say that no damages accrued during that period merely because the Chief Signal Officer may take title at some date in the future does not seem realistic.

6. A complete statement of Mr. Friedman's military and civilian Government service is inclosed. The record shows that he is not now receiving, and has never received, any pension for disability. As will be seen, his salary over a period of years has been above the average for Government employees, but to base an adverse decision on this circumstance would be equivalent to penalizing an outstanding employee since salaries in the field are no higher than elsewhere in the Government.

7. I feel that Public Law 700 provides little basis for any claim by Mr. Friedman. Such a claim, as I understand it, must represent compensation for use by the Government, and the Government has had, by license or assignment, the free right to use all of the inventions. It is furthermore true in any case that a claim under Public Law 700 must be based upon a patent, and no patents covering significant inventions have as yet issued. There has been, in other words, no use or, at most, inconsequential use of patented inventions but substantial use of inventions of pending applications. It may be noted that Mr. Friedman has consistently disclaimed any intention to bring suit under Public Law 700 or any other statute.

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8. Based on the facts before me, and in the absence of a well-defined Government policy, I feel that I should not oppose Mr. Friedman's efforts to obtain legislative relief. This is especially true since I am convinced that in the long run an organization such as the Armed Forces Security Agency will suffer if, relative to other organizations, it must offer less not only of public recognition but also of material gain to men of outstanding intelligence, ingenuity, and skill.

RALPH J. CANINE
Major General, U. S. Army
Director, Armed Forces Security Agency

Inclosures - 3

1, 2 - n/c

Added

3. Record of Service,
William F. Friedman

CC:w/incl 3

11 (3)

12

301 (2)

302L

HBSTAUFFER:ILPASSA:293

302L:17233E6 Feb 52

Note: Incls 1 & 2 were the
House and Senate bills,
respectively.

DIRAFSA

Chief, Plans &
Policies Div

AG

Chief, R & D

Patent Atty