

BRIEF HISTORY OF STEPS AND ACTIONS LEADING
TO SUBMISSION OF PRIVATE BILL S.2283
(With 7 Enclosures)

11 September 1952

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BRIEF HISTORY OF STEPS AND ACTIONS LEADING
TO SUBMISSION OF PRIVATE BILL S.22831945

27 Sept 1945 Memo from me to CG, ASA requesting declassification of patent application on Serial No. 443,320 (one of the six applications in secrecy).

1946

16 April 1946 Memo from me to Chief, ASA referring to letter of 27 September 1945 and noting that almost seven months have passed, without any official response to my memo.

29 April 1946 G-2 establishes a policy to govern the release of information of the type involved in this case.

20 May 1946 Memo from Chief, ASA sends me a copy of the G-2 policy and states that I may prepare an application for release or purchase of patent application, submitting such application to the Director of Intelligence through the Chief, ASA.

(The policy and conditions under which such an application would receive favorable consideration were so rigid that I did not think it useful to submit an application, as suggested in the 20 May 1946 memo from Chief, ASA. On 10 April 1947 new procedure for release of information concerning secret patent applications was adopted by the Chief, ASA. I decided that it might now be worthwhile to make another attempt to get Serial No. 443,320 released from secrecy.) Accordingly:

1947

6 August 1947 Memo from me to Deputy Chief, ASA requested that the status of the principles embodied in Serial No. 443,320 be ascertained and that I be advised as to whether or not that patent application could be declassified so that it could then be processed to the point of issuing as a public patent. (If issued, I could then proceed to try to sell my commercial rights, including foreign.)

20 Nov 1947 Memo to me from Chief, ASA in reply, stating that in accordance with the policy established 29 April 1946 by the Military Intelligence Division (G-2) it is necessary that the secrecy order standing against the patent application (Serial No. 443,320) be maintained.*

8 Dec 1947 Memo from me to Director of Intelligence, through Chief, ASA

*This meant I would have to follow the procedure set up in the G-2 policy - a very complicated matter - requiring legal assistance.

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stating (1) that in view of the complexities of the situation and the technical difficulties involved in preparing my case I would like to avail myself of the assistance of legal counsel; (2) asking whether the Director of Intelligence would have any objection, on security grounds, if I sought private counsel to assist me in the furtherance of my interests, with the understanding that no details of the construction or operation of the equipments involved would be disclosed to such counsel; and (3) stating that if there should be objection, would Director of Intelligence be so kind as to indicate where such counsel might be obtained within the Department of the Army?

29 Dec 1947

G-2 sends my memo to the Army JAG, refers to the 29 April 1946 policy announced by G-2, and requests information, from a legal viewpoint, on the actions I might take to avail myself of the opportunity to protect my interests, under the G-2 policy.

1948

11 May 1948

The JAG renders an opinion: (1) that I was specifically directed to experiment with a view to suggesting improvements and hence that I do not come within the G-2 policy [this was not true, as evidenced by the fact that in its official actions the Signal Corps Patents Board specifically allowed me to retain commercial rights to all my inventions]; (2) that with regard to my request to employ counsel, he was of the view that it is highly improbable that I could secure the service of a private counsel without disclosing to the counsel classified matter relating to my patent application - the decision on this point, however, being a matter for determination by the Director of Intelligence in that it is predominantly a security question (my underlining); and (3) that, with reference to the question of obtaining legal assistance within the Department of the Army to assist me, attention is called to the provisions of Section 109 of the Criminal Code (18 U.S.C. 198) which specifically prohibits such action. [Any government officer who acts as an agent or attorney for prosecuting any claim against the U.S., or assists in the prosecution or support of any such claim shall be fined not more than \$5,000 or imprisoned not more than one year, or both.]

4 June 1948

Chief, ASA forwards the JAG opinion to me "for information and return", by a handwritten, informal chit, not even initialed.

(I became seriously ill August 1948 and was more or less out of commission for almost a year - from frustration from this and other sources connected with my work and personal situation.)

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1949

- 3 March 1949 Memo from me to Deputy Chief, ASA requesting that my formal letter of 8 December 1947 be answered by a formal reply.
- 23 May 1949 The Director of Intelligence, by a 1st Ind. signed by the Acting Chief, ASA, sends me the file of comments on my letter of 8 December 1947 (including the Army JAG opinion), states that in view of the JAG's opinion the case is considered closed, and that no further action is contemplated.
- (Shortly after 23 May 1949 a new Chief of ASA was appointed, and he being a more broad-minded officer I felt I could try once more to go ahead with the case. After he got settled and after talking things over with him I prepared a 2d Ind. to the 29 May 1949 1st Ind. outlined above.) Hence:
- 8 Sept 1949 By 2d Ind. to the CG, ASA I refer to the statement that the case is considered closed and request that the statement be reviewed, in view of the fact that one of the two questions asked in my letter of 8 December 1947 has not yet been answered, viz., would there be objection to my employing private counsel to assist me? (The JAG's opinion left this decision up to the Director of Intelligence and the latter's memo of 23 May 1949 did not even mention this point.)
- 9 Sept 1949 By 3d Ind. the CG, ASA recommends that the decision required (i.e., whether I can be permitted to hire private counsel) be made by the Director of Intelligence and that the CG, ASA be informed so that he can advise me thereof. The CG, ASA makes some favorable comments in support of my case.
- 26 Oct 1949 Memo to Chief, ASA from Director of Intelligence stating that "The Intelligence Division has no objection to Mr. Friedman's hiring private counsel provided no classified information is revealed thereby."
- (In July 1949 most of the ASA was absorbed in a new organization called the Armed Forces Security Agency, and I became a member of the organization.)
- I was not shown the memo of 26 October 1949 until 16 November 1949, as evidenced by:
- 16 Nov 1949 Memo to CG, ASA from head of Secretariat Branch, Armed Forces Security Agency, stating that "In accordance with your letter dated 14 November 1949 the inclosure thereto was shown to Mr. William F. Friedman, and is returned herewith."

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(I do not have the letter of 14 November 1949 from the CG, ASA, so do not know what it said.)

1950

8 June 1950

21 Aug 1950

From about November 1949 to May 1950 I was seriously ill again and out of commission. On recovery, I got in touch with Mr. Henry G. Fischer, of the legal firm Fischer, Willis and Panzer in Washington. Mr. Fischer had one or two conferences in June 1950 with the Chief of the Patents Division, JAG, as a result of which the accompanying brief, dated 21 August 1950, was submitted to the Chief, Patents Division. (Encl. 1) In essence all this brief requested was merely an opportunity to present my case to the Congress without objection on the part of the Department of Defense.

(For details as to the dates of conception of the inventions, etc., see the brief, Encl. 1.)

15 Sept 1950

Letter from me to Director of Intelligence through Director, Armed Forces Security Agency, (1) setting forth a brief history of events leading up to the introduction of the private bill; (2) pointing out that I was prohibited from disclosing any classified information to my counsel; (3) for the latter reason, I wished to make sure that the JAG was acquainted with the G-2 policy which had been established on 29 April 1946 but which was secret; and (4) requesting the Director of Intelligence to ascertain whether the JAG did in fact have knowledge of the G-2 policy.

9 Oct 1950

By 2d Ind., the Director of Intelligence advises me that the JAG is cognizant of the policy but that the policy was rescinded on 7 July 1950.

(This was entirely news, so far as I was concerned. I tried formally, in writing, to obtain some information dealing with the background and/or reasons for the rescission of the policy but was entirely unsuccessful. It would thus appear that the very first attempt by anybody to try to get some benefit from the G-2 policy led to its prompt rescission!)

1951

9 Aug 1951

Letter from Chief, Patents Division, JAG to Mr. Fischer fails to give a "yes" or "no" answer to the question asked in the brief, and shows some lack of comprehension of the issues involved. (Copy of letter attached, Encl. 2.)

27 Aug 1951

Reply by Mr. Fischer, pointing out misunderstanding on the part

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of the JAG's people and correcting it. (Copy of letter attached, Encl. 3.)

- 31 Aug 1951 Letter from Chief, Patents Division, JAG to Mr. Fischer, saying merely that full consideration was given to all aspects of the case, including not only the legal but also the equitable considerations. (Copy of letter attached, Encl. 4.)
- 17 Oct 1951 Senator Morse introduces private bill in the Senate (S.2283) and Representative Poulson (Calif.) introduces similar bill in the House. (Copy of Senate bill attached, Encl. 5.)
- 22 Oct 1951 Senator Morse writes a letter to Senator McCarran, Chairman of the Senate Judiciary Committee, recommending favorable action on the bill. (Copy attached, Encl. 6.) Congressman Poulson sends a similar letter to Representative Celler, Chairman of the House Judiciary Committee.

1952

- 16 Feb 1952 Senator Morse writes a letter to Secretary of the Army relative to S.2283. I do not know what was in the letter but:
- 31 March 1952 Secretary of the Army answers Senator Morse's letter and states that the Department of the Army has made an investigation and will present its views, after coordination within the Department of Defense, to the Department of Justice. (Copy attached, Encl. 7.)
- 14 May 1952 Mr. Fischer is unofficially and informally told that the case had cleared the Department of Defense on 9 May 1952, with approval of the Department of Defense, the Department of the Army, and the Department of the Air Force. Only Department of the Navy had not yet acted. It became evident that Navy was intending to "drag its feet" and it took high-level spurring to jar the paper out of Navy. It finally came out of Navy with (as I was told by Mr. Fischer) a "no comment, no objection."
- 26 June 1952

The papers then had to be sent to the Bureau of the Budget and time was running very short before adjournment of the Congress. Budget wanted several days at least, saying that if Defense could take a couple of years to study the case, the Bureau was not asking too much if it wanted four or five days. But even that short a time was too long - Congress adjourned before Budget could act, the adjournment being 7 July 1952.

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The Bills will therefore have to be re-introduced in the new Congress in January, 1953. However, it may not require re-submission of the case to the Defense Department but there is no assurance on this point at all.

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02-511 350.0511

2d Ind

Office, Assistant Chief of Staff, G-2, Intelligence, Department of the
Army, Washington 25, D. C. OCT 9 1950

TO: Director, Armed Forces Security Agency, U. S. Naval Communication
Station, 3901 Nebraska Ave., N. W., Washington 25, D. C.
ATTN: Mr. William F. Friedman

With reference to the request contained in paragraph 5, basic letter,
Major Mills is cognizant of the policy which was set forth in Reference (a)
and in fact had been fully aware of the same prior to 10 March 1950, the date
of enclosure (B); however, Reference (a) was rescinded by Assistant Chief of
Staff, G-2, on 7 July 1950.

FOR THE ASSISTANT CHIEF OF STAFF, G-2

3 Incls
n/c

JOHN W. MIDDLETON
Colonel, GSC
Chief, Security & Training Division

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1st Ind

SUBJECT: G-2 policy on release of cryptographic principles

Headquarters, Armed Forces Security Agency, Washington 25, D. C.
16 September 1950

TO: Assistant Chief of Staff, G-2, General Staff, United States
Army, The Pentagon, Washington 25, D. C.

Forwarded.

S. P. COLLINS
Colonel, Signal Corps
Deputy Director, AFSA

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15 September 1950

SUBJECT: G-2 policy on release of cryptographic principles

THRU: Director, Armed Forces Security Agency
Washington 25, D. C.TO: Director of Intelligence, U. S. Army
Washington 25, D. C.

Reference: (a) Memorandum dated 29 April 1946 for Chief, Army Security Agency, Subject: Release of cryptographic principles.

Enclosures: (A) Copy of memorandum dated 26 Oct 1949 from Director of Intelligence, U. S. Army, to Chief, Army Security Agency.
(B) Copy of correspondence between Department of Defense and Mr. Henry G. Fischer.
(C) Copy of memorandum dated 21 Aug 1950 from Mr. Henry G. Fischer to the Department of Defense, Subject: Bill for the relief of William F. Friedman.

1. a. The undersigned, a civilian employee of the Armed Forces Security Agency, is the inventor of a number of cryptographic systems and devices, patent applications on which were placed by appropriate authority in a secrecy status, where they have been and will probably remain for a considerable number of years.

b. Reference (a) deals with the Department of the Army policy in the premises.

c. With a view to obtaining assistance in preparing a case which appears to fall within the scope of Department of the Army policy referred to in Par. 1b above, I requested and obtained permission to employ private counsel, as noted in Enclosure (A). I thereupon sought and obtained the services of Mr. Henry G. Fischer, of the firm of Fischer, Panzer, and Willis, of Washington, D. C., to assist me.

2. a. After I had presented to counsel the facts in the case, so far as was permissible under the limitations required by security considerations, counsel took up the matter with the Department of Defense. Enclosure (B) is a copy of the correspondence that ensued.

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b. As a result of that correspondence and conferences between counsel and Major James R. Mills, Chief of the Patents Division, Office of the Judge Advocate General of the Army, counsel submitted to Major Mills on 21 August 1950 a formal memorandum on the subject of a private bill to be initiated in the Congress on my behalf. Enclosure (C) is a copy of that memorandum.

c. The memorandum referred to in Par. 2b above, requests no affirmative action or support on the part of the Department of Defense for such a private bill, but merely requests permission to present the case to the Congress without objection by the Department.

3. a. As will be noted in Par. 2 of Enclosure (A), the condition on which I was permitted to employ private counsel was that I would not reveal any classified information.

b. For the foregoing reason and because the policy set forth in Reference (a) is classified, I was unable to tell counsel even of existence of the policy. As a consequence, when counsel proposed to me that the matter be presented to the Department on the basis indicated in Par. 2c above, I was able to go no further than to concur in his proposed basis for the presentation. Hence, instead of being in a position to direct counsel to request the active support of the Department in the presentation of the case to the Congress, in consonance with the letter and spirit of Reference (a), I was forced to let counsel remain in the more limited position of merely requesting the Department to refrain from expressing objection to the presentation of the case to the Congress.

4. Several years have passed since the policy in Reference (a) was elaborated and it is possible that presently assigned personnel in the Office of the Judge Advocate General of the Army are not cognizant of the Department of the Army policy set forth in Reference (a). It would therefore appear to be desirable and in my interest to insure that that policy is known to Major Mills in the early stages of his study of the facts in the case.

5. It is therefore respectfully requested that the Director of Intelligence ascertain whether Major Mills has knowledge of the existence and nature of the policy set forth in Reference (a), and if not, that steps be taken to inform him thereof so that this information will be available to him for consideration in connection with his study of the memorandum which was submitted to him by my counsel.

WILLIAM F. FRIEDMAN

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GAS-26 (12 Oct 1950)

1st Ind

HLM/bmm

Subject: Rescission of G-2 Policy on Release of Cryptographic Principles

Headquarters, Army Security Agency, The Pentagon, 3600 AAW, Washington 25, D. C.,
27 October 1950TO: Director, Armed Forces Security Agency, Washington 25, D. C.,
ATTN: AFSA-00TEnclosed for your information is a copy of Office Memorandum from Deputy
AG of S, G-2, Department of the Army, dated 7 July 1950 which rescinds policy
on release of Cryptographic Principles.

FOR THE CHIEF, ARMY SECURITY AGENCY:

1 Incl:
Cy of OM dtd 7Jul50H. L. WHITTEN
Lt. Colonel, AGC
Adjutant General
Army Security Agency: ~~SECRET~~

OFFICE MEMORANDUM UNITED STATES GOVERNMENT

Major A. L. Smith/mjr/71994

TO: Chief, Army Security Agency

FROM: Assistant Chief of Staff, G-2

Date: 7 July 1950

SUBJECT: Release of Cryptographic Principles

The policy announced in Memorandum for the Chief, Army Security Agency, dated 29 April 1946, from the Acting Deputy AC of S, G-2, entitled: "Release of Cryptographic Principles," is hereby rescinded.

/t/A. R. BOLLING
/s/A. R. BOLLING
Major General, GSC
Deputy A.C. of S., G-2

C O P Y

~~SECRET~~SECRET

AFSA-OOT/ef

12 Oct 1950

MEMORANDUM FOR: Col. H. L. Whitten, Adjutant General,
Headquarters, Army Security Agency,
Arlington Hall Station.

SUBJECT: Reversion of G-2 Policy on Release of Cryptographic Principles

Enclosure: (A) Copy of subject policy

1. Enclosure (A) deals with a policy established by the AC of S, G-2, War Department, on 29 April 1946.

2. As I told you on the telephone this morning, in a 2d Ind. dated 9 Oct 1950, addressed to Director, Armed Forces Security Agency, and marked for my attention, Col. John W. Middleton, GSC, Chief of Security and Training Division, Office of Assistant Chief of Staff, G-2, Intelligence, Department of the Army, states that the policy set forth in Enclosure (A) was rescinded by Assistant Chief of Staff, G-2, on 7 July 1950, but gives no further information in this regard.

3. If the ASA already has, or can obtain, any information dealing with the background and/or reasons for the 7 July 1950 rescission of the policy established on 26 April 1946, I would be most appreciative if you would supply me therewith, as this is a matter of interest not only to me as a former employee of ASA, but also to many other former employees of ASA now with AFSA.

William F. Friedman
AFSA-OOT

*This letter was
never answered in detail -
only 1st Ind 27 Oct 50
13 Mar 52*

~~SECRET~~

~~SECRET~~

C O P Y

29 April 1946

MEMORANDUM FOR THE CHIEF, ARMY SECURITY AGENCY:

SUBJECT: Release of Cryptographic Principles.

1. The following policy is announced to be effective immediately.

a. Cryptographic principles or devices developed by officers, enlisted men, or civilians employed in any War Department Agency, or patents or patent applications on such principles or devices which are owned by, assigned to, or licensed for use of the War Department will not be released for use of foreign governments or for foreign or domestic commercial or private use until such time as necessary information is available and a procedure established in the Army Security Agency whereby information which is cryptographed by means of such principles or devices can be cryptanalyzed and read under any and all circumstances.

b. Where it is in the interest of the Government of the United States that an employee have no patent rights in cryptographic principles or devices to dispose of, and for the Government to own the entire interest for security reasons throughout any foreseeable future; and where discovery or invention of cryptographic principles or devices has been made by a civilian employee and does not relate to a matter as to which the employee was specifically directed to experiment with a view to suggesting improvements nor was produced as a result of any specific employment or contract to invent a specific device or article; and where an application for patent on such principles or devices has been filed with an assignment-in-trust to the Government for the purpose of maintaining such application in secrecy, the Military Intelligence Division will support, subject to the availability of appropriations, any reasonable request for purchase of all commercially exploitable reversionary rights of the inventor in the patent application.

/s/ CARTER W. CLARKE
Colonel, GSC
Acting Deputy, A. C. of S., G-2

~~SECRET~~
C O P Y

Encl. (A)