

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN LIBRARY ASSOCIATION,)	
<u>et al.</u>)	
Plaintiffs,)	
)	
v.)	Civil Action No.
)	84-0481
LINCOLN FAURER)	
)	
Defendant.)	

AFFIDAVIT OF MEYER J. LEVIN

State of Maryland)	
)	ss:
County of Anne Arundel)	

Meyer J. Levin, being duly sworn, deposes and says:

1. I am the Chief, Information Policy Division, National Security Agency (NSA). As Chief of the Information Policy Division, I am a TOP SECRET classification authority and I am responsible for, inter alia, overseeing and implementing the NSA programs and procedures for the protection of classified information as required by Executive Orders 12356 and 12333. The statements made herein are based upon my personal knowledge, upon my personal review of the information available to me in my official capacity, and upon conclusions reached in accordance therewith.

2. Based on my review of pertinent portions of the Friedman Collection on two different occasions (April 1983 and February 1984) and my review of NSA files relative to the collection, I have determined that there are a total of 37 documents in the William A. Friedman (hereinafter Friedman) Collection at the George C. Marshall Library (hereinafter

Library) which NSA reviewers preliminarily determined to protect, which other Agency officials are evaluating for continued protection, against public disclosure pursuant to classification and statutory authority and which may have been, at one time and to one degree or another, made available to the public at the Library. Thirty-one of these documents are part of a portion of the Friedman Collection identified as the Friedman Correspondence Files and the remaining six documents consist of technical textbooks, pamphlets, and monographs. Each of these documents is undergoing extensive review at the most senior levels of NSA in an effort to confirm the need to protect them. The purpose of my affidavit is to explain how the documents were identified as those at issue in this litigation and why I determined that some of the documents may be appropriate for protection against any further public disclosure. Accordingly, I will discuss, briefly, the nature of NSA's missions, the background of William Friedman's connection to NSA and NSA's connection to the Friedman Collection at the Library. Thereafter, I will discuss why I determined that the 31 documents from the Friedman Correspondence Files, the documents which I reviewed for classification purposes, may require protection against public disclosure. The sensitivity of the six technical textbooks, pamphlets, and monographs will be discussed by the NSA Classification Authority directly involved in the classification review of those documents.

3. The National Security Agency was established by Presidential Directive in October 1952 as a separately

organized Agency within the Department of Defense. It operates under the direction, authority and control of the Secretary of Defense, who was designated by the President as Executive Agent of the Government for conducting the communications security (COMSEC) and signals intelligence (SIGINT) activities of the United States. The COMSEC efforts of NSA involve, among other things, the development and use of cryptography and cryptographic equipment to encrypt the sensitive communications of our government. NSA's SIGINT mission is to obtain information from foreign electromagnetic signals and to provide reports derived from such information or data on a rapid response basis to national policymakers and the intelligence community of the United States Government. In some instances, the capability to obtain information from intercepted signals is contingent upon the application of various techniques of decoding or decryption. The preservation of NSA's intelligence collection sources and methods is a fundamental and continuing requirement. The need to protect these sources and methods derives from a premise, which experience has shown to be sound, that disclosure of information confirming the identity of individuals or organizations whose foreign communications were acquired by NSA, disclosing the dates or contents of such communications, or divulging the methods and techniques by which the communications were acquired and analyzed by NSA, would severely jeopardize the intelligence collection mission of NSA by identifying present communications collection and analysis capabilities.

4. William Friedman was a noted cryptologist and a significant force behind this nation's early efforts and advances in the field of cryptology. For a period of approximately 35 years at NSA and its predecessor organizations, Friedman worked, in both military and civilian capacities, at developing and advancing cipher and cryptographic systems of this nation. Furthermore, Friedman played a key role in this nation's efforts to break the codes used by the Germans and the Japanese during World War II. Even after his retirement from NSA in 1955, Friedman continued to work for NSA in a consultant capacity for a period of years. Friedman's work permitted him access to some of this Nation's most guarded secrets and, in fact, his work led to the development of data, techniques, and information which was at the time of development, and must remain, classified in the interest of national security. The sensitivity of the information to which Friedman had access, and the trust and responsibility reposed in him, are reflected by the government secrecy oath Friedman was required to, and did, execute during his government service (attached at Tab 1).

5. In view of Friedman's background, NSA had a two-fold interest in any collection of books and papers he maintained. First, and foremost, NSA was concerned, to the extent that the Friedman Collection might contain classified or otherwise sensitive information to which Mr. Friedman had access as a result of his cryptologic work for the Government, that any such classified or otherwise sensitive materials in the

Friedman Collection be protected against unauthorized disclosure. Second, NSA had a historical interest in ensuring the preservation of papers and materials that reflect a significant era in the cryptologic development of the United States. As revealed in Friedman's personal correspondence, he decided to donate his collection of materials to the George C. Marshall Library located on the campus of the Virginia Military Institute in Lexington, Virginia, and officially made the donation to the Library by a letter dated 1 August 1969. The Friedman letter to the Library (attached to this affidavit at Tab 2) indicates that Friedman first became interested in the Library as the location for his collection when he learned that the Library would be approved for the storage of classified or valuable papers related to the national security. He also specifically noted that the Library had authority to handle classified documents pursuant to an agreement signed by the President of the Foundation and the Adjutant General of the Army.

6. Though Friedman officially stated his intent to donate his collection to the Library by his letter of 1 August 1969, the actual transfer of the collection did not occur until December 1970. Pursuant to an arrangement between General Marshall Carter, a former Director of NSA, Dr. Forrest Pogue, official biographer of General George C. Marshall, and the Security Division of NSA, it was agreed that NSA would provide (and, in fact, did provide) secure shipment of the collection to the Library. Apparently, NSA's provision of

security enabled the Library to insure the collection in transit and enabled NSA to protect any classified materials which were contained in the collection from unauthorized disclosure.

7. Through General Carter, NSA agreed to review the collection to identify materials in need of protection in the interest of national security as well as materials which already bore classification markings, but which could be declassified and released to the public. Between December 1970 and January 1978 (the date the collection was first opened to the public) NSA representatives reviewed the Friedman collection on five different occasions--January 1971; November 1971; July 1974; July 1975; and November/December 1976. Each of the reviews through July 1974 were devoted to assessing the organization of the collection and its historical significance, but were not systematic classification reviews. The first NSA review of the Friedman collection which resulted in any substantive classification determinations occurred in July 1975 after which the NSA reviewer reported by memorandum that several hundred items in the collection had been declassified. NSA has no record of the precise actions taken during this visit in July 1975. It is known, however, that five of the six technical textbooks, pamphlets, and monographs at issue in this case, i.e., which NSA seeks to protect from disclosure in respect to this litigation, and which were noted in paragraph 2, supra, had been declassified during this visit and were reclassified in a

subsequent review conducted in October 1981 (see paragraph 9, infra).

8. In November and December 1976, NSA representatives again visited the Library and conducted a classification review of portions of the collection. During this visit to the Library, the NSA reviewers identified various documents, from the Friedman Correspondence Files, which related, either directly or indirectly, to official and sensitive work of NSA including, inter alia, a cryptologic relationship between the United States and a foreign government, the existence of which was classified, pursuant to an agreement with the foreign government in question, at the SECRET level. The NSA reviewers brought the sensitive documents to the attention of the Library's archivist and it was agreed between the NSA representatives and the archivist that the sensitive materials would be placed in a safe and would not be available to the public. The precise documents identified as sensitive by the NSA reviewers on the occasion of this visit are not known as neither the NSA reviewers nor the Library made detailed notes of the documents to be closed.¹ The documents identified as sensitive were not marked as classified, though NSA intended that they be treated by the Library as such.

9. The Friedman collection was not opened to the public until January 1978. NSA received no information that materials in the collection identified previously as sensitive by NSA

¹The archivist did prepare a list of the files from which the documents were drawn.

reviewers had been made publicly available until June 1981 when an NSA representative briefly visited the Library and was advised by officials of the Library that some of these materials had been placed by the Library on the open shelves. NSA had not authorized the placement of these materials on the open shelves. This information prompted another visit to the Library in October 1981. In this visit, the NSA reviewers examined the technical books, pamphlets, and monographs held in a secure safe and treated by the Library as classified. They also reviewed the technical books, pamphlets, and monographs contained on the open shelves of the collection. The reviewers did not examine the Friedman Correspondence Files. This review resulted in the declassification of numerous technical books, pamphlets, and monographs. One of the technical monographs declassified at this time was subsequently reclassified in an April 1983 visit to the Library (see paragraph 10, infra) and is one of the six documents which NSA now treats as classified and which is at issue in this case. Also on the occasion of this visit the NSA reviewer classified five technical textbooks, pamphlets, and monographs which had been declassified in July 1975 (See paragraph 7, supra.)

10. In 1982 James Bamford's book, The Puzzle Palace, a book about NSA, was published. A review of the book revealed that materials in the Friedman Correspondence Files of the type identified as sensitive by NSA reviewers in 1976 (and which the Library's archivist agreed to keep closed to the public) might have been made available to Mr. Bamford. In

view of the foregoing, I visited the Library in April 1983 and reviewed those portions of the Friedman collection that I believed to have been closed to the public pursuant to the arrangement made in 1976 between the Library and NSA. It was on this occasion that I learned that, in 1979, the former archivist of the Library had, without consulting with NSA and, thus, without NSA's authority, opened to the public the materials identified by NSA as sensitive in 1976. The former archivist's memorandum for the record reflecting this fact, obtained during my most recent (February 1984) visit to the Library, is attached to this affidavit at Tab 3.

11. During the April 1983 visit to the Library, I and another NSA representative endeavored to identify and review those materials opened in 1979 without authority by the former archivist. At the time of this review I was aware that some portion of these materials may have been publicly disclosed to some degree or another, but I was not able to obtain specific information concerning any such public disclosure. In addition to the fact that we lacked this critical information, it was clear that the review task was greater than our time at the Library permitted to be accomplished effectively. Although we reviewed and classified some documents believed to contain classified information, we were not able to review all of the pertinent materials. Accordingly, I requested the Library to close, pending further and more detailed review, the materials opened in 1979 without authority by the former archivist and other materials specifically identified to them. I determined

that the continued public availability of materials of the kind contained in these files could compound any damage to the national security that may have accrued as a result of the earlier unauthorized disclosure. All of the materials I asked be closed were from the Friedman Correspondence Files. As a separate action, the technical monograph declassified in October of 1981 was reclassified during my visit.

12. In February of this year, I returned to the Library to review in depth the materials I had requested be closed during my April 1983 visit. As was the case during my April 1983 review, I was not able to obtain and consider any specific information concerning the possible public disclosure of any of these materials. During this review, I removed the NSA imposed restrictions on all but 31 of the documents in the Friedman Correspondence Files.² I determined at the time of my review that each of the 31 documents to which access is still restricted contains information which may properly be classified at the SECRET and CONFIDENTIAL levels pursuant to Sections 1.1(a)(2) and 1.1(a)(3) of Executive Order 12356 (copy attached at Tab 4) and should be protected pending further review pursuant to Section 1.1(c) of that Order. As to these 31 documents, I determined that, in the absence of

²Four other documents from these files were marked as classified by or contained potentially sensitive information of interest to other organizations. The Library is pursuing a review of one of these four documents by the organization able to assess any damage which might accrue from its disclosure and NSA is pursuing the review by the pertinent organizations interested in the other three documents.

specific information regarding the degree to which the documents may have been publicly disclosed, the disclosure of information contained in these documents could cause damage or, in many instances, serious damage, to the national security. The information for which I have recommended protection concerns cryptologic methods and activities used in the intelligence efforts of NSA and, thus, would meet the criteria for classification provided in Section 1.3 of Executive Order 12356.

13. As the 31 documents I reviewed contained information related to NSA's intelligence methods and activities, the documents may also be properly protected from disclosure pursuant to Section 6 of the National Security Agency Act of 1959 (Public Law 86-36, 50 U.S.C. §402 note). Under this statute, no law shall be construed to require the disclosure of information (classified or unclassified) pertaining to the organization, functions or activities of NSA or of persons employed there. Further, these documents may properly be protected pursuant to 18 U.S.C. §798 which prohibits the unauthorized disclosure of classified information concerning the communications intelligence activities of the United States and Section 102(d)(3) of the National Security Act of 1947 (50 U.S.C. §403(d)(3)) which permits the protection of intelligence sources and methods from disclosure. As noted in paragraph 2, supra, my preliminary judgment, in respect to these 31 documents, as well as the preliminary judgment in respect to the six technical books, pamphlets, and monographs,

is undergoing extensive review at the senior levels of NSA.

MEYER J. LEVIN
Chief, Information Policy Division
National Security Agency

Subscribed and sworn to before me
this ____ day of _____ 1984.

Notary Public

My commission expires _____