

## Police Seek Record of Bookstore Patrons in Bid for Drug Charge

By Michael Janofsky The New York Times November 24, 2000

DENVER, Nov. 23 - In the case of raiding a methamphetamine laboratory in a trailer home last March in the Denver suburb of Thornton, agents of a local drug task force found two books, "Advanced Techniques of Clandestine Psychedelic and Amphetamine Manufacture" by an author named Uncle Fester and "The Construction and Operation of Clandestine Drug Laboratories" by Jack B. Nimble.

Outside the trailer, the agents found an envelope from one of Denver's most cherished retailers, the Tattered Cover Bookstore, in which they believe the books had been mailed to one of the occupants.

Investigators believe that if they can tie up one loose end, confirming that the books were received by the person named on the envelope, they can be certain the recipient was the laboratory owner and they can arrest him. Lt. Lori Moriarty, the task force commander, said that would "turn a probable cause case into proof beyond reasonable doubt."

the surest way to do that, Lieutenant Moriarty added, is by retrieving the sales record from Tattered Cover, which investigators have tried through a search warrant.

But using sales receipts of books to solve a crime has raised concerns among booksellers, publishers and privacy groups, who are watching the case closely for its implications on the constitutional guarantees of free speech and privacy. Because of this, the store owner, Joyce Meskis, has refused to comply with the warrant, arguing that customers, even suspected felons, have a right to privacy, no matter the subject of the books they buy.

"This is about access to private records of the book-buying public," Ms. Meskis said in her office at the store. "If buyers thought that their records would be turned over to the government, it would have a chilling affect on what they buy and what they read."

Lieutenant Moriarty said investigators had identified six suspects in the case, four of whom they believed lived in the trailer at the time of the raid and were later evicted. Only one of the six was arrested, on a weapons charge, but the other five are free. Because of a lack of other evidence, Lieutenant Moriarty said, investigators are not certain which of the suspects actually owned the illegal laboratory.

That is why they need the sales records, she said, to start what investigators believe could be a string of arrests. None of the suspects have been identified by the authorities.

But Ms. Meskis's lawyer, Daniel N. Recht, said the search warrant, which initially sought all records over a 30-day period involving the buyer of the two books, amounted to nothing more than "a fishing expedition" that would prove little even if records confirmed that the books had arrived in the envelope.

Ms. Meskis, offering a rationale for the purchase of sensitive or controversial material, said, "Just because I buy material on the Third Reich doesn't make me a Nazi skinhead."

Mr. Recht won a temporary restraining order to stop the search. A hearing followed, and last month Judge J. Stephen Phillips of Colorado District Court ruled that the government's request for a month of records was too broad. But the judge said investigators had a right to see any records that would confirm that one of the suspects was the buyer of the two books.

Today, Mr. Recht filed an appeal of Judge Phillips's ruling with the Colorado Court of Appeals.

Until now, the most prominent case involving efforts to obtain bookstore records involved Kenneth W. Starr, the independent counsel investigating President Clinton, who used a subpoena in 1998 in an effort to learn what books Monica Lewinsky had bought from Kramerbooks & afterwords in Washington. Mr. Starr's effort was blocked when a federal judge ruled that the request was too broad, and it became moot later when Ms. Lewinsky agreed to cooperate with Mr. Starr's office.

Theresa Chmara, counsel for the American Booksellers Foundation for Free Expression, a nonprofit group in Washington, said a case similar to the one here was under way near Kansas City, Kan., where the authorities were trying to obtain records of sales from three Borders bookstores in a drug investigation.

"It all comes down to a First Amendment issue, the right to free speech, the right to receive information," Ms. Chmara said of all three cases. "There may be lots of reasons people read books. There also may be lots of people who read these two books who never come near an amphetamine lab."

Lawyers for the task force are arguing that the case has nothing to do with First Amendment issues. In court papers, they argued that investigators have no interest in the suspect's "thoughts or reading materials, per se."

"But they are interested," the lawyers wrote, "in conclusively establishing the identity of the person who was operating a meth lab - an activity which is neither legal nor protected under the First or any other constitutional amendment."

Ms. Meskis said the public reaction to her legal stance had been overwhelming, with hundreds of phone calls and e-mail messages urging her to stand firm.

"Since the Kramerbooks case," she said, "we have learned as booksellers that the First Amendment needs to be protected. We know now that we have options, and we just don't turn over anything without going through the entire process."

If you are in need of an experienced business litigator or criminal defense attorney, please call Recht & Kornfeld today.

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