

# The Courier-Journal Forum

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**D** Editorials  
Nick Anderson  
Readers' Forum

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## Bookseller fights for customers' privacy

By J. MICHAEL KENNEDY  
Los Angeles Times

**D**ENVER — Joyce Meskis didn't have any warning when the five policemen marched into her office that day, search warrant in hand. They were there to search the sales records of Meskis' Tattered Cover Book Store, a Denver landmark, as part of an investigation into a small-time drug operation.

"I was dumbfounded," said the 60-year-old, whose store is one of the largest independently owned booksellers in the country. "We had never faced a search warrant before."

In a matter of minutes, she was on the phone to her lawyer, who advised her to politely decline to cooperate. With that, the battle was joined in what has become one of the most prominent First Amendment cases in the United States. Now, two years later, the Colorado Supreme Court is expected to issue an opinion this spring about whether the police have the authority to search the Tattered Cover's sales records and, by extension, the records of other Colorado bookstores.

The case could decide whether booksellers have the right, even the responsibility, to keep their customers' purchases confidential.

Losing that right, activists say, could influence what publishers are willing to print and what bookstores are willing to sell.

The drug-lab investigation was part of a growing trend by law-enforcement agencies to seek computer records from booksellers to assist in building a criminal case. The first of these cases occurred in 1998, when independent counsel Kenneth Starr subpoenaed two Washington bookstores during his investigation of Monica Lewinsky's affair with then-President Bill Clinton. That effort was sidetracked by Lewinsky's agreement to cooperate with Starr's investigation, but it opened the door to other attempts.

Even with the Lewinsky case already on the books, Meskis had no inkling of the judicial odyssey she was about to embark upon, one that has become a cause celebre in the civil-rights and literary communities nationwide. In January, San Francisco's A Clean Well-Lighted Place for Books — itself an institution of sorts — held a fund-raiser that took in more than \$10,000 to help defray the Tattered Cover's legal costs. Pulitzer Prize-winning novelist Michael Chabon and author Dorothy Allison attended, saying the case threatens the right to read without fear of prying government eyes.

"I believe in the right to privacy," Chabon said. "I believe in the freedom to read what one chooses. As a writer, a reader and an American, I truly hold the First Amendment sacred."

The case arose when a narcotics detail was staking out a trailer in suburban Denver where agents suspected a methamphetamine lab was operating. As part of the surveillance, the police routinely combed through the trailer's trash and, at one point, came across a Tattered Cover shipping envelope, which had an invoice number on the front.

When police raided the trailer, they found two nearly new books by bogus authors: "Advanced Techniques of Psychedelic and Amphetamine Manufacture," by Uncle Fester, and "The Construction and Operation of Clandestine Drug Laboratories," by Jack B. Nimble. The books fit neatly into the envelope found in the trash, so investigators hoped to bolster their case by connecting the trailer owner to the drug how-to books. But to do so, they said they needed to see the Tattered Cover's computerized records to match the invoice number.

According to an appeals brief filed by Dan Recht, the Tattered Cover lawyer, investigators had to shop around before they could find a district attorney willing to approve a search warrant for the bookstore. When they finally did get one, police showed up unannounced to go through the Tattered Cover files.

**"Today, only Kentucky and Hawaii don't have laws protecting the privacy of what readers check out from libraries."**

Meskis, who leans toward cardigan sweaters and comfortable shoes, remembered, as she put it, "trying to beam thoughts" for the police to stop because she knew the case was one she would have to fight.

Over the years, the First Amendment protections that cover publishing books and newspapers have evolved to cover the institutions that sell them as well.

The police, for their part, saw no difference between a bookstore and a hardware store in searching for and confiscating records. They simply wanted to link the owner of the trailer with the books found during the drug raid. What they probably did not know was that Meskis is one of the more formidable advocates of First Amendment rights in the United States.

"Joyce is a very stubborn lady," said Chris Finan, president of the American Booksellers Foundation for Free Expression. "Her philosophy is that people should make their own decisions about what they read, and her job is to make available to her customers what they request."

Meskis, among other things, is a recipient of the William J. Brennan Jr. Award and the PEN/Newman's Own First Amendment Award, which honors those devoted to free expression. She has led a number of First Amendment fights in Colorado, including a successful 1994 campaign to stop a pro-

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posed constitutional amendment that would have made it easier for communities to label materials as obscene.

"We sell any book that is constitutionally protected," said Meskis, seated in the homey office of her downtown Denver store. "Once we start imposing our value system on you, the customer, we firmly plant our feet on a slippery slope."

After the police tried to execute the search warrant, Recht arranged for a week's grace period with the Denver district attorney's office, long enough to file for a temporary restraining order to stop the search and bring the case to court. But in October 2000, a Denver district judge ordered the bookstore to reveal the requested information about the invoice found in the trash can, which led to the state Supreme Court challenge.

In arguments before that court in December, the lawyer for the police, Andrew Nathan, said that the invoice information was an essential piece of evidence needed in the case. Recht countered that it was not and that police had not done everything else in their power to find out who bought the books.

"Our impression is that law enforcement sees (such searches) as a new tool and is pushing



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to use it," Recht said. "From the bookseller's point of view, it has scary repercussions."

Judith Krug, director of the office for intellectual freedom for the American Library Association, likened the Tattered Cover case to the time in 1970 when law-enforcement officials began combing library records for clues to criminal activity. Specifically, they were trying to find out who checked out books on bomb-making after a lab at

the University of Wisconsin was blown up by left-wing radicals.

"I was horrified," said Krug, who then began a 30-year campaign to protect library circulation records. Today, only Kentucky and Hawaii don't have laws protecting the privacy of what readers check out from libraries. She said combing through charge records had a similarly ominous tone.

"The thought of a law-enforcement officer accessing my charge records and then determining what kind of person I am on the basis of what I read would bother me tremendously," she said.

Recht said he is pinning some hope for success on the fact that the Colorado Supreme Court has a history of landing on the side of individual liberties. He said the decision will be cutting edge, no matter what the ruling, because no other state supreme court has ruled on the issue.

The criminal investigation that brought about the Tattered Cover's involvement has taken a back seat to the First Amendment case. Only one charge was ever filed in the meth lab bust, and that was later dropped.

The writer is with the Los Angeles Times.