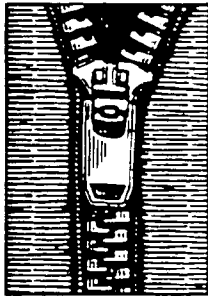


**ZIPPERGATE UPDATE**

**Monica's reading list**



Independent counsel **Kenneth Starr** last week moved a step closer to demonstrating outright contempt for constitutional rights and other deeply held societal values. Starr laid a grand jury subpoena on a Washington bookstore, seeking records of book purchases by former White House intern and very close Friend of Bill **Monica Lewinsky**. Perhaps Big Brother Starr wanted to see

whether her reading habits bore out his view of her personal morality, thereby helping him decide whether she was the kind of person more rather than less likely to engage in oral sex with **President Clinton**. If that's the case, the intrusion is arguably an abuse of grand jury subpoena power and an interference with Lewinsky's First Amendment rights.

The store, **Kramerbooks & Afterwords**, claimed not to have the resources to fight the subpoena, and turned over the records. Reportedly, the files revealed that Lewinsky had purchased a copy of *Vox*, Nicholson Baker's 1993 best-selling erotic novel about phone sex.

It's a shame that the bookstore caved in so quickly, and that some civil liberties organization was not enlisted to contest the subpoena. There was plenty of outrage expressed. The *New York Times* reported that Lewinsky's attorney, **William H. Ginsburg**, repeated his charge that Starr was "out of control." The liberal advocacy group Americans for Democratic Action charged that the subpoena was "outrageous" and "deeply insidious to First Amendment freedoms." The ACLU's national legal director, **Steven Shapiro**, noted that the subpoena raised "serious questions about the manner in which this investigation is being conducted."

— And so it did. Federal courts have long been wary of prosecutors' using their investigatory and charging powers to delve into constitutionally protected activities, such as the right to read without government interference or prying. In a 1969 case, *Stanley v. Georgia*, the US Supreme Court reversed a conviction for possession of obscene material, noting that the First

Amendment's free speech and free press provisions protect "the right to receive information and ideas." Moreover, the court stated, "a prosecution for mere possession of printed or filmed matter in the privacy of a person's own home" calls into question "the right to be free, except in very limited circumstances, from unwanted governmental intrusions into one's privacy."

Indeed, as far back as 1958, when the state of Alabama was harassing the National Association for the Advancement of

Colored People, the Court warned that grand jury subpoenas could not infringe on First Amendment rights (in that case, freedom of association).

In other recent cases, some federal courts have warned prosecutors that they'll look for evidence of prosecutorial bad faith or harassment if a victim of such a subpoena so requests. Although the Supreme Court hasn't ruled squarely on the balance between grand jury subpoena power and First Amendment right-to-read protection, the language in some opinions suggests that the justices might restrict governmental power in certain cases. So it's too bad the



**STARR:** contempt for Monica's right to read.

Lewinsky bookstore subpoena wasn't made into a test case. Knowing Starr, however, another opportunity will arise soon.

Elsewhere in the realm of civic values, Lewinsky's mother, **Marcia Lewis**, lost her court fight to avoid a return trip to the grand jury. No surprise. Forty-six states and the federal government offer no testimonial privilege between parents and children — which is more a reflection of our need to reign in prosecutors' powers than it is a comment on what most citizens value. Lewis *could* refuse to testify and risk being sentenced to prison for contempt, which would demonstrate that there's one person in this whole sorry mess who's willing to take a principled stand. But I'm not betting on it.

— **Harvey Silverglad**