

SUMMONS IN A CIVIL ACTION

United States District Court

16 55001 13:34 7 FOR THE

District of Columbia 84-0481

GENERAL
COUNSEL NSA

CIVIL ACTION FILE NO. _____

AMERICAN LIBRARY ASSOCIATION, et al.,

Plaintiffs,

v.

LINCOLN FAURER,

Defendant.

SUMMONS

To the above named Defendant : Lincoln Faurer

You are hereby summoned and required to serve upon

Mark H. Lynch, Esquire

plaintiff's attorney, whose address

122 Maryland Avenue, N.E.
Washington, D.C. 20002
(202) 544-5388

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

JAMES F. DAVEY

Robert L. Lounsbury
Clerk of Court.
Deputy Clerk.

Date: February 15, 1984

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

RETURN ON SERVICE OF WRIT

I hereby certify and return that on the _____ day of _____, 19____

I received this summons and served it together with the complaint herein as follows:

(For service made by mail:

I hereby certify that I mailed this summons on _____, 19____

at _____; and that such service was

made at _____ place of mailing

accepted refused returned but not refused.

Upon refusal of service, I certify that I made further service as follows:

Fees for Service

Travel \$ _____

Service \$ _____

Authorized or Specially Appointed Process Server

or

United States Marshal

by

Deputy United States Marshal

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date _____

Authorized or Specially Appointed Process Server

Note: Certification required only if service is made by a person other than a United States Marshal or his deputy.

1870-24

United States District Court
For the District of Columbia

Office of the Clerk
3rd and Constitution Avenue, N.W.
Washington, D. C. 20001

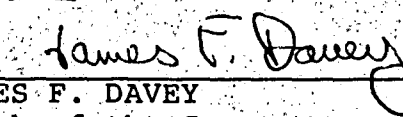
James F. Davey
Clerk

NOTICE OF RIGHT TO CONSENT TO TRIAL
BEFORE A UNITED STATES MAGISTRATE

In accordance with the provisions of Title 28, U.S.C. §636(c), you are hereby notified that the United States Magistrates of this District Court, in addition to their other duties, upon the consent of all parties in a civil case, may conduct any or all proceedings in a civil case, including a jury or nonjury trial, and order the entry of a final judgment.

You should be aware that your decision to consent, or not to consent, to the referral of your case to a United States Magistrate must be entirely voluntary. Only if all the parties to the case consent to the reference to a Magistrate will either the Judge or the Magistrate to whom the case has been assigned be informed of your decision.

An appeal from a judgment entered by a Magistrate may be taken directly to the United States Court of Appeals for this judicial circuit in the same manner as an appeal from any other judgment of a District Court. Alternatively, upon consent of all parties, an appeal from a judgment entered by a Magistrate may be taken directly to a District Judge. Cases in which an appeal is taken to a District Judge may be reviewed by the United States Court of Appeals for this judicial circuit only by way of petition for leave to appeal.



JAMES F. DAVEY
Clerk of the Court

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN LIBRARY ASSOCIATION,
50 East Huron Street
Chicago, Illinois 60611
(312) 944-6780;

DISTRICT OF COLUMBIA LIBRARY
ASSOCIATION,
Suite 531
1346 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 466-2028;

VIRGINIA LIBRARY ASSOCIATION,
80 South Early Street
Alexandria, Virginia 22304
(703) 370-6020;

AMERICAN HISTORICAL ASSOCIATION,
400 A Street, S.E.
Washington, D.C. 20003
(202) 544-2422;

ORGANIZATION OF AMERICAN HISTORIANS,
112 North Bryan
Bloomington, Indiana 47401;
(812) 335-7311

CENTER FOR NATIONAL SECURITY
STUDIES,
122 Maryland Avenue, N.E.
Washington, D.C. 20002
(202) 544-5380; and

JAY PETERZELL,
1619 S Street, N.W.
Washington, D.C. 20009
(202) 483-0226

Plaintiffs,

v.

LINCOLN FAURER,
Director
National Security Agency
Fort George C. Meade, Maryland
20755

Defendant.

84-0481

Civil Action No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
TO STOP DEFENDANT AND HIS AGENTS FROM INTERFERING WITH PLAINTIFFS'
ACCESS TO DOCUMENTS AT A LIBRARY

1. This suit seeks (1) a declaration that defendant and his agents have no authority to interfere with plaintiffs' access to documents which for several years have been publicly available at the George C. Marshall Library, and (2) an injunction restraining defendant and his agents from further efforts to interfere with plaintiffs' access to these documents.

2. This court's jurisdiction is invoked pursuant to 28 U.S.C. § 1331.

3. Venue is laid in this court pursuant to 28 U.S.C. § 1391(e).

4. Plaintiff American Library Association, founded in 1876, is a nonprofit, educational organization committed to the preservation of the American library as a resource indispensable to the intellectual, cultural, and educational welfare of the Nation. The Association's direct membership includes nearly 40,000 librarians, libraries, and members of the general public; through its affiliation with constituent state library associations, the Association additionally represents over 29,000 public, university, and special libraries, over 90,000 elementary and secondary school libraries and media centers, and over 120,000 librarians.

5. Plaintiff District of Columbia Library Association, founded in 1894, is an organization of approximately 900 librarians in the Washington, D.C. metropolitan area devoted to the promotion and support of the interests of libraries and library service.

6. Plaintiff Virginia Library Association, founded in 1905, is an organization of approximately 1200 individuals and institutions throughout the Commonwealth of Virginia devoted to the promotion and support of libraries and library service.

7. Plaintiff American Historical Association is a nonprofit membership corporation, founded in 1884 and incorporated by Congress in 1889, for the promotion of historical studies, the collection and preservation of historical manuscripts, and the dissemination of historical research. The Association's 15,000 members include faculty in secondary schools, colleges, and universities, and historians in federal, state, and local government and many other professions.

8. Plaintiff Organization of American Historians, which was founded in 1907 as the Mississippi Valley Historical Association and assumed its present name in 1965, represents approximately 8,600 individual members who are interested in the history of the western hemisphere. Among its various activities, the Organization has actively opposed attempts by government to place arbitrary restrictions on access to public and private documents. Since many OAH members are specialists in 20th-century United States foreign policy, the Organization is particularly interested in preserving access to the documents which are at issue in this suit.

9. Plaintiff Center for National Security Studies is a nonprofit organization devoted to enhancing public understanding and debate on issues concerning national security and civil liberties. Among its other activities, the Center maintains a library open to the public which contains books and primary source materials on a wide range of national security issues, including the history of the National Security Agency and other intelligence agencies.

10. Plaintiff Peterzell is a research associate at the Center for National Security Studies.

11. Defendant is the Director of the National Security Agency (NSA). He is sued only in his official capacity for declaratory and injunctive relief.

12. This controversy arises over the issue of public access to the papers of William F. Friedman.

13. Friedman was one of the leading figures in American cryptology from the time of World War I until his retirement from NSA in the mid-1950's.

14. At some point during the 1960's, Friedman made a gift of his collection of letters, personal papers, and government documents to the George C. Marshall Foundation, which maintains a library open to the public on the campus of the Virginia Military Institute in Lexington, Virginia.

15. The Friedman collection at the Marshall Library consists of some 47 five-inch boxes of correspondence and personal papers, approximately 700 monographs, 500 government documents and pamphlets, two five-drawer cabinets of clippings, and one box of photographs, certificates, and memorabilia.

16. Friedman intended that his collection should be available to scholars, researchers, and the public.

17. After Friedman's death in November 1969, his collection was shipped to the Marshall Library.

18. At the request of Friedman's wife, the collection remained closed to the public until Friedman's biographer, Ronald Clark, completed his biography of Friedman.

19. Before Clark was permitted access to the Friedman collection, NSA officials reviewed the entire collection and directed the Marshall Library to place certain documents in a secured vault where they would remain restricted from public access.

20. The material which NSA withdrew from the publicly available collection fell into two categories: classified material and unclassified material.

21. It is the policy of the Marshall library to follow NSA's instructions with respect to which portions of the Friedman collection must be restricted from public access.

22. Following NSA's withdrawal of certain documents and the completion of Clark's biography of Friedman, the remaining portions of the collection were opened to the public in 1977 or 1978.

23. At other times not specifically known to plaintiffs, NSA officials visited the Marshall Library to review the Friedman collection.

-6-

24. In 1979, James Bamford, a researcher who was writing a history of NSA, requested the Marshall Library to open the previously withdrawn but unclassified materials in the Friedman collection. In September 1979, the library opened these materials to Bamford and to the public at large.

25. In October 1980, three officials from NSA -- Wallace Winkler, David Tisdale, and Russell Fisher -- visited the Marshall Library and reviewed the open portions of the Friedman collection. The NSA officials then directed the library to withdraw some of the documents which had been made available to Bamford.

26. In October 1981, the same three NSA officials again visited the Marshall Library and reviewed the Friedman collection.

27. In April 1983, following publication of Bamford's history of NSA, The Puzzle Palace, two NSA officials, Michael Levin and Russell Fisher, again visited the Marshall Library and directed the library to remove additional items from the open collection, including items which Bamford had referenced in his book.

28. On each occasion when NSA officials have directed the removal of documents from the open collection, they have classified some of the withdrawn documents and left some of the withdrawn documents unclassified.

29. On May 31 and June 1, 1983, plaintiff Peterzell visited the Marshall Library and reviewed the open portions of the Friedman collection.

30. Peterzell found that each document which has been withdrawn from the collection has been replaced by a "withdrawal

-7-

notice." These notices identify the withdrawn document and indicate whether it has been withdrawn because it is classified or for other reasons.

31. Peterzell learned from library officials and from the withdrawal notices that the majority of the withdrawn items have been withdrawn for "other reasons" than classification.

32. When Peterzell requested access to the documents which had been withdrawn from the public collection, library officials told him that they are bound by NSA's directions and that Peterzell cannot have access to the withdrawn items unless NSA consents to making them available to the public.

33. On January 5, 1984, plaintiff Peterzell telephoned the Marshall Library to inquire whether any of the withdrawn documents have been returned to the public collection, and he was informed that there had been no change in the status of the documents since his visit to the library.

34. On January 16 and 23, 1984, plaintiffs, through counsel, wrote to defendant to inform him that they seek access to all documents in the Friedman collection which at any time have been available for public inspection at the Marshall Library and to request that defendant rescind NSA's direction to the Marshall Library that it must withhold from public access documents which have been available for public inspection.

35. On January 26, 1984, NSA's General Counsel telephoned plaintiffs' counsel to inform him that NSA would not comply with plaintiffs' request.

36. Plaintiffs seek access to the withdrawn documents that would be available to them and other members of the public

but for the insistence of NSA that these documents be withheld from the public collection.

37. NSA lacks legal authority to direct a private library to withdraw unclassified documents from public access.

38. NSA's direction to the Marshall Library to remove unclassified documents from public access is an unwarranted interference with the First Amendment rights of plaintiffs and other members of the public who seek access to such documents in the Friedman collection.

39. NSA lacks legal authority to classify documents that have been available to the public and to direct a private library to withdraw such documents from public access.

40. NSA's classification of documents which have been available to the public and the Agency's direction to the Marshall Library to remove such documents from public access are an unwarranted interference with the First Amendment rights of plaintiffs and other members of the public who seek access to such documents in the Friedman collection.

41. NSA's insistence that the Marshall Library withhold from public access documents which previously have been available to the public is causing irreparable harm to plaintiffs and other members of the public by blocking access to source materials for historical research in the Friedman collection.

42. Plaintiffs have no adequate remedy at law.

WHEREFORE, plaintiffs pray for the following relief from this court:

1. A declaration that NSA lacks legal authority to direct a private library to withdraw unclassified documents from public access.
2. A declaration that NSA's direction to the Marshall Library to remove unclassified documents from public access is an unwarranted interference with the First Amendment rights of plaintiffs and other members of the public who seek access to such documents in the Friedman collection.
3. A declaration that NSA lacks legal authority to classify documents that have been available to the public and to direct a private library to withdraw such documents from public access.
4. A declaration that NSA's classification of documents which have been available to the public and the Agency's direction to the Marshall Library to remove such documents from public access are an unwarranted interference with the First Amendment rights of plaintiffs and other members of the public who seek access to such documents in the Friedman collection.
5. An injunction restraining defendant and his agents from continuing to insist that the Marshall Library withdraw from public access documents which previously have been available to the public.
6. Such other relief as the court deems to be just and appropriate.

DATED: February 15, 1984

Mark H. Lynch

Mark H. Lynch

Susan W. Shaffer

Susan W. Shaffer

American Civil Liberties Union
Foundation
122 Maryland Avenue, N.E.
Washington, D.C. 20002
(202) 544-5388

Leonard Rubenstein (mfr)

Leonard Rubenstein

Virginia Civil Liberties Union
Suite 800
2021 L Street, N.W.
Washington, D.C. 20036
(202) 467-5730

Counsel for Plaintiffs