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Grave Issue In Stanford Daily Search

By Don West
Examiner Staff Writer

PALO ALTO — Felicity Barringer and James Zurcher stand on either side of a dispute with far-reaching implications for the public's right to an unfettered press on one hand and the public's right to protection from law-breakers on the other.

The two rights came in conflict last week when Zurcher, the Palo Alto police chief, dispatched officers to search files of Miss Barringer's domain, the Stanford Daily.

Nobody is having any trouble despite protests by the campus newspaper. The judge, police officials and prosecutors involved in the search have indicated they wouldn't hesitate to seek a similar warrant tomorrow if they believed it would produce incriminating evidence.

Zurcher obtained the warrant on Monday from Judge J. Barton Phelps of Palo Alto Mountain View Municipal Court.

Photo of Crime

Officers were looking for a photograph or negative believed to have been made by a student photographer April 9, when a nine-man police squad was overwhelmed by demonstrators escaping from a barricade within Stanford Medical Center. The photograph would have been evidence of a crime, the police argued. But they found nothing.

Many editors fear that the search warrant, which Judge Phelps readily affirmed he would have issued for The Examiner or any other newspaper's files, may endanger the ability of newsmen to gather news.

Constitutional protections and court rulings for protec-

tion of confidential materials seemed to editors to melt away under threats of search warrants.

Miss Barringer's editorial board, controlled by students, had long, as a policy matter, destroyed photos and negatives not published, a policy more and more newspapers now use. (The Examiner does not destroy unpublished photos.)

Other Papers

Neither the Palo Alto Times nor the San Jose Mercury and News, which have circulation in the area, will release unpublished photos or negatives.

Al Bodt, editor of the Times, said that such material is destroyed and not kept

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on file. Paul Conroy, managing editor of the Mercury and News, said no files are kept of unpublished pictures.

Officers of the American Newspaper Guild, which represents reporters and photographers at nine Bay Area dailies, had sought this policy after several members were beaten by demonstrators.

Miss Barringer editorialized following the search that the police actions hampered "our ability to keep files which may be of future informational use."

She added, however, more important even than keeping these files is the necessity for a news organization to keep itself from becoming a filing service for evidence to be used in civil or criminal courts.

Chief Zurcher, Judge

Phelps and State Brown, the deputy district attorney who successfully persuaded the judge to issue the warrant, see the issues otherwise.

The plan was to search the case Zurcher had filed to station police officers on both sides of the demonstrators' barricades. One side where dissidents emerged singing clubs of officers, a cameraman was misidentified as a student photographer, and he was actually in the area of Stanford University.

Zurcher said he didn't make a request for the photo

because existing policy at The Daily made him fear any evidence would be destroyed if the editors knew police were on their way.

Brown said he discussed the First Amendment guarantees of press freedom with the judge before obtaining the search warrant.

"I believe there is a vast difference between notes taken by a reporter and a picture taken by a photographer," said Brown.

"One is a subjective interpretation and could contain confidential information while a photographer's work,

certainly that night at Stanford is something anyone there could have seen. He only captures for posterity that split second of action," said the deputy district attorney.

Search warrants must be specific in what is sought or suspected to be in a certain location, Brown argues, thereby excluding notes and other confidential material.

Another step in the chain of "due process" also protects any material gathered in this method, all three contended.

Search warrants are usually issued by judges with only

a recitation of facts and little if any research into complicated court law and precedents. Police officers often awaken judges in the middle of the night to obtain such warrants. Challenges of evidence gained in such a manner is consequently required at several subsequent stages.

Damage to the newsgathering process could already have been done, however, whether the evidence is admitted or not.

Reporters often obtain information from reluctant news sources only through promises of anonymity and protections of other sorts.