

# STANFORD UNIVERSITY NEWS SERVICE

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EDITORS: Cautionary note on conflict of interest: the author of the following release witnessed both the hospital sit-in and the newspaper search and made a personal contribution to *The Daily's* defense.

FOR IMMEDIATE RELEASE

SAN FRANCISCO -

STANFORD HOSPITAL

Palo Alto police use of a search warrant in the offices of *The Stanford Daily* was unconstitutional, the U.S. Circuit Court of Appeals for the Ninth District ruled unanimously late Thursday, Jan. 3.

The three-judge panel headed by Shirley Hufstедler adopted the opinion of District Court Judge Robert F. Peckham that "a search presents an overwhelming threat to the press' ability to gather and disseminate the news."

In his Oct. 5, 1972, ruling in the unprecedented case, Peckham said that third parties, not suspected of a crime, are entitled to greater protection under the Fourth Amendment, concerning search and seizure, than are suspects. This is particularly true in cases involving the press "when First Amendment interests are involved," he added.

"Third-party searches of a newspaper office are impermissible in all but a very few situations. . . . A search warrant should be permitted only in rare circumstances where there is a clear showing that 1) important materials will be destroyed or removed from the jurisdiction and 2) a restraining order would be futile.

"To stop short of this standard would be to sneer at all the First Amendment has come to represent in our society."

The search occurred in the campus offices of the independent student newspaper April 12, 1971, when police were looking for pictures of a sit-in at Stanford Hospital. Nothing was taken during the search, which is believed to have been the first by police of a newspaper office in the U.S.

Since then at least "half a dozen" press offices and radio stations have been subject to searches, according to Jerome B. Falk, who represented *The Daily* in the initial trial and the appeal.

The Circuit Court also upheld the award of more than \$50,000 in legal fees and related costs to *The Daily* by Peckham. Its decision noted that the 1976 Civil Rights Attorney's Fees Awards Act "expressly states that it is applicable to actions like the present case. And the legislative history is crystalline on the point. . . .

"The (U.S.) Senate Report cited the award in this very case as an example of the fee awards which it approved and which it intended to authorize in the Act."

Felicity Barringer, editor of *The Daily* when the search occurred, said she was "ecstatic" at the verdict. She is now a *Washington Post* reporter. Other plaintiffs in the original suit included *Daily* staffers Fred Mann, now a press aide to U.S. Sen. Lowell Weicker; Edward H. Kohn, now a reporter for the *St. Louis Post-Dispatch*; and Hall Daily, now a staffer with the *Pasadena Star-News*, among others.

Palo Alto has 20 days to file for a rehearing with the circuit court and 60 days to ask for a writ of certiorari from the U.S. Supreme Court. Marilyn Taketa, assistant Palo Alto attorney who argued the case, said no decision has been made on a rehearing or an appeal.

If the verdict stands, it will "nip in the bud a practice which never should have happened," Falk said. Stanford Law Prof. Anthony Amsterdam and Robert Mnookin also represented *The Daily*. Falk and Mnookin are with the San Francisco firm of Howard, Prim, Rice, Nemerovski, Canady & Pollak.

Sigma Delta Chi's Freedom of Information Committee, the New York Times Foundation, the CBS Foundation, and several editors outside the Bay Area helped *The Daily*.

The search was strongly condemned by Stanford President Richard W. Lyman, the Associated Press Managing Editors, and the American Society of Newspaper Editors, among others.