

Search Warrants Banned Unless Crime Suspected

Peckham 10/7/72

SAN FRANCISCO (AP) — A federal judge has ruled that the U.S. Constitution bans police searches of newspapers, businesses or citizens not suspected of a crime. He said the proper legal tool is a subpoena.

A search warrant can be issued only with a showing that there is "proper cause" to believe records or materials sought in a criminal investigation might be destroyed, U.S. District Court Judge Robert F. Peckham said on Thursday.

Peckham ruled in a suit by the Stanford Daily, Stanford University's campus paper, against a 1971 Palo Alto police search of its office.

Municipal Court Judge J. Barton Phelps issued the search warrant after nine police officers were injured during violence at a demonstration at Stanford Hospital April 9, 1971. The paper published pictures of the demonstration and the warrant authorized a search for film and negatives to identify the demonstrators.

Peckham ruled the issue was broader than the rights of a free press guaranteed under the First Amendment.

"The basic question in this

case is whether third parties — those not suspected of a crime — are entitled to the same, if not greater, protection under the Fourth Amendment than those suspected of a crime," he said.

The Fourth Amendment bars unreasonable search and seizure.

Peckham declared that without a showing that a subpoena was impractical or that evidence might be destroyed, a police search of a third party is "unreasonable per se."

A warrant for such a search violates the Fourth Amendment, he said.

Robert H. Mnookin, one of the paper's attorneys, said legal research on the case showed that the 1971 search apparently was the first in the nation's history of a newspaper not under suspicion of criminal conduct.

"The threat to the press's news gathering ability is much more imposing with a search warrant than with a subpoena," Peckham said.

"The police officers executing a warrant will be in a position to see notes and photographs not even mentioned in the warrant," he said.

"The indiscriminate nature of such a search renders vulnerable all confidential materials, whether or not identified in the warrant.

"The concomitant threat to the gathering of news — which frequently depends on confidential relationships — is staggering."