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Newspaper Wins Key Search Suit

U.S. District Judge Robert F. Peckham issued a ruling here yesterday in the long-pending suit between the Stanford Daily and Palo Alto Police Department that has ramifications for the nation's news media.

He ruled that the search of four policemen with a search warrant conducted at the student newspaper's office on April 12, 1971, was illegal.

DECISION

The landmark decision stated that police must get subpoenas rather than search warrants in order to search for evidence believed held by a third party not directly involved in a crime.

"Because a search presents an overwhelming threat to the press' ability to gather and disseminate the news, and because less drastic means exist to obtain the same information, third-party searches of a newspaper office are impermissible in all but a very few situations," Judge Peckham said.

"A search warrant should be permitted only in the rare circumstance 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."

The 45-minute search was conducted last April in an attempt to get photo evidence in connection with a demonstration held two days earlier at Stanford University Hospital, in which nine policemen were injured.

The searchers rifled desks, dark rooms, photo files, personal papers and several cans of trash before leaving empty-handed at about 6:35 p.m.

The Daily had published some pictures that its photographers had taken at the demonstration, but police were looking for others

which might be used in evidence against those who had attacked officers.

Attorneys for the Daily contended that if such unpublished material was used as evidence or to identify attackers, it would make it harder for the paper's photographers to get pictures at subsequent demonstrations.

They also argued that photographs in the office were mixed in with notes taken in confidence by a reporter.

Judge Peckham agreed on both counts.

"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," the ruling stated.

"It is the court's belief that unless the Magistrate

has before him a sworn affidavit establishing proper cause to believe that the materials in question will be destroyed, or that a subpoena duces tecum is otherwise impractical, a search of a third party for materials in his possession is unreasonable. . ."

The judge noted that a subpoena duces tecum, which simply orders the recipient to bring into court the records enumerated on the subpoena, "obviously is much less intrusive than a search warrant."

"As is apparent from the affidavits, newspaper offices are much more disorganized than, say, the average law office," the judge wrote. "A search for particular photographs or notes will mean rummaging through virtually all the drawers and cabinets in the office."