

# Search of Paper Illegal

By Tom Hall

A far-reaching decision termed "of enormous importance" to not only newspapers but also persons and businesses wanting to protect the privacy of their homes and offices has been handed down here.

The ruling came from U. S. District Judge Robert F. Peckham yesterday while holding that an April 12, 1971, search with warrant by Palo Alto police of the Stanford University Daily newspaper office was illegal and violated the Fourth Amendment

The amendment relates to illegal searches.

The jurist held that search warrants against "third parties," those not suspected of a crime, should be used only on rare occasions when an alternative method of using a subpoena duces tecum (calling for production of records) is "impractical."

## Destruction

He included as being impractical the possibility the records or materials sought would be destroyed or removed. He found no such circumstances in the Stanford Daily incident.

Police obtained a search warrant the day of the newspaper raid from Municipal Judge J. Barton Phelps of the Palo Alto - Mountain View judicial district.

They were looking for negatives, films and pictures related to photos published April 11 in the Daily showing demonstrators at the Stanford University Hospital April 9.

Although police took nothing, the search was thorough, Judge Peckham noted, "as officers examined filing cabinets, baskets and unlocked desk drawers."

## Confidential Notes

This placed officers in "a position to see confidential notes of reporters from sources who had been prom-

ised their identity would not be revealed."

"The basic question in this case," he said, "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.

Holding that "third parties are entitled to greater protection, particularly when First Amendment interests are involved," he said:

## Violation

"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 (calling for production of materials) is otherwise 'impractical,' a search of a third party for materials in his possession is unreasonable per se, and therefore violative of the Fourth Amendment."

He emphasized "another important factor" a magistrate should consider before issuing a search warrant is First Amendment rights (freedom of press, etc.).

Rejecting one defendant's argument that newsgathering is not protected by the First Amendment and that reporters and photographers have no greater Fourth Amendment protection than other citizens, Judge Peckham said:

"Both the premise and conclusion are incorrect."

## Decisions Cited

He then cited three U. S.

Supreme Court decisions involving newspapers' rights, including the case of New York Times reporter Earl Caldwell, saying:

"They clearly state that the First Amendment protects newspapers in their newsgathering functions."

The importance to the third party of using a subpoena rather than a search warrant, he noted, is that there are safeguards whereby the third party subpoenaed may move to quash the subpoena in court

## Balance

The ensuring argument and decision on whether material or information should be produced by a newspaper or reporter would be based on balancing the First Amendment press freedom against "a compelling state interest" in information or material sought.

"The First Amendment infringements with searches of newspapers are quite serious," the judge said.

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

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