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¹The following may be found in the Appendices of both petitions for certiorari: The opinion of the Court of Appeals filed February 2, 1977 (Appendix A); the Court of Appeals' order denying the petition for rehearing and rejecting the suggestions for rehearing en banc filed March 28, 1977 (Appendix B); the opinion of the United States District Court for the Northern District of California filed October 5, 1972 (Appendix C); memorandum and order of the United States District Court for the Northern District of California granting attorneys' fees filed August 10, 1973 (Appendix D); memorandum and order of the United States District Court for the Northern District of California fixing attorneys' fees at \$47,500. (Appendix E); judgment of the United States District Court for the Northern District of California filed July 23, 1974 (Appendix F); and notice of entry of judgment by the United States District Court for the Northern District of California filed July 25, 1974 (Appendix G).

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JOINT APPENDIX

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1977

No. 76-1484

JAMES ZURCHER, et al.,
Petitioners,

vs.

THE STANFORD DAILY, et al.

No. 76-1600

LOUIS P. BERGNA, District Attorney, et al.,
Petitioners,

vs.

THE STANFORD DAILY, et al.

**On Writs of Certiorari to the United States Court of Appeals
for the Ninth Circuit**

**Petitions for Writ of Certiorari Filed
April 26 and May 16, 1977
Certiorari Granted October 3, 1977**

**CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES**

- May 13, 1971 (USDC)—Plaintiffs' complaint for declaratory and injunctive relief filed in the United States District Court for the Northern District of California.
- May 13, 1971 (USDC)—Order for service of process by Emory Wes Sage filed.
- May 13, 1971 (USDC)—Plaintiffs' notice and motion for intradistrict transfer of venue to San Jose filed.
- June 2, 1971 (USDC)—Stipulation extending time to June 11, 1971 for defendants to answer complaint filed.
- June 2, 1971 (USDC)—Return on summons for all defendants filed.
- June 2, 1971 (USDC)—Answer to complaint of defendants Phelps, Bergna and Brown filed.
- June 4, 1971 (USDC)—Defendants' notice of requirement of three-judge court filed.
- June 7, 1971 (USDC)—Plaintiffs' motion for transfer of venue granted and case transferred to San Jose calendar.
- June 8, 1971 (USDC)—Answer to complaint of police defendants filed.
- June 10, 1971 (USDC)—Police defendants notice of requirement of three-judge court filed.
- June 11, 1971 (USDC)—Case continued to September 10, 1971 for hearing on motions.

June 25, 1971 (USDC)—Stipulation on time to file pleadings on three-judge court and dismissal approved and filed.

August 12, 1971 (USDC)—Defendants' memorandum on three-judge court filed.

August 13, 1971 (USDC)—Defendants' notice and motion to dismiss or stay action filed.

August 23, 1971 (USDC)—Plaintiffs' memorandum of points and authorities in opposition to defendants' motion to dismiss or stay and in opposition to three-judge court filed.

August 30, 1971 (USDC)—Defendants' Bergna, Brown and Phelps reply to plaintiffs' memorandum of points and authorities in opposition to motion to dismiss or stay filed.

September 8, 1971 (USDC)—Defendants' reply to plaintiffs' memorandum of points and authorities in opposition to three-judge court filed.

September 10, 1971 (USDC)—Defendants' motion to convene three-judge court and to dismiss or stay submitted.

September 23, 1971 (USDC)—Request for three-judge court denied and motion to dismiss or abstain denied.

October 8, 1971 (USDC)—Defendants' notice of time and place of taking depositions of plaintiffs filed.

June 12, 1972 (USDC)—Defendants' notice of time and place of taking depositions of plaintiffs filed.

- June 14, 1972 (USDC)—Plaintiffs' notice of motion and motion for protective order filed.
- June 14, 1972 (USDC)—Affidavit of Jerome B. Falk, Jr. filed.
- June 14, 1972 (USDC)—Affidavit of service by mail of document filed.
- June 19, 1972 (USDC)—Plaintiffs' notice of motion and motion for summary judgment filed.
- June 19, 1972 (USDC)—Plaintiffs' points and authorities in support of motion for summary judgment filed.
- June 19, 1972 (USDC)—Affidavits in support of plaintiffs' motion for summary judgment filed.
- June 21, 1972 (USDC)—Plaintiffs' corrected notice of motion for protective order filed.
- June 26, 1972 (USDC)—Defendants' request for admissions filed.
- July 7, 1972 (USDC)—Defendants' memorandum of points and authorities and affidavits in opposition to motion for summary judgment filed.
- July 7, 1972 (USDC)—Index to affidavits in opposition to motion for summary judgment filed.
- July 7, 1972 (USDC)—Defendants' memorandum of points and authorities and affidavits in opposition to motion for protective order filed.
- July 10, 1972 (USDC)—Plaintiffs' reply memorandum filed.

- July 10, 1972 (USDC)—Defendants' memorandum in opposition to plaintiffs' motion for summary judgment and partial list of fact issues filed.
- July 10, 1972 (USDC)—Plaintiffs' motion for protective order and for summary judgment order submitted and motion for summary judgment severed as to defendant Judge Phelps.
- October 5, 1972 (USDC)—Memorandum and order ruling in favor of plaintiffs but denying permanent injunction filed.
- November 6, 1972 (USDC)—Notice of appeal filed by defendants.
- November 7, 1972 (USDC)—Notice of filing of appeal mailed to parties of record and Ninth Circuit Court of Appeals.
- November 9, 1972 (USDC)—Substitution of attorneys for defendant Phelps filed.
- November 15, 1972 (USDC)—Designation of record on appeal filed.
- November 16, 1972 (USDC)—Judgment filed on November 14, 1972, entered and notice of entry of judgment mailed to parties of record.
- November 16, 1972 (USDC)—Clerk's memorandum to counsel on designation of record filed.
- November 17, 1972 (USDC)—Defendants Bergna's and Brown's notice of disapproval of form of judgment filed.
- December 15, 1972 (USDC)—Record on appeal mailed to Ninth Circuit Court of Appeals.

- December 15, 1972 (USDC)—Dismissal with prejudice as to defendant J. Barton Phelps filed.
- December 15, 1972 (USDC)—Order setting aside and vacating judgment failed.
- December 21, 1972 (USDC)—Receipt from Ninth Circuit Court of Appeals of record on appeal filed.
- January 3, 1973 (USDC)—First supplemental record on appeal mailed to Ninth Circuit Court of Appeals.
- February 7, 1973 (USDC)—Plaintiffs' notice of motion and motion for attorneys' fees filed.
- March 27, 1973 (USDC)—Memorandum of points and authorities in opposition to plaintiffs' motion for attorneys' fees and proof of service of memorandum filed.
- March 30, 1973 (USDC)—Plaintiffs' reply memorandum in support of motion for attorneys' fees filed.
- March 30, 1973 (USDC)—Supplemental affidavit of Jerome B. Falk, Jr. filed.
- April 2, 1973 (USDC)—Motion for attorneys' fees submitted.
- April 16, 1973 (USDC)—Defendants' notice of motion and motion to dismiss complaint or for summary judgment filed.
- June 5, 1973 (USDC)—Plaintiffs' memorandum of points and authorities in opposition to defendants' motion to dismiss or for summary judgment filed.

- June 11, 1973 (USDC)—Stipulation and order on plaintiffs' response to defendants' motion to dismiss or for summary judgment, defendants' reply, and submission of the motion filed.
- June 19, 1973 (USDC)—Plaintiffs' notice of motion and motion for preliminary injunction and order shorting time for service of motion on defendants filed.
- June 20, 1973 (USDC)—Affidavit of service by mail of notice and motion for preliminary injunction filed.
- June 20, 1973 (USDC)—Reply memorandum in support of defendants' motion to dismiss complaint or for summary judgment filed.
- June 25, 1973 (USDC)—Memorandum of points and authorities in opposition to plaintiffs' motion for a preliminary injunction filed.
- June 27, 1973 (USDC)—Argument in opposition to request for preliminary injunction filed.
- June 27, 1973 (USDC)—Motion for preliminary injunction submitted.
- August 10, 1973 (USDC)—Memorandum and order that plaintiffs' motion for award of reasonable attorneys' fees as cost be granted filed.
- September 28, 1973 (USDC)—Unreported minute order that plaintiffs' motion for preliminary injunction is denied and further order that motion of defendant Palo Alto police parties is denied filed.

- January 9, 1974 (USDC)—Plaintiffs' notice of motion and motion for award of attorneys' fees filed.
- January 10, 1974 (USDC)—Clerk's notice of resetting plaintiffs' motion for award of attorneys' fees filed.
- February 19, 1974 (USDC)—Depositions of Robert H. Mnookin, Jerome B. Falk, and Franklin R. Garfield filed.
- March 4, 1974 (USDC)—Stipulation and order continuing motion for attorneys' fees filed.
- March 13, 1974 (USDC)—Agreement and order to continue plaintiffs' motion for attorneys' fees filed.
- March 18, 1974 (USDC)—Memorandum of defendants' on the amount of attorneys' fees to be awarded filed.
- March 21, 1974 (USDC)—Opposition of defendants Bergna and Brown to the amount plaintiffs request for attorneys' fees filed.
- March 21, 1974 (USDC)—Affidavit of Peter G. Stone filed.
- April 1, 1974 (USDC)—Reply memorandum in support of plaintiffs' motion for award of attorneys' fees filed.
- April 1, 1974 (USDC)—Affidavit of Jerome B. Falk, Jr. filed.
- April 8, 1974 (USDC)—Plaintiffs' motion for attorneys' fees submitted.

- April 8, 1974 (USDC)—Corrections to depositions of Garfield and Falk filed.
- April 16, 1974 (USDC)—Corrections to deposition of Robert Mnookin filed.
- July 17, 1974 (USDC)—Memorandum and order that plaintiffs be awarded attorneys' fees in the sum of \$47,500 filed.
- July 25, 1974 (USDC)—Judgment that plaintiffs are entitled to declaratory relief in conformity with memorandum and order previously filed, that plaintiffs recover attorneys' fees with interest, that plaintiffs recover their other costs of suit, and that the judgment is without prejudice to plaintiffs seeking further relief entered and notice of entry of judgment filed.
- August 6, 1974 (USDC)—Plaintiffs' motion to tax costs filed.
- August 12, 1974 (USDC)—Clerk's notice that \$147 in costs is taxed filed.
- August 16, 1974 (USDC)—First supplemental certificate of clerk to record on appeal filed.
- August 21, 1974 (USDC)—Joint notice of appeal to the Court of Appeals filed by defendants.
- August 22, 1974 (USDC)—Notice to counsel of record on appeal mailed.
- September 4, 1974 (USDC)—Plaintiffs and defendants' designation of the record on appeal filed.

- September 13, 1974 (USDC)—Application for order for extension of time for filing record and docketing appeal and affidavit in support thereof filed.
- September 13, 1974 (USDC)—Order extending time to file record and docket appeal filed.
- September 13, 1974 (USDC)—Defendants' supersedeas bond on appeal approved and filed.
- November 20, 1974 (USCA)—Case docketed and appearances of counsel entered.
- November 20, 1974 (USCA)—Appellants' motion for extension of time to file record filed.
- November 27, 1974 (USCA)—Order granting appellants' motion for extension of time to file record entered.
- November 30, 1974 (USCA)—Appellants' motion for extension of time to file record filed.
- December 9, 1974 (USDC)—Defendants Bergna's and Brown's supersedeas bond on appeal approved and filed.
- December 9, 1974 (USDC)—Supersedeas bond on appeal approved and filed.
- January 6, 1975 (USCA)—Order granting extension of time to file record on appeal entered.
- January 7, 1975 (USDC)—Reporter's Transcript of June 11, 1971, September 10, 1971, July 10, 1972, April 2, 1972, and June 27, 1973 filed.
- January 20, 1975 (USDC)—Record sent to Circuit Court of Appeals and notices mailed to counsel of record.

- January 21, 1975 (USCA)—Certified transcript of record on appeal filed.
- March 24, 1975 (USDC)—Receipt of record from Ninth Circuit Court of Appeals filed.
- April 3, 1975 (USDC)—Two additional copies of the record filed.
- April 15, 1974 (USDC)—Appellants' ex parte motion for order to augment the record and for extension of time to file appellants' brief filed.
- April 16, 1975 (USDC)—Letter from Ninth Circuit Court of Appeals to counsel on renumbering pages of the record on appeal filed.
- April 22, 1975 (USCA)—Order granting appellants' motion to augment the record and granting further time for filing appellants' brief filed.
- April 24, 1975 (USDC)—Copy of order from Ninth Circuit Court of Appeals granting defendants' motion to augment record on appeal filed.
- April 24, 1975 (USDC)—First supplemental record on appeal to the Ninth Circuit Court of Appeals.
- May 16, 1975 (USDC)—Appellants' ex parte motion for extension of time for filing brief filed.
- May 21, 1975 (USCA)—Order extending time for filing appellants' brief filed.
- May 21, 1975 (USCA)—Two additional copies of the record filed.
- May 22, 1975 (USCA)—Certified supplemental transcript of record on appeal filed.

- June 5, 1975 (USCA)—Received 25 copies of amicus brief with motion for leave to file.
- June 13, 1975 (USCA)—Appellants' brief filed.
- June 17, 1975 (USCA)—The motion to file amicus curiae brief denied.
- July 14, 1975 (USCA)—Appellees' motion for extension of time to file brief filed.
- July 21, 1975 (USCA)—25 copies of amicus curiae brief for State of California received with motion to permit late filing of brief.
- July 24, 1975 (USCA)—Clerk ordered to file the brief of the State of California.
- July 24, 1975 (USCA)—Order granting appellees an extension of time to file brief filed.
- August 8, 1975 (USCA)—Appellees' brief filed.
- August 22, 1975 (USCA)—Appellees' reply brief filed.
- October 6, 1976 (USCA)—Received letter from Attorney General about additional citations.
- October 6, 1976 (USCA)—Received letter from appellees about additional citations.
- October 13, 1976 (USCA)—Case argued and submitted.
- November 3, 1976 (USCA)—Received appellees' supplemental brief with motion for leave to file it.
- November 22, 1976 (USCA)—Appellees' motion for leave to file a supplemental brief is granted and appellants are given ten days in which to reply.

Submission is vacated until ten days following entry of the order.

December 2, 1976 (USCA)—Appellants' response to supplemental brief of appellees filed.

January 19, 1977 (USCA)—Received letter from Jerome B. Falk about additional citations.

February 3, 1977 (USCA)—Received letter from appellant requesting that no consideration be given to the Wade decision.

February 2, 1977 (USCA)—Opinion affirming the decision below filed and judgment entered.

February 14, 1977 (USCA)—Appellants' notice of joining of co-counsel filed.

February 16, 1977 (USCA)—Petition for rehearing and suggestion for rehearing en banc filed.

March 9, 1977 (USCA)—Received from appellant letter clarifying citation of a case in the petition for rehearing.

March 28, 1977 (USCA)—Order denying petition for rehearing and the suggestion for rehearing en banc filed.

April 1, 1977 (USCA)—Appellant's motion for stay of mandate filed.

April 5, 1977 (USCA)—Appellees' memorandum in opposition to motion for stay of mandate filed.

April 8, 1977 (USCA)—Appellants' reply to memorandum in opposition to motion for stay of mandate filed.

- April 12, 1977 (USCA)—Order staying issuance of mandate to April 27 filed.
- April 18, 1977 (USCA)—Appellants' motion for extension of stay of mandate filed.
- April 19, 1977 (USCA)—Appellees' memorandum in opposition to motion for extension of stay of mandate filed.
- April 26, 1977 (USCA)—Received telephone call that case being docketed in the Supreme Court with No. 76-1484.
- April 29, 1977 (USCA)—Received Supreme Court notice of filing of petition for certiorari on April 26, 1977, assigned No. 76-1484.
- May 23, 1977 (USCA)—Received Supreme Court notice of filing of petition for certiorari on May 16, 1977, assigned No. 76-1600.

In the United States District Court
for the Northern District of California

Civil Action No. C-71 912 AJZ

The Stanford Daily, Felicity A. Barringer, Fred Mann, Edward H. Kohn, Richard Lee Greathouse, Robert Litterman, Hall Daily and Steven G. Ungar,

Plaintiffs,

vs.

James Zurcher, individually and as Chief of Police of the City of Palo Alto, County of Santa Clara, State of California, James Bonander, Paul Deisinger, Donald Martin, and Richard Peardon, all individually and as Police Officers of the City of Palo Alto, County of Santa Clara, State of California, Louis P. Bergna, individually and as District Attorney for the County of Santa Clara, State of California, Craig Brown, individually and as Deputy District Attorney for the County of Santa Clara, State of California, J. Barton Phelps, individually and as Judge of the Municipal Court of the Palo Alto-Mountain View Judicial District, Santa Clara County, State of California,

Defendants.

[Filed May 13, 1971]

CIVIL RIGHTS ACTION COMPLAINT

Jurisdiction

I.

This is an action pursuant to 42 U.S.C. §1983 to redress the deprivation, under color of state law, of rights secured to Plaintiffs by the First, Fourth and Fourteenth Amendments to the Constitution of the United States. Jurisdiction is conferred on this Court by 28 U.S.C. §1343.

Parties

II.

Plaintiff, *The Stanford Daily*, is an independent newspaper published by students at Stanford University, Santa Clara County, Stanford, California.

III.

Plaintiffs Felicity A. Barringer, Fred Mann, Edward H. Kohn, Richard Lee Greathouse, Robert Litterman, Hall Daily and Steven G. Ungar are officers or staff members of *The Stanford Daily*.

IV.

Defendant James Zurcher is Chief of Police of the City of Palo Alto, County of Santa Clara, State of California. Defendants James Bonander, Paul Deisinger, Donald Martin, and Richard Peardon are Palo Alto police officers under the command of Chief Zurcher.

V.

Defendant Louis P. Bergna is the District Attorney for the County of Santa Clara, State of California.

Defendant Craig Brown is a Deputy District Attorney for the County of Santa Clara, State of California.

VI.

Defendant J. Barton Phelps is Judge of the Municipal Court of the Palo Alto-Mountain View Judicial District, Santa Clara County, State of California.

Facts

VII.

The Stanford Daily is the only daily newspaper at the University. Its daily press run averages approximately 13,000 copies and its total readership is estimated at 20,000 persons. *The Stanford Daily* is an important source of news for its readers. Although its coverage includes national events, *The Stanford Daily's* primary focus is with news concerning Stanford University and the surrounding community. *The Daily* has provided continuing in-depth coverage of campus political activities of all descriptions, including meetings, speeches, rallies, demonstrations, confrontations and sit-ins.

VIII.

During the 1969-1970 academic year, *The Stanford Daily* found it increasingly difficult to cover some newsworthy events because participants were fearful that things said to, or observed or photographed by newsmen might ultimately end up in police files or somehow be used to prosecute them. Political demonstrators were often particularly apprehensive about

the presence of newspaper photographers at a demonstration, rally, or meeting held on campus. Photographers were in some instances, barred from wholly peaceful meetings. For example, on January 27, 1970 a campus group known as "The New Moratorium" excluded a photographer of *The Stanford Daily* from a room on the campus in which the group was meeting because of the fear that the pictures taken might be used to prosecute those in attendance. For the same reason, *Daily* photographers who were covering demonstrations were sometimes physically threatened or harassed by those participating in demonstrations on the Stanford campus. For example, during the protest against renewed American bombing in North Vietnam that took place in November of 1970, one photographer of *The Stanford Daily* was stopped by a crowd of people and forced to surrender his film.

IX.

Because of incidents like those described above, those responsible for the editorial policy of *The Stanford Daily* have for more than a year engaged in extensive consideration of the legal and professional obligations of the paper with respect to the possible use of materials and photographs in its files for purposes of law enforcement. During this time, members of *The Stanford Daily's* staff have consulted with experts in the field of journalism on the faculty of Stanford University and others actively engaged in the profession so that the complex factors bearing upon the appropriate policy might be fully consid-

ered. That analysis was and has been rendered more difficult because of the uncertainty of applicable legal principles.

X.

At all times, those engaged in the formulation of *The Stanford Daily's* policy were concerned with (1) the barriers to effective news gathering and reporting that a policy permitting disclosure of unpublished photographs or confidential materials would generate; and (2) the physical safety of *The Stanford Daily's* staff. On that basis, it adopted a policy that (1) *The Stanford Daily* would print any photograph which it considered newsworthy whether or not incriminating; and (2) no unpublished photographs or negatives would voluntarily be made available by *The Stanford Daily* to the police or other law enforcement officers. Further, it was decided that, until there had been a clear judicial determination that the police had no right to search for or compel production of materials and unpublished photographs of *The Stanford Daily*, the *Daily* and its staff would consider itself free in the absence of the service of a subpoena or other proper judicial process, to destroy any materials in its possession.

XI.

Based on the above photo policy, first announced in February of 1970, and the special rapport and trust that student demonstrators often felt towards *The Stanford Daily* staff, *The Stanford Daily's* reporters and photographers have been able to attend various meetings, closed to other news media, and to cover

various rallies and demonstrations in a way that would otherwise not have been possible.

XII.

At no time has *The Stanford Daily* destroyed any files, photographs, negatives or other materials in its possession following the service of a judicially authorized subpoena covering any such materials.

XIII.

On Thursday, April 8, 1971, a sit-in demonstration was commenced at the Stanford Hospital by a group of Stanford University students, employees of Stanford University, and other persons protesting the firing of a black hospital employee and the denial of tenure to a Chicano doctor by the Stanford Medical School faculty. This demonstration continued until the evening of Friday, April 9, 1971. At that time, a violent confrontation occurred between the Palo Alto police and certain demonstrators.

XIV.

A number of photographers were present at the hospital demonstration. *The Stanford Daily* had one photographer, Bill Cooke, covering the hospital demonstration. Newsworthy photographs taken by *The Stanford Daily's* photographer appeared in a special Sunday (April 11, 1971) edition of *The Stanford Daily*.

XV.

On April 12, 1971, the Defendant J. Barton Phelps issued a search warrant ordering the "immediate

search" of the offices of *Stanford Daily*. A copy of this warrant is Exhibit A to this Complaint. The warrant states:

In the Municipal Court of the
Palo Alto-Mountain View Judicial District,
County of Santa Clara,
State of California

SEARCH WARRANT

The People of the State of California

To any Peace Officer present
in the County of Santa Clara:

Proof, by affidavit, having been made before me this day by Richard Peardon that there is just, probable and reasonable cause for believing that:

Negatives and photographs and films, evidence material and relevant to the identity of the perpetrators of felonies, to wit, Battery on a Peace Officer and Assault with Deadly Weapon, will be located where described below.

You are therefore commanded, in the daytime, to make immediate search of the premises of *Stanford Daily*, consisting of offices and rooms within the Stokes Publications building, located at Stanford University, County of Santa Clara, State of California, for the personal property described as follows:

- 1) Negatives of films taken at Stanford University Hospital on the evening of April 9, 1971, showing the Sit-In at the Hospital and following events.
- 2) The film used while taking pictures at Stanford University Hospital on April

9, 1971, showing the Sit-In and following events.

3) Any pictures which display the events and occurrences at Stanford University Hospital on the evening of April 9, 1971. and if you find the same or any part thereof, to hold such property in your possession under Calif. Penal Code Section 1536.

Given under my hand this 12th day of April A.D. 1971.

/s/ J. Barton Phelps
Judge of Municipal Court

RPH/eak

XVI.

The basis for the warrant described above was a single affidavit of Defendant Peardon, a copy of which is Exhibit B to this complaint. This affidavit states:

In the Municipal Court of the
Palo Alto-Mountain View Judicial District,
County of Santa Clara,
State of California

AFFIDAVIT IN SUPPORT OF
SEARCH WARRANT

State of California
County of Santa Clara

Personally appeared before me on this 12th day of April, 1971, Richard Peardon who, on oath, makes complaint, and deposes and says that he has and there is just probable and reasonable cause to believe and he does believe that there is now in the possession of the *Stanford Daily*, and in the possession of its editor and staff members at the offices located within the Storke Publica-

tions building, Stanford University, County of Santa Clara, State of California, certain evidence of felonies, to wit, 243 and 245 of the Calif. Penal Code, described as follows:

- 1) Negatives of film taken at Stanford University Hospital the evening of April 9, 1971.
- 2) The film used while taking pictures at the Stanford University Hospital April 9, 1971.
- 3) Any pictures which display the events and occurrences at the Stanford University Hospital April 9, 1971.

Affiant Richard Peardon is an officer with the Palo Alto Police Department. He has had 21½ years experience in police work. Affiant is investigating the assaults with a deadly weapon and batteries on police officers which occurred April 9, 1971, at the Stanford University Hospital, Stanford, California, that evening.

Affiant personally observed officers of the Palo Alto Police Department who had been called to special duty at Stanford University Hospital struck by objects such as legs of chairs and sticks while attempting to control the crowds at the location. Affiant observed and does know their officers were on duty and in uniform at this time attempting to disperse an unlawful assembly and control the crowd. In addition, affiant was himself struck while defending himself after an order to disperse was given by Chief Anderson of the Palo Alto Police Department.

Affiant also personally observed objects including mental tape dispensers being thrown from inside the hospital doors in the direction of police

officers outside the hospital. During this period of time affiant personally observed pictures being taken of this activity from directly behind the Palo Alto officers. Affiant personally saw cameras being pointed in the direction of the officers and demonstrators during the course of the evening.

Affiant has seen pictures appearing in the *Stanford Daily* the morning of Sunday, April 11, 1971. He has examined these pictures and determined they depict the location, occurrences and activity during the period of time the felonies of assault on a police officer and assault with a deadly weapon were occurring. A copy of said *Stanford Daily* is attached hereto. Said photographs carry the byline of one Bill Cooke who is also listed on the masthead as a "photo labman" on the *Daily* staff.

Affiant has conversed with James Bonander, a detective of the Palo Alto Police Department, who has informed him that the offices in which the pictures and articles of the *Stanford Daily* are produced are located in the Storke Publications building at Stanford University, Stanford, California, from detective Bonander's personal knowledge and observation. The copy of the *Daily*, dated April 9, 1971, which is attached hereto also lists such building as the headquarters of the paper.

Therefore, affiant believes the pictures observed in the *Stanford Daily* April 12, 1971, as well as other film and negatives taken at that time and place will be located at the above described offices.

That based upon the above facts, your affiant prays that a search warrant be issued with re-

spect to the above location for the seizure of said evidence, and that the same be held under Section 1536 of the Penal Code and disposed of according to law.

[s] Richard Peardon
Richard Peardon

Subscribed and sworn to before
me this 12th day of April, 1971.

[s] J. Barton Phelps
Judge of the Municipal Court

RRH:gl

XVII.

Defendant Brown, Defendant Bergna, or attorneys under the control of Defendant Bergna participated in securing the warrant described above.

XVIII.

On Monday, April 12, at approximately 5:45 p.m., Defendants Bonander, Deisinger, Martin, and Peardon appeared at the offices of *The Stanford Daily* in the Stokes Publications building located on the Stanford University campus. After presenting the search warrant to a staff member of *The Stanford Daily*, these Defendant police officers proceeded to search *The Stanford Daily* offices.

XIX.

The Defendant police officers opened and intensively searched filing cabinets, and desks in the offices of *The Stanford Daily*. They looked at materials on table tops, shelves and desk tops, in waste baskets and cupboards in *The Stanford Daily's* offices.

XX.

Desks in the offices of *The Stanford Daily* that were searched contained rough notes taken by reporters at interviews conducted while gathering news for *The Stanford Daily*. Some of these reporters' notes contained information given in confidence, and on the express understanding that the name of the source would not be disclosed by the staff of *The Stanford Daily*. Because of the search, Defendant police officers were in the position to see these confidential reporters' notes.

XXI.

One or more of Defendant police officers saw, scanned, or read business correspondence of *The Stanford Daily* and personal correspondence of staff members of *The Stanford Daily* by reason of the search. One Defendant police officer searched through a desk drawer containing personal papers and property including a completed income tax return of Plaintiff Kohn.

XXII.

The Defendant police officers also searched through photographic files of *The Stanford Quad*. *The Stanford Quad* is the year book at Stanford University. *The Stanford Quad* is independent and unrelated to *The Stanford Daily*. The photographic files of *The Stanford Quad* were clearly labelled as such. The search of the photographic files of *The Stanford Quad* continued after a Defendant police officer was specifically told that the files in question belonged to *The Stanford Quad*.

XXIII.

After completing their search, the Defendant police officers accounced [sic] that they had not found what they were looking for, and had consequently seized nothing. The Defendant officers left *The Stanford Daily's* offices at approximately 6:30 p.m. The duration of the search was approximately 45 minutes.

XXIV.

Following the search, Plaintiff Robert Litterman spoke with Defendant James Zurcher on the telephone. Mr. Litterman identified himself as a staff member of *The Stanford Daily*, and protested the police search. Chief Zurcher told Litterman that search warrants could be used to search any area where items of evidentiary value might be stored. Chief Zurcher refused to give any assurance that similar searches would not be authorized by him in the future under similar circumstances.

XXV.

After the search, Plaintiff Robert Litterman spoke with Defendant Craig Brown, of the District Attorney's office. Plaintiff Litterman identified himself as a staff member of *The Stanford Daily*. Plaintiff Litterman protested the legality of the search that had taken place. District Attorney Brown said he had assisted in the preparation of the warrant and that the issuance of the warrant and subsequent search was entirely legal. He also said he could give Litterman no assurance that similar searches pursuant to war-

rants issued in the same manner would not take place in the future under similar circumstances.

XXVI.

Upon information and belief, the Defendants, or some of them, intend in the future to seek and issue similar warrants, and conduct similar searches, in similar circumstances.

XXVII.

Apprehension that the Defendants or some of them may again search *The Stanford Daily's* premises jeopardizes the ability of *The Stanford Daily* satisfactorily to cover newsworthy events. The threat of such searches: (1) causes persons participating in meetings, demonstrations and rallies to refuse necessary cooperation to *The Stanford Daily* reporters and photographers thereby making it impossible for them adequately to cover the events; (2) causes persons to refuse to give confidential information to *Stanford Daily* reporters lest such information be disclosed to the police; (3) causes *The Stanford Daily* photographers and reporters to engage in self-censorship in order to avoid producing materials which the police may wish to seize; and (4) renders *The Stanford Daily* unable to maintain notes, files and records, including photographic records, necessary for the fulfillment of *The Stanford Daily's* journalistic function for fear that possession of certain materials will cause the police again to search the offices of *The Stanford Daily*.

First Cause of Action

XXVIII.

Defendants' search of the offices of *The Stanford Daily* pursuant to the warrant was constitutionally invalid under the First, Fourth, and Fourteenth Amendments to the United States Constitution because it is unreasonable *per se* to use a search warrant as a means for securing evidence belonging to and in the exclusive possession of a person or organization, where there has not been demonstrated probable cause to believe that such person or organization has participated in the unlawful activity to which said search relates, particularly when the person or organization is engaged in news gathering and publishing activities themselves protected by the First Amendment.

Second Cause of Action

XXIX.

Defendants have violated Plaintiffs rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution because Plaintiffs were given no opportunity for an adversary hearing prior to the issuance of the warrant and the search of *The Stanford Daily's* offices.

Third Cause of Action

XXX.

Defendants have violated Plaintiff's [sic] rights under the First, Fourth and Fourteenth Amendments to the United States Constitution because:

a. Such a search inhibits and violates the Constitutionally protected interests set forth in paragraph XXVII above; and

b. The police made no judicial showing prior to the search that (i) they lacked alternative sources for the information contained in the materials for which the search was sought; (ii) there was a compelling need for the materials sought; and (iii) the materials could not be obtained by a means less destructive of the freedom of the press protected by the First and Fourteenth Amendments.

Prayer

Wherefore, the Plaintiffs respectfully pray:

1. That the Court declare illegal and unconstitutional the search of the offices of *The Stanford Daily* that took place on April 12, 1971.

2. That the Court permanently enjoin and restrain Defendants, their agents, successors, employees, attorneys and those acting in concert with them or at their direction, from seeking the issuance of, issuing, or executing any warrant to search the offices of *The Stanford Daily*, or the office or residence of any of its staff members for any photographs, negatives, films, reporters' notes, documents or any other material, whether published or unpublished, taken, received, developed or maintained in the course of efforts to gather news, by any person who is a staff member of *The Stanford Daily*.

3. The Court order Defendants to pay Plaintiffs' for counsel fees and costs of suit.

4. That the Court order such relief as may seem just to the Court under the circumstances of this case.

Dated: May 13, 1971

Anthony G. Amsterdam
Jerome B. Falk, Jr.
Robert H. Mnookin
Attorneys for Plaintiffs,
By: Robert H. Mnookin
For attorneys for Plaintiffs

Exhibit "A"

In the Municipal Court for the
Palo Alto-Mountain View Judicial District,
County of Santa Clara,
State of California

[Apr. 21, 1971]

SEARCH WARRANT

The People of the State of California:

To any Peace Officer present
in the County of Santa Clara:

Proof, by affidavit, having been made before me this day by Richard Peardon that there is just, probable and reasonable cause for believing that:

Negatives and photographs and films, evidence material and relevant to the identity of the perpetrators of felonies, to wit, Battery on a Peace Officer and Assault with Deadly Weapon, will be located where described below.

You are therefore commanded, in the daytime, to make immediate search of the premises of *Stanford Daily*, consisting of offices and rooms within the Stokes Publications building, located at Stanford University, County of Santa Clara, State of California, for the personal property described as follows:

- 1) Negatives of films taken at Stanford University Hospital on the evening of April 9, 1971, showing the Sit-In at the Hospital and following events.
- 2) The film used while taking pictures at Stanford University Hospital on April 9, 1971, showing the Sit-In and following events.
- 3) Any pictures which display the events and occurrences at Stanford University Hospital on the evening of April 9, 1971

and if you find the same or any part thereof, to hold such property in your possession under Calif. Penal Code Section 1536.

Given under my hand this 12 day of April A.D. 1971.

[s] J. Barton Phelps
Judge of the Municipal Court

RRH/eak

Exhibit "B"

In the Municipal Court of the
Palo Alto-Mountain View Judicial District,
County of Santa Clara,
State of California

[Apr. 12, 1971]

AFFIDAVIT IN SUPPORT OF
SEARCH WARRANT

State of California,
County of Santa Clara.

Personally appeared before me this 12th day of April, 1971, Richard Peardon who, on oath, makes complaint, and deposes and says that he has and there is just probable and reasonable cause to believe and he does believe that there is now in the possession of the *Stanford Daily*, and in the possession of its editor and staff members at the offices located within the Storke Publications building, Stanford University, County of Santa Clara, State of California, certain evidence of felonies, to wit, 243 and 245 of the Calif. Penal Code, described as follows:

- 1) Negatives of film taken at Stanford University Hospital the evening of April 9, 1971.
- 2) The film used while taking pictures at the Stanford University Hospital April 9, 1971.
- 3) Any pictures which display the events and occurrences at the Stanford University Hospital April 9, 1971.

Affiant Richard Peardon is an officer with the Palo Alto Police Department. He has had 21½ years experience in police work. Affiant is investigating the assaults with a deadly weapon and batteries on police officers which occurred April 9, 1971, at the Stanford University Hospital, Stanford, California, that evening.

Affiant personally observed officers of the Palo Alto Police Department who had been called to special duty at Stanford University Hospital struck by objects such as legs of chairs and sticks while attempting to control the crowds at that location. Affiant observed and does know their officers were on duty and in uniform at this time attempting to disperse an unlawful assembly and control the crowd. In addition, affiant was himself struck while defending himself after an order to disperse was given by Chief Anderson of the Palo Alto Police Department.

Affiant also personally observed objects including metal tape dispensers being thrown from inside the hospital doors in the direction of police officers outside the hospital. During this period of time affiant personally observed pictures being taken of this activity from directly behind the Palo Alto officers. Affiant personally saw cameras being pointed in the direction of the officers and demonstrators during the course of the evening.

Affiant has seen pictures appearing in the *Stanford Daily* the morning of Sunday, April 11, 1971. He has examined these pictures and determined they depict the location, occurrences and activity during the period of time the felonies of assault on a police officer

and assault with a deadly weapon were occurring. A copy of said *Stanford Daily* is attached hereto. Said photographs carry the byline of one Bill Cooke who is also listed on the masthead as a "photo labman" on the *Daily* staff.

Affiant has conversed with James Bonander, a detective of the Palo Alto Police Department, who has informed him that the offices in which the pictures and articles of the *Stanford Daily* are produced are located in the Storke Publications building at Stanford University, Stanford, California, from detective Bonander's personal knowledge and observation. The copy of the *Daily*, dated April 9, 1971, which is attached hereto also lists such building as the headquarters of the paper.

Therefore, affiant believes the pictures observed in the *Stanford Daily* April 12, 1971, as well as other film and negatives taken at that time and place will be located at the above described offices.

That based upon the above facts, your affiant prays that a search warrant be issued with respect to the above location for the seizure of said evidence, and that the same be held under Section 1536 of the Penal Code and disposed of according to law.

[s] Richard Peardon
Richard Peardon

Subscribed and sworn to before me
this 12th day of April, 1971.

[s] J. Barton Phelps
Judge of the Municipal Court

RRH:g1

In the United States District Court
for the Northern District of California

[Title Omitted in Printing]

[Filed Jun. 2, 1971]

ANSWER TO CIVIL RIGHTS ACTION
COMPLAINT; DEFENSES AND AFFIRMATIVE
DEFENSES

Defendant J. Barton Phelps, individually and as municipal court judge of the Palo Alto-Mountain View Judicial District and defendants Louis P. Bergna and Craig Brown, both individually and as District Attorney and Deputy District Attorney, respectively, all of the County of Santa Clara, State of California, for answer to the complaint allege:

1. In answer to the allegations of Paragraphs II, III, XIV, XVIII, XIX, XX, XXI, XXII, XXIII and XXIV allege that they are without knowledge or information sufficient to form a belief as to the truth of such allegations.

2. In answer to the allegations of Paragraphs V and VI, admit such allegations.

3. In answer to the allegations of Paragraphs I, VII, VIII, IX, X, XI, XII, XXV, XXVII, XXVIII, XXIX and XXX, deny each and every such allegation.

4. In answer to the allegations of Paragraph IV, admit that James Zurcher is Chief of Police of the City of Palo Alto, State of California, and as

to the other allegations of such paragraph, are without knowledge or information sufficient to form a belief as to the truth of such allegations.

5. In answer to the allegations of Paragraph XIII, admit that a violent confrontation occurred on or about the night of April 9, 1971 between officers of the Palo Alto police department and certain demonstrators at or about the Stanford University Hospital at a time when the Palo Alto police department was seeking to disburse an unlawful crowd and to control such crowd; as to the other allegations of such paragraphs, are without knowledge or information sufficient to form a belief as to the truth of such allegations.

6. In answer to the allegations of Paragraph XVII, admit that defendant Craig Brown, in his capacity as Deputy District Attorney, participated solely in the preparation of the affidavit and search warrant, as such documents are set out in the complaint on file herein; denies each and every such other allegation.

7. In answer to the allegations of Paragraph XV, admit that defendant J. Barton Phelps in his capacity as municipal court judge, issued the search warrant set out in the complaint on file herein; denies each and every such other allegation.

8. In answer to the allegations of Paragraph XVI, admit that the affidavit set forth in the complaint on file herein sets forth the facts tending to establish the grounds of the application, or probable

cause for believing that such grounds existed, for the issuance of the search warrant; deny each and every other such allegation.

9. In answer to the allegations of Paragraph XXVI, admit that the defendants Bergna, in his official capacity, and other persons in his office, including defendant Brown, in their official capacity, and that defendant Phelps, in his official capacity, will participate in the seeking of a search warrant and in the issuance of the same, in good faith and in accordance with the applicable provisions of the laws of the State of California, whenever there is reasonable cause to believe that there exists property or things to be seized which consist of any item or constitute any evidence which tends to show a felony has been committed, or tends to show that a particular person has committed a felony; denies each and every other such allegation.

Wherefore, defendants pray for judgment as hereinafter set forth.

*Defenses Under Rule 12(b) of Federal Rules
of Civil Procedure*

10. This court lacks jurisdiction over the subject matter for the reason that such jurisdiction lies only with a three judge federal court under the provisions of section 2281 of Title 28 of the United States Code.

11. This court lacks jurisdiction over the person in that defendants, and each of them, in that such jurisdiction lies only with a three judge federal court

under the provisions of section 2281 of Title 28 of the United States Code.

12. The complaint fails to state a claim against the defendants, and each of them, upon which a relief can be granted.

13. Stanford University has not been joined in this action and is a party which must be joined in this action under Rule 19 in that complete relief cannot be awarded among those already parties, as the Stanford Daily is an integral part of Stanford University.

14. That plaintiffs Felicity A. Barringer, Fred Mann, Edward H. Kohn, Richard Lee Greathouse, Robert Litterman, Hall Daily and Steven G. Ungar are not real parties in interest authorized to prosecute this action within the meaning of Rule 17 of Federal Rules of Civil Procedure.

15. That the Stanford Daily is not the real party in interest authorized to prosecute this action within the meaning of Rule 17 of Federal Rules of Civil Procedure.

Affirmative Defenses

16. That at all times mentioned in the complaint, defendants, and each of them, have acted only in good faith and upon probable cause and only in their official capacity, as distinguished from their individual capacity.

17. That no constitutional privilege exists, either under the Constitution of the United States or of the State of California, where the property or thing

sought to be seized consists of any item or constitutes any evidence which tends to show that a felony has been committed, or tends to show that a particular person has committed a felony, where such seizure is based upon a search warrant issued by a magistrate after a determination that probable cause exists for the issuance of such search warrant.

18. That a compelling interest or need exists to seize property or things consisting of any item or constituting any evidence which tends to show that a felony has been committed, or tends to show that a particular person has committed a felony, providing that it has been determined by a magistrate that probable cause exists for the issuance for a search warrant to cause such seizure.

19. That the Stanford Daily or any members of its staff do not so unequivocally enjoy such a sensitive news source or do not so unequivocally enjoy the trust and confidence of such a sensitive news source that the obtaining of property or things consisting of any item or constituting any evidence which tends to show that a felony has been committed, or tends to show that a particular person has committed a felony, providing that it has been determined by a magistrate that probable cause exists for the issuance of a search warrant to cause a seizure of such property or thing.

20. That this action seeks to restrain the enforcement, operation or execution of a state statute (Penal Code sections 1523 and following, relating to the issuance of search warrants) by restraining the action

of defendants Phelps, Bergna and Brown, being state officers, in the enforcement or execution of such state statutes and as such must be heard and determined by a three judge court.

21. That this action sets forth no grounds for federal intervention in that the courts of the State of California should first be allowed to hear and determine this matter.

22. That plaintiffs Felicity A. Barringer, Fred Mann, Edward H. Kohn, Richard Lee Greathouse, Robert Litterman, Hall Daily and Steven G. Ungar are not real parties in interest authorized to prosecute this action within the meaning of Rule 17 of Federal Rules of Civil Procedure.

23. That the Stanford Daily is not the real party in interest authorized to prosecute this action within the meaning of Rule 17 of Federal Rules of Civil Procedure.

24. That the Stanford Daily has no capacity to sue under section 1983 of Title 42 of the United States Code.

25. That defendants allege on the basis of information and belief that the plaintiffs, and each of them, lack legal capacity to maintain this action.

26. That plaintiffs, and each of them, lack standing to maintain this action in that the alleged deprivation of constitutional rights was suffered, according to the plaintiffs' own statements in the complaint herein, not by the plaintiffs, or any of them, but by a photographer alleged to be Bill Cook.

27. That Plaintiff Stanford Daily is not a “bona fide newspaper” nor a newsgathering agency.

28. That this action is prematurely brought and a cause of action is not stated in that there is no threat, immediate or otherwise, that the defendants, or any of them, will seek, issue, or execute a search warrant similar to the search warrant alleged in the complaint herein.

29. That this action is prematurely brought and the cause of action is not stated in that none of the plaintiffs have found it more difficult to cover news worth [sic] events as a result of the issuance of the search warrant alleged in the complaint herein.

30. That the plaintiffs, and each of them, have come before this court with “unclean hands” in that, according to their own allegations in the complaint herein under Paragraph X, the plaintiffs have followed a policy of not making photographs or negatives voluntarily available to the police or other law enforcement officers and of considering themselves free to destroy any materials in their possession, whether or not such materials constitute evidence that a felony has been committed or that a particular person has committed a felony, thereby forcing the defendants, and each of them, to seek a search warrant to obtain photographs or films of a public event which tend to show that a felony has been committed or tend to show that a particular person has committed a felony.

31. That this action is moot in that the search complained of has taken place, no evidence was seized as a result of such search, and there is no action pending or threatened against the plaintiffs, or any of them.

32. That the plaintiffs, and each of them, have failed to allege that they have complied with the claims procedure of the California Tort Claims Act.

Wherefore, defendants, and each of them, pray for judgment as follows:

1. That the court refuse to declare illegal and unconstitutional any search of the offices of the Stanford Daily that took place on or about April 12, 1971.

2. That the court refuse to permanently enjoin and restrain defendants, their agents, successors, employees, attorneys and those acting in concert with them or at their discretion, from seeking the issuance of, issuing, or executing any warrant to search the offices of the Stanford Daily, or the office or residence of any of its staff members for any photographs, negatives, films, reporters' notes, documents or any other material, whether published or unpublished, taken, received, developed or maintained in the course of efforts to gather news, by any person who is a staff member of the Stanford Daily.

3. That the court refuse to order defendants to pay plaintiffs for counsel fees and costs of suit.

4. That the court dismiss the complaint on file herein, or in the alternative, stay the proceeding in

this court until the courts of the State of California hear and determine this matter.

5. That the court order such other relief as may seem just to the court under the circumstances of this case.

Dated: June 2, 1971.

William M. Siegel,
County Counsel
Selby Brown, Jr.,
Chief Assistant Counsel

[s] Selby Brown, Jr.

In the United States District Court
for the Northern District of California

[Title Omitted In Printing]

[Filed Jun. 9, 1971]

**ANSWER TO CIVIL RIGHTS ACTION
COMPLAINT;
DEFENSES AND AFFIRMATIVE DEFENSES**

Come now defendants James Zurcher, James Bon-
ander, Paul Deisinger, Donald Martin and Richard
Peardon and answer plaintiffs' complaint on file here-
in, and admit, deny and allege as follows:

I

Answering the allegations of paragraphs I, II, VII,
VIII, IX, XI, XII, XIX, XX, XXI, XXII, XXIV,
XXVI, XXVII, XXVIII, designated as First Cause

of Action, XXIX, designated as Second Cause of Action, and XXX, designated as Third Cause of Action, these answering defendants deny generally and specifically, each and every, all and singular, the allegations therein contained;

II

These answering defendants admit the allegations of paragraphs IV, V, VI, XVIII and XXIII of said complaint;

III

Answering the allegations of paragraphs III, XIV, XVII and XXV, these answering defendants allege that they do not have sufficient information or belief to answer the allegations therein contained, and basing their denial on such lack of information or belief, deny generally and specifically, each and every, all and singular, the allegations therein contained;

IV

Answering the allegations of paragraph X of said complaint, these answering defendants admit that the *Stanford Daily* would not voluntarily make unpublished photographs or negatives available to the police or other law enforcement officers, and further admit that it was the policy of the *Stanford Daily* to destroy any such materials in its possession, and other than said admission, deny generally and specifically, each and every, all and singular, the allegations contained in said paragraph;

V

Answering the allegations of paragraph XIII of said complaint, these answering defendants admit there was a sit-in demonstration on April 8, 1971, and April 9, 1971, and further admit that the Palo Alto Police were attacked by demonstrators, and other than said admission, deny generally and specifically, each and every, all and singular, the allegations therein contained;

VI

Answering the allegations of paragraph XV of said complaint, these answering defendants admit that defendant J. Barton Phelps in his capacity as Municipal Court Judge, issued a search warrant as attached to said complaint, and other than said admission, deny generally and specifically, each and every, all and singular, the remaining allegations of said paragraph;

VII

Answering the allegations of paragraph XVI of said complaint, these answering defendants admit that the affidavit set forth in the complaint on file herein sets forth facts tending to establish the grounds of the application or probable cause for believing that such grounds existed for the issuance of a search warrant, and other than said admission, deny generally and specifically, each and every, all and singular, the remaining allegations of said paragraph.

Wherefore defendants pray for judgment as hereinafter set forth.

*Defenses Under Rule 12(b) of the Federal
Rules of Civil Procedure*

VIII

These answering defendants allege that this Court lacks jurisdiction over the subject matter of this action, for the reason that such jurisdiction lies only with the three judge federal court under the provisions of §2281 of Title 28 of the United States Code.

IX

These answering defendants allege that this Court lacks jurisdiction over the person of the defendants, and each of them, in that such jurisdiction lies only with a three judge federal court under the provisions of §2281 of Title 28 of the United States Code.

X

That this complaint and each of the causes of action therein contained, fails to state facts sufficient to constitute a claim or cause of action against these defendants or either of them, upon which the relief sought could be granted.

XI

These answering defendants allege that this Court has no jurisdiction over the subject matter of this action, in that this action seeks to restrain the enforcement, operation or execution of a state statute (Penal Code §1523 and other applicable sections relating to the issuance of search warrants) by restraining the action of defendants, and each of them, being state

officers, in the enforcement or execution of such state statutes and as such must be heard and determined by a three judge court.

As And For a Further and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That at all times mentioned in plaintiffs' complaint, defendants, and each of them, acted only in good faith and upon probable cause and only in their official capacity, as distinguished from their individual capacity.

As And For a Second and Separate Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

No constitutional privilege exists, either under the Constitution of the United States or of the State of California, where the property or thing sought to be seized consists of photographs and films of a public event which tends to show that a felony has been committed or tends to show that a particular person has committed a felony where such seizure is based upon a search warrant issued by a magistrate after determination that probable cause exists for the issuance of such search warrant.

As And For a Third, Separate and Distinct Affirmative Defense to Each and Every Allegation Con-

tained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That a compelling interest or need exists to seize property or things consisting of photographs or films of a public event which tends to show that a felony has been committed or tends to show that a particular person has committed a felony where it has been determined by a magistrate that probable cause exists for the issuance of a search warrant to cause such seizure.

As And For a Fourth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

Neither the *Stanford Daily*, any members of its staff, nor any of the plaintiffs so unequivocally enjoy such a sensitive news source, nor so unequivocally enjoy the trust and confidence of such a sensitive news source that the obtaining of photographs or films of a public event which tends to show that a felony has been committed or tends to show that a particular person has committed a felony where it has been determined by a magistrate that probable cause exists for the issuance of a search warrant to cause a seizure of such property or thing violates any constitutionally protected right or privilege of said *Stanford Daily*, any members of its staff, or any of the plaintiffs.

As And For a Fifth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

This action seeks to restrain the enforcement, operation or execution of a state statute (Penal Code §1523 and other applicable sections) relating to the issuance of search warrants, by restraining the action of the defendants, and each of them, being state officers, in the enforcement or execution of such state statutes and as such must be heard and determined by a three judge court.

As And For a Sixth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

This action sets forth no grounds for federal intervention, and the Courts of the State of California should first be allowed to hear and determine this matter.

As And For a Seventh, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That plaintiffs, and each of them, lack the legal capacity to maintain this action.

As And For An Eighth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained In Plaintiffs' Complaint, These Answering Defendants Allege:

I

That plaintiffs, and each of them, lack standing to maintain this action, in that the alleged deprivation of constitutional rights was suffered, according to plaintiffs own statements in the complaint on file herein, not by any of the plaintiffs, but by a photographer alleged to be Bill Cook.

As And For a Ninth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That plaintiff *Stanford Daily* is not a "bona fide newspaper" nor a news gathering agency.

As And For a Tenth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That this action is prematurely brought and a cause of action is not stated, in that there is no threat, immediate or otherwise, that the defendants, or any of them, will seek, issue or execute a search warrant similar to the search warrant alleged in the complaint herein.

As And For An Eleventh, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That this action is prematurely brought and no cause of action is stated, in that plaintiffs, nor either of them, have found it more difficult to cover news-worthy events as a result of the issuance of the search warrant alleged in the complaint on file herein.

As And For a Twelfth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That plaintiffs, and each of them, have come before this Court with "unclean hands" in that, according to their own allegations contained in the complaint on file herein, under paragraph X, the plaintiffs have followed a policy of not making photographs or negatives voluntarily available to the police or other law enforcement officers and of considering themselves free to destroy any materials, or other evidence in their possession, whether or not such materials constitute evidence that a felony has been committed or that a particular person has committed a felony, thereby forcing defendants, and each of them, to seek a search warrant to obtain photographs or films of a public event which tend to show that a felony has been committed or tend to show that a particular person has committed a felony.

As And For a Thirteenth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That this action is moot in that the search complained of has taken place, no evidence was seized as a result of such search, and there is no action pending or threatened against the plaintiffs, or any of them.

As And For a Fourteenth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That plaintiffs' complaint on file herein, fails to state a cause of action against these defendants, or any of them, in that plaintiffs have failed to show that they have or are suffering irreparable damage.

As And For a Fifteenth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That plaintiffs' complaint on file herein, fails to state a cause of action against these defendants, or any of them, in that plaintiffs, by their own allegations are seeking relief on a question that has become moot.

As And For a Sixteenth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That plaintiffs' complaint on file herein fails to state a cause of action against these defendants, or any of them, in that said complaint seeks relief against these defendants based upon speculation that some unnamed persons, not in any way associated with these defendants, may at some unknown future time, commit certain acts or violations of law at this undetermined future time;

As And For a Seventeenth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That there is no showing that plaintiffs, or any of them, have exhausted their remedies in the State Courts;

As And For An Eighteenth, Separate and Distinct Affirmative Defense To Each and Every Allegation Contained in Plaintiffs' Complaint, These Answering Defendants Allege:

I

That the relief sought by plaintiffs, and each of them, is too broad, indefinite and vague for this Court to grant all or any part of the relief sought.

Wherefore, defendants, and each of them, pray for judgment as follows:

1. That this Court refuse to declare illegal and unconstitutional any search of the offices of the *Stanford Daily* that took place on or about April 12, 1971;

2. That the Court refuse to permanently enjoin and restrain defendants, their agents, successors, employees, attorneys, and those acting in concert with them or at their discretion, from seeking the issuance of, issuing, or executing any warrant to search the offices of the *Stanford Daily*, or the offices or residences of any of its staff members for any photographs, negatives, films, reporters' notes, documents or any other material, whether published or unpublished, taken, received, developed or maintained in the course of efforts to gather news, by any person who is a staff member of the *Stanford Daily*;

3. That the Court refuse to order defendants, or any of them, to pay plaintiffs for counsel fees or costs of suit;

4. That the Court dismiss the complaint on file herein, or in the alternative, stay the proceedings in this Court until the Courts of the State of California hear and determine this matter;

5. That defendants, and each of them, be awarded their costs of suit and attorney's fees, and for such other relief as may seem just to the court under the circumstances of this case.

Dated, June 8, 1971.

Peter G. Stone, Toff, Gordon & Royce
/s/ Melville A. Toff
Attorneys for Defendants

In the United States District Court
for the Northern District of California

[Title omitted in printing]

[Filed June 19, 1972]

INDEX TO AFFIDAVITS

1. Walter Cronkite
2. Frank P. Haven
3. Donald D. Holt
4. Douglas Kneeland
5. Edward H. Kohn
6. Charles Lyle
7. Fred Mann
8. Gordon Manning
9. Gene Roberts
10. Don Tollefson
11. Steven G. Ungar (May 15, 1971)
12. Steven G. Ungar (January 5, 1972)

In the United States District Court
for the Northern District of California

[Title omitted in printing]

AFFIDAVIT

State of New York
County of New York—ss

WALTER CRONKITE, being duly sworn, deposes and says:

1. I am a correspondent with CBS News, a division of Columbia Broadcasting System, Inc. My principal assignment since April, 1962, has been as managing editor of the "CBS Evening News with Walter Cronkite", a thirty-minute television news report broadcast five nights each week by the CBS Television Network. In addition, I participate in other broadcasts, including frequent participation as "anchor man" in coverage of such events as space missions and national political conventions and elections. Prior to joining CBS in 1950, I was a reporter/correspondent with United Press International for eleven years covering the Western Front in World War II and the Nuremburg Trials and post-war Moscow.

2. My work involves the preparation, through reading and talking with news sources, of the considerable volume of material necessary for such extemporaneous broadcasts as political conventions, elections, and space missions, and for analytical broadcasts such as my daily radio broadcast. It also in-

volves participation in the determination of which stories should be covered on daily television news broadcasts and how they should be covered and participation in the selection of the news items to be broadcast and reading, correcting, and in some cases, rewriting those items. All of this work entails the exercise of editorial judgment based on an extensive background of information and ideas gathered from a wide variety of sources.

3. I am making this affidavit in support of plaintiffs' action to declare the search of the offices of *The Stanford Daily* on April 12, 1971, by the Palo Alto police to be illegal and unconstitutional and for a permanent injunction prohibiting such future search warrants under the color of law.

4. I have considered in my own mind the effect of the entry by the police, the FBI, or other investigating authorities pursuant to a search warrant on the premises of a functioning broadcast newsroom in which the task of gathering and producing news is being carried out. The consequences of such an occurrence would be total chaos in terms of the ability of the staff to produce honest professional news coverage. It is clear to me that the constitutional guarantee of the First Amendment was intended to prevent these consequences.

5. Broadcast news coverage, much like newspaper reporting, depends on the acquisition of facts, including those gained from confidential sources. Included in news material which is not broadcast, therefore,

is information obtained in confidence or under restrictive conditions from sources that would perhaps be of particular interest to the police, the FBI, or other governmental agencies. It has been my experience that exposure, for whatever reason, of such unpublished information would have the chilling effect of cutting off that source in the future. Further, once a practice has been established that threatens such exposure, the knowledge would have a chilling effect on all other sources which might prefer to remain anonymous. The resulting unavailability of such confidential informants would thus undermine professional news coverage by effectively limiting the available information on which journalism has always depended. While the potential of such a chilling effect is great when more common tools such as the subpoena power are used, the "fishing expedition" nature of a search warrant makes it a particularly dangerous threat.

6. Perhaps the most shocking aspect of *The Stanford Daily* search was the fact that the police were utilizing the offices of the *Daily* to determine the availability of evidence. The extension of the use of the news office from a news gathering function to an investigating agency of the authorities is terrifying. Professional news gathering facilities cannot be permitted to be used as evidence gathering agencies in either criminal or civil proceedings without losing all trace of the independence and integrity on which the journalistic profession is founded. Indeed, the prospects of such searches are particularly frightening

when one considers that radio and television stations are licensed by the Federal Government.

/s/ Walter Cronkite
Walter Cronkite

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title omitted in printing]

AFFIDAVIT

State of California

County of Los Angeles—ss.

I, FRANK P. HAVEN, state under oath as follows:

1. I am the Managing Editor of the Los Angeles Times. I have held this position for twelve years and I have been a newspaper reporter and editor for in excess of forty years. My duties as Managing Editor essentially consist of overall responsibility for the local, national and foreign news coverage of the Los Angeles Times and the placement of the various news items within each edition of the newspaper.

2. Until a few years ago, the Los Angeles Times and its news gathering staff became involved in litigation between third parties, through the service of subpoenas or otherwise, on very rare occasions, something like two or three times a year. Even on these

rare occasions, the cases usually involved injury or damage to person or property and presented minor problems to our news gathering and reporting capabilities which were not difficult to resolve.

3. In recent years, as civil disorders and confrontations between the police and a wide variety of dissident groups became increasingly frequent, the efforts to entangle the press in these disputes and legal proceedings arising out of them have increased dramatically. To date, this entanglement has consisted of a number of subpoenas duces tecum served on behalf of prosecution and defense, seeking large-scale production of documents relating to a given event.

4. Such use of the subpoena power has not only raised serious operational threats to the ability of a newspaper to publish but strikes at the heart of our most vital freedoms—freedom of speech and press. Since much has been said and written about such consequences, I will only summarize them briefly as follows:

(a) If newspaper records, including those confidential in nature, can be readily obtained through use of the subpoena power, confidential sources of news will quickly evaporate and important information will no longer be available for the information of the public.

(b) To the extent that a newspaper, its personnel and files are used by defense or prosecution, the objective informational role of the newspaper is severely damaged, the credibility of the

newspaper is lost and it comes to be viewed as simply another agent of whichever side has chosen to involve the newspaper.

(c) The personal safety of news reporters is endangered; it is not unusual for newsmen to have their equipment destroyed or damaged and to be physically assaulted because they are viewed as informers.

(c) [sic] As newspapers, their personnel and records are ever increasingly subjected to the subpoena process, their ability to effectively function as a newspaper is impaired for a reporter cannot be out covering newsworthy events while he is tied up in litigation.

That these problems are of the utmost constitutional significance is evidenced by the fact that three cases involving such problems are now pending before the United States Supreme Court.

5. While the subpoena process raises the serious problems outlined above, and more, at least a newspaper receives advance notice of a subpoena and has time to resist through a motion to quash or other appropriate legal proceedings. The use of search warrant procedures, as in the *Stanford Daily* case, introduces an entirely new, and more invidious, threat to freedom of the press. Unlike the subpoena process, a newspaper has no opportunity to resist a search warrant. The newspaper first knows about it when the police present the warrant at the office of the newspa-

per, at which point the newspaper is confronted with the choice of violating a court order or opening its files notwithstanding the disastrous consequences.

6. The thorough disruption of day-to-day newspaper operations which would result from subjecting newspapers to the use of search warrant procedures is too obvious to require much elaboration. If law enforcement officers have the power to at any time appear at the office of a newspaper with a search warrant, systematically go through the files of a newspaper relating to a particular event, confiscating those materials which appear to suit their needs, at that point the precise, and often tight, time requirements in publishing a newspaper are disrupted, personnel are diverted from their duties, materials necessary to publish the paper may be taken, and, in a word, the ability, not to mention the constitutional right, of the newspaper to determine what will be published, and when, is put in serious jeopardy.

7. Over and above these operational problems are the constitutional problems outlined above in paragraph 4, all of which are raised in their most aggravated form. On the basis of my forty years of experience as a newspaper man, I can categorically state that if the use of the search warrant procedure against newspapers is not unequivocally declared unconstitutional, and if law enforcement agencies are able to suddenly appear at the office of a newspaper with a search warrant, and thereby become entitled to sift through the files of a newspaper concerning a

given event, summarily confiscating documents or photographs, freedom of the press, as we know it, will no longer exist.

/s/ Frank P. Haven
Frank P. Haven

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title omitted in printing]

State of New York
County of New York—ss. :

DONALD D. HOLT, being duly sworn, deposes and says:

1. I am the News Editor of Newsweek, a weekly magazine of general circulation throughout the world. As such, I supervise the gathering of news from worldwide sources for Newsweek.

2. This affidavit is submitted in support of a motion for summary judgment by the plaintiffs in the above-entitled action.

3. I have been a member of the staff of Newsweek for nearly eight years. Before becoming News Editor, I was Chief of the Chicago Bureau of Newsweek for five years, in charge of Newsweek's news coverage of ten states. Before joining Newsweek in 1964, I was a newspaper reporter for six years—three years

with the Chicago Daily News and three with the Elmhurst, Illinois, Press, a suburban weekly. I am a graduate of Wheaton College in Illinois.

4. Throughout my career as a working newsman, I have always kept my own notes and other background documents and material confidential, both to protect my sources and to maintain my position of independence of any "side" of a newsworthy event.

5. During the past five years, I have found that the problem of maintaining such confidential records has become increasingly sensitive and difficult. For example, during the 1968 Democratic National Convention in Chicago, and its aftermath, as Newsweek's Chicago Bureau Chief I was besieged by various law enforcement agencies with requests and even subpoenas to produce unpublished information. We successfully resisted furnishing any such information. Had we complied, we would have lost all standing as an independent news medium and, for all practical purposes, would have become an arm of the law enforcement agencies.

6. As a working newsman for 14 years, I find the forced search of a news office, with or without a search warrant, both shocking and dismaying. This—or any—forced disclosure of confidential documents or the names of news sources to law enforcement agencies is, in my view, a serious curtailment of freedom of the press as protected by the First Amendment. I can state categorically that were I subject to any such search, or otherwise forced to make such disclosures,

my ability to continue gathering news to inform the public would be seriously impaired.

/s/ Donald D. Holt
Donald D. Holt

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title Omitted In Printing]

AFFIDAVIT OF DOUGLAS E. KNEELAND
State of California
County of San Francisco—ss.

DOUGLAS E. KNEELAND, being duly sworn, deposes and says:

1. I am the roving national correspondent of The New York Times, a position I have held for nineteen months. Prior to that, I was deputy national editor of The Times for fifteen months and midwestern correspondent for slightly more than two years. For the preceding eight years, I was an editor on various news desks of The Times in New York, including the foreign and metropolitan desks. Before joining The Times, I was an editor and reported for The Bangor (Maine) Daily News, The Worcester (Massachusetts) Telegram and The Lorain (Ohio) Journal. I have been a full time journalist for the last twenty years and have had broad experience as a reporter and an editor.

2. I submit this affidavit in support of the motion of the plaintiffs for summary judgment that the search of the Stanford Daily on April 12, 1971 be declared illegal and unconstitutional. As a working newsman, I am vitally concerned that nothing be allowed to interfere with the freedom and integrity of the press or with its members in the performance of their role as the public's eyes and ears at all newsworthy events. If the legality of the April 12 search is upheld, I see no way that any newspaper office in this country or even the very homes of reporters, photographers and editors will be safe from official intrusion.

3. The effect of such a search on a newspaper's ability to fulfill its news gathering function is difficult to overstate. In fact, it is hard to imagine the harmful impact that it could have, because to my knowledge never before in the history of American journalism has a similar search taken place. In our society, newspapers do not exist at the whim of any government, national, state or local. They are not an arm of those governments. Potential news sources know that, as the government should. The knowledge that as a reporter I am independent, and will not be a voluntary agent for any government, provides the basis of a trust without which I could not function effectively. News sources, sometimes within government itself, know that confidential information, which frequently is vital to my understanding of other facts in context, will be treated confidentially. They know that I am functioning as a fair, objective and independent observer, and that I am not taking sides, for or against them, in any conflict in which they are

involved. Many times they hope I will take their side, but I rely on my reputation for fairness, objectivity, and my ability to keep confidences to generate the trust and respect of my sources.

4. If the government is permitted to search newspaper offices or even the homes of newsmen for unpublished photographs, notes, tape recordings or other materials, that trust essential to gathering the news will be effectively destroyed. Because no official has any way of definitely knowing what pictures a photographer has taken or what notes a reporter has jotted in his notebook, such a search smacks of a fishing expedition. And by prowling through a reporter's notebooks or a photographer's files or by rifling their desks, officials will often have access to much material that interests them even though it was outside the material that originally motivated them. At best they will have turned the newsman into an unwilling investigator and at worst into a government spy who reveals confidences. Such a development will not escape the notice of potential news sources, whose trust is based in part at least on the long and honorable tradition of the profession. It will matter not that the newspaper or the individual newsman is an unwilling accomplice of the government. An accomplice he will be, his hardwon reputation for independence shattered. Doors will be closed. And the public will be deprived of much that it has the need and right to know.

5. In my own case, I work frequently at home. I have my files there. I save my notes and other ma-

terials for future reference. Often I will mark a section in a notebook that is confidential or not for attribution. I keep names, home addresses and telephone numbers of sources. Some of these are confidential at their request. My own ability to function as a reporter would be severely impaired if some of these sources believed that I could not keep my given word that I would treat confidentially materials that they entrusted to be or information that they imparted to me—that anything in my possession was subject to a possible government search. The more sophisticated sources know that newsmen may be subject to subpoena; but they also know that recent court opinions provide a basis for lawful challenge to subpoenas. On the other hand the intrusion of a search is indiscriminate; its scope and propriety cannot be judicially tested in advance; and the mere possibility of its use renders vulnerable all confidential materials.

6. During my twenty years in the newspaper business, I have dealt with many matters that required confidentiality, a sensitivity toward the news source's fear of exposure or, at least, the winning of his trust. I have been involved in investigations of the police and of official corruption, for instance. Such investigations are usually conducted with the cooperation of concerned members of the police department or government body. If a police search of my office, my home, my files—instigated perhaps by the very people being investigated—were a real threat, I know I could not have gathered much of the material essential to

stories I have written. I have also covered riots in the cities and other protest activities where it sometimes was necessary to have the confidence of militant blacks, a difficult enough task for any white reporter; an impossible one if it was felt that I was an investigative arm, albeit an unwilling one, of the government. I have written of the radicals in this country both on college campuses and off, in such branches as the G. I. Movement. Moving from one radical group to the next and establishing oneself as a reporter is a ticklish task. Almost no new encounter is without its challenges. No matter whose auspices a reporter appears under there are nearly always some members of a group who are fearful and distrustful to the point where some would describe them as paranoid. If the information gathered, the names of members, addresses, telephone numbers, many of these things given in confidence, were only a search warrant away from any government official, there would be no way that I could have done my job as a reporter.

7. My experience as a reporter and editor had led me to feel strongly that photographs are an important part of the coverage of such events as demonstrations and riots, conveying to the reader the visual impact of what has taken place. Photographers already provide this coverage at great personal risk, considering the volatility of such situations. In many instances that I have witnessed, especially at protest demonstrations or riots, they are in particular danger. Their equipment alone makes them highly visible and a common police practice of having their own photographers

pose as newsmen frequently makes anyone with a camera suspect in the eyes of political activists. If added to this were the knowledge that the police might have easy access to the unpublished film of legitimate news photographers, their position, I believe, would become untenable and their ability to cover such events jeopardized.

8. In sum, I am deeply certain, from my own experience, that a search such as that permitted in the offices of the Stanford Daily, allowed to stand, will do irreparable damage to the free press of this nation. If that happens, it will be the American public, whom newspapers and newsmen serve, that will be most severely deprived.

/s/ Douglas E. Kneeland
Douglas E. Kneeland

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title Omitted In Printing]

AFFIDAVIT OF EDWARD H. KOHN
State of California
County of San Francisco—ss.

EDWARD H. KOHN, being duly sworn, deposes and says:

1. My name is Edward H. Kohn. I am an undergraduate student at Stanford University. I am Man-

aging Editor of *The Stanford Daily* (hereinafter referred to as "*Daily*" or "*The Daily*"), a member of the News Committee of the Associated Press Managing Editors Association, and a stringer (part-time correspondent) for *The Washington Post*.

2. At 5:30 P.M. on April 12, 1971, I was sitting in the Editor's portion of the *Daily* newsroom, located in the Storke Student Publications building on the Stanford University campus. At that time I was a staff member of the *Daily*.

3. Between 5:45 and 5:50 P.M. on that date, I became aware of a disturbance at the front of the office near the front door.

4. Between 5:45 and 5:50 P.M. on that date, Ralph Kostant, a staff member of the *Daily*, advised me to come to the door, saying that "there are some men here who want to 'speak with somebody in charge.'"

5. I turned around, and I observed two men, whom I thought were policemen.

6. As I approached the door, one man carrying what appeared to be a clipboard asked me if I was "in charge" of the office. I replied that I was not, and that I was not the editor but only a staff member and that only the editor could really be in charge of an office.

7. This man then displayed what he said was a search warrant and said he wanted to search the office. I asked him to hold the warrant steady for a moment, and he did so, saying that I would get a carbon of the document.

8. At this point, another student in the office went to call an attorney and to get ahold of Felicity Barringer, the editor.

9. I then read through the search warrant. At that time, I saw no way to prevent a search of the office, and I did not resist or interfere with the officers' subsequent search.

10. I asked the officers—there were six at this point, four from the Palo Alto Police Department and two from the Stanford Police Department, with three of the Palo Alto Police Department officers in plainclothes and the remainder of the officers in uniforms—to wait for a moment while I continued to attempt to contact the editor, Felicity Barringer.

11. I talked briefly with a lawyer, and he told me that there was nothing I could do to stop the search if the warrant appeared legal. I replied that it did, and he (Wolpman) said that he would be right over.

12. At this point, Kostant said that he could not contact Felicity—she was in a class and couldn't be reached.

13. I then attempted to contact Presidential Legal Advisor James V. Siena.

14. I then returned to the door, told the officer that I could not contact the editor, and he informed me that he was “going to go ahead and search anyway.” I replied that there appeared to be nothing that I could do to stop him, and offered to explain the layout of the office in the hopes of preventing him from searching the Stanford “*Quad*” offices, which share part of a darkroom facility with the *Daily*.

15. This officer ignored me, and I followed him down to the photo lab. When I entered the lab, I noticed that another detective had already begun to search. At this time, the second detective was searching through a waste box located in the *Daily* darkroom. The other officer began to go through, drawer by drawer, negative by negative, print by print, contact sheet by contact sheet, the "*Quad*" files, which are located in a shared area of the darkroom.

16. I asked other *Daily* staffers to watch the policemen.

17. I then returned to the darkroom, where the two detectives were still going through the *Daily* darkroom and the "*Quad*" files.

18. I then went into the Business Office for the purpose of calling Siena again—there were no free phone lines in the *Daily* office proper. At that time there were no officers in the Business Office.

19. I made the rounds of the offices again—the darkroom, the News Office, my office, the hallway outside the door, to make sure that *Daily* people were watching all phases of the search.

20. I then returned to the Business Office to use the phone again. This time, I noted that two officers were going through the papers located on top of the filing cabinets near the corner of the room near the Addressograph office. One of them asked me what was in the locked file cabinet, and I replied that there were only back copies of the paper. While in the Business Office, I also observed the search of three

desks, including the one belonging to Brian Hardy, Business Manager, and those used by some of the ad salespeople. I observed the officers open all the desk drawers that were unlocked, and search through the materials inside. In numerous instances, the officers appeared to be reading the material they were going through.

21. At about 6:20 P.M. while I was sitting behind Felicity Barringer's desk, an officer of the Palo Alto Police Department approached and indicated he wanted to search Felicity Barringer's desk. This officer went through Barringer's desk, and I saw him noticeably pause to read certain pieces of correspondence that were clearly visible to me.

22. I observed this same officer also search through other desks including the one belonging to Fred Mann, Managing Editor.

23. At approximately 6:30 P.M. the five remaining officers left the premises.

24. I also had a desk in the *Daily* newsroom. After the search, I went to my desk, and I could see that it too had been searched because things had been rearranged. At this time, in my top desk drawer, was a Xerox of my complete 1970 income tax returns.

25. As a reporter for *The Stanford Daily*, I was present at the demonstrations that took place at the Stanford Hospital on April 8, 1971 and April 9, 1971. On April 9, at the demonstration, I specifically recall seeing two uniformed Palo Alto police officers actively operating a video tape machine filming the demon-

stration. At the same demonstration, I recall seeing several other photographers. One was a stout gentleman from the *San Jose Mercury* who went into the corridor of the hospital with the second wave of policemen and sheriff's deputies. Another was Chuck Painter of the Stanford University News Service. A third was a photographer from the *Palo Alto Times*. I also recall seeing a photographer who said he was from the Associated Press.

26. As a reporter for *The Stanford Daily*, I have covered many student demonstrations. I specifically recall observing on several occasions police photographers at these demonstrations on the Stanford University campus. In particular, I recall seeing police photographers at the anti-Pompidou demonstration at the Stanford Linear Accelerator Center (SLAC) on February 27, 1970; at the two demonstrations at the Athletic Department ROTC Building during April, 1970; and during the April 21, 1972 day-long demonstration following the renewed bombing of Viet Nam. In addition, as I noted above, I also recall seeing police photographers at the Stanford Hospital demonstrations that took place in April, 1971.

27. It is impossible for any newspaper or any other communications medium to effectively gather and accurately and objectively to report the news if it is subject to, or threatened by, police intimidation, harrassment, and/or search. This is particularly true for student-run college newspapers because of their traditional, albeit inaccurate, characterization as sec-

ond rate newspapers. Thinking that their reporters and photographers are less respected by police, therefore more subject to police interference, editors may refrain from making certain assignments, for fear that the fruits of the reporter's or photographer's efforts may be obtained by police agencies.

28. Threat of police interference also makes it difficult to work with persons who, for one reason or another, may desire anonymity [sic] or partial attribution. The student reporters feel threatened; they think that the police are less hesitant to use the work product of student reporters than the work product of older reporters and they resent doing the police department's work—willingly or unwillingly.

Executed this 9th day of June, 1972 at San Francisco, California.

/s/ Edward H. Kohn
Edward H. Kohn

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title Omitted In Printing]

AFFIDAVIT OF CHARLES LYLE

CHARLES LYLE, being duly sworn, deposes and says:

1. This fall I will be a Junior at Stanford University, majoring in Communications. I have been a

photographer for the Stanford Daily since February of 1971. I have worked steadily for the Daily since, and was "promoted" to Photo Editor in September (autumn quarter) of 1971. I presently hold that position. I have, in this period, covered most of the major demonstrations that involved the Stanford campus or Stanford students.

2. The Computer Center demonstration which took place in February of 1971, was my second assignment for the Daily, and at that time, I was unaware of the radical's feelings towards photographers, and how difficult it was to cover demonstrations. I entered the Computation Center building that was being held by the demonstrators, with the intent of taking photos. When I raised my camera to my eye to take a light reading, I was told by a demonstrator that I would have to leave, since I had a camera.

3. I also covered the demonstrations at the Medical Center on April 8 as a Daily photographer. At first I was able to photograph pictures of the occupation of the lounge. When I returned later that night, the demonstrators had decided to sit-in for the night. Upon pulling my cameras out, I was told that no photographs would be taken, and that this policy had been decided earlier, as they didn't want photographs to be used against them. I was not present at the Medical Center on April 9 when the violence occurred between the police and the demonstrators.

4. Since the search of the Daily, as Photo Editor, I have had staff photographers refuse to cover dem-

onstrations for fear of injury to either their persons or their equipment.

5. Since the search I have covered many demonstrations and rallies [sic] for the Daily. Many Stanford radicals realized that I am a Daily photographer, and that it is our policy not to turn over to the authorities our photographs. Still, they are very sensitive about having their pictures taken. I find therefore, that I must use a great deal of discretion when taking photos of radicals. For example, I do not as a general rule, shoot pictures of crowd scenes showing their faces when they're milling round, in part because such pictures are rarely newsworthy, but also because I fear the authorities might try to forcibly obtain the photos, and thus jeopardize the Daily's ability to cover such events.

Signed this 18th day of June, 1972.

/s/ Charles E. Lyle
Charles E. Lyle

(Jurat omitted in printing)

In the United States District Court
for the Northern District of California

[Title Omitted In Printing]

AFFIDAVIT OF FRED MANN

FRED MANN, being duly sworn, deposes and says:

1. I have worked on the Stanford Daily since the fall of 1968, first as a sports writer, later as a sports

editor, editorial board member, and general reporter. From January of 1971 through June of 1971 I was managing editor of the Stanford Daily, and from September of 1971 through January of 1972 I was Editor of the paper. At the present time I am a staff member for the Daily and a member of the editorial board. For the past year I have spent an average of forty hours a week working for the Stanford Daily. I plan to make a career in journalism, and I have been a Communications major at Stanford University.

2. The Stanford Daily is an unincorporated association consisting of Stanford University students who produce the newspaper known as the Stanford Daily.

3. The offices of the Daily are located in the Storke Student Publications Building on the main campus of Stanford University.

4. During the autumn, winter and spring quarters of the academic year (late September through the middle of June), the Stanford Daily is published five days a week, Monday through Friday. During the summer quarter (middle of June through August), the Stanford Daily is published twice a week. The Stanford Daily's average daily press run for the 1970-71 regular academic year (September, 1970 through June, 1971) was approximately 13,000 copies. For 1971-72, the average daily press run was 15,000. The daily readership for 1970-71 was approximately 20,000 persons, and it is estimated that the readership at the present time exceeds that for the 1970-71 academic year.

5. The editorial contents of the paper and the duties of the editorial staff are controlled and supervised by a student Editor. The Editor is elected by the entire editorial staff and part of the business staff of the Stanford Daily every January and May. The editorial policy of the paper is controlled by a board known as the Editorial Board. This Board is composed of staff members who are selected by the Editor at the beginning of his or her term. The membership of the Editorial Board is subject to alteration at any time by the Editor.

6. A breakdown of the sources of revenue of the Stanford Daily is shown in Exhibit A, which is incorporated herein. The business affairs of the Stanford Daily, including the determination of advertising rates, and the level of staff salaries, are under the direct control of the Business Manager. The Stanford Daily has its own checking and savings accounts, monies from which to be drawn by the Business Manager. The Stanford Daily keeps its own books.

7. During the past three years, the Stanford Daily has paid small salaries to its staff members. Staff members do not receive academic credit from Stanford University for their work on the Stanford Daily.

8. The Stanford Daily Publishing Board is a seven man board with the following composition: the Editor and the Business Manager of the Stanford Daily; two students representing Student Senate of the Associated Students of Stanford University (A.S.S.U.); the A.S.S.U. Student Financial Manager; and two

non-students from the University community. The Stanford Daily Publishing Board periodically reviews the financial condition of the paper. It also supervises the election of the editor by the editorial staff. The Stanford Daily Publishing Board does not make the business or editorial policy decisions of the paper. During the academic year 1970-71, the board met no more than 6 times. During 1971-72, the Board did not meet at all.

9. Student publications at Stanford University, including the Stanford Daily, are represented on and subject to the A.S.S.U. Publications Board. A true copy of the current bylaws of the A.S.S.U. Publications Board, found in Article VI, § 6.09 of the Constitution and Bylaws of the Associated Students of Stanford University, is Exhibit B to this stipulation, and incorporated herein. The A.S.S.U. Publications Board is responsible for settling disputes between various publications, and overseeing the use and maintenance and the Storke Student Publications Building, in which the Stanford Daily, like other student publications, has offices. However, the A.S.S.U. Publications Board has no power to displace the Stanford Daily from its offices as long as it continues to publish and operate the newspaper. Neither the A.S.S.U. nor the A.S.S.U. Publications Board exercises financial or editorial control of the Stanford Daily.

10. The Stanford Daily itself presently has no official bylaws. The Stanford Daily Publishing Board did have bylaws, a copy of which is attached as Exhibit C to this stipulation, that were adopted

pursuant to the now repealed 1968 Constitution of the A.S.S.U. A new Constitution was approved by the Stanford Student Body in 1970, but bylaws pursuant to the current Constitution have not yet been adopted.

11. Neither Stanford University, nor any of its officers, control or supervise the editorial policy of the Stanford Daily or its financial management. I know of no written document nor any policy or agreement that indicates that Stanford University or its Board of Trustees has control over such policies of the Stanford Daily. The only money payment from Stanford University to the Stanford Daily is that amount paid by the University for faculty and staff subscriptions to the Stanford Daily. As is shown in Exhibit A, for the academic year 1970-71, this amount was \$18,000 and constituted approximately 10% of the total revenue of the Stanford Daily.

12. The Stanford Daily publishes news covering Stanford University, the surrounding community and other matters. The Stanford Daily has provided continuing coverage of campus political activities of all descriptions, including meetings, speeches, rallies, demonstrations, confrontations and sit-ins.

13. Plaintiffs Felicity A. Barringer, Edward H. Kohn, Richard Lee Greathouse, Robert Litterman, Hall Daily, Steven G. Unger and I were officers or staff members of the Stanford Daily at the time of the search of the Daily's offices on April 12, 1971.

14. Plaintiffs Edward H. Kohn, Robert Litterman, Hall Daily and I are now staff members of the Stanford Daily.

15. The sit-in demonstrations that began at the Stanford University Hospital on Thursday, April 8, 1971 and continued until the evening of Friday, April 9, 1971.

16. The Stanford Daily had two photographers, Bill Cooke and Charles Lyle assigned to cover the events at the hospital. Each had been a staff photographer for the Stanford Daily for more than six months.

17. Photographs of the demonstration taken by the Stanford Daily's photographer, Bill Cooke, appeared in a special Sunday (April 11, 1971) edition of the Daily, a copy of which is attached as Exhibit D.

18. To my knowledge at the time of the search, there was no evidence and defendants had no evidence tending to show that the Stanford Daily, its staff, or any of the plaintiffs in this case were in any personally involved in any unlawful acts at the demonstration and ensuing violence at the Stanford University Hospital.

19. The two editorials attached as Exhibits E and F are true copies of editorials printed in the Stanford Daily on the dates shown thereon.

20. Although in the absence of the service of a subpoena the Daily considers itself free to dispose of or destroy any of its property, including unpublished materials or photographs, it is the policy of the Daily not to destroy any material covered by a judicially authorized subpoena and, to my knowledge, no such destruction has ever occurred.

21. During my tenure on the Daily, it has been the policy of the Daily to choose photographs for publication solely on the basis of newsworthiness and without regard to whether the photographs might be incriminating to the persons depicted therein. The Daily in fact publishes photographs that might be thought to be potentially incriminating. Without being exhaustive, the photographs published on the following dates (while I was either Managing Editor or Editor), were potentially incriminating:

February 1, 1971—page 1—Picture of a student being physically lofted over a crowd into a “closed” judicial hearing room by supporters of the defendants on trial. She was threatened with punishment.

May 6, 1971—page 1—Prof. Robert McAfee Brown blocking the entrance to the San Mateo County draft board building in protest of the war.

May 12, 1971—page 1—B. Davey Napier, Dean of the Stanford Chapel, similarly blocking the draft board doors.

May 17, 1971—page 1—Destruction in the student union drug store after an attack by vandals.

September 27, 1971—page 1—A picture of the People’s Park confrontation in Berkeley last year.

September 28, 1971—page 1—Bruce Franklin arguing with Lt. Don Tamm of the Santa Clara Sheriff’s Dept. at the Stanford Computer Center on the day of the violence there. Franklin obviously, was already in trouble over the incident, but those in the background have been tried under campus judicial proceedings, if identified.

- October 12, 1971—page 1—demonstrations at the Franklin hearings. Again, possible prosecution under campus rules.
- October 19, 1971—page 1—Demonstration and disruption of a Hoover Institute conference on Iran by Iranian students and radicals.
- October 28, 1971—page 1—Franklin, Tamm, and crowd at Comp. Center.
- November 4, 1971—page 1—Occupation of the campus Placement Center by radicals. Numerous charges have been filed against the disruptors for this incident.
- November 5, 1971—page 1—Same as the day before, but a different picture.
- November 8, 1971—page 1—Group of fans tearing down the football goal posts following the clinching of the Rose Bowl bid. The police did try to stop people from doing it, and two warnings were given before the game ended.
- November 9, 1971—page 3—Demonstrations at the Franklin hearings.
- January 17, 1972—page 1—Placement Center demonstration, inside the building.
- January 18, 1972—page 6—Franklin teaching a class after being found guilty by Advisory Board—a violation of at least the spirit of the decision, if not the letter. It was felt the University could have taken additional action against him.
- January 20, 1972—page 1—Demonstration and sit-in in the President's office.
- January 24, 1972—page 5—Demonstration in San Francisco outside the Trustees' meeting firing Franklin. Arrests were made.

January 25, 1972—page 6—Franklin in the Faculty at an “eat-in.” Campus judicial proceedings were brought against some in this demonstration.

January 27, 1972—page 1—Two pictures of the Placement Center demonstrations.

22. Although occasionally our photographers have been intimidated and even shoved around, the policy of letting it be known that we would not allow the Daily to become an investigative arm of the police has provided us with closer access to demonstrators and others making the news. We hold more of a position of trust among radical groups than papers from off campus, and as a result have been able to cover news of their actions more closely and more accurately than any of the other media in the area. As Daily editorials indicate, we often differ with revolutionary actions, but we give them coverage that they find the least biased of any medium.

23. The importance of photographs to our news coverage is undeniable. For any newspaper, a story of action is not complete with words alone. The camera can often catch truth more easily than can the written word. No description of a beating or a fire can match the actual sight of the action through a picture. Readers expect photo coverage of events, and the Daily has been fortunate to have excellent people taking pictures and presenting a well-rounded account of protests and demonstrations.

24. The Daily cannot operate under pressure from outside forces, be they radical groups, minority group demands, or interference from government and

police. The search of the Daily offices by Palo Alto police disrupted activity here for the following four days with emergency editorial board meetings, numerous calls and letters, and at least four TV interview-camera teams invading the office. People were placed under a great strain, the editor was tied up day and night with related incidents, and the entire paper suffered. We were overtime on our press deadline, and we raised the ire of the type setting shop for our late hours and poor organization.

25. The search was disruptive in another sense also. At the time of the April 12, 1971 search, as a Managing Editor, I had a desk in the Daily's office. In my desk, I kept my notes from various interviews I had made with news sources. Some of the information in these notes had been given to me in confidence, and on the express understanding that I would reveal neither the source nor the information. Confidential information and confidential sources are of great importance in terms of my ability to function as a reporter—they often provide the background information essential to effective reporting. If sources thought confidential information would be made available to the police, they certainly wouldn't give me such information, and my ability to function as a reporter would be diminished. The search of the Daily's office, and the threat of its repetition—with the possibility of police access to information given in confidence—puts in jeopardy our newspaper's capacity to gather and report the news.

26. Furthermore, a paper loses all credibility when it acts or is compelled to act in the express interests

of one group against another. The ideal of objectivity may be a myth, but the struggle to reach that idealistic goal is imperative for all papers from the New York Times to any college paper. In addition, the readers of the Daily are basically liberal and many of them would and do object to the official campus newspaper operating as an "evidence organ" for the police in a controversial case of human rights. Whether the demonstrators at the Stanford Hospital or any other site were right or wrong in their protest is not the point; the Daily attempts to cover the story and present as clear a picture as possible. We do not attempt to "bring Law-breakers to justice" through our news coverage, although at times we might editorially think that that should be done. Any interference with the Daily's operation and its organizational philosophy truly cripples the newspaper as an effective and unbiased disseminator of information.

Executed this 16th day of June, 1972.

/s/ Fred Mann
Fred Mann

(Jurat omitted in printing)

Exhibit A

**THE STANFORD DAILY
BREAKDOWN OF INCOME**

	1969-70	1970-71		
	<u>1969-70</u>	<u>Percentage</u>	<u>1970-71</u>	<u>Percentage</u>
ADVERTISING INCOME :				
National	19,970	15%	17,815	10%
Local	68,890	51%	76,723	44%
Classified	12,358	12%	18,310	10%
Sub-Total	\$ 101,218	78%	\$ 112,848	64%
SUBSCRIPTION INCOME :				
Student Subs.	27,641	20%	35,883	20%
Faculty-Staff Subs.	0	0	18,000	10%
Off-Campus Subs.	5,688	.75%	5,869	3%
Sub-Total	33,329	20.75%	59,752	33%
OTHER INCOME :				
	681	.25%	3,587	3%
Sub-Total	\$ 681	.25%	\$ 3,587	3%
TOTALS	<u>\$ 135,228</u>	<u>100%</u>	<u>\$ 176,187</u>	<u>100%</u>

Exhibit B

Section 6.09: Publications Board

A. Function

There shall be an administration board known as the Publications Board in which the general control of all student publications shall be vested.

B. Membership

1. The members of the Publications Board shall be:

- a. The editors and business managers of the *Stanford Chaparral*, *Daily*, *Quad*, and *Sequoia*.
- b. The manager of the Stanford Blotter.
- c. Three (3) members of the Senate appointed by the President.
- d. The Student Financial Manager and the Vice-President of this Association.
- e. A faculty representative of the Department of Communications.
- f. The Business Manager of Stanford University.
- g. The Director of the Stanford University Press.

h. The Editor of the Stanford Workshop. Each member shall have one vote. The President of this Association, the Station Manager of KZSU and the editors and business mana-

gers of non-official ASSU publications shall be ex-officio members without vote.

C. Officers

The officers of Publications Board shall be a Chairman and a Secretary, who shall be elected by the Board in Spring Quarter to serve the following academic year.

1. The duties of the Chairman shall be:

- a. To call and preside at all meetings of the Publications Board, and to carry out all actions passed by the Board,
 - (1) to set the agendas for these meetings,
 - (2) to represent the Board between meetings,
 - (3) to vote only in case of tie;
- b. To oversee the proper use of all publications' funds.
 - (1) to act as Publications Board Manager,
 - (2) to oversee the expenditures from all improvement funds,
 - (3) to be responsible for the closing of any open accounts from the past years' publications;
- c. to oversee the use and maintenance of Storke Student Publications Building, subject to guidelines set by Publications Board;

- d. to assure the enforcement of the By-Laws and Standing Rules of A.S.S.U. where publications are concerned;
 - e. to serve as an impartial arbitrator in inter- or intra-publication disputes;
 - f. to represent the Board and publications to the University in questions of finance or editorial policy.
2. The secretary shall keep minutes of each meeting and prepare these minutes for submission to the Senate.
- D. Whenever an individual publication shall deem itself to be adversely affected by an action of the Board, it shall have the right to appeal the Board's action to the Senate, whose decision in the matter shall be final. All actions of the Board shall be determined by a majority vote unless otherwise provided.
- E. Immediate Financial and Editorial Control
The immediate financial and editorial control of each publication shall be in a body local to that publication. Such bodies and the rules governing them shall be in the Standing Rules of this Board.
- F. Amendments
1. Publications Board, upon a two-thirds vote of Publications Board and a majority vote of the Senate, provided that the changes

have been presented at the previous regular Senate meeting.

2. A three-fourths vote of the Senate, provided that the changes have been presented at the previous regular Senate meeting.

G. Publications Board Subcommittee

1. The Publications Board Subcommittee shall be composed of the chairman of Publications Board, an editor of one of the official A.S.S.U. publications and a business manager of one of the official A.S.S.U. publications. The latter two members shall be elected by Publications Board.
2. The Publications Board Subcommittee shall be empowered to act in behalf of Publications Board between regularly scheduled meetings of the Publications Board in the following functions: approval of distribution dates, granting of permission for distribution of spontaneous publications, granting of funds from the Assistance Fund as provided in Article III, Section 8, paragraph 6 of the Publications Board Standing Rules.

Exhibit C

ARTICLE VI: STANFORD DAILY**SECTION 1: Purposes**

The Stanford Daily Publishing Board, as agent for this Association, will publish throughout the year a newspaper for the purpose of:

- a. Informing the Stanford community of university news.
- b. Printing other news of interest to the community.
- c. Printing opinions of interest to the community, provided that the Stanford Daily maintains high standards of objectivity and fairness by separating news from editorial opinion and giving persons with conflicting opinions reasonable opportunity to reply.

SECTION 2: Board Membership

- a. The Publishing Board will consist of the editor, the business manager, the student financial manager, two persons employed by Stanford University when joining the Board but not registered as students, and two students who are members of the Legislature chosen in May by LASSU, one of whom will serve as chairman of the Board. Board members shall serve one-year terms beginning June 1, except for the editor, who will join the Board upon assuming office.
- b. The two non-student members will be chosen by a vote in May of the editor, the editor-elect if

designated during May, the business manager, the business manager designate, the student financial manager, the student financial manager designate, with the present chairman voting in case of tie.

c. Vacancies among the non-student members or chairman will be filled by a vote of the editor, business manager and student financial manager.

d. Board membership will not be a paid position.

e. Quorum for board meetings will be four.

SECTION 3: Board Powers.

a. The Board will be responsible for carrying out the purposes of the Stanford Daily as listed in Section 1 of this article, and will exercise publisher's control over the Daily except that certain powers will be reserved the editor and the editorial staff as specified below.

b. The Board will elect a business manager in April to serve one year beginning June 1, who will exercise responsibility for the production, sales and distribution as provided by the Board. The business manager may be dismissed by a vote of five members and a successor chosen to serve the remainder of the term.

c. The Board may dismiss an editor by vote of five for repeated actions which contradict the purposes of the Stanford Daily as listed in Section 1 of this article, and conduct an election among the editorial staff to replace him.

d. The Board will supervise the election of the editor according to the procedures specified herein, and will set the editor's term in office, provided the term does not exceed 12 months, and provided no such decision affects an incumbent editor.

e. The Board will authorize payment of salaries for the editorial and business staffs and will maintain a staff list, Operating Rules and Procedures for the Stanford Daily, and written public minutes of all meetings.

SECTION 4: Staff Membership

a. The editorial and news content of the Stanford Daily and the duties of the editorial staff will be controlled by an editor, nominated and elected by the editorial staff.

b. The editorial staff, specified in a staff member list prepared monthly by the editor and submitted to the Board, will consist of those persons (1) who have worked under the editor for a period of not less than two months immediately prior to designation as a staff member, and who have worked at least thirty hours during that two-month period; and (2) those persons who were staff members at some time within the previous year and are currently working under the editor.

c. The editor may delete a person's name from the staff member list at any time, but that person may appeal this action to the Board, which, by vote of five, may restore that person to the staff member

list; but the Board may under no circumstances specify the duties of the staff member in question.

d. The Board, by vote of five, may delete a name from the staff member list if the person in question has not worked under the editor regularly during the previous two months, excluding summer months.

e. The editor, in each staff member list, will designate not more than 10 senior editors and any number of junior editors, the remainder of the list consisting of regular staff members. No person will be designated a senior editor without having appeared on a previous list as a junior editor.

SECTION 5: Election of Editor

a. The Board will set a deadline for nominations for editor not less than two weeks before the beginning of the next editor's term and will set a date for the election not less than one week before the beginning of the next editor's term.

b. The staff member list prior to the list in effect on the date of election will be valid for nomination and election procedures. The senior editors and the editor will convene as a committee to nominate candidates for the election. A candidate may also be nominated by a petition to the Board signed by one-third of the staff members. No person shall be a candidate who is not at least a junior editor.

c. In the election the editor will have four votes, the senior editors three, the junior editors two