

and the other staff members one. Vote will be by secret ballot, supervised by the Board.

d. Each staff member will vote for one less person than there are candidates, indicating his first, second, and subsequent preferences. If no candidate receives a majority of first-place votes:

(1) the candidate receiving the fewest first-place votes will be dropped, and his first-place votes distributed among the remaining candidates according to the second-place preferences listed on those ballots.

(2) this procedure will be continued until one candidate receives a majority of first-place votes.

e. Should the editor resign or be dismissed, the Board will immediately request the senior editors to convene as a nominating committee and proceed with an election for an editor to serve the remainder of the former editor's term, except that the Board may appoint an interim successor should the vacancy occur in June, July, August or September.

Exhibit D

The Stanford Daily

Sunday, April 11, 1971 Stanford, California

Volume 159, Number 34A

Police Break Up Hospital Sit-in

By Ed Kohn

Clubswinging Palo Alto police and Santa Clara County Sheriff's Deputies cleared about 60 demonstrators from an administrative corridor at Stanford Hospital during a near-riot early Friday evening, ending a 30-hour sit-in.

Twenty-three persons, including the chairman of the Black Students' Union (BSU) and a candidate for the Palo Alto City Council, were arrested on a variety of charges that include assault with a deadly weapon, conspiracy, assault on a police officer, all felonies; malicious mischief, unlawful assembly, obstructing a police officer, failure to disperse and refusal to leave a public building after being ordered to do so (misdemeanors).

About two dozen demonstrators, not all of whom were arrested, and 13 police officers were reported injured. Most of the demonstrators suffered head and hand injuries after being clubbed by the police, while most of the police and sheriff's deputies were injured by flying glass, ashtrays, staplers, telephone books, table legs and other missiles.

The administrative offices where the demonstrators barricaded themselves were in shambles. Broken elec-

tric typewriters were strewn across floors; broken glass and water was under foot everywhere; furniture was damaged beyond recognition. Deputy hospital director Frank Vitale estimated damage at about \$100,000.

Alarms Set

Campus police reported 11 false fire alarms, five bomb threats—including two at the hospital—and two trash fires following the arrests. Three fire bombs were thrown at a PG&E substation near the Women's Gym early Saturday morning, but no damage was reported.

Palo Alto Police Chief James Zurcher said that 65 Palo Alto police were deployed. They were supplemented by 110 sheriff's deputies under a mutual aid agreement.

All of the adults arrested were released on bail or bond late Saturday night. The three minors arrested will remain in custody until Monday.

The adults will be arraigned at 10 a.m., April 21 at the North County Courthouse.

The near-riot—by far the most violent situation on campus since last spring—erupted over the firing of a black hospital custodian, Sam Bridges. [See accompanying story.] The demonstrators barricaded themselves in the offices of hospital director Dr. Thomas Gonda in an attempt to obtain Bridges' reinstatement.

The Black United Front (BUF), a coalition that includes the BSU, began the tense sit-in Thursday

afternoon after an apparent misunderstanding with Gonda about the form his response to its demands—including the immediate reinstatement of Bridges—was to take. Gonda later agreed to comply with all BUF demands except the reinstatement of Bridges.

Barricades Established

However, the BUF-administration negotiations broke down and shortly before 5 p.m. Friday, 60 of the demonstrators decided to remain in Gonda's office.

Hearing that at least one busload of police was on the way, they began to build barricades at both ends of the corridor. The demonstrators used desks, chairs, filing cabinets, table tops and other pieces of furniture to effectively barricade both sets of reinforced plate glass doors.

At about 5:45 p.m., police units moved in, blocking off exits at both ends of the corridor. Vitale demanded that the group immediately vacate the premises, saying that it was interfering with the orderly functioning of the hospital. Assistant Palo Alto Police Chief Anderson repeated the order to leave the premises, and gave the group five minutes to do so without facing arrest.

At 5:59 p.m., Anderson called in to BSU chairman Willie Newberry: "Then you're not going to leave?"

The reply shouted back at Anderson was a loud "Right on!"

Battering Ram

Police then produced a six-foot battering ram, which they apparently obtained from the hospital's

maintenance plant, and unsuccessfully began to attack one of the reinforced glass doors.

After several efforts, one pane of glass was smashed. Police attempted to spray a Mace-like substance at the demonstrators, but the protestors used a fire hose to repel both the charging police and their irritant. One policeman was hit by a flying stapler, and he collapsed in a pool of water.

The effects of the blown-back irritant then were felt by police, reporters, faculty observers and onlookers, and the situation remained static for about 10 minutes. The crowd, which was being held back by a double line of riot-equipped policemen, continued to shout encouragement to those sitting-in and obscenities at the police.

Onlookers Declared Illegal

“It takes a lot of nerve to hold those clubs against unarmed people,” one woman yelled.

“Power to the people,” the crowd chanted.

The onlookers and most of the press were then declared an unlawful assembly by Anderson, and the officers began to push them back in earnest. They stopped after the crowd had been moved back some 30 yards and contained behind a pair of locked glass doors. A hospital employee among the demonstrators produced a key, and unlocked the doors. An angry sergeant relocked them amidst a barrage of angry curses.

Police then repeatedly assaulted the barricaded doors, but were repelled three times by the use of

the fire hose and assorted missiles, including telephones.

In desperation, police loosened one door with what appeared to be a crowbar and a pair of bolt-cutters, and, at 6:30 p.m., using a rope, succeeded in pulling the twisted door out of the way.

“Let’s Get ’Em”

As the door was pulled back with a rope, a police officer hollered “Let’s get ’em,” and the police eagerly vaulted over the barricade. At the same time, demonstrators opened a door at the other end of the corridor, where only ten policemen were stationed.

The officers were temporarily overwhelmed by the escaping protestors, and several policemen were beaten to the ground by demonstrators armed with clubs. One officer suffered an apparent broken shoulder of a result of a beating.

Other demonstrators left the offices through the windows—several of which were smashed—and shimied to the ground on another fire hose. No one who escaped by this method was arrested.

At least one who was injured during the melee was later arrested as she was obtaining medical assistance at the Palo Alto Clinic.

One photographer on the scene estimated that it took police no more than 30 seconds to secure the entire occupied corridor. Several of the demonstrators were penned in and beaten by police. Injured police and demonstrators were treated on the scene

and in the emergency room by hospital personnel who were standing by.

As the corridor was being secured, the escaping demonstrators and others threw rocks at police vehicles. No one was reported injured in those incidents.

This is a special issue of the Daily. Because of Easter, no Monday issue will be printed. The Daily will resume its regular printing schedule Tuesday.

Page 2

The Stanford Daily

April 11

Reason Lost In Pace Of Events

By Felicity Barringer and Dan Bernstein

News Analysis

A sit-in, which, ironically, was not originally planned as a sit-in, developed Friday into one of the bloodier riots in Stanford history.

Throughout the 30-hour occupation of Administrative Offices at the Medical Center, and the intensive negotiating sessions that accompanied it, a few facts stand out.

—There was a crucial period early Friday afternoon which a combination of skillful negotiating and good timing might have resulted in a peaceful conclusion to the occupation.

—Once this chance had been forfeited by a combination of hasty decisions and intransigence on both

sides, the only alternative remaining was a bloody confrontation.

The occupation began almost by accident, as some 50 people left a noon rally for fired worker Sam Bridges and for Jose Aguilar, a professor who had not been granted tenure, and went to what they understood was a scheduled 1:00 p.m. meeting with Dr. Thomas Gonda, Associate Dean of the Medical Center.

Finding Gonda absent, the group decided to sit down in the foyer of his offices and wait for his return. Hours later, when Medical Center officials finally contacted Gonda, the demonstrators were still waiting before his offices. Gonda then met with members of the Black United Front (BUF), which was leading the group, and told them at that time that Bridges would not be rehired immediately.

The demonstrators then decided to stay until Bridges was rehired.

Groups represented in the continuing negotiations were the BUF, the Black Advisory Committee (BAC), and the hospital administration. At issue were the seven BUF demands, which dealt with the rights of employees to criticize the hospital administration, to form unions, to have grievance rights and to have peers present at those grievance procedures. Other demands were for the BAC and the Alanzia Latina, a Chicano workers' rights group, to have the right to investigate claims of violation of the above rights, and that fired janitor Bridges be rehired.

Five of these demands were readily agreed upon, as the administration declared that these rights already

existed. This left the demand for the rehiring of Bridges as the one point of contention.

A key factor in Friday morning's discussions was the reversal by the BAC of the previous stand they had taken supporting Bridges' firing.

During these negotiations many members of the BAC said that they would resign their jobs if Bridges was not rehired.

Upon the completion of the negotiations, misunderstandings started to develop on all sides.

Administration officials left the session with the understanding that the occupation would not stop until Bridges was rehired. Apparently basing his decision on that assumption, and after consultation with Gonda, Wilson, Associate Provost Robert Rosenzweig, and others, Acting President William Miller sent a statement to the sit-in, saying that "there will be no conclusion on the composition of dates for the grievance procedure while the occupation of the hospital continues."

What Miller and other Administration officials were unaware of was the developing willingness of the BUF to leave the occupation if the grievance procedures for Bridges were started immediately.

In fact, the BUF, in a meeting with the BAC and some black hospital workers, after the last session with administration officials, had agreed to leave if the grievance procedures for Bridges were started immediately, compromising on their demand for immediate rehiring.

Events, however, were going too fast to be reversed, or even slowed by now. Immediately after the BUF-BAC caucus had agreed on this point, according to Cheatam, the message came from Miller, which, in effect, slapped the demonstrators in the face right after they had made a concession. And, at the same time as Miller's statement arrived, word came from surveillance forces for the demonstrators that police were massing, and preparing to come to the hospital and stop the occupation.

Once the demonstrators had ascertained this, there was no backing down. Although they had agreed with the BAC to change their stand on Bridges' rehiring, they had had no time to make a statement to this effect and to leave with their goals apparently achieved. To leave without making a statement, after hearing of the massing of police, would amount to backing down under fire—something they would not do. Instead, they erected barricades to defend themselves, and asked all who did not want to remain inside to leave.

At the same time, having called the police, and having no knowledge of the turn of events in the negotiations, Administration officials could not recall the police. The stage for the confrontation was set, and the outcome inevitable.

Administration officials defend the timing of the police action stating that they wanted to proceed while it was still light, after the adjacent clinics had been closed, and before visiting hours began, so that corridor traffic would be at a minimum.

Between the confusion of demands, negotiations, pressures and counter-pressures, at least one crucial element of compromise was lost in the shuffle. The BUF was willing to compromise, but the Administration did not know it when it took its irrevocable step and called police.

Provost Statement

Closing and occupying an area of a hospital is not an acceptable way to pursue a grievance or make a point. When that tactic is used, as it was for more than 30 hours at the Stanford Hospital, the question for the Administration to answer is how to end the occupation with the least possible danger to patient-care services and the least possible risk to patients.

So long as there was a reasonable chance that Dr. Wilson and Dr. Gonda might persuade the people involved to leave voluntarily, I was prepared to refrain from asking for police assistance. However, disruption of hospital functions could not be allowed to continue for long, and when it became clear this afternoon that further discussion would not be productive, I asked the Palo Alto Police for assistance.

I regret, as much as anyone, that this disturbance had to be tolerated even for as long as it was. I hope it will be recognized, however, that what was at issue here was not simply expensive research equipment or valuable records, but sick people. Our first obligation was to protect their interests and each decision to act or not to act was taken with that in mind.

Before the sit-in began, the community was informed that the Hospital agreed with five of the six demands made on it. On one, the rehiring of Sam Bridges, the answer on Thursday morning was that grievance procedures are available to him if he wishes to use them. That answer still stands. If Mr. Bridges wants to file a grievance, he can be assured of a full and fair airing of the facts of his case.

William F. Miller

Page 4 The Stanford Daily April 11, 1971

BRIDGES' CASE

By Bob Litterman

Sam Bridges' firing and the subsequent negotiations concerning his case have been shrouded by misunderstanding. Bridges was first hired as a janitor for the hospital February 22. During his first month on the job, several complaints were made to his supervisor to the effect that Bridges was not doing his job.

Because the hospital was concerned about Bridges' feeling discriminated against, he was asked to attend a meeting with his supervisor, the hospital minority relations counselor Shirlee Parish, and the Assistant Chief of Engineering Warren Thorpe. At that meeting, Bridges told Parish that he had not asked for her help and did not need it.

More Complaints

After that meeting, Bridges had additional complaints made against him which included "having words" with another employee and a security guard. The security guard told his sergeant who called Thorpe to report the incident. Thorpe is alleged to have told the sergeant that he didn't need to worry because Bridges would soon be fired.

One week later, on March 16, Thorpe gave Bridges two weeks notice that he would be fired. Thorpe also told Bridges that grievance procedures were available, but Bridges later told the BAC that he was unclear what the procedures were and whether they applied to him since he was in his first six months of employment.

The next step Bridges took was to ask the help of the Black Students Union, the Black Worker's Caucus and the Black Liberation Front, a revolutionary group based in Redwood City. These groups formed the Black United Front (BUF) and began circulating a leaflet charging that Bridges had been discriminated against.

When he heard of this leaflet, Cheatham, a member of the Black Advisory Committee (BAC) initiated an investigation into the case. As a result of an initial hearing with Parish, Thorpe and Bridges supervisor the BAC issued a statement that stated in part:

"Mr. Bridges was terminated because he was not doing the job he was hired to do, and therefore putting an added burden on his co-workers."

BUF Rally

Last Tuesday the BUF held a rally in Bridges' behalf at which time they presented a list of six demands including the reinstatement of Bridges to Dr. Thomas Gonda, Director of the hospital. At that time, the BUF was led to believe that Gonda would personally give them a response 48 hours later, Thursday at 1 p.m.

Wednesday, Gonda responded with a list of written responses to the six demands. He basically agreed to five of the six demands.

The BUF scheduled a press conference Thursday morning with MECHA and Alianza Latina, a Chicano hospital workers group, to discuss Bridges' case and that of Dr. Jose Aguilar, a Chicano doctor denied tenure to the medical school faculty.

After that press conference, the two groups held a rally and shortly after 1 p.m. marched into the hospital to hear Gonda's reply to the demands.

When the group which numbered close to 100 got to Gonda's office, they were met by deputy director Frank Vitale who passed out Gonda's written response and told the group that he did not know where Gonda was. Vitale said he did not think Gonda knew he was expected to appear in person.

The BUF decided to sit down in the corridor outside Gonda's office and wait for him.

Facts Left Unmentioned

The BUF met with the BAC that afternoon at which time Bridges argued that it could not have

reviewed the case since he had never appeared before it. The BAC announced that "All the facts . . . have not been presented." A hearing was scheduled for 8 a.m. Friday morning.

At the Friday morning meeting, several new facts were presented to the BAC. Among these were:

1. Bridges claimed he was not adequately informed of his job duties. His supervisor said he had not informed Bridges of his duties, but had introduced him to the foreman. The foreman said he had introduced Bridges to a fellow worker whom he assumed had described Bridges duties to him. Bridges was never given a job description form.

2. The employee who had had the run-in with Bridges described it as "not that serious."

3. One worker who was supposed to have seen Bridges asleep during his working hours said he had not actually seen Bridges asleep, but had heard of it.

On the basis of the testimony at this meeting, the BAC reversed its earlier decision and recommended that Bridges be immediately rehired.

The BAC immediately thereafter met with Gonda to inform him of its recommendations. Gonda decided that Bridges would have to go through the formal grievance procedures and he could not rehire Bridges immediately on his own authority.

As negotiations continued the BUF asked that the first three of four steps in the grievance procedures be bypassed, and that they go directly to step four, the review by Gonda himself.

At this point Gonda ruled that he could not handle this procedure himself and that some other impartial person be appointed. The BUF agreed upon Hank Oregan, and Gonda went to get approval of this procedure from John L. Wilson, dean of the medical center, and William Miller, acting President of the University.

End In Sight

After Gonda left, the BUF met with black hospital workers and decided to end the sit-in as soon as the grievance procedures were started according to the plan.

Soon after, however, the BUF received a statement from Miller saying that:

“I have Gonda’s recommendations under consideration. However, we agree there will be no conclusion on the composition or dates for the Grievance Procedure while the occupation of the Hospital continues.”

Soon after this statement arrived the BUF heard reports that police were massing. They then barricaded the doors to the corridor and there were no further negotiations.

BSU HITS ‘RACISM’

By Dave Spector

The Black Students Union blasted the “racism” of the police action at the Medical Center in the arrest of ex-BSU Chairman Leo Bazde and the “brutal tactics employed by Stanford University against peace-

ful demonstrators" in a press conference Saturday afternoon.

BSU Co-chairman Mike Dawson stated, "Last year and earlier this year in massive student demonstrations by mostly white youths, there was not this type of police action in response . . . that black people were involved in this protest in large numbers was reason police action so heavy."

Because "the University has bargained in bad faith in enlisting the support of the Santa Clara police to disrupt our peaceful demonstration," the Black United Front demands were reiterated.

All, except the rehiring of Sam Bridges and amnesty, were agreed to by Dr. Thomas Gonda, director of the Medical Center, Friday morning.

The BSU statement affirmed "we cannot allow business to be carried out as usual at Stanford University until all demands are met" because "of the brutal tactics employed by Stanford University against peaceful demonstrators."

BAC, AL STATEMENTS

We, the members of the Black Advisory Committee, are appalled at the violence perpetuated by the police on a non-violent assembly. We are also appalled at the idea that the Acting President of the University would find it necessary to order police into a patient area, especially after the hospital Director stated that there would be no police action upon the occupants of the administrative suite.

We are holding a closed meeting for black employees at 9:30 a.m. Monday morning in room M104 in the Medical School, then adjourn and go to a mass rally at 10:30 a.m. Monday morning at the Medical School lawn off Campus Drive.

Black Advisory Committee

The Alianza Latina supports 100 percent the final finding of the Black Advisory Committee. That is, that Sam Bridges was unjustly terminated and that he be reinstated with pay retroactive to day of discharge.

However this issue has now been transcended by the vicious and totally unwarranted police action on a peaceful assembly of employees and friends.

This assault on black, brown, and white individuals has tragically pinpointed Stanford University's attitude toward minority employees. Provost Miller's decision to use University tactics (refusing to negotiate and resorting to police violence) on employees is a striking (no pun intended) example of his arrogance.

This violation of the workers' basic right to peacefully protest an unjust administrative act should be the concern of all workers.

There will be a meeting of all Latin employees Monday morning at 9:30 a.m. in room M106.

Alianza Latina

Exhibit E

February 10, 1970

THE STANFORD DAILY

Editorial:

POLITICS AND PHOTOS

The news media today is caught in a pair of scissors. While protest groups defensively resist full news coverage, police subpoena photographs and film to help prosecute demonstrators. Caught between two blades in a political argument, news gathering ability is being cut to shreds.

At Stanford, Daily photographers have been excluded from new Moratorium and SDS meetings. We recognize and regret the objections raised by the two groups—that newspaper pictures have been used to convict demonstrators. But we resent these attempts to interfere with coverage of lawful, open community meetings on campus.

The Daily cannot pursue news gathering in a vacuum, ignoring the consequences of what it prints. Neither can we brush aside our responsibility to print and picture the news fairly and fully. Responding to both journalistic responsibilities and the realities of government subpoenas, the Daily staff has voted to accept the following policy for reporting meetings and demonstrations.

- 1) Photographers will be assigned to newsworthy events, and they will remain until explicitly excluded. If they or their equipment are harmed, the Daily will

press charges through campus and community judicial bodies. However, the Daily will not withhold news coverage to force access for its photographers.

2) The Daily will print newsworthy photographs regardless of their potential for incrimination. This is essential to full coverage of events.

3) Negatives which may be used to convict protestors will be destroyed. We feel that a line can and should be drawn at this point between journalistic responsibility and cooperation with government authorities in protests that are often directed against the government. Once a story has been printed, pictures taken with it are rarely used again. However, negatives which never appear in the paper may be used to convict demonstrators.

The Daily feels no obligation to help in the prosecution of students for crimes related to political activity. Our purpose is to gather information for our readers, not for police files.

We advise both the police and the protest movement to consider again what they sacrifice when they tamper with the press' ability to present the news. The press must act as much more than a political weapon or shield.

In this spirit of responsibility, realism and independent, we present our policy.

Exhibit F

THE STANFORD DAILY

Editorials:

Yesterday's search of the Daily office for photographic evidence relating to last Friday's violent sit-in was one more in a growing list of examples of the intimidation and harrasment [sic] being inflicted on the news media by governmental agencies. It is the function of the press to inform as many people as possible of decisions and events affecting their lives. The facts imparted by the press give these people a chance to affect these decisions and events, by arming them with knowledge. If this function is impaired in any way, the ability of these people to control their own lives is jeopardized. [sic] In light of this, it is extremely difficult, if not impossible for any news organization to perform its function in a democratic society if it is constantly under the threat of a governmental subpoena or a government-sanctioned search of its premises.

A search such as yesterday's is particularly devastating to a newspaper's ability to keep its own confidential files. Although no evidence relating to Friday's demonstration was found yesterday, all photographic and editorial files were examined. Since this search was made, the possibility that subpoenas might be issued at a later date for material officers saw during this fishing expedition does not seem remote.

It has been the Daily's standing policy to destroy all potentially incriminating unpublished photographic

material. That policy, while regrettable, is a necessity. It hampers our ability to keep files which may be of future informational use. However, more important even than keeping these files is the necessity for a news organization to keep itself from becoming a filing service for evidence to be used in civil or criminal courts. Until such time as it becomes evident that the threat of actions such as yesterday's no longer exists, we will stand by this policy.

We also intend to examine all possible legal roads that may lead to the prevention of acts such as yesterday's search. In a truly free society, the news media and the government must remain as far separated from each other as possible. The use of searches, subpoenas, and all other forms of governmental harrassment [sic] obviously have a chilling effect on the freedom of the media to exercise the rights guaranteed them by the First Amendment. If the government of this country, both on the national and local level, continues to employ intimidating tactics, it must be challenged at every step of the way. This is the only possible answer to actions such as yesterday's, if we are to have a truly free press.

Monday morning quarterbacking, of a football game or a campus disruption, has little meaning in terms of the actual events being examined. Its usefulness is largely limited to suggesting guidelines for action in possible future occurrences. In this light, we offer our reactions to the events of last Friday.

We cannot help but think that the decision to call the police to the scene of the sit-in was disastrous.

When the police were called, negotiations were proceeding satisfactorily, although the administration was unaware of the fact. While the administration has defended its actions on the grounds that patients were being disturbed, it is evident that not all doctors with patients concerned were consulted. Furthermore, the demonstrators were neither clearly nor specifically informed how their presence endangered patient welfare. Finally, the nature of the demonstrators made a violent response to police presence very likely, though not inevitable.

The case of the fired custodian, Sam Bridges, is almost as complex as the sit-in his firing precipitated. We are studying the charges made against him and will discuss the validity of those charges in a later editorial.

Thus, the administration decision to wash its hands of the sit-in and give final authority in the matter to the police was both unwise and unwarranted. The events of Friday clearly demonstrate that the circle from which that decision emerged is too small and too closed. More input about the status of the negotiations, the welfare of the patients, or the nature of the demonstrators could have forestalled the tragedy.

We are less certain in our analysis of the actions and tactics of the demonstrators. Our editorial board is evenly divided as to the question of their resistance. Half of the board feels that the building of a barricade and the subsequent fighting with the police was unwarranted, that a nonviolent reaction to the police

presence was in order. The other half understands the demonstrators' actions, holding that their response to the arrival of the police was inevitable.

Most of us agree that the destruction of the offices was unwarranted. The damaging of furniture and the scattering of files has no rational defense in our minds.

If we are to learn anything from the events of last Friday, it is that decisions to use police force may have unexpected consequences. Both Provost Miller and President Lyman had best anticipate them in the future.

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

GORDON MANNING, being duly sworn, deposes and says:

1. I am Senior Vice President and Director of News for CBS News, a division of Columbia Broadcasting System, Inc. Before joining CBS news, I was *Newsweek's* Senior Editor for five years and was named Executive Editor in 1961. I began my professional career with United Press in Boston and worked in various reportorial and editorial positions

with United Press. I served in the United States Navy during World War II. After the war, I became a staff writer for Collier's Magazine and was its Managing Editor from 1950 to 1956.

2. My work for CBS News consists of general responsibility for all regularly-scheduled CBS Television Network news broadcasts, on both radio and television, as well as for urgent Special Reports, the coverage of special events, newsfilm syndication and the administration and direction of all CBS News staffs and bureaus, the correspondents and other news and administrative personnel, foreign and domestic.

3. Quite obviously, the success of these efforts depends on the ability of hundreds of employees performing dozens of functions to perform these functions free from inhibiting or disruptive influences. Such influences can take many forms. The use or misuse of the subpoena power by agencies of the government to obtain material other than that which is actually published or broadcast has, of course, been the "inhibiting influence" with which we have recently and publicly been concerned in connection with CBS' broadcast of "The Selling of the Pentagon". The specific objection to this use of broadcasters' "outtake" material was the threat of governmental second-guessing of journalistic decisions. That case, with which we have quite naturally been identified so closely, is in one sense merely the tip of the iceberg.

4. The increasing use of the subpoena power by governmental agencies puts broadcasters and other journalists in the position of being *de facto* investiga-

tive arms of the government. The inevitable effects of this are that news sources dry up, reporters may be tempted to be timid in choosing and preparing their reports through fear of themselves being subpoenaed, and the temptation arises to destroy outtake material which might otherwise be useful for follow-up reports or historical preservation. All of these effects are significantly inimical to the functioning of a free press.

5. All of this is relevant to the case at hand because the use of a search warrant in the manner used by the Palo Alto police in connection with its search of the offices of *The Stanford Daily* embodies all of the evils of misuse of the subpoena power as well as enough extra dangers to make it an especially alarming intrusion into the already threatened freedom of the press. To allow this kind of free-wheeling search is to invite more searches, since a working newsroom contains an abundance of information, much of which would be argued by investigators to be useful whether or not material obtained in this way could be used as evidence. The temptations would clearly be strong, and the acting on these temptations would be disastrous. Not only would the news gathering and reporting functions be inhibited in an exaggerated but a similar way to which the subpoena power inhibits, but also the very ability of a news organization to operate would be threatened. A search warrant presumes that material must be sifted before the needed material is located. I can imagine the workings of a newsroom being brought to a complete halt while voluminous and as yet unorganized information is "searched". The result would be intolerable, especially to a profession which de-

pend on the intelligent processing of information in the shortest possible time. That such a search may later be held illegal at best only partially can undo the damage.

6. In sum I strongly believe that only strong disavowal of such techniques by governmental agencies can free the press from being affected by influences which have no place in the practice of journalism. The use of a search warrant to obtain unpublished information from a journalist appears to me to be an especially serious threat to the maintenance of a free press, one which is intolerable in an era when journalistic freedom is at the same time so important and so fragile.

/s/ Gordon Manning
Gordon Manning

(Jurat omitted in printing)

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.

GENE ROBERTS, being duly sworn, deposes and says:

1. I am National News Editor of *The New York Times*, a position I have held for three years. Prior

to that time, I was Chief Correspondent for *The Times* in Vietnam for one year and in the South for three years. Before joining *The Times*, I was an editor and reporter for the *Detroit Free Press*, *The Norfolk Virginian* and *The Raleigh (North Carolina) News and Observer*. I have been a full time journalist for the last fifteen years and have had wide experience as a working 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 journalist, I am deeply concerned with maintaining the freedom and integrity of our nation's press. A police search of a newspaper office, even with a warrant, constitutes a clear and present threat to that integrity and freedom. If the search which was conducted in this case is permitted to stand, it is clear to me that no newspaper office in the country will be safe from official intrusion.

3. In the case of the *United States v. Earl Caldwell*, now on appeal by the United States government in the United States Supreme Court, the Ninth Circuit Court of Appeals held that a governmental investigative body must show a compelling and overriding national or state interest before requiring disclosure of a reporter's confidences. However, far more dangerous to a free press, and far more likely to result in the closing off of important news sources, I believe, is an unrestricted search of a newspaper's offices and the rifling of its files of the raw material that makes up the newspaper's published contents.

4. A government search of a newspaper office for its unpublished photographs, and other material, is certain to have a profoundly adverse impact on the newspaper's ability to gather the news. First, its reporters and photographers would earn the reputation of unwilling police agents, and their access to much sensitive information would be severely restricted. The *Caldwell* case, and its companion case *In the Matter of Paul Pappas*, each involve the threatened loss of a reporter's access to the Black Panther party. The other companion case, *Branzburg v. Hayes*, involves the reporter's sources of information with respect to illicit drug traffic. In each of these cases, the reporter swore that upon public divulgence of his confidential informants he would lose his sources for reporting obviously newsworthy activities.

5. The potential loss of sources because of their forced disclosure is an unfortunate reality with which all journalists live. This was well illustrated when Anthony Ripley, a *Times* reporter who had been reporting on the activities of radical groups, was summoned in 1969 to appear before a Congressional investigating committee. Ripley appeared before the committee and, although he testified only as to matters which had appeared in print, his effectiveness as a reporter on radical activities was effectively destroyed. Meetings to which he had previously had access were no longer open to him or, indeed, to other *Times* reporters, and other sources of information quickly dried up. In fact, the entire press suffered as a result of Ripley's forced appearance and much important information was forever lost to the public.

6. If a mere appearance before a government body can have such a destructive effect on a reporter's ability to gather the news, it is clear to me that a search of a newspaper office—during which everything in that office is open to official scrutiny—could be devastating. The parameters of the impact of such a search are hard to define only because in my fifteen years as a reporter and editor I have never before heard of a search of a newspaper office being permitted in this country.

7. The files of *The New York Times* contain many photographs and much information obtained in confidence, or with some restrictions, from a variety of persons in whom, and groups in which, government officials are interested. In the event our offices were subjected to a police search I am certain that many of these important news sources would be forever closed to our reporters and photographers, and thus to the public.

8. Of equal concern to me as an editor is the potential impact of newspaper office searches on the day to day work of reporters and photographers. If reporters and photographers believe that the information they gather will be available to government officials, they will not be eager to get the sensitive story, or to track down the individual who will supply the critical information. And I, as an editor, will consider carefully before publishing facts, or a photograph, which might imply that there is more than appears.

9. All reporters have taken written notes of factual disclosures received in confidence. If such notes are

subject to police seizure, it is likely the reporters will stop bringing them back to their offices and using them as aids in preparing their stories. I am obviously concerned for the quality and character of journalism if reporters refrain from taking notes or taping interviews for fear that this raw stuff might be easily available to government officials through the device of a search warrant.

10. A newspaper is built on millions of words and thousands of photographs. It cannot function as it should if these words and photographs can easily be examined and confiscated by government agencies.

A dangerous precedent has been set by those who authorized and conducted the search of the offices of the *Stanford Daily*. Unless this Court holds firmly and unequivocally that this search was constitutionally impermissible, no newspaper office in the country will be safe from similar police action.

The danger is real and the threat to press freedom and independence is something with which this nation's press and public cannot easily live.

/s/ Gene Roberts
Gene Roberts

(Jurat omitted in printing)

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

[Title Omitted in Printing]

AFFIDAVIT OF DON TOLLEFSON

DON TOLLEFSON, being duly sworn, deposes and says:

1. I am entering my Senior year at Stanford University, and I am a Communications Major. I have been working on the *Stanford Daily* since September, 1969, and I am presently the Editor-in-Chief. My job requires over 40 hours per week.

2. Around 5:40 p.m. on April 12, 1971, after picking up news releases from the University News Service, I returned to the *Daily* offices and noticed a Stanford Police car parked in front of the Storke Student Publications Building. When I entered the main door of the building I noticed two uniformed police officers standing in the doorway of the *Daily* editorial offices, discussing something with a couple of *Daily* reporters and two men in suits. As I entered the editorial offices, one of the men in suits (a Palo Alto Police Officer) asked another *Daily* reporter who I was. When he was told that I was the News Editor, (the position I held at the time) a search warrant was given to me. I glanced at it and when asked where the Editor was, I said that I did not know, but that I hoped she would arrive soon.

3. I then went into the News Office in order to phone some other editors. I was unable to contact anyone and the police officers shortly said that they had

to begin their search. They asked me if I would cooperate. I did not answer, and they headed towards the darkroom while I was still on the phone. During the next 15 or so minutes I went back and forth between the photo offices and the editorial offices, still trying to contact other members of our editorial board. During this period I observed the officers in the photo office for a number of minutes. All of our file cabinets and wastebaskets were gone through. I also observed one plainclothes officer making a search of the *Quad* (yearbook) photo files and carefully examining their negatives. I remember at least one person mentioning the fact that they were searching the *Quad* files in a voice loud enough for the officers to hear.

4. Shortly after observing the foregoing, I received a call from KPIX News regarding some of the demands which had been issued at the Medical Center earlier in the day and I went into the Business Manager's office to use the phone there because the rest of the offices were quite hectic. Because people were running in and out of all the offices, I shut and locked both doors going into the business office. While I was talking on the phone, some people began to knock on the door, and because I was in an inner office and thus could not see them, I yelled for them to wait, but the knocking continued. I then got up and saw that it was the police, accompanied by a number of reporters and other people who had walked across the hallway from the photo offices. When I first saw them, the uniformed Palo Alto officer was attempting to open the window adjoining the door. I opened the door and let them in.

While they were in the business office, the uniformed officer went through a stack of that day's edition of the paper, unfolded them, and shook them out.

5. When I hung the phone up, I left the business office and went back to the editorial office where I saw a uniformed officer sitting at the Editor's desk. I observed him while he searched through the drawers of that and the other desks in the office which at the time belonged to Fred Mann, Ed Kohn, and myself. In the next few minutes I saw him sift through a number of items of correspondence in and on the desks and I saw him look at least one letter for a long enough period of time to have read it. Shortly after this, the police left.

6. As the time of the search, my desk contained notes gathered during the course of my work which typically includes information given to me in confidence. Confidential information and sources are very important in terms of allowing me to function effectively as a reporter. If people felt that information given me in confidence might possibly be available to the police, many news sources might refuse to give me any further information and this would greatly hamper my ability to report the news completely.

7. To my knowledge no staff member of the *Daily* was in no way involved in the planning or participation in the Medical Center sit-in or the events arising out of it, no *Daily* reporter or photographer had any more interest in the proceedings than as a newsworthy event.

8. Prior to the search, I have observed several instances of harassment of photographers in which the *Daily's* policy helped to extricate photographers from difficult situations involving confrontations with angry or suspicious demonstrators. On the night of February 8, 1971, I was covering disturbances which followed a meeting at Dinkelspiel Auditorium. In the hour following the demonstration, approximately 60 windows were broken on campus. While following the crowd around I was aware of a number of confrontations which occurred between *Daily* photographers and people in the crowd. I was with our photo editor, Lee Greathouse, when a young man told him that "the people" didn't want any pictures. Greathouse discussed the matter briefly with him and explained that he was from the *Daily*, and that our policy was to cover the news, not to turn photos over to the police. This pacified the man to an extent, and he didn't take as harsh an attitude as I'm sure he would have had we not explained our policy. He still was not very happy about our taking pictures, but he was unwilling to use force to prevent us, as he had been at first. On that evening and subsequently during disturbances, identification as a *Daily* photographer was usually enough to admit our photographers to meetings and keep them from being bothered. In my opinion, without this protection, we would have had no more chance than other outside newspapers to cover the events on campus.

9. Because of the search, I now realize that the police could have access to our photo files. Unfortu-

nately, I think demonstrators realize this too, and I know that the fear that the authorities may use our photos has hampered our ability to cover the news. An incident that I observed April 21, 1972 illustrates this. On that date I was covering as a *Daily* reporter, a student strike at Stanford which was part of a national student strike called to protest the bombing of North Vietnam. As part of my coverage, I attended a 10:00 a.m. Biology class in Stanford's Dinkelspiel Auditorium, which had been picked as a strike target. A *Daily* photographer, Harvey Rogoff, was with me in the auditorium, also covering the strike. A number of demonstrators blocked the doors to Dinkelspiel and numerous scuffles broke out between some of the demonstrators and a number of students who were attempting to enter the class. Twenty-five or thirty students did make it into the class, but a member of Venceremos, a local revolutionary organization, repeatedly interrupted the professor, despite a vote of the students which was overwhelmingly in favor of the professor continuing with his scheduled instruction. A number of students began to heckle the Venceremos member and finally he went into the audience and slapped a student quite vigorously. Rogoff took a picture of the incident and then began walking out into the lobby. There, in the doorways, scuffling and arguing was still going on between demonstrators and students who wanted to enter the auditorium. As Rogoff was leaving, another member of Venceremos, who had entered the auditorium through a rear entrance a few minutes previously, charged up the stairs after him.

He confronted Rogoff in the lobby, grabbed him and demanded that Rogoff give him the film. The demonstrator became very vocally abusive and when it looked as if he might physically assault Rogoff, Rogoff told him that the pictures would not be printed in the *Daily*. But despite this assurance, the demonstrator continued to harass Rogoff and indicated that he through [sic] that Rogoff's potentially incriminating pictures might be available to the authorities. Rogoff still refused to hand the film over to the demonstrator and just when it seemed as if he was again on the verge of physically assaulting Rogoff, a disturbance flared up in the doorway again and the demonstrator joined some other demonstrators who were still trying to prevent students from entering the auditorium.

10. Photos serve not only an important esthetic function in a newspaper, but also serve a valuable news function as well. Pictures of civil disobedience and disturbances in particular add substantially to our political coverage, we could not serve our function as an important source of local news if we could not continue to take the type of photos that we do now.

11. 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 photographic stills, the policy of the *Daily* is not to destroy any material covered by a judicially authorized subpoena and, to my knowledge, no such destruction has ever occurred. During my three years 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.

Executed this 18th day of June, 1972.

/s/ Don Tollefson
Don Tollefson

(Jurat omitted in printing)

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

[Title omitted in printing]

AFFIDAVIT OF STEVEN G. UNGAR

The State of California
County of San Francisco—ss.

Steven G. Ungar, being duly sworn, deposes and says:

I am a member of the staff of the Stanford Daily. I was present when Palo Alto police officers searched the *Daily* offices on April 12, 1971. The following is an account of the incidents I observed, as best I can remember.

I was in the *Daily* office from about 5:20 until 7:20 the evening of April 12, 1971. I came to the office to deliver a camera to Bill Cooke, the *Daily* head photographer. I had borrowed the camera the night before in order to cover a rally at the Medical School that

was held the morning of the 12th. The camera was a Nikkormat with a 135 mm. lens.

I called the *Daily* office at 5:15 and was told I could bring the camera to the office and it would be locked in the darkroom by Don Tollefson, the news editor. When I arrived at the office moments later I was told that Tollefson had stepped out and would return shortly. After waiting for about fifteen minutes I decided to leave and return later in the evening. As I approached the front door of the *Daily* office I noticed several men emerging from a white car that had parked across the street. Some of the men were dressed in police uniforms, which led me to believe that the car was an unmarked police car. The men crossed the street and approached the *Daily* office.

When they entered the lobby they stopped to examine a directory sign that is posted near the door. One of the men said, "Do you know where you're going?" and another answered, "No, I don't." At this point I stepped up to the group and asked if I could be of assistance.

One of the non-uniformed men asked me if I was "the man in charge." I told him that I wasn't, but that I might be able to help him anyway. He asked to see "the man in charge." I told him to follow me, and entered the *Daily* news office. The group did not enter the office, but waited outside the door.

I crossed the room to the editor's desk where Ed Kohn, the *Daily's* political reporter, was seated. I asked him if Felicity Barringer, the editor, were pres-

ent. He said she was not. I told him that we "had some visitors," and that he might want to meet them. He walked across the room to the door where the group was waiting. I followed at a short distance. When I got to the door I heard the non-uniformed man mention the word "warrant". He tried to present a paper to Kohn, but Kohn refused to take it, and said something to the effect that it was no use giving it to him as he was not in charge here. The man replied that it didn't matter, as long as he worked there.

By this time a small crowd had developed around the door, including several reporters, workers from the ASSU type shop, and one or two visitors who had come to the office to transact business. After a short delay, in which it was determined that Barringer could not be immediately produced, the officers announced that they would wait only a limited time before commencing a search of the *Daily* office.

At this point Ralph Kostant, a *Daily* reporter, made a picture-taking motion in my direction. I moved back into the office, away from the door, and loaded the camera that I had been wearing around my neck.

I proceeded to take pictures of the group around the door of the news office. About five minutes later the officers announced that they would begin searching the office. Kohn told them to go right ahead, pointed out the photo lab, the business office, the news office, the editorial office, and the type shop, and told them to start wherever they wanted. Four of the men pro-

ceeded to the photo lab. Another, a Stanford Police officer, remained in the lobby.

I followed the four men into the photo lab. Two of them began to examine contact sheets and prints in the darkroom. The other two began to search through desks on either side of the photo lab. I entered the darkroom and took several pictures of the two men rummaging through a waste box. I was called into the photo lab where one of the men was searching a filing cabinet. This man (the non-uniformed man who had first addressed me, and who had produced the search warrant) continued to search this cabinet for about 45 minutes. He would remove a glassine envelope of negatives, slide a strip of negative out of the envelope, hold the strip up to the light, and then re-insert it and proceed to the next envelope. I took about 20 pictures of this activity.

After about 10 minutes I left the photo lab and went back into the news office. There were no officers in the news office, and it was very quiet. I returned to the lobby, where I spoke briefly with the Stanford police officer. He informed me that he was present because it was customary for officers to accompany officers from another jurisdiction when the other officers have entered the jurisdiction to execute a court order or to make an arrest. I pointed out that he is not a peace officer, and that Stanford is in the jurisdiction of the Santa Clara County Sheriff, so Sheriff's deputies should have been present. He told me that if an arrest were to be made, they probably would have been summoned.

I re-entered the photo lab. The search was continuing, as before. Paul Grushkin, a *Daily* reporter and a former news editor, was present, and he urged me to take more pictures of the search. I continued to take pictures of the men searching the files in the news office.

A short time later, Felicity Barringer appeared. She spoke to several of the men, and watched as the search proceeded. Many people had gathered in the *Daily* office, including a man who later identified himself to me as Jim Wolpman, an attorney, several people who identified themselves as reporters from radio station KZSU, and another photographer, who did not identify himself to me. Bob Byers, of the Stanford University News Service, also appeared.

At approximately 6:10, all but one of the officers left the photo lab and proceeded to search the rest of the office. I went with one of the uniformed Palo Alto officers into the *Daily* business office. He gave only cursory examination to the files and desks in the business office. Most of these files and desks are kept locked, as they contain important papers and documents relating to the business aspects of the newspaper.

The officer entered the news office, opened and examined the contents of the desk of Fred Mann, the managing editor, and of Felicity Barringer, the editor. I took several pictures of the officer examining the contents of Barringer's desk. While examining the desk he stopped several times to look at documents

that were in the desk, and he appeared to be reading these documents.

The officer proceeded to the sports desk, but made only cursory examination of the contents. He tried the door to the printing room, found it locked, and proceeded to the mailboxes near the door to the news office. He examined the contents of the boxes. He entered the editorial office, and proceeded almost immediately into the ASSU type shop. He was informed that the type shop was not part of the *Stanford Daily*, and he immediately left.

I returned to the photo lab, where the search through the file cabinets was still in progress. A small crowd of perhaps ten people were present. I climbed to the top of a cabinet, and photographed the rest of the search from there. Lee Greathouse, the *Daily* photo editor, entered at about this time, and proceeded to take pictures.

After a few minutes, the officers concluded their search, and left the office. I followed them to their car and took a last picture as they were entering the car.

Dated: May 15, 1971

/s/ Steven G. Ungar
Steven G. Ungar

(Jurat omitted in printing)

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

[Title omitted in printing]

AFFIDAVIT OF STEVEN G. UNGAR

The State of California
County of San Francisco—ss.

Steven G. Ungar, being duly sworn, deposes and says:

I am a Ph.D. candidate in Electrical Engineering and I am twenty-six years old. I have been on the staff of the *Stanford Daily* since April, 1969. In January, 1971, I was asked to join the photography staff of the newspaper, an invitation which came after I took some pictures of scientific apparatus at the Stanford Artificial Intelligence Project. My primary purpose in that reporting was to convey, in words, the importance and meaning of the work being performed. However, it was obvious to me that the story would be worth much more with pictures.

This is generally true; some stories cannot be told without pictures. The murders of President Kennedy, of Lee Harvey Oswald, and of Robert Kennedy were all made more real, and more frightening, because an alert photographer happened to be on the scene. Edward White's walk in space, Neil Armstrong's first step on the moon, the famous view of the earth rising over the moon's disk, are all scenes with which we are familiar, because the printed word was supplemented by brilliant photography. Thus, the first question a news editor asks about a possible story

is “Can you get any good pix?” Some tabloids, such as the *Daily News* (“New York’s Picture Newspaper”) actually depend on photography for a good part of their copy.

The *Stanford Daily* while not a tabloid has always relied on photographs to help tell a story. *Daily* photographers, because of their unique status as students working among students, have often had access to a story that, for one reason or another, was denied to photographers from other newspapers.

As a specific example of this, I can cite my experience in covering the occupation of the Stanford Computation Center by radical students in February, 1971. The students who had occupied Pine Hall were reluctant to allow any photographers on the premises. By identifying myself as a *Daily* photographer, I was able to gain access to the building in order to take pictures from the roof when the Santa Clara County Deputies arrived. I could not have taken the photos had I not been a *Daily* photographer. Only one other newspaper photographer was on the roof of that building, and he was also from the *Daily*. We were the only photographers considered “legitimate” and “trustworthy” by the demonstrators (although we have repeatedly published pictures which were not particularly helpful to their cause).

As a *Daily* photographer, I have often been in the middle of some heated confrontations. On more than one occasion I have found myself in a no-man’s land between a line of angry and scared demonstrators and a line of angry and scared police. When I cover

a demonstration, violent or non-violent, my press card, enclosed in a clear plastic case and pinned to my left breast, is my only protection, from both sides.

Since the search of the *Daily, Daily* photographers, including myself, have been threatened while covering campus demonstrations. My roommate, Joseph Berman (a *Daily* photographer also) was threatened and harassed while covering a small campus demonstration, the day after the search.

On the afternoon of June 29, 1971, I had occasion to be present in the lobby of the East Wing of Encina Hall when that lobby was being occupied by several dozen persons protesting the dismissal of five University employees for alleged misconduct at the time of the April 9 Stanford Hospital sit-in. I was present in the lobby as part of my function as a photographer for the Summer *Stanford Daily*. My press card was pinned to my left shirt pocket, and was clearly visible.

At approximately 4:58 p.m. a confrontation took place between Provost William Miller and one of the demonstrators. Provost Miller informed the demonstrators that they would have to leave the building at 5:00 p.m. or face arrest. I took several photographs of this discussion.

After I had taken many pictures, and as the 5:00 p.m. deadline approached, one of the demonstrators, a young woman dressed in a white lab coat, leaned over to me and asked me to stop taking pictures. I refused. She asked me why. I answered that I was

a member of the press, that it was my job to take pictures, and that I would continue to do so. I indicated Bob Litterman, who was standing behind me and to my left, told her that he was my editor, and that if she liked, she could talk to him about it—if he told me to stop taking pictures, I would stop.

About fifteen seconds later a man approached me from across the lobby. To my best recollection, the following conversation ensued:

Man: I saw you taking pictures of them. I was standing back there and I think you took pictures of me. I don't want my picture taken.

Me: Then don't stand there.

Man: You shouldn't be taking those pictures. I don't want my picture taken. Please stop taking pictures.

Me: No.

Man: I want you to give me your film.

Me: No.

Man: I want you to give me that film, and I want you to stop taking pictures.

Me: I'm not going to give you the film.

Man: Why are you taking pictures? Don't you know the pigs will use them. You're helping the Red Squad with their case against every one in this room.

Me: That's ridiculous. They (the demonstrators) can't be prosecuted for doing this.

Man: What do you mean they can't?

Me: They're not doing anything illegal. That's ridiculous. I work for the *Stanford Daily*. We don't give pictures to anyone. Every picture I take goes to

the office. No one else gets it. The only pictures they see are the ones in the paper. This is my editor (indicating Litterman). You can discuss it with him.

Man: I'll stop you from taking any more pictures.

Me: How?

Man: It's very easy (places hand lightly over lens).

Me: If you touch me I'll press charges or if you touch my camera I'll press charges. I'll have you up for assault.

Litterman: I'm the editor of the *Summer Daily*. Our policy is not to turn our pictures over to the police, and if you harm one of our photographers we are prepared to press charges. We won't allow you to censor us.

At this point a demonstrator approached us and stated that "The *Stanford Daily* is good, they burn the stuff."

Another demonstrator appeared and said that we had turned over photographs of the Hospital demonstration to the police. Litterman responded that we had turned over nothing. The demonstrator said that our office had been searched, and Litterman and I pointed out that the police in fact seized nothing, and that the *Daily* would never voluntarily give photographs to the police.

Although I was not harassed any further, and some of the demonstrators apologized, I am convinced that the fact of the search did not make taking photographs any easier. I am further convinced that it is only the belief on the part of campus demonstra-

tors that the police will not have access to *Daily* photographs that permits us to cover the news. It is also clear to me that the search by the police only makes it more difficult to convince demonstrators that the *Daily* is not, and will not become, an adjunct of any law enforcement agency.

/s/ Steven G. Ungar
Steven G. Ungar

(Jurat omitted in printing)

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

[Title Omitted in Printing]

INDEX TO AFFIDAVITS

[Filed Jul 7, 1972]

1. Craig Brown
2. Richard Peardon
3. Donald Martin
4. James Bonander
5. Paul Deisinger
6. Allen Bowra
7. Robert Monasmith
8. Clarence Anderson
9. J. E. Garner
10. Frank Benaderet
11. Melville A. Toff

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

[Title Omitted in Printing]

**AFFIDAVIT OF CRAIG BROWN REGARDING
THE MOTION FOR SUMMARY JUDGMENT**

I, CRAIG BROWN, being sworn, state:

1. I am a deputy district attorney for the County of Santa Clara, State of California, and one of the defendants in the above entitled action.

2. While employed in that capacity in October of 1969, I had occasion to have contact with representatives of the Stanford Daily. At that time, I was involved in the prosecution of Steven Kessler, Case No. 86/30419, in the Municipal Court for the Palo Alto-Mountain View Judicial District, County of Santa Clara, State of California. A Subpoena Duces Tecum had been served on the Stanford Daily for the production of any photographs, films, or negatives relating to the Steven Kessler prosecution. The Stanford Daily moved to quash the subpoena, and a hearing was held on October 23, 1969, at which Mr. Mark Weinberger, Editor of the Stanford Daily, testified. Mr. Kessler was being prosecuted for crimes arising out of demonstrations in May of 1969, in the area of the Stanford Research Institute in Palo Alto. The subpoena required the Stanford Daily to produce all photographs and negatives in its possession and control taken by or for the Stanford Daily in the area of the Stanford Research Institute on May 16 and May 19, 1969.

3. After viewing the contact sheets produced by Mr. Weinberger, I and my colleague, Alexander Singleton, were of the definite opinion that the contact sheets and/or the films from which they had been produced were incomplete and that a number of photographs, in our opinion those which should have been incriminating, had been deleted. The contact sheets produced by Mr. Weinberger were of absolutely no value to the prosecution except for already published photographs.

4. The testimony of Mr. Weinberger convinced my office that the Stanford Daily either would not or could not respond to a request or to a Subpoena Duces Tecum for the production of photographs, films, or negatives which might be incriminating. Mr. Weinberger had testified that he could name only two of four of his photographers who had taken the pictures on the days in question and that he could not state how many photographs were taken by these photographers. His testimony indicated that the Stanford Daily had little or no control over its photographers, over the film used by its photographers, or over the negatives and photographs which might be produced from that film, or submitted to the Stanford Daily by stringer photographers for possible publication. He testified that essentially there was no way he could determine the whereabouts of any particular picture or negative. He testified further that practically any person, whether or not he was a member of the Stanford Daily, could have access to the negative files and that, with regard to the negatives, photographs, and

contact sheets in question, the defendant in a related criminal case had been given full access to these materials with the permission of Mr. Weinberger. He testified that the Stanford Daily loses negatives "quite often" and that it often "mismarks" negatives. He explained that not all of the students working on the Stanford Daily are highly reliable.

5. Mr. Arnie Folkadahl had also been served with a Subpoena Duces Tecum for similar photographs, and the motion to quash apparently was made on his behalf also by the attorney for the Stanford Daily. Mr. Folkadahl produced a package of six strips of six negatives each, plus a lone seventh negative. Mr. Folkadahl identified himself as a free lance photographer who was "stringing for a local newspaper in the capacity of a news reporter." He testified that on the days in question he had taken close to 800 pictures. With regard to the pictures taken of the incidents in question, Mr. Folkadahl testified that he could not produce at least one roll of film because it had been stolen from the "darkroom at Stanford". Another group of pictures he considered dangerous to have around, so in the early part of August he mailed them to a certain individual in Tokyo who would not be back in the United States until the following August. A third set of negatives, he testified, were scattered throughout his belongings and he had not been able to locate them.

6. From the above-stated experience with the Stanford Daily and one of the photographers who apparently was working for the Stanford Daily, my office

was of the definite opinion that not only would the Stanford Daily strongly resist any Subpoena Duces Tecum but also that, if served with such a subpoena, the Stanford Daily would destroy or remove any incriminating photographs from its premises. This belief was strengthened by the fact that, some time prior to April, 1971, the Stanford Daily issued a policy statement indicating that it would not retain any potentially incriminating photographs, which policy became known to my office.

7. Between October, 1969, and April, 1971, there were many disruptions at Stanford University and in Palo Alto. All of these disruptions were investigated by the District Attorney's Office. Due to its known policy, no effort was made by law enforcement agencies to obtain photographic evidence from the Stanford Daily, and such evidence was usually obtainable from police agencies or it could be obtained in the usual cooperative and easy manner from other news media.

8. With regard to the incident at the Stanford University Hospital on April 9, 1971, the Stanford Daily had published many pictures of the hospital incident in a special edition on April 11, 1971. A copy of this edition was obtained by the Palo Alto Police and by the District Attorney's Office. The Palo Alto Police Department indicated that no police photographers were located at the east end of the hospital corridors where many felonious assaults upon police officers occurred, and that while most photographers and news reporters were located at the western end

of the corridor with the main police force, that some Stanford Daily photographers may have worked their way to the opposite end.

9. Any photographic evidence in the possession of the Stanford Daily relating to these assaults would have constituted evidence tending to show the commission of a felony. Prior experience in prosecuting cases arising out of demonstrations such as the one at the Stanford University Hospital has shown that photographic evidence is absolutely critical. It is used to aid eyewitnesses and victims in making crucial identifications, because few arrests are normally made at the scene. It also provides independent tangible evidence of the actual crimes.

10. Given the situation which confronted law enforcement representatives on April 12, 1971, it would seem clear that issuance of a subpoena duces tecum would have constituted an impractical and illegal course to pursue. The past experience of the Palo Alto Police and Santa Clara County District Attorney's Office with the Stanford Daily, as reflected in the Municipal Court hearing of 1969, indicated that representatives of the paper could not completely comply with such a process. The admitted policy of the Stanford Daily subsequent to that hearing (which policy was known to local law enforcement) further indicated that its representatives would take affirmative action to thwart such a proceeding by deliberately destroying pictures which might tend to incriminate anyone. Further, a subpoena duces tecum could not have legally issued at that time since under Cali-

ifornia Penal Code Section 1326-1327 a subpoena can issue only when there is a criminal action set to be tried. In the existing situation on April 12, 1971, no complaints had even been filed, nor any trial date scheduled. To delay efforts to obtain photographic evidence until after criminal complaints had been filed would have only given representatives of the Stanford Daily additional time in which to carry out their cynical efforts to thwart the judicial process. A good faith reading of California Penal Code Section 1524(4) would have led to the conclusion that it represented a proper legal procedure by which evidence of the commission of a felony could be sought, in the words of the statute, “. . . from any place, or from any person in whose possession it may be.”

11. The above stated matters are of my personal knowledge. If I were called as a witness in this action, I could competently testify to all of the above stated facts.

/s/ Craig Brown
Craig Brown

(Jurat omitted in printing)

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

[Title Omitted in Printing]

AFFIDAVIT OF RICHARD HENRY PEARDON
REGARDING THE MOTION FOR
SUMMARY JUDGMENT

I, RICHARD HENRY PEARDON, being sworn,
state:

1. I am one of the defendants in the above-entitled action.

2. I am employed as a police officer by the City of Palo Alto, California, and have been so employed for approximately four (4) years.

3. I was so employed and on duty as a police officer on April 12, 1971, between the hours of 5:00 p.m. and 7 p.m.

4. At approximately 5:50 p.m. on April 12, 1971, I and three other Palo Alto police officers, namely Officer Deisinger, Officer Martin, and Officer Bonander, went to the offices of the Stanford Daily, located in the Storke Student Publications Building, Stanford, California, to execute a search warrant issued that day.

5. Said search warrant directed us "to make immediate search of the premises of *Stanford Daily*, consisting of offices and rooms within the Stokes [sic] 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."

6. We were accompanied by one member of the Stanford University Police Department, who was to act as a liaison between us and Stanford University if needed. This officer did not participate in any manner in the execution of said search warrant or in the search of the offices of the Stanford Daily to the best of my knowledge. This officer had no authorization from me to participate in any manner in the search of the offices of the Stanford Daily pursuant to said search warrant.

7. I have no knowledge that any other member of the Stanford University Police Department was present during the course of our search of the offices of the Stanford Daily.

8. During the course of the search of the offices of the Stanford Daily, I viewed essentially four separate rooms comprising the offices of the Stanford Daily. The room identified as the photography laboratory was in a fairly orderly condition, but I found photographs among other materials in the trash container. In the remaining three rooms, many different types of materials were scattered on desk tops, table tops, and cabinet tops and in desk drawers, cartons,

and filing cabinet drawers in an extremely disorganized and disorderly fashion. Photographs were interspersed among printed and written materials in an apparently random manner.

9. During the course of the search of the offices of the Stanford Daily, I looked through only unlocked drawers as well as on desk tops, table tops, and similarly open areas for the items described in said search warrant. There were several locked desk drawers and filing cabinet drawers, but these locked areas remained locked throughout the entire course of the search to the best of my knowledge.

10. I looked carefully only at pictures, negatives, and film I discovered in order to determine whether they came within the scope of said search warrant.

11. I glanced only very briefly at all other materials in order to determine whether they were pictures, negatives, or film or whether pictures, negatives, or film were concealed among them. At no time did I read all or any part of, or in any way (except as above-stated) scrutinize any materials which were not pictures, negatives, or film. My perusal of such materials was so brief that I could not have described what materials I looked at or any portion of the contents thereof.

12. During the entire course of my search of the offices of the Stanford Daily, I was carefully and closely watched by at least one and sometimes more persons who apparently were staff members of the Stanford Daily, I was photographed numerous times,

and I was subjected to harassing comments by said persons. At no point during the course of my search of the offices of the Stanford Daily did anyone present say or infer that the materials being looked through were confidential materials.

13. I attempted to replace any materials looked through in the same condition as I found them.

14. To the best of my knowledge, the time actually spent searching the offices of the Stanford Daily was approximately fifteen minutes.

15. To the best of my knowledge, Officer Martin did not participate in the search of the offices of the Stanford Daily in any manner. The search was carried out by only three officers of the Palo Alto Police Department.

16. If I were called as a witness in the above-entitled action, I could competently testify to all of the above-stated facts.

/s/ Richard Henry Peardon
Richard Henry Peardon

(Jurat omitted in printing)

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

[Title Omitted in Printing]

AFFIDAVIT OF DONALD EZRA MARTIN
REGARDING THE MOTION FOR
SUMMARY JUDGMENT

I, DONALD EZRA MARTIN, being sworn, state:

1. I am one of the defendants in the above-entitled action.

2. I am employed as a police officer by the City of Palo Alto, California, and have been so employed for approximately six (6) years.

3. I was so employed and on duty as a police officer on April 12, 1971, between the hours of 5:00 p.m. and 7 p.m.

4. At approximately 5:50 p.m. on April 12, 1971, I and three other Palo Alto police officers, namely Officer Deisinger, Officer Peardon, and Officer Bonander, went to the offices of the Stanford Daily, located in the Storke Student Publications Building, Stanford, California, to execute a search warrant issued that day.

5. Said search warrant directed us "to make immediate search of the premises of Stanford Daily, consisting of offices and rooms within the Stokes [sic] 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.”

6. We were accompanied by one member of the Stanford University Police Department, who was to act as a liaison between us and Stanford University if needed. This officer did not participate in any manner in the execution of said search warrant or in the search of the offices of the Stanford Daily to the best of my knowledge. This officer had no authorization from me to participate in any manner in the search of the offices of the Stanford Daily pursuant to said search warrant.

7. During the course of our search of the offices of the Stanford Daily, another member of the Stanford University Police Department arrived at the scene. To the best of my knowledge, he merely looked around and immediately left the scene. To the best of my knowledge, he did not participate in any manner in the execution of said search warrant or in the search of the offices of the Stanford Daily. He had no authorization from me to participate in any manner in the search of the offices of the Stanford Daily pursuant to said search warrant.

8. I did not participate in any manner in the actual search of the offices of the Stanford Daily. Rather, I mainly stood in the hallway between the various offices of the Stanford Daily and watched the

progress of the search and the various people who were present in said offices and hallway.

9. In viewing the essentially four rooms which comprised the offices of the Stanford Daily, I noticed that many different types of materials were scattered on desk tops, table tops, and cabinet tops in an extremely disorganized, disorderly, and apparently illogical fashion.

10. To the best of my knowledge, the three officers who conducted the actual search of the offices of the Stanford Daily looked through only unlocked drawers as well as on desk tops, table tops, and similarly open areas.

11. To the best of my knowledge, said three officers looked carefully only at pictures, negatives, and film.

12. To the best of my knowledge, said three officers glanced only very briefly at all other materials which were not pictures, negatives, or film.

13. During the entire course of the search of the offices of the Stanford Daily, said three officers were closely and carefully watched by anywhere from one to six or more persons who apparently were staff members of the Stanford Daily, they were photographed numerous times, and they were subjected to harassing comments by said persons. To the best of my knowledge, at no point during the course of the search of the offices of the Stanford Daily did anyone present say or infer that the materials being looked through were confidential materials.

14. To the best of my knowledge, the time actually spent searching the offices of the Stanford Daily was approximately 15 minutes.

15. If I were called as a witness in the above-entitled action, I could competently testify to all of the above-stated facts.

/s/ Donald Ezra Martin
Donald Ezra Martin

(Jurat omitted in printing)

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

[Title omitted in printing]

AFFIDAVIT OF JIMMIE DAVE BONANDER
REGARDING THE MOTION FOR
SUMMARY JUDGMENT

I, JIMMIE DAVE BONANDER, being sworn,
state:

1. I am one of the defendants in the above-entitled action.

2. I am employed as a police officer by the City of Palo Alto, California, and have been so employed for approximately eight (8) years.

3. I was so employed and on duty as a police officer on April 12, 1971, between the hours of 5:00 p.m. and 7:00 p.m.

4. At approximately 5:50 p.m. on April 12, 1971, I and three other Palo Alto police officers, namely Officer Martin, Officer Peardon, and Officer Deisinger,

went to the offices of the *Stanford Daily*, located in the Storke Student Publications Building, Stanford, California, to execute a search warrant issued that day.

5. Said search warrant directed us "to make immediate search of the premises of *Stanford Daily*, consisting of offices and rooms within the Stokes [sic] 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."

6. We were accompanied by one member of the Stanford University Police Department, who was to act as a liaison between us and Stanford University if needed. This officer did not participate in any manner in the execution of said search warrant or in the search of the offices of the *Stanford Daily* to the best of my knowledge. This officer had no authorization from me to participate in any manner in the search of the offices of the *Stanford Daily* pursuant to said search warrant.

7. I have no personal knowledge at this time that any other member of the Stanford University Police Department was present during the course of our search of the offices of the *Stanford Daily*.

8. During the course of the search of the offices of the *Stanford Daily*, I viewed essentially four separate rooms. With the exception of the room identified as the photography laboratory, I saw many different types of materials scattered on desk tops, table tops, and cabinet tops in an extremely disorganized and disorderly fashion in the remaining rooms. Materials in desk drawers and filing cabinet drawers were also disorganized and disorderly. Photographs were interspersed among printed and written materials in an apparently random manner. Photographs were discovered among other papers in trash containers.

9. During the course of the search of the offices of the *Stanford Daily*, I looked through only unlocked drawers as well as on desk tops, table tops, and similarly open areas for the items described in said search warrant. There were several locked desk drawers and filing cabinet drawers, but these locked areas remained locked throughout the entire course of the search to the best of my knowledge.

10. I looked carefully only at pictures, negatives, and film I discovered in order to determine whether they came within the scope of said search warrant.

11. I glanced only very briefly at all other materials in order to determine whether they were pictures, negatives, or film or whether pictures, negatives, or film were concealed among them. At no time did I read all or any part of, or in any way (except as above-stated) scrutinize any materials which were not pictures, negatives, or film. My perusal of such ma-

terials was so brief that I could not have described what materials I looked at or any portion of the contents thereof.

12. During the entire course of my search of the offices of the *Stanford Daily*, I was carefully and closely watched by at least one or more persons who apparently were staff members of the *Stanford Daily*, I was photographed numerous times, and I was subjected to harassing comments by said persons. At no point during the course of my search of the offices of the *Stanford Daily* did anyone present say or infer that the materials being looked through were confidential materials.

13. I attempted to replace any materials looked through in the same condition as I found them.

14. To the best of my knowledge, the time actually spent searching the offices of the *Stanford Daily* was approximately 15 minutes.

15. To the best of my knowledge, Officer Martin did not participate in the search of the offices of the *Stanford Daily* in any manner. The search was carried out by only three officers of the Palo Alto Police Department.

16. If I were called as a witness in the above-entitled action, I could competently testify to all of the above-stated facts.

/s/ Jimmie Dave Bonander
Jimmie Dave Bonander

(Jurat omitted in printing)

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

[Title omitted in printing]

AFFIDAVIT OF PAUL JOSEPH DEISINGER
REGARDING THE MOTION FOR
SUMMARY JUDGMENT

I, PAUL JOSEPH DEISINGER, being sworn,
state:

1. I am one of the defendants in the above-entitled
action.

2. I am employed as a police officer by the City of
Palo Alto, California, and have been so employed for
approximately ten (10) years.

3. I was so employed and on duty as a police of-
ficer on April 12, 1971, between the hours of 5:00
p.m. and 7:00 p.m.

4. At approximately 5:50 p.m. on April 12, 1971,
I and three other Palo Alto police officers, namely
Officer Martin, Officer Bonander, and Officer Peardon,
went to the offices of the *Stanford Daily*, located in
the Storke Student Publications Building, Stanford,
California, to execute a search warrant issued that
day.

5. Said search warrant directed us "to make im-
mediate search of the premises of *Stanford Daily*,
consisting of offices and rooms within the Stokes [sic]
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.”

6. We were accompanied by one member of the Stanford University Police Department, who was to act as a liaison between us and Stanford University if needed. This officer did not participate in any manner in the execution of said search warrant or in the search of the offices of the *Stanford Daily* to the best of my knowledge. This officer had no authorization from me to participate in any manner in the search of the offices of the *Stanford Daily* pursuant to said search warrant.

7. I have no personal knowledge at this time that any other member of the Stanford University Police Department was present during the course of our search of the offices of the *Stanford Daily*.

8. During the course of the search of the offices of the *Stanford Daily*, I viewed three separate rooms. With the exception of the room identified as the photography laboratory, I saw many different types of materials scattered on desk tops, table tops, and cabinet tops in an extremely disorganized and disorderly fashion. My search of the offices of the *Stanford Daily* was limited to the photography laboratory and

its adjoining office. I recall searching a filing cabinet full of negatives, some apparently belonging to other student publications, and the tops of table-like furniture. I do not recall searching in any desk drawers, nor did I search in any area that was locked. I also looked through trash containers in these two rooms. I believe that photographs were interspersed among printed and written materials that I looked through.

9. I looked carefully only at pictures, negatives, and film I discovered in order to determine whether they came within the scope of said search warrant.

10. I glanced only very briefly at all other materials in order to determine whether they were pictures, negatives, or film or whether pictures, negatives, or film were concealed among them. At no time did I read all or any part of, or in any way (except as above-stated) scrutinize any materials which were not pictures, negatives, or film. My perusal of such materials was so brief that I could not have described what materials I looked at or any portion of the contents thereof.

11. During the entire course of my search of the offices of the *Stanford Daily*, I was carefully and closely watched by at least one and up to six persons who apparently were staff members of the *Stanford Daily*, I was photographed numerous times, and I was subjected to harassing comments by said persons. At no one point during the course of my search of the offices of the *Stanford Daily* did anyone present say

or infer that the materials being looked through were confidential materials.

12. I attempted to replace any materials looked through in the same condition as I found them.

13. To the best of my knowledge, the time actually spent searching the offices of the *Stanford Daily* was approximately 15 minutes.

14. To the best of my knowledge, Officer Martin did not participate in the search of the offices of the *Stanford Daily* in any manner. The search was carried out by only three officers of the Palo Alto Police Department.

15. If I were called as a witness in the above-entitled action, I could competently testify to all of the above-stated facts.

/s/ Paul Joseph Deisinger
Paul Joseph Deisinger

(Jurat omitted in printing)

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

[Title omitted in printing]

AFFIDAVIT OF ALLAN ARTHUR BOWRA
REGARDING MOTION FOR SUMMARY
JUDGMENT

I, ALLAN ARTHUR BOWRA, being sworn,
state:

1. I am employed as a police officer by the City of Palo Alto, California, hold the rank of lieutenant, and was so employed and on duty on April 9, 1971.

2. On that date, I was in charge of two arrest teams consisting of a total of eleven officers. Upon our arrival at the Stanford Hospital I took my arrest teams up the stairs to the westerly side of the administration offices. The double doors into the administration offices hallway were barricaded by the demonstrators and locked with a chain by them. The glass in and round the doors was covered with papers, plastic, and furniture, making it virtually impossible for me to view the demonstrators inside the barricaded area.

3. Chief Zurcher spoke to the demonstrators through the closed double doors. At approximately 6:00 p.m. Assistant Chief Anderson advised the demonstrators twice with the bullhorn that their actions constituted violations of the law and they were given five minutes to leave the area or face arrest. His statements followed those of Mr. Frank Vitale, hospital administrator, who advised the group to leave.

4. A wooden battering ram was furnished by the hospital, and our officers attempted to force the double doors open with it to no avail. Glass partitions in the door and along the side of the door were broken out, and the demonstrators used a fire hose to pour water out through the broken areas. Missiles were then thrown apparently by the demonstrators and Officer Garner was hit by a missile and he fell to the floor. He was then removed to a safer area.

5. Onlookers were behind us in the west corridor, and some apparently were not supportive of our efforts. They apparently posed a threat to our safety and Assistant Chief of Police Anderson twice read a warning to them to clear the corridor. Arrest Team No. 1 was assigned to move those onlookers westerly passed [sic] the glass doors to our rear. This was accomplished but the officers had to remain to present [sic] them from reentering the corridor.

6. Several squads of Santa Clara County sheriff's deputies arrived. Ropes were then tied to the barricaded doors. By pulling on one door, sufficient access was gained to permit both [sic] cutters to be inserted, and the chain was cut. The second door was then removed and Squad A and the two arrest teams entered the occupied area amid debris being thrown by the demonstrators. The demonstrators exited through the east doors where Sergeant Monasmith and his squad were stationed. By the time I arrived at the east doors, the conflict which had ensued there had ceased.

7. The above facts are stated on my personal knowledge. If I were called as a witness in this action I could competently testify to the above stated facts.

/s/ Allan Arthur Bowra
Allan Arthur Bowra

(Jurat omitted in printing)

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

[Title omitted in printing]

AFFIDAVIT OF ROBERT MONASMITH
REGARDING MOTION FOR SUMMARY
JUDGMENT

I, ROBERT MONASMITH, being sworn, state:

1. I am employed as a police officer by the City of Palo Alto, hold the rank of sergeant, and was so employed and on duty on April 9, 1971.

2. On that date, I was assigned to the B Squad consisting of nine police officers. The B Squad was detailed to the Stanford University Hospital to secure and hold the east double doors to the administration offices on the second floor. On our arrival at this area, I deployed my eight men into two ranks of four—one rank facing the double doors and the other rank facing the group in the hall to protect the rear.

3. At the east double doors, many items of office furniture, such as filing cabinets, chairs, tables, had been pushed against the inside of the doors as a

barricade. There appeared to be about 10 to 15 persons manning this barricade, and they were physically pushing against the barricade to hold it tight against the doors. I also noted that newspapers and paper banners were affixed against the inside glass of the doors and adjacent glass doors so as to block the view of the inside. However, one portion of the papers had come loose and a small view of the area inside the doors could be had.

4. A tape recorder microphone was held constantly against the center crack in the double doors, and the recorder was kept on until a later point in time when the recorder was thrown or knocked to the floor and the microphone was broken.

5. I could hear noises from the west door, which indicated that an effort was being made by the police officers to gain access to the office area with a battering ram. Each time the battering ram hit the doors, the group inside would yell "hold that line". I also heard the group inside yelling to the group standing to our rear in the corridor to do something to help them. The group inside also called to the individuals in the corridor, urging them to go out around the campus and the hospital and do what they could. A short time thereafter, the group in the corridor diminished somewhat to approximately 10 to 15 persons. A short while later, the group in the corridor had regained its original size.

6. During most of the time that I was stationed at the east doors, there was not much activity in my immediate area. Slogans and obscenities were shouted

at various times by the demonstrators in the barricaded area.

7. Suddenly, I was aware that the people inside of the east doors were very rapidly removing the barricade on the inside of the door. From all indications it appeared that they were going to come out. Prior to this, one of the officers in the line commented that, "they've armed themselves with clubs and sticks". I immediately attempted to advise the commanding officer or any one on the radio of this development. I had some difficulty in getting through, and by the time that I did get through, the barricade had been removed, the doors had been flung open, and the whole group of people attacked our line. To the best of my knowledge, I instructed my men to hold the demonstrators where they were.

8. I drew my baton and went into the line to assist. I believe I began to push the crowd with my baton in a horizontal position, and then I was struck on the right upper arm and fell to the floor. As I tried to rise, I was hit three times on the helmet, which knocked the face shield and cover off. Each time I tried to rise from the floor, I was hit on the head. When I did regain my footing, I was struck repeatedly on the left shoulder area. By that time it was obvious to me that we would have to fight to fend off the attacking demonstrators.

9. Some of the demonstrators got through the line and ran down the corridor. As I was attempting to stop one of the demonstrators, I was struck from the rear.

10. At that time I was not able to identify any of the demonstrators who had assaulted me.

11. Upon my return to the previously barricaded area, I observed Agent Eberlein standing off to one side holding his left hand. It was obvious that he was badly injured. I then saw that Officer Savage was also badly hurt.

12. It should be made very clear that prior to the violence that ultimately ensued, the officers assigned to B Squad made a very definite and concerted effort to hold their assigned position with the proper usage of the baton. The batons were initially held by them at a "high port" position, and they were pushing against the group coming out of the doors. This line and position was held for a period of approximately four to five seconds before the demonstrators brought their clubs and sticks into positive use. Then it became a situation wherein each officer had to fend off blows and protect himself.

The above facts are stated on my personal knowledge. If I were called as a witness in the above-entitled action, I could competently testify to all of the above-stated facts.

/s/ Robert Monasmith
Robert Monasmith

(Jurat omitted in printing)

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

[Title omitted in printing]

AFFIDAVIT OF CLARENCE ANDERSON
REGARDING MOTION FOR SUMMARY
JUDGMENT

I, CLARENCE ANDERSON, being sworn, state:

1. I am the Assistant Chief of Police of the City of Palo Alto and have been employed as a police officer for the City of Palo Alto for thirty years.

2. I was so employed and on duty April 9, 1971. On that date at approximately 10:30 a.m., I met with Chief of Police James C. Zurcher, Dr. John L. Wilson, Director of Stanford University Medical Center, and Frank R. Vitale, Deputy Director of Stanford University Hospital. Also present were Mr. James Siena, Stanford University attorney, and other hospital personnel. Dr. Wilson stated that numerous persons had occupied the hallway and administrative offices of the second floor of the Stanford University Medical Center since approximately 1:00 pm. on April 8, 1971. Dr. Wilson stated that the presence of such persons was disruptive to the operation of the hospital and interfered with patient care. He stated that the numbers fluctuated between 35 and 125 persons depending upon the time of day or night. He further stated that he wanted the group removed and the area cleared.

3. Mr. Vitale stated that he was authorized by the owners of the hospital to make any official an-

nouncements to clear the area. This statement was verified by Mr. William Miller, acting president of Stanford University.

4. It was agreed at that meeting the Palo Alto Police Department would take action to clear the area at approximately 6:00 p.m. on April 9, 1971, in the event the group was still occupying the administrative offices and the hallway.

5. At approximately 5:45 p.m. on April 9, 1971, police personnel arrived at the second floor of the Stanford University Medical Center adjacent to the administrative offices. At that time, the large double glass doors at each end of the hall adjacent to the administrative offices were chained in a closed position and barricades of desks, tables, chairs, and other miscellaneous materials were stacked against the inside of the doors by the demonstrators to prevent entry.

6. At approximately 5:50 p.m., the Chief of Police James C. Zurcher approached the barricaded doors at the west end of the corridor and requested to speak with Willie Newberry. A voice from inside the barricaded area indicated "there is nobody named Willie in here". Chief Zurcher stated then that the police were going to bring the demonstrators out but wanted to do so as peacefully as possible. A person from inside the barricaded area replied, "There is a lot of expensive stuff in here and we're going to get it. People out there are going to get hurt." Zurcher replied, "Then I understand you don't want to come out."

7. Just prior to 5:55 p.m., the following announcement was read by Mr. Frank Vitale, "I am Frank Vitale and I represent the owner of these premises. You are not welcome here and are causing a disturbance. I request that you leave immediately and if you do not I shall ask for your arrest."

8. Immediately thereafter, I read the following statement, "I am Assistant Chief Anderson and I represent the Police Department. You have been requested to leave by the owner of this property, and your failure to do so constitutes a trespass. I demand you in the name of the people of the State of California to disburse [sic], and if you do not, you shall be arrested for violation of Penal Code Section 407, Unlawful Assembly, Penal Code Section 409, Refusal to Disperse, and Section 602 of the Penal Code, Trespass. You have five minutes to leave the hospital area." This statement was immediately repeated a second time. The statements read by Mr. Vitale and myself were made over a power voice megaphone placed against a crack in the doors as the statements were read.

9. At the end of two minutes the group within the barricaded area was advised they had three minutes to leave. They were again advised they had two minutes to leave; then one minute; and finally that five minutes had passed. Replies from inside the barricaded area indicated that the people therein had heard and understood the announcements. At the end of the five minute period when there was no response or effort on the part of the group to leave

the area, instructions were given to the police officers to force entry into the barricaded area.

10. According to the records in my possession, fourteen (14) Palo Alto police officers were injured seriously enough in subsequent assaults by the demonstrators to warrant medical attention. The total cost for said injuries was estimated to be in excess of Fourteen Thousand Dollars (\$14,000.00) as of June 4, 1971. The records indicate that only two of the demonstrators who had inflicted said injuries could be identified.

11. I am informed that many other police officers were also assaulted and battered by the demonstrators but did not require more than immediate medical attention.

12. The above facts are stated on my personal knowledge. If I were called as a witness in the above-entitled matter, I could competently testify to the above-stated fact.

/s/ Clarence Anderson
Clarence Anderson

(Jurat omitted in printing)

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

[Title omitted in printing]

AFFIDAVIT OF J. E. GARNER REGARDING
MOTION FOR SUMMARY JUDGMENT

I, J. E. GARNER, being sworn, state:

1. I am employed as a police officer by the City of Palo Alto, California, and was so employed and on duty on April 9, 1971.

2. On that date, I was assigned to Squad A in an effort to handle a group disturbance at Stanford Hospital. The initial assignment was located outside the administration building known as Boswell Building. Our squad was met by a very hostile group of people, many of them apparently hospital personnel.

3. Within the hospital, there was a barricaded area. The doorway was blocked by desks and filing cabinets and various papers were taped on the window glass. Several attempts were made by my squad to force entry into the "held" area after the announcements by Assistant Chief Anderson by the group to disburse [sic]. A battering ram was used with little success. However, once we broke out the glass in the doors, numerous objects were thrown at us. I was struck by a thrown metal object. The impact was sufficient for me to lose consciousness. I was not able to identify the person who threw the object at me from the barricaded area.

4. I state the above facts on my personal knowledge. If I were called as a witness in this matter, I could competently testify to the above stated facts.

/s/ J. E. Garner
J. E. Garner

(Jurat omitted in printing)

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

[Title omitted in printing]

**AFFIDAVIT OF
FRANK RICHARD BENADERET REGARDING
MOTION FOR SUMMARY JUDGMENT**

I, FRANK RICHARD BENADERET, being sworn, state:

1. I am employed as a police officer by the City of Palo Alto, California, and was so employed and on duty on April 9, 1971.

2. On that date I was assigned to Arrest Team 2 at Stanford University Hospital. My position was at the west end of the second floor of Boswell Building. My function was to move into the occupied area and to peacefully arrest the demonstrators who remained at the scene of the unlawful assembly. At that time, the doors leading into the west side of the administration wing were closed and barricaded with a great

amount of office furniture stacked behind the door. The doors were chained closed from the inside.

3. After Assistant Chief Anderson gave the warnings regarding the unlawful assembly and five minutes for the demonstrators to disburse [sic], no one had emerged through the west doors. Thereafter, a group of our officers used a battering ram to break down the doors to the sit-in area. They were unsuccessful at first. The officers then broke out the glass adjacent to the locked double doors. Immediately, heavy missiles were thrown by the demonstrators through the glass at the officers. Simultaneously a fire hose from within the occupied area was turned on and turned on the officers at the opening of the glass break. The force of the water caused the shattered glass to break further, and much of it flew into the area where the police officers were assembled. Officer Garner was hit in the chest by one of the first missiles thrown through the opening in the glass. He had been hit with a heavy metal scotch tape dispenser. Just after Officer Garner was knocked to the floor, an approximately one foot length of two-inch cast iron sewer pipe was thrown within the occupied area. My opinion, is that if an individual had been hit with that pipe, which was thrown with tremendous force, he would have suffered great bodily harm or death.

4. While the above stated activities were going on, a group of 30 to 40 people who apparently were sympathetic to the demonstrators were standing approximately four feet away from the rear of our lines. They began shouting support for the demon-

strators and profanities at the officers. They were asked to leave, and they refused. Anderson then declared to that group that they also constituted an unlawful assembly. They were walked back to an area approximately 100 feet further to the rear on the other side of another set of double doors.

5. When the doors leading to the sit-in area were fully opened, the police officers climbed over the barricades and into the occupied area. I followed with our arrest team and found the demonstrators fleeing through the east side of the area. The occupied area was found to be in complete shambles; broken furniture, glass, and extensive debris were on the floor. All of the offices and the hallway areas within the occupied area were completely demolished as evidenced by partitions between offices having been torn down, telephones having been ripped from the walls, filing cabinets having been dumped and thrown to the ground, and the floors being littered with papers, files, books, and broken furniture.

6. It was reported to me that, while officers of the arrest team were walking arrested persons to the transportation buses, the officers were bombarded with large rocks and other missiles. It was reported that at least one door window of the bus had been broken completely by the thrown rocks. Inside of the occupied area a poster indicating "kill a pig" was found taped to the wall in the hallway and a red flag was tacked above the double doors.

The above facts are stated on my own personal knowledge. If I were called as a witness in this ac-

tion, I could competently testify to all of the above-stated facts.

/s/ Frank Richard Benaderet
Frank Richard Benaderet

(Jurat omitted in printing)

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

[Title Omitted in Printing]

AFFIDAVIT OF MELVILLE A. TOFF IN
OPPOSITION TO THE MOTION FOR
SUMMARY JUDGMENT

I, MELVILLE A. TOFF, being first duly sworn,
state:

That I am one of the attorneys for defendants in the above-entitled action. That I have reviewed the affidavits in support of the motion for summary judgment filed by Edward Kohn, Charles Lyle, Fred Mann, Don Tollefson and Steven Ungar, and, there are alleged factual statements made in each of said affidavits, which I am not in a position to controvert without the opportunity to depose these individuals, and complete necessary discovery in connection with matters set forth in said affidavits.

It is important for the defendants, through discovery procedures, to elicit, among other things, the relationship of Stanford University to the Stanford Daily, the relationship of each of the plaintiffs to the

Stanford Daily and to the University, whether or not plaintiffs or any of them have the legal capacity or right to maintain this suit, whether or not, the Stanford Daily is in fact a newspaper of general circulation, the editorial contents and policies of the Stanford Daily, the person or persons who control the policy or policies of the paper, the source of revenue of the Stanford Daily, whether or not, in fact, any academic credit is received by students working on the paper from the Stanford University for their work on the Stanford Daily, whether or not, in fact, any persons affiliated with the Stanford University or its officers control, supervise or have any say whatsoever in the editorial policy of the Stanford Daily, or its management, the extent of coverage of news activities of the Stanford Daily and the extent to which it disseminates its information, the photographers that were present from the Stanford Daily on April 8, 1971 and April 9, 1971 at the sit-in demonstrations, involved in this suit, the number of photographs and the ownership of the photographs and/or negatives taken at said demonstration, the extent to which the Stanford Daily members consider themselves free to dispose of or destroy unpublished materials or photographs including incriminating evidence and evidence covered by a judicially authorized process or warrant, together with whether any such destruction has ever occurred, the extent to which the members of the Stanford Daily hold an allegedly [sic] position of trust among radical groups, how and in what manner the members of the Stanford Daily have been able to

cover news of actions more closely and more accurately than any of the other media in the area, as alleged, the extent and nature of the alleged disruption of activities allegedly caused by the Palo Alto Police Department, the amount of the alleged confidential information laying around the Daily offices at the time of the search, the subject matter of this lawsuit, how and in what manner the ability of the staff members to function as reporters has been diminished as alleged, how or in what manner or to what extent has the newsgathering function of the Stanford Daily been impaired by any search or threat of future searches as alleged, the alleged items of correspondence and in particular the nature of such correspondence that any of the police officers allegedly reviewed, how or in what manner the policy of the Stanford Daily helped to extricate photographers from difficult situations as alleged, how, or in what manner or to what extent or by what persons, and in what manner, the Stanford Daily members have been threatened while covering campus demonstrations together with the alleged reasons for said threats and/or harassments.

The foregoing is a partial list of the factual matters that I hope to develop with discovery procedures, and after development of the foregoing information through the normal and allowable discovery procedures, I will then, on behalf of defendants, be in a position to more adequately prepare the defense of this action and oppose the motion for summary judgment.

WHEREFORE, this affiant respectfully requests the Court to deny plaintiffs motion for summary judgment, or in the alternative, continue the motion until such time as the defendants have the opportunity to complete the discovery necessary to properly prepare a defense to this action.

/s/ Melville A. Toff
Melville A. Toff

(Jurat omitted in printing)

United States District Court
Northern District of California

—
No. C-71 912 RFP
—

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 Dis-
trict Attorney for the County of Santa
Clara, State of California, Craig Brown,
individually and as Deputy District Attor-
ney for the County of Santa Clara, State
of California,
Defendants.

[Filed Nov. 14, 1972]

JUDGMENT

This cause came on to be heard on motion of the
plaintiffs for summary judgment pursuant to Rule 56
of the Federal Rules of Civil Procedure, and the

court having read the pleadings on file and considered the affidavits of plaintiffs in support of the motion and the affidavits of the defendants in opposition thereto, and the court having heard the argument of counsel, and due deliberation having been had thereon, and the court having prepared and filed a Memorandum and Order on October 5, 1972,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that there is no genuine issue as to any material fact and that plaintiffs are entitled to judgment as a matter of law against each and all of the defendants (other than defendant J. Barton Phelps, as to whom a stipulated Dismissal With Prejudice has been filed by plaintiffs) in conformity with the Memorandum and Order granting declaratory relief previously filed by the court herein on October 5, 1972.

Dated: Nov. 14, 1972

/s/ Robert F. Peckham
United States District Judge

United States District Court
Northern District of California

—
No. C-71 912 RFP
—

| | |
|---|--|
| The Stanford Daily, et al., vs. James Zurcher, individually and as Chief of Police of the City of Palo Alto, County of Santa Clara, State of California, et al., | Plaintiffs, Defendants. |
|---|--|

[Filed Dec. 15, 1972]

DISMISSAL WITH PREJUDICE

Upon the instance of plaintiffs, and good cause appearing and no showing having been made that defendant Phelps acted other than in good faith in discharging his judicial responsibility.

It Is Hereby Ordered that the action is dismissed with prejudice as to defendant J. Barton Phelps, sued herein individually and as Judge of the Municipal Court of Palo Alto-Mountain View Judicial District, Santa Clara County, State of California.

Dated: Dec. 15, 1972

/s/ Robert F. Peckham
United States District Judge

In the United States District Court
Northern District of California

—
No. C-71 912 RFP
—

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 Dis-
trict Attorney for the County of Santa
Clara, State of California, Craig Brown,
individually and as Deputy District Attor-
ney for the County of Santa Clara, State
of California, J. Barton Phelps, individ-
ually and as Judge of the Municipal Court
of the Palo Alto-Mountain View Judicial
District, Santa Clara County, State of
California,

Defendants.

[Filed Dec. 15, 1972]

ORDER SETTING ASIDE AND
VACATING JUDGMENT

Whereas, a Judgment in this matter was heretofore executed and filed on November 14, 1972, and entered on record on November 16, 1972, and

Whereas, said Judgment prematurely dismissed the claim against defendant J. Barton Phelps, and

Whereas, said Judgment did not reflect a determination of the issue of award of attorneys fees prayed for by plaintiffs; and

Whereas, the Defendants and Plaintiffs herein have requested and stipulated that said Judgment be vacated and set aside.

Now, Therefore, For Good Cause, it is hereby ordered that the Judgment heretofore signed and filed on November 14, 1972, and entered on record on November 16, 1972, be, and the same is, hereby set aside and vacated.

December 14, 1972.

/s/ Robert F. Peckham

Judge of the United States District Court

(Jurat omitted in printing)

In The United States District Court
For The Northern District Of California

[Title omitted in printing]

[Filed Apr. 16, 1973]

NOTICE OF MOTION AND MOTION TO
DISMISS COMPLAINT OR FOR
SUMMARY JUDGMENT

To: Plaintiffs And Their Attorneys Of Record:

Please Take Notice that on Tuesday, May 29, 1973, at 2:30 p.m., or as soon thereafter as counsel can be heard, in the Courtroom of the Honorable Robert F. Peckham, United States Court House, Courtroom No. 1, 175 W. Taylor, San Jose, California, defendants James Zurcher, James Bonander, Paul Deisinger, Donald Martin, and Richard Peardon will move the Court for an order dismissing the complaint herein under Rule 12(b)(6), Federal Rules of Civil Procedure, on the ground that the same fails to state a claim against said defendants upon which relief can be granted, or in the alternative to grant summary judgment for said defendants under Rule 56, Federal Rules of Civil Procedure, on the ground that there is no genuine issue as to any material fact and the moving defendants are entitled to a judgment as a matter of law.

This motion will be based on the records and files herein, this Notice of Motion and Motion to Dismiss Complaint or For Summary Judgment, and the

Memorandum of Points and Authorities attached hereto.

Dated, April 16, 1973.

/s/ Peter G. Stone by Marilyn Taketa
Peter G. Stone, one of the attorneys for defendants Zurcher, Bonander, Deisinger, Martin, and Peardon

TABLE OF CONTENTS

| | Page | |
|-----|---|---|
| I | Reasons for the Motion to Dismiss or for Summary Judgment at this stage of the proceedings | 1 |
| II | These defendants have raised the appropriate defenses in their answer | 3 |
| III | Declaratory relief is not available as against these defendants | 4 |
| IV | No cause of action can be sustained as to Defendant Zurcher | 6 |
| | (a) The Allegations Of The Complaint At To Defendant Zurcher | 6 |
| | (b) The Defenses Raised By Defendant Zurcher | 6 |
| | (c) Defendant Zurcher Must Be Dismissed As A Defendant In His Official Capacity | 6 |
| | (d) Defendant Zurcher Must Be Dismissed As A Defendant Because He Had No Personal Involvement In The Events | 7 |
| V | No relief can be granted as to defendants James Bonander, Paul Deisinger, Donald Martin, and Richard Peardon acting collectively in the execution of the search warrant | 9 |
| | (a) The Allegations Of The Complaint As To The Defendant Police Officers | 9 |
| | (b) The Defenses Of The Defendant Police Officers | 9 |

| | | |
|------|---|-----|
| (c) | The Previous Summary Judgment Proceedings | 9 |
| (d) | This Case Must Be Dismissed Or Summary Judgment Must Be Granted In Favor Of These Defendant Police Officers | 10 |
| (1) | The Memorandum and Order of this Court | 10 |
| (2) | No Cause of Action for Damages Could Be Sustained Against These Defendant Police Officers | 11 |
| (3) | No Cause of Action for Injunctive Relief Could be Sustained Against These Defendant Police Officers | 13 |
| (4) | No Cause of Action for Declaratory Relief Has Been, or Could Be, Sustained Against These Defendants | 17 |
| VI | No relief can be granted as to defendant Martin for the execution of the search warrant | 18 |
| VII | No relief can be granted as to defendant Peardon for signing the affidavit | 18 |
| VIII | It is unfair to require these defendants to litigate this case any further | 21 |
| IX | Conclusion | 22 |
| | Appendix "A"—Footnotes | A-1 |

United States District Court
Northern District of California

[Title omitted in printing]

AFFIDAVIT OF JEROME B. FALK, JR.

State of California

City and County of San Francisco—ss.

JEROME B. FALK, JR., being first duly sworn,
deposes and says:

1. I am a partner in the firm of Howard, Prim, Rice, Nemerovski, Canady & Pollak, and the partner in charge of the above litigation. Associated with me in this litigation from my firm are Robert H. Mnookin (who, effective November 1, 1972, has become Of Counsel to this firm and a Professor of Law at the University of California School of Law at Berkeley) and Franklin R. Garfield.

2. Co-Counsel in the above litigation is Anthony G. Amsterdam, Professor of Law at Stanford University School of Law. Although we have attempted wherever possible to spare Professor Amsterdam the day-to-day mechanical details of the litigation, he has been intimately involved with every significant aspect of the case since its inception.

3. Our firm was retained by the plaintiffs in this case with the understanding that our services would be rendered at our firm's customary hourly rates. My time is presently billed at the rate of \$65 per hour; during earlier phases of the case, it was billed at the rate of \$55 per hour. Mr. Mnookin's time, prior to

his departure, was billed at the rate of \$55 per hour. Mr. Garfield's time is billed at the rate of \$50 per hour. The expenditure of time as reflected on the books of our firm (which are based upon the daily records of each attorney), and the total amounts attributable thereto, respecting this litigation through January 31, 1973, are as follows:

| <i>Attorney</i> | <i>Hours</i> | <i>Amounts</i> |
|-----------------|--------------|--------------------|
| Falk | 149.75 | \$ 8,325.00 |
| Mnookin | 291.90 | \$16,054.50 |
| Garfield | <u>68.75</u> | <u>\$ 3,437.50</u> |
| | 510.40 | \$27,817.00 |

4. Although Professor Amsterdam does not keep precise time records, he conservatively estimates that he has expended not less than 75 hours with respect to this matter. I am of the opinion that a reasonable hourly rate for his services would be not less than \$80 per hour. Because Professor Amsterdam does not expect to be compensated for his services in this litigation, the instant application does not reflect the value of his efforts and is thus approximately \$6,000 less than would in fact be justified.

5. The amount of time which plaintiffs' counsel were compelled to expend greatly exceeded that which we had estimated. We had, from the outset, perceived this case as presenting several straightforward, if novel, questions of constitutional law. Although at first at least one of defendants' counsel seemed to share that conception and indicated his view that a stipulation of facts would be an appropriate means of presenting those questions to the Court, our expec-