

tations were wholly frustrated. The unhappy chronicle of costly delaying tactics which ensued is partially set forth in my previous Affidavit of June 14, 1972, submitted in support of our Motion for Protective Order, and that Affidavit is incorporated herein by reference. Defendants' professed willingness to enter into a stipulation as to the facts caused us to attend at least four conferences with opposing counsel in Palo Alto (and one pre-trial conference with Your Honor), only to be met by defendants' counsels' unexplained refusal to enter into a stipulation previously agreed upon coupled with efforts to depose all of the plaintiffs. These matters were, of course, exceedingly costly (in terms of requiring plaintiffs' counsel to expend substantial amounts of time to deal with them). Counsel were also compelled to expend a substantial amount of time dealing with defendants' motions to convene a three-judge court or to abstain. Although it would be possible for me to ascertain with reasonable precision those fees directly attributable to defendants' delaying tactics in these various respects, I have not attempted to do so. I believe a fair estimate is that the fees were at least \$12,000 more than they would have been had defendants in fact approached this litigation in the constructive fashion they indicated would be followed at its outset.

6. I am always reluctant to characterize the motives of any party or its counsel. It is, I believe, fair to say as an objective matter that the history of defendants' conduct of this litigation would be difficult to square with a good faith desire on their

part that the important questions of law raised thereby be presented for disposition without undue delay. That persons whose constitutional rights have been violated should have to incur legal fees of more than \$27,000 (or even more, where one member of the legal team is not donating his services as Professor Amsterdam did) simply to obtain a summary judgment on undisputed facts is a discouraging commentary on the availability of legal remedies.

/s/ Jerome B. Falk, Jr.
Jerome B. Falk, Jr.

(Jurat omitted in printing)

United States District Court
Northern District of California

[Title omitted in printing]

[Filed Mar. 30, 1973]

SUPPLEMENTAL 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. It may well be that the court neither requires nor expects any reply or supplementary evidence concerning defendants' unseemly comments concerning my law firm, the truthfulness of our time records as

reflected in my previous affidavit, and the integrity of plaintiffs' counsel (Defendants' Opposition, at pp. 24-26). For the sake of the completeness of the record—and because I frankly resent defendants' unsupported and totally unwarranted comments—I submit this supplementary affidavit.

2. Defendants profess to be “truly amazed” that my law firm would expect to charge for its services at its customary hourly rates (*Id.* at p. 24). I have some difficulty in grasping the notion that counsel should be paid *less* for services rendered in connection with a case involving important questions of public significance than, say, defending a personal injury case. (That argument would have greater credibility in defendants' mouths were Mr. Toff to advise us that he had reduced his customary charges to the client he represents in this matter.)

3. Defendants' further comments suggesting that either our firm has taken advantage of “a college newspaper and college students” or that plaintiffs have “substantial outside financial sources” require reply. As stated in my previous affidavit, the legal fees have vastly exceeded those originally contemplated—an unhappy circumstance which I attribute to the conduct of this litigation by defendants and their counsel. Although I consider it totally irrelevant to the present motion, and indeed I heretofore hesitated to mention it lest we appear immodest, the fact of the matter is that my law firm has no intention of requiring the *Daily* to pay legal fees beyond its ability to do so. We did not undertake the prosecution

of this particular matter on a *pro bono publico* basis (although, as I am sure the court knows, we undertake many matters without expectation of compensation); unhappily, because the costs of this litigation have so completely exceeded the ability of the *Daily* to pay, it appears to have taken on that character.

4. I do not propose to dignify defendants' comments concerning my hourly charges. I do wish to respond to the statement that "per-hour rates of \$50 for an inexperienced research attorney . . . are outrageously high." (*Id.* at p. 24). Without detailing the qualifications and experience of members of this firm, I note only that \$50 per hour is the *lowest* recommended hourly fee set fourth in the San Francisco Lawyers' Club Minimum Fee Schedule.

5. Defendants state that the total time expended by attorneys in my firm "seems somewhat inflated." (*Id.* at p. 25). This motion has been pending for some time; had they the slightest real doubt about my veracity, they were free to take my deposition. They pose several questions which I am happy to answer:

(a) Students from Stanford did assist in fact gathering. *No* charge has been made for their efforts. Law students clerking in our firm did significant amounts of research on the case; however, I frankly felt that their efforts in this instance were not entirely productive, and no charge has been made for their efforts.

(b) None of the time reported has anything whatsoever to do with any case but this one. Our firm is not involved in any other comparable

case; and none of Professor Amsterdam's time has been charged.

(c) No time devoted to luncheon has been charged; and travel time has been, as a general matter, adjusted to exclude the greater travel time to San Jose over a trip to a San Francisco court.

(d) Almost without exception, the out-of-state affidavits submitted by plaintiffs were prepared by persons other than attorneys in my firm, and thus no time has been charged to them.

(e) I cannot allocate my time between that devoted to one legal theory and another.

(f) The problems generated by Judge Phelps have largely been the burden of Professor Amsterdam, with whom Judge Phelps frequently communicated directly (always, it should be added, at his instigation).

/s/ Jerome B. Falk, Jr.
Jerome B. Falk, Jr.

(Jurat omitted in printing)

United States District Court
Northern District of California

[Title omitted in printing]

AFFIDAVIT OF
ROBERT H. MNOOKIN

ROBERT H. MNOOKIN, being duly sworn,
deposes and says:

1. I am an attorney admitted to practice before this Court. I was an associate with the firm of Howard, Prim, Rice, Nemerovski, Canady & Pollak from July 1, 1970 until October 31, 1972, when I joined the law faculty at the University of California, Berkeley (Boalt Hall) and became "Of Counsel" to the firm. Since April, 1971, I have been one of the attorneys for plaintiffs in this action. I submit this Affidavit in support of Plaintiffs' Motion for an Award of Attorneys' Fees.

2. Based on my monthly time records prepared contemporaneously, I have determined that I devoted a total of 290.7 hours to this litigation since April, 1971. I am confident this total is accurate.

3. From my monthly time summary, daily calendar and review of the files in this case, I have allocated my time among the particular matters I worked on in this case. Although my records do not permit me to make this allocation with accuracy down to the exact number of minutes I spent on each matter, I believe the following allocation is reasonably precise:

<i>Factual Investigation into the Circumstances of the Search</i> (April and May, 1971)	<i>Hours</i>
Meetings with members of the editorial staff of the Stanford Daily; interviews with witnesses; interviews with officials of Stanford University regarding relationship of Stanford Daily to the University; preparations of statements by witnesses	77.0
<i>Preparation of Complaint</i> (April and May 1971)	
Legal research; drafting of complaint	43.0
<i>Intra-District Transfer of Venue</i> (May and June, 1971)	
Preparation of affidavit and motion for intra-district transfer of venue; hearing on motion	3.7
<i>Defendants' Motion to Dismiss or Stay Action and Request for the Convening of a Three-Judge Court</i> (June-September, 1971)	
Preparation of Plaintiffs' response: legal research; memorandum of points and authorities; attendance at hearing on motion	62.0
<i>Negotiations Over Stipulation of Facts</i> (October, 1971—May, 1972)	
Pre-trial conference; meetings with opposing counsel; preparation and revision of proposed stipulation of facts; telephone discussions with opposing counsel; consultation with clients	49.0
<i>Motion for Protective Order</i> (June, 1972)	
Discussions with clients with regard to Defendants' Notice of Depositions; preparation	

of Motion For Protective Order and review of supporting affidavit	8.0
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Plaintiffs' Motion for Summary Judgment
(December, 1971; June-July, 1972)

Preparation of motion: legal research; memorandum of Points and authorities; interviews; preparation of affidavits in support of motion; attendance at hearing; research for and preparation of reply memorandum	44.0
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Miscellaneous (October, 1972)

Discussions with clients following Court's decision to grant motion for summary judgment	4.0
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TOTAL	<u>290.7</u>
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/s/ Robert H. Mnookin
Robert H. Mnookin

(Jurat omitted in printing)

United States District Court
Northern District of California

[Title omitted in printing]

AFFIDAVIT OF FRANKLIN R. GARFIELD

FRANKLIN R. GARFIELD, being duly sworn,
deposes and says:

1. I am admitted to practice before this Court, an associate with the firm of Howard, Prim, Rice, Nemerovski, Canady & Pollak, and one of the attor-

neys for plaintiffs in this action. I submit this affidavit in support of plaintiffs' motion for an award of attorneys' fees.

2. Since October, 1972, and based on my monthly time records, I have devoted 235.0 hours to this litigation. My time during this period has been allocated as follows:

	<i>Hours</i>
<i>Judgment</i>	
Preparation of Judgment; designation of record on appeal; discussions with opposing counsel; legal research; stipulation dismissing defendant Phelps; stipulation vacating judgment	7.5
<i>Plaintiffs' Motion for Attorneys' Fees</i>	
Preparation of motion for attorneys' fees: legal research; memo of points and authorities	61.8
Preparation of reply; legal research; memo of points and authorities	29.3
<i>Defendants' Motion to Dismiss or For Summary Judgment</i>	
Preparation of response: legal research; memo of points and authorities	38.4
<i>Plaintiffs' Motion for Preliminary Injunction</i>	
Preparation of motion: investigation of search of Stanford University psychiatry clinic; interviews; preparation of affidavits; order shortening time; memo of points and authorities	46.7

*Plaintiffs' Motion for Award of
Attorneys' Fees*

Preparation of motion: legal research; memo of points and authorities; affi- davits	21.9
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Miscellaneous

Administrative: discussions with clients; opposing counsel; consultation with other attorneys; review of recent legal developments	29.4
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TOTAL	235.0
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3. While the total of my time for this case is exact, it has been necessary for me to reconstruct from my daily calendar the time I devoted to the particular matters listed above. I have done this as carefully as possible, but I cannot determine with mathematical certainty the precise number of minutes I spent on each of these matters.

/s/ Franklin R. Garfield
Franklin R. Garfield

(Jurat omitted in printing)

[Filed Sep. 28, 1973]

FRIDAY, September 28th, 1973

PRESENT:

HONORABLE ROBERT F. PECKHAM,
U. S. District Judge

Ramon E. Xavier, Clerk

Roberta Rogers, Court Reporter

UNREPORTED—MINUTE ORDER

C-71-912 RFP—THE STANFORD DAILY, et al

vs.

JAMES ZURCHER, et al

It Is Hereby Ordered And Adjudged that because the District Attorney assures the Court that the *Daily* will not be the object of a Third Party Search, the Motions for Preliminary Injunction, is DENIED.

This ruling is without prejudice to any claim arising out of the search of the Stanford Medical Center later being arrested in another action. Further, that the later search is not the subject of the instant action.

It Is Further Ordered And Adjudged that the Motion of defendant Palo Alto Police parties, is DENIED.

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