# Department of Justice

STATEMENT

OF

ATTORNEY GENERAL GRIFFIN B. BELL

TO

MEMBERS OF THE PRESS

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CONFERENCE ROOM B
DEPARTMENT OF JUSTICE
WASHINGTON, D.C.

A few minutes ago at the White House, the President announced to a group of editors of the Gannett newspaper chain his recommendations to the Congress for legislation that deals with the question of law enforcement searches of media facilities.

The President has asked that Phil Heymann, the Assistant Attorney General in charge of the Criminal Division, and I explain these proposals in more detail to you this afternoon.

By way of background, as you no doubt are acutely aware, the Supreme Court on May 31 of this year ruled in Zurcher v. Stanford Daily that the Constitution permits the issuance of warrants to search newspaper offices for evidence of a crime, even where no one connected with the newspaper is suspected of criminal conduct.

At the request of the Supreme Court, the Department of Justice participated in the Stanford Daily case by filing an amicus curae, or friend of the court, brief. The Department's brief, while arguing that the Constitution did not forbid the court authorized search by warrant of the Stanford Daily offices of evidence of a crime, noted that policy considerations may justify legislation placing restrictions on the use of such search warrants.

The President and I, fully cognizant of our responsibilities both to law enforcement and to the first amendment, believe that applying the usual rules regarding searches to the media pose a particular threat to the independence and function of a free press in a democratic society. Those who gather and disseminate information to the public must rely heavily on persons both within and without government to disclose instances of wrongdoing, inefficiency, or neglect of duty. At the heart of the newsgathering function is the sensitive, fragile relationship between a reporter and his or her source. That relationship could be seriously jeopardized by the fear that the reporter's solemn pledge of confidentiality will be negated by a police search of the reporter's files. The interest of the media in this regard is not unlike that we in law enforcement have as it concerns our informants and sources.

The danger is not diminished merely because the power to search may be invoked only on rare occasions by the law enforcement officials, since the potential exercise of that power alone may chill sources on which the media and the public at large depend.

Even before the Stanford Daily decision, I announced in a speech before the American Society of Newspaper Editors that the federal government at least should not use search warrants to obtain evidence from

the media unless the same stringent standards that now apply to media subpoenas were used, including the requirement that any such request receive my personal approval. As you know, we know of no federal searches of media facilities.

Following the decision, President Carter in June asked me to create a special task force within the Department of Justice to study the issue of media searches. This task force, which involved representatives from throughout the Department, including investigative and prosecution personnel, chaired by Philip B. Heymann, who heads the Criminal Division, and produced an extensive report accompanied by recommendations for legislation. The result of their study, which has been fully considered by Deputy Attorney General Benjamin Civiletti, myself, and the President, led to today's proposals.

The Administration's proposal for this legislation reflects a basic conviction that the work product of persons preparing material for dissemination to the public should be protected from police searches. The media, no less than law enforcement, needs to protect its confidential sources from disclosure. Not only would fundamental First Amendment interests be furthered by ruling out searches for a reporter's notes, drafts, and other work product

materials but law enforcement efforts, which often are aided by press accounts uncovering wrongdoing, will benefit from such a rule.

The heart of the Administration's proposal is a "no search" rule protecting the work product of any person preparing material for dissemination to the public. The protected category of work product materials would consist of any documentary materials created by or for an individual in connection with his or her plans to publish. It would include notes, photographs, tapes, outtakes, videotapes, negatives, films, interview files, and drafts. The "no search" rule would be subject to only two narrow exceptions. First, a search would be permitted where there is an imminent danger to life or serious bodily injury. Second, a search would also be permitted where the individual is a suspect in the crime for which the evidence is sought. The proposal, which would apply to the states as well as the federal government, would for example prevent a repetition of the newsroom search involved in the Stanford Daily case.

In order to safeguard against other searches posing a risk of rummaging through protected work product materials, the Administration's proposal contains a "subpoena-first" requirement for non-work product documentary

materials, including fruits and instrumentalities of a crime, held in connection with plans to publish. Materials protected by the "subpoena-first" rule would include items such as an extortion note or the film of a bank robbery taken by a hidden bank camera.

This proposal is intended to protect broadly information gathering activities basic to the First Amendment while retaining the government's authority to conduct essential searches and maintain public safety. It reflects a sound accommodation of the interests of the media and of law enforcement.

Having said this, and I think you have been given several printed handouts further explaining the proposals, I would like to take a moment to introduce the architect of these proposals, Philip B. Heymann, who will answer your questions.

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