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NEWS from U.S. Senator Bob Dole

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FOR RELEASE UPON DELIVERY
June 22, 1978

COMMITTEE ON THE JUDICAIRY

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SUBCOMMITTEE ON THE CONSTITUTION

STATEMENT BY SENATOR BOB DOLE
PERSONAL PRIVACY PROTECTION ACTS

Mr. Chairman, I commend you and the Subcommittee on the Constitution for promptly scheduling today's hearing on the implications of the Zurcher v. Stanford Daily decision recently handed down by the U.S. Supreme Court.

As government continues to grow and expand, opportunities multiply for improper -- and potentially dangerous -- intrusions into the legitimate zone of privacy which every citizen enjoys. As representatives of the people, Congress must remain firm in support of the maximum personal privacy that can be achieved in a democratic society.

The Fourth Amendment

The most important source of protection for individual privacy is in the Fourth Amendment to the Constitution. It expresses an eloquent, unequivocal principle of democratic government:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."

The Fourth Amendment's guarantee sprang directly from the colonial era when warrantless searches were routinely employed by British soldiers to enforce the Crown's tax laws. Since then, the scope of Fourth Amendment protections has been broadened, and through the Fourteenth, made applicable to the States. This expansion has been concurrent with and supportive of the still-evolving "right to privacy" to which every American is entitled.

Right to Privacy

The Right to Privacy has no specific Constitutional base. The essential notion of an individual's right to be left alone by government is not found in any one clause or amendment in the Constitution. Instead, privacy rights are implicit in the scheme of Democratic statecraft. Americans have always felt that the government should not intrude in their personal lives or businesses without an adequate justification.

The existence of a right to privacy is firmly established in Constitutional law, but no concrete definition of the scope of that right has enunciated. Rather, on a case-by-case basis, the parameters of Constitutional protection for privacy are being established.

STANFORD DAILY CASE

Zurcher v. Stanford Daily, the latest case in this area, has called into question the continuing viability of constitutional guarantees of privacy as a protection against police searches. The Supreme Court held that a person not suspected of criminal wrongdoing has no greater Fourth Amendment protection than one implicated in a crime. As the court interpreted the Fourth and Fourteenth Amendments, police may be issued a search warrant even if a subpoena would be as effective in obtaining documents or other physical evidence held by third parties not suspected of criminal activity.

FREEDOM OF THE PRESS

The Supreme Court's Stanford Daily decision has also threatened another freedom essential to the preservation of democratic government, the First Amendment guarantee of a free press. The potentially chilling repercussions of unannounced police searches of newspapers, broadcasting stations, and other news media simply cannot be tolerated in a free society. The public's right to know can only be protected by free and uninhibited press. The news media must also be able to guarantee its sources a reasonable degree of confidentiality. So, just as we must guard against unwarranted invasions of personal privacy, we have a responsibility to reaffirm our commitment to freedom of the press.

DOLE LEGISLATION

As an initial response to the Stanford Daily decision, I introduced S. 3162, the Personal Privacy Protection Act. That legislation would provide an opportunity for an adversary hearing before a search warrant would issue in most third-party situation. Today, I will introduce a revised version of S. 3162, which better guarantees the rights of all Americans.

The bill I am introducing today would protect against searches such as the one conducted in the Stanford Daily case by requiring police to seek a subpoena rather than a search warrant. A search warrant could only be issued in two situations. First, if the person whose premises are to be searched is suspected of involvement in the crime under investigation, a search warrant could be issued and the search conducted without prior notice. The second exception would permit issuance of a search warrant if there was a likelihood that the evidence sought by law enforcement authorities would be destroyed if prior notice were given.

ALL PERSONAL PRIVACY RIGHTS NEED PROTECTION

While the Stanford Daily case involved information gathered by a newspaper in the normal course of its operations, the Supreme Court's decision applied to any individual or business. The congressional response must also ensure that the rights of all individuals, including but not limited to the press, are not infringed. The fundamental right we are protecting is not freedom of the press but rather freedom of all citizens to be secure in their homes and papers. A search conducted under a warrant necessarily exposes the police officer to information not related to the search. To find the relevant documents, every item in a file must be examined. The police may search every area of an individual's home under a search warrant. This type of intrusion into personal privacy is simply not justified if the person is not suspected of criminal activity.

SUBPOENA IS PREFERABLE

A subpoena is preferable to a search warrant for a number of reasons. First, a subpoena is inherently a lesser violation of privacy than a search. There is no breach of privacy as to documents unrelated to the investigation. All of the files of a doctor, lawyer, journalist, or businessman would not be exposed to outside view.

Second, a subpoena is a lesser intrusion into the private affairs of an individual or business than a search conducted after the issuance of a warrant. A subpoena requiring the production of physical evidence allows the individual an opportunity to gather the materials in an orderly manner without disrupting home life or business routine.

LAW ENFORCEMENT CONCERNS

I am aware of some of the difficult problems confronting law enforcement officials today. The task of bringing criminals to justice is more difficult now than ever before. Yet, the issue presented by the Stanford Daily case is substantially different from most constitutional conflicts that affect law enforcement. It dealt solely with individuals not suspected of any criminal involvement. The Supreme Court's decision limited the rights of citizens who may have evidence relating to a crime but have not committed any criminal offense.

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CONGRESSIONAL ROLE

The Stanford Daily decision has, in my opinion, overextended the permissible scope of investigatory activity. And while I understand that we must balance legitimate expectations of individuals, journalists, and businesses to privacy with the need for effective enforcement of the law, I do not think the procedures sanctioned by the Stanford Daily decision are fully consistent with American ideals of justice.

CONCLUSION

Many Americans today justifiably feel that their rights have been threatened by the Stanford Daily decision. Congress must act quickly to ensure that the doubts of these Americans -- individuals, journalists, and business -- are resolved. The privacy rights of all citizens must be protected. Effective enforcement of the law requires that citizens respect those responsible for the safety of the community. That respect can only be established when citizens are certain that the law will also respect their rights. I look forward to working with the subcommittee to ensure that no deterioration of this mutual respect occurs.