

Writer Upheld After Refusal To Testify

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SAN FRANCISCO — In a landmark decision yesterday, the United States Court of Appeals for the Ninth Circuit required the federal government to show a pressing need for evidence before it could require a journalist to testify in a secret grand jury proceeding.

The decision supported the refusal of Earl Caldwell, a reporter for the New York Times, to testify in an investigation of the Black Panther party. Caldwell is black.

Caldwell's lawyer, Anthony Amsterdam, said that he knew of no previous instance in which a federal court had supported a reporter's refusal to testify and that certainly no federal appeals court had ruled in that way.

THE COURT held that "where it has been shown that the public's First Amendment right to be informed would be jeopardized by requiring a journalist to submit to secret grand jury interrogation, the government must respond by demonstrating a compelling need for the witness' presence before judicial process properly can issue to require attendance."

The appeals court noted that the "rule in this case is a narrow one."

"It is not every news source that is as sensitive as the Black Panther party has been shown to be respecting the performance of the Establishment's press or the extent to which that performance is open to view. It is not every reporter who so uniquely enjoys the trust and confidence of his sensitive news source," the court said.

THE OPINION conceded that "for the present we lack the omniscience to spell out



—AP WIREPHOTO.
EARL CALDWELL

the details of the government's burden or of the type of proceeding that would accommodate efforts to meet that burden."

The court ordered the lower court to recommend rules to accomplish the end sought in the opinion. Federal District Judge Alfonso J. Zirpoli on April 3 directed Caldwell to testify under terms of an order that was designed to protect the reporter's rights and sources.

Instead, with the support of the New York Times, which filed briefs in his behalf, Caldwell elected to appeal the order and argue that he should not be required to appear before the grand jury. A wide range of other publications, as well as individual newsmen, filed affidavits and briefs supporting Caldwell.

AMSTERDAM'S incidental expenses in representing Caldwell were paid by the NAACP Legal Defense and Educational Fund, Inc.

The opinion supported much that had been asked in the appeal. The court held that, "If the grand jury may require appellant (Caldwell) to make available to it information obtained by him in his capacity as news gatherer, then the grand jury and the Department of Justice have the power to appropriate appellant's investigative efforts to their own behalf."

The court said this would convert a reporter "into an investigative agent of the government."

"The very concept of a free press requires that the news media be accorded a measure of autonomy; that they should be free to pursue their own investigation to their own ends without fear of governmental interference, and that they should be able to protect their investigative processes," the opinion said.