

Reporter's Sources Protected by Court

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SAN FRANCISCO, April 3—A federal judge ruled today that in the absence of "an overriding national interest" a reporter may not be compelled to reveal confidential information to a grand jury investigation.

The decision by U.S. District Court Judge Alfonso J. Zirpoli was described by a court source as the first federal court ruling ever to say that newsmen have a First Amendment privilege not to answer questions based on confidential associations.

The decision came at a hearing this morning in the case of New York Times reporter Earl Caldwell, who sought to quash a subpoena requiring his appearance before a federal grand jury

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probing the activities of the Black Panthers.

The case of Caldwell, a 32-year-old black reporter who specializes in coverage of black militants, attracted widespread attention as a test of the government's right to require news media reporters to reveal their sources.

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CALDWELL, From A1

The Justice Department originally sought to subpoena Caldwell's notes and tapes of conversations with Panthers, but that effort was dropped and the subpoena requiring him to testify in person was substituted. Other subpoenas seeking access to reporters' notes and films have gone out to other news agencies around the country.

Attorney for Caldwell and The New York Times argued today that he should not be required to testify at all, since his very appearance would jeopardize a delicate and carefully established relationship with the Panthers. If he were required to appear, they contended, the scope of questioning should be severely limited.

Judge Zirpoli decreed that Caldwell would have to honor the subpoena. But in a ruling he said "may well be determinative of the scope of the journalists' privilege," he added that Caldwell was entitled to a protective order.

Caldwell, the judge said, "need not reveal confidential associations that impinge upon the effective exercise of his First Amendment right to gather news for dissemination to the public. . . . until such time as a compelling and overriding national interest which cannot be alternatively served has been established to the satisfaction of the court."

The decree thus has two provisions—one that overriding national interest be shown, and second, that it be shown the information could not be obtained in some other manner.

Zirpoli stayed the date of Caldwell's grand jury appearance (scheduled for April 8) to allow for an appeal by either side.

Attorneys for Caldwell hailed the decision as "important because it allows Mr. Caldwell to give assurance to the Panthers or to any other persons who are willing to speak confidentially to him that he will not disclose—and can't be required to disclose—what they tell him. It also

means, of course, that other reporters can give the same assurances to their sources of confidential information if Judge Zirpoli's order is sustained on appeal." Government attorneys would not say today whether they planned an appeal.

In reaching his decision, Zirpoli rejected arguments by Justice Department attorney Victor C. Woerheide Jr. that a prospective witness before a grand jury cannot be granted the right not to testify on certain matters before those matters actually arise.

"Under the law there is no privilege of confidentiality" for newsmen, Woerheide argued, adding that "if the courts were to move otherwise, it would have to make new law."

Woerheide is one of a team of lawyers dispatched here last year by the Justice Department to launch an investigation of the Panthers. After more than nine months, only one indictment has been issued—against Panther chief of staff David Hilliard.

Woerheide admitted today that "the government is having a problem in developing evidence" against the Panthers.

Anthony G. Amsterdam, of the Stanford University Law School, arguing in behalf of Caldwell, contended that the government had failed to show how any information Caldwell could provide would be useful to its investigation. In the absence of such justification, he said, requiring Caldwell to testify would violate the free speech provision of the First Amendment.

Present also at the hearing were attorneys for the Associated Press, the Columbia Broadcasting System, the American Civil Liberties Union and Newsweek magazine, all of whom filed amicus curiae briefs in support of Caldwell's motion.

Newsweek's brief went beyond any of the arguments, asking that the court declare absolute immunity for reporters gathering information as part of their official duties.