

# Panther Is Released Because of Wiretap

6/5/71

By EARL CALDWELL

Special to The New York Times

SAN FRANCISCO, May 4—A Federal judge abruptly dismissed today an indictment against David Hilliard, a Black Panther leader, who had been charged with threatening the life of President Nixon.

The indictment was dismissed by District Court Judge William P. Gray after the Government had refused to disclose the contents of wiretaps that involved Mr. Hilliard, who is the third-ranking officer in the Black Panther party.

United States Attorney James Browning said that he was not authorized to make the tapes available to Mr. Hilliard's lawyers as the court had ordered.

After Mr. Browning made it clear that the Government would not comply with the

Continued on Page 62, Column 3

# Panther Released Because of Wiretap

Continued From Page 1, Col. 5

order of the court, Judge Gray promptly ordered the indictment dismissed and Mr. Hilliard released.

The Government had argued that the information obtained in the wiretap recordings was irrelevant to the case but Judge Gray said that was not the issue.

He said that the Fourth Amendment prohibited "unreasonable" search and seizure, and that in this case "the Government had ample opportunity to seek a magistrate's sanction."

The Government had previously stated that the wiretaps had been "expressly ordered" by the President. The Government's position is that the President has the authority to make such decisions in cases where national security is involved.

But in his ruling today, Judge Gray said "in this case, there is no national security exemption." He said that the Government could have sought authorization of a magistrate, and that in failing to do so, it violated the defendant's rights under the Fourth Amendment.

The violation, the court said, entitled the defendant to see the results of the surveillance. The Government had agreed to turn the tapes over to the court to permit it to determine if the contents were relevant to the case. But the court refused.

Judge Gray said that the volume of recordings was substantial, and that it should not be the burden of the court to decide what was relevant. He also said that the court did not have the expertise to determine what was relevant and thus

ordered that "all portions [of the tapes] in which Hilliard's voice appears or which were taken in his home" be turned over to the defense.

"The Government of course has the option of dismissing the action," he said. Mr. Browning, citing his lack of authorization, then chose to let the court dismiss the action.

The charges against Mr. Hilliard, the 28-year-old national chief of staff of the black militant organization, stemmed from a speech that he made here in November, 1969.

In that speech, delivered before a crowd of 100,000 a peace rally in Golden Gate Park, he was quoted as saying, "We [the Panthers] will kill Richard Nixon; we will kill any who stands in the way of our freedom."

His attorneys argued that the speech did not constitute a threat but represented only the rhetoric of the Ghetto. Mr. Hilliard's intent thus became the crucial issue.

The Government submitted other speeches that the Panther leader had made to support its contention that the words alone constituted a threat. In affidavits filed by Attorney General John N. Mitchell, the Government said that some of Mr. Hilliard's conversations were contained in its wiretaps, but that none of them were relevant to this case.

Benjamin Dreyfus, counsel for Mr. Hilliard, argued successfully that the defense was still entitled to examine the tapes.

Judge Gray said in handing down his decision, "This is another case where the executive power and the national security

are on one side and the rights of the individual are on another."

Mr. Browning said that he believed the Government would appeal the decision.

Mr. Hilliard, obviously pleased with the decision, called it "a good victory." He still faces charges in Oakland that stem from a shootout with the police in 1968.