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## U.S. AND CALDWELL FILE COURT PLEAS

### Counter Moves Made Over Subpoena of Reporter

Special to The New York Times

SAN FRANCISCO, May 1 — Earl Caldwell, a New York Times correspondent, and the Federal Government each have filed actions involving attempts to get Mr. Caldwell before a poli ruled that the reporter was vestigating the Black Panthers.

On April 3 United States District Judge Alfonso J. Zirpoli refused to quash a subpoena that had been served on Mr. Caldwell. However, Judge Zirpoli ruled that the reporter was entitled to protection for his confidential news-gathering transactions and would not be required to testify about them except when the Government could show an overriding national interest and an inability to get the desired information from other sources.

Through his attorney, Anthony Amsterdam, a Stanford University law professor, Mr. Caldwell recently filed notice of appeal of Judge Zirpoli's ruling.

That was simply a notice of intention to appeal, and no grounds were stated.

Judge Zirpoli departed in his order in two ways from the relief asked. He required the grand jury appearance, even though the Government was severely limited by the protective order. He also refused to order a study of whether the subpoena was based originally on information picked up by electronic listening devices alleged placed in a room in the Black Panther headquarters in Oakland, Calif.

Yesterday the Government filed a request in the United States Court of Appeals for the Ninth Circuit that the Caldwell appeal be dismissed on the grounds that Judge Zirpoli's order is not appealable, that the effect of the appeal is to interrupt unduly the grand jury inquiry, and that the appeal is frivolous.

The court was asked to rule on the matter no later than Tuesday, in view of the approaching time of discharge of the grand jury, which has been conducting the investigation of black militant organizations.