

U.S. to Seek High Court Ruling On Case Involving a Reporter

By JACK ROSENTHAL DEC 5 1970

Special to The New York Times

WASHINGTON, Dec. 4 — The Department of Justice announced today that it would ask the Supreme Court to review the case of Earl Caldwell, a New York Times reporter convicted of contempt by a Federal District Court whose conviction was then reversed on appeal.

Mr. Caldwell, a reporter in the San Francisco Bureau of The Times, has refused to answer a subpoena to testify before a Federal grand jury about his interviews with members of the Black Panther party.

He was found guilty of civil contempt last June, but this conviction was overturned last month by the United States Court of Appeals for the Ninth Circuit. The court, which is in San Francisco, held that he could not be compelled to submit to secret questioning unless the Government demonstrated "a compelling need."

Reasons Not Disclosed

The Justice Department did not disclose its reasons for seeking the Supreme Court review, either in a brief statement issued here or in a motion filed in San Francisco asking that the appellate court's mandate be stayed pending the department's request to the Supreme Court.

A spokesman said, however, that the questions raised in the case were of sufficient importance that the department wanted the high court's answers.

Other sources in the department suggested that the primary question was whether the appellate decision was too broad in ruling that Mr. Caldwell did not even have to appear before the grand jury regardless of which questions were asked of him.

Ordered to Appear

These sources said that the department's reasons would be detailed in the formal application for review to the Supreme Court, which would probably be filed within two weeks.

Initially, the United States District Court in San Francisco

directed Mr. Caldwell to appear before the grand jury, but said he would not have to disclose confidential information unless there was "a compelling and overriding national interest that cannot be served by alternative means."

The appellate court, reversing Mr. Caldwell's later contempt conviction, said the Government had to show compelling need before ordering him to testify. The decision said that requiring a reporter to make available information gathered as a reporter would convert him "into an investigative agent of the Government" and invade the proper autonomy of the press.

"It is not every reporter who so uniquely enjoys the trust and confidence of his sensitive news source," the decision said