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TIMES REPORTER FIGHTS SUBPOENAS

Attorney Asks U.S. Court to Quash Federal Writs

Special to The New York Times

SAN FRANCISCO, March 17

—A motion was filed here today asking the United States District Court to quash two subpoenas issued to Earl Caldwell, a New York Times correspondent, that would require him to appear before a Federal grand jury.

The grand jury has been taking evidence about the actions of members of the Black Panther party, a black militant group.

The motion asked, alternatively, that the subpoenas be modified so that Mr. Caldwell would not be required to testify about any information except that which he wrote for the Times, and that the date of his grand jury appearance be continued until the motion is decided finally.

The first subpoena was served on Mr. Caldwell on Feb. 2 and has never been cancelled. It ordered him to appear to give testimony and to bring with him tape recordings and notes of interviews with Black Panther leaders, specifically David Hilliard and Raymond [Masai] Hewitt.

The second subpoena was served yesterday and did not require the producing of any records. It ordered Mr. Caldwell to appear March 25 at 10 A.M.

The motion to quash was filed by Mr. Caldwell's attorney Anthony G. Amsterdam, and the attorney here for The New York Times, John B. Bates. Mr. Amsterdam also made public a letter he wrote today to Attorney General John N. Mitchell in which he asked that the testimony be put off until the motion to quash has been decided.

The motion was argued on the following grounds:

¶The Government must be required to show its need for information in order to justify the "grave, widespread and irreparable injury to freedoms of the press, of speech and of association" that the subpoenas could cause if Mr. Caldwell's

testimony is required.

Position Explained

¶The Subpoenas "intrude upon confidential associations necessary for the effective exercise of First Amendment rights" by inhibiting Mr. Caldwell's access to news sources on a confidential basis.

¶"The subpoenas are very probably based upon information obtained by the Government through methods of electronic surveillance" that violated Mr. Caldwell's constitutional privileges.

Mr. Amsterdam told reporters after the motion was filed that Mr. Caldwell would not resist giving testimony that would validate the authenticity of statements made by Black Panther leaders as printed in The New York Times in stories he had written.

But the correspondent will not give unpublished material on the grounds that it is confidential communication between him and his news sources, Mr. Amsterdam said. The statements were made at a news conference where Mr. Caldwell appeared, but did not answer questions.

Mr. Bates, also at the news conference, said he was present because "The New York Times feels this is a very important area. I am here to support the position taken by Mr. Caldwell and to show that The New York Times has a deep interest in these matters."

A series of affidavits was attached to the motion. Some of these said that Mr. Caldwell, as a Negro reporter, was assigned to San Francisco a year ago in part to cover news of the black community.

Other affidavits said that militant groups were generally distrustful of reporters, and that should Mr. Caldwell be subpoenaed to the secrecy of the grand jury proceedings, it would be assumed by these groups that he had testified at length, no matter what he had done in fact.

The argument that the Government had based its subpoenas on electronic surveillance of the Panthers was made through an affidavit filed by Mr. Amsterdam, who reported on his conversations with Victor C. Woerheide, an Assistant Attorney General who is conducting the investigation of the

Black Panthers.

Basis For Subpoena

Mr. Amsterdam said that on two occasions in early February Mr. Woerheide told him that Mr. Woerheide had read only one of Mr. Caldwell's articles about the Black Panthers, and had based the earlier subpoena on that article, which was published Dec. 14, 1969.

This first subpoena asked specifically for tape recordings and notes of interviews Mr. Caldwell had with David Hilliard and Raymond Hewitt.

Mr. Amsterdam said that Mr. Woerheide had said he knew that Mr. Caldwell had interviewed Mr. Hewitt, but did not know whether any part of this interview had ever been published. A copy of the Dec. 14, 1969, article was attached to the Amsterdam affidavit. Mr. Hilliard was quoted several times in it but Mr. Hewitt's name did not appear.

"As we noted at the outset of this motion," the argument filed today said, "the Government asserts unexplained knowledge of some unpublished

interview of Masai Hewitt by Mr. Caldwell. The likely explanation — we put it this way because only the Government knows the facts — is electronic surveillance by Government agents of the Black Panthers."

The court was asked to inquire of the Government if, in fact, it has been listening to Panther telephone calls or the talk in rooms where the Panthers gather, and if this electronic surveillance was the basis for the subpoenas issued to Mr. Caldwell.

'Illicit Basis'

"If the inquiry discloses an illicit basis for the subpoenas, of course they must be quashed," the attorneys argued.

In his letter to Attorney General Mitchell, Mr. Amsterdam recalled that the Attorney General on February 5 "asserted a recognition by the Department of Justice of the 'traditional freedom and independence of the press'; of 'the particular sensitivity of the press in this area' and of 'the special place occupied by the press under the Constitution.'"

Mr. Amsterdam told the Attorney General he recognized that there may be no inconsistency between these statements and the issuance of subpoenas to Mr. Caldwell. He added:

"I do think, however, that there would be a large inconsistency between a profession of respect for freedom of the press and an insistence in bringing Mr. Caldwell before the grand jury prior to the time when the courts have authoritatively decided whether freedom of the press does not preclude his compelled appearance."

Mr. Amsterdam then asked Mr. Mitchell to wait until the courts had spoken before moving to force Mr. Caldwell to testify.