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Excerpts From Ruling on Caldwell Plea

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SAN FRANCISCO, April 3— Following are excerpts from an opinion issued today by Federal Judge Alfonso J. Zirpoli on a motion by Earl Caldwell and The New York Times to quash a subpoena seeking testimony on interviews with Black Panther party members:

The standing of The New York Times Company to join in the instant motion having been established, the court now directs its attention to the issues presented by the motion.

Movants [Mr. Caldwell and The Times] contend that the contents of Mr. Caldwell's interviews under the circumstances here presented are protected against compulsory disclosure by the First Amendment to the Constitution, and that the compelled appearance of Mr. Caldwell before the grand jury will have a drastic chilling and repressive effect on First Amendment freedoms. Accordingly, they ask that the subpoena be quashed, or alternatively, that the subpoena be limited as so as to protect Mr. Caldwell's confidential relations.

The relief sought presents issues of significant magnitude—issues that go to the very core of the First Amendment, the resolution of which may well be determinative of the scope of the journalist's privilege in sensitive areas of freedom of speech, press and association not heretofore fully explored and decided by the Supreme Court of the United States.



The New York Times

Judge Alfonso J. Zirpoli

Reduced to their simplest terms the questions presented are:

1. Must Earl Caldwell appear before the grand jury in response to the subpoena issued March 16, 1970?

2. If he must appear, should the court issue a protective order limiting the interrogation of Mr. Caldwell?

The short answer to these questions is "yes" as to each question.

1. Mr. Caldwell must respond to the subpoena. It has long been settled "that the giving of testimony and

the attendance upon court or grand jury in order to testify are public duties which every person within the jurisdiction of the Government is bound to perform upon being properly summoned."

Blair v. United States, 250 U.S. 273, 281, United States v. Bryan, 339 U.S. 323, 331.

2. On the facts of this case, he is entitled to a protective order. When the exercise of the grand jury power of testimonial compulsion so necessary to the effective functioning of the court may impinge upon or repress First Amendment rights of freedom of speech, press and association, which centuries of experience have found to be indispensable to the survival of a free society, such power shall not be exercised in a manner likely to do so until there has been a clear showing of a compelling and overriding national interest that cannot be served by alternative means.

Accordingly it is the order of the court that Earl Caldwell shall respond to the subpoena and appear before the grand jury when directed to do so, but that he need not reveal confidential associations that impinge upon the effective exercise of his First Amendment right to gather news for dissemination to the public through the press or other recognized media until such time as a compelling and overriding national interest which cannot alternatively be served has been established to the satisfaction of the court.