

## U.S. Court Backs Retrial of Turco

A federal judge refused yesterday to bar the retrial of Arthur F. Turco, the attorney for the Baltimore Black Panther Party who is accused of being an accessory to the 1969 murder of a man police say was suspected by the Panthers of being an informer.

The ruling, in a 22-page opinion by Judge Herbert L. Murray, of the U.S. District Court in Baltimore, could clear the way for Turco's retrial, scheduled for Nov. 29 in Baltimore's Criminal Court. Turco's attorney, William M. Kunstler, said yesterday he plans to appeal Murray's decision.

Turco's first trial, which ended in July, resulted in a jury disagreement, Kunstler then took the case to the federal court, charging that prosecutor Hilary Caplan "conspired to use evidence he knew was perjured" in Turco's first trial.

Caplan, an assistant state's attorney in Baltimore, had termed Kunstler's charge "ludicrous."

Kunstler, in addition to asking the federal court to bar Turco's retrial, also filed a \$1-million damage suit against Caplan, State's Attorney Milton B. Allen, Baltimore Police Chief Donald D. Pomerleau and Lt. Col. Maurice D. DuBois, chief of criminal investigations for the Baltimore police.

That portion of the suit sought damages for alleged

harassment and surveillance of the Black Panther Party in an effort to destroy it.

Judge Murray deferred a decision yesterday on the damages portion of the suit. He also deferred a decision on whether the state's attorney and his assistants are immune from being sued for damages as Attorney General Francis B. Burch contended at a court hearing earlier this month. Murray said he would rule on those questions after Turco is retried.

Turco, who is white, was accused by the state of ordering a group of Black Panthers to murder Eugene Leroy Anderson, a 22-year-old car painter. Anderson's skeleton was found in Baltimore's Leakin Park in October, 1969. He was a black. Turco has been free on \$10,000 bond since July 3.

During the first trial, the judge ordered the testimony of a key prosecution witness stricken from the record because it was contradictory. Another witness, a police undercover agent, changed parts of his testimony after Kunstler confronted him with his own report to his police superiors.

Kunstler had sought an evidentiary hearing to "prove" his charge that Caplan had permitted witnesses to lie under oath. Burch had argued that recent U.S. Supreme Court rulings prohibited federal courts from intervening in actions pending in state courts.