

Brown Trial Returned to County Court

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BALTIMORE, April 27—Attorneys for H. Rap Brown lost what may be the final round today in their battle to have the young black militant's long-delayed arson-riot trial moved from the state to the federal courts.

A panel of three judges from the Fourth U.S. Circuit Court of Appeals ruled unanimously late this afternoon that the case should be tried before Judge James Macgill of the Howard County Circuit Court in Ellicott City, Md. No date has been set for the opening of the trial in Howard County.

A further appeal of today's ruling, to the U.S. Supreme Court, still is a possibility.

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Federal Court Refuses to Take Brown Trial

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But defense lawyers said they were not optimistic that the high court would hear the case, or that—even if it agreed to do so—the state proceeding would be stayed once again pending that appeal.

Chief Justice Warren E. Burger, the member of the Supreme Court assigned to hear emergency requests from the Fourth Circuit, could grant a stay, but Brown's lawyers said they doubted he would do so.

Although several days ago they said they would ask Burger to stay Brown's trial, if other appeals failed, they said tonight they are now undecided if they will make the request.

Today's decision returns the case to Macgill's jurisdiction—from which it was temporarily removed a week ago by the appeal to federal court. The judge could start the trial at any time, but his office said

he has not decided when that will be. The prosecution has urged that Brown, 26, be brought to trial as soon as possible, perhaps later this week.

Brown, who has been unaccounted for since March 7, was not in court today for the two hours of argument that preceded the ruling by Appeals Court Judges Harrison L. Winter, Albert V. Bryan and John D. Butzner Jr.

The defendant's presence was not required, for he is free on \$10,000 bond and is not due in any court until selection of a jury actually begins. Under questioning today from Bryan, chief defense attorney William M. Kunstler said he has no idea where Brown is.

"We don't want to be arguing an academic case," Bryan said. "If he's not alive, the case is not alive." Kunstler said he believes Brown is alive, but fears for his life and has gone into hiding.

Brown's attorneys had asked that the case be moved to federal court on two grounds: that racial tensions make it unsafe for Brown to stand trial in Howard County, and that the county's racial makeup—90 per cent white—makes it impossible for him to be tried by a jury of his peers.

The appellate panel rejected both arguments, upholding an earlier decision by Federal District Judge Frank A. Kaufman.

Brown is charged with arson and incitement to riot in connection with a speech he gave in Cambridge, Md. in July, 1967. Following the speech, fires and disorder broke out in the Dorchester County city's Negro section.

The trial subsequently was transferred, at the prosecution's request and over Kunstler's objections, to Harford County, and later to Howard County. Kunstler said that Brown would receive a fairer

trial in Dorchester County, where the population is about 30 per cent black, than in Harford or Howard county.

He said today that there is "no worse county in Maryland" for the trial than Harford, which he called "the headquarters of the Ku Klux Klan." (He said the Klan headquarters are in Rising Sun, which actually is in Cecil County.)

Deputy Maryland Attorney General Robert F. Sweeney told the court today the defense was "playing a game" in seeking to postpone the trial.

His assistant, John J. Garrity, said black defendants are not entitled to be judged by black jurors in order to receive a fair trial. In answer to a question from Judge Winter, he said Brown's trial could be held in Garrett County, a Western Maryland jurisdiction with no known permanent Negro residents, without infringing the defendant's rights.