

## Three-Judge Panel

R P of 4/8/70

# Trial Transfer Is Denied

BALTIMORE, Md. (AP) — A three-judge federal panel ruled Monday against the transfer of the arson-riot trial of H. Rap Brown to federal jurisdiction to protect his civil rights.

The unanimous decision to uphold the ruling made last week in U.S. District Court followed more than two hours of testimony by both sides before the

panel from the U.S. Fourth Circuit Court of Appeals.

No date has been set for resumption of the trial in a state court in Ellicott City, Md.

The panel ruled that Maryland law "does not require that the power to transfer be exercised so as to reduce the likelihood that representation of a defendant's race be diminished . . ."

The decision stated further that there is no evidence of intentional discrimination and at most it "amounts only to an assignment of error" which could be appealed in the Maryland courts or to the U.S. Supreme Court.

The judges concluded by disagreeing with the defense in its contention that Brown's safety is endangered if proceedings continue at the Howard County Circuit Court.

Defense attorney William M. Kunstler previously made a similar unsuccessful appeal of the case to the federal courts on grounds of civil rights. That appeal went all the way to the Supreme Court. It was not clear whether Kunstler would attempt to have the current appeal reviewed by the high court.

At Monday's hearing the defense counsel argued that Brown's civil rights had been infringed upon when the proceedings were moved to Harford and then Howard counties, both with much lower percentages of Negroes than Dorchester County, where Brown was charged.

Kunstler said a section of the 1866 Civil Rights Act "provides expressly for a jury of one's peers."

The prosecution, headed by

Deputy Attorney General Robert F. Sweeney, declared on the other hand that a defendant is "only entitled to no purposeful exclusion" of jury members. It held that in Brown's case, a mixed jury would not necessarily guarantee him a fair trial.

Kunstler, while agreeing with the prosecution that there had been no intentional discrimination committed by exclusion or appointment of certain persons to jury, he asserted that "there has been an exclusion because of the two transfers."

Brown, formerly head of the Student Non-Violent Coordinating Committee, is accused of arson and inciting to riot in connection with 1967 civil disorders in Cambridge, Md.

So far Brown has not appeared at any of the proceedings in Bel

Air or Ellicott City, and his lawyers say they do not know his whereabouts.

Kunstler called again Monday for a hearing at which to present evidence in the case before the federal court. He suggested one purpose would be to resolve the question of how many white and non-white persons are living in the counties to which the trial has been shifted.

In any case, the defense attorney asserted Monday that moving the trial from Dorchester to either Harford or Howard counties is equivalent to passing a law saying black men must be tried by juries picked from populations less than 10 per cent Negro (roughly the ratio in both Harford and Howard counties).