

# Kunstler Asks Court to Bar Retrial of Panther Lawyer

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BALTIMORE, Nov. 4— Charging that the prosecutor "conspired to use evidence that he knew was perjured" in the trial of Arthur F. Turco Jr. on an accessory to murder charge, William M. Kunstler today asked a federal judge to bar further prosecution of Turco.

Turco, a white lawyer who represented the Baltimore Black Panthers, was tried in state court last summer on charges of being involved in the murder of a man police say the Panthers had suspected of being an informer. The three-week trial ended in a hung jury.

Kunstler, representing Turco in today's hearing before U.S. District Court Judge Herbert L. Murray, argued that the prosecution of Turco had been in "bad faith" and that the trial had been characterized by "open perjury induced by the police with the knowledge, we are certain, of the state's attorney."

Maryland Attorney General Francis B. Burch, in arguing for the state against the motion to bar another trial of Turco, said that Kunstler's request was part of an attempt "to break down the whole concept of the effective administration of justice, and that's what's wrong with this country today."

Burch contended that recent U.S. Supreme Court decisions prohibit a federal court from

intervening in a pending action in a state court.

Turco has been free on \$10,000 bail since July 3, after the jury in his trial failed to reach a verdict, with ten jurors voting for conviction and two holding out for acquittal. Turco was alleged to have ordered the murder of Eugene Leroy Anderson, a 22-year-old car painter whose skeleton was found in Baltimore's Leakin Park in October, 1969.

During the trial, the testimony of a key prosecution witness was ordered stricken from the record by Criminal Court Judge James W. Murphy because it was contradictory. Another witness, a police undercover agent, changed portions of his testimony after Kunstler confronted him with his own report to his police superiors.

A third prosecution witness, who consulted a written statement on the witness stand that the jury was told he had given police, admitted at the end of the trial that he could not read.

Kunstler cited these incidents today to support his contention of a conspiracy of "open perjury."

Judge Murray was asked by Kunstler to grant an evidentiary hearing to allow him to "prove" his charge that assistant State's Attorney Hilary Caplan had permitted the witnesses to lie under oath. Caplan, who was present today but did not participate, told a reporter that Kunstler's charges were "ludicrous."

Burch told Murray that Kunstler was attempting to

delay "the final day of reckoning."

If Murray grants the motion for a hearing, Burch said, federal court would be "flooded" with cases from Maryland courts by defendants seeking to stop prosecution.

Kunstler said no remedy existed in the state court and that Burch was trying to "stampede" Murray with "scare tactics." Kunstler indicated that if the hearing were allowed he would call the three prosecution witnesses from Turco's first trial, Caplan, State's Attorney Milton B. Allen, Baltimore Police Chief Donald D. Pomerleau and other police officials.

Murray said he would rule on the request for a hearing as soon as he could, but indicated it would take more than a week. Turco's second trial is scheduled Nov. 29, but Kunstler said he would seek a delay. Burch said the state would insist that the trial begin on schedule.