Trial Date Is Set In Contempt Case Of Md. Prosecutor

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ELLICOTT CITY, Md., Aug. 30—A two-judge panel ruled today that Howard County State's Attorney Richard J. Kinlein must stand trial on a contempt of court charge stemming from his allegation that another prosecutor had fabricated a 1967 arson indictment against fugitive black activist H. Rap Brown.

Judges Matthew S. Evans and Ridgely P. Melvin Jr., both of the Anne Arundel County Circuit Court, rejected motions by Kinlein's attorney, William W. Greenhalgh, to dismiss the contempt charge as being vague and unconstitutional. They also rejected Greenhalgh's motion for a jury trial and set Kinlein's trial for Oct. 5.

The judges also took the unusual step today of stating that if they find Kinlein guilty of contempt of court he would not receive a penalty greater than six months in jail and a $500 fine.

Kinlein, who assisted the prosecution in the Brown case last year, told reporters in January that Dorchester County State's Attorney William B. Yates II, the chief prosecutor, had told him last year that Yates fabricated the arson charge. This had been done, Kinlein quoted Yates as saying, to insure FBI participation in the search if Brown failed to appear for trial.

Kinlein's allegation resulted in a hearing in May at which Judge James Macgill of the Howard County Circuit Court ruled there was no evidence that Yates had fabricated the arson charge. At that hearing, Maryland Attorney General Francis B. Burch called Kinlein "a disgrace to the legal profession" and said he would attempt to remove Kinlein from office.

Two months ago, Judge Macgill brought contempt proceedings against Kinlein. Macgill contended Kinlein may have violated the judge's March, 1970, order barring participants in the Brown case from making public statements on the case outside the courtroom.

Brown was indicted four years ago on felony counts of arson and inciting to arson and misdemeanor charges of riot and inciting to riot in connection with disturbances in Cambridge, Maryland, in July, 1967. His trial was first shifted to Harford County and than to Howard County.

Macgill last year dismissed the inciting to arson charge. When Brown failed to appear for trial in April, 1970, he was placed on the FBI's most wanted fugitives list. He has not been seen publicly since than. Without the felony charge, the FBI could not have been called into the case.

In today's opinion, given extemporaneously by Judge Evans, the panel noted that Maryland criminal contempt law sets no maximum or minimum penalty. Because of this, Evans said, the judges felt they had to specify the maximum sentence they would give if Kinlein were convicted.

Evans said that it was "undisputed, up until recently," that a person cited for contempt was not entitled to a jury trial. However, he said, the U.S. Supreme Court had modified this to say that if a defendent is convicted by a judge of contempt of court and then receives a sentence exceeding six months in prison or a fine of $500, then he has been denied his constitutional rights and is entitled to a new trial by jury.

After reading the charge against Kinlein along with defense motions, Evans said, the judges had determined that as things stand today Kinlein would not deserve a sentence of more than six months or a fine of more than than $500 if he were found guilty.

On the motion to dismiss the contempt citation, Greenhalgh argued that his client had never been served with a copy of Macgill's March, 1970, order, that he had not violated Macgill's order willfully, and that he had spoken to reporters about the Brown case only after Yates also had commented on the case.

Greenhalgh charged that Burch had a "rather vengeful attitude" toward Kinlein in attempting to oust Kinlein from office.

In defense briefs filed in the case, Kinlein acknowledges that he first told Robert Woodward, a reporter for the Montgomery County Sentinel, that Yates had told him the charge against Brown had been fabricated. Kinlein said he spoke out not to impede justice or embarrass the court, but rather to "aid and assist the court" in dealing with charges against Brown which he said lacked "real and substantial supporting evidence."