

# Arson Charge Against Brown Termed False

For 11/15/71

An arson charge filed against H. Rap Brown after the Cambridge, Md., riot of 1967 was "fabricated" by Dorchester County State's Attorney William B. Yates to insure that the FBI would be called into the case if Brown fled, another Maryland prosecutor said yesterday. Brown, the black militant and former chairman of the

Student National Coordinating Committee, disappeared last March, two days before he was scheduled to appear for trial on charges arising from the 1967 Cambridge disturbances. He has not been seen publicly since then.

Richard J. Kinlein, the Howard County state's attorney, an elected official, said that Yates had admitted to him that he maintained an arson charge in order to have the felony case necessary for federal involvement, in the event that Brown did not appear for trial.

The other charges against Brown were misdemeanors, which would not have brought federal officers into the search for him.

Kinlein, who assisted in the prosecution, said yesterday that Yates' action was "shocking . . . In my judgment, there was no evidence (on which) to charge arson."

Repeated attempts to reach Yates for comment yesterday were unsuccessful. Messages left for him at places where he was reported to be brought no response.

Yates was quoted in yesterday's edition of The Montgomery County Sentinel as saying that he "held the felony count to get him (Brown) on the FBI's 10 most-wanted list."

The charges against Brown stem from a speech he made in Cambridge, Md., in July, 1967. Following that speech, fires and disturbances erupted in Cambridge, and National Guardsmen were called to restore order.

Brown was indicted by a Dorchester County grand jury in August, 1967, on charges of

arson and incitement to arson, riot and incitement to riot. Yates was the state's attorney who presented the evidence to the grand jury.

The arson charges are felonies under Maryland law and are punishable by a sentence of one to 10 years each. The riot charges are "common-law misdemeanors," and have no fixed sentence.

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## BROWN, From A1

A federal fugitive warrant for unlawful flight to avoid prosecution may only be obtained in a felony case.

Brown was scheduled to appear for trial in Bel Air, Md., last March. The night before the trial was to open a bomb explosion in Bel Air killed two of Brown's friends. He never appeared, and on May 4, his \$10,000 bond was revoked.

## Most-Wanted List

Two days later, he was placed on the FBI's list of most-wanted fugitives. He has not been seen since.

Kinlein became involved in the case when the trial was moved again, to Ellicott City, the Howard County seat, after the Bel Air incident. He said yesterday that he had seen the state's evidence and had argued some of the preliminary motions in the case. Under Maryland law, the presence of the defendant is not required during pretrial legal maneuvering and the argument of preliminary motions.

## Disclosed at Lunch

He said that Yates' disclosure was made as they lunched together in Ellicott City in late April during one of those court sessions.

"I asked him what his evidence was. I was aware of the factual situation. In my judgment, there was no evidence (on which) to charge arson," Kinlein said.

"He (Yates) told me he had included that count to have a

felony charge, so that he could obtain a federal fugitive warrant charging unlawful flight to avoid prosecution if Brown did not appear," Kinlein said yesterday.

"It seemed to me to be shocking," Kinlein continued. "In effect, what you're doing is fabricating a charge in order to get the FBI involved . . . I'm very state-oriented. But I can't accept that."

Asked whether Yates could have been responding to requests from law enforcement officials that he charge Brown with arson, Kinlein replied, "I just got the impression it was his own personal crusade."

John J. Garrity, a former

Maryland assistant attorney general who was selected as an assistant prosecutor to Yates for the Brown trial, said yesterday that he and Kinlein "were in complete agreement on our analyses of the case."

Garrity, now a Prince George's County Commissioner, said that he and Kinlein made "certain recommendations" to Yates on how to prosecute the case, but that Yates had not followed all of their suggestions. He would not say whether these recommendations included one to drop the arson charges "since these are matters of evidence and it's possible that this case could still be tried."

"I will say that I never recall Mr. Yates saying he didn't have the evidence to prosecute on the arson charges," Garrity said.

Robert F. Sweeney, the state's deputy attorney general, said his office had become involved in the case "long after the indictment" was returned, upon Yates' request.

## 'Never Heard Suggestion'

"No, I never heard any suggestion after we got into the case that any of the charges may have been fabricated," Sweeney said.

An FBI spokesman said yesterday that Brown had been

placed on its "10 MOST•Wanted Fugitives" list because of the arson charge and subsequent federal warrant alleging flight to avoid prosecution.

The spokesman said that the riot charges were not serious enough crimes to enable the state to get a federal warrant. Without the arson charge, he said, Brown would not have placed on its 10 most wanted list.

"Common law misdemeanors would not involve the FBI," he said. In misdemeanor cases, a warrant is issued when a defendant fails to appear and the defendant is liable to extradition from another state. However, federal

agents would not enter the pursuit.

The spokesman said that the FBI still is not saying whether it knows Brown's current whereabouts. Speculation has placed Brown variously in Algeria, Cuba, somewhere in Africa or still in the U.S.

#### Speculate on Whereabouts

Some members of the black community also speculated that Brown himself died in the auto bomb blast in Bel Air. Former SNCC official Ralph Featherstone and William (Che) Payne died in their car when the bomb went off last March in Bel Air, Md., two days before Brown's scheduled

trial there. Both were friends of Brown. FBI and state investigators have concluded that Brown was not in the car.

Unlike other militants who have fled to avoid jailing or prosecution and later turned up in other countries, Brown has not been seen in public since March 8.

Brown was convicted in 1968 in New Orleans on a federal charge of illegally carrying a rifle across state lines. He failed to appear for sentencing in that case last Sept. 23 and his \$15,000 bond was revoked.

In a separate case, Brown is charged with making intimidating threats to an FBI agent. A hearing on motions

in that case is scheduled for Monday in U.S. District Court in New Orleans. The trial also has tentatively been set for Monday, but there is no indication Brown will be there.

Brown's lawyer, Willa M. Kunstler was unavailable for comment yesterday. A spokesman said he would speak to a reporter on the case today.

The \$10,000 bond ordered forfeited in Brown's Maryland case, posted by an Eastern Shore bondsman, never has been collected.

*This story was prepared from reports by Washington Post staff writers Jim Mann, John Hanrahan and Lawrence Meyer.*