

Lawyer Asks Dismissal Of Rap Brown Charges

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By John Hanrahan
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Attorney William M. Kunstler hinted yesterday that fugitive black militant H. Rap Brown might come out from hiding for the first time in 10 months as the result of a Maryland state's attorney's allegation that another prosecutor had fabricated an arson charge against Brown in 1967.

At the same time, Kunstler urged that all federal and state charges against his client be dropped "since these charges all stemmed from the original phony arson charge."

Kunstler said, "There is a possibility that Rap may want to do something about this himself. There is the possibility that he may surface some-

where. I'm suggesting that these news stories may have an effect on him and that he may want to do something about it."

Asked if he had specific information that Brown might appear somewhere, Kunstler said, "you might it a hunch."

Since failing to show for trial last March, Brown has been variously rumored to be either dead or alive in Algeria, Cuba, Africa and the U.S. This was the first time since last March that anyone close to Brown has suggested that he might make an appearance somewhere.

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BROWN, From A1

Kunstler said he is formally asking U.S. Attorney General John N. Mitchell, Maryland Gov. Marvin Mandel and State Attorney General Francis B. Burch to investigate the allegation that Dorchester County State's Attorney William B. Yates had no evidence on which to prosecute Brown on an arson charge stemming from 1967 disorders in Cambridge, Md.

Yates has said that the arson count was "a good charge" that he could prove.

The allegation came Thursday from Richard J. Kinlein, the Howard County state's attorney, who at one point assisted Yates in the prosecution of the Brown case.

Without the state felony indictment of arson, Kunstler said in a telephone interview from New York, federal charges pending against Brown could never have been filed since they were contingent on the Maryland arson indictment.

The first federal charge, carrying a rifle across a state line, would not have been a crime if Brown had not already been under indictment for a felony, Kunstler said. It came four days after his Maryland indictment.

Brown's other federal

charge of intimidating an FBI agent grew out of an incident outside the New Orleans courtroom where Brown appeared on the gun charge in 1968.

Brown was convicted in 1968 on the gun charge, but he failed to appear for sentencing last September, and his \$15,000 bond was revoked.

A hearing on motions in the intimidation case is scheduled for Monday in U.S. District Court in New Orleans. Kunstler said he will seek a postponement of the hearing.

Maryland case

In Maryland, 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.

The charges stemmed from a speech in Cambridge Brown gave in which Yates maintained that Brown called for the burning down of a school, which was destroyed two hours later.

The riot and incitement to riot charges are common-law misdemeanors. The arson charges are felonies. If there had been no felony charge pending at the time Brown failed to appear for his Maryland trial last year, the state would have been unable to secure a federal fugitive warrant and bring the FBI into the search.

The federal fugitive warrant resulted in the FBI placing Brown on its "10 Most Wanted" list.

'Chain of Events'

"What we have is a chain of events, all stemming from the original fabricated charge," Kunstler said. "Without this chain of events, Rap Brown would not be in exile today. This was part of the conspiracy of a venal state's attorney and a federal government that will stop at nothing in its campaign to destroy black militants."

Kunstler said that the state investigation he is seeking should be conducted publicly, with Brown's attorneys being given the opportunity to call its own witnesses and cross-examine opposition witnesses. He said he was also asking Mandel to seek criminal charges against Yates.

Also, he said he is calling upon the Justice Department "to investigate whether this was a joint venture of the federal government and the state of Maryland in 1967 to get Rap Brown."

In addition, Kunstler said, he is looking into the possibility of asking the U.S. attorney

for Maryland to indict Yates for violating a federal law prohibiting the use of state powers to deprive someone of his civil rights.

In an interview yesterday, Kinlein reiterated his allegation to the Washington Post that Yates filed the arson charges against Brown to assure that the FBI would join in the search if Brown failed to appear for trial.

Kinlein said that he had lunch with Yates and John J. Garrity, a former Maryland assistant attorney general who was assisting in the Brown prosecution last April. The lunch came just after Howard County Judge James MacGill had thrown out the incitement to arson count against Brown.

'Back Off'

At that time, Kinlein said, he and Garrity told Yates that he should "back off" from the arson charge because, "You don't have the evidence to substantiate it."

Kinlein said that Yates then said that "he put—and I distinctly remember the word 'put'—that he had 'put' the arson count in there (in 1967) so that in the event Brown didn't show up for trial he would be able to get a federal fugitive warrant.

"We (Garrity and Kinlein) recognized the defective draftsmanship of the indictment. Judge MacGill picked it

right up (in dropping the incitement to arson charge). Judge (Harry E.) Dyer (Jr.) had picked it up before and that's what caused him to make the statement that led to the removal (to Howard County)."

Brown's trial, after being moved from Dorchester County, was next scheduled for Harford County Circuit Court before Judge Dyer on March 10. Yates demanded that the trial site be moved again when Dyer publicly stated that Brown should show up for trial because he stood a good chance of being acquitted.

Two Killed

Dyer's statement came after two of Brown's friends, former SNCC official Ralph Featherstone and William (Che) Payne were killed in an auto bomb blast two days before the scheduled trial date last March. Brown has not been seen publicly since that time.

Burch, the state attorney general, yesterday disputed Kinlein's version of the lunch with Garrity and Yates. Burch said he was told by Garrity "that Dick (Kinlein) must have misunderstood" Yates' reason for bringing the arson indictment.

Garrity has told The Post that he had never heard Yates say that his sole reason for bringing the arson charge was to insure federal involvement.

Burch said that he would have to meet with Mandel before determining what to do with Kunstler's requests. A spokesman for the governor said he would meet with Burch sometime after Mandel returns from the Super Bowl in Miami. A Justice Department spokesman said that agency would "take a look" at Kunstler's request to Mitchell.