

Rap Brown Role In Arson Argued

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By John Hanrahan

Washington Post Staff Writer

ELLCOTT CITY, Md., May 7—A hearing called to determine whether felony charges against fugitive black militant H. Rap Brown had been concocted by a Maryland prosecutor took on the appearance today of a trial in absentia of Brown himself.

Much of the testimony at the day-long session, punctuated by lively exchanges among rival lawyers, concerned Brown's activities in Cambridge, Md., at the time of fires and looting there in July, 1967.

On the issue that was the ostensible purpose of the hearing—the question of whether the felony charges of arson had been fabricated to bring the FBI into the chase if Brown fled—Howard County state's attorney Richard J. Kinlein repeated his earlier allegation that they had been. He said, however, that a charge of incitement to arson charge against Brown would have been proper.

Kinlein's testimony, some of which conflicted with statements previously given to newspaper reporters, was given to Judge James Macgill of the Howard County circuit court. Macgill also heard from Cambridge residents and two newspaper reporters who had interviewed Kinlein. William B. Yates, the Dorchester county prosecutor who allegedly fabricated the charges, is

expected to testify Saturday.

One witness testified today that three juveniles, one of whom was subsequently convicted of arson, told him that they had been urged personally by Brown, in a conversation after Brown made a militant speech in Cambridge, in July, 1967, to burn down the Pine Crest Elementary School.

The witness, Top E. Barnes Jr., an investigator with the state fire marshal's office, testified that other residents of the Cambridge ghetto had given him statements placing Brown in the vicinity of the school before the fire was set. Barnes said these witnesses said Brown was looking for gasoline and urging people to get gung and shoot "anything that comes in sight."

Defense attorneys William M. Kunstler and Carl Broege disputed this account, saying Brown actually left the school area after being shot and wounded slightly by police, and that he never returned.

Today's hearing was granted in March after newspapers reported that Kinlein had charged that Yates fabricated the arson charge to insure that a federal fugitive warrant could be obtained.

Brown, missing for more than a year since failing to appear for his scheduled trial in April, 1970, was not present today. Kunstler told reporters he is certain that Brown is still alive, but does not know

his whereabouts. Macgill deferred a ruling today on whether Brown's lawyers can question 20 of the grand jurors who voted to return the 1967 indictment against Brown. Kunstler argued today that he should be allowed to question them to

determine whether any evidence was presented to them or whether they served as a "rubber stamp" for Yates. Kunstler said he believes no evidence was presented.

For the prosecution, Attorney General Francis B. Burch, a 1941 Yale Law School class-

mate of Kunstler, argued that the defense was not entitled to question the grand jurors. He said such questioning would lead the grand jurors. He said such questioning would lead to "an attack of the integrity of the grand jury."

See BROWN, B3, Col. 7

BROWN, From B1

Brown was indicted Aug. 14, 1967, on charges of arson, procuring arson, rioting and inciting to riot after the disorders of Cambridge, the racially troubled Dorchester County seat, on Maryland's Eastern Shore.

Macgill last year dismissed the procurement to arson charge, leaving the arson count itself as the only felony indictment against Brown in Maryland. Riot charges are misdemeanors. Without the felony charge, Kunstler said in March, Brown could not have been indicted on subsequent federal charges of illegally transporting a gun and intimidating an FBI agent, because both charges stemmed from the Maryland felony indictment.

Six Testify

Testifying today were Robert Woodward, a reporter for the Montgomery County Sentinel; Ben A. Franklin, a reporter for the New York Times; Stanley F. Conner, an investigator with the state fire marshal's office; Bryce G. Kinamon, the Cambridge chief

of police, Barnes and Kinlein.

Kinlein was grilled for two and a half hours of the six-hour hearing by Burch and Broege. Kinlein said that Yates told him during a court lunch break in April, 1970, that he had fabricated the arson charge against Brown to insure FBI participation in the case if Brown should flee. Kinlein said this occurred as he and former deputy Attorney General John Garrity were trying to persuade Yates to drop the arson charge, and then perhaps reindict later on the procurement of arson charge.

Yates Refused

Yates, Kinlein said, refused. Kinlein said he asked Yates what evidence he had to support the arson charge, and that Yates then told him that he had put the arson charges in the indictment in the first place to make sure the FBI could enter the case.

Woodward, who wrote the original story detailing Kinlein's allegations in January, testified that Yates told him in a telephone conversation that he had "held" the arson charge against Brown to insure FBI involvement in the case. The context of this remark, Woodward said, was that the charge had been fabricated from the very beginning.

Kinnamon, who was at the lunch last April with Yates, Kinlein and others, said that Yates said nothing at that lunch about fabricating the arson charge against Brown.