

## Hearing in Rap Brown's Case

# Md. Prosecutor Called 'Disgrace'

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8 — MARYLAND CITY, Md., May 8 — Maryland Attorney General Francis B. Burch said today that the prosecutor who alleged that an arson charge against fugitive black militant H. Rap Brown was fabricated should be impeached because he had made it "impossible" to convict Brown on the charge.

Burch, in one of several outbursts during a hearing on whether the charge should be dropped, called States Attorney Richard J. Kinlein of Howard County "a disgrace to the legal profession, the How-

ard County state's attorney's office, the State of Maryland and the United States."

Kinlein told various newspaper reporters in January that Dorchester County State's Attorney William B. Yates II had fabricated the arson charge, growing out of disorders in Cambridge, Md., in 1967, in order to insure FBI participation in the search for Brown if he failed to appear for trial.

Yates, in his testimony today, denied telling Kinlein that the charge was fabricated and called Kinlein "a mentally sick person." Kinlein testified yesterday that Yates told him

in April, 1970, that Yates "put" the arson charge in the indictment originally solely to involve the FBI in the case if Brown fled trial.

"Who does he (Kinlein) think he is — God — that he can blow this case out of the court as he has done?" Burch asked. Burch said Kinlein "should be held in contempt" of court for his testimony in the unusual evidentiary hearing that began here yesterday in Howard County Circuit Court before Judge James Macgill.

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### BROWN, From D1

Macgill promised a ruling on the defense motion to dismiss the arson charge by late last night.

Burch, in his closing argument, said he would "take the appropriate steps when this is over" against Kinlein "under the Constitution of Maryland."

Burch told reporters later that he would seek Kinlein's impeachment and removal from office. Such an action, he said, requires a two-thirds vote of the Maryland State Senate. Burch told reporters that the state's case had been prejudiced by the evidentiary hearing and by Kinlein's allegations to the point that he was unsure whether Brown ever could be successfully prosecuted in Maryland, even if a new indictment were drawn.

He said he and Yates would have to make a decision in the near future as to pursuing prosecution of Brown, who has not been seen publicly for more than a year since he failed to show for his scheduled trial last April in Howard County.

Just before Burch attacked Kinlein, William W. Greenhalgh, the attorney for Kinlein, asked for a bench conference to prevent Burch from criticizing his client. Macgill granted Greenhalgh's request, but Burch went on speaking. Later, Kunstler, in open court, and Greenhalgh, in a press conference approved by the

judge, assailed Burch for his remarks.

Burch, Kunstler said, had used the court's "privileged forum . . . to discredit a man who was constitutionally elected." Greenhalgh said the question of prejudice to the state's case would come "at the time of the swearing of the jury," which he said "may be many years away" and not now. He said Burch's attack on Kinlein was "self-serving . . . untrue . . . absurd."

Kunstler, in his closing argument, charged that Burch had attacked Kinlein for "cheap political reasons."

Kunstler said Burch was unhappy because Kinlein was an "apostate" who had betrayed "the establishment."

"What has happened in this case is that a sewer was opened (by Kinlein) for the first time," Kunstler said.

Citing the staff report of the President's Commission on Civil Disorders in 1968, Kunstler said that the Cambridge disorders were, in the words of the report, "the fault of the town of Cambridge" and not the fault of Brown or other black militants. That report charged that police initiated the riot by opening fire on an unarmed group.

Referring to Yates' criticism of Kinlein as being "mentally sick," Kunstler pointed to other testimony by Yates that he (Yates) once "lay down on the floor during a court proceeding in Dorchester County." Kunstler asked how one man who had performed

such an act could call another man "mentally sick."

Citing testimony from three newspaper reporters, Kunstler said that Kinlein had indeed been told by Yates that the arson charge had been fabricated. He urged the judge to dismiss the arson charge.

Burch contended that Kunstler had produced "not one shred of evidence" to show that Yates had fabricated the arson charge, or that Yates

had ever said to Kinlein or anyone else that he had fabricated the arson charge. Yates, in his testimony, said he scarcely knew Kinlein and had never discussed evidence in the case with him. He also denied telling Kinlein that the arson charges had been fabricated.

When asked by Kunstler why he felt that Kinlein was "mentally sick," Yates said he "must be sick" because he claimed there was no evidence against Brown and because Kinlein said in court that he would "rather defend than prosecute" the Brown case.

As Yates testified, Burch for the first time in open court played portions of a tape recording of a speech Brown made in Cambridge on July 24, 1967.

A speaker, identified by Burch as Brown, could be heard on the tape calling for the burning of the Pine Street Elementary School. The school subsequently was set

afire and a juvenile convicted of arson. Yates said there was no evidence to show that Brown himself struck the match, but there was evidence that he counseled others to do so and, therefore, he was "just as guilty" as those who set the fire.

In other testimony today, former Assistant Attorney General John J. Garrity, who was assisting Yates last year in the prosecution of the Brown case, said he had never heard Yates tell Kinlein that the arson charge had been fabricated. However, Garrity said he had repeatedly urged Yates to drop the arson charge because he felt the state could not successfully convict Brown on it. Garrity said he urged Yates to dismiss the pending indictment, and reindict Brown for counseling arson, rather than arson itself.

Brown originally was indicated in August, 1967, on charges of arson, procuring arson, rioting and incitement to riot. Macgill last year dismissed the procuring to arson charge, leaving the arson count itself as the only felony charge in Maryland against Brown. Both riot charges are misdemeanors.

Without the felony charge, Kunstler has repeatedly said Brown would not be on the FBI's "most wanted fugitive" list today, since federal fugitive warrants cannot be obtained when a person fails to appear for trial on misdemeanors. Kunstler also has said that if the arson charge falls, then subsequent federal charges that stemmed from that original Maryland indictment could also be knocked down.

Garrity, in his testimony, said he had asked Kinlein on one occasion to help him persuade Yates to throw out the indictment against Brown and secure reindictment on charges of procuring arson, riot and incitement to riot.

Garrity said there actually were two lunch time meetings in April, 1970, at which, he, Yates and Kinlein were present. At one of them, he said, Kinlein heard a discussion of the case and may have misinterpreted what was being said and thought that Yates was saying that the arson charge had been fabricated. Actually, Garrity said, Yates was merely "elated" over Macgill's decision to keep at least one of the felony charges against Brown.