

Prosecutor Asks New Rap Brown Trial Judge

By Peter A. Jay

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The chief prosecutor in the case of Maryland vs. H. Rap Brown, furious at what he called "highly prejudicial" remarks by Judge Harry E. Dyer Jr., asked the judge yesterday to disqualify himself from presiding at the trial.

"I don't feel the state can get a fair trial before Judge Dyer," said Dorchester County State's Attorney William Yates II in a telephone interview. He cited Dyer's comment to reporters Monday that "Mr. Brown can win this trial" as the major reason for his distress.

Yates said he wrote Dyer yesterday asking him to step down in favor of Judge Albert P. Close, his junior colleague in Harford County. The trial was moved to Harford County from Cambridge at Yates' request, and over the objections of Brown's attorneys.

Judge Dyer could not be reached for comment yesterday.

Yates, interviewed by telephone, said he was also upset by Dyer's action Monday in granting a one-week postponement of Brown's trial. The young black militant faces three-year-old charges of incitement to riot, incitement to arson and arson in Cambridge, after disorders following a speech he made there in July, 1967. His attorneys had sought an indefinite adjournment of the case.

The state's attorney, who is

prosecuting the case with aid of assistant Maryland attorney general John J. Garrity, said if Dyer does not turn the case over to Close voluntarily he will seek to compel him to do so.

"The state's going to start fighting all the way," said Yates. He said he was prepared to file a motion in the Harford County circuit court next week asking that Dyer be disqualified. He said he is ready to fight it to the last possible appeal, which could mean an indefinite delay in the trial.

William M. Kunstler, Brown's chief counsel, has been asking for just such a delay on the grounds that Brown cannot get a fair trial in Bel Air—the seat of Harford County—so soon after an automobile explosion there last week took the lives of two of the defendant's associates, Kunstler could not be reached for comment.

Judge Dyer made his comment that "Mr. Brown can win this trial" to television and radio reporters Monday after making the same remark on separate occasions to reporters for The Philadelphia Bulletin and The Washington Post.

In speaking to The Post, the judge prefaced his remark by saying he could not understand why the defense was reluctant to go ahead with Brown's case. Brown himself has made no public appearance in at least two weeks,

and his attorneys say they have no idea where he is.

The consensus among Brown's New York friends, as expressed by one associate yesterday, is that "he's on a boat." Brown's friends now feel that the former SNCC leader could not have remained underground or under some kind of house arrest in this country for so long a period.

Those who are close to Brown's wife, the former Lynne Doswell, believe she has been sincere in her statements that she has no idea where Brown is.

Judge Dyer said, both in court and to reporters, that he saw no basis for Kunstler's expressed fear that the defendant could not receive a fair trial in Bel Air. He himself saw no "tension" in Harford County, the judge said, and granted a one-week adjournment only out of respect for "the feelings of the defense."

Garrity said yesterday that he thought the judge's action was "appropriate." He made no comment on Dyer's remarks in the press, but gave no indication he thought the judge should be relieved.

Yates' position, however, was clear. "I never before heard a judge comment on the outcome of a case before the case is tried on its merits," he said. He said Dyer's remarks "could have a tendency to make the jury lean toward the court's thinking."