

Attorney Explains Rap Brown Story

10-20-71

By Jim Mann
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ELLICOTT CITY, Md., Oct. 19—Howard County State's Attorney Richard J. Kinlein passionately proclaimed in court here today that it was in the interests of justice that he asserted an arson charge against H. Rap Brown was fabricated.

Now on trial for contempt of court as a result of that assertion, Kinlein took the witness stand for two hours today and stood by his earlier comments about the arson count. He said he regrets only his choice of words.

"If I could go back, I would not have used the word 'fabricated.' That was a bad choice of words. It would have been better to say the charge lacked substantial evidence," Kinlein testified.

However, when special prosecutor Raymond J. Kane asked Kinlein whether he felt he had prejudiced the state's case against Brown, which has not been tried, Kinlein replied: "I don't think you can prejudice something that doesn't exist."

Kinlein was the final witness in the contempt case. After he testified, Kane and defense attorney William W. Greenhalgh finished their closing arguments. The two judges who heard the case said they will issue their verdict Wednesday at 1 p.m.

The prosecution of Brown followed a speech the black militant made in Cambridge, Md., in 1967. After the speech, delivered in the black community of a city with a history of racial tension disorder erupted and fires broke out. Brown was charged with arson and incitement to arson, riot and incitement to riot.

Just before his trial, scheduled to begin in March, 1970, Brown disappeared and was

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KINLEIN, From B1

not seen again until last Saturday, when he was captured in New York by police after four men allegedly held up a West Side bar.

Kinlein, who at one time assisted Dorchester County State's Attorney William B. Yates II in the prosecution of Brown, asserted publicly last January that Yates had fabricated the arson count against Brown.

Kinlein said then that Yates was an "ass," and that he (Kinlein) would rather defend than prosecute the Brown case.

Last May, after a two-day hearing, Howard County Circuit Court Judge James Macgill ruled there was no evidence to show that Yates fabricated the arson count against Brown.

Since that hearing, Kinlein has been charged by Judge Macgill with contempt of court for violating Macgill's order of March, 1970, forbidding all participants in the Brown case to talk to the press.

Judge Macgill is the chief judge for Maryland's Fifth Judicial Circuit. The two judges hearing his charges against Kinlein, Matthew S. Evans and Ridgely P. Melvin, both of Anne Arundel County, are also members of the Fifth Circuit.

On the witness stand today, Kinlein, 35, who has been Howard County's chief prosecutor since 1966, recounted the events leading up to his public statements about the arson

count.

For weeks before the Brown trial was scheduled to begin in 1970, former Maryland Assistant Attorney General John J. Garrity had argued with Yates regarding the arson indictment.

Garrity had been assigned by the state attorney general to assist Yates. Kinlein entered the case when the trial site was shifted to Howard county.

There was no evidence to show that Brown personally started fires in Cambridge, Kinlein explained, and Garrity — who had participated in arguments before the U.S. Supreme Court concerning a related arson case in Cambridge — felt that the arson indictment as worded would not sustain a conviction of Brown for causing or counseling other persons to commit arson.

Kinlein said that Garrity "asked me to go with him to Yates and to ask him (Yates) to drop this charge . . . he enlisted my help."

Kinlein said he believes that Yates' theory of prosecution was that "If he could get this case before a jury, they would be so inflamed by a tape recording he has (of a speech by Brown in Cambridge) that they would convict Mr. Brown."

In April, 1971, after Judge Macgill had stricken from the arson indictment all language that charged Brown with caus-

ing other persons to commit arson, Garrity and Kinlein asked Yates what evidence there was to prove Brown himself committed arson.

According to Kinlein, Garrity told Yates he couldn't win the arson case with the presently worded indictment.

"Mr. Yates screamed, literally screamed, 'Don't tell me I can't win, I don't know the meaning of not winning.' He completely lost his control," Kinlein said.

Nine months later, Robert Woodward, then a reporter for the Montgomery County Sentinel, informed Kinlein that he had been told by Yates that Yates held the arson count against Brown in order to insure that the FBI would enter the pursuit if Brown failed to appear for trial. The other charges, misdemeanors, would not have brought the FBI into the case.

"I thought that Mr. Woodward had uncovered what I already knew," Kinlein said. "at that time, extemporaneously, it seemed appropriate to confirm what Mr. Woodward had found."

Turning toward the judges, Kinlein explained, "My motivation was one toward justice as I saw it, through my experience and through the facts as they were presented to me."

He added that Judge Macgill, who cited him for contempt, was "a person of dignity," and one of the three people most influential on Kinlein's legal career.

Besides Kinlein, the other witnesses called by Greenhalgh were character witnesses. They included three Maryland state policemen; three Howard County policemen; Arthur A. Marshall Jr., president of the Maryland State's Attorneys' Association, and Judge T. Hunt Mayfield, an associate judge of the Howard County Circuit Court. All the witnesses testified that Kinlein had a reputation for truthfulness and fairness.