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TEN PAGES

Against Missile

Burch, Yates Deny Brown Charge Was Fabricated

The Maryland attorney general and State's Attorney William B. Yates have denied the accusation that an arson charge placed against black militant H. Rap Brown was "fabricated."

William M. Kunstler, Brown's defense lawyer, said Friday he would ask Gov. Marvin Mandel to suspend Yates as Dorchester County state's attorney until a "commission on prosecutorial misuse" can investigate Kinlein's charge.

"Rap Brown would not be a fugitive today had it not been for the improper use of the fugitive indictment," Kunstler said, terming it "a phony indictment."

Kunstler said he would personally visit George Beall, U.S. attorney for Maryland, to ask for criminal indictments against Yates and others for interfering with Brown's civil rights.

Richard J. Kinlein, Howard county prosecutor, claimed there was insufficient evidence to support the arson charge. He said Friday that the count had been used to guarantee FBI involvement in the case in the event that Brown failed to appear for trial.

Brown did not appear for the trial last May and is now listed as a fugitive.

Maryland Atty. Gen. Francis B. Burch said Friday night that the arson charges were fully justified and that Kinlein was in error.

State's Attorney Yates said he has a recording Brown made in Cambridge in which the militant

ferred with the Attorney General and was advised to get the warrant for the arrest of H. Rap Brown. He was charged under a statutory arson count which says that he did counsel, aid and procure the burning of the Pine Street School. A tape was taken of his remarks during his speech and this tape was played for the benefit of the Grand Jury when they were deciding whether or not to present him on this charge. At that time I knew very little about Mr. Brown and until the last minute during the last argument I still thought that Mr. Brown would appear for the trial because he had never before ever not appeared for one of his hearings or a trial.

"I did, however, steadfastly argue against a motion to quash the arson indictment which was made by the defense counsel. I did say and I did stick to my statement that I would not drop the arson count under any circumstances regardless of outside advice. This is a Dorchester County case and I was not going to let Mr. Kinlein interfere with it in any way and I would like to say right here that I never discussed the evidence or showed the evidence to Mr. Kinlein and I never asked his advice. In the first place he is not a judge and does not rule on the evidence nor would he be sitting on the jury. I must admit that toward the end of the argument I did have some suspicion that Brown might not show up and I was very happy, and could have said so, that we had the arson charge still in so

should drop a Grand Jury indictment unless there is very, very strong evidence that a mistake has been made and that is not the case here. It is hard for me to believe that a prosecutor from a host county would even comment on whether the state had a strong or weak case. That is in the province of the jury and is a jury functioning or the functioning of the trier of the facts.

"So it is still hard for me to believe that he would make such a statement after we fought so hard in court to save the felony indictment. It is my sincere belief that I can convict Mr. Brown on all the charges that the Grand Jury indicted him on and anyone who knows me knows that this has always been my position and by that I am not saying that I am legally right or wrong for that is again for the courts to decide. But I know and the town knows and Mr. Garrity knows that Rap Brown came to our town and in a speech he counseled his listeners to burn the Pine Street School down and later on the next morning the school was burnt down and under the statute I have always held that constituted the elements of arson and I would have no reason to say anything to Mr. Kinlein on that score and fortunately there were enough people present to prove that I am telling the truth.

"Now the question remains, why would a man I hardly know wait for nine months and then, suddenly, hit the press with a

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ought to burn down the old schoolhouse over there." Two hours later the Pine St. school was burned to the ground.

The closest Yates came to agreeing with Kinlein was when he admitted commenting at one point that "I was glad we had the arson charge so the FBI could be called in to assist."

Brown was charged in connection with racial disorders here in the summer of 1967. Some \$240,000 worth of damage was done after Brown made a speech from the top of a car parked in the Second Ward.

Kinlein emphasized that Yates never used the term "fabrication" but pointed out that an arson charge, being a felony in Maryland, would insure the assistance of federal agents if Brown failed to appear. The defendant's other charge, inciting to riot, is a misdemeanor.

"I really stirred up a hornet's nest, but I have no regrets," said Kinlein, who explained he normally would not comment on the action of another state's attorney.

But "in this instance . . . (the case) was being tried in our court." Kinlein added that it "messed up court schedules for two months," cost heavy police overtime and put the courthouse "in a state of near-hysteria."

This morning the state's attorney released the following statement to the press:

"I was asked about a statement which appeared in the Washington Post and in which Mr. Kinlein, the State's attorney for Howard County is alleged to have said that I told him at a luncheon that I held the arson charge in on the Rap Brown case in order to get Federal intervention. This is totally untrue and I have proof that it is, because present at the luncheon, which incidentally was the first luncheon I ever had with Mr. Kinlein, was Chief Brice Kinnamon, Assistant Attorney General John J. Garrity, Charles Hillyer, investigator, and Trooper Donald Cox of the Maryland State Police. I am sure that they will also deny that I made that statement because I was never outside of their presence for security reasons and initially, Mr Garrity has already said that he doesn't recall ever having heard me say that I didn't have the evidence to prosecute on the arson charge.

"Now, I think this should be put in the proper light. The warrants for arson were drawn in Cambridge and the two warrants for rioting were drawn in Cambridge after I had con-

that, if he did not show up, I could get a fugitive warrant for his arrest and also he could be sentenced to more years imprisonment for bail bond jumping on the felony charge, and I stick to those guns.

"Until a court tells me I have to drop the arson charge, I will not do so on my own initiative. I do not think that a prosecutor

story of this type and, also, why does he feel that he has to interfere with my case?

"Of one thing, I am sure. This fellow will eat by himself an awful lot from now on.

"Not much has changed. Now I have to fight Mr. Rap Brown, Mr. William Kunstler and the State's Attorney for Howard County and I am willing."