

Additional Facts on the Final Day of Castro's Trial

Closing remarks by defense attorney, Doug Colbert, opened the final day of Castro's trial. For two hours, Colbert reviewed the testimony presented in the case. Despite 63 objections by the prosecutor, he demonstrated that Kavanagh had not proven that Castro had taken part in the rioting or had the prosecution proven that Castro had intended to riot on August 8, 1977. In addition, he pointed out that a key prosecution witness, Corrections Officer Domfort, had changed his testimony at least three times since the rebellion; that each of the prosecution witnesses had been extensively rehearsed by the prosecutor and that Corrections Officer Kaslowsky, who was one of the guards on duty on August 8 at Napanoch, had not been called to testify by the prosecution for fear that he would expose the contradictions and lies of the other prosecution witnesses.

Following the defense attorney's remarks, Prosecutor Kavanagh summarized his case in less than one-half hour. Kavanagh attacked the fact that all of the defense witnesses were prisoners. Pointing to the fact that all prosecution witnesses were employed by the Department of Corrections, he attempted to convince the jury to reject the testimony of the inmates called by the defense. After trying to discredit the testimony of the defense witnesses, Kavanagh pointed to the fact that a "riot" had occurred as the basis for convicting Castro. Finally, he attempted to convince the jury that the issue of the Klan organizing and brutality at Napanoch was irrelevant since no evidence had been produced in the course of the trial which substantiated the defense's claim that this was one of the driving forces behind the rebellion, in the first.

This final point brought a strong objection from Defense Attorney Colbert. Judge Clyne had specifically limited the scope of the evidence submitted during the trial to events and incidents occurring on August 8. Although the prisoners' flight to expose and defeat the Klan had been going on for four years prior to the rebellion, it was not allowed into the evidence before the jury. Despite the fact that Judge Clyne had straight-jacketed the defense, Kavanagh was permitted to make several references to this point over the objection of Colbert.

The last part of the trial was taken up with the judge's charging of the jury. In 28 minutes, Judge Clyne read and explained the two felony charges, which included four sections each; two lesser charges for consideration, which included two sections each; defined several legal terms and explained section 20 of the New York penal code and the meaning of "reasonable doubt." The rapid-fire explanation left the jury unable to determine exactly what the legal considerations were concerning the charges against Castro. One hour and a half after the beginning their deliberations at 4:00 PM, the jury returned to ask the judge to explain the relevant laws a second time. Colbert objected to the manner in which the jury was charged and to specific sections of the judge's charge to the jury. These objections will be taken up on appeal.

Prior to a dinner break at 7:00 PM, two jurors were holding out for convicting Castro on second degree rioting and unlawful imprisonment - both of which are misdemeanors and would have prohibited the use of the Persistent Felon statute. However, fifteen minutes after the dinner break, the all-white jury returned a verdict of guilty in the first degree on both counts.

In a radio interview on WCBS the following day, Kavanagh indicated that he would ask Judge Clyne to sentence Castro under the Persistent Felon statute. Clyne is notorious for his use of this statute. Last year, it was utilized nine times in the whole state. Clyne was responsible for six of these.