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H.V.A.C. TRIAL SUMMARY

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p. 2 line 11, the weeks
p. 7 line 8-9: "who
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p. 8 line 6 "to the
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Hotel Sofitel



ACCOR

THE TRIAL OF LEE BROWN (Summary, ver 1, 4/13-22/99)

Lee Brown's trial opened at 10 am on Monday, March 24, 1958, in the federal district courtroom of Judge J. Skelly Wright. The government was represented by U.S. Attorney M. Hepburn Many. He was assisted by two trial attorneys, Donald Salisbury and Robert Crandall, from the Internal Security Division of the U.S. Department of Justice. Brown's attorneys were James D. McGovern and Earl J. Amedee.

Brown was charged with one count of making, using and filing a false affidavit in July 1952 with the National Labor Relations Board ^(NLRB) stating that he was not a member of the Communist Party, and a second count of making, using and filing a false affidavit claiming he was not affiliated with the Communist Party. A provision in the Labor Management Relations Act (Taft-Hartley Law) of 1947 stipulated that to be in compliance with the law officers of unions must file affidavits affirming that they are not members of nor affiliated with the Communist Party. Hence, the government, to make its case, had to prove that Brown had actually filed such an affidavit and that he was a member of the Communist Party at the time of filing.

A jury of twelve white people was sworn in to hear the case. If convicted Brown could face a maximum sentence of 5 years imprisonment on each count and a \$10,000 fine.

Prosecutor Many in his opening statement declared that "the Government will show that at the time Brown signed this

affidavit . . . stating in that affidavit that he was not a member of nor affiliated with the communist party, that he was, in fact, a member of that party and affiliated with it." (transcript, pp.38-39) Defense attorney McGovern asked the court to require the Government to outline the overt acts they were going to introduce to prove the charge against Brown. When this motion was denied by Judge Wright, McGovern said that the defense declined to make an opening statement, reserving the right to do so later. (40-41)

The prosecution then called its first witness, Juanita F. Bunch, a compliance supervisor for the NLRB in New Orleans. She testified that her job was to check that unions filed the required compliance documents ^{with} ~~under~~ the NLRB. (57-59). She said her office received such documents, including affidavits, from Local 207 in 1952 and 1953, and she sent out a notice of compliance. (60) The documents in question were presented for identification to the witness and offered for admission as evidence. On cross examination McGovern sought to establish that the witness could not affirm that the documents presented by the government had in fact been transmitted to her office by Local 207 -- there was no letter of transmittal -- and therefore they should not be admitted into evidence. "I believe the testimony of the witness that she received it back from the local union but there is no letter of transmittal or anything whatsoever to negative the possibility that this might be illegally secured evidence," McGovern contended. Judge Wright however, ruled that since

the documents had official stamps of receipt and came from official custody that was sufficient basis to admit them into evidence. (73-76) ~~(This issue would later prove to be critical in the reversal of Brown's conviction.)~~

The prosecution next sought to prove that the signature on the non-Communist affidavit was indeed the signature of Lee Brown. First Israel Augustine, a notary public, was called and testified that the non-Communist affidavit was signed in his presence, but he admitted that he could not identify Brown sitting in court as the person who had signed the affidavit. (80-89) Consequently, the prosecution brought in another witness Leonard Thomen, a loan officer for a local finance company, who said that in 1955 Lee Brown filled out and signed a loan application in his presence. Thomen said he "vaguely" remembered the person who signed the form: "I believe it is Mr. Brown, sitting right over here." (97) On cross examination Thomen admitted that he didn't have personal recollection of the person who signed the loan application. (101)

Another loan agent, J.R. Smith, with another loan company testified as to a "Lee Brown" signature on a loan application in 1955 that he handled, and he identified the signer as "the defendant in the brown suit" sitting in court. (118) To further buttress its linking of "Lee Brown" signatures with Lee Brown in court, the prosecution brought in Frank P. Mooney, manager at Waterways Terminal Corporation and Brown's old adversary in waterfront struggles. Mooney

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produced a copy of a labor contract with Lee Brown's signature on it. He identified Brown as the signer. (130-32)

The government now had signatures on documents that had been linked to Lee Brown, but were these the same signature as the one on the non-Communist affidavit? George F. Mesnig, an FBI handwriting expert, was called to the stand and testified that the signatures were indeed made by the same person. Defense attorney McGovern raised questions about how the documents were handled when processed at the FBI handwriting analysis lab and how the copies brought to court were verified, but his objection to use of the documents on the grounds that there was a failure to establish the chain of evidence was denied by the court. (147-168)

Feeling that it had established that Lee Brown signed the non-Communist affidavit, the prosecution then turned to the second part of its case, to establish that Lee Brown was in the Communist Party at the time he signed the affidavit, and therefore had made a false affidavit. Four witnesses would be called to offer evidence about the Party connection: Gladys Williams, Robert J. Chan, Irwin S. Knight and the peripatetic Arthur Eugene.

Gladys Williams was the most curious of the lot. Williams testified that she joined the Communist Party in 1944, and that she met Lee Brown at the beginning of 1946 at the Godchaux Building on Canal Street, where the Party held meetings. During the course of that year she attended various meetings of the French Quarter club and classes that

were also attended by Brown, she testified. The prosecution went into great detail about these 1946 meetings, inquiring about who attended and what was said. (182-208) Even the judge grew impatient. "Well, sir," Judge Wright interjected at one point, "we've gone into 1946 pretty thoroughly. Can we get closer to '52?" (202) The government replied that other witnesses would augment Williams' testimony and go further.

On cross-examination by Earl Amedee Williams admitted that she had joined the Communist party at the behest of the FBI. "I was contacted by Government representatives in 1943, and I was also schooled first about one year before I joined, actually joined the Communist Party." "You were schooled by the FBI?" asked Amedee. "I was taking studies to learn how to maneuver in the Communist Party." (226) Upon completing her training as a government spy, Williams was dispatched to join the Communist Party and inform on its meetings. Asked if she discussed this with her husband she replied, "Well, no. He had his -- he had what he liked as a hobby and he liked certain things and I didn't discuss his affairs and I didn't discuss mine's with him." (217) Asked if attending Communist party meetings was her hobby she replied, "I said that he had his hobby and I had what I wanted to do. I mean those were secret things that we were entitled to. I was entitled to what I said was secret, or whatever secrets I wanted to have, and he was entitled to have whatever secrets he wants, and that was what I said." (266-7)

While the Party meetings may have been her "secret thing" as far as her husband was concerned, Williams kept the Government well informed providing copious written reports of each meeting. Amedee elicited that for her efforts as an informer she was paid \$100 a month. The defense requested an accounting of these payments from the Government, and the documents provided revealed that as of February 14, 1958, Gladys Williams had been paid a total of \$13, 238.32 as a government informer. (270)

Williams' written reports were also requested. These proved to be chatty and opinionated, though hardly revelatory of any violent anti-government conspiracy. ^{she reported that in party meetings} Much time was devoted to discussions of recruitment and fundraising: "The same old story," as Williams complained more than once in her reports. Other topics of meetings included the unemployment situation, voter registration, the KKK and racism, the colonial situation, and current labor struggles. "The C.P. is moving towards a revolution[ary] period," Williams wrote of one meeting in which there was a discussion of repression against the working class. "There will be a set time but I think it is afar off yet," she opined. (628) The greatest excitement, at least for Williams, was generated when the Party's district organizer, Emanuel Levine (whom Williams referred to in her reports as "Big Shot," or "Big Chief"), ran for mayor of New Orleans. A "well packed" meeting to discuss his campaign she thought was "terrific." (624)

In her last report made available to the defense Williams complained that "sitting there in the meeting having to listen to the same old story was just another hard day's work...." (632)

The only significant reference to Lee Brown in her reports concerned an incident "told by a young Negro upstart Lee Brown" at the February 12, 1946 meeting in which Brown recounted attempting to solicit funds from a white ~~guy~~^{man} who threatened to run him in to jail. Williams mused in the report that "the kid" seemed frightened by the encounter. (617)

Nevertheless, for all this Williams admitted that she did not know for a fact whether Brown was a member of the party. Furthermore, she had not seen him since 1946; (214) that is, not until, ironically enough, Lee Brown, unaware of the role she would play at his forthcoming trial, came to her home in the summer of 1957 soliciting funds for his defense. She gave him a donation. (282-3)

Robert Chan and Irwin Knight were equally unhelpful with regard to establishing whether Lee Brown was a member of the Party in 1952. Chan, employed by the Civil Aeronautics Administration as a traffic controller, said that Lee Brown was a customer at a restaurant operated by Chan's mother. Chan claimed that his one and only personal contact with Brown occurred in the Spring of 1946 when Brown approached him in the restaurant. "I was watching, tending the business for my mother, and other than Lee Brown there was nobody else

in the place, and he approached me, motioned me to come over, and he asked me if I would be interested in joining, and then he indicated with a yellow slip of paper which had written across at the top of it, 'The Communist Youth Organization of the U.S.,' and to which I replied, 'No, I am a Catholic.' And then I walked away. And then I reported the incident tot he FBI. That is the only -- since then I have had nothing else personally to do with him." (232) Earl Amedee objected that Chan's testimony was not relevant to events of 1952 since he had had no personal contact with Brown since 1946. The Court overruled the objection. On cross examination Chan said that he was not an FBI agent and that he volunteered to testify at Brown's trial.

Irwin Knight, a clerk at Waterways Terminal Corporation, reported significant encounters with Lee Brown in 1945 and 1946. Knight claimed Brown approached him after lunch one day in December, 1945, and asked if he would join the Communist Party. "I told him that I did not know enough about it to even consider it." (236) Knight continued that in early 1946 Lee Brown asked if he would support the Communist Party candidate for mayor, Emanuel Levine. Knight professed ignorance of Levine but agreed that Levine could give him a call. After talking with Levine Knight told Brown that because of his religious beliefs -- he was a Catholic -- he couldn't join the Communist Party. (237) Brown's parting comment, according to Knight: "He said that I could have made the Party a good man." Under cross examination Knight said

he reported these conversations to his immediate supervisor.

(244) Two years later in 1948 the FBI took a written statement from Knight about these encounters. (This was when Brown's loyalty was under investigation by the Department of Commerce.) Knight admitted that he had had no discussions with Brown about politics since 1946. (247)

The government's star witness was Arthur Eugene, the man who at the HUAC hearing the year before had dramatically pointed out Lee Brown as a Communist Party member. Eugene had also played a key role in helping to convict Andrew Steve Nelson. Given that no other witness had connected Lee Brown with the Communist Party since 1946, if the Government had a case against Brown for lying about Party membership in 1952, Arthur Eugene would have to make it.

Eugene's testimony began on the afternoon of Tuesday, March 25th. Eugene, who said he was presently employed as a warehouseman, testified that he joined the Communist Party in 1948 when he was a seaman. He said he was a member of the National Maritime Union, but was expelled for Communist activities. (301-302) Eugene ^{said he} remained in the party until 1956. (289-92) Eugene said that he was introduced to Lee Brown as "Comrade Brown" shortly after joining the Party. He claimed to have attended 25-30 Party meetings with Lee Brown in the period 1948-49. (293-295) He remembered collecting dues from Lee Brown and doing Party work together. "We worked together on a number of assignments, such as selling the

'Daily Worker,' running off leaflets for the Communist Party." (299)

In May 1949 Eugene said he and Brown were present at a Party meeting during which the new Taft-Hartley law was discussed. At the meeting labor leaders affected by the law were instructed to comply with the law, to go ahead and sign affidavits. "They were not told to give up their Party membership," he said, "but they were told to cease being an open communist, such as making outright speeches and trying to recruit or sell the Daily Worker and so forth and so on." (305)

Eugene said he left New Orleans and went to San Francisco for a time but returned in 1951. (305-9) He claimed the Party membership had decreased, but he said he attended six or eight Party meetings in 1951 at which Lee Brown was present, (310-11) as well as meetings in May, June and September 1952. (314-316) The latter meeting was chaired by Andrew Steve Nelson, Eugene testified. The subject of discussion was the Cagle Act, a recently passed Louisiana state law requiring all Communists to register with the State Police. The Party had decided not to comply, Eugene claimed, and Andrew Steve Nelson, who chaired the meeting, "told us that he would be in contact with a lawyer and for us to get rid of any Communist leaflets or literature or books that we had hanging around in case the State Police was to pick us up." Eugene said that he and Lee Brown burned some copies of the Daily Worker and other leaflets and literature in a trash

can at the union hall. (316-19) He said that Brown told him the he had made arrangements to leave town if things got too hot.

Eugene recalled attending additional Party meetings in 1952 and 1953. At one meeting he said Steve Nelson told everyone to "lay low" while things were hot. (319-320) He said he ran into Lee Brown on the street in 1954 and they had a discussion about trying to rebuild the Party (324-5)

Since Eugene was already known to be an informer from the Nelson trial and the HUAC hearing the prosecution asked during what period was he "furnishing information" to the FBI. Eugene replied he started on Good Friday of 1952, and that he continued "clean up to the Steve Nelson trial." (320) He said he was paid for information by the FBI and had received a total of of \$1,500 or \$1,600 since 1952. (325)

Defense attorney McGovern began his cross examination by asking about the alleged street meeting with Lee Brown in 1954. McGovern clearly found this scenario highly unlikely, but Eugene blithely replied, "You don't know the Communist Party." (328)

McGovern also pressed Eugene about the meetings he claimed to have attended in 1948-49 at which Brown was present. McGovern was trying to impeach Eugene's testimony because the original written report he gave to the FBI made no mention of the 25 or 30 meetings he said he attended in the 1948-49 with Lee Brown. (341-45, 483)

Seeking to undermine Eugene's credibility as a witness, the next day, March 26th, McGovern hammered away at Eugene's testimony, especially inconsistencies between his written statement and his testimony in court. McGovern elicited that Eugene's first contact with the FBI was in 1952; Eugene was contacted by the FBI and called in for a meeting on April 11, 1952. (396-97) After being questioned by FBI agents Eugene signed a written statement describing his involvement with the Communist Party. The statement was later read into the record by Judge Wright. In it Eugene said that during the 1948 National Maritime Union elections in New Orleans he backed two candidates who were identified as Communists. After the election he was kicked out of the union. He said he started attending Communist party meetings in New Orleans in 1948. He claimed that the "real reason" he went to the meetings was he thought it would help him get a union book and a job through the Marine Cooks and Stewards Union. (424, 427) Eugene's statement described Party meetings and activities he attended in New Orleans and San Francisco and on ships on which he worked. The statement said that "In February of 1951, I was screened [Footnote: In earlier testimony it had come out that at this time Eugene could not get work as a seaman, having been "screened" from ship work. During the Korean War any known Communists were "screened" by the U.S. Coast Guard and prevented from working on American ships as seamen. (308-9, 400)] at Providence, Rhode Island and came back to New Orleans. I haven't gone to any Communist

meeting or attended any Communist function since that time." A few lines later the statement has Eugene claiming: "I have not been a member since about September, 1950 and have had no contact with the Party itself since I left San Francisco. I do come into contact with the Communist party members occasionally, but none of them have attempted to get me to rejoin the Communist movement." (427-8) Although Eugene named many individuals in this 1952 statement, Lee Brown was not one of them. (NOTE: A memo dated 3/21/52 in my Dept. of Justice FOIA file from James McInerney, Asst. Attorney General, Criminal Division, to FBI Director says LB was, according to "confidential informants," a CP member as late as 4/51 and executed non-Communist affidavit in 7/51, and that FBI should conduct investigation "to determine whether the affidavit was executed fraudulently." This is followed by a memo dated 3/31/52 in my FBI FOIA file from FBI director ordering New Orleans FBI to open a case on Lee Brown. This marks the beginning of the FBI's effort to build a case against Lee Brown.)

In his cross examination McGovern pressed Eugene on the contradictions between his written statement and his court testimony.

McGovern: So you state, "I have not been a member since about September, 1950" and this statement is dated . . . April 11th, 1952. Is that right?

Eugene: Right.

McGovern: So, you haven't been a member during 1951?

Eugene: Yes, I was a member.

McGovern: Well, which is accurate, Mr. Eugene, the statement you gave the F.B.I. right after you wanted them to hire you, . . . or what you are going to tell the Court and Jury now?

Eugene: Well, this statement here, (indicating) this was the first statement I made to the F.B.I. They asked me to come up there to the office to give a statement, and I gave this statement. This statement here (indicating) is not accurate."

McGovern: It sure messes you up, doesn't it?

Eugene: No, it doesn't. I mean I wasn't going to give the F.B.I., at that time, when I made this statement (indicating) something to chop my own neck off with.

McGovern: You wanted the money?

Eugene: I didn't get any money.

McGovern: I mean right after they hired you?

Eugene: Right after that is when they convinced me that they weren't going to do me anything for any Communist activities." (385-86)

In his cross examination and summation defense attorney McGovern accused Arthur Eugene of being a liar. (400, 478, 491-2) McGovern pointed out that in his court testimony Eugene claimed he attended several Communist Party meetings with Lee Brown in 1951, but in his FBI statement he said he attended no Party meetings in that period. "Arthur Eugene,

out of his own mouth, under oath, is a liar," McGovern concluded. "He is a liar for pay." (478)

McGovern moved for a verdict of acquittal on grounds that the government had not proven its case. His motion was denied.

McGovern then stated that he had recommended to his client not to testify. "We have recommended to the accused that he do not take the stand. The Government has not proved its case." Instead he asked the judge to instruct the jury that the failure of the defendant to take the stand creates no presumption of guilt. (429, 519-20)

Realizing that his whole case rested on the credibility of Arthur Eugene, prosecutor Many in his closing statement argued that it was understandable that Arthur Eugene gave a "very guarded statement" to the FBI when he was first questioned in 1952. "As he said," Many added, "he did not want to put a hatchet in the hands of the F.B.I." (442) "I say again," Many told the jury, "put yourselves in his place. I assure you that it would not be easy for anyone, for Arthur Eugene, or for anyone else, and to get up and say, 'Yes, I did not tell the truth. Although I made the statement to an official body, I did not tell the truth,' but yet he did tell you that. So, you have which to believe? His testimony under oath here over a period of days, or the statement made in the first interview he ever made?" (446)

"There, in essence, you have it, ladies and gentlemen," Many concluded. "The only witness that has been brought

before you whose testimony is in any way impeached or contradicted, is that of Arthur Eugene, and that by the one statement given when he was afraid, when he didn't know where he was headed, and when first interviewed by the F.B.I. at a time that he had reason to fear. The Government submits to you that the evidence is clear and convincing beyond any reasonable doubt whatsoever." (448)

After reminding the jury of the presumption of innocence, that the burden of proof was on the Government, defense attorney McGovern, in his closing argument, attacked ^{weak points} ~~the weaknesses~~ in the Government's case. He first argued that it had not been proved that Lee Brown filed the non-Communist affidavit in question. Juanita Bunch, the government clerk, McGovern argued, could not state who brought or delivered the affidavits to her office; she assumed they came in from the union. (451, 456, 458-61) As to the signature, McGovern reminded the jury that the notary public, Israel Augustine, could not identify Lee Brown as the person who signed the affidavit (461-2). McGovern also argued that the government's effort to link Lee Brown to signatures on other documents and then link these signatures to the signature on the affidavit was not convincing.

With regard to the Brown's membership in the Communist Party, McGovern argued that even if Lee Brown was a Party member in 1946 as alleged by Gladys Williams, Robert Chan and Irwin Knight, that does not establish that he was in the Party in 1952, as alleged in the charge against him. (469-70)

As for Arthur Eugene, McGovern said he was "an admitted paid informer, who is also an admitted paid liar. He is either lying about this man in Court today, under oath, or he is lying to the F.B.I., or to you as members of the Jury and the Court. But he has got to be lying one place or the other, because he has admitted he is a liar, and he can't reconstruct his testimony." (478)

After the closing arguments finished on March 26th the trial judge issued instructions to the jury on Thursday morning, March 27th. Judge Wright in his instructions offered his own interpretation of the charges. In the actual indictment Count one read: "On or about the 21st day of July, 1952, Lee Brown, in a matter within the jurisdiction of the National Labor Relations Board, an agency of the United States, and in accordance with the Labor Management Relations Act of 1947, did unlawfully, wilfully and knowingly make, use and file and cause to be made, used and filed with the said National Labor Relations Board . . . a false writing and document, namely an 'Affidavit of Non-communist Union Officer,' knowing the same to contain false, fictitious and fraudulent statement and representation as to material fact, to wit, that he, Lee Brown, was not then and there a member of the Communist Party" (818, FBI FOIA file, Sec 2, p. 320) Count two contained similar language with regard to affiliation with the Communist Party.

However, Judge Wright instructed the jury that "it must be shown to your satisfaction beyond a reasonable doubt that

this Defendant, made used, or filed or caused to be made used and filed, this document. Now, the indictment charges by using the word "and," and the Court uses the word "or," but under the law if it is shown to your satisfaction beyond a reasonable doubt that this Defendant made, or if he used, or if he filed this document, or if he caused the document to be made. used, or filed, then this particular element of the offense would be satisfied." In effect, the Judge instructed the jurors that if they concluded that Lee Brown made a false affidavit by affixing his signature to it, then this was sufficient to find him guilty. (508-9) However, the indictment itself required that it be proved that Lee Brown made, used and filed a false affidavit, and the question of whether he filed it was the stickler since there was no letter of transmission. McGovern took exception to the judge's interpretation, pointing out that it "gives the Jury an alternative to base the conviction on the making of the affidavit alone." (522) This is the issue on which the final outcome of the case would hinge.

The case went to the all-white jury at 10:10 am. At 12:30 the jury asked for additional instructions from the judge as to what constituted membership or affiliation. The judge listed a series of activities that could be construed as constituting membership in the Communist Party, including paying dues or making financial contributions, possessing a membership card, attending meetings, classes, conferences or other Party gatherings, recruiting new members, distributing

literature, or participating in any other way in the activities, planning or actions of the Communist Party. (526-7) Affiliation, the judge said, meant a close working alliance or association between an individual and the Party. At 12:40 the jury returned to its deliberations, and at 1:04 pm the jury ^{Come back} returned with a verdict.

The clerk read the verdict: "We, the Jury, find the accused Lee Brown guilty as charged under Count Number 1. We, the Jury, find the accused Lee Brown guilty as charged under Count Number 2." (529)

On Wednesday, April 2nd, Judge Wright sentenced Lee Brown to three years imprisonment in a federal penitentiary. The judge said he considered the two counts as one since they were in effect the same. (749, Times Picayune, 4/3/58, p. 1) Lee Brown signed a statement saying he did not plan to appeal and on April 16th he was delivered to begin serving his prison sentence at the Texarkana Federal Penitentiary ~~on April 16th~~. (750, 752) Subsequently, Brown's attorneys filed a motion for acquittal and an alternate motion for a new trial. Both were denied in early June, but the court granted the taking of an appeal. (Times Picayune, 6/5/58 p. 12)

Brown's attorneys filed a notice of appeal on June 14th (754, 5), and after several delays the appeal was filed in the spring of 1959. A year later, on April 21, 1960, the U.S. Court of Appeals for the Fifth District announced its decision. The court decided that the appeal "raises only one serious issue: was there reversible error in the Trial

Court's charge that the making, using or filing element of the offense would be satisfied if the jury found that Appellant 'made, or if he used, or if he filed the document . . .?'"

The Court noted that in a prior case (Jencks v. United States, (5 Cir.), 226 F. 2d 540, 545) "the essence of the offense charged by the government is the filing of the affidavit and the burden rested on it to prove that the Appellant filed the affidavit or caused it to be filed."

(658) The court continued that "the jurisdiction of the NLRB is not invoked until the affidavit is filed and therefore the act of filing is as essential to the commission of the offense as is the act of making the false affidavit. It seems, therefore, too clear for argument that, standing alone, the charge here complained of left open to the jury the right to convict Brown without the proof of one of the elements which we and other Courts of Appeal have found a necessary ingredient, even the gist, of the offense." (659)

One short sentence concluded the Court of Appeals' legal analysis: "The judgment is reversed." With the growing civil rights movement changing the political climate and with HUAC and the anti-Communist provisions of the Taft-Harley Law being openly challenged by college students, progressive activists and labor leaders (the non-Communist oath would be declared unconstitutional by the U.S. Supreme Court in 1964) (The Cold War Against Labor, Vol 2, pp.705-8), the Government decided not to initiate any further legal action against Lee

Brown. In May 1960 U.S. Attorney M. Hepburn Many signed an order dismissing the indictment against Lee Brown. (660) Brown would be released from Texarkana, where he had been unjustly imprisoned for more than two years.