

Judge Voids Charges In AIM Leaders' Trial

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ST. PAUL, Minn., Sept. 16—The eight-month Wounded Knee takeover trial ended today when U.S. District Court Judge Fred Nichol dismissed five felony counts against American Indian Movement leaders Russell Means and Dennis Banks.

Nichol castigated the Department of Justice, the Federal Bureau of Investigation, and Assistant U.S. Attorney R. D. Hurd, the chief prosecutor, in a scathing 1-hour-11-minute lecture.

The prosecution can appeal the ruling within seven days, Nichol said. If a government appeal is successful, the defendants could be retried.

Nichol said he had gone "over the brink" to dismissal because Hurd on one occasion had misled him and in others was at least negligent. The judge said that the FBI had been guilty of "sordid" and misleading conduct.

He said he found precedents for his dismissal in the Daniel Ellsberg Pentagon Papers case in which U.S. District



RUSSELL MEANS
... accused in takeover

Court Judge W. Matthew Byrne threw out the government's case for misconduct.

The dismissal followed the refusal of the Justice Department to let a verdict be rendered by an 11-member jury—a decision Nichol called "incredible."

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AIM, From A1

The law permits a verdict by fewer than the traditional 12 jurors if both sides agree.

If the judge had not dismissed the charges, the case automatically would have resulted in a mistrial for lack of Justice Department agreement.

One of the jurors suffered a stroke last Friday and was unable to continue on the panel.

The jury had begun deliberating the day before, and returned to the Hilton Hotel, where it had been sequestered after eight hours without reaching a verdict.

The defense was willing to go with 11 jurors, eight women and three men, but Hurd balked and then referred the decision to the Justice Department in Washington.

Hurd contended that the government's "right of a fair trial" had been jeopardized by Judge Nichol's previous statements in court, including one that the FBI was "arrogant" and by publicity instigated by the defense, some of which "must have filtered back to the jury."

Nichol, who frequently lost his temper with defense lawyers William Kunstler and Mark Lane during the trial and who on one occasion had Kunstler and Lane jailed overnight, today leveled his criticism at Hurd.

He said that Hurd had violated the American Bar Association ethical standard that holds a prosecutor's duty is to serve justice, not to convict.

Nichol recalled that after a six-week evidentiary hearing in March and April that resulted from defense charges of illegal telephone monitoring by the FBI, he had declined to dismiss the case but had warned the government that he was on the brink of dismissal.

"My deepest hope and expectations were dashed," he said today. He cited the Justice Department refusal in the matter of the truncated jury, what the defense called the suppression of an FBI statement exposing the perjury of a prosecution witness, and the government's use of an FBI informer.

An 11-member jury was the last resort because Nichol had released the four alternate jurors when the regular jury began its deliberation.

FBI informer Louis Moves Camp, who testified he became disenchanted with AIM, was put on the stand at the end of the trial. The defense charged there was a governmental conspiracy to suborn perjury and cover it up in this instance. Another witness testified, among other things, that Moves Camp was in California at a time when he said he was at Wounded Knee, S.D., and both his mother and his wife testified against him.

Nichol also said that prosecutor Hurd had acquiesced in a refusal by the FBI to give Moves Camp a lie-detector test.

He said Hurd was guilty of errors of judgment and negligence that could have been avoided if he had been half as industrious as the defense counsel. "I am rather ashamed that the government was not represented better," Nichol said.

The judge also objected to the payments of more than \$2,000 to Moves Camp by the FBI, for witness fees and "relocation." Nichol also said that "time after time" the FBI, on defense request, produced records of interrogations that were erroneous.

Banks, 42, and Means, 35, were charged with three counts of assault and one each of theft and conspiracy in the armed occupation of Wounded Knee, S.D., last year.