

NYTimes

INDIANS' LAWYERS WIN ON SUBPOENAS

Allowed to Call Officials
for Data on Wiretaps

Special to The New York Times

ST. PAUL, April 7—Federal District Judge Fred J. Nichol agreed today to allow defense attorneys to call former high-ranking officials in the Justice Department to find out whether agents of the Federal Bureau of Investigation had used illegal means in investigating the take-over of Wounded Knee, S. D., by dissident Indians last year.

The judge acted after defense attorneys were given a photocopy of a letter in which F.B.I. executives said that they thought agents had illegally monitored telephone calls from Wounded Knee during the 71 days that the Indians held the small village.

Attorneys for Dennis J. Banks and Russell C. Means, who led the take-over, said that Judge Nichol had agreed to allow them to subpoena Henry E. Petersen, the former Assistant Attorney General in charge of the Criminal Division of the Justice Department; W. Mark Felt, a retired F.B.I. assistant director; L. Patrick Gray, former acting Director of the F.B.I., and several F.B.I. agents who had been at Wounded Knee.

The defense has alleged that the Government used illegal means to gather evidence against Mr. Banks, a Chippewa Indian, and Mr. Means, a Sioux, and has asked that the 10 felony charges against them be dismissed. A dismissal of those charges could also affect charges against 100 other persons who were indicted after the Wounded Knee take-over.

Judge Nichol had said earlier that he would rule Wednesday on whether to dismiss these charges as requested by the defense attorney, William M. Kunstler and Mark Lane of New York City.

But after the Government produced the letter indicating some doubt about F.B.I. activity within the department, Judge Nichol agreed to take further testimony.

The trial will begin its 14th week tomorrow.

The letter, dated March 20, 1973, was from Mr. Felt to Mr. Petersen and said:

"Dear Henry, "Your feeling that our Title 3 application in the Wounded Knee case was based on information from an illegal wiretap concerned me greatly.

"I have reviewed the applica-

tion, and all probable cause originates with live sources. The two Teletypes reflecting information from 'sources' which you suspected might be wiretaps, were dated March 14 and 15. Copies of both are attached as we originally received them. The March 14 source is [blank]. The source in the Teletype of March 15 is [blank], who requested that his identity be protected.

"The agents admit one 'accidental' overhear on the party line. I am not so naive as to rule out other overhears. I do know the agents discussed the situation with Carl Belcher, who at first felt it could be monitored but later decided Title 3 would be necessary.

"The matter is no longer ur-

APR 8 1974

gent, however, because I told them to have this particular station disconnected. As I understand it, the marshal is paying for the service into Wounded Knee. It was an eight-party line. Imagine what the long distance tolls will add up to.

"Hope this convinces you on the two important points—our sources and our intentions.

"Sincerely, Mark."

The names of the informants of March 14 and March 15 were deleted from the letter before it was turned over to the defense attorneys.

The Title 3 referred to in the letter is a section of the Omnibus Crime Control Act of 1968 that provides for wiretaps under court orders.

F.B.I. agent Thomas Parker of St. Louis testified last week that the application mentioned in the letter was dated March 13. Defense attorneys said that clearly indicated that the application could not have been based on information collected on March 14 and March 15, as the letter stated.

"If we can get to the bottom of these intercepts and how they were covered up both by the F.B.I. and the Attorney General, we will be able to expose governmental misconduct on a scale far greater than that which caused the dismissal of the Ellsberg case," said Mr. Kunstler.