

Indians in Take-Over Free As Judge Criticizes F.B.I.

By MARTIN WALDRON
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ST. PAUL, Sept. 16—A Federal judge tongue-lashed the prosecution, the Justice Department and the Federal Bureau of Investigation today for "misconduct" and then dismissed the charges against the two men who led last year's Indian takeover of the community of Wounded Knee, S.D.

United States District Judge Fred J. Nichol said that the Justice Department, by refusing to let 11 members of the jury decide the case after the 12th became ill, appeared to be more interested in convicting the Indians than in justice.

Judge Nichol also accused the chief prosecutor, R. D. Hurd, of deliberately deceiving the court and said that the F.B.I. had "stooped to a new low."

The judge said that the function of the Justice Department and Government prosecutors was not to convict defendants but rather to seek justice. If the department had been interested in justice, he said, it would have let the 11 jurors decide the case instead of insisting on a mistrial.

Doctors reported today that the ill juror, Mrs. Therese Cherrier, 53 years old, had suffered a stroke and would not be able to rejoin them jury. Over the weekend, Mr. Hurd had said that Mrs. Cherrier may have been the only juror willing to convict the defendants, Dennis J. Banks, 42, and Russell C. Means, 34.

Prosecutors said they would appeal the dismissal. Judge Nichol said they could try and that he would welcome a review of his decision, but there is some question about the right of appeal. The Circuit Court of Appeals, he said, could treat his

Continued on Page 12, Column 1

Continued From Page 1, Col. 4

dismissal order as a verdict of acquittal.

Mr. Banks, a Chippewa Indian, and Mr. Means, a Sioux, each faced three counts of assault on Government officers, one of conspiracy and one of larceny. Each could have been sentenced to up to 85 years imprisonment.

About 50 Indians in the courtroom jumped with glee and hugged the two defendants and their attorneys after Judge Nichol dismissed the five felony

charges and released the jury.

Defense attorneys had asked the judge to grant a verdict of acquittal, but the judge said that a motion of acquittal would be appropriate only if there were insufficient evidence to convict. Mr. Means and Mr. Banks, he said, "certainly were in positions of leading roles insofar as the occupation of Wounded Knee was concerned."

Judge Wanted a Verdict

The two defendants led about 300 other Indians into the tiny Indian hamlet—the site of a massacre of Indians by soldiers in 1890—on Feb. 27, 1973, and held the village for 71 days to protest Government treatment of Indians.

During the occupation, two Indians were killed and three Federal agents were injured. The Indians surrendered when they ran out of food, ammunition and medicine.

Judge Nichol said he had hoped that the jury could decide the guilt or innocence of Mr. Means and Mr. Banks. If they had been acquitted by a jury, he said, the Government may then have seen fit to drop charges pending against more than 100 other Indians accused in the occupation but not yet tried.

Although Judge Nichol excoriated both Mr. Hurd, the chief assistant United States Attorney for South Dakota, and the Justice Department, he saved his hottest words for the F.B.I.

Earlier in the trial, when F.B.I. agents had been shown to have given untrue testimony in the trial, the judge had said in front of the jury, "The F.B.I. has certainly deteriorated."

"Maybe that was unfortunate," he said, "but it was clearly justified by the manner the F.B.I. has operated in this trial."

Witness Got Favors

He said he found it hard to believe that F.B.I. agents would act as they did when two agents squired a prospective witness around Wisconsin under an assumed name last month.

The judge said that the witness, Louis Moves Camp—who later testified to facts that were proved untrue—was paid more than \$2,000, was housed at a "plush resort" owned by the Minnesota Mining & Manufacturing Company, was given "all the liquor he wanted" and was allowed to pick up a girl at a local bar.

"I will say this for the agents, though," Judge Nichol said. "When he asked if he could take the girl back to the resort, they did say no. They said he could take her somewhere else, but not to the resort."

The girl later accused Mr. Moves Camp of raping her, but no formal charges were brought. "Although the evidence seems to indicate otherwise, I'm not going so far as to say that the F.B.I. had this rape charge quashed," the judge said.

Frequently during the eight-and-a-half-month trial, the judge had criticized F.B.I. agents. He was particularly upset when it was shown that agents had testified untruthfully, or when they had withheld documents from the court or furnished altered documents to defense attorneys.

"It's hard for me to believe that the F.B.I., which I have revered for so long, has stooped so low," the judge said.

Judge Nichol said that the

Justice Department had mishandled the Wounded Knee siege itself by secretly bringing in soldiers. "We don't want the military running civil affairs in this country," the judge said.

If soldiers were needed at Wounded Knee to handle rebellious Indians, the President should have been asked to sign a proclamation declaring martial law, he said.

After the judge's scathing ruling from the bench, Mr. Hurd and other Government lawyers marched angrily back to his office but United States marshals guarded the hallway and prevented reporters from listening in.

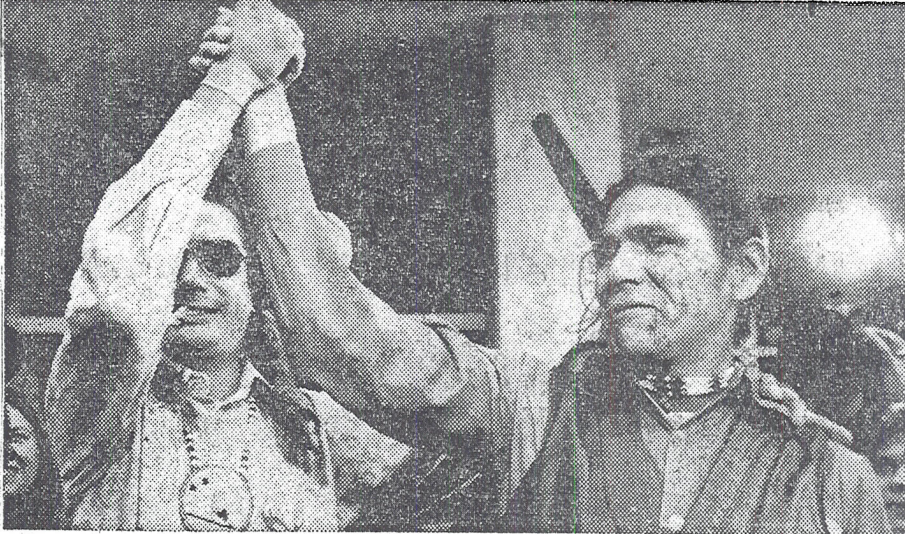
Up until today, Mr. Hurd had said he would not agree to

have an 11-member jury because he thought Mrs. Cherrier was leaning toward conviction. This morning, he said he would not make the decision, but would leave it to the Justice Department whether to move for a mistrial or to take 11 jurors.

Both Mr. Means and Mr. Banks still face other Federal charges as a result of Indian demonstrations last year, and Mr. Hurd has said that he plans to prosecute these charges regardless of the outcome of the current trial. He said that one of the main defense attorneys, William M. Kunstler of New York, would not be available to assist in the defense of the other trials.

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Russell C. Means, left, and Dennis J. Banks after charges against them were dismissed

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