

Reporter Freed in Indian-Data Case

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WASHINGTON, Feb. 15—A Federal grand jury refused today to indict a Washington newsman and two Indian activists on charges of illegal possession of stolen Government documents.

Following the jury's decision, the Government moved that the charges against Leslie H. Whitten, an investigative reporter for Jack Anderson's "Washington-Merry-Go-Round" column, and the Indian activists, Hank Adams and Miss Anita Collina, be dropped. This left unresolved the question of whether the First Amendment guarantee of a free press gives newsmen the right to obtain private Government documents for the purpose of writing articles.

Lawyers close to the case suggested that indictments could have been obtained if there had been more vigorous prosecution by the Government. But, they said, the United States Attorney's office here was reluctant to press the charges because of a dislike within the Department of Justice for the acting director of the Federal Bureau of Investigation, Patrick Gray 3d, because Mr. Gray did not alert the Justice Department to plans for the arrests.

Mr. Whitten and Mr. Adams were arrested by F.B.I. agents on Jan. 31 as they carried three boxes of documents stolen from the Bureau of Indian Affairs last November to Mr. Whitten's car. Miss Collins was arrested the same day at the home of friends.

Miss Collins and an undercover Washington policeman, posing as an Indian, had picked up the documents at a bus station the night before.

Mr. Whitten has maintained that he did not intend to make use of the documents but rather had offered the use of his car to turn over the material to the F.B.I. Because the two Indians had no other means of transportation.

A number of documents, paintings and other property had been taken from the Indian bureau by about 800 Indians who had taken over the building. The Indians had come to Washington to protest the Government's stewardship of Indian affairs.

Mr. Adams, who had served as principal negotiator for the protesters, promised in early January that property stolen from the Indian Bureau would be returned by the end of February and had already returned some articles at the time of his arrest.

The grand jury questioned the Indians and Mr. Whitten and Mr. Anderson last evening but adjourned without reaching a decision on the indictment.



Associated Press

Leslie H. Whitten in his office yesterday after the case was dropped.

Assistant U.S. Attorney John F. Rudy 2d told United States Magistrate Arthur L. Burnett at a hearing this morning that no indictment had been returned. Mr. Rudy moved to dismiss the charges against the three. Magistrate Burnett granted the motion.

In an interview after the dismissal, Mr. Whitten said he had entered the grand jury room with the "implicit understanding that no questions would be asked about my news sources."

"They asked me to recount exactly what had happened and some even asked questions about the mechanics of putting

together a story," he said.

The jury was understood to have asked the Indians, Mr. Whitten and Mr. Anderson if any money had been offered to allow examination of the papers. They testified that no money had been offered.

Possession of private Government documents for personal use or gain is prohibited by Federal law and to prosecute a case successfully the Government would have to establish this as the defendants' intent.

A lawyer close to the case said, "The Government put everything it had before the grand jury but didn't try to press the case beyond the grand jury's resistance."

The jury, the lawyer said, was not satisfied with the evidence and Mr. Rudy did not try to convince it.

"Mr. Rudy is a very capable prosecutor and if he had felt he had a case there would have been an indictment," according to a former Justice Department official. "The ultimate decision not to prosecute had to come from the Justice Department itself," the source said.

Mr. Rudy said the case had been handled "the way any case of this nature would have been and there were no attempts to control prosecution."

Asked if the Justice Department had been apprised of the investigation of the stolen documents and anticipated arrests, an F.B.I. spokesman said, "Things just don't work that way. Things move too quickly and we have some independence and flexibility."