

Judge Refuses to Dismiss Charges on Wounded Knee,

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Special to The New York Times

ST. PAUL, April 17 — While Indians chatted and danced to the beat of a war drum on the courthouse steps this afternoon, Federal District Judge Fred J. Nichol ruled that the "misconduct" and "negligence" of Government prosecutors and agents of the Federal Bureau of Investigation was not "gross enough" to warrant dismissing criminal charges against Indians who seized Wounded Knee, S.D., last year.

But the judge said that if the Government continued its course, he would not hesitate to dismiss the charges.

The judge ordered testimony to resume May 1 in the trials of Dennis J. Banks and Russell C. Means, the leaders of the raid on Wounded Knee, a hamlet on the Pine Ridge Sioux Indian reservation in southwestern South Dakota.

The jury has heard no testimony for five weeks while the judge has investigated

whether F.B.I. agents illegally wiretapped the Indians and whether the justice agency has given proper cooperation to defense attorneys.

Based of Ruling

Mr. Baks, a Chippewa Indian, and Mr. Means, a Sioux, did not come to court until the judge was halfway through his ruling. The two men, leaders of the American Indian Movement, are the first to be tried in the Wounded Knee affair. About 35 others still face trial.

In his ruling, Judge Nichol

said that while the F.B.I. illegally listened to telephone calls at Wounded Knee during the 71-day siege there last year, he was not persuaded that the agents had been gathering evidence. He said he believed the illegal listening had been done for "defensive" purposes.

Agents at Wounded Knee last year were apprehensive that the Indians might attack Government lines.

Judge Nichol said that while the F.B.I. had been slow to yield documents to which defense attorneys were entitled,

but Warns U.S. Prosecutors and F.B.I. on Tactics

it had not been shown that any material had been destroyed, adding that what appeared to have been gross misconduct could have been mere negligence.

Preventing the Government from prosecuting criminal charges is a very drastic measure, the judge said, and should be a last remedy. "Accused individuals must be brought to trial or our institutions will collapse," he observed.

Judge Nichol ordered the Government not to use any evidence it may have got from

the illegal telephone monitoring last year and told the F.B.I. to search its records once more for documents that may help the defense.

He said it was the Government's duty to see that accused individuals get a fair trial. Prosecutors have said they know of no evidence that F.B.I. agents got as a result of illegal overhearing of conversations.

After the judge had finished delivering his ruling, United States Attorney William Clayton said that the Government had no plans to shorten its case to

save time. The trial started in early January and fewer than 20 per cent of the Government's witnesses have testified.

Defense attorneys said that they planned to file new motions when the trial resumed May 1.

U.S. Aide Scores Supervision

MILWAUKEE, April 17 (AP) — A Justice Department official criticized The Associated Press last night for suspending a photographer who gave information about the Indian occupation of Wounded Knee to

agents of the Federal Bureau of Investigation.

John W. Hushen, the department's director of public information, called the action "deplorable." His remarks were in a speech to the Milwaukee chapter of Sigma Delta Chi, a journalists' fraternity.

"Newsmen are citizens too. They have responsibilities like other citizens," Mr. Hushen said. "And when they see criminal activities occurring they have the same obligation as other citizens to cooperate with law enforcement authorities."