

Containing the F.B.I.

Attorney General William B. Saxbe has announced a Justice Department study of the Wounded Knee trial and other cases in which the defendants have asserted that their prosecutions were politically based. One major focus of that study should be the Federal Bureau of Investigation.

In dismissing the Government's case against Russell Means and Dennis Banks for their part in the Wounded Knee uprising last year, Federal District Judge Fred J. Nichol was critical of the Government generally and had particularly harsh words for the F.B.I. He excoriated an F.B.I. agent for not telling the truth about the bureau's surveillance of Indians' telephones, for withholding documents from defense attorneys or furnishing them with altered ones and for the lavish and dubious custody in which they kept a prosecution witness of questionable credibility.

It would be bad enough if the Wounded Knee trial were an isolated incident. Unfortunately, it is not. Two other recent trials are sufficient to demonstrate that the Wounded Knee debacle is part of a dangerous pattern in American law enforcement.

At the Harrisburg trial of Father Daniel Berrigan, the F.B.I. used an unstable and unreliable man named Boyd Douglas as its informant. Mr. Douglas was also an agent provocateur, who spent a good deal of his time egging the anti-war movement on to bigger and less lawful activities. In the trial growing out of the raid on the Camden (N.J.) draft board, it turned out that the crime could not have been committed at all without the enterprising activities of the F.B.I. plant who ultimately became the mastermind of the plot.

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When Clarence Kelley became Director of the F.B.I. last year, he promised a new atmosphere and new procedures. Former Attorney General Elliot L. Richardson ordered a full-scale review of the program and activities of the bureau. The Senate Judiciary Committee established an F.B.I. oversight committee and Mr. Kelley, an earnest and competent professional, promised his cooperation. The era of J. Edgar Hoover was to be ended for good.

Yet in September, 1974, this very month, Judge Nichol was forced to dismiss a criminal case in disgust because—largely on the basis of the bureau's behavior—he perceived the Government to be substantially more interested in obtaining a conviction than in achieving justice. After the trial was over, defense lawyers revealed that a basic part of their strategy was to put the manner in which the Government handled the case on trial.

Until the Department of Justice, Director Kelley and the Senate Judiciary Committee actually do what is necessary to turn the F.B.I. into what it has been cracked up to be—a highly professional, non-ideological law enforcement agency, American citizens cannot be entirely sure that their rights will not be subject to invasion by a bureau with awesome power to inflict injury. It is incumbent on the Government to require that the F.B.I., too, live by the rule of law.