



John William Sayer. *Ghost Dancing the Law: The Wounded Knee Trials*. Cambridge, Mass.: Harvard University Press, 1997. ix + 310 pp. \$29.95 (cloth), ISBN 978-0-674-35433-3.

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## Using History as a Legal Weapon: The Wounded Knee Trials of Russell Means and Dennis Banks

Consisting of a preface, an Introduction, ten chapters, and copious notes, John William Sayer's *Ghost Dancing the Law: The Wounded Knee Trials*, provides a lucid and meticulously documented account of the eight-month trial of Russell Means and Dennis Banks. In 1974 these two leaders of the American Indian Movement (AIM) went on trial in St. Paul, Minnesota, as a result of AIM's seventy-one day occupation of the village of Wounded Knee on the Pine Ridge Reservation in South Dakota the previous year. Sayer deftly contextualizes the trial by providing background material in the introduction and in the first two chapters and by interweaving relevant parts of the ongoing Watergate investigation and other concurrent events within the text. Relying on legal motions and briefs, correspondence, jury studies, and FBI files containing materials dealing with AIM and Wounded Knee, along with newspaper and news magazine articles, trial transcripts that eventually numbered over one hundred volumes, and interviews with thirty trial participants as well as other sources, Sayer offers a fascinating, highly readable account.

Central to the trial and to the defense's strategy is the Fort Laramie Treaty of 1868, which contains a clause stating that offenses committed by American Indians fall within the jurisdiction of the Tribal Court. More importantly, admissibility of the treaty also allowed the defense to shift the focus of the trial from Banks' and Means' alleged crimes to the history of crimes committed by the federal government against American Indians over the past century. Although several months passed before Judge Nichol finally admitted the treaty into evidence, its admission, in the words of Means and Banks, authenticated their point: "It's really the United States that's on trial, not us" (p. 122). In the end, the co-defendants are proven correct; Judge Nichol dismisses all charges because of federal and prosecutorial misconduct, including evidence of illegal wiretapping, withholding of evidence, and the U. S. military's clandestine involvement in the oc-

cupation of Wounded Knee (see Ward Churchill and Jim Vander Wall's *Agents of Repression: The FBI's Secret Wars Against the Black Panther Party and the American Indian Movement*).

Although a federal appeals court refused to allow Means and Banks to be retried on the charges stemming from Wounded Knee, their problems were not over. Members of the AIM leadership continued to spend much of their time as defendants in court in various other cases, devastating their effectiveness in advancing the cause of American Indian rights. AIM never regained its power.

Associated with the Wounded Knee Defense Committee for a short time in the summer of 1973, Sayer clearly manifests a serious and abiding interest in the trials and their meaning, then and now. Perhaps the fact that Russell Means' name does not appear on the list of interviewees in the preface accounts for a minor discrepancy that demonstrates the impossibility of perfectly reconstructing any event. Sayer earnestly asserts that AIM had issued a statement declaring South Dakota "a war zone" and calling for a boycott of tourism in the state (p. 127). He also mentions that "officials noted that tourism in the state was down for the month of June" (p. 139), documenting his quotations with notes referring to newspaper articles. The discrepancy, however, becomes evident when one compares Sayer's text with Russell Means' own account of the genesis of the "war zone" and tourism boycott in his autobiography, *Where White Men Fear to Tread*. Means remarks that while listening to "months of testimony, much of it tedious and repetitious," he and Dennis Banks amused themselves by "drafting tongue-in-cheek press releases. One such release, reported almost verbatim by the Associated Press, was printed solemnly as page-one news by newspapers throughout the Great Plains" (Means 314). This release, reprinted in Means' book, is headlined "AIM DECLARES SOUTH DAKOTA A 'WAR ZONE'" and contains the call for a tourism boycott.

Sayer states that his account “is not intended to provide a single truth, or *the* definitive history of the trials” (p. 8); instead, he hopes “to amplify voices from the past and identify the structures and procedures that altered or silenced those voices, both as the events unfolded and over the course of time” (p. 8). He succeeds admirably in fulfilling his purpose; despite his disclaimer, it seems that his work *will* stand as the definitive history of the trials of Russell Means and Dennis Banks. At least for

the foreseeable future, his book will be required reading for scholars and others who are interested in these trials.

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