

STATES-ITEM NEWSMEN DISAGREE

The Marcello Case: Two Points of View

(Editor's Note: Is Carlos Marcello being singled out for "special treatment" under the U.S. system of justice? Jack Wardlaw and David Snyder of the States-Item staff consider the question.)

By JACK WARDLAW

Mark Twain once shocked his Victorian readers with an essay espousing the cause of the devil. At the hands of the master satirist, the old boy came out a sympathetic, not to say heroic, figure.

Much the same thing has been going on in recent days with regard to that prominent Jefferson Parish businessman, Carlos Marcello. My favorite woman TV commentator came

on the other night with a sympathetic piece, and that noble upholder of the underdog, the American Civil Liberties Union (ACLU) feels that somehow this individual's rights are being trampled on. The ACLU is a gutty outfit that is not afraid to take on unpopular causes. This is to its credit, but it does not follow that every cause it backs is right simply because it is unpopular. In this case, it is dead wrong.

Let's look at the facts. Mr. Marcello faces a two-year jail term for intimidating (i.e., taking a poke at) an FBI agent. He was convicted beyond reasonable doubt and the federal courts have upheld the verdict through numerous appeals.

Beyond Comprehension

Mr. Marcello's advocates have chosen the incredible grounds that he believed the person he sought to clobber at New Orleans International Airport was not a G-man but a news reporter. Why this argument impresses anyone in the news media is beyond my comprehension.

In recent years, there has been an unsettling tendency on the part of everyone from policemen to black militants to baseball pitchers to regard us scribes as fair game for billies, bullets or ice water. Speaking as one who often has to occupy exposed positions on the news fronts, I feel there should be mandatory jail terms for picking on the press.

Matter of Credibility

But the grounds for wanting to see Mr. Marcello behind bars do not rest on such special interests. Rather, it is a matter of the credibility of the legal system. Is it possible to put a wealthy and influential wrongdoer in jail?

The event for which Mr. Marcello faces incarceration took place in 1966. As of Sept. 11, 1970, he was still a free man. So are Cassius Clay and, if he still lives, H. Rap Brown. So are several Louisiana public officials caught in obvious misdeeds. Law and

order is a fine vote-getting slogan, but it doesn't seem to apply to the rich and powerful.

Obscure and Penniless

I recently had occasion to interview several inmates of a Louisiana penal institution. Obscure and penniless persons, they were unceremoniously shuttled off to jail shortly after their tacky and unnewsworthy misdeeds. What conclusion are they to draw from Mr. Marcello's success in avoiding their fate?

There are other points. The histories I read do not record tears shed when Scarface Al Capone went up on an income tax rap. It's true nobody much cared how Al filled out his return. The point was to put him, a public enemy, away. It worked, and those that did it are justifiably hailed as heroes of law enforcement.

How Does It Apply?

How does this apply to the present case? Mr. Marcello, through a long career of brushes with the law, has been remarkably successful in avoiding its penalties. To some overly literal-minded persons, this necessarily means he is an innocent man who has suffered continual harassment at the hands of authorities. Such a view flies in the face of commonsense.

Take a single case. Mr. Marcello only last week testified before an investigating committee that he was in the gambling business in Jefferson Parish. Gambling is regarded in this area as a minor vice, if not a positive virtue, but the point is, it was unquestionably illegal in the parish and state at the time Mr. Marcello admits he fostered it.

In order to operate illegal gambling, it is necessary to corrupt public officials. It is necessary to resort to frightful means to collect debts. It is necessary, to say the very, very least, to be an undesirable citizen.

You can't put people in jail in the U.S.A. for being undesirable citizens. I'm glad of that. But you can put them in jail for swinging at FBI agents. I'm glad of that, too.

As the Fifth Circuit Court of Appeals said last week, the time for finality in the Marcello case is here. Lock him up.

By DAVID SNYDER

This is not written in defense of Carlos Marcello. It is written in defense of myself. Somehow, the Carlos Marcello case makes me uneasy.

The question is not whether Marcello is one of the "bad guys" and should be locked up. He has, in fact, a prison record of long standing and was "in that number" when law enforcement officers swooped down on a well-publicized Mafia meeting a few years ago in New Jersey. What bothers me is a question that goes right to the heart of our democratic system—the concept of equal justice under the law. Marcello, it would seem, is more equal than others. He has been singled out for special, zealous attention.

In order to applaud the Justice Department's handling of the Marcello case (and the department has been actively pursuing the man for a number of years) one must embrace a concept alien to the system of justice as we know it—a concept that the end justifies the means.

You must say that since Marcello shows signs of being a "rackets figure" he should be put away, either through deportation to another country or incarceration.

Anything Goes?

And since Marcello is a "rackets figure," society says, anything goes. His is a special case.

But who else is likely to become a special case? That's the question creating the uneasiness. And doesn't a police state generally evolve from the erosion of laws protecting our rights as individuals?

The American Civil Liberties Union is principally interested in the case because the agency has been concerned with complaints that plain-clothes law enforcement officers have provoked attacks, then made arrests.

The ACLU sees this as a kind of harassment. The organization's concern is not just for the rights of George Wallace's "pointy-headed liberals," but for all of us.

Credibility of System

The credibility of this nation's system of justice is, indeed, open to question in 1970. Penniless, illiterate men who hardly know why they have been arrested languish defenseless in Parish Prison, and men who can afford batteries of attorneys roam free.

But the credibility of the system is also strained where a technical violation of the law is prosecuted to the maximum in a special case.

We make a mockery of our system of justice when we scream "Lock him up." Rich or poor, he is entitled to due process



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of law—to run out his string in the courts. Due process is what Marcello is getting.

If and when the Supreme Court turns down Marcello's plea for a new trial, then it will be time for the gates of a federal prison to close behind him.

Marcello has been sentenced to two years in prison for swinging "at" an FBI agent.

That agent was stationed in the midst of a group of newsmen. Marcello's attorneys say their client thought the FBI agent was a newsman. The conclusion is a reasonable one.

Well, what's the difference whether Marcello swung at an FBI agent or at a news photographer?

There is a great deal of difference as far as Marcello is concerned. By intimidating an FBI agent, Marcello lined himself up for a trial in a federal court where, as he found out, the penalty can be a two-year prison sentence.

Had his target been a news photographer, the matter would have been settled in a municipal or state court. Such an act generally generates no more than a nickle-and-dime fine.

The record of Carlos Marcello is bad. There is every reason to wish him bon voyage.

But in this country, unlike in some others, the end should not justify the means. The means—the "way" in which we are adjudged guilty or innocent—is very important.

When we cease to care about the niceties of justice, we will find ourselves living in an unjust society.