

# Marcello Count Dismissed

By CHARLES ZEWE and JAMES HEARTY

A federal judge today dismissed an indictment against Carlos Marcello for illegal re-entry and presence in the United States.

Shortly before noon, Judge Lansing L. Mitchell ruled the statute of limitations has run its course in the government's attempt to prosecute the alleged Mafia boss for reentering the country in 1961.

A similar indictment against Marcello was dropped in 1965.

In announcing his decision, Judge Mitchell said he interpreted immigration laws to mean an alien can be prosecuted for a single instance of illegal re-entry only the first

time he is found in the country.

**MITCHELL SAID** Marcello's 1961 arrest and subsequent indictment on re-entry counts constituted the initial instance he was "found" in the U.S. after being deported. He said Marcello could not be retried on the charges because the statute of limitations had expired.

The judge said an alien could be prosecuted for illegal presence or re-entry beyond the seven-year statute of limitations only if the alien had hidden from authorities.

Mitchell ruled when Marcello was arrested in 1961 "in front of newsmen and everyone else" that was the one

and only time he could be prosecuted, and that Marcello had done anything but hide from authorities in the ensuing nine years.

"IF HE HAD gone into hiding and could not have been found it would have been a different matter," Mitchell said.

U.S. Attorney Gerald P. Gallinghouse said he will appeal the decision to the 5th Circuit Court of Appeals.

As Mitchell announced his decision, Marcello broke into a broad grin and exchanged handshakes with courtroom spectators, newsmen and his defense attorneys. He appeared notably relieved.

**ATTORNEYS FOR Marcello**

argued earlier that a previous indictment was dropped against the underworld figure because the government "didn't want to be embarrassed."

Jack Wasserman, Marcello's immigration specialist, leveled the charge in argument on 18 motions in behalf of Marcello to dismiss the indictment.

"It is my understanding from conversations I had with immigration officials," Wasserman said, "that the government decided they had tried to convict Marcello on their two best charges in 1961 (a fraud indictment and a

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jury tampering count) and had been licked.

"THE GOVERNMENT felt it would be embarrassing for them to prosecute the illegal reentry charge because they would be forced to reveal some legal dirty linen, showing the U.S. Attorney General (Robert Kennedy) and the U.S. immigration commissioner knew of the false Guatemalan birth certificate and allowed Marcello to be illegally deported."

Wasserman's charge came during arguments on the first of 18 motions to dismiss the indictment returned in June.

Marcello, who sat in the partially filled courtroom with his son, Joseph, was represented by Wasserman, Cecil M. Burglass Jr., and Michael Maroun.

ON HAND for the government were U.S. Attorney Gerald P. Gallinghouse and attorneys Eric Gisleson and Julian Murray.

In his initial arguments, Wasserman told the court the indictment was identical to one returned against the 60-year-old alleged Mafia boss in 1961 and then dismissed in 1965.

"This is the exact same indictment and only a few words have been changed," Wasserman said.

Much of the courtroom debate between defense and government attorneys centered around the use of the word "found" in immigration laws governing illegal reentry of aliens.

**WASSERMAN ARGUED** the indictment constituted double jeopardy for Marcello because he was "found" in the country in 1961 and the charge was dismissed.

"The law says on any day he (Marcello) happens to be in the United States he can be prosecuted under the law," Gallinghouse told Mitchell.

Wasserman disagreed and said that while Marcello has been in the country for nine years since his 1961 deportation, he was "found" legally only once, when he surrendered to immigration agents at his Metairie home.

**MITCHELL ASKED:** "Do you think that every day Marcello is in the country the government can bring a new indictment against him? If that were true and he was tried and found guilty on each count he could be sentenced to more than 6,000 years in jail. Not even Methuselah lived that long."

It brought to trial and found guilty on a single count of il-

legal presence in the country, Marcello could be sentenced to as much as two years in prison and forced to pay a \$1,000 fine.

Gisleson said defense arguments were "void" of merit and he said it was "absolutely clear" the government had indicted Marcello on a separate charge.

"THIS IS A continuing offense and he can be prosecuted at any time he is found in

the country," Gisleson said. "Whatever happened in the past is not relevant in this case."

Mitchell then asked the young attorney why the government waited so long to reindict Marcello and if it would have done the same if he were just "John Doe."

"I admit this is a highly unique case, your honor," Gisleson said, "but the facts here fit the law and we feel we have a valid case."

"You know," Mitchell replied, "it is my opinion public sympathy has turned toward Marcello because he has been harassed for so long and by so many legal cases."

Government deportation efforts are based on a marijuana conviction. Marcello pleaded guilty Oct. 29, 1938, to the sale of more than 23 pounds of marijuana and was sentenced to the federal prison in Atlanta, Ga. The government began proceedings to have him deported when he left prison a year later.

**THE PROCEEDINGS** were renewed in 1950. After long delays during which the case reached the U.S. Supreme Court three times, in April, 1961, immigration agents hustled him aboard an Immigration Service plane for Guatemala. He reappeared in the U.S. about one month later.

The Justice Department has been confronted in each of its attempts to oust Marcello with the problem of finding a

country willing to accept him.

A birth certificate—later proved a fraud—was discovered for Marcello in an obscure Guatemalan village and was used by the Immigration Service in its 1961 deportation.

Marcello already is fighting a two-year prison term on a 1968 conviction for attempting to strike an FBI agent at New Orleans International Airport in 1966.

The Supreme Court will hear Marcello's pleas for a new trial on the charges Oct. 5.

Meanwhile, he has been free on \$25,000 bail not only for the assault conviction but also for the illegal reentry indictment.



<sup>76)</sup> CARLOS MARCELLO is flanked by his son JOSEPH, left, and attorney, JACK WASSERMAN, prior to entering federal court today. —States-Item photo.