

# Marcello to Ask Dismissal Of Illegal Re-Entry Case

By CHARLES ZEWE

Carlos Marcello will go before Federal Judge Lansing Mitchell tomorrow to ask dismissal of an indictment charging he is illegally in the United States.

The 60-year-old millionaire rackets figure is slated to appear with his attorneys before Judge Mitchell at 9:30 a.m. as part of a preliminary hearing on 18 defense motions to throw out the charges.

Marcello was indicted June 18 for "illegal presence" in the United States. He was taken into custody and released on \$25,000 bail.

## THE INDICTMENT

stemmed from his re-entry into the U.S. in 1961 after being deported to Guatemala. It represents renewal of an almost 20-year government effort to have the legally embattled Marcello deported and kept out of the country as an "undesirable alien."

The action also represents the second major court battle in which Marcello is involved. He currently is fighting a two-year prison sentence for attempting to strike an FBI agent four years ago.

Supreme Court Justice Hugo L. Black has turned over Marcello's appeals for a new trial on the assault charges to

the full Supreme Court which will hear the case Oct. 5.

MARCELLO'S Washington counsel, Jack Wasserman, an immigration law specialist, is expected to be in New Orleans to handle defense proceedings before Judge Mitchell.

In briefs filed with the court, Marcello's attorneys contend their client cannot be prosecuted on the charges because the indictment is similar to one dismissed in 1965 and thus violates double jeopardy clauses of the U.S. Constitution.

Attorneys also claim the seven-year statute of limitations on prosecution has expired and Marcello could not receive a fair trial because of "adverse and prejudicial" publicity surrounding not only the re-entry charges but also

his assault conviction.

"THERE IS NOT a community in this country which has not been poisoned by inflammatory publicity against the defendant," the attorneys said.

The defense also claims the indictment should be dropped because of a lack of a speedy trial on the original charges.

"This nine-year delay in bringing up these charges is oppressive, inexcusable and highly prejudicial to the defendant in view of the death and unavailability of witnesses connected with the case," attorneys contend.

EFFORTS TO deport Marcello are rooted in his 1938 marijuana-peddling conviction.

Marcello pleaded guilty Oct. 29, 1938, to the sale of more than 23 pounds of marijuana and was sentenced to the Federal Penitentiary in Atlanta.

When he emerged from the prison just over a year later, the government began proceedings to have him deported.

Marcello was born Calogero Minacori Feb. 6, 1910, in Tunis, North Africa, then a French protectorate, and now Tunisia.

WHEN HE WAS eight months old Marcello emigrated to the U.S. with his family, which changed the family name to Marcello and settled in Algiers.

Deportation proceedings began in earnest in 1950 and before Marcello was hustled out of the country in 1961, the government was continually thwarted in efforts to have the courts rule finally in the case. Marcello took his case to the Supreme Court three times being turned down each time.

Using his phalanx of lawyers Marcello spent an estimated \$1 million in fighting the deportation orders.

A major problem which confronted the Justice Department was that no country would take Marcello. Neither Italy nor France would accept his deportation.

FINALLY, IN April, 1961, a birth certificate showing Calogero Minacori had been born in the obscure village of San Jose Pinula in Guatemala turned up.

Several days later as Marcello went into the District Immigration office at the Masonic Temple for his required routine quarterly appearance, he was handcuffed by Immigration agents, hustled off to the airport and put on an Immigration Service plane for Guatemala City.

The deportation apparently lasted only a month.

A public outcry in Guatemala over Marcello's admission into the country reportedly prompted Guatemalan government agents to spirit Marcello out of Guatemala and into El Salvador and deposit him on a mountain in the wilderness at the border of Honduras.

IN LATER court testimony attorney Michael Maroun told a federal court he and Marcello hiked 17 miles into Honduras.

It is not known exactly how Marcello re-entered the country but on June 1, 1961 he showed up at his fishing camp on the Gulf of Mexico at Grand Isle.

Four days later he surrendered to immigration agents and spent a few days at the Federal Alien Detention Center in McAllen, Tex.

In subsequent indictments he was charged with fraud in falsifying his Guatemalan birth certificate and illegally re-entering the country.

He was tried and acquitted in 1963 on the falsification charges. He never was brought to trial on the illegal re-entry charges and they were dropped April 28, 1965.

AMONG WITNESSES now deceased which defense attorneys say would have been key figures in the case were Sen. Robert F. Kennedy, then U.S. attorney general, and airplane pilot David W. Ferrie, who figured prominently in Dist. Atty. Jim Garrison's probe of

President John F. Kennedy's assassination.

"His (Kennedy's) testimony would have been highly material in the case," said the attorneys, "and would have been sought by the defendant if the trial had been held earlier."

The defense accused Kennedy of exerting undue influence in pursuing Marcello's deportation.

FERRIE WAS mentioned as having gone to Guatemala at the request of Marcello attorneys during his stay there.

Attorneys also described recent Life magazine articles alleging Marcello dominated Louisiana government and subsequent statements by Gov. John J. McKeithen constituted "vicious and increasingly adverse publicity," to a fair trial.