5/21/68

Airtel

To: SAC, Detroit (89-74)

From: Director, FBI 1-1333-85

CARLOS J. MARCELLO, aka.;
PATRICK J. COLLINS, JR. - VICTIM
ASSAULT ON A FEDERAL OFFICER
(OO: NEW ORLEANS)

Re Detroit airtel 5/11/68 enclosing copies of FD-302 and letterhead memorandum setting forth the results of an interview of Joseph Valachi at FCI, Milan, Michigan.

Since this information may become a matter of record in connection with prosecution of subject, Detroit is instructed to immediately recontact Valachi and clarify the identities of individuals mentioned in this interview. Photographs and descriptive data have been previously furnished Detroit in connection with the La Cosa Nostra membership index. Prior interviews indicate these individuals are well-known to Valachi. The results of your interview may be recorded as Thomas Luchese referred to by Valachi as Tommy Brown, if necessary.

MAILED 9 COMM-FBI

Joe Bender is probably Anthony Strollo, aka, Tony Bender. "Four Fingers" Brown is probably Thomas Luchese, aka, Tommy Brown, "Three Fingers" Brown. Tommy Rie may be Thomas Eboli, aka, Tommy Ryan.

Page one, paragraph four of both FD-302 and letterhead memorandum should describe Marcello as the dominant La Cosa Nostra figure in the New Orleans area.

Score appropriate errors. Advise Bureau, New Orleans and Houston by return mail with copies of corrected letterhead memorandum and FD-302.

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Soyars

1 - Houston (info)
1 - New Orleans (info)
NOTE: Detroit is being requested to clarify information attributed to Valachi during a recent interview conducted in connection with captioned matter at the request of the Department.

REK:skh
(6)

JUN 6 1968

MAIL ROOM TELETYPE UNIT

FD-36 (Rev. 5-22-64)

F B I

Date: 5/11/68

Transmit the following in AIRTEL
(Type in plaintext or code)

Via _____
(Priority)

TO: DIRECTOR, FBI

FROM: SAC, DETROIT (89-74) (RUC)

CARLOS J. MARCELLO, aka.;
PATRICK J. COLLINS, JR. - VICTIM,
ASSAULT ON A FEDERAL OFFICER
OO: NEW ORLEANS

Re Bureau radiogram, dated 5/10/68.

Enclosed for the Bureau are 3 copies each of an LHM and an FD-302 covering interview of JOSEPH VALACHI, at FCI, Milan, Mich.

Two copies each of LHM and FD-302 are enclosed for Houston, of which one copy each to be disseminated to USA, Houston. Three copies each of LHM and FD-302 are enclosed for New Orleans, two copies each to be disseminated to USA, New Orleans.

JOSEPH VALACHI, Inmate, FCI, Milan, several times during the course of the interview advised, as reported in enclosed FD-302, that "I've never been in New Orleans and have never meet those people." He appeared cooperative and friendly, expressed his admiration for the Bureau and noted that he would help in any way "if I could".

3 - Bureau (Enc.- 6)
2 - Houston (Enc.- 4)
2 - New Orleans (Enc.- 6)
1 - Detroit
JLM/jmd
(8

REC-114 7-1533

12 MAY 13 1968

C. C. - Letter

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

FBI

MAY 14 5 12 PM '68

RECEIVED
SPECIAL INVESTIGATIVE
DIVISION

RECEIVED
SPECIAL INVESTIGATIVE
DIVISION

MAY 17 10 21 AM '68
U.S. DEPT. OF JUSTICE

FD 302 (Rev. 4-15-64)

FEDERAL BUREAU OF INVESTIGATION

1

Date 5/11/68

JOSEPH VALACHI, Inmate, Federal Correctional Institute, Milan, Michigan, advised that he has never been to New Orleans, Louisiana, and has never met either CARLOS J. MARCELLO or [redacted] He stated that he knows of them only by reputation and "they are big people in the family, particularly CARLOS J. MARCELLO". He noted that the family meant that they were members of the La Cosa Nostra. b6 b7C

VALACHI stated that CARLOS MARCELLO has been a big man in the New Orleans area for approximately 25 years. The New York mobsters are not welcomed in Louisiana. MARCELLO employed only local New Orleans people in his operations. VALACHI mentioned to his former La Cosa Nostra Lieutenant, JOE BENDER, at New York, in the 1940's, that he would like to go to New Orleans for the Mardi Gras. BENDER told him to stay in New York as the New Orleans group did not want any of the eastern crowd in their city.

VALACHI had on occasion heard rumors that CARLOS MARCELLO would come to New York and get with eastern gangsters such as "FOUR FINGERS" BROWN, TOMMY LUCHESE, and FRANK COSTELLO, but he had no personal knowledge of these meetings.

In closing, VALACHI stated that CARLOS MARCELLO is the dominate La Cosa Nostra figure in the New Orleans area, but he could not support his statement with any specifics merely noting that it "was well known in the family that he was the man".

11-1333

On 5/10/68 at Milan, Michigan File# Detroit 89-74

by SAs [redacted] and J. JLH / JLH / JMD Date dictated 5/11/68 b6 b7C

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

Re: Carlos J. Marcello;
Patrick J. Collins, Jr. - Victim
Assault on a Federal Officer

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

2*

4

Form DJ-150
(Ed. 4-26-65)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF JUSTICE

TO : Director, Federal Bureau of Investigation DATE: May 23, 1968

FROM : The Attorney General

SUBJECT: United States v. Carlos Marcello
Assault on FBI Agent

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

The above case is scheduled for trial before Judge Ben C. Connally, Laredo, Texas, on May 27, 1968.

It is requested that your indices be examined for the purpose of ascertaining any relevant information concerning the members of the trial jury panel and the results communicated to United States Attorney Morton L. Susman in Laredo as soon as possible.

EXP. PROC.
MAY 23 1968

REC 5 - 133-86

4 MAY 29 1968

cc to Mr. DeLoach 5-24-68

May 24 9 54 AM '68
REC'D DE LOACH
F B I

May 24 10 03 AM '68
F B I
REC-D BISHOP

May 24 12 01 PM '68
U.S. DEPT. OF JUSTICE

RECEIVED - DIRECTOR
F B I

May 24 F 03 PM '68

RECEIVED-GALE
May 24 10 36 AM '68
F B I
U.S. DEPT. OF JUSTICE

May 20 8 07 AM '68
REC'D - ROSEN
FBI

SPECIAL INVESTIGATIVE DIVISION

5/28/68

The trial of New Orleans La Cosa Nostra boss Marcello commenced on May 27, 1968, in Larado, Texas. Marcello is being tried for the assaulting of Special Agent Collins upon Marcello's return by air from New York City in September, 1966, where he had attended a meeting of hoodlums at a New York restaurant.

AAS:mfd

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATION SECTION
MAY 27 1968

TELETYPE

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

FBI WASH DC

FBI SANANTON

8:03 PM 5/27/68 URGENT RLB

9-1 BEF

TO DIRECTOR (89-1333) (ATTN: SPECIAL INVES. DIV.)

FROM SAN ANTONIO (89-81)

CARLOS JOSEPH MARCELLO, AKA; SA PATRICK J. COLLINS, JR. - ASSAULTING FEDERAL OFFICER
VICTIM, AFO. OO: NO.

SUBJECT'S TRIAL COMMENCED TODAY NINE A.M. LAREDO, TEXAS. U.S. District Judge
USDJ SEQUESTERED JURY. AGENTS PATRICK J. COLLINS JR. AND [redacted] AS WELL AS [redacted] NEW ORLEANS PD b6 b7C
AND TWO NEW ORLEANS NEWSPAPER MEN TESTIFIED AND PROSECUTION RESTED. MOTION FOR DIRECTED VERDICT OF ACQUITAL DENIED BY USDJ. DEFENSE COMMENCED AND TWO WITNESSES TESTIFIED PRIOR TO TRIAL BEING ADJORNED TILL NINE THIRTY A.M. FIVE TWENTY-EIGHT NEXT. BUREAU WILL BE KEPT ADVISED. AIRMAIL COPY TO NO.

REC-33 87-1333-87

6 JUN 3 1968

END.

CAB

FBI WASH DC

P

6-JAC

70 JUN 10 1968

REC'D-TELETYPE UNIT
F B I REC'D - ROSEN
FBI

RECEIVED DIRECTOR
F. B. I.

MAY 28 9 04 AM '68

MAY 27 9 08 PM '68

MAY 28 10 12 AM '68
REC'D DE LOACH
F B I

MAY 28 1 16 PM '68

MAY 28 8 25 AM '68
REC'D DE LOACH
F B I

RECEIVED-DALE

JUN 6 4 48 PM '68

FBI
DEPT. OF JUSTICE

JUN 6 5 20 PM '68

U.S. DEPT. OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATION SECTION

MAY 29 1968

TELETYPE

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

FBI WASH DC

FBI SANANTON

436PM CDT URGENT 5-29-68 DMB

TO DIRECTOR (89-1333) AND NEW ORLEANS

FROM SAN ANTONIO (89-81)

CARLOS JOSEPH MARCELLO; SA PATRICK J. COLLINS - VICTIM. AFO.

OO: NEW ORLEANS.

REMYTEL MAY TWENTYEIGHT LAST.

JURY RETURNED TO COURT FOUR P.M. THIS DATE AND MIS-TRIAL DECLARED AS JURY COULD NOT REACH UNANIMOUS DECISION. NO DEFINITE DATE SET FOR RETRIAL THIS DATE.

END

WPK

FBI WASH DC

REC 22

89-[illegible]-88

14 JUN 3 1968

memo DeLoach to LaRocca
5/31/68
REK:mfb

55 JUN 11 1968

RECEIVED-GALE

MAY 29 5 50 PM '68

F B I
U.S. DEPT. OF JUSTICE

RECEIVED
GENERAL INVESTIGATIVE
DIVISION
JUN 3 11 05 PM '68
F. B. I.
DEPT. OF JUSTICE

REC'D-TELETYPE UNIT
F B I
MAY 29 5 40 PM '68

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-106

UNITED STATES GOVERNMENT

Memorandum

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

TO : Mr. DeLoach

DATE: May 31, 1968

FROM : J. H. Gale

SUBJECT: CARLOS JOSEPH MARCELLO;
SA PATRICK J. COLLINS - VICTIM
ASSAULT ON A FEDERAL OFFICER

9-KCR 3-1
1-1
CC

The San Antonio Office has advised that the trial of New Orleans hoodlum Carlos Marcello which was held in United States District Court, Laredo, Texas, ended May 29, 1968, with jury unable to reach a unanimous decision.

Marcello was being tried for assaulting Bureau Agent Collins at the New Orleans Airport on September 30, 1966, following his return from New York City where he had been involved in local court action resulting from his arrest by local authorities at a La Cosa Nostra meeting held at the La Stella Restaurant, New York City, September 22, 1966. The case was tried in Laredo, Texas, on a change of venue from New Orleans. Marcello is the leading racketeer in Louisiana and La Cosa Nostra boss of New Orleans.

The Department advises that the jury was deadlocked on a vote of nine to three for conviction. This matter is now receiving consideration by the Department for retrial at an early date.

We will continue to follow this matter closely with New Orleans, San Antonio and the Department Attorney handling prosecution and to press for an early retrial of Marcello.

ACTION:

For information.

REC 22

92-1333-89

1 - Mr. DeLoach
1 - Mr. Gale
1 - Mr. Staffeld
1 - Mr. Kent

REK:skh
(5)

JUN 3 1968

55 JUN 11 1968

RECEIVED-GALE

MAY 31 11 04 AM '68

RECEIVED-GALE

MAY 31 1 48 PM '68

MAY 31 12 15 PM '68

FBI

REC'D BISHOP DE LOACH

F B I

RECEIVED-GALE

MAY 31 9 50 AM '68

F B I

RECEIVED-DIRECTOR OF JUSTICE

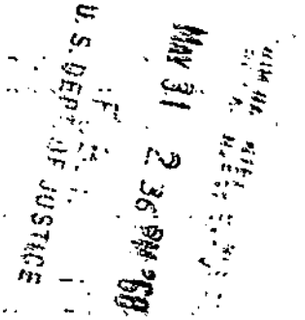
F. B I.

MAY 31 11 19 AM '68

MAY 31 3 57 PM '68

REC'D DE LOACH

F B I



FD-36 (Rev. 5-22-64)

FBI

Date: 5/29/68

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL _____
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, SAN ANTONIO (89-81)(P)

CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR -
VICTIM
AFO

OO: NO

Remytel 5/28/68.

[redacted] one of MARCELLO's defense counsels and subject of New Orleans anti-racketeering case, tesified for the defense on 5/28/68.

[redacted] Law Clerk for USDJ BEN C. CONNALLY, advised that [redacted] testified that SA PATRICK J. COLLINS, JR., told him at Shreveport, La., in February 1968, that the incident was an accident and that MARCELLO should never have been charged in the assault. b6 b7C

[redacted] further testified that COLLINS said the real instigator was MARCELLO's brother, [redacted] and that [redacted] should have been charged in the alleged incident. b6 b7C

SA PATRICK J. COLLINS, JR., testified that he did see [redacted] in Shreveport, La., in February 1968, by chance but that he did not discuss this case with [redacted] at that time or any other time.

3-Bureau
2-New Orleans (89-79)
2-San Antonio
LEA:iat
(7)

REC 13 -90

JUN 1 1968

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

PERS. REC. UNIT

JUN 3 11 31 AM '68
F. B.
U. S. DEPT. OF JUSTICE

SA 89-81

[redacted] Departmental Attorney, advised that he considered the testimony of [redacted] in this regard fully refuted by SA COLLINS. Mr. [redacted] further advised that it was rather obvious that Judge CONNALLY thought [redacted] was lying as evidenced by the Judge's intense questioning of [redacted] in this regard.

b6
b7C

The above is submitted for the information of the Bureau.

FD-263 (Rev. 3-8-67)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
SAN ANTONIO	NEW ORLEANS	6/4/68	5/27-29/68

TITLE OF CASE

CARLOS JOSEPH MARCELLO, aka;
PATRICK J. COLLINS, JR. -
VICTIM

REPORT MADE BY

TYPED BY kfh

CHARACTER OF CASE

AFO

REFERENCE: San Antonio teletype to Bureau and New Orleans 5/29/68.

-RUC-

- A* -
COVER PAGE

ACCOMPLISHMENTS CLAIMED						ACQUIT-TALS
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES	

CASE HAS BEEN:
PENDING OVER ONE YEAR ☐ YES ☐ NO
PENDING PROSECUTION OVER SIX MONTHS ☐ YES ☐ NO

APPROVED _____ SPECIAL AGENT IN CHARGE

DO NOT WRITE IN SPACES BELOW

89-1333 91

REC-59

EX-105

8 JUN 7 1968

COPIES MADE:

2 - Bureau (89-1333)
3 - New Orleans (89-79)
(1 - USA, New Orleans)
1 - USA, Houston
1 - San Antonio (89-81)

Dissemination Record of Attached Report

Agency				
Request Recd.				
Date Fwd.				
How Fwd.				
By				

JUN 19 1968

Notations

SAC

STAT SECT.

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 1 - USA, Houston
1 - USA, New Orleans

Report of: [redacted] Office: San Antonio, Texas
Date: June 4, 1968

Field Office File #: 89-81 Bureau File #: 89-1333

Title: CARLOS JOSEPH MARCELLO;
PATRICK J. COLLINS, JR. -
VICTIM

Character: ASSAULTING A FEDERAL OFFICER

Synopsis:

Trial of subject commenced at Laredo, Texas, 5/27/68. USDJ BEN C. CONNALLY sequestered jury during trial. Testimony lasted two days and jury deliberated approximately eight hours and could not reach unanimous decision. Mistrial declared and Houston proposed by Judge CONNALLY as site of next trial.

- RUC -

DETAILS:

The following items were hand delivered to [redacted] Departmental Attorney, on May 22, 1968, at Laredo, Texas:

One reel of 16 mm movie film taken by SA [redacted] at New Orleans International Airport on night of September 30, 1966

Copies of Identification Records for the following individuals:

CARLO GAMBINO
THOMAS EBOLI
SANTO TRAFFICANTE
DOMINICK ALONGI

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

SA 89-81

ANIELLO DELLOCROCE
MICHAEL MIRANDA
[redacted]
JOSEPH N. GALLO
JOSEPH ANTHONY COLOMBO

b6
b7C

Selection of the jury commended at 9:00 a.m. on May 27, 1968. After selection of the jury, the following witnesses testified for the government:

SA [redacted]
[redacted]
SA PATRICK J. COLLINS, JR.
[redacted]

b6
b7C

The government rested its case at approximately 4:50 p.m. and a motion for acquittal was denied by Judge BEN C. CONNALLY.

[redacted] testified for the defense before court was adjourned at approximately 5:30 p.m., and Judge CONNALLY sequestered the jury.

b6
b7C

On May 28, 1968, prior to the jury entering the courtroom, Judge CONNALLY granted the government the motion to quash the subpoena that had been issued for the Attorney General. Judge CONNALLY also granted the defense the motion that subject may testify without being cross-examined regarding prior convictions.

The jury entered the courtroom at approximately 9:40 a.m. on May 28, 1968, and the following witnesses testified for the defense:

SA [redacted]
[redacted]
CARLOS MARCELLO
[redacted]

b6
b7C

The defense rested approximately 12:00 noon and another motion for acquittal was denied by Judge CONNALLY. After hearing the final arguments, the jury retired to deliberate for approximately two hours before they were called to the courtroom, at which time the foreman advised Judge CONNALLY that no decision had been reached and more time was required. Judge CONNALLY dismissed the jury for the night and again ordered that the jury be sequestered.

On May 29, 1968, the jury commenced its deliberations at 9:00 a.m. At approximately 10:40 a.m. the jury requested the judge that part of the court record be explained to them again, specifically, the charge that Judge CONNALLY had made to the jury, and this was done.

The jury returned to its deliberation, and after lunch reported to Judge CONNALLY that they could not reach a verdict. At this point Judge CONNALLY informed the foreman of the jury that he would allow them to deliberate until 4:00 p.m., May 29, 1968, and gave the jury the "dynamite" charge.

After deliberating further, the jury returned to the courtroom at approximately 4:00 p.m., May 29, 1968, and the foreman reported that a unanimous verdict could not be reached. Judge CONNALLY declared a mistrial and dismissed the jury.

When the jury left the courtroom, Judge CONNALLY asked both counsels about a retrial and suggested that the retrial be held in Houston at a time decided by him and both counsels privately.

FD-36 (Rev. 5-22-64)

F B I

Date: 5/29/68

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL _____
(Priority)

TO: DIRECTOR, FBI

FROM: SAC, DETROIT (89-74) (RUC)

CARLOS J. MARCELLO, aka;
PATRICK J. COLLINS, JR. - VICTIM
ASSAULT ON A FEDERAL OFFICER
(OO: NEW ORLEANS)

ENCL
X

ReDEairtel to Bureau, 5/11/68, and Buairtel to Detroit, 5/21/68.

Enclosed for the Bureau are 3 copies each of corrected LHM and corrected FD-302 covering interview of JOSEPH VALACHI at FCI, Milan, Mich.

Two copies each of corrected LHM and FD-302 are enclosed for Houston, of which one copy each to be disseminated to USA, Houston. Three copies each of corrected LHM and FD-302 are enclosed for New Orleans, two copies each to be disseminated to USA, New Orleans.

3 - Bureau (Enc. 6)
2 - Houston (Enc. 4)
2 - New Orleans (Enc. 6)
1 - Detroit
JLM/srs
(8)

MKD
REC 89-1[illegible]-92
RECORDED
MAY 31 1968

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

JUN 13 1968

INCONS JUN 4 1968

Auto from 6/13/68

RECEIVED
GENERAL INVESTIGATIVE
DIVISION

MAY 31 11 10 PM '68

F. B. I.
U S DEPT. OF JUSTICE

MAY 31 5 17 PM '68

U. S. DEPT. OF JUSTICE

JUN 4 1968

RECEIVED
FBI

FD-302 (Rev. 4-15-64)

FEDERAL BUREAU OF INVESTIGATION

Date 5/11/68

JOSEPH VALACHI, Inmate, Federal Correctional Institute, Milan, Michigan, advised that he has never been to New Orleans, Louisiana, and has never met either CARLOS J. MARCELLO or [redacted] He knows of them only by reputation and "they are big people in the family, particularly CARLOS J. MARCELLO". He noted that the family meant that they were members of the La Cosa Nostra.

b6
b7C

VALACHI stated that CARLOS MARCELLO has been a "big man" in the New Orleans area for approximately 25 years. The New York mobsters are not welcomed in Louisiana. MARCELLO employed only local New Orleans people in his operations. VALACHI mentioned to his former La Cosa Nostra Lieutenant, ANTHONY STROLLO, alias Tony Bender, at New York, in the 1940's, that he would like to go to New Orleans for the Mardi Gras. STROLLO told him to stay in New York as the New Orleans group did not want any of the Eastern crowd in their city.

VALACHI on occasion had heard rumors that CARLOS MARCELLO would come to New York and meet with Eastern gangsters such as THOMAS LUCHESE, alias "Four Fingers Brown", THOMAS EBOLI, alias Tommy Eye, and FRANK COSTELLO, but he had no personal knowledge of these meetings.

In closing, VALACHI stated that CARLOS MARCELLO is the dominant La Cosa Nostra figure in the New Orleans area, but he could not support his statement with any specifics, merely noting that it "was well known in the family that he was the man".

On 5/10/68 at Milan, Michigan File # Detroit 89-74

by SAs [redacted] and J. jlm/srs Date dictated 5/11/68

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

Detroit, Michigan
May 29, 1968

Re: Carlos J. Marcello;
Patrick J. Collins, Jr. -
Victim
Assault on a Federal Officer

On May 10, 1968, Joseph Valachi, Inmate, Federal Correctional Institute, Milan, Michigan, was interviewed by Special Agents of the Federal Bureau of Investigation (FBI). He advised that he has never been to New Orleans, Louisiana, and has never met either Carlos J. Marcello or [redacted] He knows of them only by reputation and "they are big people in the family, particularly Carlos J. Marcello". He noted that the family meant that they were members of the La Cosa Nostra.

b6
b7C

Valachi stated that Carlos Marcello has been a "big man" in the New Orleans area for approximately 25 years. The New York mobsters are not welcomed in Louisiana. Marcello employed only local New Orleans people in his operations. Valachi mentioned to his former La Cosa Nostra Lieutenant, Anthony Strollo, alias Tony Bender, at New York, in the 1940's, that he would like to go to New Orleans for the Mardi Gras. Strollo told him to stay in New York as the New Orleans group did not want any of the Eastern crowd in their city.

Valachi on occasion had heard rumors that Carlos Marcello would come to New York and meet with Eastern gangsters such as Thomas Luchese, alias "Four Fingers Brown", Thomas Eboli, alias Tommy Rye, and Frank Costello, but he had no personal knowledge of these meetings.

In closing, Valachi stated that Carlos Marcello is the dominant La Cosa Nostra figure in the New Orleans area, but he could not support his statement with any specifics,

This is amended ed. 1. Hm. Form 5ER-57 dtd 6/13/68

ENCLOSURE 92-1338-92

Re: Carlos J. Marcello;
Patrick J. Collins, Jr. - Victim
Assault on a Federal Officer

merely noting that it "was well known in the family that he was the man".

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

FD-36 (Rev. 5-22-64)

FBI

Date: 6/6/68

Transmit the following in PLAIN TEXT
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: Director, FBI (89-1333)

FROM: SAC, New Orleans (89-79)

RE: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO
(OO - NO)

Remyairtel 6/4/68.

Departmental Attorney [redacted] advised that he had determined from the court reporter of the MARCELLO trial at Laredo that [redacted] testified that he had his conversation with SA COLLINS on 2/5/68.

Referenced airtel indicated it was the recollection of the Government counsels that it was 2/4/68.

This communication will complete the files of the Bureau in this regard.

3 - Bureau
2 - New Orleans
RER:jam
(5)

EX 110

REC-82 89-1333-93

16 JUN 7 1968

62 JUN 19 1968

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

JUN 7 4 05 PM '63
F. B. I.
U. S. DEPT OF JUSTICE

June 7, 1968

Airtel REC-115

1 - Mr. DeLoach
1 - Mr. Gale
1 - Mr. Callahan
1 - Mr. Staffeld
1 - Mr. Kent

To: SAC, New Orleans (89-79)

From: Director, FBI (89-1333) — 94

CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
ASSAULT OF A FEDERAL OFFICER

Reurairtel, 6/4/68.

In view of the U.S. Attorney's instructions, conduct no interviews of [redacted] or the alleged conversants with SA Collins at this time. b6 b7C

SA Collins, as the principal prosecution witness against Marcello, may well be subjected to additional and continued allegations of this nature. New Orleans must be alert to this possibility and take all logical precautions to avoid and combat these tactics.

New Orleans must continue to follow this matter closely and keep the Bureau fully informed.

NOTE: See Gale to DeLoach memorandum, 6/6/68, REK:mfd.

REK:mfd
(8)

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

MAILED 7
JUN 10 1968
COMM-FBI

62 JUN 19 1968

MAIL ROOM ☐ TELETYPE UNIT ☐

JUN 6 3 45 PM '68
RECD - DE LOACH
F B I

RECEIVED
FBI
JUN 10 3 52 PM '68

FD-36 (Rev. 5-22-64)

FBI

Date: 6/4/68

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO
OO: NO

Re my airtel 5/29/68.

On the afternoon of 6/3/68, pursuant to the request of Mr. [redacted] Departmental Attorney, SAC ROBERT E. RIGHTMYER and ASAC J. T. SYLVESTER, JR., conferred with Mr. [redacted] USA LOUIS C. LACOUR, and his First Assistant, [redacted]

At the outset, Mr. [redacted] advised that an evaluation of a retrial in captioned case was being made and that there were certain questions to which he would like answers that either came up in testimony during the trial or mentioned by the defense attorneys after the trial. Mr. [redacted] advised that the transcription of the testimony was not yet available and that he would advise this office when same was available.

SA COLLINS' CONTACTS WITH [redacted]

During the trial, [redacted] one of MARCELLO's defense counsels and subject of New Orleans Anti-Racketeering case, testified for the defense on 5/28/68. [redacted] testified

2 cc-DTD

(3) - Bureau
2 - New Orleans

RER:sam
(5)

REC-115 89-1333-7

1 JUN 17 1968

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

JUN 5 4 03 PM '68

F. B. I.
U. S. DEPT. OF JUSTICE

that by pre-arrangement, he met SA COLLINS at the Town and Country Restaurant and Lounge in Bossier City, La., on 2/4/68. (The date of 2/4/68 has not been verified as yet by the court reporter but is based on the recollection of the Government counsels who are in the process of verifying this date).

According to Mr. [redacted] testified that SA COLLINS told him on this occasion that

1) The matter was an accident.

2) [redacted] was the instigator. b6 b7C

3) [redacted] should have been indicted.

4) SA COLLINS said he was not afraid of CARLOS MARCELLO but was afraid of [redacted]

On cross examination at the Laredo, Texas, trial, SA COLLINS testified that he did meet [redacted] at the Town and Country Restaurant and Lounge in Bossier City, La., by chance, and firmly denied that he had any conversation with [redacted] concerning this case.

[redacted] It is noted that there are two discrepancies in testimony when compared with that of SA COLLINS: b6 b7C

a) [redacted] saying the meeting was pre-arranged versus SA COLLINS saying it was by chance.

b) [redacted] testifying regarding his alleged conversation with SA COLLINS on the four points enumerated above, versus SA COLLINS' testimony that he did not discuss this case with [redacted]

SA COLLINS strongly denies that this meeting was pre-arranged and states it was by chance as he testified to in Laredo, Texas. He firmly further denies that the assault case was discussed by him with [redacted] at this or any other time.

After the trial, [redacted] showed Mr. [redacted] a memorandum which Mr. [redacted] believes to have been dated 2/6/68 and which allegedly covers SA COLLINS' meeting with [redacted] at Shreveport on either 2/4/68 or 2/5/68. According to [redacted] this memorandum contains two additional alleged statements by SA COLLINS, namely: b6 b7C

5) SA COLLINS said to [redacted] that CARLOS MARCELLO could win the case in either the district or circuit court.

6) SA COLLINS allegedly told [redacted] that USA LACOUR telephoned him at Lucky Pierre's, a New Orleans French Quarter club, on the night of the assault and attempted to get SA COLLINS to make a stronger statement against CARLOS MARCELLO.

SA COLLINS strongly denies making the latter two statements and again states that the assault case was not discussed with [redacted]

USA LACOUR also strongly states that he did not call SA COLLINS on the night of the assault and states there is no truth in item six. b6 b7C

On the morning of 6/4/68, SAC RIGHTMYER and SA COLLINS conferred with Mr. [redacted] USA LACOUR and AUSA [redacted] at which time SA COLLINS again strongly reiterated his testimony.

In addition, these attorneys were advised that from a review of administrative records, it was determined that the daily report of SA COLLINS shows that the contact with [redacted] was at the Town and Country Restaurant and Lounge in Bossier City on 2/12/68 and that the time of this contact was 6:30 p.m., to 10:45 p.m., that date. b6 b7C

These attorneys were further advised that administrative records in the New Orleans Office reflected SA COLLINS was on duty at New Orleans from 2/1/68 to the afternoon of Sunday, 2/11/68, when he departed for Shreveport, La., on official business.

These attorneys felt this information highly valuable to the Government's case since it shows that [redacted] memorandum is not what he purported it to be to Departmental Attorney [redacted]

During the trial, [redacted] testified that sometime before the Bossier City meeting he saw SA COLLINS at Lucky Pierre's in the French Quarter in New Orleans. Both [redacted] and SA COLLINS agree that this was a chance meeting. However, [redacted] testified that SA COLLINS said the case was "an accident" on the occasion of this chance meeting at Lucky Pierre's. SA COLLINS strongly denies this and the Government attorneys were so advised. b6 b7C

[redacted] in conversation with Government attorneys indicated he had seen SA COLLINS on two other occasions but did not allege any conversation ensued. One was in New York City and the other at Evangeline Downs Racetrack near Lafayette, La. SA COLLINS states he did see [redacted] at a session of the Queens County Grand Jury in New York City in December, 1966. At that time [redacted] CARLOS MARCELLO, and others of MARCELLO's associates, had been subpoenaed to testify before the Queens County Grand Jury. While SA COLLINS states he did see [redacted] no conversation ensued. b6 b7C

SA COLLINS advised that during the Summer of 1967, he was at Evangeline Downs Racetrack near Lafayette on official business and recalls seeing [redacted] there, but he had no conversation with him. b6 b7C

The above summarizes the contacts of SA COLLINS and [redacted] and in connection with the chance meeting at Lucky Pierre's during the Fall of 1967, [redacted] admitted to Mr. [redacted] that this meeting was somewhat embarrassing to him since he was with a woman other than his wife.

SIMILAR STATEMENTS ALLEGEDLY MADE BY SA COLLINS

[redacted] one of CARLOS MARCELLO's defense attorneys, told Mr. [redacted] after the trial that SA COLLINS had made similar statements to that of [redacted] testimony to b6 b7C

a) JOE PORETTO, Town & Country Restaurant manager, New Orleans;

b) [redacted]

c) "the OCCHIPINTIs".

SA COLLINS advised that during his investigation of hoodlum activities in the New Orleans area, he has talked to JOE PORETTO and to [redacted] and ROY OCCHIPINTI. He strongly denies that he has ever discussed the assault case with them and categorically denies [redacted] allegations. b6 b7C

For the information of the Bureau, PORETTO is the subject of New Orleans case entitled "JOSEPH ALBERT PORETTO, aka, AR", Bufile 92-2801; and the OCCHIPINTIs are likewise subjects of Anti-Racketeering cases in New Orleans: [redacted] AR", Bufile 92-7779; and "ROSARIO FRANK OCCHIPINTI, AR", Bufile 92-7775.

SA COLLINS advised that while he has contacted [redacted] similar to those allegedly made to [redacted] as [redacted] claims. b6 b7C b7D

[redacted]

Both [redacted] and [redacted] told USA [redacted] and Mr. [redacted] that SA COLLINS was taking [redacted] out on dates. For the information of the Bureau, SA COLLINS operated [redacted]

SA COLLINS advises that during the period of time [redacted] b6 b7C b7D each of them. SA COLLINS advised that all meetings with [redacted]

NO 89-79 /sam

[redacted]

During the pretrial conferences between Mr. [redacted] and SA COLLINS, [redacted]

b6
b7C
b7D

Mr. [redacted] states that in order [redacted] SA COLLINS [redacted] SA COLLINS [redacted] Attorney [redacted] has told both [redacted] and USA LACOUR that he is aware of this latter conversation between SA COLLINS [redacted]

[redacted] told Mr. [redacted] after the trial that he introduced [redacted] to SA COLLINS in the Golden Room at the Town and Country Restaurant and Lounge in Bossier City, La. While not certain of this, [redacted] indicated that she was either an employee of [redacted] or a personal friend.

[redacted] told [redacted] that [redacted] had told him that SA COLLINS "snacked up" with her for three nights at her place, presumably in Shreveport or Bossier City, La. [redacted] said that [redacted] was a divorcee.

b6
b7C

SA COLLINS states that [redacted] allegation that he introduced [redacted] to him is not true. SA COLLINS states he did meet Miss [redacted] at the Town and County Restaurant and Lounge at Bossier City, La. He further states that he took her to dinner on two occasions while in Shreveport in February, 1968.

b6
b7C

SA COLLINS states that Miss [redacted] employed by a Shreveport automobile agency. SA COLLINS states [redacted] did not introduce Miss [redacted] to him as he introduced himself to her and subsequently telephoned her for dinner dates.

NO 89-79 /sam

SA COLLINS categorically denies [redacted] allegation that he engaged in any improper conduct with her.

b6
b7C

The indices of the New Orleans Office are negative with respect to [redacted]

Based upon my discussion with SA COLLINS, I have no reason to question his statement as same was made forth-right and without the slightest degree of hesitation.

It is further noted that while the Town and Country Restaurant and Lounge is probably one of MARCELLO's operations, it is considered one of the more reputable restaurants and lounges and is frequented by the better-class citizens in the area.

[redacted] and [redacted] stated the above answered all their questions with respect to this matter and strongly indicated that their recommendation to the Department would be that the case be re-tried promptly.

b6
b7C

One point which they desire very closely guarded is their belief that they can completely shatter [redacted] testimony by proving that his memorandum is not what it purports to be; that same was an after-thought and was prepared in an attempt to discredit SA COLLINS.

For the further confidential information of the Bureau, USA [redacted] advised that the jury was nine-to-three for conviction. He indicated that one of the three had an intense hatred of the FBI, growing out of cattle rustling investigation, and indicated the possibility that the other two had been reached.

b6
b7C

This information, which apparently was furnished by the Foreman of the jury, is being pursued by the Department attorneys and the possibility exists that a request will be made for investigation in the area of the two jurors. No request was made and it is mentioned that this is the most recently obtained information and has not been completely evaluated.

NO 89-79 /sam

USA LACOUR and Departmental Attorney [redacted] stated that under no conditions should [redacted] JOE PORETTO and the OCCHIPINTIs be interviewed concerning this matter, since in their opinion, to do so would put the Government in very bad light and lay the basis for a claim by the defense that the Government was attempting to fix defense witnesses. b6 b7C

This matter will be closely followed and the Bureau kept advised of all developments.

For Informational Purposes Only

The originals removed from this file and replaced with duplicate copies of the original were accessioned to the National Archives and Records Administration (NARA) pursuant to the JFK Records Collection Act of 1992. Provision of the JFK Act allowed for certain information to be postponed from public release until the year 2017; therefore, the pages have NOT necessarily been released for public review in their entirety.

Under the JFK Act, originals to all material deemed assassination records must be accesssioned to NARA regardless of whether the material is open in full or released with information postponed. Therefore, any documents or pages from FBI files accessioned to NARA pursuant to the JFK Act are no longer considered the possession of the FBI. The duplicate pages have been inserted strictly for research purposes.

The copies contained herein do not necessarily show the most up-to-date classification.

To attain a copy of the publicly released version of any materials maintained in the JFK Collection at the NARA facility in College Park, MD, you may contact the JFK Access Staff, at 301/713-6620.

The following materials were removed from this file and are maintained in the JFK Collection at NARA:

File & Serial Number	JFK Subject Identifier (for NARA purposes)
89-1333 (75)	[redacted] b6 b7C

For Informational Purposes Only

FD-36 (Rev. 5-22-64)

F B I

Date: 6/12/68

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIRMAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, HOUSTON (89-45) (P)

SUBJECT: CARLOS J. MARCELLO, aka;
PATRICK J. COLLINS, JR. -VICTIM
AFO
(OO: New Orleans)

AUSA [redacted] Houston, Texas, advised on June 12, 1968 that no new motions have been filed in this matter and, to his knowledge, no action has as yet been taken concerning a possible new trial.

b6
b7C

REC 89

3 - Bureau
1 - New Orleans (89-79) (Info)
1 - Houston
RWS: sar
(5)

89-[redacted]-96

JUN 13 1968

51 JUN 25 1968

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO: DIRECTOR, FBI (89-1333)

DATE: 6/21/68

FROM: SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka.;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO: NEW ORLEANS)

Reference is made to the request of the Bureau for a copy of the transcript of the trial that was held in Laredo, Texas.

[redacted] On July 21, 1968, Departmental Attorney advised SA G. MYRYWIN ALDERSON that the transcript of the testimony during the trial was still being typed by the Court Reporter, at Houston, Texas. Mr. [redacted] stated that a copy of this transcript could be obtained in Houston, through the Office of the United States Attorney.

b6
b7C

The Houston Office is requested to contact the Office of the United States Attorney and obtain a copy of the transcript of the trial which was held at Laredo, Texas. When this copy of the transcript is obtained, it should be forwarded to the Bureau.

(2) - Bureau
2 - Houston (89-45)
2 - New Orleans
GMA:lrs
(6)

EX-REC 65

89-1333-97

12 JUN 24 1968

57 JUL 3 1968

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-108-01

Jun 28 9 10 AM '68

REC'D - FUGITIVE
F B I

RECEIVED
GENERAL INVESTIGATIVE
DIVISION

JUN 27 12 41 PM '68

F. B. I.
U. S. DEPT OF JUSTICE

FD-36 (Rev. 5-22-64)

F B I

Date: 6/29/68

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, HOUSTON (89-45)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO

OO: New Orleans

Assistant U.S. Attorney [redacted] advised SA [redacted] trial in this matter has been secretly set for 8/5/68, at Houston, Texas. The subject and his counsel are aware of these arrangements, and are cooperating in attempts to prevent the press from obtaining this information.

b6
b7C

3 - Bureau
1 - Houston

RWS/tjs
(4)

REC 29 89-1333-98

89-105

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

61 JUL 19 1968

RECEIVED
GENERAL INVESTIGATIVE
DIVISION

JUL 1 4 29 PM '68

F. B. I
U.S. DEPT OF JUSTICE

CRIMINAL DIVISION
DEPT OF JUSTICE

JUL 2 3 00 PM '68

F. B. I
U. S. DEPT OF JUSTICE

Routing Slip
FD-4 (Rev. 6-14-66)

Date 6/21/68

To:

XX Director

FILE NO 89-79

Att.: Administrative Division

Title CARLOS JOSEPH MARCELLO, aka; SA PATRICK J. COLLINS, JR. - VICTIM AFO

☐ SAC

☐ ASAC

☐ Supv.

☐ Agent

☐ SE

☐ IC

☐ CC

☐ Steno

☐ Clerk

Check for $ [redacted] detached and sent to Treasury. See Certificate of Deposit and Schedule of Collections FBI 4 dated 7-12-68

RE:

☐ Rotor #:

ACTION DESIRED

- ☐ Acknowledge
- ☐ Assign ____ Reassign ____
- ☐ Bring file
- ☐ Call me
- ☐ Correct
- ☐ Deadline ____
- ☐ Deadline passed
- ☐ Delinquent
- ☐ Discontinue
- ☐ Expedite
- ☐ File
- ☐ For information
- ☐ Handle
- ☐ Initial & return
- ☐ Leads need attention
- ☐ Open Case
- ☐ Prepare lead cards
- ☐ Prepare tickler
- ☐ Recharge serials
- ☐ Return assignment card
- ☐ Return file
- ☐ Return serials
- ☐ Search and return
- ☐ See me
- ☐ Send Serials to
- ☐ Submit new charge-out
- ☐ Submit report by
- ☐ Type
- ☐ Return with explanation or notation as to action taken.

NOT RECORDED 4 JUL 12 1968

ReBurouting slip 6/19/68.

Returned herewith is endorsed check in amount of [redacted] payable to Robert Rightmeyer for witness fee in connection with captioned case.

SAC ROBERT E. RIGHTMYER

____ See reverse side

Office NEW ORLEANS

51 JUL 18 1968

187

FD-36 (Rev. 5-22-64)

FBI

Date: 6/27/68

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

Mr. Tolson
Mr. Mohr
Mr. Bishop
Mr. Tavel
Tele. Room
Miss Gandy

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79)

SUBJECT: CARLOS JOSEPH MARCELLO;
SA PATRICK J. COLLINS, JR.
- VICTIM
AFO

Departmental Attorney [redacted] advised the retrial in captioned matter has been scheduled at Houston, Texas, for 8/5/68.

Mr. [redacted] advised that the Government would utilize the following witnesses:

SA PATRICK J. COLLINS, JR.	(assigned New Orleans)
SA [redacted]	(assigned FBI Lab)
SA [redacted]	(assigned Houston)
SA [redacted]	(assigned New Orleans)
ASAC J. T. SYLVESTER, JR.	(assigned New Orleans)

b6
b7C

Mr. [redacted] advised that ASAC SYLVESTER would be a necessary witness to testify on rebuttal to a contention that SA COLLINS was in Shreveport, La., on 2/5/68.

REC-35 61-1[illegible]-99

b6
b7C

Mr. [redacted] further advised he desired to introduce into evidence the sign-in registers for 2/5/68 thru 2/11/68 which show SA COLLINS as working and signing in and out on the registers in New Orleans during this entire week.

(4) - Bureau (1 - FBI Lab)
2 - Houston (Info)
2 - New Orleans

REC-35 15 JUL 16 1968

JTS:sam
(8)

Regarding Marcello material in capias dated 7-1-68 entitled [illegible]

7 - Appropriate

Approved _____ Sent _____ M Per _____
Special Agent in Charge

61 JUL 24 1968

C. C. - Bishop

6-28 cd

CRL 17 EDB

JUL 1 10 30 AM '69

U.S. DEPT. OF JUSTICE

JUL 1 [illegible] '68

JUL 16 4 28 PM '68

U.S. DEPT. OF JUSTICE

JUL 15 4 33 PM '68

U.S. DEPT. OF JUSTICE

NO 89-79 /sam

Mr. [redacted] advised he also desired to put into evidence the daily report of SA COLLINS submitted from Shreveport, La., on 2/12/68.

It was pointed out to Mr. [redacted] that the daily report, if made available to the defense counsel and/or CARLOS MARCELLO, contains names of other individuals contacted during the course of investigation that would reveal FBI interest in certain other hoodlums in the Shreveport area. b6 b7C

Mr. [redacted] advised he would arrange for an in camera inspection by the court in order to have the court exercise the portion of the above daily report which is not pertinent but which does reflect the contact with [redacted]

Mr. [redacted] stated that [redacted] Senior Resident Agent at Shreveport, La., is a necessary rebuttal witness to testify to the effect that SA COLLINS was in Shreveport on 2/12/68 and that he in turn initialed the daily report of SA COLLINS which was submitted to him in Shreveport prior to its transmittal to the New Orleans FBI Office.

Mr. [redacted] advised that the Judge admonished the USA's office, Houston, against alerting the press or any other news media with reference to the date of the retrial. It is also his understanding from the USA's office, Houston, that a petit jury list will not be made available in advance. b6 b7C

UACB, [redacted] who accompanied SA COLLINS on the night of the arrest and is a necessary witness, will be at Houston to testify in this matter no later than 8:00 a.m., 8/5/68.

UACB, ASAC J. T. SYLVESTER, JR., will be available in Houston to testify in rebuttal and to produce sign-in registers if necessary for introduction into evidence. b6 b7C

UACB, SA [redacted] will also report to Houston as requested by Departmental Attorney [redacted] who states his testimony will be vital for rebuttal as to SA COLLINS' presence in Shreveport on 2/12/68.

NO 89-79 /sam

SA COLLINS is a necessary witness and will appear UACB.

b6
b7C

SA [redacted] is already in Houston and should be available to testify to the arrest and any pertinent statements made by MARCELLO.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-106

UNITED STATES GOVERNMENT

Memorandum

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

TO : MR. TOLSON

DATE: 7/8/68

FROM : [redacted]

SUBJECT: CARLOS JOSEPH MARCELLO, AKA
SA PATRICK J. COLLINS, JR. - VICTIM
ASSAULT OF A FEDERAL OFFICER

Mr. [redacted] who is well known to the Bureau, called to advise that he desired to stop by and discuss a matter of importance involving possible embarrassment to the Bureau. I spoke to him in my office at 2:15 P. M. today. b6 b7C

[redacted] stated the information he had was obtained from his good friend, [redacted] the Washington attorney for Carlos Marcello (top hoodlum in the New Orleans area.) He stated that the Government had an assault case against Marcello for striking a blow at SA Pat Collins and this matter had been tried in Laredo, Texas, resulting in a hung jury on 5/29/68. A retrial is scheduled for 8/5/68 in Houston and [redacted] says he has damaging information and witnesses which will embarrass the Bureau and SA Collins. According to [redacted] SA Collins is a "swinger," has a great deal of money, works for the FBI for $1.00 a year and is having a good time. [redacted] indicated that Collins met with [redacted] a Marcello attorney, in Shreveport, Louisiana, and told [redacted] the assault charges should not have been filed against Carlos Marcello, but should have been against Marcello's [redacted] also that [redacted] introduced Collins to a prostitute named [redacted] and Collins, thereafter, spent three days and nights with her. b6 b7C

Davidson stated that he was furnishing the above information for the benefit of the FBI as he did not desire to see the Bureau embarrassed; that he believes the information [redacted] furnished him and that [redacted] would be willing to show to an FBI agent the documentation he has to prove these allegations in court. b6 b7C

I thanked Davidson for his interest in bringing this to our attention and made no further comment to him.

A check with the Special Investigative Division reveals that the above allegations have been made previously and have been refuted in court by SA Collins. They were first made to Departmental Attorney [redacted] by Marcello's attorney, [redacted] [redacted] feels that the allegations have been appropriately refuted. b6 b7C

89-1333-100

MCT-33
REC-47

16 JUL 17 1968

1 - Mr. DeLoach
1 - Mr. Gale

XEROX

RRB:DSS

53 JUL 30 1968

PERS. REC. UNIT

REC'D - ROSEN
FBI

JUL 9 12 06 PM '68

F. B. I.
U.S. DEPT. OF JUSTICE

JUL 15 11 12 AM '68 RECEIVED - DIRECTOR
F. B. I.

JUL 9 9 20 AM '68

JUL 9 10 03 AM '68

JUL 16 11 23 AM '68
FBI

JUL 9 10 34 AM 68
FBI
REC-D BISHOP

JUL 10 10 22 AM '68
U.S. DEPT. OF JUSTICE

It is obvious that Marcello and his attorney are still attempting to engage in shyster tactics in an endeavor to save Marcello from being convicted of assaulting an agent.

RECOMMENDATION:

That this be referred to the Special Investigative Division for information and any appropriate action.

RM

Press vigorously the prosecution of Marcello.

1 - Mr. Griffith b6
1 - Mr. [redacted] b7C

July 17, 1968

AIRTEL

EX-103

To: SAC, New Orleans (89-79)
REC 45
From: Director, FBI (89-1333) — 101

CARLOS JOSEPH MARCELLO
SA PATRICK J. COLLINES, JR. - VICTIM
AFO

Re New Orleans airtel to Bureau, 7/12/68.

Special Agent [redacted] has already testified in this matter and has attended pretrial conferences with Departmental Attorney, [redacted] relative to the May 1968 trial of captioned subject in Laredo, Texas. b6 b7C

SA [redacted] holds reservations on Eastern flight #555, arriving Houston 8:25 P.M., 8/4/68. If there are persuasive reasons, not apparent to the Bureau, why SA [redacted] should appear earlier, advise Bureau immediately. b6 b7C

MAILED 10
JUL 17 1968
COMM-FBI

2 - New Orleans (89-79)
2 - Houston

JMA:JMF (7)

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

54 JUL 24 1968

MAIL ROOM ☑ TELETYPE UNIT ☐

FD-36 (Rev. 5-22-64)

FBI

Date: 7/12/68

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIRMAIL
(Priority)

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

Re New Orleans airtel to Bureau, 6/27/68.

Departmental Attorney, [redacted] advised that [redacted] AUSA, Houston, Texas, advised 7/11/68. Special Agents PATRICK J. COLLINS, JR. and [redacted] would be required to appear at pretrial conference at 8:00 A.M., 8/2/68, at Houston, Texas.

UACB, PATRICK J. COLLINS, JR. and [redacted] will be at Houston for pretrial conference in this matter no later than 8:00 A.M., 8/2/68.

(4) - Bureau
(1- FBI Lab)
2 - Houston (Info)
2 - New Orleans
JCM/kmt
(8)

EX-103

cc-DeD REC 45 87-1333-101

JUL 15 1968

SEVEN

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

REC'D - RUSSELL
FBI

Jul 15 2 39 PM '68

Jul 15 12 49 PM '68

Jul 15 3 27 PM '68

RECD - FBI
SPECIAL INVESTIGATIVE
DIVISION

U.S DEPT OF JUSTICE

FD-36 (Rev. 5-22-64)

FBI

Date: 7/15/68

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIRMAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79) (P)

CARLOS JOSEPH MARCELLO;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

Former [redacted] telephonically contacted the New Orleans Office today and [redacted]

b6
b7C
b7D

[redacted]

b6
b7C
b7D

Former source is going to make an appointment with [redacted] Departmental Attorney, to discuss this situation.

b6
b7C

Departmental Attorney [redacted] New Orleans, apprised of the above situation.

[redacted]

b6
b7C
b7D

[redacted]

Bureau will be kept advised.

REC-78 87-1333-102

X-110

15 JUL 17 1968

(3) - Bureau
2 - New Orleans
PJC:med
(5)

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

1JUL 29 1968

JUL 29 1968

JUL 18 12 55 PM '68

JUL 17

SPECIAL AGENT

JUL 19 9 55 AM '68

U.S. DEPT. OF JUSTICE

FD-36 (Rev. 5-22-64)

F B I

Date: 7/18/68

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO

Re New Orleans airtel 7/15/68.

As noted in referenced airtel, Departmental Attorney [redacted] was to meet with [redacted] b6 b7C b7D

[redacted] discussed with [redacted] specifically with reference to allegations made by MARCELLO's defense attorney [redacted] that SA COLLINS [redacted] SA COLLINS is alleged to have said to [redacted] another defense attorney; [redacted] b6 b7C b7D

CARLOS MARCELLO would win the case in Federal District Court.

[redacted] stated without qualification that SA COLLINS had never told her any of the foregoing and that they had not discussed the case. b6 b7C b7D

REC-65 89-1333-103

Above for information of the Bureau.

3 - Bureau
2 - New Orleans
JTS:sam
(5)

20 JUL 20 1968

Approved: AUG 5 1968 Sent _____ M Per _____
Special Agent in Charge

RECEIVED
FEDERAL INVESTIGATIVE
DIVISION STAT

JUL 27 9 59 AM '68 JUL 28 3 13 PM '68 JUL 24 11 52 AM '68

F. B. I.
U. S. DEPT. OF JUSTICE SPECIAL AGENT
INVESTIGATIVE

SPECIAL AGENT
INVESTIGATIVE

JUL 28 3 53 PM '68
F. B. I.
U. S. DEPT. OF JUSTICE

JUL 24 11 52 AM '68
F. B. I.
U. S. DEPT. OF JUSTICE

7/27/68

SPECIAL INVESTIGATIVE DIVISION

Subpoena received for appearance of SAC, and Assistant SAC, New Orleans, as well as Agent now assigned to Seat of Government for appearance on August 5, Houston, Texas, for retrial of La Cosa Nostra leader Marcello on charges of Assaulting a Federal Officer. In view of fact SAC, New Orleans, was on extended sick leave during period pertinent to assaulting case, New Orleans recommends and Special Investigative Division concurs, that contact be made with Department to quash subpoena of SAC, New Orleans. If approved, appropriate contact will be made.

AAS:

89-1333-104

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO: DIRECTOR, FBI (89-1333) DATE: 7/26/68

FROM: SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka.;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO: NEW ORLEANS)

Re New Orleans teletype dated 7/26/68.

Enclosed are two Xerox copies of the subpoenas issued by defense attorney [redacted] 1707 Pere Marquette Bldg., New Orleans, Louisiana for the appearance of SAC ROBERT RIGHTMYER, ASAC J. T. SYLVESTER, JR., and SA [redacted] in USDC, Southern District of Texas, Houston, Texas on August 5, 1968, at 10 AM to testify in the above entitled case. b6 b7C

Also enclosed are three checks, each in the amount of $64.00. These checks are numbered 169, 173 and 174, are drawn on the Merchants Trust and Savings Bank, Kenner, La., payable to [redacted] J. T. SYLVESTER, JR. and ROBERT RIGHTMYER. These checks are certified and signed by [redacted] Notary Public, 1225 Airline Highway, Metairie, Louisiana. These three checks were attached to the above described subpoenas and are to cover the travel expenses of SAC RIGHTMYER, ASAC SYLVESTER and SA [redacted] to answer their subpoenas. b6 b7C b7E

ENCLOSURE ATTACHED
ENCLOSURE

3 checks detached in Budget Unit for deposit in Treasury — RLS

2 - Bureau (Enc. 9) (AM)(RM)
2 - New Orleans
GMA:lrs
(4)

166-DHD

REC 49
REC 49

89-1333-104

113

12 JUL 29 1968

(1) THREE [redacted]

(2) [illegible]

327
59 AUG 6 - 1968

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-103-01

FBI

JUL 31 1 32 PM '68

FBI - CID
SPECIAL INVESTIGATIVE
DIVISION

CRIMINAL INTELLIGENCE SECTION
SPECIAL INVESTIGATIVE DIV.

JUL 31 2 10 PM '68

F. B. I.
U. S. DEPT. OF JUSTICE

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79) (P)

RE: CARLOS JOSEPH MARCELLO, aka.;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO: NEW ORLEANS)

ENCLS: Two Xerox copies each of subpoenas issued for the appearance of SAC ROBERT E. RIGHTMYER, ASAC J. T. SYLVESTER, JR., and SA [redacted]

b6
b7C

Also enclosed are three checks, each in amount of $64.00.

AIR MAIL - REGISTERED

ENCLOSURE

89-1333-101

Subpoena to Testify

Cr. Form No. 20 (Rev. 1-57)

United States District Court

RECEIVED
[illegible]
JUL 26 12 55 PM '68
NEW ORL[illegible]NS 12, LA.

FOR THE

SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA

v.

CARLOS MARCELLO

No. 68-L-89

b6
b7C

To [redacted] Federal Bureau of Investigation, Department of Justice, New Orleans, Louisiana

You are hereby commanded to appear in the United States District Court for the Southern District of Texas at Federal Building, Judge Connally's Courtroom in the city of Houston, Texas on the 5th day of August, 19 68 at 10:00 o'clock A.M. to testify in the above-entitled case., and upon any adjourned date.

This subpoena is issued on application of the[1] defendant.

July 11, 19 68

[redacted]

Attorney for

1707 Pere Marquette Bldg.,

Address New Orleans, Louisiana

V. BAILEY THOMAS

_____, *Clerk.*

By _____, *Deputy Clerk.*

RETURN

Received this subpoena at _____ on _____ and on _____ at _____ I served it on the within named _____ by delivering a copy to h[illegible] and tendering[2] to h[illegible] the fee for one day's attendance and the mileage allowed by law.

_____,

Service Fees By _____,

Travel _____ $

Services _____

Total _____ $

[1] Insert "United States," or "defendant" as the case may be.

[2] Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825.

Subpoena to Testify — Cr. Form No. 20 (Rev. 1-67)

United States District Court

FOR THE
SOUTHERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA

v.

CARLOS MARCELLO

No. 68-L-89

To Special Agent, T. Sylvester, F.B.I., Department of Justice, New Orleans, Louisiana

You are hereby commanded to appear in the United States District Court for the Southern District of Texas at Federal Building Judge Connally's Courtroom in the city of Houston, Texas on the 5th day of August, 1968 at 10:00 o'clock A. M. to testify in the above-entitled case, and upon any adjourned date.

This subpoena is issued on application of the[1] defendant.

July 11, 1968

[redacted]
Attorney for Defendant
1707 Pere Marquette Bldg.,
Address New Orleans, La.

V. BARNEY WOODS, *Clerk.*

By _____, *Deputy Clerk.*

RETURN

Received this subpoena at _____ on _____
and on _____ at _____ I served it on the
within named _____
by delivering a copy to h _____ and tendering[2] to h _____ the fee for one day's attendance and the mileage
allowed by law.

_____

Service Fees By _____

Travel _____ $
Services _____
Total _____ $

[1] Insert "United States," or "defendant" as the case may be.
[2] Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825.

Subpoena to Testify

Cr. Form No. 20 (Rev. 1-57)

United States District Court

FOR THE

SOUTHERN DISTRICT OF TEXAS

RECEIVED
CLERK'S OFFICE
JUL 21 2 55 PM '68
HOU
S.D. TEX.

UNITED STATES OF AMERICA

v.

CARLOS MARCELLO

No. 68-L-89

To Robert Rightmeyer, Federal Bureau of Investigation, Department of Justice, New Orleans, Louisiana

You are hereby commanded to appear in the United States District Court for the Southern District of Texas at Federal Building Judge Connally's Courtroom in the city of Houston, Texas on the 5th day of August 19 68 at 10:00 o'clock A.M. to testify in the above-entitled case, and upon any adjourned date

This subpoena is issued on application of the[1] defendant.

July 11, 19 68

[redacted]

Attorney for Defendant

1707 Pere Marquette Building

Address New Orleans, Louisiana

V. BAILEY THOMAS

Clerk.

By _____

Deputy Clerk.

b6
b7C

RETURN

Received this subpoena at _____ on _____

and on _____ at _____ I served it on the

within named _____

by delivering a copy to h_____ and tendering[2] to h_____ the fee for one day's attendance and the mileage allowed by law.

_____

By _____

Service Fees

Travel _____ $

Services _____

Total _____ $

[1] Insert "United States," or "defendant" as the case may be.

[2] Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825.

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATION SECTION
JUL 26 1968

TELETYPE

/\FBI WASH DC

FBI NEW ORLS
417PM 7-26-68 URGENT LWH
TO DIRECTOR 89-1333 AND HOUSTON 89-45
FROM NEW ORLEANS 89-79

CARLOS JOSEPH MARCELLO, AKA; SA PATRICK J. COLLINS, JR.
VICTIM, AFO.

U. S. MARSHAL'S OFFICE DELIVERED SUBPOENAES TO NEW ORLEANS OFFICE IN CAPTIONED CASE FOR SAC ROBERT E. RIGHTMYER, ASAC J. T. SYLVESTER, JR., AND SA [redacted]

SUBPOENAES WERE ISSUED AT THE REQUEST OF THE ATTORNEY FOR THE DEFENDANT, [redacted] FOR APPEARANCE OF THE ABOVE NAMED SPECIAL AGENTS IN U. S. DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS, HOUSTON, AUGUST FIVE, SIXTYEIGHT, AT TEN A. M., TO TESTIFY IN THIS MATTER. CERTIFIED CHECKS OF SIXTYFOUR DOLLARS EACH WERE ATTACHED TO INSTANT SUBPOENAES. THESE CHECKS WILL BE HANDLED PURSUANT TO CURRENT BUREAU INSTRUCTIONS.

DEPARTMENTAL ATTORNEY [redacted] WHO HAS BEEN HANDLING THIS MATTER, IS CURRENTLY ON LEAVE AND NOT AVAILABLE.

IT IS TO BE NOTED THAT SAC RIGHTMYER WAS UNDERGOING MAJOR SURGERY DURING THE TIME OF THIS ASSAULT AND HAS NO DIRECT KNOWLEDGE OF THE MATTER. DEPARTMENTAL ATTORNEY [redacted] HAS

END PAGE ONE

b6
b7C

b6
b7C

AUG 6 1968

RECEIVED
FEDERAL INVESTIGATION
DIVISION STATE

JUL 26 5 59 PM '68

F. B. I.
U. S. DEPT. OF JUSTICE

ADVISED SAC RIGHTMYER THAT HE TOLD [redacted] AFTER THE LAREDO, TEXAS, TRIAL THAT RIGHTMYER WAS HOSPITALIZED AT THE TIME OF THE ASSAULT, THEREFORE, HAD NO FIRST HAND KNOWLEDGE OF THE CASE. [redacted] FURTHER STATED THAT [redacted] SAID AT THIS TIME THAT HE WAS SATISFIED THERE WAS NO WIRETAPPING INVOLVED IN THIS MATTER, IT BEING NOTED THAT IN THE FALL OF NINETEEN SIXTYSEVEN, [redacted] SUBPOENAED SAC RIGHTMYER IN CONNECTION WITH DISCLOSURE OF ANY WIRETAPS. b6 b7C

SINCE THE GOVERNMENT INTENDS TO USE ASAC SYLVESTER AS A GOVERNMENT WITNESS AND FURTHER IN VIEW OF THE FACT THAT IT WOULD APPEAR THAT ASAC SYLVESTER COULD TESTIFY TO ALL MATTERS THAT RIGHTMYER COULD, IT IS SUGGESTED THAT THE BUREAU LOCATE DEPARTMENTAL ATTORNEY [redacted] AND SEE IF THE SUBPOENA OF SAC RIGHTMYER CANNOT BE QUASHED SINCE IT IS HIGHLY UNDESIRABLE FOR BOTH THE SAC AND ASAC TO BE OUT OF THE DIVISION AT ONE TIME. IT IS ALSO TO BE NOTED THAT [redacted] SUBPOENAED RIGHTMYER TO LAREDO, BUT DID NOT CALL HIM AS A WITNESS. b6 b7C

END

SLB

FBI WASH DC

ORIG: MR. DELOACH FOR DIRECTOR

FBI

JUL 26 5 22 PM '60

RECEIVED-GALE

JUL 26 6 32 PM '60

DEPT. OF JUSTICE

FD-36 (Rev. 5-22-64)

F B I

Date: 7/11/68

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, HOUSTON (89-45)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO: NO)

ReNOlet to Bu, 6/21/68.

Enclosed for the Bureau is one copy of transcript of the trial proceedings at Laredo, Texas.

3 - Bureau (Enc-1) ENCLOSURE
1 - New Orleans (89-79)(Info)
1 - Houston
RWS/sjm
(5)

ENC. BEHIND FILE

ENCLOSURE

REC-3 89-1333-105

4 JUL 13 1968

Sent _____ M Per _____

Special Agent in Charge

1968

RECEIVED
GENERAL INVESTIGATIVE
DIVISION 5710
JUL 13 12 41 PM '68
F. B. I.
U. S. DEPT. OF JUSTICE

FD-36 (Rev. 5-22-64)

F B I

Date: 7/23/68

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, HOUSTON (89-45) (P)

SUBJECT: CARLOS JOSEPH MARCELLO;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO

Re Bureau Airtel to New Orleans, dated 7/17/68.

Assistant U.S. Attorney [redacted] advised this date that it is imperative that SA [redacted] be in Houston on 8/2/68, for pre-trial conference. He stated that although [redacted] has had pre-trial conferences with Departmental Attorney [redacted] he feels it necessary to the proper continuing of this case that he can go over SA [redacted] testimony prior to the trial.

REC- 50 89-1333-106

JUL 25 1968

3 - Bureau
1 - New Orleans (89-79) (Info)
2 - Houston

RWS/tjs
(6)

[redacted]

[redacted]

SIX

cc Mr. 7/26/68 Rec
C. C. - Bishop

7-[redacted] GRIFFITH

NI Rec'd 1529
1527

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

1968

FD-36 (Rev. 5-22-64)

FBI

Date: 7/22/68

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIRMAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)
(ATTENTION: SPECIAL INVESTIGATIVE DIVISION)
(ATTENTION: IDENTIFICATION DIVISION)

FROM: SAC, NEW ORLEANS (89-79)(P)

SUBJECT: CARLOS MARCELLO, aka;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO

Departmental Attorney [redacted] requested identification record checks and copies of any up-to-date identification records on the following individuals; who may be used by subject in his upcoming assault trial:

(1) JOSEPH PORETTO, FBI #1799932, born 3/21/06, at New Orleans, La.;

(2) [redacted] FBI # [redacted] born [redacted] at New Orleans, La.;

(3) ROSARIO FRANK OCCHIPINTI, aka, Roy Occhipinti, no known FBI number, born 5/30/24, at New Orleans, La., or Rockford, Ill., w/m, 5'7", 190 lbs., brown eyes, bald head, USN serial # 5744125

EX-105 REC-78 87-12382-107

17 JUL 24 1968

Please expedite as trial takes place on 8/5/68.

(4) - Bureau
2 - New Orleans
PJC:jah
(6)

C.C. - Bishop

ONE/NEG

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

JUL 30 1968

JUL 30 11 00 AM '68

JUL 26 AM '68

b6
b7C

1 - Mr. Griffith
1 - Mr. [redacted]

7/30/68

Airtel

To: SAC, Houston (89-45)

From: Director, FBI (89-1333)

CARLOS JOSEPH MARCELLO
SA PATRICK J. COLLINES, JR. -
VICTIM
AFO

Reurairtel 7/23/68.

SA [redacted] will arrive Houston on 8/1/68, at 8:25 pm via Eastern Flight #555. Houston is requested to make appropriate motel or hotel reservations.

b6
b7C

MCT-44 89-1333-108

MAILED 3
JUL 30 1968
COMM-FBI

EX 110 REC-30 JUL 31 1968

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

1 - New Orleans (89-79)

JMA:JMF (6)

59 AUG 7 - 1968

MAIL ROOM ☐ TELETYPE UNIT ☐

SPECIAL INVESTIGATIVE DIVISION

August 1, 1968

With respect to the retrial of New Orleans La Cosa Nostra leader Marcello on charges of assaulting Federal officer now scheduled for August 5 in Houston, Texas, it has been ascertained that the U. S. District Judge has issued an order to all agencies and personnel involved to give no publicity to pending trial. U. S. Attorney has advised he contemplates making motion to quash subpoena received by Attorney General. No motion to quash subpoena of SAC Rightmyer contemplated since he appeared at previous trial and there is no basis for such action.

AAS:msm

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATION SECTION
JUL 31 1968

TELETYPE

Mr. Tolson	
Mr. DeLoach	
Mr. Mohr	
Mr. Bishop	
Mr. Casper	
Mr. Callahan	
Mr. Conrad	
Mr. Felt	
Mr. Gale	
Mr. Rosen	
Mr. Sullivan	
Mr. Tavel	
Mr. Trotter	
Tele. Room	
Miss Holmes	
Miss Gandy	

FBI WASH DC

FBI HOUSTON

342PM URGENT 7-31-68 MBG

TO DIRECTOR, FBI (89-1333)

NEW ORLEANS (89-49)

FROM HOUSTON (89-45)

CARLOS JOSEPH MARCELLO, AKA; SA PATRICK J. COLLINS, JR. VICTIM, AFO.

REBUTEL, JULY THIRTY, LAST. U.S. ATTY / U.S. MARSHAL
U.S. DISTRICT JUDGE
USDJ, HOUSTON, THIS DATE ORDERED USA, USM, FBI AND DEFENSE ATTORNEYS TO GIVE NO PUBLICITY WHATEVER TO PENDING TRIAL AND IS SIGNING A WRITTEN ORDER TO THIS EFFECT.

U.S. ATTY
USA ADVISES PRETRIAL CONFERENCE WITH JUDGE WILL BE HELD FRIDAY, AUG. TWO, NEXT, NINE THIRTY AM AT WHICH TIME EFFORTS WILL BE MADE TO QUASH SUBPOENA RECEIVED BY AG. NO EFFORT WILL BE MADE TO QUASH SUBPOENA SERVED AGAINST SAC RIGHTMYER AS HE APPEARED AT PREVIOUS TRIAL AND HAS NOT BEEN REQUESTED TO BRING ANY RECORDS AND THERE IS NO BASIS TO QUASH. USA STATES RIGHTMEYER SHOULD APPEAR AS DIRECTED BY SUBPOENA.

REC 27 89-1333-109

16 AUG 2 1968

END

EXJ

FBI WASH DC

@

CC - MR. ROSEN

MR. DELOACH FOR THE DIRECTOR

JUL 31 4 30 PM '68
FBI
DEPARTMENT OF JUSTICE

FBI
JUL 31 3 45 PM '68

JUL 31 4 55 PM '68
DEPARTMENT OF JUSTICE

AUG 1 8 48 AM '68
FBI

AUG 1 3 08 PM '68
RECD-ROSEN
FBI
U.S. DEPT OF JUSTICE

AUG 1 A 20 PM '68
REC'D-CRIMINAL SEC.
F.B.I.

AUG 1 10
FBI
REC-D BISHOP

AUG 1 12 21 PM '68
U.S. DEPT OF JUSTICE

FD-36 (Rev. 5-22-64)

F B I

Date: 7/29/68

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIRMAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)
ATTENTION: IDENTIFICATION DIVISION

FROM: SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka.;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO: NEW ORLEANS)

Departmental Attorney [redacted] has requested that copies of Identification Records on the following individuals be fufnished AM to the United States Attorney, Houston, Texas:

(1) JOSEPH PORETTO, FBI #1 799 932

(2) [redacted] FBI # [redacted]

(3) ROSARIO FRANK OCCHIPINTI, aka, Roy Occhipiniti, FBI #4 638 889.

Please expedite as trial takes place in Houston, Texas on 8/5/68.

3 - Bureau
2 - Houston (89-45)
2 - New Orleans
GMA:lrs
(7)

REC 46 [illegible]-110

JUL 31 1968

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

AUG 2 11 4 AM '68
REC'D - FUGITIVE
F B I

JUL 31 12 35 PM '68
REC'D-IDENT. DIV
FBI

SPECIAL INVESTIGATIVE DIVISION

August 3, 1968

During preliminary hearing in case involving retrial of La Cosa Nostra boss Marcello on charges of assaulting Federal officer, judge quashed defense subpoena to Attorney General for production of records other than those pertaining to statements of witnesses. Judge also overruled defense motion for perusal of Bureau Agent Collins' personnel file. Selection of jury expected to begin Monday, August 5, 1968.

AAS:msm

FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
COMMUNICATION SECTION

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Tele. Room
Miss Holmes
Miss Gandy

FBI WASH DC

TELETYPE

FBI HOUSTON

335PM URGENT 8-2-68 MBG

DIRECTOR (89-1333)

FROM HOUSTON (39-45) (P)

CARLOS JOSEPH MARCELLO, ~~AKA~~ also known as.; ~~SA~~ SPECIAL AGENT PATRICK J. COLLINS, JR. - VICTIM, ~~AFO~~. ASSAULTING FEDERAL OFFICER.

REFERENCE MY TELETYPE ~~REMYTEL~~ TODAY.

IN PRETRIAL HEARING THIS DATE JUDGE QUASHED SUBPOENA OF ~~AG~~ ATTORNEY GENERAL AND PRODUCTION OF ALL RECORDS REQUESTED BY DEFENSE EXCEPT STATEMENTS OF WITNESSES UNDER JENCKS ACT. GOVERNMENT FURNISHED DEFENSE COUNSEL ALL FD THREE ZERO TWOS FROM CAPTIONED CASE. JUDGE RULED FD THREE ZERO TWOS FROM ANY OTHER CASE INADMISSABLE. JUDGE OVERRULED DEFENSE MOTION FOR PERUSAL OF ~~BUAGENT~~ BUREAU AGENTS PERSONNEL FILE.

AIRMAIL COPY TO NEW ORLEANS.

REC 4 89-1333-111

END

LPT

FBI WASH DC

AUG 6 1968

54 AUG 12 1968

REC'D - ROSEN
FBI
Aug 2 5 16 00 '60

REC'D - ROSEN
FBI
Aug 3 4 37 PM '60

Aug 3 9 [illegible] AM '60
[illegible]
F B I

Aug 3 1 27 PM '60
REC'D [illegible]
F B I

RECEIVED-DIRECTOR
F. B. I.
Aug 3 3 11 AM 1960

Aug 5 10 01 AM '60
REC'D-CRIMINAL SEC.
F B I

8/2/68

SPECIAL INVESTIGATIVE DIVISION

By way of background, SAC and ASAC, New Orleans, both subpoenaed by defense for appearance in Houston 8/5/68 for retrial of New Orleans La Cosa Nostra (LCN) boss Marcello on assaulting a Federal officer charges. Inquiry made of U.S. Attorney to determine if appearance could be staggered in order that both officials were not away from the New Orleans Office at the same time. Houston Office advises staggering of the appearance not possible though their arrival in Houston may be deferred until 8/6/68, since it is anticipated difficulty will be met in the selection of jury on 8/5/68.

It has been previously ascertained that this trial is expected to be of very short duration and may be as little as two days in length. Matter will be followed closely to insure appearance of New Orleans Office officials in Houston is held to an absolute minimum.

AAS:mfd

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATION SECTION

AUG 2 1968

FBI WASH DC

TELETYPE

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

FBI HOUSTON

1242PM URGENT 8-2-68 MBG

TO DIRECTOR (89-1333)

FROM HOUSTON (89-45)

CARLOS JOSEPH MARCELLO, AKA; SA PATRICK J. COLLINS, JR.
VICTIM, AFO.

ASSAULT OF FEDERAL OFFICER

RE HOUSTON TEL CALLS TODAY TO BUREAU AND NEW ORLEANS.

ASSIT U.S. ATTORNEY
AUSA, [redacted] ADVISED TODAY NOT POSSIBLE TO STAGGER
ASST AGENT IN CHARGE SPECIAL AGENT IN CHARGE
APPEARANCE OF ASAC SYLVESTER AND SAC RIGHTMYER OF NEW
ORLEANS AT TRIAL IN INSTANT CASE, HOWEVER, ANTICIPATES SOME
DIFFICULTY IN SELECTING A JURY WHEN TRIAL BEGINS AUGUST FIVE
NEXT. STATED IT WOULD NOT BE NECESSARY FOR ASAC SYLVESTER
AND SAC RIGHTMYER TO APPEAR IN HOUSTON ON MONDAY AS PREVIOUSLY
ORDERED, BUT INSTEAD TO REPORT NINE AM TUESDAY, AUGUST SIX
NEXT.

NEW ORLEANS ADVISED AIRMAIL.

REC-3
89-45-113

END

EXJ

FBI WASH DC

25 AUG 7 1968

57 AUG 12 1968

AUG 6 10 16 AM '68

REC'D - FUGITIVE.
F B I

AUG 2 3 16 PM '68

AUG 6 11 57 AM '68

AUG 5 11 14 AM '68

REC'D-CRIMINAL SEC.
F B I

AUG 2 1 44 PM '68

F B I

AUG 2 2 18 PM '68

REC'D - ROSEN
FBI

AUG 5 9 44 AM '68

REC'D-ROSEN
FBI

8/2/68

SPECIAL INVESTIGATIVE DIVISION

In view of fact both SAC and ASAC New Orleans, subpoenaed for simultaneous appearance in Houston as witnesses in retrial of New Orleans La Cosa Nostra leader Marcello on charges of assaulting a Federal officer, contact made with Department in effort to stagger the appearance of the SAC and ASAC in Houston. Department's Organized Crime Deputy Chief Keeney indicated in view of fact subpoena issued by defense, it was questionable if defense would agree to such arrangement and recommended contact with U.S. Attorney. He indicated trial is expected to be extremely short in duration of possibly two days. ASAC, Houston, has been instructed to contact U.S. Attorney and determine if arrangements can be made to stagger appearance of SAC and ASAC, New Orleans, in Houston and advise Bureau of results.

AAS:mfd

VIA TELETYPE
AUG 1 1968
ENCIPHERED

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

R-30

URGENT 8-1-68

TO DIRECTOR (89-1333)

FROM NEW ORLEANS

ATTENTION MOVEMENT SECTION.

CARLOS JOSEPH MARCELLO; SA PATRICK J. COLLINS, JR., - VICTIM. ASSAULTING A FEDERAL OFFICER. AFO.

SAC ROBERT E. RIGHTMYER AND ASAC JOSEPH T. SYLVESTER, JR., JR., WILL BE SIMULTANEOUSLY ABSENT FROM HEADQUARTERS CITY AND OUTSIDE THE STATE OF LOUISIANA FROM AUGUST FIVE, NEXT, UNTIL RELEASED BY U. S. DISTRICT COURT, HOUSTON, TEXAS.

RIGHTMYER AND SYLVESTER CAN BE REACHED CARE OF HOUSTON OFFICE OF FBI AND SUPERVISOR ERNEST C. WALL, JR., WILL BE IN CHARGE OF THE NEW ORLEANS OFFICE.

REC-110 89-1333-114

1 AUG 6 1968

RECEIVED: 5:49 PM RDR

Noted in Comm. Sec'y
By 2873

53AUG 13 1968

MR. MOHR FOR THE DIRECTOR

RECEIVED DIRECTOR
F. B I.
Aug 2 12 10 PM '68

RECEIVED
TELETYPE UNIT
Aug 1 6 43 PM '68

Aug 1 7 29 PM '68

DEPT. OF JUSTICE

Aug 2 1 43 PM '68
DIRECTOR
F B I

Aug 2 2 03 PM '68

7/30/68

PLAINTEXT

TELETYPE

URGENT

TO SAC HOUSTON (89-45)
NEW ORLEANS (89-79)

FROM DIRECTOR, FBI (89-1333)

CARLOS JOSEPH MARCELLO, AKA; SA PATRICK J. COLLINS, JR. VICTIM, AFO.

RE NEW ORLEANS TELETYPE, JULY TWENTY-SIX, LAST. DEFENSE SUBPOENAS FOR BUREAU PERSONNEL DESCRIBED IN RETEL DISCUSSED WITH DEPARTMENT. DEPARTMENT ADVISES AUSA, [redacted] WILL HANDLE EFFORTS TO QUASH SUBPOENA FOR SAC RIGHTMYER; HOWEVER, CURRENTLY OF OPINION RIGHTMYER'S PRESENCE WILL BE NECESSARY WHEN MOTION TO QUASH ARGUED. NEW ORLEANS INSURE COPIES OF SUBPOENAS ARE IMMEDIATELY FURNISHED TO USA IN NEW ORLEANS AND HOUSTON.

DEPUTY CHIEF JOHN KEENEY, ORGANIZED CRIME AND RACKETEERING SECTION, DEPARTMENT, WILL CONTACT USA, HOUSTON, CONCERNING EFFORTS TO QUASH SUBPOENA FOR SAC RIGHTMYER AS WELL AS SUBPOENA RECEIVED BY ATTORNEY GENERAL FOR PRODUCTION OF RECORDS IN CAPTIONED MATTER.

NEW ORLEANS AND HOUSTON MAINTAIN CLOSE CONTACT WITH RESPECTIVE USA'S OFFICES AND KEEP BUREAU ADVISED.

REK:jm
(3)

SEE NOTE PAGE 2.

REC-110 89-1333-115

12 AUG 6 1968

MAIL ROOM ☐ TELETYPE UNIT ☑

AUG 1 1968

FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
COMMUNICATION SECTION
JUL 30 1968
TELETYPE

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Ingram
Gandy

JUL 30 4 19 PM '68
RECEIVED
FBI

JUL 30 3 27 PM '68
DEPT OF JUSTICE

JUL 30 7 22 PM '68
DEPT OF JUSTICE

JUL 31 11 68

FBI
JUL 30 4 54 PM '68

NOTE: This concerns retrial of Carlos Marcello, New Orleans' La Cosa Nostra leader for assault of Bureau Agent to start 8/5/68 in Houston, Texas. New Orleans received defense subpoenas for SAC, ASAC, New Orleans, and SA [redacted] Seat of Government, for appearance in Houston, Texas, 8/5/68. SAC Rightmyer subpoenaed for defense in first trial but did not testify. SA [redacted] testified as supervisor assigning Bureau Agents to observe Marcello prior to assault. New Orleans recommends efforts to quash subpoena of SAC as he was on extended sick leave during period pertinent to assault case. Department contacted and advises efforts will be made to quash SAC's subpoena but of opinion his presence will be required when motion argued. New Orleans and Houston instructed to follow closely.

b6
b7C

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATION SECTION
AUG 3 1968

TELETYPE

FBI WASH DC

FBI HOUSTON

1106AM URGENT 3-3-68 MBG

TO DIRECTOR (89-1333) AND NEW ORLEANS (89-79)

FROM HOUSTON (89-45) (P)

CARLOS JOSEPH MARCELLO, AKA.; SA PATRICK J. COLLINS, JR.

VICTIM, AFO.

DEPARTMENTAL ATTORNEY [redacted] ADVISED TODAY IT WILL BE NECESSARY FOR ASAC, NEW ORLEANS, TO BRING FOLLOWING DOCUMENTS TO HOUSTON EIGHT FIVE NEXT:

NUMBER ONE REGISTERS FROM TWO TWO LAST THROUGH TWO SIXTEEN LAST;

DAILY REPORTS OF VICTIM FROM TWO ELEVEN LAST THROUGH TWO FOURTEEN LAST.

BUREAU WILL BE KEPT ADVISED.

EN

~~CORR LINE SIX WRD LZXXX ONE SHD READ DAILY.~~

END

BJP

FBI WASH DC

01 AUG 12 1968

b6
b7C

EX-100

87-1333-116

REC 54

FBI

AUG 3 12 08 PM '66

AUG 3 12 20 PM '66

FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE
COMMUNICATION SECTION

TELETYPE

FBI WASH DC

130PM URGENT 8-3-68 BMC

TO: DIRECTOR (89-1333) AND HOUSTON (89-45)

FROM: NEW ORLEANS (89-79)

CARLOS JOSEPH MARCELLO, AKA; SA PATRICK J. COLLINS, JR.

VACTIM, AFO.

RE HOUSTON TELETYPE TO BUREAU AND NEW ORLEANS ELEVEN ZERO EIGHT A.M., AUGUST THREE INSTANT.

HOUSTON OFFICE SHOULD APPRISE DEPARTMENTAL ATTORNEY [redacted] [redacted] IF DAILY REPORTS OF SA COLLINS ARE TO BE UTLIZED IN THIS COURT ACTION, THAT THESE DAILY REPORTS CONTAIN FILE NUMBERS AND NAMES OF INDAVIDUALS WHO HAVE BEEN CONTACTED BY SA COLLINS IN THE HOODLUM FIELD AND IT WOULD BE NECESSARY TO EXERCISE THESE NAMES AND/OR FILE NUMBERS AS INFORMATION CONCERNING THESE NAMES WOULD BE OF INVALUABLE ASSISTANCE TO CARLOS MARCELLO ANDHIS ASSOCIATES, THROUGH MARCELLO'S ATTORNEYS, AS TO PARTIES BEING INTERVIEWED IN WHOM THE FBI AND THE CRIMINAL DIVISION OF THE DEPARTMENT HAVE A VITAL INTEREST.

END.....

SLB

FBI WASH DC

285

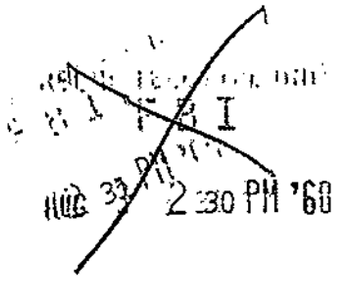
1- CC-D+D

53AUG 131968

89-1333-117

EX-100 REC 54

AUG 6



FBI
AUG 3 2 31 PM '60

RECEIVED-GALE
AUG 3 3 19 PM '60
DEPT. OF JUSTICE

NR
8-3-68

FBI WASH DC

COMMUNICATIONS SECTION

FBI HOUSTON

TELETYPE

227PM URGENT 8-3-68 MBG

TO DIRECTOR, (89-1333) AND NEW ORLEANS (89-79)

FROM HOUSTON (89-45) (P)

CARLOS JOSEPH MARCELLO, AKA.; SA PATRICK J. COLLINS, JR.

VICTIM, AFO.

RENOTEL TO DIRECTOR AND HO, EIGHT THREE INSTANT.

DEPARTMENTAL ATTORNEY [redacted] APPRISED OF INFORMATION IN REFERENCED TEL AND ADVISED WILL ATTEMPT TO EXERCISE NAMES AND FILE NUMBERS FROM DAILY REPORTS OF SA COLLINS IF IT BECOMES NECESSARY TO USE THESE DAILY REPORTS IN TRIAL.

[redacted] AND AUSA [redacted] CONFERRED WITH SA'S [redacted] AND PATRICK J. COLLINS, JR., TODAY AND REVIEWED PERTINENT MATERIAL NECESSARY FOR TRIAL. PER DEFENSE COUNSEL [redacted] REQUEST, [redacted] ALLOWED [redacted] TO VIEW FILM TAKEN BY ONE OF NEWS MEDIA AT MOISANT INTERNATIONAL AIRPORT, NEW ORLEANS, LOUISIANA, DURING NIGHT OF SEPTEMBER THIRTY SIXTYSIX.

BUREAU WILL BE KEPT ADVISED.

EX-100

REC 54

89-1333-118

END

SLB

FBI WASH DC

53 AUG 13 1968

FBI
AUG 3 3 29 PM '68

RECEIVED-GALE
AUG 3 4 29 PM '68
U.S. DEPT. OF JUSTICE

7/27/68

SPECIAL INVESTIGATIVE DIVISION

Subpoena received for appearance of SAC, and Assistant SAC, New Orleans, as well as Agent now assigned to Seat of Government for appearance on August 5, Houston, Texas, for retrial of La Cosa Nostra leader Marcello on charges of Assaulting a Federal Officer. In view of fact SAC, New Orleans, was on extended sick leave during period pertinent to assaulting case, New Orleans recommends and Special Investigative Division concurs, that contact be made with Department to quash subpoena of SAC, New Orleans. If approved, appropriate contact will be made.

AAS:

89-1333-119

ENCLOSURE

NO
81665
7 PM
TOR

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATION SECTION
AUG 6 1968

TELETYPE

FBI WASH DC

FBI HOUSTON

521PM URGENT 8-6-68 EVB

TO DIRECTOR (89-1333)

FROM HOUSTON (89-45) 1P

9-KBGT

CARLOS JOSEPH MARCELLO; SA PATRICK J. COLLINS, JR. - VICTIM, AFO.

REMYTEL AUG FIVE LAST.

TRIAL PROCEEDED TODAY THROUGH ALL EXCEPT LAST GOVERNMENT WITNESS WHO IS STILL ON STAND. SAS MADE EXCELLENT WITNESSES AND NOTHING DEVELOPED TO EMBARRASS THE BUREAU.

NEW ORLEANS ADVISED AM.

END

JTM

FBI WASH DC

REC-39 89-1333-120

12 AUG 7 1968

61 AUG 12 1968

RECEIVED
FEDERAL INVESTIGATIVE
DIVISION 5710

FBI

AUG 6 6 55 PM '68

6 6 22 PM '68

F.B.I.
U.S. DEPT. OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATION SECTION

AUG 5 1968

TELETYPE

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

FBI WASH DC

FBI HOUSTON

249PM URGENT 8-5-68 YCG

TO DIRECTOR (89-1333) AND NEW ORLEANS (89-79)

FROM HOUSTON (89-45) (P)

CARLOS JOSEPH MARCELLO, AKA; SA PATRICK J. COLLINS, JR. -
VICTIM, AFO.

REMYTEL, EIGHT THREE LAST.

JURY SELECTED AND SEQUESTERED UNDER TIGHT SECURITY.
CASE ADJOURNED TO NINE THIRTY AM, EIGHT SIX NEXT FOR
STATEMENTS AND APPEARANCE FIRST WITNESS.

END

EXJ

FBI WASH DC

REC-3 89-1333-121

12 AUG 7 1968

SIX

51 AUG 12 1968

[illegible] DATE

FBI

AUG 5 4 10 PM '94

AUG 5 3 50 PM '94

DEPT. OF JUSTICE

August 6, 1968

SPECIAL INVESTIGATIVE DIVISION

Defense Counsel is enraged with security precautions initiated in court room preliminary to retrial of New Orleans La Cosa Nostra boss Marcello on charges of assaulting a Federal officer. Defense attorney said that Pat Collins would have to be fired by his superiors after they see what Defense Counsel does to him. Collins is the New Orleans Special Agent who was assaulted by Marcello. It is apparent Defense Counsel contemplates effort to smear Collins so as to discredit him as a witness in the case.

AAS:lab

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

AUG 5 1968

TELETYPE

FBI WASH DC

FBI HOUSTON

354PM URGENT 8-5-68 YCG

TO DIRECTOR (89-1333)

FROM HOUSTON (89-45)

CARLOS JOSEPH MARCELLO; SA PATRICK J. COLLINS, JR. -
VICTIM, ~~AFO.~~ ASSAULTING FEDERAL OFFICER

JURY SELECTED FROM PANEL BETWEEN NINE THIRTY A.M., AND ONE FIFTY P.M., TODAY. EXTREMELY TIGHT SECURITY PRECAUTIONS TAKEN BY FEDERAL DISTRICT JUDGE. [redacted] CHIEF DEFENSE COUNSEL, WAS ENRAGED AT PRECAUTIONS AND SAID TO DEPARTMENTAL ATTORNEY [redacted] AFTER SELECTION, "WHEN PAT COLLINS' SUPERIORS SEE WHAT I DO TO HIM, THEY'LL HAVE TO FIRE HIM." BUREAU WILL BE KEPT ADVISED.

END

JTM

FBI WASH DC

REC 13 89-1333-122

6 AUG 8 1968

b6
b7C

b6
b7C

283

57 AUG 13 1968

RECEIVED
GENERAL INVESTIGATIVE DIVISION
AUG 7 5 04 PM 1968
F.B.I.
U.S. DEPT. OF JUSTICE

RECEIVED
GENERAL INVESTIGATIVE DIVISION
AUG 7 3 58 PM 1968
F.B.I.
U.S. DEPT. OF JUSTICE

RECEIVED
TELETYPE UNIT
AUG 6 PM '68
F.B.I.

RECEIVED-GALE
REC'D-ROSEN
FBI
AUG 5 5 37 PM '68

AUG 6 10 15 AM '68
F.B.I.

AUG 6 12 29 PM '68
DEPT. OF JUSTICE

AUG 8 1 09 PM '68
REC'D-CRIMINAL SEC.
F.B.I.

U.S. DEPT. OF JUSTICE

AUG 7 10 05 AM '68

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

AUG 7 1968

TELETYPE

FBI WASH DC

FBI HOUSTON

700PM URGENT 8-7-68 EVB

TO DIRECTOR (89-1333)

FROM HOUSTON (89-45)

9-KAGR

CARLOS JOSEPH MARCELLO; SA PATRICK J. COLLINS, JR. - VICTIM.

AFO.

REMYTEL AUG SIX LAST.

JUDGE DENIED DEFENSE MOTIONS FOR DIRECTED VERDICT AND MISTRIAL .DEFENSE RESTED THIS PM AFTER SUBJECT, HIS SON AND BROTHER DENIED ASSAULT AND [redacted] AND ASSOCIATES OF SUBJECT ALLEDGED SA COLLINS TOLD THEM GOVERNMENT HAD NO CASE. THEIR TESTIMONY OBVIOUSLY SHADED. CASE SHOULD GO TO JURY AUG ~~SEVEN~~ EIGHT.

NO ADVISED AM.

END

~~CORR LAST LINE 2ND WORD SHD BE EIGHT.~~

END

LPT

EX 110

REC 47 89-1333-123

16 AUG 8 1968

51 AUG 15 1968
FBI WASH DC

[illegible] TELEGRAM

AUG 7 8 11 PM '68

[illegible] DEPT. OF JUSTICE

FBI

AUG 7 8 02 PM '68

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

AUG 8 1968

TELETYPE

FBI WASH DC

FBI HOUSTON

220PM URGENT 8-8-68 MBG

TO DIRECTOR (89-1333) AND NEW ORLEANS (89-79)

FROM HOUSTON (89-45) (P)

CARLOS JOSEPH MARCELLO; SA PATRICK J. COLLINS, JR. -

VICTIM, AFO.

REMYTEL, EIGHT SEVEN LAST.

CASE COMPLETED TODAY AFTER GOVERNMENT PRESENTED TWO REBUTTAL WITNESSES. JURY RECEIVED CASE ONE FORTY CDT AND WILL DELIBERATE ON RETURN FROM LUNCH.

END

LPT

FBI WASH DC

EX-101
REC-34 89-1333-124

6 AUG 9 1968

56 AUG 16 1968

RECEIVED-DALE

AUG 8 3 39 PM '68

DEPT OF JUSTICE

FBI

AUG 8 3 22 PM '68

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

AUG 8 1968

TELETYPE

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

FBI WASH DC

A

FBI NEW ORLS

840AM 8/8/68 URGENT RXB

TO DIRECTOR, ATTENTION MOVEMENT SECTION 89-1333

FROM NEW ORLEANS 89-79

CARLOS JOSEPH MARCELLO; SA PATRICK J. COLLINS, JR. - VICTIM, AFO.

SAC ROBERT E. RIGHTMYER AND ASAC J. T. SYLVESTER, JR., RETURNED NEW ORLEANS EIGHT TEN A.M., AUGUST EIGHT INSTANT, AFTER BOTH BEING SUBPOENAED BY DEFENSE IN INSTANT TRIAL AT HOUSTON. NEITHER SAC RIGHTMYER NOR ASAC SYLVESTER TESTIFIED.

END

SLB

FBI WASH DC

REC-65 89-1333-125

EX-103

AUG 9 1968

AUG 20 1968

R. GALE

PERS. REC. UNIT

MR. MOHR FOR THE DIRECTOR

RECEIVED-GALE

Aug 8 4 53 PM '68

FBI
DEPT OF JUSTICE

REC'D-TELETYPE UNIT
F B I

Aug 8 9 43 AM '68

CODED COPY

Aug 8 4 47 PM '68

RECEIVED-GALE

Aug 9 9 46 AM '68

FBI
DEPT. OF JUSTICE

REC'D - ROOM
FBI

Aug 9 11 32 AM '68

Aug 8 10 30 AM '68

FBI

Aug 8 5 21 PM '68

U.S. DEPT. OF JUSTICE

Aug 9 12 26 PM '68

REC'D-CRIMINAL SEC.
F B I

VIA TELETYPE
8 AUG 7 1968
ENCIPHERED

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Trotter
Tele. Room
Miss Holmes
Miss Gandy

WBC

4:26 PM URGENT 8-7-68 RXB

TO DIRECTOR AND HOUSTON

FROM NEW ORLEANS

CARLOS MARCELLO: PATRICK J. COLLINS - VICTIM: ASSAULTING FEDERAL OFFICER.

RE NEW ORLEANS TELETYPE, AUGUST THREE, LAST.

A REVIEW OF NEW ORLEANS FILE NUMBER ONE THREE SEVEN - THREE ONE ONE THREE, ENTITLED, [redacted] - PCI" REFLECTS FOLLOWING INFORMATION:

ON SEPTEMBER SIXTEEN, SIXTYSEVEN, AT APPROXIMATELY SEVEN THIRTY PM, [redacted] SHREVEPORT, LA., CONTACTED SA [redacted] AND ADVISED THAT [redacted] HAD JUST TELEPHONICALLY CONTACTED HIM AND [redacted] CARLOS MARCELLO [redacted].

AT APPROXIMATELY NINE THIRTY PM, [redacted] WAS CONTACTED AND HE [redacted]

b6
b7C
b7D

EX-11
92-1333-126
8 1968
REC

56 AUG 16 1968
167

CARLOS MARCELLO; [redacted] OF CARLOS MARCELLO; [redacted] ACCOMPANIED BY A TALL DARK MAN; [redacted] (LNU), HE INDICATED HE WAS FROM LAS VEGAS; [redacted] (LNU), WORKS AT [redacted] A BLACK HAIRED MAN WHO [redacted] DID NOT KNOW; [redacted] AND ANOTHER UNKNOWN COUPLE. [redacted] STATED THAT [redacted], TO THE BEST OF HIS KNOWLEDGE DID NOT WORK. [redacted] CARLOS MARCELLO [redacted]

b6
b7C
b7D

[redacted] HAS ADVISED HIS IDENTITY MUST NOT BE REVEALED AND HE WILL NOT TESTIFY IN THIS MATTER.

ON AUGUST SEVEN, INSTANT [redacted] (PORTECT IDENTITY), A FORMER PCI OF THE NEW ORLEANS OFFICE, FURNISHED SA [redacted] [redacted] THE FOLLOWING INFORMATION:

[redacted] IS PRESENTLY STATIONED IN THE [redacted] LA., AND IS A [redacted] AN ATTORNEY FOR CARLOS MARCELLO. [redacted] HAS ON SEVERAL OCCASIONS DURING THE PAST YEAR, OBSERVED [redacted] IN [redacted] IN THE COMPANY OF [redacted] CARLOS MARCELLO. [redacted] AND [redacted] WERE OFTEN IN THE COMPANY OF [redacted] [redacted] STATED HIS IDENTITY MUST NOT BE REVEALED AND HE WILL NOT TESTIFY IN THIS MATTER. [redacted] SAID [redacted] ANOTHER [redacted] SHOULD BE ABLE TO TESTIFY TO THE ABOVE INFORMATION.

b6
b7C
b7D

RECEIVED: 5:52 PM LRC/RDR

SPECIAL INVESTIGA[redacted] VISION

A[redacted] 1968

A retrial of New Orleans La Cosa Nostra member Carlos Marcello has resulted in a conviction. He was charged with assaulting Federal officer (SA Collins of the New Orleans Office) at the New Orleans Airport upon the return of Marcello from New York City on 9/30/66 where he had been subpoenaed to appear in connection with a state investigation into an alleged meeting of La Cosa Nostra members which occurred in New York earlier that month.

AAS:msm:jm

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

1cc AUG 8 1968

TELETYPE

FBI WASH DC

FBI HOUSTON
543PM URGENT 8-8-68 EVB

TO DIRECTOR (89-1333) AND NEW ORLEANS (89-79)

FROM HOUSTON (89-45)

CARLOS JOSEPH MARCELLO; Special Agent SA PATRICK J. COLLINS, JR. - VICTIM, Assaulting Federal Officer
AFO.

Reference my teletype
RE MYTEL THIS DATE.

JURY RETURNED GUILTY VERDICT FIVE FIFTEEN PM TODAY AND SUBJECT CONTINUED ON EXISTING BOND. SENTENCING SET NINE THIRTY AM NINE TWELVE NEXT.

END

LPT

FBI WASH DC

P

REC 37

89-1333-127

AUG 19 1968

FBI

AUG 12 9 23 AM 68

DEPT OF JUSTICE

AUG 8 6 45 PM '68

AUG 12 9 47 AM '68

U.S. DEPT OF JUSTICE

AUG 8 8 11 PM '68

DEPT OF JUSTICE

FD-36 (Rev. 5-22-64)

FBI

Date: 8/9/68

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIRMAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, HOUSTON (89-45)

RE: CARLOS JOSEPH MARCELLO;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO

The purpose of this communication is to recommend that the Director give consideration to sending a letter of appreciation to the following Governmental attorneys for their very competent, professional and successful handling of the trial in captioned matter which was completed in Houston, Texas, on 8/8/68:

LOUIS C. LACOUR
U. S. Attorney
Eastern District of Louisiana
500 St. Louis Street
New Orleans, Louisiana 70116

[redacted]
Departmental Attorney
500 St. Louis Street
New Orleans, Louisiana 70116

b6
b7C

[redacted]
Assistant U. S. Attorney
Southern District of Texas
P. O. Box 61129
Houston, Texas 77061

89-103
REC 27
89-1333-128

3 - Bureau
2 - New Orleans (89-79)
1 - Houston

10 AUG 12 1968

KVH:mec
(6)

C. C.

Approved _____ Sent _____ M Per _____
Special Agent in Charge

rec'd from Viv...
8/22/68 mcg

RECEIVED
CENTRAL INVESTIGATIVE
AUG 12 11 30 AM 1968
F. B. I.
U. S. DEPT. OF JUSTICE

As the Bureau is aware, this trial drew considerable public notice and the defendant's attorneys based their defense mainly on testimony designed to discredit Agent COLLINS. All such testimony was refuted through the efforts of these attorneys, which culminated in the return of a guilty verdict against MARCELLO. It is obvious that this case required diligent effort on the part of the Government attorneys and long hours of preparation for trial, and skillful presentation of the Government's case during the trial.

ROBERT E. RIGHTMYER, SAC, New Orleans Division, who was subpoenaed to this trial, concurs in this recommendation as I do, and there is no information in the New Orleans or Houston office indices to preclude the sending of such a letter.

FD-36 (Rev. 5-22-64)

F B I

Date: 8/23/68

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL _____
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, HOUSTON (89-45) (P)

SUBJECT: CARLOS MARCELLO;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO

AUSA [redacted] SDT, Houston, advised USDJ JOHN V. SINGLETON, JR., on 8/20/68, overruled a motion which had been filed by [redacted] and mailed directly to Laredo, Tex., requesting a judgment of acquittal, motion in arrest of judgment and/or a new trial.

Also filed on 8/15/68, by Attorney [redacted] [redacted] ET AL, and submitted directly to the court in Houston were supplemental motions for judgment of acquittal, supplemental motion for a new trial and a motion in arrest of judgment.

Following the judge's ruling on 8/20/68, [redacted] filed a Notice of Motion requesting an order for a judgment of acquittal or order for arrest of judgment and a new trial and requested that this be heard at 10:00 AM, 9/9/68.

Airmail copy to New Orleans for information.

C. C. Eisenhower

REC 13 92-4133-129

EX-100

AUG 26 1968

3 - Bureau
1 - New Orleans (89-79) (Info.)
2 - Houston

RWS:jas
(6)

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

56 SEP 5 1968

AUG 26 2 14 PM '68

RECEIVED
SPECIAL INVESTIGATIVE
DIVISION

U.S. DEPT OF JUSTICE

AUG 26 9 19 AM '68

U.S. DEPT OF JUSTICE

FD-263 (Rev. 3-8-67)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW ORLEANS	NEW ORLEANS	8/28/68	8/3 - 26/68

TITLE OF CASE

CARLOS JOSEPH MARCELLO, aka.;
SA PATRICK J. COLLINS, JR. -
VICTIM

REPORT MADE BY: SA G. MYRYWIN ALDERSON

TYPED BY: gma

CHARACTER OF CASE

AFO

Pump

REFERENCES: Report of SA [redacted] 6/4/68 at San Antonio.
New Orleans airtel to Bureau dated 6/4/68.
Bureau airtel to New Orleans dated 6/7/68.
New Orleans teletype to Bureau dated 8/3/68.
Houston teletype to Bureau 8/8/68.

b6
b7C

- P -

LEADS:

HOUSTON DIVISION

AT HOUSTON, TEXAS

Will report sentencing of MARCELLO in USDC on 9/12/68.

ACCOMPLISHMENTS CLAIMED NONE						ACQUITTALS
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES	

CASE HAS BEEN:
PENDING OVER ONE YEAR [X] YES [ ] NO
PENDING PROSECUTION OVER SIX MONTHS [X] YES [ ] NO

APPROVED

SPECIAL AGENT IN CHARGE

DO NOT WRITE IN SPACES BELOW

89-1333-130 REC 27

AUG 30 1968

EX 109

COPIES MADE:
(3) - Bureau (89-1333)
1 - USA, New Orleans
3 - Houston (89-45)(1 - USA, Houston)
1 - New York (89-98)(Info.)
4 - New Orleans (2 - 89-79)
(1 - 92-36) (1 - 92-365)

Dissemination Record of Attached Report

Agency	
Request Recd.	
Date Fwd.	
How Fwd.	

CC. AAG, Criminal Division, Organized Crime and Racketeering Section, Room 2514.

Notations

STAT. SECT.

1 DCD 9-13-68

9-11

SEP 11 4 58 PM '68

SPECIAL INVEST
DIVISION

U.S. DEPT OF JUSTICE

RECEIVED

SEP 9 4 13 PM '68

F B I
VOUCHER-STATISTICAL SEC

SEP 11 5 17 PM '68
REC'D-FUGITIVE
F B I

NO 89-79/gma

ADMINISTRATIVE:

One copy of this report is furnished the New York Office in view of their interest in CARLOS JOSEPH MARCELLO.

B*
(COVER PAGE)

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 1 - United States Attorney, Houston
1 - United States Attorney, New Orleans

Report of: SA G. MYRYWIN ALDERSON Office: NEW ORLEANS
Date: 8/28/68

Field Office File #: NO 89-79 Bureau File #: 89-1333

Title: CARLOS JOSEPH MARCELLO;
SA PATRICK J. COLLINS, JR. - VICTIM

Character: ASSAULTING A FEDERAL OFFICER

Synopsis: Credit Bureau, Shreveport, Louisiana, advised credit rating of [redacted] generally satisfactory, except for one collection item in 1963. One [redacted] aka. [redacted] La. advised on 8/9/68 that [redacted] closely associated with MARCELLO and his associates in Shreveport, La. [redacted] friendly with [redacted] of MARCELLO. [redacted] went to Houston, Texas to testify for MARCELLO and [redacted] of opinion that [redacted] On 8/26/68 [redacted] advised now believes that [redacted] did not [redacted] On 8/8/68 MARCELLO found guilty by jury of violation of Section 111, Title 18, USC. MARCELLO will be sentenced in USDC, Houston, Texas on 9/12/68. b6 b7C

- P -

DETAILS:

AT SHREVEPORT, LOUISIANA

The following investigation was conducted by SA [redacted]:

On August 3, 1968, a review of the 1968 Shreveport, La., city directory was negative on the name of [redacted] The city directory contained the following information on [redacted]: b6 b7C

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to

She was listed as being employed as a [redacted] for [redacted] Shreveport, La., head of a household, and residing at [redacted] Shreveport, La. The current telephone directory for Shreveport, La. did not contain a listing. b6 b7C

On August 3, 1968, Mrs. [redacted] Shreveport Credit Bureau, advised that her files contained the following information on [redacted]:

The Credit Bureau has had a file on [redacted] and her husband [redacted] since May, 1956. Her husband is listed as being employed by [redacted] Shreveport, La., since about 1958. The last residence address listed in the file was in 1966 and was [redacted] Shreveport, La. The file did not contain any background information, and the last report was made in 1966, although a few local stores had made credit inquiries. Mrs. [redacted] advised that the credit rating is generally satisfactory, except for one collection item of $17.12 by the Red River Motor Company, Bossier City, La. on October 12, 1963. There was no record of any suits filed, and no derogatory information was in the file. b6 b7C

On August 3, 1968, a check of the records of the Bossier City Police Department failed to disclose any arrest record for [redacted] b6 b7C

On August 3, 1968, a check of the records of the Shreveport, La. Police Department indicated that [redacted] aka. [redacted] Shreveport, La., was arrested on [redacted] This person was described as age 30, born on [redacted] at [redacted] La., 5'5", 130 lbs., brown hair, green eyes, occupation listed as housewife. The records indicated that the [redacted] and the warrant was signed by neighbors [redacted] and [redacted] On December 13, 1966, the charge was nol prossed. b6 b7C

FD-302 (Rev. 1-25-60) FEDERAL BUREAU OF INVESTIGATION

1 Date 8/14/68

Mr. [redacted] Louisiana, appeared at the Shreveport Resident Agency on the morning of August 9, 1968, and voluntarily furnished the following information, after having been advised of the identity of the interviewing agents, and stating he will not testify in this matter, and his identity must be protected: b6 b7C

[redacted] has been going steady with [redacted] of [redacted] Louisiana, for the past two years, and is in love with her. During this time he has been aware that [redacted] is closely associated with CARLOS MARCELLO, and his associates in Shreveport, Louisiana. [redacted] regularly runs around with [redacted] MARCELLO at [redacted] Louisiana. Through [redacted] has met CARLOS MARCELLO. Some weeks ago, MARCELLO came to Shreveport, Louisiana, and telephoned [redacted] from the Town and Country Motel, Bossier City, Louisiana. He requested that [redacted] come to the motel and have coffee with him. b6 b7C

[redacted] went to the motel and visited with MARCELLO, who during their conversation asked [redacted] if there was anything [redacted] MARCELLO in his forthcoming trial at Houston, Texas. [redacted] told MARCELLO [redacted] FBI Agent PATRICK J. COLLINS, [redacted] not help MARCELLO. MARCELLO told [redacted] b6 b7C

[redacted] knows that MARCELLO and his attorney, [redacted] in this trial, but [redacted] Agent COLLINS discuss the evidence against MARCELLO. b6 b7C

On August 8, 1968, a friend who [redacted] would not identify told him that [redacted] was in Houston, Texas, at the MARCELLO trial and this person felt [redacted] was the person the newspaper identified

On 8/9/68 at Shreveport, Louisiana File # NO [illegible] b6 b7C

by SA [redacted] JAW-daf Date dictated 8/9/68

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

2
NO 9079

[redacted] from Shreveport, Louisiana, [redacted] feels [redacted] and the [redacted] He described [redacted] as a [redacted]

b6
b7C

[redacted] will be in contact with [redacted] upon her return from Houston, Texas, [redacted]

FD-302 (Rev. 1-25-60)

FEDERAL BUREAU OF INVESTIGATION

Date 8/27/68

1

Mr. [redacted] Owner, [redacted] Louisiana, furnished the following information after having been advised of the identity of the interviewing Agent: b6 b7C

[redacted] has not been able to make personal contact with his girlfriend, [redacted] since [redacted] left Houston, Texas [redacted] has remained with CARLOS MARCELLO, in the Baton Rouge, Louisiana, area. [redacted] has talked to [redacted] telephonically and [redacted] told him she was through with him and was not returning to [redacted] Louisiana.

[redacted] no longer thinks that [redacted] at Houston, Texas, [redacted] He now relizes there is a woman by the name of [redacted] believes that [redacted] in Houston, Texas, with [redacted] CARLOS MARCELLO [redacted] b6 b7C

On 8/26/68 at Bossier City, Louisiana File # NO 89-79

by SA [redacted] - jah Date dictated 8/27/68 b6 b7C

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

NO 89-79/gma

AT HOUSTON, TEXAS

On August 5, 1968, the trial in this matter began in United States District Court, and on August 8, 1968, the jury returned a verdict of guilty to the indictment charging MARCELLO with violation of Section 111, Title 18, United States Code.

United States District Judge JOHN V. SINGLETON advised that MARCELLO would be sentenced on September 12, 1968, and he stated that MARCELLO would continue on the same bond as previously set.

On August 23, 1968, the Houston Office advised that Assistant United States Attorney [redacted] Southern District of Texas, stated that USDJ JOHN V. SINGLETON, on August 20, 1968, overruled a motion which had been filed by defense attorney [redacted] and mailed directly to Laredo, Texas, requesting a judgment of acquittal, motion in arrest of judgment and/or a new trial. b6 b7C

Also filed on August 15, 1968 by Attorney [redacted] and submitted directly to the court in Houston were supplemental motions for judgment of acquittal, supplemental motion for a new trial and a motion in arrest of judgment.

Following the ruling of Judge SINGLETON on August 20, 1968, [redacted] filed a Notice of Motion requesting an order for a judgment of acquittal or order for arrest of judgment and a new trial, and requested that this motion be heard at 10:00 AM on September 9, 1968. b6 b7C

RECEIVED
SEP 16 3 07 PM 1968
F. B. I.
U. S. DEPT. OF JUSTICE

SEP 20 10 58 AM '68
SPECIAL INVESTIGATIVE
DIVISION

SEP 25 11 26 AM '68
RECEIVED

FD-263 (Rev. 3-8-67)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
HOUSTON	NEW ORLEANS	9/12/68	9/12/68

TITLE OF CASE

CARLOS JOSEPH MARCELLO; AR
SA PATRICK J. COLLINS, JR. - VICTIM

REPORT MADE BY	TYPED BY
SA RICHARD W. SUTER	:jas

CHARACTER OF CASE

AFO

9-24-68

4/10

REFERENCES:

New Orleans report SA G. MYRYWIN ALDERSON, 8/28/68.
Houston teletype to Bureau, 9/12/68.

- RUC -

LEAD:

NEW ORLEANS

AT NEW ORLEANS, LOUISIANA. Will follow and determine whether Notice of Appeal filed.

1- 89 cover.

A*
(COVER PAGE)

ACCOMPLISHMENTS CLAIMED						ACQUIT-TALS	CASE HAS BEEN:
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		PENDING OVER ONE YEAR ☐ YES ☐ NO PENDING PROSECUTION OVER SIX MONTHS ☐ YES ☐ NO
1-NO							

APPROVED _____ SPECIAL AGENT IN CHARGE

DO NOT WRITE IN SPACES BELOW

89-1333-131

REC-78

2 SEP 16 1968

EX-100

COPIES MADE:

3 - Bureau (89-1333)
1 - USA, Houston
3 - New Orleans (89-79)
(1 - USA, New Orleans)
1 - Houston (89-45)

Dissemination Record of Attached Report				
Agency	Cc Secret Service, RHO			
Request Recd.	POC-mjp 9-19-68			
Date Fwd.				
How Fwd.				
By				

Notations

DIVE
SIX
STATE ECT.

59 OCT 3 1968

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to:	1 - USA, Houston, Texas 1 - USA, New Orleans, Louisiana		
Report of: **Date:**	SA RICHARD W. SUTER SEPTEMBER 12, 1968	**Office:**	HOUSTON
Field Office File #:	HO 89-45	**Bureau File #:**	89-1333
Title:	CARLOS JOSEPH MARCELLO; SA PATRICK J. COLLINS, JR. - VICTIM		
Character:	ASSAULTING FEDERAL OFFICER		

Synopsis: Subject appeared in U.S. District Court, Houston, 9/12/68, and sentenced to $5,000 fine with two years to serve in penitentiary.

- RUC -

STATISTICS TAKEN
OCT 1 3 50 PM '68
FBI
NARCOTICS-STATISTICAL

DETAILS:

AT HOUSTON, TEXAS

CARLOS JOSEPH MARCELLO, accompanied by his attorneys, [redacted] and [redacted] appeared in U.S. District Court, Houston, Texas, at 9:30 AM, September 12, 1968, for sentencing.

b6
b7C

U.S. District Judge JOHN V. SINGLETON, JR., advised them that he had reviewed and studied all of the original and supplemental motions for acquittal and for a new trial and was overruling all of those motions.

He further stated that he was overruling a motion to inspect the pre-sentence investigation, but that he would be willing to read into the record those portions of the investigation which he considered prior to making his decision.

He discussed with subject's attorneys his consideration of the fact that MARCELLO has two or three previous convictions and is currently involved in deportation proceedings. However, those portions of the pre-sentence investigation dealing with these matters were not made a matter of record.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

GOVERNMENT PRINTING OFFICE: 1967—O—279-67

Judge SINGLETON sentenced subject to a $5,000 fine and two years in the penitentiary. No Notice of Appeal was filed in open court.

MARCELLO was continued on a $5,000 personal recognizance bond.

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATION SECTION

SEP 12 1968

TELETYPE

FBI WASH DC

FBI HOUSTON

1053AM URGENT 9-12-68 MBG

TO DIRECTOR (89-1333)

FROM HOUSTON (89-45) (P)

CARLOS JOSEPH MARCELLO; SA PATRICK J. COLLINS, JR., -
VICTIM, AFO.

REHO TEL CALL TO NO THIS DATE.

SUBJECT APPEARED USDC, HOUSTON, TEXAS, NINE THIRTY AM THIS DATE. JUDGE JOHN V. SINGLETON, JR., OVERRULED ALL ORIGINAL AND SUPPLEMENTAL MOTIONS FOR ACQUITTAL AND NEW TRIAL AND ALSO OVERRULED MOTION TO INSPECT PRE-SENTENCE INVESTIGATION. SUBJECT SENTENCED TO FIVE THOUSAND DOLLAR FINE AND TWO YEARS AND CONTINUED ON FIVE THOUSAND DOLLAR PR BOND.

EX 110

AIRMAIL COPY TO NO.

END

SLB

FBI WASH DC

REC-15 89-1333-132

16

1LL-DHD

56 SEP 19 1968

RECEIVED

TELETYPE UNIT

SEP 12 11 56 AM '68

RECEIVED-GALE

SEP 12 12 35 PM '68

U.S. DEPT. OF JUSTICE

RECEIVED ROSEN

FBI

SEP 12 12 16 PM '68

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

TO : MR. DE LOACH

DATE: 9/12/68

FROM : J. H. GALE

SUBJECT: CARLOS MARCELLO
ASSAULTING A FEDERAL OFFICER

Assistant Special Agent in Charge Sylvester, of the New Orleans Office, called this morning to advise that Marcello, New Orleans La Cosa Nostra leader who has been previously convicted of assaulting a Bureau Agent, was sentenced to two years in the penitentiary and $5,000 fine today.

Marcello is currently out on bond pending an appeal.

ACTION:

For information. The foregoing conviction and sentencing represents a substantial accomplishment in our drive against the top leaders of La Cosa Nostra in this country.

1 - Mr. DeLoach
1 - Mr. Bishop
1 - Mr. Walters
1 - Mr. Gale
1 - Mr. Staffeld

McA:mfd
(6)

REC-21

89-1333-133

12 SEP 17 1968

58 SEP 23 1968

RECEIVED-GALE
SEP 13 1 06 PM '68
F B I
U.S. DEPT. OF JUSTICE

RECEIVED DIRECTOR
F. B. I.
SEP 12 2 02 PM '68

SEP 12 11 40 AM '68
SEP 13 5 54 PM '68
REC'D DE LOACH
F B REC'D DE LOACH
F B I

SEP 12 12 05 PM '68
F B I
REC'D TOLSON
REC'D BISHOP

SEP 13 2 31 PM '68
U.S. DEPT. OF JUSTICE

SEP 12 6 13 PM '68
RECEIVED
FBI

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 9/17/68

FROM : SAC, HOUSTON (89-45) (RUC)

SUBJECT: CARLOS JOSEPH MARCELLO;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO

(OO: NEW ORLEANS)

ReHOrep SA RICHARD W. SUTER, 9/12/68.

The Houston file in this matter does not contain sufficient information concerning date and place of arrest, USM number and date and place of indictment, etc., in order to complete a Parole Report and Disposition Sheet in this matter.

The New Orleans Division should immediately prepare Parole Report and final Disposition Sheet and forward same to the Bureau.

2 - Bureau
2 - New Orleans (89-79)
1 - Houston

RWS:jas
(5)

89-1333-134

REC-81

16 SEP 20 1968

EX-101

SEP 1968

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-108

RECEIVED
GENERAL INVESTIGATIVE

SEP 26 2 30 PM 1968

F. B. I.
U. S. DEPT. OF JUSTICE

SEP 27 9 42 AM '68

SEP 27 10 48 AM '68
REC'D - FUGITIVE
F B I

SEP 27 5 12 PM '68

U. S. DEPT. OF JUSTICE

FD-36 (Rev. 5-22-64)

F B I

Date: 9/20/68

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIRMAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79)

SUBJECT: CARLOS JOSEPH MARCELLO, aka.;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

On 9/16/68, during an interview with [redacted] b6 b7C in the matter captioned "ALLEGED EFFORTS TO INFLUENCE TESTIMONY OF [redacted] OOJ - CR", he furnished the following information:

[redacted] stated that [redacted] New Orleans, La. had remarked that he received a letter from USA MORTON SUSMAN, San Antonio, Texas, which acknowledged a newspaper article that [redacted] had sent to SUSMAN. This article was written by MARTIN [redacted] b6 b7C for the "Houstonian", and the article reportedly made a claim that there was some prior knowledge, prior to the trial of MARCELLO, that MARCELLO would be convicted.

The San Antonio Office has been requested to contact USA SUSMAN to determine the date this article appeared in the "Houstonian", and to furnish this information to the Houston Office. The Houston Office has been requested, upon receipt of the information from San Antonio, to obtain copies of this article, and furnish copies to the Bureau and New Orleans.

(3) - Bureau
2 - New Orleans
GMA:gma
(5)

REC-13 89-1333-735
11 SEP 23 1968

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

530CT9 1968

SEP 26 '68

SEP 24 2:30 PM '68
U.S. DEPT. OF JUSTICE

SEP 24 '68

FD-362 (Rev. 11-21-63)

PAROLE REPORT
FEDERAL BUREAU OF INVESTIGATION

Reporting Office	Office of Origin	Date
NEW ORLEANS	NEW ORLEANS	9/25/68

Name of Convict with Aliases:

CARLOS JOSEPH MARCELLO

Report Made By: [redacted]

Typed By: bnk

b6
b7C

Violation:

ASSAULTING A FEDERAL OFFICER

Outline of Offense:

On 9/30/66 at Moisant International Airport, in the New Orleans Division of the Eastern District of Louisiana, MARCELLO did assault and intimidate PATRICK J. COLLINS, JR., FBI Agent, while COLLINS was engaged in the performance of his official duties.

Date and place of indictment; or information filed:	Indicted by Federal Grand Jury, New Orleans, La., 10/7/66
Code and section under which charged:	Sec. 111, T. 18, USC.
Section under which sentenced:	Sec. 111, T. 18, USC.
Date and nature of plea:	11/9/66, not guilty
Date and place of conviction:	U. S. District Court, Houston, Texas 8/8/68
Date and duration of sentence:	9/12/68, two years
Fines:	$5000
Aggravating or Mitigating circumstances:	There are no known mitigating or aggravating circumstances

Approved: Special Agent in Charge

Copies Made:
3 - Bureau (89-1333)
Dissemination at SOG
2 - Bureau of Prisons
Date Fwd.:
By:
1 -

Do Not Write in Spaces Below

89-1333-136

REC-40

EX-105

18 OCT 4 1968

5 OCT 4 1968

This report contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

TO : Mr. Gale

DATE: October 2, 1968

FROM : A. A. Staffeld, Jr.

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
ASSAULT OF A FEDERAL OFFICER

Reference is made to memorandum Gale to Mr. DeLoach, dated June 7, 1968, concerning allegations by Marcello's attorneys against SA Collins in connection with Marcello's first trial which ended in a hung jury May 29, 1968. This concerned alleged conversations by Collins regarding this case which were refuted in testimony. All questions were resolved to the satisfaction of the United States Attorney and the Department Attorney prior to a retrial of Marcello. This appeared an obvious attempt by Marcello's attorneys to engage in shyster tactics through unfounded attacks on the Bureau Agent presenting damaging testimony against Marcello.

On August 8, 1968, Marcello, the leading hoodlum in Louisiana, was convicted in Federal Court, Houston, Texas, of Assaulting a Federal Officer and subsequently sentenced to two years in prison and a $5,000 fine.

Referenced memorandum recommended interview of one Kathy Angel at the conclusion of the retrial to resolve this matter completely.

Angel appeared as a defense witness at Marcello's retrial. Her allegations that Collins discussed this case with her were refuted in testimony and Marcello convicted. This conviction is being appealed.

Since the allegations in this matter were successfully refuted in court during both trials, including Angel's testimony and the fact that this matter is on appeal, no further consideration of interview of Angel appears warranted at this time.

ACTION:

For information.

1 - Mr. Gale
1 - Mr. Staffeld
1 - Mr. Ursic
REK: jny
(4)

REC 40 92-1333-137

OCT 4 1968

59 OCT 1968

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

Mr. Tolson	
Mr. DeLoach	
Mr. Mohr	
Mr. Bishop	
Mr. Casper	
Mr. Callahan	
Mr. Conrad	
Mr. Felt	
Mr. Gale	
Mr. Rosen	
Mr. Sullivan	
Mr. Tavel	
Mr. Trotter	
Tele. Room	
Miss Holmes	
Miss Gandy	

TO : DIRECTOR, FBI (89-1333)

DATE: 10/1/68

FROM : SAC, HOUSTON (89-45) (RUC)

SUBJECT: CARLOS JOSEPH MARCELLO, Aka.;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO

(OO: NEW ORLEANS)

ReNOairtel, 9/20/68.

Enclosed for the Bureau are two copies of a letter from the USA, Houston, to JACK MARTIN, author of an article which appeared in "The Houstonian", a Houston, Texas weekly.

Also enclosed are two copies of referenced article.

One copy of each are forwarded for the information of the New Orleans Division.

The San Antonio Division should discontinue efforts in this regard.

ENCLOSURE

"ENCLOSURE ATTACHED"

EX-102

REC 5

89-1333-138

1 OCT 3 1968

2 - Bureau (Enc. 4)
2 - New Orleans (89-79) (Enc. 2)
1 - San Antonio (Info.)
1 - Houston

RWS/Jas
(5)

79 OCT 22 1968

SIX

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-108

REC'D - ROSEN
RECEIVED
GENERAL INVESTIGATIVE
DIVISION
Oct 21 10 07 AM 1968 6 PM '68
F.B.I.
U.S. DEPT. OF JUSTICE
RECEIVED-GALE
Oct 8 3 45 PM '68
REC'D SULLIVAN
FBI JUSTICE
RECEIVED
GENERAL INVESTIGATIVE
Oct 4 2 51 PM 1968
F.B.I.
U.S. DEPT. OF JUSTICE
RECEIVED
GENERAL INVESTIGATIVE
DIVISION
Oct 3 3 04 PM '68 DIRECTOR
FBI
REC'D DEGUAL
RECEIVED
GENERAL INVESTIGATIVE
DIVISION
OCT 10 10 08 AM 1968 2 PM 1968
F B I
U.S. DEPT. OF JUSTICE
Oct 9 11 38 AM '68
RECEIVED
SPECIAL INVESTIGATIVE
REC'D DIVISION
FBI JUSTICE
RECEIVED—F.B.I.
Oct 4 11 51 AM '68
RECEIVED
SPECIAL INVESTIGATIVE
DIVISION
U.S. DEPT. OF JUSTICE
Oct 8 3 26 PM '68
REC'D
INTELL. DIV.
Oct 10 9 35 AM '68
U.S. DEPT. OF JUSTICE
Oct 10 11 04 AM '68
REC'D
INTELL DIV.
Oct 10 3 30 PM '68
REC'D
INTELL DIV.

June 14, 1968

Mr. Jack Martin
Correspondent
The Houstonian
2005 Mason
Houston, Texas

Dear Mr. Martin:

I have assumed that you sent me "The Houstonian" dated June 4, 1968, which refers to Carlos Marcello who has been prosecuted in this Judicial District.

Let me thank you for your kindness in sending this and we will make the article a part of our Marcello file and forward a copy of it to the Organized Crime Section of the Department of Justice.

I hope you will accept my apology for not receiving calls last week and remaining relatively inaccessible. I am engaged in intensive preparation of the Westec securities case for trial next Monday and I have delegated all other matters to other attorneys here so that I can put all of my time on preparation for this most important trial.

I hope after the trial is over, that I can meet you, and again I thank you for your interest in exposing corruption.

Sincerely,

MORTON L. SUSMAN
United States Attorney

MLS:fd

ENCLOSURE

89-122-138

ENCLOSURE

8411333-134

LA. GESTAPO THREATENS AGAIN

THE HOUSTONIAN

"THE VOICE OF THE PEOPLE"

O, Justice when expelled from other habitations, make this thy dwelling place!

VOL. 35, NO. 21 | TUESDAY, JUNE 4, 1968 | $3.00 PER YEAR

DREW PEARSON, JIMMY HOFFA, LA. GOV. RACKET GROUP HAVE SABOTAGED IMAGE OF R. F. K.

HAVE GOONS, POLITICIANS JOINED TO STOP NOMINATION OF KENNEDY?

BY NAT TERENCE
EDITOR
THE HOUSTONIAN

AND

JACK MARTIN
CORRESPONDENT
THE HOUSTONIAN

Copyright 1968, The Houstonian

BATON ROUGE — At the same time the Jimmy Hoffa trials were going on in Nashville, Tennessee, it is said that columnist Drew Pearson was going in and out of Hoffa's office down in Memphis like a revolving door. Maybe Pearson was either picking up his "copy" or "something" else, but there must have been some reason for these visits, while R. F. K., was prosecuting Hoffa.

If what Pearson has said in his "news" columns recently was correct . . . About "wire-tapping" evidence in the Hoffa case . . . Why did he wait until now to expose this? That is, if he is such a guardian of public morals? Or is Pearson just a journalistic prostitute? We mean that ild, which sells their "wares", as some do their virtue, for a price!

Pearson would also have intelligent American readers believe by a second news article that R. F. K. tapped the telephones of the late Dr. Martin Luther King just to spy on him for personal reasons, rather than for security purposes. What a joke? The reason for this was manifold.

Anytime J. Edgar Hoover goes along on such a venture as this, there must be a good reason for it! In this case it was a very sound one.

Amongst other things, King's life was in danger. Hence, there were various federal matters at stake here...preventive crime, and security measures, as it were.

However, ol' Pearson, a political-journalistic-hack, would have us all think that gangster Hoffa is a "fine-misunderstood-Sunday-School-teacher" kind of a fellow . . . A "nice person", like the man next door . . . A "solid" citizen, and that R. F. K. is a "bad-guy"! Maybe Pearson has just been at it too long, or is becoming senile, and in need of help. Either that, or he must think everyone is pretty stupid if he believes that he can hand us this sort of a line and get away with it . . . What a "cock-n-Bull-Story" this is!

All, or most of these events took place around-about the time, or shortly before, a "political-heal-'n-toer" from New Orleans by the name of Marshal Brown got "side-rocked" on an "official" trip to San Francisco, and wound up at the Desert Inn located in Las Vegas . . . Expenses all paid, they say.

Besides Brown representing the political interests of Louisiana's gubernatorial aspirant and candidate John Julian McKeithen at that particular time, there were at least two people named Smith involved in this little episode. Yes! For upon that dark hour of Oct. 13, 1963, it is alleged that Fifty Grand ($50,000) belonging to one Carlos Marcello of Costra Nostra fame was delivered into Brown's hands for the political hopeful, McKeithen.

Why? We hear that a certain Dalton Smith was to get some sort of consideration out of this transaction. What a mess? Everyone knows what's going on regarding this fine character, Dalton Smith, who's related, they say, by marriage, to the Marcello family.

However, let's examine the past, or rogues gallery, of this little production. We all know just what Hoffa, Marcello, or even McKeithen and Brown are, or might be. But just upon inspection, we find that those now serving on the Louisiana Governor's Labor Rackets Commission may be no better . . . For they are as follows:

(1) A. Harry Roberts, Shreveport. He is a former special agent of 12 years service in the F.B.I. Although, it might be well to ask Roberts just why he resigned by "request" from this agency. From what we've been told, after you read his employment file, you'd know . . . Especially after a short talk with him, the impression is left to many we've met, that he's "some-sort-of-a-nut". In fact, after voicing our opinions, we were informed that any psychiatrist might easily tell you what sort of a person oft times readily convinces a jury there is "nothing" the matter with him, and that this was a most "unfortunate" "trate" amongst those "suffering" the way we believe Roberts to be.

(2) Joseph A. Oster, New Orleans. Some say he is of infamous fame about the area. This guy allegedly left the navy in somewhat of an abrupt hurry, from what they tell us. Then too, it is rumored that his employment file jacket in the New Orleans police department may hold a story telling even more.

After our talk with New Orleans Mayor Victor H. Schiro, we learned far too much for our own good. It seems to be the concensus of local opinion that Oster may be "flying-with-fellow-birds-of-a-color", you might say, inasmuch as, he too, has left several of his past employers under conditions far more than by their mutual consent.

(3) Raymond Ruiz, Sr., formerly of the New Orleans police, now of the Governor's Commission . . . Who, from what we hear by scuttle-butt, may have suffered from "female-trouble" and other such ailments during his tenure of office with the N.O.P.D. Thus, resigning by request, just as his aforementioned "comrades" have moved around by the mutual consent of all.

(4) Billy Dean Miller, employed by the Governor's Commission as an undercover "drawer-prowling" investigator. This "political-pimp" has a long "rap-sheet" as an offender of justice, rather than a defender of the law as we know it. He is currently wanted by both the Texas and Louisiana law enforcement authorities, and by now, maybe even the federal people.

Miller's wanted in Texas for blowing the safe of the First Baptist Church in Amarillo, and removing over several thousand dollars of that group's funds. In Livingston (county) Parish, Lou-

(continued on page 4)

WRITER AND FAMILY SUFFER FROM ACTS OF LA. LABOR GESTAPO

BY JACK MARTIN
CORRESPONDENT
THE HOUSTONIAN

MONTERREY—While this reporter was here in Mexico by request of his editor and others to assure his safety, the goons were still at work!

The all night and day telephone calls continued. They were either going to fire bomb our house, kill our wife and child, or ourselves.

We were forced to remove our child from his regular school sometime ago because the school could no longer suffer the harassment, or chances to any further extent, as there were hundreds of other innocent children involved.

In this case, there were not only the telephone calls, but numerous visits by strange looking people at the school. These asked personal questions about our youngster. Which child? Would they point him out? Where did he live? What time he left school, et cetera?

Last week, unknown to us at the time, our wife collapsed at her place of employment. She suffered a minor heart attack and was rushed to a local hospital for emergency treatment, all because of these goons, and our attempt to expose them for what they and their employers are . . . TRASH!

During our sojourn here, South-of-the-Border, we have been told not to return. This was told us, and several of our colleagues, after an impression was made upon us, as to what we might expect if we did come home.

Moreover, our wife has been forced by these parties to seek legal separation from us, only because she fears for her personal safety and that of the child. This was the message fostered upon her by these gangsters.

Furthermore, certain factions have attempted to harass us with false complaints levied against us in certain municipal city courts, just to make matters a little worse. One gastapo tool has complained we struck him upon one occasion.

At the time he declared this happened, we were at home with our wife, child, and other witnesses. However, our wife has been frightened to the point where she fears testifying in our behalf, and our other witnesses have been forced to leave the area at the moment of this writing. This seems to be the neat package [illegible] us, one way or another, by these

(Continued on Page 4)

THE HOUSTONIAN Subscription Blank

2005 Mason Street Houston, Texas 77006

RATES: (1 year $3.00), (2 years $5.00), (3 years $7.00), (5 years $10.00), or (25 years or for lifetime $25.00).

Date

Name

Address

Zip Code Phone

Occupation

L NOTICES

N BY PUBLICATION
STATE OF TEXAS

NO. 154,979

. H. WALSH
vs.
DANIEL FULFORD

Daniel Fulford, a transient
ducts are announced:

HENDRY COMMANDER
appear before the District
ris County for 11th Judi
of Texas, in the Court
city of Houston, Texas,
ten which term of this
day of July, 1948, be
ing your following the to
Plaintiff's said above
and you are hereby
ed provided then and there
the written answer to
petition, filed in said
20th day of May, 1948, in
ed 154,979 on the docket
wherein P. H. Walsh, is
Joseph Daniel Fulford,
nature of Plaintiff's de
the said petition alleg

ing, towit: on the 1st day
the February made, exe
ported to the Plaintiff his
tain Note for the sum
THOUSAND ($2,000.00) DOL
date of the day and
payable to the order of
Houston, Harris County,
on the 1st day of Feb
interest at the rate of
per annum from date until
providing for 10 per cent
that on 60 days default in
from date of maturity
also providing for 10 per
on the amount of prin
that then due as attorney's
in the hands of an
collection or if suit is
terms, wherein Defendant
and bound to Plaintiff
to pay into the sum of
sums specified, together
cost and attorney's fee
preceding in the upper and
said note, being in words
substantially as follows:
$2,000.00
Harris County, Texas
D, 1942
days after date, for value
we, or either of us, the
promise to pay to the order
TWO Thousand and
Dollars at Houston,
Texas with an per cent
annum from date until
said principal and in
shall bear interest at
per cent per annum.
event default is made in
of the said, at maturity,
said in the hands of an
Attorney, or said Attorneys
probate proceedings, there
agree that an additional
per cent on the principal
then due hereon shall be
same as collection fees.
1942
s Kirby Drive, Houston,

Daniel Fulford

II
for his bloody sake, and
EDWARD HEARNEVILLE
for collection and has
pay him the ten (10) per
in said note, the same
due and the usual and

III
date to pay part due and
provided, though after re
thereto failed and refused
so to pay the same, or
part, to Plaintiff's damage
DOLLARS, FOUR THOU
PUNITIVE DOLLARS and

FOR, Plaintiff prays that
Defendant be cited to appear
this Petition, and that Pla
ff for his debt, interest and
, and costs of suit; and
or and further relief, special
, in law and in equity, to
be justly entitled and
and will ever pray.

shall be given by pub
Citation once each week for
three weeks previous to Ch
July, 1948, in some
published in the county of
Jose, in a newspaper pub
, but if not, then in
city where a newspaper is
Citation shall be re
the 3rd day of July,
a forty-two days after the
hereof, and the first pub
to at least twenty-eight
said return day.

AND, NOT, but have before
said return day this writ
ecute thereon, showing how
ecuting the same.

Hardy, District Clerk,
Texas.

UNDER MY HAND and seal
at office in Houston this
of May, A. D. 1948.
AY HARDY, District Clerk,
Texas
Deputy.

Texas, May 27, 1948.
ing that writ published
ORIGINAL Houston
UNTY TIMES, a newspaper of
Texas.
Ishell Jr. Notary

ESHIP TEXAS

Battleship Texas at
acinto Battleground.
ery day from May 1
ug. 31 from noon to 6

of the year open from
5 p.m. and closed on

n is 50 cents for
ildren 12 years and
ts, children six years
5 cents, and children
ears free.

HAVE GOONS —
(Continued From Page 1)

isiana, he's wanted because of his "hot-checks". All of this was done we're told, at the same time he was supposed to be serving as an agent of the commission, as the record indicates.

Furthermore, we are also informed that this wanted criminal, Miller, is now under the protection of Jack P. F. Gremillion, Louisiana's attorney general, his main assistant Thomas McFerrin, and others comprising the Governor's Commission group. In short, Louisiana's "Justice Department" and members of this commission are, by their own act, in full intent and purpose, harboring a fugitive from justice, a wanted man.

Gremillion fled upon several occasions a few weeks ago when questioned by Newsweek about knowing Miller. He can't deny this now. We say this because why else would Gremillion call a certain official (a Mr. Hughes) in Amarillo and plead that the charges against Miller be quietly dropped.

We can't wait until the federal warrents on Miller hit Gremillion. We understand Miller is to be charged with federal violations, such as, flight to avoid prosecution. Perhaps, when this occurs, Gremillion and his entire motley crew may also go to federal jail for rendering sanctuary and giving aid to a wanted criminal; Lo, Miller.

(5) Bill Sidney Simpson, whose police and court records indicated in excess of 40 arrest and conviction notations, who has been rewarded for his work with the Governor's group.

Gremillion says he and the other Louisiana officials involved obtained the deserved ... parole under supervised probation because of Simpson's cooperation with them. It seems that he was released from the joint just a few days after he started to serve a five-year sentence.

We fail to see how this goon could help anybody as he's either been in prison or jail on several charges and offenses for too long to be a value to anyone. Hence, we witness another Louisiana Political Fairy Tale, and Gremillion "quickie", to say the least. For all Simpson knows are the lies he may have been fed by his "friends", you can well believe that.

However, inasmuch as, the U. S. Attorney General has just formed a special division of the Federal Justice Department to expedite various Labor-Management-Racket matters, blows may soon fall upon those in high places where they are least expected. In fact, this is just one of many such items this new Federal Agency fully intends to take up at an early date, we understand.

We've had it from top authority that our Uncle Sam is not going to stand by and allow any bunch of goons, political hacks, or journalistic-prostitutes, to brain-wash or intimidate people, for their own personal gain. Just to spring Hoffa out of jail . . . And . . . you can bet this goes for governors, judges, and their flunkies.

The record proves many of those have misused their public and private office to reach this goal. Some of these have even smeared F. B. I. to attempt this. So don't believe all the "Hitlerish" conduct, and such propaganda.

Our nieces Renee Pope of Tucson, has graduated high school and will soon leave for a 10 weeks trip of Europe with a group of other graduates. They will visit most of the principal cities there.

WRITER AND —
(continued from page 1)

powers that be!

Hell, we can't even communicate with our family or others over our own telephone, because the phone company lets these gestapo people tap our telephone lines. In short, we dare not call anyone for fear that other innocent people, or our friends might be needlessly involved, and that someone might learn something on which to frame on item or two, then act accordingly, as they seem to be doing with gusto.

Yes! These are the "pure-of-heart", the pious frocked "good-citizens" making up the gang of the Louisiana Governor's Labor Rackets Commission. The private gunmen of the governor . . . his personal gestapo . . . mercenaries, subsidized by public funds . . . working for he and Hoffa, so things seem!

The law firm of Patterson, McDaniel, Moore, & Browder, 1100 Houston First Savings Bldg., is composed of the following lawyers:

Bennett S. Patterson, Jesse W. McDaniel, Louis M. Moore, Elmer S. Browder, Tom C. Primm, Robert E. Newey, Ross D. Mergraves Jr., and Arthur M. Glover Jr.

WON'T YOU GET IN OUR BIRTHDAY ISSUE?

IN MEMORIAM

TO OUR MOTHER
MRS. FANNIE TERENCE
WHO PASSED AWAY
JUNE 13, 1939

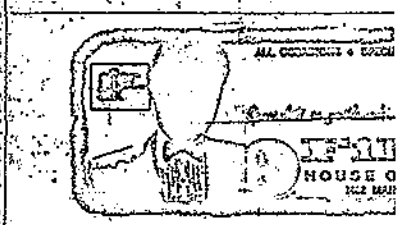
O God and Father hear me a
I pray with the Psalmist of old
So teach us to number our days
that we may get us a heart
wisdom.

This day that recalls to me th
passing of my dear Mother, ha
now come in the midst of life'
daily round of tasks and duties
My thoughts are disturbed, m
heart is heavy. O God, teach m
the true value of this day, tha
more of Thy wisdom may ente
into thy soul.

Help me to feel that my dea
Mother is in Thy peaceful keep
ing.

My dear Mother is gone; but al
the goodness, the sweetness an
nobility of that life I well remember,
As this light burns pure
and clear, so may the blessed
memory of the goodness, the no
bility of character of my dear
Mother illuminate my soul. Mai
the hallowed influences of thi
day give me strength to do Thy
will. O God, with a steadfast
submissive and loving spirit
Amen.

Charles, Nat, Lillian, Abe, Sa
rah and Mary, grandchildren an
great-grandchildren.



OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 11/18/68

FROM : SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, Aka.;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

Re report of SA RICHARD W. SUTER, dated 9/12/68 at Houston.

On November 12, 1968, Mr. [redacted] Deputy Clerk, United States Court of Appeals for the Fifth Circuit, 400 Royal Street, New Orleans, Louisiana, reviewed his file number 26773 and furnished the following information:

b6
b7C

On September 27, 1968, MARCELLO, through his attorneys, [redacted] Washington, D. C.; [redacted] New Orleans, Louisiana; [redacted] Shreveport, Louisiana and [redacted] Houston, Texas filed notice of appeal in instant matter.

b6
b7C

On October 28, 1968, there was an order of the District Court extending the time for filing the record on appeal to and including November 8, 1968.

On November 11, 1968, the record and file was withdrawn for printing. [redacted] stated that the Appellant would have 40 days to file his brief.

Contact will be maintained with the U. S. Court of Appeals, and the Bureau will be kept advised.

(2) - Bureau
2 - New Orleans
GMA:lrs
(4)

ST-113

REC- 56 89-1333-139

NOV 20 1968

397

5 NOV 28 1968

5010-108-01

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

RECEIVED
GENERAL INVESTIGATIVE
DIVISION

NOV 25 9 49 AM 1968

F. B. I.
U. S. DEPT. OF JUSTICE

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 12/19/68

FROM : SAC, NEWORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, Aka.;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

Re New Orleans letter to Bureau, 11/18/68.

On December 18, 1968, Mr. [redacted] Deputy Clerk, United States Court of Appeals for the Fifth Circuit, 400 Royal Street, New Orleans, Louisiana, reviewed his file Number 26773, and advised that the Appellant had not filed his brief. b6 b7C

Contact will be maintained with the United States Court of Appeals, and the Bureau will be kept advised.

(2) - Bureau
2 - New Orleans
GMA:lrs
(4)

REC-1 89-1333-140

EX-105

2 DEC 23 1968

JAN 6 1969

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-108-01

RECEIVED
SPECIAL INVESTIGATIVE
DIVISION

DEC 30 11 21 AM '68

REC'D - FUGITIVE
F B I

RECEIVED
SPECIAL INVESTIGATIVE
DIVISION

DEC 30 9 20 AM 1968

F.B.I.
U.S. DEPT. OF JUSTICE

FBI
DEPT. OF JUSTICE

DEC 30 10 55 AM '68

RECEIVED
SPECIAL INVESTIGATIVE
DIVISION

DEC 30 12 48 PM '68

F.B.I.
U.S. DEPT. OF JUSTICE

RECEIVED
SPECIAL INVESTIGATIVE
DIVISION

DEC 30 12 09 PM '68

FBI
DEPT. OF JUSTICE

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 1/22/69

FROM : SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, Aka
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

Re New Orleans letter to Bureau, 12/19/68.

On January 21, 1969, Mr. [redacted] Deputy Clerk, United States Court of Appeals for the Fifth Circuit, 400 Royal Street, New Orleans, Louisiana, reviewed his file Number 26773, and advised that an extension of time to file appellant's brief had been granted to February 21, 1969.

b6
b7C

Contact will be maintained with the United States Court of Appeals, and theBureau will be kept advised.

(2) - Bureau
2 - New Orleans
GMA:lrs
(4)

89-1333-141

REC-34

JAN 24 1969

EX-101

JAN 28 1969

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

RECEIVED
FEDERAL INVESTIGATIVE
DIVISION

JAN 20 10 48 AM 1969

F. B. I.
U S DEPT OF JUSTICE

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 3/28/69

FROM : SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka.,
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

Re New Orleans letter to Bureau, 2/26/69.

On March 26, 1969, Mr. [redacted] Deputy Clerk, United States Court of Appeals for the Fifth Circuit, 400 Royal Street, New Orleans, Louisiana, reviewed his file number 26773 and advised that the Government had not filed their brief.

Contact will be maintained with the United States Court of Appeals, and when the brief is filed by the Government, copies will be obtained.

89-1333-143

(2) - Bureau
2 - New Orleans
GMA:gma
(4)

DEC-3

5 APR 1 1969

APR 7 1969

ICC D+J

NINE

5010-108-01

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

FBI

APR 3 10 57 AM '69

RECEIVED
SPECIAL INVESTIGATIVE
DIVISION

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333)

DATE: 2/26/69

FROM : SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka.,
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

Re New Orleans letter to Bureau, 1/22/69.

On February 24, 1969, Mr. [redacted] Deputy Clerk, United States Court of Appeals for the Fifth Circuit, 400 Royal Street, New Orleans, Louisiana, reviewed his file Number 26773 and advised that appellant's brief had been filed on 2/24/69. Mr. [redacted] furnished two copies of appellant's brief, one copy is being forwarded to the Bureau, and the other copy is being retained in the files of the New Orleans Office. b6 b7C

A review of appellant's brief reflects the following items listed for review by the United States Court of Appeals:

1. The District Court erred in changing venue from the Eastern District of Louisiana to the Southern District of Texas over objections of appellant.

2. The District Court erred in changing the place of trial from the Laredo Division to the Houston Division and in denying appellant's motion to change venue and return the case to New Orleans.

3. The District Court erred in refusing to dismiss the indictment upon the ground it was not filed by a grand jury representing a fair cross section of the community.

4. The District Court erred in refusing to dismiss the indictment on the ground that it failed to allege an offense.

5. The District Court erred in refusing to dismiss the indictment on the ground that appellant had been granted immunity from prosecution.

89-1333-142

REC 17

(2) - Bureau (Enc. 1)
2 - New Orleans
GMA:lrs
(4)

ENCLOSURE
ENCLOSURE ATTACHED

11 FEB 28 1969

64 MAR 5 1969

5010-108-01

RECEIVED
FEDERAL INVESTIGATIVE
DIVISION
MAR 3 9 08 AM 1969
F. B. I.
U. S. DEPT. OF JUSTICE

MAR 3 3 34 PM '69
RECEIVED
SPECIAL INVESTIGATIVE
DIVISION

NO 89-79/gma

6. The District Court erred in refusing to dismiss the indictment and to authorize a hearing to establish that it had been procured by misconduct of prosecuting officials.

7. The District Court erred in quashing the subpoena served on the Attorney General and depriving appellant of records needed for cross-examination of complaining witness PATRICK J. COLLINS.

8. The District Court erred in refusing to grant a mistrial when the complaining witness and prosecuting officials injected Cosa Nostra and Mafia references into the trial.

9. The District Court erred in refusing to grant a mistrial when prosecuting officials improperly referred to a document not in evidence and improperly accused defense counsel of unfairness and manufacturing evidence.

10. The District Court erred in refusing to charge the jury that knowledge by appellant that PATRICK J. COLLINS was a Federal Bureau of Investigation agent was an element of the offense.

11. The District Court erred in refusing to charge the jury that the offense required a willful attempt and intent to inflict violent or serious injury.

12. The District Court erred in refusing to charge the jury relative to the issue of entrapment.

13. The District Court erred in submitting the issue of intimidation and assault to the jury and not requiring an election.

14. The District Court erred in refusing to grant appellant's motion for a judgment of acquittal, motion in arrest of judgment and a new trial.

15. The District Court erred in sentencing appellant to two years imprisonment and a $5,000 fine upon the basis of "brushes with the law", indictments which resulted in acquittals, and assertion of his Fifth Amendment privilege before a Congressional Committee.

Contact will be maintained with the United States Court of Appeals for the filing of the brief by the appellee.

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79)

RE: CARLOS JOSEPH MARCELLO, aka.;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

ENCL: One copy of appellant's brief.

ENCLOSURE

89-1333-142

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 26,773

CARLOS MARCELLO,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

APPELLANT'S BRIEF

JACK WASSERMAN
Warner Building
Washington, D.C.

G. WRAY GILL,
GEORGE M. LEPPERT
Pere Marquette Building
New Orleans, Louisiana

Attorneys for Appellant

U. S. COURT OF APPEALS
FILED
FEB 24 1969
EDWARD W. WADSWORTH

Washington, D.C. THIEL PRESS · 202 · 393-0625

TABLE OF CONTENTS

		Page
STATEMENT OF THE ISSUES PRESENTED FOR REVIEW		1
STATEMENT OF THE CASE		3
A.	Indictment And Pretrial Proceedings	3
B.	Evidence Developed At The Trial	7
C.	The Government's Summation	10
D.	The Court's Charge And Sentence	11
STATUTES INVOLVED		12
ARGUMENT:		
I.	Appellant's Constitutional Right to a Trial In The Eastern District of Louisiana Was Violated. It Was Error For the Trial Court to Direct a Change of Venue	12
II.	Reversal Is Required By the Deliberate Course of Misconduct By the Prosecution Including Injection of Irrelevant and Prejudicial References to the Mafia and Accusations in Closing Jury Argument of Unfairness and the Manufacture of Evidence by the Defense and Defense Witnesses	17
	A. The Accusation of Unfairness and the Fabrication of Evidence	18
	B. The Deliberate Injection of Mafia References Into the Case Was a Ground for Mistrial. It Was Error to Deny a Mistrial Solely to Save the Expense of a New Trial	22
III.	The Indictment Herein Was Not Returned By a Fair Cross Section of the Community and Should Have Been Dismissed	24
IV.	Appellant Was Granted Immunity From Prosecution By a New York Grand Jury	26
V.	The District Court Erroneously Refused to Submit the Issue of Entrapment to the Jury	29

VI. The District Court Erred in Suppressing the Subpoena for the Personnel and Other Records of Patrick J. Collins, Jr., and Surveillance Records of September 30, 1966 30

VII. The District Court Erred in Submitting the Issues of Assault or Intimidation to the Jury and in Not Requiring an Election 31

VIII. It Was Error to Refuse to Charge the Jury That an Assault Under 18 U.S.C. 111 Required a Willful Attempt and Intent to Inflict Violent and Serious Injury 33

IX. The District Court Erred in Eliminating Knowledge of Collins' Identity as an Element of the Offense of Assault and Intimidation under 18 U.S.C. 111 36

X. The Evidence Did Not Establish Guilt Beyond a Reasonable Doubt 36

XI. The District Court Erred in Utilizing Brushes With the Law and Fifth Amendment Claim in Evaluating the Severity of Appellant's Sentence Herein 39

CONCLUSION 42

CITATIONS

Cases:

Atlantic Coast Line R.R. Co. v. Coxwell, 91 S.E. 2d 135, 93 Ga. App. 159 (1955) 20

Ballard v. United States, 329 U.S. 187, 193 (1946) 25

Bennett v. United States, 285 F.2d 567 (5th Cir., 1960) 34, 36

Berger v. United States, 295 U.S. 78, 88 (1934) 19

Brown v. United States, 276 U.S. 134 (1928) 31

Brundage v. United States, 365 F.2d 616 (10th Cir., 1966) 34, 38

Bruton v. United States, 391 U.S. 123 (1968) 23

Burke v. United States, ___ F.2d ___ (5th Cir., No. 24, 957, September 23, 1968) 36

Carney v. Cochran, 369 U.S. 506, 516 (1962) 14

Chapman v. State, 78 Ala. 463 (1885) 34, 35
Counselman v. Hitchcock, 142 U.S. 547, 586 (1891) 28
Delaney v. United States, 199 F.2d 115, 116 (1st Cir., 1952) 14, 15
Demos v. United States, 205 F.2d 596 (5th Cir., 1953) 29
Dunn v. United States, 307 F.2d 883 (5th Cir., 1962). . . . 20, 21, 23
Fay v. Noia, 372 U.S. 391, 439 (1963) 14
Frank v. United States, 347 F.2d 486 (D.C. Cir., 1965), cert. denied 382 U.S. 923 28
Glasser v. United States, 315 U.S. 60, 71-72 (1941) 16
Green v. United States, 355 U.S. 184, 191 (1957) 14
Greenberg v. United States, 280 F.2d 472, 474-5 (1st Cir., 1960) 21
Guarro v. United States, 237 F.2d 578, 580 (D.C. Cir., 1957) 35, 38
Hall v. United States, 235 F.2d 248 (5th Cir., 1956) 34
Hanford v. United States, 249 F.2d 295 (5th Cir., 1957). 19
Harris v. United States, 400 F.2d 264, 266, note 3 (5th Cir., 1968) 30
Harris v. United States, 402 F.2d 656 (D.C. Cir., 1968) 19
Hensley v. United States, 281 F.2d 605 (D.C. Cir., 1960) 15
Henderson v. United States, 237 F.2d 169 (5th Cir., 1956). 30
Hill v. Texas, 316 U.S. 400 (1942). 26
Jackson v. Commonwealth, 247 S.W. 2d 52 (Ky., 1952) 34
Johnson v. United States, 347 F.2d 803 (D.C. Cir., 1965) 21
Johnson v. Zerbst, 304 U.S. 458 (1937) 14
Jones v. State, 205 S.W. 2d 590, 151 Tex. Cr. App. 115 (1947) 20
Long v. United States, 199 F.2d 717 (4th Cir., 1954). 32, 34
Lopez v. United States, 373 U.S. 427 (1963). 29
McEwen v. United States, 390 F.2d 47 (9th Cir., 1968) 34
McPhaul v. United States, 364 U.S. 372 (1960) 31

Miranda v. United States, 384 U.S. 475 (1966) 14
Mitchell v. United States, 394 F.2d 767 (D.C. Cir., 1968) 36
Mobley v. United States, 379 F.2d 768 (5th Cir., 1967) 25
Murphy v. Waterfront Commission, 378 U.S. 52 (1964)..... 28
Nalls v. United States, 240 F.2d 707 (5th Cir., 1957)..... 22
O'Gallagher v. Finkel, 129 N.E. 2d 345, 7 Ill. App. 2d 296 (1955)..... 20
Olenin v. Curtin & Johnson, Inc., ___ F.2d ___ (D.C. Cir., No. 21, 104, November 27, 1968) 19
Panama Refining Co. v. Ryan, 293 U.S. 388 (1935)..... 26
Parr v. United States, 351 U.S. 513, 521 (1956)..... 14
Patriarca v. United States, 402 F.2d 314 (1st Cir., 1968) ... 15, 20
Paz v. United States, 387 F.2d 428 (5th Cir., 1967)..... 36
People v. Doud, 223 Mich. 120, 193 N.W. 884 (1923) 34, 35
Peters v. United States, 376 F.2d 839 (5th Cir., 1967) 37
Pipes v. United States, 399 F.2d 471 (5th Cir., 1968)..... 36
Pratti v. United States, 389 F.2d 660 (9th Cir., 1968) 15
Rabinowitz v. United States, 366 F.2d 34 (5th Cir., 1966).... 3, 25
Reichert v. United States, 359 F.2d 278 (D.C. Cir., 1966)..... 21
Sears v. United States, 343 F.2d 139 (5th Cir., 1965) 29
Slochower v. Board of Education, 350 U.S. 551, 557 (1956)..... 41
Sorrells v. United States, 287 U.S. 435 (1932)..... 29
Stevens v. Marks, 383 U.S. 234 (1966)..... 15, 16
Sullins v. United States, 389 F.2d 985 (10th Cir., 1968)..... 14
Thiel v. Southern Pacific Co., 328 U.S. 217 (1946) 25
Tri State Transit Co. v. Westbrook, 180 S.W. 2d 121, 207 Ark. 270 (1944) 20
United States v. Andolschek, 142 F.2d 503 (2nd Cir., 1944)..... 31
United States v. Barnaby, 51 Fed. 20, 21 (D. Montana, 1892)..... 34, 38

United States v. Chicago B & O R. Co., 82 F.2d 131, cert. denied 298 U.S. 689 . . . . . 14, 15

United States v. Coplon, 185 F.2d 629, 638 (2nd Cir., 1950) 31

United States v. Goodman, 285 F.2d 378 (5th Cir., 1961), Cert. denied 366 U.S. 930 32

United States v. Grossman, 400 F.2d 951 (4th Cir., 1968) 21

United States v. Leggett, 312 F.2d 566 (4th Cir., 1962) 32

United States v. Marcello, 196 F.2d 437 (5th Cir., 1952) . . . 11, 39

United States v. Martinez-Gonzalez, 89 F. Supp. 62 (S.D. Calif. 1950) 32

United States v. Niarchos, 125 F. Supp. 214 (Dist. of Col., 1954) 28

United States v. Parr, 17 F.R.D. 512 (S.D. Texas, 1955) 14

United States v. Smith, 392 F.2d 302 (4th Cir., 1968) 14

United States v. Wallace, 368 F.2d 537 (4th Cir., 1966) 36

United States v. Wiley, 278 F.2d 500, 504 (7th Cir., 1960) 41

Verdugo v. United States, 402 F.2d 599 (9th Cir., 1968) 41

Williams v. United States, 140 F.2d 351, 352 (D.C. Cir., 1944) 37

Yates v. United States, 356 U.S. 363, 366 (1958) 40

Statutes:

New York Penal Law:
Section 584 26
Section 2447 27

Public Law, 90-274, 82 Stat. 53 . . . . . 12, 26

United States Code:
18 U.S.C. 111 . . . . . 12, 34, 35
18 U.S.C. 118 (1940 Ed.) 35
18 U.S.C. 254 (1940 Ed.) 35
28 U.S.C. 1863(b) (Prior to amendment by P.L. 90-274, 82 Stat. 53) 12, 26

United States Constitution:
Article 3, Section 2 13
Sixth Amendment 13

Miscellaneous:

Canon 15, American Bar Association Canons of Professional Ethics 21
5 *Am. Jur.* 2d, Sec. 698 15
1 *Burdick, Law of Crimes,* Sec. 342 (1946) 35
5 *Busch, Law and Tactics in Jury Trials* (1963), Sec. 664 20
6 *C.J.S.* p. 913 33
60 *C.J.S.* p. 42 15
8 *Cyclopedia of Federal Procedure,* p. 22 (1968) 31
26 F.D.R. 509 26
55 *Georgetown Law Review* 656 (March, 1967) 28
Hawkins, 1 P.C. 110 33
House Report 304, 80th Congress, 1st Session 35
House Report 1455, 73rd Congress, 2d Session 35
House Report 4200, 58th Congress, 3rd Session 34
2 *Orfield, Criminal Procedure Under the Federal Rules* (1966), pp. 665-666, p. 730 . . . . . 14, 31
S. Report 535, 73rd Congress, 2d Session 35
S. Report 891, 90th Congress, 1st Session, p. 24 25
1 *Wharton, Criminal Law,* Section 603 (10th Ed.) 33

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 26,773

CARLOS MARCELLO,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

APPELLANT'S BRIEF

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the District Court erred in changing venue from the Eastern District of Louisiana to the Southern District of Texas over objections of appellant.

2. Whether the District Court erred in changing the place of trial from the Laredo Division to the Houston Division and in denying appellant's motion to change venue and return the case to New Orleans.

3. Whether the District Court erred in refusing to dismiss the indictment herein upon the ground that it was not approved or filed by a grand jury representing a fair cross section of the community.

4. Whether the District Court erred in refusing to dismiss the indictment herein upon the ground that it failed to allege an offense.

5. Whether the District Court erred in refusing to dismiss the indictment upon the ground that appellant had been granted immunity from prosecution.

6. Whether the District Court erred in refusing to dismiss the indictment and to authorize a hearing to establish that it had been procured by misconduct of prosecuting officials.

7. Whether the District Court erred in quashing the subpoena served on the Attorney General and depriving appellant of records needed for cross-examination of complaining witness Patrick J. Collins.

8. Whether the District Court erred in refusing to grant a mistrial when the complaining witness and prosecuting officials improperly injected Cosa Nostra and Mafia references into the trial herein.

9. Whether the District Court erred in refusing to grant a mistrial when the prosecuting officials improperly referred to a document not in evidence and improperly accused defense counsel of unfairness and manufacturing evidence in their closing argument.

10. Whether the District Court erred in refusing to charge the jury that knowledge by appellant that Patrick J. Collins was a Federal Bureau of Investigation agent was an element of the offense herein.

11. Whether the District Court erred in refusing to charge the jury that the offense herein required a willful attempt and intent to inflict violent or serious injury.

12. Whether the District Court erred in refusing to charge the jury relative to the issue of entrapment.

13. Whether the District Court erred in submitting the issue of intimidation and assault to the jury and in not requiring an election.

14. Whether the District Court erred in refusing to grant the appellant's motion for a judgment of acquittal, the motion in arrest of judgment and a new trial.

15. Whether the District Court erred in sentencing appellant to two years imprisonment and a $5,000.00 fine upon the basis of "brushes with the law", indictments which resulted in acquittals, and assertion of his Fifth Amendment privilege before a Congressional Committee.

STATEMENT OF THE CASE

A. Indictment and Pretrial Proceedings

On October 7, 1966, appellant was indicted in the Eastern District of Louisiana in one count for assaulting and intimidating Federal Bureau of Investigation agent Patrick J. Collins at the Moissant International Airport on September 30, 1966, in violation of 18 U.S.C. 111 (No. 30538B). This indictment was dismissed on June 5, 1967, for failure to comply with *Rabinowitz v. United States,* 366 F.2d 34 (5th Cir., 1966).

On June 1, 1967, appellant was reindicted (No. 30888-B, App. 1). Appellant moved to dismiss the indictment for failure to state an offense (App. 17), by reason of the improper composition of the grand jury (App. 27), the grant of immunity (App. 24), and the improper announcement to the press by the prosecutor herein, Mr. Neff, on September 29, 1966, that Marcello's arrest in New York as a material witness "makes it obvious that there is organized crime in the area and that Marcello was there in the interest of this area" (App. 19). A motion was also made for a change of venue and a continuance (App. 3).

The pretrial motions were set for hearing before Judge Heebe on September 13, 1967, when the Court limited argument to the motion for a change of venue and continu-

ance (App. 55, 69). Government counsel submitted on the motion without argument. Counsel for appellant advised the Court that his motion was only for a five month continuance by reason of adverse publicity. He stated (App. 59-61, 63-4):

> "*Mr. Wasserman:* Yes, and my motion this morning, this afternoon, is for a five-month continuance. I feel that we should not be obliged to try this case in this atmosphere at this time. I am, naturally, withdrawing a request for a change of venue—I beg your pardon—I am not pressing my request for a change of venue at this time.
>
> "*The Court:* All right. You mention the Delaney case, and I thought you were mentioning it in support of the motion for change of venue.
>
> "*Mr. Wasserman:* No. I am only pressing at this time the request for a postponement * * *.
>
> * * *
>
> "*Mr. Neff:* As I understand the nature of the motion, your Honor, he is moving for a continuance of this matter for five months.
>
> "*Mr. Wasserman:* That is correct.
>
> * * *
>
> "*Mr. Wasserman:* * * * we have again adverse publicity and it is for this reason that I am anxious to have this case postponed until sometime after election, to reassess the effect of that adverse publicity at that time.
>
> * * *
>
> "*The Court:* * * * I will grant the motion for change of venue and leave all other motions * * *"

Ten minutes after the argument defense counsel appeared in the Court's chambers and requested withdrawal of the change of venue order (App. 99), upon the ground that it was contrary to appellant's express wishes (App. 72, 73). At the Court's suggestion a written motion for reconsidera-

tion was filed one day later on September 14, 1967, together with an affidavit by Marcello which stated that he objected to a change of venue, had so advised his attorney prior to the argument and that he did not waive his constitutional right to a trial in the place where he was charged with the crime herein (App. 100, 42, 44). Marcello's affidavit of September 14, 1967, stated (App. 45):

> "I do not waive my constitutional right under the Sixth Amendment to a trial in the place where I am alleged to have committed the crime herein. * * * I do not consent to a change of venue outside of New Orleans and in particular to anyplace designated by the Government or the Court. I, therefore, request reconsideration of the Court's order."

The motion for reconsideration was argued on September 22, 1967. Permission was specifically requested for leave to abandon the motion for change of venue (App. 43, 71).

The Government asserted that it was again submitting the matter without argument but prosecutor, Mr. Neff, observed without any basis in the record, that it was "the opinion of the Government that the representations by defense counsel and by the defendant are fraudulent on their face" (App. 88, 90).[1] The Court orally observed that

---

[1] The improper conduct of Mr. Neff throughout this proceeding cannot go without comment. He announced to the press on September 29, 1966, that Marcello was connected with organized crime (App. 11, 19). He accused appellant's counsel, without justification, of fraudulent misrepresentations (App. 90). During the trial he improperly elicited Cosa Nostra references from the complaining witness. The Court below so found (App. 1013-1015) (Point II (B), *infra*). In closing argument he accused appellant's counsel of manufacturing evidence—another baseless charge (App. 1353) (Point II (A), *infra*).

To this we may note the outrageous request of the Government to hold Marcello in $100,000 bail when he was originally arrested on this charge and its further action in requesting a denial of bail pending appeal. Appellant was released on bail of $5,000.00.

"this is a novel issue insofar as any jurisprudence is concerned" (App. 80), and kept the motion under advisement for over five months. On March 1, 1968, in a written opinion and order it was directed that the case be transferred to the Southern District of Texas. The Court found that prejudicial publicity prevented a fair trial in Louisiana, that the statements of appellant's counsel that he was not pressing the motion for a change of venue was not an abandonment of it, that Marcello's affidavit does not state that he "did not want a change of venue in any event", that Marcello merely preferred a continuance, that when the motion for a change of venue was granted orally Marcello made a binding election and waived his Sixth Amendment rights, that Marcello was granted the relief he requested and that Marcello could only receive due process and a fair trial by a change of venue (App. 98-132).

The various motions to dismiss the indictment were heard before Judge Connally on March 22, 1968. Testimony and exhibits were presented to show that in selection of the grand jury residents of 6 out of 13 parishes which constitute the Eastern District of Louisiana were excluded by order of Court without any stated basis for such exclusion. Unintentionally, those on federal registration lists were excluded from the Parish of Plaquemines (March 22, 1968, Tr. 59-81). No testimony was permitted by the Court to show that the grand jury was biased through reading the September 29, 1966 announcement of the prosecutors that Marcello was connected with organized crime (March 22, 1968, Tr. 25-27). Testimony was adduced to show that on November 4, 1966, and on May 3, 1967, after claiming self-incrimination, appellant was granted complete immunity by the Grand Jury of Queens County, New York, from any prosecution, and relieved from any penalty on account of any transaction concerning which he gave testimony. Testimony was given relative to the incident herein (March 22, 1968, Tr. 27, 53). Judge Connally denied all of appellant's motions to dismiss (App. 197-206). A trial

before Judge Connally in Laredo, Texas, resulted in a hung jury and mistrial on May 29, 1968 (App. 692).

The case was reset before Judge Singleton in Houston, Texas, and on August 8, 1968, a jury returned a verdict of guilty (App. 1413-4). On September 12, 1968, appellant was fined $5,000.00 and sentenced to two years imprisonment (App. 1510).

B. Evidence Developed At the Trial

On September 30, 1966, appellant's counsel informed the Federal Bureau of Investigation in New York in response to its request that appellant and his brother, Joseph Marcello, would proceed from New York to New Orleans by Delta Airlines. This was done with appellant's approval (App. 1172-4). Upon their arrival at the Moissant International Airport in New Orleans, appellant was surrounded by a group of news photographers and newspapermen who followed him from the point of deplaning through the airport and to his son's car which was parked on the outer ramp. Federal Bureau of Investigation agents, Joseph Avignon and Patrick J. Collins, were assigned to take photographs and conduct surveillance of Marcello at the airport. Collins, in shirt sleeves, holding his suit jacket, posed as a deplaning passenger (App. 858-9, 887-8, 931-933, 979). Avignon, in shirt sleeves, carried a camera and took photographs (Gov't Ex. 6). Neither agent identified himself to Marcello (App. 877-8).

After reaching the upper ramp outside the airport building, appellant, angrily and with some profanity, inquired whether the photographers had secured enough pictures. Collins, with his hands folded, asserted in the negative. Thereupon, Marcello asked: "Are you looking for trouble?" Collins replied: "I can handle trouble" (App. 939). There is confusion among prosecution witnesses as to what happened next and contradiction by defense witnesses as to the events which followed.

Complaining and chief prosecution witness, Federal Bureau of Investigation agent Collins, testified that the report (Government Exhibit 7)[2] he prepared immediately after the incident contained a full, complete and true account of the incident herein (App. 965). This report, introduced in evidence by the Government (App. 1002), stated:

> "* * * Carlos Marcello brought his right hand with his fist closed toward me in a roundhouse blow. Simultaneously, with his commencing of a blow, Joseph Marcello grabbed his arm and attempted to restrain him. I immediately took a counterpunch position with my hands open.
>
> "Carlos Marcello did not get to strike a blow due to his brother's immediate action and the unknown individual's[3] action shortly thereafter. I struck no blow due to the fact that I would not strike a blow unless one of these individuals struck first."

Collins, 39 years of age, an athlete with training in defensive tactics, 6'1" tall and 185 pounds, testified that non-athletic Marcello, 58 years of age, and 5'3" tall (App. 947-950, 1202, 1206), first jabbed with his left, that if bodily contact with the left was made he did not feel it and that he was not paying attention to Marcello's left hand (App. 941, 955). He was only apprehensive of harm for a split second from the *right* hand (App. 955). He could not identify the photograph (Gov't Ex. 6) in the sequence of events (App. 945, 970-971). He posed as a deplaning passenger, did not identify himself as a Federal Bureau of Investigation agent, and Marcello did not impede, interfere or resist Collins (App. 878, 972, 979). He was not directed to engage Marcello in conversation and when he said he could handle trouble the physical action started (App. 980, 995). He could not deny being questioned by A.P. photo-

[2]Originally Defendant's Exhibit 3 for identification (App. 965).

[3]Later identified as Joseph C. Marcello, the son of Carlos Marcello.

grapher Thornell or newspaperman Elder at the time of the incident (App. 957-8). He denied stating to four defense witnesses that the incident was an accident which later got out of hand. Upon redirect he stated that he discussed La Costra Nostra—the American Mafia—with Mike Maroun, a confidant of Marcello. With misgivings and because of the expense involved in a retrial, the Court denied a mistrial when La Cosa Nostra was injected into the case (App. 983-992, 1013-1016).

Federal Bureau of Investigation agent Avignon testified that appellant swung a single *right* in the direction of Collins and saw no other movement. He saw no contact and observed no interference with Collins' surveillance (App. 846, 880-1, 903-4, 908).

Prosecution witness, Jack Thornell, an Associated Press photographer, took a photograph of the incident (Government Exhibit 6) which shows Marcello's right hand at his side (App. 921, 924, 929). Thornell only saw a movement of Marcello's *left* hand. He observed that Collins was relaxed and not in fear and Collins commented to him that no contact was made, that he was not hurt and that Marcello was an "old man" (App. 928-9).

Patrick Nolan, a New Orleans police official, testified for the prosecution that he was unaware of the identity of the two agents at the time, that Marcello drew his left hand across his body with a cupped hand, not a full fist, and that his *left* hand made contact with Collins' neck and shoulder region. There was no roundhouse right (App. 1033-4, 1047-8).

Reporter, William Elder, subpoenaed as a Government witness and called by both sides, testified that Collins told him at the time of the incident that he was not afraid of Marcello, he did not think he was going to be thrown off the concourse, that he did not want to hurt that old man, and would not lay a finger on him (App. 1082-5).

Reporter M. J. Gauthier, called in rebuttal by the prosecution, asserted that Marcello struck Collins on the right cheek with a *left* hand (App. 1293, 1299, 1308).

Carlos Marcello, his son, Joseph C. Marcello, and his brother, Joseph Marcello, Jr., testified that they did not know Collins was a Federal Bureau of Investigation agent, and that appellant did not strike or attempt to strike Collins. On the contrary, appellant merely raised his left hand in a non-threatening gesture to tell Collins "Oh man, let's go, get away from me". His brother and son then grabbed appellant and wheeled him around (App. 1152-3, 1174-9, 1203-5).

Attorney Michel Maroun and Katherine Angel testified that on February 12, 1968, Collins stated to them in Shreveport, Louisiana, that the incident was an accident, that appellant should not have been charged, and that he was not put in fear by Marcello (App. 1224-8, 1260-3). Maroun admitted that the next day he had dictated a memorandum of his conversation with Collins and that his secretary mistakenly dated it February 6th, 1968 (App. 1246-7). Joseph Paretto testified that Collins told him that Joseph Marcello, Jr., was the real troublemaker on September 30, 1966 (App. 1114-5). Roy Occhipinto testified that Collins told him that there was nothing to the incident and that nothing would come of the case (App. 1096). At the close of the Government's case and at the close of the entire case, motions for judgments of acquittal were denied (App. 1064, 1319).

C. The Government's Summation

In summation to the jury, over objections which were noted, accompanied by motions for mistrial, initially prosecutor Owen Neff referred to the Maroun memorandum (not in evidence) of February 6th stating "the defense decided that they needed some kind of memorandum to impeach Agent Collins so they made up this phony memorandum" (App. 1353). Later he referred to the skunk in the case,

the February 6th memorandum (App. 1355). In concluding argument, prosecutor Blask stated that he would tell the jury what really occurred (App. 1389), that the jury should not be kidded by the defense, "they're not trying to be fair," it's the prosecution's "inference and contention that the memorandum or date of February 6th was manufactured, that defense witness, Mr. Maroun, "will sing upon request" (App. 1390, 1393-4). The Court's reaction to objections by defense counsel was: "I can't believe that this is so horrible. It says nothing about the defendant whatsoever." (App. 1354).

D. The Court's Charge and Sentence

The jury was instructed that appellant was not required to touch Collins, know who he was, but merely to offer to touch him to establish guilt (App. 1401-5).

The District Court, although requested to, refused to charge on the issue of entrapment, that a willful attempt and intent to inflict violent or serious injury were required, or that scienter that Collins was a Federal Bureau of Investigation agent on the charge of assault or intimidation was essential (App. 1408-9, 1411-13). The Court submitted both issues of assault or intimidation to the jury over objection (App. 1324-9, 1404). In the first trial herein, the Court ruled as a matter of law that intimidation was not established (Tr. May 29, 1968, p. 488, App. 688). After the jury returned a verdict of guilty, access to the presentence report was denied appellant (App. 1490, 1498). On September 12, 1968, appellant was fined $5,000.00 and sentenced to two years imprisonment. The Court stated (App. 1508-10) in meting out this sentence that consideration was given to appellant's brushes with the law, including mere arrests, indictments which resulted in dismissals, or findings of not guilty and his assertion of his constitutional rights before a Congressional Committee which resulted in a decision of this Court that he was not in contempt. *United States v. Marcello,* 196 F.2d 437 (5th Cir., 1952). This appeal was noted on September 12, 1968, the day of sentence.

STATUTES INVOLVED

18 U.S.C. 111 provides:

> "Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in Section 1114 of this title while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than three years, or both."

28 U.S.C. 1863(b) (prior to amendment by P.L. 90-274, 82 Stat. 53) provided:

> "Any class or group of persons may, for the public interest, be excluded from the jury panel or excused from service as jurors by order of the district judge based on a finding that such jury service would entail undue hardship, extreme inconvenience or serious obstruction or delay in the fair and impartial administration of justice."

ARGUMENT

I.

APPELLANT'S CONSTITUTIONAL RIGHT TO A TRIAL IN THE EASTERN DISTRICT OF LOUISIANA WAS VIOLATED. IT WAS ERROR FOR THE TRIAL COURT TO DIRECT A CHANGE OF VENUE

Appellant's counsel filed a motion for a change of venue and continuance herein on July 3, 1967. This and other motions were set for hearing on September 13, 1967, when appellant's counsel clearly and repeatedly stafed in open court that he was not pressing the motion for a change of venue but only desired a continuance (p. 4 of this brief, *supra,* App. 59-61, 63-4). Nevertheless, the Court ruled that venue should be changed.

Ten minutes after the argument defense counsel appeared in the Court's chambers and requested withdrawal of the change of venue order (App. 99) upon the ground that it was contrary to appellant's wishes (App. 45). At the

Court's suggestion a written motion for reconsideration was filed one day later on September 14, 1967, together with an affidavit by Marcello which stated that he objected to change of venue, had so advised his attorneys prior to the argument and that he did not waive his constitutional right to a trial in the place where he was charged with the crime herein (App. 45). This motion for reconsideration was argued on September 22, 1967. Permission was specifically requested for leave to abandon the motion for change of venue (App. 42-3). The Court ruled on March 1, 1968 (App. 98-132), that Marcello waived his Sixth Amendment right to a trial in Louisiana, that he could only receive a fair trial outside Louisiana and a change of venue to the Southern District of Texas was directed. After venue had been changed herein to Laredo, the District Court transferred the case to Houston, Texas, over objections of appellant who renewed his request that the case be tried in New Orleans (App. 1420-26).

We submit that on the facts presented here it was error to change venue contrary to appellant's express wishes. Prior to the actual change of venue the Court was specifically advised that appellant did not press and did not desire the change. Prior to the actual change of venue, the Court was advised that appellant desired to withdraw his motion for a change of venue. Under these circumstances, the place of trial should not have been altered.

We submit that appellant should have been permitted to withdraw his application for a change of venue and that he did not waive his constitutional right to a trial in the district of the alleged offense.

Article 3, Section 2, of the Constitution provides that a defendant's:

> "trial shall be held in the state where the said crimes shall have been committed."

The Sixth Amendment provides that:

> "* * * the accused shall enjoy the right to a * * * trial by an impartial jury of the state and

district wherein the crimes shall have been committed, which district shall have been previously ascertained by law * * * ."

A defendant may waive his constitutional right to a trial in the district of the alleged crime by requesting a change of venue and accepting such change.

Under Rule 21(a) a transfer may only be made upon motion of the defendant. The right to apply for a change of venue is at the defendant's option and for his benefit. A change of venue may not be forced upon defendant against his wishes. *Delaney v. United States,* 199 F.2d 115, 116 (1st Cir., 1952), 2 *Orfield, Criminal Procedure Under the Federal Rules* (1966), p. 730. The Government has no power to obtain a transfer to another district. It is only the defendant who has such right. *United States v. Parr,* 17 F.R.D. 512 (S.D. Texas, 1955); *Parr v. United States,* 351 U.S. 513, 521 (1956).

Waiver of constitutional rights requires a voluntary and knowing relinquishment. *Green v. United States,* 355 U.S. 184, 191 (1957). Acquiescence in the loss of fundamental rights will not be presumed. *Johnson v. Zerbst,* 304 U.S. 458 (1937). The facts establishing waiver of a constitutional right must be clearly established. *United States v. Smith,* 392 F.2d 302 (4th Cir., 1968); *Sullins v. United States,* 389 F.2d 985 (10th Cir., 1968).

A choice made by counsel not participated in by the accused is not necessarily binding upon him. *Fay v. Noia,* 372 U.S. 391, 439 (1963). Mere silence by an accused was erroneously interpreted as a waiver by the Court below. See: *Miranda v. United States,* 384 U.S. 475 (1966); *Carney v. Cochran,* 369 U.S. 506, 516 (1962). Here, at the time of argument before Judge Heebe, it was made abundantly clear that the motion for change of venue was not being pressed[4] and that only a continuance was requested.

---

[4]Compare the accepted principle that failure to press issues in appellate arguments constitutes an abandonment of the same. *United*

The District Court was advised that no place of transfer could be named. In this situation appellant should not have been required against his will to have a trial elsewhere. In *Delaney v. United States, supra,* the Court was advised, as here, that there was no assurance that a trial free from public prejudice could be obtained by a transfer. There, too, the Court was advised, as appellant's counsel stated here, that postponement until after election would give appellant a fairer trial. The Court ruled that the law required such postponement.

We submit that no strong reason existed for denying appellant permission to withdraw the motion for a change of venue and that such request should have been granted. See *Stevens v. Marks,* 383 U.S. 234 (1966), 60 *C.J.S.,* p. 42.

Appellant did not waive his constitutional right to a trial in New Orleans. He may and did withdraw any alleged waiver of his Sixth Amendment rights.

The attitude of Judge Heebe was directly contrary to that of the District Court in *Patriarca v. United States,* 402 F.2d 314, 316 (1st Cir., 1968), where a pretrial motion was made for a change of venue and for a four or five month postponement. The appellant was permitted to waive his initial request for a change of venue.

In *Hensley v. United States,* 281 F.2d 605 (D.C. Cir., 1960), where counsel waived a jury trial in the presence of his client, it was held that the waiver was ratified by the defendant proceeding to trial without objection. Here, on the contrary, counsel and appellant promptly advised the

---

States v. Chicago B & Q R. Co., 82 F.2d 131, cert. denied, 298 U.S. 689; *Pratti v. United States,* 389 F.2d 660 (9th Cir., 1968); 5 *Am. Jur.* 2d, Sec. 698. No authority can be cited to contradict the proposition that intentionally not pressing a point and so advising the Court is an abandonment of such point. Here, appellant's counsel effectively abandoned his motion for a change of venue.

Court of appellant's desire to stand trial in New Orleans, and before the entry of any formal order of transfer.

Stevens v. Marks, 383 U.S. 234, 243, 244 (1966), involved a written waiver of immunity and of Fifth Amendment rights signed by a police officer without the advice of counsel. Thereafter, he withdrew the waiver and claimed his constitutional rights under the Fifth Amendment. Justice Douglas, speaking for the Court, said that no justification could be found for not permitting the right to withdraw the waiver and further:

> "We hold that petitioner's effort to withdraw the waiver was effective * * * petitioner could properly stand on his privilege and refuse to answer potentially incriminating questions."

The *Stevens* case is particularly applicable here. The motion for a change of venue was not *per se* a waiver. Even if it were, no justification existed for denial of permission to withdraw such motion and to permit the appellant to stand on his constitutional right. The instant case is stronger than *Stevens*, as here appellant never personally stated on the record that he desired to waive such right.[5] On the contrary, he promptly advised the Court before any transfer that he desired no changed place of trial. Under these circumstances, it was error to force a change of venue upon appellant.

---

[5]Waiver of the constitutional right to counsel should appear on the record. *Glasser v. United States*, 315 U.S. 60, 71-72 (1941). Waiving the constitutional right of venue should likewise appear on the record.

II.

REVERSAL IS REQUIRED BY THE DELIBERATE COURSE OF MISCONDUCT BY THE PROSECUTION INCLUDING INJECTION OF IRRELEVANT AND PREJUDICIAL REFERENCES TO THE MAFIA AND ACCUSATIONS IN CLOSING JURY ARGUMENT OF UNFAIRNESS AND THE MANUFACTURE OF EVIDENCE BY THE DEFENSE AND DEFENSE WITNESSES

The Government embarked upon a deliberate course of misconduct in the management of this prosecution. Government attorneys announced to the press in New Orleans on September 29, 1966, that Marcello had connections with organized crime. At the pretrial argument of motions herein on March 22, 1968, when the defense called for production of evidence favorable to the accused, they misrepresented that no such evidence was in their possession.[6] The prosecution baselessly accused defense counsel with fraudulent misrepresentation to the Court (App. 90). They failed to exhibit Government Exhibit 8 to defense counsel prior to trial in conformity with the discovery order herein (App. 204-5, 1090-1). As found by the Court below, they deliberately injected references to the Mafia into their redirect-examination of their chief witness, Federal Bureau of Investigation agent Collins (App. 1013-15) and in closing jury arguments they improperly accused defense counsel of unfairness and manufacturing evidence (App. 1353, 1390-4). Likewise, their closing argument improperly asserted that two important defense witnesses, Michel Maroun and Katherine Angel, had fabricated evidence (App. 1353-5, 1390-5).

---

[6]It subsequently developed that the statements of Jack Thorneli that Collins admitted that he was not hurt and he regarded Marcello as an old man, as well as William Elder's statement that Collins was not afraid of Marcello, were clearly favorable to the accused. So was Government Exhibit 7. Nevertheless, it was represented that the Government had no evidence favorable to Marcello (App. 170, 292-4, 1070-1).

A. The Accusation of Unfairness And The Fabrication of Evidence

In closing argument prosecutor Neff referred to a meeting of February 12, 1968, between defense witness Michel Maroun and Collins. Maroun, a member of the Louisiana Bar (who represented Marcello but did not act as attorney in the trial herein) and Katherine Angel had testified that at this meeting Collins had admitted that the alleged Marcello assault was an accident, that he was not placed in fear by Marcello and that Marcello should not have been charged. Maroun stated that he dictated a written memorandum of the event a day later but that his secretary incorrectly dated it February 6th (App. 1247-8). The memorandum was not introduced in evidence. Prosecutor Neff said (App. 1353):

> "The defense decided that they needed some kind of memorandum to impeach Agent Collins so they made up this phony memorandum."

Objection was made and appellant moved for a mistrial (App. 1353, 1390, 1408). The Court observed: "I can't believe that this is so horrible. It says nothing about the defendant whatsoever." (App. 1354) Mr. Neff then continued, stating that God only knows when Katherine Angel went back and inserted the date February 12th on her calendar[7] to show the meeting with Collins (App. 1355), that the skunk in the case was the February 6th memorandum of an interview that had never taken place (App. 1355). Prosecutor Blask advised the jury he would tell them what really occurred, and that the defense was not trying to be fair (App. 1390). Appropriate objection was noted and overruled (App. 1390, 1408). He concluded (App. 1393-5):

> "Don't you know a lawyer representing this defendant in a criminal case would have been sure about

[7]Katherine Angel testified that the date of her meeting with Collins, February 12, 1968, appears on her personal calendar (App. 1273-5).

> that date? It was a week earlier and it is our inference and our contention that it was manufactured. The only thing that I can offer about Mr. Maroun and what he had to say is that he will sing upon request.
>
> * * *
>
> "I hope that I can convey it to you as I feel it, that this is insult to your intelligence, this whole defense."

The closing jury argument of the prosecution was reprehensible, improper, unethical and prejudicial. The United States Attorney is dedicated to fairness and equal justice to all. *Hanford v. United States,* 249 F.2d 295 (5th Cir., 1957). His duty is not to win cases but to see that justice is achieved. *Berger v. United States,* 295 U.S. 78, 88 (1934). Here, the prosecution was not concerned with justice to Marcello but with obtaining a conviction. The closing arguments were highly improper, *firstly* because they unjustly and prejudicially charged the defense and defense witnesses with fabrication and the manufacture of evidence.

Harris v. United States, 402 F.2d 656 (D.C. Cir., 1968), condemned the argument by a prosecutor that appellant's testimony was a "lie" or "fabrication". Reversal was denied since neither objection nor a motion for mistrial was noted.

Olenin v. Curtin & Johnson, Inc., ___ F.2d ___ (D.C. Cir., No. 21,104, November 27, 1968), a civil case, contains this further observation by the District of Columbia Circuit Court of Appeals:

> "Defense counsel argued that one of plaintiff's witnesses 'told a lie, that he committed perjury on the stand * * *'. We occasionally have found it necessary to remind counsel of the elementary rule, stated in the Canons of Ethics and interpretative opinions which forbids an advocate from arguing to the jury *his* opinion or *his* appraisal of the issues, of the evidence, or of the credibility of a witness. It is unprofessional conduct, meriting discipline by the

> court, for counsel either to vouch for his own witnesses or to categorize opposing witnesses as 'liars'; that issue is *for the jury*. The frequency of violations of this basic precept suggests the need for trial judges to take steps to discipline lawyers who violate it. The bar should hereafter be on notice in this respect. See, e.g., *Harris v. United States*, No. 21,392 (D.C. Cir., Sept. 17, 1968)."

See also: *Patriarca v. United States*, 402 F.2d 314 (1st Cir., 1968, cert. denied, January 13, 1969).

Charging an attorney for a party with unethical misconduct is prejudicial error. *Atlantic Coast Line R.R. Co. v. Coxwell*, 91 S. E. 2d 135, 93 Ga. App. 159 (1955); *O'Gallagher v. Finkel*, 129 N. E. 2d 345, 7 Ill. App. 2d 296 (1955); *Tri State Transit Co. v. Westbrook*, 180 S. W. 2d 121, 207 Ark. 270 (1944).

In *Jones v. State*, 205 S. W. 2d 590, 151 Tex. Cr. App. 115 (1947), the Court declared:

> "What defense counsel says and does is as if the defendant himself were the actor."

An allegation that the defense was fabricated was held improper. The claim of fabrication by witnesses is equally objectionable. 5 *Busch, Law and Tactics in Jury Trials* (1963), Sec. 664. Here, Michel Maroun, an attorney at law, described by Collins as a Marcello attorney and close associate (App. 1008) was no ordinary witness but one who had been identified with Marcello and Marcello's defense. The unjustified accusation of fabrication, whether considered as aimed at the defense counsel or at his witnesses, Michel Maroun and Katherine Angel, was aimed at Marcello and his defense herein. It was highly prejudicial and cause for a mistrial. As noted in *Dunn v. United States, infra*, it was an error that could not be cured by instructions. Here, unlike the *Dunn* case, none were given by the trial judge who saw no prejudice (App. 1354, 1390).

Secondly, the prosecution improperly commented on a memorandum or document which was not in evidence. As

noted in *Dunn v. United States,* 307 F.2d 883 (5th Cir., 1962):

> "It is improper for counsel to express his personal opinion or to state facts of his own knowledge, not in evidence, and not part of the evidence to be presented, or to make unwarranted insinuations calculated to prejudice the defendant. * * * Opinions of prosecutors or defense counsel are not issues to be presented to the jury."

See also: *Greenberg v. United States,* 280 F.2d 472, 474-5 (1st Cir., 1960), where it was stated that such conduct is contrary to Canon 15 of the American Bar Association Canons of Professional Ethics, *Reichert v. United States,* 359 F.2d 278 (D.C. Cir., 1966); *Johnson v. United States,* 347 F.2d 803 (D.C. Cir., 1965).

United States v. Grossman, 400 F.2d 951 (4th Cir., 1968), emphasizes the impropriety of utilizing non-record material in closing argument. The Court said:

> "The prejudice to a defendant of inviting conviction on facts—if they be such—dehors the record is counter to the basic concept of fairness. From the representative of the United States, a sovereign whose duty it is to govern impartially, and a person in whom the average jury has confidence that he will faithfully observe his trust, the thrust of the statements, in the context made, destroyed fairness and equal justice."

Here, too, the thrust of the repeated charges of a "phony memorandum" and of "manufactured evidence" by Mr. Maroun who "will sing upon request" was a reference to material not in evidence. In the context made by the prosecution that the defense was not fair, that defense lawyers were not revealing what really occurred and that they were fabricating evidence, the Government effectively destroyed fairness and equal justice in the trial herein.

Thirdly, it was improper for the prosecutors to express their personal opinion. The challenged statements of the

prosecution noted above clearly expressed to the jury the prosecution's belief that appellant was guilty. This was highly prejudicial and reprehensible.

The issue of guilt here was highly contested. There was a previous hung jury and mistrial. In the first trial, the prosecutor did not indulge in the unethical and improper closing argument, here the subject of complaint. It cannot, therefore, be said that the unjustified remarks of the prosecutors did not weigh heavily with the jury below. A reversal is clearly called for. *Nalls v. United States,* 240 F. 2d 707 (5th Cir., 1957).

B. The Deliberate Injection of Mafia References Into The Case Was A Ground For Mistrial. It Was Error To Deny A Mistrial Solely To Save The Expense Of A New Trial

On cross-examination Federal Bureau of Investigation agent Collins, a law school graduate, denied admitting to Michel Maroun that the alleged assault was an accident. On redirect examination the Government prosecutor was intent on bringing out the fact that other matters irrelevant to the case were discussed by Collins and Maroun. It was brought out that Maroun was a business associate of Marcello and a close personal confidant (App. 1008). The irrelevancy of going into Maroun's associations in a November, 1967, meeting with Collins was noted by defense counsel (App. 1009). The Court asked Collins about the subject of the conversation and was told that Maroun accused the Federal Bureau of Investigation of tapping "our phones". Then the prosecution asked what was the subject matter of the conversation of February 12, 1968. Collins replied (App. 1011-13):

> "Again the big thing he spoke of was wire tapping, listening in and we did discuss La Cosa Nostra, the American Mafia."

A motion was then made for a mistrial. The Court declared that it did not know whether this skunk could be

taken out of the jury box but instructions would be attempted. The Court noted that prosecutor Neff knew what the witness was going to say and that "I am very inclined to grant a mistrial (App. 1013-5). * * * I will not declare a mistrial because too much time, effort and money has gone into this case. We will just see. If the Government has to take these chances on getting cases like these reversed, as far as I am concerned, let them go ahead" (App. 1016-7). Instructions were given to disregard the remarks (App. 1017).

The instructions, of course, could not remove the prejudice from the case. If you "throw a skunk into the jury box, you can't instruct a jury not to smell it." *Dunn v. United States,* 307 F.2d 883 (5th Cir., 1962). See also: *Bruton v. United States,* 391 U.S. 123 (1968).

Here, the prosecution had publicly described Marcello's connection with organized crime and they insisted on deliberately injecting Mafia references between Federal Bureau of Investigation criminal intelligence agent Collins (App. 931-2) and an alleged Marcello business associate and confidant. The jury had been sequestered in a simple assault case to protect them from Mafia references in the press. The prosecution pierced this protective veil to stir the jury's mind into the realization that this was a prosecution of an alleged Mafia leader.

We submit that the prejudicial effect of the Mafia comment by Federal Bureau of Investigation agent Collins cannot be underestimated. It could not be cured by instruction. The desire to eliminate the expense of a new trial, was no basis for declination of a mistrial.

The deliberate misconduct of the prosecution herein in closing argument in injecting Mafia references herein requires reversal.

III.

THE INDICTMENT HEREIN WAS NOT RETURNED BY A FAIR CROSS SECTION OF THE COMMUNITY AND SHOULD HAVE BEEN DISMISSED

Testimony and exhibits were presented herein to show that in the selection of the grand jury residents of 6 out of 13 parishes which constitute the Eastern District of Louisiana, New Orleans Division, were excluded by orders of Court dated October 8, 1948, and January 20, 1967 (App. 27-31), without any stated basis for such exclusion.[8] The grand jury which indicted Carlos Marcello, pursuant to the aforesaid court orders, excluded persons from the following parishes: Assumption, La Fourche, St. James, Tangipahoa, Terrebone and Washington. Unintentionally, those on federal registration lists were excluded from the parish of Plaquemines (Tr. March 22, 1968, pp. 59-81, App. 296-315).

The objective in excluding the 6 parishes was to select residents from parishes closest to New Orleans where court is held, pursuant to 28 U.S.C. 98. However, residents of Bogalusa in Washington Parish, 65 miles from New Orleans, were excluded under the orders of court. On the other hand, residents of Grand Isle in Jefferson Parish, 150 miles from New Orleans, were included. This was the illogical and arbitrary breadth of the orders of 1948 and 1967.[9]

---

[8]The 13 parishes of the Eastern District of Louisiana, New Orleans Division, are set forth in 28 U.S.C. 98, and are the parishes of Assumption, Jefferson, La Fourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, St. Tammany, Tangipahoa, Terrebone, and Washington.

[9]Under the new Jury Selection Act (P.L. 90-274, 82 Stat. 53), each district court may fix the distances either in miles or travel time from each place of holding court beyond which juror residing on individual request shall be excused from jury service on the ground of undue hardship in traveling to the place of trial. 28 U.S.C. 1863(b)(7).

In S. Report 891, 90th Congress, 1st Session, p. 24, it was said:

> "As long as there are significant departures from the cross sectional goal, biased juries are the result—biased in the sense that they reflect a slanted view of the community they are supposed to represent."

Our jury system requires a jury list compiled from a fair cross section of the community. *Rabinowitz v. United States,* 366 F.2d 34 (5th Cir., 1966); *Mobley v. United States,* 379 F.2d 768 (5th Cir., 1967). In *Ballard v. United States,* 329 U.S. 187, 193 (1946), the Supreme Court stated:

> "Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system."

Thiel v. Southern Pacific Co., 328 U.S. 217 (1946), disapproved a blanket exclusion of daily wage earners.

Rabinowitz v. United States, 366 F.2d 34, at 54, note 48, observes:

> *"Ballard v. United States,* 1946, 329 U.S. 187, 67 S. Ct. 261, still prevents an overly broad exclusion order by a district judge. * * * However, it is possible that the exclusion struck down in *Thiel v. Southern Pacific Co.,* 328 U.S. 217, 66 S. Ct. 984 (1946), could now be ordered by a district judge *after appropriate findings and with appropriate limitations."* (Italics supplied.)

Rabinowitz v. United States, 366 F.2d 34, at 54, also states:

> "Section 1863(b) allows the district judge to exclude or excuse a group from jury service *after 'a finding'.* Such procedure insures that blanket exclusions or excuses will be open and known, thus subjecting them to possible appropriate review." (Italics supplied.)

In the instant case there was an intentionally broad and arbitrary exclusion from jury service of all persons in six

parishes. A broad unintentional exclusion was made of persons from Plaquemines Parish.

The exclusion of those from the six parishes was made pursuant to 28 U.S.C. 1863(b) (prior to 1968 amendment) without any findings[10] whatsoever and without regard to individual competence or individual hardship. No findings were made with regard to the excluded group or the individuals therein either in the 1948 or 1967 order. The orders cannot be sustained either by logic under 28 U.S.C. 1893(b) or under the language of the *Rabinowitz* case.

The irregularity in the selection of the grand jury herein denied appellant a grand jury selected from a fair cross section of the community and required the dismissal of the indictment. *Hill v. Texas,* 316 U.S. 400 (1942).

IV.

APPELLANT WAS GRANTED IMMUNITY FROM PROSECUTION BY A NEW YORK GRAND JURY

After the alleged assault herein and prior to the trial, appellant was called before a grand jury in Queens, New York. After claiming self-incrimination on November 4, 1966, and again on May 3, 1967, appellant was granted complete immunity by the grand jury from any prosecution and relieved from any penalty on account of any transaction concerning which he gave testimony (App. 24, 269-291, 199). This was pursuant to the New York Penal Law which provided:

> *"SECTION 584 WITNESSES–IMMUNITY*
>
> "In any criminal proceedings before any court, magistrate, or grand jury or upon any investigation

---

[10] If "* * * authority depends on determinations of fact, those determinations must be shown." *Panama Refining Co. v. Ryan,* 293 U.S. 388 (1935).

Compare the orders of exclusion entered by the District Court in 1948 and 1967 with the suggested order and findings under 28 U.S.C. 1863(b) set forth in 26 F.R.D. 509.

before any joint committee for or relating to a violation of any of the provisions of this article, the court, magistrate or grand jury or the committee may confer immunity in accordance with the provisions of section two thousand four hundred forty-seven of this chapter.

"SECTION 2447 WITNESSES–IMMUNITY

"1. In any investigation or proceeding where by express provision of statute, a competent authority is authorized to confer immunity, if a person refuses to answer a question or produce evidence of any other kind on the ground that he may be incriminated thereby, and notwithstanding such refusal, an order is made by such competent authority that such person answer the question or produce the evidence, such person shall comply with the order, and if but for this section, he would have been privileged to withhold the answer given, or the evidence produced, then immunity shall be conferred upon him as provided for herein.

"2. 'Immunity' as used in this section means that such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, in accordance with the order by competent authority, he gave answer or produced evidence, and that no such answer given or evidence produced shall be received against him upon any criminal proceeding.
* * *

"3. Competent authority in this section means:

* * *

"(c) The grand jury before which a person is called to answer questions or produce evidence when such grand jury is expressly requested by the prosecuting attorney to order such person to give answer or produce evidence."

Prior to his grand jury appearance, appellant objected to testifying because he was under this assault indictment. He then obtained a ruling in New York by the Queens County

Supreme Court that he was granted immunity in Louisiana as well as in New York pursuant to *Murphy v. Waterfront Commission*, 378 U.S. 52 (1964) (see Tr. March 22, 1968, pp. 27, 53).

To be valid, an immunity statute "must afford absolute immunity"; *Counselman v. Hitchcock*, 142 U.S. 547, 586 (1891). The grant of immunity by a state precludes federal prosecution, *Murphy v. Waterfront Commission*, 378 U.S. 52 (1964).

As noted in *United States v. Niarchos*, 125 F.Supp. 214 (Dist. of Col., 1954), the language of the immunity provisions are clear and the "protection of immunity is to prosecution and not to indictment. As indicated hereafter, the immunity provision would be ineffective if it did not apply to indictments already returned and in which the witness was named as a defendant." See also: *Frank v. United States*, 347 F.2d 486 (D.C. Cir., 1965), cert. denied 382 U.S. 923 and 55 *Georgetown Law Review* 656 (March, 1967).

The New York immunity statute precludes use of a person's testimony against him and also grants immunity from prosecution for any matter which was the subject of his testimony.

While appellant was under this assault indictment, he was compelled to testify in New York pursuant to a broad grant of immunity from prosecution for any matter concerning which he testified. He did testify relative to the alleged assault herein in a very limited way as found by the Court below (App. 200). However, if the immunity statute means what it says, and if persons under indictment are continued to be called before grand juries, then appellant was granted complete immunity for any matter concerning which he testified, including this alleged assault. He was, therefore, granted immunity from this prosecution and such immunity should be respected.

V

THE DISTRICT COURT ERRONEOUSLY REFUSED TO SUBMIT THE ISSUE OF ENTRAPMENT TO THE JURY

On September 30, 1966, appellant's counsel informed the Federal Bureau of Investigation in New York in response to its request that Marcello and his brother would proceed to New Orleans on a particular Delta flight. This was done with appellant's approval (App. 1172-4). Thereafter, Patrick Collins, an agent, posing as a deplaning passenger (App. 979) and Joseph Avignon, another agent, giving the appearance of a news photographer with a group of photographers, met appellant's plane in New Orleans (App. 843, 932-3, 1022, 1203). Collins engaged a harassed and agitated Marcello in conversation, telling him that they did not have enough photographs. When Marcello asked whether he was looking for trouble, Collins, without disclosing his identity, boasted that he could handle trouble. Then, according to Collins, the physical action—the assault—followed (App. 995). These events presented sufficient facts to submit the issue of entrapment to the jury. The trial court, however, erroneously refused to submit the issue to the trier of facts, stating (App. 1408):

> "I really, myself, wondered about entrapment. I have done some reading on entrapment and I came to the conclusion that this case doesn't fall within the confines of entrapment."

The issue of entrapment arises when the Government by persuasion or inducement causes a defendant to commit a crime. *Lopez v. United States*, 373 U.S. 427 (1963); *Sorrells v. United States*, 287 U.S. 435 (1932); *Demos v. United States*, 205 F.2d 596 (5th Cir., 1953). Whether there was entrapment here was an issue which should have been submitted to the jury. *Sorrells v. United States*, *supra*; *Sears v. United States*, 343 F.2d 139 (5th Cir., 1965). Here, Marcello admitted the overt act of raising his left hand in the direction of Collins, but denied his guilt. We submit

that under *Sears v. United States*, *supra*, and *Henderson v. United States*, 237 F.2d 169 (5th Cir., 1956), appellant could rely upon the defense of entrapment. Compare: *Harris v. United States*, 400 F.2d 264, 266, note 3 (5th Cir., 1968).

On the facts developed here the question whether agent Patrick Collins actively induced appellant to commit the alleged crime or merely afforded him an opportunity to do so was a jury question which should not have been decided by the Court below.

VI.

THE DISTRICT COURT ERRED IN SUPPRESSING THE SUBPOENA FOR THE PERSONNEL AND OTHER RECORDS OF PATRICK J. COLLINS, JR., AND SURVEILLANCE RECORDS OF SEPTEMBER 30, 1966

Patrick J. Collins, Jr., was the complaining and a key Government witness. His credibility was sharply in issue. Appellant served a subpoena duces tecum upon the Attorney General, calling for the production of Marcello's surveillance records of September 30, 1966, and of the personnel records of Collins, excluding payroll records but including records of Collins' activities on September 30, 1966, October 1, 1966, and in February, 1968. At the first trial herein, Government prosecutors objected, stating that this was an attempt "to get impeachment matter out of his file" (Tr. May 27, 1968, p. 117). On motion of the Government, the subpoena duces tecum was suppressed prior to the retrial herein (App. 730, 1430).

Rule 17(c) of the Rules of Criminal Procedure prescribes the circumstances under which a subpoena duces tecum will be quashed. It provides:

> "The Court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive."

The subpoena was reasonable and not oppressive. A subpoena will be open to attack if it is too broad, not specific

or unreasonable. In *Brown v. United States*, 276 U.S. 134 (1928), the Supreme Court upheld a subpoena which required the production of all letters and documents on specified topics over a 3½ year period. *McPhaul v. United States*, 364 U.S. 372 (1960), upheld the production of all records, correspondence and memoranda of the Civil Rights Congress. See also: 2 *Orfield, Criminal Procedure Under the Federal Rules*, pp. 665-666; 8 *Cyclopedia of Federal Procedure*, p. 22 (1968).

Here, there can be no claim that the subpoena was too broad, that it was not specific or that it was oppressive. Moreover, the subpoenaed records were not privileged. *United States v. Andolschek*, 142 F.2d 503 (2nd Cir., 1944); *United States v. Coplon*, 185 F.2d 629, 638 (2nd Cir., 1950).

The motion to suppress was motivated by a desire to prevent access by appellant to impeachment material.

The objective of a trial is the search for truth. Here, the search for truth was impeded by the Government's desire to prevent impeachment. The suppression order deprived appellant of valuable testimony relating to the circumstances which led to the September 30, 1966, meeting of Marcello by the news media and Government agents and deprived him of valuable material for cross-examination. This error in limiting testimony for appellant and in limiting cross-examination opportunities of a key witness was prejudicial error.

VII.

THE DISTRICT COURT ERRED IN SUBMITTING THE ISSUES OF ASSAULT OR INTIMIDATION TO THE JURY AND IN NOT REQUIRING AN ELECTION

The Court below submitted both issues of assault or intimidation to the jury over objection (App. 1324-32, 1404, 1412, 1447). A motion to compel an election was denied (App. 1324-32). In the first trial herein, the Court ruled as a matter of law that intimidation was not established. Judge Connally advised the first jury which had

specifically requested additional instructions on the definition of assault and intimidate as follows (Tr. May 29, 1968, pp. 487-489, App. 688):

> "As I understand the Government's case, and the evidence which was offered, the evidence was not directed at showing that there was any intimidation of Mr. Collins, but rather that there was an assault.
>
> "So I think for practical purposes you may forget the part 'and intimidate' and consider the indictment as though the charges were only as to assault."

The evidence relative to intimidation was the same at both trials. On this record there was no *forcible* intimidation.[11] However, on this record, appellant may have been found guilty on the issue of intimidation.

As noted in *United States v. Martinez-Gonzalez*, 89 F. Supp. 62 (S.D. Calif., 1950), where a jury can find a verdict of guilty as to one part of a single count indictment and not guilty as to another, the indictment is duplicitous. Where this is so, an election should be required. *United States v. Goodman*, 285 F.2d 378 (5th Cir., 1961), cert. denied 366 U.S. 930. See also: *United States v. Leggett*, 312 F.2d 566 (4th Cir., 1962). The Court below, therefore, erred and should have granted the motion for election and the motion in arrest of judgment. *United States v. Martinez-Gonzalez, supra.*

---

[11] The term forcibly modifies the word "assault" as well as the word "intimidate" in 18 U.S.C. 111. *Long v. United States*, 199 F. 2d 717 (4th Cir., 1954).

VIII.

IT WAS ERROR TO REFUSE TO CHARGE THE JURY THAT AN ASSAULT UNDER 18 U.S.C. 111 REQUIRED A WILLFUL ATTEMPT AND INTENT TO INFLICT VIOLENT AND SERIOUS INJURY

The jury was instructed over objection (App. 1400-05, 1412-3) that appellant was not required to touch Collins, know who he was, but merely to offer to touch him to establish guilt. The jury was told that an assault was an "unlawful threat or attempt to commit injury upon the person of another" and that:

> "In connection with the word forcibly and the word intimidate it is not necessary that Patrick J. Collins, Jr., believed that any bodily harm he might sustain would be great or severe. For instance, attempting to strike a person with an open hand might constitute an assault, although that person knows that a blow by the open hand is not normally calculated to cause any serious bodily injury. Therefore, it is sufficient if the attempt to use force causes a person such as Patrick J. Collins, Jr., to reasonably believe that some injury might be inflicted although such injury might not be severe." (App. 1402).

From earliest times a criminal assault has required an intent by a defendant to cause a violent injury.

Hawkins, 1 P.C. 110, defines an assault as "an attempt or offer with force and violence to do corporal hurt to another".

1 *Wharton, Criminal Law*, Section 603 (10th Ed.), states:

> "An assault is an apparent attempt by *violence* to do corporal hurt to another."

6 *Corpus Juris Secundum*, p. 913, says:

> "An 'assault' may be defined as an unlawful attempt, coupled with the present ability, to commit a *violent injury* on the person of another."

United States v. Barnaby, 51 Fed. 20, 21 (D. Montana, 1892), declares:

> "An 'assault' is generally defined to be an unlawful attempt coupled with a present ability to commit a *violent injury* upon the person of another."

See also: *Brundage v. United States*, 365 F.2d 616, 619 (10th Cir. 1966); *Chapman v. State*, 78 Ala. 463 (1885); *People v. Doud*, 223 Mich. 120, 193 N.W. 884 (1923); *Jackson v. Commonwealth*, 247 S.W. 2d 52 (Ky., 1952).

18 U.S.C. 111 forbids an assault which alone imports force and violence but also adds the requirement of a "forcible" assault. It was intended to protect Government agents engaged in their duties from violent or serious injuries and not from open handed slaps on the wrist. Every reported case under 18 U.S.C. 111 involved instances of attempted forcible assaults seriously endangering the victim[12] and interfering with his duties.[13]

The legislative history of 18 U.S.C. 111 reflects the concern of Congress that only "*forcible*" assaults be punished. In 1905 (33 Stat. 1265) and again in 1909 (35 Stat. 1100) Congress prohibited "*forcible*" assaults upon employees of the Bureau of Animal Industry. The legislation was prompted by "two vicious, deadly and unprovoked assaults" (*House Report* 4200, 58th Congress, 3rd Session, p. 5) upon such employees. This statute subsequently became

---

[12]All reported cases show that force was used, *Long v. United States*, 199 F.2d 717 (4th Cir., 1954). Thus, in *Bennett v. United States*, 285 F.2d 567 (5th Cir., 1960), *Hall v. United States*, 235 F.2d 248 (5th Cir., 1956), and *McEwen v. United States*, 390 F.2d 47 (9th Cir., 1968), guns were utilized in the assault. This is the only case where a conviction resulted even though there was no interference with the Government agent's duties (App. 972). We submit that the statute contemplated a forcible assault which did interfere with an agent's duties.

[13]Collins testified that Marcello did not interfere with his duties (App. 972).

18 U.S.C. 118 (1940 Ed.) which was consolidated with 18 U.S.C. 254 (1940 Ed.) to become 18 U.S.C. 111 (*House Report* 304, 80th Congress, 1st Session).

Section 2 of the Act of May 18, 1934 (48 Stat. 780) prohibited mere assaults and forcible resistance or intimidation of federal officials (*House Report* 1455, 73rd Congress, 2d Session, *Senate Report* 535, 73rd Congress, 2d Session). This section became 18 U.S.C. 254 (1940 Ed.).

When Congress consolidated 18 U.S.C. 118 (1940 Ed.) and 18 U.S.C. 254 (1940 Ed.) it had the language of *forcible* assault in the former and a mere assault in the latter section. In enacting 18 U.S.C. 111 Congress chose to retain the requirement of a *forcible* assault and not a mere assault.

Here, the Court's charge read out of the statute the word "forcibly". Here, in a case where there was a conflict in the Government's evidence as to whether Collins was even touched and in a case where there was a conflict as to Marcello's intentions, the trial judge instructed the jury that the test of an assault under 18 U.S.C. 111 was whether Collins reasonably believed that some non-severe injury or touching might be inflicted. This was error, firstly, because violent or serious injury must be contemplated in a criminal assault and, secondly, because it is the criminal intent of the appellant rather than the belief of the alleged victim which should have controlled. I *Burdick, Law of Crimes*, Sec. 342 (1946); *Guarro v. United States*, 237 F.2d 578, 580 (D.C. Cir., 1957); *People v. Doud, supra*; *Chapman v. State, supra*.

IX

THE DISTRICT COURT ERRED IN ELIMINATING KNOWLEDGE OF COLLINS' IDENTITY AS AN ELEMENT OF THE OFFENSE OF ASSAULT AND INTIMIDATION UNDER 18 U.S.C. 111

Unlike *Bennett v. United States*, 285 F.2d 567 (5th Cir., 1960), and *Pipes v. United States*, 399 F.2d 471 (5th Cir., 1968), here it is clear that appellant was unaware that Collins, posing as a deplaning passenger and appearing like a newspaper representative, was a Government agent. For the reasons relied upon by Judge Godbold in the *Pipes* case, we submit that knowledge of Collins' identity was an essential element of the assault offense under 18 U.S.C. 111. See also: *Mitchell v. United States*, 394 F.2d 767 (D.C. Cir. 1968).

Burke v. United States, ___F.2d___ (5th Cir., No. 24,957, September 23, 1968), leaves the same issue open on the question of intimidation. The Court below eliminated knowledge here, too. An intentional and unlawful invasion of the rights of victims is contemplated as noted in *United States v. Wallace*, 368 F.2d 537 (4th Cir., 1966). Without knowledge that Collins was a Government agent, Marcello's alleged conduct could not have been an intentional intimidation of Collins in the performance of his duties. The District Court, therefore, erred in eliminating knowledge from the intimidation portion of the statute.

X

THE EVIDENCE DID NOT ESTABLISH GUILT BEYOND A REASONABLE DOUBT

The case herein was submitted to the jury in the alternative on the issues of forcible intimidation and forcible assault under 18 U.S.C. 111.

We are mindful that the jury verdict of guilty must be sustained if supported by substantial evidence, including reasonable inferences drawn therefrom in the light most favorable to the Government. *Paz v. United States*, 387

F.2d 428 (5th Cir., 1967); *Peters v. United States*, 376 F.2d 839 (5th Cir. 1967).

Neither substantial evidence, nor evidence more consistent with guilt than innocence, *Williams v. United States*, 140 F.2d 351, 352 (D.C. Cir., 1944), supported a finding of guilt on the issue of forcible intimidation. If in the context of 18 U.S.C. 111, forcible intimidation means something different from forcible assault, then the only Marcello conduct which was relevant was his use of profanity and use of words stating that he was the boss or asking whether Collins was looking for trouble. This fell far short of a *forcible* intimidation. We submit that intimidation accompanied by force implied an intimidation involving a threat of physical violence. Apart from the alleged assault, there was none here. The ruling in the first trial eliminating the intimidation issue was proper.

On the issue of forcible assault, the Government's evidence was highly contradictory. Several witnesses (Collins and Avignon) testified that Marcello swung with his right hand. Others, Thornell, Nolan and Gauthier, asserted that it was only a left that was utilized. A photograph (Govt. Ex. 6) showed only a left hand elevated. Collins admitted that he feared no harm from Marcello's left, but only from his right for a split second (App. 941, 955). The prosecution's evidence was in conflict as to whether Collins was touched. Collins himself claimed no blow was struck (App. 967). The prosecution's evidence was in conflict as to whether Marcello used a fist or open hand (App. 940, 1032, 1047). Collins reaffirmed the completeness and the truth of Government's Exhibit 7 which reported several hours after the event that Joseph Marcello grabbed appellant's hand "simultaneously with his commencing of a blow" and that "Carlos Marcello did not get to strike a blow due to his brother's immediate action." Collins, therefore, struck no blow himself. Moreover, he admitted there was no interference with his duties (App. 972).

It was not established beyond a reasonable doubt on this confused and conflicting evidence from the prosecution that Marcello assaulted Collins with his right hand. Collins' testimony that he did not fear Marcello's left and the conflicts among prosecution witnesses relative to the alleged left hand blow did not establish a left hand assault beyond a reasonable doubt.

Moreover, Collins could not be in fear of a blow when the immediate action of Marcello's brother prevented any blow. Obviously, the prompt intervention of Marcello's brother likewise deprived appellant of the present ability to assault Collins or interfere with his duties. *United States v. Barnaby*, 51 Fed. 20, 21 (D. Mont., 1892); *Guarro v. United States*, 237 F.2d 578, 580 (D.C. Cir., 1957); *Brundage v. United States*, 365 F.2d 616, 619 (10th Cir., 1966). Under these circumstances no assault was committed.

The inconsistencies and conflicts in the Government's presentation, the vacillations in Collins' various versions of the assault,[14] Collins' adoption of Exhibit 7 as the complete and truthful account of the alleged assault, and the non-interference with Collins' duties as an agent, all deprived the prosecution's case of the substantiality necessary to uphold a guilty verdict.

---

[14]Collins asserted at first that there was only an attempted right hand blow (Exhibit 7). Thereafter, he claimed it was a single left jab, followed by a right (App. 939-40, 943, 971, 976-8). He later claimed that there were several left jabs (App. 976-8). Government's Exhibit 6 and the news photographer who took the same confirms that Marcello's right hand was at his side with an elevated left hand (App. 929).

XI.

The District Court Erred in Utilizing Brushes With the Law and Fifth Amendment Claim in Evaluating the Severity of Appellant's Sentence Herein

On this record, Marcello was given the unusually severe sentence of two years imprisonment and a fine of $5,000.00, although he inflicted no bodily harm and interfered in no manner with an agent whose identity he did not know. The District Court acknowledged that in meting out this sentence weight was accorded to his "brushes with the law", indictments which resulted in acquittals,[15] and assertion of his Fifth Amendment privilege before a Congressional Committee. See *United States v. Marcello,* 196 F.2d 437 (5th Cir., 1952).

The Court stated (App. 1499-1500, 1508-10):

> "THE COURT: The matters that this Court has taken into consideration are all matters relating to which are factual. In other words, there are some prior convictions, as you know.
>
> "MR. WASSERMAN: Yes, sir.
>
> "THE COURT: And some prior trials that resulted in not guilty verdicts, and a matter relating to deportation that went up to the United States Supreme Court and is now pending. Those matters, I have taken into consideration and that's all.
>
> * * *
>
> "THE COURT: As you know, this particular crime carries with it a maximum sentence of three years in the penitentiary and a maximum fine of $5,000.00. It is true that in particular, in connection with the incident that brought about the event that caused

[15] Marcello was acquitted in 1963 on a conspiracy prosecution (E.D. La., No. 28,365) and on a bribery charge in 1965 (E.D. La., No. 29,711). Two other indictments filed in 1961 for perjury (E.D. La., No. 28,366) and illegal reentry (E.D. La., No. 28,233) were dismissed.

the indictment in the later trial of Mr. Marcello, *it was not what the Court would determine an aggravated type of incident.* However, it is likewise true that Mr. Marcello has in the past, throughout his life, been convicted of some crimes--two, I believe--three, I believe, and one of them was set aside. I think it would actually--

"MR. WASSERMAN: Two.

"THE COURT: In connection with one of which I believe he received a pardon from Governor O. K. Allen in Louisiana back in 1936 or '38. His activities have been such that he has been under suspicions and accusations from time to time resulting, as we have already discussed, in a trial. *Well, first, an indictment for failing to answer questions--contempt proceeding in front of the United States Senate for failure to answer questions before the United States Senate Committee, and then a trial, a not guilty, then an indictment for perjury for jury--alleged violation of bribing the jury, for which he was found not guilty, also.*

"*But all of these matters, of course, indicate to the Court that Mr. Marcello has had some connection with and brushes with violations of the law.* The letters all indicate that Mr. Marcello, at least today, is a man of substance, a man who was charitable to the charities and to the poor people, but all in all the Court is of the opinion that a fair trial was afforded Mr. Marcello on this incident and an unprejudiced and unbiased jury found him guilty. *Even though the events were not of an aggravated type, they found him guilty.*

"And, therefore, the Court is going to sentence Mr. Marcello to a fine of $5,000 and to two years in the penitentiary." (Emphasis supplied.)

Appellate courts normally do not review sentences. They have such authority, however, in the exercise of their supervisory powers. *Yates v. United States,* 356 U.S. 363, 366 (1958). A defendant should not be punished by a heavy

sentence because of exercise of his constitutional rights. *United States v. Wiley*, 278 F.2d 500, 504 (7th Cir., 1960). The practice of imputing a sinister meaning to the exercise of a person's constitutional right under the Fifth Amendment was condemned by the Supreme Court in *Slochower v. Board of Education*, 350 U.S. 551, 557 (1956). *Verdugo v. United States*, 402 F.2d 599 (9th Cir., 1968), remanded a case for resentencing where the trial judge improperly relied upon evidence seized contrary to the Fourth Amendment in determining the sentence imposed. [A concurring opinion also notes that the present rules contemplate inspection of the presentence report by defendants, a practice not observed below.][16]

The utilization of a Fifth Amendment claim is just as improper as the procedure adopted by the District Court in the *Verdugo* case.

We submit that it was error to give weight to indictments and brushes with the law which resulted in acquittals or dismissals of indictments, as well as a Fifth Amendment claim sustained by this Court in meting out the sentence herein.

---

[16]The District Court denied a motion to permit defense counsel to inspect the presentence report (App. 1498).

CONCLUSION

This conviction was obtained by misconduct of the prosecution seeking a guilty verdict by impermissible means. It was secured after a venue transfer which violated appellant's constitutional rights and upon an indictment filed by a grand jury which did not represent a fair cross section of the community. Errors of the trial judge during the trial in his charge to the jury and in failing to submit issues to the jury compounded the unfairness of the trial herein. Substantial evidence failed to support the verdict of guilt herein. The severe sentence imposed upon appellant based upon unconstitutional considerations should not be permitted to stand. Neither sentence nor conviction should be upheld on this record. The totality of circumstances presented here call for reversal.

JACK WASSERMAN
Warner Building
Washington, D.C.

G. WRAY GILL,
GEORGE M. LEPPERT
Pere Marquette Building
New Orleans, Louisiana

Attorneys for Appellant

89-1333-142

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 4/22/69

FROM : SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka.,
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

Re New Orleans letter to Bureau 3/28/69.

On April 21, 1969, Mr. [redacted] Deputy Clerk, United States Court of Appeals for the Fifth Circuit, 400 Royal Street, New Orleans, Louisiana, reviewed his file number 26773 and advised that the appellee had filed their brief in this matter. Mr. [redacted] furnished two copies of appellee's brief, one copy is being forwarded to the Bureau, and the other copy is being retained in the files of the New Orleans Office.

b6
b7C

A review of appellee's brief reflects that the Government has denied the allegations set forth in appellant's brief.

Contact will be maintained with the U. S. Court of Appeals in this matter.

ENCLOSURE ATTACHED

(2) - Bureau (Enc. 1)
2 - New Orleans
GMA:gma
(4)

REC-103 89-1333-144

APR 24 1969

79 APR 30 1969

5010-108-01

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

RECEIVED
INVESTIGATIVE
APR 25 4 49 PM 1969
F. B. I.
U. S. DEPT OF JUSTICE

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79)

RE: CARLOS JOSEPH MARCELLO, aka.;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

ENCL: One copy of appellee's brief.

ENCLOSURE

144

NO. 26,773

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

CARLOS MARCELLO, *Appellant*

v.

UNITED STATES OF AMERICA, *Appellee.*

Appeal from the United States District Court for the Southern District of Texas

BRIEF FOR APPELLEE

LOUIS C. LACOUR
United States Attorney
for the Eastern District
of Louisiana
New Orleans, Louisiana

OWEN A. NEFF, Attorney,
Department of Justice,
Washington, D. C.

ANTHONY J. P. FARRIS
United States Attorney

RONALD J. BLASK
MALCOLM R. DIMMITT
JAMES R. GOUGH
Assistant United States
Attorneys
P. O. Box 61129
Houston, Texas 77061

Alpha Law Brief Co., M & M Bldg., Houston, Texas 77002—4/69—50

INDEX

	Page
Statement	1
Appellee's First Point *The appellant having moved for a change of venue, the District Court for the Eastern District of Louisiana properly granted it.*	3
Appellee's Second Point *There was no misconduct on the part of the prosecution calling for reversal.*	4
Appellee's Third Point *The indictment was not returned by an improperly constituted grand jury.*	7
Appellee's Fourth Point *Appellant was not granted immunity.*	7
Appellee's Fifth Point *No issue of entrapment is here presented.*	8
Appellee's Sixth Point *No error was made in quashing the subpoena duces tecum on the Attorney General.*	8
Appellee's Seventh Point *There was no error in submitting both assault and intimidation to the jury since no inconsistency existed between them.*	9
Appellee's Eighth Point *There was no error in the charge.*	9
Appellee's Ninth Point *The trial court correctly charged that knowledge of Collins' identity by Marcello was not required.*	10
Appellee's Tenth Point *The evidence supports the verdict.*	10
Appellee's Eleventh Point *The sentence imposed was within the statutory limits.*	11
Certificate of Service	12

LIST OF AUTHORITIES

CASES	Page
Brady v. Maryland, 373 U.S. 83 (1963)	4
Pipes v. United States, 399 F.2d 471 (C.A. 5, 1968)	10
United States v. Hubert Geroid Brown, aka H. Rap Brown, etc., Cr. No. 30,966, Sec. F	7
United States v. Iozia, 13 F.R.D. 335, 338 (S.D. N.Y., 1952)	8
Vause v. United States, 53 F.2d 346 (C.A. 2, 1931)	6, 7
Williams v. New York, 337 U.S. 241 (1949)	11
UNITED STATES STATUTES	
18 U.S.C. §111	9

NO. 26,773

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

CARLOS MARCELLO, *Appellant*

v.

UNITED STATES OF AMERICA, *Appellee.*

Appeal from the United States District Court for the Southern District of Texas

BRIEF FOR APPELLEE

STATEMENT

The appellant was tried to a jury in the Houston Division of the Southern District of Texas on his plea of not guilty to the offense of assaulting a federal officer in violation of 18 U.S.C. §111. The offense occurred in the Eastern District of Louisiana. Venue was changed to the Southern District of Texas on the motion of the defendant. A trial in Laredo ended in a hung jury. A subsequent trial in Houston resulted in a conviction. A sentence of

two years' imprisonment together with a fine of $5,000.00 was imposed.

As is repeatedly alluded to in the record, the appellant Carlos Marcello bears the reputation of being the "boss" of the Mafia or "Cosa Nostra" in the New Orleans area and has been the subject of widespread newspaper publicity. He had made a trip to New York and was known to be returning to New Orleans upon a certain Delta Airlines flight on the evening of September 30, 1966. In addition to various journalists and photographers, two officers of the New Orleans police department were present at Moisant (New Orleans) Airport to observe Marcello's arrival. Also present were two special agents of the Federal Bureau of Investigation, Patrick J. Collins, Jr., and Joseph M. Avignone. Avignone had received special training as a cameraman and was in possession of a camera and under instructions to photograph Carlos Marcello. The agents, in plain clothes, blended in with the arriving passengers. As Carlos Marcello (accompanied by his son, Joseph C. Marcello, and his brother, Joseph Marcello, Jr.) walked toward the exit, the Marcello party was followed by the newsman and photographers, the latter busily engaged in taking flashlight pictures. As the Marcellos neared their automobile, Carlos Marcello turned around and advanced threateningly toward the journalists, among whom were the two FBI agents. He demanded that the taking of photographs cease, using obscene language, and according to certain witnesses stated, "I am the boss of this town," or words of similar effect. Collins closed in beside Avignone, who continued to take photographs. Further words were had between Marcello and Collins, who at this point was backed up against a low railing, behind which there was a drop of some forty feet to a concrete pavement. Marcello then

jabbed at Collins with his left fist, apparently grazing or hitting him lightly on the right side of the face. Marcello also began a "roundhouse" right swing, but his brother caught his right arm before this blow could be delivered. Shortly thereafter, an airport policeman arrived and broke up the altercation, after which the Marcello family left the airport.

All three Marcellos testified, and other defense witnesses were called as well. The principal endeavor of the defense was apparently to discredit Collins by testimony that he had said to particular defense witnesses at times subsequent to the offense that Marcello had not struck him, that he had not been in fear, and that Joseph Marcello, Jr., the brother, should have been charged rather than Carlos.

ARGUMENT AND AUTHORITIES

APPELLEE'S FIRST POINT

The appellant having moved for a change of venue, the District Court for the Eastern District of Louisiana properly granted it.

In his first point, appellant, who had moved for a change of venue, complains because it was granted. The proceedings leading up to the granting of the motion appear in the Appendix at Pages 54 to 98, and the opinion of the trial court appears at Pages 98-133. The opinion discusses both the facts and the applicable law in great detail. It is clear that the action taken was within the court's discretion. To admit the contentions of the appellant as to this point would be to permit the most flagrant trifling with the processes of the court.

No error was here committed.

APPELLEE'S SECOND POINT

There was no misconduct on the part of the prosecution calling for reversal.

Appellant first complains of accusations of "fraudulent misrepresentations" by his counsel (App. 90 *et seq.*). This was in reference to the ambivalent position of the defendant in connection with his motion for a change of venue. It was not said in the presence of the trial jury. The language used by government counsel was no stronger than that used by the trial court, which remarked,

> "The defendant obviously wants two bites at the apple; such fast and loose play is not favored in this Court. . . ." (A. 128)
>
> ". . . The defendant would be in a better position if his action could be elevated even to the dignity of strategy or trial tactics. But this Janus-faced behavior falls miserably short of this mark. . . ." (*Ibid.*)
>
> ". . . merely because the defendant's action resulted from clever and quick thinking does not eradicate the taint of his unworthy motive. Such quick action, in fact, only solidifies our conviction that the defendant was straddling both sides of the fence." (A. 129)

The appellant complains that certain statements were not made available to him under *Brady v. Maryland,* 373 U.S. 83 (1963). The short answer is that these statements, from the witnesses Elder and Gauthier, *were* made available during the course of the trial, although the trial judge stated, "I don't see anything in these statements. They certainly don't divulge anything that has not already been talked about." (A. 1074). The statements, as well as grand jury testimony (A. 1077), were made available to the defendant.

Defendant contends that his attorneys were accused of fabricating evidence. The reference was to one Michael A. Maroun, a versatile individual who, it appears from the record, not only practices law and engages in business transactions with members of the Marcello family but also owns a night club in Shreveport, Louisiana, and himself acts as an entertainer in the club. Maroun, although an attorney, did not act as counsel in the case at bar since he appeared as a witness. Maroun testified as to certain statements made by Patrick Collins (which the latter denied having made) in a conversation which he testified took place on February 12, 1968, in the Shreveport night club. At the previous trial, he had testified that he had dictated a memorandum as to this conversation on February 6, some six days before the conversation took place! (A. 1246-1252). He sought to explain the discrepancy in dates as the mistake of his secretary—one possible explanation. Another possible explanation is that both memorandum and conversation were fabricated, and the fabrication revealed by a mistake in the date of Collins' alleged visit. What was said on this subject by the prosecutions was within the bounds of fair comment.

Counsel for the prosecution did not express their personal opinions. What was stated was, "Don't you know a lawyer representing this defendant in a criminal case would have been sure about that date? It was a week earlier and it is *our inference and our contention* that it was manufactured. . . ." (A. 1393-1394, emphasis supplied).

Finally, appellant complains of the fact that, on redirect examination, Collins was asked to and did state what the actual subjects of the conversation had been on the occasion when Maroun testified that Collins had stated that

the alleged assault was an accident or had not taken place. Collins had previously testified (A. 1010 *et seq.*) to an earlier conversation with Maroun at "Lucky Pierre's" in New Orleans relating to "which of our phones we have tapped. We know which of our rooms you have wired." This testimony was admitted without objection. Collins testified that later in Shreveport on February 12, 1968, Maroun had again discussed these matters with him and that also they had discussed "La Cosa Nostra, the American Mafia." (A. 1013). Appellant contends that this called for a mistrial. The appellant had opened up the subject of these conversations, long after the events giving rise to the charge. Maroun was one of four witnesses connected with the Marcellos, each of whom gave a version of statements allegedly made by Collins and tending to discredit his testimony. Each conversation had allegedly been held out of the presence of any third party. In each case Collins had denied making the statements in question. In the case of Maroun, at least, a conversation had in fact taken place. Under the circumstances, a bare denial of the statements in question would have been lame. Collins was entitled to, as he did, testify affirmatively as to what was actually said. Having opened up the subject of this conversation, the appellant is not in a position to complain if the entire conversation was brought out. The Court of Appeals for the Second Circuit discussed the matter in *Vause v. United States,* 53 F.2d 346 (C.A. 2, 1931), in the following terms:

> "But the responsibility for any harm, if there was any to the defendant concerned, is traceable directly to the cross-examination. The direct examination merely disclosed the loan. That was certainly harmless. The cross-examination led up to the point where the defendant's attorney virtually challenged the

district attorney to have the loan explained if he dared. Under these circumstances, the government had to let the matter remain as a subject somewhat veiled in mystery and let it be implied that there was something in it disadvantageous to its case or bring the facts to light. It chose the latter course, and, if it proved to be somewhat of a boomerang to the defendant, there is no help for it now, for the government was not bound to let the defendant bring out only what he pleased and be content itself with no more." (53 F.2d 346, 352).

APPELLEE'S THIRD POINT

The indictment was not returned by an improperly constituted grand jury.

In the Appendix, PP. 150-158, the government's opposition to the motion to dismiss by reason of an improperly constituted grand jury is set out. Therein are cited authorities generally bearing upon the question presented. Insofar as the jury selection procedures employed within the Eastern District of Louisiana are concerned, these were discussed in detail in the opinion of District Judge Lansing Mitchell in *United States v. Hubert Geroid Brown, aka H. Rap Brown, etc.,* Cr. No. 30,966 Section F. This opinion appears in the Appendix on PP. 174-193. The sum and substance is that, on this record, appellant has failed to demonstrate that the error he complains of has occurred. The grand jury was properly constituted and was a fair cross-section of the community.

APPELLEE'S FOURTH POINT

Appellant was not granted immunity.

By some form of reasoning not at all clear, appellant contends that subsequent action by a New York state

grand jury immunized him from prosecution for the present offense. The cases cited offer no support for this proposition. This point is clearly frivolous.

APPELLEE'S FIFTH POINT

No issue of entrapment is here presented.

It is a sufficient answer to this contention of appellant to point out that nothing shown by the evidence to have been done by any person acting on behalf of the United States caused the appellant to turn around from the direction in which he had been going, to advance on the reporters using threats and obscene language, and to strike the complaining witness with his fist. The request for a charge on entrapment was not timely made, but even had it been, it was without merit.

APPELLEE'S SIXTH POINT

No error was made in quashing the subpoena duces tecum on the Attorney General.

The subpoena duces tecum was quashed for the reason that it did not satisfy the test laid down in *United States v. Iozia,* 13 F.R.D. 335, 338 (S.D. N.Y., 1952), which requires

(1) That the documents are evidentiary and relevant;

(2) That they are not otherwise procurable by the defendant reasonably in advance of trial by the exercise of due diligence;

(3) That the defendant cannot properly prepare for trial without such production and inspection in advance of trial and the failure to obtain such inspection may tend unreasonably to delay the trial;

(4) *That the application is made in good faith and is not intended as a general fishing expedition.* (Emphasis added.)

This ruling was, on this record, clearly a proper one and within the discretion of the trial court. No error was here committed.

APPELLEE'S SEVENTH POINT

There was no error in submitting both assault and intimidation to the jury since no inconsistency existed between them.

In general, an election between counts or issues is called for only where an inconsistency exists between them and the jury cannot properly find both. There is no such situation here. Assaulting and intimidating are both ways in which 18 U.S.C. §111 can be violated. Both or either violate the statute. A conviction might be based on either, and the evidence supported both. It indicated at least implied threats in the statement, "I am the boss of this town" and the query, "Are you looking for _____ trouble?" as well as indicating an assault. No election was called for. No error was here committed.

APPELLEE'S EIGHTH POINT

There was no error in the charge.

The appellant, under this point, cites questionable legal history. Contrary to his position, the only "force" required is that sufficient to satisfy the phrase *"vi et armis."* An assault is committed when the victim is placed in apprehension of receiving a battery, and any striking, however slight, constitutes a battery. (Perkins on Criminal Law, P. 80). There is nothing in the legislative history of the

statute to indicate that the word "assault" was used in other than its normal meaning, derived from the common law. The charge was correct, and no error was here committed.

APPELLEE'S NINTH POINT

The trial court correctly charged that knowledge of Collins' identity by Marcello was not required.

The opinion of this Court in *Pipes v. United States*, 399 F.2d 471 (C.A. 5, 1968), refutes the present contention of appellant. No showing of knowledge is required. The appellant was necessarily aware that he was committing an unlawful assault on Collins. That the latter was (rather than a newspaper or radio man) a federal agent was a risk he took. He is not entitled to an acquittal because of it. No error was here committed.

APPELLEE'S TENTH POINT

The evidence supports the verdict.

The assault by Marcello on Collins was not merely witnessed by many persons, it was photographed as well. Conflicts in the evidence were resolved by the jury. Whether or not a blow was actually struck is legally immaterial—an assault is no less an assault because a battery is not also effected. It was not necessary to place Collins in "fear" beyond an apprehension—i.e., an expectation—of receiving an immediate battery. This Marcello clearly did. Eyewitnesses testified that a blow was actually struck by Carlos Marcello with his left hand, and it also appears that the right hand, before it was caught by his brother, had moved sufficiently far to amount to an assault. The evidence was sufficient, and no error was committed.

APPELLEE'S ELEVENTH POINT

The sentence imposed was within the statutory limits.

The record does not show that the trial judge abused his discretion in imposing sentence. He went beyond the requirements of the law in discussing in open court matters which he was taking into consideration. The very purpose of a presentence investigation is to permit consideration of a defendant's general background in imposing sentence. *Williams v. New York,* 337 U.S. 241 (1949). The trial court did not abuse his discretion. No error was committed.

CONCLUSION

The judgment was correct and should be affirmed.

Respectfully submitted,

ANTHONY J. P. FARRIS
United States Attorney

RONALD J. BLASK
MALCOLM R. DIMMITT
JAMES R. GOUGH
Assistant United States
Attorneys

By_____

CERTIFICATE OF SERVICE

I certify that a typewritten copy of the foregoing Brief for Appellee was mailed to Jack Wasserman, Esq., Warner Building, Washington, D. C., and to Messrs. G. Wray Gill and George M. Leppert, Pere Marquette Building, New Orleans, Louisiana, Attorneys for Appellant, on the 7th day of April, 1969, by certified mail, return receipt requested, and two printed copies in like manner on the____ day of April, 1969.

_____

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 4/24/69

FROM : SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka., N.R.
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

Re New Orleans letter to Bureau dated 4/22/69.

On April 24, 1969, Mr. [redacted] Deputy Clerk, United States Court of Appeals for the Fifth Circuit, 400 Royal Street, New Orleans, Louisiana advised that in case number 26773, the appellant filed a reply brief in answer to the brief filed by the appellee. Mr. [redacted] furnished two copies of this brief, one copy is being forwarded to the Bureau, and the other copy is being retained in the files of the New Orleans Office.

b6
b7C

A review of appellant's reply brief reflects that appellant is refuting the statements made in the brief filed by appellee.

Contact will be maintained with the U. S. Court of Appeals in this matter.

ENCLOSURE ATTACHED

(2) - Bureau (Enc. 1) ENCLOSURE
2 - New Orleans
GMA:lrs
(4)

REC 11 89-1333-145

EX 106

3 APR 28 1969

NINE

79 MAY 1 - 1969

5010-108-01

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

[illegible]

APR 30 3 48 PM '69

U.S. DEPT. OF JUSTICE

FBI
U.S. DEPT OF JUSTICE

APR 30 9 19 AM '69

RECEIVED
SPECIAL INVESTIGATIVE
DIVISION

ENCLOSURE 89-1333-145

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
APR 22 1969
EDWARD W. WADSWORTH
CLERK

No. 26,773

CARLOS MARCELLO,

Appellant

v.

UNITED STATES OF AMERICA,

Appellee

APPELLANT'S REPLY BRIEF

Appellant, Carlos Marcello, submits this brief in reply to the appellee's brief herein.

1. The Facts. Appellee seeks to inject the same prejudicial and unsupported allegations in its brief that the prosecutors herein improperly insinuated in the press and on the record, i.e., that Marcello bears the reputation of being a Mafia or Cosa Nostra boss. Reputation is the evaluation of a person by those who know him in his community and not what newspaper publications may say. Sloan v. United States, 31 F. 2d 902, 906 (8th Cir., 1929). There is not one iota of evidence of record herein

that Marcello has or had a reputation of being a Mafia boss. Newspaper statements stirred up by appellee's representatives are not the equivalent, legally or otherwise, of reputation testimony. We deny that Marcello is a Mafia or Cosa Nostra member or boss - a denial which will be established at the appropriate time and place. *

2. Knowledge of Marcello's Flight Plans. Marcello was known to be returning to New Orleans by a Delta Flight on September 30, 1966, as is mentioned by appellee, by reason of disclosure through Marcello's counsel to the Federal Bureau of Investigation in New York. The Federal Bureau of Investigation thereafter arranged and planned the news media reception for Marcello at the airport to stage the events which followed. (App. 172-4.) Confirmation of this would have been developed by additional evidence had the subpoenaed surveillance records of the Federal Bureau of Investigation been produced.

3. The Alleged Assault. Appellee correctly notes that the airport incident was photographed and witnessed (Appellee's Tenth Point). The photograph (Govt. Ex. 6) and the Associated Press photographer who took the exhibit (App. 921, 924, 929) established beyond any doubt that Marcello never raised his right hand. Collins feared only an intended blow from a right hand that

*See Harrington and Wagner, The Chaplain of Bourbon Street (1969), pp. 83-92, for a different version of Marcello.

remained at Marcello's side (App. 955). Collins himself could not be sure that any left jab touched him (App. 941, 955), and he was never placed in apprehension of a left handed blow (App. 955), nor did he even report a left handed blow to his superiors in his formal account of the incident (Govt. Ex. 7). As Collins was not placed in apprehension of an alleged left handed jab, there was no forcible assault from this source. As the photograph clearly shows no right handed assault, the conviction cannot be upheld on such claim. Moreover, the Government's case is in utter confusion as to whether there was only a right hand swing as some of its witnesses testified, only a left hand blow as others testified, or both, as only Collins asserted, in marked contradiction to his first declaration on the subject in his written report (Govt. Ex. 7). The following chart is a summary of the Government's confused and inconsistent version of the alleged assault:

The Alleged Marcello Assault
(Government Version)

Government Eyewitness	Hand allegedly used by Marcello	Whether bodily contact made with Collins	Record Reference
Patrick J. Collins F.B.I.	Right hand fist*	None	Govt. Ex. 7, App. 965, 941, 955
Joseph Avignon F.B.I.	Only right hand	None	App. 880-1 903-4, 908
Jack Thornell A.P. photographer	Only left hand	None	Govt. Ex. 6, App. 921, 924, 928-9
Patrick Nolan New Orleans Policeman	Only left cupped hand	Contact made in neck and shoulder region of Collins	App. 1033-4, 1047-8
M. J. Gauthier News reporter	Only left hand	Contact made with right cheek of Collins	App. 1293, 1299, 1308

*Collins stated that his contemporaneous report that Marcello only used his right fist and made no contact was a full, complete and accurate account of the incident (App. 965). He then contradicted himself to say that Marcello first jabbed with his left and then attempted a right hand blow (App. 941, 955).

On this hopelessly confused account of what occurred, no reasonable jury could fathom what the true facts were. On this hopelessly contradictory government presentation, no man should be sent to jail for two years and fined $5,000.00.

4. Change of Venue. The issue presented by the change of venue did not involve discretion but the constitutional right of the appellant to have a trial in New Orleans. The Court singled out for hearing only the change of venue motion, one of eleven motions, as if a predetermination had been made to grant it. Prior to October 3, 1968, some of the District Judges in the New Orleans Division had been quite free in transferring cases to other courts upon the basis of disqualification or other causes.[1/] It would appear that the District Court below may have been motivated by this liberal policy of transferring cases which was in existence in 1967.

By remaining silent in the courtroom where he was not seated with counsel, appellant did not waive his constitutional right. His failure to jump up and interrupt proceedings in a federal court should not be penalized. Marcello did all he could do. He

---

1/ See Joint Order of District Judges Cassibry and Mitchell in Southland Inns, Inc. v. Holiday Inns of America, Inc., Civil Action No. 66-491, announcing a change of policy on October 3, 1968.

promptly called his views to the attention of counsel who, as the Court acknowledges, just as promptly brought the matter to the attention of the Court "not ten minutes after the conclusion of the hearing" on September 13, 1967 (App. 99). The hearing on the motion to reconsider filed at the Court's suggestion followed on September 22, 1967 (App. 71).

The Court did not render its opinion until March 1, 1968, during all of which time it had the full benefit of the statement under oath by appellant that he did not wish a change of venue. If change of venue under these circumstances involved discretionary action, and we do not acknowledge this, then the District Court clearly abused its discretion.

5. Misconduct of the Prosecution by Injection of Prejudicial Testimony and Prejudicial Comments.

(a) Prejudicial Mafia and Cosa Nostra references. Unlike Vause v. United States, 53 F. 2d 346 (2nd Cir., 1931), here the District Court found that the Mafia and Cosa Nostra references were improper and not necessary for a proper understanding of the entire conversation (App. 1016). Unlike Vause, here the Court warned "Let's not go into the details of the conversation" (App. 1011, 1014). And, unlike Vause, here the relevancy of the Mafia and Cosa Nostra references were so remote and so highly prejudicial

that prejudice far outweighed relevancy. Under such circumstances, it was misconduct /to deliberately inject these references, as the District Court found (App. 1015). On cross-examination Collins was questioned about his conversation with Maroun on February 12, 1968, about this case. He responded that he had no conversation "No sir, not about this case" (App. 986). This did not call for redirect examination about conversations irrelevant to this case and on the contrary about other conversations so highly prejudicial to this case. Nevertheless, after being warned, the prosecution brought in discussions about "La Cosa Nostra, the American Mafia" (App. 1013). The door was not opened on cross-examination to these prejudicial references. There was no need to inject them into the case to clarify the limited evidence developed on cross-examination. As found by the Court below, these references were so highly prejudicial that a mistrial would have been declared if expense were not a factor. The Court said:

> "I will not declare a mistrial because too much time, effort and money has gone into this case." (App. 1016)

We submit that this was no basis for denying a mistrial.

(b) Prejudicial summation of the prosecution. The Government, utilizing a partial quotation of one prosecutor and not of both Government attorneys who presented closing arguments, asserts that the prosecutors did not express their personal opinions". Allegations that evidence was manufactured, that the defense made up a "phony memorandum", that the defense was not trying to be fair, that the whole defense was an insult to the jury's intelligence (App. 1353, 1390, 1393-5), is certainly the opinion of the prosecutors, their appraisal of the issues and the credibility of witnesses, and the defense itself. It is the type of prejudicial and improper conduct which has been repeatedly condemned, especially in cases as close as this one where a previous jury was unable to agree.

6. Improper composition of Grand Jury. The decision in United States v. Brown, Cr. 30,966 (App. 174-193), does not discuss or answer our contention that under 28 U.S.C. 1863(b) (prior to 1968 amendment) and under Rabinowitz v. United States, 366 F. 2d 34, 54, Note 48 (5th Cir., 1966), the broad jury exclusion of six parishes without appropriate findings is invalid.

7. Quashing the subpoena duces tecum. United States v. Iozia, 13 F.R. Dec. 335, 338 (S.D. N.Y., 1952), involved the quashing of a subpoena duces tecum which sought pretrial

discovery under Criminal Rule 16 and 17(c). The Court held that the requirement of good cause incorporated in Rule 16 (prior to the 1966 amendment) was a limitation on pretrial discovery under Rule 17(c)

The good cause requirement of Rule 16 was eliminated effective July 1, 1966. Pretrial discovery is not involved here. The Iozia case is totally irrelevant to whether under the rule applicable since 1966 the subpoena duces tecum for evidence at the trial herein should have been suppressed. As the subpoena was neither oppressive nor unreasonable and as no contention was made to that effect, it was error to suppress. Appellant was deprived of producing material highly relevant to the defense herein and damaging to prosecution's key witness, Patrick Collins.

Conclusion. We rely on all the arguments set forth in our main brief and deem reply unnecessary on other issues. For the reasons set forth in our main and this brief we urge reversal of the conviction herein.

Respectfully submitted,

JACK WASSERMAN
Warner Building
Washington, D. C.

C. WRAY GILL
GEORGE M. LEPPERT
Pere Marquette Building
New Orleans, Louisiana
Attorneys for Appellant

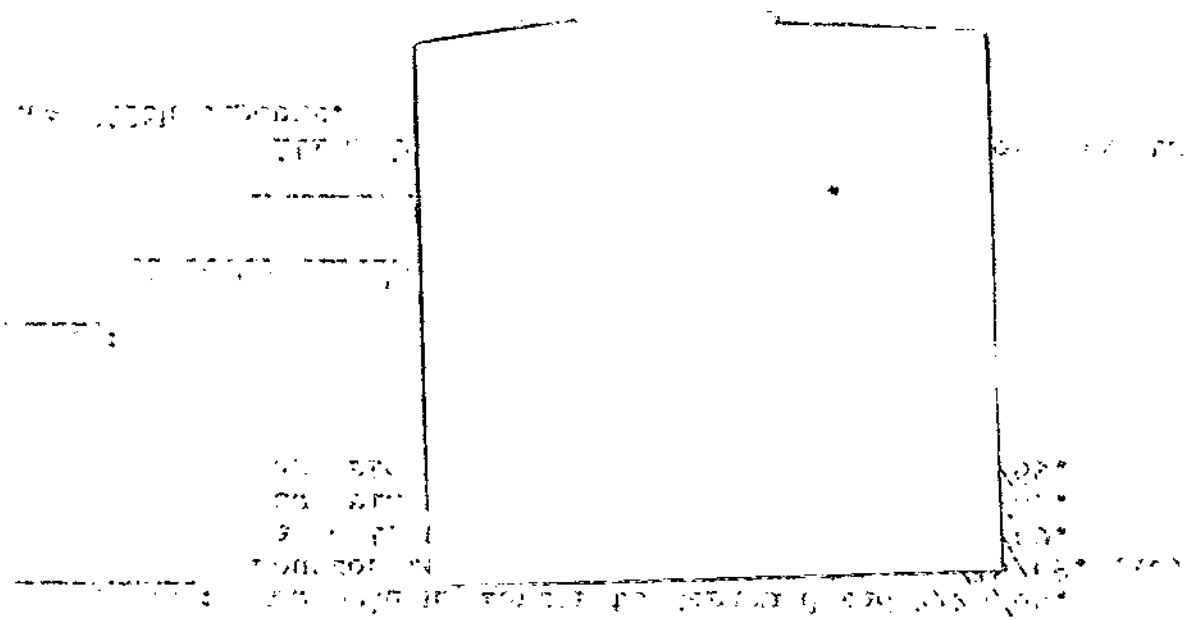
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appellant's Reply Brief was mailed, postage prepaid, this 21st day of April, 1969, to Anthony J. P. Farris, United States Attorney, P. O. Box 61129, Houston, Texas 77061.

JACK WASSERMAN

89-1333-145

RECEIVED
GENERAL INVESTIGATIVE
MAY 5 10 30 AM 1959
F. B. I.
U S DEPT OF JUSTICE



FD-263 (Rev. 12-19-67)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
NEW ORLEANS	NEW ORLEANS	4/29/69	2/24 - 4/24/69

TITLE OF CASE

CARLOS JOSEPH MARCELLO, aka.;
SA PATRICK J. COLLINS, JR. - VICTIM

REPORT MADE BY: SA G. MYRYWIN ALDERSON — TYPED BY: lrs

CHARACTER OF CASE

AFO

REFERENCES: New Orleans letter to Bureau dated 2/26/69.
Houston letter to New Orleans dated 3/18/69. (IO)
New Orleans letter to Bureau dated 3/28/69.
New Orleans letter to Bureau dated 4/22/69.
New Orleans letter to Bureau dated 4/24/69.

- P -

LEADS:

NEW ORLEANS DIVISION

AT NEW ORLEANS, LOUISIANA

Will maintain contact with U. S. Court of Appeals for the Fifth Circuit.

ACCOMPLISHMENTS CLAIMED ☒ NONE						ACQUITTALS
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES	

CASE HAS BEEN:
PENDING OVER ONE YEAR ☒ YES ☐ NO
PENDING PROSECUTION OVER SIX MONTHS ☐ YES ☒ NO

APPROVED — SPECIAL AGENT IN CHARGE

DO NOT WRITE IN SPACES BELOW

89-1333-146

REC-3

18 MAY 2 1969

COPIES MADE:

3 - Bureau (89-1333)
1 - USA, New Orleans
2 - Houston (89-45) (1 - USA, Houston) (Info)
2 - New Orleans (89-79)

Dissemination Record of Attached Report				
Agency	1-RAO	1-Secret		
Request Recd.	Criminal	Service		
Date Fwd.	5/16/69			
How Fwd.				
By	PAC/jmy			

Notations: SAC STAT. SECT.

16 MAY 1 - 1969

COVER PAGE

GPO : 1968 O - 298-8[illegible]

NO 89-79/lrs

ADMINISTRATIVE:

Copies of this report are being furnished the Houston Office for information in view of their interest in the appeal pending in the U. S. Court ofAppeals for the Fifth Circuit.

B*
COVER PAGE

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 1 - USA, Houston, Texas
1 - USA, New Orleans, Louisiana

Report of: SA G. MYRYWIN ALDERSON Office: NEW ORLEANS
Date: 4/29/69

Field Office File #: NO 89-79 Bureau File #: 89-1333

Title: CARLOS JOSEPH MARCELLO;
SA PATRICK J. COLLINS, JR. - VICTIM

Character: ASSAULTING A FEDERAL OFFICER

Synopsis: On 2/24/69, attorneys for MARCELLO filed brief with U. S. Court ofAppeals for Fifth Circuit, New Orleans, La., their file 26773, in connection with his appeal. Brief alleged 15 errors by the District Court. Government filed brief 4/8/69 which denied allegations set forth in appellant's brief. Appellant filed reply brief on 4/22/69 refuting statements made by appellee. U. S. Probation Officer, Houston, Texas advised pre-sentence investigation conducted at New Orleans, La. and forwarded to USDJ JOHN V. SINGLETON. Report contained several letters. U. S. Probation Office, New Orleans, La. furnished list containing names of 48 persons who wrote letters as character witnesses for MARCELLO.

- P -

DETAILS:

AT NEW ORLEANS, LOUISIANA

On February 24, 1969, Mr [redacted] Deputy Clerk, United States Court of Appeals for theFifth Circuit, 400 Royal Street, advised that file number 26773 reflected that the appellant had filed their brief on February 24, 1969. b6 b7C

A review of appellant's brief disclosed the following items listed for review by the United States Court of Appeals:

1. The District Court erred in changing venue from the Eastern District of Louisiana to the Southern District of Texas

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

over objections of appellant.

2. The District Court erred in changing the place of trial from the Laredo Division to the Houston Division and in denying appellant's motion to change venue and return the case to New Orleans.

3. The District Court erred in refusing to dismiss the indictment upon the ground it was not filed by a grand jury representing a fair cross section of the community.

4. The District Court erred in refusing to dismiss the indictment on the ground that it failed to allege an offense.

5. The District Court erred in refusing to dismiss the indictment on the ground that appellant had been granted immunity from prosecution.

6. The District Court erred in refusing to dismiss the indictment and to authorize a hearing to establish that it had been procured by misconduct of prosecuting officials.

7. The District Court erred in quashing the subpoena served on the Attorney General and depriving appellant of records needed for cross-examination of complaining witness PATRICK J. COLLINS.

8. The District Court erred in refusing to grant a mistrial when the complaining witness and prosecuting officials injected Cosa Nostra and Mafia references into the trial.

9. The District Court erred in refusing to grant a mistrial when prosecuting officials improperly referred to a document not in evidence and improperly accused defense counsel of unfairness and manufacturing evidence.

10. The District Court erred in refusing to charge the jury that knowledge by appellant that PATRICK J. COLLINS was a Federal Bureau of Investigation agent was an element of the offense.

11. The District Court erred in refusing to charge the jury that the offense required a willful attempt and intent to inflict violent or serious injury.

12. The District Court erred in refusing to charge the jury relative to the issue of entrapment.

13. The District Court erred in submitting the issue of intimidation and assault to the jury and not requiring an election.

14. The District Court erred in refusing to grant appellant's motion for a judgment of acquittal, motion in arrest of judgment and a new trial.

15. The District Court erred in sentencing appellant to two years imprisonment and a $5,000 fine upon the basis of "brushes with the law", indictments which resulted in acquittals, and assertion of his Fifth Amendment privilege before a Congressional Committee.

On April 21, 1969, Mr. [redacted] advised that the Government filed their brief on April 8, 1969. A review of the appellee's brief reflected that the Government denied the allegations made by appellant.

b6
b7C

On April 24, 1969, Mr. [redacted] advised that the appellant filed a reply brief on April 22, 1969. A review of appellant's reply brief disclosed that the appellant refuted the statements made in the brief filed by appellee.

AT HOUSTON, TEXAS

On March 17, 1969, U. S. Probation Officer [redacted] advised SA RICHARD W. SUTER that the pre-sentence investigation was conducted by the U. S. Probation Office at New Orleans, Louisiana, and the results forwarded to U. S. District Court Judge JOHN V. SINGLETON. Mr. [redacted] stated that he recalled the report included several letters, the contents and authors unknown.

b6
b7C

FD-302 (Rev. 4-15-64)

FEDERAL BUREAU OF INVESTIGATION

Date 4/2/69

Mr. [redacted] Chief, U. S. Probation Officer, 500 St. Louis Street, New Orleans, Louisiana, advised that during the pre-sentence investigation that was conducted regarding CARLOS JOSEPH MARCELLO, the following individuals submitted letters as character witnesses: b6 b7C

[redacted]
Metairie, Louisiana 70002

[redacted] b6 b7C
New Orleans, Louisiana 70130

[redacted]
New Orleans, Louisiana 70121

[redacted] b6 b7C
Funeral Directors,
[redacted]
New Orleans, Louisiana or
[redacted]
Westwego, Louisiana

[redacted]
Mandeville, Louisiana 70448

[redacted] b6 b7C
Lake Charles, Louisiana

On 4/1/69 at New Orleans, Louisiana File# 89-79

by SA G. MYRYWIN ALDERSON/gma Date dictated 4/2/69

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

[redacted]
New Orleans, Louisiana

[redacted]
New Orleans, Louisiana 70112

b6
b7C

[redacted]
Metairie, Louisiana

[redacted]
New Orleans, Louisiana

b6
b7C

[redacted]
Paincourtville, Louisiana

[redacted]
Metairie, Louisiana

b6
b7C

[redacted]
Baton Rouge, Louisiana

[redacted]
New Orleans, Louisiana 70118

b6
b7C

[redacted]
New Orleans, Louisiana 70115

3
NO 89-79/gma

[redacted]
New Orleans, Louisiana 70122

[redacted]
Destrehan, Louisiana 70047

b6
b7C

[redacted]
Des Allemands, Louisiana

[redacted]
Kenner, Louisiana 70062

b6
b7C

[redacted]
New Orleans, Louisiana 70130

[redacted]
Metairie, Louisiana 70001, or
[redacted]
Gretna, Louisiana 70053

b6
b7C

[redacted]
New Orleans, Louisiana 70119

[redacted]
Thibodeaux, Louisiana 70301

b6
b7C

[redacted]
New Orleans, Louisiana 70116

[redacted]
Metairie, Louisiana 70005

b6
b7C

[redacted]
New Orleans, Louisiana 70112

[redacted]
Metairie, Louisiana

[redacted]
Houston, Texas 77036

b6
b7C

[redacted]
New Orleans, Louisiana 70112

[redacted]
New Orleans, Louisiana 70115

[redacted]
Abbeville, Louisiana 70510

b6
b7C

[redacted]
New Orleans, Louisiana

[redacted]
Chalmette, Louisiana 70043

b6
b7C

5
NO 89-79/gma

[redacted]
Metairie, Louisiana

[redacted] b6 b7C
Kenner, Louisiana

[redacted]
New Orleans, Louisiana (Waggaman, La.)

[redacted]
New Orleans, Louisiana 70118

[redacted] b6 b7C
516 Commerce Street,
Shreveport, Louisiana 71101

[redacted]
Former Special Agent,
Intelligence Division,
United States Treasury Department,
510 O'Keefe Avenue,
New Orleans, Louisiana

[redacted]
Metairie, Louisiana 70002

[redacted] b6 b7C
Lafourche Parish,
Thibodeaux, Louisiana

[redacted]
7202 Washington Avenue,
New Orleans, Louisiana 70125

[redacted]
New Orleans, Louisiana

[redacted]
Metairie, Louisiana 70001

[redacted]
Ferriday, Louisiana 71334

[redacted]
Luling, Louisiana

[redacted]
New Orleans, Louisiana 70150

[redacted]
Bridge City, Louisiana 70094

b6
b7C

b6
b7C

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO: DIRECTOR, FBI (89-1333) DATE: 5/13/69

FROM: SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka.,
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

Re New Orleans letter to Bureau 4/22/69.

On May 12, 1969, Mr. [redacted] Deputy Clerk, United States Court of Appeals for the FifthCircuit, 400 Royal Street, New Orleans, Louisiana, advised that in file number 26773, that the appellant had filed a supplemental brief. Mr. [redacted] furnished two copies of this brief, one copy isbeing forwarded to the Bureau, and one copy is being retained in the files of the New Orleans Office.

b6
b7C

A review of appellant's brief reflects that appellant is listing additional reasons to have the case reversed.

Contact will be maintained with the U. S. Court of Appeals in this matter.

ENCLOSURE

(2) - Bureau (Enc. 1)
2 - New Orleans
GMA:lrs
(4)

REC 37 89-1333-147

8 MAY 14 1969

51 MAY 22 1969

5010-108-01

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

RECEIVED
FEDERAL INVESTIGATIVE
DIVISION

MAY 19 9 31 AM 1969

F. B. I.
U. S. DEPT. OF JUSTICE

MAY 19 1 42 PM '69

SPECIAL
DIVISION

RECEIVED
SPECIAL
DIV.

MAY 20 9 42 AM '69

F. B. I.
U. S. DEPT. OF JUSTICE

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
MAY 5 1969
EDWARD W. WADSWORTH
CLERK

No. 26,773

CARLOS MARCELLO,

Appellant

v.

UNITED STATES OF AMERICA,

Appellee

APPELLANT'S SUPPLEMENTAL BRIEF

Over objections by appellant, the Court below submitted the issue of forcible intimidation and forcible assault to the jury under the one count indictment herein. Appellant's motion to compel an election was denied. (App. 1324-32, 1404, 1412, 1447).

As Government Exhibit 7 (Appendix A, Reply Brief, p. 9) discloses Marcello is alleged to have said: "I'm the boss here. Are you looking for some (obscene) trouble?" Federal Bureau of Investigation Agent Collins states that he then

> "crossed my hands on my chest and stated to Carlos Marcello, 'I can handle trouble'."

Judge Connally found in the first trial herein that this did not constitute a forcible intimidation and he removed this issue from the case

89-1330-147
ENCLOSURE

(App. 688). The District Court below, however, refused to eliminate this issue.

It is clear, we submit, that on the basis of Street v. New York, _____ U.S. _____, decided April 21, 1969 (No. 5, Sup. Ct., Oct. Term, 1968, 37 L.W. 4321), that the refusal of the District Court to eliminate the alleged intimidation issue constitutes reversible error.

In Street v. New York, the appellant was convicted for violating a statute which punished defiling the flag by words or acts. He was charged with setting fire to an American flag and shouting: "If they did that to Meredith we don't need an American flag." The Supreme Court reversed the conviction upon the ground that the words above could not constitutionally be the basis for a conviction, that they were protected by the First Amendment and that since the Court's general verdict could not be separated, it was not possible to say under which part of the statute the conviction was obtained. As in Street, appellant's words constituted an exercise of free speech and as a matter of law was not a forcible intimidation. See New York Times v. Sullivan, 376 U.S. 254 (1964). Marcello's words threatened Collins with no physical or other violence, immediate or in the future. Collins did not react as a person subject to intimidation. Relaxed, he folded his hands and responded that he could handle trouble.

As in Street, where a decision was made by a judge rather than a jury appellant's words could have been an independent but unconstitutional basis for his conviction under the Court's charge to the jury (App. 1404).

As in Street and Stromberg v. California, 283 U.S. 359 (1931), the verdict against appellant was a general one and it is impossible to say under which clause of the statute the conviction was obtained, whether solely on the ground of forcible intimidation or forcible assault or both. As noted in Street and Stromberg:

> "If any one of these * * * clauses was invalid, it cannot be determined upon this record that the appellant was not convicted under that clause * * * . It follows that * * * the conviction cannot be upheld."

On this record, it is impossible to say whether appellant was convicted solely for saying "I'm the boss here. Are you looking for some (obscene) trouble?"

We submit that this was no forcible intimidation as found by Judge Connally. We submit that this language was constitutionally protected by the First Amendment and cannot properly by any stretch of the imagination be considered a forcible intimidation. Upon this basis alone and upon the authorities set forth in Point VII of our main brief, reversal is required.

Respectfully submitted,

JACK WASSERMAN
Warner Building
Washington, D. C.

G. WRAY GILL

GEORGE M. LEPPERT
Pere Marquette Building
New Orleans, Louisiana

FD-36 (Rev. 5-22-64)

F B I

Date: 5/23/69

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL _____
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, HOUSTON (89-45) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, Aka.;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO

(OO: NEW ORLEANS)

On 5/23/69 Miss [redacted] secretary to AUSA [redacted] advised that the arguments in this case are scheduled to be heard in New Orleans, Louisiana, on 6/3/69.

b6
b7C

Enclosed for the Bureau and New Orleans is one copy each of appellant's brief, Government brief, and appellant's supplemental brief received 5/7/69 and appellant's reply brief received 4/23/69.

ENC. BEHIND FILE

REC 17 89-1333-148

2 - Bureau (Enc. 4)
2 - New Orleans (89-79) (Enc. 4)
2 - Houston

RWS:jam
(6)

ENCLOSURE

23 MAY 26

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

7 JUN 1969

FBI

MAY 26 4 18 PM '69

MAY 26 12 51 PM 1969

F. B. I.
U S DEPT OF JUSTICE

JUN 5 2 16 PM '69

JUN 5

U.S. DEPT. OF JUSTICE
F.B.I.

MAY 27 9 55 AM 1969

CRIM INTELL SEC
SPECIAL INVEST DIV

FD-36 (Rev. 5-22-64)

FBI

Date: 6/4/69

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL _____
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, Aka.;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO

(OO: NEW ORLEANS)

Re New Orleans airtel to Bureau dated 5/13/69.

On June 3, 1969, the appeal of MARCELLO was argued before the United States Court of Appeals for the Fifth Circuit at New Orleans, Louisiana.

MARCELLO's attorneys, [redacted] and [redacted] asked the Court of Appeals to reverse the conviction of MARCELLO on the principal point that District Judge FREDERICK J. R. HEEBE improperly transferred venue in this matter from the Eastern District of Louisiana to theSouthern District of Texas. b6 b7C

[redacted] and [redacted] claimed that they abandoned a motion asking for a change in venue, although they failed to file a formal motion making their position clear. The attorneys further contended that after a hearing on the change of venue motion before Judge HEEBE, that MARCELLO told the Court that he did not want the case moved. They claimed that they then asked Judge HEEBE to reconsider the matter. The attorneys also claimed that the change of venue from Louisiana to Texas was a clear deprivation of MARCELLO's constitutional rights. The attorneys also attacked certain statements made by the Federal prosecutors during the trial, which they claimed were prejudicial. b6 b7C

(2) - Bureau
1 - Houston (89-45)(Info)
2 - New Orleans
GMA:lrs
(5)

REC. 81 89-1333-149

JUN 5 1969

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

56 JUN 18 1969

RECEIVED
GENERAL INVESTIGATIVE

JUN. 5 4 55 PM 1969

F. B. I.
U. S. DEPT. OF JUSTICE

CRIM INTELL SEC
SPECIAL INVEST DIV

JUN 6 4 34 PM 1969

F. B. I.
U. S. DEPT. OF JUSTICE

JUN 6 9 48 AM '69

F. B. I.
GENERAL
SPECIAL INVESTIGATIVE
DIVISION

JUN 9 1969

The attorneys for the Government charged that MARCELLO and his attorneys "toyed" with Judge HEEBE, and that they were lacking in candor in connection with their motion for a change of venue. They stated that if JUDGE HEEBE had not changed venue from Louisiana to Texas, and if MARCELLO had been convicted in New Orleans, he would have claimed on appeal that he was denied due process.

Contact will be maintained with the U. S. Court of Appeals in this matter.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 7/3/69

FROM : SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, Aka.;
SA PATRICK J. COLLINS, JR -
VICTIM
AFO

(OO: New Orleans)

Re New Orleans airtel to Bureau dated 6/4/69.

On July 2, 1969, Mr. [redacted] Deputy Clerk, United StatesCourt of Appeals for the Fifth Circuit, 400 Royal Street, New Orleans, Louisiana, checked his file number 26773, and advised that no decision had been handed down.

b6
b7C

Contact will be maintained with the U. S. Court of Appeals, and the Bureau will be kept advised.

(2) - Bureau
1 - Houston (89-45)(Info)
2 - New Orleans
GMA:lrs
(5)

EX-102

REC-53 87-10322-150

REC-53 JUL 7 1969

JUL 15 1969

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

CRIM INTELL SEC
SPECIAL INVEST DIV

FBI

FBI

JUL 11 11 51 AM '69 JUL 10 12 12 PM '69

JUL 14 10 33 AM '69 JUL 14 3 12 PM '69

F. B. I.
U. S. DEPT. OF JUSTICE

RECEIVED
SPECIAL INVESTIGATIVE DIVISION

SPECIAL INVESTIGATIVE DIVISION

FORM NO. 10
1962 EDITION
GSA GEN. REG. NO. 27

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 7/25/69

FROM : SAC, HOUSTON (89-45) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, Aka.;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO

(OO: NEW ORLEANS)

On 7/23/69, AUSA [redacted] Houston, Texas, advised that subject's appeal was argued before the U.S. Court of Appeals, 5th Circuit at New Orleans, Louisiana, in 6/3/69, and that no decision has yet been handed down in this matter. Mr. [redacted] stated that it will probably be sometime in late summer, 1969, before a decision will be handed down.

b6
b7C

LEAD:

HOUSTON

AT HOUSTON, TEXAS. Will maintain contact with U.S. Attorney's Office concerning this matter.

ST-105 REC-39 89-1333-151

3 JUL 29 1969

2 - Bureau
2 - New Orleans (89-79)
2 - Houston

RWS:jam
(6)

87

51 AUG 11 1969

FBI

AUG 5 3 40 PM '69

RECEIVED
SPECIAL INVESTIGATIVE
DIVISION

RECEIVED
SPECIAL INVESTIGATIVE
DIVISION

JUL 31 9 59 AM 1969

F. B. I.
U. S. DEPT. OF JUSTICE

JUL 31 2 23 PM '69

RECEIVED
SPECIAL INVESTIGATIVE
DIVISION

CRIM INTELL SEC
SPECIAL INVEST DIV

AUG 5 4 05 PM '69

F. B. I.
U. S. DEPT. OF JUSTICE

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 8/18/69

FROM SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka.;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO

(OO: NEW ORLEANS)

Re New Orleans letter to Bureau dated 7/3/69, and Houston letter to Bureau dated 7/25/69.

On August 13, 1969, Mr. [redacted] Deputy Clerk, United States Court ofAppeals for the Fifth Circuit, 400 Royal Street, New Orleans, Louisiana, reviewed his file number 26773, and advised that no decision had been handed down.

b6
b7C

Contact will be maintained with the U. S. Court of Appeals, and the Bureau will be kept advised.

2 - Bureau
1 - Houston (89-45) (Info)
2 - New Orleans
GMA:lrs
(5)

ST-106
REC-20 89-1333-152
AUG 20 1969

FBI
AUG 27 1969

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

CRIM INTELL SEC
SPECIAL INVEST DIV
AUG 25 2 25 PM '69

RECEIVED
GENERAL INVESTIGATIVE
DIVISION
AUG 25 9 53 AM 1969

F. B. I.
U. S. DEPT. OF JUSTICE

FBI
AUG 25 12 43 PM '69

F. B. I.
U. S. DEPT. OF JUSTICE

RECEIVED
SPECIAL INVESTIGATIVE
DIVISION

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 10/17/69

FROM : SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka.;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO

(OO: NEW ORLEANS)

Re New Orleans letter to Bureau dated 8/18/69.

On October 13, 1969, Mr. [redacted] Deputy Clerk, United States Court of Appeals for the Fifth Circuit, 400 Royal Street, New Orleans, Louisiana, reviewed his file number 26773, and advised that no decision had been handed down.

b6
b7C

Contact will be maintained with the United States Court of Appeals, and the Bureau will be kept advised.

2 - Bureau
1 - Houston (89-45) (Info)
2 - New Orleans
GMA:lrs
(5)

NONE

89-1333-153

REC 17

2 OCT 21 1969

5 OCT 27 1969

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

Oct 23 12 59 PM '69

[illegible] DIVISION

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-107-02

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 11/7/69

FROM : SAC, NEW ORLEANS (89-79)(P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO
(OO: NEW ORLEANS)

Re New Orleans letter to Bureau dated 10/17/69.

On November 5, 1969, [redacted] Deputy Clerk, United States Court of Appeals for the Fifth Circuit, 400 Royal Street, New Orleans, Louisiana, reviewed her file number 26773, and advised that no decision has been handed down.

b6
b7C

Contact will be maintained with the United States Court of Appeals, and the Bureau will be kept advised.

REC 1

154

2 - Bureau
1 - Houston (89-45)(Info)
2 - New Orleans
JGB-sd
(5)

SIX

5 NOV 18 1969

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 12/9/69

FROM : SAC, NEW ORLEANS (89-79)(P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR.
VICTIM
AFO
(OO: NEW ORLEANS

Re New Orleans letter to Bureau dated 11/7/69.

On 12/5/69, [redacted] Deputy Clerk, United States Court of Appeals for the Fifth Circuit, 400 Royal Street, New Orleans, Louisiana, reviewed his file number 26773, and advised that no decision has been handed down. b6 b7C

Contact will be maintained with the United States Court of Appeals, and the Bureau will be kept advised.

REC-95

89-1333-156

9 DEC 15 1969

② - Bureau
1 - Houston (89-45)(Info)
2 - New Orleans
JGB:cb
(5)

59DEC19 1969

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-106

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333)

DATE: 12/22/69

FROM : SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO
(OO: NEW ORLEANS)

ReNOlet to the Bureau, 12/9/69.

On 12/18/69 [redacted] Deputy Clerk, U. S. Court of Appeals for the Fifth Circuit, 400 Royal St., New Orleans, La., reviewed his file #26773 and advised that no decision has been handed down. b6 b7C

Contact will be maintained with the U. S. Court of Appeals, and the Bureau will be kept advised.

(2) - Bureau
1 - Houston (89-45)(Info)
2 - New Orleans
JGB:nmb
(5)

ST-139

REC-47 87-1333-157

10 DEC 30 1969

59 JAN 7 1970

F162

5010-106

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 1/21/70

FROM : SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPIA MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO: NEW ORLEANS)

Re New Orleans letter to Bureau, 12/22/69.

On 1/14/70, [redacted] Deputy Clerk, U. S. Court of Appeals for the Fifth Circuit, 400 Royal St., New Orleans, La., reviewed his file, #26773, and advised that no decision has been handed down.

b6
b7C

Contact will be maintained with the U. S. Court of Appeals, and the Bureau will be kept advised.

158

5 JAN 28 1970

2 - Bureau
1 - Houston (89-45) (info)
2 - New Orleans
JGB/ehs
(5)

SPECIAL INVESTIGATIVE DIVISION

February 19, 1970

Attached teletype advises that United States Circuit Court of Appeals, Fifth Circuit, New Orleans, Louisiana, on 2/18/70, handed down decision affirming the Lower Court ruling upholding the conviction of Carlos Marcello.

Marcello is the "boss" of the New Orleans "family" of La Cosa Nostra, who was convicted in District Court in Houston, Texas, in September, 1968, for assaulting a Federal officer namely, an Agent of our New Orleans office. Marcello was sentenced at that time to two years in the penitentiary and $5,000 fine.

MER:jfp

FBI WASH DC

TELETYPE

FBI NEW ORLS

314PM 2:18:70 URGENT LWH

TO DIRECTOR 89-1333

FROM NEW ORLEANS 89-79

CARLOS JOSEPH MARCELLO AKA; SA PATRICK J. COLLINS, JR. - VICTIM. ~~AFO.~~ ASSAULT OF FEDERAL OFFICER (OO: NEW ORLEANS)

RE NEW ORLEANS LETTER TO BUREAU JANUARY TWENTYONE, LAST.

DEPUTY CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, NEW ORLEANS, LA., ADVISED ON FEBRUARY EIGHTEEN, INSTANT, THAT FIFTH CIRCUIT COURT OF APPEALS HAD HANDED DOWN A DECISION AFFIRMING THE LOWER COURT RULING IN UPHOLDING THE CONVICTION OF CARLOS JOSEPH MARCELLO, WHO WAS SENTENCED IN U.S. DISTRICT COURT IN HOUSTON, TEXAS, ON SEPTEMBER TWELVE, SIXTYEIGHT TO TWO YEARS IN THE PENITENTIARY AND FIVE THOUSAND DOLLARS FINE.

END

ERT

FBI WASH DC

EC-128 89-1333-159

56 MAR 3 1970

FEB 19 10 38 AM '70

REC'D DeLOACH
F B I

FEB 19 9 02 AM '70
RECEIVED-TOLSON
F B I

FEB 19 8 39 AM '70
REC'D DeLOACH
F B I

RECEIVED DIRECTOR
F. B. I.

FEB 19 9 23 AM '70

FEB 19 9 57 AM '70
RECEIVED-TOLSON
F B I

FEB 19 12 14 PM '70

FEB 19 4 18 PM '70

FEB 19 2 12 PM 1970

SAC, New Orleans (89-79)

February 26, 1970

1 - Mr. Colwell

Director, FBI (89-1333) — 160

CARLOS JOSEPH MARCELLO, AKA;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
OO: NEW ORLEANS

Re New Orleans airtel 2-19-70.

Enclosed for New Orleans are two copies of instant matter which was heard by U. S. Court of Appeals for the 5th Circuit, New Orleans.

New Orleans is requested to handle in accordance with Manual of Rules and Regulations, Part II, Section 8, Page 22, Paragraph K.

Enclosures (2)

WLC:jst
(4)

NOTE: New Orleans should have furnished referenced enclosure with a summary of points raised on appeal and the Government's answer thereto. They are being requested to handle in accordance with Manual of Rules and Regulations.

MAILED 21
FEB 26 1970
COMM-FBI

Tolson
DeLoach
Walters
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Soyars
Tele. Room
Holmes
Gandy

F153
MAR 12 1970

MAIL ROOM ☑ TELETYPE UNIT ☐

FD-36 (Rev. 5-22-

F B I

Date: 2/19/70

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO
OO: NO

Re New Orleans teletype to Bureau 2/18/70.

Enclosed herewith are two copies of the decision in instant matter as handed down by the U. S. Circuit Court of Appeals for the 5th Circuit, New Orleans.

2 - Bureau (Enc. 2) ENCLOSURE
2 - New Orleans

JTS:sam
(4)

FEB 25 1970

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 3/6/70

FROM : SAC, HOUSTON (89-45) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, Aka.;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

Remylet to NO, 1/30/70.

On February 20, 1970, Miss [redacted] office of AUSA [redacted] SDT, Houston, advised that the conviction of captioned subject had been affirmed.

On March 3, 1970, Miss [redacted] advised that on March 2, 1970, she had received a copy of a transcript of the court's deliberations in this matter and also a copy of the notation petitioning for a re-hearing in the Fifth Circuit Court of Appeals. This letter indicated that the petition for re-hearing had been granted.

b6
b7C

LEAD

NEW ORLEANS

AT NEW ORLEANS, LOUISIANA:

Will, if not already done, obtain a copy of the transcript in this matter and forward same to Bureau.

(2) - Bureau
1 - New Orleans (89-79)
2 - Houston
RWS/bf
(5)

REC-1 89-1333-161

EX-111

18 MAR 9 1970

MAR 13 1970

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-108

RECEIVED
INVESTIGATIVE
DIVISION
MAR 13 9 15 AM 1970
F. B. I.
U. S. DEPT. OF JUSTICE

b6
b7C

36 (Rev. 5-22-64)

F B I

Date: 3/5/70

Transmit the following in PLAIN TEXT
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: Director, FBI (89-1333)

FROM: SAC, New Orleans (89-79)

RE: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO - New Orleans)

b6
b7C

Bureau's attention is directed to New Orleans airtels of 6/4/68 and 6/6/68 in which [redacted] testified concerning his conversation with SA COLLINS and alleged that SA COLLINS had lied in his testimony.

b6
b7C

This matter was completely handled by communication sent in to the Bureau and by testimony in court not only in Laredo, Texas but in Houston, Texas when CARLOS MARCELLO was tried.

On 3/4/70, [redacted] approached SA [redacted] and advised him that he had previously complained to Departmental Attorney [redacted] that there were five instances where COLLINS lied concerning dates and times when SA COLLINS was in Shreveport, Louisiana prior to the trial of CARLOS MARCELLO. According to [redacted] on 3/3/70 he had discussed this matter with [redacted] MARCELLO's attorney, and [redacted] suggested that he get evidence to prove this.

b6
b7C

It was pointed out to Mr. [redacted] that this matter had already been brought up and settled in court.

b6
b7C

On 3/4/70, a petition was filed with the U. S. Fifth Circuit Court of Appeals by attorneys for CARLOS MARCELLO requesting an en blanc re-hearing of MARCELLO's appeal from his conviction in instant case.

REC- 62

Above for information of the Bureau.

MAR 10 1970

2 - Bureau
2 - New Orleans
JTS:jam
(4)

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

55 MAR 13 1970

CRIM INTELL SEC
SPECIAL INVEST DIV

MAR 9 9 24 AM 1970

F. B. I.
U.S. DEPT. OF JUSTICE

FD-36 (Rev. 5-22-64)

F B I

Date: 4/2/70

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL AIRMAIL (Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. -
VICTIM;
AFO
(OO: NO)

Re New Orleans airtel to Bureau, 3/5/70.

On 4/1/70, U. S. Fifth Circuit Court of Appeals denied MARCELLO's petition for rehearing En Banc. No member of the panel nor Judge in regular active service on the Court requested that the Court be polled on rehearing en banc.

MARCELLO was sentenced in USDC, Houston, Texas, on 9/12/68 to two years in the penitentiary and $5,000.00 fine.

LEAD:

NEW ORLEANS

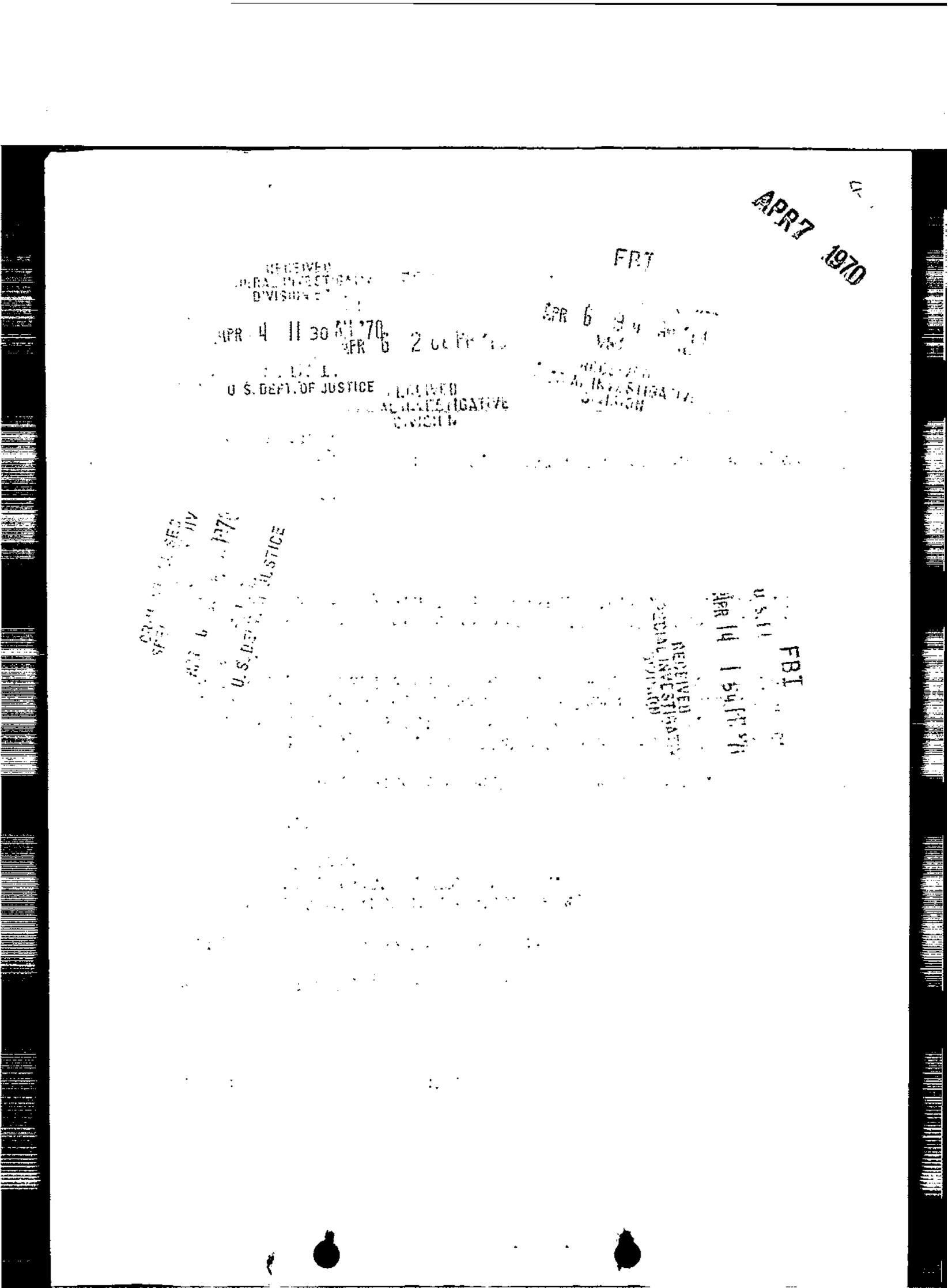
AT NEW ORLEANS, LA.: Will follow MARCELLO's appeal in this matter.

REC 98 89-1333-163

APR 4 1970

(2) BUREAU
2-NEW ORLEANS
JGB/kMt
(4)

Approved: _____ Sent _____ M Per _____
Special Agent in Charge


APR 7 1970
FBI
APR 4 11 30 AM '70
U.S. DEPT. OF JUSTICE
RECEIVED
FBI
APR 14 1 54 PM '70

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 4/9/70

FROM : SAC, HOUSTON (89-45) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka.;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

Remylet 3/6/70.

On April 7, 1970, Miss [redacted] office of AUSA [redacted] SDT, Houston, advised that subject's petition for a re-hearing in this matter before the Fifth Circuit Court of Appeals was denied on April 1, 1970. b6 b7C

LEADS

HOUSTON

AT HOUSTON, TEXAS:

Will maintain contact with U. S. Attorney's office.

2 - Bureau
1 - New Orleans (89-79) (Info)
2 - Houston
RWS/bf
(5)

REC-72 89-1333-164

8 APR 13 1970

57 APR 21 1970

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-108

5/1/70

Airtel

REC-58

To: SAC, New Orleans (89-79)

From: Director, FBI (89-1333)-165

CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

Reurairtel 4/29/70.

New Orleans is instructed to attempt to obtain corroborating information to substantiate that furnished by [redacted] concerning Marcello's intentions. All information should then be submitted in a letterhead memorandum suitable for dissemination to the Department. b7D

MAILED 8
MAY 1 - 1970
COMM-FBI

NOTE: New Orleans top echelon informant advises that Marcello, La Cosa Nostra "boss" of New Orleans "family," has "become desperate" over his eminent incarceration resulting from assault of FBI Agent. Informant advises [redacted] purpose of foregoing is to show that government prejudiced each juror prior to trial and on that basis would be able to seek to obtain new trial. b7D

MER:jmp
(4)

Tolson
DeLoach
Walters
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel

59 MAY 12 1970

MAIL ROOM TELETYPE UNIT

FD-36 (Rev. 5-22-64)

FBI

Date: 4/29/70

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79) (P)

CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO: NEW ORLEANS)

ReNOairtel to Bureau, 3/5/70.

[redacted] advised on 4/29/70 that CARLOS MARCELLO has "become desperate" concerning the possibility of his going to jail following his appeal to the Supreme Court, which he has just recently filed, on the above-captioned assault charge. [redacted]

b7D

[redacted]

b7D

According to source, [redacted]

[redacted]

(2) - Bureau (RM)
2 - Houston (89-45) (RM)
4 - New Orleans
(2 - 89-79)
(1 - 92-36) (CARLOS MARCELLO)
(1 - [redacted]) [redacted]

REC-58 89-1333-165

b2
b7D

JCM:nmb
(8)

1970

SIX

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

RECEIVED
INSPECTION SERVICE

MAY 5 9 10 AM 1970

F.B.I.
DEPT OF JUSTICE

made by the Government with the juror.

[redacted] b7D

[redacted]

LEADS:

NEW ORLEANS

AT NEW ORLEANS, LOUISIANA. 1) Will maintain contact with [redacted] re MARCELLO's travel to Houston, Texas, on 5/4-8/70. b7D

2) Will follow with [redacted] re [redacted]

[redacted] b7D

INFORMATION FURNISHED BY [redacted] IS OF A SINGULAR NATURE, AND IF REPORTED, SHOULD APPEAR ON THE ADMINISTRATIVE PAGES ONLY IN ORDER TO PROTECT IDENTITY OF SOURCE. b7D

FD-36 (Rev. 5-22-64)

F B I

Date: 5/5/70

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
OO: NO

Re New Orleans airtel 4/29/70 and Buairtel 5/1/70.

[redacted] advised 5/5/70 that [redacted] deferred plans to travel to Houston, Texas, during week of [redacted]

b7D

b6
b7C
b7D

New Orleans will follow activities of MARCELLO and keep Bureau and Houston advised.

2 - Bureau
2 - Houston (89-45)
2 - New Orleans

JCM:sam
(6)

REC-35 87-1333-Buffalo-166

17 MAY 7 1970

Approved: 54 MAY 1 _____ Sent _____ M Per _____
Special Agent in Charge

MAY 8 1970

MAY 8 10 52 AM

FBI/DOJ CRIMINAL SEC.

FD-36 (Rev. 5-[illegible]64)

F B I

Date: 6/2/70

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79) (P)

CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO: NEW ORLEANS)

ReNOairtel to Bureau, 4/29/70.

[redacted] advised on [redacted] b7D

[redacted] b7D

THE ABOVE INFORMATION IS SINGULAR IN NATURE, AND IF REPORTED, SHOULD APPEAR IN THE ADMINISTRATIVE PAGES ONLY, IN ORDER TO PROTECT IDENTITY OF SOURCE.

89-1333-167

2 - Bureau (RM)
2 - Houston (89-45) (RM)
4 - New Orleans
(2 - 89-79)
(1 - 92-36)
(1 - [redacted])
JCM:nmb
(8)

REC 33

10 JUN 5 1970

b2
b7D

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

JUN 9 1970

JUN 5 1 13 PM 1970

DEPT OF JUSTICE

FBI

JUN 8 9 54 AM '70

RECEIVED
INVESTIGATIVE

NO 89-79

LEAD:

HOUSTON

AT HOUSTON, TEXAS. Will contact informants and determine if MARCELLO did, in fact, fly to Houston, and determine the purpose of this visit.

FD-36 (Rev. 5-22-64)

FBI

Date: 6/25/70

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIRMAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, HOUSTON (89-45) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO: NO)

ReHOtel today.

On 6/18/70, Motion for Stay of Execution of Mandate Pending Application for Rehearing from Denial of Certiorari and Motion for New Trial on Grounds of Newly Discovered Evidence filed with Fifth Circuit Court of Appeals by MARCELLO'S attorneys.

On 6/19/70, Motion for New Trial and Stay of Sentence filed in USDC, SDT, Houston, Texas. This motion encloses affidavit of [redacted], former employee of Channel 12, W.V.U.E., New Orleans, stating FBI phoned news media in advance of MARCELLO'S arrival by plane 9/30/66. Motion claims entrapment.

b6
b7C

USA, Houston, filed answer to the motion in the Fifth Circuit Court of Appeals 6/23/70 attaching with it a copy of defendant's Motion for New Trial and Stay of Sentence.

USA, Houston, has not yet answered the Motion

2 - Bureau (Enc. 3)
2 - New Orleans (89-79) (Enc.)
2 - Houston

89-1333-1681 REC 87

JUN 27 1970

AGG/bc
(6)

Approved: 1 JUL 1 1970 Sent _____ M Per _____
Special Agent in Charge

U. S. GOVERNMENT PRINTING OFFICE : 1969 O - 346-000 (11)

JUN 29 1970

CRIMINAL SEC
DIV
JUN 29 9 AM 1970
DEPT OF JUSTICE
U.S.

for New Trial and Stay of Sentence in the USDC, SDT.

Enclosed to the Bureau and New Orleans are xerox copies of the above three motions.

Houston will follow with USA, Houston.

IN COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FILED
6-18-70

MARCELLO

53-26

MOTION FOR STAY OF EXECUTION OF MANDATE PENDING APPLICATION FOR REHEARING FROM DENIAL OF CERTIORARI AND MOTION FOR NEW TRIAL ON GROUNDS OF NEWLY DISCOVERED EVIDENCE

Appellant, Carlos Marcello, through undersigned counsel, moves the Court for a stay of execution of the mandate of this Court for the following reasons:

I

Appellant has just learned that on June 15, 1970 the Supreme Court of the United States denied his application for certiorari for a review of the judgment of this Court in the proceedings entitled: "Carlos Marcello v. United States of America," No. 1488, October Term, 1969, of the docket of the Supreme Court of the United States;

II

It is the intention of Appellant to apply to the Supreme Court of the United States for a rehearing of the denial of certiorari in the above cause within 25 days of said denial of certiorari;

III

It is also the intention of Appellant to apply forthwith to the United States District Court for a new trial on the grounds of newly discovered evidence;

IV

Therefore, Appellant urges that a stay of execution of the execution of the mandate of this Court should issue pending disposition of a timely application for a rehearing of denial of certiorari in the above cause and disposition of said motion for new trial.

JACK WASSERMAN

G. WRAY GILL

GEORGE LEPPERT

/s/ George M. Leppert

(Certificate of service shows copy to U. S. Attorney, but copy was sent to Eastern District of Louisiana)

ENCLOSURE 89-1333-1

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

RECD
JUN 19 1970

UNITED STATES OF AMERICA, PLAINTIFF	§	
VS.	§	CRIMINAL NUMBER 68-L-89
CARLOS MARCELLO, DEFENDANT	§	

MOTION FOR NEW TRIAL AND STAY OF SENTENCE

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, the Defendant, CARLOS MARCELLO, and respectfully submits this, his Motion for a New Trial and Stay of Sentence, pursuant to Rule 33 of the Federal Rules of Criminal Procedure and would show this Honorable Court as follows:

I.

The Defendant was indicted, tried, and convicted of the offense of technically assaulting an agent of the Federal Bureau of Investigation who was posing as a member of the press at the arrival of the Defendant by an airline at the New Orleans, Louisiana, airport.

The facts that developed at the trial reflect that a confrontation did occur which provided the Department of Justice with the opportunity to translate this occurrence into a technical violation of the Federal Statutes which was adroitly used to successfully prosecute the Defendant.

II.

The attached affidavit of Erby Aucoin, a member of the news media, who was an employee of Channel 12, W. V. U. E., in New Orleans, Louisiana, on the date of the alleged assault on Agent Collins, raises a serious question concerning the propriety of the validity of, and the constitutionality of the actions of the responsible agents of the Federal Bureau of Investigation who created the airport confrontation by "tipping" off each of the news media that the Defendant would arrive by plane at a certain time and would be available to possible picture taking and interviews.

The discovery of the fact that the television cameramen, the news photographers and various reporters were all brought to the scene by a carefully conceived plan of the Federal Bureau of Investigation raises a serious question as to whether the Defendant was deliberately "entrapped" by this confrontation, which was the creation of the agents, one of whom complains he was assaulted and/or intimidated by the Defendant; such actions offend any concept of basic justice and due process.

III.

Failure to disclose to the defense, after a timely request for disclosure, pursuant to the intent and tenor of Brady vs. Maryland, 373 U.S. 83 (1963), of this preconceived plan for the confrontation and harassment of the Defendant, which was known to the Government when the request was made, constitutes a violation of due process and offends the very intent and tenor of the Supreme Court in that land mark decision.

IV.

That failure to timely disclose the fact that the airport incident was the product of the F. B. I. plan, and the resultant confrontation and harassment

leading to the alleged assault was preconceived, denied to the defense an opportunity to develop facts upon which to raise a defense of entrapment and to have such defense presented to the jury for its consideration at the time of the trial.

V.

The Defendant was clearly "entrapped" by the actions of the agents of the United States Government. The defense was effectively denied the right to have the issue of such entrapment submitted to the jury.

Defense diligently sought by the Brady vs. Maryland motion, timely filed, such information as is now disclosed by the attached affidavits.

Defendant would show that this failure to disclose material facts directly related to and certainly relevant to the basic question of entrapment was a wrongful withholding within the meaning of Brady vs. Maryland, Supra, and the denial of the Defendant's request offended due process under the United States Constitution, Amendment 14, U.S.C.A., and contravenes any concept of basic fairness.

VI.

Another substantial prejudicial result of the wrongful withholding of this evidence was the impact it would have had on the trial jury, on the material element of the offense involving the requirement that the agent assaulted was..."in the official performance of his duties."

If the jury had been allowed to learn that the official duties alleged were that of arranging for the confrontation, participating in such confrontation, and then taking advantage of the natural result of such harassment, to "entrap" the Defendant to create the assualt situation, the conviction result would have been substantially placed in jeopardy.

VII.

This Motion is presented pursuant to the provisions of Rule 33 Federal Rules of Criminal Procedure and constitutes newly discovered evidence of a material nature.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully submits he be granted an evidentiary hearing on the motion for new trial, be allowed to develop the facts now disclosed which were withheld by the Government before and during the trial, and; after said hearing, to grant Defendant a new trial, and in the interim, a stay of sentence pending consideration of the Motion for New Trial.

Respectfully submitted this 19th day of June, 1970.

EDDINGTON & FRILOUX
1215 First National Life Building
Houston, Texas 77002
227-4141

C. Anthony Friloux

C. Anthony Friloux, Jr.
Attorney for the Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion for a New Trial and Stay of Sentence has been served on the United States Attorney for the Southern District of Texas, Houston Division by placing same in the United States Mail, postage prepaid, this date.

C. Anthony Friloux

C. Anthony Friloux, Jr.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA

VS. NO. 68-L-89

CARLOS MARCELLO

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared:

Erby Aucoin

who, being by me duly sworn, did depose and say:

1. That he resides at 700 Miradon Avenue, New Orleans, La. 70123.
2. That on September 30, 1966, he was employed as a photographer at Channel 12 W V U E in New Orleans, La.
3. That on September 30, 1966, about two hours before the scheduled arrival of Mr. Carlos Marcello's plane at the New Orleans International Airport, I received a telephone call from an agent of the Federal Bureau of Investigation in New Orleans. The agent advised me of the time and place of Mr. Marcello's arrival and I was invited to be present to take pictures and interview.
4. I turned the telephone over to John Korbel who was also an employee of Channel 12 W V U E. Korbel was employed by the station at the time as a reporter.
5. We were fairly excited about this information.
6. At that particular time I was spending a great deal of time, at the station's instructions, at police stations, etc., and getting information and making contacts to receive tips such as this. We were confused as to why we received the tip as the F. B. I. does not give tips.
7. When we arrived at the airport we saw the Channel 6 car and other news cars. We realized that we did not have an exclusive tip and that the F. B. I. had called others. This was verified

by a talk with other news media. We ascertained that all news media in the City had received the same information as we had from the F. B. I.

8. Affiant testified before the Grand Jury in New Orleans prior to the first Marcello indictment in New Orleans.

9. Affiant left Channel 12 in June of 1968. Prior to leaving as senior photographer he was out of town a good deal and in July of 1968, went to California where he remained approximately two months.

10. Not until April of 1969, did affiant make contact with the attorneys for Mr. Marcello and on April 7, 1969, he was interviewed for the first time by Mr. Jack Wasserman at 944 St. Charles Avenue, New Orleans, La., at affiant's place of employment.

Erby Aucoin

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 17TH DAY OF JUNE, 1970.

NOTARY PUBLIC

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA

VS. NO. 68-L-89

CARLOS MARCELLO

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared:

Jack Wasserman and Michel Maroun

who, after first being duly sworn, did depose and say:

1. Prior to the first trial herein we jointly attempted to interview Erby Aucoin at Channel 12. Our attempts were unsuccessful as he was not at the station when we attempted to contact him. In addition we were advised that he left the airport prior to the alleged assault.

2. Not until April 7, 1969, was Erby Aucoin contacted by Jack Wasserman at which time he gave an oral statement containing the information set forth and now reduced to affidavit form.

3. We likewise attempted prior to trial herein to ascertain from other sources including several members of the news media whether they had been called by the F.B.I. to assemble at the airport on September 30, 1966. These attempts were unsuccessful until the interview with Erby Aucoin on April 7, 1969.

Jack Wasserman

Michel Maroun

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 17th DAY OF JUNE, 1970.

Notary Public

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 26,773

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

CARLOS MARCELLO,

Defendant-Appellant

Appeal from the United States District Court for the Southern District of Texas

OPPOSITION TO MOTION FOR STAY OF EXECUTION OF MANDATE PENDING APPLICATION FOR REHEARING FROM DENIAL OF CERTIORARI AND MOTION FOR NEW TRIAL ON GROUNDS OF NEWLY DISCOVERED EVIDENCE

Comes now the United States of America, Appellee herein, and files this, its opposition to the motion for stay of execution of mandate, etc. filed herein by the Appellant, Carlos Marcello, upon the following grounds:

I

It is not necessary that the mandate be stayed in order that the Appellant may file a petition for a rehearing of the denial of certiorari in the above cause. Apart from that, the probabilities of success of this or any other motion for a rehearing from the denial of certiorari are minimal.

II

It is not necessary that the mandate be stayed in order that the Appellant may file a motion in the District Court wherein he was convicted for a new trial upon the grounds of newly discovered evidence. Should such motion be entertained by the District Court, that court has full authority to admit the appellant to bail. This

is a matter which should be taken up in the District Court if and when it becomes necessary to do so.

A copy of the motion made by the Appellant in the trial court is attached hereto and is referred to herein.

III

The motion for new trial upon the grounds of newly discovered evidence is insubstantial. The question of entrapment was fully litigated upon appeal and found to be insubstantial. Nothing in the motion adds anything material to the Appellant's contention in this respect. It remains true, as urged by the Appellee on appeal, that there is nothing in the evidence showing that anything was done by any person acting on behalf of the United States which necessitated that the Appellant turn around from the direction in which he had been going, advance on the bystanders mouthing threats and obscene language, and strike the complaining witness with his fist. The issue of entrapment was not raised by the evidence and is not raised by the present motion.

PREMISES CONSIDERED, Appellee prays that the motion be in all things denied.

ANTHONY J. P. FARRIS
United States Attorney

MALCOLM R. DIMMITT
JAMES R. GOUGH
Assistant United States Attorneys

By ORIGINAL SIGNED BY JAMES R. GOUGH

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Opposition to Motion for Stay of Execution, etc. was mailed to each of the following on the 23rd day of June, 1970, by certified mail, return receipt requested: Jack Wasserman, Esq., Warner Building, Washington, D. C.; C. Wray Gill and George M. Leppert, Esq., Pere Marquette Building, New Orleans, La., Attorneys for Appellant.

ORIGINAL SIGNED BY JAMES R. GOUGH

NR003 HO PLAIN

2:00PM URGENT 6-25-70 DFR

TO DIRECTOR (89-1333)
NEW ORLEANS
~~52-9433~~ (89-79)

FROM HOUSTON (89-45) 2 PAGES

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION
JUN 25 1970
TELETYPE

Tolson
Mr. DeLoach
Mr. Tav. I
Tele. Room
Miss Holmes
Miss Gandy

CARLOS JOSEPH MARCELLO, AKA; SA PATRICK J. COLLINS, JR. - VICTIM,
~~AFO~~ DISTRICT OF FOREIGN OFFICER
~~AFO~~, 00 NEW ORLEANS.

RE HOUSTON TEL CALL TO NEW ORLEANS TODAY.

ON JUNE TWENTY FOUR LAST [redacted] INVESTIGATOR, DIAMOND DETECTIVE AGENCY, INC., HOUSTON, APPEARED HOUSTON OFFICE AND ADVISED HE RECEIVED A WIRE THAT DATE FROM THE ATTORNEY OF CARLOS MARCELLO, [redacted] NEW ORLEANS, LA, HIRING [redacted] TO INTERVIEW JURORS. WAS TO INQUIRE ABOUT A STATEMENT MADE BY A WITNESS DURING THE TRIAL THAT MARCELLO WAS MEMBER OF THE "MAFIA" OR "COSTA NOSTRA" AND WHAT INFLUENCE IF ANY THIS HAD ON THE GUILTY VERDICT. b6 b7C

[redacted] STATED HE CONSULTED WITH HIS ATTORNEY AND WAS ADVISED THERE WAS NO FEDERAL LAW OR REGULATIONS PROHIBITING HIM FROM CONTACTING THE JURORS. [redacted] STATED HIS PURPOSE IN CONTACTING THE FBI WAS TO DETERMINE IF THE FBI KNEW OF ANY SUCH REGULATIONS OR LAWS AND TO APPRISE THE FBI OF THE WIRE RECEIVED FROM BURGLASS. b6 b7C

END OF PAGE ONE

REC-3 89-79-1693

JUL 7 1970

51 JUL 10 1970

MR. DELOACH FOR THE DIRECTOR

ON JUNE TWENTY FOUR LAST AUSA [redacted] HOUSTON, WAS ADVISED OF THE ABOVE. b6 b7C

ON JUNE TWENTY FIVE INSTANT MITCHUM TELEPHONICALLY ADVISED THIS OFFICE HE WAS GOING TO START INTERVIEWING THE JURORS.

AUSA [redacted] ADVISED TODAY THAT TRANSCRIPT READS USDJ JOHN V. SINGLETON INSTRUCTED JURY AT CONCLUSION OF THIS TRIAL THAT THEY COULD TALK TO ANYONE ABOUT THE CASE AT THEIR DISCRETION. [redacted] FEELS GOVERNMENT SHOULD TAKE NO ACTION ONE WAY OR THE OTHER AT THIS TIME RE JUROR INTERVIEWS. b6 b7C

COPY OF MOTIONS FOR STAY OF EXECUTION OF MANDATE AND FOR NEW TRIAL BEING FORWARDED NEW ORLEANS TODAY.

NEW ORLEANS AT [redacted] USA, NEW ORLEANS, OF ABOVE.

END

WRSS

FD-36 (Rev. 5-22-64)

FBI

Date: 7/2/70

Transmit the following in AIRTEL (Type in plaintext or code)

Via _____ (Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, HOUSTON (89-45)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO: NO)

ReHOairtel, 6/25/70 and tel 6/25/70; phone calls to NO, 7/2/70.

Enclosed for the Bureau and New Orleans are copies of the following:

1. Defendant's Motion for Reduction of Sentence Pursuant to Rule Thirty-Five Federal Rules of Criminal Procedure

2. Motion to Delay Commitment for Service of Sentence

3. Defendant's Reply to Government's Opposition to Motion for New Trial

4. Order by U.S. District Judge JOHN B. SINGLETON, JR. staying sentence until July 20, 1970 at which time defendant will appear on motions.

2 - Bureau (Enc-4)
2 - New Orleans (89-79) (Enc-4)
2 - Houston
AGG/bc/sjm
(6)

REC-59 [illegible]-170

4 - Enc. [illegible]

ENCLOSURE ATTACHED

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

54 JUL 16 1970

U. S. GOVERNMENT PRINTING OFFICE : 1969 O - 346-090 (11)

HO 89-45

AUSA [redacted] advised that a hearing on these motions has been set for July 20, 1970 in Houston, and in preparation for answers to the motions for this hearing he desired the following: b6 b7C

1) determination as to whether [redacted] was previously interviewed by FBI and if so copies of his FD-302's;

2) contact with former Department Attorney [redacted] and of former AUSA [redacted] at New Orleans to determine whether [redacted] did testify before FGJ and whether transcript of his testimony is available. He does not desire FBI to examine transcript. If transcript available, [redacted] will arrange to have it forwarded to him from New Orleans for possible use. b6 b7C

LEAD

NEW ORLEANS:

AT NEW ORLEANS, LOUISIANA:

Will obtain and forward information requested by AUSA [redacted].

FD-36 (Rev. 5-22-64)

F B I

Date: 7/16/70

Transmit the following in PLAINTEXT
(Type in plaintext or code)

Via NITEL URGENT
(Priority)

TO: DIRECTOR (89-133[illegible]) (MAIL) AND HOUSTON (89-45)

FROM: NEW ORLEANS (89-79)

CARLOS JOSEPH MARCELLO, AKA; SA PATRICK J. COLLINS, JR.; AFO. OO: NEW ORLEANS.

RE HOUSTON AIRTEL TO BUREAU, JULY FOURTEEN, LAST.

THIS IS TO ADVISE THAT SA PATRICK J. COLLINS, JR., RECEIVED A SUBPOENA THIS DATE FROM THE DEFENSE, COMMANDING HIS APPEARANCE IN HOUSTON ON JULY TWENTY, NEXT, FOR THE HEARING SCHEDULED ON THAT DATE IN CAPTIONED MATTER. A CHECK SIGNED BY CARLOS MARCELLO ACCOMPANIED THIS SUBPOENA IN AN AMOUNT SUFFICIENT TO COVER TRAVEL EXPENSE AND WITNESS FEE. NO OTHER SUBPOENA RECEIVED TO DATE AND HOUSTON WILL BE IMMEDIATELY ADVISED IF FURTHER SUBPOENAS ARE RECEIVED.

HOUSTON INSURE THAT AUSA [redacted] ADVISED THAT COLLINS HAS RECEIVED DEFENSE SUBPOENA THIS DATE.

b6
b7C

REC 8 89-1333-171

EX-117

JUL 18 1970

1 - Bureau (AM)
1 - New Orleans
TLC:ehs
(2)

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI

DATE: 7/10/70

FROM : SAC, NEW ORLEANS

SUBJECT: CARLOS MARCELLO, aka
AR
(OO: NEW ORLEANS)
(Bufile 92-2713)
(NO 92-36) (P)

CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO: NEW ORLEANS)
(Bufile 89-1333)
(NO 89-79) (P)

ReNOlet to Houston, 7/6/70, captioned "CARLOS MARCELLO; AR."

For the information of the Bureau, relet set out leads for receiving offices to determine subscriber information and background re telephone numbers found in the possession of CARLOS MARCELLO subsequent to his arrest on 6/18/70.

Enclosed herewith for the Bureau and receiving offices are four copies each of an FD-302 reflecting the

1 ENCLOSURE

④ - Bureau (Enc. 4)
(2 - 92-2713)
② - 89-1333)
4 - Houston (Enc. 4)
(2 - 92-86)
(2 - 89-45)
4 - San Antonio (Enc. 4)
(2 - 92-94)
(2 - 89-) (CARLOS JOSEPH MARCELLO)
4 - New Orleans
(2 - 92-36)
(2 - 89-79)

89-1333-
NOT RECORDED
98 JUL 13 1970

TLC:nmb
(16)

60 JUL 20 1970

92-2713-540

NO 92-36
NO 89-79

items which were in MARCELLO's possession at the time of his arrest on 6/18/70 and located in his wallet.

This information is being supplied to receiving offices for whatever value it might be in view of MARCELLO's continuing legal battle to avoid incarceration on his conviction of assaulting an FBI Agent.

FD-302 (Rev. 3-17-69)

FEDERAL BUREAU OF INVESTIGATION

1

Date 6/29/70

This is to record that the following items were observed by Special Agents [redacted] and [redacted] among the personal effects taken from CARLOS MARCELLO subsequent to his arrest on June 18, 1970, by the United States Marshal and were found in his wallet: b6 b7C

A business card with the name Mrs. [redacted] New Orleans, Louisiana 70123, residence telephone [redacted] office telephone [redacted] representing [redacted] Incorporated, [redacted] New Orleans, Louisiana.

A membership card for National Motor Club, Incorporated, 3320 North Causeway Boulevard, Post Office Box 23582, New Orleans, Louisiana, in the name of CARLOS MARCELLO, 1225 Airline Highway, Metairie, Louisiana. Membership number was shown as A-4935, expiration date as October 15, 1970, and president as HAROLD BERTRAND, On the back of this card where the member's signature should appear was telephone number 362-6919, hand written. Card was not signed.

Three business cards with the name Capps Plumbing, "We Do Plum Good", [redacted] phone [redacted] or [redacted], Louisiana.

A piece of paper with the inscription [redacted] and [redacted] On the back of this paper was written Shreveport, [redacted]

A business card with the name [redacted] Attorney at Law, [redacted] Louisiana [redacted] telephones [redacted] (Office) and [redacted] New Orleans).

Credit card number 126 for the Blue Marlin Restaurant issued to Mr. C. J. MARCELLO, signed [redacted] b6 b7C

A piece of paper with the following inscription, Area [redacted] private home.

On 6/18/70 at New Orleans, Louisiana File # NO 92-36

by SA [redacted] and SA [redacted] TLC:cmp Date dictated 6/24/70 b6 b7C

ENCLOSURE 89-1333

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

A piece of linedpaper with the following inscription: [redacted] 10:00 o'clock, [redacted]

A piece of paper with the following names and telephone numbers: [redacted] area [redacted] and [redacted]; [redacted] and home [redacted]

Guest card number 137 dated April 17, 1970 for the Club El Galeon', Ramada Inn, San Pedro at 410 Loop, San Antonio, Texas.

A plain white cardwith the handwritten inscription: [redacted] office, [redacted] home. b6 b7C

A 1969 telephone credit card for the Town and Country Motel, 1225 Airline Highway, Metairie, Louisiana 70001, bearing credit card number M 833-3757 046 and not signed.

An 8 by 11 sheet of white paper which read as follows:

"April 7, 1969

2:00 P.M.

"Interview with [redacted].

"Was with Channel 12 and [redacted] b6 b7C

"Called by F.B.I. (did not know name- not Sylvester).

"Thought had exclusive. Told to make pictures of Marcello. Called about 2 hours before time of arrival. When arrived saw group of photographers.

Realized no exclusive - F.B.I. had called others and that it was a set up. So told by [redacted]. b6 b7C

"Photographer ceased taking pictures. F.B.I. pushed and kept pointing at Marcello. would have slugged himself. Felt unfair advantage taken of Marcello and that he was entrapped.

"Former marine and photographer for [redacted] b6 b7C

"944 St. Charles St., Office of New Orleans Saints. Photography Director at office of Saints."

An 8 by 11 sheet of white paper bearing the following names and telephone numbers, front and back:

HOUSTON

465-2421 -- MA 2-0262

[redacted] (White House Restaurant, 9300 So. Main Street) . . . . . [redacted]

Mr. [redacted] . . . . . [redacted] b6 b7C

[redacted] (Maxim's Restaurant). . [redacted]

[redacted] . . . . . [redacted]

[redacted] . . . . . [redacted]

[redacted] . . . . . [redacted] b6 b7C

[redacted] (ILLEGIBLE) . . . . . [redacted]

[redacted] (illegible)

[redacted] . . . . . [redacted]

LAREDO

[redacted]

[redacted] . . . . . [redacted] b6 b7C

[redacted] . . . . . [redacted]

BROWNSVILLE

[redacted] . . . . . [redacted]

SAN ANTONIO b6 b7C

[redacted] . . . . . Office [redacted]

Home

PORT ISABEL

[redacted] . . . . . [redacted]

In case you decide to call [redacted] and let him know when to meet you in New Orleans -

Office: Miami Area
Office: Tampa "
Home: Tampa "

[redacted] b6 b7C

[redacted] Apartment
San Antonio

[redacted]

[redacted] - Lake Charles, Louisiana
Area 318 Office [redacted] b6
Home [redacted] b7C

[redacted] - Memphis, Tennessee
Area [redacted]

- Biloxi, Mississippi (Bimbo Inn)
Area [redacted] -

[redacted] - Bay City, Texas
Area [redacted] - Office [redacted]

[redacted]

(ILLEGIBLE) [redacted] - New Orleans-
Area [redacted] [redacted] b6 b7C

[redacted] - New Orleans-
[redacted]

The following names and numbers were written in various places on this paper:

6
NO 92-36

Mr. [redacted]

[redacted]

HALLISTER b6 b7C

[redacted]

[redacted] Coles' Florist

A plastic Phillips 66 credit card issued to Churchill Farms, number 608 000 693 2.

A plastic card for the Metairie Savings Bank and Trust, issued to CARLOS J. MARCELLO, number 213 189 514 8.

Social Security card for CARLOS J. MARCELLO, number 434-20-6189.

All of the items mentioned above with the exception of the last three were Xeroxed in the presence of United States Marshal [redacted] b6 b7C

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

JUL 17 1970

TELETYPE

Mr. Tolson	
Mr. DeLoach	
Mr. Walters	
Mr. Mohr	
Mr. Bishop	
Mr. Casper	
Mr. Callahan	
Mr. Conrad	
Mr. Felt	
Mr. Gale	
Mr. Rosen	
Mr. Sullivan	
Mr. Tavel	
Mr. Soyars	
Tele. Room	
Miss Holmes	
Miss Gandy	

NR002NO PLAIN

4-21 PM URGENT 7-17-70 LAB

TO DIRECTOR 89-1333

HOUSTON 89-45

FROM NEW ORLEANS 89-79 (P)

CARLOS JOSEPH MARCELLO, ~~AKA~~; also known as

Special Agent
~~SA~~ PATRICK J. COLLINS, JR.- VICTIM

ASSAULTING A FEDERAL OFFICER

~~AFO~~; ~~LCN~~.
La Cosa Nostra

~~OO~~: NEW ORLEANS
Office of Origin

CR RE HOUSTON TELTYPE, INSTANT.

SUBPOENA DUCES TECUM SERVED BY ATTORNEY FOR CARLOS MARCELLO, SEVEN SEVENTEEN SEVENTY, ISSUED TO THE AGENT IN CHARGE OF THE FBI OR AN AUTHORIZED REPRESENTATIVE TO APPEAR IN THE SOUTHERN DISTRICT OF TEXAS, HOUSTON, ON THE TWENTIETH DAY OF JULY, AT TEN A.M. AND QUOTE TO BRING THE FILE OR FILES CONTAINING THE NOTES, MEMORANDUM, REPORTS OF ONE CARLOS MARCELLO OR CLAERGO MINACORE AS TO THE DEPARTURE FROM ~~NYC~~ NEW YORK CITY BY COMMERCIAL AIRLINE AND THE ARRIVAL OF [redacted] AND CARLOS MARCELLO

89-1333-172

REC-21

5 JUL 20 1970

b6
b7C

END PAGE ONE

54 JUL 23 1970

IN MOISANT AIRPORT, THE DEPLANING OF [redacted] THROUGH AND INCLUDING AN INCIDENT ON THE RAMP; FURTHER, PLEASE BRING ALL DEVELOPED FILM IN YOUR POSSESSION, TOGETHER WITH ALL NEGATIVES OF THE SUBJECT MATTER OF THIS SUBPOENA, END QUOTE. b6 b7C

ABOVE INFORMATION TELEPHONCIALLY FURNISHED TO THE HOUSTON DIVISION WHO ADVISED THAT AUSA [redacted] Assistant United States Attorney INTENDS TO ATTEMPT TO QUASH THIS SUBPOENA DUCES TECUM.

DEPARTMENTAL ATTORNEY [redacted] IN NEW ORLEANS, ADVISED THAT ATTORNEYS FOR CARLOS MARCELLO HAVE ALSO SUBPOENAED [redacted] MANAGING DIRECTOR OF THE METROPOLITAN CRIME COMMISSION IN NEW ORLEANS, LA.; MR. [redacted] CHIEF U.S. PROBATION OFFICER IN NEW ORLEANS, LA.; [redacted] NEWS DIRECTOR, CHANNEL TWELVE, WWL DASH TV, NEW ORLEANS; AND [redacted], NEWS REPORTED FOR WDSU DASH TV. OTHER SUBPOENAS OF NEWS MEDIA ALLEGEDLY HAVE BEEN SERVED, BUT IDENTITIES UNKNOWN AT THIS TIME TO NEW ORLEANS OFFICE. b6 b7C

HOUSTON ADVISE NO WHAT RESPONSE MUST BE MADE TO SUBPOENA.

~~E~~

~~CORR PG TWO ONE I TWELVE REED~~

END

DRL FBI WASH DC

CLR

CC-MR. ROSEN

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

JUL 17 1970

TELETYPE

NR003 HO PLAIN

517PM URGENT 7-17-70 PXA

TO DIRECTOR (89-1333)

NEW ORLEANS

FROM HOUSTON (89-45) 1 PG.

Mr. Tolson
Mr. DeLoach
Mr. Walters
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Soyars
Tele. Room
Miss Holmes
Miss Gandy

CARLOS JOSEPH MARCELLO, also known as AKA: SA PATRICK J. COLLINS, JR.
ASSAULTING A FEDERAL OFFICER
AFO: ~~EGM~~. ~~00~~:NO. NEW ORLEANS
La Cosa Nostra

Office of Origin

RE NO TEL INSTANT.

United States Attorney

~~USA~~ HOUSTON ADVISES NO ADVANCE RESPONSE NECESSARY. DOES NOT DESIRE ASAC SYLVESTER TO BRING THE RECORDS BUT IS AGREEABLE THAT SA [redacted] ANSWER SUBPOENA BECAUSE HIS EXPOSURE WOULD NOT DISCLOSE TO DEFENSE THE PURPOSE THE GOVERNMENT MAY ALSO HAVE FOR HIM. USA DESIRES SAC NO BY LETTER DESIGNATE [redacted] AS TEMPORARY CUSTODIAN AND AUTHORIZED REPRESENTATIVE TO COMPLY WITH THIS SUBPOENA AND BRING ORIGINAL LETTER WITH RECORDS.

b6
b7C

Assistant United States Attorney

~~AUSA~~ ADVISED GOVERNMENT WILL NOT AGREE TO HAVING ANY RECORDS PRODUCED FOR DEFENSE AND WILL ATTEMPT TO QUASH SUBPOENA EARLY IN HEARING. IF THIS FAILS WILL ATTEMPT TO HAVE JUDGE VIEW RECORDS HIMSELF "IN CAMERA". IF THIS FAILS THEY WILL EXERCISE EXECUTIVE PRIVILEGE AND THEN DEAL WITH ANY POSSIBLE CONTEMPT. P.

REC-21 89-1333-173

JUL 20 1970

END

54 JUL 23 1970

DEL FBI WASH DC

CLR

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

JUL 15 1970

TELETYPE

Mr. Tolson
Mr. DeLoach
Mr. Walters
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Soyars
Tele. Room
Miss Holmes
Miss Gandy

NR007 HO PLAIN

807PM URGENT 7-15-70 PXA

TO DIRECTOR (89-1333)

NEW ORLEANS (89-79)

NEW YORK

FROM HOUSTON (89-45) 1 0&.

CARLOS JOSEPH MARCELLO, AKA: SA PATRICK J. COLLINS, JR. ~~AFO:~~ ASSAULTING FEDERAL OFFICER
~~LCN:~~ ~~(OO:NO):~~ La Cosa Nostra Office of Origin: NEW ORLEANS

RE ~~HO~~ HOUSTON AIRTEL, JULY ONE FOUR LAST AND PHONE CALLS TO SAC RICHARD J. BAKER, NEW YORK, JULY FIFTEEN TODAY.

DEPARTMENTAL ATTORNEY [redacted] WHO TRIED MARCELLO IN HOUSTON IN DIRECT CONTACT WITH NEW YORK OFFICE TODAY. [redacted] WILL BE IN HOUSTON AS ONE OF GOVERNMENT ATTORNEYS HANDLING HEARING ON MOTIONS JULY TWENTY NEXT. [redacted] AND ~~AUSA~~ Assistant United States Attorney [redacted] BOTH DESIRE THAT SA [redacted] OF NEW YORK OFFICE BE IN HOUSTON PRIOR TO NINE A. M. JULY TWENTY NEXT TO BE AVAILABLE WITHOUT DEFENSES KNOWLEDGE FOR CALL AS GOVERNMENT WITNESS IF NECESSARY.

b6
b7C

89-1333-174

EX-114 REC-10

JUL 20 1970

GOVERNMENT ATTORNEYS EXPECT [redacted] TO TESTIFY FOR DEFENSE AND [redacted] MAY BE NECESSARY AS REBUTTAL WITNESS.

b6
b7C

UACB MURRAY SHOULD BE PRESENT AS REQUESTED.

END

BRB FBI JUL 24 1970

b-36 (Rev. 5-22-64)

FBI

Date: 7/14/70

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIRMAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, HOUSTON (89-45) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka
SA PATRICK J. COLLINS, JR.
AFO; LCN
(OO: NO)

Remyairtel, 7/10/70 & HOphone call to NO, 7/14/70.

AUSA [redacted] advised he had just received a phone call from subject's attorney [redacted] stated that SA PAT COLLINS is a "integral and necessary part of their case" and will be subpoened by the defense. Further, that they may issue a subpoena duces tecum for records of New Orleans FBI Office of COLLINS' activities on the day in question. This subpoena will be directed to "the man in charge of the records." No man was mentioned. [redacted] indicated that he had another affidavit coming but did not explain this further. b6 b7C

No mention was made of SA [redacted] in this conversation. b6 b7C

[redacted] requested he be immediately advised if a subpoena duces tecum is served so that he will know what defense is after. He will undoubtedly move to quash the duces tecum subpoena.

89-13[illegible]-175

EX-115 REC 79

2 JUL 15 1970

2 - Bureau
2 - New Orleans (89-79)
2 - Houston

AGG/bc
(6)

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

66 JUL 27 1970

U. S. GOVERNMENT PRINTING OFFICE : 1969 O - 346-090 (11)

At this time he does not plan to quash subpoena of COLLINS and will determine action to be taken at the time of hearing of July 20, 1970.

[redacted] had also told [redacted] that it was "MARCELO'S people" who had notified FBI of MARCELLO'S travel plans before his arrival at New Orleans 9/30/66. [redacted] may subpoena any records of this and [redacted] desires to know what records are available. b6 b7C

His file does not contain any reports stating that MARCELLO'S attorney [redacted] had notified our New York Office. New Orleans is requested to forward a copy of this to Houston for USA'S information.

New Orleans is also attempting to determine testimony of [redacted] before the First Grand Jury indictment of MARCELLO as this is not available in Houston USA files. b3 b6 b7C

Bureau and New Orleans will be kept advised.

(Rev. 5-22-64)

FBI

Date: 7/10/70

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL AIRMAIL (Priority)

Mr. Tolson
Mr. DeLoach
Mr. Walters
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Soyars
Tele. Room
Miss Holmes
Miss Gandy

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, HOUSTON (89-45) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka
SA PATRICK J. COLLINS, JR.
AFO; LCN ← LA COSA NOSTRA
(OO: NO)
Assaulting A Federal Officer
ReHO phone call to NO, 7/10/70

b6
b7C

Enclosed to the Bureau and New Orleans are copies of Governments Opposition to Motion for New Trial and Stay of Sentence filed 6/26/70 and copy of Fifth Circuit Order denying appellant's motion for stay of execution of the mandate of the Fifth Circuit Court. This filed 7/6/70.

AUSA [redacted] made these available this date. [redacted] advised that in contact with MARCELLO'S Houston Attorney [redacted] has indicated defense may decide to call as witnesses to the 7/20/70 hearing on the motions in USDC Houston SA'S PATRICK COLLINS and [redacted] requested [redacted] to have these agents alert to this possibility so they will be available for subpoena. [redacted] stated as much notice would be given as possible.

b6
b7C

[redacted] requests that above agents be requested to be available for the subpoena. However, he is going to

(2) - Bureau (Enc. 2)
2 - New Orleans (89-79) (Enc. 2)
2 - Houston

ENCLOSURE

REC-52 29-1333-

EX-117

30 JUL 14 1970

AGG/bc
(6)

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

U. S. GOVERNMENT PRINTING OFFICE : 1969 O - 346-090 (11)

July 16, 1970

SPECIAL INVESTIGATIVE DIVISION

Attached relates to Carlos Marcello, "boss" of La Cosa Nostra in New Orleans. Marcello was convicted on August 8, 1968, in U. S. District Court, Houston, Texas, on a charge of assaulting an FBI Agent at New Orleans airport September 30, 1966, and fined $5,000 and sentenced to two years in jail. Conviction affirmed by Court of Appeals and Supreme Court denied certiorari. Defense attorneys filed motions in District Court, Houston for new trial and stay of sentence alleging newly discovered evidence. Hearing on motions to be held on July 20, 1970. Defense has indicated they may subpoena as defense witnesses two Agents who previously testified. Assistant U. S. Attorney handling case will strenuously object to appearance of Agents, and his brief strongly opposes consideration for a new trial.

RFH:cs

strenuously object to testimony of these or any other witnesses at the 7/20/70 hearing.

REQUEST OF THE BUREAU:

SA [redacted] is believed presently assigned in Washington, D. C. and UACB should be advised to be available between now and 7/20/70 for possible defense subpoena. b6 b7C

UNLESS ADVISED TO CONTRARY BY BUREAU

LEAD

NEW ORLEANS:

AT NEW ORLEANS, LOUISIANA:

Similar request re PATRICK COLLINS.

ENCLOSURE

89-1353-126

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTFICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	)	
	)	
VS.	)	CRIMINAL NO. 68-L-89
	)	
CARLOS MARCELLO	)	

OPPOSITION TO MOTION FOR
NEW TRIAL AND STAY OF SENTENCE

Comes now the United States of America and submits this, its opposition to the Motion for New Trial and Stay of Sentence, and would show the Court as follows:

I

The motion is frivolous, without merit, and interposed solely for delay.

II

The question of entrapment was fully litigated on the appeal. The Court of Appeals held that when the evidence does not raise entrapment, the issue should not be submitted. The Court stated,

> "The elements of the entrapment are well known. [Citing Sorrells v. United States, 287 U.S. 435, and Sherman v. United States, 356 U.S. at 372.]
>
> "In the instant case there is no evidence tending to show any of these elements of the defense. The evidence shows that Marcello had begun his angry charge at the group of reporters before Collins arrived. This certainly shows that his design and disposition to commit the offense were present before Collins' arrival and thus could not have originated with or been induced by a government official. After Collins' arrival it is true that his presence and refusal to back down when Marcello asked "Are you looking for trouble?" afforded opportunity to commit the offense, but this does not constitute implantation of the disposition to commit in the mind of an innocent man, or inducement for the purpose of prosecuting. Sorrells and Sherman, supra."

The defendant now advances what purports to be a showing that someone acting on behalf of the Federal Bureau of Investigation apprised a number of newspaper reporters of Marcello's impending arrival at the airport. To contend that this is evidence of entrapment ignores not only the legal definition of that doctrine but ignores as well elementary principles of causation. The statement

BF-133-176

of [redacted] is hearsay, and the truth of the statement that an FBI agent advised him of the arrival of Marcello is not admitted. But even if this were the case, it shows no misconduct on the part of a government agent. Marcello's arrival was not classified information. The presence of many other reporters and photographers is as much evidence that Marcello's arrival was common knowledge as it is evidence that anyone acting on behalf of the FBI disseminated this information, and there is nothing in the presence of newspaper reporters and photographers that would act in any way as an excuse or mitigation of the unlawfulness of Marcello's conduct in assaulting Agent Collins.

b6
b7C

The cause of the commission of the offense, both factual and legal, was Marcello's own voluntary decision, not the presence of any newspaper reporters or photographers. There was nothing in this situation that necessitated an assault upon Agent Collins.

III

There is no showing of circumstances which indicates diligence on the part of the defendant in discovering this evidence. The facts which he advances all occurred before the offense was committed, and there is no indication as to why it was impossible to contact and interview Erby Aucoin before the trial and to call him as a defense witness. The evidence thus does not meet the definition of "newly discovered evidence" within the meaning of Rule 33, F.R. Crim.P.

IV

Motions for new trial on the ground of newly discovered evidence are not viewed with favor and should be granted only upon the clearest showing that an injustice has been committed and that a new trial would probably result in a different judgment. The showing made by the defendant herein does not come remotely near meeting this standard.

PREMISES CONSIDERED, the United States of America prays that this motion be in all things denied.

ANTHONY J. P. FAHRIS
United States Attorney

[redacted]

Assistant United States Attorneys

By ORIGINAL SIGNED BY [redacted]

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Opposition to Motion for New Trial and Stay of Sentence was mailed to [redacted] b6 b7C [redacted] Houston, Texas 77002, on the 26th day of June, 1970, by certified mail, return receipt requested.

ORIGINAL SIGNED BY [redacted]

84-3331-Nk

U. S. COURT OF APPEALS
FILED

JUL 6 1970

EDWARD W. WADSWORTH
CLERK

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

NO. 26773

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS MARCELLO,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Tex as.

Before BROWN, Chief Judge, DYER, Circuit Judge and HUNTER, District Judge.

BY THE COURT: -

IT IS ORDERED that appellant's motion for a stay of the execution of the mandate of this Court pending the filing and the determination of a motion for new trial on the grounds of newly discovered evidence or otherwise is DENIED.

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

JUL 20 1970

NR002 HO PLAIN

7:47PM IMMEDIATE 7-20-70 CLB

TELETYPE

TO DIRECTOR

FROM HOUSTON (89-45) THREE PAGES

CARLOS JOSEPH MARCELLO, AKA; SA PATRICK J. COLLINS, JR., VICTIM,

AFO. 00:NEW ORLEANS.

ASSAULTING FEDERAL OFFICER

COMPLAINANT

SA [redacted] ADVISED THAT [redacted], A PUBLIC b6 b7C
RELATIONS MAN FOR CHANNEL TWELVE TV IN NEW ORLEANS, HAD TESTIFIED THAT HE HAD TAKEN SA PATRICK COLLINS TO LUNCH AT THE RED CARPET ROOM IN BRENNANS RESTAURANT, WHERE THE PRESS WERE BEING ENTERTAINED IN REFERENCE TO A MOTION PICTURE CALLED FORTUNE COOKIE; THAT THEY HAD BEEN AT THIS AFFAIR FROM APPROXIMATELY TWELVE UNTIL THREE PM ON SEPT. THIRTY, NINETEEN SIXTYSIX, THE DAY MARCELLO WAS ARRESTED, AND WHEN THEY LEFT AND HE RETURNED TO HIS OFFICE, SA COLLINS WAS IN HIS OPINION DRUNK AND HE PRESUMED COLLINS RETURNED TO THE FBI OFFICE.

SUPERVISOR [redacted] WHO HAD DIRECTED COLLINS ON SEPT. THIRTY, NINETEEN SIXTYSIX, STATED THAT SA COLLINS WAS IN THE NEW ORLEANS OFFICE AND [redacted] CONFERRED WITH COLLINS FROM APPROXIMATELY FOUR TO SIX PM ON THAT NIGHT AND SA COLLINS WAS COLD SOBER.

SA [redacted] NOW ASSIGNED TO THE LABORATORY, ADVISED SA COLLINS WAS NOT DRUNK, THAT SA COLLINS HAD EATEN WITH [redacted] AND HIS WIFE ON SEPT. THIRTY, NINETEEN SIXTYSIX, AND BOTH [redacted] b6 b7C

ENCLOSURE

ST-10 REC-3

10 JUL 28 1970

END PAGE ONE

SRC: Houston will type

56 AUG 3 1970

MR. SULLIVAN FOR THE DIRECTOR

PERS. REC. UNIT

AND HIS WIFE COULD TESTIFY THAT SA COLLINS WAS NOT DRUNK BUT WAS SOBER.

AT APPROXIMATELY TEN PM ON SEPT. THIRTY, NINETEEN SIXTYSIX, ASAC SYLVESTER CONFERRED WITH SA COLLINS AFTER SA COLLINS WAS ASSAULTED BY MARCELLO AND SA COLLINS HAD NOT BEEN DRINKING. THIS IS AGAIN AN OBVIOUS TACTIC IN THE LAST DITCH FIGHT OF MARCELLO TO KEEP OUT OF JAIL.

SA COLLINS WAS RECALLED TO THE STAND AND DENIED BEING DRUNK.

USA REQUESTS PRESENCE OF SA [redacted] SOG SUPERVISOR, WHO WAS ACTING AS SUPERVISOR AND GAVE INSTRUCTIONS TO COLLINS ON SEPT. THIRTY SIXTYSIX, AND WHO IS IN A POSITION TO TESTIFY THAT SA COLLINS DID NOT REPORT BACK TO THE NEW ORLEANS OFFICE IN ANY DRUNKEN CONDITION AND HAD NOT BEEN DRINKING. b6 b7C

SA [redacted] CURRENTLY ASSIGNED TO THE LABORATORY, WHO WAS ASSIGNED WITH SA COLLINS FOR THE COVERAGE OF MARCELLO ON THE NIGHT OF SEPT. THIRTY SIXTYSIX, IS A NECESSARY WITNESS ACCORDING TO THE USA AS HE, [redacted] HAD DINNER AT SA [redacted] RESIDENCE WITH SA [redacted] WIFE PRIOR TO GOING TO THE AIRPORT TO COVER THE ARRIVAL OF HOODLUM MARCELLO.

SA COLLINS ADVISED HE HAS HAD A CAUSAL SOCIAL ACQUAINTANCE WITH [redacted] COLLINS ADVISED SINCE MEETING BROWN IN JUNE OF SIXTYSIX, HE HAS BEEN AT [redacted] HOUSE ON TWO OCCASIONS WHEN THERE b6 b7C

HO (89-45)

WERE MANY OTHER PERSONS PRESENT AT A SOCIAL GATHERING.

RECOMMEND PRESENCE BOTH AGENTS AS NECESSARY WITNESSES HOUSTON EARLY AM JULY TWENTYONE TO CLEARLY REFUTE ALLEGATION ON RECORD.

END

MKA FBI WASH DC

CC-MR. ROSEN

SPECIAL INVESTIGATIVE DIVISION

July 21, 1970

With respect to hearings on motions for new trial made by New Orleans La Cosa Nostra boss Marcello, a television channel public relations man testified that on the afternoon prior to Marcello having assaulted Agent Collins at New Orleans Airport, the public relations man had entertained Collins between 12:00 and 3:00 p.m. at restaurant where Collins became intoxicated. Agent Collins subsequently testified that he was not intoxicated. United States Attorney desires presence for purpose of testimony, Seat of Government Supervisor [redacted] of Special Investigative Division and Agent [redacted] of Laboratory, both of whom were with Agent Collins during pertinent period prior to Marcello's assault. Both [redacted] and [redacted] during interview, have stated that Collins was not intoxicated. These Agents have proceeded to Houston where the motions for a new trial are being argued.

b6
b7C

Should know when they return
Collins was drinking
& was with public
relations man

AAS:rad

ENCLOSURE 89-1333 177

FD-( )(Rev. 12-19-67)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD
HOUSTON	NEW ORLEANS	7/23/70	7/2-21/70

TITLE OF CASE	REPORT MADE BY	TYPED BY
CARLOS JOSEPH MARCELLO, aka; SA PATRICK J. COLLINS, JR. - VICTIM	SA RICHARD W. SUTER	bc
	CHARACTER OF CASE: AFO	

1 CR

REFERENCE: HOairtel to Bu, 7/2/70.

- P -

LEADS

HOUSTON:

AT HOUSTON, TEXAS:

Will follow with USA and USM and report subject's surrender on 9/4/70.

P

ACCOMPLISHMENTS CLAIMED ☒ NONE						ACQUIT-TALS	CASE HAS BEEN:
CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES		PENDING OVER ONE YEAR ☒ YES ☐ NO PENDING PROSECUTION OVER SIX MONTHS ☒ YES ☐ NO

APPROVED _____ SPECIAL AGENT IN CHARGE

DO NOT WRITE IN SPACES BELOW

89-1333-178

REC-84

EX-105

15 JUL 27 1970

COPIES MADE:

2 - Bureau (89-1333)
1 - USA, Houston
3 - New Orleans (89-79)
(1 - USA, New Orleans
2 - Houston (89-45)

Dissemination Record of Attached Report			
Agency	1-Secret Service		
Request Recd.	1-RHO		
Date Fwd.	7/30/70		
How Fwd.	Legal		
By			

54 JUL 31 1970

Notations

SEE STATE SECT.

F303

A*
COVER PAGE

GPO : 1968 O - 299-885

FD-204 (Rev. 3-3-59)

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

Copy to: 1 - USA, Houston
1 - USA, New Orleans

Report of: SA RICHARD W. SUTER Office: HOUSTON
Date: 7/23/70

Field Office File #: Houston 89-45 Bureau File #: 89-1333

Title: CARLOS JOSEPH MARCELLO;
SA PATRICK J. COLLINS, JR. -
VICTIM

Character: ASSAULTING A FEDERAL OFFICER

Synopsis: Motion for New Trial and Motion to Reduce Sentence of subject denied USDC, Houston, Texas 7/21/70 by U.S. Judge JOHN V. SINGLETON, JR.. Subject granted delay of commitment until 9/4/70.

- P -

DETAILS:

AT HOUSTON, TEXAS

Hearings were held at Houston in U. S. District Court before Federal Judge JOHN V. SINGLETON, JR. on July 20 & 21, 1970, concerning subject's motions for a new trial and for reduction of his sentence.

Judge SINGLETON denied both motions and granted the subject 45 days delay in his commitment order to "get his business in order." He was ordered to surrender himself to the U. S. Marshal by 5:00 p.m. September 4, 1970.

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

U. S. GOVERNMENT PRINTING OFFICE: 1969 O - 351-076

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Director, FBI (89-1333)
Attn: Voucher-Statistical Section

DATE: 7/23/70

FROM : SAC, New Orleans (89-79)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
OO: NO

b6
b7C

There is enclosed herewith a check in the amount of $91.00 dated 7/15/70, payable to PATRICK J. COLLINS, signed by CARLOS J. MARCELLO and drawn on the Merchants Trust and Savings Bank, Kenner, Louisiana.

This check was forwarded in connection with the subpoena which SA COLLINS received from the defendant in this case, CARLOS J. MARCELLO, requesting his appearance in Houston, Texas, in connection with the hearing to be held there on 7/20/70.

This check has been endorsed as payable to the Treasurer of the United States, and is forwarded herewith to the Bureau for appropriate disposition.

(2) - Bureau (Encl. 1) (RM)
2 - New Orleans

RER:sam
(4)

Copy retained in Vou-Stat 7/29/70

Check for $91.00 detached and sent to Treasury. See Certificate of Deposit and Schedule of Collections FBI-83 dated 9/3/70

EX-117
REC-30 89-1333-179

ENCLOSURE ATTACHED

JUL 28 1970

STAT. SECTION

5010-108-01

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

NR005 HO PLAIN

435 PM NITEL 7-21-70 KFB

TO DIRECTOR

FROM HOUSTON (89-45) 3P

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION
JUL 21 1970

TELETYPE

ASSAULTING FEDERAL OFFICER

CARLOS MARCELLO, also known as AKA; SA PATRICK J. COLLINS, JR.-VICTIM, AFO. 00:

REHOTEL TO BUREAU JULY TWENTY LAST.

CR

SA PATRICK J. COLLINS, JR., TESTIFIED IN COURT HE WAS CASUAL [redacted] b6 b7C
ACQUAINTANCE OF [redacted] AND THAT HE HAD NO RECOLLECTION

WHERE HE HAD LUNCH ON SEPTEMBER THIRTY, NINETEEN SIXTYSIX, THE DATE OF THE ASSAULT ON COLLINS. COLLINS ALSO HAD NO RECOLLECTION OF ATTENDING LUNCHEON WITH [redacted] AT BRENNAN'S RESTAURANT IN NEW ORLEANS ON SEPT. THIRTY. COLLINS SPECIFICALLY STATED HE DID NOT SPEND THREE HOURS AT ANY TIME WITH [redacted] AT LUNCHEON IN NEW ORLEANS AS [redacted] TESTIFIED TO. SA COLLINS TESTIFIED HE HAD NOT HAD A DRINK WHILE ON OFFICIAL DUTY ON THAT DAY. SOG SUPERVISOR [redacted] TESTIFIED UNDER DIRECT AND CROSS EXAMINATION THAT COLLINS HAD NOT GIVEN ANY APPEARANCE IN HIM b6 b7C MANNER OF WALK, SPEECH, ACTIONS OR BREATH THAT HE HAD PARTAKEN OF ANY ALCOHOLIC BEVERAGES ON SEPT. THIRTY, NINETEEN SIXTYSIX. [redacted] TESTIFIED THAT COLLINS WAS IN HIS PRESENCE ON SEPT. THIRTY, NINETEEN SIXTYSIX FOR APPROXIMATELY TWENTY MINUTES DURING THE LATE AFTERNOON AT WHICH TIME ANY EVIDENCE ON THE PART OF COLLINS HAVING BEEN DRINKING WOULD HAVE BEEN READILY NOTICEABLE TO HIM.

89-43-1333-180

END PAGE ONE

EX-109 REC-33

6 AUG 3 1970

8 JUL 27 1970

MR. SULLIVAN FOR THE DIRECTOR

SPECIAL INVESTIGATIVE DIVISION

July 21, 1970

With respect to testimony on behalf New Orleans La Cosa Nostra boss Marcello on behalf of the latter's motions for a new trial, Director stated he would want to know more about the fact that Agent Collins had allegedly spent three hours with a public relations man.

Attached teletype indicates Agent Collins, during testimony, specifically stated he did not spend three hours at any time with [redacted] as the latter had testified concerning the events on the date Marcello assaulted Collins. Collins also testified that he had not had a drink while on official duty that day. Further, he had no recollection of attending the luncheon with [redacted] at Brennan's Restaurant. After, two Bureau Supervisors, who were previously assigned New Orleans on the date of the assault, had testified to their association with Collins and the absence of any indication of drinking on the latter's part, U. S. District Judge denied motions for a new trial and to vacate or reduce sentence. Defendant requested and was granted 45 days to put business in order and for Marcello to surrender to U. S. Marshal on 9-4-70 to begin serving two-year sentence.

b6
b7C

AAS:rdr

HO 89-45

SUPERVISOR [redacted] ALSO TESTIFIED THAT SA COLLINS HAD DINNER WITH HIM AND [redacted] WIFE THAT NIGHT IN [redacted] HOME AND SA COLLINS HAD NOT BEEN DRINKING AT ANY TIME IN HIS PRESENCE OR GIVEN ANY INDICATION THAT HE HAD BEEN DRINKING DURING THAT DAY, IT BEING NOTED THAT THE ARREST OF MARCELLO WAS MADE AT NINE THIRTY PM THAT NIGHT FOLLOWING THIS DINNER. b6 b7C

USDJ JOHN V. SINGLETON DENIED BOTH MOTIONS OF DEFENSE, ONE FOR NEW TRIAL, AND TWO, MOTION TO REDUCE OR VACATE THE SENTENCE. DEFENSE REQUESTED FORTY-FIVE DAYS FOR MARCELLO TO PUT HIS BUSINESS IN ORDER. THIS WAS GRANTED. JUDGE SIGNED A COMMITMENT ORDER REQUIRING MARCELLO TO SURRENDER HIMSELF TO THE U.S. MARSHAL BY FIVE PM, SEPT. FOUR, NINETEEN SEVENTY.

ALL AGENT WITNESSES RETURNING TO THEIR RESPECTIVE OFFICES.

END

REW FBI WASH DC

CC: MR. [illegible]

FD-36 (Rev. 5-22-64)

F B I

Date: 7/28/70

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIRMAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, HOUSTON (89-45) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM;
AFO
(OO: NO)

ReHOrep SA RICHARD W. SUTER, 7/23/70.

On 7/27/70, subject's attorneys filed Notice of Appeal at Houston, Texas claiming that the airport incident at New orleans, Louisiana was staged by the FBI and that evidence relating to the alleged "entrapment" had been willfully concealed by the Government.

LEAD

HOUSTON:

AT HOUSTON, TEXAS:

Will follow subject's ordered surrender on 9/4/70.

2 - Bureau
1 - New Orleans (89-79) (Info.)
2 - Houston

RWS/bc
(5)

REC-55 9-181

1-181

9 JUL 29 1970

59 JUL 6 1970

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

U. S. GOVERNMENT PRINTING OFFICE : 1969 O - 346-090 (11)

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

JUL 17 1970

TELETYPE

NR003 NO PLAIN

8:55PM URGENT 7-17-70 LLA 3P

TO DIRECTOR (89-1333)

HOUSTON (89-45)

FROM NEW ORLEANS (89-79) (P)

CARLOS JOSEPH MARCELLO, AKA; SA PATRICK J. COLLINS, JR.-
VICTIM; AFO; LCN (OO:NEW ORLEANS).

RE NOTEL JULY SEVENTEEN SEVENTY AT FOUR TWENTYSEVEN PM.CST AND NO TEL CALL TO HOUSTON.

RE SUBPOENA DUCES TECUM SERVED ON THE SAC OF THE FBI, NEW ORLEANS, OR AN AUTHORIZED REPRESENTATIVE.

FOR THE BUREAU'S INFORMATION, SAC ROBERT E. RIGHTMYER CURRENTLY ON SICK LEAVE IN NEW ORLEANS BEING TREATED FOR STREPTOCOCCUS PHARYNGITIS, WHICH IS A CONTAGIOUS INFECTION OF THE THROAT. SAC RIGHTMYER IS UNDER STRONG MEDICATION, ACCORDING TO HIS PHYSICIAN, AND WOULD BE UNABLE TO TRAVEL.

EX 105 REC-10 89-1333-182

HOUSTON OFFICE ADVISED USA, HOUSTON, IS PLANNING TO MAKE EVERY EFFORT TO QUASH THIS SUBPOENA WITHOUT RECORDS BEING BROUGHT INTO COURT. IF THE JUDGE WILL NOT QUASH SUBPOENA, USA WILL ATTEMPT TO HAVE USDJ EXAMINE IN CAMERA, AND AS A LAST RESORT WILL CITE EXECUTIVE PRIVILEGE. USA

AUG 3 1970

END PAGE ONE

66 AUG 10 1970

MR. DELOACH FOR THE DIRECTOR

Mr. Tolson
Mr. DeLoach
Mr. Mohr
Mr. Bishop
Mr. Casper
Mr. Callahan
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Sullivan
Mr. Tavel
Mr. Soyars
Tele. Room
Miss Holmes
Miss Gandy

EXPECTS TO HAVE SUBPOENA QUASHED.

IN VIEW OF ILLNESS OF SAC RIGHTMYER AND THE FACT THAT SA [redacted] IS ALREADY UNDER SUBPOENA TO HOUSTON, USA ADVISES THAT [redacted] CAN BE DESIGNATED THE AUTHORIZED REPRESENTATIVE TO ANWER THE SUBPOENA DUCES TECUM. AS THE SUBPOENA HAS BEEN ISSUED BY THE DEFENSE, THE SUBPOENA HAS TO BE ACKNOWLEDGED. b6 b7C

UNLESS ADVISED TO CONTRARY BY BUREAU

UACB, SA [redacted] WILL BE DESIGNATED AS AUTHORIZED REPRESENTATIVE AND TEMPORARY CUSTODIAN OF THE RECORDS TO COMPLY WITH THIS SUBPOENA. b6 b7C

HOUSTON SHOULD INFORM THE USA, HOUSTON, OF DEPARTMENTAL ORDER THREE EIGHT ONE DASH SIX SEVEN, AND ALL ORIGINAL FD THREE ZERO TWO'S AND EVIDENCE IN THIS CASE ARE BEING FURNISHED TO USA, HOUSTON, AND IF THE COURT DIRECTS THESE BE DELIVERED, THE COURT WILL BE COURTEOUSLY ADVISED THAT THEY ARE IN THE POSSESSION OF THE USA.

END PAGE TWO

FOR THE ADDITIONAL INFORMATION OF THE BUREAU AND HOUSTON, USA GERALD J. GALLINGHOUSE, EDLA, WAS ALSO SERVED WITH SUBPOENA DUCES TECUM THIS DATE TO PRODUCE ALL RECORDS IN THE CUSTODY OF THE USA, NEW ORLEANS, IN THIS MATTER.

THE BUREAU WILL BE KEPT ADVISED.

END.

DCW

FBI WASH DC CLR

CC-MR. ROSEN

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

JUL 17 1970

NR001 HO PLAIN

245PM URGENT 7-17-70 IRV

TELETYPE

TO DIRECTOR, FBI (89-1333) NEW ORLEANS (89-79)

FROM HOUSTON (89-45) (P) 2 PAGES

CARLOS JOSEPH MARCELLO, AKA: SA PATRICK J. COLLINS, JR. AFO:LCN. (OO:NO).

REMY TEL, JULY FIFTEEN LAST & PHONE CALLS NEW ORLEANS JULY SIXTEEN & SEVENTEEN, SEVENTY.

USA ANTHONY J.P. FARRIS, DEPARTMENTAL ATTORNEY [redacted] AND TWO AUSA'S, HOUSTON HAVE BEEN ~~CONFIRMING~~ CONFERRING AS TO GOVERNMENT'S STRATEGY FOR HEARING ON MOTIONS SET FOR JULY TWENTY NEXT. THEY ADVISE THAT ASAC J.T. SYLVESTER OF NEW ORLEANS IS NECESSARY TO BE IN HOUSTON FEDERAL BUILDING WITHOUT DEFENDANTS' KNOWLEDGE DURING HEARING. THIS IS TO AVOID GIVING DEFENSE ANY REASON TO ASK FOR FURTHER DELAY IN ORDER FOR THEM TO INTERVIEW AND/OR SUBPOENA SYLVESTER. INSTEAD, GOVERNMENT WOULD THEN IMMEDIATELY PRODUCE SYLVESTER FOR THEIR USE AS WITNESS OR REJECTION.

EX 105 REC-10 89-1333-183

ATTORNEYS FURTHER ADVISE THAT SA [redacted] OF NEW ORLEANS ALSO NECESSARY TO BE PRESENT AS POSSIBLE GOVERNMENT

END PAGE ONE

AUG 3 1970

/- ENCLOSURE

86 AUG 10 1970

MR. DELOACH FOR THE DIRECTOR

COPY SENT TO MR. TOLSON

WITNESS RE THE SHEET OF PAPER FROM MARCELLO'S PERSONAL EFFECTS ON HIS ARREST JUNE EIGHTEEN LAST. THIS APPEARS TO BE VITAL TO IMPEACHMENT OF DEFENSE WITNESSES [redacted] AND OTHERS INCLUDING MARCELLO HIMSELF. b6 b7C

AUSA'S DESIRE CONFERENCE WITH SYLVESTER AND [redacted] AT SIX PM SUNDAY, JUNE NINETEEN NEXT. UACB THEY WILL BE IN HOUSTON AS REQUESTED. (P)

~~CORRECTION PAGE 1 LINE 4 WD 7 SHD BE CONFIRING~~

END

REW FBI WASH DC CLR

CC-MR. ROSEN

SPECIAL INVESTIGATIVE DIVISION
July 18, 1970

It will be recalled that New Orleans La Cosa Nostra (LCN) boss Marcello has been convicted for assaulting an FBI Agent and the Supreme Court recently refused to review the case. Marcello has now filed motions in U.S. District Court, Houston, asking for a new trial on the basis of newly discovered evidence which motions are being vigorously opposed by U.S. Attorney (USA). USA, Houston, desires presence of New Orleans ASAC Sylvester and New Orleans Agent [redacted]. In addition, defense has served subpoena duces tecum for production of all documents and film pertaining to Marcello case, which is in possession of New Orleans office, for hearing on 7/20/70, in Houston. In view of fact SAC Rightmyer is on sick leave with contagious throat infection and SA [redacted] is already under subpoena by defense though it is contemplated he will be used as a Government witness to rebut testimony anticipated by defense, USA recommends [redacted] be declared as Custodian of Records for purpose of hearing, it being noted USA contemplates vigorously opposing surrender of documents and if necessary invoking executive privilege. USA desires ASAC's presence in Houston to be retained as confidential as he anticipates defense may, thinking that ASAC is not in Houston, seize upon this as a means of obtaining additional delays so as to arrange for presence of ASAC.

b6
b7C

b6
b7C

Special Investigative Division concurs in recommendation that [redacted] be designated Custodian of Records for purpose of this hearing. It is noted the subpoenaed records will be placed in the hands of the USA and if [redacted] required to testify he will so advise the court. If needed, ASAC Sylvester will testify on his recollection of events pertaining to Marcello's airport arrival from New York in 1966 when assault took place.

b6
b7C

AAS:mfd

89-1333-183

ENCL

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Director, FBI (89-1333) DATE: 7/23/70
Attn: Voucher-Statistical Section

FROM : SAC, New Orleans (89-79)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
OO: NO

WCF and Budget

There is enclosed herewith a check in the amount of $91.00 dated 7/17/70, payable to "Agent in Charge - FBI", signed by CARLOS J. MARCELLO and drawn on the Merchants Trust and Savings Bank, Kenner, Louisiana.

This check was forwarded to the FBI in connection with the subpoena which SAC ROBERT E. RIGHTMYER received from the defendant in this case, CARLOS J. MARCELLO, requesting his, or his authorized representative's appearance in Houston, Texas, in connection with the hearing to be held there on 7/20/70. Travel in connection with this subpoena was incurred by SA [redacted] of the New Orleans Division.

b6
b7C

This check has been endorsed as payable to the Treasurer of the United States, and is forwarded herewith to the Bureau for appropriate disposition.

(2) - Bureau (Encl. 1) ENCLOSURE (RMYER)
2 - New Orleans

RER:sam
(4)

Copy returned to U.S. 7/28/70 lw

REC-20 89-1333-184

EX 105

22 JUL 30 1970

Check for $91.00 detached and sent to Treasury. See Certificate of Deposit and Schedule of Collections FBI-18 dated 8/5/70

59 AUG 13 1970

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-108-01

FD-36 (Rev. 5-22-64)

FBI

Date: 8/3/70

Transmit the following in 8-28
(Type in plaintext or code)

Via AIRTEL AIRMAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, HOUSTON (89-45)

RE: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO: NO)

Re New Orleans telephone call to Houston today.

Attached are original and two copies of an affidavit from SA C. MYRYWIN ALDERSON regarding captioned matter.

There is also attached copy of the affidavit for New Orleans.

EX-105
REC 25

2 - Bureau (encs 3)
1 - New Orleans (89-79)(enc 1)
1 - Houston

TJJ:mec
(4)

"ENCLOSURE ATTACHED"

89-45-185

70 AUG 14 1970

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

89-1333 - 15

ENCLOSURE

Houston, Texas
August 3, 1970

I, G. Myrywin Alderson, being duly sworn, hereby make the following free and voluntary statement to Thomas J. Jordan, who I know to be the Special Agent in Charge of the Federal Bureau of Investigation, Houston, Texas.

On April 1, 1969, while conducting investigation in the Carlos Joseph Marcello, aka.; SA Patrick J. Collins, Jr. - Victim, AFO, case I contacted Mr. [redacted] Chief U. S. Probation Officer, New Orleans, Louisiana, and obtained from him a list of persons who had submitted letters as character witnesses for Marcello. b6 b7C

This list was set forth in my report dated April 29, 1969.

At no time did I, nor have I ever, given a copy of this list to [redacted] News Reporter, WWL-TV, New Orleans, or to anyone else. b6 b7C

G. Myrywin Alderson
Special Agent

Sworn to and subscribed before me on August 3, 1970, at Houston, Texas.

Thomas J. Jordan
Special Agent in Charge

FD-36 (Rev. 5-22-64)

FBI

Date: 7/31/70

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

Mr. Tolson
Mr. Sullivan
Mr. Mohr
Mr. Bishop
Mr. Brennan CD
Mr. Callahan
Mr. Casper
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Tavel
Mr. Walters
Mr. Sullivan
Tele. Room
Miss Holmes
Miss Gandy

b6
b7C

TO: DIRECTOR, FBI

FROM: SAC, NEW ORLEANS (89-79)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
OO: NO

On the evening of 7/30/70, Departmental Attorney [redacted] New Orleans, telephonically advised that he had received a telephone call from [redacted] Managing Director, Metropolitan Crime Commission, New Orleans, saying that [redacted] news reporter, WWL-TV, New Orleans, had called Mr. [redacted] and requested information on [redacted] Sheriff of Lafourche Parish, Thibodaux, La., who had written a character letter to Judge SINGLETON, Houston, Texas, concerning CARLOS MARCELLO. According to [redacted] claimed to have the identities of all persons writing character references for MARCELLO to Judge SINGLETON.

Mr. [redacted] contacted [redacted] and was informed by [redacted] that he had a list of the individuals submitting character references for MARCELLO and that he contemplated making them public in his news broadcast. [redacted] indicated to [redacted] that he felt same would be inadvisable in view of the current court proceedings regarding MARCELLO. [redacted] asked [redacted] where he obtained this list and [redacted] replied "from a Federal employee".

b6
b7C

91-12[illegible]-186

(2) - Bureau (Encl. 2) (RM)
2 - New Orleans

REC 11

15 AUG 5 1970

PER:sam
(4)

ENCLOSURE

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

SPECIAL INVESTIGATIVE DIVISION

August 3, 1970

Attached relates to information received from Departmental Attorney [redacted] New Orleans, regarding a list of names of individuals writing character references to United States District Court Judge Singleton in behalf of La Cosa Nostra "boss" Carlos Marcello. According to [redacted] he was called by [redacted] Managing Director, Metropolitan Crime Commission, New Orleans, who told him television station WWL-TV had in its possession the list of references. [redacted] contacted the station and was told the names were received from a "Federal employee." He told the station it would be inadvisable to reveal the names in view of Marcello's pending appeal. [redacted] ascertained a New Orleans United States Probation Officer furnished the list of names to FBI and [redacted] claimed he furnished the list to Special Agent Patrick J. Collins, Jr., on March 28, 1969.

b6
b7C

Special Agent Collins furnished affidavit revealing he had been telephonically contacted by [redacted] regarding list but advised [redacted] he was not handling case. Special Agent [redacted] denied having list in his possession. New Orleans files reveal list furnished to Special Agent [redacted] by United States Probation Officer on April 1, 1969, [redacted] submitting affidavit denying he furnished list to television station.

New Orleans informant has advised Marcello's attorneys will attempt to use all devious means in order to impugn character of Special Agent Collins in order to obtain reversal of conviction. New Orleans recommends no further inquiry as interviews might jeopardize case against Marcello.

RFH:jfp

NO 89-79/jam

Mr. [redacted] contacted U. S. Probation Officer [redacted] New Orleans, and inquired of him whether he had furnished this list of names to anyone. [redacted] stated he had furnished the list to the FBI and to [redacted] In contact with [redacted] claimed that he only furnished the list to SA PATRICK J. COLLINS, JR., and he did this on 3/28/69. b6 b7C

Our files show, and it has been reported, that we did obtain a list of these individuals from the U. S. Probation Office on 4/1/69. This list was obtained by SA G. MYRYWIN ALDERSON, formerly of the New Orleans Division, now of the Houston Division.

There is enclosed herewith an affidavit from SA PATRICK J. COLLINS, JR., obtained under oath, wherein he states that he never obtained a list of the character references from [redacted] He states that he recalls receiving a telephone call from [redacted] telling him that he, [redacted] had such a list. SA COLLINS states he told [redacted] he was not handling this case and he did not obtain the list, and has never had the list in his possession. SA COLLINS believes that he told SA ALDERSON about [redacted] offer. It is noted that SA ALDERSON did receive this list from the U. S. Probation Office on 4/1/69, some three days after [redacted] stated he gave it to SA COLLINS. b6 b7C

It is further noted that this list was reported in the report of SA G. MYRYWIN ALDERSON dated 4/29/69 at New Orleans, Louisiana. This report was disseminated both to the USA at Houston and the USA at New Orleans.

This is being submitted for the information of the Bureau and, UACB, no further inquiry is being made by this office since to interview [redacted] or [redacted] might conceivably jeopardize the case against CARLOS MARCELLO. b6 b7C

UNLESS ADVISED TO CONTRARY BY BUREAU

ENCLOSURE

New Orleans, Louisiana
July 31, 1970

I, Patrick J. Collins, Jr., being duly sworn, hereby make the following free and voluntary statement to Assistant Special Agent in Charge J. T. Sylvester, Jr., of the New Orleans Office of the FBI.

I did not obtain a list of the names who were character references for Carlos Marcello from [redacted] I recall [redacted] telephonically contacting me sometime a year or so ago, stating he had a list of character references, but I told him I was not handling this case and did not obtain the list. b6 b7C

I have never had such a list in my possession from anyone.

Patrick J. Collins, Jr.
Special Agent, FBI

Sworn to and subscribed before me on this thirty-first day of July, 1970, at New Orleans, La.

J. T. Sylvester, Jr.
Assistant Special Agent in Charge,
FBI, New Orleans, Louisiana

Witness: [redacted] b6 b7C

Special Agent, FBI
New Orleans, Louisiana
July 31, 1970

FD-36 (Rev. 5-22-64)

FBI

Date: 8/3/70

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
OO: NO

Re New Orleans airtel 7/31/70.

[redacted] stated that CARLOS MARCELLO is now becoming desperate and will use any means whatsoever to have the appeal revoked. b7D

2 - Bureau
2 - New Orleans

JTS:sam
(4)

EX 106
REC 85 -187

AUG 5 1970

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

66 AUG 17 1970

FD-36 (Rev. 5-22-64)

F B I

Date: 7/31/70

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
OO: NO

[redacted] advised on 7/31/70 that the attorney for CARLOS MARCELLO intends to use any method conceivable to discredit and destroy SA COLLINS' character, with the ultimate goal of having SA COLLINS' testimony declared invalid and, therefore, resulting in MARCELLO being set free.

Above for information of the Bureau. Bureau will be apprised of any further information in this regard.

(2) - Bureau
2 - New Orleans

JTS:sam
(4)

REC 18 9-188

15 AUG 1970

EX-104

SEP 3 1970

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

1 AUG 14 1970

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Director, FBI (89-1333) DATE: 8/20/70

FROM : SAC, New Orleans (89-79)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
OO: NO

Re New Orleans airtels 7/31/70 and 8/3/70, and Houston airtel 8/3/70.

USA GERALD J. GALLINGHOUSE, New Orleans, telephonically advised that [redacted] news reporter, WWL-TV, New Orleans, has been saying he has copies of the original letters which were sent to USDJ SINGLETON at Houston concerning CARLOS MARCELLO. b6 b7C

According to USA GALLINGHOUSE, in addition to the list of names furnished by [redacted] U. S. Probation Officer, to [redacted] Managing Director, Metropolitan Crime Commission, New Orleans, [redacted] also furnished [redacted] copies of the letters sent to Judge SINGLETON by persons who were character references for CARLOS MARCELLO and that [redacted] did not retain any copies of the letters. b6 b7C

USA GALLINGHOUSE stated that [redacted] is saying that he had obtained copies of these letters from LeBLANC, that he did not furnish them to [redacted] but had furnished copies of the letters to SA PATRICK J. COLLINS, JR., as SA COLLINS told [redacted] he would like these copies so the information could be furnished to Washington, D. C. b6 b7C

EX 106 REC 12 89-1333-189

USA GALLINGHOUSE was advised that the New Orleans Office had never had copies of these letters in its files.

10 AUG 27 1970

SA COLLINS is currently on annual leave in Europe and will not return until 9/14/70, at which time appropriate affidavit will be obtained concerning this matter.

(2) - Bureau
2 - New Orleans

JTS:sam
(4)

28 SEP 1970

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-108-01

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

AUG 26 1970

TELETYPE

Mr. Tolson	
Mr. Sullivan	
Mr. Tyler	
Mr. Bishop	
Mr. Brennan C.D.	
Mr. Callahan	
Mr. Casper	
Mr. Conrad	
Mr. Felt	
Mr. Gale	
Mr. Rosen	
Mr. Tavel	
Mr. Walters	
Mr. Soyars	
Tele. Room	
Miss Holmes	
Miss Gandy	

NR001 HO PLAIN

1145PM URGENT 8-26-70 MBG

TO DIRECTOR (89-1333)

FROM HOUSTON (89-45)

CARLOS MARCELLO, AKA; SA PATRICK J. COLLINS, JR. - VICTIM. AFO.

OO: NEW ORLEANS.

ON AUG. TWENTY FOUR, LAST, SUBJECT THROUGH HIS ATTORNEYS FILED TWO MOTIONS IN THE COURT OF U.S. JUDGE JOHN V. SINGLETON, JR. IN CONNECTION WITH SENTENCE, WHICH WAS TO BEGIN ON SEPT. FOUR, NEXT. ONE OF THE MOTIONS REQUESTS SUBJECT'S SENTENCE BE REDUCED ON GROUNDS OF DEFENDANT'S HEALTH AND UPON THE GROUNDS OF PROVOCATION. THE OTHER MOTION, CONSISTING OF FIVE PARTS CONTENDS THE GRAND JURY WHICH ORIGINALLY INDICTED SUBJECT WAS IMPROPERLY COMPOSED; THE STATUTE UNDER WHICH SUBJECT WAS CONVICTED (EIGHTEEN USC ONE ONE ONE) IS UNCONSTITUTIONAL IN THIS CASE BECAUSE SUBJECT THOUGHT SA COLLINS TO BE A NEWS PHOTOGRAPHER AND NOT AN EMPLOYEE OF THE GOVERNMENT PERFORMING HIS DUTY; ADVERSE AND PREJUDICIAL PUBLICITY PRECLUDED GRAND JURY OBJECTIVITY; USE OF PERJURED, FALSE AND SURPRESSED TESTIMONY INVALIDATES THE VERDICT, JUDGEMENT AND SENTENCE; THE COURT HAS THE POWER UNDER T. TWENTY EIGHT, USC, SEC. TWO TWO FIVE FIVE TO ALLOW SUBJECT TO REMAIN AT LARGE UPON HIS OWN RECOGNIZANCE OR ON BAIL

END PAGE ONE

REC-3 89-1333-190

EX-117

18 AUG 28 1970

28 SEP 1970

MR. SULLIVAN For the Director

August 26, 1970

SPECIAL INVESTIGATIVE DIVISION

Attached r[illegible]tes to new motions filed in behalf of New Orleans La Cosa Nostra (LCN) "boss" Carlos Marcello in United States District Court, Houston, Texas, on August 24, 1970.

Marcello is to begin a two-year prison sentence on September 4, 1970, after being convicted for the crime of assaulting SA Patrick J. Collins, Jr., at New Orleans Airport in 1966.

The new motions include a request for Marcello's sentence to be reduced because of poor health and to allow him to remain at large pending a hearing on the statutes requiring that he be in custody.

United States District Court Judge John V. Singleton, Jr., Houston, Texas, who has previously denied a motion for a new trial for Marcello, has advised that he would consider a medical report from a New Orleans clinic concerning the motion pertaining to Marcello's health.

RFH:rad

PENDING HEARING ON THE STATUTES REQUIRING THAT HE BE IN CUSTODY.

Assistant United States Attorney
AUSA [redacted] STATED JUDGE SINGLETON ADVISED

b6
b7C

DEFENSE HE WOULD CONSIDER A MEDICAL REPORT FROM A CLINIC IN NEW ORLEANS, LA. WHEN HE HEARS THE MOTION CONCERNING REDUCTION OF SENTENCE ON HEALTH GROUNDS.

COPY OF MOTION TO REDUCE SENTENCE, ETC. FOLLOWS VIA AIRTEL.

NEW ORLEANS DIVISION ADVISED SEPARATELY.

CORR. TIME SHOULD BE 12:45PM

END

MXW

FBI WASH DC

CLR

CC-MR. RCSLA

6 (Rev. 5-22-64)

FBI

Date: 8/26/70

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL _____ (Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, HOUSTON (89-45)

SUBJECT: CARLOS MARCELLO, aka;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO
(OO: NO)

Re HO tel to Bu, 8/26/70.

Enclosed for the information of the Bureau and the office of origin is one copy of a motion filed by the subject's attorney requesting reduction of subject's sentence upon grounds of subject's health and upon the grounds of provocation.

As the Bureau was previously advised, Judge JOHN V. SINGLETON, JR. before whom this motion was filed was advised according to AUSA [redacted] that he would consider a medical report from a clinic in New Orleans, Louisiana when the motion is heard in his court. No time has been set for this hearing. b6 b7C

For the further information of the New Orleans Division, a second motion was filed before Judge SINGLETON on the same date which was broken into five parts and contends:

The grand jury that first indicted MARCELLO was improperly composed.

The statute under which he was convicted is unconstitutional in this case because MARCELLO thought the FBI agent to be a news photographer rather than a government agent performing his duties.

ENCLOSURE REC-21 -191

2 - Bureau (Enc-1)
1 - New Orleans (Info)(Enc-1)
1 - Houston
RWS/sjm
(4)

ENCLOSURE ATTACHED

14 AUG 28 1970

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

54SEP3 1970

U. S. GOVERNMENT PRINTING OFFICE : 1969 O [illegible] (11)

Adverse and prejudicial publicity precluded grand jury objectivity.

Use of perjured, false and suppressed testimony invalidates the verdict, judgement and sentence.

The court has the power, jurisdiction and right to allow MARCELLO to remain at large upon his own recognizance or on bail, pending a hearing on a statute requiring that he be in custody.

Houston will follow.

ENCLOSURE

UNITED STATES OF AMERICA

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA

V. CR. NO. 68-L-89

CARLOS MARCELLO

MOTION TO CONSIDER REDUCTION OF SENTENCE UPON GROUNDS OF DEFENDANT'S HEALTH, AND UPON THE GROUNDS OF PROVOCATION

CARLOS MARCELLO, through his attorneys, respectfully urges the Court to consider a reduction and suspension of sentence, relative to defendant's being jailed. Annexed hereto is an affidavit from defendant's personal physician, who defendant will tender as a witness at an evidenciary hearing should the Court so desire.

Further, in the interest of objectivity, defendant, in good faith, and pleading ill health, submits himself to the will of the Court, to be examined, at his own expense, by any private or public clinic or institution designated by the Court, including the United States Public Health Service.

THEREFORE, in the interest of justice, defendant prays the Court permit this motion to be heard, and upon the findings of fact, urges the Court to grant him relief as the Court believes required under the circumstances.

And, further, the Court has now become aware through evidence elicited at the hearing on a motion of a new trial on newly discovered evidence that the atmosphere of harassment and provocation surrounding the

the alleged offense was created, for whatever reason, by the government. It is basic common law that provocation is to be considered relative to anticipation of punishment in cases of assault. Without this harassment and provocation, the incident would never have occurred. Upon suggesting to the Court that had not a circus atmosphere been staged by the government, the defendant would have deplaned peacefully, walked to his automobile, and gone home, without any breach of the peace.

b6
b7C

[redacted]
New Orleans, Louisiana 70116

[redacted]
Washington, D. C.

[redacted]
Houston, Texas

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA

V. CR. NO. 68-L-89

CARLOS MARCELLO

ORDER TO DELAY DEFENDANT'S SURRENDER TO THE UNITED STATES MARSHALL

This Court, having considered defendant's Motion to delay his surrender to the United States Marshal on September 4, 1970, as previously ordered by this Court, and believing that the reasons for delay are sound and sought in good faith,

IT IS THEREFORE ORDERED, that this Court's order of July 21, 1970, causing defendant to surrender himself to the United States Marshal on September 4, 1970, at Houston, Texas, is hereby vacated, and

FURTHER, IT IS ORDERED that the defendant be allowed to remain at large on his bond until such time as this Court shall again fix a date for defendant to surrender himself to the United States Marshal.

SIGNED at _____, Texas, this _____ day of _____, 1970.

_____

UNITED STATES DISTRICT JUDGE

[redacted]
6584 WESTBANK EXPRESSWAY
[redacted] LOUISIANA [redacted]

b6
b7C

June 16, 1970

Re: Mr. Carlos Marcello
Metairie, Louisiana

TO WHOM IT MAY CONCERN:

I have been the family physician for the above named person since 10/18/66 and have treated him at this office on some 29 visits. His initial visit consisted of blood test and low cholesterol diet, plus medication to lower the serum cholesterol. In January 1967 a diagnosis of osteo-arthritis of the thoracic and lumbar spine was made and he started on anti-arthritic compounds.

In November, 1967 x-rays of the chest revealed multiple old healed rib fractures. He has had bilateral indirect inquinal hernias for several years which should be repaired. He has been advised not to perform any type of work especially any weight lifting or straining which might strangulate these hernias.

At present his plan of treatment consists of:

1. Cholesterol lowering medication
2. Cholesterol free diet
3. Anti-arthritic medication
4. Anti-allergic medication (skin)
5. Abdominal support for hernias, Supp-Hose (varicose veins)
6. Medication for insomnia
7. Rest as much as possible
8. No heavy lifting or straining
9. ASA compounds (Pain)

DIAGNOSIS:

1. EKG evidence of myocardial disease
2. Arterio sclerotic heart disease
3. Hypercholesterolemia
4. Obesity
5. Osteo-arthritis thoracic and lumbar spine
6. Multiple fractures of ribs (healed)
7. Bilateral Indirect Inquinal hernias
8. Varicosities lower extremities.

Respectfully

[redacted]

b6
b7C

FBI

Date: 8/26/70

following in _____
(Type in plaintext or code)

AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
OO: NO

Re New Orleans airtels 7/31/70, 8/3/70; New Orleans letter 8/20/70; and Houston airtel 8/3/70.

[redacted] Metropolitan Crime Commission of New Orleans, Inc., by letter dated 8/24/70 to SAC ROBERT E. RIGHTMYER, advised that the U. S. Probation Officer received from [redacted], background information on CARLOS MARCELLO in preparation of U. S. Probation Officer's pre-sentence investigation on MARCELLO after MARCELLO was convicted for assaulting SA PATRICK J. COLLINS, JR. b6 b7C

According to [redacted] Probation Officer also secured from [redacted] background information concerning a number of persons who had written letters seeking clemency for MARCELLO and when [redacted] requested copies of letters for Metropolitan Crime Commission's files, the Judge gave his approval with the understanding the letters would be used with discretion. b6 b7C

[redacted] in instant letter (two copies of which are enclosed for the Bureau), stated SA COLLINS came to [redacted] office on 3/28/69 and [redacted] gave SA COLLINS Xerox copies of all the letters, together with a list [redacted] had prepared of the letter writers. b6 b7C

EX 106

REC-53

(2) - Bureau (Encl. 2)
2 - New Orleans

JTS:sam
(4)

ENC. BEHIND FILE

SEP 2 1970

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

59 SEP 14 1970

PERS. REC. UNIT

NO 89-79 /sam

According to [redacted] SA COLLINS said this information would be mailed to Washington, D. C., the same day.

[redacted] stated it was his understanding that the only copies of these letters were in the possession of the FBI and of the Crime Commission. [redacted] stated he had consistently refused to divulge any of the letter-writers to news reporters who have sought such names. [redacted] stated he was told the names are now in the possession of Life magazine reporter [redacted] WWL-TV reporter [redacted] and [redacted] Chief, Investigative Bureau, Louisiana State Police, and the letters have been promised to other reporters.

[redacted] stated he was concerned [redacted] delivery of copies of the letters to the FBI resulted in their use in the manner which violates the trust placed in [redacted] by the court and that he, [redacted] wanted assurance that the FBI will not be violating [redacted] commitments to others by his continuing to furnish information to the FBI.

[redacted] concluded by saying "I am sure that your own attitude and policies are consistent with ours. I thought you would want to have these comments for your own evaluation".

This letter has not been acknowledged and as pointed out in referenced communications, the New Orleans Office has no record of any copies of these letters in its files. SA COLLINS is currently on annual leave in Europe and will return to New Orleans 9/14/70. SA COLLINS has previously furnished an affidavit 7/31/70 advising he had obtained no list of character references from [redacted] and had never had such a list in his possession from anyone. b6 b7C

As was pointed out in New Orleans airtel of 7/31/70, no further inquiry is being made by New Orleans since any interviews to be conducted might conceivably jeopardize the case against CARLOS MARCELLO.

[redacted] in his position as Managing Director of the Metropolitan Crime Commission of New Orleans, is a highly volatile individual and a constant seeker of headlines. In view of this, his letter is not being acknowledged and he is not being contacted by me concerning his letter. b6 b7C

NO 89-79 /sam

SA COLLINS will return from annual leave on 9/14/70 from his current trip to Europe and at that time an affidavit will be obtained from him concerning the letters. This affidavit, together with a prior affidavit concerning list of letter writers, will be furnished to USA GERALD J. GALLINGHOUSE.

To acknowledge [redacted] letter or to conduct any other interviews until the MARCELLO case is finally and completely settled, would not seem to be advisable and, UACB, no action other than that indicated above will be taken. b6 b7C

VIA TELETYPE

ENCIPHERED

PARAPHRASE IF DISSEMINATED

Mr. Tolson	
Mr. Sullivan	
Mr. Mohr	
Mr. Bishop	
Mr. Brennan CD	
Mr. Callahan	
Mr. Casper	
Mr. Conrad	
Mr. Felt	
Mr. Gale	
Mr. Rosen	
Mr. Tavel	
Mr. Walters	
Mr. Soyars	
Tele. Room	
Miss Holmes	
Miss Gandy	

STATE 971

URGENT 9-3-70

TO DIRECTOR

FROM LEGAT LONDON NO. 109

CARLOS JOSEPH MARCELLO, AKA; SPECIAL AGENT PATRICK J. COLLINS, JR. - VICTIM, AFO.

REBUCAB SEPTEMBER ONE LAST.

SA COLLINS INTERVIEWED BY ME IN PRESENCE OF ASSISTANT LEGAT [redacted] AND ADVISES AS FOLLOWS: b6 b7C

NO COPY OF THE LIST OF PERSONS FURNISHING REFERENCE LETTERS FOR MARCELLO WAS MADE AVAILABLE TO HIM. HE HAS PREVIOUSLY ADVISED IN AN AFFIDAVIT FORM THAT NO COPES OF THESE LETTERS WERE MADE AVAILABLE TO HIM.

HE REITEREATES THAT MR. [redacted] NOTIFIED HIM THAT HE HAD SUCH DATA IN HIS POSSESSION AND THAT HE NOTIFIED THE CASE AGENT, MYRWIN ALDERSON. b6 b7C

ST-105 REC-87-1333-1981

HE STATES HE HAS NO OTHER KNOWLEDGE CONCERNING THIS MATTER.

RUC.

SEP 9 1970

RECEIVED: 6:40 AM RDR

SEP 18 1970

9/8/70

Airtel

TO: SAC, New Orleans

FROM: Director, FBI

CARLOS JOSEPH MARCELLO;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO

Reference New Orleans airtel 8/26/70.

SA Collins was interviewed by the Legat, London, on 9/1/70, at which time he advised that he received neither the list of names to which he furnished an affidavit previously, nor any letters from [redacted]. Collins further states that referenced letters were never made available to him. b6 b7C

SAC, New Orleans should personally contact Mr. [redacted] and advise him that a review of Bureau records reveals that copies of the letters in question are not included in our files, nor is there any information which indicates that these letters have ever been made available to the FBI. b6 b7C

ST-105 REC-61 89-1333-194

Mr. [redacted] should be advised that the FBI agrees with his views relative to the confidential nature of such matters and that Mr. [redacted] can be assured that FBI policies are consistent with his. b6 b7C

MAILED 7
SEP 8 1970
COMM-FBI

MER:dcc
(4)

SEE NOTE PAGE 2.

Tolson
Sullivan
Mohr
Bishop
Brennan, C.D.
Callahan
Casper
Conrad
Felt
Gale
Rosen
Tavel
Walters
Soyars
Tele. Room
Holmes
Gandy

55 SEP 15 1970

MAIL ROOM TELETYPE UNIT

Airtel to New Orleans
Re: CARLOS JOSEPH MARCELLO

NOTE: In connection with the conviction of Carlos Marcello, New Orleans LCN "boss," for assault of a New Orleans Special Agent, a list of character references as well as letters furnished by same, were maintained by the Federal Judge hearing the case and were furnished to [redacted] Commissioner of New Orleans Crime Commission. It has been brought to the attention of SAC, New Orleans, that these letters are now reportedly in the possession of several persons connected with the news media. [redacted] states that he furnished copies of these letters to SA Patrick J. Collins in 1969. Collins previously furnished an affidavit stating that he had never received the list of names of character references. Collins currently on leave in England contacted 9/1/70, and states he received neither the list of names nor the letters.

b6
b7C

n/a 9/8/70 ZIF

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

SEP 8 1970

TELETYPE

Mr. Tolson	
Mr. Sullivan	
Mr. Mohr	
Mr. Bishop	
Mr. Brennan CD	
Mr. Callahan	
Mr. Casper	
Mr. Conrad	
Mr. Felt	
Mr. Gale	
Mr. Rosen	
Mr. Tavel	
Mr. Walters	
Mr. Sullivan	
Tele. Room	
Miss Holmes	
Miss Gandy	

NR007 NO PLAIN

453 PM URGENT 9-8-70 OLP

TO DIRECTOR (89-1333))

FROM NEW ORLEANS (89-79)

CARLOS JOSEPH MARCELLO; SA PATRICK J. COLLINS, JR. - VICTIM, AFO, OO- NEW ORLEANS.

FIFTH CIRCUIT COURT OF APPEALS TODAY DENIED MARCELLO APPEAL AND ORDERED;

FIRST: THE STAY PENDING APPEAL AND ACTION THEREON BY THIS COURT IS DENIED.

SECOND: THE INTERIM STAY ENTERED BY JUDGE WISDOM IS VACATED;

THIRD: TO ENABLE APPELLANT TO SEEK RELIEF FROM THE CIRCUIT JUSTICE, THE SUPREME COURT OR A JUSTICE THEREOF THE INTERIM STAY OF JUDGE WISDOM EXPIRES AT THREE PM, CDST, SEPTEMBER TEN, SEVENTY;

REC- 36 89-1333-195

FOURTH: NO STAYS BEYOND THAT PRESCRIBED IN PARAGRAPH THIRD WILL BE GRANTED PENDING MOTIONS FOR REHEARING OR REVIEW OR STAY PROCEEDINGS BEFORE THE SUPREME COURT OR A JUSTICE THEREOF.

10 SEP 10 1970

AIRMAIL COPY TO HOUSTON.

END

LRC FBI WASH DC 5 5 SEP 24

TKS CLR

PERS. REC. UNIT

FD-36 (Rev. 5-22-64)

FBI

Date: 9/8/70

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIRMAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79)

SUBJECT: CARLOS JOSEPH MARCELLO;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO
(OO:NEW ORLEANS)

Re New Orleans teletype to the Bureau, 9/8/70.

Enclosed herewith for the Bureau are two Xerox copies, and for Houston one Xerox copy, of the Decision by the Fifth Circuit Court of Appeals, New Orleans, La., on 9/8/70.

EX-116

REC-84 196

5 SEP 10 1970

ENCLOSURE

(2) - Bureau (Enc. 2)
2 - Houston (Enc. 1)
2 - New Orleans
JCM:djm
(6)

ENCLOSURE ATTACHED

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

61 SEP 16 1970

U. S. COURT OF APPEALS
FILED
SEP 8 - 1970
EDWARD W. WADSWORTH
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE FIFTH CIRCUIT

No. 30492

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CARLOS MARCELLO,

Defendant-Appellant.

- - - - -

Appeal from the United States District Court for the Southern District of Texas

- - - - -

Before BROWN,* Chief Judge, DYER, Circuit Judge, and HUNTER, District Judge.

PER CURIAM:

Appellant moves for a stay of execution of the sentence pending conclusion of the present appeal from the order of the District Court denying a motion for new trial after conviction, appeal and affirmance thereof and denial of certiorari by the Supreme Court.

---

*Sitting by designation.

Our examination of the record made on the hearing of the post affirmance motion for new trial (and other relief) does not reflect that on the hearing of the merits the appellant will succeed in reversing the action of the District Court. There is a need for finality. The time for finality is now.

The Court therefore ORDERS:

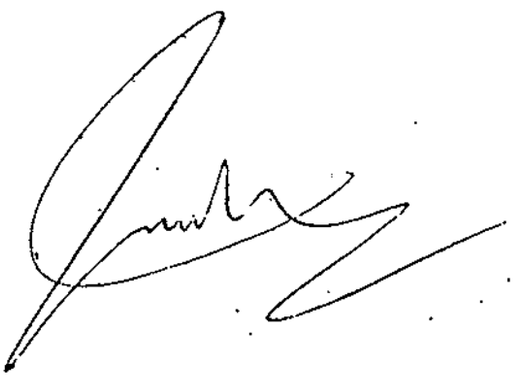
FIRST: The stay pending appeal and action thereon by this Court is DENIED.

SECOND: The interim stay entered by Judge Wisdom is vacated;

THIRD: To enable appellant to seek relief from the Circuit Justice, the Supreme Court or a Justice thereof the interim stay of Judge Wisdom expires at 3 p.m. C.D.S.T., September 10, 1970;

FOURTH: No stays beyond that prescribed in paragraph THIRD will be granted pending motions for rehearing or review or stay proceedings before the Supreme Court or a Justice thereof.

September 8, 1970.



(Rev. 5-22-64)

FBI

Date: 9/4/70

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL AIR MAIL (Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79) (P)

CARLOS JOSEPH MARCELLO;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(CO: NEW ORLEANS)

ReNOtel to Bureau 9/3/70.

Enclosed herewith for the Bureau are two Xerox copies, and for Houston is one copy, of a motion filed before the Fifth Circuit Court of Appeals on 9/3/70.

This information made available by Departmental Attorney, New Orleans, La., and is being submitted for the information of the Bureau and Houston.

6 - Bureau (Enc. 2)
1 - Houston (89-45) (Enc. 1) (Info)
2 - New Orleans
TLC:nmb
(5)

REC- 61 89-1333-197

54 SEP 16 1970

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

89 1355-194
ENCLOSURE

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 30,492

UNITED STATES OF AMERICA,

vs:

CARLOS MARCELLO,

- - - - - - - - - - - - - - - - - - - -

O R D E R

It is ORDERED that the defendant, Carlos Marcello, shall remain at large upon his bond until such time as a panel of this Court shall have an opportunity to consider the foregoing motion and shall have granted or denied the motion.

John Minor Wisdom

UNITED STATES CIRCUIT JUDGE

The term of said order rests solely upon the governments response to the appeal, its formal or informal consideration by this Court, and the decision therefrom.

[redacted]

Attorney for Defendant
2111 Dauphine St.
New Orleans, Louisiana

CERTIFICATE OF SERVICE

I, Cecil M. Burglass, attorney for defendant Carlos Marcello certify that a copy of the foregoing motion has been served upon the United States Attorney, Hon. Jerry Gallinghouse, by personally delivering copy of same to his office in New Orleans, Louisian, this 3rd day of September, 1970

b6
b7C

[redacted]

defence to assault, the offence here--his right to be left alone- now proved as a fact- covers up several defenses not available at trial, and may have been the basis of a valid motion to suppress. But specific defenses need not be spelled out. The jury and the defense had a right to this evidence. It is not within the District Court's perogative to second guess the jury. It is also not within the principles of law to permit this conviction to stand. The government cannot patently mislead the denfense, the Court, subverting justice, without penalty.

VI.

The transcript on the motion for a new trial has now been received in this Court. Defendant's memorandum of authorities and argument nears completion. The issues involved are substantial. The spirit of the Rules, as in Rule 23 of the Appellate Rules of Procedure, and Rule 49 of the Supreme Court Rules, both relating to habeas corpus, is that no one should lanquish in prison, awaiting judicial decisions where the chances of a favorable resolution are more than possible.

VII.

Defendant is prepared to proceed immediately in this cause.

VIII.

Defendant has always honored the judgments or orders of all Courts, and his record of appearance, pursuant to order, is without blemish.

IX.

The order sought here, to maintain defendant at large pending appeal of substantial issues relating to the very issue of guilt, as well as legal defenses, is interem in nature;.

IV.

Defense counsel made pre-trial motions under the rule of Brady v. Maryland, at Laredo and Houston, and at various points during both trials for any evidence within the knowledge of the Government favorable to the defendant. None was forthcoming following government denial of its existance. A particularized call for evidence relative to the convocation of the news media was sought in Laredo. The following occurred in pre-trial motions.

Mr. Wasserman: (Defense council):

= "I think they arranged this convocation of news media."

Mr. Neff: (Prosecutor):

"I resent that, your Honor."

Mr. LaCour (Prosecutor):

"I do too. This is not the first time this man was in the news."

(R-345).

The resentment of the truth and a positive denial of the facts known to the government to a United States District Judge repeated again at R-345, is a denial of due process, striking at the fairness in trial doctrine which is the foundation upon which due process rests.

V.

Due process being denied in its broader sense, due process was denied in its more practical application by limiting and prohibiting particular defences available to the defendant, as well as the denial of defendant's right to present all of the evidence to the jury, the tribunal competent to pass on it.

The defence of entrapment was actually submitted but refused by the District Court in Houston; this suppressed evidence of the F.B.I. using unknowing news personnel as government agents was an integral and first step in that defense. Provocation can be a

U.S. COURT OF APPEALS
FILED
SEP 3 '70
EDWARD W. WADSWORTH
CLERK

UNITED STATES COURT OF APPEAL

FIFTH CIRCUIT

UNITED STATES OF AMERICA

VS NO. 30-492

CARLOS MARCELLO

MOTION FOR INTERIM STAY OF EXECUTION
OF SENTENCE, PENDING HEARING ON APPEAL

TO THE HONORABLE JUDGES OF THE COURT:

Carlos Marcello, through his attorney moves the Court to stay the execution of sentence which is scheduled for September 4 1970, and in support thereof, shows the Court:

I.

Defendant filed a motion for a new trial upon the grounds of newly discovered evidence, and upon the grounds of supression of evidence. An evidentiary hearing was held on July 20 and 21 1970, and an order of denial was entered on July 21 1970. Notice of appeal was filed on July 27, 1970.

II.

At the evidentiary hearing, it was conclusively proved by the admission of Joseph Sylvester, Agent-in-Charge of the New Orleans Federal Bureau of Investigation, that it was he who caused the convocation of news media at the New Orleans Airport on the evening of September 30 1966 the date time and site of he offence. Agent Sylvester also testified that he informed the Federal Prosecutors prior to the Laredo, Texas trial of this fact.

III.

Defendant was tried in Laredo, Texas, and a hung jury caused a mis trial. He was tried again in Houston, Texas. and a conviction resulted. The two prosecutors who were informed by Agent Sylvester of the facts set out above, actively participated in both trials.

September 4, 1970

SPECIAL INVESTIGATIVE DIVISION

After the U. S. Supreme Court refused to review the conviction of New Orleans hoodlum Carlos Marcello who was sentenced to a two-year term for assault on SA Patrick Collins of the New Orleans office, attorneys for Marcello filed a motion in U. S. District Court, Houston, Texas, for a new trial based on alleged newly discovered evidence. The District Judge of Houston on 7/21/70, denied this motion as well as a motion to vacate the judgment and reduce sentence and ordered Marcello to surrender 9/4/70 to begin serving his sentence.

Attached teletype advises Fifth Circuit Court Judge John Minor Wisdom on 9/3/70 granted Marcello a stay of execution of sentence pending review by three-judge panel of motion appealing for a new trial. New Orleans is following matter and will keep Bureau advised.

JGL:rad

CABLEGRAM TO LEGAT, LONDON
RE: CARLOS JOSEPH MARCELLO

[redacted] FURNISHED SAME TO U. S. PROBATION OFFICE, NEW ORLEANS, FOR BACKGROUND INFORMATION. THE NAMES WERE SUBSEQUENTLY FURNISHED TO SA G. MYRYWIN ALDERSON, NEW ORLEANS, BY PROBATION OFFICER. THE LIST NOW IS SUPPOSEDLY IN POSSESSION OF NEWS MEDIA AND ONE REPORTER ADVISED THE NAMES WERE RECEIVED FROM A "FEDERAL EMPLOYEE." SA ALDERSON HAS FURNISHED AN AFFIDAVIT THAT HE DID NOT DISCLOSE LIST TO NEWS MEDIA. SA COLLINS HAS PREVIOUSLY FURNISHED AFFIDAVIT ADVISING THAT HE HAD BEEN TELEPHONICALLY CONTACTED BY [redacted] REGARDING THE LIST BUT ADVISED KOHN HE WAS NOT HANDLING THE CASE, THEREFORE, HE, COLLINS, DID NOT OBTAIN THE LIST. SAC, NEW ORLEANS, HAS ADVISED NO RECORD OF RECEIPT OF COPIES OF LETTERS IN QUESTION IN NEW ORLEANS OFFICE AND NONE FORWARDED TO BUREAU. b6 b7C

BY LETTER DATED AUGUST TWO FOUR, LAST, TO SAC, NEW ORLEANS, [redacted] CLAIMS HE FURNISHED COPIES OF LETTERS TO COLLINS ON MARCH TWO EIGHT, ONE NINE SIX NINE, IN HIS OFFICE AT WHICH TIME COLLINS ADVISED [redacted] THAT THE LETTERS WOULD BE PROMPTLY MAILED TO WASHINGTON, D. C.

SA COLLINS IS ON ANNUAL LEAVE UNTIL SEPTEMBER ONE FOUR, NEXT, AND CAN BE LOCATED IN CARE OF [redacted] TELEPHONE THREE [redacted] [redacted] b6 b7C

CABLEGRAM TO LONDON
RE: CARLOS JOSEPH MARCELLO

WHILE SA COLLINS HAS PREVIOUSLY DENIED RECEIVING FROM [redacted] THE LIST OF NAMES INVOLVED IN THE LETTER WRITING, LEGAT SHOULD CONTACT COLLINS AND INTERVIEW HIM TO DETERMINE WHETHER COPIES OF THE LETTERS THEMSELVES WERE FURNISHED TO SA COLLINS AS CLAIMED BY [redacted]. IT IS NOTED [redacted] CLAIMS COPIES OF LETTERS MADE AVAILABLE MARCH TWENTYEIGHT NINETEEN SIXTYNINE.

b6
b7C

EXPEDITE AND SUCAB.

AIRMAIL COPY SENT TO NEW ORLEANS.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

Tolson
Sullivan
Mohr
Bishop
Bishop C.D.
Callahan
Casper
Conrad
Felt
Gale
Rosen
Tavel
Walters
Soyars
Tele. Room
Holmes
Gandy

TO : MR. SULLIVAN

DATE: August 31, 1970

FROM : J. H. GALE

SUBJECT: CARLOS JOSEPH MARCELLO
SPECIAL AGENT PATRICK J. COLLINS, JR. - VICTIM
ASSAULTING OF FEDERAL OFFICER

As you recall, La Cosa Nostra (LCN) Chieftain, Carlos Marcello, was convicted in United States District Court, Houston, Texas, in 1968 on a charge of assaulting Special Agent Patrick J. Collins, Jr., of the New Orleans Office, in New Orleans in 1966. Following his conviction, Federal District Judge John Singleton received approximately twenty-five letters from various individuals in the New Orleans area attesting to the good character of Marcello which letters were sent for Judge Singleton's consideration prior to sentencing Marcello.

Copies of these letters were furnished to the United States Probation Office for inclusion in any probation report to be prepared by that agency. Additionally, [redacted] Managing Director, Metropolitan Crime Commission of New Orleans (former Special Agent), received copies of these same letters for the Metropolitan Crime Commission's files.

b6
b7C

In July, 1970, information was brought to the attention of the New Orleans Office that a news reporter for a New Orleans television station had copies of these letters in his possession. Inquiry into this situation revealed that the list of character references had been furnished by the United States Probation Office, New Orleans, to both [redacted] and to the FBI, New Orleans. Bureau files reveal that Special Agent G. Myrywin Alderson received this list of names which he included in his report of April 29, 1969, which was disseminated to United States Attorney at Houston and the United States Attorney at New Orleans.

b6
b7C

Enc. 1 ENCLOSURE
1 - Mr. Sullivan
1 - Mr. Gale
1 - Mr. Staffeld
1 - Mr. Hogan
1 - Mr. Rutland

MER:jfp
-6-

REC-32 89-1333-198

EX-109

18 SEP 10 1970

CONTINUED - OVER

REC. PTT. UNIT

Memorandum to Mr. Sullivan
Re: Carlos Joseph Marcello

[redacted] now claims in a letter to SAC, New Orleans (copy attached) that, upon Collins' request, he furnished Collins copies of these letters on 3/28/69. b6 b7C

[redacted] also states that after Carlos Marcello was safely in jail he had contemplated producing these letters in testimony before the Louisiana Joint Legislative Committee investigating organized crime at which time the letters would become a public record. He expressed concern over the manner in which these names were leaked out. b6 b7C

Collins, in affidavit of July 31, 1970, states that while [redacted] contacted him about a list of character references for Marcello, he told [redacted] he was no longer handling the case and he did not obtain the list.

New Orleans recommended that we make no reply to [redacted] and that a statement from Collins be obtained upon Collins' return from Europe where he is on annual leave until September 14, 1970. b6 b7C

ACTION

While [redacted] letter does not require a reply, it is recommended that SA Collins be contacted now by Legat, London, (Collins is on annual leave, c/o [redacted] England, telephone [redacted] for the purpose of ascertaining from Collins whether or not he ever received copies of the letters referred to by [redacted]. Upon receipt of Collins' interview, consideration will then be given to having SAC, New Orleans, contact [redacted] with respect to this matter. b6 b7C

1107 NATIONAL BANK OF COMMERCE BUILDING

James P. Schwartz, President
C. Allen Favrot, Vice-President
William L. Monaghan, Vice-President
H. Eustis Reily, Vice-President
Frank B. Williams, Vice-President
Philip Gensler, Jr., Secretary
Edwin C. Daniels, Treasurer

Aaron M. Kohn, Managing Director

August 24, 1970

Mr. Robert E. Rightmyer
Special Agent in Charge
Federal Bureau of Investigation
701 Loyola Avenue
New Orleans, Louisiana 70113

Dear Bob:

During August 1968 this office rendered considerable assistance to the U. S. Probation Officer in preparation of his pre-sentence report on Carlos Marcello, following Marcello's conviction for assaulting FBI Agent Pat Collins. The Probation Office also secured from me background information concerning a number of persons who had written letters seeking clemency for Marcello. When I requested copies of such letters for our files, the Judge gave his approval with the understanding they would be used with discretion.

Consistent with such discretion, I considered the identities of the letter-writers, and the incriminating information in some of the communications, should prove of value to intelligence and strategy of the Bureau's LCN squad. I mentioned this in chance conversation with Agent Pat Collins. He came to my office on March 28, 1969 and I gave him Xerox copies of all the letters, together with a list I had prepared of the letter-writers. Mr. Collins said that they were to be mailed to Washington the same day.

It continued to be my understanding thereafter that the only copies of these letters were in possession of the Bureau and of our Crime Commission.

In my testimony advocating Senate Bill #30 before the Celler House Judiciary Subcommittee on June 11, 1970 (copy attached), I described in general terms the kinds of people who had written letters on behalf of Marcello without mentioning any names. This was done, however, only after I submitted my

89-1333 198

ENCLOSURE

prepared testimony to U. S. Attorney Gerald Gallinghouse and he assured me it did not injure or complicate the government's position in the Marcello case. To avoid any such complication or obstruction I have also repeatedly and persistently refused to divulge any of the letter-writers to news reporters who have sought such names.

Because of this consistent caution on our part, I have been disturbed about the manner in which these names were leaked out to some selected reporters. I am told the names are now in the possession of Life Magazine reporter [redacted] [redacted] WWL-TV reporter [redacted] and Captain [redacted] I am also now told that copies of the letters have been promised to other reporters next month. b6 b7C

It had been my plan, discussed with Mr. Gallinghouse, that after Marcello is safely in the penitentiary I would exercise the "discretion" imposed by the Judge by producing all of these letters in testimony before the Louisiana Joint Legislative Committee Investigating Organized Crime. Not only would the letters then become a public record available to all news media but, more important, they would fix responsibility on the official State body to investigate and question, under oath, those who wrote letters on behalf of Marcello and, in many instances, admitted highly questionable involvements with him.

I am deeply concerned about the use of this material to generate news stories, at a time when they could complicate the government's Marcello case, still pending in the courts. I am concerned that my delivery of copies of the letters to the local FBI office resulted in their use in the manner which violates the trust placed in me by the court. My judgment, in deciding to give copies to the Bureau, is now doubtful.

Any knowledge or information acquired by this office has always been, and will continue to be, available to agents of your office. But I must have assurance that we will not be violating our commitments to others by doing so.

I am sure that your own attitude and policies are consistent with ours. I thought you would want to have these comments for your own evaluation.

With best wishes.

Cordially yours,

[redacted]

Managing Director

b6
b7C

AMK:mgc

Enclosure 2

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

SEP 3 1970

TELETYPE

Mr. Tolson
Mr. Sullivan
Mr. Mohr
Mr. Bishop
Mr. Brennan CD
Mr. Callahan
Mr. Casper
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Tavel
Mr. Walters
Mr. Sevars
Tele. Room
Miss Holmes
Miss Gandy

NR006 NO PLAIN

922 PM NITEL 9-3-70 OLP

TO DIRECTOR (89-1333) AND HOUSTON

FROM NEW ORLEANS (89-79) 1P

SPECIAL AGENT — ASSOCIATING FEDERAL OFFICIAL

CARLOS JOSEPH MARCELLO: S/A PATRICK J. COLLINS, JR. VICTIM. AFO.

CR

FIFTH CIRCUIT COURT JUDGE JOHN MINOR WISDOM GRANTED SUBJECT INTERMIN STAY OF EXCUTION OF SENTENCE PENDING A THREE JUDGE PANEL TO REVIEW MOTION APPEALING FOR A NEW TRIAL. COPY OF THIS MOTION OBTAINED FROM DEPARTMENTAL ATTORNEY NEW ORLEANS AND WILL BE FORWARDED BY AIRTEL.

END

DCW

FBI WASH DC CLR

REC- 61 89-1333-199

ST-121

SEP 11 1970

54 SEP 18 1970

FD-36 (Rev. 5-22-64)

FBI

Date: 9/10/70

Transmit the following in PLAIN TEXT
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: Director, FBI

FROM: SAC, New Orleans (89-79)

RE: CARLOS JOSEPH MARCELLO;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

ReBuairtel 9/8/70.

On 9/10/70, SAC RIGHTMYER contacted Mr. [redacted] Managing Director of the Metropolitan Crime Commission of New Orleans, Inc., and advised him that a review of Bureau records revealed that copies of the letters in question were not included in our files nor was there any information which indicated that these letters had ever been made available to the FBI.

Mr. [redacted] was advised that the FBI agrees with his views relative to the confidential nature of such matters and he was assured that FBI policies are consistent with his.

Mr. [redacted] expressed his appreciation for the Bureau's courtesy in so advising him.

2 - Bureau
2 - New Orleans
RER:jam
(4)

REC-10 89-1333-200

ST-103

SEP 14 1970

SEP 24 1970

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

FD-36 (Rev. 5-22-64)

F B I

Date: 9/4/70

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL _____
(Priority)

TO : DIRECTOR, FBI

FROM : LEGAT, LONDON (89-2)(RUC)

SUBJECT: CARLOS JOSEPH MARCELLO, AKA;
SPECIAL AGENT PATRICK J. COLLINS,
JR. - VICTIM
AFO

ReBucab 9/1/70 and LONcab 9/3/70.

As set forth in reLONcab, SA PATRICK J. COLLINS of the New Orleans Office, was interviewed by me in the presence of Asst. Legal Attache [redacted] on 9/3/70. SA COLLINS advised as follows: b6 b7C

He was not furnished a copy of the list of persons furnishing referenced letters for MARCELLO in any form. He stated he previously furnished an affidavit in which he set forth info to this effect.

He reiterated that Mr. [redacted] notified him that he had such data in his possession, and that he notified the case Agent, SA MYRWIN ALDERSON. b6 b7C

He stated that he possessed no other knowledge concerning this list of persons or copies of the letters.

Subsequently, on 9/4/70, in my absence from London, Asst. Legal Attache [redacted] in order to clarify the allegation by [redacted] in reBucab that he had furnished copies of the letters to COLLINS on 3/28/69, telephonically contacted SA COLLINS at Newcastle-on-Tyne. At this time SA COLLINS advised [redacted] that he had never received copies of the letters from [redacted] or anyone else. b6 b7C

89-133-201

REC 85

SEP 17 1970

(3) - Bureau
1 - Foreign Liaison
1 - London

ST-122

JTM:ejg
(5)

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

PERS. REC. UNIT

FD-36 (Rev. 5-22-64)

FBI

Date: 9/11/70

Transmit the following in PLAIN TEXT
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: Director, FBI

FROM: SAC, New Orleans (89-79)

RE: CARLOS MARCELLO;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO - NO)

For the information of the Bureau and New York, [redacted] advised that information had been obtained by CARLOS MARCELLO to the effect that a Special Agent of the FBI at New Orleans had been assaulted and no federal case was made of this. b7D

AUSA [redacted] EDLA, New Orleans, telephonically contacted the New Orleans Office of the FBI on 9/10/70 and inquired as to whether or not we had presented an assault case involving SA [redacted] who was assaulted by a man named [redacted] to the U. S. Attorney's Office. b6 b7C

Mr. [redacted] was advised that Mr. [redacted] was not on official duty at the time he was assaulted and, therefore, the matter was handled by local authorities and case not presented to the U. S. Attorney.

REC-86 89-103202

I inquired of Mr. [redacted] as to why he was interested in this particular matter and he advised that the American Civil Liberties Union had developed information from police records to the effect that SA [redacted] had been assaulted by a [redacted] and [redacted] had been given a minor sentence in local court concerning same and that the American Civil Liberties Union said the assault of SA COLLINS by MARCELLO should have been handled in the same manner or the assault of SA [redacted] should have been handled in Federal Court. b6 b7C

SEP 15 1970

2 - Bureau (Rm)
1 - New York (Rm)
1 - New Orleans
JTS:jam
(4)

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

NO 89-79

Above information concerning SA [redacted] was forwarded to the Bureau under the caption, SA [redacted] PERSONNEL MATTER, by the New Orleans Division and sets forth facts concerning this matter and is incorporated in the personnel file of SA [redacted] who is currently assigned to the New York Office.

b6
b7C

Informants continue to supply information to the effect that MARCELLO is using every possible legal tactic whether based on fact or not in an effort to not serve any time. He is constantly alluding to harrassment by the FBI in all matters.

Above is for the information of the Bureau and New York.

SAC, New Orleans (89-79) 9/23/70

Director, FBI (89-1333)

CARLOS JOSEPH MARCELLO:
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

Enclosed herewith for New Orleans and Houston is one copy of a Supreme Court memorandum order which reveals Justice Black will refer the Marcello bail application to the full Court on 10/5/70.

Your offices will be apprised of the decision.

Enc.

1 - Houston (89-45) - Enc.

110

MAILED 6
SEP 23 1970
COMM-FBI

REC 18 89-1333-203

19 SEP 24 1970

Tolson
Sullivan
Mohr
Bishop
Brennan, C.D.
Callahan
Casper
Conrad
Felt
Gale
Rosen
Tavel
Walters
Soyars
Tele. Room
Holmes
Gandy

RFH:dcc
(5)

SEP 30 1970

MAIL ROOM ☐ TELETYPE UNIT ☐

0-19 (Rev. 7-21-70)

Tolson
Sullivan
Mohr
Bishop
Brennan, C.D.
Callahan
Casper
Conrad
Felt
Gale
Rosen
Tavel
Walters
Soyars
Tele. Room
Holmes
Gandy

Black Stalls Marcello's Prison Term

By the Associated Press

Supreme Court Justice Hugo L. Black has acted to block the beginning of a two-year prison sentence for Carlos Marcello, an alleged New Orleans rackets figure, at least until the Supreme Court reconvenes Oct. 5.

Black said he found the prosecution and conviction of Marcello on charges of intimidating an FBI agent "highly disturbing."

Black desoribed as incredible the government's denial that it has any evidence favorable to Marcello as he seeks a new trial.

"I have no doubt that the government's conduct in this case raises questions worthy of review," Black said.

Black has had on his desk since Sept. 9 a bail application by Marcello designed to keep him out of jail until his appeal, now before the U.S. Circuit Court in New Orleans, is decided.

Black said he will refer the application to the full court when it reconvenes.

Since the Justice Department has said it will not act to jail Marcello until his bail plea is settled, Black's action has the effect of keeping Marcello free at least until then.

Marcello was convicted in a Texas federal court in 1968 of "intimidating" FBI agent Patrick J. Collins at the New Orleans airport two years earlier. In seeking a new trial, Marcello claims he was trapped illegally by FBI agents who, he said, mixed in Collins with a group of photographers and reporters. Marcello tried to shoo away as he left the airport.

The Washington Post
Times Herald
The Washington Daily News
The Evening Star (Washington) A-12
The Sunday Star (Washington)
Daily News (New York)
Sunday News (New York)
New York Post
The New York Times
The Sun (Baltimore)
The Daily World
The New Leader
The Wall Street Journal
The National Observer
People's World
Examiner (Washington)

Date SEP 19 1970

89-1333-A
NOT RECORDED
56 SEP 28 1970

6-R

55 SEP 29 1970

file copy

FD-350 (Rev. 7-16-63)

(Mount Clipping in Space Below)

11TH-HOUR STEP PUTS OFF TERM FOR MARCELLO

Await High Court Rule, His Attorneys Say

An eleventh-hour agreement Thursday between attorneys for Carlos Marcello and officials of the U.S. Justice Department delayed the start of the Jefferson Parish rackets figure's jail sentence.

Attorneys for Marcello said he will not go to jail until the U.S. Supreme Court rules on motions for a new trial.

Marcello, 61, was scheduled to have surrendered to a U.S. marshal in Houston, Tex., at 3 p.m. Thursday and begin serving a two-year prison sentence for attempting to punch a Federal Bureau of Investigation agent.

CONSIDERS MOTIONS

Supreme Court Justice Hugo L. Black is considering two motions for a new trial. Marcello's attorneys claim Marcello was "harassed and provoked" into taking a swipe at FBI agent Patrick Collins in 1966 and that Collins perjured himself during Marcello's 1968 trial.

Marcello's Washington attorney, Jack Wasserman, filed the motions with the court Wednesday. Black asked the Justice Department for an opinion on the appeals and a request for a stay of sentence.

Cecil M. Burglass Jr., a Marcello attorney, said the compromise to delay Marcello's jail term until the high court rules on the appeals was worked out by himself, Wasserman, and Justice Department lawyers in Houston and Washington.

TO OPPOSE MOTIONS

Justice Department attorneys said they will oppose motions for a new trial, but need time to prepare a brief. The brief, they said, will be filed with the Supreme Court either late Friday or early next week.

The court is expected to rule on the motions once the brief is filed. In the meantime, Marcello will remain out of prison.

Burglass said if Justice Black rules against the motions, then a new reporting date for the prison term will be arranged.

"Until then, Mr. Marcello positively will not go to jail," he said.

"This agreement," said Burglass, "gives us a little more room to breathe in . . . it has taken a little of the pressure off Marcello."

TERMED FORMALITY

A Justice Department spokesman said the delay is a normal "administrative formality" used to hold prison terms in abeyance until the court rules.

Meanwhile Thursday, Marcello's attorneys docked in the U.S. Fifth Circuit Court of Appeals an appeal from the denial by Judge Singleton last week in Houston of a motion to vacate Marcello's sentence.

A notice of appeal from Judge Singleton's ruling was filed Wednesday in Federal District Court in Houston.

Last week, Judge John Minor Wisdom of the Fifth Circuit granted Marcello a delay until a three-judge federal panel could consider an appeal of the prison sentence on grounds Marcello was unable to go to jail because of ill health. The panel rejected the request Tuesday and ordered Marcello to report to jail Thursday.

At the same time Tuesday, Marcello told the legislative committee investigating organized crime that he is "positively not" the head of organized crime in Louisiana.

Mr. Tolson
Mr. Sullivan
Mr. Mohr
Mr. Bishop
Mr. Brennan CD
Mr. Callahan
Mr. Casper
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Tavel
Mr. Walters
Mr. Soyars
Tele. Room
Miss Holmes
Miss Gandy

(Indicate page, name of newspaper, city and state.)

PAGE 1

TIMES-PICAYUNE

NEW ORLEANS, LA.

Date: 9-11-70
Edition:
Author:
Editor: GEORGE W. HEALY, JR
Title:
CARLOS MARCELLO
Character:
or 92-
Classification:
Submitting Office: N.O., LA.
☐ Being Investigated

87-13334
NOT RECORDED
167 SEP 24 1970

89-1333
file copy

SEP 25 1970

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

Tolson
Sullivan
Mohr
Bishop
Brennan, C.D.
Callahan
Casper
Conrad
Felt
Gale
Rosen
Tavel
Walters
Soyars
Tele. Room
Holmes
Gandy

TO : Mr. Sullivan

DATE: 9/21/70

FROM : J. H. Gale

SUBJECT: CARLOS MARCELLO
SPECIAL AGENT PATRICK J. COLLINS, JR. - VICTIM
ASSAULT ON A FEDERAL OFFICER

This is with respect to my memorandum of September 18, 1970, indicating Supreme Court Justice Black had directed a number of questions to the Department with respect to the appeal made by New Orleans La Cosa Nostra "boss" Marcello who had been convicted of assaulting an FBI Agent and was scheduled to begin his confinement during the first week of September, 1970.

It has been ascertained that Justice Black, on Friday afternoon, September 18, 1970, indicated it was his opinion that from an analysis of the record it was worthy of review by the Supreme Court.

He said, "I am not sure, however, that three of my brethren will agree. Under these circumstances, I shall take no action at all on this application but will refer it to the full Court at its first meeting October 5."

It is noted that under rules of the Supreme Court it is necessary for at least four Justices to concur that a review of the case is warranted before certiorari can be granted.

ACTION:

We will continue to follow this matter closely.

1 - Mr. Sullivan
1 - Mr. Bishop
1 - Mr. Gale
1 - Mr. Staffeld
1 - Mr. Hogan

AAS:dcq

REC-43 89-133-204

SEP 23 1970

58 OCT 1 1970 FBI

10/1/70

Airtel

To: SAC, New Orleans (89-79)

From: Director, FBI (89-1333)

CARLOS MARCELLO, aka;
SA PATRICK J. COLLINS, JR., - VICTIM
ASSAULTING A FEDERAL OFFICER

Re New Orleans teletype to the Bureau dated 9/29/70.

The information contained in retel regarding Attorney [redacted] contacting the Shreveport, Louisiana, Resident Agency, at which time he expressed his desire to interview SA [redacted] was furnished to the Department of Justice. b6 b7C

The Department has advised that no employee of the New Orleans Division is to submit to any interviews with [redacted] or any other of Marcello's lawyers regarding this matter without prior Departmental approval. b6 b7C

NOTE: Department advised in letterhead memorandum that was delivered to Departmental Attorney [redacted] by Section Chief A. A. Staffeld on 10/1/70. Mr. [redacted] and Attorney [redacted] of the Department's Appellate Section advised that no Agent assigned to the New Orleans office is to discuss the Marcello matter with any of Marcello's attorneys without first obtaining Departmental approval. b6 b7C

REC-30 29-1333-205

EX-113

19 OCT 2 1970

RFH:jfp
(4)

Tolson
Sullivan
Mohr
Bishop
Brennan, C.D.
Callahan
Casper
Conrad
Felt
Gale
Rosen
Tavel
Walters
Soyars
Tele. Room
Holmes
Gandy

59 OCT 9 1970

MAIL ROOM TELETYPE UNIT

September 30, 1970

CARLOS MARCELLO;
SA PATRICK J. COLLINS, JR., - VICTIM
ASSAULTING A FEDERAL OFFICER

The New Orleans office of the Federal Bureau of Investigation (FBI) has advised that [redacted] one of Carlos Marcello's attorneys, telephonically contacted the FBI, Shreveport, Louisiana, Resident Agency on September 29, 1970, and advised that he was conducting an investigation concerning the appeal case of Marcello, and [redacted] desired to interview Special Agent [redacted] He explained that he desired to present certain questions which he did not identify to Special Agent [redacted] Attorney [redacted] was advised that official information in the possession of Special Agent [redacted] is considered privileged under Departmental Order 351-67. There will be no contact made with [redacted] by Special Agent [redacted] concerning this matter.

b6
b7C

New Orleans has further advised that Special Agent [redacted] was not at the scene at the time the assault was committed nor has he conducted any investigation with respect to this matter.

b6
b7C

89-1333-206

REC'D. REC. UNIT

19 OCT 2 1970

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

RFH:dcc
(5)

Tolson
Sullivan
Mohr
Bishop
Brennan, C.D.
Callahan
Casper
Conrad
Felt
Gale
Rosen
Tavel
Walters
Soyars
Tele. Room
Holmes
Gandy

339
58 OCT 14 1970

MAIL ROOM [ ] TELETYPE UNIT [ ]

FD-36 (Rev. 5-22-64)

F B I

Date: 10/2/70

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS MARCELLO, aka;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO

Re New Orleans teletype to Bureau 9/29/70, and New Orleans airtel to Houston 10/1/70.

Enclosed herewith for the Bureau and Houston are copies of FD-302s of SAs [redacted] and [redacted] Houston requested to disseminate copies of FD-302s to Mr. [redacted] of the U. S. Attorney's Office, Houston. b6 b7C

On 10/2/70, [redacted] attorney, Shreveport, La., contacted SA [redacted] regarding efforts to interview SA [redacted] and SA [redacted] referred him to SRA [redacted]

Mr [redacted] did contact SA [redacted] at the Shreveport RA and advised he wants to interview SA [redacted] regarding SA PATRICK J. COLLINS, JR.'s activities in Shreveport on 2/12/68, particularly about telephone calls made, association with [redacted] and [redacted] said he is now in the role of investigator as when he became a witness, he was taken off duty as an attorney in this matter. b6 b7C

ENCLOSURE

REC-84 29-1333-207

OCT 5 1970

(2) - Bureau (Encl. 4)
2 - Houston (Encl. 20)
2 - New Orleans

TPK:sam
(6)

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

55 OCT 12 1970

NO 89-79 /sam

SA [redacted] advised [redacted] that the information in SA GREAVES' possession is privileged under Departmental Order 381-67. b6 b7C

Bureau will be kept advised.

FD-302 (REV. 3-17-69)

FEDERAL BUREAU OF INVESTIGATION

Date 10/2/70

At 1:10 p.m., while in the Pioneer Bank and Trust Company, Milam and Edwards Street, Shreveport, Louisiana, SA [redacted] was confronted by attorney [redacted] in the lobby of the bank. b6 b7C

Mr. [redacted] stated he wished to interview SA [redacted] and asked if SA [redacted] was presently in Shreveport. [redacted] was immediately advised by SA [redacted] that it would be best if he discussed the matter with SRA [redacted] who was presently at the Shreveport Resident Agency. [redacted] added that he left a message with SA [redacted] to have SA [redacted] contact him and to date, he has heard nothing from SA [redacted]

Mr. [redacted] said he was conducting an investigation and that he wanted to report the results of same, including the answers given by SA [redacted] to the Judge (unspecified). b6 b7C

[redacted] was again referred to SA [redacted] at which time he asked for and was given directions to the Shreveport Resident Agency.

On 10/2/70 at Shreveport, Louisiana File # NO 89-79

by SA [redacted] /sam Date dictated 10/2/70 b6 b7C

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

1 ENCLOSURE 89-1333-207

FD-302 (REV. 3-17-69)

FEDERAL BUREAU OF INVESTIGATION

Date 10/2/70

At 1:18 p.m., October 2, 1970, [redacted] attorney, Shreveport, Louisiana, appeared at the Shreveport Resident Agency of the FBI and advised SA [redacted] that his client, Mr. MARCELLO, had asked for a new trial on the basis of perjury by SA PATRICK J. COLLINS, JR., which was handled at Houston, Texas, July 20 and 21, 1970. b6 b7C

Mr. [redacted] said it was his understanding that SA [redacted] was with SA COLLINS on February 12, 1968, when SA COLLINS was in Shreveport making some investigation and this was pertinent to the above perjury matter. Mr. [redacted] said he wanted to ask SA [redacted] about his association with SA COLLINS on February 12, 1968, about telephone calls made by SA COLLINS, about SA COLLINS' association with [redacted] and [redacted]

[redacted] also said that SA COLLINS did not tell the truth in testifying about when he was at the Town & Country Motel and that SA COLLINS also had many more drinks than he admitted. [redacted] further stated that he is now in the role of an investigator as when he became a witness in this case, he was relieved of his duty as an attorney for his client. b6 b7C

Mr. [redacted] was advised that any information regarding this matter in possession of SA [redacted] is privileged under Departmental Order 381-67.

Mr. [redacted] stated that the Judge would want to know if he had made a thorough investigation in his efforts, and that he felt that his effort to interview SA [redacted] was necessary and that he would make it a matter of record that he had made the official contact and also he requested SA [redacted] to make it a matter of record that he had made the official contact in an effort to interview SA [redacted]

The interview was terminated at 1:36 p.m.

On 10/2/70 at Shreveport, Louisiana File # NO 89-79

by SA [redacted] /sam Date dictated 10/2/70 b6 b7C

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

NR008 NO PLAIN

755 PM NITEL 9-29-70 OLP

TO DIRECTOR (89-1333)

FROM NEW ORLEANS (89-79)

TELETYPE UNIT

Mr. Tolson
Mr. Sullivan
Mr. [illegible]
Mr. [illegible]
Mr. [illegible] CD
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. [illegible]
Mr. Walters
Mr. [illegible]
Tele. Room
Miss Holmes
Miss Gandy

CARLOS MARCELLO, AKA; SA PATRICK J. COLLINS, JR. - VICTIM. AFO.

[redacted] ATTORNEY FOR CARLOS MARCELLO TELEPHONICALLY CONTACTED THE SHREVEPORT, LOUISIANA RESIDENT AGENCY OF THE FBI ON SEPTEMBER TWENTYNINE SEVENTY. [redacted] STATED THAT HE WAS CONDUCTING AN INVESTIGATION IN THE APPEAL CASE OF CARLOS MARCELLO AND WANTED TO INTERVIEW SA [redacted] AND ASK [redacted] CERTAIN QUESTIONS (WHICH HE DID NOT IDENTIFY) WHICH [redacted] MIGHT EITHER ANSWER OR DECLINE TO ANSWER. b6 b7C

[redacted] IS BEING ADVISED THAT OFFICIAL INFORMATION IN THE POSSESSION OF SA [redacted] IS CONSIDERED PRIVILEGED UNDER DEPARTMENTAL ORDER THREE EIGHT ONE DASH SIX SEVEN. NO CONTACT WILL BE MADE WITH [redacted] BY SA [redacted] CONCERNING THIS MATTER. b6 b7C

REC 27 89-1333-208

THE INFORMATION CONCERNING [redacted] REQUEST SHOULD BE FURNISHED TO THE DEPARTMENT OF JUSTICE'S ATTORNIES IN WASHINGTON HANDLING THE APPEAL.

OCT 6 1970

NO OTHER ACTION BEING TAKEN BY THE NEW ORLEANS OFFICE.

END

TRC FBI WAHSINGTON DC

55 OCT 12 1970

PERS. REC. UNIT

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

Tolson
Sullivan
Mohr
Bishop
Brennan, C.D.
Callahan
Casper
Conrad
Felt
Gale
Rosen
Tavel
Walters
Soyars
Tele. Room
Holmes
Gandy

TO : MR. SULLIVAN

DATE: September 18, 1970

FROM : J. H. GALE

SUBJECT: CARLOS MARCELLO
SPECIAL AGENT PATRICK J. COLLINS, JR. - VICTIM
ASSAULT ON A FEDERAL OFFICER

This is in response to the Director's request for facts relative to an "Evening Star" article of September 17, 1970, captioned "Justice Black Queries FBI About Marcello."

The news item pointed out that Justice Black questioned the Justice Department and FBI activities in the case against the New Orleans organized crime figure. He had inquired of the Justice Department as to why Marcello was given a two-year sentence for what appears to be only a technical assault; whether Marcello used fists or a weapon; whether Collins was injured; whether there had been a contact with the press by the FBI to suggest that reporters and photographers meet Marcello's plane; and in addition, an allegation that Agent Collins had been drinking before the incident at the airport.

Departmental Attorney [redacted] who handled the preparation of the Department's response in the Appellate Section, has expressed chagrin at the questions raised by the Court. He has advised that all questions were adequately answered in the Court record and advised that he prepared all responses to the questions raised from material already set forth in the various court records in this case. He stated that the questions raised were believed to be propounded by Justice Black's law clerk without having reviewed the entire record of the trial and appeals relating thereto.

[redacted] further advised that in the response he prepared, he cited the court record (which is supported by information contained in Bureau files) indicating that Agent Collins had testified in open court that he had not had a drink throughout the day of the Marcello incident at the airport. Two Special Agents [redacted] and [redacted] who were then assigned at New Orleans and are now Seat of Government supervisors, testified to the fact that they had no reason to believe Collins was drinking prior to the airport incident. Both [redacted] and [redacted] advised they had seen Collins before the incident and in fact, Collins had dinner at [redacted] residence just prior to the incident, at which time no drinking took place.

b6
b7C

1 - Mr. Sullivan
1 - Mr. Bishop
1 - Mr. Callahan
1 - Mr. Mohr

EX-112
REC-53

1 - Mr. Gale
1 - Administrative Division
1 - Mr. Leggett
1 - Mr. Staffeld

89-1333-309

ENCLOSURE

AAS:rad:dlb
-9-

CONTINUED - OVER

55 OCT 14 1970

17 OCT 8 1970

PERS. REC. UNIT

Memorandum to Mr. Sullivan
Re: Carlos Marcello

New Orleans Assistant Special Agent in Charge Sylvester testified that he conferred with Agent Collins immediately after the assault on the night of September 30, 1966. It was his observation that Collins had not been drinking. Sylvester, mindful that Marcello was returning that night from New York where substantial publicity resulted when local police raided a so-called Little Appalachin meeting at which Marcello was found to be present and was arrested as a result, anticipated that there may be significant elements of the New Orleans La Cosa Nostra at the airport which would be of value to our interest in Marcello's activities. In effort to determine if there would be extensive coverage at the time of Marcello's arrival at the New Orleans Airport, Sylvester contacted local news sources and without naming any individual inquired as to whether coverage was contemplated for any reason at the airport during the evening of Marcello's arrival. Upon learning that there was to be a minimum of coverage, Sylvester said he determined that two Agents would be sufficient to afford coverage of Marcello's return and thus assigned Agents Collins and [redacted] b6 b7C

With respect to other questions raised by Justice Black, [redacted] pointed out that the matter of sentencing is a prerogative of the District Court, that Collins was not injured in this assault, and further that a weapon was not involved. Again, [redacted] pointed out that each of these points was adequately covered in the record and needed no further investigation or clarification. It is noted this is the second review of this matter by the Supreme Court. On the first occasion, the Court denied certiorari. Marcello, in June of this year, apparently as a last ditch effort to avoid confinement in accordance with the two-year sentence, raised motions for a new trial alleging the discovery of new evidence. This motion has been denied by the District and Appellate Courts, and Marcello has been ordered to jail pending any further appeals. It is this decision which Marcello is now appealing.

b6 b7C

ACTION:

This matter will be closely followed and you will be advised of the outcome.

0-19 (Rev. 7-21-70)

Tolson
Sullivan
Mohr
Bishop
Brennan, C.D.
Callahan
Casper
Conrad
Felt
Gale
Rosen
Tavel
Walters
Soyars
Tele. Room
Holmes
Gandy

Justice Black Queries FBI About Marcello

Supreme Court Justice Hugo L. Black has questioned Justice Department and FBI tactics in a case against a New Orleans Mafia figure.

On Monday, Black posed six questions he wants answered on the handling of Carlos Marcello, reputed to be the boss of Mafia operations in the New Orleans area.

His questions seemed to challenge the fairness of FBI activities in an incident at the New Orleans airport in September 1966, which led to a criminal conviction of Marcello.

Black's inquiries also seemed to challenge the over-all Justice Department record in pursuing Marcello, who was convicted of assaulting a federal officer after the airport incident. He was accused of taking a swing at FBI Agent Patrick J. Collins, who had come to the airport to meet Marcello's plane.

Gets 2-year Tearm

Marcello was given a two-year prison sentence following conviction. Earlier this year, the Supreme Court refused to review the conviction.

Since then, however, Marcello's lawyers have found what they say is new evidence that questions the official version of the airport incident, including alleged evidence that Collins had been drinking before the incident. Marcello has asked for a a new trial and last week sent a special request to Black asking to be released on bail pending a ruling on his request for a new trial.

Black's questions included queries about why Marcello was given a two-year sentence "for an incident which appears to have been a technical assault."

Quizzed on Drinking

Other inquiries questioned whether Marcello had used his fists or a weapon, whether Collins had been injured in any way, whetther Collins had been drunk or under the influence of alcohol at the time, and whether the FBI had contacted the press to suggest it send reporters and photographers to the airport to meet Marcello's plane.

Black also asked the Justice Department to give him a full accounting of all court cases, civil as well as criminal, between the federal government and Marcello.

What are the facts?

The Washington Post
Times Herald
The Washington Daily News
The Evening Star (Washington) A-3
The Sunday Star (Washington)
Daily News (New York)
Sunday News (New York)
New York Post
The New York Times
The Sun (Baltimore)
The Daily World
The New Leader
The Wall Street Journal
The National Observer
People's World
Examiner (Washington)

Date SEP 17 1970

FINAL EDITION

ENCLOSURE

89-1333-209

17 OCT 8 1970

PERS. REC. UNIT

SPECIAL INVESTIGATIVE DIVISION

9/30/70

Attached advises lawyer for Carlos Marcello, "boss" of New Orleans La Cosa Nostra, telephonically contacted the Shreveport, Louisiana, Resident Agency, and requested to interview SA [redacted] regarding the Marcello case. Attorney advised official information is privileged. Department will be advised of request in writing. It will be recalled that this matter concerning Marcello's assault on a Federal officer is presently on appeal before Justice Black U.S. Supreme Court. b6 b7C

New Orleans has advised SA [redacted] was not on the scene at the time of the assault nor has he conducted any investigation with respect to it.

RFH:dcc

FD-36 (Rev. 5-22-64)

F B I

Date 10/13/70

Transmit the following in _____ (Type in plaintext or code)

AIRTEL AIRMAIL

Via _____ (Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, HOUSTON (89-45) (P)

SUBJECT: CARLOS MARCELLO, aka;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO

ReNOairtel to Bu, 10/2/70.

On 10/9/70, USDJ JOHN V. SINGLETON, JR. reduced the sentence he had previously imposed on the subject to six months.

SINGLETON based his new ruling on the age of the subject and "further review of all the facts and circumstances surrounding the incident."

In addition to a six months sentence to be served in prison, the subject is to serve an additional six months under supervision and the $5,000 fine originally imposed is still in effect.

2 - Bureau
1 - New Orleans (89-79)
2 - Houston

RWS/bc
(5)

EX-112

REC- 56 [redacted] -210

OCT 15 1970

SIX

54 OCT 22 1970

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

U. S. GOVERNMENT PRINTING OFFICE : 1969 O - 346-090 (11)

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-106

UNITED STATES GOVERNMENT

Memorandum

Tolson
Sullivan
Mohr
Bishop
Brennan, C.D.
Callahan
Casper
Conrad
Felt
Gale
Rosen
Tavel
Walters
Soyars
Tele. Room
Holmes
Gandy

TO : Mr. Sullivan

DATE: 10/14/70

FROM : J. H. Gale

SUBJECT: CARLOS MARCELLO
SPECIAL AGENT PATRICK J. COLLINS, JR. - VICTIM
ASSAULT ON A FEDERAL OFFICER

SAC Jordan, Houston, called to advise that Carlos Marcello, La Cosa Nostra boss of the New Orleans area, had surrendered to the U. S. Marshal for the purpose of beginning the six-month sentence imposed on him for assaulting an FBI Agent. Jordan indicated that Marcello would be committed to the Federal Medical Center at Springfield, Missouri.

What is wrong with him?

By way of background, just prior to Marcello's scheduled confinement in the first week of September, 1970, the New Orleans racketeer entered motions of appeal alleging discovery of new evidence and asking for a new trial. The lower court denied the motions and they were carried by Marcello to the Fifth Circuit Court of Appeals which indicated that Marcello's bail should be terminated and he should be confined while the motions were being considered by the Appellate Court. Marcello, however, appealed to Supreme Court Justice Black, who, on 9/18/70, indicated that he thought the record of the Marcello case warranted review by the Supreme Court, but he was not certain that a sufficient number of judges on the Supreme Court would agree with him and he, therefore, chose to present the matter to the full panel when the court reconvened this fall.

The fact that the court, in a 7 to 2 decision denying bail to Marcello pending his appeal to the Fifth Circuit Court, certainly indicates that Black was not able to convince a sufficient number of judges to accept Marcello's case for review. The only other Justice to side with Justice Black was Douglas.

EX-111 REC-36 89-43-1333-211

TO OCT 20 1970

ACTION:

This is for information.

1 - Mr. Sullivan
1 - Mr. Bishop
1 - Mr. Gale
1 - Mr. Staffeld
1 - Mr. Hogan

50 OCT 23 1970

AAS:mfd
(6)

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

5010-106

UNITED STATES GOVERNMENT

Memorandum

Tolson
Sullivan
Mohr
Bishop
Brennan, C.D.
Callahan
Casper
Conrad
Felt
Gale
Rosen
Tavel
Walters
Soyars
Tele. Room
Holmes
Gandy

TO : Mr. Sullivan

DATE: 10/15/70

FROM : J. H. Gale

SUBJECT: CARLOS MARCELLO
SPECIAL AGENT PATRICK J. COLLINS, JR. - VICTIM
ASSAULT ON A FEDERAL OFFICER

In advising that New Orleans La Cosa Nostra boss Carlos Marcello was being committed to the Federal Medical Center at Springfield, Missouri, the Director inquired as to what is wrong with him.

It has been ascertained from United States Attorney Anthony Farris, Houston, Texas, where Marcello's trial took place, that prior to sentencing, Marcello, age 60, made motions to vacate on the basis of ill health. Judge Singleton, the trial judge, ordered that a clinic examine Marcello and that, in addition, a report be filed by Marcello's personal physician. The reports, when filed with the court, revealed Marcello to have a bad heart and a respiratory problem. As a consequence, the Bureau of Prisons assigned Marcello to the Federal Medical Center at Springfield, Missouri.

United States Attorney Farris advised that the commitment to the Federal Medical Center was so as to enable a thorough physical examination of Marcello and a full determination of his condition.

ACTION:

None. This is for information.

1 - Mr. Sullivan
1 - Mr. Bishop
1 - Mr. Gale
1 - Mr. Staffeld
1 - Mr. Hogan

REC- 36
EX-111
1338-218
30 OCT 20 1970

AAS:rdr/mfd
(6)

F117

5 50CT 23 1970

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

TELETYPE

Mr. Tolson	
Mr. Sullivan	
Mr. Mohr	
Mr. Bishop	
Mr. Brennan CD	
Mr. Callahan	
Mr. Casper	
Mr. Conrad	
Mr. Felt	
Mr. Gale	
Mr. Rosen	
Mr. Tavel	
Mr. Walters	
Mr. Soyars	
Tele. Room	
Miss Holmes	
Miss Gandy	

NR008 NO PLAIN

956 PM NITEL 10-14-70 OLP

TO DIRECTOR (89-1333)

FROM NEW ORLEANS (89-79)

CARLOS MARCELLO, AKA; SA PATRICK J. COLLINS, JR. - VICTIM, AFO.

REBUAIRTEL OCTOBER ONE LAST, AND NEW ORLEANS TELCALL OCTOBER FOURTEEN INSTANT.

U. S. MARSHAL, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS, ADVISED THAT CARLOS MARCELLO SURRENDERED HIMSELF TO USM, NEW ORLEANS, AT NINE FIFTY A. M., OCTOBER FOURTEEN INSTANT. USM, NEW ORLEANS, ADVISED THAT MARCELLO WAS TO BE COMMITTED TO THE MEDICAL CENTER FOR FEDERAL PRISONERS AT SPRINGFIELD, MISSOURI.

INASMUCH AS THE COMMITMENT PAPERS FOR MARCELLO HAD BEEN SENT TO THE USM, HOUSTON, TEXAS, THEY WERE FORWARDED VIA AIRLINE TO NEW ORLEANS AND HAND DELIVERED TO THE USM AT NEW ORLEANS BY AN AGENT OF THE NEW ORLEANS FBI OFFICE AT TWO THIRTY FIVE P. M., OCTOBER FOURTEEN INSTANT.

END PAGE ONE

REC 83 89-1333-213

OCT 20 1970

EX-103

5 50CT 23 1970

USM, NEW ORLEANS, ADVISED HE WAS TRANSPORTING MARCELLO TO MISSOURI ON THE FIRST AVAILABLE FLIGHT OUT OF NEW ORLEANS.

FOR INFORMATION, ATTORNEY DEAN A. ANDREWS, JR., NEW ORLEANS, WHO HAS BEEN REPRESENTING MARCELLO, FILED AN APPLICATION FOR WRIT OF HABEAS CORPUS IN BEHALF OF MARCELLO BEFORE USDJ FRED J. CASSIBRY, EDLA, NEW ORLEANS, ON OCTOBER FOURTEEN INSTANT, REQUESTING THAT MARCELLO BE ALLOWED TO REMAIN IN CUSTODY WITHIN THE EASTERN DISTRICT OF LOUISIANA AND THAT A HEARING BE GRANTED TO SHOW CAUSE WHY THE WRIT OF HABEAS CORPUS SHOULD NOT BE ISSUED. THIS APPLICATION WAS DENIED BY JUDGE CASSIBRY OCTOBER FOURTEEN INSTANT.

USM, NEW ORLEANS, IS ATTEMPTING AT THIS TIME TO ARRANGE TRANSPORTATION OF MARCELLO TO SPRINGFIELD EVENING OF OCTOBER FOURTEEN INSTANT.

AIRMAIL COPY TO HOUSTON.

END

[illegible] COMMUNICATIONS SECTION

TELETYPE

Mr. Tolson
Mr. Sullivan
Mr. Mohr
Mr. Bishop
Mr. Brennan CD
Mr. Callahan
Mr. Casper
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Tavel
Mr. Walters
Mr. Soyars
Tele. Room
Miss Holmes
Miss Gandy

NR013 NO PLAIN

1038 PM URGENT 10-14-70 OLP

TO DIRECTOR (89-1333)

FROM NEW ORLEANS (89-79)

CARLOS MARCELLO, AKA; PATRICK J. COLLINS, JR. - VICTIM. AFO.

RENOTEL TO DIRECTOR TEN FOURTEEN SEVENTY.

U. S. MARSHAL, NEW ORLEANS, LA., DEPARTED NEW ORLEANS THIS DATE SIX THIRTYTHREE P. M. ON DELTA FLIGHT FOUR ONE FIVE WITH CARLOS MARCELLO ENROUTE SPRINGFIELD, MISSOURI TO ARRIVE TEN FIFTYSEVEN P. M. CDT.

END

REW FBI WASH DC CLR

REC-52 [illegible]-214

EX-103

OCT 20 1970

F117

51 OCT 23 1970

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 10/19/70

FROM : SAC, HOUSTON (89-45) (RUC)

SUBJECT: CARLOS MARCELLO, aka;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO

Enclosed for the information of the Bureau is one copy of a letter from subject's attorney, [redacted] directed to the Honorable JOHN SINGLETON, U. S. District Judge, Houston, Texas, concerning the subject's medical condition. b6 b7C

In view of the fact that the subject has begun serving his prison term, it appears that no further investigation is necessary at Houston and this matter is being considered RUC'D.

2 - Bureau (Enc. 1)
1 - New Orleans ENCLOSURE
1 - Houston

RWS/bc
(4)

REC-30
EX-113

89-1333-215

OCT 22 1970

STAFFELD

OCT 27 1970

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-106

LAW OFFICES

[redacted]

NEW ORLEANS, LOUISIANA 70116

b6
b7C

September 30, 1970

Hon. John Singleton
United States District Judge
Federal Building
Houston, Texas

Re: United States Vs. Marcello,
68-L-89

Dear Judge Singleton:

The only matter pending in the above entitled and numbered cause is the Motion for Reduction of Sentence, filed pursuant to Rule 35 of the Federal Rules of Criminal Procedure.

Certiorari was denied by the Supreme Court of the United States on June 15, 1970. I read Rule 35 to mean that this Court, if it intends to act, must do so within 120 days from June 15, 1970; in other words, sometime before October 13, 1970.

We have matters pending in the Fifth Circuit and the Supreme Court, but it is clear that nothing definite will occur before the 13th of October.

I will have Mr. Marcello in your Court at the time and date you designate, or if the Motion may be acted upon in his absence, we urge that you render your decision before the time tolls.

Mr. Marcello's physican, Dr. [redacted] has reviewed the medical findings of Ochsner Clinic, and has mailed to you his own views in connection with Mr. Marcello's health.

b6
b7C

I may be reached by telephone at [redacted] or [redacted].

With kindest regards,

Yours very truly

[redacted]

b6
b7C

CC: United States Attorney
Houston, Texas
Mr. [redacted] Attorney
Mr. [redacted] Attorney

b6
b7C

89-1333-215

ENCLOSURE

[redacted]

b6
b7C

MARRERO, LOUISIANA 70072

[redacted]

September 30, 1970

The Honorable John V. Singleton
Federal District Court
Houston, Texas

Re: Mr. Carlos J. Marcello
Metairie, Louisiana

Dear Judge Singleton:

I have been asked and authorized by Mr. Marcello, who has been one of my patients since October 1966, to write a full and complete history concerning his medical condition, findings and treatment at this office.

Mr. Marcello recently was examined and had numerous tests performed on him at the Ochsner Clinic in New Orleans, Louisiana. These tests were performed in the latter part of August and September, 1970.

The following comments are on his history, findings and treatment:

Mr. Marcello was first seen in my office on October 18, 1966, at which time he presented himself for evaluation and treatment. His examination revealed that he did have an arcus senilis, which is evidence of hyper-cholesterolemia or high fat levels in the blood; obesity; osteo-arthritis of the thoracic and lumbar spine; multiple fractures of the ribs; bi-lateral indirect inguinal hernias; varicose veins, with scarring of both lower legs; and electrocardiographic evidence of heart disease.

Mr. Marcello was informed of the above conditions and he asked that I put him on the appropriate treatment; for which he received a cholesterol lowering agent (Nicalex tablets), a low cholesterol diet, and was advised to refrain from any unusual or heavy, strenous exercises or manual labor; to use supportive stockings; to use a hernia truss and to take aspirin or salicylate compounds for his arthritic condition. He was also advised, at this time, that he should have regular monthly check-ups for the abnormalities he suffered.

His initial cholesterol, or fat level, reading in the blood was 332 mg%. After being on medication for one month, he was in my office on November 16, 1966 and subsequent cholesterol and blood sugar readings were taken. The cholesterol had dropped to 245mg% with the cholesterol agents he had been taking. The blood sugar reading was 114 mg%, which was a high normal and indicative of impending diabetes mellitus. On January 10, 1967 he was in my office again and on this visit the cholesterol readings were 335 mg% and 120 mg% for the sugar reading. Again, he was advised to continue with the low-cholesterol diet and to be careful about sweets in his diet.

87-1555-215

ENCLOSURE

[redacted]
MARRERO, LOUISIANA 70072
341-1204

b6
b7C

On August 10, 1967 his chief complaint was pain in the lower back, or lumbar section. You will note in the above history that Mr. Marcello suffered from arthritis in the areas of the back, and, at this time, he was given a steroid medication (Pabalate-HC) to alleviate the arthritic pain. Injections were also given for arthritis.

Mr. Marcello was seen every two to three months following the above described visits, for a total of some thirty-one visits. His last visit to my office was on September 21, 1970. He has had cholesterol readings as high as 363 mg% and sugar readings as high as 120 mg%. The normal limits for cholesterol are 150 to 250 mg%, although we like to see the cholesterol reading around 200 mg%, the sugar reading around 100 mg%, which are median values.

I have reviewed the findings of the Ochsner Clinic, and while I agree with the diagnosis, I cannot and do not agree with the conclusions reached by that fine clinic. I interpret and explain these findings as follows:

1. Electrocardiographic evidence of heart disease and right bundle-branch block;

The electrocardiograms reveal abnormal nerve conduction rates of the heart, resulting in a right bundle-branch block. The heart is supplied by two nerves; the right coronary nerve and the left coronary nerve. Mr. Marcello's shows an incomplete blockage of the right coronary nerve and bundle-branch, which means that he has a nerve defect on the right side of the heart. This nerve defect, which should worsen or become more severe as he grows older, could result in a complete blockage and thereby slow the heart rate down considerably, requiring him to have need of a pace-maker. This, in itself, could be critical under certain conditions. Mr. Marcello was advised of this condition and the probability that in the future he would require a pace-maker in order to live.

2. Arteriosclerotic heart disease is evident in this man due to the following reasons:

Arcus Senilis (a circle in the cornea of the eye revealing high levels of fat in the blood for long periods of time) is present. Arteriosclerotic heart disease is normally found in an individual of this age, however, it may not be normally this far advanced in a person of this age.

In my opinion, Mr. Marcello has a moderately-far advanced case of arteriosclerotic heart disease.

3. Hyper-cholesterolemia;

[redacted]
MARRERO, LOUISIANA 70072
[redacted]

b6
b7C

Hyper-cholesterolemia is a condition whereby the fat level, or lipid level, of the blood is greatly increased over that of normal. The normal reading for fat levels in the blood are 150 to 250 mg%. As was stated before, Mr. Marcello's readings have gone as high as 363 mg% and he is presently taking a compound (Choloxin, 4 mg tablets) twice daily in order to keep his fat levels down. His last cholesterol reading at my office was on August 7, 1970 and the value was 250 mg%. I am sure if Mr. Marcello had not been on any medication for this, his readings would be well over 300 mg%.

4. Obesity:

Mr. Marcello is quite obese for his height and age, and, at present, he is approximately seventy-five pounds over-weight. This weight is detrimental to his physical well being, especially the heart condition which he suffers.

5. Osteoarthritis of the thoracic and lumbar spines:

Mr. Marcello has a type of arthritis which goes along with aging. This is the type of arthritis referred to as a "wear-and-tear of the bones" and usually becomes more severe as time goes along. He has been on medication for this condition and continues to take medication for this condition on an off-and-on basis. He was advised that this condition would worsen as he grows older.

6. Multiple rib fractures:

The rib fractures are old and are well-healed; although they may give him trouble in the future because of the number of ribs having been fractures. The possible future pathology would be "arthritis involving these bones".

7. Bi-lateral indirect inguinal hernias:

These hernias have been present for a number of years and they are quite large and have a large protrusion into the inguinal area. They are protected by a truss Mr. Marcello wears and as long as he wears this appliance and does not perform any unusual heavy lifting or straining or any unusual exercises, they should not strangulate. Should he be subjected to any type of work, exercise or straining these hernias could strangulate themselves and require immediate surgery.

8. Varicosities of the lower extremities:

The varicosities have been present for quite some time inasmuch that they have decreased the circulation to both lower legs. He has had thrombosis of the veins in both lower legs, and more so

[redacted]
MARRERO, LOUISIANA 70072
341-1204

b6
b7C

in the left lower leg. For this, he should wear supportive stockings and eliminate any possibility of having injury to the legs; such as lacerations, scratches, sores or other types of lesions which do not heal too readily because of the poor circulation. The scarring and deep, dark pigmentation of the lower legs is due to the long-standing, inadequate circulation and varicosities present.

9. Dermatitis:

Dermatitis of the face and groin areas is a manifestation of a nervous condition suffered by Mr. Marcello and is relieved, at times, by steroid or cortisone-like ointments applied to the affecte d areas, although this is for temporary healing only.

10. Internal hemorrhoids:

The hemorrhoids are present and protrude into the rectum on the internal side; and when they become engorged with blood, due to long-standing, inadequate rest and constipation, they begin to bleed bright red blood. These should be corrected surgically.

At present, Mr. Marcello's treatment consists of cholesterol-lowering agents (Choloxin, 4 mg. tablets), low-cholesterol (low-fat) diet, anti-arthritic medication (Pabalate-HC and Delta done tablets, which are cortisone compounds), anti-allergic medication for the skin (Vioform H.C. cream), abdominal support for hernias (bi-lateral trans), supp-hose or elastic stockings for varicose veins, medication for insomnia (Parest capsules), advice to get as much rest as possible, stay off his feet as much as possible, advice against any heavy type of lifting, straining or exercises, and ASA compounds (salicylate or aspirin) for pain.

In reviewing the letter written by Dr. [redacted] I find that he has found essentially the same physical findings that I have had for several years on Mr. Marcello and I would like to bring emphasis on several of his comments. b6 b7C

On page two of Dr. [redacted] letter, he gives several blood-pressure readings and although the systolic readings, or the top readings, are normal for his age, the bottom readings, or diastolic readings, are high. This indicates heart pathology in this man. In the second paragraph, page two, he also finds that the patient has arcus senilis present and finds a grade one sclerosis of the retinal arterioles. This, in itself, represents arterio-sclerotic disease, which is a hardening of the arteries resulting from hyper-cholesterolemia and aging. b6 b7C

[redacted]

MARRERO, LOUISIANA 70072

[redacted]

b6
b7C

In the fourth paragraph, page two, he notes that the cholestrol was 300 mg%. This is definitely abnormal; for the upper limits of the normal cholesterol readings are 250 mg%. In paragraph six, page two, he notes a blood sugar reading, after 2½ hours, of glucose of 144 mg% with 4+ sugar in the urine. This indicates definite evidence of impaired sugar metabolism, or break-down in the blood and a tendency towards diabetes mellitus and, I am sure, in the very near future, this patient will exhibit definite evidence of this disease.

In paragraph seven, page two, the electrocardiogram was interpreted as having shown an incomplete right bundle-branch block and, as was stated before, this means that the right coronary nerve and bundle-branch to this patient's heart has an incomplete block, due to arteriosclerotic disease. This condition, if it becomes complete, or, if it worsens in the near future, will result in him having to have a pacemaker inserted in order for him to live.

On page three, Dr. [redacted] summarizes, in his opinion, that Mr. Marcello is basically in very good health for his 60 years. I disagree with him in his opinion; he, himself, had stated a number of things wrong with Mr. Marcello and these findings are not normally found in someone of this age. Mr. Marcello certainly does have a heart condition; hardening of the arteries; impaired sugar metabolism; bi-lateral hernias; varicose veins; impaired circulation to both lower legs; internal hemorrhoids; rash of the groins and face; arthritis of the lumbar and thoracic spines; hyper-cholesterolemia, or high fat levels in the blood; and obesity, at this time.

b6
b7C

After reviewing my own records and the opinion of Dr. [redacted] I submit that Mr. Marcello is not a healthy individual. I feel that confinement of any kind will be extremely detrimental to his health.

If I can be of any further assistance in this matter, please do not hesitate to call or write to me.

[redacted]

b6
b7C

(Dictated, not read)

RTR/nl

FD-36 (Rev. 5-22-64)

11-28

F B I

Date: 11/4/70

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79) (P)

CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO
(OO: NEW ORLEANS)

Enclosed herewith for the Bureau are four copies of an LHM, dated and captioned as above.

Copies of LHM are being furnished locally to USA, New Orleans, and Departmental Attorney, New Orleans Strike Force.

(2) - Bureau (Enc. 4)
2 - New Orleans
JCM:nmb
(4)

REC-38

89-1333-216

NOV 6 1970

- ENCLOSURE

Approved _____ Sent _____ M Per _____
Special Agent in Charge

57 NOV 27 1970

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to File No.

New Orleans, Louisiana
November 4, 1970

CARLOS JOSEPH MARCELLO;
SA PATRICK J. COLLINS, JR. - VICTIM

Mr. [redacted] Clerk, U. S. Circuit Court of Appeals, New Orleans, Louisiana, advised on November 4, 1970, that the U. S. Fifth Circuit Court of Appeals has granted Carlos Marcello's appeal for a new trial, and will hear oral arguments concerning this motion at 10:00 AM on November 24, 1970, at Tampa, Florida.

b6
b7C

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

1*

89-1353-216
ENCLOSURE

SUPREME COURT OF THE UNITED STATES

Carlos Marcello
v.
United States of America

On Application for Bail Pending Appeal from the Denial of Motion for New Trial.

[October 13, 1970]

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS joins, dissenting.

This bail application by Carlos Marcello is the latest event in a long series of prosecutions of Marcello by federal authorities. See, *e. g.*, *Marcello* v. *United States*, 196 F. 2d 437. All these prosecutions ended in dismissal of charges by the Government or acquittal except a conviction of illegal transfer of marijuana in 1938 and the present case in which Marcello was convicted in 1968 of assaulting an FBI agent in violation of 18 U. S. C. § 111. This conviction was affirmed on appeal, 424 F. 2d 993, and this Court denied certiorari. 398 U. S. 959. In June 1970, Marcello filed a motion for a new trial, alleging that the Government suppressed evidence which he was entitled to present to the jury that convicted him. In August 1970, Marcello sought a hearing under 28 U. S. C. § 2255 alleging that the chief government witness had perjured himself. Both motions were denied, and Marcello's appeals from these orders are now pending in the Court of Appeals for the Fifth Circuit. The Court of Appeals declined to continue Marcello on bail pending a final disposition of his appeals. Marcello's claims rest on the following summary of facts shown by the record.

Shortly before the alleged assault in 1966 Marcello was in New York preparing to return to his home in New Orleans. FBI agents in New York advised agents in New Orleans that Marcello was scheduled to arrive at the New Orleans airport on Delta Airlines at 8:30

89-1333-
NOT RECORDED
8 OCT 28 1970
89
ENCLOSURE
5 5NOV 2 1970

p. m. on September 30.[1] After the receipt of this message, a New Orleans FBI agent telephoned the Associated Press, the local newspapers and a local television channel and inquired whether they intended to cover the arrival of a "prominent person" at the airport that evening.[2] When the Delta plane arrived, the press swarmed around Marcello. With them were FBI agent Collins, who according to the Government's brief and the Court of Appeals was "posing as a passenger," and FBI agent [redacted] carrying a camera. According to the Court of Appeals: b6 b7C

> "This crowd followed Marcello through the airport and onto the upper ramp outside where Marcello, angrily and with some profanity, inquired whether the photographers had taken enough pictures. Collins, with arms folded, answered in the negative, and Marcello retorted: 'Are you looking for trouble?' which elicited the not unexpected reply from Collins that 'I can handle trouble.'" *United States* v. *Marcello,* 423 F. 2d 993, 997.

Marcello's version was that Collins said "I'm always looking for trouble."[3] The Court of Appeals continued: "This exchange had an unsettling effect on Marcello who took a couple of short jabs at Collins and attempted to mow him down with a haymaker, which never really got off the ground because of his brother Joseph's restraint." Collins himself testified that if Marcello touched his body at all, "it was so slight, I did not feel it."[4] For this "technical assault" which Collins swore he did not feel, Marcello was fined $5,000 and sentenced to two years in prison.

---

[1] *United States* v. *Carlos Marcello,* Trial Transcript at 1126.

[2] *United States* v. *Carlos Marcello,* Transcript of Motion for New Trial and for Reduction of Sentence at 206, 213, 221.

[3] *United States* v. *Carlos Marcello,* Trial Transcript at 1209.

[4] *Id.,* at 941.

The entire case and circumstances shown by the record are highly disturbing. At Marcello's trial in 1968 his counsel suggested that government agents were themselves responsible for the crowd of newsmen surrounding Marcello and photographing him at the airport.[5] Counsel prosecuting Marcello expressed resentment at the suggestion that the Government had entrapped or provoked him. The Government then denied that it had any evidence favorable to Marcello. This denial seems incredible to me in view of the now admitted facts that an agent called the press telling them of the arrival of a "prominent person" and that prosecuting counsel were informed before trial of these FBI contacts with the press.[6] I have no doubt of the relevancy of this evidence in the eyes of the jury considering Marcello's defense that the FBI was after him and had provoked the incident. I have no doubt that the Government's conduct in this case raises questions worthy of review, and I therefore dissent from the Court's denial of bail.

---

[5] *Id.*, at 345.

[6] *United States* v. *Carlos Marcello,* Transcript of Motion for New Trial and for Reduction of Sentence at 220.

ORDER LIST

TUESDAY, OCTOBER 13, 1970

ORDERS IN PENDING CASES

No. ___ [redacted] ET AL. V. NEW JERSEY b6 b7C

___ [redacted] V. NEW JERSEY

The applications for bail presented to Mr. Justice Brennan, and by him referred to the Court, are denied. Mr. Justice Black and Mr. Justice Douglas are of the opinion that the applications should be granted. Mr. Justice Brennan took no part in the consideration or decision of these applications.

___ CARLOS MARCELLO V. UNITED STATES

The application for bail presented to Mr. Justice Black, and by him referred to the Court, is denied. Mr. Justice Black and Mr. Justice Douglas dissent.

FD-36 (Rev. 5-22-64)

FBI

Date: 11/27/70

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL _____
(Priority)

Mr. Felt
Mr. Sullivan
Mr. Mohr
Mr. Bishop
Mr. Brennan C.D.
Mr. Callahan
Mr. Casper
Mr. Conrad
Mr. Felt
Mr. Gale
Mr. Rosen
Mr. Tavel
Mr. Walters
Mr. Soyars
Tele. Room
Miss Holmes
Miss Gandy

TO: DIRECTOR, FBI

FROM: SAC, TAMPA (89-0)

CARLOS MARCELLO
AFO

Enclosed is self-explanatory newspaper article which appeared in "The Tampa Tribune", Page 17A, on 11/25/70, relating to Fifth U. S. Circuit Court of Appeals hearing arguments in connection with subject's conviction for AFO.

(2) - Bureau (Enc. 1)
2 - New Orleans (Enc. 1)
1 - Tampa
PAM/mw
(5)

EX-115 89-1333-217
REC-32
NOV 30 1970

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

U. S. GOVERNMENT PRINTING OFFICE : 1969 O - 345-093 (11)

FD-350 (Rev. 7-16-63)

(Mount Clipping in Space Below)

U.S. Circuit Judge Panel Hears FBI Assault Case

By BILL PURVIS
Tribune Staff Writer

Judges of the Fifth U.S. Circuit Court of Appeal heard argument yesterday in Tampa aimed at reopening the case in which alleged New Orleans Mafia boss Carlos Marcello was convicted of assaulting an FBI man.

The FBI man "lied throughout" the trial, the defense contended yesterday.

The judges did not rule after hearing brief argument, but took the matter under consideration.

ON THE PANEL were Chief Judge John Brown and Judges David Dyer and Bryan Simpson. The judges had been present in St. Petersburg Monday for the investiture of new appellate judge Paul Roney, apparently the reason the matter was heard in Tampa. Simpson and Dyer live in Florida.

Argument was aimed at post-trial action in the conviction of Marcello, found guilty of assaulting an FBI man at the New Orleans airport in 1966.

The conviction has withstood appeal, a government spokesman said.

THE PROCEEDINGS in Tampa concerned the trial court's refusal to reopen the case and in that connection to look into additional defense evidence meant to support contentions of entrapment, provocation and a claim the FBI man "lied throughout."

Much of the argument centered around the appearance of reporters at the airport, an event apparently unexpected by Marcello.

Defense contentions were aimed at showing the FBI notified reporters Marcello would be returning from New York in hopes of provoking the man. The government argued testimony offered earlier in the case in support of that theory was "way short of a setup."

As for the FBI man, the defense claimed his first written report indicated he was not struck. But the next day, the reasoning went, he read he had been assaulted and began tailoring his story to fit newspaper accounts.

THERE ALSO was a contention the trial court should have looked into the offer of additional post-trial testimony that the FBI man was drunk.

The government countered that Marcello had had his "day in court" on the subject and that to allow reopening it would make it impossible to conclude any case.

(Indicate page, name of newspaper, city and state.)

THE TAMPA TRIBUNE
Tampa, Florida
Page 17-A

Date: 11/25/70
Edition:
Author:
Editor:
Title:

Character:
or
Classification:
Submitting Office: Tampa

☐ Being Investigated

b6
b7C

89-1333-217

ENCLOSURE

NR 1 1 1-4-71 GP

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

JAN 4 1971

TELETYPE

Mr. Tolson	
Mr. Sullivan	
Mr. Mohr	
Mr. Bishop	
Mr. Brennan CD	
Mr. Callahan	
Mr. Casper	
Mr. Conrad	
Mr. Felt	
Mr. Gale	
Mr. Rosen	
Mr. Tavel	
Mr. Walters	
Mr. Soyars	
Tele. Room	
Miss Holmes	
Miss Gandy	

NR003 NO PLAIN

08:20 PM NITEL 01-4-71 JEM

TO DIRECTOR, FBI (89-1333)

FROM NEW ORLEANS (89-79) (P)

CARLOS JOSEPH MARCELLO, AKA, SA PATRICK J. COLLINS, JR. - VICTIM

AFO (OO- NEW ORLEANS)

CR

ON ONE FOUR SEVENTYONE U. S. COURT OF APPEALS FOR THE FIFTH CIRCUIT DENIED MOTION FOR NEW TRIAL AS PETITIONED BY MARCELLO, AND AFFIRMED THE DECISION OF USDC, HOUSTON, TEXAS, IN DENYING NEW TRAIL.

END.

WJM FBI WA

1-100

RE 89-1333-218

JAN 5 1971

58 JAN 13 1971

DECLASSIFICATION AUTHORITY DERIVED FROM:
FBI AUTOMATIC DECLASSIFICATION GUIDE
DATE 08-19-2010

The Attorney General

January 7, 1971

Director, FBI

1 - Mr. Sullivan
1 - Mr. Gale
1 - Mr. Staffeld
1 - Mr. Hogan

JOSEPH EDWARD MAY, JR.
EXTORTION CONCERNING

Classified by 6855 DMH/tlf
Exempt from GDS, category 3
Date of Declassification Indefinite
10-14-77

Senator-elect Robert Taft, Jr., Ohio, was interviewed by an Agent of our Cincinnati office on December 23, 1970, at his request. He advised that he had been contacted by [redacted] an attorney from New Orleans, Louisiana, who explained that he represented Carlos Marcello, a New Orleans underworld figure currently serving a six-month sentence for assaulting a Federal officer. b6 b7C

Mr. [redacted] explained to Mr. Taft that he had been contacted by one [redacted] who allegedly was soliciting funds in behalf of Mr. Taft's campaign. Mr. [redacted] advised that May had implied that if a substantial contribution was made by Marcello for Mr. Taft's campaign, Mr. Taft would then intervene with United States Supreme Court Justice Potter Stewart to obtain assistance on behalf of Mr. Marcello. b6 b7C

Mr. [redacted] advised Mr. Taft that he felt May was a misguided individual and he was bringing the matter to Mr. Taft's attention in an effort to preclude possible embarrassment. b6 b7C

Mr. Taft was greatly concerned that his name would be used in such a manner and desired that the facts be brought to the attention of the Justice Department. He advised he does not know May, but he has been advised by officers of his campaign committee that May worked for a short time as a volunteer in the primary.

89-1333-

NOT RECORDED
29 JAN 8 1971

Enclosed herewith are documents furnished by Mr. Taft in this matter which consist of his memorandum dated December 21, 1970, regarding a telephone call received from Mr. [redacted] b6 b7C

RFH:mfd
(9)
SEE NOTE PAGE 2

CONFIDENTIAL

Group 1
Excluded from automatic downgrading and declassification

ENCLOSURE

JAN 11 1971

MAIL ROOM ☐ TELETYPE UNIT ☐

MAILED 2
JAN 7 1971
COMM-FBI

~~CONFIDENTIAL~~

The Attorney General

two signed statements given by attorneys associated with Mr. Taft's law firm concerning their interview with May; Mr. [redacted] letter to Mr. Taft dated December 17, 1970; and miscellaneous items forwarded to Mr. Taft by Mr. [redacted] consisting of various types of correspondence received by Mr. [redacted] from May. Also enclosed is a memorandum dated December 29, 1970, from our Cincinnati office regarding the interview with Mr. Taft. b6 b7C

(u) FBI files disclosed that [redacted] visited the office of the Soviet Commercial Counselor and Information Department, Washington, D. C., on July 29, 1968. Investigation concerning May was made at his place of employment, General Electric Company, Cincinnati, Ohio, and it was ascertained that he was considered by his associates at the plant to be possibly mentally disturbed. (u) b6 b7C

No inquiry is being conducted by this Bureau in this matter and the foregoing is being furnished to you pursuant to the request of Mr. Taft.

Enclosures (14)

1 - The Deputy Attorney General

1 - Assistant Attorney General
Criminal Division

NOTE: Information concerning this matter was furnished to the Bureau by Cincinnati airtel dated 12/29/70. It was recommended by the Special Investigative Division that the documents furnished by Mr. Taft be forwarded to the Justice Department and this was approved.

The case in which [redacted] was investigated is Bureau file 105-18338 and concerned a visit by [redacted] to a Soviet establishment and subsequent investigation of [redacted] by our Cincinnati office revealed him to be an emotionally upset individual; therefore, the case was closed. (u) b6 b7C

This letter is being classified Confidential due to the fact that the information regarding [redacted] contact with the Soviet establishment has been classified as Confidential. (u)

~~CONFIDENTIAL~~

FD-36 (Rev. 3-22-64)

FBI

Date: 1/4/71

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79) (P)

CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO: NEW ORLEANS)

Enclosed herewith is one copy 5th Circuit Court of Appeals decision reflecting denial of motion for new trial.

On 1/4/71 U.S. Court of Appeals for the Fifth Circuit denied motion for new trial as petitioned by MARCELLO, and affirmed the decision of USDC, Houston, in denying new trial.

(2) - Bureau (Enc. 1)
2 - New Orleans
JCM:nmb
(4)

REC 10

89-1333-219

EX-112

5 JAN 7 1971

ENCLOSURE ATTACHED

b6
b7C

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

89-1333-219

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

Nos. 30492 and 30519

UNITED STATES OF AMERICA,
Respondent-Appellee,

versus

CARLOS MARCELLO,
Defendant-Appellant.

Appeals from the United States District Court for the Southern District of Texas

---

(January 4, 1971)

Before BROWN, Chief Judge, DYER and SIMPSON, Circuit Judges.

DYER, Circuit Judge: Marcello, having been convicted of assaulting and intimidating an F.B.I. agent in violation of 18 U.S.C.A. III,[1] which this Court af-

---

[1]The statute provides in pertinent part: "Whoever forcibly assaults, resists, opposes, impedes, intimidates, or interferes with * * * [any employee of the Federal Bureau of Investigation of the Department of Justice] while engaged in or on account of the performance of his official duties shall be [punished]."

firmed on appeal,[2] now seeks review of the District Court's denial of his motion for a new trial based upon the Government's alleged suppression of evidence, and the denial, without a hearing, of his petition under 18 U.S.C.A. 2255 in which he urged that his conviction was obtained by the knowing use of false testimony. We affirm.

The evidence supporting the conviction is fully developed in the previous opinion of this Court. Suffice it to say that the assault of F.B.I. agent Collins by Marcello occurred on the night of September 30, 1966, at the New Orleans, Louisiana, airport where a number of the news media had gathered to interview and photograph Marcello as he deplaned on his return from New York. A chronology of the post-trial proceedings follows.

After certiorari was denied by the Supreme Court, a timely motion for a new trial was filed alleging that the F.B.I. had tipped off the news media that Marcello would arrive at the New Orleans airport at a certain time from New York and this caused a convocation of the media. Marcello further alleged that the confrontation and harassment leading to the assault was preconceived and that he was entrapped or that he was denied an opportunity to develop facts upon which to raise the defense on entrapment. Relying on *Brady v. Maryland*, 1963, 373 U.S. 83, ____ S.Ct. ____, ____ L.Ed. ____, he points out that he made a motion re-

[2] *United States v. Marcello*, 5 Cir. 1970, 423 F.2d 993, *cert. denied*, 398 U.S. 959.

questing favorable evidence prior to and during trial and that the Government assured him that it had no such evidence.

At the hearing on the new trial motion, acting agent-in-charge Sylvester, of the New Orleans F.B.I. office, testified that on September 30, 1966, he learned from another agent that Marcello was returning by airplane from New York City that night and that two agents (although he did not know their identity) had been assigned to cover the arrival. He became concerned about the sufficiency of F.B.I. manpower at the airport; and in order to make a judgment about this, Sylvester contacted the Times Picayune, a local newspaper, and asked whether they were covering any prominent person coming in that night on an early evening flight. He was told that no one would be there. He also contacted the Associated Press in the same manner and received an equivocal answer. He then telephoned channel 12 TV and was told that they would have coverage at the airport. A post-trial affidavit offered by Marcello relates that other members of the news media were called. In each instance the recipient of the call probably knew that the caller was Sylvester because of his distinctive voice, but the name Marcello was not mentioned. Sylvester, having determined that Marcello's arrival would be covered by the TV, found no necessity to increase the F.B.I. manpower.

Prior to trial Sylvester related these events to the United States Attorney. Neither F.B.I. agents Collins nor Avigion, who had received the airport assignments, knew that Sylvester had contacted the news

media. The first time that they knew anyone else would be present at the airport was when they saw the group of cameramen and reporters.

At the same hearing, on motion for new trial, Marcello also offered evidence from one witness that he had attended a press party with Collins on September 30, 1966, and that Collins was drunk when they left the party about three in the afternoon. Collins testified that he had no recollection of the events of that day prior to his airport assignment which was made by his superior at about three-thirty or shortly thereafter. The acting agent-in-charge and [redacted] with whom Collins had dinner and carried out the assignment, thought that Collins appeared normal. The District Court denied the motion for new trial.

b6
b7C

Subsequently, Marcello filed a § 2255 petition to set aside the judgment of conviction on the ground that it was obtained by the perjury of agent Collins. The District Court denied the petition without an evidentiary hearing.

Denial of the Motion for New Trial

The thrust of Marcello's argument is that the Government, by failing to disclose to counsel for Marcello that F.B.I. agent-in-charge Sylvester had informed the news media of the time of arrival of Marcello at the airport prevented Marcello from using this evidence, in some way, to prove entrapment, or the first step in that defense, or provocation.

b6
b7C

Without any knowledge on the part of Collins or [redacted] that Sylvester had called the news media, which is undisputed, there is no way, simply no way to introduce entrapment or provocation into the case. The "issues raised and the evidence adduced must be pertinent to the controlling question whether the defendant is a person otherwise innocent whom the Government is seeking to punish for an alleged offense which is the product of the creativity of its own officials." *Sorrells v. United States*, 1932, 287 U.S. 435, 451, S.Ct. L.Ed. . There was nothing sinister in the nondisclosure by Government counsel that Sylvester made calls to the news media. Not only was this wholly irrelevant to any issue in this case but it borders on the frivolous to claim, as does Marcello, that it was a scheme by the F.B.I. to "set up" an incident at the airport or to invade Marcello's right of privacy. Given a number of newsmen at the airport, whether their presence was because they learned of Marcello's arrival time from the F.B.I., or from independent sources, nothing occurred there that gave cause to Marcello to shout pejorative epithets at them and to assault F.B.I. agent Collins. There was nothing done by the F.B.I. that can be said to have constituted "implantation of the disposition to commit [assault] in the mind of an innocent man, or inducement for the purpose of prosecuting." *United States v. Marcello*, 5 Cir. 1970, 423 F.2d 993, 1011.

Having failed to demonstrate error in the trial court's refusal to submit the issue of entrapment to the jury in the previous appeal, Marcello makes another attempt to do so here via *Brady* by a revelation

that the F.B.I. called the news media but did not disclose this to the defense. Even if this "suppressed evidence" could be considered favorable to Marcello, a conclusion that can be reached only by spurious syllogistic reasoning, it does not come within the *Brady* rule because it was wholly immaterial to the issue of entrapment. Sylvester had a perfectly legitimate purpose in calling three or more news outlets. Neither Collins nor [redacted] knew that newsmen would be at the airport which negates any suggestion of an F.B.I. set up. Furthermore, it is manifest that Marcello was the aggressor.

b6
b7C

We are firmly convinced that no favorable or material evidence was suppressed by the prosecution and that the trial judge properly denied Marcello's motion for a new trial.[3]

Denial of Petition Under 18 U.S.C.A. 2255.

The District Court denied Marcello's § 2255 petition without an evidentiary hearing because the court found that its factual basis was, for all intents and purposes, presented and considered by the court in connection with the motion for new trial. This is not supported by the record. The motion for new trial was based upon suppression of evidence by the Government, while the § 2255 petition, subsequently filed, asserts

[3]By brief Marcello contends that the Government also suppressed the fact of Collins' drunkenness on the day of the incident and his inability to recall the events of that day. Not having raised this point in his motion for new trial we decline to entertain it here. Marcello's claim of perjury in this respect is treated *post*.

b6
b7C

that the conviction was obtained through the perjury of F.B.I. agent Collins,[4] a matter which had not previously been considered or decided. Nevertheless, for the reasons that follow we conclude that no evidentiary hearing was required.

Marcello charged perjury in the following particulars: (a) Collins' testimony at trial relating to the assault and intimidation; (b) Collins' denial of admissions made by him that Marcello did not assault or intimidate him; (c) Collins' denial that while he was in Shreveport, Louisiana, in February 1968 he admitted that Marcello did not assault or intimidate him; (d) Collins' denial that while he was in Lucky Pierre's bar in New Orleans in November or December 1967 he admitted that Marcello did not assault or intimidate him; and (e) Collins' testimony in connection with the motion for new trial in which he denied having any recollection of attending a press party on September 30, 1966, or of being drunk on that date.

The contention that Collins perjured himself at the hearing on the motion for new trial gives us little pause. Assuming, contrary to the finding of the District Court, that Collins gave perjured testimony at that hearing in July, 1970, there was no way that this could have borne on the conviction in August, 1968.

With respect to the other allegations of perjury, a review of the evidence submitted at both trials (the

---

[4] Marcello also accuses government witnesses [redacted] of perjury. While they are not hereafter specifically alluded to by name we consider the legal consequences of their testimony to be precisely the same as Collins.

first having resulted in a mistrial) shows, without peradventure, that there was an encounter between Collins and Marcello at the airport. While there is some conflict concerning the assault by Marcello on Collins. there is substantial evidence that an assault took place.[5] Collins denied at the trial any prior inconsistent statements or admissions to the effect that Marcello had not assaulted or intimidated him on September 30, 1966. On the other hand, [redacted] a close personal confidante and attorney for Marcello, contradicted Collins by relating alleged admissions made by Collins at Lucky Pierre's, but with no one else present,[6] and testified that similar admissions had been made by Collins in Shreveport, Louisiana, in February, 1968.[7] [redacted] a total stranger whom Collins met in the lounge of [redacted] place, corroborated Maroun's testimony.[8] It is on this conflict of evidence that Marcello charges Collins with perjury.

Perjury may be succinctly defined as knowingly and willfully giving false testimony relating to a material matter. *Luna v. Beto,* 5 Cir. 1968, 395 F.2d 35, 38, *cert. denied,* 1969, 394 U.S. 966; *see United States v. Edmondson,* 5 Cir. 1969, 410 F.2d 670, 672-73, *cert. denied,* 396 U.S. 966. Except for the bald assertion in his § 2255 petition, Marcello has done nothing to demonstrate his

[5]See the testimony of Collins, pps. 459, 460, 940, 945; Avigion, 402-404, 421, 846, 853, 887; Thornell, 446, 450, 451, 921; Elder, 490-491, 1081, 1087; Nolan, 506, 507, 513, 1031, 1033, 1034, 1055; Joseph Marcello 555, 568-570, 1164; McCrossen, 597, 599, 1035; Joseph Marcello Jr., 604, 621, 1137, 1138; Carlos Marcello, 630, 631, 634, 1203; Gauthier, 1293, 1294, 1302, 1305.

[6]Maroun, 641, 645-7, 649, 1223; Collins 984, 1010.

[7]Maroun, 641-43, 1225, 1248; Collins 482, 985-6, 1012.

[8]Angell 1260, 1263, 1269, 1270-71.

claim that Collins perjured himself. He has offered no evidence, other than that upon which the jury passed, relating to the events constituting the crime. Significantly there were non-government witnesses that corroborated Collins' testimony on the vital trial issues. Marcello's petition simply seeks to reopen and relitigate the issues already resolved against him by the jury. This he cannot do. *Ehrlich v. United States,* 5 Cir. 1944, 145 F.2d 693.

In view of what we have said, an evidentiary hearing was not required to dispose of Marcello's petition. There was nothing to hear that had not already been said.

b6
b7C

While we agree with the principle which Marcello couches in broad terms of argument, that due process will not tolerate a conviction obtained by the knowing use of false testimony — *Napue v. Illinois,* 1959, 360 U.S. 264, ___ S. Ct. ___, ___ L.Ed. ___; *Mooney v. Holohan,* 1935, 294 U.S. 103, ___ S.Ct. ___, ___ L.Ed. ___, and their progeny — this principle has no application here because there is no showing by Marcello of any evidence to support his claim of denial of due process other than his persistent attempts to discredit Collins and attack his credibility, all of which were before the jury whose verdict resolved the matter.

The orders of the District Court denying the motion for new trial and for relief under 18 U.S.C.A. § 2255 are severally

AFFIRMED.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.

UNITED STATES GOVERNMENT

Memorandum

TO : Director, FBI (89-1333) DATE: 2/19/71

FROM : SAC, New Orleans (89-79)(P)

SUBJECT: CARLOS JOSEPH MARCELLO aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO

(OO: New Orleans)

Re New Orleans letter to Director 1/4/71.

Attorneys for captioned subject have filed an appeal to the U. S. Supreme Court for a new trial, alleging that the prosecution suppressed evidence that the FBI staged the circumstances under which MARCELLO swung his fist at the Agent, and also alleging that the Agent was drunk at the time.

This appeal was reportedly filed on or about 1/20/71.

LEADS:

WASHINGTON FIELD

AT WASHINGTON, D. C. Obtain copies of above appeal and furnish same to the Bureau and New Orleans.

Follow and report results of appeal.

2 - Bureau
2 - WFO
2 - New Orleans
NOB-epk
(6)

89-1333-220

MAR 3 1971

SEC. U.S. DEC. UNIT

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI

DATE: 4/5/71

FROM : SAC, WFO (92-113) (RUC)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR.-VICTIM
AFO
(OO:NO)

According to an order list issued by the United States Supreme Court on 3/29/71, the Court denied subject's petition for a writ of certiorari.

The above concludes action in the United States Supreme Court in this matter.

EX-104
REC-32 89-1333-221

APR 7 1971

(2) Bureau
2-New Orleans
1-WFO

HDP:sag
(5)

3 APR 16 1971

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

The Attorney General

January 28, 1972

Director, FBI

CARLOS JOSEPH MARCELLO
SPECIAL AGENT PATRICK J. COLLINS, JR. - VICTIM
ASSAULT ON A FEDERAL OFFICER

[redacted], Assistant United States Attorney, Southern District of New York, advised our New York office on January 19, 1972, that [redacted] residence Beverly Hilton Hotel, Beverly Hills, California, furnished [redacted] on that date with an allegation of possible influencing of a judge in the case concerning Carlos Marcello, a New Orleans underworld figure who is currently on probation after serving six months for assaulting a Federal officer.

[redacted] was interviewed on January 20, 1972, regarding this allegation stating he learned through a confidant of Carlos Marcello and [redacted] a prominent, wealthy [redacted] that [redacted] allegedly approached the United States District Court judge, who sentenced Marcello, regarding having his probation terminated. According to [redacted] the judge told [redacted] he needed a reason for terminating Marcello's probation. [redacted] reportedly furnished the judge an affidavit, which alleged that an unidentified waitress in a bar in New Orleans, Louisiana, claimed that on the day of the assault by Marcello against Special Agent Collins, September 30, 1966, Special Agent Collins was in an unidentified bar, signed a tab for a number of drinks and Special Agent Collins was drunk when he left the bar.

[redacted] also stated that [redacted] had indictments against him by Internal Revenue Service in Toledo, Ohio, dismissed through the intervention of former Assistant Attorney General [redacted] [redacted] further related [redacted] broached you with these indictments, but you would have nothing to do with them.

EX-104 REC-18 7-1333-222

NOTE: See T. J. Emery to Cleveland memo, 1-27-72, same caption, WAH:rag.

WAH:bag
(6)

MAILED 3
JAN 28 1972
FBI

FEB 1 1972
ROOM [ ] TELETYPE UNIT [ ]

The Attorney General

[redacted] is described as a notorious stock and bond thief and confidence man, who has been convicted for violation of the Interstate Transportation of Stolen Property (ITSP) statute and currently awaiting trial on other ITSP cases. [redacted] is known to have furnished unreliable information in the past. b6 b7C

Our Cleveland office has advised that [redacted] b6 b7C [redacted] who has associated with the hoodlum element in Toledo, is a heavy gambler and has been convicted in a case developed by Internal Revenue Service.

Special Agent Collins has had a similar allegation made against him in the past which allegation was refuted by Special Agent Collins and other Special Agents testimonies during the trial of the Marcello case. Special Agent Collins has furnished an affidavit denying the current allegation. Our Houston and New Orleans offices have advised that they could locate no affidavit concerning the claim by an unidentified waitress that Special Agent Collins had been drinking.

The above is being furnished for your information and unless advised to the contrary no investigation is being conducted by the Bureau concerning these allegations.

1 - The Deputy Attorney General

1 - Assistant Attorney General
Criminal Division

airtel

1-27-72

To: SAC, New Orleans (87-79)

From: Director, FBI (89-1333)

CARLOS JOSEPH MARCELLO;
SPECIAL AGENT PATRICK J. COLLINS, JR. - VICTIM
ASSAULT ON A FEDERAL OFFICER
(OO: NO)

Re New York airtel to Director 1-24-72, and Bureau telephone calls to New Orleans and Houston 1-26-72.

New Orleans and Houston suairtel advising results of your check of court records for motions and affidavit referred to in re airtel 1-24-72.

New Orleans and Houston follow this matter closely and keep the Bureau advised of any pertinent developments.

1 - Houston (89-45)

MAILED 5
JAN 27 1972
FBI

EX-102

REC-28 89-1333-223

19 JAN 28 1972

WAH:bag
(5)

Mr. Tolson
Mr. Felt
Mr. Rosen
Mr. Mohr
Mr. Bishop
Mr. Miller, E.S.
Mr. Callahan
Mr. Casper
Mr. Conrad
Mr. Dalbey
Mr. Cleveland
Mr. Ponder
Mr. Bates
Mr. Waikert
Mr. Walters
Mr. Soyars
Tele. Room
Miss Holmes
Miss Gandy

MAIL ROOM ☑ TELETYPE UNIT ☐

FD-36 (Rev. 5-22-64)

FBI

Date: 1/28/72

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIRTEL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79) (P)

CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO: NEW ORLEANS)

ReNYairtel to Bureau 1/24/72, and Buairtel to New Orleans 1/27/72.

Enclosed for the Bureau is one copy of Civil Action Petition 71-L-1, which was filed in the Southern District of Texas, U.S. District Court, Houston Division, 11/17/71.

On 1/27/72 IC [redacted] searched the records of the U.S. Fifth Circuit Court of Appeals, New Orleans, re captioned case. The enclosed petition is the only matter which was before the court concerning captioned case as of 1/27/72.

b6
b7C

New Orleans will advise the Bureau of any pertinent developments.

"ENCLOSURE ATTACHED"

REC-89
89-1333-224

(2) - Bureau (Enc. 1) (RM)
2 - New Orleans
HVH:nmb
(4)

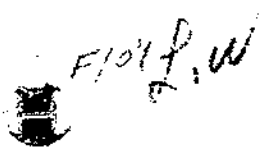
JAN 31 1972

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

54 FEB 8 1972

GPO : 1970 O - 402-735

ENCLOSURE TO THE BUREAU (1)
Bufile 89-1333
NO 89-79
Airtel dated 1/28/72



Marcello's petition for a writ of certiorari and that the Supreme Court denied certiorari on the same day it decided Sisson, supra. As concluded above, from an analysis of Sisson, supra, its principles are not of much help in this instance. But in any event, the circumstances under which certiorari was denied have little if any material bearing on the applicability vel non of Sisson, supra. When the Supreme Court denies certiorari, it imports nothing as to the merits of the case. All it means is that, for whatever reason, there were not four members of the court who wished to hear the case. Wright, Federal Courts, § 108, p. 495 (1970).

b6
b7C

The clerk is directed to file this Memorandum and Order and forward true copies to counsel of record.

DONE at Houston, Texas, this 17th day of November, 1971.

46

After the jury returned a verdict of guilty, the trial judge, based upon his view of the evidence presented, entered what he termed an arrest of judgment under Rule 34, Fed. Rules Crim. Proc. The government appealed under the arresting judgment provision of the Criminal Appeals Act, 18 U.S.C. § 3731, but the court held that regardless of what label the trial judge attached to his action, depending as it did on facts developed at Sisson's trial, the action taken was in legal effect a directed acquittal. It is similarly recognized here that the failure of Judge Connally to characterize his instructions to the jury does not necessarily preclude a finding that he directed an acquittal. It has been found, however, from an analysis of the circumstances under which the comments to the jury were made that these comments were no more than that and do not constitute an acquittal.

One final thought should be expressed. The government has contended that much significance should be attached to the fact that the double jeopardy question was raised in

intimidated Agent Collins, it cannot be held that the instruction to the jury was anything more than a comment on the evidence. It is interesting to note that it was specifically held on the appeal from petitioner's conviction that there was sufficient evidence to sustain a conviction for intimidation. United States v. Marcello, supra.

United States v. Jorn, 400 U.S. 470 (1971), relied upon by petitioner is not germane to any of the issues presented here. In that case, the court was concerned with when and under what circumstances a defendant could be retried after a mistrial had been declared not at his insistance at his previous trial. No contention is made here that Judge Connally abused his discretion in declaring a mistrial or that by virtue of the fact that a mistrial was declared petitioner could not be retried.

Neither can it be said that United States v. Sisson, supra, is controlling. Sisson was convicted for failing to submit for induction into the armed forces in violation of the Selective Service Act of 1967, 50 U.S.C. App. § 462(a).

a formal judgment of acquittal. It is true, as petitioner contends, that a verdict of acquittal, although not followed by a judgment, is a bar to a subsequent prosecution for the same offense. United States v. Sisson, U.S. , 38 L.W. 4616 (1970). It is not here held to the contrary, however, since the question is one of whether the effect the trial court's instruction resulted in an acquittal as a matter of law for the petitioner. Under the procedures presented in Rul2 29(a), Fed. Rules Crim. Proc., there is no such creature as a directed verdict of acquittal. If a verdict of acquittal is warranted by the lack of evidence of guilt, the proper procedure is not to direct a verdict of acquittal, as petitioner contends that the trial court did, but simply to enter a judgment of acquittal. Rule 32, Fed. Rules Crim. Proc. requires that the judgment shall be signed by the judge and entered by the clerk. There was no such action taken following the abortion of petitioner's first trial. Thus, in absence of a clear manifestation of the trial judge to acquit Marcello on the charge that he

that I mean I am permitted to tell you which witnesses I think are credible and worthy of belief, or which ones are not. Or to tell you wherein I think the truth lies or even to tell you what verdict I think you should return.

"I have no expectation of doing so, but I do instruct you if from my remarks you draw some conclusion or inference as to my own feelings about the credibility of the witnesses, or about the facts of the case, I do not intend it as an effort to tell you or to direct you as to what verdict you should return. The finding of the facts is your exclusive province and I have no desire to trespass upon it. You are at perfect liberty to disregard anything I say about the facts of the case or about the evidence that we have received or about the credibility of the witnesses."

In his statement to the jury telling them to disregard intimidation, the court carefully qualified his choice of words, i.e., "As I understand the Government's case, and the evidence which was offered, the evidence was not directed at showing ... intimidation ..."; "So I think for practical purposes, you may forget ... 'and intimidate' ..." (emphasis added). Another circumstance indicating the trial court's intention is the absence from the record of

The same considerations governing deliberate bypass of federal remedies apply with equal force here. It is those same considerations which warrant a finding the petitioner, under the circumstances of this case, has made abusive use of section 2255.

Another basis for denying relief is that the statement to the jury during the first trial does not rise to the dignity of a directed verdict, but is merely a comment on the strength of the evidence. Petitioner contends that the refusal of the trial judge to define intimidation conclusively shows that there was a directed verdict. This, however, is just one circumstance to be considered. Another circumstance is the following passage from an earlier portion of the charge clearly indicating that the court did not intend to direct a verdict:

> "You gentlemen of the jury are the exclusive judges of facts proved, of the credibility of the witnesses and of the weight to be given their testimony.
>
> "Now, I should tell you, too, in this court the Judge is permitted, if he sees fit to do so, to comment upon the evidence. By

been sufficiently met to enable consideration of that question. That abuse of the motion remedy is a reprehensible practice is beyond dispute. In Sanders v. United States, supra, the statement was made:

> "To say that it is open to the respondent to show that a second or successive application is abusive is simply to recognize that 'habeas corpus has traditionally been regarded as governed by equitable principles. United States ex rel. Smith v Baldi, 344 U.S. 561, 573 (dissenting opinion). Among them is the principle that a suitor's conduct in relation to the matter at hand may disentitle him to the relief he seeks. Narrowly circumscribed, in conformity to the historical role of the writ of habeas corpus as an effective and imperative remedy for detentions contrary to fundamental law, the principle is unexceptionable.' Fay v Noia, supra (372 US at 438). Thus, for example, if a prisoner deliberately withholds one of two grounds for federal collateral relief at the time of filing his first application, in the hope of being granted two hearings rather than one or for some other such reason, he may be deemed to have waived his right to a hearing on a second application presenting the withheld ground. The same may be true if, as in Wong Doo, the prisoner deliberately abandons one of his grounds at the first hearing. Nothing in the traditions of habeas corpus requires the federal courts to tolerate needless piecemeal litigation, or to entertain collateral proceedings whose only purpose is to vex, harass, or delay. (373 U.S. 17-18)

what his attorney either did or omitted to do. But here where it was apparent throughout the trial that Marcello was in close contact with his lawyers, it is inconceivable that he could have failed to participate in an important decision concerning appellate strategy after the trial when there was ample time for deliberation in such matters. Petitioner must be held to have deliberately bypassed the federal appellate remedy on this issue.

The government argues that relief should be denied because it has previously been decided adversely to petitioner. By the giving of the instruction on intimidation, petitioner's double jeopardy claim was necessarily rejected. A federal court on a section 2255 motion need not resolve issues it has already resolved.

By its contention that the matter has already been settled, the government is suggesting indirectly that petitioner has abused the section 2255 remedy. The burden of pleading this point is on the government, Sanders v. United States, 373 U.S. 1 (1963), and that burden has

ceedings. There was recognized, however, a limited discretion to deny relief on the basis of such a procedural default. This limited discretion in the federal habeas judge could be exercised only when there were circumstances present, discovered by holding a hearing or by some other means, indicating that the applicant personally had deliberately bypassed the orderly procedure of the state courts and in so doing had forfeited his state court remedies. In Kaufman v. United States, 394 U.S. 217 (1969), it became settled that the deliberate bypass concept applied also to proceedings under section 2255:

> "Furthermore, the § 2255 court may in a proper case deny relief to a federal prisoner who has deliberately bypassed the orderly federal procedures provided at or before trial and by way of appeal--e.g., motion to suppress under Fed. Rule Crim. Proc. 41(e) or appeal under Fed. Rule App. Proc. 4(b)." (394 U.S. 227, n.8)

Clearly, the inference is inescapable that petitioner's attorney intentionally abandoned the double jeopardy contention on appeal. Courts, however, are reluctant -- and this one is no exception -- to hold a client in default for

Petitioner contends that the statement made to the jury at his first trial to the effect that the jury could disregard the intimidation portion of the indictment was a correct one. Thus, according to the petitioner, the charge to the jury at his second trial that they could convict him of intimidating agent Collins rendered that trial in violation of the Double Jeopardy Clause. There is no merit in these contentions.

Marcello's counsel objected to the intimidation instruction on the grounds that it was duplicitous and that it constituted double jeopardy. Although on appeal it was urged that the instruction was duplicitous, no further contention was made either on appeal from the conviction or in petitioner's first section 2255 motion that there was an unconstitutional trespass into his privilege against double jeopardy. In Fay v. Noia, 372 U.S. 391 (1963), it was held that the jurisdiction of federal courts on habeas corpus is not affected by procedural defaults incurred by the applicant during state court pro-

assault and intimidation were defined for the jury and it was made clear to them that they could convict if they found either that Marcello assaulted Collins or that Marcello intimidated Collins and in either event found the other elements of the offense to be present. Counsel for Marcello objected to this instruction on the grounds that it violated the double jeopardy provision and that it was duplicitous.

Subsequently, the conviction was affirmed. United States v. Marcello, 423 F.2d 993 (5th Cir. 1970), cert. den.; 398 U.S. 959 (1970). Thereafter, Marcello moved for a new trial, which was denied on July 21, 1970. While the denial of the motion for new trial was on appeal, Marcello applied for relief under 28 U.S.C. § 2255. This was denied on September 3, 1970, and both the overruling of the motion for new trial and the denial of the motion to vacate were affirmed. United States v. Marcello, F.2d (5th Cir. 1971). Thereafter, Marcello filed the motion under section 2255 presently before the court.

Texas, on May 27, 1968, before Judge Ben C. Connally. In charging the jury, the court defined forcibly, assault, and willful, but did not define intimidation. When the jury was unable to reach a verdict, they were brought back into the courtroom for further instructions. The jury specifically requested the court to "again define and explain the definition of the following: assault and intimidate." The court responded in part:

> "...[A]s I understand the Government's case, and the evidence which was offered, the evidence was not directed at showing that there was any intimidation of Mr. Collins, but rather that there was an assault.
>
> "So I think for practical purposes you may forget the part 'and intimidate' and consider the indictment as though the charges were only as to assault.
>
> "That is what I had in mind when I instructed you yesterday and defined."

When the jury was still unable to reach a verdict, they were discharged and a mistrial was declared.

The retrial began before the undersigned judge in Houston, Texas, on August 5, 1968. Both the terms

his motion to vacate sentence under § 2255 will be, and is hereby, DENIED.

The statute under which petitioner stands convicted, 18 U.S.C. § 111, imposes punishment on whomever "forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties...". The incident out of which petitioner's conviction came about occurred at the airport in New Orleans, Louisiana, where petitioner had an altercation with an FBI agent engaged in the performance of his duties, a person protected by section 111. The indictment, originally filed in the Eastern District of Louisiana and transferred here on a change of venue, charged that Marcello did "forcibly assault and intimidate Patrick J. Collins, Jr., an officer of the Federal Bureau of Investigation of the Department of Justice, while [Collins] was engaged in the performance of his official duties, ***". Marcello first went to trial in Laredo,

CLERK, U. S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
NOV 17 1971
V. BAILEY THOMAS, CLERK
BY DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CARLOS MARCELLO,

Petitioner,

V.

UNITED STATES,

Respondent.

CIVIL ACTION 71-L-1

b6
b7C

Memorandum and Order:

In the hope that he can overturn his conviction for violating 18 U.S.C. § 111, Carlos Marcello has moved a second time for relief under 28 U.S.C. § 2255. The sole question presented by the instant petition is whether petitioner's conviction, under the circumstances here present, was obtained in violation of the constitutional injunction that no "*** person shall be subject to the same offense to be twice put in jeopardy of life or limb, ***". Amend. 5, U.S. Const. Because the resolution of that issue must be unfavorable to the petitioner,

89-79-547

33

FD-36 (Rev. 5-22-64)

FBI

Date: 1/24/72

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL _____
(Priority)

TO : DIRECTOR, FBI (89-1333)

FROM : SAC, NEW YORK (89-98)

SUBJECT : CARLOS MARCELLO;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO: NO)

Enclosed for the Bureau and New Orleans is a sworn affidavit executed by SA PATRICK J. COLLINS, JR.

For the information of the Bureau, on 1/19/72, Assistant United States Attorney (AUSA) [redacted] Southern District of New York (SDNY), telephonically advised that he had been contacted on that date by [redacted] aka [redacted] FBI Number [redacted] and received allegations of the possible influencing of a judge in captioned matter.

[redacted] was interviewed by SA [redacted] on 1/20/72, when he advised that he is acquainted with an individual whose identity he would not reveal, but who was reputedly a confidant of CARLOS MARCELLO and [redacted] whom he described as a prominent wealthy steel magnate from Toledo, Ohio. [redacted] allegedly approached the United States District Court Judge who sentenced MARCELLO in the Assault of a Federal Officer case involving SA COLLINS regarding having MARCELLO's probation terminated. (According to [redacted] MARCELLO served six months of his sentence in the assault matter and was released on probation about eight months ago.)

"ENCLOSURE ATTACHED"

2 - Bureau (Encl. 1)
1 - Cleveland (Info.)
1 - Houston (89-45) (Info.)
1 - Los Angeles (Info.)
2 - New Orleans (87-79) (Encl. 1)
2 - New York

TMD:RM
(10)

ENCLOSURE REC- 45 89-1333-225

2 JAN 25 1972

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

59 FEB 14 1972

This judge was alleged to have told [redacted] that he needed a reason for terminating MARCELLO's probation. [redacted] allegedly within the last few weeks furnished the judge with an affidavit from an unidentified waitress in a bar in New Orleans, Louisiana. The affidavit from the waitress reportedly alleges that on the day of the assault by MARCELLO against SA COLLINS that SA COLLINS had been in an unidentified bar during the morning hours of that day, signed a tab indicating he had ordered approximately fifteen drinks. The affidavit is also supposed to have alleged that SA COLLINS was drunk when he left this bar. b6 b7C

[redacted] reputed source advised that on the basis of this affidavit the judge agreed to terminate MARCELLO's probation, and, if this has not already happened, in fact it is alleged it will happen on 1/24/72, when MARCELLO "returns from a trip abroad." b6 b7C

[redacted] stated that his source advised him that [redacted] is alleged to have organized crime connections in Ohio and invested hoodlum money in legitimate businesses.

[redacted] is also alleged to have had a five-count indictment against him brought through the Internal Revenue Service in Toledo, dismissed through the intervention of [redacted] former US Assistant Attorney General. [redacted] is further alleged to have brought [redacted] indictment up with US Attorney JOHN MITCHELL, an alleged friend of [redacted] but the Attorney General would have nothing to do with it. b6 b7C

MARCELLO is also alleged to have had a deportation proceeding against him dismissed but [redacted] reportedly had no details at this time regarding this matter.

Telephonic inquiry with New Orleans on 1/20/72, revealed that MARCELLO has not taken a trip abroad and is currently in the New Orleans area.

NY 89-98

Inquiry at the Cleveland Division disclosed that [redacted] is the [redacted] is associated with the hoodlum element in Toledo, is a heavy gambler, and has been convicted in the Northern District of Ohio for Conspiracy to Violate Obstruction of Proceedings (18 USC 1505), in a case investigated by the Internal Revenue Service. b6 b7C

[redacted] is reportedly exceptionally wealthy and that [redacted] the Town House Motel, a known hangout for hoodlums, including La Cosa Nostra (LCN) members. In addition, he owns several race horses and has in the past tried to buy a race track in Phoenix, Arizona (PX File 92-1234). b6 b7C

A review of NY files disclosed that [redacted] resides at the Beverly Hilton Hotel, Beverly Hills, California. He has been the subject of numerous Bureau investigations and has recently been convicted in two of them: b6 b7C

NY 87-54676 [redacted] aka [redacted] et al ITSP

NY 87-60092 [redacted] aka et al ITSP

He has been sentenced to three years imprisonment in the NY 87-60092 matter and will be sentenced in the NY 87-54676 matter on 2/11/72.

[redacted] is also the subject of another Bureau pending investigation in which he is expected to plead guilty under Rule 20 (NY 87-64908), (OO: Los Angeles). b6 b7C

He has the reputation of a confidence man.

Inquiry at Houston disclosed that in September, 1971, subject filed a motion to vacate the conviction. In December, 1971, the motion was denied by US District Court Judge JOHN V. SINGLETON, who gave subject ten days to file Notice of Appeal to the Fifth Circuit Court. In early January, 1972, subject filed another motion before Judge SINGLETON for permission to file the motion late.

NY 89-98

On 1/20/72, Judge SINGLETON granted permission to the subject to file the late motion before the Fifth Circuit Court.

A copy of SA COLLINS' affidavit is being furnished New Orleans inasmuch as New Orleans is Office of Origin in this matter. An additional copy is being maintained in NY file.

Information copies are being furnished Cleveland, Houston and Los Angeles in view of their interest in subject and others noted herein.

For the information of the Bureau, the allegations made by GRAY have reportedly been brought to the attention of [redacted] Assistant Attorney General, Criminal Division, US Department of Justice, by AUSA [redacted]

b6
b7C

1 Enclosure to Bureau (89-1333)

New York File 89-98

265

ENCLOSURE

89-1333-225

A F F I D A V I T

I, PATRICK J. COLLINS, JR., Special Agent of the Federal Bureau of Investigation, being duly sworn deposes and says as follows:

1. I am a Special Agent of the Federal Bureau of Investigation, and was so employed in the New Orleans, Louisiana Field Division on September 30, 1966.

2. I was not in any bar on September 30, 1966, in New Orleans, Louisiana, or any other city; ordered no alcoholic drinks, signed no tabs, nor consumed any alcoholic drinks.

Sworn to and subscribed
to before me this 24th day
of January, 1972.

[redacted]
Supervisory Agent

Special Agent
Patrick J. Collins, Jr.

b6
b7C

89-1333-3385

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-106

UNITED STATES GOVERNMENT

Memorandum

Tolson
Felt
Rosen
Mohr
Bishop
Miller, E.S.
Callahan
Casper
Conrad
Dalbey
Cleveland
Ponder
Bates
Waikart
Walters
Soyars
Tele. Room
Holmes
Gandy

TO : Mr. Cleveland

DATE: January 27, 1972

FROM : T. J. Emery

SUBJECT: CARLOS JOSEPH MARCELLO
SPECIAL AGENT PATRICK J. COLLINS, JR. - VICTIM
ASSAULT ON A FEDERAL OFFICER

The New York office was advised on January 19, 1972, by Assistant United States Attorney (AUSA) [redacted] Southern District of New York (SDNY) that he had been contacted by [redacted] residence Beverly Hilton Hotel, Beverly Hills, California, regarding an alleged attempt to influence a judge in the captioned matter to terminate Marcello's probation. b6 b7C

With reference to the captioned case, Carlos Marcello, "boss" of La Cosa Nostra (LCN) in New Orleans, was convicted on August 8, 1968, in United States District Court, Houston, Texas, on charge of assaulting FBI Agent Patrick J. Collins, Jr., at New Orleans airport on September 30, 1966, receiving a sentence of two years, which was reduced to six months plus six months' probation. He was committed to the Federal Medical Center, Springfield, Missouri, on October 14, 1970, because of a bad heart and a respiratory problem, where he served six months and was released on probation. EX-104 REC-15 87-1333-2210

[redacted] was interviewed by New York Agents on January 20, 1972, regarding this allegation and he related he was acquainted with an individual whose identity he would not reveal, but who was a confidant of Carlos Marcello and [redacted] who he described as a prominent, wealthy steel magnate from Toledo, Ohio. According to Zochowski, [redacted] allegedly approached the United States District Court judge who sentenced Marcello regarding having Marcello's probation terminated. The judge was alleged to have told [redacted] he needed a reason for terminating Marcello's probation. [redacted] reportedly furnished the judge an affidavit from an unidentified waitress in a bar in New Orleans, Louisiana, which alleges that on the day of the assault by Marcello against Special Agent Collins on September 30, 1966, Special Agent Collins was in an unidentified bar during the morning hours, signed a tab for a number of drinks and was drunk when he left the bar. b6 b7C

20 FEB 2 1972

Enclosure

PERS. REC. UNIT

1 - Mr. Rosen
1 - Mr. Mohr
1 - Mr. Cleveland
1 - Mr. Bates
1 - Mr. Callahan
1 - Mr. Emery
1 - Mr. Harwood

51 FEB 10 1972

WAH:rar (8)

CONTINUED - OVER

Memorandum to Mr. Cleveland
Re: Carlos Joseph Marcello

[redacted] further related [redacted] is also alleged to have indictments against him by the Internal Revenue Service (IRS), Toledo, Ohio, dismissed through the intervention of a former Assistant Attorney General, [redacted] is alleged to have brought the indictments to the attention of the Attorney General, an alleged friend of [redacted] but the Attorney General would have nothing to do with it. b6 b7C

[redacted] is a notorious stock and bond thief and confidence man, who has been convicted for violation of the Interstate Transportation of Stolen Property (ITSP) Statute and is currently awaiting trial in other ITSP cases. [redacted] a former Bureau informant was discontinued because of his unreliability and double dealing. b6 b7C

Cleveland Division advised that [redacted] is [redacted] Toledo, Ohio; is associated with the hoodlum element in Toledo, Ohio; is a heavy gambler; and, has been convicted in a case developed by IRS. b6 b7C

The Houston office has advised that attorneys for the subject have filed numerous motions in the recent past seeking to have Marcello's probation terminated. On January 20, 1972, United States District Court Judge Singleton, Houston, Texas, granted permission to the subject to file a late motion in the Fifth Circuit Court at New Orleans, Louisiana. No affidavit was located by either the Houston or New Orleans offices concerning the alleged claim of the unidentified waitress that Special Agent Collins had been drinking.

It will be recalled that another attempt by the notorious hoodlum, Carlos Marcello, alleging drinking on Special Agent Collins' part was refuted by Special Agent Collins by his testimony in court. Special Agent Collins has furnished an affidavit regarding this current allegation and denies same.

ACTION:

Attached letter for the Attorney General be approved advising him of this current allegation. New York noted that AUSA [redacted] has brought the details of this matter to the attention of Assistant Attorney General Petersen of the Criminal Division b6 b7C

OK 12- WVC RJE GEK JGH WBS

FBI

Date: 1/26/72

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIRMAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, HOUSTON (89-45)

RE: CARLOS MARCELLO;
SA PATRICK J. COLLINS, JR. -
VICTIM
AFO
OO: New Orleans

ReNYairtel to the Bureau 1/24/72.

Enclosed for the completion of the Bureau's file are Xerox copies of all motions, memoranda, responses and orders in this case since the sentencing of MARCELLO. The San Antonio office at Laredo has been requested to furnish those documents which are not on file in U. S. District Court at Houston.

No further action being taken by Houston in view of the order of the district court permitting MARCELLO to file subsequent appeals before the U. S. Fifth Circuit of Appeals in New Orleans, Louisiana.

"ENCLOSURE ATTACHED"

ENCLOSURE

2 - Bureau (enc 8)
1 - San Antonio
1 - Houston

REC-102

TJJ:mec
(4)

89-1333-227

6 FEB 7 1972

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

EDDINGTON & FRILOUX
ATTORNEYS AND COUNSELLORS AT L
1215 FIRST NATIONAL LIFE BUILDIN
HOUSTON, TEXAS 77002
227-4141

(12)

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

LAREDO DIVISION

CLERK, U. S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
JAN 20 1972
W. BAILEY THOMAS, CLERK
BY DEPUTY

b6
b7C

CARLOS MARCELLO,	§	
	§	
Petitioner	§	
	§	
V.	§	CIVIL ACTION NO. 71-L-1
	§	
UNITED STATES,	§	
	§	
Respondent	§	

ORDER

It is hereby ORDERED that the Defendant, CARLOS MARCELLO, be granted leave (pursuant to Rule 4(b) of the Federal Rules of Appellate Procedure) to file an appeal from the entry of judgment denying Defendant's Motion to Vacate and to discharge Defendant upon grounds of double jeopardy.

ENTERED this 20th day of January, 1972.

JOHN V. SINGLETON, JR.

District Judge

III.

That apparently a breakdown in communications occurred between the two attorneys for each of the lawyers determined that the other would file the Notice of Appeal.

IV.

That this error of the attorneys which should not be imputed to the defendant, who is blameless, falls within the excusable neglect provision of Rule 4 (b) of the Federal Rules of Appellate Procedure, which permits this Court to extend the time for filing a Notice of Appeal; for, all that a defendant can do if he has retained counsel is to instruct his attorneys to formalize his appeal and lawyer failure should not be assessed against a defendant who has an appeal as a matter of right. United States v. Johnson, D.C.MO. 1970, 315 F. Sup. 58.

b6
b7C

[redacted]
Warner Building
Washington, D. C. 20004

[redacted]
2111 Dauphine Street
New Orleans, Louisiana 70116

[redacted]
1215 First National Life Building
Houston, Texas 77002

ATTORNEYS FOR MOVER

C E R T I F I C A T E

I hereby certify that a copy of the foregoing Motion has been mailed, postage prepaid, to the office of the United States Attorney, Houston, Texas, this 30th day of November, 1971.

Cecil H. Burglass, Jr.

(11)

b6
b7C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLERK, U. S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
DEC 3 1971
W. BAILEY THOMAS, CLERK
BY DEPUTY:

CARLOS MARCELLO,	:	
	:	
Petitioner	:	
	:	
V.	:	CIVIL ACTION NO. 71-L-1
	:	
UNITED STATES,	:	
	:	
Respondent.	:	

MOTION TO PUT APPEAL AFTER TEN DAYS FROM
[illegible]
[illegible]
[illegible]

Carlos Marcello, through undersigned counsel, moves the Court to permit his appeal of the denial of a Motion to Vacate Judgment and to Discharge Defendant Upon Grounds of Double Jeopardy, entered by this Court on November 17, 1971, and in support of said motion, shows the Court:

I.

The denial of the Motion to Vacate Judgment and to Discharge Defendant Upon Grounds of Double Jeopardy was filed in the office of the Clerk of the United States District Court, Southern District of Texas, on November 17, 1971, and a copy of the Memorandum and Order denying said motion was received by [redacted], New Orleans, Louisiana, a counsel of record, but not by [redacted] Attorney at Law, Houston, Texas, who is also a counsel of record.

II.

That either on the 22nd or 23rd of November, 1971, the defendant advised [redacted] one of his attorneys, that he wished to appeal the ruling of the Court and pursuant to those instructions, [redacted] contacted telephonically [redacted] in Houston, Texas, to discuss the case and to arrange and provide for the requisite Notice of Appeal in accordance with Rule 4 of the Federal Rules of Appellate Procedure.

Marcello's petition for a writ of certiorari and that the Supreme Court denied certiorari on the same day it decided Sisson, supra. As concluded above, from an analysis of Sisson, supra, its principles are not of much help in this instance. But in any event, the circumstances under which certiorari was denied have little if any material bearing on the applicability vel non of Sisson, supra. When the Supreme Court denies certiorari, it imports nothing as to the merits of the case. All it means is that, for whatever reason, there were not four members of the court who wished to hear the case. Wright, Federal Courts, § 108, p. 495 (1970).

b6
b7C

The clerk is directed to file this Memorandum and Order and forward true copies to counsel of record.

DONE at Houston, Texas, this 17th day of December, 1971.

[redacted]

TRUE COPY I CERTIFY
ATTEST:
V. BAILEY THOMAS, Clerk

By [redacted]
Deputy Clerk

After the jury returned a verdict of guilty, the trial judge, based upon his view of the evidence presented, entered what he termed an arrest of judgment under Rule 34, Fed. Rules Crim. Proc. The government appealed under the arresting judgment provision of the Criminal Appeals Act, 18 U.S.C. § 3731, but the court held that regardless of what label the trial judge attached to his action, depending as it did on facts developed at Sisson's trial, the action taken was in legal effect a directed acquittal. It is similarly recognized here that the failure of Judge Connally to characterize his instructions to the jury does not necessarily preclude a finding that he directed an acquittal. It has been found, however, from an analysis of the circumstances under which the comments to the jury were made that these comments were no more than that and do not constitute an acquittal.

One final thought should be expressed. The government has contended that much significance should be attached to the fact that the double jeopardy question was raised in

intimidated Agent Collins, it cannot be held that the instruction to the jury was anything more than a comment on the evidence. It is interesting to note that it was specifically held on the appeal from petitioner's conviction that there was sufficient evidence to sustain a conviction for intimidation. United States v. Marcello, supra.

United States v. Jorn, 400 U.S. 470 (1971), relied upon by petitioner is not germane to any of the issues presented here. In that case, the court was concerned with when and under what circumstances a defendant could be retried after a mistrial had been declared not at his insistance at his previous trial. No contention is made here that Judge Connally abused his discretion in declaring a mistrial or that by virtue of the fact that a mistrial was declared petitioner could not be retried.

Neither can it be said that United States v. Sisson, supra, is controlling. Sisson was convicted for failing to submit for induction into the armed forces in violation of the Selective Service Act of 1967, 50 U.S.C. App. § 462(a).

a formal judgment of acquittal. It is true, as petitioner contends, that a verdict of acquittal, although not followed by a judgment, is a bar to a subsequent prosecution for the same offense. United States v. Sisson, U.S. , 38 L.W. 4616 (1970). It is not here held to the contrary, however, since the question is one of whether the effect the trial court's instruction resulted in an acquittal as a matter of law for the petitioner. Under the procedures presented in Rul2 29(a), Fed. Rules Crim. Proc., there is no such creature as a directed verdict of acquittal. If a verdict of acquittal is warranted by the lack of evidence of guilt, the proper procedure is not to direct a verdict of acquittal, as petitioner contends that the trial court did, but simply to enter a judgment of acquittal. Rule 32, Fed. Rules Crim. Proc. requires that the judgment shall be signed by the judge and entered by the clerk. There was no such action taken following the abortion of petitioner's first trial. Thus, in absence of a clear manifestation of the trial judge to acquit Marcello on the charge that he

> that I mean I am permitted to tell you which witnesses I think are credible and worthy of belief, or which ones are not. Or to tell you wherein I think the truth lies or even to tell you what verdict I think you should return.
>
> "I have no expectation of doing so, but I do instruct you if from my remarks you draw some conclusion or inference as to my own feelings about the credibility of the witnesses, or about the facts of the case, I do not intend it as an effort to tell you or to direct you as to what verdict you should return. The finding of the facts is your exclusive province and I have no desire to trespass upon it. You are at perfect liberty to disregard anything I say about the facts of the case or about the evidence that we have received or about the credibility of the witnesses."

In his statement to the jury telling them to disregard intimidation, the court carefully qualified his choice of words, i.e., "As I understand the Government's case, and the evidence which was offered, the evidence was not directed at showing ... intimidation ..."; "So I think for practical purposes, you may forget ... 'and intimidate' ..." (emphasis added). Another circumstance indicating the trial court's intention is the absence from the record of

The same considerations governing deliberate bypass of federal remedies apply with equal force here. It is those same considerations which warrant a finding the petitioner, under the circumstances of this case, has made abusive use of section 2255.

Another basis for denying relief is that the statement to the jury during the first trial does not rise to the dignity of a directed verdict, but is merely a comment on the strength of the evidence. Petitioner contends that the refusal of the trial judge to define intimidation conclusively shows that there was a directed verdict. This, however, is just one circumstance to be considered. Another circumstance is the following passage from an earlier portion of the charge clearly indicating that the court did not intend to direct a verdict:

> "You gentlemen of the jury are the exclusive judges of facts proved, of the credibility of the witnesses and of the weight to be given their testimony.
>
> "Now, I should tell you, too, in this court the Judge is permitted, if he sees fit to do so, to comment upon the evidence. By

been sufficiently met to enable consideration of that question. That abuse of the motion remedy is a reprehensible practice is beyond dispute. In Sanders v. United States, supra, the statement was made:

> "To say that it is open to the respondent to show that a second or successive application is abusive is simply to recognize that 'habeas corpus has traditionally been regarded as governed by equitable principles. United States ex rel. Smith v Baldi, 344 U.S. 561, 573 (dissenting opinion). Among them is the principle that a suitor's conduct in relation to the matter at hand may disentitle him to the relief he seeks. Narrowly circumscribed, in conformity to the historical role of the writ of habeas corpus as an effective and imperative remedy for detentions contrary to fundamental law, the principle is unexceptionable.' Fay v Noia, supra (372 US at 438). Thus, for example, if a prisoner deliberately withholds one of two grounds for federal collateral relief at the time of filing his first application, in the hope of being granted two hearings rather than one or for some other such reason, he may be deemed to have waived his right to a hearing on a second application presenting the withheld ground. The same may be true if, as in Wong Doo, the prisoner deliberately abandons one of his grounds at the first hearing. Nothing in the traditions of habeas corpus requires the federal courts to tolerate needless piecemeal litigation, or to entertain collateral proceedings whose only purpose is to vex, harass, or delay. (373 U.S. 17-18)

what his attorney either did or omitted to do. But here where it was apparent throughout the trial that Marcello was in close contact with his lawyers, it is inconceivable that he could have failed to participate in an important decision concerning appellate strategy after the trial when there was ample time for deliberation in such matters. Petitioner must be held to have deliberately bypassed the federal appellate remedy on this issue.

The government argues that relief should be denied because it has previously been decided adversely to petitioner. By the giving of the instruction on intimidation, petitioner's double jeopardy claim was necessarily rejected. A federal court on a section 2255 motion need not resolve issues it has already resolved.

By its contention that the matter has already been settled, the government is suggesting indirectly that petitioner has abused the section 2255 remedy. The burden of pleading this point is on the government, Sanders v. United States, 373 U.S. 1 (1963), and that burden has

ceedings. There was recognized, however, a limited discretion to deny relief on the basis of such a procedural default. This limited discretion in the federal habeas judge could be exercised only when there were circumstances present, discovered by holding a hearing or by some other means, indicating that the applicant personally had deliberately bypassed the orderly procedure of the state courts and in so doing had forfeited his state court remedies. In Kaufman v. United States, 394 U.S. 217 (1969), it became settled that the deliberate bypass concept applied also to proceedings under section 2255:

> "Furthermore, the § 2255 court may in a proper case deny relief to a federal prisoner who has deliberately bypassed the orderly federal procedures provided at or before trial and by way of appeal-- e.g., motion to suppress under Fed. Rule Crim. Proc. 41(e) or appeal under Fed. Rule App. Proc. 4(b)." (394 U.S. 227, n.8)

Clearly, the inference is inescapable that petitioner's attorney intentionally abandoned the double jeopardy contention on appeal. Courts, however, are reluctant -- and this one is no exception -- to hold a client in default for

Petitioner contends that the statement made to the jury at his first trial to the effect that the jury could disregard the intimidation portion of the indictment was a correct one. Thus, according to the petitioner, the charge to the jury at his second trial that they could convict him of intimidating agent Collins rendered that trial in violation of the Double Jeopardy Clause. There is no merit in these contentions.

Marcello's counsel objected to the intimidation instruction on the grounds that it was duplicitous and that it constituted double jeopardy. Although on appeal it was urged that the instruction was duplicitous, no further contention was made either on appeal from the conviction or in petitioner's first section 2255 motion that there was an unconstitutional trespass into his privilege against double jeopardy. In Fay v. Noia, 372 U.S. 391 (1963), it was held that the jurisdiction of federal courts on habeas corpus is not affected by procedural defaults incurred by the applicant during state court pro-

assault and intimidation were defined for the jury and it was made clear to them that they could convict if they found either that Marcello assaulted Collins or that Marcello intimidated Collins and in either event found the other elements of the offense to be present. Counsel for Marcello objected to this instruction on the grounds that it violated the double jeopardy provision and that it was duplicitous.

Subsequently, the conviction was affirmed. United States v. Marcello, 423 F.2d 993 (5th Cir. 1970), cert. den., 398 U.S. 959 (1970). Thereafter, Marcello moved for a new trial, which was denied on July 21, 1970. While the denial of the motion for new trial was on appeal, Marcello applied for relief under 28 U.S.C. § 2255. This was denied on September 3, 1970, and both the overruling of the motion for new trial and the denial of the motion to vacate were affirmed. United States v. Marcello, F.2d (5th Cir. 1971). Thereafter, Marcello filed the motion under section 2255 presently before the court.

Texas, on May 27, 1968, before Judge Ben C. Connally. In charging the jury, the court defined forcibly, assault, and willful, but did not define intimidation. When the jury was unable to reach a verdict, they were brought back into the courtroom for further instructions. The jury specifically requested the court to "again define and explain the definition of the following: assault and intimidate." The court responded in part:

> "...[A]s I understand the Government's case, and the evidence which was offered, the evidence was not directed at showing that there was any intimidation of Mr. Collins, but rather that there was an assault.
>
> "So I think for practical purposes you may forget the part 'and intimidate' and consider the indictment as though the charges were only as to assault.
>
> "That is what I had in mind when I instructed you yesterday and defined."

When the jury was still unable to reach a verdict, they were discharged and a mistrial was declared.

The retrial began before the undersigned judge in Houston, Texas, on August 5, 1968. Both the terms

his motion to vacate sentence under § 2255 will be, and is hereby, DENIED.

The statute under which petitioner stands convicted, 18 U.S.C. § 111, imposes punishment on whomever "forcibly assaults, resists, opposes, impedes, intimidates, or interferes with any person designated in section 1114 of this title while engaged in or on account of the performance of his official duties...". The incident out of which petitioner's conviction came about occurred at the airport in New Orleans, Louisiana, where petitioner had an altercation with an FBI agent engaged in the performance of his duties, a person protected by section 111. The indictment, originally filed in the Eastern District of Louisiana and transferred here on a change of venue, charged that Marcello did "forcibly assault and intimidate Patrick J. Collins, Jr., an officer of the Federal Bureau of Investigation of the Department of Justice, while [Collins] was engaged in the performance of his official duties, ***". Marcello first went to trial in Laredo,

(19)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLERK, U. S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
NOV 17 1971
V. BAILEY THOMAS, CLERK
BY DEPUTY: [redacted]

b6
b7C

CARLOS MARCELLO,

Petitioner,

V.

UNITED STATES,

Respondent.

CIVIL ACTION 71-L-1

Memorandum and Order:

In the hope that he can overturn his conviction for violating 18 U.S.C. § 111, Carlos Marcello has moved a second time for relief under 28 U.S.C. § 2255. The sole question presented by the instant petition is whether petitioner's conviction, under the circumstances here present, was obtained in violation of the constitutional injunction that no "*** person shall be subject to the same offense to be twice put in jeopardy of life or limb, ***". Amend. 5, U.S. Const. Because the resolution of that issue must be unfavorable to the petitioner,

any further benefit from a continuing supervision of the probationer.

Respectfully submitted,

[redacted]

Warner Building
Washington, D. C. 20004

[redacted]

2111 Dauphine Street
New Orleans, Louisiana

[redacted]

b6
b7C

1215 First National Life Bldg.
Houston, Texas 77002

ATTORNEYS FOR DEFENDANT

CERTIFICATE

I hereby certify that a copy of the foregoing Memorandum has been mailed, postage prepaid, to the office of the United States Attorney, Houston, Texas, this 27th day of October, 1971.

[redacted]

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

b6
b7C

UNITED STATES OF AMERICA	:	
	:	
VS.	:	CIVIL ACTION NO. 71-L-1
	:	
CARLOS MARCELLO	:	

MEMORANDUM IN SUPPORT OF
MOTION SEEKING A CHANGE OF THE PERIOD OF PROBATION
AND FOR TERMINATION OF PROCEEDINGS AGAINST DEFENDANT

This motion is brought pursuant to 18 USCA 3651 which provides in pertinent part:

> "The court may revoke or modify any condition of probation or may change the period of probation."

The power of this court to discharge the probationer and terminate the proceedings is stated in 18 USCA 3653 which provides:

> "When directed by the court, the probation officer shall report to the court, with a statement of the conduct of the probationer while on probation. The court may thereupon discharge the probationer from further supervision and may terminate the proceedings against him, or may extend the probation, as shall seem advisable."

The defendant has repeatedly declared that had he known that the federal agent was, in fact, an agent of the United States of America, the incident which resulted in his arrest and conviction would never have occurred. The record supports the fact that defendant could not have known the official status of the Federal Bureau of Investigation agent. The conviction of defendant of a technical assault could, in fact, only have resulted in five of the ten circuits which have ruled that knowledge of the official capacity of an agent is not an essential element of the offense. Unfortunately, the incident occurred in one of the five circuits which maintains that knowledge of the official capacity of an agent is not an essential element of the offense, and defendant was convicted.

We submit that justice is served by bringing to a conclusion all proceedings against the defendant who has obediently and with respect served his sentence.

We respectfully urge the court to exercise its power and conclude in its discretion that neither the government nor the probationer will have

CERTIFICATE

I hereby certify that a copy of the foregoing Motion has been mailed, postage prepaid, to the office of the United States Attorney, Houston, Texas, this 27th day of October, 1971.

[redacted]

b6
b7C

6. Defendant shows the Court that he was convicted of a technical assault against a federal agent whose identity was unknown to him and that his record will show that defendant has always respected federal officers as well as met every condition imposed upon him by the federal government and by federal courts and judges.

7. Defendant further shows the court that aside from the offense for which he was convicted, there remains no need for supervision. If the government believes defendant requires supervision for other alleged activity, defendant avers that he has for many years been supervised through the United States Department of Immigration and Naturalization, to which agency he is required to report on a monthly basis; therefore, the supervision of the probation officer is a duplication of effort insofar as the government is concerned.

b6
b7C

WHEREFORE, petitioner moves that the Court direct [redacted], New Orleans, Louisiana, to report to the Court with a statement of the conduct of the probationer while on probation and that the Court direct Mr. [redacted] to forward to the Court a statement of the prison authorities who may advise the Court as to defendant's conduct and deportment during his incarceration. Thereupon, defendant prays that the Court will change the period of probation to the date of the Court's decision, discharge the probationer from further supervision, and terminate the proceedings against him.

Respectfully submitted,

[redacted]

Warner Building
Washington, D. C. 20004

[redacted]

2111 Dauphine Street
New Orleans, Louisiana

ATTORNEYS FOR DEFENDANT

(6)

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA	:	
	:	
VS.	:	CIVIL ACTION NO. 71-L-1
	:	
CARLOS MARCELLO	:	

MOTION SEEKING A CHANGE OF THE PERIOD OF PROBATION AND FOR TERMINATION OF PROCEEDINGS AGAINST DEFENDANT

Carlos Marcello, through [redacted], his attorney, moves the court to change the period of probation to actual time served and to actual time under the supervision by his probation officer. In support of said motion, defendant shows the court:

b6
b7C

1. Carlos Marcello was sentenced to serve one year, of which six months was suspended; defendant also to be placed on probation for two years.

2. On October 24, 1970, defendant began to serve his sentence and was released on March 12, 1971. Defendant returned to his domicile as directed and from that time until the present date, defendant has been supervised by [redacted] in the City of New Orleans, State of Louisiana.

3. This motion is brought pursuant to 18 USCA 3651 and 18 USCA 3653.

4. While confined, defendant was a model prisoner and, following his release, has met all of the terms of his probation.

5. The offense for which Carlos Marcello was convicted is not a crime of moral turpitude and since the offense for which he was convicted is an assault, defendant shows the court that he has no prior record of violence nor has he been engaged in any activity which would indicate that the offense would be repeated.

statute; 18 USC 111, prescribes two different offenses, and further stated:

"One might be guilty of one or the other or both." Precisely, and in the second trial, the jury could easily have found that "intimidation" had occurred and not "assault".

However, the government could not constitutionally re-try defendant for "intimidation" without twice placing him in jeopardy in that separate offense.

The motion should be granted and defendant discharged.

Respectfully submitted,

[redacted]
Warner Building
Washington, D. C.

[redacted]
2111 Dauphine Street
New Orleans, Louisiana

[redacted]
1215 First National Life Building
Houston, Texas

b6
b7C

CERTIFICATE OF SERVICE

I certify that a true copy of this Memorandum has been mailed postage pre-paid, to the office of the United States Attorney, Houston, Texas, on this ___day of January, 1971.

[redacted]

> "Quite apart from the statute, it is, of course, well settled that an acquittal can "not be received, on error or otherwise, without putting [the defendant] twice in jeopardy, and thereby violating the constitution.
> * * * [I]n this country a verdict of acquittal, although not followed by any judgment, is a bar to a subsequent prosecution for the same offense.
>
> * * *
>
> ... in this case, it was the judge not the jury who made the factual determinations. This difference alone does not support a legal distinction, however, for judges, like juries, can acquit defendants."

The Court also stated:

> "... except for decisions arresting judgment, there can be no governmental appeals from decisions rendered after the trial begins."

In the Marcello case, Judge Connolly's ruling and advice to the jury, "So I think for practical pruposes you may forget the part 'and intimidate' and consider the indictment as though the charges were only as to assault," amounts to a judgment of acquittal on the charge of intimidation.

Assuming arguendo, that the jury's verdict, following Judge Connolly's ruling and charge to the jury, had been for the defendant. Could the government have then tried the defendant again for the offense of "intimidation", upon the grounds that the Court had removed it from consideration by the jury, and therefore, jeopardy did not occur? Of course not. The Supreme Court has ruled that jeopardy has occurred. The District Judge has the authority to acquit, which he did, by whatever device he chose. In this case, Judge Connolly believed that the government had enough evidence to go to the jury on "assault", and consequently, he overruled a motion for a judgment of acquittal, but he charged the jury to forget about "intimidation," following which the government cannot again place defendant in jeopardy for the separate crime of intimidation, which it did.

The Fifth Circuit Court of Appeal in United States v. Marcello, 423 F. 2d 993 (5th Cir. 1970), ruled that the

(2)

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA

V.

NO. 71-L-T

CARLOS MARCELLO

b6
b7C

MEMORANDUM IN SUPPORT OF
MOTION TO VACATE JUDGMENT
AND TO DISCHARGE DEFENDANT
UPON GROUNDS OF DOUBLE JEOPARDY

This Court erred in its determination that double jeopardy had not occurred in the second Marcello trial for assaulting and intimidating a federal officer. Ashe v. Swenson, 90 S. Ct. 1189 (1970), Green v. United States, 355 U.S. 184 (1957), Street v. New York, 394 U.S. 576 (1969), Giordenello v. United States, 357 U.S. 480 (1958) and United States v. Leggett, 312 F. 2d 566 (4th Cir., 1962) seemed in our favor, particularly Ashe.

The recent case of United States v. Sisson, 90 S. Ct. 2117 (1970) is conclusively in our favor and it is evident that double jeopardy occurred. In that case, following a jury verdict of guilty, the Court, designating its action to be an arrest of judgment, overturned the conviction. The Supreme Court, Mr. Justice Harlan, after deciding that the District Court had incorrectly tagged his action, i.e., in arrest of judgment, decided that the Court's decision was in fact an "acquittal rendered by the Trial Judge after the jury's verdict of guilty."

Here, it should be noted that the government was appealing this decision allegedly in arrest of judgment, but in reality, says the Supreme Court, a judgment of acquittal. In denying itself jurisdiction, as well as the government's right to appeal, the Court stated:

b6
b7C

CERTIFICATE OF SERVICE

I certify that a true copy of this Motion to Vacate Judgment has been mailed, postage pre-paid, to the office of the United States Attorney, Houston, Texas, on this ___ day of January, 1971.

[redacted]

10.

The defendant shows the court that 28 USC 2255 permits a Motion for Relief to be made at any time. Since the issues herein involved do not require findings of fact but only conclusions of law, it is not necessary that the evidenciary hearing occur nor is it necessary, if the Court permits argument on the motion, that the defendant be present at the argument or hearing. Further, it is shown to the Court that the relief granted in this motion has never been requested before in any previous motions under 28 USC 2255 or upon an application for a writ of habeas corpus in any other court. The defendant, pursuant to the statute, is entitled to a prompt hearing which, if justice is to be done here, should be granted since the defendant is a prisoner in a federal penal institution whose sentence will have been completely served on March 14, 1971.

b6
b7C

11.

The defendant moves the Court to vacate the judgment of defendant, reverse his conviction and discharge him.

Respectfully submitted,

[redacted]

Warner Building
Washington, D. C.

[redacted]

2111 Dauphine Street
New Orleans, Louisiana

[redacted]

1215 First National Life Building
Houston, Texas

a. Objection that it was improper to submit the two offenses of assault and intimidation to the jury under a one count indictment which is duplicity (R. 1324-29) and

b. Objection that the submission of the issue of intimidation to the jury at the second trial constituted double jeopardy violative of defendant's rights guaranteed by the Fifth Amendment to the Constitution. (R-1284).

5.

The jury returned a verdict of guilty, but it is pure speculation as to whether the jury decided that defendant was guilty of assault, of intimidation, or both, the Court having charged the jury that either was sufficient to bring in a verdict of guilty.

6.

The government concedes it does not know whether or not the defendant was found guilty of assault, of intimidation, or both, and the Fifth Circuit Court of Appeals has held that the two are separate offenses. United States v. Marcello, 423 F. 2d 993 (5th Cir., 1970).

7.

The Court's ruling permitting the jury to consider the issue of intimidation was error, prejudicial error.

8.

Not before this Court at the time it ruled that "intimidation" should go to the jury was the decision of United States v. Sissons, 90 S. Ct. 2117 (1970) decided by the Supreme Court of the United States on June 29, 1970.

9.

That decision would have been decisive as to the right of defendant to assert, as he did, objections to Fifth Amendment violations of double jeopardy and duplicity.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

UNITED STATES OF AMERICA

V. NO. 71-L-

CARLOS MARCELLO

b6
b7C

MOTION TO VACATE JUDGMENT AND TO DISCHARGE DEFENDANT UPON GROUNDS OF DOUBLE JEOPARDY

1.

Jurisdiction, venue, and timeliness of this motion lie from the authority of 28 USC 2255.

2.

The defendant was tried for the offenses, under 18 USC 111, specifically, as per indictment, of assaulting and intimidating a federal officer, in Laredo, Texas, United States District Court, Judge Connolly, resulting in a hung jury and mistrial on May 29, 1968 (R. 692).

3.

However, after the trial had begun and following the taking of all evidence in the case, Judge Connolly refused to permit the jury to consider the question of "intimidation", charging the jury solely on the offense of "assault", thereby directing a verdict for the defendant on the offense of "intimidation".

4.

The defendant was re-tried in the United States District Court, in Houston, Texas, Judge Singleton, for the same offenses, assault and intimidation of a federal officer. In violation of the double jeopardy provision of the Fifth Amendment of the Constitution, the Court permitted the jury to pass upon the offense of intimidation, over two objections:

10. 11-17-71: (JVS) MEMORANDUM AND ORDER, filed and entered, denying motion to vacate sentence under 2255. Parties notified.

12-3-71: MOTION TO FILE APPEAL AFTER TEN DAYS FROM ENTRY OF ORDER DENYING A MOTION BUT WITHIN THIRTY DAYS OF THE EXPIRATION OF THE TIME PRESCRIBED IN RULE 4 OF THE FEDERAL RULES OF APPELLATE PROCEDURE, filed.

1-20-72: (JVS) ORDER, filed and entered, granting motion for leave to file an appeal from the entry of judgment denying Defendant's Motion to Vacate and to Discharge Defendant upon grounds of double jeopardy. Parties notified.

b6
b7C

CIVIL ACTION CALENDAR LAREDO Division, Judge BEN C. CONNALLY

NO. 71-L-1

CARLOS MARCELLO, PLAINTIFF.

VS.

UNITED STATES OF AMERICA, DEFENDANT.

Filed JAN 25 1971, 19.... Object of Suit: Motion to Vacate Sentence in Cr. No. 68-L-89, Title 28, Sec. 2255, USCA.

ATTORNEYS:

[redacted] Warner Bldg., Washington, D.C.
2111 Dauphine Street, New Orleans, La. for Plaintiff.
[redacted] 1215 First National Life Bldg., Houston, Texas
[redacted] Box 61129, Houston 77061. for Defendant.

PROCEEDINGS:

1. 1/25/71: Petitioner's Motion to Vacate Judgment and Sentence filed. (Returnable February 25, 1971).

2. " " " Memorandum in Support of Motion to Vacate Judgment and to Discharge Defendant Upon Grounds of Double Jeopardy filed.

3. 2-25-71: Respondent's Answer to Motion to Vacate Judgment & to Discharge Defendant Upon Grounds of Double Jeopardy, filed.

4. 2-25-71: Respondent's Memorandum in Support of Answer to Motion to Vacate Judgment, filed.

5. 3-12-71: Petitioner's Response to Memorandum in Support of Answer, filed.

6. 10-28-71: Motion Seeking a Change of the Period of Probation and for Termination of Proceedings Against Defendant, filed.

7. 10-28-71: Memorandum in Support of Motion Seeking a Change of the Period of Probation and for Termination of Proceedings Against Defendant, filed.

8. 11-15-71: Notice to Submit Motion and Certificate of Service on Motion Seeking a Change, Etc., filed.

9. 11-15-71: Notice to Submit Motion and Certificate of Service on Motion to Vacate Judgment, Etc., filed.

9a. 11-16-71: Defendant's request for oral hearing on Motion to Vacate Judgment and to Discharge Defendant upon Grounds of Double Jeopardy and Motion Seeking a Change of the Period of Probation and for Termination of Proceedings Against Defendant is DENIED. JVSJR. Parties notified.

(over)

FD-36 (Rev. 5-22-64)

F B I

Date: 2-2-72

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, HOUSTON (89-45)(RUC)

SUBJECT: CARLOS JOSEPH MARCELLO;
SPECIAL AGENT PATRICK J. COLLINS, JR. - VICTIM
ASSAULT ON A FEDERAL OFFICER
(OO:NO)

Re Bu atl to NO, 1-27-72;
Re HO atl to Bu, 1-26-72.

Enclosed for San Antonio is one (1) copy of New York airtel to Bureau 1-24-72 and Bureau airtel to New Orleans 1-27-72.

For information of the Bureau and OO, AUSA [redacted] SDT, Houston, Texas, advised the complete file concerning the appeal of MARCELLO is located in the U.S. District Clerk's Office, Laredo, Texas. There is an incomplete memorandum file located in the U.S. District Clerk's Office, Houston, Texas, however, it does not contain copies of all documents. b6 b7C

REC-11 89-1333-229

EX-103

The Houston Division obtained on 1-26-72, xerox copies of the eight documents located in the memorandum file, U.S. District Clerk's Office, Houston, Texas and forwarded same to the Bureau in referenced Houston airtel. The San Antonio Office was requested to furnish to the Bureau copies of those documents which are not on file in the U.S. District Clerk's Office, Houston, Texas.

LEADS

1 FEB 5 1972

SAN ANTONIO:
AT LAREDO, TEXAS

Will follow this matter closely and keep the Bureau advised of any pertinent developments in the appeal of this case.

2 - Bureau
2 - San Antonio (Enc. 2)
2 - New Orleans (89-79)
1 - Houston
JJD:bl
(7)

UNRECORDED COPY FILED IN

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

GPO : 1970 O - 402-735

FD-36 (Rev. 5-22-64)

F B I

Date: 2/1/72

Transmit the following in _____
(Type in plaintext or code)

Via AIRTEL AIR MAIL
(Priority)

TO: DIRECTOR, FBI (89-1333)

FROM: SAC, NEW ORLEANS (89-79) (P)

CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO: NEW ORLEANS)

ReNOairtel to Bureau 1/28/72.

On 1/31/72 IC [redacted] searched the records of the U.S. Fifth Circuit Court of Appeals re captioned case. He was advised by Mr. [redacted] Deputy Clerk, U.S. Fifth Circuit Court of Appeals, New Orleans, that the Record of Appeal of captioned case was filed with the Fifth Circuit Court of Appeals at New Orleans on 1/28/72. This Record of Appeal contained all of the information and records previously filed in the Southern District of Texas.

b6
b7C

The defense attorneys have 35 days from 1/28/72 to file the defense brief, and following this, the USA has an additional 20 days to file the Government's response.

No affidavits re any allegations made against SA PATRICK J. COLLINS, JR. as outlined in NYairtel to Bureau 1/24/72 are contained in these records.

New Orleans will advise the Bureau of any pertinent developments.

REC-30 89-1333-228

EX-102

6 FEB 3 1972

(2) - Bureau (RM)
2 - New Orleans
HVH:nmb
(4)

Approved: _____ Sent _____ M Per _____
Special Agent-in Charge

GPO : 1970 O - 402-735

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (88-1333) DATE: 3/10/72

FROM : SAC, NEW ORLEANS (88-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(CC: NEW ORLEANS)

Reference to Bureau, 2/1/72.

Enclosed for the Bureau is one copy of Brief #72-1209, which was filed 3/3/72 with the U.S. Fifth Circuit Court of Appeals, New Orleans, La.

New Orleans will advise the Bureau of any additional pertinent developments.

REC 25 230

MAR 10 1972

2 - Bureau (Enc. 1)
2 - New Orleans
(AM):mab
(4)

SIX

UNIFORM CR. REC.

ENCLOSURE TO THE BUREAU (1)
Bufile 89-1333
NO 89-79
Letter dated 3/10/72

5

89-[illegible]-230

ENC[illegible]

89-1333-230

Scofields' Quality Printers, Inc. — New Orleans, La.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 72-1209

UNITED STATES OF AMERICA,
Respondent-Appellee,
versus

CARLOS MARCELLO,
Defendant-Appellant.

On Appeal From Denial Of Relief On Motion Under 28 USC 2255 By The United States District Court Southern District Of Texas

BRIEF OF DEFENDANT-APPELLANT

[redacted]
Warner Building
Washington, D.C.

[redacted]
2111 Dauphine Street
New Orleans, Louisiana 70116
Attorney for Defendant-Appellant

b6
b7C

U. S. COURT OF APPEALS
FILED
MAR 3 1972
EDWARD W. WADSWORTH
CLERK

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED 1

JURISDICTION 2

STATEMENT OF THE CASE 2

ARGUMENT 7

APPENDIX A
Proposed Instruction of Government Relative to Offense of Intimidation 1a

APPENDIX B
Complete instructions of Laredo District Court to Jury 3a

APPENDIX C
28 USC 2255 Motion, subject of this appeal 24a

APPENDIX D
Government's answer to 28 USC 2255 motion .. 29a

AUTHORITIES

A. Cases

Fay v. Noia, 372 U.S. 267 (1970) 11

Green v. United States, 355 U.S. 184 (1957) 13

Kaufman v. United States, 39 U.S. 222 (1969) .. 8, 9

Sanders v. United States, 373 U.S. 1 (1963) 7

United States v. Jorn, 400 U.S. 470 (1970) 13

United States v. Lewis, 392 & 2d 440 (C.A. 4, 1968) 9

United States v. Marcello, 423 f.2d 993 (C.A. 5, 1970) 13

United States v. Sisson, 397 U.S. 267 (1970) 11

89-1333-230

AUTHORITIES (Continued)

Page

Wade v. Hunter, 336 U.S. 644 (1949) 13

B. Constitutional Citations

Amend. 5, U.S. Const. 1

C. Statutes

28 USC 2255 ..... 2, 6, 7, 8, 9

18 USC 111 ..... 2, 11, 13

D. Rules

Rule 30, Fed. Rules Crim. Proc. 18 USC 12

Rule 29 (b, c) Fed. Rules Crim. Proc., 18 USC .. 11

in a single count against the petitioner. In consequence, no question of duplicity is or could be presented.

PREMISES CONSIDERED, respondent prays that the petition be in all things denied.

[redacted]
United States Attorney

[redacted]
Assistant United States Attorney

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Answer was mailed to each of the following on the 25th day of February, 1971, by certified mail, return receipt requested:

[redacted]
Warner Building
Washington, D. C. 20004

[redacted]
2111 Dauphine Street
New Orleans, La. 70116

[redacted]
1215 First National Life Bldg.
Houston, Texas 77002

[redacted]
Assistant United States Attorney

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 72-1209

b6
b7C

UNITED STATES OF AMERICA,
Respondent-Appellee,

versus

CARLOS MARCELLO,
Defendant-Appellant.

On Appeal from Denial of Relief on Motion under 28 USC 2255 by the United States District Court Southern District of Texas

BRIEF OF DEFENDANT-APPELLANT

QUESTIONS PRESENTED

1. Whether the defendant-appellant has the right to bring the motion pursuant to 28 USC 2255, or whether he is guilty of abuse of the motion.

2. Whether defendant-appellant's conviction was obtained in violation of the constitutional injunction that "* * * no person shall be subject to the same offense to be twice put in jeopardy of life or limb, * * *." Amend. 5, U.S. Const.

JURISDICTION

During his incarceration in a federal penal institution, Marcello filed the 28 USC 2255 which is the subject of this appeal. The District Court, contrary to the dictates of section 2255, delayed judgment for approximately one year, in fact, until Marcello had been released from prison. However, Marcello still remains subject to a suspended sentence and is supervised by federal probation officers. The District Court denied relief and Marcello appeals.

STATEMENT OF THE CASE

The statute under which appellant stands convicted, 18 USC 111, imposes punishment on whomever "forcibly assaults, resists, opposes, impedes, intimidates, or interferes with" a federal officer while engaged in or on account of his official duties. The incident out of which appellant's conviction came about occurred at the airport in New Orleans, Louisiana, where appellant had an altercation with a disguised FBI agent, a person protected by Section 111. The indictment, originally filed in the Eastern District of Louisiana, was transferred on a change of venue to the Southern District of Texas, Laredo Division, and charged that Marcello did "forcibly assault and intimidate Patrick J. Collins, Jr., an officer of the Federal Bureau of Investigation of the Department of Justice, while (Collins) was engaged in the performance of his official duties * * *." Marcello went to trial in Laredo, Texas, on May 27, 1968, before Judge Ben C. Connally. Presumably pursuant to Rule 30, Federal Rules of Criminal

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

CARLOS MARCELLO,
Petitioner,
CIVIL ACTION
versus No. 71-L-1

UNITED STATES OF AMERICA,
Respondent.

ANSWER TO MOTION TO VACATE JUDGMENT AND TO DISCHARGE DEFENDANT UPON GROUNDS OF DOUBLE JEOPARDY

Comes now the United States of America, respondent herein, and in opposition to the motion pursuant to Title 28 U.S.C. §2255 would show the following:

I

There was no implied acquittal of any charge as a result of the mistrial which occurred on May 29, 1968. In consequence, no question of double jeopardy is or could be presented.

II

To "assault" and to "intimidate" within the meaning of Title 18 U.S.C. §111 do not constitute two separate offenses but are merely different methods of committing the same offense, which was charged

(Signed) [redacted]

2111 Dauphine Street
New Orleans, Louisiana

[redacted]

1215 First National Life
Building
Houston, Texas

CERTIFICATE OF SERVICE

I certify that a true copy of this Motion to Vacate Judgment has been mailed, postage pre-paid, to the office of the United States Attorney, Houston, Texas, on this __ day of January, 1971.

[redacted]

b6
b7C

Procedure, 18 USC; the government proposed instructions to be given to the jury. (See Appendix A.) The pertinent government request is as follows:

"Government's Requested Instruction No. 2

(Definitions)

> You will note that the indictment and the statute which has been read to you uses certain words such as forcibly, assault and intimidate. I will now define these words for you as follows:
>
> * * * Intimidate means to make timid or fearful, to inspire or affect one with fear; to deter or overawe a person."

The government's request for this instruction was rejected by the trial judge, who is obligated by Rule 30 to "instruct the jury after the arguments are completed." In charging the jury the court defined *forcibly, assault* and *wilful,* but did not refer to the offense of intimidation at any point in his charge other than to read 18 USC 111 to the jury. (See Appendix B.) The case went to the jury the afternoon of May 28, 1968. The jury was unable to reach a verdict and Judge Connally retired the jury until the morning of May 29, 1968. Sometime during that day, the jury sent a note to the court. The jury returned to the court room and Judge Connally instructed them as follows:

"THE COURT:
Mr. Foreman, you gentlemen have written me a note reading as follows: 'The jury wishes that the Honorable Judge again define and explain the definition of the following: Assault and intimidate.'

Because I gave these instructions more or less off the cuff, and what I have said to you, I do not write it down, I'm going to ask the court reporter to read back what I said yesterday because I probably couldn't say it the same way the second time precisely.

One point which may be of importance and which perhaps I should have told you yesterday is this, you use the term 'assault and intimidate' and I am sure you do so because I think that is what the indictment charges.

The statute which I read to you on which the prosecution is based reads: Whoever forcibly assaults, resists, opposes, impedes, intimidates or interferes with any person designated in the other section, which has, as I said, the inclusion of the F.B.I. Agent while engaged in or in the performance of his duties violates the law.

These various verbs, assault, resist, opposes, impedes, are all included in the statute.

Fifth Amendment violations of double jeopardy and duplicity.

10.

The defendant shows the court that 28 USC 2255 permits a Motion for Relief to be made at any time. Since the issues herein involved do not require findings of fact but only conclusions of law, it is not necessary that the evidenciary hearing occur nor is it necessary, if the Court permits argument on the motion, that the defendant be present at the argument or hearing. Further, it is shown to the Court that the relief granted in this motion has never been requested before in any previous motions under 28 USC 2255 or upon an application for a writ of habeas corpus in any other court. The defendant, pursuant to the statute, is entitled to a prompt hearing which, if justice is to be done here, should be granted since the defendant is a prisoner in a federal penal institution whose sentence will have been completely served on March 14, 1971.

11.

The defendant moves the Court to vacate the judgment of defendant, reverse his conviction and discharge him.

Respectfully submitted,

(Signed) [redacted] b6 b7C

Washington, D. C.

5.

The jury returned a verdict of guilty, but it is pure speculation as to whether the jury decided that defendant was guilty of assault, of intimidation, or both, the Court having charged the jury that either was sufficient to bring in a verdict of guilty.

6.

The government concedes it does not know whether or not the defendant was found guilty of assault, of intimidation, or both, and the Fifth Circuit Court of Appeals has held that the two are separate offenses. *United States v. Marcello*, 423 F. 2d 993 (5th Cir., 1970).

7.

The Court's ruling permitting the jury to consider the issue of intimidation was error, prejudicial error.

8.

Not before this Court at the time it ruled that "intimidation" should go to the jury was the decision of *United States v. Sissons*, 90 S. Ct. 2117 (1970) decided by the Supreme Court of the United States on June 29, 1970.

9.

That decision would have been decisive as to the right of defendant to assert, as he did, objections to

The Government need not prove that the defendant did all of those things, and while the indictment charges that the defendant assaulted and intimidated, it need not prove both. It would be sufficient if the proof showed beyond a reasonable doubt that the defendant assaulted or intimidated, *and as I understand the Government's case, and the evidence which was offered, the evidence was not directed at showing that there was any intimidation of Mr. Collins, but rather that there was an assault.*

So I think for practical purposes you may forget the part 'and intimidate' and consider the indictment as though the charges were only as to assault.

That is essentially what I had in mind when I instructed you yesterday and defined.

Now, beginning at that point, Mr. Reporter, continue until I tell you to stop.

(Portion of the charge read.)

THE COURT:
Have we read far enough to cover what troubled you gentlemen? All right, you may retire."

The jury was unable to reach a verdict and a mistrial was declared.

Marcello was retried beginning August 5, 1968, in the Southern District of Texas, Houston Division, before Judge John Singleton and a jury, on the same charge of assaulting and intimidating the federal agent. Judge Singleton instructed the jury, defining assault and intimidation, and charged that the jury could convict if they found either that Marcello assaulted Collins or that Marcello intimidated Collins. Counsel for Marcello objected to this instruction on the grounds that it violated the double jeopardy provision and that it was duplicitous. Marcello was convicted and sentenced to two years in prison, and a fine of $5,000.00.

Subsequently, the conviction was affirmed. *United States v. Marcello*, 423 F. 2d 993 (5th Cir., 1970); cert. den., 398 U.S. 959 (1970). Thereafter, Marcello moved for a new trial which was denied on July 21, 1970. While the denial of the motion for a new trial was on appeal, Marcello applied for relief under 28 USC 2255 on several grounds, none of which were related to the issue of former jeopardy. At the same time, Marcello prayed that the court reduce his sentence. The court denied the section 2255 motion but granted Marcello relief by reducing his sentence to one year imprisonment, six months of which were suspended, probation and a fine. Marcello was imprisoned. While Marcello was in prison on the appeal from the denial of the initial section 2255 motion was argued, and later affirmed.

During Marcello's incarceration, the section 2255 motion which is the subject of this appeal was filed in the Southern District of Texas. Approximately one year later, after Marcello had completed serving his

3.

However, after the trial had begun and following the taking of all evidence in the case, Judge Connolly refused to permit the jury to consider the question of "intimidation", charging the jury solely on the offense of "assault", thereby directing a verdict for the defendant on the offense of "intimidation".

4.

The defendant was re-tried in the United States District Court, in Houston, Texas, Judge Singleton, for the same offenses, assault and intimidation of a federal officer. In violation of the double jeopardy provision of the Fifth Amendment of the Constitution, the Court permitted the jury to pass upon the offense of intimidation, over two objections:

a. Objection that it was improper to submit the two offenses of assault and intimidation to the jury under a one count indictment which is duplicity (R. 1324-29) and

b. Objection that the submission of the issue of intimidation to the jury at the second trial constituted double jeopardy violative of defendant's rights guaranteed by the Fifth Amendment to the Constitution. (R-1284).

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

No. _____

UNITED STATES OF AMERICA

versus

CARLOS MARCELLO

MOTION TO VACATE JUDGMENT AND TO DISCHARGE DEFENDANT UPON GROUNDS OF DOUBLE JEOPARDY

1.

Jurisdiction, venue, and timeliness of this motion lie from the authority of 28 USC 2255.

2.

The defendant was tried for the offenses, under 18 USC 111, specifically, as per indictment, of assaulting and intimidating a federal officer, in Laredo, Texas, United States District Court, Judge Connolly, resulting in a hung jury and mistrial on May 29, 1968 (R. 692).

jail sentence, the District Court denied the motion and Marcello appeals therefrom. Marcello is at the present time being supervised on probation.

ARGUMENT

1.

Marcello Had The Right to Bring The Motion Under 28 USC 2255

The district court declared that appellant had abused the use of 28 USC 2255.

The burden of pleading this point is on the government. *Sanders v. United States*, 373 U.S. 1(1963). The government filed an answer to the motion. (Appendix D).

The government did not plead the point. However, in its memorandum in support of its answer, the government states that the section 2255 motion relative to the issue of double jeopardy is an attempt to "again raise questions determined adversely to the petitioner by (the District) Court and by the Court of Appeals for the Fifth Circuit, 423 F. 2d 993 (C.A. 5, 1970). The government, in its memorandum further states these "questions were also raised in petitioner's application to the Supreme Court for a writ of certiorari."

The District Court seized upon the language of the government's memorandum filed in support of its answer and erroneously ruled that the government in-

directly pleaded in its memorandum abuse of the section 2255 motion.

Since the government failed to *plead* abuse of section 2255, the issue was not properly before the court. Be that as it may, the District Court's finding of abuse of the motion weighs heavily upon counsel. This appeal was perfected and is being urged only after careful consideration and reflection, and only because no abuse of the motion was or is intended. Firmly convinced that no abuse exists, we proceed.

The twofold basis for denial of relief for abuse of the section 2255 motion are (1) previous failure to urge the double jeopardy issue and (2) Marcello's *personal* approval of the deliberate bypass of the double jeopardy issue. The district court is incorrect on both items.

The issue of double jeopardy was raised by counsel's objection at the Houston trial, urged upon appeal to the Fifth Circuit in the motion for rehearing and hearing en banc (p. 11, No. 26773, Fifth Circuit) and in the petition for certiorari to the Supreme Court. There is no question that we did not urge the point in the first section 2255 motion.

A. This section 2255 motion was filed while Marcello was imprisoned. (See Appendix C) The same remedies afforded prisoners under habeas are available under 28 USC 2255. *Kaufman v. United States*, 39 U.S. 222, 89 S. Ct. 1068 (1969). "The underlying purpose of 2255 is to remove the possibility of the survival of an injus-

Those various verbs, assault, resist, opposes, impedes, are all included in the statute.

The Government need not prove that the defendant did all of those things, and while the indictment charges that the defendant assaulted and intimidated, it need not prove both. It would be sufficient if the proof showed beyond a reasonable doubt that the defendant assaulted or intimidated, and as I understand the Government's case, and the evidence which was offered, the evidence was not directed at showing that there was any intimidation of Mr. Collins, but rather that there was an assault.

So I think for practical purposes [489] you may forget the part "and intimidate" and consider the indictment as though the charges were only as to assault.

That is essentially what I had in mind when I instructed you yesterday and defined.

Now, beginning at that point, Mr. Reporter, continue until I tell you to stop.

(Portion of the charge read.)

THE COURT:

Have we read far enough to cover what troubled you gentlemen? All right, you may retire.

PROCEEDINGS

May 29, 1968

(The following proceedings were had within the presence and hearing of the jury.)

THE COURT:

Mr. Foreman, you gentlemen have written me a note reading as follows: "The jury wishes that the Honorable Judge again define and explain the definition of the following: Assault and intimidate."

Because I gave these instructions more or less off the cuff, and what I have said to you, I do not write it down, I'm going to ask the court reporter to read back what I said yesterday because I probably couldn't say it the same way the second time precisely.

One point which may be of importance and which perhaps I should have told you yesterday is this, you use the term "assault and intimidate" and I am sure you do so because I think that is what the indictment charges.

The statute which I read to you on [488] which the prosecution is based reads: Whoever forcibly assaults, resists, opposes, impedes, intimidates or interferes with any person designated in the other section, which has, as I said, the inclusion of the F. B. I. Agent while engaged in or in the performance of his duties violates the law.

tice beyond trial and appeal." *United States v. Lewis*, 392 F. 2d 440, (C.A. 4, 1968). Section 2255 permits a federal prisoner to move the sentencing court for relief if there has been a "denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack." 28 USC 2255. The line of cases — *Fay v. Noia*, 372 U.S. 391 (1963) and *Sanders v. United States*, supra, clearly contemplate and require more than an unsupported inference of deliberate bypass; actually, these cases clearly support appellant's argument. Moreover, we are dealing with an issue of law, and appellate advocacy, traditionally left to the discretion of attorneys. In *Kaufman v. United States*, supra, the Supreme Court held:

> "We noted in *Fay v. Noia*, * * * that the course of decisions in this Court * * * makes plain that restraints contrary to our fundamental law, the Constitution, may be challenged on federal habeas even though imposed pursuant to the conviction of a federal court of competent jurisdiction. We have given the same recognition to constitutional claims in section 2255 proceedings."

In *Kaufman* the High Court put the issue at rest when it declared:

> "The provision of federal collateral remedies rests more fundamentally upon a recognition that adequate protection of constitutional rights relating to criminal trial process re-

quires continuing availability of a mechanism for relief."

In this case, Marcello seeks relief from his unconstitutional conviction, a conviction obtained not through "mere error," but error which addresses itself to the fundamental constitutional provision forbidding that a person be twice placed in jeopardy for the same offense.

B. From the erroneous premise that Marcello's attorneys abandoned the double jeopardy point on appeal, the court imputes (without evidence and purely by imposing inference upon inference) that Marcello *personally* and deliberately abandoned the issue of former jeopardy. The court assumes, and erroneously, that the attorney-client relationship was so close that Marcello personally controlled his post-trial appeals. It should be noted that counsel who tried this case and handled the original appeal is from Washington, D. C. and Marcello is from New Orleans, Louisiana, and they were physically separated by hundreds of miles.

The District Court recognizes the principle that defendants should not be precluded from raising valid constitutional issues following conviction solely because of procedural defaults in former proceedings, but then, inexplicably, treats Marcello as if he were a special case. The court *assumes* that Marcello deliberately and personally abandoned the double jeopardy issue on appeal. Frankly, it is improbable that Marcello understands the issue of law presented here.

THE COURT:

It is a few minutes [486] before 6:00 and I indicated that we might work a little later if it would convenience you all, or you thought you could finish.

Do you feel like you might succeed in arriving at a verdict if we worked a few minutes longer, or do you think considerable more deliberation is required?

JURY FOREMAN:

Your Honor, I think it will take some time.

THE COURT:

Suppose then we knock off for the day. What time would you gentlemen like to come back?

JURY FOREMAN:

9:15.

THE COURT:

Well, we have a lot of people to get together and so forth. Make it 9:30. It will not be necessary for you to come back into the courtroom. I will ask the Marshal, you can turn over your documents and exhibits and papers and so forth to him.

JURY FOREMAN:

We already have, Your Honor.

THE COURT:

You will be with him and just come back to the jury room at 9:30.

(Adjournment until May 29, 1968.)

gentlemen will be able to arrive at a verdict at a reasonable time this evening. I will remain here until 5:30 or 6:00 so that if you do we can conclude. We will let you go for the day. If you run beyond supper time and then I will ask that you come back and continue deliberations in the morning.

You may take the indictment, the form of verdict and the various exhibits. You will retire now, please, and go with the Marshal, if you will.

[485] (Jury out for deliberations.)

THE COURT:

As to our thirteenth juror, I am able to dismiss you. I appreciate you having served with us. This is a safeguard we take in a case where we have witnesses coming from great distances at considerable trouble and expense to the parties. If one juror becomes ill or has to drop out, we have an extra. You are excused, sir.

You gentlemen will stand at ease. If we need to reconvene, you will be handy.

(The following proceedings were had within the presence and hearing of the jury.)

THE COURT:

Mr. [redacted] I do not want you to tell me anything about how you gentlemen stand or how you view the matter or anything of that nature, except to answer these questions: You have obviously not yet arrived at a verdict?

JURY FOREMAN:

That is correct.

b6
b7C

II
On The Merits

Marcello Was Unconstitutionally Placed in Jeopardy Twice for the Same Offense

The District Court, although questioning Marcello's right to overturn his conviction, nevertheless reaches the merits and denies relief. Judge Singleton, in his written opinion, states the question to be one of whether the effect of Judge Connally's instructions resulted in an acquittal as a matter of law for the petitioner. The District Court (Judge Singleton) is influenced by and accepts the government's analysis that Judge Connally was merely commenting on the evidence and that no judgment of acquittal was formally entered.

Judge Connally advised the jury that there was no evidence establishing intimidation. He read to the jury 18 USC 111 and told the jury to forget the part "and intimidates" as found in the indictment. He followed this by saying, "This is what I had in mind when I *instructed* you yesterday, * * * indicating clearly it was a ruling of law and an instruction on the law. The failure of the clerk, or for that matter, the Judge to formally enter a verdict of acquittal, as well as the fact that it was done in the form of a final instruction to the jury does not deprive it of its force as an acquittal, *United States v. Sisson*, 397 U.S. 267 (1970). Judge Singleton recognizes the basic holding of *United States v. Sisson*, supra, and agrees that judges, like juries, can and do acquit defendants. Fed. Rules Crim. Proc., Rule 29 (b, c) 18 USC. The District Court also

acknowledges another teaching of *Sisson* and states in its written reasons in denying relief that the "failure of Judge Connally to characterize his instructions to the jury does not necessarily preclude a finding that he directed an acquittal." Therefore, the government, the district Judge, and the appellant agree that this case rests upon the force and effect of Judge Connally's instructions, or lack of them, to the Laredo jury.

The government argues that the offense of intimidation was before the Laredo jury and that they were free to ignore the judge's instruction and convict Marcello. To accept this faulty premise is to conclude that the jury was free to convict on a crime upon which it had not been instructed relative to law and where, literally, the trial judge *refused* to instruct upon or define the crime. This indefensible position would render the conviction null as violative of Rule 30, Federal Rules of Criminal Procedure, which obligates the judge to instruct, and further, it raises serious constitutional issues. Having ignored the government's written request to instruct upon *intimidation*, and having refused to do so upon jury request, the court effectively acquitted Marcello on that charge. The trial judge, having heard the evidence, clearly found that the government failed to prove its case. In fact, Judge Connally stated that the government apparently didn't attempt to prove the offense of intimidation but rather focused its prosecution solely on the issue of assault. Convictions based upon errors of law in jury instruction are reversible. The government asks this court to hold that where there are *no* instructions of any kind on the offense charged, the result thereof is a

THE COURT:
That point is well made and preserved.

MR. [redacted]
I do have some difficulty with Your Honor's charge with regard to fear. I expressed this yesterday, that ordinarily I felt that the victim had to be put in fear, and I would like to object on that, and reserve that objection as well.

THE COURT:
Is that all?

MR. [redacted]
Yes.

b6
b7C

THE COURT:
Bring in the jury.
(The following proceedings were had within the presence and hearing of the jury.)

THE COURT,
Gentlemen, just one last [484] word. I have prepared a form of verdict for you reading as follows, We the jury find the defendant Carlos Marcello, followed by a blank, in which you will insert either guilty as charged or not guilty.
The verdict should be signed by the foreman and the verdict must be unanimous. All of you jurors must be in agreement.
Mr. [redacted] juror No. 6, I will ask you to serve as foreman of our jury, please. I will say to you, too, that it is now 4:00 o'clock. I do not know whether you

consider it as evidence or as in any way tending to show his guilt.

Further, I instruct you in the event of a finding of guilty, the sentence to be imposed in this court is the sole responsibility of the Court and not of the jury. Hence you gentlemen please will not discuss or speculate upon what sentence may be imposed in the event of a finding of guilty.

I think that concludes what I have to say to you gentlemen, but the law gives these lawyers a right to object out of your presence and hearing. I do not believe this will take very long. I will ask the bailiff to put you in my office for just a minute and bring you back for one last word.

(The following proceedings were had without the presence and hearing of the jury.)

THE COURT:
Any objections from the Government?

[483] MR. [redacted]
Is the Court going to advise them that the verdict will be unanimous?

THE COURT:
Yes. For the defense?

MR. [redacted]
If it please Your Honor, I would like to preserve, of course, the objections that I heretofore made on knowledge that he was an F. B. I. Agent.

b6
b7C

mere comment upon the evidence. Aside from the legal implications, logic and common sense refute this novel concept.

Marcello was indicted and tried for two separate offenses: assault and intimidation. "* * * the statute (18 USC 111) prescribed two separate offenses ... one might be guilty of one or the other or both." *United States v. Marcello*, 423 F. 2d 993 (C.A. 5, 1970).

"A defendant is placed in jeopardy in a criminal proceeding once the defendant is put to trial before the trier of facts, whether the trier be a jury or a judge," *United States v. Jorn*, 400 U.S. 470 (1970); *Green v. United States*, 355 U.S. 184, 188 (1957); *Wade v. Hunter*, 336 U.S. 644, 688 (1949).

Having been placed in jeopardy in his Laredo trial, and acquitted by judicial action upon the offense of intimidation, Marcello could not again be retried in Houston for the same offense. Marcello's conviction must be vacated.

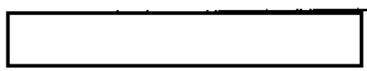
Respectfully submitted,

[redacted]
2111 Dauphine Street
New Orleans, Louisiana 70116
ATTORNEY FOR
CARLOS MARCELLO
Defendant-Appellant

CERTIFICATE

I certify that a copy of the foregoing Brief has been served upon the plaintiff, this ___ day of March, 1972, by placing a copy of the same in the United States Mail, postage pre-paid, addressed to:

U. S. Attorney
Federal Building
Houston, Texas



The defendant's theory is considerably different. They tell us that their party was annoyed and bothered by the photographers. They didn't know that the F.B.I. Agents were among the group, that they were a little irritated at the time they finally got to the car. The defendant was on the point of getting in the car when we heard some talking about his brother and his son to the group, that he walked back to see what the trouble was.

He walked up to Collins, as I [481] understood, Mr. Marcello did, and Collins was more the aggressor, he was using the stronger terms. He, Collins, was the one looking for trouble, or always looking for trouble, I believe he said.

b6
b7C

That he, Marcello, made no attempt either with his left hand or right hand to attempt to strike Collins. But after the little interchange of words, he gestured with one hand and said "Let's call it off" or forget it or let's go home, something to that effect.

If you find that to be the case, or if you find some reasonable doubt about it, and there was just no attempt to strike Collins, thus boiling it down to its simplest terms, I think that is about what I have told you.

One or two other matters. I instruct you that the indictment which is here and which you may take with you to the jury room is not evidence in the case. It is the charge upon which the defendant is brought to trial. You may consider [482] it in determining what it is he is charged with having done, but you will not

APPENDIX A

GOVERNMENT'S REQUESTED INSTRUCTIONS

(Number and Title Omitted)

(Filed: May 28, 1968)

MORTON L. SUSMAN
United States Attorney
Southern District of Texas
/s/ [redacted]

b6
b7C

GOVERNMENT'S REQUESTED INSTRUCTION No. 1

(Elements of the Offense)

The elements of the offense charged in the indictment are as follows:

(1) That on or about the 30th day of September, 1966, at New Orleans, Louisiana, the defendant, Carlos Marcello, did forceably assault and intimidate Pat Collins;

(2) That said Pat Collins was at the said time and place an agent of the Federal Bureau of Investigation, an agency of the United States Department of Justice;

The Government's version, as I understand it, it was at this point that the defendant, licensed and angry at the [479] picture taking, and perhaps licensed and angry that these two men didn't walk back where the others did, asked Collins if he was looking for trouble, and Collins told us, "Well, I can take care of myself," or "I can handle it," or words to that effect. Whereupon Collins told us — I won't go through the arm movements because there was considerable doubt as to just what arm movements were made — as I understand it the defendant put out his left hand once or twice and undertook to strike him with what he called a right-hand punch or a roundhouse right or something to that effect.

The blow went pretty close to the other F. B. I. Agent, Mr. [redacted] and before it struck Collins, where it was aimed, so the Government witnesses tell us, the brother caught or struck the defendant's arm. Thus the blow never landed.

Under the defendant's theory of the case, if you should accept that, and so find beyond a reasonable doubt, you would [480] be warranted in finding, I think, that the defendant at that time did attempt willfully to strike and inflict some injury upon the person of Collins, that it was coupled with the ability, or apparent inability to do so at the time he was restrained, and that the Agent Collins, or one in his position, would have a well-founded fear or expectation of immediate bodily harm. That is the defendant's theory, as I see it and understand it.

(3) That at such time and place, the said Pat Collins was engaged in the performance of official duties as an agent of the Federal Bureau of Investigation.

GOVERNMENT'S REQUESTED INSTRUCTION No. 2

(Definitions)

You will note that the indictment and the statute which has been read to you uses certain words such as forceably assault, and intimidate. I will now define these words for you as follows:

"Assault" is defined as any intentional and unlawful threat to commit injury or attempt to commit injury upon the person of another, coupled with an apparent present ability so to do, or an intentional display of force such as to place the victim in reasonable apprehension of immediate bodily harm. An assault may be committed without actually touching, striking, or committing bodily harm to another.

Any intentional use of unlawful force upon the person of another which results in the unlawful touching of such person constitutes a battery.

The word "unlawfully" as used in this instruction means with contrary to law and without legal justification.

to go back over all of the witnesses and the evidence. I am sure you remember it better than I.

It seems to be without dispute that a number of newspaper and television photographers and reporters as well as the F. B. I. Agents were present, and I believe one of the local police officers. They were all on hand to observe and photograph this defendant when he got out of the plane and walked to his car.

You have heard a great deal of testimony as to how many of them annoyed the defendant and his brother and his son [478] and made a nuisance of themselves, which may well have been true.

As I understand the Government witnesses, after the party had progressed outside the airport proper, and out on the ramp or the sidewalk beyond, the brother and the son turned to the reporters and said, "Don't you have enough pictures, quit worrying us," or words to that effect, and sort of walked back toward the group with their hands out as though they were fed up with it and wanted to stop the picture taking.

Mr. Collins told us, as I remember the testimony, that his associate Avignon was taking pictures over by the rail, and he anticipated there may be some trouble and he walked over and stood beside Avignon.

The newspaper and television people retreated a little bit and the F. B. I. people stayed where they were.

An assault is the attempt to strike and injure. You have heard, I am sure, [476] many lawyers and others talk about assault and battery. That is the difference in the assault. That is an attempt to strike and injure. And if you fully make contact and strike and injure, it constitutes a battery.

So, if you find beyond a reasonable doubt that the attempt was made under the circumstances and in view of the definitions I have given you, beyond a reasonable doubt, the fact that the defendant did not connect at all would not constitute a defense.

I have told you it was necessary that the Government show Collins in the performance of his official duties. It is not necessary that the defendant know who Collins was or that he was in the performance of his official duties.

If I assault a person willfully and deliberately and intending to injure him, not knowing who he is, and if it develops that he is a federal officer in the performance of his duties, I have violated the law. And one who makes an [477] assault under those circumstances does so at his risk or peril that the intended victim may turn out to be a federal officer.

So much for the law of the case. What have the witnesses told us and what are the facts?

I remind you again that what I say about the facts is not in any way binding on you and whatever I do say is merely intended to be of help. I do not intend

"Forceably" means power, violence, or constraint directed toward a person.

"Intimidate means to make timid or fearful, to inspire or affect one with fear; to deter or overawe a person.

GOVERNMENT'S REQUESTED INSTRUCTION No. 3

(Knowledge Not An Element of Offense)

You are further advised that the government need not prove that the defendant have knowledge that the victim, Patrick J. Collins, was an Federal Bureau of Investigation agent acting on official duty at the time of the alleged assault. All that is necessary, bearing in mind of course, the remainder of the charge, is that an assault was committed by the defendant, against the person of Patrick J. Collins.

Bennett v. United States, 285 F.2d 567 (5th Cir. 1960) cert. den. 366 U.S. 911 (1961)

APPENDIX B

THE COURT:

Gentlemen of the jury, at this stage of our proceedings, after the evidence has been concluded and the lawyers have had the opportunity to argue the case

to you, it becomes my duty to give you the Court's charge.

By that I mean I will discuss with you your function as jurors, will instruct you upon the law of the case and will discuss the evidence with you to [461] some extent as to your function here.

Whenever it occurs in the trial of a case, as it has here, that there is a conflict in the evidence, one witness or one group of witnesses testifying that events happened in one fashion, and other witnesses testifying that the events happened in a contrary fashion, or where, as is always the case in a criminal trial, the question arises as to whether the Government has offered sufficient evidence to meet the burden imposed upon it by law, someone must weigh and consider that conflicting testimony, someone must determine what witnesses are credible and worthy of belief and which ones are not.

In short, someone must determine where the truth lies. That is the function which you gentlemen who compose our trial jury serve. You are the fact finding arm of this Court.

In passing upon the evidence, and considering the credibility of the witnesses, you are justified in accepting [462] and believing everything that a particular witness has told you, or you are warranted in declining to believe everything that a particular witness may have told you. You may accept part of what a witness

It is not necessary to make out the offense and assault that the intended victim actually be placed in fear. It isn't essential to make out the offense that the victim even know about it.

If I fire a gun at a person who is asleep, intending to shoot him, and I miss, he may never have known it, but I assaulted that person.

Or if I slip up behind someone who doesn't see me and I try to strike him [475] with my fist and I miss, he may not ever know it, but nevertheless it would constitute an assault.

So, the question isn't so much as to whether the particular victim or intended victim is afraid, the question is whether a sufficient force is used to place a person in the victim's position in fear or apprehension of some personal injury, if he sees and knows what is going on.

Another point I want to make clear to you is this, there has been a great deal of questions, as I remember the testimony, as to whether if the defendant was trying to strike Collins he actually hit him or he didn't hit him. It is not necessary to make out the offense of an assault that contacts actually be made.

In the illustration I just gave you, if I try to strike someone and miss, it may constitute an assault and I have never touched him.

sault prior to the time that he was restrained and [473] held.

Now, I have told you that the attempt to strike or injure must have been willful and deliberate. I have defined the term willful. I want to make clear to you the distinction between an act of that nature done willfully and deliberately, and one that is done accidentally or inadvertently.

There has been testimony here from the defendant himself, corroborated in substantial degree at least by other witnesses which the defense has called, that there was never a blow aimed or intended for Collins. The defendant has told us, as I understood his testimony, that while they had a few words, and he asked whether Collins was looking for trouble, and Collins says yes, I am always looking for trouble, and at that point the defendant desired to break it up and go about his business, and he made a mere gesture with his left hand and says, oh, let's all go home, or let's get away, or words to that effect, the [474] point I am making and the manner in which I instruct you is, that any movement of the defendant's hand, whether his left or his right, if it was accidental, if it was inadvertent, if it was not intended as a blow at Collins, would not constitute an assault. And if you so find, or if you have a reasonable doubt on that score, then it would be your duty to acquit.

Now, as to whether Collins himself was placed in fear, there has been some discussion among the lawyers during the course of the argument about that.

has said and you may decline to accept other portions of the testimony of that same witness.

We frequently think that if a witness looks you in the eye while testifying from the stand, if he or she answers the questions that are put to the witness clearly and concisely and without equivocation or evasion, if the testimony seems to be consistent with our common experience, if the story which the witness tells you seems to hold water, as we sometimes say, we think those are some indications that that witness is a credible witness and his or her testimony worthy of belief.

On the other hand, if the witness does not do these things, if he or she does not answer the questions clearly, if the witness seeks to evade or [463] equivocate, if a witness tells us a story that seems unreasonable and not consistent with our experience and common sense, we think those are some indications that that witness' testimony perhaps should be taken with some reservation.

The lawyers have alluded to the interest which some of the witnesses may have in the outcome of the case, and it has been suggested that that interest might color the testimony of the witnesses. The Government witnesses, it has been suggested, that the F. B. I. Agents are Government employees. It is their job to do these things and to testify. It has even been suggested, I believe, that the job of one or perhaps both of the F.B.I. Agents might be in jeopardy, and hence it is suggested that they might have colored their testimony in favor

of the Government to some extent by reason of that circumstance.

On the other side of the coin, the defendant himself, of course, has the greatest stake in the outcome of the case. [464] His brother and his son have testified on his behalf and those facts, that interest and that family connection have been pointed to as perhaps reasons that those witnesses might have colored their testimony in favor of the defense.

Those, of course, are not the only criteria or tests that you gentlemen may want to use. I am simply suggesting that those are some of the factors you may want to take into consideration in passing upon the credibility of the witnesses.

You gentlemen of the jury are the exclusive judges of facts proved, of the credibility of the witnesses and of the weight to be given their testimony.

Now, I should tell you, too, in this court the Judge is permitted, if he sees fit to do so, to comment upon the evidence. By that I mean I am permitted to tell you which witnesses I think are credible and worthy of belief, or which ones are not. Or to tell you wherein I think the truth lies or even to tell you what verdict I [465] think you should return.

I have no expectation of doing so, but I do instruct you if from my remarks you draw some conclusion or inference as to my own feelings about the credibility of the witnesses, or about the facts of the case, I do

The evidence shows, as I understand it, that he was sent there by his superiors to watch and observe the defendant as he got off the plane. If you believe beyond a reasonable doubt that that was the case, that is why he was at the airport and what he was doing at the airport, he would be in the performance of his duties, even though his instructions did not contemplate that he would have a conversation with this defendant or did not contemplate that there would be a confrontation, I will say, for want of a better term.

If he were not there for that purpose, if it was his day off and he was there on a personal lark or for personal pleasure, he would not be in the [472] performance of his duties. And an assault upon an F.B.I. Agent under those circumstances would not constitute a violation of this statute.

I said, too, that it must be necessary that the defendant have the apparent present ability to strike and injure the intended victim. We know, of course, from the testimony here that at some time during the course of this fracas, the defendant's brother and his son grasped his arms, or perhaps his shoulder, and whether they restrained him as the Government witnesses, I believe, said, or whether turned him around as, I believe, the brother said, in any event, of course, if he was being held and while he is being held, and while under restraint, if he was, he would not have the present ability to commit the assault.

But if you adopt the Government's version of the matter, he might very well have committed the as-

I used the term willful. A willful attempt to inflict injury, an act is done in a willful manner if done voluntarily and intentionally and with the specific intention to do that which the law forbids. That is to say with bad purpose, to disobey or disregard the law. [470] So, what are the elements of the offense? What is it that the Government must prove beyond a reasonable doubt?

First, that the defendant forcibly attempted to strike and injure Patrick J. Collins, who was then an agent of the F. B. I., and who was engaged in the performance of his official duties.

Second, that the defendant had present apparent ability at the time to strike Collins and that this conduct of the defendant in attempting to strike Collins, if he did, was willfully done.

Next, that there was sufficient force applied so as to place someone in Collins' position in reasonable fear of some bodily harm. It is not necessary that the injury, which is to be anticipated, shall be great or severe. Striking a person with the fist or even with the open hand, such as a slap, might constitute an assault, although we know that that is not calculated to cause any serious personal injury.

Hence, it is sufficient, if the [471] attempt be made, to inflict some injury, even though it not be severe.

Now, I mentioned the question as to the performance of his duties. It was necessary the Government show that Collins was in the performance of his duties.

not intend it as an effort to tell you or to direct you as to what verdict you should return. The finding of the facts is your exclusive province and I have no desire to trespass upon it. You are at perfect liberty to disregard anything I say about the facts of the case or about the evidence that we have received or about the credibility of the witnesses.

The law of the case you will take from the Court's charge and be governed thereby.

I also instruct you that it occurs not infrequently in the course of a trial that I will see fit to ask questions of one or more of the witnesses myself. I do that to bring out matters which I think perhaps the lawyers have not fully [466] brought out, or because I think other questions would be appropriate. You should attach no significance whatsoever to that circumstance. You should not draw any conclusion as to my feelings, if I had any, as to the credibility or non-credibility of that particular witness. It is simply an attempt on my part to develop some matters which I think should be developed.

Now, I instruct you, gentlemen, that this defendant, as is true of every defendant brought to trial in this court, is presumed at the outset to be innocent of the charges against him. The defendant starts off with a clean slate and by pleading not guilty, as he has done here, has imposed upon the Government the burden of proving his guilt beyond a reasonable doubt.

And by the term reasonable doubt, as I used here, is meant such doubt as may arise in your minds when, after fully and impartially considering all of the evidence, the jurors do not feel [467] satisfied to a moral certainty of the accused's guilt.

A reasonable doubt does not mean a mere possible or imaginary doubt or a mere conjecture. A reasonable doubt is one which appeals to and is based upon your reason.

After fully and impartially considering all the evidence in the case, if you have a reasonable doubt as to the guilt of this defendant, it is your duty to acquit. On the other hand, if, after fully and impartially considering all the evidence, you are convinced beyond a reasonable doubt of his guilt, then it is your duty to convict.

Now, let us see what it is the defendant is charged with having done and what laws he is alleged to have violated.

The indictment charges that on or about September 30, 1966 at the airport in New Orleans, this defendant did forcibly assault and intimidate Patrick J. Collins, Jr., an officer of the F. B. I., while the said Collins was engaged in [468] the performance of his official duties, which is alleged to have been a violation of Title 18 U.S.C. 111, which reads as follows:

All of it is not pertinent to our case, but I will read it to you anyway, Section 111, "Assaulting, resisting

or impeding certain officers or employees. Whoever forcibly assaults, resists, opposes, impedes, intimidates or interferes with any person designated in Section 1114 of this title while engaged in or on account of the performances of his official duties," shall be punished as the statute thereafter provides.

Section 1114, which is another section referred to, sets out the various officers protected by this statute and Special Agents of the F. B. I. are among that number.

So, as far as we are concerned, and omitting the unnecessary portions, the statute may be considered as reading: Whoever forcibly assaults, or forcibly [469] intimidates a Special Agent of the F. B. I., while engaged in or on account of the performance of his official duties, violates that law.

Now, what is an assault. An assault is any willful attempt or threat to inflict injury upon the person of another when coupled with an apparent present ability to do so, and an intentional display of force, such as would give the victim well-founded fear or expectation of immediate bodily harm.

That is the way assault is defined. That is what an assault is.

I use the term forcibly. Forcibly means that the defendant is charged with use or threatening to use force in the assault.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333)

DATE: 3/23/72

FROM : SAC, SAN ANTONIO (89-81)(RUC)

SUBJECT: CARLOS JOSEPH MARCELLO;
SPECIAL AGENT PATRICK J. COLLINS, JR. - VICTIM
ASSAULT ON A FEDERAL OFFICER

OO: New Orleans

Re Houston airtel to Bureau, 2/2/72.

AT LAREDO, TEXAS

On 3/10/72, [redacted] Clerk, U. S. District Court, advised that the only activity in MARCELLO's file to date to his knowledge is a motion by MARCELLO to vacate the conviction resulting from above charge so that he can avoid deportation. He stated that this is currently on appeal in New Orleans and the file is located there.

b6
b7C

LEAD

NEW ORLEANS

AT NEW ORLEANS, LOUISIANA. Should follow this appeal and keep the Bureau informed of any pertinent developments.

REC-30 231

2 - Bureau
1 - Houston (89-45)(Info)
2 - New Orleans (89-79)
1 - San Antonio
LEA:sh
(6)

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 4/4/72

FROM : SAC, NEW ORLEANS (89-79) (P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO: NEW ORLEANS)

Re New Orleans airtel to Bureau, 3/10/72.

Enclosed for the Bureau is one copy of Brief #72-1209 which was filed March 29, 1972, with the U. S. 5th Circuit Court of Appeals, New Orleans, Louisiana.

New Orleans will advise the Bureau of any additional pertinent developments.

EX-101
REC-3

232

APR 10 1972

(2) - Bureau (Enc. 1) (RM)
2 - New Orleans
HVH:mal
(4)

57 APR 18 1972

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-108-02

TO BE SUBSTITUTED

NO. 72-1209

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA,
Respondent-Appellee

v.

CARLOS MARCELLO,
Petitioner-Appellant

On Appeal From Denial Of Relief On Motion Under 28 USC 2255 By The United States District Court For The Southern District Of Texas

---

BRIEF FOR APPELLEE

b6
b7C

U. S. COURT OF APPEALS
FILED
MAR 29 1972
EDWARD W. WADSWORTH
CLERK

[redacted]
United States Attorney

[redacted]
Assistant United States Attorney
P. O. Box 61129
Houston, Texas 77061

232

ENCLOSURE

STATEMENT

This appeal was taken by Carlos Marcello from the denial by the trial court of a petition under 28 U.S.C. §2255 to vacate sentence. The principal contention (which the government contends had already been passed upon in the principal appeal from the conviction adversely to the appellant) is that Marcello was subjected to double jeopardy. The facts appear from the trial judge's opinion (R. 33-46).

ARGUMENT AND AUTHORITIES

This appeal attempts again to raise questions already determined adversely to the appellant by this court, 423 F.2d 993 (C.A. 5, 1970). These questions were also raised in the appellant's unsuccessful application to the Supreme Court for a writ of certiorari after the appeal from the conviction. The memorandum in opposition filed at that time by the Solicitor General on behalf of the United States (after summarizing the facts) sets out the following:

> "In urging that the petition for a writ of certiorari should be denied, we rely in the main on the thorough opinion of the court below (Pet. App. B 1-39). The single contention advanced here to which we deem it appropriate to respond is the claim of double jeopardy (Pet. 15-18).
>
> "The indictment alleged that petitioner did 'forcibly assault and intimidate' the federal agent in the performance of his official duties. At a first trial, the judge's instructions dealt only with the meaning of 'assault' and omitted any reference to the intimidation branch of the statute and indictment (R. 672-679). After retiring for its deliberations, the jury

sent in a note asking the court again to explain the definition of 'assault and intimidate.' The trial judge charged that, although the indictment used the term 'intimidate' as well as 'assault,' the government need not prove that the defendant did both. The court then stated (R. 687-688):

> 'As I understand the Government's case, and the evidence which was offered, the evidence was not directed at showing that there was any intimidation of Mr. Collins, but rather that there was an assault.
>
> 'So I think for practical purposes you may forget the part "and intimidate" and consider the indictment as though the charges were only as to assault.'

"The jury thereafter was unable to agree on a verdict and a mistrial was declared (R. 692).

"At the instant trial before a different judge, defense counsel, prior to the court's instructions, objected to the submission to the jury of both aspects of the indictment (assault and intimidate). The objection was not based upon the theory of collateral estoppel asserted here,[5] but on the assertion that, in the circumstances of this case, there was no distinction between the two charges and therefore the government should elect which aspect it wished submitted (R. 1284-1285, 1324-1326, see Pet. App. B 37). The trial judge denied the motion, finding there was a legal distinction between 'assault' and 'intimidate' in that the latter did not require proof of an apparent present ability to commit bodily harm, in this case the defendant's statements 'I'm the boss of this town,' followed almost immediately by the inquiry 'Are you looking for trouble?', in the context in which made, were sufficient to warrant a finding of intimidation (R. 1327-1328).[6] Subsequently, the court instructed on both aspects of the indictment (R. 1401-1402) and the jury returned a general verdict of guilty.

5/ This claim was first raised by defense counsel in the court of appeals.

6/ The court of appeals expressly affirmed this decision in its opinion. (Pet. App. B 37)

"Petitioner contends here that the trial judge's statement at the first trial quoted above (p. 4, supra) amounted to a directed verdict of acquittal as to 'intimidation' which constitutionally precluded the government from again raising and arguing 'intimidation' at the second trial under the doctrine of collateral estoppel. See Sealfon v. United States, 332 U.S. 575; Ashe v. Swenson, No. 57, O.T., 1969, decided April 5, 1970, where the Court stated, slip op., p. 7:

> 'Collateral estoppel' * * * means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit. * * *' (emphasis added.)

"We cannot agree that the judge's statement at the first trial constituted a 'final judgment' determining 'an issue of ultimate fact' as to the intimidation aspect of the indictment. The only 'judgment' at the first trial was the order declaring a mistrial. And the judge could not have entered a judgment with respect to intimidation as distinct from assault, since they are not separate offenses under the statute but merely different methods of committing the same offense, which was charged in a single count against petitioner.7/ There is no principle that binds the government, following a mistrial, to present its evidence verbatim as it was presented at the first trial, or that requires the trial judge to repeat verbatim the instructions given at the first trial.

"Moreover, petitioner never raised this issue at trial. Indeed, defense counsel's motion at the second trial (which was denied) to require the government to elect between 'assault' and 'intimidate' indicates clearly that petitioner did not then view the government as being collaterally estopped from raising the issue of

---

7/ The court of appeals, in its discussion of 'Election' (Pet. App. B 37), states that assault and intimidation are two different offenses. The court, which was dealing with petitioner's argument that assault and intimidation mean the same thing, properly held that they did not. It did not, we believe, mean to decide that petitioner could have been separately convicted and separately punished for both assault and intimidation.

'intimidation.' Accordingly, he cannot now, as an afterthought, be permitted to set aside his conviction on this tenuous basis.

"It is therefore respectfully submitted that the petition for a writ of certiorari should be denied."

The petition for certiorari was denied on June 15, 1970, 398 U.S. 959. Petition for rehearing was denied on June 29, 1970, 399 U.S. 938. This was the same day that the Supreme Court decided United States v. Sisson, 399 U.S. 267, which is advanced as new and controlling authority by the appellant in this appeal. While denial of certiorari is not technically a holding, it is inconceivable that Sisson, if actually controlling authority, would have been overlooked in the decision of Marcello. And it is clear that the two have nothing in common.

The position taken here by appellant is completely unsound and flies in the face of elementary principles of procedure. In particular, it ignores the basic principle expressed by the Supreme Court in Baltimore Steamship Company v. Phillips, 274 U.S. 316 (1927), in the following words:

"A cause of action does not consist of facts, but of the unlawful violation of a right which the facts show." (274 U.S. 316, 321)

This principle is no less applicable to a criminal violation than to a civil one. Since the federal system of criminal law is statutory, the particular Act of Congress denouncing the offense must be looked to initially to determine the elements of the offense. In the case at bar, it is

clear that the statute denounces only a single offense, which may be committed in several different ways. Ladner v. United States, 358 U.S. 169 (1958); Cunningham v. United States, 356 F.2d 454 (C.A. 5, 1966), cert. den. 384 U.S. 952. In its turn, the indictment in the case at bar charged only a single offense arising from the single transaction at the airport. It charged in the terms, "forcibly assault and intimidate." The government's position has been consistent that only one offense has been committed, and no attempt has ever been made by the prosecution to submit the issue of two distinct offenses to a jury, or to urge the trial court to impose separate sentences for two offenses (which the trial court, in such a case, might have made consecutive). It may be predicted with confidence that counsel for defendant, in such an event, would have leaped forward instantly with the contention--well-founded, since otherwise the indictment would have been duplicitous,--that only a single offense under the statute had been charged and that only a single sentence could be imposed. And it is also clear that Judge Brown, at 423 F.2d 1011, in referring to separate submission of the "issues" of assault and intimidation, did not mean to imply that separate offenses in the above sense had possibly been committed in the case at bar. To ascribe this meaning to the opinion would have meant that a controlling precedent, Cunningham v. United States, supra, had been overruled sub silentio or that a conflict between panels had come about.

The appellant's brief adds nothing to the contentions already made and rejected by three courts except the citation of United States v. Sisson, 399 U.S. 267, which, as has been mentioned, was handed down by the Supreme Court on the same day that it denied appellant a rehearing on his application for certiorari in which this same point had been prominently asserted. The question presented in Sisson differed radically from that now before this court. A verdict of guilty had been returned in a prosecution for the violation of the Selective Service Act. Thereafter the trial court, in what he (according to the Supreme Court) mislabeled an order granting a motion in arrest of judgment on the verdict, terminated the prosecution adversely to the government. The question before the Supreme Court was whether this procedure, whatever it may have been termed, was to be deemed in substance an arrest of judgment within the meaning of the Criminal Appeals Act, 18 U.S.C. §3731. If so, the government was entitled to appeal, and the Supreme Court would have had jurisdiction to determine the merits of the case. It was held that the action of the trial judge actually constituted an acquittal of the charge, based upon matters of evidence outside the common law record, from which no appeal by the government lies no matter how erroneous may have been the ruling of the trial court. The appeal was thus dismissed. The significant feature for present purposes, however, is that a verdict was returned; and that it was thereafter set aside by the trial court by what in a civil case

would have been termed a judgment non obstante veredicto. It is sometimes said that a verdict of guilty in a criminal case is a conviction, or a verdict of not guilty an acquittal, whether or not a judgment is later rendered and entered on the verdict. However, the appellant cites no cases, and the appellee is aware of none, in which it has ever been held or even stated as dictum that a hung jury--a failure to reach a verdict of any kind--constitutes either an acquittal or a conviction. Instead, it is as though a trial had never been had at all.

As to the present appellant, there has been no express acquittal of anything, and neither has any acquittal been "implied." The typical situation involving an implied acquittal is that found in Green v. United States, 394 U.S. 576 (1969), cited by appellant. The defendant was prosecuted for murder. A verdict of guilty was returned on the charge of murder in the second degree, and the verdict was silent on the charge of murder in the first degree. The conviction was later reversed and remanded. It was held that the verdict of guilty of second degree murder implied a verdict of not guilty of the greater offense. But the rule of this case has no application to a situation in which there is only a one-count indictment, only one form of verdict is submitted, and the jury hangs and fails to return any verdict whatever. And retrial after a hung jury does not constitute double jeopardy. Wade v. Hunter, 336 U.S. 684, 689 (1949); United States v. Jorn,

400 U.S. 470 (1970), is not in point.

Finally, and perhaps most fundamentally of all, appellant would ignore or distort the substance of what Judge Connally told the jury in response to their question. He did not instruct them on the legal distinction, if any, between a assault and intimidation. Instead, he stated (emphasis supplied):

> "As I understand the government's case, and the evidence which was offered, the evidence was not directed at showing that there was any intimidation of Mr. Collins, but rather that there was an assault.
>
> "So I think for practical purposes you may forget the part 'and intimidate' and consider the indictment as though the charges were only as to assault."

This is not a directed verdict, but a comment upon the evidence. While perfectly proper in the federal courts, it is not binding even upon the jury to whom it was addressed, much less upon a different jury considering different evidence after a second trial. (See Judge Connally's instructions, A. 669-670, as follows:)

> "Now, I should tell you, too, in this court the judge is permitted, if he sees fit to do so, to comment upon the evidence. By that I mean I am permitted to tell you which witnesses I think are credible and worthy of belief, or which ones are not. Or to tell you wherein I think the truth lies or even to tell you what verdict I think you should return.
>
> "I have no expectation of doing so, but I do instruct you if from my remarks you draw some conclusion or inference as to my own feelings about the credibility of the witnesses, or about the facts of the case, I do not intend it as an effort to tell you or to direct you as to what verdict you should return. The finding of the facts is your exclusive province and I have no

desire to tr[redacted]pass upon it. You are at p[redacted]fect liberty to disregard anything I say about the facts of the case or about the evidence that we have received or about the credibility of the witnesses.

"The law of the case you will take from the court's charge and be governed thereby."

CONCLUSION

The trial court's decision was correct and should be affirmed.

Respectfully submitted,

ANTHONY J. P. FARRIS
United States Attorney

[redacted]
Assistant United States Attorney

[redacted]
Assistant United States Attorney

b6
b7C

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Brief for Appellee was mailed to each of the following counsel for appellant on the 27th day of March, 1972, by certified mail, return receipt requested:

[redacted]
Warner Building
Washington, D. C.

[redacted]
2111 Dauphine Street
New Orleans, La. 70116

[redacted]
1215 First National Life Bldg.
Houston, Texas 77002

[redacted]

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 5/24/72

FROM : SAC, NEW ORLEANS (89-79)(P)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO:NEW ORLEANS)

Re New Orleans letter to Bureau, 4/4/72.

For the information of the Bureau, Mr. [redacted] Deputy Clerk, U. S. Fifth Circuit Court of Appeals, advised that captioned matter was heard during the week of 5/8/72 at Houston, Texas. b6 b7C

LEAD:

HOUSTON

AT HOUSTON, TEXAS. Advise the Bureau and New Orleans the results of hearing at Houston, Texas, re captioned matter.

2 - Bureau
2 - Houston (89-45)
2 - New Orleans
HVH:djm
(6)

REC-73 233

55 JUN 9 1972

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI (89-1333) DATE: 6/1/72

FROM : SAC, NEW ORLEANS (89-79)(C)

SUBJECT: CARLOS JOSEPH MARCELLO, aka;
SA PATRICK J. COLLINS, JR. - VICTIM
AFO
(OO:NEW ORLEANS)

Re New Orleans letter to Bureau, 5/24/72.

Enclosed for the Bureau are two copies of Affirmation of Opinion of U. S. Court of Appeals, 5th Circuit, #72-1209, as well as copies of Rule #21 for U. S. Court of Appeals, 5th Circuit. Enclosed for Houston is one copy of each of the above.

Inasmuch as no additional investigation remains in this matter and since the sentence has been affirmed, no additional investigation is requested at Houston.

2 34

2 - Bureau (Enc. 4)
1 - Houston (89-45)(Enc. 2)(Info)
1 - New Orleans
HVH:djm
(4)

3 JUN 5 1972

54 JUN 12 1972

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 72-1209

CARLOS MARCELLO,
Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,
Respondent-Appellee.

Appeal from the United States District Court for the Southern District of Texas

---

(May 22, 1972)

Before DYER, Circuit Judge, SKELTON,* Judge, and INGRAHAM, Circuit Judge.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

---

*Judge Byron G. Skelton, U.S. Court of Claims, sitting by designation.

[1]See *NLRB v. Amalgamated Clothing Workers of America*, 5 Cir., 1970, 430 F.2d 966.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

72-1209-234

ENCLOSED FOR BUREAU AFFIRMATION OF OPINION
AND RULE #21 (4)

BUFILE 89-1333

NO 89-79

New Orleans letter, 6/1/72

89-1333-234

ENCLOSURE

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 72-1209

CARLOS MARCELLO,
Petitioner-Appellant,

versus

UNITED STATES OF AMERICA,
Respondent-Appellee.

Appeal from the United States District Court for the Southern District of Texas

---

(May 22, 1972)

Before DYER, Circuit Judge, SKELTON,* Judge, and INGRAHAM, Circuit Judge.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

---

*Judge Byron G. Skelton, U.S. Court of Claims, sitting by designation.

[1]See *NLRB v. Amalgamated Clothing Workers of America*, 5 Cir., 1970, 430 F.2d 966.

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

72-1333 -234

Rule 21.

AFFIRMANCE WITHOUT OPINION

When the court determines that any one or more of the following circumstances exists and is dispositive of a matter submitted to the court for decision: (1) that a judgment of the district court is based on findings of fact which are not clearly erroneous; (2) that the evidence in support of a jury verdict is not insufficient; (3) that the order of an administrative agency is supported by substantial evidence on the record as a whole: (4) that no error of law appears; and the court also determines that an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

In such case, the court may in its discretion enter either of the following orders: "AFFIRMED. See Local Rule 21," or "ENFORCED. See Local Rule 21."

See N. L. R. B. v. Amalgamated Clothing Workers of America, 5th Cir. 1970, —— F.2d ——.

U. S. COURT OF APPEALS—FIFTH CIRCUIT

Rule 21.

AFFIRMANCE WITHOUT OPINION

When the court determines that any one or more of the following circumstances exists and is dispositive of a matter submitted to the court for decision: (1) that a judgment of the district court is based on findings of fact which are not clearly erroneous; (2) that the evidence in support of a jury verdict is not insufficient; (3) that the order of an administrative agency is supported by substantial evidence on the record as a whole; (4) that no error of law appears; and the court also determines that an opinion would have no precedential value, the judgment or order may be affirmed or enforced without opinion.

In such case, the court may in its discretion enter either of the following orders: "AFFIRMED. See Local Rule 21," or "ENFORCED. See Local Rule 21."

See N. L. R. B. v. Amalgamated Clothing Workers of America, 5th Cir. 1970, —— F.2d ——.

234

EX-106

REC-2 89-1133-235

July 31, 1975

Mr. [redacted] b6 b7C
The Daily Oklahoman
Oklahoma City Times
Oklahoma City, Oklahoma 73125

Dear Mr. [redacted]:

This will acknowledge receipt of your letter dated June 18th and addressed to the Deputy Attorney General.

Your request for copies of investigative reports, including FBI Forms 302 and others, regarding the 1966 jury tampering case and the 1966 case involving assault on a federal officer against Carlos Joseph Marcello is not being processed pending notification from you that you have notarized authorization from Mr. Marcello instructing us to release to you information in our files concerning him.

MAILED 6
JUL 31 1975
FBI

The Freedom of Information Act, Title 5, United States Code, Section 552 (b)(6) and (b)(7)(C) exempt from disclosure information which would constitute a clearly unwarranted invasion of personal privacy. If, at a later date, these exemptions no longer apply, other exemptions may be asserted.

Though the materials you have requested might include some portions of public source information, such as newspaper clippings, which would not be exempt from disclosure, I feel certain this is not the type of information you are seeking and that you would not be satisfied with such a disclosure.

Assoc. Dir. ____
Dep. AD Adm. ____
Dep. AD Inv. ____
Asst. Dir.:
Admin. ____
Comp. Syst. ____
Ext. Affairs ____
Files & Com. ____
Gen. Inv. ____
Ident. ____
Inspection ____
Intell. ____
Laboratory ____
Plan. & Eval. ____
Spec. Inv. ____
Training ____
Legal Coun. ____
Telephone Rm. ____
Director Sec'y ____

1 - The Deputy Attorney General - Enclosure
Attention: [redacted] b6 b7C

clf:smg (5)

SEE NOTE ON PAGE 2

SEP 29 1975

MAIL ROOM ☐ TELETYPE UNIT ☐

GPO 954-546

Mr. [redacted] b6 b7C

Accordingly, I shall await notification from you that you have notarized authorization from Mr. Marcello for the release of information in our files concerning him, or that you desire only the above-described public source information.

Please do not infer from the above that we do or do not have the information you requested.

You have 30 days from receipt of this letter to appeal to the Attorney General from any denial contained herein. Appeals should be directed in writing to the Attorney General, (Attention: Freedom of Information Appeals Unit), Washington, D. C. 20530. The envelope and the letter should be clearly marked "Freedom of Information Appeal" or "Information Appeal." Following the Attorney General's decision, judicial review is available in the district of your residence or principal place of business, or in the District of Columbia, where the records are situated.

Sincerely yours,

C. M. Kelley

Clarence M. Kelley
Director

NOTE: [redacted] has requested FBI investigative reports regarding the 1966 jury tampering case and the 1966 assault against a Federal officer case involving Carlos Joseph Marcello. This request would involve two Bufiles 46-42600 (6 sections) and 89-1333 (4 sections). [redacted] being advised that the materials requested are exempt for disclosure pursuant to (b)(6) and (b)(7)(C), except for public source type information. Request not being processed until notification is received from [redacted] that he has authorization to request and receive information regarding Marcello, or that he will be satisfied with public source information only. b6 b7C

EDWARD L. GAYLORD
PRESIDENT, PUBLISHER

[redacted]

THE OKLAHOMA PUBLISHING COMPANY
THE DAILY OKLAHOMAN--OKLAHOMA CITY TIMES
OKLAHOMA CITY, OKLAHOMA 73125

FEB [illegible] 1975

ATTORNEY GENERAL

b6
b7C

18 June 1975

Mr. Lawrence Silverman
Deputy Attorney General
U.S. Department of Justice
Constitution Avenue and 10th Street, N.W.
Washington, D.C. 20530

Re: FREEDOM of INFORMATION ACT REQUEST

Dear Mr. Silverman:

Your attention is invited to the Freedom of Information Act [5 U.S.C. 552], as amended by P.L. 93-503, and to implementing Department of Justice instructions and regulations.

Under provisions of the above cited authority, request that we be provided with access to or copies of all FBI investigation reports (FBI Forms 302 and others) filed in connection with the 1966 jury tampering case and the 1966 case involving assault on a federal officer against Carlos Joseph Marcello, FBI #292-542, of Metairie, Louisiana.

We are willing to pay search and reproduction costs that may be associated with the production of these reocrds. We are also willing to accept necessary sanitizing to protect the identity of any confidential source whose name appears in any of the requested records.

REC-19 EX-108 9-1333-235

Sincerely,

[redacted]
Special Assignments/
Investigations

ack: let dtd 7-29-75
clf:pmg

b6
b7C

EX-108 9-1333-235