

U.S. Lawyers Fight Bail For Marcello

Justice Department lawyers today registered strong opposition to pleas by Carlos Marcello to stay out of jail while he continues his efforts to win a new trial.

The 61-year-old rackets figure was convicted two years ago in a Texas federal court of assaulting and intimidating an FBI agent and will begin serving a two-year prison sentence unless Supreme Court Justice Hugo L. Black approves his request to remain free on bail.

He was to have surrendered yesterday but the Justice Department delayed its reply to Marcello's pleas. The department said it will not insist on Marcello's surrender until Black rules, which he is expected to do over the weekend.

OPPOSITION TO Marcello's remaining out of jail was contained in a brief filed today with the high court challenging the motions by Marcello attorneys.

Marcello asked Black Wednesday to keep him free on \$25,000 bail until his new trial motions are ruled upon.

Solicitor General Erwin N. Griswold said bail should be granted only in extraordinary circumstances.

"THERE ARE no such extraordinary circumstances

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present here," he said.

Black had withheld a ruling until the Justice Department could come up with answers to Marcello's motions. He also has given Marcello attorneys Jack Wasserman and Cecil Burglass Jr. until later today to file reports to the department brief.

In seeking a new trial, Marcello contends he was illegally trapped by FBI agents. He said the agent involved in the ruckus at New Orleans International Airport four years ago, Patrick J. Collins, was mixed in with a group of photographers whom Marcello tried to sidestep as he got off a plane.

GRISWOLD SAID the fact that the news media was alerted to Marcello's arrival is "irrelevant."

"It certainly was not a way of inducing Marcello to attack an FBI agent," he said.

Marcello's 1968 conviction was upheld by the U.S. 5th Circuit Court of Appeals earlier this year. The Supreme Court denied a review.

THE RACKETS figure also claimed the government suppressed evidence in the case and that Collins perjured himself on the witness stand.

"There is no evidence to support his (Marcello's) contention that evidence was suppressed," Griswold said, "and we reject the idea that Collins lied."

An aide to Justice Black said the 84-year-old judge probably will hand down a ruling before noon tomorrow.

MEANWHILE, Marcello remained out of jail today in accordance with an agreement reached yesterday by his attorneys and the Justice Department.

Marcello's attorneys are appealing the case to the Supreme Court, alleging that he was "harassed and provoked" into swinging at FBI agent Patrick Collins in 1966 and that Collins lied during the 1968 trial in which Marcello was convicted.

In another legal move yesterday, Marcello's attorneys filed in the U.S. Fifth Circuit Court of Appeals an appeal from a federal district judge's denial of a motion to vacate his sentence. The motion was denied last week in Houston and a notice of appeal was filed Wednesday in Federal District Court in Houston.