

SEPTEMBER 12, 1970

# Justice Ponders Marcello Appeal

U.S. Supreme Court Justice Hugo L. Black, now holding briefs on both sides of the issue, is considering this weekend whether Carlos Marcello must go to jail while he tries to win a new trial.

A court spokesman in Washington said a decision probably will not be handed down until Monday.

Lawyers for Marcello, who was sentenced to a two-year prison term on a conviction of intimidating an FBI agent at New Orleans International Airport in 1966, have asked Black to allow Marcello to post \$25,000 bond to keep him out of jail while the lawyers take legal steps to gain a new trial.

MARCELLO WAS scheduled to go to jail Thursday but that was delayed while Justice Black considered his request.

The Justice Department filed a brief yesterday opposing Marcello's request for bail and his efforts to gain a new trial.

Solicitor General Erwin N. Griswold said bail should be granted only in unusual circumstances and "there are no such extraordinary circumstances here."

IN SEEKING A new trial, Marcello contends that the government trapped him into attempting to punch FBI agent Patrick Collins. He said the government notified the news media of his arrival and Collins was standing among them at the airport. Marcello tried to avoid newsmen but ended up swinging at Collins.

Griswold argued that the fact the news media was notified is "irrelevant."

Marcello also contends that the government suppressed evidence at his 1968 Houston trial and that Collins lied on the witness stand.

Answering for the government, Griswold said there is no evidence of suppression of trial evidence and rejected the notion that Collins committed perjury at the trial.