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Marcello Freedom Bid Opens

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TAMPA — A federal appeals court here today took under study charges by lawyers for Carlos Marcello that the government "suppressed, altered and used perjured testimony" in the rackets figure's 1968 assault conviction.

The allegation came as a special three judge panel of the U.S. Fifth Circuit Court of Appeals heard arguments on six technical motions by Marcello attorneys seeking to overturn his assault conviction and have him freed from a federal prison.

Attorneys Cecil M. Burglass Jr. of New Orleans and Jack O. Wasserman of Washington attacked government handling of the case and told the court they could produce a new set of witnesses and affidavits to prove the government's contentions wrong.

A DECISION is expected on the motions within two weeks.

"We have positive evidence that the FBI convoked the news media at the airport and created an incident of provocation," Burglass told the three judges.

Chief Circuit Court Judge John R. Brown, Judge David W. Dwyer of the Fifth Circuit and District Judge Bryan R. Simpson of Jacksonville heard the arguments.

"The government deliberately misled the court in Houston," Burglass said. "We know they absolutely had information which could have been helpful to Marcello if that evidence would have been brought before a hearing. We could have established that there was indeed provocation."

MARCELLO WAS jailed Oct. 14, after avoiding imprisonment through a tangled set of legal maneuvers for more than four years.

He is confined to the Federal Medical Center at Springfield, Mo., serving a reduced six-month prison term for intimidating FBI agent Patrick J. Collins Jr. by taking a swing at him four years ago at New Orleans International Airport.

Burglass told the court the FBI used newsmen who went to the airport to cover Marcello's arrival as cover for their own agent. He said this fact should have been brought before a jury and that it also indicated there was some sort of plot to "entrap" Marcello.

The Marcello attorneys also said Houston District Judge John R. Singleton, who presided over the trial, erred in not hearing the testimony of new witnesses turned up by the defense.

SHOULD THE panel rule in Marcello's favor, he would be released immediately on bond pending a new trial.

Assistant U.S. Attorney James R. Gough of Houston countered the defense charges, saying even if Marcello was provoked at the airport into throwing a punch, the law does not recognize provocation as a defense in an assault case.

"There was no way the FBI agents could know that Marcello would lose his temper," Gough said. "Their allegations come close to substantiating entrapment but not quite close enough."

"Their charges fall far short of proving that there was an elaborate, pre-conceived plan to trigger a confrontation."

Burglass said if his attempts to free Marcello fail, it may be the last legal attempt to free him before his term

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ends in March. Shortly after Marcello stepped behind bars, Burglass said he'd like to have Marcello home "by Thanksgiving."

"IF WE'RE NOT successful this time," he said, "there may be no point in trying to further appeal the case before Marcello's prison term ends."

THE TAMPA proceedings were the

second day of legal hearings involving Marcello.

Yesterday the Louisiana Fourth Circuit Court of Appeal granted Marcello lawyers a two-week continuance in their efforts to have property assessments on Marcello's Churchill Farms reduced. They claim the assessments, which were raised by more than \$200,000, are unfair.

A hearing on the case has been reset for Dec. 9.