

Black Grants Marcello Temporary Prison Stay

By RICK THOMAS

(States-Item Bureau)

WASHINGTON — U.S. Supreme Court Justice Hugo Black has granted Carlos Marcello temporary relief in the New Orleans rackets figure's attempt to stay out of prison pending an appeal for a new trial.

In a three-page opinion harshly critical of the government, Black yesterday referred to the full court the question of whether Marcello is entitled to bail while appellate courts review his request for a second trial.

Had Black agreed with the Fifth Circuit Court of Appeals that Marcello should not have bail, the Louisianian would have faced immediate imprisonment. He has been fined \$5,000 and sentenced to two years in prison on charges of assaulting an FBI agent.

BLACK, HOWEVER, made it clear he thinks Marcello's quest for a new trial has merit and indicated that if the high court ever decides the question of a new trial he probably would vote to grant it.

"I have no doubt that the government's conduct in this case raises questions worthy of review," Black wrote, but he added that he is "not sure" whether at least three other justices—four are needed to accept jurisdiction in an appeal to the supreme court—would agree with him.

"Under these circumstances, I shall take no action at all on this application (for bail) but will refer it to the full court at its first meeting Oct. 5," Black wrote.

Marcello is basing his petition for a new trial on grounds that the government suppressed evidence in the first trial and that a government witness perjured himself.

THE ALLEGATION of suppressed evidence stemmed from the government's failure to state that it had arranged for news media to show up at New Orleans International Airport to view Marcello's arrival in 1966 from New York.

It was at the airport that

Marcello is alleged to have assaulted the FBI agent, who was part of the crowd while news media personnel, including photographers, followed Marcello out of the airport.

Black wrote:

"THE ENTIRE case and circumstances shown by the record are highly disturbing. At Marcello's trial in 1968 his counsel suggested that government agents themselves were responsible for the crowd of newsmen surrounding Marcello . . ."

"Counsel prosecuting Marcello expressed resentment at the suggestion that the government entrapped or provoked him. The government then denied 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.

"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."