

PANEL TO HEAR MARCELLO BID

New Assault Trial Sought

By CHARLES ZEWE

The U.S. Fifth Circuit Court of Appeals today agreed to hear motions by imprisoned rackets figure Carlos Marcello for a new trial on assault charges.

A three-judge panel, headed by Chief Circuit Court Judge John R. Brown, said it will hear arguments on six technical motions by Marcello's attorneys seeking to overturn his assault conviction and have him freed from a federal prison.

No date was set for the hearing but court sources said it will probably be held in mid-November.

MARCELLO IS confined at the Fed-

eral Medical Center at Springfield, Mo., undergoing medical tests while serving a six-month jail term for attempting to punch an FBI agent.

The action to grant a hearing gave government attorneys until Nov. 12 to file opposition briefs on the motions for a new trial. Once the government files replies to the defense motions a hearing date will be set.

Included in motions to be heard, which were denied earlier by a federal district court in Houston, are defense contentions the grand jury that indicted Marcello was improperly composed and influenced by prejudicial publicity and that the government's chief wit-

ness in the case perjured himself on the witness stand during Marcello's trial.

The 60-year-old Marcello was convicted in 1968 of "intimidating" an FBI agent, Patrick J. Collins Jr., at New Orleans International Airport in 1966.

HE ORIGINALLY WAS sentenced to serve two years in jail on the conviction but the term later was reduced to six months. Marcello avoided being put behind bars for more than four years on the charge through a complex series of legal maneuvers, which included numerous requests for a new trial.

Marcello surrendered to U.S. mar-

shals in New Orleans two weeks ago today to begin serving his jail sentence after the U.S. Supreme Court refused to keep him free on bail pending a hearing on the motions by the Fifth Circuit.

In addition to Brown, Judges David W. Dyer of the Fifth Circuit and Edwin F. Hunter, a Lake Charles district court judge, will hear the arguments.

ATTORNEY Cecil M. Burglass Jr., Marcello counsel, said the court agreed to advance the hearing to November and would hear the case aside from its "regular docket."

"The court docket was filled until aft-

er the first of the year," Burglass said. "Having a hearing then would have been virtually no good for us, so they agreed to an out-of-term hearing."

Burglass said defense attorneys have agreed to plead their case anywhere in the Fifth Circuit's multi-stage coverage area.

"**WE'VE TOLD** the court we'll go anywhere any time to argue these motions," Burglass said.

Marcello has contended in his efforts for a new trial, federal agents "trapped" him at the airport and mixed Collins in with a group of newsmen on hand to cover Marcello's arriv-

al. He said he thought Collins was a photographer.

Meanwhile, U.S. Atty. Gerald Gallinghouse said he is preparing legal briefs for an appeal of an illegal re-entry indictment against Marcello thrown out by a federal court.

GALLINGHOUSE said he expects the appeal to be filed with the Fifth Circuit within several weeks.

Recently, U.S. District Court Judge Lansing L. Mitchell threw out an indictment against Marcello charging the rackets figure had illegally re-entered the U.S. after being deported to Guatemala in 1961. The judge said the statute of limitations had expired.