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U.S. Will Ask Full Court To Review Mandel Ruling

By Sandra Saperstein
Washington Post Staff Writer

The Justice Department said yesterday that it would ask the full 4th U.S. Circuit Court of Appeals to reverse an earlier ruling and reinstate the political corruption conviction of former Maryland governor Marvin Mandel.

The decision by Solicitor General Wade H. McCree Jr. followed recommendations of prosecutors in the case. It left unanswered the question of whether the department would try Mandel for a third time on the mail fraud and racketeering charges if the court refuses to reverse the conviction.

By a 2-to-1 vote last month, a three-judge appellate panel overturned the convictions of Mandel and his five co-defendants, saying that the trial had been marred by technical errors.

It the 4th Circuit granted a rehearing on the Justice Department request the full panel of seven judges then could either reaffirm last month's decision or find that the 1977 convictions were valid.

However, few petitions for en banc (full-court) rehearings are granted, according to court observers. If a rehearing request were denied, the government still could ask the U.S. Supreme Court to hear an appeal, or it

could seek a retrial or drop the charges entirely.

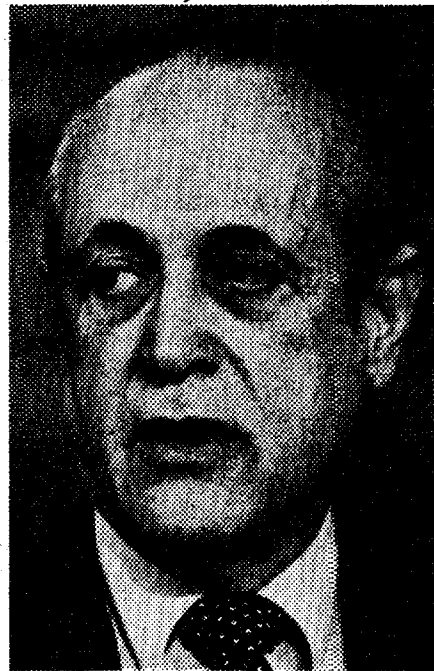
Mandel was convicted in August 1977 of mail fraud and racketeering after prosecutors charged that he had accepted \$350,000 in gifts, vacations and stock from wealthy friends in return for using his office to enrich their business interests.

The U.S. attorney for Maryland Russell T. Baker Jr., and two of the prosecutors who handled the Mandel case, Barnet D. Skolink and Danie Hurson, have consistently refused to comment on their plans.

However, sources familiar with the Justice Department discussions on the case said an important factor in the decision to seek a rehearing was the strong dissent of 4th Circuit Judge John D. Butzner Jr., from the ruling of the two other judges on the panel.

The other judges on the panel, H. Emory Widener Jr. and Donald S. Russell, concurred in overturning Mandel's conviction, finding that the judge had omitted certain instructions to the jury and improperly allowed certain evidence to be introduced by the prosecutors.

In his dissent, Butzner argued that there was no "support" in previous



MARVIN MANDEL
... conviction reversal challenged

4th Circuit decisions for reversing a judge on these grounds.

The majority also ruled that crucial testimony indicating that Mandel had influenced legislative action for his friends should not have been admitted into evidence. They ruled that the testimony was unreliable "hearsay" because the politicians who gave it did

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not have firsthand knowledge of the facts.

Butzner, however, argued that the testimony was properly admitted into evidence under earlier rulings of other federal appellate courts.

Conflicts with previous appellate rulings are often a strong factor in deciding to seek a rehearing before the full court, lawyers familiar with the appeals process said.

Prosecutors, who already are preparing their rehearing petition, must file it with the 4th Circuit in Richmond by Feb. 24. Four judges must vote to grant the petition for a rehearing to take place.