

# Supreme Court Refuses To Hear Mandel Appeal

## Decision Brings End to 12-Year Legal Battle

By Jef Feeley  
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In an ending to one of Maryland's longest running political sagas, the U.S. Supreme Court announced yesterday it would not review a lower court ruling overturning the 1977 mail fraud conviction of former Maryland Gov. Marvin Mandel.

Without comment, the court refused to grant *certioria* to review an appeal of the reversal filed by the federal government, whose lawyers argued the former governor's conviction

should be reinstated despite flawed instructions given to the jury which convicted Mandel.

### 'A long, long road'

"I feel relief that it has all finally come to an end," Mandel told a crowd of reporters yesterday at a press conference. "It's been a long, long road to this day.

"I don't think this is a question of vindication versus a technical reversal," the former governor said. "The Supreme Court has said, once and for all, that what I did was not a crime in the first place.

"I'll let people decide for themselves whether it's vindication," Mandel said as he sat with his wife, Jean, in the office of his lead counsel, Arnold M. Weiner. "As far as I'm concerned, I'll rely on the Supreme Court."

The high court's decision in *United States vs. Marvin Mandel et al*, No. 88-1759, clears the way for Mandel to regain his license to practice law in Maryland, according to state court officials.

Melvin Hirshman, bar counsel for the state Attorney Grievance Commission, told *The Daily Record* yesterday that he saw "no reason" why Mandel would not be immediately reinstated.

### Conviction 'no longer exists'

"The Maryland Court of Appeals recently approved a petition for reinstatement from a lawyer that had his mail fraud conviction overturned," Hirshman said. "I can't see any real distinction between the two cases. The only reason he [Mandel] was disbarred was the criminal conviction and that no longer exists."

Mandel was disbarred after he was con-

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Former Gov. Marvin Mandel, shown here in a 1985 photograph, had reason to be jubilant yesterday as the U.S. Supreme Court finally ended his 12-year-long battle with the federal government over 1977 mail fraud conviction.

The Daily Record. 20 June 1989

# Mandel

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victed in 1977 of mail fraud and racketeering in connection with receiving \$350,000 in cash and property from the owners of a Prince George's County race track in return for helping them secure more racing days.

Convicted with Mandel were Irvin R. Kovens, a close friend and political adviser to Mandel as well as the then-governor's chief fund raiser, and W. Dale Hess, Harry Rodgers III, William Rodgers and Ernest Cory Sr., all of whom were connected to the events involving the Marlboro Race Track. They were sentenced to varying jail terms and each was fined \$40,000.

But in November 1987, U.S. District Frederic Smalkin vacated the Mandel defendants' convictions in the wake of a Supreme Court decision that changed the prevailing interpretation of the federal mail fraud statute.

Smalkin said that court's ruling in a Kentucky mail fraud case made it clear that the acts for which Mandel and the others were convicted did not actually amount to a violation of that statute.

## McNally case

In the Kentucky case, *McNally v. U.S.*, the high court held that the conduct of a state government official, who had been convicted of mail fraud for defrauding the citizens of his state out of their right to "good government" and his "loyal and faithful services," was not a federal crime.

Based on the *McNally* decision, Smalkin threw out the Mandel defendants' convictions, reasoning that they had been convicted under the same theory as the Kentucky official.

Long before Smalkin acted, former President Ronald Reagan had commuted Mandel's sentence and released him after he served 19 months of the four-year term. The other defendants already had completed their jail terms at that time.

The Mandel case had bounced around the federal appellate courts for 10 years before Smalkin vacated the sentence, with different panels of the U.S. Fourth Circuit Court of Appeals voting a half-dozen times either to overturn the convictions or uphold them.

The case ultimately reached the Supreme Court when the government appealed Smalkin's decision to vacate the Mandel defendants' convictions.

The Fourth Circuit, using *McNally* as its authority, upheld the lower court's decision to reverse the criminal convictions in March.

Maryland U.S. Attorney Breckinridge Willcox had asked the U.S. Solicitor General's office to file a petition for *certioria* to have the Supreme Court give the final say on Smalkin's decision.

## 'Narrow window of opportunity'

Yesterday, responding to the Supreme

Court decision, Willcox sounded a defiant note, saying that despite the reversal of the convictions, he believes Mandel "abused the trust" of the state's residents.

"The courts may have overturned the jury's verdict, but the ultimate judgment of Marvin Mandel and his cronies will be made by the public," the prosecutor said in a written statement. "Marvin Mandel abused the power and trust of his position, he disgraced the office of governor and was found guilty by a jury of conscientious Maryland citizens.

"Mr. Mandel has escaped through this narrow window of opportunity [presented by the *McNally* decision]. His conviction may be vacated, but the facts remain," Willcox added. "I am confident of the judgment that history will render on Marvin Mandel."

Sitting before the familiar glare of TV camera floodlights in a conference room in Weiner's office, Mandel visibly stiffened when he heard Willcox's statements about him.

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*— Marvin Mandel*

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"I'm not going to get into an argument with the U.S. Attorney," the former governor said. "If you argue with a fool, you've got an argument between two fools. I'm not going to have any more discussions over that."

As for his future, Mandel said that he intends to push forward with his petition to regain his license to practice law.

Weinberg & Green partner M. Albert Figsinki, who is handling Mandel's petition for readmission, said that there is no timetable for getting Mandel's license back.

"We probably will be able to prepare it pretty quickly and get it to Annapolis," Figsinki said. "We fully expect to have him reinstated."

Mandel originally filed a petition for reinstatement in the winter of 1986, contending that he had been rehabilitated and deserved to be able to practice law again.

The former governor had voluntarily agreed to a suspension when he was originally convicted in 1977 and the Court of Appeals later made the disbarment official.

But now that the Supreme Court has decided that what Mandel was convicted of was not criminal activity, Figsinki said that he will amend the petition already on file with the Attorney Grievance Commission.