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Governor Mandel (left) meets the press in Annapolis while his stand-in, acting Governor Lee, finds one Mandel comment funny.

Mandel, allies 'storm' capitol; U.S. plans steps U.S.

By ROBERT A. ERLANDSON

Federal authorities in Baltimore are expected to recommend that the Justice Department request a rehearing by the entire federal appeals court in Richmond on the ruling that overturned Governor Mandel's political corruption conviction, department sources said yesterday.

If such a hearing is sought before the Fourth United States Circuit Court of Appeals, the government must submit its petition by January 25. If it does not act by then, the appeals court's mandate confirming its judgment will be issued February 1.

Approval of a request for rehearing in Richmond would set the stage for an entirely new opinion. The appeals court could either reaffirm the reversal issued Thursday or reinstate the verdict reached August 23, 1977, by a jury under Judge Robert L. Taylor.

If the appeals court rejects a petition for rehearing, then the likelihood of a government request for a retrial would exist. Some legal sources said yesterday that the charges are "too significant and important" not to be resolved fully by trial.

But at a press conference yesterday, Arnold M. Weiner, Governor Mandel's lawyer, urged the government not to seek another trial and to drop the charges against Governor Mandel and his five co-defendants for "legal, political, social and humanitarian" reasons.

In listing the options available to the government, besides dismissing the charges, Mr. Weiner cited:

- A rehearing, either before the full Fourth Circuit bench or the same three-judge panel that split 2-to-1 in overturning the convictions of Mr. Mandel and the co-defendants.

Judge Harrison L. Winter, of Baltimore, has disqualified himself from the case. Thus, a rehearing would require the approval of four of the other six active judges—a majority of the entire bench.

- Another trial, which Mr. Weiner said would have to begin within two to six months of the reversal under the federal Speedy Trial Act. This could require the assignment of a new judge—the fourth—to the case.

The original judge was disqualified for a possible conflict of interest with a potential witness. Another judge was assigned for the first trial, which ended in a mistrial December 7, 1976, and finally, Judge Taylor was appointed for the second trial.

- A petition to the Supreme Court for further review of the case, a course seen unlikely with the present state of the record of the case.

In his statement, Mr. Weiner said the government "bears responsibility for the present status of the case," because prosecutors insisted on using what the appeals court found to be inadmissible evidence and on opposing instructions to the jury

See U.S., A6, Col. 5

U.S. likely to request rehearing in Richmond

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"which were required by the principles of fundamental fairness."

The government "risked reversal by trying the case in that manner." Mr. Weiner declared, and, with the reversal, "there are serious questions as to whether, in its present posture, the litigation hazards justify a third trial from the government's perspective."

Neither Russell T. Baker, Jr., the United States attorney, nor any of his assistants would comment yesterday on the appellate decision or on their future plans for the Mandel case.

However, Mr. Baker and his staff were known to be studying the ruling in anticipation of making a recommendation to the fraud section of the Justice Department's Criminal Division.

The fraud section, in turn, will make a recommendation to Philip Heymann, the assistant U.S. attorney general in charge of the Criminal Division, and Mr. Heymann will decide what action to take.

Benjamin R. Civiletti, the deputy U.S. attorney general, said he had not read the opinion and, therefore, could not comment on it or what action the government might take. But he outlined the Justice Department's procedures up to Mr. Heymann's level.

Mr. Civiletti said neither he nor Griffin B. Bell, the Attorney General, would become involved in the decision unless a conflict developed at a lower level on how to proceed with the case.

Arguing against a retrial of the Mandel case, Mr. Weiner said the public should be spared the "expense and drain of federal resources" which would be required by further prosecution. "This case involves events which took place 7 to 10 years ago, during an administration which is almost over. There are more urgent and current problems which should command the attention of the federal prosecutors."

In addition, the defense lawyer said, "There are what one editorial writer has

described as the imperatives of fairness. The suffering, the humiliation and the expense of these proceedings have taken their toll. Even the innocent are punished by such an ordeal. The onslaught of a prolonged and highly publicized federal prosecution inflicts severe and crippling wounds."

"In short, after more than five years, it is time for this case to be over," Mr. Weiner said.

Discussing the case yesterday, Mr. Weiner said, "As you will note from the [appellate] opinion, the government was afforded every consideration during the second trial, both in rulings on the evidence and in the instructions to the jury. Even then, it took the jury two weeks to arrive at a verdict, and not until the so-called dynamite instruction was given."

He said the reversal of the convictions was "absolutely not" on technicalities. "The second trial was fundamentally unfair, both in evidence and in instructions given to the jury."

The defense lawyer said the appellate court found, "in essence," that the "mail fraud statute was misapplied in the case," and that the government had to prove that bribery occurred through government action taken by Governor Mandel in exchange for favors.

He said Judge Taylor denied a defense request for an instruction to the jury on this point and did not define bribery for the jury or advise the jury of "the crucial distinction between gifts and bribery."

The prosecutors tried to show that the Governor accepted thousands of dollars worth of gifts and shares in investments in exchange for favorable government action on Marlboro Race Track which, according to testimony, was owned secretly by the other defendants.

"The opinion stresses that there were fundamental errors in the conduct of the trial," Mr. Weiner said. "It also notes that these errors were highly prejudicial to the Governor and to his co-defendants."



Sun photo—Walter M. McCardell

Marvin and Jeanne Mandel meet the public outside the State House.