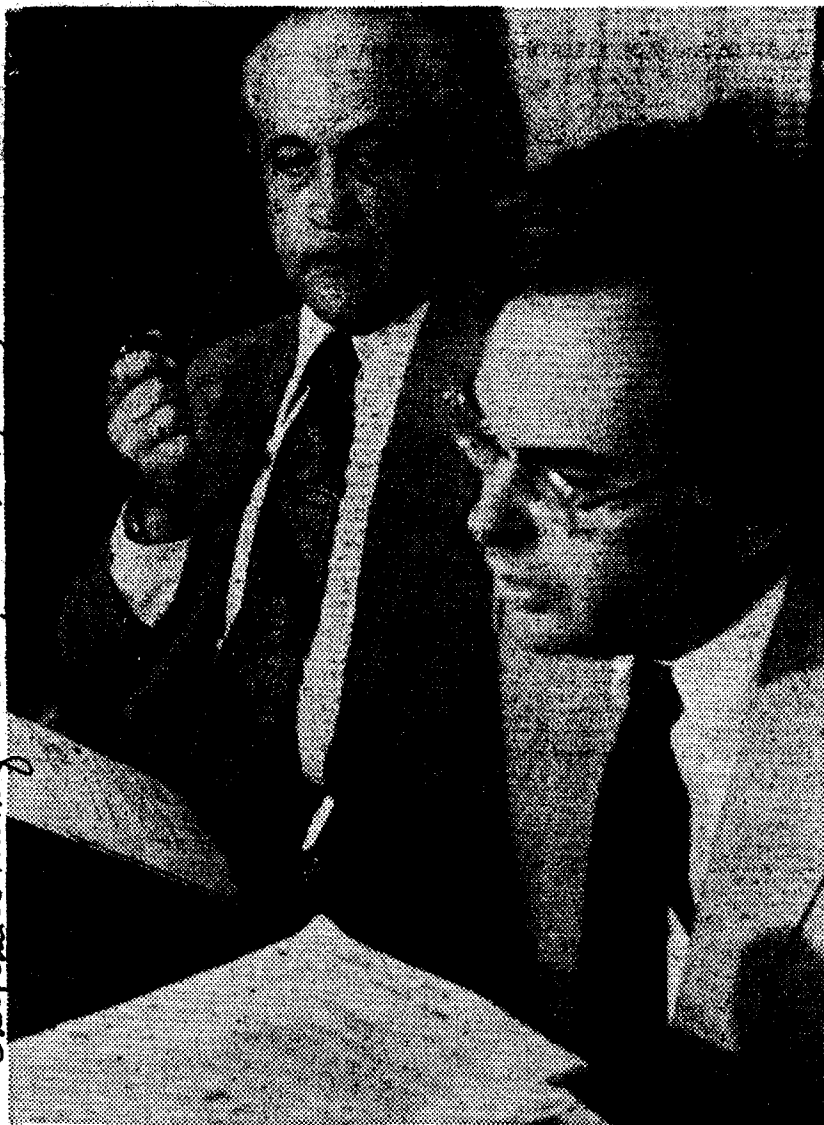


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Sun photo—Lloyd Pearson

Former Governor Marvin Mandel (left) and Arnold Weiner, his attorney, respond to questions on appeals court's decision not to rehear case.

Mandel loses appeal for rehearing of case

By TIMOTHY M. PHELPS

The case against former Governor Marvin Mandel took another bizarre turn yesterday as a federal appeals court—by yet another tie vote—left Mr. Mandel one legal step away from a four-year prison term.

Four months ago, by a 3-3 vote, the Fourth Circuit Court of Appeals in Rich-

State officials hinted at more legal trouble for Marvin Mandel over the Government House furnitureC1

mond threw out an earlier decision in Mr. Mandel's favor and reinstated his political corruption conviction.

Yesterday, apparently by a 4-4 vote, the same court plus two new members refused a request by Mr. Mandel's lawyers that they reconsider their earlier decision and rehear the case with the new members present.

The result provoked cries of unfairness not only from Mr. Mandel and his lawyers, but also from Judge Francis D. Murnaghan, Jr., a Baltimore lawyer who only recently joined the court.

"The defendants and the public generally, in whose service the courts operate, are entitled to a decision of this court, whether it leads to reversal and a new trial, or whether, through affirmance, it gives requisite certainty and finality to the convictions," wrote Judge Murnaghan in a dissent that raised legal eyebrows.

"This was no ordinary case," he wrote. "Its consequences on the entire political system of the state of Maryland are enormous. It cries out for a proper resolution, where such a resolution is possible," he said.

Arnold Weiner, Mr. Mandel's lawyer, promised at a news conference yesterday to ask the U. S. Supreme Court to decide the case, and Mr. Mandel, asserting "I have committed no crime," said he would not even stop there in his effort to clear his name.

"I have no idea what the Supreme Court will do," Mr. Mandel said somberly, his wife Jeanne at his side at the press conference in Mr. Weiner's office.

"But I don't intend to stop, even after
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Mandel loses plea for new hearing

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the court has stopped, until I somehow, somehow, can prove that I am not guilty of doing anything to hurt, endanger or damage the people of Maryland," he said.

Informed sources said the defendants were heartened at the unusual, strongly worded dissent by Judge Murnaghan, a "rookie judge" who nevertheless has an established reputation in legal circles and who, ironically, is identified with the liberal wing of the Democratic Party in Maryland, which has sometimes been at odds with Mr. Mandel.

They said they thought the Murnaghan dissent, plus another by Judge H. Emory Widener, Jr., in which Judge John D. Chantner, Jr., joined, might add to their chances of persuading at least the requisite four Supreme Court justices to vote to hear the case.

Other sources said the appeal would focus on the issues that surround the tie votes, the first of which overruled an initial decision last January by Judges Widener and Russell, as members of a three-judge panel, that the Mandel jury had heard inadmissible testimony.

The court agreed last April to the prosecution's request that the full appeals court hear the case. But Judge Harrison Winter of Baltimore excused himself from the case, leaving only six judges and leading to the tie vote, which upholds the verdict of the jury.

With Judge Murnaghan and James Sprouse of West Virginia joining the court, Mr. Mandel's lawyers asked for reconsideration, saying that he had unfairly been deprived of a clear-cut decision in the case and that the new members could contribute to a resolution of the tie.

It did not work out that way. The court itself issued a curt, two-paragraph order stating only that "fewer than a majority" of the eight judges voted to rehear the case. But Judge Murnaghan, in his dissent, indicated that there was once again an even split.

Last July, Judges Widener and Russell were joined by an unnamed judge in voting to reconsider the case. Judge Murnaghan yesterday provided a fourth vote. Apparently, unless someone switched sides in the meantime, the other new judge, Judge Sprouse, voted not to rehear the case.

Judge Murnaghan indicated that he would have excused himself from the case and kept silent about the decision by his "dedicated" colleagues but for "a strange certainty, transcending the ordinary confidence one has in one's convictions, that the court's failure to decide this case constitutes a serious injustice."

He said his own past "tangential contact" with the case—as a lawyer for *The Sun* and *The Evening Sun* in a successful attempt to get access to court records in the case and as the lawyer for one other unnamed client—might have been enough to persuade him not to get involved.

But he said that since those reasons are of a "tentative and speculative nature" and would be outweighed "by the importance of the court's being able to reach a decision" he would agree to sit on the case, or if necessary to provide an odd number of judges, to excuse himself.

Had Judge Murnaghan stayed quiet, the result apparently would have been a 4-3 vote not to rehear the case. But he apparently felt so strongly about the injustice of the 3-3 tie that he joined in, creating the second tie.

Mr. Mandel and his co-defendants—Irvin Kovens, W. Dale Hess, Harry W. Rodgers III, William A. Rodgers and Ernest N. Cory—now have 30 days to ask the Supreme Court to hear the case—which it does in only a small percentage of the cases it is asked to hear.

A decision from the court would be expected in two to three months. If the answer is no, there is nothing standing between Mr. Mandel and jail. If the court agrees to take the case, it could hear it early in 1980 and decide it before its summer recess.

One alternative suggested by several lawyers yesterday would be for the Supreme Court to order the appeals court to resolve its tie vote. If Judge Murnaghan excuses himself, that would leave seven judges able to sit on the case. However, another judge is about to be appointed to the court. Judge Murnaghan said that in the event that there were an even number of judges, he would participate to break any possible deadlock.

All this legal maneuvering—four years from Mr. Mandel's indictment—leaves even the former governor, himself a lawyer, somewhat bewildered, he conceded yesterday.

"I just think in the way that we're losing without losing, it leaves so much unanswered," he said. "I had hoped for a resolution of the case, at least that we would get an answer one way or the other and we could guide our lives accordingly."

He spoke of the hardships, financial and otherwise, that have beset himself and his family.

"I would ask all of you to put yourselves in our shoes," he said.

"We have won an appeal, then lost by an even vote. Now we have lost again by another equally divided court. How do you lose? Apparently at this point we're losing. But it's hard for even a lawyer to understand."