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JUSTICES TO WEIGH BAN ON MARXISTS

Mitchell's Denial of Visa to Belgian Is Challenged

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WASHINGTON, Jan. 10—The Supreme Court agreed today to rule on the constitutionality of the section of the McCarran-Walter Act of 1952 that permits the Government to bar foreign Marxists from visiting the United States.

At issue is the Government's denial of a visitor's visa to Dr. Ernest E. Mandel, a Belgian economist and writer, who was invited to lecture at American colleges, universities and conferences.

Last March, a three-judge Federal District Court in Brooklyn declared the law unconstitutional, saying that although Dr. Mandel has no right to enter, United States citizens have a First Amendment right to hear his views and debate them with him.

The lower court also said that the Government had no legitimate interest in barring Marxist speakers and that the statute was not even-handed because it barred only radicals of the political left.

Eight American scholars brought suit on Dr. Mandel's behalf. They challenged the provision of the law that denies visas — unless the Attorney General waives the provision—to aliens who write, teach or advocate "the economic, international and governmental doctrines of world communism.

Dr. Mandel, the editor of the weekly journal La Gauche and the "Marxist Economic Theory," is not a member of the Communist party. He was granted visas in 1962 and 1968 to lecture.

When he applied for a third visa in 1969, Secretary of State William P. Rogers recommended that he again be granted entry. But Attorney General John N. Mitchell refused to grant a waiver.

The reason given was that on a previous visit he broke Government rules by altering his itinerary and attending a meeting where money was solicited—rules that, he said, had never been communicated to him.

After the lower court granted Mandel a visa, the Government obtained a stay of the order until the Supreme Court decides.

In the lower courts, the Justice Department asserted, as it has in a series of recent cases, that the Government's action had been taken within the sovereign power to conduct foreign relations and maintain national security, and that he courts should not interfere.

The Mandel case was one of 10 petitions for review granted by the Supreme Court today, as it considered several appeals that had been held until Justices Lewis F. Powell Jr. and William H. Rehnquist were sworn in to complete the nine-member Court.

Justice Rehnquist noted in orders released today that he would not take part in the upcoming decision on the Justice Department's contention that it can legally wiretap "dangerous" radicals without court approval.

The new Justice had said during his Senate hearings that he would probably do this, because he helped frame the Government's arguments when he was an Assistant Attorney General.

Justice Powell, who wrote a newspaper article last year terming the "outcry against wiretaping" a "tempest in a teapot," stayed in the case.

Stop-and-Frisk Case

Another case that the newly constituted Court agreed to hear is an effort by prosecutors to expand the Supreme Court's landmark 1968 "stop-and-frisk" decision. In that case the Court held that the police may search suspicious and dangerous-looking persons for weapons and may use any weapons found as evidence.

Left unanswered was whether courts should accept evidence other than weapons turned up in frisks that do not satisfy the Fourth Amendment's requirement that searches be made only with warrants, or probable cause to believe that a specific crime has been committed.

In the appeal granted today, a policeman in Bridgeport, Conn., frisked a man named Robert Williams on the basis of an anonymous tip and found a loaded revolver plus heroin and a machete in Mr. Williams's car.

The United States Court of Appeals for the Second Circuit held the evidence inadmissible. Connecticut officials — backed by a friend-of-court brief filed by New York District Attorney Frank S. Hogan—asked the Supreme Court to rule that the courts can admit any evidence uncovered in a frisk for weapons.

The Supreme Court also agreed to decide if the Federal Communications Commission exceeded its legal authority when it ordered large community antenna television (CATV) systems to originate programs as well as relay programs of other stations by cable into subscribers' homes.

The case involves the Midwest Video Corporation, which owns CATV systems in Missou New Mexico and Texas.