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Arnold H. Lubasch

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Gotti's Lawyer Argues to Overturn His Conviction

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By ARNOLD H. LUBASCH

Listening to legal arguments on whether John Gotti's murder-racketeering conviction should be overturned, a panel of judges peppered a prosecutor with questions yesterday about why Bruce Cutler had been barred from acting as a defense lawyer in the Gotti trial.

The three-judge panel, which seemed more troubled by Mr. Cutler's disqualification than by any other issue in Mr. Gotti's appeal, reserved its decision after hearing the arguments. Judge Amalya L. Kearse presided over the panel in a packed Manhattan courtroom of the United States Court of Appeals for the Second Circuit.

Two judges, Frank X. Altimari and Roger J. Miner, expressed surprise that the prosecutors in the case had moved to disqualify Mr. Cutler on the ground that he was a potential witness in the trial when they acknowledged that they had no intention of calling him as a witness.

A prosecutor, James Orenstein, re-

sponded that Mr. Cutler participated with Mr. Gotti in incriminating conversations that were secretly taped by the Government and used as evidence in the Gotti trial.

The Bombastic Mr. Duck

If Mr. Cutler were a lawyer in the trial, he would have become "an unsworn witness" who could argue to the jury about his view of the conversations, Mr. Orenstein said, citing one of the Government's principal reasons for the lawyer's removal.

Judge Miner observed that it might have been possible to preserve Mr. Gotti's right to the lawyer of his choice if Mr. Cutler's part of the conversations had been excised from the tapes or if Mr. Cutler's voice on the tapes had been altered to "make it sound like Donald Duck."

But Mr. Orenstein argued that Judge I. Leo Glasser, who conducted the trial and disqualified Mr. Cutler, found there was no way to keep Mr. Cutler in the case because the lawyer was a central part of the conversations.

A Harvard law professor, Charles J. Ogletree Jr., argued the appeal for Mr. Gotti, with Mr. Cutler listening in the crowded spectator section.

Professor Ogletree told the court that Mr. Gotti did not have a fair trial for four main reasons — he was deprived of his longtime lawyer, the prosecution improperly used an expert witness, the judge restricted cross-examination of the chief witness, Salvatore (Sammy Bull) Gravano, and an anonymous and sequestered jury added to the highly charged atmosphere.

The prosecutor who handled most of the Gotti trial, John Gleeson, responded by arguing that the Government had acted properly and that the defendants had received a fair trial.

Mr. Gotti's codefendant, Frank Locascio, was represented in the appeal by Michael E. Tigar, who argued that Mr. Locascio had merely been present during some conversations and should not have been convicted.