

# Prosecutors Get Extension To Seek Mandel Rehearing

By Frank Kauffman

The 4th U.S. Circuit Court of Appeals has given federal prosecutors an extra 30 days in which to ask the full court to reconsider the decision overturning the political corruption conviction of former Gov. Marvin Mandel.

The court issued a routine order Tuesday extending until Feb. 24 the deadline for the filing of the rehearing petition. Without the extension, the deadline would have been today.

The mail fraud and racketeering convictions of Mr. Mandel and his five co-defendants were overturned Jan. 11 in a 2-to-1 decision by a three-judge panel.

In seeking the additional 30 days, U.S. Attorney Russell T. Baker Jr. said in papers filed with the court that the Justice Department needed more time to decide whether to seek the *en banc* (full court) rehearing. According to sources, Mr. Baker has recommended that the department petition for the rehearing.

Under Justice Department procedures, the prosecutor's recommendation must first be reviewed by the department's Criminal Division and then by the U.S. Solicitor General, Wade H. McCree Jr., who makes the final decision on all govern-

ment requests for *en banc* rehearsings.

A Justice Department official in Washington said yesterday the solicitor general has not made a decision. "The recommendations haven't even reached us," said Andrew Frey, deputy solicitor general.

According to one Justice Department source, the rehearing option is being "actively considered" by lawyers in the Criminal Division's appellate section. He said the appellate section will circulate its views to other sections in the division before a recommendation is sent to the solicitor general. This procedure, he said, will take at least another few days.

"This is not the run-of-the-mill case," the official said. "In this case, you can bet that they're not going to speed read it and rubber stamp the recommendation."

The 4th Circuit rarely approves requests for *en banc* rehearsings. But even if the court turns down the request, there are several other options open to prosecutors.

They could ask the U.S. Supreme Court to hear an appeal, retry the case or drop it.

Seven judges sit on the 4th Circuit Court, but one, Judge Harrison L. Winter of Baltimore, has disqualified himself from the Mandel case. This means that

four of the six remaining judges would have to approve any government petition for a rehearing by the full court.

The court could then affirm the decision or reinstate the convictions.

Mr. Mandel and his co-defendants were convicted in August 1977 after evidence showed the former governor received \$350,000 in gifts from his friends. In return, the prosecutors claimed, Mr. Mandel used his office to increase the value of their business enterprises.

In overturning the conviction, the majority of the three-judge panel cited procedural errors at the trial by presiding Judge Robert L. Taylor. The two appeals court judges said Judge Taylor should not have allowed the use of hearsay testimony from state senators about Mr. Mandel's alleged role in influencing racetrack legislation.

The decision also said the trial judge improperly instructed the jury on the law.