



By James M. Thresher—The Washington Post

Weaving around and deflecting reporters' questions, Mandel holds first press conference in 18 months.

Court Ruling on Mandel Case Ambiguous on Mail Fraud Law

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The decision that reversed the conviction of Maryland Gov. Marvin Mandel Thursday left largely untouched the federal government's principal weapon against political corruption, the catch-all use of federal laws prohibiting fraudulent use of the mails.

The Fourth Circuit Court of Appeals in Richmond stepped so carefully around the controversial question of how far prosecutors can stretch "misuse of the mails" that it left some otherwise jubilant defense lawyers discouraged. And because the court's reasons for overturning the jury verdict were technical, it left some federal prosecutors doubtful about their chances for a Supreme Court review.

"Whatever it is, I'm not disappointed," said Eugene Gressman, a professor at the University of North Carolina School of Law, who was hired by Mandel and his codefendants to prepare the appeal in the case.

"I'll take anything I can get," Gressman said.

What the defendants got was a 2-to-1 decision that reversed their convictions and ordered a new trial on the narrow grounds that procedural errors tainted the outcome of the case. The judges in the majority said, in effect, that they accepted the government's theory in the Mandel case, but found among other things that flawed evidence was used to support it.

As a result, lawyers interviewed yesterday expected the decision to have little if any significant impact on future attempts to prosecute public officials.

"The Mandel case was so unique," said one defense lawyer, "that I doubt whether the opinion will ever apply to any other case."

The government's theory was that Mandel used his office to enhance the value of the Marlboro Race Track, which prosecutors contended was then secretly owned by the other codefendants. At the same time, the governor received from them more than \$350,000 worth of loans, gifts and other favors, the prosecutors said.

The gifts constituted bribes, in the view of the prosecutors. Failure to disclose the true ownership of the racetrack amounted to a "fraud" on the public.

The appeals court decision, which suddenly cleared the way for Mandel's return to the Maryland State House for the remaining five days of his administration, "demonstrates to you how fragile those cases are," said one former government lawyer.

"That's what scares you when you're a prosecutor," he said.

In a 96-page opinion for the majority, Judge H. Emory Widener rejected defense arguments that the indictment and the prosecution in the Mandel case constituted an "unwarranted overextension" of the mail fraud statute and an intrusion of the federal government into the state of Maryland's political affairs.

But, the court said, the trial judge was wrong when he decided to allow the jury to hear evidence from Maryland state senators that, the government

said, supported its theory that Mandel wanted legislative action favorable to the race track.

Judge Robert Taylor had ruled that the testimony was acceptable under a general exception to the federal court rule that prohibits hearsay statements, but the appeals court disagreed.

Widener, joined in his opinion by Judge Donald Russell, said the court was not persuaded that the testimony met the standard of "trustworthiness" required by the rule.

None of the senators who testified seemed to have firsthand knowledge that Mandel wanted his 1971 veto of a piece of racetrack legislation overridden, the court said. That legislation would have doubled the number of racing days at Marlboro track, by then allegedly owned by Mandel's codefendants.

The majority of the judges also expressed concern about the fact that the testimony was drawn from "a purely legislative political scene."

Some of the most damaging statements came from some of Mandel's longtime political enemies and the statements were made "on and around the Senate floor in the heat of political battle, where rumors, opinion and gossip abound," the court said.

"Evidence based on rumors and general discussions is the worst type of hearsay," the court said.

In a lengthy dissent, Judge John D. Butzner Jr. warned that in political corruption cases, the courts "should be particularly reluctant to withhold from the jury relevant evidence that sheds light on the defendants, motives and intentions."

"The interests of justice are not served by impeding prosecutions against public officials simply because the evidence available to the government is necessarily unusual," Butzner said.

Judges Widener and Russell also indicated a number of other procedural objections, saying that Taylor failed to explain the legal definition of bribery to the jurors. He also failed to tell the jurors they had to be convinced Mandel knew his friends owned the track before they could find him guilty of mail fraud, the majority opinion said.

The court's reliance on these rather narrow evidentiary and procedural points to support its reversal of the convictions both surprised and disappointed those lawyers who had hoped for a strong statement on the mail fraud statute.

On paper, the mail fraud statute simply prohibits the use of the federal mail system to defraud. In application, it gives the federal government jurisdiction to prosecute offenses that may be uncovered by federal law.

In the Mandel case, for example, prosecutors accused the governor of violating state bribery laws and the state code of ethics. Only the fact that the codefendants mailed financial papers and state documents connected with the accusations allowed a federal prosecution.

Defense lawyers thought that application of the mail fraud statute went too far and represented a desperate maneuver by the prosecutors to stretch the criminal statute to fit their case.

A decision supporting that view would have been devastating to the federal government's future use of the mail fraud statute, which had been used in such celebrated cases as the corruption conviction of former Illinois governor Otto Kerner in 1973.