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What Now for Marvin Mandel?

WITH THE OVERTURNING of his political corruption conviction, Marvin Mandel once again stands innocent of any crime, legally entitled to conclude his second term as governor of Maryland—and understandably jubilant. After struggling through two trials that consumed nearly two years (and, presumably, vast sums in legal fees), Mr. Mandel and his five co-defendants have every reason to savor the moment. So far, the governor has reacted with grace in not crudely snatching back the reins from Acting Gov. Blair Lee III for the last ride to the inauguration of the next governor, Harry Hughes, on Wednesday. Still, the big question remains: What happens to the case now?

Though a cloud that had hung over Mr. Mandel and the state of Maryland has been lifted, he has not been acquitted. The U.S. Fourth Circuit Court of Appeals has ordered a retrial—and the next move is up to the Justice Department. If the case is dropped, Mr. Mandel will have been cleared, though the legal issues will have been left in limbo. The federal prosecutors must weigh the impact of the appellate court's 2-to-1 decision on their evidence—for the appellate court's findings could cause significant difficulties if the government decides to go for a third trial. Among other things, the appellate court found that the trial judge should not have permitted Maryland state senators to testify about their recollections of what other legislators and aides to Mr. Mandel had told them during a crucial 1972 vote on horse-racing legislation.

So what if this and other evidence found to have been faulty had not been introduced at the trial? On

this point, the appellate court was noncommittal, saying that "perhaps the faulty evidence was the key to the jury's decision; perhaps it was not. Who can say? Certainly not a court of appeals which has neither seen the witnesses nor heard them testify."

There are alternatives. Instead of seeking another trial in district court, the prosecutors could seek reconsideration by the same three appeals judges; they could request a hearing by all six appeals judges in the circuit; or they could request the U.S. Supreme Court to reverse the ruling.

It's difficult to see what would be gained by pursuing rehearings by the appeals judges. And though the appellate court's ruling could be appealed to the Supreme Court, many legal experts think the issues involved are not ones this court would review.

If the Justice Department concludes that its case has been substantially weakened by the appellate court ruling, the case certainly should be dropped. True, this would leave unanswered the question of whether what Marvin Mandel did was illegal. But it is not worth dragging Marvin Mandel and his associates through a third trial merely to satisfy some legal curiosity, if the prosecutor's case has really been damaged. In human and political senses, the lessons have been learned, we suspect. As a practical matter, a new administration is about to take over, and the vote that brought it to office suggests that the lessons of the Mandel era were not lost on the Maryland electorate. So perhaps it may be best to end this unpleasant chapter in Maryland's history as a matter of fairness to Mr. Mandel—and just about everybody else concerned.