

Review of Mandel Reversal Sought

By Michael Weisskopf

Washington Post Staff Writer

BALTIMORE, Feb. 26—Federal prosecutors formally asked the full 4th U.S. Circuit Court of Appeals today to reconsider its reversal of Maryland Gov. Marvin Mandel's political corruption conviction, declaring that the earlier decision marks "a radical departure from prior precedent."

In a 30-page petition filed with the appellate court in Richmond, prosecutors charged that last month's decision lifting Mandel's conviction and four-year sentence was "in error in several respects" and "removes the trial judge's discretion."

Specifically, prosecutors are asking the full seven-member court to reconsider the split decision of three of their colleagues who ruled that the trial judge who heard the case in 1977 made technical errors serious enough to fatally taint Mandel's conviction on racketeering and mail fraud charges.

A full court review is "particularly

appropriate," according to the petition by U.S. Attorney Russell T. Baker Jr. and Deputy U.S. Attorneys Daniel J. Hurson and Daniel F. Goldstein, because "resolution of the legal issues here is in considerable dispute" and because of the importance of the case itself.

"The case involves serious allegations of wrongdoing by the highest elected official of the state," the petition said. "The parties, the scores of witnesses and the state of Maryland itself have endured nearly five years of turmoil and uncertainty."

Mandel and five-codefendants were convicted in August 1977 after prosecutors presented evidence that the former governor accepted \$350,000 in gifts, vacations, and stock from four of his codefendants.

In return, prosecutors claimed, Mandel used the power of his office to manipulate legislation so that the business interests of his codefendants were enriched.

However, some of the key testimony involving this legislative manipulation should not have been admitted into evidence, the appellate panel ruled last month.

According to court observers, petitions such as the one sought today are granted only rarely.

If a rehearing is granted, the full court could reimpose Mandel's conviction or reaffirm last month's decision of the smaller panel. If prosecutors fail to win a rehearing, they could appeal the decision to the U.S. Supreme Court, begin a new trial or drop the charges.

In overturning the convictions, Judges Donald S. Russell and H. Emory Widener Jr.—who formed the majority—ruled that the presiding trial judge, Robert L. Taylor, had erred in allowing certain testimony to go to the jury.

They concentrated their attack on Taylor's admission of testimony from 10 state senators who served in the legislature in 1972 when Mandel allegedly encouraged an override of his veto of a bill that would have increased the value of a race track secretly owned by his friends.

The testimony from those senators—some of whom concluded, without talking directly to Mandel, that the governor wanted his own veto overridden—should not have been allowed to go to the jury, according to the majority opinion, because it was hearsay testimony and because the statements came from "long-time political enemies of the governor."

A strong dissent was filed by 4th Circuit Judge John D. Butzner Jr., who said that the disputed testimony was properly admitted into evidence according to earlier appellate rulings by other federal courts.

Agreeing with the dissenting judge, prosecutors said the majority opinion is "wildly at odds" with other appellate court treatment of hearsay evidence and unfairly disregarded Taylor's judgement that the testimony was "trustworthy."



MARVIN MANDEL

... reversal called radical departure