

LAW EXTRA

Mandel Panel Causes Feds Some Concern

Two Judges Ruled For Ex-Governor in 1979

By Jef Feeley
Daily Record Legal Affairs Writer

SPARTANBURG, S.C. — When Maryland U.S. Attorney Breckinridge Willcox spotted the names of the appellate judges who will decide whether Marvin Mandel's fraud conviction should be reinstated, he grimaced.

That's because two of the three Fourth Circuit judges had voted before to overturn the conviction of the former governor and five of his political supporters.

"My stomach dropped when I saw their names on that list," Willcox said as he peered into the courtroom where Circuit Judges Donald S. Russell, H. Emory Widener Jr. and K. K. Hall sat earlier this week.



Assistant U.S. Attorney Martin Himeles, who argued the government's case against Mandel, acknowledges that two of the judges on the panel had "disagreed with the government's position" in the past.

The judges are hearing cases in this sleepy South Carolina town during the summer recess of the Fourth Circuit, which normally convenes in Richmond.

Russell, of South Carolina, and Widener, a Virginian, were both part of the three-judge panel which voted in 1979 to throw out the convictions in the *Mandel* case because of problems with jury instructions.

"It's certainly not the panel I would have picked to hear this case. It doesn't bode well for us," Willcox added. "I suspect someone — probably us — will be asking for an *en banc* review [by the full Fourth Circuit]. I suspect the Mandel case isn't over yet."

A successful trip?

Willcox and his assistants, who traveled more than 500 miles to argue that a change in the interpretation of the mail fraud statute should not have caused the *Mandel* defendants' convictions to be set aside, now will have to wait to see if their trip was in vain.

Lawyers for both the government and the defendants predicted the panel will hand down the latest decision in the 13-year legal saga of Marvin Mandel some time this fall.

It will be the fourth time the federal appeals court has ruled on some aspect of Mandel's 1977 mail fraud and racketeering conviction in connection with a scheme in which he allegedly accepted bribes to add extra racing days at a Prince George's County racetrack.

W. Dale Hess, Harry W. Rodgers III, William A. Rodgers, Ernest N. Cory Sr. and Irvin Kovens also were convicted of mail fraud for allegedly giving Mandel more than \$380,000 in cash and property for helping the Marlboro Race Track, which the men secretly owned.

In 1978, Mandel and his co-defendants asked the Fourth Circuit to reverse their convictions, claiming jury instructions were flawed.

In January 1979, a Fourth Circuit panel voted 2-1 to overturn the convictions, citing problems with the instructions. Widener wrote the majority opinion and Russell joined him. Senior Circuit Judge John D. Butzner Jr. dissented.

The full Fourth Circuit voted in July 1979 to reinstate the convictions on a 3-3 tie vote. Four months later, the full court refused to rehear the case on another tie vote, 4-4. The U.S. Supreme Court later refused to review the case.

But in November 1987, a federal judge in Baltimore once again overturned the convictions in the *Mandel* case, ruling that a Supreme Court decision in another case indicated that the conduct of Mandel and the others did not amount to a federal crime.



UPI/Bettmann Newspapers

Mandel and Weiner arriving at the governor's first trial in September 1976. That case ended in a mistrial, but Mandel and five co-defendants were convicted of mail fraud in a second trial in August 1977. Last year, a federal judge set aside the conviction, and federal prosecutors went to the Fourth Circuit this week to urge that it be reinstated.

Prosecutors appealed the dismissal of the convictions, arguing that the defendants' actions were still criminal in spite of the high court's narrower interpretation of mail fraud.

All smiles

In his presentation to the appellate panel Tuesday, however, Assistant U.S. Attorney Martin S. Himeles acknowledged that some of the judges might not be swayed by the government's arguments that Mandel deserved to be convicted.

"Judges Russell and Widener, I know you disagreed with the government's position in the first hearing in this case," Himeles said.

"But we maintain that the facts set forth at trial prove activities that are still valid crimes," the prosecutor said.

Mandel's attorneys, Arnold Weiner and Stuart Berger, were all smiles when they looked at a list taped to a wall near the courtroom to check the make-up of the appellate panel.

Judges assigned to review Fourth Circuit cases are not announced until 8:30 a.m. the morning of the arguments.

"We are very pleased that all the judges hearing this case are familiar with the background. We are confident they will give us a fair hearing," Berger said with just a hint of satisfaction.

The 67-year-old Mandel, who proclaimed himself to be "vindicated" when his conviction was wiped out last fall, did not make the trip from his Anne Arundel County home to hear the arguments in his case.

Although Mandel already has served his prison term, he is battling to clear his name and gain readmission to the Maryland bar. His lawyers say readmission hinges upon whether Mandel's conviction is reinstated.

"Marvin's not here [for the hearing] because he's trying to stay out of the limelight. He just wants this all to be over," said Berger, an associate at the Baltimore law firm of Melnicove, Kaufman, Weiner, Smouse & Garbis.

Even though Mandel didn't make an appearance, word that his case was being argued drew several spectators to the courtroom, to hear arguments over bribes and political corruption.

See Mandel, page 6

Mandel

(Continued from page 5)

"All I know is that he used to be the governor of Maryland and they kicked him out for taking a bribe," said Henry Johnson, a maintenance man who works in the Spartanburg County Courthouse across the street from the federal courthouse. He came over to hear the case.

"I wanted to see him. Is he here? The hearing was pretty boring. I'm disappointed. We don't get too many celebrities up here," Johnson added.

Mandel will be pursued

Wilcox said he thinks the Mandel case is

important enough that he will continue to pursue it until a final decision is reached.

"It should offend every law-abiding citizen of Maryland to hear the former governor, who sold his office, to now say he is vindicated because of a technicality," Wilcox contended.

"This case has become a matter of principle. The citizens are entitled to know that they can trust their elected officials and hold them accountable when they are untrustworthy," Maryland's chief federal prosecutor said.

But Berger countered that Mandel and the other defendants believe the government is singling them out for special attention.

"I have a real problem with them [the prosecutors] continuing this thing. I believe the opinion [vacating Mandel's conviction] is clear and bullet-proof," he added. "This case is really a paragon of injustice."