



Two Trials: Enough

The overthrow of Marvin Mandel's conviction raises a troubling dilemma for the Department of Justice. This was an important and difficult case, one in a series flowing from a well-justified federal decision to undertake investigations of Maryland government that local prosecutors would not or could not.

The two Fourth Circuit Court of Appeals judges who rejected the conviction did not undermine the government's use of the mail fraud statutes to prosecute political corruption. They specifically said this case did not represent an "impermissible federal intrusion into the political affairs of the state of Maryland. . ." Rather they acted on relatively narrow grounds involving trial judge errors. And a third appeals judge wanted to uphold the conviction.

So, it would be reasonable for the prosecutors to seek a re-hearing by the full Court of Appeals in hopes of persuading the entire court that the two appeals judges erred in their decision. In the event they fail to get a rehearing, the prosecutors and their superiors in the Department of Justice must then decide whether to try Mr. Mandel and his co-defendants a third time. That is a much more difficult question.

Another three-month trial would mean another effort to find an impartial jury, which would have to be sequestered, after years of publicity, including wide coverage of Thursday's reversal. That decision threw out some of the government's important evidence. If they nevertheless obtained a conviction at a third trial,

prosecutors again would face the prospect, as they did this time around, of defense lawyers raising numerous issues on appeal, hoping one or two would contain the seeds of reversal. Prosecutors must ponder what the chances are of making another conviction stick.

They must also ask themselves whether the interests of justice would be advanced by another trial. The first trial exposed to Marylanders a pattern of unusual generosity by Mr. Mandel's co-defendants to the Governor in exchange for favors concealed from the public by deception, evasion and lying. These facts emerged unshaken from the trial. The Governor already is claiming vindication and would continue to do so in the absence of a conviction that withstood appeal. But no matter how often he makes such claims, Mr. Mandel will never be able to erase the stain upon his stewardship that the prosecutors exposed. Citizens now know what kind of governing they got from Mr. Mandel.

Whatever money Mr. Mandel's secret defense fund has raised, the cost of his defense has been enormous. Whatever bravado the Governor employs, the exposure of these details has constituted considerable punishment. The emotional cost—to Mr. Mandel, his co-defendants and their families—has been enormous. While it is one thing to seek a rehearing of the appeal, there is a line between vigorous prosecution, which we applaud, and the pursuit of what the public might come to perceive as a vendetta. The government risks crossing that line if it decides on the third Mandel trial.

