

# Prosecutors win June rehearing in Mandel case

By SHERIDAN LYONS

A federal appeals court gave prosecutors the chance yesterday to argue anew, before the full court, that the convictions of former Governor Mandel and five co-defendants should be allowed to stand.

The rehearing, rarely granted by appellate courts, is scheduled for the first week of June, before six judges of the United States Court of Appeals for the Fourth Circuit, in Richmond.

The political corruption convictions were reversed January 11 in a 2-to-1 vote by three Fourth Circuit Court judges who initially heard the appeal of the verdict that had been reached in August, 1977, in the federal District Court in Baltimore.

The January 11 majority opinion found several errors by the trial judge in admitting some evidence and in instructing the jury. The third member of the three-judge panel disagreed and voted to uphold the 1977 convictions.

The rehearing required the votes of four of the six judges who considered the petition by the U.S. attorney's office. The three judges who heard the appeal last year will participate in the rehearing, but the court's seventh judge, Harrison L. Winter, of Baltimore, has disqualified himself.

The rehearing will amount to a fresh review of the case by the appellate judges; a 3-to-3 split among the six judges would uphold the conviction.

This means that while the prosecutors must persuade only three judges in order to carry the day, the defense lawyers must persuade at least four judges if they are to get the conviction overturned.

Rehearings before the full court rarely

are granted and are limited under the Federal Rules of Procedure to cases which raise questions of exceptional importance or which create confusion in a circuit by contradicting previous rulings.

The prosecution argued in its petition that the 2-to-1 reversal created such confusion by contradicting prior rulings in the areas of evidence and of trial judges' discretion.

The petition also cited the importance of the case, in which it said, "The parties, the scores of witnesses and the State of Maryland itself have endured nearly five years of turmoil and uncertainty."

Defense attorneys, headed by Arnold M. Weiner for Mr. Mandel, urged the court to reject the petition in a 36-page answer filed last month. They argued that the unusual rehearing should not be granted merely because prosecutors were "dissatisfied."

They said claims that the reversal creates conflict in the circuit "are greatly exaggerated" and that the trial of a governor does not automatically make the case one of "exceptional importance," as required by the rules.

Mr. Weiner said yesterday that he did not want to comment on the granting of the petition, beyond observing, "It is apparent that the full court wants to take a closer look at this case."

The former governor was convicted with five other men in August, 1977, on charges of mail fraud and racketeering, involving legislation that affected Marlboro Race Track. A trial begun in 1976 ended in a mistrial.