

The Weather

Partly cloudy with chance of afternoon or evening thundershowers. High, 86; low, 70. Yesterday's high, 82; low, 76.
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THE



SUN

Murder conviction voided as trial is held unfair: B1

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IMORE, SATURDAY, JULY 21, 1979

Convictions of Mandel, 5 others upheld by full appeals court, 3-3

Corruption conviction is sustained

2 judges dissent; ex-governor has 2 ways to appeal

By SHERIDAN LYONS

A federal appeals court upheld the 1977 political corruption conviction of former Governor Mandel and five co-defendants yesterday in another dramatic turn of a tortuous legal battle that the defendants had seemed to have won only a few months ago.

The 4th U.S. Circuit Court of Appeals in Richmond issued its ruling in a one-page opinion revealing that the six judges were split, 3 to 3, on the issue. Two judges filed a 16-page dissent.

The ruling was not unexpected, in light of the decision by the full appeals court to hear the case after a three-judge panel overturned the convictions earlier this year.

Arnold M. Weiner, Mandel's lawyer, said immediately that the case would be pursued.

But, he said, he must meet with other defense lawyers before deciding which of two courses to follow: an immediate request that the U.S. Supreme Court hear the case, or an attempt to persuade the Circuit Court to grant another full-court hearing—perhaps with its two new members participating.

Daniel J. Hurson, an assistant U.S. attorney, said, "We are very pleased with the decision."

Mr. Hurson could not say yesterday whether his office might now seek to have the defendants begin serving the prison sentences imposed in October, 1977.

"We haven't even begun to consider that," Mr. Hurson said, noting that while such an move usually comes at this point in a routine case, the Mandel case does not qualify as routine.

Mr. Weiner said, similarly: "This is a case in which the unusual has become the commonplace."

He said that he had called Mandel immediately after he received word of the decision from the court clerk in Richmond about noon yesterday. The former governor did not react to the news, according to Mr. Weiner, but only asked how soon a copy of the opinion would be available.

In January, after Mandel had won the first round in his appeal, he returned in triumph to the State House and announced, "I am Governor." He resumed the office—after a 15-month suspension—just two days before the swearing-in of Harry R. Hughes January 17.

He was able to resume office then because his conviction had been reversed January 11, when two members of a three-judge panel of the federal appeals court found reversible errors by the trial judge.

On April 17, however, the U.S. attorney's office won permission to re-argue the appeal before the full court, effectively wiping out the defense victory. The full-court hearing required the votes of four of the six judges.

The court heard arguments June 5 in Richmond on three issues in the case: testimony by state senators based upon what they had heard, the use of the state Code of Ethics in the trial and the judge's instructions to the jury about bribery.

Although the June hearing was concerned almost entirely with the first two issues, the jury instruction was the focal point in yesterday's ruling.

A majority of the judges would have voted to uphold the convictions against all the defense claims, the ruling said, "except the claim of error in the charge to the jury, which was the point upon which there was equal division."

And Judge Emory Widener, Jr., a member of the panel that had reversed the convictions, criticized the majority in a 16-page dissent dealing primarily with the issue of the bribery instruction.

Judge Widener was joined in his opinion by Judge Donald S. Russell, who also voted to reverse the convictions in the

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Court upholds convictions of Mandel, 5 others

MANDEL, from A1

January panel opinion.

Only their votes were revealed in yesterday's action.

The resulting 3-to-3 vote among the judges maintained the status quo. To reverse the convictions, defense lawyers would have had to persuade four of the six judges that errors by the trial judge invalidated the jury's verdict.

Mr. Weiner said of the vote, "I am disappointed that the court was unable to decide the case. A tie vote is tantamount to a statement that the Court of Appeals is unable to decide the case.

"I'm not sure that in a criminal case, the effect should be to affirm the conviction," he said. "The right to appeal, it seems to me, includes the right to have that appeal decided by a majority of the appellate court."

He said that point might become an issue in the next legal round.

The defense has 14 days in which to seek a re-hearing by the Circuit Court and 30 days in which to apply to the Supreme Court.

Mandel was indicted in 1975. After a 1976 trial ended in a mistrial, he was convicted in August, 1977, with five other men: W. Dale Hess, Irvin Kovens, Ernest N. Cory, Jr., and brothers William A. Rodgers and Harry W. Rodgers 3d.

The jury found the six guilty of mail fraud and of racketeering in connection with legislation affecting Marlboro Race Track.

Cory, a Laurel attorney who received an 18-month sentence, learned of yesterday's ruling from reporters.

"It's all a mystery to me," he said. "I never thought the government had a case." Cory attended last month's argu-

ments in Richmond.

Kovens, who spent the day in his West Baltimore furniture store, said, "I have nothing to say. Any statement will have to come from my attorney."

The other three defendants could not be reached for comment. Harry Rodgers's son, Harry W. Rodgers 4th, said, however, that his father was "shocked and very upset."

Kovens, Hess and Harry Rodgers received four-year prison sentences from Judge Robert L. Taylor, while William Rodgers received a 20-month sentence.

The jury found that Mandel had accepted thousands of dollars in gifts and bribes from the co-defendants and, in return, used his influence to help their business interests.

A central part of the case was the contention that the former governor guided the enactment of two bills by the 1972 General Assembly that increased the value of his friends' financial interest in the half-mile Marlboro Race Track in Prince Georges county.

At the trial, Judge Taylor permitted testimony by several senators that they had heard—but not from Mandel—that the Governor wanted them to override his veto of legislation that would have increased the track's value.

That issue consumed most of the June 5 hearing before the full appeals court, with Judge Russell and Judges Kenneth K. Hall and J. Dixon Phillips suggesting that the testimony might be admissible and Judge Widener suggesting that the absence of direct testimony "is the most relevant thing in this whole case."

In his dissenting opinion yesterday, Judge Widener again labeled the testimony untrustworthy and said it fell precisely within the categories of "gossip, rumor, unfounded report, second-, third- or even further-hand stories" that have been outlawed in previous court decisions.

But the bulk of the dissent dealt with Judge Taylor's refusal to instruct the jury on the issue of bribery in connection with the mail fraud counts.



Sun photo—William Hotz
Arnold M. Weiner, lawyer for former Governor Mandel, reacts to the re-instatement of Mandel's conviction in his Baltimore office.

The following reporters contributed to today's coverage of the Mandel case: David Brown, Karen Hosler, Sheridan Lyons, Timothy M. Phelps, Antero Pietila, G. Jefferson Price 3d and John Schidlovsky.