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# Mandel argues his case before Court of Appeals

By Phillip Davis  
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ANNAPOLIS — Drawing an analogy between himself and the president, former Gov. Marvin Mandel stood yesterday before Maryland's highest court to argue that he should be immune from charges of fraud in the 1971 sale of the old Marlboro Racetrack.

If the court agrees, Mr. Mandel can avoid being tried in a \$15 million civil suit he and several co-defendants have been fighting for the last 12 years.

The most striking moment of the hearing came as it opened, with Mr. Mandel representing himself as co-counsel and addressing the red-robed jurists.

His influence as governor still reverberates, as the radically changed makeup of the court reflected. Only two of the seven sitting judges were on the panel. The other five were absent, because they owed their offices to Mr. Mandel.

Chief Judge Robert C. Murphy and Judges John C. Eldridge, John F. McAuliffe, Albert T. Blackwell Jr. and William Adkins II, all Mandel appointees, recused themselves and were replaced with retired judges and judges from other courts.

To that hastily assembled panel, Mr. Mandel declared: "The future of the [governor's] office, not the individual, is before you."

He said the U.S. Supreme Court has held that a governor bears the same relation to a state that the president does to the nation. He added that courts have found the president to have absolute immunity from civil suits for actions taken while in office.

"Such is the law and rightfully



THE SUN/AMY DAVIS

**Former Gov. Marvin Mandel, who has been fighting a civil suit for 12 years, leaves court flanked by his wife, Jean, and attorney M. Albert Fignski. The man at the rear is an unidentified friend of the Mandels.**

so," Mr. Mandel told the high court. "Why not then for the chief executive of the state?"

Mr. Mandel is one of the defendants in a suit filed by two former partners in the racetrack, brothers Michael Patrick O'Hara and James F. O'Hara III. They allege that Mr. Mandel and some of his political cronies used the legislative process to artificially lower the price of the

track before buying the brothers' 14 percent share.

The key act in the alleged conspiracy was Mr. Mandel's May 28, 1971, veto of a bill to give the track more racing days. After the brothers sold their share to the defendants, Mr. Mandel allegedly encouraged the legislature to override his veto during the next General Assembly, thus boosting the value of the property.

The co-defendants in the case are Dale Hess, Harry and William Rodgers, and the late Irv Kovens.

A jury in 1978 found Mr. Mandel guilty of mail fraud and racketeering in the case, but the conviction was overturned by the federal courts, which ruled that the charges had been misapplied.

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The O'Hara brothers, however, pressed ahead with a civil suit that sought \$15 million in damages against Mr. Mandel and the other defendants.

On May 15, two weeks before the civil trial, Mr. Mandel filed a motion to dismiss the case on grounds of immunity. Baltimore Circuit Judge Elsbeth L. Bothe rejected the motion, and Mr. Mandel appealed.

Yesterday, the appeals court, presided over by Judge Harry A. Cole,

peppered Mr. Mandel's lawyer, H. Thomas Howell, and the O'Haras' counsel, Roy L. Mason, with questions about the case's constitutional ramifications.

Judge Lawrence F. Rodowsky asked Mr. Howell if he thought Mr. Mandel's immunity went beyond Article 6 of the state constitution, which states that the governor is a "trustee of the public, and as such accountable for [his] conduct."

Mr. Howell replied that the judges should follow the example of the Supreme Court, which in the 1982 case

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*“There is no precedent . . . that gives a governor absolute immunity from [charges of] fraud.”*

**ROY L. MASON**

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of Nixon vs. Fitzgerald ruled that the chief executive had absolute immunity from civil suits stemming from

actions taken while in office. A 1980 Maryland Appeals Court ruling applied the same standard to the governor's office, he said.

Mr. Howell also argued that the governor has a constitutional immunity in the act of vetoing legislation, the same as any other legislator acting on a bill in the General Assembly. He warned that if the court did not uphold that immunity, it would "open a window for all the disgruntled people who couldn't get their bills through" to sue the governor.

But the O'Haras' attorney, Mr.

Mason, said the judges in the Nixon case specifically held that governors have limited immunity. "Our contention is that the governor is not immune from suits for non-government, non-executive actions," he said.

Though the veto is a key element in their case, Mr. Mason said, it is only one part of the conspiracy put together by Mr. Mandel and the others. "There is no precedent anywhere in this country that gives a governor absolute immunity from [charges of] fraud," Mr. Mason said.