

U.S. seeks new Mandel hearing

By SHERIDAN LYONS

Federal prosecutors asked the United States Court of Appeals for the Fourth Circuit yesterday to hear arguments for reinstatement of the convictions of Marvin Mandel and five co-defendants.

In their petition, filed in Richmond, the prosecutors said last month's 2-to-1 decision to reverse the convictions should be reconsidered because it creates confusion by contradicting prior court rulings in the areas of evidence and of the trial judge's discretion.

And, they argued: "The importance of the legal issues is matched by the importance of the case itself, coming on appeal after a lengthy second trial.

"The case involves serious allegations of wrongdoing by the highest elected official of the state. The parties, the scores of witnesses, and the state of Maryland itself have endured nearly five years of turmoil and uncertainty."

Former Governor Mandel was convicted with five others in August, 1977, on mail fraud and racketeering charges involving legislation that affected Marlboro Race Track. A 1976 trial ended in a mistrial.

The prosecution charged that Mr. Mandel accepted thousands of dollars in gifts from some of the co-defendants, who held a secret interest in the track, in return for his influence to reverse his own 1971 veto of legislation that would have benefited

the track.

Four of the appeals court judges must vote to grant the rehearing. Only six of the seven judges will consider the request, because Judge Harrison L. Winter, of Baltimore, has disqualified himself.

If four judges do grant a rehearing before the full court—which rarely occurs—the prosecution will have to convince at least three of the six that the conviction should be reinstated.

If the court denies a rehearing, the prosecutors may decide to re-try the case or to take the more difficult route of an appeal to the U.S. Supreme Court.

Judges Donald S. Russell and H. Emory Widener, Jr., ruled against the government in the opinion last month. They said that the trial judge should not have allowed some testimony by Maryland state senators as to what others told them, should not have allowed the state's Code of Ethics into evidence, and, should have instructed the jury more fully in some areas.

The petition, filed by the U.S. attorney, Russell T. Baker, Jr., and assistants Daniel J. Hurson and Daniel F. Goldstein, argued that the reversal "marks a radical departure" from prior court rulings—including those by the Fourth Circuit itself.

They said the two judges made assumptions about the facts not supported by the record in saying, for example, that some of the senators may have been politi-

cal enemies of the governor or that some of their testimony concerned statements made by others "in the heat of political battle, where rumors, opinion and gossip abound."

Such questions are to be explored through cross-examination of the witnesses, clarified in the trial judge's instructions—and resolved by the jury, the petition argued.

They said an analysis of the senators' testimony shows that only 7 of 78 segments of testimony involved what the judges ruled was inadmissible hearsay, not based upon the senator's own knowledge.

Regarding the contested testimony, they argued that some of it was repetitive, that some of it was supported by other evidence—and that, by court rules, the question of its validity is settled by the trial judge unless it amounts to a clear abuse of discretion.

The court's concern that no senator testified that Mr. Mandel told him directly to over-ride the veto is irrelevant, they argued, because, "Had the government been able to produce statements by Mandel, lack of necessity would have barred admitting the hearsay."

The senators' conclusions based upon activity or inactivity around them are as trustworthy as a statement by a person familiar with automobiles that a car is being driven too fast, they argued.