

Mandel seeks rehearing, calls tie 'intolerable'

By TIMOTHY M. PHELPS

Lawyers for former Governor Mandel asked a federal appeals court yesterday to hear his case for a third time, charging that last month's 3-3 split decision by the court was "intolerable" and "indecipherable."

Papers filed with the Fourth United States Circuit Court of Appeals in Richmond boldly attacked both the tie vote that left Mandel's political corruption conviction standing and the court's brief, unsigned order announcing its decision.

Arnold M. Weiner and lawyers for the five other defendants in the case asked that two judges recently appointed as the court's eighth and ninth members be allowed to participate in yet another hearing in an effort to break the tie.

Judge Francis M. Murnaghan, of Baltimore, took his seat on the bench July 27, one week after the case was decided. James Sprouse, of West Virginia, has been nominated to the court but not yet confirmed.

Even if the judges do not agree to hold a new hearing, they should allow the appeal court's first decision—which overturned the convictions by a 2-1 margin—to stand, Mr. Weiner argued.

The appeal was first considered by a panel of three of the seven judges on the court. In January, the panel announced the reversal of the conviction and ordered a new trial.

But in April, the full court—minus Judge Harrison L. Winter, of Baltimore, who excused himself—agreed to hear the case at the government's request. The 3-3 decision followed.

According to legal precedent, the tie vote restored the original verdict of the jury, which found Mandel and his co-defendants guilty in August, 1977.

But Mandel's lawyers mounted a

strong attack on that legal precedent yesterday.

"The announcement by this court that it is equally divided in this important and well-publicized case . . . has served the interests of no one," the defense lawyers said.

"The court presents itself as an institution unable to perform its primary function, the resolution of disputes; the legal issues, over which so much energy has already been expended, remain unsettled; half the court is of the opinion that a fair trial was not accorded, yet the litigants are committed to prison; and the general public, necessarily, entertains its own doubts as to the ability of the federal judiciary to function fairly and effectively in the management of major prosecutions."

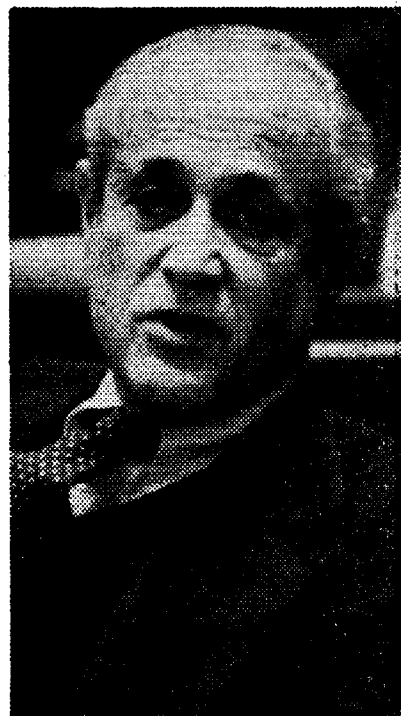
The defense lawyers attacked the one-page decision, which did not explain the judges' reasoning or even list which judges voted on which side, as "indecipherable."

"The operation of the federal appellate system is significantly hobbled by a summary and ambiguous order which is less than an opinion but which purports to deal with the important issues . . ."

The failure of a majority of the judges to agree has deprived the defendants of their right to appeal, "not through any fault of their own, but because of the inability of this court to reconcile its own differences," the lawyers said.

In addition to Mandel, the other defendants are Irvin Kovens, W. Dale Hess, Harry W. Rodgers 3d, William A. Rodgers and Ernest N. Cory.

There is an irony in Mandel's attempt to enlist the help of Mr. Murnaghan, who in the past has been closely associated with Democratic politicians who have not been allied with Mandel.



MARVIN MANDEL

... seeks new hearing on appeal

Mr. Murnaghan would not comment yesterday when asked if his involvement in state politics would lead him to excuse himself from the Mandel case. He also was a lawyer for *The Sun* and the *Evening Sun*, both of which attempted to gain access to legal documents connected with the case.

Judge Winter, who is also from Baltimore, excused himself from the case because at various times he has represented three of the defendants in official or private capacities, he said yesterday.