



Judges hear Mandel case. From left: J. Dixon Phillips, Jr., H. Emory Widener, Jr., John D. Butzner, Jr., Clement F. Haynsworth, Jr., Donald S. Russell and Kenneth K. Hall.

Sketch by Amy Salganik

Appeals court in Richmond holds hearing on Mandel case

By SHERIDAN LYONS
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Richmond—Federal appeals court judges threw questions at both defense and prosecution lawyers yesterday in a full court hearing in Richmond on the convictions of former Governor Marvin Mandel and five co-defendants.

The granting of yesterday's hearing en banc, by six judges of the United States Court of Appeals for the Fourth Circuit, effectively wiped out the previous reversal of the 1977 convictions.

On January 11, an appeal panel composed of three of the six judges voted 2 to 1 to reverse the convictions.

If the prosecution persuades at least

three of the six judges, the convictions for mail fraud and racketeering will stand. The defense must persuade four judges to reverse the convictions.

The judges gave no indication when they might rule in the case. Judge Harrison L. Winter, of Baltimore, the court's seventh judge, disqualified himself.

The court had instructed the attorneys to focus upon three issues that formed the basis of the January reversal: testimony by several state senators based upon what they had heard; the admission into evidence of the state Code of Ethics, which was not binding on Mr. Mandel, and the trial judge's instructions to the jury regarding bribery in the mail fraud charges.

Mr. Mandel's attorney, Arnold M. Weiner, argued yesterday on behalf of all six defendants.

He was interrupted almost as soon as he began to argue that the case did not warrant the full court hearing.

"Don't you think the court is past that point? The fact that we granted en banc, that we're hearing it?" asked Judge Donald S. Russell, one of the two judges who voted to reverse the convictions.

Mr. Weiner said that he had thought so, too, until told by the court that it wished to hear argument regarding the appropriateness of the hearing.

Chief Judge Clement F. Haynsworth, Jr., agreed, but told Mr. Weiner, "I think

perhaps you've done enough."

The argument then moved—and remained throughout most of the 75-minute hearing—on the question of hearsay testimony by several legislators on Mr. Mandel's supposed desire that they override his 1971 veto of legislation that would have benefited Marlboro Race Course. In return, the prosecution charged, the co-defendants who held a concealed interest in the track provided the governor with \$300,000 to \$400,000 in benefits.

The hearsay testimony was "absolutely the essential evidence," Mr. Weiner argued, saying that it was not only unsupported, but contradicted by other evidence.

Judge Kenneth K. Hall interrupted to suggest that the fact that "rumors were rampant" might be important, whether or not they were true.

"But here it was used to convict the governor," Mr. Weiner said excitedly. "The jury—literally—was told it could decide that rumor, speculation, gossip and thirdhand hearsay in the case was true."

Both Judge Hall and Judge Russell continued to suggest that the rumors might be admissible, with Judge Hall observing, "During the legislative process, a feel, an aura is going on that envelops the whole scene."

"The senators knew from some way . . . See MANDEL, A17, Col. 4

Baltimore Morning Sun, June 6, 1979