

Appeals court upholds conviction in bid to influence Mandel trial

Richmond (Special)—A federal appeals court upheld the conviction of Charles E. Neiswender here yesterday for offering \$20,000 to insure that the 1977 corruption trial of suspended Governor Mandel "would come out the right way."

The Fourth United States Circuit Court of Appeals unanimously found that Neiswender, one of two men convicted of trying to influence the outcome of the trial, was guilty of trying to obstruct justice when he offered money to Arnold M. Weiner, Mandel's lawyer, and implied that he could influence a juror.

The three judges rejected Neiswender's arguments that government misconduct and secrecy surrounding his arrest were adequate reasons to reverse his conviction, which resulted in a 2½-year prison sentence.

Even assuming that the officers who

arrested Neiswender, a shipping clerk from Cinnaminson, N.J., violated his rights, "such violations were essentially technical and not prejudicial to his defense and resulted from judicially authorized and supervised police conduct undertaken with the understandable goal of avoiding a mistrial in the Mandel case," an 18-page opinion written by Chief Judge Clement F. Haynsworth, Jr., said.

"Under these circumstances," the court continued, "we refuse to invoke our supervisory powers to dismiss the indictment. While severe official misconduct born of malice, caprice or brazen lawlessness might justify supervisory intervention, the facts presented here simply fail to warrant such extreme action."

According to the court records, Neiswender had claimed that his arrest and

transfer more than 100 miles to Baltimore—without an appearance before the nearest magistrate—were improper, that the original bail of \$1 million was excessive and violated federal bail provisions, and that his right to a speedy trial was violated because an indictment was not obtained within 30 days of his arrest.

He also contended that his secret appearance before the judge presiding over the Mandel trial contravened "the spirit" of the administration of criminal justice.

"While we do not condone the abrogation of one man's rights to avoid unfairness to another," Judge Haynsworth said in his opinion, "we refuse to adopt the defendant's proposed remedy [upsetting the conviction and dismissing the indictment] for the government's purported wrongs.

"Assuming Neiswender's arrest and

detention were illegal, the suppression of illegally obtained evidence provided a proper sanction. Indeed, the government did not use inculpatory statements made by Neiswender during his detention in Baltimore."

"We need not carefully scrutinize these assertions of misconduct," Judge Haynsworth wrote. "Although the case raises serious issues, we find no reversible error."

According to authorities, Neiswender voluntarily began serving his 2½-year sentence January 5 at the federal penitentiary in Allenwood, Pa. He had been free under virtual house arrest since his conviction and sentencing nearly two years ago.

One of the three major issues Neiswender raised in the appeal was that federal prosecutors failed to prove the type of intent necessary for conviction

and that "faulty" instructions to the jury had essentially adopted the government's theory of the case.

On these points, the court's opinion said: "Neiswender argues that the statute does not proscribe mere fraud, that it proscribed instead illicit designs to undermine the judicial process, and that it therefore requires the specific intent to obstruct justice. Neiswender contends that the government proved nothing more than an ill-advised attempt to obtain money by deception."

Rejecting this argument, the court held that a defendant is guilty "if he intentionally undertakes an act, or attempts to effectuate an arrangement, the reasonable consequence [of which] is to obstruct justice . . . even if his hope is that the judicial machinery will not be seriously impaired."

According to the court, there was no

proof that Neiswender ever dealt with a juror, even though the indictment charged that he "solicited from an attorney . . . a certain sum of money to insure that a juror would vote to acquit."

In appealing, Neiswender and his counsel also argued that the government had not proved the crime alleged in the indictment but an entirely different act or set of acts.

The appellate judges agreed that "on its face the indictment suggests that the crux of the case is jury tampering, while in fact the government's case had nothing to do with jury tampering. Although some ambiguity inheres in the indictment, we find it unobjectionable," the opinion said.

The appellate court took more than a year to issue its ruling. The case was argued here December 9, 1977.