

COURT DENIES DA MOTION TO SEAL TAPE TRANSCRIPT



—Photo by The Associated Press.

DISTRICT ATTORNEY Jim Garrison enters the Royal Orleans Hotel Wednesday to await the decision of the jury in his pinball bribery conspiracy case.

Sought to Block Jury
from Having Them

By DON HUGHES
and JOHN McMILLAN

The U.S. Fifth Circuit Court of Appeals late Wednesday afternoon denied a motion by defense attorneys in Dist. Atty. Jim Garrison's pinball bribery conspiracy trial aimed at preventing the jury from obtaining transcripts of four tape recordings of conversations in which Garrison allegedly accepted illegal bribes.

The denial by the higher court was handed down after Fred J. Barnett, a former Garrison attorney who has been serving recently as the DA's legal advisor, rushed from the U.S. District Court at 400 Royal to the Fifth Circuit with the motion.

The request for denying the transcripts to the jury had been signed by Garrison, serving as his own attorney, and Virgil Wheeler, attorney for John Aruns Callery, one of the other two defendants on trial with Garrison.

Robert E. Nims, represented by attorney Louis C. LaCour, is the third defendant in the six-week-old trial which went to the jury Tuesday afternoon.

The nine-man, three-women jury had asked originally for a transcript of the recording made on Feb. 25, 1971, between government informant Pershing O.

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Garrison Motion Is Denied

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Gervais and Garrison, at Garrison's home.

Shortly thereafter, the jurors requested the other three Gervais-Garrison tapes which had been played in court, along with some 50 others, earlier in the trial.

It was then that the defense decided on its move to ask the Fifth Circuit for an emergency writ to stop the jury's examination of the documents.

All four transcripts described Gervais, Garrison's former chief investigator, allegedly handing over pinball bribes to the DA.

Barnett told newsmen in his opinion the jurors are "entitled to view exhibits" while deliberating, but not transcriptions of tapes.

Defense counsel had objected to the transcripts being used during the trial itself.

The jury weighing the evidence in the six-week-old pinball bribery trial of the defendants continued its first full day of deliberation into the night Wednesday without reaching a verdict.

The jury of nine men and three women had been closeted in their deliberation room since 9:30 a.m., pouring over evidence and discussing testimony that they had heard in U.S. District Court Judge Herbert W. Christenberry's court since the trial began Aug. 21.

The jury and its two female alternates had been empaneled the previous day.

As the jurors completed their secret discussions Wednesday night, they were escorted by deputy U.S. marshals to be sequestered before resuming deliberation at 9:30 a.m. Thursday.

There was no official word, of course, on how long it will take the jury to reach a verdict, but in light of the vast amount of exhibits, evidence and testimony presented by both the government and defense, speculation around the federal courts was that it may be several days.

Also, the verdict must be unanimous to result in a conviction or acquittal. Should one or more of the jurors hold steadfast with an opinion different from the others, the trial would result in a hung jury and could be retried.

If one or more of the defendants are found guilty, they would have the right to appeal to a higher court.

The jury is deciding the fate of Garrison, currently campaigning for a fourth term as DA; Callery, a former partner in New Orleans Novelty Co.; and Nims, owner of REN Enterprises.

Immediately before the jury began its deliberations Wednesday morning, word was sent to

Judge Christenberry that the jury members wanted transcripts of the testimony of all witnesses who had appeared on the stand since the trial began and transcripts of the more than 50 tapes played in court.

Calling the court into session briefly, the 76-year-old judge said the witness testimony—probably in the millions of words over the past five and one-half weeks—had not yet been transcribed in full, and therefore was not available.

Although the tape transcripts have been filed into evidence, all of which the jury has at its disposal, Judge Christenberry suggested the jurors discuss among themselves the testimony of each witness to the best of

their recollection.

He added the purpose of deliberation is discussion among the jurors, and is the "customary way for a jury to decide a case."

The jurors, for the most part, have shown little emotion during the trial.

The lengthy proceedings in room 404 at 400 Royal St. have had their humorous moments and their bombshells, but most of the visible reaction—either in chuckles or amazement—has come from the courtroom spectators.

The 12 jurors and two alternates all are employed, with the exception of one housewife. They hail from various widespread communities, with only one a New Orleans resident. Two come from as far away as Thibodaux and Roseland.

Gervais faces U.S. grand jury

Government informer ^{9-27-73 5-7 1A-3} Pershing O. Gervais, the prosecution's chief witness against Dist. Atty. Jim Garrison, went before a federal grand jury here today to "tell all" he knows about criminal activity in the New Orleans area.

Gervais appeared outside the grand jury room about 10:15 a.m. and said he would "tell as much as I can" about criminal activity. He was called before the same jury that questioned former police Supt. Joseph I. Giarrusso about testimony in the Garrison case that he had been paid \$30,000 by a pinball operator to protect gambling. "I will tell them anything and everything they want to know going back to the year one if necessary," Gervais said.

Ask if his testimony was part of an announced "cleaning" on his part, Gervais replied, "There's no doubt about it."

Questioned about specifics, the one-time chief investigator

for Garrison said he would talk about bribes, presumably the bribes he claims pinball operators paid Garrison and two former policemen to protect the pinball industry.

It was Gervais who permitted the government to tape record his conversations with Garrison that led to the charges of public bribery against the district attorney.

Gervais said under oath that he repeatedly carried bribes from a pinball figure to the district attorney, including some money the government had marked. That money was introduced during the trial.

The jury is still out in the Garrison trial.