

GARRISON LAWYERS OUT; HE BEGINS OWN DEFENSE

Judge Denies Prejudice Motion by DA

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and JOHN McMILLAN

Dist. Atty. Jim Garrison's lawyers withdrew from the case but Garrison began defending himself in a surprising turn of events Wednesday afternoon.

U.S. District Judge Herbert W. Christenberry granted the motion in the pinball bribery case of Garrison and his two fellow defendants.

The judge, however, denied a motion by Garrison that the judge recuse himself because of prejudice against Garrison.

In granting the motion that Garrison be allowed to defend himself, Judge Christenberry said he had met with the DA and his lawyers in his chambers. He said the attorneys "stated there were irreconcilable differences in the way their client wished to proceed and the way they wished to proceed."

MUTUAL AGREEMENT

The judge said, "The court was informed Mr. Garrison and his counsel had reached a mutual agreement that they withdraw and he represent himself.

"The court believes the representation was made in good faith. The court finds in the interest of the proper administration of justice the attorneys should be permitted to withdraw and Mr. Garrison be permitted to represent himself."

The judge ordered that the proceedings in his chambers between him, Garrison and Garrison's former attorneys be sealed until the trial ends.

The judge remarked that the action should in no way reflect adversely upon the attorneys. "They do not feel, and the court agrees, that under the circumstances they could continue."

LAWYERS LEAVE

At that point Fred J. Barnett and Louis Merhige, who had represented Garrison up to that point, left the court room. Outside Barnett, who said he couldn't comment on the specifics of his differences with Garrison, said, "He had one philosophy and we had another."

Barnett, a law partner of F. Lee Bailey, whom Garrison had sought to have represent him, said, "At the beginning of the trial there was a motion filed that there were differences and he asked for a continuance until Bailey could represent him."

Bailey is facing trial himself in Orlando, Fla., in connection
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with the fraud case involving Glenn Turner, a Florida entrepreneur.

'NO HOSTILITY'

"As the trial progressed the differences became more apparent," Barnett said. "There was no hostility. We parted in a very friendly vein. His thoughts were going one way and ours were going another."

Asked whether Garrison felt he would have been in agreement at this point with Bailey if Bailey were his attorney, Barnett said, "That was his opinion at the time. He felt that Mr. Bailey is more attuned to his wave length than we are."

In another development in the case, Virgil Wheeler, who represents John Aruns Callery, a former partner in the pinball firm, New Orleans Novelty Co., rested his case without any defense.

Besides Garrison and Callery, pinball executive Robert Nims, the owner of REN Enterprises, is on trial in the bribery and conspiracy trial which is into its fourth week.

'IN NO WAY'

Before Garrison began his own defense with opening motions and a statement to the court, Louis C. LaCour, attorney for Nims, stated that bribe payments alleged, in previously played tape recordings, to have taken place between June 15, 1971, and June 29, 1971, "in no way" connected his client with those transactions, and asked that he be allowed to call Callery to the stand as a favorable witness.

Since Callery had rested his case without defense and ordinarily would be immune from being called, Judge Christenberry denied the request.

In his opening statement, Garrison said he felt that the judge had spoken with bias, "but unintentional bias," on Tuesday when he ruled that the government had presented "abundant evidence to establish the guilt" of the defendants if the jury believes the evidence.

"It is essential that the court not only be impartial but appear impartial," Garrison added, approximating that as many as a million people may have read or heard the judge's remarks through news sources.

WHAT LAW SPECIFIES

Judge Christenberry told the DA that if there had been no evidence of guilt presented, then under the law he would have granted a "directed verdict of acquittal as asked by defense attorneys. But if there is evidence, it must go to the jury to determine if the jury believes it. Garrison said that one of the results of the statement was to injure him since he is presently running for reelection.

"I regard you in the highest esteem," Garrison was telling the judge when Christenberry interjected: "I don't want to get into personalities, but that must be something very recent." The judge alluded to the fact that at the beginning of the trial Garrison had tried to have Judge Christenberry recuse himself from the case.

QUICKLY DENIED

The DA then again asked Christenberry to either recuse himself from the trial or rule a mistrial on the grounds of the "abundant evidence" statement the judge had made Tuesday. Both motions were quickly denied.

"Thank you very much for listening to me, your honor," said Garrison.

"That's what I'm here for," the judge replied.

Garrison said during a recess that followed shortly afterward that he was not sure whether Judge Christenberry had issued his rulings on his recusal and mistrial motions "before or after I finished making them."

Asked if he was receiving legal aid in his defense since releasing Barnett and Merhige, both of whom he said were serving free of charge, Garrison answered; "I'm already receiving assistance from Captain America (a known nickname for the prosecutor, U.S. Atty. Gerald Gallinghouse), but I believe it is unintentional assistance."

THREE WITNESSES

During the rest of the afternoon, Garrison called three defense witnesses to testify in his behalf.

Max Mercer, an assistant DA under Garrison from 1964 to 1966 assigned part of that time as supervisor of vice case prosecution, testified that Garrison had instructed him "to fish or cut bait," meaning that he should do his job or someone would replace him.

'NO, NONE'

"In all the time I was in your office," Mercer added, "you never asked me to do anything improper or to compromise my attempts to be a decent person." Asked by his former boss if he knew of any form of protection system for pinball offenses within the DA's office while he was employed there, Mercer, now a Slideil attorney, replied: "No, none."

Mercer said he had prosecuted pinball cases "vigorously" while with Garrison.

Under cross-examination by Gallinghouse, Mercer said that

No owners of pinball machines were ever prosecuted in New Orleans while he was supervisor of vice cases for the DA.

Garrison's second defense witness was Numa Bertel, an assistant DA since December, 1966, who said that he was once given a folder by First Assistant DA John Volz containing a complaint by then-pinball operator Santo DiFatta that he had been fleeced out of some \$150,000 by someone who had since left the state. Bertel said it was ruled that the case did not warrant filing extradition proceedings against the person accused by DiFatta, "and that was the end of it." Bertel said Garrison did not intervene in the matter in an attempt to aid DiFatta who testified earlier in the trial that he had made payments earmarked toward receiving advance notice on impending pinball raids by police vice squad men.

WOMAN CONVICTED

The only bribery matter that had come up in the DA's office that he was aware of, Bertel continued, was when he himself once was offered a bribe by a woman to dismiss a case. Bertel said he asked Garrison about it, and was told to take the appropriate action. He said the woman was tried and convicted of the bribery attempt.

NEVER TOLD HIM

Bertel said in reply to a question from Gallinghouse that Garrison had never told him that police Capt. Frederick Soule Sr., police Sgt. Robert Frey or Garrison himself was receiving bribe money to protect illegal pinball gambling.

In one of the tapes played earlier in the trial, government informant Pershing Gervais was heard to inform Garrison that both Soule and Frey were receiving bribe payments. Both have pleaded guilty in the case and have testified as government witnesses. On four of the government-recorded tapes, recorded in 1971, Gervais allegedly was making bribe payments directly to Garrison.

The DA's final witness for the day was police Supt. Clarence B. Giarrusso whose brother, former Supt. Joseph I. Giarrusso, was accused during the trial by pinball operators Lawrence La-

garde Sr. and John Elms Jr. of receiving \$30,000 in bribes while in office from their TAC Amusement Co.

Clarence Giarrusso said Wednesday that his own policy in dealing with illegal gambling is "uncompromising enforcement of the law," adding that as superintendent for the past three years he has had no occasion to deal personally with pinball cases. He added, however, that he has had no complaints about Garrison's office from Sgt. David Kent, currently vice squad commander.

Giarrusso, under questioning from Gallinghouse, also said that Garrison had never told him that Soule, Frey or himself had ever received bribes from the pinball industry.

FIRST WITNESS

The first witness called by Garrison in the role of his own attorney was Byron LeGendre, a former assistant district attorney in Garrison's office.

LeGendre, who is currently the first assistant district attorney in Lafayette, testified that while he served as supervisor of vice for the DA's office he had primary responsibility for prosecuting pinball gambling cases.

LeGendre said, "The only instruction I received was that it was up to me to do what I saw fit based upon my integrity and my oath of office."

He said, in response to questions by Garrison, that he never had been asked to do anything improper. "No sir, I cannot recall any such thing. Nothing that would violate my conscience or my oath of office."

Under cross-examination by Gallinghouse, LeGendre said when he prosecuted pinball gambling cases, he charged the person who made the payoff. He said he did not investigate the ownership of the machines. (Garrison is accused of accepting bribes from the pinball machine owners.

WHO PAID?

Gallinghouse asked LeGendre whether he knew that the persons who made the actual payoffs for games won on the machines were reimbursed for their losses by the owners. LeGendre said he never investigated that or received such information.

Gallinghouse asked, "You did know that there were approximately 1,000 pinball machines in New Orleans?"

"No, sir."

"Did you try to find out?"

"No, sir."

"Did Mr. Garrison try to find out?"

"Not that I know of."

"Did you ever prosecute anyone other than the man who made the actual payoff?"

LeGendre said that on occasions the owner or manager of the establishment where the payoffs were made was prosecuted.

REVIEW BY SOULE

He also was asked whether Soule — who was assigned to Garrison's office as an investigator until June 30, 1971, the

date, Garrison, Soule and the other defendants were arrested — reviewed the evidence in gambling cases.

LeGendre said, "He was my expert as to the sufficiency of evidence" to prosecute gambling cases.

Soule pleaded guilty in the case and admitted taking bribe money for tipoffs to pinball dealers when raids were planned by the vice squad.

Asked if he had received information concerning public bribery, whether he would have ignored it, LeGendre said, "I would not have ignored it. I would have taken the necessary action based on provable facts. I have not to this day received any such information from what I consider reliable sources." He said he never had any indication that Garrison took bribes.

During the morning session of court, the jury viewed documentary evidence and money the prosecution said was received by Garrison as bribe payments. The trial resumes at 10 a.m. Thursday.