

BRIBERY TRIAL NEARS END; CROWD JAMS COURTROOM

Trial Is Expected to Go to Jury Tuesday

By DON HUGHES
and JOHN McMILLAN

The nine-man, three-woman jury empaneled for the government's pinball bribery case in U.S. District Court here heard a full day of closing arguments Monday from both the prosecution and defense as the trial—now in its sixth week—nears its climax.

The trial, in which Dist. Atty. Jim Garrison and two local pinball executives are charged with conspiracy to obstruct justice by either paying or receiving bribes to foster illegal pinball gambling, drew a capacity crowd of spectators to Judge Herbert W. Christenberry's court Monday. Scores of curious spectators lined the hallway outside the courtroom more than an hour before closing arguments began Monday morning.

The 12 jurors and two alternates were sequestered Monday night for the first time since the trial started Aug. 20.

The case will go to the jury for deliberation Tuesday after Judge Christenberry makes his charge to the jurors. This will immediately follow Garrison's closing argument and rebuttal by U.S. Atty. Gerald J. Gallinghouse.

In Monday's court action, presentation of the government's case and a review of previous testimony and evidence was shared by Gallinghouse, Assistant U.S. Attorney Michael J. Ellis, and acting

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Chief of the Organized Crime Strike Force in New Orleans Eric Gisleson.

On trial with Garrison are John Aruns Callery, a former partner in New Orleans Novelty Co.; and Robert B. Nims, owner of REN Enterprises. These three were arrested June 30, 1971, along with seven others and subsequently were indicted by a federal grand jury on the conspiracy charge.

The government is charging Garrison, Callery, Nims and the others all were participants in a long-running scheme in which members of the local pinball industry paid a predetermined amount of money on a regular basis to gain protection against arrest and prosecution for illegal payoffs being made on the machines they owned.

ONE OF THREE

The prosecution says that Garrison was among three persons on the receiving end of the bribery, the other two being former police Capt. Frederick Soule Sr. who was assigned to Garrison's office as an investigator at the time of his arrest; and former police Sgt. Robert Frey, commander of the vice squad when arrested.

Both Soule and Frey have pleaded guilty and testified as government witnesses in the current trial.

The other five original defendants either have pleaded guilty or had their cases severed from this one. They are John Elmo Pierce, owner of Pierce Amusement Co.; Lawrence Lagarde Sr. and John Elms Jr., both partners in TAC Amusement Co.; Louis Boasberg, owner of New Orleans Novelty; and Hardy Marks Jr., an employee of Boasberg.

In the packed courtroom Monday, Mrs. Liz Garrison, the DA's attractive blonde wife, and seated in the front row of spectators with five Garrison children.

Garrison himself spent much of the day jotting down notes on

white file cards, possibly for use during his closing argument in his own behalf Tuesday morning.

Garrison has been serving as both defendant and defense counsel for himself for the last half of the trial since parting ways with his two original attorneys, Fred Barnett and Louis Merhige.

Completing their closing arguments by late Monday afternoon were the government attorneys and Virgil Wheeler, attorney for Callery.

Louis C. LaCour, representing Nims, was to have presented his argument following a supper break Monday night.

'JIGSAW PUZZLE'

The prosecution began its final statements with U.S. Atty. Gerald J. Gallinghouse explaining how the government said it intended "to put together the pieces of the jigsaw puzzle" involving the case.

He said Eric Gisleson and Michael Ellis, his two fellow prosecutors, would explain the case and after the defense attorneys made their statements he would conclude.

Finally he asked the jury to remember Pershing Gervais "is not on trial. No one but Mr. Garrison, Mr. Callery and Mr. Nims is being tried."

Gisleson told the jury that the case involved "A classic conspiracy." He said it began in 1962, when Garrison took office, and continued until the arrest of the defendants in 1971.

He recounted testimony that payments to the DA began in 1962 and, while some participants and methods of operation changed the conspiracy remained the same.

SAME OLD CAR

He compared the alleged conspiracy to a 1962 automobile with a new bumper, a new engine and other new parts. "If I tried to tell you," he argued to the jury, "it was a 1970 car you'd look at me and laugh," he said.

His argument was to counter defense contentions a new

conspiracy developed in 1970 after the massive raids by federal agencies put a cramp in the pinball industry.

Gisleson began by telling the jury the indictment charges "a conspiracy to obstruct state and local law enforcement." "We must move that beyond a reasonable doubt." And, he told the jury, if it has a doubt it must say what that doubt is. "We must leave our personal beliefs, predisposition." This is no personal contest.

Gisleson said the government "is trying to prove two or more people agreed not to enforce the laws of this state and one of them must have done something to put it into effect and that one was a public official and one was engaged in an illegal gambling business."

'BAG MEN'

The others, he said, could be intermediaries or "bag men."

The gambling business, to be illegal, must be in violation of the laws of Louisiana and employ five or more persons and have been in existence in excess of 30 days.

He said the crime of conspiracy with which the defendants are charged is "the simplest crime known to man—an agreement to violate the law. In this case the agreement was to not enforce the laws of the state of Louisiana regarding gambling business."

Gisleson, who is the acting head of the Organized Crime Strike Force of New Orleans, said a conspiracy "does not have to occur in a smoke-filled room on a foggy morning at 3 o'clock in the French Quarter. We just have to prove they were all working together for a common goal."

'CLASSICAL CASE'

This case, he said, was "classical" in its functioning without all individuals meeting or being acquainted with one another, and having "insulation" (the use of intermediaries to deliver money from briber to the person receiving the bribe).

He said protection money was a necessary fact of life for the pinball industry.

"They were using pinball machines for illegal gambling and operating openly in most bars in town. That made them very vulnerable. They were subject to being raided and having the machines seized.

"That meant a loss of money. It would hit them in the pocket book. And prosecution would put them out of business. They had to stop both types of attack," he said.

INTERMEDIARY

Gisleson said all the pinball operators "did not get together and run down to Tulane and Broad (the location of the DA's office) and give money to Mr. Jim Garrison.

"They made arrangements through the Mr. Callerys and Pershing Gervais of this world to plug off—so to speak—one of the areas in which they were vulnerable. They then made arrangements to reach the vice squad, which could ruin their business.

He said they didn't need to nor could they have, bribed every assistant district attorney or policeman. They needed only to bribe those at the top to be effective.

Gisleson told the jury while the indictment under which the federal grand jury charged the defendants was lengthy it was not difficult.

He said it had five parts: the names of the defendants, the allegations that illegal pinball gambling operated, the allegation there was a conspiracy, the way the conspiracy was committed, and the overt acts of that conspiracy.

ONLY ONE CHARGE

He said while 35 overt acts were charged, only one needed to be proved to convict all alleged conspirators.

Gisleson said once any one of the defendants became part of a conspiracy, they were responsible for anything that occurred as a result of it until it ended. "You will hear from the defense attorneys 'it's a new ball game.' That is false, there was one conspiracy."

Ellis began his final statement by telling the jury that "it is our allegation that the agreement was hatched in 1962 when Mr. Garrison was elected. He brought into office with him Mr. Pershing O. Gervais. He testified that as chief investigator (for Garrison) he had under him police officers."

Ellis said that Gervais recounted the raids on Bourbon Street "clip joints" and other illegal activities, but that when he wanted to perform the same actions against the pinball industry he was perverted by his boss, Garrison.

Garrison told Gervais, Ellis said, to forget that idea because the pinball industry had given him a \$10,000 campaign contribution.

Instead of cracking down as Gervais suggested, Garrison sent Gervais to arrange for bribe payments with Callery, Ellis said.

Gervais was not the only person who had told Garrison how to go about getting the principals involved in the pinball business, Ellis said. Aaron Kohn, the managing director of the Metropolitan Crime Commission, suggested a means and elicited a promise from Garrison he would do it.

'THE BIG MAN'

Ellis said that Kohn had suggested that Garrison not crack down "on the little man, but hit the big man, the pinball owners."

But instead, Ellis said, Garrison takes the \$50 a day payments arranged by Callery "so he would not make waves."

Ellis also recalled how former Police Capt. Frederick Soule Sr. was brought into the scheme in 1962, how Callery had outlined the arrangements for tips when raids were planned by the vice squad which Soule headed.

Ellis said the payments to Garrison continued from 1962 until 1965 when Gervais left the DA's office. They still continued from then until 1971 when Garrison was arrested, but under a different form of delivery. Instead of being made directly by Gervais to Garrison in the DA's

office, they were taken to his home.

Ellis also struck out at the testimony of two of Garrison's investigators, Lynn Loisel and Louis Ivon, as "smacking of deception."

Loisel testified he was with Garrison when he fired Gervais in 1965 for taking a \$3,000 bribe from local attorney Burton Klein.

That testimony was before lunch one day during the trial, and during the lunch break, Klein, having heard about the testimony, approached Garrison, Ellis said, and Garrison told him it was the first he heard of it and would rectify it in open court.

'NO CORRECTION'

Instead, Ellis said, after the lunch break Ivon testified that Garrison had told him he fired Gervais for taking the bribe.

"There was no correction of the record as Garrison promised," Ellis said.

But, he asked, "What is the proof positive (that Garrison didn't fire Gervais)? Not what Mr. Gervais says or what Mr. Klein says, but a plaque which says it was presented to the best chief investigator the DA's office ever had, presented to Gervais by Garrison two months after he was 'fired.'"

Ellis recalled testimony of John Elmo Pierce. Pierce, a pinball operator, testified there was a meeting of pinball owners to discuss making increased payments for protection.

PROFITS CITED

What stimulated large bribe payments, Ellis asked. The fact that they were making \$70,000 a week on pinball machines in New Orleans, he answered, better than \$3.5 million a year.

Ellis told how Callery, according to testimony by Lawrence Lagarde Sr. and John Elms Jr., partners in TAC Amusement Co., inquired about continuing their \$20,000 a year obligation in 1968 when John "Tae" Elms Sr. died. They did, he said, and said then-Police Supt. Joseph I Giarrusso was receiving the money.

Ellis told how after the federal raids in November of 1970 the pinball industry was set back on its heels and bribe payments slackened off. But they continued, he said, and cited testimony of Boasberg and Soule.

Callery was responsible for the arrangements, he said, and had an interest in the pinball industry profiting because he had a contract with New Orleans Novelty Co. which paid him \$12,000 a year and 7.5 per cent of its profits as long as the pinball machines continued to operate.

PAY-OFFS REHASHED

Ellis then outlined numerous calls and meetings of the defendants with Gervais, as testified to in court. He recounted arrangements described and evidence in court showing how payments were made to Garrison in 1971.

Then Ellis outlined how he said the evidence proved the exchanges of money.

—In January of 1971 Harby Marks delivered \$1,000 to

Soule who gave \$250 of it to Frey. Boasberg testified he gave the money to Marks for delivery.

—Feb. 18, 1971, Marks gave Soule \$1,000 who gives it to Gervais. On Feb. 25 Gervais and federal agents exchanged that money for money on which serial numbers were recorded. Gervais gave it to Garrison at his home and the transaction was recorded. Garrison told Gervais, "Our move is no move," meaning, Ellis said, Garrison "is not going to take any affirmative action against the pinball industry." He said, "It's inescapable that Mr. Garrison got it and the reason he got it is to protect the pinball industry."

FONTAINEBLEAU SCENE

—March 8, Marks brought \$2,000 to Gervais at the Fontainebleau Motor Hotel. This money was exchanged for marked money and delivered to Garrison on March 9. The transaction was recorded on tape. During this conversation Garrison was told that not only Soule but Frey—both of whom have admitted their guilt—was being bribed and Garrison's reaction was one of being pleased.

—May 3, Marks delivered \$2,000 to Gervais. This money was exchanged by federal agents for marked money and \$1,000 went to Soule and \$1,000 to Garrison on May 28. Then 13 of the marked \$50 bills were recovered when Garrison paid his bill at the Fontainebleau where he was staying. An investigator for the DA testified he paid the bill with money Garrison gave him.

—June 29, Marks brought another \$2,000. Garrison called Gervais to get his permission to re-hire Frank Klein as an executive assistant DA. Then Gervais told Garrison, he wanted to see him and Garrison invited him to his house. The money was exchanged for marked money. The money was also dusted with fluorescent powder and placed in an envelope. It was delivered to Garrison and the transaction recorded on tape. Gervais told IRS agents the money was locked in a desk drawer by the DA.

—June 30, Gervais gave \$1,000 to Soule who split it with Frey. Both were arrested with the money in their possession. Garrison was arrested at his home. When agents discovered the desk drawer was locked, Garrison said he didn't have the key with him and they pried it open. The money was in the envelope in the desk drawer. An examination of Garrison's hands

By IRS Agent Irving Johnson revealed traces of the fluorescent powder on the DA's hands.

Ellis then argued that Louis Gerstman, Garrison's "So-called tape recording expert", examined a small part of a copy of a copy of a copy of one tape recording and said he believed it to have been tampered with.

He asked the jury to compare that testimony with the testimony of Lt. Ernest Nash, a Michigan state policeman, and one of only 10 voice print experts in the world. Nash examined all of the original tapes and said there was no alteration.

Ellis said the jury also had the testimony of other original defendants that the tapes were accurate.

The assistant U.S. attorney said Garrison may claim this is a federal conspiracy to frame him. But, Ellis said, IRS agents working on the case are Irving Johnson, New Orleans, Joel Lanoux, Edgard, and Edward Martin, Westwego.

"Are these the kind of men who set out to frame anyone? And I dare Mr. Garrison to look Agent Moore (Chief IRS intelligence agent Floyd D. Moore) in the eye and say 'you set out to frame me.'"

Ellis said, "No, ladies and gentlemen, this was no frame. This was an investigation to ferret out the political and public corruption that existed in New Orleans."

He said the only difference between Garrison and the other defendants is that he "is an attorney and holds the highest elected office in the city of New Orleans with the public trust to carry out."

"But he betrayed that public trust, the trust the people put in him for the past eight and one-half years while he has received illegal bribery money."

In his concluding statement, Wheeler said he sees a totally different picture when the pieces of the jigsaw puzzle—as mentioned earlier by the prosecution—are assembled. He added the government had failed to prove Callery's guilt of the charge "beyond a reasonable doubt."

Wheeler said that prior to Oct. 15, 1970, there was no federal offense involved in the payoff "agreement" alleged by the government to have taken place, and although Callery was a partner to such an agreement earlier along with Soule and others, his client

terminated his participation in June of 1970.

The period of the indictment under which the defendants are charged runs from Oct. 15, 1970—the effective date of the federal Omnibus Crime Bill—to June 30, 1971—the date on which they were arrested.

3 AGREEMENTS

Wheeler said that in actuality there were three separate conspiracies, or "agreements," with the second in effect between Jul and Septembyber, 1970, "that was different, separate and apart from the original one."

The attorney said the third scheme, which he termed the "Boasberg agreement," was founded in August of 1970 by Boasberg.

"If Callery was a member of that agreement, you should convict him," Wheeler told the jury, "but if he was not a member of the Boasberg agreement, you should acquit him."

He said even if Callery had knowledge of the so-called "Boasberg agreement" and discussions with its members, this would not be proof of guilt.

"Guilt by association is not sanctioned in law," he stated.

Contending there was "no such a thing" as one continuous, uninterrupted conspiracy from 1962 through June 30, 1971, as the prosecution alleged, Wheeler claimed that Callery told others in the pinball industry of his withdrawal from the original bribe payment scheme and never participated in the Boasberg agreement.

Wheeler quoted from testimony by Soule earlier in the trial, saying that Callery's participation in the bribe payments ended in June of 1970, and he was no part of Boasberg's "new deal" which started the following August.

The attorney also declared Soule stated on one of the more than 50 tape recordings played during the lengthy trial "everything ceased when Joe Giarrusso (former police superintendent) left office," which was in August, 1970.

Wheeler was again stressing that the original conspiracy had ended before the indictment period began Oct. 15, 1970.

NOT ON BENCH

"Callery never even made the Boasberg team. He never even made the bench, the second string," Wheeler continued.

He said that on another tape—recorded in January, 1971—with the aid of government in-

formant Pershing O. Gervais—Boasberg was relating to Gervais that he was trying to finish assembling a new payment deal for protection, and mentioned that Callery "had washed his hands of it."

On yet another tape made later that month, Wheeler quoted Gervais as commenting that Callery had "stepped out" of the bribery agreement.

Wheeler said that Callery was merely "a conduit, a source of information, a crutch" for Gervais whose alter-ego was the government and Internal Revenue Service agents with whom he was cooperating.

Bribery Trial Jury Has One Orleanian

These are the jurors in the pinball bribery trial of Dist. Atty. Jim Garrison and pinball executives Robert Nims and John Aruns Callery:

Delores W. Newton, 8332 Green St. She is a telephone repairwoman for Western Electric and the only New Orleanian on the jury;

Delbert J. Schexnayder, La-Place, a welder for Avondale Shipyards;

Leon C. Morgan, 2216 Volpe Drive, Chalmette, an automobile mechanic;

William M. Grover, Reserve, a truck driver;

Dewey L. LeJeune, Hammond, an electrician;

Gerard A. Chutz, 2129 Corinne Ave., Chalmette, an employe of Charity Hospital;

Raoui Trahan, Des Allemands, a bridge tender;

Bruce Fussell, Roseland, a millwright;

Mrs. Mary Lou Durbin, New Sarpy, a postal worker;

Moise S. Crochet, Thibodaux, a school custodian;

Jessie P. Villemarette, 3001 Hero Drive, Gretna, a pipeline gauger for Chevron Oil Co;

Mrs. Eula P. Fleming, a Pearl River housewife.

Alternates are Audrey M. Chouest, 315 Fifth St., Westwego, a packer with Frito-Lay, and Mrs. Ouita S. Jourdan, a legal secretary from Bush.

The foreman will be elected when the jury starts to deliberate.