

Garrison dealt setback

VOICE 'EXPERT' REJECTED

By ED LEPOMA and LANNY THOMAS

Dist. Atty. Jim Garrison's attempt to discredit key tape-recorded conversations in his pinball bribery trial suffered a setback today when the presiding judge shut off testimony by a New York voice expert.

The judge also denied a defense motion for a mistrial.

Dr. Louis Gerstman, a professor of speech and hearing sciences at City University of New York, was questioned about one of the tapes made by government informer Pershing O. Gervais. The government has based most of its case against Garrison and two pinball executives on a series of more than 50 tapes made by Gervais.

U.S. Atty. Gerald J. Callinhouse objected to Gerstman's testimony on grounds he is an incompetent witness and not an expert.

U.S. Dist. Court Judge Herbert W. Christenberry sustained the motion and cut off questioning of Gerstman but ordered Callinhouse's statement on

incompetency stricken from the record.

Callinhouse's motion to have Gerstman disqualified as a witness came after Asst. U.S. Atty. Eric Gislerson had put Gerstman through sharp examination.

In sustaining the prosecution motion, Judge Christenberry noted differences in Gerstman's testimony, comparing his copy of one of the tapes with the original government copy.

"First, he said it was word-for-word, then he said he did not examine the copy against the original to see if it was word-for-word," said the judge. "I am going to sustain the government objection."

The tape in question was one the government claims was of a Feb. 25, 1971, conversation between Gervais and Garrison.

At one point in the questioning this morning Gerstman blurted out, "There was clear evidence that the tape is fraudulent."

The judge instructed the jury not to

give any weight to Gerstman's statement.

When Callinhouse charged that Gerstman was not a competent witness, the defense moved for a mistrial "because of the inflammatory remarks made by the prosecution."

Judge Christenberry denied the mistrial motion but ordered Callinhouse's statement stricken from the record.

After a brief recess Garrison told the jury the tape controversy, calling Dr. Frederic Barnett, one of his former defense attorneys, to the stand. Christenberry excused the jury before letting Barnett testify.

Barnett said he, Gislerson and Internal Revenue Service agents listened to the tape Gerstman had heard last Friday. He said at that time the

tape jammed in a couple of instances. The agents commented on it but made no complaint.

"Occasionally, one of these people would say, 'Ok,' as if they had found something as the tape was being re-played," Barnett said.

Gislerson told the judge he and the agents made no complaint to Barnett while they were listening to the tape "because we try our case in the court."

Judge Christenberry indicated he would listen to both the original tape and the copy.

Gerstman first took the stand Friday but court recessed before he could be questioned and his testimony was put off until today.

There was a possibility Garrison would rest his case today. He and pin-

ball figures John Aruns Callery and Robert Nims are on trial on a charge of conspiring to obstruct law enforcement by giving and taking bribes to protect illegal pinball gambling.

The trial, in its fifth week, could be in the hands of the nine-man, three-woman jury by Friday.

After Garrison rests, only the defense of Nims is to be heard before attorneys make their final arguments to the jury. Callery's attorney, Virgil Wheeler, rested his case without calling witnesses.

Lt. Ernest Nash, a voice-identification expert with the Michigan State Police, testified at the trial's outset that the tapes were not tampered with.

Agents of the Internal Revenue Service who monitored and recorded the conversations said they are exactly the same on the tapes as they were the day they were made.

Judge Herbert W. Christenberry recessed the trial at midafternoon yesterday after Garrison finished calling witnesses he scheduled for the day.

The judge asked Garrison if he planned to finish today and Garrison replied: "I haven't had a chance to consult my client."

Christenberry responded: "I would think you would be in consultation with yourself at all times."

GARRISON THEN said he expects to rest today. He took over his own defense last Wednesday.

Yesterday Garrison called four former district attorneys and Thomas McGee, first assistant DA in Jefferson Parish, all of whom testified they could not recall pinball-machine owners being prosecuted.

McGee's testimony is the first showing that a parish other than Orleans had gambling-type pinball machines, and like Orleans, did not prosecute the owners who placed them in bars and restaurants.

The government contends Garrison, as part of a conspiracy to protect pinball gambling, did not try to prosecute owners.

But Garrison—and his assistants and former DAs have backed him up—contends he could not prosecute without an immunity-from-prosecution provision. The Louisiana Legislature enacted such a provision in its 1972 session, but that was after Garrison's arrest.

THE GOVERNMENT claims the state did have a law allowing DAs to grant immunity to prospective witnesses in cases of public bribery, but that Garrison ignored it.

Shirley Wimberly, one of Garrison's assistants, identified lists containing the disposition of cases handed by the DA's office for 1968-1972. The lists were submitted annually to the attorney general's office, he said.

Garrison will argue that these lists reflect that the handling of pinball prosecutions by his office was no different from that of other parishes.

Guy Johnson, an attorney for Louis M. Boasberg, a defendant in the case who pleaded guilty, and pinball dealer Charles Pace testified yesterday over objections from the government.

HE SAID Boasberg cooperated with the Orleans Parish Grand Jury in its 1970 investigation of pinball gambling by turning over company records.

Pace, Johnson said, invoked the Fifth Amendment and did not testify before the grand jury.

Criminal Dist. Court Judge Oliver P. Schulingkamp later ruled that Pace had a right to invoke the Fifth because there was no law to grant him immunity from prosecution, Johnson said.

He said the DA's office opposed his argument "vigorously" when he sought a ruling from Judge Schulingkamp.

Garrison is trying to establish that money given him by Gervais in taped conversations was for repayment of loans. The government argues that Garrison received \$4,000 in bribe money in 1971.

Clyde Merritt, an assistant DA with an accounting background, testified he prepared Garrison's income tax returns. He made an off-the-cuff state-

ment that the DA had a problem of insufficient funds for checks he wrote.

Merritt also said he heard Gervais criticize Garrison during coffee breaks at the Fontainebleau Motor Hotel. "I couldn't understand how Gervais could be knocking you because he owed you a substantial amount of money," said Merritt.

Garrison tried unsuccessfully to bring out testimony from his secretary, Mrs. Sharon Herkes, that she heard Garrison say Gervais owed him money. But the wording of the DA's questions brought objections from U.S. Atty. Gerald J. Gallinghouse which the judge sustained.