

# DEFENSE MAY CONCLUDE WITH TAPES TESTIMONY

## Alteration of Recordings Is Questioned

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Dist. Atty. Jim Garrison indicated Monday that he may conclude his defense Tuesday with the presentation of two tape recording experts and the district attorney of Alexandria as witnesses.

One of the tape experts, Louis Gerstman, a college professor from New York City, had attempted to testify last Friday as to the authenticity of a tape recorded conversation between Garrison and Pershing Gervais, the man who worked under cover for the government in developing the pinball bribery case against the DA and others.

However, Gerstman's testimony was halted until it could be established that the recording he examined had not been altered.

### CHECKS WRITTEN

In Monday's session it was brought out by Clyde Merritt, an assistant DA in Garrison's office, that Garrison had written several non-sufficient fund checks in 1968 and 1969 and was several months behind in the payments on his home at 4600 Owens Blvd.

Merritt, who is an accountant in addition to being an attorney, said he prepares Garrison's income tax returns without compensation.

Merritt also said that during the three or four times he had been in the company of Gervais that Gervais had been critical of Garrison for not allowing him to use the district attorney's office to further his influence.

Previous witnesses had testified that Gervais often said he used the DA's name in order to pretend he had influence there and could fix cases.

Another assistant of Garrison's, Shirley Wimberly, testified merely to introduce copies of the district attorney's reports to the state Attorney General's Office for several years.

### LACK OF PROSECUTION

The thrust of Garrison's defense Monday centered on the lack of prosecution of the owners of pinball machines by his predecessors in the district attorney's office. He was attempting to show the difficulty of making cases against the owners.

He also called in Thomas McGee, the first assistant district attorney for Jefferson Parish. McGee said he could not recall whether any pinball ma-

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chine owners were ever prosecuted during the almost 10 years he has been in that office. He said his duties were administrative and in addition dealt with the prosecution of narcotics cases.

Garrison brought another witness from his office to the witness stand. Mrs. Sharon Herkes, his secretary, but was unable to illicit testimony about his financial condition during the spring of 1971 due to objections by U. S. Atty. Gerald J. Gallinghouse which U. S. District Judge Herbert W. Christenberry, who is trying the case, sustained.

When the afternoon session, which ended early due to a lack of witnesses for Garrison being available, Judge Christenberry asked Garrison when he thought he would conclude his defense.

Garrison replied, "I haven't had a chance to consult with my client yet."

"With who?" the judge asked.

"With myself," Garrison said.

"I would think you would be to constant consultation with yourself," Christenberry remarked.

Garrison dismissed his attorneys, Fred J. Barnett and Louis Merhige, in a surprise move last week and has been conducting his own defense.

Barnett, however, has remained in the courtroom as a spectator.

Monday morning Garrison called to the witness stand a string of former Orleans Parish district attorneys, all of whom basically gave the same testimony — that they had prosecuted pinball cases while DA, but did not recall ever prosecuting the owners of the pinball machines.

They said they had taken to court the people who actually made the illegal payoffs on the machines, usually a bartender or owner of the bar in which the machines were located.

Leon D. Hubert Jr., DA from 1954 to 1958 and now a law professor at Tulane University, said he did not prosecute the machine owners because of the difficulty in linking them directly to the payoffs.

Richard Dowling, former DA and a former Criminal District Court judge, said he prosecuted all gambling cases in which there was sufficient evidence, but said he did not recall ever prosecuting any machine owners.

Juvenile Court Judge James O'Connor, who was DA from 1944 to 1946, said essentially the same thing, adding that the DA's office at that time did not have a general immunity statute with which it could grant immunity to a witness to make it easier to gain convictions in gambling cases.

Former DA, Herve Racivich, who held the office from 1946 to 1950, testified along the same lines as the others.

David Levy, an attorney who represented pinball operator Santo DiFatta during a 1970 Orleans Parish grand jury investigation of the pinball business, testified that Garrison's office vigorously opposed a ruling by Criminal District Court Judge Oliver Schulingkamp that DiFatta be allowed to stand behind the Fifth Amendment, thereby protecting himself from giving self-incriminating testimony.

However, under cross-examination from Gallinghouse, Levy admitted that Garrison's office never appealed Judge Schulingkamp's ruling in favor of DiFatta's right to take the Fifth Amendment.

The only other witness called by Garrison Monday morning was former assistant district attorney Guy Johnson. However,

Johnson did not get to testify because Gallinghouse objected on the grounds that his testimony in the case would be unethical since Johnson was Boasberg's attorney during the Bally Manufacturing Corp. trial in U.S. District Court here earlier this year. Judge Christenberry sustained Gallinghouse's objection and Johnson was dismissed from the stand.

However, after the lunch break, Judge Christenberry allowed Johnson to take the stand over objections by Gallinghouse that the attorney's testimony might violate the canons of ethics, that Johnson had represented two previous witnesses in the case, that his testimony might violate the attorney-client privilege between Johnson and Louis Boasberg, the owner of New Orleans Novelty Co. and a defendant in the current case who pleaded guilty, and that, as Boasberg's attorney, he had sat in on conferences with government prosecutors.

Johnson replied that he had the permission of Boasberg and

Charles Pace, who owned Place Amusement Co., to testify and "as far as ethics, that's my responsibility."

After all that, Johnson said that Pace took the Fifth Amendment and would not testify before the grand jury as did others involved in the pinball business. Boasberg, he said, did testify.

The trial, now in its fifth week, will resume at 10 a.m. Tuesday.