

JUDGE KILLS CHARGES AGAINST GALLINGHOUSE

By FERREL GUILLORY
and ALLAN KATZ

U. S. District Judge Herbert W. Christenberry today threw out seven charges brought by District Attorney Jim Garrison against the two Justice Department officials who accused Garrison of taking bribes to protect pinball operators.

In dismissing the case against U.S. Attorney Gerald J. Gallinghouse and John Wall, who heads the federal anti-crime task force here, the judge expressed concern that the district attorney may later attempt to reinstate the charges. This, he said, would be "malicious prosecution" and he indicated he would consider a permanent injunction against such acts.

EARLIER in the proceedings the judge said the charges brought by Garrison constituted an instance in which prosecutions have for their purpose reprisals or obstruction of officers.

The federal government on June 30 charged Garrison and nine others, two of them policemen, with violating the Organized Crime Control Act by public bribery.

The district attorney countered Tuesday by filing charges in state court accusing Gallinghouse and Wall of extortion, inciting a felony, compounding a felony, criminal mischief, public intimidation, defamation and malfeasance.

THE GARRISON charges promptly were transferred to federal court and the district attorney was placed under court orders not to arrest the two government officials. Today's hearing was called to give Garrison an opportunity to ask that the case be remanded to state courts or to show that he has sufficient evidence with which to prosecute the two in federal court.

Garrison was not present at the hearing.

At the outset, Judge Christenberry denied a move by Garrison's attorneys for the return of the case to the state court. The attorneys claimed that the transfer to federal jurisdiction constituted federal interposition in a state sovereignty matter.

In turning down this argument, Judge Christenberry said this was an instance where the prosecutions have as their purpose reprisal or obstruction of the officers who brought the original charge.

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a good-faith prosecution," he said, adding that one of the charges was brought under a statute which was declared unconstitutional in a case brought by Garrison himself.

The judge also noted that another charge came under a state statute which clearly applies only to state officials.

When the motion to remand was rejected, newly appointed executive assistant district attorney Frank J. Klein rose to ask if the government was willing to make available all tape recordings it had made involving the Garrison bribery charges. The government said it would not.

Klein then announced he would nolle pros (drop) the charges against the two, but First Assistant U.S. Attorney Julian R. Murray Jr. objected because under the law the charges could be reinstated at a later date.

JUDGE CHRISTENBERRY then said, "I can't understand why, if there was no probable cause, these charges were instituted in the first place. If there is probable cause, why are they being dismissed now?"

He said he could not be sure that the nolle was being executed in good faith. So he ordered a preliminary hearing on the Garrison charges.

Wall, the first witness called, was asked if there was any truth to Garrison's allegation that he had threatened or intimidated Pershing O. Gervais, the government's chief witness and a former chief investigator for the district attorney.

"I state that those charges are completely false," Wall replied.

HE SAID he had been introduced to Gervais through an Internal Revenue Service agent in July, 1970, and Gervais agreed to cooperate with the government in its investigation.

"Take your best shot," Wall quoted Gervais as saying. "When you come up with nothing, we'll work together."

Wall quoted Gervais as saying his motive in agreeing to help the government was the imprisonment of his son in a North Vietnam POW camp.

He claimed the government agreed that it would not disclose Gervais' identity without his consent and it would never require him to be a witness against his will.

HE ADDED that the government agreed not to prosecute Gervais on the information he furnished, but it made no such agreement on evidence turned

up by other sources or investigations that reflected violations of the law.

In answer to a question by Murray, Wall said the government had never paid "one penny" to Gervais for his help.

Wall said he later told Gervais that the stories the government was receiving from him were interesting but he needed to corroborate them so that charges could be brought. He suggested that Gervais consent to eavesdropping, and he did.

During many of the meetings involved in the case, Wall said, agents were posted in other rooms to listen to the conversations and to take notes.

HE SAID that he (Wall) had on two occasions, one on Feb. 25, 1971, and again on March 9, 1971, heard contacts that involved Gervais passing money to Garrison.

Wall categorically denied that the tapes had been doctored, although he did say that the government did not use parts of the transcripts in the 113-page affidavit accompanying the charge because they involved speculation or names of persons not involved.

Gallinghouse was then called and was asked if there was any truth to the Garrison charges.

"There is not a word of truth to those charges," he replied. "They are false — absolutely false."

WHEN Gallinghouse offered to make himself available to cross-examination, Klein rose to say that the district attorney's office had retired from the case after it offered to nol-pross the charges.

When the judge asked Klein if he could give the court assurances that these charges would not be reinstated, Klein said he could not speak for Garrison and only the district attorney could make the determination to reinstate the case.

The judge then dismissed the charges.

Garrison and his fellow defendants in the bribery case were to have appeared for a preliminary hearing this afternoon before U.S. Magistrate Morrey L. Srea, but all but one waived the right to the hearing.

The one defendant who has not was John Elmo Pierce.

Charged with Garrison in that case were Police Capt. Frederick Soule, an investigator in the DA's office; Vice Squad Commander Sgt. Robert Frey and pinball figures Louis Boasberg, John Aruns Callery, Lawrence L. Legarde, John J. Elms Jr., Harby S. Marks and Robert Nims.

"IT IS CLEAR to me that this is not

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**Their
emergency
is over**

U. S. Attorney GERALD J. GALLINGHOUSE, left, and JOHN WALL, head of the federal crime strike force, pass an emergency sign in the Vieux Carre after charges brought against them by District Attorney Jim Garrison were dismissed. (AP photo by Jack Thornell.)