

The Government's Case: III

Pinball Bribery Affidavit Text

(Editor's Note: The States-Item continues today with the third installment of the text of the affidavit charging pinball bribery filed against Dist. Atty. Jim Garrison and others by Floyd D. Moore, special agent for the Internal Revenue Service.

(The affidavit will be quoted verbatim, except that obscene terms will be deleted.

(Another installment will be printed Monday.)

(5) UNLESS otherwise indicated herein all statements made by me in this affidavit are as a result of (1) my own personal knowledge, (2) the personal knowledge of other federal agents who communicated their personal knowledge directly to me, (3) the personal knowledge of other federal agents who have communicated such personal knowledge to me indirectly through official channels, or (4) the personal knowledge of Pershing Gervais, which was communicated to me by him both directly and through John Wall, Attorney-in-Charge of the Justice Department's Organized Crime Strike Force in New Orleans, and Arlie G. Puckett, Special Agent, Intelligence Division, Internal Revenue Service.

(6) BASED on the personal knowledge, experience and expertise of other federal agents concerning Bally in-line gambling type pinball machines, I can state that such devices are coin-activated electrically operated machines. Each machine when assembled and ready for use consists of a vertical section attached to a base section to which are secured four legs.

The base section contains a plunger device, a number of holes drilled into an inclined playboard and a quantity of posts with rubber bumpers placed at intervals thereon. The device is equipped with from five to eight metal balls, five of which are released for play upon insertion of a coin. The vertical section has a glass front upon which the results of play are recorded by

electrically operated equipment.

The object of play of the device is to propel the balls by means of the plunger onto the inclined playboard so that the balls will fall into certain holes and thereby light corresponding light bulbs located on the vertical section of the machine. When three or more bulbs are lighted in a row, or in some other predetermined order, the machine registers so-called "free plays." The machine is so constructed that any number of coins may be inserted therein before actual play of the game begins. The number of "free plays" to be awarded for successful operation of the device can be increased by insertion of additional coins prior to play of the machine, although the rate of increase of free play awards cannot be controlled by the player and may or may not increase upon the insertion of a particular coin.

After having been struck with the plunger, a ball is propelled onto the playboard and descends the inclined plane dependent upon the law of gravity and chance contacts with the posts affixed to the board. Free plays won on the machine are recorded on a three or four digit counting meter (replay register). Free games so recorded may be used by depressing appropriate buttons to activate the mechanism which controls the increase of the free game awards, or to activate other features of the machine. Each such use decreases the number shown on the replay register by one. The replay register can be immediately cleared by operation of an on-off switch located on the base section of the device or by disconnecting the device from its power source and then reconnecting it.

Inside the base section are located two additional meters referred to as the total plays meter and the replays meter. The total plays meter records the number of coins inserted in the device and the number of free plays used in the play of the machine. The replays

meter records the total number of free plays which have been won by playing the machine. Subtracting the total registered on the replays meter and the total of coins in the coin box from the total registered on the total plays meter will result in the number of free games eliminated from the machine without being used in play. The devices are so equipped that the replay meter may be readily rewired in order to record only the number of free games eliminated from the machine without being used in play. Also, additional meters may be installed to assist in the making of other calculations.

(7) WHILE Bally in-line pinball machines are not illegal in themselves (contraband) in the state of Louisiana (LSRS, Section 31(b), the use of such machines for gambling purposes—such as payoffs to the players for "free plays" accumulated—is illegal in the City of New Orleans (City Code, 1956, Section 27-2.2) and throughout the State of Louisiana (Article 90 of the Louisiana Criminal Code, R.S. 14:90).

Personal inspection by federal agents of company records, together with actual physical surveillance by federal agents from the Intelligence Division, Internal Revenue Service; Alcohol, Tobacco and Firearms Division, Internal Revenue Service; Federal Bureau of Investigation; Postal Inspection Service of the Postal Service; Customs Agency Service, Bureau of Customs; Labor Management Service Administration, Department of Labor; Immigration and Naturalization Service; and the United States Secret Service, as of June 28, 1971, disclosed that New Orleans Novelty Company has placed Bally in-line gambling type pinball machines in at least 139 known locations, and that during the past 90 days payoffs were obtained or observed by or admitted to the above federal agents at 113 lo-

cations, the most recent such payoff having been on June 28, 1971, for a percentage of profits of 81% (percent); that TAC Amusement Company has placed Bally in-line gambling type pinball machines in at least 65 known locations, and that during the past 90 days payoffs were obtained or observed by or admitted to the above federal agents at 54 locations, the most recent such payoff having been on June 28, 1971, for a percentage of payoffs of 85% (percent); that State Novelty Company, Inc. of Baton Rouge, La., has placed Bally in-line gambling type pinball machines in at least 66 known locations, and that during the past 90 days payoffs were obtained or observed by or admitted to the above federal agents at 64 locations, the most recent such payoff having been on June 28, 1971, for a percentage of payoffs of 97% (percent); that Pierce Amusement Company has placed Bally in-line gambling type pinball machines in at least four known locations, and that during the past 90 days payoffs were obtained or observed by or admitted to the above federal agents at four locations, the most recent such payoff having been on June 26, 1971, for a percentage of payoffs of 100% (percent).

Of a total of 274 known locations in which the above named four companies have placed Bally in-line gambling type pinball machines, during the past 90 days payoffs were obtained or observed by or admitted to the above federal agents at 235 locations, for an overall percentage of payoffs of 85% (per cent). These federal agents have reported that the payoffs were made after the machines were played and a number of so-called "free plays" were accumulated; and that the payoffs were made by personnel of the locations on the basis of 5 cents per free play, which plays were taken off the replay registers by operation of on-off switches or by disconnecting the machines

from their power sources as described in (6) above.

(8) BASED on information received from other federal agents through their personal knowledge and experience regarding the Louisiana pinball industry, on direct knowledge obtained from dealers in Louisiana, and on direct knowledge obtained from several location owners in Louisiana, I can state that the above-mentioned pinball companies have collected and do regularly collect the proceeds of the play from the gambling-type pinball machines from within the machines, that the companies and their employes have exclusive access into the machines and their contents, that the companies reimburse the location owners for payoffs made, that companies charge a set service charge which is then subtracted from the total proceeds and the remaining proceeds are then split (usually on a 50-50 percentage basis) with the location owners, that the amount of income thus derived and the operation of the machines is dependent that the location owners' willingness to award players payoffs in exchange for the free games the players have accumulated on the machines, and that the location owners' willingness to pay off its customers is directly and totally dependent on the companies' willingness to reimburse the location owners for such payoffs.

(9) BASED on surveillance as well as personal observation of company records conducted by other federal agents, including the information set forth in paragraph 7 above, I can state that each of the above-named pinball companies is and has been in business in excess of 30 days and that each has had and does have at least five persons involved in the conduct, financing, management, supervision, direction and ownership of all or part of the gambling - type pinball machine business.

(10) BASED on my personal knowledge and experience and on information received from other federal agents with personal knowledge and experience regarding the Louisiana-Mississippi pinball industry, and also on direct knowledge obtained from dealers in Louisiana-Mississippi and from the Bally Manufacturing Company in Illinois, I can state that

pinball machines are manufactured exclusively in Chicago, Ill., and are not and never have been manufactured in the State of Louisiana; that when such machines are shipped from the manufacturer, there are located in the rear of the vertical sections or cabinets, operating instructions and parts catalogs together with business reply cards on which are prominently displayed the manufacturer's name and Chicago, Ill., address; that other accompanying documents containing the manufacturer's name and address include electrical circuit diagrams, patent notices, and warranties; that the electrical circuit diagrams are for referral when the devices are being repaired and that the manufacturer has conducted and does conduct schools in Chicago, Ill., and elsewhere on the care and maintenance of the gambling devices, which schools some of the local repairmen have attended; that the manufacturer's name appears on the glass face of the vertical section of all of the Bally in-line gambling type pinball machines manufactured from 1963 through 1967 and that the manufacturer's name and the place of manufacture appear on all such devices manufactured from 1968 through the present time; that there is permanently impressed into and clearly visible on both the vertical section and the base section of each of the said gambling devices, the date of manufacture of such device and its permanent serial number as required by the Gambling Devices Act of 1962; and that therefore there is probable cause to believe that the recipients and purchasers of the Bally in-line gambling type pinball machines have knowledge and in fact know that said machines have traveled in interstate commerce.

(11) RECORDS of New Orleans Novelty Company, the sole "prime" distributor of Bally in-line gambling type pinball machines for the States of Louisiana and Mississippi and of the manufacturer, Bally Manufacturing Company, have been examined by federal agents and these federal agents have reported to me that New Orleans Novelty Company, TAC Amusement Company, Lucky Coin Machine Company, Inc., Pierce Amusement Company, State Novelty Company, Inc., and Palace Amusement Com-

pany have purchased and received Bally in-line gambling type pinball machines within the past five years on a regular basis. Moreover, actual physical surveillance by federal agents discloses that gambling type pinball machines manufactured and shipped to Louisiana within the past five years have been observed in commercial locations within the past ten days, said machines bearing ownership indicia of the above companies (except for Lucky Coin Machine Company, Inc., and Palace Amusement Company which went out of the pinball business on Nov. 24, 1970) and the ownership of said machines being reflected on documents, records and reports of the companies.

(12) ON JUNE 24, 1969, I met with Pershing Gervais at which time Gervais agreed to assist the Internal Revenue Service in the investigation of violations of federal law and in the accumulation of intelligence information regarding criminal activity in the New Orleans area. Special Agent Arlie G. Puckett, Intelligence Division, Internal Revenue Service, was assigned by me to work with Gervais who thereafter furnished Special agent Puckett with facts regarding numerous violations of law, particularly bribery payoffs to elected public officials and law enforcement officers, including transactions in which Gervais had been a participant.

(13) ON JULY 27, 1970, together with Special Agent Puckett, I introduced Pershing Gervais to John Wall, Attorney-in-Charge of the Justice Department's Organized Crime Strike Force in New Orleans. Gervais agreed to assist the Strike Force in its investigative and prosecutive efforts and Special Agent Puckett was authorized by Gervais to furnish Wall with all information previously obtained from Gervais.

(14) ON AUG. 31, 1970, and on subsequent occasions, Gervais outlined to Wall various illegal aspects of the pinball business in Louisiana (much of which had been previously told to Special Agent Puckett), including the fact that John Aruns Callery makes bribery payoffs for protection of the pinball industry to public officials including law enforcement officers and state

legislators; that in the New Orleans area, John Elmo Pierce of Pierce Amusement Company collects protection bribe money from certain pinball dealers, then brings it to John Aruns Callery, who passes it on to public officials for protection of the pinball industry; that John Aruns Callery delivers money to him (Gervais) for delivery to District Attorney Jim Garrison; that the relationship between Garrison and the pinball dealers began in the year 1961 when the pinball dealers gave Garrison \$10,000 during his campaign for the office of district attorney for Orleans Parish; that since 1962 he (Gervais) has been the conduit, through Callery, for payoffs from pinball machine dealers to Jim Garrison; that when the pinball payoffs began to Garrison through Gervais in 1962, the payoff amount from Callery to Gervais was thirty-six hundred dollars (\$3,600) every two months, but that over the years the payments varied, dropping as low as twenty-seven hundred dollars (\$2,700) bi-monthly and as high as forty-four hundred dollars (\$4,400) bi-monthly, which latter figure was the one in effect at the time of the instant Aug. 31, 1970, interview.

Gervais further stated that generally during the year 1962 and for a time thereafter, he retained seven hundred dollars (\$700) from each bi-monthly pinball payoff that Callery gave him, and passed the balance on to Garrison; that for several years he re-

tained nine hundred dollars (\$900) from each bi-monthly pinball payoff he received from Callery and passed the balance on to Garrison; and that when the bi-monthly pinball payoff amount reached to forty-four hundred dollars (\$4,400), he (Gervais) had retained fourteen hundred dollars (\$1,400) from each bi-monthly pinball payoff he received from Callery, and passed the balance of three thousand dollars (\$3,000) every two months to Garrison.

(15) ON NOVEMBER 13, 1970, Attorney Wall told Gervais that the federal government intended in the near future to take major action against some dealers in the pinball industry for violations of federal laws; that as a result of this action at least some of the pinball dealers would no longer have illegal gambling businesses to protect; and that the most accur-

ate and reliable evidence of the commission of the above described and other crimes would be tape recordings of the participants themselves planning and executing their criminal activity. It was suggested to Gervais that the latter's conversations with certain other persons be monitored by special agents of the Intelligence Division, Internal Revenue Service, who would also record the conversations. Gervais was further told by Attorney Wall that such consensual eavesdropping and recording of conversations has long been held by the United States Supreme Court to be legal and admissible in evidence at trial, from as far back as the time of the case of *On Lee v. United States*, 343 U.S. 747 (1952), through *Lopez v. United States*, 373 U.S. 427 (1963), *Lewis v. United States*, 385 U.S. 293 (1966), and *Osborne v. United States*, 385 U.S. 323 (1966); that these Supreme Court decisions had been scrupulously adhered to by the United States Court of Appeals for the Fifth Circuit, *Koran v. United States*, 408 F. 2d 1321 (CA 5, 1969); and that these Supreme Court decisions had been codified by the United States Congress in the Omnibus Crime Control and Safe Streets Act of 1968 in Title 18 of the United States Code at Section 2511(2)(g) and (d). Gervais agreed at this Nov. 13, 1970, meeting to the action proposed by Wall.

(16) ON NOV. 14, 1970, Attorney General John Mitchell authorized the installation, with the consent of Gervais, of electronic listening devices on the latter's person, his telephones and in any rooms under his dominion and control.

(17) ON NOV. 16, 1970, special agents of the Intelligence Division, Internal Revenue Service, began monitoring and recording conversations between Gervais and various other persons.

(Monday: The Fourth Installment.)