

By DALE CURRY

The government rested its case shortly after noon today in a hearing to determine whether Pershing O. Gervais acted voluntarily as a government informer in the Jim Garrison pinball bribery case.

Immediately thereafter, U.S. District Judge Herbert W. Christenberry denied a motion by a Garrison attorney to suppress the government's evidence on grounds that the government did not put Gervais on the stand and that testimony of the government's two witnesses was inadequate.

IN DENYING the motion, Judge Christenberry said he would withhold final judgement until testimony from both sides is completed but "as the

record stands now, I would have to find he (Gervais) helped voluntarily."

"I think the evidence is overwhelming," Judge Christenberry said. "It establishes completely the voluntary character of Gervais' cooperation."

Mark Kadish, the Garrison attorney, contended the government did not accept the burden of proof when it ignored its duty to put Gervais on the stand.

Kadish said the failure to put him on the stand was unusual.

Judge Christenberry said he knew of no law requiring Gervais to testify. "This is an unusual case, but it may be an unusual witness," the judge said.

MEANWHILE, AFTER a noon recess, Gervais was denied an injunction to stop his imprisonment on charges of contempt for failure to testify before a Jefferson Parish grand jury.

Gervais' attorneys immediately filed notice of appeal to the U.S. 5th Circuit Court of Appeal.

Judge Christenberry yesterday denied a temporary restraining order, which was not subject to appeal. Gervais is seeking an injunction against a five-day jail sentence and an injunction to keep from testifying in another bribery case.

The second of the government's wit-

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nesses, Floyd David Moore, chief of the Internal Revenue Service's intelligence division in New Orleans, testified that the IRS file containing evidence that Gervais failed to report total income for three years was closed within the last three weeks.

Moore said he held the file open until he was instructed by the Justice Department's Organized Crime Strike Force to close.

He said Gervais has not been prosecuted for failure to pay \$8,777 in delinquent taxes for the years 1966-68.

Asked if he would recommend that Gervais be prosecuted for fraud, based on information given to government agents while Gervais acted as an informer, Moore replied, "No decision has been made yet. I will probably be the one to make the decision and I probably will not recommend that the

fraud penalty be asserted."

MOORE SAID he still considers himself bound by promises made to Gervais not to use information he gave under their agreement to cooperate.

In testimony last week John Wall, head of the Strike Force, said "all deals are off" now that Gervais has returned to New Orleans and accused the government of forcing him into his informing role and relocation to Canada.

Moore said he didn't know what Wall's opinion was now, but he still feels "morally bound" to the promise that certain information will remain secret.

Moore said the government agreed not to use information Gervais gave to them in any prosecution against him. He said Gervais told him he had not paid income tax on \$28,375 during the three-year span.

The witness said IRS agreed to let Gervais file amended income tax returns for those years.

Moore said Gervais told him about \$4,600 in unreported income for 1966, \$11,150 for 1967 and \$12,625 for 1968.

"My agreement with Gervais was to accept information from him on unreported incomes only if he would file amended returns," Moore said.

He testified that during the 1950s Gervais gave information to the government and was allowed to file amended returns to cover unreported income, but he paid the difference. Moore said Gervais has paid nothing on these amended returns.

Moore was the first witness today as the hearing to determine whether Gervais cooperated willingly with the federal government in the Garrison pinball bribery case resumed before U.S. District Judge Herbert W. Christenberry.

## Winsberg Case Goes to Judge Swift

Judge G. William Swift Jr. of the 14th Judicial District Court, encompassing Calcasieu and Cameron parishes, has been appointed by the Louisiana Supreme Court to sit as a special judge at the trial of Criminal District Judge Jerome M. Winsberg.

Judge Winsberg was indicted Aug. 31 by the Orleans Parish Grand Jury on a charge of corrupt influencing, allegedly by offering a bribe of \$5,000 to Pershing Gervais in connection with three narcotics cases.

The alleged violation occurred before Winsberg became a judge.

The Winsberg case was allotted to Judge Thomas M. Brahney Jr., but he and other Orleans Parish judges asked the high court to recuse them. Arraignment of Judge Winsberg has been delayed pending appointment of the special judge.