

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE  
WESTERN DISTRICT OF MISSOURI WESTERN DIVISION  
UNITED STATES OF AMERICA, Plaintiff,

vs.

T. J. PENDERGAST, R. E. O'MALLEY, A. L. McCORMACK, Defendants.  
14,937.

PLEA IN ABATEMENT, PLEA IN BAR AND MOTION TO DISMISS.

COMES NOW R. E. O'Malley, one of the defendants herein, and moves that the Court bar, abate and quash and for naught hold the indictment, cause and proceedings herein, to dismiss the prosecution of the indictment herein, and to discharge this defendant, and, for grounds of such motion, defendant states:

I.

That on the 7th day of April, 1939, an indictment was returned to the Federal Court for the Western Division of the Western District of Missouri against this defendant, charging him in two counts with the federal offense of income tax evasion; that while said indictment was pending and before a trial thereon, defendant's counsel, with the full knowledge, consent and approval of this defendant, conferred with the Honorable Maurice M. Milligan, then United States District Attorney for the Western Division of the Western District of Missouri, and with the Honorable Sam Blair, then Assistant United States District Attorney for the same district and division, in charge as the representatives of the United States Government of the prosecution of this defendant under said indictment and of all investigations then being made of the defendant, to ascertain what, if any other, offenses against the United States had been committed by him, for the purpose of discussing with the said United States District Attorney and Assistant United States District Attorney the possibility of defendant's entering a plea of guilty to the indictment theretofore returned against him.

Defendant further states that during the discussion which followed between defendant's counsel and the United States District Attorney and Assistant United States District Attorney, defendant's counsel stated that the defendant would enter a plea of guilty on both counts of the indictment if defendant could be assured by the United States District Attorneys representing the Government of the United States that there

would be no further indictments or prosecutions of the defendant for further alleged income tax evasion or for the offense of conspiring to obstruct or obstructing justice in the United States Court in connection with certain insurance litigation which had pended therein in the Central Division of the Western District of Missouri, or for any other offense which could be alleged to have arisen out of the transactions then under consideration.

Defendant further states that after such discussion it was agreed between the defendant, acting through his counsel, and the United States of America, acting through the United States District Attorneys, that if this defendant would enter a plea of guilty to both counts of said indictment, the United States would agree that there would be no further indictments or prosecutions of this defendant for any offenses against the United States allegedly theretofore committed, and especially no indictment or prosecution of defendant for conspiring to obstruct or for obstructing justice in the United States Court in connection with said insurance litigation or the settlement thereof, the very offense with which this defendant stands charged in this case.

Thereafter, this defendant, relying upon the promises and agreement of the United States Government, through its District Attorneys, and in pursuance of said agreement did, upon the 27th day of May, 1939, enter a plea of guilty to both counts of said indictment in the United States District Court for the Western Division of the Western District of Missouri, before His Honor, the Honorable Merrill E. Otis.

Defendant further states that His Honor, Judge Merrill E. Otis, sentenced the defendant and that defendant, in pursuance of said sentence and judgment of the Court, paid the fine assessed and served the entire sentence, except time for good behavior, in the Federal Penitentiary at Leavenworth, Kansas, and since his release therefrom has faithfully kept and performed all the conditions and terms of the parole imposed upon him at the time of said sentence.

Defendant states that because of all of the foregoing, public policy and the ends of justice and equity require that the agreement between this defendant and his counsel and the United States, through its public prosecutors, the United States District Attorneys, shall be carried out; that because of said agreement and defendant's plea of guilty entered pursuant thereto, and upon the faith thereof, defendant has an equitable right to dismissal of this cause, and to have this indictment abated and quashed and to

be discharged by this Court.

II.

Said indictment obtained and returned is wrongful and a direct violation of the rights of this defendant, and a violation of the solemn agreement entered into between the United States and this defendant; that defendant should not be put upon trial in said indictment, and because of the facts and circumstances aforesaid, it is not a lawful indictment of a Grand Jury of the United States, and that, therefore, he has not been charged with an offense in a manner and under the circumstances guaranteed by the Constitution and the Laws of the United States, and particularly the Fifth and Sixth Amendments to the Constitution of the United States; that said agreement made and entered into between the United States and this defendant has barred the prosecution for any and all of the alleged acts and offenses charged in said indictment, and that this Honorable Court should recognize and sustain said agreement.

WHEREFORE, this defendant moves that the Court bar and for naught hold the indictment filed herein, and abate and quash said indictment, cause and proceedings, dismiss the prosecution of said cause and proceedings, and discharge this defendant.

James P Aylward

George Aylward

Terence M O'Brien

Attorneys for Defendant R. E. O'Malley

Service of above motion acknowledged this \_ day of November, 1940.

United States District Attorney.

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Filed Nov. 18-1940

A. L. Arnold, Clerk

By HC Spaulding, DC

(Original)

JAMES P. AYLWARD,

GEORGE V. AYLWARD,

TERENCE M. O'BRIEN,

Attorneys for Defendant R. E. O'Malley.