

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

United States of America, Plaintiff,

v.

T. J. Pendergast, R. E. O'Malley, A. L. McCormack, Defendants.

No. 14912

INDICTMENT

The grand jurors of the United States of America, duly and legally chosen, selected, summoned and drawn from the body of the Western District of Missouri, and duly and legally empanelled, sworn, and charged to inquire of and concerning crimes and offenses against the United States of America in the Western District of Missouri, upon their oaths present and charge that T. J. Pendergast, R. E. O'Malley and A. L. McCormack, whose more full and true names are not known to the members of this grand jury, and who are hereinafter sometimes referred to as the defendants, together with Charles R. Street and divers other persons whose names are unknown to the grand jurors who are likewise referred to herein as defendants, at Kansas City, Jackson County, Missouri, within the Western Division of the Western Judicial District of the said state of Missouri, and within the jurisdiction of this court, prior to the commission of the said overt acts hereinafter set forth in this indictment did unlawfully, wilfully, knowingly, feloniously and corruptly conspire, combine, confederate and agree together and with each other and to and with divers other persons whose names are unknown to the members of this grand jury in violation of Section 88, Title 18 of the United States Code Annotated, to commit an offense against the United States in violation of Section 241 of Title 18 of the United States Code Annotated by endeavoring to influence, obstruct or impede the due administration of justice in a certain United States Court, to wit, a three judge equity court sitting in and for the Western Judicial District of the state of Missouri;

At all times mentioned in this indictment there was pending in the District Court of the United States of the Western Judicial District of the state of Missouri a certain cause entitled American Insurance Company, a corporation, plaintiff, vs. Joseph B. Thompson, Superintendent of the Insurance Department of the state of Missouri, and Stratton

Shartel, Attorney General of the state of Missouri, defendants, which action so pending in the District Court of the United States aforesaid was an action in equity in which by due and proper motion and order from time to time substitutions were made for the names of defendants who were the duly elected, acting, and qualified officers of the state of Missouri as these officials would change in the regular course of elections at which successors would be chosen for them; that this cause of action aforesaid in equity bore the docket number 270 and was filed on the 25th day of May 1930 with the Clerk of the District Court for the Central Division in the Western Judicial District of the state of Missouri at Jefferson City, Missouri, and with which action at or near the same time were filed companion cases brought by divers and various insurance companies of the United States against the same defendants and all of which were actions of similar character and which were consecutively numbered upon the docket of the court from 271 to 426, inclusive, and in which companion cases it was ordered by the court, that every motion, pleading and order made in the case of the American Insurance Company, a corporation, vs. Joseph B. Thompson, Superintendent of the Insurance Department of the state of Missouri, and Stratton Shartel, Attorney General of the state of Missouri, defendants, having docket number 270 should likewise be made in each and every one of the companion cases consecutively numbered 271 to 426, inclusive; that this action in equity aforesaid and the companion cases filed therewith hereinbefore described and consecutively numbered from 270 to 426, inclusive, were actions in which the plaintiffs prayed for restraining orders and interlocutory injunctions until such time as a hearing could be held upon the merits of said causes to prevent the said defendants, their solicitors, attorneys, agents and deputies from attempting to interfere in any way with the plaintiff in the demand, collection, receiving and retaining premium charges for fire insurance and windstorm insurance as set forth in the notice duly filed by the plaintiff with the defendant, Superintendent of Insurance, on the 30th of December 1929; that an order had been made by said court granting to the plaintiff the relief prayed for as above set forth and that therewith was filed an order appointing W. T. Kemper of Kansas City, Missouri, as custodian of monies which by said order were to be impounded and which fund so to be impounded represented 16-2/3 per cent of all premium charges upon all policies of fire and windstorm insurance written in the state of Missouri by the plaintiff

companies, said 16-2/3 per cent further representing the difference between the rate of premium charge for fire and windstorm insurance approved by the State Superintendent of Insurance and that provided for in the new rates to be charged by insurance companies writing windstorm and fire insurance in the state of Missouri contained in the notice hereinbefore mentioned filed with the Superintendent of Insurance on the 30th of December 1929; that a Special Master was appointed by the said United States District Court to take testimony in all of said cases filed as aforesaid and consecutively numbered upon the docket of the court from 270 to 426, inclusive, for the purpose of report and recommendations in accordance therewith to the court; that at all times mentioned in this indictment these causes were pending before the said United States Court for the Western Judicial District of Missouri, and to a certain date hereinafter mentioned, to wit, on or about the 1st of February 1936, no hearing had been had upon the merits in any of the causes hereinbefore described and which were consecutively numbered upon the docket of the court from 270 to 426, inclusive, and that said cause had not been finally determined, and that the monies so impounded and so paid over to the custodian appointed as hereinbefore set forth by the court to said certain date of the 1st of February 1936 amounted to the sum of more than \$8,000,000.00;

It was the purpose and object of the conspiracy and of the said defendants and each and all of them that they, the said T» J. Pendergast, R. E. O'Malley, A. L. McCormack and Charles R. Street, would and did attempt to obtain the payment of a large sum of money from certain insurance companies who were parties plaintiff in the equity cases hereinbefore referred to, being numbered upon the docket of the court from 270 to 426, inclusive, which large sum of money they would and did pretend and state to the insurance companies was to be used for legal expenses in settling and compromising all of said cases so pending before the District Court of the United States, as aforesaid; that the large sum of money so obtained from divers and various insurance companies, parties plaintiff in the above-described litigation, would be and was divided between T. J. Pendergast, R. E. O'Malley and A. L. McCormack; that upon the division of the said large sum of money between the three defendants, T. J. Pendergast, R. E. O'Malley and A. L. McCormack, they would and did obtain the influence of Charles R. Street with the various and divers insurance companies, parties plaintiff in the litigation hereinbefore

described, to agree and accede to, and they would and did induce R. E. O'Malley, Superintendent of Insurance for the state of Missouri, to agree and accede to a compromise and settlement of all the litigation hereinbefore described, by the terms of which compromise and settlement there would be distributed out of the monies impounded by order of the court, as hereinbefore set out, approximately 80 per cent for the insurance companies, to be proportionately divided among them according to the interest of each of them therein, and approximately 20 per cent would be refunded to the policy holders; that after having induced the various insurance companies, parties plaintiff in the litigation hereinbefore described, and the State Superintendent of Insurance to agree and accede to the compromise and settlement hereinbefore described, the defendants, and each and all of them, the said T. J. Pendergast, R. E. O'Malley and A. L. McCormack, would and did attempt to induce and procure from the United States District Court, before which all of the said causes hereinbefore described were pending, a decree ratifying and embodying all of the provisions fraudulently and corruptly agreed upon in the said compromise and settlement hereinbefore described; that they, the said defendants, and each of them, the said T. J. Pendergast, R. E. O'Malley and A. L. McCormack, would and did attempt to procure, by the corrupt, fraudulent and unlawful means hereinbefore described, the distribution of all the money impounded to the various insurance companies who were parties plaintiff as aforesaid, upon the one hand, and to the policy holders upon the other, and that they would and did continue to work together in concerted action until all of said money had been finally and completely distributed, and until all of the causes had been finally determined and disposed of by the said United States District Court sitting as aforesaid; and that they, the said defendants, and each and all of them, the said T. J. Pendergast, R. E. O'Malley and A. L. McCormack, would and did keep secret all of the fraudulent and corrupt plans, negotiations and agreements hereinbefore described, and would and did prevent the said United States District Court from discovering the fraudulent and corrupt means employed, by which the said decree of the said United States District Court was obtained, as hereinbefore set out, and that they would and did continue to endeavor to conceal all of the corrupt and fraudulent agreements made by them hereinbefore described until after all of said causes were finally determined and completely disposed

of by the said United States District Court, as aforesaid.

That after the formation of said unlawful conspiracy and in pursuance thereof and to effect the object and purposes thereof, and while said conspiracy was in force and in effect, the defendants did, among other things, certain acts hereinafter designated as overt acts, as follows:

OVERT ACTS

I

In the early part of the year 1935 the defendant A. L. McCormack had a conference with R. E. O'Malley, who in 1935 was the duly elected, qualified and acting Superintendent of Insurance for the State of Missouri, and was successor defendant to Joseph B. Thompson in all of the suits in equity heretofore described having consecutive docket numbers from 270 to 426, inclusive, in the City of St. Louis, Missouri, in which the said R. E. O'Malley asked the defendant, A. L. McCormack to go to Chicago to interview Charles R. Street, Chairman of the Committee of fire insurance companies, for the purpose of determining if the said Charles R. Street would be willing to discuss the matter of a settlement and compromise of all the suits in equity heretofore described, and consecutively numbered on the docket of said United States District Court from 270 to 426, inclusive, with the said T. J. Pendergast; that within a few days thereafter the defendant A. L. McCormack went to Chicago, interviewed the said Charles R. Street at his office in the Strauss Building on Michigan Boulevard in the said City of Chicago, and was advised by the said Charles R. Street that he would meet the said T. J. Pendergast to discuss with him the matter of a settlement and compromise of the fire insurance rate litigation and the distribution of impounded funds.

II

That shortly thereafter, at St. Louis, Missouri, the defendant A. L. McCormack told the defendant R. E. O'Malley that the said Charles R. Street would meet the defendant T. J. Pendergast in Chicago for the purpose of attempting to effect a compromise and settlement of the litigation pending as aforesaid.

III

Within a week or two thereafter the defendants T. J. Pendergast and A. L. McCormack met the said Charles R. Street at the Palmer House, a hotel in the City of

Chicago, and that at that meeting and conference Mr. Street told Mr. Pendergast that he would be willing to pay a fee in order to get the matters, then in controversy between the fire insurance companies and the State Superintendent of Insurance then pending for a hearing upon the merits before the United States District Court as aforesaid, compromised and settled, and that it was then and there agreed the defendant T. J. Pendergast was to receive a fee of \$500,000 if he could get the cases compromised and settled.

IV

That a few weeks thereafter the defendant A. L. McCormack delivered \$50,000 in United States currency to T. J. Pendergast at the office of the said T. J. Pendergast at 1908 Main Street in Kansas City, Missouri, the said \$50,000 representing the first installment to be paid upon the fee to be paid by Charles R. Street to T. J. Pendergast, and that the said T. J. Pendergast received and retained the said \$50,000.

V

That sometime after the transaction set forth in overt act IV next above, the exact day and date being -unknown to the members of this grand jury, the defendant A. L. McCormack received \$50,000 in United States currency from Charles R. Street in Chicago, Illinois, and delivered the same to the defendant T. J. Pendergast at his office at 1908 Main Street, Kansas City, Missouri; that the said T. J. Pendergast received the said \$50,000, retained \$5,000 thereof, returning to the defendant A. L. McCormack the sum of \$45,000, and that the defendant A. L. McCormack delivered \$22,500 of this to the defendant R.E. O'Malley and retained \$22,500 for himself.

VI

That sometime thereafter, the exact day and date being unknown to the members of this grand jury, but being in the year 1935, a conference was held at the Muehlebach Hotel in Kansas City, Missouri, which was attended by Charles R. Street and various attorneys for the insurance companies, and R. E. O'Malley, the State Superintendent of Insurance, and divers other persons, at which a compromise and settlement of the fire insurance rate litigation and the distribution of the monies impounded by order of this Court was agreed upon, which said agreement was substantially in all particulars the same as is recited in the stipulation hereinbefore referred to and filed with the United

States District Court on the 19th of June, 1935.

VII

That sometime in the early part of the year 1936, the defendant A. L. McCormack received from Charles R. Street in Chicago, Illinois, the sum of \$330,000 in United States currency, which he delivered to the defendant T. J. Pendergast at his office at 1908 Main Street in Kansas City, Missouri; that the said T. J. Pendergast retained \$250,000 of the said sum of \$330,000 and returned to the said defendant A. L. McCormack the sum of \$80,000, saying, "Here is \$80,000, give half of it to Emmett" (meaning the defendant R.E. O'Malley), and that the said defendant A. L. McCormack delivered \$40,000 to the defendant R. E. O'Malley in St. Louis, Missouri, and retained \$40,000 for himself.

VIII

That thereafter on or about the 25th day of October, 1936, Charles R. Street transmitted by bank draft from Chicago, Illinois, to the defendant A. L. McCormack at St. Louis, Missouri, \$10,000, which the said defendant A. L. McCormack converted into United States currency and conveyed to Kansas City and delivered to T. J. Pendergast at the Menorah Hospital in Kansas City, Missouri.

IX

In the early part of March, 1939, the defendant A. L. McCormack appeared before a United States grand jury sitting at Kansas City, Missouri, for the Western Judicial District of the State of Missouri, to testify before the said United States grand jury concerning the transactions between himself, T. J. Pendergast, R. E. O'Malley, Charles R. Street and any other person or persons unknown to the members of the grand jury, in connection with the compromise and settlement of the litigation hereinbefore described, pending in the United States District Court. The said A. L. McCormack was called on numerous occasions by the United States grand jury sitting at Kansas City in March, 1939, as aforesaid, and between sessions of the grand jury was frequently visited by and frequently visited the defendant R. E. O'Malley, on each of which occasions the defendant R. E. O'Malley requested of and importuned the defendant A. L. McCormack to refuse to disclose and to conceal from the said United States grand jury all of the fraudulent, corrupt and unlawful transactions between him and the other defendants herein named, and any other person or persons with whom he may have had corrupt,

fraudulent and unlawful agreements or negotiations, and not to disclose to the grand jury, to the United States Attorney or any of his Assistants or to any agents of the United States any payment of any money by Charles R. Street to the said A. L. McCormack for delivery to the defendant T. J. Pendergast or the defendant R. E. O'Malley.

X

That the said A. L. McCormack, so appearing before the United States grand jury sitting in Kansas City, Missouri, as aforesaid, in March of 1939 in his testimony before said grand jury refused time after time to reveal and disclose any of the corrupt, unlawful and fraudulent transactions between himself, Charles R. Street, R. E. O'Malley and T. J. Pendergast, to the United States grand jury, and refused to disclose to said grand jury the payment of any money or monies to any person or persons for the purpose of obtaining or influencing the fraudulent and dishonest settlement and compromise of all the litigation pending before the said United States Court for the Western Judicial District of the State of Missouri, and that by so refusing to reveal and disclose any of the things concerning which inquired, the grand jury/ but by denying the same said defendant A. L. McCormack committed wilful, deliberate and corrupt perjury and continued and kept in force the conspiracy and agreement which had theretofore been entered into between himself, Charles R. Street, R. R. O'Malley and T. J. Pendergast;

And so the grand jurors aforesaid, upon their oaths aforesaid, do present and charge that T. J. Pendergast, R. E. O'Malley, A. L. McCormack, Charles R. Street and other persons to the grand jurors unknown, at the times and places aforesaid, by the means aforesaid, and in the manner and form aforesaid, did unlawfully, knowingly, fraudulently, feloniously and corruptly conspire, combine, confederate and agree together to and with each other and divers other persons to the grand jurors unknown to commit an offense against the United States of America, namely, to do acts and things made crimes against and in violation of the laws of the United States by Section 241 of Title 18 of the United States Code Annotated;

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

Richard K Phelps

Acting United States Attorney

A TRUE BILL:

Ross. S. Ammons

Foreman of the grand jury

Form No. 195

No. 14912

UNITED STATES DISTRICT COURT Western District of Missouri Western Division

THE UNITED STATES OF AMERICA

vs.

T. J. Pendergast, R. E. O'Malley, A. L. McCormack,

INDICTMENT

Vio: Sec. 88, T. 18

A true bill, Foreman.

Filed in open court this day of, A.D. 19, Clerk

FILED JUL 13 1940

W.W. Caster