

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. 14937.

SEPARATE DEMURRER OF DEFENDANT R. E. O'MALLEY

COMES NOW the defendant R. E. O'Malley and demurs to the indictment herein, and states that same is legally insufficient for each of the following reasons:

First: Said indictment fails to set forth facts sufficient to constitute any offense under the laws of the United States.

Second: Said indictment fails to set forth facts sufficient to constitute the offense sought to be charged in the indictment.

Third: Said indictment does not state facts sufficient to constitute an offense against the laws of the United States or sufficient to constitute the offense sought to be charged, and violates defendant's right to be informed of the nature and cause of the accusation under Article VI of the Amendments to the Constitution of the United States which in part provides, "In all criminal prosecutions, the accused shall enjoy the right \* \* to be informed of the nature and cause of the accusation" in that said indictment does not state the nature and cause of the accusation against this defendant with sufficient particularity to enable this defendant to properly prepare his defense thereto.

Fourth: Said indictment is so indefinite, vague and uncertain that defendant cannot determine the nature and cause of the accusation against him.

Fifth: Said indictment is so indefinite, vague and uncertain as to the offense therein attempted to be charged that an acquittal or conviction thereunder would not bar another or further prosecution for the same alleged offense or offenses.

Sixth: Said indictment does not charge in proper form and substance the essential and material elements of the offense of conspiracy on the part of this defendant and those jointly charged with him in violation of Section 88, Title 18 of the United States Code Annotated, to defraud the United States by interfering, obstructing and impeding, and endeavoring to obstruct, interfere and impede by dishonest means the orderly and

lawful functions of a department of the United States Government.

Seventh: Said indictment does not allege, set out, or specify any particular violation of the laws of the United States, but contains broad and general allegations with respect thereto which are legal conclusions and therefore insufficient upon which to predicate a conviction.

Eighth: Said indictment violates Article V of the Amendments to the Constitution of the United States which provides in part, "nor shall any person be subject for the same offense to be twice put in jeopardy of life or liberty" in that there is at this time pending against this defendant another indictment, simultaneously returned and filed, charging him with the same alleged and identical offenses, and that there is at this time pending in this court against this defendant another indictment, simultaneously returned and filed, for the same matter although charged as different offenses, and in that there is another proceeding pending against this defendant charging him with the same matter and with the commission of the same alleged acts.

Ninth: Said indictment containing and attempting to charge numerous separate, distinct, and different felonies requiring this defendant to appear before the same jury for trial upon each and all of said alleged offenses at the same time deprives this defendant, R. E. O'Malley, of due process of law in violation of Article V of the Amendments to the Constitution of the United States which provides in part, no person shall be deprived of life, liberty or property without due process of law" in that defendant is thereby denied a separate trial by a separate and different jury upon each and every one of said alleged offenses, and because the joinder of said separate, distinct and different alleged offenses tends to and will confuse the defendant in his defense, prejudice him as to and deprive him of his challenges allowed by law in separate trials, hold him out as an habitual criminal, and distract the minds of the jury by mingling and confusing the cases by trial of said separate and distinct offenses at the same time before a single jury.

Tenth: Said indictment attempts to charge several separate and distinct alleged acts, offenses, and transactions which are not of the same class and are against different persons.

Eleventh: Two or more separate, distinct, different and in dependent alleged offenses are averred and set out in said indictment.

Twelfth: Said indictment shows upon its face that prosecution thereunder is barred by the statute of limitations in such cases made and provided.

Thirteenth: Said indictment does not state facts sufficient to constitute a cause of action or to state an accusation against this defendant.

Fourteenth: Said indictment for the reasons above set forth violates Article V of the Amendments to the Constitution of the United States in that said defendant, by reason of the foregoing, is and will be deprived of his life and liberty without due process of law in violation of said Article V of the Amendments to the Constitution of the United States which in part provides, nor shall any person be deprived of life, liberty or property without due process of law \*\*", and said defendant hereby invokes each and every article of the Amendments to the Constitution of the United States which are commonly called the Bill of Rights and are Articles I to X, inclusive, of the Amendments to the Constitution of the United States.

WHEREFORE, defendant prays that this demurrer be sustained and that defendant be dismissed and discharged.

James P. Aylward

George V. Aylward

Terence M. O'Brien

Attorneys for Defendant R. E. O'Malley

Service of above Separate Demurrer of Defendant R. E. O'Malley acknowledged this 5th day of September 1940.

Richard K Phelps

Acting United States District Attorney.

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SEPARATE DEMURRER OP DEPENDANT R. E. O'MALLEY.

James P. Aylward, George V. Aylward, Terence M. O'Brien, Ralph M. Russell  
Attorneys for Defendant R. E. O'Malley.

Filed Nov. 18-1940

A. L. Arnold, Clerk

By HC Spaulding, DC