

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
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**06CRIM.1 072**

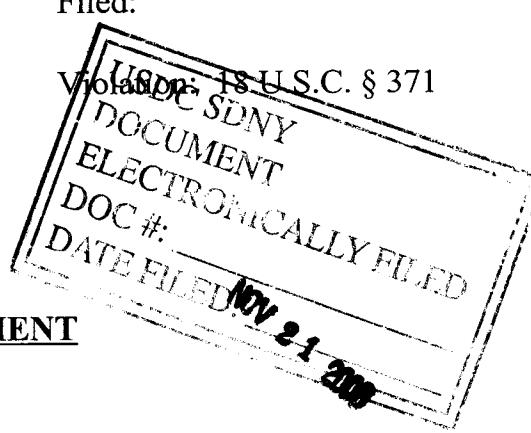
UNITED STATES OF AMERICA : Criminal No.

v. : Filed:

HERBERT EYERS BRADLEY, : Violation 18 U.S.C. § 371

Defendant. : DOCUMENT

-----x ELECTRONICALLY FILED



**PLEA AGREEMENT**

The United States of America and the defendant Herbert Eyers Bradley ("Bradley") hereby enter into the following plea agreement ("Agreement") pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P.").

**AGREEMENT TO PLEAD GUILTY**  
**AND WAIVE CERTAIN RIGHTS**

1. Bradley will waive indictment pursuant to Fed. R. Crim. P. 7(b) and plead guilty in the United States District Court for the Southern District of New York to an Information, in the form attached, in which he is charged with violating 18 U.S.C. § 371 in connection with participating in a conspiracy beginning at least as early as 1997 and continuing until at least December 10, 2001 with the objective of depriving the New York City Department of Education and its predecessor, the Board of Education of the City of New York (collectively the "NYCDOE") of the honest services of Bradley and that

Bradley and others executed the scheme and artifice to defraud by and through the United States mails, in violation of Title 18, United States Code, Sections 1341 and 1346.

### **DEFENDANT'S COOPERATION**

2. Bradley will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal antitrust and related criminal laws involving the purchase of industrial cleaning and maintenance supplies and any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party (collectively referred to herein as "Federal Proceeding"). The ongoing, full, and truthful cooperation of the defendant shall include, but not be limited to:

- (a) producing to the United States all documents, information, and other materials, including claimed personal documents, in the possession, custody or control of Bradley, requested by the United States in connection with any Federal Proceeding;
- (b) making himself available for interviews, not at the expense of the United States, at the New York Office of the Antitrust Division, or at any other mutually agreed upon locations, upon the request of attorneys and agents of the United States;
- (c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false

statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

(d) otherwise voluntarily providing the United States with any material or information, not requested in (a) - (c) of this paragraph, that he may have that is related to any Federal Proceeding;

(e) testifying when called upon to do so by the United States in connection with any Federal Proceeding, in grand jury, trial, and other judicial proceedings fully, truthfully and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

(f) agreeing to bring to the attention of the United States all crimes which he has committed, and all administrative, civil or criminal proceedings, investigations or prosecutions in which, to Bradley's knowledge, he is or has been a subject, target, party or witness; and

(g) committing no further crimes whatsoever.

3. Bradley agrees that any assistance he may provide to federal criminal investigators in connection with any Federal Proceeding shall be pursuant to the specific instructions and control of the Antitrust Division and those criminal investigators.

**GOVERNMENT'S AGREEMENT**

4. If Bradley fully complies with the understandings specified in this Agreement, and upon the Court's acceptance of the guilty plea called for by this

Agreement, he will not be further prosecuted criminally by the Antitrust Division of the Department of Justice for crimes committed prior to date of this agreement arising from the following activity to the extent that he has disclosed his participation in such criminal activity to the United States as of the date of this Agreement: (a) agreeing to rig and rigging bids to the NYCDOE for contracts for industrial cleaning and maintenance supplies; (b) receiving kickbacks in the form of cash or goods and services from vendors of industrial cleaning and maintenance supplies to the NYCDOE; and (c) creating and submitting false and fraudulent documentation to the NYCDOE related to the purchase and sale of industrial cleaning and maintenance supplies and other supplies and thereby causing the NYCDOE to pay for goods and services that it never received or received only in part. This paragraph does not apply to civil matters of any kind, violations of federal tax or securities laws, or crimes of violence.

5. It is understood that this Agreement does not bind any other federal agency or local prosecuting authority or administrative agency other than the Antitrust Division of the United States Department of Justice. However, if requested, the United States will bring the fact, manner and extent of the cooperation of Bradley to the attention of other prosecuting, administrative, or other agencies as a matter for such agencies to consider as appropriate.

**POSSIBLE MAXIMUM PENALTIES**

6. Bradley understands and agrees that pursuant to 18 U.S.C. § 371 and 18

U.S.C. § 3571, the maximum sentence provided by law to which he is subject for his violation of 18 U.S.C. § 371, a class D felony, is (a) a term of imprisonment of not more than five years; (b) a fine of not more than the greater of \$250,000, or the greater of twice the gross pecuniary gain from the offense, or twice the victim's gross pecuniary loss from the offense together with the costs of prosecution; or (c) both such sentences. Bradley also understands that pursuant to 18 U.S.C. §§ 3663, 3663A, and 3664, the Court shall impose an order of restitution. The Court may also impose a term of supervised release of no more than three years, pursuant to 18 U.S.C. § 3583(b)(2) and USSG § 5D1.2(a)(2). In addition, Bradley understands that, pursuant to 18 U.S.C. § 3013(a)(2)(A) and USSG § 5E1.3, the Court must impose a special assessment of \$100.

### **SENTENCING GUIDELINES**

7. Bradley understands that the United States Sentencing Guidelines (“Guidelines”) are advisory, not mandatory, but that the Court must consider the applicable Guidelines along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing a sentence. Bradley understands that the Guidelines determinations will be made by the Court by a preponderance of the evidence standard. Bradley understands that although the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its sentence must be reasonable based upon considerations of all relevant sentencing factors set forth in 18 U.S.C. § 3553(a).

8. The United States and Bradley agree and stipulate that pursuant to USSG § 1B.11(b)(1), the Guidelines (Nov. 2001), the version in effect at the time of the offense, should be applied because the application of a later version (now the Nov. 2005 edition) would lead to a higher adjusted offense level.

9. Bradley understands that the sentence to be imposed on him is determined solely by the Court. It is understood that the Guidelines are not binding on the Court. Bradley acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. The United States cannot and does not make any promises or representations as to what sentence Bradley will receive. Bradley understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with either party's sentencing recommendation, he nevertheless has no right to withdraw his plea of guilty. However, the United States will inform the Probation Office and the Court of (a) this Agreement; (b) the nature and extent of Bradley's activities with respect to this case and all other activities of Bradley which the United States deems relevant to sentencing; and (c) the timeliness, nature, extent and significance of Bradley's cooperation with the United States. In so doing, the United States may use any information it deems relevant, including information provided by Bradley both prior and subsequent to the signing of this Agreement. The United States reserves the right to make any statement or argument to the Court or the Probation

Office concerning the nature of the offense charged in the attached Information, the participation of Bradley therein, and any other facts or circumstances that it deems relevant. The United States also reserves the right to comment on or to correct any representation made by or on behalf of Bradley, and to supply any other information that the Court may require.

10. If the United States determines that Bradley has provided substantial assistance in any Federal Proceeding and has otherwise fully complied with all of the terms of this Agreement, it will file a motion, pursuant to USSG § 5K1.1, advising the sentencing judge of all relevant facts pertaining to that determination and requesting the Court to sentence Bradley in light of the factors set forth in USSG § 5K1.1(a)(1)-(5), and thus impose, in the Court's discretion, a sentence below the applicable Guidelines ranges for incarceration and fine. The United States and Bradley are free to recommend or argue for any specific sentence to the Court.

11. Bradley understands that this Agreement does not in any way affect or limit the right of the United States to respond to and take positions on post-sentencing motions or requests for information that relate to reduction or modification of sentence.

12. Bradley acknowledges that the decision whether he has provided substantial assistance in any Federal Proceeding is within the sole discretion of the United States. It is understood that should the United States determine that Bradley has not provided substantial assistance in any Federal Proceeding, such a determination

will release the United States from any obligation to file a motion pursuant to USSG § 5K1.1, but will not entitle Bradley to withdraw his guilty plea once it has been entered. Bradley further understands that whether or not the United States files a motion pursuant to USSG § 5K1.1, the sentence to be imposed on him remains within the sole discretion of the sentencing judge.

13. Bradley understands and agrees that should the conviction following his plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against Bradley, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

14. Bradley understands and agrees that on the date of sentencing he will have at least \$12,000 in liquid assets in an escrow account controlled by his attorney. The United States and Bradley agree to recommend to the Court that the funds in the escrow account be used only to satisfy any restitution or fines that Bradley is sentenced to pay. Bradley acknowledges, however, that the Court may sentence him to pay fines

and restitution totaling more than the amount in the escrow account.

**REPRESENTATION BY COUNSEL**

15. Bradley has been represented by counsel and is fully satisfied that his attorney has provided competent legal representation. Bradley has thoroughly reviewed this Agreement and acknowledges that counsel has advised him of the nature of the charges, any possible defenses to the charges, and the nature and range of possible sentences.

**VOLUNTARY PLEA**

16. Bradley hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, Bradley waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the United States has failed to produce any discovery material, Jencks Act material, exculpatory material pursuant to Brady v. Maryland, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to Giglio v. United States, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

17. Bradley's decision to enter into this Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this

Agreement.

18. Bradley understands and agrees to waive any right to contest venue in the United States District Court for the Southern District of New York.

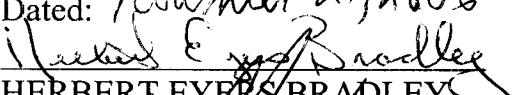
**VIOLATION OF PLEA AGREEMENT**

19. Bradley understands that should the United States determine in good faith that Bradley has given false, misleading, or incomplete information or testimony, or that Bradley has failed in any other way to fulfill any of the obligations set out in this Agreement, the United States shall notify counsel for Bradley in writing of the claimed breach and its intention to void any of its obligations under the Agreement (except its obligations under this paragraph), and Bradley will be subject to prosecution for any federal criminal violation of which the United States has knowledge, including perjury and obstruction of justice.

20. If Bradley violates any provision of this Agreement, he agrees that any documents, statements, information, testimony or evidence provided by the him, whether before or after the execution of this Agreement, and any leads derived therefrom, shall be admissible in evidence in any and all criminal proceedings hereafter brought against Bradley, and that he will not assert a claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that such evidence, or any leads therefrom, should be suppressed.

**ENTIRETY OF AGREEMENT**

21. This Agreement constitutes the entire agreement between and among the United States Department of Justice, Antitrust Division and Bradley concerning the disposition of the charge contained in the attached Information. The United States has made no other promises to or agreements with Bradley. This Agreement cannot be modified other than in a writing signed by the parties.

Dated: November 21, 2006  
  
HERBERT EYERS BRADLEY  
  
VINCENT MARTINELLI, ESQ.

  
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