

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	IP 03-181-CR M/F
	)	
v.	)	FILED: May 10, 2004
	)	
HAROLD E. VOGEL	)	-02
Defendant.	)	Hon. Larry J. McKinney

PLEA AGREEMENT

The United States of America and Harold E. Vogel (“defendant”) hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”):

RIGHTS OF DEFENDANT

1. The defendant understands his rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) to plead not guilty to any criminal charge brought against him;
 - (d) to have a trial by jury, at which he would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for him to be found guilty;
 - (e) to confront and cross-examine witnesses against him and to subpoena witnesses in his defense at trial;
 - (f) not to be compelled to incriminate himself;
 - (g) to appeal his conviction, if he is found guilty at trial; and
 - (h) to appeal the imposition of sentence against him.

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

2. The defendant waives the rights set out in Paragraph 1(c)-(g) above. The defendant also waives the right to appeal the imposition of sentence against him, so long as the sentence imposed is consistent with or no greater than the recommendation in Paragraph 9 of this Plea Agreement. Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the defendant will plead guilty to the one-count Indictment filed in this case. That Indictment charges the defendant with participating in a conspiracy to suppress and eliminate competition by eliminating discounts on medical textbooks and fixing margins at which new textbooks were offered for sale to customers on and near the Indiana University Purdue University at Indianapolis (“IUPUI”) campus beginning in or about April 2001 and continuing until approximately November 2002 in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

FACTUAL BASIS FOR OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence to prove the following facts:

(a) For purposes of this Plea Agreement, the “relevant period” is the period beginning in or about April 2001 and continuing until approximately November 2002. During the relevant period, the defendant oversaw the operation of bookstores involved in the retail sale of medical textbooks and other textbooks in Indianapolis, Indiana. The only major competitor of those bookstores was a bookstore which was owned and

operated by a nationwide textbook retailer. Textbooks are books published by textbook publishing companies and distributed for sale to customers through various channels, including textbook stores located on and near college and university campuses.

Textbooks are typically, though not exclusively, purchased by undergraduate and graduate students at colleges, universities, and other institutions of higher learning for use in conjunction with specific class requirements. Medical textbooks are textbooks that are primarily published for, and sold to, students whose studies focus on medicine, health sciences, and related fields.

(b) During the relevant period, the defendant participated in a conspiracy with others engaged in the retail sale of medical textbooks and other textbooks. The primary purpose of the conspiracy was to suppress and eliminate competition by eliminating discounts on medical textbooks and fixing margins at which new textbooks were offered for sale to customers on and near the IUPUI campus. In furtherance of the conspiracy, the defendant engaged in a conversation and attended a meeting on April 23, 2001 with another bookstore employee and a representative of the only other major textbook retailer serving the IUPUI campus. During this meeting and conversation, agreements were reached by the defendant and the representative of the only other major textbook retailer to eliminate competition by eliminating discounts on medical textbooks and increasing from 25% to 27% the profit margins at which new textbooks were offered for sale to customers on and near the IUPUI campus in Indianapolis, Indiana.

(c) During the relevant period, medical textbooks and other textbooks sold by one or more of the conspirator textbook retailers, as well as payments for medical

textbooks and other textbooks, traveled in interstate commerce. The business activities of the conspirators in connection with the sale of medical textbooks and other textbooks affected by this conspiracy were within the flow of, and substantially affected, interstate trade and commerce.

(d) Acts in furtherance of this conspiracy were carried out within the Southern District of Indiana, Indianapolis Division. Medical textbooks and other textbooks affected by this conspiracy were sold by one or more of the conspirators to customers in this District.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the maximum penalty which may be imposed against him upon conviction for a violation of Section One of the Sherman Antitrust Act is:

- (a) a term of imprisonment for three (3) years (15 U.S.C. § 1);
- (b) a fine in an amount equal to the greatest of: (1) \$350,000, (2) twice the gross pecuniary gain the conspirators derived from the crime, or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (15 U.S.C. § 1; 18 U.S.C. § 3571(b) and (d)); and
- (c) a term of supervised release of one (1) year following any term of imprisonment. If the defendant violates any condition of supervised release, the defendant could be imprisoned for the entire term of supervised release (18 U.S.C. § 3559(a)(5); 18 U.S.C. § 3583(b)(3) and (e)(3); and United States Sentencing Guidelines (“U.S.S.G.”) § 5D1.2(a)(3)).

6. In addition, the defendant understands that:

- (a) pursuant to U.S.S.G. § 5E1.1, the Court may order him to pay restitution to the victims of the offense; and
- (b) pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3, the Court is required to order the defendant to pay a \$100.00 special assessment upon conviction for the charged crime.

SENTENCING GUIDELINES

7. Sentencing for the offense charged will be conducted pursuant to the U.S.S.G. Manual in effect on the day of sentencing.

SENTENCING AGREEMENT

8. The United States and the defendant agree that the Guidelines calculations relevant to the defendant are as follows: Under USSG § 2R1.1, the Base Offense Level is 10. Because the volume of commerce attributable to the defendant is \$12.4 million, a four-level increase under USSG § 2R1.1(b)(2)(D) is appropriate. The defendant is entitled to a two-level decrease under USSG § 3E1.1 for Acceptance of Responsibility. The United States and the defendant agree that no other adjustments under the Sentencing Guidelines are warranted in this case.

9. Pursuant to Fed R. Crim. P. 11(c)(1)(B), the United States agrees that it will recommend, as the appropriate disposition of this case, that the Court impose a sentence requiring the defendant to pay to the United States a criminal fine of \$124,000, pursuant to USSG 2R1.1(c)(1), payable in full before the thirtieth (30th) day after the date of judgment with interest accruing under 18 U.S.C. § 3612(f)(1)-(2) for any portion not paid before the fifteenth day after the date of judgment; a period of incarceration of ten months; and no period of supervised release (“the recommended sentence”). The United States and the defendant agree

that restitution pursuant to USSG § 5E1.1 is not appropriate in this case because it would complicate or prolong the sentencing process and because restitution has already been paid by IUPUI.

10. The defendant may recommend any sentence consistent with an adjusted offense level of 12. The United States understands that the defendant will seek a downward departure on the Sentencing Guidelines fine based on an inability to pay, but the defendant agrees that no other departures are warranted. The defendant understands that the Court will order him to pay a \$100 special assessment pursuant to 18 U.S.C. § 3013(a)(2)(A) and U.S.S.G. § 5E1.3 in addition to any fine imposed.

11. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence provided for in Paragraph 9 of this Plea Agreement. The defendant understands that, as provided in Fed. R. Crim. P. 11(c)(3)(B), if the Court does not impose a sentence consistent with the recommendation contained in this Agreement, he nevertheless has no right to withdraw his plea of guilty.

GOVERNMENT'S AGREEMENT

12. Subject to the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of a sentence, the United States will not bring further criminal charges against the defendant for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving the sale of medical textbooks and other textbooks in Indianapolis, Indiana ("Relevant Offense"). The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

13. The defendant understands that he may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take.

REPRESENTATION BY COUNSEL

14. The defendant has reviewed all legal and factual aspects of this case with his attorney and is fully satisfied with his attorney's legal representation. The defendant has thoroughly reviewed this Plea Agreement with his attorney and has received satisfactory explanations from his attorney concerning each paragraph of this Plea Agreement and alternatives available to the defendant other than entering into this Plea Agreement. After conferring with his attorney and considering all available alternatives, the defendant has made a knowing and voluntary decision to enter into this Plea Agreement.

VOLUNTARY PLEA

15. The defendant's decision to enter into this Plea 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 Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

ENTIRETY OF AGREEMENT

16. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

17. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

DATED: May 5, 2004

Respectfully submitted,

BY: /s/
HAROLD E. VOGEL
Defendant

BY: /s/
FRANK J. VONDRAK

/s/
JULIAN SOLOTOROVSKY
Counsel for Harold E. Vogel

/s/
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