



Could This Happen in Middle America?

-By Steven John Fellman-

The cases were entitled *United States v. Steven Keith VandeBrake* and *United States v. Kent Robert Stewart*. They were criminal cases pending in the United States District Court for the Northern District of Iowa, Western Division. Both defendants appeared before United States District Judge Mark W. Bennett on February 8, 2011 for sentencing. Both men had plead guilty. They had reached an agreement with the prosecutor whereby the government had recommended a fine and jail sentence for both men. The Judge said that he would not accept the agreed upon recommendation for punishment and might impose a more severe punishment. He gave each defendant an opportunity to withdraw his guilty plea.

Neither defendant withdrew his plea of guilty. The Judge issued a Memorandum and Order Regarding Sentencing that was 108 pages long. Here is how he began:

Writer Pearl S. Buck cogently observed in her novel “The Good Earth,” ‘Hunger makes a thief of any man.’ Defendants Steven Keith VandeBrake and Kent Robert Stewart came before the Court for sentencing on February 8, 2011 for violations of the Sherman Act, 15 U.S.C. § 1. Neither defendant, however, suffered from hunger, at least as Pearl Buck knew it, but from insatiable greed, which is all the more shocking because both were already wealthy, multi-millionaire business men. Sir Francis Bacon wrote, ‘Opportunity makes a thief.’ While Stewart’s greed was a least tempered a modicum by Stewart’s misguided motivation to ensure the jobs and livelihood of his employees. VandeBrake’s appalling greed knew no such bounds and was fueled by the unique and easy opportunity that his industry, concrete sales, gave him in establishing a concrete cartel in northwest Iowa. The defendants, although dressed in the attire of hardworking business men, were nothing more than common thieves, and serial ones at that. Like a neighborhood thief, they stole from friends, acquaintances, businesses and local governments. The defendants tools of their trade were

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not dark clothing worn in midnight burglaries facilitated by pry bars and screw drivers. Instead, in ordinary business attire and in the glare of broad daylight, they used the ordinary communication tools of modern commerce and business, cell phones, Blackberries, and email to rob their victims. Unlike the neighborhood thief who values high end TV's, computers, jewelry, and furs, the defendants specialized in cold, hard cash. Unlike the neighborhood thief whose victims immediately recoil in shock at the loss of their property, the defendants stole from their victims without them ever knowing it. Their actions were clever, cunning, but taken with full knowledge and intent to violate this Nation's criminal antitrust laws.

The Judge then sentenced Mr. VandeBrake to 48 months in jail to be followed by 5 years of supervised release during which he is required to perform 500 hours of community service. In addition, the Judge fined him \$829,715.85.

The Judge sentenced Mr. Stewart to a jail term of 12 months and 1 day to be followed by three years of supervised release and 100 hours of community service. Stewart was fined \$83,427.09 and required to pay \$25,981.80 in restitution to a contractor.

Who Were These Guys?

Steve VandeBrake is a life long resident of Orange City, Iowa. At the time of his sentencing he was 42 years old. He lived in Orange City with his wife and three daughters, ages 13, 9 and 7. He was sales manager of a ready mix concrete operation owned by a Grupo Cementos (GCC), Mexican corporation which has 23 ready mix plants in Iowa. His family had owned a small ready mix business in Iowa which VandeBrake sold to GCC and then became sales manager for several Iowa plants. His net worth was reported to be about \$10 million. The government alleged that he participated in three separate bid rigging conspiracies in northwest Iowa. One of those conspiracies involved defendant Kent Stewart. The total volume of commerce in VandeBrake's three conspiracies was \$5,666,439. The Court concluded that the amount of price increase caused by the bid rigging was more than \$400,000 but less than \$1,000,000.

Stewart was 51 years old at the time of sentencing and was born and raised in Iowa and had spent almost his entire life in Iowa. He lives in Spirit Lake, Iowa with his wife. He has two step children ages 29 and 27 and a daughter age 21 who is a college student. Stewart was President of a small ready mix business, Great Lakes Concrete in Ochededan, Iowa. He had a net worth of about \$4 million. He was involved in one bid rigging conspiracy with VandeBrake. The amount of commerce involved covered 12 to 15 projects with total ready mix sales of \$743,001.95.



Judge Mark W. Bennett is a highly respected Federal Judge who graduated from Drake University Law School in 1975. He and some friends opened a law office in Des Moines, Iowa where he practiced for about 15 years. He was appointed a U.S. Magistrate in 1991 and a Federal District Court Judge in 1994. He has been active in the Iowa State Bar Association and is a well known author and speaker on legal issues.

A Question for the Reader?

I ask the reader one question: If Judge Bennett sentenced the Sales Manager of a small ready mix operation in northwest Iowa to four years in jail for engaging in a bid rigging conspiracy involving a total of \$5.6 million in bids, what would he do to the Sales Manager or President of a large national contractor who engaged in a bid rigging conspiracy involving \$500 million (or more) in bids?

I hope I never learn the answer to that question.

P.S. Maximum prison sentence for a single antitrust violation is 10 years in jail. In Mr. VandeBrake's case, he was charged with participating in three separate conspiracies, each of which would be a separate violation.

