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## The Great Price Conspiracy, by John Herling

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THE GREAT PRICE CONSPIRACY. By John Herling. Washington: Robert B. Luce, Inc. 1962. Pp. xv, 366. \$5.50.

[N]o matter what General Electric's past [has] been in regard to the observance of the antitrust laws, "our record for the past decade and more indicates that the managers of the General Electric Company are making earnest and successful efforts to comply not only with the letter, but also with the spirit of the antitrust laws.

As long ago as 1946 . . . the company embarked upon an educational program, a program which has been continued to date with undiminished vigor, designed to sharpen the sensitivity and awareness of all our people to the role and importance of the antitrust laws." [I]n 1958 . . . [the] Assistant Attorney General in charge of the Antitrust Division . . . "cited the General Electric Company as the 'number one example' of companies which have made earnest efforts to live up to the antitrust laws."<sup>1</sup>

These words were spoken by Ralph J. Cordiner, Chairman of the Board of the General Electric Company during a May, 1959, appearance before the Senate Subcommittee on Antitrust and Monopoly. They represent the image projected by General Electric at the time of the first public rumblings of "The Great Price Conspiracy," the revelation and prosecution of which was to shake the electrical manufacturing industry to its very foundations.

In compiling this history of the electrical industry's price fixing scandal, the author, newspaperman John Herling has called upon many sources for his information, including the individual defendants, executives of defendant corporations, the staff of the Senate Subcommittee on Antitrust and Monopoly, officials of the Department of Justice, as well as his fellow newspapermen. He utilizes, as could be expected, a reportorial style, placing the main emphasis on the role of General Electric and its officials in the conspiracies.<sup>2</sup> The absence of any detailed le-

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1. P. 54-5.

2. General Electric was involved in nineteen of the twenty conspiracies for which indictments were returned, as was also true of Westinghouse, the other giant corporation in the electrical industry.

gal analysis<sup>3</sup> makes the book of limited value to persons trained in the law; however, it may still be recommended for the socio-economic implications of its insights into the operations of the modern American industrial corporation and the personalities and attitudes of corporate executives involved in vast criminal conspiracies violative of the federal antitrust laws. Although he labors under the disadvantage of writing before all the facts and circumstances surrounding the conspiracies are known and without the benefit of a detached historical perspective, Mr. Herling seems to have presented an authentic account of the offenses. He carries his narrative chronologically through the issuance of indictments covering twenty conspiracies, the entry of pleas of guilty or *nolo contendere* by the corporate and individual defendants, and the sentencing procedure. However, he occasionally departs from a strict chronological presentation of the conspiracies to turn his attention to some of the corporate officials most deeply involved in or affected by the plots. This technique results in a fairly successful attempt to present some of the complexities of twenty conspiracies embracing different combinations of electrical products, companies and officials.

Mr. Herling begins this modern morality play in May, 1959, when the officials of the Tennessee Valley Authority complained of identical secret bids received in connection with three contracts advertised to the electrical industry. In fact, identical bids on electrical equipment contracts had occurred in some twenty-four instances over a three year period. As a result of the TVA announcement, the United States Attorney General authorized the Antitrust Division's Philadelphia office to begin a grand jury investigation of price fixing within the electrical industry, which had already been the subject of two such investigations during the 1950s. Once begun, the grand jury proceedings advanced rapidly. In mid-June, subpoenas were issued requesting documents to be returned by the companies in mid-July. Then, as the facts of corporate existence and activities emerged, individual subpoenas began to be issued. In order to acquire knowledgeable testimony the investigators granted immunity to conspirators who were not considered sufficiently important in the overall conspiracy to be saved as defendants in the approaching indictments. From this chain of witnesses came the outlines, and then the details, of numerous conspiracies designed primarily to fix prices, and

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3. For example, the twenty indictments are described only in general terms; they are in no place set forth verbatim. Nor are the conspiracies themselves described in sufficient depth to aid the legal scholar. There is almost no discussion of the Sherman Antitrust Act and the legal principles which have evolved in court decisions interpreting it.

also to control the submission of rigged price bids and allocation of business.

The indictments, most of which were issued during the first six months of 1960, were far-reaching, shocking the electrical companies and the public. The investigation had become too much for one grand jury by November, 1959, and before the indictments were completed, five grand juries had been appointed. With each indictment covering a separate product, the first seven, which were handed down February 16 and 17, charged fourteen electrical manufacturers<sup>4</sup> and twenty-eight of their officials with conspiring to fix prices and bids and divide markets in selling power switchgear, oil and circuit breakers, low-voltage power circuit breakers, bushings, lightning arrestors, insulators, and open fuse cutouts to government agencies and private industry. The annual sales involved in the conspiracies were 270 million dollars, or more than 1 billion dollars for the entire period of the conspiracies. The government charged that, as a result of the conspiracies, prices of electrical equipment were maintained at "high and artificial levels," price competition was eliminated, and purchasers did not enjoy the "benefits of free competition." The later indictments covered power switching equipment, navy and marine switchgear and isolated phase buses (50 million dollars annual sales); power, distribution, network and instrument transformers (500 million dollars annual sales); and industrial control machinery (262 million dollars annual sales).

The author examines the operations of three typical conspiracies, although perhaps not in as great a detail as the reader might desire since this is one of the most fascinating portions of the story. The description of the industrial control equipment conspiracy provides a picture of meetings between representatives of supposedly competing electrical companies during a six year period. Several times the conspirators agreed to raise prices ten percent. The talks ranged over such subjects as the effect of prior price increases, uniform cash discounts, competition from non-conspirators, and even the marketing of new products. It is readily apparent that, despite the meetings, the conspirators remained suspicious of each other. Nor was the conspiracy completely effective as at nearly every meeting there were complaints about price-cutting and renewed efforts to obtain adherence to the prices set at the meetings.

In the condenser conspiracy, a two level operation was revealed: The basic pricing policy for the entire industry was established in infrequent "high level" meetings of executives and managerial personnel while the

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4. Some of the smaller companies were named as co-conspirators, but not as defendants.

lower-level managerial personnel implemented the pricing policy in "working-level" meetings held every six to eight weeks. The conspirators controlled the published prices of condensers, which they agreed to raise four times in less than three years. Additionally, the working level group discussed and set bid prices and bid positions for the various companies for upcoming (specific) condenser jobs. If the conspirators were unable to decide through discussion which company was to be given the low position for a job, then the decision was made by lot.<sup>5</sup> During many of the "working-level" meetings, so-called "bitching" sessions were held, during which representatives of corporations which had not respected the position of the designated low bidder on a prior job were criticized and admonished.

While the basic significance of this book lies in the spectacle of the so-called "captains of industry"—men ostensibly committed to the preservation of the competitive free enterprise system—engaging in wholesale violations of the antitrust acts,<sup>6</sup> the author devotes a major portion of his narrative to the issue of the innocence of the top corporate officials and the sharp conflicts arising within the defendant corporations. It is characterized by the manner in which the top executives of General Electric strove to save themselves while consigning the managerial executives to face punishment in the federal courts for the antitrust offenses. The struggle within General Electric, which first came to the surface before the indictments were returned, centered around the following men: Raymond W. Smith, a General Electric vice-president and general manager of the transformer division; William S. Ginn, a General Electric vice-president and general manager of the turbine division; Arthur F. Vinson, General Electric group vice-president; Robert Paxton, president of General Electric; and Ralph J. Cordiner, chairman of the General Electric Board of Directors. The former two, division managers under General Electric decentralization program, were indicted for antitrust violations by the Philadelphia Grand Juries, while the latter three, members of the top executive group of General Electric, escaped prosecution. When it became apparent during the grand jury investigations from sources outside the General Electric Company that there had been price discussions between competitors in the electrical manufacturing industry

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5. In most of the conspiracies, the market for a product was allocated between the conspirators on a percentage basis, thus providing guidance in the award of specific jobs.

6. Chief Federal Judge J. Cullen Ganey, during the hearing on sentencing, called the offenses "a shocking indictment of a vast section of our economy" which has "flagrantly mocked the image of that economic system of free enterprise which we profess to the country and destroyed the model which we offer today as a free world alternative to state control and eventual dictatorship." P. 195.

with employees of General Electric participating, the top executives drew a sharp line between the " 'sinful' general managers and . . . the virtuous executives. . . ." The participants in the meetings with competitors were demoted and given cuts in pay for their flagrant violations of General Electric's policy directive 20.5,<sup>7</sup> while the top executives retreated behind 20.5, denying any participation in the conspiracies or any knowledge of their existence.

Raymond Smith's reaction to his prospective demotion was an angry resignation. While he admitted his offenses, he claimed that he was doing nothing more than following tacit company policy. In Smith's own words :

When I took over as general manager of transformers on January 1, 1957, Cordiner told me that neither I nor my people should have any dealings with our competitors. I accepted this statement as well as the written declaration in the re-publication of Company Policy 20.5 *in the light of my knowledge of the methods used in the switchgear area where I was employed from 1940 to 1947, and in the transformer area where I was employed from 1947 on. . . .* To my knowledge . . . during the entire period from 1940 through 1956, it was common practice in both of these areas to discuss prices and other competitive matters with competitors. . . . I was also aware that similar practices were being followed not only in other areas of the company, but also in other companies in the electrical manufacturing industry. . . . In other words . . . although the General Electric Policy 20.5 regarding antitrust practices had been issued in 1946, it had been constantly disregarded in major areas of the company with, at least, the tacit approval and agreement of the managers and the officers of the company at the time responsible for those areas.<sup>8</sup>

In contrast to Smith's strong reaction against his superiors, William S.

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7. The provisions of policy directive 20.5 of the General Electric Company, which had been in effect since 1946, are as follows:

It is the policy of the company to comply strictly in all respects with the anti-trust laws. There shall be no exception to this policy nor shall it be compromised or qualified by anyone acting for or on behalf of the company. No employee shall enter into any understanding, agreement, plan or scheme, expressed or implied, formal or informal, with any competitor, in regard to prices, terms or conditions of sale, production, or distribution, territories or customers; nor exchange or discuss with a competitor information; nor engage in any other conduct which in the opinion of the company's counsel violates any of the antitrust laws.

8. P. 31.

Ginn, whose numerous violations of the antitrust laws were also beyond question, accepted his demotion quietly and continued in the employ of General Electric Company. He remained the organization's man.<sup>9</sup>

During the period of the conspiracies, Robert Paxton, like Smith and Ginn, was advancing through the ranks of General Electric corporate management. Prior to assuming the presidency in 1958, he had been a key executive in the switchgear and transformer divisions which were later revealed to be deeply involved in the price conspiracies. In his testimony before the Kefauver Committee, Mr. Paxton admitted that, while he was marked as a man who did not "understand" and would not become "personally involved" in meetings with General Electric's competitors, he was aware that such meetings were occurring. Yet he did not investigate or report to his superiors the possible antitrust violations because he felt this to be "tale-bearing," "womanish" and personally "distasteful." He forcefully denied Raymond Smith's assertion that he had knowledge of the meetings. Mr. Herling's reaction to Paxton's denial of complicity is strong: "Since Ray Smith was a close friend of Paxton, and a man who in effect had followed in his footsteps in the transformer division, Paxton's ignorance strained belief."<sup>10</sup> In other words, Robert Paxton maintained a pose of aloofness calculated to escape legal, if not moral, responsibility.

The innocence of the top executives of General Electric was the key issue underlying the fight by the corporation's attorneys to secure the dismissal of the charges against Arthur F. Vinson in connection with the switchgear conspiracy. Vinson, who served as the link between General Electric President Paxton and Board Chairman Cordiner and the managerial executives, had been indicted on the basis of the testimony of two vice-presidents and two general managers of General Electric. They alleged that, in addition to having full knowledge of the meetings with competitors, Group Vice-President Vinson had specifically directed them to participate at a time when it appeared that the conspiracies were due to collapse because of a failure of some companies, most notably Westinghouse, to cooperate. The government's case against Vinson was based primarily upon a luncheon meeting in a dining room at General Electric's Philadelphia plant he was alleged to have held with his four accusers, three of whom were themselves under indictment. The General Electric lawyers developed evidence which tended to show that Vinson could not have been in Philadelphia on the days which the government alleged in a

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9. Following the trials, William S. Ginn's resignation was requested by Ralph J. Cordiner along with those of other General Electric executives receiving jail sentences.

10. P. 47.

bill of particulars that the meeting probably took place. The Justice Department attorneys were caught in a dilemma. The dropping of the indictment against Vinson could appear to be contrived, yet the presentation of the evidence of his alibi—some of it being testimony from distinguished officials in the Eisenhower administration—might confuse the jury and jeopardize the government's case against General Electric. This was true even though the testimony of his subordinates at General Electric was persuasive despite their inability to recall exact dates. Moreover, General Electric, which was the only corporate defendant who had not offered a guilty plea, had indicated that it would plead guilty or *nolo contendere* to the charges if Vinson's name were dropped from the indictment. It was under these conditions that Robert A. Bicks, Assistant Attorney General in charge of the Antitrust Division, reluctantly recommended that General Electric's terms be met.

The attorneys for General Electric, not satisfied with the behind-the-scenes victory in the negotiations, requested a statement for the record from the Government attorneys. Thus, after Justice Department Attorney Charles Whittinghill moved that the charge against Vinson be *nolle prosequi*, Gerhard Gesell of Covington and Burling, representing General Electric, said "Before pleading in this case, inasmuch as this is the only one of the cases involving General Electric where there have been any allegations concerning the company's board of directors, I would like to ask the government if they have a statement they wish to make with respect to that before I plead."<sup>11</sup>

Whittinghill then read the following statement:

In response to the request of General Electric, the government makes this statement: The government has not charged and does not claim that any member of the General Electric board of directors, including Mr. Ralph J. Cordiner and Mr. Robert Paxton had knowledge of the conspiracies pleaded to in the indictments, nor does the government claim that any of these men personally authorized or ordered commission of any of the acts charged in any of the indictments.<sup>12</sup>

General Electric thereupon entered pleas of guilty and *nolo contendere* to the various indictments.

During the hearing on sentencing, Chief Federal Judge J. Cullen Ganey, the presiding trial judge, gave his opinion of the positions of the high General Electric executives in an unusual statement:

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11. P. 163.

12. P. 164.



[The court] is not at all unmindful that the real blame is to be laid at the *doorstep of the corporate defendants and those who guide and direct their policy*. While the Department of Justice has acknowledged that they were unable to uncover probative evidence which could secure a conviction beyond a reasonable doubt of those in the highest echelons of the corporations here involved, in a broader sense they bear a grave responsibility for the present situation for one would be most naive indeed to believe that these violations of the law, so long persisted in, affecting so large a segment of the industry and finally, involving so many millions upon millions of dollars, were facts unknown to those responsible for the conduct of the corporation and, accordingly, under their various pleas, heavy fines will be imposed.<sup>13</sup>

Finally, in regard to the individual defendants, Judge Ganey stated that he was "convinced that in the great number of these defendants' cases, they were torn between conscience and an approved corporate policy, with the rewarding objectives of promotion, comfortable security and large salaries—in short, the organization of the company man, the conformist, who goes along with his superiors and finds balm for his conscience in additional comforts and the security of his place in the corporate set-up."<sup>14</sup> Judge Ganey's comments, made in February, 1961, offer a sharp contrast to the statement of Ralph J. Cordiner before the Kefauver Committee less than two short years before.

Mr. Herling leaves little doubt about his opinion concerning the attempt to maintain the reputation of General Electric's top executives unsullied. In regard to the statements made by Gesell and Whittinghill in court, he states:

Both these statements have since been widely used by General Electric as evidence that the government had cleared their top company officials of any wrongdoing. Top Justice Department officials regard this as an abuse of the government's statement. . . . [T]he government speaking through Whittinghill did not state that General Electric's directors, board chairman and president did not have knowledge of nor authorize the power switchgear conspiracy. The government merely said "it *did not charge or claim* that those individuals did have such knowledge or did give such approval." . . . Nevertheless, Gen-

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13. P. 196.

14. *Ibid.*

eral Electric sought to explain to its stockholders that it pleaded guilty and *nolo contendere* to the antitrust indictments "only when it appeared that the company would be held legally responsible for what had been done by a few officers and employees, in spite of the innocence of the directors and top management." The misleading impression was thus created that a government stamp of innocence was placed on the anxious brow of General Electric's summit leadership.

The government might not be able to prove legally the involvement of the "highest corporate echelons" but the government would not and did not assert that the top corporate echelons were ignorant of the violations being committed in their company's midst.<sup>15</sup>

Mr. Herling provides a good description of the crucial battle by the Justice Department's attorneys to prevent the electrical industry antitrust cases from following the pattern of earlier antitrust cases. Antitrust criminal prosecutions had settled into a generally followed pattern in which the defendants plead *nolo contendere*—or sometimes guilty—after which they receive moderate fines. Prison sentences were the exception rather than the rule, while the fines were considered merely a cost of successfully doing business. As the author states it: "the violation of the antitrust law never was considered more than a gentlemen's misdemeanor—and a gentleman was never sent to jail for violating the antitrust law."<sup>16</sup> An advantage of the plea of *nolo contendere* over a plea of guilty from the defendant corporation's standpoint, in addition to and arising from the fact that it is not an admission of guilt, is that, in any subsequent civil suit concerning the same facts, the former plea would require complete proof of the offense from the plaintiff while the latter would not.

The critical point was reached during March, 1960, after the issue of the first seven indictments, when some of the smaller defendant corporations, including Allis-Chalmers and I-T-E Circuit Breaker, offered pleas of *nolo contendere*. General Electric and Westinghouse entered pleas of not guilty and awaited the outcome of the maneuvers of their co-defendants. The government attorneys forcefully opposed the acceptance of the pleas of *nolo contendere*, the decisions on which lay entirely within the discretion of Judge Ganey. Assistant Attorney General Bicks personally appeared in the Philadelphia courtroom to present the Government's contention that the pleas should be rejected. He argued

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15. P. 164-5.

16. P. 9.

that the offenses were the most serious in the history of federal antitrust legislation, that the public interest demanded the defendants not be permitted to submit to criminal punishment and then deny their guilt in later civil suits, and that the plea of *nolo contendere* does not bear the same imputation of moral turpitude as a plea of guilty or a conviction. Bicks' position was effectively supported by an "unprecedented" affidavit from Attorney General William P. Rogers which detailed the steps in one of the conspiracies, indicated the clear "guilty knowledge" of defendants' representatives, and pointed to the importance of this ruling in setting a pattern in regard to the pleas of other more important conspirators in these and companion cases. In a major victory for the Justice Department and an ominous warning for the defendants, Judge Ganey rejected the offered pleas. Within a short period, the management of Allis-Chalmers not only decided to plead guilty, but also to completely reveal to the Justice Department its involvements in the conspiracies through documents and witnesses. Suddenly the government found itself able to fill in its evidence for many of the cases in return for which Allis-Chalmers hoped for leniency in the final disposition of its cases. In the end, after all twenty indictments had been handed down by the grand juries, the government attorneys, after long and tedious negotiations with the many attorneys representing the corporate and individual defendants, required guilty pleas from the most culpable offenders in the seven most important cases while accepting *nolo contendere* pleas from the other defendants.

Even though the antitrust cases were marked by tense and dramatic struggles throughout, the author's account of the hearing on sentencing is not anticlimactic. The sentences adjudged fell heavily upon the assembled defendants. The twenty-nine companies involved were fined more than 1.9 million dollars, nearly half of which was levied on General Electric and Westinghouse. Of the fifty-two individual defendants, thirty were given jail sentences although only seven actually went to jail for thirty days. The remainder received suspended sentences with long periods of probation. All received heavy fines. The violation of the federal antitrust laws would no longer be known as a gentleman's misdemeanor.

All in all, the author has presented an interesting, general report of the electrical industry antitrust violations of the 1950s, one which should prove informative to most readers with no great expertise in the antitrust field of the law.

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