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Part II

The Incredible Electrical Conspiracy

by Richard Austin Smith

In a Philadelphia federal court last February the great price-fixing conspiracy in the electrical-equipment industry came to a climax with jail sentences for seven executives and fines of nearly $2 million levied against twenty-nine corporations. Part I of the story of this historic case took the reader inside one of the cartels, and showed how collusion had become a corporate "way of life." Behind us now are the ruinous days of the 1954-55 "white sale," the bitter meetings, the regimen of concealment. Ahead is exposure. Here in Part II is the story of how the Antitrust Division finally broke the case and what went on at General Electric from the time a principal conspirator realized the game was up until the corporation threw in its hand, fourteen months later.

Shortly before ten o'clock on the morning of September 28, 1959, an urgent long-distance call came in to G.E.'s vast Transformer Division at Pittsfield, Massachusetts. It was for Edward L. Dobbins, the divisional lawyer, and the person on the line was another attorney, representing Lapp Insulator Co. He just wanted to say that one of Lapp's officers had been subpoenaed by a Philadelphia grand jury and was going to tell the whole story. "What story?" said Dobbins pleasantly, then listened to an account that sent him, filled with concern, into the office of the divisional vice president, Raymond W. Smith.

At that time, Vice President Smith was a big man in G.E., veteran of twenty-eight years with the corporation, and one of President Robert Paxton's closest personal friends; he was also a big man in Pittsfield, where the Transformer Division employs 6,000 people out of a population of 57,000, director of a local bank, active member of the hospital building board. Smith heard Dobbins out, his six-foot-five frame suddenly taut in the swivel chair and a frown deepening on his forehead; he got up and began pacing back and forth. "It's bad," he said, "very bad." Then he added, shaking his head grimly, "You just don't know how bad it is!"

The story Dobbins had, which the man from Lapp was about to spill before a Philadelphia grand jury, was that Paul Hartig, one of Ray Smith's departmental general managers, had been conspiring with Lapp Insulator and a half-dozen other manufacturers to fix prices on insulators. Such news was unsettling enough to any boss, but Smith's alarm had its roots in something deeper than the derelictions of a subordinate. He was himself "Mr. Big" of another cartel, one involving $210 million worth of transformers a year, and he didn't need the gift of prescience to sense the danger to his own position. Nevertheless, Smith concluded that he had no choice but to report the trouble to Apparatus Group Vice President Arthur Vinson, in New York.

That very night Vinson flew up to Pittsfield. A cool, dynamic executive, boss of G.E.'s nine apparatus divisions, Vinson was used to hearing the word "trouble" from his general managers, but the way Smith had used it permitted of no delay, even for a storm that made the flight a hazardous one. He had dinner with the Smiths at a nearby inn, and then, back in Smith's study, heard the story. Vinson's concern centered immediately on the extent of G.E.'s involvement. His recollection today is that after discussing Hartig, he asked Ray Smith whether the Transformer Division was itself involved in a cartel and received assurances to the contrary. Hartig's case appeared to be just that of a young manufacturing executive whose inexperience in marketing matters had got him compromised.

By sheer coincidence, G.E. Chairman Ralph Cordiner showed up in Pittsfield the next day. He had come, ironically enough, to hear an account of the new market approach by means of which Smith's Transformer Division

The Accusers

Chief of Antitrust from 1959 until the Kennedy Administration took office this year, Robert A. Bicks (right) looked on the electrical-conspiracy case as the most significant of his career. During his eighteen-month term of office Bicks brought more antitrust actions than any trust buster since Thurman Arnold (1938-43).

Mainspring of the investigation, William L. Maher is chief of the Antitrust Division's Philadelphia office. He had taken part in an earlier (1951-52) attempt to crack a transformer cartel in Pittsburgh, could turn this experience to good account in the collection and coordination of evidence. Owing in part to the efficiency of the Philadelphia office, the present case took only eighteen months, from the start of the investigation to sentencing.

expected to beat the ears off the competition, foreign and domestic. G.E. had worked out a method of cutting the formidable costs of custom-made transformers by putting them together from modular (standard) components. Westinghouse, long the design and cost leader in the transformer field, had been put on notice only the previous month that new prices reflecting the 20 per cent cost reduction were in the making.

Told of Hartig's involvement in the insulator cartel, Cordiner reacted with shock and anger. Up until then he had reason to think his general managers were making "earnest efforts" to comply with both the spirit and the letter of the antitrust laws; he had so testified in May before a congressional antitrust subcommittee. When the Tennessee Valley Authority had complained that it was getting identical bids on insulators, transformers, and other equipment, and the Justice Department had begun to take an active interest in this charge, he had sent G.E.'s amiable trade-regulation counsel, Gerard Swope Jr., son of the company's former chief executive, to Pittsfield. Swope considered it his mission to explore "a more dynamic pricing policy to get away from the consistent identity of prices." He had, however ventured to say, "I assume none of you have agreed with competitors on prices," and when nobody contested this assumption, he came away with the feeling that any suspicion of pricing agreements boiled down to a competitor's voicing a single criticism at a cocktail party. Cordiner had been further reassured by a report from G.E.'s outside counsel, Gerhard Gesell of Covington & Burling, who had burrowed through mountains of data and couldn't find anything incriminating. Gesell's conclusion, accepted by the top brass, was that G.E. was up against nothing more than another government attack on "administered" prices such as he and Thomas E. Dewey had beaten off earlier that year in the Salk vaccine case.

It was no wonder, then, that Cordiner was upset by what he heard about the insulator department. And this was only the beginning. G.E.'s general counsel, Ray Luebbe, was brought into the case, and within a matter of days Paul Hartig was in Luebbe's New York office implicating Vice President Ray Smith. Smith made a clean breast of things, detailing the operation of the transformer cartel (bids on government contracts were rotated to ensure that G.E. and Westinghouse each got 30 per cent of the business, the remaining 40 being split among four other manufacturers; book prices were agreed upon at meetings held everywhere from Chicago's Drake Hotel to the Homestead at Hot Springs, Virginia; secrecy was safeguarded by channeling all phone calls and mail to the homes, destroying written memoranda upon receipt).

Then Smith implicated a second G.E. vice president, William S. Ginn. Head of the Turbine Division at forty-one, Ginn was considered a comer in the company. Unfortunately for him, he was just as much of a wheel in conspiracy, an important man in *two* cartels, the one in transformers, which he had passed on to Ray Smith, and the one in turbine generators, which only the year before had aroused the suspicions of TVA by bringing about some very rapid price increases.

The involvement of divisional Vice Presidents Smith and Ginn put G.E.'s whole fifteen-man Executive Group—a group including Cordiner and Paxton—in an understandable flap. By now, the corporation was plainly implicated in four cartels, and an immense number of questions had to be answered, questions of how to ferret out other conspiracies, what legal defense to make, whether there was any distinction between corporate and individual guilt. For the next few weeks—from early October to late November—the executive office was to devote itself almost exclusively to searching for dependable answers.

Big fish in small companies

The Justice Department was also looking for answers. It had got started on the case because of TVA's suspicions and because Senator Estes Kefauver had threatened an

investigation of the electrical industry, putting the executive branch of government on notice that if it didn't get on with the job, the legislative branch would. Robert A. Bicks, the most vigorous chief of Antitrust since Thurman Arnold, certainly had plenty of will to get on with the job, but the way was clouded. The Antitrust Division had once before—in 1951-52—tried to find a pattern of collusive pricing in the maze of transformer bids, but had wound up with no indictments. Now, as Bicks and William Maher, the head of the division's Philadelphia office, moved into the situation, proof seemed just as elusive as ever.

The tactics of the Antitrust Division were based on using the Philadelphia grand jury to subpoena documents, and then, after study of these, to subpoena individuals —the corporation executives who would logically have been involved if a conspiracy existed. The ultimate objective was to determine whether the biggest electrical manufacturers and their top executives had participated in a cartel, but the approach had to be oblique. As Maher put it: "Even if we had proof of a meeting where Paxton [president of G.E.] and Cresap [president of Westinghouse] had sat down and agreed to fix prices, we would still have to follow the product lines down through to the illegal acts. You have to invert it, start with what happened at a lower level and build it up step by step. The idea is to go after the biggest fish in the *smallest* companies, then hope to get enough information to land the biggest fish in the biggest companies."

In mid-November a second Philadelphia grand jury was empaneled, and Justice Department attorneys began ringing doorbells across the land. As more of these rang and the trust busters took more testimony (under grand-jury subpoena), a sudden shiver of apprehension ran through the industry. The grapevine, probably the most sensitive in American business, began to buzz with talk that the feds were really on to something—moreover, that jail impended for the guilty. Everyone by then was only too well aware that an Ohio judge had just clapped three executives behind bars for ninety days for participating in a hand-tool cartel.

Cordiner's command decision

Back at G.E., meanwhile, Cordiner had issued instructions that all apparatus general managers, including those few who so far had been implicated, were to be interviewed by company attorneys about participation in cartels. Most of the guilty lied, gambling that the exposures would not go any further than they had. Cordiner, accepting their stories, began to formulate what he thought would be G.E.'s best defense. It would have two principal salients: first, the company itself was not guilty of the conspiracies; what had occurred was without the encouragement or even the knowledge of the chairman, the president, and the Executive Office. G.E.'s corporate position on antitrust compliance was a matter of record, embodied in Directive 20.5, which Cordiner had personally written and promulgated five years before. Furthermore, illegal conduct of any individuals involved was clearly beyond the authority granted to them by the company, and therefore the company, as distinguished from the individuals, should not be held criminally responsible. Second, those employees who had violated Directive 20.5 were in for corporate punishment. "Stale offenses" were not to be counted, but a three-year company "statute of limitations" would govern liability (the federal limitation: five years).

The Accused

Clarence Burke, fifty-six, $75,000 general manager of G.E.'s High Voltage Switchgear Department, was demoted after involvement in that cartel, eventually forced to resign in March of this year.

Raymond W. Smith, fifty-six, vice president of G.E.'s huge Transformer Division, close friend of President Robert Paxton, was implicated in the transformer cartel in 1959, resigned to run a car-leasing agency.

Arthur Vinson, fifty-three, G.E. Group vice president, was indicted in switchgear, then cleared because Justice felt it "could not argue convincingly to a jury of Vinson's guilt of the specific charges . . ."

Punishment of necessity had to go hand in hand with a corporate not-guilty stance. If G.E.'s defense was to be that the conspiracies had taken place in contravention of written policy (Directive 20.5), then unpunished offenders would be walking proof to a jury that 20.5 was just a scrap of paper. On the other hand, here was a clear management failure on the part of the Executive Office—a failure to detect over a period of almost a decade the cartels that were an open secret to the rest of the industry. As G.E. was to learn to its sorrow, lots of people who approved of punishment for the offenders did not think this permitted G.E. to wash its hands of responsibility. Westinghouse's president, Mark W. Cresap Jr., spoke for many executives both inside the industry and out when he stated his position this January: "Corporate punishment of these people . . . would only be self-serving on my part . . . this is a management failure."

But aside from the moral question, the legal basis of G.E.'s not-guilty stance was shaky to say the least. Its lawyers felt bound to inform the Executive Office: "The trend of the law appears to be that a business corporation will be held criminally liable for the acts of an employee so long as these acts are reasonably related to the area of general responsibility entrusted to him notwithstanding the fact that such acts are committed in violation of instructions issued by the company in good faith . . ." Under the decentralization policy, distinguishing between an "innocent" corporation and its "guilty" executives would be tough, for Cordiner himself had given the general managers clear pricing powers.

The Cordiner position had another weakness: it was based on the assumption that G.E. was involved in only four cartels—at the most. Yet wider involvement could reasonably have been expected. That very month general counsel Luebbe (who retired on October 1, 1960) had been warned by one of the general managers who had confessed that collusion would be found to have spread across the whole company front. ("I tried to tell Luebbe to stop the investigation," reflected the general manager, "and try to make a deal with the government. I told him in November, 1959, that this thing would go right across the board. He just laughed at me. He said, 'You're an isolated case—only you fellows would be stupid enough to do it.'") Thus when wider involvement actually did come to light—the four cartels multiplied into nineteen and accounted for more than 10 per cent of G.E.'s total sales—the company found itself in the ludicrous position of continuing to proclaim its corporate innocence while its executives were being implicated by platoons.

The ax falls

But vulnerable or not, G.E.'s posture was officially established in November, and management moved to put it into effect. Ray Smith was summoned to Arthur Vinson's big, handsome office and told he was going to be punished. His job was forfeit and his title too. There was a spot for him abroad, at substantially less money, if he wanted to try to rebuild his career in General Electric. Smith was stunned. Once implicated, he had leveled with the company to help it defend itself, and there'd been no hint of punishment then or in the succeeding two months. He decided he'd had it, at fifty-four, and would just take his severance pay and resign.

It was probably a wise move. Those conspirators who didn't quit on the spot had a very rough go of it. Initial punishment (demotion, transfer, pay cuts) was eventually followed by forced resignation, as we shall see. But the extra gall in the punishment was the inequality of treatment. William Ginn had been implicated at the same time as Ray Smith, and his case fell well within G.E.'s statute of limitations. Yet he was allowed to continue in his $135,000 job as vice president of the Turbine Division—until he went off to jail for that conspiracy, loaded with the biggest fine ($12,500) of any defendant.

Widespread resentment over this curious partiality to Ginn and over the meting out of discipline generally was destined to have its effect: willing G.E. witnesses soon began to turn up at the trust busters' camp; among them was an angry Ray Smith, who claimed he had been acting on orders from above. His mood, as a government attorney described it, was that of a man whose boss had said: "I can't get you a raise, so why don't you just take $5 out of petty cash every week. Then the man gets fired for it and the boss does nothing to help him out."

There was, however, an interval of some three months between Smith's resignation in November and his appearance in Philadelphia with his story. And eventful months they were. The first grand jury was looking into conspiracies in insulators, switchgear, circuit breakers, and several other products. The second grand jury was hearing four transformer cases and one on industrial controls. With a score of Justice men working on them, cases proliferated, and from December on lawyers began popping up trying to get immunity for their clients in return for testimony. Scarcely a week went by that Bicks and company didn't get information on at least two new cases. But what they still needed was decisive data that would break a case wide open. In January, 1960, at just about the time Ralph Cordiner was making an important speech to G.E.'s management corps ("every company and every industry —yes, and every country—that is operated on a basis of cartel systems is liquidating its present strength and future opportunities"), the trust busters hit the jackpot in switchgear.

"The phases of the moon"

Switchgear had been particularly baffling to the Antitrust Division, so much so that in trying to establish a cartel pattern in the jumble of switchgear prices the trust busters got the bright idea they might be in code. A cryptographer was brought in to puzzle over the figures and try to crack the secret of how a conspirator could tell what to bid and when he'd win. But the cryptographer was soon as flummoxed as everyone else. One of the government attorneys in the case, however, had made a point of dropping in on a college classmate who was the president of a small midwestern electrical-equipment company. This executive didn't have chapter and verse on the switchgear cartel but what he did have was enough for Justice to throw a scare into a bigger company, I-T-E Circuit Breaker. Indicating that subpoenas would follow, antitrust investigators asked I-T-E's general counsel, Franklyn Judson, to supply the names of sales managers in specific product lines. Judson decided to conduct an investigation of his own. When the subpoenas did come, a pink-cheeked blond young man named Nye Spencer, the company's sales manager for switchgear, was resolutely waiting—his arms loaded with data. He had decided he wasn't about to commit another crime by destroying the records so carefully laid away in his cellar.

There were pages on pages of notes taken during sessions of the switchgear conspiracy—incriminating entries

continued page 210

like "Potomac Light & Power O.K. for G.E." and "Before bidding on this, check with G.E."; neat copies of the ground rules for meetings of the conspirators: no breakfasting together, no registering at the hotel with company names, no calls to the office, no papers to be left in hotel-room wastebaskets. Spencer, it seems, had been instructed to handle some of the secretarial work of the cartel and believed in doing it right; he'd hung onto the documents to help in training an assistant. But the most valuable windfall from the meticulous record keeper was a pile of copies of the "phases of the moon" pricing formula for as far back as May, 1958.

Not much to look at—just sheets of paper, each containing a half-dozen columns of figures—they immediately resolved the enigma of switchgear prices in commercial contracts. One group of columns established the bidding order of the seven switchgear manufacturers—a different company, each with its own code number, phasing into the priority position every two weeks (hence "phases of the moon"). A second group of columns, keyed into the company code numbers, established how much each company was to knock off the agreed-upon book price. For example, if it were No. 1's (G.E.'s) turn to be low bidder at a certain number of dollars off book, then all Westinghouse (No. 2), or Allis-Chalmers (No. 3) had to do was look for their code number in the second group of columns to find how many dollars they were to bid *above* No. 1. These bids would then be fuzzed up by having a little added to them or taken away by companies 2, 3, etc. Thus there was not even a hint that the winning bid had been collusively arrived at.

With this little device in hand, the trust busters found they could light up the whole conspiracy like a switchboard. The new evidence made an equally profound impression on the grand juries. On February 16 and 17, 1960, they handed down the first seven indictments. Forty companies and eighteen individuals were charged with fixing prices or dividing the market on seven electrical products. Switchgear led the list.*

A leg up from Allis-Chalmers

These initial indictments brought about two major turning points in the investigation. The first was a decision by Allis- Chalmers to play ball with the government. This move came too late to save L. W (Shorty) Long, an assistant general manager—he was one of the eighteen already indicted—but the trust busters were willing to go easier on Allis-Chalmers *if* the company came up with something solid. It did. Thousands upon thousands of documents were turned over to the government. Further, the testimony of Vice President J. W. McMullen, and others was so helpful (attorney Edward Mullinix had coached them many hours on the importance of backing up allegations with receipted hotel bills, expense-account items, memorandums, telephone logs, etc.) that a number of new cases were opened up. Only two of those first seven indictments retained their Justice Department classification as "major" cases. To them were

continued page 212

**The other six: oil circuit breakers, low-voltage power circuit breakers, insulators, open-fuse cutouts, lightning arresters, bushings. Each indictment covered one product and listed all the corporations and individuals charged with conspiracy to fix prices on that product.*

added five new major indictments—power transformers, power switching equipment, industrial controls, turbine generators, and steam condensers—culled from thirteen to follow that spring and fall.

The second major turning point came through a decision in March by Chief Federal Judge J. Cullen Ganey, who was to try all the cases. That decision concerned whether the individuals and companies involved in the first seven indictments would be permitted to plead *nolo contendere* (no contest) to the charges. The matter was of vital importance to the companies, which might well be faced by treble-damage suits growing out of the conspiracies. (A G.E. lawyer had advised the Executive Office: "If a criminal case can be disposed of by a *nolo* plea, the prospective damage claimant is given no assistance in advancing a claim; it must be built from the ground up.") The matter was also of great importance to a determined Robert Bicks, who argued that *nolo* pleas would permit the defendants "the luxury of a 'Maybe we did it; maybe we didn't do it' posture. 'Oh, yes, technically before Judge Ganey we admitted this, but you know we weren't guilty. You know we didn't do this.'"

Actually, in the opinion of one veteran antitrust lawyer, everybody in the industry and 99 per cent of the government thought the court would accept *nolos*. Indeed, the Justice Department was so worried about the matter, and so anxious to forfend such a development, that for the first time in the history of the department an attorney general sent a presiding judge an affidavit urging rejection of *nolos*.

"Acceptance of the *nolo* pleas tendered in these cases," William Rogers deposed to Judge Ganey, "would mean [that] . . . insistence on guilty pleas or guilty verdicts would never be appropriate in any antitrust case—no matter the predatory nature of the violation or the widespread adverse consequences to governmental purchasers. This result would neither foster respect for the law nor vindicate the public interest. These interests require, in the cases at bar here, either a trial on the issues or pleas of guilty."

But Judge Ganey didn't need to be impressed with the seriousness of the cases. He ruled that *nolo contendere* pleas were inacceptable (unless, of course, the Justice Department had no objections). The corporations and individuals would either have to plead guilty or stand trial. At the arraignment in April, Allis-Chalmers and its indicted employees promptly pleaded "guilty"; most others, including G.E. and its employees, pleaded "not guilty." They intended at that time to take their chances before a jury, no matter how bleak the prospects.

The trails to Arthur Vinson

Around the time of Judge Ganey's eventful decision, Bicks and company got what seemed to be another windfall: two potential leads to the very summit of power at G.E. The first came from Ray Smith. He and a St. Louis lawyer registered at a Philadelphia hotel that February and got in touch with the local Justice Department office. The attorneys there refused to see Smith personally—he was on the way to being indicted in the transformer conspiracy and they were afraid that talking to him might be construed as pressure—but he did get his story to them via a series of notes, with the St. Louis lawyer as the go-between. The gist of it was eye-popping. In June of 1958 two top officials of G.E. and two from Westinghouse had got together during the Electrical Equipment Institute convention in Boston. The meeting had taken up the matter of stabilizing prices in transformers, among other products. That cartel was not only to be kept alive; it was to be revitalized.

At first blush Smith's charge looked like the answer to a trust buster's dream. But under careful checking some serious flaws arose: Smith could only attest to what Arthur Vinson, allegedly one of the two G.E. officials at the Boston meeting, had told him of the top-level get-together. Any account by Vinson to Smith of what the other parties had said or done was hearsay. Moreover, in the face of Vinson's expected denial that any such meeting had ever occurred it would be just Smith's word against Vinson's—unless, of course, corroborating evidence might come to light in the course of the investigation. None ever did, apparently, for nothing came of the charge.

The second lead to top-level executives, however, was based on the evidence not of one man but four. Vice President George Burens, head of G.E.'s Switchgear Division, and his three departmental general managers (Clarence Burke, H. F. Hentschel, and Frank Stehlik)—all of whom had been indicted in switchgear that February—trooped down to Washington and claimed the government had missed the key man: their boss, again Group Executive Arthur Vinson.

Needless to say, Antitrust was fascinated. On top of Smith's charges, here were four of the company's general managers, one a vice president, now prepared to swear that Vinson had authorized them to rejoin a price-fixing conspiracy sometime in the third quarter of 1958. Moreover, their story was a clear-cut account, with few of the ambiguities the Justice Department had come to expect from G.E. witnesses.*

The luncheon in dining room B

The story, as Clarence Burke told it to the Justice Department, to the grand jury, and, last month, to FORTUNE, began with a 1958 visit by Vinson to the Philadelphia works. Burens had been under heavy fire from other apparatus-general managers, because, they said, his cut-rate switchgear prices were bringing complaints from their customers, who considered they should be getting similar discounts on other G.E. equipment. Now, according to Burke, Vinson himself was taking up the cudgels to get a reluctant Burens to raise switchgear prices by reactivating the cartel.

This is Burke's account of the episode: "I got a call from Burens to drop by his office [in Philadelphia]. Arthur Vinson was there and Burens, looking like the wreck of the Hesperus. Burens said 'Tell Art your experience contacting competitors, particularly Westinghouse.' So I said, 'Art, we've been in and out and we've tried it so much but they only try to make monkeys out of us, particularly Westinghouse. They get us to agree to book prices and then they chisel.' Art said that that wouldn't take place any more, that it had all been squared away. I said I had heard that before, then they say they hadn't had enough control over their field. Vinson said, 'I have assurance of it from Montieth [Westinghouse vice president]; they don't want to be leaders, they just want to make money.' Burens said, 'See, that confirms it—we don't have to be in.' Vinson said (with some vehemence), 'I told you I've got it all set up.' So Burens said, 'All right, we'll re-establish contacts.' Then he said

continued page 217

** "I think part of G.E.'s management course must be how to double-talk," commented a government attorney, ruminating about the investigation. "They were always 'gathering' that such and such was said." Indeed, a story of such circumspection going the rounds this spring concerned a G.E. employee who told his boss, a member of the Executive Office, that he intended going to Canada on vacation. Said the boss: "I am* told *you will have a good time."*

something like 'I know you're in a hurry, Art. I've called the two other managers and we'll have a quick lunch.'

"As we came out of Burens' office, I saw Stehlik coming down the corridor toward us and noticed that he wouldn't reach the turn which led down to dining room B, so I dropped back and waited for him. He remembers this, and on the way down to the dining room I briefed him on Art's having ordered us to re-establish contacts.

"All during lunch we talked about price stability and I tried to get Art to say the same thing he had in Burens' office, but he wouldn't volunteer anything. Finally, I said, 'Art, these competitors of ours have been calling us up recently ' He looked as if he could have hit me, and Burens said quickly, 'Yes, Art, what do you think we ought to do?' Vinson said again we ought to talk to them, but he said don't let it get below the general managers' level."

Burke's best recollection was that the Vinson order occurred between the end of July and September 13, 1958. In independent testimony, Burens set it in August or September; Stehlik, between mid-August and October, Hentschel, the latter part of August. The dates were highly important, in view of subsequent events; they were also highly illuminating. They fitted in nicely with Ray Smith's story of the top-level Boston meeting that June, the meeting reported to him by Vinson where Westinghouse and G.E. had allegedly decided to bury the hatchet and get together again on prices.

As a result of this information, Vinson was indicted. Clarence Burke's name was dropped from the new switchgear indictment in consideration of his testimony against Vinson, although he continued to be charged for conspiracy in circuit breakers. Then a few weeks later the government chestily filed a Voluntary Bill of Particulars, which included Cordiner, Paxton, and the board of directors among those charged with the illegal switchgear actions. In the same bill the government volunteered the time and place of Vinson's alleged instruction of Burens, *et al.* to reactivate the switchgear cartel "in or about July, August, or September, 1958, at General Electric's plant in Philadelphia."

The Bill of Particulars had been intended as a tactical move to impress G.E. with the strength of the switchgear case and influence the corporation to change its not-guilty plea. It had just the opposite effect. The company lawyers realized that if Group Executive Vinson went down, their whole corporate defense (no authorization) would collapse at the same time. Moreover, they were by then familiar with "the Vinson lunch," having got wind of it in April during some re-interviews with Burke and others. Vinson had denied the whole affair. More than that, he had come up with records of his whereabouts during 1958. Now that the government had particularized the time, place, and individuals, all Vinson had to do was prove he'd never even been in Philadelphia during July, August, and September of 1958.

A talk with Bicks

Necessarily, the Vinson case had a vital bearing on how G.E. would plead on its own indictments, but the issue was also important to the other corporate defendants. The one thing nobody wanted was a trial where the dirty linen of the conspiracies would be washed every day in the public press. If one company, or even an employee of one company, chose to stand trial, everyone else might just as well too, for all the juicy details of their involvement would surely come out. But the problem of settling the case without trial was complicated by the fact that the companies involved were of

continued page 218

different sizes and degrees of guilt. Five companies, for example, had had no part in any conspiracy save steam condensers; they were understandably opposed to any package deal on the twenty indictments that committed them to a guilty plea instead of the *nolo* plea they might otherwise have been allowed to make.

G.E. and Westinghouse, however, were both convinced by now that rapid settlement was essential. G.E.'s own hopes of a successful not-guilty plea had been trampled to death under the parade of grand-jury witnesses, and were interred by a decision in the Continental Baking case that summer.* Moreover, Bicks and company still had the grand juries going full blast; at the rate these were taking testimony any delay in settling might dump a half-dozen additional indictments on top of the twenty already handed down. Judge Ganey was certainly willing to speed up the proceedings and suggested all defendant companies have an exploratory talk with Robert Bicks.

On the thirty-first of October the lawyers of almost all the affected companies crowded into a Justice Department conference room and from nine in the morning till seven that night worked at hammering out a package of guilty and *nolo* pleas. On thirteen "minor" cases, where only corporations had been indicted, Bicks was willing to accept *nolos*, but he insisted on guilty pleas in the seven major cases. And he wanted pleas (guilty or *nolos*) on all twenty indictments at the same time. But one thing stood in the way of the package deal: G.E.'s insistence on trial or dismissal of the Vinson indictment in switchgear, a major case.

Early the next month Vinson himself made a move that for cool nerve commanded the respect of even Justice Department attorneys. He offered to let the government see the evidence supporting his alibi. If the evidence failed to convince Bicks that his indictment should be dismissed, then he'd be at a serious disadvantage, having given the government that much more time to poke holes in his alibi. Bicks accepted the offer with alacrity; in his office on Sunday night, November 6, the curtain rose on one of the strangest incidents of the whole affair.

Eight fateful days

Vinson's attorneys had got recapitulations of the testimony about the luncheon in the Philadelphia plant from the executives concerned. That luncheon allegedly took place in company dining room B, so it had to occur on a working day There were fifty-odd working days in July, August, and September, but only eight when Burens, Burke, Hentschel, and Stehlik were all at the plant between the hours of eleven and one. For those eight days, said Vinson's lawyers, his expense accounts showed no Philadelphia trip, and Vinson was a man who put the smallest items on that account. There was no entry in the company-plane log showing a Philadelphia flight for Vinson on the eight days, though he was an inveterate flyer, nor any such entry in the executive-limousine log. On one of the eight days the head of a fund-raising committee at Michigan State had a toll slip on a telephone call to Vinson in New York at close to noon, eastern standard time. On another, a Manhattan banking transaction had been

continued page 221

**Said the U.S. Court of Appeals (Sixth Circuit): "The courts have held that so long as the criminal act is directly related to the performance of the duties which the officer or agent has the broad authority to perform, the corporate principal is liable for the criminal act also, and must be deemed to have 'authorized' the criminal act."*

stamped at a late morning hour. For two days Vinson could prove he had been with some Little Cabinet officers in Washington. There was a Pinnacle Club luncheon check testifying he'd had a noon meal in New York with an executive from another company and other checks from G.E.'s executive dining room, consecutively numbered and countersigned by the waitress. And so it went.

Bicks was impressed. The next day the expense-account records of the Four (Burens, Burke, Hentschel, and Stehlik) were examined and Bicks made a disquieting discovery. There was no item showing a group luncheon with Vinson in the records of the Four. Vinson had been indicted without an expense-account item to help corroborate the conspiratorial meeting. This led Bicks to wonder whether the whole Vinson charge might not be a self-serving fabrication, to support a plea of corporate coercion. He summoned the Four to Washington, and they volunteered there to go through lie-detector tests.

It was a grueling experience, considering the perjury charges hanging on the outcome, but certainly a dramatic one. The procedure was to establish the "lie pattern" of each individual by recording his uncertainties under casual questions and then compare this pattern with his response to sudden queries about the Vinson lunch. Clarence Burke's lie pattern was established early when he hesitated on being asked if he'd ever been arrested ("I was wondering if 'arrest' meant being nabbed by a traffic cop"). Then the FBI man asked unimportant things like where he'd lived and worked and sensitive things like whether he'd ever cheated on his income tax (he said he had) and whether Vinson was in Philadelphia between July 31 and September 13 (he reiterated that Vinson was). The machine showed Burke to be telling the truth; Burens, Hentschel, and Stehlik also came through their lie-detector tests with flying colors.

There was now no doubt in the minds of the trust busters about the veracity of the Four. But corroborative evidence, not lie-detector tests, was needed to demolish the Vinson alibi. The government promptly assigned a score of agents to that job.

The impregnable alibi

As the weeks ticked off, FBI men poked Vinson's picture at Philadelphia cab drivers to see if anyone remembered driving him to the switchgear plant, examined notebooks for erasures, interviewed scores of individuals. The most likely day of their meeting, Justice figured, was September 12. Vinson's alibi for that day consisted of some phone calls and a bank deposit in New York; but G.E. records couldn't pin down the time of the phone calls and the bank deposit had been made after two o'clock. But then the investigation turned up a G.E. man who had written a detailed memorandum of his activities during that day, and they included a meeting with Vinson in the New York office just before lunch.

All weekend December 3 and 4 Bicks pondered the Vinson case. He was of half a mind to press for Vinson's trial anyhow, banking that corroborative evidence might turn up then or proof be forthcoming that the incident with the Four had occurred earlier, say in 1957, at the time Vinson became vice president of the Apparatus Group. On the other hand, Vinson's alibi had stood up like a rock; it seemed certain to get him off the hook and might even win jury sympathy for the other switchgear defendants. Bicks decided to drop the charges.

In a carefully worded statement, government attorneys

continued page 222

informed Judge Ganey they couldn't "argue convincingly to a jury of Vinson's guilt of the specific charges contained in the Bill of Particulars." At the same time, they set aside the charge in the Bill of Particulars that Cordiner, Paxton, and G.E.'s board of directors had authorized the switchgear conspiracy, and stated that the government did not now claim any of them "had knowledge of the conspiracies nor that any of these men personally authorized or ordered commission of any of the acts charged."

So the curtain rang down on the Vinson case, and then went up on the last act of the drama. With Vinson's involvement no longer at issue, G.E. pleaded "guilty" to all the major indictments against it, and with the government's consent, *nolo contendere* to the thirteen "minor" ones. The other major companies followed suit. The way thus cleared, judgment was swift in coming. On February 6, executives from every major manufacturer in the entire electrical-equipment industry sat in a crowded courtroom and heard Judge Ganey declare: "What is really at stake here is the survival of the kind of economy under which this country has grown great, the free-enterprise system." Seven executives went off to a Pennsylvania prison; twenty-three others, given suspended jail sentences, were put on probation for five years; and fines totaling nearly $2 million were handed out.

Twenty-nine companies received fines ranging from $437,500 for G.E. down to $7,500 each for Carrier Corp. and Porcelain Insulator Corp. The others, for the record, were: Allen-Bradley Co., Allis-Chalmers Manufacturing Co., A. B. Chance Co., Clark Controller Co., Cornell-Dubilier Electric Corp., Cutler-Hammer, Inc., Federal Pacific Electric Co., Foster Wheeler Corp., Hubbard & Co., I-T-E Circuit Breaker Co., Ingersoll-Rand Co., Joslyn Manufacturing & Supply Co., Kuhlman Electric Co., Lapp Insulator Co., McGraw-Edison Co., Moloney Electric Co., Ohio Brass Co., H. K. Porter Co., Sangamo Electric Co., Schwager-Wood Corp., Southern States Equipment Corp., Square D Co., Wagner Electric Corp., Westinghouse Electric Corp., C. H. Wheeler Manufacturing Co., and Worthington Corp.

Is the lesson learned?

So ended the incredible affair—a story of cynicism, arrogance, and irresponsibility. Plainly there was an egregious management failure. But there was also a failure to connect ordinary morals and business morals; the men involved apparently figured there was a difference.

The consent decrees now being hammered out by the Justice Department are partial insurance that bid rigging and price fixing won't happen again. Yet consent decrees are only deterrents, not cures. The fact is that the causes which underlay the electrical conspiracies are still as strong as they ever were. Chronic overcapacity continues to exert a strong downward pressure on prices. The industry's price problem—outgrowth of an inability to shift the buyer's attention from price to other selling points like higher quality, better service, improved design—could hardly be worse: many items of electrical equipment are currently selling for less than in the ruinous days of the "white sale." Corporate pressure is stronger than ever on executives, who must struggle to fulfill the conflicting demands of bigger gross sales on the one hand and more profit per dollar of net sales on the other. These are matters that require careful handling if conspiracy is not to take root again in the electrical-equipment industry.

The antitrust laws also confront the largest corporations

continued page 224

with a special dilemma: how to compete without falling afoul of Section 2 of the Sherman Act, which makes it unlawful to "monopolize, or attempt to monopolize." It will take plenty of business statesmanship to handle this aspect of the law; one way, of course, is simply to refrain from going after every last piece of business. If G.E. were to drive for 50 per cent of the market, even strong companies like I-T-E Circuit Breaker might be mortally injured.

Has the industry learned any lessons? "One thing I've learned out of all this," said one executive, "is to talk to only one other person, not to go to meetings where there are lots of other people." Many of the defendants FORTUNE interviewed both before and after sentencing looked on themselves as the fall guys of U.S. business. They protested that they should no more be held up to blame than many another American businessman, for conspiracy is just as much "a way of life" in other fields as it was in electrical equipment. "Why pick on us?" was the attitude. "Look at some of those other fellows."

This attitude becomes particularly disturbing when one considers that most of the men who pleaded guilty in Judge Ganey's court (to say nothing of the scores given immunity for testifying before the grand juries) are back at their old positions, holding down key sales and marketing jobs. Only G.E. cleaned house; out went Burens, Burke, Hentschel, and Stehlik, plus ten others, including the heretofore unpunished William S. Ginn. (Although the confessed conspirators at G.E. had been assured that the transfers, demotions, and pay cuts received earlier would be the end of their corporate punishment, this was not the case. In mid-March they were told they could either quit or be fired, and were given anywhere from a half hour to a few days to make their decision.)

Disjointed authority, disjointed morals

But top executive officers of the biggest companies, at least, have come out of their antitrust experience determined upon strict compliance programs and possessed now of enough insight into the workings of a cartel to make those programs effective. Allis-Chalmers has set up a special compliance section. G.E. and Westinghouse, without which cartels in the industry could never endure, are taking more elaborate preventive measures. Both are well aware that any repetition of these conspiracies would lay them open to political pressure for dismemberment; size has special responsibilities in our society, and giants are under a continuous obligation to demonstrate that they have not got so big as to lose control over their far-flung divisions.

This case has focused attention on American business practices as nothing else has in many years. Senator Kefauver says he intends to probe further into the question of conspiracy at the top levels of management. Justice Department investigations are proliferating. Said Attorney General Robert Kennedy this April: "We are redoubling our efforts to convince anyone so minded that conspiracy as 'a way of life' must mean a short and unhappy one."

The problem for American business does not start and stop with the scofflaws of the electrical industry or with antitrust. Much was made of the fact that G.E. operated under a system of disjointed authority, and this was one reason it got into trouble. A more significant factor, the disjointment of morals, is something for American executives to think about in all aspects of their relations with their companies, each other, and the community. END