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Joseph Nettis

Part I

The Incredible Electrical Conspiracy

by Richard Austin Smith

"The end of the case has left me with a generally unsatisfied feeling," said Baddia Rashid, Justice Department attorney, after sentence had been imposed. "There are so many unanswered questions: Who started the conspiracy? Who was really responsible for keeping it going?" To answer these and other pressing questions about the electrical cartel, FORTUNE *has gone far beyond the court record: months were spent talking with big companies and small ones, with marketing men, economists, corporation presidents, Justice Department attorneys, Judge J. Cullen Ganey, and the defendants themselves. The story falls into two parts. Part I delves into what happened inside one conspiracy and one company, General Electric. Part II, to be presented next month, will recount how the government broke the case.*

Judge J. Cullen Ganey: "This 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 for one would be most naive indeed to believe that these violations of the law involving so many millions upon millions of dollars, were facts unknown to those responsible for the corporation and its conduct."

As befitted the biggest criminal case in the history of the Sherman Act, most of the forty-five defendants arrived early, knocking the snow of Philadelphia's Chestnut Street from their shoes before taking the elevator to federal courtroom No. 3. Some seemed to find it as chill inside as out, for they kept their coats on and shifted from one foot to another in the corridor, waiting silently for the big mahogany doors to open. On the other side of those doors was something none of them relished judgment for having conspired to fix prices, rig bids, and divide markets on electrical equipment valued at $1,750,000,000 annually The twenty indictments, under which they were now to be sentenced, charged they had conspired on everything from tiny $2 insulators to multimillion-dollar turbine generators and had persisted in the conspiracies for as long as eight years.

As a group, they looked like just what they were well-groomed corporation executives in Ivy League suits, employed by companies ranging in size from Joslyn Manufacturing & Supply Co., whose shop space is scarcely larger than the courtroom itself, to billion-dollar giants like General Electric and Westinghouse. There was J E. Cordell, ex-submariner, sales vice president of Southern States Equipment Corp., pillar of the community in a small Georgia town, though his net worth never exceeded $25,000, and urbane William S. Ginn, G.E. vice president at $135,000 a year, a man once thought to be on his way to the presidency of the corporation. There was old, portly Fred F Loock, president of Allen-Bradley Co., who found conspiring with competitors quite to his taste ("It is the only way a business can be run. It is free enterprise."), and G.E.'s Marc A. deFerranti, who pocketed his repugnance on orders from his boss. There was M. H. Howard, a production manager of Foster Wheeler, who found it hard to stay in the conspiracy (his company's condenser business ran in the red during two years of it), and C. H. Wheeler Manufacturing's President Thomas, who found it hard to quit—he'd been told his firm couldn't survive if he left the cartel.

At nine-thirty the courtroom doors opened and everyone trooped in. It was a huge room, paneled in mahogany with carved pilasters that reached up thirty feet or more to a white ceiling, yet big as it was it very soon filled with tension. What the defendants were thinking of was not hard to guess the possibility of prison, the careers ruined after decades of service, the agile associates who weren't there, the ones who had saved their hides by implicating others.

Shortly after ten o'clock, Judge J Cullen Ganey, chief judge of the U.S. District Court, entered the courtroom. He had earned a reputation in his twenty years on the bench for tolerance and moderation. But it was clear almost immediately that he took a stern view of this conspiracy "This is a shocking indictment of a vast section of our economy, for 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." The first targets of his censure were the twenty-nine corporations and their top management. He acknowledged that the Justice Department did not have enough evidence to convict men in the highest echelons of the corporations before the court, but in a broader sense the "real blame" should be laid at their doorstep "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 corporation and its conduct " Heavy fines, he said, would be imposed on the corporations themselves.

Next he turned a cold blue eye on the forty-five corporation executives who had not escaped the nets of Antitrust. Many of the individual defendants he saw "torn between conscience and an approved corporate policy . 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 setup." The judge said that individuals "with ultimate responsibility for corporate conduct, among those indicted," were going to jail.

By midafternoon of that first day E. R. Jung, Clark Controller vice president, was ashen under a thirty-day prison sentence and a $2,000 fine. Gray-haired Westinghouse Vice President J H. Chiles Jr., vestryman of St. John's Episcopal Church in Sharon, Pennsylvania, got thirty days in prison, a $2,000 fine, his colleague, Sales Manager Charles I. Mauntel, veteran of thirty-nine years with the corporation, faced thirty days and a $1,000 fine, Ginn of G.E. (indicted in two conspiracies), thirty days and a $12,500 fine, G.E. Divisional Manager Lewis Burger, thirty days plus a $2,000 fine, G.E. Vice President George

Ralph J Cordiner, chairman, General Electric, to G.E. management, January, 1960: "We have the issue before us of individual business ethics and morality. Do we believe in this company policy [on antitrust compliance]? That is the real issue. Ask yourself when, if ever, you discussed this directive policy or communicated the company's objectives with associates who report to you."

Burens, $4,000 and thirty days. "There goes my whole life," said this veteran of forty years with G.E., waving his arm distractedly as he waited to telephone his wife. "Who's going to want to hire a jailbird? What am I going to tell my children?"

By lunchtime the second day it was all over The little game that lawyers from G.E. and Westinghouse had been playing against each other—predicting sentences and total fines—was ended. G.E. had "lost," receiving $437,-500 in total fines to Westinghouse's $372,500. All told, $1,924,500 worth of fines were levied, seven jail sentences and twenty-four suspended jail sentences handed down. But sentencing, far from closing the case, has raised it to new importance.

The problems of predominance

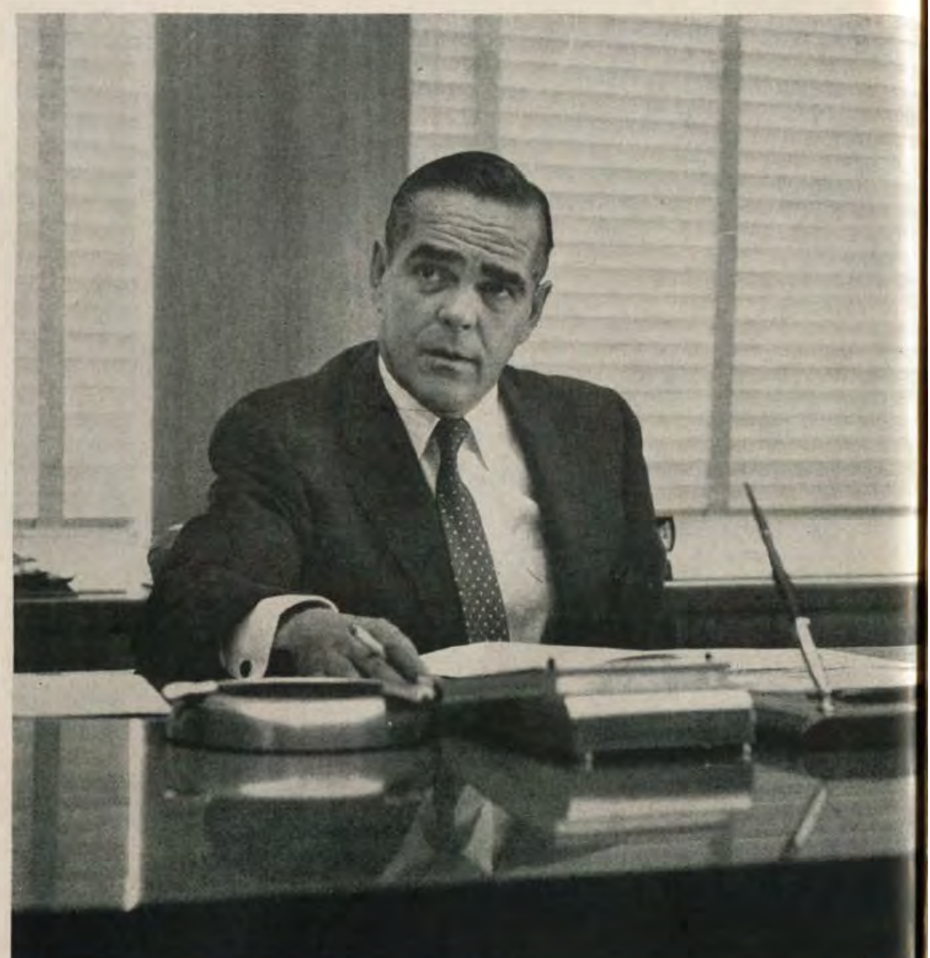
No thoughtful person could have left that courtroom untroubled by the problems of corporate power and corporate ethics. We live in a corporate society Big business determines institutionally our rate of capital formation, technological innovation, and economic growth, it establishes the kind of competition that is typical of our system and sets the moral tone of the market place. The streets of every city in the U.S. are crowded with small businesses that take their cue from great corporations, whether it trickles down from what some executive tells a crop of college graduates about free enterprise or the way he himself chooses to compete. Their lawyers pleaded that the way the electrical-equipment executives did compete was not collusion at its *worst*. To be sure, it was not so vulgar as the strong-arm price fixing of the Gulf Coast shrimpers or the rough stuff employed by a certain Philadelphia linen-supply company But by flouting the law, the executives of the great companies set an example that was bound to make small companies feel they had similar license, and never mind the kid gloves. As Robert A. Bicks, then head of Antitrust, declared early in the proceedings, "These men and companies have in a true sense mocked the image of that economic system which we profess to the world."

This being so, it is highly important to understand what went wrong with the electrical-equipment industry and with General Electric, the biggest company of them all and the one without which the conspiracies could not have existed.

"Security, complacency, mediocrity"

When Ralph Cordiner took over the presidency of G.E. from Charles E. Wilson in December of 1950, it was clear from the outset that the corporation was in for some teeth-rattling changes. Cordiner had spent the previous five years working up a reorganization plan that would give G.E. the new plants, the new additions to capital, and the new management setup he thought essential to its revitalization. Moreover, he had long made plain his distaste for running any big company the way G.E. had

R. S. Stevenson, president, Allis-Chalmers: "We have not thought it necessary heretofore to phrase a specific policy [on antitrust] However, under the circumstances, we believe special attention is necessary we will dedicate ourselves to the end that the present situation will never arise again."



Mark W Cresap Jr., president, Westinghouse: "Corporate punishment of these people wouldn't do any good—it would only be self-serving on my part. They have learned their lesson and we have learned our lesson . I don't take the position that I can wash my hands of it. My viewpoint is that this is a management failure."

been run by his predecessors, with authority tightly concentrated in the president's office. *De*centralization was a thing with him he had never forgotten how the "layers of fat" in a centralized G.E. had slowed his own incessant drive for recognition to a point where he'd once quit to take the presidency of Schick. The simple fact was that intellectually and temperamentally a centralized organization went against his grain, whether it be run with Electric Charlie Wilson's relaxed conviviality or the clockwork autocracy of Gerard ("You have four minutes") Swope.

The corporation at large learned almost immediately what the new boss had in store for it and from Cordiner himself. Within six weeks he rode circuit from New York to Bridgeport, Chicago, Lynn-Boston, Schenectady, spreading the word to some 6,000 G.E. executives. The gist of his message could be divided into three parts. First, G.E. was in sorry shape. It was dedicated principally to "security, complacency, and mediocrity " Second, decentralization and rewards based on performance were going to be relied on in the rapid transformation of this "sinecure of mediocrity" into a dynamic corporation. G.E. would be split into twenty-seven autonomous divisions comprising 110 small companies. The 110 would be run just as if they were individual enterprises, the local boss setting his own budget, even making capital expenditures up to $200,000. But with authority and responsibility would go accountability and measurement, measurement by higher, harder standards. Third, G.E.'s new philosophy of decentralized management specifically prohibited meeting with competitors on prices, bids, or market shares. Charlie Wilson's General Instruction 2.35* on compliance with the antitrust laws, first issued in 1946 and re-issued in 1948 and 1950, would remain very much in force.

There was good reason for stressing this last point. Antitrust was then a very sore subject at G.E. In the decade just ended (1940-50), the corporation had been involved in thirteen antitrust cases, the offenses ranging from production limitation and patent pooling to price fixing and division of markets. Moreover, G.E. had long been something of a battleground for two divergent schools of economic thought. One school was straight Adam Smith and dedicated to the classical concept that corporate progress, like national progress, was best secured by freedom of private initiative within the bonds of justice. Its advocates believed that nothing was less intelligent than entering into price restrictions with competitors, for this just put G.E. on a par with companies that had neither its research facilities nor its market power Ralph Cordiner, the company's most articulate advocate of this viewpoint, prided himself on the fact that it was at his insistence that the three G.E. employees implicated in illegal price fixing got the sack in 1949, his philosophy, at its most eloquent, was simply "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 second school of thought held that competition, particularly price competition, was for the birds. Getting together with competitors was looked on as a way of life, a convention, "just as a manager's office always has a desk with a swivel chair " It was considered easier to negotiate market percentages than fight for one's share, less wearing to take turns on rigged bids than play the rugged individualist. Besides, the rationale went, they were all "gentlemen" and no more inclined to gouge the consumer than to crowd a competitor Admittedly, all of them knew they were breaking the law—Section 1 of the Sherman Act is as explicit as a traffic ordinance. Their justification was on other grounds. "Sure, collusion was illegal," explained an old G.E. hand, "but it wasn't *unethical*. It wasn't any more unethical than if the companies had a summit conference the way Russia and the West meet. Those competitor meetings were just attended by a group of distressed individuals who wanted to know where they were going."

One important reason for the strength of G.E.'s anticompetition school was a change that occurred in the electrical industry after World War II. Smaller companies were becoming bigger and they were broadening their product lines. Customers had a wider choice of heavy electrical equipment, alike in quality and design. Price, consequently, became the decisive selling point. To turn this situation to their best advantage, buyers adopted a new technique the competitive bid. When the utilities took it up, it became so prevalent that some manufacturers came to believe certain types of equipment would be treated like commodities with prices expected to fluctuate from day to day This produced serious instability in the market and made profit planning difficult. The conspiracies proliferated at G.E. and elsewhere because the manufacturers lacked the gumption to shift the buyers' attention from price to higher quality, better service, and improved design.

Precisely what numerical strength the anticompetition school commanded at the time Cordiner took office in 1950 is of course a controversial point. G.E. prefers to talk of it as "a pocket," while the collusionists themselves like to think nine G.E. executives out of ten shared their point of view A fact to keep in mind is that thirty-two G.E. executives implicated themselves before the grand juries in addition to those general managers and vice presidents, clearly involved, but not called to testify There can be no doubt that the collusionists' influence was formidable and pervasive. And now, despite what Cordiner said about over-all company policy on cartels, under his decentralization plan the head of each of the 110 units comprising the company was being given power to set his own marketing policies and to raise or lower prices as he saw fit. Under the circumstances, anyone might have foreseen the results.

A way of life for Clarence Burke

One of the more attentive listeners to what the incoming president had to say about antitrust was Clarence Burke, a hard-driving, tenacious executive in his middle forties (who was to become the $42,000-a-year general manager of the High Voltage Switchgear Department and one of fifteen G.E. executives sentenced in Philadelphia) Burke had come to the heavy-equipment end of G.E. in 1926, fresh from the Georgia Institute of Technology (B.S. in electrical engineering), and his entire corporate life had been spent there. The heavy-equipment division was more than just the group that accounted for some 25 per cent of G.E. sales, it was the oldest division, and the foundation upon which the whole company had been built. Moreover, it was the stronghold of the collusionists. All of the nineteen indictments to which

*"*It has been and is the policy of this Company to conform strictly to the antitrust laws special care should be taken that any proposed action is in conformity with the law as presently interpreted. If there is any doubt as to the legality of any proposed action the advice of the Law Department must be obtained.*"

The unlucky seven, who went off to spend thirty days in Norristown jail, included, from left to right, G.E. Vice President George Burens, veteran of forty years with the corporation; G.E. General Manager Lewis Burger, twenty-nine years; G.E. Vice President William S. Ginn, twenty-four years; and Clark Controller Vice President Edwin R. Jung, thirty-three years.

G.E. pleaded either guilty or no contest in Philadelphia sprang from price fixing, bid rigging, market division in heavy equipment.

Burke's introduction to the heavy-equipment conspiracies was easy as falling off a log. It occurred when he reported to Pittsfield, Massachusetts, on June 1, 1945, as sales manager of distribution transformers. A month or so after Burke's arrival, H. L. "Buster" Brown, sales manager of the whole Transformer Department, called the new man in and told him he'd be expected to attend a Pittsburgh meeting of the transformer section of the National Electrical Manufacturers' Association. It was a regularly scheduled affair, held during OPA days, in what is now the Penn-Sheraton Hotel, and it was attended by thirty or forty industry people plus the N.E.M.A. secretaries from New York. But after adjournment—when the N.E.M.A. secretaries had departed—the company men reassembled within the hour for a cozier meeting. The talk this time was about prices, OPA-regulated prices, and how the industry could best argue Washington into jacking up the ceilings. Burke didn't consider this illegal, and he took part in several subsequent monthly meetings before OPA was abolished.

The convenient price klatsches following the regular N.E.M.A. meetings continued after OPA's demise. But instead of discussing pricing under government controls, the conspirators turned to fixing prices among themselves. "In that conspiracy," Burke recalled this winter, "we didn't try to divide up the market or prorate the sealed-bid business. We only quoted an agreed-upon price—to the penny" Nor did the post-OPA agreements seem to some of the participants like Burke to put them any more outside the law than agreements under the OPA. "We gradually grew into it. Buster Brown assured us that [the company's antitrust directive] didn't mean the kind of thing we were doing, that Antitrust would have to say we had *gouged* the public to say we were doing anything illegal. We understood this was what the company wanted us to do."

For a while this comfortable rationale sustained Burke and any conspirators who had qualms about the matter, but in 1946 it was demolished by the company lawyers. Teams of them made the rounds of G.E. departments, no doubt in response to federal probings that were to result in the successful antitrust prosecutions of G.E. two years later The lawyers put everyone in G.E. on notice that it certainly was illegal to discuss prices with competitors, whether the public was gouged or not. Then the head office followed this up by barring anybody who had anything to do with pricing from attending N.E.M.A. meetings. Engineering personnel were substituted for people like Buster Brown and Clarence Burke. The G.E. conspirators called such enforced withdrawal from active participation "going behind the iron curtain." This situation continued for about nine months, during which everyone received a copy of Electric Charlie's antitrust admonition and during which G.E.'s competitors kept the Pittsfield shut-ins informed by telephone of their own price agreements. Then, abruptly, the iron curtain was raised.

"Word came down to start contacting competitors again," Burke remembers. "It came to me from my superior, Buster Brown, but my impression was that it came to him from higher up. I think the competitive situation was forcing them to do something, and there were a lot of old-timers who thought collusion was the best way to solve the problems. That is when the hotel-room meetings got started. We were cautioned at this time not to tell the lawyers what we were doing and to cover our trails in our expense-account reports." Part of Burke's camouflage transportation entries never showed fares to the actual city where the meeting was held but to some point of equivalent distance from Pittsfield.

The conspiracy operated, although sporadically, for the next several years of Burke's Pittsfield assignment (he was reassigned February 1, 1950) Every so often, the G.E. participants would retire behind the iron curtain, until it seemed necessary to bring about some general price increases. Then there would be a resumption of quiet talks with the men from other major manufacturers like Westinghouse. The antitrust-compliance directives they had all initialed? "When anybody raised a question about that, they would be told it doesn't apply now "

"I was adept at this sort of thing"

By 1951, however, at the time Burke was listening to Ralph Cordiner's antitrust exhortations, the Pittsfield conspiracy had closed down—to make matters simpler if, as everyone correctly suspected, Cordiner was going to clamp down on such cabals. But bigger and better conspiracies were in the offing. In September, 1951, not very long after the Cordiner meeting, Clarence Burke walked into a new job at G.E.—and into membership in probably the oldest conspiracy then extant. The conspiracy was in circuit breakers* and it had been operative over the span of a quarter-century Burke's new job was manager of all switchgear marketing, which included circuit breakers, switchgear, and other items of heavy electrical equipment. This particular spot was open because the previous incumbent had been troubled ever since signing a restatement of Charlie Wilson's "Policy Concerning the Antitrust Laws" the year before. As Burke got the story from Robert Tinnerholm, who interviewed him for the job "I was to replace a man who took a strictly religious view of it, who, because he had signed this slip of paper [the Wilson directive] wouldn't contact competitors or talk to them—even when they came to his home." Burke got the job, an important step up the G.E. ladder, because he had become something of a conspiratorial wheel by then "They knew I was adept at this sort of thing. I was glad to get the promotion. I had no objections." No objections then or subsequently, as it turned out, for he had found it easy to persuade himself that what he was doing in defiance of the letter of the antitrust directive was not done in defiance of its spirit.

Burke's boss when he first went to switchgear in 1951 was Henry V Erben, to whom Buster Brown had reported in the cozy old days at Pittsfield. Erben had risen to the No. 3 spot in G.E.— executive vice president, Apparatus Group—and as Burke recalls, "he was saying then that he had talked to Cordiner about this policy, that Cordiner was not pleased with [the idea of getting together with competitors] but that he, Erben, had said he would do it in a way that would not get the company into trouble. And I'd been told by others that Erben had said things like this earlier than that."

Burke's initial assignment in Philadelphia was to get to know the local marketing executives of Westinghouse, Allis-Chalmers, and Federal Pacific, and then to see they met the other new members of G.E.'s switchgear management. (This department had been restaffed in anticipation of being split into three parts, the separate companies called for by Cordiner's decentralization plan.) He was also expected to take a hand at indoctrination in conspiracy "Erben's theory had been live and let live, contact the competitors. He gave us that theory at every opportunity and we took it down to other levels and had no trouble getting the most innocent persons to go along. Mr Erben thought it was all right, and if they didn't want to do it, they knew we would replace them. Not replace them for that reason, of course. We would have said the man isn't *broad* enough for this job, he hasn't grown into it yet."

One man, ironically enough, who had not yet "grown" into the job was George Burens, the new boss of the whole switchgear operation. Burens had started out in G.E. as a laborer; he had the additional disadvantage of being a junior-high-school man in a corporate world full of college men, but during the next thirty years he had steadily risen by sheer competitive spirit. Part of his zest for competition had been acquired in the Lamp Division, where he had spent the bulk of his career Lamps had long been noted as the most profitable of G.E. divisions and the most independent, a constant trial to Gerard Swope in the days when he tried to centralize all administrative authority in G.E.'s New York headquarters. But most of Burens' competitive spirit was simply in the nature of the man. "He had grown up hating competitors," was the way a colleague put it. "They were the enemy "

"This is Bob, what is 7's bid?"

Burens arrived on the scene in September of 1951 and busied himself solely with the job of splitting switchgear into three independent companies (high, medium, and low voltage), each with a general manager and himself as general manager of the division. Once decentralization was accomplished, he was content for a time to let his new departmental general managers like Clarence Burke run the conspiracy And some conspiracy it was.

Some $650 million in sales was involved, according to Justice Department estimates, from 1951 through 1958. The annual total amounted to roughly $75 million and was broken down into two categories, sealed bids and open bids. The sealed-bid business (between $15 million and $18 million per year) was done with public agencies, city, state, and federal. The private-sector business was conducted with private utilities and totaled some $55 million to $60 million per annum.

The object of the conspiracy, in so far as the sealed-bid business was concerned, was to rotate that business on a fixed-percentage basis among four participating companies, then the only circuit-breaker manufacturers in the U.S. G.E. got 45 per cent, Westinghouse 35, Allis-Chalmers 10, Federal Pacific 10. Every ten days to two weeks working-level meetings were called in order to decide whose turn was next. Turns were determined by the "ledger list," a table of who had got what in recent weeks, and after that the only thing left to decide was the price that the company picked to "win" would submit as the lowest bid.

Above this working-level group was a second tier of conspirators who dealt generally with the over-all scheme of rigging the sealed bids but whose prime purpose was maintenance of book prices (quoted prices) and market shares in the yearly $55 million to $60 million worth of

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** Like their household counterparts, circuit breakers are used to interrupt the flow of electricity when it reaches dangerous voltages. The industrial versions are sometimes forty feet long, twenty-six-feet high, and weigh eighty-five tons.*

private-sector business. Once each week, the top executives (general managers and vice presidents) responsible for carrying out the conspiracy would get the word to each other via intercompany memo. A different executive would have the "duty" over each thirty-day period. That involved initiating the memos, which all dealt with the same subject matter the jobs coming up that week, the book price each company was setting, comments on the general level of equipment prices.

The conspiracies had their own lingo and their own standard operating procedures. The attendance list was known as the "Christmas-card list," meetings as "choir practices." Companies had code numbers—G. E. 1, Westinghouse 2, Allis-Chalmers 3, Federal Pacific 7—which were used in conjunction with first names when calling a conspirator at home for price information ("This is Bob, what is 7's bid?"). At the hotel meetings it was S.O.P not to list one's employer when registering and not to have breakfast with fellow conspirators in the dining room. The G.E. men observed two additional precautions never to be the ones who kept the records and never to tell G.E.'s lawyers anything.

Where to cut throats

But things were not always smooth even inside this well-oiled machine, for the conspirators actually had no more compunction at breaking the rules of the conspiracy than at breaching the Sherman Act. "Everyone accused the others of not living up to the agreement," Clarence Burke recalled, "and the ones they complained about tried to shift the blame onto someone else. "The most constant source of irritation occurred in the sealed-bid business, where chiseling was difficult to detect. But breaks in book price to the utilities in the open-bid business also generated ill will and vituperation. Indeed, one of the many ironies of the whole affair is that the conspiracy couldn't entirely suppress the competitive instinct. Every so often some company would decide that cutthroat competition outside was preferable to the throat-cutting that went on in the cartel, they would break contact and sit out the conspiracy for a couple of years.

What prompted their return? Chronic overcapacity, for one thing, overcapacity that put a constant pressure on prices. Soon after he went to Washington as defense mobilization chief in 1950, Electric Charlie Wilson announced that the nation's electric-power capacity needed to be increased 30 per cent over the next three years. The equipment industry jumped to match that figure, and added a little more as well. Thus an executive, who ebulliently increased capacity one year, a few years later might join a price conspiracy to escape the consequences of that increase. "This is a feast or famine business," summed up Clarence Burke. "At one time everybody was loaded with orders, and ever since they wanted to stay that way When utilities decide they need more generating capacity, they start buying and we have three years of good business—and then three years of bad. The decision to build capacity was delegated down to the managers [under decentralization]."

A more human explanation of why the conspiracy snarled on for eight years was corporate pressure, the pressure to perform. "All we got from Lexington Avenue," said Burke, "was 'get your percentage of available business up, the General Electric Co. is slipping.' " Cordiner himself has remarked "I would say the company was more than slightly nervous in 1951–52–53."

Certainly corporate pressure no more exculpates an executive who enters into an illegal conspiracy than the relatively

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low pay of a bank clerk justifies his dipping into the till. But that is not to say it didn't carry weight with the conspirators from G.E. For the company was not only experiencing the increased pressure that goes with new presidents but was adjusting to a whole new organizational setup. Said one observer of the scene, Vice President Harold Smiddy, G.E.'s management expert. "Some thought that he was going too fast. But Cordiner's asset is stretching men. He can push them and he did." Said another observer, G.E. director Sidney Weinberg "If you did something wrong, Cordiner would send for you and tell you you were through. That's all there would be to it."

Down the line, where the pressure must have been intense, Clarence Burke had this to say of it as a factor in continuing the conspiracy "We did feel that this was the only way to reach part of our goals as managers. Each year we had to budget for more profit as a per cent of net sales, as well as for a larger percentage of available business. My boss, George Burens, wouldn't approve a budget unless it was a 'reach' budget. We couldn't accomplish a greater per cent of net profit to sales without getting together with competitors. Part of the pressure was the will to get ahead and the desire to have the good will of the man above you. He had only to get the approval of the man above *him* to replace you, and if you wouldn't cooperate he could find lots of other faults to use to get you out."

Cordiner takes the plunge

By May of 1953, Clarence Burke had been promoted to general manager of one of the three new switchgear departments (high voltage), a post that made him in effect the president of a small company with some $25 million worth of sales. He felt he had a bellyful of the cartel because "No one was living up to the agreements and we at G.E. were being made suckers. On every job some one would cut our throat, we lost confidence in the group." So he got out.

The G.E. boycott of that cartel continued on through 1954. To be sure, Westinghouse, Allis-Chalmers, and the other competitors would still call Royce Crawford, Burke's marketing man, to tell him the prices that the high-level group had decided on, and express the heartfelt hope he would honor it. Crawford did honor it pretty much, though maintaining a free hand to go after all the business available.

This was the situation when, in mid-September 1954, Ralph Cordiner replaced the Wilson directive of antitrust compliance with a stronger one of his own. Far more explicit than Wilson's directive, Cordiner's Directive Policy 20.5 went beyond the compliance required by law and blanketed the subject with every conceivable admonition.

But 1954 was a bad year for the industry and for G.E. The company's sales slumped for the first time since Cordiner had taken the helm, dropping almost $176 million. Moreover, profits as a per cent of sales were still well below the 8 per cent achieved by Charlie Wilson in 1950. The result was that Cordiner and Robert Paxton, executive vice president for industrial products, began putting more heat on one division after another

"We were told," as one general manager remembered it, "that G.E. was losing business and position because our prices weren't competitive." Then, in the latter part of 1954, Paxton heard a report that moved him from words to the action his blunt Scottish temperament favored. Westinghouse had beaten G.E. out of a big turbine order and had done it at considerably off book price. Determined that no more of the big ones were going to get away, Paxton decided he'd instruct the fieldmen personally Thus, when the next big job came along, a $5-million affair for transformers and switchgear with Ebasco, the New York district manager knew he was not to let the competition underbid him. But Westinghouse and the others were hungry too, and the price breaks came so fast it was difficult to keep track of them one day the price was 10 per cent off book, the next 20 per cent, finally 40 per cent.

So began the celebrated "white sale" of 1954-55. Before it was over, the electrical industry was discounting price as much as 40 to 45 per cent off book. Delivery dates began stretching out, got as far as five years away from date of sale. This of course meant that the impact of 1955's giveaway prices was not confined to that one year, the blight they put on profits persisted down to 1960.

Mixing conspiracy with golf

General Electric, with its broad product lines, was not hit as hard by the "white sale" as some of its smaller competitors, but it was just as anxious as anyone else to call a halt. The word went out from headquarters on Lexington Avenue that prices had to be got back up, and stability restored. Sales responsibility was being returned to the general managers. They certainly welcomed the news, for all during the period that Paxton had taken over sales nobody had relieved the general managers of the companion responsibility of turning in the profit demanded. Now with power over sales restored, they could strike a better balance between the irreconcilables of getting more market and getting more profit.

At the Switchgear Division, the pressure was so great that George Burens, the lifelong believer in tough competition, underwent a remarkable conversion. He called department manager Clarence Burke into his office and told him the old cartel was going to be cranked up again. More than that, Burens was going to do the job of re-establishing it himself. Shortly thereafter, he and Burke trotted off to mix in a little conspiracy with a little golf in Bedford Springs, Pennsylvania. Burens and Burke formed a foursome with Landon Fuller and J B. McNeill, key men in sales at Westinghouse. They concluded that it might take more than the combined market power of G.E. and Westinghouse (some 70 to 75 per cent) to get things back to normal, other companies would have to be brought in. Fuller agreed to contact Allis-Chalmers and Burens agreed to get in touch with I-T-E Circuit Breaker—but only at a high level. Everyone was concerned at the danger of low-level contacts and rightly so, for, as Burke remembers what happened subsequently: "It got so that people who worked for people who worked for me knew about pricing arrangements."

About January, 1956, another high-level meeting was held in Cleveland. Fuller's call on Allis-Chalmers had been successful, he had Joseph W McMullen in tow But at I-T-E, George Burens, trying to keep the contact at a high level, apparently hadn't got to the right man. Joe McMullen, however, had his eye on somebody in I-T-E (Harry Buck, as it turned out) and volunteered to bring him into camp. Then there was a round of golf and a couple of rounds of drinks and the conspirators went their separate ways, after agreeing to keep in touch by memorandums. Every month that year one company conspirator would initiate a memorandum to the others (who now included I-T-E's Buck), listing every pending job whether sealed bid or open and stating what the calculated book price would be. Then the conspirators would reassemble and compare calculations to forestall

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any chiseling from the agreed-upon book. There were nine such meetings in 1956, held in various hotel suites. These and the memorandums worked fairly well, until the first part of 1957 Then a one-man gang named McGregor Smith lit the fuse that blew them up.

The malign circle

"Mac" Smith, chairman of the Florida Power & Light Co., personally handled some of the buying for his dynamic utility As he went marketing for equipment, it struck him that the manufacturers had set artificially high profit goals for themselves, had priced their products accordingly, and then had got together to see that the prices stuck. In other words, a malign circle of manufacturers was short-circuiting what Ralph Cordiner liked to call the "benign circle of power producers and power consumers." Smith was buying a lot of transformers, switchgear, and other equipment in 1957, but the manufacturers were defending book price as if life depended on it and, despite heavy pressure from Mac Smith and his purchasing agents, were giving little in the way of discounts.

Then one Monday, Smith closed his transformer purchases with a number of companies, including G.E. and Westinghouse; on Tuesday Clarence Burke got a worried report from one of his switchgear salesmen in Miami: Westinghouse had proposed to Florida Power that it add all its circuit-breaker order (about a million dollars worth) to its order for Westinghouse transformers. In return, Westinghouse would take 4 per cent off circuit-breaker book and hide the discount in the transformer order. Telling his man to be sure of the facts first, Burke gave him authority to meet the Westinghouse terms. A grateful Mac Smith then decided to split the circuit-breaker order, half to Westinghouse, which had broken the price, and half to G.E., which had matched the break.

This unexpected turn of the wheel brought the Westinghouse salesman boiling into Florida Power's executive suite. There he raised Mac Smith's hackles to a point where the latter called G.E. and asked it to do him the favor of taking the whole order. G.E. naturally obliged.

Retaliation was not long coming. "Westinghouse went to Baltimore Gas & Electric," says Burke, shaking his head in recollection of the chaos that ensued, "and said they'd give them 5 per cent off on switchgear and circuit breakers, and a week later Allis-Chalmers gave Potomac Electric 12 per cent off. A week after *that*, Westinghouse gave Atlantic City Electric 20 per cent off, and it went on down to much worse than the 'white sale'—in the winter of 1957–58 prices were 60 per cent off book."

That was the end of that cartel. It did not, of course, mean the end of the other conspiracies G.E. was involved in. Far from it. Each general manager of a division or department took a strictly personal view of his participation in any cartel. Thus while circuit breakers was at daggers drawn, industrial controls was enjoying an amiable conspiracy Indeed, W F Oswalt, general manager of G.E.'s industrial-control department, seems to have accomplished the neat trick of fulfilling the purpose of that conspiracy—to fix prices—while at the same time remaining true to Cordiner's antitrust directive, in a fingers-crossed sort of way He regularly attended meetings from 1953 to 1955, then stopped upon receiving the assurance of the other conspirators that they would keep him informed of what went on. In August of 1956, for example, Oswalt was lounging comfortably in his cabin at North Bay, Ontario, physically removed from the cabin down the road

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where the cartel was busy hammering out a price rise. Nevertheless, the resultant 10 per cent boost in prices was really his contribution: a representative of one of the smaller companies had panted back and forth between him and "the boys," carrying his strong recommendations to that effect.

Cordiner's "pieces of paper"

G.E. was involved in at least seven other conspiracies during the time the circuit-breaker cartel was inoperative. The one in power transformers (G.E. Vice President Raymond W Smith) was going, for G.E. had yet to develop the "black box" (a design breakthrough using standard components to produce tailor-made transformers), which two years later would enable it to take price leadership away from Westinghouse. The one in turbine generators (G.E. Vice President William S. Ginn) was functioning too. In the fall of 1957 it was agreed at the Barclay Hotel* to give G.E. "position" in bidding on a 500,000-kilowatt TVA unit.

The question that naturally arises, the cartels being so numerous, is why didn't G.E.'s top management stop them? Cordiner has been criticized within the company, and rightly so, for sitting aloofly in New York and sending out "pieces of paper"—his 20.5 antitrust directive—rather than having 20.5 personally handed to the local staff by the local boss. But there was also a failure in human relations. A warmer man might have been close enough to his people to divine what was going on. According to T K. Quinn (*I Quit Monster Business*), the G.E. vice president who had helped him up the ladder, Ralph Cordiner, was "first class in every aspect of management except human relations."

After the conspiracy case broke, the question of top-level complicity came up. G.E. hired Gerhard Gesell of the Washington law firm of Covington & Burling to come to a conclusion one way or another as to whether Cordiner, Paxton, or any other member of the Executive Office had knowledge of the cartels. No corroborated evidence ever came to light that Cordiner knew of them; quite the opposite. As Clarence Burke put it last month: "Cordiner was sincere but undersold by people beneath him who rescinded his orders."

Robert Paxton, however, is something else again. The fifty-nine-year-old G.E. president, who resigned this February for reasons of health, was in the unenviable position of having worked most of his corporate life in those vineyards of G.E. where cartels thrived. He was in switchgear for twenty-one years, five of them as works manager, went to Pittsfield with his close friend Ray Smith (later one of the convicted conspirators), and eventually became manager of the Transformer and Allied Product Division there. A conspiracy had started before he got to Pittsfield and one was operating (first under Ginn, then under Smith) after he left. Paxton was not then *responsible* for marketing, as G.E. points out, but he has always shown a lively interest in the subject: "I found myself, even as a very young engineer working for General Electric, dealing with the very practical daily problem of how to minimize cost and how to maximize profit."

Gesell discovered there was violent disagreement within G.E. about Paxton and the cartels: "Things were said about his having knowledge. I interviewed Ray Smith and made every effort to pin down what he thought he had, but it was

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* *On February 2, 1960, the hotel jocularly described its* spécialité de maison *in a small New York* Times *ad: "Antitrust-corporation secrets are best discussed in the privacy of an executive suite at the Barclay. It's convenient, attractive, and financially practical."*

always atmospheric The government investigated and didn't have any better luck."

Judge Ganey, however, expressed a more definite view: "I am not naive enough to believe General Electric didn't know about it and it didn't meet with their hearty approbation." In Ganey's opinion, Directive 20.5 was "observed in its breach rather than in its enforcement." To say the least, there was a serious management failure at G.E.

Cold turkey and the pressure for profits

In 1958 the circuit breaker–switchgear conspiracy started up again. George Burens and his three departmental general managers, Burke, H. F Hentschel, and Frank Stehlik, were all dead set against resumption. But the pressure was too great. Pressure had already produced some profound changes in Burke. "He used to be hail fellow well met," said a colleague who witnessed the transformation over the years, "until he was put under that great pressure for profits. Then he simply shrank into himself; everything got to be cold turkey with him—without any warmth at all." Now the pressure was redoubling, as it always did after the market went to pieces. Burens and some of the other apparatus executives were summoned to New York in 1958 for a talk with the boss, Group Executive Arthur F Vinson. This affair became known to Burens' subordinates as the "Beat Burens" meeting, for at it were aired angry complaints by G.E.'s customers that, with switchgear selling at 40 to 45 per cent off book, other G.E. departments should be offering their products at substantial discounts. The solution: stabilize switchgear prices; in other words, get back in the cartel.

Burens returned to Philadelphia, battered but unshaken in his resolve to keep clear of the cartel. He expected to do it by keeping up quality and efficiency, and by pricing the product so that there was a fair profit. Ironically enough, in view of his subsequent indictment, he was firmly of the belief that, given six months time, he could bring prices up in the free market without messing around with any conspiracy. But at the annual business-review meeting of apparatus people, held on July 30 and 31 in Philadelphia, he underwent a further hammering from other divisional general managers about the way switchgear prices were hurting them. He seemed morose at the following banquet, held in a private dining room at the Philadelphia Country Club; indeed, he got into a heated argument about prices with Paxton, who had succeeded Ralph Cordiner as president that April.

What happened next to change George Burens' mind about getting back into the conspiratorial rat race is a matter of great controversy. It concerns whether he got a direct order to rejoin the cartel from Arthur Vinson. If Vinson did so instruct Burens, and others, then General Electric's complicity extended to the highest corporate level, for Vinson was a member of the fifteen-man Executive Office, a group that included Cordiner and Paxton. This key issue will be examined at length in Part II, which discusses Arthur Vinson's indictment as a conspirator and the government's eventual quashing of that indictment.

Suffice it to say here that Burens did rejoin and was confronted by a delicate problem of face. He didn't want to have to crawl back, particularly after having given everyone such a hard time when he quit. But as matters turned out, G.E. was holding its quadrennial Electric Utility Conference in California that fall and there Burens ran into Fischer Black, the amiable editor of *Electrical World*. Black reported that a lot of people in the industry were sour on G.E. in general

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and Burens in particular because Burens had refused to go along with new pricing agreements. To end this insalubrious state of affairs, Black would be happy to set up a meeting—if Burens would just attend. The latter agreed.

On October 8, 1958, the cartel set gathered at the Astor Hotel in New York. The G.E. contingent was there, headed by Burens and Burke, Landon Fuller for Westinghouse, Harry Buck for I-T-E Circuit Breaker, Frank Roby for Federal Pacific. L. W "Shorty" Long had called in to say he couldn't make it but anything they decided was O.K. with Allis-Chalmers. Black himself popped in to chirp that he was paying for the suite and to be sure and order up lunch. Then he left them to business. Not much of it was transacted. There was a lot of crape-hanging over what had happened in the past and a number of hopeful ideas for the future were discussed. The net of it was that everybody agreed to go home, check their records, and come up with proposals on November 9, at the Traymore hotel in Atlantic City.

A party for Burens

Whatever watery cordiality prevailed at the Astor vanished into the steam of conflict at the Traymore. Circuit-breaker prices had been dropping alarmingly ever since September, so much so that G.E., Westinghouse, Allis-Chalmers, and Federal Pacific extended options to some utilities to purchase large numbers of circuit breakers at 40 to 55 per cent below book. Moreover, I-T-E Circuit Breaker had got into the business via the purchase of Kelman Electric and wanted a slice of the sealed-bid market; Federal Pacific had a slice but wanted a fatter one.

Deciding what to do about prices was not particularly trying; an agreement was reached to keep them substantially identical at book. The real trouble came over changing the percentages of sealed-bid business. G.E., Westinghouse, and Allis-Chalmers knew that anything done to accommodate the demands of Federal Pacific and I-T-F would have to come out of their hides. But at the end of ten hours of angry argument they decided the only way to get the cartel going again was to submit to the knife: General Electric's percentage was sliced from 45 to 40.3, Westinghouse's from 35 to 31.3, Allis-Chalmers from 10 to 8.8. I-T-E was cut in for 4 per cent and Federal Pacific got a 50 per cent boost, its percentage of the market was raised from 10 to 15.6.

So began the final circuit-breaker cartel, born in recrimination and continued in mistrust. George Burens struggled with it for the next three months, a round of meetings at the old hotels and some swanky new places. Circuit-breaker prices inched up. Then in January, 1959, Burens was promoted out. It was a gay party that celebrated his departure to head up G.E.'s Lamp Division, and nobody was gayer than Burens, the tough competitor returning to free competition. Paxton was on hand with an accolade; the Lamp Division, he said, needed Burens' admirable talents to get it back where it belonged.

But there was no gay party for the incoming general manager of switchgear Lewis Burger was simply told his job was "at risk" for the next two years. If he performed, he could keep it and become a vice president to boot. If he was found wanting, he wouldn't be able to go back to his old job. He'd just be out. Burger promptly joined the circuit-breaker conspiracy But the day was not far off, indeed it was only nine months away, when a phone call would set in motion the forces that would shatter the conspiracy and send Burger along with Burens off to prison. END