

CALAMITY HOWLER/A.V. Krebs

Must reading

RATS IN THE GRAIN: The Dirty Tricks and Trials of Archer Daniels Midland The Supermarket to the World

by James B. Lieber [Four Walls Eight Windows Press, New York, New York]

Dubbed the "best documented corporate crime in American history" one realizes in reading James B. Lieber's riveting and authoritative account of the recent criminality and trials of Archer Daniels Midland and its executives that had it not been for that "documentation" the "Supermarkup to the World" and its world-wide price fixing machinations in lysine, citric acid and high fructose corn syrup ("HFCS") would have gone unpunished.

As a lay person reading this lawyer/journalist's account of not only the crimes for which ADM as a corporation was charged and fined, but the trial, conviction and sentencing of its executives, Mick Andreas, Terrance Wilson and Mark Whitacre, one cannot help but feel had it been left to the US Department of Justice's witness testimony in the courtroom justice would not only have not been done, but not even seen to be done.

As one juror remarked after the convicting of Wilson, "the situation was so clear. The tapes were so incriminating," and the jury consensus of Andreas' guilt was based on videos of price fixing meetings he held with ADM's "competitors" for as Lieber notes "without those tapes, he probably would have been freed."

As readers of *The Progressive Populist* know, Mark Whitacre, while president of the company's Bioproducts Division, made some 239 surveillance tapes in his three years as an FBI mole (1992-95) while the FBI itself made a number of videotapes of meetings of ADM executives and their international corporate price fixer counterparts.

Not only would the eventual outcome of the ADM trials been doubtful without the aforementioned incriminating tapes, but as Lieber explores in his 418-page book, given the rather questionable resolve of the US Department of Justice to thoroughly investigate, prosecute and divulge the details of the multitude of crimes that had become part and parcel of ADM's corporate culture, whether justice would have been served at all while the public was kept in the dark by a disinterested national media.

One also wonders, for example, how much of the little enough coverage that was given to the ADM affair by the national media would have materialized if it were not for the person of David Hoech, a dissident ADM shareholder and critic and writer of the *Shareholders Watch* newsletter.

Greed versus greed buried in the business section

"After Whitacre exposed ADM," Lieber writes, "the media mobbed the story, touting it as a David and Goliath parable. After the exposé was exposed, the press drifted away. Good versus evil inside a multinational corporation was front-page news. Greed versus greed was buried in the business section, if it made the paper at all.

"In a tabloid culture," he notes, "trials of gruesome crimes generate the most news. Searing tragedies for those involved, they become gladiatorial spectacles for the rest of us. But bloodless while collar trials say more about the way the world works, and it is my my personal bias that it makes sense to pay more attention to them."

Clearly Hoech agreed, for as Lieber notes he did not let the story die. Rather, in the years since the FBI raided ADM's headquarters in Decatur, Ill., on June 27, 1995, Hoech maintained constant contact with reporters from the *New York Times*, *Wall Street Journal*, *Chicago Tribune*, the *Decatur Herald-Review*, Bloomberg News Service and a number of other free-lance journalists (including this reviewer).

As Lieber notes: "He supplied them with leads that they often followed and sometimes with ADM or government documents, including tape transcripts. Some reporters questioned his motivation, and at times his sanity, but most kept coming back for more. Hoech never let the case get out of the news or relaxed pressure on ADM."

As Hoech himself exclaims, "the law prostituted brings chaos and chaos brings on dictatorship. Democracy functions best when people stand up. That's all I'm doing. People call me and say you don't know who you are up against. I say Dwayne [Dwayne O. Andreas, former ADM CEO, Board Chairman and a major political party funder] doesn't know what he's up against."

Indeed, as one reads through Lieber's book, one sees not only the contempt for the public -- "the competitor is our friend, the consumer is our enemy" was the popular ADM refrain -- but where the law was indeed prostituted in the ADM case, for *Rats In The Grain* is a story of a corporate culture of corruption and manipulation.

'Williams & Connolly controlled the investigation'

In the telling of this story of a corporate culture of corruption and manipulation Lieber believes:

"There is a reason for this book. And the reason is to show how the story involving Mark Whitacre, Terry Wilson and Mick Andreas and others did not just happen. It was a natural step in the development of a corporate culture. And as a lawyer, I'm interested in whether the law can actually deal with big, structural, difficult problems. ... The law did work. But much of the story in the book is about how the law and law enforcement was constrained by ADM's power."

In an interview with the *Corporate Crime Reporter's* Russell Mokhiber, the author elaborates:

"I don't think Microsoft has the power to go to the Justice Department and say, 'limit your attention to this aspect of my criminal behavior. Don't look over at that aspect of my criminal behavior.' But ADM was able to do that."

Questioned as if he was saying that ADM and its law firm, Williams & Connolly, persuaded the Justice Department not to prosecute all of ADM's wrongdoing, Lieber replied:

"The Justice Department was prevailed upon by Williams & Connolly to limit its investigation to the fraud investigation." How did Lieber know that? "From FBI records, and then I talked about it with the FBI. The FBI said Williams & Connolly controlled the investigation."

It was the politically powerful law firm of Williams & Connolly that represented ADM unsuccessfully in its price fixing suit filed against it by the US Department of Justice. ADM was subsequently fined \$100

million for its role in a world-wide scheme to fix prices in the \$650 million-a-year international lysine market and also in the citric acid market and Mick Andreas, Wilson and Whitacre were sentenced to two years in jail and fined each \$350,000 for their part in conspiring with Japanese and Korean companies in the fixing of said prices.

Lieber relates that he learned in his research that there existed a strict agreement of separation between the anti-trust division and fraud section -- a "Chinese wall" -- that prevented antitrust from playing any role in the fraud case, much as it would keep fraud out of the antitrust trial.

The fraud aspect of the case centered around the fact that shortly after the FBI raided ADM's offices ADM accused Whitacre of embezzling over \$9 million from the company by means of bogus invoices and off-shore accounts and filed suit in Switzerland seeking to recover the funds. Whitacre meanwhile claimed that ADM President Jim Randall had approved all the payments as "special bonuses," with the first one timed approximately at the same time Mick Andreas first insisted that he meet and work with Wilson on the lysine pricing matter.

'Government's action ... borders on being ludicrous'

Other examples of the government's questionable tactics abound throughout this book.

For example, Department of Justice lawyers not only failed to convince Federal Judge Blanche Manning that Andreas and Wilson deserved the maximum three years in jail, but were berated by her as she meted out Andreas' and Wilson's fines.

Federal prosecutors had sought a \$25 million fine and three years in prison, the maximum allowable, against Andreas, saying the fine reflected the amount of money allegedly reaped from the price-fixing scheme, which spanned from 1992 through 1995. Andreas and Wilson claimed that the \$25 million figure didn't equate with the amount of lysine produced in the world during the scheme and sought proof from overseas lysine producers who allegedly participated in the conspiracy.

But Judge Manning said the government merely wrote letters to the lysine producers "informing them that they were not obliged to produce documents." She called the government's action "so incredible that it bordered on being ludicrous."

By way of contrast, Purdue University agricultural economics professor John Connor estimates that customers buying lysine from ADM and its co-conspirators between 1992 and 1995 paid prices elevated due to the conspiracy in the range of \$150 million to \$160 million. ADM and its co-conspirators early on offered to settle for \$45 million which implied a \$15 million overcharge. Connor estimates the actual overcharge was ten times higher, despite the fact that the government only fined ADM \$100 million.

Not just in this instance, but in a number of other areas the Justice Department's actions remain questionable. Lieber, for example, asks why Dwayne Andreas was never investigated. "The heads of this organization [ADM], where there was a valid criminal investigation taking place, not only received immunity from prosecution, but were never interviewed. And I don't mean not interviewed by a grand jury, but not interviewed by anyone in law enforcement."

As the author observes, "it seems like the power of this company resulted in this unusual deal. This is one of the questions that I simply cannot find an answer to. The government won't comment on it. We are not talking about national security here. We are talking about something that should be well within the public domain, and you can't get an answer to this. And there are other questions like this. In the book, I list

major unanswered questions."

Most productive informant

Throughout Lieber's tale of a corrupt and manipulative corporate culture the complex, often mysterious and unexplainable person who ultimately allowed both the heartland and a jury to witness the inner workings of that corporate culture is explored.

"Even after days of intimate conversation with Mark Whitacre," Lieber writes, "it was difficult to trust him a hundred percent. This was not because his explanations about [competitors] and the off-the-books bonuses have altered over the years ... ADM fixed markets on a worldwide basis. It cheated us all. The fact that Whitacre took advantage of such a company was not the block that kept me from believing him completely. Rather, it was the fact that he had broken faith with those on his side who had tried to help, his psychiatrist and his lawyers. I liked Mark Whitacre, applauded his contribution to antitrust law enforcement, and admired the way he coped with his broken life and disproportioned punishment."

While Lieber makes no pretense that his ADM saga is intended to be objective, it is a fair book showing both the flaws of the government's prosecution, the manipulations of both the government, ADM and Mick Andreas, Terrance Wilson and Mark Whitacre's attorneys, and the myriad of questions still left unanswered by ADM and the government.

Whether this book will receive the attention that it deserves from the national corporate-controlled media it is a must read for those who are concerned about the so-called "free market system", the growing corporate concentration in agribusiness which allows corporations to not only freely operate in their own self-serving interests, but allows them to corrupt and destroy our democratic institutions and rape Lady Justice.

Reading Lieber's cogent, provocative examination of corporate greed and corruption this reviewer, already quite familiar with the facts of the case, nevertheless, had the unsettling feeling, after fines had been paid, executives had gone to jail, lives ruined, that in the end corporate crime does pay!

That suspicion was readily confirmed in the days soon after reading Lieber's book, for my colleague, national syndicated farm columnist Alan Guebert, reports that in the July 27 *Federal Register*, the USDA proposed to pay ag processors up to \$450 million to make ethanol from America's ever-growing piles of grain.

Under the quietly offered plan, USDA hopes to make quarterly payments to some 50-plus bio-energy makers over the next three years to make fuel. "If adopted," Guebert reports, "USDA could end up paying Archer Daniels Midland, the admitted price-fixer which produces 42% of the nation's ethanol, \$189 million."

When Guebert explained that fact to one farmer-caller recently, the farmer's only reply was, "So ADM gets back its \$100 million price fixing fine with interest."

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