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Judgment Call *Antitrust Law*

Tale of the Tapes

by Susan Webber

Kurt Eichenwald provides a masterful account of the ADM price-fixing scandal – with the help of a government informant

One of journalism's oldest sayings is, "A reporter is only as good as his sources." In choosing the Archer-Daniels-Midland price-fixing case as his subject, New York Times reporter Kurt Eichenwald relies heavily on the best possible source: tapes.

"The Informant," Eichenwald's recounting of ADM saga, is of the "Barbarians at the Gate" school of writing, telling a high-level, high-stakes corporate drama through reconstructed conversations and incidents. Works like this are legitimately criticized for relying unduly on individual recollections, which may be incomplete or biased. And the narrative style forces the author to choose one version of the facts, when the facts may be in dispute.

What sets "The Informant" apart from others in this genre is that the key actor, Mark Whitacre, president of ADM's lysine division, taped numerous conversations and meetings at the FBI's behest. Thus Eichenwald uses his voyeur's-eye view to recount key scenes, often in gritty detail, or to distill them while staying faithful to the essence of the discussion.

Without giving too much away, for the plot twists and turns are one of the book's strengths, the FBI begins investigating a case of possible industrial espionage and extortion directed against ADM. They interview Whitacre, recipient of the threats, and he tells them of his concern that their examination will uncover his role in price fixing.

Whitacre not only wears a wire, but also arranges for meetings to take place on U.S. soil, where the price fixing discussions are criminal, and helps the FBI make videotapes. But it turns out that, like most cooperating witnesses, Whitacre is problematic and ultimately self-destructive, far more so than anyone could possibly have envisioned.

Despite the book's length ("The Informant" weighs in at over 600 pages), the story moves rapidly, going from the emotional roller-coaster of the investigation to the increasing participation of the Department of Justice's Antitrust Division and the U.S. Attorney General's Office, with attendant turf battles, to the settlement negotiations. Ultimately, ADM pleads guilty, pays \$100 million in fines, and agrees to have two of its executives charged, including Mick Andreas, heir apparent and son of chairman Dwayne Andreas. Yet Whitacre, who is discovered to have engaged in criminal misconduct apart from the price fixing, appears to have fared worst of all and is sentenced to nine years' imprisonment.

A compelling feature of "The Informant" is that, were this story told as fiction, no one would believe it. The taped conversations show ADM executives as stereotypic big-business heavies: crude, lewd, cavalier about their fiduciary and legal responsibilities and social propriety.

Dwayne Andreas's influence, ruthlessness, and hubris are larger than life. (He was the

source of the Watergate crew's walking-around money; he gave an additional \$100,000 in cash after such donations were prohibited, which was returned by a beleaguered and newly cautious Nixon Administration.)

And Whitacre is the most improbable figure of the story. He is astoundingly naive, believing up to the end that he will become chief executive officer of ADM. He lies with abandon and not particularly well (one would think with all that practice, he would at least get good at it), and seems constitutionally unable to steer an appropriate course of action. He is also peculiarly suggestible: after seeing the movie, 'The Firm,' he imitates its hero, Mitch McDeere, and tries to hit the FBI up for money, with far less success. Indeed, at one point, corporate investigator Jules Kroll, convinced that Whitacre is acting out a delusional fantasy based on 'The Firm,' comes up with forty-six parallels between the ADM case and the Grisham tale. Whitacre's behavior, which was off-kilter even under normal circumstances, becomes increasingly bizarre and he is hospitalized, diagnosed as manic-depressive, and treated with lithium.

Eichenwald has grown as a writer. While his 1995 book, "Serpent on the Rock", was a well-researched, lively read about the Prudential-Bache Securities limited partnership scandal of the 1980s, "The Informant" is masterful. Eichenwald skillfully constructs the narrative, dropping hints without heavy-handed foreshadowing, and lets the story seemingly speak for itself.

Eichenwald touches upon larger issues in the epilogue. Even though Whitacre was clearly culpable, he also did a tremendous amount of good (the lysine investigation led to other price-fixing probes in citric acid and vitamins, ultimately yielding \$1 billion in fines), so his sentence appears harsh. No allowance was made for the mental illness that led him to undermine his own defense. And while Eichenwald points no fingers, Dwayne Andreas escaped scott free, his pride and his dynastic designs the only casualty.

One probably needs to be a little unhinged to be a whistle-blower, given the costs. Even Jeffrey Wigand, the Brown & Williamson executive who was the most senior member of the tobacco industry to go public, appears tightly wound. Society should support the Wigands and Whitacres, given the tremendous resources that senior executives have at their disposal to keep misconduct secret. Yet there is no white-collar equivalent of a witness protection program, no coaching from the authorities, and certainly no income protection.

Eichenwald appears more interested in telling a suspenseful, engrossing story, which he has done successfully, than in conveying a larger social message. But maybe he gave it at the office.