

outcome shook the company profoundly. It had argued that to accept Telex's complaints would be tantamount to telling IBM that it is not allowed to compete with the PCM's. But the court did just that, and IBM sat in silence for a day and a half before releasing a terse letter to stockholders from chairman Frank Cary. In it, he questioned the size of the damage award to Telex and charged that the ruling "goes far beyond that of any judicial precedent and contains serious errors of law and fact."

Although IBM may use anti-competitive practices to entrench its vast mar-

ket share (almost 67 per cent of the nation's \$26.6 billion worth of computers are IBM machines), it is clear that these alone are not responsible for the company's spectacular success over the last 25 years. Very simply, IBM is unsurpassed in its ability to give customers what they want.

Though for many years it lagged behind its competitors technologically, the company now spends \$676 million a year on research and development, and is one of the most scientifically advanced entities in the country. Its System 360, introduced a decade ago, revolutionized the in-

dustry and though it has since been surpassed (by IBM's own System 370, among others), its basic design is still considered to be the ultimate in the computer art.

Still, IBM didn't invent the computer.\* But, as one industry analyst puts it, "it might as well have." For the company had what, in hindsight, turned out to be a far more important advantage: a legacy of salesmanship and marketing gen-

\*University of Pennsylvania researchers built the first electronic-computer system, called ENIAC, in 1946. IBM's first system, the 701, wasn't completed until 1953.

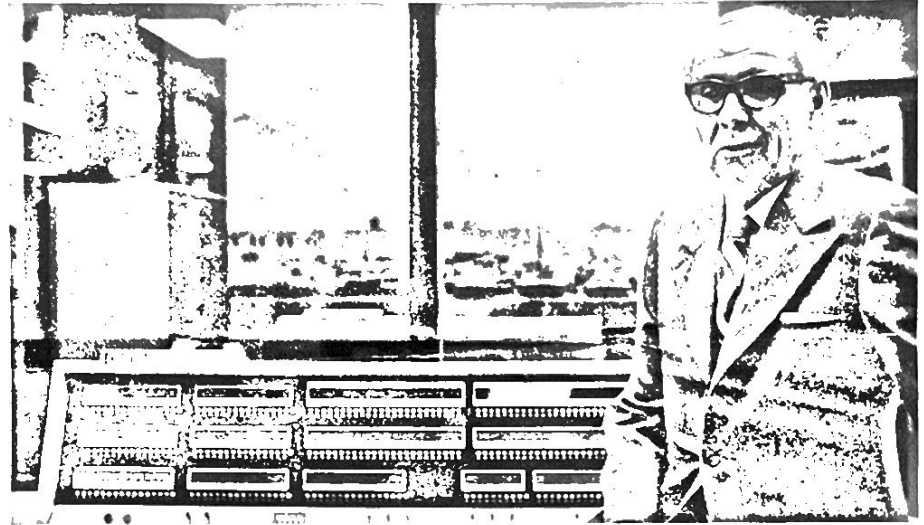
## HOW TO SETTLE OUT OF COURT

It began at 4 p.m. in a carefully guarded room at Control Data Corp.'s modern glass-and-steel headquarters in a suburb of Minneapolis. Two dozen people worked under the watchful eyes of nervous lawyers. Some opened file cabinets, pulled thousands of documents and stuffed them into cardboard boxes. Others stripped reels of magnetic tape from computers, and still others gathered microfilm from cabinets. The grim work continued as the cold January afternoon gave way to a frigid Minnesota evening. The document-filled boxes were loaded into a truck and taken to a nearby paper plant, where men in yellow hard hats dumped them into a huge vat that mulched everything into a uniformly gray paste. The tapes were run between two magnets to erase their coded memories, and microfilm was heaped into deep, green garbage containers and given a bath with Clorox bleach, effectively destroying any impression.

By 2 a.m., it was over. The lawyers shook hands, and one of the strangest chapters in American business history had ended. For the attorneys represented Control Data and IBM, and as an informal but vital part of an out-of-court settlement between the two litigants, they had just presided over the destruction of an index of internal IBM documents painstakingly compiled by CDC.

**Print It:** The IBM-CDC saga—which critics cite as a textbook case of how IBM deals with challenges—actually began back in 1964, when CDC introduced its 6600 series computer, a large, expensive and incredibly sophisticated machine. The company had lined up several prestigious customers when IBM suddenly announced it would soon introduce a new and powerful computer of its own, the 360/90. According to CDC, many potential customers started to disappear, and CDC chairman William C. Norris later startled the computer world by bitterly telling a reporter: "IBM is out to get us—and you can print that."

Norris felt sure IBM did not even have a 360/90 machine. "They were market-



Control Data's Norris: A secret weapon against IBM

ing, in effect, futures on a machine," CDC attorney Elmer B. Trousdale told NEWSWEEK's William Schmidt. As CDC saw it, IBM wanted to stop potential customers from committing themselves to the CDC—and it was willing to prematurely unveil a new system of its own to do so. At first, Norris could only fume as he watched CDC's profit statement fill with red ink. But by 1968, he'd had enough. "Goddamit, we're going to sue," he declared.

CDC's suit was filed late that year and charged IBM with violating the antitrust laws. IBM countered that its marketing of the 360/90 was simply a major gamble on a new generation of computers. But the suits never made it to trial. Last Jan. 15, Norris once again startled the computer world by announcing the out-of-court settlement with IBM. He seemed the clear winner. CDC got a settlement estimated at as much as \$250 million; IBM apparently got nothing. Why did it seem so one-sided? Very simply because CDC had come up with a secret weapon that others could use against IBM as well—and the others included Telex and, more important, the Federal government, which had also filed an antitrust suit against the giant.

During the pretrial period, each side was allowed to roam freely through the

internal files of the other. CDC took full advantage of the opportunity, perusing some 40 million IBM documents, selecting 150,000 that it considered pertinent to its case and putting them in a computerized index that cross-referenced the documents in a dozen different ways.

When IBM executives learned of the index they were impressed—and plainly shaken by CDC's ability to program the documents and use them to test the veracity of witnesses. It was then, in mid-1971, that IBM began seriously talking settlement. IBM says it wanted to avoid costly litigation, but CDC executives claim that a major aim of the settlement was the destruction of the index.

**Waiting Game:** Secret talks between opposing lawyers began, and the deal was struck last January. The index would be destroyed, but that provision would not be included in the settlement. Thus the bizarre scene on Jan. 11, when the lawyers met to exchange the necessary papers. "No one wanted to turn anything over until what would happen [destruction of the index] was settled," recalls chief CDC counsel Richard G. Lareau. "It was like laying your guns on the table so no one can draw and shoot first."

The destruction of the index started that afternoon, and ten hours later, the case was closed as far as the opponents were concerned.



electronic-data-processing market, while the Justice Department is pursuing a much more massive "structure" case alleging IBM's effective monopoly of the entire computer industry. Nevertheless, Judge Christensen's decision clearly pumps new blood into the government's case against IBM.

Indeed, if the Justice Department ever entertained any notions of trying to settle the case with an out-of-court consent decree (as it settled its last case against IBM in 1956), those notions now "are dead," a government source told NEWSWEEK's James Bishop Jr. Given the Telex

ruling, an antitrust lawyer observed, "there's no reason for Tom Kauper [chief of the Justice Department's antitrust division] to accept half a loaf when he has a chance for a whole loaf."

Though the Telex case is a much narrower one than the Justice Department's, it does in many ways substantively bolster the government's suit. Judge Christensen's findings provide government prosecutors with a detailed portrait of life behind the scenes at IBM. And the portrait is not especially flattering.

Telex was one of many relatively small firms that in the mid-1960s swarmed into the booming market for IBM-compatible peripheral equipment. Until the '60s each of the major computer manufacturers—IBM, Burroughs, Control Data, Honeywell, NCR and Sperry-Univac—was the only source of peripheral equipment for its own system. Since each designed its machines differently, the peripherals of one would not attach to the system of another. Thus, if a company had an IBM system it had to have IBM peripherals, and IBM was the only outfit that could provide them.

**A 'Predatory' Response**

All that changed with the appearance of what were called the PCM's, the plug-compatible manufacturers. Led by Telex, they began copying IBM peripherals and offering equipment to users of IBM systems at prices as much as 30 per cent lower than IBM's.

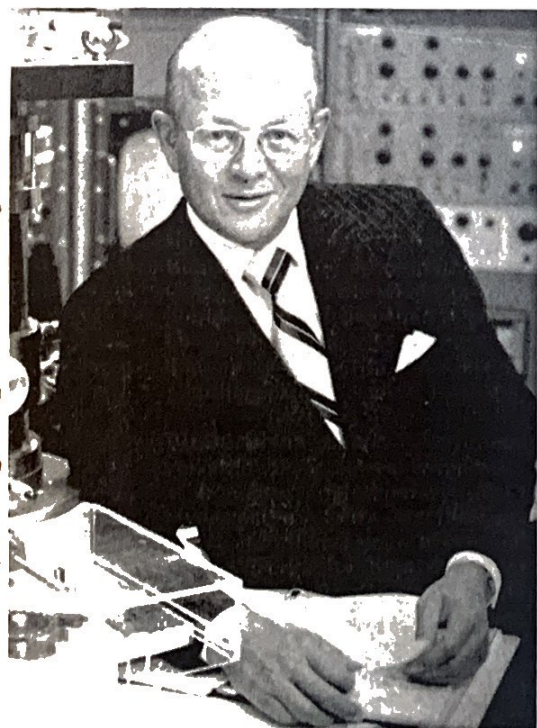
Outwardly, IBM regarded the PCM's with an icy disdain, considering them parasites. But inwardly it was worried, and it responded to the challenge with what Telex later claimed were monopoly tactics—and in his decision last week Judge Christensen agreed that the alleged practices had indeed taken place. For example, the court found that IBM undertook secret "corporate viability"

studies of its prime PCM competitors, Telex and Memorex, with an eye to determining how much it would have to lower its prices to drive its tiny rivals out of business. It cut prices on its own peripherals, masking the cuts by bringing out "new" products essentially the same as the ones they were meant to replace except cheaper—and the judge agreed with Telex that these tactics were "predatory." It junked its system of 30-day cancellable leases, offering big discounts to customers who would lease IBM peripherals for one or two years.

Telex decided to fight back. On Jan. 21, 1972, it filed suit against IBM charging the giant company with violating the Sherman Antitrust Act and the Clayton Act by monopolizing the market for its peripherals. It ultimately asked for over \$1 billion in treble damages. IBM responded with a \$25 million countersuit, charging Telex with stealing IBM trade secrets and infringing on IBM copyrights. The case went to trial in Tulsa, Telex's hometown, last April and lasted 29 days. Four months later, Judge Christensen issued his 222-page decision.

The award to Telex, if upheld, may turn out to be the largest damage award ever assessed by an American court. Not surprisingly, Telex president Stephen J. Jatras was overjoyed. The judgment, Jatras said, "will go far in re-establishing a competitive environment in which the small company can compete with the giant." Telex's attorney, Floyd Walker, was also more than a little pleased. He had taken the case on a contingency basis and, as a result, stands to collect the largest lawyer's fee in history—as much as \$60 million if the damage award is upheld—a possibility that most observers consider rather unlikely.

But, then, most observers considered a Telex victory in the first place rather unlikely. Certainly IBM did, and the



IBM's Cary: 'We don't train losers'