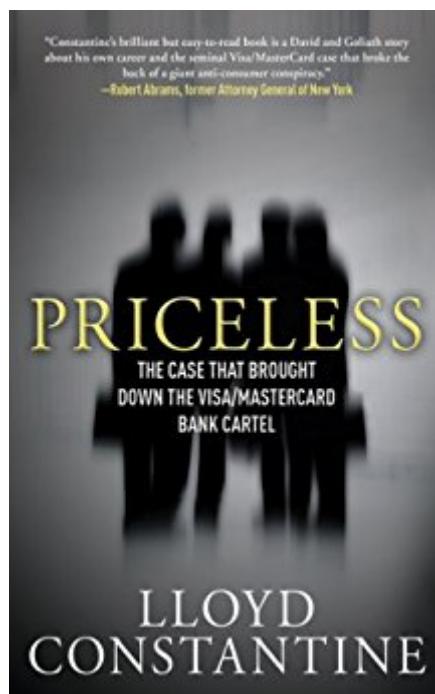


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# Priceless: The Case That Brought Down The Visa/MasterCard Bank Cartel



## Synopsis

Lloyd Constantine began his career in legal services, representing impoverished clients in civil rights and constitutional cases. Decades later, he would make headlines for representing retailers and consumers against a cartel that undermined one of the fundamental tenets of commerce in America: competition. A man who thrives on competition himself, Constantine now gives us the insider's story on the biggest antitrust lawsuit in history—“a case that pitted his small firm against financial-industry giants Visa and MasterCard, along with Clifford-Chance, the largest law firm in the world. Combining the real-life legal drama of *A Civil Action* with the relentless pace of a John Grisham novel, Constantine delivers the definitive account of a case that made history and will be studied for years to come. Beginning in the 1980s, when Visa and MasterCard—“whose combined market share topped 95 percent—“announced the merger of their debit card networks, *Priceless* traces the fallout of this catastrophic union, from raised eyebrows among attorney generals to the launch of a major class-action lawsuit. For the five merchants initially represented by Constantine’s firm (Wal-Mart, Sears, Circuit City, Safeway, and The Limited), the reality of the situation was clear: millions of U.S. businesses were being illegally coerced in a scheme that forced excessive fees on merchants every time a customer used a debit card. When a \$3.4 billion settlement was reached in 2003, the court estimated that the case would save stores and shoppers up to \$87 billion in the first decade alone. A suspense-filled story with a vibrant cast of characters—“and a smoking-gun document known as “The Shark”—“*Priceless* travels from corporate backrooms to the courtroom to capture one of America’s biggest triumphs in the high-stakes world of antitrust litigation.

## Book Information

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## **Customer Reviews**

Book is a quick read that provides insights into the evolution of the payments industry. Lawyers will also appreciate the behind the scenes look at the preparation required for a mega-antitrust case.

A great read into one of the seminal attacks on the hegemony of Visa, MasterCard and their member banks. Details of the obfuscation, outright deceit, delay tactics and business model legal-engineering of these famous card brands is astounding. C&P established the benchmark precedent for all antitrust actions surrounding the card brands today (C&P did not "kill the beast" only weakened it), making this book a "must read" for anyone in card payments policy and antitrust law. Anyone who still harbors a shred of sympathy for these brands needs to focus on the evidence surrounding public deception to kill more efficient PIN debit (still happening today), conspiracy to restrict access from potential competitors and general distain of antitrust laws needs to read this book. On the down side, Lloyd's views on the how politics played in the growth of Visa and MasterCard are a bit flawed. While he contends Regan/Bush/Bush lax approach to antitrust lead to the growth of the monopoly, he fails to point out that most of the market power growth and restrictive practices occurred during the Clinton administration. Sadly, this highlights the fact that NO administration - including Obama, to date - has been willing to take on the banking lobby beyond "show trials".

Rare is the attorney who writes a good book about his success in his own civil trial. Daniel Petrocelli achieved it in "Triumph of Justice," in his civil damages trial of the infamous OJ Simpson case. Strong editing tones down the subjective in autobiographies or trial memoirs forcing the preening attorney - all trial attorneys preen - to be objective. Editing is minimal in this book. With an ego "as big as the Ritz," to borrow from Scott Fitzgerald, Lloyd Constantine does not defy the odds; this book reads more like a legal brief than a good yarn. Bloated with too much legal procedure, and

nasty snipes at other lawyers and judges, the overwhelming subjectivity and the lack of story telling ability makes for a plodding read. Focusing on one narrow slice of the credit and debit card industry, he misses the chance to explain this business central to modern day America. He is ungracious to his adversaries characterizing them as venal, ignoring for the most part the names and legal arguments of opposing counsel and, most inexplicably, insulting to federal judges. One appellate female judge who sits on a panel is fingered by Constantine as trying to date him in the past, another appellate judge is painted as a right wing ideologue and then the trial judge who just awarded millions in fees is accused of rank sophistry. The book only becomes interesting in the author's analysis of the lode star considerations upon which his fee should have been awarded. In sum, a limited effort drenched in gracelessness.

Lloyd Constantine was the antitrust chief for the New York Attorney General's Office for more than a decade, then founded a law firm in 1994; he has also co-writtenÂ Journal of the Plague Year: An Insider's Chronicle of Eliot Spitzer's Short and Tragic Reign. He wrote in the Prologue to this 2009 book, "[In 1989] I was just beginning to realize the magnitude of what would be involved in our attempts to break up the EntreÃ© joint venture... MasterCard's discussion about discrediting me suggested that what we had discovered, in a relatively cursory investigation of Visa and MasterCard, was just the tip of an anticompetitive iceberg. Moreover, the broader issues of what I considered to be the abandonment of antitrust enforcement by the Department of Justice... was a matter of great importance to the economy of the country... the Reagan-Bush officials at the Fed were fanatical believers that the market could cure everything and always deliver optimal results... The result was a great transfer of wealth from stores and consumers into the pockets of the banks and Visa/MasterCard. I swallowed my private anger against MasterCard, and proceeded in court with the EntreÃ© case... The inside story of that ... case, which lasted more than seven years, is the subject of this book." (Pg. xii-xiii) Later, he adds, "That 1989 lawsuit... forced Visa and MasterCard to abandon their joint debit card operation and laid the groundwork for the Merchants' case. The Merchants' case was the contest that I had been training for all my life." (Pg. 10)He states, "The overarching allegation in the EntreÃ© complaint was that the new network was not really designed to operate actively so much as serve as an obstacle to the expansion of other fledgling debit card networks. EntreÃ© fell apart as soon as we filed the complaint... the associations' lack of resolve soon became apparent. I believe one reason their quickly threw in the towel was MasterCard's post-traumatic stress, resulting from our discovery of their discussion about threatening me." (Pg. 25)He explains, "The United States claimed [in its own case]... that Visa and MasterCard's

exclusionary rules suppressed competition from American Express, Discover and others by barring their banks from issuing American Express or Discover brand credit or debit cards or the cards of any other network that Visa/MasterCard considered to be a competitor... Our focus had been on how these rules injured competition in the debit card market." (Pg. 91-92) He recalls, "To show the defendants' contempt for common people, we showed another analysis prepared by Andersen for Visa... Over and over again, the analysis said that what was bad for consumers, stores and competition was good for Visa and MasterCard and vice versa." (Pg. 156) Eventually, "I accepted the fact that the case would settle. That night, the merchants, MasterCard and Visa signed short-form, but binding, memoranda of understanding containing the outlines of the Settlement. At that moment, I surrendered my plans for a beautiful trial." He concludes, "At the moment that I realized I would eventually receive enough money that I never had to work again, I also realized that I must continue working. I thought that I needed to win the case. Though I'm very happy that we won, as I am happy about the money, I didn't really need the victory. I needed the game, the battle and the stretch. I needed to have a case in which we needed to do, and did, everything. I needed the work." (Pg. 245-246) Not always a "page turner," this book is still an informative look at the anticompetitive practices of these two companies, and will interest many readers.

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