

think it is accepted as being a model of a disclosure scheme. This is an area, this area of industrial warfare—based on my own experience I can say this—an area in which the greatest ingenuity has always been employed. The Government's ingenuity is frequently no match for it and there is a lag. I must confess that. But we do catch on after while and adopt the appropriate regulation to deal with the problems—at least the major problems.

Mr. Moss. Do you have any data which would show in the case of transactions which are not completed how many of the share tenders were actually accepted and, is there any information as to whether the acquiring person during the course of receiving these tenders may have unloaded shares that he possessed prior to making this offer?

Mr. COHEN. We don't have any systematic information, but we do have some information in particular that the last item may have occurred. We have such a situation under investigation. I would rather not speak further to it. This is an area where darkness very often serves the purposes of many, but certainly, not that of the investor.

Mr. Moss. As long as you have the matter under investigation—

Mr. COHEN. There have been other situations, Mr. Chairman, which you may have in mind.

There has been enough experience in the past 2 years for any sophisticated takeover bidder to know that, unless management joins him, management will seek another partner and that other partner probably will make a slightly better offer. We have the feeling that many of these people are doing it for the short-term gain, or, to use the vernacular, to make a fast buck. We have a number of variants of that. We have a situation where almost overnight particular individual or company made several millions of dollars in a situation of this kind.

We have the feeling that some of these offers are made only to initiate that activity.

Now, there is one thing about that.

Mr. Moss. I was going to ask you that. Has this device been used in your judgment for the sole purpose of pushing it up?

Mr. COHEN. I can say that I think it has been, but I cannot say that we have a case in which we have proven it. I think there has been a good deal of discussion of this in the newspapers and I think the newspaper people, who are frequently very sophisticated about these matters, think so. I believe it has happened. We have had other kinds of problems. In fact, there is one which occurred recently where there is a question which has been raised about whether or not some of the profit, if not all of it, may be subject to some recovery action by the company involved.

Mr. Moss. There again you anticipate a question. I was going to ask whether there should be some kind of mechanism provided for this type of manipulation to be made unprofitable, that is the profit be recapturable by the corporation, or, in the absence of a suit, by the corporation or its stockholders by the Commission.

In this connection I think we should take note of the recent transactions of Crane Co. and the proposed acquisition of control of Westinghouse Air Brake Co. When this failed Crane sold its holdings for around \$75 million and presumably made a profit of some \$5 million to \$10 million, and I have a series of recent press clippings, which I am