

Mr. STUCKEY. Is this the way the law reads?

Mr. COHEN. This is what the courts have said.

Mr. MOSS. The judge said it as a means of emphasizing the very different nature of proof which would be undertaken.

Mr. STUCKEY. Now let's go back to the conflict of interest because this concerns me and let's go back to saying that I own 51 percent of a corporation. Then the corporation gave me a contract as president and chairman of the board. This would be a conflict of interest.

Mr. COHEN. Would that be a conflict?

Mr. STUCKEY. Yes.

Mr. COHEN. Yes, indeed.

Mr. STUCKEY. We have got a lot to—

Mr. COHEN. There are a few cases in recent years, Mr. Stuckey, that never reached the courts. One of the very largest oil companies in America entered into a contract with a director and with his firm. When that was disclosed, he resigned as a director. There was another situation where the president of a very large insurance company, who was a director of a prominent company engaged in a transaction with his company, and I am not altogether sure there was anything wrong with the situation, but when that was disclosed, he resigned as president of the insurance company.

There was another situation where a gentleman was the president of a large automobile company, and I am just talking about a few cases that have been in the newspapers in the last several years, where his company, his automobile company entered into contracts with certain supplier companies in which he had an interest. When that was disclosed, he was compelled to resign.

I am not speaking only to basic business morality, forgetting the law. So far as the law is concerned, it is absolutely clear that where there is this situation, and I referred to the *Geddes v. Anaconda* case when I was here last, where that type of transaction is put in issue the defendant whether he owns 51 or 91 percent has the burden of establishing the fairness of it. In our proposal we don't go quite that far.

Mr. STUCKEY. But simply because he owns 51 percent and does hold the contract does not make him in violation of the law.

Mr. COHEN. No, but you asked me whether he was in a conflict of interest and I have to say the answer is right. But once being in the conflict of interest, that transaction, even though entered into by the board, is subject to some examination by an independent body.

Mr. STUCKEY. Sure, this is the way that our system works. But you are saying that this is a conflict of interest. How many corporations would you say in this country, just venturing a guess, where a person owns 51 percent or more and is in fact president of the corporation or chairman of the board?

Mr. COHEN. Well, I think there are probably a great many of them, but I don't know that they all engage—

Mr. STUCKEY. Aren't they in violation of the law?

Mr. COHEN. No, sir; I didn't say that the ownership of the stock was a violation of law nor did I say engaging in a transaction was a violation of law. The only point I am making is that when they do in fact engage in a transaction of that kind, they are in the position of conflict of interest, and under the laws of the United States and of the States, this may be brought into question.