

Mr. STUCKEY. That is right, but they still are not actually in violation of the law.

Mr. COHEN. I didn't say they were, sir. If I suggested that, then perhaps I overstated it.

Mr. STUCKEY. All right. So if this is true in a regular corporate structure then the same thing would be true in—

Mr. COHEN. No, sir. I think the judge explained it much better than I, in fact he sat on a couple of cases that dealt with this subject. The courts have a rule which they apply in this case. Where you have, as required by statute, and as put in by the Congress to protect the investors, two things, shareholder ratification and approval by the directors, both or singly, the courts say that the ordinary test of whether or not there has been overreaching or just unreasonableness has to be put aside, and the plaintiff has the burden of proving corporate waste, which the judge described as being excessively excessive or unreasonably unreasonable.

Now it is surprising to me that these people, who admit that they are fiduciaries, who do not deny that they are in a conflict of interest, and they don't deny this at all nor do they deny, in fact some of them say as a matter of course, that they run these funds, they are their funds, it is almost as if they have a proprietary interest, would urge before this committee that they should not be subject to any independent review by any independent body. It is an extraordinary situation.

Mr. STUCKEY. The point that I was trying to make here, because even though an investment adviser does sit on the board and he is a stockholder, this in itself does not constitute a conflict of interest.

Mr. COHEN. The investment adviser is rarely a stockholder. In fact, I know of very few situations if any where the investment adviser is a stockholder of the fund. Normally he is not.

Mr. STUCKEY. I can think of corporations where members of the board sit on the board and are not necessarily a stockholder.

Mr. COHEN. This is true, but I was trying to answer your question factually. They do have this contract. There is no denying the factual situation.

Mr. STUCKEY. The point I am trying to get across is whether it is a corporation, and the mutual funds as I understand it are a corporation. I do not see the difference between the mutuals and the regular corporation because if a majority votes against renewal then you simply do not renew the contract, and I still maintain that this is legally so, that this can be done, and you yourself agree.

Mr. COHEN. Let me try this another way, Mr. Stuckey. I think you asked me, and I think Mr. Keith asked me whether or not all of these things weren't disclosed. Well, the fact of the matter is that these companies were operating in 1933 and before 1933, and in 1933 the act was passed requiring disclosure. So immediately in 1933 all of these things had to be disclosed. But the Congress determined in 1935 that that was not enough, and it directed the Commission to conduct a comprehensive study, which resulted in I think five or six volumes of reports, and ultimately in 1940 at the request of the industry as well as that of the Commission, a statute was passed, and this committee I said in its report to the Congress that disclosure cannot deal with the problem. And insofar as the problem we are talking about is con-