

trust," not "abuse of trust," which is the standard any court goes by, not "abuse of fiduciary obligation," but "gross abuse of trust." This industry says they don't want to be viewed in any other light except in a gross abuse of trust, a very strange position.

Mr. STUCKEY. So, isn't this right? You have found no malpractices in the management field?

Mr. COHEN. We have not brought any actions under section 36 attacking the fees.

Mr. STUCKEY. All right. Now, do you think that a prominent disclosure of management fees—let's take for example, say, on the cover page of a prospectus, would this adequately inform the prospective investor?

Mr. COHEN. It might. It probably does adequately inform him. But the Congress decided that that was not enough in this area. If disclosure was enough, there was no need for the 1940 act to begin with, but let me point to one thing, Mr. Stuckey.

In every other area of inside dealing, if a director wants to sell 10 shares of stock, any stock, to the fund, it is forbidden, even though it may only amount to \$1,000, or \$100. It is forbidden, and he has to apply to the Commission. The Commission has to find that it is fair and reasonable; that it involves no overreaching, and that it is consistent with the policies of the company and the purposes of the act.

But here, you have the same conflict, much more insidious, far more far reaching, and there is no standard for review.

Mr. STUCKEY. So you are saying that a prominent disclosure of the management fee on the cover of a prospectus would not adequately inform the prospective investor?

Mr. COHEN. Yes, sir; we are saying that, obviously. We wouldn't be here otherwise.

Mr. STUCKEY. So, in effect, you are saying that an individual investing in a mutual requires more protection against paying excessive charges than an individual, say, purchasing, say, a kitchen stove on the installment plan?

Mr. COHEN. Yes, sir; and that was the Congress decision in 1940.

Mr. STUCKEY. So you are saying he is ignorant—

Mr. COHEN. I didn't say he is ignorant, sir. I said he needs more protection.

Mr. STUCKEY. I don't see this.

Mr. COHEN. Well, the point is, in the 1933 act, there are all kinds of provisions for giving information, but the Congress decided in 1940 that it needed more, that it needed regulation of this industry, because of the built-in conflict, because these people sit astride these funds, and run them, and they sit on both sides of the table. It isn't a situation of an ordinary corporation where you are held accountable to your own shareholders, and you don't have any other interest.

When you have another interest, then you are accountable in a court.

Mr. STUCKEY. We are getting off in another area. Now, do the mutual fund shareholders have any way of knowing what the profits of the management company are?

Mr. COHEN. They don't have it now, except indirectly in those situations where the management company is a publicly owned company and the information may be found in the public files somewhere.