Mr. COHEN. That is true. I will correct my statement.
Mr. KEITH. And you corrected it by saying "very frequently."
Mr. COHEN. Well, I will change it back to "most frequently."
Mr. KEITH. I think it is of some importance.
Mr. COHEN. Yes, sir. A principal means by which these acquisitions are accomplished is the tender offer, or takeover bid, by which a corporation seeking to acquire another makes a public offer to purchase its shares. There are reasons for the popularity of tender offers. They are fairly obvious but if the committee will forgive me I would like to recite some of them anyway.

These may include speed, simplicity, and also—and of particular significance—the fact that, unlike a negotiated merger, the concurrence of existing management is not required and, unfortunately for the public interest, little or no disclosure is usually made. This contrasts with the two other principal methods by which control of a company is changed, the proxy contest and the negotiated merger or purchase of assets. In these situations, stockholders are required to vote and consequently the proxy rules apply and full disclosure is obtained. Where the 1933 act applies, of course, the registration statement contains information with respect at least to the efforts and identity of the offeror. As I will indicate later, there is a problem in that area. I might note incidentally, that this committee in 1964 wisely extended the scope of the proxy rules so that they now apply to practically all industrial corporations in which there is any significant public interest. In the tender offer, by contrast, there is no express provisions of law which requires any disclosure at all.

The offeror need not even disclose his identity, let alone his plans and purposes. Investors are therefore confronted with the necessity of making an important investment decision, the determination whether to sell their shares, or to keep them, without disclosure of material facts. The problem is compounded by the fact that the offeror usually wishes to bring all possible pressure on investors to decide quickly without reflection, and indeed without opportunity to consider relevant and material information.

The appeal is to get aboard the band wagon immediately or lose the opportunity to participate in what is made to appear an attractive offer. This situation is totally inconsistent with the basic philosophy of the Federal securities laws, as this committee has evolved them over the years in the Securities Act and the Securities Exchange Act, and in other statutes administered by the Commission, that investors should be furnished with full disclosure of material facts and given the opportunity to make a unhurried investment decision upon the basis of such disclosure. The purpose of the legislation before you is to remedy this situation.

The existence of a problem in this area has been recognized for some time. In the last Congress, and in particular on April 7, 1966, Chairman Staggers introduced H.R. 14417, a bill which was intended to accomplish essentially the same purpose as the bill before you today. Similar legislation was introduced in the Senate in that year. Such legislation, modified in the light of suggestions by various interested persons, was reintroduced in the current Congress and extensive hearings were held in the Senate Committee on Banking and Currency in the spring of 1967.