It is a problem of the insurgent to equalize management's initial big head start. Management can generally rely on the vote of almost all he existing stockholders since the American investor habitually signs management's proxy almost without reading it, even though (a) the insurgent's plans and action may be in the best interests of the stockholders, and (b) the new group, to evidence its faith in its plans and people, is prepared to purchase millions of dollars in stock and expend tremendous sums in connection with the expenses of acquiring control to improve the security values. The insurgent must use his own funds. He and his volunteer workers receive no salaries for long difficult work. Management can use the corporate treasury and receive salaries during the fight. It can also use the corporate employees to help its cause.

The bill calls for the insurgent to reveal all of his plans to management. These plans can be very valuable. Under the proposed legislation, management can claim the plans, or a modification thereof, as its own, defeat the insurgent, and never carry them out, thereby preventing new people with new ideas from actively proceeding with them and directing the affairs of the public company. Although the insurgent's plans may be beneficial for the company and its stockholders, management will do everything within its power to stop the insurgent from getting control.

In a football contest is one team compelled to give its playbook to the coach of the other team in advance of the game? Is this a way to conduct the contest?

At some point in a corporation's life, changes should be made which can benefit the stockholders. Does corrupt or inefficient maangement have the right to run down a company during its tenure and not expose itself to loss of control and positions?

I submit that the job of the insurgent is tremendous and can result in substantial benefits to the stockholder of a company which is the subject of a proxy contest. I point to the few successful ones in the past few years: U.S. Smelting, Sunshine Mining, Penn-Dixie.

I do not intend here to detail all of the ways in which a management could defeat an insurgent once it knew that control was in jeopardy when the insurgents reached 10% of the stock. The ways are myriad and management's ingenuity endless (with corporate funds) in preserving its own power, even though it may have limited managerial competence.

The corporate proxy fight starts the football game with management ahead 90 to 10, and the insurgent is on his own 10 yard line. The proposed legislation then compels the insurgent to give his secret plays to the management and to grant management months to watch the insurgent in practice, time to break up the insurgent team and cut off the sources of supply from the training table. Obviously, no football coach would take on the job of coaching the insurgent team under these conditions. If you wish by legislation to end proxy fights, then this legislation should do it. If you wish to give incumbent management the green light to do anything with corporate assets, this will do it. If you wish to keep vested interests perpetually vested, this will do it.

Certainly, most investors who have held their stock through a proxy contest have benefited by virtue of the work, efforts and money of the insurgents. Managements have no monopoly on doing right. The scale should be somewhat balanced so the insurgent has a chance.

Passing this legislation will stop the flow of new ideas into corporations from the outside through proxy fights. I doubt if any self-respecting attorney, after examining the significance of the proposed legislation, would in his professional judgment advise a client who seeks control of a public company through a proxy contest to proceed to purchase stock on the open market. The risk is too great to justify the commitment of time, money and effort. This new legislation would effectively eliminate any possibility of success.

Consequently, the proposed bill should not be enacted into law, or subsections (1)–(4) to be added to Section 13 of the Securities Exchange Act of 1934, as contained on line 6 of page 1 to line 22 of page 5 of S. 510 should be limited to tender offers and invitations for tenders.

I trust that these views are helpful to the Committee and I am glad that I have had this opportunity of expressing them.