

concentration of financial and economic power. That is not involved in this bill and it goes a bit beyond our jurisdiction.

In the proposed institutional investment study, we will deal with another type of growing concentration of economic and financial power which has its effects in the area of the problems to which you have adverted. Beyond that, I don't think it would be appropriate for me to express a view, Mr. Keith.

Mr. KEITH. Thank you.

You mentioned that you had ways to get at certain situations where stockholders with 10 percent or more of the stock—

Mr. COHEN. Not we, the courts. There is a provision of the statute.

Mr. KEITH. Who brings the action?

Mr. COHEN. Either the company, or upon failure of the company a shareholder on behalf of the company, and the recovery goes to the company to be shared by all of the shareholders.

Mr. KEITH. You have no authority to move.

Mr. COHEN. No, sir. We do not.

Mr. KEITH. And you are not requesting it.

Mr. COHEN. We are not. I think implicit in Mr. Moss' question—and I probably did not answer it—was whether or not the Commission should have authority in this particular area.

I hesitate to say yea or nay to that because whenever I do I am accused of engaging in the latest version of Mr. Parkinson's law, reaching out for power, but quite obviously I would have to say that, provided you vest this power in the Commission after I am gone, this would be a most effective way of dealing with problems of this kind.

Mr. Loomis wants to add to that.

Mr. LOOMIS. There are quite a number of cases pending now under section 16 of the Securities Exchange Act, at least five or six of them involving a situation where a person made a tender offer, got 10 percent of the stock and then there was a so-called defensive merger and the person who had made the tender offer then sold the securities he acquired as a result of the merger for a substantial profit.

The courts have not yet decided any of these cases, and it will be interesting to see what happens.

Mr. COHEN. There is one further thing to complete my answer to Mr. Moss, with which I did not deal.

In these 16(b) cases, the courts, at least at the appellate level, frequently call upon the Commission to file a brief as *amicus curiae* with respect to interpretation of the statute.

As I say, we have no enforcement powers and for that reason normally we don't even engage in interpretation of 16(b). We do have authority with respect to 16(a), which requires the filing of information with respect to holdings and transactions by certain persons. In this area we have not been too bashful about issuing interpretations. In some of the 16(b) bases we have gone in where there has been placed in issue a question which seems to be important in the overall administration of the statute and may involve adversely the interests of investors. I do not believe we have invited in these particular cases to which Mr. Loomis has adverted.

Mr. LOOMIS. They are not on trial yet.

Mr. KEITH. Thank you, Mr. Chairman.