

Mr. KEITH. Well, the law to which they turned was——

Mr. LOEFFLER. State law.

Mr. KEITH. A State statute, and even though the law there may be different than it is here, the law here I believe talks about unconscionable, does it not?

Mr. LOEFFLER. The unconscionable provision in the Investment Company Act, sir, relates to another matter. It relates to the sales load area.

Mr. KEITH. The sales load area.

Mr. LOEFFLER. It does not relate to——

Mr. KEITH. Not to this.

Mr. LOEFFLER. No, sir.

Mr. KEITH. So the only subject we are really talking about is whether or not there is a bona fide similar parallel between the shareholders of a mutual fund and the stockholders of a corporation.

Mr. LOEFFLER. I think it is exactly the same, sir. I think they have exactly the same——

Mr. KEITH. There is in these many volumes of hearings that have been presented to us a dissertation on this subject, but that is one of the arguments I think that Mr. Cohen has advanced for this legislation, that there is not truly an arm's-length relationship, and you are insisting that there is the usual arm's-length relationship.

Mr. LOEFFLER. Yes, sir. If there is not an arm's-length relationship, sir, then a stockholder wouldn't have to prove waste. Then he can go right to the fairness of the contract. That is the law today, if there is not an arm's-length relationship.

Mr. KEITH. I am not an attorney, and I am not sufficiently acquainted with it. We will later on with the advice of counsel get into this, whether or not there is truly this arm's-length relationship which you brought out. You drew the parallel, and having raised the question, I would like to explore it in some depth.

Mr. LOEFFLER. Yes, sir; it is a rather complicated subject to try and clarify briefly.

Mr. KEITH. You pointed out about the reduction in rate to improve the product. What is the relationship if any to reduction in rate in the cases that were brought by Pomerantz and others?

Mr. LOEFFLER. I think what happened, if I may go back on this——

Mr. KEITH. Was there any reduction in rate industrywide as a result of the Pomerantz suits?

Mr. LOEFFLER. Yes, sir; I think they had effect.

Mr. KEITH. Mostly as to the shedding of light on the subject, rather than competition?

Mr. LOEFFLER. Well, I think they were unrelated to the competitive aspect.

Mr. KEITH. It invited the shareholders' attention.

Mr. LOEFFLER. I think it invited the industry's attention. I think what had happened actually, sir, was that this industry grew enormously during the 1950's. It was really a very young industry. The effect, as is true in almost any situation such as that, is that generally your competitive effects and your price adjustments lag behind an enormous sudden growth. I think they were just coming into play in the 1960's when this rash of litigation broke out. I think there is a possi-