I should like to make entirely clear that in complying with that request, as I felt bound to do, I am limiting myself to that precise inquiry. While I have read the relevant parts of the report of the SEC that gave rise to this bill, and some of the material that it has provoked, I would not want as a judge to express any opinion whether the reasonableness of the fees of advisers of investment companies is a problem requiring legislation, or if so, whether section 15(d) is the best possible solution.

On the other hand, I am glad to give the subcommittee such help as I can on the limited question whether Congress should hesitate to enact a requirement like section 15(d) for fear that the courts could not administer it properly. I think I can sum up my position by saying that while the courts are not looking for any more business, because we have plenty, and Congress keeps us well occupied with new lines of business, I perceive no reason why the courts could not effectively administer section 15(d) if Congress should decide that it wants us to do so.

The question whether charges or other business practices are reasonable is not a new question for courts at all. Long before the Interstate Commerce Commission, the first Federal regulatory commission, was created in 1887, courts were deciding about overcharges by railroads and other carriers, and in many states they continued to do that as to intra-State rail rates and other utility rates for many years thereafter, until in the first and second decades of this century public service commissions came to be created.

I think it is peculiarly appropriate to recall that work of the courts before a committee whose landmark report preceding enactment of the Securities Exchange Act of 1934 declared in some famous words that also have their application to mutual funds:

> The great exchanges of this country, upon which millions of dollars of securities are sold, are effected with a public interest in the same degree as any other great utility.

In addition to that jurisdiction over public utility rates, courts frequently have to pass on questions of business reasonableness when a corporate acquisition or merger is attacked as unfair to one party or the other. Still another instance where courts have to deal with the question of reasonable value comes from the Constitution itself. I refer, of course, to the provisions of the fifth amendment that private property shall not be taken for public use without just compensation. And the problems that we sometimes encounter in fixing a fair price for a large condemnation, particularly where the property is not of the kind that is freely bought and sold, seem to me at least as hard as the task that is here proposed.

Another very well known area where courts pass on the reasonableness of business practices without aid of any previous administrative determination is in suits by the United States or by private plaintiffs relating to acts that are alleged to constitute unreasonable restraints of trade.

Examples like that, and one could give many others, seem to me sufficient to answer the objection that was made by a witness in the Senate hearings when he said that the question that was posed by section 15(d) is not a legal question but an economic question. I don't