most of them settled, getting into court and then settling would indicate that the law is working reasonably well in its present form?

Judge FRIENDLY. No; I wouldn't draw that conclusion, because I think the courts have laid down such a heavy burden as to discourage the bringing of these suits, the burden of proof on the plaintiff.

Mr. KEITH. Thank you, Mr. Chairman.

Mr. MOSS. Mr. Murphy?

Mr. MURPHY. No questions.

Mr. MOSS. Mr. Watkins?

Mr. WATKINS. Mr. Chairman. Judge, I wonder if you would clarify my conception. I feel as though freedom of contract is a rule under the Federal Constitution. The exception would be the right of Congress to abridge it can be justified only by the existence of special circumstances such as war, depression, a public utility with monoply power, or a fraud, waste, or similar matters.

Now it seems to me that—do you agree with that?

Judge FRIENDLY. Well, I would agree there has to be special circumstances.

Mr. WATKINS. I am certainly in no position to argue with the distinguished gentleman.

Judge FRIENDLY. No; I agree there has to be a special justification for it. Certainly I agree with that.

Mr. WATKINS. It seems to me as though the SEC has put these mutual people in the same category perhaps with the stockyards, in which there were cases—290 U.S. 420——

Judge FRIENDLY. Perhaps the industry would rather be analogized to——

Mr. WATKINS. Do you agree that it seems as though that is what has happened?

Judge FRIENDLY. Yes; I think it might be a more pleasant comparison to say perhaps it has put them in the same place as the insurance companies. That is a little more attractive analogy.

Mr. WATKINS. I feel as though this is an infringement upon the people's rights, and it seems to me that a Big Brother, which is our Federal agency in this case, why should they substitute their judgment for that of an investor? There doesn't seem to be any quarrel in this country about the investors. I haven't received any. Perhaps there is. I have never received any complaint. Do you think it is legal—do you think it is right that the Federal Government should step in as Big Brother and take my place as an investor, if I want to buy the stock? I should be the one to bring the complaint.

Judge FRIENDLY. Well, I think it is legally defensible for the Government to do this, if you gentlemen find that the conditions are such as have led to Government intervention in other areas, commencing with the railroads in 1887. If you find that, in effect, there is no competition, and that because of the nature of the industry, the buyer really is defenseless——

Mr. WATKINS. Your Honor, when you talk about the railroads you are talking about monopoly.

Judge FRIENDLY. What did you say, sir?

Mr. WATKINS. Railroads are governed by the Interstate Commerce Commission.