That doesn't mean that it is necessarily wrong, if we do get more people into this business.

If they get out and display their wares in a forthright fashion, and don't misrepresent, I think that the effects of the 1940 act are beneficial. Maybe it didn't go as far as it should, but nevertheless we have a pretty good economy as a result of the capitalist system.

I am scanning your testimony as I comment on it. If you would care to correct me to any degree.

Mr. JENNINGS. Well, I would just say that we have here, I think it has to be admitted that the investment adviser is in a fiduciary relationship, but we have in this industry conflicts of interest that no other industry that I know matches. You have the brokers, the portfolio brokerage.

Mr. KEITH. Are they legally in a fiduciary relationship?

Mr. JENNINGS. What?

Mr. KEITH. Are they legally in a fiduciary relationship?

Mr. JENNINGS. In my view, without any question they are in a fiduciary relationship.

Mr. KEITH. I said legally.

Mr. JENNINGS. Yes, I believe so, yes.

Mr. KEITH. Have the courts so held? Hasn't a case been brought trying to prove that point in the State of California?

Mr. JENNINGS. You mean the *I.S.I.* case?

Mr. KEITH. Yes.

Mr. JENNINGS. No; the *I.S.I.* case was a case involving the sale of control by the shareholders.

Mr. KEITH. Didn't the SEC argue that——

Mr. JENNINGS. The SEC argued that that was a gross abuse of trust under the Investment Company Act, and the court held to the contrary on that. This is a question of sale of control.

Mr. KEITH. Wasn't the pitch made that that trust was of a fiduciary nature?

Mr. JENNINGS. I happen to have written in this field myself, and I don't really place much weight on the *I.S.I.* case. I feel that if that case were properly presented, say to the second circuit, you might get a little different result. I would say that in my view that the investment advisers under a management contract—in the first place certainly the directors of the funds are fiduciaries and the directors of the fund have the duty to get the best executions and to get the best advice at the most reasonable prices for the fund, and the point I made was that they do not exercise that, they cannot under the structure, and I think inherently this is very bad, and the courts have not gone into the situation, as I tried to explain, because they fall back upon the structure that is established in the Investment Company Act.

Mr. KEITH. Did the Congress in its report in the last treatment of this subject indicate that this was a fiduciary relationship?

Mr. JENNINGS. You mean the special study?

Mr. KEITH. No; the Congress in its reoprt. You just said in your view under the act which we are now operating there was a fiduciary relationship, and I am asking—I am not an attorney.

Mr. JENNINGS. Yes.

Mr. KEITH. We have been told that there is great store in decisionmaking, in the committee report and the legislative debate. Was there