

a court of law, review their situations except on a standard of corporate waste, which as every lawyer knows is at best the most difficult standard in the world, and at worst provides no remedy at all.

Now not only does the industry misconstrue the nature and the purpose of our proposal. They also misconstrue how it would operate in practice, and they do exercise their ingenuity, and by golly, they have a lot of it, in conjuring up imaginary or exaggerated difficulties rather than trying to devise workable means to avoid these difficulties while still protecting investment company shareholders and at the same time protecting themselves.

In the first place, they misconstrue the Commission's attitude and purpose. I am quite prepared to state that we do not regard all investment advisory fees as unreasonable, nor would we propose to embark on any campaign to cut the general level of fees way back to that of the lowest. I wish to restate that one of the important conclusions underlying our recommendation was that the economies of scale attributable to that growth and attainable as the funds grow, have not been adequately shared with the funds' shareholders. It is to this situation that our principal concern is directed.

I must point out, and the figures are before you, that a number of the people in the industry, and unfortunately there are not too many, did recognize the situation. Some of them recognized this many years ago, long before there was a Wharton School report, long before such a report was initiated, and they took steps to share these economies of scale with their shareholders. It really hasn't hurt them. They have sold as well as any. In fact, they have sold better. And the investment managers have done exceedingly well.

Now an argument could be made that these people who admit they are fiduciaries and are providing services to this corporation, to this institution that they create, should only be entitled for compensation for their services. But they say—and we are not for the purposes of this legislation taking issue with the suggestion—that they should also be entitled to some entrepreneurial profit. As I say, a reasonable argument could be made against it. We are not making it. We are accepting the fact that they should have some entrepreneurial profit, for those who have been successful in starting and building an investment vehicle.

We recognize, and it is the reason we came to this conclusion, that the creation and the building of a fund does involve certain risks, and that those who are successful are entitled to some reward. But that reward must be within reason, and at some point in time and growth, the reward will have been reaped.

Now the courts, as the judge pointed out, have traditionally been able to deal with these problems, and certainly the courts will continue to deal with them in the context of the particular situations.

I might say in this connection that another distinction between the mutual fund advisory organization and banks and insurance companies is that in an insurance company the owners of it, the shareholders, whether they be many or few, have to provide capital to guarantee the promises to the man who wants to buy a life insurance policy, and that is strictly enforced by the States. So also in the case of the banks. Their capital is at risk to take care of the obligations and