

So I do not think that proves an awful lot in terms of this big risk you are talking about.

Mr. CUTLER. Sir, if we can get this information from Cutter and if we can demonstrate to you that Cutter's decline in rate of return was primarily attributable to the incident that occurred with its polio vaccine and that it has not yet recovered, would you agree that that is evidence of a substantial risk of the type that Professor Markham is talking about?

Senator NELSON. I do not know how well they manage the company or anything else.

Mr. CUTLER. We will submit that.¹

Senator NELSON. It may very well be a factor. All I am saying is that it does not impress me, quite frankly, very much. You have the whole manufacturing industry and all the best economists in the country available and we are quibbling about one case which may or may not support your thesis. All I am saying is that you are proving that these factors, such as obsolescence in the marketplace, constitute a significant risk factor beyond what normal industry would face. Then let's take a look at the major companies and see how many of them went into a decline and have not recovered a reasonable spot in the marketplace because of obsolescence of a drug. That is all. You would not go into court with less than that. You cannot go in with one example to prove a case or use the exceptions to prove a rule.

Mr. CUTLER. It simply depends on the court, Mr. Chairman. The question is will the judges of the court be economists or who will they be?

Senator NELSON. I think any judge, economist or not, is going to say, give me a pattern of evidence that proves the case. I am asking for a pattern; you have given me one case. And you do not have available before you the facts that prove whether or not that is a case that proves your thesis.

You said you will find the information. Fine. I am just saying I do not want the record to stand with these assertions that product obsolescence is a significant risk when you do not have the evidence to prove a single case.

Dr. MARKHAM. No one has said, Senator—at least I have not. I think I have made it quite clear from the beginning that we have not over time traced these particular events through the revenue accounts of the companies that are concerned. I thought some time ago, we did promise to give them to you, to the extent that we could get them to put them together. The focus of our study, I just finished saying, was on a different aspect of this. We have not tried to catalog the total number of times this occurred or any of these risks occurred. We have, however, assembled some data on the extent to which the firm is vulnerable by virtue of the fact that its sales and its estimated profitability seemed to be fairly highly concentrated in a few, at this point in time, successful products. We are making the very simple thesis that when you have this kind of all your eggs in one basket, or two baskets, so to speak, that firm is more vulnerable to these risks, however frequent or infrequently they may occur, than would be the case if a firm went on all the time with its sales dispersed over eight or so or 100 products, and fairly evenly.

¹ See Appendix III beginning at p. 2129, *infra*.