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HEARING
BEFORE THE
COMMITTEE ON ARMED SERVICES
UNITED STATES SENATE
NINETY-FIFTH CONGRESS
SECOND SESSION

SEPTEMBER 14, 1978

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**S. RES. 555 AND S. RES. 556 TO DISAPPROVE PENDING
SHIP CLAIMS SETTLEMENTS UNDER PUBLIC LAW 85-804**

THURSDAY, SEPTEMBER 14, 1978

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m., in room 212, Russell Senate Office Building, Hon. John C. Stennis (chairman of the committee) presiding.

Present: Senators Stennis, Cannon, McIntyre, Hart, Tower, and Garn.

Also present: Francis J. Sullivan, staff director; John C. Roberts, general counsel; John T. Ticer, chief clerk; Phyllis A. Bacon, assistant chief clerk; Charles H. Cromwell, George H. Foster, Edward B. Kenney, James R. Locher, Don L. Lynch, Robert Q. Old, E. George Riedel, and George F. Travers, professional staff members; Rhett B. Dawson, counsel; Christine E. Cowart and Fran Frazier, clerical assistants; and Louise R. Hoppe, research assistant.

Also present were: Frank Gaffney, assistant to Senator Jackson; Jeffrey Record, assistant to Senator Nunn; Bill Lind, assistant to Senator Hart; John Haynes, assistant to Senator Anderson; Lew Ashley, assistant to Senator Hatfield; Ron Lehman, assistant to Senator Bartlett; and David M. Fitzgerald, assistant to Senator Garn.

Chairman STENNIS. Our committee will come to order. This is an early hour for us to be meeting, but there are other meetings going on, too. As I understand, Senator Proxmire has to chair a meeting which begins shortly.

We conferred yesterday over the telephone after deciding that we would have this meeting today, and I was delighted that he could come. I appreciate him making special preparations on such short notice, and you are always welcome, Senator. You always know that. We have limited copies of your remarks here.

Without objection, I would like to insert in the record, at this point, the resolutions which Senator Proxmire has introduced.

[The resolutions follow:]

95TH CONGRESS
2D SESSION

S. RES. 555

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 8 (legislative day, AUGUST 16), 1978

Mr. PROXMIRE submitted the following resolution; which was referred to the
Committee on Armed Services

RESOLUTION

Disapproving the modification of certain shipbuilding contracts
between the Department of the Navy and General Dynamics
Corporation.

1 *Resolved*, That the Senate disapproves the obligation of
2 the United States proposed to be made by the Secretary of
3 the Navy in modifications to contracts numbered N00024-
4 71-C-0268 and N00024-74-C-0206 between the United
5 States and the Electric Boat Division of General Dynamics
6 Corporation, notification of such proposed obligation having
7 been transmitted by the Secretary of the Navy to the Com-
8 mittee on Armed Services on June 22, 1978, under the
9 provisions of the first section of Public Law 85-804 (50
10 U.S.C. 1431).

95TH CONGRESS
2D SESSION

S. RES. 556

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 8 (legislative day, AUGUST 16), 1978

Mr. PROXMIRE submitted the following resolution; which was referred to the
Committee on Armed Services

RESOLUTION

Disapproving the modification of certain shipbuilding contracts between the Department of the Navy and Litton Systems, Incorporated.

1 *Resolved*, That the Senate disapproves the obligation
2 of the United States proposed to be made by the Secretary
3 of the Navy in modifications to contracts numbered N00024-
4 69-C-0283 and N00024-70-C-0275 between the United
5 States and the Ingalls Shipbuilding Division of Litton Sys-
6 tems, Incorporated, notification of such proposed obligation
7 having been transmitted by the Secretary of the Navy to
8 the Committee on Armed Services on June 24, 1978,
9 under the provisions of the first section of Public Law
10 85-804 (50 U.S.C. 1431).

Senator STENNIS. With that word of special welcome, we ask you to proceed.

STATEMENT OF HON. WILLIAM PROXMIRE, A U.S. SENATOR FROM WISCONSIN

Senator PROXMIRE. I appreciate this opportunity to appear and it is typical of your great fairness and your consideration as well as your courtesy, Mr. Chairman, to invite me to appear under these circumstances at the last minute on something that is so highly controversial but, as I say, has only been available to you for a couple of days.

I gave testimony about the Navy's proposed settlements to this committee on August 24, so there is no need for me to go into great detail about my views. Of course, I am willing to elaborate on any of my reasons for opposing the proposals or to answer questions.

Briefly, I oppose the Navy's plan for the following reasons:

One: It is a bad precedent. The Navy is capitulating to General Dynamics' and Litton's threat to stop construction unless their demands are met. Other contractors will be encouraged to adopt similar tactics.

Two: The shipbuilding claims problem will not be solved by the proposed settlements. The settlements will lead to new and perhaps larger claims in the future because of the bad precedent that is being established.

Three: The Navy examiners rejected most of the claims because most of the cost overruns are the responsibility of the shipbuilders. Giving them the extra \$541 million will reward mismanagement and inefficiency.

Four: The Navy is turning military muscle into fat by using funds that could build ships to pay for the cost overruns.

Five: The Navy admits that neither contractor would face bankruptcy if the payments were not made.

The Navy's proposed actions are inflationary. They will add to the budget and the deficit, and they are unjustified.

On September 8, I introduced resolutions to disapprove the modifications of the General Dynamics and Litton contracts. The resolutions were referred to this committee and the question now is whether or not they will be reported to the floor.

Under the terms of Public Law 85-804, either House of Congress has 60 days to disapprove use of Public Law 85-804 or else the proposed action will go into effect. That 60 days expires in about 1 week.

As the author of the 60-day provision, along with the Senator from Virginia, Mr. Harry F. Byrd, Jr., I can assert in unqualified terms that its purpose was to grant authority to Congress to act in extraordinary circumstances. The conditions are simple—there must be a large amount of money—public funds—at stake. The legislation calls for congressional participation any time the amount is over \$25 million. Of course, this is more than 20 times that.

When I introduced this legislation, it had incorporated within its provision certain requirements which would make it certain that any controversial matter would come to a vote. There was an antifilibuster provision, for example.

However, due to the request from the majority leader, this language was stricken. Senator Symington, then acting chairman of the Armed Services Committee, indicated that he thought these controversial subjects should be brought to the Senate for a vote. He wrote me a letter stating that he had instructed the staff of the committee to inform the authors of the amendment when the use of Public Law 85-804 was contemplated. He also said that he would work with me to insure votes on such matters. Given that assurance, I struck the antifilibuster and automatic vote provisions from the legislation and it was passed.

Perhaps I was too trusting, for today we have a circumstance where it is possible that these resolutions of disapproval will be bottled up in the Armed Services Committee and not allowed to come to the floor for a vote.

I withheld offering these resolutions so that the committee could hold hearings and gather facts. It seemed that this was the proper thing to do—to allow the committee process to work. But the committee process will not work if the committee takes no action on the resolutions or fails to report them to the floor.

I hope that this will not be the case—that the committee will agree that the expenditure of nearly \$1 billion of tax funds is worthy of a vote by the Senate. Even if the committee should be in opposition to resolutions, certainly there should be a vote on the substance of the issue.

The taxpayers will be caught up in a legislative Catch-22 if the Senate is not given a chance to take up my resolution. Public Law 85-804 was amended to require congressional approval of proposals to grant financial relief to contractors if the amount exceeds \$25 million.

If the Senate and House take no action, the proposal is automatically approved. If either body adopts a resolution of disapproval the proposal is rejected. But how can the Senate carry out its responsibilities under the law if resolutions are introduced and bottled up in committee?

I submit that it would be unfair and undemocratic to prevent a rollcall vote on this matter.

I want to add a few words about the financial implications of the settlements for the two shipbuilders because I think all of us are concerned about the enormous losses which both of these contractors are taking and the larger losses that they would take if the resolutions are disapproved.

First let me say although Secretary Claytor implied at the time the agreements were announced that the companies faced catastrophic losses on their Navy contracts unless they were given financial relief, that argument has no basis in fact. Indeed, the Navy has reversed itself. It admits that neither company would face bankruptcy even if they had to absorb the full amount of the potential losses.

In other words, even if the resolutions were disapproved. This conclusion is fully supported by the Coopers and Lybrand and the Haskins and Sells audit reports ordered by the Navy for General Dynamics and Litton. It is true that the losses could be quite large. But it should be kept in mind that the Navy claims examiners rejected most of the shipbuilders claims. They rejected them because they concluded that the shipbuilders were responsible for most of the cost overruns.

The issue here is whether the shipbuilders or the taxpayers should have to pick up these losses. It is a difficult choice. But it would be completely unjustified in these cases to shift the responsibility for the cost overruns from the shipbuilders to the taxpayers.

Mr. Chairman and Senator Cannon, I think we have to recognize that these losses were estimated by the contractor. There is no other discipline on them. There is no counterestimate by the Navy or by any other expert body. They were estimated by the contractor. The contractor has every incentive to inflate those losses. They are the basis of a bargaining system between the Navy and the contractor.

The higher the potential losses the higher the settlement. In these cases they have every reason to make the losses seem as big as possible. In General Dynamics' case, if the losses have been overstated and there is an underrun, General Dynamics gets 50 percent and the Government gets 50 percent, so there is still a big incentive to exaggerate potential losses.

In Litton's case, if the losses have been overstated, Litton gets 80 percent so they have a very strong incentive for overstating the cost and the losses.

Let me make one important point, but it is one of considerable significance.

Look at General Dynamics and Litton's total financial position. I tried to do that in the limited time I had. The New York papers, Wall Street Journal, indicated this morning that General Dynamics sold last night at the close of the market at 88.5. That is close to its high for the year. That is almost 2½ times its low. The price of the stock increased greatly when this settlement was announced.

Litton closed only a small fraction below its high. Its high for the year was 27.75 reached a week ago. It closed at 26. Its low was at 11.75. These two firms are doing far better than the rest of the market.

General Motors, Textron, in each case there has been—the sale yesterday was only 50 or 60 percent above their low for the year compared to 150 percent for General Dynamics and Litton. They are doing better than McDonnell Douglas. They are doing better than Lockheed. In the judgment of the stock market which I think is the most expert objective evaluator of the future performance health of a firm, and we get that every day in the clearest objective terms, they feel both General Dynamics and Litton are doing better than they were early in the year, and they value their stock highly.

On that basis, they have been treated rather well with the proposal, and on the basis of the best estimates we can get by the experts who have been investigating their books, they can easily survive having to pay the full cost, and in my judgment they should pay the full cost.

The CHAIRMAN. Senator, we thank you very much for your statement. Again, we thank you for making the preparation to be here this morning. This matter comes in at this time because yesterday the House put some of the claims money in their bill.

We have your resolutions here, too. This matter had to come up one way or the other. Let me observe here, I certainly share with you the concern about the uncertainty of these contracts. It is one of the things we just must do more about in the field of military procurement, and I know, too, that we seem to have a better system in letting contracts for airplanes.

We used to have trouble with them, but not as much now. We have several members of our committee that are trying to get in this matter of procurement in depth, and I hope that next year we can make some headway—I am talking about military procurement as a whole.

Mr. Morgan, from North Carolina, is working on it, as is the Senator from Arizona, Senator Goldwater. I just hope we can do something on these claims. Mr. Duncan, Mr. Claytor, and Mr. Hidalgo, talented members of ability, worked hard on this, and they came up with this dollar figure.

It was not my idea to try to put the money in this bill even though we will consider that, of course.

It is not my idea to dodge your resolutions either. They are before the committee. May I ask you, I was not on the floor Monday, do you have some kind of plan about an amendment on the floor? You inquired of the Parliamentarian, which you certainly had a right to do.

We will have difficulty getting the bill passed. Everything is in it. It is just 2 weeks from the beginning of the fiscal year. Was it your idea to offer your resolution of amendment to the authorization bill?

Senator PROXMIRE. Yes. Mr. Chairman, I inquired of the Parliamentarian Monday on the floor, and I found out that I could not offer my resolution to the appropriation bill because it would not be germane and under the rules I could not do that.

I could offer it, however, as an amendment to any authorization bill. The timing here is very critical. As you know, we now have been blocked on the floor with the natural gas bill, the conference report, which is unamendable. And the deadline expires Tuesday on my resolution.

Those 60 days are up on Tuesday. I feel strongly that in view of the enormous size of this payment, the Senate should have an opportunity to act. This, of course, would be \$531 million over the settlement claim, if the Senate should have an opportunity to vote up and down on it.

Either this committee reports this resolution out, so we can have it on the floor Monday or Tuesday, or, unless the leader—and I have written the leader and asked him to do so—is able to make some legislation available which I can amend and get a vote on it.

The CHAIRMAN. All right. Thank you very much.

Senator CANNON. Thank you. I have been very much concerned about this matter, too, and I am sure every member of this committee has gone into this at some length with the Navy and the people who are directly involved, and it seems to me the recommendations they have made are about our only way out of it.

I do not think it is a question as you say if whether these companies can withstand this kind of a loss without going into bankruptcy. I think it is a question of can we get the items that we need under these contracts for the security of our country.

According to the case that was made here by the Secretary and his assistants, there is no way we can. We could be tied up in litigation for a 10-year period on this and not have the hardware that is really needed.

Senator PROXMIRE. If I could interrupt Senator Cannon, I disagree wholeheartedly in that. You can be tied up in litigation for a while, but Secretary Claytor and Secretary Hidalgo testified before the Joint Economic Committee that the court would require the shipbuilders to continue production. They have gotten an injunction before.

They can require them to continue. They would have to continue producing the ships. So we will get the ships. It is a question of whether or not the taxpayer or the company should bear the loss.

If the company, the contractor, will not accept the verdict of the Navy experts on its claim, the solution is to go to court or, as in this case, get the company to estimate their losses, and have the Federal Government, the taxpayer, take half of it.

I think that is a terribly bad precedent.

Senator CANNON. I disagree with you that we could force them to go ahead. I frankly do not think we could force them to go ahead.

Senator PROXMIRE. The Secretary of the Navy agrees with me.

Senator CANNON. I do not agree with you or the Navy either one if you both agree on that. I do not think they could be forced to go ahead in this kind of a situation by any court if they do not have adequate resources with which to do it. I do not believe that they have with this kind of a dispute hanging fire.

I am impressed here as well by a letter that Senator Pell has sent and, Mr. Chairman, I think this letter should be made a part of the record. But I would like to read a part of it.

The CHAIRMAN. I have just been handed this letter. You can put it in the record yourself, if you wish.

[The letter follows:]

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C., September 14, 1978.

Hon. JOHN C. STENNIS,
Chairman, Armed Services Committee, U.S. Senate,
Washington, D.C.

Dear MR. CHAIRMAN: I understand that the Armed Services Committee is meeting this morning to consider and possibly act on Senator Proxmire's resolutions to disapprove the shipbuilding claims settlements that are pending before the Congress under Public Law 85-804.

I believe that the settlement announced by the Navy and General Dynamics on June 9 is the only realistic option the government has to deal with the difficult problem presented by shipbuilding cost overruns. The alternative is to send the parties into a long and costly court battle which will seriously impair the nation's shipbuilding program. A disruption for any period in the 688 class attack submarine program will have a severe impact on our strategic preparedness. The nation needs these submarines, and it is important that Electric Boat get on with the business of building combat ready ships for our Naval fleet without the serious impairment of relations with the Navy which has resulted from the battle over cost overruns.

Consistent with the hard line taken by the Navy during the long negotiations, the settlement announced June 9 is truly the bottom line for both parties. An essential element of all Navy discussions with General Dynamics was the concept of a severe fixed loss as the key to any settlement. General Dynamics, with extreme reluctance, agreed to an unprecedented fixed loss of \$359 million, the largest ever assumed by a contractor in dealings with the Navy. I would also point out that the costly and traumatic claim process has led Electric Boat to take an entirely new approach to ship construction. The new shipbuilding management has taken decisive action to reduce overhead and increase productivity.

The resources of both General Dynamics and the Navy were tied up for months in order to reach a settlement which is fair to both sides. To disapprove the settlement simply does not make sense, from the standpoint of either the American taxpayer or national security. The General Dynamics settlement clearly does not create a bad precedent for the Navy because no sane contractor would choose the claim process merely to achieve the kind of relief provided by this settlement. I urge my colleagues in the strongest terms to reject the resolution of disapproval and permit the Navy and General Dynamics to implement this painful resolution to a difficult problem.

Warm regards.

Sincerely,

CLAIBORNE PELL.

Senator CANNON [reading]:

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Now, I personally am of this same opinion, and I listened very carefully, and I questioned the Secretary and his assistants on a good bit of this.

Senator Pell points out a disruption for any period in the 688 class of attack submarine program would have a very severe impact on our strategic preparedness.

I think it is a fact that the Navy does need these submarines. You say you can get them through the court process. I frankly do not believe that that kind of a process would work in this kind of a situation despite what your judgment is on it. To me, this is a very painful decision. I have had the unfortunate experience of going through that F-14 exercise which went way over cost and we had the problem of do we revise the contract or do we try to force the contractor into bankruptcy, in which event, you do not obtain the hardware. That was certainly the decision we had to make whether we would or would not get the hardware.

I think that is the key issue right here. I am impressed by the fact that the Navy has negotiated here what they contend is a fixed loss of \$200 million for Litton and \$359 million loss for General Dynamics.

Senator PROXMIRE. In the first place, we do not know what those losses are. They are estimated by the contractor who has an overwhelming incentive to make the estimate as big as he can. It is an estimated loss. Nobody can verify it. It is up to them to do it.

Furthermore, if they have overstated it and they come in under the loss, General Dynamics gets half the difference, Litton gets 80 percent of it, so they get paid the full cost of the settlement plus 80 percent of the underrun, and in the General Dynamics case the full cost and 50 percent of the underrun.

Senator CANNON. They do not get the full cost. They get paid the full cost in the case of Litton less the \$200 million loss. If that full cost figure is different, that is where they share in whatever saving occurs. But when you say they get their cost plus this amount, that is not correct. I do not know what your man is telling you, but we heard the testimony here and I think it is quite clear.

Senator PROXMIRE. Senator Cannon, what I am trying to point out here is the losses are estimates which come from a party which has a reason to be biased and we understand that they are estimates which may or may not be correct. To the extent it is exaggerated they benefit so they have every reason for doing that.

But the big point is there is no question—the Secretary of Navy, Mr. Claytor, Assistant Secretary, Mr. Hidalgo—all agree if they have to pay the full loss, they will not go bankrupt and will still be viable corporations. Even with the big loss, it is alleged they will be required to take under this negotiation, the stock market tells us the investors are investing in those companies because they think they are doing extremely well. After the settlement the stock went up sharply.

It is selling near their high for the year. So there is every objective indication we can get that these companies are doing well.

Furthermore, it is the precedent here. If we are going to establish a precedent where a contractor comes in and says he has a loss and wants to split it 50-50 with the Federal Government there will be on the Trident and on other weapons systems—much bigger claims than before.

We already have Newport News coming in. We have documentation of that, saying they want the same treatment. They want Public Law 85-804 treatment too even if they are not losing money at all. They may not get it or they may get it, but we are going down a dangerous path, and it is a mistake.

The clearest signal to the contractors would be make them pay too for the losses that are due to their incompetence and their mismanagement.

Senator CANNON. There was a court order in the case of Litton requiring them to go ahead and it required them to pay 91 percent of the cost. Now that figure, that requirement of the court, was more than the negotiated settlement is here.

As a result of the Navy's negotiation, the Government is paying 75 percent whereas under the court order Litton would have had to proceed but would have been able to receive 15 percent more from the Government.

Senator PROXMIRE. That was only a temporary order.

Senator CANNON. It was a temporary order but it was an order. You made the statement they could be required to go ahead and complete. That is true they could. The Government required them to proceed—not the Government—the court required them to proceed but it said you have to pay, you, the Government, have to pay 91 percent of these costs.

Senator PROXMIRE. What you are talking about is an injunction. There was no trial, no opportunity for the court to determine all the facts. The court temporarily, while the injunction was in force, required the Government to pay, as you say 91 percent of the cost. You are right about that, but it was a temporary action.

Senator CANNON. Let me read here for the record. This is my question:

Senator CANNON. Now one final point, Mr. Secretary. If you would go over again the cost we project the Government would incur under the court order based on the 91 percent. I want a dollar figure to compare to this \$447 million that the Government is paying. In other words, we have \$265 million in claims that your people say should probably be allowable and then \$182 million the Navy is proposing to assume of the additional cost of completion for total of \$447 million. If you had proceeded to finish the contract in accordance with the court order, what dollar figure does that equate to?

Mr. HIDALGO. It would have been \$300 million, sir, over ceiling. It equates to \$300 million.

Senator CANNON. And then you would still have been left with the litigation for the claim.

Mr. HIDALGO. With \$1 billion of claims.

Senator CANNON. But you would have had to litigate over a 10-year period.

Mr. HIDALGO. Exactly.

Secretary CLAYTOR. Senator Cannon, you understand that the \$300 million was not money paid to Litton, it was agreed to be Litton's to keep. That was not a cash settlement and in the litigation we might have had to pay another \$300 or \$400 or \$500 million over and above that. Also if we were 100 percent we would get that \$300 million back.

Senator CANNON. Assuming you had a company with assets so you could get it back.

Secretary CLAYTOR. That's right. We would get a judgment to get it back which is a different thing from having the money."

That is sort of the analysis.

Senator PROXMIRE. That's right. It seems to me that is exactly the way this should be handled. In this case what you are talking about is not a final definitive determination based on a trial, it is a temporary injunction. If the contractor did not accept the Navy's offer the dispute would then have to go to the Armed Services Board of Contract Appeals. If the Board's decision is appealed to the courts then there is a trial and a determination and the Federal Government may or may not get it back. If the Federal Government got less I would be satisfied. At least you would have had a trial to determine the facts. Now we don't know. All you have is a contractor estimating losses with every incentive to estimate them as big as possible and the Navy officials saying we will pay half the loss, you pay the other half. It seems very unsatisfactory for the taxpayer. You may be correct, the taxpayer may have to pay more, but then you would have a fair system. You would not be establishing a precedent where contractors estimate a big loss and Federal Government bails him out 50-50.

Senator CANNON. That is where you and I differ. I am not willing to take that gamble with the taxpayers' money. I think we have taken the best gamble with the taxpayers' money here because we have eliminated the prospective billion dollars in claims that has to be negotiated. We have eliminated the moneys that we would have to pay under that 91 percent. You said that would go to the Board of Appeals. That is not correct under that court order. That would not go to the Board of Appeals as I understand it.

Senator PROXMIRE. What we have not eliminated here is the precedent, the incentive that you give contractors in the future. If you think this is a bite of the apple you are going to have a bite of the watermelon. You will have a watermelon slice when you come along with Tridents and other more expensive weapons systems.

Senator CANNON. I don't agree a contractor is going to come in on the chance they can negotiate a \$200 million loss and engage in that course of conduct as a means of doing business.

Senator PROXMIRE. Newport News is coming in without a loss. They have a good point. Otherwise you have a situation in which you subsidize and bail out the inefficient contractor and the efficient contractor like Newport News is barred from the right kind of relief so again there is disincentive to be efficient.

Senator CANNON. I must say, while I agree with you, that is an unsatisfactory solution, it seems to me to be the best solution and that, of course, is a judgment that this committee has to make. I listened very carefully to the testimony—I don't know whether you heard the Secretary or Mr. Hidalgo.

Senator PROXMIRE. They testified before our committee at considerable length just the other day. You made a very strong point,

Senator Cannon, a series of points, but all I ask is that the full Senate have an opportunity to vote up and down on that. That was the purpose of the Byrd-Proxmire resolution.

Senator CANNON. I understand what you are saying but I, myself, in good conscience, could not vote to report that resolution out of this committee. I would have to oppose it in the committee, and I would oppose it on the floor.

Senator PROXMIRE. I would hope you would give us a chance to vote on the floor by reporting it out.

Senator CANNON. I can't vote to report it out of committee when I don't think it is right. We heard the testimony and we formed the judgment and I know that you came to a different conclusion.

Chairman STENNIS. Thank you, gentlemen, both of you. I understand Senator Proxmire has limited time. There are others here. Senator Hart, do you have some questions?

Senator HART. Yes, sir, Mr. Chairman.

Senator Proxmire, does your resolution not contain an implicit, perhaps even explicit conclusion that the Secretary of the Navy, Secretary Hidalgo and the others who negotiated this settlement were at least misfeasant in the conduct of their responsibilities?

Senator PROXMIRE. I am not sure what you mean by misfeasant.

Senator HART. They did not perform their office according to their oath of responsibility. Misfeasance, not malfeasance.

Senator PROXMIRE. I don't know about that technical aspect.

Senator HART. It is not a technical question.

Senator PROXMIRE. Misfeasant bothers me because I don't have your legal background but what concerns me is the Navy experts made a conclusion—that is, the Manganaro board in the *General Dynamics* case made a careful study over a period of many, many months and they came to a conclusion as to how much was the responsibility of the Navy and how much was the responsibility of the contractor. They recommended a settlement based on that for General Dynamics for \$125 million. In my view the Secretary was wrong, dead wrong, in not settling on that basis. It seems me to that would have been the healthy thing to do.

Senator HART. If he is wrong, as your resolution suggests he is, then you have a very serious problem here. It is not just that somebody made a judgment and made a wrong judgment. What your resolution suggests is that these people came very close to not performing their constitutional responsibilities, and that is a heavy judgment to make for us.

Senator PROXMIRE. I think that again and again we find, Senator Hart, you and I, we disagree with administration officials and in that disagreement I always try to give them the full benefit of the doubt. That is only fair. I hope people give me the benefit of the doubt when they disagree with me. But I wouldn't charge they were not earnest or honest and that they were not competent people. I just feel their judgment was different and wrong in this case and should be overruled by the Congress but I would not charge anything else.

I have great respect for Secretary Claytor. He and I have agreed on some things and disagreed on others and I think he is a fine Secretary.

Senator HART. Are there doubts in your mind about who is to blame or at fault with cost overruns? Do you assume it is 90 percent the contractor's fault, 100 percent the contractor's fault?

Senator PROXMIRE. I think there are many cases where cost overruns are the fault of the Navy, where they request changes, where there is lack of Government information supplied, where there is delay caused by the Navy. In such cases it is their fault. But I have great faith also in the Manganaro Board. I think they are responsible people and I think their findings deserve respect and support. They concluded the Navy was about 30 percent responsible in these cases. Maybe that was wrong but I would be inclined to rely on that.

Senator HART. It seems to me that after several years of work on this, we have two courses of action. This whole shipbuilding problem has become a knot and a very big knot. What the Navy is recommending to us, based on the hearings and testimony that Senator Cannon cited, is that we cut the knot, slice it, based on some calculations they have made. What you are suggesting, it seems to me, is that we go in and unravel the knot; start at the beginning and take it all apart. And I take it that it is your position based on what you said to Senator Cannon, that if we went through the process of unraveling the knot and it turned out the taxpayers were more liable than they are now, that they ought to pay more, is that correct?

Senator PROXMIRE. Absolutely. At the same time I feel confident the likelihood is that the taxpayers would owe less. But I do think it is true that it is harder. It takes longer and it is more painful, maybe more expensive, but I think it is the right way to go.

If you don't do that you are establishing a bad precedent. We are always going to cut knots and cutting the knot is going to be based on the recommendations of the contractor which I tried to point out are understandably biased. If I were in their position I would be inclined, too, to do everything to make my costs as big as possible.

Senator HART. Is it your expectation that the taxpayers would suffer less with the unraveling approach?

Senator PROXMIRE. Far less.

Senator HART. Is that based on your assessment of the facts of the case or on the human nature argument you are making that it is human nature if you are doing the estimating to estimate your costs high.

Senator PROXMIRE. It is based on the facts of the case. No question about it in this case. Having considered the Manganaro recommendations and recommendations of other professionals that looked at the history of this it seems we would be far better off to follow a tough, strong course here even though there might be some problems. There is no danger that the ships will not get built. We can get an injunction and get production. We are running a risk of paying quite a bit more but I think the chances are overwhelming it would be less and in any event I think that is the way to go.

Senator HART. One final point. If you have looked at the facts and you are convinced as you are that the taxpayers will pay more under this procedure than they should, then we go back to the concern I already mentioned: that is, that others in positions of responsibility have looked at the same facts and reached a different conclusion and, therefore, they are coming very close to dereliction of duty. How can two people look at the same set of facts and come out that far apart?

Senator PROXMIRE. I look at the acts and I consider the position taken by people like Rickover and other admirals as well as the people who have spent many, many, many months of studying this and I

come to that conclusion. But I can understand how the others may have a different view. You may be right that I should consider more carefully the motivation and the efficiency of the Secretaries. You are in a much better position to judge that because you judge them not just on this particular instance but again and again they come before you constantly over the years. You have been on this committee for some time as have other Members so perhaps you are in a better position to judge them overall.

In this case because it is an instant case I try not to do anything but assume they operate under the best of motives but their judgments are different.

Senator HART. If you were right about the facts, then these people would come close to very questionable behavior, I think. That is what troubles me.

Senator PROXMIRE. We have had extensive hearings on this.

Chairman STENNIS. Thank you, Senator.

Senator Tower?

Senator TOWER. I have no questions, Mr. Chairman.

Chairman STENNIS. Senator McIntyre?

Senator McINTYRE. No questions.

Chairman STENNIS. Senator Proxmire, do you have anything else?

Senator PROXMIRE. I want to thank you very much once again, Mr. Chairman, for inviting me in. I appreciate this. This is an extraordinarily fair thing to do in view of the lateness of this procedure but I do hope you will give every consideration of reporting this measure to the floor even if you report it negatively so Senators can have an opportunity to vote on it.

Chairman STENNIS. What date did you give?

Senator PROXMIRE. Unfortunately the deadline is the 19th for the first one and on the second one the 22d.

Chairman STENNIS. The 19th is next Tuesday.

Thank you for coming in. We appreciate it.

Gentlemen, I think members will be here in a few minutes—I just feel the need to talk this whole problem over with committee members unofficially, not in a committee meeting. We are Senators before we are members of this committee and I did invite the Secretary of Defense to be here at 11 o'clock. He wants to put some additional money items in the authorization bill. So, of course, we will hear him.

Senator McINTYRE. Has the Secretary testified before the House?

Chairman STENNIS. Yes; he testified yesterday before the House committee, but he wanted to testify before our committee, and, of course, we always hear him. I think some other members of the committee will be here shortly. We will just suspend our committee meeting now for 20 minutes, and we will talk some things over here.

I am going to ask you visitors to excuse yourselves, please.

The committee will officially reconvene to hear Secretary Brown in 20 minutes.

[Whereupon, at 10:15 a.m., the committee recessed, to reconvene at 10:35 the same day.]