

1 WHISTLEBLOWER RETALIATION AT THE HANFORD NUCLEAR SITE

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3 TUESDAY, MARCH 11, 2014

4 United States Senate,  
5 Committee on Homeland Security and Governmental Affairs,  
6 Subcommittee on Financial and Contracting Oversight  
7 Washington, D.C.

8 The Subcommittee met, pursuant to notice, at 11:12  
9 a.m., in Room 628, Dirksen Senate Office Building, Hon.  
10 Claire McCaskill, Chairman of the Subcommittee, presiding.

11 Present: Senators McCaskill and Johnson.

12 OPENING STATEMENT OF SENATOR MCCASKILL

13 Senator McCaskill. This hearing will now come to  
14 order.

15 The waste treatment plant is a Federal nuclear facility  
16 in Hanford, Washington that is supposed to convert  
17 hazardous, highly radioactive nuclear waste into a more  
18 stable and safe form for permanent disposal.

19 Last June, I held a hearing on contract management by  
20 the Department of Energy, which looked specifically at the  
21 WTP, the waste treatment plant, at Hanford because the  
22 plant, which is under a design and construction construct in  
23 terms of how the contracts were given, has a litany of cost  
24 overruns and schedule delays.

25 Today, however, we are here to examine another aspect

1 of the plant--allegations that the Department of Energy and  
2 its contractors, Bechtel and URS, are engaging in  
3 retaliation against employees who raise concerns about the  
4 safety of the plant's design and construction.

5         The Department of Energy has a specific nuclear safety  
6 policy that states, "It is the policy of the Department of  
7 Energy to design, construct, operate and decommission its  
8 nuclear facilities in a manner that ensures adequate  
9 protection of workers, the public and the environment."

10         However, Federal agencies that have looked at safety  
11 issues at Hanford have repeatedly found key safety-related  
12 weaknesses, including the lack of quality assurance, safety  
13 culture and Federal oversight.

14         Most recently, URS Manager for Environmental and  
15 Nuclear Safety, Donna Busche, has alleged that she was fired  
16 because she raised concerns that basic nuclear safety  
17 fundamentals had not been considered from the beginning of  
18 construction.

19         Another official associated with the waste treatment  
20 plant, the Manager of waste treatment plant Research and  
21 Technology, Dr. Walter, Tomasaitis, who testified before  
22 this Subcommittee in 2011, also claims to have suffered  
23 professional damage, including termination, after raising  
24 major nuclear safety issues.

25         These individuals and many more who have chosen to

1 remain anonymous have brought their concerns forward to  
2 their employers, to DOE and to Congress.

3 I do not think anyone wants to be a whistleblower.  
4 Reporting your colleagues, who may be your friends, for  
5 actions that look like waste, fraud, abuse or a danger to  
6 others is not an easy decision for most people, and life  
7 after you have blown the whistle is not easy either.

8 But the job that whistleblowers do is tremendously  
9 important and valuable. That is why when courageous men and  
10 women feel compelled to speak out we do not want to silence  
11 them. We want to give them a process that allows them to  
12 report that information without fear of retaliation.

13 Before this hearing began, I took the opportunity to  
14 hear from Ms. Busche and Dr. Tomasaitis. I also heard from  
15 Mr. Carpenter, who represents many more whistleblowers  
16 through his work at Hanford Challenge. They describe an  
17 atmosphere in which they and other individuals faced severe  
18 retaliation for raising concerns about Hanford.

19 Whether Ms. Busche or Dr. Tomasaitis or any of the  
20 other individuals that have come forward to this  
21 Subcommittee is right about the science behind the safety at  
22 Hanford is not a matter on which I or the people in the room  
23 at this hearing will be able to reach a final conclusion  
24 about.

25 But the fact that Ms. Busche and Dr. Tomasaitis were

1 fired, despite being known to have raised their concerns,  
2 has created the appearance of a chilled atmosphere to safety  
3 and the belief of employees that management suppresses  
4 technical dissent. That demands attention by Congress, and  
5 it certainly demands attention by the people who have  
6 oversight over this project.

7 Today, we will hear from two witnesses from the  
8 Department of Energy, with responsibility for the safety  
9 culture at Hanford. We will also hear from Bechtel, the  
10 prime contractor at the waste treatment plant, and URS, the  
11 subcontractor to Bechtel, who is the employer of both Ms.  
12 Busche and Dr. Tomasaitis.

13 I thank the witnesses for being here and look forward  
14 to their testimony.

15 And we will begin with Mr. Eckroade and Mr. Moury. I  
16 will introduce both of you, and you can take your oath.

17 And the reason I am a little frantic is that we are  
18 going to start votes at 11:30, which is really going to mess  
19 this up, and this is going to prolong the hearing in a way  
20 that did not seem efficient to me.

21 And, since this is a Subcommittee about efficiency and  
22 effectiveness in government, it is hard for me to  
23 accommodate what seems to me an antiquated notion that  
24 members of the government cannot sit at the same table with  
25 contractors. That flies in the face of the reality that our

1 government is filled with contractors working side by side,  
2 sometimes indistinguishable from each other in terms of  
3 their work function and what they are doing. The notion  
4 that we have to have two tables to make sure the government  
5 people do not have to intermix with the company people seems  
6 to be somebody holding onto some notion that makes no sense  
7 in terms of today's government and its operation.

8 But I know you two are not responsible for that  
9 decision, so I will not yell at you. I will save my wrath  
10 for the person who actually made that decision, which will  
11 come at a later time.

12 Mr. Eckroade is Deputy Chief of Operations, Office of  
13 Health Safety and Security at the U.S. Department of Energy.  
14 Mr. Eckroade previously served as Principal Deputy Chief for  
15 Mission Support Activities in the Office of Health Safety  
16 and Security and Director of the Office of Independent  
17 Oversight.

18 Matt Moury is Deputy Assistant Secretary for Safety,  
19 Security and Quality Programs, Environmental Management at  
20 the U.S. Department of Energy, where he executes operational  
21 safety and awareness programs and oversees quality assurance  
22 programs. Mr. Moury previously spent almost 20 years at the  
23 Defense Nuclear Facilities Safety Board, which we referenced  
24 earlier, where he led the Board's efforts to ensure the  
25 Department of Energy's nuclear stockpile and defense nuclear

1 research operations met health and safety standards.

2 Thank you both for being here. It is the custom of  
3 this Subcommittee to swear all witnesses, if you would  
4 stand.

5 Do you swear that the testimony that you are about to  
6 give before this Subcommittee will be the truth, the whole  
7 truth and nothing but the truth; so help you, God.

8 Mr. Eckroade. I do.

9 Mr. Moury. I do.

10 Senator McCaskill. Thank you both.

11 And we will begin with you, Mr. Eckroade.

12 Am I pronouncing your name correctly, I hope?

13 Mr. Eckroade. Yes, Madam Chairman, you are.

14 Senator McCaskill. Thank you.

1 TESTIMONY OF BILL ECKROADE, DEPUTY CHIEF OF  
2 OPERATIONS, OFFICE OF HEALTH SAFETY AND SECURITY,  
3 U.S. DEPARTMENT OF ENERGY

4 Mr. Eckroade. Madam Chairman, Ranking Member Johnson  
5 and members of the Subcommittee, thank you for the  
6 opportunity to provide testimony regarding safety culture  
7 and related issues at the Department of Energy's Hanford  
8 site, waste treatment and immobilization plant, or WTP.

9 I would like to take a brief moment to describe the  
10 unique role of the independent oversight program within the  
11 Office of Health Safety and Security, which has conducted  
12 safety culture reviews at Hanford and elsewhere.

13 The mission of this program is to provide DOE line  
14 management and Congress and other stakeholders with an  
15 independent evaluation of the effectiveness of DOE policy  
16 and line management performance in safety and security.  
17 This mission is accomplished by conducting performance-based  
18 assessments designed to verify the Department's security  
19 interests are protected, that the Department can effectively  
20 respond to emergencies and the Department's operations are  
21 conducted in a manner that protects its employees, the  
22 public and the environment.

23 Our team has completed two safety culture assessments  
24 at WTP--one in 2010 and one in 2012. These assessments  
25 included interviews with employees of the Office of River

1 Protection, or ORP, and the contractor, Bechtel National,  
2 Incorporated, as well as a detailed review of their safety  
3 programs, processes and procedures. Detailed reports of  
4 these assessments and their recommendations have been  
5 provided to the Committee, and I will summarize their  
6 findings briefly.

7 In the 2010 assessment, we found that most personnel  
8 who were interviewed expressed that their managers  
9 encouraged a questioning attitude and that they were  
10 comfortable with raising safety concerns. However, some  
11 individuals believed that there was a chilled environment  
12 that discouraged reporting of safety concerns, and some BNI  
13 employees expressed fear about retaliation.

14 Our report contained a number of detailed  
15 recommendations for both ORP and BNI. Among those  
16 recommendations were that BNI strengthen procedures for the  
17 resolution of nuclear safety concerns, identify mechanisms  
18 to strengthen the trust among the workforce and better  
19 communicate information to employees.

20 Two years later, in 2012, we performed a second  
21 comprehensive assessment to measure the state of the safety  
22 culture at WTP. For this assessment, we engaged external  
23 independent experts with extensive experience in safety  
24 culture reviews to complement the highly experienced nuclear  
25 safety expertise on our staff. That helped us more



1 effectively diagnose the safety culture and attributes of  
2 WTP and learn things we did not learn in our 2010  
3 assessment.

4 In 2012, we found that most personnel at WTP believed  
5 that safety was a high priority. However, a significant  
6 number of Federal and contractor staff expressed reluctance  
7 to raise safety or quality concerns. Fear of retaliation  
8 was identified in some BNI groups.

9 Employee willingness to raise safety concerns without  
10 fear of retaliation is an essential element of a healthy  
11 safety culture.

12 Our conclusion was that significant management  
13 attention was needed to improve safety culture at WTP. We  
14 found that, while managers espoused support for a healthy  
15 nuclear safety culture, they did not have a full  
16 appreciation of the current culture or the nature and level  
17 of effort needed to foster a healthy safety culture.

18 We are currently conducting a follow-up assessment of  
19 safety culture at WTP, our third review. That review will  
20 be completed this spring and a written report presented to  
21 management. We look forward to sharing the results of that  
22 assessment with the Committee when it is complete.

23 A strong safety culture starts with strong, ongoing  
24 support by the most senior leaders of the organization. We  
25 want to assure the members of the Subcommittee that this is

1 a very high priority for Secretary Moniz and Deputy  
2 Secretary Poneman.

3 With the permission of the Subcommittee, I would like  
4 to introduce for the record a copy of a September 20, 2013  
5 memorandum signed by both the Secretary and Deputy, titled  
6 "Personnel Commitment to Health and Safety through  
7 Leadership, Employee Engagement and Organizational  
8 Learning."

9 The memorandum provides a visionary leadership and a  
10 deep personal commitment to building an organization we can  
11 all be proud to work in. A vibrant and healthy  
12 organizational culture will help the Department to achieve  
13 its national security, scientific and environmental missions  
14 safely and securely. We are committed to helping the  
15 Department achieve this goal.

16 I would be glad to answer any questions that the  
17 Committee may have.

18 [The prepared statement of Mr. Eckroade follows:]

1           Senator McCaskill. Thank you very much.

2           Mr. Moury.

1 TESTIMONY OF MATT MOURY, DEPUTY ASSISTANT  
2 SECRETARY FOR SAFETY, SECURITY AND QUALITY  
3 PROGRAMS, ENVIRONMENTAL MANAGEMENT, U.S.  
4 DEPARTMENT OF ENERGY

5 Mr. Moury. Well, good morning. Thank you, Chair  
6 McCaskill, Ranking Member Johnson and members of the  
7 Subcommittee.

8 I am here today to discuss the Department of Energy's  
9 efforts to improve workplace safety culture. In the  
10 interest of time, with your permission, I would like to give  
11 a brief summary of my testimony and then submit my full  
12 testimony for the record.

13 Creating and maintaining a robust safety culture,  
14 including a workplace where all employees feel free to raise  
15 concerns, is essential to achieving our mission at the  
16 Hanford site in Washington State and across the DOE complex.

17 As you mentioned earlier, in terms of my background, I  
18 am an engineer by training, and I have 30 years of  
19 experience in the nuclear field, including almost 20 years  
20 at the Defense Nuclear Facilities Safety Board. I also  
21 began my career as a nuclear trained submarine officer and  
22 recently retired with the Captain in the Navy Reserves.

23 I spent much of my career working to ensure adequate  
24 protection of the health and safety of the workers and the  
25 public. At DOE, my office executes operational safety and

1 awareness programs.

2         At DOE, we believe safety culture is best described as  
3 an organization's values and behaviors that are modeled by  
4 its leaders, internalized by its members and serves to make  
5 the safe performance of work the overriding priority to  
6 protect the workers, the public and the environment.  
7 Improving safety culture across the Department remains a top  
8 priority.

9         In September of last year, as Mr. Eckroade mentioned,  
10 the Secretary and Deputy Secretary of Energy reaffirmed  
11 their commitment to health and safety in a memorandum to all  
12 employees. The memo recognized that DOE can advance its  
13 challenging missions only if it provides all employees a  
14 safe and healthy work environment and fosters a culture in  
15 which workers at all levels are empowered to raise problems,  
16 participate in the development of solutions and are engaged  
17 appropriately in decisions that affect their work.

18         In addition, DOE has taken actions to improve safety  
19 culture at Hanford. Shortly after his confirmation, the  
20 Secretary of Energy traveled to the site to gain a firsthand  
21 understanding of the technical issues at the waste treatment  
22 plant. The Secretary continues to engage DOE senior  
23 leadership and employees to underscore the importance of a  
24 robust safety culture.

25         In particular, the efforts taken over the last two

1 years by DOE to improve safety culture at Hanford are  
2 extensive and varied.

3 First, new leadership has been put in place. The new  
4 leadership has the qualifications, experience and safety  
5 values to put the waste treatment plant on a sustainable  
6 path.

7 Second, the Department clarified formal roles and  
8 responsibilities for management in the waste treatment plant  
9 project execution plan, which is the DOE document that  
10 communicates to the contractor project objectives and how  
11 they will be accomplished. The Department also revised the  
12 waste treatment plant contract performance evaluation  
13 measurement plan to better balance the priorities and  
14 emphasize quality and safety culture elements.

15 Third, DOE implemented a safety culture oversight  
16 process at the waste treatment plant. Senior management  
17 meets regularly with contractor management to formally  
18 review the contractor's progress in executing its safety  
19 culture improvement action plan. Likewise, senior  
20 headquarters managers meet with ORP managers to discuss  
21 their progress and the progress of their contractors.

22 Fourth, the Department designed training to assist in  
23 reinforcing a positive safety culture and engaged in an  
24 extensive effort to provide this training. Beginning in  
25 December 2011, a team of Federal and contractor subject

1 matter experts from across the Department began to design,  
2 develop and deliver a course on safety culture and provided  
3 that training to more than 1,800 of our senior Federal and  
4 contractor leaders.

5 Rules and slogans do not drive culture change. Leaders  
6 drive this change, personally. Leaders must recognize the  
7 message that their actions will convey to their employees.  
8 This course was designed to provide the tools necessary for  
9 leaders to improve our safety culture.

10 Finally, the Department is working to strengthen the  
11 avenues to address issues raised by contractor and Federal  
12 employees. A comprehensive issues management system has  
13 been established at ORP to ensure that new and previously  
14 identified issues are addressed and tracked to closure.

15 The Department has also strengthened the Hanford  
16 Employee Concerns Program, hired a new Employee Concerns  
17 Manager at Hanford and continues to administer its Differing  
18 Professional Opinion process, both of which provide  
19 additional avenues for employees to raise issues.

20 Madam Chairman, with respect to claims of whistleblower  
21 retaliation by contractors, let me be clear. DOE is  
22 strongly committed to a workplace where all workers, both  
23 Federal and contractor employees, are free to speak out.  
24 They are free to voice concerns or lodge complaints without  
25 any fear of retaliation. Contractors are statutorily and

1 contractually bound not to retaliate against employees for  
2 protected whistleblower conduct.

3 While I cannot speak to the specifics of the claims  
4 under review, DOE was not asked to and did not approve Ms.  
5 Busche's recent termination. This termination has raised  
6 questions about the potential of an improper reprisal for  
7 having raised health, safety or other protected concerns.

8 For this reason, the Department has asked the Office of  
9 the Inspector General to review the circumstances  
10 surrounding the termination of Ms. Busche. The Department  
11 will take appropriate action based on the outcomes of any IG  
12 investigation.

13 In conclusion, while the Department has undertaken a  
14 broad array of activities to improve its safety culture,  
15 there still work to be done. Safety culture is a continuum,  
16 and we continue to move along this continuum as we strive to  
17 improve.

18 We recognize this is an ongoing process, a journey, not  
19 a destination and one which calls for continuous  
20 improvement. A safety culture built on these principles  
21 requires sustained effort by the Department's leadership and  
22 senior managers. The Department remains fully committed to  
23 this effort.

24 Madam Chairman, this completes my comments. I would be  
25 happy to answer your questions at this time.



1 [The prepared statement of Mr. Moury follows:]

1           Senator McCaskill. Thank you both, and thank you both  
2 very much for being here. We appreciate it very much.

3           I, very rudely, blew right past my colleague's and  
4 friend's, Senator Johnson's, opening statement. So I am  
5 going to defer my questions and allow him to go first in the  
6 spirit of bipartisan cooperation that we try to work on in  
7 this Committee.

8           Senator Johnson. Nothing rude about it. I took no  
9 offense. I know we are trying to hustle through this. So I  
10 appreciate you letting me ask some questions.

11           Mr. Eckroade and Mr. Moury, both of you are talking  
12 about studies and processes and all kinds of, no offense,  
13 bureaucratic gobbledygook.

14           What I want to get to is I want to find out what  
15 control is in place right now. You are the customer. You  
16 should be in control of this process.

17           What should someone like Ms. Busche do? What course of  
18 action should she be taking, and what kind of protections  
19 are available to her in the Department of Energy, currently,  
20 Mr. Moury?

21           Mr. Moury. Well, she should be--as I mentioned  
22 earlier, the Department is fully committed to her being able  
23 to raise any issue that--

24           Senator Johnson. What was the first step she should  
25 have taken?

1           Is there somebody in the Department of Energy, somebody  
2 at the site, where somebody like Ms. Busche could go to and  
3 then really be able to speak very freely and kind of  
4 establish, hey, listen, I am a whistleblower; I need some  
5 protection?

6           Mr. Moury. Well, I mean there is certainly a series of  
7 steps she can go through to elevate her concerns, first,  
8 starting with her line organization, the people that she  
9 works for.

10          If she does not achieve satisfaction through them, I  
11 mean, clearly, the best position we would be in is if the  
12 Department took those issues and a contractor took those  
13 issues, tracked them, worked them to closure and  
14 communicated the closure of those issues.

15          Senator Johnson. Okay, but that did not happen.

16          So, if you are in a position as a whistleblower--

17          Mr. Moury. So, if that did not happen--

18          Senator Johnson. --you end up having to go to the  
19 customer, the government. What system is in place right now  
20 to address that type of situation?

21          Mr. Moury. Well, there are a number of different  
22 programs that are available that--

23          Senator Johnson. Well, there is a problem right there--  
24 --a number of different programs.

25          I mean, is there one specific approach that she should

1 have taken?

2 Is there somebody in the Department of Energy  
3 overseeing that contract that she could have gone to, that  
4 everybody from the contractor base knows that if I have got  
5 a serious safety concern I go to this office right there to  
6 get this thing taken care of?

7 Mr. Moury. Well, the next step would be to go the  
8 Employee Concerns Program that is out at the waste treatment  
9 plant that is run by the Richland office. It is a combined  
10 Employee Concerns Program. We have expended an incredible  
11 amount of time upgrading that program, as I mentioned  
12 earlier in my statement. So that would be the next, next  
13 step.

14 How she pursues her issues is really up to her. It is  
15 up to the individual. She can then take it to the  
16 headquarters and go through the Department of Energy's  
17 program, or she can go directly to the Department of Labor,  
18 if she feels the need to raise her issues through those  
19 programs.

20 Senator Johnson. Do you know if she availed herself of  
21 any of those programs?

22 Mr. Moury. I am not aware of her availing herself of  
23 the Hanford Employee Concerns Program. I do know that she  
24 has used the Department of Labor's program. But other than  
25 that, I would have to get back to you with more details.

1           Mr. Moury. Okay. Mr. Eckroade, can you add anything  
2 to that?

3           Mr. Eckroade. Ms. Busche, in the last couple of years,  
4 has used the DOE headquarters Employee Concerns Program a  
5 number of times. I am familiar with a couple of different  
6 employees concerns that she has sent forward. Most dealt  
7 with her concerns with actions of her managers that appear  
8 to be retaliatory in nature.

9           But she did use the mechanisms that were available to  
10 her to share her concerns, and I was aware of some of those,  
11 as well as other managers in the Department of Energy.

12           Senator Johnson. Now was she in a unique position in  
13 terms of safety within the site, where her management, those  
14 contractors, had to consult with the Department of Energy,  
15 the customer, prior to her dismissal?

16           Mr. Moury. The Department was not consulted nor did we  
17 approve the termination of Ms. Busche.

18           Senator Johnson. But was she in a position where  
19 according to the contract, according to the rules, that she  
20 was supposed to--that the Department of Energy should have  
21 been notified prior to her dismissal?

22           Mr. Moury. I am not an attorney. As I mentioned  
23 before, I am an engineer, not a contracting officer. I am  
24 not aware of the specifics of what was required prior to URS  
25 terminating Ms. Busche.

1           Senator Johnson. Well, that would be a pretty  
2 significant control, I would think, from the customer on  
3 their contractor--that if you have got key safety positions,  
4 that prior to anybody--you know, if one of those safety  
5 officers is raising an issue, prior to any termination or  
6 any type of action being dealt with that employee, the  
7 Department of Energy would have to be consulted and would  
8 have to be brought into that process.

9           I mean, does that control exist?

10          Mr. Moury. I am not familiar with that specific  
11 element of the contractor. What I would like to do with  
12 your permission is to take that question for the record and  
13 provide you with an answer at a later date.

14          Senator Johnson. Okay. Mr. Eckroade, do you have--are  
15 you aware of a particular control in place through the  
16 Department of Energy, governing these contracts, of  
17 employees of the contractor having a heightened status and  
18 because safety is such a huge issue, that the contractor  
19 must consult with the customer, the Department of Energy,  
20 prior to taking any employer action against an employee?

21          Mr. Eckroade. Just like my colleague, Mr. Moury, I am  
22 not a lawyer as well, and I am not familiar with any  
23 departmental policy that would govern the provision that you  
24 just mentioned.

25          Senator Johnson. Okay. Can you point--because, again,

1 we have talked about all these studies. You were going to  
2 say, specifically, this is what we have done. I just did  
3 not hear any specifics.

4 I heard, like I say, studies, processes, formal review  
5 systems.

6 I mean, specifically, what kind of controls are in  
7 place to afford whistleblower protection, to ensure that  
8 people who have legitimate safety concerns, where those  
9 concerns are adequately aired and addressed?

10 Mr. Eckroade. I will just talk about my office.

11 The one thing that the Department has done is really  
12 become aware of the importance of a healthy safety culture  
13 in its organizations. A few years ago, we kind of had the  
14 awakening when Mr. Tomasaitis raised his issues and he was  
15 removed from his position and the Defense Board raised  
16 concerns, and that was the beginning of our and my office's  
17 first review of safety culture.

18 We have learned about safety culture and how to assess  
19 it, but the Department growing its competencies in this area  
20 as we understand the results of safety culture reviews. We  
21 brought in external experts from the Nuclear Regulatory  
22 Commission, who are really helping us understand this very  
23 different way in aspects of safety, including things such as  
24 behavioral sciences that really help inform us about how we  
25 have to interface and communicate with our employees much

1 better.

2           Although the Department has not reached maturity in  
3 healthy safety culture, we are clearly learning the  
4 importance of it and growing in our abilities to manage it,  
5 but we still have a lot of problems left to manage.

6           Senator Johnson. The Department has been around how  
7 many years? The Department of Energy--when was it created?

8           Mr. Eckroade. Well, if you go back to the Manhattan  
9 Project, a long time.

10          Senator Johnson. And it has been overseeing these  
11 nuclear waste sites for how many years?

12          Mr. Eckroade. Well, over 50 years.

13          Senator Johnson. And so now you are saying that the  
14 Office of Health Safety and Security, two years ago, was  
15 just really kind of coming into understanding and dealing  
16 with safety and security issues.

17          Mr. Eckroade. Right. Well, the whole Department has  
18 really had an awakening since the 2010 time frame. We did  
19 not stick our heads in the sand. We kind of ventured out to  
20 try to learn about this. And we are learning, and we are  
21 growing, but we are not mature.

22          Senator Johnson. I appreciate that you had an  
23 awakening two years ago, but what is shocking, literally--I  
24 mean, I have been in business, and trust me, frequently,  
25 because of governmental actions, things like OSHA,



1 businesses have been concerned about safety and security for  
2 decades. It has been a top priority within the private  
3 sector.

4 It is a little mind-boggling and a little jaw-dropping  
5 that within the Department of Energy, overseeing an  
6 incredibly complex--I will give you that--very difficult  
7 issue.

8 I mean, I would not have to grapple with this. It has  
9 really been the last couple of years that we are kind of  
10 pulling our heads out of the sand and going, boy, you know,  
11 we really ought to take a look at the safety and security  
12 concerns.

13 I mean, I am just saying--just a commentary on that.

14 Mr. Eckroade. Just one comment, if I could, sir. The  
15 Energy Department has a very strong technical safety  
16 program. We have our own internal regulations that drive a  
17 lot of very good aspects of the occupational safety and  
18 health of our employees, and we really had that awakening  
19 about 20 years ago.

20 The issue of safety culture is very different. It is a  
21 new part of kind of the study of safety, and this is an area  
22 that we are late to.

23 Senator Johnson. And what I am saying is in business  
24 the idea of a safety culture is not new, not by any stretch  
25 of the imagination. You have to have specific controls so

1 that your employees and people that work with you know  
2 exactly what they need to do to raise safety concerns so  
3 they can be addressed very quickly. That is what has to  
4 happen.

5 But thank you, Madam Chair.

6 Senator McCaskill. Thank you.

7 Assuming there is 10 minutes left on the vote, so I am  
8 going to go ahead and go.

9 Senator Johnson. Do you want me quick do it and come  
10 back?

11 Senator McCaskill. That would be great.

12 Senator Johnson. Okay.

13 Senator McCaskill. She was a key personnel. She is  
14 still listed on the contract as key personnel--Ms. Busche.  
15 And, as key personnel, she could not be fired without DOE  
16 approval.

17 We know that happened. We know she was fired without  
18 DOE approval. What is the recourse DOE has against the  
19 contractor for doing that?

20 Mr. Moury. Well, Bechtel provided to the Department a  
21 letter that said they were going to be changing the key  
22 personnel list, adding to and removing one. However, having  
23 said that, at no time was the Department asked or approved  
24 the dismissal of Ms. Busche.

25 And, as I mentioned before, her dismissal did raise

1 some concerns about reprisal for the fact that she had been  
2 raising issues. So that is why the Department has taken the  
3 step to engage the IG to take a look at the circumstances  
4 surrounding her removal, and if, in fact, reprisal is found  
5 to exist, then the Department will take action.

6 Senator McCaskill. And what would that be?

7 Mr. Moury. I do not know exactly what those actions  
8 would be. They would be dependent on the results of the  
9 review. I can get back to you with the very specifics about  
10 the actions or the steps that they could take.

11 Senator McCaskill. Does it surprise you that they, two  
12 weeks after the Secretary, who I am a big fan of, Secretary  
13 Moniz--two weeks after he signed the memorandum about safety  
14 and a culture of safety, that they would choose that time to  
15 get rid of Dr. Tomasaitis and then just a few months later  
16 fire Ms. Busche?

17 Does that seem to be the actions of a contractor that  
18 is concerned about a culture that welcomes whistleblowers?

19 Mr. Moury. I do not know the specifics of Ms. Busche's  
20 termination. I believe you will have to ask the next panel  
21 to get into some of the specifics of why she was fired.

22 Senator McCaskill. I am sure that we will not get into  
23 the specifics because I am sure that they will say it is in  
24 litigation.

25 Mr. Moury. We have certainly made it very clear to our

1 contractors that reprisal against whistleblowers or people  
2 raising issues is totally unacceptable. We have different  
3 processes available to us if we do find that retaliation has  
4 occurred.

5 Senator McCaskill. That is what I am going to really  
6 watch carefully--

7 Mr. Moury. That also includes award fees.

8 Senator McCaskill. --you know, because I just--you  
9 know, you did the report in 2012. Now you are doing another  
10 one. You have called the IG. Meanwhile, the money keeps  
11 flowing, costs keep escalating, performance bonuses keep  
12 being given.

13 You know, at some point in time, the customer here  
14 needs to do something other than ask for another report  
15 because, clearly, it does not appear that even the Secretary  
16 of Energy issuing a memorandum had much of a chilling effect  
17 on the company doing what they had to know was going to be  
18 too high profile dismissals. There are no two people at  
19 that plant that had a larger profile for having the courage  
20 to stand up on technical safety issues than those two  
21 people.

22 Would you disagree with that statement, either one of  
23 you?

24 Mr. Moury. No.

25 Senator McCaskill. So they--after the Secretary of

1 Energy, the most powerful person in the country in regards  
2 to their contract, signs a written memorandum basically  
3 saying, we cannot have this kind of culture, they say, you  
4 know what; we are going to get rid of the two biggest,  
5 highest profile whistleblowers in the whole Hanford  
6 treatment facility.

7 And then let me ask you about the next piece of this.

8 Have you all discussed--and this may be for someone  
9 other than the two of you, but--this notion that contractors  
10 can litigate on our dime?

11 Do you know how much we have forwarded them for legal  
12 costs at this point surrounding the dismissal of these two  
13 people?

14 Mr. Moury. I do not have that information with me. We  
15 can provide that information to you at another time.

16 Senator McCaskill. The notion that they defend  
17 themselves without telling you they were firing her--you  
18 know, they sent in something that they are going to try to  
19 argue, I am sure, means they were getting rid of her, but  
20 they did not tell you that. They just said they were  
21 changing key personnel.

22 You know, these cases go on for years, millions of  
23 dollars in legal costs, and at the end of that, if they  
24 settle the case without admitting any wrongdoing, then the  
25 taxpayer stays on the hook, correct?

1           Mr. Moury. I am sorry, Madam Chair. Would you repeat  
2 that last piece?

3           Senator McCaskill. At the end of a lengthy litigation--  
4 -

5           Mr. Moury. Correct.

6           Senator McCaskill. --with expensive lawyers being paid  
7 by the government, if they settle at the end of this  
8 lengthy--or if they wear down the other side because the  
9 other side does not have the resources the United States  
10 Government has--you can imagine if you are an individual  
11 trying to sue a company that is being bankrolled by the U.S.  
12 Government.

13           I mean, talk about hard.

14           So there is a concept in litigation called wearing them  
15 down. Papering them to death. Overwhelming them with the  
16 resources of one side versus the other side.

17           So let's assume just a hypothetical case, not these  
18 individuals and a hypothetical case. They wear someone down  
19 five, six, seven years. Finally, the person on the other  
20 side is out of money. Their lives has been on hold. Their  
21 careers have been on hold. And many, many times, they  
22 settle because they cannot go on anymore.

23           And, if they settle and the defendant does not have to  
24 admit any kind of wrongdoing, then we stay on the hook. We  
25 end up having to cover all of those costs.

1           Should there be something that would incentivize  
2 litigants that we are funding, that if it goes past a  
3 certain time or a certain amount of money spent, that they  
4 have got to have skin in the game in this legal fight?

5           Mr. Moury. Well, I would say, Madam Chairman, that the  
6 costs to the contractor is not a done deal. It is up to the  
7 contracting officer to determine whether the legal costs are  
8 appropriate in the event that a case is settled. Whether  
9 they will be fully allowable or partially allowable is up to  
10 the contracting officer.

11          Senator McCaskill. Well, that is good to know because  
12 I will have some questions for the contracting officer on  
13 this case.

14          What if we had a rule that if you did not inform DOE,  
15 your customer, that you were firing key personnel that you  
16 had to absorb all the legal costs of litigation surrounding  
17 that firing yourself and not ask the government for  
18 reimbursement?

19          Mr. Moury. I mean, that is an interesting concept. I  
20 am not--I would like to spend some more time thinking about  
21 it, and maybe we can provide you with some additional  
22 details.

23          Senator McCaskill. There just seems to be something  
24 wrong with this.

25          Mr. Moury. Our system is also based on the presumption

1 that our contractors are not liable based on an assertion by  
2 the contractor's employees.

3 Senator McCaskill. Of course not. Of course not, and  
4 nor would I want there to be an assumption.

5 I just know that in terms of resourcing litigation this  
6 is not an even playing field and the way it is set up does  
7 not incentivize a quick resolution of the dispute. It  
8 incentivizes lengthy litigation as opposed to a quick  
9 resolution.

10 And it seems to me that we could work on doing  
11 something in that regard that might level the playing field  
12 slightly--

13 Mr. Moury. Yes.

14 Senator McCaskill. --so that everyone had an  
15 opportunity to actually have their case adjudicated by an  
16 impartial jury.

17 Mr. Moury. Right. Ma'am, I understand--

18 Senator McCaskill. The vast majority of these never  
19 get there.

20 Mr. Moury. Thank you, Madam Chairman.

21 I understand your frustration, especially with the  
22 length of time that some of these issues take to be  
23 resolved.

24 We do follow the processes that were set up by  
25 Congress, and we are always looking for ways to improve the



1 Department's processes, and the whistleblower is one that we  
2 are also looking at also.

3 Senator McCaskill. We have discussed earlier today the  
4 Defense Nuclear Facilities Safety Board. I did not realize  
5 at the time that you had given so many years of service  
6 there and to your country in the military.

7 Is there--can you give--you are the perfect witness to  
8 ask this question of. Why couldn't we give DNFSB some kind  
9 of jurisdiction as a third party oversight on a facility  
10 like Hanford?

11 Mr. Moury. This is a little bit outside of what we  
12 were going to talk about today.

13 I would say that the Board, in all my tenure there--I  
14 have been gone for a number of years. But it was really  
15 focused on the role of the Board to help the Department  
16 complete their mission, and in that context, their  
17 evaluations are based on the Department's requirements and  
18 evaluating the implementation of those specific  
19 requirements.

20 So to give them a separate, independent role--I think  
21 it removes what the purpose of the Board was put in place  
22 for when they were first established back in 1988.

23 Senator McCaskill. At the end of the day, this  
24 controversy boils down to technical concerns, highly  
25 technical concerns, by two professionals in the field that

1 had been given positions of great trust by your contractors.

2 Do you feel comfortable, Mr. Moury, that their  
3 technical concerns have received the airing that they  
4 should? And, as somebody with your background, you know  
5 that they are not alone in the field with some of the  
6 technical concerns that they expressed.

7 Mr. Moury. Well, we have asked the contractor to put a  
8 consolidated list of all the issues that both Dr. Tomasaitis  
9 and Ms. Busche have voiced. I am well aware of many of  
10 those issues, and many of those issues were raised by other  
11 people and are being pursued.

12 Once we have that list, we will evaluate them based on  
13 the technical merit of the issues that they have raised and  
14 make a determination at that time. But those issues are  
15 being worked.

16 I mean, many of these issues--since this is a one-of-a-  
17 kind facility, it is incredibly complex. The technical  
18 issues are very complex, and they take a long time to  
19 resolve.

20 So sometimes our failure is in the fact that it takes  
21 us--we are not--we have not in the past done a good job of  
22 getting the word back to the people that are raising these  
23 issues on where exactly in the process resolution of their  
24 issues stands, and that is one of the key things that we  
25 have been working on.

1           And I think it is important to preventing this chilled  
2 work environment, to make sure that people understand where  
3 those issues are being addressed and that they are not being  
4 ignored.

5           Senator McCaskill. Either of you, are you familiar  
6 with the people that have been tasked with their  
7 responsibilities now at Hanford?

8           Mr. Eckroade. Could you be a little more specific?

9           Senator McCaskill. The two jobs that they were removed  
10 from, two very important jobs, one in the technical  
11 capability and one in the safety EM capability. They were  
12 both high-level people at that facility. Who has replaced  
13 them; do you know?

14          Mr. Eckroade. I am not aware.

15          Mr. Moury. I do not know the answer.

16          Senator McCaskill. Have you heard anything from either  
17 of those people about any of the same concerns?

18          Mr. Moury. The people that replaced them?

19          Senator McCaskill. Correct.

20          Mr. Moury. I have not heard anything. I am not sure  
21 who is replacing those two individuals.

22          Senator McCaskill. Okay. Would it be a smart thing  
23 for the Department of Energy to go to their replacements and  
24 go through that list of concerns and see if they have the  
25 same ones, to take the impetus yourselves to ask those

1 questions?

2           Mr. Moury. Well, I think it would be appropriate  
3 certainly to work with them and go through this list of  
4 issues and to determine the validity of those technical  
5 issues. I think that is fully appropriate.

6           Senator McCaskill. If you did that--if you did that,  
7 if you took the impetus to do that, that would remove the  
8 necessity of them being branded as whistleblowers, and it  
9 would also give credibility to the concerns that were raised  
10 in the first place--that you were asking about those same  
11 concerns.

12           In other words, you cannot just replace these two  
13 people and have the concerns go away.

14           Mr. Moury. That is correct. That is correct.

15           In the real world, I mean, I understand the benefit  
16 that whistleblowers have provided to our country on a number  
17 of different areas.

18           If we were in an ideal world, we would have very few  
19 whistleblowers because when their issues are raised  
20 initially at those lower levels we would address them; we  
21 would track them to closure; we would keep them informed of  
22 how we were progressing.

23           And that whole process is something that we have been  
24 expending a lot of time trying to strengthen.

25           Senator McCaskill. I appreciate very much.

1 I have to go vote. If you have more questions, great.  
2 If not, this is the introduction for the two witnesses that  
3 will--

4 Senator Johnson. You want to hear the testimony,  
5 right?

6 Senator McCaskill. No, you can go ahead. I have read  
7 it.

8 Senator Johnson. [Presiding.] Well, thank you. I  
9 will, I guess, dismiss you two.

10 Senator McCaskill. If you would not mind staying, in  
11 case we have questions after the other two witnesses  
12 testify, we would really appreciate it.

13 Mr. Eckroade. Certainly.

14 Mr. Moury. Yes, ma'am.

15 Senator Johnson. Okay. So I will ask the other  
16 witnesses to come forward then.

17 Again, thank you for being willing to appear before our  
18 Committee--our Subcommittee.

19 Our first witness is James Taylor. He is Senior Vice  
20 President, Global Management and Operations Services at URS  
21 Corporation, where he oversees strategic initiatives,  
22 business development activities and administrative and  
23 operations support functions. Mr. Taylor leads the business  
24 unit responsible for URS's work at the waste treatment plant  
25 at Hanford. Mr. Taylor has 26 years of experience in the

1 nuclear industry, including as Director of the Savannah  
2 River National Lab.

3       So, Mr. Taylor, welcome.

4       And our second witness is Michael Graham. He is the  
5 Principal Vice President at Bechtel National, Inc. Mr.  
6 Graham has worked at four major Department of Energy sites  
7 across the country and previously led a project to evaluate  
8 the impacts of Hanford waste on groundwater in the Columbia  
9 River.

10       So, again, it is the tradition of this Subcommittee to  
11 ask people to swear in, so if you would stand.

12       Do you swear to tell the truth, the whole truth and  
13 nothing but the truth?

14       Mr. Taylor. I do.

15       Mr. Graham. I do.

16       Senator Johnson. Mr. Taylor, why don't you start your  
17 testimony?

1           TESTIMONY OF JAMES TAYLOR, SENIOR VICE PRESIDENT,  
2           GLOBAL MANAGEMENT AND OPERATIONS SERVICES, URS  
3           CORPORATION

4           Mr. Taylor. Good morning, Ranking Member Johnson and  
5 members of the Subcommittee. Thank you for the opportunity  
6 to appear before you today.

7           My name is James Taylor. I am the General Manager  
8 responsible for the environmental cleanup work under URS's  
9 Energy and Construction Division, the role I assumed in  
10 January of this year.

11          I am grateful to lead a team of nearly 20,000 dedicated  
12 professionals working at 18 major cleanup projects in the  
13 U.S. and abroad. My business unit is responsible for our  
14 work on the waste treatment plant at the Department of  
15 Energy's Hanford nuclear site in Richland, Washington.

16          I would like to provide you a brief introduction to the  
17 work we do at the waste treatment plant and discuss our  
18 companywide commitment to safety.

19          I also want to be very clear. URS has zero tolerance  
20 for retaliation against whistleblowers. This is firmly  
21 embedded in our company's culture and goes hand in hand with  
22 the dedication, our dedication, to safety.

23          As you are aware, projects at the Hanford site are  
24 intended to address once-in-a-lifetime environmental  
25 challenges, and we will eventually build a one-of-a-kind

1 facility. There are currently more than 56 million gallons  
2 of nuclear waste stored in underground tanks at the Hanford  
3 site. The waste is a byproduct of nine nuclear reactors  
4 that operated at Hanford from World War II through the Cold  
5 War. Some of these tanks were constructed as early as the  
6 1940s, and many are well beyond their design life.

7 When operational, the waste treatment plant will be the  
8 first chemical waste processing facility in the world with  
9 the capacity to separate and stabilize nuclear waste.

10 Our role at the waste treatment plant is to work with  
11 Bechtel, DOE's prime contractor at the site, to design,  
12 construct and start up this treatment facility. We work  
13 under the direction of DOE and Bechtel.

14 DOE is charged with managing the Hanford site and has  
15 the ultimate authority over the project from design to  
16 completion.

17 It is imperative that we continue to develop and  
18 implement the technology needed to process this waste and  
19 complete the waste treatment plant as soon as safely  
20 possible.

21 Understanding the unique safety and environmental  
22 demands of this project, we listen very seriously to  
23 feedback from Congressional leaders, experts in the field,  
24 our employees and members of the public, and we are always  
25 open to new ideas.



1           I know how important it is to get this right from a  
2 national perspective but also from a local perspective.  
3 Hundreds of our employees live and work in this community,  
4 and no one is more committed than we are to the success of  
5 the waste treatment plant.

6           We are proud of the safety record that we have built  
7 over many years at many facilities in the U.S. and abroad.  
8 We know we need to remain ever-vigilant to protect and  
9 extend that record, which is why our corporation, our  
10 corporate culture, makes safety our highest priority.

11          URS encourages its employees to raise safety concerns,  
12 and we are methodical in addressing the concerns they  
13 identify. We work closely with our employees to promote an  
14 open atmosphere because the complex issues we tackle demand  
15 a questioning attitude and creative solutions. Critical  
16 feedback and dissent are vital parts of our process, which  
17 is one of the reasons we encourage employees to raise  
18 concerns and challenge the status quo.

19          We address all identified concerns and value these  
20 important contributions to our safety culture. We also  
21 continue to improve the safety culture at the waste  
22 treatment plant through internal and external reviews.

23          Ms. Busche joined the waste treatment plant project in  
24 March 2009. On February 18, 2014, Ms. Busche's employment  
25 was terminated for cause due to her conduct and behavior.

1 Ms. Busche was not retaliated against because she raised  
2 safety concerns. Given the privacy interests at stake and  
3 the pending litigation relating to Ms. Busche's employment,  
4 I am limited in what I am able to say about this matter.

5 I can say with confidence, however, that URS counts on  
6 our employees working at the front lines to remain vigilant  
7 about safety. For this reason, we have effective policies  
8 and procedures in place to encourage employees to raise  
9 safety concerns and a zero tolerance policy against  
10 retaliation to protect them when they do.

11 I am proud of the work we at URS do to address some of  
12 our country's most difficult environmental challenges. We  
13 will continue to work with DOE and others to ensure the  
14 waste treatment plant is designed and constructed safely  
15 with the best available technology.

16 Thank you for the opportunity to participate in this  
17 hearing, and I am happy to answer your questions.

18 [The prepared statement of Mr. Taylor follows:]

- 1 Senator Johnson. Thank you, Mr. Taylor.
- 2 Mr. Graham.

1                   TESTIMONY OF MICHAEL GRAHAM, PRINCIPAL VICE  
2                   PRESIDENT, BECHTEL NATIONAL, INC.

3           Mr. Graham.   Senator Johnson, I am Michael Graham,  
4 Principal Vice President of Bechtel National, Incorporated.

5           Bechtel designed and engineered the defense waste  
6 processing facility--

7           Senator Johnson.   Is your mic on?   The red button?

8           Mr. Graham.   Oh, sorry.

9           Bechtel designed and engineered the defense waste  
10 processing facility at the Savannah River site in South  
11 Carolina.   It is the only plant in the Nation that currently  
12 converts liquid high-level nuclear waste into solid glass, a  
13 process known as vitrification.   This is the same process  
14 that will be used at WTP.

15           The waste treatment plant at Hanford is being designed  
16 and built to meet a U.S. Government commitment to the State  
17 of Washington to immobilize the highly radioactive waste  
18 stored in 177 aging underground tanks.   These legacy tanks  
19 of World War II and the Cold War date back to the 40s, and  
20 67 of these tanks have been reported to have leaked over a  
21 million gallons of radioactive waste.   The plant will take  
22 the radioactive tank waste, mix it into glass and package it  
23 into robust containers for permanent disposal.

24           This mission to safely dispose of the radioactive waste  
25 that has been accumulated over generations is a challenge

1 that has been handed to our generation by our parents and  
2 our grandparents. It is, and will continue to be, a very  
3 difficult, costly and time-consuming venture. We owe it to  
4 our children and our grandchildren to undertake this task  
5 and to bring it to successful conclusion.

6 An essential element of our success in completing  
7 technically challenging projects like WTP is creating and  
8 maintaining a strong safety culture that values a  
9 questioning attitude towards technical and safety issues.  
10 Raising and resolving technical issues is an integral part  
11 of our fundamental work process. All personnel are expected  
12 to fully and collaboratively participate in the  
13 identification and resolution of issues and concerns.

14 In most instances, differences in professional opinions  
15 are resolved as a routine part of interactions between  
16 colleagues and management, but if these interactions do not  
17 effectively address a question, there are multiple avenues  
18 for project personnel to raise issues and concerns.

19 The first is the Project Issues Evaluation Report, or  
20 PIER process. It is a tool for managing WTP's technical  
21 issues and opportunities for improvement. Issues raised in  
22 this peer process are fully transparent to the Department of  
23 Energy. This readily available process provides a mechanism  
24 for the resolution of any and all issues, be they raised by  
25 a project personnel or an external reviewer.

1           The next level is the Employee Concerns Program, and it  
2 provides all personnel at WTP with an independent avenue for  
3 reporting and resolving concerns.

4           And yet another level is Differing Professional  
5 Opinions. This process is a formal mechanism for WTP  
6 personnel to resolve questions and concerns about the  
7 adequacy of the technical design or if there is a legitimate  
8 disagreement regarding the appropriate technical path. The  
9 DPO process provides a formal review of the disputed issues  
10 by a technically qualified and independent panel with  
11 oversight by a DPO review board.

12           So, collectively, these represent a robust, best-in-  
13 class process for identifying and tracking and resolving  
14 issues and concerns.

15           I can assure you the WTP project will not be completed  
16 until all open technical questions have been resolved to the  
17 satisfaction of our team and the Department of Energy. The  
18 facility will then undergo a rigorous multiyear operational  
19 readiness review process. Operational testing will use  
20 surrogate materials to demonstrate that the plant will  
21 safely operate as designed and will be performed before any  
22 hot nuclear operations can begin.

23           This process took many years to complete when DWPF, the  
24 plant in South Carolina, was started up in the 90s.

25           Finally, you have asked what role our company had in

1 Ms. Busche's dismissal.

2 Ms. Busche was an employee of URS, and URS alone made  
3 the decision related to the termination of Ms. Busche.

4 It is my understanding that we were informed by URS  
5 that they were considering terminating Ms. Busche's  
6 employment for cause.

7 I also understand that we were informed by URS that  
8 they intended to proceed with termination, and we received a  
9 letter from URS, formally notifying us of Ms. Busche's  
10 departure, which we then forwarded to the Department of  
11 Energy.

12 We at Bechtel are extremely proud of our work at  
13 Hanford. It is an honor to serve as the government's lead  
14 contractor for this vitally important project. We welcome  
15 thoughtful criticism as a foundational component for our  
16 commitment to continuing improvement.

17 It is important to note that there are many enormous  
18 successes at the WTP project, and we are committed to  
19 reaching that day when the plant is operating and safely  
20 processing nuclear waste to protect the Columbia River and  
21 the people of the Pacific Northwest.

22 Thank you.

23 [The prepared statement of Mr. Graham follows:]

1 Senator Johnson. Thank you both for your testimony.

2 Let me just first ask, were either of you in the room  
3 when we were talking with Ms. Busche?

4 Mr. Taylor. Yes, sir.

5 Senator Johnson. Anything from that discussion that  
6 you want to respond to, Mr. Taylor?

7 Mr. Taylor. Yeah, I only heard the very end of her  
8 testimony. I cannot--I do not have any comments from that.

9 Senator Johnson. Mr. Graham?

10 Mr. Graham. Was your question, was I here at the  
11 earlier session roundtable?

12 Senator Johnson. Correct.

13 Mr. Graham. I was not, sir.

14 Senator Johnson. Oh, okay.

15 There was, let's say, a description of--I would call  
16 it--regulatory capture or basically that the contractors  
17 themselves so overwhelm the Department of Energy, in terms  
18 of design and safety concerns, that it almost renders the  
19 Department of Energy moot in terms of their safety concerns.  
20 Would you agree with that assessment?

21 Mr. Graham. I would not. I think there is adequate  
22 oversight by the Department of Energy. I have worked at a  
23 number of the sites and in partnership with DOE to work on  
24 these very difficult problems.

25 Senator Johnson. Mr. Taylor?



1           Mr. Taylor. I agree. I think there is adequate  
2 oversight by DOE. We certainly focus on our oversight of  
3 our projects.

4           Senator Johnson. Mr. Graham, it sounded like you were  
5 informed by URS that Ms. Busche was going to be terminated  
6 and then you reported that to the Department of Energy. Is  
7 that correct?

8           Mr. Graham. That is my understanding, yes.

9           Senator Johnson. Is that your duty under your  
10 contract?

11           I mean, do you have--is there--because I was asking the  
12 folks from the Department of Energy and they did not seem to  
13 be aware of any kind of contractual or legal obligation of  
14 let's say a protected bunch of employees for a contract,  
15 dealing with safety, to notify the Department of Energy.

16           Is it your understanding that there is that contractual  
17 obligation or legal obligation?

18           Mr. Graham. It is my understanding that there is not a  
19 contractual obligation for us to get DOE's approval if we  
20 are dismissing an employee for cause.

21           Senator Johnson. Regardless of what position that  
22 employee may be in?

23           Mr. Graham. Yes, sir.

24           Senator Johnson. Okay. Well, that creates a problem  
25 for a whistleblower if it is a safety issue because a

1 company could always then not notify and take the position  
2 that you are obviously taking in this case, that the  
3 termination was for cause. Is that a little bit of a  
4 problem in the control process there?

5 Mr. Graham. I think this is a very interesting  
6 situation.

7 And, again, this was a URS employee, and URS took the  
8 action. We were informed.

9 Senator Johnson. Let me state, as I did in that  
10 earlier meeting, I do not think this is the place to  
11 adjudicate an employer-employee dispute. To a certain  
12 extent, that is part of this issue, but you also have the  
13 very legitimate concerns of whistleblower protection and  
14 raising safety issues that, I mean, I would like to think  
15 that everybody working on this project is highly concerned  
16 about.

17 So let's go into the types of controls that should be  
18 in place.

19 Mr. Graham, you talked about a number of steps that  
20 somebody who has a safety issue or concern can go through.  
21 At what point in those areas--because it sounded like there  
22 was the PIER and then you had the Employee Concern avenue  
23 appeal to an independent body. I mean, what independent  
24 body?

25 Mr. Graham. So, if there is an issue that raises to a

1 differing professional opinion, then resources outside the  
2 project with known expertise in these areas are brought in  
3 to help resolve the issue.

4 Senator Johnson. But who pays for those resources?

5 Mr. Graham. My understanding is that is paid for by  
6 the project as an allowable cost.

7 Senator Johnson. So, really, it would be the  
8 contractor employing or contracting with the subcontractor  
9 to provide that expertise.

10 Mr. Graham. Right.

11 Senator Johnson. There would probably be some issues  
12 of independence there, wouldn't you agree?

13 Mr. Graham. Well, I think all of our processes are  
14 very transparent.

15 And so, you know, just as we have done in the  
16 commercial nuclear industry, that first tier of the  
17 opportunity for people to raise concerns is a very low-  
18 threshold, high-volume process. And so it has in there  
19 issues like they do not like somebody smoking at the work  
20 site to, you know, other concerns about safety or other  
21 things. And those are all tracked to closure, and all those  
22 will be reviewed before the plant enters into any kind of a  
23 startup phase.

24 Senator Johnson. Reviewed by whom?

25 Mr. Graham. So it is reviewed by the Department of

1 Energy--

2 Senator Johnson. Okay.

3 Mr. Graham. --and by our management team.

4 Senator Johnson. So somebody who has a real safety  
5 concern and goes through these processes can be assured that  
6 the Department of Energy is going to be well aware of  
7 somebody raising an issue.

8 Mr. Graham. Absolutely.

9 Senator Johnson. I was certainly concerned about just  
10 differing professional opinions, and we talked about the  
11 Fukushima site where apparently the experts back in the  
12 design phase said we should have built higher tsunami walls  
13 to protect the diesel generators, the cooling generators.

14 I have spoken with some nuclear experts in the past,  
15 that that instance has resulted in really a different design  
16 idea, that what we ought to do is just put a big ole tank of  
17 water over the reactor so it can be filled with any power  
18 source. To me, that makes a lot of sense.

19 Now there is a difference of expert opinion prior to,  
20 basically, a continuous improvement process where you  
21 actually have an instance that says, well that would not  
22 have worked either; this works better.

23 Describe the resolution in differing professional  
24 expert opinions which can be pretty strongly held? How do  
25 you resolve those things?

1           Who in the end is the arbiter? Who makes the decision  
2 on what could be some very strongly held differences of  
3 expert opinion?

4           Mr. Graham. Well, I think, you know, at the end of the  
5 day, we are the project manager, and we would take our  
6 recommendations forward to the Department of Energy, and we  
7 would gather the input from the best and brightest.

8           As we talked about, this is an incredibly complex  
9 plant. And so I think just to put it into perspective, the  
10 footprint of WTP is over 60 acres, and the Pentagon sits on  
11 about 41 acres. So it is huge.

12          Senator Johnson. But in the end, it would be the  
13 Department of Energy. If you have got a pretty close call,  
14 a technical issue--

15          Mr. Graham. Right.

16          Senator Johnson. --you know, if there is a difference  
17 opinion and a decision has to be made, is that the  
18 contractor that makes the decision on that, or is it the  
19 Department of Energy that in the end is the customer and  
20 makes the final call?

21          Mr. Graham. It would be our recommendation with DOE's  
22 approval.

23          Senator Johnson. So you would make a recommendation,  
24 but DOE in the end has control of the process. They will  
25 decide between the alternatives based on the information you

1 are providing them.

2 Mr. Graham. And with a lot of input from external  
3 Defense Board and others.

4 Senator Johnson. Again, I understand the constraint  
5 here, which is the reason this is not a very good place to  
6 adjudicate the employer-employee issue here. But, within  
7 that constraint, can you describe to me; what is the area of  
8 disagreement between the two whistleblowers that we talked  
9 to earlier and Bechtel or URS and the Department of Energy  
10 in terms of the safety issues? Can you at least describe  
11 that?

12 Mr. Graham. I am obviously not steeped in all the  
13 details of that plant and these issues, but I can give you a  
14 landscape picture.

15 The issues, as I understand it, that have been raised  
16 by these individuals are, as was stated earlier, issues that  
17 other people have also raised. I can assure you that each  
18 of these issues is being formally tracked and will be  
19 tracked to closure in those systems that I described.

20 Senator Johnson. Mr. Taylor, do you have anything to  
21 add there? Can you get a little more specific in terms of  
22 what is the issue at hand?

23 I mean, we heard some pretty scary things about  
24 hydrogen explosions and some relatively scary issues being  
25 raised here.

1           Mr. Taylor. Senator, I, unfortunately, cannot get into  
2 more detail. I just took over the position as General  
3 Manager approximately eight weeks ago.

4           I have asked my Executive Vice President to go  
5 investigate the concerns that were raised, the nuclear  
6 safety concerns at the site. He has investigated those.  
7 Those--what I am told is that all of the issues that have  
8 been raised are being tracked and corrective actions put in  
9 place and that it is a work in progress.

10          Senator Johnson. And when you say tracked, this is  
11 going to be going through a process that is very  
12 transparent, and the Department of Energy is well aware of  
13 these things, correct or incorrect?

14          I mean, is this just being tracked internally within  
15 the contractor and subcontractor base, or is the Department  
16 of Energy fully engaged, fully looking over your shoulders  
17 in terms of what issues are being discussed, what concerns  
18 are being raised?

19          Mr. Taylor. I have not been engaged at that level of  
20 detail to know the details of the list, but I have been told  
21 that they are being tracked.

22          Senator Johnson. But, again, when you say tracked,  
23 that means full transparency and the Department of Energy  
24 being involved in these.

25          Mr. Taylor. That is correct. That is my

1 understanding.

2           Senator Johnson. Mr. Graham, do you have anything to  
3 add to that?

4           Mr. Graham. No, that is correct.

5           Senator Johnson. Mr. Graham, you were talking about--I  
6 think it was you.

7           No, actually, Mr. Taylor, you were also Director of the  
8 Savannah River National Lab.

9           One of the questions I had during the earlier session  
10 was, is there--it sounds like those cleanup sites are  
11 progressing. The plants have been constructed. We are  
12 actually solving the problem there.

13           Is there something dramatically different at the  
14 Hanford site versus other sites that are currently  
15 operating?

16           Mr. Graham. I can provide a little background on that.  
17 The Hanford site had five different processes to--that they  
18 utilized to separate the plutonium through the years, and  
19 so--the Savannah River site had one. And so the complexity  
20 of the 56 million gallons of waste that is sitting in these  
21 failing tanks is much more complicated than it is at  
22 Savannah River.

23           And so even though the fundamental aspect of making  
24 glass is well understood and is operating well within  
25 Savannah River, these different processes in the early days



1 of the Manhattan Project makes this a much more challenging  
2 project.

3           Senator Johnson. Would either of you be willing to, or  
4 care to, comment on your own evaluation in terms of the  
5 expertise that resides within the government agencies that  
6 are involved with you?

7           Does the government have enough resources?

8           Do they have manpower?

9           Do they have the requisite skills of the people in the  
10 position to, with transparency, with tracking process,  
11 really understand what the issues and be in the position  
12 that when you make a recommendation on different ideas in  
13 terms of how to handle these problems, that in the end the  
14 Department of Energy is well enough versed and has the  
15 expertise to make the intelligent decision there?

16           I realize that might be kind of a difficult question to  
17 ask, but--

18           Mr. Graham. No, actually, I think absolutely.

19           I personally know Kevin Smith who is the head of DOE's  
20 operation at Hanford for the Office of River Protection. I  
21 had the honor of working with him when I was at Los Alamos,  
22 managing the cleanup of that site.

23           I have had a lot of experience with the Department of  
24 Energy Environmental Management over the years, and they  
25 have a depth and breadth of expertise that I know that the

1 Japanese, when they had their issues with Fukushima, turned  
2 to the Department of Energy here for support.

3 Senator Johnson. Mr. Taylor?

4 Mr. Taylor. I think the Department of Energy has  
5 significant resources, number one. They are well trained  
6 and qualified.

7 Many of the DOE folks have worked in the commercial  
8 world. So they have worked for contractors like Bechtel and  
9 URS.

10 So I would agree that they have the expertise to--you  
11 know, to work with the contractors and provide good  
12 oversight.

13 Senator Johnson. Again, you are probably not the best  
14 people to ask this question. But, can you think of anything  
15 in the Department of Energy or any of the government  
16 agencies overseeing your work, any controls that are in  
17 place that simply do not work or that are just burdensome,  
18 that could be replaced by better controls that would provide  
19 better transparency and certainly address and protect  
20 whistleblowers?

21 Mr. Graham. I do not have anything that comes to mind  
22 at this point.

23 Senator Johnson. One of my concerns is the disparity  
24 of just who pays legal fees. As it was described in the  
25 earlier meeting, the legal fees to mount a defense for the

1 contractors is really reimbursed by the government. The  
2 whistleblowers themselves, apparently--I would imagine it is  
3 because they were terminated with cause--have no one in  
4 terms of paying for legal fees, which ends up really putting  
5 them at huge disadvantage.

6 Do you agree with that fact, that it puts them at a  
7 disadvantage?

8 Is there a better process for whistleblower protection  
9 potentially right within the Department of Energy?

10 Mr. Graham. I think we would be happy to engage in  
11 those discussions, but I do not--I did not come prepared to  
12 talk about that aspect of this situation.

13 Senator Johnson. Okay. Mr. Taylor?

14 Mr. Taylor. I do not have anything to add.

15 We could provide our technical experts inside our  
16 company to support you on that.

17 Senator Johnson. I think that is really what we have  
18 to--I think this Committee really has to be taking a look at  
19 that and how can we offer the appropriate whistleblower  
20 protection and how can we ensure safety.

21 To me, the government is the customer, and they ought  
22 to be in charge. That is certainly the way it was in my  
23 business.

24 I mean, we had pretty well--you know, when our  
25 customers said jump, we jumped, and we did what they

1 required.

2       So we surely want to look--but, again, I want to design  
3 these things to facilitate safety, as cooperative a process  
4 as possible.

5       I would like to just turn to, from my standpoint, a  
6 little bit of a conundrum certainly that I would be  
7 concerned about--trying to find any company willing to work  
8 on this project. This is a once-in-a-lifetime problem. It  
9 is a very difficult problem.

10       How many companies in the world could be viewed as  
11 viable contractors to do something like this?

12       I mean, what is the universe, the known universe, of  
13 potential suppliers here?

14       Mr. Taylor. I think if you look at the companies that  
15 have the expertise, the capabilities and experience to do  
16 this work, there are only a handful.

17       I think that URS; from an operations standpoint and  
18 startup and test of significant facilities like this, we are  
19 one of the leaders.

20       I think Bechtel in the same sense; when it is doing the  
21 engineering, procurement, construction, they are known to be  
22 the best in the world.

23       And, if you look outside that, there are other  
24 companies that operate similar facilities. For example, in  
25 France, there is Areva. And I know there are other

1 companies outside, in Japan and other countries, that also  
2 have that capability.

3 But, in the U.S., it is a very small group, and I would  
4 say that URS and Bechtel are the leaders in that--in this  
5 business.

6 Senator Johnson. Do you know of any companies that  
7 might have the capability that just refuse to do it, or  
8 started working on a project like this and just walked away  
9 out of sheer frustration and mounting losses? Did that ever  
10 happen?

11 Mr. Taylor. I am not aware of that happening.

12 Mr. Graham. I am not aware.

13 I would just say that, you know, we are--and I will not  
14 speak for URS, but I think we are fully committed to this  
15 really critical and difficult mission, and we have got thick  
16 skins, and we are going to stick it out.

17 Senator Johnson. This is kind of harkening back to the  
18 hearing we had back in June, but just refresh my memory.  
19 Talk about how these contracts are tailored. You know, what  
20 is the review process? How often are they renegotiated?  
21 What are the cost escalator provisions?

22 Can you just really kind of describe in detail how this  
23 all comes about and how it is managed on an ongoing basis?

24 Mr. Graham. Well, yeah, and I was here in June when we  
25 discussed this.

1           You know, the original contract for waste treatment  
2 plant was for to fast-track a pilot plant to get on with the  
3 waste. That scope was expanded, and it now includes the  
4 future larger plant that was going to be a phase two. So it  
5 was to do it all at once.

6           That change was managed through a very formal change  
7 management program for contract management within DOE. And  
8 so all changes in scope, all issues associated with managing  
9 through these complex things are handled through formal  
10 change control with approval of the contracting officer for  
11 the Department of Energy.

12           Senator Johnson. Are those all cost-plus contracts?

13           How do you--

14           Mr. Graham. This particular contract is cost-plus.

15           Senator Johnson. What is the plus?

16           I mean, what do you expect above your costs?

17           What do you--and, again, your costs are fully loaded?

18           I mean, is that a full costing system then plus a profit?

19

20           Mr. Graham. Incentive fees or--right. But the cost is  
21 our cost of our materials and people.

22           Senator Johnson. So, in terms of your contract so far,  
23 how much have you been paid by the government?

24           Mr. Graham. You know, I would be glad to provide for  
25 the record later. I am not prepared to answer that today.

1 Senator Johnson. I would appreciate that information.

2 And do you have any sense for just your percent  
3 profitability?

4 Mr. Graham. I do not.

5 Senator Johnson. What is the plus of the cost-plus?  
6 Do you know what that percentage is that is called out in  
7 the contracts?

8 Mr. Graham. I do not.

9 Senator Johnson. Okay. Well, again, I would certainly  
10 appreciate that for the record.

11 Mr. Graham. You bet.

12 Senator Johnson. With that, Madam Chair, I will turn  
13 it back over to you. Thank you.

14 Senator McCaskill. [Presiding.] Thank you very much.  
15 Thank you for helping us accommodate, and thank you all for  
16 helping us accommodate, an aggressive schedule of voting at  
17 the same time that we are trying to have hearings with  
18 people who have disrupted their schedules to accommodate  
19 ours.

20 So it is the chaos of the scheduling of the Senate, and  
21 I apologize for it.

22 Let me first make sure I understand both of your  
23 position, especially URS.

24 Mr. Taylor, about notification of DOE about removing  
25 two folks--both of you should answer this.

1           About what you feel like your legal obligation is in  
2 terms of notifying your customer over firings of two people  
3 who had had a very high profile in terms of discussing  
4 technical concerns relating to safety, do you feel that  
5 either of you had an obligation to tell DOE that you were  
6 letting these folks go?

7           Mr. Taylor. Out of courtesy--and I will speak to Ms.  
8 Busche. Out of courtesy, we routinely notify our customers  
9 if we have significant issues that--for example, in regards  
10 to Ms. Busche, we did have some individual raise concerns  
11 about her conduct and behavior, and they were severe.

12           And, basically, the need--I needed to notify DOE to let  
13 them know that because Donna is a key person, because these  
14 are severe, you know, claims against her, that I needed to  
15 let them know, especially given that she is a whistleblower.

16           And URS--absolutely, we do not support action or  
17 retaliation against whistleblowers. So we just needed to  
18 let DOE know. So we felt that because of that there was an  
19 obligation.

20           From a personnel issue, when you are terminating an  
21 employee for cause, my understanding--and I am not an  
22 attorney or an expert on the matter, but the notifying DOE  
23 is not formally required.

24           Senator McCaskill. So it is not formally required.

25           Are you saying that you did it?



1           Mr. Taylor. I am saying that I notified my counterpart  
2 in DOE that we have significant issues associated with an  
3 employee, Ms. Busche, about her conduct and behavior, and  
4 that they were severe, and it was just a notification.

5           They were not notified that we had actually done the  
6 investigation, that we confirmed the findings, and then we  
7 moved to terminate her. They did not know that we had  
8 terminated her until after the fact.

9           Senator McCaskill. Okay. And it is your belief that  
10 that is not legally required?

11          Mr. Taylor. That is my belief.

12          Senator McCaskill. And let's assume it may not be  
13 legally required. But, do you think it might be a good idea  
14 to tell them that you were firing her under all those  
15 circumstances that you just delineated, just from a  
16 management perspective?

17          What would be the reason you would not want to tell  
18 them?

19          Mr. Taylor. Well, I was--from a human resources  
20 standpoint--and I have experts that basically inform me that  
21 we should--these are private issues with employees. They

22          Senator McCaskill. Wait. You just said you already  
23 told them you had severe issues with her conduct. You did  
24 that. You were not worried about her privacy then--that you  
25 had serious ongoing conduct issues. So you were not--did

1 not hesitate to already poison the well, so to speak.

2 But you did not think that--you thought somehow telling  
3 that you had fired her was somehow a kinder thing to her  
4 since you had already done that?

5 I mean, that does not make sense to me. Why would you  
6 go to them in the first place and tell them you had problems  
7 with her, unless you were papering the file?

8 Mr. Taylor. It was out of courtesy to our primary  
9 customer to notify them that we had these allegations and we  
10 are investigating.

11 Senator McCaskill. But you did not think it was a  
12 courtesy to let them know that you fired her.

13 Mr. Taylor. Following the termination, we did call--I  
14 called my counterpart and informed them that--about the  
15 conditions around her termination at a very high level.

16 Senator McCaskill. Okay. Let's talk a little bit  
17 about the nondisclosure form. I have had a chance to--my  
18 staff has had a chance, I should accurately say, to look at  
19 the nondisclosure form.

20 It is my understanding that there is nothing in the  
21 nondisclosure form that delineates the ongoing superior  
22 rights of an employee to report safety concerns to either an  
23 IG or to Congress, that that is not included in your  
24 disclosure report. Is that correct?

25 [No response.]

1           Senator McCaskill. Your nondisclosure agreement that  
2 someone has to sign when they come to work for you.

3           Mr. Taylor. I am not an attorney or an expert on the  
4 legal issues around a nondisclosure form. So I really  
5 cannot address that.

6           It is not my understanding that that is a document that  
7 gets in the way of any employee raising concerns. We have  
8 to have an open environment. Folks have to have the  
9 opportunity to raise safety concerns. You know, we cannot  
10 start up these complicated high-risk nuclear facilities if  
11 there is any risk of safety to our employees, the  
12 environment, the public.

13           So it is my understanding that that does not prevent  
14 employees from coming forward.

15           Senator McCaskill. Do you acknowledge, either one of  
16 you, that you have an issue with the culture there, that  
17 people do not believe they can come forward?

18           Do you see that as a problem that you need to manage?

19           Mr. Graham. We take--we, obviously, take this very  
20 seriously. We will continue to encourage people to bring  
21 any issues that they have forward.

22           As I said in my oral testimony, we have several  
23 mechanisms for people to do that. If they want to remain  
24 anonymous, they can.

25           And all of those issues are openly tracked. DOE has

1 access to that information. And we make sure that we track  
2 those and appropriately close those issues.

3 Senator McCaskill. Do you believe the issues that were  
4 raised by the two people that were terminated have been  
5 adequately tracked and taken care of?

6 Mr. Graham. I can tell you that--I can assure that all  
7 of the issues that they raised or were--as was pointed out  
8 earlier, many of which were raised by others, are being  
9 formally tracked to closure within our system.

10 Senator McCaskill. Okay. So, if we have a list of  
11 those, you could give us that information for the Committee  
12 record?

13 Mr. Graham. Yes. Yes, Madam Chairwoman.

14 Senator McCaskill. So are there any technical issues  
15 that either of these people raised that you thought did not--  
16 -that were off the wall or irrational or reflected something  
17 other than a sincere desire to point out technical problems  
18 that they foresaw could arise, or safety problems that could  
19 arise?

20 Mr. Graham. Well, I just would say that, you know, in  
21 our process, we go through and make sure that each of those  
22 is vetted by appropriate individuals.

23 And I am not in a position to prejudge how those  
24 matters will be resolved. That would not be appropriate.

25 Senator McCaskill. Okay. Have any of them been

1 resolved that they--because some of these go back years,  
2 especially Dr. Tomasaitis.

3 Mr. Graham. I do not have those details, but I would  
4 be glad to provide the status of all the issues.

5 Senator McCaskill. I would hope that one--I think some  
6 of them were raised as early as 10 years ago. I would hope  
7 they have been tracked and resolved.

8 Mr. Graham. I am just not prepared to give you the  
9 details today.

10 Senator McCaskill. Okay.

11 Mr. Graham. But I will be glad to--

12 Senator McCaskill. If you would get those details for  
13 us, we would like to see how those concerns have been  
14 tracked and resolved.

15 Mr. Graham. Okay. Absolutely.

16 Senator McCaskill. Let's talk about legal fees. How  
17 much have you guys spent defending yourself on these  
18 lawsuits; do you know?

19 Mr. Taylor. I have no firsthand knowledge of what the  
20 legal fees have been.

21 Senator McCaskill. Do you know, Mr. Graham?

22 Mr. Graham. I am sorry. I do not.

23 Senator McCaskill. Is there somebody at your company  
24 that would know?

25 Mr. Graham. Yes, obviously, we will be glad to provide

1 that.

2 Senator McCaskill. Do you have any idea what the  
3 hourly rate is that you are being charged for  
4 representation?

5 Mr. Graham. I have no idea at this time.

6 Senator McCaskill. We would like that, too.

7 It is my understanding all that is government money  
8 that is paying for that.

9 Mr. Graham. Okay.

10 Senator McCaskill. Right? Do you know that?

11 Mr. Graham. I do not know.

12 Senator McCaskill. Okay.

13 Mr. Graham. I know there are some splits in what is  
14 covered and what is not. I am just not an expert on that.  
15 I am sorry.

16 Senator McCaskill. Okay. Well, we will have a series  
17 of questions about that because there is a real uneven  
18 playing field as it relates to having a case adjudicated of  
19 this nature.

20 And I am not one here--I do not know who is right and  
21 who is wrong, honestly. It is not my place. That is a  
22 court of law.

23 But I know how expensive it can be to get to a court of  
24 law, especially if one side has a lot of resources and the  
25 other side has zip. It puts the side with the superior

1 resources in a commanding position, and you can see how that  
2 could be offensive if, in fact, those commanding resources  
3 are coming from the United States Government.

4 I mean, it is one thing to fight your employer when you  
5 feel like that you have been treated badly. It is a whole  
6 other thing when they are being bankrolled by the United  
7 States Government. And that is why I think we have got to  
8 look at this issue--because as long as you guys do not admit  
9 guilt it is my understanding that the Federal Government  
10 picks up the tab.

11 So, hypothetically, not that you are doing that in this  
12 case or not that you would do this, but hypothetically, a  
13 contractor could draw out a case as long as possible, weaken  
14 the plaintiff significantly, financially and over time, and  
15 then get a settlement and never have to pay a dime of their  
16 own money for their legal defense, whereas, the other side,  
17 who wanted an adjudication, is denied that opportunity just  
18 be being worn down.

19 And that is what I would like to get at, and so we are  
20 going to ask a lot of questions around that in terms of  
21 timing, how long these cases take, has anyone availed  
22 themselves of arbitration, are they willing to or, more  
23 importantly, is it maybe an issue where at a certain point  
24 in time, if you go so long and spend so much, that it begins  
25 to be the company's dime rather than the United States

1 Government's dime. You know.

2 I do not want to chill people wanting to do business  
3 with the Federal Government by them thinking that they are  
4 going to be subjected to costly litigation. On the other  
5 hand, this does not seem fair to me--the way this is  
6 currently situated.

7 I did not have a chance to hear your testimony live. I  
8 wanted to give both of you an opportunity if there were  
9 points you made in your testimony that you want to make sure  
10 that I hear.

11 I try very hard to read everything, both before and  
12 after hearings, but I want to confess that there are times  
13 that I do not get a chance to read everything. So I did not  
14 want to give either of you--to dismiss either one of you  
15 without you having a chance to point out anything to me that  
16 you think I need to know.

17 Mr. Taylor. Chairman, I would just like to state, and  
18 I stated it in my opening remarks, that URS has a zero  
19 tolerance for retaliation against whistleblowers. We did  
20 not terminate Ms. Busche as retaliation against the nuclear  
21 safety issues she brought up.

22 We are very concerned about any issues that are raised  
23 at our sites because of the consequences that exist at these  
24 high-hazard nuclear operations. So we want to make sure we  
25 have an open environment at our sites for people to raise



1 concerns so that they can be addressed appropriately.

2       It is unfortunate, and it was one of the toughest  
3 decisions I have made in my career. I took over as a  
4 General Manager eight--seven weeks ago. It was brought to  
5 my attention through our Employee Concerns Program where we  
6 had employees that filed complaints against Ms. Busche's  
7 conduct and behavior. We investigated those. We validated  
8 those concerns. And I had to make the really hard decision  
9 to terminate Ms. Busche.

10       Senator McCaskill. Let's talk a little bit about--you  
11 go ahead, Mr. Graham, if you had anything that you wanted to  
12 bring to my attention.

13       Mr. Graham. I think the only thing I wanted to put  
14 into perspective is that the real--where the real risk is in  
15 doing nothing and that we have 56 million gallons of high-  
16 level waste sitting in failing tanks and that this is a very  
17 long and complex mission that we are fully dedicated.

18       And we will not be successful if we do not have this  
19 open process for people to raise their issues and concerns.  
20 We do that in government work. We do that in the private  
21 sector.

22       And so we are fully committed to completing the  
23 mission, starting up the plant safely. It will go through a  
24 very rigorous startup process that will take multiple years.

25       And so a lot of the issues that are raised of what if

1 when the plant is operating--we will get there, and I look  
2 forward to the day when we are--when the plant is  
3 operational and we are protecting the people of the  
4 Northwest and the Columbia River.

5 Senator McCaskill. We are captured by the severity of  
6 the situation and the technical expertise that is required,  
7 but I want to make sure that in our effort to address that  
8 that we are not taking shortcuts--

9 Mr. Taylor. Absolutely.

10 Senator McCaskill. --that we will look back and  
11 regret.

12 And I think, as we talked about in the previous  
13 hearing, the design-build concept for something like this is  
14 literally like trying to build an airplane in the air.

15 The delays that have occurred and the budget increases  
16 that have occurred, looking back--I know this Monday morning  
17 quarterbacking, but looking back, it might have been better  
18 to design first, and probably now that we know how long this  
19 is going to take, it may have actually saved time in the  
20 long run.

21 Let me ask a little bit about Dr. Tomasaitis. In 2010,  
22 he raised--came to the managers of Bechtel and URS with a  
23 list of about 50 serious technical concerns at WTP.

24 And shortly after he raised those concerns, the Bechtel  
25 manager, Frank Russo, wrote Bechtel and URS officials and

1 said, "We need to kill this BS now. Walt is killing us.  
2 Get him in your corporate office today."

3 And then he was ultimately reassigned.

4 Now were there issues with Dr. Tomasaitis that you  
5 allege were true, that he was difficult to work with and a  
6 behavioral and so forth?

7 Those are the allegations you are making against Donna  
8 Busche. You understand that this looks very bad in terms of  
9 a culture that encourages people to come forward with  
10 technical concerns.

11 Do you have any response to someone calling this, you  
12 know, talking about him killing us and this BS after he has  
13 raised these concerns?

14 Mr. Taylor. Chairman, I am new to the job. I do not  
15 know if you caught that part of the message. I have been on  
16 this job about eight weeks. Before that, I was in charge of  
17 business development.

18 I have no firsthand knowledge of Dr. Tomasaitis and the  
19 actions that were taken at that point in time. So I can get  
20 back with you and provide additional information, working  
21 with my team that was around at that time.

22 Senator McCaskill. Well, I think that is important,  
23 and I think that we need to know your perspective on that  
24 because I think you--the essence of this hearing is I  
25 understand what your words are, but we have outside

1 agencies, time and time again, citing problems with the  
2 culture at that facility in terms of people feeling like  
3 they can come forward with concerns.

4 And the way these two cases have been handled--the  
5 courts will decide. I hope the courts get a chance to  
6 decide. I hope that this is not one of those that they get  
7 worn down and everybody agrees to settlements that nobody  
8 ever gets to know about. But that is not my say. That is  
9 the litigants' decision as to what happens.

10 But you guys have a serious problem in terms of  
11 whistleblower culture out there, and we are going to have to  
12 do something to make sure that people understand that they  
13 are not going to be moved to the basement; they are not  
14 going to be laid off; they are not going to be fired, for  
15 raising legitimate concerns.

16 And we will look forward to your additional information  
17 that you will give us, and we will have some more questions  
18 for the record.

19 Unfortunately, the bell is calling me again to go vote.  
20 So we will conclude the hearing at this point, but we will  
21 have follow-up questions for both you and for the DOE, and  
22 then we will share the Committee record with all those that  
23 are interested.

24 Thank you very much for being here today.

25 Mr. Taylor. Thank you, Madam Chair.

1           Mr. Graham. Thank you.

2           [Whereupon, at 12:44 p.m., the Subcommittee was

3 adjourned.]