

1 After the conclusion of this discussion, we will
2 proceed to the third Subcommittee hearing on these topics
3 that we have actually had in this Subcommittee.

4 The focus of today's discussion is the safety culture
5 at Hanford and the allegations of whistleblower retaliation
6 that resulted when safety and technical concerns were
7 brought to the attention of the Department of Energy and
8 contractor management.

9 Hanford has been in the news again lately because yet
10 another contractor employee at the waste treatment plant,
11 who raised safety concerns, was fired. These actions
12 contribute to a strong perception, both within Hanford and
13 outside of it, that the contractors and the Department of
14 Energy are failing to put an adequate emphasis on creating a
15 strong safety culture at Hanford.

16 Today, I wanted to give fellow members of Congress and
17 the public an opportunity to hear from some of those
18 individuals familiar with this situation at Hanford.

19 Donna Busche--

20 Ms. Busche. Yes, ma'am.

21 Senator McCaskill. --is a former Environmental and
22 Nuclear Safety Manager at the waste treatment plant. She
23 has over 20 years of experience in nuclear safety. She was
24 fired by URS in February of this year.

25 Dr. Walter Tomasaitis is the former Research and

1 Technology Manager and Assistant Chief Process Engineer for
2 the waste treatment plant. Dr. Tomasaitis has over 40 years
3 of experience in the chemical and nuclear industries. He
4 was fired by URS in December of 2013.

5 And Tom Carpenter is the Executive Director of the
6 advocacy group, Hanford Challenge. Mr. Carpenter has
7 decades of experience in policy oversight of the nuclear
8 field and whistleblower advocacy. He helped establish and
9 is a member of the Hanford Concerns Council.

10 Let me turn it over to Senator Johnson if he would like
11 to say a few words, and then we would love to ask each of
12 you to give a brief statement, and then we will have some
13 questions.

14 OPENING STATEMENT OF SENATOR JOHNSON

15 Senator Johnson. Thank you.

16 Well, certainly, Madam Chair, I certainly appreciate
17 your efforts trying to get to the bottom of what this
18 government needs to do, what the U.S. has to do, in terms of
19 cleaning up these nuclear sites.

20 I am relatively new to the issue, and so I really do
21 not come to this issue with any biases or any assumptions.

22 I think my assumption would be that nobody at the table
23 here, not the companies, not the current government
24 employees, caused the problem. That was done decades ago.
25 And it is a huge problem. It is an incredibly complex

1 problem.

2 I am not an engineer. I am not a nuclear engineer. My
3 guess is because of the complexity, because of the difficult
4 nature of this problem, there is going to be certainly
5 differences of opinion in terms of how to approach it.

6 I would like to think--whether it is the government
7 employees, whether it is the contractors that are basically
8 agreeing to take on this task and try and grapple with this
9 very difficult situation, my guess is everybody is trying to
10 solve this problem, but it is an incredibly, like I say,
11 enormous and complex and difficult issue.

12 So I certainly want to get all the information and
13 appreciate your coming here today and, with that, just
14 wanted to hear what you have to say.

15 Senator McCaskill. Okay. Why don't we begin with you,
16 Ms. Busche? And, take a few minutes to say whatever you
17 would like to say in terms of where you find yourself and
18 what you think is relevant, knowing that our concern is
19 whistleblower protections and contract management. I mean,
20 those are basically the two cornerstones that this hearing
21 that we are going to have in another hour or so is really
22 about.

23 So why don't you each take a few minutes?

24 And then I have got some questions, and I am sure
25 Senator Johnson may have some questions.

1 TESTIMONY OF DONNA BUSCHE, FORMER MANAGER FOR
2 ENVIRONMENTAL AND NUCLEAR SAFETY, HANFORD WASTE
3 TREATMENT PLANT, URS CORPORATION

4 Ms. Busche. Okay. I will keep my remarks pretty brief
5 so that we can actually, I think, get--afford you the
6 opportunity with questions so that we might be able to help
7 your investigation.

8 So I think everyone knows me. My name is Donna Busche.
9 I was the former Manager of Environmental and Nuclear Safety
10 at the waste treatment plant.

11 My responsibilities included making sure that the
12 dangerous waste permit that is actually one of the governing
13 documents for the environmental cleanup mission--that we
14 provided and complied with the terms and conditions of that
15 dangerous waste permit. And the more controversial side was
16 the nuclear safety side, where I would summarize my job as
17 making sure that we adequately implemented the Department of
18 Energy's requirement to integrate safety into the design.

19 So most people resonate with Fukushima, right?

20 I am not advocating that we are going to have a
21 Fukushima. We are not going to have an earthquake and a
22 tsunami.

23 But the parallels from the Department of Energy's
24 regulations are very similar to the Nuclear Regulatory
25 Commission. So we analyze hazards and then we must make

1 sure that there are controls adequate to handle the hazards
2 of the highly radioactive and toxic waste in the waste
3 tanks.

4 My journey, I believe, started at the waste treatment
5 plant in 2009, and I was on good rapport with the company,
6 URS, Bechtel and the Department of Energy until a fortuitous
7 meeting with Dr. Walter Tomasaitis, where we identified some
8 key issues at that time, a highly controversial technical
9 issue of mixing. And I think that was the subject of one of
10 your previous hearings.

11 In that meeting, it was not received well--it being the
12 56 comments and questions that Dr. Walter Tomasaitis raised.
13 When I reviewed the list, I identified that--and these are
14 my words--holy moly, there is quite a few of these that have
15 not been adequately analyzed to understand the hazards and
16 what needs to go into the design.

17 From that point forward, I was requested to attend a
18 public meeting from the Defense Nuclear Facilities Safety
19 Board, where I provided testimony in three panels that were
20 quite controversial, where I took positions technically that
21 may have been differing opinions, as you put it, Senator
22 Johnson.

23 In the nuclear business, we must unwaivering commitment
24 to making sure that we comply with the regulations and
25 execute the public trust that has been endeared to us. So I

1 took a conservative stance. The Defense Nuclear Facilities
2 Safety Board supported that stance and so did many others in
3 the technical community.

4 After that, I was requested to be deposed in Walter
5 Tomasaitis's case. I was subpoenaed for a closed testimony
6 with the Defense Nuclear Facilities Safety Board. And,
7 miraculously, after that, I now have performance issues.

8 And I would characterize--if you disagree with URS or
9 Bechtel in making sure that we build the waste treatment
10 plant, not design it safely, build the waste treatment
11 plant, that you are labeled with performance issues,
12 attitude issues and do not get along with colleagues.

13 So I stayed until I was terminated from my employment
14 on February 18th.

15 Senator McCaskill. I am going to interrupt, if you do
16 not mind, Dr. Tomasaitis, and give my colleague, Ron Wyden,
17 who I know has been interested and active on this issue, and
18 give him a few moments to make comments.

19 Donna Busche just finished explaining her situation,
20 and then the other two witnesses were going to give an
21 informal presentation. Then we are just going to have
22 informal questioning between the whistleblowers-

23 OPENING STATEMENT OF SENATOR WYDEN

24 Senator Wyden. Chair McCaskill, thank you, first of
25 all, for doing this. This is extraordinarily important

1 because if we are going to have the kind of safety agenda
2 that we need in this country we have got to get the truth
3 out. That is the bottom line.

4 And I am particularly pleased that you have three
5 individuals that I have had a chance to talk to--in the case
6 of Mr. Carpenter, for practically two decades, I believe
7 now, and Dr. Tomasaitis and Ms. Busche as well.

8 Getting the real story of the problems at the
9 Department of Energy's Hanford site is hugely important for
10 our part of the world. As some of you know, Hanford
11 essentially adjoins the Columbia River, which is our life
12 blood for our quality of life and recreation and business
13 and a whole host of needs. And the reality is Hanford is a
14 lasting and dangerous legacy of the Federal Government's
15 nuclear weapons production activities, including millions of
16 gallons of high-level radioactive waste.

17 And for decades, secrecy was a way of life at Hanford,
18 first, because it was necessary to protect the nuclear
19 weapon secrets, but later it became a way of hiding the true
20 environmental impacts of decades of plutonium production.

21 And what you are going to hear from these three today
22 and, hopefully, a number of times in the days ahead because
23 working with my colleagues--I am glad to see Senator Johnson
24 here as well. We really need to dig in and get the truth
25 out about the problems at the site. We are talking about

1 contamination of groundwater and the safety problems at the
2 waste treatment plant.

3 And the reality is--and I say this to our Chair and our
4 colleague, Senator Johnson. The only way these serious
5 matters have become public knowledge is because courageous,
6 committed employees like these two individuals have come
7 forward to tell us and to tell the American people.

8 And I will close up, Senator McCaskill, with just two
9 last points.

10 First, independent reviews essentially corroborate
11 their point of view. Both the Defense Nuclear Facilities
12 Safety Board and the Department's own safety inspectors
13 found that Hanford has maintained a culture that, at best,
14 has thwarted the ability of employees to come forward and,
15 at worst, has threatened their careers and livelihoods.

16 And the fact that with respect to Dr. Tomasaitis and
17 Ms. Busche, that they were fired after this issue has gotten
18 so much attention by the independent observers, by you as
19 our Chair, Senator McCaskill, and myself when I was Chair of
20 the Energy Committee, in my view, underscores the fact that
21 nothing has really changed at Hanford. And that is what we
22 have got to turn around.

23 I will just say to the Chair and Senator Johnson, my
24 staff wrote this really long address. I think I can maybe
25 spare you the full filibuster and just thank you very much

1 for what you are doing.

2 This is important for our part of the world, but it is
3 important because all over the country, at other sites, this
4 is being followed, and employees are saying, what are the
5 consequences of coming forward and speaking the truth to
6 influential policymakers?

7 I thank you very much for your work. If you, as Chair,
8 Senator McCaskill, have any questions--softball questions
9 are especially welcome, but I better get back pretty quick
10 to Finance Committee deliberations. And I just thank you
11 very much for doing this.

12 Senator McCaskill. Absolutely. Thanks for coming,
13 Ron.

14 Senator Wyden. Thank you. Thank you.

15 Senator McCaskill. Dr. Tomasaitis.

1 TESTIMONY OF WALTER TOMASAITIS, FORMER MANAGER FOR
2 RESEARCH AND TECHNOLOGY, HANFORD WASTE TREATMENT
3 PLANT, URS CORPORATION

4 Mr. Tomasaitis. The retaliation against me started
5 after I raised technical issues that had nuclear safety
6 implications. My concerns centered around the buildup of
7 hydrogen gas, which could cause a hydrogen explosion; the
8 buildup of plutonium at the bottom of the tanks, which could
9 cause a criticality; and the plugging of pipelines, which
10 could render the plant inoperable for years.

11 The issues I raised not only had nuclear safety
12 implications but could have major impacts on the plant
13 design, and I believe that is the root of the problem.

14 The issues stood in the way of Bechtel and URS earning
15 their award fees and, of more importance, getting additional
16 funding from Congress.

17 The problem of the WTP, I would offer, is not the
18 complexity of the process or actually how the process should
19 operate. There are many good people at Hanford that are
20 working very hard on it.

21 The problem is the mismanagement. The management's
22 objective, the contractors' objective, is to keep the
23 project moving and get their funding regardless of whether
24 they are moving behind, moving backwards, moving forward or
25 standing still. As long as they are there, they get their

1 funds.

2 The concerns I raised led to my firing from the WTP by
3 Bechtel. I want to say that this issue is much bigger than
4 me, and I do not want the issue to be judged solely by my
5 input.

6 By firing me, putting me in the basement and then
7 releasing me--URS firing me--both Bechtel and URS are
8 sending a clear message to all employees, do not do what
9 Walt did. And from what I hear from people calling me,
10 talking to people, they are doing a doggone good job of
11 getting that message out.

12 URS claims they laid me off for downsizing reasons. I
13 can tell you that I see no difference in how I was handled
14 when I was fired from the WTP by Bechtel versus being laid
15 off by URS.

16 And URS held my severance pay hostage for me to give
17 them legal immunity, and we are talking a significant amount
18 of money. I did not sign the agreement to give them legal
19 immunity, so I foregoed [sic] my severance pay. I
20 considered the withholding of my severance pay by URS to be
21 akin to extortion.

22 With the contractors' focus on profits, the employees
23 receive punitive treatment and retaliation if they raise
24 safety issues because it could impact the plant. The
25 contractors then, if they cannot blame DOE, bear the cost of

1 their repairs. Their performance decreases--cost and
2 schedule performance.

3 And there is nothing wrong with making money. I mean,
4 companies need to make money. That is the way our system is
5 built. But, when the focus on profits trumps safety,
6 quality and doing the right thing, you have a problem.

7 And I would submit that you have a major problem in the
8 WTP when the cost goes from an initial estimate by Bechtel
9 of \$4.6 billion, and today the estimate would be over \$25
10 billion or higher. The startup was going to be in seven
11 years, 2001 to 2008, and now the startup is talked about
12 being the late 2020s.

13 I mean, the plant would have been further ahead and
14 closer to startup if they had done nothing. They would have
15 been only seven years from startup with 2001 to 2008, but
16 nothing gets done with the contractors despite that abuse
17 because they continue to get the funding, lobby Congress for
18 additional money, and they continue to get their funding and
19 stay there. Their objective is to keep the funding coming.

20 The contractors, especially Bechtel, will use
21 intimidation and pressure to get the answer they want. This
22 is evidenced by the information we found in their dealings
23 with the Savannah River National Lab.

24 They also put tremendous pressure on Battelle in the
25 Pacific Northwest National Lab. Mr. Ogilvie of Bechtel

1 Corporation leaned on Dr. Wadsworth, the CEO of Battelle, in
2 order to get Battelle to give the answer they wanted.

3 Battelle's ethics prevented them from doing that.

4 To make matters worse, the government is fueling,
5 funding and supporting these contractor actions. Now is the
6 time, in my mind, for Congress to make changes. All the
7 companies in the DOE system are watching to see what
8 happens. With the visibility of my case, Donna's case, the
9 cost growth, the schedule overrun, it will be "Katy, bar the
10 door" if no action is taken to reign the contractors in.

11 As an example of how Congress is funding the contractor
12 performance, all legal expenses incurred by Bechtel and URS
13 to fight employee legal actions are reimbursed on an ongoing
14 basis via taxpayer money. Then, if the company is found
15 guilty, they may be asked to pay back.

16 Well, what do they do? They settle before they pay
17 back. They are not found guilty; no payment.

18 All their attorneys and the people that are here today
19 will be reimbursed for their expenses to come here, and that
20 comes from taxpayer money.

21 So what do they do? They have no incentive--the
22 companies have no incentive to do the right thing.

23 Let the employee file a concern. We will drag the
24 thing out. The government is paying us to fight them.

25 They hire outside attorneys. The outside attorneys are

1 paid by the hour. They have no incentive to settle quicker.

2 So the system provokes support for the contractors
3 doing what they do and continuing to get paid. There is no
4 incentive to do the right thing or to settle quicker.

5 And guess who pays for the cost of us for our legal
6 expenses? Us.

7 Another problem in the WTP is that Bechtel is the
8 design agent and the design authority. That means they
9 decide what they need to do and how they need to do it, and
10 then they are rewarded for cost and schedule performance.
11 That is akin to giving the fox the hen house.

12 I would even say it is worse. It is a license to
13 steal, to keep the project going, to keep that funding
14 stream going.

15 And, if somebody raises a technical issue and it could
16 stand in the way of their funding, they are going to
17 retaliate. They are going to take punitive action. And
18 that is what happened with M3, the mixing issue, back in
19 2010, when not only was there a \$5 million award fee on the
20 line but behind the scenes they were lobbying Congress for
21 an extra \$50 million in funding, of which they got because
22 they "closed M3."

23 But today, as Senator Wyden said, the Department of
24 Energy has conducted surveys that supported and found the
25 negative culture. The Defense Board did an in-depth study

1 and found issues and issued two recommendations. Outside
2 groups have identified issues.

3 And, if you do not believe all that and say, you know,
4 that is all kind of hoo-doo; we do not believe ole Walt, the
5 Secretary of Energy, former Secretary Chu, shut the place
6 down.

7 So the problems are well known, but the contractors
8 continue to get their funding because they misrepresent and
9 mislabel the information.

10 My termination occurred on the heels of Secretary Moniz
11 issuing a statement for a harassment-free workplace. He
12 issued that statement about the third week of September. I
13 was laid off by URS--"laid off"--on October 2nd, less than 2
14 weeks after he issued that statement.

15 Now, with the visibility of my case, several lawsuits
16 and Moniz issuing that statement, if URS would blatantly
17 just lay me off, dismiss me, get rid of me right after the
18 Secretary issues such a cultural statement, what does it say
19 about what they would do if there was no statement?

20 I mean, they will--if you stand in the way of their
21 progress to keep the funding going, there are problems.

22 And, with that, I will say, in my mind, the WTP and the
23 DOE culture are at a tipping point. Now is the time to make
24 a change. If no change is made, I feel real bad for the
25 future generation of workers because I do not want anybody

1 to go through what I have gone through. It is tough.

2 Thank you.

3 Senator McCaskill. Thank you, Doctor.

4 Mr. Carpenter.

1 TESTIMONY OF TOM CARPENTER, EXECUTIVE DIRECTOR,
2 HANFORD CHALLENGE

3 Mr. Carpenter. Thank you for inviting my comments
4 today and thank both of you, Senators, for supporting
5 whistleblower rights. I know that you are strong advocates,
6 and we really appreciate that, and this hearing is a very
7 welcome oversight on what is happening.

8 My name is Tom Carpenter. I am the Executive Director
9 of Hanford Challenge. Our mission is the safe and effective
10 cleanup of the Hanford site for both present and future
11 generations.

12 We work with insiders. We hope they do not become
13 whistleblowers unless they need to tell the truth, but we do
14 not want employees to become whistleblowers.

15 These folks did not want to become whistleblowers.
16 They simply were doing their jobs. And that is the case for
17 most people out there, and then suddenly they are finding
18 themselves on the wrong side of their company.

19 We would like to change that culture so that concerns
20 are welcomed, addressed and we move on and we have a better
21 plant because of that.

22 It is the third anniversary of the Fukushima accident
23 today, and I think it is fitting and appropriate that we are
24 here talking about protecting nuclear whistleblowers and
25 talking about nuclear safety.

1 At the Fukushima plant, engineers there wanted to
2 build, and recommended the building of, a higher tsunami
3 wall to protect the plant against that event. And they also
4 recommended that the emergency diesel generators be moved
5 from the flood plain to on the hill behind the plant.

6 Engineers tell us that the earthquake itself did not
7 cause the Fukushima accident. It was the tsunami. So
8 because the utility that run Fukushima did not listen to and
9 suppressed the testimony of these engineers about the
10 tsunami effects, we have one of the worst nuclear accidents.

11 It is still raging out of control. We still have three
12 meltdowns in process there. Two spent fuel pools have had
13 hydrogen gas explosions, and there are 300,000 gallons a day
14 of radioactive water pouring into the ocean.

15 We can prevent that kind of thing happening in our own
16 country at the Hanford site but only if we listen to our
17 experts.

18 It is not just Donna Busche and Walt Tomasaitis, who
19 are both acknowledge experts with good degrees, with
20 excellent degrees, the top in their country. It is why they
21 were recruited for these positions--Donna being the Manager
22 of Nuclear Safety; Walt, the Manager of Research and
23 Technology.

24 But you also have on record the Chief Engineer of the
25 facility, a guy named Gary Brunson, who recommended the

1 shutdown of the waste treatment plant until the safety
2 issues are resolved. That did not happen. He resigned in
3 protest.

4 You also have Don Alexander, the Chief Scientist for
5 the facility, raising safety concerns, going to USA Today
6 and trying to find some avenue.

7 Initially, these folks did get through to Secretary
8 Chu, the former Energy Secretary. He listened to their
9 concerns, and that resulted in the suspension of all nuclear
10 work at the plant. It has been that way for a year and a
11 half, and it remains that way.

12 We are grateful that is happening. However, it could
13 have been earlier. It could have been years ago, when these
14 folks were listened to.

15 Right now, our major concern is that the treatment of
16 these folks and others like them has sent a message
17 throughout the safety culture that it is not safe to raise
18 an issue. That is a message that cannot be allowed to
19 stand.

20 And it is really up to the Department of Energy to make
21 sure that that message is countered because, right now, we
22 see that Bechtel and URS are winning the battle to silence
23 employees out there. People who are younger in their
24 careers, who see a safety issue--they need to be encouraged
25 to raise those concerns, and the system does not tolerate

1 that right now.

2 So we are asking that Congress take some action to
3 subject DOE to some independent oversight for nuclear
4 safety. We have been doing this now for 25 years, trying to
5 get the Department of Energy to take steps to protect
6 whistleblowers and to have a better nuclear safety culture
7 out there.

8 It is not working. They are not going to. There needs
9 to be independent oversight for nuclear safety and for a
10 safety culture at the site. So we would like to ask
11 Congress to consider taking some steps in that direction.

12 In the practice of reimbursing attorneys' fees, the
13 public should not be reimbursing what amounts to a legal
14 retaliation against whistleblowers out there. It is not in
15 their interest. It is in the interest of the public to hear
16 the safety concerns, not suppress and silence them. So I am
17 hoping this Committee also takes on that challenge.

18 And we are also looking for meaningful remedies and
19 protections for whistleblowers. Right now, there is really
20 not much there to avail, for these folks to avail themselves
21 of protection.

22 Thank you very much for considering my statement today,
23 and I am happy to answer any questions you might have.

24 Senator McCaskill. Let me start with asking, was there
25 ever any issue, documented issue, on your job performance,

1 either one of you, prior to you saying things out loud and
2 publically that raised safety concerns concerning Hanford?

3 Ms. Busche. You want me to start off?

4 I received three letters.

5 The first one was titled Corrective Action Letter,
6 where, in summary, it told me to be nicer to people. It was
7 not written as a written warning from a standard human
8 resources perspective. It was just titled Corrective Action
9 Letter. That was in 2011.

10 I received nothing until 2013. So there was a silence
11 between 2011 and 2013.

12 I received another letter that said I was basically
13 late on assignments, and it listed four of those.

14 And then the final letter was that I had sent
15 inappropriate e-mails. When I requested human resources,
16 had they done an investigation, because an e-mail by itself,
17 without the context of the conversation, is just an e-mail
18 by itself.

19 And my supervisor and the manager of human resources
20 admitted, oh, this was just based on the e-mails.

21 And those were the three letters I received.

22 Senator McCaskill. And those occurred before you--I am
23 trying to figure out the performance issues with you, if
24 there were any that were documented prior to you giving
25 testimony in a public way that they did not like.

1 Ms. Busche. No. Prior to that, I would say I received
2 above average raises, very good bonuses from the executive
3 compensation pool, had received numerous letters of thank-
4 you's from my supervisors, until--

5 Senator McCaskill. So it was not until you gave
6 answers that made the companies uncomfortable. That was
7 when you first started receiving some kind of documentation
8 about your job performance.

9 Ms. Busche. Yes, ma'am.

10 Senator McCaskill. And what about you, Doctor; was
11 there anything prior to you raising concerns about technical
12 issues of safety at Hanford? Had you gotten any performance
13 issues brought to your attention prior to that?

14 Mr. Tomasaitis. No, ma'am, not at all.

15 Senator McCaskill. Okay. How long did you work there
16 prior to you raising concerns publically that the
17 contractors disagreed with?

18 Ms. Busche. I would say probably 14, 15 months.

19 I started in March of 2009. The fortuitous was July of
20 2010 or the latter part of June 2010. Before that, I
21 received really no negatives, lots of accolades that I was
22 doing great work at the waste treatment plant.

23 Senator McCaskill. Was there ever a time that you felt
24 pressure to change anything you had written or testified to
25 by the companies?

1 Ms. Busche. Yes, ma'am, in--

2 Senator McCaskill. And would you delineate what those
3 were and when?

4 Ms. Busche. In the public meeting convened by the
5 Defense Nuclear Facilities Safety Board--I think it was
6 October 7th and 8th of 2010--I was requested to sit on the
7 panel. During the second panel discussion, which was the
8 first day, it was really the controversial, where I took
9 positions, technically.

10 Immediately after that, I was admonished by, at that
11 time, EM1, and that is Dr. Triay, and--

12 Senator McCaskill. Explain what EM1 is.

13 Ms. Busche. Environmental Management. So in the
14 Department of Energy, Environmental Management is really the
15 government part, that flow-down of who is overseeing the
16 cleanup of Hanford.

17 So after that particular meeting, when I walked into
18 the debrief room--you know, you are shuttled back and forth.
19 I made a comment that I was out looking for a gentleman
20 because I figured I was off his Christmas card list. So I
21 was trying to relieve tension.

22 And I was admonished that if my intent was to piss
23 people off I did a mighty fine job that day. So I left the
24 room.

25 The next morning I chose not to go back there because

1 it was quite--you know, 40 people not being kind.

2 I was met outside by Frank Russo, Leo Sain and Bill
3 Gay, requesting me. So Frank Russo was Bechtel. Leo Sain
4 and Bill Sain were URS, requesting me to change my
5 testimony.

6 And I told them I could, and I basically went inside.

7 During the actual third panel session, Shirley Olinger
8 from the Department of Energy was actually passing cards to
9 Leo Sain with handwritten notes to change the testimony that
10 I had given.

11 Senator McCaskill. So it was Bechtel, URS and the
12 Department of Energy that were putting pressure on you to
13 change what you were saying publically?

14 Ms. Busche. Yes, ma'am.

15 Senator McCaskill. And what about you?

16 Mr. Tomasaitis. There were several very distinct
17 cases.

18 I started raising issues when I got there in 2003
19 because that was my job responsibility.

20 In 2006, I chaired and led a very intensive technical
21 review chartered by Secretary Bodman at that time, Secretary
22 of Energy Bodman.

23 Upon issuing that report, a Bechtel manager, Craig
24 Albert, called me and said he wanted to edit the report.

25 And I said, no. As you know, those were the ground

1 rules. Those were included in the ground rules, that there
2 be no editing by management of the report.

3 He said to me, who do you work for?

4 And I said, well, you know, I think I know who I work
5 for.

6 He then went on to say, well, I have talked to Jim
7 Owendoff at DOE, and Jim Owendoff said it is okay.

8 And I said, well, if it is okay, I will call Mr.
9 Owendoff and confirm it.

10 And he then recanted his story.

11 The pressure then began, retaliation on me, from '06.

12 In 2010, there were many times when my URS manager,
13 Bill Gay, took me aside and said, quit raising issues. Do
14 not raise the issues.

15 Leo Sain, the Vice President in Aiken, South Carolina,
16 told me, Walt, bring the issues to me, and I will take them
17 up the line.

18 And I said, Leo, you are in Aiken. I am 3,000 miles
19 away. My job is to do that.

20 No, no, you bring the issues to me, and I will handle
21 them.

22 Then, at the end of June 2010, I tasked PNNL, Pacific
23 Northwest National Lab, to issue a report, and my immediate
24 two URS bosses, Bill Gay and Richard Edwards, both tried to
25 have that report squashed because they knew that that report

1 would conflict with Bechtel's approach to the technical
2 resolution of the problem.

3 So I have had many--

4 Senator McCaskill. Of the mixing problem?

5 Mr. Tomasaitis. Of the mixing problem, yes, Senator.

6 Senator McCaskill. Okay. Finally--and I want Senator
7 Johnson to have an opportunity to ask you some questions,
8 and I may have a couple more--you have already said that
9 they would not give you your severance pay unless you signed
10 documents absolving them of any legal liability surrounding
11 the way that you were treated.

12 On your nondisclosure agreements, was it clear in your
13 nondisclosure agreements that they had no legal authority to
14 keep you from doing what you are doing today, making reports
15 to either inspectors general or to Congress as a
16 whistleblower? Was that clear in the nondisclosure
17 agreements, that you retained those rights?

18 Mr. Tomasaitis. Do you mean when we signed on with the
19 company?

20 Senator McCaskill. Right.

21 Mr. Tomasaitis. Wow. I would say I do not remember
22 any such verbal or written statement. And, since the time I
23 filed suit in the past--over the past almost four years, I
24 have never heard that referred to.

25 Senator McCaskill. Okay.

1 Mr. Tomasaitis. So I do not know anything about it.

2 Ms. Busche. I would say--the nondisclosure, because I
3 have read it numerous times, I would say, is not--would not
4 supersede some of the Department's regulations to provide
5 factually accurate information.

6 So, when the Defense Nuclear Facilities Safety Board,
7 whether an attorney or a board member, would ask me a
8 question, I believe I am obligated to tell the truth.

9 Senator McCaskill. Senator Johnson.

10 Senator Johnson. Yes, I come at this from the
11 perspective of a business guy who has managed construction
12 projects in the past, and there are a lot of things that
13 just--this is a real head-scratcher from a number of
14 different perspectives.

15 First of all, I am not sure in terms of the--obviously,
16 we have a dispute between yourself and the company. I am
17 not sure this is the best place to adjudicate this. This
18 will be done through a court of law.

19 I think there are some real issues in terms of
20 whistleblower protection and who is getting reimbursed for
21 legal fees and who is not. I think those are very
22 legitimate issues.

23 But, as a business guy, I avoided attorneys, no
24 offense, and judicial process like a plague.

25 And taking this kind of action, both Bechtel and URS,

1 would certainly understand that this is going to create an
2 awful lot of heat.

3 So, again, putting that aside, what I want to get to
4 is, again, having managed construction projects, having been
5 a customer--I mean, having been a customer and a supplier,
6 it is always the customer that is in the driver's seat here.
7 And the customer in this instance is the government.

8 So let me start--because I read in part of the briefing
9 that the companies are required to notify the government if
10 they are going to be laying off or dismissing a safety
11 employee or somebody in that safety function.

12 Ms. Busche. It is key personnel on a contract.

13 Senator Johnson. Okay. So were you one of those key
14 persons?

15 Ms. Busche. Yes, I am, and as of yesterday, I am still
16 listed in the Bechtel contract as key personnel.

17 Senator Johnson. Okay. So were those notifications
18 given?

19 Ms. Busche. There was a letter, to my knowledge.

20 I will not speculate, but I do know that Bechtel sent a
21 letter January 14th to the Department of Energy, requesting
22 to change key personnel. That a letter has been labeled
23 Sensitive in the system, so there is a lot of gossip.

24 So people brought it to my attention. I could not get
25 a copy.

1 My understanding is the Department of Energy did not
2 approve that or the significant reorganization of my job
3 department at that time.

4 So, today, I do not believe that they have actually
5 made a decision one way or another, and I am still listed in
6 the contract.

7 Senator Johnson. Again, I think the government should
8 be in the driver's seat of pressing safety and making sure
9 and putting controls in place to make sure things like that,
10 you know, that type of system should be honored and
11 respected and followed.

12 What other things are there that the government has in
13 place to be in charge of this process that they be ignoring
14 or that they are not following through on?

15 [No response.]

16 Senator Johnson. Does that make sense? Do you know
17 what I am trying to get at?

18 Mr. Tomasaitis. Well, I think so.

19 I think I would answer that in my view the Department
20 of Energy is outnumbered, outmanned and outgunned when it
21 comes to deal with the contractors. At the WTP, it is about
22 100, if not 150, to 1--the ratio of contractor employees to
23 DOE oversight.

24 DOE has to rely on the contractor for what the
25 technical situation is, and when I was R&T Manager, there

1 was not one engineer in the DOE chain between my counterpart
2 and Secretary Chu.

3 I mean all good degrees, but a law degree is not going
4 to necessarily help with the design of the WTP. So the DOE
5 has to rely on the contractors.

6 The contractors now want to keep their funding going.
7 So they will mislead, misrepresent the facts and, I will
8 say, sell a story to DOE.

9 Senator Johnson. But, again, that gets to the point
10 that the government has to put in place the controls,
11 recognizing the limited nature of their personnel versus the
12 personnel of the contractors.

13 And I remember the hearing we did have on this. That
14 was a question I had. Could we, could the government, hire
15 the people to do this type of project? And, really, the
16 answer is, I mean, no way.

17 So the government has to rely on these contractors that
18 have expertise in producing these one-of-a-kind, you know
19 once in the span of human history, these types of projects.
20 You have to rely on contractors, but it is a matter of how
21 you institute the controls that ensure the safety to protect
22 whistleblowers.

23 Yes, Mr. Carpenter, respond to that.

24 Mr. Carpenter. Yes, thank you very much.

25 We do have models in this country for regulating

1 nuclear energy and the nuclear navy. Both have programs for
2 instituting safety culture and making sure that the laws are
3 followed. Of course, there is an element of independence
4 there, and that is what is missing at the Department of
5 Energy and the Hanford site, for instance.

6 The Department of Energy owns the site. They are
7 subject to pressure from you guys, from the State of
8 Washington and from other stakeholders to hurry up and get
9 it done.

10 Senator Johnson. That is justifiable pressure, right?

11 Mr. Carpenter. It is justifiable pressure.

12 Senator Johnson. I mean because we are already getting
13 leaking of the aquifer.

14 Mr. Carpenter. Absolutely.

15 Senator Johnson. I mean, this is a big, complex
16 problem.

17 Mr. Carpenter. No question about that. However, you
18 do have nuclear safety laws, and if you take shortcuts there
19 to hurry up on the schedule, then you have got a problem.

20 Senator Johnson. Let me--because I talked about
21 difference of opinion.

22 You mentioned Fukushima. I was just speaking to
23 somebody--and again, I am not a nuclear engineer.

24 One of the lessons learned--you said the experts said
25 increase the walls to protect the diesel generators. The

1 design change that can be made as a result of that
2 experience is to put a big ole tank of water on top of the
3 nuclear reactor that can cook it and can be filled by
4 anything.

5 I mean, you can get outside pumps to fill that.

6 So the outside experts at that point, not having that
7 experience, would have recommended raising walls--not the
8 best design solution. The best design solution is to put a
9 big ole tank of water.

10 I mean, it is true that you have got differences of
11 opinion of the best way to proceed in pretty complex
12 engineering-

13 Ms. Busche. I want to go back, I think, to your
14 original question--that yes, do I believe that the
15 Department of Energy is ultimately responsible and
16 accountable for the safe cleanup of Hanford? Absolutely.

17 Senator Johnson. And it has to be.

18 Ms. Busche. Absolutely. So I have no argument there.

19 But I also believe that the contractors, primarily
20 Bechtel and URS, who have signed written agreements and
21 contracts with the Department of Energy, are obligated to
22 tell the truth.

23 Senator Johnson. And to follow those contracts.

24 Ms. Busche. Correct. Right.

25 Senator Johnson. I mean that is there.

1 Ms. Busche. So that is the business side.

2 Senator Johnson. So what parts of those contracts are
3 they violating?

4 Ms. Busche. So, it is a fundamental under 10 C.F.R.
5 820.11, that any documentation provided to the government be
6 factual in all material respects.

7 So, when the Department--excuse me. When Bechtel and
8 URS exclude, even with those differing opinions, people are
9 making an uninformed decision on incomplete facts. That
10 directly lies with the contractor.

11 So, if Donna Busche is no longer allowed to go to the
12 senior management meetings with the Department of Energy,
13 all they are hearing is, we are good to go. There are no
14 differing professional opinions. It is all solved.

15 And is it a complex problem? Yes, but it is not as
16 complex as people would make it out to be.

17 We vitrify waste all over the world. We are building
18 two vitrification facilities in a laboratory. Those are
19 standard technologies, but yet, there are still systemic
20 design flaws because we have not addressed technical issues
21 as they are raised.

22 Senator Johnson. At some point in time, people have to
23 make decisions.

24 Ms. Busche. Correct.

25 Senator Johnson. They have to make decisions on

1 basically alternate approaches and alternate technologies.

2 And, again, I think those always have to be reviewed
3 and updated. You know, was it the right decision?

4 At a certain point in time it becomes a management
5 quandary, going, okay, we have got to make a decision. We
6 have to move forward on this.

7 And you can have--and I am not saying--you can have
8 people with potentially off-the-wall different ideas on
9 things.

10 At what point do you say this is the decision we made
11 in conjunction with the government, and we are moving
12 forward on this?

13 You know what I am saying?

14 Ms. Busche. Absolutely.

15 Senator Johnson. That is the question.

16 Ms. Busche. Absolutely.

17 Senator Johnson. There is the quandary. That is the
18 conundrum here.

19 Mr. Tomasaitis. Well, I--

20 Ms. Busche. Hang on just one second, Walt.

21 I was an executive, so I do get the business and the
22 profit and loss piece. I clearly understand that.

23 But we made those risks from the year 2003 to 2010.
24 Those risks were taken. Management made those decisions,
25 and they turned out to be technically wrong.

1 So we have six-foot concrete walls with commodities in
2 the walls. Ventilation-

3 Senator Johnson. My question is, why isn't the
4 Department of Energy--they are the ones who should be saying
5 this is wrong; we have got to move forward.

6 And, quite honestly, because it is a work in process,
7 nobody knows for sure.

8 Ms. Busche. No, I--

9 Senator Johnson. I mean, from the standpoint of
10 business, okay, well, we all collectively made the decision.
11 It was a wrong decision. Now we have got to change it.

12 It is going to cost more money. I mean, we are not
13 going to like that. Dollars are scarce.

14 So you have got all these competing pressures making it
15 pretty difficult to decide exactly how to move forward.

16 Ms. Busche. I believe the Department of Energy has
17 stood down construction and a large part of production
18 engineering on pretreated HLW for the very reasons that we
19 and many other people raised. Right?

20 The question is, how do you go forward?

21 If you use the same business management models that
22 make the same business decisions, using the same process and
23 the same people, we are going to end up 10 years from now
24 having the next discussion at \$25 billion.

25 Senator Johnson. Putting your specific situation

1 aside, which will be adjudicated in a court of law--

2 Ms. Busche. Sure.

3 Senator Johnson. --which is the appropriate venue,
4 from our standpoint, what do we need to do or consider
5 legislatively to solve it?

6 I mean, how should the Department of Energy, as the
7 customer--how do they institute the controls?

8 What do we need to put into the controls so this
9 process is going to move forward and be as cost-effective as
10 possible but also proceed in a timely manner, quickly, as
11 quickly as possible, but also in a safe manner?

12 Mr. Tomasaitis. Well, first, let me offer that with
13 the design of the WTP, Bechtel designed the Savannah River
14 vitrification plant. They operate it. URS operates it.
15 URS operated the West Valley vitrification plant, and URS is
16 operating Sellafield, England.

17 Those two companies well know how to build a plant.

18 The problem is that they do not come forward and say,
19 here is what we are going to do. Let us tell you what we
20 are going to do, what we are going to meet. Let us give
21 you--tell you what this plant will do, what we are going to
22 provide you as the customer, Department of Energy.

23 They do not do that.

24 Senator Johnson. Let me just--are there differences
25 between these sites?

1 I mean, there are, aren't there?

2 Mr. Tomasaitis. No, no, no. It is nuclear waste with
3 every element of the periodic table that you put in the
4 glass.

5 Senator Johnson. So, again, why didn't the government
6 or why didn't the Department of Energy say, hey, listen, you
7 have already got these? Just give us a quote on this exact
8 same process?

9 We have already overcome these technical hurdles at
10 these other sites. Why are we reinventing the wheel here?
11 This worked.

12 I mean, again, the customer should be driving this
13 process. They should be in charge.

14 Mr. Tomasaitis. I would concur that the Department of
15 Energy plays a role in establishing those requirements, but
16 again, they do not have the technical background.

17 Senator McCaskill. Why not?

18 Mr. Carpenter. Good question.

19 I would suggest that you need, as Congress, to give the
20 Defense Nuclear Facilities Safety Board some authority to
21 assure that the designs are compliant with the nuclear laws.
22 That is what is missing here--that driver.

23 They are in conflict. The GAO has done this study.
24 The Army Corps of Engineers has done these studies. They
25 have identified mismanagement, incompetence, et cetera, but

1 mostly they identified conflict of interest.

2 If you beef up the role of an agency that is already
3 there doing this work but does not have the authority to,
4 for instance, grant a license, then you have got a problem.

5 Now you make that so. You make sure that it is a safe
6 design, and DOE can continue being DOE. The contractors do
7 what they have to do, but they have to do it with nuclear
8 safety in mind, and that is going to improve the schedule
9 and the cost.

10 Senator Johnson. That only assumes that the government
11 agencies have the expertise--

12 Mr. Carpenter. They do.

13 Senator Johnson. --that is at least as good--

14 Mr. Carpenter. They do.

15 Senator Johnson. --as the contractors have.

16 Mr. Carpenter. They do. The Defense Nuclear
17 Facilities Safety Board has retired nuclear engineers from
18 the contractor community, from the NRC, from the nuclear
19 navy. This is an excellent agency.

20 Senator Johnson. Then why hasn't the government
21 instituted the types of controls that are necessary here to
22 ensure safety?

23 Mr. Carpenter. Good question.

24 We have been asking for that for some time, and we
25 would love you to do that. We would love you to do that.

1 Senator Johnson. I mean that is where-

2 Senator McCaskill. But that is a statutory issue.

3 Mr. Carpenter. Right.

4 Senator Johnson. Precisely. That is what we should
5 get decided on in this press--whatever this is, this
6 meeting, which I appreciate, and hearings and subsequent
7 hearings.

8 We have got to get to the point of, what is the
9 solution? What are the controls?

10 I mean, what do we need to do from the government
11 standpoint, who really should be in charge of this process,
12 to get those types of controls--

13 Mr. Carpenter. You are singing my song. I love that.

14 Senator Johnson. --to solve the problem as well as
15 provide the controls?

16 Mr. Carpenter. Absolutely.

17 Ms. Busche. But, for the purpose of whistleblowers, we
18 need a forum that we can actually raise concerns.

19 Individuals like myself and Dr. Walter Tomasaitis have an
20 incredible amount of courage, and some days I do not know
21 why I went to work. Right?

22 But, when you see very strong people that are treated
23 the way we are, it is a deafening silence when they have no
24 forum to actually raise those concerns. And, there is no
25 check and balance in the system now.

1 So, with respect to whistleblower reform, I think we
2 have a lot of work that we need to do so that, one, we can
3 raise concerns and that they do not just have to be
4 adjudicated in a court of law for six to seven years while
5 very legitimate safety issues may be on the--

6 Senator McCaskill. And I might add, adjudicated in a
7 court of law for six or seven years with the taxpayers
8 picking up an unfettered bill of millions of dollars for
9 legal fees while they are scraping to figure out how they
10 can actually out-wait the paper barrage that will come down
11 on their head from private defense firms who know the more
12 they work it the more money they make. Their incentive is
13 to bill, depose, bill, delay, depose, bill, bill, bill,
14 delay, depose.

15 So the notion that this is somehow a level playing
16 field is ridiculous.

17 Senator Johnson. But it should be because the
18 adjudication process really in terms of whistleblower
19 protections should reside, from my standpoint, with the
20 Department of Energy. They are the ones that have the
21 charge with safety and making sure that those controls are
22 in place, and you should be able to go to the Department of
23 Energy and speak freely.

24 Again, from my standpoint, the companies having laid
25 you off, have taken a pretty big legal risk, and we will

1 find out how that all plays out.

2 But the process really has to be, and the control has
3 got to be, within a governmental agency, which always gives
4 me pause because we see they are not particularly--

5 Mr. Tomasaitis. I did go to the Employee Concerns
6 Program in DOE, and when the manager listened to my case, he
7 said--he told me this was above the ability of his group and
8 I should go to somebody on the outside.

9 Senator Johnson. That is what we have to be talking
10 about. I mean, that is what this is--

11 Senator McCaskill. Well, then I am just encouraged to
12 hear that you are ready to increase appropriations to the
13 Department of Energy to hire engineers.

14 Senator Johnson. I am happy to look at priority in
15 spending.

16 Senator McCaskill. That surprises me. That surprises
17 me that you would--

18 Senator Johnson. Well, I think the Department of
19 Energy--

20 Senator McCaskill. We could enhance government here
21 and not solely rely on the private sector, especially when
22 all the incentives, financial and otherwise, are to not slow
23 down the process for technical concerns, to not allow the
24 technical concerns that are being raised to get the same
25 prominence in their reports to DOE as their version of what

1 needs to occur.

2 So I think that there is a real issue here in terms of
3 empowering DOE so that they can, in fact, be a real player
4 at the table. They do not have that power right now because
5 they do not have the manpower and they do not have the
6 expertise and they do not have the resources.

7 Senator Johnson. This is a priority of government.
8 Who else is going to do this?

9 This is a big mess that has got to be cleaned up.

10 We have got to look at some lower priority items--

11 Senator McCaskill. Well, are you saying that we are
12 going to

13 Senator Johnson. --that we do not have to spend money
14 on.

15 Senator McCaskill. So you will co-sponsor a bill with
16 me to increase appropriations for the Department of Energy?

17 Senator Johnson. As long as we find where--

18 Senator McCaskill. See, last time I looked, I thought
19 you wanted to do away with the Department of Energy.

20 Senator Johnson. --are the lower items, where are the
21 lower priority spending items that we offset for that, you
22 know, for the higher priority spending which-

23 Senator McCaskill. I am fine with that. I just think--
24 -

25 Senator Johnson. Good. This is bipartisanship here

1 moving on.

2 Senator McCaskill. Maybe it is not DOE. Maybe it is
3 the nuclear board that you referenced.

4 Mr. Carpenter. How about the bonuses and fees for some
5 of the contractors that have not performed very well?

6 Senator McCaskill. But that is old refrain that we
7 have heard many times in the Subcommittee.

8 Mr. Tomasaitis. I am sorry.

9 Senator McCaskill. Go ahead.

10 Mr. Tomasaitis. I think certainly one step forward
11 would be Congress setting the standard, empowering DOE,
12 telling them that the performance is unacceptable.

13 DOE is in their operation. They want to move ahead. A
14 lot of pressure on them for schedule and costs. They listen
15 to the contractors. You get into a cycle.

16 The cycle can slowly degrade. It is degraded now.

17 Congress reinforcing the DOE that the performance is
18 unacceptable and here are things that need to change, just
19 that, I believe would make a big step.

20 I have advocated for the Defense Board to be given
21 enforcement authority so that when they issue a
22 recommendation, as Mr. Carpenter said, they could enforce
23 it. Steps like that would help.

24 Senator McCaskill. That would be great.

25 Senator Johnson. Let me just throw one caveat out

1 there because I was a business guy that just did not do
2 business with the government because it was not worth it.

3 And you are taking a look at it right here. There are
4 not many companies in the world that could handle this. We
5 have got to make sure that we have got some people that are
6 willing to do this type of work.

7 So it has got to be fair from all sides, but we have
8 got to institute the safety controls to ensure it proceeds
9 in a safe and effective manner.

10 Senator McCaskill. We will look forward to any more
11 information you want to submit for the record.

12 We will begin the formal hearing in just a few minutes
13 and certainly would appreciate your input after hearing the
14 formal hearing.

15 And we have got a couple of to-do items that I think
16 might really help, that Senator Johnson and I can agree on.

17 And I think from empowering DOE but also to looking at
18 having this outside, third, already very--you know, everyone
19 respects this board. Everyone knows they know this very
20 technical area. Giving them some third-party oversight with
21 the ability to make some pronouncements in this area, I
22 think, makes a lot of sense. There is a lot of private
23 companies that deal with this board now in that context, and
24 there is no reason why this facility should not be also one
25 of them.

1 Okay. Thank you all very much.

2 [Whereupon, at 11:08 a.m., the Subcommittee was

3 adjourned.]