



1 APPEARANCES:  
2

3 For the Petitioner, appearing pro se: DALE WASHAM

4 For the Respondent: JOSEPH F. QUINN

5 Also present: LEE DORN, Petitioner  
6 JOYCE BARBER, Petitioner  
7 ROBERT HENKEL, Petitioner8 \*\*\*\*\*  
910 BE IT REMEMBERED that on Monday, the 21st day of  
11 MARCH, 2005, at 1:32 p.m., at Pierce County Superior Court,  
12 930 Tacoma Avenue South, Tacoma, Washington, before THE  
13 HONORABLE WM. THOMAS McPHEE and reported by Dianne Y.  
14 Wilson, CCR-RPR, the following proceedings were had, to  
15 wit:16 \*\*\*\*\*  
1718  
19 THE COURT: Please be seated.20 Good afternoon, ladies and gentlemen. I think  
21 we're ready to proceed again.

22 MR. DALE WASHAM: Good afternoon, your Honor.

23 If I might, your Honor, there is one other statute  
24 that I need to inform the Court about.

25 THE COURT: All right.

1 MR. DALE WASHAM: And that is RCW 36.21.015.  
2 And under that statute, it says "Qualifications --" The  
3 entitlement is "Qualifications for person assessing real  
4 property -- Examination -- Examination waiver -- Continuing  
5 education requirement." And under (2), under that -- under  
6 that number, statute, it states, "No person shall assess  
7 real property for purposes of taxation without having  
8 passed said examination or having received an examination  
9 waiver from the Department of Revenue upon showing  
10 education or experience determined by the department to be  
11 equivalent to passing the examination. A person passing  
12 said examination or receiving an examination waiver must be  
13 accredited accordingly by the Department of Revenue."

14 In other words, that you have a requirement to be  
15 licensed and have a certain amount of education before  
16 it -- It would be like your fifth year of teaching. In  
17 other words, it's a requirement. You cannot do any  
18 assessing without that. And that's RCW 36.21.051 -- 015.  
19 Pardon me.

20 THE COURT: Are you contending that's a  
21 minimum qualification for election to the post of assessor?

22 MR. DALE WASHAM: No. I'm -- What I'm saying  
23 here is that if for some far out reason that Mr. Quinn was  
24 to say to this Court that his -- that the  
25 assessor-treasurer Ken Madsen had the right to do

1 appraising, that I'm saying that he would have to be  
2 licensed pursuant to that statute and meet those  
3 requirements --

4 THE COURT: All right.

5 MR. DALE WASHAM: -- which he certainly  
6 doesn't. Thank you. Thank you, your Honor.

7 THE COURT: Thank you.

8 Mr. Quinn?

9 MR. QUINN: Yes, your Honor. Thank you.

10 May it please the Court. My name is Joseph Quinn,  
11 attorney for Ken Madsen.

12 And normally I would start out by talking about  
13 factual sufficiency and legal sufficiency. I've done that  
14 quite a bit in my brief, and I probably will come back to  
15 that. I think in this case though first I'd like to talk  
16 about the overall appropriateness of recall under these  
17 particular circumstances with respect to the statutory  
18 scheme.

19 I sensed from the Court's questions and from  
20 Mr. Washam's answers that it would be appropriate to start  
21 with a little discussion of the statutes that have to do  
22 with revaluation. So I'm going to start with RCW  
23 84.41.030, which I hand up to the Court a copy thereof and  
24 a copy to Mr. Washam.

25 And I just wanted to call attention to part of it,

1 your Honor. I won't read the entire statute to you. But  
2 essentially this provides that each county assessor shall  
3 maintain a program for revaluating property within the  
4 county on a continuance basis and shall establish a  
5 revaluation schedule, which will result in revaluation of  
6 all taxable real property within the county at least once  
7 each four years and physical inspection of all taxable  
8 property, real property, within the county at least once  
9 each six years.

10 So that's the general statute that starts the  
11 discussion. I think in fact what their allegation is,  
12 their underlying argument, as you heard near the end of  
13 Mr. Washam's argument here this morning, was essentially  
14 it's the position of the recall petitioners that  
15 Mr. Madsen's office, and therefore his responsibility, is  
16 to physically inspect property once every six years based  
17 on this statutory scheme. They don't think that the office  
18 is doing that.

19 Specifically though the recall Charges 1 and 2 are  
20 in furtherance of that theory, that in essence "We don't  
21 think that you're physically inspecting the properties once  
22 every six years. And furthermore, you are lying about it."  
23 I think that's a fair summary of what they're saying.

24 But I keep going back to the underlying theory that  
25 they have, which is that this office is not in fact

1 physically inspecting the property at least once each six  
2 years.

3 Now, that statute is in pari materia with and  
4 therefore must be read in conjunction with this statute.  
5 I'm handing up RCW 84.41.041. And I'm handing a copy to  
6 Mr. Washam. And I really just wanted to highlight a  
7 portion of this statute as well, your Honor.

8 This one expands on 030, the previous statute,  
9 thus: It says, "Each county assessor shall cause taxable  
10 real property to be physically inspected and valued at  
11 least once every six years in accordance with RCW  
12 84.41.030," the previous law, and it goes on to say, "and  
13 in accordance with a plan filed with and approved by the  
14 Department of Revenue."

15 Now, I pointed out in my responsive materials that  
16 nowhere in this record has been filed the revaluation plan  
17 of Pierce County. It would seem to me that if you are  
18 going to make an argument that you are not properly  
19 inspecting the property once every six years in accordance  
20 with the law, that you would want to at least submit the  
21 revaluation plan of the county so that the Court would have  
22 the full record before it to test the offer of evidence and  
23 to test what's actually being done in response to that, to  
24 test it against the plan. Otherwise the Court is operating  
25 with a partial record. I think we have seen already in

1 this case the dangers of proceeding with a partial record.  
2 And this Court has been scrupulous in trying to make sure  
3 that you understand all the facts and have a complete  
4 picture of all the pertinent laws.

5 So in that regard, let me hand up another statute  
6 that goes with these first two. And that's 84.41.070.

7 Now, for my argument, your Honor, this 070 is  
8 actually the most important statute, because my argument is  
9 that we shouldn't be here today, we shouldn't be in the  
10 process, the constitutional process, of recall unless and  
11 until the other processes and the other jurisdictions  
12 allowed by law to the various agencies are fulfilled. It's  
13 Mr. Madsen's office's responsibility to follow all of those  
14 statutes. And in fact the department with jurisdiction  
15 over his oversight, if you will, is the Department of  
16 Revenue. And that's what this 070 is all about.

17 And interestingly, it states this: "If the  
18 Department of Revenue finds upon its own investigation, or  
19 upon a showing by others --" Now, I think a showing by  
20 others could be citizens. It could be Dale Washam in a  
21 recall, I suppose. But it could also be citizens. It  
22 says, "or upon a showing by others, that the revaluation  
23 program for any county is not proceeding for any reason as  
24 herein directed, the Department of Revenue shall advise  
25 both the county legislative authority and the county

1        assessor of such finding."

2                So the proper complaint and the proper jurisdiction  
3        is with the Department of Revenue, in my view.  If you feel  
4        that the revaluation program is not proceeding with enough  
5        physical inspections every six years, or for any reason,  
6        here's the remedy.  You present that evidence to the  
7        Department of Revenue, which, incidentally, they have done,  
8        as shown on page 8, I believe it is.  I don't know if the  
9        Court noticed that, so I'll call attention to it.

10                THE COURT:  Say that again, please, that last  
11        argument that you made.

12                MR. QUINN:  If you call attention to this  
13        fact, this supposed fact, that they have not proceeded as  
14        they should have done with the revaluation program, for  
15        some reason you are not doing enough physical  
16        inspections -- which, after all, is their contention.  If  
17        you are not doing enough physical inspections, bring it to  
18        the Department of Revenue, and they will, on their own  
19        investigation or upon a showing by others -- they will look  
20        into it.  And that's the process, not this process.

21                I would also point out that on page 8 of the recall  
22        petition -- You can see it near the bottom.  The  
23        second-to-the-last paragraph on page 8 of their own  
24        petition says that in July of 2002, they reported this very  
25        thing to the state Department of Revenue, what's the same

1 subject matter of this recall. They said that Ken Madsen  
2 had falsely reported in the 2001 assessor's annual report  
3 that thousands of residential real property sites in Pierce  
4 County had been physically inspected as required by the  
5 RCW, when in fact, et cetera, those said thousands of  
6 residential sites in Pierce County cited to by Ken Madsen  
7 were never physically inspected as Madsen stated they were.

8 So they have made a showing already, in 2002, to  
9 the Department of Revenue. I see no results yet. Maybe  
10 the Department of Revenue didn't find their report to be  
11 very credible. I have no way of knowing. But the point  
12 is, they know how to make a showing to the Department of  
13 Revenue. They know that the Department of Revenue has  
14 jurisdiction.

15 And I'm not saying that they can't file a recall.  
16 I'm just saying that the primary jurisdiction on something  
17 like this should be with the Department of Revenue under  
18 this factual statutory scheme.

19 It specifically goes on to say that after they  
20 advised the county legislative authority, i.e. the county  
21 council, and the county assessor of that finding, within 30  
22 days after receiving such advice, the county legislative  
23 authority, at regular or special session, either, one,  
24 shall authorize such expenditures as will enable the  
25 assessor-treasurer -- the assessor to complete the

1 revaluation program as herein directed or, two, shall  
2 direct the assessor to request special assistance from the  
3 Department of Revenue for aid in effectuating the county's  
4 revaluation program.

5 I submit to you that that's the proper way to  
6 proceed, not to proceed with a recall, because you haven't  
7 even exhausted all of the statutory possibilities. I  
8 submit to you that it couldn't really be misfeasance or  
9 malfeasance or a violation of your oath of office if you  
10 haven't even gotten to the point where the Department of  
11 Revenue says, "Look. You are not physically inspecting  
12 enough properties. What do you need to do your job? If  
13 you are not physically inspecting enough properties every  
14 six years, we have aid to offer you. We can advise the  
15 county council that you need further inspectors, that you  
16 need whatever, that you need further resources to keep  
17 up-to-date."

18 Until we get to that stage, your Honor, how can we  
19 have reached a situation where a judge can conclude that  
20 the case is sufficient to move forward factually or legally  
21 for recall? That's my submittal on that issue.

22 THE COURT: Well, I have a tough time  
23 accepting that submittal, Mr. Quinn, as to Charge 2.  
24 Charge 2, as you characterize it, is lying about it. And  
25 how does a statute like Section 070 trump a recall petition

1 based upon a person who knowingly and intentionally lies  
2 about a duty that is imposed upon him or her by reason of  
3 the elected position?

4 MR. QUINN: Well, let me start by saying that  
5 Recall Charge No. 2 -- about the revaluation reports, the  
6 annual reports?

7 THE COURT: Mm-hm. (Answers affirmatively.)

8 MR. QUINN: It's totally predicated on the  
9 correctness of Charge 1. If you look at Charge 1 and  
10 Charge 2 and the way they put those together, it would only  
11 be -- it would only be a lie to report in the revaluation  
12 progress report if they're correct on their first charge.  
13 If, on the other hand, their first charge fails because of  
14 lack of factual sufficiency and legal sufficiency, then  
15 Charge 2 falls like a house of cards, because it's built  
16 strictly upon that premise. If you read it, it has to be  
17 that way. And I pretend -- I intend to show you that  
18 Charge 1 has no factual basis whatsoever. And that's why  
19 Charge 2 is not a lie.

20 THE COURT: All right. I understand your  
21 position. Thank you.

22 MR. QUINN: There's a few things -- I think,  
23 as I said before, I think this Court is scrupulous about  
24 understanding the facts and trying to get the entire record  
25 before the Court. And there's one thing that bothers me

1 about the submittal as it is so far to -- that may mislead  
2 you.

3 Looking again at the area of pages 15 through 42,  
4 that's that Addendum B. I'll just take page 15 as a  
5 sample, as an example, your Honor.

6 THE COURT: All right.

7 MR. QUINN: It's imperative that you  
8 understand what that is and what it's not. And I think you  
9 understand already that it's not an A-2.

10 We're not here to quibble though about the title of  
11 the document. They called it an account summary. We don't  
12 call it an account summary. It's just a screen. It's a  
13 data-gathering device as part of the RealWare software that  
14 has the characteristics of a certain part of the property  
15 for purposes of taxes, okay?

16 And what I want to point out to your Honor is  
17 probably best illustrated on pages 20 and 21, because what  
18 I want to make sure the Court understands is that this  
19 screen is only a part of the puzzle that goes into  
20 assessing and valuing property so that we can plug in the  
21 taxes on the property. And page 20 and 21 illustrate it  
22 best.

23 On page 21, what this is is called a land screen,  
24 your Honor. If you will see up in the left-hand corner  
25 where the title says "Account Summary" -- in the upper left

1 corner?

2 THE COURT: Mm-hm. (Answers affirmatively.)

3 MR. QUINN: Below that, where it says  
4 "Summary", next to that, it says "Land." Do you see that?

5 THE COURT: Mm-hm. (Answers affirmatively.)

6 MR. QUINN: What that is is what we call a  
7 land screen, because the data, the rest of the data that's  
8 on there, is basically just about the land.

9 If there's a building on that land, there will be  
10 another screen, that they haven't told you about, called a  
11 building screen, I think. And that basically is to show  
12 the characteristics of the improvements on the land.

13 This just relates to the land itself, land only.  
14 And the law requires us to segregate land from buildings,  
15 as you probably know.

16 And 21, as contrasted with page 20, will illustrate  
17 the point best, I think. If you look now at the bottom of  
18 page 21, the one we're looking at, it says "Land Value"  
19 down in the lower left-hand corner.

20 THE COURT: Yes.

21 MR. QUINN: \$20,200, if the Court sees that.

22 THE COURT: Yes.

23 MR. QUINN: Now, just to the right of that,  
24 where it says, "Cost, zero," on page 21? It says, "Cost,  
25 zero." That's the building. So on this particular land

1 screen, that suggests to me that that parcel doesn't have a  
2 building.

3 Now, if you look right next to that, page 20, on  
4 the other side, you will see the contrast. This is a land  
5 screen again, because it says up there "Land" up in the  
6 left. But down at the bottom, do you see where it says  
7 \$70,100 on the "Land?" Well, on "Cost" it says \$134,900.  
8 That's the building.

9 So my point is that there's another screen they're  
10 not showing you that shows the characteristics of that  
11 building, where you get the \$134,900. And on that screen  
12 you are getting another piece of the puzzle that they  
13 haven't shown you.

14 So for them to argue that this is an A-2, or  
15 whatever it is, that's used to determine value of a  
16 property is not right. It's part of a puzzle. You are  
17 being shown a part of a puzzle.

18 And I'm showing you in my papers, through the  
19 declaration of Sally Barnes primarily, that you can't look  
20 at this just in pieces. In order to understand the  
21 assessment on a piece, you have to look at the land screen,  
22 yes, that's true. You have to look at the building screen  
23 in many cases. You would have to look at the rates. You  
24 would have to look at any special factors.

25 It's a computer. It has data coming from several

1 places. And they're giving you an information and an  
2 argument based upon only looking at one place. We think  
3 that's horribly unfair for you to draw or try to draw legal  
4 conclusions about a recall based upon being told only a  
5 part of the puzzle.

6 THE COURT: Well, Mr. Washam is going to stand  
7 up on rebuttal, and he is going to say that there is a  
8 significant difference between Screen 20 and Screen 21, as  
9 you have outlined, but that the point that they want to  
10 make is that in each instance, Mr. Madsen's office has  
11 represented that the property was inspected, physically  
12 inspected. And how do you respond to that contention?

13 MR. QUINN: I'm sorry, your Honor, but it  
14 doesn't represent that at all.

15 THE COURT: Okay.

16 MR. QUINN: There's been no one from the  
17 assessor's office in any of our papers who concurs that  
18 somehow KMP is a certification, one, that the person is an  
19 appraiser. Even though it says they are an appraiser, so  
20 what? That's a place to put initials in.

21 THE COURT: Let's not focus on the label  
22 that's placed on the person who enters --

23 MR. QUINN: All right.

24 THE COURT: -- his or her initials there.

25 MR. QUINN: Let's focus on his assumption

1 then, because that's all it is, your Honor. It's their  
2 assumption. It's their assumption that because it says KMP  
3 that the P means physical inspection.

4 THE COURT: Isn't there a document that  
5 identifies the employees of the office by two-letter  
6 initials and also states that the letter P means physically  
7 inspected?

8 MR. QUINN: I don't think the document states  
9 that it means physical inspection, your Honor. There is a  
10 list of the whole staff.

11 And again, I would point out that they're making an  
12 argument that somehow Ken is misrepresenting himself as an  
13 appraiser. By putting initials in that box, all it means  
14 is this is the most recent data in the computer and the  
15 initials there are the person who input the data. If you  
16 look at that list that he flashed you --

17 THE COURT: I understand. I understand that  
18 argument.

19 But focusing on the presence of the letter P there,  
20 Mr. Washam, what evidence do you rely upon to show that --  
21 your contention that P means physically inspected in this  
22 code? What evidence in the record is there?

23 MR. DALE WASHAM: Your Honor, the recall  
24 petitioner Lee Dorn is a 20-year veteran. He is an  
25 appraiser, a licensed appraiser, in the state of

1 Washington. He can tell this Court what the letter P  
2 means. And that's my source.

3 THE COURT: Where is it currently in the  
4 record if it is in the record? I know I've read this. But  
5 it may have just been in the argument of the briefs. So do  
6 you have someplace in the materials submitted with the  
7 petition or in any other material --

8 MR. DALE WASHAM: Your Honor --

9 THE COURT: -- that establishes that?

10 MR. DALE WASHAM: Let me put it this way.  
11 It's in the -- It's in I believe in Lee Dorn's declaration.  
12 It is -- I mean, I'm one of four, and you are asking me to  
13 memorize everything.

14 And again, this is not a legal case. I mean, in  
15 other words, this isn't -- I'm not -- Mr. Quinn is arguing  
16 about, for instance, administrative action and things of  
17 that nature, which I think is totally inappropriate under  
18 the circumstances even to be talking about it.

19 But it's a hearing. We could come into this Court  
20 with just the recall petition drafted, no support at all.

21 I'm asking the Court to voir dire Mr. Dorn, and he  
22 can certify that the P stands for physical inspection.

23 THE COURT: All right. Thank you.

24 Mr. Quinn, if that is the case, it's one thing to  
25 say they haven't shown it, they haven't proved it, it's not

1 in the record. It's another thing to say it's not the  
2 truth, that it's not accurate. And I hear you saying they  
3 haven't proved it, it's not in the record, but I haven't  
4 heard you say it's not accurate.

5 MR. QUINN: Well, it's not accurate. And  
6 there is a declaration here that addresses it.

7 THE COURT: Where is that?

8 MR. QUINN: The declaration of Sally Barnes --

9 THE COURT: All right.

10 MR. QUINN: -- addresses it on page 4,  
11 starting at line 15 or 16. And it follows that discussion  
12 about what that land screen is, your Honor, her explanation  
13 of what an A-2 was and so forth. And it starts out, "The  
14 initials KMP."

15 THE COURT: Mm-hm. (Answers affirmatively.)

16 MR. QUINN: That's on page 4, line 15 or 16.  
17 Do you see that?

18 Basically she is saying, "That's a code. We use  
19 that code to indicate that the data you see is the product  
20 of the statistical or computer modeling and not data  
21 inputted by a particular appraiser.

22 "That box on the screen perhaps should not say  
23 'appraiser,' as we use different initials for various  
24 persons on our staff, and the initials of the person keying  
25 in the input is used even if they're not one of the

1 appraisers."

2 That list Mr. Washam flashed has a long list of  
3 staff. They're not all appraisers. If that person  
4 providing input is a nonappraiser, they still put their  
5 initials in that blank.

6 So the P -- As far as the record of any person with  
7 knowledge other than Mr. Dorn, the record shows from Sally  
8 Barnes that "We never meant to say that that means that Ken  
9 Madsen or any person whose initials are there did a  
10 physical inspection."

11 MR. DALE WASHAM: Your Honor --

12 THE COURT: All right.

13 MR. QUINN: It doesn't stand for that.

14 MR. DALE WASHAM: He has mischaracterized  
15 that. That doesn't -- Sally Barnes --

16 THE COURT: Mr. Washam, I'll give you your  
17 opportunity to rebut. On occasion I may interrupt either  
18 side and ask the opposing side to respond to some  
19 particular question that I have or point that has been  
20 made. But I haven't asked you to do that here. We'll come  
21 back to that on your rebuttal.

22 MR. QUINN: In addition to that, your Honor,  
23 what the statutes deal with is physical inspection at one  
24 point. And they say that in the revaluation cycle you  
25 should try to physically inspect each property once every

1 six years.

2 But again, have they shown that any parcel, that  
3 even one parcel in the county, hasn't been inspected  
4 physically at least once every six years? I submit to you  
5 they haven't shown that either.

6 Because you are only looking at one part of the  
7 county every six years. I'm not sure if the Court  
8 understands that or if we have made that clear. But in the  
9 actual revaluation plan that's done, there's a process of  
10 updating each area in the county once every six years.

11 That doesn't mean that we're not doing physical  
12 inspections. I want the Court -- And I know the office --  
13 And all the people in the office told me this. We want the  
14 Court to understand that physical inspection goes on in the  
15 county irrespective of what cycle you are in on any  
16 particular piece of property; if there's a new building, if  
17 there's a sale of a parcel. There's a lot of circumstances  
18 under which you are doing physical inspections throughout  
19 the county.

20 In other words, we don't have all 18 of the  
21 appraisers assigned over here in this one-sixth of the  
22 county doing the annual reval cycle. They're assigned all  
23 over the place. Of course, many of them are working on the  
24 reval cycle. But a lot of them are working elsewhere.

25 So to say that we don't meet the statute by only

1 looking at the revaluation area is only, again, a piece of  
2 the puzzle. And I just want the Court to understand the  
3 bigger picture.

4 But let's go back now. I'd like to go back now to  
5 where I usually start, which is with a little discussion of  
6 factual sufficiency and legal sufficiency. What's lacking  
7 primarily in this case I think is the legal sufficiency,  
8 but I do want to say a few words about factual sufficiency.

9 There's a lack of specific dates and details. And  
10 as I pointed out and attempted to point out to the Court,  
11 there's also some factual inaccuracies and incompleteness  
12 in this recall.

13 But more importantly, there's a lot of case law  
14 that says that the petitioners, in order to satisfy the  
15 Court that there's factual sufficiency, have to go beyond  
16 bare facts. They have to in effect show why, why is this  
17 misfeasance, why would it be malfeasance, why would that be  
18 a violation of the oath of office.

19 And as I said, not one parcel has been shown in  
20 fact to not have been inspected in six years. If you read  
21 that statute, 84.41.041, you can focus on the part that  
22 says "and valued --" "inspected and valued at least once  
23 every six years." In order to determine that, the  
24 department or the Court would have to say, "I need to know  
25 a specific parcel, at least one," that you can identify

1 that has not in fact been inspected and six or more years  
2 have gone by. No attempt has been made to demonstrate  
3 that.

4 But more importantly, I guess, it comes down to  
5 this as far as factual sufficiency goes, is, where's the  
6 intent? They allege a lot in this case in a way. They  
7 allege false reporting, basically. But they haven't  
8 alleged anything regarding intent because they have no  
9 knowledge or any evidence of Ken Madsen's intent or even  
10 his office's intent.

11 There's really no showing in this case that there  
12 was any intent to mislead the Department of Revenue. The  
13 Department of Revenue has been apprised of the same things  
14 this Court has been apprised of. And to date they haven't  
15 changed anything, haven't criticized, they haven't -- More  
16 importantly, I guess, under 070, they haven't reported  
17 unsatisfactory progress on the reval program either. The  
18 revaluation program is proceeding, as far as we can tell,  
19 in accordance with law.

20 Let me talk briefly about legal sufficiency. In  
21 order to show in most of these cases, especially a  
22 technical case like this one, they have to show that it's  
23 an arbitrary or unreasonable exercise of discretion.  
24 That's why I gave you the affidavit of Robert Gloudemans.

25 I can spell that for you later if you need it.

1           Mr. Gloudemans is probably one of the most renowned  
2 national experts on what's called mass appraisal  
3 techniques, as opposed to site-specific appraisal. The use  
4 of statistics, the use of computer modeling in appraisal  
5 and in assessing property by public appraisers has gotten  
6 so common that it's more dominant than the old way, let's  
7 say, of actually physically inspecting every single  
8 property every time you change the value. It's become very  
9 common.

10           And in effect, what we say this statute gives the  
11 assessor is a certain amount of discretion in using  
12 statistical analysis in updating values. And what in fact  
13 this county is doing, like all the major counties, I would  
14 say, all along I-5 -- the same thing -- is annually trying  
15 to keep up with the market value, not once every six years,  
16 by any means, or once every four years, but actually every  
17 year, trying to update the value by extensive use of  
18 statistics and computer modeling.

19           And we submit that that's an exercise of  
20 discretion. That's what that is.

21           So if you look at what they have done here, what  
22 they have proved, arguably, is that Madsen, just like all  
23 the assessors before him in recent years in Pierce County,  
24 are using mass appraisal techniques more and more.  
25 That's -- If that's the charge, we admit that, that more

1 and more assessors in this county and other counties are  
2 using mass appraisal techniques and using technology.

3 I was surprised the Court didn't ask, actually,  
4 about this land screen, because I asked my client about it.  
5 At one point, say, on page 20 -- and I think all of those  
6 examples in that addendum have this -- in the middle of the  
7 screen, your Honor, it says "Type, residential," if the  
8 Court sees that line.

9 THE COURT: In the black box or --

10 MR. QUINN: Below, just below the black box.

11 THE COURT: Yes.

12 MR. QUINN: That line says "Value by." And  
13 underneath that it says "MRA." It looks like somebody's  
14 initials. It's not. It means multiple regression  
15 analysis.

16 And so, I mean, I guess you could have inferred --  
17 If you didn't know what this was, you could have inferred  
18 that was some appraiser too, giving a value by Quinn. I  
19 don't know what it means, but it doesn't mean that. It  
20 means by statistics.

21 And in effect, that's what this whole thing  
22 signifies. According to my witnesses, this land value --  
23 The KMP specifically is meant to say Ken Madsen is  
24 responsible for that one because it was done by statistics.  
25 It wasn't done by physical appraisal. It means just the

1 opposite, in effect, of what they're saying.

2 The whole code, if you will, the code was meant to  
3 mean this one was done by mutual regression analysis. This  
4 data was inputted by a person who put it in without an  
5 appraisal, without an assessment based upon a physical  
6 inspection. That's exactly what it means.

7 THE COURT: Mr. Quinn, if the legislature, in  
8 its wisdom, passed a law in this session that says "No more  
9 mass appraisals. You can't do that anymore" -- Aside from  
10 the frightening consequences of a law like that, if the  
11 legislature did do that and Mr. Madsen decided to ignore  
12 them and went ahead and did it anyway and didn't adjust  
13 values based upon actual on-site appraisals, would that be  
14 an act that is subject to a recall petition or is that an  
15 exercise of discretion that is immune from that type of  
16 reaction?

17 MR. QUINN: No. Discretion only goes so far,  
18 your Honor. As I said in the introductory remarks about  
19 legal sufficiency and in the brief, an arbitrary and  
20 unreasonable exercise of discretion is a recallable  
21 offense.

22 So if the legislature were to pass a law that said,  
23 "Thou shalt not use statistical methods. Thou shalt not  
24 use mass appraisal, and you must physically inspect and  
25 appraise every six years," then in that instance, of course

1 you wouldn't have a great deal of discretion.

2 In this instance, you have got a blend of the two.  
3 If you look at the statutes I pointed out, they do say in  
4 the revaluation statute that appropriate statistical data  
5 will be used to adjust. It says that right in there.

6 What I'm saying is --

7 THE COURT: Well, I don't -- By posing that  
8 hypothetical to you, I don't want to suggest that I believe  
9 that this case is about mass appraising. But I was  
10 focusing on your argument that an assessor has the  
11 discretion to institute that type of policy and that in  
12 this day and age, in any significant -- in any county with  
13 significant population that is being done; as opposed to  
14 the specific statutory and administrative code requirement  
15 that seems to say that the assessor shall cause physical  
16 inspections of property on a certain formula. And if that  
17 is not done, does that constitute an exercise of discretion  
18 immune from recall or is that an act that is subject to  
19 recall? And of course --

20 MR. QUINN: You haven't noticed -- In my  
21 argument, you haven't noticed me arguing that the assessor  
22 has not and will not inspect property once every six years.  
23 There is no refusal to physically inspect property once  
24 every six years. There is also no showing on this record  
25 that that has not happened.

1           That's my point, your Honor, is that they seem to  
2 think from the evidence that they have seen that we  
3 wouldn't be able to establish a physical inspection of  
4 every property within six years. It may or may not be  
5 true. I'm not going to stand up here and say one way or  
6 another, because on this record one cannot.

7           This revaluation cycle that's submitted and the  
8 plan that it's submitted pursuant to merely calls for  
9 revaluation of the six areas in the county once every six  
10 years, so that they're moving around revaluating. Some of  
11 that revaluation will be done by physical inspection. Some  
12 of it will not.

13           My point is that the statute nowhere says that we  
14 have to do the whole revaluation cycle and every property  
15 in it by physical inspection only. It doesn't say that.

16           And the report doesn't say that either. The annual  
17 report that's the subject of Charge 2, it doesn't say, "We  
18 certify that we inspected physically every property on this  
19 list and there's 40,000 of them."

20           Look at page 71, I think it was, for example.

21           THE COURT: Mm-hm. (Answers affirmatively.)

22           MR. QUINN: Yeah, 71. For example, that's the  
23 one for the 2003 cycle, 2003 assessment year.

24           "Physical inspection and appraisals, A, B," and  
25 it's got a total. That's not a certification that every

1 one of those properties has been physically inspected, not  
2 as I see it. That's physical inspection and valuation.

3 Notice how the statute was changed in 2001. In  
4 fact, maybe I should touch on that again. In 84.41.041,  
5 where it says, in the second line -- It says, "Each county  
6 assessor shall cause taxable real property to be physically  
7 inspected and valued..." That's the way the statute reads  
8 now. That word "valued, " before 2001, Chapter 187, that  
9 actually said "inspected and appraised." It doesn't say  
10 that anymore.

11 The forms, which according to the law and another  
12 statute -- The forms are provided by the Department of  
13 Revenue. This form of annual report, it's not generated  
14 by -- The form is not generated by Ken Madsen. It's  
15 generated by the Department of Revenue. We fill in the  
16 numbers, is what I'm saying.

17 But the words "physical inspection and appraisals"  
18 arguably should be changed, because since 2001 the law  
19 hasn't said that. It's "physical inspection and  
20 valuation."

21 It's a process, your Honor. And it doesn't -- That  
22 isn't meant to say necessarily that we inspected 40,797  
23 parcels.

24 THE COURT: What does it say, if it is not a  
25 certification that their 40,797 properties were physically

1 inspected and valued?

2 MR. QUINN: Our position on what that means?

3 THE COURT: Yes.

4 MR. QUINN: What that means is in the  
5 revaluation cycle this office has physically inspected and  
6 valued that many parcels, residential and so on, broken  
7 down that way.

8 THE COURT: Mm-hm. (Answers affirmatively.)

9 MR. QUINN: That's how many we have -- we have  
10 revalued during this cycle.

11 THE COURT: Are you suggesting that "physical  
12 inspection and valued or appraised" means not a conjunction  
13 there, not physically inspected and valued but, rather,  
14 physically inspected or valued?

15 MR. QUINN: Essentially.

16 THE COURT: Well, why doesn't it say that?  
17 Why doesn't the statute say that? If they amended the  
18 language "appraisal" to "valuation," or words thereof, why  
19 didn't they change "physically inspected" or change the  
20 conjunction from a conjunctive joinder to a disjunctive  
21 joinder?

22 MR. QUINN: I don't know that. They could  
23 have, but they didn't. I'm just telling you that that's  
24 what's intended to be certified, if you can call it  
25 certified. I mean, he just files an annual report and

1 signs it. I don't know if I would call that a  
2 certification or not. He just signs the annual report and  
3 sends it forward.

4 But they receive these annual reports. To think  
5 that somehow the Department of Revenue doesn't know what's  
6 happening is fantasy. They know quite well what's  
7 happening. They review all kinds of things that the  
8 department does, and they're very hands-on with the  
9 department. So to think that somehow they're big and  
10 misled is not realistic.

11 I just want to make sure the Court does understand  
12 there's a lot of physical inspection that goes on  
13 irrespective of that one area of the county where the  
14 revaluation program is happening. So if you were to total  
15 up the amount of physical inspections done throughout the  
16 whole county, it would go way beyond this report. This is  
17 just the revaluation program annual report, where you do  
18 one-sixth, basically, one-sixth of the county each of six  
19 successive years.

20 But in the other five-sixths of the county you are  
21 still doing physical inspections of sales, physical  
22 inspections of new permits that have been issued, physical  
23 inspections because something doesn't look right. There's  
24 a lot of reasons why they do physical inspections.

25 And who knows in fact if you have actually done

1 one-sixth? There isn't any document that shows that,  
2 whether you have done one-sixth. You can only determine  
3 that by an in-depth search of the data at the assessor's  
4 office.

5 So I submit to you basically that the petitioners  
6 haven't shown any violation of these statutes. And I look  
7 at the statutory scheme more than I look at the reports.  
8 And the statutory scheme calls for a revaluation program.  
9 We have a revaluation program, pursuant to a plan that's  
10 not on file with the Court, but we have one, and it's  
11 diligently pursued. And in addition to that, we also  
12 physically inspect properties all over the county.

13 Basically I've covered all the issues I want to  
14 cover in my presentation, your Honor. I'd be happy to  
15 answer any questions that you have.

16 THE COURT: I do have some questions, and I  
17 need to find the source of a statute. And as soon as I  
18 have that, I'll ask you the questions.

19 Mr. Quinn or Mr. Washam, there is a series of three  
20 statutes that define failure to do certain acts by public  
21 officials as misdemeanors. What are those statutes? Do  
22 either of you recall?

23 Or Mr. Vanscoy?

24 MR. DALE WASHAM: I had them all -- I have  
25 them all listed in a letter that we were going to send

1 to -- Well, matter of fact, we asked the prosecutor's  
2 office to look into it.

3 MR. QUINN: I think he's referring to --

4 I think you are referring to 42.20, your Honor.

5 MR. DALE WASHAM: 42.20. And then there's a  
6 9 -- a 9 -- even a criminal one under I think 9A.

7 MR. QUINN: It's on page 4 at the bottom of  
8 their -- at the bottom of their petition, the statutes you  
9 are talking about, I think, your Honor.

10 THE COURT: Yes. That's where I saw it.

11 Mr. Quinn, at the time that Mr. Madsen signed any  
12 of the three reports that are listed in Addendum C, that  
13 are contained in Addendum C, do you dispute the fact that  
14 he is or was performing an act that is encompassed by the  
15 statutes RCW 42.20.040, 050, or 100?

16 MR. QUINN: I'd have to look at those again,  
17 your Honor, because some of those have an implication that  
18 there's a certification or an oath being taken. And I'm  
19 not sure this is that type. You know, there are some types  
20 of vouchers for expenses, for example, that require  
21 somebody to certify under oath that the travel expenses are  
22 true and correct. This is not that type of a document,  
23 your Honor.

24 If you are referring to the annual reports, I don't  
25 look at those as the same as some voucher that says "I

1 certify that I incurred these expenses" and so on. These  
2 are just annual reports written pursuant to the statute.

3 MR. DALE WASHAM: Your Honor, they're much  
4 more than just annual reports. They're reports that are  
5 based upon future budgets, based upon monies that they're  
6 asking for through the Department of Revenue. I mean, it  
7 has very much significance. And they are --

8 THE COURT: All right.

9 MR. DALE WASHAM: -- required to --

10 THE COURT: I will hear that argument on your  
11 rebuttal.

12 Mr. Quinn, 42.20.040 states, "Every public officer  
13 who shall knowingly make any false or misleading statement  
14 in any official report or statement, under circumstances  
15 not otherwise prohibited by law, shall be guilty of a gross  
16 misdemeanor."

17 And 42.20.050 says, "Every public officer who,  
18 being authorized by law to make or give a certificate or  
19 other writing, shall" -- who shall knowingly make and  
20 deliver as true such a certificate or writing containing  
21 any statement he knows to be false, et cetera, et cetera,  
22 shall be guilty of a misdemeanor.

23 Now, we're not here to determine misdemeanors.  
24 We're not here to determine guilt or innocence. What I'm  
25 asking is, is the report that the assessor makes to the

1 Department of Revenue, represented by the three reports  
2 before us here -- are those reports that fall within the  
3 purview of these statutes: under 040, any official report  
4 or statement; under 050, a certificate or writing  
5 containing any statement?

6 MR. QUINN: I don't know that I would go so  
7 far as to say it's any kind of a certificate, your Honor,  
8 under 050. I think that implies that there's a little bit  
9 more of a certification opportunity -- "I certify that this  
10 is a true and correct statement" -- but something more than  
11 just a report. I'm certainly not going to say it's not a  
12 report. It is a report.

13 The only problem under 42.20.040 is you would have  
14 to find somehow on this record -- and I don't know how you  
15 could find that -- that it was knowingly false or  
16 misleading.

17 And if Ken Madsen put his name on a report, that's  
18 reflecting the whole product of his office, the whole  
19 staff, on the revaluation issue. And when he signs that  
20 report, he is certifying, I suppose you could say, that  
21 what's in there is accurate. But it's not a certification;  
22 it's simply an annual report based upon the statute.

23 And if they have questions and opportunities to say  
24 "Is this correct?" or "Is he making satisfactory progress  
25 or not?" the statute addresses that, as I pointed out.

1           So I just don't think on this record you can say,  
2 you could conclude reasonably that Ken Madsen knowingly  
3 gave a false report even. There's not enough information  
4 to say that it's knowingly false or misleading.

5           And that's one of the things that I -- That's the  
6 reason I pointed out factual sufficiency requires intent.  
7 You would have to show somehow there's some indicia, some  
8 evidence besides the face of this record that shows, "Oh,  
9 he intended, he intended to mislead them." And I just  
10 don't think that can be shown.

11           THE COURT: The one focus of your argument  
12 here has been to direct my attention to the process of  
13 valuation --

14           MR. QUINN: Right.

15           THE COURT: -- and to suggest that mass  
16 valuations are done using statistical analysis, multiple  
17 regressive analysis, if you will -- I think I got that  
18 right -- and that there's no mystery about that, there's no  
19 hiding that, and there's nothing wrong with it. And it  
20 certainly doesn't rise to the level of an act that would  
21 support a charge in a petition for a recall. That's the  
22 argument that I hear you making to me.

23           But the focus of these petitioners is on the  
24 process of physical inspection. And they contend in Charge  
25 2 that the contentions in these three reports that over a

1 three-year period there were --

2 MR. DALE WASHAM: 97,661, your Honor.

3 THE COURT: No. That's --

4 MR. DALE WASHAM: If you add them all  
5 together.

6 THE COURT: Yes. All right. There were a  
7 total of 97,661 physical inspections reported to the -- not  
8 only the Department of Revenue, but to the public, and that  
9 that contention cannot be true. And it's --

10 MR. QUINN: Well, their contention was that  
11 they were done personally by Mr. Madsen too, and we  
12 obviously don't contend that that's true.

13 THE COURT: But it seems like --

14 MR. QUINN: But the point is, your Honor, that  
15 it's only --

16 THE COURT: But it seems like that there is  
17 support for that contention in the argument that you make  
18 to me concerning valuations. You are saying of course  
19 these properties weren't individually valued or revalued.  
20 They were the subject of recognized and permitted valuation  
21 processes that didn't involve an individual valuation of  
22 the properties.

23 But doesn't that suggest that if there is an  
24 obligation in the law to physically inspect these  
25 properties, that -- Doesn't that suggest that indeed these

1 properties weren't physically inspected on the schedule  
2 reported in these reports, which are official reports and  
3 signed by Mr. Madsen?

4 MR. QUINN: Obviously some of them were, too,  
5 your Honor, physically inspected. Even some of the ones  
6 as you pointed out before when you asked about the 79  
7 percent. What about the other 21 percent? Well, the other  
8 21 percent obviously were physically inspected.

9 And as I keep reiterating, what about all of the  
10 other physical inspections done throughout the county?  
11 We're not counting any of them or even looking at those.  
12 They're not counted anywhere in the numbers the petitioners  
13 have given you. What about those? Don't they have to be  
14 counted as physical inspections that were in fact done?

15 If one were to say -- And the charge is to  
16 Mr. Madsen, "You have not physically inspected each and  
17 every parcel in the county once every six years." One  
18 cannot draw that conclusion under that statute just by  
19 looking at the revaluation program, can you? Because  
20 there's physical inspections being done in the other  
21 five-sixths of the county for various reasons, as I keep  
22 pointing out: for sales, because of permitting, because of  
23 various reasons.

24 You have to look at the whole picture, again, as I  
25 keep saying, not just part of the puzzle. And I think what

1 we're doing here is looking at a piece here and a piece  
2 there and then concluding, "Oh, he didn't really meet that  
3 statute."

4 That statute requires what? That statute requires  
5 that at some point each parcel be inspected physically once  
6 every six years. If we accept that and then only look at  
7 the revaluation cycle, we're only looking at part of the  
8 puzzle.

9 So I submit to you that it's really misleading to  
10 only look at the revaluation annual report, which is just  
11 the revaluation cycle -- it's not the whole operation of  
12 the office -- and then draw any conclusion about that from  
13 how many physical inspections are being done by this office  
14 in a year. The apples and oranges somehow don't get  
15 together, your Honor.

16 And that's not our fault. I'm still dealing with  
17 that. But, you see, that's not our fault. That's just  
18 because they chose that part of the puzzle to look at.

19 I'm not going to stand up here and say, and admit,  
20 that there's a parcel that you can find that hasn't been  
21 inspected at least once in the last six years because I  
22 don't know that to be true. It may be true. But if it's  
23 true, you know what, your Honor? Every assessor up and  
24 down the I-5 corridor is subject to recall as much as Ken  
25 Madsen, as much, no less, no more, because they all do

1 similar things.

2 THE COURT: All right. Thank you.

3 Mr. Washam, rebuttal.

4 MR. DALE WASHAM: Your Honor, I appreciate  
5 your indulgence. And I want to say that I appreciate this  
6 Court's inquiry. And I've done several recalls, and I'm  
7 impressed. And I thank you, no matter how it turns out.

8 I believe, in listening to Mr. Quinn's presentation  
9 and certainly your treatment of me and my presentation and  
10 my -- my fellow petitioners' presentation, that you have a  
11 very good understanding of what we're dealing with here.  
12 So I'm just going to kind of for the record hit some of the  
13 areas that I made notes with.

14 Something that has to be looked at right from the  
15 beginning is, through this whole process that we have had  
16 today for these numbers of hours -- and part of the time of  
17 those hours shared by Mr. Quinn -- Mr. Quinn has never said  
18 that Ken Madsen did the physical inspections on those  
19 97,661 properties. Mr. Quinn never even said there was an  
20 inspection done by anyone, period. And that's probably  
21 what happened. That makes a lot of sense.

22 THE COURT: What makes a lot of sense?

23 MR. DALE WASHAM: Is that those inspections  
24 were never done. In other words, Mr. Madsen, with his  
25 initials and with the P, indicate that they were done. But

1 I question even if they were ever done. But certainly if  
2 they were done by Mr. Madsen, they were done illegally.

3 I'm not going to get into a lot about the mass  
4 computer appraisals. The law requires that all property,  
5 in essence, be upgraded to its highest value every year.  
6 And so there's where your mass appraisal comes in, in doing  
7 that. You couldn't do it any other way unless you were  
8 doing it with a computerized program and having -- through  
9 the statistics in the computers, upgrading, comparing, and  
10 coming out with a certain percent of increase.

11 But we're not talking about -- Mr. Quinn -- It's a  
12 red herring. It's drawing attention to something that is  
13 not even -- we're not even arguing in this recall petition,  
14 nothing about mass appraisal.

15 What we're talking about is appraisals that were  
16 not done. We're talking about a substantial amount. I  
17 mean, 97,661 in the period of time that we're talking about  
18 is significant.

19 THE COURT: Now, let me stop you there,  
20 because you told me we're talking about appraisals that  
21 were not done.

22 MR. DALE WASHAM: Pardon me. I meant physical  
23 inspections.

24 THE COURT: Okay.

25 MR. DALE WASHAM: I'm sorry, your Honor. I'm

1       sorry. A slip of the tongue.

2               Sally Barnes' declaration talks about KMP, but no  
3 one -- And your Honor, you, matter of fact, asked Mr. Quinn  
4 in so many words about the P. In other words, why would  
5 the P be put on there? The P is not put on any other  
6 initials for people signing documents. They're only put on  
7 there by appraisers. And that means -- or people that  
8 value property, whichever term you want to use; however, up  
9 to 2003, the appraisers. And in essence the appraisers --  
10 whether they valued or what, they are still licensed  
11 appraisers -- make those physical inspections, and the P  
12 stands for the physical inspection. And Ms. Barnes  
13 really -- Her declaration is insignificant. It really  
14 doesn't have any meaning.

15               Intent. I think that the intent in this recall  
16 petition is clear, that Mr. Madsen, when he signs those  
17 three reports that we have in the recall, he has an  
18 obligation as a public official, as an elected official, to  
19 look at those figures and believe that they are correct.  
20 And if there's any question, he absolutely, unequivocally  
21 should do something about it.

22               Mr. Quinn begs the question and says, well, you  
23 know, the Department of Revenue, they should ask him about  
24 it if something is wrong.

25               The Department of Revenue is dealing with all the

1 counties of the states of Washington, which are  
2 significant. And each of those counties, when they submit  
3 those reports, the department is going to take the position  
4 that those reports are accurate, because they should be  
5 accurate. Particularly like in the case of Pierce County,  
6 Ken Madsen is signing his signature telling that it is,  
7 when in fact there are -- through those three years there  
8 are those thousands and thousands and thousands of  
9 appraisals that they say are being done, that they  
10 projected would be done, and then they're saying that would  
11 be done, with Ken Madsen's initials, and following those  
12 initials is the physical appraisal, which takes and  
13 makes -- In other words, that fulfills what the Department  
14 of Revenue is asking.

15 Mr. Quinn pointed out that the form, the reports,  
16 the questions you have got to fill out on that report, are  
17 actually given to you by the Department of Revenue. So you  
18 have to consciously think about what you are putting in  
19 there. And when they asked you for the physical  
20 inspections, you are consciously thinking about that I'm --  
21 you know, we did so many physical inspections.

22 And for Mr. Quinn to even imply that Mr. Madsen  
23 didn't know what, you know, "physical inspections" meant in  
24 that report would -- I think it would border on a  
25 dereliction of duty as an elected official, as an elected

1        assessor-treasurer.

2                    THE COURT: Mr. Washam, let's talk about the  
3 facts here, because as you have pointed out and as I  
4 clearly understand, my duty is not to decide disputed  
5 facts.

6                    MR. DALE WASHAM: No.

7                    THE COURT: That's for the electorate to  
8 decide if the process survives this hearing.

9                    But I am required under this process to determine  
10 what information you have that supports the facts that you  
11 contend should be submitted to the voters in the recall.

12                    And the facts that you have contended as far as  
13 Charge 2 is that over a three-year period Mr. Madsen in his  
14 official report to the Department of Revenue disclosed that  
15 there were 97,000 physical inspections that -- that there  
16 were physical inspections of 97,661 properties that are  
17 identified in the assessor's records and contained in the  
18 CD that was supplied to you. So you have got 97,000  
19 parcels of property. You have got a contention that these  
20 97,000 parcels were physically inspected, and you have  
21 Mr. Madsen's signature on that report.

22                    What evidence do you have that they weren't  
23 physically inspected? What information supports your  
24 factual --

25                    MR. DALE WASHAM: Your Honor --

1 THE COURT: -- contention here?

2 MR. DALE WASHAM: You have got account summary  
3 documents, which are certified account summary documents,  
4 telling you that.

5 Now, I want to clarify one thing. In those three  
6 reports, the total of the -- including 2004, which there  
7 was no report, was the 97,661.

8 THE COURT: Okay.

9 MR. DALE WASHAM: I think it's 87,000 -- It's  
10 in there, but it's a little less. It's 8,000 or so less.

11 THE COURT: All right.

12 MR. DALE WASHAM: I just wanted to clarify for  
13 the record for you, your Honor.

14 The -- I -- We have certified copies of records.  
15 We have a purchased CD from that office that show these  
16 account summary documents, that show the P. We have a  
17 report signed by Mr. Madsen that states these physical  
18 inspections were done.

19 Now, we would have to go and follow -- if what you  
20 are saying -- the appraiser out and follow to see if they  
21 have done the inspection, if in fact there was legitimate  
22 inspectors. But in this case, it's a no-brainer. Ken  
23 Madsen is not an appraiser. So when he is identified on  
24 public documents -- and certified public documents; I want  
25 to emphasize that. There's 20 for the year of 2001 that

1 Ken Madsen appears on. And we can -- We could have given  
2 this Court thousands of them certified that way. And it  
3 clearly identifies Ken Madsen, and it clearly identifies  
4 with the P for physical inspection.

5 Now, you had asked me a question, and I would ask  
6 this Court a question. And that is, if you have a concern  
7 as to whether or not these physical inspections were not  
8 done, voir dire Mr. Madsen, because Mr. Quinn has never --  
9 He somewhat -- And for -- Mr. Quinn I have the greatest  
10 respect for, so this is not meant to be superfluous or  
11 demeaning in any way. But he danced around at the end of  
12 his presentation about, "Well, yeah, you know, I'm not  
13 going to say that, that we did all these inspections. I'm  
14 not going to say that they were done."

15 I believe that if you are going to put, in essence,  
16 a burden of proof -- which I believe is inappropriate in  
17 this type of a hearing -- on the recall petitioners to take  
18 and say or show for this Court, for instance, that  
19 Mr. Madsen didn't do those appraisals or someone else  
20 didn't do those appraisals, then I would think it would be  
21 appropriate for this Court to voir dire Mr. Madsen and say,  
22 "Did you do those reports?" Let him go on record. And if  
23 he says yes, then it's a matter of record.

24 But, you know, I mean, to ask the petitioners -- I  
25 mean, I think we have more than provided this Court with a

1 preponderance. If this was a civil lawsuit -- and a recall  
2 petition certainly, if it was a legal action, would never  
3 go over the threshold of a preponderance -- I think that we  
4 have more than supplied to this Court a preponderance of  
5 evidence that those reports were falsified. The  
6 information in those reports were not correct.

7 They -- And it was done intentional. I mean, the  
8 implication there was that "We want to look good." I would  
9 have to say that this was his first -- Mr. Madsen's first  
10 term in office. And the occurrences of this, of doing the  
11 physical inspections, would make him look very good if he  
12 could accomplish this job on a lot less money, because it  
13 becomes, you know, greater with the more people, the more  
14 building and all that goes on, and say, "Well, look what a  
15 fine job I'm doing" and simply just be skirting part of  
16 what you are really supposed to be doing in accordance with  
17 the law.

18 The reports, I want to emphasize again --

19 Oh, just one other thing. It just popped into my  
20 mind. There has never been a formal complaint by these  
21 recall petitioners filed. Mr. Quinn didn't say that  
22 specifically but implied it. We have never filed a  
23 complaint with the Department of Revenue about it. So they  
24 didn't exonerate. In essence he was portraying that  
25 Mr. Madsen was exonerated. The only thing that was ever

1 done is in Mr. Dorn's original declaration on the claim  
2 with the -- and in the recall petition, where -- that he  
3 had called him and told him about it.

4 All the parcels to be valuated each year.

5 You know something, your Honor? I think you've --  
6 I think you've -- I think you have got it. I think you  
7 have got it, know enough. I -- Unless you have a question  
8 for me --

9 THE COURT: No, I don't have any more  
10 questions for you --

11 MR. DALE WASHAM: -- I think that --

12 THE COURT: -- Mr. Washam.

13 I will respond to your questions to me or your  
14 request to me by first saying I'm not applying any burden  
15 of proof to any party here. But it is I think appropriate  
16 under the law to inquire what information you have that  
17 supports the factual contentions. I think the law clearly  
18 contemplates that. And that was my request of you for  
19 that.

20 Now, you have suggested that my next step should be  
21 to place Mr. Madsen under oath and conduct a voir dire  
22 examination of him. I'm going to consider that for a brief  
23 period of time. And I'd like Mr. Quinn's view of that  
24 request before I make any determination.

25 And Mr. Quinn, if you want to talk that over with

1 your client, we will take a short recess.

2 MR. QUINN: Thank you, your Honor.

3 (Pause in the proceedings.)

4 THE COURT: Please be seated.

5 Mr. Quinn?

6 MR. QUINN: Yes, your Honor. Mr. Madsen would  
7 like to testify. I told him that I would inform the Court,  
8 having been involved in a lot of these before, that there  
9 is case law that states that the Court may voir dire the  
10 petitioners, basically to test the petitioners and see if  
11 they have personal knowledge of the things that they  
12 allege.

13 And so while there's no -- nothing in the statute,  
14 I think as Mr. Washam correctly pointed out, there's  
15 nothing in the statute about voir dire, it does say in the  
16 case law that the Court, not the attorney, but the Court  
17 may frame questions for the petitioners to test their  
18 knowledge to make sure that they do have the factual  
19 knowledge that's required for factual sufficiency.

20 THE COURT: And I have done that, but of  
21 course Mr. Madsen is not a petitioner.

22 MR. QUINN: Right. And so there is no case  
23 law that says the Court may voir dire the elected official.

24 In spite of that, my client would not like to sit  
25 here and rest upon that, because there's no court case that

1 says the judge shall not voir dire the elected official  
2 either.

3 So I'm inclined to let him go ahead and answer the  
4 questions that the Court has. And Mr. Madsen wants to  
5 answer and be on the record to answer the Court's  
6 questions. So I'm inclined to let him do it.

7 THE COURT: I think that I will go ahead and  
8 do that. And in my -- The scope of my questions will be  
9 quite narrow. It will be limited to that subject that  
10 Mr. Washam suggested I conduct an inquiry. And it seems to  
11 me that under the circumstances it would be appropriate.

12 So Mr. Madsen, you may remain seated where you are,  
13 but first please stand and raise your right hand.

14 KEN MADSEN having been duly sworn, testified as  
15 follows:

16 THE COURT: Thank you. And please be seated.

17 VOIR DIRE EXAMINATION

18 BY THE COURT:

19 Q Mr. Madsen, in the petition for recall, on pages 2 and 3,  
20 the parties petitioning for recall contend that during the  
21 years 2001, 2002, and 2003, of the parcels, the total  
22 number of parcels that you reported in those reports as  
23 being physically inspected and appraised, that  
24 approximately 89,000 of those parcels contain your  
25 initials, KM, plus P, in the summary screen. I understand

1 that that representation is not a representation that you  
2 physically valued all of those properties by some acts of  
3 your own. But as regards physical inspection, do you  
4 contend that in those reports, that those 89,000 parcels  
5 approximately were physically inspected by someone in your  
6 office?

7 A I don't have the backup to -- how these documents were put  
8 together, but I can say that in my mind, what was reported  
9 is a combination of physical appraisal -- or physical  
10 inspection and statistical update or statistical appraisal.  
11 There is a part of -- And I'd like to just take a second on  
12 that.

13 The computer program that we have -- And you will  
14 notice on the summary screens, the building values are  
15 cost. And in the computer program we have the  
16 Marshall-Swift manual, which is the same manual they use  
17 manually. In that, the -- actually the computer does a  
18 physical -- does an appraisal. But on the report that you  
19 have, I -- it is my impression and my recollection that  
20 these numbers were a combination of both, the statistical,  
21 or the computer, and a physical inspection.

22 I might say now we have a computer system -- or a  
23 computer program -- that analyzes the area that we need to  
24 do in that time frame. And the computer can identify those  
25 parcels that we need to put boots on the ground, we need to

1 put boots on the ground because something's wrong.

2 And I want to emphasize there are people out there  
3 that are doing physical inspections. And now, in this time  
4 frame, they are going to the property that says we need  
5 somebody there.

6 Q Do I understand your answer to mean that for those  
7 approximately 89,000 parcels, that -- all of which  
8 contained your initials -- that there may have been some of  
9 those that were not physically inspected?

10 A I would agree with that.

11 Q Can you estimate for me what percentage of those 89,000  
12 parcels that bore your initials were not physically  
13 inspected?

14 A I -- I'm not sure I can answer that.

15 THE COURT: Thank you. That's all the  
16 questions I have.

17 MR. QUINN: Thank you, your Honor.

18 THE COURT: I think that covers the scope of  
19 what I was requested by the petitioning parties to inquire  
20 about, and I'll not go further than that.

21 MR. DALE WASHAM: Thank you, your Honor.

22 THE COURT: All right. Well, ladies and  
23 gentlemen, that concludes the arguments here.

24 It is 3 o'clock. And I want to make sure that I'm  
25 right in this, at least as right as I can be. This is a

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

matter of some considerable importance. It is a matter of considerable importance to the petitioning parties and the community of voters that they believe they represent in bringing this matter. And it's clearly a matter of some considerable importance to the individual who is the subject of this petition.

So I'm not going to attempt to formulate all my thoughts and give you the decision this afternoon. Instead I would prefer to come back tomorrow afternoon and give you my decision.

Will you be available at that time, starting at 3:30?

MR. QUINN: We can do that, your Honor.

MR. DALE WASHAM: Tomorrow at 3:30, your Honor?

THE COURT: Yes.

MR. DALE WASHAM: Yes.

THE COURT: All right.

MR. QUINN: Your Honor, I would like to hand up a proposed order if the Court allows.

THE COURT: Please do.

MR. QUINN: And I provided it to counsel already, or Mr. Washam already.

MR. DALE WASHAM: And you have one of our proposed orders?

1 THE COURT: Yes, I do. I have got yours.

2 MR. DALE WASHAM: Thank you, your Honor.

3 THE COURT: All right. Then we'll recess  
4 until that time.

5 (Proceedings concluded.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

