

1

MORNING PROCEEDINGS

2

(The following occurred on
January 7, 1997 at 9:20 a.m.,
outside the presence of the
jury.)

3

4

5

THE COURT: All right, counsel, we had a discussion
briefly in Chambers regarding a couple issues. One involved
the productions of the daily copy in this case. I think --
we're pretty well resolved on most of those issues. One of
those evolving sort of things, I think. As we work through
it, we'll iron out any bugs. But apparently we're pretty
much ready to proceed and provide that.

6

7

8

9

10

11

12

Counsel understands that Mrs. Norton's prime concern was
that counsel be very mindful of the record that is being
created in this case so that it's easier for the court
reporter to retrieve whatever materials they need.

13

14

15

16

Specifically, if you cite cases, cite the entire name of
the case and the entire cite of the case, with a spelling of
the name. During the course of the trial, if it occurs to
you that any name that is stated or anything, really, in the
record might be problematic in terms of going back and
retrieving a spelling for that and so forth, obviously, there
are any number of names of people involved in this case that
might fit in that category.

17

18

19

20

21

22

23

24

Geographical site locations not generally familiar. If
you will take that extra second to spell those or make sure

25

1 you at least pronounce them very clearly and enunciate
2 those. Speak up so the court reporter can hear you.

3 At all times, be mindful of the fact that when you are
4 questioning witnesses in this case, given the logistical
5 limitation of this courtroom such as they are, that you at
6 all times attempt to maintain a line of sight between the
7 court reporter and the person to whom you are speaking and
8 that the witnesses are allowed, as they work off of any
9 charts, graphs and so forth, to go to the opposite end of the
10 room from us and face toward the jury from that side so the
11 court reporter can more easily see the witness as they
12 speak.

13 And therefore -- as I said before, I know nothing about
14 how she does what she does. But I understand that part of it
15 is being able to see the person speak is of great benefit.
16 So when that is possible, please do that.

17 And we also apparently then have another issue with
18 regard to opening statement.

19 MR. SMART: Yes, Your Honor. As I explained in
20 Chambers, Mr. Hagens had an objection to our use of the
21 complaints that were filed in the various cases in opening
22 statement, although he intends to use requests for admission
23 and answers thereto in his portion of the opening statement.
24 I didn't think this was an issue until we discussed it last
25 night.

1 We thought we should bring it up before the Court.
2 Mr. Hagens' position, apparently, is that statements in a
3 pleading are not admissible in evidence against the
4 plaintiff. However, I believe he is in error in that
5 regard. Neilson vs. Vashon School District, 87 Wn.2d 955,
6 states specifically that:

7 Averments in a pleading to which a
8 responsive pleading is required are admitted
9 when not denied. A statement of fact made
10 by a party in this pleading is an admission
11 the fact exists as such and is admissible
12 against him in favor of his adversary.

13 And there are other cases cited in Neilson vs. Vashon
14 School District.

15 THE COURT: Is it true or not that from the facts
16 of that case the complaint to which they were referring was
17 in fact a complaint that was the complaint being used at the
18 time of trial?

19 MR. SMART: That was the -- it was an issue, Your
20 Honor. With respect to averments in an answer, it wouldn't
21 make any difference for the purpose of the rule. Mr. Hagens'
22 position in Chambers was that they have an amended complaint
23 in this case and they've changed the pleadings. Well, they
24 have changed the pleadings and made the same allegation in
25 another lawsuit in Skagit County. They have allegations in a

1 similar complaint in the federal court case.

2 And the purpose of the rule is to allow a party to point
3 out that an individual, in this case, the plaintiff, are
4 taking one position in a pleading filed with the court in one
5 instance, and as we are entitled to point out, they are
6 taking a different set of positions in this case. So for the
7 purpose of admissibility, which is what we're talking about,
8 is clearly admissible against them and we should be able to
9 talk about it in our opening statement.

10 THE COURT: Counsel?

11 MR. HAGENS: Your Honor, first of all, I believe a
12 verified complaint would be evidence. I don't believe just a
13 notice pleading is essentially evidence. Certainly they
14 can't use a pleading that wasn't filed in this court with
15 respect to this action. And I think that what he has in mind
16 is referring to a complaint was filed in the federal court,
17 which you know is a wholly separate, different lawsuit, a
18 civil rights action.

19 He complains about us using requests for admission. But
20 Rule 36 --

21 THE COURT: Let me ask you.

22 Are these requests for admission in this case?

23 MR. HAGENS: In this case, that they responded to.
24 In this case.

25 THE COURT: I want to make sure we're not mixing

1 apples and oranges.

2 MR. HAGENS: This is in this case. Rule 36 (b)
3 says any matter admitted under this rule is conclusively
4 established. That is what Rule 36 (b) says, Your Honor.

5 Now, a complaint is just a notice pleading. If it's
6 unverified, I don't even think you can use it. You might be
7 able to cross-examine with it, but I don't think you can read
8 it into evidence, Your Honor. So that is our objection,
9 Your Honor.

10 THE COURT: Would you be more specific, counsel?
11 Exactly what complaint or answer, whatever it is?

12 MR. SMART: Well, there are three or four
13 complaints that are similar, Your Honor. First place, the
14 claims that were filed in federal court in the class action
15 are the same claims for inverse condemnation that were filed
16 in this case. And the cases filed against the diking
17 districts for trespass and nuisance were the same claims
18 filed in this court as well. There was a complaint in the
19 federal court case, in this court and in the Skagit County
20 court, all of which had essentially the same allegations
21 against the diking districts. And certainly we would be
22 entitled to read the complaint that they filed in this court
23 against the diking districts.

24 The dike districts have been dismissed because they were
25 trying to sue them in Skagit County in order to have the

1 whole case consolidated up there. But they never did
2 anything to unallege the facts against the diking district.
3 And whether they did that or not, fact that they made those
4 claims against the diking districts would be evidence as to
5 what their position regarding the diking districts were doing
6 because they have done it in this court and in superior court
7 in Skagit County.

8 THE COURT: Counsel, on that issue?

9 MR. HAGENS: Our position remains the same, Your
10 Honor. A pleading in this case --

11 THE COURT: What about a pleading that did exist in
12 this case and the fact that the diking districts have been
13 dismissed? They were at one time defendants in this action;
14 am I not right.

15 MR. HAGENS: That's right. We could not hold them
16 in that jurisdictionally. He said that -- something about us
17 dismissing up in Skagit County. We told the court. We
18 represented to the court --

19 THE COURT: Did you voluntarily dismiss them in
20 this action?

21 MR. HAGENS: After a motion to dismiss was filed
22 for lack of jurisdiction, with authorities we couldn't
23 contest or dispute. That's correct, Your Honor. We took --
24 I did -- Then we went and sued them in Skagit County, Your
25 Honor, and then tried to remove the case down here.

1 THE COURT: What does the actual form of order look
2 like that granted dismissal to the diking districts in this
3 case? What I'm saying is, was it an order of the court after
4 hearing or was it just simply something that you both signed
5 off on? You realized that you didn't have what it took to
6 hold them in and you did an agreed order, or was it some sort
7 or stipulated order?

8 MR. HAGENS: You are testing my recollection on
9 that point, Your Honor. My recollection is that after we
10 received their motion, we looked at it. I don't believe we
11 contested it, Your Honor. It wasn't argued; I know that.

12 We argued it up here in front of Judge McKeeman. I
13 shouldn't say -- we didn't argue it. I think we took the
14 position, Your Honor, the legal authorities were correct, we
15 were going to have to sue them up in Skagit County and try to
16 remove the action, and that is what we did.

17 And so, but the point I make is that a notice pleading
18 isn't really evidence of anything. It's a claim, like a
19 charge.

20 MR. SMART: Your Honor, in many instances a claim
21 may be admitted as evidence against the party making such a
22 claim. It happens all the time. Somebody makes a claim to
23 the Department of Labor and Industries about a matter that is
24 related to an injury. Somebody makes a previous claim.
25 Legions of cases in this state on estoppel by pleading. A

1 party cannot file a pleading in court and then disavow it
2 later and have it be expunged from the record. It's simply
3 admissible, as the case says, against them as evidence.

4 MR. HAGENS: If I had might respond to that just
5 briefly.

6 If they want to ask a witness about that, that's fine.
7 I don't think that they should be allowed in opening
8 statement to make -- put in a pleading or to argue about a
9 pleading that hasn't even be proved up yet. And so I really
10 think that this is a total misuse of a complaint,
11 particularly if they are going to use a complaint that wasn't
12 filed in this case. And that is what he is talking about,
13 some federal case, if I understand.

14 MR. SMART: That is not true. It's a complaint in
15 this case. Allegations against the diking district filed in
16 this court. But it wouldn't make --

17 MR. HAGENS: It was amended, Your Honor. I do
18 believe the complaint was amended.

19 MR. SMART: It wouldn't make any difference for the
20 purpose of the rule, Your Honor, whether it's admissible.
21 Again, it's one of these situations where sauce for the goose
22 is sauce for the gander. Mr. Hagens wants to use it in favor
23 of his position, we should be able to use it in favor of our
24 position. It's exactly the same thing. Averment in a
25 complaint is admissible against the party making it.

1 MR. HAGENS: Your Honor, I am not -- I'm using a
2 request for admission, not in a pleading. There is a major
3 distinction there, Your Honor.

4 MR. SMART: They are both pleadings, Your Honor.

5 THE COURT: Well, except that -- well, the question
6 we have here, it says that the rule, basically, is that
7 averments or statements in a pleading to which a responsive
8 pleading is required are admitted when not denied in a
9 responsive pleading.

10 So what is the posture of the response?

11 MR. SMART: We agreed, Your Honor, that the diking
12 districts owned and controlled the levees. He has issued us
13 a request for admission that the -- that is the request for
14 admission that he wants to use -- that is the Dike District
15 12 levee has some effect on the floodwaters. He has alleged
16 that they have done that. What he wants now is to prevent us
17 from saying that he previously contended the dike districts
18 owned and controlled the levees and that it was the dike
19 districts' levee as opposed to somebody else's.

20 That is all we're talking about. He wants to talk about
21 it, he doesn't want to let us talk about it.

22 MR. HAGENS: Of course, that is not true, Your
23 Honor. Not even close to the truth. He can characterize our
24 position, but he shouldn't be entitled to use the pleading.
25 That is our position.

1 MR. SMART: Why not, though?

2 MR. HAGENS: Because it's not signed by a witness
3 that can verify the factual nature of it.

4 MR. SMART: It's signed by counsel, Your Honor, who
5 represents in court the plaintiffs in this case. And they
6 have an obligation under Rule 11 to make sure that the
7 factual matters in their pleadings are correct prior to the
8 time they filed the case.

9 THE COURT: We'll handle it this way.

10 There will be no mentioning, no mention of -- at least
11 in the opening statement -- or reading of any pleading that
12 was not at least at one point in time a part of this action
13 or -- that excludes the invocation of any elements of a claim
14 in federal court or in Skagit County or some other place.

15 However, the pleading that was filed in this particular
16 case, as long as it is in accord with that -- that is:

17 Averments in a pleading to which a
18 responsive pleading is required are admitted
19 when not denied.

20 And the case is quite clear. It says, and shall be --
21 and is admissible against the party so pleading it in favor
22 of his adversary. So it appears that Mr. Smart would have
23 the right to allude to that.

24 MR. SMART: Thank you, Your Honor.

25 THE COURT: In the course of the opening statement

1 since it is a pleading in this court which was admitted.

2 MR. SMART: Your Honor, I can put that volume
3 back.

4 THE COURT: All right. Thank you.

5 Counsel, we'll take a brief recess and make sure our
6 jurors are all in place.

7 MR. MAJOR: There is one other issue I would like
8 to raise.

9 We previously made a motion to exclude witnesses. And
10 for nonparties, I think that makes sense. And the question
11 is whether that will cover expert witnesses as well.

12 THE COURT: It does.

13 MR. HAGENS: Well, Your Honor, I -- I'm sorry.

14 THE COURT: It does in this courtroom.

15 MR. MAJOR: Would you like a stipulation on
16 experts?

17 MR. HAGENS: What do you mean a stipulation? What
18 kind of a stipulation are you proposing?

19 MR. MAJOR: To allow experts to attend trial,
20 notwithstanding the exclusion of other witnesses.

21 MR. HAGENS: Generally, that is common practice in
22 federal court because sometimes --

23 THE COURT: Like I said yesterday, counsel, you are
24 not in federal court.

25 MR. HAGENS: I understand.

1 THE COURT: You're not even close to being in
2 federal court. You're in Snohomish County Superior Court.
3 We do things quite differently. Here, when I give an order
4 excluding witnesses, witnesses are excluded. That's it.
5 Flat out. No ifs, ands, or buts. I don't want people coming
6 along later second guessing who should have been here, who
7 shouldn't, what they heard and what they didn't hear. They
8 are excluded.

9 MR. MAJOR: All nonparties then.

10 THE COURT: Exactly right.

11 Anything else?

12 MR. ANDERSON: Your Honor, I did have one thing.

13 I want to introduce to the court Tim D'Acci, the State's
14 National Fund Insurance Program representative of the
15 department.

16 MR. HAGENS: And Your Honor, I am pleased to
17 introduce our clients in this action. This is Judge Hulbert.

18 THE COURT: Ladies and Gentlemen, welcome.

19 MR. HAGENS: These are some of the plaintiffs in
20 the case, Your Honor.

21 THE COURT: I've read about and come to know your
22 names and those of other witnesses for the State for a year
23 and a half now, or almost two years. Finally we're here
24 ready to start the case, and look forward to having it
25 finished.

1 THE COURT: All right. Please do so.

2 MR. HAGENS: Good morning, Ladies and Gentlemen of
3 the Jury.

4 As you know, my name is Carl Hagens. I proudly
5 represent our clients who come from Skagit County. That is
6 them back there.

7 I want to thank you because I know this is going to be a
8 burden for all of you, a burden on your families, a personal
9 burden on you to come here day after day after day. Some of
10 this is going to get repetitious, so I want to thank you in
11 advance on behalf of our clients. They know it's going to be
12 tough for you. It's going to be tough for them. It's going
13 to be tough for everybody in the court. I want to thank you
14 from the bottom of our hearts for taking the time hearing
15 their case. You are the only people they can turn to in the
16 situation they're in, and that is why we're here.

17 So what is this case about? This is a civil case. And
18 it really, if you scrape away all the veneer and get to what
19 the case is about, I came to the conclusion it's about the
20 type of society we live in, a democratic society, a society
21 that doesn't take people's properties, as other governments
22 do, a society that is supposed to protect and enforce, defend
23 the rights of the citizens; not one that takes and doesn't
24 compensate their citizens.

25 So when you get through all the veneer, that's what this

1 assistant Carrie Scheafer.

2 This is the Skagit County levee system. This actually
3 comes out of a Corps of Engineers' document. This isn't
4 something we prepared. This was prepared long before this
5 case was ever brought.

6 And the black lines show you the contours of the levees.

7 And over 50 miles of levees, as I told you in the mini
8 opening statement, 50 miles of levees in here. And there is
9 a bridge that -- doesn't show it here. It should. There is
10 a Burlington Northern Bridge. It shows it right here. These
11 levees, I think, are, like, 10 to 14 feet higher up here.
12 They are pyramidal, a pyramid with the top cut off, so you
13 can drive over the tops of these levees.

14 And what happens is, when you have a big event there is
15 one area is unprotected here. Right in here. Called the
16 Nookachamps Creek. And the Clear Lake area back here. What
17 happens when these large floods come down the river, it hits
18 the bottleneck where the Burlington Northern Bridge is and it
19 begins to back up. It begins to back up and it floods all
20 the other people. That is the way these levees are supposed
21 to work. Back it up in here and use this area as a reservoir
22 storage area. And that is in fact what happens.

23 So you get this effect. The water can't drain out
24 through Burlington into Pidilla Bay, cannot get out into the
25 Puget Sound. Used to. Doesn't any longer. So it backs up

1 onto our land. And that is how this complex levee system, 50
2 miles of it, works. Protects Burlington and Mount Vernon.
3 Does an excellent job of that.

4 But our clients are a reservoir for the county, and they
5 haven't been compensated for their damages. We'll get more
6 about that as we go on.

7 I want to also tell you that the county has admitted
8 that absent these levees, absent these levees right here,
9 Dike District 12 levees, that absent these levees -- this is
10 what we asked them. We said -- we asked them this in what is
11 called a request for admission. We said, Absent the Skagit
12 County diking system, there would be significant decrease in
13 water surface elevation upon some or all of the plaintiffs'
14 properties during significant flood events comparable to
15 those that occurred in Skagit County prior to 1998. We
16 haven't got there yet. The event we are going to focus on
17 happened in 1990. And they understood it in 1990 in their
18 response. This was done in November. They first denied it.
19 This was done in November of '96. November of 1996. 21st of
20 November. They first denied it.

21 After this case has been under way for several weeks,
22 Skagit County admits that after the levees owned by Diking
23 District No. 12 -- and assuming all the geographic and
24 environmental conditions are the same as they currently
25 exist, such as the removal of the surface elevation on some

1 or all the plaintiffs' properties -- excuse me -- there would
2 be significant decrease in water surface elevation upon some
3 or all of the plaintiffs' properties during significant flood
4 events comparable to those that occurred in Skagit County
5 November of 1990. The key dates. That is their admission.

6 So they say, Look, if you take the levees out, take the
7 levees out, there would be significant less flooding. We
8 didn't have these levees, this area wouldn't be a reservoir,
9 we would have lower flood levels. And what this does is it
10 does lower. Like having another reservoir like Ross Dam or
11 Baker Dam, it lowers the flood levels. Water will come down
12 the stream, taking the pressure all the levees. You take the
13 pressure off the levees, they don't break like they did in
14 the past.

15 And it's a great benefit to the entire county. In fact,
16 on the radios they announced when the Nookachamps area filled
17 up, because that alerts everybody, in fact, that the floods
18 may start getting worse in Mount Vernon. And Burlington.

19 They didn't break in '90. We'll get to those in a
20 moment.

21 But this is the focus of the case, this levee system.
22 It has been systematically improved and expanded over the
23 years, to the point where it's an impenetrable wall, provides
24 at least a 25-year protection to most of the areas of Skagit
25 County, and perhaps up to a hundred in the community of

1 Burlington. That is what this case is about, this is the
2 focus of the case: the improvement, construction and
3 maintenance of these levees by Skagit County.

4 You are going to learn in the course of this that one
5 man's flood control is another person's flood problem,
6 because it's our clients who took the brunt of these floods
7 in November 1990 -- the two critical events we're interested
8 in, I call it the Valentine's flood. It wasn't. The
9 Veteran's day flood, in November of 1990. The Thanksgiving
10 Day flood in 1995. Back-to-back events. First rated it a
11 40-year event, ultimately rated a 25. That means it happens
12 once every 25 years.

13 This is when our clients suffered some of the most
14 severe induced-levee flooding in the history of the county,
15 between a foot and a half, or actually -- get to this in a
16 moment -- but our experts will come here and explain to you
17 it's between a foot and a half and four feet of additional
18 flood induced -- that they experienced because of this levee
19 system, the system that had been built up and constructed
20 over the years.

21 And you know, I want to stop right there. Our clients
22 do not resent the construction and improvement of the levees
23 in Skagit County. The government officials have decided that
24 levee protection is a way to go. It took them years and
25 years to get it up to this amount. But they do believe that

1 we should be compensated if they are taking the brunt of
2 these floods acting as reservoir.

3 So we encourage governments to build roads, highways,
4 hospitals, schools and flood protection. But when those
5 projects injure our clients, then we ask, as the noblemen did
6 back in England, you got to compensate for the damages you're
7 causing.

8 Okay. Who are these courageous plaintiffs out here?
9 There are 60 of them. There are 90,000 people live in Skagit
10 County. Who are these courageous people who took Skagit
11 County, said, Enough is enough, we have taken our
12 disproportionate share. Let me tell you about some of them.

13 A good number of them are retired. Some of them are on
14 social security. Some of them are farmers. There is a
15 nurseryman. Two work for the county. One works for the
16 county of Skagit County. One is in the jail and another one
17 works on the road department as a supervisor. Mr. Tewalt.
18 Several 80-year-olds. Several 80-year-olds who are going to
19 come down here and testify before you as to their experiences
20 in these disastrous floods of 1990.

21 What would force a 90-year-old to sue somebody? I'm
22 telling you, it is the system here that has been constructed
23 and improved and increased to its current protection level.
24 That is what is causing it, at the bottom of this case.

25 Several other clients have gone sandbagging. They don't

1 want their neighbors to experience what they have
2 experienced. Several of them have served on flood control
3 committee. They are going to attack them for their service
4 on the flood control committee. These people provide
5 community service to the community, and now they are attacked
6 by Skagit County for having done that.

7 So they were a minority interest. Most of the people on
8 these various councils all came from behind the dikes, in
9 areas here. All that stayed dry in 1990, like District 12.
10 This is Dike District 17. Mount Vernon. Two of the
11 wealthiest dike districts.

12 So these people are not opposed to flood protection for
13 the good citizens, and their neighbors. They have helped
14 them out. They say, Look, we have to take our
15 disproportionate share, we want to be compensated. And that
16 is what this case is about.

17 Well, where do they live? Here is where they live,
18 right here. We have this -- our firm made up this map and it
19 shows where each and every plaintiff resides. There is
20 approximately 60 of them here. I don't know if you can see
21 them all. This is -- showed you the Nookachamps here. Here
22 is the Nookachamps Creek.

23 Interesting thing. Typically drains in the Skagit
24 River. But because of these levee systems, 50 miles of
25 levees, it backs up and floods our clients. The Nookachamps

1 actually reverses course, as does everything else, and floods
2 our clients. And these are all the people who took floods,
3 from one-and-a-half to four feet of induced flooding.

4 We're not here about the flooding they would have taken
5 without the levee. Talking about the flooding they take with
6 the levees. One-and-a-half to four feet. This is where they
7 reside. This is called the Clear Lake area. Call this
8 typically the Nookachamps area. There are 60 of them left in
9 this lawsuit.

10 And this is a beautiful -- as I told you in the mini
11 opening statement, a beautiful area to live in. But it's a
12 disaster, and dangerous place, the evidence will be, during
13 significant flood events. More so dangerous by Skagit
14 County's activities on the levees over many, many years.

15 One of the things we're going to have to deal with is
16 plaintiffs' responsibility to prove its reoccurrence. Has
17 this reoccurred in the past. It's occurred three times in the
18 last five years, November 11, '90, November 25 -- 24-25 '90,
19 again November 30, 1995. Major flood events where our
20 clients have taken this one-and-a-half to four feet,
21 particularly in the higher ones. This occurred, like, 15
22 times in the last 50 years. A little less than two and a
23 half times a year. It's reoccurring, chronic and
24 unreasonable.

25 And it will happen again. It will happen again, which

1 is why our clients want their houses raised up. Skagit
2 County won't do it. Plenty of government programs out
3 there. You can hear them come and testify that they want
4 their houses raised up, get it out of harm's way.

5 Why? Why? They can't force the county to take the
6 levees down, get the houses up out of the water where they
7 are not taking all the damage. So we know it's going to
8 happen again.

9 What this case is not about. This case is not about
10 whether -- how much flooding they would have taken without
11 the levees; it's about how much flooding they took with the
12 levees in place.

13 You know, our people could handle the flooding and have
14 handled the flooding in the past. But it's that last
15 one-and-a-half to four feet that is devastating to them.
16 That is what gets in the homes. In and under. Disrupts the
17 forms. Kills the crops. This case is about the
18 one-and-a-half to four feet. And in 1990 when these
19 disastrous events occurred, it was one of the first times for
20 many of our clients that they ever, ever had water in their
21 homes. Some never had water on their property.

22 This case is -- not about whether the levees are good or
23 bad. I told you. They are in. Nobody is going to take them
24 down.

25 I believe that Skagit County is going to spend its money

1 flooding. Many of the property owners had no idea that their
2 property was going to flood the way it did. When they bought
3 -- there was some discussion in the mini statements -- our
4 clients had investigated. I think maybe one or two of these
5 people bought this property site unseen. Many, many did.
6 Asking the seller, the real estate agent, neighbors. So the
7 range of knowledge is -- range of knowledge about these
8 properties is going to vary from plaintiff to plaintiff:
9 those that actually experienced floodwaters in '71 and '75,
10 those who had no knowledge, no idea whatsoever their
11 properties could flood the way they did, the one-and-a-half
12 to four feet. Not the natural flooding, the induced
13 flooding.

14 And then you have to ask: How many of them knew that
15 the levees may have been contributing to this, to their
16 flooding? How many of these people knew the levees were
17 contributing to the flooding?

18 I think their testimony will be that none of them had
19 any idea of the amount -- the amount, one-and-a-half to four
20 feet, that the levees were causing. I think one or two may
21 have suspected. Many of them didn't even think about it
22 until after '90 when they suffered the severe events, water
23 in their homes, water under their homes, for the first time.
24 Most of them didn't even think about it.

25 The only person living who knows how much water is

1 caused by the levees is Jerry Mutter, our Ph.D. He is going
2 to show you using a computer model. I think the testimony
3 will be none of the plaintiffs knew about the one-and-a-half
4 to four feet. One or two may have suspected. Most had no
5 idea the levees could be behind this degree of flooding.

6 In contrast, let's talk about what Skagit County knew.
7 What is the evidence going to be there about what it knew
8 about potential flooding of plaintiffs' property it knew it
9 was causing?

10 The documents go back for decades. It knew that the
11 levee system as erected was causing them flooding, damaging
12 these people. Never measured. Never even asked an expert in
13 this case to measure it. That is simply because they
14 couldn't take the levees down, the testimony is going to be
15 on that. They had their priorities. They wanted to protect
16 the financial interest in Burlington and Mount Vernon. And
17 there is nothing wrong with that, but let's take care of the
18 people in the Nookachamps.

19 So they ignore the plaintiffs, all along knowing that
20 there was some flooding, induced flooding caused by these
21 levees. But they ignore the plaintiffs, and they have done
22 nothing for them.

23 Why? Because they weren't complaining until 1990. They
24 survived most floods. Why respond to these people up here in
25 the Nookachamps area?

1 So until a harm occurred in 1990, they were probably
2 safe in ignoring the people in the Nookachamps. Doing
3 nothing for them. Providing no flood protection. Providing
4 everybody else in the county protection but providing the
5 people in the Nookachamps zero protection.

6 What did they tell our clients when the subject arose?
7 You are going to hear some testimony, in 1979, a project got
8 under way by the Corps of Engineers to raise the levees.
9 This is 1979. Never happened. But it's very important event
10 because, for a number of reasons, one of which is Mrs.
11 Austin, who is a former plaintiff in this case, asked them,
12 Well, what are the existing levees causing in the way of
13 damages?

14 Why was she asking that? Because they were going to
15 raise the levees, provide a hundred-year protection for
16 Burlington and Mount Vernon, fifty-year protection elsewhere,
17 in the rural areas. None for Nookachamps.

18 So the corps had studied how much this raising would
19 cost, this additional raising of the levees would cost in
20 terms of the additional induced flooding. And, of course,
21 about a foot to a foot-and-a-half in the Nookachamps area.
22 So they were just talking about the additional raise in the
23 levees.

24 So this one lady asked: Well, how much are the existing
25 levees causing? And Don Nelson, the County's flood control

1 engineer, said it couldn't be calculated. Of course it could
2 be calculated. Our experts have done it.

3 They have called it a natural drainage area. About as
4 natural as a swimming pool. This is no natural draining
5 area. You're going to see documents where they told the
6 people, Nookachamps, this is a natural drainage area.
7 Natural? At least as to the induced flooding it's not
8 natural. Mr. Booth, Mr. McNair, Mrs. Howell, they went to
9 the county to, build their homes -- or raise their homes
10 -- and said, How high? County says, You got to be one foot
11 above the hundred-year-flood level. They gave them a
12 height.

13 Mr. Booth had a foot and a half on his property of water
14 inside his home in 1990, and that was a 25-year event.
15 25-year event supposed to be a foot above the hundred-year
16 event. And the 25-year event he has a foot and a half of mud
17 and filth in his house.

18 Mr. McNair also asked the county how high he should
19 build, and he gets water in his house.

20 The county never warned these people that this was an
21 induced flooding area, a reservoir, a storage area. Never
22 posted any signs. Never posted any ordinance that required
23 sellers to disclose that this was an induced flooding area,
24 although it knew all along, that is how it was acting.
25 Didn't measure it, but knew all along this is exactly how

1 this area was acting. Never admitted until 1996, November of
2 1996, that absent levees there would be significantly less
3 flooding.

4 Now, a factual -- a little bit about the history. Dikes
5 don't spontaneously rise up from the ground. This is man's
6 effort to raise these levees. And to determine that the
7 county is responsible you need to know a little bit about the
8 history of how the levees got to this configuration.

9 Put this back up. How did they get to this condition?
10 This took a lot of time and money by Skagit County and the
11 governmental entities up there. And you are going to find
12 that the County's involvement was essentially pervasive with
13 all aspects of the building and erection of these levees.

14 Give you a little history. When it started out mid to
15 late 1800s, you know, there were mounds. Farmers used to
16 build mounds in here to protect their crops from being
17 flooded in the summer and spring, washout. Seeds washed out
18 that they had planted. And so they built these little
19 mounds. They wouldn't connect or anything. It was a
20 hit-or-miss proposition.

21 As time went on, they started to connect up these little
22 mounds that protected. In fact, there are still some mounds
23 in Dike District 20. That is one that is in the
24 Nookachamps. They get overrun every time there is a
25 significant flood event. They start out as little mounds,

1 really, that the farmer put in to protect the crops from
2 being washed out. Slowly but surely they were integrated,
3 tied to one another.

4 And one of the farmers -- As time marches on -- and this
5 whole area used to be forested. And the floodwaters, more or
6 less, fan out evenly over the floodplain, Burlington and
7 Mount Vernon as well. They are in the same floodplain as
8 Nookachamps, our clients are. So fan out more or less
9 evenly. But, of course, now it's focusing on the
10 Nookachamps, this reservoir that they need to reduce the
11 pressure on the levees. But it took time to build these
12 levees up and up and up, strengthen them.

13 So you start to see an organized effort, what we call
14 dike districts. County is big on dike districts. Start to
15 see an organized effort for the formation of dike districts
16 in the late 1800s, early 1900s. Dike districts are really
17 taxing authorities. Three part-time commissioners. And
18 those were formed in the late 1800s, early 1900s. They
19 assist people. One of the rich dike districts. It assesses
20 everybody in the district money to improve the levees. You
21 start to see those dike districts form in the late 1800s,
22 early 1900s.

23 Who appoints those diking commissioners? The county. I
24 think by the twenties you have like what is called
25 five-to-eight-year protection, protect against events

1 occurring every five to eight years. That was the
2 configuration of the levees in the 1920s.

3 As time marches on, we get to the twenties. And fifties
4 you see more effort put into the -- by the dike districts and
5 the county. Becomes more a collaborative effort to improve
6 the levees as time marches on. You are going to see that the
7 county was involved in many of the construction and funding
8 and improvement designs of the projects that have raised
9 these levees to the point where they provide the protection
10 they do today, which is at least 25-, in some areas a
11 hundred-year. Up here by Burlington we believe the evidence
12 will be that you can get protection -- may reach about a
13 hundred-year protection.

14 So what has the county done that gets them in the case?
15 They are the ones that had much to do with the construction,
16 the improvement, the maintenance of these levees and the
17 raising and strengthening of them to their present-day level.
18 And in fact, combined an estimate of cost -- I'll go through
19 that in more detail.

20 Indeed, the county has blown levees, not the dike
21 district, the county has blown levees to relieve pressure on
22 Fir Island. This happened in 1990. Get the pressure out of
23 Fir Island. That was the county, not the dike district.

24 You want anything done in Skagit County, you got to go
25 to the Department of Public Works. Dike districts don't have

1 any engineers, employees are officers. They design most of
2 the projects. They perform many of the projects. Skagit
3 County actually performs the work on the dike, or the levee.

4 The dike district had an incentive to use the county
5 because they didn't charge a profit. Free rock. Rock goes
6 into the these levees. Right on the riverside. Riprap.
7 Designed to put up a barrier so it won't get undermined in
8 the event of a significant event coming down the river.

9 And two types of projects that are typically done on
10 these levees to increase their strength. One is called a
11 keyway. That is just a huge slip trench, again, on the
12 riverside. Maybe a thousand, 1,500 feet long, four feet wide
13 and 15 feet deep. They excavate it and put in impervious
14 clay, pack it down really hard. Prevents seepage onto the
15 levees, which can carry away the levee. Turns it into, like
16 soup or a milk shake if you don't have these protective
17 keyways or slip trenches in front of them. That is another
18 way to increase the strength of the levees.

19 And then they just added fill. Raise them up. Add more
20 fill. Make them stronger, tougher. And the county has done
21 all of those things. Many of those projects were done by
22 itself. Or let out for bid. Larger contracts, guess who
23 estimates the material and labor to do these jobs? The dike
24 districts don't have any engineers. So you have the county
25 estimating these various projects to raise and improve the

1 When they get to the decision of what FCAAP money to
2 use, State money to use to improve the levees, who is making
3 the decision in Skagit County? Not the dike districts. They
4 prioritize project. Comprehensive flood control plan. To
5 get money from the State, you have to have what is called a
6 comprehensive flood control plan. Who bought and paid for
7 that? Skagit County.

8 The plan is, by the way, 25-year protection for
9 everybody but our clients.

10 Permits. Let's talk about permits. Another piece of
11 the puzzle.

12 You know, you build something in the floodplain in
13 Skagit County and you got to go through a nightmare, a
14 gauntlet of permits. Fill and grade permit. Required, more
15 than 500 cubic yards of fill is involved. Flood control
16 permit. Required for any structure built in the floodplain.
17 Shoreline management required when any project greater than
18 \$1,500 is to be formed within 200 feet of the river. EPA.
19 SEPA, state environmental protection agency requires
20 environmental checklist by applicant. Permits issued. In
21 all three instances, four instances, Skagit County is the
22 issuer.

23 Did the dike districts have to get these permits? No.
24 You or I put 500 cubic yards in the floodplain up there, you
25 better have a permit. But the dike districts got exempted.

1 Why? Because they called it repair and maintenance. Mind
2 you, they've got a slip trench 1,000, 1,500 feet long, ten
3 feet deep, and they are changing the basic condition of the
4 levee, and they call it repair and maintenance. That is the
5 rubric by which they avoid having to apply all of these
6 regulatory requirements that you or I would have to comply
7 with.

8 Why do that? Why except themselves from these
9 requirements? The answer is simple. They want the
10 protection level increased in Skagit County, as maybe they
11 should. But again, it's a piece of the puzzle that shows
12 more control by Skagit County, more control and influence, in
13 a cooperative effort to increase the levees, protection level
14 of the leaves, as they have done.

15 Talk about accountants. Another piece of the puzzle.
16 Guess who gives the dike districts their monthly financial
17 statements? The treasurer's office in Skagit County. They
18 don't have bookkeepers of their own. Every month they get a
19 periodic statement from the Skagit County Treasurer's Office
20 telling them how much money they have in the bank, how much
21 they spent and have not spent.

22 Banker. Guess who lends them the money when they have
23 to do a big major project? Skagit County. Who will arrange
24 for loans? Skagit County. Who invests their funds? Skagit
25 County. And I've already talked about paying a contractor.

1 That is how you get from a protection level of five to eight
2 years, which it was in 19 -- protect against an event
3 occurring every five to eight years -- that was in 1920 -- to
4 a level today where it protects against at least a 25-year
5 event, by putting those millions of dollars into these levees
6 increasing the size and strength and the current condition.

7 Interested in the 1990 -- pretty good description as to
8 these two horrendous floods in 1990 in the newspaper article,
9 because this is an article, December 20. 20 something.
10 1990. After the two disastrous events our clients
11 experienced. What it tells you is some very interesting
12 things about how the improvement has increased over time.

13 "Little by little because money for improvements is
14 hard to come by." Talking about, "Little by little, much
15 like the dikes and levees were built in the first place."
16 "Little by little because money for improvements is hard to
17 come by." Talking about how this has been a slow,
18 evolutionary process.

19 Don Nelson talks about the 50-year profile being the
20 goal of protection. He says, "That way everyone gets equal
21 treatment." Not our clients.

22 Goes on down here:

23 "Little by little, we'll get there," he
24 said. "The whole system was built that
25 way. It's always been improving since it

1 was first formed."

2 Up here he mentions:

3 Nonetheless, Nelson said improvements to
4 that level checked the rivers.

5 Talking about 50-year protection and 50-year profile
6 level, which is 25-year protection. He says:

7 Nelson said improvements to that level
8 checked the river during the Veteran's Day
9 and Thanksgiving weekend floods.

10 "Everywhere we've worked, it stood and it
11 stood good," Nelson said.

12 How? Because of the constant money, time and experience
13 they are putting into these levees.

14 Let me talk about the rich and poor dike districts
15 here. "Three years ago it was \$100,000." Talking about
16 county grants. Now, he talks about \$150,000, going up to
17 \$200,000. Rich dike districts can get their hands on this
18 money, eventually get more money from the State and put this
19 money into the levees, raise them up and strength them. But
20 who is out pulling the seed money there? Skagit County.
21 Poor ones can't.

22 So that's how you get to the 25-year protection level.
23 Constant improvement, strengthening of the levees.

24 I also want to talk about, before we start talking about
25 the dike districts as opposed to the levees -- I mean as

1 opposed to Skagit County -- on the dike districts having a
2 shared goal. People want the maximum protection they can
3 afford for people in the Burlington, Mount Vernon, suburban
4 areas of Skagit County. I think there is nothing wrong with
5 that, as long as they compensate our people.

6 But before the suit got started, they didn't get up here
7 and say, it's all the dike district's problems or Burlington
8 Northern's problem. This is what they said. Letter signed
9 by the three county commissioners, December 28, 1990, shortly
10 after the floods of 1990. What they want is, they want the
11 Corps of Engineers to study increasing the protection level
12 in Mount Vernon and Burlington. It says:

13 We are interested in renewing a study to
14 increase the flood protection for Skagit
15 County. Unless we upgrade the level of
16 protection, our system.

17 Called it "our system" --

18 will continue to be vulnerable against the
19 larger floods.

20 Called it "our system."

21 They get sued and all of sudden the system turns into
22 the dike district system. After they got sued, it's no
23 longer our system, it's the dike district's system.

24 Let's talk about the dike districts. You know, all the
25 dike districts before the suit had a couple of things in

1 common: no offices, no employees, no engineers, three
2 part-time elected commissioners who got their expenses, at
3 most, no business offices, no full-time employees. I told
4 you about no engineers. No materials to do any work on the
5 levees with. No ability, really, to construct or improve the
6 levees at all. And no financial books and records, except as
7 maintained by the county.

8 You have the rich and the poor. They were all poor at
9 one time. But the richer ones, 12 and 17, protect Burlington
10 and Mount Vernon, they have been able to increase their
11 wealth by leveraging it with these funds that are available
12 from the county.

13 Now, most of the dike districts can certainly maintain
14 the levees by mowing them and filling up the holes, rodent
15 holes and things like that, the smaller riprap projects. But
16 to do the larger projects, they must have the county. And I
17 believe the testimony will be here that there are very few,
18 if any, projects the dike districts have ever done on their
19 own to raise and strengthen these levees to the current
20 protection level.

21 Now, are they puppets? One of the arguments they are
22 going to get up here and say, we claim they are puppets. The
23 dike districts are not puppets, they are separate entities.
24 They are not independent. All of us, every one of us,
25 operates within the means and resources available to us.

1 These dike districts don't have a lot of means and
2 resources.

3 Where do they get their engineering? The county. No
4 county, no work done. They do have free will. Where are
5 they going to spend money, what projects they want to
6 pursue. Without the county, they are going nowhere. And the
7 county is the moving force behind -- with the shared goal of
8 increasing, maximizing the protection to the people of
9 Burlington and Mount Vernon.

10 I want to digress for a moment. Again, before the
11 lawsuit, it's our system. After the lawsuit, it's the dike
12 districts that is causing all these problems.

13 I want to get back to the '79 project. Told you how
14 they want to increase the flood protection. A hundred-year
15 protection for Mount Vernon and Burlington. Nothing for
16 Nookachamps. They went public with this and announced to a
17 number -- well, everybody, because they had to sell some
18 bonds to the public. To do that, they had to pass an
19 authorization for the sale of these bonds, so the thing went
20 on the ballot. When our people found out it was going to
21 increase flood levels, they rose up in masses and defeated it
22 in 1979. People of Nookachamps got organized and opposed it.

23 And one of the important -- so when they are told, they
24 oppose. When these people were told, they opposed. Because
25 they didn't want the induced flooding that they were going to

1 have to suffer after the raising of the project.

2 But another important aspect of that '79 project, the
3 chief engineer, hydraulic engineer, come here and testify,
4 one of our first witnesses working on the general design.
5 Come here and tell you what that project was all about. And
6 one of the things that occurred in the course of that was
7 after the corps said, Look, raise the levees this much and
8 you are going to get another foot of flooding into the
9 Nookachamps-Clear Lake area; you have to buy flowage
10 easements from those people. You got to buy flowage
11 easements, you got to compensate those people for that
12 additional foot you are going to put into that area by
13 raising those levels and dikes.

14 The county didn't want to do that -- pay their share of
15 that. You increase the flooding, you got to buy flowage
16 easements. And the bill went down in defeat. They never had
17 to buy flowage easements. But right then the county knew, if
18 you are going to flood people, you got to buy flowage
19 easements. That is something not done to this day. Hasn't
20 offered these people any help or assistance whatsoever.

21 Another important development. Why haven't they done
22 something? Dike off the Nookachamps. Dike this area up to
23 here? Why don't they do that? Do something for these
24 people?

25 There is an answer to that. And the answer lies in this

1 available.

2 That is the engineer, chief engineer for Skagit County,
3 telling them? Look, you dike off the Nookachamps, you are
4 going to lose the storage area, that you are going to
5 continue to flood these people. That is what the chief
6 engineer said on January 2nd, 1979. And they have never done
7 anything for these people.

8 Up here on Lafayette Road here. I'm not sure I'm going
9 to find this. Right about in here, where my finger is,
10 you're not going to see up here. On Lafayette Road. There
11 is a low spot on Highway 20. And the Army Corps of Engineers
12 -- not Army Corps of Engineers, they sandbagged up -- or
13 actually put a berm in, dumping huge amounts of fill and
14 gravel and whatnot on this low spot on Highway 20.

15 Why did they do that? First of all, they wanted to
16 protect the city of Mount Vernon, but also wanted to protect
17 Highway 20. Why am I telling you about this Highway 20
18 so-called emergency action? They called it emergency
19 action. It was planned, but they called it emergency
20 action. Why am I telling you about this? Guess who dumps
21 the fill? Skagit County. Not some dike districts. Again,
22 another piece of the puzzle who is really calling the shots
23 up in Skagit County.

24 Defendant claims the levees are the same as they were in
25 1975. They are in the same location; they are right about

1 that. They are the same location they were in 1955. They
2 are not in the same condition. You can't put that much
3 money, time and effort into these levees and expect the
4 levees to be the same. In the same location, not the same
5 condition.

6 Defendant's position. Instead of standing up here and
7 saying, Look, we should accept some partial responsibility,
8 they point at the empty chairs of people who aren't here. We
9 tried to get dike districts in here. We couldn't do it. The
10 law wouldn't allow us to do it, at least in this county.

11 They point at other people: the dike districts,
12 Burlington Northern Railroad, City of Burlington, Corps of
13 Engineers, sued the State of Washington. State of Washington
14 gave them significant money to improve these levees. Points
15 to the empty chairs.

16 Ladies and Gentlemen of the Jury, this testimony about
17 these empty chairs is going to be mostly without substance.
18 You know they are going to point to the Burlington Northern
19 bridge. Yes, there is a bridge that goes across -- right
20 across here. That is a chunk (phonetic) point. But it's
21 trivial in terms of blocking flow in comparison to this
22 entire levee system that runs up and down the Skagit River on
23 both sides up to this point.

24 The south side -- the left side of the river looking
25 down, the levee stops there. Going to talk about depression

1 areas on the ground. Well, some of your clients live in a
2 depression. It collects water naturally, anyway. Depression
3 areas all over the county. So that is not going to help you
4 find anything.

5 They may put on some testimony that flooding is good for
6 farmers because this is where they get the sediment to grow
7 things in the very fertile valley anyway. You're not going
8 hear one farmer get up here and tell you that flooding is
9 good for them. It washes out their crops, kills it, wrecks
10 the fences, provides no nutritional -- much in the way of
11 nutritional needs, and brings in all kinds of seeds and other
12 adverse things that affect farmers. No farmer is going to
13 get up here and tell you this is a good thing.

14 Talk to you a little bit more about our case. Then on
15 to the damage.

16 First thing we're going to do up here is get our experts
17 on to tell you what I've been telling you about this foot and
18 a half to four feet. We have hired, I think, the two finest
19 experts in the northwest, Dr. Jerry Mutter and Richard
20 Regan. He did the general design memorandum. Spend a little
21 time with him this afternoon maybe.

22 What they did, we asked them: Are these levees causing
23 any problems? Can you guys tells us? You're hydraulic
24 engineers. Can you tell us?

25 Yeah. It's going take us a while. Did some preliminary

1 calculation. It looks like it. Preliminary calculations
2 justified doing a very sophisticated scientific computer
3 model to tell everybody, to try to calculate the amount of
4 flooding our people would receive if there were no levees on
5 the river as there exist currently. Took them six months,
6 about 500 hours, to put together this very complex scientific
7 computer model.

8 What they did is they came up with -- I don't know if
9 you folks can see this. This is the visual output of the
10 computer model. What you are going to see there is, you
11 know, it shows, like, this area -- blue area here is on like
12 two feet, all the blue area. The green area is, like, three
13 feet. The light blue is, like, four feet. And what that
14 tells you is -- that tells us what the levees, the summary of
15 the levee-induced flooding, the amount of flooding that is
16 caused by the levees. They don't have protection. That is
17 what is being caused by levees.

18 You will see the little dots when you get here of where
19 we put the plaintiffs' houses in that area, each one of them,
20 from one-and-a-half to four feet. So that is what Dr. Mutter
21 is going to come tell you about, as is Dick Regan, who has
22 been with the corps for over 30 years.

23 No expert is going to disagree with this. County didn't
24 even ask their expert to study this problem. He focused on
25 the Burlington Northern Railroad Bridge.

1 Then we have to put on each of the 65 plaintiffs. Ask
2 you for your patience in listening to them. It's going to
3 get repetitious, and I think it's going to be hard for you to
4 get through that. Each of you made a commitment to try your
5 darnedest to listen to each of them. I'm sure you will do
6 that.

7 Get to each one of them a day at a time. Probably get
8 as many on in a day as we can. Going to get through this
9 trial a day at a time, with your help and patience.

10 Damages. Last subject I want to talk about before I sit
11 down. The damages in this case range from substantial to
12 monumental to some instances catastrophic. It falls in three
13 categories: personal property damages, things people could
14 move if they could, cars, furniture. Compared to the
15 physical damage to the property. This is actual physical
16 damage: decks torn off by the flood.

17 And the third is decline in market value, or mitigation,
18 to get their houses raised. We have some people to come in
19 here and tell you about the cost of doing that.

20 Our clients were unable to do anything about the
21 damage. They watched in horror. Few events more terrifying
22 than a flood. They watched these three categories of
23 damages, suffered this damage. All they could do is watch.
24 Filthy, mud-laden waters rise up towards their properties,
25 over their fields, over the manure pit and droppings of

1 livestock, feed. Crept into their garages and then started
2 to rise some more. Got in the lawn mowers, lawn furniture.
3 Crept into their basements, crawl spaces.

4 Possessions of a lifetime we all have in our basement.
5 I don't know about you, but I have a lot of stuff that I had
6 in college or high school. That was ruined for these
7 people. Got into electrical circuits, the duct work,
8 insulation, under the house. Got into the foundation,
9 undermined the foundations, causing them to settle. Serious
10 problems with structural problems.

11 If you had a freezer or an appliance in your basement,
12 you are going to see that the washers and dryers and the like
13 that were in people's basements got ruined in this
14 one-and-a-half to four feet of water. Furnaces ruined.

15 For the lucky, it stopped there, didn't get into the
16 living area. Just into crawl spaces and maybe people's
17 basements. Others, it crept through their floor into the
18 living areas, into their carpets, furniture, into their
19 family albums and pictures. Crept into everything they
20 owned, this filthy, mud-laden water. Has a devastating
21 effect on property of all kinds.

22 It wicked up the walls. The wallboard we use actually
23 wicks this water up the wall. Rose over crops. Got into
24 insulation in the wall.

25 Carried debris in the fields, knocking down people's

1 fences, wiping them out. Firewood and everything else
2 floating out there. Decks detach.

3 Cars couldn't be moved. They tried to limit their
4 damages. They didn't want to suffer these huge damages.
5 They tried as best they could to move property they could.
6 To some extent they were successful, but many were not. You
7 can't move the possessions of a lifetime in the space of a
8 day and a half or two when you think there might be a flood
9 coming.

10 Slowly it drained out, leaving the mud and crud and
11 corruption behind, in their floors, furniture. Doors,
12 windows swollen, floor boards swollen. Major problems for
13 these people.

14 And nature played a cruel trick in November of 1990 on
15 these people. November 11, November 25, there was no flood.
16 People started to return. Dry out their homes, get the
17 heaters home. November 11, November 25. Then the second
18 flood hit. It was worse than the first. Some people had
19 gotten the mud and crud and corruption out of their homes.
20 The first time they had it in it, they got it out, only to
21 have a disaster come and do it again. One-and-a-half to four
22 feet, the worst part getting into their homes.

23 So they -- many of them evacuated again and now spent
24 many -- well, months, trying to get their properties -- at
25 least months, some years, back into the position it should

1 have been without all this induced flooding. Of course, the
2 same events repeated in 1975. I mean, excuse me, 1995.
3 November 30th, 1995.

4 Now, how do you put a value on something like a used
5 piece of furniture that you inherited or a used washer that
6 somebody gave you or a used whatever. Somebody -- maybe you
7 inherited it. Maybe someone gave it to you. Well, they are
8 going to do the best they can. For many of the items they
9 don't have receipts. I'm sure you all have property in your
10 homes that you may not have receipts for. They are not going
11 to have receipts. The best they are going to be able to do
12 is give you their opinion of what it was worth at the time it
13 was destroyed.

14 Who wants to buy property that is three to five years --
15 that has been flooded three times in five years? Who wants
16 to buy that kind of property? Their own expert is going to
17 tell you there is no market for that property. Nobody wants
18 to buy property that has been in induced flooding from the
19 county.

20 So you are going to hear another range of evidence about
21 the decline in market value. Some have opinions. Some have
22 estimates of what the property would be worth if it wasn't
23 suffering this additional flooding. Some have just their own
24 estimates to go on. Owners, owners. I had to reduce my
25 price 20 to 30 thousand to move it at all.

1 do about the decline in the value of the property.

2 We are going to ask you, because Skagit County won't
3 voluntarily help these people out. We have to come to you
4 as our resort to take care of these people when Skagit County
5 will provide these people no protection. You are our last
6 resort. This is what America is all about. The county won't
7 voluntarily take care, they come to you or they get nothing.

8 So these people face the menacing perils of flooding up
9 there. Their homes still flood before the
10 hundred-year-flood, expecting future floods, and many of them
11 not being able to do anything about raising their house.
12 Some want to be reimbursed for raising their house.

13 In the end, we're going to -- everything they can
14 estimate, everything about the damages, the house raising,
15 decline in market value, Mr. Loeb's \$450,000 destroyed
16 inventory, we're going to ask you for it all because you are
17 the last resort and because Skagit County will not
18 voluntarily compensate these people.

19 Thank you, one and all.

20 THE COURT: Counsel?

21 MR. SMART: Your Honor, may I inquire about the
22 plans the Court has for the noon break and timing in that
23 regard? Probably take me ten minutes to set these diagrams
24 up. Maybe only five.

25 THE COURT: Well, it's your preference. Would you

1 rather wait? We don't have a one o'clock setting today. We
2 did have one scheduled, but we have moved it for reasons
3 other than this trial. So we can reconvene at one.

4 MR. SMART: That makes sense to come back early and

5 --

6 THE COURT: As opposed to having you interrupted.

7 Ladies and Gentlemen, counsel and I are discussing that,
8 obviously, as we instructed you earlier in the case, the
9 parties, that is, the defendant Skagit County and the third
10 party defendant State of Washington, have the opportunity to
11 make their opening statements this morning as well. As we
12 said in the instruction, they can waive that, but I
13 anticipate that both will in fact give their opening
14 statement.

15 Rather than have them interrupt that with our lunch
16 break and sort of lose the flow and the train of thought and
17 that sort of thing, what we will do is take a break earlier
18 today. We do not have the usual interruption between one and
19 1:30 that we discussed before. We had a matter set but,
20 frankly, with the preparation of this case and some other
21 issues, I felt that it would be better for us to use today's
22 time to move through systematically with our case today and
23 postpone that for another week or so.

24 All that means to say, we'll start again at one o'clock
25 rather than the one-thirty time which we quite ordinarily

1 will be using during the course of the trial.

2 So with that, Mr. Shields, if you will let the jury
3 retire to their jury room and take your break for lunch. You
4 will be back in the jury room, please, at 12:55, ready to
5 start at one o'clock or as promptly thereafter as we can.

6 Counsel, anything else before the jury is excused?

7 MR. SMART: Nothing, Your Honor.

8 MR. ANDERSON: Nothing, Your Honor.

9 MR. HAGENS: Nothing, Your Honor.

10 THE COURT: Thank you.

11 (Court recessed at 11:38 a.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25