COMPLAINT FORM
JUDICIAL COUNCIL OF THE NINTH CIRCUIT
COMPLAINT OF JUDICIAL MISCONDUCT AND DISABILITY

MAIL THIS FORM TO THE CLERK, UNITED STATES COURT OF APPEALS, P.O. BOX 193939, SAN FRANCISCO, CA 94119-3939. MARK THE ENVELOPE "JUDICIAL MISCONDUCT COMPLAINT" OR "JUDICIAL DISABILITY COMPLAINT." DO NOT PUT THE NAME OF THE JUDGE ON THE ENVELOPE.

SEE RULE 2(e) FOR THE NUMBER OF COPIES REQUIRED FOR FILING.

1. **Complainant's name:**

John O. Rasmussen
Address: **1900 Congress Circle, Unit 1**
Anchorage, AK 99507
Daytime telephone: **(907) 868-2713**

2. **Name of judge(s) complained about:**

Betty Binns Fletcher, *and* **Barbara Jacobs Rothstein**

Court(s): **Court of Appeals for the Ninth Circuit,** *and* **United States District Court, Western District of Washington**

3. Does this complaint concern the behavior of the judge in a particular lawsuit or lawsuits?

☒ **Yes** ☐ No

If "yes" give the following information about each lawsuit (use reverse side if there is more than one):

Court: **Court of Appeals for the Ninth Circuit**
Docket Number: **01-35610**

Court: **United States District Court, Western District of Washington at Seattle**
Docket Number: **CV-00-01637-BJR**

Are (were) you a party or lawyer in the lawsuit? ☒ **Party** ☐ Lawyer ☐ Neither

If a party, give the name, address, and telephone number of your lawyer:

(Note: My Lawyer has had no part in this filing of Judicial Misconduct. He has not been consulted, nor has he offered advice or his opinion with respect to this filing. He is not aware of the fact that this filing has been made.)

J.J. Sandlin, Esq.
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Cottage Square
P.O. Box 1005
Zillah, Washington 98953
(509) 829-3111/fax: 3100

Docket numbers of any appeals to the Ninth Circuit: **An appeal for reconsideration was made to the Ninth Circuit Court of Appeals and to the U.S. Supreme Court. Both courts denied consideration.**

4. Have you filed any lawsuits against the judge? ☐Yes ☒ **No**

If yes, give the following information about each lawsuit (use the reverse side if there is more than one):
Court:
Present status of suit:
Name, address, and telephone number of your lawyer:
Court to which any appeal has been taken:
Docket number of the appeal:
Present status of appeal:

5. **Statement of Facts:** On separate sheets of paper, not larger than the paper this form is printed on, describe the facts and evidence that support your charges of misconduct or disability. *See* Rules 1(c) (proper grounds for a complaint; does not include merits of judges' decisions), 2(b) (content of the statement of facts) and 2(d) (attachment of supporting materials). Do not use more than 5 pages (5 sides). Most complaints do not require that much.

6. You should either:

(1) Check the first box below and sign this form in the presence of a notary public; or

(2) Check the second box and sign the form. You do not need a notary public if you check the second box.

☐ I swear (affirm) that:

☒ **I declare under penalty of perjury that:**

I have read rules 1 and 2 of the Rules of the Judicial Council of the Ninth Circuit Governing Complaints of Judicial Misconduct or Disability, and the statements made in this complaint are true and correct to the best of my knowledge.

_____

(Signature) John O. Rasmussen

Executed on February 10, 2004

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5. Statement of Facts:

This complaint of judicial misconduct describes wrongdoing by two Ninth Circuit Judges. District Judge Barbara Jacobs Rothstein and Senior Circuit Judge Betty Binns Fletcher have participated in a federal tax fraud scheme by manipulating and manufacturing facts, and then issuing decisions that protect some very powerful people from prosecution. The tax fraud scheme involved Arthur Andersen, among others. If Judge Rothstein had turned over the evidence of Arthur Andersen's wrongdoing to federal prosecutors, instead of hiding it, the Enron scandal might have unfolded very differently, and perhaps so many innocent folks would not have been financially harmed by Enron's collapse. This is a case of Ninth Circuit judges participating in crimes from the bench. These Ninth Circuit decisions threaten the legitimacy of the Court.

Judges Rothstein and Fletcher kept control of this case by dishonestly allowing summary judgment. On appeal, every judge in the Court turned his or her back on the Constitution and the law, and supported the treasonous decisions of these two judges. The U.S. Supreme Court refused to hear my appeal.

Judicial Misconduct:

This note describes judicial misconduct, and at the same time points out some of the major errors in the appeals process. I understand that the court will not reconsider the items that already have been mishandled on appeal. I cannot ask, here, that the Court correct its appeals errors. However, it is necessary to show the complete failure of the appeals process in order to fully understand the issues of misconduct that I describe. The portions of this note that deal with judicial misconduct were not previously briefed by my lawyer. I bring this complaint of misconduct without his advice, opinion, or consultation.

The Tax Fraud Scheme:

The tax fraud scam involved Arthur Andersen, Burlington Northern Santa Fe (BNSF), national officers of The Rails to Trails Conservancy working with a local 501(c) non-profit, and the Prosecutor of King County, Washington. BNSF obtained an inflated Arthur Andersen appraised value for right of way land that it didn't own, and then donated to land to King County through the non-profit, taking a massive illegal tax write-off. Both King County and the officers of the non-profit

were aware that the donation was fraudulent. Judge Rothstein struck evidence of this fraud on a motion from the King County Prosecutor, and failed to turn it over to federal prosecutors for investigation. Further, Judges Rothstein and Fletcher were influenced to dishonestly determine that BNSF actually owned the right of way land. Their decisions upset 100 years of consistently applied property law in Washington State, and hid evidence of the fraud. Railbanking is a great idea but has been turned into a cesspool of corruption through transactions such as this one. This East Lake Sammamish railbanking scheme defrauded the American Taxpayers out of about $15 million and stole valuable land from my family, my neighbors, and me. On May 16, 2003, I wrote an individual letter, to each of the 46 judges of the Court of Appeals for the Ninth Circuit that described the injustice they have created in the *King County v. Rasmussen* decisions. The Court refused to accept the letters and returned all of them to me. The attached letter to Chief Justice Schroeder is representative of those 46 letters. The federal tax fraud scheme is described on pages 11-13. It would be useful to read Judge Schroeder's letter in its entirety, as it provides greater detail of the misconduct discussed here.

District Judge Barbara Jacobs Rothstein:

Judge Rothstein intentionally denied my right to establish the facts before the court. She denied my right to a trial, and denied more than ten requests for oral arguments. She denied my Constitutional Right of Due Process. With absolutely no agreement on critical material facts, she lied in her decision and declared that there was agreement on all the material facts. This allowed her to control the case, abusing the use of summary judgment and protecting some powerful folks from prosecution. Summary judgment requires that there be no disagreement with material facts, allowing the judge to simply apply the law. Rothstein's illegitimate use of summary judgment also denied my right to depose the parties that I believe have committed this crime.

Under Washington State law, a deed is construed by determining the intentions of the parties. Since the parties to the right of way deed construed in *King County v. Rasmussen* are no longer available to explain their intentions, the law allows the court to understand the party's intent based on the language of the deed, the circumstances surrounding the execution of the deed, and the subsequent conduct of the parties.

Judge Rothstein intentionally perverted the law by analyzing the intentions of only one party to this deed, based on phony facts that she manufactured. Further, Rothstein chose an irrelevant legal decision as precedent to analyze the extrinsic evidence (circumstances surrounding, and subsequent conduct) in this case, ignoring a number of Washington State decisions that clearly spell out the law.

Her complete dishonesty in analyzing the use of exempt language in deeds can be understood by reading *Zobrist v. Culp*, 18 Wn. App. 622, 570 P.2d 147 (1977) and comparing it to her analysis of *Harris v. Ski Park Farms, Inc.*, 120 Wn.2d 727, 844 P.2d 1006, 1012 (1993).

In 1887, Bill Hilchkanum and his wife Mary granted the railroad right of way deed that was construed in the Rothstein decision. Bill Hilchkanum was illiterate. He was a Duwamish Indian who, as a condition of giving up his tribal affiliation, was allowed to homestead the land involved in the grant. In the late 1800's, Native Americans in Washington were at great disadvantage in legal transactions. Americans Indians existed at the mercy of the settlers in those days. This fact is apparent from the history of those times and from the excerpts of record we provided the court. This fact is also reflected in R.C.W. 64.20.020. To protect Native Americans in real estate transactions, this 1890 law required that "All deeds [] executed by any Indian [] shall in all cases be acknowledged before a judge of a court of record. [] (T)he said judge shall explain to the grantor the contents of said deed or instrument, and the effect of the signing or execution thereof, and so certify the same in the acknowledgment []". None of the subsequent deeds, that Judges Rothstein and Fletcher find so revealing, in their twisted analysis of extrinsic evidence, have that required endorsement by a judge. (See page 4 of the attached letter to Judge Schroeder for more detail.)

Judge Rothstein simply manufactured the fact that Bill Hilchkanum wrote his own deed to the Railway. This "fact" was not suggested in King County's briefs; is disputed by the statements made in our briefs; is completely contrary to the facts we provided in the excerpts of record; and is inconsistent with the history of the times. Rothstein made up this material fact. The excerpts of record prove that Hilchkanum was illiterate and unable to even sign his own name. With no justification whatsoever, Judge Rothstein decided that Hilchkanum "knew how to limit a grant". She decided that Hilchkanum chose certain words in his deed based on his expert understanding of the Homestead Act. She decided that Hilchkanum signaled his intention to grant unconditional fee title through his subtle change of wording in the different portions of his deed. Judge Rothstein construed the words in the deed against only Hilchkanum based on her dishonest and irrational assignment of him as the author. She did this, intentionally ignoring the fact that the lawyers for the railway wrote the deed, and knowing that Washington State law requires her to construe the deed in that light. Since the words in the Hilchkanum deed are identical to other SLS&E deeds, Rothstein has therefore decided that Bill Hilchkanum wrote many of the other deeds for the railway. This is completely ridiculous, and Rothstein knows it. Rothstein and Fletcher hide this massive lie in their decisions by refusing to compare the Hilchkanum deed to the Squire deed, and Squire decision. (See attachment, page 6.)

The truth is that Bill Hilchkanum did not write one word in his deed. The truth is that the railway's lawyers, led by Judge Thomas Burke, wrote the Hilchkanum right of way deed. Neither Hilchkanum, nor any of the other Native American homesteaders along Lake Sammamish, wrote, or even altered, the right of way deeds prepared for them by the railroad. If Rothstein had admitted the truth that Judge Burke was responsible for the words of the deed, she would not have been able to come to her dishonest decision. In the Laws of 1886, the territorial legislature specified the statutory warranty deed form to transfer fee title. This was the year before the Hilchkanum right of way deed. The Hilchkanum deed is not in statutory warranty form. The year after the Hilchkanum right of way deed, Judge Burke became Chief Justice of the Washington Territory Supreme Court. It's impossible that Chief Justice Thomas Burke did not understand how to properly convey fee simple title. So, in order to justify her dishonest conclusions, Rothstein irrationally manufactured the material fact that an illiterate Native American, Bill Hilchkanum, was the author of his right of way deed.

Why?

Why would Judge Rothstein strike evidence of federal tax fraud on a motion from one of the participants to the fraud, and then fail to turn the evidence over to federal prosecutors for investigation? Why would Judge Rothstein manufacture material facts and base her decision on this falsehood? Why would Rothstein allow herself to decide by summary judgment when she was aware that there was no agreement on the material facts? Why would Rothstein slander me, accusing me of racial prejudice, when the racial prejudice is hers for intentionally mischaracterizing American Indians in the late 1800's? Why would Rothstein strike large portions of my lawyer's briefs after she agreed to an informal method of allowing extended briefs? Why does Judge Rothstein pretend that *King County v. Squire Investment Co.*, 59 Wn. App. 888, 801 P.2d 1022 (1990) doesn't exist, and control this case? The only logical explanation for these questions is that Judge Barbara Rothstein has intentionally covered up a federal tax fraud scheme, and became part of that crime by her actions.

Senior Circuit Judge Betty Binns Fletcher:

It appears that Judge Betty Fletcher personally took over the appeal to protect her sister judge, and perhaps personal friend, Barbara Rothstein. With the massive errors in this case, it is impossible that the two other judges on the appeals panel had any legitimate input.

Judge Betty Binns Fletcher irrationally agreed to every lie in Rothstein's decision. Further, Judge Fletcher refused our request to refer the State issue of deed interpretation to the Washington State Supreme Court, clinging to her "right" to misinterpret the deed. To turn the Court against me on appeal, Fletcher slandered me in her opinion. Fletcher implied that I illegally threatened King County employees. This is a lie that is based on a perjurious triple hearsay declaration manufactured by King County. Apparently Judge Fletcher loves triple hearsay declarations because I sat in front of her for over half an hour at the appeal hearing, and she had no interest in clearing up this lie before publishing it in her decision. Further, she mischaracterized Rothstein's decision by implying the issue was whether or not there would be a trail along East Lake Sammamish, Washington. That was not the issue, and she knows it. I'm an avid bicyclist and have repeatedly stated my support of bicycle trails. I do not oppose a trail along Lake Sammamish. I oppose the outrageous theft of my property to cover up a federal tax fraud scheme and protect some powerful people from federal prosecution. Portraying me as an obstructionist slandered me, and biased the court against me on appeal. This case is not about whether or not there will be a trail along Lake Sammamish. This case is about whether or not the judges of the Ninth Circuit can participate in crimes from the bench, and get away with it.

Summary: Treason.

The many falsehoods and errors in this case fit into a matrix that, when viewed as a whole, show intentional criminal acts by Rothstein and Fletcher. Federal District Judge Barbara Rothstein participated in the crime of federal tax fraud with the confidence that her fellow federal judges would never hold her responsible. On appeal, Senior Circuit Judge Betty Fletcher covered up Rothstein's crime. This is a case of Federal Judges committing crimes from the bench. This is treason.

A Personal Note: *I am a graduate of the U.S. Naval Academy and served our Country for eleven years as a Naval Officer. While I never served in combat, I did put my life on the line to defend the very freedoms that the Ninth Circuit now denies me in its courts.*

Every judge in the Ninth Circuit knows the rules of summary judgment, yet not one judge stood up for those rules in this case. Any judge that looked at this case, more than superficially, knows that Judge Rothstein manufactured the central fact that controls her decision. The appeal process is not another chance for me to make my case; it's another chance for the judges of the Ninth Circuit to get it right. That process has totally failed, and now all that is left, within the system, is this complaint of judicial misconduct. Morally, the Ninth Circuit has lost its franchise.

Attachment to Complaint of Judicial Misconduct

Letter to Chief Judge Mary M. Schroeder, Dated May 16, 2003

johnras@attglobal.net
1900 Congress Circle, #1
Anchorage, AK 99507
May 16, 2003

The Honorable Mary M. Schroeder
Chief Judge, United States Court of Appeals for the Ninth Circuit
C/O Clerk, United States Court of Appeals
95 Seventh Street
San Francisco, California 94103-1526

Ref: No. 01-35610, D.C. No. CV-00-01637-BJR

Dear Judge Schroeder:

This letter describes absolute corruption in The United States Court of Appeals for the Ninth Circuit. It describes active participation in federal tax fraud by at least two Ninth Circuit judges, and the passive acceptance of the fraud by the whole Court.

Ninth Circuit District Judge Barbara Jacobs Rothstein and Senior Circuit Judge Betty Binns Fletcher have hidden evidence of Arthur Andersen wrongdoing in a tax fraud scheme that preceded the Enron Scandal. If Judge Rothstein, had turned over the evidence of fraud to federal prosecutors rather that hiding the fraud and issuing an opinion that protected the involved parties from prosecution, the Enron Scandal might have evolved very differently and many innocent folks might have been spared their great financial losses.

Of course, your fellow Ninth Circuit Judge, Barbara Rothstein, didn't realize that she would become part of the Enron Scandal when she struck evidence, denied Constitutional rights, manufactured facts, and intentionally misapplied the law. Apparently, she thought she was merely destroying the rights of a handful of people along Lake Sammamish in King County, Washington, and was confident that the full Ninth Circuit Court would grant her that privilege. In our modern society, who cares about the rights of a handful of people?

Federal Tax Fraud:

The tax fraud scam involved Arthur Andersen, Burlington Northern Santa Fe (BNSF), officers of The Rails to Trails Conservancy working with a local 501(c) non-profit, and the Prosecutor of King County, Washington. It appears that The Rails to Trails Conservancy has been using federal tax fraud as an incentive to encourage railroads to railbank unused right of way. Railbanking is a great idea but has been turned into a cesspool of corruption by greedy railroad executives, misguided trail advocates, and arrogant public officials. Arthur Andersen appraised the BNSF right of way along East Lake Sammamish, Washington at about three times its actual value. BNSF then donated the right of way to King County, using the 501(c) as a middleman. This donation allowed BNSF to rip off about $15 million from United States taxpayers. It seems very likely that Judge Rothstein became part of this scandal when one of the parties to the fraud convinced her to dishonestly determine that the Lake Sammamish right of way land was owned by BNSF, fee simple. It previously had been considered easement land. BNSF couldn't take a tax write-off on the donation of land it didn't own. Rothstein's decision fixed that problem. Further, Rothstein's decision protected the Prosecutor of King County and the trail advocates from prosecution for federal tax fraud, and greatly lessened Arthur Andersen's and BNSF's exposure to prosecution. Judge Betty Fletcher upheld Rothstein's dishonest decision on appeal. A more complete description of the steps leading to the fraud and its subsequent cover-up is attached to this letter, directly below my signature.

Judge Schroeder, you have covered-up this tax fraud scheme with your denial of en banc consideration. Did you hide the evidence of this Enron related tax fraud because you failed to do your job and fully review the material? Or, did you intentionally hide the evidence of the tax fraud with the knowledge that you were covering up the crimes of your fellow federal judges? There is no possibility that the Rothstein and Fletcher decisions conform to the Constitution and the law. Their completely ridiculous opinions are based, in large part, on their bizarre concocted fact that an illiterate Duwamish Indian wrote the deeds for the Seattle Lake Shore and Eastern Railway in the late 1880's. You don't have to be a lawyer or a judge to understand how intentionally dishonest and completely unsupportable that "fact" is. This concocted fact, along with other manufactured facts, and their gross misapplication of the law, forces one to conclude that these dishonest decisions by Rothstein and Fletcher are

intentional. These are brilliant but morally flawed jurists, with brilliant but morally flawed staff. The lawyers for the Railway drafted the words in those right of way deeds, and these two judges know that. But more importantly, these two judges know that they had no legal right to decide this case by summary judgment with this critical material fact in dispute. Rothstein and Fletcher could not have justified their predetermined decisions if they had admitted the truth that the lawyers for the Railway drafted the deeds. It's quite apparent that they have altered the facts in this case in order to cover up the tax fraud scheme and protect some powerful folks from going to prison.

I am a graduate of the U.S. Naval Academy and served our country for twelve years as a Naval officer. While I never served in combat, I did put my life on the line to defend the very freedoms that Judges Rothstein and Fletcher have denied me in their courts. I put my life on the line to defend the Constitution and the law, not the illicit privileges that Rothstein and Fletcher have granted themselves with this abuse of judicial power.

Abuse of Summary Judgment Rules, Violation of Due Process, and manufacturing of phony facts:

In order for Ninth Circuit District Judge Barbara Rothstein to guarantee her predetermined result, she needed to control the decision by not allowing it to go before a jury. Summary judgment is the procedure that allowed Rothstein this abuse of the Constitution and the law. Summary judgment requires that all parties agree to the material facts, and then the judge simply applies the law. If there is a disagreement with the facts, it must go to trial. Further, in summary judgment the non-moving party must have all the facts construed in its favor. Judge Rothstein violated both of these requirements. Significant facts were construed against the non-moving party, which is my former wife and I. More importantly, Judge Rothstein manufactured a false material fact that was critical to her predetermined decision. The fictitious fact was that Bill Hilchkanum drafted his own deed to the Seattle Lake Shore and Eastern Railway (SLS&E) in 1887. That phony "fact" was critical to her decision because the words in a deed are construed against its drafter. Bill Hilchkanum was the homesteader and Native American Indian who granted the right of way deed in question. Manufacturing that fact allowed Judge Rothstein to construe the words of the deed against Hilchkanum instead of the lawyers for the railroad. Apparently, the only actual fact that Judge Rothstein used to prove

Hilchkanum's authorship of the deed is that he signed it with his illiterate "X". That's all. She then applied the common assumption that the grantor writes the deed, and used that false assumption as a "fact" to establish his authorship.

There is no possibility that Hilchkanum wrote his own deed, and the other deeds, to the Seattle Lake Shore and Eastern Railway. Bill Hilchkanum was a member of the Duwamish tribe. He was born in a tribal setting around 1844; eight years before the first white settlers founded Seattle. He obviously had no schooling in the white man's sense of the word. He was a boy in 1855 when his tribe was enticed, or forced, to sign the treaty that gave up their land and moved the tribal members onto a reservation. He lived through the Indian Wars of 1856 in which the white settlers drove away the Indians that revolted against this taking of their lands. He was a young man in 1858 when Chief Leschi of the Nisqually was hanged for resisting the white man's treaties and settlement. He lived through the disastrous times in 1862 when canoes full of natives, infected with smallpox, were towed north from Vancouver Island by order of white officials. This intentionally spread smallpox to the isolated native villages killing about 14,000 natives. The death rate was about 50%. This is the history of the time in which Bill Hilchkanum lived. The Native Americans of that time were at the mercy of the white settlers.

Judge Rothstein has manufactured a different history of the times to justify her dishonest decision. She has assigned Hilchkanum the equivalent of an Ivy League education and made him an expert in federal and territorial land use law. She has made Bill Hilchkanum the author of his railroad deed, and in complete control of its meaning. Will the Ninth Circuit now force the public schools in Washington State to teach the "Rothstein Revised History of Washington Territory", showing the Native Indians as highly educated? Will the Ninth Circuit force Harvard, Yale, or some other prestigious university to show Bill Hilchkanum as a graduate? The Duwamish are presently attempting to gain federal tribal status in the courts. Will Rothstein's manufactured history of this member of the tribe now be used to factor against the modern tribe gaining federal tribal status? Where does this ridiculous charade end? Rothstein denies the truth and dignity of this American Indian's life in order to hide the federal tax fraud scheme of some very dishonest folks. Her bias against this man and his tribe continues the tradition of abuse of Native Americans by the federal government from before the beginning of Bill Hilchkanum's life to the present day.

Bill Hilchkanum gave up his tribal affiliation and homesteaded along Lake Sammamish in the late 1800's. There are many documents associated with the Hilchkanum homestead transactions and subsequent land transactions that are before this Court as excerpts of record. These documents show that Bill Hilchkanum was illiterate, unable to even sign his own name, and completely dependent on his "white friends" to do his business for him. In spite of these documented facts, Judge Rothstein manufactured her own material fact that Bill Hilchkanum drafted his deed to the Seattle Lake Shore and Eastern Railway. She also concocted the fact that he crafted his deed based on his expert understanding of the Homestead Act and his expert understanding of the subtle nuances of railroad right of way deeds. Since the other Seattle Lake Shore and Eastern Railway deeds are written using this same basic deed form, one must then conclude that Judge Rothstein has decided Bill Hilchkanum wrote all the deeds for the Railway, or at least the portions of those deeds that are identical in wording to the Hilchkanum deed. This is completely ridiculous, and this brilliant but morally flawed jurist knows it.

With the material fact of who drafted the deed in complete dispute, Judge Rothstein simply decreed there was no disagreement with the material facts, and dishonestly allowed herself the right to decide the case by summary judgment. Had Judge Rothstein rightfully allowed this case to go before a jury we would have been able to prove the obvious fact that the lawyers for the railroad drafted the deed. Specifically, the lawyer responsible for the words in the Hilchkanum deed was Judge Thomas Burke, the lead attorney and cofounder of the railway. Judge Burke became Chief Justice of the Washington Territory Supreme Court in the year following the Hilchkanum deed, and is considered one of the greatest jurists in the early history of the Northwest. Judge Burke had the expert understanding of railroad right of way deeds that Judge Rothstein has so dishonestly assigned to illiterate Bill Hilchkanum. The words in the Hilchkanum deed would have been construed in a completely different manner if Judge Rothstein had admitted Burke's responsibility for the wording, and construed the deed in light of its true author's competence and interest in the deed. We were not allowed to prove the fact that Judge Burke was the person responsible for the words in the Hilchkanum deed because Judge Rothstein intentionally misapplied the rules of summary judgment. She intentionally denied my Constitutional right of due process. She dishonestly struck portions of my declaration. She dishonestly struck evidence of federal tax fraud. She denied my right to a jury. She denied the truth.

Did Hilchkanum write all the deeds to the railway?

As stated above, Judge Rothstein decided that Bill Hilchkanum wrote his own deed to the Seattle Lake Shore and Eastern Railway. I copy the Hilchkanum granting clause here to show that he must have written other deeds to the railway if, indeed, he wrote his own. For comparison, following the Hilchkanum granting clause, I copy the granting clause from another SLS&E deed, the Squire deed.

> **Hilchkanum Granting Clause:**
> "In consideration of the benefits and advantages to accrue to us from the location, construction and operation of the Seattle Lake Shore and Eastern Railway, in the County of King, in Washington Territory, we do hereby donate, grant and convey unto said Seattle Lake Shore and Eastern Railway Company a right of way one hundred (100) feet in width through our lands in said County described as follows to wit..."

> **Squire Granting Clause:**
> "In Consideration of the benefits and advantages to accrue to us from the location, construction and operation of the Seattle Lake Shore and Eastern Railway, in the County of King, in Washington Territory, we do hereby donate, grant and convey unto said Seattle Lake Shore and Eastern Railway a right-of-way Fifty (50) feet in width through said lands in said County, described as follows, to-wit..."

If Bill Hilchkanum drafted his own granting clause, then he also must have drafted the granting clause in Judge Squire's deed, for they are essentially word-for-word the same. How did an illiterate Native American, who cannot even sign his own name, write any of these deeds? Why would Judge Squire let an illiterate Indian write his deed for him? Judges Rothstein and Fletcher did not, and cannot, justify their ridiculous fiction.

The Federal Court violates the Rights of Washington State:

The Squire deed was found to be an easement based, principally, on the words granting a right of way in its granting clause, which is shown above. See: *King County v. Squire*, 59 Wn. App. 888, 890 (1990). In my declaration to Judge Rothstein, I stated: "King County ignores *Squire*

because it destroys its claim to ownership of my property." Judge Rothstein struck that statement and refused to honestly address the inconsistency of her decision with *Squire*. In turn, appeals judge Betty Fletcher refused to even call attention to our comparison of the Hilchkanum deed with the Squire deed by referring to *Squire*, vaguely, as a "Washington Court of Appeals case". That is intellectually dishonest, and consistent with the rest of the dishonesty in Fletcher's decision. An honest comparison of those two deeds undermines these judge's predetermined decisions, so they simply pretend the *Squire* decision doesn't exist, or they mischaracterize it.

The grant of a right of way to a railroad has always been found to be an easement under Washington State law. This precedent goes back to the origin of the words *"right of way"*. It has always been held to be the grant of a *"right"*, an easement rather than a fee simple grant. This was the understanding of those words in 1887, when the Hilchkanum, Squire, and other SLS&E deeds were granted. The words to a deed must be construed in light of their meaning to the participants to the deed in 1887, not the meaning that Rothstein and Fletcher dishonestly contrive in their 2001 and 2002 decisions. Rothstein and Fletcher have established a new federal property law in the Ninth Circuit that is in complete disagreement with Washington State law and legal precedent. This is a gross intrusion on the rights of Washington State by the Federal Court.

Did someone illegally influence Judge Rothstein?

As I stated at the top of this letter, the tax fraud in the East Lake Sammamish railbanking transaction involved some very wealthy and influential parties. Here's a partial list.

Norm Maleng and senior staff: Norm Maleng is Prosecutor for King County, Washington. He has great influence with the judges in King County, both state and federal. His recent decision to not prosecute Senior Ninth Circuit Judge Jerome Farris for cutting down 108 trees on Seattle City property is an example of how he cultivates the "good ol' boy (and girl)" legal network.

Gary Locke: Gary Locke is Governor of the State of Washington and was Norm Maleng's boss when this crime took place. The question here is: Did Gary Locke direct Norm Maleng to commit federal tax fraud, or did Maleng do it on his own and hide the crime from his boss?

Peter Goldman: Peter Goldman is director and managing attorney for The Washington Forest Law Center, a 501(c)(3) public interest law firm. Goldman worked for eleven years as a King County prosecutor, and also is on the board of directors for The Rails to Trails Conservancy. Peter Goldman is the common factor with the County, The Land Conservancy of Seattle and King County (TLC), and the national rails-to-trails organization. Does he have a connection with Rothstein too?

Charles Montange: Charles Montange, formerly the lead attorney for The Rails to Trails Conservancy, was the lawyer that negotiated this fraudulent transaction for TLC. He was well aware of BNSF's intention to defraud the American taxpayer when he accepted the phony donation of the right of way from BNSF.

Matthew Cohen: Matthew Cohen is one of the lawyers that worked for TLC on the fraudulent transaction.

Gene Duvernoy: Gene Duvernoy headed TLC and would be a candidate for federal prison if this ever gets investigated.

Arthur Andersen: Arthur Andersen provided the fraudulent inflated appraisal of the right of way.

Burlington Northern Santa Fe (BNSF): Lawyers and executives for BNSF have engineered a fraudulent tax write-off that has ripped-off the American Taxpayer for about $15 million on this single railbanking transaction. How many other railbanking transactions by BNSF are also fraudulent?

I don't know which of these parties got to Judge Rothstein, or if it was another party not named here. I do know that it's unlikely that we will ever discover who influenced Rothstein, if you and the other judges in the Court of Appeals decide to hide this misconduct rather than investigate it.

Don't hang my lawyer.

I write this letter without the advice or review of my lawyer. He is not aware that have written this letter. I do this because I fear that you will destroy his career and livelihood for questioning the honesty of a Ninth Circuit judge. This recognizes the power you have as a federal judge to

destroy people's lives, and the ugly abuse of power by Ninth Circuit judges that I have experienced to date. I will provide a copy of this letter to my attorney when I go public with this information.

I don't have a choice about writing this letter. I have two sons that have the right to live as free men in this Country. It is clear that at least two judges in the United States Court of Appeals for the Ninth Circuit despise the Constitution and laws that guarantee that freedom for my sons. I've put my life on the line as a Naval officer to defend the very freedoms that Rothstein and Fletcher have taken away from me and denied me in Ninth Court courts. I cannot let this treason be quietly dropped from view.

Did Judges Rothstein and Fletcher commit treason?

Strong evidence points to tax fraud being committed by Arthur Andersen, Burlington Northern Santa Fe (BNSF), The Land Conservancy of Seattle and King County (TLC, and the Prosecutor of King County. With knowledge of this, Judges Rothstein and Fletcher have struck this evidence from the case and failed to turn to turn it over to federal prosecutors for investigation. Then, these dishonest judges issued decisions containing lies, altered and manufactured facts, and gross misapplication of the law. In the process of doing this, Judges Rothstein and Fletcher denied my Constitutional right of due process. The only logical reason for these judges to have issued their dishonest decisions, and denied my rights, is to cover-up the tax fraud scheme.

Judges Rothstein and Fletcher have violated their oaths and have committed criminal acts. This is treason.

Freedom and rights die a quiet death in the Ninth Circuit.

The Ninth Circuit has pushed my case up to the U.S. Supreme Court by refusing to deal with the morass of dishonesty and misconduct described above. Since the U.S. Supreme Court does not have the capacity to deal with judicial misconduct, cases like this die a quiet death when the Ninth Circuit fails to police its own ranks. Judge Schroeder, my chance for justice in the Ninth Circuit died when you failed to approve en banc review of this abomination of justice. Did you consciously choose to not recommend en banc consideration in order to protect Rothstein and Fletcher?

What I intend to do about this.

This is not a filing of a Charge of Judicial Misconduct. I've read the Ninth Circuit rules that apply to that charge and they are so narrowly defined that what I describe in this letter does not fall under the Ninth Circuit definition of judicial misconduct. Unbelievably, treason in the Court of Appeals for the Ninth Circuit is not judicial misconduct, when it has been mishandled in the manner of this case.

My fear is that you and the other judges in the Court will continue to hide this corruption, rather than deal with it and reestablish the integrity of the Court. Unless you indicate to me a willingness to correct your errors, I intend to go public with this letter and these facts within the next week or two. I will contact the newspapers and other media. Also, I will encourage law schools to consider a study of this case in relation to preparing their graduates for dealing with judicial misconduct, both as young clerks and future judges. If you would like to contact me about this letter before I go public, kindly reply to the email address at the top of the letter.

Were it not for the Enron Scandal, I doubt that I would be able to draw any public attention to this injustice. The public perception is that Arthur Andersen and crooked Enron executives are responsible for the Enron Scandal. The evidence, I refer to here, shows the blame also rests with politicians, judges, and other influential people outside of the business community. A portion of the blame for the Enron Scandal rests on the steps of the Court of Appeals for the Ninth Circuit. A portion of the blame for the Enron Scandal rests on your shoulders.

Judge Schroeder, based on what I describe here, I question the integrity of the United States Court of Appeals for the Ninth Circuit. I question the legitimacy of the United States Court of Appeals for the Ninth Circuit.

Sincerely,

John O. Rasmussen

Attachment:

Background information on the Fraud:

In 1996, Burlington Northern Santa Fe decided to abandon a spur line that ran for twelve miles along the eastern shore of Lake Sammamish in King County, Washington. For years, King County had expressed a desire to obtain the right of way for a trail and park. BNSF obtained a greatly inflated appraised value of the right of way from Arthur Andersen LLP. It then conspired with officials of The Land Conservancy of Seattle and King County (TLC) to provide documentation to the IRS of its acceptance of the donation of the right of way, at the greatly inflated Arthur Andersen value. BNSF made this phony donation as a condition of railbanking the land under the Rails-to-Trails Act. Technically, it was a "bargain sale" with BNSF accepting a payment of $1.5 million and donating $40.2 million.

Arthur Andersen LLP was commissioned to appraise the right of way, or rail line, for BNSF in 1996, "...to assist [BNSF] management in accounting for the donation of the right of way...for rails to trails use." To maximize the amount of its phony donation, BNSF instructed Arthur Andersen to value the land as if all of the right of way were held by BNSF, fee simple. The date of the Appraisal was December 10, 1996. The report from Arthur Andersen to BNSF was dated January 21, 1997. The Andersen appraisal was for $41.7 million. This amount is three times the value placed on the right of way by King County in an appraisal by Bruce C. Allen and Associates in July 1997. The Allen appraisal was for $13.97 million. Other appraisals confirm the value of the Allen appraisal.

I have a copy of the 1996 Arthur Andersen appraisal. It was submitted as an exhibit to Judge Rothstein in the case of King County v Rasmussen. Judge Rothstein struck that evidence on a technical motion by Norm Maleng's office. With its validity not in question, Judge Rothstein failed to turn this information over to a federal prosecutor and by that inaction protected Norm Maleng, Arthur Andersen, BNSF, and others from federal tax fraud prosecution.

The Land Conservancy of Seattle and King County (TLC) acted as a middleman in this tax fraud scheme. On April 4, 1997, BNSF Legal presented a draft sale agreement to Charles Montange, lawyer for TLC. Montange was former lead attorney for The Rails to Trails Conservancy, the

national organization. That draft agreement showed TLC acknowledging a fair market value of $41.7 million for the rail line (right of way) and agreeing to accept a donation of $40.2 million. While Arthur Andersen is not named in the draft sale agreement, the right of way value was specified to be $41.7 million, which is exactly the same as the Arthur Andersen appraisal. The connection is obvious.

In the final sale agreement between BNSF and TLC, the language was changed, deleting the direct link to the $41.7 million Arthur Andersen appraisal, but still referring to "...an independent appraisal...represented to be substantially higher than the consideration..." It's obvious this change was designed to give deniability to TLC and King County officials, while they were still very aware that BNSF intended to take the fraudulent tax write-off at the inflated Arthur Andersen value.

TLC worked as a middleman in the railbanking transaction because there was a legal complication for King County to purchase or own a railroad, as I understand. It is apparent that TLC and King County officials worked very closely together in these transactions because the right of way was resold/donated by TLC to King County with in a few hours after the purchase/donation from BNSF.

King County acknowledged the BNSF phony tax donation in those papers of sale with the words "...accept a donation (bargain sale) of the Premises..." Norm Maleng and his staff understood that BNSF intended to rip off the U.S. taxpayers for many millions and that King County's acceptance of the phony donation made it possible. It's quite apparent that the King County Prosecutor is one of the biggest crooks in the history of the County.

Cover-up of the Fraud:

It is suspicious that the publicly released copy of the draft sale agreement between BNSF and TLC is very distorted in the section that commits TLC to provide documentation of the phony donation to the IRS, but the rest of the document is very easy to read. When this document was released to the public, did an official of TLC or the King County prosecutor's office alter it to reduce the chance the public would ask questions? When TLC later sold a portion of the right of way to the City of Issaquah, it provided a copy of the BNSF-TLC final sale agreement to the

City. It is suspicious that page 6 of the document was omitted. Page 6 contains the same information that was distorted in the draft version. Copies of these documents, with a declaration stating these facts, were submitted as an exhibit to the Federal District Court in the case of King County v Rasmussen. Judge Rothstein struck that declaration and evidence on a technical motion by Norm Maleng's office. With its validity not in question, Judge Rothstein failed to turn this information over to a federal prosecutor and by that inaction protected Norm Maleng and the others from federal tax fraud prosecution.

The King County Prosecutor had a "little problem" in accepting the phony donation from BNSF, and it had nothing to do with the morality of that act. The County's position prior to accepting the "donation" was that BNSF owned only two percent of the land, the remainder being easements. Accepting the donation forced Norm Maleng to now claim BNSF owned 100% of the land, fee simple. One of the problems was that there was written documentation of the County's opinion that BNSF held only two percent ownership. A document available under the Freedom of Information Act, containing that opinion, was altered "mysteriously". It wasn't that a page was missing, as described above. In this case an incriminating paragraph simply disappeared from a page. My understanding is this Freedom of Information document was under the control of Norm Maleng's office. Norm Maleng would have been able to hide his wrongdoing by having that paragraph removed. Of course, we don't know who removed it.

Copies of the altered and unaltered version of the document, with a declaration stating these facts, were submitted as an exhibit to the Federal District Court in the case of King County v Rasmussen. Judge Rothstein struck that declaration and evidence on a technical motion by Norm Maleng's office. With its validity not in question, Judge Rothstein failed to turn this information over to a federal prosecutor and by that inaction protected Norm Maleng, Arthur Andersen, BNSF, and the others from federal tax fraud prosecution.