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Did the Judges of Our Washington State Supreme Court Intentionally Participate in the East Lake Sammamish Federal Tax Fraud Scheme?

By John Rasmussen

In the late 1990s, King County conspired with Burlington Northern Santa Fe Railway (BNSF) and a local non-profit to commit the East Lake Sammamish (ELS) federal tax fraud scheme. The crime involved BNSF "donating" land it didn't own to King County and then taking a fraudulent federal tax write-off. King County accepted the "donation" with the knowledge BNSF didn't own the land. The tax fraud scheme resulted in a $40 million phony federal tax write-off by BNSF and the theft of more than $10 million in land by King County from its landowners along East Lake Sammamish. To hide its participation in the crime, King County then turned its resources against its own citizens, falsely claiming ownership of their land. I write this in 2019, twenty years later, and the issues are far from being settled. Those who committed the crime have not been held accountable, and likely never will. There are legal opinions which hide the tax fraud scheme and legal opinions which expose the fraud. These conflicting opinions have resulted in a minority of ELS landowners being compensated for the taking of their land, but the majority left uncompensated and defrauded, in spite of the fact that they are equally deserving of compensation. Most responsible for this injustice are the judges of our Washington State Supreme Court. Our Washington State Supreme Court has contradicted itself on the property rights issues associated with the ELS tax fraud scheme. When confronted with accepting a very dishonest Division I opinion for appeal, *Ray v. King County* (2004), our Supreme Court judges refused to accept the appeal, allowing that criminal act from the bench to stand and alter our property law. *Ray* covered-up the ELS tax fraud scheme by overturning one hundred years of consistently held railroad right-of-way legal precedent. I see the refusal to correct *Ray* as evidence the judges of our Washington State Supreme Court intentionally covered up the ELS tax fraud scheme and are active participants in the crime.

Kindly observe my disclaimer statement at the top of this and every page of this document. My accusations of criminal acts by judges, politicians, and others must be understood to be my opinion. The documents, facts, legal opinions, and argument I present here should provide the reader information to come to their own conclusion about the validity of my opinion.

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Note: In this document, the underline has been removed from hyperlinks in order to enhance readability. Hyperlinks are identified only by their blue color. i.e. ELS federal tax fraud scheme

Accusing our Washington State Supreme Court judges of participating in a tax fraud scheme is something I don't take lightly. On the other hand, I despise the abuse of power I've found in our courts and that I see in our Washington State Supreme Court. I don't have evidence of any illegal outside contact and collusion with the criminal parties they protected. My evidence is the obvious misapplication of the law, manipulation of the facts, and violation of constitutional rights presented to these dishonest Supreme Court judges in the appeal of *Ray v. King County* (2004), and their subsequent denial of appeal. It is based on the fact that the judges of our Washington State Supreme Court subsequently contradicted themselves with their actions and lied to hide their dishonesty with respect to the ELS federal tax fraud scheme.

Directly below, I establish a timeline which shows that, in 1996, our Supreme Court provided confirmation of long held legal precedent used to construe the easement-or-fee issue in railroad deeds. (The precedent in briefest terms: When it is determined that the parties to a railroad deed intend to convey a "right of way" to the railroad, the grant is understood to be an easement.) Then, starting around 1997, King County participated in the federal tax fraud scheme and provided a dishonest legal argument to hide its crime. I discuss this dishonest legal argument and have given it the name: Norm Maleng's "legal theory". This dishonest legal argument was adopted in the *Ray v. King County* and the *King County v. Rasmussen* opinions by Washington State and Ninth Circuit judges. When confronted with this dishonest legal argument in the appeal of *Ray v. King County* (2004), the judges of our Washington State Supreme Court refused to correct that opinion, therefore accepting its dishonest conclusions of law and fact. Then in 2006, I show that the judges of our Supreme Court reestablished the long held precedent used to construe railroad right-of-way deeds which was in effect in 1996 and earlier. They did this in a most dishonest way in *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006). Their dishonesty is explained below. The timeline describes the period of time our Supreme Court judges protected the participants in the East Lake Sammamish (ELS) federal tax fraud scheme from federal tax fraud prosecution, at the expense of the Constitution, the law, the facts, and the rights of the defrauded ELS landowners. Significantly, in 2011 United States Court of Federal Claims Judge Marian Horn exposed the dishonesty of our Washington State Supreme Court with her *Beres v. United States* (2011) opinion. In *Beres* (2011), Judge Horn disagreed with every significant conclusion of *Ray v. King County* (2004) and exposed the dishonesty of the judges of our Washington State Supreme Court in refusing to correct that corrupt opinion.

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Timeline for the temporary change in Washington State property law which hid the East Lake Sammamish federal tax fraud scheme.

1996

In 1996, our Supreme Court issued *Brown v. State of Washington* (1996) which cited a number of precedential railroad right-of-way opinions for authority and confirmed the long held rules to construe easement-or-fee in railroad right-of-way deeds. An important part of that precedent is this: When it is determined that the intention of the parties in a railroad deed is to convey a "right-of-way" to the railroad, the conveyance is understood to be an easement and not a fee simple grant of the underlying land. *Brown* confirmed this legal precedent which had been consistently upheld for more than one hundred years.

1997

In 1997, the King County Prosecutor published a white paper claiming Brown had established a new "bright line rule" to construe railroad right-of-way deeds. The Prosecutor claimed that the grant of a "right of way" was now a fee simple grant of the underlying land. I've given his dishonest legal argument a name: Norm Maleng's "legal theory". The "white paper" was published at the time King County was preparing to accept a phony donation of East Lake Sammamish right-of-way land from BNSF. The King County Prosecutor knew the "donation" was fraudulent. The Prosecutor's "white paper" set out the dishonest argument that King County would use in its legal briefs to falsely claim ownership of the land under the East Lake Sammamish (ELS) BNSF right-of-way. King County needed this dishonest legal argument to hide its participation in the ELS federal tax fraud scheme and to protect its members from federal tax fraud prosecution.

1998

In 1998, King County accepted the phony donation of ELS right-of-way land from BNSF. The Land Conservancy of Seattle and King County (TLC) served as a middleman in the transaction. The value of the "donation" was based on an Arthur Andersen inflated appraisal of $40 million. This was a few years before Arthur Andersen was found guilty in the Enron and WorldCom scandals. In this document, I discuss three lawsuits which adopt or reject the dishonest legal argument made by King County to hide its involvement in the East Lake Sammamish (ELS) federal tax fraud scheme. They are *Ray v. King County*, *King County v. Rasmussen*, and *Beres v. United States.* *Ray* and *Rasmussen* hide the tax fraud scheme. *Beres* exposes the fraud.

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2004

In 2004, the opinion most relevant to exposing the dishonesty and corruption in our Washington State Supreme Court was issued. In *Ray v. King County* (2004), Washington State Division One Appeals judges Ronald Cox and Ann Schindler adopted King County's dishonest legal argument (Norm Maleng's "legal theory") and improperly awarded the Ray's land to King County. *Ray* is a criminal act from the bench with dishonesty in critical issues of law and fact. When *Ray* was appealed to our Supreme Court, the judges of our Washington State Supreme Court refused appeal, allowing the dishonesty in *Ray* become law. This denial of appeal by the judges of our Washington State Supreme Court covered-up the East Lake Sammamish federal tax fraud scheme and established these judges as participants in the crime

2005

Unable to obtain justice in the federal and state courts of Washington, a number of defrauded East Lake Sammamish (ELS) landowners filed taking claims with the United States Court of Federal Claims. In 2005, the plaintiffs in *Beres v. United States* moved for Court of Federal Claims Judge Marian Horn to submit a series of questions to the Washington State Supreme Court to clarify the law used to construe railroad right-of-way deeds in our State. The response by the judges of our Washington State Supreme Court confirms their participation in the East Lake Sammamish federal tax fraud scheme. In its reply, our Washington State Supreme Court refused to answer the questions, but rather advised Judge Horn to simply adopt the findings in *Ray v. King County* (2004) and *Brown v. State of Washington* (1996). This advice from our Washington State Supreme Court was bizarre because *Ray* and *Brown* contradict each other. *Ray* claimed that the term "right of way", when used to designate what is conveyed in the granting clause of a railroad deed, is understood to be the fee simple grant of the underlying strip of land. *Brown* explained that the term "right of way", when used to designate what is conveyed in the granting clause of a railroad deed, is construed to be an easement. The failure of the judges of our Washington State Supreme Court to justify and explain this contradiction this is strong evidence that the judges of our Washington State Supreme Court intentionally participated in the ELS federal tax fraud scheme.

2006

In 2006, our Washington State Supreme Court issued *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006). *Kershaw* dealt with the critical issue which was before the courts in *Ray*. This critical issue was whether the Kershaw deed granted

easement or fee to the railroad. In *Kershaw*, the easement-or-fee issue involved a railroad deed containing conflicting presumptions. The deed was in statutory warranty deed form, which established the presumption of a fee simple grant of the land. (This was not a factor in the *Ray* opinion because the deed construed in *Ray* was not in statutory warranty form, but rather directly conveyed a "right of way" in its granting clause.) The other presumption in *Kershaw* was that an easement was conveyed. This was caused by the deed language explaining that the conveyance was for right-of-way or railroad purposes. Our Supreme Court found that this second presumption of an easement overcame the presumption of a fee simple grant, which was established by the use of the statutory warranty deed form. The Kershaw deed was found to convey an easement. This 2006 *Kershaw* opinion contradicts our Supreme Court's 2005 advice to Judge Horn to use *Ray* for precedent. In fact, Level 3 cited *Ray* in its brief and applied the finding in *Ray* to the issue of easement-or-fee in *Kershaw*. Our "honorable" Washington State Supreme Court judges hid their reply to Level 3 in Footnote 11 of *Kershaw*. Crooked judges and lawyers like to hide their dishonesty in footnotes. In Footnote 11 of *Kershaw*, our Supreme Court judges misstated the granting words of the Hilchkanum right-of-way deed (the right-of-way deed construed in *Ray*), and then dishonestly dismissed a comparison between the Kershaw and Hilchkanum deeds. This tactic of misstating or changing the granting words of the Hilchkanum deed was also used by judges in *Ray v. King County* and *King County v. Rasmussen*. It is an adoption of Norm Maleng's "legal theory". This dishonesty is evidence that the judges of our Washington State Supreme Court (WSSC) intentionally participated in the ELS tax fraud scheme and are responsible for the theft of more than $10 million in land from innocent ELS landowners. Further, our Supreme Court judges covered-up BNSF's fraudulent $40 million federal tax write-off with their refusal to correct *Ray*. With respect to Washington State property law, "the buck stops" with our Supreme Court. A theft of this magnitude should have put these WSSC judges in federal prison along with the powerful politicians, lawyers, and others in King County who participated in the crime. Of course, it didn't.

2011

In 2011, United States Court of Federal Claims Judge Marian Horn issued *Beres v. United States* (2011). *Beres* (2011) ignored the 2005 advice of the judges of our Washington State Supreme Court to use *Ray v. King County* (2004) and *Brown v. State of Washington* (1996) for guidance to construe the SLS&E right-of-way deeds along the East Lake Sammamish right-of-way. Instead Judge Horn used *Kershaw* for precedent. In doing so, she ignored the profound dishonesty in *Ray* and the fact that *Ray* and *Brown* contradict each other. *Beres* construes six 1887 East Lake Sammamish (ELS) SLS&E right-of-way deeds, including the 1887 Hilchkanum right-of-way deed. Since the *Ray* and *Rasmussen* opinions are based on misconstruing the Hilchkanum deed, it is very significant that Judge Horn

"reverses" those opinions and finds the Hilchkanum right-of-way deed grants an easement. Comparing *Beres v. United States* (2011) to *Ray v. King County* (2004) exposes the complete dishonesty of *Ray.* Further, it exposes the complete dishonesty of the judges of our Washington State Supreme court in refusing to correct *Ray* when it was appealed, and then advising Judge Horn to use *Ray* as precedent. Needless to say, this comparison will be made in a following section of this document.

The dishonest legal opinions which covered-up the East Lake Sammamish federal tax fraud scheme.

In the timeline above I explain that, on behalf of King County, Prosecutor Norm Maleng accepted a fraudulent donation of East Lake Sammamish (ELS) right-of-way land and then concocted a phony legal argument to justify and hide his criminal act. I've named his phony legal argument Norm Maleng's "legal theory". I believe most lawyers are honest, but we will always have a few crooked lawyers making dishonest legal argument. This dishonesty should be checked and corrected by our judges. This didn't happen with the East Lake Sammamish (ELS) federal tax fraud scheme. The fact that this dishonest legal argument was allowed and adopted by the judges of our Washington State Supreme Court destroys the legitimacy of our judicial system in Washington State. When our Supreme Court is corrupt, every lower court opinion is exposed to this corruption through the appeal process. So, here are the *Ray v. King County* and *King County v. Rasmussen* opinions. These opinions are obvious criminal acts from the bench. Our Supreme Court is responsible for the *Ray* opinion because it failed to correct *Ray* on appeal and then advised U.S. Court of Federal Claims Judge Marian Horn to use *Ray* as legal precedent in construing ELS Seattle Lake Shore and Eastern Railway (SLS&E) right-of-way deeds in her *Beres* opinions. The *Rasmussen* lawsuit was settled in the Ninth Circuit courts, with a final denial of appeal by the U.S. supreme Court. First, I present these dishonest opinions, then I provide a discussion of the dishonesty in *Ray.* The judges of our Washington State Supreme court are responsible for *Ray.* Their failure to correct *Ray* stole land from from ELS landowners and covered-up of the East Lake Sammamish (ELS) federal tax fraud scheme. Their failure to correct *Ray* established precedent which applied to construing other ELS right-of-way deeds associated with the tax fraud scheme.

View *Ray v. King County* (2004) without my comments.
View *Ray v. King County* (2004) with my Brief Notes throughout.
View Ray v. King County (2004) with my Detailed Notes throughout.

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View *King County v. Rasmussen* (2001) without my comments.
View *King County v. Rasmussen* (2001) with my Brief Notes throughout.
View *King County v. Rasmussen* (2001) with my Detailed Notes throughout.

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Ray v. King County (2004), is a criminal act from the bench which our Washington State Supreme Court refused to correct.

I concentrate on *Ray v. King County* (2004) in this note because it is the opinion that the judges of our Washington State Supreme Court refused to correct, and later advised Judge Horn to use as precedent. *Ray* steals land from ELS landowners and covers-up the East Lake Sammamish (ELS) federal tax fraud scheme. There is dishonesty in almost every paragraph of *Ray*. I will discuss just three of the issues here. **First**, the *Ray* judges changed the critical words in the Hilchkanum granting clause and then used their substituted words to construe the deed. That is as outrageous and dishonest as it appears. It is an adoption of Norm Maleng's "legal theory". This same dishonest tactic of changing, or misstating, the granting words of the deed construed in *Ray* was used in the *King County v. Rasmussen* opinions and later by our Washington State Supreme Court in its *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006) opinion. I know of no other instance where judges have committed this crime of changing the granting words when construing right-of-way deeds. When judges can change the words of a deed, they can construe the deed to mean anything they want. The judges of our Washington State Supreme Court knew *Ray* was a criminal act, allowed it to stand, and then advised U.S. Court of Federal Claims Judge Horn to use *Ray* as precedent. **Second**, the *Ray* judges misrepresented the legal effect of Hilchkanum's subsequent real estate deeds in order to build the false impression that the Hilchkanums intended to convey fee simple title with their 1887 right-of-way deed to the SLS&E. Our Supreme Court knew this was dishonest because the *Ray* judges misrepresented the findings in several important Washington State Supreme Court opinions in order to justify their lies. Our Supreme Court judges should understand and enforce their own opinions. Right? They didn't. **Third**, the *Ray* judges intentionally misidentified the author of the Hilchkanum deed. This dishonest act, and violation of the rules of summary judgment, allowed the *Ray* judges to ignore a comparison of the 1887 Hilchkanum and Squire right-of-way deeds to the SLS&E. The Hilchkanum and Squire right-of-way deeds were based on the same SLS&E form deed. The SLS&E form deed, which was

used along East Lake Sammamish, was authored by the Railway's lawyers. In King County v. Squire (1990), the Squire deed was found to grant an easement using the identical granting words found in the Hilchkanum deed. The Squire judges found these granting words "...strongly suggests conveyance of an easement…" As a Division One opinion, *Squire* was binding precedent for the *Ray* judges, but they refused to recognize and apply the precedent established in *Squire*, which found the granting words conveyed an easement. Intentionally misidentifying the author was one tactic the *Ray* judges used to ignore the *Squire* precedent. Apparently, binding legal precedent isn't very binding in Washington State courts anymore. So, here is a discussion of these three issues.

The Ray judges changed the granting words in the Hilchkanum deed.

For more than one hundred years in Washington Territory/State courts, when the term "right of way" was used in the granting clause of a railroad deed to designate what is conveyed, the term has been construed to mean the parties intended to convey an easement. On the other hand, for more than one hundred years in Washington Territory/State courts, when the term "strip of land" has been used in the granting clause of a railroad deed to designate what is conveyed, the term has been construed to mean the parties intended to convey fee simple title of the land. In railroad deed granting clauses, the terms "right of way" and "strip of land" are contradictory with respect to easement or fee. But, when the *Ray* judges construed the 1887 Hilchkanum right-of-way deed, they changed the term "right of way" to "strip of land" in the granting clause and then construed the deed as if it granted a "strip of land". This dishonest maneuver was concocted by the King County Prosecutor. It was adopted by the judges in *Ray v. King County* (2004, and also adopted by the judges of our Washington State Supreme Court with their refusal of the *Ray* appeal. But, this dishonesty was adopted by our Supreme Court only for a few years, then abandoned in a most dishonest way with its 2006 *Kershaw* opinion. First, here is the Hilchkanum right-of-way deed granting clause, with a link to the transcribed deed and photocopy of the filed deed. The *Ray* judges stated that a "strip of land" was granted in the Hilchkanum deed. Decide for yourself!

> "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."
> [1887 Hilchkanum right-of-way deed to the SLS&E] (my **bold** emphasis)

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In spite of the fact a "right of way" is conveyed, the *Ray* judges state a "strip of land" is conveyed. Here is a citation from *Ray* and a link to a version of *Ray* containing my detailed comments.

> "The granting provisions of the Hilchkanums' deed characterize the conveyed property first as a '**right of way** one hundred (100) feet in width through' {the Hilchkanums'} lands,' and the property conveyed as a '**right of way strip**.' 31 The substance of this language is that the subject of the conveyance is a **strip of land**, not just the grant of some interest 'over' the land, as the Rays state. Language **conveying a strip of land suggests a fee**, not a mere easement.32"
> [*Ray v. King County* (2004)] (my **bold** emphasis)

In the above citation Judge Cox changes the granting words, first from **"right of way"** to **"right of way strip"**. Then he changes **"right of way strip"** to **"strip of land"**. Finally, he concludes that a deed granting a **"strip of land"** grants fee title. This is obscenely dishonest and ignores one hundred years of well understood Washington State common law precedent. More obscene, is that the judges of our Washington State Supreme Court allowed *Ray v. King County* (2004) to stand when appealed. Then, our Supreme Court judges advised United States Court of Federal Claims Judge Marian Horn to use *Ray* as precedent when she asked for certification of the law to use to construe the ELS SLS&E right-of-way deeds in her *Beres* opinions.

The term "strip of land" does not exist in the 1887 Hilchkanum right-of-way deed to the SLS&E. Further, it would be very unusual for a party to convey a "right of way" in the granting clause of a railroad deed but actually mean "strip of land". For Judge Cox to conclude that the parties to the Hilchkanum right-of-way deed intended to do that, there would need to be some document describing that unusual, and unheard-of, substitution of terms. There is no such document or fact. The two basic elements in construing a railroad deed are the law and the facts. Washington State common law requires the intentions of the parties to be enforced when construing a railroad deed. So, the intentions of the original parties to the Hilchkanum deed is the critical material fact to be considered. In *Ray*, Judges Cox and Schindler illegally substituted their intentions for the intentions of the original parties to the deed. This substitution of "strip of land" for "right of way" by Cox and Schindler is simply a lie they manufactured in order to justify their dishonest award of the Ray's land to King County. This criminal act from the bench covered-up the East Lake Sammamish (ELS) federal tax fraud scheme.

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The *Ray* judges adopted Norm Maleng's "legal theory". King County Prosecutor Norm Maleng dishonestly claimed our Supreme Court decided in *Brown v. State of Washington* (1996) that the grant of a **"right of way"** is the same as the grant of a **"strip of land"** in a railroad deed. Maleng dishonestly claimed a deed conveying a "right of way" in its granting clause would be found to grant an easement only if a separate statement of right-of-way purpose or limitation was included. This was an intentional lie by King County Prosecutor Norm Maleng, designed to keep him, his staff, and the leadership of King County out of federal prison for their participation in the East Lake Sammamish (ELS) federal tax fraud scheme.

The judges of our Supreme Court refused to correct the dishonesty of *Ray v. King County* (2004) when it was appealed. In 2005, when U.S. Court of Federal Claims Judge Horn requested clarification of the rules to construe railroad deeds, our Supreme Court judges advised her to use *Ray* as precedent. Here is a citation from *Beres* (2010) and a link.

> "In January 2005, the plaintiffs filed a motion requesting certification to the Washington State Supreme Court on questions of state law. This court agreed and forwarded the following questions to the Supreme Court of the State of Washington:
>
> > 1. When the granting clause of a deed expressly conveys a "right-of-way" to a railroad, does Washington state law hold that the property interest conveyed to the railroad is an easement as distinguishable from a fee simple?
> >
> > 2. Under Washington state law, did the above-quoted language of the 1887 deeds convey fee simple absolute interest in the Seattle Railway Company, or, instead, did the deeds convey an easement?
>
> Plaintiffs' certification request, as forwarded to the Washington State Supreme Court, indicated that this court, the parties and other future litigants could benefit from additional guidance from the Supreme Court of Washington.
>
> In the published order, which granted plaintiffs' motion to certify the questions to the Washington State Supreme Court, Schroeder v. United States, 66 Fed. Cl. 508 (2005), this court explained:
>
> Although the Brown court set out seven possible factors for consideration

> by other courts, whether the plaintiffs' deeds convey an easement or a fee is not easily determined without prioritization within the factors, and guidance regarding the seventh factor, which includes "many other considerations suggested by the language of the particular deed." Even the lower Washington state courts seem to arrive at differing resolutions. At a minimum, a declaration by the Supreme Court of Washington on this matter would be welcome in order to best resolve the issue of whether the multiple plaintiffs in the cases before this court can continue with their Fifth Amendment taking claims.

Id. at 519 (quoting Brown v. State, 924 P.2d 908, 912 (Wash.), recons. denied, (Wash. 1996).

The Supreme Court of the State of Washington, however, declined the request for certification, stating:

> **The court is of the view that, in light of existing precedent such as Brown v. State, 130 Wn.2d 430, 924 P.2d 908 (1996) and Ray v. King County, 120 Wn. App. 564, 86 P.3d 183, review denied, 152 Wn.2d 1027 (2004), the questions posed by the federal court are not "question[s] of state law ... which [have] not been clearly determined."**

Order at 1-2 (Wash. Oct. 7, 2005) (quoting Washington Rules of Appellate Procedure (RAP) 16.16(a) (2006)) (omissions in original). Plaintiffs sought reconsideration of the Washington Supreme Court's order denying review. The Washington Supreme Court indicated, however, that because the Washington Supreme Court had not granted review, its order was not subject to reconsideration, and the Washington Supreme Court closed the file without further action."
[*Beres v. United States* (2010)] (with my **bold** emphasis)

In the above citation, our Washington State Supreme Court judges advised Judge Horn to use *Ray* and *Brown* for precedent. An honest evaluation of these two opinions finds they contradict each other. *Ray* claims a deed conveying a **"right of way"** actually conveys a **"strip of land"** and that the grant of a **"strip of land"** conveys fee simple title. *Brown* finds a very different meaning of the words "right of way" in a granting clause. *Brown* finds the term "right of way" in a railroad deed granting clause indicates the intention of the parties to grant an easement. Here is a citation from *Brown*.

> "The words 'right of way' can have two purposes: (1) **to qualify or limit the interest granted in a deed to the right to pass over a tract of land (an easement)**, or (2) to describe the strip of land being conveyed to a railroad for the purpose of constructing a railway. *Morsbach*, 152 Wash. At 568; *Harris* 120 Wn.2d at 737. **Unlike *Swan, Veach,* and *Roeder*, where 'right of way' was used in the granting or habendum clauses to qualify or limit the interest granted,** 'right of way' in the deeds at issue here appears in either the legal description [ ] or in the portion of the deeds describing [ ] obligations with respect to the property."
> [*Brown v. State* (1996)] (with my **bold** emphasis)

In 2005, our Washington State Supreme Court advised Judge Horn to use *Brown* and *Ray* for guidance to construe the ELS SLS&E right-of-way deeds. But, these opinions contradict each other, as I show with the citations above. *Ray* claims "right of way" in the granting clause really means a "strip of land" which means a fee simple conveyance. *Brown* claims "right of way" in the granting clause means an easement. The judges of our Washington State Supreme Court advised Judge Horn that the answer to her questions of property law were so obvious that **"the questions posed by the federal court are not "question[s] of state law... which [have] not been clearly determined."** I've learned to hate the term "clear" or "clearly" when used in briefs or opinions. The judges of our Supreme Court could not possibly explain the inconsistency in *Brown* and *Ray*, so they declared it had been **"clearly determined".** Obviously, honesty and character are not requirements to be a Washington State Supreme Court judge.

Then, with their 2006 *Kershaw* opinion, our Supreme Court judges reestablished the long held precedent that the conveyance of a "right of way" in the granting clause of a railroad deed conveys an easement. Here is a citation which summarizes that analysis.

> "27 In sum, Brown establishes that use of a statutory warranty deed creates a presumption that fee simple title is conveyed. However, **our previous cases, which Brown does not overrule, and in fact incorporates**, establish that whether by quitclaim or warranty deed, language establishing that **a conveyance is for right of way or railroad purposes presumptively conveys an easement** and thus provides the "additional language" which "expressly limits or qualifies the interest conveyed."Brown, 130 Wash.2d at 437, 924 P.2d 908. In examining the language of the deed, while there is some conflicting language, there is insufficient evidence to overcome the presumption that an easement was created.[11] In fact, **the language, specifically granting the railroad the "right to construct, maintain and operate a railway or railways over and across the same" strongly supports the**

> **presumption in favor of an easement.** CP at 654. **This conclusion is consistent with Mosbach, Swan, Veach, and Roeder** and at the same time maintains Brown's instruction that reviewing courts perform a thorough examination of railroad deeds based on Brown's enumerated factors.[12] **While the use of the term "right of way" in the granting clause is not solely determinative of the estate conveyed, it remains highly relevant, especially given the fact that it is used to define the purpose of the grant.** Weighing the other language in the deed, we find the language of the 1905 deed suggests the parties' intent to convey only an easement interest to the railroad. We thus affirm the Court of Appeals decision that Yakima Interurban possesses an easement interest in the right of way."
> [*Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006)]
> (with my **bold** and underlined emphasis)

In *Kershaw*, our Supreme Court contradicted its support of the lies published in *Ray* and reestablished the long understood meaning of the term "right of way" in a railroad deed. If confronted with their inconsistency, I assume the judges of our Supreme Court will claim that my statements here are naive and ignore all the considerations in construing a railroad deed. So, here is a link to a discussion on the rules to construe railroad deeds. These rules are the basis of my argument here, and are derived from the precedential railroad right-of-way decisions used to construe the meaning of the term "right-of-way" in railroad deeds from territorial days through *Brown v. State of Washington* (1996).

Understand the Rules to Construe a Railroad Right-of-Way deed.

In the citation above, *Kershaw* cites *Morsbach, Swan, Veach,* and *Roeder,* and *Brown* for authority in determining the meaning of the term "right of way" in a railroad granting clause. To aid in understanding this important precedent, I provide twenty significant hyperlinked citations from those five opinions. Click on the citation\link to open the citation at its position in its full opinion. This allows the reader to read the citation in context. The precedent which is established and reaffirmed with these citations was carefully briefed to the *Rasmussen* and *Ray* judges. While I have not been able to obtain the briefs to the Washington State Supreme Court in the *Ray* appeal, I'm confident that this precedent was correctly briefed there, based on the *Ray* lawyer's earlier briefs. In any case, it is the responsibility of the judges of our Washington State Supreme Court to uphold the legal precedent they have established over the years, whether it is briefed, or not!

The blue text below is hypertext. The underline is removed for readability. Click on the hypertext to open the link at its position in the full opinion. The **bold emphasis** is mine.

Brown v. State of Washington (1996)

"...we held the deed granted an **easement** based on the specifically declared purpose that the grant was a **right of way** for railroad purposes..."

"...the term '**right of way**' as a limitation or to specify the purpose of the grant generally creates only an **easement**."

"The words "right of way" can have two purposes: (1) **to qualify or limit the interest granted in a deed** to the right to pass over a tract of land **(an easement)**, or (2) to describe the strip of land being conveyed to a railroad for the purpose of construct railway. Morsbach, 152 Wash. at 568; Harris 120 Wn.2d at 737. Unlike **Swan, Veach, and Roeder, where "right of way" was used in the granting or habendum clauses to qualify or limit the interest granted**, "right of way" in the deeds at issue here appears in either the legal description of the property conveyed or in the portion of the deeds describing Milwaukee's obligations with respect tot he property."

Dissenting Opinion: "...where the granting clause...declares the purpose...to be a **right of way** for a railroad, the deed passes an **easement** only..."

Dissenting Opinion: "...an **easement** is not created unless the magic words '**right of way**' are contained in the 'granting clause.'"

Dissenting Opinion: "...Morsbach does not narrowly define 'granting clause' nor does it require the **right of way** purpose be expressed in any particular words."

Dissenting Opinion: "Where the purpose is **right of way**...it was the intent of the parties to grant...an **easement**."

Dissenting Opinion: "...majority...giving 'special significance to the words '**right of way**' in railroad deeds,'...finding the absence...overpowering in significance."

Dissenting Opinion: "A grant of a **right of way** to a railroad company is the grant of an **easement** merely..."

Roeder v. BNSF (1986)

"Since the granting clause...declares the purpose of the grant to be a **right of way** for a railroad, the deed passes an **easement**..."

"...land being conveyed as "a **right-of-way**"...has been found to create an **easement**..."

Veach v. Culp (1979)

"The parties in fact describe **what was being conveyed: a right-of-way 100 feet wide**, being 50 feet on each side of the center line of the railroad. **Language like this has been found to create an easement**, not a fee simple estate."

"Given the **language of the deed explicitly describing the conveyance of a right-of-way** and given the rule of Swan v. O'Leary, supra, and Morsbach v. Thurston County, supra, we conclude **the deed conveyed an easement**, not a fee title."

Swan v. O'Leary (1950)

"...when the granting clause of a deed declares the purpose of the grant to be a **right of way** for a railroad the deed passes an **easement** only..."

Morsbach v. Thurston Co. (1929)

"It is followed by a case note in 6 Ann. Cas., p. 239, supra, among others, citing many cases to the effect that, **where a railroad has taken a conveyance expressly granting a right of way, it will be held to have taken an easement merely**, and that a grant of a strip of land to a railroad company 'for right of way and for operating its railroad only,' conveyed merely an easement."

"...**The granting clause of this instrument conveys only a right of way, which is a mere easement**, the owner of the soil retaining his exclusive right in all mines, timber and earth for every purpose not incompatible with the use for which it is granted;..."

"The agreement in this case does not grant land in its granting clause, but only right of way . . . Where the granting clause declares the purpose of the grant to be a right of way for a railroad, the deed passes an easement only**though it be in the usual form of warranty deed."**

"In Cincinnati, H. & D. R. Co. v. Wachter, 70 Ohio 113, 70 N. E. 974, **the grant involved was of a right of way,** one hundred feet in width, across a tract of land containing twenty acres or more, together with a waiver of all further damages that might arise by reason of the location or construction of the railroad or repairing thereof when finally established or completed. There was no reservation of any kind in the instrument. The right of way was adopted, the road completed in 1854, and used continuously for the operation of railroad passenger and freight trains. **The court there said:**

> **'The right of way of the company is an easement.** Washb. on E. & S. 4. It is, using exact language, a servitude imposed as a burden on the land. **The conveyance from Crane in terms specifies that it is a 'release of a right of way,' and no question is made, and we presume none can be, that the right thus granted is not different from, nor greater than, that which would result from an appropriation proceeding under the statute.'**

It was held in that case that an easement, and not a fee simple estate, was granted."

"A noted text writer states the law as follows:

'**A grant of a right of way to a railroad company is the grant of an easement merely, and the fee remains in the grantor.** The mere fact that the railroad company's charter empowered it to acquire a greater estate than that which it contracted for has been held not to affect its rights in the land purchased. But statutes authorizing railroad companies to acquire the fee in land have been generally given effect. It is held that a deed conveying land to a railroad for a right of way gives the railroad no more rights than it would have acquired by condemnation. 'The easement is

> not that spoken of in the old law books, but is peculiar to the use of a railroad which is usually a permanent improvement, a perpetual highway of travel and commerce, and will rarely be abandoned by nonuser. The exclusive use of the surface is acquired, and damages are assessed, on the theory that the easement will be perpetual; so that, ordinarily, the fee is of little or no value unless the land is underlaid by quarry or mine.' Where the intention to convey a fee does not appear, as in case of the conveyance of a 'right of way' for the railroad through certain lands, the company takes an easement only. The fact that the right conveyed is designated as a fee, or that the deed contains covenants of warranty, does not necessarily pass the fee.
> 1 Thompson on Real Property, SS 4:20.'"

In this section of the document, I'm discussing three issues related to the dishonesty in *Ray v. King County* (2004). There is too much dishonesty in *Ray* to discuss all of it in this document. Above, I've discussed the fact that the *Ray* judges changed the critical words in the Hilchkanum granting clause and then used their substituted words to construe the deed. I've shown that the judges of our Washington State Supreme Court adopted that dishonesty in *Ray* with their refusal to accept *Ray* for appeal, and with their later advice to the U. S. Federal Court of Claims to use *Ray* for authority. Further below, I'll show that the judges of our Supreme Court disavowed *Ray* with their 2006 *Kershaw* opinion and dishonestly hid their inconsistency in a footnote of that opinion. The dishonesty demonstrated by the judges of our Washington State Supreme Court, in temporarily allowing *Ray* to stand, suggests they intentionally covered up the East Lake Sammamish federal tax fraud scheme.

Next, I'll explain that the *Ray* judges misrepresented the legal effect of Hilchkanum's subsequent real estate deeds in order to build the false impression that the Hilchkanums intended to convey fee simple title of their right-of-way land to the SLS&E. Below that, I'll explain that the *Ray* judges intentionally misidentified the author of the Hilchkanum deed, and the reason for that lie.

The Ray judges misrepresented the legal effect of Hilchkanum's subsequent real estate deeds in order to build the false impression the Hilchkanums intended to convey fee simple title of their right-of-way land to the SLS&E with their 1887 right-of-way deed.

In *Ray v. King County* (2004), Judge Cox finds the exception of the "right-of-way" in some subsequent Hilchkanum real estate deeds to be confirmation that the Hilchkanums intended to convey fee simple title of the land to the Railway with their original right-of-way

deed. But, that conclusion is not supported by the law and the facts. In his opinion, Judge Cox refers to four Hilchkanum subsequent real estate deeds. Each of these four subsequent real estate deeds will be discussed here.

First, Judge Cox misrepresents the effect of the December 16, 1898 Bill Hilchkanum conveyance to wife Annie**.** Here is that discussion in *Ray*:

> "In 1898, Bill Hilchkanum conveyed to his then wife Annie Hilchkanum 'Lot one (1) less three (3) acres right of way of railroad and lot three (3) less three and 25/100 acres right of way of railroad, and all of lot five (5)...'50 Thus, **the plain language of the 1898 deed excludes the previously conveyed right of way from the conveyance and explains why ('right of way of railroad')**. The 1898 deed therefore **clearly indicates that Hilchkanum's intent in 1887 was to convey the right of way to the Railway in fee, not as an easement**. And there is no question that this exclusion of the right of way from the 1898 deed applied to Lot 3 - the property the Rays now own."
> [*Ray v. King County* (2004)] (With my **bold** emphasis)

Judge Cox cites "Lot one (1) less three (3) acres right of way of railroad and lot three (3) less three and 25/100 acres right of way of railroad, and all of lot five (5)..." as being excluded, and then states this **"clearly indicates that Hilchkanum's intent in 1887 was to convey the right of way to the Railway in fee"**. Apparently, Judge Cox needs to take a refresher course in property law. His conclusion is contrary to the conclusions in *Zobrist v. Culp* (1977), as explained in the citations below. Use the attached links to read the two citations in context of the *Zobrist* opinion.

> "**The grantor here excepted a right-of-way amounting to an easement** from the grant. **No reference was made in the conveyance to Custer of an exception of the fee** to the 100 feet. **The railroad received an easement** from Watson and nothing more." [*Zobrist v. Culp* (1977)] (With my **bold** emphasis)

> "In 6 G. Thompson, Commentaries on the Modern Law of Real Property SS 3090, at 773 (repl. ed. 1962), it is stated:
>
> > **An exception is the withholding from the operation of the deed of something existent which otherwise the deed would pass to the grantee.** Accord, Duns v. Ephrata, 14 Wn.2d 426, 430, 128 P.2d 510, 134 P.2d 722 (1942). **The conveyance of a fee simple interest with a clause excepting an easement** previously deeded to a third party, therefore, **conveys to the grantee all the grantor's rights and interests in the land**, yet compels the grantee to

> refrain from acting in a manner inconsistent with the rights of the third party in the land as described in the exception."
> [*Zobrist v. Culp* (1977)] (With my **bold** emphasis)

In *Ray,* Judge Cox incorrectly concludes that the exception of a right-of-way in a subsequent real estate deed proves that the right-of-way was granted in fee simple. That's wrong! The exception of a right-of-way in a deed withholds whatever is represented by the term "right-of-way" in that subsequent real estate deed. It is **"...the withholding from the operation of the deed of something existent which otherwise the deed would pass to the grantee"**. To understand what is withheld, the investigator must to go to the original document granting that "right-of-way" to determine what was intended by the use of that term in that original right-of-way deed. If the 1887 Hilchkanum right-of-way deed to the SLS&E granted an easement, then the term "right of way of railroad" in the 1898 Bill Hilchkanum conveyance to wife Annie would also be construed as an easement. Therefore, the withholding of "Lot one (1) less three (3) acres right of way of railroad and lot three (3) less three and 25/100 acres right of way of railroad, and all of lot five (5)..." would merely recognize the easement and not withhold the land under the easement in that 1898 deed to Annie Hilchkanum.

Judge Cox incorrectly works the logic backward. He wrongly assumes the words "Lot one (1) less three (3) acres right of way of railroad and lot three (3) less three and 25/100 acres right of way of railroad, and all of lot five (5)..." can only be understood as the withholding of the conveyance of the land under the right-of-way in that 1898 deed to Annie Hilchkanum. He then incorrectly applies that misinterpretation of the 1898 deed to the construing of the 1887 Hilchkanum right-of-way deed to the SLS&E. Judge Cox failed to consider all the possibilities when construing the 1898 real estate deed from Bill Hilchkanum to wife Annie. If the 1887 Hilchkanum right-of-way deed to the SLS&E granted an easement, the withholding of that easement in the 1898 real estate deed from Bill Hilchkanum to wife Annie would merely recognize the easement, and not except the land in the conveyance. On the other hand, if the 1887 Hilchkanum right-of-way deed to the SLS&E granted fee simple title of the right-of-way land to the SLS&E, the language "Lot one (1) less three (3) acres right of way of railroad and lot three (3) less three and 25/100 acres right of way of railroad, and all of lot five (5)..." in the 1898 real estate deed from Bill Hilchkanum to wife Annie would withhold the land under the "right of way of railroad" in that subsequent real estate deed. Judge Cox considers only this second possibility in his analysis and ignores the binding precedent provided by *Zobrist v. Culp* (1977).

While Judge Cox was responsible for applying the precedent set in *Zobrist v. Culp* (1977), one might wonder if this precedent was briefed to Judge Cox by the Ray's attorney, and subsequently to the judges of our Washington State Supreme Court when they denied the *Ray* appeal. I don't have the briefs by the Ray's lawyer for their Division One appeal or for their appeal to our Washington State Supreme Court, but I do have his briefs to King County Superior Court. The precedent set in *Zobrist*, discussed above, was briefed to the judge in King County Superior Court. Based on that fact, I must assume it was also briefed to Judges Cox and Schindler in Division One and to the judges of our Washington State Supreme Court with their 2004 appeal. A portion of the Ray's King County Superior Court brief is cited here, with a link to the document.

> "Turning to the final factor for determining intent, the subsequent conduct of the parties also confirms that only a right of way easement was granted. The subsequent deeds by Hilchkanum, and referred to by the County in Exhibit 5 of Johnson's declaration except the railroad right of way from the operation of the deed. The deeds, in order as set forth in Johnson's Exhibit 5, refer to the right of way with the following phrases: "right of way of railroad;" "right of way of Rail Road;" "for right of way purposes;" and "right of way." Contrary to the argument advanced by King County, these references are consistent with the intent of the original granting clause that created the easement.
>
> By including the right of way exception, the correct construction is that Hilchkanum was acknowledging that the right of way easement had been previously conveyed and that the new purchaser of Hilchkanum's fee title would remain subject to the right of way easement. As ruled in *Zobrist v. Culp*,
>
> > The conveyance of a fee simple interest with a clause excepting an easement previously deeded to a third party, therefore, conveys to the grantee all the grantor's rights and interests in the land, yet compels the grantee to refrain from acting in a manner inconsistent with the rights of the third party.
>
> 18 Wn.App. at 629. Accordingly, these subsequent conveyances are consistent with intent to convey an easement."
> [Rays' Opposition To County's Motion For Summary Judgment, August 13, 2001]

Z*obrist* is a 1977 Division One decision, so it supplied binding precedent for Judge Cox as Chief Judge of the Division One Court of Appeals. Is Judge Cox an incompetent judge who has failed to research the law or consider the Ray's brief? In this case, his misrepresentation of the law steals land from the Rays and contributes to the cover-up of the ELS federal tax fraud scheme. This protects powerful folks in King County government from

federal tax fraud prosecution. Are some of them friends of his? As I will show below, Judge Cox also chose to ignore the binding precedent in King County v. Squire (1990), another Division One opinion. By his actions, it obvious to me that Judge Cox has no respect for legal precedent, which is the foundation of common law in Washington State.

Read a study explaining how the Hilchkanum judges misrepresented exception language in the Hilchkanum's subsequent real estate deeds.

Second, Judge Cox misrepresents the effect of the June 30, 1905 Bill Hilchkanum conveyance to John Herder. Here is the citation from *Ray*.

> "Bill Hilchkanum's 1905 conveyance of another portion of Lot 3 to John Herder provides further support for these conclusions. The deed describes the boundary of the property, in part, **as running 'thence in a Northeasterly direction along the right of way of the Seattle Lake Shore and Eastern Railway**.'51 Hilchkanum's exclusion of the previously conveyed right of way is consistent both with his exclusion of the same right of way in the 1898 conveyance and the prior conveyance in fee of that same right of way in the May 9, 1887 deed to the Railway. There is no other reasonable explanation for him to have excluded the right of way from subsequent conveyances. Again, there is no doubt that we again deal with Lot 3 - the property the Rays now own."
> [*Ray v. King County* (2004)] (With my **bold** emphasis)

Judge Cox describes the boundary **"as running 'thence in a Northeasterly direction along the right of way of the Seattle Lake Shore and Eastern Railway'"**. Based on that wording, Cox incorrectly claims that the deed excludes the right-of-way. Again, it is apparent that Judge Cox needs to take a refresher course in property law. The wording in the Herder deed is construed in Washington State common law to use the center-line of the railway as the boundary, if Hilchkanum owned that far. Assuming Hilchkanum granted an easement to the SLS&E in 1887, half of the right-of-way is included in the sale, and the right-of-way is not excluded as Cox incorrectly concludes. Apparently Judge Cox wrongly believes the wording in the Herder deed refers only to the outer edge of the right-of-way. This situation was resolved in *Roeder v. BNSF* (1986), a Washington State Supreme Court opinion. Here is a citation that explains the law and precedent which Judge Cox ignored in his analysis.

> "Generally then, the conveyance of land which is bounded by a railroad right of way will give the grantee title to the center line of the right of way if the grantor owns so far, unless the grantor has expressly reserved the fee to the right of way, or the grantor's intention to not convey the fee is clear." and "When the deed refers to the grantor's right of way as a boundary without clearly indicating that the side of the right of way is

> the boundary, it is presumed that the grantor intended to convey title to the center of the right of way." [*Roeder v. BNSF* (1986)]

Based on the citation above, if Hilchkanum granted an easement with his 1887 right-of-way deed to the SLS&E, the 1905 Herder deed would convey land using the center line of the right-of-way. But, if Hilchkanum granted fee simple title with his 1887 right-of-way deed to the SLS&E, the 1905 Herder deed would convey land using the outer edge of the right-of-way. Judge Cox considers only the second possibility with his analysis and then declares the Herder deed proves that Hilchkanum granted fee simple to the SLS&E in 1887. Perhaps Cox is too stupid to read *Roeder* and understand the finding. Based on his dishonesty in almost every paragraph of his *Ray* opinion, I assume dishonesty is his "problem", not stupidity. *Roeder* explains how the wording in the Herder deed should be construed. Since *Roeder* is a Washington State Supreme Court opinion, it is binding precedent for Judge Cox. But, as I wrote above, Judge Cox doesn't seem to have much belief in binding precedent or correctly applying the law.

Open *Roeder v. BNSF* (1986) at "Issue Three" to understand the law Judge Cox failed to apply in his analysis of the Herder deed.

Third, Judge Cox misrepresents the effect the 1904 Deed from Hilchkanum to Nelson for Government Lot 1. Here is the citation from *Ray*.

> "A third conveyance by Hilchkanum is also consistent with the view that he intended to convey fee title to the right of way to the Railway. In 1904, Bill Hilchkanum conveyed to Chris Nelson lot number one, **'less three (3) acres heretofore conveyed to the Seattle and International (sic) Railway for right of way purposes.'**52 Again, there is no indication in this deed that the conveyance was 'subject to' the right of way, an indication that the strip of land previously conveyed was an easement. Rather, the right of way is excluded from the conveyance entirely, an indication that the strip of land was previously conveyed in fee." [*Ray v. King County* (2004)] (With my **bold** emphasis)

Judge Cox concludes this deed further proves Hilchkanum's intention was to convey fee simple title in his 1887 right-of-way deed to the SLS&E. Did he even read his quotation before he construed it? The term **"conveyed to the...Railway for right of way purposes"** is classic language for conveying an easement in Washington State common law. Yet, Judge Cox states that language refers to a conveyance of a fee simple estate. Here are just two citations which explain that precedent:

> "...when the granting clause of a deed declares the purpose of the grant to be a right of way for a railroad the deed passes an easement only..." [*Swan v. O'Leary* (1950)]

> "Since the granting clause of the Improvement Company's deed declares the purpose of the grant to be a right of way for a railroad, the deed passes an easement, not a fee." [*Roeder v. BNSF* (1986)]

Each of these citations are from Washington State Supreme Court opinions, so they are binding precedent for Judge Cox. The citations explain that language used in the Nelson deed **"conveyed to the...Railway for right of way purposes"** refers to the conveyance of an easement. Judge Cox ignores well understood binding legal precedent and declares this language refers to the conveyance of a fee simple estate. How can he be more wrong? How can he be more dishonest?

Judges Cox and Schindler cherry-picked the subsequent real estate deeds.

I suppose that it might be relevant to point out that Judges Cox and Schindler cherry-picked the subsequent real estate deeds in order to build a false impression of the Hilchkanum's intentions with their 1887 right-of-way deed to the SLS&E. That's dishonest. The above 1904 deed from Hilchkanum to Nelson was for Government Lot 1. None of the Ray's property was in Government Lot 1. King County presented this deed to build a false impression that Hilchkanum granted fee simple with his 1887 right-of-way deed. That deed was cherry-picked because it could be misrepresented to support King County's claim to the Ray's land.

So, let's look at two 1904 deeds from Hilchkanum to Nelson, linked below. The first one conveys Hilchkanum's property in Government Lot 1 to Chris Nelson, and is the one discussed above. The second one conveys Hilchkanum's property in Government Lot 2 to Chris Nelson, and contains language which the *Ray* judges would not want you to see and consider. The second deed includes the right-of-way land and has no exception language. Therefore, it conveys the land under the right-of-way to Chris Nelson just two weeks after the first deed. Since the second deed conveys the right-of-way land, it strongly suggests that Hilchkanum understood that he owned that land. This would strongly suggest that Hilchkanum intended to convey an easement to the SLS&E in 1887. I stated above that none of the Ray's land was in Government Lot 1. It is also true that none of their property was in Government Lot 2. All of the Ray's land was in Government Lot 3. Here are the two deeds discussed here.

View the February 27, 1904 Deed from Hilchkanum to Nelson for Government Lot 1.

View the March 15, 1904 Deed from Hilchkanum to Nelson for Government Lot 2.

King County cherry-picked the first deed in order to claim that Hilchkanum understood he had granted fee simple title to the SLS&E with his 1887 right-of-way deed. As explained

above, there are two different interpretations of the language in that deed. Cox considered only the interpretation which supported his predetermined outcome of the Ray's lawsuit. The second deed conveys the land under the ELS right-of-way to Chris Nelson without any exceptions using the statutory warranty deed form. This strongly suggests that Hilchkanum believed he owned the right-of-way land in 1904, and that he had conveyed an easement to the SLS&E in 1887. This deed was not discussed because it destroys King County's argument and the *Ray* judges dishonest analysis. Since the second deed conveyed the land under the SLS&E right-of-way, the first deed should be interpreted to merely recognize the right-of-way easement, not to withhold conveyance of that land. This interpretation harmonizes the analysis of the two Chris Nelson deeds and removes the inconsistency created by Judge Cox dishonest analysis.

King County made the same dishonest claim in my lawsuit, *King County v. Rasmussen*. All of the Hilchkanum subsequent real estate deeds associated with my property did not except the right-of-way or the land under the right-of-way, yet King County and the *Rasmussen* judges used cherry-picked Hilchkanum deeds to build the same false impression that Judge Cox builds in *Ray*. Here is an analysis of King County's dishonesty in my lawsuit. This link will provide maps of the Government Lots discussed. The Ray's property was south of mine, and totally in Government Lot 3.

View my analysis of the March 15, 1904 deed Hilchkanum to Nelson for GL 2.

Forth, and finally, Judge Cox admits that the 1890 deed to Julia Curley did not except the SLS&E "right-of-way". Here is that portion of the *Ray* opinion:

> "We are aware that in 1890, Bill Hilchkanum conveyed all of Lot 2 to Julia Curley without any exceptions.53 But **because the 1890 deed contains no reference whatsoever to the right of way, it is not probative of the grantors' intent in the 1887 deed.54** In any event, Lot 3 is at issue in this appeal, not Lot 2, and the record before us establishes that Hilchkanum was entirely consistent in excluding the right of way and stating that no other encumbrances affected Lot 3." [*Ray v. King County* (2004)] (With my **bold** emphasis)

Cox finds that **"...because the 1890 deed contains no reference whatsoever to the right of way, it is not probative of the grantors' intent in the 1887 deed."** That is such a dishonest statement! If the right-of-way is an easement, there is no requirement to address it or identify it in the deed. Most people who have bought a home in recent years find out there are easements burdening their property which are not identified in the deed. These easements are found and identified by the title company and provided in the title report. There is no requirement for an easement to be identified in a deed, so Cox' statement is

completely bogus that **"...because the 1890 deed contains no reference whatsoever to the right of way, it is not probative of the grantors' intent in the 1887 deed."**

From Judge Cox' discussion, it is assumed that the Curley deed conveyed land containing a portion of the SLS&E right-of-way but did not except the portion under the right-of-way. If the "right-of-way" or the land under the right-of-way is not excepted in this deed to Curley, then Hilchkanum conveyed the land under the right-of-way to Curley. This fact strongly suggests that the original 1887 Hilchkanum right-of-way grant to the SLS&E should be seen as an easement. The logic is simple. If Hilchkanum granted fee simple title of the land to the SLS&E in his 1887 right-of-way deed, then Hilchkanum would be illegally selling that land for a second time if he did not except that "right-of-way" land in his 1890 deed to Julia Curley. On the other hand, if Hilchkanum granted only an easement with his right-of-way deed to the SLS&E in 1887, then he would have every right to sell the land under the right-of-way to Julia Curley in 1890, and would not be required to except that land in the deed. In light of this analysis, it is obscenely dishonest for Judge Cox to declare that the deed to Julia Curley is **"not probative"**. Since Hilchkanum didn't except the right-of-way or the land under the right-of-way in the Curley deed, he did sell the land under the SLS&E right-of-way to her in 1890. Yet, Judge Cox claims Hilchkanum conveyed that land to the SLS&E with his 1887 right-of-way deed. How many times does Judge Cox believe the Hilchkanums can sell their land to different parties? This idea of declaring evidence which destroys one's argument as **"not probative"** is disgusting. If this judge had any character, he would admit that an honest analysis of the 1890 Curley deed contradicts his argument that the Hilchkanums granted fee simple title to the SLS&E in 1887. In the discussion above I explain how Judge Cox cherry-picked the 1904 Hilchkanum deeds to Chris Nelson, considering only the deed to Government Lot 1 and ignoring the deed to Government Lot 2. Like the Curley deed, discussed here, the 1904 Hilchkanum deed to Chris Nelson for Government Lot 2 did not except the right-of-way and sold the land under the right-of-way.

In the *Ray* citation describing the Curley deed above, footnote 54 is noted. Footnote 54 takes the reader to *King County v. Rasmussen* (2002). *Rasmussen* (2002) is a criminal act from the bench, which denied my constitutional right of due process and stole my land. I discuss the dishonesty of *King County v. Rasmussen* (2002) in detail on my website. Here is a link which will take the reader to Federal Ninth Circuit Judge Betty B. Fletcher's claim in *King County v. Rasmussen* (2002) that the language in the 1904 deed from Hilchkanum to Nelson for Government Lot 2 was "not significantly probative" of the parties intent to convey easement-or-fee. I've attached a detailed note to Fletcher's statement in that version of *King County v. Rasmussen* (2002) which will inform the reader of the law, and show Fletcher's intentional dishonesty in ignoring the legal effect of that 1904 deed to Nelson.

Open a version of *King County v. Rasmussen* (2002) where Hilchkanum's subsequent real estate deeds are discussed by Federal Ninth Circuit Judge Betty Fletcher.

Open my analysis of Judge Fletcher's dishonest misrepresentation of Hilchkanum's intentions with his subsequent real estate deeds.

Here, again, is a link to the portion of *Ray v. King County* (2004) which discusses the above subsequent Hilchkanum subsequent real estate deeds to his wife Annie, John Herder, Chris Nelson, and Julia Curley.

Open *Ray v. King County* (2004) in the section Judge Cox discusses the Hilchkanum subsequent real estate deeds.

To summarize, Judge Cox analyses four subsequent real estate deeds in order to explain the intentions of the Hilchkanums in their 1887 right-of-way deed to the SLS&E. In each case he refuses, or fails, to apply established law and binding legal precedent with his analysis. This misapplication of the law in his analysis is used to justify his award of the ELS right-of-way land to King County, and to cover-up King County's participation in the East Lake Sammamish (ELS) federal tax fraud scheme. *Ray v. King County* (2004) is a criminal act from the bench.

The Ray judges intentionally misidentified the author of the 1887 Hilchkanum right-of-way deed to the SLS&E. This lie allowed them to ignore the precedent set with King County v. Squire (1990).

First, I'll explain the importance of *King County v. Squire (1990).* Then, I'll explain why authorship is important. Last, I'll explain the dishonesty of the *Ray* judges in misidentifying the author of the Hilchkanum right-of-way deed. The Squire deed to the SLS&E has wording which is identical to the wording in the Hilchkanum deed to the SLS&E. In fact, both deeds are based on a SLS&E form deed which was prepared by the Railway lawyers. If it were established that both deeds were written by the SLS&E lawyers, using identical granting language, then the *Squire* court's opinion that the Squire granting clause "...strongly suggests conveyance of an easement..." would be precedent that should be applied in construing the Hilchkanum deed. Based on their irrational conclusions and profound dishonesty in almost every paragraph of their opinion, it is obvious that the *Ray* judges didn't want to apply this binding precedent established in *Squire*. Directly below, I provide the granting clauses of both

deeds and links to the full transcribed deeds with a photocopy of the original filed deeds. This provides the reader full understanding of the identical wording of the two deeds.

The 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 Company a right of way Fifty (50) feet in width through said lands in said County, described as follows, to-wit:"

View a transcription and photocopy of the 1887 Squire right-of-way deed to the SLS&E.

The 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."

View a transcription and photocopy of the 1887 Hilchkanum right-of-way deed to the SLS&E.

You will notice that the only significant difference in the Squire and Hilchkanum granting clauses is the width of the right-of-way. The *Squire* court explained that change was made by Watson Squire, the grantor. Use the link below to confirm that fact.

View *King County v. Squire* (1990).

While the granting clauses are essentially identical, there were major changes made to the SLS&E form deed habendum clause in the Squire deed. This can be observed in the link directly above. Use the first link below to read a detailed comparison of the 1887 Squire and Hilchkanum deeds to the SLS&E. The difference in the habendum clauses is discussed there. The second link below explains the SLS&E form deed that is the basis of both the Squire and Hilchkanum right-of-way deeds.

My accusations of wrongdoing and statements of criminal behavior in this document must be understood to be my opinion. Any quotation taken from this document must include this statement.

View a study comparing the Squire and Hilchkanum right-of-way deeds.

Understand that the Squire and Hilchkanum deeds were based on a Railway form deed.

Why is authorship important?

"As a general rule, the words of a deed are construed against its author, or the lawyer who prepared the deed". Absent any evidence of authorship, as a general rule, the words of a deed are construed against the grantor. In *Ray*, the judges decided that the Hilchkanums (grantors) were responsible for the words of their right-of-way deed. It was important for the *Ray* judges to find the Hilchkanums responsible for the words of their right-of-way deed. As explained above, if they admitted the truth that the SLS&E lawyers wrote the granting words of both the Hilchkanum and Squire right-of-way deeds, then the findings in *King County v. Squire* (1990) would have provided precedent which could not be ignored. Authorship is a material fact. In *Ray,* there was no agreement with several important material facts, including authorship. Issues of material fact are resolved by a jury, not the judge. No jury was allowed to resolve the authorship issue in *Ray.*

The authorship issue becomes the first domino in a domino chain reaction. The first "domino" represents the truth that the SLS&E lawyers authored the ELS right-of-way deeds. Finding the SLS&E lawyers wrote the Hilchkanum deed leads the court to compare the SLS&E Hilchkanum deed to the SLS&E Squire deed. That leads to the understanding that both deeds grant a "right of way" to the SLS&E using the identical ELS SLS&E form deed language. In turn, that takes the court to the finding in *Squire* that the conveyance of the "right of way" grants an easement. Absent other evidence, these facts force the court to conclude the Hilchkanum right-of-way deed also grants an easement to the Railway. Since the Hilchkanum deed is identical to a number of other ELS deeds, they would also be understood to grant easements. If all these deeds granted easements, then the donation of the land under the East Lake Sammamish right-of-way to King County was fraudulent. With each logical step represented by a "domino" in the chain reaction, toppling the first "authorship domino" starts the chain reaction and the sequence which topples the rest. This exposes the East Lake Sammamish federal tax fraud scheme at the end of the chain. The *Ray* judges stopped that "domino chain reaction" at the first "domino" by irrationally determining that the words of the Hilchkanum deed were not written by the Railway lawyers or the Railway's representative. Instead, in *Ray,* Judge Cox wrote that Hilchkanum was responsible for the words of his right-of-way deed based on Cox' bizarre conclusion that the notary public, who obtained signatures and copied the deed into the King County record, actually authored the Hilchkanum deed, and was not an agent for the Railway. Ridiculous! Authorship is a material

fact. Issues of material fact are resolved by a jury. Judges illegally use summary judgment and deny the right to a jury when they want to control the outcome of a lawsuit. When they do that, ridiculous facts and bizarre conclusions appear, like findings of authorship I describe in *Ray v. King County* (2004) here.

The issue of authorship was examined and resolved by United States Court of Federal Claims Judge Marian Horn in *Beres v. United States* (2011). On page 59, Judge Horn concludes the SLS&E deeds were written by the Railway's lawyers.

> "Moreover, the record in this case contains exhibits which were not before the courts in Ray v. King County and King County v. Rasmussen. The record in this court contains six virtually indistinguishable, SLS&E Deeds and additional relevant exhibits.35 The records in Ray v. King County and King County v. Rasmussen included only the Hilchkanum deed and limited additional information. Moreover, the railroad's decision to follow what appears to be a pre-printed form, which was not in the form of statutory warranty deed, for all the SLS&E Deeds, and the apparent illiterate state of the majority of the source deed grantors, supports plaintiffs' argument that the form deeds were drafted by the railroad. Therefore, any ambiguity in the language of the deeds should be construed against the railroad." [*Beres v. United States* (2011), Page 59]

Judge Horn implies that the *Ray* and *Rasmussen* judges came to a different conclusion about authorship because inadequate records were provided to the judges by the Rays and Rasmussens. I'm confident Judge Horn did not review those records before making that dishonest statement. There is an etiquette among judges that requires they protect each other. It angers me to see Judge Horn write the statement above, protecting the *Ray* and *Rasmussen* judges, when their opinions are so obviously dishonest. In *Rasmussen* (2001), the problem was not the lack of "exhibits", as Judge Horn suggests in the above citation. The problem was that Judge Rothstein denied my right to a jury, eliminated our exhibits, and ignored our correct legal arguments. She did that because she wanted to impose her predetermined decision to award my land to King County. It is obvious that the *Ray* judges used the same dishonest tactics to justify their predetermined outcome to *Ray v. King County* (2004). It disgusts me that Judge Horn protects these crooked judges in her opinion, but at least Judge Horn had the character to correctly apply the law and find the ELS right-of-way deeds to convey easements.

I established my website, trailofshame.com, in 2008. On the website are several studies which relate to the issue of authorship of the Hilchkanum right-of-way deed. My argument in these studies, and the documentation I supply in support, agrees with Judge

Horn's conclusions in *Beres* (2011). Two studies are linked below. The first explains the form deed which was used for the ELS SLS&E right-of-way deeds and provides strong evidence that the Railway lawyers authored the words. The second linked study provides documents and discussion which explain the ability of the Hilchkanums to participate in their right-of-way deed. Both of these studies were written before Judge Horn issued *Beres* (2011). They were updated to recognize Judge Horn's opinion but not changed in order to adopt her analysis. My analysis agrees with hers, but is my work. If my right to a jury trial had been allowed, this is an argument and the documentation we would have presented to the jury.

Read a study explaining the ELS SLS&E form deed and identifying the author.

Understand the ability of the Hilchkanums to participate in their ROW deed.

Judge Cox lied when he "stated" in Ray that the notary public wrote the Hilchkanum deed, and was not an agent for the Railway.

In *Ray v. King County* (2004), Judge Cox identifies the author of the 1887 Hilchkanum right-of-way deed with this statement:

> "...examination of the deed shows that it is entirely handwritten, apparently by the same person. Both the language of the main part of the deed, as well as the acknowledgment, **is in the handwriting of the notary** who acknowledged the signatures of the Hilchkanums, B.J. Tallman.66 **Nothing in the record before us indicates that he was the agent of the Railway.** Absent such proof, we fail to see why we should construe ambiguities in the May 1887 deed against the Railway. Rather, to the extent we were to engage in applying a rule of construction to any perceived ambiguities in the language of the Hilchkanum deed, we would construe the deed against the Hilchkanums, the grantors."
> [*Ray v. King County* (2004)] (with my **bold** emphasis)

The question before the court was: Who authored the Hilchkanum deed? The Ray's attorney claimed it was the Railway. Judge Cox' dishonest analysis identifies the notary public as being the author of the words of the deed, and then Cox holds the Hilchkanums responsible for the words of their deed as the grantors. The Hilchkanums were illiterate Native Americans who had previously demonstrated a lack of knowledge of the law and were at the mercy of the white settlers at that point in our history. Further, Cox lies when he states that the notary was not an agent for the Railway. Directly below his signature on the deed is this statement by the notary: **"Filed for record at the request of Burk and Haller..."**.

Thomas Burk (Burke) and George Haller were co-council for the SLS&E Railway. Any legitimate jury would find that this statement identifies the notary as an agent for the Railway. Of course, no jury was allowed in the *Ray* or *Rasmussen* lawsuits. This violated the rules of summary judgment, but allowed Judges Cox and Schindler to obtain the outcome that they desired.

View my detailed analysis of these dishonest statements by Judge Cox.

In the citation above, Judge Cox decides (or strongly implies) that the Hilchkanum deed was written by B.J. Tallman. B.J. Tallman was the notary public who merely obtained signatures and filed the Hilchkanum deed, transcribing the words into the King County record. It was very wrong for Cox and Schindler to name Tallman as author of the deed. In modern terms, this is equivalent to determining a copy machine is the author of the papers it copies. It is obscene that Cox and Schindler resolved the question of authorship, because they were resolving that disputed material fact in violation of the rules of summary judgment. This disputed question of fact would go to a jury for resolution in real courts of law. Sadly, there are no longer legitimate courts of law in Washington State. I don't have the briefs and exhibits to the Washington State Court of Appeals for *Ray v. King County (*2004), but Cox' ridiculous claim that B.J. Tallman authored the Hilchkanum deed would have been rejected by any legitimate jury. As shown in a number of SLS&E deeds which I've obtained, the identical granting words found in the Hilchkanum deed are found in the Luber, Lewellyn, Burnett, Perry, Palmberg, and Squire right-of-way deeds to the SLS&E. Links to view these deeds are provided below. The Hilchkanum, Luber, Lewellyn, Burnett, and Perry deeds are constructed from an unaltered SLS&E "ELS form deed". The Luber, Lewellyn, and Burnett deeds use Edwin Briscoe as notary. The Perry deed used Jo. J Beard, a Justice of the Peace and notary public. The Palmberg deed used G. Morris Haller as notary. G. Morris Haller was co-council for the SLS&E with Thomas Burk (Burke). With the Squire deed, Edwin Briscoe acted as notary for Watson Squire, and Jos. Gregory acted as notary for his wife, Ida.

It's ridiculous that Cox and Schindler would find that B.J. Tallman wrote the Hilchkanum deed based on the fact his handwriting was found on the filed deed. This becomes even more ridiculous when one realized the identical words were filed by at least four other notaries public. Confirm this fact in the transcriptions and photocopies of the deeds, below.

View the **Hilchkanum Right-of-Way Deed** to confirm **B.J. Tallman** acted as notary.

View the **Lurber Right-of-Way Deed** to confirm **Edwin Briscoe** acted as notary.

View the **Lewellyn Right-of-Way Deed** to confirm **Edwin Briscoe** acted as notary.

View the **Burnett Right-of-Way Deed** to confirm **Edwin Briscoe** acted as notary.

View the **Perry Right-of-Way Deed** to confirm **Jo. J Beard** acted as notary public.

View the **Palmberg Right-of-Way Deed** to confirm **G. Morris Haller** acted as notary.

View the **Squire Right-of-Way Deed** to confirm that **Edwin Briscoe** acted as notary public for Watson Squire and **Jos. Gregory** acted as notary public for Ida Squire.

In his *Ray* dissenting opinion, Judge Baker provides proof that Judges Cox and Schindler were made aware that there was legitimate argument over this question of authorship, this question of material fact. Here is a portion of Judge Baker's dissenting opinion that explains this disputed material fact.

> "The majority states that because Hilchkanum must have understood the nature and extent of his conveyance, the fact that the deed was handwritten by someone else is of no consequence. And the majority holds that because there is nothing in the record indicating that the drafter was an agent of the railway, Hilchkanum must have been the drafter. This conclusion wrongly focuses on the identity of the grantor instead of the identity of the drafter of the deed. It is undisputed that the deed's language was taken from the railroad's standard deed. And the affidavit by the Rays' expert creates a material question of fact concerning who actually drafted the document. Taking this affidavit in a light most favorable to the Rays as the nonmoving party, any ambiguities in the deed must be construed against the railroad.5"
> [Ray v. King County (2004) (Dissenting)]

The above citation from the dissenting opinion shows that the judges were aware that they were illegally resolving a question of material fact. Disputed material facts are resolved by a jury. Yet, these judges took on the duty of the jury themselves. This illegal application of summary judgment is how judges force their predetermined outcome to the cases before them. This violates the Ray's constitutional right of due process, and is a direct violation of Washington State law.

> "All questions of fact other than those mentioned in RCW 4.44.080, shall be decided by the jury, and all evidence thereon addressed to them." [Revised Code of Washington (RCW), RCW 4.44.090 Questions of fact for jury. (Civil Procedure)]

My accusations of wrongdoing and statements of criminal behavior in this document must be understood to be my opinion. Any quotation taken from this document must include this statement.

Summary of the of the dishonesty in Ray v. King County (2004)

To understand the dishonesty of the judges of our Washington State Supreme Court, one needs to understand the dishonesty in *Ray v. King County* (2004), which our Supreme Court refused to accept for appeal and correct. In this section, I've discussed only three of the dishonest tactics involved in *Ray*. I've discussed the dishonesty of the *Ray* judges changing the words of the deed before construing it. I've discussed the dishonesty of the *Ray* judges finding false intentions of the Hilchkanums by misrepresenting the legal effect of their subsequent real estate deeds. Last, I've discussed the *Ray* judges illegally and dishonestly misidentifying the author of the Hilchkanum deed, and the consequences of that dishonesty. These three tactics were used to illegally award land to King County and to cover-up the East Lake Sammamish federal tax fraud scheme.

To briefly expand on these three dishonest tactics, earlier I provided a study of the rules to construe a railroad right-of-way deed. In the simplest terms, the duty of the court is to enforce the intentions of the original parties to a deed. Primarily, this is done by an analysis of the deed, giving "...some meaning [] to every word, clause and expression, if it can reasonably be done and if it is not inconsistent with the general intent of the whole instrument...". In *Ray*, the court changed the granting words of the Hilchkanum right-of-way deed, dishonestly giving the deed a completely different meaning than intended. In construing a deed, the court also looks at the "...the circumstances surrounding [the deed's] execution, and the subsequent conduct of the parties...". In *Ray*, the court presented a dishonest analysis of the Hilchkanum's subsequent real estate deeds, misrepresenting the Hilchkanum's intentions is each of the four subsequent deeds discussed. Dishonestly identifying the notary public as author of the Hilchkanum right-of-way deed allowed the *Ray* court to ignore the binding precedent established in *King County v. Squire* (1990), an opinion which construed a SLS&E right-of-way deed constructed on the identical form deed which had been authored by the Railway lawyers. There is dishonesty in almost every paragraph of *Ray v. King County* (2004). In this document, I've discussed only these three important issues (tactics).

There are three versions of *Ray* linked directly below. Read one of the versions containing my notes to understand the profound dishonesty throughout this opinion.

View *Ray v. King County* (2004) without my comments.
View *Ray v. King County* (2004) with my Brief Notes throughout.
View Ray v. King County (2004) with my Detailed Notes throughout.

In *Kershaw*, the judges of our Supreme Court reconfirmed the rules to construe railroad deeds which have been used in Washington State for more than one hundred years. In doing so, they exposed their dishonesty in allowing *Ray* to stand.

As I explained in the timeline at the beginning of this document, in 2004 the judges of our Washington State Supreme Court let stand the complete dishonesty of *Ray v. King County* (2004), and then in 2005 they advised Judge Horn to use *Ray* and *Brown v. State of Washington* (1996) as precedent to construe the 1887 Hilchkanum deed to the SLS&E in her *Beres* opinions. But then, in 2006, they refused to adopt their own advice when they issued their *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006) opinion. Instead of adopting *Ray* as precedent in *Kershaw*, our Supreme Court judges mischaracterized the findings in *Ray* and claimed that *Ray* did not apply to the construing of the Kershaw deed. They lied! To hide their dishonesty, the judges of our Washington State Supreme court tucked away their lies in footnote 11 of *Kershaw*. It seems that lawyers are famous for hiding their dishonesty in footnotes. Our Supreme Court judges adopt that dishonest tactic with *Kershaw.* So, here are the conclusion statement on the issue of easement-or-fee in *Kershaw*, followed by *Kershaw* footnote 11.

Paragraph 27 - Summary of the Kershaw discussion about easement v. fee:

"27 In sum, *Brown* establishes that use of a statutory warranty deed creates a presumption that fee simple title is conveyed. However, our previous cases, which *Brown* does not overrule, and in fact incorporates, establish that whether by quitclaim or warranty deed, **language establishing that a conveyance is for right of way or railroad purposes presumptively conveys an easement and thus provides the "additional language" which "expressly limits or qualifies the interest conveyed."*Brown*, 130 Wash.2d at 437, 924 P.2d 908.** In examining the language of the deed, while there is some conflicting language, there is insufficient evidence to overcome the presumption that an easement was created.**[11]** In fact, the language, specifically granting the railroad the "right to construct, maintain and operate a railway or railways over and across the same" strongly supports the presumption in favor of an easement. CP at 654. This conclusion is consistent with Mosbach, Swan, Veach, and Roeder and at the same time maintains *Brown's* instruction that reviewing courts perform a thorough examination of railroad deeds based on *Brown's* enumerated factors.[12] **While the use of the term "right of way" in the granting clause is not solely determinative of the estate conveyed, it remains highly relevant, especially**

> **given the fact that it is used to define the purpose of the grant.** Weighing the other language in the deed, we find the language of the 1905 deed suggests the parties' intent to convey only an easement interest to the railroad. We thus affirm the Court of Appeals decision that Yakima Interurban possesses an easement interest in the right of way." [*Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006)] (With my **bold** emphasis)

Next is *Kershaw* footnote 11 which is noted in above paragraph 27. If our Supreme Court had applied the precedent used in *Ray* to construe easement-or-fee in *Kershaw*, our Supreme Court would have found *Kershaw* to grant fee simple title rather than an easement. Since the judges of our Washington State Supreme Court allowed *Ray* to stand by refusing to accept appeal and correct its dishonesty, our Supreme Court judges hide their dishonesty and inconsistency in footnote 11 of Kershaw.

> ***Kershaw* Footnote 11:**
>
> "[11] Level 3 asserts a recent Division One case, *Ray v. King County*, 120 Wash.App. 564, 86 P.3d 183, review denied, 152 Wash.2d 1027, 101 P.3d 421 (2004), which applied the *Brown* factors to a railroad deed and found a fee simple conveyance, is analogous here and we should apply the same analysis. However, **while the *Ray* deed did include the phrase "right of way" it did so only to the extent that it stated it was conveying a "right of way strip."** *Id*. at 572, 86 P.3d 183. The *Ray* court thus found no presumption in favor of an easement and applied the *Brown*, factors to reach its conclusion that a fee interest was transferred. Here, the deed specifically established the purpose of the grant when it stated the land was "to be used by [the Railway] as a right of way for a railway." CP at 654. This creates a presumption in favor of an easement which was not present in *Ray*." [*Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006)] (With my **bold** emphasis)

In its summary of the easement-fee issue in paragraph 27, cited above, the judges of our Washington State Supreme Court state that **"...the term "right of way" in the granting clause [] is used to define the purpose of the grant."** and **"...language establishing that a conveyance is for right of way or railroad purposes presumptively conveys an easement..."**. So, if the term "right of way" in the granting clause of a railroad deed explains that the purpose of the grant is to convey an easement, then why didn't the judges of our Washington State Supreme Court find that the term "right of way" in the granting clause of the 1887 Hilchkanum right-of-way deed to the SLS&E grant an easement? Well, the "honorable" judges of our Washington State Supreme Court explained in *Kershaw* footnote 11 that the

Hilchkanum deed did not convey a “right of way” to the Railway in its granting clause. Instead, the “honorable” judges of our Washington State Supreme Court stated that the Hilchkanum deed granted a “right of way strip”. Of course, this is an intentional lie by these crooked judges. It is obvious that they morphed the granting words of the Hilchkanum deed from “right of way” to “right of way strip” to make it appear that the Hilchkanum deed did not conform to the long held precedent that the grant of a “right of way” to a railroad is the grant of an easement. So, directly below is the granting clause of the Hilchkanum deed with a link to the full transcription of the deed and a photocopy of the filed deed. Read the deed and decide if the Hilchkanums granted a “right of way” or if they granted a “right of way strip”. Do you believe the judges of our Washington State Supreme Court, who state in *Kershaw* that the Hilchkanums granted a “right of way strip”, or do you believe your “lying eyes” that a “right of way” is granted in the 1887 Hilchkanum right-of-way deed to the SLS&E?

The 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."
> [Transcription and photocopy of the 1887 Hilchkanum right-of-way deed to the SLS&E]
> (with my **bold** emphasis)

Why would the judges of our Washington State Supreme Court state a “right of way strip” is granted in the Hilchkanum deed, when it is obvious that a “right of way” is granted? Does this suggest that they didn’t even read the deed when *Ray* was appealed in 2004? The answer is obvious. The judges of our Washington State Supreme Court knew that *Ray* was dishonest and corrupt, but decided to let it stand. Their reason for committing this crime is explained by the effect of their dishonesty. They covered-up the East Lake Sammamish (ELS) federal tax fraud scheme by refusing to correct the dishonesty in *Ray*. They protected crooked King County politicians and lawyers with their refusal to accept appeal and correct *Ray*. They protected the crooked Ninth Circuit judges and lower court Washington State judges who issued the dishonest *Rasmussen* and *Ray* opinions. These dishonest legal decisions are responsible for the theft of more than $10 million in land from innocent East Lake Sammamish landowners and the illegal award of that land to the dishonest folks in King County government who committed tax fraud by accepting the phony donation of that land from BNSF.

My accusations of wrongdoing and statements of criminal behavior in this document must be understood to be my opinion. Any quotation taken from this document must include this statement.

While the change in wording from **"right of way"** to **"right of way strip"** seems minor and innocent, an examination of the changing of the words of the Hilchkanum deed in the *Ray* opinion explains the dishonesty and corruption involved. Here, again, is a citation from *Ray* which shows the complete dishonesty of the *Ray* judges and explains the dishonesty of the judges of our Washington State Supreme Court in hiding their analysis of *Ray* in footnote 11 of *Kershaw.*

> "The granting provisions of the Hilchkanums' deed characterize the conveyed property first as a '**right of way** one hundred (100) feet in width through' {the Hilchkanums'} lands,' and the property conveyed as a '**right of way strip**.' 31 The substance of this language is that the subject of the conveyance is a **strip of land**, not just the grant of some interest 'over' the land, as the Rays state. Language **conveying a strip of land suggests a fee**, not a mere easement.32"
> [*Ray v. King County* (2004)] (my **bold** emphasis)

In the above citation Judge Cox changes the granting words, first from **"right of way"** to **"right of way strip"**. Then he changes **"right of way strip"** to **"strip of land"**. Finally, he concludes that a deed granting a **"strip of land"** grants fee title. This is obscenely dishonest. The term "strip of land" does not exist in the Hilchkanum right-of-way deed, yet Cox claims that the deed grants a "strip of land". Since it is the duty of the court to understand and enforce the intentions of the original parties to the deed, where is any document or fact that suggests it was the intention of the Hilchkanums to grant a "strip of land" instead of granting a "right of way"? There is none! The only intentions enforced in *Ray v. King County* (2004) were the intentions of Judges Cox and Schindler to illegally award the Ray's land to King County. Their dishonest opinion established precedent for the theft of all the BNSF right-of-way land along East Lake Sammamish. Their criminal act covered-up the ELS federal tax fraud scheme.

As I've explained earlier in this note, the only thing more obscene is that the judges of our Washington State Supreme Court allowed *Ray v. King County* (2004) to stand when appealed. Then our Supreme Court judges advised United States Court of Federal Claims Judge Marian Horn to use *Ray* as precedent when she asked for certification of the law used to construe the ELS SLS&E right-of-way deeds. Finally, to tidy up their dishonesty, they mischaracterize the Hilchkanum deed construed in *Ray* and refuse to adopt *Ray* as precedent in their *Kershaw* opinion.

My accusations of wrongdoing and statements of criminal behavior in this document must be understood to be my opinion. Any quotation taken from this document must include this statement.

Summary of the of the dishonesty in Kershaw (2006)

In *Kershaw*, the judges of our Washington State Supreme Court reestablished the legal precedent which had been used to construe railroad right-of-way deeds for more than one hundred years in Washington State. In the simplest terms, the precedent is this: When it is determined that the intention of the parties in a railroad deed is to convey a "right-of-way" to the railroad, the conveyance is understood to be an easement and not a fee simple grant of the underlying land. This precedent had been suspended by our Supreme Court for several years. Their bizarre suspension of this common law precedent covered-up King County's participation in the East Lake Sammamish (ELS) federal tax fraud scheme and protected powerful officials and judges from federal prosecution. But, there was a little problem our "honorable" Supreme Court judges needed to resolve. In 2004, our "honorable" Washington State Supreme Court judges let stand *Ray v. King County* (2004). *Ray* is a criminal act from the bench. The *Ray* judges adopted King County's claim that *Brown v. State of Washington* (1996) effected a "sea change" in Washington State property law which overturned all the previous Washington State railroad right-of-way opinions. That intentional lie was adopted by Division One Judges Cox and Schindler in *Ray*. Our Supreme Court judges had the responsibility to correct the dishonesty of *Ray* when it was appealed in 2004. They didn't. But then, in *Kershaw* (2006), our Supreme Court judges stated this about *Brown*:

> "...our previous cases, which ***Brown* does not overrule**, and in fact incorporates, establish that whether by quitclaim or warranty deed, language establishing that **a conveyance is for right of way** or railroad purposes presumptively **conveys an easement** [.....] the language, specifically granting the railroad the "right to construct, maintain and operate a railway or railways over and across the same" strongly supports the presumption in favor of an easement. This conclusion is **consistent with *Mosbach, Swan, Veach,* and *Roeder*** and at the same time maintains *Brown's* instruction that reviewing courts perform a thorough examination of railroad deeds based on *Brown's* enumerated factors."
> [*Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006)]
> (with my **bold** emphasis)

The *Ray* opinion was based on King County's dishonest claim that *Brown* had established a "sea change" in our property law and had thrown out one hundred years of consistently applied legal precedent used to construe railroad right-of-way deeds. Yet, as shown in the citation directly above, in *Kershaw* our Supreme Court judges explain that there was no "sea change" in *Brown*, and that *Brown* was consistent with the earlier important railroad right-of-way opinions, including Mosbach, Swan, Veach, and Roeder. In *Kershaw*,

when Level 3 argued to apply the "precedent" established in *Ray*, our Supreme Court judges refused to acknowledge and adopt the dishonest conclusions of law and fact which they illegally let stand when *Ray* was appealed. In order to falsely explain there was a significant difference in the granting language of the deeds construed in *Ray* and *Kershaw,* our Supreme Court judges misstated the granting words construed in *Ray*. They made this misstatement of fact in footnote 11 of *Kershaw*. By stating a difference that doesn't exist, our Supreme Court judges built an excuse to not apply the dishonest precedent they allowed to be established in *Ray* to their *Kershaw* opinion. This dishonesty by the judges of our Washington State Supreme Court covered-up the East Lake Sammamish (ELS) federal tax fraud scheme and protected King County's "right" to steal more than $10 million from innocent ELS landowners. This is the state of our legal system. We have a Supreme Court in Washington State that does not believe it has the responsibility to enforce the law and the constitution. We have a Supreme Court in Washington State that does not recognize and protect the rights of its citizens.

United States Court of Federal Claims Judge Marian Horn refused to adopt the "advice" of our Washington State Supreme Court to use Ray as precedent. Instead, she found the ELS right-of-way deeds granted easements, including the 1887 Hilchkanum deed.

In search of justice, a number of East Lake Sammamish (ELS) landowners filed taking claims with the United States Court of Federal Claims. Their claim was that, as owners of the land under their portion of the ELS right-of-way, the Railbanking of the ELS right-of-way caused the taking of an easement for a trail. Their lawsuit required they show that the Hilchkanum deed, and other ELS right-of-way deeds to the SLS&E, conveyed easements. Further, they needed to prove that they were owners of the land under the right-of-way, and that the right-of-way easements granted to the SLS&E were not broad enough to allow the replacement of the railroad tracks with a trail. Federal Judge Marian Horn issued four opinions which resolved those issues. The opinion which is most relevant to the issues discussed here is *Beres v. United States* (2011). This opinion is relevant because Judge Horn determined that five ELS right-of-way deeds, which were granted to the SLS&E in1887 and were based on the ELS Form Deed, granted easements. This included the 1887 Hilchkanum right-of-way deed to the SLS&E, which is the subject of the *Ray* and *Rasmussen* opinions. Needless to say, this is exactly the opposite conclusion of the *Ray* and *Rasmussen* judges, who determined that the Hilchkanum deed granted fee simple title to the Railway. More important, this is opposite to the opinion of our Washington State Supreme Court with its denial of the *Ray* appeal. As explained above, the judges of our Supreme Court had the

responsibility to overturn *Ray v. King County* (2004), and they refused to correct that dishonest opinion. In refusing to accept *Ray* for appeal, the judges of our Supreme Court agreed with the *Ray* conclusion that Hilchkanum granted fee simple title to the SLS&E.

As I explained earlier in this note, on a motion by the *Beres* plaintiffs, Judge Horn requested clarification from our Washington State Supreme Court on the issue of easement-or-fee in construing railroad deeds. The following is a citation which explains this request and the reply by the judges of our Supreme Court.

> "In January 2005, the plaintiffs filed a motion requesting certification to the Washington State Supreme Court on questions of state law. This court agreed and forwarded the following questions to the Supreme Court of the State of Washington:
>
> > 1. When the granting clause of a deed expressly conveys a "right-of-way" to a railroad, does Washington state law hold that the property interest conveyed to the railroad is an easement as distinguishable from a fee simple?
> >
> > 2. Under Washington state law, did the above-quoted language of the 1887 deeds convey fee simple absolute interest in the Seattle Railway Company, or, instead, did the deeds convey an easement?
>
> Plaintiffs' certification request, as forwarded to the Washington State Supreme Court, indicated that this court, the parties and other future litigants could benefit from additional guidance from the Supreme Court of Washington.
>
> In the published order, which granted plaintiffs' motion to certify the questions to the Washington State Supreme Court, Schroeder v. United States, 66 Fed. Cl. 508 (2005), this court explained:
>
> > Although the Brown court set out seven possible factors for consideration by other courts, whether the plaintiffs' deeds convey an easement or a fee is not easily determined without prioritization within the factors, and guidance regarding the seventh factor, which includes "many other considerations suggested by the language of the particular deed." Even the lower Washington state courts seem to arrive at differing resolutions. At a minimum, a declaration by the Supreme Court of Washington on this

> matter would be welcome in order to best resolve the issue of whether the multiple plaintiffs in the cases before this court can continue with their Fifth Amendment taking claims.

Id. at 519 (quoting Brown v. State, 924 P.2d 908, 912 (Wash.), recons. denied, (Wash. 1996).

The Supreme Court of the State of Washington, however, declined the request for certification, stating:

> The court is of the view that, in light of existing precedent such as Brown v. State, 130 Wn.2d 430, 924 P.2d 908 (1996) and Ray v. King County, 120 Wn. App. 564, 86 P.3d 183, review denied, 152 Wn.2d 1027 (2004), the questions posed by the federal court are not "question[s] of state law ... which [have] not been clearly determined."

Order at 1-2 (Wash. Oct. 7, 2005) (quoting Washington Rules of Appellate Procedure (RAP) 16.16(a) (2006)) (omissions in original). Plaintiffs sought reconsideration of the Washington Supreme Court's order denying review. The Washington Supreme Court indicated, however, that because the Washington Supreme Court had not granted review, its order was not subject to reconsideration, and the Washington Supreme Court closed the file without further action." [*Beres v. United States* (2010)]

On my website, trailofshame.com, I explain that the judges of our Washington State Supreme Court denied "appeal" of the *Ray* lawsuit three times. The first appeal was directly from King County Superior Court. The second appeal was from the *Ray v. King County* (2004) Division One opinion. The above citation form *Beres* (2010), describes the third "denial" of *Ray* by our Supreme Court. The judges of our Supreme Court cited *Ray* and *Brown* as the authority that United States Court of Federal Claims Judge Marian Horn should use in construing the ELS right-of-way deeds, including the 1887 Hilchkanum right-of-way deed to the SLS&E. Judge Horn ignored this "advice" and instead determined the 1887 ELS right-of-way deeds to the SLS&E granted easements, including the Hilchkanum deed. Her excuse to ignore the advice of our Supreme Court is explained with this citation:

> "Until Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Association, 126 P.3d 16, decided ten years later, the Brown case was the best available guidance on how to determine fee versus easement in railroad deeds in the State of Washington." [*Beres v. United States* (2011), Page 21]

This statement justified Judge Horn taking a fresh look at the SLS&E deeds because she had asked for and received advice from the Washington State Supreme Court in 2005, before the Supreme Court issued *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban* (2006). So, using the later 2006 *Kershaw* opinion for guidance allowed Judge Horn to ignore our Washington State Supreme Court's earlier advice to use *Ray* and *Brown* for guidance in construing the ELS right-of-way deeds.

In her analysis, Judge Horn explains that *Brown* does not overturn earlier opinions, but rather simply failed to find limiting language in the deeds construed in *Brown*:

> "The State of Washington Supreme Court in Kershaw, which was decided ten years after the State of Washington Supreme Court's decision in Brown v. State, asserted that the Brown decision had not overturned the established precedent on railroad rights of way established in Morsbach v. Thurston County, 278 P. 686, Swan v. O'Leary, 225 P.2d 199, Veach v. Culp, 599 P.2d 526, and Roeder Co. v. Burlington Northern, Inc., 716 P.2d 855, but 'rather it distinguished them on the limited basis that none of the deeds at issue in Brown possessed language relating to the purpose of the grant or limiting the estate conveyed.' Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Ass'n, 126 P.3d at 22-23 (emphasis in original). The Kershaw court continued: 'Brown refined the principle relied on in Morsbach, Swan, Veach, and Roeder and suggests a more thorough examination of the deed is appropriate.' Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Ass'n, 126 P.3d at 23.
>
> In turning to the deed before it, the State of Washington Supreme Court in Kershaw determined that, '[l]ike the cases finding an easement, and unlike the deeds in Brown, the word [sic] 'right of way' is used to establish the purpose of the grant and thus presumptively conveys an easement interest.'"
> [*Beres v. United States* (2011), Page 28]

This analysis by Judge Horn echos the analysis of railroad right-of-way deeds by our Supreme Court in Kershaw. Here again is the summary paragraph on the easement-or-fee issue in Kershaw.

Paragraph 27 - Summary of the Kershaw discussion about easement v. fee:

> "27 In sum, *Brown* establishes that use of a statutory warranty deed creates a presumption that fee simple title is conveyed. However, our previous cases, which

> *Brown* does not overrule, and in fact incorporates, establish that whether by quitclaim or warranty deed, language establishing that a conveyance is for right of way or railroad purposes presumptively conveys an easement and thus provides the "additional language" which "expressly limits or qualifies the interest conveyed."*Brown*, 130 Wash.2d at 437, 924 P.2d 908. In examining the language of the deed, while there is some conflicting language, there is insufficient evidence to overcome the presumption that an easement was created.[11] In fact, the language, specifically granting the railroad the "right to construct, maintain and operate a railway or railways over and across the same" strongly supports the presumption in favor of an easement. CP at 654. This conclusion is consistent with *Mosbach, Swan, Veach,* and *Roeder* and at the same time maintains *Brown's* instruction that reviewing courts perform a thorough examination of railroad deeds based on *Brown's* enumerated factors.[12] While the use of the term "right of way" in the granting clause is not solely determinative of the estate conveyed, it remains highly relevant, especially given the fact that it is used to define the purpose of the grant. Weighing the other language in the deed, we find the language of the 1905 deed suggests the parties' intent to convey only an easement interest to the railroad. We thus affirm the Court of Appeals decision that Yakima Interurban possesses an easement interest in the right of way." [*Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006)]

So, Judge Horn ignored the advice of our Washington State Supreme Court to use *Brown* and *Ray* as precedent to construe the ELS right-of-way deeds, and instead used our Supreme Court's *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006) opinion as guidance. I would assume that she realized that *Brown* and *Ray* contradict each other and that the judges of our Supreme Court were unable to explain that contradiction when Judge Horn challenged them to explain with her request for certification, as cited above. In *Kershaw* paragraph 27, our Washington State Supreme Court judges stated that *Brown* incorporates the rule that when the **"...the term "right of way" in the granting clause [] is used to define the purpose of the grant."** the **"...language establishing that a conveyance is for right of way or railroad purposes presumptively conveys an easement..."** and that **"[t]his conclusion is consistent with Mosbach, Swan, Veach, and Roeder..."** [*Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006)] Yet our Supreme Court judges allowed *Ray* to stand in spite of the fact the *Ray* judges came to the opposite conclusion about the meaning of **"...the term "right of way" in the granting clause..."** In *Ray v. King County* (2004), Judges Cox and Schindler decided the term "right of way" in the Hilchkanum granting clause actually meant a **"strip of land"** and that the Hilchkanums intended to convey fee simple title to the Railway. This dishonest legal analysis in *Ray* is contradicted by *Brown* and *Kershaw*, as shown in the citations above.

With respect to the above discussion on the dishonesty of the *Ray* and *Rasmussen* opinions, Judge Horn had no trouble reading the Hilchkanum granting clause and determining that the deed granted a "right of way". She refused to change the words "right of way" in the Hilchkanum granting clause to "strip of land" like the judges did in *Ray v. King County* and *King County v. Rasmussen*. She had no trouble determining that the Hilchkanum subsequent real estate deeds did not indicate the intentions of the Hilchkanums to grant fee simple title with their 1887 right-of-way deed to the SLS&E, despite the fact the *Ray* and *Rasmussen* judges came to the opposite conclusion. Further, Judge Horn determined that the SLS&E lawyers wrote the Hilchkanum right-of-way deed. As explained above, the *Ray* and *Rasmussen* judges refused to name the Railway lawyers as author. In *King County v. Rasmussen* (2001), Judge Rothstein decided that the Hilchkanums wrote their right-of-way deed. The Hilchkanums were illiterate Native Americans. In *King County v. Rasmussen* (2002), Judge Fletcher decided that the Hilchkanums wrote their right-of-way deed with the help of their friends. In *Ray v. King County* (2004), Judge Cox decided the notary public who filed the deed was the author. As I explained above, the *Ray* and *Rasmussen* judges lied about authorship in order to avoid the precedent set with *King County v. Squire* (1990). None of their bizarre conclusions of authorship is supported by any document, fact, or the law.

I've written an analysis of *Beres v. United States* (2011) which address the issues discussed here in greater detail and other related issues. Use the following links to read the opinion and my analysis.

Read *Beres v. United States* (2011)

Read my analysis of *Beres v. United States* (2011)

The illegal grant of East Lake Sammamish right-of-way land to King County covered-up the East Lake Sammamish federal tax fraud scheme. It's important to understand that it was not necessary for King County to own the land in order to establish the trail.

I write this section for the "progressive thinkers" who believe that it was fair for ELS landowners to involuntarily give up their land and property rights in order for the King County community to gain a bike trail. This section is for those who believe we must involuntarily sacrifice our Constitutional individual freedoms and rights for the good of all. It is for those who do not believe in the rights enumerated in the Bill of Rights of our Constitution.

My accusations of wrongdoing and statements of criminal behavior in this document must be understood to be my opinion. Any quotation taken from this document must include this statement.

It was not necessary for the courts to award ownership of the ELS right-of-way land to King County in order for the County to establish the East Lake Sammamish trail. Railbanking, USC Title 16, Section 1247(d), withholds abandonment of unused railroad rights-of-way and makes them available for interim trail use. Ownership of the land under a railbanked right-of-way remains in the hands of its owner, but is burdened by a new trail easement. The East Lake Sammamish right-of-way was Railbanked and transferred to King County for a trail. Railbanking authorized King County to establish the trail in spite of the fact that the County did not own the underlying land. The reason that King County needed to claim ownership of the ELS right-of-way land was that the County accepted the fraudulent donation of the right-of-way land from BNSF with the knowledge that BNSF did not own the land. This allowed BNSF to illegally claim a $40 million federal tax write-off. But, it forced King County to falsely claim it owned the land in order to hide its participation in the tax fraud scheme. So, the claim of ownership by King County was not necessary to establish the trail. Rather, it was necessary to keep crooked King County officials out of federal prison for their participation in the tax fraud scheme.

If the leadership of King County had been honest, they would have raised money to compensate BNSF for railbanking the ELS right-of-way. One method would have been to tax the people of King County in order to provide a bike trail for the people of King County. Instead, King County chose to compensate BNSF by participating in the ELS tax fraud scheme. If the King County leadership had been honest, they could have then aided ELS landowners in obtaining Tucker Act compensation from the federal government. Instead, they used County resources to steal the land from their constituents and to work against their right for Tucker Act compensation. The King County leadership decided it would be better to participate in the tax fraud scheme and to steal the land from their ELS landowners than to tax the people of the County to pay BNSF to railbank the right-of-way. Taxes aren't popular with voters, so stealing the ELS right-of-way land from their constituents was a "better" option for our leadership. Then King County needed the Ninth Circuit and State judges to cover-up their criminal act with dishonest legal opinions like *Ray v. King County* (2004), *King County v. Rasmussen* (2001), and *King County v. Rasmussen* (2002). But, the most dishonest "legal opinion" was not a legal opinion at all. The most dishonest act was the refusal of the judges of our Washington State Supreme Court to correct *Ray.* The judges of our Washington State Supreme court became participants in the East Lake Sammamish (ELS) federal tax fraud scheme when they refused to correct *Ray*. As the highest authority on Washington State property rights, they committed the highest crime.

My accusations of wrongdoing and statements of criminal behavior in this document must be understood to be my opinion. Any quotation taken from this document must include this statement.

Summary:

In this document, I've described the East Lake Sammamish (ELS) federal tax fraud scheme and its cover-up by the judges of our Washington State Supreme Court. The evidence of this crime by our Supreme Court judges lies in their refusal to accept and correct the profound dishonesty of *Ray v. King County* (2004), their advice to Court of Federal Claims Judge Horn to use *Ray* and *Brown v. State of Washington* (1996) as precedent to construe ELS SLS&E right-of-way deeds, and then their refusal to apply that same *Ray* precedent with their *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Association* (2006) opinion. This established a period of time that the judges of our Supreme Court temporarily changed our property law. The reason they did this is explained by the effect of their dishonesty. Allowing *Ray* to become law for several years protected the criminals who participated in the ELS federal tax fraud scheme from federal tax fraud prosecution. In providing that protection for the participants in the crime, our Supreme Court judges became participants in the crime themselves.

When our judges abandon their duty to enforce the laws that we-the-people have established to govern ourselves, we no longer have a legitimate judicial system in our State. Instead we have judges who willingly abuse the power we have granted them. They have illegally used that power to promote their agendas and protect their friends who have committed crimes. They have no right to do this, but our system to hold them responsible for crimes from the bench is not working. We've lost out judicial system in Washington State.

The Washington State Supreme Court judges who served during the time the East Lake Sammamish (ELS) federal tax fraud scheme was covered-up in our courts are listed here.

Gerry L. Alexander
Bobbe Bridge
Tom Chambers
Mary Fairhurst
Faith Ireland
Charles W. Johnson
James M. Johnson
Barbara Madsen
Susan Owens
Richard B. Sanders