

## **MY TRIBUTE TO BERT SMITH, A DEDICATED AMERICAN**

**By Fred Kelly Grant, April 3, 2016**

On Thursday night, March 31, 2016, a most respected, deeply dedicated man, Bert Smith of Ogden, Utah died at the age of 96 young years. I am so proud to say that Bert Smith is a friend of mine---not "was" but "is" because he will be with me as long as I make it here on earth. I would have referred to him as "a great man", but the term "great" has been used so often, and so often inappropriately that has become hack in my mind. So, it would not due to apply the term to my friend.

His memorial services will be held on Saturday, April 9, 2016, just one week after Easter Sunday at the Mound Fort Stake Building on Washington Boulevard between 12<sup>th</sup> and 17<sup>th</sup> Streets in Ogden, Utah. Viewings will be on Friday the 8<sup>th</sup> from 5:00 to 8:00 pm and Saturday between 9:30 and 10:30 am.

Bert has devoted his life and time to teaching Americans of today the important Constitutional principles that are the foundation for the American Dream. He has conducted workshops, paid for production of and distribution of copies of the Constitution which can be carried in a pocket for easy reference, and provided support for ranchers all over the west whose livelihoods depend on use of the so-called Federal lands. Before it was "the thing" to do, he stood firm against the intimidation of the Bureau of Land Management and the Forest Service and the Fish and Wildlife Service, and the Corps of Engineers and other bureaucratic alphabet federal agencies. He stood his ground before Fred Kelly Grant, Kirk McKenzie, and others came on the scene. In fact, he served as the inspiration for many of them.

Bert always said that from the time he returned from the Pacific war zone after World War II, he knew that the ranching industry was saddled with false claims by the federal government, and he determined to do something about it. He thought it completely unacceptable that veterans who ranched, ranchers who had sons and grandsons who served this nation, faced domination by government agencies---particularly since the Constitution as he read it, prohibited such domination or even ownership. He and his brother bought a ranch at the eastern foot of Ruby Mountain in Elko County, Nevada after the war. He told the 2012 Utah Freedom Conference that at 26 years of age he got "mad at the BLM and the Forest Service" and has "been fighting them ever since." I think he kind of proudly accepted it when he was referred to by the Press as "the Godfather of the Sage Brush Rebellion."

So, instead of sitting and talking about their problems on the ranch with bureaucrats, complaining and “wishful thinking”, he set about seeking change. Among his “inventions” were the National Federal Lands Conference. He worked with people like the late Henry Lamb and Michael Coffman in for the first time turning sunlight on the darkly held secret of Agenda 21, a plan to bring us into World Government.<sup>1</sup> With other great men and women he formed Freedom 21 which like the Conference sponsored and paid for conferences which provided information to all people as to the dangers to liberty lurking in the disguise of support for a healthy environment.

Over two decades ago, I first met Bert at Jordan Valley, Oregon where he was sponsoring a National Federal Lands Conference workshop. He was a founder of the Conference which paid for knowledgeable people to speak to ranchers in local areas about the constitutional, statutory and common law technicalities that would help them in their on-going, never-ending struggle with bureaucrats. I remember that Wayne Hage spoke that day and detailed his case against the United States in the Claims Court, a case that I would later help with through Stewards of the Range and then American Stewards of Liberty.<sup>2</sup> I remember that there were lawyers presenting a supremacy concept that they were laying to the feet of local governments.

It was a snowy, windy day, so I decided I should leave early for the drive home. I was not there out of interest. I had no interest in property law, had no interest in federal land concepts, because I had no knowledge of the convoluted problems caused for ranchers by bureaucrats. One afternoon, my very good friend Dick Bass, an Owyhee County, Idaho Commissioner stopped in to ask me for help with the Bureau of Land Management. He told

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<sup>1</sup> For the longest time I would not use the term Agenda 21 in my presentations on coordination. So many people believed it was a vast conspiracy of right wing “nuts” that I felt it distracted from my presentations. In fact, when I first started in this business, I doubted seriously that sinister anti-American elements planned to take away our sovereignty in world government. My very good friend Michael Coffman is the one who convinced me that there was a realness about it, and then Tom DeWeese finished off my education when we shared the stage at a conference.

<sup>2</sup> Margaret and Dan Byfield are two more of my heroes. Their unfaltering work, first in separate organizations and then under the umbrella American Stewards of Liberty, in fighting off the radical environmentalists’ use of the Endangered Species Act to stop farming, ranching, development and the free exercise of private property rights has been instrumental in saving the private property rights of thousands of Americans. They have participated in countless defenses against passage of grazing bills that would be disastrous to western “federal land ranchers”, even bills sponsored by “friends of the ranchers” who did not see the danger in language promoted by the anti-grazing forces. Margaret is the daughter of Wayne Hage who took the courageous step of challenging the United States Government in Claims Court. He, with the financial help of members of Stewards, then American Stewards, won a monumental victory before Chief Judge Smith of the Court. Of course, once the politically correct dogma was applied at the Circuit Court in D.C. which hears all appeals from Claims Court, the decision was remanded because it was not “ripe” for decision.

me about a plan being devised by the BLM at that time that would place a 40 percent grazing reduction on virtually every rancher in Owyhee County. No rancher, I now know, could survive such a cut. He explained what the BLM was and how they managed in Idaho, and gave me a flyer advertising the Jordan Valley conference for the next Saturday. He asked me to go and see whether these people had any solution. I agreed only because of my friendship with Dick and his wife, Karen, who was one of my favorite classmates at Nampa High School where we graduated in 1954.

So, here I was---listening to a conference made interesting only because of the detailed presentation by Hage of a very interesting, so complex that it seemed simple, strategy being advanced in his "takings" case. As I started to leave, trying to be as inconspicuous as possible since I was walking out on an attorney, Bert intercepted me at the door. I did not know him, had never met him or heard of him before that day.

Bert asked "are you Grant", and I admitted to it. He asked whether I could buy in to what was being said. I candidly said "no, because the concept is going to run into the supremacy clause of the Constitution, will be declared unconstitutional, and the County will have to pay attorney fees". He asked me what I was going to tell the Commissioners, and I told him that I was going to tell them to advise the ranchers to get out of the cattle business if they couldn't live with such a big reduction, and that if the federal government did own the land and said to get off, they wouldn't stop until the cows were gone. Bert then said to me something profound, so profound that it has changed the whole scope of my work for the past twenty two years. He said "Young man, if you're even half as smart as the Lowrys think you are, if you just look to local government, especially county government, and you'll find a way to help the ranchers."<sup>3</sup> We shook hands and I left for home.

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<sup>3</sup> The "Lowrys" were of course, Bill and Nita Lowry of Jordan Valley, and their son Tim and his wife Rosemary of South Mountain. When my action for Owyhee County began, it was Bill Lowry who stood and confronted the Commissioners: "Hal, we want to try this, but if we put in for it, we want to know that you're going to stick with it to the end, and not just get in and then get out." Commissioner Hal Tolmie committed as did the other Commissioners, and the County's twenty year success story began and turned out to be a beacon to the west. Tim was elected as the first Chairman of the Owyhee County Natural Resources Committee which put together a range plan that mirrored every section of the BLM's plan, but was based on generally accepted science that promoted grazing as a means of keeping down fire fuel. On several occasions Tim accompanied me to Washington to testify before congressional committees and always acquitted himself well. The four of them, and Tim's brother Mike of Reno, are some of my very favorite people. How they knew to tell Bert that I was smart I know not. In fact, I've never asked them but will---you see I am planning a visit real soon while we're all still kicking.

Through the years, we went separate paths aimed at the same goal: protection of our liberty which is inherently founded on private property rights. But, whenever I could I spoke with him, I always was re-energized. In fact I once said that when I got down and tired I needed either to visit New York City, the most electric city I've ever visited, or visit with Bert Smith.

All the way back to Nampa I thought about Bert's eyes, so earnest, so involved with what I was saying, so intense as he spoke about local government. Bert always listened—not as a courtesy, but as a means of learning and finding strength in new ways. I decided that if this guy could travel from Ogden, Utah all the way to Jordan Valley and bring speakers with him, and could so, almost spiritually, urge me to help, the least I could do was go over to the Supreme Court library in Boise on Monday and see what I could find.

The rest of the story, according to Paul Harvey, was icing on the cake. I found and read thoroughly the provisions of the Federal Land Policy Management Act, in which the Congress mandated that the BLM "coordinate" all decisions and planning events with local governments. I specifically noticed the fact that Congress used the word "cooperate" at various places in the statute, but reverted to "coordinate" and "coordination" when setting forth the authority of local governments. What's more, the Congress defined the word "coordination" in such a way that I could argue that the BLM has a duty to seek consistency between its plan or action and the policy of the local government. It didn't take a University of Chicago School of Law education to see that if Owyhee County adopted a policy of no reductions of grazing in order to shore up its economy and culture, the BLM would have a tough time putting its 40 percent reductions into action. But it helped to have that education because my professors taught us to be awake, alert and be ready to take a bold step to develop or implement the law. Karl Nickerson Llewellyn, famed for his writings on the law and on litigation, barked out once in class "If you want to be an office lawyer, get out and go over to the business school. A "lawyer" ought to love the fight, the jabs and chops that make the courtroom a magnificent battle ground---so learn to fight!!"

I met with the Commissioners and with a group of about 50 ranchers and I described what Bert had said, what I had found, and what I could do with it. But I did add that in spite of Bert Smith's confidence, I could only promise that I could "muck up the system for a couple of years with the process". I suggested that they start looking at how to convert their business.

Because of commitment on the part of that first Board: Hal Tolmie, Dick Bass, and Chet Sellman, and their successors for the next twenty years, and of county attorneys like Ed Yarbrough, and county officers like Barbara Jayo, Charlotte , Owyhee ranchers too numerous to list, and on the strength of Bert Smith's eyes, I engaged the BLM for the County, and the reductions were never put in place.<sup>4</sup>

From that time on, the coordination process has saved many ranchers, farmers, miners, and off road recreation enthusiasts. I am given credit by many for all that has happened, and I always have shared that credit by telling the story of how Bert Smith put me on the track---no, he made me look for the track because of the spirit and determination that showed in his eyes on that cold, January day long, long ago.

I missed an opportunity to visit with him once last time just a month or so ago. I was going to Utah to visit with the widow of LaVoy Finnicum at the request of some of her friends who wanted me to represent her.<sup>5</sup> When Kathy Smith, Bert's wonderful wife and his "better half and again some" as he put it, heard about the trip she invited Carol and I to stay with them on the trip down and visit.

A change in scheduling made it expedient that I fly from California to Cedar City, so I missed that opportunity. I felt bad about it at the time, and decided that I would make the effort to find and re-make contact with some old friends, and try to make amends with my own family. I had it in mind that when I went to Arizona in the coming month I would drive so that I could visit with them.

Don't put off opportunities for closeness with friends. Had I only had an inkling, I would have foregone the air flight to Cedar City, driven and had a chance to visit one more time with my friend and mentor, Bert Smith.

One of the tributes to how dedicated he was is the manner in which the radical environmentalist press referred to him as espousing "a legally flawed" constitutional principle, as "spreading a false gospel" that leads to violence, and as "just one more shadowy element propping up Utah politicians in their efforts to seize our public lands". They do not disparage those who are not successful, those who are not committed, and those who

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<sup>4</sup> The first Owyhee County Natural Resources Plan was adopted in early 1993, and was revised in 2008. It can be found by entering Natural Resources Plan Owyhee County, Idaho. It shows the degree of thought and analysis and creativity a group of ranchers and recreation users and business people can put together if they have the help of another of my personal heroes, Dr. Chad Gibson who was County Agent for the University of Idaho and with whom I worked so closely---he was my daily instructor in "range talk".

<sup>5</sup> It turned out that she decided not to engage me, so I have no representative part in the post Malheur stand off.

are not right. When the rest of us are so disparaged we know we're getting the job done.

And, that's what Bert Smith would have us do. As his wife Kathy emailed to me last evening: " 'Carry on and never give up' is what Bert would say." Indeed it is Kathy. So, all of those who were touched by Bert Smith should do just that, gear up, gird ourselves, dig in and "carry on and never give up."