

2001

George C. Blonquist, Ethel Blonquist, Larry Don Wright, Vera D. Wright, Keith Blonquist, Merlene Blonquist v. Troy Blonquist, Grace Blonquist, Justine Blonquist, Kenneth Blonquist : Unknown

Utah Supreme Court

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W Eugene Hanson; Tel Charlier; Alan D Frandsen; Attorneys for Respondents.

William J Cayias; D Eugene Livingston; Attorneys for Appellants.

Recommended Citation

Legal Brief, *Blonquist v. Blonquist*, No. 13160.00 (Utah Supreme Court, 2001).

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IN THE SUPREME COURT OF THE STATE OF UTAH

GEORGE G. BLONQUIST and
ETHEL BLONQUIST, his wife;
LARRY DON WRIGHT and
VERA D. WRIGHT, his wife;
KEITH BLONQUIST and
MERLENE BLONQUIST, his wife,

Plaintiffs and Respondents,

vs.

TROY BLONQUIST and
GRACE BLONQUIST, his wife;
JUSTINE BLONQUIST and
KENNETH BLONQUIST,

Defendants and Appellants.

Case No.
13160

ABSTRACT OF RECORD

WILLIAM J. CAYIAS and
D. EUGENE LIVINGSTON
405 Continental Bank Building
Salt Lake City, Utah
Attorneys for Defendants-
Appellants

W. EUGENE HANSON
Newhouse Building
Salt Lake City, Utah
and

TEL CHARLIER
425 South 400 East
Salt Lake City, Utah
and

ALAN D. FRANDSEN
353 East 4th South
Salt Lake City, Utah
Attorneys for Plaintiffs-
Respondents

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ABSTRACT OF RECORD

TRANSCRIPT OF PROCEEDINGS

* * * *

(Tr. 11)

* * * *

WALLACE D. MEARS

called as a witness by the Plaintiff was first duly sworn
and took the witness stand and testified as follows:

CROSS EXAMINATION

BY MR. CAYIAS:

Q. Do you know where or how the information was obtained by your department to place this information on these particular exhibits? Where did that information come from?

A. I don't quite understand what you want.

Q. Well, in other words you've prepared plats and you've not offered them to the Court today, and the information to prepare those plats must have come from some place to permit these to be prepared. Where did that information come from?

A. From actual field survey of the road.

Q. Now, was that done when you identified it on the map with respect to being a

(Tr. 12)

county road, does that come from your field survey?

A. Yes.

Q. Are you sure?

A. You mean, to identify it as a county road?

Q. Yes.

A. After we map a particular county we meet with the county commission, and it is they who say that these are or are not county roads.

Q. Do you know if that was done with respect of this area, of your own knowledge?

A. That has been the general practice, yes.

CROSS EXAMINATION

BY MR. CAYIAS:

(Tr. 27)

Q. And the blue lines that appear on this would be placed on there because of some record that appears in the Utah State Road Commission records. I mean, where would you go—Excuse me. Where would you go to get the information to gather the necessary background to justify or to authorize you in your internal workings to make this a blue line or this a red line or the other indications that you make on this exhibit?

A. Well, I'm well aware of those roads that are on a State system, which is reflected in red. Those that are in blue are considered part of the County system, and that information is obtained from the County.

Q. Well, now the record that was obtained from the County say with respect to the year 1950 that justified the placing the blue lines on this exhibit, do you have that with you?

A. No, it's usually determined by a representative of the County that declares if this is a county road or not.

Q. Do you have any records to reflect how that was done for the year 1950?

A. No, sir.

Q. So you don't know even from a search of your own records how it came about that the line was placed blue on this particular exhibit for 1950, is that correct?

A. That's correct.

Q. Now, would the same thing apply with respect to 1956?

A. Yes, sir.

(Tr. 28)

Q. Would the same thing apply with respect to 1966?

A. Well, one moment, please. Yes, sir.

Q. Then if that's true, Mr. Mears, where did the information come from to justify the application of the blue lines on these maps?

A. From the County representatives.

Q. You mean it was a personal thing, it was never done anything in writing?

A. That's true.

Q. So it was just a comment then?

A. That's true.

Q. And there's no record made of that comment?

A. No, sir.

Q. There's no recording of that comment or who appeared, the name of the man, or anything else that reflect as far as the records are concerned who came from the County to give that information?

A. Prior to—What year is that?

Q. 1966.

A. Prior to 1966 we didn't keep these records of this type. Now we have what we call our "daily work sheets" that reflect the County personnel that is with our inventory party.

Q. So when you send an inventory party out now you have a County representative go with you?

A. Yes.

Q. I see. But you didn't do that prior to 1966?

- A. Approximately about that time is when we started doing this.
- Q. So there is nothing in the records then of your office to reflect who or where or what information came to you to identify the County road on these maps, is that correct?
- A. That's true, sir.

* * * *

KEITH BLONQUIST

called as a witness by the Plaintiff was first duly sworn and took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. HANSON:

- Q. Now tell us then, Keith, during your life time what use you have observed has been made of the upper road. Who has used the upper road other than yourselves and Troy?
- A. Oh, sheep—quite a few sheep men.
- Q. And would you indicate what use has been made by sheep men?
- A. Hauling their sheep back and forth, and trucks. When they've trailed a sheep up, then they'd haul their sheep back, their lambs and ewes.
- Q. Do you recall when a or if at any time there has been a gate placed across the area that's designated as
- (Tr. 82)
- “Blonquist Gate”?
- A. Do I recall a gate being put there?
- Q. Yes.

A. Yes, sir.

Q. Has the gate been there so long as you can remember?

A. Not that particular gate. No.

Q. Well, has there been a gate there?—

A. No.

Q. —for as long as you can remember?

A. Not right there. No.

Q. Okay. In that general area has there been a gate for as long as you can remember?

A. There was a gate above where this one is.

Q. I see. And can you tell the Court as to whether or not that gate has been kept locked?

A. No, sir.

Q. Can you tell us?

A. It's never been—Do you mean now?

Q. Yes.

A. Yes. That gate is locked now, the one that's there now.

Q. Well, the gate located by your home?

A. Oh, are you talking about the gate by my home?

Q. Down by the Blonquists.

A. Oh, no.

Q. What we have designated as Blonquist. Okay. Tell us then what you've observed with respect to that gate that's located there, which we designated "Blonquist Gate." Has it been there as long as you can remember?

(Tr. 83)

A. Yes, sir.

Q. And have you observed that it's been locked on occasion?

A. Rare occasions, yes.

Q. And do you recall when it has been locked, approximately when it was first locked?

A. They used to lock it during deer season to control the hunters. That is, they would stop there and get their permit to go up and hunt.

Q. To go up and hunt where?

A. Hunt deer up both on Troy's property and George's.

Q. Were there any permits sold at your place there for the Chalk Creek Range Association?

A. Yes.

Q. And who sold those?

A. My mother.

Q. And where did those proceeds go?

A. To the Chalk Creek Protective Association.

Q. Are you members of the Chalk Creek Range Association?

A. No, sir.

Q. Now, do you recall when that gate was first locked for this purpose, as you have testified?

A. I suppose, approximately twenty years ago. It could have been a little longer than that.

Q. All right. And for what period of time, then?

A. Just during deer season.

Q. Now, has the gate ever been left open over the years that you can recall?

A. Yes, sir.

(Tr. 84)

Q. Well, during what periods of time?

A. Well, I've seen that gate left open for long periods of time.

Q. How long?

A. Months.

Q. All right. And when the gate is open, do people ever come to your place and ask permission to go in the area?

A. Occasionally. But most often, no.

Q. All right. Do you know of any other uses that have been made of that road during your life time?

A. Yes. They hauled timber out of there.

Q. Now, who is "they"?

A. I can recall a person the name of Jack Sargent who hauled timber out of there. And Bill Blonquist used to have a saw mill up there.

Q. And by "up there," approximately where was it located?

A. Well, Jack Sargent hauled timber off of Cottonwood, off of our place up—both our's and Troy's both.

Q. Will you step to the board and indicate approximately where that is?

A. Well, it is in this area here. (Indicating) Troy's was down in this area. (Indicating)

Q. Now you're indicating Section Nine for Troy's and

up in Section Fourteen with respect to your's—your's and Troy's?

A. A part of Eight, on Troy's.

Q. All right. Now, do you know where the saw mills were located that you have testified to?

(Tr. 85)

A. Yes, sir.

Q. And approximately where were they located?

A. They was up on the end of this, where this road here went. (Indicating)

Q. You're referring here to the "X" that's placed at the—in Section Twenty-five. Would you take this green pen and draw a circle? We'll designate that, "Saw mill." Is that the approximate location?

A. Yes. It wouldn't be too far past this point here, (Indicating) maybe.

Q. Just draw a circle at the approximate area.

A. Right here, approximately. (Indicating)

Q. Okay. And we'll label that the "Saw mill." And when was that in operation?

A. About thirty years, approximately.

Q. Approximately thirty years ago?

A. (Witness nodded his head) Maybe not quite that long.

Q. All right. Any other uses that have been made of the highway—or of the roadway?

A. Well, it seems that each summer there's a bunch of college students come up every day for about ten days Geologists, I think they are.

Q. I see. Any fishermen?

A. Fishermen.

Q. In this area?

A. Yes, sir. Fishermen, deer hunters.

Q. Over what period of time have there been fishermen traversing the upper road?

A. As long as I can remember.

(Tr. 86)

Q. And do you have an idea or an estimate as to approximately how many would go through that gate in a given month in the summer?

A. Well, it varies. A long time ago, it seems to me that there was more goes up than there is now.

Q. Um-hum. Which creeks would they fish in?

A. The South Fork Creek.

Q. Um-hum. Let me ask you, Keith, are you aware of any roadways that go beyond this area that is indicated, that looks like a "T" on this particular map?

A. Yes, sir.

Q. And would you indicate what those are?

A. There was a beacon.

Q. And where was that located?

A. In here. (Indicating)

Q. Would you take this green pen and draw a circle, and indicate? We'll label that, "Beacon." What kind of a beacon was that?

A. Aeronautics beacon.

Q. And would you describe what it was like?

A. Well, it had a large light that would go around in circles and flash a light out through the—

Q. Did anyone traverse the road going to that location?

A. Yes, sir.

Q. All right. And during your lifetime, and while you can remember during the period you can remember, how often would someone traverse the road for that purpose, as best you recall?

A. I would say, once a month.

**FURTHER DIRECT EXAMINATION
BY MR. HANSON:**

(Tr. 87)

Q. Label that, "Newton's." And we'll designate this road. Is there any other road in that area?

A. Yes, sir.

Q. And will you indicate where that is?

A. Now, this road here continues on up. (Indicating)

Q. Just draw it in as best you—

A. On up, like this. (Indicating) Then there is a road that you could take that cuts off of this one that goes up and joins on to this one. (Indicating)

Q. And in what direction? You'd be travelling east there, would you?

A. East. Yes.

Q. Would you mark on the map where North would be. Would North be to the top on this map?

A. No, sir. I'd say—Yes, I'd say so.

Q. Now, toward which location would—or what settlement or area would this road be heading toward?

(Tr. 88)

A. That would be East Fork.

Q. East Fork?

A. East Fork.

Q. So label that.

A. And you could also take off from this road and go over and down into Weber.

Q. Would you indicate the approximate location of that road?

A. I would say, in here someplace it would go this way down into Weber Drainage. (Indicating)

Q. We'll just designate that as "To Weber." All right. Any other roads in that area?

A. No, sir. That I can recall.

MR. HANSON: I believe that's all. You may cross examine—or some more direction, maybe?

A. There is one road where you could come down from this beacon down to what we call "Redrock."

Q. (By Mr. Hanson) Would you indicate that?

A. About right from here down into here, like that. (Indicating)

Q. And does it come from the beacon light road?

A. Yes.

Q. Connect that up, and then indicate then "To Redrock."

A. Um-hum.

CROSS EXAMINATION

BY MR. CAYIAS:

(Tr. 105)

Q. And on that occasion, the earliest time that you ever had anything to do with it, what was discussed with the County officers or officials about working on this road?

A. Well, we just came down and met with them and

(Tr. 106)

asked them if they would come up and fix the road for us.

Q. And was there any discussion about whether it was a Class "B" or a Class "C" road, or anything like that?

A. Well, yes.

Q. What did you talk about?

A. Whether it was or whether it wasn't. That's when we started having this trouble.

Q. I know. But the first time that you talked to the County officials about it did you say anything about whether it was a County road or not?

A. No, sir.

Q. Wasn't it a mere fact that it was an accommodation by the County officials to help you?

A. No. I wouldn't exactly say that.

Q. Why did you think that the County officials would come up and put that grader on that road for you?

A. Because they do that every place else.

Q. In other words, they—but that's what I'm getting at—they do it as an accomodation for a lot of people, don't they?

A. Yes.

Q. And they do it all over the County for people that need a little help?

A. Yes, sir.

Q. Isn't this true?

A. Yes.

(Tr. 107)

Q. And did you know a chap named Bill Miller and
(Tr. 108)

Jack Sargent?

A. I knew Jack Sargent, yes.

Q. And did you know that they both made arrangements with your father and Troy to buy lumber up there on that property? You knew that of your own knowledge, didn't you?

A. Yes, sir.

Q. So they had permission from both your father and Troy Blonquist to go up there and cut timber and haul it out?

A. Well, let me clarify it a little bit. He actually hauled more timber but what they brought off of them. He hauled timber from up above, too.

Q. Where did he get that timber from?

A. Up on Oswald's.

Q. Did he make arrangements to buy it from Oswalds?

A. I don't know anything about that.

Q. But he had permission from both your father and Troy Blonquist to cut timber and haul it down the road?

A. Yes, sir.

Q. Now, do you know a chap named C. A. Crittenden?

A. Yes, sir.

Q. And has he ever done any work on that road?

A. Yes, sir.

Q. And how? Did he work for the County?

A. I couldn't say.

Q. Is he any relation to you?

A. No Sir.

Q. Any relation to any of the other Blonquists involved in this matter?

A. No, sir.

(Tr. 109)

Q. Was he hired by you or your father to do work on that road?

A. He was hired by my father to do part of it.

Q. And what kind of work did he do on the road?

A. Bulldozer work.

Q. And whereabouts?

A. Just in below the ranch.

Q. Would that be above the Blonquist gate or below the Blonquist gate?

A. That would be above the Blonquist gate.

Q. How far?

A. Almost three miles. Approximately three miles.

Q. Would that be up to where your present boundary line is?

A. It—What do you mean by the “boundary line”?

Q. Well, where your cattle guard is now.

A. It would be above there. Yes.

Q. That would be on the property that your father now owns?

A. Yes, sir.

Q. And when was that work done?

A. Oh, maybe 25 years ago. Twenty, twenty-five years ago. About in there somewhere.

Q. You know your dad paid him to do the work?

A. Yes sir.

(Tr. 111)

Q. Now, Mr. Blonquist, isn't it true that for many years there's been a charge for deer hunters to go up that road?

A. Yes, sir.

Q. And when did that first start?

A. About twenty years ago. Somewhere in that vicinity.

Q. Now, when it first started, did Troy Blonquist and George Blonquist both charge people to go up that road for deer hunting?

A. Yes, sir.

Q. And how would they divide those monies?

A. Whatever they got they would just divide right down the middle.

Q. Fifty-fifty?

A. Yes, sir.

Q. I see. Now, who would collect those monies?

(Tr. 112)

- A. Possibly, my mother.
- Q. And what was the charge? What was the charge when you first started?
- A. A dollar, I believe.
- Q. And what is the charge now?
- A. Three.
- Q. And you do this every year, don't you?
- A. Yes, sir.
- Q. Now, do you still do it?
- A. Yes, sir.
- Q. Did you do it this last year?
- A. Yes, sir.
- Q. And did you still participate in the proceeds of that money on a fifty-fifty basis?
- A. No, sir.
- Q. How did you handle it?
- A. Troy handled his, and we handled ours.
- Q. So you charge to go on your grounds and they charge to go on their ground?
- A. Yes, sir.
- Q. And do you set up some kind of a watch on that gate as to people that go up so that you collect this stipend for hunting?
- A. Yes, sir.
- Q. I see. and when did you stop doing it on a fifty-fifty basis?
- A. Approximately three, four years ago.

Q. I see. Now, what about that beacon light you told me about there, Mr. Blonquist? That beacon light is actually on L. C. Oswald's property, isn't it?

(Tr. 113)

A. No, sir.

Q. Whose property is it on?

A. It's on Newton's ground.

Q. Do you know if it's the Federal Aviation Agency that put the beacon in? Do you know that?

A. I'm quite sure. Yes.

Q. Do you know when the beacon went in?

A. Not exactly. No.

Q. Has it been there as long as you can remember?

A. Yes, sir.

Q. So it's been there at least thirty years?

A. Yes, sir.

Q. Does it still operate?

A. No, sir.

Q. When did it quit operating?

A. Probably twenty years ago. Around there.

Q. Now, up until the time it quit operating did they pay you or did they pay your father or you or Troy Blonquist to go up and take care of that beacon?

A. I used to go with him. Yes.

Q. And did they pay to do that?

A. Yes, sir.

Q. What did they pay?

A. Well, that I don't know exactly.

Q. Did they pay an annual rental for that?

A. For what do you mean?

Q. For paying to go up there.

A. No. They just paid me by the trip.

Q. They gave the money to you?

A. Yes, sir.

(Tr. 114)

Q. And what did you do with the money?

A. Spent it on this and that.

Q. Did you keep it for yourself or did you give it to your father and Troy?

A. I kept it for myself.

Q. Was it very much?

A. Well, under a hundred dollars.

Q. Was this agreeable with everybody? I'm not trying to be facetious, I'm just trying, so that we have a record I want to know what happened. You did get money for that, and it was all right with everybody that you used the money?

A. Yes, sir.

Q. All right. How many years did that go on, Mr. Blonquist?

A. That I went with them? Not too many years. Maybe one or two years is all.

Q. I see. Now, did it stop because they quit using the beacon? Is that when the arrangement stopped?

A. No, sir. It wasn't.

Q. Why did it stop, then?

A. It stopped because I was one of the first in this county to own a jeep and that's the reason why they hired me, because I would take them up there with a jeep, and later it got so they could go up there in their own equipment.

Q. Well, after that arrangement stopped with respect to the jeep, then, they'd go up in their own equipment?

A. Yes, sir.

Q. They'd drive their own truck up?

(Tr. 115)

A. Yes, sir.

Q. Now, during this period of time did you know that they paid money to Troy Blonquist or your father for the use of that area up there for a beacon?

A. No, sir.

Q. You just don't know, is that answer? Or do you know?

A. Restate your question.

Q. Let me put it—It is a little confusing. It's awkwardly phrased. I'll withdraw it. Mr. Blonquist, with respect to the operation of that beacon, do you know of your own knowledge whether the people who operated that beacon for as long as they did paid anyone for the right to operate that beacon up there?

A. As far as I know. No, only partly.

Q. Well, tell me what you mean by "partly."

A. Well, I understand that there was one small area of land that they had to go over a corner that they paid money on.

Q. And who did they pay that money to?

A. I guess, between the father and Troy.

(Tr. 116)

Q. With respect to the problems you have had up and down that road on your access and so on, this has been periods of time when it's been rainy or snowy, is that correct?

A. Mostly, yes.

Q. And the inclement weather has made the road difficult to get up and down, is that correct?

A. Yes, sir.

Q. And you figured that if the County worked on it they'd gravel it and make it a better road, is that what you figured?

A. Yes, sir. I do. Yes.

(Tr. 118)

Q. Now, Mr. Blonquist, you testified that a lot of sheep men still use that road?

A. Yes, sir.

Q. When was the last time that you remember any sheep people using that road?

(Tr. 119)

A. Last year.

Q. Who was it?

A. Aagard and Newton's.

Q. Well, Newtons have their ranch up there. They have been doing that for many years, to take sheep up to their own ranch, isn't that true?

A. Yes, sir.

- A. Now, you say, Aagard?
- A. Yes, sir.
- Q. And why should he take sheep up there?
- A. Because he leases this Oswald ground.
- Q. So then he had a lease arrangement with Oswalds?—
- A. Yes, sir.
- Q. —who owns property at pretty much the end of that road?
- A. Yes, sir.
- Q. All right. Anybody else?
- A. That haul sheep?
- Q. Right.
- A. No.
- Q. So the only ones then that you know, when you say a lot of sheep men use the road, the lots of sheep men you are talking about is the Newton people who have the end ranch at the end of that road and the Aagards who have a ranch?
- A. Yes, sir.

* * * *

CHARLES ERNEST WILDE

called as a witness was first duly sworn and took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. HANSON:

- Q. All right. Did you ever see anyone else along the road or travelling the road as you drive your cattle over to Weber?
- A. Only sheep men, I think.

Q. Um-hum. Did you ever see anyone fishing up in the area?

A. Yes, sir.

Q. And when would that have been?

A. Well, that was the first part of my life?

Q. I see. Did you ever see any fishermen on the road?

A. I don't think I did.

Q. All right. Do you know of any other uses that anyone has made of that road that you observed during your—

A. State your question again.

Q. Do you know of any other uses that anyone else has made of the road during your lifetime?

A. Oh, yes.

Q. And would you tell the Court what those uses were?

A. I'll try to pull my book out.

Q. Oh, all right.

(Tr. 165)

A. Well, there was the Salmons, and Jim Reed, Swansons, Newtons and Oswalds, and Bill Bagnell.

Q. And where were they? Did they have places up in this area, ranches?

A. Yes, sir.

Q. And would you step over to the board here and indicate where their places were?

A. You might have to help me here on this.

Q. Well, this is the area where George Blonquist's ranch is at the present time, the upper ranch? (Indicating)

- A. Yes. Well, this Jim Reed used to own that ranch.
- Q. I see.
- A. And Salmon, he was up this way some place. (Indicating) And he took off to the north, his ranch did. I couldn't tell you on this map right where it was.
- Q. I see. And where were some of the others located?
- A. Well, now, this here Bagnell, he lived down here where Troy and them lived. (Indicating) Down close.
- Q. Do you mean, down near the State Highway?
- A. Down there by the river, ya.
- Q. Oh, I see. All right. Now, do you know where the Newton property was and the—or where the Newton property is now—the Oswald property?
- A. Now, this is—this is north, on this?
- Q. All right. This is north, up here. (Indicating)
- A. Okay.
- Q. Up this way. (Indicating)
- A. Okay.
- Q. And this is the South Fork Road as it traverses to the south, or to the east and then south. (Indicating)
- (Tr. 166)
- A. Well, the Newton and Oswald—Oswald, he owned a lot of it up towards the—about where we used to take our cattle over the mountains.
- Q. Over to the Weber.
- A. Into the Weber.

Q. I see.

A. And Newton, now, he was on the northwest side of it.

Q. Of where you used to take your cattle over the Weber?

A. Yes, sir.

Q. All right. And was that above the Salmon Ranch?

A. That was above the Salmon Ranch.

Q. That was beyond the Salmon Ranch?

A. That was beyond.

Q. As you were travelling up the Chalk Creek Road?

A. Yes, sir.

Q. All right. Do you want to resume the stand? Now, do you know what those ranchers used the road for?

A. Well, the Salmons used to run cattle, and the Reeds used to run cattle, and the Bagnells used to run cattle.

Q. I see.

A. And the others ran sheep.

Q. All right. Now, do you know whether or not any of those ranchers used to take their cattle over into the Weber?

A. No, sir.

Q. They didn't?

A. We was the only ones.

Q. I see. When was the last time you were on

(Tr. 167)

that road, Mr. Wilde?

A. Well, I guess the last time I was on there was about sixty years ago, as I come over from the Weber.

Q. Well, that would be back in about 1910?

A. Somewhere along there.

Q. Now, you indicated you'd used the road for about 25 years?

A. Yes, sir.

Q. All right. And you were born?—

A. State that over again. I think it was somewhere about 45 or 50 years ago that I was over it last.

Q. I see. All right. In the 1920's?

A. Yes, sir.

Q. Okay. Do you remember—You don't remember the exact year, then?

A. No, sir. I don't.

Q. But do you remember that you did use the road for 25 years or thereabouts?

A. Somewhere along there, between 20, 25.

Q. And that was the first time you were on the road you were about eleven years of age?

A. That's right.

Q. I see. Do you know who it was that improved that road?

A. No, sir. I don't.

Q. Do you know whether or not other people other ranchers at the time that you were using the road had to ask permission to use it?

A. No, sir. I don't know. I have no idea.

CROSS EXAMINATION

BY MR. CAYIAS:

(Tr. 171)

Q. You knew their father very well?

A. He was a father to me.

Q. And what was this—When you say he was a father to you, Ern, was there a close relationship between you and him?

A. No, sir. Only sociality.

(Tr. 172)

Q. And were you good friends?

A. Wonderful friends. I might state this, he was the president of the bank. That's one reason how we come to get acquainted well.

Q. I see. Now, when you talked to him, did you ever talk to him about taking your cattle up the South Fork?

A. No, sir.

Q. Did you ever talk to him about it at all?

A. No, sir.

Q. Do you think that he was a good enough friend that you didn't have to talk about taking the cattle?

A. That's right.

MR. CHARLIER: We'll object to that, your Honor, what he thinks. I move that it be stricken.

MR. CAYIAS: It's cross examination, your Honor.

THE COURT: Yes. It may remain.

Q. (By Mr. Cayias) How long had you known, Ern

—I'm just trying to find out facts many years ago.
—The father of Troy Blonquist and George Blonquist?

A. All my life.

Q. And what was his first name?

A. What was his name?

Q. What was his first name?

A. His first name was Alfred.

Q. Alfred. And he was a good friend of yours?

A. You bet, he was.

Q. And so you felt that because he was a good friend of yours you never had to worry about asking him to take the cattle up the South Fork?

(Tr. 173)

A. That's right.

Q. I see.

A. I might state one thing. Their cattle used to come over on to our country. That's one reason we was good friends. We used to take care of them.

Q. Used to take care of each other?

A. That's right.

Q. And take care of each other's cattle?

A. That's right.

Q. This was good neighbors, wasn't it?

A. Good neighbors. Right.

* * * *

ERNEST CHAPPEL

called as a witness was first duly sworn and took the witness stand and testified as follows:

CROSS EXAMINATION

BY MR. CAYIAS:

(Tr| 259)

Q. If I understand you correctly then, Mr. Chappel, when you took office as commissioner these maps were already in existence?

A. That's right.

Q. And they — the particular areas in here that are identified as county roads, you accepted them from the map?

A. That's right.

Q. Now, did you ever have any conversations with Troy Blonquist, George Blonquist about whether or not it was a county road?

A. Oh, yes.

Q. When did you do that?

A. I don't remember the date, but on one occasion the landowners or part of the landowners come to a county commissioners meeting with the idea that this road was not a county road. And the County, in order to clear it up, they suggested, I believe, at that time that the County should delete the road from the map and abandon it. I believe that was the word they used, "should abandon it."

Q. When was that, Mr. Chappel?

A. What year? I couldn't say what year that was. I'd have to hunt the Record for me, but—

Q. But it was during your term of office, though?

(Tr. 260)

A. Yes. I would think that would be in '57, but I just—it may, it may not be right.

* * * *

DON WRIGHT

called as a witness was first duly sworn and took the witness stand and testified as follows:

CROSS EXAMINATION

BY MR. CAYIAS:

(Tr. 268)

Q. And, Mr. Wright, the only reason that you're really interested in the law suit and you're here today is that you want the County to help you moneywise with a road up to your property, isn't that right?

A. Yes.

* * * *

CARLOS L. PORTER

called as a witness was first duly sworn and took the witness stand and testified as follows:

CROSS EXAMINATION

BY MR. CAYIAS:

(Tr. 319)

Q. During the period of time that you have been Commissioner do you know of any persons other than the persons who live up in that area, the Newtons, the Oswalds, the Blonquists, Judds, or the other people who have access to that country for their own land, do you know of anyone else who has ever used that road as a thoroughfare to some other part of the country?

A. Don Wright and his family used that road pretty near every day.

Q. And that would be up to his property?

A. That's right.

Q. What I'm talking about, Mr. Porter, is anyone other than the people who own land up in that country.

A. The only one I know is the Aagards and the Newtons.

(Tr. 320)

Q. And, of course, the Newtons owned land up there?

A. That's right.

Q. And Aagards owned land, and Oswalds?

A. I think that's right.

Q. Do you know of anyone else?

A. Not to my knowledge.

Q. During your ten years as Commissioner, Mr. Porter, you have come to know the County pretty well, haven't you?

A. Yes, sir.

Q. And that's part of your job and your duty as a Commissioner?

A. That's right.

Q. To know where the roads are and where your problems might—?

A. That's right.

Q. And you know of no one other than what you've told me the names you have told me that have traversed that road above the Newton Gate?

A. I know there's a lot of deer hunters that's been up there. I haven't stood there and tried to see how many people drive it.

Q. Do you know of anyone regularly who has used that

road as a thoroughfare to some other location in the area other than the landowners?

A. I'm not aware there is anyone.

* * * *

GEORGE A. ROBINSON

called as a witness was first duly sworn and took the witness stand and testified as follows:

CROSS EXAMINATION

BY MR. CAYIAS:

(Tr. 356)

Q. But do you know of any regular—I'd better phrase that a little differently. Do you know of your own knowledge of any group of people or any trades people or anything that used that South Fork of Chalk Creek as a thoroughfare to go to someplace else all the time?

A. Well, it's kind of out of your way. It was not done much, if any, that I knew of.

Q. Actually, Mr. Robinson, wasn't the South Fork of Chalk Creek Road used primarily for access by the landowners in that area?

A. Pretty much.

Q. In other words, the Newtons, the Blonquists, the Oswalds, the other people who owned property off from the side there, they were the ones that used the road?

A. They were principally the ones that travelled it all the time.

RECROSS EXAMINATION

BY MR. CAYIAS:

(Tr. 359)

MR. HANSON: That's all, your Honor. We'd like just a few moments, and probably we could do that over the Noon recess, just to gather things together, but (Tr. 360)

I'm prepared to rest. There are a couple of things that I want to introduce here that are official records, and maybe Bill could be looking at those. I have a plat that's certified. Would you mark this, Clerk? A plat that's certified by the Chief, Branch of Public Services and Records at the Salt Lake City office of the Bureau of Land Management. It bears his certificate and seal, which purports to be a plat of the township wherein this property is located. It is the original survey that—of the area, certified here January 9, 1875.

THE COURT: 1875?

MR. HANSON: Yes, your Honor. That's when it was surveyed and platted. Would you also mark those please?

THE CLERK: Do you want these individually?

MR. HANSON: No. As one exhibit will be fine.

MR. CHARLIER: What's the number of that map?

MR. HANSON: That is Thirty-eight. This is the area that we are involved in here, South Fork.

THE COURT: Are there any roads indicated on it?

MR. HANSON: Yes, there are, your Honor. Roads indicated here. (Indicating) Not extending the entire length of that road, but it would indicate that a road goes up into Section Nine up to the end of Section Nine, which would be about this area right here (Indicating) at that time.

* * * *

ARCHIE PACE

called as a witness was first duly sworn and took the witness stand and testified as follows:

CROSS EXAMINATION

BY MR. CHARLIER:

(Tr. 381)

Q. Mr. Pace, these times you went up the South Fork Road and found the gate not open, the gate was closed?

A. Yes.

Q. The gate we are referring to?

A. Sometimes was open and sometimes it was closed.

Q. Did you ever stop and ask permission to go up—further up the road?

A. No, sir.

Q. All right. Did you as a Commissioner authorize any expenditure of funds on this South Fork Road, Mr. Pace?

A. I think that we passed some funds in about 1952 on that road.

Q. The equipment of the County was up there every year during your period, wasn't it?

A. No, not to my knowledge?

Q. It could have been, not to your knowledge?

A. It could have been. Yes.

Q. But you did authorize funds to be spent on that road.

A. Yes, that's right. But not as a County road.

Q. Not as a County road?

A. Not as a County road. We have spent money on other roads, too, private roads.

Q. What do you use these maps for? Weren't they (Tr. 382)

used to determine County roads?

A. Yes, that's what they was.

Q. And you used that map also?

A. Yes.

Q. In your district?

A. Yes, sir.

Q. Tell us, Mr. Pace, when did you ever expend money on a private road using County equipment?

A. Well, there's been quite a few. I just don't like to mention, but there has been some spent on private roads.

Q. Well, tell us the one you know of your knowledge.

A. Well, I think farther up there was roads. There was also gravel put on. There isn't too much up in the South end, but there's been a lot spent on private roads in the North end of the County.

Q. Do you know of your own knowledge of any, specifically?

A. Yes.

Q. Did you authorize that, or what?

A. No, I didn't.

Q. Were you aware of it?

A. I was after it was all done.

Q. Has there ever been any County road equipment used or was there in your district while you were a Commissioner?

A. Yes.

JUSTINE BLONQUIST

called as a witness was first duly sworn and took the witness stand and testified as follows:

CROSS EXAMINATION

BY MR. CAYIAS:

(Tr. 386)

Q. Now, Mr. Blonquist, have you traversed and gone up the South Fork of the Chalk Creek Road ever since you were a youngster?

A. Pretty much so, yes.

Q. When was the first time that you could remember being up on that road?

A. Oh, I was pretty young as that time when it would be. Used to go up what we call the Mouth of Buck Hollow fishing, or over to Fish Creek.

Q. And have you had occasion to work up in there for your father?

A. Just on our own property.

Q. I see. Now, Mr. Blonquist, during the period of time that you have resided there have you had occasion to observe the gate that's on the Blonquist property?

A. Yes, I have.

Q. Now, that's the Troy—the Blonquist gate, whose
(Tr. 387)

property is that gate on?

A. That's on Troy Blonquist's property.

Q. And how long do you remember that there's been a gate there?

A. Oh, I would say my recollection would go back to I was about ten years old, anyhow.

Q. And do you ever remember there being a sign on there?

A. Yes, there was.

Q. And do you—What did the sign say?

A. No trespassing.

Q. And how long ago can you remember there being a no trespassing sign on that gate?

A. Since I was about ten and when I recollect the gate.

Q. Now, has it been the same sign over the years?

A. No.

Q. How long has there—Let me ask you this: Was there a sign on the gate on the day that they came out and put the cattle guard in?

A. Yes, there was.

Q. And what did that sign say?

A. It's "No Trespassing, Private Property."

(Tr. 392)

Q. Now, over the years, Mr. Blonquist, have you had occasion to work on this road?

A. Yes.

Q. And when did you first start working on the road?

A. I've got some notes here that—if it's permissible to use.

Q. Refer to them.

A. In September 1965 I bladed the road from Choke-cherry Hollow down to the gate with a bulldozer

(Tr. 393)

owned by L. C. Construction.

Q. And did you do the work?

A. Yes.

Q. And have you worked on that road on any other occasion?

A. Yes.

MR. HANSON: Just a minute. Your Honor, we'd object to this on the grounds that it's irrelevant and immaterial. Whether or not he did work on the road certainly has no bearing as to — and doesn't go to the proof as to whether or not it is a County road.

MR. CAYIAS: Your Honor,—well, go ahead Gene. I'm sorry.

MR. HANSON: Well, certainly anyone might do work on a public road or—and it still would not go to the issue as to whether or not it is a public road.

THE COURT: It probably enforces his opinion that it's a private road and not a public road. You may proceed. The objection will be overruled.

MR. CAYIAS: Thank you.

Q. (By Mr. Cayias) Did you ever work on a road other than that, Mr. Blonquist?

A. Oh, in September 1968 I bladed the road from the gate to Smith's Crossing with a Mountain Fuel cat, a D-6.

Q. Was that tractor loaned to you, is that?

A. Right.

Q. Now, have you ever worked on the road other than that?

A. I — On September 11th I bladed the road from Smith's Crossing to Chokecherry Hollow with the (Tr. 394)

same caterpillar.

MR. HANSON: What year?

THE WITNESS: 1968.

THE COURT: Mountain Fuel?

THE WITNESS: Yes.

Q. (By Mr. Cayias) How did you obtain the use of that tractor?

MR. HANSON: Well, your Honor, object to this as being irrelevant.

MR. CAYIAS: Well, the only reason, the Court inquired about Mountain Fuel, and if the Court has some concern?

THE COURT: Well, I pay bills to Mountain Fuel all the time. And are they loaning their equipment for use on private lands, I wonder? It's not relevant to our inquiry, anyway.

Q. (By Mr. Cayias) When else did you work on the road, Mr. Blonquist?

A. September 22nd we brought the Mountain Fuel cat—

MR. HANSON: What year?

THE WITNESS: '68, same year.

A. —down to Smith's Crossing. We bladed down to Chokecherry Hollow, back down to Smith's Crossing again. And we bladed with it just intermit-

tently, and within the two months period that the Mountain Fuel had the bulldozer in the area.

Q. Now, did you do any work on the road prior to that time, Mr. Blonquist, either you or your brother?

A. We've bladed the road with our own private little tractor and one of these little terracer blades at times.

(Tr. 395)

A. Yes.

Q. And how often have you done that?

A. Oh, when the roads would get rutty enough or bad enough that we figured that we could try and fill up a few of the ruts with our tractors.

Q. Now, how far would you grade the road?

A. We would go to, oh, about to Chokecherry Hollow with that, yes. Because the roads from there on up were pretty well gravelled, a good gravel base, and this—this way on down was to the gates was sort of a clay base soft base material.

Q. What is the earliest time that you can remember, Mr. Blonquist, of having worked on the road either by yourself or with other members of your family?

A. Oh, I'd—We purchased our first tractor in 1945, and I borrowed a blade to put on to it. And at that time I used to drag the road with that blade.

Q. I see. Would you drag the work on the road just on the property that you and your father owned or that your father owned, I should say?

A. Well, at that late date back in 1945 we were still in together with George.

Q. So how much of the road would you grade?

A. Areas that needed it at the worst, you know, bad things.

Q. How far up the road would you grade?

A. Really, I've hit bad spots on the road all the way through. In the spring of the year I'd go and grade off some of the bad spots.

Q. Would it be on the property owned by Troy and (Tr. 396)

George?

A. Yes.

Q. I see. Did you ever work on the road or do anything to repair the road prior to 1945?

A. Well, I didn't personally.

Q. Do you know of anyone else in your family that did?

A. Yes.

Q. Who?

A. My father.

Q. And did you see him do it.

A. I used to go with him, yes.

Q. And when was that?

A. Well, we'd hook a team on to a drag and drag it up and down the road. I don't remember the years, but that was when, you know, we used to do all our work with horses.

Q. How old were you then, Mr. Blonquist?

A. Maybe ten, twelve.

Q. Now, Mr. Blonquist, have you ever hired people to do work on the road?

A. Yes, we have.

Q. And who have you hired to work on the road?

A. We have hired Gary Construction, we have hired C. A. Crittenden, and at different—Well, those were the only two, I believe.

Q. I see. Have you ever hired people to remove or take snow off the road?

A. Yes.

Q. And who have you hired to do that?

A. We hired C. A. Crittenden.

(Tr. 397)

Q. Now, Mr. Blonquist, have you been present here all the time that this matter's been tried?

A. Yes, I have.

Q. Have you heard the testimony about the bridge at Smith's Crossing?

A. Yes.

Q. And are you familiar with that area?

A. Yes, I am.

Q. And is that the bridge that goes up Elk Horn Creek?

A. Yes.

Q. And did you do any work on that bridge?

A. Yes, I did.

Q. And what did you do?

A. I went up and helped Sam—Sam Smith install the forms and remove the forms, and help lay the timbers, the stringers, on the bridge.

Q. Now, was there any discussion at that time about the County doing it?

A. No.

Q. Did you ever see any County equipment up there while you worked on the bridge?

A. No.

Q. How many days did it take you to put the bridge in?

A. I worked two days helping put the forms in, one day helping to take them out, and another weekend we put the stringers across. We let the cement cure.

Q. Now, who all worked on that bridge?

A. In my remembering back, there was me, Sam Smith, Ward Wright, J. Duncan, Darrell Smith, and at times Don would come.

Q. Now, was there ever any information given to you that the County was doing it?

A. No.

Q. Now, Br. Blonquist, have you—there was some testimony on direct examination as far as Mr. Hanson is concerned that you were paid by the County for some work.

A. Yes.

Q. And what was that for?

A. That was for working on the bridge there by my dad's house over at the Chalk Creek.

A. And would that be the same thing that they paid your dad for?

A. I believe so.

Q. Now, Mr. Blonquist, over the years have you had occasion to be interested in or know about charging deer hunters to go up into that country?

A. Yes, sir.

Q. And when did that start?

A. It started approximately 25 years ago, 30.

Q. Prior to that time would deer hunters go up there?
(Tr. 399)

A. Well, like I say, that's 30 years ago. I'd only be 12 years old. I wasn't really interested too much in deer hunting at that time. I never paid that much attention.

Q. Did you ever participate in permits and so on for deer hunters?

A. In the selling of them?

Q. (Mr. Cayias nodded his head).

A. I never did participate in the selling of them. I did check at the gate.

Q. And who would handle the selling of the permits?

A. My mother and Ethel.

Q. Now, when you say Ethel you mean—?

A. Mrs. Blonquist. Mrs. George Blonquist.

Q. George Blonquist's wife?

A. Yes.

Q. And did they receive the money jointly?

A. Yes.

Q. And was this in effect over a period of 25 years?

A. I believe so, yes.

Q. How long did you jointly operate the charge for deer hunters?

A. Up until 1967.

Q. And since that time are there still charges made for deer hunters?

A. Yes.

Q. And how does it operate since '67?

A. George and Ethel sell their permits, and we sell our permits.

Q. Now, with respect to the Chalk Creek—is the Chalk Creek Users Association? What is the name of that (Tr. 400)

organization?

A. Echo-Chalk Creek.

Q. And where does their operation and participation go into effect?

A. They set up a checking station right at the Newton gate.

Q. And you honor their permits?

A. Yes.

Q. To go through your property, that is?

A. Right.

Q. Okay. Now, over the years, Mr. Blonquist, have you had occasion when people would ask you to go up there?

A. Yes.

Q. And who would they be?

A. Oh, different fishermen, or someone wanting to go up to visit Don's property or George's property.

Q. And has this happened very many times?

A. Yes.

Q. And what was generally your reaction as far as a consent is concerned?

A. There was never anyone turned away.

Q. And during the period of time that you can remember, Mr. Blonquist, have there been sheep and cattle go up that road?

A. Yes.

Q. And who did those sheep and cattle belong to?

A. Oswalds used to trail up there, Newtons used to trail, Probst, and as already been stated Axel Blonquist used to drive his cattle to his property.

Q. Now, would there be anybody use that South Fork (Tr. 401)

of the Chalk Creek Road for trailing cattle or sheep who were not landowners in that area?

A. None that I know of.

Q. Did you ever know of any such person as long as you have any recollection?

A. No, I don't.

* * * *

TROY BLONQUIST

called as a witness was first duly sworn and took the witness stand and testified as follows:

CROSS EXAMINATION

BY MR. CAYIAS:

(Tr. 457)

Q. Mr. Troy, calling your attention to Exhibit One, that's on the board here. And for the purpose of this

- law suit, are you familiar with that map? Could you look at it and testify from it?
- A. Yes, I'm familiar with that map.
- Q. And are you familiar with the area shown on the map as the Blonquist Gate?
- A. Yes.
- Q. And are you familiar with the area identified there as the Newton Gate?
- A. Yes.
- Q. All right. Now, Mr. Blonquist, do you know how long that gate has been in the area in the place where it is now? I mean how long that gate's been in place?
- A. The house there?
- Q. Right. The Blonquist gate. How long has there been a gate there?
- A. That's been in there about—That's been there 48 or 50 years.
- Q. Did you have anything to do with installing it?
- A. Yes, I did.
- Q. What did you do to install it?
- A. I helped my brother and the hired man. We had put the gate up.
- Q. I see. Now, Mr. Blonquist, why did you put that gate up there?
- A. To keep the cattle up there.
- Q. Now, Mr. Blonquist, was there ever a sign on that gate?
- A. Yes, there was.
- Q. When did you put the sign on the gate?

A. There has been a sign on that gate for 30 or 40 years.

Q. And who put the sign on the gate the first time?

A. My dad put the sign on the gate the first time. "Private Property."

Q. And do you remember when that was, the year?

A. No, I don't know the year. I never did keep track of the years. I never kept track of no years.

Q. Well, now, has there ever been a period of time from then up to the present time, Mr. Blonquist, when there hasn't been a sign on the gate?

A. No. Only once, George took the one sign off and I put the other one back on.

Q. Now, when did that happen?

A. Just before this term come up here about moving the gate and that.

(Tr. 459)

Q. Would that be in the last two or three years or—?

A. In the last five or six years.

Q. Last five or six years. Now, Mr. Blonquist, did George Blonquist ever have anything to do with putting a sign up on the gate?

A. Yes, he did. We was in together at that time. We put the sign up together.

Q. I see. Now, where did you place the sign when you put it together, when you say you put?

A. Right where this one is now.

Q. Was that on the gate or to the side, or where was it?

A. On the gate.

Q. And why did you do this? Did you?

A. To keep the people from coming up in there, everybody out of there. There was a lot of people out of there at that time.

(Tr. 468)

Q. I see. Now, Mr. Blonquist, did you ever work on the road? Did you ever do work fixing the road?

A. At the South Fork, yes, I do it work on the road after my dad bought the place.

Q. When was the first time you did that?

A. I don't recollect the year or nothing, but I remember working on that road.

Q. And do you remember how old you were the first time you worked on it?

A. I was about fourteen, I guess.

Q. And do you remember what you did?

A. Yes.

(Tr. 469)

Q. What did you do?

A. I drove a grader.

Q. And anybody help you?

A. George.

Q. And what did you do?

A. We pulled a grader with a team.

Q. And whereabouts on the road?

A. When the ranch up to the ridge place up to George's property, where he calls his property.

Q. Would that be up to where the cattle guard is now?

A. Above it.

Q. Above the cattle guard?

A. Ya.

Q. Now, did you ever do work after that on the road?

A. Yes.

Q. How often would you work on the road, Mr. Blonquist?

A. Well, we'd work there every once in a while, clean the road off. And I'll tell you on this grader work tell you how you know all about the road. And I'll tell you the teams we used on that and their names.

Q. Well, tell me.

A. Well, the leader team was called Dan and Barney, and the Wheelers was called Flyin'—

MR. CHARLIER: Your Honor, we are going to object to this. I see no materiality.

MR. CAYIAS: It goes to the credibility, your Honor, as far as his memory is concerned.

Q. (By Mr. Cayias) Now, Mr. Blonquist, how often would you work on that road?

(Tr. 470)

A. Dad would have to go up and clean the road every once in a while and clear it off. And my dad—At one time Carl Heston had an old horse grader, and he wanted to ditcher. And my dad had an old ditcher up there, and he traded this old ditcher for this old horse grader. And I can show you the blades off of this old horse grader right up there now.

Q. Mr. Blonquist, did you use it?

A. Yes.

Q. How often did you use it?

A. Every time the roads got bad and needed fixing up we'd go up with a team on it and go up and grade it. It was just a two horse grader.

Q. Would you do this once a year, twice a year? How often?

A. Maybe twice or three times a year.

Q. Did you do it alone?

A. I didn't take anybody else. Just get on the seat and away you go.

Q. Now, how long did you do this? How many years?

A. Oh, Dad done that for years.

Q. How long did you do it?

A. I done it for a long, long time. And they were my dad's up there on the ranch.

(Tr. 476)

Q. Now, are you familiar with that country up to where the Newtons have their ranch and up to where the Oswalds have their ranch?

A. Yes.

Q. Have you been up through to Oswalds is all?

A. I have been up there.

Q. Now is there a thoroughfare through that country?

A. No.

Q. Are there any regularly gravelled roads up through that country?

A. Not that I know of any kind of road up in there at all. The only road I know is the—Les' cabin.

(Tr. 477)

Q. And are there—During the period of time that you have resided there have you ever noticed any party or person that regularly went up and down that area except the adjacent landowners?

A. No.

Q. Now, Mr. Blonquist, you have been present during all the time we have been trying this matter, haven't you?

A. Ya.

Q. And you have heard testimony with respect to the beacon light?

A. Yes.

Q. And where is that beacon light, on your property?

A. No.

Q. Whose property is it on?

A. It was on Fenner's property at that time.

Q. Now does that beacon light still function?

A. No.

Q. When did it go out of service?

A. Well, I don't know just when it went out of service. I couldn't tell you that, when it went out.

Q. Well, approximately, Mr. Blonquist. What's your best judgment or recollection?

A. One feller told us it went out in '35, but I believe it was longer than that. But I'll say '35.

REDIRECT EXAMINATION

BY MR. CAYIAS:

Q. Mr. Blonquist, are there any public lands adjoining the South Fork of the Chalk Creek Road?

- A. Public land? It's all public.
- Q. Whereabouts?
- A. There's Newtons and Oswalds is public.
- Q. Well, don't they own that ground?
- (Tr. 509)
- A. Yes, it's public ground, ain't it? It's private ground.
- Q. Do you understand what I mean by public as against private ground?
- A. Yes. Private ground.
- Q. Well now, is there any public—Is there any ground up there that's owned by the State adjoining the South Fork Road? Does the State own any ground?
- A. No. The state don't own no ground up in there.
- Q. Does the Federal Government own any ground that adjoins? And I'm talking about the South Fork of the Chalk Creek Road that appears on this exhibit. (Indicating)
- A. I don't know of any government that owns anything on there either.
- Q. Does any city or county own any ground up there?
- A. No. No.
- Q. How far away, Mr. Blonquist, would you go before you reached any government forest or you reached any state ground or any ground that's owned by any government agency?
- A. Oh, you'd have to go up there, oh, clean over on to the other side of the Weber. That ground.
- Q. And how far away would that be from this area, in miles, and just roughly speaking?

A. It would be thirty, forty miles.

Q. I see. All right. Now, Mr. Blonquist, did you have an arrangement with the Chalk Creek Users Association to let those permit holders up through your land?

A. With the Association, you mean?

Q. Yes.

(Tr. 510)

A. Well, you see, they had a right to go up that.

MR. HANSON: Just a minute. Your Honor—Just a minute. Going to have to object to this leading and suggestive arrangement. It's impossible to—

THE COURT: It is leading.

MR. CAYIAS: Very good, your Honor.

THE COURT: The last question I think was not leading. Did he have any arrangements?

MR. CAYIAS: I certainly didn't intend it to be, your Honor. I was just hurrying the matter along.

Q. (By Mr. Cayias) Mr. Blonquist, are you familiar with the Chalk Creek Users Association? Do you know who they are?

A. Use the road?

Q. No. The Chalk Creek—You testified in response to Mr. Hanson's questions that the people who had permits from the Chalk Creek Users Association. Is that the name of the concern?

A. Users—

Q. Just a minute. I can—Now, are you familiar with, Mr. Blonquist, the Echo-Chalk Creek Range Owners Protective Association?

A. The people that owns in it, you mean?

Q. Yes.

A. No, I'm not familiar with them fellers.

Q. Are you familiar with the land that they control above the Newton Gate?

A. Oh, yes.

Q. Now, what did you and that association do with
(Tr. 511)

respect to any joint use of your lands?

MR. HANSON: Just a minute. Your Honor, this calls for hearsay. There's no chance to cross examine, what did they do with respect to their lands.

THE COURT: If he knows what they did, he may testify. He may proceed.

(WHEREUPON, the reporter read back the last question)

Q. (By Mr. Cayias) Do you understand the question, Mr. Blonquist?

A. No, I don't Bill.

Q. Well, let me phrase it a little differently. How long has that association been in existence?

A. I couldn't tell you how long the Association's been in business.

Q. Well, what's your best recollection? What's your best recollection, Mr. Blonquist, about this sign that appears on Defendants' Exhibit Number Forty-one? How long has that sign been up there?

A. Well, you've sure got me there.

Q. Now, Mr. Blonquist, just your best judgment.

What is your best judgment with respect to how long that sign's been there?

A. It's been there close to twenty years, I guess, the Association, I think.

Q. Is that your best judgment?

A. Yes, it is.

Q. All right. Now, Mr. Blonquist, do you know if that association sells permits during the deer season?

A. Yes.

Q. And are you familiar with the little tags that they give out to hunters to use that area?

A. They give a little tag, and they put it in their hat.

Q. Now, do you honor those tags through your gate?

A. The association's?

Q. Yes.

A. We used to, but then they have a man go up there now and stay right by the gate and honor them.

Q. Do you let the owners of those permits go through the South Fork of Chalk Creek Road to get up into the Newton Gate?

A. Yes. To get their permit to go on hunting, yes.

Q. I see.

A. Some of them buy them downtown here.

Q. Thank you. How long has that honoring of permits gone on? How long have you been doing that?

A. Have we been doing it?

Q. Um-hum.

A. For the last 22 years.

Q. Now, Mr. Blonquist, just a matter of clarification. How many permits would you and George Blonquist sell in one year, in one year ordinarily, to allow them to hunt on your lands, approximately? And if you know.

A. Well, I don't know whether they ever did keep track of that or not, how many permits we have sold.

Q. Well, do you think it would be fifty, a hundred? What would just be—

A. Maybe a hundred and fifty.

Q. I see. Now, Mr. Blonquist, do you sell permits at any other time during the ten days of deer season?

A. No.

Q. So when deer hunters go up there they are only up there during the ten days of deer season?

A. Ten days.

* * * *

KENNETH BLONQUIST

called as a witness was first duly sworn and took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. CAYIAS:

(Tr. 518)

Q. Now, that road, Mr. Blonquist, are there any roads that extend from that road into the South Fork of Chalk Creek that anyone could travel on? Anyone?

A. Well, if you did you'd be asking for an awful lot of trouble.

Q. Why?

A. Because the land on both sides of the road is private

property. And there's gates across the road on these roads that go out into these areas, and they are all locked. And if you go through a locked gate, I'm afraid you're looking for trouble. That's all.

Q. How many roads are there, would you say, Mr. Blonquist, from the area identified as the area where the Blonquist Gate is and up along this road to Evanston that extend south into the area of the South Fork of Chalk Creek? Are there any roads?

A. I believe you lost me on that one.

Q. Well, are there any roads, Mr. Blonquist, that extend from the road that you're familiar now oriented on the map that this road goes to Evanston, the one we are talking about?

(Tr. 519)

A. Right.

Q. Now, are there any roads from where your dad lives up in this area generally proceeding east that extend south into the South Fork of Chalk Creek? (Indicating) Any roads that run from that road over to the South Fork of Chalk Creek?

A. Only private roads. Roads made by private landowners.

Q. How many roads are there, would you say, in that area?

A. Well, crimony, I don't know how many roads there is in there, actually.

Q. Is there a lot of them or just three or four, or approximately?

A. Well, it's just roads that the landowners have built.

* * * *

RONALD ROBINSON

called as a witness was first duly sworn and took the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. CAYIAS:

(Tr. 549)

Q. Um-hum. Now, Sheriff, is there any recognized or regular travelled route up through the South Fork of Chalk Creek that you'd have to take any precautions for with respect to watching traffic or gearing traffic or anything like that?

A. No, sir.

Q. Isn't it true, Sheriff, that the South Fork of Chalk Creek Road is a road that's travelled primarily by the landowners in that area.

A. Primarily. Other than the hunting season.

Q. Right. Now, during the deer season there are a number of people that go up there to hunt, isn't that true?

A. Yes, sir.

Q. Now, Sheriff, you're familiar with that matter of the charging the fees to hunt up in that country, aren't you?

A. Yes, sir.

Q. Have you been up there during the deer season to see that the Blonquist people have charged people to go up there and hunt?

A. I've never asked them about it. I think it's just common knowledge that they did charge. I don't know any of the details.

Q. Now, are you familiar with the Echo-Chalk Creek—

Are you familiar with the Echo-Chalk Creek Range Owners Protective Association?

A. Yes, sir.

Q. And do you know how long they have been in existence?

(Tr. 550)

A. No, sir. Not exactly. Ever since—

Q. Have they been in existence as long as you have been sheriff?

A. Yes.

Q. And their range—Is that protective association is put together for the matter of protecting the range and governing and controlling deer hunters, isn't that the primary purpose of it?

A. Yes, sir.

Q. And their area adjoins right on the Blonquist property, George and Troy Blonquist, immediately adjoins George Blonquist's property, doesn't it?

A. Yes, sir.

Q. And do you know that they charge people to go up there and hunt?

A. Yes, sir.

Q. Do you know that of your own—don't you?

A. Yes, sir.

Q. Now, Sheriff, do you know of your own knowledge, and I assume that you're familiar with the entire county as far as which ground is public and which is private pretty much?

A. Pretty much. There's some I don't.

Q. Now, is there any country up in this area, and I'm talking now about the area—Are you oriented, Sheriff, about where the Blonquist people live here? (Indicating)

A. Yes, sir.

Q. Now, is there any country up through here that goes up through the South Fork of Chalk Creek Road and up to where it hits the Wasatch National Forest; is there any

(Tr. 551)

country down there that's owned by the Federal Government?

A. I have never been in that country, but to my knowledge there isn't.

Q. Now, is there any ground up there owned by the County, that you know of?

A. Other than the road, I don't know anything in question.

Q. Excuse me, Sheriff. Do you know of any public owned ground up in that entire watershed for the South Fork of Chalk Creek Road?

A. No, I don't know of any.

Q. Now, Sheriff, if there was any County owned ground up in that area you'd know about it, wouldn't you, as part of your duties as sheriff?

A. Not necessarily. The only time that I come in contact with the County owns is like a lot in Park City, you know, that comes up for sale, once in a while. It used to. It doesn't any more. And I wouldn't know about that. And they could have the property there that I wouldn't know about. But none that I do know about.

Q. Sheriff, during the summertime did you have occasion to go up there as a matter of patrolling your County in connection with your official duties?

A. Only when I'm called, like I've stated before.

Q. Would you say that you get up there once a year?

A. No.

Q. You don't even get up there that often?

A. No, sir.

Q. And as part of your patrol duties why wouldn't you go up there during the summertime?

(Tr. 552)

A. Well, I haven't got that many men to partol all parts of this county, only where the trouble spots are. And there's lots of places like South Fork that we never get into.

Q. I see. Now, are you familiar, Sheriff, with the terrain, I mean, the physical features of the area and the South Fork Road, whether it's rocky, meadow, or whatever kind of soil? Are you familiar with that?

A. Yes.

THE COURT: I wonder if counsel couldn't stipulate on those matters and save some time.

MR. HANSON: We certainly would, your Honor.

MR. CAYIAS: Fine. I propose the stipulation, your Honor, that for the Record that the drainage for the South Fork of the Chalk Creek and that area is mountainous country, that it's primarily range ground, that it's rough terrain, that there are one—there is one meadow area up there, on George Blonquist's property, but it's half a mile off the road on

the other side of a little valley, and that there is no—well, let's see. Can we stipulate that far?

MR. HANSON: Well, I'd like to add to the Record that prior to commencing this law suit, based upon stipulation of counsel, the Court in company with counsel had the sheriff drive him across the area, at our request, at the request of counsel.

MR. CAYIAS: Correct.

MR. HANSON: Up to the area which has been designated as the Newton Gate. And as far as I'm (Tr. 553)

concerned, the Court can take judicial notice of what the Court observed there as the type of land it was.

THE COURT: However, we can't put that in the Record so the Supreme Court can read it.

MR. HANSON: I suppose that's true. I think we'd have to add to this stipulation, your Honor, that there are other areas of meadow as we rode up that.

MR. CAYIAS: Not on the road, though, Gene.

MR. HANSON: Little valley—Well, Troy's land, as I recall, there were areas of meadow close by.

THE COURT: It's my recollection that there were areas of meadow as we went up. But essentially it's grazing land.

MR. HANSON: Oh, yes.

THE COURT: Rough grazing land.

MR. HANSON: We would stipulate to that, your Honor.

* * * *

(Tr. 567)

MR. CAYIAS: And the stipulation would be,

your Honor, that if we called E. Vine, who lives at Hooper, Utah, as our witness he would appear in Court and testify that he has hunted deer in the area that we are concerned about for 22 years, that he has paid the Blonquist people a fee each one of those 22 years for hunting in the Blonquist area. And Counsel indicated that he would stipulate. Now, if there's any correction to that, Mr. Hanson?

MR. HANSON: Just in one detail. That would be that he has paid this fee for hunting on the Blonquist property instead of in the Blonquist area.

MR. CAYIAS: Right. And that would be both Troy and George.

MR. HANSON: Yes.

THE COURT: It may be so stipulated.

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