

decided **guidance:** case examinations

Testimony

According to Black's Law Dictionary evidence is "Something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact." Black's also defines a fact as "Something that actually exists; an aspect of reality. Facts include not just tangible things, actual occurrences, and relationships, but also states of mind such as intentions and opinions."

Your State has granted you a license to recover evidence, analyze facts, and form opinions regarding the location of titled land. Your opinion is very strong when it harmonizes evidence and fact. So much so that it naturally garners public faith and respect. Conversely an opinion abrasive to evidence and fact offers great opportunity for dispute and challenges in court.

A case in point is *Harris v. Robertson* 813 S.W.2d 252 306 Ark. 258. The Arkansas Supreme Court was asked to review a lower Court decision founded on a finding of fact. Long story short: the lower Court held the deed calls and the Supreme Court held the pins in the ground. The Supreme Court did so because 69 A.L.R 1491 says that owners cannot claim that a recognized and accepted line is not the true line even though "that" line may not **in fact** be the true line according to the calls of their deed. This case separates the paperheads and deed stakers from the genuine Professional Land Surveyor. A boundary survey is the observation of evidence supporting facts that are relayed by linear measure and math. Without the support of evidence and facts the exercise is simply the physical act of measuring a.k.a. "deed staking". I'll go out on a limb and say that "deed staking" may



have inadvertently duped this **plaintiff** into believing he was somehow hornswoiggled by his neighbor. A simple "plotting" of the deed showed a fifteen foot discrepancy between the the record and the monuments on ground...and then it was off to the courtroom! Let's break this case down.

Okay, so we have two pieces of bread and butter evidence, a deed (documents) and original monuments (tangible objects). They do not agree and tend only to prove that fact. This evidence together is inconclusive, so what next? Well, the definition of evidence includes testimony, so why not depose the concerned land owners and credible witnesses? This is exactly what the court did in this case and that testimony clearly convinced The Supreme Court of where the true line was. The testimony revealed some very interesting facts that directly impact a surveyor's opinion, however, the surveyors were not privy to those facts until it was too late. I'll summarize as follows:

1. The original grantor and grantee agreed on and physically placed the pins themselves then had "Surveyor No.1" measure between them and write a legal description.
2. The first and subsequent buyers including the plaintiff were physically shown the marks prior to the sales. The marks were relied on and recognized by everyone up to the time that the "deed conflict" was discovered by Surveyor No.2".
3. The mistake found in the original deed was readily identified and isolated by "Surveyor No.3".

From this we see that the lion's share of the evidence came from testimony and it really did prove where the true line was. Testimony is especially important when the "bread and butter" evidence is inconclusive. According to my bookkeeping the two pieces of "bread and butter" resulted in somewhat of a 1-1 tie ballgame. Testimony

came through in the ninth inning and hit a three run triple to win. I suspect Joe Torre would be moving Testimony up in the batting order.

Collecting testimonial evidence is in the land surveyor's wheelhouse and may uncover the best evidence of stabilized boundaries. So how does a surveyor go about this?

First, make certain that your client knows he may bear additional costs in boundary resolution. Perhaps a retainer may be appropriate and/or clear contract language introducing the required services as needed. **Second**, establish a professional relationship with an attorney and a Court Reporting Service. These are the folks that are capable of deposing clients impartially and harvesting the evidence you are after. **Third**, offer any disputing parties the opportunity to resolve the issues in mediation. **Fourth**, be prepared to accept the parties agreement and yield your findings/opinion to their resolution.

Fifth, as you work through the process be mindful of your regulatory requirements. For example, you may not be able to prepare a final map or set final monuments in a 90 day duration. How do you communicate that with other surveyors and your Licensing Board?

Other Observations

The Supreme Court did not seem to get hung up on the mistake in the deed. The fact that it happen apparently explains the conflict, but I don't think the surveyor was sent to the gallows for it...I hope not anyway. The point is that land is still owned and conveyed regardless of mistakes made in conveying documents.

The public has a right to recognize and accept boundaries in spite of mistakes.

Recognition and acceptance of those lines on the ground ripens into fact so strong that our law recognizes owners can't just change their minds afterward. This is a great example of "stability of boundaries". It would be just plain nonsense to rejuvenate an ancient error in a stabilized community. The surveyor apparently has no exception to this law.

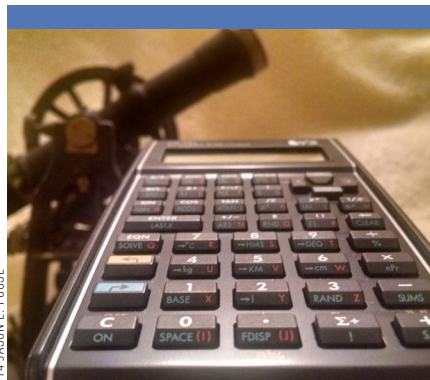
Testimony showed that the "wrong" line in this case was in fact exactly where the original buyer and seller put it. The intentions of the parties are paramount and I can't think of a more direct expression than the acts of the parties themselves. They saw, touched, decided, and agreed on these boundaries. There is no disputing that the pins were exactly where the parties wanted them. That's like a having a stick of dynamite in "paper, scissors, rock".

Parting Thoughts

So the questions have to be asked. How can you possibly have "the best available evidence" of a boundary location without interviewing the concerned parties? How can you form an accurate opinion of the true boundary without the best available evidence? Are you truly providing a boundary survey or rather a standard service without all of the available evidence?

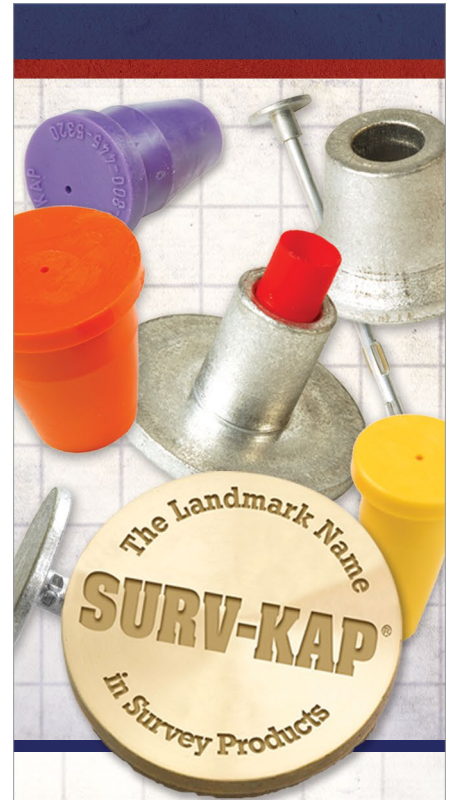
A PDF of this case, (813 S.W.2d 252 (1991), 306 Ark. 258) including the wacky testimony from all the parties, can be found at amerisurv.com/PDF/813_S.pdf ■

Jason Foose is the County Surveyor of Mohave County Arizona. He originally hails from The Connecticut Western Reserve Township 3, Range XIV West of Ellicott's Line Surveyed in 1785 but now resides in Township 21 North, Range 17 West of the Gila & Salt River Base Line and Meridian.



**Remember the HP35s
Calculator series that we
put together a while back?**

Well the complete collection is available in both PDF and Flip Page formats found at:
amerisurv.com/PDF/Foose_HP35s.pdf or
amerisurv.com/emag/Misc/foosehp35s/



**CUSTOMER
SERVICE...
we stake our
reputation on it.**

**EASY ONLINE
ORDERING!**
Your Satisfaction, Guaranteed.

SURV-KAP

- SURVEY MARKERS
- CAPS
- ACCESSORIES

800-445-5320



SURV-KAP.COM