

decided **guidance:** case examinations

Wacker vs. Price

Part 3—Conclusion and the Dissenting Opinion

We are back in Phoenix, Arizona again this month. The Arizona Supreme Court went all guns-a-blazin' in Wacker vs. Price. I highlighted the concurring opinion last month. This month we'll dissect the dissenting opinion by Justice Udall.

I guess the best place to start is near the end of Justice Udall's dissent. *"It is our view that under the record of this case it may be conclusively presumed there being no evidence to the contrary that the Grand Avenue Addition was laid out in accordance with the government survey of the area which it embraces."* I'm not comfortable with that presumption as a land surveyor, nor was Chief Justice Cooley, nor was Justice Stanford, nor, by the way was F.M. Holmquist. In fact, I think, the only reason I reject that presumption is exactly because I am a land surveyor with



extensive knowledge and training in the subject matter of retracement. Otherwise the presumption works, as I suspect it is supposed to, without our special brand of knowledge and experience. So the baker, banker, millwright, and Justice only have that presumption to work with.

The Grand Avenue Addition plat itself is inconclusive and evidence indicated it was not originally laid out on the ground. So Justice Udall apparently uses the term "laid out" as meaning drawn or planned.

Let's face it, it's a decent picture for a guy and an inkwell in 1887 but some assembly is required. The contemporary copy that I downloaded from the Maricopa County website shows that point very clearly. The only preparation data I see is "C.J. Dyer, Draughtsman" and the recording data. What I don't see is more telling than what I do. I don't see any words like "engineer, civil engineer, architect, surveyor, city planner, subdivider, or land owner". I do not see any absolute ties to any government monument or monuments themselves for that matter. From that era I'd be willing to accept a dot or a circle at the end or angle point in a line as being indicative of a field observation or a call with certainty. All I can determine from this plat is that the islands of lots most likely fall within the opposing quarter sections of Section 6.

Oh, by the way, isn't Section 6 the one that the G.L.O. "draughtsman" protracted



Interstate 10 and 15th Avenue (Althea Street) occupies the site of this monumental boundary case. Google Earth coordinates are 33°27'42.20 N and 112°05'30.17"W.

back in D.C. as well? Where's all that G.L.O. ballyhoo fall on the Grand Avenue Addition plat? According to the GLO plat we have a deficiency of 41-1/2 feet or so in the north line of the Section. Unfortunately Mr. Dyer did a poor job of showing his "yardstick". So right off the bat the "first surveyor in" is faced with ambiguity between the G.L.O. and the Grand Avenue plat! Justice Udall and I agree that Grand Avenue Addition should fit in Section 6. The difference is a question of what or which evidence defines how it fits.

I honestly can't tell from this plat if the streets insulate the lots from the G.L.O. lines, or the G.L.O. lines are the centerlines, or if the G.L.O. lines are the exterior of the Subdivision. There's some conflict in the drafting that seems to make assumptions troublesome at the midsection lines... at least to me. Regardless, my training and knowledge directs me to answer the mysteries of the plat with the evidence on the ground. The dissent was not willing to take that leap and accept what F.E. Holmquist was laying down.

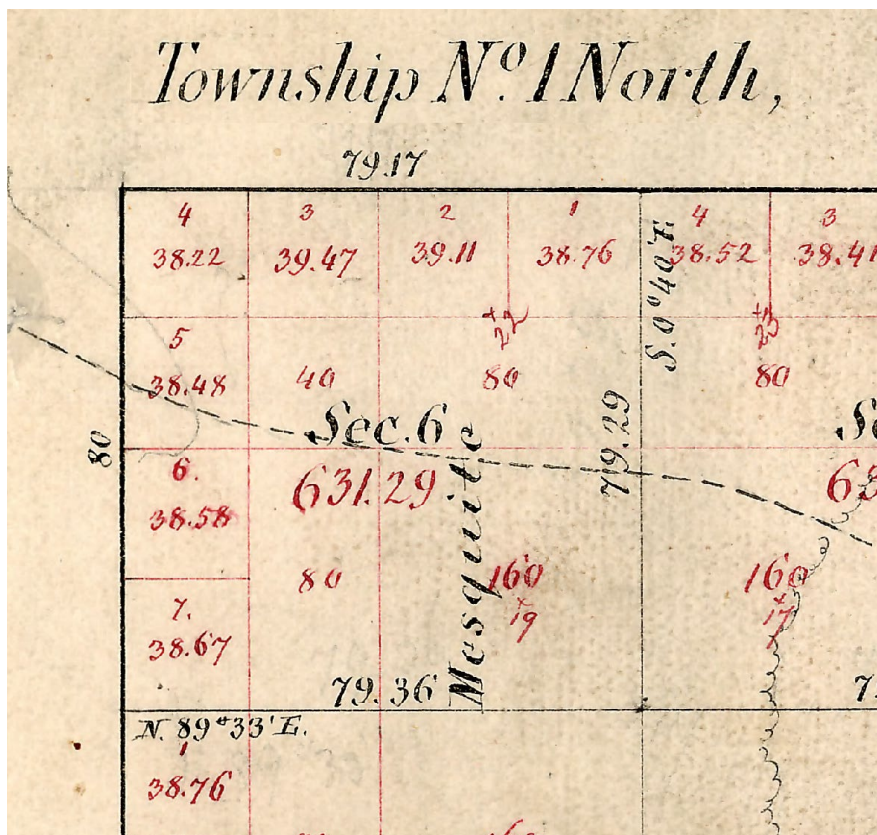
Irony #8 and Parting Thoughts

Just a few short decades after the Supreme Court of Arizona exercised the highest form of peaceful deliberation and chiseled a resolution onto the stone tablets of history, the Federal Highway Administration and Arizona Department of Transportation showed up on site with the bulldozer and erased *Wacker v. Price* from the face of the earth. Every day between 7:00 a.m. and 10:00 a.m. traffic passes the site in a "funeral-like procession" crawling a few miles per hour as motorists pay their respects to the Honorable Supreme Court of Arizona...no, wait, that's just rush hour traffic on I-10. ■

Note: A copy of this case is available at www.amerisurv.com/PDF/WackerVPrice.pdf.

The original GLO plat can be found here: https://gloreCORDS.blm.gov/details/survey/default.aspx?dm_id=107721&sid=03xu4box.wtm#surveyDetailsTabIndex=1

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The original GLO Plat lotting tier in Section 6.

The Barbershop Barrister

Do you need a haircut and legal advice? I'm neither a licensed barber nor attorney, so my rants and \$15 might get you a clean cut for your next court appearance but that's it. The dissenting Justice Udall was concerned that appellate Courts customarily hold the facts in the most favorable light sustaining the lower Court's judgment and that didn't happen here. The case was apparently tried by a single Judge rather than a jury. So if there's a problem with the lower Court's handling of evidence then it seems natural to me that the Appellate Court would out of necessity have to become a trier of fact and reopen the evidence. Justice Udall made this sound like a travesty. I gather this is a rare event and perhaps nearly non-existent when a jury is employed by the lower court.

Regardless, I find a lot of comfort in the sentinel role Justice Udall took up in the preservation of our sacred legal system. The Majority is attacking the lower court by reevaluating the evidence and deserves every flaming tar ball catapulted in its path.

Best I can tell nothing really new was introduced as evidence except perhaps the Court taking notice of the facts that the plat was originally outside of the Phoenix City limits and covered with mesquite trees. Justice Udall's concerns about the evaluation of the evidence seem "half a bubble off" to me. The majority used the plat map as a means to an end whereas the lower court and dissent held it as the end of the means. It seems like the lower court is treating the plat as a well written contract whereas the majority has taken the sum of the evidence to demonstrate how the people have determined the language of a poorly executed contract (the plat). In any event the majority overturned an errant decision. More importantly Justice Udall's dissent is a necessary function of due process along with the special concurrence by Justice Phelps. I suspect all of these opinions together make the decision whole and are intended to keep the scales of justice in balance. Maybe this game is not about right or wrong, but rather simply answering the questions to the best of human ability.

