



By Gary Kent, LS

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Boundary Disputes I Have Known

Unlike many surveyors, I relish the challenge of testifying in court as an expert witness. The intensity of the give and take in deposition or on the stand is an excellent test of one's preparation, confidence and knowledge. Responding to the attorneys' questions in a way that clearly explains applicable boundary law principles, surveying techniques or the weighing of evidence to the court presents a unique challenge and great opportunity.

The need to convey confidence both in yourself and in the opinion you are advocating, and to back up that confidence with supporting resources and documentation, is critical to the successful defense of your opinion. It is also a wonderful opportunity to educate the judge and attorneys, and to establish a reputation for being knowledgeable in your field of expertise. While acknowledging all of that, I am nevertheless frequently stunned by the relative pettiness of the nature of the disagreement that generates the legal action in the first place.

Several years ago I testified in a case related to a boundary line dispute involving a strip of land about 9 feet by 200 feet. This was the second time the parties had been to court over the same boundary.

While I sat in the courtroom, there was testimony that indicated both parties were pretty much in agreement that the property they were arguing over was worth approximately \$3,500. There was also testimony that the two parties had, up to that point, spent some

\$150,000 on the dispute! One of the parties, while on the stand, commented to the judge "Your Honor, I just don't understand it!" (I wanted to chime in "Dude, look in the mirror!")

In another case, I was sitting in the attorney's office about 15 minutes prior to the time we were to be in court. In rushed an associate who reported that, after three years of legal maneuvering, the other party was willing to concede the boundary for which my client had been arguing. The attorney asked "Is there any reason we do not want to accept this offer? It's what we've been asking for."

After some pondering, the client asked "Does their offer acknowledge that we were right?" The attorney responded "Well, no, but this is what we've been asking for." The client answered "We've worked too long on this. If they are not willing to say we were right then let's go to court." I don't think I would have believed it had I not witnessed it myself. The only good news was that through the course of a long day, the parties were, with the judge's patient yet persistent encouragement, able to craft a satisfactory solution without actually proceeding with the lawsuit.

In yet another case, the parties were arguing over what amounted to about a quarter-acre of soybean field in a rural area. The value of the disputed area was at the time probably less than \$1000. During our day in court I learned that this was essentially a disagreement between a woman and her brother-in-law. I'll never forget what I heard in the hallway afterwards. The

woman's husband was reflecting on the cost of the four surveyors and three attorneys that day. In what I thought was a brilliant impersonation of Carol Burnett in her "Mama" character's most hateful voice, the woman responded through gritted teeth "At least I'll git mah property back!"

Another situation did not result in legal action, but could easily have. When I reported with great confidence and pleasure that we were in agreement with another surveyor within less than an inch, my client became agitated and animated. When he pressed me for more specific information, I hesitantly stated that we differed by only about a quarter of an inch. I mistakenly thought this would satisfy him as to the accuracy of both surveys.

Was I wrong! He decided right then that he wanted to sue the other surveyor over that quarter inch, and then threatened to sue me if I so much as talked with the other surveyor (little did he know that I already had). He did not realize that I would not have participated in what I would have considered both a legal and survey farce. Had I received a subpoena, I would have testified as to the ridiculousness of his claim.

The seeming pettiness of these disputes can be disconcerting to the conscientious surveyor. What may seem like an irrelevant or insignificant amount of real estate to us may not prevent an owner from spending thousands of dollars arguing over or defending that ground. Given that, it is always wise to approach and conduct every survey as if it were going straight to court. You never know—it may! *A*