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Why Do the Research?

A number of years ago I was giving a seminar on how to do legal research when a gentleman in the audience suddenly interrupted with loud disdain. “Why should surveyors know how to do this, anyway? I can just hire a paralegal to do it for me.” At first taken aback (since there were other programs he could have attended instead of mine), I replied with my own question: “How will you know what to ask for if you don’t have at least some background? Yes, you can hire someone else to do the legwork for you, but you can reduce your out-of-pocket expenses if you have some idea of what you really need.”

Perhaps I am in the minority, having always preformed my own legal research, but I see the need to understand legal materials in the same way as I see the need to understand GPS even if I hire someone else to perform the mechanics for me. How can I know what to ask for and know if I’m getting what I really need if I don’t have at least some background? The ability to contractually specify to a consultant the purpose and the approach for my project requires at least enough familiarity to know that what I’m requesting is appropriate to my real needs.

When I applied to take my first surveying licensing exam, the State Board sent out a single double-sided sheet of paper with a few regulations on it that were presumably the sum total of the legal knowledge necessary.

Somehow the rules about responsible charge and proper format of a title block did not seem all-inclusive to me. Surely there were other legal matters affecting the practice of surveying. So I set out to visit the law library in a local college, and soon found myself overwhelmed by all there was to know. Incidentally, law librarians are generally quite happy

regulations or rules (which are created by the agencies that statutes have established). For example, the laws creating our State Boards are statutes, while the rules issued by the State Boards are administrative regulations. These materials are indexed and filed separately.

The practice of every design professional—including surveyors, geomaticians,

Examples of what the law can tell us

Professionalism	Business practice	Technical practice
<ul style="list-style-type: none"> ▪ Defined scope of professional surveying practice ▪ Standard of care ▪ Ethical standards ▪ Definitions of malpractice and misconduct ▪ Rules of evidence regarding expert testimony 	<ul style="list-style-type: none"> ▪ Business formation ▪ Tax schedules ▪ Employee relations (including EEO and ADA requirements) ▪ Contracts and agreements ▪ Torts ▪ Rules of evidence relating to record keeping ▪ Mechanics liens ▪ Small claims court actions 	<ul style="list-style-type: none"> ▪ State plane coordinate system ▪ Calibration of instruments ▪ Contents of maps and plats ▪ Monuments — acceptable materials and dimensions, where to set them, recording their location ▪ Filing maps, deeds, and other records ▪ Rules of evidence regarding boundaries and monuments

to help guide novices with this kind of hands-on, hard copy research.

What was it I was looking for? I didn’t really know at first, but starting in the index volumes I found far more than what the State Board had forwarded. I also learned the difference between statutes (which are created by legislative bodies, whether state or federal) and

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malpractice or negligence than to find and read the laws defining practice and misconduct.

Secondly, we are involved in the legal bond between client and professional known as the contract. Statutes, administrative regulations, and case law clarify what should be in a contract to make it legally binding, and we can learn by the mistakes of others drawn into court battles how best to avoid pitfalls.

Finally, we may be called to court as defendants, professional witnesses, or expert witnesses. Attorneys are educated in generalities, and therefore often must rely upon specialists to assist them in

website is updated. And finally, important portions of case law are routinely omitted from on-line viewing: diagrams, maps, and appendices. Instead, the cases are likely to say, “see illustration in original”, meaning a trip to the library is still necessary.

The law affects what we do and how we do it, touching our professionalism, business practice, and technical practice. Take just one aspect of surveying: land development. A non-exhaustive list what legal materials tell us includes:

- Acceptable zoned land use
- Minimum lot size, setbacks, building size and height, and impervious cover

What is included in some of the legal materials

Legislative material (statutes & ordinances)	Administrative rules and regulations	Judicial sources
<ul style="list-style-type: none"> ▪ Definitions of terms ▪ Definition of legal practice ▪ Standards of practice ▪ Elements of contracts 	<ul style="list-style-type: none"> ▪ Standards of practice ▪ Business standards ▪ Environmental practice ▪ Land use 	<ul style="list-style-type: none"> ▪ Rules of evidence ▪ Explanation of terms ▪ Explanations of what laws mean (interpretation by application to certain fact scenarios)

specific areas. Surveyors may then be called upon as “expert witnesses”, to comment on the facts but not on the issues of laws. As experts, we guide attorneys to the most useful laws and cases, and suggest lines of questioning to them that may assist in drawing out the facts of a case.

Currently we have more convenient means to access a variety of legal materials than when I first walked through the law library doors all those years ago. The Internet provides a range of materials for every state, some accessible for no cost, some accessible only by paid subscription. While there is great advantage in this accessibility, there is also danger of error, outdated information, and omitted material. For instance, more than once I have started reading a case on line, only to find that typographical errors have made parts incomprehensible (likely a result of off-shoring the transcription) or parts have been left out—like the last sentence stating the court’s conclusion. I have also sometimes found that on-line statutes and regulations have been superseded and are no longer in effect, relating to how (in)frequently the

- Environmental land use restrictions: floodplains, limestone, tidelands, steep slopes, wetlands, protected areas
- Water district restrictions
- Road access—existing and reserved rights
- Setbacks to protect solar easement rights of adjoining
- The limit of professional services that a surveyor can provide in the state where the development is to be accomplished
- Appropriate contractual content to define the surveyor’s responsibilities and limit liabilities

Returning to the gentleman who preferred to hire a paralegal than to search out this information for himself: it is only the practice of research that teaches the most effective means to phrase a question. Without that experience, a question posed to a contracted researcher may yield no information, less than what is needed, more than what is needed, or in an irrelevant vein. Unless the researcher has some background in surveying, it is more efficient—and more important, more self-educating—to do the work ourselves. *A*

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