



**By Joel Leininger, LS**

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## Interpreting Land Records

**A**nother diversion this time to focus on a new resource which is long overdue. Very rarely a book comes across my desk that makes me sit up and take notice, but the recently published *Interpreting Land Records* by Donald Wilson is such a book. Wilson, of course, is the godfather of New England retracement surveyors, held in esteem in that part of the country (and elsewhere) as someone akin to the Supreme Court. He is co-author, along with Curtis Brown and Walt Robillard of what are commonly known as the “Brown” books, long considered the definitive texts on retracement surveys.

In my opinion, however, this book easily out-classes all the rest. Francis Bacon once wrote “Some books are to be tasted, others to be swallowed, and some few to be chewed and digested.” This latest from Wilson is of the third category. It is a solid, well-presented treatment of the subject with sufficient breadth and depth to satisfy both the occasional student of retracement and those of us who live and breathe it.

### Land Records Defined

Wilson thinks, as I do, of “land records” encompassing more than just that collection of documents probably housed at your local courthouse; he considers *all* records relating to land and the land’s history as entitled to consideration in retracement: deeds, wills, judicial decisions, utility records, unrecorded surveys, municipal plats, maps, letters, etc. Frankly, any retracement without considering that “non-courthouse” data is significantly hampered, and only observers at a distance assume otherwise.

He also draws a distinction between boundary research (he calls it “deed research”) and title research, a subtlety that everyone except retracement surveyors fails to grasp. Title research attempts to identify ownership of the whole and full or partial encumbrances thereon, while boundary research attempts to document the sequence of boundary line creation along with the clues necessary for field searches. Misunderstanding this differentiation is the source of much confusion as to the role of surveyors in record discovery.

After examining the various record sources, the book delves into primary

provided which refer to authority in the jurisdictions noted. This serves two functions: the first is that citations provide evidence that the author did not invent the material; older writings inform newer discussions. The second is that citations offer the reader a path for further research. But surveyors generally do not pay enough attention to whether cited authority is controlling *where they are*, and, in view of that fact, books such as this one can be misused. The office of works like this volume is not to provide the user with legal authority, but to frame the discussion, and, if necessary, point to other sources of information.

**This book does not belong on your bookshelf, but on your desk.**

boundary doctrine: the hierarchy of conflicting title elements, resolution of repugnant clauses in deeds, the use of extrinsic evidence in retracement, the analysis and interpretation of pictures, maps and other graphical evidence—all good stuff.

### General Truths

It is important to remember where books such as this fit into our day to day arsenal of resources. Treatises tear into a subject, examining it from every angle, and offer general truths about it. General truths are not synonymous with specific controlling law, however. In many instances, legal citations are

This particular text is also crammed with examples likely drawn from Wilson’s actual retracements through the years.

Another useful component of the book is a 73-page glossary of retracement-related terms – but with a very useful twist: the definitions are culled from court cases which have defined the terms. Considering the role that legal precedent plays in the decisions of later cases, it should come as no surprise that the courts through the years have had occasion to define words and phrases, which definitions are then binding on lower courts in their jurisdiction. Indeed, a 100+ volume encyclopedic reference


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work *Words and Phrases* has been an essential reference for generations of attorneys. This exhaustive work attempts to document every definition developed or adopted by appellate courts across the country. It is the last word (the courts themselves excepted, of course!) on legal definitions. But unless you have ready access to a law library (or subscribe to an online service), the reference work is of little use. The inclusion of this form of glossary in Wilson's book does two things, in my opinion: it provides the definitions themselves, directly from the cases cited, and it reinforces to the non-attorney reader that the courts have ascribed specific meanings in specific jurisdiction to words, and defensible retracement had better take them into account.

### **Document Examination**

I was disappointed in one aspect of the volume. A chapter devoted to document examination focuses on film-based photographic analysis of documents while ignoring digital tools. Given the widespread availability of the latter,

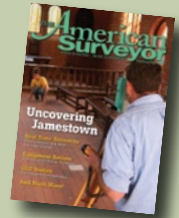
and considering the obvious trends in the photographic world, it takes little imagination to conclude that film-based techniques have a limited future. I monitor the digital imaging world closely because of the projects our firm is involved in, and, frankly, I cannot think of a single aspect of film-based analysis that cannot be done faster and easier with digital tools. Moreover, I remain unconvinced that in-depth document analysis (looking for forgeries, alterations, and the like) is within the surveyor's scope of responsibility. Nevertheless, its inclusion in the text as a peripheral study is interesting, and does not detract from the rest of the work.

I recently found myself involved in a case where none of the attorneys "on our side" were familiar with the process of conducting retracements, a common situation. One of them asked me if there was a textbook or some other resource that succinctly dealt with the doctrines involved. I replied in the negative to him, but if I were asked the same question today I'd recommend Wilson's *Interpreting Land Records*. It's that good, and you should have it. 

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