



By Joel Leininger, LS

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Our Niche of the Law

In a trial with which I was recently involved, the judge interrupted one of the attorneys in his closing arguments by saying, “Wait a minute. Are you telling me that if someone uses my property without my permission for a length of time, I can lose that property?” It’s fair to say that counsel for both parties were taken aback by that question, as was I. After all, it is the judges who are charged with the responsibility of interpreting the law, and it seems an

ously assuming that such basics would not be the subject of discussion. Both attorneys and the judge participated in my questioning, and I was left with the distinct impression that none of them were even slightly acquainted with the doctrine. (In my opinion, coordinates actually belong at the bottom of those Rules, but trying to explain an abstract mathematical concept like coordinates would have generated glazed eyes all over the room; and it was irrelevant to the dispute.) More on that case later.

we have received from our predecessors the particulars of their work, which is inseparable from the land boundaries under consideration, because their work *created* those boundaries. We have spent years following and trying to understand arcane land law. No one understands monuments and other physical boundary evidence like we do. No one grasps the intersection of mathematics and law as well as us. This is a very narrow part of the law, but we have been its only fans for some time now. Look around: there is no one else in this room.

I am not implying that lawyers have no role in title work or in dispute resolution. Clearly those tasks require skills we are not presumed to have, and, in most cases, do not have. But it is equally incorrect to assume that every lawyer has even a slight grasp of the legal doctrines attendant to our practice. Although that may have been generally true at some point in the past, it is *not* now, and has not been the case for years. Despite this, there continues a school of thought across the country that we surveyors have no role in forming and expressing opinions on legal topics.

Our understanding of legal doctrines needs to deepen.

impossible task if they are ignorant of it.

The presumption that judges are acquainted with every corner of the law is, of course, unfair to judges. The body of the law is now so broad and deep that no single person on the planet has a chance of mastering even a tenth of it. And yet, upon entering the courtroom, everyone (with the likely exception of the attorneys) assumes that the judge is fully versed on the law, if not the facts, of the case.

Not long ago in another case, I had to spend a fair amount of time explaining why Area was (and belonged) at the bottom of the Rules of Construction. I was unprepared for such a task, errone-

What’s Happening Here?

I relate these events to underscore a trend that has been discussed in this column and others: the retreat of the legal community from boundary-related issues. This essay is not the place to expound on why this retreat has happened (primarily because I do not know all the reasons), but to explore the role of surveyors in filling that vacuum. There is some resistance from our own quarter in doing so, but is it based on valid argument? I think not.

We are the natural choice to assist society in this area. We have steeped ourselves in the history of land titles;

The Bright Line

Where is the division line between what lies within our purview and what does not? The adoption of an iron pipe as marking a lot corner can only be the result of legal analysis of the evidence at hand, which evidence is itself the product of a legal analysis (perhaps subconscious). Few surveyors would balk at expressing an opinion on

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that legal topic, and fewer still would suggest that the owner consult an attorney for that opinion. So it cannot be the opining on legal topics itself that gives some of us pause. We step on less firm ground when expressing opinions on adverse possession and prescription, and I once thought (and wrote) that those topics were *verboten* to us. No more. Are there potential dangers in our swimming in those waters? Of course. One needs to know the rules of the game, or one can get into trouble quickly. How is that different from any other part of our practice?

The question presented by this discussion is, "Are we ready to serve in this role?" For many of us, sadly, the answer is "No." In the aforementioned trial where area became an issue, the opposing surveyor testified that our state does not have a particular set of rules for choosing between conflicting title elements; he essentially placed boundaries from day to day with no firm rules to guide him. Upon hearing that, I almost fell off my chair. Obviously we have failed in some quarters in educating our surveyors-to-be and in winnowing out the unqualified during the licensing process. If that is the case, we cannot be the solution required by the legal profession's retreat.

Action Items

Two things should happen. First, our understanding of legal doctrines affecting our practice needs to deepen. Frankly, there is no excuse for a licensed surveyor today to opine that there are no particular rules governing boundary retracement. To the extent that this is the case, both the pre-licensure and post-licensure educational experiences for that surveyor have failed. *In fact, the licensing process itself has failed.* I hope we can agree on that.

Second, we should eradicate the false notion that surveyors only identify problems and have no role in rectifying them. That assumption is supported neither by logic nor the market. There is no preclusion to our serving in that capacity, and no one else is focusing on these issues. No other professional deals, for instance, with determining senior and junior rights in a chain of title; why, after detecting a conflict of that sort, would we bail out of the conversation? It makes no sense, and it does a disservice to the parties involved.

Not to mention, us. *A*