By Joel Leininger, LS

Joel Leininger is a principal of S.J. Martenet & Co. in Baltimore and Associate Editor of the magazine.

The Pincushion Dilemma

Pincushion corners result when two or more markers exist identifying the same property corner. If set by surveyors, they are invariably the result of different interpretations of evidence, whether justified or not. The *measurati* have almost universally denounced them as further evidence of rank-and-file surveyors "not getting it;" of them ignoring error theory and the wishes of property owners for stability in favor of one-upping the competitor down the street who never could measure, and never will. Besides, they argue, having multiple markers for a single corner invites ridicule of our profession among the general population. One website huffs, "a 'pin cushion' corner is *prima facie* evidence of incompetence." Strong assertions.

Are they justified? Clearly, there is some merit to the idea that earlier markers should be afforded dignity by virtue of the probable reliance property owners have placed on them. (In this discussion, we assume that the found, uncalled-for marker, is not in its "correct" geometric relationship to surrounding boundary evidence.) Since no measurements are perfect, we delude ourselves when we claim that our new measurements automatically have less error (and are thus more valid) than those whom we retrace. It is likely that, on average, recent work is tighter than older work. But exceptions abound, and chest-beating over precision should wait until we can consistently retrace our own work and get the *exact same results*, day after day. To my knowledge, even with today's fancy equipment, no surveyor anywhere achieves that. So our insistence on setting a new marker in the vicinity of an existing marker should have more behind it than mere measurement arrogance.

The Argument For

But does that translate into "automatic corner marker status" for the first monument? Some think so. This is a complex argument, but it appears to have at its core the presumption that unwritten transfers will have taken place ratifying the otherwise misplaced monument. In other words, monumentation begets occupation, which, given enough time, ripens into adverse possession. Several complementary factors must align for this to work. First, in some areas of the country, short prescriptive periods (as little as five years in places) considerably lower the bar for perfecting adverse possession. Next, one must presume that occupation always extends exactly to the monumentation, and no farther. Finally, one must presume that all the other elements of adverse possession will have been satisfied. Satisfying all of these parameters would result in that marker identifying the property corner. Your willingness to opine on that question will necessarily depend on your willingness to opine on adverse possession. As I have written before, I believe we surveyors can be in a position to do that, as long as we have access to *all of the relevant facts*. That last can prove to be a tall order, in most cases.

Looming large on the other side of the argument are the venerable rules of construction, which, in case you haven't reviewed them lately, make no provision for error ellipses, measurement theory or uncalled-for monuments. Historically, the courts treated 100 feet as 100.0000 feet. No more, no less. Find the original, undisturbed monument if at all possible, but, failing that, the courses and distances in the record control the boundaries. This tends to stifle chicanery.

The *measurati* have almost universally denounced them…

Pssst: Want Some More Land?

One of the oldest (and we're talking Biblical here) ways to obtain land without paying for it was to set (or move) the property bound without the neighbor noticing. The ultimate zero-sum game, losses of the neighbor automatically become our gains. The more valuable the land, the more incentive to "bend" the rules, as it were. Greed is such a compelling motive. Given that situation, a surveyor adopting just any marker in the vicinity would be making a rash decision, potentially abetting a crime of Biblical proportions!

Remember how "fenceline surveyors" were derided? If occupation were our sole guide, why bother with the recorded descriptions, or, for that manner, with the land records at all? Adopting whatever markers are found in the vicinity of the corner is a step farther out on the

continued on page 70

Leininger, *continued from page 8*
thin ice than our "fenceline" predecessors. If we take the position that genuine occupation is conclusive evidence of the boundary location, an enclosure (fence) is much more persuasive than a lone pipe with no other evidence of possession near it. I think acting in this manner exceeds our mandate.

It seems to me that the adoption of a secondary marker, *i.e.,* one that is not called in the original grant, can only be justified when its provenance is known, and supported. If one has access to records documenting the secondary marker, such as who placed it, when, and the basis for the location, one should be able to decide whether the earlier survey is defensible. If one agrees with the methodology of the earlier work, one should honor the results of it, and hold the marker. This, of course, is easier in areas where records of survey are recorded or otherwise available, but is possible to a lesser extent everywhere.

Sure, That's Our Pipe

For several years our area had a variation on that theme whereby a crew (or crews) of a large local firm would smash that firm's identifying cap over top of whatever cap had been installed on the pipe, sometimes leaving the original cap lying in pieces next to the marker, other times leaving it hanging off the side of the pipe like some drunken sot. To my knowledge, no one from that firm ever owned up to the practice, even when presented with photos of the crime. (As I think about it, since the caps are primarily a means of identifying the firm responsible for them, and since the very act of leaving the identifying cap *identifies* the firm responsible, it takes a considerable amount of gall to later claim ignorance of the deed or the doer. But they did, and, as far as I know, still do. I'm sure they won't mind my telling the 40,000 of you that no one in the area believed their pious denials.) Annoying as those episodes were, the real victims of the acts were the parties for whom accurate evaluation of the evidence in the area was important. The pipe cap's *raison d'etre* is to identify the origin of the marker, not to identify the surveyor in the area most recently. The stature of the marker's location rises or falls depending on whether it was set by a defensible survey or not.

Accurate evaluation of the evidence. Our goal 100 years ago. Our goal today. (And only use your caps on your pipes. I'm sorry I have to say that.)