The Voice of the Land Surveyors of California

California Surveyor

Institutional Affiliate of American Congress on Surveying and Mapping

Summer 2003 Issue #138

Passing the Gavel:

Marc R. Van Zuuk, PLS, 2002 President
Raymond L. Mathe, PLS New CLSA President

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"Recognizing that the true merit of a profession is determined by the value of its services to society, the California Land Surveyors Association does hereby dedicate itself to the promotion and protection of the profession of land surveying as a social and economic influence vital to the welfare of society, community, and state."

"The purpose of this organization is to promote the common good and welfare of its members in their activities in the profession of land surveying, to promote and maintain the highest possible standards of professional ethics and practices, to promote professional uniformity, to promote public faith and dependence in the Land Surveyors and their work."

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Passing the Gavel:
2002 President Marc R. Van Zuuk,PLS (Left)
Raymond L. Mathe, PLS (Right) New CLSA President

By: Phil Danskin, PLS - Editor

PUD, CEU, PDH, CPD, CVIP ...

I don't know 'bout you, but if we embrace continuing education, the first course taught will be A Treatise on Acronyms . . . Professional Unit Development, Continuing Education Units, Professional Development Hours, Continuing Professional Development, Certified Voluntarily Informed Professional . . . yadda. yadda. yadda.

Personally, I think continuing education should be compulsory. There are, and always will be, two camps on this subject. One for. One against. It seems that if you act professionally within the guidelines of our societies' Creeds and Cannons, that common sense predicts we all need some form of continuing education. On the other hand, there is nothing wrong with a guy or gal who represents their client professionally, ethically and most importantly - works within his or her limits of expertise and hardly ever attends a professional development seminar.

Certifiably Loco . . .

I'd like to propose something different? "CLSA-Certified - dedicated to high professional standards and practices"? If one was CLSA Certified, a benefit would be inclusion in a CLSA Yellow Page listing - indicating a "cut above" to the consumer.

Rumor has it, that the statistics do not support continuing education as making a difference as to the number of disciplinary actions against the professional. MAYBE BECAUSE MANY OF US HAVE VOLUNTARILY IMPOSED continuing education upon ourselves. The only way to "proof" such a rumor and/or statistics are for all of us not to attend any conferences and/or seminars, cease reading any and all professional journals and/or 'zines, do not read any technical literature etc. for five years! Let's dumb-down and see if business at the enforcement division of BPELS doesn't pick up! That would prove that continuing education is a factor!

As BPELS reminds us - upon licensure one is considered "minimally competent." And if the powers that be don't believe continuing education protects the public . . . then be all that you can be - CLSA-Certified! Maybe CLSA-Certified, NSPS Certified or Fil's Phollies, could go like this:

First and foremost - Local

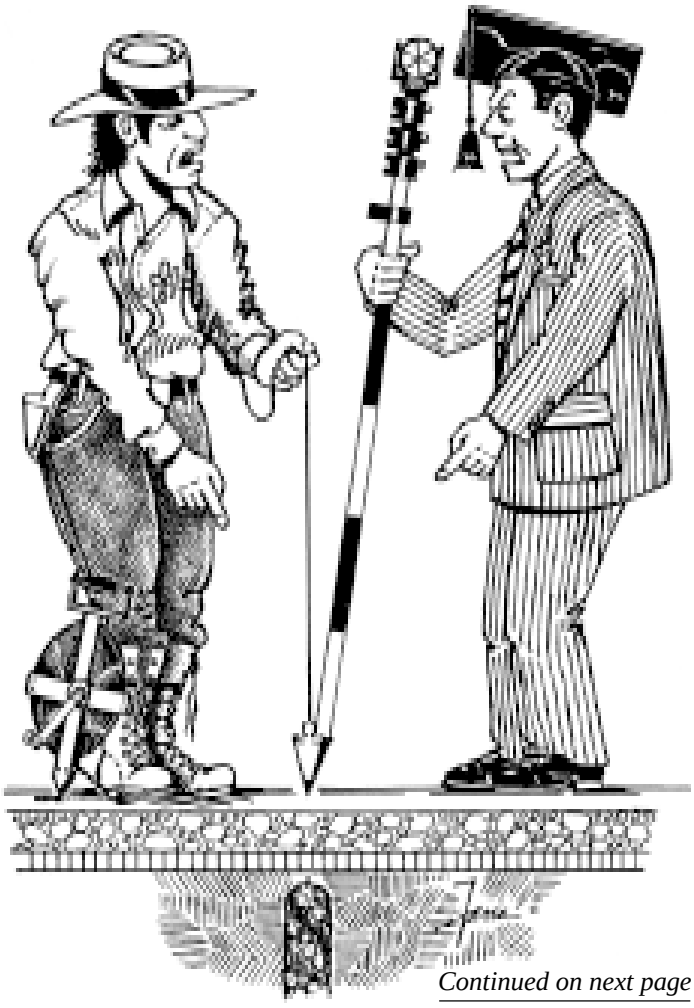
One should attend at a minimum of seven Chapter meetings a year. For those that presently show up once a year, even the Holiday meeting counts! (I'm tryin' to make this easy!) Attending Chapter meetings, any Chapter meetings, would keep one appraised of local issues and practices. If you only come to listen you'll pick up something, (hopefully not a barfly!).

Secondly . . .

Another duty one shall experience is that of a chapter officer at least once every six years. As most officers begin as Secretary and subsequently run the chairs . . . such as a stint from Secretary, to Treasurer, to Vice President, to President, could last you, (six times four . . .), 24 years in CLSA Brownie-points! Is that asking too much? Not able to dedicate so much time? Then be secretary every six years! Or treasurer.

Three-six-nine, the goose drank wine, the monkey chewed tobacco on the street car line, the line broke, the monkey got choked and they all went to heaven in a little row boat . . .

Attending CLSA/NALS or ACSM/NSPS conferences are always an eye-opener for me. Vendors show their latest wares,



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causing us to drool on the latest technological gizmos, (not to mention some of sales staff). Conferences are a virtual candy store of knowledge . . . How equipment works . . . Keeping abreast of current or soon-to-be laws which affect us and/or our clients . . . Mini-lessons in geodesy . . . GPS . . . Laws and practices that affecting boundary resolutions and more! One would have to be holed-up in an opium den not to stimulate some synapses of professional enlightenment. Therefore, attending a State conference shall be required once every three years. Is that too great a burden?

Basshhhhhezzzz? I no got to show you no steenkin' basshhhhhezzzz!

Generally the public believes all licensed surveyors are equal. However, if you ask John Q. Public, or the Contracting Officer of a public entity, if they would engage the services of an orthopaedic surgeon based on the lowest bid, they'd all choose on reputation - not price! Ladies and gentlemen, we have an image problem and only we can change that!

So let's climb on that lil' rowboat and row like hell to heaven - in order that all of us be as professional as we may be!

RENO 2003 . . .

As always . . . Reno proved to be successful, (considering the times). Gizmos 'n gadgets galore! Cranial overload to me . . . but for the likes of Parrish, D'Onofrio, Ikehara, Whitaker, et al it must have been like they were floatin' on their backs in the pool of life sipping on drinks with lil' umbrellas in 'em. (Oh to have one-quarter of any one of those brains . . .)

Reunions abounded! At a lunch with the onetime professional comedian, the infamous Jeeeeeerrrry Miller, (now Professor Miller!), I was in awe of how small our world is. A gent mentioned knowing a surveyor, (John), he'd worked with abroad. "Not JB?" I asked. He guffawed that I too knew humble Bolin. JB was a mentor to many NorCal surveyors and to some international ones as well. It is nice to visit with members that have moved out of state, whereby they are attending because of their state's continuing education requirement. Another reason for continuing ed - requires us to reunite with old friends and keep abreast of our profession! A win-win situation.

Those that missed the funky dinner in Virginia City, you missed-out on a mining surveyor's history lesson - spoken by an impassioned Mining Surveyor. It was as though we were in a time capsule transported back a hundred fifty years. The town was almost a ghost town, which added to the intimate feeling that they opened up Virginia City, privately, to only surveyors that attended the conference.

We had just finished dinner when a bearded gentleman in his sixties, wearing a beautiful gold and silver bolero in the shape of Nevada with a roll of maps tucked under his arm and the visual trappings of an old prospector, traverses to the center of the dinning hall and began speaking of the history of Virginia City. He passed around maps delineating copious mines. These mining maps had the appearance of an ALTA survey gone awry. Mines atop mines, going every which way - as though the mining surveyor drafted them for the rewards of free liquor.

Save the "best" for last. On the final day of the CLSA/NALS Conference a lively debate ensued regarding the proposed Model Law. Rita Lumos in one corner. Howard Brunner in the other. Rita a proponent. Howard a cautious opponent. Too much to ponder, but there should be more written debate published. (Of which . . . Yours Truly, is in the process of obtaining statistics on one aspect of the proposed Model Law. Sorry gang, next issue - if I don't forget!)

Thank you for your time. Don't forget: put the seat down and wash your hands. v

Letters to the Editor

Dear Mr. Danskin,

I am answering your request that all professionals report on the lot line adjustment cases that are negatively affected by the lot line adjustment legislation passed last year.

I am an affiliate member which does not make me a "professional" unless I have some other profession. I have been using the services of surveyors and engineers for over 40 years so perhaps I am a "professional" client.

I do not understand your statement, "All thanks to a narcissistic developer with an apparent belief system that development is a right rather than a privilege."

So many of our rights have been eroded in the past 50 to 60 years. I guess it would be nice to think that some of them were just slipped over to "privilege" rather than expunged entirely.

I tend to think that changing boundary lines is, or should be, a right not a privilege. I did have a reaction to your articles in Winter 2001/02 and Spring 2002 regarding SB 497 and I include a response to those now.

It was better than no rebuttal but, it is disconcerting that the CLSA is limiting their objection to a self-serving issue. The article makes the correct assertions that SB 497 will hamper common California citizens who seek to remedy boundary disputes; "SB 497 amendments to the map act create a much larger problem for "everyday Californians" than it solves for environmentally sensitive properties."

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Letters to the Editor

This points out two things:

1. Many laws that get on the books do so because there are a minimal number of persons affected by the law at any one moment in legislative history. The law then sides through with the everyday citizen not being aware of another right that has just either disappeared or has taken on a carload of bureaucratical red tape.

2. It also points out that CLSA is ignoring the Patent Parcel- Legal Parcel- Lot Line Adjustment Issue. Lot Line adjustments are not necessary to sell Legal Parcels. Legal Parcels can be sold without a Lot Line Adjustment. The Lot Line Adjustment just makes the Parcels better sized and shaped, and perhaps a lesser number of parcels after the Lot Line Adjustment. This process makes the parcels more useful. And possibly more valuable. Is this bad?

The amount of money seems to be a concern of the proponents of SB 497. The expected money from any tract of multiple parcels may not be appreciably different with or without the Lot Line Adjustment. If there are more parcels without a Lot Line Adjustment then the amount of money may even be greater and the parcel average size smaller but less useful because of a shape that does not fit the topography.

C.L.S.A. seems to want to leave out these occurrences by mentioning only "common California citizens" as if someone doing a broader project may be uncommon and maybe it's O.K. for SB 497 to curtail Lot Line Adjustments of an uncommon sort of citizen.

I admit to not having first hand knowledge to the Brian Sweeney purchases and sales. I can only guess from the newspapers. My short version is that in the instance of the Brian Sweeney purchase and sale, the state probably paid what the land was worth. If the seller to Sweeney was asleep that is either too bad for that seller or the seller may try an unjust enrichment case against the buyer. The state paid the true value for the land and it was not necessarily a Lot Line Adjustment that produced this value. It was the recognition of the separate legal parcels within the larger holding. What am I missing? Just how much value was added by the Lot Line Adjustment? If those changes actually make the land more valuable then isn't a legitimate value? I don't know Mr. Sweeney. He may be a totally self-serving narcissistic nerd but the fatal flaw here is the attack on 66412d of the Subdivision Map; Act depriving the people of the State of California, both the common and uncommon, the right to adjust boundary lines on their property is tilting at the windmill.

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By: Raymond L. Mathe, PLS

President's Message

Where is our profession of Land Surveying going? I'm not sure, but I can tell you it seems to be going there fast! Technology, legislation, and court decisions are all moving at a breakneck pace. If we don't educate ourselves, our profession will pass us by in a flash.

Lets take a little step back and look at yesterday, today and then the possibilities for tomorrow. In the late 1960's and early 1970's we took this huge leap forward with technology and legislation. Over one hundred years of chaining jumped into technology with the tellurometer (…can you here me now?) and the electro tape (only two car batteries and a pack mule needed) – Wow! No more chain! Well, I guess the chain didn't really disappear. The 1972 Subdivision Map Act saw the addition of the Parcel Map and the removal of an owner's ability to split their land by a deed or a minor land division with a Record of Survey.

The 1980's saw total stations become a productive and vital part of our tool kit. Lot Line Adjustments found their way into legislation; and corner records and records of survey were elevated to a new level of enforcement (and cost). GPS was in an infant stage, much like a sound system for a Who concert.

In the 1990's GPS evolved faster than the personal computer did in the 1980's. GPS-aided grading makes it's way into the industry. NAFTA and Sunset Review slip under the radar of most surveyors. GIS blows by most of our profession before we even know what the acronym means (Graphics Instead of Surveyors).

Today GPS is the common tool of most surveyors. Unfortunately, several use it like a "Black Box" and fail to understand the real limitations and serious problems we can create with this tool. Lot Line Adjustments saw a legislative step backwards, clearly a legislative band-aid for a local issue. And the Model Law is at the forefront of a national agenda to make land surveying a cross state profession.

In five years, how many stakes will you set for a rough grading operation, will you need to set control for an aerial survey or will anyone with cell phone be authorized to collect geo-spatial data for a local GIS? In ten years, will a survey monument contain meta-data telling you when it was set, by whom it was set, a complete history of all monuments previously at that position and all of the properties that it affects; and will engineers be authorized to file maps if a recorded boundary exists. In twenty years, will there be a need for any survey construction stakes at all; the legal definition of your property boundary be latitude and longitude values; and property subdivisions will now be under the authority of planners? In fifty years, will we be a footnote in the orderly development of the American west?

It is up to you. If you want to sit back relax and skim the fat off our profession – you can probably do it just fine…for a season. But, it will be payday someday for those of us that will be around a little longer and definitely a mess for the next generation. If you would prefer to be a real part of our changing profession you will have to educate yourself in today's dynamics of land surveying. You can start by joining the CLSA, giving a little bit of your time by being involved in a committee, or more of your time as an officer or representative. I don't want to get too far towards selling CLSA but the fact is, CLSA is the only real voice for just Land Surveyors in California. Another fact is, we better help educational programs flourish and grow right now. There is no question that your entry-level technicians are better prepared for our profession when they have higher education under their belts. And the fact is, they can use much of what they learn immediately. And as they progress in their careers they will be better equipped to insure that the legislature doesn't forget what a vital part, yesterday, today, and tomorrow Land Surveyors are to the world we live in. ❖

By: Gary T. Leonard, PLS

The Big Contract

On a Tuesday Morning in June 1991, our civil engineering and surveying firm received a phone call from a gentleman, a Mr. Big Contract, who I will call Mr. Big for brevity. In this phone call, Mr. Big stated that he would like a proposal for engineering and surveying services on a 284.6 million dollar project, which was for a 399-bed "Crippled Children's Hospital." Furthermore, Mr. Big said that the funding for the project would be a combination of federal, state and private monies. Of course, you can imagine the excitement that my engineering partner, Dennis Clift, and I felt when we heard that there would be only one other engineering/surveying firm submitting a proposal for the project. The other firm was from out-of-state. After learning that the meeting would take place at the site the next day, and learning where the site was, Dennis asked the gentleman what the assessor's parcel number was. Mr. Big said that he wasn't sure. We thought that it was rather odd that he didn't know the assessor's number, but considering the size of the project we figured that he had a lot on his mind. The next day, Dennis and I arrived at the site to find a group of approximately fifteen men standing on the side of the road waving their arms, gesturing, and pointing in various directions. As we walked up to the group, the crowd parted, and we were greeted by Mr. Big, with whom we shook hands and introduced ourselves. The other men were representatives from several general contracting firms, the other out-of-state engineer, and several soils engineers. It was at this time that I got a good look at Mr. Big. First of all he was wearing a yellow hard hat. Since there was no construction going on for miles around us, I can only presume that he might have been expecting a flock of Canadian geese to fly over, and he didn't want to be hit with any droplets. Maybe it was the crop of hairs sticking out of his ears (which could be mistaken for sideburns), or the lack of shaving or of washing his hair that make me aware that Mr. Big was not concerned about his personal appearance. He had several dog-eared California lottery tickets sticking out of his pocket. He was also wearing a pair of sky-blue, one hundred percent (at least) polyester pants that I am sure were the lower half to a leisure suit. At first I thought the pants were three inches longer than they needed to be, and as a result they were dragging in the dirt. Then it became apparent that the pants were actually the correct length but were hanging about three inches lower around his waist than they should have been. I'm sure you get the drift of what I'm describing without the need of pictures. It wasn't a pretty sight.

Mr. Big explained to us that the project would cover 84 acres in total, but the first phase would cover 40 acres. There would be three buildings on the site: A twelve story hospital with one story underground for parking, and administration building, and a separate wing for student teaching. He insisted that he wanted proposals from us as soon as possible so that he could get the general contractor started on the construction of the project. He also said that this was a five-year project and, since he had already lost two years due to illness, he wanted to complete the project in three years.

We asked Mr. Big if we could see a preliminary site plan so that we could get an idea of how the improvements would be laid out. He replied that he didn't have any plans drawn up at this time. We then asked him at what stage he was with the E.I.R., rezoning, use permits, etc. We asked him how the planning department viewed the project. Mr. Big said that he didn't want to get the county involved at this time. The jaws on most of the people dropped when he said that he had not even spoken to the county planning department about the project. We asked him if the parcel was zoned correctly or if it might need a special use permit. Once again he stated that he didn't know, but he would begin the process on that, if necessary. He again said that it was important to get proposals from the civil engineer and soils engineer so that he could get the general contractor started on construction as soon as possible.

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At this point, Dennis and I looked at each other, and I knew Dennis was as confused as I was. We both wondered who Mr. Big was. Was he a wealthy eccentric who wanted to help the crippled children of the world, or a nut case? It was obvious that he had no idea of the steps involved to complete this type of project.

Since Dennis had some specific questions about the project and what Mr. Big would be needing from us, we worked our way over to Mr. Big. Mr. Big looked at me, asked who I was, shook my hand, and said he was glad to meet me. (Yes, this was the second time I had introduced myself and shaken his hand in a ten minute period.) At this point I wondered if he was playing with a full deck, and I also questioned my own sanity for being suckered into this situation. Mr. Big said he needed a topographic survey as soon as possible so that a preliminary site plan could be prepared. He then explained again how the project would be laid out, pointing in this direction and that direction, specifically stating that the underground parking would have a blacktop surface. Dennis said that the use of asphalt would depend on several factors, but Mr. Big said that he didn't want to use asphalt, he wanted to use "blacktop". To this day, Dennis and I still haven't figured out the difference between asphalt and blacktop.

At this point, we decided it was time to leave. Just in case this guy was legitimate, Dennis asked Mr. Big for a business card so that we could contact him with a price for the topo. (We were too optimistic for our own good.) Mr. Big pulled out his business card and wrote his phone number on it; the only other items on the card were a picture of a unicorn and a post office box number.

The next day, Thursday morning, I received a call from Mr. Big, who said that the project would be put on hold for awhile. When I asked him why, he said that he didn't want to discuss it over the phone. Just out of curiosity, I asked him what other projects he had developed in the area, but he didn't want to discuss that over the phone either. Maybe he thought my phone was being tapped. However, he did promise that he would get back to us.

I think the reason the project was put on hold for awhile was due to financial reasons. I'm guessing that the state funding that Mr. Big was counting on didn't materialize. In other words, I don't think Mr. Big had the winning numbers in the California State Lottery. Of course, that's only a guess on my part. It just seemed too coincidental that he called the morning after the lottery numbers were chosen.

Later we discovered that Mr. Big was an elevator operator in one of the older buildings here in Sacramento. I guess the only question left unanswered is: Does Mr. Big's elevator go all the way to the top? ❖

Letters to the Editor

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I have, in the past, used the lot line adjustment section 66412d in the Map Act for adjusting boundaries of multiple parcels. In one instance I combined one dozen 30' X 70' lots together with adjoining acreage into 4 nice parcels. Another case was where I had four miles of U.S. highway that split U.S. patents. I lot line adjusted the portions of those patents to other full patents on either side of the highway completely doing away with the portions of patents. Neither of these events would be possible with the passing of SB 497.

The most recent project I was involved with was a lot line adjustment that did not get an approved application in time to escape SB 497.

I was unaware that SB 497 was in the pipeline and the county was successful in stalling my efforts. The property was zoned 160 acre minimum and was further restricted by the Williamson Act to sales of 160 acres minimum. I had 98 patents and had combined them and reconfigured some so that I made 44 parcels. All sensible manageable parcels taking into account existing roads and natural features of the topography. All could continue agricultural production under the original Williamson Act contract. That effort was all wasted because SB 497 precluded that number of adjustments. These patent parcels are all legally created parcels so I am now selling them without the benefit of making those ownerships much more desirable by adjusting boundaries.

How does this harm the public? If these parcels cannot be reconfigured in such a way as to make them more logical and more manageable then areas will go unused. I suppose this can be construed as harmful to the public especially when you include the owner as a member of the public. The real harm to the public is one of which very few members of the public are aware. They will not be aware until they go to get a Lot Line Adjustment and even then they will not realize how it used to be before SB 497.

The road to hell is paved with good intentions. A lot of harm in the world is set in motion and trumpeted forth by honest and good people motivated by lofty ideals towards virtuous ends. These lofty motives however have chipped away at individual independence in favor of individual dependence, government control and more erosion of the rights of the public. I don't find much comfort in knowing that some rights have not been totally removed but are now a privilege. The procedure of which is bestowed upon us by the planning police for some substantial fees and onerous make works assignments that will eat the heart out of valuable time and money! This is harmful to the public.

Robert C. McKee ❖

By: Knud E. Hermansen, PLS, PE., PhD, Esq.

Arbitrating a Boundary

While written as a single arbitration event, the events described are actually a compendium of experiences from several arbitrations engaged in by the author.

The sun was just barely above the eastern horizon as I drove up to the two surveyors parked along the road. They were leaning against their vehicles and talking to each other. They were waiting for me. Today I am an arbitrator or arbiter. I am a judge appointed not by election or governor but by the parties themselves. My powers are derived from the agreement between the parties supplemented by statute and common sense. I embarked upon this arbitration approximately three weeks ago when I received a call from one of the attorneys. The attorneys were inexperienced with arbitration but willing to let their clients give arbitration a try. I sent the attorneys a sample arbitration agreement with an explanation on what to consider. The most important task for an attorney willing to involve their client in arbitration is to craft a solid arbitration agreement. Writing an arbitration agreement is a story by itself.

I greeted the surveyors warmly. I counted both of them as old acquaintances and friends. Both surveyors had a reputation for quality work. We were meeting at this early hour to perform the view required by the arbitration agreement. In this case, the landowners had been locked in heated litigation with all the power of a law firm to fight for them. I felt I was safe at this twilight hour. Given the poor light available at dawn, the chance of a landowner mistakenly shooting their own surveyor was too great for them to take a chance shooting at a stranger walking with their surveyor.

Prior to this day, the attorneys had decided that the early morning view should be left to the surveyors and arbiter alone. I must admit that I had eagerly anticipated watching attorneys dressed in their dresses or suits scrambling through the mud and pucker brush to look at pins, pipe, fences, walls, trees, etc. I was disappointed – there would be no wrecks at the races today. As I applied a liberal dose of bug repellant to hold off the mosquitoes and black flies that were expected to stir soon, I couldn't imagine why the attorneys would willingly forego the experience of watching the sun rise over the fields, especially if they could get paid to do so.

My combination as both a lawyer and surveyor has placed me in much demand for performing this type of service. (Though, in truth, any competent surveyor could easily fulfill the role as arbiter in boundary disputes and often do.) This case, like so many I had been involved with, had been waiting for trial for over four years. Continuances and a long court docket had caused an untold number of delays. Lengthy delays are common in civil litigation. In this case, the parties, out of patience and money, were finally willing to try some alternative to litigation. The path from death threats, to litigation, to settlement or arbitration is often simply a question of how long the clients can withstand being beaten on their heads with their own wallets. (I have never been able to determine if it is the abuse of the landowner by the process itself or the fast and steady weight loss of the wallet that is most compelling.)

On this day I believe the three of us were, for the most part, content to be doing this part of the arbitration by ourselves without landowners or attorneys present. We can speak in "surveyeze" without the blank looks from laypersons or questions from counsel. We can freely use technical language that intermingles terms like "traverse," "rods," "scribings," "N30°W," etc. without causing confusion. A corner stone that resides some five feet from the spot where meticulous protraction of the record measurement would otherwise place the corner is easily put aside with the mention of the original surveyor's name. Experience has taught us what measurement precision can be expected from the ancient surveyor who placed the stone and whose reputation is familiar to all surveyors.

I walked around the property, sometimes joking, but more often in serious contemplation as each surveyor pointed out and described the evidence they found and what weight it should be given. Finally, with the time of the hearing fast approaching, the view and casual conversations were ended and we drove our vehicles to the lawyer's office where the hearing would be held.

Waiting for us outside the attorney's office was one the lawyers with their client, along with a couple of witnesses. I could tell how they greeted the one surveyor and glared at the other surveyor which one of the two litigants I was seeing for the first time. Inside was the other landowner with their lawyer and witnesses. Needless to say, there wasn't a lot of hugging and kissing between the two groups.

When there is a big crowd like the one present at this arbitration hearing, I start by getting the surveyors and lawyers off by ourselves and going through the rules that aren't in the arbitration agreement. I tell them that the first witnesses I like to hear from are the surveyors. There are several reasons for this. First, the surveyors introduce the plats and other documents that the other witnesses will often use. Second, they usually provide the most compelling evidence in the most logical format. Third, they are getting paid by the hour. I can save the landowners money by getting the surveyors out of the hearing and back to other business as soon as possible.

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Most lawyers and surveyors aren't familiar with arbitration so I take this opportunity to point out that the rules of civil procedure and evidence don't apply. The lawyers can make all the objections they want but I'll usually let the story go on especially, as in this case, it is rumored one litigant-landowner attempted to murder the other. I know that such testimony is totally irrelevant in locating the boundary but this testimony is what the other witnesses appreciate the most. I also tell the attorneys that they are free to consult with their client's surveyor during the questioning of the other surveyor. The attorney can even let one surveyor question the other. If one surveyor questions the other, I don't get a numb question like: "Could you please explain to the arbiter why you feel the orange post marked 'W.B. 1951,' is a corner monument set by William Bigelow in 1951?"

After the meeting with the attorneys and surveyors, we all file back to the reception area to pick up the litigant-landowners and witnesses before heading to the conference room where the hearing will take place. The look of relief on the receptionist as the people file out of the reception area tells me the two litigant-landowners weren't attempting to kiss and make up while we were gone. There is a heavy run on the coffee pot at this time.

We enter the conference room. The conference room is big. Clearly this was meant to stand as a status symbol for the law firm. People living in a mobile home don't have this much room. Naturally, each side of the litigation occupies their own side of the conference room. The conference room contains more area than the litigant-landowners are fighting over. After listening to University faculty describe their "love and peace" vision of life for 15 years, I'm half tempted to ask for a big group hug to settle the whole affair. According to faculty, people can be persuaded to put aside their differences and to love another. I worked for a living before teaching so I know better than to believe it. Four years in the Marines has taught me that ill-will toward another can only be settled by combat. The only difference between military training and legal training is the former emphasizes that victory is measured by the amount of blood from the opponent while the later determines the victor by the amount of money squeezed from the opponent. The strategies taught by the Marines and law school were pretty much the same. (Ambush the other side. Gain fire superiority, cut off supplies, etc.) Legal and military training did not include group hugs or sessions on how to understand the other person's feelings while denying your own.

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I start the arbitration hearing by introducing myself. I can tell that some of the people present expected someone in a robe or at least a suit and tie. Of course, I'm wearing a polo shirt with a tint of mud on the front resulting from climbing under a barbed wire fence. I'm still trying to stop the bleeding on my arm where a blackberry bush ripped a gash in my skin less than an hour previously. (I usually stop bleeding quickly but the insect repellent was causing this cut to burn and bleed.) My position on wearing a suit is simple. You can have a view or a coat and tie but not both within the same hour.

I've conducted hearings where the parties agreed only the surveyors and attorneys would be present at the hearing. The only difference between that small hearing and meeting with the same people in a bar is that beer is lacking in the former while plentiful in the later. Conversation is pretty informal where the landowners are not present. There is quite a crowd at this hearing, including the landowners. As a general rule, when the landowners are present, I mirror the decorum of the courtroom. I can't guarantee they'll be happy with the outcome but I can go a long way toward making them feel they've been fairly heard and had their day in court.

The first witness is one of the surveyors I've spent the last two hours talking to at the view. I've got to be careful to address him as "Mr." and not his first name. I try to look solemn as I put him under oath even though we both know he can lie with a straight face. Not more than an hour ago I suspect he doubled the size of the trout he caught on his last fishing trip when recounting the details of the trip to me. He begins his testimony. It's not long before both lawyers are thoroughly lost. They have to start asking questions in the guise of helping me understand what they don't. In truth, I can't hold the lawyers at fault. You can hardly blame the attorney for asking a question when the surveyor identifies a corner as the one where I slipped on the dew laden grass and fell on my ass. Such testimony tends to limit the number of people comprehending the location of the corner to exactly three people in the room. Of course, there are some questions from legal counsel that give surveyors in the room the opportunity to look bewildered. "Could you explain to the arbiter why you didn't question the possibility of the monument being moved ? Let me remind you that you previously stated that you measured 3,234.45 feet between the monuments you found while the deed clearly calls for 3,233.82 feet." Questions like that cause the surveyor to stare at the questioning attorney with a look of bewilderment. I let several of these questions and the resulting answers go before I feel compelled to explain to the attorneys that certain facts are no more cause for concern than the number of clouds that will be in the sky next

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week. Fortunately for me, most attorneys that are involved in arbitrations are good real estate attorneys and don't seek answers from the obvious.

We work through the testimony in a methodical manner similar to trial – direct, cross, re-direct, re-cross, and so on. At this point, the only difference between an arbitration hearing and a court hearing is that I ask questions. I enjoy retracing boundaries so I have lots of questions. Often the lawyers become lost because my questions and the answers from the surveyors are spoken in technical terms. Whispered conversations between the lawyer and surveyor on the other side of the room are common as the other surveyor explains to his client's attorney what I asked and what the other surveyor said in response. I suspect the attorneys are clearly surprised at this point by my interest in the testimony. No doubt in court hearings, the judge is starting to nod off at this time. This is one reason why parties specify a surveyor as an arbitrator in boundary disputes.

Finally both surveyors are done testifying. Rather than leave the room, I'm surprised to see that they remain. No doubt they are waiting for a fight to erupt when the litigant-landowners testify. Rather than one side presenting their entire case then the other side presenting their case like a trial, my arbitration hearing lets each side offer a witness in turn. Attorneys seem pleased with the flexibility as they make deals to allow elderly witnesses or those with pending appointments or jobs testify and go on about their normal business. Hearsay and extraneous evidence run on without objection. My hand movements signal attorneys that I understand the marginal benefit of the testimony but to let it continue. Justice not only requires that the hearing be fair but the landowners sense they have been fairly heard. I listen to one witness explain why the boundary should be in a certain location because her grandmother told her the boundary location when she was seven years old. I figure that must be almost forty years ago. I listen to this testimony attentively and with some amazement. In truth, I tend to forget what my wife asked me to pick up at the store an hour earlier. This person's memory must be remarkable, if true. I'm mindful that a conversation about a boundary to a seven year old some forty years ago is to be taken with some trepidation on my part.

Testimony brings in every rancorous act — dogs shot, trees cut, cuss words shouted, and so on. This is better than day-time television. Fortunately, the fight expected when the litigant-landowners testify does not occur. Apparently there is some deal between the attorneys to keep a tight reign on their client's

Continued on page 25

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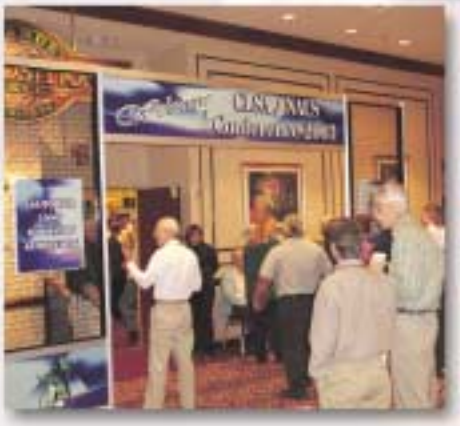


By: Richard S. Hogan, PLS

In the Beginning:

Curtis Brown in his second addition of Evidence and Procedures for Boundary Location cites in a paragraph entitled " Civilization and Land Ownership "The earliest recorded accounts of property surveys are Egyptian, but it must be assumed that the Babylonians practiced such an art even as early as 2500 B.C." He writes of evidence in the Old Testament with a quote from Genesis in an account of how the Lord spoke to Abraham giving the land to him and his heirs. And he quotes the biblical surveyors curse, (often heard, even today), from Deuteronomy: Cursed be he that removeth his neighbor's landmark. And the people shall say amen!

Recently there arose evidence that the art of surveying originated much earlier, beginning prior to recorded civilization, as much as 50,000 years ago. This evidence has turned up because of access to ancient caves in the mountains of Afghanistan, and preliminary archeology furnished by some members of the U.S. occupation forces, which has reached the current journals. The theory, developed as it had previously been reported by Robert J. Braidwood, The Near East and the foundations for civilizations; An Essay in Appraisal of the General Evidence Vol. 7 (Eugene: Oregon State System of Higher Education, 1952) which credits the transition of the end of the Neanderthal man in the upper Paleolithic period. This era was followed by the Neolithic age which is characterized by the use of stone for the manufacture of weapons and religious symbolism .

The Upper paleolithic age indicated a greater pace of evolution, in the cultural development, witnessed by the last glaciation period, which brought out development of language, and the stone tool, the Aurignacian flint blade . It was discovered at the time in which Upper Paleolithic men left their most remarkable cave paintings in France and Spain and they disclose a tantalizing glimpse of the human habitat at the end of the stone age, and man's esthetic response to it. The artifacts found in Afghanistan theorize the beginning of surveying did occur due to this esthetic reaction. It is theorized that with the family and tribal development within the caves, the primitive population grew with time until the cave life habitat was crowded. Quarrels because of this condition would create tension as the Neanderthal man evolved into Homo Sapiens.

With the expressions of human spirit and the dim origins of mental processes, it was reasonable to assume the strongest member of the tribe gained leadership, which of course indicates responsibility for the members of his group. The theory offered was that the chief or leader of the tribe, might be disgruntled with the spats, occasioned as females wandered, as they are want to do, into the adjacent campfire circle. Firewood might float also, which was also important. Other family related tensions, which occur within nearly all confined groups of persons, much less the early uncivilized mankind, would escalate into mayhem over the tensions created within the cave.

Artifacts were found indicating the rise of a dramatic cultural environment, the offshoot of which might be "rules of conduct", in which the chieftain enforced the claims of masculine family heads. Thus it was reasoned the profession of Surveying had its crude but significant beginning, for each family gathering. The artifacts recovered that lead to this theory, in one extensive cave were chiseled or deeply incised ideograms consisting of square, or rectangles generally joined together. Initially these amateur archaeologists assumed the marks were early attempts of writing, however additional searches and disclosures lead to a significantly different conclusion.

With further excavation, all of the cave wall symbols were directly over evidence of distant past fire camp sites. In a startling discovery in the deep bowels of the cave a series of flat shales piled in rows was found. Incredibly the shales has similar markings as explained above, and a match was found for each of the fire areas. In this same area, the final key to this important discovery was made. A fossilized, slender, thigh bone was discovered about a yard long and measured meterically was exactly 1.00 meters long. Naturally the theory formulated that this item was the Vey instrument.

Crudely Incised on one of the flat slate was the insignia translated as "Vey", although some of the team members insisted it was "Oh Vey". The cave niche that housed the slates was one of the more protected corners of the entire cave. It was theorized that the "veyor" rose to a high recognition, in that he was responsible only to the Chief, and become the functionary responsible to mark off the allotted family spaces.

Another important find, was the collection of clam shells in one corner of this enclosure. The image persisted that this beatle-browed (not dissimilar in today's world) Veyor might sit at his fireplace, counting his clams and grinning at the thought that the bone corners he had set would eventually be torn out of their position by rabid dogs, and he would be needed to replace them. This of course implied new clay tablets would have to be created recording the new positioning. Of course this theory was immediately disowned by archeology experts, generally recognized as green party apologists. The author of this article is a well known Irish purveyor of Surveyor historical dis-information, and it is routine to disregard all such vital pre-history presumptions.

Data furnished by this article is protected by the Society of Profound Surveyor Senior Informats or SPSSI. Any reprints, copies, quotes are sincerely appreciated and encouraged. ❖

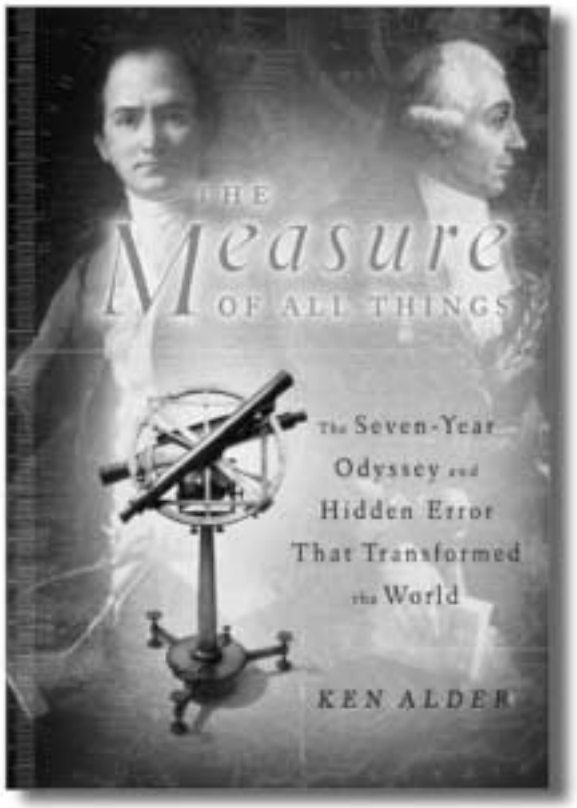
Thanks, Dick! Nice to "lighten" things up during times as these! Ed

By: Steven Frank, Academic Department Head
Dept. of Surveying Engineering, New Mexico State University

Book Review

The Measure of All Things: The Seven-Year Odyssey and Hidden Error That Transformed the World

by Ken Alder Free Press, 2002.



The Measure of All Things is a historical account of the Delambre and Mechain survey of the Paris Meridian during the turmoil of the French Revolution. The survey was to measure approximately 10 degrees of the Meridian from Dunkerque south to Barcelona. The results would be used to extrapolate the length from the pole to the equator. One ten-millionth of this value would then become the meter. The survey, originally estimated to take seven months, took seven years to complete. Alder's book personalizes the lives of the two astronomer\geodesists as well as many of their contemporaries, including Lelande, Cassini, Borda, and Legendre, and recounts the political, personal, and technical difficulties encountered in the survey.

The survey, a revisit of an earlier triangulation survey by Cassini that was extended south into Spain, relied upon accurate measures of both triangles and positions of latitude. Delambre and Mechain were supplied with the first high-accuracy one-second theodolites designed by Borda, and the observations were expected to be of high precision. Delambre, the junior of the two in both age and academic standing, was given the northerly portion of the route. He took meticulous field notes and allowed his aids to assist in both observations and computations. Mechain, taking the southern portion of the route, began his survey in Barcelona as war broke out between France and Spain. Mechain, accounted a top-rated observer, allowed no one else to either observe, look at his field notes or to check his computations. Because of his reputation, Mechain took great pains to disguise systematic atmospheric errors unknown to science at the time. Blaming himself and believing that he had failed to live up to the high standards of precision he thought were expected, he hid the errors from the scientific community until after his death and thus, the Alder claims, introduced a small error to the computation of the meter (about 0.02 mm).

The book recounts the hardships of the survey, including fighting suspicions among the French peasantry that the geodesists were either spies or sorcerers. Many signals had to be rebuilt or replaced due to the constant turmoil of the times. The book also gives the background of the harsh social conditions in France that made the time ripe for the development of the meter. The battle for the metric system was not without its failures of the metric system- the metric clock and the metric calendar did not manage to overcome the popular dislike of the abstract.

Lastly- and here is what makes the book doubly interesting to the community of modern geodesists- Alder does not spare the word when recounting the significant contributions to geodesy that the survey inadvertently produced. We now have a better understanding of errors of refraction and a better understanding of the anomalies of Earth curvature. And, we can now better appreciate why a new mathematical technique, known today as least-squares adjustment was needed to fit the measurements of the Earth to its shape.

At the end of the book are thirty-four pages of notes listing the author's sources. Despite my initial apprehension at seeing such a long list of notes that the book would be too "scholarly" to engage the reader's interest, the book is so well written that it can be followed by anyone- with or without any knowledge of surveying. I found myself soon caught up in the story and was able to read for hours at a time. I highly recommend this book as a good story for surveyors and as a way of enlightening friends and loved ones about the science of surveying. v

News Release National Council Of Examiners for Engineering and Surveying

In May 2003, the NCEES will distribute over 5,000 questionnaires as part of a land surveying Professional Activities and Knowledge Survey (PAKS). The questionnaire asks recipients to rate the importance of statements describing tasks and knowledge required of a newly licensed land surveyor. Those who complete the survey will also have the opportunity to recommend examination content. A special NCEES committee will use the survey results to develop new specifications for the content of the Fundamentals and the Principles and Practice of Land Surveying examinations. The examinations with updated content are scheduled to be administered in April 2005. Only 10 percent of licensed land surveyors in the United States will receive the questionnaire. It is essential to the validity of this study that as many questionnaires as possible are completed and returned by those who receive them.

This year's PAKS comes at a crucial time. At the August 2003 NCEES Annual Meeting, the delegate body is expected to approve modifications to the Model Law for Surveying. The changes will result in a Model Law that includes the practice of photogrammetry and the use of Geographical Information Systems as tools to perform professional services that are included in the definition of land surveying. As a result, NCEES will invite individuals such as photogrammetrists and GIS specialists as well as licensed surveyors to participate in this PAKS. Their input will play an important role in the future of surveying licensure examinations for the next 5–7 years. Full participation from all parties is needed to obtain a complete articulation of the important tasks and knowledge of surveying under the proposed new definition of surveying.

The PAKS is an essential part of updating the Fundamentals and the Principles and Practice of Land Surveying examinations. The PAKS enables NCEES volunteers working on land surveying examinations to have information on the important continuing and emerging knowledge needed in modern practice. NCEES uses rosters provided by its member licensing boards and the American Congress on Surveying and Mapping to solicit participation from a cross-section of professionals across the United States, aiming for diversity in geography, practice, age, gender, and ethnicity.

The National Council of Examiners for Engineering and Surveying develops licensing examinations for the engineering and land surveying professions. These examinations are used by engineering and land surveying licensing boards across the U.S. as part of their candidate assessment process. NCEES provides examination scoring services and offers exam administration services to all U.S. engineering and land surveying licensing boards. NCEES headquarters is located in Clemson, SC.

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Subdivisions and Subdivision Maps

Subdivision map recorded in 1865-i.e., before enactment of Subdivision Map Act-did not create legal parcels.

Gardner v. County of Sonoma (2003) 29 C4th 990, 129 CR2d 869

In 1865, the owner of land in Sonoma County recorded a subdivision map. In 1893, California passed its first subdivision map statute with statewide effect. In 1996, the owners of 158 acres from the original 1000 acres in the 1865 map, in order to establish 12 lawfully subdivided parcels, applied to the county for certificates of compliance under the Subdivision Map Act (Act) (Govt C 66410-66499.37). The application was denied and litigation ensued. The trial court denied the owners' petition for a writ of mandate, ruling that the 1865 map did not create legal parcels within the meaning of the Act. The court of appeal affirmed, holding that the legislative intent underlying the Act precluded legal recognition of subdivision lots shown on antiquated subdivision maps recorded before 1893.

The California Supreme Court affirmed. The 1865 recordation of the subdivision map did not establish or create legally cognizable subdivisions for purposes of the Act, regardless of the map's accuracy of its inclusion in an 1877 county atlas. The court rejected the argument that two "grandfather" provisions (Govt C 66499.30(d) and 66451.10(a)) supported recognition of the 12 parcels. Recordation of the 1865 map did not lawfully establish the claimed subdivision for purposes of 66499.30(d). Under the Act, the 1865 map was not a final map, a parcel map, or a certificate of exception. Further, the 1865 map was never "filed for approval" or "subsequently approved" by a local agency. The court noted that it was undisputed that the property in question remained intact under sequential owners throughout its history; consequently, there was no argument that a subdivision was established by conveyance.

As for 66451.10(a), that section applies only to those units of land that already were "created" as separate parcels at some point in the past, does not provide a basis for legal recognition of subdivided lots depicted on antiquated maps, and has no application if the lots were not legal subdivisions before the Act.

Continued from page 15

Arbitrating a Boundary

testimony. Clearly the failure of a fight to break out disappoints some witnesses and the surveyors who stayed. Looking around the attorney's conference room at all the antiques and costly paintings, it is easy to see why at least one attorney is eager to prevent fights.

We have been at the hearing for six hours. All the testimony has been wrapped up. I now provide some closing comments. I ask the surveyors for their coordinate files so I can reconcile the different basis of bearings between the respective plats. Each surveyor has typically excluded measurement information about the other surveyor's location. There is some reluctance to hand over large coordinate files but the two surveyors quickly agree on providing coordinates for three common points so I can reconcile the different basis of their bearings. The attorneys can't follow the conversations that are occurring at this point. They got lost at the mention of coordinates. The surveyors ignore the attorney's bewilderment and promise to send me the information. That done, we review the arbitration agreement to make sure we are all clear on the leeway I am allowed in my decision. In some cases I must choose between one of two monuments. In this case I can place the boundary wherever I feel a location is appropriate. The arbitration agreement in this case specifies that the parties will execute and exchange quit-claim deeds to seal the decision. I offer to prepare the descriptions for the deeds. I have seen too many descriptions and decisions prepared by attorneys and judges that are problematic. Often the description the judge prepares or adopts is worse than the description the parties were fighting over. The attorneys accept my offer with relief. I also put them on notice that my decision will require one or both parties retain surveyors to adequately mark the boundary I describe. They have no objection with that part of the decision even though it is unusual after a court hearing. Finally, I promise to publish my decision within two weeks after receiving the coordinates from the surveyors. Their clients will be pleased with the quick decision. They have waited over two years to get into court. Once they agreed to arbitration, a hearing date was set within three weeks and the decision followed in two weeks. Everything will be over in slightly more than a month. The judicial sleigh ride on their wallets is coming to an end.

A week later the coordinates arrive by electronic mail. My decision is reached after carefully considering the evidence and rules of construction. I have never had an easy time reaching a decision because I agonize over each piece of credible evidence. My decision is documented and sent to the attorneys. One will be pleased, the other disappointed. I don't believe in splitting the difference unless the facts clearly show that to be proper. The landowners came for justice not reconciliation. I prepare an affidavit with a description of the boundary. The affidavit with supporting documentation is sent to the registry with the proper recording fees. I do this myself to make sure a record of the decision will exist for future landowners. The boundary location is fixed. No doubt the feuding will continue over some other matter.❖

Announcements

ANNOUNCEMENT FROM WENDY LATHROP!

FEMA The new version of the Elevation Certificate is finally available, and can be downloaded from FEMA's website at http://www.fema.gov/nfip/elvinst.htm. The prior form had a printed expiration date of July 31, 2002, had been formally extended until October 31, 2002, but had been unofficially revalidated until whenever a new form would be published. That "whenever" was January 29, 2003, and the form is the proper form to use from that date forward. It is valid through December 31, 2003.

NSPS Excellence in Professional Journalism Awards . . .

Congratulations to our New York and Montana cousins! More particularly: Ann Marie Schreiber, Editor of The Empire State Surveyor, Albany, NY for the Excellence in Professional Journalism Award, Over 500 Member Category; and Ronald Milam, Editor of Treasurer State Surveyor, Missoula, MT, for the Under 500 Member Category. Both fine journals! I so enjoy the covers of The Treasurer State Surveyor, with their beautiful pen-and-ink drawings of wildlife. And I don't mean intoxicated rascals. Ed

Letters to the Editor

Dear Editor:

Thank you so much for sending me your excellent and informative magazine. I have always said the ninety percent of the value of a survey is in the integrity of the surveyor. Please keep sending the magazine.
Frank R. Rainey (LS 2755)

Thanks for your appreciation - Ed

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This'll Get Your Goat

Two guys are walking through the woods and come across this big deep hole. "Wow…that looks deep." "Sure does…toss a few pebbles in there and see how deep it is."

They pick up a few pebbles and throw them in and wait…no noise.

"Jeez. That is REALLY deep…here, throw one of these great big rocks down there. Those should make a noise."

They pick up a couple of football-sized rocks and toss them into the hole and wait….and wait. Nothing.

They look at each other in amazement. One gets a determined look on his face and says, "Hey over here in the weeds, there's a railroad tie. Help me carry it over here. When we toss THAT sucker in, it's GOTTA make some noise."

The two drag the heavy tie over to the hole and heave it in. Not a sound comes from the hole.

Suddenly, out of the nearby woods, a goat appears, running like the wind. It rushes toward the two men, then right past them, running as fast as it's legs will carry it. Suddenly it leaps in the air and into the hole.

The two men are astonished with what they've just seen…

Then, out of the woods comes a farmer who spots the men and ambles over.

"Hey…. You two guys seen my goat out here?"

"You bet we did! Craziest thing I ever seen! IT came running like crazy and just jumped into this hole!"

"Nah", says the farmer, "That couldn't have been MY goat. My goat was chained to a railroad tie."

Reprinted from the Wisconsin Professional Surveyor (September 2002)

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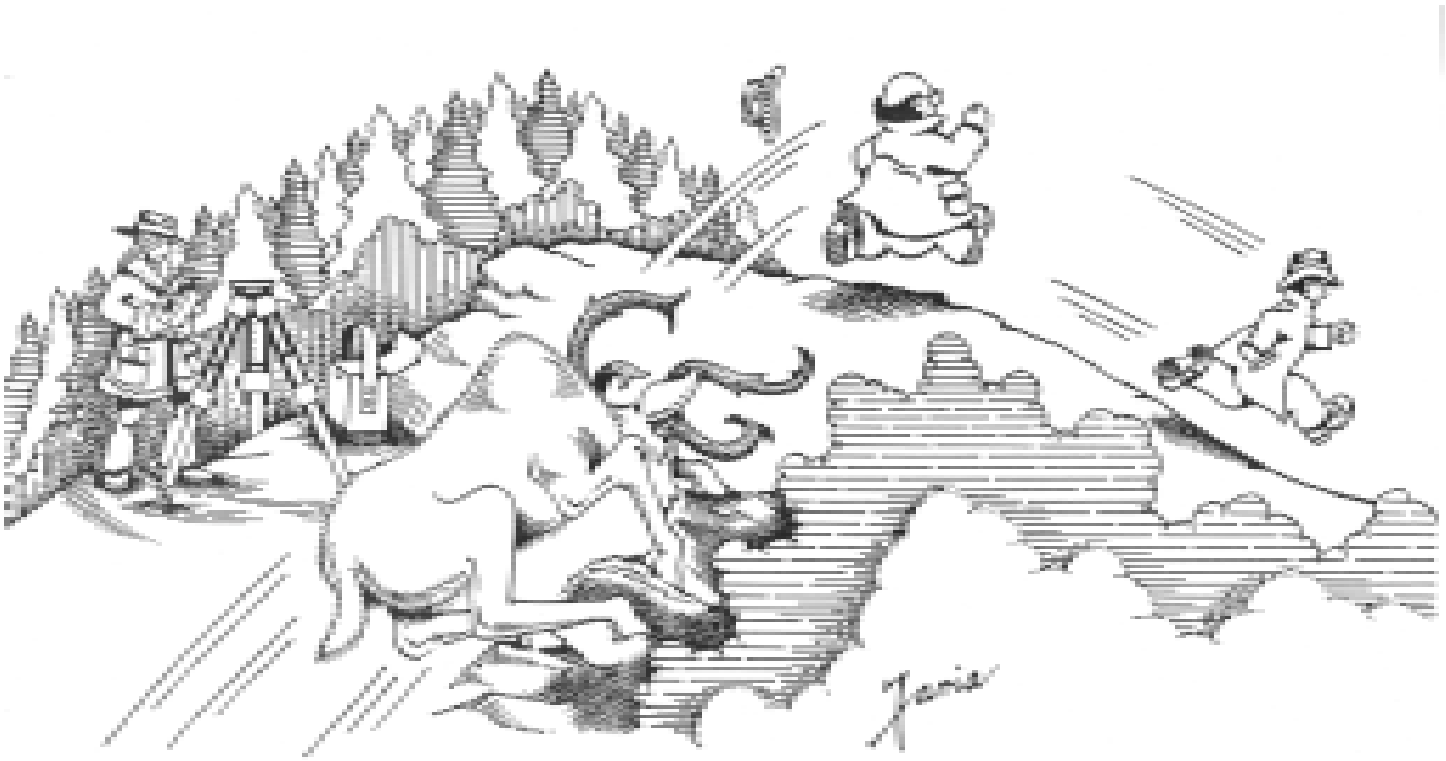

Tri-State Photogrammetry
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Here's Some Important Information About CLSA

The goal of the California Land Surveyors Association is to promote and enhance the profession of surveying, to promote the common good and welfare of its members, to promote and maintain the highest possible standards of professional ethics and practice, and to elevate the public's understanding of our profession. CLSA represents all Land Surveyors, whether they are employees or proprietors, whether in the public or private sector.

Representation

LOCAL: Your local chapter represents you in local issues. Through your chapter representative to the State Board of Directors, the individual member can direct the course CLSA will take. STATE: The Surveyor is represented at the state level through an active legislative program, legislative advocate, and liaison with the State Board of Registration. REGIONAL: CLSA is an active member of the Western Federation of Professional Surveyors. This Federation is composed of associations throughout the western United States and addresses regional issues. NATIONAL: Through institutional affiliation with the National Society of Professional Surveyors and the American Congress on Surveying and Mapping, CLSA is represented at the national level.

Educational Opportunities

CLSA presents annual conferences which provide technical and business programs, as well as exhibits of the latest in surveying and computing technology. Seminars and workshops are presented to assist in continuing education. CLSA publishes the California Surveyor magazine and the CLSA NEWS to keep the membership abreast of changing legislation, legal opinions, and other items which affect our profession.

Business and Professional Services

CLSA provides a fully staffed central office which is available to answer questions or to provide up-to-date referrals concerning legislation, educational opportunities, job opportunities, or other issues concerning our membership. Professional liability insurance programs are available to members.

JOIN CLSA TODAY!

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■ **CE CORPORATE MEMBER** *$159.00 + Entrance Fee. Any California registered Civil Engineer who is authorized to practice land surveying pursuant to Article 3, Section 8731 of the PLS Act and must be actively practicing land surveying and show sufficient proof thereof. CE Corporate membership must be approved by the Board of Directors.

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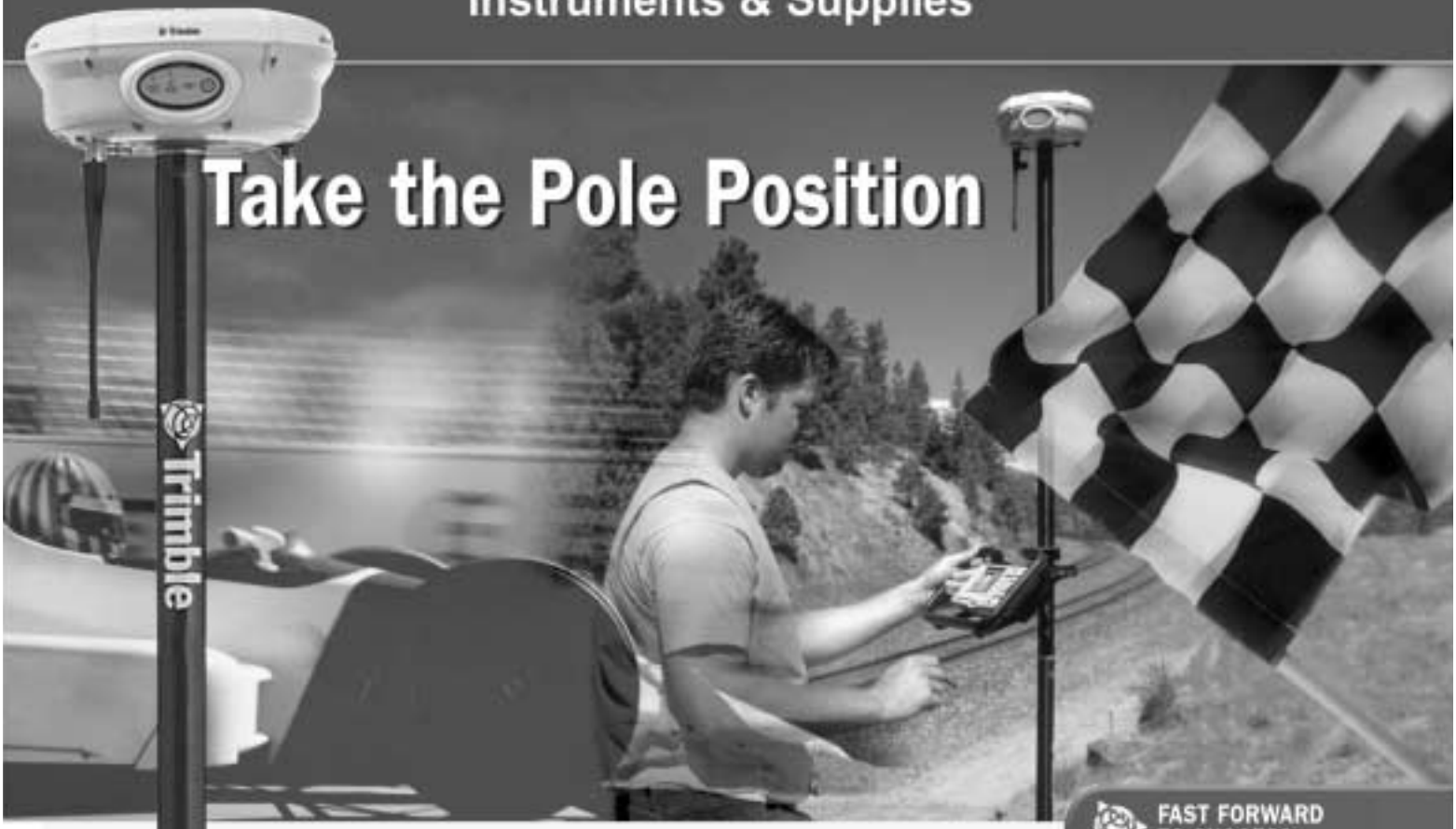

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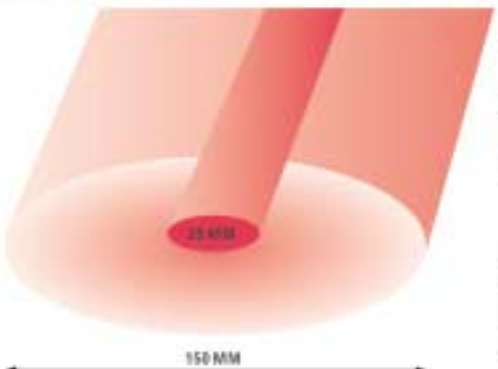

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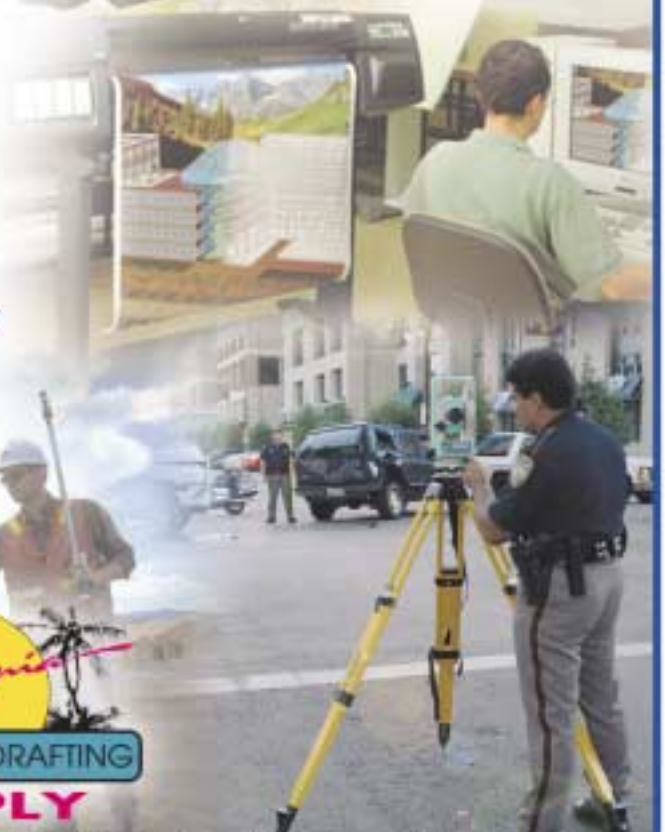

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