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# SURVEYOR

*California*

Institutional Affiliate of American Congress on Surveying and Mapping

Summer 2004 Issue #142

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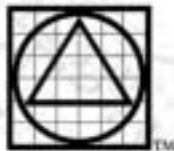
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# Surveyor *California*

The quarterly publication of the California Land Surveyors Association, Inc. and is published as a service to the land surveying profession of California. It is mailed to all Licensed Land Surveyors in the State of California as well as to all members of the California Land Surveyors Association, Inc. The California Surveyor is an open forum for all Surveyors, with an editorial policy predicated on the preamble to the Articles of Incorporation of the California Land Surveyors Association, Inc. and its stated aims and objectives, which read:

“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 Land Surveyors and their work.”

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## On The Cover:

Guess which famous surveyor occupied this home?

Send your guess to:  
[clsa@californiasurveyors.org](mailto:clsa@californiasurveyors.org)

Answer will be published in the next issue of the CLSA NEWS.

Additional Photos on page 36



# Nobody raises his own reputation by lowering others . . .



Doctors are like surveyors - professionals. Some good. Some bad. Some wealthy. Some not so. Unfortunately, sometimes the surgeon that operates on any and everything, and boasts of numerous surgeries in one breath, also spews the faults of others. Such conduct does not set well for the profession, nor is it ring ethical.

When a potential client calls for an estimate, it becomes your opportunity to sound professional. Bad-mouthing others doesn't raise one's reputation. Should a boundary dispute be in question - don't imply the other surveyor is out to lunch. Should you recognize the other surveyor as reputable, tell the caller. And if the opposite is so . . . remember what mom says: If you can't say anything nice - don't say anything at all. This establishes a sense of professionalism with your potential client. Recognize this: most clients we come across in our profession are not "Low Functioning", (as they say in the mental health business). Rather probably they are educated professional, like yourself. Which means - they're smart enough to recognize character-bashing as not-so-professional.

If it is observed another reputable surveyor has a survey nearby; seems as though he/she have done their homework and appears they don't have a conflict-of-interest, you may suggest they get an estimate from that person. I know this isn't a smart business-sense, but we're not in this business to own a baseball team! "Surveyors just want to be loved," to quote Walt Robillard.

The next time you find yourself starting to spew . . . think first, then speak. For a wise man thinks all that he says and a fool says all that he thinks.

## Boundary Client Fishing 101 . . .

I suspect Robillard's axiom " . . . surveyors just want to be loved" is part of our genetic makeup. At times countless hours are spent with a potential client, only to do what may be best for them - refer 'em to another . . . or get 'em "committed".

One should not sell oneself short. Spend some time explaining why your estimate is what it is. (Time spent may be trust acquired.) There is a good reason one estimate may be higher than another . . . and you'll find the lowest estimate is not always the successful tact. In estimating a boundary survey, explain what it is you do. Express your confidences and weaknesses that may

## A golden covering does not make the ass a horse

- *Those that have a right to boast don't need to.*
- *The surveyor who boasts that he never made a mistake has a client who did.*
- *A fool tells you what he will do; a boaster, what he has done. The wise man does it and says nothing.*
- *Success doesn't always go to the head; some times it goes to the mouth.*
- *It is easier to acquire a good reputation than to lose a bad one. Reputation is one of the few things that looks worse when you try to decorate it.*

evolve from your opinion. Should you surmise it may not be wise for them to be the client - rather their attorney . . . this sounds, and is the professional thing to do. Odds are their attorney will concur and praise your forethought.

Explain that some day you may be asked to defend your boundary opinion in court. Ask them if they believe it wise to spend little money on a survey, only to spend a lot of money, (in court), trying to defend it. Again the old analogy . . . would you obtain medical or legal advice from the lowest bidder?

Do give a reasonable estimate. Don't give 'em a get-the-job estimate . . . later to ratchet the fees up. Tell 'em like it is. Personally, I'd prefer to know the 'worst case scenario' . . . rather than painting a 'rosy' picture . . . then getting a final statement, the likes of which, looks and feels like a steer down at a Coalinga slaughter house, gettin' smacked between the eyes, by a Raiders lineman wielding a ten-pound sledge!

We're terra dicks - Land Detectives . . . and there are times that we need to recognize, it would be wise having the client's legal council on the team. The more familiar our profession becomes of the legal profession, you realize, just as in our profession, there are the damned good and the others. Strive to be one of the damned good!

*Continued on next page*

## An nutter one ... let's hope!

At the April CLSA Board of Director's meeting, it was announced that Napa and Solano Counties may have interest in forming a Napa-Solano Chapter! For those cousins in those territories, we'd love to have you aboard. If you need any help getting started, don't hesitate to call Central Office.

Forming a chapter would not only benefit CLSA but also the constituency! For those of you in Solano who would like to get away from the wind - meetings in Napa. Those in Napa wishing to obtain some relief from the summer heat - meet in Suisun for a cool one!

## Louie 'n Clark ...

The Spring issue of The Ontario Land Surveyor, posted an article of interest. David Rumsey has created a mosaic of historical maps of the Lewis and Clark expedition whereby one may do an animated fly through of portions of the trail! View his 3D GIS at: [www.davidrumsey.com/GIS/lewisclark3D.htm](http://www.davidrumsey.com/GIS/lewisclark3D.htm). Be warned: it requires substantial graphics-card and at least eight megabytes. Also, our Canadian cousins have a pretty good web-site at: [www.aols.org](http://www.aols.org). (Does anyone get the same urge I do, when seeing a maple leaf on a visiting car? " . . . welcome to California Canuck! . . . and thanks for freeing our hostages from Iran!")

*Okie dokie. Put the seat down and wash up . . . time to get back to the drawin' board!* ❖

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## Letters to the Editor



Dear Self,

I'd like to share with you, and the wonderful staff of Central Office, an enormous benefit of belonging to the California Land Surveyors Association! Being a Luddite, I don't wish to build, maintain or even look at my own "website"! However, due to the link "Find a Surveyor" on the CLSA web site ([californiasurveyors.org](http://californiasurveyors.org)), I have had several clients calling for services.

Chapter sponsoring a seminar? Our chapter's bulk mail was a bit tardy and some attendees didn't receive our seminar flyers in time. However, after some of you surfed the CLSA website - found and attended our Chapter's seminar! Another great benefit!

Thanks be to the CLSA Central Office, for maintaining our informative website and informing the public!

*Appreciatively yours!*  
*Dah Editor*

Phil,

Just read your editorial in the Spring 2004 California Surveyor, and I agree that the profession needs to be more visible.

I recommend a book by Richard Weingardt to our junior engineers and surveyors titled Forks in the Road, Impacting the World

Around Us. It expands your editorial about being involved with your community.

*Keep up the great work on the California Surveyor.*  
*Leon Mills, PLS 5159*

*Thanks for the encouraging words and the recommendation! - Ed*

### Corner Records:

Your article was interesting, and I agree with Mr. C. deBaca they are nearly worthless. The finding of a point whether of record or not, requires an opinion as to its correctness.

1. First I ask the surveyor whose point I have found for his records, just in case I missed something, then I decide if its correct.

2. The only possible use is if the surveyor who set the point is dead and his records unavailable. Then only if the city or county agency is in violation of 8771.

### Another Gripe:

I was told by the Board that I had to file a record of survey which was not required by the Land Surveyors Act. It was a lot within a tract. The tract had errors in it, but not within the area of my survey. I filed the record of survey, and was then fined \$500 for filing it late.

*John E. Combs, PLS 4861*

# President's Message

## President's Challenge Continued...

**H**ow do we inspire our members to accept the challenges of advancing the interests of land surveying?

The answer is not simple. We must motivate members to take action to accomplish the goals and objectives adopted by the Board. All Board members are charged to volunteer for at least one committee, however, committee members are not limited to Board members; any CLSA member may volunteer and begin statewide service. Committee communication is generally conducted by email and occasional conference calls. We have recently instituted committee meetings during the lunch break at the quarterly Board of directors meetings. These luncheon meetings are a way to jump start the committee work, meet new members and develop a strategy to accomplish committee charges. We have received positive response to this approach. We have set the bar high for the completion of committee tasks. As the year unfolds we are always expecting perfection and realizing something less. With a grand vision in sight, our lofty goals may carry on into the next administration to see fruition.

Consistent representation through our liaisons provides CLSA members an important service by presenting in-depth analysis of the issues, knowing pivotal players and consistently representing CLSA's position. Past President Howard Brunner is a stellar example of this level of service. Serving as our liaison to the National Council of Examiners for Engineering and Surveyors Participating Organizations Liaison Council (NCEES-POLC) for the past thirteen years, Howard has provided the CLSA Board of Directors the information necessary to take positive steps towards protecting the interests of the land surveying profession. Thanks Howard!

We have made major inroads garnering support of our opposition to the North American Free Trade Agreement - Mutual Recognition Document (NAFTA-MRD), crafted at the direction of the National Society of Professional Surveyors (NSPS). This opposition centered on the definition of land surveying which established a two-tiered system; (1) boundary surveyors and (2) all of the other tasks land surveyors perform, except boundary surveying, as described by the current NCEES Model Law. We communicated our concerns in several letters and were told that the NAFTA-MRD was a done deal. In fact, it had been approved last year at the NSPS annual meeting. Our objections centered on

the fact that the MRD, if signed by Canada and Mexico to state, without passing the state this was not in concert with the Professional Engineers and Land Surveyors to protect the public. NCEES and International Engineering Professionals Committee, reviewed the MRD as well as cited many technical flaws. As a result, NSPS established a committee to review the MRD and make recommendations to fix the document without completely rewriting it. Our own Carl C. de Baca, CLSA Treasurer, was appointed chairman of the NAFTA-MRD Review Committee. Carl along with select committee members, hammered out two critical amendments, which we expect will be adopted by NSPS at this year's national meeting. The first amendment will allow surveyors who are licensed by their respective jurisdictions, to sit for a host jurisdiction's license examination. Those who pass the examination would be issued a non-restricted license.

The second amendment adds language recognizing some states, like California, maintain an all-inclusive definition of land surveying under a single license. Surveyors in these states must be licensed to practice all aspects of surveying. For those states, a Schedule "C" signatory block was added. The two amendments work together to protect states with an "expanded" definition of surveying by requiring a license but making it more practical for an out-of-state (or country) licensee to get one, while not impeding those Schedule "B" states, if any, that would allow certain survey functions to be practiced by non-licensees. It is through CLSA's continued involvement, relentless doggedness and perseverance that these important issues are being reconsidered. We have maintained our momentum by obtaining the support of BPELS and the Western Federation of Land Surveyors (WFPS) on this issue. This action, on the part of NSPS, has led me to the conclusion that now is the time to encourage our members to join this national survey organization. Show NSPS that we see a movement toward national surveying representation and when we see something less we may withdraw our support.

In our last challenge we introduced past leaders who provided a legacy to follow. Today we have mentioned current Board members and representatives who continue to lead by example. Let's join with them by investing your time, skills and interests in the future of land surveying.



*Continued on page 12*



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# 2004 CLSA/NALS Conference



On Sunday, April 4, the 2004 CLSA/NALS conference at the Las Vegas Hilton was kicked off with announcements that California's governor, Arnold Schwarzenegger and Nevada's governor, Kenny Guinn, had both issued proclamations declaring the week of the conference "Surveyors Week" for their respective states.

## *Congratulations Phil!*



Phil Danskin, PLS receiving the Distinguished Service Award from CLSA President Bob Hart, PLS

During the opening speeches, CLSA president Robert Hart and NALS president Tim Wolfe made announcements and gave out awards. Hart noted that CLSA membership is at nearly 50% of licensed land surveyors in California. He also announced that Phil Danskin has earned the Distinguished Service Award for his rock-steady work as editor of the California Surveyor. Congratulations, Phil!

The keynote speaker, incoming NSPS president Craig Savage described the 'new' NSPS and the relationship between NSPS and the 'new' ACSM and noted that ACSM provides services but not direction to NSPS and the other member organizations. Savage emphasized more than once that "NSPS is the national voice of surveying...period." He discussed the TrigStar program, the Joint Government Affairs Committee, NSPS scholarships, NSPS' work with NCEES on examinations and on the Model Law, and he brought up the NAFTA Mutual Recognition Document. Savage explained that a new committee, chaired by California, has been formed to review the document and recommend changes. He also noted that nationwide, only about 20% of surveyors who are members of their state organizations are also members of NSPS. Clearly the voice of surveyors would be better heard if more of us would join their ranks.

Immediately after the Keynote address, Steve Parrish got the conference off to a vigorous start with his presentation entitled "Following in the Footsteps". Over the next three days, speakers such as Roger Frank, Jan Van Sickle, Michael Durkee, Anne Lazurus and John

Johnson presided over sessions on everything from GPS, the Public Land Survey System and the Subdivision Map Act to Marketing and developing a strategic plan for your business.

On Monday the exhibitor's hall opened and the spot raffles began. The periodic breaks between sessions afforded everyone a chance to renew old acquaintances, pick up literature and see new equipment, as well as gather a fine collection of free schwag such as key chains, pens, coffee mugs, hats, cordura bags, mini-compasses and pocket knives.

One of the best parts of the conference was the luncheon on Monday which featured self-professed mob attorney and popularly-elected mayor of Las Vegas, Oscar Goodman.

Mr. Goodman had many amusing things to say in a wide-ranging discussion that touched on his roles in recent movies and his policy that any movie filmed in his town must feature at least a cameo appearance by his honor the mayor. He described how he decided to put his lucrative career as a mob attorney, (a phrase he clearly loved saying), and make a run for the mayor position. He told how he was a prohibitive underdog in the early days of his campaign and yet he stuck it out and won the job. He made an interesting presentation of his efforts to secure a first rate teaching hospital and medical center and a performing arts center for his city and he touched on the ongoing revitalization of the old downtown area of Las Vegas. Oscar's humor and candor and colorful legal background make him the perfect mayor and principal spokesman for the city. He also pointed out the (unofficial?) motto of the city: "What happens in Las Vegas stays in Las Vegas".

What was perhaps the biggest highlight of the conference also came on Monday. The scholarship auction, always a huge success, netted over \$18,000 which will be

*Continued on next page*

## Special Thanks to those individuals and companies that donated to our Annual Scholarship Auction

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*Continued from previous page*

split between the two organizations, based on the affiliation of those who donated the merchandise. The silent auction featured any number of old, decayed pieces of survey equipment, not quite antique, not quite collectible and not fit for any museum I've ever visited, but still appealing in some way. There were also books, baseball tickets, wine and hand-knitted afghans.

One familiar figure spent the entire time going back and forth surreptitiously putting bids on items he felt were undervalued. That created little bidding wars for people who had their hearts set on a particular item and was quite amusing to watch. This anonymous character kept it up until the tables were closed and certainly did his part to raise scholarship funds. Thanks Hal, see you next year!

I myself bought a paltry \$172 worth of, somewhat dated (junk) equipment. If any of it works I'll be amazed and if it doesn't I'll put it back on the auction table next year. The Live auction, headed by our returning auctioneer, Lightnin' Jack, was definitely live entertainment! As auction frenzy and (a few glasses of wine) set in, the bidding went crazy. A certain stuffed bear with some survey accessories

went for several hundred dollars, a survey caddy, bearing remarkable resemblance to a rolling golf bag went for several hundred dollars, as well.



At the closing ceremonies, several fine gifts were raffled off and Bob Hart announced that CLSA membership had gone over the 2000 mark with several new members signing up during the conference. All in all it was another great conference.

Next March 18-23, the conference will be at the Riviera Hotel and Casino in Las Vegas and will be a joint conference of CLSA, NALS, ACSM and WFPS. Hope to see you there! ❖



# President's Message

## CLSA 2004 Conference

A proclamation for Land Surveyors Week, April 4 through 10, 2004, from the Governor, Arnold Schwarzenegger, a little late for press release or distribution, is available on the CLSA website, [californiasurveyors.org](http://californiasurveyors.org), along with my favorite, the "forum" where classifieds, discussion threads or soon to be revived, the Advanced Technology Committee discussion page, where technology issues will be presented and spark questions from the visitors and responses from the committee and the other participants.

## Celebrity Sightings:

On the 28th Floor, while heading for dinner on Saturday night, before the nine o'clock showing of "Mamma Mia" the musical based on AABA's 80's pop hits, we encountered a gesticulating actor Jerry Orbach (of the Wednesday night television drama "Law and Order") while searching for the unmarked ice machine closet. We wanted to let him off the hook by saying "no one can find the ice machine, on this floor!", but he was already disappointed because the Spanish-speaking housekeeping staff could not direct him to the desired location.

At the conference luncheon on Monday, we were privileged to host Las Vegas Mayor Oscar Goodman at the head table, where he shared the reason he does not eat lunch, when he was a practicing attorney, the afternoon in court was difficult following lunch, due to the overwhelming desire to nap. The mayor has appeared in the movie "Casino" and the Thursday night television show CSI Las Vegas and shared a unique policy of requiring every film crew applying for a permit to film in Las Vegas must include the Mayor in the film in some way. He wanted to help his acting career.

On the road trip home we craved a Mad Greek dose of fried zucchini, and pulled into the famous Baker eatery and stood in line behind ultra petit actress Meg Ryan, her 10 year old son and current beau, who bought a small bag of pita bread, and a portion of takeout which they took on the road, but not before she pleasantly signed a half dozen autographs.

This year's Education Foundation Scholarship auction was the most exciting to date, with the high level of excitement generated by the excellent, lively and in-your-face, challenge you to give your money to the students, Lightning Williams of Reno and maintained by the volunteering survey program students wearing silly hats and keeping the noise level high during those precious bidding rants. We took \$700 for a custom made survey bear, \$400 for a black and white print framed with old level rods and \$475 for an unused HP41 in the original box. We brought donations from two surveyor estates which held many unusual items. The venue was the best yet and allowed the event to be held where the donations were received, making the foundation board members and volunteers job easier. ❖



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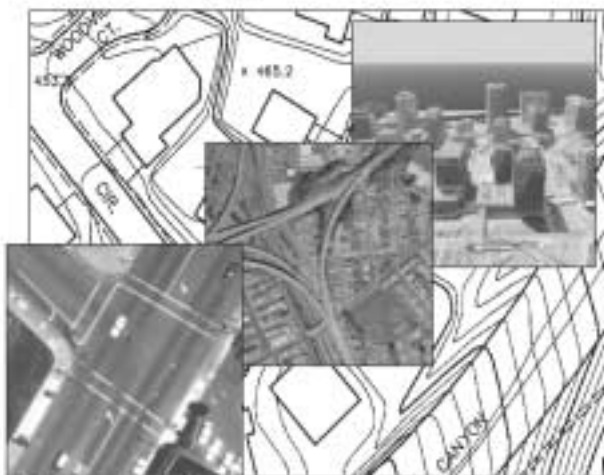
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# Our Paradigm Problem and a Summary of Land Boundary Location and Law

Copyright Jackson Pemberton December 1, 2003

A recent article in the Professional Surveyor Magazine, ("While We Were Looking the Other Way", October, 2003) got me pondering. There seems to be a collision of galaxies going on here - the historical professional land surveying industry in collision with new, disruptive technologies like GIS, GPS, etc. I think the challenges can be distilled down to two issues: Do we understand who we are? Do other land boundaries users understand why we are? I want to talk about these issues and then suggest an idea that may help us broadly establish a paradigm that will carry us properly for the next decade or two. It is useful to consider other disruptive technologies and how they demanded deeper understanding of their paradigms.

The railroads had perfected their technologies and procedures and were very good at what they were doing when the big trucks and then the airplanes came along. They thought they were railroaders so there never was a B&O Airlines. The Swiss watch makers had perfected mechanical watches to a degree of beauty, precision, and accuracy that was absolutely wonderful when the digital watch came along. It was presented to some of the top Swiss companies and licensing agreements were proffered. The Swiss thought they were in the mechanical watch business and turned down the opportunity. They lost the digital market which then grabbed a great portion of the mechanical market. Maybe if we think we are in the land measuring business we will miss our market too.

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**The more precisely you measure the line, the less accurately you place it.**

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Part of our paradigm problem is that both we and others are experiencing these disruptions. Tools that planners and researchers have only dreamed about are suddenly in their hands. Not only are these tools fast but they are extremely precise (but inaccurate). The excitement generated has clouded the minds of all land boundary workers. But there is something very unique about land surveying that will not change during the foreseeable future and that will allow us to get our paradigm correct if we can just get our brains around it. To introduce this unique thing, let me pose a conundrum.

The more precisely you measure the line, the less accurately you place it. This is a consequence of the interplay between measurement, common law, and the requirements of professional surveying. The law says the boundary is where the first markers indicated; the markers are usually gone and/or were not set exactly where the property description says they were; then more precision you apply the more you constrict the error ellipse; the smaller the ellipse, the more certainly the line falls outside of it. The fact is, to do a retracement, the surveyor should leave his total station in the truck, talk to the land owner(s), then maybe even use a magnetic compass and pace the best he can to the point he is looking for. Then he will have to apply the law to locate the corner because all he has to help him is a thoughtful, thorough search for evidence of the boundary, which, when he finds it, will very often be the legal line – the one the court would uphold if it came to that, as it certainly may if he just sticks to his "gun".

Now that had a tiny bit of playing with words in it, but it serves to point out that there are two major problems here: 1) Many readers will think the idea of leaving the precision instruments in the truck is a silly idea, and in some few cases it certainly would be. The difficulty is that many surveyors operate under a seriously flawed paradigm of what it is they do. They see themselves as deft, accurate and fast measurers - a paradigm that leaves out the fact that boundary lines cannot be accurately located by measurement alone. If they could, civil engineering and surveying would be the same vocation. 2) The more we think of ourselves as measurers, the more incapacitated we become in our effort to establish the surveyor as the only legal steward of land boundaries.

In an effort to understand what we do (and therefore who we are) I tried to find the basic principles that define this uniqueness about surveying and drew up a series of short statements, like axioms, and corollaries that attempt to describe the essence of land surveying at its "atomic level".

My hope is that this might eventually lead to a one-page summary "over the signature" of the UCLS that could be handed to a County Recorder, a property owner, an attorney, or whomever when there is an opportunity to educate land boundary workers. These are written for land surveyors, a more popularized version would need to be written for other land boundary users.

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*Continued on next page*

## A Summary of Land Boundary Location and Law

**Disclaimer:** Note that the following is based on generalizations and is an attempt to summarize and is therefore not an appropriate source of information in regard to any specific land boundary question. All land boundary issues must be decided upon their own merits.

### 1. The true land boundary line is an invisible, immovable and perpetual legal entity with one dimension: length.

- A) All stakes, pins, monuments, etc. are but visible markers of the location of the line.
- B) Loss or movement of monuments has no effect on the location of the boundary (except some earth movements).
- C) Since a line has no width, markers set after the original ones are never exactly or perfectly located at the end of a line. One of the primary objectives of the land surveyor is to set these as true as possible, but he can never do it perfectly accurately, hence,
- D) Determining the location of a line is first a matter of measurement to bring the surveyor into the immediate vicinity of the line, and second a matter of law where all available evidence is weighed and applied to the best estimation of the location of the line.
- E) Because of (D), no computational system can be devised or authorized to unilaterally and exactly locate a previously set legal boundary.

### 2. Only the owner of a property can create new boundaries and/or set legal boundary markers on the property.

- A) The law declares he must do this himself or authorize a licensed land surveyor or a court of law to do it.
- B) Adjoining owners may move a common boundary by overt agreement, by long-term acquiescence or by adverse possession.
- C) Boundary disputes between adjoining owners can best be settled by these owners themselves. They have the authority to work out an agreement and settle the matter. No one else has this authority. When an owner takes his neighbor to court, he is just delegating his authority to an attorney and to the court. He should seriously consider getting good advice and then settling the matter himself. Judges and juries try very hard to render their most common sense decision based on statutory and common law.

### 3. Lines are perpetually fixed in position on the ground by their original markers notwithstanding imprecision in their placement or description.

- A) Original surveyed lines as marked on the ground, are perfectly accurate.

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*Continued from previous page*

- C) The description of a boundary can only be used as evidence of its location: the courts have invariably ruled that boundary descriptions are nominal.
- D) Identifying a previously established boundary requires the application of measurement to determine its approximate location and of law to determine its exact location.
- F) Monuments or stakes set after the original monuments will always be more or less erroneously set.

**4. It is impossible to determine the exact location of the true, legal line without a person being in the immediate proximity of the line.**

- A) Only licensed land surveyors are authorized to perform these activities.
- B) Many licensed surveyors are not competent in land boundary law.
- C) A "pin cushion" corner is prima facie evidence of incompetence. The second marker placed for a corner location is always wrong for at least one reason: it is professionally unethical.
- D) Location of an existing corner by measurement alone is a "last resort" activity.

**5. The professional land surveyor finds existing lines and then establishes new lines in opposite fashions. To locate an existing**

**line he follows the principles above and upon finding a discrepancy between the legal description and the legal lines, he corrects the description. To establish new lines, he follows the grantor's instructions for the placement of the new monuments and applies his best measuring skills to write the legal description of their location and of the new parcel(s).**

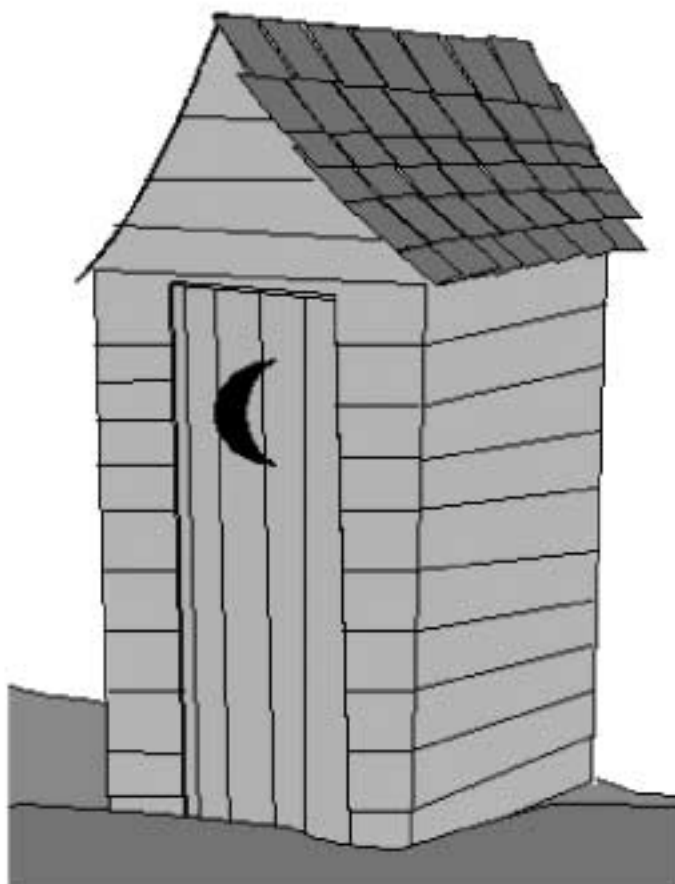
- A) Only land owners and licensed land surveyors are authorized to perform these activities.

*Notes: No computer system is yet able to consistently describe boundaries accurately. Because the legal principles outlined here and the information required to link adjacent properties are not in the Geographic Information System (GIS) as currently implemented, GIS cannot be used to generate property descriptions or to locate land boundaries. In fact, there is very little data in digital form that precisely describes boundary lines. Generally, the best digital data, poor as it is, is found in the GCDB because its data identifies and co-locates boundaries common to adjacent parcels.*

*A licensed land surveyor is, by virtue of his office, responsible equally to his client and his client's adjoining land owners for accurately locating existing boundaries. He is also charged with the accurate location, monumentation and description of new lines that a land owner may authorize him to create. He is the only legally authorized steward of land boundaries. ❖*

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## New Calculator Policy for National Examinations to be Enforced Beginning in April 2004

Beginning with the April 2004 examination administration, the Board will be enforcing the new calculator policy as instituted by the National Council of Examiners for Engineering and Surveying (NCEES). The NCEES calculator policy prohibits the use of any calculators with communication or text-editing capabilities. NCEES has created a list of calculators which may not be used during the examinations. This list and further information about this new NCEES calculator policy may be obtained from the NCEES website.

The Board will enforce the NCEES calculator policy during the administration of all national examinations. In April, the NCEES calculator policy will be enforced for the Engineer-in-Training (EIT), Land Surveyor-in-Training (LSIT), 6-hour National Land Surveyor, 8-hour National Civil Engineer, and Chemical Engineer, Electrical Engineer, and Mechanical Engineer examinations. In October, the NCEES calculator policy will be enforced for the EIT, LSIT, 8-hour National Civil Engineer, 8-hour National Structural Engineer, and all other Professional Engineer examinations, except for the Traffic Engineer and Geotechnical Engineer examinations.

The Board will continue to enforce its current calculator policy, which is described below, for all state-specific exami-

nations. In April, the Board's calculator policy will be enforced for the 4-hour California State-Specific Professional Land Surveyor and the Special Civil Engineer (Seismic Principles and Engineering Surveying) examinations. In October, the Board's calculator policy will be enforced for the Traffic Engineer, Geotechnical Engineer, 8-hour California State-Specific Structural Engineer, and Special Civil Engineer (Seismic Principles and Engineering Surveying) examinations.



### The Board's Current Calculator Policy

The use of any calculating/computing device having a QWERTY keypad arrangement similar to a typewriter or a keyboard during the exam is strictly prohibited. The following devices are also prohibited, whether or not they have a QWERTY keypad function: palmtop, laptop, handheld or desktop computers, data banks, data collectors, personal data assistants (PDA), and organizers. Calculators with other alphanumeric keypads are acceptable. Notwithstanding the above, the Board or its designees have the right to prohibit the use of any device which, in the opinion of the Board, may pose a threat to exam security.

*Continued on next page*

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## NCEES Calculator Policy

Calculators with communication or text-editing capabilities will be banned from all NCEES exam sites. These include, but are not limited to, the following calculators:

<b>Casio:</b>	<b>Hewlett Packard:</b>	<b>Texas Instruments:</b>	
CFX9850	HP 39 series	TI-82	TI-89
FX 7400	HP 41 series	TI-83, TI-83 Plus and TI-83 Plus Silver Edition	TI-92
FX-9750	HP 42S	TI-84 Plus, TI-84 Plus Silver Edition	TI Voyage 200
FX 2.0	HP 48 series	TI-85	
Class Pad 300	HP 49 series	TI-86	

*Please keep in mind that this list is NOT all-inclusive. If your calculator has the ability to store a string of text and communicate it in any way, it will not be permitted.*

### BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS WRITTEN EXAMINATION SCHEDULE FOR LAND SURVEYING EXAMINATIONS 2004 through 2007

#### LAND SURVEYOR-IN-TRAINING/FUNDAMENTALS OF SURVEYING (LSIT/FLS)

Spring Examination Date	Final Postmark Date for Filing for Spring Examination	Fall Examination Date	Final Postmark Date for Filing for Fall Examination Date
April 17, 2004 (Saturday)	February 13, 2004 (Friday)	October 30, 2004 (Saturday)	August 20, 2004 (Friday)
April 16, 2005 (Saturday)	February 11, 2005 (Friday)	October 29, 2005 (Saturday)	August 19, 2005 (Friday)
April 22, 2006 (Saturday)	February 17, 2006 (Friday)	October 28, 2006 (Saturday)	August 25, 2006 (Friday)
April 21, 2007 (Saturday)	February 16, 2007 (Friday)	October 27, 2007 (Saturday)	August 24, 2007 (Friday)

#### STATE-SPECIFIC LAND SURVEYING

Spring Examination Date	Final Postmark Date for Filing for Spring Examination
April 17, 2004 (Saturday)	January 2, 2004 (Friday)
April 16, 2005 (Saturday)	January 7, 2005 (Friday)
April 22, 2006 (Saturday)	January 6, 2006 (Friday)
April 21, 2007 (Saturday)	January 5, 2007 (Friday)

#### NATIONAL LAND SURVEYING

Spring Examination Date	Final Postmark Date for Filing for Spring Examination
April 16, 2004 (Friday)	January 2, 2004 (Friday)
April 15, 2005 (Friday)	January 7, 2005 (Friday)
April 21, 2006 (Friday)	January 6, 2006 (Friday)
April 20, 2007 (Friday)	January 5, 2007 (Friday)

The Board reserves the right to amend this schedule without advance notice. Land surveyor applicants applying for comity (reciprocity) in the State of California must comply with the above final filing dates as they are required to take and pass a state-specific land surveying examination as required by law. The Board does not allow extensions of the final filing dates pending notification of previous test results of EIT/LSIT exams.

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# Welcome New CLSA Members

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 Candace K. Daly, Monrovia  
 William R. Esteda, Ontario  
 Brian E. Eyerman, Fallbrook  
 Adolfo Flores, La Mesa  
 Wesley J. Hohenberger, Temecula  
 Damen Alan Marriott, Escondido  
 Eric Nickle, Fallbrook  
 Eric Ramos, Arcadia  
 Larry Thompson, Richmond  
 Jason Vestal, Truckee  
 Miles Wadsworth, Watsonville  
 Laura H. Wilson, Temecula

## ASSOCIATE

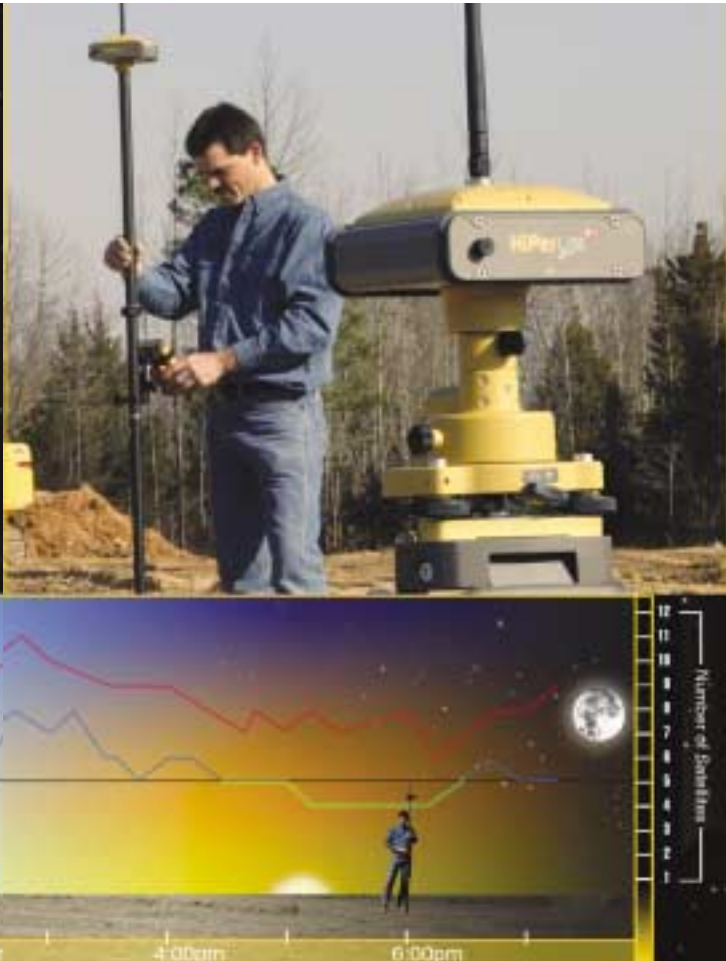
Cristobal Banuelos, San Diego  
 James Conti, Modesto  
 David C. Horn, Fresno  
 John Schock, Oakland

## CORPORATE

William Appleton, Santa Ana  
 Nigel D. Bain, Littleton, CO  
 Dennis Balagtas, San Diego  
 Michael J. Bell, Sacramento  
 Douglas Bredahl, North Fork  
 Armando D. Dupont, Corona  
 Richard E. Erskine, Alameda  
 Jon D. Forsyth, Arcata  
 Matthew Goetz, Piedmont  
 James Luke, Irvine  
 James H. Lycklama, Castaic  
 Ron Walker, Bakersfield  
 Robert Yeckley, Colton  
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Gregory Sebourn, Fullerton



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# Attorney Fees Clause



A sizable proportion of litigation results in legal fees exceeding the damages that were sought and awarded. Numerous surveyors have opted not to pursue unpaid fees from the client because the cost of collecting the fee is not worth the amount sought.

One contract clause that will often reduce the cost of collection is a section in the contract shifting the prevailing party's attorney fees and litigation costs to the losing party.

**Attorney Fees & Litigation Costs:** In any litigation between the Client and Surveyor for fees provided for in this contract, the party prevailing in the litigation shall be compensated by the loser for attorney fees and court costs to recover fees.

Many people have the mistaken impression that the loser must always pay the prevailing party's attorney fees. Shifting the prevailing party's attorney fees to the loser is common in other countries but is not allowed in the United States absent statute, vexatious litigation, or contract. (The responsibility for each side to pay their own legal fees is so distinctly a part of the judicial system in the United States that it is known as the "American Rule").

Accordingly, the surveyor that does not wish to pay attorney fees and litigation costs in order to collect their fee must include a provision in the contract to provide for the client to pay for the surveyor's attorney fees and litigation costs.

There are limitations to this clause that reduce its effectiveness. First and foremost, only reasonable fees can be collected. Since only reasonable fees can be sought and collected, the surveyor cannot always expect to be compensated for the best legal representation for all legal avenues that were pursued. The standard of reasonable fees has been defined in some cases to mean that the cost of only minimally acceptable legal representation will be compensated using a rate that is standard for the locality.

Often in litigation, complete victory seldom occurs. Accordingly, the term "prevailing" is subject to interpretation. The prevailing party is defined as the party that on a practical level is said to have succeeded in achieving a measure of their goals when compared against the other party. Accordingly, if a surveyor seeks \$1,000 in fees that the client denies entirely and the surveyor is awarded only \$500 in fees as a result of the judg-

ment, the surveyor would be considered to be the prevailing party. On the other hand, if the client made claim they only owed the surveyor \$400 when the surveyor was demanding \$1000, the client, on a practical level, would be said to have prevailed. If the action was voluntarily dismissed there would not be a prevailing party. The court often determines who was the prevailing party as part of the judgment.

The contract clause, such as the previous example, often limits collection of fees and litigation costs to the terms set forth in the clause. In the previous example, the clause only applies to litigation costs over fees. The focus on fees tends to favor the surveyor since most litigation over the surveyor's fee is initiated by the surveyor. Where the surveyor litigates over the fee and the client counterclaims claiming shoddy surveying services, only those attorney fees related to the claim of fees and not the counterclaim are covered by the contract.

Another limitation of the previous clause is the exclusion of attorney fees and costs arising from alternate dispute resolution such as arbitration. Only litigation is covered in the previous clause.

The contract clause can be re-written to cover all litigation involving a service contract.

**Attorney Fees & Costs:** In any action incurred to enforce this contract or defend services provided according to the contract, the prevailing party shall be entitled to reasonable attorney's fees.

As with other contract clauses, only the parties to the contract can seek relief under the clause, barring a state statute providing otherwise. Accordingly, litigation involving a third party will not shift the attorney fees and costs to the third party. ❖

---

*Knud is a professional land surveyor, professional engineer, and attorney at law licensed in several states. He teaches in the surveying program at the University of Maine and operates a consulting firm specializing in professional liability, boundary disputes, land development, and title issues.*

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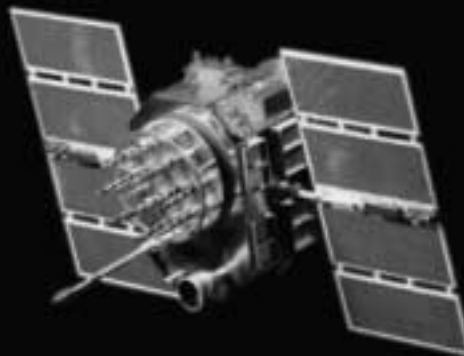


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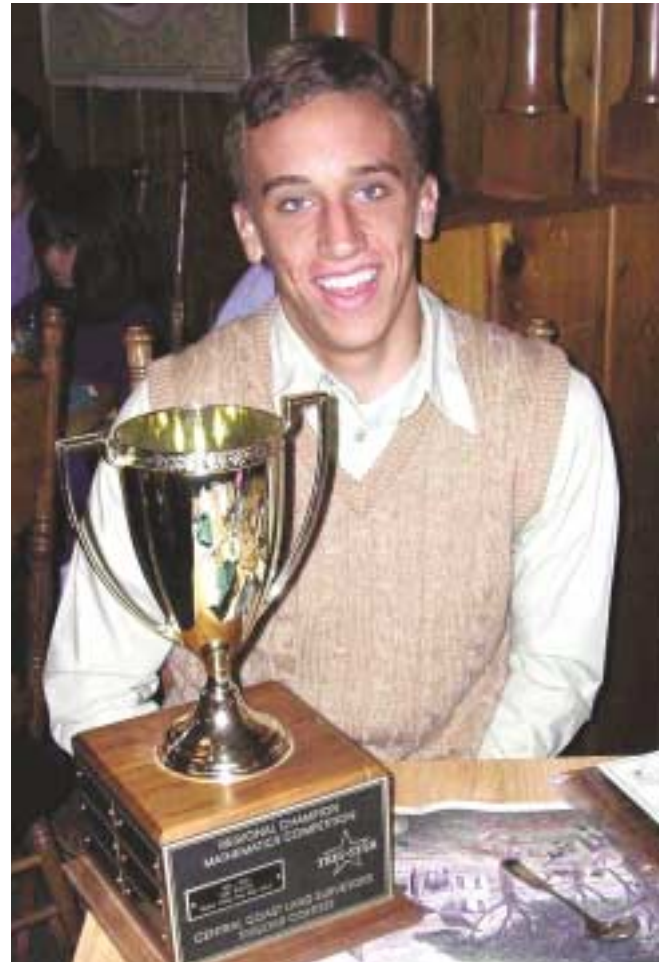
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# Trig-Star

This year's state winner of the Trig-Star competition was Sam Wilson from Mission College Prep. High. With the one and only perfect score in the state, Mr. Wilson was able to take home a \$1000.00 in prize money. Both George Marchenko and Phil Reimer of the Central Coast Chapter sponsored the local high school, and donated their personal time to give the presentation and proctor this year's exam.

Second place winner Brian E. Adams of Durham High, followed with an impressive score of 95. With help from Thomas Taylor and Donald Vaught of CalTrans, Mr. Adams was able to receive prize money in the amount of \$500.00.



Sam Wilson from Mission College Prep. High  
Winner 2004 Trig-Star Competition

Third place went to Dan Desmand of Trabuco Hills High. Mr. Desmand was one of 120 students who took the exam at his school and was able to win taking home \$250.00. Special thanks goes to Tony Cuomo of the Orange County Chapter who proctored the exam.

Overall twenty-six schools and seven hundred students participated in the 2004's competition. Caltrans, headed up by Tom Taylor, sponsored seven of this year schools, which is an increase from 2003 where only four schools were involved.

Much appreciation goes to the PECG (Professional Engineers In California Government) who donated \$1000.00 to the Trig-Star program, which helped increase the winning prize money for these students. Also special recognition should be given to all the sponsoring surveyors who have given up time of their own to see that this program is a success, thank you. ❖

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# CLSA Education Foundation Update

The 2004 CLSA Board of Directors reappointed Armand Marois, Mark Van Zuuk, and Bob Hart as Executive Directors for a two-year term. The Board also confirmed Hal Davis and Ken Fargen for a second year of their two-year term.

Ken Fargen has since resigned his position as a Director. Ken, as one of the original directors in 1996 that help create the Foundation, was very instrumental in developing the Foundation in its infancy towards the success it is enjoying today. His expertise and guidance will truly be missed. Heartfelt thanks to Ken.

To fill the vacated position the Foundation Board has appointed Steve Martin, San Diego Chapter. His appointment was made at the February 28th Foundation meeting. At the same meeting, the officers were elected as follows: Chairman, Armand Marois; Vice-Chairman, Bob Hart; Secretary-Treasurer, Steve Martin; and Dorothy Calegari as functioning Treasurer. General Directors were appointed as follows: Jim Herrick, Northern Counties Chapter; Steve Shambeck, Orange

County Chapter; Gary Lippincott, Northern Counties Chapter; and Kurt Lehnhardt, Channel Islands Chapter.

The mission of the Foundation is to provide scholarships to as many students in surveying programs as possible. By doing this, it is felt that this would be more beneficial to the surveying profession by supporting a majority of these students than to provide awards to a select few top students.

The main fund raising tool utilized by the Foundation is the Scholarship Auction held at the Annual CLSA Conference. Various items (old surveying instruments, books, photographs, paintings, tools, etc...) are donated by surveyors and vendors from throughout the state. In live and silent formats, the items are auctioned off with the proceeds helping to pay for scholarships and also to build up a "war chest" account where the interest earned would continue to subsidize the scholarships. Except for the cost of the auctioneer and miscellaneous printing expenses the majority of the funds collected go towards the scholarships.

*Continued on page 31*

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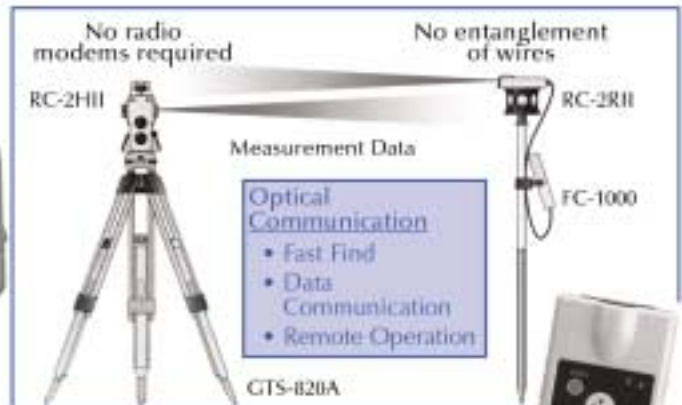


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## CLSA Education Foundation Update

As a separate goal to help fulfill our mission, the Foundation wants to encourage as much involvement from the Chapters as possible. Currently, the Foundation awards three specific scholarships; James Adams, Ed Griffin and President's. As of last year, the San Diego Chapter, Northern Counties Chapter, Central Coast Chapter, Central Valley Chapter and the San Joaquin Chapter participated with the Foundation in selecting their scholarship winner.

### This year's scholarship recipients are, as follows:

James E. Adams Memorial \$1,000 **Ken DeMueurichy**  
A.E. "Ed" Griffin Memorial \$1,000 **Florence Fandel**  
President's \$500 **Jason Fong**

#### San Joaquin Valley:

W.O. Gentry \$1,000 **Brian Gammel**  
Central Valley Chapter:  
\$1,000 **Joaquin Lopez**

#### Central Coast Chapter:

Jeremy Redmond Memorial \$750 **See Yang**  
Cliff Lewis Memorial \$750 **Joshua Cates**

#### Northern Counties Chapter:

\$1500 **Anthony Squellati**  
Donated \$500 to the Endowment Fund

#### San Diego Chapter:

Curtis Brown Memorial \$1500 **Sylvia Dietch**

Active Chapter participation in the candidate selection process is crucial to the success of the program. The goal is to have the Chapters inform the Foundation on who gets their specific scholarship. In return the Chapters attain state-wide recognition for their scholarship and get to make their selection from the applications the Foundation receives. Chapters are strongly encouraged to have representatives available to present the scholarship at the award ceremony in which the student would be recognized.

Realizing that some Chapters have an excellent scholarship award program, the Foundation is not interested in trying to override that Chapter's program, but to work with the Chapter in giving their scholarship more exposure. Also the Foundation can assist smaller Chapters that have excellent fund raising capability but have trouble finding qualified candidates. The Foundation is also considering adding to each participating Chapters' Scholarship award amounts.

If a Chapter is interested in developing a relationship with the Foundation, please contact the Central Office or Armand A. Marois at [amarois@bhaincsd.com](mailto:amarois@bhaincsd.com). ❖



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## 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.

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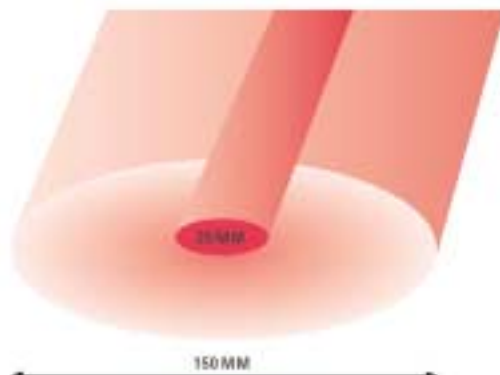
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