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The Myth of Inappropriate Opinions

I promised in the last issue to respond to the strange notion that our duty as surveyors is not to solve boundary discrepancies, but merely to bring them to our client's attention. The idea does not withstand close scrutiny, but it is useful nevertheless to occasionally revisit groundless assertions because of the clarity resulting from the effort.

It is germane to the conversation to remind ourselves why clients hire us in the first place: to find the limits of their dominion. To that end, we should recognize that there are a number of influences on those limits, the primary one of which is the title history resulting in the current ownership. No surprises here.

There is a school of thought floating out there which postulates that surveyors are not vested with any authority to judge the correctness or effect of any document, conveyance, or anything beyond, I suppose, which traverse adjustment to use. Such judgments must be left to those "with authority" to make them, and surveyors are not in that group. (This is also related to the silliness circulated occasionally that clients are interested in the location of *markers* as opposed to *property corners*. Who cares where the marker is if we are not prepared to opine on its relation to the corner? No one, of course–except perhaps the surveyor trying to disclaim responsibility for figuring out where the corner belongs.)

The Myth

I have yet to discover the origin of this myth that surveyors exceed their authority when they offer an opinion on anything, but I suspect it is a false derivative of the fact that our opinions are not binding on our clients, and certainly not on their adjoiners. Of course the same is true for attorneys and every other professional. No one is obligated to believe them, or heed their advice, no matter how advisable it would be to do so. Does that then mean that they too should refrain from rendering opinions?

Those who wrap themselves in this notion piously claim, "Only courts can fix boundaries." Let's examine that, shall we? If the courts were the only authority able to "fix" boundary lines, it follows that any lines not addressed by the court would remain in flux. Since only a tiny fraction of boundaries have ever been the subject of court decisions, must we not conclude that the remaining sea of parcels are (and will always be) indefinitely bounded? No court would subscribe to such a notion, for it flies directly in the face of judicial policy: litigation is the remedy of last resort. In the same manner, title insurers would balk at the intrinsic uncertainty.

"Oh," but they continue, "the parties to the land have authority to execute an agreement or other document eliminating the problem." But wait: who is to say that the boundary agreement "solving" the just-discovered overlap has any validity unless "blessed" by the court? Taking that rationale a step further, how is *any* transaction held to be valid unless signed by a judge? The theory begins to be crushed by its own weight. No one argues that judges need to participate in every transaction.

And therein lies the essence of the failed logic: if today's boundary agreement is to be considered binding on the parties and their successors-in-title, *so the original grants trumping the later "overlapping" conveyance must have been binding on the successors-in-title.* One cannot have it both ways. Either transactions mean something, or not. And if they do, who is to say that we as surveyors cannot analyze their effects as well (or better) than other title professionals?

The Effect of the Overlap

The apparent overlap, in effect, is a nullity. It does not exist and never did. Perpetuating it by drawing attention to it or otherwise giving it "airtime" only gives ammunition to the party not entitled to it. How does that comport with our role as uninterested observers? Must we make judgments in order to decide which side is entitled? Of course, but no

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more than we should be making anyway. What we are really doing here is analyzing the effect of past transactions. Nothing more, nothing less.

Why does simply noting the apparent overlap not serve the users of the survey? Two reasons: First, none of the other players in the situation (client, attorney, title company, adjoining landowner, etc.) have the necessary skills to answer the question of entitlement on their own. That analysis depends on a surveyor's expertise. (Most attorneys these days could not sketch a metes and bounds description under any circumstances.) Alerting them to the issue, then, is a preamble to our being presented with the problem anew. (Some will argue that we surveyors have no authority to investigate "ownership" issues and thus cannot speak to title matters. Although this is generally true when descriptions are not in question, where the essence of the question surrounds the interpretation of conflicting tracts, we are the *only* ones who can speak authoritatively to the issue; no one else has the necessary background. Even the courts will require surveyors to advise them on the matter. This is as it should be.)

Second, to the extent the "overlap" ends up being resolved in our client's favor, there was no actual controversy for that client. This is why title searchers, properly, focus on the chain of title exclusively and ignore the adjoining chains. Put simply, in that context adjoiners are irrelevant. Why then would a unilateral call in an adjoining deed spark a controversy on our side of the line? (Our "bailing out" by merely noting the overlap in our writings but not solving it serves, I believe, to reduce our stature in the eyes of observers, especially when they realize that we are the ones who must answer the question, had we sufficiently researched the issue. Only we can put the saddle on the right horse here. And after some reflection, others will come to the same conclusion.)

We ceased being merely "measurement experts" when we happened upon our first "pin-cushion" corner, or when we encountered our first uncalled-for monument. The solution to such quandaries cannot be found through mechanical dexterity or adjustments expertise, but through judgment, familiarity with the traits of our predecessors, and knowledge of the law. We thus enter the realm of decision-maker. And that's a Good Thing.