

# The Land Surveyor and the Attorney

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IN the relatively short time that I have been acquainted with the activities of The Florida Society of Professional Land Surveyors, I have been impressed with the efforts being made to upgrade and improve the standards of the land surveying profession in the state. These efforts are bearing fruit, and great strides have been made in the past ten years.

Land surveyors are members of an old and honorable profession, and can well be proud of a long and rich tradition. The profession currently appears to be undergoing what might be described as a renaissance. Land surveying originated principally as a science, being concerned primarily with mathematics. It then underwent a change, and the demands of the profession called upon land surveyors to expand their work beyond the utilization of purely scientific skills. Many of the great names out of the past are well-known for the contributions they made as land surveyors to the settling of this country. The next phase in this overly brief sketch is related to the growth of the field of engineering, which rapidly assumed pre-eminence. Land surveying, as such, was relegated to a secondary role, looked upon by many people as merely a technical skill, not worthy of the dignity accorded the so-called professions.

Today, however, and for quite a few years now, there appears to be an increased awareness of and emphasis on the role of the land surveyor as it is and truly ought to be—someone who is not merely a technician with a tape measure, but a professional person trained in mathematics, engineering, and to some extent, law, and called upon to make decisions based upon the exercise of professional judgment.

Clearly the land surveyor is concerned with both engineering and law. But the law schools in general neglect many of the legal principles that are of importance in the work of the land surveyor, and most of the formal education offered to land surveyors in the engineering schools reflect an absence of training in these areas of the law. The plain fact is that neither the land surveyors nor the lawyers know enough about the work of the other. Accordingly, the theme of this discussion is that the two related professions of land surveying and law ought to know more about each other, and ought to work more closely together and communicate better on a professional level.

I am not talking about the admittedly

good working relationship between the local land surveyor and the local attorney on a day-to-day basis. They get along pretty well for any number of reasons, not the least of which is the economic necessity of the situation. What I have reference to is the relationship between the professions, as such; the interchange of ideas and information that will be of aid to the members of both callings and their clients. Undoubtedly, there is a good deal of misunderstanding on the part of both land surveyors and attorneys as to what the members of the other profession can and should properly be doing.

There are several distinct areas in which the lawyer and the surveyor work together. The most obvious, of course, is in the preparation of surveys in real estate transactions. In addition, the land surveyor acts as a source of information about local land, and can provide much useful knowledge not obtainable elsewhere that can be used by an attorney in many varied situations. Also, the surveyor, based on his experience and knowledge of local land, can provide invaluable aid in interpreting land descriptions. And in litigation involving land disputes, surveyors are frequently called upon as expert witnesses.

In all of these areas, the more insight land surveyors and attorneys have into the problems confronting each other in the performance of their professional tasks, the better able they are to understand and communicate with each other. As one lawyer recently remarked to me: "The lawyers think the land surveyors don't understand what lawyers are supposed to do, and the surveyors think the lawyers don't understand what the surveyors are supposed to do." Many lawyers think of land surveyors merely as measurers. They fail to comprehend why two competent surveyors will sometimes disagree in the results of a survey. They believe that any skilled technician ought to be able to measure the length of a line, and they do not recognize the many instances in which the measuring process is dependent upon problems requiring evaluation and judgment upon which competent surveyors may differ.

A rather pertinent observation was made by Mr. Curtis M. Brown, serving as a mem-

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Lecture presented May 20, 1965, at Gainesville, Florida, at the Fourth Land Surveyors Short Course, sponsored by the Department of Civil Engineering of the University of Florida and the Florida Society of Professional Land Surveyors. Prof. Glicksberg was elected an Honorary Member of FSPLS in June 1965.

ber of a panel discussion on "The Challenging Future of the Land Surveyor" at the 24th Annual Meeting of the American Congress on Surveying and Mapping:<sup>1</sup>

"In the location of land boundaries, the surveyor also locates the boundaries of adjoining. He is in a quasi-judicial position, in that he is obligated to consider the rights of others, even though they do not pay him a fee."

Most people, and lawyers are no exception, do not realize the full nature of the responsibilities involved in the duties of a surveyor. They just do not stop and think about the true role of the land surveyor.

Nevertheless, much progress is being made. Mr. Brown and Professor Winfield H. Eldridge of the University of Illinois are leaders in providing materials that emphasize the legal aspects of land surveying. Mr. Brown's book, *BOUNDARY CONTROL & LEGAL PRINCIPLES* (1957), and the more recent book, *EVIDENCE & PROCEDURES FOR BOUNDARY LOCATION* (1962) by Mr. Brown and Professor Eldridge, are the leading texts in this area. And the excellent periodical *SURVEYING AND MAPPING* contains a wealth of material.

It occurred to me that a group of land surveyors might be interested in learning what lawyers throughout the state believe to be problem areas in their relations with surveyors. I therefore contacted a number of attorneys who do extensive work in the field of real property law. By and large, as might be expected, the response indicated that the problems were minimal, and that the relationship between the lawyers and surveyors was a very good one. Where problems did exist, the lawyers were as critical of their own shortcomings as they were of those of the surveyors.

The following quotes from letters written by some of these attorneys may be of interest. Each numbered quote is from a different attorney, and they represent merely a sample of those I received:

1. "I might say that in my experience the average lawyer, like myself, does not leave law school with any sufficient equipment to know when he has a good survey and the best or proper way in which property should be described."

2. "As for my own experience in the field, I have found that lawyers are prone to attempt to prepare legal descriptions without the proper knowledge of the facts. I have found that lawyers generally are not familiar with the most simple rules of surveying and by and large should not try to describe land, excepting by reference to Plat Book and page, or existing descriptions. I would think that the use of surveyors at legal in-

stitutes to explain the uses and purpose of legal descriptions might be of advantage to the Bar."

3. "Surveyors are sometimes critical of attorneys (and probably rightly so) for drafting legal descriptions without consulting with surveyors. This provides later difficulty in locating lands according to the descriptions, particularly where they are prepared by inexperienced attorneys who aren't familiar with the general principles of surveying. An example of this that I have heard surveyors refer to is the description of a tract as the "East 40 acres" of a larger tract whose East and West boundaries do not run North and South. Another example is the preparation of descriptions upon the assumption of a section having exactly 640 acres, and perfect dimension of one mile square. As you know, very few sections are exactly one mile square. To meet these objections, I think it would be desirable for the Bar to continually emphasize the importance of using the assistance of surveyors in the preparation of most legal descriptions."

4. "One practical problem which I have had in the past might be worthy of mention in the way of the following illustration:

A tract of land comes down through a chain involving a metes and bounds description originating at the northeast corner of the NW- $\frac{1}{4}$  of the SE- $\frac{1}{4}$  (or some other similar point). The land is then fenced in and located on the ground perhaps without the benefit of a survey. Thereafter, the landowner employs a surveyor and simply requests him to survey the tract of land which he points out on the ground. The surveyor, because of previous experience in the area, or because of some distinguishing markings, or other practical reasons, commences his survey with the point of beginning at the northwest corner of NW- $\frac{1}{4}$  of the SE- $\frac{1}{4}$ . Thereafter, contracts are made upon the basis of the survey and the title examiner has the problem of ascertaining if it is the same tract of land.

"Generally assuming that the 40-acre tract were regular in all directions, the problem is not so great, but certainly it would simplify the matter if the descriptions used by the surveyor were also the descriptions used in the chain of title.

"I therefore suggest that surveyors concern themselves more with the chain of title, and that they in all instances where it is feasible and practical first contact the landowner's attorney to ascertain the descriptions used in the chain of title before a survey is made. This is not an extremely important or vexing problem, but I do believe that it would be helpful if generally the description used by the surveyor was cleared with the attorney."

5. "... I have personally found this profession to be the most cooperative group of men that I have had occasion to work with in my practice of the law. I have had occasion to do business with some engineers who

<sup>1</sup> *SURVEYING AND MAPPING*, Vol. XXIV, No. 2, June 1964, p. 246.

were not as capable as others, however, in the main, I have found most of the surveyors doing business in the more populated areas to be most efficient.

"The few problems which I have encountered in dealing with a surveyor are primarily as a result of the failure of the party ordering the survey to adequately explain to the engineer the services needed. Most people will merely order a survey from an engineer and let it go at that. . . .

"One possible cause for concern may be the time taken to obtain a survey, however, establishing corners in rural areas can be both time consuming and dangerous, consequently, the placement of orders for surveys in remote regions should allow ample time for the work to be done. . . .

"It may be of some benefit to the legal profession to know a little bit more about the services provided by the surveying profession. I also have some information to the effect that some of the surveyors doing business in the sparsely populated areas of the state could improve their service through better study and use of new scientific methods, publications and educational facilities, however, my information in this regard is most sketchy.

". . . I feel that attorneys not well versed in the real property field (and even many of these) should utilize the surveying profession more in the development of the legal descriptions, particularly those involving metes and bounds. I have found the surveyors to be of great help to me in this area.

"I personally feel that the cooperative efforts of the members of the two professions have met with considerable success where some member or members of the Bar or the surveying profession did take hold of the problem and attempt to do something with it. It is my opinion that there is no real lack of cooperation between the two professions but there is, on the other hand, a decided absence of initiative or effort to bring the two together. . . ."

Also, one lawyer mentioned that attempts should be made to decrease the possibility of errors in legal descriptions. He suggested that consideration should be given to eliminating the use of symbols for such words as feet, minutes, seconds, degrees, etc. He recognized that this would increase the length of such descriptions, but felt that this was outweighed by the decrease in the possibility of mistakes due to typographical and proof-reading errors attributable to the use of these symbols.

It is not only the attorneys, of course, who are concerned with improving the preparation of legal descriptions. This is well illustrated by the following excerpt from a letter written by a land surveyor:

"Another significant area where cooperation seems desirable is that having to do with the preparation and interpretation of descriptions. . . . [L]and surveyors are not

equally capable in this matter. The preparation of an adequate description is an art in itself, and while, generally speaking, land surveyors are more likely to be well advised on this subject than other professionals, their abilities vary considerably. I would use extreme caution in making a selection of someone to write a legal description of real property, even though many descriptions would appear to be merely a routine matter. . . . Too many writers of descriptions assume that every reader will have the same understanding of the intent that they have."

Finally, in this attempt to set forth some of the thoughts and attitudes of practitioners, I would like to quote a comment from a title attorney for a leading title insuring organization:

"We find that too often the surveyor describes the property as he finds it on the land rather than locating the land according to the description in the deeds in the chain of title. It is my opinion that the surveyor should obtain the description from the lawyer and then should proceed to locate that description on the land. If he finds any encroachments, discrepancies, shortages, overage, etc. these would then appear on the sketch of the survey. We are experiencing considerable difficulty in such instances where surveyors have given the description in accordance with what they find on the property rather than locating the property according to the description and showing any discrepancies."

These, then, are some of the comments that I received. They indicate, I believe, that a good relationship exists between the two professions, and that the troublesome areas that do exist can undoubtedly be remedied by a little effort and better lines of communication.

One step in the direction of improving the services rendered by land surveyors was taken in 1962 with the publication of a booklet entitled "Minimum Requirements for Land Surveys Made For Title Purposes in The State of Florida." This pamphlet was developed and adopted by The Florida Society of Professional Land Surveyors and The Florida Land Title Association, and approved by the Mortgage Bankers Association of Florida. It is interesting to note that The Florida Bar is not included among the organizations adopting or approving the booklet.

This is a very useful and informative publication and should be on the desk of every lawyer and surveyor concerned with the location and description of real property. Unfortunately, however, the majority of real property lawyers to whom I have mentioned the pamphlet were either unaware of its existence or remembered having seen a copy at one time but could not locate it at the moment. On the other hand, one

attorney, on his own initiative, specifically referred to the pamphlet and stated that in his opinion many problems would be overcome if more surveyors would follow all the minimum requirements set forth. He has an extensive real property practice with a large law firm in a metropolitan area and he stated that he could not recall ever having seen a local survey bearing the certificate of compliance set forth in paragraph 1 of the pamphlet.

Undoubtedly, many surveys that do not bear such a certificate nevertheless fully comply with the minimum requirements. Many, possibly even most, surveyors as a matter of course prepare their work in accordance with these standards. But their importance cannot be over-emphasized, and they should continually be brought to the attention of all persons engaged in this type of work.

Possibly many surveyors, and perhaps even some attorneys, do not fully appreciate the significance of a complete and comprehensive inspection of the property. In many instances lawyers rely on the surveyor for their information about the physical characteristics of the land, and for any evidence of encroachments, easements, parties in possession, and the like. Factors of this type have great significance in the law from the standpoint of notice; that is, the law will imply notice of the rights of others stemming from knowledge that one has gained or should have gained from a complete inspection of the property, whether or not such an inspection was in fact made. The surveyor is probably the best qualified person to conduct such an inspection, and the attorney who relies on the surveyor is dependent upon him for a detailed, comprehensive, and accurate report.

The existence of errors in surveys and legal descriptions prepared by surveyors appears to be a common complaint of lawyers. Of course, the highly detailed nature of the work lends itself to the possibility of errors, but the very nature of the work itself demands the utmost precision and skill on the part of the surveyor.

The lawyer in many instances is not inclined to be overly tolerant of errors of this nature because in most instances in which both a lawyer and a surveyor are involved, the surveyor has little if any contact with the client. The lawyer frequently orders the survey, and the client looks to his attorney to handle the transaction. If something goes wrong, it is generally the attorney who has to deal with the parties to the transaction, and they are inclined to hold him responsible, regardless of where the blame actually may lie. This is equally true, for example, in instances in which surveyors cannot agree among themselves on the location of boundary lines. The property owners, or prospec-

tive purchasers, if they are working through an attorney, look to him, and the lawyer can easily find himself in the middle of a situation over which he has little control but for which he is being held responsible.

One further area is perhaps worth noting, and that concerns the legal principles applicable in the preparation of resurveys. One highly respected property lawyer stated that many of the criticisms of surveyors by attorneys are attributable to a lack of understanding of these principles by surveyors. He cited the leading Florida case of *Akin v. Godwin*, 49 So. 2d 604 (1950), and stated that its principles are not understood and properly applied by surveyors. Undoubtedly, the same can be said about many attorneys.

In a resurvey, as such, the question is not where an entirely accurate survey would locate the lines, but where the original survey did in fact locate them. This rule has been applied by the Florida courts to private as well as government surveys, without any real attempt at defining what is meant by an original survey.<sup>2</sup> In addition, on occasion judicial pronouncements in Florida have stressed the question of reliance on the prior survey without clearly defining the role that such reliance plays in the matter of resurveys.<sup>3</sup>

The case of *Bishop v. Johnson*,<sup>4</sup> decided in 1958, rather nicely illustrates the fact that these resurvey principles, even if understood, are not always easy to apply. Although the opinion of the court does not show this, the briefs and other documents filed by the defendant show that both the court and the defendant were in agreement on the law applicable to resurveys and both referred to the case of *Akin v. Godwin*. The defendant cited the case in support of his position while the court cited the case in support of its holding for the plaintiff. No wonder, therefore, that surveyors are sometimes confused on how to apply even those rules that are well-established. This sort of thing is familiar to most lawyers because the application of seemingly certain rules to varying factual situations is what comprises a large part of the practice of law. But it can be unsettling to one who is used to dealing with set rules that produce set results much of the time, which I suspect is generally true of a large part of the work of a surveyor. In making a resurvey, however, as well as in certain other aspects of his work, the surveyor must deal with legal principles that cannot be applied with mathematical pre-

<sup>2</sup> See e.g., *Wildeboer v. Huck*, 97 So. 2d 29 (1957).

<sup>3</sup> See e.g., *Cowgill v. Hopkins*, 52 So. 2d 343 (1951).

<sup>4</sup> 100 So. 2d 817.

cision.

There is no doubt that the surveyor and the attorney must work closely together. The services of a surveyor should be utilized in most real estate transactions. When buying a piece of realty, the purchaser is not only concerned with obtaining a good title, but he wants to be assured that the land he buys is properly described and is located where he thinks it is. There is, in fact, a need to educate the public on the necessity and desirability of surveys. The average deposit receipt, or form sales contract, in use in most parts of the state usually makes no reference to a survey. This could and probably should be remedied to call to the attention of the parties the fact that a survey might be desirable, even if it is not imposed as a requirement.

At least three occurrences have taken place recently (1965) that point to an increased spirit of cooperation and communication between the legal and land surveying professions in the state. The Continuing Legal Education Program of The Florida Bar has recently published a Florida Real Property Practice Manual dealing with various aspects of the practice of law relating to real property. It contains a comprehensive coverage of such topics as descriptions, boundaries, plats, etc., plus comments on the need for the services of land surveyors and a discussion of the minimum requirements for land surveys previously mentioned in this paper. It is, to my knowledge, the first publication designed specifically for members of The Florida Bar that goes into detail on so many aspects of land surveying.

The second instance to which I have reference occurred at the University of Florida College of Law, when we devoted our Advanced Property Course to problems of land location and description. Fifteen senior law students were enrolled, and the reaction to the course was most favorable. Three distinguished land surveyors in the state appeared before the group to participate in an informal discussion along with a practicing attorney. In addition, they and other leaders in the land surveying and legal professions aided and consulted with many of the students during the course. I am grateful to all who devoted their time and effort to share their knowledge and experience with the students, and I hope that in some measure the course served to improve the understanding between the two fields.

The last occurrence is still (1965) in the formative stages. The various committees of The Florida Bar are now being organized for the coming year, and for the first time in several years a subcommittee is being activated for the purpose of providing a means of cooperation and communication with the land surveyors of the state. The subcommittee is not yet organized, but a chairman was appointed, and the prospects look promising. Possibly the Florida Society of Professional Land Surveyors may see fit to establish a similar committee and the two committees might provide a liaison between the professions that could result in improvements in their mutual endeavors.

It is hoped that the spirit of cooperation will continue to grow, and that the result will be improved professional services to the public.

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## INSTRUCTION TO LAND BUYERS

<p>First see the land which thou intends to buy, Within the seller's title clearly lye, And that no woman to it doth lay claime by dowry, joynture, or some other name, That may incumber, know if bond or fee, the Tenure stand, and that for each feoffee It be released, that th' sellers be soe old, that he may lawfull sell, thou lawful hold.</p> <p>Have special care that it not mortgaged lye, nor be entailed upon posterity Then if it stand in statute bound or noe, be well advised what quitt rent out must goe, What custome service hath been done of old by those who forerly the same did hold.</p>	<p>And if a wedded woman put to sale Deal not with her unless she brings her male, For she doth under covert barren goe, although sometimes some traffique soe we know Thy bargain made and all this be done, have special care to make thy charter run</p> <p>To thee, thy heirs, executors assigns, For that beyond they life securely binds, These things foreknow and done, you may prevent those things rash buyers many times repent, And yet when you have done all you can, if youle be sure, deal with an honest man.</p> <p>— Lines over 300 years old copied from the roll in the Manor Court Office, Wakefield, England.</p>
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Submitted by George Wegman