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BACKSIGHTS & FORESIGHTS

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January 8, 9 and 10, 2015
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Photo Courtesy of Brandon Huppler of Interstate Engineering
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PUBLICATION DEADLINES

Material Cutoff	*Publication*
January 15	February 1
April 15	May 1
July 15	August 1
October 15	November 1

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FROM THE PRESIDENT:

As I write this it is the last day of October. I hate to think of winter being not too far away and lots of projects yet to finish. It is not a good time for equipment problems which I am dealing with today. I am having to do a lot of re-scheduling and praying that the weather stays nice, so I hope everyone is faring better than I am! It's amazing how much we rely on our equipment always working and when it doesn't the headaches that it causes.

It has been a busy time for the SDSPLS Board of Directors as well, we have been going over the Recommended Guidelines, and are about halfway through that process. We will be having a conference call meeting to try and finish our review of those guidelines. A lot of people have worked very hard on the writing and review of the guidelines and we owe them all a big thanks as it is not an easy process. All of this is happening while the Board has been taking care of the regular business of the society. Scholarship applications have now been received and the Board will be reviewing these for selection of this year's scholarship recipients.

I have been contacted by the SDES president, who was contacting all of the DPC member organizations as to what the DPC is and does. He explained that the membership on their Board is new and they were not sure why they were paying so much for this service. I explained that the DPC is a watchdog group and that the service we receive is well worth the cost. We feel very strongly that it should be kept in place because a time may come that all of the member groups need it. And we would never be able to replace our watchdog at the price that we are paying now. The review we receive of all the bills is incredibly important as most of us do not have time to spend reading each and every bill to see if any would affect our profession.

I have also been contacted by the chair of the Minnesota society seeking information from neighboring states. Under MN statue, a plat to be recorded must be produced by a photographic process on 4mil matte finish mylar, their issue being that this mylar is in short supply with only one supplier for the entire state. They are asking if we are facing the same issue. My response to them was citing our state platting statues, but I also said that each City/County has its own requirements. I have not had to provide 4mil mylar for any of the projects I have worked on and wondered if anyone has come across this issue and could provide some information that may be helpful? Please feel free to contact me and I will forward any information.

Janelle has been busy getting convention information ready for mailing and keeping up with all the other projects the Board is working on. We are lucky to have such a hard-working and organized Executive Director.

Hope to see everyone again in January for the 2015 annual convention. Until then have a great holiday season and see you soon.

Diane Aas, PLS
2014 SDSLPS President

SDSPLS – Board of Directors Meeting
Monday, September 8, 2014
Missouri Winds – Cedar Shores Resort – Chamberlain, SD

(This report subject to BOD approval)

Participants: President Diane Aas, President-Elect Ben Lamke, Secretary Eric Howard, NSPS Governor Tom Berkland, Big Sioux Chapter President Wade Lunders, Missouri River Chapter President Fred Leetch, Education Committee Chair Kristi Goehring and Executive Director Janelle Finck.

1. Call to order at 12:00 p.m. (central) by President Aas.
2. Acceptance of Agenda: ++Motion by Lamke to approve Agenda as amended, 2nd by Berkland. Motion approved.
3. Old Business
   a) SDBOTP Recommendation – Contact Updates: Discussion follows. ++Motion by Lamke to recommend Steve Thinglestad to represent the SDBOTP, 2nd by Berkland. Motion approved.
   b) Recommended Guidelines Review – Discussion follows with page by page analysis and recommended changes to the initial draft. The review stopped at page 21.
4. New Business
   a) SDBOTP – Proposed Rules Changes – Aas states the Surveyors Certification Note does not fit all situations and to consult local jurisdiction requirements. ++ Motion by Berkland to recommend disregarding suggested certification and to use an appropriate note, 2nd by Leetch. Motion approved. Discussion was also held on the signing and sealing of all sheets in a plan set vs. only the title page. ++Motion by Berkland to recommend signing, sealing and dating each individual sheet, 2nd by Lamke. Motion approved.
   b) STI Grant Application - ++Motion by Lamke to approve the requested $1,000 and additionally up to $1,000 for additional expenses with returned receipts, 2nd by Berkland. Motion approved.
10. Next Meeting – T.B.D
11. Meeting adjourned at 3:45 pm. (central)

Respectfully Submitted

Eric Howard
SDSPLS Secretary

Perceived Value

By: Charles "Dan" Church, PLS, CFedS

One simple thing that we as Professional Land surveyors can do to improve our public and professional image is to educate and explain to people what we do. People want to know what they are getting for their money and why things cost what they do. If the client thinks that all you are going to do is get a copy of their deed or map, go find two pins, then it's understandable that they don't want to pay the $1,250.00 proposal.

When a prospective client calls I try to find out what they are endeavoring to accomplish. Why do they want a survey? Is it a property owner that just wants to put up a fence, or having a dispute with a neighbor, or getting ready to build a garage, etc. They know they need some kind of survey, but like most people they don't know the difference between a boundary, a topographic or an ALTA/ACSM Land Title Survey. The more you know, the better you can direct them to the correct approach to complete the project. I try to explain to them what I'm going to do and why it's important for it to be done correctly. Take the time to educate the consumer, if you want people to be willing to pay what it is worth then they need to understand why it costs what it does.

Even in professional settings, some surveyors have become viewed as technicians, simply making measurements, staking points and drawing maps. While it's OK to be support staff to other professionals, there are times when the surveyor needs to put on his/her consultant hat and educate the design staff about the process that needs to be undertaken and the quality of the resulting product. Since land surveying was removed from college engineering curriculums, I find that a growing number of engineers are ignorant about National Map Accuracy Standards or the processes involved in even a simple topographic survey, let alone the legal implications of boundaries and easements.

Think about it; surveyors have the legal authority to create documents that will become a part of the public record that may have ramifications long beyond his/her lifetime. A design professional's documents rarely have any impact or authority past the completion of construction. Once that certificate of occupancy is acquired the plans are shelved and they move on to the next project. I have spent a great deal of time in my career explaining to other disciplines why close enough is not good enough, why getting the drawings through plan check is not the ultimate goal. For others that may be all that is necessary, just get it through plan check and we will "make it work". Rarely is there an easy way to "make it work" with a flawed boundary or easement after the project is complete. With the construction

(Continued on Page 11)

32nd ANNUAL CONVENTION

Cedar Shore Resort, Chamberlain, SD
For reservations call: 1-888-697-6363

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Thursday - January 8, 2015

Ethics and Standards
Gary Kent, LS

LSIT Course - Surveying Math
Mark Lippincott, PLS

Scholarship Auction

****

Friday - January 9, 2015

Easements and Rights of Way
Gary Kent, LS

NSPS & SDBOTP Updates
Annual Business Meeting
Banquet, Awards & Entertainment

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Saturday – January 10, 2015

NGS Updates:
Proposed River/Valley Crossing Technique
Geoid Slope Validation Surveys Research
New Horizontal & Vertical Datums Planning
Design of Real time CORS Networks
David Zenk, PE, LS

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Alternate/Concurrent Session

Thursday - January 8, 2015
and
Friday - January 9, 2015

OPUS Projects
David Zenk, PE, LS

This is a limited registration session (24) for those with a firm background in GPS. Registrants must attend both sessions and provide their own laptop

****

See enclosed flyer for registration and additional information or contact Janelle at 605-348-1538, janelle@fisklandsurveying.com or visit the SDSPLS website at www.sdspls.org

It Pays to Belong

How NSPS benefits members/ the profession:

Advocacy Program
- Political Action Committee (PAC)
- US Congress
- Federal Agencies
- Assistance on state specific matters (if requested)
- Other geospatial organizations
  - International Federation of Surveyors (FIG)
  - Coalition of Geospatial Organizations (COGO)

Education
- ABET-Lead Society for surveying/geomatics program evaluation for accreditation
- Scholarship Program – 15 annual awards

Licensing/Standards
- NCEES – Participating Organizations Liaisons Council (POLC)
- ALTA/ACSM Land Title Survey Requirements
- NSPS Model Standards

Outreach Opportunities
- Trig-Star
- Boys Scouts Surveying Merit Badge
- National Surveyors Week

Certification Programs
- Reduced rates for Certified Survey Technician Program
- Hydrographic Certification opportunities

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Automotive

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1. Go to www.tirebuyer.com
2. Choose your tires and/or rims
3. Use coupon code **GDNSPS14** at checkout and save 6% instantly
4. Choose one of our local professional installers – products will be delivered fast, in most cases, free to the TireBuyer installer
5. Head to the installer and have the tires/wheels installed on your vehicle

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Thank You, Land Surveying ...

By: Eric Martin, PLS

We're all born with a clean slate, free of skepticism, doubt, and distrust, veiled from life's true nature. I'm not sure when it occurs, but for everyone that veil slowly parts to reveal an often disappointing, cynical world. Maybe it's in grade school when the class bully knocks you over, or the cool kids conspire to make sure *you're* the one with cooties this year, to be teased and avoided at all costs. Or maybe it's later, when you find out your parents are actual human beings with the same deficiencies and failures as the other 108 billion (estimated) people to have walked on this planet. Hence, we manufacture an ideal in the form of fantasies and heroes.

We all need heroes. They set standards beyond our own to which we can aim. They spur us to self-actualized feats we wouldn't normally achieve on our own. And they help us indulge in a little fantasy once in a while, believing some things in this world can rise above the normal and always end happy *(the Justice League never lose, and Boss Hogg never did keep those Dukes behind bars)*.

Sadly, it's been a bad few years for hero worshiping. As a native Pennsylvanian and die-hard Nittany Lion, I was among the throngs of people who thought Penn State and Joe Paterno could do no wrong. I bought into their image, donned my blue and white every Saturday, and even followed them across the country each fall to feed this blinding loyalty. In a world full of fraud, corruption, liars and cheats, I rest assured accepting Saint Joe was leading his army of good guys dressed in white onto the gridiron to combat not only an opponent, but all that was wrong with big-time athletics. I truly believed, as their slogan claimed, they were indeed achieving *Success With Honor*. Until they were not.

I also love bikes; building them, fixing them, and especially riding them. And I love watching the best riders in the world display their craft in the storied European races. Surely my hero needs could be met by Lance Armstrong, the all-American boy who took on the world and became a champion. He accomplished much: Rise to the top of the cycling world; done. Defeat cancer; done. Establish a foundation to support cancer survivors; done. Return to cycling and dominate the sport; done. Inspire millions to blast their limits and reach high; done. Do all of this with honor, honesty and integrity; didn't. *Damn.*

So where do I look, where do *we* look, for inspiration and pride in this world of all-too-real realities? I'm not talking about the moral direction that faith, friends, and family supply. Rather, the kind of ego-swelling pride we all get in the presence of pure, clean excellence. Like the faint notches on an original section corner stone, sometimes the answers are right in front of us; they need only the meeting of time, skill, luck, and opportunity to reveal themselves. The answer, I understood while driving home from the Missoula conference last winter, is Land Surveying.

The Land Surveying community is a family as much as it is a profession. Can any of you walk away from a chapter meeting or annual conference and not feel a swell of pride in what you do and with whom you work? Business makes us competitors, but professionalism and integrity creates colleagues and friendships. There's honor in all work, and I'm proud my dollars earned picking strawberries, frying fries, cleaning grills, washing cars, mowing lawns, pounding nails, clerking, and teaching, but a day spent surveying is more satisfying than a nap after Thanksgiving thirds. You can't help but feel like you've done something good for today, and for posterity. So like it or not, I look to you, Land Surveyor, for the excellence and ideals where my heroes have failed. I send you many thanks.

Thank you for filing your work, completely, which helps me do mine, completely.

Thank you for mentoring young professionals as they explore this wonderful profession.

Thank you for respectfully explaining to a skeptical public the importance of our services, and why they command a commensurate fee.

Thank you for embracing technology, which brings unthinkable speed, efficiency, and accuracy.

Thank you for respecting the past, for Land Surveying has always been, and always will be, about shovels in the dirt and boots on the ground.

Thank you for engaging in civic discussions and watching for policy, zoning, and regulatory threats to landowner rights.

Thank you for all of the little things, like flagging on a nearby branch, accurate caps, bearing tags, guard stakes, and slowing down through a construction zone.

Thank you for joining your professional association, and adding strength to the collective voice only possible through active participation.

Lastly, thank you for reading. No one should be burdened with the expectation of perfection, but we demand as much from our heroes. And even though Land Surveyors are not without fault, I challenge anyone to set a more worthy benchmark.

As seen in Treasure State Surveyor. July 2013

ANNUAL

SDSPLS

SURVEY *Photo* CONTEST

Bring a print of your favorite survey project photograph to the convention with your name and a short description of the photo or project.

(8" x 10" maximum please)

Winner to receive a $100 CABELA'S GIFT CARD!

SDSPLS reserves the right to post entries on the SDSPLS website and/or print in Backsights & Foresights (with appropriate credit).

A Constitution for the New State of South Dakota

A constitutional convention that resulted in what would eventually become a constitution for the new state of South Dakota might have ended before its work began.

On Sept. 8, 1885, delegates gathered in Sioux Falls to draft a frame of government.

"At the start (Henry) Neill of Grant (County) offered a resolution setting forth that lacking a mandate of the people, and acting only on the authority of the Territorial Legislature, which had arbitrarily divided the territory into two states when the whole territory should be admitted as one state, that the convention adjourn at once sine die," wrote convention delegate L.W. Lansing in a undated document contained in the South Dakota State Historical Society – State Archives at the Cultural Heritage Center in Pierre.

Adjournment sine die means "without assigning a day for a further meeting or hearing." To adjourn an assembly sine die is to adjourn it for an indefinite period. No date has been appointed for meeting or assembling again.

The resolution was defeated 59-12, as some delegates had not yet arrived, Lansing wrote. The convention proceeded on.

"The writer holds to the opinion that the Constitutional Convention of 1885, and of which he is the sole surviving member, evolved the instrument that became the organic law of the embryonic state," wrote Lansing, who represented Hand County at the convention. He was a graduate of Rochester University in New York and a former assistant city editor of the Morning Herald of Rochester.

The constitutional convention of 1885 was the second time delegates had gathered to draft a constitution. A constitution is commonly defined as the body of fundamental law for a political unit. A state constitution outlines the basic structures and power of state and local government.

Discussion about statehood is said to have originated among dinner guests on Thanksgiving Day, 1879, at the home of Congregational minister Stewart Sheldon in Yankton, Dakota Territory. Delegates gathered in September 1883 for an unauthorized first constitutional convention at which they drafted a state constitution and declared statehood for the southern half of Dakota Territory. Voters supported the plan, but the Democratic-controlled U.S. House of Representatives rejected it, fearing that the new state would send Republican congressmen to Washington, D.C.

"The discussions were active and interesting and participated in quite generally," Lansing wrote about the 1885 constitutional convention. "One delegate suggested that the Indian name 'Dacotah' be adopted as name for the new state but lost. A state motto was adopted 'Under God the people rule.' Controversial matters like Woman Suffrage, Prohibition and Minority Representation and Referendum were left to the voters and the new legislature to decide, although women were given a vote on school matters ... Aliens who had declared their intention to become citizens (which they had to do to file on land) were also given the right to vote."

The constitution that was drawn up prohibited legalized divorces, lotteries, games of chance, changing county seats or individual names, according to Lansing.

"The rank and file of the membership were honest, intelligent, conscientious men with the best interests of the new state at heart and did a good, substantial piece of work in formulating the constitution submitted for the people's endorsement," Lansing wrote.

Voters in the south half of Dakota Territory approved the new state constitution. The Democratic-controlled U.S. House of Representatives again rejected it.

The political tide changed after the presidential election of 1888. Republican Benjamin Harrison, who was pro-statehood, was elected president. Republican success in the election, a change by their leaders in Congress and the lame-duck Democrats wanting to get credit for allowing new states combined to assure passage of an enabling act. On Feb. 22, 1889, President Cleveland signed the Omnibus Bill allowing the creation of the states of North Dakota, South Dakota, Montana and Washington.

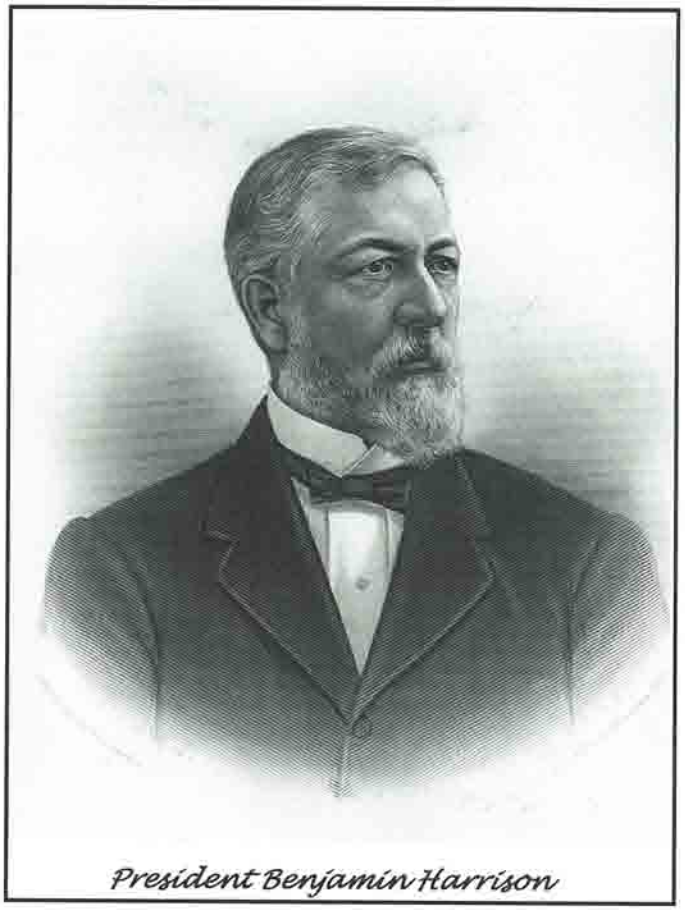
The Enabling Act of 1889 required a new constitutional convention for South Dakota. It was left to voters to decide whether to draft a new constitution or to adopt the constitution drawn up in 1885. Voters made their decision in an election that took place in May 1889.

"The people almost unanimously ratified the Constitution of 1885 and the (constitutional) convention that met on July 4th had only had only perfunctory duties to perform in making the Constitution conform to the provisions of the enabling act and in equitably dividing the debts and effects of Dakota Territory between North and South Dakota," State Historian Doane Robinson wrote in "Doane Robinson's Encyclopedia of South Dakota."

The constitution recognized only four functions of state government, according to Robinson. These functions were to preserve the peace, administer justice, promote education and provide care for the disabled. South Dakota's constitution is displayed in the museum of the South Dakota State Historical Society at the Cultural Heritage Center.

An election took place on Oct. 1, 1889, in which a slate of state officials was elected and the constitution approved. President Harrison signed the document that made South Dakota a state on Nov. 2, 1889.

This moment in South Dakota history is provided by the South Dakota Historical Society Foundation, the nonprofit fundraising partner of the South Dakota State Historical Society, headquartered at the Cultural Heritage Center in Pierre. Find us on the web at www.sdhsf.org. Contact us at info@sdhsf.org to submit a story idea.



President Benjamin Harrison

An Original Autograph Telegram sent to the Governors of North Dakota and South Dakota notifying them of The Admission of the two states into the Union in November 2, 1889 by Secretary of State James G. Blaine.

The last Act in the admission of the two Dakotas in the union was completed at the White House at three o'clock and forty minutes this afternoon by the President Benjamin Harrison signing at that moment the two states.

The article on Prohibition submitted separately in each state was adopted in both. The article providing for minority representation in South Dakota was rejected by the people.

This is the first instance in the history of the National Government of twin states. North and South Dakota entered the Union at same moment.

James G. Blaine

Drowsy Driving

By: Joe Breaux – TSPS Safety Committee Chair

Have you ever been driving and realized that you were either nodding off or dozing? You don't remember the last few miles? Maybe you drifted onto the shoulder but woke up before anything worse happened. I have, and I'm not proud to admit it. Fortunately I didn't run off of the road or hit anything. Some have and they aren't here today to talk about it.

Driving on long stretches of straight, open road can be numbing, especially when you haven't had enough sleep. Driving in general can be dangerous without adequate concentration or without enough sleep. Numerous factors affect our driving and concentration, such as lack of sleep, drowsiness due to medication (over the counter or prescription), effects of alcohol consumption, distractions such as talking, eating or adjusting the music, or even pre-occupation with anything but the task of driving safely.

Data reported by the National Highway Traffic Safety Administration (NHTSA) indicates that drowsy driving causes more than 100,000 reported crashes per year, with 40,000 injuries and 1,550 deaths. Damage could be as high as $12.5 billion. Drowsy driving is underreported as a cause of these crashes, and driver inattention is excluded from these numbers. This is only part of the whole tragic story as it is difficult to attribute sleepiness as a cause of crashes for a number of other reasons. Some of these reasons are there is no test for sleepiness as there is for intoxication (a "breathalyzer test"); inconsistency in state reporting practices due to lack of training or non-uniform coding of crash report forms, or some states lack codes for fatigue; and crashes attributed to other causes such as alcohol may also include drowsiness or fatigue or driver inattention. European nations, Australia and some countries (besides the U.S.) have more consistent reporting procedures that show drowsy driving represents 10% - 30% of all crashes.

In the National Sleep Foundation (NSF) "Sleep in America" poll conducted in 2005, 60% (equals approximately 168 million) of adult drivers admitted they drove while drowsy during the past year. More than 37% (equals 103 million) actually had fallen asleep at the wheel and of those, 13% said they had done so at least once a month. Approximately 4% (equals 11 million) admitted they had a near accident or an accident due to dozing off or being too tired. Another poll by NSF conducted in 2002 shows some surprising figures also. Younger adults, 18-29 years of age are far more likely to drive while drowsy compared to other, older age groups. Men are more likely than women and also almost twice as likely to fall asleep. Adults without children in the household are far less likely to drive drowsy than those adults with children. The less people sleep, the greater the increase of risk of drowsiness. From a AAA Foundation for Traffic Safety study, people who sleep 6-7 hours a night are 2 times more likely to be involved in a crash as those sleeping 8 or more hours, and people sleeping less than 5 hours per night are 4 to 5 times more likely to be involved in a crash. Researchers in Australia found that being awake 18 hours is equivalent to the impairment of a blood alcohol concentration (BAC) of 0.05%; while being awake for 24 hours equaled a BAC of 0.10%. 0.80% is legally drunk in Texas and other states.

A recent NSF poll shows that 29% of respondents get less than 6 hours of sleep, 41% get 6-7 hours of sleep, 21% get 7-8 hours of sleep and 8% get more than 8 hours of sleep. Some people just don't sleep enough while others don't get sufficient sleep due to sleep disorders, either diagnosed or undiagnosed. People with a sleep disorder are said to have a seven times greater risk of falling asleep while driving. Sleep disorders include sleep apnea, where during sleep, the individual's breathing stops for long periods of time, loud snoring, frequent daytime sleepiness, regularly occurring insomnia or difficulty sleeping due to stress. If you don't normally sleep well, check with your doctor or a specialist or clinic dealing with sleeping disorders.

How much sleep is recommended? Well that does depend on the individual, but the NSF says most of us need 7-9 hours. Teenagers need 8 ½ to 9 ½ hours of sleep. If you need more sleep, get it, do what it takes to get restful and sufficient amounts of sleep so that you don't risk driving drowsy.

Signs that a driver should stop and rest are daydreaming or wandering, disconnected thoughts; difficulty focusing, frequent blinking or inability to hold your eyes open; trouble remembering the last few miles driven, missing exits or traffic signs; rubbing your eyes or yawning repeatedly; trouble keeping your head up; drifting out of your lane, tailgating, hitting the shoulder or rumble strips; or feeling restless and irritable.

What can we do to prevent drowsiness while driving? First, get an ample amount of sleep, especially if you have a long drive. If you do have a long drive, drive with a partner or work associate, plan a rest stop every 2 hours or 100 miles; avoid alcohol or medications that cause drowsiness. If you find that you do need sleep, pull over at a rest stop for a nap or stop for the night at a motel. Remember to be safe about either of these, too. Taking in caffeine from coffee, tea, soft drinks, energy drinks, gum or other sources can often help some of us, but it does take approximately 30 minutes for caffeine to enter your blood stream. And the more you regularly consume it, the less the affect. Taking caffeine and then a short nap may offer the benefits of both.

Don't drive if you're drowsy. Drive alert and arrive alive, your family and friends want you to safely return home alive, each and every day.

http://drowsydriving.org
http://www.nhtsa.gov

As seen in The Texas Surveyor, March 2013

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*(**Perceived Value** – continued from Page 4)*

Complete, maybe the building is sold and now you are dealing with a whole new set of players that were not involved in the design and construction. They are not likely to want to monetarily participate in the preparation and recording of documents to correct items that were poorly handled or overlooked in the development process.

I'm not suggesting that we become the annoying know-it-all that tries to take over every aspect of the project. What I am suggesting is that the next time someone asks you for a proposal that we take the time to find out what the end product will be and then make recommendations and develop a strategy that will accommodate the project.

With property owners as well as other professionals, they often do not clearly understand what we do and subsequently why it's worth the time and money. Often it is a problem of perceived value.

As seen in The Nevada Traverse, Vol. 41, No. 2, 2014

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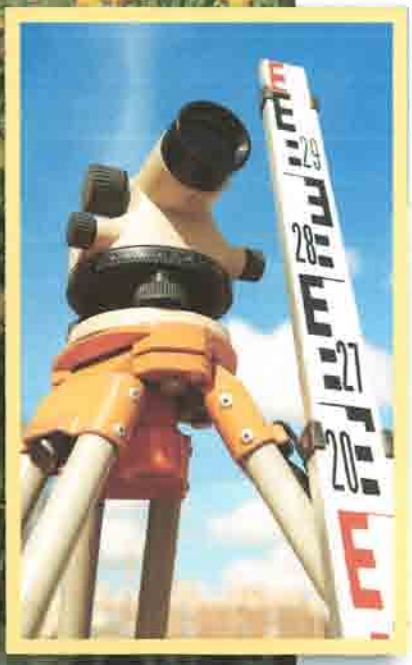

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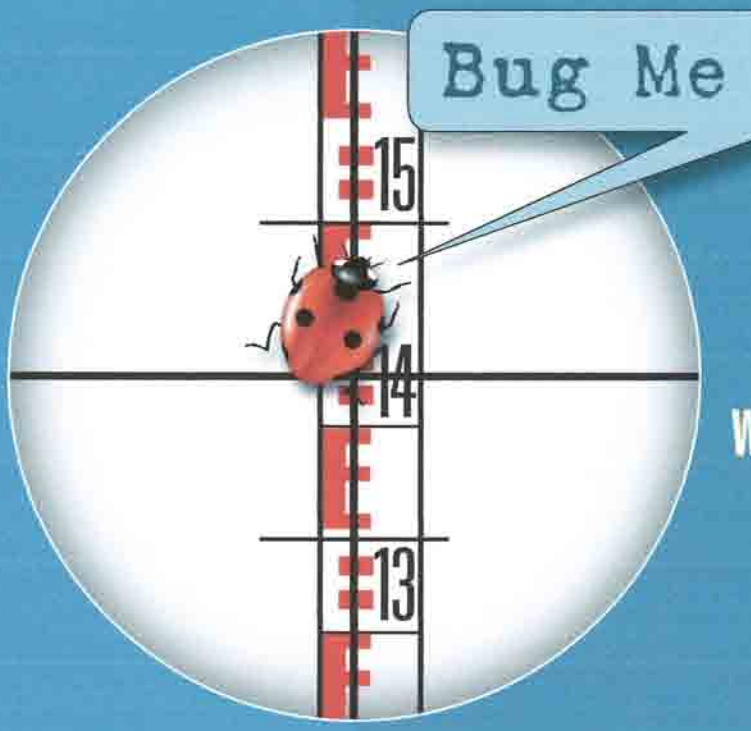

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The Land Surveyor's Guide to the Supreme Court of South Dakota

Part 8 – 1904 to 1906

This article represents the eighth in a series of excerpts from a book prepared by South Dakota licensee Brian Portwood. The complete book is available for review in PDF form on the SDSPLS website and covers 120 years of historic South Dakota cases, answering fundamental land rights questions of potential interest to land surveyors, which are being presented in chronological order here in Backsights & Foresights.

What is after-acquired title?

Bernardy v Colonial & US Mortgage (1904)

This case introduces the concept of after-acquired title, which is an important component of the relationship between grantors and their grantees, that can have a major impact on ownership of land, and therefore upon boundaries, particularly when multiple adjoining parcels are conveyed in a single deed and the title of the grantor to one or more of those parcels later proves to have been inadequate at the time of conveyance. The basic premise of equity motivating the after-acquired title doctrine is the idea that once a party who has made a commitment to convey land becomes capable of doing so, that agreement to convey is automatically executed by operation of law. This principle obviously serves to mandate honesty and fair dealing, by making it impossible for an unscrupulous grantor to purport to convey land that he does not own, then proceed to acquire the land himself, and then inform his grantee that the grantee did not actually acquire the area in question, because the grantor did not yet own it at the time of their conveyance. The 1902 case of Wilson v McWilliams, another interesting case on the topic of the validity and the legal effect of a deed, is also worthy of note at this point, since it represents an early example of some related concepts of major importance, that will later be explored in greater depth. In that case, McWilliams acquired land that had previously been owned and mortgaged by Wilson, by virtue of a mortgage redemption, under a verbal agreement between the two men that McWilliams would convey the property back to Wilson. Once McWilliams obtained his deed however, declaring him to be the sole and absolute owner of the tract, he simply decided not to honor his oral agreement to convey it to Wilson, instead keeping the tract for himself. Wilson filed an action against McWilliams, seeking to compel him to convey the land, as they had orally agreed, but McWilliams maintained that his deed was superior to any verbal agreement, so he could not legally be compelled to deed the tract back to Wilson, and the trial court agreed with McWilliams, quieting title to the land in him. The Court disagreed however, taking the position that even a deed that appears to be absolute in form may not actually convey any land, if it can be shown that the deed was actually intended to function only as a mortgage, and since the evidence clearly indicated that the deed to McWilliams had been executed as part of a mortgage redemption process, it had conveyed nothing to McWilliams, so the tract in question was still owned by Wilson, and McWilliams was required to deed it to Wilson, to clarify the record. This result in favor of Wilson demonstrates that an oral agreement relating to a deed can effectively negate the operation of the deed, and an agreement to reconvey land, if either satisfactorily proven or conceded, can prevent a deed from having the effect of an absolute conveyance. In addition, a verbal mortgage agreement can prevent a deed from being treated as a genuine conveyance of land, because the statute of frauds is inapplicable to mortgages, since a mortgage is not a conveyance of land, so parol evidence can control the legal effect of a deed. The outcome of the Wilson case foreshadows other important equitable limitations that the Court would subsequently place upon the application of the statute of frauds to land rights, as we shall see going forward.

1882 - Taylor settled on a certain quarter section in Kingsbury County, and shortly thereafter, he mortgaged it.

1885 - Although he had not yet obtained a patent for this quarter section, Taylor conveyed it to Wilkes, by means of a warranty deed. Whether or not Wilkes was aware of the existence of the mortgage is unknown. No longer having any interest in the land, Taylor turned it over to Wilkes and departed.

1888 - Since Taylor had failed to meet his obligations or complete the requirements necessary to obtain a patent, his entry was cancelled by the GLO, terminating his rights to the quarter. Wilkes was apparently occupying or using the land at this time, so upon learning of the cancellation, which rendered his deed from Taylor worthless, Wilkes filed his own independent claim upon the quarter

with the GLO.

1890 - Colonial acquired the mortgage that had been issued by Taylor in 1882. Presumably upon discovering that Taylor's rights to the quarter had been terminated, leaving this mortgage worthless, and also finding that Wilkes was now in possession of the land, Colonial obtained a warranty deed from Wilkes, conveying the quarter to Colonial, although Wilkes had not yet obtained a patent himself, and Colonial recorded this deed. Wilkes evidently went on using or occupying the land however, in order to fulfill his obligations as an entryman and obtain a patent for the quarter.

1893 - Wilkes mortgaged the quarter to Smith. Since the deed to Colonial was recorded, Smith was presumably aware that Wilkes had already conveyed the quarter, but if he did know of the existence of the 1890 deed, Smith apparently believed that it was of no value or effect, since Wilkes did not yet hold legal title to the land.

1895 - The GLO issued a patent for the quarter to Wilkes. Having completed his obligations, and his involvement with the quarter, Wilkes ceased his use of the land and departed, apparently leaving the land unused and idle. Colonial took no action with respect to the quarter however, so it evidently remained unoccupied, and it remained in the name of Wilkes, as the owner of record.

1897 - The mortgage issued by Wilkes in 1893 was foreclosed, and a sheriff's deed was issued to Smith, conveying the quarter to him.

1898 - Smith conveyed the quarter to Cadwell by warranty deed, and Cadwell then conveyed it to Hortman, also by warranty deed.

1899 - Hortman conveyed the quarter to Bernardy, again by warranty deed.

1900 to 1903 - At an unspecified time during this period, Bernardy apparently learned that Colonial claimed to own the quarter, so he filed an action seeking to quiet his title to it.

Bernardy argued that he had legitimately acquired the quarter, without any means of notice that any other parties claimed any interest in it, and the deed allegedly conveying the land from Wilkes to Colonial was invalid, because it was executed before Wilkes became the owner of the land, so Colonial had no valid claim to the quarter, and title to it should be quieted in him. Colonial argued that the deed executed by Wilkes in 1890 was valid, because he subsequently obtained his patent, confirming his ownership of the quarter, and all of the conveyances that had resulted from the foreclosure of the mortgage issued by Wilkes in 1893 were invalid, because by 1893 Wilkes no longer had any interest in the land to mortgage, so Bernardy had acquired nothing. The trial court held that nothing that Wilkes had done prior to obtaining his patent in 1895 was of any significance, and after obtaining his patent he had forsaken and lost the land by virtue of his abandonment of it, so the sheriff's deed issued to Smith in 1897 was valid, and all of the subsequent conveyances, including the one to Bernardy, were also valid, therefore Bernardy was the owner of the quarter, and Colonial held no legal interest in it.

Although the long and convoluted history of conveyances and encumbrances associated with this particular quarter section was potentially somewhat troublesome, and had proven to be a source of uncertainty and confusion for the unfortunate parties who became involved with the quarter as time went by, the Court was up to the task of sifting through the evidence, and thoroughly analyzing it, to properly resolve the conflict at hand. The fundamental issue of course, was simply who now owned the land, but since many apparently valid deeds had been executed, and it was impossible for all of them to be upheld, the Court would need to apply the appropriate legal and equitable principles, to determine which of them must be invalidated. This situation was actually a fairly typical one of it's time, containing the kind of issues that frequently developed during the years when the original settlement of the Dakota Territory was taking place, since many settlers did things that were foolish, improvident or senseless, similar to what Taylor and Wilkes had done in this scenario. In fact, settlers all over the west were uncertain about the extent of the rights that they held to the land that they were occupying prior to obtaining a patent, but many of them presumed that the land already belonged to them in effect, because someday it was going to belong to them, on the assumption that they would successfully complete all the requirements of the patenting process. Both Taylor and Wilkes had acted unwisely and in haste, by attempting to leverage their use and occupation of the land in question for their own personal profit, prior to securing complete legal ownership of it, thereby creating a problematic situation for their successors, yet nothing they had done was genuinely fraudulent or outside the law, so the legal

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(**Supreme Court Guide** – *continued from Page 15)*

ramifications of their actions had to be determined. While Taylor and Wilkes had acted very similarly, both mortgaging and conveying the quarter at issue, there was a distinct difference in the impact of their actions, which the Court took notice of. Since Taylor had departed prematurely, and had failed to ever acquire any land rights, nothing he had done held any value, but the same was not true of Wilkes. Because Wilkes had successfully obtained his patent, everything that he had done, since the moment of his occupation or use of the land under his own claim had begun in 1888, was relevant and important. The effect of the patent, though not issued until 1895, the Court indicated, was to render all that Wilkes had done since 1888 valid, as legitimate acts of a land owner, because the patent did not initiate his land rights, it merely confirmed the legal existence of his rights to the quarter, which had commenced to accrue in his favor 7 years before. The principle applied by the Court to resolve this controversy, and adjudicate the relative rights of all of the parties, is based on the concept known as after-acquired title, which was already codified in statutes that were in existence well prior to all of the events that had resulted in the present litigation, leading the Court to exercise that principle here as follows:

> *"where a person purports, by a proper instrument, to grant real property in fee simple, and subsequently acquires any title or claim of title thereto, the same passes by operation of law to the grantee or his successors ... on the subsequent issuance of the patent to the grantor (Wilkes) the fee passed to defendant under the deed (of 1890) ... the after-acquired title of Wilkes passed by operation of law to the defendant ... the deed from Wilkes to the defendant ... conveyed Wilkes title to the defendant, not only as against himself, but as against everyone subsequently claiming under him, except a purchaser in good faith ... the conveyance from Wilkes to the defendant was good as against him and all persons claiming under him ... the plaintiff ... did have constructive notice of the conveyance from Wilkes to the defendant ... a purchaser is presumed to know the law ... and that such prior grantee (Colonial) may have acquired such legal title by operation of law ... Had the respondent made such an examination of the records as men of ordinary prudence would have done, he would have discovered that Wilkes had ... conveyed the property ... and that Wilkes, at the time he mortgaged the property to Smith, had no interest in the property to mortgage, and that Smith acquired no title ... and that he (Bernardy), in purchasing, would* acquire no title to the property."

The key factor to understanding the outcome seen here is the realization that a unique relationship exists between each grantor and grantee, so although Wilkes had not yet fulfilled his burden as the grantee of the United States, at the time he conveyed the quarter in controversy to Colonial in 1890, he was nonetheless free to enter a separate relationship with Colonial as a grantor. Once Wilkes fulfilled his obligations as a grantee of the United States, the title he obtained by virtue of having earned his patent made it possible for him to then also fulfill his other role, as a grantor, under his conveyance agreement with Colonial, so the patent issued in 1895 retroactively gave validity to the conveyance made by Wilkes in 1890. Had Wilkes failed to ever earn and obtain his patent, Colonial would have owned nothing, quite ironically, just as Wilkes himself had been left with nothing in 1888, when Taylor abdicated his responsibility as an entryman, leaving Wilkes with a worthless deed. Under the law, the Court observed, every grantor and every grantee has definite obligations that they are individually bound to uphold and fulfill, on pain of incurring liability for any failure to do so, therefore upon obtaining his patent, Wilkes was legally bound to fulfill his commitment to transfer the land in dispute to Colonial, so in fact title to the quarter had passed directly to Colonial in 1895, by operation of law, as stated by the Court, without any need for any further action by either party at that time. The application of this powerful principle, which compels grantors to follow through on their promises and commitments to their grantees, represents a clear manifestation of the Court's strong efforts to give effect to every agreement that can be upheld and protected by any legal or equitable means. Bernardy's case was based on the premise that one cannot sell what one does not own, but since he was on notice of the existence of the recorded 1890 deed to Colonial, he was not seen by the Court as an innocent purchaser acting in good faith, which robbed his position of any controlling force it might otherwise have had. Bernardy was mistaken in his belief that nothing that had happened before the land had been patented could be of any importance, just as Smith had been mistaken in 1893, in failing to realize that Colonial's acquisition of the quarter in 1890 was valid and binding, so neither Smith, nor Cadwell, nor Hortman, nor Bernardy had ever owned the land in controversy. Having so decided, the Court reversed Bernardy's lower

court victory, leaving him empty handed, one dissenting justice did however suggest that Bernardy could have valid grounds upon which to file an action against his grantor, for breach of warranty, and in fact Bernardy's real mistake was filing his action against the wrong party, since he should have realized that Colonial owned the quarter, and seen that it was his own grantor, and not Colonial, who had cheated him. The success of Colonial here proves that it definitely is possible to convey land that one does not yet legally own, or as viewed from the perspective of a grantee, to acquire land from a party who has not yet acquired it themselves, in those situations to which the equitable rule of after-acquired title is applicable.

The fact that all title conflicts are to be decided on the basis of equity, rather than upon a purely legal basis, is an important concept, which was affirmatively set forth by the Court in a series of 3 cases decided in 1910 and 1914, Grigsby v Larson, Grigsby v Verch and Wilson v Grigsby. Day was a bank President, who evidently owned a substantial amount of land, but he was in financial trouble, so he quitclaimed his land to his own bank, in an attempt to shield it, and parts of it were subsequently conveyed to Larson, Verch and Wilson. Day then asserted however, that his own quitclaim deed to the bank had actually been only a mortgage, so he still owned the land, and he then proceeded to convey all of it to Grigsby. Grigsby then sought to quiet his title against the 3 grantees of the bank, but he lost all 3 cases, and each lower court decision against him was upheld by the Court, on the basis that a grantor, such as Day in this case, cannot be allowed to nullify the legal effect of his own deed, so the quitclaim deed executed by Day had functioned as an absolute conveyance of all of his land, and not merely a mortgage, leaving Grigsby as a subsequent grantee with nothing. The Court thus protected the 3 prior grantees, against the virtual conspiracy of Day and Grigsby, by eliminating the testimony of Day through the application of laches and estoppel. In 1911 however, in Hohn v Bidwell, the Court provided the further clarification that a quitclaim deed never carries after-acquired title, because a quitclaim deed amounts to a relinquishment of all of the rights of the grantor to the subject property, but it is limited, by definition, to the rights actually held by the grantor at the specific point in time when the deed is delivered. A grantee holding a quitclaim deed necessarily holds no assurance of the validity of his acquisition whatsoever, and can therefore register no successful claim that he was cheated in any respect, even if his own grantor later acquires title to the same land that was quitclaimed, so a grantor is free to assert ownership of land that he once quitclaimed, if he can prove that he did not own it at the particular moment when he quitclaimed it. The 2006 case of Myers v Eich serves as a fine modern example of the presence and the impact of the same basic equitable principles that were applied by the Court in the 1902 Wilson case summarized above, in this instance concerning the legal effect of a warranty deed. Myers loaned Eich money to redeem land that Eich had mortgaged, and Myers required Eich to sign a warranty deed, conveying his land to Myers, to serve as collateral or security, but when Eich was unable to pay Myers back, Myers asserted fee ownership of the Eich property, based on the warranty deed, and the trial court quieted title in Myers, as requested by him, on the basis that a warranty deed is absolute in nature. The Court reversed the lower court ruling however, holding that even a warranty deed can be proven to be merely the product of a mortgage security agreement. The Court concluded that the deed in question had simply been wrongly titled, since the title of the document failed to capture the true intentions of the parties to enter a security arrangement, rather than to complete a conveyance, invoking the venerable axiom that substance always controls over form. This case clearly illustrates that extrinsic evidence can operate to determine the true legal status of a deed, again emphasizing that the outcome of any title dispute is fundamentally controlled by the relevant principles of equity.

Does equity form the basis for adverse possession?

Murphy v Dafoe (1904)

Having already noted some of the basic elements of adverse possession, most significantly the element of notice, which lies at the core of adverse possession, in the context of some unsuccessful claims, here we review a typical successful adverse possession claim, resulting from an unexplained abandonment of land, which was not at all uncommon on the frontier. The case we are about to review was not the first successful adverse possession claim made in South Dakota however, so we will also briefly reference a few other noteworthy early cases. In the 1899 case of Parker v Vinson, Parker was the record owner of land that she had either neglected or abandoned for several years, during which time Vinson had occupied and used it to some extent, under a tax deed which turned out to be invalid. Parker therefore filed an action against Vinson, and the trial court quieted

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*(**Supreme Court Guide** – continued from Page 17)*

title to the property at issue in her, effectively ejecting Vinson from the land, but also holding that she had to pay Vinson for the improvements that he had made to Parker's property. South Dakota's first adverse possession statute was not enacted until 1891, and it required a minimum of 10 years to complete adverse possession, so no adverse possession claims could be successfully made until 1901, prior to that time, parties such as Vinson could only obtain the value of any improvements that they had made to the land being recovered by the owner of record in any given case. The applicable statute, providing for the compensation of ejected parties, like Vinson, by a recovering record owner, like Parker, did not define a void tax deed as being a source of genuine color of title, which an occupant like Vinson was required to show in order to qualify for compensation, so Parker charged that she should not have to pay Vinson, because his tax deed did not represent valid color of title. The Court rejected Parker's assertion however, upholding the lower court ruling that Vinson must be paid, in order for Parker to recover her land, as it had been improved at Vinson's expense, adopting the important position that any void document of conveyance represents valid color of title for purposes of adverse possession. A series of 3 cases that took place in 1900 and 1901, Houts v Hoyne, Houts v Olson & Houts v Bartle, appear to mark the first occasion upon which the Court exercised the 1891 adverse possession statute, making Houts the first party to be thereby barred from claiming ownership of real property. Houts was apparently in the business of obtaining quitclaim deeds to properties that had been subjected to a mortgage foreclosure process, from prior owners who supposed that they had lost their land to foreclosure, and then charging that such foreclosures had been void, allowing him to then eject the occupants, who had innocently acquired such land from the party who had executed the flawed foreclosure. While upholding the lower court's application of the statutory 10 year limitation on recovery actions in each case, to nullify the ownership claims set forth by Houts and protect the occupants from ejection, the Court reiterated that matters of title and ownership of land are controlled primarily by principles of equity, which was quite fitting, since the Court recognized that statutory adverse possession actually represents nothing more than a legislative tool, created to support the implementation of the equitable concepts of laches and estoppel to land rights.

1875 - Morris was the owner of a 120 acre tract in an unspecified location in Union county. Whether or not Morris lived on this tract, or ever made any other use of it, is unknown, but he was the original patentee of this land. He evidently set out to leave the country, presumably on either a business errand or a pleasure trip of some kind, but never returned, and he was never heard from again. He had a brother who lived elsewhere in Union County, but for unknown reasons his brother never made any claim to the tract in question, and no one else stepped forward to claim it by virtue of relation to Morris, so it apparently sat idle and unused during the years immediately following his departure.

1879 - The taxes on the Morris tract having gone unpaid, it was sold by the county to Marsh. While Marsh never actually occupied the tract, or made any other actual use of it himself, he did direct Osborne, who was apparently either an employee or a friend of Marsh, to look after the land on his behalf, on an occasional basis. Osborne therefore visited the tract on an unspecified but regular schedule, sometimes harvesting timber from it, which he then used for firewood and for fence construction, apparently on his own land, which was presumably situated somewhere in the vicinity of the Morris tract.

1883 - Marsh conveyed the entire former Morris tract to Barker, who then took possession of it and made some unspecified improvements to it. Whether Barker ever actually lived on the wooded tract is unknown however, and whether she made use of all of it, or just some small portion of it, is unknown as well, but she apparently allowed Osborne to continue taking wood from the tract for his personal needs, which he had become accustomed to doing.

1884 to 1903 - Barker paid all of the taxes on the tract during this period, but no additional details relating to her use of it are known. At an unspecified time toward the end of this period, Murphy appeared, presenting a deed allegedly from Morris, conveying the tract in question to him, and he apparently either ordered Barker off the land or demanded that she acknowledge him as the true owner of the tract. Barker evidently declined to relinquish the property to Murphy, and instead agreed to convey it to Dafoe, so Murphy filed an action against both of them, seeking to quiet his title to the tract.

Murphy merely argued that the 1879 tax deed to Marsh was invalid, and his deed from Morris was

legitimate, so he was the true owner of the tract in dispute, and title to it should therefore be quieted in him. Dafoe and Barker argued that the tax deed was valid, but they also argued that Murphy's claim was barred by the 20 year statute of limitations, since the possession of Marsh and Barker combined had endured for more than 20 years, and thus met the duration requirement for a successful adverse possession. The trial court found that Murphy's claim was indeed barred, as a consequence of the 20 year absence of Morris, who remained the record owner of the tract, in combination with the sole possession of all of the land at issue throughout that period of over 20 years by Marsh and Barker, and thus denied his claim to the tract, without giving any consideration to the issue of the validity of Murphy's deed.

At an unspecified date, following the completion of the trial of this case, Barker died, and Conly became the administrator of her estate, so Dafoe and Conly became the co-defendants, when Murphy decided to continue this legal battle after Barker's death. This had no impact whatsoever on the resolution of the issues in play however, because Barker's testimony was already fully documented as a matter of record, and the legal burden rested squarely upon Murphy, as the appealing party, to successfully demonstrate to the Court that the result of the trial had been so flawed or unjustified as to require the Court to reverse that result. In his effort to induce the Court to overturn the trial court's decision against him, Murphy continued to insist that the 1879 tax deed to Marsh was void, and he also pointed to the very minimal nature of the use that had been made of the land in controversy during the years that had intervened since the departure of Morris from the land. The Court adopted Murphy's position that the tax deed was void, which effectively made this an adverse possession case, since the case would have been merely a plain contest over the validity of the competing deeds of the litigants, and possession of the land would not have been a factor in the outcome, if the tax deed had been acknowledged as valid by the Court. Murphy had presumably chosen to take the position that the tax deed was worthless, which forced the defendants to rely on adverse possession in order to prevail, because he wanted to deflect attention from the highly suspicious character and origin of his own deed, and he very likely suspected that in a direct contest between the two deeds, he would lose. Murphy evidently believed that the use that had been made of the land, first by Marsh and then by Barker, was too insubstantial to support adverse possession, and he also knew that the use made of the land during the period prior to Barker's acquisition of it from Marsh would be critical, since the involvement of Barker with the land had not lasted for the requisite 20 year period. Murphy was apparently a member of a family that operated as a ring of professional land sharks, so he made it his business to be very good at seeking out situations such as this one, in which innocent land holders were potentially vulnerable to attack, and his plan to acquire the former Morris tract was fairly well devised, yet in this instance all of his efforts would prove to be for naught, and the Court would see that justice was done. As a result however, of Murphy's success in questioning the validity of the tax deed, along with the fact that Barker had held the land for under 20 years, Dafoe and Conly needed to prove that the use of the land by Marsh, as well as that of Barker, had been genuinely adverse, in order to show a full 20 years of truly adverse possession, which would bestow title upon the estate of Barker, by barring the ability of Morris, or Murphy as his successor, to ever assert any successful claim. In that context, the Court addressed the evidence as follows, finding that:

> *"the deed from ... Morris to the plaintiff was inoperative ... Morris not having been seised or possessed of the premises ... within 20 years ... Morris having been guilty of great laches, neglect and delay ... forfeited and lost any claim or right of action against defendants ... Osborne, while upon the land and cutting timber thereon, stated that he was acting as the agent of the Marshes ... this evidence ... was properly admitted ... Osborne was acting as the agent of the Marshes ... cutting the wood and looking after the premises ... if the land, though not inclosed, has been used for the supply of firewood, it is deemed to be in the adverse possession of the party ... the cutting of firewood by such agent for the use of his family is an act of possession of his principal, within the meaning of the statute ... the essential requirement seems to be that the party shall enter under a claim of title exclusive of any other right ... the Marshes claimed the property under their tax deed, and whether that tax deed was valid or invalid it is not necessary now to inquire ... such a conveyance, even void upon its face, constitutes color of title, and is sufficient for the purpose of founding a claim of title by adverse possession ... 20 years adverse possession ... under a written instrument, even though defective, constitutes a good title as against the plaintiffs ... estoppel is applicable ... silence estops those whose*

(Continued on page 20)

*(**Supreme Court Guide** – continued from Page 19)*

> *duty it is to speak ... there is no principle better established ... he shall not afterward be permitted to exercise his legal rights ... Where a party has slept upon his claim ... his laches constitute a bar to his maintaining an action ... Morris had abandoned the property ... he and his grantee (Murphy) were estopped from claiming the property."*

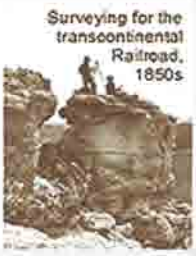
Despite the fact that the tract in dispute was apparently comprised primarily, if not entirely, of unenclosed woodland, the Court deemed the possession of it by both Marsh and Barker to have been adverse, even though Marsh had evidently never even set foot on the land himself, and he may never have even seen it. The acts of Osborne, who had acted as an agent of Marsh, although seemingly quite insubstantial, and definitely highly transitory in nature, were key to the outcome, since his footsteps on the land were, in legal effect, equivalent to the presence of Marsh himself. In essence, Osborne had functioned as a tenant of the tract, even though there was no evidence that he had ever lived on it, Marsh being his landlord, and Osborne had made sufficient use of the land in question to support adverse possession, since the use that had been made of the land by Osborne had been a use of the type that a typical owner of such wooded land would normally make of it. The Court had set the standard for the physical acts necessary to support adverse possession relatively low, since the acts of Osborne were not sufficient to provide obvious notice of his presence on the land, to one viewing the land at a time when Osborne did not happen to be there, indicating that major acts, amounting to constant occupation of land, are not essential to the completion of a successful adverse possession. The claims to the tract in controversy that were manifested in the uses made of the land by Marsh and Barker were genuinely exclusive, the Court indicated, because their presence on the land emanated from the tax deed, which represented a source of title that was not dependent upon the title of Morris, and was in fact completely antagonistic to his title, so none of their use of the land, since 1879, had been subordinate or subservient to Morris in any respect, therefore all of it had been truly adverse to his interest in the land at issue. Because 20 years of legitimately adverse possession of the former Morris tract had taken place, the Court agreed fully with the lower court's holding that no claim to the land made by Murphy, or anyone else, based upon any conveyance from Morris, could have any legal effect on the current ownership of the land, so there was no need to evaluate the validity of the deed that had been obtained by Murphy, and the lower court had correctly quieted title to the tract in the estate of Barker. Its important to note that the conflict in this case was over the ownership of the entire Morris tract, so no boundary issues were in play, and the boundaries of the tract were not disputed or contested at all, since the concept of adverse possession of a portion of a tract had not yet been adopted by the Court. Also importantly, in resolving this case, the Court very wisely recognized the true meaning of the statutory phrase "seised or possessed" as stipulating the actual physical presence of the owner of record, or a tenant or agent of his, on the land, so a record owner who physically abandons his land, as Morris had done, cannot claim that he is still seised of the land, once he has physically vacated it. In addition, the Court had also made it very clear that it recognized the concept of adverse possession as representing the statutory codification of the ancient and highly venerated equitable principles of laches and estoppel, two exceedingly powerful tools at the disposal of the Court, which when applied in tandem, operate to prevent the commission of such an injustice as Murphy attempted to perpetrate here, thereby employing the passage of time, to protect the land rights of those who have occupied land in good faith.

The exploits of a different member of the Murphy clan, who was operating in Grant County, because the courthouse there had burned down, destroying the land records and creating chaos among titles, provided no less than 3 opportunities for the Court to exercise the 1891 adverse possession statute, which are worthy of note at this point. In Murphy v Redecker, in 1903, the Court quite readily disposed of an assault by Murphy upon the ownership of a certain tract by Redecker, which Redecker and his predecessors had occupied under a sheriff's deed since 1888. Murphy discovered that Redecker's deed was void, and he also learned that Redecker had neglected to pay his property taxes on time one year, so Murphy charged that Redecker could not successfully rely upon adverse possession to retain his property, because the law required timely tax payment. The Court agreed that the provisions of statutory adverse possession included good faith, color of title and payment of taxes, all for a period of 10 years, but finding that an adverse possessor has no greater obligation to pay taxes on time than any other citizen, the Court ruled that Redecker had successfully acquired the property in question through adverse possession, despite the fact that he had paid his taxes late one year.

Just 2 months later in 1903, Murphy was back before the Court, participating in the case of Murphy v Pierce. In this instance, Murphy set out to acquire other land that had been formerly owned by another member of the Barker clan, which had been acquired by Pierce, by means of a deed from the heirs of Barker, and also by tax deed. Murphy discovered that both of Pierce's deeds were fatally flawed and were therefore invalid for different reasons, so he obtained a correct deed from the Barker heirs and challenged the title held by Pierce. Pierce had satisfactorily occupied the land at issue for over 10 years however, so the Court rejected Murphy's contentions concerning the validity of Pierce's deeds as moot and irrelevant, quieting title in Pierce by means of adverse possession. In 1905, Murphy pursued yet another such claim, this time attempting to leverage laws that restricted the rights of native people to convey their lands, in the case of Murphy v Nelson. Pazi was a native who conveyed his land in violation of the law in 1889, and it was subsequently acquired by Nelson, who was unaware of the illegality of that 1889 conveyance. In 1902 Murphy obtained a deed to the tract in question and charged that since the land had been in native ownership, and was therefore not subject to taxation, Nelson could not satisfy the statutory tax payment requirement that had been established in 1891. The Court again found no merit in the assertions made by Murphy, ruling that Nelson had acquired the disputed tract by adverse possession, regardless of whether the tax payments that she had made had been legally assessed against her land or not, because the mere fact that she had made the payments fully illustrated the good faith character of her possession, clearly fulfilling the spirit of that particular adverse possession requirement. By the end of their career, the Murphys had served our society well, albeit unintentionally, by helping the Court to establish several important ground rules relating to adverse possession, despite losing on every occasion, and by giving the Court these superb opportunities to demonstrate how adverse possession operates to protect the land rights of the innocent. Although adverse possession cases did not yet involve any boundary issues at this point in time, and still centered solely upon the relative merits of competing titles covering whole properties, the hand of the Court would soon be forced to extend adverse possession to engulf cases involving boundary evidence as well.

"Far and away the best prize
that life offers
is the chance to work hard
at work worth doing"

Theodore Roosevelt


Surveying for the transcontinental Railroad, 1850s

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NSPS stolen equipment registry

You may not be aware that NSPS offers a registry for any NSPS member to use for listing stolen equipment, and for members to check if they are approached to purchase equipment from unknown sources. Anyone wishing to utilize the NSPS registry can access it by using the link, http://www.nsps.us.com/index.cfm?fuseaction=Page.viewPage&pageId=676&parentID=525&nodeID=2.

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Phone: 240-439-4615 * Fax: 240-439-4952
www.nsps.us.com

October 29, 2014

NSPS CST CERTIFIED SURVEY TECHNICIAN

Re: Certified Survey Technician (CST) Program Poll Results

Dear Fellow Professional Surveyors:

The NSPS CST Board created a poll for the purpose of improving the CST Program. This poll was sent early in 2014 to all 1400 active CST's in order to obtain feedback on the program, and received 210 responses. The following is a synopsis of the results of the poll.

We were pleasantly surprised that responses noted the most beneficial aspect for participating in the CST program as being personal reward, adding NSPS membership as the single most important recognition they could receive. This shows their dedication to the surveying profession. Other benefits mentioned as important were monetary considerations and employment security.

Another suggestion was to make the CST program more visible and accepted by the entire surveying community. Nationally, the program is utilized mostly in the eastern states. By utilizing this program in all states, and at all levels, we could greatly increase membership and participation through the entire surveying spectrum.

The CST's were asked if they were members of either NSPS or their state society. The vast majority responded that were not a member of either. This is where I believe we are missing the boat with this segment of our profession. We must recognize that we need them, and we want them. They are critical for our future survival, especially considering that the average age of professional surveyors continues to rise.

Based upon another aspect of this poll, we have also initiated a contract with Spatial Media, the publishers of *The American Surveyor, LIDAR News, and Machine Control* magazines, to create a CST exam preparation and learning website (*www.learncst.com*) to help prepare survey technicians to take the Level I, II, and III exams. This online tool is based upon the descriptive work elements as listed in the CST Program Book. Only Level I training is available at this time, as work continues in the development of training for Levels II and III.

I look forward to working with each of you in this endeavor. We hold our future in our hands with these dedicated survey technicians, and they should be encouraged to participate in our Young Surveyors initiative. Information about CST and contact information for area representatives can be found at http://www.nsps.us.com/index.cfm?fuseaction=Page.viewPage&pageId=522.

Sincerely,

Curtis W. Sumner

Curtis W. Sumner
Executive Director NSPS

SOUTH DAKOTA SOCIETY of PROFESSIONAL LAND SURVEYORS

Affiliate of the National Society of Professional Surveyors

APPLICATION FOR MEMBERSHIP

Complete the following

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Member *(In-State w/NSPS):*	___ $160	**Technician:**	___$60	**Life Member** *(In-State w/NSPS):*	___ $65
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LSI:	___ $90	***Student:**	___$25	**Sustaining:**	___ $250

In-State classifications are determined by the home mailing address.
Fees for In-State Members ($160) include NSPS membership.
Fees for Out-of-State Member ($125) do not include NSPS membership.
In-State Life Members have the option of selecting NSPS membership ($65)

Member:
a) Any person licensed to practice the profession of surveying, according to state or provincial statues;
b) A GS-1373 employee classified as a Land Surveyor or Supervisory Land Surveyor;
c) An academician holding a bachelor's or higher degree and the rank of assistant professor or higher rank and teaching in an ABET accredited or a state land surveying registration board surveying program;
d) A practicing surveyor or surveying teacher who has attained a minimum of six years experience in responsible charge of surveying activities or four years of education and two years of experience may submit credentials for consideration.

LSI (Land Surveying Intern)
Any person who has successfully completed the LSI examination according to state or provincial statutes.

Technician:
Any person who has successfully completed any level of the Certified Surveying Technician program as administered by and through the National Society of Professional Surveyors.

Associate:
a) Pre-Professional: Any person who by their employment is actively engaged in a program leading to a career in the profession of surveying;
b) Subscriber: Any person with an associative interest in Surveying whose qualifications do not meet the requirements of Member, LSI, or Technician.

***Student:**
Any person who is a full-time student studying surveying or related fields.

Sustaining:
Any person or organization, either individuals, partnerships or corporations, who or which are engaged either in the manufacture or distribution of surveying instruments, equipment or supplies, or in the compilation or reproduction of maps, or in the performance of services for land surveyors.

Life Members:
Any person who has attained 60 years of age and has retired from active practice as a land surveyor and who has paid dues for each of the nine years preceding and also in the year which he or she attained such age or so retired, whichever is later.

Signature of Applicant **Date**
I certify that I qualify for the class of membership I have applied for as outlined below.

*Signature of Faculty Member (required for students) Date Institution
I certify that the applicant is a full-time student. (12hrs or more)

Send complete application & payment to: SDSPLS - PO Box 8154 - Rapid City, SD 57709
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