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Third party liability

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setting of monuments is at hand. Adjoiners, adjacent and future land owners will have no knowledge of these approximations and will be led to rely on those monuments as a precise and accurate delineation of boundaries.

At the onset of this article it was promised that some procedures and actions that the surveyor could take to limit exposure to liability would be addressed. Most of these are based in common business practices. The first guideline should be that the surveyor should never accept an assignment that would require specialized skills or knowledge that the surveyor does not possess. Second, work on the project should not be commenced until there is a written contract that, as completely as possible, explains the exact scope of the project. (Note: the American Congress on Surveying and Mapping, Sample Contract Manual has some excellent examples of contracts that can be used or modified to meet almost any job requirements.) Third, all parties that may have any impact on the survey or that the survey may impact must be notified. Not only are these people a source of potential information but it puts them on notice that a survey is being performed and that they should come forward if they have any questions. The fourth guideline is to place the results of the survey, along with any details or explanations, in the public records. This step may be viewed by some as increasing liability due to the increased exposure, but the benefits far outweigh the potential harm, due to the notice given to all concerned parties both present and future.

SUMMARY

In many cases, plane or spherical surveying is primarily a mathematical application, but when the project concerns the boundaries and uses of real property, the scope of the project changes to one of legal applications. For indeed, the rights of ownership and use of real property are the application of law. The bonds of trust that exist between the surveyor and client and the surveyor and the public are based in a reliance on the integrity and knowledgeable application of legal issues on the part of the surveyor. The profession of land surveying is viewed by both the courts and the public as the one profession that has direct interaction and knowledge of the ramifications of real property boundary delineation and uses. If the profession of surveying is to endure and provide a service as a benefit to society, then it is the responsibility of the surveyors of today to strive to be worthy of this trust and to practice in the best interest of the public. □

Proposed Record of Survey

by Dr. Herbert W. Stoughton, PhD

The land surveyor (licensed/registered professional land surveyor) is statutorily and legally (judicial mandate and directive) required to execute the retracement of original, or predecessor, surveys that were the basis of legal boundaries that affect the pertinent boundaries. This requirement was established by judicial decision having antecedents in the fifteenth to seventeenth centuries in England. Although the subject has been discussed (both orally and in writing) many times, the most cited presentation, in the United States was by Michigan Supreme Court Justice Cooley (1880's). The work is known as "The Judicial Functions Of Surveyors", and was presented at a meeting of the Michigan Engineering Society.

Although several matters in Cooley's paper address Michigan's statutory and regulatory aspects for land surveying, the import was that the surveyor has the responsibility to faithfully retrace the original boundaries and to adequately document discrepancies and ambiguities of the physical evidence with respect to the legal and historical records. The guidance provided by Justice Cooley, while not legally binding upon the land surveyor, is a pragmatic statement of philosophy in boundary retracement.

The mandate given the land surveyors in retracing legal boundaries is to search for and attempt to recover the original monuments set/established. Simultaneously, collateral evidence noted in the original survey must be recovered because of its value in the court under the rules of evidence. The rules of retracement for both General Land Office surveys and real property subdivisions require that the surveyor attempt to locate the original corners of the lands being surveyed. If unrecovered, then the land surveyor must search for the nearest controlling original corners/monuments. When retracing a GLO survey, this "outward" search proceeds to the limits of the township (usually a distance of 40 to 440 chains in the 'normal' township). This means that a simple survey conducted on the client's lands could expand to requiring trespass in order to search for and locate requisite corners. No matter how thoroughly the land surveyor plans and researches in order to execute a boundary survey, the field crew will encounter problems and unforeseen adversities.

The land surveyor **must have access** to lands in order to execute a valid retracement. If trespass is not permitted, it will be impossible for the land surveyor to acquire pertinent evidence. The inability to be able to acquire the requisite information has the following effects:

1. incorrect determination of legal boundaries/corners,
2. potential loss in a legal contestation because the land surveyor possess incorrect and/or inadequate data,
3. loss of professional liability insurability due to inadequacy of performing/executing boundary retracement surveys,
4. financial remuneration to client and/or adversary for any damages resulting from civil court litigation, and
5. charges of professional misconduct, with the associated legal expenses and lost income, resulting from (1), (2), and (4) above.

Several states have enacted permissive trespass statutes for the land surveying profession in order to conduct land boundary retracements. These statutes require the land surveyor and the employees to exercise caution in harming/injuring flora and personal property. In most instances these statutes include a liability statement for the surveyor to reimburse land owners for any documented damages. □



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VOLUME 2 NO. 2

JUNE 1990

HARRY C. YOUNG, LS #7

Glenrock, Wyoming, 1883 - 1967

Recollections by Joe W. Popp

It was my very good fortune to have known and worked with Harry Young. He was indeed one of those individuals who only rarely appear on the scene but leave their mark and influence in their own special way. I came to Glenrock with my parents in 1923 so I knew him from way back.

Harry spent most of his life in and around Glenrock and Converse County. His parents built and lived in a large white house in Glenrock. Harry's father, Noah Sr. was a mining engineer, in fact was Wyoming's first State Mine Inspector.

Harry had two brothers, John and Noah Jr. The three of them were the town dandies of the era. John was a big powerful man, as were his brothers. John was a prize fighter, in fact he was coming up through the ranks as a contender for the heavyweight title. Jack Johnson, a black man, had become the world heavyweight champ and there was a scramble among fighters to become the "Great White Hope" and upend Mr. Johnson. In 1913, Jess Willard and John "Bull" Young were fighting for the right to challenge Johnson. But Willard knocked Young down during the fight and Bull's head struck a corner post or the floor and he later died as a result. He is buried in the Glenrock Cemetery.

Of course, I never knew "Bull" Young, since I waited some six years after he died to be born. But I did have the good fortune of knowing Harry's other brother, Noah Jr. He spent part of the summers with Harry in Glenrock in the 1950's. Noah would accompany Harry and me on some of our surveying trips. I can't remember all of the tales that Harry and Noah would tell.

Noah was a little different. He had gone to Hollywood and into the movies. He played in silent movies with such as Harold Lloyd, Irving S. Cobb, and Will Rogers. Noah was usually the "sheriff", being a big man like his brothers. He had Harry's Colt '45 Single-action usually strapped on him.

Harry and his brothers were musicians of sorts. They played for local dances, etc. Harry played the violin, and quite well. One of my favorite pictures is of Harry with

his violin. Big, young, and handsome dude, he was. I found the photo of him in his files.

Harry spent some time at the University of Wyoming and eventually returned to Glenrock to marry and raise two daughters. He became associated with Ambrose Hemingway, an early time surveyor around Casper. He was registered first as LS #5, and later as LS #7. When I asked him about the two numbers he said he had let his license expire and was reissued a new number.

Most of Harry's work consisted of locating settlers homesteads, which involved breaking out sections and subdividing them into the "40's", as well as running ditches and other irrigation facilities with Ambrose Hemingway. Harry did surveys for many of the sheep and cattle ranchers in the area. He was also involved with mineral location work around the Big Muddy oil field west of Glenrock. Harry always claimed he was actually the first locator in Big Muddy.

After Harry's death, Mrs. Young gave me all of his maps, records, and field books that we could find. Included was a packet containing location notices for some mineral placer claims in what is now Big Muddy oil field. Penciled on the outside of the packet in Harry's handwriting is his note explaining how a certain Mr. Parker was attempting to "jump" his (Harry's) claims. But, as Harry wrote "— when a Colt's .45 was stuck in his ribs, he took off—". The note goes on to explain that Mr. Parker claimed to be the first locator and discoverer of Big Muddy but the enclosed location notices clearly show that such was not the case. In any event, the community that later grew up in the oil field was named Parkerton, after Mr. Parker.

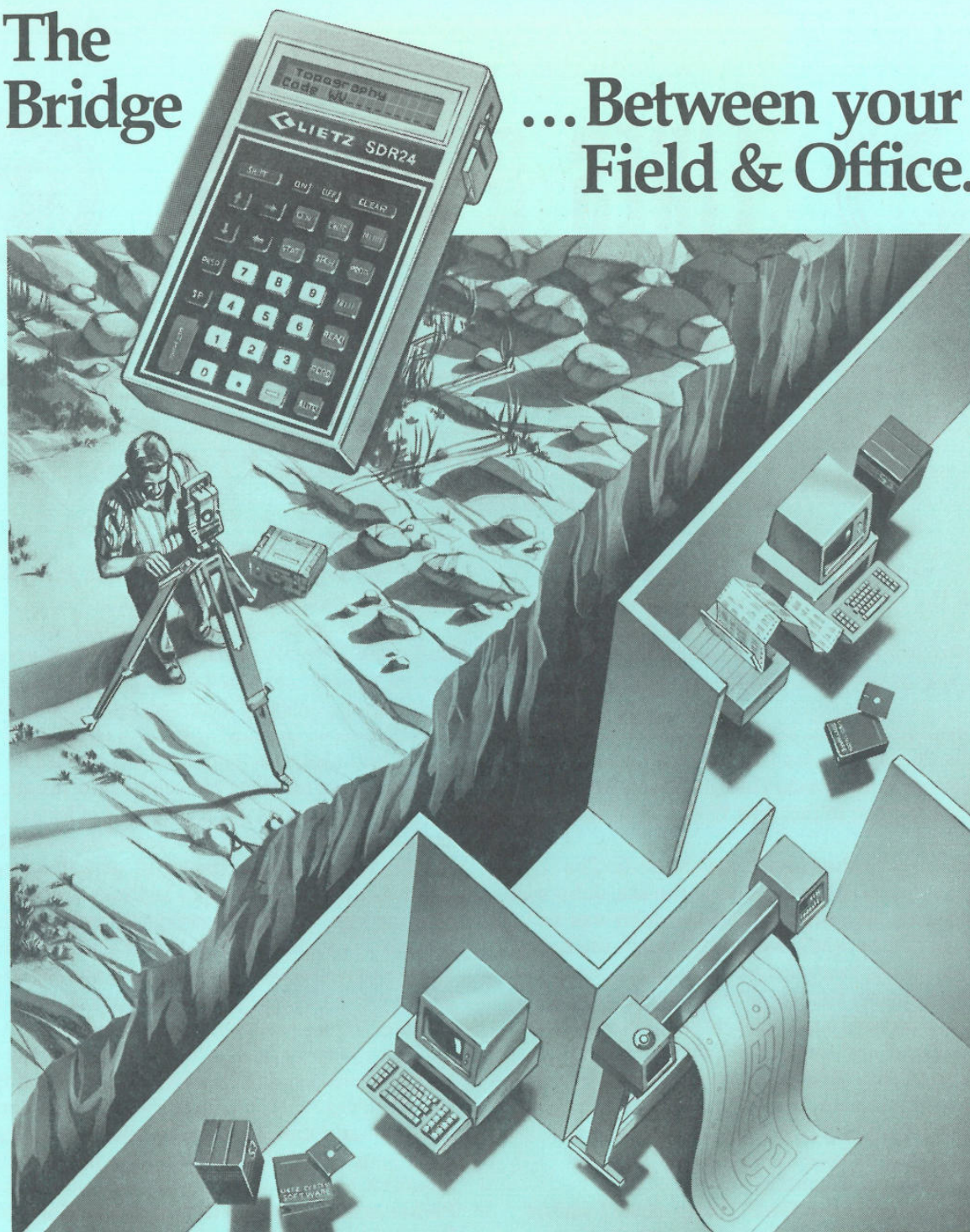
The first surveying and platting of the Town of Glenrock was done by earlier surveyors soon after Wyoming became a state. About 1912 the Chicago, Burlington & Quincy Rail Road began the work of extending their line through Wind River Canyon. Harry left the business of further subdividing the new additions to the growing Town of Glenrock to an associate and

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Third party liability... continued from page 10

done by Mortgage Associates. Both Mortgage Associates and the state Veterans Administration denied access to the appraisal. Thereafter, the Costas hired an independent appraiser to value the property. The Costas' appraiser determined that the fair market value of the property was \$13,000. The Costas lost the property in a mortgage foreclosure in 1979 for failure to make the monthly payments. (366 NW2 896, 123 Wis.2d 410)

In 1977 the Costas filed suit against Mortgage Associates and Neimon. A motion for summary judgement later dismissed Mortgage Associates from this action. A judgement was rendered in 1983 as a result of a jury trial. Within the trial it was proven that Neimon had made some errors in calculation and that he had neglected to address some items of evidence that would have substantially affected the appraised value of the property. These omissions and errors were viewed as sufficiency for a finding of negligence. The judgment was in favor of the Costas for a total of \$9,629.74. Neimon then appealed the judgement on three grounds.

APPELLANT'S ARGUMENTS

The first argument presented stated that the appraiser owed a duty only to the parties of the contract that hired him, the lender, and the VA as guarantor of the loan and not to the purchaser. The lack of privity as a defense was found to be misplaced. The Wisconsin court properly held that the duty to perform was an implied warranty and that Neimon was responsible to all parties that had a foreseeable use or reliance of the service provided. In *A.E. Investment Corp. v. Link Builders, Inc.* the court had ruled that an architect could be held liable for damages to a third party. In that case summary the court stated that:

The duty of any person is the obligation of due care to refrain from any act which will cause foreseeable harm to others even though the nature of that harm and the identity of the harmed persons or harmed interest is unknown at the time of the act. (62 Wis.2d 479, 487,214 N.W.2d 764, 7680) (1974)

The court went on to say that a party is liable if "it was foreseeable that his act or omission to act may cause harm to someone" (62 Wis.2d 479, 487,214 N.W.2d 764, 768). Based on these grounds Neimon's first argument was rejected.

The second issue that Neimon argued against was the jury's finding of negligence. Neimon contended that his appraisal was a statement of "opinion" and not a representation of fact. The Wisconsin Jury Instructions address this topic by stating:

A statement of opinion, which carries with it an implied assertion that the speaker knows that the facts exist which support his opinion, may in [the jury's] discretion, be determined by [it] to be a representation of fact. (W.J.I. - Civil 2403)

During the original trial, the jury had been presented with clear and convincing evidence that the preparation of an appraisal required that the facts

concerning the property's square footage, improvements, replacement cost, depreciation and sales of comparable properties along with other factors all be addressed. This constitutes a condition where the appraiser's opinion carries with it the implication that the facts support this opinion.

Neimon further argued that the Costas never saw the appraisal and thus could not have relied upon it. The court rejected this position as the Costas understood that the loan would not have been approved had an appraisal not been performed and that the appraiser evaluated the property value at a point equal to or greater than the loan amount. This requirement by the lender as a condition for approval of the loan was deemed sufficient notice to the Costas. It is apparent that the only requirement was that the damaged party know that the service had been performed and thus committed a reliance upon it that later proved to be to their detriment.

A third argument was presented concerning the process and points of law used in the computation of the compensation for damages. This point was successfully argued and the Court of Appeals instructed that the case be remanded for a new trial, but solely limited to the issue of determining the monetary amount of damages and not to address the liability aspect of the prior trial, which the Court of Appeals had upheld.

THE SIGNIFICANCE TO SURVEYORS

While this case was directly related to the performance of a real estate appraisal and the action of the appraiser, the correlation is significant for the surveyor. Many of the same requirements exist within the scope of the performance of a survey. Facts that are not readily available or apparent to the general public must be compiled. Many technical and legal acts must be performed and recorded. Detailed observations and measurements must be conducted. And the results from accurate computations must be derived. All of these and other actions must be addressed before the surveyor can express an opinion.

The surveyor's opinion is not always expressed in a formal document as it is with an appraisal, but this opinion can often be evidenced by the decision as to placement of a monuments or the location of an improvement. These statements of opinion are in full view for the world to see and use. These opinions are further represented as fact when the surveyor or client records the documentation of this survey with the county clerk and recorder or other public agency.

MEANS OF LIMITING LIABILITY

Surveyors must admit that, when dealing with boundaries, there is no such thing as a private survey. A survey license is held in a public trust, for the good and protection of the public and all boundary surveys will have a foreseeable impact on the rights of unknown third parties. Surveyors must also admit that there can be no approximate surveys or partial surveys when the

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Exploring the effects of third party liability

by Raymond E. Connin, PLS

From the 1990 ACSM Convention
ABSTRACT

The far reaching effects of third party liability encompass many of the aspects of the practice of land surveying. Many land surveying projects, particularly in the area of boundary surveys, are contracted between the surveyor and the intermediary, not the person(s) or party that will derive the ultimate benefit from the survey. This paper will explore some of the pit falls and cautions that must be addressed when working in this environment.

INTRODUCTION

The nature of the service performed while conducting a boundary survey dictates that the results will have an impact on a persons rights of ownership other than the client for whom the project is being performed. It is impossible to delineate a boundary from just one side. By definition a boundary is the dividing line of one party's property from that of another. These other parties along with all subsequent owners of the subject property could be considered third parties to the survey. These parties have a right and a foreseeable dependency to expect that a survey was performed correctly and that it can be relied upon for their use also.

While this paper is not intended to be a substitute for good legal advice, excerpts from a case argued before the Court of Appeals of Wisconsin and rulings from other related cases will be presented. A correlation of how these court findings and opinions might be applied to surveying and some suggestions on procedures that will attempt to limit a surveyors exposure to litigation arriving from the claims of a third party will be developed.

PRIVITY OF CONTRACT

It has long been held by many that the surveyor's only duty of care is that to the client and no others. This has been proven not to be true. The U.S. Supreme Court stated that a lack of privity as a defense to a negligent action was substantially destroyed in 1916 with MacPherson v. Buick Motor Co.

What is privity and how does it impact surveyors? Privity is defined by *Black's Law Dictionary* as the "mutual or successive relationship to the same rights of property..."(1079). Regarding privity to a contract, Black's goes on to state that it is:

That connection or relationship which exists between two or more contracting parties. It was traditionally essential to maintenance of an action on any contract that there should subsist such privity between the plaintiff and defendant in respect to the matter sued on. (1079)

This view would support the idea that the surveyor is bound only to the duty to the client. While this contractual relationship may bind the surveyor to specified requirements within the scope of the performance, it will not relieve the surveyor of the

duties and obligations that are owed to the public. Just as a person cannot legally contract to perform an illegal act, the surveyor cannot contract to perform a survey that is substandard or performed in a manner that may cause harm to other parties.

The courts have viewed that the absence of privity is no longer a defense in cases where a warranty or general duty exist. The court decisions have expanded the right to sue and recover damages to third party beneficiaries and even innocent bystanders. (Elmore v. American Motors Corp.)

Along with this, most states have encompassed within the Uniform Commercial Code a section similar to that of the state of Massachusetts where it provides that:

Lack of Privity between plaintiff and defendant shall be no defense in any action brought against the manufacturer, seller, lessor or supplier of goods to recover damages for breach of warranty, expressed or implied, or for negligence, although the plaintiff did not purchase the goods from the defendant if the plaintiff was a person whom the manufacturer, seller, lessor or supplier might reasonably have expected to use, consume or be affected by the goods...(Mass. U.C.C. 2-318)

While a surveyor is not a manufacturer of goods, these concepts could easily embrace the supplier of a service that would affect the interest of the third party.

THIRD PARTY OBLIGATION

The scope of the obligation to any foreseeable user of a professional service was addressed in a recent Wisconsin Court of Appeals case where a real estate appraiser had been sued by the purchaser of a property. In this case it was alleged that the appraiser was negligent in his duties by providing an appraisal that was in error and with a grossly over stated value. The particulars of the case as reported in Costa v. Neimon are as follows:

In April, 1976 the Costas signed an offer to purchase real estate located on South 17th Street in the city of Milwaukee; the seller was a local real estate company. The offer to purchase contained a subject-to-financing clause, which provided that the closing of the transaction was contingent upon the Costas' securing a state Veterans Administration-guaranteed mortgage. The realtor arranged for the Costas to meet with a loan officer from Mortgage Associates. The Costas applied for a loan.

Mortgage Associates retained Neimon's services for an appraisal of the subject property. Neimon appraised the property as having a fair market value of \$21,500. The loan was approved, and the sale closed in July, 1976. Later that month, the Costas thought about relocating and sought information about the appraisal

Editorial Potpourri

• **Chapter Minutes** – Only the Northwest Chapter sent minutes for publication. Is any other Chapter active? We need a summary of your activities by August 15, 1990.

• **Join PLSW Now** – If you are not a member of PLSW, you will not continue to receive *Lines and Points*. Only PLSW members, advertisers and other state newsletters will receive this newsletter. Join NOW. An application is included in this issue.

• **Support Your Advertisers** – The advertisers in this issue help make this publication possible. Support your advertisers.

• **Next Issue** – The deadline for the next issue of *Lines and Points* will be August 15, 1990. Please submit your comments, letters to the editor, and articles to Box 904, Casper, WY 82602. We recognize that this is a short time between issues but we are trying to get back on schedule.

• **Surveying Firms** – Have you considered advertising in this newsletter? The *Lines and Points* staff is proposing to print a page or one-half page of business cards of surveyors or surveying firms. The cost is minimal and it will help support the newsletter. Please consider advertising your services in the next issue.

• **Advertisers** – Have you checked your advertisement lately? Maybe you wish to change it and we certainly hope you wish to continue advertising. We will be sending notices that your advertisement is due. Thank you for your support.

• **Draft Cannon of Ethics** – Herb Stoughton has presented a draft Cannon of Ethics for adoption by PLSW. All chapters should have copies. Herb asks for comments by July 1, 1990. What are your thoughts? Write to Herb or send them to *Lines and Points*. We will forward them to Herb.

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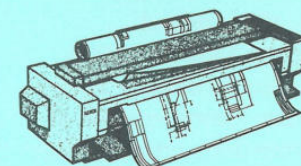
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Harry C. Young

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went to Thermopolis to work for the railroad surveying the route through the canyon. His tales of this work were truly fascinating. Many times he and his crew literally suspended themselves and their equipment down the sides from the top. I think about Harry whenever I travel through that canyon, picturing mentally that huge man dangling down the rocky walls.

Upon the completion of his work for the railroad, Harry returned to Glenrock. He set about doing the subdivisional work in the town as well as a good share of the utility development. He built most of the original sewer system in town. There was much land surveying to be done around Converse County for the various ranches. The GLO was active in the area doing the extensive Independent Resurvey along the foot of and in the string of mountains south of town. Harry was made County Surveyor after Mr. L. C. Bishop was named State Engineer. He remained so until very late in his life.

In the meantime, I was working for the State of Wyoming in Cheyenne and had become acquainted with Mr. Bishop, whom I had come to respect and admire greatly. Mr. Bishop strongly urged me to find my future out in the field rather than in the dead end job I was in. He urged me to go back to Glenrock and become associated with Harry. I did so and embarked upon one of the most interesting, to say the least, periods of my life.

I had been involved in engineering and surveying since before World War II, having worked for various engineers and surveyors in private firms and the State Highway Department. But working for Harry Young was different! I cannot imagine a formal educational process in a school or college that approaches the real down to earth (literally) process of learning and experience with such as Harry Young.

With Harry I learned to actually "walk in the footsteps" and did so. He was by that time somewhat past his prime, so it would take a lot longer to get over a section line. But we did get over more of them than I can count. He was a great teacher, well founded in the principles of "land" surveying. Two of my prized possessions are original editions of the 1902 and 1930 GLO Manuals which were part of Harry's library. They are well worn and dog eared with use. However most of the original surveys in Wyoming were done under earlier manuals and Harry's copies of those have since

disappeared. Included in his files are voluminous letters, notes, diagrams, etc., pertaining to problems he had turned up regarding these earlier surveys in the area. The names of nearly all the surveyor-generals of Wyoming show up in the files, especially that of one venerable gentleman, Joel Q. Naret. It was previously my good fortune to have become well acquainted with "JQ", as he was affectionately called, prior to my association with Harry. The instructions and explanations of "JQ" are priceless. Harry would study them and explain the meaning and import and then we would work out the solution on the ground. The vast Independent Resurvey done by Clark in this region provides a great source of information and study material for a student and practitioner of land surveying.

Harry was a stickler for certain procedures, notably that of pulling a tight chain. We would occasionally pull a repair sleeve on a tape apart in the process. So you learned to make a good repair joint. On one occasion we were on a section line south of Deer Creek and running northward, we came to a steep, high cut bank at the creek. Harry had me, as head chain, set a hub on line at the top of the cut bank from which to cross the creek. I did so and proceeded to hold the "plus" on the hub for Harry at the rear. He kept calling for me to "tighten up the d--- chain!" I pulled on the tape until I was sure it would come apart and then he let go the back end. Down over the bank and into the creek I tumbled. About twenty feet it was to the bottom. I lost my glasses, cap, and other various articles in the creek but managed to flounder around and out the far bank, dripping wet and quite upset. By that time Harry was standing on the bank with

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Northwest Chapter Minutes

April 9, 1990

The Northwest Chapter of PLSW met at the office of Rick Hudson in Thermopolis at 8:00 p.m. Those present were: Rick Hudson, Dick Olson, Harvey Copeland, Stan Abell and Alan Cormier. Guests included Chris Hamilton, John Katzenberger and Tony Warburton.

The meeting was called to order by President Dick Olson. The minutes of the March 12th, 1990 meeting and the treasurer's report were read and approved.

The secretary/treasurer sent invitations to all Fremont County professionals to attend the meeting. Chris Hamilton was the only one from that area that could attend. Chris reported that he talked to several individuals that were interested in attending, but had other obligations. Rick Hudson stated that Fremont County could form their own chapter if they wished, but were more than welcome to join the Northwest Chapter.

Old business included the discussion of the problems with the Wyoming State Highway Department. The individual who had problems with the department not filing Certified Land Corner Recordations was unable to attend. Chris Hamilton who has had a problem with the department not resetting corners after being destroyed during construction reported that several corners in the city of Riverton had been destroyed during construction of a street by the Highway Department. Chris went to Ed Steele, Resident Engineer in Riverton, and gave him a monument to use to replace a particular corner. According to Chris, Ed Steele had that one replaced but none of the others, and it has been approximately a year since. Stan Abell advised Chris Hamilton to write a letter to the Practice, Welfare and Ethics Committee

of the chapter with the details of his complaint. That committee will proceed with the correct procedure from there. Any other members with complaints against the State or other individuals should follow the same procedure. It was also agreed by this group that the Highway Department should file Certified Corner Recordations before and after a corner monument is destroyed.

Harvey Copeland offered his and Paul Blough's time and service on behalf of the chapter to attend the Greybull Career Fair April 20th, 1990. Stan Abell suggested it would be beneficial if Sherman Allred could also participate, since he is from that area. The secretary was directed by the president to contact Sherman Allred and see if he could attend. Alan Cormier informed the group that he had been in contact with Brad Cole of Selby's and that he had offered to supply any surveying instruments or other equipment that might be needed for the presentation. Harvey Copeland could contact Mr. Cole if he needed anything.

Harvey Copeland mentioned that some county clerks dislike the new Certified Corner Recordation forms. Stan Abell made a motion for Director Harvey Copeland to contact Bryce Rumph and inform him of the time and place of the next County Clerk's Association meeting so that Mr. Rumph could attend to discuss their concerns and dislikes. The motion was seconded by Rick Hudson and passed.

The video, "Matter of Degrees", from the NSPS was viewed. The group felt it was a good video and that parts of it could be used at the Greybull Career Fair.

The next meeting will be held at the office of Paul Campbell in Cody at 7:30 p.m., May 14th, 1990. □

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Land Commissioners' Actions

The State of Wyoming Board of Land Commissioners met on May 2, 1990 to discuss the draft Rules and Regulations, Chapter XVI Surface and Subsurface Surveying Activities. This followed a public hearing held April 2, 1990, requested by P.L.S.W., and attended by approximately 25 people. The commissioners received 18 written comments and 7 oral comments at said meeting. The majority of comments concerned subsections 3, 4 & 5 regarding the 3-day written notification procedure, the suspension of surveying authorization, lessee negotiation, and surface disturbance/damage payments/reclamation. As evidenced by the following Board Matter F-1, the hearing was well worth the miles and time spent by those in attendance.

The proposed rules have been revised in several areas in response to public comment:

- 1) The proposed written notification procedure was revised to require a best efforts notification of the surface lessee using any available means for all survey activities, and to require additional written notice to the Commissioner only for geophysical surveys.
- 2) The procedure and standards for suspension of survey authorization were clarified.
- 3) The reclamation requirement was revised to only apply to surveyor-caused damages to state land that exceed the stimulation of effects identified and mitigated in the surface damage payment agreement. Such damages can either be reclaimed or mitigated through additional surface damage payment following completion of the survey or related project (e.g., pipeline or roadway construction).

- 4) The proposed requirement for surveyors to submit copies of the corner file to the office whenever they establish, reestablish, or restore monumented corners on state land was replaced with a discussion of the office's monumentation reimbursement and filing program. Under this program, the office supplies surveyors with brass caps and records the corner file with the appropriate county clerk's office as an incentive to surveyors to set state land corner monuments.

Several other wording revisions were made in response to suggestions from commenters. The staff believes that the rule revisions were responsive to the major concerns of the commenters, while retaining an appropriate level of control over state land surface and subsurface survey activities. Surface survey activities would be authorized for the first time in the Board's rules, while subsurface survey activities would be removed from the temporary use permit process and authorized through a process that better reflects standard industry practice for geophysical exploration surveys.

All Wyoming Land Surveyors should make a point to contact LeAnn at the State Land Commissioners office and request these revised rules and regulations and also request to be put on their mailing list. We would like to commend the Board of PLSW for requesting the hearing,, and further commend the State Board of Land Commissioners for rescinding the proposed regulations that did very little to protect the state lands. These would have only further burdened the Land Surveyor and other professionals who use and respect the public lands.

Proposed Right of Entry

by Herbert W. Stoughton, PhD

Section 1. As used in this act "surveyor" means any of the following:

- a) A surveyor, land surveyor, geodesist or cartographer employed by the government of the United States of America or this state.
- b) A person who is a professional land surveyor registered in this state in accordance with W.S. 33-29-114 through 33-29-139.
- c) A person who is under the direct supervision of a person who is a surveyor under subdivision (a) or (b).

Section 2. A person who is a surveyor as defined in Section 1 of this act and any of his agents, servants or employees may enter public or private land or water in the state only to occupy, locate, relocate, install or replace survey monuments to locate boundaries, determine geodetic positions and to make surveys and maps.

Section 3. Nothing in this act shall be construed as giving the surveyor or his agents, servants or employees any right to destroy, injure, or damage the land or any

person or property on the land of another.

Section 4. The right of entry onto the land is not contingent upon the provision of prior notice to the owner or tenant. However, the owner or tenant shall be notified of the proposed time and place of entry whenever practicable.

Section 5. A surveyor making an entry pursuant to Section 2 of this act shall be liable only for actual damage to crops, other improvements located on the land, or to other property, or for actual damage due to negligence of the surveyor during the entry.

Section 6. The surveyor by his entry shall forfeit any and all claim for damage or injury to his person and equipment while on the lands or waters, unless the damage or injury is caused by the intentional tortious conduct of another.

Section 7. The refusal by an owner or tenant permitting a surveyor right of entry is a misdemeanor and if convicted is punishable by a fine not exceeding the amount stated in W.S. 6-10-103.

Harry C. Young

continued from page 4

his hands on his hips and glaring at me with all the disdain he could muster. "Kid, that'll teach you to brace yourself!" was all he said. He had a great sense of humor, although sometimes I didn't appreciate it.

Harry had three nephews who would visit in the summertime. They were grade schoolers and junior high age. At times one or two of them would go with us on jobs out in the Thules. One of them is by now as an adult a prominent professional person who will recognize himself if he happens to read this story. He was in fact something of a pain in the neck at times, always deviling us about something. On one trip back from a job as we approached town yet about four or five miles from home, Harry stopped the pickup and said he had one last shot to make on a point on top of a far hill. He instructed this kid to take the stadia rod and hike up to the top of that particular hill and hold the rod on a point on the summit. We watched the youngster make his way slowly up the slope and as soon as he had the rod up, Harry said, "let's go home". About two hours after supper a tired and somewhat wiser boy straggled home and tried to explain to his parents where he had been.

Before I set up my own office, I would do all our comps and drawing on Harry's drafting table in the basement of his home. I spent many delightful hours so doing while he sat in an easy chair nearby, smoking a cigar and either reading or talking about his experiences and rendering opinions about political matters. On a nail over the drafting table hung his old Colt's .45 Single Action.

Truly Harry C. Young was a remarkable man, a land surveyor of an earlier time, true to his calling, a good teacher, mentor, and a good friend. I shall always remember him. □

Education Committee Report

At a recent PLSW Board of Directors meeting the Education Committee was asked to compile a list of audio/video programs that are available for presentations at chapter meetings, service clubs and schools. It is hoped that having this information available will encourage members to conduct some public relations activities as well as add some more interest to the chapter meetings. Anyone having knowledge of or access to such programs is asked to contact either Larry Perry at Terrestrial Surveying and Mapping, (307) 634-9360 or Ray Connin at Technical Services (307) 638-1522.

The following are video tapes that are available by contacting either Larry or Ray.

Title	Format/Running Time	Produced By
A Matter of Degrees	VHS / 30 min.	NSPS
Land Surveying	VHS / 15 min.	Penn. Society
Sur. of the 6th PM	VHS / 17 min.	BLM
Mag. & Cable Locator	VHS / 12 min.	SCHONSTEDT
Intro to Astro Survey	VHS / 60 min. (2 parts)	Def. Mapping

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ACSM/ASPRS Advocates Brooks Act Coverage for Federal Grants

Encouraged by the recent success of the Brooks Act clarification (which includes surveying and mapping services), the professional societies are working through the Committee on Federal Procurement of Architectural/Engineering Service (COFPAES) to extend Brooks Act coverage to federal grant monies. Brooks Act coverage applies currently to federal surveying/mapping/architectural/engineering contracts for the Executive Agencies and to certain grant monies, such as the Federal-aid Highway Grants and Federal Airport Improvement Grants. COFPAES is seeking an amendment for Brooks Act coverage of federal grant monies on major procurement reform legislation slated for congressional action this year.

Congress Moves on Measure to Study National Park System Boundaries

Legislation introduced last Fall by Rep. Bruce Vento (D-MN) will be the subject of subcommittee hearings in Congress this March. The legislation (H.R. 3383) requires a three-year study that would contain recommendations regarding boundary adjustments and other methods available to protect park resources. The study would direct the National Park Service to undertake a comprehensive review of current boundaries of the National Park System. This measure is expected to move through Congress this year.

FHWA Proposes Rule on Brooks Act Coverage

In a Federal Register notice published this month, the Federal Highway Administration (FHWA) outlined a proposed rule revising its regulation on the procedures to be followed when using federal-aid highway funds (under the grant-in-aid process) for the procurement of engineering/surveying/mapping and other design-related services. The proposed rule does a good job of implementing the Brooks Act provisions in the Surface Transportation and Uniform Relocation Assistance Act of 1987. These provisions require that states award federal-aid highway engineering/surveying/mapping and other design-related contracts in accordance with the Brooks Act or use equivalent state qualifications-based procedures unless they have established, or choose to establish, a formal procurement procedure by state statute. ACSM/ASPRS will provide official comments to FHWA supporting this

PLSW solicits your comments

Extension Courses in Surveying Through U.W.

Rod B. Skaggs, PE

The University of Wyoming is presently considering the needs for offering Surveying classes as correspondence credits through the School of Extended Studies. These courses would be available in video tapes, and are designed to provide practicing surveyors and trainees a better understanding of their profession. Ultimately, we hope to be able to provide the necessary credits to allow admission to the Wyoming Land Surveyor's Exam.

Prerequisites for these classes will be successful completion of an elementary surveying class offered at most community colleges throughout the state. This is necessary because of the difficulty to teach a lab intensive class through video tapes. Consideration will be given to field personnel with extensive field experience to be able to "pass-out" of elementary surveying with a written exam and letter of competency of field techniques from an employer. University credit will be available through the Department of Civil Engineering for all courses taken.

Topics to be offered are still in the planning stage, however we plan to begin a 3 hour course in Route Surveying as early as next Spring semester. If there is a substantial amount of interest in this first class, more offerings will follow in Control Surveying and Public Land Surveys.

As I mentioned before, these classes are being **considered** by the University. Most of the consideration is being given to whether or not there is a need in the state to bear the cost. Now we all know about the new laws requiring formal education to take the exam, so we honestly feel the need is there. This letter is to not only to get you guys to thinking about taking a Surveying class in the Fall at a local community college, but to also solicit letters stating interest in what we are doing. The more letters we receive, the more support we can claim we have when we approach the "powers to be" for both academic and financial support.

If your local community college is not offering basic Surveying this fall, call them up and ask them why. If enough interest (pressure?) is given at a local level, I'll bet they will come up with something.

Thanks for letting me bend your ear. If you have any questions or answers, please don't hesitate to call or write either me or Ray.

Rod B. Skaggs, P.E.
Lecturer of Civil Engineering
P.O. Box 3295
University Station
Laramie, Wyoming 82071
(307) 766-6279

Ray Connin, P.L.S.
2114 East 18th Street
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BLM News

The Bureau of Land Management (BLM), Wyoming State Office has acquired a new telephone system as of May 29, 1990. Here are the new telephone numbers of the key personnel of Cadastral Survey.

The area code remains 307.

The commercial prefix is 775 + extension.

John Lee, Chief, Branch of Cadastral Survey	6216
Dorothy Martinez, Branch Secretary	6211
Dennis Bland, Chief, Office Section	6219
Jerry Messick, Chief, Field Section	6220
Stan French, Geographic Coordinate	
Data Base Project Manager	6224
Marty Winemiller, Survey Records Clerk	6222
WSO Telefax Number	6082
Confirmation Number	6088 or 6089

The Gillette Project Office (GPO) telephone number has not changed. It remains (307) 686-6750. The telefax number for the GPO is (307) 686-6755.

We would like to take this opportunity to remind you that the BLM is the custodian of the General Land Office (GLO) as well as the BLM land survey records. Copies of these records for Wyoming may be procured from our Survey Records Office. Marty Winemiller, Survey Records Clerk, will be happy to assist you with your needs. She is available to assist the public from 8 a.m. to 3:30 p.m. daily, the commercial phone number is (307) 775-6222.

New chief cadastral surveyor for Wyoming and Nebraska appointed by BLM

John Lee has been appointed chief cadastral surveyor for the Wyoming Bureau of Land Management (BLM). Lee's appointment to the Wyoming State Office in Cheyenne began on October 8, 1989.

Lee holds Bachelor of Science degrees from the State University of New York, College of Environmental Science and Forestry and from Syracuse University. Lee has been a land surveyor for BLM for the past 12 years. He has worked in Oregon, California, Colorado and most recently in BLM's Washington, D.C. office. Lee is licensed as a land surveyor by the state of California.

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CITY _____ STATE _____ ZIP _____
EMPLOYER _____ TITLE _____
If in private practice, which counties do you work in? _____
What are your specialties? _____
States other than Wyoming that you are registered in: _____
CLASS OF MEMBERSHIP APPLIED FOR: (check one only)
MEMBER

____ Member, annual dues \$40. (Persons duly registered in the State of Wyoming to engage in the practice of professional land surveying.)

AFFILIATE MEMBER

- ____ Associate Member, annual dues \$30. (Employed under direction of P.L.S. and working toward P.L.S. license in Wyoming.)
____ Special Member, annual dues \$25. (Not meeting above qualifications but with particular interest in or association with the profession of land surveying.)
____ Special Member, Student, annual dues \$5. (Pursuing a post secondary academic course of study, and currently enrolled.)
____ Sustaining Member, annual dues \$55. (Persons, institutions or corporations desiring to assist P.L.S.W. financially.)

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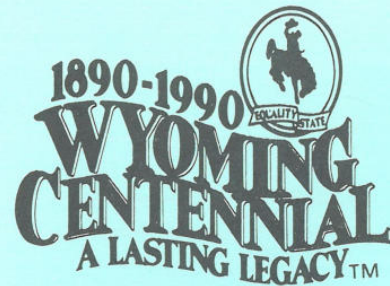
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Richard M. Hartman, Chairman
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Howard W. Johnson, Commissioner
Department of Public Lands
J. D. McPherson
W. G. McPherson, Director
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*In consideration of an investment in "A Lasting Legacy"
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*The holder of this deed is entitled to the general enjoyment
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State in recognition of the one-hundredth anniversary
of Wyoming's admission to statehood on July 10, 1890.*

This to the land described in this deed is subject to the provisions of W.S. 2-2-102 and 2-2-103. Such title is limited to the right of the State of Wyoming to manage the land to the benefit of the people of the State and the land is not to be sold, leased, or otherwise disposed of by the State. Ownership is evidenced by the deed. Does not create the holder's right of use of the land different than that of the general public. No deed is subject to the holder's right of property taxes, assessments or any other fees or sales conditions incident to the land.

Editor's Preface: As you may know, the great cowboy state of Wyoming will be celebrating its Centennial Year in 1990. As part of the fund-raising activities, we are selling a Centennial Acres in parcels of one square foot. This acre is located adjacent to Independence Rock, which many of you may have visited, on the Highway between Casper and Rawlins, just west of Alcova Reservoir. This is your chance to not only lend us a helping hand but to acquire a "piece of Wyoming" complete with an Official deed and commemorative Certificate. The survey of the property was done by members of the Professional Land Surveyors of Wyoming as a public service. *Ordering information follows:*

For just \$10.00, you can now purchase a square foot of Wyoming near Independence Rock, located along the famous Oregon Trail. You'll receive a ceremonial deed and a copy of the plat to show your claim to ownership.

Not only will you be buying into a special part of history by participating in Wyoming's centennial celebration of its statehood, you'll also have a great gift for that special person for holidays, birthdays, graduations and other important dates.

The project, known as Wyoming's Centennial Acre, was initiated as an official Wyoming Centennial Activity by the Professional Land Surveyors of Wyoming when they surveyed the acre.

The money received from the sale of the square foot parcels will go towards funding the Wyoming Centennial Commission's activities and projects for Wyoming's 1990 centennial celebration.

Hurry! Parcels are limited. Complete the form below, include your check for \$10.00 for each parcel, and mail or carry to the Wyoming Centennial Commission, 122 W. 25th St., 1st floor East, Cheyenne, WY 82002, (307) 777-5844.

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YES! I want a *Piece of the Past... A Gift for the Future.* Please record
_____ parcels for me in the Wyoming Centennial Acre.

Deed(s) in the name of: _____ @ \$10.00

Send to _____ Address _____

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Please send completed form and payment to Wyoming Centennial Commission, 122 W. 25th St., 1st floor East, Cheyenne, WY 82002, (307) 777-5844.