



PLSO 2014

To accept or not to accept.....  
*THAT* is the question

Witness Tree Consulting, Inc.

Dennis J. Mouland, PLS

Instructor

© 2010 Witness Tree Consulting, Inc. All Rights Reserved

# Course Goals

- Review guidance from the law on acceptance and/or rejection of corner evidence
- Gain awareness of the questions we should be asking about evidence
- Construct a useful list of guidelines for decision making on evidence acceptance

# It's evidence, but is it proof?

- **EVIDENCE** - “Writings, testimony, or material objects legally presentable at a trial, as a means to prove the existence or non-existence of a fact.”
- **PROOF** - “The effect of evidence, a mental conviction as to the truth or falsity of a proposition; the creation of a belief.”

# Basic Definitions

- Corner
- Monument
- Accessory
- Memorial
- Best available evidence
- Common report
- Hierarchy of evidence (bounds vs. metes)



# Hierarchy of Evidence

- Natural monument
- Artificial monument
- Record boundary
- Ties from other surveys
- Distance
- Bearing
- Area
- Coordinates



This is not an engineering decision matrix

# Case Law

- The body of law based on judicial decisions, as distinguished from laws created by legislatures or Congress, the latter begin known as statutory law.
- Case law is often considered part of the common law
- Survey-related case law very consistent; look these up some time:
  - Vaught v. McClymond (155 P2d. 612 {1945})
  - Halley v. Harriman (183 NW 665 {1921})
  - State v. Ball (133 NW 412 {1911})
  - Puget Mill Co v. North Seattle Improvement Co. (206 P. 954 {1922})

## Vaught v. McClymond (155 P2d. 612 {1945})

- Error of location of original corners, established by official federal government surveys, cannot be corrected by courts or by a surveyor called on to locate government corners and lines.

Puget Mill Co v. North Seattle Improvement Co.  
(206 P. 954 {1922})

True corner is where government survey located it, and when known, controls courses, distances, blazes and the calls of the official field notes.

Error in the location of the corner, however plainly shown, is not subject to correction in the courts.

*Evidence search is NOT an option, nor a matter to be taken lightly*

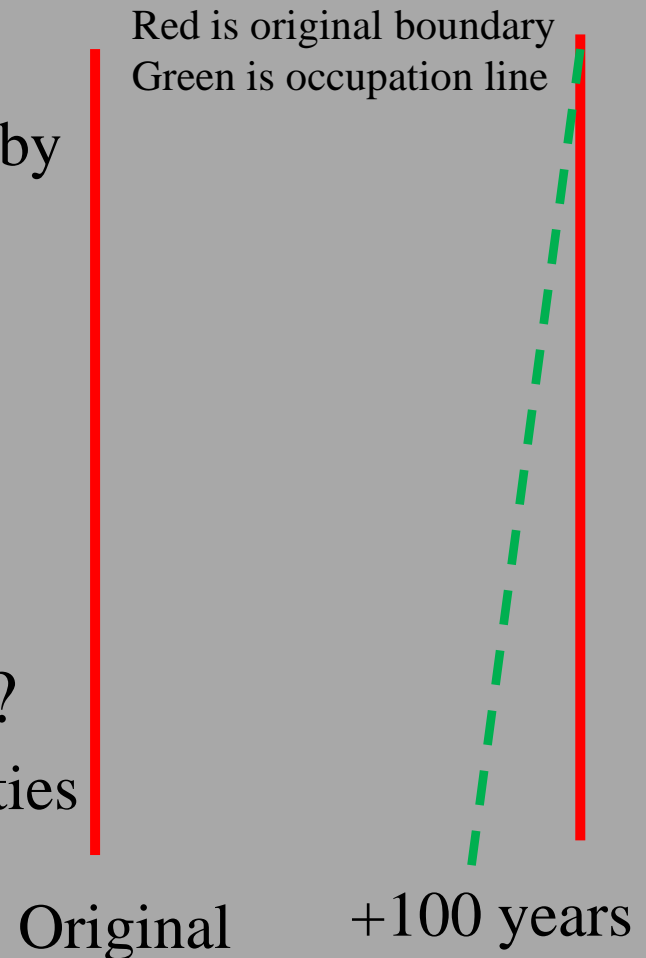


Fixed Forever? Without error and exact?

- A legal concept
- Not a math issue
- Basis of proportioning; hold the original “intent”
- Basis of a stable society is a set of stable boundaries
- Disputes arise due to interpretation of intent or due to conflicting intent

# Boundary v. Property Line

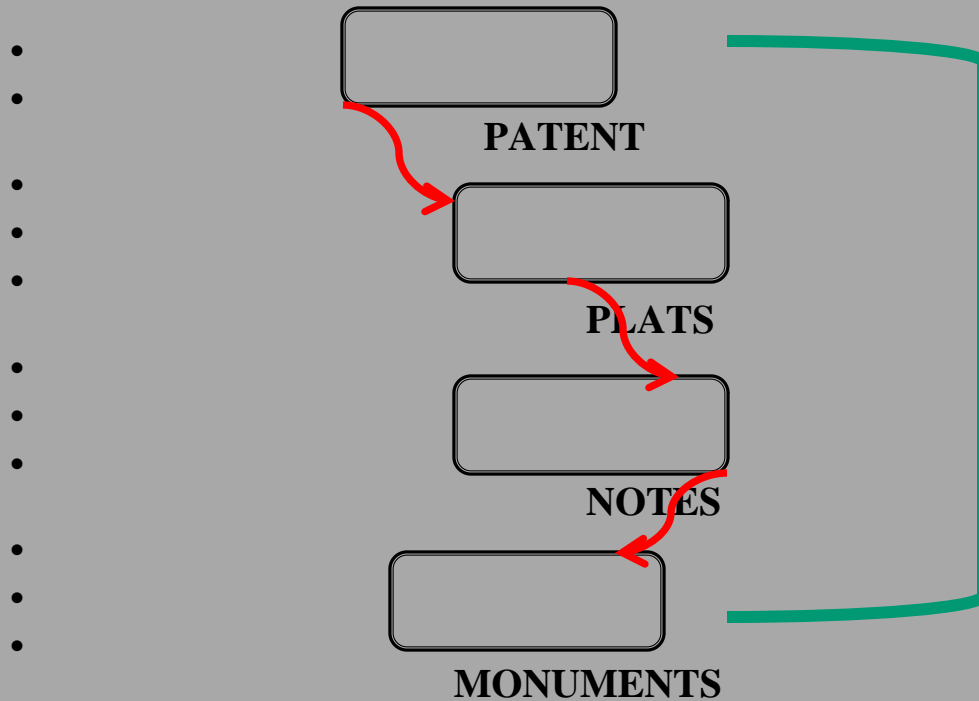
- Sometimes these terms are confused
- For our purposes;
  - Boundaries are original lines created by GLO
  - Property lines start on these
  - Property lines can move away from boundaries by actions or inactions of landowners or courts
  - Boundaries stay fixed
- So what can the courts actually do?
  - Fix the property line between the parties named



# The *Legal Pathway* of Evidence

- Patent calls for the plat
- Plat calls for the notes
- Notes call for measurements and evidence on the ground
- Thus, every patent calls for monuments and other evidence on the ground to control its location
- *How could you do a real survey without these records?*

# Pathway



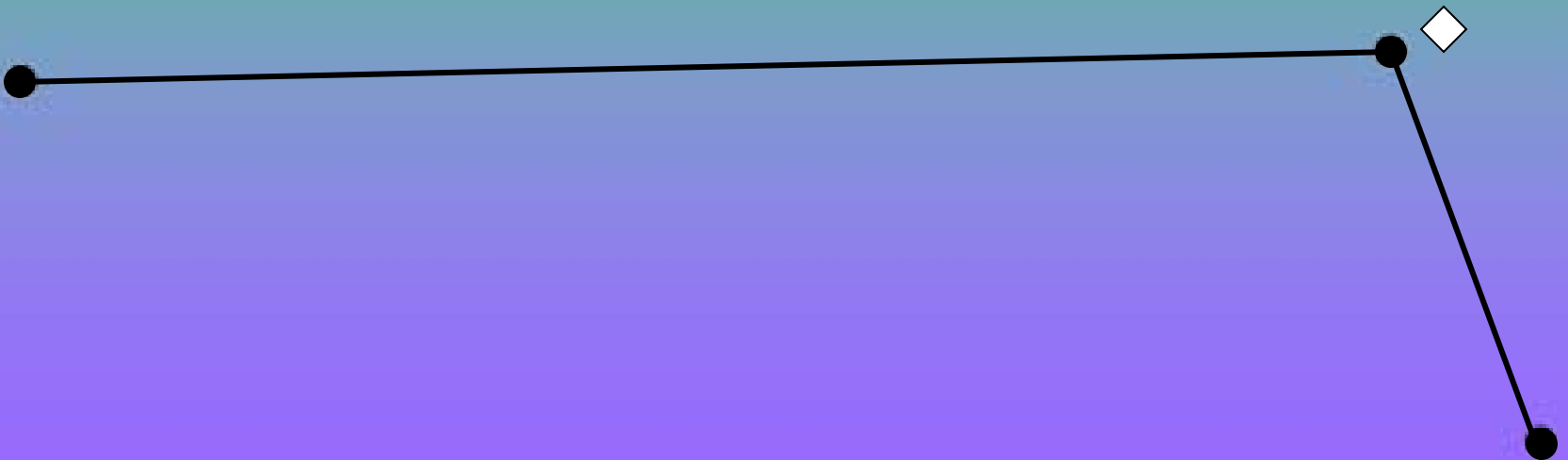
• Every PLSS parcel ultimately calls for monuments in the ground!

# Reality of Measurements

- Until very recently, measurements were not very repeatable.
- Our laws reflect this issue
- Even now, differing datums, improper use of GPS, improperly monumented or referenced points, and the basic element of human error still prevent us from having perfect measurements
- Thus we are still bound to our bounds..... Not our metes

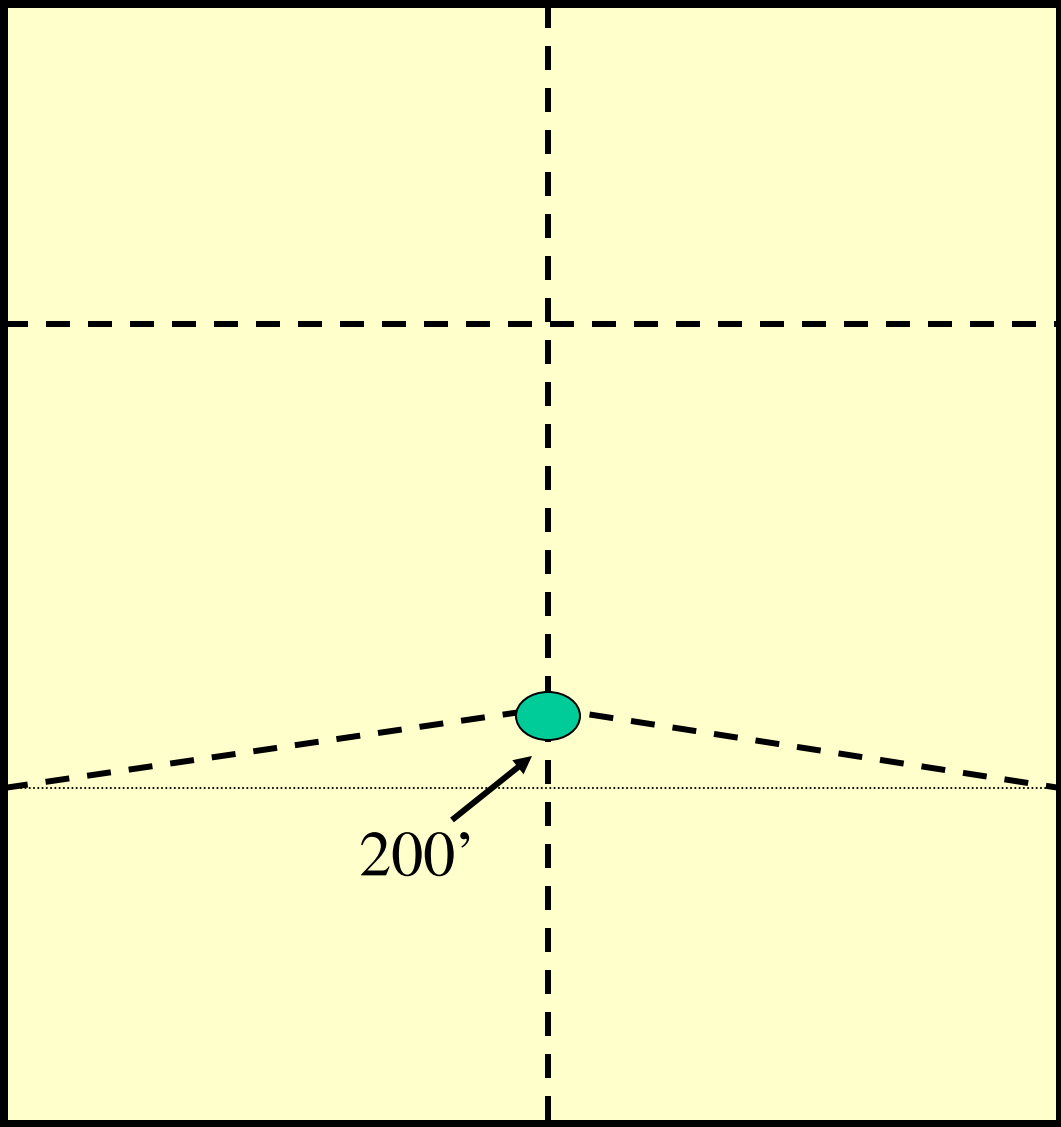
# Example Situation #1

- Evidence called for in the original deed is found, but not at the exact record dimensions



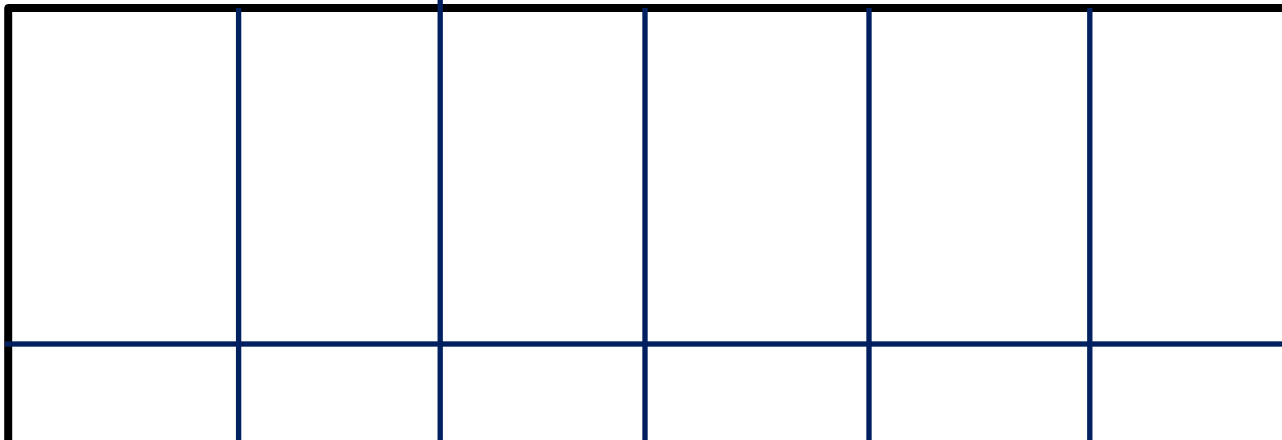
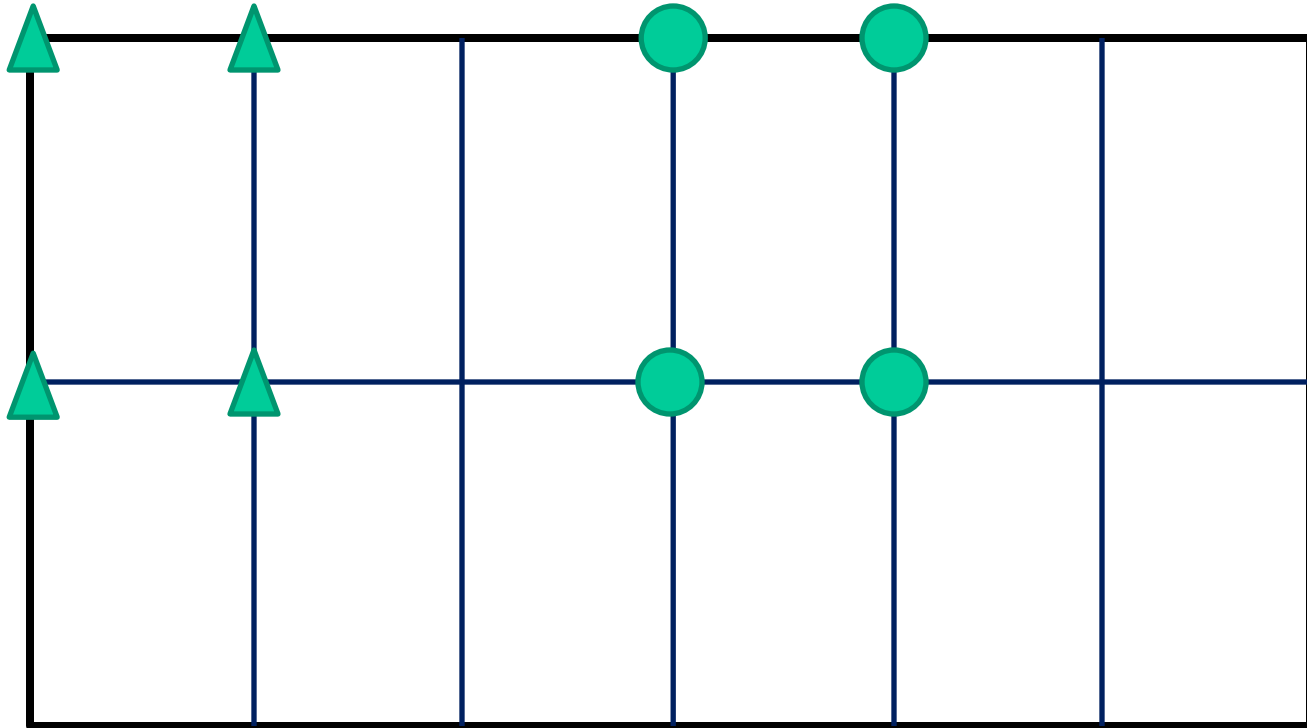
Record Data - Not Aliquot parts


# Measured Data

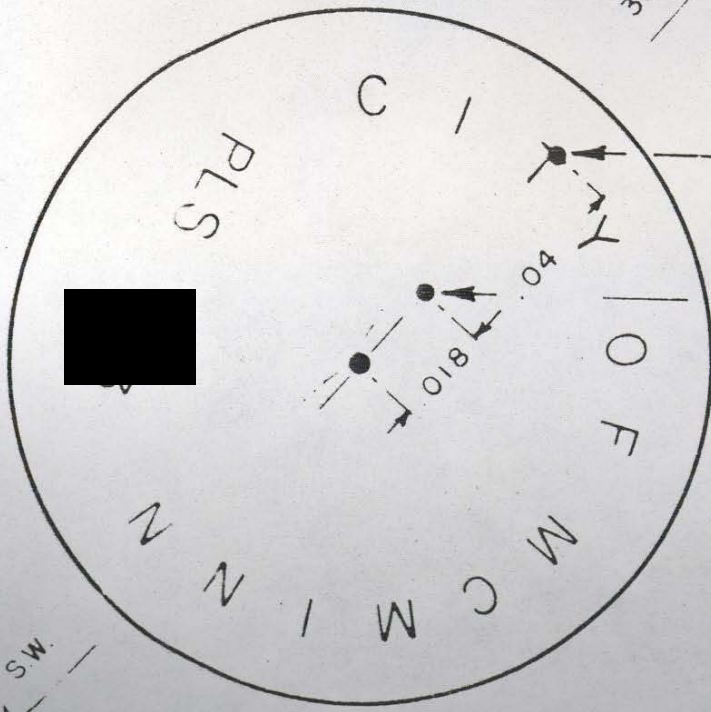
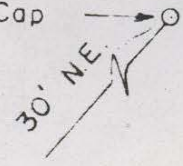








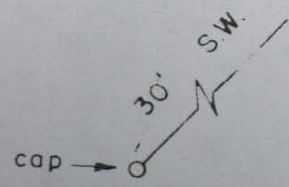
Ref. Mon  
1 1/2" Alum. Cap  
5/8" x 30"



PRC from north

PRC from s

Ref. Mon  
1 1/2" Alum  
5/8" x 31"



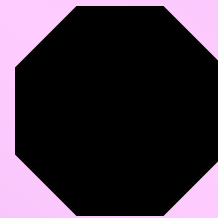
Detail "A"

# Example Situation #2

- Original deed calls for evidence, but found evidence differs significantly in character, etc.



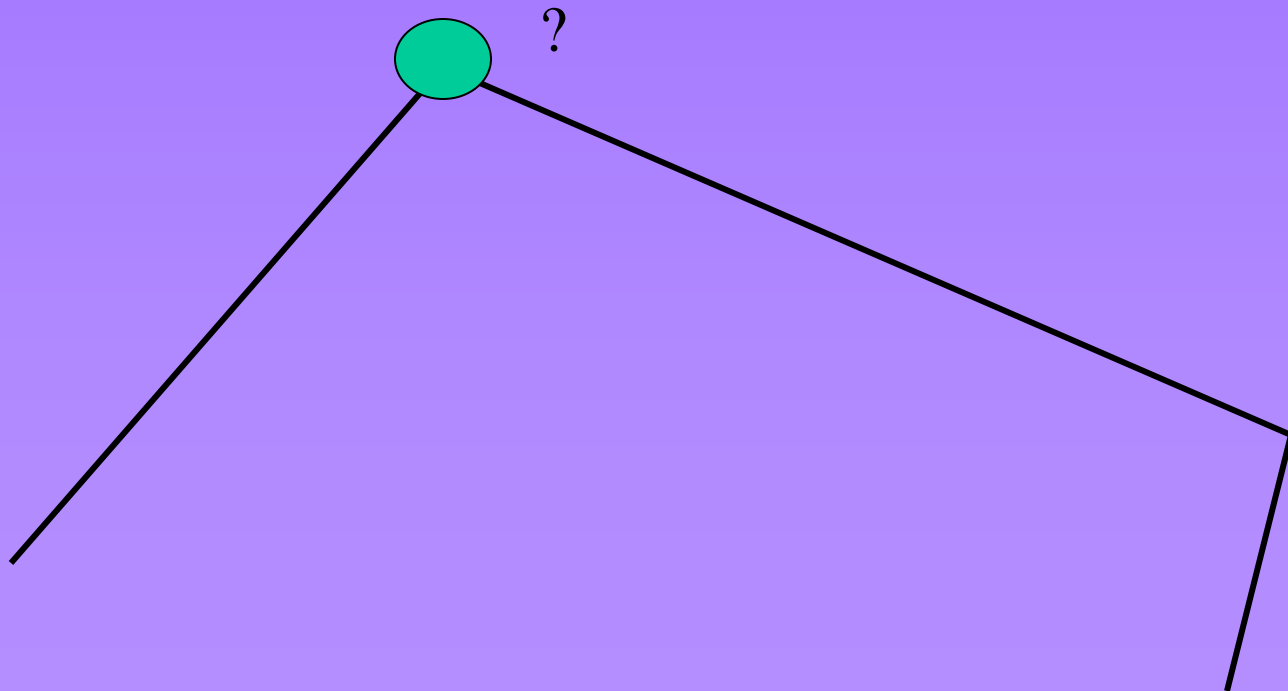
R



M

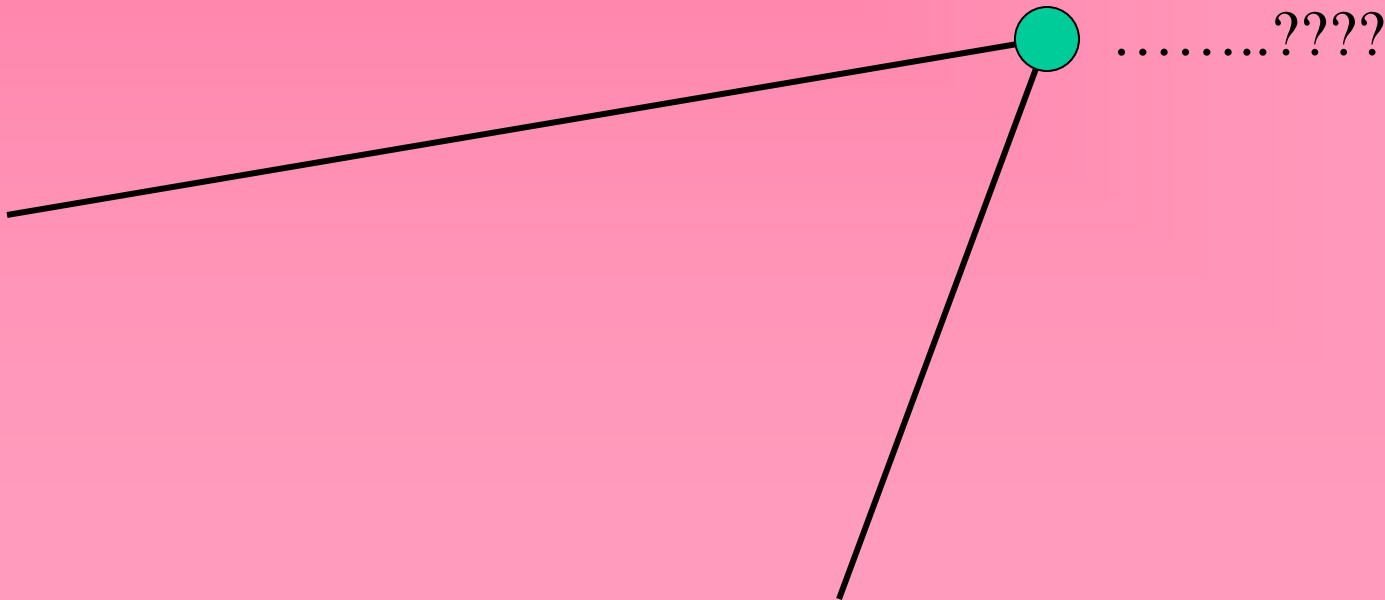
# Example Situation #3

- Original deed calls for no evidence, but evidence is found that somewhat “fits”.



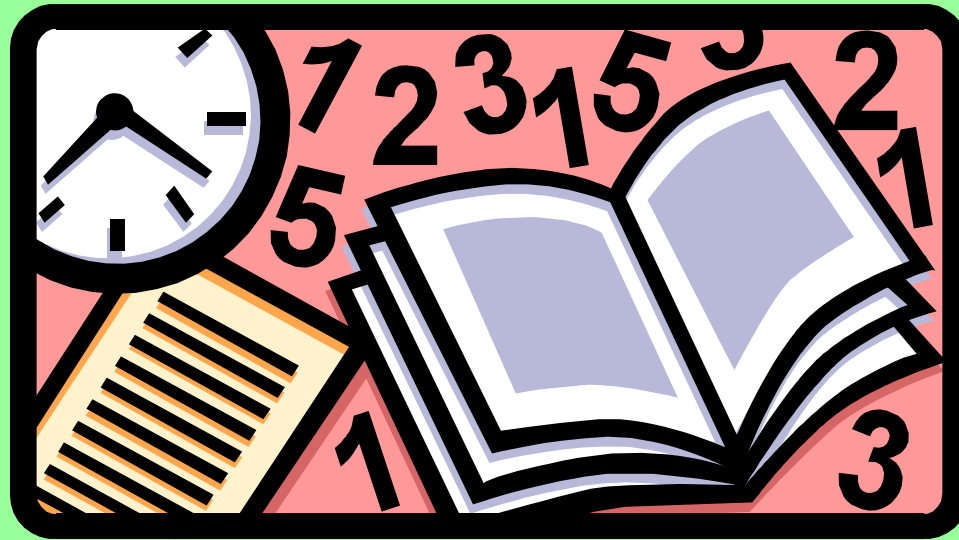
# Example Situation #4

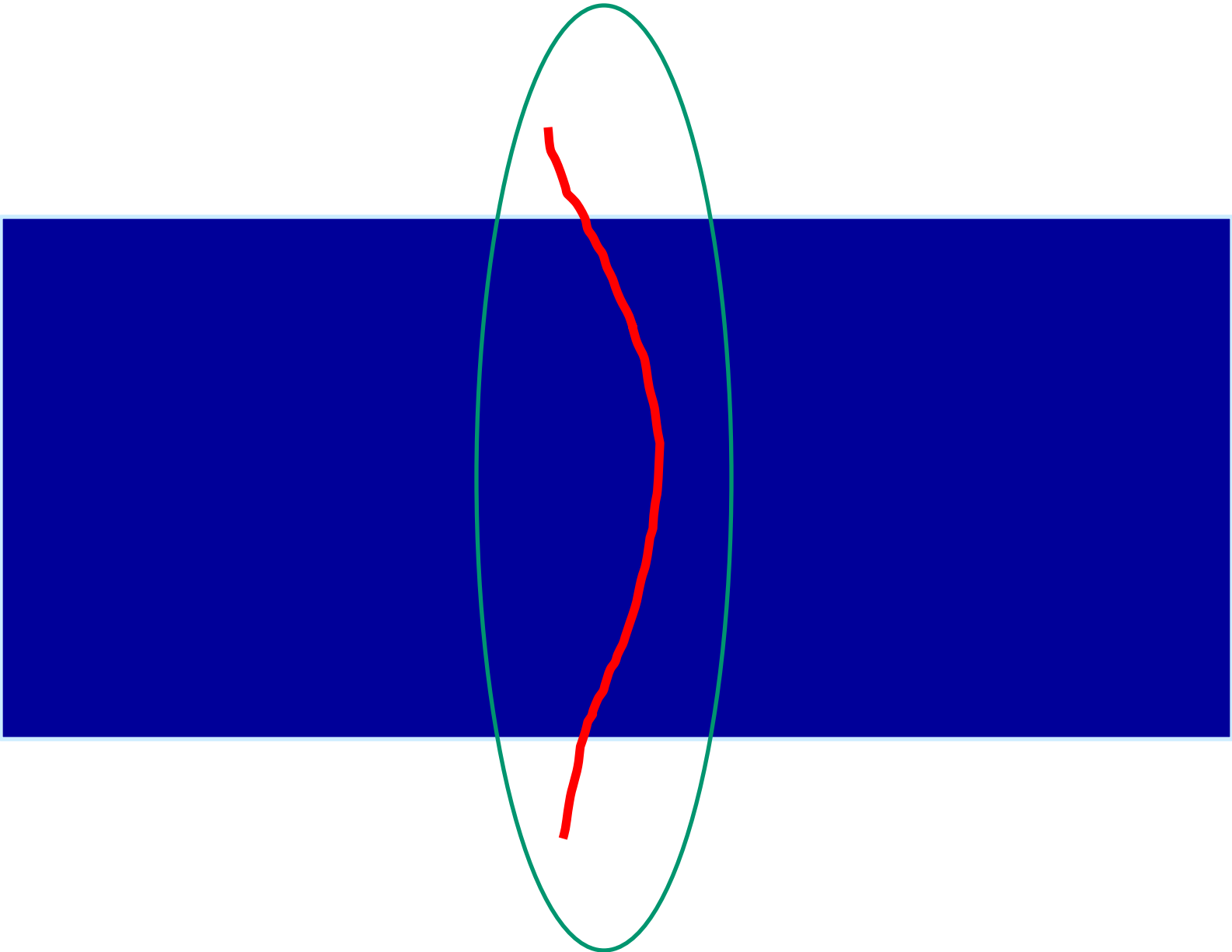
- Current deed calls for evidence, which is found, but has no relation to the original survey.



# Example Situation #5

Agreed upon boundary, set, not recorded

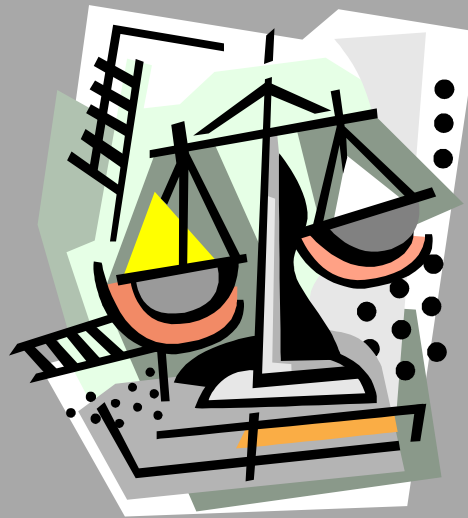






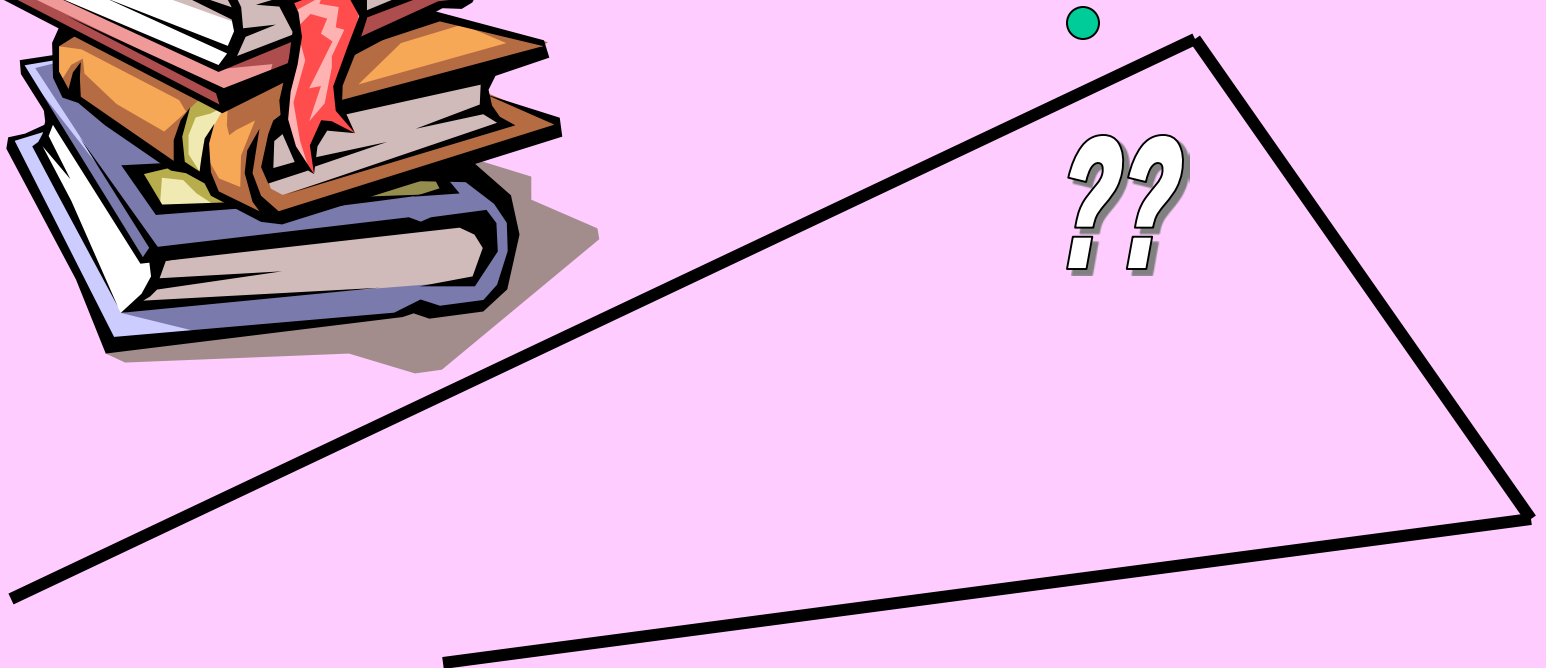
# Example Situation #6

Court action, not recorded



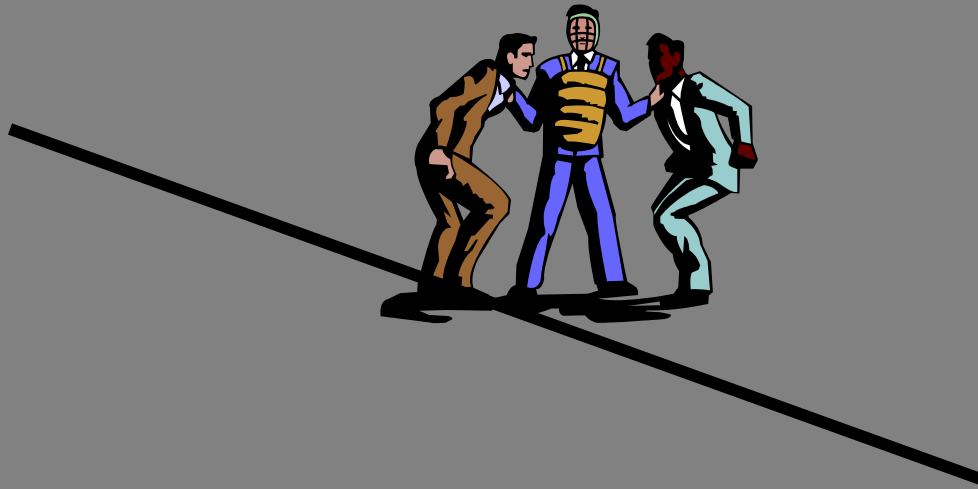
# Example Situation #7

More than one record, no calls, but monuments found



# Example Situation #8

Plat calls for monuments, not found, but  
other evidence is found (not called for)



# What does the LAW say?

- Statutes
- Regulations
- Case Law

*Our textbooks based on  
Case law!*



# What does the LAW say?

- The Court System:
- Where do we go for precedent setting cases?
- Equity vs. Precedent
- Most survey cases only heard by “Judge Judy”



# Case Law

- The body of law based on judicial decisions, as distinguished from laws created by legislatures or Congress, the latter being known as statutory law.
- Case law is often considered part of the common law
- Survey-related case law very consistent; look these up some time:
  - Vaught v. McClymond (155 P2d. 612 {1945})
  - Halley v. Harriman (183 NW 665 {1921})
  - State v. Ball (133 NW 412 {1911})
  - Puget Mill Co v. North Seattle Improvement Co. (206 P. 954 {1922})

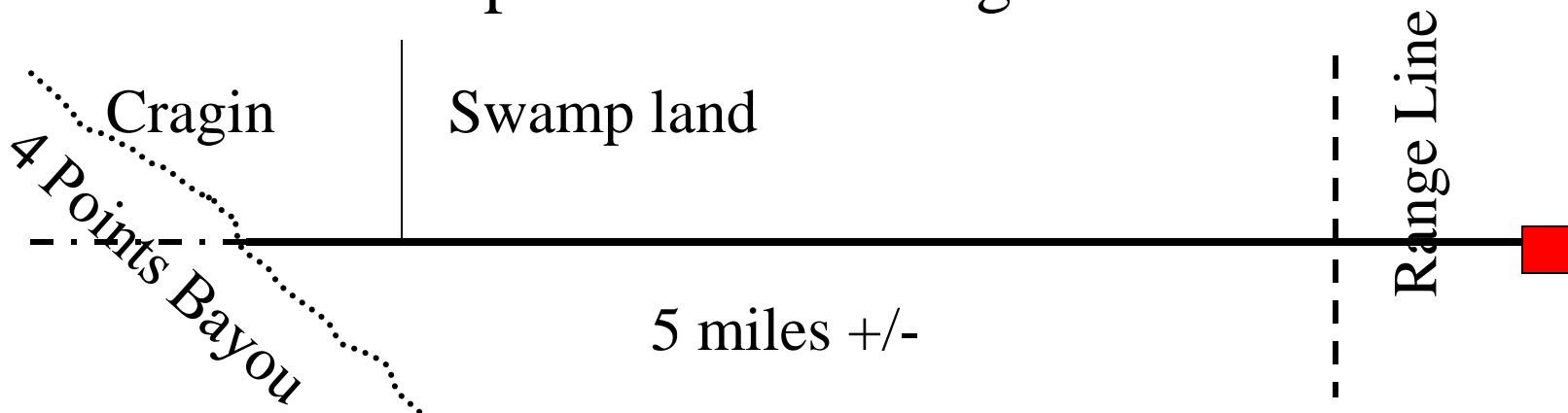


- “Protect the plat” is a concept GLO/BLM always held. Basics of protecting bona fide rights granted by patents.
- It comes from U.S. Supreme Court direction
- Means to uphold the factors given on the plat, including topography, intent, ratios and equities
- Our slogan will be:
- *“Always let the PLAT tell you what to do”*

# Cragin v. Powell

128 U.S. 691 (1888)

- What is a resurvey?
- Chaos with erroneous resurveys
- A major issue for the modern surveyor
- How apply to the 1320 Club's actions?
- Use of topography ok
- “Protect the plat” not “running the record”





# Subdivisional Corners created?

- Yes, but not monumented:
- Not synonymous terms
- Corner is a point on the surface of the earth, a location
- Monument is a physical object claiming to be at a corner point



Puget Mill Co v. North Seattle Improvement Co.  
(206 P. 954 {1922})

True corner is where government survey located it, and when known, controls courses, distances, blazes and the calls of the official field notes.

Error in the location of the corner, however plainly shown, is not subject to correction in the courts.

*Evidence search is NOT an option, nor a matter to be taken lightly*

# Fixed Forever? Without error and exact?

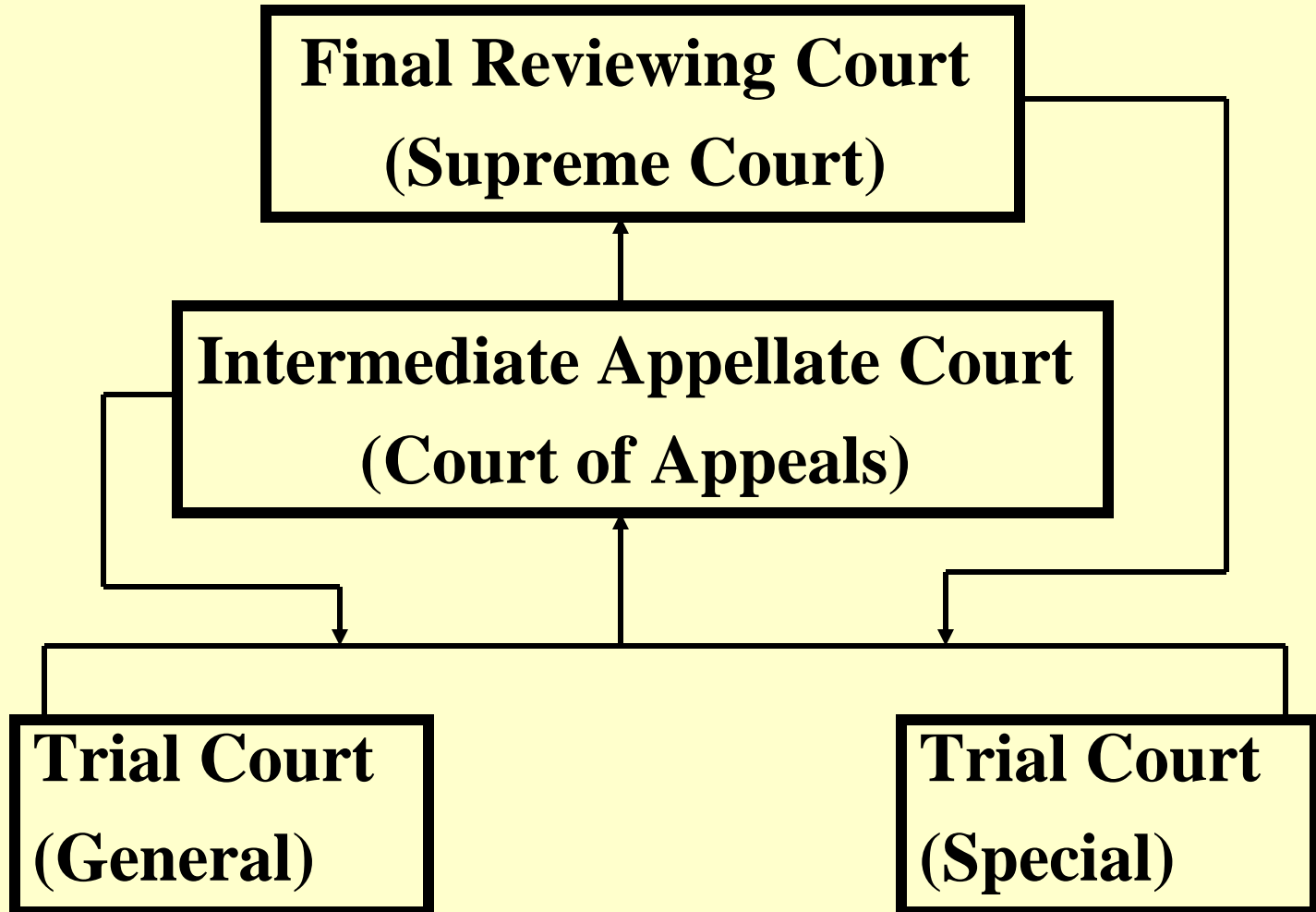
---

- A legal concept
- Not a math issue
- Basis of proportioning; hold the original “intent”
- Basis of a stable society is a set of stable boundaries
- Disputes arise due to interpretation of intent or due to conflicting intent

Where do we go for precedent setting case law?



# State Court System



# Compiling a Check list

- Age of monument
- Positional precision
- How often used
- Consider the methods used before
- Recognize the true gray areas: heavily deteriorated evidence?
- Occupation?
- Called for?
- Authority of who set it:
  - License required?
  - Federal authority?
- Landowner's actions
- Equipment and limitations
- Intent of the parties

# Duties of the Surveyor

- Gather evidence and report the facts
- Follow the footsteps of the original surveyor when retracing a boundary (not those of the last retracer)
- Provide expert opinions on evidence and use
- When authorized by statute, court, or party consent, locate new boundary lines (partition, commission, subdivision)
- Monument new boundaries when new land subdivisions are created

# What rights does the landowner(s) have?

- The right to rely on your professional expertise!
- A fully researched survey
- An understandable plat, report, description
- Professional guidance to other experts
- The same rights they had before you started the survey



# Best Available Evidence? Or Unwritten Rights?

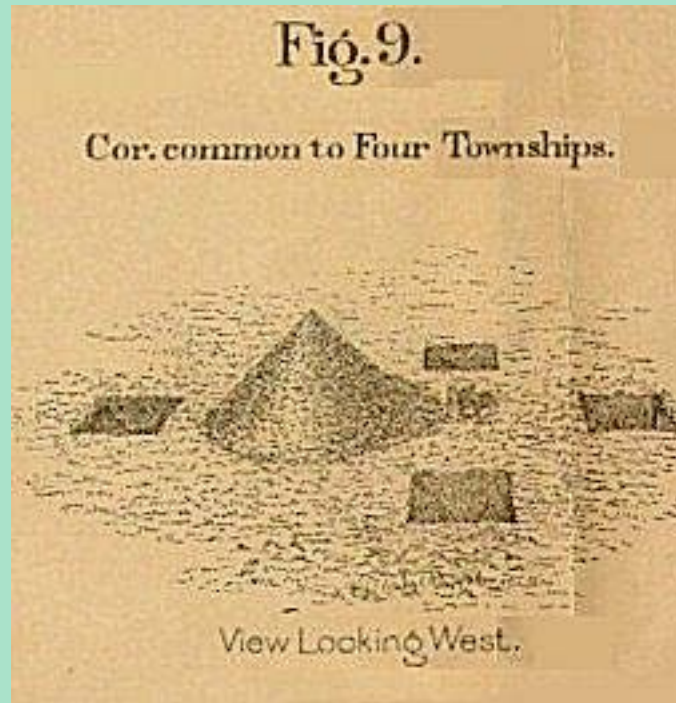
- Same types of evidence, but.....
- Different applications
- Often confused together
- Importance of the record
- Reality checks are useful



## Whether in PLSS, Colonial, or Tasmanian lands, some things are still the same...

- Evidence is not proof!
- What is the “best available” evidence?
- A monument is not a corner
- It’s not “how far off” a monument is from the deed call that matters; it’s the original intent that counts.
- Anyone can do math, but only a licensed *Professional* surveyor can analyze boundary evidence.
- There can sometimes be more than one “reasonable” answer.

Don't answer a legal question.....  
.....with a math answer!!



# Conclusion

- Final questions or observations
- Course evaluation forms
- Overall Summary





# Thank You for Your Participation

Dennis J. Mouland, PLS

Witness Tree Consulting, Inc.