Joanne Darcy Crum, L.S., Esq.

Practice Areas
- Easements and Boundary Disputes
- Real Estate
- Land Use & Zoning
- Municipal Law
- Professional Discipline for Design Professionals
- MWDBE certification

Education
- B.A. State University of New York, 1977
- M.B.A. University at Albany, 2004
- J.D. Albany Law School of Union University, 2011

Publications
- "Regulating Junk and Junkyards in New York"
- New York Zoning Law and Practice Report, November/December 2010

Joanne Darcy Crum, focuses her practice on legal issues including litigation and litigation support involving boundary disputes, easements, zoning, municipal law, title insurance and land titles; professional discipline for design professionals; and small business aspects of governmental contracting and certification for Minority, Women, and Disadvantaged Business Enterprises (MWDBE).

* Licensed as a Land Surveyor since 1985
* Licensed in NY, NJ, FL
* 25 years in business
* NYSED OP/NYSBELS 10 years
* Professional Discipline 25 years
* NCEES – NE Zone VP
  Chair of EPS Committee

Cooley’s Dictum
Surveyors as Mediators
Joanne Darcy Crum, L.S., Esq.
NYSAPLS
Turning Stone
January 2015

Michigan Big Four
- James V. Campbell (1858-1890)
- Isaac P. Christiancy (1858-1875)
- Thomas M. Cooley (1864-1885)
- Benjamin F. Graves (1857, 1868-1881)

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- Possessed a high degree of fair mindedness
- Capable of expressing views in opinions marked by vigor and clearness of expression

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Thomas Cooley

- Born January 6, 1824
- Attica NY
- Settled in Michigan on his way to Chicago to study law
- Deputy County Clerk/Court Commissioner and Recorder/Farmer/Law Professor at the newly formed University of Michigan Law for 25 years
- Court Reporter for Michigan Supreme Court and Justice 1864 - 1885 Michigan Supreme Court

- Died 1898

Psalm 16:6

“My boundaries enclose a pleasant land, Indeed I have a goodly heritage”

And as we all have experienced—beware if you cross them!!!

Thomas Cooley, the Chief Justice of the Supreme Court of Michigan from 1864-1885, wrote in “The Judicial Functions of Surveyors”:

“Surveyors are not and cannot be judicial officers, but in a great many cases they act in a quasijudicial capacity with the acquiescence of parties concerned; and it is important for them to know by what rules they are to be guided in the discharge of their judicial functions.”

The surveyor’s expertise can supply the client with information needed to accurately locate land boundaries, prepare maps, and design improvements to the property which will meet municipal or other governmental requirements.
The surveyor’s expertise can also be a valuable service in the judicial process.

Much of the surveyor’s knowledge with the administrative rules and regulations can assist the parties during settlement or litigation.

Prominent surveyors in our nations history are memorialized on Mount Rushmore.

- Washington,
- Jefferson, and
- Lincoln
  - were surveyors by trade.
- Theodore Roosevelt, while not a surveyor was none the less a mediator who helped bring peaceful conclusion to the Russo-Japanese War in 1905. (Portsmouth Peace Treaty 1905)

The other three were also known for their attempts to solve problems through negotiation and mediation.

George Washington

George Washington left a directive that should there be any disputes over the disposition of his estate that three impartial men (one named by each party and the third by the two mediators) interpret the will and that their decision be binding on the parties.

Thomas Jefferson

- The Thomas Jefferson Mediation Program (Thomas Jefferson School of Law, San Diego CA) provides the opportunity to students to participate in community dispute resolution.
- The program views mediation in the legal community as a growth industry.
Abraham Lincoln

Abraham Lincoln was a skilled trial lawyer and viewed litigation as a last resort. He discouraged litigation and promoted compromise where possible in order to conserve resources, fees, expenses and time.

Admonitions have been made directly to surveyors, encouraging them to take an active role in society as mediators, assisting landowners in the establishment of their boundaries and settlement of disputes.

In a presentation addressed to the second annual meeting of the Michigan Association of Surveyors and Engineers held January 11-13, 1881, Thomas M. Cooley, Chief Justice of the Michigan Supreme Court, made the following observations:

“\textit{It is always possible, when corners are extinct, that the surveyor may usefully act as a mediator between parties and assist in preventing legal controversies by settling doubtful lines. Unless he is made for this purpose an arbitrator by legal submission, the parties, of course, even if they consent to follow his judgment, cannot, on the basis of mere consent, be compelled to do so; but if he brings about an agreement, and they carry it into effect by actually conforming their occupation to his lines, the action will conclude them. Of course, it is desirable that all such agreements be reduced to writing, but this is not absolutely indispensable if they are carried into effect without.} \textit{The Judicial Function of Surveyors, The Michigan Engineers’ Annual, 1880-1881}

Surveyors as Mediators

- When a surveyor makes a determination, that determination will stand as valid until such time as the parties disagree and bring it to a higher authority.
- The acquiescence and dependence of the parties may give rise to legal rights not previously recognized.
- Where the decision is contested, the lines may only be changed by agreement between the parties or a judicial determination.

- A primary role of the Professional Surveyor is to assist the legal system in fulfilling its role in society and to assist in preventing a legal controversy by acting as a mediator.
- Acting as a mediator is an underlying statement of Cooley’s \textit{The Judicial Functions of Surveyors}.
- The surveyor can act as a mediator, with the consent of the parties concerned.

- In this context the Surveyor is in a position to shape the direction of the discourse, for the better or the worse.
- In having surveyors act as a mediator, the peace of the community can be preserved, something that Cooley thought was important.
Jerry Taylor

- Underlying premise is that surveyors role is to assist the legal system.
- This differentiates the surveyor from other in related fields.

- Legal System was established to help eliminate anarchy which is present in a society where there is insecurity and uncertainty.
- Substantive law,
- Remedial law
- Procedural law

ALTERNATIVE DISPUTE RESOLUTION VS. LITIGATION

Using ADR rather then litigation as the primary avenue to solve disputes is effective mainly because:

- Cost of litigation
- Time to get through litigation (i.e. issue may become a moot point after a certain length of time)
- Continuing relationships between the parties (i.e. neighbors or relatives)
- Ability of the judge to force the parties into ADR

Various types of ADR

- Mediation
- Arbitration
  - Binding
  - Non-binding

Litigation is always an option if ADR is unsuccessful, but as a secondary rather than primary avenue.
Mediation

- In mediation a neutral 3rd party helps to identify issues, help the parties communicate and explore possible solutions.
- The goal is to establish a mutually acceptable solution to the parties.
  - Mediator has no authority to decide or to impose a resolution.

Court ordered mediation is an anachronism.
- The court can penalize the parties for failure to participate, but theoretically cannot penalize the parties for failure to come to a resolution. But can provide incentives to find a resolution.

Overall mediated solution is “the devil you know vs. the devil you don’t.”
- Judge has latitude to steer or navigate the parties, this also helps to limit the court calendar and eliminate some of the more

See NYS Office of Court Administration http://www.nycourts.gov/ip/adr/

Summary

While many surveyors limit their interaction with the legal system to an arm’s length, such as responding to an attorney inquiry, there is a real opportunity to be more involved.

Training, Practice, & Certification

- All very touchy feely if you go for formal training.
- In most cases the surveyor can and does participate long before the courts get involved.
Many times surveyors help the clients and the neighbors evade a costly court battle by being adept at recognizing fair and honorable solutions to the problems we encounter on a regular basis.

Surveyors can identify problems and craft “win-win” solutions, even without all of the training and recognition of certified mediators.

Keep up the good work and take the next step if you have the desire to expand your services and offer value to your clients.

Mediating Boundary Disputes, John Stahl

The Judicial Function of Surveyors, Nathan Ovans
- http://btcsure1.ferris.edu/Ovans/Projects/The%20Judicial%20Function%20of%20Surveyors.pdf

Mediation opportunities for the surveying profession in Tennessee, Jerry D. Taylor
- http://works.bepress.com/jerry_taylor/1

Boundary Disputes – The U.S. Surveyor’s Role, Robert W. Foster

Alternative Dispute Resolution (ADR) NYS Office of Court Administration
- http://www.nycourts.gov/ip/adr/