



The Connecticut Surveyor

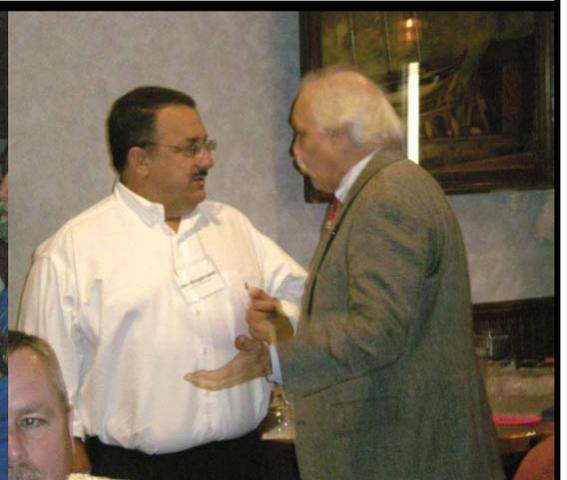
May 2010

Volume Fifteen: Issue Five



2010 General

Membership Meeting





It's Spring...

and that means it's time for CALS Golf Outing!

Join us on Thursday, June 17th, at the Stanley Golf Course for a full day of food, fun and prizes. The total cost is \$100 per player. Send in your registration today.

CALS 2010 Golf Outing Registration Form

Player 1 Name & Handicap _____

Player 2 Name & Handicap _____

Player 3 Name & Handicap _____

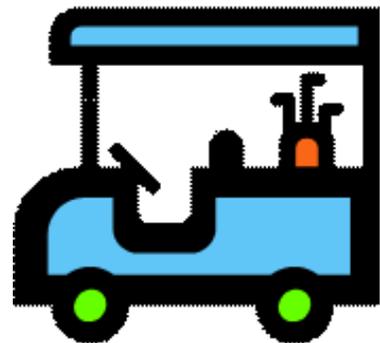
Player 4 Name & Handicap _____

Company/Address _____

Phone/Email _____

Enclosed is \$_____ for _____ players.

CALS also accepts MasterCard & Visa.



Parol Testimony

By Knud E. Hermansen, P.L.S., Ph.d, Esq.

Parol testimony or verbal testimony is an important source of information for retracing boundaries. Few surveyors would ignore a landowner who describes how to find the corner monument or the elderly resident who shows where the corner tree once stood. Yet, not all parol testimony should be considered. There are four hurdles to be considered before relying on parol testimony.

Useful

The first hurdle is that the parol testimony be useful. The testimony should advance the surveyor's efforts at arriving at an opinion.

Of course, there is often parol information that is not useful. All surveyors are familiar with landowners who want to talk but do not provide useful information. Most surveyors have experienced a landowner who tags along with the survey crew and maintains a constant flow of questions and gossip about the neighborhood. This later parol testimony is not useful and not helpful.

Acceptable

The second hurdle is that the parol testimony be acceptable. The parol testimony must be of a source and circumstance that the testimony would more likely than not be used by other competent surveyors in the same or similar situation. This hurdle is codified in the Federal and many state rules of evidence as the following sample illustrates:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect. (Underline mine) Federal Rules of Evidence, Rule 703.

It is important for the surveyor to understand that the standard for acceptance is measured against what other reasonable surveyors would do, not what one particular surveyor would do. Put in other words, if most surveyors would readily use the testimony, it is acceptable to use. If only a few (minority) of surveyors would use the testimony, it is not acceptable to use under the rules of evidence.

Admissible

As the last part in the underline portion of the previous quote states, not all parol testimony the surveyor finds useful and acceptable to aid in retracing a boundary will be admissible in court (nor does it need to be). However, parol testimony that is not admissible yet forms the basis of the surveyor's opinion could place the surveyor in a difficult position - the surveyor has an opinion but can't disclose how the opinion was reached. The result is the surveyor on the witness stand can provide an opinion but the foundation of the opinion is deemed inadmissible and therefore the surveyor's opinion is suspect.

Parol Testimony continued ...

As a general rule, parol testimony will not be admissible where parol testimony will contradict, vary or change the written terms of the contract, agreement, or deed (known as the parol evidence rule). Conversely, parol testimony is generally admissible to aid in the construction, clarification, or interpretation of an ambiguity in the deed or when a deed description is applied to the site. Parol testimony may be used to explain that which is not clear or a latent ambiguity such as the meaning of words and site conditions at the time of conveyance.

For example, parol testimony is not admissible to prove the corner tree is a maple contrary to the deed description that cites an oak to be a monument to the corner. On the other hand, parol testimony is acceptable to show which of two oaks is the one intended by the deed to mark the corner.

Therefore, parol testimony is generally admissible to identify the monument cited in the deed, explain its disappearance, show its former location, and show a replacement is in the position of the original, to name a few applications of parol testimony. Also, parol testimony can be used to show elements of equitable claims or defenses such as acquiescence, practical location, and adverse possession.

Credible

The final hurdle is that the parol testimony be credible. Credibility does not prevent the information from being accepted as evidence. The credibility affects how the information is perceived by the judge, jury, arbiter, etc.

The lack of credibility, I believe, is the most common deficiency of parol testimony used by surveyors. May surveyors claim not to be an advocate for their client, yet accept, rely, and adopt parol statements from the client or the client's witnesses that lack credibility. Therefore the surveyor becomes an extension of the advocacy of their client or client's attorney.

There are three elements involved in determining the credibility of parol statements: 1) The person making a statement would be unaffected by the outcome of the decision. 2) The person would or has some basis for the knowledge sufficient to "sear" the knowledge into memory. 3) When the memory of the witness was formed or the memory recounted there was no actual or an appearance of bias at the time.

Unaffected: The first element of credibility requires that the person making a statement be unaffected by the outcome of the decision. This element would generally make any statements by the client or neighboring property owner suspect. Both the client and neighbor stand to gain if their statements were accepted and relied upon. Even prior owners are suspect if they gave a warranty deed and may be called upon to defend their warranty should the boundaries not reside where they claim the boundaries reside.

There is one exception to this element of credibility. The exception is when the statement of the witness is against the interest of the witness. For example, if the client were to agree with the neighbor's assertions regarding the former location of a boundary stone, the client's testimony regarding the stone's location would be judged credible since it is a statement against their interest.

Basis for Knowledge: The second element affecting the credibility of a parol statement requires the witness have some basis for their knowledge sufficient to "burn the knowledge" into their memory. The basis for the knowledge must be such that logic and experience would compel a reasonable person to believe the witness would remember the facts they testify about. Was there something unique or noteworthy that would cause the

Parol Testimony continued ...

witness to remember or retain the knowledge in their memory? In the instance of a corner location, it is often insufficient for a witness to merely state they remember there was a corner pin at a certain location. The witness must be able to relate their memory gained in the past to an existing location on the ground in a manner that is logical, reasonable, and trustworthy.

“The pin was right at the top of the ditch and the ditch hasn’t moved.” I watched my dad put a stone right on the old stump and after the stump decayed that stone was still there.”

Consider an 83 year old witness who insists that she remembers the location of a pin she saw in her cousins yard when she was 12 years old. That statement without some other supporting information is not credible because logic and experience suggest that 12 year old children have trouble remembering to feed the dog that day, let alone the location of a corner pin the elderly witness saw 70 years earlier. However, it is believable that the 85 year old witness can remember the location of the corner pin if she recounts that the pin was under a tree branch she fell out of when playing in the tree at age 12 and the corner pin injured her very badly when she landed on it. The tree and severe injury is something that a reasonable person would believe someone could remember may decades later. Since the tree and the branch the witness climbed on still stands, the witness is able to accurately place where the where the pin stood 70 years previously.

Of course knowledge gained last week does not need the same intensity of experience (if any) in order to accurately recount the knowledge. On the other hand, knowledge gained a decade ago would require some extraordinary experience to retain a credible memory.

Impartial: The disposition, temperament, or bias of the person when the memory was created or the statement is made also forms an element of credibility. Statements by close friends and family of the client or neighbor are suspect. Also, witnesses who were angry or emotional to the extent their judgment may be impartial or biased against or for a party may hurt the credibility of the witness.

Documenting parol testimony using an affidavit should incorporate the criteria that was discussed previously.

Affidavit of Leroy Cameron

My name is Leroy F. Cameron, I am 62 years old. I reside at 3049 Ames Lane in the town of Lincolnville.

From the age of 9 until I was 18 years old and went into the service, I lived at what is known as the Wooster Farm. The Wooster Farm was owned by my grandparents during the time I lived there.

At the southeast corner of the farm there was a large oak tree with three blazes. I spent hours sitting in a tree stand that I built in this tree to hunt deer. I spent countless hours in the tree and shot several deer that came to eat acorns at this tree. From this tree I could see down a woods land in one direction and along a fence-row in another direction.

Recently, I returned to the location of the oak tree. From the alignment of the woods lane and remains of a fence-row, I was able to determine the former locations of the oak tree. A month ago, I placed a pile of 6 to 12 inch diameter stones at the location of the oak and indicated this location to Sarah Kener, a surveyor.

Parol Testimony continued ...

While I have often met the person who owns the Wooster Farm and the neighboring property, I am not related or know them outside this occasional meeting that occurs while hunting. I continue to hunt on this farm and the neighboring property.

Dated the 3rd day of August 2010.

Leroy Cameron

Leroy Cameron

This article has focused on parol testimony, yet many of the criteria would also apply to other forms of extrinsic evidence. The age, loss of information over time, and unreliability of the surviving information often do not allow the surveyor to be very discriminating as to the information the surveyor uses. Yet, where there is conflicting information, including parol testimony, the surveyor must be prepared to critically examine the parol testimony before relying on it or making it superior to other possibly more reliable evidence.

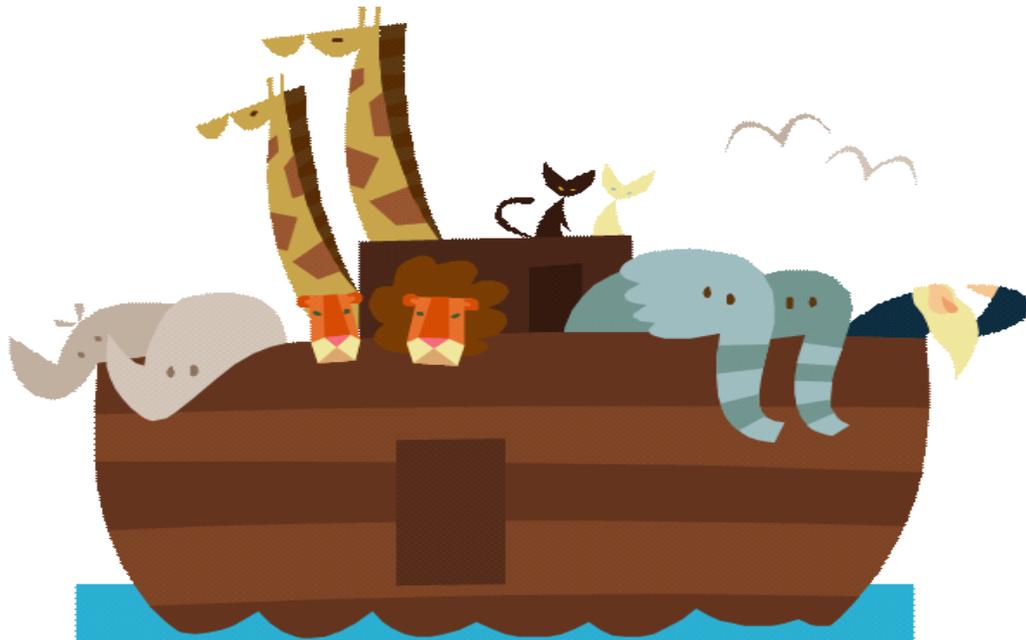
¹ Knud is a professor in the Surveying Engineering program at the University of Maine and operates a consulting firm specializing in boundaries, real estate title, easements, alternate dispute resolution, professional liability, and land development.



Frank W. Carature 58, of Columbia, South Carolina, died May 3, 2010, with his family by his side. He was in the care of Solaris Hospice. A Memorial Mass for family and friends will be celebrated Sunday, August 22, 2010, at 11 a.m at the e Church of the Good Shepherd, 135 Mountain Road, Seymour, CT. A private funereal service and burial took place in Columbia, South Carolina, May 6, 2010.

Frank was born October 23, 1951, in Derby, CT, to the late Frank and Julia (Kross) Carature. He graduated from Ansonia High School in 1970 and attended Hartford Technical School, graduating in 1976, with a Certificate in Surveying. He enjoyed team bowling, his computer, fishing and riding his Harley. Surviving are his children Ryan and Krisit Carature of Columbia; his companion Myrna Thames of Columbia; a brother David Carature of Ansonia, CT; a sister and brother-in-law Carolyn and John Koval of Oxford, CT; a Sister-in-law Linda Pasnault; a brother-in-law Kenneth Toler; several nieces and nephews and many dear friends. He was predeceased by his wife Debra Toler Carature.

Friends may sign the guest book at www.dunbarfunerals.com.



Lessons from Noah's Ark

ONE: Don't miss the boat.

TWO: Remember that we are all in the same boat!

THREE: Plan ahead. It wasn't raining when Noah built the Ark.

FOUR: Stay fit. When you're 60 years old, someone may ask you to do something really big.

FIVE: Don't listen to critics; just get on with the job that needs to be done.

SIX: Build your future on high ground.

SEVEN: For safety's sake, travel in pairs.

EIGHT: Speed isn't always an advantage. The snails were on board with the cheetahs.

NINE: When you're stressed, float away.

TEN: Remember, the Ark was built by amateurs; the Titanic by professionals.

ELEVEN: No matter the storm, there's always a rainbow waiting.

**Most people walk in and out of your life,
but FRIENDS leave footprints in your heart.**

Submitted by Resident Humanitarian Reese Roberts





May 5, 2010

We are pleased to inform you that the letters of concern and support you have sent to the President at the University of Maine were successful. It now appears that the President was persuaded not to cut the College of Engineering budget beyond a point where the Dean would have to eliminate a faculty position from the Surveying Engineering Technology (SVT) program.

The letters you sent were so numerous and compelling that the Dean was convinced and was able to convince the President there existed untapped support in New England for the surveying program. As a result, the Dean believes some current revenue shortfalls can be rectified by increasing enrollment in SVT - particularly out-of-state students. Approximately 38% of the current and historical SVT enrollment is out-of-state students. The administration at the University of Maine is certain that with your support, enrollment can be increased.

Help with increasing enrollment can take many forms. Simple but effective help is achieved by talking to high school students, community college students, and young adults about a career in surveying and the surveying program. Don't forget to mention the great two-year surveying programs available in each New England state. We have received many excellent transfer students from these programs and hope to receive more. Our 2+2 relationship with two-year surveying programs in New England allows students to save money by attending their local two-year program while still earning an ABET accredited B.S. degree in surveying that will ensure the graduate has both a quality education and the requirements necessary for the first step in professional licensure anywhere in the United States.

Also helpful toward efforts at recruiting students is to send Knud Hermansen contact information for perspective students so we can try our best to convince the prospective student that they should pursue a degree and career in surveying. We've had some great help in this regard from state trig-star sponsors.

Creating or funding scholarships is another avenue that helps attract students. Many students have chosen surveying or stayed in the surveying program because of the financial aid afforded by scholarships. Please consider donating or creating a scholarship for surveying students at the University of Maine. Ray Hintz will be happy to discuss starting a scholarship or answer your questions regarding scholarships.

Your support is not a one-way street. Carlton, Ran, and Knud are always willing to help the profession with workshops and individual technical and legal questions. Our only request is to have any travel/lodging costs covered and for some profit to be used for scholarships.

Finally, take some time to mentor high school students or young adults and educate them about surveying. This could include speaking at high school career days or having a high school student job shadow a surveyor or survey crew for a day or two. We have many students that claim their interest in surveying started knowing a surveyor or working for a surveyor for a short time.

Thank you again for your recent efforts on our behalf. While many other engineering programs faced similar or more extensive cuts, the Dan appeared to be most impressed by our support.

On behalf of the Surveying Engineering Technology...

Ray Hintz, Ph.D., P.L.S.
Professor & SVT Coordinator

Carlton Brown, M.S., P.L.S., P.E.
Assistant Professor

Knud E. Hermansen, P.L.S., P.E., Ph.D., Esq.
Professor

Classified

SEEKING POSITION:

1) Associate Member of CALS looking for full-time position. Hartford County. Eleven years experience. BS in Geography and AA in Mathematics. Skilled in AutoCAD Mapping, Eagle Point Coordinate Geometry, Trimble, Topcon, TDS, Sokkia total stations and data collectors; Leica and Trimble GPS. Excellent references. Contact the CALS office for resume #101.

2) Professionally trained land surveyor with over 20 years experience. Diversified in all aspects of land surveying including but not limited to ALTA/ACSM Surveys, Property/Boundary Surveys, Zoning and Improvement Location Surveys, Topographic Surveys and Subdivision/Condominium maps. Proven leadership skills with a high level of organization and communication abilities. Able to consistently keep projects on target from a financial and time line perspective. I believe I would make a significant contribution to any firm. If your firm is looking for a dependable, results orientated professional with a solid performance track, I would be interested in speaking with you to discuss the value that my strengths and experience can bring to your search. Contact the CALS office for a full resume #102.

3) Licensed Land Surveyor seeking a management position with responsibilities for marketing services for an engineering/surveying firm, developing business with new and existing clients and project management. Twenty-five years in land surveying applications of business development for new and existing clients; project management; supervision of field and office personnel and experience in all facets of land surveying projects, large and small. Contact the CALS office for full resume and references #104.

4) Licensed Land Surveyor seeking employment. Extensive experience with title research, boundary surveys, topographic surveys, hydrographic surveys, construction and as-built surveys an existing conditions surveys for redesign, improvements and new design. Willing to work part time. Middlesex County. Contact the CALS office for full resume and references #105.

POSITIONS AVAILABLE:

Fairfield County

Pereira Engineering, LLC is an established Civil/Environmental Engineering and Land Surveying firm located in Shelton, CT and we are looking to fill the following positions:

Survey Technician / CAD Operator: We are seeking a candidate with 0-2 years experience in Land Surveying or Civil Engineering. The qualified candidate MUST be highly proficient with AutoCAD and Autodesk Survey software. Candidate must also be highly-motivated and detail-oriented. Responsibilities will include downloading field survey data, preparation of CAD survey maps, and other office/field work all under the direct supervision of Senior Surveyor.

Survey Crew: We are also looking to bring on an additional survey crew. Qualified candidates must be experienced in boundary, ALTA/ACSM, topographic surveys, underground utility location, and construction stakeout. Experience with AutoCAD and Autodesk Survey software a real plus.

Pereira Engineering offers a very competitive salary and benefits package including Major Medical Insurance, Retirement Plan, Life Insurance including Short-Term Disability and AD&D coverage, paid Vacation, Holidays, Sick Days, and Direct Deposit for payroll.

Please email resume and salary requirements to: joe@pereiraeng.com or fax to: (203) 944-9945.

The Future of the National Society of Professional Surveyors

By

Wayne Harrision, NSPS President

Curt Sumner, NSPS Executive Director

John Matonich, NSPS Immediate Past President

The recent NSPS meeting in Phoenix was probably one of the most emotional since NSPS was incorporated in 1981. A motion was introduced at the Board of Governors meeting to request the Board of Directors to initiate the process of separating from the umbrella organization of ACSM. This certainly got everyone's attention and the discussion started. It was emotional at times, rightfully so, bringing many comments and suggestions forth. The end result was a motion passed by the Governors 35 yes, 5 no, and 7 abstentions requesting the Board of Directors to initiate the process of separation while charging a committee to study and make a report, by September 15, 2010, on the financial and membership impacts of this action if it were to go full term. This motion was then passed by the NSPS Board of Directors by a vote of 11 yes and 5 no.

A previous agreement with ACSM spells out a two-year term of separation for any of the member organizations (MOs) which can be reversed at any point along the way. The motion that passed holds a lot of wisdom and keeps all options open for NSPS, but it does start the clock and provides a two-year window to work on the future of NSPS and its relationship to ACSM.

Why is this process so important? The answer to that question may be found in the marketing report commissioned by ACSM and all of the MOs to help improve the health of the ACSM and the MOs. An ACSM committee made up of the members from all the MOs worked very hard to read through and understand the report. The report gathered information from various sources including association leaders, current and past members, various government agency heads, related association executives and publishing-oriented contacts. There were also on-line surveys conducted with over 4100 current and former MO members and state affiliate members. The results weren't especially surprising, but were very significant. The primary challenges identified were:

- Lack of awareness
- Lack of perceived value
- Perception of ACSM and MOs as an outdated group that is behind the times
- Negative stereotype of the term surveyor
- High levels of competition amongst the state affiliates, MOs and other associations

The report also recommended "*the formation of a single industry-wide membership organization that included all the MOs as well as the state and local pieces of NSPS*". The Ad-Hoc committee reported this to the ACSM Congress where a motion was passed to charge a committee to study a possible structure of a unified member organization. Their report is due on September 1, 2010.

Given the state of membership, the current financial situation and the findings of the commissioned report, NSPS and the other MOs have reached a critical juncture and there is no luxury of extra time to mover this in the right direction whatever that direction may be. The work that will be done by both the NSPS and ACSM committees will be extremely valuable in the discussions about the future. The two-year time frame keeps the importance of this issue where it belongs...at the top of the list.

The Evolution of a National Voice

What is needed is everyone's input on the possible scenarios. If you have a doubt about whether there needs to be a national voice for the surveying profession, you need to think again. Just as state issues do, national issues touch all surveyors. Public, private, topographic, boundary, layout and many others all have national tones. ALTA standards, Qualification Based Selection, academic accreditations, real estate settlement survey issues, GPS height modernization, letters of map amendments (LOMAs) and many more issues are all dealt with at the national, not the state or local level.

These issues won't go away and some organization will deal with them nationally for the surveying community. The question is which one? The American Society of Civil Engineers, the American Council of Engineering Companies, the American Society of Photogrammetry and Remote Sensing, the Management Association of Private Photogrammetric Surveyors or **a true national voice** of the Surveying Profession. This is the question being dealt with today and over the next several months. There will be many opportunities for input and when they present themselves, take the time to share your input and counsel. Together, the result will be the best option possible for the entire surveying profession.

Professional Development

Stay Out of Court: Mock Trial With Gary Kent

Friday, June 4, 2010
The Conference Center at Waltham Woods
860 Winter Street, Waltham, MA 02451

Presented by Massachusetts Association of Land Surveyors & Civil Engineers (MALSCE)

This is a full-day seminar. Registration is 7:30a.m. - 8:00a.m., Seminar 8:00a.m. - 4:00p.m.
Register on-line by May 31, 2010, at: <http://www.engineers.org/>

Post Secondary Options Consortium 2010

Bolton High School, RHAM High School and Bacon Academy will hold a Career Fair Friday, September 24, 2010. As in past years, CALS would like to take a booth to educate students about a career as a Professional Land Surveyor. Second Vice President Dave Palmberg is looking for volunteers to donate a few hours of time to this endeavor. Please call Dave at 860-763-3300 or email him at davepalmberg@sbcglobal.net.

Security Risk

John Bruno, President of CALS Sustaining member Alpha Imaging, has advised us that copy machines can be a security risk storing data such as social security numbers, bank account numbers, and other private and personal information.

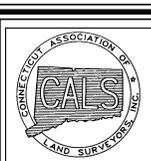
While all machines since 2000 have had the **option** of a hard drive, it is only within the past 5 years that they have come as standard equipment on most copy machines.

Also, each manufacturer came out with a data security kit or hard drive encryption kit to erase information on hard drives. They had to do this for machines going into medical and financial companies to comply with Sarbanes-Oxley and HIPAA. Unfortunately most people are not aware of these data security kits or they don't want to spend the money on them. CALS current copier has a hard drive. Before removing a machine, Alpha Imaging will use an encryption kit to erase all the data and leave it completely blank.

Furthermore, John is hoping this report (seen on CBS News) will open people's eyes to the fact that they need a reputable local dealer to do business with who makes sure that the copier de-install is done properly rather than relying on the trucking company who picks up the machine to do this work because they don't know how to do it themselves.

We shall see if this report has any effect on the way people do business or if this, much like everything else, falls by the wayside when a new alarmist report on something else comes out.

Alpha Imaging, located in Newington, CT, sells, leases and services copiers, scanners, printers, and fax machines. They have provided CALS with excellent equipment and service for the past several years. For more information call John Bruno at 860-667-2064.



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