

**June 2010**

*News & Views* editor  
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Among the Contributors:  
Robert L. Banzhoff, Jr.  
Dorothy Calegari  
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Abbie Goodman  
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## From the NSPS president NSPS Strategic Planning Committee's Survey of the Profession

Unless you have been off traveling in some remote area with limited or no communications, I'm sure you have heard or read about NSPS starting the process of withdrawing from under the ACSM umbrella. As part of that process the NSPS Strategic Planning Committee has been asked to gather input relating to this course of action from NSPS members as well as non-members.

To help accomplish this task, the committee has decided to develop a web-based survey of approximately twenty questions. Invitations to participate in this survey will be e-mailed in late July to as many past and present NSPS members and non-members as can be contacted.

Please complete the survey as soon as you receive your invitation; the committee has a very short window in which to gather and tabulate the data. A report based on these data will be sent to the NSPS Board of Governors and Board of Directors on September 15th. This report will be used by both Boards in their Fall Meeting discussions on whether or not NSPS should continue the withdrawal process. — *A. Wayne Harrison, PS, FNSPS/FACSM, NSPS president, [wharrison@cullinaneng.com](mailto:wharrison@cullinaneng.com)*

## short takes

### ACSM Lobby Day webinar

The first ever Lobby Day webinar was delivered to members via GoToWebinar. The presentation and other new advocacy materials are accessible on the Government Affairs page of the ACSM website (<http://www.acsm.net>). — *Ilse Genovese, ACSM Communications Director, [ilse.genovese@acsm.net](mailto:ilse.genovese@acsm.net)*

### Thank you

The note below came from Jacob Heck, the 2010 recipient of the scholarship established by the Awards Committee to replace the withdrawn Schonstedt award and created from funds given in honor of Al Frieze. Jacob attended the conference as contact person and participant on the Michigan Tech student competition team and helped them take third (3rd) place. The award is helping him to move on from MTU to study geodesy at Ohio State. — *Robert L. Banzhoff, Jr., Member Organizations Coordinator, [Bob.Banzhoff@acsm.net](mailto:Bob.Banzhoff@acsm.net)*

Thank you for selecting me as the recipient of the 2010 Al Frieze Memorial Scholarship. I have worked very hard over the past four years and I am happy to receive recognition for it. Because of the support of organizations such as NSPS and ACSM, students are more involved in their education, acquiring the skills necessary to become

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leaders in the surveying and mapping community. Some day we will be providing encouragement and support to the next generation of young people, preparing them for a surveying career as you have done for my colleagues and me. With this support, I have chosen to continue my studies at the Ohio State University in the fall, in the geodesy program. Thank you once again. I hope to maintain a strong relationship with NSPS and ACSM throughout my career — Jacob Heck

## you report

### News from MALSCCE

On May 11, 2010, MALSCCE members, along with ACEC/MA and BSCES members and leaders from other engineering and design related associations, gathered at the Massachusetts State House for our Annual Design Professionals Day. The Massachusetts Association of Land Surveyors and Civil Engineers works in coalition with these associations on many issues. Staff arranged for meetings with Massachusetts State Representatives and State Senators based on where our members live and vote. Members discussed several key issues with their legislators. For more information, download the fact sheets at: <http://www.acecma.org/index.cfm?cdid=10527&pid=10243>.

One of the key issues discussed was Qualifications Based Selection (QBS) and how this applies to Massachusetts land surveyors and related professions. The basic premise of QBS is that the selection of design professionals for government contracts using qualifications accomplishes the goals of delivering quality projects at competitive costs while safeguarding the public. The language in Sections 40-45 of Chapter 25 of the Acts of 2009 makes this premise the law in Massachusetts for both horizontal public works projects and vertical public building projects in Massachusetts.

**ACTION UPDATE:** The Massachusetts legislature passed an FY2010 Supplemental budget on May 13, 2010, which included our coalition's QBS clarification language. See sections 4, 6, and 22 at [http://www.acecma.org/acecma/file/Supp%20Budget%205\\_13\\_10--including%20QBS%20clarification%20language.pdf](http://www.acecma.org/acecma/file/Supp%20Budget%205_13_10--including%20QBS%20clarification%20language.pdf) for reference. Section 22, in particular, repeals the requirement that MassDOT (formerly MassHighway) select land surveyors by low bid. As a result, MassDOT will select land surveyors by QBS. This is a victory for MALSCCE! — *Abbie Goodman, MALSCCE Executive Director, [malsce@engineers.com](mailto:malsce@engineers.com)*.

### News from TSPS

The [Annual Ray Wisdom Barbecue Cook-off and Auction](#) on June 5 in Austin raised \$12,000 for surveying scholarships to be administered by Texas Surveyors Foundation Inc. Four cooking teams from across Texas competed.

The annual [High School Educators Retreat](#) held on June 15-17th in Dallas/Ft. Worth is in its fourth year. The retreat is very popular among high

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school educators who attend to gain better understanding of surveying as a career path for their students.

A new [Museum of Measurement and Time](http://www.museumofmeasurementandtime.org) recently opened in Jefferson, Texas. The museum houses the collection of Mr. Johnny Ingram, which includes his library of surveying books and maps, surveying equipment, calculating devices, and clocks. [See [www.museumofmeasurementandtime.org](http://www.museumofmeasurementandtime.org)] — *Henry A. Kuehlem, RPLS, NSPS Area 8 director, [HKUEHLEM@aol.com](mailto:HKUEHLEM@aol.com)*

## News from CLSA

California Land Surveyors Association (CLSA) has published a Safety Tailgate Meeting Guide. The guide, which is provided complimentary to CLSA members, features over 70 tailgate safety meeting topics and includes information regarding OSHA regulations.

In an effort to become more active in the GIS community, CLSA will have a booth at the Esri Survey Summit and will host a panel discussion regarding Land Surveying & GIS. — *Dorothy Calegari, CLSA Executive Director, [clsa@californiasurveyors.org](mailto:clsa@californiasurveyors.org)*

## News from SAMSOG

Re: SAMSOG Annual Meeting and Summer Conference

If you have not made your reservation to attend the SAMSOG Annual Meeting and Summer Conference, here is a reason to do so now. Amelia Island Plantation has reduced SAMSOG's nightly hotel rate to \$149 (+\$12 daily resort fee and tax) for RESORT VIEW (not beach view) rooms. If you have an existing reservation that you would like to change to the \$149 resort view room, please let me know before June 30th. The Plantation will continue to honor this rate and book rooms for SAMSOG as long as they are available. Remember to register for the summer meeting by June 30th to take advantage of the early registration discount! If you have any questions, contact *Ginger Walker, SAMSOG Executive Director, 770-947-1767; [ginger\\_samsog@bellsouth.net](mailto:ginger_samsog@bellsouth.net)*

## News from IPLSA

The Illinois Professional Land Surveyors Association is joining four other professional societies of engineers and architects to request that the Illinois Supreme Court receive an amicus curiae brief in *Thompson v Gordon*, a case which the court decided to hear.

Amicus curiae is Latin for "friend of the court." Amicus curiae briefs are offered so as to enable a reviewing court to receive an expanded view from interested parties and so better understand the precedential impact its ruling might have.

In the case before the Illinois Supreme Court, a developer hired a professional engineer to create the design necessary to replace the deck of an existing bridge over an Illinois interstate highway. The design was furnished, approved by the developer, accepted by the Illinois Department of Transportation, executed by the contractor, and remained

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in place some seven years. Tragically, a car using the bridge spun out of control, jumped over the bridge's median barrier, and struck a car traveling in the opposite direction, killing a father and his daughter.

The engineer's contract called for "structural design plans to be provided for deck replacement of the existing [bridge]. The contract did not call for a different barrier design on the bridge. Instead, the design called for essentially a replacement of what had originally been there. The contract also contained a provision stating that "the standard of care for [defendants'] services will be the degree of skill and diligence normally employed by professional engineers or consultants performing the same or similar services."

Plaintiff's engineering expert opined that the requisite standard of care called for a new and higher barrier to be specified, even though it was conceded that the contract was silent on that feature.

The trial court rejected plaintiff's theory and entered summary judgment in favor of the engineers in advance of trial. The Illinois Appellate Court reversed, holding that the plaintiff's engineer's affidavit created a question of fact that only a jury trial could ultimately resolve.

In 1985, the Illinois Supreme Court ruled in the Ferentchak case that an engineer's contract with his client set his scope of duty, even in negligence actions brought by strangers to the contract. The Thompson appellate court recognized that precedent, but distinguished it, reasoning that the standard of care language allowed plaintiff's expert to opine that a much more extensive barrier should have been specified and thus erected.

Before the Illinois Supreme Court, the defendant engineer now will argue that the Court should follow its Ferentchak decision and hold that the scope of duty must be determined from the face of the contract and not as "re-written" many years later by an opposing expert. The contract created at the time of services, not an opposing expert years later at trial, must set the scope. That same rule must apply for surveyors, architects, even other professions (e.g., accountants). The scope of services determined by the parties to the contract should define what the scope of duty will be in any future negligence case brought by a passer-by, subsequent owner, or future user. How strange it would be for a design professional to perform services to a client's satisfaction and any years later to have an opposing expert tell the defendant—and a jury—that the expert knew better what the scope of the agreement really should have been! — By *Kevin R. Sido, Hinshaw & Culbertson LLP*. For more details, contact *Robert E. Church, IPLSA Associate Executive Director*, [bob@iplsa.org](mailto:bob@iplsa.org)