

Though not particularly relevant in light of the clear legal precedent stated above, it may nonetheless be productive if I take a brief moment to point out that those who believe the time bar in the Quiet Title Act is not applicable where questions of erroneous surveys are concerned, in my opinion, place too much emphasis on the distinction between title and location. While there is, of course, a distinction between the two, neither title nor location can be totally separated from the other. If the United States, for example, claims title to a tract of land, it does so based upon a survey which, on its face, purports to have properly located that tract. If a private party claims title to all or any part of that same tract, the private claim necessarily rests on the proposition that the survey upon which the government sets up its claim erroneously located the corners thereof; it cannot be otherwise. This realization is precisely the reason for the language found at 2409a(a), which makes clear that the intent of the statute is to permit adjudication of those lands "in which the United States claims an interest". And it is why the Fadem court held that the Act applies to "all" boundary disputes with the Federal Government, including disputes which arise "from allegedly improper survey by Bureau of Land management."

Turning, then, to a closely related argument, it is often suggested that the refusal of this office to relocate an erroneously established corner because of the 12 year statute of limitations is a violation of the rights of those whose boundaries are, or will subsequently be, controlled by the allegedly erroneous corner. The basis for this argument rests on the contention that the act of officially sanctioning an error would, in effect, constitute an injustice on those whose legal and equitable claims would thus be barred. Apparently, those who subscribe to this notion are unaware that the rule operates independently of, and without regard to, the question of error. As pointed out above, the court rejected Dr. Fadem's claim of error without even inquiring into the correctness of the Bureau's resurvey. Simply put, after the running of the time bar, the question of error is immaterial. As will be briefly explained below, Statutes of repose find their support in a different principle.

But first, the claim that the 12 year rule is contrary to legal and equitable considerations does not seem to be a view shared by the courts. In Hatter v. United States, 402 F.Supp. 1192 (1975), for example, the plaintiff pointed specifically toward legal and equitable considerations in his effort to avoid the consequence of the 2409a(g) time bar. Chief Justice MacBride, however, saw no conflict with these doctrines, and wrote, at 1194:

As an initial matter, the denomination of a claim as "legal" or "equitable" has no practical significance on the question...of the United States' interest in property to which quiet title is sought. Section 2409a(f) makes no such distinction, but speaks only of disputes in title of real property in which the United States claims an interest. Quiet title actions are, after all, not merely actions to settle title, but also actions to remove any clouds of title, whether legal or equitable. (Underscoring added)

These arguments -that the 12 year rule is a violation of an owner's property rights, or that it is for some similar reason unjust- do not recognize the purpose served by limiting statutes. There is an equally valid other side to this equitable coin. The applicable principle was stated with great clarity in Railroad Telegraphers v. Railway Express Agency, 321 US 342 (1944). As the court there explained, at page 349: