
Securing Identity in the 21st Century

A Report on the
22nd Annual Conference of the
NATIONAL NOTARY ASSOCIATION
Chatsworth, California



MILTON G. VALERA
President

DEBORAH M. THAW
Executive Director

August, 2000

TABLE OF CONTENTS

- **INTRODUCTION**.....2
- **KICKOFF KEYNOTE ADDRESS:**
 - Frankie Sue Del Papa3
- **ACHIEVEMENT AWARD RECIPIENT’S ACCEPTANCE ADDRESS:**
 - Angel R. Marrero5
- **FAREWELL KEYNOTE ADDRESS:**
 - Ron Thornburgh.....7
- **CRYPTONOTARY™ REGISTRATION AUTHORITY NETWORK**
 - Gordon W. Romney9
- **STATE OFFICIALS ROUNDTABLE**12
- **INTERNATIONAL ROUNDTABLE**.....24
- **JOINT ROUNDTABLE**.....35
- **CONCLUDING REMARKS**.....40
- **APPENDIX**41

INTRODUCTION

For the past 22 years, the National Notary Association's Annual Conference of Notaries Public has been a vital part of our mission to educate and serve Notaries. It also serves our goal to provide a forum for notarial administrators and legal authorities from the United States and around the world on issues affecting the Notary Public office.

The 2000 Conference, "Securing Identity in the 21st Century, was held in Las Vegas, Nevada, and addressed how new technologies will be integrated into the traditional Notary function. Because properly identifying the document signer is an integral part of the notarial act, the three-day program offered an in-depth look at identification issues, including those emerging technologies that may be exploited to compromise identity.

The rapidly progressing passage of electronic signature laws throughout the country bolstered the relevance of conference workshops, which included such sessions as "Personal Identification in the New Millennium," "Facing the Challenges of Electronic Documents" and "Protecting Yourself Against Forgeries." In addition to the many how-to workshops and training sessions for the practicing Notary, the conference program included an accredited daylong law workshop for the practicing attorney and a series of special roundtable programs for both Notary-regulating officials and foreign Notary practitioners. These valuable panel discussions focused on practical ramifications of the new electronic signature laws.

The National Notary Association also uses its annual conference to honor those Notaries who exemplify the highest standards and dedication, through presentation of the NNA Notary of the Year and the four special honorees. The annual Achievement Award is also presented to the official who has done the most to improve the standards, image and quality of the Notary Public office.

It is through the valuable dialogues begun at this annual meeting that many ideas for strengthening the Notary Public office are developed and implemented. Suggestions from state officials, industry experts and Notaries themselves have resulted in many revisions of statutes and administrative rules that have appreciably improved Notary services to the public.

A digest of the highlights and minutes of the roundtable sessions and other important presentations follows.

KICKOFF BREAKFAST: KEYNOTE ADDRESS

The Honorable Frankie Sue Del Papa Attorney General, Nevada

The importance of education, notarization and public service are not lost on Nevada's Attorney General Frankie Sue Del Papa. After six years of governing higher education throughout the state as a regent of the University of Nevada system, she was elected Nevada's first woman secretary of state in 1987 and became responsible for commissioning and regulating all of the state's Notaries.

Pursuing a commitment to public service, she was subsequently elected Nevada's first woman attorney general and is now serving a third term, continuing her emphasis on consumer protection resources and anti-fraud initiatives.

Speaking from her vantage-point as the state's chief legal officer, Attorney General Del Papa offered her observations of the new era to which we are being introduced:

Let me talk to you about the Internet and try to put it in some perspective. When I was secretary of state, we lived first in the age of Federal Express. We would get hundreds of deliveries a week. Then, we moved into the age of the fax machine. People didn't ask, "Do you have a fax machine?" The question was, "What is your fax number?" Now we're in the age of the Internet. By way of comparison, it took radio, in our country, 38 years to reach 50 million users. It took television 13 years to reach 50 million users. It took cable 10 years to reach 50 million users. It took the Internet five years to reach 50 million users. It is reported that business on the Internet is doubling every one hundred days.

As she reviewed the law enforcement activities that are being developed at the state and federal levels to address this rapidly growing technology and the threats it poses, she stressed its speed and the ways in which Notaries may become critically involved.

We are facing questions about pen-and-paper notarizations versus electronic notarization. We are facing questions about how to balance the ease and convenience of using e-commerce with adequate protection for the user consumer. Let's put it in perspective: the FBI reports the average bank robbery in this country nets \$2,700. The average high-tech crime nets \$50,000. Secretary Heller concluded his remarks earlier by reminding those in attendance that we all place our trust in those we choose to provide services for us.

This demands a kind of consumer protection in which Notaries need to play a role. The potential for e-commerce is absolutely mind-boggling, as is the computer crime that may accompany it. I believe the future role of the Notary will change, and we don't really know what the new role will be. However, in light of law enforcement and consumer fraud matters that we will face as e-commerce continues to boom, that role will be an important one.

Attorney General Del Papa urged the delegates to play a part in the examination of this new role because of the necessary interaction of Notaries with law enforcement groups like attorneys general and district attorneys:

We're all in this together. I think the crimes Notaries need to be particularly aware of are the computer intrusions that allow documents to be destroyed or altered, and fraud that allows for some kind of forgery. Obviously, with the growing importance of e-commerce, consumers who use it must have confidence and trust in that technology. The protections available in terms of electronic signatures and privacy enhancing technologies are critical. And Notaries, certainly, are on the front line and among those who must be educated and informed about this changing technology.

Attorney General Del Papa concluded her remarks by reminding those in attendance that we all have a responsibility to our communities:

In the end, our community is what we help make it, just as our state is what we help make it, just as our country is what we help make it. And people who take the time to participate and belong to a group such as the National Notary Association are part of the glue that holds a society together. Remember, you make a living by what you get, but you make a life by what you give.

ACHIEVEMENT AWARD RECIPIENT'S ACCEPTANCE ADDRESS

Angel R. Marrero Attorney and Civil Law Notary

Since 1979, the National Notary Association has recognized those individuals who have contributed to the improvement of the standards, image and quality of the office of Notary Public.

This year's recipient, Puerto Rico attorney and Notary Angel R. Marrero, was honored at the farewell banquet. During the banquet he shared his thoughts, which reflected the dedication and spirit motivating him to seek to bridge the gap between U.S. Notaries and their Latin civil-law counterparts.

Through his position on the Executive Council for the International Union of Latin Notariats (IULN), he served as an indispensable intermediary and catalyst in bringing together leaders of the civil and common law worlds for the 1998 landmark *Agreement of Collaboration* between the IULN and the National Notary Association.

Marrero, a corporate attorney and *Notario* of the U.S. Commonwealth of Puerto Rico, is a modest, soft-spoken professional who harbors a great passion for his career in law. After watching and listening humbly to the video congratulations of his colleagues in the San Juan law firm of McConnell, Valdes, Marrero began:

It is said that accepting with grace is grace itself. So, I accept this distinction bestowed upon me by the National Notary Association. I accept it on my own behalf and on behalf of the International Union of Latin Notariats that I represent before the National Notary Association.

It is indeed my privilege to share with each of you our mutual interests and concerns. As Notaries, you and I share a big responsibility. By delegation from the state, we, you and I, are called upon to impart the public faith. In so doing, we provide an invaluable and indispensable service to society.

Much has been said about the difference between the common law — your systems — and the civil-law system — my system. Certainly, there are many differences. If we compare each and every notarial system around the world, we will find many differences, even among civil law systems. But we must not reflect on the differences. Rather, we must look at the common traits. This will allow us to look for ways to bring all notarial systems closer together.

Marrero explained that as boundaries between countries and language barriers were lowered in the century just past, we can expect all barriers to disappear in the century ahead. And, he speculated that all notarial systems will have to rise to meet the challenges ahead.

The international business community has a great need for our services and a great need for efficacy and for simplicity. Our main goal should be to have the free circulation and the full acceptance of the notarial document in all countries. This can only be achieved if all notarial systems around the world adopt uniform systems and uniform requirements to meet these needs. We must look for ways to modernize our systems to ensure that notarial documents can move freely from country to country. In her closing remarks, Fran emphasized that determination is a requisite for success and that whatever one imagines, desires, believes and acts upon, can be achieved.

Challenging the delegates and guests, Marrero closed with the observation that new times require new and innovative solutions:

We must respond to the needs of those who call upon us for our services. So, I leave you with one question: Are we, you and I, ready to embark on this common goal?

In presenting the award to Marrero, NNA President Milton G. Valera also announced that Marrero was also the first recipient to receive a \$1,000 scholarship in his name to be awarded to the university or college of his choosing.

FAREWELL BANQUET: KEYNOTE ADDRESS

The Honorable Ron Thornburgh Secretary of State, Kansas

With the advent of digital signature laws and regulations to enhance the flow of e-commerce, many secretaries of state are finding their offices charged with administering these laws or forging the rules by which such laws will be implemented.

In his second term as Kansas' 29th Secretary of State, Ron Thornburgh sees the future as full of possibility, just as his career has proved to be. From a part-time college job as a mailroom clerk in the Secretary of State's office, Thornburgh showed that good work at one level translates into good work at the next. He was appointed Assistant Secretary of State in 1991, and his advancement to his current position was logical and appropriate. Upon his election to office, he sought to promote voter turnout and participation and to make state government more accessible to its citizens.

Earlier this year, he demonstrated his leadership in the Notary arena by working with the National Notary Association to bring a series of educational seminars for Notaries to Kansas communities.

Thornburgh complimented the delegates and guests for their attendance at the Conference and encouraged them to continue their education on the increasingly important subject of electronic documents and digital signatures. Acknowledging that the Notary will never again be the same as seen in the Roman Empire, he said that there will always be a place and a need for a trusted third party — especially today.

We need your leadership to get there. To be a true leader you need four qualities. A little knowledge, a little courage, a little trust ... and a whole bunch of a secret ingredient. Knowledge is simple. If you don't know what you are talking about, no one will follow you. Courage is not necessarily physical courage, it is having the courage to live by your convictions and doing what you know is right and leading the way based upon your own values.

He went on to describe a trust as an often unspoken reliance on the character, ability and strength of another, such as a blind person has for a seeing eye dog. Lastly, he revealed the fourth ingredient: failure. He explained it as the kind of failure that you suffer when you do everything you can within the power of your being, and you still fall flat on your face. It is, he explained, an opportunity, because it teaches important lessons.

He urged the delegates and guests to use the opportunities offered by the new

technology to help determine the future role of the Notary.

When we talk about the future, we get so caught up and talk about policies and products and politics, but when you boil it down, it is not about policy or products or politics: it's people that make the future. And I believe that that is the role of the Notary. It's going to be you, the people, who make the process work in the future. You are vital to the emerging ideas that we see happening here. So quickly, go out and make them work.

LUNCHEON: THE FUTURE IS TODAY: UNVEILING THE CRYPTONOTARY® - REGISTRATION AUTHORITY NETWORK

Gordon W. Romney, President, ARCANVS

Launching the CryptoNotary™/Registration Authority Network at this special luncheon, Gordon Romney, president of Arcanvs, introduced the program by explaining to delegates how computer technology could put into their hands a “digital pen” with which they could sign electronic documents.

He remarked that Notary practice has waxed and waned in this country ever since the first Notary arrived with Columbus, but there have never been such change as with this present combination of technology and economic forces.

Quoting Michael Closen of The John Marshall Law School, Romney said:

“Computer technology has provided the platform from which some specialized Notaries may re-establish both their public images and their prominence within the government and business community. While this new technology revolutionizes the way that special Notaries perform some of their duties, it does not affect the fundamental authority of the Notary Public.”

By way of introduction, he described the concept of the Digital Notary to differentiate its function from that of the CyberNotary. The CyberNotary, a name coined by the American Bar Association, describes an attorney who uses Public Key Infrastructure (digital signatures) and practices international notarial law in a similar fashion to a Civil Law Notary, or what we more commonly refer to as a Latin Notary. Romney described his thoughts regarding the Digital Notary and Arcanvs:

The Digital Notary should be a Notary Public who uses Public Key Infrastructure tools — in other words, a “digital pen” instead of an ink pen. An electronic document written in Microsoft Word or WordPerfect could stay in its electronic pathway rather than being printed out on paper, signed with a “wet signature,” then digitally scanned and reintroduced into the electronic pathway. The benefits would be a reduction of paper usage, a reduction of production costs in handling and storing paper, the detection of any modification in the document after signing, and an unforgeable signature verifiable by anyone, not just an expert. The process should not require major changes in state or international Notary Public laws. The process

should be complementary to existing Notary practices and work side by side with traditional methods. At Arcanvs this Digital Notary process was called CryptoNotary. Arcanvs obtained a registered U.S. Trademark on the name, CryptoNotary, and two U.S. and European Union patents have been issued and others are pending on the process. The desire on the part of Arcanvs is to elevate the quality of the Notary worldwide with a process that works for Notaries Public in the United States, and for *Notaires* and Latin Notaries internationally. The procedure should be made as simple as possible, perhaps even transparent to signers of electronic documents.

The process of becoming a CryptoNotary/Registration Authority requires that the Notary be issued a CryptoNotary/Registration Authority digital certificate. In fact, several hundred delegates at the Conference applied and received digital certificates.

Romney reminded those Notaries:

Each of us as a CryptoNotary becomes part of the CryptoNotary/Registration Authority Network ... a network of Notaries Public focused on facilitating (a) the issuance of secure digital certificates and (b) secure and unforgeable notarizations.

In describing how the CryptoNotary functions, he clarified the difference between the role of CryptoNotary and that of a CryptoNotary/Registration Authority:

A CryptoNotary/Registration Authority is a Notary Public, but also serves to facilitate identifying an applicant for a digital certificate by receiving a sworn affidavit regarding identity in the function as a Registration Authority. In Congressional testimony two weeks ago, the head of the U.S. Secret Service expressed concern regarding the rapid increase in identity theft. Using Notaries Public to witness applications for digital certificates raises the level of authentication to very high levels, far beyond the existing practice of other Certification Authorities. National health care organizations have indicated that they want to have Notaries Public witness the identity by sworn affidavit of applicants for digital certificates to be used in healthcare. Because of this model of high assurance of identity used by Arcanvs, Arthur Andersen has selected Arcanvs to be a provider of the Registration Authority function in its Global Trust Model.

Romney also explained to delegates why they could be comfortable providing Arcanvs with the appropriate personal information by which they would be given their digital certificates:

First of all, Arcanvs was organized along Notary guidelines as a trusted third party. The word Arcanvs is a Latin word that means something trustworthy. Privacy and security are our business. In order to be licensed by any state, Arcanvs' procedures and system have undergone a rigorous security audit to national NIST CS2 standards performed by Arthur Andersen, the international public accounting firm. All Arcanvs personnel must qualify "clear" of any misdemeanor or felony offense by both state and private due diligence agencies. Arcanvs has met the rigorous licensing standards for bonding and errors and omissions insurance required by Utah, Washington, Minnesota, North Carolina and Oregon. Licensing is pending in California, Nevada, Texas and other states. The Arcanvs privacy policy protects applicant information from being used by any third party. Such information as Social Security numbers is protected by layers of firewalls and strict internal procedures. All information is supplied over a secure internet session that cannot be compromised. For a Notary to become a CryptoNotary/Registration Authority, the Notary's identity must be established without doubt, because such Notaries become those who verify the identity of applicants for digital certificates, and they must be trusted third parties.

With the current trend among states to introduce electronic or digital signature laws, Romney explained how the Arcanvs application, based on Utah law, would affect a Notary from another state:

Utah law is the basis for the licensing of Arcanvs as a Certification Authority. All other state licenses are established relative to Utah standing. This relates to the rules under which a Certification Authority functions and has nothing to do with a Notary's being commissioned in another state. In other words, a California Notary, can become a CryptoNotary/Registration Authority and facilitate applicants for Arcanvs high assurance digital certificates that may be used in any state. As a California Notary, based on the UETA (Uniform Electronic Transactions Act) passed this spring in California, a digital signature is an acceptable electronic signature, and Section 11 states that an electronic signature may be used for notarization. For the moment, in California, we are dealing only with applications for digital certificates. In the near future, CryptoNotaries in California will be ready for full electronic notarizations as soon as permitted, although the existing law appears to authorize such electronic signatures.

In sharing his vision of the future for the CryptoNotary, Romney encouraged the delegates to go forward, as CryptoNotary/Registration Authorities, into this new era of e-commerce, with greater security and improved privacy.

STATE OFFICIALS ROUNDTABLE

Fourteen state regulating officials and two secretaries of state participated in this year's Roundtable, moderated by Kerey Carpenter, assistant general counsel of Florida's Department of State. Having served as general counsel to the state's executive office of the governor and initiated the state's Notary-education program prior to assuming her position with the Department of State, Carpenter facilitated the lively discussions at which officials shared with each other their "state of the Notary office."

ALICIA STEWART, NOTARY PUBLIC SECTION MANAGER OFFICE OF THE SECRETARY OF STATE, CALIFORNIA

California hired its first full-time investigator of Notaries in 1978, and today employs three investigators. To facilitate background checks, the commission application process requires that all applicants be fingerprinted. Working with the California Department of Justice, which analyzes the fingerprints, the state is in the process of refining its guidelines for administrative proceedings.

We are refining our guidelines so that the Notary knows how the agency makes decisions regarding a particular action. We want to make the procedure more equitable for Notaries, judges, administrative law attorneys, the general public and anybody who wants to know what we look at in determining what action to take. When we receive a complaint or if there is a criminal history that we are aware of, we are going to deny an application. We write up an accusation that goes out to the Notary and inform them they have a right to a hearing. If they choose to have one, they actually go to an administrative law judge. We have an attorney on staff that represents us and hears the cases on behalf of the secretary of state. The administrative law judge issues a proposed decision that comes back to our office. Then, the secretary of state actually makes the final decision to adopt the decision or not. There is also an appeal process so the decision can be taken to a higher court.

Stewart explained that California Notary commission applicants had been required to submit fingerprints for a long time, but it took up to six months to get the results back from the Department of Justice.

Because the majority of applicants don't have a criminal history, we felt that everyone was being penalized by delaying the commissioning. So we issued the commissions first, and then, if we received a criminal history back, we would try to revoke the commission. Now with the

live scan program, we get the results back within an hour of when the prints are taken. We now have the fingerprint information back before commissioning.

She added that there was no increase in the application fee when the live scan program was started, because the fingerprinting fee had always been separate and forwarded on to the Department of Justice. The process continues to identify applicants with a criminal record.

A lot of actions that we take right now are those against applicants who lied on their application. They tell us they have never been convicted of anything, and we discover that they were convicted of a felony two years ago. We have become rather strict on those who fail to disclose information on their application, and the administrative law issues are in our favor. Notaries are supposed to be held liable to a high degree of integrity and trust, and if they can't provide us with that information, then they are denied. In fact, just because they have a conviction doesn't mean they would be denied a commission. They would tell us about it. In many cases, it would be all right – but if they don't, the application is rejected.

Also, said Stewart, if there is a break of more than six months between commissions, the applicant must submit fingerprints again.

The state commissions Notaries for four years, and the Department of Justice will ask whether we want information on these people and then notify us *anytime anything* happens to anybody that we are interested in.

**HEIDY WEIRICH, ADMINISTRATIVE ASSISTANT
ALICIA MILLER, PROSECUTING ATTORNEY
PENNSYLVANIA DEPARTMENT OF STATE**

Weirich processes all complaints about Notaries that come to the department and passes them on to Alicia Miller, who prosecutes them, if necessary. Miller explained:

Pennsylvania has a vibrant complaints division, with 988 files opened this year. A Notary's commission can be suspended, there can be a probationary period, or the commission can be revoked. A Notary can also be required to attend a class given by an outside, approved provider. We would love to have mandatory education, but the Legislature is hesitant to enact such legislation.

RUSS SAVAGE, ELECTRONIC TRANSACTIONS LIAISON ARIZONA OFFICE OF THE SECRETARY OF STATE

Arizona passed an electronic signature act about three years ago for use by state agencies, and Savage has been working on setting the implementing procedures these agencies would use. With this year's passage of two other acts affecting electronic signatures, he has begun setting procedures to integrate these new laws with existing statute.

Savage explained the approach Arizona had taken in its new electronic signatures acts:

We made this fairly broad in the sense that it links electronic notarial acts with pen and paper notarial acts. We did it in a couple of ways. One is the presence of the Notary. We also foresaw cases, like with counties, where you may want to automate the process. Here essentially is a process where you are giving someone an electronic signature and they are stating that they will use it in a notarial form so it doesn't require the presence of Notary when it happens.

According to Savage, this process would still be considered a notarial act if all the steps provided by statute are followed.

Basically, they [the digital certificate holder] swear when they are issued their certificate that, when they use it, it will have the same force and effect as having been done in the presence of a Notary. The Notary is still involved in that he or she is there when the certificate is issued. There are limitations on how long the certificate is used. There are all kinds of restrictions on its use and the proper people to notify if the certificate is compromised. There are all kinds of processes to go through for electronic signatures and digital signatures.

Arizona, explained Savage, has passed the new laws, but it will still take some time to work the whole process out. The electronic signature project is funded to allow small pilot programs.

MICHAEL TOTTEROW, CHIEF INFORMATION OFFICER ARIZONA OFFICE OF THE SECRETARY OF STATE

The possibility of Arizona notarizations being performed without the holder of the digital certificate being in the presence of a Notary raised some comment from Utah County Recorder Randall Covington as it related to land documents. He indicated that he and his colleagues are concerned about such "notarizations" of land documents, which represent a

high dollar figure. Recorders, he explained, feel that this system is not adequate and that there should be a “warm body” Notary next to the person, making sure that the signer is not acting under duress and that the digital certificate is not compromised.

Totherow responded:

In UETA (Uniform Electronic Transactions Act), deeds are actually excluded from electronic transactions. You would not be able to electronically notarize [a deed of trust]. If it were digitized, the recorders actually take copies of signed documents and already digitized signatures, and there is some sort of electronic Notary process used to authenticate the digitized signature.

Covington and Totherow briefly discussed the distinction between a *digitized* signature and a *digital* signature. Totherow continued in an explanation of an *electronic transaction*:

That is when an electronic transaction resides in the electronic form and remains in the electronic form for the entire life of the document. That is what UETA actually implements: it makes electronic transactions uniform. Then, there are specific exclusions built into it, like for wills and deeds of trust. If a typical deed of trust lasts only 25 years, in Internet terms that would be about three billion lifetimes, and we just can't see that far out. That is why they are excluded from electronic transactions.

Savage interjected a reminder of the issue they were attempting to solve:

We have to make sure that it is a viable document for its entire life, and we are just not sure at this point that we can guarantee that. We are talking about documents that originate in the electronic form and never have a physical form. We are working on how [these documents] could be a permanent record as an electronic record.

Carpenter raised her concerns regarding the lack of a requirement for appearance before a Notary, since one reason a document is notarized is to make sure it was not signed under duress. She asked how there could be an assurance that the signer signed the document voluntarily, especially the type of sensitive document that traditionally have required a Notary's presence. Savage answered, “We will have to make sure that we set those up in very narrow types of applications where it would be an issue. Something that is happening fairly routinely and not be in that broad range of things.”

Totherow explained more about the new Arizona statute:

The Notary is issued a pre-authorized Notary signature. But there are other requirements in addition to the use of that signature: the electronic document has to be time-stamped, and it has to be executed in a certain amount of time. The Notary is basically taking the responsibility up front for any actions that are going to happen in a short period of time. Let's say that the Notary is given a token now, and this token is used to generate subtokens — smaller tokens. The smaller token can be used by another individual to do an electronic signature, and that would count as a valid signature. And, yes, the subtokens can be used later when the Notary is not there.

The Notary gives [an individual] some tokens. The Notary, when you take an oath or affirmation right now...is attesting to the fact that the person is signing in their presence and swearing to God. That same sworn statement is taken to indicate that the subtoken will only be used in good faith every time it is used. A Notary is involved because the Notary represents the trusted network.

Covington continued to point out the inherent danger in not requiring personal appearance before the Notary for every digital signing:

I go back to the earlier issue: for a land document with a high level of security, we must prove that the person didn't sign under duress and prove the identity of the person who applied for the private key.

FRAN FISH, NOTARY PUBLIC ADMINISTRATOR UTAH DEPARTMENT OF COMMERCE

Representing the state that was the first to enact digital signature legislation, Fish reported her state's recent activities:

There have been changes to Title 46 that allow an acknowledgement to take place by electronic communication under certain conditions. I plan to propose regulations that will describe the process for electronic notarization in the absence of a Notary. These regulations probably will require audiovisual contact between the signer and the Notary.

JENNIFER BERTSCH, NOTARY EDUCATION COORDINATOR FLORIDA OFFICE OF THE GOVERNOR

We recently enacted legislation that imposes an education requirement on first-time Notary applicants. Our office will provide on-line education that will be based on our Notary reference manual and will be free. The materials will cover the seven chapters, with

questions at the end of each chapter. Although it is not a test, an applicant will have to give the correct answers before he or she can move on to the next chapter. The Notary applicant must then turn in a completion certificate to the bonding agency before a bond can be issued and the application submitted.

TOM WROSCH, NOTARY PUBLIC SUPERVISOR SECRETARY OF STATE/CORPORATION DIVISION, OREGON

Oregon has enacted two new laws, one of which places the administrative responsibility regarding electronic notarization in Wrosch's office. The other law allows Notaries to accept stamped signatures and was passed to help the disabled, although the disability does not have to be proved to the Notary.

Wrosch said he wasn't planning to introduce legislation on education next year, but will still start to implement certain voluntary educational programs, including an annual newsletter offering voluntary education programs, and tutorials over the Internet.

Wrosch also indicated that he is concerned with the difficulty of finding Notaries in his state because businesses are restricting access to their employee Notaries, which the state's Department of Justice has ruled acceptable. In the 1992 opinion, the Attorney General explained:

I advise that there is no such statutory obligation (to serve the general public) and that the secretary of state may not, under the present statutes, impose such an obligation. Notaries Public may feel a moral obligation to serve the public by reason of their state commission (and by reason of the fact that the office is called a Notary Public), but this is not an enforceable obligation. There is no requirement that a Notary Public hold himself or herself out to the "public" to perform notarial services. The focus of the Notary Public laws is on the correct performance of the notarial acts which the Notary Public performs.

RANDALL COVINGTON UTAH COUNTY RECORDER, SALT LAKE CITY, UTAH

In the wake of widespread passage of the Uniform Electronic Transactions Act, Randall Covington's representation of how his county accepted and recorded an electronic document offered practical insight into the future of electronic transactions. This program was presented at roundtable, at the International Roundtable the following day and at a general session of conference delegates during a workshop titled, "Facing the Challenges of Electronic Documents." Covington started with a brief history of how his county became the

first to execute this type of transaction:

Utah was the first state to pass the digital signature act in 1995. In 1996, general provisions were instituted, and Fran Fish from the state Department of Commerce proposed the possibility of our recording digitally signed documents. At that time, we didn't consider it seriously, because paper documents have such a track record for reliability.

About a year later, I attended a county recorders' meeting at which there was a presentation by a recorder who was doing digitized recordings. In other words, the office was accepting documents that had been faxed from a title company into the office. They were accepting it as an original document and putting it on record. Frankly, I was scared.

I asked the recorder how he knew the document was an original. There are serious issues with land documents, and when we put our stamp on a document, we certify that it is an original. Oftentimes, there are copies of documents flowing around, and the original is sitting in escrow waiting to be paid off and is not released from escrow until the terms of the contract are met. When the original document comes to us, then we verify and put it on record.

The other issue we are concerned with is that whoever gets to the recorder first records their document, and that document has precedence over the next document that comes in. We are a little concerned about how this county [making the presentation] managed it: they allowed a block of time to receive documents from title companies to come by fax or electronically. This did not allow equal access for someone who walked in off the street to get their documents recorded.

However, as recorders, we are interested in the next area of technology and want to have remote transmission of documents so that our offices are not so choked up. The Utah digital signature act looked like a more viable possibility.

Covington explained that at that point they spoke to Mark Reynolds of iLumin Corporation about digital documents and digital signatures. Because iLumin had facilitated a project using digital documents with the Third District Court, he asked them the tough questions about the reliability of digital signatures and how likely they were to be compromised. When he was satisfied, he went to the county attorney to determine whether he could accept a digital document with the same effect as a hand-written one.

Both Covington and the attorney agreed that it would be acceptable. At that time, Covington then sought a title project to record a document that arrived in his office from “cyberspace.”

The document was signed digitally, notarized digitally, and arrived at my office digitally. We went over the document to make sure it met the recording statute. With the use of the iLumin software, we were able to check with the certificate authority and verify that the signatures were legitimate, so we applied our stamp to the document.

Because we must retain land documents forever, we had a hard copy made and microfilmed so that, with my stamp on it as county recorder, it was an original document and would stand up in court.

Covington went on to explain that there are still logistical and legislative issues to resolve.

One of the concerns that we have had is the idea of having a Notary notarize a signature. In Utah state law, it says that because a digital signature is created by a document that is already notarized, the digital signature is notarized, no matter what document it's placed on. They've kind of missed the point as far as the purpose of a Notary.

As an office dealing with highly expensive land documents, if we pursue this, we will require that the documents be digitally signed and also digitally notarized within the guidelines of Notary law. The person who signs must personally appear before the Notary. There must be a warm-body-to-warm-body interaction so that the Notary can observe the person making the signature. It's more than just a matter of identifying the signer. We must also determine that the person who bears the electronic signature card, smart card, or disk or whatever it is, has proven his or her identity to the Notary. Also, that the signer was competent and not under duress.

So there are two reasons that we feel it is important for a Notary to be involved with land documents even though legally we can accept documents that do not have [a Notary's direct involvement].

MARK REYNOLDS
DIRECTOR OF PRODUCT MANAGEMENT AND BUSINESS
DEVELOPMENT, iLUMIN CORPORATION
OREM, UTAH

The following is a compilation of excerpts from portions of both the “Facing the Challenges of Electronic Documents” presentation and the International Roundtable session at which Mark Reynolds explained the software application used in the electronic recording process as it was applied to the Utah County recording project. This presentation was made a total of three times during the course of the Conference program.

I will describe the steps that we went through in the recording process sequentially. The software that we used has three parts – one is what we call an on-line signing room where documents are posted. The parties who are going to attach signatures, such as the Notary or the grantor, are given access to the signing room and then register by role. This registration determines what actions a party can effectuate in the room. Some may be able to review a document; some may be able to sign a document and some may be able to edit and change a document.

The second part of the software manages the work flow or the business logic: how this document is routed from one person to another. This logic also determines in what order signatures are attached: who signs first, whether or not two signatures are parallel or one is nested within another. You can also verify and validate each signature as it is applied.

We also have the equivalent of a filing clerk — a virtual filing clerk — that allows you to define the logic to which the document is subject. The document can flow from one party to another or the document can pass through some automated process by which what needs to be done with the document can be incorporated into the electronic transaction. It can then be delivered to the server which is the electronic “cabinet” where the document is stored.

Our first installation has been with the Third District Court in Salt Lake City, where criminal information against fugitives from justice is filed on the computer. In that case, we start out with information coming from the officer in the field. Then, it goes to the precinct office where it’s integrated into the database. From there, it goes to a paralegal who will draft the probable cause statement, put the information together, and send it to a reviewing attorney. Once that information has been reviewed, the attorney will attach a digital signature and forward it to the clerk of the court. This represents the

business logic of the document process.

The third part of the software is a repository that allows you to store and view documents that have been signed. This entire structure is put together with XML, a programming language, which enables us to bring the document world and the data world together. Simply, we can “tag” specific information and by identifying these “tags,” efficiently identify the data elements of a document. This enables the computer, by reading these tags, to manage the document with greater accuracy. Then, XML allows the data and the content to be married and managed in a way that’s very effective. For example, one of the concerns that has come up regarding deeds in the public record has been that police officers don’t like to have their name and address in the public record, for obvious reasons. So, if legislation will support this, and in many jurisdictions it does, then the computer can be intelligent enough to be able to tell if this parcel belongs to a police officer by simply checking a list. When someone from the public comes to view the document, it simply doesn’t present the name and address in that field.

Now, in the case of the recording done in Utah, first we had to get digital signatures for each of the participants. The deed was filled out in advance, which meant that we posted the deed in the signing room with the grantor and grantee information, the description of the property, etc. Then the grantor, who in this case happened to be me, went into the signing room where the deed had been prepared. I had my digital signature on a floppy disk, my certificate, inserted that into the computer, and then I actually applied that signature to that deed as the grantor.

Sitting next to me at the time was a Notary who observed that I, performed the actions necessary for an electronic signature, and that I did it intentionally. The Notary then inserted the floppy disk with his digital signature and applied his signature.

Also, there’s a utility in the software that allows you to verify the signature. This involves two steps. First, it checked my certificate to make sure that it was valid. Second, it checked the document to make sure it was valid and that no changes had been made. The software made both of those verifications. Then, the Notary, understanding that the document was valid and that I had been the one to sign it, applied his signature.

At that point, the deed was sent over the Internet to Randall Covington’s office. The clerk who was responsible for recording this deed pulled it up on the screen and viewed it for recordability. There are requirements in recorders’ offices for each instrument that is

recorded so, she was obligated to verify visually that this instrument met those requirements.

After having done this, she used the same utility that I described earlier to verify my signature as the grantor and the Notary's signature. Once she confirmed that the signatures were valid and that the document was in conformance with recording requirements, I handed her the payment of \$10. She accepted the deeds, and her computer system generated a book and page number that was applied to the deed, entered and processed into the system.

Now, there was one remaining step – archiving. Because Utah County has a microfilm archive policy, we printed out the deed on the page, the signature as it appeared – as numbers and letters that would appear to be random but were in fact a signature. Then, the paper was put in the queue to go under the camera to be included in the microfilm.

Reynolds concluded his portion of the presentation by affirming the important role of Notaries in facilitating the “coming together of the deal” and making it happen. He said he thought there would be some jurisdictions that would prescribe a Notary's participation differently, but there would continued to be a need for a Notary to make sure that these transactions happen in an orderly way.

TODD HOUGAARD, PRESIDENT, INGEO SYSTEMS NORTH LOGAN, UTAH

Software provider InGeo Systems gave a visual demonstration of the program Reynolds had described. Projecting the actual system software onto a screen, Hougaard dialed into Salt Lake County's office via an Internet connection and proceeded to show how all of this was accomplished.

He explained, however, that as people move into the digital way of doing things, it is important to understand that technology only enables us to do the same things, differently.

We may do them better; we may do them faster, and perhaps the media that we're working with has changed, but the end result is still some tangible artifacts — whether it's paper, electronic records, or old papyrus scrolls.

You traditionally have used ink and stamp on paper. The electronic procedure has become a replacement for that. It does not replace the Notary, because the Notary does more things than simply stamp a paper. As you go forward in this, remember the job is the same, but

the tools of the trade and the media you're working with have changed.

At this time, Hougaard made a connection with the server in Salt Lake City and a web page was projected onto the screen showing the status of documents as they were being processed.

When a document comes in, it gets the date and time that it's received. This is not the recording, it simply sets the order for the computer to process them in. It will note who the sender was and validate the sender. Then it runs a whole bunch of other validation functions to make sure that the digital certificate and the digital signature from the Notary are correct and that the document hasn't been tampered with. It also validates people who signed the document, tests their digital signatures, and runs through some processing to make sure that the document is in recordable form. It will then affix an endorsement to the document, embedding information like the entry number, book, page, and amount of the recording fee. It will include all of that information in the document.

It will then sign the digital signature of the county recorder and produce a receipt which is digitally signed as well. It creates an image of the document, extracts data from the document for the index and, now, shows you the status.

If you are aware of procedures in a recorder's office, you will see that this process describes pretty much what they do with paper, but this is all now in the electronic world. No paper in the beginning, no paper in the end, and no paper in between.

INTERNATIONAL ROUNDTABLE

This year's International Roundtable focused on the technologically complex commercial and legal issues relative to electronic transactions and, like the State Officials Roundtable, featured a presentation by the Utah team that performed the United States' first completely electronic document transaction and electronic notarization.

Puerto Rico civil law Notary and attorney Angel R. Marrero moderated the session, which began with brief introductions of the attending delegations, including the Society of Notaries Public of British Columbia and the Japan National Notaries Association.

MARK REYNOLDS DIRECTOR OF PRODUCT MANAGEMENT AND BUSINESS DEVELOPMENT ILUMIN CORPORATION, OREM, UTAH

Reprising his presentations at both the State Officials Roundtable and a conference General Session titled "Facing the Challenges of Electronic Documents," Reynolds amplified his previous explanation regarding electronic transactions and their integration into the commercial field previously dominated by paper documents.

We look at documents as a fundamental piece of e-commerce. We've been able to automate, to some extent, our use of paper documents and provide machines to handle such documents efficiently. The point of paper was that you could place upon it any agreement that you made and it wouldn't change. When you write on paper with ink, you've got a memorial of the content of an agreement. Also, in applying a signature, you have the act of assent that's necessary for a legally binding document. Therefore, the placing of the signature becomes symbolic of entering into a contract and also serves as an identity of the parties who are entering into the particular contract. In a digital world, transactions are going to require those same elements.

In this new world, we will rely on database records or other electronic formats. We run into trouble, though, when we must establish a means of recording the content — the terms and conditions of an agreement, or the boilerplate, along with the data component — specifics like the date and time it was signed, who the signing parties were, the expiration date of the agreement, if there is one, and so on. We are required to account for not only those data elements but the content or boilerplate that couches the data in order to achieve enforceability.

Reynolds explained that the signature, because it may be interpreted in court, has to fulfill the same role in the electronic world as it did in the paper based one: as a symbolic event and a necessary ingredient in the formation of a contract and as a mark of identity of the signer.

The basic concept I want to convey is that the document metaphor is hundreds of years old and has been honed and refined in order to meet the needs of the business community. Moving into an electronic environment does not mean that we need to abandon the principles and lessons that have been learned with the document, but rather that we find a way to efficiently move those components of the binding transaction into the electronic world. The key part for Notaries in all of this is assuring the integrity of the document and the identity of the participant in some kind of document-based transaction.

Enunciating the concerns of many officials, moderator Marrero asked Reynolds about the long-term storage and retrieval of electronic documents.

Reynolds reported that there are several solutions emerging in response to this particular problem and that no specific solution has surfaced that permits permanent archiving of digital documents.

Reynolds identified several possible technologies that are being considered. One is a two-dimensional bar code feature that, like existing bar codes, could be read by a scanner. The two-dimensional code representing encoded data appears as a postage-stamp-size rectangle in the form of dots going both crosswise and lengthwise. According to Reynolds, it can capture up to several kilobytes of information in a single image that can then be read back with a normal scanner. He continued:

So, an electronic document, for example, could be archived by printing these images to paper. You have the same storage longevity as that of paper. Another aspect of the two-dimensional bar code technology is that the image can be projected onto microfilm and archived. As with the paper option, this offers the same storage longevity that we now associate with microfilm.

Reynolds also explained that archivists are working on a standardized optical disk reader. It does not, however, resolve the concerns about a reader's ability in the distant future to read disks produced today or to store documents for extended periods of time.

For example, with magnetic tape, there is degradation over time, and you lose the data. Now, there's been discussion that a solid nickel master CD can be used for electronic archiving. I can't point to a

technology today that is a complete and permanent solution, but the combination of an unchanging archiving surface and standards for readers and storage formats could offer a permanent archiving strategy.

Determining the life expectancy of stored documents is one challenge faced by archivists, according to Reynolds. To illustrate where document storage is headed, he reported how the state of Utah is tackling the issue.

The state just built a new courthouse following a state archivist requirement that the court no longer produce paper records after 2003. They simply have no storage facility in the new building for paper and they're not planning to manage paper, so there was, and is, a lot of pressure to come up with a complete and permanent solution for the storage of electronic records.

Presently, we are working with law enforcement and the courts on the electronic filing of criminal information. The policeman completes a record on a fugitive with whom he may have come in contact. The data is transmitted to the precinct, where officers incorporate it into the actual criminal complaint and then forward it to the prosecuting attorney for review and approval. He will apply a digital signature on the document that is then forwarded to the clerk of the court. A computer program at the clerk's office automatically extracts the data needed to file the document with the court, places it into the court's database and then forwards it to the judge. The judge determines whether he wants to issue a warrant and attaches his digital signature. The document goes back to the court clerk, automatically updating the court database with the judge's action and returns to the precinct for approval. It is printed out and then served on the person.

According to Reynolds, electronic storage saves money. He reported that there are estimates in different industries that the cost of maintaining a single paper document can be more than \$100 a year.

Hewlett Packard indicated that just to save the W-4 forms of their employees requires a multi million-dollar annual budget. All of it could be maintained on a computer for a fraction of the cost. And, there is also a savings with going to a digital format, compared to imaging. A digital document will probably take one-tenth the storage space than would be required to store an image, TIF file or something of that nature. Going to a digital environment will save archiving storage money, and will allow for greater processing efficiency

Because civil law Notaries are required to ensure that a document's contents are legally correct, Akira Nakatsugawa, vice president of the Tokyo Notaries Association, asked how this would be accomplished within the procedures Reynolds had outlined.

Reynolds clarified the nature of electronic documents:

The format in which the document is stored is optional. Whether the content of the document is encrypted or not, the document can be presented on a browser for the Notary's review and validate the signature using PKI instructions.

In terms of storage, there will always be a need for some computerized reader by which the document can be presented on a screen, because you can't read a disk. And, once you assume that you can rely upon a mechanical reader, then you can read the document without having to decrypt it or destroy it. Of course, if you change the document in any way after it has been signed, then you invalidate it.

RANDALL COVINGTON UTAH COUNTY RECORDER, SALT LAKE CITY, UTAH

Sharing the experiences of his office with the international delegates, Covington presented an overview of the experience of filing the first digital document and his feelings about the need for notarization of digital land documents.

In a technologically rich environment, including a student population of 50,000 and 460 software companies, the Utah County recorder's office began a computerized land records management system in 1978. In 1984, Covington reported that his office had started computer mapping that led to GPS mapping today. In 1994, the office started document imaging of all land records.

His role, Covington announced, was to implement policies to improve land records and the indexing system of the recorder's office. In anticipation of the recording of digital documents, he identified two principles of which he must be assured:

First, I must be confident that the digital document will have a high level of security and reliability equivalent to, or better than, the original paper document that we accept now. Second, I must be assured that digital documents will arrive in a form that benefits the efficiency and accuracy of the work flow of my office.

Land documents represent agreements between parties involving extremely high sums of money. Because digital land documents are

signed with digital signatures, a person issued a digital signature must meet the stringent requirements to prove his or her identity. This proof must be equal to, or better than, that required by a Notary. I'd like to see the requirement that digital signatures on land documents be notarized with a digital Notary acknowledgment. In Utah's digital signature act, it says this, "Unless otherwise provided by law, or contract, the certificate issued by a licensed certificate authority is an acknowledgment of the digital signature verified by reference to the public key listed in the certificate."

It is important that two things occur when a person digitally signs the document before a Notary. The Notary must be able to digitally notarize the document and require proof of identity of the digital signer that ensures that the private key has not been compromised and is not being used by someone else. Also, the Notary must physically observe the signer and determine whether the signer is acting under duress.

Since [in the digital environment] it would be impossible to affix a Notary seal digitally, the acknowledgment is considered complete without the imprint of the seal if the following information appears electronically within the message digitally signed by the Notary: the Notary's full name and commission number, the words *Notary Public* and *State of Utah* and *My commission expires on ...* and the address of the Notary's business or residence exactly as it is indicated on the seal.

As a recorder, I presume that the document has not been altered, but there is always that possibility. I know that documents are altered after they've been signed, and that legal descriptions have been added where there's been a space on the document, and that pages can be inserted since not all documents are initialed on every page. For this reason, I like digital documents because they cannot be altered. If one letter or space is changed on the document, the certification authority cannot verify the document. That is an important security asset that the digital document has over the paper one.

Digital documents can also have *intelligent* data that allows our computer to extract fields of data and place it directly into our indexes, not only automatically, but without error. Currently, our computer input personnel visually identify index information and then key it into the computer.

Of course, there are a few challenges to be resolved before digital documents can be recorded on a regular basis. Now that we're being asked to do more with less, we look at this as a labor-saving device and something that will allow us to be much more accurate in our responsibilities. I also feel that once this becomes common, the

security of land documents will be improved immensely.

In response to Marrero's question about how electronic documents would be handled within a state jurisdiction, between state jurisdictions and between state and international jurisdictions, Covington answered:

Probably, the ideal would be the establishment of federal standards, which states would agree to follow. If that could not be accomplished, then perhaps interstate agreements could be implemented with certain standards that each would accept.

TODD HOUGAARD, PRESIDENT, INGEO SYSTEMS NORTH LOGAN, UTAH

In the presentation to the International Roundtable delegates, Hougaard demonstrated again how the pilot program was being implemented in Salt Lake County. As in his previous demonstrations, he logged onto the system so that delegates could witness real-time activity of the document-recording process. After this demonstration, Japanese Notary Susumu Umemura asked whether it was necessary for both parties to appear before a Notary.

Hougaard explained that they were following the model and the traditional process of notarization whereby the signer was in the presence of the Notary.

The only thing we are doing differently from the traditional process is that instead of using a physical stamp and signature, it's an electronic stamp and signature. The process of presentation of the individual is exactly the same. It will be up to others to decide if they don't want to present themselves in person — that's not a technology question. In this case, the signer still appears before the Notary for the notarization to take place. It's only changing media; it's not changing process.

And, the Notary will still be required to protect the smart card or disk on which the Notary digital signature is stored from unauthorized use. In my opinion, if I get sloppy and leave my smart card and the access password written down where it can be used, that is just as bad as if I were to leave my seal lying around for anyone to use. The tools of the trade are changing, but the actual responsibility to protect those tools still hasn't changed. And, the process of applying those tools is fundamentally the same — we simply had to change the tools to deal with it. And for the Notary, the digital signature has become the

equivalent of the stamp that is used to perform the act.

The process of notarization is what is valuable. We have gone from a pressed, wax mark to an embosser, to rubber stamps. But it is simply a tool and will continue to change. The only change is that Notaries will have different tools and technologies to apply it.

The Notary witnesses that something is taking place, and I think that is still an important part of the process. Just because the computer can run checks on numbers that are stored in databases and someone has validated that a person has a digital signature does not necessarily mean that they are consenting to perform that act of signing, which is the Notary role. You could pile mountains of technology on it and it would still need a Notary to watch what's going on and that it is handled properly.

DISCUSSION: ELECTRONIC TRANSACTIONS AND DIGITAL SIGNATURES

Voicing his concern regarding the security and integrity of digital signatures and electronic documents, Vice President Ernie Janzen of the Society of Notaries Public of British Columbia asked if this meant that he would be required to be familiar with every end-user document and to establish some satisfaction that each verification system was secure.

Janzen asked:

If someone comes to me with a document from some other certification authority that I do not know, what kind of controls are there over this certification and the processes? Now we have introduced a third party that's the controlling interest, and I must now become familiar with every third party and be satisfied with their integrity.

Hougaard identified this issue as one of the critical aspects of public key infrastructure and why it is such a powerful technology.

If you think about the paper world in which a courier takes important documents back and forth between institutions in armored cars and then think of PKI in that same context, the application of a digital signature is more than a signature that's being put on the document; it is a means whereby the entire document is secured. The signature is a combination of reading through the document and coming up with a number that represents the document. One can determine in this way

whether a document has been altered.

Janzen narrowed his concern to that of *who* is controlling the PKI:

If I sign this piece of paper and bundle it up in a secure document and you receive that document, then we have the same document. However, if it's now in the hands of someone else who can open the package and reclose it so you'll never notice, then we no longer have that integrity. I have to be absolutely sure that this third party that controls the PKI doesn't have it in their capability to open and change a document.

Hougaard responded by distinguishing between a technology answer and a legal answer.

The technology answer is that it's largely a matter of the providers that hold documents — document repositories. In Utah, for instance, the certificate authority has to register with the state, and they have to prove to the state that they follow certain procedures and requirements. Some certificate authorities handle security very aggressively with firewalls, strong encryption technology, and strong physical control over the facilities, including restricting access to limited personnel. The other answer is regardless of all the technology, the ownership of information is still not resolved. There is actually a company in Utah, and their model is a legal trust that still uses all the technology, but when the documents are placed in this legal trust, their ownership is established as being connected to an individual and so only the individual has access to the information.

Moderator Marrero concluded the discussion by saying that although the current paper-based system provides an uncertain level of security, the new electronic system should be designed to provide the same degree of security or better.

DISCUSSION: U.S. CIVIL LAW NOTARY

Florida's special international counsel, Todd Kocourek, reported on that state's current civil law Notary office, which was established several years ago to be the American equivalent of Notaries outside the United States. As in Europe, Latin America and Asia, civil law Notaries in Florida are attorneys. They are qualified by the Florida bar and, have been in practice for at least five years, received specialized notarial training and passed an examination.

The Florida civil law Notary has essentially the same powers as Notaries in Latin

nations, and their acts ensure the legal correctness of the documents they handle.

Echoing an earlier concern regarding the feasibility of digital technology for the remote signature of documents, Kocourek remarked that he found the technology more useful if it would be applied in a closed system. [Editor's comment: An open system would be akin to that of public recording agencies, as opposed to a closed system wherein the exchange of documents is between a finite group, such as civil law Notaries.]

Like our non-U.S. brethren, we maintain a protocol of notarial acts, and I and some of my colleagues have taken to digitalization of our protocol, that is, all the notarial acts that we issue in the normal and traditional notarial manner physically on paper. We take the entire package of the transaction and scan it at an acceptable resolution and digitally sign it. We have, if you will, a shadow, digital protocol that allows us to transfer documents to one another flawlessly and securely and to verify for ourselves and third parties the unchanged nature of the certified copies we issue. As many of you know, those certified copies have the legal effect of originals, and the ability to verify that those copies have not been altered [is] theoretically perfect with digital technology.... The change of a single dot will change the hash or digital identity of the document. This is very comforting for us because, like our colleagues overseas, we take enormous personal liability in our notarial practice. The additional certainty that we gain within our own notarial office of knowing that a document is exactly as it was at the time it was executed and certified by us as a notarial act is very comforting.

Kocourek told the group that the state of Alabama also had adopted a civil law Notary act, which was modeled after the Florida law. Alabama has subsequently established a close working relationship with Florida in an attempt to create a standard examination and training program to the extent permitted by the different legal systems. It was a balancing act because the civil law Notary as created in Florida is a construct of the civil law system and the international model. The challenge, he added, was to make the new office comfortable in a common-law environment. One way was by imbuing the civil law Notary with all the powers under law of a regular Florida Notary Public. So, certain acts of a civil law Notary in Florida are equivalent to those of common-law Notaries. The bonus is that the civil law Notary may do a broad range of additional things that fall within the scope of an attorney. This includes the authority to ensure the legality of the contents of a document and to counsel clients. He explained that many Florida civil law Notaries have already interacted with non-U.S. jurisdictions and enjoyed success in the acceptability of their notarial acts in those jurisdictions. They have also worked with non-U.S. Notaries to ensure that their practice is consistent with international norms. Then he shared an example of how the two systems are working together:

A Miami civil law Notary has a package of immigration materials lost by a delivery company destined for South America. That package, although insured, contained originals representing three months' work that would be impossible to regenerate without a large investment of time and probably the loss of an important client. However, the person involved was a civil law Notary who as a precaution, had performed the work according to notarial norms and under seal. The entire package or pieces of the package were notarial acts that were registered in the Notary's protocol. Consequently, the Notary was able to reissue the package as a certified copy, present it, properly certified and reissued, along with a letter of explanation to the Venezuelan authorities of the legal status and capacity of the Florida civil law Notary. As a result, the package was accepted in lieu of the originals and saved a very important client as well as the work to recreate all the documents.

In response to a question about whether he has ever rejected a document on legal grounds, Kocourek answered:

I have never been presented with a document that I have been obliged to reject on legal grounds. Part of the reason for that may be that the majority of my notarial activity has involved generating the document on behalf of the parties to ensure its legality. Our law permits us as civil law Notaries to issue an authentic act in a broad number of cases in a great spectrum of authentication. That is, we authenticate only what we say in our act that we're authenticating. It's a good rule of thumb, we've all shared among ourselves and we live by, that you never authenticate, you never list in your authentication act anything that you do not personally certify to be true. So from that perspective, it's preferable to generate the document oneself so that one can comfortably assume full liability for the legality of the document and its execution.

Confirming Kocourek's remarks regarding notarial authentication and responsibility for the documents, Marrero explained that the issuance of certified copies is standard procedure in most civil law notarial systems.

In Puerto Rico, for example, whenever I do a notarial document, like Todd, I draft it. I have never accepted a document that has been drafted by someone else, because of the liabilities involved. I keep the original, and only one original is signed. I keep that original, and once I sign it as a Notary, it becomes a public document and becomes the property of the state under my custody. I then issue a certified copy of that document under my own signature, seal and stamp. I certify that this is a certified copy of the original, and that certified copy will serve

for all purposes as the original. That is the certified copy that goes to the register of property, and that may go to court if we have to go to court with it. So the original is kept in my protocol.

JOINT ROUNDTABLE

The Joint Roundtable provides an opportunity for state officials administering U.S. Notary programs to meet with foreign Notaries representing notarial organizations of other countries. The face-to-face discussions are valuable because they not only heighten the appreciation of the common principles uniting Notaries but enhance the understanding of customs and practices that are relied upon by each group.

The Joint Roundtable was moderated by NNA Executive Director Deborah M. Thaw.

Apostilles and the Hague Convention

As at past roundtable discussions, the subject of the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents was revisited. Angel Marrero initiated the discussion on the Hague because of the frequent misconceptions regarding what it intended to accomplish and how its requirements can be met. Marrero indicated that the material he was presenting was available publicly and he had obtained it over the Internet at <http://www.hcch.net>. He proceeded to discuss a few of the articles he had identified as the most significant based on the discussions at the last conference.

The Hague Convention Abolishing Requirements for Legalization of Foreign Public Documents was concluded on Oct. 5, 1961. This date is important because there were perhaps 38 Hague Conventions. You can be certain that you have the right convention by referencing the date. The Hague Convention has been adopted by 92 countries, jurisdictions and territories, including Washington D.C., American Samoa, Guam, the Northern Mariana Islands, Puerto Rico and the American Virgin Islands.

Every document that leaves the United States to one of the signatories to the Hague Convention has to comply with these requirements. The purpose of the Hague Convention is to abolish the requirements of diplomatic and constant legalization of documents. You might have been familiar with the painstaking procedure of having documents go step-by-step, agency by agency for consular legalization, which is now avoided by provisions of the Hague Convention. The Convention applies to public documents executed in a contracting state and are defined in Article One as documents emanating from an authority or an official connected with the courts, administrative documents, notarial acts and official certificates placed on documents signed by officials and Notary authentication of signatures.

Our main concern is the notarial act, though as state officials you may deal with all four. The Convention does not apply, and this is very important, to documents executed by diplomatic or consular agents or with administrative documents dealing with commercial or customs operations. So, you have to determine, first of all, if the document you have before you is a public document and whether the Convention applies.

Next is legalization. Legalization is the formality by which the diplomatic or consular agents of the country in which the document was produced, certify the authenticity of the signature, the capacity in which the person signs the document, and the authenticity of the seal or stamp which the document bears. This is important because every time you affix an *apostille* on a document, you are certifying to the authenticity of the seal and signature.

Marrero voiced his concern regarding this certification and asked how many states retained Notary seals and signatures on file.

Every time you affix an *apostille* on a document that is going to be used in another country, you are authenticating the seal and signature, and we rely upon this when we get the document. The most crucial document we work with is the power of attorney. When the *apostille* is affixed by the state official, the individual who is accepting that power of attorney is relying on the authenticity of the signature, not of the person, but of the Notary. Under Article 3, the only formality required is that the *apostille* must be issued by a competent authority, except where the states agree otherwise, such as when countries agree between themselves to accept documents outside of the Hague Convention. Article 6 designates which official has authority to issue the *apostille*. In each state you have one individual — in Florida it is the secretary of state, to whom this power has been delegated. This article stipulates that the authority must be designated and that the *apostille* has to be signed by that authority. Todd mentioned a few moments ago, an *apostille* that was rejected because the signature of that authority was not an original. Again, the Hague Convention doesn't specify what type of signature you must affix, only that the designated authority would have to be the signing authority. Now regarding the *apostille*, Article 5 is very clear that it certifies the authenticity of the signature of the person signing, that means the authenticity of the Notary Public; in our case, the capacity of the person signing, meaning the capacity of the Notary; and the identity of the seal, meaning the identity of that notarial seal. I bring this to your attention because I know that many of the states don't keep these type of records. The *apostille* is a very simple document of ten items that have to be completed. But don't be misled, the power of the

apostille, one that is affixed by the certifying authority within the state, is very great. It goes out from a particular state to another country and enables the execution of transactions worth millions of dollars. The concern among the international community is what happens if the state authority provides the *apostille* without the signature of the Notary on file. Article 7 indicates that the certifying authority shall keep a register of certificates issued under the Hague Convention. This enables us to go back and check if that *apostille* was issued by that state authority.

Within most foreign jurisdictions, the Notary is responsible for that document. It is their responsibility to either accept it or reject it. And, if an *apostille* is there, I have no choice but to accept it. If the *apostille* is not properly affixed, for whatever reason, we have a big problem, and this is the problem we're trying to avoid. This information is available on the Internet, and I hope that you go to those sites and bring yourself up to date. The information gets outdated very quickly. Finally, I will leave you with one concern and one question: Does your state authority keep the records necessary to properly affix that *apostille*? I know that some of you do, I know that some of you don't, and that is a big concern in the international community. I hope that with this information, you will become more familiar with the Hague Convention, what the requirements are, and the expectations of the person relying on that *apostille*, once that document is signed by the certifying authority and is brought to another country to be used as an official and legal document.

Of course, the following dialogue addressed the Hague Convention and its relation to electronic commerce. Marrero responded:

We must to remember that the Hague Convention was drawn in 1961, before electronic commerce. Also, the Hague Convention does not address electronic commerce specifically, and it doesn't regulate it. It doesn't prohibit the certification of the *apostille* on a digital signature. I suppose that there are two ways to interpret this. When the Hague convention was prepared, no one even thought of electronic commerce or digital signatures. Everything was paper based. But it wasn't prohibited either. It would seem that the purpose of the Hague Convention is to facilitate the transportation of documents from one country to another.

Since the *apostille* requirement permits my reliance on the document, if the originating state feels that a document, an electronic document, has been notarized and an *apostille* can be affixed, then I cannot go beyond that. I cannot question the authority that affixed it on that electronic document. I suspect that in Europe there are some thoughts that the Hague Convention has to be modified or another Convention

has to be drawn up in order to address electronic commerce.

In response to a question regarding the possibility of forgeries and the signature requirement of the Notary, Marrero continued:

The Hague Convention doesn't require more than an eye judgment. Our concern goes beyond forgeries and straight to what the records the state maintains in order for that state to affix the *apostille*. I know I cannot point to anyone in particular, but I know that some states do not keep signatures of Notaries on file and others don't retain seals. So when an *apostille* comes to me, my first question is, Is that state complying with the Hague Convention in order to affix the *apostille*? In many cases, my answer is no. We're not that concerned with forgeries. We're concerned with the record keeping requirements of the state.

Article Five stipulates these requirements. It certifies that this person has signed the document, that this person is a Notary and that this is the correct seals. Now, if there is no seal requirement, then the Hague Convention doesn't require a seal. It is a burden to the state, but those are the requirements of the Hague Convention. My concern is that whenever that *apostille* is affixed to that document on which I rely, and upon which my personal fortune is riding, I want to make sure I can rely on that. I am not sure that I can in every instance.

Man: Is it time to stir the pot a little bit?

Marrero: Go ahead.

Man: I think for purposes of discussion, let me suggest that the majority of states in America misapply or violate the requirements of the Hague Convention of 1961. For purposes of discussion I will throw that out for you as a starting point. I'll tell you why I say so. Our office has been engaged for several months in a range of projects related to *apostilles* and the Hague Convention. We became convinced more than a year ago that there was a problem in our own administration of our duties under the Hague Convention as well as the way that others administer those duties. One of the things that we undertook as part of that project was a survey that involved several people in this room. A survey in which we contacted the competent authority designated by each state to issue apostilles and went through a preliminary set of questions regarding procedures. The survey was only semi scientific and the results should be considered preliminary but they were very enlightening. The first I would throw out to you is the percentage of states in which the Notary's signature is verified as explicitly required in the Hague Convention. That percentage was exactly one-third. Off the

bat, two-thirds of the United States fails to implement one of the fundamental requirements of the Hague Convention.

Marrero: I wonder how many of those two-thirds don't do not verify signatures because they don't keep the signatures of the notary.

Man: It gets worse. Without going into detail, we haven't boiled it all down to come up with an honor roll. It certainly appears that a very small number of states fully execute all of their duties under this international treaty, which is the supreme law of the United States. It is a situation that has given rise to a lot of difficulties internationally. As Angel mentioned, there are problems on the receiving end of many of our *apostilles* to the extent that this information, to the extent that the situation continues we are going to have greater and greater difficulties in having our documents excepted overseas. The value of the U.S. *apostille* will certainly come into question. We're hoping to raise this subject in what we think is the best form for it, which would be the National Association of the Secretaries of State. The majority of states in the United States designate their secretary of state as the competent authority to issue *apostilles*. So we are hoping this year to undertake a campaign to remedy this situation. Florida has committed itself to the tune of a substantial amount of cash to remedy it's deficiencies in this area and we certainly have as many as the next Sstate. That's just to stimulate discussion.

Marrero: Well that really supports my concern. My concern is of the many Notaries I deal with internationally. I can tell you I hear from my Argentina colleagues, "What about the U.S.? What are they doing?" I can tell you I have no answers for them, but now I probably could. I think the point that I would like to leave you with is the *apostille* is a very serious document. It is not something that should be taken lightly. It is something that the state, that the certified or competent authority should have a system to assure that it complies with the requirements of the Hague Convention. If you come down to the requirements of the Hague Convention they are so simple, there are three that's all, three or maybe two. If there is no seal then you are not certifying to the seal. What you do have to certify is to the signature, you have to certify as to the capacity meaning. That is the Notary and that was a notary. That is the minimum requirements. They are simple to comply with for those states that do keep those records. I would imagine how many *apostille* in a year, I don't know. Then again the Hague Convention doesn't go into detail about how to do it. You can choose whatever system you want so long as the end result is maybe one or two or three. So again you have my name and phone number there if I can be of any help please feel free to call me. I'm sure we can find an answer for you. Thank you very much.

CONCLUDING REMARKS

The National Notary Association's 22nd Annual Conference proved to be one of its most successful, with nearly 500 attendees from both foreign and domestic regions. While it served as a unique forum for the exchange of information and ideas on notarial practices and customs, it was also the venue for a cutting-edge introduction of electronic transaction procedures.

Industry experts, practitioners and regulating officials in attendance took advantage of the opportunity to explore common notarial issues, work cooperatively to develop solutions and participate in workshops and programs that addressed the latest trends in personal identification security, real property transactions and health care records management.

The conference also enabled key dignitaries from around the world to continue an important dialogue between the American common-law system and the international common-law system.

The National Notary Association would like to thank all participants of the 22nd Annual Conference for their invaluable insight and contributions to "Securing Identity in the 21st Century. Undoubtedly, the information exchanged at the conference will influence customs, practices, procedures and legislative initiatives now and into the future.

The 23rd Annual Conference
coming to Montreal, Canada
June 27 – 30, 2001

APPENDIX

ROUNDTABLE ROSTERS

STATE OFFICIALS

Jennifer Bertsch
Notary Education Coordinator
Office of the Governor
Tallahassee, Florida

Kerey Carpenter
Assistant General Counsel
Florida Department of State
Office of the Secretary
Tallahassee, Florida

Kateri Cavin
Deputy Attorney General
Office of Nevada's Attorney General
Carson City, Nevada

Brenda Coffman
Administrative Programs Officer
Oklahoma Secretary of State
Oklahoma City, Oklahoma

Laura "Bru" Ethridge
Notary Division Administrator
Digital Signature Coordinator
Office of Secretary of State
Carson City, Nevada

Fran Fish
Notary Public Administrator
State of Utah / Dept. of Commerce
Salt Lake City, Utah

Mimi Griffiths
Director, Public Services Division
Arizona Secretary of State
Phoenix, Arizona

Deborah K. Kearney
General Counsel
Florida Department of State
Office of the Secretary
Tallahassee, Florida

Alicia S. Miller
Prosecuting Attorney
Commonwealth of Pennsylvania
Department of State
Harrisburg, Pennsylvania

Candice Miller
Secretary of State
State of Michigan
Lansing, Michigan

Russ Savage
Electronic Transactions Liason
Arizona Secretary of State
Phoenix, Arizona

Ron Thornburgh
Kansas Secretary of State
Topeka, Kansas

Michael Totherow
Chief Information Officer

Arizona Secretary of State
Phoenix, Arizona

Judith A. Vandever
Clark County Recorder
Las Vegas, Nevada

Heidy Weirich
Administrative Assistant
Commonwealth of Pennsylvania
Department of State
Harrisburg, Pennsylvania

Tom Wrosch
Notary Public Supervisor
Secretary of State/Corporation Division
Salem, Oregon

INTERNATIONAL DELEGATES

Tsuyoshi Akatsuka
Japan National Notaries Association
Hiratsuka Notary Office
Hiratsuka-Shi Kanagawa, Japan

Ernie Janzen
The Society of Notaries Public of British
Columbia
Vancouver, British Columbia

Angel R. Marrero
Civil Law Notary
San Juan, Puerto Rico

Akira Nakatsugawa
Vice President
Tokyo Notaries Association
Tokyo, Japan

Stan Nicol
The Society of Notaries Public of British
Columbia
Vancouver, British Columbia

Susumu Umemura
Kumagaya Notary Office
Kumagaya City, Soitama-ken, Japan

NNA OFFICIALS

Milton G. Valera
President

Deborah M. Thaw
Executive Director

Charles N. Faerber
Vice President of Notary Affairs

Tiffanie Heben
Manager, Legislative Affairs & Outreach



NATIONAL NOTARY ASSOCIATION
9350 De Soto Ave., P.O. Box 2402, Chatsworth, CA 91313-2402
Phone: (818) 739-4000 • Fax: (818) 700-0920
<http://www.nationalnotary.org>