
e-Confidence in World Commerce

A Report on the
24th Annual Conference of the
NATIONAL NOTARY ASSOCIATION
Chatsworth, California



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INTRODUCTION

Doing business in the 21st century has presented the National Notary Association with the challenge of keeping up with ever-changing technological advances while shepherding the professional growth of our members. The June 2002 Conference, “e-Confidence in World Commerce,” in San Diego, California, successfully met this challenge.

Because electronic commerce is now a fact of life, the 24th annual conference program offered an in-depth look at several electronic identification issues, including technology that may be exploited to shake that confidence.

The four-day program was the most ambitious the NNA has ever presented, with two General Sessions and 31 workshops. It boasted the largest-ever gathering with nearly 1,000 persons in attendance.

Conference attendees also explored the growing Notary Signing Agent profession. A plethora of refinancings, fueled by low home loan interest rates; the battle against fraud; demands by lenders for reliable, professional Signing Agents; and other factors all combined to heighten the need for training for Notary Signing Agents.

Other activities included special Roundtable Sessions in which foreign and U.S. Notary-regulating officials delved into issues raised by electronic notarization, the current state of electronic commerce, and the Notary Signing Agent career track.

The annual conference is also the venue where the National Notary Association officially recognizes Notaries who exemplify the highest standards and dedication, through presentation of awards to the Notary of the Year and four Special Honorees. The annual March Fong Eu Achievement Award is also presented to the individual who has done the most to improve the standards, image and quality of the Notary Public office.

A digest of the highlights and minutes of the Roundtable Sessions and other important presentations follow.

KICKOFF BREAKFAST: KEYNOTE ADDRESS

The Honorable Lon Hatamiya Secretary of the California Technology, Trade and Commerce Agency

Notaries have long been recognized as critical cogs in trade and commerce, and more recently, electronic commerce. This fact has not escaped the head of a state agency responsible for those activities. As the Secretary of the California Technology, Trade, and Commerce Agency, Lon Hatamiya is the state's champion for innovation, investment and economic opportunity. This requires him to face new challenges regarding technology and its implications for global and electronic commerce. Secretary Hatamiya lauded the NNA's encouragement of the development of electronic technologies to simplify paper transactions. He offered these comments regarding the role of the Notary in e-commerce:

Nothing should erode the time-tested and traditional services Notaries provide to protect against fraud. Hopefully, technology will be developed to enhance and supplement your services. In fact, your Association has already begun formulating parameters for electronic notarization. You are moving lock step with the advancement of technology, just as the state is moving together to help the development of technology.

Secretary Hatamiya addressed the ability to verify someone's identity on the Internet and in e-commerce, balanced against the need to protect one's privacy:

Technology has always tended to advance faster than the creation of laws to guard against those who manipulate it unethically for their own profit. But I feel that given time, technology will be created for you to verify digital signatures, and laws will be created to further that cause.

We recognize that not all transactions should be performed electronically. Signing up for a library card is a lot different from signing closing papers for a home. There is no 'one-size-fits-all' proposal to sign documents online. Secure Web sites do help protect people and their electronic transactions.

NOTARY OF THE YEAR RECIPIENT'S ACCEPTANCE ADDRESS

Michael J. Finland, New York

Each year, the National Notary Association honors Notaries Public who have contributed to the advancement of the office through their outstanding achievements. Chosen earlier in the year, 2002 Notary of the Year Michael J. Finland was acknowledged at the Conference Kickoff Breakfast.

Mr. Finland, a Notary Public for the state of New York since 1992, has used every educational tool available to master the subject of notarization and has shared that expertise with his colleagues. In doing so, he adheres to the highest standards of notarial practice. Mr. Finland, who has worked for the Suffolk Police Department for more than 20 years, imbues his notarial career with a strong sense of compassion. He has traveled throughout the greater New York City area to provide Notary and paralegal services to the sick, poor and others in need. Following the September 11 terrorist attacks, Mr. Finland answered the New York City Bar Association's call for volunteers. During the winter and spring months he traveled to Manhattan and assisted in notarizing paperwork for family members of hundreds of victims. In his remarks, Mr. Finland recalled the words of a venerated school district employee at his high school graduation ceremony:

She said that if we remember two words from her speech, it should be these two words: Follow through. She said that no matter what we do in life, we should always follow through on our goals, hopes and dreams. So I in turn impart these two valuable words to you as you perform your duties as Notaries Public. It is a credo and a work ethic that will lead you to great success and personal fulfillment.

Mr. Finland lauded Americans response to the September 11 attacks:

People contributed record amounts of money to various charities in an attempt to assist the surviving family members as a result of this incident. Notaries in the New York area were called upon to offer their services. I considered it an honor and a privilege to be able to help out. I will never forget the commitment and the devotion of the staff who coordinated this effort with the bar association. The hard work ethic I witnessed from the bar association members was similar to the work ethic that I have witnessed from NNA staff members over the years. I will also never forget the faces of family

members that I encountered. It is my sincere hope that through the concerted efforts of myself and through other individuals we were somehow able to help World Trade Center victims' families in making the process of applying for benefits less onerous for them.

Mr. Finland concluded his acceptance speech capsulizing the lessons he has learned in the aftermath of September 11:

September 11 reminded us of the fragility of life and the value of time. It taught us the importance of taking time to stop and smell the roses or to tell our loved ones, 'I love you.' It also taught us the value of following through on our dreams.

OPENING GENERAL SESSION “e-CONFIDENCE IN WORLD COMMERCE”

Speaker: Benjamin Wright

The Opening General Session, “e-Confidence in World Commerce,” explored the issues that lie ahead in creating a new paperless business environment, and possible solutions to help promote public confidence in electronic signatures and notarization.

The featured speaker was Benjamin Wright, who addressed ensuring confidence in document signatures, and expediting national and international transactions. Mr. Wright is co-author of the definitive legal text on electronic business, *The Law of Electronic Commerce*, and he works with government leaders to update e-commerce laws and regulations. He also served on the committee to revise the Model Notary Act. Mr. Wright discussed the principals of Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and case law with respect to electronic notarization.

Mr. Wright explained some of the issues encountered in electronic commerce and technologies:

The laws are very flexible and capable of allowing many kinds of technologies to serve as a signature, because essentially a signature is just a symbol adopted with intent. And at a technical level, it’s possible for people to sign documents by clicking a mouse click where there is a button on the screen that says, ‘Click here to sign.’

There is also complex technology, such a public-key cryptography, but it is challenging to use. We have PIN numbers, personal identification numbers that you use with your ATM card. Those can be electronic signatures in the right situation. “Another technology is what is known as signature dynamics, in which a person takes a PIN or stylus and writes their autograph on a tablet that is connected to a computer. And through measurements of unique qualities of the autograph, the software can create a biometric profile of the signature and can attach that signature to a document.

This is still a world where new technologies are coming to the fore, and the technologies do not fit into nice neat little categories very well, because the technologies get mixed up.

Mr. Wright addressed the issue of e-commerce's unrealized potential:

We have not seen a rapid implementation of electronic signatures and electronic notarizations in the marketplace. There are a number of reasons for that. There is still a great deal of learning to do in the industry ... that is, in the technology industry as well as in the legal profession and in the Notary profession. So as I try to gaze into the future and anticipate what is going to work and where we are going and how are we going to do these things, I have a number of observations. One observation is technology changes the roles that professionals play. Technology changes the roles that different businesses play in commerce. And we need to bear that in mind as we see new technologies come into a particular kind of industry.

Mr. Wright then addressed the role of the Notary profession in e-commerce:

If the Notary profession is not nimble and finding out how to make itself relevant in the 21st century, 20 years from now we will look back and say, 'The role of a Notary was an interesting old relic from the days of paper and ink. But the role of a Notary didn't find a way to make itself relevant in a purely electronic world.'

I also see this opportunity for not only finding a new role to play but also for the Notary to expand the role he or she already plays in commerce. The office of a Notary has a number of strengths that can be used for the betterment of commerce and for the betterment of our society. The law expects certain responsibilities out of Notaries and provides certain privileges. An important privilege is that, generally, the liability of a Notary is limited if he follows the rules of identifying a person and authenticating a document. In terms of business, the Notary has a competitive advantage against some of the things that might try to take the place of a Notary. I could see the Notary becoming a secure point on the Internet ... secure in the sense that the key purpose of the Internet is to interact and transact business. But oftentimes we don't know who it is we are dealing with, who it is really on the other side typing that password or entering that key or sending us that e-mail. A Notary could be a secure point where at the right time people would go to see that Notary and authenticate themselves and establish themselves physically as in fact a person who does control a password or does control a private key or something to that effect.

Increasingly a subject that we are hearing on the national stage is the subject of homeland security. An important aspect in homeland security is identifying people. I see the Notary as potentially playing a very important role in establishing the identities and confirming the authenticity of people who are doing business or interacting with government. Today, however there is not a viable vision in the electronic world for making this happen.

Mr. Wright said the Notary profession must give serious thought to the Notary as a marketable product:

The profession has to learn how to sell itself in this new world. You must figure out what are your strengths, what particular technologies are you going to use and how do those particular technologies play into the needs of the marketplace and play into the needs of government. I see opportunity and need for marketing and technical direction that says, 'Notaries are going this way, this is the technology we are going to use, these are the standards we are going to meet.'

I see the need for development of a comprehensive, polished product to show to government, to show to the marketplace why the electronic Notary will deliver value and support secure electronic transactions.

GENERAL SESSION

SECURE e-CONFIDENCE: THE ELECTRONIC NOTARY

Featured Speaker: Daniel Greenwood

Expanding on the Opening General Session topic, Daniel Greenwood delivered the Second General Session presentation entitled “Secure e-Confidence: The Electronic Notary.” Mr. Greenwood is director of the E-Commerce Architecture Program at the Massachusetts Institute of Technology and a lecturer with MIT’s School of Architecture and Planning. He previously served as a deputy general counsel and special counsel for e-commerce in Massachusetts, where he designed the first public-key encryption and security systems for the state government.

Mr. Greenwood discussed how businesses and society gradually adopt the use of electronic documents and signatures and how the Notary’s role as an impartial witness and fraud deterrent will evolve in this environment:

When a database for a large e-commerce concern is compromised, there is a proportionately disastrous result where 100,000 or tens of millions of identities are compromised and credit information is abused. There are a number of Web sites that are not secure and are susceptible to different kinds of fraud. As technologies change and evolve, there are new kinds of security holes that are opening up. Vendors of software and hardware and others will come up with patches and new security methods to protect against those holes. It’s a sort of ‘Spy versus Spy’ struggle between those interested in compromising systems, and those who are trying to secure them. Come up with a better lock and people learn how to pick that lock. In terms of efficiency and responsiveness, digital transactions do require new forms of reliability.

Mr. Greenwood envisions a future where certain industries would lobby legislators for a repeal of Notary laws:

Time is money, especially in the securities industry – trading stocks and bonds and other kinds of financial instruments. The lower they can get their transaction costs the better. The fewer people, the fewer steps, faster, cheaper, much better – that aggregates to big money. Increasingly, as some of these services become indistinguishable from each other, the only thing these people have left to compete on is cost. The lower the costs, the better. So there’s a struggle, a life-and-death struggle from a corporate perspective, to reduce costs. I’ve been head to head against some of these industries

when I worked with state government as we tried to maintain some of our old systems, including notarization. It's hard to argue with these people, because we don't want to stand in the way of commerce. We want to accommodate the reasonable requests of industry to do things faster, cheaper and better – to fully avail themselves of new technologies. Meanwhile, there are other methods for reducing risk in electronic transactions. There's other technology and practices. And some of them are fairly attractive. If the legislative requirement were lifted so that people didn't have to use the traditional notarizations, a number of these businesses will say, 'You know we could reduce our risk acceptably by using this or that information security technology.' So eventually there's got to be a conflict. If you project forward enough years and if the lobbyists of some of these big industries say, 'Look, Congress, and look, state legislators, there are the alternative ways we can do it that are faster, cheaper and better than traditional notarization. Would you please lift this anachronistic legislative barrier now?'

Eventually, and not that long from now, notarization is going to be one of the things that they're going to try get out of the process so they can get their costs down. If Notaries are providing a genuinely valuable service that's well understood, that's widely recognized as useful and desired, then notarization demand, and therefore the legal requirements too, will be maintained.

Mr. Greenwood then described various scenarios in which personal appearance and identification of the signer would occur in e-commerce:

When you're dealing with virtual presence, you don't necessarily know who's on the other end of the wire. And so, I think this is your big value. You're willing to go somewhere and look someone in the eyeball and say, 'This is Dan Greenwood or Ben Wright or whoever.' That is potentially invaluable. One of the things we're working on at MIT now is virtual legal presence – VLP, where through secure links of videoconferencing and other kinds of links we can have people be legally present. For example, at a local government meeting in order to show up and speak you have to be present, in order to be heard. And we're coming up with technologies that would meet regulations and statutes that apply, where we get the legal requirement for presence, so that people can hear and be heard, see and be seen, vote, and participate fully in what's going on. Arguably, they could be more present when they're virtual and have all the data readouts and access to the archives, as opposed to like the guy sleeping in the back row who can't even hear or see what's going on. Virtual presence could be very good potentially.

Mr. Greenwood described various technologies being used or considered for verifying the identity of the signer:

Authentication – verifying the identity of the signer – is one of the underlying policy goals of notarization, as it exists today. Researchers are experimenting with video from several angles, which actually tells you a lot more information. You can tell a lot about someone’s mental state from the tone of voice, especially if you’ve done it electronically. When you play back the voice and the video, you can look at pupil dilation, you can look at their skin condition, you hear the tone of their voice. You can extrapolate on whether they were lying, whether they were nervous and whether they were under duress. There are all sorts of diagnostic equipment where you could get a little more intrusive. You can pick up heart rate; you can pick up pulse, respiration ... without having to attach stuff to the body. And it’s already being used in some of our professions that are keeping us safe and sound around the world. So, it won’t long before they’re commercialized. These things give us a much even better read of what’s going on biologically with a person. Some of the stuff can happen whether there’s either physical or virtual presence of the Notary.

Law serves a role and we have to make sure the law supports and reflects the best practices. And then we must stay flexible and be ready to adapt.

STATE OFFICIALS' ROUNDTABLE

A number of state Notary regulating officials joined by New York state Assemblywoman Patricia L. Acampora met to discuss electronic signature technology at the State Officials' Roundtable. During the discussion, participants shared information and reported on new developments in their respective states.

Patricia L. Acampora New York State Assembly

Assemblywoman Acampora described the need for Assembly Bill 9095, which she introduced, the chances of the bill passing and New York's political climate.

Among the provisions of AB 9095 is the requirement that Notaries maintain a journal and obtain a thumbprint from the signer of the journal. The assemblywoman said that the terrorist attacks of September 11, 2001, demonstrated the need for such legislation, which has garnered bipartisan support. Assemblywoman Acampora gave this report:

We know that we have a problem with couriers from Canada. There are many people coming into New York State through Canada where no one is checking to see who they are. That's a federal issue that the governor is working very hard to try to address. Also, we are also very vulnerable on our state's other borders, from people who are coming up from Florida or other areas. The idea of the thumbprint is truly important in the state of New York. The Assembly has 150 members – 97 of whom are Democrats – and I am moving this bill with no opposition. I think the success has to do with security and making sure that we address all the needs and the safety of the people in the state of New York. Some attorneys have expressed a little bit of angst with regard to requiring attorneys to keep journals. We're hoping to get this thing moving as we wind down the legislative session.

**Fran Fish, Notary Administrator
Department of Commerce, Utah**

Ms. Fish explained the status of Utah legislation as it relates to Notaries and electronic commerce:

We currently have a bill pending in our state Senate that passed with tremendous support in the house last June. That bill would update the Notary Public Law of 1953 and permit electronic notarizations. We had passed our Electronic Transactions Act back in the year 2000 and we were thinking it would be just a matter of time to get the necessary amendment to permit electronic notarizations. Unfortunately the bill has not moved into State Government Committee despite diligent efforts on the part of our legislative liaison. We will continue to make every effort to get that bill passed.

In 1983, the Notary office was split between Secretary of State and Lieutenant Governor. The authenticating officer remained in the Lieutenant Governor's office and the records of Notaries were sent to the Division of Corporations in the Secretary of State's Office. The current administration realized the importance of these offices being together. So it looks as though by the end of the year, I may be moving from my current location back to the Lieutenant Governor's office, reuniting the Great Seal and the records. And I do look forward to this. My goal, as it has been all along, is to mandate the training of our Notaries in this state. Education is the key for performing a proper notarization, but I think it's absolutely an atrocity that any state agency would grant a commission without giving that person a tool to do their jobs, and that's adequate education.

Dilip Mehta,
Office of the Secretary of State, Ohio

In Ohio, the Notary Division has moved from the Governor's domain to that of the Secretary of State's Office. Other changes are planned:

In Ohio, the Secretary of State's Office only issues Notaries their commissions. The other responsibilities lie directly with county clerks. Training and the testing is conducted by the county bar associations. We have close to 50,000 attorneys who are Notaries. Each county handles commission requirements differently. In some counties, you just take an oath and you receive a Notary commission. Some counties require an exam. In some counties, if you are a resident of this state, you can become a Notary. We have many changes to make.

Todd Kocourek, International Counsel
Department of State, Florida

Administrative changes are underway in Florida regarding authentication of notarized documents for use abroad. Mr. Kocourek, who deals with Civil Law Notaries only, had these comments:

There are changes planned related to certificates of notarial authority for international use. These concern procedures relating to the attachment of the seal to the related documents. Most of the other activity relates to our continuing online Notary education program ... and enforcement actions related to instances of seal fraud, which are substantial probably because of the higher immigrant population in the state of Florida.

**Alicia Stewart, Notary Section Manager
Office of the Secretary of State, California**

California has experienced record-high numbers of Notary applicants. And state officials feel legislation enabling electronic commerce is no longer necessary:

We don't really have that great of a ratio of Notaries to citizens in the state, so for us this is really a good thing. Also, we don't at this point believe we need any further enabling legislation or regulations for electronic notarization. California adopted UETA a couple of years ago and we feel that's enough. There is a requirement in California that all Notaries have to use a seal, however, with any official act, and we have now gotten beyond that. We have three authorized electronic seal manufacturers in the state so Notaries can actually anytime now begin notarizing electronically. So we've got our procedures and guidelines for any prospective seal manufacturers who want to choose to do this electronically.

**Peter Goolsby, Electronic Commerce Specialist
Department of the Secretary of State, North Carolina**

Mr. Goolsby gave this report on Notary legislation North Carolina:

One of the things that we're looking for with this new piece of legislation is to test Notaries when they are re-commissioned in addition to the test we administer after training prior to their first commission. We have a tremendous volume of Notaries in the state and we're pretty confident that there is a significant number who are probably not competent to practice. We think that this testing approach may winnow that number down. If it doesn't do that at least it will give us greater confidence that these folks are more competent at what they do. Despite that fact that we've worked many months developing a superior alternative to our existing Notary statute, we're not confident at all that it's going to be introduced this session. However, there is an alternative piece of legislation that has been introduced. It addresses mobile Notaries and makes a mobile Notary a real thing in North Carolina. It provides for certain types of compensation for these Notaries that has not been available before with respect to payment for mileage. I think that piece of legislation has some possibilities.

When it comes to electronic notarization, we have an impediment in a piece of legislation known as our Electronic Commerce Act that specifically says that electronic notarization is verboten and one of our objectives is to remove that clause in this legislative session that's underway right now.

**Peter C. Garcia, Operations Director
Office of the Secretary of State, New Mexico**

Mr. Garcia addressed the need to update New Mexico's Notary laws and improve the performance of its Notaries:

Hopefully next year, in our next legislative session, we can look seriously at Notary laws. Unfortunately, for the last eight years, due to the political and financial situation in our state, we weren't able to make an attempt and it's been a long ride. We are hoping that situation will change; come January, we'll have a new governor and hopefully we can do all the things we need to. Obviously it depends on what this new governor will allow us to do and what he's willing to sign on to or support. We also need to meet with lobbyists for the insurance industry to see how cooperative they're going to be with changes to the law and things like that. So there's still some exploration that needs to be done.

**Laura 'Bru' Ethridge, Notary Administrator
Office of the Secretary of State, Nevada**

Nevada legislators are reviewing the Secretary of State's bill draft request regarding the current limit on travel fees for Notaries:

I recently submitted a bill to be approved by our state legislators. We are looking to remove Nevada's travel fee requirement that limits their charges to only 32 cents per mile. That will open the door so that Notaries, while they are still required to charge no more than the maximum fee per signature, can travel and fulfill requests of their clients in other areas and collect a fee that will be suitable for their jobs.

INTERNATIONAL ROUNDTABLE

The International Roundtable at the NNA's annual Conference of Notaries Public provides one of the few opportunities anywhere for representatives of both Common Law and Civil Law notarial systems to engage in face-to-face discussions about ways to lower barriers to commercial exchange between nations. Among the topics discussed were the Notary's role in electronic transactions, authentication of notarized documents exchanged internationally, and Civil Law Notaries in the United States and their relationship with their foreign counterparts.

Todd Kocourek, International Counsel Department of State, Florida

Mr. Kocourek explained the Civil Law Notary project in Florida, which was initiated to solve difficulties with international transfers of legal documents:

The experience and the capability required of Civil Law Notaries throughout the world was the guide for Florida in creating its Civil Law Notary program. The Civil Law Notary in Florida, Alabama, and as proposed in Illinois is a legal professional, a lawyer by training. In addition to the ability to practice law, Civil Law Notary candidates must have a minimum of five years of experience in the practice of law.

Our most recent group of candidates sat for the exam two weeks ago and the average there was something approaching 15 years of legal practice. However, it's important to note the law authorizing Civil Law Notaries and practice also does not limit Civil Law Notaries to international transactions. The acts of Civil Law Notaries in all cases so far have domestic as well as international effect. The Civil Law Notary is authorized to give something that is the equivalent of public faith in the civil law context.

The National Association of Civil Law Notaries is the professional association formed by the notariats in Alabama and in Florida, with a chapter planned in Louisiana. Mr. Kocourek described its activities:

The association has been admitted as a permanent observer to the International Union of Latin Notariats. The members of NACLN have also been appointed to the commission on the free trade area

of the Americas regarding free trade agreements in the hemisphere. In addition, the president of the international union, Francisco Arias, has created a subcommission as well, relating to the Gulf States Accord, which is an agreement among the U.S. and Mexican states that circle the Gulf of Mexico. The first meeting of that group was held last week at the Mexican National Notarial Association in Matamoros. There were delegates from Florida, from Alabama, from Texas on the NACLN side and from six Mexican states. It was a very fruitful meeting. Finally, the international acceptance of notarial acts of U.S. Civil Law Notaries has been excellent. I think it's achieved a certain critical mass as well, because of the interaction with international union and with national notariats; there have been many articles and informative publications done in those countries regarding the rise of the Civil Law Notaries. The acts of the Civil Law Notaries have been accepted in circumstances, which other national laws limit to true Civil Law Notaries.

Japan

Akira Nakatsugawa, President of the Tokyo Notary Association, discussed the state of the Notary office in Japan. The topics included electronic notarization and a national examination for applicants for the Notary office. Mr. Nakatsugawa gave this report:

The law related to electronic notarization system was enacted last year. On January 15, 2002, electronic notarization acts began in Japan. Electronic notarization, under authority of the Minister of Justice, is available only to corporations on file with the Legal Affairs Office. The electronic notarization system consists of electronic attestation to a private electromagnetic record (document) and electronic attachment of a legal date to a private electromagnetic record (document). Public and private keys are used in the electronic notarization system. When a corporation uses this system, it must file the latter key with the Legal Affairs Office. The Office issues an electronic certificate that identifies the corporation in question and its public key. After the corporation prepares an electromagnetic record using a private key, its representative appears before a Notary with this record and the aforementioned certificate for electronic attestation to or attachment of a legal date to the said record. The Notary attests to the said record by affixing a digital signature or attaches electronically a legal date to the said record.

In March, the Civil Affairs Bureau of the Ministry of Justice and the Japan National Notaries Association invited about 200 members of leading corporations associated with the Society of Management Law of the Economic Federation to familiarize themselves with the new electronic notarial system. Nakatsugawa said:

At the meeting, we received answers to our questionnaire from the participants: Seventy-eight percent already know this system, the remaining 22 percent did not have any prior knowledge about it. It turned out that the electronic notarization system was not known even to influential corporate entities. Furthermore, 9 percent expressed their intent to utilize this electronic notarization, while 83 percent said that they would consider whether to use it and 6 percent said they would not use it. The remaining 2 percent did not answer. In view of their rather passive reaction, it became clear that every effort should be made to propagate the merits of the new electronic notarization system. For the very first time in the history of Japanese Notaries, national notarial examination will be held from next year onward. Details for the examination are not yet made public.

Susumu Umemura, president of the Japan National Notary Association, discussed electronic infrastructure, which in Japan has not developed enough to promote electronic commercial transactions. Mr. Umemura said the government is interested in spreading the word to the corporate world:

Even though about four months have passed since electronic notarization was approved, there have been no requests for electronic verification of a digital signature for an electronic private document or electronic attachments. This may be attributable to the fact that the Internet system is not well-developed or prevalent in corporate entities. The Ministry of Justice is of the opinion that Notaries should be increased in number, particularly in big cities with increasing notarial services. Notaries should be assigned to areas where there is no Notary. The Ministry of Justice is trying to put into practice these projects, asking for the cooperation on the part of the Japan National Notary Association.

The Ministry of the Justice also is considering a revision in the Notary appointment system, which suggests further training and a revision of payment for Notaries, Mr. Umemura said.

**Jim Palmer, United States
Director of Channel Relations for Identrus, LLC**

Identrust recently merged with Digital Signature Trust, a company Mr. Palmer has been associated with for several years. Those two companies are considered among the world leaders in digital signature technology. Jim Palmer gave an update of digital signature activities:

I was present when President Clinton signed the E-Sign Act, because he used one of our certificates to do that. We've been involved from a policy perspective through the American Bankers Association, influencing some of the federal laws that have come about. There are several places where digital certificates are actively used in business today. The primary leader is actually the federal government, followed by state governments here in the U.S. There are several programs. The largest is the Common Access Card that the U.S. Department of Defense is distributing to all active military personnel and soon expanding to their families for benefits. It acts as an identity card; it also contains a digital certificate and allows them to do digital signing. The military's actively rolling that out to re-engineer its processes, primarily around benefits, and transferring people in the military with orders and so forth. That is moving to digital. The civilian side of the government through our General Services Administration has a program that they call ACES or Access Certificates for Electronic Services. It's being widely adopted by several agencies. For example, we're working with the Social Security Administration. They receive tax filings from about six million businesses that file tax withholdings on their employees. Those are being filed on paper today but they're moving that to a system of electronic filing and incorporating digital signatures.

Mr. Palmer then discussed the demand for electronic transactions and the federal government's role:

The demand is not there in many industries, because we have a chicken-and-egg problem of why would you want to digitally sign something if you don't have it in digital format. And there's no drive to change things into a digital format if they can't be electronically signed, until you get both of those things going.

JOINT ROUNDTABLE DISCUSSION

A group of international officials met for a working lunch session to discuss international document traffic. One concern of the participants was acceptance of notarized documents, particularly with regard to adoption of children from other nations. Another issue raised during the session concerned the issuing of apostilles, which were intended to streamline the authentication process between nations that have subscribed to a particular Hague Convention.

Todd Kocourek, international counsel for the Florida Department of State, reported his agency recently completed a 50-state survey regarding apostilles. Mr. Kocourek said that the survey will be presented to the National Association of Secretaries of State, the International Union through the Commission on International Notarial Cooperation, and the Hague Conference. Mr. Kocourek had these comments:

We have quite a large database of information gathered during interviews with Notary administrators and legal research as to the law and regulation that relate to apostilles in every state. The apostille is a document issued by a number of authorities designated by the United States government. In the case of the states, there is either a single official or a set of officials who are authorized to issue the apostille. There will be an agenda item at the NASS meeting this summer where we will find out the best way to comply with the law. The information will be going to the International Union and the Hague Convention. The information will be going out in summary form to the individual states.

Mr. Kocourek described the apostille procedures in the United States as “a big problem:”

I think it's fair to say in summary that apostille practice in the United States is grossly divergent. There are a number of cases where state practices are not in congruence with the treaty obligations of the United States under the Hague Convention. So, a large number of states in the United States do not fulfill the legal requirements of the Hague Convention in issuing apostilles.

As it turns out, the most extreme example of deviation from the law is in the practice of some states to issue apostilles in blank. What this means is that the state literally hands a blank apostille to a Notary Public. In fact, the state simply hands as many blank apostilles as are requested by the common law Notary Public and the Notary is free to fill out the apostille as desired. Five U.S. states currently issue apostilles in blank. It's their policy.

Peter Garcia, Operations Director for the New Mexico Secretary of State, inquired as to whether the NNA maintained a current listing of Hague Convention countries on its Web site:

We're looking for a reliable place to go when we're looking for that information. The U.S. State Department is of no help. We had an incident over a year ago, where we were trying to verify the status of one of the countries. We went to two Web sites at the State Department and contacted them in writing too. It's an enormous task to get someone there to talk to you. When you do get someone, you're passed off to someone else. We were left twisting in the wind.

Another issue of concern to American Notary officials is cross-border document authentication with regard to adoption. Officials have sometimes found themselves at odds with their foreign counterparts in interpretation of the Hague Treaty. Mr. Kocourek had these comments:

Problems arise when the child is adopted overseas then brought back to the United States, where a birth certificate is required. Visa status, birth certificate, and adoption order are the documents necessary to complete the adoption.

The adoption system in Florida and Alabama usually ends with a judicial order of adoption. Alabama is considering a plan to accept Civil Law Notary documents in lieu of court order to complete the adoption. I think it will make it easier to complete the adoption.

Fran Fish, Notary administrator in Utah, said the adoption documents are often rejected because one or more of the documents are improperly filled out or incomplete:

The task is being able to educate the adoption agencies as to the proper procedure for filling out the needed paperwork.

The issue is more complicated when it comes to issuing documents going to Russia, where bureaucrats there have their own set of rules, said Bru Ethridge, Notary Administrator in Nevada:

We have found that in sending documents to Russia, we have complied with the letter of the law in sending documents across the borders, but there's no guarantee what they'll accept there.

NOTARY SIGNING AGENT DISCUSSION

In the past, it was common for a borrower to travel to the office of a lender to sign loan papers and conduct the settlement. Changing market forces have created the need for Notaries Public to travel to the borrower's home or office as an "agent" to coordinate the loan signing, notarize any applicable instruments and return the documents to the closing agent for processing. While emergence of Notary Signing Agent activity as a viable career option has generated excitement among Notaries and the real estate and lending industries, the mere fact that is relatively new has caused concern among some state officials.

Daniel Greenwood, an attorney at the Massachusetts Institute of Technology, offered this opinion:

The emergence of the Signing Agent as part of the role of a Notary is, as far as I can tell, a uniformly good development. There's a real market for it. They're providing an obvious benefit within the economy and bringing new relevance and new centrality to the role of notarization, so I think this is a good trend and it's the sort of thing to look at: 'How can we do this so that we do right by everybody.'

Fran Fish, Notary administrator for the Department of Commerce in Utah, addressed her office's initial concerns:

We were concerned about Notaries going out and being placed in a position of a Closing Agent, then being placed in a position to explain these documents to their clients where they had no authority to do so, nor any background. We were concerned about the exposure to liability of the Notaries, so we were discouraging this. But then as time went by, where NASA appeared for the first time in Las Vegas, we had a better understanding of what that was all about. So then we went back to the drawing board and re-evaluated where we were coming from on this issue, because then we have been seeing an increase of Notary applications all due to this Signing Agent thing. What we have concluded is that it's OK for our Notaries to do this, because they are signing a contract and are literally becoming an employee of that mortgage company or whoever it is they're going to take these documents for. If you're a Notary for a banker, a credit union or anywhere else and you're notarizing documents, you're not collecting those fees, you're collecting a salary and generally those fees would go back to your

employer. The fee issue was a concern to us and we didn't want our Notaries giving advice where they had no authority. But we just assume that as long as they're performing the notarization properly and if they are an independent contractor with whomever they're providing the service for, we're just considering them an employee.

Eric M. Seabrook, general counsel for the Office of the Secretary of State in Ohio, wondered whether the consumer had adequate information:

As a consumer awareness question, the issue may be, is it clear to the signing party that you are an employee? For instance, when I go into a bank I'm pretty much aware that it's a bank employee who's performing the notarization. I would think that the question would be, 'Is there some type of disclaimer or statement to the citizen that this person performing the notarial function is a staff member of the financier or whomever they're working for?'

Linda Adams, a Signing Agent and the former Notary Education Coordinator for the Office of the Governor in Florida:

The very first document in the loan packet is a disclaimer. It's the first thing you to give to the borrower. It reads: 'I am the Notary Public; I have no connection with the mortgage company; I cannot answer questions about this loan or the terms and conditions of this loan; if you have any questions, you must call your loan officer and the lender's office.' They sign it and then I sign it saying that I presented this to them and they understand that I can't answer any questions. Now one of the things that I did when I called to confirm an appointment is to tell them, 'I am not an attorney and I can't give any legal advice, nor am I employed with the mortgage company who's lending you this money. I can't answer your questions about the loan. If you have any questions at all, you need to make sure that you understand everything before I come to your home.'

You need to be ready to sign the documents when I get there because all I'm going to do is present the documents to you and watch you sign and then the documents that require notarization, I'll take care of that for you. That's the extent of my service to you.' If they start asking questions, of course I say that you need to call your loan officer and if they refuse to go through and close the loan, then we're told to call the loan officer immediately, if it's not too late.

A lot of times there will still be somebody on duty or there will be a contact number to call even after hours. We'll call and try to resolve any issues that come up. If the issues cannot be resolved and we do not close the loan, then I still get paid. I've never had a company not pay me. I've not had very many refusals, mainly because I try to make sure that they're ready to close before I even show up at their house. If they have any questions, I don't go until they tell me over the phone that they have identification, they have proper witnesses available for the transaction, they have everything they need to know about the loan and they're ready to sign.

Kateri Cavin, counsel with the Office of the Secretary of State in Nevada, questioned the Notary's impartiality as an NSA:

The Notary Signing Agent does not sound like an impartial person in the traditional Notary sense to me. But if they are impartial, then could we be looking at possibly changing Nevada statutes to remove at least the fee prohibition.

Mimi Griffiths, the former director of the Public Services Division for the Secretary of State's Office in Arizona, offered this insight:

There's more in the package than documents that need to be notarized. Some documents just need to have a signature witnessed but there's no notarization to it; some things just need to be initialed. So in Arizona you're going to get technically \$2 for each notarization but there are going to be other things in that package that you're going to be doing so you're actually going to be earning more than the \$6 because you have three documents to be notarized.

MARCH FONG EAU ACHIEVEMENT AWARD RECIPIENT'S ACCEPTANCE ADDRESS

Susan Pense

Each year, the National Notary Association presents the March Fong Eu Achievement Award to an individual who has contributed the most to the improvement of the standards, image and quality of the office of Notary Public during the preceding year.

Colorado Notary Susan Pense, who was honored this year as the NNA's 2002 March Fong Eu Achievement Award Recipient at the Farewell Banquet, was a unique selection.

As founding director of the National Association of Signing Agents, Mrs. Pense was instrumental in helping create a new industry and career path for the Notary. In doing so, she made the Notary's respected impartiality the cornerstone of the Signing Agent's utility, and, through a certification program and an ethical code, has set high standards for the Signing Agent practitioner.

In her succinct acceptance address she thanked those responsible for her success:

Well, who would have thought two years ago that an idea started on some green paper with a white gel pen would come to this. I just want to make a couple of quick thank yous. First of all I'd like to thank my Almighty Father for the challenges that he's put in my life and for the strength to overcome them. Second, I'd like to thank my children who are back home with grandma and grandpa for sacrificing their time with me to allow me to build this organization. I'd also like to thank my husband for his patience and unending support and love, and through the ranting and the raving, and the tears and the triumph. I'd like to thank the NNA for the willingness to take on this little organization and do great things with it and move forward to great things in the future.

And of course, I would like to thank all of you, particularly the members of NASA who have believed in me, believed in what we were trying to accomplish, and gave me the strength and the confidence to go through and face the negative, which there was a lot of in the beginning. And I'm just very humbled and very honored by this award. I just can't thank all of you enough for your strength and support, and hope that you will all continue to believe in us and the things that we are trying to accomplish for the future in this industry. Thank you.

SPECIAL ADDRESS

The Honorable John McCain United States Senator, Arizona

Throughout his public career, Arizona Senator John McCain has been a leader in the most critical issues facing our nation. He has become one of Congress' most respected voices for a strong national defense and sound foreign policy. Senator McCain, recognizing the need for Notaries to be diligent in helping safeguard our nation's security, spoke via video to the attendees at the Farewell Banquet:

Since September 11, we as a nation have had to face a grave and difficult reality that we are vulnerable to attack. Yet, through these troubled times have emerged great acts of heroism, uncompromising compassion, and extraordinary dedication to public duty that have reaffirmed my life-long faith in the courage of the American people. As America's Notaries, you are on the front lines here at home in our continued battle for a safer nation. I applaud your dedicated efforts to maintain the highest standards of honesty, impartiality, and integrity. Make these values your lifetime companions and you will be a credit not only to the office of Notary Public, but also to our great nation.

In light of recent revelations of the nation's security measures and procedures prior to September 11, your vigilance has never been more important than now. Too often, government fails to account for its actions and learn from its mistakes. All public servants, including Notaries, must face the sobering truth that what we do, and don't do, can have effects that may not be realized until carelessness turns, too late, into regret.

The defense of our nation is not only the responsibility of our armed forces, law enforcement agencies, and government officials. It is also the duty of each and every individual who chooses to call this great land home. And, as Notaries Public, you especially are charged with the task of protecting the public from those that would seek to defraud it. You are the shield behind which marches the enduring conviction of public service.

Should we only concern ourselves with personal profit and leave to others the duty to the nation that protects them, whatever we gain for ourselves will be of little lasting value. It will build no monuments to virtue, claim no honored place in the memory posterity, offer no worthy summons to others. Sacrifice for a cause greater than your self-interest, and you invest your life with the eminence of that cause, your self-respect assured. You may not be a soldier fighting hand-to-hand with an armed terrorist and you may not fly surveillance missions over enemy territory in the cover of night. But your tremendously important work and dedication will help ensure our nation's security and survival.

Senator McCain, who served in the United States Navy and was a prisoner of war during the Vietnam War, said he was privileged to have held a public trust since graduating from the Naval Academy 44 years ago:

I have never lived a single day, in good times and bad, that I wasn't grateful for the privilege. It is a blessing beyond exaggeration to serve this country and her causes. You too hold the public's trust, a privilege not to be treated lightly, but with the full realization of the honor bestowed upon you. Do not be overburdened by this daunting task. By attending this Conference you have shown a genuine desire to educate yourself so you may perform your duties to the best of your ability. And, if at times, the world seems indifferent to your efforts, remind yourself of the integral place you hold in society. Notaries like you face a wealth of choices every day and your good judgment will afford you the respect and gratitude of those you serve.

I honor all of you who have devoted yourself to this noble office of Notary Public. Thank you and God bless America.

FAREWELL BANQUET: KEYNOTE ADDRESS

The Honorable Patricia L. Acampora Assemblywoman, New York

When it was discovered that the hijackers were able to commit their crimes using fraudulent identities and documentation, it became clear that one of the first lines in defense of America is the Notary. Assemblywoman Patricia L. Acampora introduced legislation that will help Notaries deter terrorism. She spoke to the attendees of the Farewell Banquet from the perspective of a New York resident and legislator from a district not far from “Ground Zero” in lower Manhattan. Here are her remarks:

We all have learned many of the hijackers involved in the 9/11 attacks were operating with illegal, forged, and otherwise fraudulent documentation. Becoming a first line of defense in this regard is an awesome responsibility. From the perspective of a Legislator who has seen close-up what these terrorists are capable of, I can assure you, I appreciate the implication of that responsibility. As a state lawmaker, I will also assure you that I will do everything in my power to give you the most effective weapons possible to fight your part of the battle. I know this Conference has given you information that will assist you. Just this past week, I heard personal accounts on the events of 9/11 from New York City’s bravest and finest – the New York City Fire and Police Departments – firefighters and police officers who are also fathers, who lost their children in this horrible tragedy. Men who spent the last nine months digging in the rubble day in and day out, searching for their children, brothers, sisters, wives, friends ... many recovering nothing.

Assemblywoman Acampora detailed the provisions of Assembly Bill 9590, which she is sponsoring:

Assembly Bill 9590 would require signers to present satisfactory evidence of identity consisting of at least one current document issued by a federal or state government agency bearing the individual’s physical description and photograph. Another key component of the bill would require Notaries to keep a sequential journal to record all transactions. Additionally, if ID is not used, the number and signature of any identifying witnesses including the type of document used to identify that witness must be recorded

along with the notarization fee. Attorneys who are Notaries may keep a record of all notarizations in office files maintained by the law practice in lieu of a journal. Even without legislation, many Notaries are already keeping journals with these provisions – and these records have proven invaluable in the pursuit of both criminals and terrorists. A final provision calls for exemption from notarization fees for military veterans.

Acampora said the legislation will go a long way in preserving and enhancing the job description as stated by the third-century Roman author Lactanius: “The first point of wisdom is to discern that which is false; the second is to know that which is true.”

Assemblywoman Acampora also praised Notaries for their often overlooked, but crucial role as society’s official witness:

It is a small price to pay for the freedom and comfort that, for a long time, until 9/11, we all took for granted. Incidentally, that also fits the attitude that your fellow Americans have often had about Notaries. I’m sure that I don’t have to tell you that before you became the first line of defense, you too, have often been overlooked. I’m also quite sure that you are still having the same problem to some extent. However, rest assured that, as the news gets out, as more arrests are made, and terrorists are thwarted, Americans will become more and more aware of your efforts on the frontline of homeland security.

Assemblywoman Acampora concluded by telling the attendees they were not only on the frontline in the fight for homeland security but also “the first point of wisdom our vile enemies will often have to deal with. And I am confident that you are up to the task.”

CONCLUDING REMARKS

The National Notary Association's 24th Annual Conference in San Diego was the most successful in the history of the NNA. With nearly 1,000 attendees from foreign and domestic jurisdictions, attendees were kept abreast of pertinent innovations in an ever-changing technological landscape, and shown an exciting new career path as Notary Signing Agents.

The NNA thanks all the attendees who made "e-Confidence in World Commerce" such a notable success. A special thanks goes to the participants of the roundtable discussions whose technical expertise, insights and experiences proved so valuable.

APPENDIX ROUNDTABLE ROSTERS

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Linda Adams
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Kateri Cavin
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Laura “Bru” Ethridge
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