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http://repository.jmls.edu/lawreview/vol30/iss4/9

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COMMENTS

NOTARY LAW AND PRACTICE FOR THE 21ST CENTURY: SUGGESTED MODIFICATIONS FOR THE MODEL NOTARY ACT

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The scandal of the reckless notary has been allowed to go too far... The notary's certificate of acknowledgment of a deed is the pillar of our property rights. All titles depend on official records; and all official records depend on the notary's certificate of acknowledgment. And these pillars of property become a treacherous support when they are permitted with forgery. A practice which permits forgery is as dangerous in policy as it is unsound in principle. - John Wigmore, 1928.

INTRODUCTION

Alaska and Tennessee have one notary public for every forty-nine residents. Florida, with more than 400,000 notaries public, has one notary for every thirty-four citizens. South Carolina has one for every twenty-four of its residents. Additionally, several states have more than 100,000 notaries in each of them.

2. This Comment uses the terms “notary public” and “notary” interchangeably as in some state statutes. See, e.g., 5 ILCS 312/1-104 (West 1993 & Supp. 1996).
4. Id.
5. Id.
6. See States with Notary Populations of 100,000 or More, NOTARY BULL., June 1996, at 1 (charting the states with over 100,000 notaries). The survey rounds the number of notaries off to the nearest thousand. Id. States with more than 100,000 notaries include: Florida, 400,000; Texas, 326,000; New York, 240,000; South Carolina, 200,000; Illinois, 180,000; and New Jersey, 178,000. Id.
There are about 4.5 million notaries public in the United States. To put that number into perspective, there are 30 states each with less than 4.5 million residents. There are more notaries than there are police officers, firefighters, and teachers combined. There are so many notaries that, if you laid all of them together from head to toe, their length would span 4,687 miles, or twice the diameter of the moon.

Despite the abundance of existing notaries, the aggregate number of notaries is rising. Today, North Carolina has 14% more notaries than it did in 1994. Nevada had 11.8% more notaries in 1995 than it did in 1994. In Tennessee, from 1994 to 1995, the number of notaries increased 31%. These numbers suggest that there are simply too many notaries in this country. By way of contrast, for example, there are just 540 notaries in Japan.

Furthermore, there is a need to keep notaries in this country in tune with the times. Yet, the biggest technological advance for notaries in the last century and a half has been the evolution of the self-inking stamp, now commonly used as the notarial seal.
Notarial seals have advanced from imprints in melted wax, to an embosser, to a stamp with a separate ink pad, to a self-inking stamp.\textsuperscript{17} Very few states have yet approved a computer-generated notarial seal.\textsuperscript{18} In the future, however, with society transacting a significant amount of its business over the computer, there will be greater need for notaries to verify transactions using computer generated seals or digitized signatures to accomplish their notarizations.\textsuperscript{19} Notary law and practice have been moving in the wrong direction, however, as evidenced by a sizable number of states abandoning use of a notarial seal altogether.\textsuperscript{20}

Presently, the National Notary Association (NNA) is forming a committee to develop a Revised Model Notary Act which is to be completed by the year 2000.\textsuperscript{21} The NNA published the current Model Notary Act on September 1, 1984, but it has remained unchanged for the last dozen years.\textsuperscript{22} The Revised Model Notary Act hopefully will provide states the tools they need to send notaries under seal was special and had great power.\textsuperscript{16} Most people considered the sealing special because of the formalities that accompanied it.\textsuperscript{16} There was a ceremonial melting of hot wax and an applying of the signet ring to the wax.\textsuperscript{16} The signet ring was often a personalized representation of the promisor.\textsuperscript{16} The shape of the seal took many forms at the time of Edward III.\textsuperscript{16} at n.48. Some men created seals for themselves using their initials, some flowers, birds, bear arms, and other things.\textsuperscript{16} Others used different forms of seal, such as King Edward III who sealed a transfer of land from him to Norman the Hunter by “bit[ing] the wax with his fore tooth.”\textsuperscript{16} The formality involved in the placing of the seal helped to guarantee the trustworthiness of the document because such formalities put the promisor on his guard and made him more cautious about breaking his promise.\textsuperscript{16} at 627.

17. See id. at 622-23 (recognizing the seal's loss of formalism in the wake of government actions, some court decisions, and statutes that limited, substituted, or altogether abolished the seal).


19. See Michael L. Closen & R. Jason Richards, Notaries Public Lost in Cyberspace, or Key Business Professionals of the Future?, 15 J. MARSHALL J. COMPUTER & INFO. L. 703, 730 (1997) (stating that the reduction or even the eventual elimination of paper usage is a goal of electronic transactions and communications); see Milton G. Valera, Preparing for the Next Millennium: Updating the NNA's Model Notary Act, NOTARY BULL., June 1996, at 3 (recognizing the use of the computer to perform some of the tasks traditionally accomplished by notaries with paper and ink).

20. See NAT'L. NOTARY MAG., Mar. 1996, at 4 (stating notaries in the following states are not required by law to affix a seal of office to authenticate official notarial acts: Connecticut, Delaware, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Michigan, New Jersey, New York, Rhode Island, Vermont and Virginia). In the state of Washington, notaries may omit the required official seal when certifying an oath for use in any of the state's courts.\textsuperscript{16} Though seals are not required by law, many officials in these states, as well as the NNA, recommend their use on all notarized documents.\textsuperscript{16}

21. See Valera, supra note 19, at 3 (discussing the NNA's development of a model notary act).

22. Id.
into the next millennium. 23

In order to bring notaries public into the 21st Century, and to regain public confidence in notarized documents, several things must occur. First, the NNA must expand and update the current Model Notary Act. 24 There are several subject areas that need improvement. 25 This Comment discusses some of the most important subjects. Additionally, states must abandon their antiquated statutes and incorporate the NNA's amended Model Act into their legislation. 26 The Model Notary Act is only a model, as will be the Revised Model Notary Act, and it will have no legal effect unless states adopt it, or parts of it, into their current law. 27 Finally, each

23. Id.
24. Id.
25. See id. (noting three topics that the NNA committee will probably discuss at the meeting to revise the Model Notary Act (Act), including: seals affixed by computer, thumbprint requirements, and bond amounts).
26. See id. (stating that 10 states enacted the Uniform Law on Notarial Acts (ULONA) in whole since 1982, and many other state lawmakers relied on ULONA and the Act in part to devise their own notary statutes). ULONA is a shorter notary act which is printed with the Act. Id. ULONA deals more with forms used by notaries. Id.
notary public must do three things. First, they must follow their respective state notary statutes. Second, they must abide by the heightened standards of the Model Notary Act and the guidelines to be established in the Revised Model Notary Act. Last, they must always remember that they are public officials performing functions vital to the stability of both domestic and international commerce and obligated to uphold the public trust reposed in them.

This Comment suggests several ways to improve the NNA's current Model Notary Act. Part I of this Comment traces the background of the NNA and examines the current status of the notary public including statutes regulating the appointment and functioning of notaries. Parts II, III, and IV will identify three critical subjects for improvement in notarial practices. Part II considers the best ways to deter fraud in notarized transactions. Part II also discusses documents of identification and the use of a thumbprint as a further deterrent against fraud in notarized transactions. Part III addresses the inadequacies of the bond system as a protection for notarial mistakes, such as notarizing false signatures. Moreover, Part III recommends that notaries obtain substantial errors and omissions insurance, a better alternative to the bond system. Part IV examines the inadequacies of current education and testing of notaries. Part IV also suggests ways to improve the level of confidence in United States notarizations, both at home and abroad. Finally, Part V sets out proposed language for the changes to the current Model Notary Act in the areas just mentioned.

I. BACKGROUND OF THE NOTARY PUBLIC AND THE CURRENT MODEL NOTARY ACT

Throughout most of recorded history, the notary public has played a role in ensuring the reliability of documents. In pursuit of the goal of document security, states empower notaries to per-


29. See Closen, supra note 3, at A24 (stating that U.S. notarizations are not taken seriously in foreign countries). The lack of respect abroad for U.S. notarizations stems from the fact that citizens of foreign countries take the responsibility of being a notary public seriously, while many U.S. notaries do not take their role as a notary very seriously. Id.

form a variety of official functions. These duties vary somewhat depending upon the state in which the notary holds his or her commission. First, notaries generally have the power to administer oaths to individuals in conjunction with the signing of documents. Violation of such an oath may constitute perjury punishable by a court as a criminal offense.

Next, an important and most frequently used power of a notary is the power to attest signatures. With the verification of a notarized document, parties who have not observed the completion of the paper transaction should still be able to rely on the authenticity of the documentation. Many courts, state agencies, and private party filings require this attestation. Therefore, banks, insurance offices, real estate companies, hospitals, law firms, government agencies, and accounting firms all employ notaries public.

Furthermore, notaries have the power to take acknowledgments of signatures. That is, one may sign a document and subsequently acknowledge, in the presence of a notary, that the signature is his or hers. This authority allows notaries flexibility in the use of their commissions, because notaries need not be present at the time of every signing provided the signer personally appears before the notary and acknowledges the signature.

A. The Need for Concern About the Notary Public

In the past, fewer notaries existed than today to perform no-

31. See infra notes 33-42 and accompanying text for some of the notary's current functions.
33. Id.
34. Id. See also People v. Ramos, 424 N.W.2d 509, 511 (Mich. 1988) (stating that an oath signifies the undertaking of and obligation "to speak the truth"); State v. Heyes, 269 P.2d 577, 582 (Wash. 1954) (noting that the purpose of the oath is to impress upon its taker the importance of providing accurate information).
36. Id. at 884.
37. Id.
38. Id.
39. While these are some of the more common powers throughout the states, the power of the notary, in some states, does not stop here. For example, in Florida a notary may solemnize marriages. FL. STAT. ANN. § 117.04 (West 1996). In California, a notary "may demand acceptance and payment of foreign and inland bills of exchange, or promissory notes, to protest them for non-acceptance and nonpayment" and other duties as authorized by the laws of any other state or country. Closen & Dixon, supra note 28, at 885 (citing CAL. GOV'T CODE § 8205 (West 1992)). Also, notaries may receive wills in Louisiana. LA. REV. STAT. ANN. § 35:2 (West 1985 & Supp. 1996).
41. Id.
42. Id.
tary functions, and the public had more respect for them. One reason fewer notaries existed in earlier days, and the reason those that did exist were taken more seriously than notaries today, was that the notaries were either elected or specially appointed. Indeed, the President of the United States and state governors themselves appointed some of the very first notaries. Logically, it followed that society considered notaries to be persons of competence, diligence, and integrity. Additionally, notaries were "bonded," and the required bond was typically in the amount of $500 to $5,000, which was quite a substantial sum in the 1800's for covering damages due to notary mistakes.

While today the most important responsibility of notaries is the determination of the true identity of document signers, there are several ways that the modern notary public differs from the notary of the 1800's. First, today's applicants for notarial commissions are neither appointed by the President nor the Governor. They need only indicate on a form that they know the English language and have no disqualifying criminal record. Generally, however, states make no effort to verify this information. Furthermore, states do not have any minimum general educational standard for a potential notary. Because most states do not mandate notary education at all, the notaries either learn about notarial practice on their own, or they do not learn at all. In addition to the absence of notary education, most states do not utilize a program of testing potential notaries, in contrast with the testing of prospective attorneys and accountants. States tend

43. Id. at 876.
44. Id.
46. Id. at 873.
47. See infra notes 179-208 and accompanying text for a discussion and examples of the inadequacies of the current bond system.
48. See, e.g., MASS. GEN. LAWS ANN. ch. 222, § 3 (West 1993) (stating that the "governor, with the advice and consent of the counsel, shall appoint commissioners" to appoint the state's notaries public).
49. See Closen, supra note 3, at A23 (stating how easy it is to become a notary in most states).
50. Id.
51. See Comparison of State Notary Provisions, NAT'L NOTARY MAG., May 1996, at 31 [hereinafter Comparison] (listing the special state requirements for each state). New York and Louisiana require an exam for non-attorneys only. Id. In North Carolina, notaries who are not members of the Bar of that state must complete a course on notarial practice at a state community college. Id. Wyoming encourages a test but does not mandate one. Id. Finally, in Ohio, a judge must endorse the potential notary, and the judge has discretion to order an exam. Id.
52. See infra notes 218-30 and accompanying text for a discussion of states which have neither education nor testing requirements and of a survey which shows the low percentage of notaries using correct notarial procedures.
53. Only six state statutes require any notarial education or testing. CAL.
only to require that a potential notary complete a form and pay a nominal application fee, and "another notary is born."\textsuperscript{54}

The main reasons the public cannot fully trust today's notarized documents is that many notaries do not comply with the technical details of the notarization procedure and do not properly identify document signers.\textsuperscript{56} Notaries often do not demand the physical presence of document signers when they sign or acknowledge their signatures, do not date the documents for the day of the notarization, and most importantly, do not demand sufficient documentary evidence to identify the signers.\textsuperscript{57} Another factor contributing to the problem has been the practice of employers, who are sometimes even lawyers, to abuse the services of their notary-employees.\textsuperscript{57} Employers often direct notaries to notarize documents when signers are not present or without sufficient proof of the signer's identity.\textsuperscript{58} Given such practices, it should come as no surprise that notary related fraud and misconduct appear to be on the rise.\textsuperscript{59} However, as we move towards even more complicated

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\textsuperscript{54} See Closen, supra note 3, at A23 (noting the general lack of requirements for becoming a notary). See, e.g., 5 ILCS 312/1-101 (West 1993 & Supp. 1996) (stating the minimal requirements for becoming a notary).

\textsuperscript{55} See infra notes 221-30 and accompanying text for a discussion of common notarial mistakes.

\textsuperscript{56} See infra notes 221-30 and accompanying text for data showing the percentage of notaries who make mistakes.

\textsuperscript{57} See Closen, supra note 3, at A23 (stating that some of the worst offenders of notarial fraud are lawyers who, as notaries public, do not follow the legal requirements for a valid notarization, and as employers, order their employees to perform invalid notarial tasks like stamping documents in violation of legal standards). See generally, United States v. Potter, 900 F.2d 1402, 1404-05 (9th Cir. 1990) (finding that an attorney-notary had mistakenly notarized an acknowledgment); Transamerica Title Co. v. Green, 89 Cal. Rptr. 915, 919 (Cal. Ct. App. 1970) (stating that a notary was negligent in acknowledging an impostor's signature based solely upon the introduction of an attorney who was personally known to the notary); Florida Bar v. Farinas, 608 So. 2d 22, 23-24 (Fla. 1992) (holding that an attorney's illegal use of a notary in failing to personally acknowledge a signature before notarizing a document warranted public reprimand of the lawyer); Committee on Prof'l Ethics and Conduct of the Iowa State Bar Assoc. v. Bauerle, 460 N.W.2d 452, 452-54 (Iowa 1990) (imposing indefinite suspension of attorney-notary's license for falsely certifying documents); Committee on Prof'l Ethics and Conduct of the Iowa State Bar Assoc. v. O'Donohoe, 426 N.W.2d 166, 169 (Iowa 1988) (reprimanding attorney-notary for "knowingly mak[ing] a false statement of fact on a document filed for public record."); Succession of Killingsworth v. Schlater, 292 So.2d 538, 541 (La. 1973) (holding an attorney-notary liable to legatees for failing to use proper care in notarizing a will).

\textsuperscript{58} See Closen, supra note 3, at A23 (stating employers are often the worst offenders).

\textsuperscript{59} Id. As far back in history as 1858, courts have held notaries liable for
their negligent conduct. See, e.g., Fogarty v. Finlay, 10 Cal. 239, 245 (1858) (holding a notary guilty of negligence for failing to complete a certificate before signing it). In Forgarty, the court stated that the notary either intentionally failed to “faithfully perform his duty according to law” by reading the certificate of notarization but ignoring obvious omissions or negligently failed to perform his duty by failing to read the certificate at all. Id. In either case, the notary gave an air of authority to a document that did not deserve that air when he attached his signature and seal to it. Id.

Likewise, a notary’s negligence is not tolerated today, as shown by the court in Summers Bros., Inc. v. Breuer, which held that a notary committed fraud where he allowed third parties to rely on an authenticated document containing forged signatures that were not signed in the notary’s presence. 420 So.2d 197, 204 (La. Ct. App. 1982). By authenticating the document, the notary “was telling the world that the parties had appeared before him and affixed their signatures in his presence.” Id. This act in turn mislead all those who relied upon a valid notarization. Id.

For additional examples of notarial negligence, see generally, McKenzie v. Renberg’s Inc., 94 F.3d 1478, 1482 (10th Cir. 1996) (stating that the notary admitted she had mistakenly notarized a contract for sexual favors drafted between two co-workers); Bernd v. Fong Eu, 161 Cal. Rptr. 58, 61-62 (Cal. App. Ct. 1979) (holding a notary liable for “gross and culpable negligence” for not “faithfully” performing his official duties); Commonwealth Insur. Sys. Inc. v. Kersten, 115 Cal. Rptr. 653, 666 (Cal. Ct. App. 1974) (holding the lower court should have determined whether a notary was negligent notarizing an affidavit which caused $25,000 in damages); Lewis v. Agricultural Insur. Co., 82 Cal. Rptr. 509, 513 (Cal. Ct. App. 1969) (finding that notary’s act of falsely certifying claimed signatures of an individual who had never appeared before the notary constituted “official misconduct or neglect” of the notary); Biakanja v. Irving, 320 P.2d 16, 18 (Cal. 1958) (invalidating a will where the notary failed to properly attest to the signature on the will); Levy v. Western Casualty & Sur. Co., 43 So.2d 291, 294 (La. Ct. App. 1949) (concluding that a notary was negligent in failing to get proof of identification from a person signing a document in the notary’s presence); Gautreaux v. Harang, 183 So. 349, 371 (La. 1938) (finding that an inexperienced notary had mistakenly inserted the words “to secure a debt” instead of “to pay a debt”); Howcott v. Talen, 63 So. 376, 379 (La. 1913) (holding a notary “gross[ly] negligent in accepting, conveying, and placing on record titles to property which belonged to others, merely upon the faith of... representations”); State Life Ins. Co. v. Faucett, 163 S.W.2d 592, 596 (Mo. 1942) (holding the notary fraudulently signed a false certificate of acknowledgment); Baxter v. Bank of Belle, 104 S.W.2d 265, 265 (Mo. 1937) (stating that a notary mistakenly signed his name where the testatrix should have signed, and the testatrix mistakenly signed under the attestation clause); Immerman v. Ostertag, 199 A.2d 869, 874 (N.J. Super. Ct. Law Div. 1964) (concluding that a notary displayed a “high degree of negligence” in certifying an acknowledgment and administering an oath without determining whether the individuals purporting to have made the statements even knew of the nature or the contents of what they were signing); Commonwealth to Use of Willow Highlands Co. v. United States Fidelity & Guar. Co., 73 A.2d 422, 424 (Pa. 1950) (holding a notary liable for negligently certifying that property owners had personally appeared before him and acknowledged a mortgage where the property owners had in fact neither appeared before the notary nor had any knowledge of the transaction); In Re Donohoe’s Estate, 115 A. 878, 879 (Pa. 1922) (finding that a notary had mistakenly written her name in the wrong place); Orrell v. Cochran, 685 S.W.2d 461, 462 (Tex. Ct. App. 1985) rev’d on other grounds, 695 S.W.2d 552 (Tex. 1985) (noting that the notary mistakenly signed her name in the place designated
computerized notarizations, it is more important now than ever for notaries to understand and abide by the fundamentals of their profession. A working knowledge of their responsibilities and liabilities will help notaries to better withstand coercion to cut corners and to make notarial mistakes as their notarial functions grow increasingly technical.

To satisfy these fundamentals, notaries must insist upon sufficient documents of identification to properly identify document signers and in addition should conscientiously maintain journals of their notarizations that include each document signer's thumbprint to further authenticate important transactions. Sufficient documents of identification include the individual's signature, photograph, name, and physical description. Presently, though, the NNA does not require any documents of identification if the signing individual is "personally known" to the notary. Additionally, notaries should use journals to keep track of their notarizations. The notary journal should contain information such as the name, address, and signature of the document signer along with the type of notarization completed. Also, the document signer should leave his or her thumbprint in the journal and on the notarized document.

Another significant problem today is that the public presumes for the seal, rather than above the words "notary public"); Thompson v. Stack, 150 P.2d 387, 388 (Wash. 1944) (stating that the notary had mistakenly notarized a deed by inserting a description of nonexistent property).

60. Currently, only California requires thumbprints for a proper notification. CAL. GOV'T CODE § 8206 (West 1992 & Supp. 1996). Any party signing a deed, quitclaim deed, or deed of trust affecting real property needing a notarization must place his or her right thumbprint in the notary's journal. Id. If the right thumbprint is not available, then the party must use his or her left thumbprint or any other finger that is available. Id.

61. See infra notes 146-52 and accompanying text for a discussion of documents of identification.


63. See, e.g., CAL. GOV'T CODE § 8206(a) (requiring a notary public to keep a journal of all official acts performed as a notary public).

64. See id. (specifying the required contents of a journal entry).

65. See id. at § 8206(a)(7) (mandating the party signing the document to place his or her thumbprint in the journal but only when the document is a "deed, quitclaim deed, or deed of trust affecting real property"). Unfortunately, California does not also require the document signer to place a thumbprint on the signed document. Id. See infra notes 235-42 and accompanying text for a proposal that the Model Notary Act require that a thumbprint accompany all transactions and be included on the document as well as the notary's journal. By requiring that the document signer leave his thumbprint on the notarized document, it will be easier to verify the validity of the notarization, to track down the document signer who fraudulently has a document notarized, and to deter those who would otherwise attempt to trick the notary.
notaries acquire sufficient surety bonds to protect against notarial mistakes. Many states, however, do not require notaries to obtain bonds. Moreover, courts have regularly held notaries liable for damages in excess of their surety bonds. Therefore, some plaintiffs may not recover damages caused by notarial misconduct if the notaries cannot personally afford to pay those judgments. Presently, only thirty states and the District of Columbia have statutes that mandate surety bonds for notaries, and no state requires errors and omissions insurance for notaries. Thus, twenty states require no surety bonds at all for their notaries.

66. See infra notes 179-208 and accompanying text for a discussion of notarial bonds.

67. See Comparison, supra note 51, at 32 (listing the states that do not require a surety bond for their notaries: Colorado, Connecticut, Delaware, Georgia, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Vermont, Virginia and West Virginia).

68. See Michael L. Closen & Michael J. Osty, The Illinois Notary Bond Deception, ILL. POL., Mar. 1995, at 13, 14 (comparing state bonding requirements for notaries ranging from $0 to $10,000 and a judgment holding an Illinois notary personally liable for $23,000). Here, the notary was lucky because the amount of the underlying transaction was for only $16,000. The amount of the transaction could easily have been much higher. Id.

69. See infra notes 186-95 and accompanying text for examples of judgments against notaries with damage amounts that exceeded state mandated notarial bonds.


71. See supra note 67 and accompanying text for a list of states that do not require notarial bonds.
small that the bond is useless and misleading. California recently became the first state to require a bond as high as $15,000. Otherwise, state bond requirements range from $500 to $10,000. These bond amounts make notaries vulnerable. While notary misconduct often results in harmless error, suits for less than the $10,000 bond amount are usually not worth bringing since, after attorney fees and court costs, the recovery would be minimal. A fortiori, suits for over $10,000 are worth bringing, but it is exactly these larger suits from which the bond leaves the notary unprotected.

Importantly, many notaries do not realize that a bond is not insurance. While the surety bond protects the notary's customers and others who rely on and who suffer injury because of the notarization for up to the face amount of the surety bond, the bond company will seek reimbursement from the notary for any amount paid. Therefore, seldom will the public or the notaries really benefit from the small levels of surety bonds. The companies selling these nearly worthless no-risk bonds are the real winners. The mere fact of bonding, however, is important. The public perception which persists is that, since the notary is bonded, the notary must be trustworthy or at least the public is protected if the notary is not worthy of trust.

Another matter of consequence for modern notary law is the standing of United States notarizations in the international arena. Foreigners too often do not take United States notarizations seriously and, in some instances, refuse to recognize them. United States notarizations constitute an "embarrassment" when it comes to international commerce. States must heighten the caliber of notaries and tighten the procedural safeguards for the identification of document signers to avoid document fraud and to enhance the respect of United States notarizations in the eyes of foreign businesses and governments.

73. See infra notes 179-81 and accompanying text for a discussion of California's move to increase its bond amount.
74. See Closen & Osty, supra note 68, at 13 (claiming that if the damage is less than $5,000, it is not really worth pursuing by a claimant and citing CNB National Bank v. Spiwak, No. 89-L-13696 (Cir. Ct. of Cook County tried Apr. 19-20, 1994) which held a notary personally liable for more than $23,000 because the notary failed to exercise due diligence in verifying the identity a deed signatory who was in fact an impostor).
75. Id.
76. Id.
77. Id.
78. See infra notes 196-98 and accompanying text for a discussion of bond misconceptions.
80. Id.
81. Id.
B. Origins of the Model Notary Act

There is no longer a need for different laws to govern notaries in different states. On the contrary, there are some compelling reasons in favor of modernizing and making uniform the various state codes for notaries. For example, the dawning of a computer-dominated "paperless" society will mandate new advances, and the international community that emerges from the old will demand United States notarizations worthy of respect. Today, we live in a highly integrated and interdependent national and increasingly international society, approaching a global village. Yet, many of the state laws that govern notaries were drafted in the 1800's and have remained virtually unchanged. Meanwhile, the advancement of technology marches on. The role of notaries must adapt now to the inevitably coming paperless society. Furthermore, United States notarizations must command more respect at home and abroad than they currently do. The NNA, the American Society of Notaries, the Commissioners on Uniform State Laws, and the American Bar Association (ABA) all share the goal of improving notarial practice.

The NNA, founded in 1957, is a nonprofit educational organization. It is committed to educating, informing, and unifying the practices of notaries public. The NNA has more than 120,000 members, and it conducts annual meetings for those members. It alternatively publishes a bimonthly magazine called The National Notary and a bimonthly newsletter called the Notary Bulletin. The NNA conducts educational programs for notaries and continuing legal education programs for attorneys. It is in the process of

82. MODEL NOTARY ACT, at 1 (Nat'l Notary Ass'n 1984).
83. See id. (explaining the NNA's reasons for publishing the Act).
84. Closed & Dixon, supra note 28, at 894.
85. MODEL NOTARY ACT, at 1 (Nat'l Notary Ass'n 1984).
86. Id.
87. See infra notes 201-03 and accompanying text for a typical example of how little state mandatory bond requirements have changed in some states over the last one hundred years.
89. See Closed, supra note 3, at A24 (noting the marginal role of United States notaries in contrast to the seriousness with which the responsibly is taken in many foreign countries).
90. See infra notes 97-115 and accompanying text for a discussion of the NNA's, American Society of Notaries', Commissioners', and ABA's efforts to unify and improve notarial practice.
91. See The National Notary, NAT'L NOTARY MAG., Sept. 1996, at 3 (stating the history of the organization).
92. Id.
93. Id.
94. See, e.g., id. (as an example of an NNA magazine publication).
95. See, e.g., Notarial Ethics, 6 NOTARY HOME STUDY COURSE, VOL. VI (1989).
developing a code of ethics to govern notarial conduct, and on March 1, 1997, it released a draft Notary Public Code of Ethics more than fifty-six pages in length.  

In the early 1970's, the NNA undertook the task of formulating standard criteria to govern all notaries throughout the United States. The NNA published its first act, the Uniform Notary Act, in 1973 with the help of a national committee of officials, attorneys and representatives from The Yale Law School. The NNA designed the Uniform Notary Act as a prototype for lawmakers to standardize the diverse laws regulating notaries. One central goal was to establish the most modern techniques for detecting and deterring fraud in notarized documents. The Uniform Notary Act was the most comprehensive law of its time.

In contrast, the Commissioners on Uniform State Laws promulgated narrower model rules of notarial practice which were more narrow than the NNA's model. While the NNA's Uniform Notary Act was comprehensive, the Commissioners' first act was more specific. The NNA's act dealt comprehensively with just about every aspect of commissioning and regulating notaries as well as with the practices of notaries. The Commissioners' Uniform Acknowledgment Act of 1939 and 1960, however, dealt with specific notarial acts, certificates, and rules for recognizing the acts and certificates in other states and other nations. In 1982, the Commissioners published, and the ABA approved, the Uniform Law on Notarial Acts (ULONA), which was also narrowly drawn.

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96. NOTARY PUBLIC CODE OF ETHICS (Nat'l Notary Ass'n, Preliminary Draft 1997).
97. See Valera, supra note 19, at 3 (discussing facts leading up to the publication of a model notary act).
98. MODEL NOTARY ACT, at 1 (Nat'l Notary Ass'n 1984).
99. Id.
100. Id.
101. Id.
102. See Valera, supra note 19, at 3 (contrasting the NNA's model act with other model notary acts published by the ABA and the National Conference of Commissioners on Uniform State Laws).
103. Id.
104. Id.
105. Id.
106. Id. See also MODEL NOTARY ACT (Nat'l Notary Ass'n 1984) (reprinting ULONA at the end of the Act). A portion of ULONA is reprinted below.

**UNIFORM LAW ON NOTARIAL ACTS, § 2 (1982):**

(a) In taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

(b) In taking a verification upon oath or affirmation, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement veri-
Ten states and the District of Columbia have enacted ULONA in its entirety since 1982.\textsuperscript{107}

In 1984, the NNA updated its 1973 Uniform Notary Act replacing it with the Model Notary Act (Act).\textsuperscript{108} Many states have adopted sections, subsections, sentences, and even phrases from the Act.\textsuperscript{109} Because the NNA's Act comprehensively covers notarial functions and the Commissioners' ULONA deals with only a small number of specific notarial procedures, the two laws compliment each other.\textsuperscript{110} Indeed, ULONA is even reprinted at the end of the NNA's booklet containing the Model Notary Act.\textsuperscript{111}

Meanwhile, the NNA is currently forming a committee that will update the Act for the next century.\textsuperscript{112} The makeup of the committee for the Revised Model Notary Act is expected to be quite similar to the panels of the past.\textsuperscript{113} Six different secretaries of state volunteered their services on the panel to write the original Act along with legislators, county recording officials, surety company executives, a law school dean, a judge, and attorneys with expertise in notarizations.\textsuperscript{114} The process of revising the Act should begin in 1997, and the NNA hopes to have the Revised Model Notary Act completed for publication by January 1, 2000.\textsuperscript{115}

The NNA recognizes the "breadth and significance of advancing technology," and the field of notarial practice cannot escape the

\(\text{id.}\)

107. See Valera, supra note 19, at 3 (discussing ULONA). The states that adopted ULONA are Delaware, Iowa, Kansas, Minnesota, Montana, Nevada, New Mexico, Oklahoma, Oregon and Wisconsin. \textit{Id.}

108. \textit{Id.}

109. \textit{Id.}

110. \textit{Id.}

111. \textit{Id.}

112. See \textit{id.} (discussing ULONA).

113. See Valera, supra note 19, at 3 (discussing the diversity of people interested in making up the committee for the next Act).

114. \textit{Id.}

115. \textit{Id.}
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progress, nor would we wish it to. The day is fast approaching when businesses and governments will accomplish much of their transactions electronically, and digitized signatures and cybernotarizations will be the norm. To keep pace with the technology, improved methods of identifying document signers, mandated errors and omissions insurance, and heightened educational and professional standards will become more important than ever before. The following sections discuss ways for notarial practice to stay in step with an advancing society.

II. IDENTIFICATION STANDARDS AND THE REQUIREMENT OF A THUMBPRINT TO DETER FRAUD

Today's society relies heavily on the notary public to verify that the signers of certain important documents are who they claim to be, especially when business transactions between strangers are so common. Thus, society must have confidence in the notary public to insure business and governmental transactions. Although notaries are not legally held to be guarantors of the authenticity of the signatures which they notarize, notaries are accountable for employing reasonable care in the performance of their identification of document signers. The failure to live up to that standard subjects the notary to liability for notarial negligence if a forgery is undetected and injures someone as a conse-

117. See Valera, supra note 19, at 3 (interviewing Milton G. Valera, Association President of the NNA, on what he sees as some of the upcoming changes to the Act).

While the topic of cybernotary is a very important issue for the revised Act, this paper will not cover the subject in detail. The topic of cybernotary is a topic that deserves a whole paper by itself. It is enough for this paper to acknowledge that the day of electronic notarization is quickly approaching, and the current notarial laws and standards are inadequate to meet these electronic needs. Some states already recognize digital signatures as part of their law. See, e.g., UTAH CODE ANN. §§ 46-3-101 - 504 (1993 & Supp. 1996) (becoming the first state to incorporate a digital signature act into its law).

Similarly, it appears other states are following Utah's lead. See generally Victoria Slind-Flor, Moving Into Cyberspace as Notaries: The Need to Authenticate Electronic Documents is a New Frontier for Attorneys, THE NAT'L L. J., Dec. 18, 1995, at A1, A21 (stating that California, Florida and Wisconsin are not far from passing digital signature acts); NEV. REV. STAT. ANN. § 240.040 (Michie 1996) (digital signature act). According to the Nevada code, authentication is accomplished with the use of a rubber or a mechanical stamp. Id. A mechanical stamp includes “an imprint made by a computer or other similar technology.” Id.
118. Valera, supra note 19, at 3.
119. See Identification Standards, supra note 62, at 1 (noting the notary's need for a uniform method of identifying document signers).
120. See Closen & Richards, supra note 19, at 725-26 (discussing the potential liability of notaries).
Hence, notaries must detect and deter fraud and can best accomplish that if there are thorough and effective standards for identifying document signers. Without such standards, notaries are left to decide for themselves, on an ad hoc basis, the methods by which to identify signers. This kind of individualized decision making is inappropriate for a notary, who as a ministerial officer, should be expected simply to follow and apply clearly written guidelines. A lack of detailed guidelines leads to inconsistencies and mistakes by notaries and undermines public confidence in notarized documents and the notaries who execute them.

Specifically, official guidelines for identification of document signers should accomplish several purposes. First and foremost, guidelines should protect the integrity of notarized documents. Important documents needing notarization might include wills, trusts, real-estate deeds, powers of attorney, contracts, and court and governmental filings. Detailed guidelines would hinder con-artists and forgers by preventing the use of readily counterfeited and altered documents of identification. Additionally, guidelines should reduce the litigation burden on the courts by clarifying the notary public's duties and preventing errors that lead to lawsuits. Thorough guidelines decrease notary misjudgment by providing clear-cut guidelines for notaries to follow thereby narrowing their range of discretionary matters. Notaries can best detect and deter fraud by employing proper methods of identifying document signers and by requiring a thumbprint to accompany all of their notarizations.

A. Methods of Identifying Document Signers

There are several ways for a notary to accurately identify a document signer. A notary may identify a signee through: 1) personal knowledge of the signee; 2) identification of the signee by one or more credible witnesses personally known to the notary; and 3) reliable documents of identification. Points two and three are often referred to by statutes and courts as "satisfactory evi-
The best way for a notary to establish positive identification of a document signer is through the notary's personal knowledge of the signer's identity, or, in other words, the notary's genuine and independent personal acquaintance with the signer over a sufficient course of time. In a simpler era, populations were smaller and just about everyone in a community knew one another, so that the document notarization functions of notaries were easier. All that has changed dramatically for most notaries, who must notarize for many people they do not know at all or do not know well. It is important today to define personal knowledge so as to avoid including nominal personal acquaintance. Personal knowledge clearly requires something more than a casual acquaintance. Otherwise, a notary might incorrectly assume that an informal introduction by a friend, employer, or someone else immediately constitutes knowledge of the signer, a dangerous conclusion that has led to a number of misidentifications, faulty notarizations, and lawsuits.

In the absence of the notary's personal knowledge of the signer, the notary must rely on satisfactory evidence of identification. Unfortunately, statutes are neither thorough nor uniform in prescribing what constitutes satisfactory evidence of identification. Some statutes simply prescribe that the notary either

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133. Id. at 1.
134. Identification Standards, supra note 62, at 1. The NNA's Act currently defines personal knowledge as "familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every reasonable doubt that the individual has the identity claimed." MODEL NOTARY ACT, § 1-105(10) (Nat'l Notary Ass'n 1984). It is important, in terms of deterring fraud, that the notary establish his or her knowledge of the signer by a number of encounters over time to eliminate any real degree of doubt as to the signer's identity. Identification Standards, supra note 62, at 1. When the notary has doubt as to whether he or she personally knows the signer, the notary should consider the signer as more akin to a stranger and should use one of the other methods of identification. Id.
135. See Closen & Dixon, supra note 28, at 876 (stating that colonists in the New World rarely used the services of notaries). Furthermore, courts often performed notarial acts because transactions between the colonists were scarce. Id.
136. See id. (claiming that the courts performing notarial acts in the New World quickly became too cumbersome).
137. Identification Standards, supra note 62, at 1.
139. See, e.g., id., 184 P. at 12 (finding that a notary could be negligent); City Consumer Services Inc. v. Metcalf, 775 P.2d 1065, 1069 (Ariz. 1989) (holding that a jury could find the defendant-notary's action negligent where he notarized the signature of a person from his office building who he did not really know).
140. See Anderson 184 P. at 14 (reversing and remanding a summary judgment for the notary defendant where the notary's negligence exposed him to possible liability). The question presented in this case related to how much of
"know" the signer or have "satisfactory evidence" that the signer is the individual described in the instrument. Under such statutes, courts have occasionally held that the means used by the notary to identify the signer are sufficient if they satisfy the notary's conscience that he or she acted properly. In other states, however, the law provides that the notary must act as a reasonably prudent notary would under the same or similar circumstances. Obviously, neither formulation provides the notary with a concrete guide to identify signers.

As stated above, satisfactory evidence of identification exists in two forms. The notary may notarize a document provided a credible witness known to the notary is present to identify the signer. Usually, however, notaries perform their notarizations for strangers. Documents of identification have become the most widely used method of identifying signers not personally known by the notary and where there is no credible witness. The NNA's Act currently suggests the use of two documents to identify a signer. A federal, state, or local governmental agency should

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141. Id. See, e.g., MODEL NOTARY ACT, § 4-102(a)(5) (Nat'l Notary Ass'n 1984) (discussing notary procedure for notarial acts).
142. Id.
144. MODEL NOTARY ACT, § 1-105(11) (Nat'l Notary Ass'n 1984). A credible witness is a reliable individual who personally knows the document signer and can truthfully vouch for the signer's identity under oath. See Identification Standards, supra note 62, at 6 (describing how to use a credible witness to identify document signers when the document signer is not personally known by the notary and the document signer lacks the proper identifying documents). Often times people do not have identification documents. This regularly occurs with the elderly. Id.

The credible witness must be personally known by the notary. Id. The same "personally known" standard which applied to the signer will also apply to the witness. Id. A credible witness must be believable, honest, competent, and impartial about the document signed. Id. Signers who are a party to the document are not credible witnesses. Id. The credible witness should take an oath and swear before the notary that: 1) the signer is truly the person named in the document; 2) the signer is personally known to the witness; and 3) the witness is not personally interested nor named in the document. Id.

146. Id.
147. MODEL NOTARY ACT, § 1-105(11) (Nat'l Notary Ass'n 1984). The NNA recommends identifying an individual based on:

i) at least 2 current documents, one issued by a federal or state government with the individual's photograph, signature, and physical description, and the other by an institution, business entity, or federal or state government with at least the individual's signature; or
ii) the oath or affirmation of a credible person who is personally known to the notary and who personally knows the individual. Id.
sue the first document of identification. The document should contain the individual's photograph, signature, and physical description. The notary can use the photograph for a comparison with the physical appearance of the signer. Also, the notary should compare the physical description on the document of identification with the physical appearance of the signer and the signature on the document of identification with the signature on the document to be notarized (as well as with the signature in the notary journal entry).

According to the Act, the second document of identification should include at least a signature. Even more helpful to the identification process would be a document containing a date of birth and Social Security number because such information would provide an additional feature for comparison and would deter fraud. The date of birth would permit the notary to judge the signer's age, and the Social Security number, when recorded in the notary journal, would provide assistance in apprehending wrongdoers. Further, a notary can stave off fraud by matching the date of birth and the Social Security numbers with those on the notarized document if the document includes that information.

149. See id. at 5 (stating that the best documents are a state drivers license or identification card, a United States passport, a foreign passport stamped by immigration, or a United States military identification card). Florida and California proscribe these methods of identification. Id.
150. Id.
151. Id. For example, a woman comes to the notary with a picture I.D. card and looks like the woman on the card. Yet, the I.D. claims that the pictured woman is five feet two inches tall while the woman with the notary is actually six feet two inches tall. Here, the notary should not use the I.D. as proper proof of identification.

If the picture and the description on the signer's I.D. both match the signer's physical attributes, then the notary should next check the signature on the I.D. against the signature on the document and in the notary's journal, if a journal is used by the notary. See, e.g., CAL. GOV'T CODE § 8206(a) (West 1992 & Supp. 1997) (requiring the journal to contain 1) the date, time, and type of each official act; 2) the character of the document at issue; 3) the signature of each person whose signature is being notarized; 4) a statement whether the notary based the identity of the parties on personal knowledge or satisfactory evidence; 5) material regarding the identifying documents of witnesses if the notary ascertained the person's identity by the oaths or affirmations of two credible witnesses; 6) the fee charged for the notarial services; and 7) if the document is a deed, quitclaim deed, or a deed of trust, the document signer must place a thumb or finger print in the journal).

B. The Use of a Thumbprint to Further Deter Fraud

Arguably, thumbprinting is currently the notary's best weapon for preventing fraud. A notary should require a thumbprint of a document signer, which he or she should place in the notary's journal, before notarizing any documents. While, at the very least, a notary should require a thumbprint of anyone who signs a document involving real estate transactions, California

153. See Thumbprinting: 'The Notary's Best Anti-Fraud Weapon' Now, NOTARY BULL., June 1996, at 1, 13 (describing how the thumbprinting technique has caught on in California).

154. While the American Civil Liberties Union (ACLU) opposed finger prints in the 1980's, many of the bases for their arguments do not exist today. See A Journal Thumbprint: The Ultimate ID, NAT'L NOTARY MAG., May 1996, at 10 (noting the opposition to a thumbprinting requirement by certain groups in the 1980's). For example, the ACLU complained that the requirement of mandatory fingerprinting invaded an individual's privacy. Id. Similarly, they complained that fingerprinting equipment was too expensive and too messy and that fingerprinting would not prevent fraud. Id.

Since the 1980's, however, fingerprinting has become a common occurrence, no longer exclusively associated with criminal bookings. Id. Currently, thousands of children are fingerprinted for the FBI's data banks used to track down missing children. Id. Also, many states require fingerprints for driver's licenses. Id. Further, some states require fingerprints from real estate agents, brokers, notaries, and other professionals. Id.

Likewise, the advent of low-cost, easy to use inkless devices has led to the widespread use of thumbprinting. A Journal Thumbprint: The Ultimate ID, NAT'L NOTARY MAG., May 1996, at 10. Long gone are the days of the messy black ink technique that police departments traditionally employed. Ted Appel, Thumbprint Law Targets Fraud, Scams Tracking Down Impostors Will Be Easier, THE PRESS DEMOCRAT (SANTA ROSA, CA), Mar. 16, 1996, at R1. The new technique involves placing the finger or thumb on a pad treated with a colorless chemical and then rolling it onto paper that reacts to the chemical. Id. The notary may store the thumbprint in a journal at the notary's office so that the thumbprint does not become part of the public record. Id.

Finally, we know from a Los Angeles County project that thumbprinting works as a fraud deterrent. See Corrie M. Anders, Fingerprints, Rent Controls Among New Year Changes, SAN FRANCISCO EXAMINER, Dec. 31, 1995, at E1 (discussing the pilot program); Marsha K. Seff, New Rule of Thumb Helps Put Finger On Scam Artist, THE SAN DIEGO UNION-TRIB., Oct. 22, 1995, at H1 (discussing the pilot program); Corrie M. Anders, With Home Fraud Down, L.A. Project Getting Thumbs Up, THE SAN DIEGO UNION-TRIB., June 4, 1995, at H14 [hereinafter Anders, Thumbs Up] (discussing the pilot program). The thumbprinting technique worked so well in Los Angeles County, the state of California, which leads the nation in property deed scams, is the first state to adopt this fraud deterring measure. See CAL. GOV'T CODE § 8206(a) (West 1992 & Supp. 1997) (mandating a thumbprint in certain real-estate transactions).

is the only state that requires thumbprints. The state legislation mandating thumbprints came in the wake of a Los Angeles County three-year pilot-program. The pilot-program was so successful and effective in Los Angeles that there was virtually no opposition to expansion of the program statewide. The new thumbprinting requirement became effective on January 1, 1996. Currently, the only exemptions from the thumbprinting requirement in California are for deeds involving a reconveyance or foreclosure.

Real estate fraud had begun to increase dramatically in California in the early 1970's as property values started to increase and homeowners had accumulated more equity in their houses. In Los Angeles County alone, between July 1990 and November 1992, con-artists cheated at least 1150 residents out of some $131 million dollars. While the elderly are the most common targets because they tend to have more equity built up in their properties, even young property owners are at risk. It is easy for an imposter to pose as a homeowner, apply for a loan, and forge the owner's

156. Id.
157. Id.
158. Id.
159. Id.
160. Id.
161. See Anders, Thumbs Up, supra note 154, at H14 (discussing how requiring a thumbprint in real estate transactions will help to prevent real estate fraud). There are several methods of real estate transaction scams. See Seff, supra note 154, at H1 (endorsing the thumbprint requirement in real estate transactions). While the elderly are the most likely targets of real estate scams because they usually have the most equity built up in their property, young working professionals can also be a con-artist's target. Id. In some instances, an impostor forges the name of the real property owner and a "new owner" on a blank grant deed. Id. The con-artist then finds a careless or dishonest notary to notarize the deed. Id. Once the notary notarizes the deed, the "new owner" applies for a loan, takes the money, and then flees. Id. The con-artist can get away with this scheme because some mortgage brokers take short cuts by not doing the usual appraisals or requiring title insurance from the person requesting the loan. Id.

Another scam involves crooks posing as door-to-door salesman. See Anders, Thumbs Up, supra note 154, at H14 (discussing California's adoption of mandatory thumbprints). These fake salesman sell everything from "home improvements, carpeting and security systems to satellite antennas and water-purifying systems." Id. The goods sold are often inexpensive and/or defective. Id. Among the sales documents for the home owners to unknowingly sign is a lien contract. Id. Before the home owners know what hit them, they owe a lot of money to a finance company and possibly find themselves in foreclosure. Id.

163. See Anders, Thumbs Up, supra note 154, at H14 (discussing the targets of real estate scams).
name on the loan package. The impostor then simply takes the cash and walks away without ever making any payments.

Another scam begins with a homeowner who is in financial trouble and is falling behind on his or her mortgage payments. With foreclosure pending, the con-artist offers to help. Later the homeowner finds out, much to his or her dismay, that instead of “loan documents,” he or she signed over the deed to the con-artist. The con-artist can then use this fraudulent deed to obtain a loan and never make any payments.

A thumbprint, “whether on a murder weapon, the door knob to a burglarized room, or in a [n]otary journal,” is the ultimate identifier and therefore the best way to deter fraud. After a notarization, the thumbprint is the best evidence that a particular individual attempted or perpetrated a fraud and the best defense that an allegation of negligence against the notary is groundless. The thumbprint requirement accomplishes several things. First, it deters criminal impostors from seeking notarizations of forged signatures. No one who forged a signature would want to leave his or her thumbprint behind. Second, it deters signers from falsely stating that a con-artist forged a signature and that the signer never personally appeared before the notary to have the document notarized. Finally, it alerts all signers, including the easily targeted like the elderly, to the seriousness of the document which they are about to sign. These points are especially important in light of the fact that victims are inadequately protected by current state notary bond requirements.

III. BONDS AND ERRORS & OMISSIONS INSURANCE

Because of the substantial financial value of some documents that notaries notarize, the interested parties need protection against the losses that might be caused by notarial mistakes and

164. Id.
165. Id.
166. See Seff, supra note 154, at H1 (discussing typical scams).
167. Id.
168. Id.
169. Id.
170. See A Journal Thumbprint: The Ultimate ID, NAT'L NOTARY MAG., May 1996, at 9 (discussing the benefits or requiring a thumbprint in the notary’s journal for real estate transactions).
171. Id.
172. Id.
173. Id.
174. Id.
175. See id. (noting different ways the mandatory thumbprint for real estate transactions prevents fraud).
176. See infra notes 179-95 and accompanying text for a discussion of the inadequacies of the current bond system.
misconduct. Presently, thirty states and the District of Columbia require surety bonds for commissioned notaries. A more effective way to provide coverage for injuries would be for states to mandate substantial errors and omissions insurance.

A. Bonds

On January 1, 1997, California became the first state to require notaries to have a $15,000 bond. The state legislation raised the bond amount from $10,000. This is only the second time in the state's history that the legislature has changed the bond amount. Yet, today's legislation is still far too low for the times. Courts are increasingly holding notaries liable for sums far in excess of $15,000. However, most states require notary bonds of only $5000 or less. Data from the NNA in May of 1996 indicates that twenty states do not require notary bonds at all and that another nineteen states and the District of Columbia require notary bonds of $5000 or less, for a total of thirty-nine out of fifty states requiring a notarial bond of $5000 or less.

For more than a generation, courts have held notaries, and sometimes their employers, accountable for sizable sums exceeding their required surety bonds. For instance, in the 1994 Illinois case of CNB National Bank v. Spiwak, the court held the notary personally liable for more than $23,000 although the notary's bond amount was only $5000. In another case, City Consumer Services v. Metcalf, an Arizona court held a notary accountable for $60,000 while the required bond amount for the notary was merely $5000. A Louisiana court, in Webb v. Pioneer Bank & Trust

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177. See supra note 70 and accompanying text for a discussion of notarial bonds and a list of bond requirements by state.
178. See infra notes 209-15 and accompanying text for a discussion on the benefits of errors and omissions insurance.
179. $15,000 Bond to be Effective on January 1, NOTARY BULL., Oct. 1996, at 1, 13.
180. Id.
181. Id. In 1850, California's very first notary statute set the bond at $5,000, a very substantial sum for the middle 1800's. Id.
182. Id.
183. See infra notes 186-95 and accompanying text for illustrations of potential liability for the notary public.
184. See Comparison, supra note 51, at 32 (listing only eleven states requiring a notarial bond more than $5000: Alabama, California, Idaho, Kansas, Michigan, Missouri, Nebraska, Nevada, North Dakota, Tennessee and Washington).
185. See id. (listing states that mandate a notarial bond of $5000 or less).
186. No. 89-L-13696 (Cir. Ct. of Cook County tried Apr. 19-20, 1994).
188. 775 P.2d 1065 (Ariz. 1989).
189. See id. at 1069 (finding a notary had negligently notarized a deed
Co. found a notary liable for $20,000 yet Louisiana only required a $5000 surety bond for the notary. Similarly, in the 1976 case of Iselin-Jefferson Financial Co. v. United California Bank, the court held that the notary caused over $70,000 to the plaintiff, however, the notary's bond only covered up to $5000 in damages. Finally, in a 1969 Arizona case, Transamerica Ins. Co. v. Valley Nat'l Bank, the court found a notary liable for over $84,000 in damages although the state-required surety bond was only $5000. In sum, the liability of many notaries greatly exceed the required surety bond amounts.

Traditionally, the notarial bond served a couple of purposes. First, bonds established public confidence. In the past, notaries who were bonded were considered trustworthy. Second, bonds in substantial dollar amounts protected the parties who accepted notarized documents by allowing recovery from the bond company if where the notary based the identity of the signer solely upon the signers own representation); ARIZ. REV. STAT. ANN. § 41-315 (West 1992 & Supp. 1995)(requiring $5000 bond).

191. Id. See LA. REV. STAT. ANN. § 35:1 (West 1985 & Supp. 1996) (mandating a $5000 bond requirement). In Webb the notary had notarized a $40,000 loan with the signature of Mrs. Webb, the plaintiff. Webb, 530 So.2d at 116. The loan paper signatures, however, were forged by her husband. Id. at 117. The unemployed husband signed his wife's signature on the loan without her knowledge or permission. Id. The husband then had the loan notarized by the defendant-notary. Id. At the time, the plaintiff let her husband take care of the financial matters even though she was the sole wage earner. Id. She would hand her checks over to him to deposit and to use to pay the bills. Id. Therefore, unbeknownst to her, she was making payments on the forged loan. Id. The court held the notary negligent in failing to exercise ordinary care in notarizing the document. Id. at 118. The court awarded the plaintiff $20,000 for the loan plus $2500 for her mental anguish and distress. Id.

192. 549 P.2d 142 (Cal. 1976).
193. Id. at 143. In Iselin-Jefferson Financial Co., the notary notarized a bank guarantee containing a forged signature. Id. The plaintiff-financial company subsequently entered into an agreement with the forger which it would not have done without the forged papers. Id. The trial court found that the plaintiff suffered damages of over $71,000 because of the forged deed. Id. California only required a $5000 bond at the time of the trial. Id.

195. Id. See ARIZ. REV. STAT. ANN. § 41-315 (West 1992 & Supp. 1995) (requiring $1000 bond). In Transamerica, the notary, who worked for the defendant bank in Arizona, notarized a warranty deed. Transamerica, 462 P.2d at 814. This deed, however, was not signed in the notary's presence. Id. The notary merely compared the signature on the document with the signature card on file at the bank. Id. The forger later used the warranty deed to close an escrow account which directed the plaintiff to pay him $84,800. Id. Subsequently, the plaintiff paid the $84,800 to the forger. Id.

196. See Closen & Osty, supra note 68, at 13 (describing how state bond systems are deceiving to both notaries and the public).
197. Id.
198. Id.
the notary caused the parties to incur any damages.\textsuperscript{199} Presently, thirty states have a bond requirement, yet the bond amounts are inadequate to protect the person injured by the notary.\textsuperscript{200} In Illinois, for instance, the first notary statute in 1819 set the bond amount at $500 which was a significant sum at that time.\textsuperscript{201} In 1872, the legislature raised this amount to $1000.\textsuperscript{202} The current bond amount is a mere $5000.\textsuperscript{203} The public has a false sense of confidence that its notaries are covered against mistakes because the public knows notaries are bonded but probably does not know the bond amount.\textsuperscript{204} Additionally, notaries share this same sense of false confidence.\textsuperscript{205} Many notaries do not realize that notaries are not protected by a bond.\textsuperscript{206} Rather, the bond protects their customers up to the face amount of the bond.\textsuperscript{207} If the bond company should have to pay because of misconduct by the notary, the bond company will subsequently seek reimbursement from the notary for the amount paid to the injured party.\textsuperscript{208}

**B. Errors and Omissions Insurance**

There is a solution to the bond dilemma. The best way to protect notaries, the notaries' employers, and the notaries' clients is through a statutory requirement of substantial errors and omissions insurance.\textsuperscript{209} If legislation were to mandate substantial errors and omissions insurance, insurance companies would organize risk pools of notaries so that they could spread the cost of the insurance over the entire pool of notaries and thus could make the insurance affordable.\textsuperscript{210} Further, the insurance limit would be substantially higher than any of the states' bond requirements currently in effect.\textsuperscript{211} Notaries could readily obtain insurance policies

\textsuperscript{199} Id.
\textsuperscript{200} Id.
\textsuperscript{201} Closen, supra note 3, at A23.
\textsuperscript{202} Id.
\textsuperscript{203} See 5 ILCS 312/2-105 (West 1993 & Supp. 1996) (setting the current bond amount at $5000).
\textsuperscript{204} See Closen, supra note 3, at A23 (explaining that today's bond requirements are useless and misleading in the 30 states that still require bonds).
\textsuperscript{205} Id.
\textsuperscript{206} See Closen & Ostry, supra note 68, at 13 (comparing notaries of the past and notaries of the present).
\textsuperscript{207} Id.
\textsuperscript{208} Id.
\textsuperscript{209} See id. (describing errors and omissions insurance in place of a bond).
\textsuperscript{210} Id.
\textsuperscript{211} See supra notes 186-95 and accompanying text for examples of the inadequacies of the current bond system in protecting the notary and the person requiring the services of the notary from notarial negligence, fraud, or mistake. See also supra note 70 and accompanying text for a list of state mandated bond amounts.
with limits of $100,000 to $1,000,000. Furthermore, in many instances the notary’s employer would cover the premiums as a cost of doing business. Best of all, unlike the obligation to reimburse a bond company, the notary does not have to reimburse an insurance carrier.

As discussed, states must pass more notarial legislation. One piece of that legislation should impose mandatory insurance requirements on notaries. This is not a unique concept as shown by the number of states that impose mandatory auto insurance which courts have upheld as constitutional. Another piece of that legislation should implement education and testing requirements for notaries.

IV. EDUCATION AND TESTING REQUIREMENTS

Only a few states mandate any kind of education, testing, continuing education, or re-testing upon re-commissioning for notaries. It therefore is no wonder “the notary profession is . . . one of the least-understood and least-respected professions” in the nation. While, in the United States, people do not regard the job of the notary public as being very important, in Latin America, Europe, and Japan the notary is held in the same esteem as an attorney or a judge.

One report found almost 70% of the 178,000 notaries in New Jersey were unfamiliar with some of the most basic principles of notary practice. Likewise, a random sampling in 1993 of 16,000 notaries in 20 states revealed that notaries nationwide did not use established fraud deterring methods. For example, 65% of notaries did not keep a record of their notarial acts, which is one of the most effective fraud deterrents.

213. Id.
215. See infra notes 243-50 and accompanying text for a discussion and model of a proposed notarial insurance statute.
217. See infra notes 218-33 and accompanying text for a discussion of notarial education and testing.
218. See Comparison, supra note 51, at 31 (stating only six states require notary education or testing: California, Connecticut, Louisiana, New York, North Carolina and Pennsylvania).
220. Id.
221. Id.
222. Id.
223. Id.
In Texas, almost 2 out of 3 notaries do not even know some of the most basic facts about their official duties. About 200,000 of the state's 314,000 notaries did not know the difference between a jurat and an acknowledgment. In Texas, as in most states, a new notary gets his or her seal, a record book, and nothing more because Texas mandates neither notary education nor testing for notary applicants.

A 1990 observational study in New York found that only 1 out of 217 notaries completed the notarial procedure correctly. The study also found that, of the notaries questioned, more than 97% were unable to properly perform the authentication procedure that verifies certificates that notaries issue to the public. Likewise, nearly 90% of the notaries neglected to administer the required oath to the affiants. Remarkably, more than 82% of the notaries failed to check the document signer's identification.

There is a solution to these problems. Proper education, testing, and continuing education with re-testing for notaries would be a panacea for almost all notarial ills. The NNA needs to update the Act to meet these needs. Then, in addition to the state-mandated education, testing, and continuing education processes, states should encourage professional organizations to have supplemental courses and programs for notaries.

First, states should require potential notaries to attend a class. The state could administer the class through local colleges or community colleges. The state would have the discretion to choose the length of the class time which could be between three to six hours long. At the end of the class, the potential notaries should take an examination to evaluate their knowledge of notarial duties.

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225. See id. (explaining the difference between a jurat and an acknowledgment). A jurat is "a notarial act in which a notary certifies having watched the signing of a document and administers an oath or affirmation in which the signer declares the document to be true." Id. An acknowledgment identifies "a document signer who personally appeared before the notary and admitted having signed the document freely" at some earlier time. Id.
226. See generally TEX. GOV'T CODE ANN. §§ 406.001 - .024 (lacking both education and testing requirements for notaries).
228. Id.
229. Id.
230. Id.
231. See infra note 255 and accompanying text for a discussion of the possible locations for notary testing.
232. See infra note 253 and accompanying text for a discussion of the amount of classroom instruction that states should require for notaries.
States should then mandate continuing education and re-testing for notaries seeking re-commissioning. Most states require re-commissioning for notaries every two to four years. Similar to the way that motorists are re-tested when their licenses expire, states could require additional class time and examination at the time the state re-commissions the notary. As education and testing standards increase, the level of fraud will decrease, and United States notarizations will begin to regain the respect that they once had.

V. PROPOSAL

This section sets forth proposed changes to the NNA's Model Notary Act. It is divided into three sub-sections: 1) identifying document signers; 2) errors and omissions insurance; and 3) education and testing. Each sub-section sets forth the new statutory language in large and small capitalized print. Brackets within the text indicate options for lawmakers. Next, much like the committee comments appearing along with many statutes, an explanation of the proposed changes follows the statutory language. The explanation reveals the purpose behind the changes, how the purpose is achieved, and what is included or excluded from the new language.

A. Identifying Document Signers; Thumbprinting


THE NOTARY SHALL EXAMINE TWO CURRENT DOCUMENTS OF IDENTIFICATION FROM THE PERSON WHO HAS REQUESTED THE NOTARIAL ACT, AND A GOVERNMENTAL AGENCY SHALL HAVE ISSUED AT LEAST ONE OF THE DOCUMENTS. THE TWO DOCUMENTS MUST BOTH INCLUDE A SIGNATURE, AND TOGETHER MUST CONTAIN THE INDIVIDUAL'S PHOTOGRAPH, NAME, DATE OF BIRTH OR AGE, SOCIAL SECURITY NUMBER (OR THERE MUST BE A SATISFACTORY REASON FOR

233. See Comparison, supra note 51, at 23 (listing term limits for notaries public by state). Most states have four year terms. Id. Delaware and Rhode Island both have two year terms. Id. New Hampshire, New Jersey, North Carolina and Ohio all have five year terms. Id. States with over five year terms are as follow: Idaho and North Carolina have six year terms; Maine and Massachusetts have seven year terms; South Dakota has an eight year term; South Carolina and West Virginia have 10 year terms; and Louisiana has a term for life. Id.

234. See MODEL NOTARY ACT, § 1-105(11)(i) (Nat'l Notary Ass'n 1984) (defining documents of identification that are proper for a notary to use in identifying the person who wishes to use the notary's services).
THE UNAVAILABILITY OF SUCH NUMBER), AND PHYSICAL DESCRIPTION
(INCLUDING FEATURES SUCH AS HEIGHT, WEIGHT, COLOR OF HAIR
AND EYES, TATTOOS, BIRTHMARKS, WHETHER OR NOT THE PERSON
WEARS GLASSES, ETC.).

IF THE NOTARY IS NOTARIZING A DOCUMENT, THE NOTARY SHALL
REQUIRE THE PARTY SIGNING THE DOCUMENT TO PLACE HIS OR HER
RIGHT THUMBPRINT ON THE DOCUMENT AND IN THE NOTARY’S
JOURNAL. IF THE RIGHT THUMBPRINT IS NOT AVAILABLE, THE
NOTARY SHALL HAVE THE PARTY USE HIS OR HER LEFT THUMB, OR
ANY AVAILABLE FINGER. OTHERWISE THE NOTARY SHALL NOTE IN
THE JOURNAL THE REASON FOR THE UNAVAILABILITY OF A
THUMBPRINT OR FINGERPRINT.

While this section dramatically changes past practice, it
serves the important purpose of improving techniques of identifi-
cation for notaries which will reduce the chance of successful fraud
and deception by document signers. This section improves the
NNA’s Act in several ways. First, this section requires the use of
documents of identification as the only method available to nota-
ries to identify persons who request a notarial act. By mandating
the use of these documents for all notarizations even in situations
where the notary personally knows the one requesting the notarial
act, or upon “the oath or affirmation of a credible person who is
personally known to the notary and who personally knows the in-
dividual,” this section effectively eliminates two highly subjective
methods otherwise allowed by the NNA’s Act. No longer will the
notary have discretion to decide whether he or she has sufficient
personal knowledge due to “meaningful interactions” with the in-
dividual over a period of time that exceeds a “casual acquain-
tance.” Likewise, the notary will not have to consider whether
he or she has any doubts as to the identity of the person other than
doubts emanating from the documents of identification. Next, this
section removes the “reasonableness” standard of personal knowl-
edge which is an ambiguous standard at best. Based on this pro-
posal, a notary must view documents of identification from the
person requesting a notarial act or the act will not be reasonable.

Finally, this section adds the thumbprinting technique. This
technique deters fraud by making it harder for a con-artist to get

235. Id.
(mandating a thumbprint in real estate transactions).
237. Id.
238. See supra notes 146-52 and accompanying text discussing the types of
documents that notaries should use when identifying document signers.
240. See id. § 4-101(a)4&5 (stating the recommended procedure for every
notarial act).
241. See Anderson v. Aronsohn, 184 P. 12, 13-14 (Cal. 1919) (describing the
threshold test of personal knowledge).
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away with forging a document and easier to catch these violators.\(^{242}\) Unlike the California law, though, here a notary must require a thumbprint from the document signer in all transactions, and the print must be in both the notary's journal and on the notarized document. Leaving a thumbprint solely in the journal would be awkward because it would require authorities to track down the notary in order to compare the recorded print with that of a suspect. By requiring the thumbprint on the document also, authorities can more immediately confirm or dispel that a suspect had a document fraudulently notarized.

B. Errors and Omissions Insurance

AN APPLICATION FOR A NOTARIAL COMMISSION MUST BE ACCOMPANIED BY A CERTIFICATE OF NOTARIAL LIABILITY INSURANCE IN AN AMOUNT NOT LESS THAN [$250,000] COVERING BOTH NEGLIGENCE AND INTENTIONAL MISCONDUCT.\(^{243}\) ONLY INSURERS AUTHORIZED TO DO BUSINESS IN THIS STATE SHALL ISSUE SUCH A CERTIFICATE OF INSURANCE.\(^{244}\)

This section supplements the current bond requirement in the NNA's Act and in some state statutes.\(^{245}\) Low bond requirements are worthless to the injured party whose damages often exceed the bond amount or whose damages are so low that it would not pay to sue the notary to recover the amount of the bond.\(^{246}\) Likewise, high bond requirements are futile to the notary who is expected to reimburse the bond company for any amount paid.\(^{247}\)

Hence, states should require notaries public to obtain errors and omissions insurance in meaningful amounts. While states may set the minimum level of insurance that they wish to require, this proposal suggests an amount of $250,000 which is modest by insurance standards yet more than fifteen times greater than the current largest bond requirement.\(^{248}\) The concept of state required mandatory insurance for notaries is not a novel one. In many instances, states already demand mandatory automobile, malprac-

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242. See supra notes 153-76 and accompanying text for a discussion of the benefits of requiring a document signer to place his or her thumbprint in the notary's journal as a fraud deterring technique.
244. Id.
245. MODEL NOTARY ACT, § 2-103 (Nat'l Notary Ass'n 1984); see supra note 70 and accompanying text for a listing of bond requirements for notaries public by state.
246. See supra notes 186-95 and accompanying text for a discussion of the inadequacies of bonds as coverage for notaries public.
247. Id.
tice, and home owners insurance. Finally, insurance rates for notaries should be reasonable considering that insurance companies would be able to spread the costs among a 4.5 million person risk pool.

C. Education and Testing

For a person to qualify for a notarial commission, he or she shall satisfactorily complete a course of study in notary ethics, law, and practice. The [commissioning official] shall prescribe and approve that course of study and shall establish regulations to implement this provision. The course of study shall consist of at least [six] hours of classroom instruction on notary ethics, law, and practice. [Commissioning official] approved universities and colleges, including community colleges, shall administer the instruction throughout the state. Upon the completion of the course of study, applicants for a notarial commission shall take and pass a written examination prepared and administered with the approval of the [commissioning official].

Notaries seeking to renew their commissions, must complete [three] hours of continuing education on notary ethics, law, and practice. Prior to their re-commissioning, notaries shall take and pass a test, prepared and administered with the approval of the [commissioning official].

This section, based in part on the North Carolina Notary Act, sets up an education, testing, and continuing education requirement for commissioned notaries public. The proposed Act, however, is unlike the North Carolina act in several ways. First, the North Carolina act does not require a licensed member of the Bar of North Carolina to take the notarial course. The proposed act

250. See Closen, supra note 3, at A24 (stating that there are 4.5 million notaries in the United States).
252. Id.
253. Id.
254. Id.
255. See MODEL NOTARY ACT, § 2-203 (Nat'l Notary Ass'n 1984) (obligating applicants for a notarial commission first to pass a written exam).
257. See id. (making an exception for members of the North Carolina bar). Members of the North Carolina Bar, unlike other North Carolina residents, do not have to participate in the otherwise mandatory class needed to become a notary. Id.
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does not make this exception for members of the Bar. Lawyers need notarial education as much as non-lawyers. Additionally, the North Carolina act, unlike the proposed act, does not require testing.

Testing is an important element of the educational process. The provisions in the proposal allow the states to determine the details of their testing program. While the proposed provisions suggest a three-hour time period for education which is the equivalent of a half-day of work, in the alternative states could require an eight-hour time period which would equal a full day of work. In either case, states should choose an amount which is not meaningless. Further, states should require testing and education each time the notary, or potential notary, is commissioned. The NNA's current Act requires that "[e]very application for a notarial commission must . . . include . . . an examination written by the applicant." The application "tests the applicant's knowledge of notarial laws and procedures . . .." However, the NNA's Act, unlike the proposed act, does not require classroom instruction.

CONCLUSION

As the United States Supreme Court has cautioned, "[t]o be sure, considerable damage could result from the negligent or dishonest performance of a notary's duties." A 1996 appellate case illustrates the Supreme Court's predilection. The tale of 93-year-old Adeline Fuoco is a shocking example of the way notaries sometimes abuse their power. Adeline had purportedly transferred a parcel of real estate to her son Joseph. At the time of the trans-

258. Closen, supra note 3, at A23. Some lawyers misuse notaries by having the notary notarize documents signed while not in his or her presence.
261. Id.
262. Id.
263. Bernal v. Fainter, 467 U.S. 216, 225 (1984). The plaintiff in Bernal was a citizen of Mexico residing in Texas. Id. at 218. Texas denied the plaintiff's application to become a notary because the plaintiff was not a United States citizen and therefore did not satisfy a requirement in the Texas notary statute. Id. The United States Supreme Court struck down the statute as violative of the Fourteenth Amendment. Id. at 228.
265. Id.
266. Id. Joseph was one of Adeline's 10 children. Id. Joseph's only heir, his daughter Kelley, was one of the parties to bring this suit after Adeline died. Id. The trial court granted a motion to dismiss Kelley as the plaintiff. Id. The appellate court held that the dismissal of Kelley was improper and remanded this case for further proceedings. Id. at 383.
fer, Adeline was legally blind, hospitalized, and "confused." 267 Adeline never signed the deed which purported to transfer the parcel of real estate to her son. 268 Nor did she ask anyone else to sign the deed for her. 269 Yet, a notary attested the deed. 270 The notary who attested the deed had no credible evidence to demonstrate that the signature was Adeline’s or that Adeline authorized the signature. 271 The notarization occurred outside of Adeline’s hospital room. 272 At probate, the trial judge declared the deed null and void. 273

While Adeline’s story is tragic and, as we have seen not uncommon, all hope is not lost. If better procedures are put in place, tales like Adeline’s would be less likely to occur. Moreover, notarizations may deserve the level of trust and confidence they once held.

Some hope for the future of notarizations is shown in at least two ways: the advent of digital signature law 274 and the NNA’s Notary Code of Ethics. 275 Several states already have passed digital (or electronic) signature legislation. 276 These laws will guide the future of cybernotarization, or notarizing transactions which occur electronically between two computer users. 277 These notarizations may one day supersede the ink seal as the ink seal has replaced the embosser and the embosser has supplanted wax. 278 Some advantages of cybernotarization include the speed and convenience with which a notary can notarize a transaction, the decrease or eradication of paper use leading to a reduction in the amount of storage space and the conservation of our forests, and more efficiency generally in the notarization process. 279

The cybernotary will be in a position of heightened responsibility and consequently prestige. These notaries must command the technological knowledge and experience required to perform

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267. Id. at 381.
268. Id.
269. Id.
271. Id.
272. Id.
273. Id.
275. NOTARY PUBLIC CODE OF ETHICS (Nat’l Notary Ass’n, Preliminary Draft 1997).
277. Closen & Richards, supra note 19, at 729.
278. See supra notes 17-20 and accompanying text for a discussion of the evolution of the notarial seal. See Closen & Richards, supra note 19, at 715 (stating that the existence of cybernotaries will be common within a few years).
computerized notarizations unlike today's notaries who presumably only have to know how to operate a rubber stamp. Similarly, cybernotaries must possess the integrity necessary to conduct online interstate and international transactions which, because of their nature, are usually of greater value and consequence than every-day transactions. For these reasons, there is a possibility that only lawyers should fill the role of the cybernotary.

In addition to the future effect cybernotaries will have on the notary public's status in society, the NNA is working on a more immediate means by which to advance respect for notaries. It is producing a Notary Code of Ethics (Code). The NNA completed a preliminary draft of the Code on March 1, 1997. The NNA based the Code in part on principles of the notary as a public servant, an impartial witness, a ministerial officer, a fiduciary, and a keeper of records. Because notary actions affect the rights of citizens under both criminal and civil law, it is extremely important that notaries act according to ethical standards. The Code will supplement development of the standard of care for notaries where statutes and regulations presently leave off.

While society has utilized the notary since the time of the Romans, this is the first time that an organization has produced such an extensive notarial code. The Code is an important and dramatic change for the notary in his or her quest for obtaining respect as a professional. Hopefully the advent of cybernotary, the Code and this Comment's suggested changes to the Model Notary Act will be instruments that shape the image of the notary public to one that again deserves the United States Supreme Court's description of them in 1883: "officers recognized by the commercial law of the world."

\[\text{\hyperref[280]{280. \textit{See id. at 740-41}} \text{(discussing the roles of a cybernotary)}}\]
\[\text{\hyperref[281]{281. \textit{Tsuchiya, supra note 15, at 18.}}}\]
\[\text{\hyperref[282]{282. \textit{NOTARY PUBLIC CODE OF ETHICS}} \text{(Nat'l Notary Ass'n, Preliminary Draft 1997)}}\]
\[\text{\hyperref[283]{283. \textit{Id.}}}\]
\[\text{\hyperref[284]{284. \textit{Id.}}}\]
\[\text{\hyperref[285]{285. \textit{Id.}}}\]
\[\text{\hyperref[286]{286. \textit{See Closen & Dixon, supra note 28, at 873}} \text{(stating that the notary has existed from the time of the Roman Empire)}}\]
\[\text{\hyperref[287]{287. \textit{Compare NOTARY PUBLIC CODE OF ETHICS}} \text{(Nat'l Notary Ass'n, Preliminary Draft 1997) with CODE OF ETHICS}} \text{(Am. Society of Notaries, Adopted May 4, 1980)}}\]
\[\text{\hyperref[288]{288. \textit{Pierce v. Indseth, 106 U.S. 546, 547 (1883)}}\]