

# Immigration Law TODAY

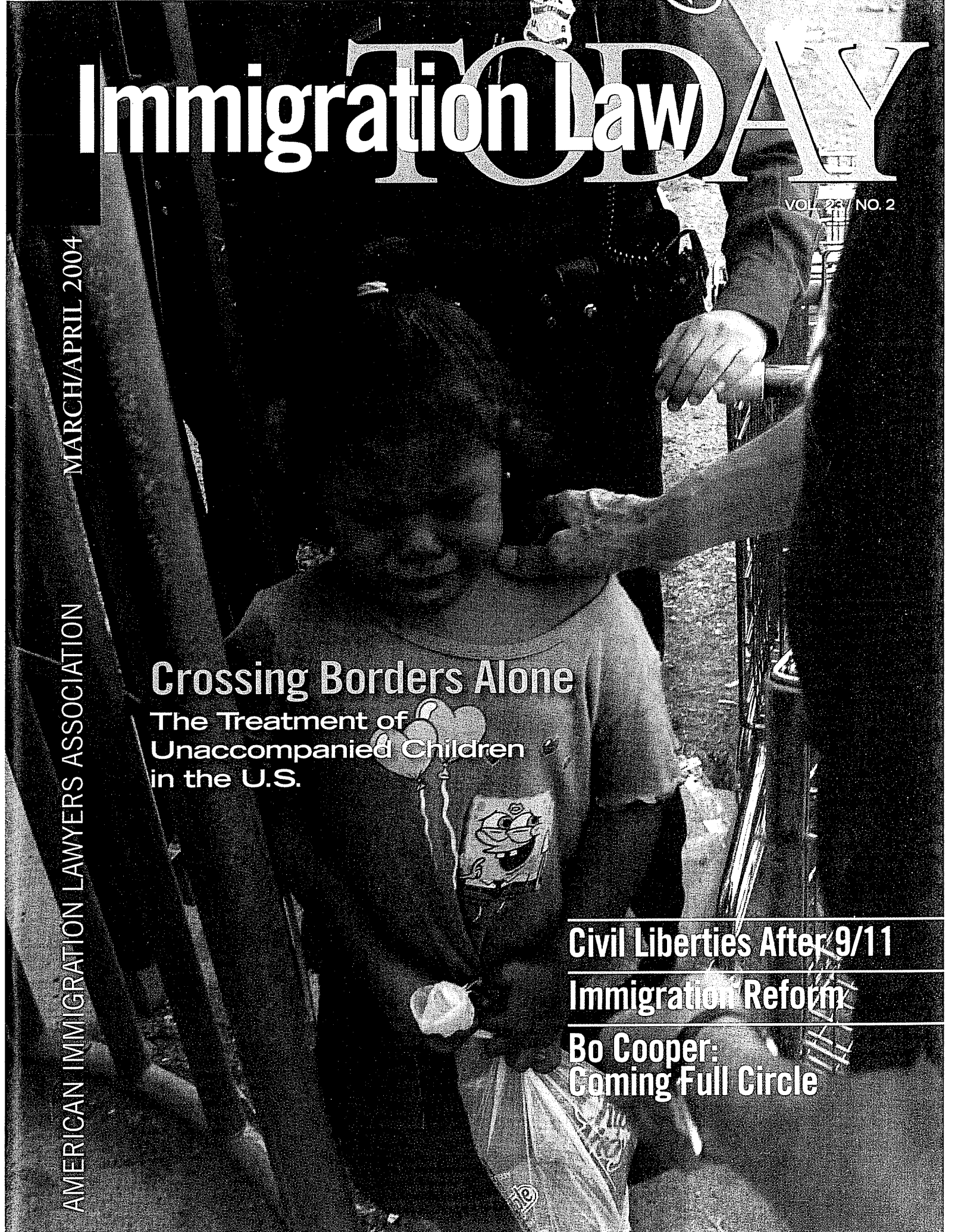
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AMERICAN IMMIGRATION LAWYERS ASSOCIATION

## Crossing Borders Alone The Treatment of Unaccompanied Children in the U.S.

Civil Liberties After 9/11  
Immigration Reform  
Bo Cooper:  
Coming Full Circle



## The Use of Civil Law Notaries In the Immigration Law Arena

**W**HILE ALMOST EVERYONE KNOWS about notaries public, and most immigration lawyers are familiar with the concept of nonlawyer notarios, few are aware of the lawyer qua “civil law notary.” Statutorily established in the United States only within the last decade (yet with a centuries-old history), the civil law notary, in fact, can be quite useful to the immigration practitioner.

In 1997, the Florida Legislature passed the first statute in the United States establishing civil law notaries. In that same year, Alabama’s first civil law notarial statute became law. Since then, Alabama is believed to have the model code for states that do not yet have civil law notarial statutes. (See *Florida Statutes*, Title X, Ch. 118; *Alabama Code*, §36-20-50, *et seq.*)

Legislative intent in both states was to create the position of civil law notary and to give the power of appointment to the Secretary of State to appoint experienced attorneys to serve in that capacity. Such officeholders are known as *Notario Público* in Mexico, *Notaire* in France, *Notar* in Germany, and “Latin notary” in many developing nations.

### The Meaning of Civil Law Notary

Rather than simply serving as a witness to the signing of documents or verifying the identity of the signatory, as a notary public would do, a civil law notary has the power to issue “authentic acts.” An authentic act is, effectively, a legal opinion regarding the facts set forth in and surrounding the document—not merely the signatures. This authentic act is entitled to certain evidentiary presumptions that render it useful to the parties in establishing facts and in “armor-plating” transactions.

For example, a will executed as an authentic act serves as confirmation by the civil law notary that: (a) the terms of the will are legal and will be given full force and effect by the state; (b) it was executed prop-

erly; (c) the testator fully understood what he or she was signing; and (d) the testator had the requisite testamentary capacity.

Similarly, an agreement between two corporations—such as a merger and acquisition or a commercial transaction—executed as an authentic act, will not only (a) establish the agreement between the parties, but also establish that (b) the agreement is lawful and legally binding; (c) each corporation is in good standing, whether domiciled in the state of execution, another state, or abroad; (d) the corporate officers executing the agreement have the legal capacity to enter into the agreement; and (e) the parties have presented sufficient evidence that they have the financial means to pursue and accomplish the terms of the agreement.

### ■ Matters in Need of Authentication

Although civil law notaries guard against authenticating matters in controversy, they may certify facts not in controversy or be called upon by the parties or a court to issue findings of fact with regard to particular matters in controversy. They also may authenticate documents for foreign nationals in light of increasing scrutiny by federal officials, both here and abroad.

*Example:* An AILA member contacts a civil law notary in Florida about a matter involving a client seeking an L visa at a U.S. consulate. The consular officer has rejected financial documents provided by the client’s Florida firm because he or she is suspicious of the accounting method. A Florida civil law notary may be called upon

to issue “general minutes”—which is a document that would contain reliable, legal opinion, perhaps relying upon expert testimony—concerning acceptable accounting practices in Florida and provide certified copies to the immigration law practitioner to submit to the consular officer.

Civil law notaries in other nations enjoy a well-earned reputation for objectivity, neutrality, legal experience, and skill. In Spain, for example, one who wishes to challenge the factual certification by a civil law notary must file a separate declaratory action in court to have it set aside.

### ■ Appointment Procedures

Civil law notaries, unlike notaries public, are appointed subject to good behavior. Under rules promulgated in both Florida and Alabama, their appointments may be suspended or revoked. They represent the transaction and the parties, and all applicants for appointment to the office of civil law notary in both Florida and Alabama must be practicing attorneys with not less than five years of experience. Applicants for appointment as civil law notaries are required to receive special training, have annual reporting requirements, are regulated by both the Secretary of State and state bar association, and are subject to discipline, sanctions, or expulsion from the rolls of civil law notaries for improper behavior.

Civil law notaries, while new and unique to Florida and Alabama, represent an international and historical tradition of nonadversarial representation, combined with a recording function. The civil law notary owes a duty to the transaction, rather than to a party. He or she provides services to “interested parties” rather than to “clients.” As a result of this distinctive mode of legal representation, the Latin no-

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tary is a model of impartial, multi-party counseling. In the United States, in contrast, the notary public developed a purely clerical character, which remains today.

### History of Civil Law Notaries

This nonadversarial, impartial mode of representation traces its history to ancient Rome.<sup>1</sup> Roman *tabelliones* were private individuals who wrote and kept wills and other documents. With the decline of the Roman Empire came the decline of the Roman *tabelliones*. During the 10th through

12th centuries, medieval notaries gradually returned to the Roman model of the *tabellio*. Eventually, the Germanic peoples developed a semblance of the modern-day notary, who kept the authentication function, but not as a public official but as a private legal professional.

The development of the modern notariat (a generic term for the college of civil law notaries) began in earnest in 1228 in Bologna, Italy, with the opening of the Scuola di Notariato. The most influential notary of the period was Rolandino, who

published his *Summa Artis Notariae*, in 1234. Italy, France, and Spain have had notarial laws since the 13th century.

### Today's Notary

The contemporary Latin notary is defined by the International Union of the Latin Notariat (UINL) as "a legal professional specifically designated to attest the acts and contracts that persons celebrate or perform, to draft the documents which formalize the latter, and to give legal advice to those who require the services of his or her office." See [www.uinl.org](http://www.uinl.org).

Civil law notaries in Florida<sup>2</sup> and Alabama,<sup>3</sup> like their historical forebears in other countries, maintain each and every authentic act they have ever issued, including the exhibits appended to it, in their "protocol." The civil law notary's →

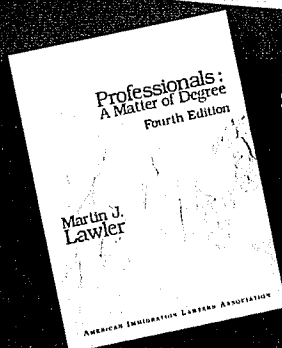
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The immediate need for civil law notaries is seen in cross-border and international legal transactions for everything from domestic relations to all manner of commercial transactions.

protocol must be maintained in a fire-proof location. It must contain an original or certified photocopy of each of his or her authentic acts in date sequence, along with originals or certified photocopies of any supporting or related documents. The protocol must contain or be accompanied by an index to its contents in date order. Each entry is required to identify the party or parties who paid a fee to the notary, and the amount of the fee.

State regulations also make provision for the transfer of the protocol of a civil law notary to the custody of another civil

law notary in the event of such notary's suspension, cessation of practice as a civil law notary, death, or disability.<sup>4</sup>

While the civil law notary (or Latin notary) is used in many countries as the only authorized entity to conduct real estate transactions and record them, this is inapplicable to the United States because of the existence of government-run recording systems and private title insurance.

#### Within the Immigration Arena

The immediate need for civil law notaries is seen in cross-border and international

legal transactions for everything from domestic relations to all manner of commercial transactions. In the 70 other members of the UINL, the drafting and execution of contracts, corporate resolutions, releases, powers of attorney, commercial transactions, and a host of other business documentation as authentic acts provide counsel for the foreign party to the transaction with an increased level of comfort in that they will be receiving documentation from the other side of the transaction in the United States from an official in whom they can have great confidence, and in forms that they readily recognize, appreciate, and utilize within the format of their own legal systems.

Similarly, various aspects of family law will be simplified. Where pre- and post-nuptial agreements, marital property settlements, proof of paternity, marriage,

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and adoption, and like matters are memorialized in authentic acts, they should be readily recognized in UINL member nations and given full faith and credit by their respective legal systems.

In UINL member countries, the civil law notary has been, for centuries, an efficient, neutral "counsel to the transaction," rather than counsel to one party as against another. The adoption of this system, with some revisions and recognition of previous methods of handling legal transactions, in Florida and Alabama will not only promote better cross-cultural understanding and efficiency on the international business level, but may also serve as a new paradigm for neutral and less costly business and contract counseling in Florida and Alabama.

The UINL maintains a high level of interest in the efforts of Florida, Alabama,

and a few other states, to create a Civil Law Notariat in this country. The National Association of Civil Law Notaries (NACLN) was formed as an umbrella organization for the Civil Law Notariat in this country. See [www.nacln.org](http://www.nacln.org). As such, NACLN has been admitted to the UINL as an observer—the first step toward full membership.

UINL officers from a variety of UINL member nations have attended civil law notarial training in Florida and have shown a keen interest in developing an American tradition of the Civil Law Notariat in the United States.

While civil law notaries were established in the late 1990s to meet the increasing demands of foreign parties to domestic and international business transactions, we may look forward to expansion of this concept in state domestic practice as well.

**Boyd F. Campbell** practices private international law and immigration law in Montgomery, and is a director of NACLN and of the Alabama Association of Civil Law Notaries. **Ronald G. Meiwirth** practices bankruptcy and corporate reorganization law and is chairman of NACLN and a director of the Florida Association of Civil Law Notaries.


*Articles in ILT do not necessarily reflect the views of the American Immigration Lawyers Association.*

### Notes

<sup>1</sup>Malavet, Pedro A., *Counsel for the Situation: The Latin Notary, a Historical and Comparative Model*, 19 Hastings Intl. And Compa. L. Rev., #3, pp. 389, 392 (1996).

<sup>2</sup>Florida Administrative Code, Chapter 1C-18.001, *et seq.*

<sup>3</sup>Alabama Administrative Code, Chapter 820-6-1-.01, *et seq.*

<sup>4</sup>Florida Administrative Code, Chapter 1C-18.001(4)(c); Alabama Administrative Code, Chapter 820-6-1-.02(3). 

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