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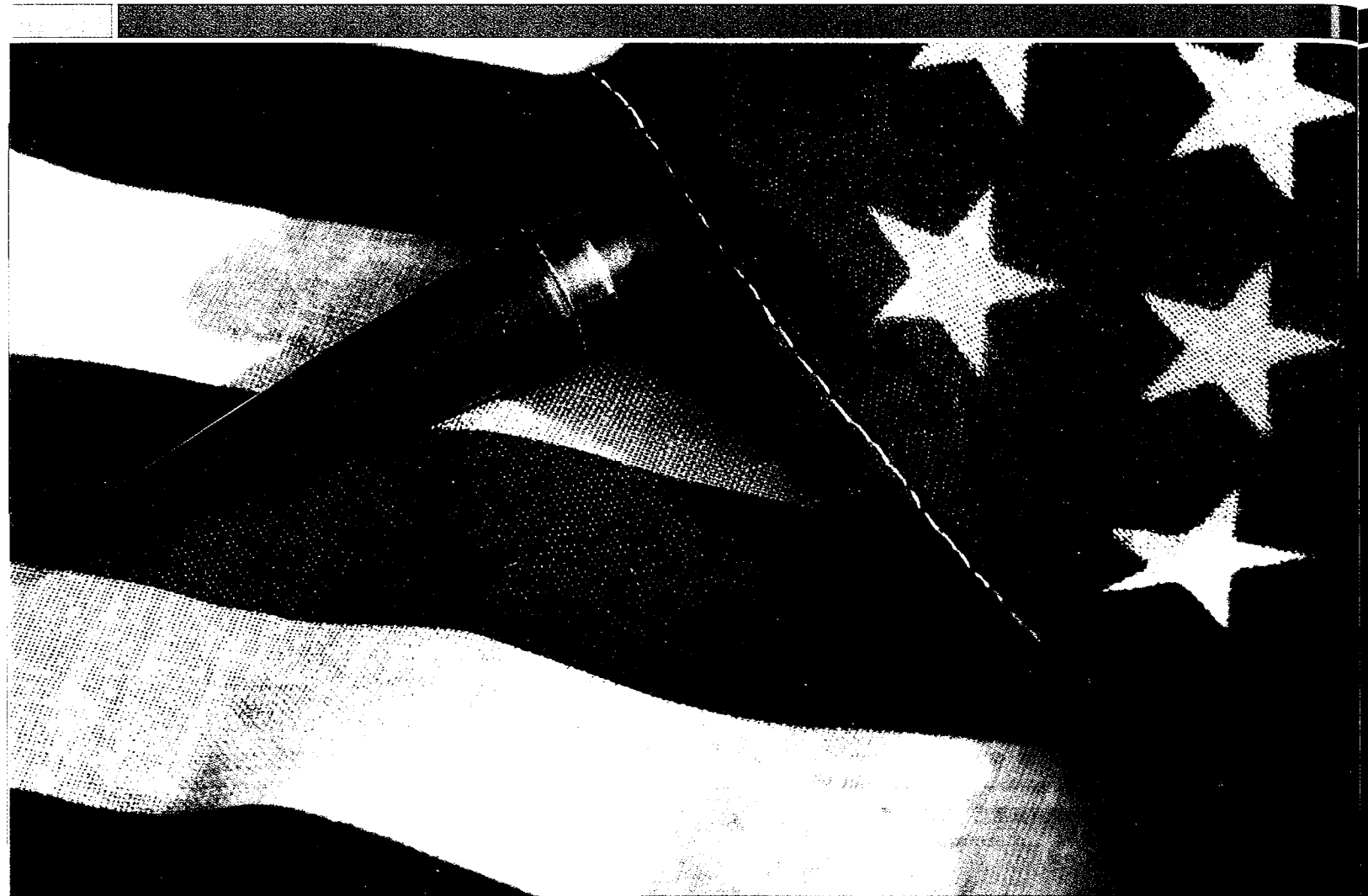
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LEGAL PIONEERS

A NEW MODEL OF NOTARIES IS MAKING INROADS IN THE UNITED STATES: THE CIVIL LAW NOTARY

BY SUSAN KELLY

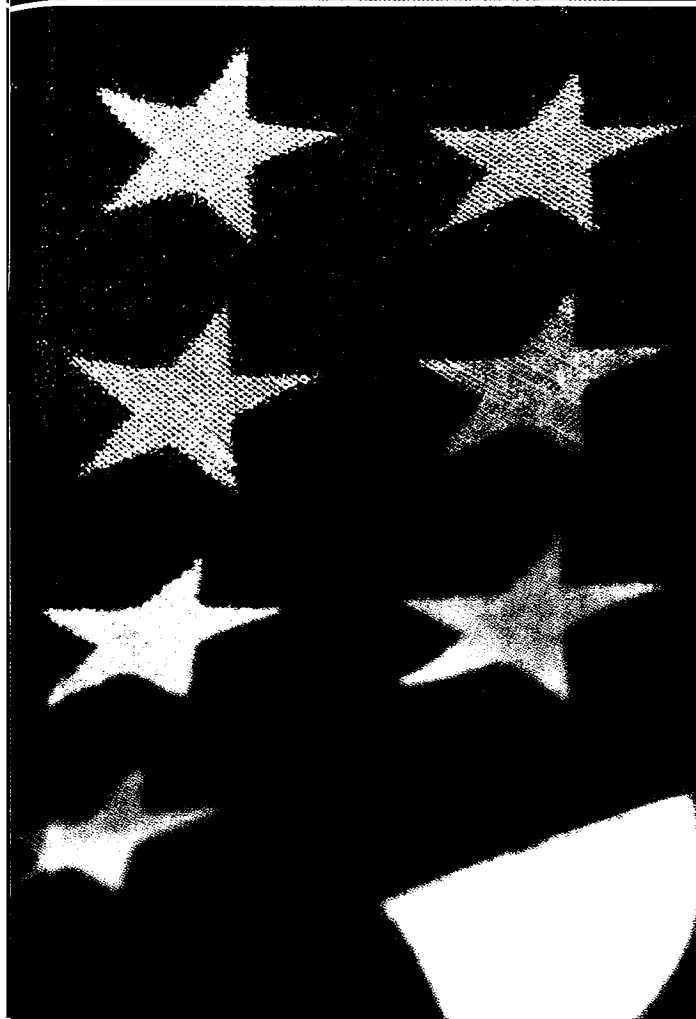
Boyd Campbell's office phone is ringing off the hook. However, the civil law notary figures that 99 per cent of the calls are for the non-notarial side of his legal practice. An attorney based in Montgomery, Alabama, he is also a civil law notary, appointed in 2001. "At this point, I spend more time explaining what a civil law notary is to my colleagues and clients than I do actually being one," he laughs.

Most of Canada and the United States operate in the Common Law, or Anglo-American tradition. In the United States "notary" more often means notary public, an official empowered mainly to act as a witness to the signing of legal documents. (See sidebar: Apples and Oranges?)

According to the National Association of Civil Law Notaries, however, there are currently 18 accredited civil law notaries in Alabama, with close to 100 in Florida. And the profession is now struggling to take root in several other states. "We're pioneers of sorts," explains Campbell of himself and his fellow civil law notaries in the U.S., "and pioneers historically don't necessarily flourish immediately or reap huge benefits from their efforts," he says.

WHEN DILIGENCE IS REQUIRED

Today, civil law notaries in the U.S. are making new inroads as businesspeople, especially those involved in international commerce with countries under civil law, become aware of the valuable services civil law notaries provide. In fact,



efforts are now underway in California, Texas, New Jersey, Illinois, and Washington, D.C., to introduce civil law notaries to those states.

"The civil law notary remains an optional feature in our legal system, because today there is such enormous pressure in business to get things done quickly and cheaply," says Montgomery-based attorney and civil law notary Charles Grainger, the former General Counsel to the Office of the Secretary of State for Alabama in 2003. "This is at odds with the civil law notary function, which is to ensure transactions that are thoroughly researched and properly executed," he explains.

So why are civil law notaries even necessary in the U.S.? There are times when absolute diligence is required in a legal transaction.

A civil law notary is highly involved in the authentication process of legal documents. When he or she puts the stamp on a document like a deed of sale for a home, the notary attests that the people signing it are who they say they are, and that the contents comply with the laws of the jurisdiction.

"We feel there is value to what we create, and in time the office of the civil law notary will become an intrinsic part of this blended [civil and common law] system we're trying to create in this country."

- Charles Grainger

"The civil law notary is obligated, and in fact liable, for the instruments he performs," says Grainger, "and so he has an obligation to be much more thorough. Which means it becomes a lengthier and more costly process."

There are benefits, however, to be derived from this greater diligence on the part of civil law notaries — most importantly, the security of knowing the documents have greater legal certainty, which is what many in the legal profession call "armour-plated transactions".

Where the civil law notaries come out ahead, according to Grainger, is in cases in which the economic benefits of avoiding litigation and other risks in the transaction outweigh the costs of having a civil law notary oversee it. "In making it an optional feature, essentially the civil law notary office must compete with the option that people have of not employing us," Grainger says. "But we feel there is value to what we create, and in time the office of the civil law notary will become an intrinsic part of this blended [civil and common law] system we're trying to create in this country."

"Although in the U.S. people seem comfortable with a lawyer handling every step of a document's authentication, in other countries they are not,"

- Todd Kocourek

INTERNATIONAL TRADE

The boom in international trade has also increased the advantages of using civil law notaries says Tallahassee, Florida lawyer and civil law notary Todd Kocourek. In addition to being president and CEO of Florida First Capital Finance Corporation, Kocourek actively works to promote his chosen profession as a trustee of the National Association of Civil Law Notaries.

"Although in the U.S. people seem comfortable with a lawyer handling every step of a document's authentication, in other countries they are not," he says. "This is because they are used to the civil law notary handling that function."

More importantly, civil law notaries undertake their duties as impartial third parties, unlike attorneys who often must put the ►

► interests of their clients first. "A civil law notary is first, last and always a transactionalist," he says. "They are not courtroom litigators, but rather specialists in executing correct transactions for their clients. As notaries, they insure that activities and legal undertakings of the client are as correct and secure as possible."



that Florida's population is also considerably larger than Alabama's, according to Kocourek. "We also undertake more and a wider range of international operations," he said. "Which makes our function more easily understood and appreciated."

Florida continues to take the lead when it comes to the number of civil law notaries in practice in the U.S. In December 1998, Florida issued its first-ever civil law notary commission. By 2000 there were 63 officially recognized civil law notaries. By 2005, it counted nearly 100 civil law notaries — more than five times as many civil law notaries than did Alabama, the only other state to recognize the office. But it should be noted

The signing of the North American Free Trade Agreement was only the beginning of what could be an increased need for the civil law notary. As barriers to trade continue to disappear, particularly in a North-South direction, Kocourek believes that the role of the civil law notary will increase in importance.

"With a large Latin American population, we have very strong trade links with countries in South America and the Caribbean," he says. "But there is also an historic tie with Quebec that is very important to us."

As barriers to trade continue to disappear, particularly in a North-South direction, the role of the civil law notary will increase in importance.

WHAT IT TAKES

Does it take a special kind of person to be a civil law notary? Yes, says Kocourek: "At the present time, all civil law notaries in Florida and Alabama must pass the Bar first. After a minimum of five years of legal practice, they then undergo training and sit special state exams to become civil law notaries, the failure rate for which, in Florida at least, is much higher than for lawyers." ©

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APPLES AND ORANGES?

IN THE UNITED STATES, A CIVIL LAW NOTARY SHOULD NEVER BE CONFUSED WITH A NOTARY PUBLIC.

Most of the United States operates under the common law system. Under this system, the term "notary" means "notary public" to most Americans. A notary public is not required to have the legal training nor is granted the legal powers that a civil law notary possesses. Rather, a notary public is restricted to witness oaths or affirmations from witnesses, usually in connection with legal documents.

Some confusion reigns in states with large Hispanic populations, where efforts have been made to prohibit a notary public from listing himself as Notario Publico. This is because in many Spanish-speaking countries, which mostly follow the civil law system, the title refers to a civil law notary. Some immigrants have been duped by dishonest notaries public. There have been cases of "bad apples" in the profession using the title Notario Publico to suggest that they possess greater powers than they actually do. For more than 15 years, California has had such legislation in place to thwart this practice, and now Georgia and several other states do as well.