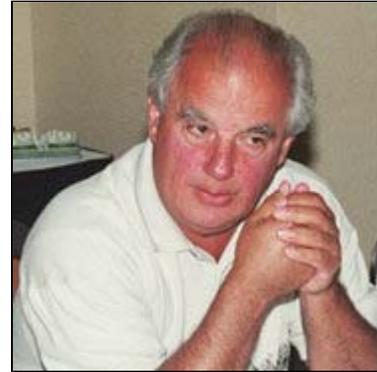


Presidents Message

The Docket Sheet
January-February 2006

John Perez
President

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The purpose of this report is to render my assessment, as NAPPS President, of our current involvement in international relations, and to make suggestions to the membership for future activity.

Despite several articles published in TDS,¹ numerous board decision regarding this topic, as well as extensive reports to the NAPPS membership by the Chair of the International Relations Committee and others², there remains a lack of understanding among a portion of the membership as to what our role in international relations is, and what are the benefits to the membership as a whole in having expended approximately \$88,000 since 1996 for international activity.³ These expenditures may well exceed \$100,000 in 2006 as a result of our commitment to attend and host a reception at the upcoming UIHJ conference in Washington, D.C.⁴

In an attempt to provide answers to these questions, I have identified five areas of possible involvement by private process servers in international litigation. In this report, I will briefly examine those areas to see if private process servers can realistically participate in them sufficiently enough to warrant continued allocation of manpower and financial resources by this association. These five areas are (1) privatization of service of foreign process within the United States; (2) service of U.S. process in foreign countries; (3) evidence taking in the United States in aid of foreign litigation (4) enforcement of foreign judgments in the United States and; (5) privatization of judgment enforcement in the United States.

1 See Appendix I

2 See Appendix II

3 See Appendix III

4 See UIHJ Permanent Council Report in the November/December 2005 issue of TDS, page 24.

Privatization of Service of Foreign Process within the United States.

As reported in the November/December, 2005 issue of TDS, one of the joint goals of the UIHJ and NAPPS was to privatize the service of international process that was ineffectively and inefficiently handled by the United States Department of Justice (DOJ) as the US Central Authority for such purposes. NAPPS embarked upon an effort to have the DOJ delegate that responsibility to a private contractor. After much work and expense, the DOJ acquiesced and requested bids from the public. Although NAPPS had hoped to participate in that process as a successful bidder, that was not to be. Another NAPPS member won the bid and currently oversees the service of international process within the United States. It is estimated that annual revenues derived from this activity are at a

minimum \$600,000 and increasing, all of which now inures to the benefit of private process servers. This would not have been possible without the NAPPS initiative.

That having been accomplished, there appears to be no further role for NAPPS to engage in other than to possibly await the rebidding of the DOJ contract. Should that occur in the future, I am of the opinion that serious consideration should be given to whether this is a role that the NAPPS bylaws, or our non-profit corporate status, permit, or whether we should be engaged in this at all.

Service of U.S. Process in Foreign Countries

There are several companies that specialize in the service of process originating in the United States and served in foreign countries. Some of these companies have employees that are members of NAPPS. This type of work is highly specialized. Most NAPPS members are not sufficiently experienced nor care to handle such work. In my opinion, NAPPS members would be best served by being educated on the general nature and complexity of service of process in foreign countries to the extent that they can advise their clients and refer the work to competent NAPPS members. This education can be provided to the membership through seminars at the NAPPS Annual Conferences and Educational Seminars as well as publications in The Docket Sheet. Those members interested in further pursuing this type of work can do so on their own initiative.

Evidence Taking in the United States in Aid of Foreign Litigation

Evidence taking in the United States in aid of foreign litigation is largely the function of attorneys. In the international arena, evidence taking is impacted by three factors; the rules of the originating foreign state, the rules of any treaty or bilateral agreement that might be in effect, and the rules of the destination (discovery) state. In many countries, there are domestic rules that require the foreign litigant to pass through the treaty channel and require the evidence to be taken by a US court, or even require that evidence be taken by a foreign consular officer.

Although 28 U.S.C. Section 1782, authorizes a United States District Court, at the request of a "foreign or international tribunal or upon the application of any interested person" to order discovery for "use in a proceeding in a foreign or international tribunal", this procedure is utilized in the minority due to the above considerations. When utilized, as with most legal proceedings, it is necessary to retain legal counsel to file an application with the court.

Applications for discovery orders not only involve attorneys but also, in many instances, require the services of foreign language translators to convert documents into English. A private process server's role in this area is limited to the service of a federal subpoena that may result from a discovery order being granted. Service of that subpoena would be no different than service of subpoenas in domestic federal civil actions.

Enforcement of Foreign Judgments in the United States.

Enforcement of foreign judgments in the United States is governed by the laws of the states, not the federal government. Under U.S. law, an individual seeking to enforce a foreign judgment, decree or order in this country must file suit before a competent state court. The court will determine whether to give effect to the foreign judgment. Here again, as with most legal proceedings, it is necessary to retain legal counsel to conduct the suit.

Enforcement of foreign judgments in the United States involves a two-step Process. First, a foreign judgment must be recognized by a state court of competent jurisdiction. Once recognized, the foreign judgment may be enforced in the same manner as the judgment of a sister US state which is entitled to full faith and credit pursuant to US Constitution and, where adopted, the Uniform Enforcement of Foreign Judgments Act or the Uniform

Foreign Money-Judgments Recognition Act.⁵

Once a foreign judgment is recognized by a competent state court, the second phase of enforcing that judgment typically involves sheriffs, as well as constables and state marshals, in the jurisdictions that have them. With the exception of a few states, private process servers throughout the United States do not serve nor execute enforceable process.

Privatization of Judgment Enforcement in the United States.

One of the goals of the UIHJ is to seek the establishment of the office of “judicial officer” in as many jurisdictions as possible for the purpose of efficiently serving process and enforcing judgments.⁶ Ideally, the UIHJ would like to see the role of judicial officer instituted in

⁵See US Dept. of State web site

http://travel.state.gov/law/info/judicial/judicial_691.html

⁶See UIHJ web site www.uihj.com

“Judicial officers”, in the context used by the UIHJ, are a hybrid of attorneys, or persons with equal or nearly equal levels of legal education, who are empowered by their local laws to enforce judgments, that is to say, execute writs, seize and sell property for the satisfaction of judgments. These are private individuals who derive their income from fees charged and commissions taken on the sale of property.⁷ These judicial officers are also known as “Huissiers”.

The profession of huissier is hard to define in US legal terms. It is a quasi-private, but at the same time quasi-public (“ministerial”) position that fuses the functions of sheriff, court bailiff and marshal. Huissiers serve process and seize and liquidate property to satisfy judgments. Their precise duties vary significantly by country. In some countries they are magistrates; while in others, they are the equivalent of sheriffs. Not all are attorneys. In Europe, there is considerable prestige associated with the function. In general, there are a limited number of huissiers per European jurisdiction and the huissier’s lifetime appointment is confirmed by a local judicial authority, such as a high court or a ministry of justice.

Privatization of judgment enforcement in United States through what the UIHJ refers to as “judicial officers” is highly unlikely and would require significant revisions in the laws of the several states unless such changes were accomplished by international treaty approved by the United States Senate and executed by the President. If such a treaty was entered into, the treaty would become the “law of the land” applicable to all states. It is worthy to note, however, that the profession or function of the “judicial officer” has not been addressed in any treaty negotiation to date.

There is currently an international treaty being discussed concerning enforcement of judgments in foreign countries. The focus of current treaty negotiations, however, is not how foreign judgments will be executed or who will execute them but rather whether foreign judgments will be recognized and domesticated in a practical, efficient manner. In Europe, mutual recognition of court judgments has always been facilitated by the similarity between European civil law jurisdictions. The framework for such enforcement was the Lugano and Brussels Conventions and now, the European Union regulations. The United States is not a party to those Conventions, or to the European Union.

US civil actions, and the judgments resulting from them, encompass a number of

disturbing aspects, disturbing to the Europeans, at least. These include anti-trust and class action lawsuits, lawsuits rendering punitive rather than actual damages, and treble damages. As a result, US judgments are often denied recognition abroad and the US has been put at a disadvantage with respect to international trade.

⁷ Huissers, or Bailiffs, in the Province of Quebec, Canada are regulated by tariff and do not receive commissions as part of their compensation.

The US State Department has worked to resolve this enforcement issue for years. It attempted to broker an agreement with the United Kingdom back in the '70's, but discussions broke down over the issue of high tort awards being handed down by US courts. In 1996, the State Dept asked the Hague Conference to step in and draft a Convention on the Recognition and Enforcement of Foreign Judgments. Negotiations over the wording on this treaty have been continuing for at least ten years but there is little headway being made. By way of interim compromise, the Convention has now mutated into the "Draft Hague Convention on Exclusive Choice of Court Agreements."

It thus appears that if an enforcement treaty were to be successfully put into place, it would unlikely define which judicial authority was empowered to execute the foreign judgment. That would remain a question for domestic law. If NAPPS were to choose to advance the UIHJ agenda with regard to the institution of enforcement or judicial officers in the US, that work would have to take place on a state level, with revisions to local laws, rather than on a federal or international level. That would be a formidable undertaking involving vast amounts financial, legal and political resources with very unlikely results.

Conclusion and Recommendations

It thus appears that the role of private process servers in the foregoing five areas involving international litigation is, at best, very limited. Privatization of service of foreign process in the US has already been accomplished. Service of US process in foreign countries is highly specialized limited to a few companies, some of whom employ NAPPS members. Securing federal court assistance in evidence taking in aid of foreign litigation is largely the function of attorneys, as is the recognition of foreign judgments in the various state courts. Lastly, the privatization of judgment enforcement in the United States is not a realistic endeavor.

With such limited potential for private process servers, why should this association continue expending resources that are unlikely to benefit the general membership? Why not abandon our involvement in international activities and concentrate, instead, on domestic issues? Although I have considered these thoughts, I see several reasons for the continuation of our involvement in international affairs tempered by a re-analysis of what our international policy or agenda should be.

First, our bylaws provide that this association engage in activities for the purpose of "[i]mproving relations between the industry and the legal community-attorneys, judges clerks and officers of the court and the general public, both national and international". As officers and directors of this association, we are charged with the responsibility of upholding our bylaws. The extent to which emphasis is placed on one aspect of our responsibilities over another is left to the discretion of the board of directors. Previous boards have steadfastly supported our involvement in international activities. Should the membership wish for the current or future boards to take a different course of action, their collective desire can and should be expressed at the board meetings and annual conferences, even to the extent of proposing bylaws amendments regarding our international activities.

Second, this association is comprised of process servers within and outside of the United

States. Currently, we have 49 members from 10 foreign countries who are NAPPS members. The interests and concerns of those members, especially in the exchange and service of process between our countries, are of utmost importance. International dialogue should continue.

Third, the importance of having a voice in as many forums as possible that may affect process servers should not be discounted. We live in a rapidly changing global environment, an environment made smaller and brought closer to us by the advent of the Internet. International commerce, and the litigation that inevitably results from it, affects litigants and court decisions in the United States. The policies and laws affecting service of process established in other countries can and, undoubtedly, will affect policies and laws in this country. We need to be aware of these and, wherever possible, affect change for the benefit of private process servers. In my opinion, we need to be at the conference tables to participate in the discussions that may affect us. Withdrawing from international participation will not allow us to be part of those discussions.

An example of the benefit of participating in international forums is illustrated by Fred Blum having been invited to speak before the Hague in Geneva, which appearance and participation affected a decision on electronic service of process that would have been adverse to process servers. Furthermore, our attendance and participation at UIHJ meetings has afforded us the opportunity to present our views on several topics, including the NAPPS Best Practices on Service of Process, to that body. This recognition, audience and participation has value that should not be abandoned. The prestige of this association and opportunity to be heard should be extended wherever possible.

It has been stated that as a result of the successful efforts that NAPPS undertook to privatize international service of process in the United States at the behest of the UIHJ, we are viewed as the leading process server association in the United States. My recent experience while attending the UIHJ conference in Paris bore this out. We are viewed positively, with the highest respect for our association and our members. Our efforts and opinions do seem to matter. These favorable comments notwithstanding, I nonetheless believe that it is the opinion of the NAPPS membership that matters most. I therefore recommend the following:

1. That the membership of this association expresses its informed opinion with respect to our future involvement in international activities, and that a defined policy or agenda be established. This can best be accomplished by attendance at the next NAPPS Annual Conference where discussions can be had, and where a member's vote counts. If members cannot attend the Annual Conference, correspondence to this office is invited.
2. That, until such time as the membership of this association mandates a contrary view, the Board of Directors continue to uphold the NAPPS bylaws and previously adopted resolutions regarding our international activity, exercising due discretion by establishing and publishing a defined policy or agenda.
3. That the discretion exercised by this and future boards with respect to the allocation of resources and expenditure of funds for international activity be proportionate to the goal to be achieved. In this regard, I would recommend that we curtail the expenditure of funds to attend UIHJ meetings and limit such NAPPS funded attendance, when necessary, to only one (1) person designated by the president to attend. All other interested NAPPS members may attend, especially now since the UIHJ has opened its membership to a new category of "UIHJ Club Member[s]".⁸ Those members that do attend should do so at their own expense.

⁸See UIHJ Permanent Council Report in the November/December 2005 issue of TDS, page 23

APPENDICES

Appendix I. Overview of articles/commentary appearing in The Docket Sheet.

June 1992, President's Message (Ezell) re Bruno A. Ristau; Foreign Services. Cover page, pages 4, 7.

July, 1992, Profile of Frank R. Britton, Jr. re service in Mexico, pages 14, 15.

August-September, 1992, Photo and comments re Bruno Ristau, page 7.

March-April, 1996, President's Message (Tamaroff) re international expansion, page 3.

July-August, 1996, In Memoriam Badouin Gielen, page 4.; Bailiffs of Justice in the Province of Quebec by Michele Paquette, page 21.

March-April, 1997, NAPPS and UIA Officers Meet in Philadelphia, Cover page;

President's Message (MacDonald) re UIHJ and DOJ, page 3.

1997 Conference Booklet-International Committee Report, page 32; Copy of UIHJ Protocol Agreement, page 33.

July-August, 1997, Photos from Stockholm, page 13; UIHJ Protocol Agreement, pages 14 & 15; Protocol Agreement attached.

1998 Conference Booklet- Letter from DOJ, page 22; International Affairs Committee Report re DOJ, UIA Congress and UIHJ, pages 44-45.

September-October, 1997, Photo Justice O'Connor/Fred Blum at UIA Meeting in Philadelphia, PA, Cover page; Photo UIHJ members, page 20; Commentary, page 25.

May-June, 1998, Photo Collins in London, Cover page, page 33.

September-October, 1998, "UIHJ Features NAPPS Meetings and President", page 39.

1999 Conference Booklet, President's Message re UIHJ, page 6.

July-August, 1999, Photo of UIHJ members, Cover page; Committee Report re International Committees, page 10; Flash Back on Chicago by Michele Paquette, h.j., page 26-28.

September-October, 1999, President's Message (Collins) re Hague Conference, page 3; International Relations Committee report re HCPIIL and UIHJ, page 7.

March-April, 2000, President's Message (Collins) re Hague Convention and international involvement.

2000 Conference Booklet, International Committee Report re Hague Service Convention, page 28.

September-October, 2000, International Relations Committee Report re UIHJ and DOJ, pages 26-27.

November-December, 2000, President's Message (Blum) re UIHJ, page 3; Board Meeting Highlights by Joe Butler re UIHJ, page 37.

January-February, 2001, Board Meeting Highlights by Joe Butler re UIHJ, pages 27, 29.

2001 Conference Booklet, President's Report re DOJ, page 4.

November-December, 2001, Profile-"Who is John Talbot?", pages 33-35.

January-February, 2002, President's Message (Blum) re DOJ and UIHJ, pages 3, 37, 39.

2002 Annual Conference Booklet, President's Message (Blum) re DOJ; International Committee Report re Hague Convention, DOJ and UIHJ, page 24.

July-August, 2002, Highlights of Board Meeting by Joe Butler re UIHJ, pages 39, 41.

Fall, 2002, President's Message (Butler) re UIHJ and DOJ, page 3; International Committee Special Report re DOJ, page 5.

December, 2002, Photo, Collins, et al, Cover page; International Relations Committee-Special Report re UIHJ and DOJ, pages 14-15; Highlights of Board Meeting by Joe Butler re DOJ, pages 35-36.

Fall, 2002, "Springtime in Italy" (Photos), pages 16-17.

February, 2003, "Viva La France, International Relations Opinion" by Larry Roth, page 7; Highlights of Board Meeting re ABC, DOJ and UIHJ, pages 43, 47.

March, April, 2003, Highlights of Board Meeting re DOJ update, page 5.

2003 Conference Booklet, Minutes of Prior Annual Meeting re DOJ and UIHJ, pages 16, 17; International Relations Committee Report re DOJ, UIHJ and Hague Conference on Private International Law, page 22; International Relations Report from Tunisia re UIHJ, page 35.

September-October, 2003, "UIHJ Delegation Visits the United States of America" Photo, Cover page, page 13; Article re ABC Legal Services/UIHJ, pages 8-11; Minutes of prior meeting re UIHJ, pages 33, 35.

2004 Conference Booklet, International Relations Committee Report re UIHJ, pages 12-13; Minutes of prior meeting re UIHJ, page 23; International Relations Report re UHIJ tour of ABC offices Hague Service Convention and 2006 UIHJ meeting in Washington DC, pages 29-30.

2005 Conference Issue, International Relations Committee Report re UIHJ, page 19; International Relations Committee Report re 2006 UIHJ Washington, DC meeting, 2004 UIHJ Permanent Council Meeting, pages 34-35.

November-December, 2005, UIHJ Permanent Council Report, pages 23-25.
International Relations Committee Report, pages 26-27

Appendix II. Board Resolutions Regarding International Expenditures. (Source: NAPPS Book of Resolutions 10/10/82 thru 8/22/04)

January 14, 1995-New Orleans, LA (Winter) [Motion] moved, seconded and carried (6-2) that NAPPS budget up to \$10,000 for a contingent to attend the UIHJ meeting in the Netherlands. (F.Blum)

[Motion] moved, seconded and carried (6-2) that the contingent consist of Paul Tamaroff, Alan Crowe and George MacDonald. (F.Blum)

July 29, 1995-Williamsburg, VA (Summer) [Motion] moved seconded and carried that Fred Blum be reimbursed his airfare to Europe and his hotel expenses at The Hague. (C. Melvin) [Mr. Blum objected to the motion and declined the reimbursement. Nonetheless, it was the board's feeling that the money be available to him to use in a manner of his own choosing.]

July 20, 1996-Salt Lake City, UT (Summer) [Motion] moved, seconded and carried (8-0) that we send designated representative-the same as last year's delegation to the Hague-to the UHIJ meeting in Paris. (P. Tamaroff)

February 22, 1997-Orlando, FL-Special Board Meeting Motion by Paul Tamaroff, that now and in the future, in the matter involving foreign delegations, a budget should be passed for expenses and the then President will determine who will go as part of the delegation. Seconded by Lee Russell. Motion carried with 1 abstention (Blum).

January 17, 1998-Phoenix, AZ (Winter) [Motion] moved by Andy Estin that NAPPS budget \$5,000 for trip to London to attend UIHJ meeting. Seconded. Tied 3-3 with 2 abstentions. Chair voted Yea.

August 14, 1999-Portland, OR (Summer) [Motion] moved, Seconded and Carried (5-0) that \$2,000 be allocated towards travel and lodging expenses to Fred Blum for his attendance to participate in the Geneva Roundtable meeting relating to Electronic Commerce and the Internet. (Rustand/MacDonald. Fred Blum abstains and Jeff Karotkin absent.)

February 12, 2000-San Antonio (Winter) Motion by Thomas MacDonald to allocate up to \$15,000 for the UIHJ Congress in May of 2000. Seconded by MaryLee Rustand. Carried 6-0 with two abstentions. (Fred Blum and Bruce Lazarus)

November 3, 2000-St. Louis, MO (Fall) Thomas MacDonald moved to authorize \$2,500 for Sue Collins to attend the UIHJ meeting in Paris November 22-24, 2001 at which time she will make a presentation on Hague enforcement in the U.S. Passed 8-0. Fred Blum will also speak at the meeting but will attend at his own expense.

February 10, 2001-San Diego, CA (Winter) Thomas MacDonald moved, seconded by Ron Ezell, to approve budget for Sue Collins and Fred Blum to attend the June 2001 meeting of the UIHJ in Antwerp. Passed

November 16, 2002-Washington, DC-(Fall) Motion by Thomas MacDonald, seconded by MaryLee Rustand that \$5,000 be budgeted to the International Relations Committee to attend the 50th meeting of the UIHJ in Paris. Chairman Fred Blum will attend to report on the DOJ contract that had been awarded to ABC. Passed 6-0 with one abstention (Blum)

February 22, 2003-Las Vegas, NV (Winter) Discussion re expenses in attending UIHJ meetings. Fred attend 50th meeting of the UIHJ in December, 2002 and Sue Collins will be attending the UIHJ Congress in Tunisia in June, 2003. Motion made by Thomas MacDonald, seconded by MaryLee Rustand that the Internal [International] Relations Committee have a budget of \$5,000 for the purpose of attending UIHJ meetings both now and in the future. Passed 7-1 (David Nill)

November 19, 2005-Dallas, TX (Fall) Discussion had regarding February 22, 2003 resolution establishing a budget of \$5,000 for the purpose of attending UIHJ meetings. Issue arose whether the \$5,000 allocation was a yearly limit, or a per-meeting limit. Motion made by Andy Estin, seconded by Thomas MacDonald to authorize a budget of \$5,000 for each [UIHJ] meeting attended. Motion passed 8-0.

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