

INTERNATIONAL SERVICE OF PROCESS

NAPPS begins educational program on serving process in foreign countries

by Alan Crowe

Members attending the NAPPS convention were given a special treat — a two-hour nuts-and-bolts seminar by **Bruno A. Ristau**, a Washington, D.C., attorney who is this country's foremost authority on legal procedures in transnational civil litigation.

In a quiet but compelling voice, the diminutive author of **International Judicial Assistance: Civil and Commercial** (2 Vols., International Law Institute, 1990) captured the rapt attention of his audience and gave very valuable, practical advice on how to effect service of documents in foreign countries. About 20 percent of those present indicated having had some experience in foreign services; many others said they wanted to learn.

From a background of 30 years experience, Mr. Ristau detailed his career with the Department of Justice ~ from establishing an office to handle the Justice Department's foreign litigation in the early 60s (subsequently designated the "Central Authority" office when the U.S. ratified the Hague Service and Evidence Conventions) to serving as a delegate to special sessions of the Hague Conference in the 70s.

These treaties, he indicated, have improved and expedited transnational civil litigation in the 29 countries which now have ratified them. But matters are much more complicated, he said, when dealing with the other 160-odd countries with which the United States presently maintains diplomatic relations. In those countries letters rogatory is the required method of effecting service of process.

Mr. Ristau gave some insight into the history of letters rogatory. By and large it is an unreliable means of serving process. In some countries it's an antiquated device encrusted with so many layers of ceremonial pomp that it oftentimes gets buried under its own weight. Instead of the 6-8 weeks it usually takes to get a paper served under the Hague Convention, a letter rogatory can easily take six months to a year to wind its way through the official bureaucracy. Taking longer than a year is not uncommon. And Mr. Ristau is personally aware of instances in which no response was ever received.

An engaging question-and-answer session followed the lecture. The questions highlighted some of the knotty problems which can and do occur when national boundaries are crossed to serve process. In summary, the only thing missing from this lecture was a video camera so that members not at the convention could share in - and learn from - this unique experience.

Foreign Services - A Trap For The Unwary

The number of calls to the NAPPS office about foreign services are increasing. We sometimes get three or four in a single week. Most are from members but some are from secretaries and paralegals in law firms. In almost all instances the caller has never served a single paper in a foreign country. Most callers want only the "name of a process server" in a particular country, a telling reminder that NAPPS needs an effective program of assistance in this area.

Serving documents in foreign countries is serious business! And a commitment to engage in this activity should not be taken lightly. Since most lawyers know little or nothing about transnational procedures, a process server who claims experience in this area but then directs a foreign service which subsequently proves ineffective (thereby rendering a judgment unenforceable or causing a statute to run), will surely be named a defendant in any lawsuit filed against the lawyer for malpractice.

It is most important that those who handle foreign services know when an informal service may be made (by having a private investigator or other party serve the defendant personally), and when the service must be made in a formal or official manner (in strict accordance with the laws of the foreign country). Then there's the matter of language translation - which countries require it, who does it, etc.? Those who handle international services must know the answers to these questions.

We have compiled (at the NAPPS office) considerable information on foreign services from a variety of sources - U.S. State Department, U.S. Marshall's office, books, law review articles, etc. - and this data is available to members who need assistance.

Information Needed From Members

Certain specific data about foreign services simply doesn't exist. You can assist us in compiling this information by dropping us a line with the answers to these questions:

D How many papers have you served abroad in last 12 months? Which countries?

D Method of service: 1) Hague Convention, 2) Letters rogatory, or 3) private process server/investigator

D Specific comments about service - Was it good or bad? Fast or slow? Proof written in English? Cost? Any language translation problems?