

Risk Management in the "Paper" World and Dealing with "Clients from Hell"

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In this paper I shall examine risk management in the “paper” world, looking at the technology of paper itself, historically and nowadays, the risks to which paper is vulnerable, some management strategies to alleviate risk, and a brief look at “clients from hell”. I conclude that the use of paper is still a technology of critical importance to notaries and that the risks of using it must be mitigated primarily by means of electronic back up.

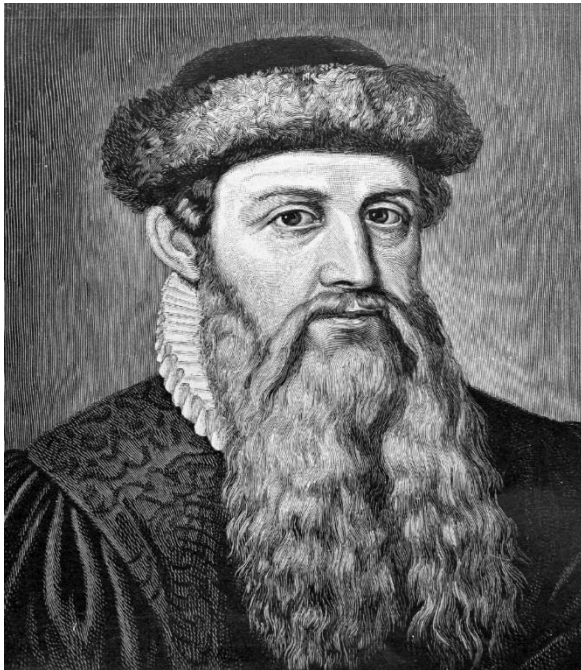
The History of Paper Technology

Paper was invented around 100 BC in China (Wikipedia accessed 21 September 2018). The “first papermakers were Chinese workmen, who as early as 649 to 683 could make paper from the inner bark of certain plants and trees” (The History of Paper, 35). Papermaking has evolved. In America, the first paper-mill was “established near Philadelphia by William Rittenhouse about 1650, and the manufacture of paper is now one of the great industries of the country, hundreds of mills being in operation, having an annual output amounting to many millions of dollars” (The History of Paper, 36). Handmade papers were

considered the finest quality, but machines can now produce paper of a quality on par with the best of handmade paper.

“Softest and richest to the eye and to the touch are still some of the hand-made productions of the Japanese, the Chinese, the Dutch, French, and English, the delight of the connoisseur in book-making; but in many grades our machine-made papers are unsurpassed. But a few years ago nearly all fine writing-papers came from abroad; now the Bailey, Banks & Biddle special American papers are the best in the world for the finest requirements of correspondence and wedding stationery. In the manufacture of these superfine material is employed, the greatest possible care is taken in preparing the pulp, only clear, pure spring-water is used, brought from springs far and wide in the hills amid which the factory is located, and the result is a uniform texture, absolute freedom from defects, and many points of excellence trifling perhaps in themselves, but which together constitute the perfection of the handiwork (The History of Paper, 36, 37).

The invention of paper changed the world. Paper enabled the spread of knowledge and ideas throughout the world. Both feeding and fomenting the need to write down words with technology easier to use than wood or animal skins (250 sheep skins were needed for a good parchment bible), this “sheet of vegetable fibres, felted in an aqueous fluid” (Voorn, 105), has fostered “growing international connections, progress in medical care and hygienics, influence of war and peace, development of air transport, labor-movement, and standard of living” and, “is the looking glass in which our modern civilization is reflected” (Voorn, 106). For centuries, Europeans didn’t need paper because they had parchment. But [Johannes] Gutenberg, a goldsmith from Mainz in Germany changed that with the Gutenberg printing press, “widely considered to be one of humanity’s defining inventions” (Harding).



Johannes Gutenberg



Writing paper, initially divisive among medieval Europeans, met with widespread acceptance in the fourteenth century. It produced a proliferation of repositories and a culture sensitive to the material evanescence of the written word. Paper was fragile compared to more durable parchment, but both media became players in a drama that saw unceasing documentary production mirrored by its loss and obliteration. On one hand, loss resulted from insufficient strategies of document management and care, especially at the state level where documents were expected to outlive regimes. On the other hand, regimes often found the bulk of paper to be a vexing impediment to power and were keen for it to vanish. Unintended loss and calculated suppression were twin concerns of the paper age (Gagné, Abstract).

Paper “collected rapidly in the studios of notaries and lawyers, in the cells of scholars and in the repositories of governments” (Lyons, 61). Paper has endured as a usable and vital technology, including, and perhaps especially, for the work of notaries. “Old technologies have a habit of enduring. We still use pencils and candles and the world still produces more bicycles than cars” (Harford). The concept of the paperless world has led to querying trust in a document “that exists only in the so easily altered memory of a computer” (Cipra, 162). Despite considerable advances for electronic technology, original paper is still arguably the best evidence of the truth or dependability of that which a document may purport to represent.

Any paper-based notarial act must be as tamper-proof as possible. Similarly, where trust is to be placed “in an electronic notarial act it should be as secure and tamper-proof as possible using appropriate technology. The security of the notarial act (whether paper-based or electronic) should be backed up by notarial records, to which prompt recourse must be possible if any doubt should arise as to the genuineness, integrity or contents of the notarial act or the circumstances in which it was issued” (Code of Practice).

The work of notaries appears not to be diminishing, and neither perhaps is the use of paper, at least in the first instance. Described as “princes of paperwork ... In America, notaries’ main job is to certify documents, mundane work that requires few qualifications. In France and Italy, however, as in much of continental Europe, valuable assets (houses, companies, shares and so on) cannot change hands without a notary’s approval” (*The Economist*).

Notaries are, however much the importance of their work may be at times depreciated, “crucial cogs [rather than crucial clogs!] in the apparatus of the state and ... organization of people’s lives”, (Burns, 351). Notaries remain “truth’s alchemists, mixing the singular into the formulaic in accordance with prescribed recipes to produce the written, duly witnessed, and certified truth ... truth by template” a notary appealing “to the notion that he was there - present at the scene, a trustworthy eyewitness - properly equipped to register what mattered” (Burns, 352, 353). So it was that Rodrigo de Escobedo, notary, was present when Christopher Columbus set foot on American soil, looking after the “legal templates [which] were an essential part of the enterprise” (Burns, 350), confirming that “Language has always been the companion of empire” (Burns, 350). So it is today when a notary issues a certificate certifying that she or he has identified an appearer and witnessed a signature. That certificate is a template of the truth to be relied upon by others for its veracity, from someone present at the scene. Notary certificates are still predominately (at least originally), produced in paper, not without incurring, however, considerable risks in using such technology in the absence of strategies to mitigate those risks.

Risks in using paper technology: Managing Risks

Risks for those using paper may conveniently be grouped into four categories - catastrophic events, mismanaged information, forgery, and improper document disposal. Catastrophic events such as earthquakes, fire, floods, war, or, chemical spills may destroy paper or damage it beyond retrieval. For want of time I will primarily look at earthquake risks with a brief word about water damage.

The earthquake struck at 12.51pm on 22 February 2011, and lasted for 22 seconds. Measuring magnitude 6.2 on the Richter Scale it is described as a “torsional” earthquake, the earth thrusting upwards about a metre, and simultaneously violently sideways. It is New Zealand’s fifth-deadliest disaster, killing 185 people. Fifteen hundred commercial buildings were eventually demolished. The city is now about halfway through its reconstruction. 40 billion dollars will have been spent on repair and reconstruction. Some buildings collapsed immediately.



My law firm was located on Level 11 of a 17 level building.



Both stairwells collapsed.

We were rescued by crane from the top of the building.

We were only able to retrieve approximately 10000 deeds and some files over a four hour civil defence escorted rescue by crane mission on 17th April 2011. The balance of paper in the business, if not amongst the documents and files destroyed by Urban Search and Rescue (USAR) teams as they searched the building in the days after the catastrophe, smashing their way through walls and doors and offices, sat where it was following the earthquake, and was subsequently destroyed, considered uneconomic to retrieve by our insurers.

The building was eventually repaired and is now a hotel.

It was a huge disaster for our city.

<https://www.youtube.com/watch?v=alC7JpUuDMI>



We therefore lost most of the paper in our business except for those deeds and few selected files we were allowed to recover during the four hour crane lift back up to the 11th floor. Had we not had electronic back up we would have taken months rather than weeks to re-establish the work of our law firm in temporary premises elsewhere in the city. I personally knew six people as clients in the building in the first image. A client of mine who died a few years later (not as a result of the earthquake), had signed her will on 21 February 2011, the day before the earthquake. The will had not been scanned or placed in deeds prior to the earthquake. It had therefore been destroyed along with the contents of the office we were unable to retrieve. The probate court was kind, allowing us to adduce evidence by affidavit and granting probate of an unsigned Word draft will, the best evidence available.

Other Risks

Water can be an issue even apart from floods. Many old wills in our firm had developed rust around the staples requiring a Memorandum of Counsel in support of applications for probate explaining moisture ingress in the firm's old deeds room. In mitigation of the risk of water ingress move to warm dry offices!

Severe weather such as hurricanes, or heavy snow, fires, earthquakes, floods and termites are natural disasters making it important to "take proper steps to manage your documents and create a disaster recovery plan for ensuring your company [notary protocol] is protected and able to get back on its feet as quickly as possible" (Record Nations).

It is axiomatic therefore, that records in a notary's protocol ought to be recorded electronically as well as, or instead of paper, as back up contingency against the possibility of loss or damage from catastrophic events. Electronic backup should be stored offsite.

Mismanaged information

Theft, misuse of confidential information, or loss can occur with paper record storage. Electronic records can be barcoded and tracked with an inventory management system to provide better protection.

Improper document disposal

If you are recording notarial acts electronically be sure to dispose of the paper originals in a way which prevents anyone from accessing the information prior to shredding.

Forgery

Where there is any doubt, the services of a forensic expert may be necessary to prove a document is an original. Interestingly, in answer to the question "how in the world can a notarized (sic) document be "forged"?",

The key to the answer may be the word "copy". Chances are that the document you possess is a copy of the original: the original has already been submitted. You would think that a photocopy of the document is a reliable representation of the original document, but that isn't necessarily what ends up happening. Any part of the document could have been altered and recopied. Sometimes the alteration is done so well it takes an expert to sort out the changes" (Forensic QDE lab IIC).

Notaries can certify a forged document with unfortunate consequences. In *Meyers v. Meyers* The Supreme Court of Washington, 81Wn.2d 533 (1972), before Stafford J, the appeal involved a forged deed certified by a notary.

There are diverging views as we shall no doubt have heard at this conference about the use of electronic technology. Some believe it not to be possible to fully apply. Others believe notaries are at a cross roads:

The profession of the Notary is at a cross roads. The Notary operates in a world of paper-based transactions where the use of traditional signatures and seals are mandatory. The practices and procedures which have evolved over centuries simply cannot be applied in a digital environment (Leslie Smith, iii).

Nonetheless, as with many human advances, a better way may be to combine the use of both old and new technologies intelligently and not allow either nostalgia or simple modernity to rule. In addition to dealing with the challenges of technology, the Notary must also develop skills to deal with people, who may not always be reasonable, and some of whom may be quite difficult.

Clients from Hell

Notaries are the most benign and polite people I know, even in the face of difficult clients!

Notaries are often subject to belittlement. I recall being asked to attend a board meeting of directors gathered in Christchurch from a number of countries, asked to certify Board Minutes. One director was quite late arriving, and became uncooperative when asked to go

back up to his hotel room to bring his passport down as to be able to produce it for my perusal as requested. I stood my ground in the face of a rather sad attempt to diminish my role. There is a narrative abroad which makes light of the role of the notary which has the hallmarks of bullying that can be surprising. Perhaps this is because our role is not always understood.

https://www.youtube.com/watch?v=x-m4_DyQKU8

And the sentiment is not a new phenomenon as may be seen from a delightfully written story from the 1940's:

The Thornes had to be protected not only from their peccadilloes, but from all marauders whom money attracts, particularly the matrimonially minded ... By the time Thorne got here, we had been in the conference room with the buyer and his counsel, making the closing adjustments, for half an hour. I doubt that I've ever seen an angrier man. He paid no attention to anyone but Mr. Donner when he burst into the room, taking his stand at the end of the long table and shouting down it to his offending lawyer: "This is the worst goddam outrage I've ever known! Making me come down here to swear before some two-bit notary! There isn't a law firm in this city that wouldn't perform so minor a service for an important client. What the hell sort of crazy kick do you get, Donner, out of humiliating me this way in public?" But Mr. Donner was imperturbable. He turned to me. "I think Mr. Thorne is ready to attest. Will you kindly act as his notary?" He turned back to his irate client. "Do you swear, Mr. Thorne, that the contents of this affidavit are true and do you acknowledge this signature to be yours?" Thorne was silent for a moment, as if stunned by such coolness. "I swear," he said at last. Mr. Donner nodded. "Then we need not detain you further. I hope you will be on time for at least one race at Belmont." Thorne strode to the door, but turned back to face the room before leaving. "And don't think I shan't be looking for a more obliging lawyer! He shouldn't be hard to find." After the closing I invited Alda and Jason to lunch with me at my club, but as Alda had an appointment with her hairdresser uptown, Jason and I went without her. At our table he ordered a cocktail and raised his glass to toast Mr. Donner. He seemed actually elated. "He's marvelous! Would any other lawyer treat an important client that way?" "Most firms have obliging notaries, I guess. And the attorney in charge usually looks the other way. It's really not that big a deal. But then Mr. Donner is a rule to himself" (Auchincloss, 8).

From further back in history, *No Thoroughfare*, by none other than the great Charles Dickens, a stage play released in December 1867 sets a notary scene:

Act IV

The Clock-Lock

The pleasant scene was Neuchatel; the pleasant month was April; the pleasant place was a notary's office; the pleasant person in it was the notary; a rosy, hearty, handsome old man, chief notary of Neuchatel, known far and wide in the canton as Maitre Voigt ... there was another person in the notary's office, not so pleasant as the notary.

Therefore the ability to remain imperturbable, and pleasant yet firm in the face of a difficult appearer will remain one of the most important skills for a notary to possess.

Be polite. Always.

Be straightforward. Often a difficult person is surprised there is a fee for the notary service, tries to beat down the price, and, if given the chance, refuses to pay the account. Politely explain the normal fee, and the process.

Be free. Be free to delegate to a trained PA who can politely explain the process for the service, advise the fee, and the usual time frame. Be free to suggest to anyone requesting the service a fellow notary if it is not possible for you to complete the service as seems necessary. In our city some notaries charge less than others if fees are an issue.

Be flexible - if urgent then make way for that in exceptional circumstances.

Be sure to collect the fee prior to releasing the certificate.

Be clear about recording exactly what work was carried out in performing the service, all the more if the appearer is a difficult person.

And remember: A notary's job for the public is never done!

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