To Tell the Truth: Notaries and Business Ethics in 2002

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Enron, WorldCom, Adelphia. Once the shining lights of capitalism, their names have come to symbolize excess and corruption. The financial scandals wracking these multimillion-dollar companies have shaken the economy, created a furor in Congress and eroded consumer trust in the business world.

Business professors and industry experts say there is a silver lining for Notaries within this cloud of chicanery — a new awareness of the importance of honesty in the workplace.

One of the most common problems Notaries face is employers who demand that rules be bent or broken to expedite the processing of documents. These include requests to backdate notarizations, affix a stamp or seal on a document with blank spaces or notarize without identifying a signer. Business employees at all levels are seeing firsthand the consequences of asking Notaries and other workers to “bend the rules a little.”

The Causes

The culture of questionable behavior in companies such as Enron did not spring up overnight, said Marc Drizin, vice president of Walker Information, an Indianapolis firm specializing in the study of corporate-employee relations. As media coverage of financial activity evolved over the last 20 years, corporations endure more and more pressure to report positive results daily, Drizin says. If pressure comes from upper management to bend or break rules to ensure profit, it becomes extremely difficult for honest employees to make moral choices, he said.

“Companies are feeling forced to put profits ahead of ethics,” Drizin said. “If employees can’t look to their senior
leaders as an example, then how do you expect them to make the right decisions?”

Telecommunications advances have increased pressure to expedite transactions and close deals quickly, says Nan Andrews Amish, a management consultant and teacher at the University of San Francisco.

“The ability to send money anywhere around the world and sign contracts in two hours has raised people’s expectations to the degree where they don’t want to wait,” she said, resulting in greater demand on Notaries to work faster by cutting corners.

During the economic boom of the 1990s, prosperity and increased profits also caused many companies to relax their standards and become less vigilant.

“...In such a period, there are more opportunities to take advantage, and people have their guard down,” said Joseph Badaracco, professor of business ethics at the Harvard Business School. “There are more shenanigans during this kind of period. It’s human nature — when you dangle a lot of money in front of people, they will grab at it.”

Companies and educational institutions added fuel to the fire by increasing the emphasis on developing moneymaking models rather than ethics, said Marianne Jennings, professor of legal and ethical business studies at Arizona State University. Many students coming out of colleges and universities were entering the business world without a clear moral code, she said.

“There used to be a bright line between right and wrong,” Jennings said. “Companies were much more honest about debt and disclosure. It’s a line that has been moving for some time. Students are taught how to one-up the next guy. Kids who have been out in business for a couple of years are taught to make deals and increase shareholder value. They are so caught up in financial wizardry, they aren’t looking at the ethics.”

“Some schools have very strong ethical programs,” said Tim Fort, associate professor of business ethics and law at the University of Michigan. “Others don’t. There was sometimes an impression that these issues were extraneous. The 2002 scandals showed that they were core to business.”

The Consequences

Not every company suffers from dishonesty in the workplace. But for those that do, ethical violations can have a pervasive effect on a company’s employees. When a company’s leaders adopt a dishonest culture, it can adversely affect each rung of the corporate ladder. For example, a manager or supervisor may believe asking a Notary to backdate a document or skip identifying a signer is harmless. But small violations often lead to bigger ones, said Richard Hadden, an author and speaker on employee relations based in Jacksonville, Florida.

“I think many organizations go down a slippery slope when managers ask someone to do something wrong that appears innocuous,” Hadden said. “Let’s say a Notary is asked to identify someone without personal appearance. The boss says, ‘You’ve seen him a million times.’ Then let’s say the Notary is moved into a position of fiduciary responsibility. The Notary remembers the boss said fudging notarizations is okay, so then thinks messing with accounting is okay too.”

Notaries are in an especially difficult position because they are both public servants and employees under the authority of a supervisor, Hadden said. Fear of losing a job can put tremendous pressure on a Notary to accede to an employer’s...
demands, even if they are improper.

“When you notarize, it means that a person personally appeared before you. If that’s not the case, you need to stand up and say you can’t do that,” he said. “But I recognize the difficulty this presents to an employee. A Notary who is a single mother making $8.50 an hour is going to have a strong temptation to agree.”

The situation becomes worse if employees see dishonest behavior rewarded and honest actions punished, said Anthony Paradiso, author of the book “The Management Mind Field.”

“The rules have become distorted,” he said. “Those most inclined to bend the rules have the best chance for success. As they move up the ladder, this behavior is reinforced. At its most extreme form, it becomes criminal behavior.”

Conversely, Hadden says setting a good example can be a positive influence on employees.

“Let’s say the manager says, ‘You can’t notarize without the signer present, and we’ll support you on this.’ Then when the Notary becomes a manager, a precedent has been set and he knows right from wrong,” he said.

**The Effect on Notarics**

Regardless of the pressure, Notaries have a duty to remain true to their duties and refuse improper acts.

“I think employees need to invoke the names of Enron and WorldCom when they are asked to do anything they shouldn’t do,” Hadden said. “It can be tough if you’re a Notary and a
Notaries and the ‘Corporate Accountability Act’

Corporate accountability became a political buzzword this year. Throughout the summer the phrase peppered national news stories, culminating July 30 when President Bush signed into law the Sarbanes-Oxley Act of 2002, also known as the Corporate Accountability Act.

Sarbanes-Oxley requires chief executive and financial officers to certify quarterly and annual financial reports. Violators face fines of up to $5 million and imprisonment for up to 20 years for false statements in certifications.

As harsh as this may seem, the law might have been more effective if it mandated notarization, as an earlier requirement did.

In an emergency rule adopted June 27, when the WorldCom collapse dominated news, the Securities and Exchange Commission specifically required a notarized oath for financial statements filed by the top officers of the nation’s largest 947 public companies. To compel truthfulness, the executives had to file signed sworn and notarized statements, along with their companies’ most recent annual and quarterly reports, by August 14 deadline.

Then came Sarbanes-Oxley, and another SEC rule. The new rule, effective August 29, requires only a statement signed by a CEO and CFO certifying that the reports their companies file with the Commission are accurate and complete.

Spokeswoman Chrisi Harlan said the June 27 emergency order is not affected by Sarbanes-Oxley, and will remain in effect until all 947 companies comply, or until January 31, 2003.

“The June order listed specific companies that must include a notarized statement with the filing,” Harlan said. “The specific companies on that list are not exempt from complying, regardless.”

But under Sarbanes-Oxley, future filings may not require notarization. However, the omission of telling the truth is no less severe for anyone signing the statement, Harlan said.

“There is no loophole or chance for plausible deniability. The person making the certifying statement is going to hold responsible and pay a heavy price if the statement turns out not to be true,” Harlan said.

Nonetheless, the National Notary Association believes the SEC had it right the first time and should mandate notarized filings. In a letter to the SEC commenting on the then-proposed new rule, NNA President Milt Valera called for continued participation by Notaries: “The involvement of Notaries strengthened the credibility of these reports in the public eye through positive verification of the identity and intent of their signers.

“It is clear that the public is now demanding an accountability on the part of CEOs and CFOs that the mere signing of a ‘certification’ under penalty of perjury will not provide,” Valera wrote. “Without the involvement of a trusted impartial witness — a Notary Public — to place the executive under oath, the reliability of any certification could much more readily be called into question.”

Additionally, for the first SEC rule and August 14 deadline, every company submitted paper forms, complete with jurat wording. For the new rule, the SEC expects almost all companies to file certification statements electronically. Some people ask, how do we know who, indeed, hit the “send” button on a computer keyboard?

“Even executives couldn’t come back and claim they didn’t send it,” said attorney Ken Weiss, founder and owner of StockholderAction.com. “With notarization, you know the executive was in fact the person who signed it. I think it provides extra prevention to fraud. It works both ways. It protects the public, and it protects the executive and company.” Weiss said. “The real heart of it is that the person is who he said he is, and signed as he said he is not someone else.”

Certification of corporate statements may be commonplace in the near future. By September, the Commission was seeking comment on a proposed rule to certify shareholder reports. The NNA, which will continue to carefully monitor this situation, believes notarization will instill public confidence in certified statements.

“At the very least, and regardless of whether or not it’s mandated, these executives would be wise to swear to or affirm an oath and have their filings notarized,” Valera said. “It’s an act of good faith to the public, as if to say, I’m going beyond what the law requires to ensure the truthfulness of these reports.”