

Solving Corporate Mysteries

By Ashley M. Marchand

Editor's note: With the costs and reasons for conducting internal corporate investigations mounting, *NACD Directorship* sought to interview several members of the modern corporate investigations firm K2 Intelligence to understand how white-collar investigations play out today and what role boards might take in the process.

Sherlock Holmes was a detective's detective—a man of science and reason who took seemingly unrelated bits of minuscule details unobserved by most individuals, and found patterns and cause-and-effect relationships from which he deduced concrete solutions to complex investigations. Far ahead of his time, the fictional London-based character had a keen understanding of human behavior and data interrogation.

In some ways, success in modern-day corporate investigations relies on that same acute knowledge of human behavior and careful examination of data. The tools, however, and the investigators themselves are now far more evolved.

Founded in 2009 by father-son team Jules and Jeremy M. Kroll, K2 Intelligence provides investigative, analytic, and advisory services worldwide. The firm has offices in New York, London, Madrid, and Tel Aviv. Jules Kroll is widely regarded as the creator of the modern business investigations industry. Kroll Inc., which the elder Kroll founded in 1972, later went public and in 2004 was sold to Marsh & McLennan, reportedly for \$1.9 billion.

"In this day and age, there can be any number of issues that re-

quire investigation—responsible, thorough, and detailed investigation—in order to prevent or mitigate the issue from getting out of hand and really impacting share price and, ultimately, reputation of the firm," said Jeremy Kroll, president and CEO of K2 Intelligence. Approximately 75 percent of K2 Intelligence's revenue comes from providing preventative services related to risk management and compliance, money laundering, cybersecurity, and due diligence, Kroll said. The competitive differentiator of his firm is the use of advanced technology and a team of veteran investigators that can decipher the analyzed data and piece together past events to find answers to questions that might otherwise gridlock a corporate boardroom.

Many clients seek K2 Intelligence's services as their businesses embrace globalization. "As companies have come out from underneath the financial crisis, they're investing more in frontier and emerging markets; they are pursuing joint ventures and local investments," Kroll said. "So we're very active in providing business intelligence to boards in places like Africa and the Far East."

Directors don't want to be the last to know when corporate malfeasance has occurred, Kroll said. "They want to make sure they have their arms around the company data. They want to make sure they understand the human behavior within their company."

In cases where the board or company management does not have its arms around company data and behavior, conducting an investigation after a problem occurs can be costly. For example, Avon disclosed in its 2011 annual report that that between 2009 and 2011,

Matt Unger (left), Mitch Silber, Jeremy Kroll,
Rich Plansky, and Bob Brenner.

“...There are few people, however, who, if you told them a result,
would be able to evolve from their own inner consciousness
what the steps were which led up to that result.

This power is what I mean when I talk of reasoning backwards,
or analytically.” —SHERLOCK HOLMES, *A STUDY IN SCARLET*



“Come, Watson, come!’ he cried ‘The game is afoot.
Not a word! Into your clothes and come!’”

—SHERLOCK HOLMES, *THE ADVENTURE OF THE ABBEY GRANGE*

it spent \$247 million on fees associated with a global Foreign Corrupt Practices Act investigation and compliance reviews. While investigations rarely follow a linear process, the first step is for the board to reach an agreement regarding the initial direction of the probe.

“Every good investigation starts with key questions that everyone agrees on,” said Richard Plansky, K2 Intelligence’s executive managing director and regional head of the Americas. “They can be simple, or they can be complex and have multiple parts. It can be, ‘Is this whistleblower telling the truth? Has someone engaged in insider trading? Is somebody embezzling from us? Is the head of our Malaysian office bribing government officials?’ ”

“A lot of the work we do is really not like a game of Clue,” said Matt Unger, chief digital officer at K2. “Sometimes we’re trying

to paint a picture. Sometimes we’re just trying to characterize the situation, describe relationships.” Some investigations are opened to verify the qualifications of candidates for company management positions. This can provide boards with the assurance that candidates are—or are not—who they claim to be when being considered for a position in the C-suite.

Boards also hire K2 Intelligence to provide deeper information during contests for corporate control when activist investors or other parties push for changes to the business.

“One example is that an outside investor was loading up on shares of a public company, and the board was concerned about whether or not to feel comfortable allowing this person...to join the board,” Kroll said. K2 Intelligence conducted research about the individual, his track record of investing, and the board became comfortable accepting the investor as a board member.

Once all involved parties agree on the investigative questions, K2 Intelligence develops a customized plan to answer those questions. “Investigations are like snowflakes: every one is different,” Plansky said.

Some investigations may prove more challenging than others, such as those that are multijurisdictional or cross-border, where, for example, a company may have its headquarters in the United States but be dealing with an issue in the Far East or elsewhere.

Mind Games

“The challenge is to find technically qualified people with language skills on a moment’s notice to go somewhere in the world to begin to gather facts, to begin to seize data and equipment, and to begin to establish a strong foundation on which to build a case,” Kroll explained. Having that level of challenge is what helps the firm recruit fertile minds, he added.

Prior to joining K2 Intelligence, its interdisciplinary teams of investigators have worked in academia, banking, compliance, law, journalism, intelligence, and forensic accounting, among other fields. Those teams are actively working on investigations that span about 30 different countries at any given time, Kroll said.

The first phase of the investigation might include a thorough public records search. The investigatory team would then assess what was learned in that phase, and use those lessons to inform



Mitch Silber (left) and Matt Unger

the next phase of the investigation. The number of phases in an investigation can be from one to about six, depending on the questions that need to be answered and the progress of finding answers to those questions.

“At the most basic level, investigations are about re-creating human behavior,” Plansky said. “Something has happened in the past, and we want to understand [it].”

To discover what happened, K2 Intelligence uses a broad range of tools.

“We may also do interviews of people who are relevant to the case, who are participants in the case,” said Mitch Silber, executive managing director of intelligence and analytic solutions. “There might actually be use of undercover or surveillance techniques, depending on the nature of the case.”

The Dark Web

“We have investigative researchers, and investigative researchers are very skilled at mining things that are publicly available—both in government offices and on the Web, and not just the part of the Web that is indexed and reachable through search engines like Google,” Plansky said. “Approximately—by some accounts—80 percent of the Internet is not indexed and is commonly referred to as the ‘deep’ Web, or in certain sinister applications, the ‘dark’ Web.” Plansky said K2 Intelligence employs people who are skilled at gathering intelligence and evidence from these sources.

“You can do a search of public records in Russia, Kazakhstan, Azerbaijan, etc., but the real scoundrels have essentially paid to wipe out their public records,” said Thomas Glocer, an investor and director for K2 Intelligence and former CEO of Thomson Reuters Corp. “What you need is a very sophisticated troll through dark Internet and databases that aren’t generally available, coupled with legwork and connections—feet on the ground.”

In some cases, said Unger, the firm is able to investigate data that a law firm has gained through the course of litigation or subpoena. Information might also come from internal data provided by the general counsel or compliance officer of the company opening the investigation. Kroll noted that although law

firms have been adding ex-prosecutors to their teams to conduct investigations, the services and capabilities offered by a corporate investigations firm like his provide more thorough solutions.

Investigators face a challenge that is somewhat the inverse of what they have faced, even as recently as 10 or 15 years ago. Then, the problem was figuring out how to procure data to analyze for a case. Now, the challenge is the exact opposite. “There’s just too much information—terabytes and terabytes of information,” said Plansky. “You could drown in the oceans of information. The challenge is how you get to the stuff that really matters.”

Tools of the Trade

“We’ll go in and start the really technical phase of modeling the data, ingesting the data into analytic platforms, choosing the right analytic platform for the job, and then getting the data into it,” Unger said.

To thoroughly investigate, gather intelligence, and effectively advise a client, you need to absorb the data using the right tools and run the analytics against the data sets in a way in which you’re able to pull out narratives that indicate what has happened in the clearest possible way, Kroll explained.

Some of the data platforms are off-the-shelf; some tools are built or tailored for clients by staff at K2 Intelligence. Other tools have been made accessible to the firm through its partnership with technology developer Palantir, based in Palo Alto, Calif.

Palantir’s analytic platform is “incredibly effective at cutting through massive quantities of multi-modal data,” Plansky said. “In other words, data that comes in different flavors—not just emails, not just instant messages, not just transactional records, not just access logs. It’s all of the above.”

Searching for data that answers questions for an investigating company used to be like searching for a needle in a haystack, but now, with so many different ways of communicating, searching for data is like searching for a needle broken into three pieces and hidden in three different haystacks, Plansky said. “One particular email may have no meaning unless you put it side-by-side with a wire transfer and an access log. In context, those three things together mean something.”

“Data!
Data!
Data!”
he cried
impatiently.

“I can’t
make bricks
without
clay.”

—SHERLOCK
HOLMES, *THE
ADVENTURE OF
THE COPPER
BEECHES*

Other Corporate Sleuths

Many different kinds of firms offer sleuthing services to assist companies with corporate investigations. The Big Four auditors—Deloitte, EY, KPMG, and PwC—all offer fraud investigation, forensics, and dispute services. Law firms remain among the largest users of investigatory services, and many have their own dedicated staffs that specialize in information gathering and consult to clients on specific risks such as employee safety. K2 Investigations has plenty of competition. Among them:

Blackwater Agency helps corporations, nonprofits, and law firms identify, respond to, and mitigate risk. The agency's investigators specialize in performing research involving asset searches, locating witnesses, and real-time criminal and civil record retrieval.

Freeh Group International Solutions, founded by former FBI director Louis J. Freeh, was bought by the law firm Pepper Hamilton in 2012. It was among the first such acquisitions of an investigations firm and underscored the growth and potential in corporate investigations work.

FTI Consulting, through its global risk and investigations practice, provides a multidisciplinary approach to business-critical investigations. With offices around the globe, its team includes former prosecutors, law enforcement officials, forensic accountants, and data analytics specialists, among others.

Guidepost Solutions is chaired by former federal prosecutor Bart M. Schwartz. In addition to investigations and compliance offerings, Guidepost serves as a government-appointed monitor to corporations implicated in wrongdoing.

Kroll, founded by Jules Kroll in 1974 and widely considered the pioneer in corporate investigations, was sold by Marsh & McLennan Cos. in 2010 to Altegrity, which is owned by the private equity firm Providence Equity Partners.

Mintz Group has conducted more than 10,000 investigations in more than 100 countries. "We don't provide bodyguards, we don't rescue the kidnapped, we don't audit financial results," it claims on its website. "We specialize in one thing: digging into questions that concern our clients."

Veris Consulting's corporate investigative services provide consulting to prevent, identify, respond to, and recover from negative commercial exposure. The firm supports internal investigations, helps companies through regulatory investigations, and can present its findings through expert testimony at court hearings and trials.—A.M.M.

Because the sheer volume and variety of data have increased, it's becoming increasingly difficult for boards to be familiar with their company's data.

"When we're working for clients—including boards—that have attracted the attention of certain regulators and they are being required to turn over data, it's really important for them to understand what it is that they're turning over," Plansky said. "What is the agency that they are answering to likely to find in the data that they're turning over? If you don't know that, then you're at a disadvantage."

Over the next several years, Plansky said, directors and officers will gain a better understanding of the data and behavior at their companies. One result of that in investigations will likely be a shift away from retrospective—looking back to re-create an action that already has happened—to a more prospective approach that would catch problems at a company as or before they happen.

**“There is a strong family
resemblance about misdeeds,
and if you have all the
details of a thousand at your
finger ends, it is odd if you
can't unravel the thousand
and first.”**

—SHERLOCK HOLMES, *THE SIGN OF FOUR*

Technology that can help monitor information or human behavior is built on a simple theory, Plansky said: "When people are planning to do something bad, when they are doing something bad, and when they're covering up something bad, their behavior changes in ways that can be measured.

"Sometimes it's obvious, sometimes it's not so obvious," he continued. People may use code words, shorten the length of their emails, or change their mode of communication, all in an attempt to conceal wrongdoing at a company.

Despite individuals' attempts to conceal malfeasance, Silber said the firm so far hasn't met with an unsolvable case.

A record like that beats even the performance of Sherlock Holmes, who—despite his investigatory prowess—left a few cases unsolved. **D**

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