



By Richard Dailly, Managing Director,
Kroll Southeast Asia

Strategic intelligence in support of litigation

Whether conducted in support or expectation of litigation or other corporate scenarios, the role of intelligence gathering in the corporate context is almost always misunderstood. Frequently viewed only in terms of the provision or collection of evidence, the role of intelligence gatherers can be far more valuable.

When you consider that, in general, discretion is the preserve of the intelligence professional, then problems immediately arise with the transparent gathering of evidence. In many respects, this misunderstanding highlights the difference between an investigation on the one hand, and the acquisition of intelligence on the other.

An investigation is a process undertaken to prove a theory, and very often investigators have access to material which will help prove that theory. Computer data is an obvious example. While masses of information may be available, 90 percent is often useless, but a skilled investigator will be able to find the 10 percent that really matters to the investigation.

Intelligence acquisition is more abstract. It is a tool used to determine what is currently or likely to happen, not what has already occurred. Unlike the investigator, the intelligence professional attempts to understand and pre-empt the next move, whether at an operational or strategic level.

Intelligence is not evidence: it's not going to stand up in court, but it might help you understand the issues more clearly and can be an important tool when determining tactics and strategy. The more information you have at your fingertips; the wider your options are in terms of developing your approach to the case.

To look at it another way, the investigator is the defender, who unpicks the past and pieces together what's been going on. The intelligence professional is the early warning radar. He is the person who will seek to determine what's happening now and the best way to counteract it. So how does this help the in-house counsel?

Intelligence gathering can clearly be of benefit when determining the whereabouts of assets, but asset tracing really

falls within that grey area where investigation meets intelligence and the intelligence professional and investigator should work as a double act when conducting this type of activity. But what about the acquisition of pure *strategic* intelligence?

Imagine you are in-house counsel for Smalltime Chemicals, which is being sued by Bigtown Conglomerate for a relatively minor breach of contract. You recognise that technically you are liable, and so you develop a strategy to

negotiate with Bigtown Conglomerate. But Bigtown Conglomerate is not interested in negotiating; it is purely focused on destroying Smalltime Chemicals.

Clearly, there is more to this situation than initially meets the eye and Bigtown Conglomerate has a greater hidden agenda. Uncovering this agenda could avert a catastrophic situation for Smalltime Chemicals, and ultimately save the company.

While this example is obviously simplified, the key lesson to note here is that Smalltime Chemicals does not know what is motivating Bigtown Conglomerate's aggression.

Maybe Bigtown Conglomerate wants to monopolise a particular sector or geography, or maybe there is a third party involved about which you know nothing. Either way, having a clear understanding of why Bigtown Conglomerate is behaving in such a way could save the company.

Given this, a creative approach to learning the true motivation and ambitions of Bigtown Conglomerate is clearly required in order to counter the aggression. The first, step to securing the strategic information required is to understand the difference between the role of the intelligence professional and investigator, and how they can help you protect your organisation.

To receive a copy of Kroll's Global Fraud Report please email: fraudasia@kroll.com

The intelligence professional is the early warning radar. He is the person who will seek to determine what's happening now and the best way to counteract it

rdailly@kroll.com
www.kroll.com