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Follow the money: the world's sharpest fraudbusters

By Nick Ryan | 02 September 2009



Photo: Neil Massey

Kenney's services were first requested in summer 2003. James Lee, the Tradex investor from California, called in Burke Files, a former securities broker turned investigator based in Phoenix, Arizona. The trouble was, there was only \$5,000 on the table: the clients were broke, having lost huge sums of money. So he put a call in to his old friend James McGunn.

McGunn had worked with Kenney for many years. They were in demand globally as top fraud lawyers and asset chasers. In one case they had taken on Canada's most infamous telemarketing fraudster in a worldwide investigation, making legal history and winning a record \$36 million. How? By suing a law firm purporting to be working for the victims but which had in fact double-crossed them to cut a secret deal with the con man.

From their original base in County Wicklow, Ireland, the two men were taking on some of the most ruthless criminals and con men in the world - and they were winning. A solicitor advocate, the precisely spoken Kenney had rights of audience similar to a barrister's and was licensed to practise in several countries. Crucially, this meant he could follow the fraudsters - and therefore the money - wherever they led him, right across the globe. And, with traditional law enforcement increasingly ineffective against sophisticated money-launderers, Kenney's approach was to target felons where it hurt them most - their pockets.

In 1995, the former champion ice-hockey player had investigated Nick Leeson, who brought down Barings Bank. Later, his law firm had tackled dodgy Brazilian banks, corrupt insurers and Russian organised criminals and even crossed swords with the Chinese government on behalf of victims of economic crime.

Last year, international security firm Kroll claimed that, in the previous three years, four out of five firms had suffered some form of corporate fraud and about one in ten had lost more than \$100 million a year. What's more, these costs are often passed along to us, the public. Money can be laundered through any number of offshore jurisdictions and shell companies in massively complex constructs. It's not unheard of to have armed guards escort bullion trucks from one side of a street to the other, as a fraudster physically moves his cash to break the paper trail and avoid detection.

As well as corporations, individuals are targets of scams like these. Few ever reclaim their money. Trillions travel through this highly secretive world every year, including the proceeds of organised crime and drug money which are then "washed" back into everyday use. Filing cabinets in Kenney's office contain stacks of letters from desperate pensioners, many of whom have lost their entire life savings to a fraudster. Kenney, who plainly loathes the confidence tricksters, often speaks as though he is on a crusade.

His approach is innovative. Making extensive use of "sealed and gagged" (secret) court-appointed powers, such as the curiously named Norwich Pharmacal-Bankers Trust Order (a "discovery order", which forces an organisation to turn

over records) and Anton Pillar Orders (a "raid order", allowing his team to enter premises), Kenney uses well-established legal procedures to tackle complex money-laundering cases. His teams can act just like a law-enforcement agency to obtain bank or phone records, raid a corrupt lawyer helping create fake companies or seize a yacht.

Kenney's operations also involve undercover surveillance, stings and forensic-accountancy skills to trace document trails or build a model of how a crime was committed. He uses expert handwriting analysts, criminal psychologists and IT specialists, as well as legal teams who can "depose" (interview under oath) any witnesses. His men have located and frozen criminal assets via civil courts right across the globe. Indeed, officers at law-enforcement agencies such as the FBI have referred some of the world's most complex fraud cases to the firm. These can still take years to achieve solid results, however - with the con men free in the meantime to spend victims' money to fight their corners in court.

As the hurricane season faded, the 2003 Offshore Alert conference met amid the old-world charm of the Biltmore Hotel in Coral Gables, Florida. It was a gathering of the world's top fraud lawyers and investigators. Burke Files was there - as was Kenney.

By now, Files was working with Kenney and McGunn on the Tradex case. It had already taken over \$150,000 of the lawyer's time, so far unpaid. Phase One of the investigation plan had been launched, and the team had split into its investigative and legal components, starting on the long and tortuous process of identifying and following the convoluted audit and evidentiary trails left by the Ferdig gang. A small number of the Tradex victims had now come over to their side, too, under the skeptical Californian's lead, but they'd had to do so in secret, as most investors still believed Ferdig's promises that at Tradex it was business as usual.

That summer, Kenney's team had sat around the conference table back in Ireland, together with John Bagalini, their forensic accountant and chief negotiator. They pondered the likely twists and turns to come. McGunn would lead the initial investigative movements: seeking witnesses, surveilling locations, drawing up complex affidavits. Kenney and his lawyers would execute the intricate discovery and raid orders - always sealed and gagged, so the other side remained ignorant of their true intent. (Kenney sometimes found himself having to educate the judges he encountered in different jurisdictions: several were unaware of the razor-sharp forms of the law he could employ. One judge in Georgia even wanted to find him in contempt of court for using such methods.)

Bagalini, meanwhile, would be responsible for sifting through evidence, looking for the one clue or pattern in the money trail that could lead them to a stolen asset. He'd then draw up "link analysis" charts (see previous page) using specialist software the company had been developing. It was a method pioneered during the FBI's Mafia investigations in the 50s and 60s, allowing them to plot all money flows, entities and people in a case pictorially. Kenney's team had already uncovered enough to suggest the crime had its roots not in Asia but the steamy ports of the Caribbean.

Over cocktails at the Biltmore Hotel, Burke Files introduced Kenney to another suited figure. Kenney knew the man by reputation; Marcus Wide was a senior insolvency professional at PricewaterhouseCoopers (PWC) in Halifax, Nova Scotia. But more importantly, he was also the liquidator of Banc Caribe.

"I'm sitting on \$2 or \$3 million of Tradex monies," said Wide. "Art Ferdig and that woman of his, Rita, are raising hell night and day trying to get it unlocked. The thing is, I can't stall them forever."

Kenney nodded. The FBI and Dominica's Financial Intelligence Unit (FIU) had raided Tradex's Roseau office only a few weeks ago, arriving at the one-storey residential building perched on the edge of the ramshackle Caribbean town just as Ferdig fled. He was now squirrelled away in a hotel in Montego Bay, Jamaica, where McGunn's agents - former Scotland Yard and FBI men - were keeping tabs on him.

They'd since learned that "Rita", Ferdig's fake investigator, had tried to blackmail the con man to get her hands on more of the cash. "She had him begging on his knees in the hotel room - unbelievable!" laughed the lawyer. Once they turned their sights on her, they would freeze the remaining \$115,000 of the victims' unspent money that she had received from Ferdig, effectively neutralising any further threat.

Now if they could get their hands on the frozen Tradex monies being held in the Banc Caribe account, that would be enough to fund Phase Two of the chase: a full, comprehensive field investigation with a chance to locate targets for recovery. Kenney steeped his fingers and considered what their next move should be.

As they ordered further drinks, he proposed they help Marcus Wide become not only liquidator of Banc Caribe, but also of Tradex; to leave Ferdig in control risked destruction of the remaining evidence and the loss of the millions in the Tradex accounts. Furthermore, most investors were still convinced of Ferdig's innocence and were kicking up a storm about Kenney's involvement and threatening legal action. They needed to wind up Tradex - and fast. If they failed, Ferdig would surely get to keep the loot.

Kenney unleashed a legal storm: over 130 sealed subpoenas were issued by the US Bankruptcy Court in Los Angeles; discovery and raid orders were served on banks, businesses and associates of Art Ferdig across the Caribbean, following on from that summer of 2004. Sealed requests for judicial assistance abroad were sent to nine territories on Marcus Wide's behalf, allowing Kenney powers of asset discovery, arrest and recovery across The Bahamas, Jamaica, the US, Antigua, the Cayman Islands, Canada, Singapore and further afield.

Earlier, in spring that year, Tradex had been wound up. As agents of the liquidator, Kenney's team now had supreme power over the company and its related entities, and \$2.2 million from the frozen Banc Caribe accounts. The team was employing both "forward" and "reverse" tracing techniques, following the movement of funds and also tracking back from where the Ferdig gang was now spending that cash. Thousands of pages of bank and investment account statements, emails, telephone records, mortgage files, airline frequent-flyer accounts and other data flowed into the Martin Kenney & Co offices to be pored over by the assembled team of specialists.

By now the FBI wanted to find Ferdig. James McGunn was keeping tabs on the crook and was in daily contact with the Bureau. He tracked Ferdig as he crisscrossed between south Florida, The Bahamas, a number of Caribbean islands, European countries and the Americas.

There are no typical days for McGunn, a barrel-chested 66-year-old who looks much younger. He'd been a San Jose beat cop in the 60s, then a Secret Service agent guarding two presidents, before being stationed on the Afghanistan-Pakistan borders when the US was supporting the mujahideen. An expert in complex financial investigations, his work today might involve him sweeping offices for bugs, shadowing a criminal in a Panamanian dive, or liaising with a worldwide network of investigators. "We fish," as he puts it, "in troubled waters." Behind his desk sits a radio-wave detector; above him motion detectors record his every move. He keeps a carved human legbone as a grisly memento from an undercover operation in Papua New Guinea.

Online editing by Michael Conroy

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