

## **Nardello On Doing Global Investigation Work 'The Right Way'**

By **Marco Poggio**

*Law360 (July 26, 2021, 4:45 PM EDT)* -- All the things global investigation firm Nardello & Co. does have one common denominator: They are based on fact-finding. With seven offices around the world, Nardello & Co.'s employees conduct corruption-related investigations, support civil and white-collar criminal litigation, help clients assess risks in foreign countries and help them with due diligence issues.

Dan Nardello, who founded Nardello & Co. in 2003 with a \$30,000 investment, said the work of a private investigator requires flexibility and problem-solving skills, with outcomes that may vary widely.

"We're fact-finders," Nardello said. "Sometimes that entails looking for evidence to impeach someone's credibility. Sometimes it involves uncovering wrongdoing."

The world of private investigation is filled with gray areas. The work of some investigative firms has been recently singled out in the public record for using dubiously ethical means to retrieve information in high-stakes cases. For example, investigators with Black Cube, an Israeli private intelligence agency hired by Harvey Weinstein, reportedly posed under false identities to get access to people who had accused the media mogul of sex crimes.

Diligence International, a London-based private investigation firm, was hired to spy on a Dechert LLP partner who a former client of the firm thought was leaking sensitive information to the Serious Fraud Office of the U.K. government. The company is now being scrutinized by the High Court of Justice for allegedly having employees pose as relatives of the partner to gain access to his personal information.

"There has been a lot reported about investigative firms that are breaking the law or acting unethically, and that concerns me," Nardello told Law360.

Nardello & Co. has maintained a long list of loyal clients that include top law firms in the United States and abroad because his investigators work within the boundaries of the law and follow the same ethical rules attorneys do, Nardello and his clients say.

Jonathan Polkes, the global co-chair of Weil Gotshal & Manges LLP's litigation practice, said he trusts the firm's expertise in law enforcement and forensics.

"They understand what to do and how to do it. There is no one I would trust more with an assignment," Polkes said. "They just get it."

Former U.S. Attorney General Michael B. Mukasey, now at Debevoise & Plimpton LLP, told Law360 Pulse in an email that he has worked with Nardello & Co. on monitoring Bayer AG's divestment of certain assets as a condition of its \$66 billion buyout of the Monsanto Co.

"When it comes to investigations, they have well-placed contacts throughout the world that allow them to get relevant and useful information quickly," Mukasey said. "They are, quite simply, the gold standard in their field."

Firms that have retained Nardello & Co. also praised its reliability and work ethics. Barry H. Berke, a partner and co-chair of the litigation practice at Kramer Levin Naftalis & Frankel LLP, said Nardello & Co. have proven crucial in numerous criminal cases.

"In every one of our cases together, they were instrumental in discovering essential evidence that had been unknown and was critical in helping to undermine the credibility of the government's star witness, the prosecution or both," Berke told Law360 Pulse.

Nardello, a 64-year-old Brooklyn native of Italian descent, talked to Law360 Pulse about the work the firm does around the world, his background as a prosecutor under Rudolph Giuliani and some of the stories the firm's investigators hear and experience on the job.

This interview has been edited for length and clarity.

### **What can you tell me about your background?**

I'm a lawyer by training. I practice law in New York. I was a federal prosecutor in the U.S. Attorney's Office in the Southern District from 1987 to 1994. When I left the U.S. attorney's office, I ended up working for another investigative firm that no longer exists and opening their first office in Europe in Rome, Italy. That was in 1994.

I knew nothing about the world of private investigation, but I did have a background as a prosecutor who investigated cases worldwide, so I did have some preparation for it. I was in Italy for seven years, during the course of which we established a very robust business in Italy. I also opened up an office in London for this firm. Ultimately, we moved our operations from Rome to Milan at the end of 1998. I then moved, just around 2000, to London and made London my base. I became a partner in that firm, then we sold it to a publicly traded company in 2001, and I stayed on for a couple of years, and founded my business in London in 2003.

We've been in business for 18 years. We have offices in London, Dubai, Hong Kong, Tokyo, New York, Washington, and we have a strategic alliance with a very, very well-known and well-respected group of lawyers in Italy in Milan, because we continue to do a lot of work in Italy.

### **Who are your clients?**

My clients have been relatively consistent over the years. They are the best law firms in the United States, the Magic Circle, and many international law firms and the international offices of U.S. and U.K. firms. We do a lot of work directly with law firms. We also do a lot of work for general counsels of corporations. We are often appointed by boards of directors to do work. We work directly with high-net worth individuals and do work for NGOs, cultural institutions, not for profits, and sometimes

governments. That client base has grown exponentially over the years since I started in this business 27 years ago, but the nature of it has remained pretty consistent.

### **Can you paint us a picture of what your firm does?**

We are an investigative firm that services the legal community, and what we do, and this is the only thing we do, is investigating. We find out facts to support litigation positions of our clients, to help our clients recover assets, to do due diligence before transactions. We work with law firms all the time in internal investigations, like FCPA investigations. It's really fact-finding at a very high level, and we do it globally.

As you can appreciate, we are engaged by law firms and subject to obligations of confidentiality. There are a number of cases that are in the public record. A few years ago, we were engaged by the government of Abu Dhabi to do an investigation into allegations that during the construction of [New York University's] Abu Dhabi campus, the migrant labor population was not subject to the protections that NYU promised. That resulted in a public report, which was very well covered in the media.

We are currently working with Judge Mukasey and on the antitrust monitorship around issues arising from the merger of Bayer and Monsanto.

We have been appointed in the past to be the independent investigator chosen by the New York State Attorney General's Office and the Big Tobacco companies to adjudicate certain claims under the settlement between Big Tobacco and New York state.

We worked with Kramer Levin Naftalis & Frankel LLP to help secure a dismissal of a criminal charge. That case is called U.S. v. Pinkerton. As publicly reported, we were engaged by Wachtell Lipton to assist in investigating whistleblower allegations against its client Grupo Televisa SAB. Those allegations proved to be without basis. We worked with the defense in the case U.S. v. Billy Walters, an insider trading case.

We have a substantial cyber practice. That includes digital forensics, and oftentimes that is a necessary complement to our investigative work, as well as cybersecurity, both consulting and when there's a breach. We're working on quite a few very interesting cases now, but those I can't talk about, unfortunately.

### **What was your assignment in the Billy Walters case?**

We have the leading practice for white-collar criminal defense lawyers in high-stakes cases. A lot of that involves looking at the government's witnesses with an eye towards helping the lawyers impeach their credibility during cross-examination. In the Billy Walters case, we did that.

### **Are there any entertaining anecdotes you can share?**

We were engaged by a financial firm to conduct a surveillance of one of their senior executives. They believed that he was spending company money on a mistress. He was a married guy. We started the surveillance — it started at an airport in California — and we had somebody next to him for the whole flight to Frankfurt. We changed planes. We got somebody next to him on a flight from Frankfurt to Moscow. We then picked up the surveillance in Moscow. We had a surveillance team in the hotel, we knew which room he was in. The next morning — he had a balcony — he comes out with his bathrobe. A woman comes out, they're having coffee, they are smoking cigarettes. We take photos. We're

congratulating ourselves because we think we got the smoking gun. We sent the photos back to the client, and it turns out that was his wife. I've had, throughout the years, a couple of surveillance that turned out exactly in the same way.

One time, looking at an opposition candidate in a board fight, we find some really interesting stuff. One guy had a magic chair. He only could sit on that chair, and he had one person designated to be his chair carrier — if you can believe that.

There was a criminal case we did a while ago. We were looking at the government's cooperating witness, and he claimed he cooperated in part because his wife was invalidated. We were able to find out through research and surveillance that not only she wasn't invalidated, but she was the tennis star at the local country club.

### **What standards do you follow in your profession?**

There is no investigative profession. And there are no particular ethical rules for private investigators. We adopt the rules that limit and govern lawyers' conduct. For instance, we never misrepresent ourselves when we need to go out and do interviews. We won't talk to people who are represented by counsel. We won't pretend to be journalists. We won't — and this should be taken for granted but it isn't — do things like hack into people's computers or their phones. These are examples of what other firms have done.

The firm does have legal DNA. We don't believe in a democracy of facts. We believe facts should be given the appropriate weight, and we bring to the fact-finding process the discipline that good lawyers do, invoking principles of corroborations, teasing out inferences, looking for supporting documentation or testimony, all the skills that one develops as a lawyer we try to apply to our work as investigators.

### **What kind of professionals does your firm hire?**

There are five former federal prosecutors in the firm and a number of people who are lawyers. Our general counsel, Warren Feldman, who joined us last year was a senior white-collar partner at Skadden.

My partner and the president of the firm, Sabina Menschel, has an MBA from Harvard. She worked at the FBI and then spent the bulk of her career in the investigation business with other firms.

Tom Feeney has a background in federal law enforcement. He was a postal inspector. He worked with the Southern District of New York on various insider trading prosecutions.

And then we have folks who are regional specialists. My partner Martin Stone, in our London office, is an Arabist by training. He speaks Arabic, he wrote a book on Algeria. He has an encyclopedic knowledge of the Middle East.

Ben Rowse, who is in Tokyo and runs our Asia practice, is a former journalist. He started at Agence France-Presse working in Vietnam. Before he joined us, he was running the business intelligence group at the Deloitte office in Hong Kong.

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The head of our cyber practice, Jud Welle, is also a former federal prosecutor. He was a cyber

prosecutor in New Jersey.

Scott Nawrocki was with the FBI cyber squad.

Jim Nauwens was the chief investigator in the Southern District of New York.

It's a mix of lawyers, researchers, former journalists, people out of the security services, regional specialists. When combined, we speak just about every language that would be implicated in investigations.

### **How do you find your talent?**

Folks who do this work like working for us for a number of reasons. One is that we do really interesting work. We focus, unlike a lot of other firms, on complex investigations. A lot of those have cross-border elements to them. And two, they know that we do things ethically.

In terms of recruiting, we work really hard to find good people. Sometimes they come right out of private practice, sometimes they come right out of government. Sometimes they come from law firms. They would sometimes come from competitors. Some of the younger people, we recruit them right out of university. Some folks approach us, some folks are referred to us.

Finding the right talent and people who get our culture and our values is something that I certainly and my partner Sabina Menschel spend a lot of time on.

### **How do you see your firm growing?**

In terms of geography, I think we're pretty well covered. By next year, it is likely that we will have an office in Los Angeles. One thing we're evaluating is whether to open an office in Singapore to serve the firms that have moved there from China and from Hong Kong.

We're also exploring an actual office of our own in Milan, although I have some concerns about that. We have had plenty of Italian business, from Italian clients and from U.S. and U.K. clients with issues in Italy, but as you may know, the profile of a private investigator in Italy is "molto basso" [very low]. We may do that if we can educate the market about what an investigation firm like ours does compared to the typical Italian private investigator.

We do a lot of work in the former Soviet Union, but for security reasons I would never have an office in Russia. And we do a lot of work in both North and sub-Saharan Africa, but I don't think at least at this point any of those places are really hospitable for an office.

We're constantly evaluating whether it would make sense to have an office in South America, but for security concerns and for issues related to local corruption, I don't see that happening any time soon.

### **What ethical rules do you follow when working in jurisdictions abroad?**

Any jurisdiction that you're working in, you need to understand what the local law is. For instance, if we have a private investigation business and we employ investigators in Italy, we need to abide by the public security law, which says you need to have licensed investigators. In Italy, licenses are given out by the prefect, and there is an analog to that in most jurisdictions, certainly in civil law jurisdictions whose

jurisprudence stems from the Napoleonic Code, like Italy, France and Spain.

In the U.K., interestingly, there is no licensing requirement, but you have to abide by the [General Data Protection Regulation] and various data protection legislation.

So part of what we do is informing ourselves of what's required in the jurisdiction we're going into, making sure anybody we use in those jurisdictions to assist us in our work understands what the ethical rules are, where the legal lines are, and understand also confidentiality.

If we're using someone in, say, Nairobi, a local investigator, that person is going to sign up to our code of ethics. We'll give them training. We'll vet them. Part of it is how you manage outside resources, in particularly difficult jurisdictions where corruption is widespread. You don't want to conduct an FCPA investigation and violate the FCPA by paying some officials to give you information. We are very careful about this.

### **You worked as a federal prosecutor under Giuliani. What was it like?**

Rudy hired me. I spent seven years in that office. Back in the day, Rudy was a terrific boss, a terrific lawyer. He was an inspirational leader. My experiences with him when I was an assistant were very positive.

### **Do your employees ever find themselves in danger?**

Certain times, they have been in situations and in jurisdictions where the rule of law is not paramount. We've done a lot of work over the years for American and European clients evaluating potential deals in Mexico. An aspect of that was trying to make sure the counterparty on the Mexican side was not in any way associated with the drug cartels.

We had one case there where our client didn't heed a warning from the cartels. There was violence, and the location where it had some of its technology was burned to the ground. We were instrumental in helping extricate the client from that particular situation. It was dangerous.

We've worked in the Democratic Republic of the Congo, which can be challenging, and in Nigeria, which can be challenging. We've done work more recently in Afghanistan, a very extensive internal investigation for an NGO there. So, we've done work where the rule of law is certainly not up to U.S. standards and where our folks could be potentially in peril.

--Editing by Brian Baresch.