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Resilience During Volatile Times – How Boards Are

Jules B. Kroll is the founder of Kroll, Inc., the world's leading risk consulting company, and the widely acknowledged founder of the modern investigations, intelligence and security industry. In 1972, when he established Kroll Associates, Inc. as a consultant to corporate purchasing departments, he created the prototype for a new breed of professional service firm dedicated to mitigating risk. By employing former prosecutors, law enforcement officials, journalists and academics who utilized sophisticated fact-finding techniques to address decision-makers' needs for accurate information, Jules established investigations and risk consulting as valuable corporate services.

Since 1997, his vision of providing clients with a full spectrum of risk consulting services propelled the firm's growth as a public company, in particular, its acquisition of employee screening, forensic accounting, data recovery and corporate advisory and restructuring firms. This vision was fully realized in July 2004 when Kroll was acquired by Marsh & McLennan Companies. With this vast experience and perspective on risk management in today's volatile economy, Jules led our 39th Topic Luncheon discussion on October 2, 2008 at The University Club in New York that was attended by nearly 30 experienced board leaders.

Framing the Effectiveness and Sustainability of Existing Board Governance Jules began by asking where boards turn for deep expertise and whether they are equipped with the sources of advice and counsel that can help them make more informed decisions, especially if individual directors aren't steeped in the intricacies of modern-day accounting and risk exposure. Further, when one looks at the institutions that have had the most dramatic demises in recent times and you look at how their boards functioned, one begins to see it for what it was: a shell game.

I know it's always easier to judge how the game is played on Monday morning than it is on Sunday morning," Jules says. But you do have to ask yourself, if you look at those boards of institutions that have either gone out of business now, or virtually have gone out of business, and how they really function as opposed to others, what is it about the way those boards were governed that raises issues for us today?" He points to the board of one particularly well-known financial institution and opined that there were some outstanding individual directors serving on its board. However, Jules adds, "It was not run in a way that even remotely approached proper governance–one person's view–and led by an individual who conducted himself in such a way that it would be hard for that board to miss it. We haven't had these kinds of frank discussions and I think the time has come."

While much of the focus is on financial institutions because of recent collapses, the need for more stringent board oversight extends far beyond investment banks and financial institutions. “It also applies,” Jules contends, “to many, many important companies that have a treasury function where these activities are taking place somewhat below the radar where we as directors are very, very much in the hands of the professionals inside of the companies. And frankly it is very seldom that I have seen directors, unless they have a deep financial background, really understand some of the things that are going on and be capable of explaining it to others. So there’s the governance point.”

Boards have, so far, largely escaped the blame being heaped on elected officials as a result of the downfall of large financial institutions and the forced realignment of Wall Street. “I have been absolutely fascinated by how, thus far, the boards of directors, generally speaking, are not being placed front and center,” Jules says, “and I wonder how much longer that is going to be the case.”

Facing The Fallout: Bracing For The Litigation To Come When institutions, lawmakers and shareholders emerge from the short-term, crisis management that all have been forced into as a result of banking calamities and subsequent volatility in the markets, the focus will invariably shift to investigations of malfeasance or misfeasance and the related litigation that goes along with it.

This is precisely the area in which Jules noted he has made a living for many years, but one that he sees as ill-equipped to do anything more than further enrich the lawyers, some of whom are already mobilizing in task forces to identify high-return litigation targets.

The truth is, Jules asserts, “Our litigation and the litigation process in this country is absolutely broken. And what we’re going to see is…billions and billions of dollars spent on lawyers dealing with this, and most of it will be spent in the area called ‘discovery,’ which, of course, is an oxymoron.”

The rules of federal procedure were changed years ago, he explained, so that one part could understand more about what the other knew and did, and vice versa, with the theory being that if one party knew more about what the other side had done or their positions, the prospect of settling things out of court would increase and leave us with a more rational system. Instead,” Jules argues, “80 to 85 percent of the money that will be expended on lawyers during.