

## ***Corporate Crime Reporter***

June 26, 2000

### **INTERVIEW WITH JAMES MINTZ, PRESIDENT, JAMES MINTZ GROUP, NEW YORK, NEW YORK**

Last month, we received a neat little booklet titled "19 Things Business Executives Don't Want You to Know...And How We Find Out About Them." The booklet was put out by the James Mintz Group, a corporate and financial investigative firm with offices in New York, Washington, Miami and London.

The company is headed by its namesake, James Mintz, who has been an investigator since the late 1970s.

The James Mintz Group has investigated thousands of business executives and companies on behalf of investment bankers, corporate officers and their legal advisers. Out of those investigations, Mintz and his partners observed a pattern of deceit—what executives hide about themselves and their businesses and how they try to cover up these issues.

Attached to the brochure, Mintz sent along a red flag. On the red flag was printed a *New Yorker* cartoon that pictures two corporate executives sitting in an office. One says to the other—"I gotta tell ya, these embezzlement convictions raise a red flag." The 19 things business executives don't want you to know include criminal activities like embezzlement, but also drunken driving, scrutiny by consumer and rights groups, secret companies, bombs in regulators' files and ties to organized crime.

To gain an understanding of how Mintz brings to life what executives seek to hide, we interviewed him on June 19, 2000.

**CCR:** Who are your competitors?

**MINTZ:** There is a lively community of corporate investigative firms. They include Kroll Associates, Investigative Group International, DSFX, Control Risk.

**CCR:** What is James Mintz Group Inc. known for?

**MINTZ:** One is litigation support and the other is due diligence before transactions. We have developed a subspecialty in art and antiquities related investigations. When art is in dispute, we trace it backwards in time, place and ownership. From time to time, we check on art for someone who is thinking of buying the piece.

**CCR:** Do you consider white-collar criminal defense law firms as your competitors?

**MINTZ:** We work for many white-collar criminal defense lawyers. They are our clients. So, no, we don't view them as competitors at all. In fact, we share with our clients our knowledge of how to efficiently get at the public record. Our clients are already doing much of this work themselves, and we encourage them to do more. Our clients historically sent over a Nexis run or a Dun and Bradstreet run and asked us for more information. Now, they are sending over information from other databases and asking us to inquire further.

Our work starts with the end of something that our clients have researched, and that is the way it should be.

**CCR:** There is a sense corporations will go to private investigative firms if they perceive that they need something done extra-legally. Today's *Wall Street Journal* reports that unnamed competitors of Microsoft hired IGI to buy the trash of a Microsoft funded lobbying group, the Association for Competitive Technology.

So, is there a sense in the legal community that the law firm will do the work, unless it gets edgy, and then they will hand it off to the investigative firm?

**MINTZ:** No. Anything that an agent of a law firm does would be held to the same standard as the law firm.

I don't know anything about the case you mention, but let me tell you what I mostly do for law firms—mostly I interview people. Law firms are quite comfortable going in and doing internal investigations, in which the interviews have been set up. They might not be friendly interviews, but they have a certain structure to them. People have been told to expect the law firm to come in.

We sometimes do that kind of interviewing for law firms, but it is more often that law firms do those for themselves.

But often an investigation turns to the need to unscramble a fraud by talking with all kinds of people who may have absolutely no reason to speak, may be hostile or neutral, or might be friendly—by going out into potentially hostile territory to maximize the information you get from people—and maximize the cooperation and truth you get from people.

That's what we specialize in. We do a lot of research and are experts at finding obscure pieces of paper in the public record. But usually, we end up interviewing. And we think of ourselves as professional interviewers.

**CCR:** You have put out a booklet titled "Nineteen Things Business Executives Don't Want You to Know and How We Find Out About Them." Why did you do this?

**MINTZ:** We are doing more than 1,000 background checks a year on business people. And we decided to compile what comes up most often that our clients find helpful as they think about doing a deal. If we list it as number one, that's what comes up most often. We did this booklet in response to a question that clients often ask us—what do you find that might be helpful to me?

**CCR:** To whom did you send this booklet?

**MINTZ:** We sent it to our client base.

**CCR:** Attached to the booklet is a red flag upon which is printed a *New Yorker* cartoon. In the cartoon, one corporate executive is telling another "I gotta tell ya, these embezzlement convictions raise a red flag." Number one on your list of 19 things business executives don't want you to know is "jobs that fall off resumes." You say that it is often the little things that people edit out of their pasts that a prospective business partner most needs to know.

**MINTZ:** In the egregious example, you will find an executive who claimed to have graduated from MIT, when in fact they didn't, or they claimed to have been in the Army Rangers and they weren't. And occasionally we do find that egregious example. But our point here is that much, more often than that, we find that the business executive took a job that didn't work out—he was fired or quit after six months or a year. And they don't want to own up to it, they don't want to live with that little imperfection on their resume, so they exercise it and they stretch the dates of the job just before or just after, to make it look as if they have a seamless, successful career.

**CCR:** Does that kill the deal?

**MINTZ:** My sense from a number of our clients is that lying is looked on with great disfavor. A number of our clients would say they might have sympathy for a businessperson who had some trouble in the late 1980s or early 1990s when the economy dipped, as long as people are straightforward about it. But we certainly uncovered falsehoods in the due diligence process that people took more seriously than I thought they would.

**CCR:** Are most of your due diligence clients about to do deals?

**MINTZ:** Most of them are investment banks or the general counsel of companies that are on the verge of taking a company public, or doing a financing for someone, or that kind of thing.

**CCR:** What law requires them to do this kind of due diligence?

**MINTZ:** There's no specific requirement to do due diligence investigations before a deal, it's more like a duty. The Securities Act gives investors in public offerings the right to sue underwriters and other parties to the deal in the event that the registration contains statements that are materially false. An effective due diligence investigation can be a defense against these kinds of liability claims after a deal.

**CCR:** You say that business executives don't want you to know that they have been involved with a bankruptcy. This comes in second place in your survey. Is there any way to hide bankruptcy?

**MINTZ:** It is much more difficult to hide it in the last couple of years. We can now search the whole country for a bankruptcy. And we do that by using a couple of databases in combination—Nexis and CourtLink and others.

Before a couple of years ago, it was quite easy to hide a bankruptcy. I used to live in Brooklyn, but I now live in Manhattan. If you didn't know that, the only place you would have searched before doing a deal with me would have been the Southern District of New York. You would not have known to look in the Eastern District, and you certainly would have had to look district by district to find my record.

Now, using these databases in combination, we can scan the entire country. And as you can imagine, from a due diligence investigator's point of view, this is a great advance in the information retrieval business.

**CCR:** What are the top five information databases?

**MINTZ:** Nexis/Lexis, Dialog, CourtLink, AutoTrack and the Internet. Maybe the Internet should be put first.

**CCR:** What is AutoTrack?

**MINTZ:** It's a database of public records that, among other things, shows you people's past addresses and phone numbers to allow you to identify them.

Common names are like kryptonite to investigators. For example, there are a number of Jim Mintzs around the country. AutoTrack allows you to sort me from the rest of my namesakes.

**CCR:** What about privacy concerns? How do you know when you have gone too far and invaded someone's privacy?

**MINTZ:** These are databases of public records. We are looking for things like litigation and tax liens that are left behind on the public record.

We are not looking for medical records or tax returns or banking records, or the fact that they subscribe to a magazine or anything along those lines.

**CCR:** So, when a law firm asks you—what can you give me that I can't get by going through public databases—are you saying nothing?

**MINTZ:** Let's take asset searching, for example. There might be private investigators out there who would claim that they can get a peek at people's bank accounts. And they will tell you how much money some person has in his account. I don't do that. So, I can look for real estate, boats, or planes, or companies that put them into some relationship. I try and find a person's former secretary who tells me that he had a Swiss bank account.

If that seems like a Boy Scout's way to look for assets, then so be it. If a client wants to go elsewhere to have some kind of other asset search done, then they should go elsewhere.

**CCR:** Is there an industry group that represents the interests of investigators?

**MINTZ:** I belong to some international groups, so that if we need to find somebody in Nigeria tomorrow, we have a number we can call.

**CCR:** Are there codes of conduct?

**MINTZ:** I don't know if there are any. But there are laws in most states that closely regulate how investigators do business.

**CCR:** Let's get back to the list. Number four is "secret companies." Why would an executive start a secret company?

**MINTZ:** I'm not sure I know the answer, but in many, many cases, we find a business executive with a side company that he has at his home. He has named it after the street that his vacation home is on, or he has named it after his wife's sister. Often these companies sit off to the side during an executive's life, not being used, or not being terribly active.

When you find one—and we find them quite often—it makes you worry a little bit about whether the guy has been doing any self-dealing—getting the big company he heads to buy something from his little side company. That is the kind of thing we check for.

**CCR:** Number five is "bombs in regulators files." As you say, you can go on-line and check the SEC database. But others tend to be secretive. For example, we reported last month on the Treasury's Department's Office of Foreign Assets Control. They have an active enforcement arm, but they engage in secret settlements, and there is no public record of the settlements. We have just filed a FOIA request to get them. But there are hundreds of state and federal agencies.

**MINTZ:** The Internet has raised the standard for all of us. But it is still an incredible maze of different sites. You certainly can't put somebody's name into a search engine and have it pierce into the Massachusetts Attorney General's office. Once you know that the Massachusetts Attorney General keeps regulatory data on auto dealers in Massachusetts, then you know to go there and look up the information you need. But regulatory data on-line is quite a maze.

**CCR:** But beyond just looking up information, you make the point that you might have to go visit the regulator to see whether you can get access to any publicly available files.

**MINTZ:** Yes, once you file a FOIA, you can fly that as your flag and get more information.

**CCR:** A number of the 19 things business executives don't want you to know deal with civil litigation. Number seven is "litigiousness." Is the business executive you are studying out there suing people? Are the lawsuits legitimate? Is the business executive being sued? For what reason?

**MINTZ:** Yes, you always want to know whether this executive has been accused of any wrongdoing in lawsuits. If our client is about to loan some millions of dollars to this person's company, and we find that he has had disputes with previous banks that have loaned him money, or if he hadn't paid the money back, that would be taken pretty seriously.

But just as often our clients take seriously a pattern of the guy suing other people. We try to look for patterns. If a person takes a scorched earth approach when in disputes with people, then our clients might want to shy away. We come across people who litigate apparently over all sorts of minor things. Our clients might want to walk away from deals with such people on the theory that life is too short.

**CCR:** Often you are asked to investigate companies, not just executives.

**MINTZ:** Well, yes, if we are asked to investigate companies, we would want to look at not just the company, but also the top executives at that firm. Someone comes to us and says—we are thinking of doing something with this company. We want to make sure the company is okay and its top people are okay.

**CCR:** Number eight is "past criminal trouble." Is there a national database of criminal actions—local, state and federal?

**MINTZ:** Yes, the Federal of Bureau of Investigation's database. But we do not have access to it. So, we are left with trying to understand where a person has lived in the past, and then going into the local courts and looking for criminal matters by hand. That one we do the old-fashioned way.

**CCR:** Most of those criminal cases are not on-line?

**MINTZ:** Some are. Recently, at the federal level, some of them are, but not at the state and local levels.

**CCR:** What do you know about the FBI's database and why is it not publicly available?

**MINTZ:** It's called the NCIC, which stands for the National Crime Information Center. It contains not just convictions but arrests—what used to be called rap sheets. It is fed by, and accessed by state, local and federal law enforcement agencies.

**CCR:** This is available only to law enforcement officials?

**MINTZ:** Yes. If private people have accessed this database, they have done so illegitimately. Sometimes people come to you and say, all I want is his criminal record, just go to the FBI database. And I say—can't do that.

**CCR:** What kinds of trouble are corporate executives getting into?

**MINTZ:** In a surprising number of cases, we find lawsuits involving punch-ups. In this society today, if you punch a guy out in a bar fight, you are probably going to get sued. And more often than you think, we find those kinds of altercations. I don't know how seriously our clients take it.

**CCR:** Is it serious enough for your clients to question a deal if an executive is involved in a bar fight?

**MINTZ:** We try to get to the criminal records and see how serious the circumstances are. If we see a pattern, drunk driving in one year, bar fight in

another—then that would pose a problem. Our clients put the data we find in with what they already have on the guy. Maybe they will talk to him about it.

**CCR:** Number nine on your list is "reason for leaving a job." You write: "There are lots of reasons why someone leaves a job, but when asked, many corporations will only confirm a former employee's dates of employment." How do you find out why a person leaves a job?

**MINTZ:** We sometimes ask to see if we can ask around quietly to find the real story why a person left a job. And we do our best to get to the person's former colleagues, without attributing it to them, to get some insight into what happened. It's the only way to separate the real resignations from the "resign or we'll fire you" situations. It's an interviewing process.

**CCR:** Yesterday, the *New York Times* ran an interview with a group of New York Giants football players. One of them said that as a high-profile athlete, if they get caught driving while drunk, they'll make the front page of the sports section of the paper. Number ten in your booklet is titled "Drunken Driving" in which you asked "Could your prospective colleague or business partner have a problem with drugs or alcohol?" I guess business executives, if they are not high-profile business executives, don't end up in the paper. That again is non-public information generally. How do you find out?

**MINTZ:** The only way we can is to check public records in the courts or the databases for a person's driving record. And it will show that they received a speeding ticket here and two points on their license. And it will show if they were charged with driving under the influence. So, that's one little window you get into a person's drinking problem.

**CCR:** If there is a string of these problems—lying, drunken driving, a punch out incident—that might cause your client to back off. But one little problem isn't going to knock out a deal, is that right?

**MINTZ:** Yes, that's right. I've seen business executives acknowledge big problems in their past—bankruptcies, financial reversals, a period in their life where they had a problem with drinking, for example, that have not affected deals at all. The advice they get from good investment bankers, and that they would get from us is—acknowledge it, give whatever details are asked for—that's the only way to handle it. In this day and age, some of the stuff is probably on the obscure public record.

**CCR:** Number 12 is "lies to win government contracts." You write: "Some years ago, a waste disposal company made some exaggerated claims about the volume of its business in order to win a county contract. The company's competitors complained and the county held a hearing. When the hearing was over, the trash hauler withdrew its

bid. Years passed and the incident was all but forgotten. However, we discovered audio tapes of the hearing stored in county records and played them for our client."

**MINTZ:** That killed the deal because the client viewed this lying as providing a window into the character of the people they were going to do business with. Generally, businesses and business people live their lives unscrutinized by the public. Occasionally, you get a little window. So if the window a client gets access to provides a negative incident, they will suspect other bad acts.

In recent years, there have been a great number of deals in the trash hauling business. Wall Street firms finance roll-ups and other deals in that industry. In waste hauling, the problems are more notorious.

**CCR:** How do you determine whether a waste hauler has mob ties?

**MINTZ:** You certainly want to scrutinize the criminal and civil litigation the company has been involved in. In addition, you want to look for news articles to see if there has been an investigative piece.

From our experience, you want to check articles that may or may not be on-line. Many local and community papers are not on-line.

**CCR:** Has the trash hauling situation in New York City improved?

**MINTZ:** We certainly are getting more national waste hauling companies in New York City that do not have those accusations. People's concern about organized crime has moved on to other industries. We work, for example, for some private bankers who worry about taking Russians as clients because of concern over mob ties. Different ethnic groups are coming to the fore.

**CCR:** Number 13 is charges against foreign subsidiaries. You come across this in Foreign Corrupt Practices Act cases where a major American company will have a subsidiary take the guilty plea so that there is not a hit against the company itself.

**MINTZ:** Yes, and sometimes defense counsel do this with an eye on Nexis/Lexis. Defense counsel may be smarter than the government in some cases so that people like me coming along a year or more later can't pin the tail on the donkey.

**CCR:** You make an interesting point that depositions in civil cases are an important source of information. But how do you get civil depositions for a case that has been dead for a number of years?

**MINTZ:** It's tough. We will go out and scour docket sheets in a litigation, looking for depositions, and we may go to counsel for the other side and ask for it, or see

if a court reporter will get it for us. Depositions are part of the public record, but they are often not in the public record. But they can be terribly helpful.

One thing that has worked well for us is to file an FOIA with the SEC for any information about an individual from closed matters. And the one thing they give you fairly quickly if they have it is the one thing that you most want—and that is a deposition of the individual.

**CCR:** Are most government agencies that quick and that responsive?

**MINTZ:** No, the SEC is unusual in that one respect.

**CCR:** Number 18 you have listed as scrutiny by consumer and rights groups. You write: "When Ralph Nader helped kill the Corvair, he spawned a cottage industry of consumer activists dedicated to exposing corporate abuses. You may need to know whether any of them have targeted—or are about to target—your prospective business partner. The challenge is to pick up any signals that such whistleblowing is about to take place."

**MINTZ:** The consequences of getting the reputation as a bad guy are steep. And public interest groups can give you that reputation. It's almost as bad as being sued by the government.

The Internet helps us identify what these groups are doing. If you are doing due diligence on a clothing company, we check with the right places in Europe or Asia as to whether they have made some bad guy list, and if so to try to get into the file and see what's behind that.

Usually, these groups are willing to share that information. Public interest groups are savvy about wanting others to know why they put some company on a list.

**CCR:** Finally, number 19 is "controversy in local politics." You write: "Political campaigns subject candidates to a great deal of scrutiny, revealing information that may be relevant to a later business transaction." There can't be many businessmen who turn politician and then become businessmen again.

**MINTZ:** Well, it is rare. But we do find people who run for local office.

You find people who run for school board, or mayor, who go through a rough campaign, and you want to know what's out there on them.

**CCR:** Is due diligence most of your business?

**MINTZ:** Helping people who are in litigation is probably two-thirds, and about one-third of our business is due diligence.

We wrote this booklet with an eye on the due diligence part. We try and identify particular tricks of the trade—web sites, databases, FOIA requests—which are equally useful if you are backgrounding somebody who you are in litigation with.

**CCR:** On the litigation side, are your clients mostly law firms or mostly corporations involved in the litigation?

**MINTZ:** Mostly law firms. A good deal of our work is before litigation, where we are asked to see whether some event is part of a pattern that a person or a company has engaged in. Sometimes we are asked to identify and interview people who might be knowledgeable about a certain situation. Litigators sometimes like the element of surprise we can provide them with. Before they file litigation, we are able to get out and interview people.

In this day and age, people are looking to file strong complaints with a strong fact pattern. And once the litigation has been filed, it sometimes helps to have us out there interviewing a whole category of people—former employees, vendors, or competitors—looking for the one or two who are both knowledgeable and cooperative, so that their depositions can be taken.

**CCR:** Is most of your business in the United States?

**MINTZ:** It's about 70 percent domestic and 30 percent abroad. We have done a lot of work in Europe and Latin America.

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