



The Patriot Act & Elliott Spitzer

by John D. Whitaker

Well, New York Governor Elliott Spitzer had about as spectacular a flame out as any hypocritical politician in recent memory. Watching him crash was like watching the kid hit the baseball at his dad on America's Funniest Home Videos. You know what's coming is going to be hideous, but you can't look away. The most interesting aspect of this train wreck was that it was ultimately caused by the government's use of the Patriot Act.

You all remember the Patriot Act. It was the law passed by Congress in response to the terrorist attacks of Sept. 11. One of the more obscure aspects of this law was that it requires banks to report certain unusual financial transactions including odd patterns of cash transactions and wire transfers. Banks were required to install sophisticated computer software which would scour the banks transactions looking for unusual activity. The banks started ranking their customers based upon risk levels which were determined by considering such things as the customer's credit rating, assets, profession and most troubling, the customer's political activity. The rationale for this was that politicians were more likely to be targets of corruption by outside governments.

When something pops up as unusual, the bank reports the activity to law enforcement via a "SAR," or Suspicious Activity Report. The problem is that the SARs are readily available to law enforcement and are frequently used by prosecutors to look for potential leads in garden-variety domestic white-collar crime investigations. These investigations have nothing whatsoever to do with Osama bin Laden, or terrorism per se, but rather are investigations of American citizens.

Apparently, Mr. Spitzer was using his ATM to obtain



large amounts of cash and was sending money to the call girl operation from his accounts using someone else's name. This activity was reported to the authorities with a SAR, and an investigation began. Initially it was reported that the government thought he was being blackmailed, but as the investigation intensified, his extracurricular activities were exposed, as was the fact that he was not engaging in terrorism. It seems to me that if the reason we gave the government this extraordinary power was to catch terrorists, then as soon as they found out that Mr. Spitzer's case had nothing to do with terrorism, they should have dropped it.

One might fairly wonder how much information the government has obtained about any of us using these tools. How much of our activities are truly private, and how much is being maintained in a file somewhere for later use. I don't want to sound paranoid, but I have always believed that as an American citizen I was entitled to be free from unreasonable searches and seizures. I believed that there was a right to privacy implied in the Constitution and that the government did not have the right to rifle through my private business without probable cause or my knowledge and consent.

I would argue that those who would use the Patriot Act for domestic surveillance of American citizens are violating the United States Constitution. This law simply goes too far. Once it becomes clear that national security is not implicated, the use of information gathered by virtue of the Patriot Act should be prohibited.

Does George Orwell still matter? I would bet that he does, but betting is illegal and I sure don't want my bank to be forced to tell the feds that my account suggests that I might be gambling.

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at jw@wyoinjury.com or by calling his office in Casper at 265-6204.