

# The Rise and Fall of Eliot Spitzer: The Power of Electronic Evidence

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Truth be told, electronic evidence gunned down “The Sheriff of Wall Street.” As this morality play aired night after night on the news, Eliot Spitzer seemed to be plagued by an electronic evidence posse. When the mighty fall, it’s never pretty – and it’s always hopelessly public, now spurred on by the viral news of the Internet.

Though it is not hard to shake your head and simply ask, “What was he thinking?,” there is an age-old tale contained within the debacle that unraveled Spitzer’s life.

He is brilliant, no one disputes that. Born to the silver spoon in 1959, son of a real estate tycoon and an English professor, he graduated from Harvard Law School. After a stint in a private law firm, he went on to join the Manhattan District Attorney’s office, determined to tackle organized crime. He launched an investigation of the Gambino family which finally brought the family down. He returned to private practice for a time and then, in 1998, became New York’s attorney general, with a huge “leg up” in the form of a loan from his dad.

Once there, Spitzer was a bulldog. As attorney general, Spitzer prosecuted cases relating to corporate white collar crime, securities fraud, Internet fraud and environmental protection. He brought cases against companies involved in computer chip price fixing, investment bank stock price inflation, and the 2003 mutual fund scandal. He also successfully prosecuted cases against (is there ironic music playing in the background) prostitution rings, roundly denouncing the world’s oldest profession.

His fame snowballed in the press, which cheerfully dubbed him “Eliot Ness” and burnished his reputation as a crusading reformer, a “law and order” man who put criminals behind bars. *Time* magazine even named him “Crusader of the Year” during his two terms as New York attorney general.

In a move that shocked many, he sued Richard Grasso, the former chairman of the New York Stock Exchange, claiming he had failed to fully inform the board of directors of his deferred compensation package, which exceeded \$140 million. The charges may or may not have been valid, but no matter. The boy had proved that he had cojones and everyone knew it.

Was he popular? Only with the toadies who streamed after him as his entourage in every photo op and video byte of Spitzer emerging from courthouses. In fact, his arrogance was the stuff of legend, and increasingly, that arrogance seemed to blind him to his actions, particularly after he became the Governor of New York in January 2007.

Long before the prostitute scandal broke, Spitzer had been accused of using “official” resources to spy on political rivals, something we may learn more about now that no one is currying his favor. It was said that his temper was fearsome and that no one dared to “naysay” the Governor. As is so often the case, it appeared that power had corrupted and “near-absolute” power had corrupted “near-absolutely.”

This moves us to March when the story broke that Spitzer had been involved with the Emperors Club (think there’s any appeal to hubris in THAT name?). He confessed, the press had a field day, his family suffered greatly, and he ultimately resigned. What struck us most at the time was how electronic evidence had brought Spitzer to be a “person of interest,” how it was then used to mount a case, and how it finally added to his ultimate humiliation.

Few people we talk to seem to understand exactly how Spitzer got nailed. To the surprise of many, his undoing came about through (improbably enough) The Patriot Act. The wildly controversial Act gave the FBI new powers to snoop on suspected terrorists. In the Act’s fine print were provisions that gave the Treasury Department authority to demand more information from banks about their customers’ financial transactions, which was supposed to help identify terrorist money launderers. The Treasury Department went still further by issuing stringent new regulations that required banks themselves to look for unusual transactions (such as odd patterns of cash withdrawals or wire transfers) and submit SARs – Suspicious Activity Reports – to the government. Facing stiff penalties for non-compliance, banks and other financial institutions installed sophisticated software to detect anomalies among millions of daily transactions. They began ranking the risk levels of their customers – on a scale of zero to 100 – based on complex formulas that included the credit rating, assets and profession of the account holder.

Unfortunately for Spitzer, one of the elements of the formulas was whether an account holder was a ‘politically exposed person.’ While the transaction formulas were first focused on potentially crooked foreign officials, the lists expanded to include many U.S. politicians and public officials who were potentially vulnerable to corruption. The data, stored in an IRS computer in Detroit, is accessible by law-enforcement agencies nationwide. Treasury lawyers say that the vast majority of SARs filed these days involve white collar crime and have nothing to do with terrorism.”

Spitzer knew enough not to process large cash transactions, which would have triggered his bank’s requirement to file a currency transaction report (CTR). Instead, he arranged a series of wire transfers in smaller amounts to a bank being used by a company fronting for the prostitution ring, QAT Consulting Group, which uses a number of names (surprise). Apparently, he did not fully understand that his series of wired payments might trigger the filing of a suspicious activity report by his own bank (as well as that of the front company’s bank, which did indeed happen).

Something must have worried him, because current news reports in mid-April are saying that he actually called the bank to have his name removed from the wire transactions, which the bank refused to do. It is still unclear whether the bank would have filed its SAR if Spitzer hadn’t called in requesting that his name be removed from the transactions, but that certainly sealed the “suspicious” nature of the transactions. Shortly thereafter, the bank filed the SAR . . . and trip-wired a whole series of events.

Most SARs don't go anywhere, because so many of them are filed, but it was inevitable that someone would recognize the name of the Governor of New York, and sure enough, someone in the IRS Criminal Investigation Division did. Uncertain of whether the Governor might be a blackmail victim, a victim of identity theft or engaging in political corruption, the investigation was opened.

The IRS agents then joined with prosecutors in the Southern District in New York to determine the circumstances surrounding the transfer of the money and the nature of the company it was going to. The Southern District was chosen because the bank transaction had occurred in Manhattan. Ultimately, the FBI joined the investigation because it had greater authority to look into possible political corruption and use wiretaps. We confess that our cynical side guesses that the FBI also had the blood scent of an unpopular and very Democratic politician.

Having appeared on the radar of law enforcement, the FBI did indeed begin wiretapping and the next round of electronic evidence proved utterly damning. Forever consigned to the dustbin of history as "Client 9," the FBI monitored calls between Spitzer and the Emperors Club, working out the monetary details of paying for his now infamous encounter with "Kristin" in Washington D.C.'s Mayflower Hotel in Room 861, on February 13<sup>th</sup>, the night before Valentine's Day. Ultimately, the accumulated evidence showed that Spitzer was mixed up with not one, but two prostitution rings and that he had been involved in this conduct for some period of time.

Just when he must have thought that things couldn't get worse, Murphy's law struck, and they did. Journalists fell all over themselves when they realized that the lady who had an appointment with Spitzer at the Mayflower Hotel also had a page on MySpace. Kristen (real name Ashley Alexandra Dupre) was a wannabe singer, and everything on her MySpace page became the last of the electronic evidence to add utter misery to Spitzer's disgrace. Through the MySpace page, reporters were able to hone in on 'Kristin,' her brother Kyle, and even her mom. As the buzzards circled around these folks and gave them their 15 minutes of fame, it was an ignominious end note to a debacle of the first order.

Bank records, wiretaps, MySpace pages – all common fare to those of us in the computer forensics business. But surely to Everyman, the rise and fall of Eliot Spitzer is a clear indicator that skeletons and personal foibles are far less likely to remain in the closet these days. Once any electronic data bubbles to the surface making any of us "of interest" to law enforcement, there is very little that is likely to remain hidden. Privacy has been eviscerated far beyond the imaginings of even George Orwell. Although the essence of his message is correct: Big Brother is indeed watching.

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