

THE LAW

• Aaron Krauss



The Sheriff's Trail

What was Eliot Spitzer thinking? How could he think he could get away with it? I'm not talking about whatever he was doing in his hotel room. They say people get away with that all the time. I'm talking about the money. How could the "Sheriff of Wall Street" think that he could transfer thousands of dollars between bank accounts and not leave a trail? After all, he made his reputation by following the money on Wall Street. Didn't he realize that someone could follow his money as well?

There are two lessons to be learned from this (well, three really, if you want to stay in office, stay married, or both, but this is a magazine about risk, not relationships, so I'll skip that one). The first is that, in this day and age, it is nearly impossible to do anything without leaving a trail.

As Scott McNealy, chairman and former CEO at Sun Microsystems so famously said, "You have no privacy, get over it." Even if you pay cash, you have to get the cash from somewhere, and that leaves a record of a withdrawal. There are very few good explanations for a large withdrawal without a correspondingly large deposit somewhere else.

The second lesson is the flip side of the first. If someone is doing something wrong, they are going to leave a trail.

Realizing that everyone leaves a trail behind them can help you in two ways. Proactively, you can monitor. Just as an example, while nearly every company now informs its employees that their computer usage can be monitored (even if they are accessing "personal" e-mail accounts from work), more and more companies are actually doing so. Not only does random monitoring serve as a deterrent, IT departments have the ability to scan all message traffic for key words. The "red flags" can be either variations of George Carlin's "seven dirty words" (something that the HR department would certainly appreciate, since plaintiffs' lawyers often try to use e-mail "jokes" as evidence of a hostile work environment) or the components of your company's "secret formula."

The IT department can also either set limits on the size of files that can be downloaded or e-mailed, or alert senior management if someone is copying large amounts of information. Alternatively, the IT department can alert senior management if someone's e-mail patterns change. A drastic variation in the amount of e-mail, either too much or too little, can be an indication that something is wrong.

Finally, if you have reason to suspect wrongdoing, reading their e-mail, or the files they have accessed while at work, can often either

confirm, or refute, your suspicions, ideally before too much damage is done.

Reactively, if anything goes wrong, you can follow the trail. The first thing you should do if an employee leaves, especially under less-than-ideal circumstances, is grab their computer. Most people think that hitting the delete key actually deletes a file. It doesn't. While there are things one can do to completely and more or less permanently delete something including the ever popular loss of a laptop, doing these things is tantamount to announcing "I am

trying to cover my tracks."

Even if employees cover their tracks internally, there is always, as Eliot Spitzer found out, another party involved. If they didn't cover their tracks, you can pick right up with your investigation. As the old saying goes, when in doubt, follow the money. While doing so might not make you completely whole, it is a step in the right direction.

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