

that the government will never be able to satisfy.

A stolen car may prove easier to track than what will amount to "stolen" information under a new legislative regime, but in neither case will anyone be willing to place a bet on a successful outcome if only law enforcement agents are allowed to do the work.

In the end, recognition of the need for information and an acceptance of intelligence gathering can bridge the gap in the right situation. Society concedes nothing by tolerating the practice because the real evils have already long since been identified and criminalized.

There is a place for pretexting in the arsenal of the responsible private investigator and there are already adequate sanctions in place to check abuses by irresponsible ones.

While unsavory on its face, pretexting does share some similarities with other recognized legitimate investigative and law enforcement techniques, such as using telescopic lenses, parabolic microphones and GPS tracking units, all of which have legitimate uses — and all of which are subject to abuse by unscrupulous parties.

### Conclusion...

In balancing the need for private, discreet and timely remedies against the threat or fear of abuse, the existing set of federal, state and local laws already prohibit the kind of behavior that is clearly socially unacceptable. Newer and more comprehensive legislation aimed at essentially thwarting a legitimate, albeit unpopular, method of addressing these needs will be a disservice in the long run.

### Endnotes:

1.) More than forty percent of federal criminal law enacted since the Civil War was enacted after 1970. John S. Baker, Jr., *Overcriminalization: The Politics of Crime Jurisdictional and Separation of Powers Strategies to Limit the Expansion of Federal Crimes*, 54 Am. U.L. Rev. 545 (2005).

2.) The Gramm-Leach-Bliley Act, which already criminalizes the use of pretexting to obtain private banking information, has hurt legitimate parties seeking to vindicate their rights through licensed, reputable investigators, and arguably does nothing to make potential fraud victims any safer, since criminals seeking to defraud the unwary will no sooner obey this law as any other. (Ed. Note: Since this article was submitted, the 109th Congress has criminalized pretexting once again.)

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