

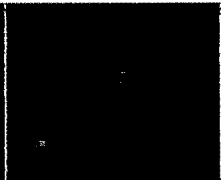
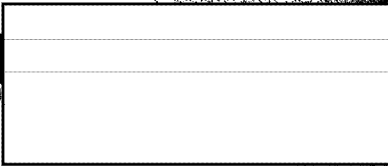
Old Definition

New Definition

- "pen register" means a device which records or decodes electronic or other impulses which **identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached....**

- "pen register" means a device **or process** which records or decodes ***dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, provided, however, that such information shall not include the contents of any communication....***

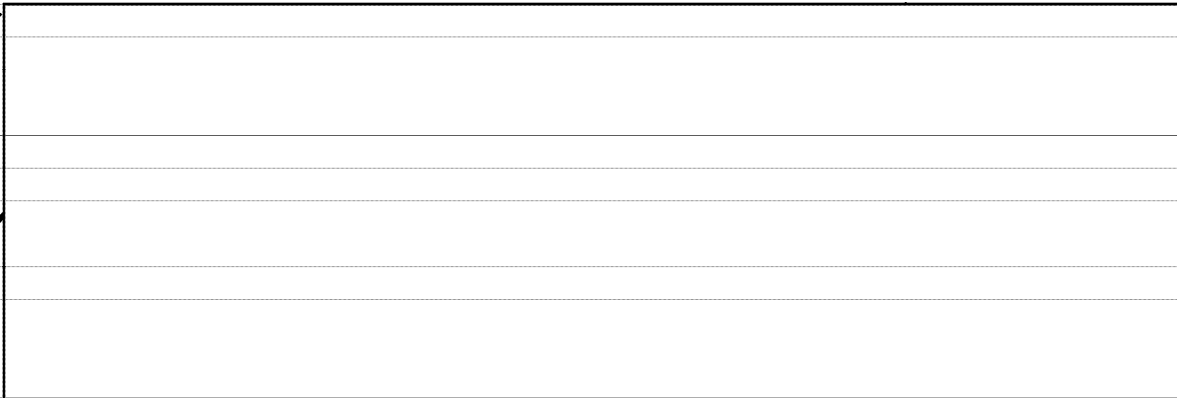




- **§ 3127 Pen Register device or process:**
 - “records or decodes dialing, routing, addressing, or signaling information”
 - transmitted by an instrument or facility from which a wire or electronic communication is transmitted”

DOJ:

✓

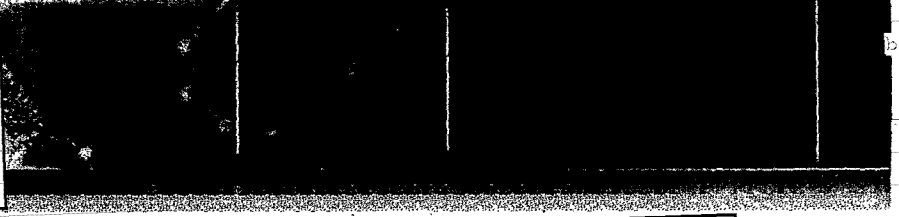
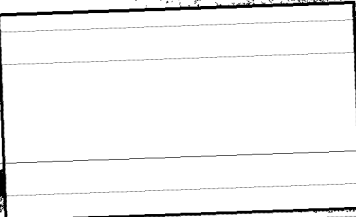


✓

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<http://30.100.99.18/ogc/usabook/usabook/esis/13esis.htm>





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DOJ/CCIPS: Pen/Trap order



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any “signaling information” transmitted from a cellular telephone to:

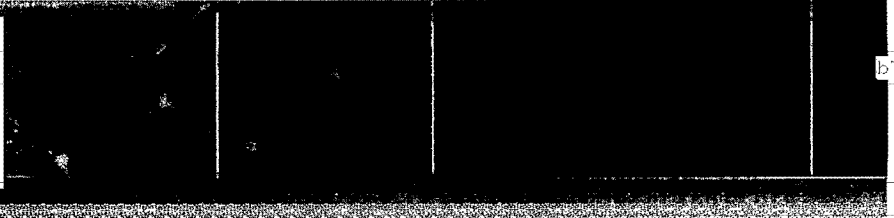
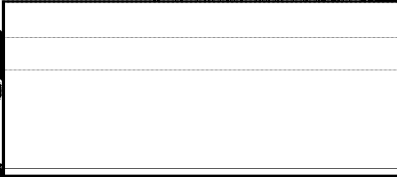
- 1) Identify a target phone or
- 2) Locate a phone

DOJ: **“signaling information”** is any non-content information “transmitted by” a telephone instrument

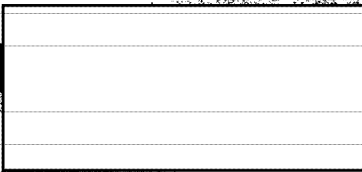




- is generated by the network for network purposes regardless of a LE order.
- is necessary to the successful processing of a call by the provider; a call cannot be processed without it.
- exists in the network as a record prior to its being obtained by LE.
- has no relationship to the content of a communication.
- is delivered to LE under CALEA only at the beginning and end of a call.

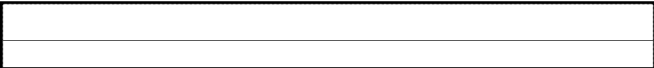


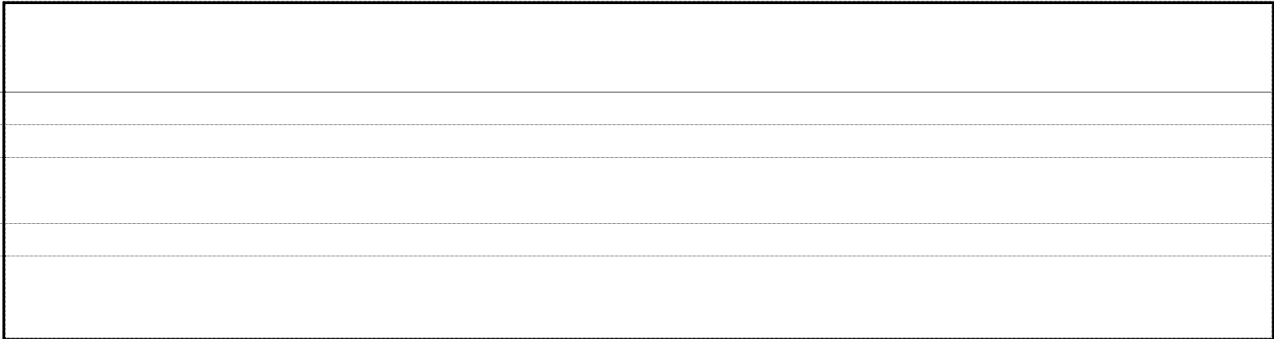
- **Origination** (of an outgoing call from target phone)
- **Answer** (at answer of a call terminating to the target phone)
- **Release** (at the end of the call for both incoming and outgoing calls)
- (http://www.tiaonline.org/standards/search_results2.cfm?document_no=J-STD-025-A www.tiaonline.org)



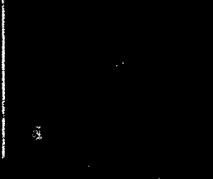
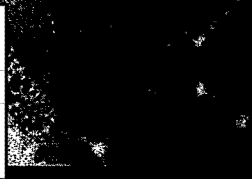
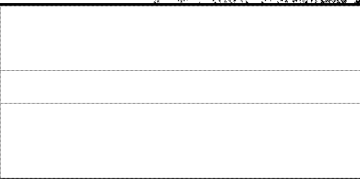
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▪ **Recent Court Decisions**

- CALEA prohibits collecting location information “solely pursuant” to a PR/TT
- SCA 18 USC 2703(d) 

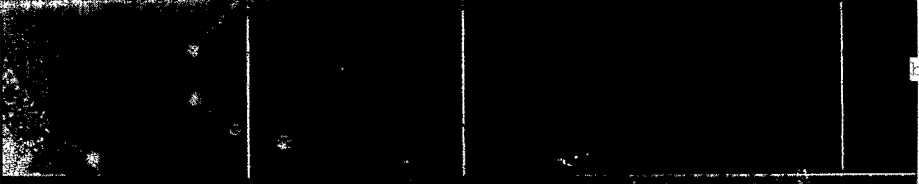
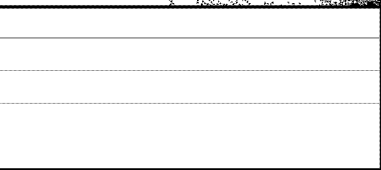


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- **In re Application for Pen Register and Trap/Trace Device with Cell Site Location Authority, 396 F.Supp2.d 747 (S.D.Tx. 2005)**
- **In the Matter of an Application of the United States for an Order (1) Authorizing the Use of a Pen Register and a Trap and Trace Device and (2) Authorizing Release of Subscriber Information and/or Cell Site Information, 396 F.Supp.2d 294 (E.D.N.Y. 2005)**
- **In re Application of the United States for an Order Authorizing the Installation and Use of a Pen Register and a Caller Identification System on Telephone Numbers (Sealed) and Production of Real Time Cell Site Information, 2005 WL 3160860 (D.Md. Nov. 29, 2005)**
- **In re Application of the United States of America for an Order for Disclosure of Telecommunications Records and Authorizing the Use of A Pen Register and Trap and Trace, 2005 WL 3471754 (S.D.N.Y)**
- **In the Matter of the Application of the United States of America for an Order Authorizing the Release of Prospective Cell Site Information, 2006 U.S. Dist. Lexis 589 (D.C. Jan 11. 2006)**





■

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■

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■ **Incident to use of cellular service**

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▪ **AND Use [Redacted] PR/TT order for [Redacted] gear**

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[Redacted]

▪ [Redacted]

▪ Advise of [Redacted]

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▪ Authority to collect [Redacted]

▪ Not retain records?



[Redacted]

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✓ [Redacted]

47 U.S.C. § 333

✓ [Redacted]

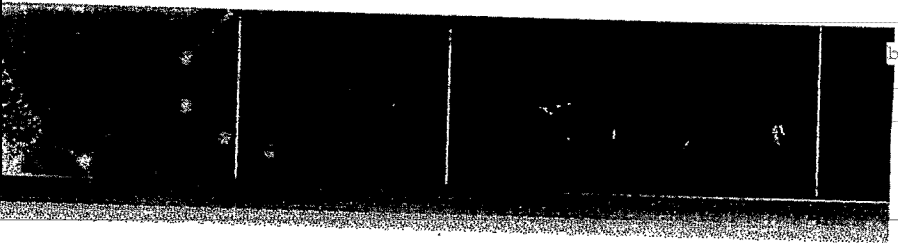
✓ Incidental collection on non-target users: 18 U.S.C. § 3123(b)(1)(C) requires that order specify number or other identifier to which order applies.

• [Redacted]

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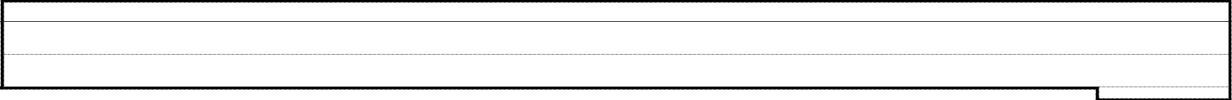
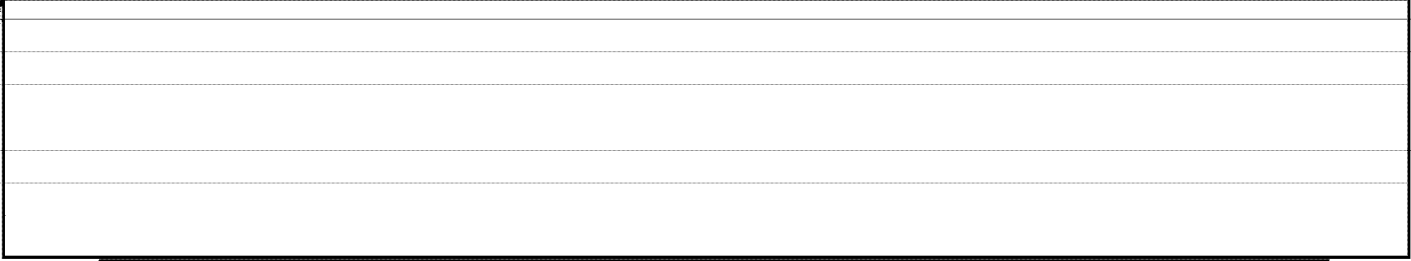
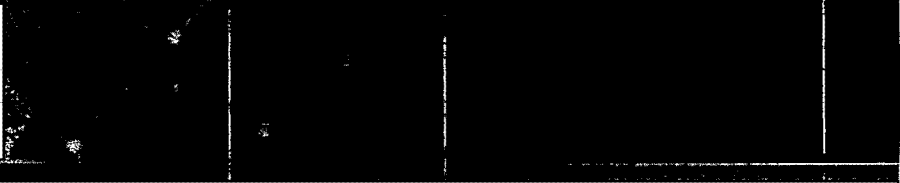
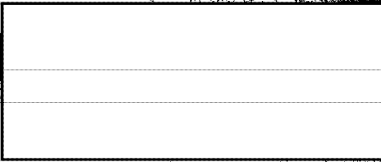
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■ Maintaining/Purging “Pen” data?

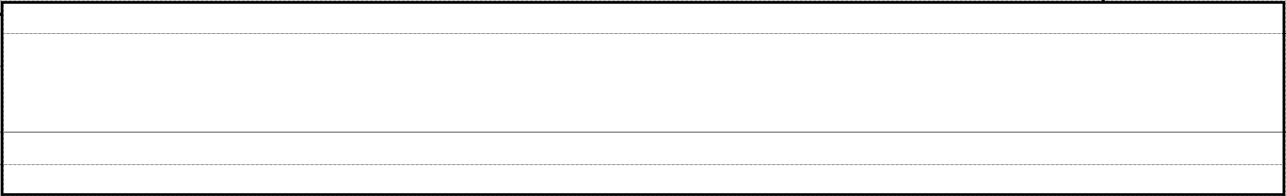
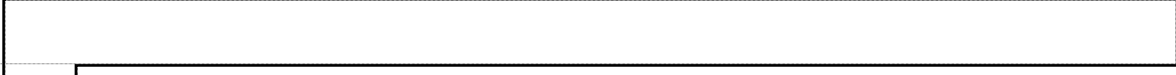
A large, empty rectangular box with a black border, intended for a response or notes.

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- **U.S. v. Balzano, 687 F.2d 6 (1st Cir 1982) (USSS Nigra recording, re-recorded onto device, but lost "original" removable medium—destruction of original recording on the device was not done in bad faith b/c nature of equipment was such that original was erased in the re-recording process)**



[Redacted]

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Therefore, pursuant to 18 U.S.C. § 3123(d), I request that this application and order be sealed until otherwise ordered by this court; and

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- [Redacted]

- DOJ command Center [Redacted] or OEO (business hours)

- Emergencies involving:

- Immediate danger of death or serious injury

- [Redacted]
 - [Redacted]
 - [Redacted]

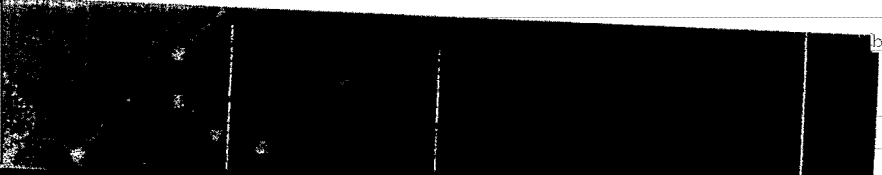
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- [Redacted]

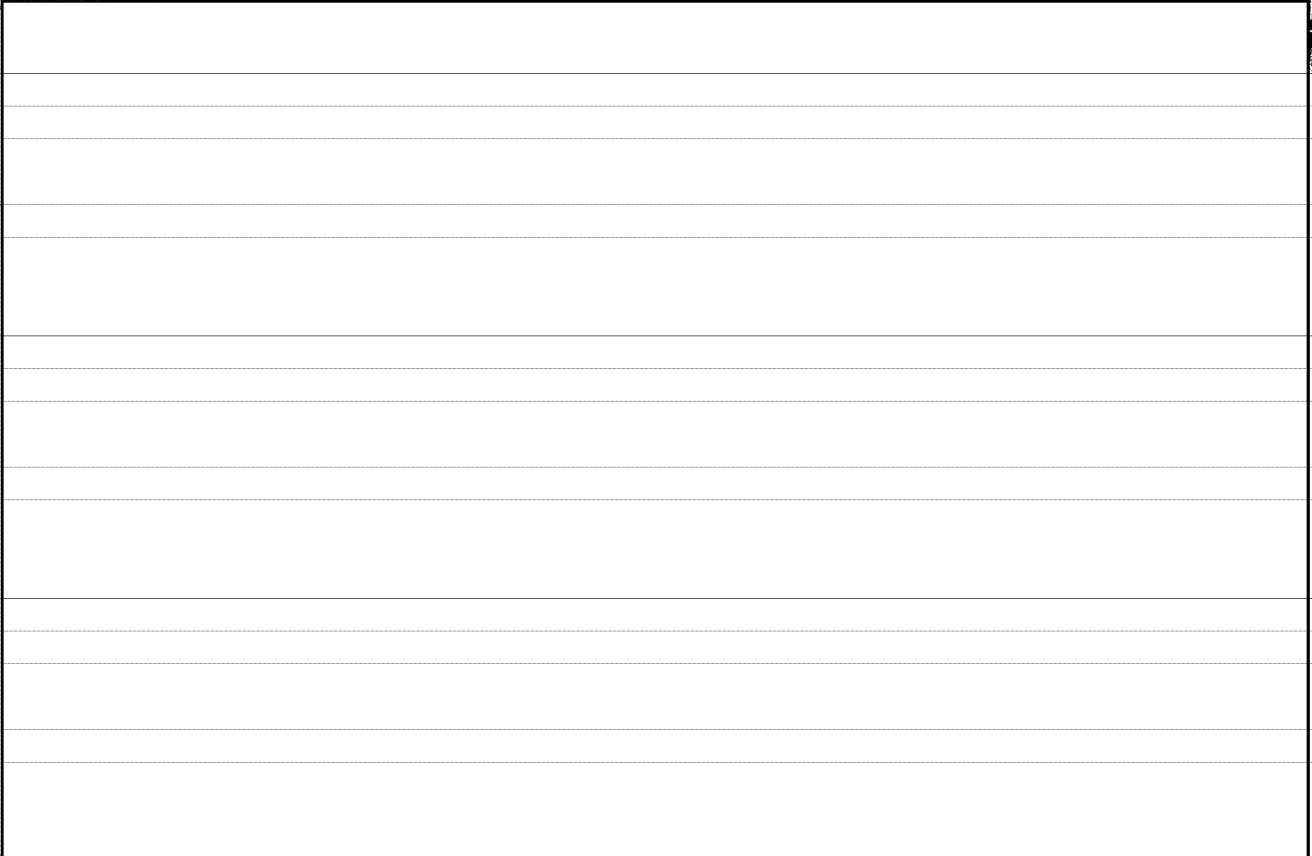
- MIOG, Part 2, 10-10.7.1 (pen register) 10-10.17.1 (trap & trace)

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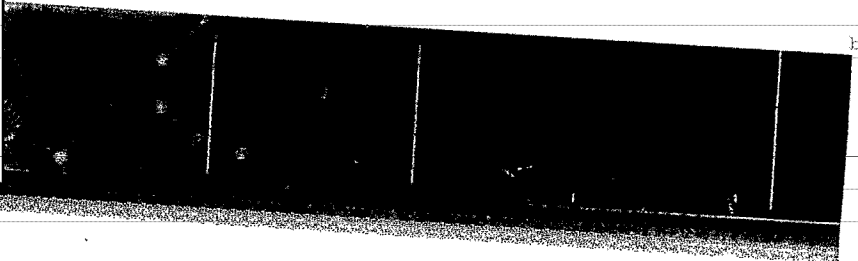
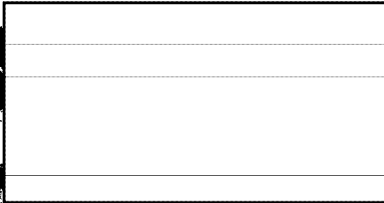
- [Redacted]



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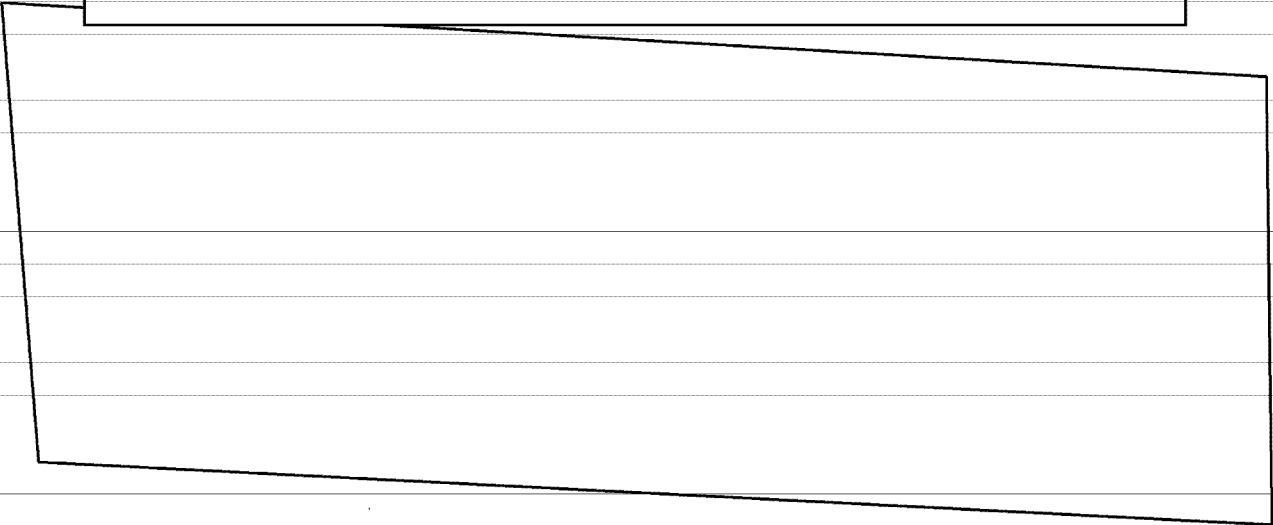
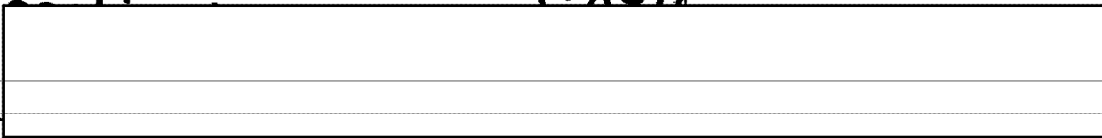
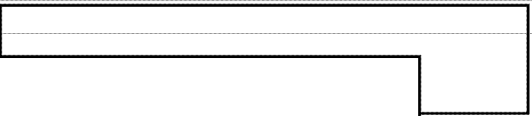


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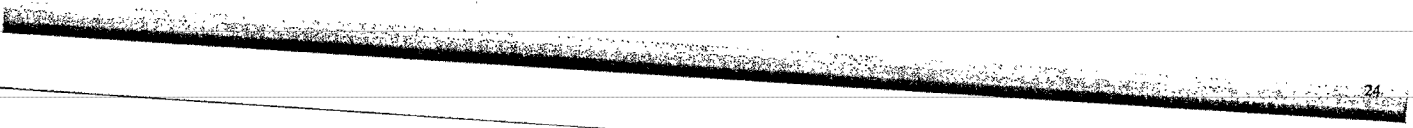


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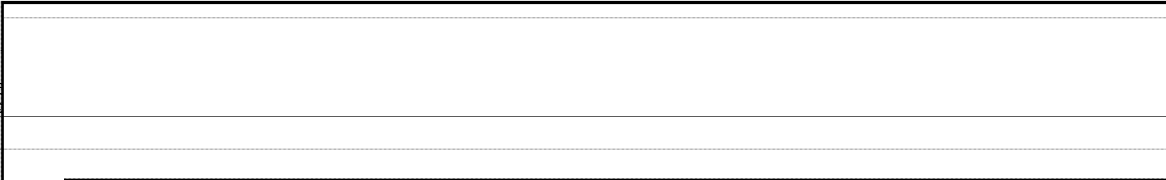
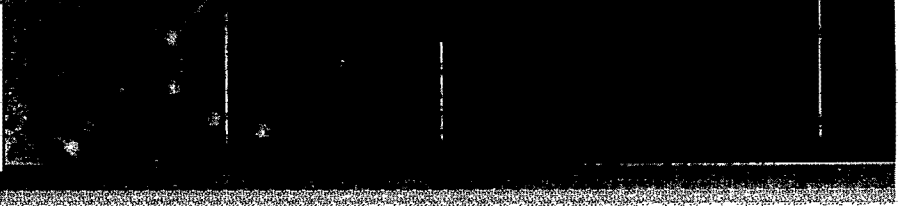
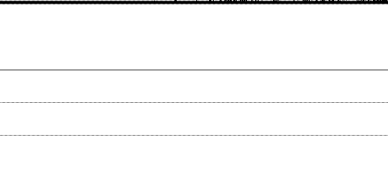
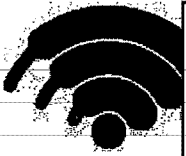
Consent (18 USC 3121(b)(3))



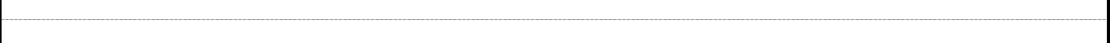
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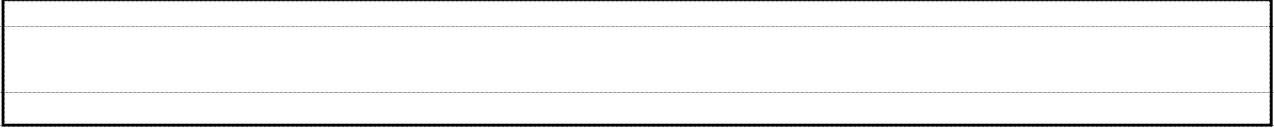
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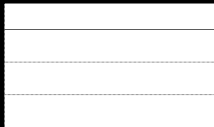
Smith v.

Maryland, 442 U.S. 435, 744 (1979).

- no legitimate expectation of privacy in information knowingly conveyed to a third party
- In re Digital Analyzer found “[n]o logical distinction between telephone numbers called and a party’s own telephone number (or ESN number), all of which are regularly voluntarily exposed and known to others. 885 F. Supp. at 199 (citing Smith v. Maryland, 442 U.S. 735, 742-45 (1979)).



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Certification Course Legal Training

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Science and Technology Law Unit
Office of General Counsel
Federal Bureau of Investigation



TOPICS

- **The Law (Title III)**
- **Pen Register/ Trap and Trace**
- [REDACTED]
- [REDACTED]
- **Loan of ELSUR Equipment**
- [REDACTED]
- [REDACTED]
- **Stored Communications**
- **Computer Trespasser Exception**

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General Operational Guidelines

-

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Law Enforcement Sensitive

- Law Enforcement Sensitive (LES) collection devices, systems, techniques, and related information are not to be disclosed. Only the product of the technical operation is disclosed.
- Examples: [REDACTED] equipment is LES; CART SOPs are LES.



Law Enforcement Sensitive

- FOUO (For Official Use Only) – a caveat applied to sensitive but unclassified information that may be exempt from release under FOIA
- LES (Law Enforcement Sensitive) is another of 9 potential exemptions under FOIA to protect law enforcement sources and methods, evidence, reports, tools and techniques, etc.
- FOUO/LES is unclassified information



Law Enforcement Sensitive

- Law Enforcement Sensitive (LES) equipment enjoys “qualified privilege”
- State/local vs. Federal prosecutions
- Testimony – how to ...

-
-
-



The Law

- **Title III & Electronic Communications Protection Act**
 - **Title III, 18 USC sec. 2510, Omnibus Crime Control and Safe Streets Act, Commonly referred to as the Wire Tap Act**
 - **As amended by the ECPA, Title III prohibits the interception of wire and oral communications, and electronic communications.**
 - **Provides for criminal penalties and civil damages against anyone who “intentionally intercepts, endeavors to intercept” any covered communication.**



Title III Order

- Under Title III, the government may apply for a court order authorizing an interception. 18 U.S.C. §2516(1)
- Application must specify the offense being investigated, the nature and location of the facilities where the communications are to be intercepted, and a particular description of the communications sought to be intercepted. 18 U.S.C. § 2518(1)
- Standard: Probable cause to believe that a particular offense is being committed and that targeting the specified facility will yield communications concerning the offense. 18 U.S.C. § 2518(3)



Title III Order (cont.)

- Good for up to thirty days. Extensions allowed, but same standard applies to extension. 18 U.S.C. § 2518(5)
- Required to “minimize” the interception unrelated to criminal activity. 18 U.S.C. § 2518(5)
- Requires a finding that normal investigative procedures are unlikely to be successful or are too dangerous. 18 U.S.C. § 2518(3)(c)
- Requires notice to the target within 90 days. 18 U.S.C. § 2518(8)(d)



Pen Register/ Trap and Trace

- Court ordered surveillance
- Government must certify that information likely to be obtained by use of device “is relevant to an ongoing criminal investigation.” 18 U.S.C. § 3122(b)(2)



What is the Pen/Trap “addressing information”?

- **Dialing, Routing, Addressing, Signaling Information**
- **Transmitted by Instrument or Facility from which a Communication is Transmitted (outgoing call) (pen)**
- **Identifies Originating Number or Other D/R/A/S or is Reasonably Likely to Identify the Source (incoming call) (trap)**
- **Utilized in Processing or Transmission of Communications**
- **Is not “Contents of any...Communications”**



Limitation:

- Thou shall NOT collect the Contents of any communication
 - 18 USC sec. 3121 (c) – “use technology reasonably available to restrict . . . so as not to include the contents of any wire or electronic communications”
 - 18 USC sec. 3127 pen/trap definition: “shall not include the contents of any communication”

- 



Cell Phone Locating (cont.)

- Collection of cell phone location directly by LEO-

— [Redacted]

— [Redacted]

— [Redacted]

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Loan of ELSUR in Support of Federal, State, and Local Requests for Assistance

- AG Order 2954-2008

- DIOG 11.11

-



Basic Subscriber Information

Can be obtained w/ Subpoena, 2703(d) order, or Search warrant, consent

Provider must give government:

- Name, Address
- Local and long distance telephone connection records, or records of session times and durations;
- Length of service (including start date) and types of service utilized;
- Telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and
- Means and source of payment for such service (including any credit card or bank account number)



Transactional Data

- **“A record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications).”
§ 2703(c)(1) (Everything that’s not content & not subscriber information)**

- **Example:**
 - Cell-site data;
 - Addresses / Identities of past e-mail correspondents
 - Incoming e-mail traffic information;
 - Account logs that record usage e.g., URLs (web surfing activity)



Q & A?

[Redacted]

Assistant General Counsel

Science & Technology Law Unit

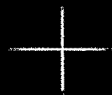
Engineering Research Facility - Extension

Quantico, VA

[Redacted]

[Redacted]@ic.fbi.gov

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[REDACTED] **Certification Course**
Legal Training

[REDACTED]
Science and Technology Law Unit
Office of General Counsel
Federal Bureau of Investigation

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TOPICS

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- [Redacted]

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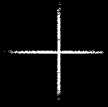
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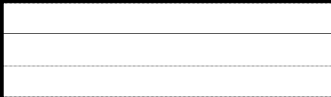


Loan of ELSUR in Support of Federal, State, and Local Requests for Assistance



- AG Order 2954-2008

- DIOG 11.11

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 - Incoming e-mail traffic information;
 - Account logs that record usage e.g., URLs (web surfing activity)



Questions?



Assistant General Counsel
Science & Technology Law Unit
Engineering Research Facility
Quantico, VA

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[Redacted]
[Redacted]@ic.fbi.gov

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