



Federal Bureau of Investigation
Washington, D.C. 20535

December 7, 2012

MR. ALAN BUTLER
ELECTRONIC PRIVACY INFORMATION CENTER
SUITE 200
1718 CONNECTICUT AVENUE, NW
WASHINGTON, DC 20009

Subject: STINGRAY/CELL SITE SIMULATOR DEVICES

FOIPA No. 1182490-000

Dear Mr. Butler:

The enclosed documents were reviewed under the Freedom of Information/Privacy Acts (FOIPA), Title 5, United States Code, Sections 552/552a. Deletions have been made to protect information which is exempt from disclosure, with the appropriate exemptions noted on the page next to the excision. In addition, a deleted page information sheet was inserted in the file to indicate where pages were withheld entirely. The exemptions used to withhold information are marked below and explained on the enclosed Explanation of Exemptions:

- | Section 552 | | Section 552a | |
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1132 page(s) were reviewed and 62 page(s) are being released.

- Document(s) were located which originated with, or contained information concerning other Government agency(ies) [OGA]. This information has been:
 - referred to the OGA for review and direct response to you.
 - referred to the OGA for consultation. The FBI will correspond with you regarding this information when the consultation is finished.

In accordance with standard FBI practice and pursuant to FOIA exemption (b)(7)(E) [5 U.S.C. § 552 (b)(7)(E)], this response neither confirms nor denies the existence of your subject's name on any watch lists.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

You have the right to appeal any denials in this release. Appeals should be directed in writing to the Director, Office of Information Policy (OIP), U.S. Department of Justice, 1425 New York Ave., NW, Suite 11050, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope and the letter should be clearly marked "Freedom of Information Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

The enclosed material is from the main investigative file(s) in which the subject(s) of your request was the focus of the investigation. Our search located additional references, in files relating to other individuals, or matters, which may or may not be about your subject(s). Our experience has shown when ident, references usually contain information similar to the information processed in the main file(s). Because of our significant backlog, we have given priority to processing only the main investigative file(s). If you want the references, you must submit a separate request for them in writing, and they will be reviewed at a later date, as time and resources permit.

See additional information which follows.

Sincerely,



David M. Hardy
Section Chief
Record/Information Dissemination Section
Records Management Division

This represents the third interim release of information responsive to your Freedom of Information Act (FOIA) request.

Enclosure(s)

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could be reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could be reasonably expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

FEDERAL BUREAU OF INVESTIGATION
FOIPA
DELETED PAGE INFORMATION SHEET

Serial Description ~ Unrecorded Serial

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- Page 6 ~ b3, b4, b7E
- Page 7 ~ b3, b4, b7E
- Page 8 ~ b3, b4, b7E
- Page 9 ~ b3, b4, b7E
- Page 10 ~ b3, b4, b7E
- Page 11 ~ b3, b4, b7E
- Page 12 ~ b3, b4, b7E
- Page 13 ~ b3, b4, b7E
- Page 14 ~ b3, b4, b7E
- Page 15 ~ b3, b4, b7E
- Page 16 ~ b3, b4, b7E
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FEDERAL BUREAU OF INVESTIGATION
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Page 212 ~ b3, b4, b7E
Page 213 ~ b3, b4, b7E
Page 214 ~ b3, b4, b7E
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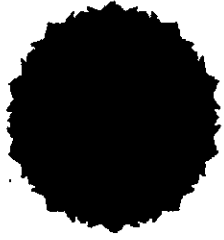
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Cellular Tracking and Other Legal Issues

June 2008



Overview



- **DOJ's Policy on Cellsite Simulators: Pen Register Device (18 U.S.C. 3127(3))**
 - **BEST PRACTICES**
- **Emergency Pen Register Authority**
 - Federal v. State Orders
 - Voluntary Disclosures
- **Prospective Cell Site Location data**
 - Distinguished from
- **GPS/Triangulation from provider**
- **Protecting Sensitive Techniques**
 - Use as evidence
- **Loan of ELSUR Policy**
 - **Using State Orders**
 - **Liability-scope of authority**
-

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Pen Register Device: 18 USC 3127(3)

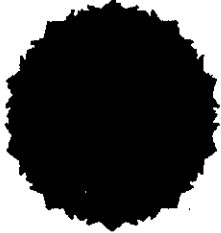


Old Definition

- "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....

New Definition

- "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....



New Law: USA Patriot Act



DOJ/CCIPS & OEO:

✓

✓

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

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



DOJ Opinion:

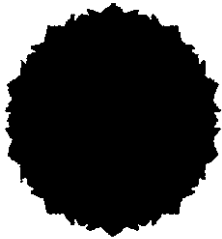


DOJ: Pen/Trap order 


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to use a Pen Register Device to obtain
“signaling information” transmitted from a
cellular telephone to:

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



[Redacted] Pen Register—
BEST PRACTICES

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BEST PRACTICES:

Use PR/TT order to authorize use of [Redacted] [Redacted]

[Redacted]

1. authorize installation & use

[Redacted]

[Redacted]

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2. Advise of potential

[Redacted]

[Redacted]

3. Will not retain records beyond use to locate target phone



Disruption of Service



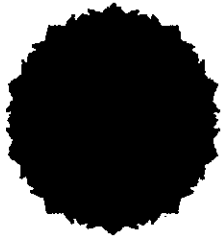
- [Redacted]
- **47 U.S.C. § 333 prohibits interference with cellular frequencies**

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- [Redacted]
- **18 USC 3124: requires that a pen register be implemented with "minimum of interference" to those accorded service-**

- [Redacted]
- [Redacted]

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Purge [redacted] Data

[redacted] preserve 1st Amendment
rights & Minimize [redacted] data

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[Large redacted rectangular area]

b5

Data Retention

- Maintaining/Purging “Pen” data?

— [Redacted]

- [Redacted]

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Sensitive Technique

[Redacted]

■ [Redacted]

[Redacted]

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

■ [Redacted]

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Emergency Provision

3125(a)(1)

[Redacted]

- DOJ command Center [Redacted]
- OEO (business hours) [Redacted]
- Emergencies involving:
 - Immediate danger of death or serious injury or immediate threat to a national security interest

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- [Redacted]

- MIOG, Part 2, 10-10.7.1

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- [Redacted]



Alternative authority

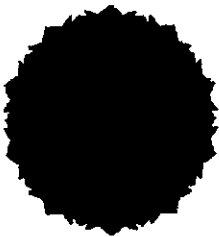


Consent (18 USC 3121(b)(3))

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Voluntary Disclosure by Provider (18 USC 2702(c)(4)) : if
provider “reasonably believes that an emergency
involving immediate danger of death or serious physical
injury to any person justifies the disclosure of: “a record
or other information pertaining to a subscriber or
customer of such service.””

b7E




Function vs.
Location (Tower/Sector) data
from Provider

b7E



What is Cell site location data



- Tower/Sector data:

1. is generated by the network for network purposes regardless of a LE order.
2. is necessary to Provision of Service & a call cannot be processed without it.
3. exists in the network as a **RECORD or Other Information** prior to its being obtained by LE.
4. NON-Content data; not substance of a communication.
5. is delivered only at the beginning and end of calls per CALEA J-Std

Obtaining Cell Site Data

1. CALEA prohibits collecting location information
“solely pursuant” to a PR/TT- 47 USC
10029(a)(2)(B)

2. 18 USC 2703(d) (Stored Communications Act)

[Redacted]

3.

[Redacted]

[Redacted]

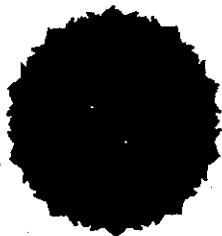
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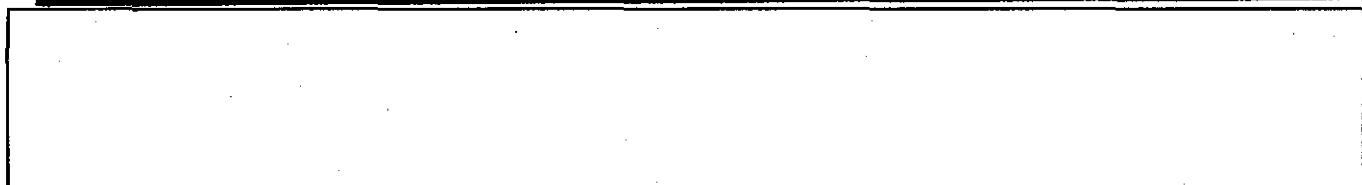
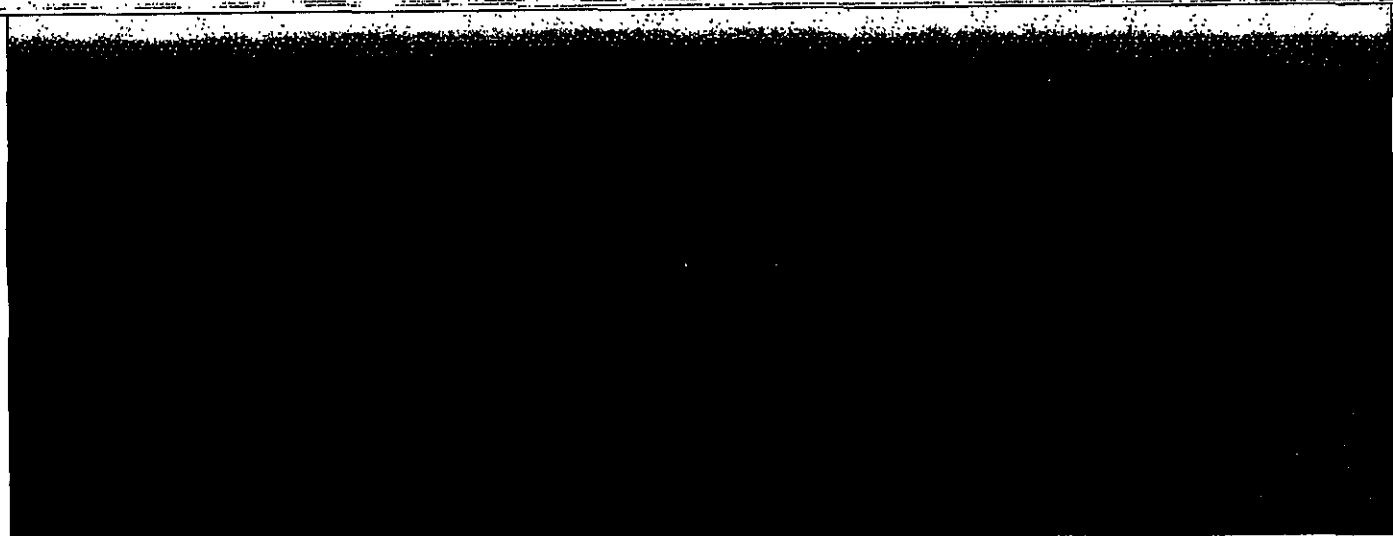
CALEA Delivery of location data



- **Near Real-Time**: CALEA (47 USC 1002) requires carriers to “expeditiously isolates”
 - “call-identifying information”: includes cell site information utilized in processing calls
 - for government access "before, during, or immediately after the transmission of a [] communication" (i.e., in real-time or near real-time)
- **CALEA J-Standard**: location information is delivered after generation of data by the carrier’s network and use in the provision of service (e.g., call origination, Answer, call release)

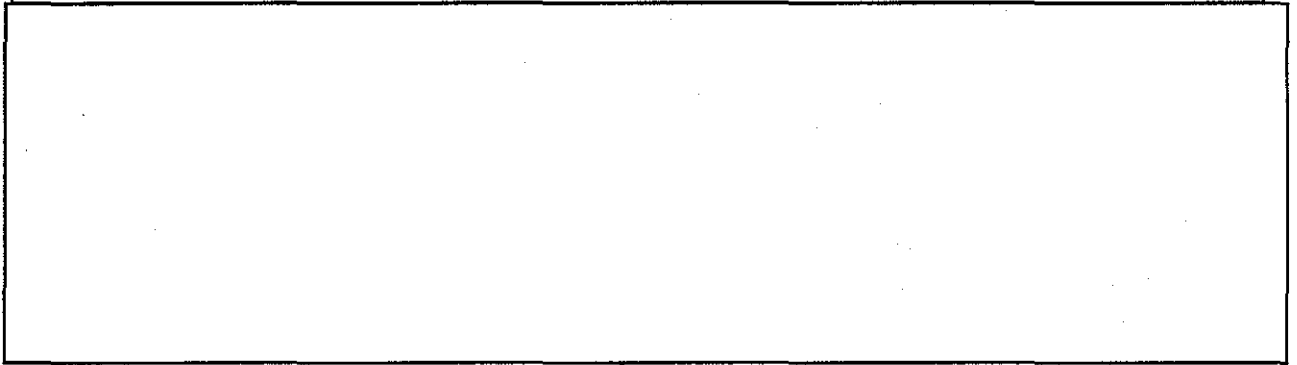
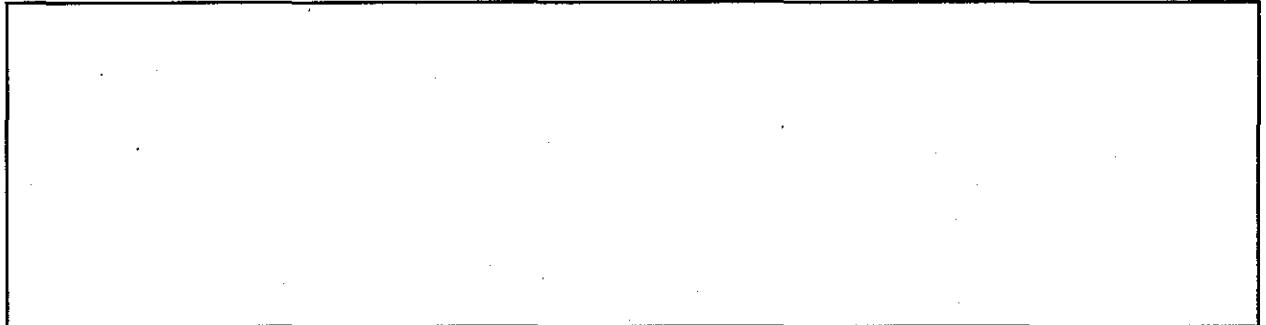


**CALEA amended SCA 18 USC
2703(d) ("Transactional Data")**



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Prospective disclosure of Cell site data



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Guidance

■ [Redacted]

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

1. [Redacted]
2. Advise of [Redacted]
3. Not retain [Redacted] records

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■ [Redacted]

[Redacted]

4th Amendment Privacy Interest

■ [Redacted]

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— [Redacted]

[Redacted] 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)).

■ [Redacted]

[Redacted]

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4th Amendment Privacy Interest

[Redacted]

[Redacted]

- See *Kyllo v. United States*, 533 U.S. 27 (2001) (use of thermal imager to measure heat emitted from home constituted a search in part because there was no objective reason for the home owner to know that a device would be routinely used to detect and measure heat emitted from his home).

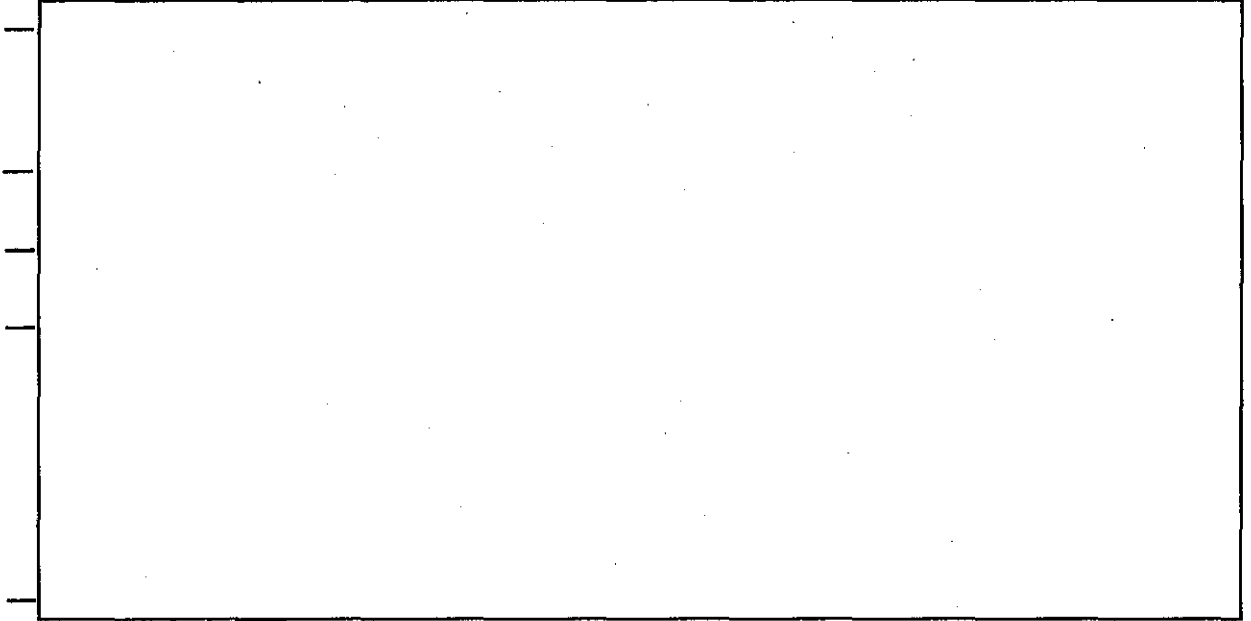
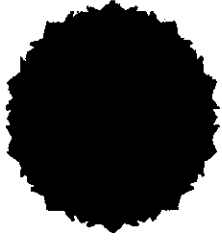
[Redacted]

- See, e.g., *United States v. White*, 401 U.S. 745, 752 (1971) (plurality opinion) (party to conversation accepts the risk that his listener may betray his confidences); *Hoffa v. United States*, 385 U.S. 293, 300-03 (1966).

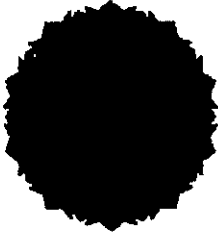
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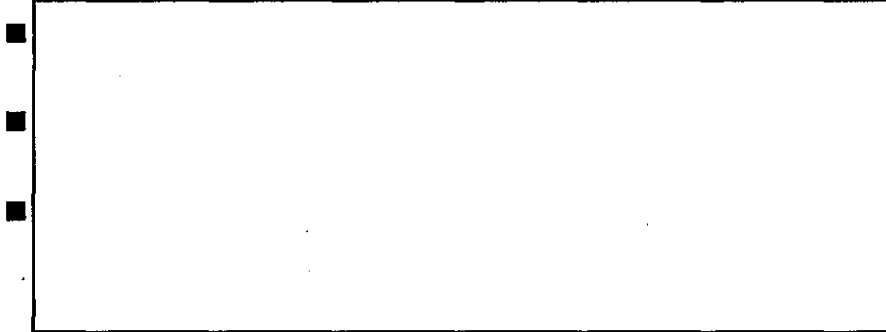
GPS / Ping



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GEOLocation Data—E911



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Court order: 2703(d)

■ 2703(d) order— [redacted]

[redacted]

— [redacted] will provision for up to [redacted]
max. charge

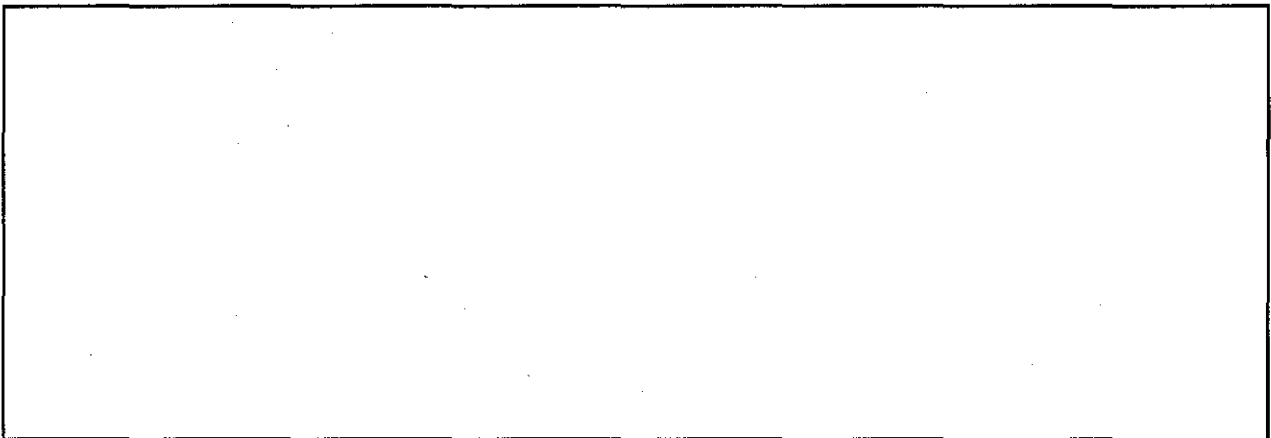
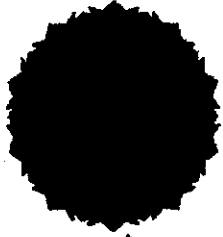
■ [redacted] Language:

[redacted]

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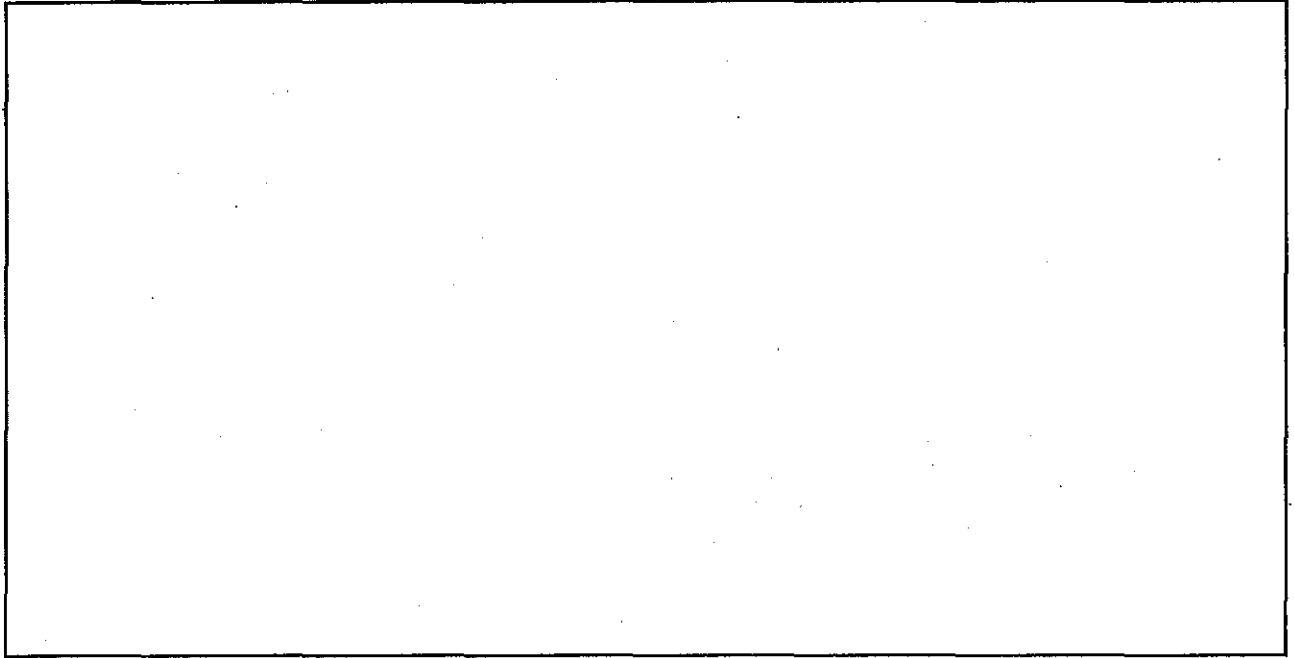
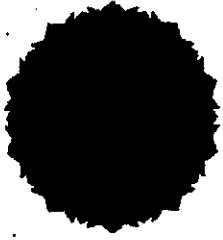
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Increased Investigative Use of Technique



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Cellular Tracking as Evidence



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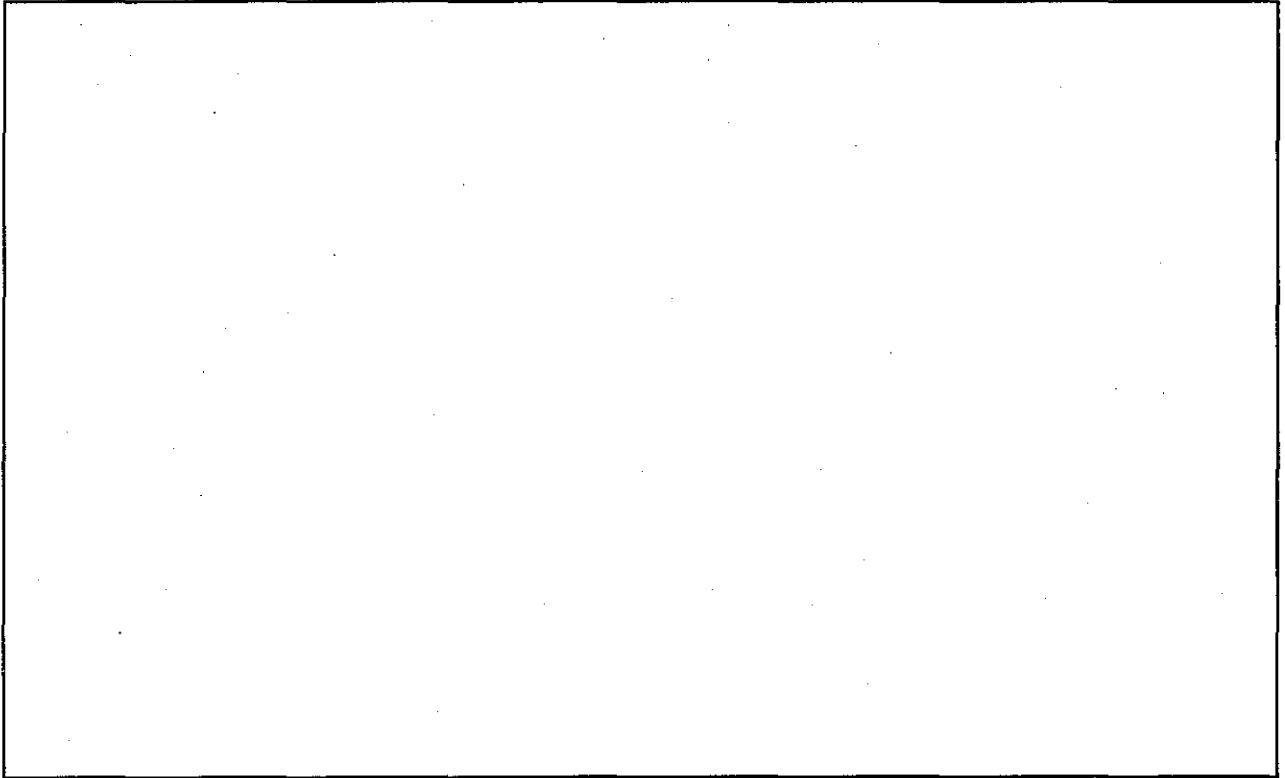
Protecting Sensitive Techniques

- Qualified Government Privilege in Non-disclosure based on Roviaro v. United States, 353 U.S. 53 (1957): disclosure of identity (and testimony) of informant.

- Generally technique, type of device, location of install, etc. is protected
 - unless Defense can establish disclosure is necessary to defense, I.e., no other/adequate means to cross-examine/test evidence; if so:
 - then Balancing of interests

-
- see also Jayme S. Walker "The qualified privilege to protect sensitive investigative techniques from disclosure," LEB Vol 69 NO.5 at 26 (May 2000).

**LOAN of ELSUR:
STATE Authority**



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Contact Info:



Assistant General Counsel,
Science & Technology Law Unit,
Office of the General Counsel

• DOJ (CCIPS): www.cybercrime.gov

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Science & Technology Law Unit

Violent Gang Safe Street Task Forces Legal Issues



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

July 29, 2010

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TOPICS

- General discussion and DES/OTD policy discussion
- Law Enforcement Sensitive (LES) – what is it and why is it important
- Pen Register/Trap and Trace and [REDACTED]
- ELSUR support for State and locals
- Other topics as time permits

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The Disclaimer

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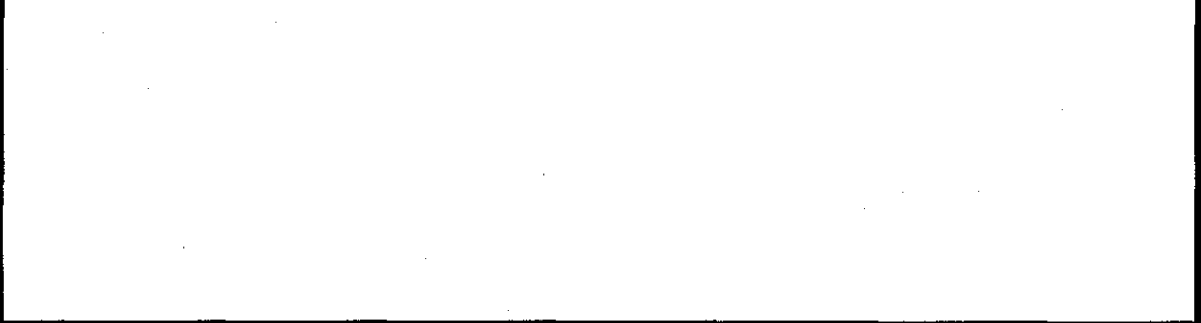
Comments/Materials are subject to the case law or statutes in your jurisdiction. The law in your federal circuit may be different. Consult YOUR Chief Division Counsel!

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General Operational Guidelines

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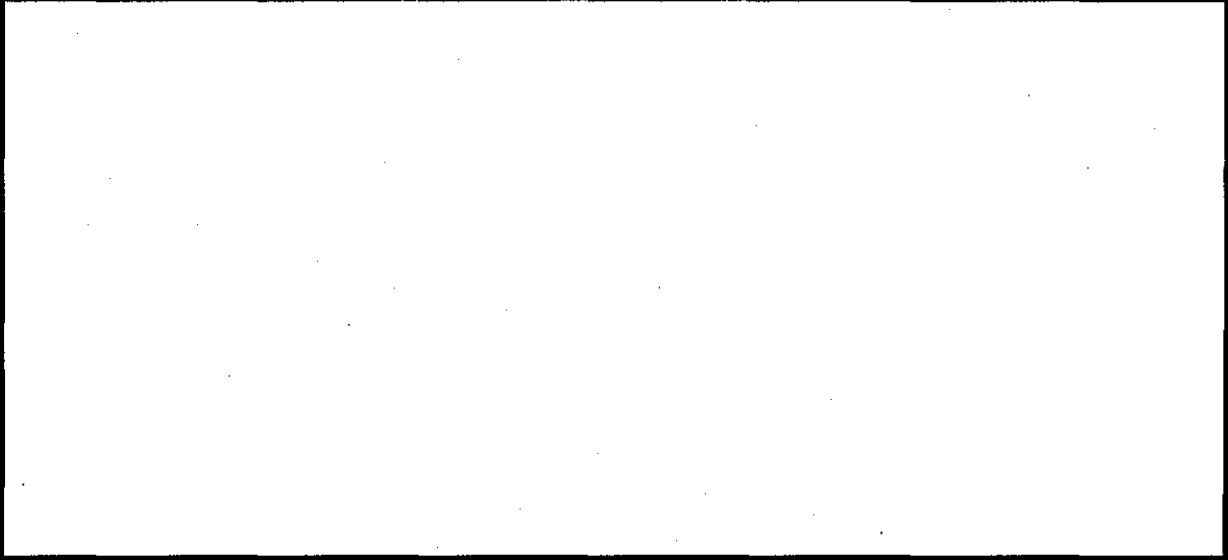
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OTD Policy

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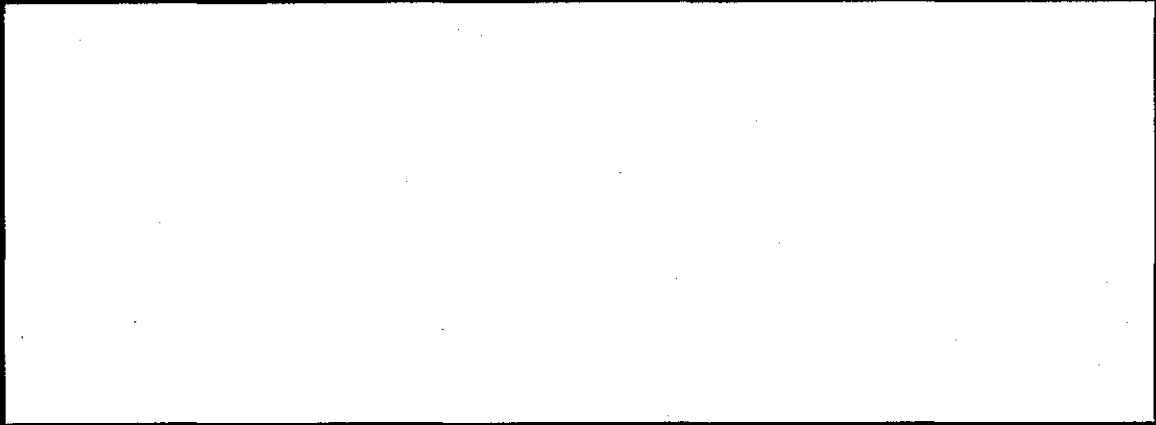
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Legal Authority Review

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▪ Why?



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Law Enforcement Sensitive

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- 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.

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Law Enforcement Sensitive

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- 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

Science & Technology Law Unit

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

- ✓
- ✓
- ✓



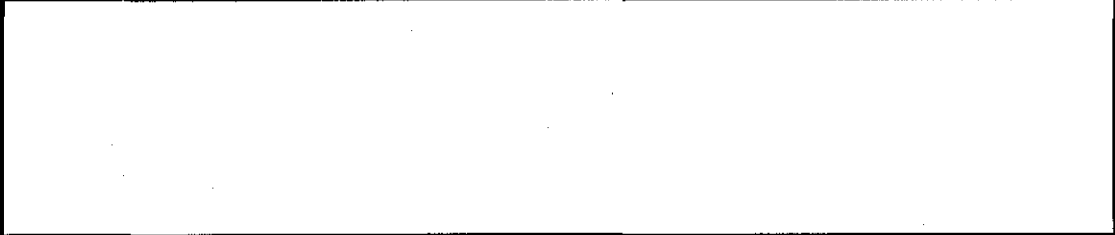
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Pen Register/Trap and Trace

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- 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)

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What is the Pen/Trap "addressing information"?

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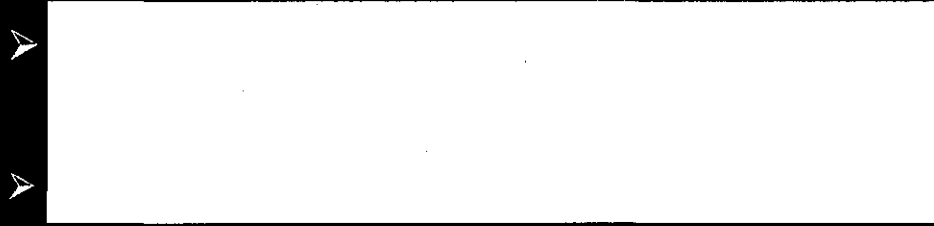
- Dialing, Routing, Addressing, Signaling (DRAS) Information
- Transmitted by Instrument or Facility from which a Communication is Transmitted (outgoing call) (pen)
- Identifies Originating Number or Other D/R/A/S or is Reasonably Likely to Identify the Source (incoming call) (trap)
- Utilized in Processing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

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Limitations:

- 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”



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Legal Authority for use of Pen Register Trap and Trace - Summary

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- Besides 18 USC § 3121 – 3125 (... relevant to an ongoing criminal investigation ...)
- PRT&T captures "... dialing, routing, addressing, and signaling information ..."
- [REDACTED]
- [REDACTED]
- 18 USC § 3121 states, "... no person may install or use a PRT&T device without first obtaining a court order ..." (CALEA)
- The FBI may not use [REDACTED] without an order.

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Legal Authority to Deploy [REDACTED]

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Science & Technology Law Unit

[REDACTED]

- ▶
- ▶
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[REDACTED]

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Legal Authority to Deploy [REDACTED]

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- When is a Rule 41 Search Warrant necessary? (Probable cause standard)



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Legal Authority For Technical Assistance to Federal, State, and Local Law Enforcement Agencies

- 18 USC § 3121 - § 3125
- AG Order 2954-2008
- DIOG 11.11
- [REDACTED]

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FBI Technical Assistance to Federal, State and Local Law Enforcement Agencies

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- It must be lawful. (4.a)
- Appropriate and consistent with the law. (4.b)
- Appropriate use of personnel and financial resources. (4.c)
- Not jeopardize any ongoing sensitive or classified investigation. (4.d)

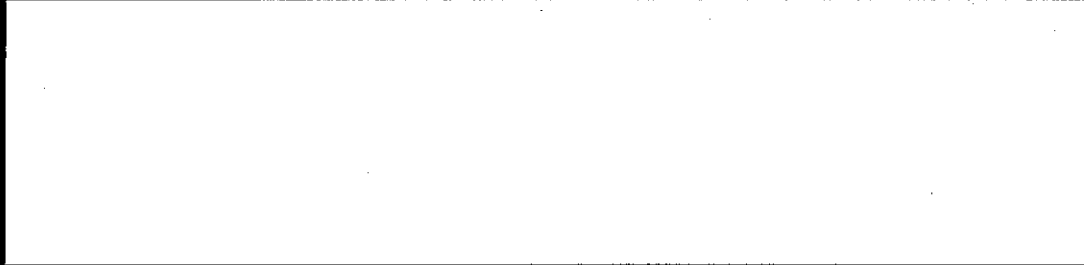
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The Requesting Agency shall certify
that: (5.c)

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- Technical Assistance will be used lawfully.(5.c.1)
- Shall not be used outside of its jurisdiction. (5.c.2)



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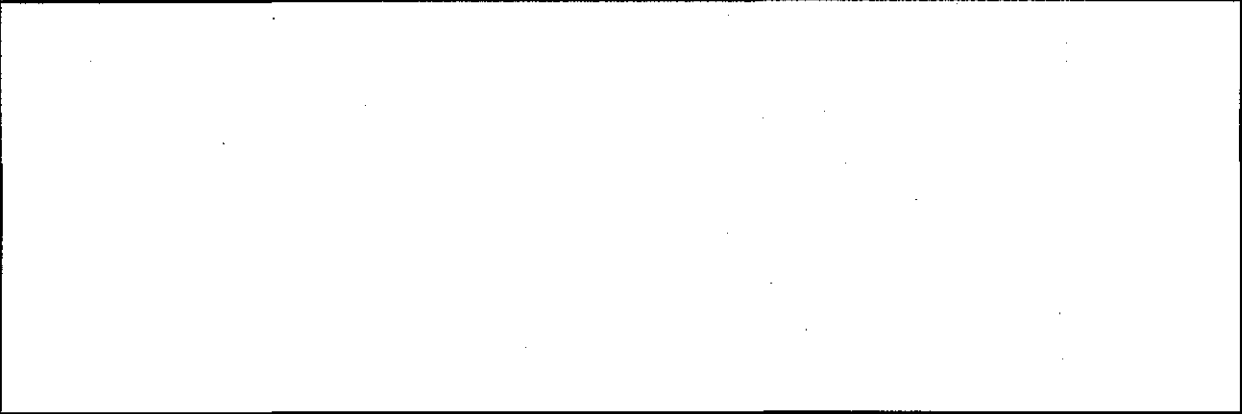
Supporting the Request shall be the written certification of an appropriate attorney for the prosecutorial office.(5.d)

- It is lawful and authorized under the relevant law of the applicable jurisdiction for the Requesting Agency:
 - To make use of the FBI Technical Assistance requested and(5.d.1)
 - For the FBI to provide the Technical Assistance requested, including the FBI personnel involved.(5.d.2)



Request by Executive Level Official in writing (letterhead, email, fax, etc). (5.a)

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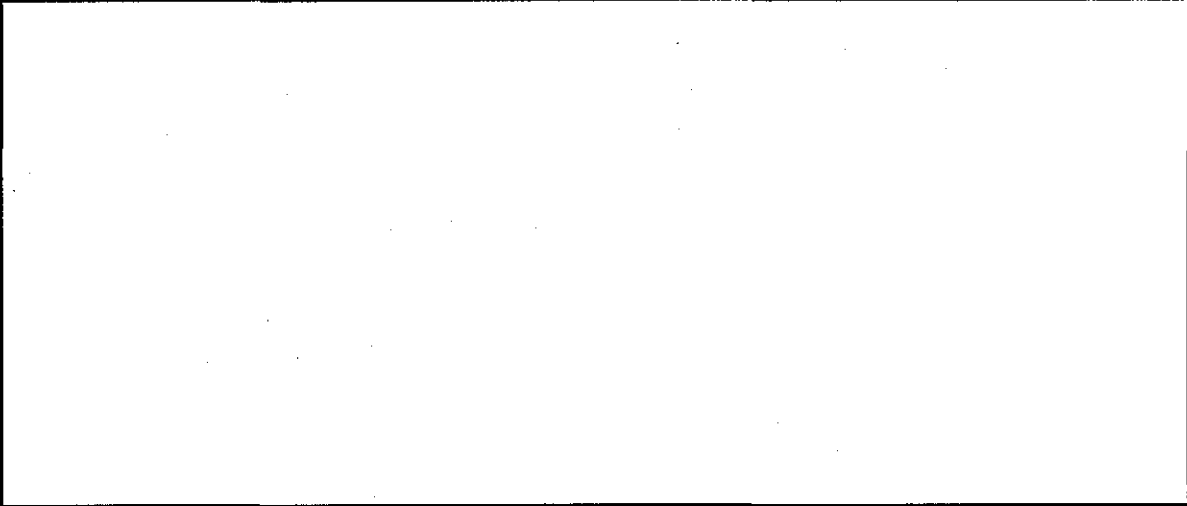
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In Emergency Situation

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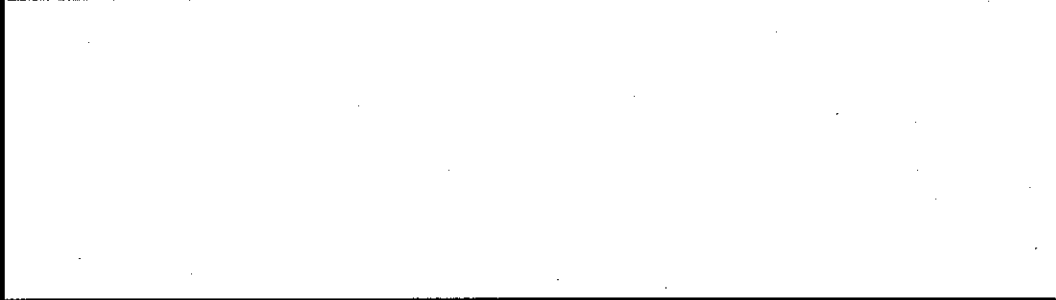
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In Emergency Situation

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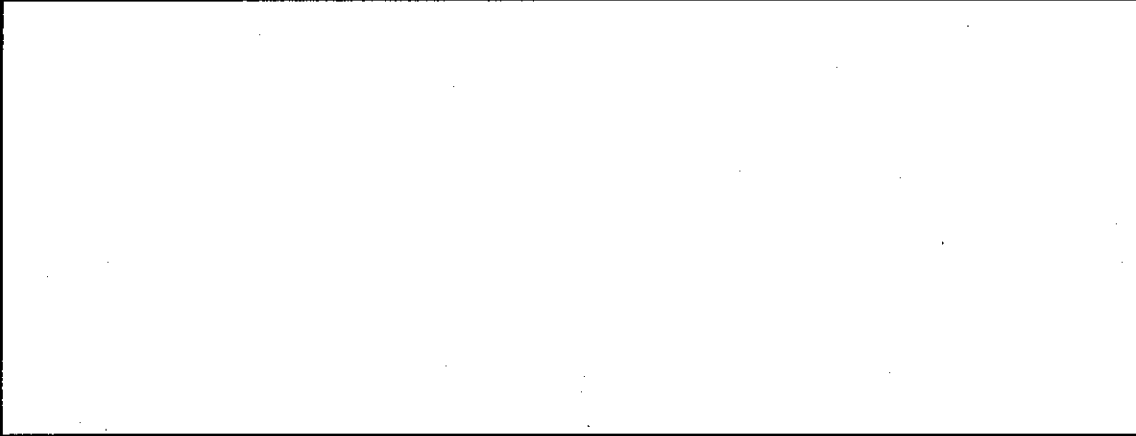
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Procedures for field office approval for technical assistance (6)

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- The CDC shall review the request, the certification(s) and supporting court order and other legal process.(6.1.a)



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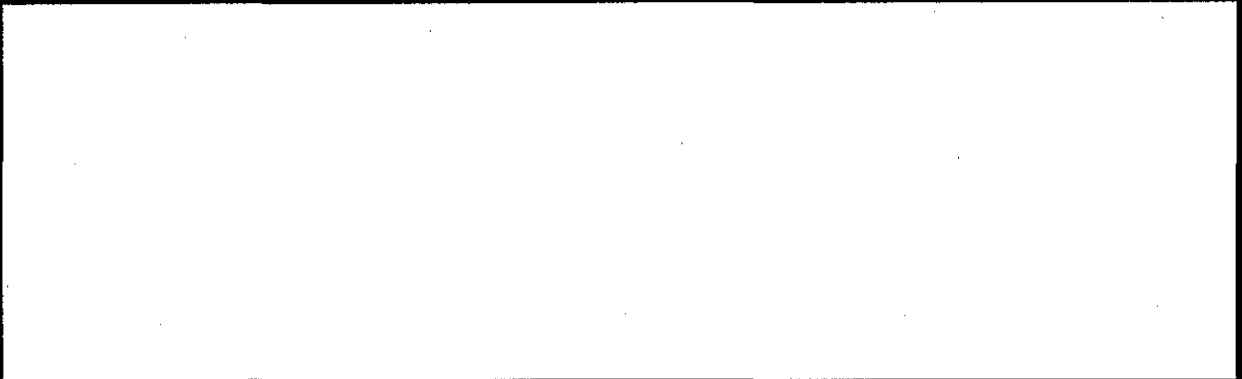
- Is Authorized under the AG Order No 2954-2008. (6.1.c.1)
- Can be implemented as specified within the order or other legal process. (6.1.c.2)
- Is lawful, reasonable and appropriate. (6.1.c.3)
- Complies with FBI policy. (6.1.c.4)

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FBI Field Office Approving Official

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4th Amendment Concerns

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[Redacted]

- *Zweibon v. Mitchell*, 516 F.2d 594 (D.C. Cir. 1975), *cert. den.*, 425 U.S. 944 (1976) (damages authorized against FBI agents engaged in unjustified warrantless wiretap for national security)

➤ [Redacted]

- *U.S. v. Ehrlichman*, *supra* (government official who authorizes or conducts warrantless search for national security purposes is subsequently determined no authority existed for search)

[Redacted]

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T-III

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- **Title III & Electronic Communications Protection Act**
 - Title III, Omnibus Crime Control and Safe Streets Act
 - Codified at 18 USC § 2510
 - Commonly referred to as the Wire Tap Act
 - **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.

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Title III Order

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- **Law enforcement exception** - 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)

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Title III Order (cont.)

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- Good for up to thirty days. Extensions allowed, but same PC 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); Delayed notice may be authorized by court.

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Title III vs. Pen/Trap

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- Pen/Trap (non-content; [redacted])
 - [redacted]
 - [redacted]
 - [redacted]
 - [redacted]
- Title III – content of communications

- [redacted]
- [redacted]
- [redacted]

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Consent Exception to Title III

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- Must have the consent of a “party” to the communication

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Questions?



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