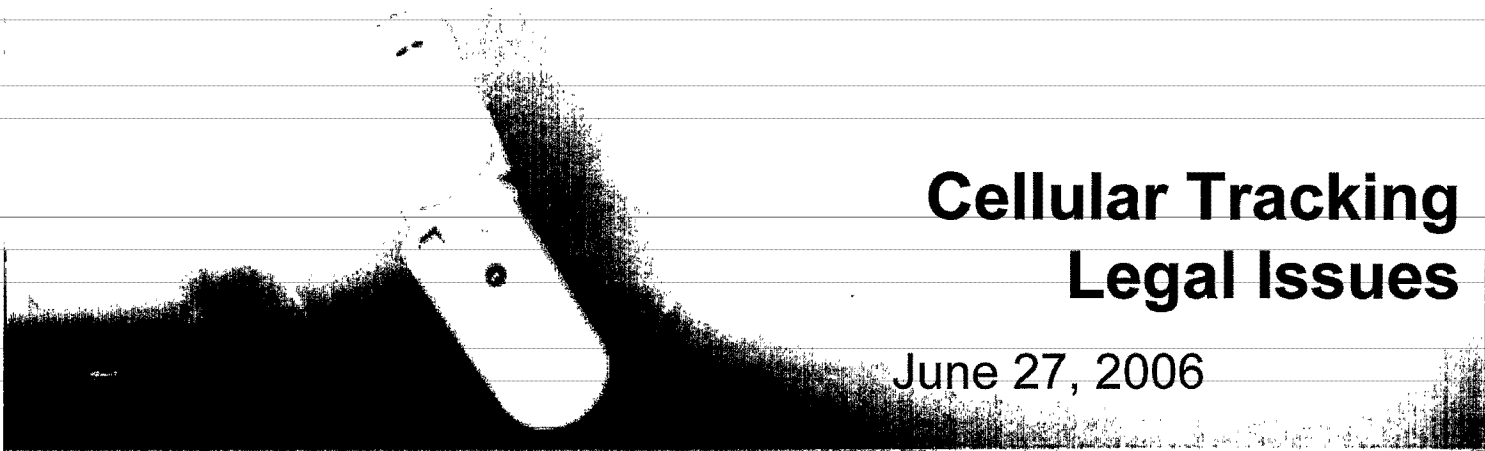
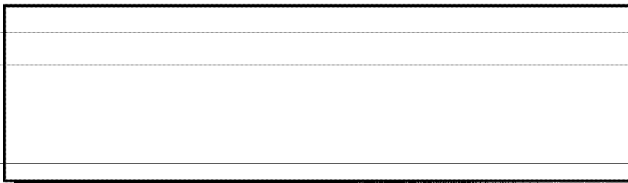


CELL/OTD 024505



Cellular Tracking Legal Issues

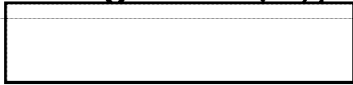


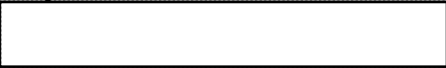
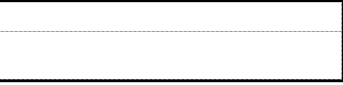
June 27, 2006



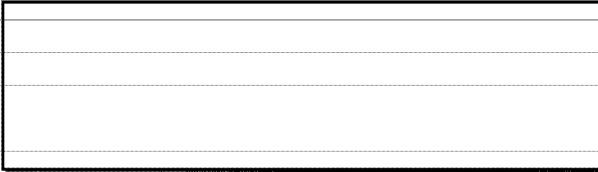
Overview

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024506
CELL/OTD

- DOJ's Policy on Cellsite Simulators: **Pen Register Device** (18 U.S.C. § 3127(3))
 - 
 - **LIABILITY RISKS & Best Practices**
- Loan of ELSUR Policy
 - 
 - 
- Emergency Pen Register Authority
 - Federal v. State Orders
 - Voluntary Disclosures
- Prospective Cell Site Location data
 - 
- Protecting Sensitive Techniques
 - 

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**Pen Register Device:
18 USC 3127(3)**

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CELL/OTD 024507

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....***



New Law: USA Patriot Act

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CELL/OTD

- **§ 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/CCIPS:

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

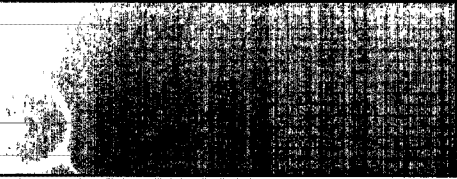
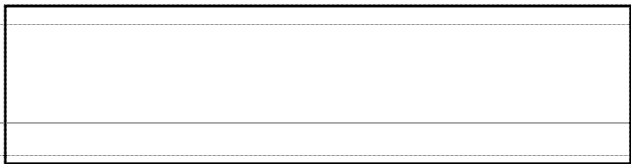


USMS Fugitive Authorities

STATE LAW FUGITIVES:

- **U.S. Marshals** (including FBI agents serving as deputy marshals) are authorized to investigate fugitive matters "as directed by the Attorney General." 28 USC 566(e)(1)(B)
 - Includes pursuit of fugitives wanted on state warrants when done pursuant to a "special apprehension program" (e.g., Fugitive Investigative strike teams) approved by the Attorney General;
 - IF the investigation of a state fugitive is conducted pursuant to such an authorized "special apprehension program" then the US Marshall is, in effect, executing "federal law" within the State; AND
 - USMS "May exercise the same powers which a sheriff of the State may exercise in executing the laws thereof" (28 USC 564), **INCLUDING the power to arrest a state law fugitive**
 - DOJ, Office of Legal Counsel memo to FBI, General Counsel: "Authority to Pursue Non-Federal Fugitives" (Feb. 21, 1995).

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CELL/OTD



- Agents of the United States Marshals Service have sole and inherent authority among federal law enforcement to pursue non-federal fugitives. 28 U.S.C. § 566(e)(1)(B). Pursuant to the Attorney General's National Anti-Violent Crime Initiative, the Presidential Threat Protection Act of 2000 (Pub. L. 106-544), and the Department of Justice Policy on Fugitive Apprehension (Aug. 11, 1988), when participating on a task force duly-sanctioned by a U.S. Attorney's Office, the Service is allocated federal funds and is expressly tasked with investigating and apprehending violent or otherwise significant state fugitives. No federal charge, such as Unlawful Flight to Avoid Prosecution, is necessary.



FBI SAs as Deputy USMS

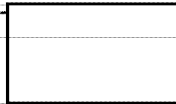
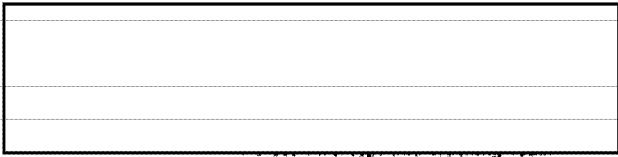
An FBI agent serving as a **Deputy US Marshall** could also arrest a state law fugitive under the same lawful authority.

- **BUT if not deputized, FBI agents have the authority to investigate/arrest state law fugitives ONLY**
 - **if there is a reasonable indication that the state law fugitive will violate the Fugitive Felons Act (FFA or UFAP),**

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Pen Register
BEST PRACTICES

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CELL/OTD 024515

BEST PRACTICES:

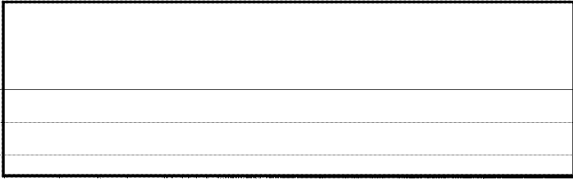


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**Function of Cellsite
Simulators:**

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CELL/OTD 024516

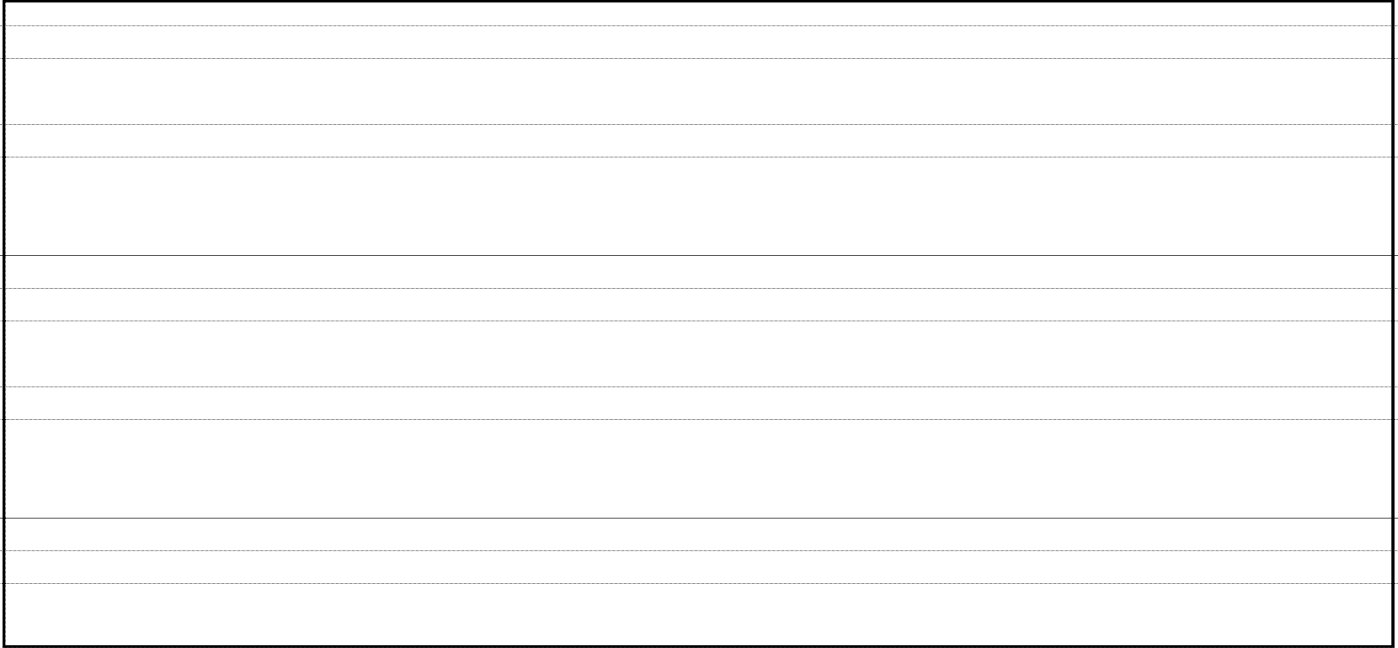


Incidental Collection

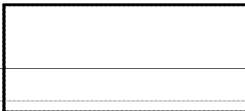
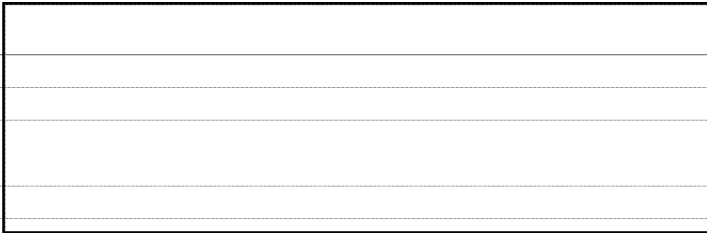
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CELL/OTD 024517

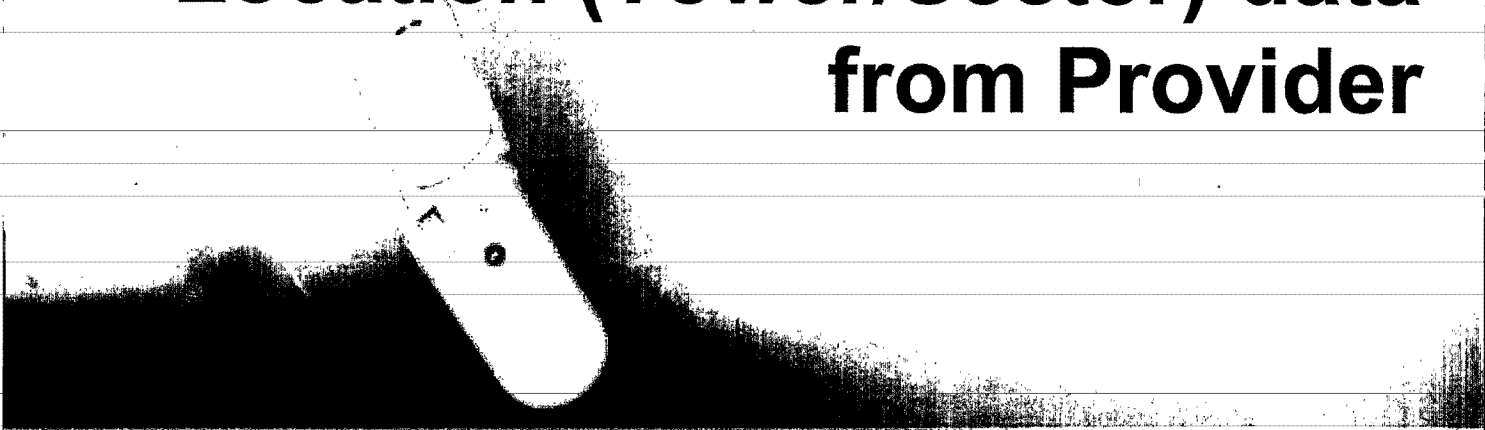
advise court of potential for incidental collection
on innocent users



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





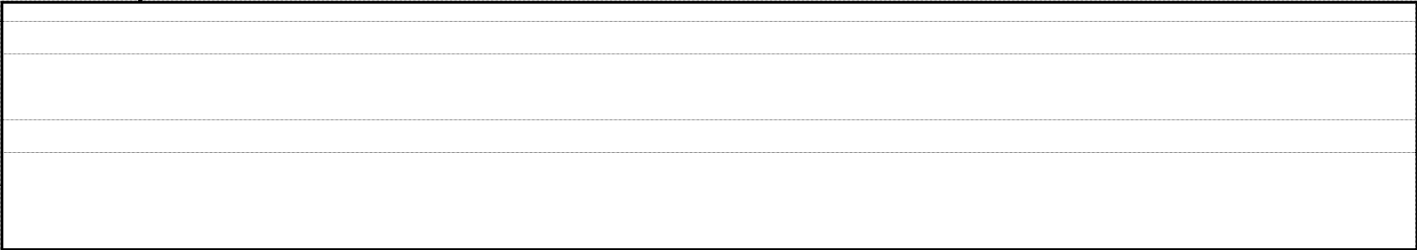
Qualified Privilege

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DLB/TJL
CELL/OTD 02/25/89

- **Compare, United States v. Van Horn**, 789 F.2d 1492 (11th Cir.), cert. denied, 479 U.S. 854 (1986) (concealed microphone in office, defendant sought information about location of device claiming necessary to demonstrate that voices on tape could have been distorted by way mic was hidden and the distortion led to misidentification of the voice), recognized a qualified government privilege not to disclose sensitive investigative techniques.

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- 
- **With United States v. Foster**, 986 F.2d 541, 543 (D.C. Cir. 1993) (defendant sought location of observation post: officer's observation of drug transaction was key evidence implicating defendant; surveillance not taped or photographed, so no alternative evidence for jury to examine to determine whether surveillance post provided clear view from which officer could make accurate identification of defendant).



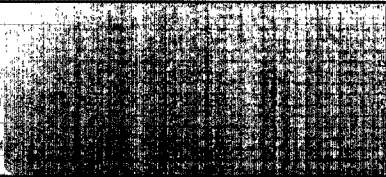
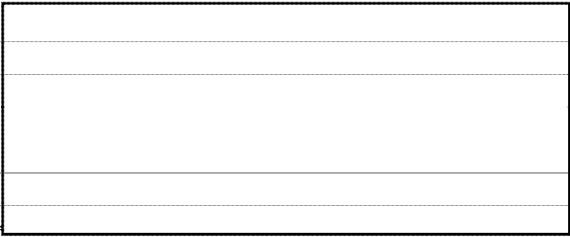
Qualified Privilege (cont)

- **U.S. v. Garey, 2004 WL 2663023 (M.D.Ga. Nov. 15, 2004)**
 - Defendant sought nature & details of pen register used to determine the geographical location of a cellular phone
 - Court found the information protected by qualified investigative techniques privilege & national security privilege
 - Balanced government's interest in maintaining privilege with Defendant's need for the information
- Defendant had the **Product of the Surveillance**: the cellphone used in making threatening calls was found in defendant's house during search of residence;

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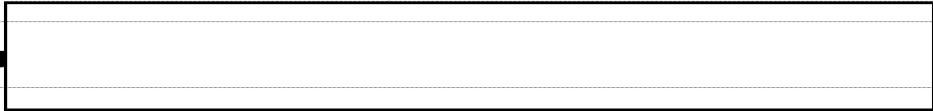
CELL/OTD 024540

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CELL 010 02-27-15

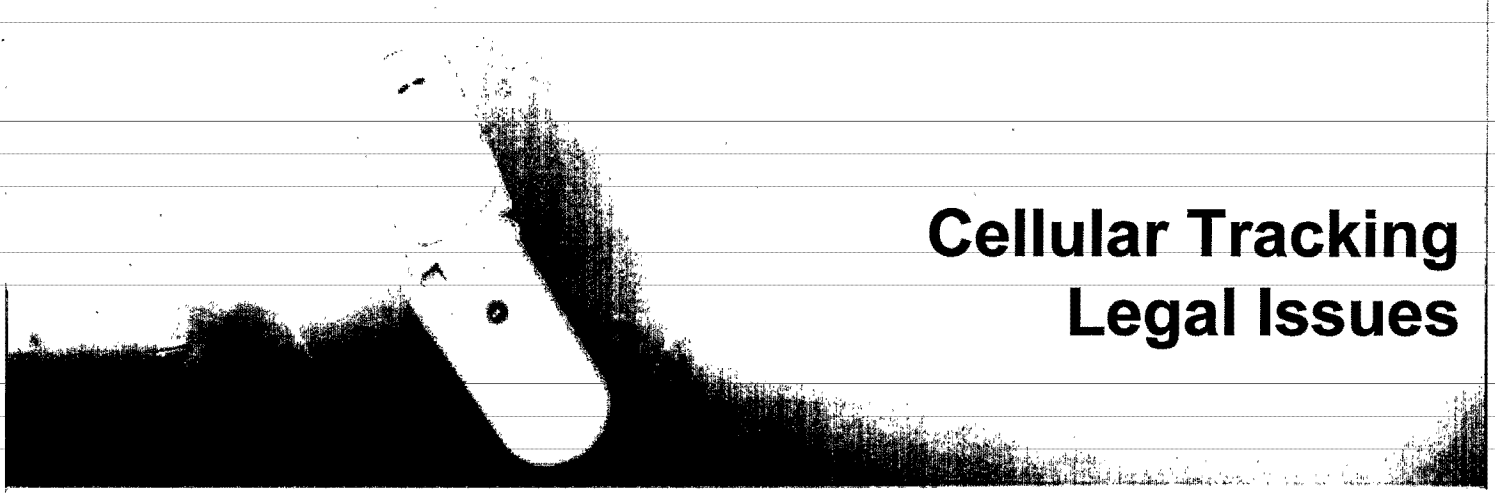
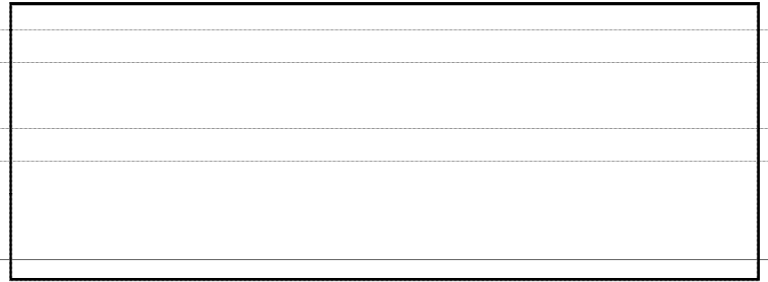
Contact Info:



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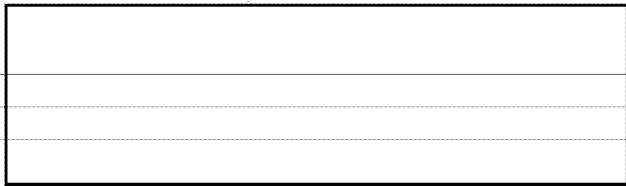
ASSISTANT GENERAL COUNSEL,
Science & Technology Law Unit,
Office of the General Counsel

- DOJ (CCIPS): www.cybercrime.gov



Cellular Tracking Legal Issues

CELL/OTD 020918



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- 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

- Loan of ELSUR Policy

- [Redacted]
 - [Redacted]

- Prospective Cell Site Location data

- [Redacted]

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- GPS/Triangulation from provider

- Protecting Sensitive Techniques

- [Redacted]

**Pen Register Device:
18 USC 3127(3)**

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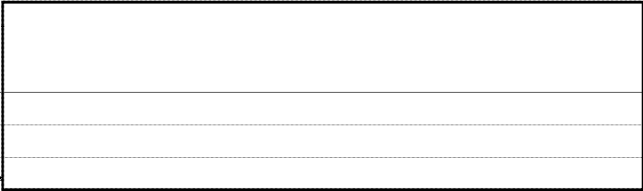
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CELL/OTD 020920



Disruption of Service

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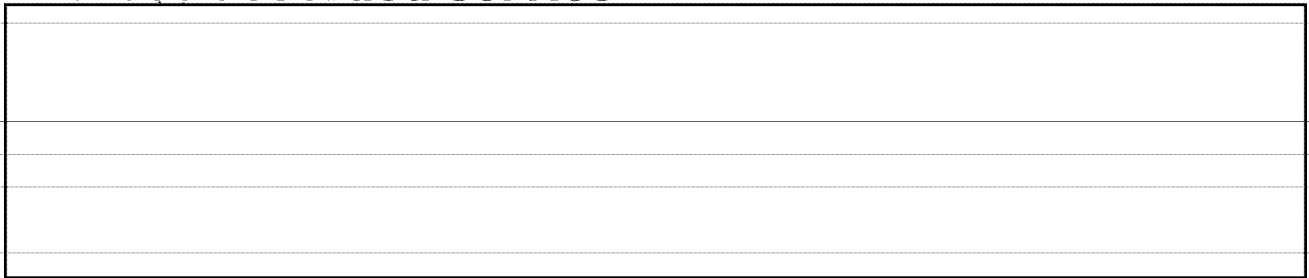
Potential **disruption of service** to phones while temporarily registered with government device during **active interrogation.**

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



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

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CELL/OTD

020925



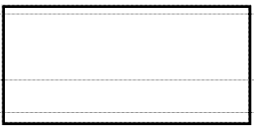
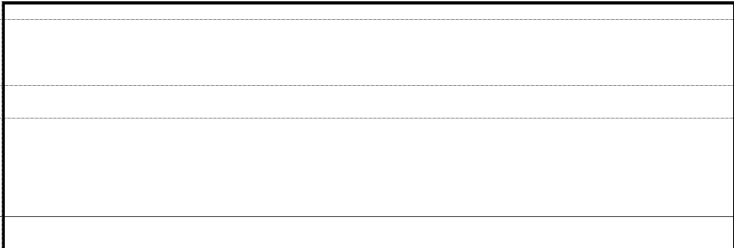
USMS Fugitive Authorities

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CELL/OTD 020932



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



CELL/OTD 020935

FEDERAL BUREAU OF INVESTIGATION

Precedence: Routine

Date: 03/11/2009

To: Operational Technology

Attn: Tracking Technology Unit

UC
SSA

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From: Security
Security Operations Section
Physical Security Unit. PA555

Contact:

Approved By:

Drafted By:

Case ID #: 261D-HQ-C1188941-TECHSEC

Title: PHYSICAL SECURITY MATTERS

ENGINEERING RESEARCH FACILITY, QUANTICO, VA

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Synopsis:

CELL/OTD 021184