

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY
INFORMATION CENTER

Plaintiff,

v.

FEDERAL BUREAU OF
INVESTIGATION,

Defendant.

Civil Action No. 12-CV-00667-CKK

Exhibit N

FEDERAL BUREAU OF INVESTIGATION
FOI/PA
DELETED PAGE INFORMATION SHEET
FOI/PA# 1226796-0

Total Deleted Page(s) = 60

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07DEC05

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(Proposed)

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b7C

Standard Operating Procedure (SOP) for Case Squads requesting
Cell Phone Tracking assistance during
"Exigent Circumstances"

Definition: Exigent Circumstances - An emergency exists that involves the immediate danger of death or serious physical injury to a person. Our threshold for utilizing the below procedure is that the situation demands immediate action to prevent death or serious bodily injury.

[Redacted]

Step 1. [Redacted]

b7E

[Redacted]

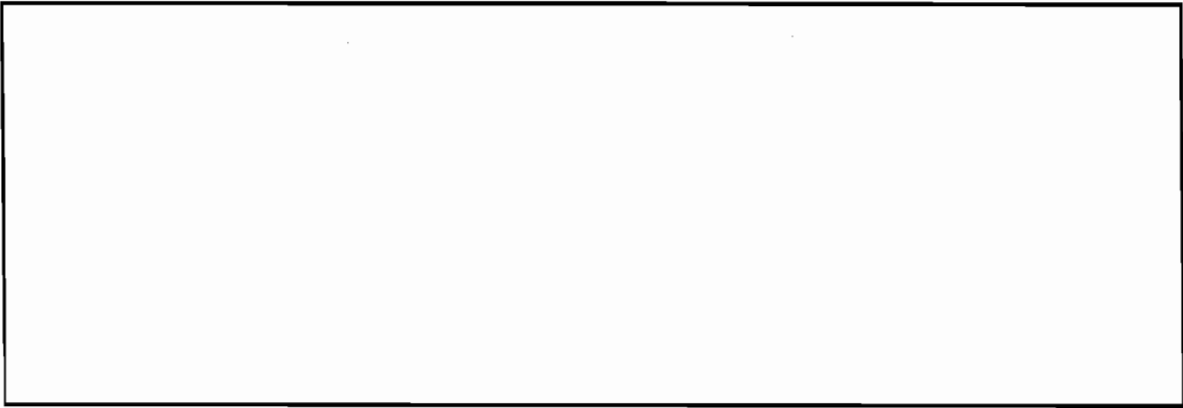
Step 2. [Redacted]

b7E

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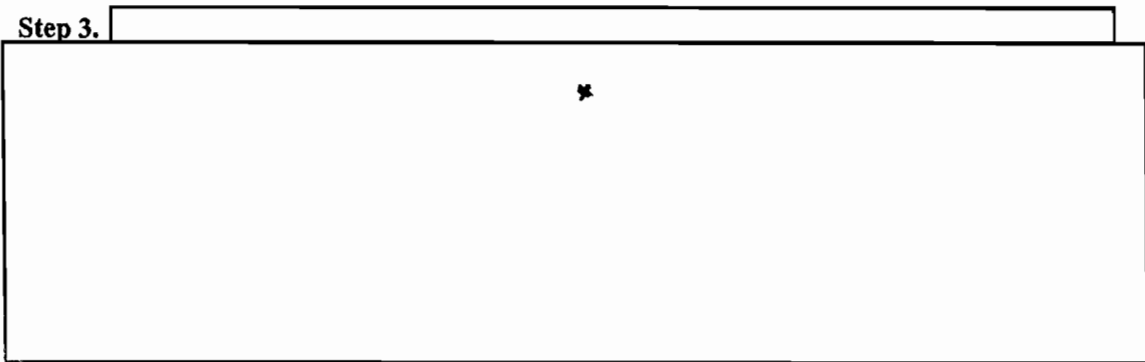
CELL/OTD 002617

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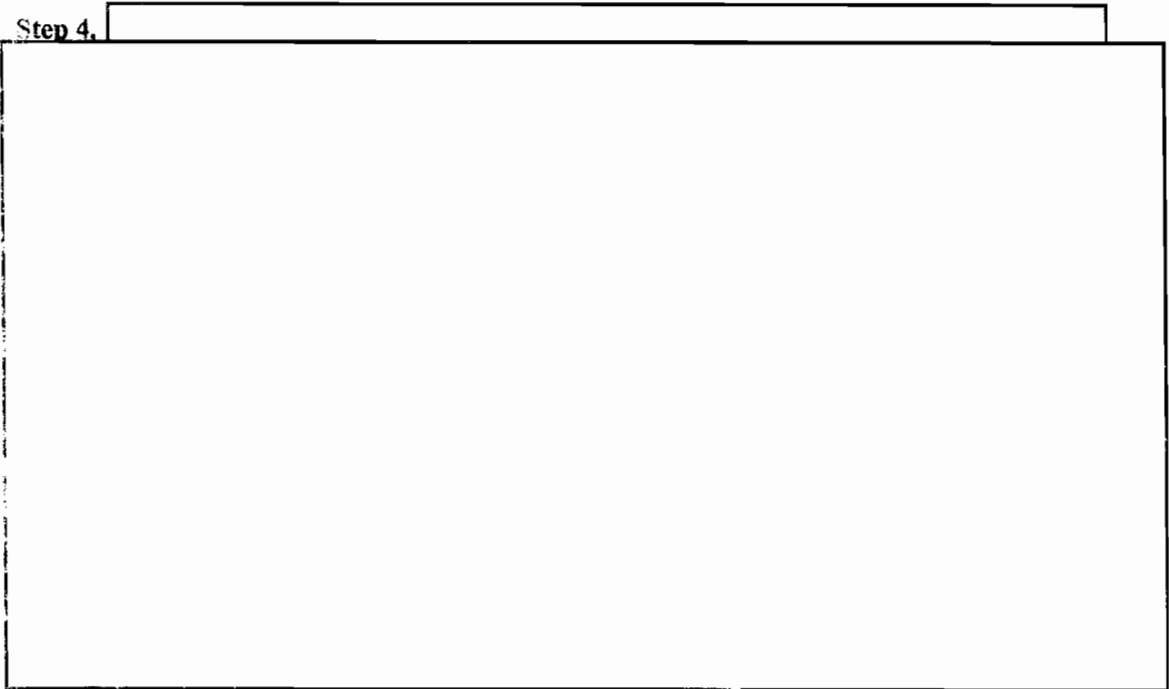
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Step 3.



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Step 4.



b3
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CELL/OTD 002618

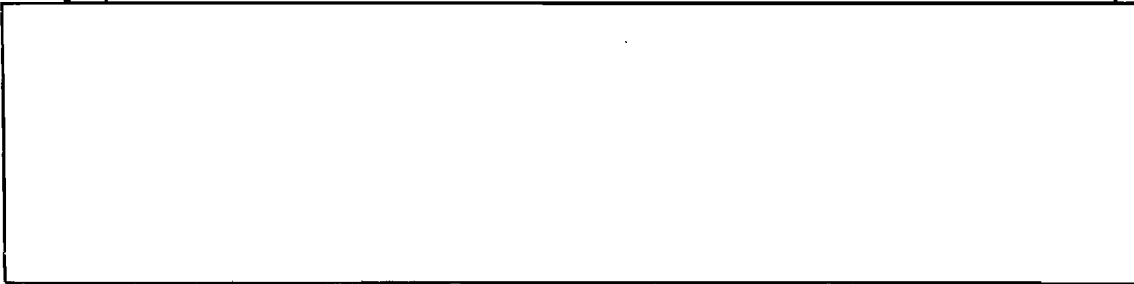


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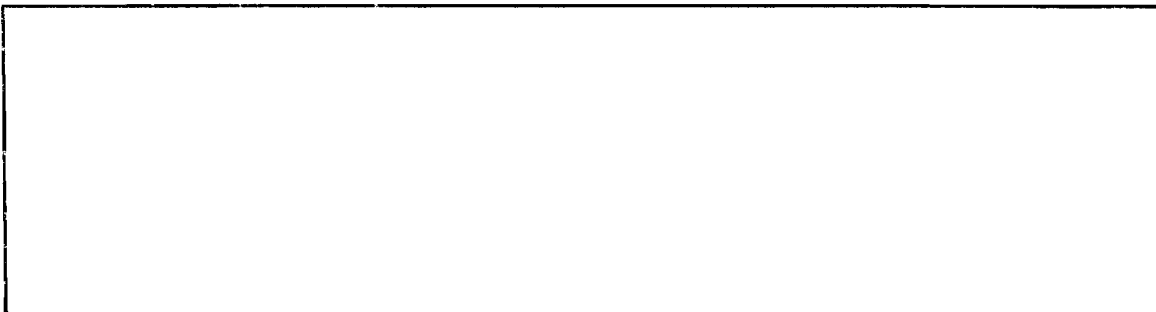
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Step 5.



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Step 6.



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CELL/OTD 002619

Step 7.

[Redacted]

b7E

Step 8.

[Redacted]

b7E

Step 9.

[Redacted]

Step 10.

[Redacted]

b7E

Step 11.

[Redacted]

***** Recommendations:** Any case squad that foresees the use of Cell Tracking should:

- a. Be familiar with the sample Pen Register/2703(d) Orders.
- b. Pro-actively meet with their perspective AUSA's and discuss the specifics of the Order.
- c. Ensure squad members are familiar with the use of the [Redacted] Pen Registers.

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CELL/OTD. 002620

GSM Cell Phone Tracking For Dummies

[redacted] StingRay, [redacted]

Prior to tracking, answer the following questions:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.

b3
b7E

Prior to starting up the Stingeray

b3
b7E

STEP 1

STEP 2

Turn StingRay system on.

STEP 3

b3
b7E

STEP 4

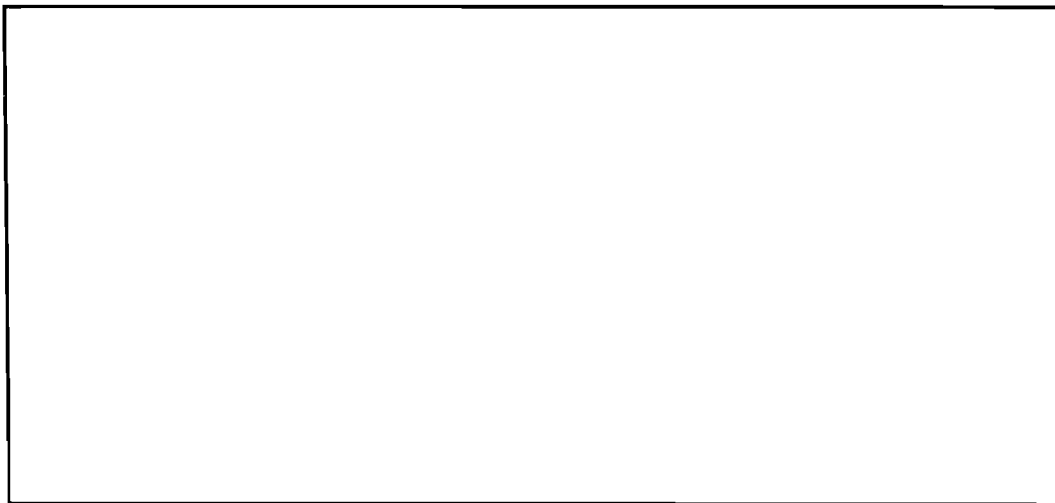
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STEP 5

A large rectangular box with a black border, completely empty, representing redacted content for Step 5.

STEP 6

A large rectangular box with a black border, completely empty, representing redacted content for Step 6.

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STEP 7

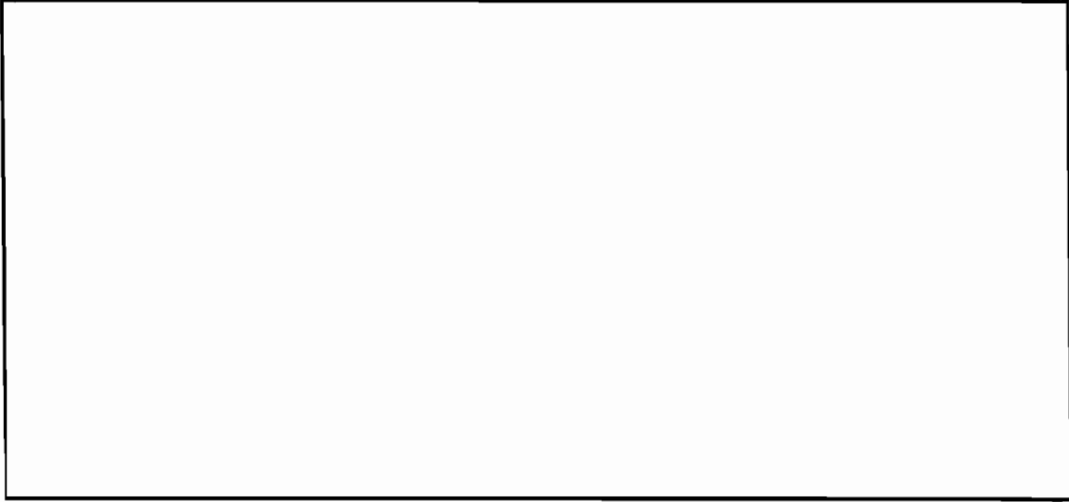
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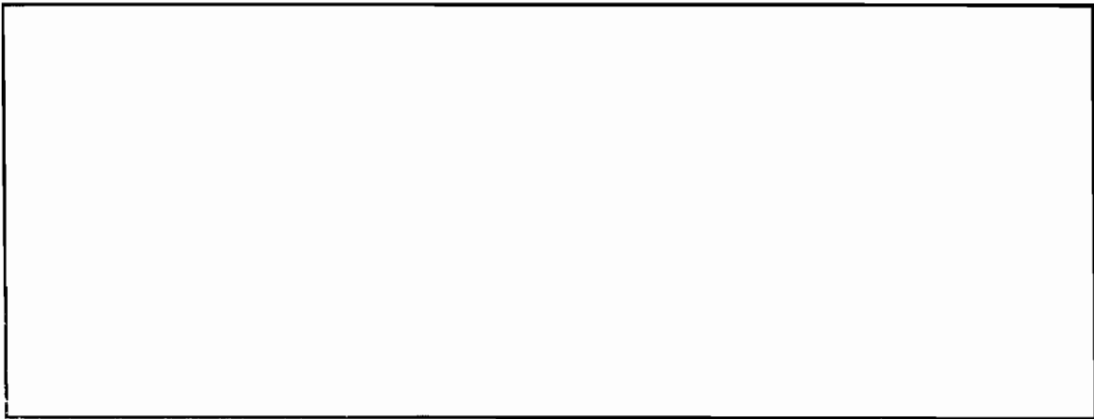
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STEP 8

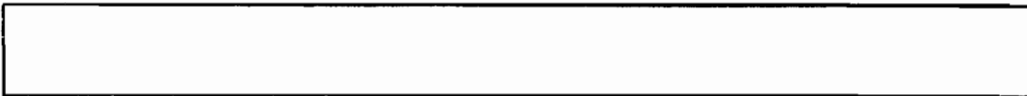


b3
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b3
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STEP 9



b3
b7E

CELL/OTD 002624

Important Reminders:

1.

2.

3.

4.

5.

6.

7.

8.

9.

b3
b7E

b3
b7E

CELL/OTD 002626

CDMA Cell Phone Tracking For Dummies

[Redacted] **StingRay,** [Redacted]

CDMA TECHNOLOGY IS RESPONSIBLE FOR APPROXIMATELY 50% OF THE CELL PHONE BUSINESS IN THIS COUNTRY. THIS APPLIES PRIMARILY TO SPRINT, VERIZON, VIRGIN (PREPAID PHONE) AND A FEW OF THE SMALLER CELL PHONE COMPANIES.

[Redacted]

Prior to tracking, answer the following questions:

1. [Redacted]
2. [Redacted]
3. [Redacted]
4. [Redacted]
5. [Redacted]
6. [Redacted]
7. [Redacted]
8. [Redacted]
9. [Redacted]

b3
b7E

Prior to starting in the Stingray system [Redacted]

[Redacted]

STEP 1

[Redacted]

b3
b7E

STEP 2

Turn StingRay system on [Redacted]

STEP 3

[Redacted]

b3
b7E

STEP 4

[Redacted]

STEP 5

[Redacted]

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b7E

STEP 6

[Redacted]

b3
b7E

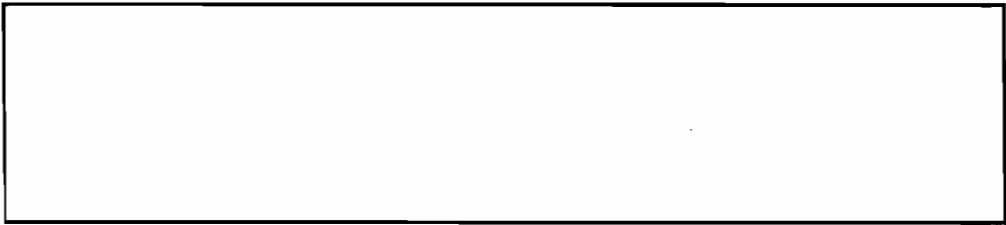
STEP 7

[Redacted]

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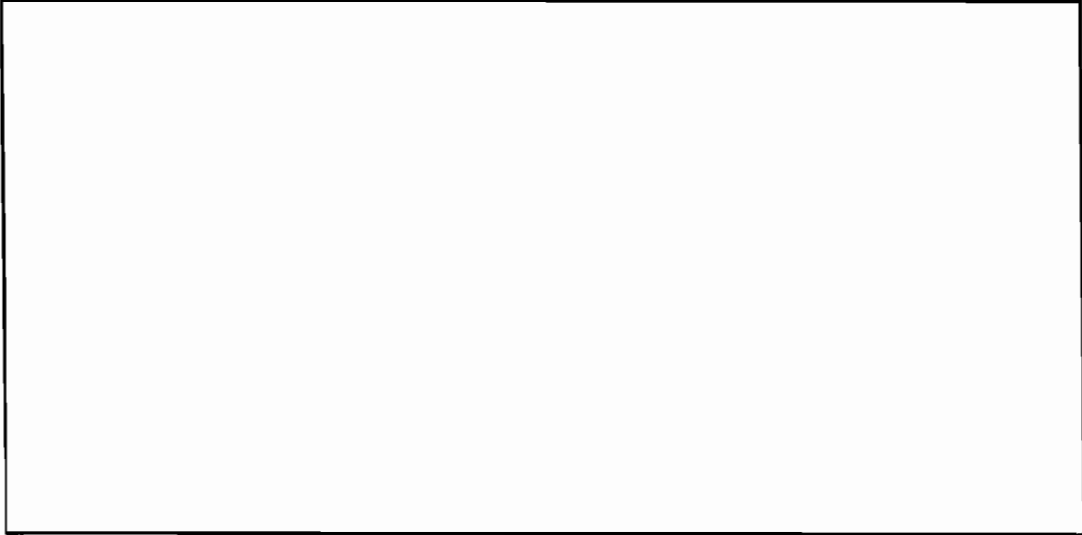
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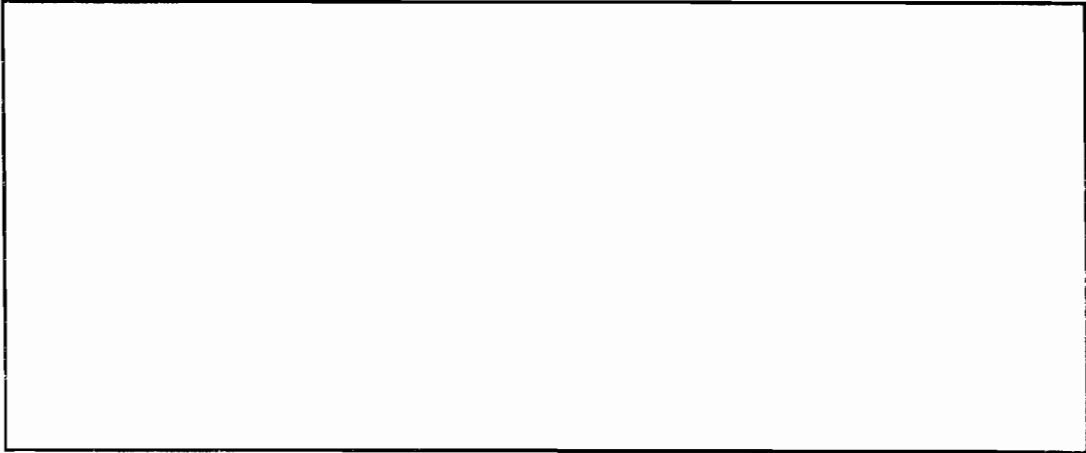
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STEP 8



b3
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STEP 9



b3
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CELL/OTD 002629

STEP 10

[Redacted]

b3
b7E

STEP 11

[Redacted]

b3
b7E

STEP 12

[Redacted]

STEP 13

[Redacted]

b3
b7E

[Redacted]

b3
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CELL/OTD 002630

Important Reminders

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.

b3
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ADDED INFORMATION:

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b3
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CELL 970 002632



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 WITT
- **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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2



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

5



WITT Pen Register— BEST PRACTICES



BEST PRACTICES:

Use PR/TT order to authorize use of WITT gear —

1. authorize installation & use

2. Advise of potential

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

b5
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Disruption of Service



[Redacted]

b5
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- **47 U.S.C. § 333 prohibits interference with cellular frequencies**

- [Redacted]

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

- [Redacted]

b5

- [Redacted]



Purge [redacted] Data



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

[redacted]

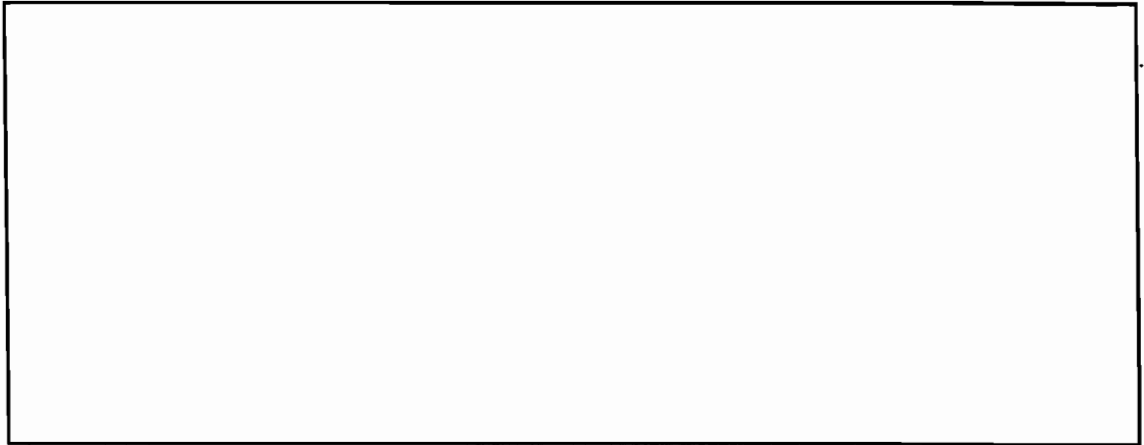
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Data Retention

- Maintaining/Purging "Pen" data?

- WITT policy EC 268-HQ-1068430:



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Emergency Provision 3125(a)(1)

[Redacted]

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- 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

[Redacted]

- MIOG, Part 2, 10-10.7.1

[Redacted]

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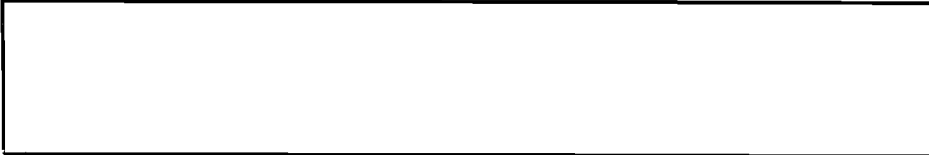
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Alternative authority

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.””



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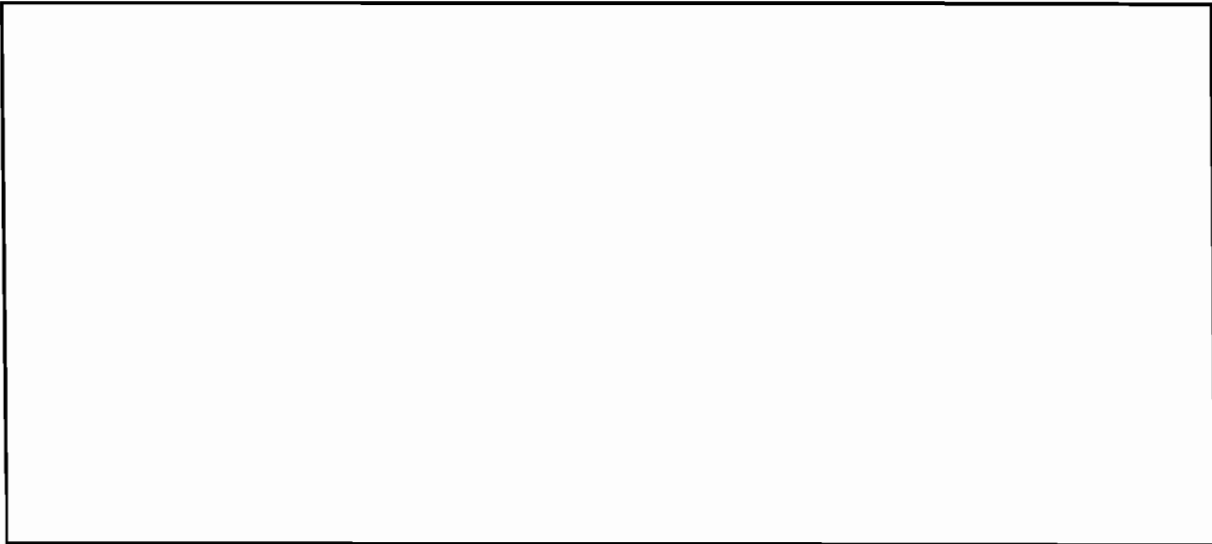
**WITT Function vs.
Location (Tower/Sector) data
from Provider**



WITT doesn't collect Cell site data



WITT equipment:



b7E

15

Guidance

■ [Redacted]

■ **AND Use a PR/TT order for WITT gear**

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

■ [Redacted]

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.21

4th Amendment Privacy Interest

■ [REDACTED]
[REDACTED]
[REDACTED] Smith v. Maryland, 442 U.S. 435, 744
(1979).

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- 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).

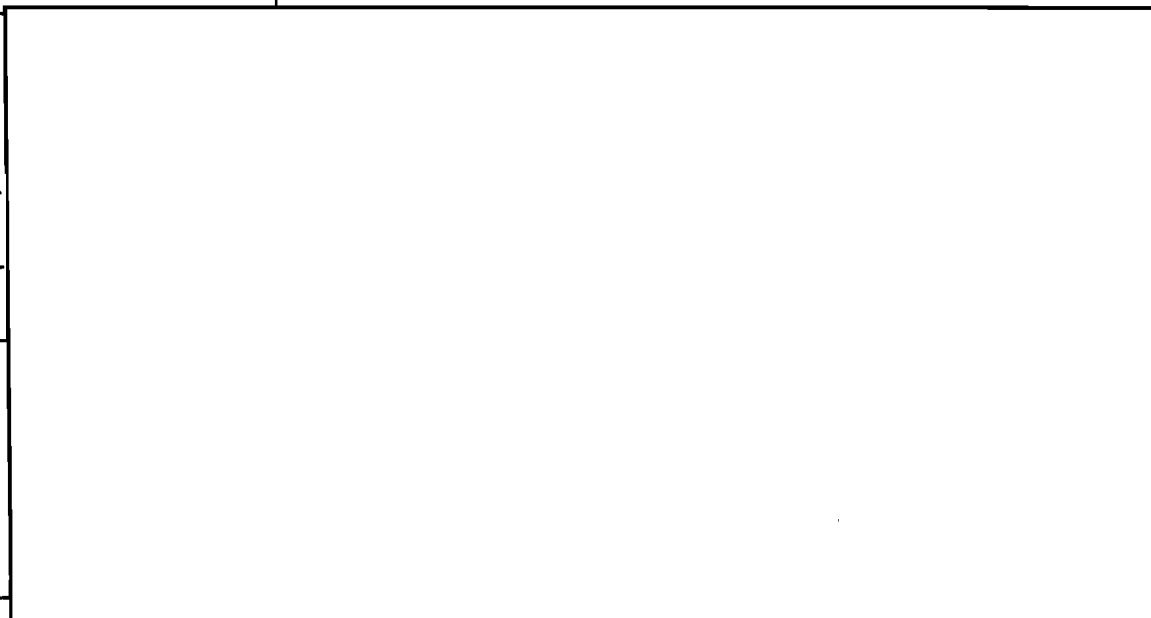
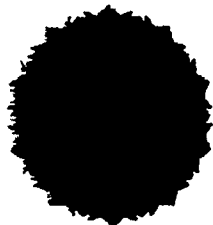
[Redacted]

- 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).

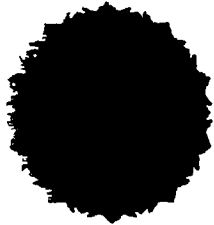
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GPS / Ping



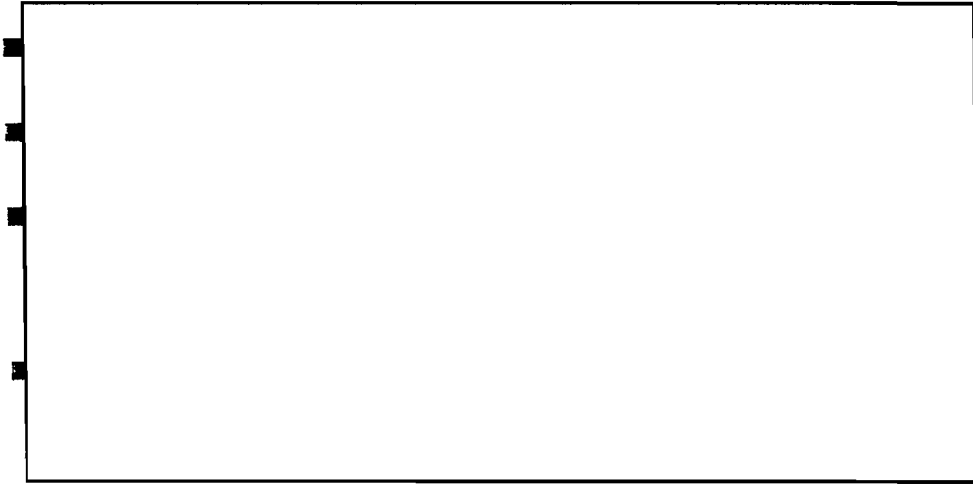
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GEOLocation Data—E911



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Court order: 2703(d)

■ 2703(d) order—

[Redacted]

[Redacted]

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

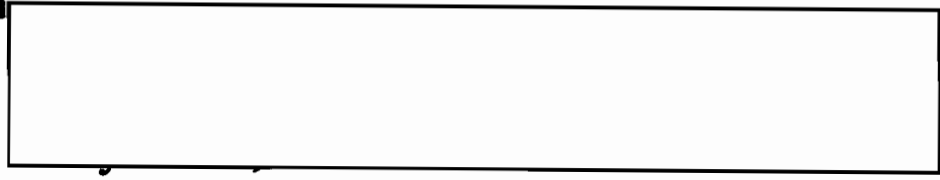
■ [Redacted] Language:

[Redacted]

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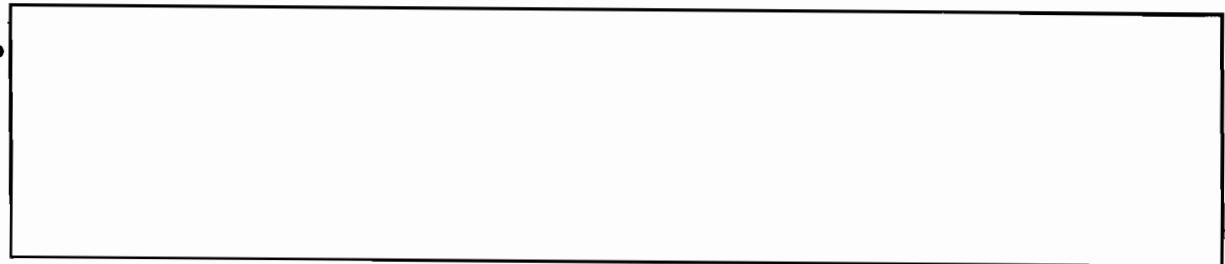
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Increased Investigative Use of Technique



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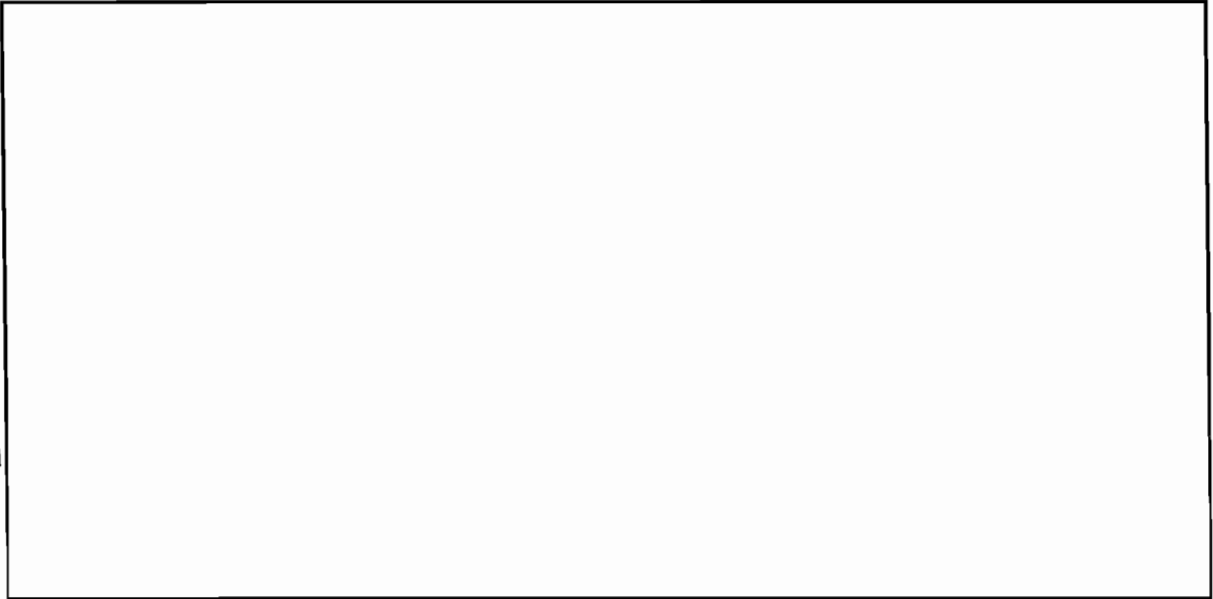
- **WITT policy EC 268-HQ-1068430--serial 342 or 66F-HQ-C1384970--serial 13634 entitled Wireless Intercept and Tracking Team (WITT), dated 08/24/2004.**



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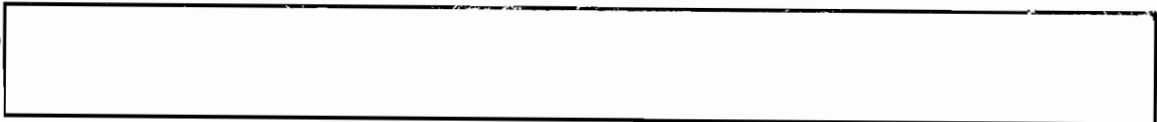
Cellular Tracking as Evidence



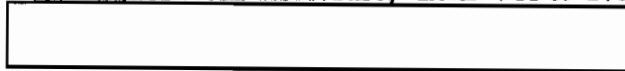
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Protecting Sensitive Techniques

- 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



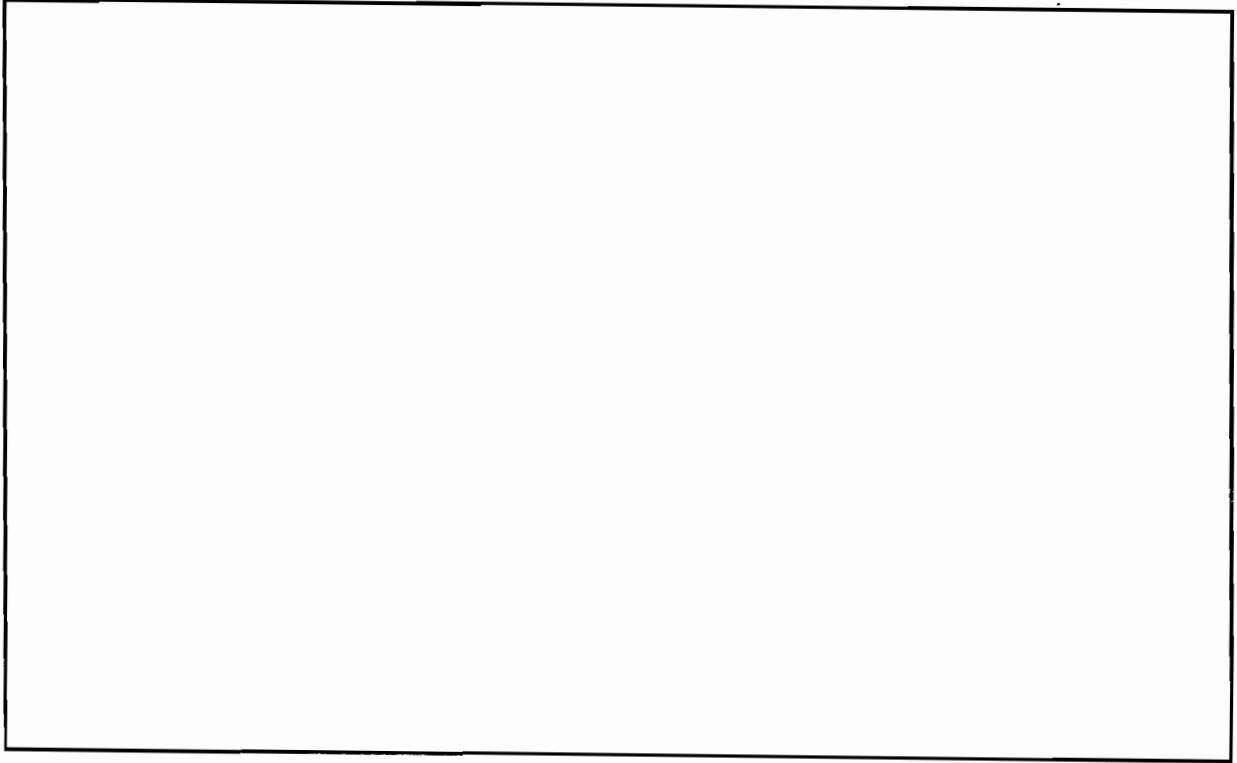
- see also Jayme S. Walker "The qualified privilege to protect sensitive investigative techniques from disclosure," LEB Vol 69 NO.5 at 26 (May 2000).



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**LOAN of ELSUR:
STATE Authority**



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TOPICS

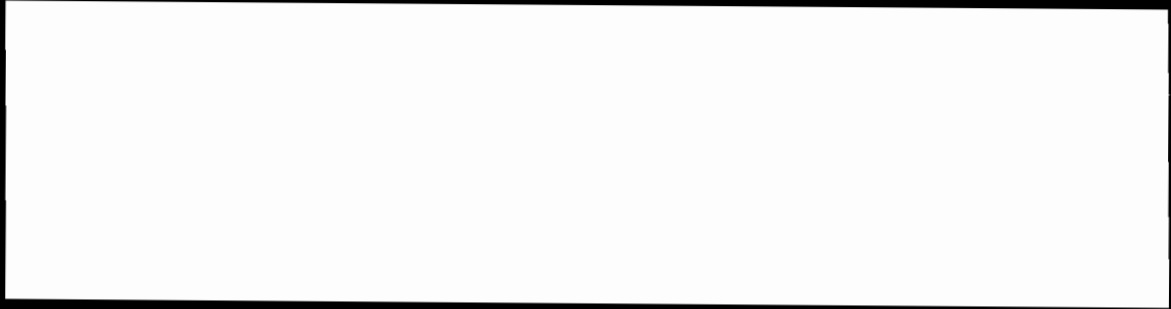
- General discussion and DES/OTD policy discussion
- Law Enforcement Sensitive (LES) – what is it and why is it important
- Pen Register/Trap and Trace and WITT
- ELSUR support for State and locals
- Other topics as time permits

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General Operational Guidelines

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OTD Policy

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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: WITT equipment is LES; CART SOPs are LES.

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WITT

- WITT = Wireless Intercept Tracking Team
- WITT doesn't intercept; and
- WITT doesn't track

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

Science & Technology Law Unit

- Besides 18 USC § 3121 – 3125 (... relevant to an ongoing criminal investigation ...)
- PRT&T captures "... dialing, routing, addressing, and signaling information ..."
- WITT [REDACTED]
- WITT is not [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 WITT without an order.

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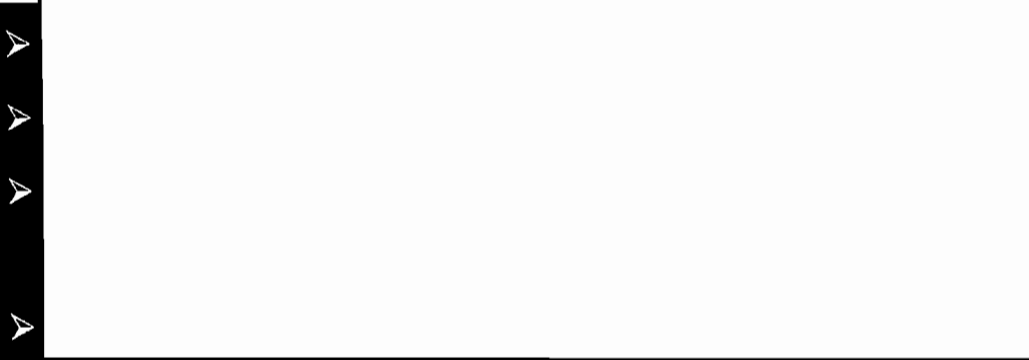
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Legal Authority to Deploy WITT



Science & Technology Law Unit



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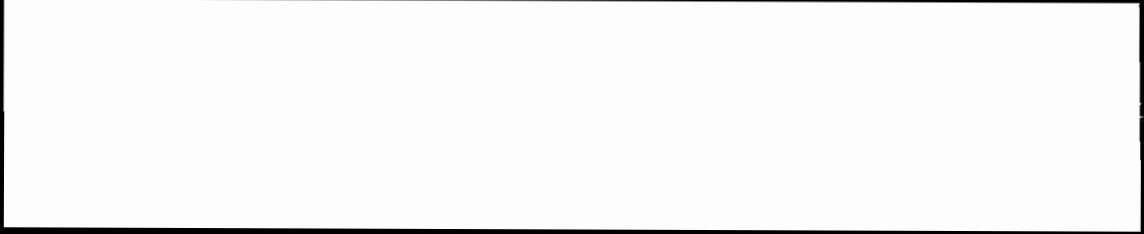
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Legal Authority to Deploy WITT

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



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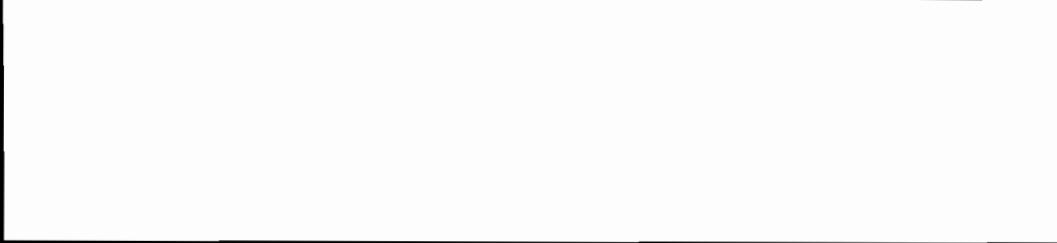
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The Requesting Agency shall certify
that: (5.c)

Science & Technology Law Unit

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



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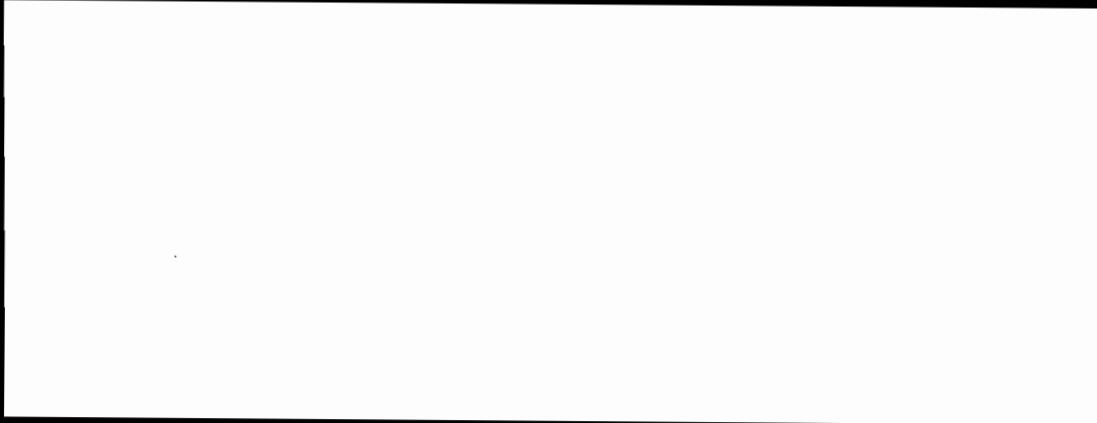
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Procedures for field office approval for technical assistance (6)

Science & Technology Law Unit

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



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Title III vs. Pen/Trap

Science & Technology Law Unit

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

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

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(2) THE USE OF FBI ELECTRONIC SURVEILLANCE EQUIPMENT IN JOINT CASES WHERE STATE AND LOCAL LAW ENFORCEMENT AGENCIES OBTAINED AUTHORITY FOR ITS USE (SEE MIOG, PART 2, 10-10.3 (8).) (RCU)

| (a) A JOINT CASE, for purposes of this section, is an investigation in which there exists significant FBI interest in the subject or subjects of a local investigation and substantial FBI investigative resources have been utilized and/or will be utilized in the planned investigation with the local agency. (RCU)

| (b) FBIHQ authority MUST be obtained prior to any use of FBI electronic surveillance equipment or personnel in furtherance of any order or authority obtained by state or local law enforcement agencies. Should approval be granted for such use, the pertinent local or state order or authority MUST contain specific language authorizing FBI participation and specifying whether the assistance is for installation, monitoring, or whatever is required. (RCU)

| (c) In requesting FBIHQ authority, the field office is to set forth the following information: (RCU)

| 1. A synopsis of the investigation conducted to date by FBI and the local agency involved, to include the date the FBI case was opened, as well as when the joint investigation was initiated. (RCU)

| 2. the specific SAC comments as to the value of the assistance to the FBI investigation and extent of federal control over local electronic surveillance. (RCU)

| 3. the exact nature of equipment to be utilized and technical assistance required, and whether the equipment is on hand in the requesting division. (RCU)

| 4. the specific comments of the [REDACTED] as to the complexity of the equipment and the ability of the local agency to properly utilize technical equipment requested. (RCU)

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| 5. that the local agency has valid legal authority under state or local law to conduct the electronic surveillance for which equipment will be utilized, to include citation of the specific statute; (RCU)

| 6. that the Chief Division Counsel or the Assistant U.S. Attorney has reviewed the affidavits and orders to be filed and concurs in their sufficiency; and, (RCU)

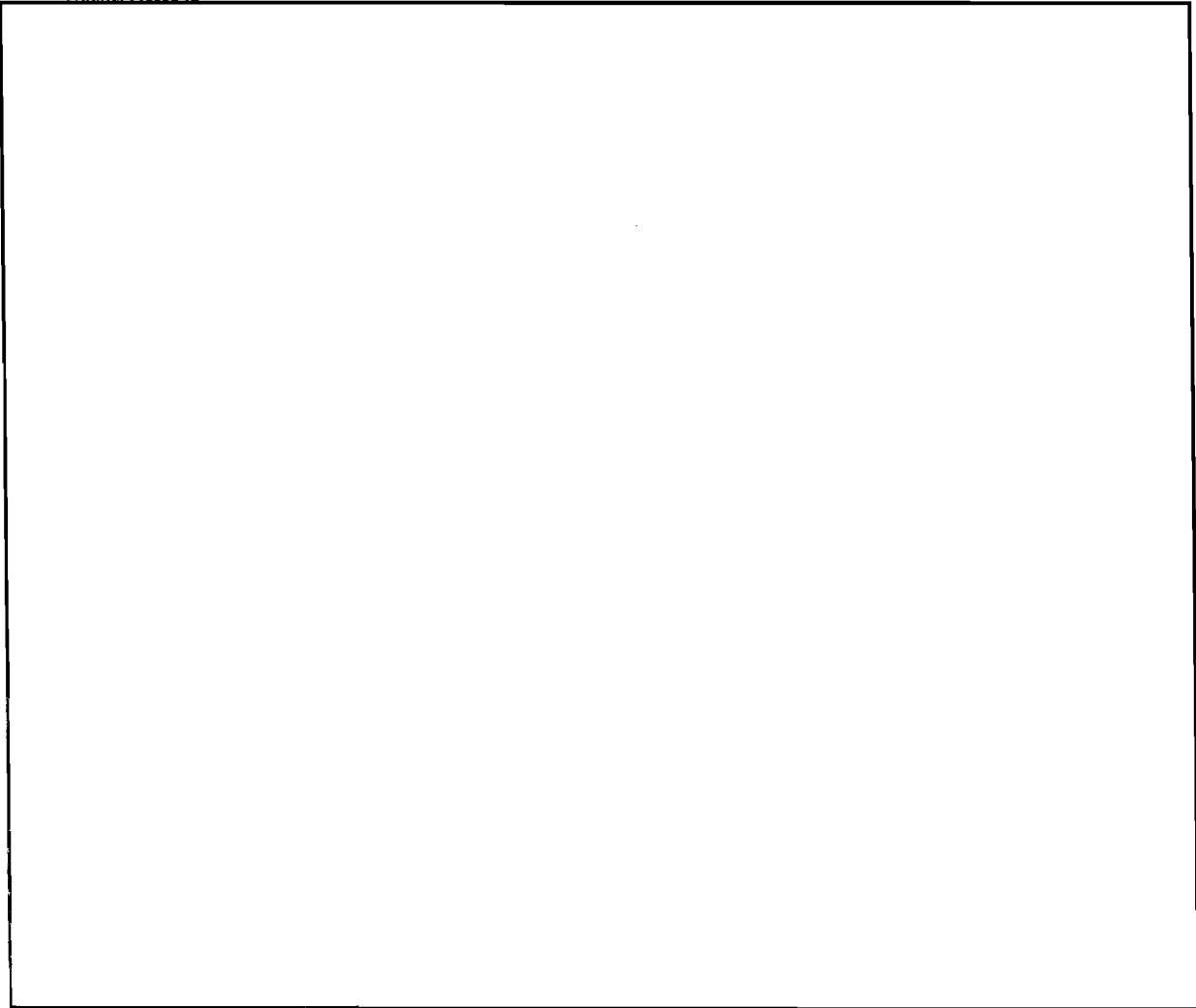
| 7. that FBI policy in limiting disclosure as set forth in Part 2, Sections 10-10.13 and 10-10.16, of this manual, will be honored in any subsequent local proceedings. (RCU)

| The above information is to be provided by appropriate communication to the attention of the Operational Technology Division, as well as to either the Criminal Investigative Division or the [redacted] as appropriate. (RCU)

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(d) Any request for FBI assistance in the execution of a locally obtained court order which requires [redacted] will be handled separately and will require significant justification. Emergency requests for such assistance are to be discouraged and likely will NOT be approved. (RCU)

-----Original Message-----



b5
b6
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UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED

[Redacted]

From:
Sent:
To:
Subject:

[Redacted]

b6
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SENSITIVE BUT UNCLASSIFIED
NON-RECORD

[Redacted]

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Per your request....

[Redacted]

The policy verbage reads:

Title 47 United States Code- TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

CHAPTER 5--WIRE OR RADIO COMMUNICATIONS

SUBCHAPTER III--SPECIAL PROVISIONS RELATING TO RADIO

Part I--General Provisions

Sec. 333. Willful or malicious interference

No person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this chapter or operated by the United States Government.

[Large Redacted Block]

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SENSITIVE BUT UNCLASSIFIED