



# Wire Tapping: The Federal Electronic Surveillance Manual

*United States Department of Justice*

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This manual sets forth the procedures established by the Criminal Division of the Department of Justice to obtain authorization to conduct electronic surveillance pursuant to Title 18, United States Code, Sections 2510-2522 (2001) (Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended by the Electronic Communications Privacy Act of 1986 (ECPA), the Communications Assistance for Law Enforcement Act of 1994 (CALEA), the Anti Terrorism and Effective Death Penalty Act of 1996 (Anti Terrorism Act)), the USA-Patriot Act of 2001, and the Homeland Security Act of 2002 and discusses the statutory requirements of each of the pleadings. This manual is divided into two sections. The first section provides an overview of the procedures to follow when applying for authorization to conduct electronic surveillance, and discusses format, statutory and policy requirements, and pertinent case law concerning specific electronic surveillance issues. The second section provides sample forms pertaining to electronic surveillance involving wire, oral and electronic communication interceptions, pen register/trap and trace procedures, access to transactional data and stored wire and electronic communications, and the use of tracking devices. Topics include: THE ELECTRONIC SURVEILLANCE UNIT TITLE III AUTHORIZATION PROCESS THE ELECTRONIC SURVEILLANCE PLEADINGS-The Application, The Affidavit, and The Order ELECTRONIC COMMUNICATIONS-Coverage under Title III and Stored Electronic Communications ROVING INTERCEPTIONS-Roving Oral Interception and Roving Wire or Electronic Interception EMERGENCY PROCEDURES-Title III Interceptions, Pen Register/Trap and Trace Devices SEALING-Overview, When to Seal, Sealing Delays, How to Seal/Custody of the Tapes, and Suppression for Failure to Seal Properly DISCLOSURE OF TITLE III EVIDENCE-Use and Disclosure of Interception Information, Testimonial Use, Privileged Communications, and Use of "other Crimes" Evidence PEN REGISTERS/TRAPS AND TRACES THE LEGAL AUTHORITIES REQUIRED TO LOCATE CELLULAR TELEPHONES-Compelling Providers to Disclose Cellphone Location Records, Obtaining Historical Records from Cellular Providers, Compelling Providers to Collect Cell Phone Location Information Prospectively, Collection of Cell Phone Location Information Directly by Law Enforcement, The Pen/Trap Statute, As Amended By the USA PATRIOT Act of 2001, and The Inapplicability of CALEA's Prohibition on Collection Using Pen/Trap Authority MOBILE TRACKING DEVICES VIDEO SURVEILLANCE SAMPLES: Application for Wire and/or Oral Interceptions Affidavit for Oral and/or Wire Interception Order for Interception of Wire and/or Oral Communications Order to Service Provider Sample Minimization Instructions for Oral and Wire Communications Application for Electronic Communications Interception Affidavit for Electronic Communications Interception Order for Interception of Electronic Communications Sample Title III Roving Affidavit Order for Sealing Application for 2703(d) Court Order 2703(d) Court Order Application for Trap and Trace/Pen Register Order for Trap and Trace/Pen Register Application for Order Permitting Government To Use Its Own Pen Register/Trap and Trace Equipment (Triggerfish/Digital Analyzer or Similar Device) Order Permitting Government To Use Its Own Pen Register/Trap and Trace Equipment (Triggerfish/Digital Analyzer or Similar Device) Combined 3123/2703 Application Combined 3123/2703 Order Application for Video Surveillance Order for Video Surveillance Application for Disclosure Order for Disclosure of Interceptions Section 2517(5) Application for Testimonial Use of Interceptions Relating to "Other Offenses" Section 2517(5) Order Permitting Testimonial Use of Interceptions Relating to "Other Offenses" Inventory Application Order for Inventory Inventory Notice Affidavit for Mobile Tracking Device Order for Mobile Tracking Device

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