

ELECTRONIC SURVEILLANCE IN THE UNITED STATES: A CASE STUDY

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I. INTRODUCTION

The following is a case study of a typical electronic surveillance investigation. This case study begins with the initial investigation, and proceeds through preparing the evidence for trial.

II. THE INVESTIGATION

On February 22, 2001, FBI Special Agent Clark Kent interviewed a confidential government informant ("CI-1"). CI-1 has provided reliable information in other investigations, and in those investigations, CI-1 bought drugs and introduced undercover agents to the targets of those investigations. CI-1's information has been used previously in arrest warrants and search warrants. The information that CI-1 has provided in this case has been corroborated by physical surveillance of the subjects, and information from other confidential informants and an undercover agent. CI-1 has a prior conviction for possession of cocaine, and is cooperating with the FBI in this investigation in hopes of gaining leniency for a family member who has pending drug charges.

During the interview on February 22, CI-1 told Agent Kent that Robert Gerard ("Gerard") and members of his drug crew distribute cocaine and heroin in the Keeney Heights area of Washington, D.C., and that CI-1 bought cocaine from "J-Boy," a member of Gerard's crew, in December 2000. CI-1 identified the following persons as members of Gerard's drug crew: "Little G," "Kay Kay," and "Sweet Nancy." Agent Kent showed driver's license photographs to CI-1 and CI-1 was able to identify Little G as Gene Blum, Kay Kay as Katrina Karr, and Sweet Nancy as Nancy Prim.

On March 30, 2001, Agent Kent learned that Fred Hendricks was murdered that day in the same neighborhood in Keeney Heights where Gerard lives. Agent Kent reviewed the official police reports written by the local police officers investigating the murder. Based upon those reports, Agent Kent learned that Gene Blum, Bridget Lynn, and Natasha Spencer were present at the scene of the murder on March 30. Those reports also contained the following information: The police questioned each of these individuals about the murder. Lynn and Spencer denied any knowledge of the circumstances surrounding the murder. As to Blum, when police arrived at the scene, he was seen trying to leave the area on a motorcycle. Blum was detained and he volunteered to answer some questions. During the questioning, Blum advised the police that there was a quantity of cocaine inside a locked compartment in the motorcycle. Blum gave the keys to the compartment to the

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**As a consequence of the terrorist attacks in the U.S.A. on 11 September 2001, Ms. Wuslich was unable to attend the 119th International Training Course. Copies of the two lectures Ms. Wuslich had prepared were distributed to all of the participants.

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officer. Later that day, the police obtained a search warrant for the motorcycle compartment. The next day, the search warrant was executed and approximately one quarter of a kilogram of cocaine was found inside. Because Blum is suspected in the murder of Fred Hendricks, a decision was made not to charge Blum with any crime at this time, but rather to continue the investigation.

On April 5, 2001, Gerard's house was burned to the ground. Agent Kent reviewed police reports of the incident, which reflected that witnesses saw three unidentified males enter the house carrying gasoline, and set the house on fire. Two persons, one of whom was an infant male, were inside the house when the fire was set, and died as a result. Gerard was not at home at the time of the fire.

On April 25, 2001, Agent Kent interviewed Stephen Simon, who has been indicted on charges of distributing cocaine. Simon provided the following information as part of a plea bargain in his pending case. In the presence of his attorney, Simon told Agent Kent that he was a member of a rival drug gang, and that he knows Gerard and Blum. Simon stated that Gerard had given Hendricks two kilograms of cocaine on consignment, and when Hendricks failed to pay Gerard for the cocaine, Gerard had Hendricks killed. Simon stated that he learned this information from his girlfriend, Natasha Spencer, who was at the scene of the murder. Simon stated further that Gerard receives large shipments of cocaine every few months, and that he sells cocaine for \$17,500 per kilogram.

On May 5, 2001, the local police interviewed an individual who was willing to provide information about Gerard's drug trafficking activities. This

person ("CI-2") has never provided information to law enforcement before and, therefore, his reliability is unknown. CI-2 stated that Gerard and Blum are heavily involved in drug trafficking and are very violent. On May 11, 2001, CI-2 told the local police that Gerard and members of his crew were at the Starlight Motel in Rajon, Maryland. Based on this information, local police officers established surveillance at the motel. During the surveillance, officers saw Gerard, Blum, and several unidentified males enter and exit two motel rooms.

On May 13, 2001, an undercover FBI agent ("UC") was sent to the Starlight Motel to apply for employment. On May 18, 2001, the UC began work at the Starlight Motel as a maintenance worker.

On May 20, 2001, CI-2 told the local police that Gerard and Blum were at the Starlight Motel, and that they were selling drugs from a room there. That day and the following day (May 21, 2001), surveillance agents observed Gerard and Blum entering and exiting room 123. In addition, throughout the day, several unidentified males were seen entering room 123, staying a few minutes, and then leaving the room.

On May 25, 2001, CI-2 stated that Blum had gone to the Starlight Motel again to sell drugs. The local police conducted surveillance of the motel and saw Blum exit room 178. Blum entered a Chevy Suburban truck that was being driven by a female. Surveillance agents later identified this female from photographs as Nancy Prim. One hour later, agents saw the Chevy Suburban return to the motel. Blum exited the car and entered room 178. Prim, the driver, departed the area.

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On May 25, 2001, the UC was working at the motel, when someone from room 178 called the front desk to complain about a maintenance problem. The UC went to room 178 to fix the problem and observed Blum and two unidentified males inside the room. When the UC arrived, he heard Blum refer to one of the unidentified males as “J-Boy.” While in the room, the UC used the telephone to make a call to another police officer. During the call, the UC mentioned going to a party and getting some cocaine to take to the party. Blum overheard the UC’s call and offered to sell the UC some cocaine. The UC, who was wearing a recording device, recorded his conversation with Blum. During the conversation, Blum stated, “I can get you all the coke you want. How much do you want?” The UC replied, “I’ll take an oz (one ounce of cocaine).” Blum told the UC to call him later at the motel. The UC then left the room.

That evening, the UC called the telephone in room 178 and spoke to Blum. The UC recorded his conversation with Blum. During the call, the UC and Blum agreed to a price of \$1,100 for one ounce of cocaine. Blum gave the UC his pager number and told the UC to page him at that number when the UC was ready to conduct the drug deal.

On May 26, 2001, at 9:15 a.m., the UC paged Blum at the number he was given, and input the telephone number of his cellular telephone. At 9:20 a.m., the UC received a call from Blum. The caller identification device on the UC’s cellular phone revealed that Blum was calling from a telephone bearing the number (202) 514-1234. During this conversation, which the UC recorded, the UC told Blum that he was ready to buy some cocaine from him. Blum instructed the UC to meet him at room 178 at the Starlight

Motel at 10:30 a.m. Blum then ended the call. Later, the FBI subpoenaed¹ telephone records for Blum’s phone, (202) 514-1234 (hereinafter, referred to as the “target phone”). Those records show that immediately after Blum ended the call with the UC, the target phone was used to call a pager. The FBI subpoenaed records for the pager from the service provider, and learned that the pager is subscribed to in the name of Dorothy Gerard, Gerard’s mother. At 10:30 a.m., the UC arrived at the motel and met Blum in room 178. The UC bought one ounce of cocaine from Blum in exchange for \$1,100. Meanwhile, surveillance agents were outside the motel. After the transaction, the UC left the motel room, followed by Blum. Blum entered a white Ford Navigator sport utility vehicle and drove away from the motel. Surveillance agents followed Blum to Interstate Highway 95. While Blum was driving on Interstate 95, he slowed down and drove along side of the car being driven by the surveillance agents. Blum waived to the agents and then sped off. Realizing that they had been detected, the agents discontinued surveillance of Blum.

On June 2, 2001, the UC attempted to contact Blum at the pager number Blum had given the UC. The UC never received a call back from Blum.

On June 22, 2001, a local police officer contacted Agent Kent and advised that she had been contacted by a confidential informant (“CI-3”). The police officer advised Agent Kent that CI-3 was reliable, and that CI-3 had provided credible information to her in the past. The police officer advised that CI-3, who is associated with many gang members, knows that Blum uses the target phone in furtherance of his drug business.

¹ 18 U.S.C. §2703(c)(1)(C).

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On June 28, 2001, Agent Kent learned of another confidential informant working for the local police ("CI-4"). CI-4 has never provided information before, but knows Blum and has bought cocaine from Blum on several occasions within the last six months, most recently in the beginning of June 2001. CI-4 stated that he has never bought cocaine from Gerard, but knows that Blum works for Gerard as a drug distributor. CI-4 indicated that he would be willing to contact Blum to buy cocaine, but that he was not willing to record any of his conversations with Blum. CI-4 stated that, given the drug crew's reputation for violence, he feared retribution from Blum or others, if the recording equipment was detected on his person.

On August 1, 2001, at 1:20 p.m., CI-4 paged Blum and input the telephone number where CI-4 could be reached. At 1:45 p.m., Blum called CI-4. Subpoenaed phone records for the target phone show that at approximately 1:45 p.m., the target phone was used to call CI-4's phone. According to CI-4, he told Blum that he wanted to buy an ounce of cocaine. Blum told CI-4 to meet him at a gas station in one hour. One hour later, CI-4 went to the gas station. Before CI-4 arrived at the gas station, Agent Kent searched CI-4 for contraband, with negative results, and gave CI-4 \$1,100 in pre-recorded government funds. Surveillance agents then observed CI-4 approach the gas station. A short while later, Blum arrived at the gas station in a red Lexus automobile. Blum got out of his car and walked over to CI-4. Agents saw CI-4 hand something to Blum. Blum returned to his car, reached inside, and returned to CI-4. Blum handed an object to CI-4. CI-4 left the gas station and Blum drove away. CI-4 then met with Agent Kent and gave him one ounce of a

substance that later tested positive for the presence of cocaine.

On August 5, 2001, Agent Kent subpoenaed telephone records for the target phone from the service provider. A review of those records shows that between July 2, and August 2, 2001, the target phone was used to make and receive a total of 1,144 calls. Of that total number of calls, Agent Kent determined that the target phone was used to make calls to the following telephone numbers: 1) 34 calls to the pager believed to be used by Gerard, most recently on August 1, 2001; 2) 22 calls to a residential phone subscribed to by Dorothy Gerard, most recently on July 23, 2001. Agents conducting physical surveillance have seen Gerard frequent this residence; and 3) 19 calls to a telephone at the Starlight Motel, most recently on July 28, 2001. Agents observed Gerard, "J-Boy," and Nancy Prim at the Starlight Motel on July 22, 2001, and saw "J-Boy" at the motel on July 28, 2001.

III. POST-APPROVAL PROCESS

Based upon the above facts, on August 10, 2001, the FBI agent and the prosecutor submitted an application and an affidavit² to the Department of Justice, seeking approval to conduct electronic surveillance over Blum's phone—the target phone—in connection with their investigation of federal drug crimes being committed by Blum and others. On August 12, 2001, the Department of Justice approved the application,³ authorizing the prosecutor to seek a court order for the electronic surveillance. On August 13, 2001, the prosecutor submitted the application and affidavit to a judge for approval. On

² See Attachments A and B.

³ See Attachment C.

August 13, 2001, the judge signed the order⁴ granting authorization to intercept wire communications over the target phone used by Blum to investigate federal drug violations being committed by him and his co-conspirators.

IV. CONDUCTING THE ELECTRONIC SURVEILLANCE

A. The Logistics

1. The Personnel

Conducting an electronic surveillance investigation is a manpower intensive operation, requiring the requisite number of monitors (those persons who will be intercepting and recording the communications) and an adequate number of law enforcement officers to provide investigative assistance during the course of the investigation.

Depending on the type of criminal activity being investigated, the government may want to monitor the telephone or the location, 24 hours a day, seven days a week. In a typical drug investigation, like the one described above, the government will monitor the telephone on a constant basis and an issue will be whether the government can locate and train enough monitors in order to comply with Title III's minimization requirements as outlined in 18 U.S.C. §2518(5). In addition to the hours during which the interception will be conducted, the government must determine if it will need monitors who speak a foreign language or who are conversant in the coded language that the subjects may be using to discuss their criminal activity. Drug dealers often discuss their illegal activities in coded terms. In one investigation, the drug traffickers had their own language, where they used

numbers to represent the letters of the alphabet. By the end of the investigation, the government had a complete dictionary of coded words that the drug dealers used.

Many times, the monitors are not federal law enforcement agents. Title III permits the use of local and state police officers and contract personnel (such as foreign language translators) to monitor the communications as long as they are under the supervision of a federal agent.⁵

As to the requisite number of law enforcement personnel, it is critical that the government has enough officers to engage in complimentary investigative action to corroborate and support the electronic surveillance evidence. For example, as explained above, drug dealers often use coded language when conversing with one another over the telephone, and sometimes will use code words that reflect legitimate business activities in which they may be involved. In one recent case, the drug dealer owned an auto repair shop. When the dealer discussed his drug trafficking activities over the telephone, he often used terminology related to the auto repair business. Physical surveillance of his business was used to show that, despite his claims that his calls were related to his legitimate business, he had very few customers, performed very little, if any, auto repair work, and that his business was often closed during normal business hours. In addition, through physical surveillance, the agents were able to seize a load of cocaine based upon a series of calls that were intercepted over the drug dealer's telephone,⁶ in which the dealer used words related to his business.

⁴ See Attachment D.

⁵ 18 U.S.C. §2518(5); *United States v. Lyons*, 695 F.2d 802 (4th Cir. 1982); *United States v. Manfredi*, 488 F.2d 588 (2d Cir. 1973).

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Without physical surveillance, the government would not have been able to contradict the drug dealer's assertions that his calls were innocent in nature, nor would it have been able to seize corroborative evidence, in this case a load of cocaine, of his drug dealing.

Intercepted communications, in and of themselves, are rarely enough to convict the subjects of the crimes. Rather, intercepted communications are a means by which to establish relationships between individuals and to locate evidence that will be used at trial to prove the crimes. Without corroborative evidence obtained through physical surveillance and other investigative techniques, the wiretap evidence has little or no meaning to a trier of fact.

2. Where to Monitor the Communications

Under Title III, a court can only issue an order for communications that will be intercepted within its territorial jurisdiction.⁷ Judicial opinions have defined the term "interception" broadly so that it can occur in at least two places: 1) where the interception (or initial capture of the communications) will occur technically for the first time (this is usually the place where the premises are physically located or where the telephone is being used), or 2) where the communications will be redirected and

heard or accessed by the government for the first time (the monitoring location).⁸ It is the policy of the Department of Justice that if the government is going to listen to, or access, the communications in a jurisdiction where the premises are not located or where the telephone is not being used, there must be some investigative connection to that jurisdiction, i.e., some element of the criminal conspiracy is occurring there. Usually, the telephone or the premises is located in the same jurisdiction where the government will be monitoring (i.e., listening to or accessing) the communications, but that is not always the case. In the scenario outlined above, subject Blum uses a cellular telephone in two jurisdictions, Washington, D.C., and Maryland, to commit his drug trafficking activities. It would be permissible under Title III to obtain the court order in either place. In this instance, it is likely the government would obtain the court order from a judge in the jurisdiction where it can monitor the communications.

Given the mobility of cellular telephones and the ability to access the Internet from anywhere, traditional notions of jurisdiction and where an interception of a communication actually takes place no longer apply. In the case of computers, consider this example: the subject lives in jurisdiction A, where he or she orchestrates a nationwide criminal conspiracy using his or her home computer; the Internet service provider that processes the communications is in jurisdiction B, where the communications are captured or intercepted, in technical terms, for the first time; and the law enforcement agency investigating the

⁶ 18 U.S.C. §2517(1), (2) permit the disclosure of electronic surveillance evidence by law enforcement officers to other officers while acting in the proper performance of their duties. See also United States v. Vento, 533 F.2d 838 (3rd Cir. 1976); United States v. Rabstein, 554 F.2d 190 (5th Cir. 1977). Section 2517 does not authorize disclosure of wiretap information to foreign law enforcement officers. United Kingdom v. United States of America, 238 F.3d 1312 (11th Cir. 2001).

⁷ 18 U.S.C. §2518(3).

⁸ United States v. Rodriguez, 968 F.2d 130 (2d Cir. 1992); United States v. Denman, 100 F.3d 399 (5th Cir. 1996); United States v. Jackson, 207 F.3d 910 (7th Cir. 2000).

case is in jurisdiction C, where some elements of the criminal conspiracy are occurring and where it has the technical capability to access the subject's communications from the service provider. Arguably, jurisdiction could lie in all three of these places. Most likely, the government would obtain the court order authorizing the interception of the subject's communications in jurisdiction A, where the subject is actually using the computer to commit the crimes and where he or she will ultimately be prosecuted for them.

Consequently, when considering the court's jurisdiction to authorize the interception of communications in today's technically advanced world, it is important to consider the types of communication devices that criminals use to facilitate their crimes, law enforcement's ability to intercept those communications, and the telecommunication industry's ability to assist law enforcement in this area. Jurisdiction is no longer a concept defined strictly by geographical boundaries. Technology has erased those boundaries and now permits criminals a global reach, allowing them to facilitate the commission of crimes in places far from where they may be.

B. The Role Of The Prosecutor

1. Training the Monitors

The prosecutor and the lead investigating agent are responsible for training the monitors, those persons who will be intercepting, listening to, and recording the communications. The monitors may not be law enforcement agents, but could be support personnel who work for the law enforcement agency, foreign language translators, or local police officers with no experience in conducting an electronic surveillance

investigation. The initial training of the monitors involves two components. First, the monitors must read the affidavit that was submitted for approval so that they understand the investigation, know who the subjects are, and what crimes are being committed. Second, the prosecutor must instruct the monitors about the proper minimization procedures.⁹ The monitors must not only attempt to minimize the interception of innocent communications, but also they must avoid intercepting communications between persons and their attorneys, between husbands and wives, between doctors and patients, and between parishioners and clergy.¹⁰ Additionally, the prosecutor must instruct the monitors about how long they can intercept a communication to determine if it is criminal in nature,¹¹ what to do if a privileged communication was intercepted inadvertently, and how to maintain the recordings in a way that

⁹ See Attachment E.

¹⁰ 18 U.S.C. §2517(4). It should be noted, however, that if an attorney, spouse, doctor, or clergyman is involved in the criminal conspiracy, the government may intercept the communications. For example, in alien smuggling cases, attorneys are often used to obtain fraudulent documents for the illegal aliens. In insurance fraud cases, doctors are often co-conspirators by performing unnecessary medical procedures or providing false documentation to support an insurance claim. See United States v. Zolin, 491 U.S. 554 (1962) (crime fraud exception to attorney-client privilege); United States v. Dube, 820 F.2d 886 (7th Cir. 1987)(clergy-penitent privilege did not apply where person was seeking relief from his obligation to pay taxes); United States v. Gotti, 771 F. Supp. 535 (E.D.N.Y. 1991) (outlines elements of a privileged attorney-client relationship); United States v. Cooper, 2000 WL 135248 (D.D.C.) (crime fraud exception applies to marital communications).

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will preserve their integrity for use later at trial.

Once the interception begins, the prosecutor and the lead agent will need to continue to advise the monitors, particularly any new monitors, about developments in the case of which they are not aware. For example, they will need to inform the monitors of: 1) patterns of innocent conduct that are developing and the need to minimize the interception of communications relating to it; 2) whether the subjects are involved in crimes that were not listed in the court's order; 3) whether new subjects have been identified; 4) whether a privileged relationship now exists involving any of the subjects; and 5) the identification of locations that may be used by the subjects to facilitate their crimes.

2. Submission of Progress Reports

When the government applies for an order to conduct electronic surveillance, the judge routinely orders the prosecutor to submit progress reports to him or her every ten days during the 30-day authorization period.¹² There is no standard format for progress reports but, typically, they include information about: 1) the total number of communications intercepted; 2) the number of communications that related to the

crimes under investigation; 3) the number of innocent communications intercepted; 4) whether any new subjects have been identified; 5) whether there have been seizures of contraband or arrests of any of the subjects; 6) whether communications about crimes not listed in the order were intercepted; 7) whether there have been technical problems with the interception; and 8) why the government needs to continue the interception to meet its investigative goals.

Progress reports are meant to keep the judge apprised of developments and problems in an electronic surveillance investigation, thereby giving the judge the opportunity to exercise his or her discretion and terminate the interceptions if the judge determines that the investigative goals have been met, or that the government is not conducting the interceptions in a lawful manner.

3. Providing Legal Advice and Support

The prosecutor should be an active participant in the conduct of the electronic surveillance, by supervising and advising the law enforcement agents conducting the investigation. Often, problems will arise that require a legal opinion that the law enforcement officers are incapable of making because they lack the experience or training. Generally, the prosecutor's role is to ensure the admissibility of the evidence at trial, to ensure the development of the best evidence, and to make sure that the electronic surveillance is conducted properly. Consider the following examples.

Many times during a Title III investigation, the government will intercept communications about crimes that were not listed in the court's order. If the government wants to be able to use

¹¹ The monitors often use a procedure called "spot monitoring," whereby the monitor will listen to a telephone call or face-to-face conversation for a short period of time to determine if the communication is criminal in nature. If the call or conversation does not appear to be criminal, the monitor will cease interceptions for a brief period of time, and then resume listening to the call or conversation once again. This process may be repeated several times during the interception of a call or conversation.

¹² 18 U.S.C. §2518(6).

this evidence later, the prosecutor must apply to the court for an order allowing the government to use these communications in furtherance of its investigation, particularly in any court proceeding that may arise from the investigation.¹³ For instance, if the court order authorized the interception of communications related to drug-trafficking, and telephone calls about prostitution were intercepted, the prosecutor must submit an application to the judge asking permission to be able to use the prostitution calls in its investigation of the subjects, and to disclose the contents of those calls at a subsequent trial of the subjects. In the investigation outlined above, it is likely that conversations about crimes related to the subjects' drug-trafficking activity will be intercepted. Given the subjects' propensity for violence, the government may intercept calls about attempts to commit acts of violence in connection with the subjects' drug business. Likewise, the government would have to obtain a court order allowing it to use these calls in its prosecution of the subjects. Alternatively, if the government wants to extend the electronic surveillance investigation beyond the first 30 days of interceptions, the government may seek to expand its investigation by including information about these new crimes in the application and affidavit in support of the extension order. The judge may then issue an order authorizing the government to continue to intercept communications about these crimes for a 30-day period.

It is also common during the course of an electronic surveillance narcotics investigation that the law enforcement agents will develop evidence about where drugs are being stored or how they are being transported, and the prosecutor

must advise the agents how to seize that evidence legally, without compromising the ongoing electronic surveillance investigation. For example, the government may intercept calls indicating that a load of drugs will be transported in a vehicle from one location to another. Given drug traffickers' natural wariness that they could be under investigation, the prosecutor and the agents must decide when and how to seize the drugs without alerting the subjects of the ongoing electronic surveillance investigation. In this scenario, the prosecutor could advise the agents to give a description of the vehicle to the local police, telling them that the vehicle may contain drugs,¹⁴ and ask them to stop the vehicle on a pretext, such as a traffic infraction.¹⁵ The police officer could then ask the driver of the vehicle to consent to a search of the car. If the driver does consent to the search, which is common, the officer could discover and seize the drugs.

When contemplating this action, the prosecutor must consider whether to advise the local police to arrest the driver if drugs are found. An arrest and subsequent prosecution of the driver may require divulging the existence of the ongoing electronic surveillance investigation before the government's investigative goals have been met, because the primary reason the vehicle was stopped was based on information from the wiretap that the vehicle contained drugs. In the investigation outlined herein, there is another, more sinister risk. Given Gerard's propensity for violence, he may take retaliatory action against the driver, if the driver cannot show that the drugs were seized

¹³ 18 U.S.C. §2517(5).

¹⁴ 18 U.S.C. §2517(1).

¹⁵ *Arkansas v. Sullivan*, 121 S.Ct. 1876 (2001) (pretext stops are permissible).

by law enforcement. Gerard, suspecting that the driver kept the drugs for himself, may harm him.

C. The Role Of The Judge

When Congress enacted Title III, it contemplated, by permitting or requiring the judge to assume certain responsibilities, that the judge who issued the order authorizing the electronic surveillance would be an active participant in the investigation. Specifically, as discussed above, Title III permits the judge to require that the prosecutor submit progress reports during the 30-day interception period. In addition, if the government intercepts communications about crimes not authorized for interception in the order, the government must obtain permission from the judge to use those communications in its investigation and prosecution. Additionally, the judge must order the recordings of the communications sealed for safekeeping, and direct the government's efforts to notify those persons who were intercepted during the course of the electronic surveillance investigation that they were the subject of a wiretap.

Not only does Title III encourage a judge's active participation in an electronic surveillance investigation, but appellate courts are more forgiving of government mistakes or missteps in an electronic surveillance investigation if the supervising judge was aware of, and condoned, the government's actions.¹⁶

¹⁶ *United States v. Bascaro*, 742 F.2d 1335 (11th Cir. 1984) (court authorized interceptions to continue over a telephone with a different telephone number); *United States v. Ozar*, 50 F.3d 1440 (8th Cir. 1995) (court approved the government's minimization procedures).

V. TERMINATION OF THE INVESTIGATION

A. Policy Considerations

In every investigation, a tension always exists between tolerating ongoing criminal activity known to have a devastating effect on individuals and the community at large, and the need to accumulate enough evidence to dismantle the criminal organization and to prosecute the subjects successfully. For instance, in a drug investigation, the intercepted communications and the accompanying physical surveillance show that cocaine is being sold on a daily basis from an abandoned building near a school, and that this activity is putting children at risk. In alien smuggling investigations, there is evidence that the illegal aliens are being subjected to dangerous conditions that might result in their death. Child pornography investigations may reveal that a pedophile is contacting potentially hundreds of children a month. In the scenario set forth above, drug trafficker Gerard has exhibited a willingness to use violence in connection with his drug trafficking activities, and retaliatory action by unknown persons resulted in additional deaths.

Occasionally, during an electronic surveillance investigation, communications may be intercepted where the subjects are planning to kill someone. Most of the time, the intended victim is another criminal. In that instance, the law enforcement agency has an obligation to warn the intended victim, offer protection, and continue to monitor the situation through the interception of communications and other investigative techniques. Other times, the intended victim may be a law enforcement officer or an innocent bystander, and there may or may not be prior notice of the crime.

In one investigation of a group of drug traffickers, the government learned that the subjects were planning the murder of a law enforcement officer who had been instrumental in the conviction of one their co-conspirators. The government wanted to continue to the electronic surveillance investigation of the subjects' drug-trafficking activities while it attempted to thwart the threat against the officer's life. Through the use of a confidential informant, the government was able to fake the officer's death to the satisfaction of the subjects, and it continued its investigation into the subjects' drug activity until it accumulated enough evidence to convict every member of the conspiracy.

In a public corruption investigation that was conducted several years ago, the FBI intercepted calls over a cellular telephone used by a corrupt local police officer. During one call, the FBI intercepted a conversation between the police officer and a co-conspirator, wherein the officer ordered the co-conspirator to kill a woman who had filed a complaint against him. The call, however, did not reveal enough details about the intended murder victim or where the murder was to occur. The FBI learned later that the co-conspirator killed the woman shortly after the call ended. The electronic surveillance investigation was terminated soon thereafter, and the police officer and his co-conspirators were arrested. At some point, the risk of further investigation outweighs the benefit of accumulating additional evidence against the subjects.

B. Legal Requirements And Practical Considerations

Title III requires that an electronic surveillance investigation must be terminated when the government's defined investigative goals have been

met, i.e., the identification of a drug supplier, sufficient evidence of a fraud conspiracy, or the interception of a particular criminal event.¹⁷ When the government is ready to end the electronic surveillance investigation, it must perform certain administrative tasks required by Title III, and formulate a plan that will result in the greatest number of arrests and seizures of evidence.

1. Administrative Tasks

At the end of every electronic surveillance investigation, the government must seal the recordings of the intercepted communications, and notify the subjects that they were the targets of the wiretap.

As to sealing the recordings, Title III requires that the government seal the original recordings of the communications immediately upon the termination of the electronic surveillance investigation in order to protect their authenticity and integrity for use at trial.¹⁸ In order to seal the recordings, the government makes the recordings available to the judge for inspection.¹⁹ If the judges waive inspection of the tapes, or after he or she inspects them, the tapes are placed in containers and sealed. After the containers are sealed, the judge, the prosecutor, and the lead investigative agent initial and date each container. The judge then issues an order, directing the law enforcement agency to maintain the sealed tapes in a secure location. Sealing of the recordings can be an arduous undertaking if the electronic surveillance investigation has involved numerous

¹⁷ 18 U.S.C. §2518(5).

¹⁸ 18 U.S.C. §2518(8)(a).

¹⁹ United States v. Abraham, 541 F.2d 624 (6th Cir. 1976); United States v. Kincaide, 145 F.3d 771 (6th Cir. 1998).

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telephones and locations, and spanned several months. If the government fails to seal the tapes or fails to seal them in a timely manner, and cannot offer a satisfactory explanation for the delay or failure to seal, the court may find that either the defendant was prejudiced by the government's actions or that the tapes were tampered with, and exclude the evidence from the trial.²⁰

With regard to the notification requirement, Title III and related judicial opinions mandate that the government notify the subjects of the electronic surveillance that they were either named as subjects in the court order or that their communications were intercepted during the electronic surveillance investigation.²¹ Specifically, the government informs the subjects whether the court granted its application to conduct the surveillance and, if so, the date of the court order, when the interceptions occurred, and whether their communications were intercepted. Occasionally, the government may not be able to identify all of the persons who were intercepted during the course of the electronic surveillance and, therefore, cannot provide them with notice. In the investigation outlined above, "J-Boy" may never be identified by his true name, and if he was intercepted during the investigation, he may never receive notice of it. Of course, if the government cannot identify him, he will not be prosecuted for his role in the conspiracy.

²⁰ United States v. Gangi, 33 F. Supp.2d 303 (S.D.N.Y. 1999) (two-day delay in sealing the tapes was legally acceptable); United States v. Wilkinson, 53 F.3d 757 (6th Cir. 1995) (court found no prejudice to the defendant, tampering with the recordings, or any effort to gain a tactical advantage by failure to seal the recordings in a timely manner).

²¹ 18 U.S.C. §2518(8)(d).

2. How and When to Terminate the Investigation

The type of criminal organization under investigation will dictate how and when the subjects are arrested and when locations are searched for contraband or documentary evidence. In cases involving drug organizations, gangs, and alien smuggling, for example, it is imperative to coordinate the arrests and the searches on the same day, even if the criminal organization is a nationwide one with persons and locations in different parts of the country. Once the existence of the investigation has become known, subjects are more likely to flee and destroy evidence. Therefore, the largest number of arrests and seizures of evidence will occur if they are done simultaneously. To facilitate the "takedown" of a case, it is often helpful to continue the electronic surveillance investigation after the individuals have been arrested. It is not uncommon to intercept communications about the identities of subjects not previously known to law enforcement or locations where contraband is being stored during the period after the takedown. Under American jurisprudence, continuing to intercept the communications of those persons who have been arrested does not violate the individual's constitutional rights against self-incrimination or right to counsel.²²

VI. TRIAL PREPARATION

A. Evaluating The Evidence

Once the electronic surveillance investigation has been terminated, the prosecutor must evaluate the evidence and review how the investigation was conducted. The prosecutor must

²² United States v. Poeta, 455 F.2d 117 (2d Cir. 1972); United States v. Wong, 40 F.3d 1347 (2d Cir. 1994); Patterson v. Illinois, 487 U.S. 285 (1988).

determine if all of the technical requirements of Title III were met and, if not, whether the technical violations are fatal to the case. It is the general rule that if the government acted in good faith and without a reckless disregard for the statute, wiretap evidence will not be suppressed as long as the defendant was not prejudiced by the errors.²³ On rare occasions, the courts have suppressed evidence when the affidavit supporting the government's request for the wiretap contained misleading statements,²⁴ or when law enforcement agents made a conscious decision not to comply with certain provisions of Title III.²⁵

B. Discovery Obligations Under Title III

Under 18 U.S.C. §2518(9), the government must provide the defendant with a copy of the application and order under which the electronic surveillance was approved ten days before the trial, hearing, or proceeding, at which evidence of the communications will be introduced.²⁶ The purpose of this provision is to give the defendant “an

opportunity to make a pretrial motion to suppress” the evidence.²⁷ It is within the court's discretion to order the government to provide any other documentation, including the recordings of the communications themselves, to the defendant at this time.²⁸

While section 2518(9) provides the defendant with a right to the application, order, and related documents, section 2518(8)(b) makes it clear that the defendant is entitled to only that evidence which is relevant to his or her defense and is not protected from disclosure by some other right or privilege. In some instances, courts have ordered information redacted from the application and order before those documents were provided to the defendant.²⁹

With regard to the recordings of the communications, general rules of discovery require that the government provide the defendant with copies of those recordings which are relevant to his or her defense. Typically, the government will provide copies of all of the recordings

²³ United States v. Donovan, 429 U.S. 413 (1977); United States v. Ozar, 50 F.3d 1440 (8th Cir. 1995) (inadvertent interception of attorney-client communications); United States v. Estrada, 1995 WL 577757 (S.D.N.Y.) (inaccurate summaries of conversations was careless but there was no intentional disregard for the truth); United States v. Velazquez, 1997 WL 564674 (N.D. Ill.) (mistake in initial identification of a subject did not constitute a knowing false statement and a reckless disregard for the truth).

²⁴ United States v. Aileman, 986 F. Supp. 1228 (N.D. Cal. 1997).

²⁵ United States v. Luong, No.CR-94-0094 MHP (N.D. Cal. 7/14/98) (unpublished) (law enforcement officer admitted that he did not perform the check for prior applications as required by 18 U.S.C. §2518(1)(e) because it would have taken too much time).

²⁶ In re Grand Jury Proceedings, 841 F.2d 1048 (11th Cir. 1988) (the terms “application” and “order” include other related documents, such as the affidavit and progress reports).

²⁷ United States Senate Report No. 1097, 90th Congress, 2d Session, 1968.

²⁸ 18 U.S.C. §2518(10)(a); United States v. Orena, 883 F. Supp. 849 (E.D.N.Y. 1995).

²⁹ United States v. Yoshimura, 831 F. Supp. 799 (D. Hawaii 1993) (when revelation of the information is not necessary to the defense and may jeopardize the safety of confidential informants, it does not have to be revealed to the defendant); United States v. Brown, 539 F.2d 467 (5th Cir. 1976) (privacy rights of third parties who may be affected by the disclosure of the information must be considered); United States v. Buckley, 586 F.2d 498 (5th Cir. 1978) (same).

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to the defendant to forestall any later argument by the defendant that the government withheld evidence that might have been exculpatory or helpful to the defendant's case.

VII. CONCLUSION

As demonstrated herein, electronic surveillance is a valuable technique to use to combat crime. Congress, while allowing law enforcement to use this very invasive technique, has proscribed the manner in which it can be used, attempting to design a legal regime that protects the individual from unnecessary invasions into privacy and according the individual certain due process rights to challenge the evidence against him or her.

ATTACHMENT A

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

IN THE MATTER OF AN
APPLICATION FOR AN ORDER
AUTHORIZING THE INTERCEPTION
OF WIRE COMMUNICATIONS

**APPLICATION FOR
INTERCEPTION OF WIRE
COMMUNICATIONS**

Lois Lane, an Assistant United States Attorney, District of Columbia, being duly sworn, states:

1. I am an investigative or law enforcement officer of the United States within the meaning of Section 2510(7) of Title 18, United States Code, that is, an attorney authorized by law to prosecute or participate in the prosecution of offenses enumerated in Section 2516 of Title 18, United States Code.
2. This application is for an order pursuant to Section 2518 of Title 18, United States Code, authorizing the interception of wire communications until the attainment of the authorized objectives or, in any event, at the end of thirty (30) days from the earlier of the day on which the investigative or law enforcement officers first begin to conduct an interception under the Court's order or ten (10) days after the order is entered, of Gene Blum, Robert Gerard, Katrina Karr, Nancy Prim, "J-Boy," and others as yet unknown to and from the telephone bearing the number (202) 514-1234 and ESN 12CE568L, and subscribed to by Julio Iglesias, 123 Main Street,

N.W., Washington, D.C., (hereinafter, the "Target Telephone") concerning offenses enumerated in Section 2516 of Title 18, United States Code, that is, offenses involving violations of Title 21, United States Code, Sections 841, 843, and 846, that are being committed by Gene Blum, Robert Gerard, Katrina Karr, Nancy Prim, "J-Boy" (hereinafter the "Target Subjects"), and others as yet unknown.

3. Pursuant to Section 2516 of Title 18, United States Code, the Attorney General of the United States has specially designated the Assistant Attorney General, any Acting Assistant Attorney General, any Deputy Assistant Attorney General or any acting Deputy Assistant Attorney General of the Criminal Division to exercise the power conferred on the Attorney General by Section 2516 of Title 18, United States Code, to authorize this Application. Under the power designated to him by special designation of the Attorney General pursuant to Order Number 2407-2001, dated March 8, 2001, an appropriate official of the Criminal Division has authorized this Application.
4. I have discussed all of the circumstances of the above offenses with Special Agent Clark Kent of the Federal Bureau of Investigation, who has directed and conducted this investigation and have examined the Affidavit of Special Agent Kent, which is attached to this Application and is incorporated herein by reference. Based upon that Affidavit, your

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applicant states upon information and belief that:

- a. there is probable cause to believe that the Target Subjects and others as yet unknown have committed, are committing, and will continue to commit violations of Title 21, United States Code, Sections 841, 843, and 846.
 - b. there is probable cause to believe that particular wire communications of the Target Subjects concerning the above-described offenses will be obtained through the interception of wire communications. In particular, these wire communications will concern the distribution of cocaine and heroin, the identities of co-conspirators, the sources of supply for the drugs, and the methods by which the Target Subjects carry out their illegal activities. In addition, the communications are expected to constitute admissible evidence of the commission of the above-stated offenses;
 - c. normal investigative procedures have been tried and failed, reasonably appear to be unlikely to succeed if tried, or are too dangerous to employ, as is described in further detail in the attached Affidavit;
 - d. there is probable cause to believe that the Target Telephone is being used and will continue to be used in connection with the commission of the above-described offenses.
5. The applicant is aware of no previous applications made to any judge for authorization to intercept the oral, wire or electronic communications involving any of the same persons, facilities, or premises specified in this application.

WHEREFORE, your applicant believes that there is probable cause to believe that the Target Subjects and others as yet unknown are engaged in the commission of offenses involving Title 21, United States Code, Sections 841, 843, and 846, and that the Target Subjects and others yet unknown are using the Target Telephone in connection with the commission of the above-described offenses; and that wire communications of the Target Subjects and others yet unknown will be intercepted over the Target Telephone.

Based on the allegations set forth in this application and on the affidavit of Special Agent Kent, attached, the applicant requests this court to issue an order pursuant to the power conferred upon it by Section 2518 of Title 18, United States Code, authorizing agents of the Federal Bureau of Investigation, and officers of the Metropolitan Police Department and the Prince George's County Police Department, and contract personnel under the supervision of a federal agent, to intercept wire communications to and from the Target Telephone until such communications are intercepted that reveal the manner in which the Target Subjects and others unknown participate in the specified offenses and reveal the identities of their coconspirators, places of operation, and nature of the conspiracy, or for a period of 30 days measured from the day on which the investigative or law enforcement officers first begin to conduct the interception or ten days from the date of this order, whichever occurs first.

IT IS REQUESTED FURTHER that the authorization given be intended to apply not only to the target telephone number listed above, but to any changed telephone number subsequently assigned to the instrument bearing the same

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electronic serial number (ESN) as the Target Telephone within the thirty (30) day period. It is also requested that the authorization be intended to apply to background conversations intercepted in the vicinity of the target telephone while the telephone is off the hook or otherwise in use.)

IT IS REQUESTED FURTHER, pursuant to Title 18, United States Code, Section 2518(3), that in the event that the Target Telephone is transferred outside the territorial jurisdiction of this Court, interceptions may take place in any other jurisdiction within the United States.

IT IS REQUESTED FURTHER that this Court issue an order pursuant to Section 2518(4) of Title 18, United States Code, directing Killion Communications, an electronic communications service provider as defined in Section 2510(15) of Title 18, United States Code, to furnish and continue to furnish the Federal Bureau of Investigation with all information, facilities and technical assistance necessary to accomplish the interceptions unobtrusively and with a minimum of interference with the services that such provider is according the persons whose communications are to be intercepted, and to ensure an effective and secure installation of electronic devices capable of intercepting wire communications over the above-described telephone. The service provider shall be compensated by the Applicant for reasonable expenses incurred in providing such facilities or assistance.

IT IS REQUESTED FURTHER, to avoid prejudice to this criminal investigation, that the Court order the provider of electronic communication service and its agents and employees not to disclose or cause a disclosure of this Court's Order or the request for

information, facilities, and assistance by the Federal Bureau of Investigation or the existence of the investigation to any person other than those of their agents and employees who require this information to accomplish the services requested. In particular, said provider and its agents and employees should be ordered not to make such disclosure to a lessee, telephone subscriber, or any participant in the intercepted communications.

IT IS REQUESTED FURTHER that this Court direct that its Order be executed as soon as practicable after it is signed and that all monitoring of wire communications shall be conducted in such a way as to minimize the interception and disclosure of the communications intercepted to those communications relevant to the pending investigation, in accordance with the minimization requirements of Chapter 119 of Title 18, United States Code. The interception of wire communications authorized by this Court's Order must terminate upon attainment of the authorized objectives or, in any event, at the end of thirty (30) days measured from the day on which investigative or law enforcement officers first begin to conduct an interception or ten (10) days after the Order is entered.

Monitoring of conversations must immediately terminate when it is determined that the conversation is unrelated to communications subject to interception under Chapter 119 of Title 18, United States Code. Interception must be suspended immediately when it is determined through voice identification, physical surveillance, or otherwise, that none of the named subjects or any of their confederates, when identified, are participants in the conversation unless it is determined

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during the portion of the conversation already overheard that the conversation is criminal in nature.

IT IS REQUESTED FURTHER that the Court order that either the applicant or any other Assistant United States Attorney familiar with the facts of the case provide the Court with a report on or about the tenth, twentieth, and thirtieth days following the date of this Order showing what progress has been made toward achievement of the authorized objectives and the need for continued interception. If any of the aforementioned reports should become due on a weekend or holiday, it is requested further that such report become due on the next business day thereafter.

IT IS REQUESTED FURTHER that the Court order that its Order, this application and the accompanying affidavit and any other orders, and all interim reports filed with the Court with regard to this matter be sealed until further order of this Court, except that copies of the Order(s), in full or redacted form, may be served on the Federal Bureau of Investigation and the service provider as necessary to effectuate the Court's Order as set forth in the proposed order accompanying this application.

DATED this 13th day of August, 2001.

Lois Lane
Assistant United States Attorney

SUBSCRIBED and SWORN to before me this 13th day of August, 2001.

UNITED STATES DISTRICT COURT
JUDGE
DISTRICT OF COLUMBIA

ATTACHMENT B

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

IN THE MATTER OF THE
APPLICATION OF THE UNITED
STATES OF AMERICA FOR AN ORDER
AUTHORIZING THE INTERCEPTION
OF WIRE COMMUNICATIONS

**AFFIDAVIT IN SUPPORT OF
APPLICATION**

Introduction

Clark Kent, being duly sworn, deposes and states as follows:

1. I am a Special Agent with the Federal Bureau of Investigation (“FBI”), United States Department of Justice. I have been so employed by the FBI since August 1994. Since becoming a Special Agent, I have participated in numerous criminal investigations, including investigations into suspected narcotics trafficking. For the past five years, I have been assigned to the Washington, D.C., resident agency of the FBI, where I am responsible for investigations focusing on the distribution of narcotics by violent drug trafficking organizations. In that time, I have participated in the execution of numerous search warrants and arrests, and have been the affiant on three previous affidavits submitted in support of the authorization to intercept wire communications. As such, I am familiar with the operation of illegal drug trafficking organizations, and the methods used to distribute narcotics.

2. I am an investigative or law enforcement officer of the United States within the meaning of Section 2510(7) of Title 18, United States Code, and am empowered by law to conduct investigations and to make arrests for offenses enumerated in Section 2516 of Title 18, United States Code.

3. This affidavit is submitted in support of an application for an order authorizing the interception of wire communications occurring to and from a cellular telephone bearing the number (202) 514-1234, electronic serial number (“ESN”) 12CE568L, and subscribed to by Julio Iglesias, 123 Main Street, N.W., Washington, D.C., 20005 (hereinafter referred to as “the target telephone”). As will be set forth below, the investigation has revealed that this phone is being used by Gene Blum, aka “Little G.”

4. I have participated in the investigation of the offenses set forth below. As a result of my personal participation in this investigation, through interviews with and analysis of reports submitted by other Special Agents of the FBI, as well as other state and local law enforcement personnel, I am familiar with all aspects of this investigation. On the basis of this familiarity, and on the basis of other information which I have reviewed and determined to be reliable, I allege the facts to show that:

a. there is probable cause to believe that GENE BLUM, aka “Little G,” ROBERT GERARD, KATRINA KARR, aka “Kay Kay,” NANCY

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- PRIM, aka "Sweet Nancy," First Name Unknown (FNU) Last Name Unknown (LNU), aka "J-Boy," (hereinafter referred to as "the target subjects") and others as yet unknown have committed, are committing, and will continue to commit offenses involving the distribution of, and possession with intent to distribute narcotics, including cocaine and heroin, the use of communications facilities to facilitate narcotics offenses, and conspiracy to commit the above offenses, in violation of Title 21, United States Code, Sections 841, 843(b), and 846.
- b. there is probable cause to believe that particular wire communications of Gene Blum, Robert Gerard, Katrina Karr, Nancy Prim, "J-Boy," (hereinafter referred to as the "interceptees"), and others as yet unknown, concerning the above offenses will be obtained through the interception of such communications to and from the target telephone.
5. In particular, these communications are expected to concern the specifics of the above offenses, including (i) the nature, extent and methods of the narcotics distribution business of the target subjects and others; (ii) the nature, extent and methods of operation of the drug trafficking business of the target subjects and others; (iii) the identities and roles of accomplices, aiders and abettors, co-conspirators and participants in their illegal activities, including sources of supply for the narcotics; (iv) the distribution and transfer of the contraband and money involved in those activities; (v) the existence and location of records; (vi) the location and source of resources used to finance their illegal activities; (vii) the location and disposition of the proceeds from those activities; and (viii) the locations and items used in furtherance of those activities. In addition, these wire communications are expected to constitute admissible evidence of the commission of the above-described offenses.
6. The statements contained in this affidavit are based in part on information provided by Special Agents of the FBI, on conversations held with detectives and officers from the Metropolitan Police Department of Washington, D.C., and the Prince George's County Police Department, on information provided by confidential sources and a named source, and on my experience and background as a Special Agent of the FBI. Since this affidavit is being submitted for the limited purpose of securing authorization for the interception of wire communications, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish the necessary foundation for an order authorizing the interception of wire communications.
- PERSONS EXPECTED TO BE INTERCEPTED**
7. Gene Blum: As set forth in more detail below, Blum, the user of the target telephone, has been identified through source information as being a member of Robert Gerard's drug distribution "crew." The FBI has conducted controlled narcotics purchases with Blum.

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8. Robert Gerard: Gerard has been identified through source information, set forth below, as the leader of a Washington, D.C.-based narcotics distribution network that sells multi-kilogram quantities of cocaine and heroin. Gerard resides in the Keeney Heights area of Washington, D.C., and is believed to be responsible for the murder of one of his narcotics customers, who had failed to pay a drug debt. At this time, Gerard's narcotics suppliers are unknown.
9. Katrina Karr: In December 1994, Karr was convicted of possession of cocaine with intent to distribute in Raljon, Maryland, and was sentenced to two years incarceration and five years probation. Karr is currently on probation. Karr has been identified by confidential sources as a member of Gerard's narcotics distribution "crew."
10. Nancy Prim: Prim has been identified through source information, as set forth below, as a member of Gerard's "crew." Prim has also been observed accompanying Gerard and Blum to the Starlight Motel, which Gerard and Blum use as a location to conduct narcotics transactions.
11. FNU LNU, aka "J-Boy": Several confidential sources have stated that J-Boy, who has not yet been identified, is a narcotics distributor for Gerard.
12. On February 22, 2001, your affiant interviewed a confidential informant ("CI-1"). CI-1 has provided reliable information in other investigations, and in those investigations, bought drugs and introduced undercover agents to the targets of those investigations. CI-1's information has been used previously in arrest and search warrants. The information that CI-1 has provided in this case has been corroborated by physical surveillance of the subjects, information from other, reliable confidential informants, and the analysis of telephone records. CI-1 has a prior conviction for possession of cocaine, and is cooperating with the FBI in this investigation in hopes of gaining leniency for a family member who has pending drug charges.
13. During the interview on February 22, 2001, CI-1 told your affiant that Robert Gerard and members of his drug crew distribute cocaine and heroin in the Keeney Heights area of Washington, D.C., and that CI-1 bought cocaine from "J-Boy," a member of Gerard's crew, in December 2000. CI-1 identified the following other persons as members of Gerard's crew: "Little G," "Kay Kay," and "Sweet Nancy." Your affiant showed CI-1 some driver's license photographs and he was able to identify Little G as Gene Blum, Kay Kay as Katrina Karr, and Sweet Nancy as Nancy Prim.
14. On March 30, 2001, your affiant learned that Fred Hendricks was murdered that day in Gerard's neighborhood in Keeney Heights. Your affiant reviewed reports made by the local police officers investigating the murder. Based upon those reports, your affiant learned that Gene Blum, Bridget Lynn, and Natasha Spencer were present at the scene. The local police questioned each individual about the murder, and it was learned that Blum was seen trying to leave the scene on a motorcycle. Blum was detained and

FACTS AND CIRCUMSTANCES

12. On February 22, 2001, your affiant interviewed a confidential informant ("CI-1"). CI-1 has provided reliable information in other investigations, and in those investigations, bought drugs and introduced undercover agents to the targets of those

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he volunteered to answer some questions. During the questioning, Blum advised the police that there was a quantity of cocaine inside a locked compartment in the motorcycle. Blum gave the keys to the compartment to the officer. Later that day, the police obtained a search warrant for the motorcycle compartment. The next day, the search warrant was executed and approximately one quarter of a kilogram of cocaine was found inside. Blum was never charged with any drug offenses. Spencer and Lynn claimed to know nothing about the murder.

15. On April 5, 2001, Gerard's house was burned to the ground. Your affiant reviewed police reports of the incident and learned that three unidentified males entered the house carrying gasoline, and set the house on fire. Two persons, one of whom was an infant male, were inside the house when the fire was set, and they died as a result. Gerard was not at home at the time of the fire.
16. On April 25, 2001, your affiant interviewed Stephen Simon, who has been indicted on charges of distributing cocaine. Simon agreed to provide the following information as part of a plea bargain in his pending case. Simon told your affiant that he was a member of a rival drug gang, and he stated that he knows Gerard and Blum. Simon stated that Gerard had given Hendricks two kilograms of cocaine on consignment, and when Hendricks failed to pay Gerard for the cocaine, Gerard had Hendricks killed. Simon stated that he learned of this information from Natasha Spencer, his girlfriend, who was at the scene of the murder. Simon stated further that Gerard receives large shipments of cocaine every few months, and that he sells cocaine for \$17,500 per kilogram.
17. On May 5, 2001, the local police interviewed an individual who was willing to provide information about Gerard's drug trafficking activities. This person ("CI-2") has never provided information to law enforcement before and, therefore, his reliability is unknown. CI-2 stated that Gerard and Blum are heavily involved in trafficking and are very violent. On May 11, 2001, CI-2 told the local police that Gerard and members of his crew were at the Starlight Motel in Rajon, Maryland. Based on this information, local police officers established surveillance at the motel. During the surveillance, officers saw Gerard, Blum, and several unidentified males come and go from two motel rooms.
18. On May 20, 2001, CI-2 told the local police that Gerard and Blum were at the Starlight Motel, and that they were selling drugs from a room there. That day and the following day (May 21, 2001), surveillance agents observed Gerard and Blum coming in and out of room 123. In addition, throughout the day, several unidentified males were seen entering room 123, staying a few minutes and then leaving the room.
19. On May 25, 2001, CI-2 stated that Blum had gone to the Starlight Motel again to sell drugs. The local police conducted surveillance of the motel and saw Blum exit room 178. Blum entered a Chevy Suburban truck that was being driven by a female. Surveillance agents later identified this female from photographs as Nancy Prim. One hour later, agents

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saw the Chevy Suburban return to the motel. Blum exited the car and entered room 178.

20. Shortly after May 5, 2001, an undercover police officer ("UC") was sent to the Starlight Motel to seek employment there as a maintenance worker. On May 25, 2001, the UC was working at the motel, when someone from room 178 called the front desk to complain about a maintenance problem. The UC went to room 178 to fix the problem and observed Blum and two unidentified males inside the room. When the UC arrived, he overheard Blum refer to one of the males as "J-Boy." While in the room, the UC used the telephone to make a call to another police officer. During the call, the UC mentioned going to a party and getting some cocaine to take to the party. Blum overheard the UC's call and offered to sell the UC some cocaine. The UC, who was wearing a recording device, recorded his conversation with Blum. During the conversation, Blum stated, "I can get you all the coke you want. How much do you want?" The UC stated that he wanted an ounce. Blum told the UC to call him later at the motel. The UC then left the room.
21. That evening, the UC called the telephone in room 178 and spoke to Blum. The UC recorded his conversation with Blum. The UC and Blum agreed to a purchase price of \$1,100 for one ounce of cocaine. Blum gave the UC his pager number and told the UC to page him at that number when the UC was ready to conduct the drug deal.
22. On May 26, 2001, at 9:15 a.m., the UC paged Blum at the number he was given, and input the telephone number of his cellular telephone. At 9:20 a.m., the UC received a call from Blum. The caller identification device on the UC's cellular phone revealed that Blum was calling from a cellular telephone with the number (202) 514-1234. During this conversation, the UC told Blum that he was ready to buy some cocaine from Blum. Blum instructed the UC to meet him at room 178 at the Starlight Motel at 10:30 a.m. Blum then ended the call. The FBI later obtained telephone records for Blum's phone, (202) 514-1234 (hereinafter, referred to as the "target phone"). Those records show that immediately after Blum ended the call with the UC, the target phone was used to call a pager. The FBI obtained records for the pager and learned that it is subscribed to in the name of Dorothy Gerard, Gerard's mother. At 10:30 a.m., the UC arrived at the motel and met Blum in room 178. The UC bought one ounce of cocaine from Blum in exchange for \$1,100. Meanwhile, surveillance agents were outside the motel. After the transaction, the UC left the motel room, followed by Blum. Blum entered a white Ford Navigator sports utility vehicle and drove away from the motel. Surveillance agents followed Blum as he drove away. The agents followed Blum to Interstate Highway 95. At one point, Blum slowed down and was driving along side of the surveillance agents. Blum waived to the agents and then sped off. Realizing that they had been detected, the agents discontinued surveillance of Blum.
23. On June 2, 2001, the UC attempted to contact Blum at the pager number Blum had given the UC. The UC never received a call back from Blum.

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24. On June 22, 2001, a local police officer contacted your affiant and advised that she had been contacted by a confidential informant ("CI-3"). The police officer advised your affiant that CI-3 was reliable, and that CI-3 had provided credible information to him in the past. The police officer advised that CI-3, who is associated with many gang members, knows that Blum uses the target phone to conduct his drug business.
25. On June 28, 2001, your affiant learned of another confidential informant working for the local police ("CI-4"). CI-4 has never provided information before, but knows Blum and has bought cocaine from Blum on several occasions within the last six months, most recently in the beginning of June 2001. CI-4 stated that he has never bought cocaine from Gerard, but knows that Blum works for Gerard as a drug distributor. CI-4 indicated that he would be willing to contact Blum to buy cocaine, but that he was not willing to record any of his conversations with Blum.
26. On August 1, 2001, at 1:20 p.m., CI-4 paged Blum and input the telephone number where CI-4 could be reached. At 1:45 p.m., Blum called CI-4. Phone records for the target phone show that at approximately 1:45 p.m., the target phone was used to call CI-4's telephone. According to CI-4, he told Blum that he wanted to buy an ounce of cocaine. Blum told CI-4 to meet him at a gas station in one hour. One hour later, CI-4 went to the gas station. Before CI-4 arrived at the gas station, Agent Kent searched CI-4 for contraband, with negative results, and gave CI-4 \$1,100 in pre-recorded government funds. Surveillance agents then observed CI-4 approach

the gas station. A short while later, Blum arrived at the gas station in a red Lexus vehicle. Blum got out of his car and walked over to CI-4. Agents saw CI-4 hand something to Blum. Blum returned to his car, reached inside, and returned to CI-4. Blum handed an object to CI-4. CI-4 left the gas station and Blum drove off. CI-4 rendezvoused with Agent Kent and gave him one ounce of a substance that later tested positive for the presence of cocaine.

**ANALYSIS OF TELEPHONE
RECORDS**

27. On August 5, 2001, your affiant obtained telephone records for the target phone. A review of those records show that between July 2, and August 2, 2001, the target phone was used to make and receive a total of 1,144 calls. Specifically, those records reflect the following pertinent contacts:
- a. 34 calls to Gerard's pager, with the most recent call on August 1.
 - b. 22 calls to and from a telephone subscribed to by Dorothy Gerard at a residence located at 1253 Corey Lane, N.W. The most recent call to this telephone was on July 23, 2001. Agents conducting physical surveillance have seen Robert Gerard entering this residence on several occasions since the fire at his home. Your affiant believes that Blum calls this telephone to speak with Robert Gerard.
 - c. 19 calls to a phone located at the Starlight Motel, with the most recent call on July 28, 2001. Based on physical surveillance and source information, your affiant believes that Gerard, J-Boy, Prim,

and Blum use that motel as a location to conduct narcotics transactions. Surveillance agents saw J-Boy at the Starlight Motel on July 28, 2001.

NEED FOR INTERCEPTION

Based upon your affiant's training and experience, and based upon all of the facts set forth herein, it is your affiant's belief that the interception of wire communications is the only available technique that has a reasonable likelihood of securing the evidence necessary to prove beyond a reasonable doubt that the target subjects and others as yet unknown are engaged in the above-described offenses. In addition, information recently obtained from C1-2 indicates that Gerard is expecting to receive a large shipment of heroin during early September 2001. It is hoped that the interception of wire communications over the target phone will help to reveal further information about this shipment.

Your affiant states that the following investigative procedures, which are usually employed in the investigation of this type of criminal case, have been tried and have failed, reasonably appear to be unlikely to succeed if they are tried, or are too dangerous to employ.

ALTERNATIVE INVESTIGATIVE TECHNIQUES

Physical Surveillance

Physical surveillance has been attempted on numerous occasions during this investigation. Although it has proven valuable in identifying some activities and associates of the target subjects, physical surveillance, if not used in conjunction with other techniques,

including electronic surveillance, is of limited value. Physical surveillance, even if highly successful, has not succeeded in gathering sufficient evidence of the criminal activity under investigation. Physical surveillance of the alleged conspirators has not established conclusively the elements of the violations and has not and most likely will not establish conclusively the identities of various conspirators. In addition, continued surveillance is not expected to enlarge upon information now available; rather, such prolonged or regular surveillance of the movements of the suspects would most likely be noticed, causing them to become more cautious in their illegal activities, to flee to avoid further investigation and prosecution, to cause a real threat to the safety of the informants, or to otherwise compromise the investigation.

Physical surveillance is also unlikely to establish conclusively the roles of the named conspirators, to identify additional conspirators, or otherwise to provide admissible evidence in regard to this investigation because the subjects appear to be extremely surveillance conscience. For example, as set forth above, Blum detected law enforcement surveillance on May 26, 2001. While surveillance agents have attempted to follow Blum and Gerard while they were driving, both Blum and Gerard tend to drive very erratically by slowing down or speeding up with little warning, turning without signaling, and stopping on the side of the road unexpectedly to watch cars as they go by. Such counter-surveillance techniques have made it difficult, if not impossible, to maintain effective surveillance of Blum or Gerard. Furthermore, Blum lives on a cul-de-sac in a very close-knit neighborhood. Neighbors are often on the porches, and appear to be watching the activity in the

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neighborhood. On February 10, 2001, surveillance agents attempted to conduct surveillance near Blum's residence by parking just outside the entrance to the cul-de-sac. However, agents observed a neighbor appear to be watching the vehicle from her porch. The neighbor eventually began walking towards the vehicle, as if to confront the agents. At that time, the agents drove away.

In my opinion, further surveillance would only serve to alert the suspects of the law enforcement interest in their activities and compromise the investigation.

Use of Grand Jury Subpoenas

Based upon your affiant's experience and conversations with Assistant United States Attorney Lois Lane, who has experience prosecuting violations of criminal law, your affiant believes that subpoenaing persons believed to be involved in this conspiracy and their associates before a Federal Grand Jury would not be completely successful in achieving the stated goals of this investigation. If any principals of this conspiracy, their co-conspirators and other participants were called to testify before the Grand Jury, they would most likely be uncooperative and invoke their Fifth Amendment privilege not to testify. It would be unwise to seek any kind of immunity for these persons, because the granting of such immunity might foreclose prosecution of the most culpable members of this conspiracy and could not ensure that such immunized witnesses would provide truthful testimony. Additionally, the service of Grand Jury subpoenas upon the principals of the conspiracy or their co-conspirators would only (further) alert them to the existence of this investigation, causing them to become more cautious in their activities,

to flee to avoid further investigation or prosecution, to threaten the lives of the informants, or to otherwise compromise the investigation.

Confidential Sources

Reliable confidential sources have been developed and used, and will continue to be developed and used, in regard to this investigation. However, CI-1 is merely a purchaser of narcotics from J-Boy, and has not had any direct contact with Blum or Gerard. Although CI-1 is aware that J-Boy obtains narcotics from Gerard, J-Boy has never made any attempts to introduce CI-1 to Gerard, or to any other possible sources of supply. While CI-1 can continue to make controlled purchases of narcotics from J-Boy, it is not believed that further purchases would help to reveal the identities of Gerard's sources of supply, or help to reveal the full extent of the organization's narcotics trafficking activities. Although CI-1 is willing to testify if necessary, CI-1 has expressed a fear for his safety and for that of his family should his cooperation with law enforcement become known. CI-1 has stated that he knows the organization to be very violent, and that he has seen J-Boy carrying a gun.

CI-2 has provided useful information regarding Gerard's and Blum's narcotics trafficking roles, and has also been able to advise law enforcement of the approximate dates when narcotics transactions have occurred. However, CI-2 has not been able to provide any specific information about Gerard's narcotics suppliers or couriers. In addition, CI-2's reliability is unknown, because he has never provided information to law enforcement in the past.

CI-3, who has provided useful background information about violent

gangs in the Keeney Heights area of Washington, D.C., and has confirmed that Blum uses the target phone, has only limited contact with Gerard. CI-3 has seen Gerard with Blum, but CI-3 cannot provide any direct information about Gerard's drug trafficking activities, and does not know who Blum's or Gerard's narcotics suppliers are.

CI-4 has been used to make a controlled purchase of narcotics from Blum. CI-4 has also been able to provide useful information about Blum's role as one of Gerard's narcotics distributors. While CI-4 can be used to make additional controlled narcotics purchases from Blum, CI-4 is not in a position to purchase narcotics directly from Gerard. In addition, it is unlikely that Blum or Gerard will introduce CI-4 to their narcotics suppliers or to other narcotics distributors of Gerard. Furthermore, CI-4 has refused to permit the FBI to record any of his conversations with Blum and has refused to testify against Blum for fear for his safety.

Undercover Agents

Undercover agents have been unable to infiltrate the inner workings of this conspiracy due to the close and secretive nature of this organization. As detailed above, during May 2001, an undercover agent obtained employment at the Starlight Motel, and was able to conduct a narcotics purchase from Blum. However, during that meeting, Blum said that he rarely conducts transactions with "anyone new," and that he agreed to meet with the undercover agent because he knew him from the Starlight Motel. The undercover agent was unable to obtain any information about Blum's narcotics supplier. In addition, after Blum observed surveillance agents after his drug deal with the agent, he has not

returned any of the agent's calls. Accordingly, the FBI is unable to conduct any additional narcotics transaction with that undercover agent. Your affiant believes that there are no undercover agents who can infiltrate the conspiracy at a high enough level to identify all members of the conspiracy or otherwise satisfy all the goals of this investigation. Furthermore, given the violent nature of Gerard's organization, there are concerns for the safety of any undercover agent who participates in drug deals with the organization.

Interviews of Subjects or Associates

Based upon your affiant's experience, I believe that interviews of the subjects or their known associates would produce insufficient information as to the identities of all of the persons involved in the conspiracy, the source of the drugs, the location of drugs, and other pertinent information regarding the named crimes. Your affiant also believes that any responses to the interviews would contain a significant number of untruths, diverting the investigation with false leads or otherwise frustrating the investigation. Additionally, such interviews would also have the effect of alerting the members of the conspiracy, thereby compromising the investigation and resulting in the possible destruction or concealment of documents and other evidence, and the possibility of harm to cooperating sources whose identities may become known or whose existence may otherwise be compromised. When the police interviewed Natasha Spencer and asked her about the murder of Fred Hendricks, she denied knowing anything about it. However, her boyfriend, Stephen Simon indicated to your affiant that Spencer knew that Gerard ordered Hendricks' murder. As to Simon, he knows of Gerard's and Blum's activities

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only through his own past drug dealings in the same neighborhood where Gerard and Blum operate. Given that Simon is currently incarcerated, he can provide no further information about the drug activities of Blum and Gerard.

Search Warrants

The execution of search warrants in this matter has been considered. However, use of such warrants would, in all likelihood, not yield a considerable quantity of narcotics or relevant documents, nor would the searches be likely to reveal the total scope of the illegal operation and the identities of the co-conspirators. While some members of Gerard's crew use the Starlight Motel as a location to sell narcotics, it is not believed that members of that crew use that location to store a large portion of their narcotics. The search warrant executed on the motorcycle driven by Blum yielded a quantity of cocaine, but that evidence in and of itself is not sufficient to prosecute and convict all of the members of this conspiracy. At this time, it is unknown where Blum or Gerard store their narcotics. Further, it is unlikely that all, or even many, of the principals of this organization would be at any one location when a search warrant was executed. The affiant believes that search warrants executed at this time would be more likely to compromise the investigation by alerting the principals to the investigation and allowing other unidentified members of the conspiracy to insulate themselves further from successful detection.

Phone Records

Pen register and trap and trace information has been used in this investigation, including a pen register and trap and trace on the target

telephone, as described above. The pen register and trap and trace information has verified frequent telephone communication between the target telephone and telephones suspected of being used by co-conspirators. Pen registers and traps and traces, however, do not record the identity of the parties to the conversation, cannot identify the nature or substance of the conversation, or differentiate between legitimate calls and calls for criminal purposes. A pen register and trap and trace cannot identify the source or sources of the controlled substances, nor can it, in itself, establish proof of the conspiracy. Telephone toll information, which identifies the existence and length of telephone calls placed from the target telephone to telephones located outside of the local service zone, has the same limitations as pen registers and traps and traces, does not show local calls, and is generally available only on a monthly basis.

PRIOR APPLICATIONS

Based upon a check of the records of the Federal Bureau of Investigation and the Drug Enforcement Administration conducted on or about August 1, 2001, no prior federal applications for an order authorizing or approving the interception of wire, oral, or electronic communications have been made involving the same persons, premises or facilities named herein.

MINIMIZATION

All interceptions will be minimized in accordance with the minimization requirements of Chapter 119 of Title 18, United States Code, and all interceptions conducted pursuant to this Court's Order will terminate upon attainment of the authorized objectives or, in any event, at

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the end of thirty (30) days measured from the earlier of the day on which investigative or law enforcement officers first begin to conduct an interception under the Court's Order or ten (10) days after the Order is entered. Monitoring of conversations will terminate immediately when it is determined that the conversation is unrelated to communications subject to interception under Chapter 119 of Title 18, United States Code. Interception will be suspended immediately when it is determined through voice identification, physical surveillance, or otherwise, that none of the named interceptees or any of their confederates, when identified, are participants in the conversation, unless it is determined during the portion of the conversation already overheard that the conversation is criminal in nature. If a conversation is minimized, monitoring agents will periodically spot check the conversation to insure that the conversation has not turned to criminal matters.

Clark Kent
Special Agent, Federal Bureau of
Investigation

Sworn to before me this 13th day of
August, 2001.

UNITED STATES DISTRICT COURT
JUDGE
DISTRICT OF COLUMBIA

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ATTACHMENT C

U.S. Department of Justice
Criminal Division
Washington, D.C. 20530

applications for court orders authorizing the interception of wire or oral communications. As a duly designated official in the Criminal Division, this power is exercisable by me.

MEMORANDUM

TO: Jimmy Olson, Director
Office of Enforcement
Operations
Criminal Division

FROM: Perry White
Assistant Attorney General
Criminal Division

WHEREFORE, acting under this delegated power, I hereby authorize the above-described application to be made by any investigative or law enforcement officer of the United States as defined in Section 2510(7) of Title 18, United States Code.

SUBJECT: Authorization for
Interception Order
Application

The authorization given is intended to apply not only to the target telephone number listed above, but also to any other telephone numbers subsequently assigned to the instrument bearing the same electronic serial number used by the target telephone within the thirty (30) day period. The authorization is also intended to apply to background conversations intercepted in the vicinity of the target telephone while the telephone is off the hook or otherwise in use.

This is with regard to your recommendation that I, an appropriately designated official of the Criminal Division, authorize an application to a federal judge of competent jurisdiction for an order under Title 18, United States Code, Section 2518, authorizing for a thirty (30) day period, the original interception of wire communications occurring to and from the cellular telephone bearing the number (202) 514-1234, subscribed to by Julio Iglesias, 123 Main Street, N.W., Washington, D.C., in connection with an investigation into possible violations of Title 21, United States Code, Sections 841, 843, and 846, by Gene Blum, Robert Gerard, Katrina Karr, Nancy Prim, "J-Boy," and others as yet unknown.

Perry White
Assistant Attorney General
Criminal Division

Date

By virtue of the authority vested in the Attorney General by Section 2516 of Title 18, United States Code, the Attorney General of the United States has by Order Number 2407-2001, dated March 8, 2001, designated specific officials in the Criminal Division to authorize

ATTACHMENT D

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

IN THE MATTER OF THE
APPLICATION OF THE UNITED
STATES OF AMERICA FOR AN ORDER
AUTHORIZING THE INTERCEPTION
OF WIRE COMMUNICATIONS

**ORDER AUTHORIZING THE
INTERCEPTION OF WIRE
COMMUNICATIONS**

Application under oath having been made before me by Lois Lane, Assistant United States Attorney, District of Columbia, an investigative or law enforcement officer of the United States within the meaning of Section 2510(7) of Title 18, United States Code, for an Order authorizing the interception of wire communications pursuant to Section 2518 of Title 18, United States Code, and full consideration having been given to the matter set forth therein, the Court finds:

- a. there is probable cause to believe that Gene Blum, Robert Gerard, Katrina Karr, Nancy Prim, "J-Boy," (hereinafter, the "Target Subjects") and others as yet unknown have committed, are committing, and will continue to commit violations of Title 21, United States Code, Sections 841, 843, and 846.
- b. there is probable cause to believe that particular wire communications of the Target Subjects and others as yet unknown concerning the above-described offenses will be obtained through the interception for which authorization has herewith been

applied. In particular, there is probable cause to believe that the interception of wire communications to and from the telephone bearing the number (202) 514-1234, and ESN 12CE568L, and subscribed to by Julio Iglesias, 123 Main Street, N.W., Washington, D.C. (hereinafter, the "Target Telephone") will concern the specifics of the above offenses, including the manner and means of the commission of the offenses;

- c. it has been established that normal investigative procedures have been tried and have failed, reasonably appear to be unlikely to succeed if tried, or are too dangerous to employ; and
- d. there is probable cause to believe that the Target Telephone has been and will continue to be used in connection with commission of the above-described offenses.

WHEREFORE, IT IS HEREBY ORDERED that Special Agents of the Federal Bureau of Investigation ("FBI"), officers of the Metropolitan Police Department and the Prince George's County Police Department, and contract personnel who are under the supervision of the FBI, are authorized, pursuant to an application authorized by a duly designated official of the Criminal Division, United States Department of Justice, pursuant to the power delegated to that official by special designation of the Attorney General and vested in the Attorney General by Section 2516 of Title 18, United States Code, to intercept wire communications to and from the Target Telephone.

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PROVIDED that such interception(s) shall not terminate automatically after the first interception that reveals the manner in which the alleged co-conspirators and others as yet unknown conduct their illegal activities, but may continue until all communications are intercepted which reveal fully the manner in which the above-named persons and others as yet unknown are committing the offenses described herein, and which reveal fully the identities of their confederates, their places of operation, and the nature of the conspiracy involved therein, or for a period of thirty (30) days measured from the day on which investigative or law enforcement officers first begin to conduct an interception under this order or ten (10) days after this order is entered, whichever is earlier.

IT IS ORDERED FURTHER, pursuant to Title 18, United States Code, Section 2518(3), that in the event that the Target Telephone is transferred outside the territorial jurisdiction of this court, interceptions may take place in any other jurisdiction within the United States.

IT IS ORDERED FURTHER that the authorization apply not only to the target telephone number listed above, but to any changed telephone number subsequently assigned to the instrument bearing the same electronic serial number as the Target Telephone within the thirty (30) day period. It is also ordered that the authorization apply to background conversations intercepted in the vicinity of the Target Telephone while the telephone is off the hook or otherwise in use.

IT IS ORDERED FURTHER that, based upon the request of the Applicant pursuant to Section 2518(4) of Title 18, United States Code, Killion

Communications, an electronic communication service provider as defined in Section 2510(15) of Title 18, United States Code, shall furnish the FBI with all information, facilities and technical assistance necessary to accomplish the interceptions unobtrusively and with a minimum of interference with the services that such provider is according the persons whose communications are to be intercepted, with the service provider to be compensated by the Applicant for reasonable expenses incurred in providing such facilities or assistance.

IT IS ORDERED FURTHER that, to avoid prejudice to the government's criminal investigation, the provider of the electronic communications service and its agents and employees are ordered not to disclose or cause a disclosure of the Order or the request for information, facilities and assistance by the FBI, or the existence of the investigation to any person other than those of its agents and employees who require this information to accomplish the services hereby ordered. In particular, said provider and its agents and employees shall not make such disclosure to a lessee, telephone subscriber or any Target Subject or participant in the intercepted communications.

IT IS ORDERED FURTHER that this order shall be executed as soon as practicable and that all monitoring of wire communications shall be conducted in such a way as to minimize the interception and disclosure of the communications intercepted to those communications relevant to the pending investigation. The interception of wire communications must terminate upon the attainment of the authorized objectives, not to exceed thirty (30) days measured from the earlier of the day on which

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investigative or law enforcement officers first begin to conduct an interception of this order or ten (10) days after the order is entered.

orders, in full or redacted form, may be served on the FBI and the service providers as necessary to effectuate this order.

Monitoring of conversations must terminate immediately when it is determined that the conversation is unrelated to communications subject to interception under Chapter 119, Title 18, United States Code. Interception must be suspended immediately when it is determined through voice identification, physical surveillance, or otherwise, that none of the Target Subjects or any of their confederates, when identified, are participants in the conversation unless it is determined during the portion of the conversation already overheard that the conversation is criminal in nature. If the conversation is minimized, the monitoring agent shall spot check to insure that the conversation has not turned to criminal matters.

UNITED STATES DISTRICT COURT
JUDGE
DISTRICT OF COLUMBIA

Dated this 13th day of August, 2001.

IT IS ORDERED FURTHER that Assistant United States Attorney Lois Lane or any other Assistant United States Attorney familiar with the facts of this case shall provide this Court with a report on or about the tenth, twentieth, and thirtieth days following the date of this Order showing what progress has been made toward achievement of the authorized objectives and the need for continued interception. If any of the above-ordered reports should become due on a weekend or holiday, IT IS ORDERED FURTHER that such report shall become due on the next business day thereafter.

IT IS ORDERED FURTHER that this Order, the application, affidavit and any related orders, and all interim reports filed with this Court with regard to this matter, shall be sealed until further order of this Court, except that copies of the

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ATTACHMENT E

MINIMIZATION INSTRUCTIONS FOR
WIRE COMMUNICATIONS

MEMORANDUM

TO: Monitoring Personnel

FROM: AUSA Lois Lane

RE: Minimization Instructions

DATE: August 14, 2001

1. All agents and monitoring personnel must read the affidavit, application, order and these instructions and sign these instructions before monitoring.
2. The Order of August 13, 2001, only authorizes the interception of conversations between the Target Subjects and others occurring to and from the telephone number (202) 514-1234, subscribed to by Julio Iglesias, 123 Main Street, N.W., Washington, D.C., regarding offenses involving Title 21, United States Code, Section 841, 843, and 846.
3. Personnel may monitor for a reasonable period not to exceed two minutes to determine whether a subject is participating in a conversation.
4. If, during this monitoring, it is determined that additional individuals are engaged in a criminal conversation, intercepts may continue despite the fact that a named subject is not engaged in the conversation, until the conversation ends or becomes non-pertinent. If individuals other than a subject are participating in the criminal conversation, continue to monitor and advise the case agent or supervisor immediately. If these individuals can be identified, provide this information also.
5. If a subject is engaged in conversation, interception may continue for a reasonable time, usually not in excess of two minutes, to determine whether the conversation concerns criminal activities.
 - a. If such a conversation is unclear but may be related to the drug trafficking offenses, interception may continue until such time as it is determined that the conversation clearly no longer relates to that topic.
 - b. If such a conversation is unclear but may relate to other criminal activities, interception should cease after about two minutes unless it can be determined within that time that the conversation does in fact relate to other criminal activities, in which case interception may continue.
6. The above instructions regarding the number of minutes of permissible interception will vary once experience has been gained. If experience shows that conversations between certain people are invariably innocent, interception of such conversations should be ended sooner. If experience shows that other individuals always discuss criminal activities, a longer interception may be justified. This is especially true for individuals who can be identified as participants with the subjects in possessing and distributing controlled substances.

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Read all of the logs of the interceptions on a continuing basis and notify the case agent if patterns develop.

7. No conversation may be intercepted that would fall under any legal privilege. The four categories of privileged communications are described below:
 - a. Attorney-Client Privilege: Never knowingly listen to or record a conversation between a subject and his or her attorney when other persons are not present or are not participating in the conversation. Any time that an attorney is a party to a conversation, notify the case agent immediately. If it is determined that a conversation involving an attorney constitutes legal consultation of any kind, notify the case agent, shut off the monitor and stop recording, unless you are able to determine from the interception of any conversation involving an attorney that third parties who are not involved in the legal matters being discussed are present. If such third parties are present, and only if they are present, may you intercept such conversations following the above-described rules of minimization. In any event, notify the case agent immediately.
 - b. Parishioner-Clergyman Privilege: All conversations and conduct between a parishioner and his or her clergyman are to be considered privileged. An electronic surveillance order could not be obtained to listen to a subject confess his or her sins to a priest in a confessional booth; similarly, a subject discussing his or her personal, financial or legal problems with his or her priest, minister, rabbi, etc. may likewise not be intercepted. Thus, if it is determined that a clergyman is a party to a communication being intercepted and that the communication is penitential in nature, turn off the monitor, stop recording, and notify the case agent.
 - c. Doctor-Patient Privilege: Any conversation a patient has with a doctor relating to diagnosis, symptoms, treatment, or any other aspects of physical, mental or emotional health, is privileged. If it is determined that a person is talking to his or her doctor and that the conversation concerns the person's health (or someone else's health), turn off the machine and notify the case agent.
 - d. Husband-Wife Privilege: As a general rule, there is also a privilege covering communications between lawfully married spouses. Monitoring should be discontinued and the case agent notified if it is determined that a conversation solely between a husband and wife is being intercepted. If a third person is present, however, the communication is not privileged and that conversation may be monitored in accordance with the previously described rules of minimization. If the conversation is between the named subjects and their respective spouses, the conversation may be monitored in accordance with the previously described rules of minimization regarding monitoring these individuals' conversations to determine whether they are discussing crimes. If the nature of

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the conversation is criminal, monitoring may continue; otherwise, it may not be monitored.

8. Abstracts or summaries of each conversation are to be made at the time of interception and are to be included in the logs and the statistical analysis sheet. If the conversation is not recorded entirely, an appropriate notation should be made indicating the incomplete nature of the conversation and why the conversation was not recorded completely (e.g., "non-pertinent" or "privileged").
9. The logs should reflect all activity occurring at the monitoring station concerning both the intercepted conversations as well as the equipment itself (e.g., "replaced tape," "malfunction of tape recorder," "no conversation overheard"). These logs will be used ultimately to explain the monitoring agent's actions when intercepting communications. It is important to describe the parties to each conversation, the nature of each conversation, and the action taken. All monitoring agents will record the times their equipment is turned on and off.
10. All conversations that are monitored must be recorded.
11. The Log
The monitoring agents should maintain a contemporaneous log, by shifts, of all communications intercepted, indicating location of each communication on the cassette tape or computer disc; the time and duration of the interception; whether the telephone call was outgoing or incoming; the telephone number

called if the call was outgoing; the participants, if known; and a summary of the content of the pertinent conversations. Any peculiarities, such as codes, foreign language used, or background sounds, should also be noted. When the interception of a communication is terminated for purposes of minimization, that fact should be noted. This log should record the names of the personnel in each shift and the function performed by each, malfunctions of the equipment or interruptions in the surveillance for any other reason and the time spans thereof, and interceptions of possibly privileged conversations or conversations relating to crimes not specified in the original interception order. Each entry in the log should be initialed by the person making it.

12. Protection of the Recording

The following procedure should be followed during the period of authorized interceptions:

- a. Either during or at the end of each recording period, copies of the recorded conversations should be made for the use of the investigative agency and the supervising attorney;
- b. The original recording should be placed in a sealed evidence envelope and kept in the custody of the investigative agency until it is made available to the court at the expiration of the period of the order; and
- c. A chain of custody form should accompany the original recording. On this form should be a brief statement, signed by the agent supervising the interception, which identifies:

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- (i) the order that authorized the recorded interceptions (by number if possible);
 - (i) the date and time period of the recorded conversations; and
 - (i) the identity (when possible) of the individuals whose conversations were recorded.
- d. The form should indicate to whom the custody of the original recording was transferred and the date and time that this occurred. Each subsequent transfer, including that to the court, should be noted on the form.
- e. The case agent should mark a label attached to the original tape reel/cassette/computer disc in order to identify it as corresponding with accompanying chain of custody forms. The date of the recording should also be marked on the label and this should be initialed by the agent.
- f. Each agent or other person signing the chain of custody form should be prepared to testify in court that the original tape, while in his or her custody, was kept secure from the access of third parties (unless noted to the contrary on the form) and was not altered or edited in any manner. It is the responsibility of the investigative agencies to ensure that original recordings in their custody will be maintained in such a way as to ensure their admissibility in evidence at trial over objections to the integrity of the recording.
13. Procedure When No Recording Can be Made
In those unusual instances when no recording of the intercepted conversations can be made, the following procedure should be used:
- a. The monitoring agent should make a contemporaneous log or memorandum that is as near to a verbatim transcript as is possible;
 - b. The log or memorandum should close with a brief statement signed by the agent indicating the date, time, and place of the intercepted conversation. The order authorizing the interception should be identified. The agent should indicate that the log or memorandum contains the contents of the intercepted communication which he or she overheard. This should be followed by the agent's signature; and
 - c. This log should be treated by the investigative agency as if it were an original recording of the intercepted communication.
14. If the conversation occurs in a language other than English that no one at the monitoring post understands, the entire conversation should be monitored and recorded and then minimized by a person familiar with the investigation, but who is not actively involved in it, in accordance with the minimization rules set forth above.
15. If any problems arise, please call the case agent or the AUSA. Several telephone numbers will be posted at the monitoring post.

Assistant United States Attorney
Lois Lane