

Tracking the Bad Guys: Legal Considerations in Using GPS¹

I. Introduction

The ready availability and affordability of Global Positioning System (GPS) devices allows law enforcement to efficiently, accurately, and safely track the movement of vehicles.² The results of GPS tracking will create a permanent and credible record of precisely where the tracked vehicle was and the time it was there. To use this technology, officers must be able to lawfully get to the target vehicle and install certain devices.

- The simplest form of installation consists of a GPS receiver, antenna, power supply, and logging device that record where the vehicle has moved. Depending on the equipment, the data on the logging device can be remotely obtained electronically or may require physically retrieving the device to access the data. The devices could be in single or multiple units.
- Live tracking applications will require the above items (less perhaps the logging device), but will also require a transmitter and separate antenna for that transmitter.

This article surveys some fundamental legal considerations for federal officers and agents in placing and using GPS devices to track vehicles. Because many states have separate statutory schemes, only brief mention will be made of state law in Section VIII.

II. The Law That Applies

A common question is whether Title III (wiretaps) laws are implicated in the use of GPS devices or intercepting their transmissions, and the answer is clearly no. Title 18 U.S.C. § 2510(12)(C) specifically excludes signals by mobile tracking devices, like GPS, from federal wiretap law.

Fourth Amendment considerations do apply, however, to the installation of GPS devices. In this regard, it is all about whether officers need to intrude into an area where one has a reasonable expectation of privacy (REP) to perform the installation. If so, the Fourth Amendment applies and the officers will need a warrant. This is addressed in detail in Section IV.

Section VI will address the requirement for a warrant if the tracked vehicle is moving in an REP area.

¹ By Federal Law Enforcement Training Center Legal Division Senior Instructor Keith Hodges. The author wishes to thank and commend Senior Instructor Jenna Solari for her invaluable editing skills.

² For an overview of how GPS works and many other technical details, to include GPS tracking technology, go to: <http://en.wikipedia.org/wiki/GPS> (last visited July 18, 2006). For an excellent survey of GPS uses and applicability to law enforcement, see John S. Ganz, *Comment: It's Already Public: Why Federal Officers Should not Need Warrants to Use GPS Tracking Devices*, 95 J. CRIM. L. & CRIMINOLOGY 1325 (Summer 2005).

III. The Upcoming Rules of Federal Criminal Procedure and Tracking Devices

18 U.S.C. § 3117 provides that if a court is empowered to issue a warrant “or other order” for the installation of a mobile tracking device, the tracking can be conducted in districts other than the district in which the warrant was issued. The continued relevance of this statute is uncertain, however, in light of upcoming changes to Federal Rules of Criminal Procedure that provide specific rules in this area.

New Federal Rule of Criminal Procedure 41 has been substantially modified to specifically address how officers are to obtain and process warrants for tracking.³ These changes will take effect on December 1, 2006, unless Congress takes affirmative action to block their implementation. After that date, it appears that Section 3117 will become irrelevant except for the definition of a tracking device.⁴ Below is a summary of the changes.

A. Authority to issue the warrant - Rule 41(b)(4)

A magistrate judge in the district where the device will be installed may issue a warrant to install a tracking device. The issuing magistrate judge may authorize tracking in the district where the device will be installed, another district, or both.

B. Contents of the warrant - Rule 41(e)(2)(B)

The warrant must contain the following:

- Identity of the person or property to be tracked.
- Identity of the magistrate judge to whom the return on the warrant will be made.
- A reasonable period of time that the device may be used.
 - The time will not exceed 45 days.
 - Other extensions for not more than 45 days may be granted for good cause shown.⁵
- A command that the device be installed:
 - Within 10 days or less from the time the warrant is issued, and
 - During the daytime, unless the magistrate for good cause shown authorizes another time.
- A command that there shall be a return on the warrant.

³ See the attachments at the end of this article for the full text of the new Rule 41 in both red line format and “clean.”

⁴ “As used in this section, the term ‘tracking device’ means an electronic or mechanical device which permits the tracking of the movement of a person or object.” 18 U.S.C. § 3117(b) (2006).

⁵ If the results of the tracking device thus far disclose evidence of criminal activity, that fact should always be mentioned in the request for an extension.

C. Return on Warrant – Rule 41(f)(2)

Within ten days after use of the device has ended, the officer executing the warrant must make the return to the magistrate judge specified in the warrant. The return must contain the exact dates and times of both installing the device and the period in which it was used.

The return must be served on the person who was tracked, or whose property was tracked, within ten days after use of the device has ended.⁶

D. Delays in the Return – Rule 41(f)(3)

Upon request of the government, the magistrate judge may delay providing the notice required by the return.

It is important to recognize that the new Rule 41 does *not* change the law regarding *when* a warrant is required to install or track. It only sets forth the procedure to request and issue a warrant *if* a warrant is required.⁷

IV. The Big Picture – All About REP

It is clear from federal law that people:

- have REP in the interior of their vehicles.
- do not have REP in the exterior of their vehicles.⁸
- have REP in certain places where a vehicle may be located, such as the curtilage of a home.

⁶ Any delay in the required notification must be one “authorized by statute.” See 18 U.S.C. § 3103a (2006).

⁷ “The amendment [to Rule 41] reflects the view that if the officers intend to install or use the device in a constitutionally protected area, they must obtain judicial approval to do so. If, on the other hand, the officers intend to install and use the device without implicating any Fourth Amendment rights, there is no need to obtain the warrant. See *e.g.* *United States v. Knotts*, where the officer’s actions in installing and following tracking device did not amount to a search under the 4th Amendment. . . . Amended Rule 41(d) includes new language on tracking devices. . . . The Supreme Court has acknowledged that the standard for installation of a tracking device is unresolved, and has reserved ruling on the issue until it is squarely presented by the facts of a case. The amendment to Rule 41 does not resolve this issue or hold that such warrants may issue only on a showing of probable cause. Instead, it simply provides that if probable cause is shown, the magistrate must issue the warrant. And the warrant is only needed if the device is installed (for example, in the trunk of the defendant’s car) or monitored (for example, while the car is in the defendant’s garage) in an area in which the person being monitored has a reasonable expectation of privacy.” Judicial Conference of the United States, *Report of the Advisory Committee on Criminal Rules*, May 17, 2005, *Committee Note*, Rules App. D-34. (internal citation omitted).

⁸ *New York v. Class*, 475 U.S. 106 (1986); *Cardwell v. Lewis*, 417 U.S. 583 (1974); *United States v. McIver*, 186 F.3d 1119 (9th Cir. 1999), *cert. denied*, 528 U.S. 1177 (2000); *United States v. Rascon-Ortiz*, 994 F.2d 749 (10th Cir. 1993); *United States v. Gonzalez-Acosta*, 989 F.2d 384 (10th Cir. 1993); *United States v. Muniz-Melchor*, 894 F.2d 1430 (5th Cir. 1990), *cert. denied*, 495 U.S. 923 (1990); and *United States v. Lyons*, 2005 U.S. Dist. LEXIS 6963 (D. Kan. 2005).

From these concepts, we can conclude that a search warrant is required under the Fourth Amendment in the following instances:

- The vehicle is located in an REP area when the GPS device is to be installed.
- No matter where the vehicle is located, officers want to intrude *into* the vehicle to install the device so as to better conceal or protect the device or tap into the vehicle’s power supply.
- Officers want to seize a vehicle so technicians can install a device.

A search warrant is not required to attach a device to the exterior of a vehicle provided the vehicle is in a non-REP place at the time of installation.

Warrant Requirements – Installing GPS devices on/in vehicles				
Location OF Vehicle during installation	In REP area	Not in REP area	In REP Area	Not in REP area
Location ON Vehicle	In REP area (Internal installation)	Not in REP area (External installation)	Not in REP area (External installation)	In REP area (Internal installation)
Officer action	Warrant required.	No warrant required.	Warrant required.	Warrant required.

From the table above, we see that officers may conduct a warrantless installation of a GPS device *only* when there is no REP in *either* the place the device is installed on the vehicle, *or* the place where the vehicle is located at the time of installation. In more practical terms, a warrant is not required to install a GPS device on the exterior of a vehicle when the vehicle is in a public place.⁹

V. REP Places

Exterior/interior of a vehicle. Those installations that intrude into the passenger compartment, trunk, or under the hood of the vehicle to access the vehicle’s wiring or power sources, or to install a device or antenna, are “interior installations.”¹⁰ Officers should be conservative and consider an external (no REP) installation to be one that involves the

⁹ One federal district court judge has agreed with a magistrate judge’s recommendation that reasonable suspicion is required before placing a GPS device on the exterior of a vehicle that is located in a public place. In the author’s opinion, that recommendation is unsupported by any other case except in *dicta* or by innuendo. The chances are, however, that this issue may not receive any further appellate review because the magistrate later concluded, and recommended the federal district court judge find, that there was not only reasonable suspicion, but also probable cause (albeit no warrant) to install the tracking device. *United States v. Garcia*, No. 05-CR-155-C, 2006 U.S. Dist. LEXIS 4642 (W.D. Wis. February 3, 2006); *United States v. Garcia*, No. 05-CR-0155-C-01, 2006 U.S. Dist. LEXIS 6424 (W.D. Wis. February 16, 2006). *United States v. Garcia*, No. 05-CR-155-C, 2006 U.S. Dist. LEXIS 29596 (W.D. Wis. May 10, 2006).

¹⁰ Except when looking for a Vehicle Identification Number, the author is unaware of any case that stands for the clear proposition that a governmental intrusion under the hood of an automobile is outside the protection of the Fourth Amendment. Cases that discuss REP and the exterior of automobiles often do mention whether, as an REP factor, there has been interference with the operation of the vehicle or penetration into it. Tapping into a vehicle’s power supply or placing items under the hood might trigger that factor.

installation of *all* components of the tracking device, and any transmitters (to include power sources and antennas), on the exterior of the vehicle.

REP and the location of vehicle during installation. Those areas where law enforcement officers have the right to be (public places) are not REP places. So, vehicles parked on public streets, in apartment parking lots,¹¹ and in gated communities¹² are not located in REP places. A vehicle parked in a garage or covered carport of a residence, however, is probably within the curtilage of a home, placing the vehicle in an REP area.

Residential driveways are a closer call. Federal cases support the position that there is no REP in the usual residential driveway,¹³ but this determination will always be dependent on the driveway's length, what measures the homeowner has taken to remove his driveway from public view and access, and other considerations that should be discussed with an Assistant U.S. Attorney before attempting a warrantless installation. Obtaining a warrant or waiting for the vehicle to move to a public place might be a better option.

VI. Tracking Issues: Location of the Vehicle During Tracking

Not only do Fourth Amendment REP considerations apply to the installation of GPS devices on vehicles, but tracking the vehicle itself may require a warrant. The Supreme Court has held, in a case involving Radio Frequency (RF) tracking,¹⁴ that the Fourth Amendment warrant requirement is not triggered if the vehicle is tracked in public places, which include all public roads and highways.¹⁵ If the tracking will be done while the vehicle is in an REP protected place, however, a warrant is required.¹⁶

This warrant requirement will not often arise in GPS tracking because GPS, unlike RF transmitters and receivers, does not work in areas where the GPS receiver cannot see the sky to

¹¹ *United States v. Cruz-Pagan*, 537 F.2d 554 (1st Cir. 1976) and *Cornelius v. State*, No. A03-704, 2004 Minn. App. LEXIS 149 (Minn. Ct. App. February 10, 2004).

¹² *United States v. Harris*, No. 99-5435, 2001 U.S. App. LEXIS 3918 (6th Cir. March 7, 2001) and *Wheeler v. State*, No. 05-94-01957-CR, 1996 Tex. App. LEXIS 2546 (Tex. App. June 26, 1996).

¹³ *United States v. Hatfield*, 333 F.3d 1189 (10th Cir. 2003); *United States v. Reyes*, 283 F.3d 446 (2d Cir. 2002), *cert. denied*, 537 U.S. 822 (2002); *United States v. Hammett*, 236 F.3d 1054 (9th Cir. 2001), *cert. denied*, 534 U.S. 866 (2001); *Rogers v. Vicuna*, 264 F.3d 1 (1st Cir. 2001); *United States v. Garcia*, 997 F.2d 1273 (9th Cir. 1993); *Maisano v. Welcher*, 940 F.2d 499 (9th Cir. 1991), *cert. denied sub nom. Maisano v. IRS*, 504 U.S. 916 (1992); *United States v. Smith*, 783 F.2d 648 (6th Cir. 1986); and *United States v. Ventling*, 678 F.2d 63 (8th Cir. 1982). For an exhaustive review of the law of driveways as REP areas, see Vanessa Rownaghi, *Comment, Driving Into Unreasonableness: The Driveway, The Curtilage, and Reasonable Expectations of Privacy*, 11 AM. U.J. GENDER SOC. POL'Y & L. 1165 (2003).

¹⁴ Prior to GPS, law enforcement had only Radio Frequency tracking technology, also commonly called "beepers" or "beacons." This technology required placing a transmitter on the target vehicle that transmitted a radio signal that law enforcement could follow. GPS devices, on the other hand, do not send signals but must receive them from GPS satellites. In live tracking applications, a transmitter can be combined with the GPS receiver so the location of the vehicle can be transmitted.

¹⁵ *United States v. Knotts*, 460 U.S. 276 (1983); *United States v. Forest*, 355 F.3d 942 (6th Cir. 2004) *cert. denied*, 543 U.S. 856 (2004) (cell-phone tracking in public place); and *United States v. Moran*, 349 F. Supp. 2d 425 (D.N.Y. 2005).

¹⁶ *United States v. Karo*, 468 U.S. 705 (1984).

get a signal directly from a GPS satellite. Since most REP places in which a vehicle could go are indoors or under shelter, the REP tracking issue is not a frequent concern.

In summary, no *federal* case requires a warrant to track in public places, assuming the installation of the device was lawful. While the Supreme Court has not yet decided the issue with regard to GPS, the Court did decide in 1983 that RF (beeper) tracking on public roadways does not trigger the Fourth Amendment.¹⁷

Law enforcement must always keep abreast of developments in the law, and a word of caution might be appropriate here. GPS is more intrusive than RF tracking because of GPS's ability to capture greater detail. Also, unlike RF tracking technology, GPS can be placed on a vehicle and the data retrieved many days or weeks later. Based on these differences, the prevalence of GPS tracking, and the state law uncertainty,¹⁸ the issue may reach the Supreme Court in the next few years.

VII. Preserving the Data

One issue that may be receiving insufficient attention in the law enforcement community is the need for officers to preserve GPS tracking information for presentation in court.

Under federal evidence law, only the original of a writing may be admitted unless certain exceptions apply. This is the crux of the "best evidence rule."¹⁹ What officers see on a computer screen or the display of a GPS device is a "writing." An officer's testimony about what he saw on the screen or display - without having the writing available in court - should not withstand a best evidence objection. What is needed is either a photograph of the screen or display, or a "screen print," to satisfy the requirement for an original.²⁰ The best option is to download the GPS data and create a printout or display for court.

The consequences of not following these principles can be seen in *United States v. Bennett*.²¹ Federal officers boarded a drug-laden vessel, and to determine whether the vessel had traveled "from any place outside the United States" in violation of importation laws, the officers examined the "backtrack" feature on a GPS device found onboard. The data were not downloaded from the device and the device was not seized. The trial court permitted the boarding officers to testify that the GPS display indicated the vessel had traveled from Mexican waters into those of the United States. On appeal, however, the importation conviction was reversed because the officer's testimony violated the best evidence rule.

¹⁷ *United States v. Knotts*, 460 U.S. 276 (1983).

¹⁸ See Section VIII, *infra*.

¹⁹ FED. R. EVID. 1002.

²⁰ An original is the writing or recording itself, a negative or print of a photograph or, "if data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately." FED. R. EVID. 1001(3).

²¹ 363 F.3d 947 (9th Cir.), cert. denied, 543 U.S. 950 (2004).

To summarize, in any case involving GPS data seized *or collected* by law enforcement, officers must preserve the data and be prepared to either display the tracking information in court or have printouts available.

VIII. State Law

This article addressed U.S. Constitutional and federal law concerning GPS tracking. State law can differ widely.

- Some states follow federal law as outlined in this article.²²
- Some states require probable cause to install devices, and others reasonable suspicion. Federal law, however, would require no articulable suspicion for cases in which tracking will be done in public places only, the vehicle is in a public place when the device is installed, and the installation is purely external.
- Some states require a warrant to track a vehicle in a public place.²³

The scope of this article does not permit a more exhaustive survey of state cases and statutes.

IX. Recommendations

Use warrants whenever possible because:

- a. Warrants are more likely to fulfill the Fourth Amendment's reasonableness requirement.
- b. State officers may not know whether a state court will read the state constitution to require a warrant even if the Fourth Amendment and federal case law would not.
- c. Warrants give officers flexibility in the event the initial plan to make a warrantless installation is thwarted. For example, when attempting to execute a warrantless installation officers discover the vehicle has moved into an REP area, or that only an internal installation is feasible. Having a warrant in hand will still allow the installation to go forward.
- d. Officers may need a warrant if they have to change out, maintain, reinstall, or retrieve the device in an REP area, as when the vehicle is garaged in an REP place after the device is installed.

²² As of this writing, California (*People v. Zichwic*, 114 Cal. Rptr. 2d 733 (Cal. Ct. App. 2001)) and Nevada (*Osburn v. State*, 44 P.3d 523 (Nev. 2002)).

²³ As of this writing, Oregon (*State v. Campbell*, 759 P.2d 1040 (Or. 1988)); Washington (*State v. Jackson*, 76 P.3d 217 (Wash. 2003)); and New York (*People v. Lacey*, 787 N.Y.S.2d 680, (N.Y. Misc., 2004)).

Federal Rule of Criminal Procedure Rule 41. Search and Seizure.

Effective December 1, 2006 unless Congress provides otherwise.

“Red line” version showing changes.

Underlined: Language added by the Dec 1, 2006 amendments.

~~Strike through~~: Language deleted by the Dec 1, 2006 Amendments.

Federal Rule of Criminal Procedure 41. Search and Seizure

(a) Scope and Definitions.

(1) Scope. This rule does not modify any statute regulating search or seizure, or the issuance and execution of a search warrant in special circumstances.

(2) Definitions. The following definitions apply under this rule:

(A) "Property" includes documents, books, papers, any other tangible objects, and information.

(B) "Daytime" means the hours between 6:00 a.m. and 10:00 p.m. according to local time.

(C) "Federal law enforcement officer" means a government agent (other than an attorney for the government) who is engaged in enforcing the criminal laws and is within any category of officers authorized by the Attorney General to request a search warrant.

(D) "Domestic terrorism" and "international terrorism" have the meanings set out in 18 U.S.C. § 2331.

(E) "Tracking device" has the meaning set out in 18 U.S.C. § 3117(b).

(b) Authority to Issue a Warrant. At the request of a federal law enforcement officer or an attorney for the government:

(1) a magistrate judge with authority in the district--or if none is reasonably available, a judge of a state court of record in the district--has authority to issue a warrant to search for and seize a person or property located within the district;

(2) a magistrate judge with authority in the district has authority to issue a warrant for a person or property outside the district if the person or property is located within the district when the warrant is issued but might move or be moved outside the district before the warrant is executed; ~~and~~

(3) a magistrate judge--in an investigation of domestic terrorism or international terrorism ~~(as defined in 18 U.S.C. § 2331) --having --~~ with authority in any district in which activities related to the terrorism may have occurred, ~~may~~ has authority to issue a warrant for a person or property within or outside that district; ~~and~~

(4) a magistrate judge with authority in the district has authority to issue a warrant to install within the district a tracking device; the warrant may authorize use of the device to track the movement of a person or property located within the district, outside the district, or both.

(c) Persons or Property Subject to Search or Seizure. A warrant may be issued for any of the following:

- (1) evidence of a crime;
- (2) contraband, fruits of crime, or other items illegally possessed;
- (3) property designed for use, intended for use, or used in committing a crime; or
- (4) a person to be arrested or a person who is unlawfully restrained.

(d) Obtaining a Warrant.

(1) ~~Probable Cause.~~ In General. After receiving an affidavit or other information, a magistrate judge ~~-- or if authorized by Rule 41(b), or~~ a judge of a state court of record ~~--~~ must issue the warrant if there is probable cause to search for and seize a person or property or to install and use a tracking device, under Rule 41(e).

(A) Warrant on an Affidavit. When a federal law enforcement officer or an attorney for the government presents an affidavit in support of a warrant, the judge may require the affiant to appear personally and may examine under oath the affiant and any witness the affiant produces.

(B) Warrant on Sworn Testimony. The judge may wholly or partially dispense with a written affidavit and base a warrant on sworn testimony if doing so is reasonable under the circumstances.

(C) Recording Testimony. Testimony taken in support of a warrant must be recorded by a court reporter or by a suitable recording device, and the judge must file the transcript or recording with the clerk, along with any affidavit.

(2) Requesting a Warrant in the Presence of a Judge.

(A) Warrant on an Affidavit. When a federal law enforcement officer or an attorney for the government presents an affidavit in support of a warrant, the judge may require the affiant to appear personally and may examine under oath the affiant and any witness the affiant produces.

(B) Warrant on Sworn Testimony. The judge may wholly or partially dispense with a written affidavit and base a warrant on sworn testimony if doing so is reasonable under the circumstances.

(3) Requesting a Warrant by Telephonic or Other Means.

(A) In General. A magistrate judge may issue a warrant based on information communicated by telephone or other reliable electronic means. ~~appropriate means, including facsimile transmission.~~

(B) Recording Testimony. Upon learning that an applicant is requesting a warrant under Rule 41(d)(3)(A), a magistrate judge must:

(i) place under oath the applicant and any person on whose testimony the application is based; and

(ii) make a verbatim record of the conversation with a suitable recording device, if available, or by a court reporter, or in writing.

(C) Certifying Testimony. The magistrate judge must have any recording or court reporter's notes transcribed, certify the transcription's accuracy, and file a copy of the record and the transcription with the clerk. Any written verbatim record must be signed by the magistrate judge and filed with the clerk.

(D) Suppression Limited. Absent a finding of bad faith, evidence obtained from a

warrant issued under Rule 41(d)(3)(A) is not subject to suppression on the ground that issuing the warrant in that manner was unreasonable under the circumstances.

(e) Issuing the Warrant.

(1) In General. The magistrate judge or a judge of a state court of record must issue the warrant to an officer authorized to execute it.

(2) Contents of the Warrant.

(A) Warrant to Search for and Seize a Person or Property. Except for a tracking-device warrant, ~~The~~ the warrant must identify the person or property to be searched, identify any person or property to be seized, and designate the magistrate judge to whom it must be returned. The warrant must command the officer to:

~~(A)~~ (i) execute the warrant within a specified time no longer than 10 days;
~~(B)~~ (ii) execute the warrant during the daytime, unless the judge for good cause expressly authorizes execution at another time; and
~~(C)~~ (iii) return the warrant to the magistrate judge designated in the warrant.

(B) Warrant for a Tracking Device. A tracking-device warrant must identify the person or property to be tracked, designate the magistrate judge to whom it must be returned, and specify a reasonable length of time that the device may be used. The time must not exceed 45 days from the date the warrant was issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each. The warrant must command the officer to:

(i) complete any installation authorized by the warrant within a specified time no longer than 10 calendar days;
(ii) perform any installation authorized by the warrant during the daytime, unless the judge for good cause expressly authorizes installation at another time; and
(iii) return the warrant to the judge designated in the warrant.

(3) Warrant by Telephonic or Other Means. If a magistrate judge decides to proceed under Rule 41(d)(3)(A), the following additional procedures apply:

(A) Preparing a Proposed Duplicate Original Warrant. The applicant must prepare a "proposed duplicate original warrant" and must read or otherwise transmit the contents of that document verbatim to the magistrate judge.

(B) Preparing an Original Warrant. If the applicant reads the contents of the proposed duplicate original warrant the ~~The~~ magistrate judge must enter ~~the~~ those contents ~~of the proposed duplicate original warrant~~ into an original warrant. If the applicant transmits the contents by reliable electronic means, that transmission may serve as the original warrant.

(C) Modifications. The magistrate judge may modify the original warrant. The judge must transmit any modified warrant to the applicant by reliable electronic means under Rule 41(e)(3)(D) or direct the applicant to modify the proposed duplicate original warrant accordingly. ~~In that case, the judge must also modify the original warrant.~~

(D) ~~Signing the Original Warrant and the Duplicate Original Warrant.~~ Upon determining to issue the warrant, the magistrate judge must immediately sign the original warrant, enter on its face the exact date and time it is issued, and transmit it by reliable electronic means to the applicant or direct the applicant to sign the judge's name on the duplicate original warrant.

(f) Executing and Returning the Warrant.

(1) Warrant to Search for and Seize a Person or Property.

~~(1)~~(A) Noting the Time. The officer executing the warrant must enter on it its face the exact date and time it is was executed.

~~(2)~~ (B) Inventory. An officer present during the execution of the warrant must prepare and verify an inventory of any property seized. The officer must do so in the presence of another officer and the person from whom, or from whose premises, the property was taken. If either one is not present, the officer must prepare and verify the inventory in the presence of at least one other credible person.

~~(3)~~ (C) Receipt. The officer executing the warrant must: ~~(A)~~ give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken; or ~~(B)~~ leave a copy of the warrant and receipt at the place where the officer took the property.

~~(4)~~ (D) Return. The officer executing the warrant must promptly return it--together with a copy of the inventory--to the magistrate judge designated on the warrant. The judge must, on request, give a copy of the inventory to the person from whom, or from whose premises, the property was taken and to the applicant for the warrant.

(2) Warrant for a Tracking Device.

(A) Noting the Time. The officer executing a tracking-device warrant must enter on it the exact date and time the device was installed and the period during which it was used.

(B) Return. Within 10 calendar days after the use of the tracking device has ended, the officer executing the warrant must return it to the judge designated in the warrant.

(C) Service. Within 10 calendar days after the use of the tracking device has ended, the officer executing a tracking-device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon request of the government, the judge may delay notice as provided in Rule 41(f)(3).

(3) Delayed Notice. Upon the government's request, a magistrate judge--or if authorized by Rule 41(b), a judge of a state court of record--may delay any notice required by this rule if the delay is authorized by statute.

(g) Motion to Return Property. A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

(h) Motion to Suppress. A defendant may move to suppress evidence in the court where the trial will occur, as Rule 12 provides.

(i) Forwarding Papers to the Clerk. The magistrate judge to whom the warrant is returned must attach to the warrant a copy of the return, of the inventory, and of all other related papers and must deliver them to the clerk in the district where the property was seized.

Federal Rule of Criminal Procedure Rule 41. Search and Seizure.

Effective December 1, 2006 unless Congress provides otherwise.

“Clean Version”

Federal Rule of Criminal Procedure 41. Search and Seizure

(a) Scope and Definitions.

(1) Scope. This rule does not modify any statute regulating search or seizure, or the issuance and execution of a search warrant in special circumstances.

(2) Definitions. The following definitions apply under this rule:

(A) "Property" includes documents, books, papers, any other tangible objects, and information.

(B) "Daytime" means the hours between 6:00 a.m. and 10:00 p.m. according to local time.

(C) "Federal law enforcement officer" means a government agent (other than an attorney for the government) who is engaged in enforcing the criminal laws and is within any category of officers authorized by the Attorney General to request a search warrant.

(D) "Domestic terrorism" and "international terrorism" have the meanings set out in 18 U.S.C. § 2331.

(E) "Tracking device" has the meaning set out in 18 U.S.C. § 3117(b).

(b) Authority to Issue a Warrant. At the request of a federal law enforcement officer or an attorney for the government:

(1) a magistrate judge with authority in the district--or if none is reasonably available, a judge of a state court of record in the district--has authority to issue a warrant to search for and seize a person or property located within the district;

(2) a magistrate judge with authority in the district has authority to issue a warrant for a person or property outside the district if the person or property is located within the district when the warrant is issued but might move or be moved outside the district before the warrant is executed;

(3) a magistrate judge--in an investigation of domestic terrorism or international terrorism -- with authority in any district in which activities related to the terrorism may have occurred, has authority to issue a warrant for a person or property within or outside that district; and

(4) a magistrate judge with authority in the district has authority to issue a warrant to install within the district a tracking device; the warrant may authorize use of the device to track the movement of a person or property located within the district, outside the district, or both.

(c) Persons or Property Subject to Search or Seizure. A warrant may be issued for any of the following:

(1) evidence of a crime;

(2) contraband, fruits of crime, or other items illegally possessed;

(3) property designed for use, intended for use, or used in committing a crime; or

(4) a person to be arrested or a person who is unlawfully restrained.

(d) Obtaining a Warrant.

(1) In General. After receiving an affidavit or other information, a magistrate judge -- or if authorized by Rule 41(b), a judge of a state court of record -- must issue the warrant if there is probable cause to search for and seize a person or property or to install and use a tracking device.

(A) Warrant on an Affidavit. When a federal law enforcement officer or an attorney for the government presents an affidavit in support of a warrant, the judge may require the affiant to appear personally and may examine under oath the affiant and any witness the affiant produces.

(B) Warrant on Sworn Testimony. The judge may wholly or partially dispense with a written affidavit and base a warrant on sworn testimony if doing so is reasonable under the circumstances.

(C) Recording Testimony. Testimony taken in support of a warrant must be recorded by a court reporter or by a suitable recording device, and the judge must file the transcript or recording with the clerk, along with any affidavit.

(2) Requesting a Warrant in the Presence of a Judge.

(A) Warrant on an Affidavit. When a federal law enforcement officer or an attorney for the government presents an affidavit in support of a warrant, the judge may require the affiant to appear personally and may examine under oath the affiant and any witness the affiant produces.

(B) Warrant on Sworn Testimony. The judge may wholly or partially dispense with a written affidavit and base a warrant on sworn testimony if doing so is reasonable under the circumstances.

(3) Requesting a Warrant by Telephonic or Other Means.

(A) In General. A magistrate judge may issue a warrant based on information communicated by telephone or other reliable electronic means.

(B) Recording Testimony. Upon learning that an applicant is requesting a warrant under Rule 41(d)(3)(A), a magistrate judge must:

(i) place under oath the applicant and any person on whose testimony the application is based; and

(ii) make a verbatim record of the conversation with a suitable recording device, if available, or by a court reporter, or in writing.

(C) Certifying Testimony. The magistrate judge must have any recording or court reporter's notes transcribed, certify the transcription's accuracy, and file a copy of the record and the transcription with the clerk. Any written verbatim record must be signed by the magistrate judge and filed with the clerk.

(D) Suppression Limited. Absent a finding of bad faith, evidence obtained from a warrant issued under Rule 41(d)(3)(A) is not subject to suppression on the ground that issuing the warrant in that manner was unreasonable under the circumstances.

(e) Issuing the Warrant.

(1) In General. The magistrate judge or a judge of a state court of record must issue the warrant to an officer authorized to execute it.

(2) Contents of the Warrant.

(A) Warrant to Search for and Seize a Person or Property. Except for a tracking-device warrant, the warrant must identify the person or property to be searched, identify any

person or property to be seized, and designate the magistrate judge to whom it must be returned. The warrant must command the officer to:

- (i) execute the warrant within a specified time no longer than 10 days;
- (ii) execute the warrant during the daytime, unless the judge for good cause expressly authorizes execution at another time; and
- (iii) return the warrant to the magistrate judge designated in the warrant.

(B) Warrant for a Tracking Device. A tracking-device warrant must identify the person or property to be tracked, designate the magistrate judge to whom it must be returned, and specify a reasonable length of time that the device may be used. The time must not exceed 45 days from the date the warrant was issued. The court may, for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each. The warrant must command the officer to:

- (i) complete any installation authorized by the warrant within a specified time no longer than 10 calendar days;
- (ii) perform any installation authorized by the warrant during the daytime, unless the judge for good cause expressly authorizes installation at another time; and
- (iii) return the warrant to the judge designated in the warrant.

(3) Warrant by Telephonic or Other Means. If a magistrate judge decides to proceed under Rule 41(d)(3)(A), the following additional procedures apply:

(A) Preparing a Proposed Duplicate Original Warrant. The applicant must prepare a "proposed duplicate original warrant" and must read or otherwise transmit the contents of that document verbatim to the magistrate judge.

(B) Preparing an Original Warrant. If the applicant reads the contents of the proposed duplicate original warrant the magistrate judge must enter those contents into an original warrant. If the applicant transmits the contents by reliable electronic means, that transmission may serve as the original warrant.

(C) Modifications. The magistrate judge may modify the original warrant. The judge must transmit any modified warrant to the applicant by reliable electronic means under Rule 41(e)(3)(D) or direct the applicant to modify the proposed duplicate original warrant accordingly.

(D) Signing the Warrant. Upon determining to issue the warrant, the magistrate judge must immediately sign the original warrant, enter on its face the exact date and time it is issued, and transmit it by reliable electronic means to the applicant or direct the applicant to sign the judge's name on the duplicate original warrant.

(f) Executing and Returning the Warrant.

(1) Warrant to Search for and Seize a Person or Property.

(A) Noting the Time. The officer executing the warrant must enter on it the exact date and time it was executed.

(B) Inventory. An officer present during the execution of the warrant must prepare and verify an inventory of any property seized. The officer must do so in the presence of another officer and the person from whom, or from whose premises, the property was taken. If either one is not present, the officer must prepare and verify the inventory in the presence of at least one other credible person.

(C) Receipt. The officer executing the warrant must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the

property was taken or leave a copy of the warrant and receipt at the place where the officer took the property.

(D) Return. The officer executing the warrant must promptly return it--together with a copy of the inventory--to the magistrate judge designated on the warrant. The judge must, on request, give a copy of the inventory to the person from whom, or from whose premises, the property was taken and to the applicant for the warrant.

(2) Warrant for a Tracking Device.

(A) Noting the Time. The officer executing a tracking-device warrant must enter on it the exact date and time the device was installed and the period during which it was used.

(B) Return. Within 10 calendar days after the use of the tracking device has ended, the officer executing the warrant must return it to the judge designated in the warrant.

(C) Service. Within 10 calendar days after the use of the tracking device has ended, the officer executing a tracking-device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon request of the government, the judge may delay notice as provided in Rule 41(f)(3).

(3) Delayed Notice. Upon the government's request, a magistrate judge--or if authorized by Rule 41(b), a judge of a state court of record--may delay any notice required by this rule if the delay is authorized by statute.

(g) Motion to Return Property. A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

(h) Motion to Suppress. A defendant may move to suppress evidence in the court where the trial will occur, as Rule 12 provides.

(i) Forwarding Papers to the Clerk. The magistrate judge to whom the warrant is returned must attach to the warrant a copy of the return, of the inventory, and of all other related papers and must deliver them to the clerk in the district where the property was seized.