

Sample Minimization Instructions  
for Oral and Wire Communications

MEMORANDUM

TO: Monitoring Agents  
FROM: AUSA \_\_\_\_\_  
RE: Minimization Instructions  
DATE: \_\_\_\_\_

1. All agents must read the affidavit, application, order and these instructions and sign these instructions before monitoring.

2. The Order of \_\_\_\_\_ only authorizes the interception of conversations of (name the interceptees listed in the Order) with anyone else occurring (to and from telephone number \_\_\_\_\_ subscribed to by \_\_\_\_\_) (at the premises known as \_\_\_\_\_ and located at \_\_\_\_\_), regarding offenses involving (list the offenses).

3. Agents may spot monitor for a reasonable period not to exceed two minutes to determine whether the subject is present and participating in a conversation. This spot monitoring may occur as often as is reasonable, but in any event at least one minute should elapse between interceptions.

4. If, during this spot monitoring, it is determined that additional individuals are engaged in criminal conversation, intercepts may continue despite the fact that the named subject is not engaged in conversations, until the conversation ends or becomes non-pertinent. If individuals other than the subject are participating in 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 the 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 (name the 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 such 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. Read all of the logs of 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 parties are not present. Any time that an attorney is a party to a conversation, call 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 clergyman are to be considered privileged. An electronic surveillance order could not be obtained to listen to a subject confess his sins to a priest in a confessional booth; similarly, a subject discussing his personal, financial or legal problems with his 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.

© 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

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 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 overheard conversation"). 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 the reel and footage locations of each communication; the time and duration of the interception; whether outgoing or incoming in the case of telephone conversations; the number called if the call was outgoing; the participants, if known; and the subjects and a summary of the content of 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 agencies and the supervising attorney;

(b) The original recording should be placed in a sealed evidence envelope and kept in the custody of the investigative agencies until it is made available to the court at the expiration of the period of the order; and

© 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:

I - the order that authorized the recorded interceptions (by number if possible);

ii - the date and time period of the recorded conversations;

iii - the identity (when possible) of the individuals whose conversations were recorded; and

iv - the place (e.g., location of telephone) where intercepted communications took place.

(d) The form should indicate to whom the case agent has transferred the custody of the original recording 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 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 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 overheard. This should be followed by the agent's signature; and

© This log should be treated by the investigative agencies 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 anything appears to be breaking suddenly, please call the case agent or the AUSA. Several telephone numbers will be posted at the monitoring post.

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Assistant United States Attorney