

WIRETAP SEMINAR MATERIALS

I. The Statutes

A. **A.R.S. § 13-3010: Ex parte order for interception; definition**

A. On application of a county attorney, the attorney general or a prosecuting attorney whom a county attorney or the attorney general designates in writing, any justice of the supreme court, judge of the court of appeals or superior court judge may issue an ex parte order for the interception of wire, electronic or oral communications if there is probable cause to believe both:

1. A crime has been, is being or is about to be committed.
2. Evidence of that crime or the location of a fugitive from justice from that crime may be obtained by the interception.

B. An application under subsection A shall be made in writing and upon the oath or affirmation of the applicant. It shall include:

1. The name and title of the applicant.
2. A full and complete statement of the facts and circumstances relied upon by the applicant, including the supporting oath or affirmation of the investigating peace officer of this state or any political subdivision of this state to justify the officer's belief that an order should be issued. The statement shall include:

- (a) Details as to the particular crime that has been, is being or is about to be committed.
- (b) The identity of the person, if known, committing the offense and whose communications are to be intercepted.
- (c) A particular description of the type of communications sought to be intercepted.
- (d) A particular description of the nature, identification and location of the communication facility from which or the place where the communication is to be intercepted. If the identification or specific description of the communication facility from which or the place where the communication is to be intercepted is not practical, the affidavit in support of the application must state why:
 - (i) Specification is impractical.
 - (ii) Interception from any facility or at any place where the communication may occur is necessary.

3. A full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous.

4. A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that authorization to intercept should not automatically terminate when the described type of communication has been first obtained, the statement shall include a particular description of facts establishing probable cause to believe that additional communications of the same type will occur after the communication has been first obtained.

5. A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any judge for authorization to intercept, or for approval of interceptions of communications involving any of the same persons, facilities or places specified in the application, and the action taken by the judge on each application.

6. If the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

C. Upon proper application, a judge may enter an ex parte order authorizing interception, as requested or with any appropriate modifications, if the judge determines on the basis of the facts submitted by the applicant that:

1. There is probable cause to believe that a person is committing, has committed or is about to commit a particular crime.
2. There is probable cause to believe that particular communications concerning that offense will be obtained through the interception.
3. Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous.
4. There is probable cause to believe any of the following:
 - (a) Wire or electronic communications concerning the offense are being made or are about to be made by the person over the communication facilities for which interception authority is granted.
 - (b) Oral communications concerning the offense are being made or are about to be made by the person in the location for which interception authority is granted.
 - (c) Communications concerning the offense are being made or are about to be made by the person in different and changing locations, or from different and changing facilities.

D. Each order authorizing the interception of any wire, electronic or oral communication shall specify all of the following:

1. The identity of the person, if known, whose communications are to be intercepted.
2. The nature and location of the communication facilities as to which or the place where authority to intercept is granted. If authority is granted to intercept communications of a person wherever that person is located or from whatever communication facility is used, the order shall so state and shall include any limitations imposed by the authorizing judge as to location, time or manner of the interception. The order shall state that the interception shall not begin until the facilities from which or the place where the communication is to be intercepted is ascertained by the person implementing the interception order.
3. A particular description of the type of communication sought to be intercepted and a statement of the particular offense to which it relates.
4. The identity of the agency authorized to intercept the communications and of the person authorizing the application.
5. The period of time during which the interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.
6. That the authorization for interception be executed as soon as practicable, that it be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this section and that it terminate upon attainment of the authorized objective or on the date specified, whichever comes first.
7. That entry may be made to service, install or remove interception devices or equipment if entry is necessary to effect the interception.

E. An order that is entered under this section may not authorize the interception of any wire or oral communication for any period that is longer than is necessary to achieve the objective of the authorization and that exceeds thirty days. This thirty day period begins on the earlier of the day on which the interception actually begins under the order or ten days after the order is signed. The court may grant extensions of any order if an application for an extension is made pursuant to subsection A and the court makes the findings required by subsection C. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and shall not exceed thirty days.

F. Any ex parte order for interception, together with the papers on which the application was based, shall be delivered to and retained by the applicant during the duration of the interception as authority for the interception authorized in the order. The justice or judge issuing the order shall retain a true copy of the order at all times.

G. Within ten days after the termination of the authorized interception, applications made and orders granted under this section shall be returned to and sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. The applications and orders shall be disclosed only on a showing of good cause before a judge of competent jurisdiction or as otherwise provided.

H. If possible, the contents of any communication that is intercepted by any means authorized by this section shall be recorded on any tape, electronic, wire or other comparable device. The recording of the contents of any wire, electronic or oral communication under this subsection shall be done in such a way as will protect the recording from editing or alterations. Within ten days after the termination of the authorized interception, the recordings shall be made available to the judge who issued the order and shall be sealed under the judge's directions. Custody of the recordings shall be maintained pursuant to court order. The recordings shall be kept for ten years and shall not be destroyed except on an order of the issuing judge or another judge of competent jurisdiction.

I. Within ninety days after an application under subsection A is denied, or the period of an order or any extension expires, the issuing or denying judge shall serve the persons named in the order or application and any other parties to the intercepted communications as the judge may determine the interests of justice require with an inventory, including notice of all of the following:

1. The fact of the entry of the order or the application.

2. The date of the entry and the period of authorized interception, or the denial of the application.

3. The fact that during the period of authorized interception wire, electronic or oral communications were or were not intercepted. On motion, the judge may make available to the person or the person's attorney for inspection such portions of the intercepted communications, applications and order as the judge determines to be in the interest of justice. On an ex parte showing of good cause to the judge, the serving of the notice required by this subsection may be postponed.

J. On request of the applicant, any order authorizing interception shall direct that the communication service provider, landlords, custodians or other persons furnish the applicant with all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that these persons are according the person whose communications are to be intercepted.

K. The order may require written reports to be made to the issuing judge at specified intervals showing the progress made toward achieving the authorized objective and the need for continued interception.

L. Any order authorizing the interception of wire communications pursuant to this chapter is also deemed to authorize the interception of any electronic communication that may be made over the same equipment or by the same facility.

M. If the intercepted communication is in a code or foreign language and an expert in that code or foreign language is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after the interception.

N. An interception under this chapter may be conducted in whole or in part by government personnel or by an individual operating under a contract with the government or acting under the supervision of a law enforcement officer who is authorized to conduct the interception.

O. The applicant is responsible for providing to the administrative office of the United States courts all reports on applications for or interceptions of wire, electronic or oral communications that are required by federal statutes.

P. For the purposes of this section, "crime" means murder, gaming, kidnapping, robbery, bribery, extortion, theft, an act in violation of chapter 23 of this title, dealing in narcotic drugs, marijuana or dangerous drugs, sexual exploitation of children in violation of chapter 35.1 of this title or any felony that is dangerous to life, limb or property. Crime includes conspiracy to commit any of the offenses listed in this subsection.

B. A.R.S. § 13-3015: Emergency Interception:

A. Notwithstanding any other provision of this chapter, if the attorney general or a county attorney or such prosecuting attorneys as they may designate in writing reasonably determines that an emergency situation exists involving immediate danger of death or serious physical injury to any person, and that such death or serious physical injury may be averted by interception of wire, electronic or oral communications before an order authorizing such interception can be obtained, the attorney general or a county attorney or his designee may specially authorize a peace officer or law enforcement agency to intercept such wire, electronic or oral communications.

B. The attorney general or county attorney or his designee specially authorizing an emergency interception pursuant to subsection A of this section shall apply for an order authorizing the interception, in accordance with the provisions of § 13-3010. The application shall be made as soon as practicable, and in no event later than forty-eight hours after commencement of the emergency interception. The application shall include an explanation and summary of any interception of communications occurring before the application for authorization.

C. If the prosecuting attorney fails to obtain an authorization within forty-eight hours after commencement of the emergency interception, or if authorization to intercept communications is denied, the interception shall immediately terminate and any communications intercepted without judicial authorization may not be used as evidence in any criminal or civil proceeding against any person. In either event, the prosecuting attorney shall furnish to the court an inventory of any communications intercepted, for service pursuant to the provisions of § 13-3010, subsection I. The provisions of this subsection do not prohibit the use as evidence of any communications intercepted without judicial authorization against the persons conducting or authorizing the interceptions if such interceptions were not made in good faith reliance on this section.

C. A.R.S. § 13-3017: Ex Parte Pen Registers/Trap & Trace:

A. Any prosecuting attorney or investigating peace officer of this state or its political subdivisions may apply to any justice of the supreme court, judge of the court of appeals, judge of the superior court or magistrate for an ex parte order authorizing the installation and use of a pen register or a trap and trace device. The application shall be made in writing and under oath and shall state:

1. The name and title of the applicant.
2. The attributes of the communication, including the number or other identifier, the identity, if known, of the subscriber and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied and, if the order authorizes the installation of a trap and trace device, the geographic limits of the order.
3. A certification by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation.
4. A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.

B. On proper application pursuant to subsection A, the judge shall issue an ex parte order authorizing the installation and use of a pen register or trap and trace device or process if the judge finds that the applicant has certified that the information likely to be obtained by the installation and use is relevant to an ongoing criminal investigation. On service, the order applies to any person or entity that provides wire or electronic communication service in this state or that does business in this state and whose assistance may facilitate the execution of the order. If an order is served on any person or entity that is not specifically named in the order and on request of the person or entity, the prosecuting attorney or peace officer who serves the order shall provide written or electronic certification that the order applies to the person or entity being served. An order that is issued under this subsection shall specify all of the following:

1. The identity, if known, of the subscriber of the communication service or telephone line to which the pen register or trap and trace device is to be attached or applied.
2. The attributes of the communication to which the order applies, including the number or other identifier and, if known, the location of the telephone line or other facility to which the pen register or trap and trace device is to be attached or applied and, if the order authorizes the installation of a trap and trace device, the geographic limits of the order.
3. A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates.
4. That, on the request of the applicant, the communication service provider shall furnish information, facilities and technical assistance necessary to accomplish the installation of the pen register or trap and trace device and to identify subscribers of any communication facility or telephone number obtained by operation of such device.

C. An order that is issued under this section authorizes the installation and use of a pen register or trap and trace device for a period of not to exceed sixty days. Extensions of the order may be granted, but only on an application and judicial finding pursuant to subsections A and B. The period of each extension granted shall not exceed sixty days.

D. Related Statutes:

1. A.R.S. § 13-1812: Bank Records; Subpoenas; Affidavit of Dishonor; Affidavit of Loss
2. A.R.S. § 13-2315: Racketeering; Investigation of Records; Confidentiality; Court Enforcement
3. A.R.S. § 13-3005: Illegal Interception of Communications
4. A.R.S. § 13-3006: Illegally Divulging Intercepted Communications
5. A.R.S. § 13-3008: Possession of Interception Devices
6. A.R.S. § 13-3009: Duty To Report To Law Enforcement Officers
7. A.R.S. § 13-3011: Illegally Disclosing Confidential Information Regarding Ex Parte Order
8. A.R.S. § 13-3012: Exemptions Regarding Disclosure
9. A.R.S. § 13-3013: Defenses For Alleged Disclosure Violations
10. A.R.S. § 13-3016: Disclosure of Communications to Agencies; Backup Preservation; Delayed Notice; Records Reservation Request
11. A.R.S. § 13-3017: Pen Register or Trap and Trace Device
12. A.R.S. § 13-3018: Communication Service Records; Subpoenas (Administrative or "Desk" Subpoenas)
13. A.R.S. § 13-3019: Surreptitious Photographing, etc.

II. Affidavit

A. Authorizing Judge Given Great Deference and Defendant Bears the Burden

1. "The issuing judge is given discretion and this court should not invalidate an order or interpose our judgment where there are sufficient facts to support his decision." *State v. Politte*, 136 Ariz. 117, 664 P.2d 661 (Ariz. App. 1982).
2. Because the issuing judge's authorization is entitled to deference, Defendant was not entitled to an evidentiary hearing on necessity. *United States v. Oregon-Cortez*, 244 F.Supp. 1167 (2003).
3. "A defendant bears the burden of proving that a wiretap is invalid once it has been authorized." *People v. Davis*, 168 Cal.App.4th 617, 86 Cal.Rptr.3d 55, 65 (Cal.App.,3 Dist., 2008), *citing United States v. Ramirez-Encarnacion*, 291 F.3d 1219, 1222 (10th Cir. 2002).
4. *See also, United States v. Quintana*, 70 F.3d 1167, 1169 (10th Cir. 1995).

III. Probable Cause

A. In General

1. Probable cause determination in support issuance of wiretap order is not to be judged on more rigorous scale than that ordinarily required for any other search warrant. *State v. Olea*, 139 Ariz. 280, 678 P.2d 465 (App.Div.1 1983).
2. Where affidavits in support of wiretap authorizations indicated each defendant used his own telephone to communicate with other alleged coconspirators in furtherance of drug conspiracy, offenses being investigated were listed, facilities or places from which interception was to occur were identified, types of communications to be intercepted were provided, identity of persons who were believed to be committing or about to commit one of several enumerated offenses were indicated, and information relating to conversations intercepted on previously authorized wiretaps revealed that all defendants were involved in unlawful distribution of heroin, probable cause existed for issuance of wiretap authorization. *State v. Olea*, 139 Ariz. 280, 678 P.2d 465 (App.Div.1 1983).
3. Investigation which preceded application showed that subject telephone was used extensively to conduct illegal business and, therefore, issuance of wiretap order was proper given that there was probable cause to believe that telephone would be used in future and would lead to both source of narcotics and identity of buyers. *State v. Politte* (App. Div.2 1982) 136 Ariz. 117, 664 P.2d 661(App.Div.2 1982).
4. For purposes of wiretap order, probable cause to believe that phone in defendant's residence would be used in future illicit activities enumerated existed, even though no calls were shown directly to have been made to a source from residence, where an inference could be drawn that defendant would use that phone to contact his source. *State v. Politte*, 136 Ariz. 117, 664 P.2d 661 (App.Div.1 1983).

B. Staleness

1. Commonsense reading of officer's affidavit in support of his application for wiretap order demonstrated that defendant's activities and those of his son in selling heroin was so continuous and long-standing that they justified a finding of probable cause at time wiretap was obtained even though as long as two months elapsed between time factual information was obtained and time wiretap was sought. *State v. Hale*, 131 Ariz. 444, 641 P.2d 1288(Ariz. 1982).

2. Out-of-date information regarding a single event given in support of an application for a wiretap order must be seen to describe no more than an isolated transaction in the past and establishes no probable cause to believe that similar conduct is presently occurring; however, where the information evidences activity of a continuous nature, passage of time becomes less significant. *State v. Hale*, 131 Ariz. 444, 641 P.2d 1288 (Ariz. 1982).
3. Probable cause for issuance of wiretap ceases to exist when it is no longer reasonable to presume that the wiretap will turn up evidence of unlawful activity. *State v. Hale*, 131 Ariz. 444, 641 P.2d 1288 (Ariz. 1982).

IV. Necessity/Exhaustion

A. In General (Az. Law)

1. Wiretaps are not to be routinely used as first step in criminal investigation. *State v. Olea*, 139 Ariz. 280, 678 P.2d 465 (App.Div.1 1983).
2. Wiretap statutes do not mandate the indiscriminate pursuit of every non-electronic device. *State v. Politte*, 136 Ariz. 117, 664 P.2d 661 (App. Div.2 1982).
3. Although wiretaps are not to be used routinely as first step in criminal investigations, necessity requirement is to be interpreted in a commonsense fashion with an eye toward practicalities of investigative work and, therefore, wiretaps need not be used only as a last resort. *State v. Hale* 131 Ariz. 444, 641 P.2d 1288 (Ariz. 1982).
4. Phone interceptions met the requirements of wiretap statute and were therefore admissible, despite claim that available investigative techniques such as undercover operations, informants, surveillance, and pen registers were not exhausted. *State v. Politte*, 136 Ariz. 117, 664 P.2d 661 (App. Div.2 1982).
5. Wiretaps cannot be authorized where traditional investigative techniques will solve the crime. *State v. Politte*, 136 Ariz. 117, 664 P.2d 661 (App. Div.2 1982).
6. Danger of recognition of undercover officer by those who were subject to wiretap order was not so remote as to preclude wiretap order on ground that undercover operations had not been exhausted. *State v. Politte*, 136 Ariz. 117, 664 P.2d 661 (App. Div.2 1982).
7. State's affidavit showed necessity of wiretap order where state alleged that surveillance could only confirm meetings of people, that both defendant and accomplice were "street smart" and would not openly discuss details of case with informants, that undercover operations were rejected because of defendant's prior police training, that a grand jury investigation would not provide enough evidence to support a prosecution, and that executing a search warrant would prematurely alert other conspirators. *State v. Ring*, 200 Ariz. 267, 25 P.3d 1139 (2001), certiorari granted 122 S.Ct. 865, 534 U.S. 1103, 151 L.Ed.2d 738, reversed 122 S.Ct. 2428, 536 U.S. 584, 153 L.Ed.2d 556, on remand 204 Ariz. 534, 65 P.3d 915.
8. Motion to suppress wiretap evidence, based on asserted lack of necessity for wiretap order, was properly denied in capital murder prosecution arising from robbery of armored car and fatal shooting of its driver, where wiretap affidavit contained detailed facts explaining necessity for order, trial judge found that "trash cover" that was underway prior to wiretap order was risky venture with little chance of success, and trial judge also found that persons mentioned by defendant as informants who could have been used in lieu of wiretapping would not have been suitable. *State v. Ring*, 200 Ariz. 267, 25 P.3d 1139 (2001), certiorari granted 122 S.Ct. 865, 534 U.S. 1103, 151 L.Ed.2d 738, reversed 122 S.Ct. 2428, 536 U.S. 584, 153 L.Ed.2d 556, on remand 204 Ariz. 534, 65 P.3d 915.

B. Necessity Defined

1. "The affidavit in support of a search warrant 'must simply explain the retroactive or prospective failure of several investigative techniques that reasonably suggest themselves.' *United States v. Van Horn*, 789 F.2d 1492, 1496 (11th Cir.1986)." *People v. Roberts*, 184 Cal.App.4th 1149, 109 Cal.Rptr.3d 736 (Cal.App.4 Dist., 2010).
2. A finding of necessity is supported when affidavits state physical surveillance was attempted numerous times, has proven to be useful, but has not resulted in sufficient evidence of the criminal activity being investigated and that continued surveillance is likely to alert the suspects of the investigation. *United States v. Campos*, 541 F.3d 735 (7th Cir., 2008).
3. "[M]erely because an 'investigation technique is theoretically possible, it does not follow that it is likely'. [*United States v. Castillo Garcia*, 117 F.3d 1179, 1188 (10th Cir.1997)]. *United States v. Gutierrez-Santiman*, 988 F.Supp. 1410, 1418 (D.Utah, 1997).
4. In assessing the techniques, "a practical, common sense evaluation must be made". *United States v. Gutierrez-Santiman*, 988 F.Supp. 1410, 1418 (D.Utah, 1997).

C. What Are Traditional Investigative Techniques?

1. Surveillance, infiltration or undercover work, questioning of participants, execution of search warrants, and the use of pen registers and trap-and-trace devices are considered "traditional investigative techniques". *People v. Roberts*, 184 Cal.App.4th 1149, 109 Cal.Rptr.3d 736 (Cal.App.4 Dist., 2010), citing *United States v. Verdin-Garcia*, 516 F.3d 884, 890 (10th Cir.2008).
2. Investigative Techniques simply explained:
 - a. A Pen register (PEN) or Dialed Number Recorder (DNR) records outbound digits in real-time from a telephone,
 - b. A trap and trace records inbound digits in real-time to a telephone;
 - c. Toll records are billed historical records showing both billed inbound and billed outbound numbers to a particular telephone.
 - d. A call detail report (CDR) contains all inbound and outbound historical calls regardless if billed or not billed

D. Exhaustion Of All Techniques Not Required

1. The Courts "have consistently held that the wiretap statute does not mandate the indiscriminate pursuit to the bitter end of every non-electronic device as to every telephone and principal in question to a point where the investigation becomes redundant or impractical or the subjects may be alerted and the entire investigation aborted by unreasonable insistence upon forlorn hope. *United States v. Baker*, 589 F.2d 1008, 1013 (9th Cir.1979)." *United States v. Bennett*, 219 F.3d 1117, 1122 (9th Cir.), 2000.
2. "A comprehensive exhaustion of all possible investigative techniques is not necessary before applying for a wiretap. (*Citation omitted*). The [wiretap] statute was not intended 'to foreclose electronic surveillance until every other imaginable method of investigation has been unsuccessfully attempted, but simply to inform the issuing judge of the difficulties involved in the use of conventional techniques.'" *United States v. De La Cruz Suarez*, 601 F.3d 1202, 1214 (11th Cir.,2010).
3. "We have held that the wiretap should not ordinarily be the initial step in the investigation, but that law enforcement officials need not exhaust every conceivable alternative before obtaining a wiretap." *United States v. Garcia-Villalba*, 585 F.3d 1223, 1227-28 (9th Cir. 2009).

4. The necessity for a wiretap is evaluated in light of the government's need not merely to collect some evidence, but to effectively develop cases against those involved in conspiracy, however, law enforcement need not exhaust every conceivable alternative before obtaining a wiretap. *United States v. Reed*, 575 F.3d 900 (9th Cir. 2009).
5. The necessity provision should not be understood as requiring absolute necessity since it does not demand that any and all other investigative procedures be tried prior to an order being issued for the interception or that a wiretap be used as a last resort, since this provision requires only that the success of other methods of investigation appears unlikely or too dangerous. *United States v. Campos*, 541 F.3d 735 (7th Cir., 2008).
6. A wiretap affidavit need not exhaust all possible investigative techniques but must simply explain the retroactive or prospective failure of several techniques that reasonably suggest themselves. *People v. Roberts*, 184 Cal.App.4th 1149, 109 Cal.Rptr.3d 736 (Cal.App.4 Dist., 2010).
7. "The 'necessity' requirement of Title III is not an 'exhaustion' requirement. In examining necessity challenges to wiretap orders, [it has been] repeatedly held that law enforcement officials are not required to exhaust all other conceivable investigative procedures before resorting to wiretapping." *United States v. Gutierrez-Santiman*, 988 F.Supp. 1410, 1418 (D.Utah, 1997), *citing United States v. Castillo Garcia*, 117 F.3d 1179 (10th Cir.1997).
8. However . . .
 - i. The entire pre-wiretap investigation of the new target consisted of a toll records analysis, a pen register, some limited (but undisclosed) physical surveillance of the new target's home, and some investigation into the criminal record of the new target and other co-Defendants. This was found to not be a sufficient use of traditional investigative techniques to make the wiretap necessary. Other traditional measures such as trash searches, pole cameras and data base inquires had not been used. (The affidavit must be able to "truthfully claim that traditional techniques had been tried and had failed"). *United States v. Landeros-Lopez*, 718 F.Supp.2d 1058 (D.Ariz. 2010).

E. No Time Requirement

1. "There is no rule on the amount of time investigators must try and fail, using other methods, before turning to a wiretap application,' *United States v. Nelson-Rodriguez*, 319 F.3d 12, 33 (1st Cir.2003)." *United States v. Cartagena*, 593 F.3d 104, 110 (1st Cir. 2010).

F. Boilerplate

1. When presented in an affidavit in support of a wiretap order, conclusory statements or boilerplate recitations of difficulties inherent in any investigation do not satisfy the statutory requirement of showing necessity for wiretapping. *State v. Ring*, 200 Ariz. 267, 25 P.3d 1139 (2001), certiorari granted 122 S.Ct. 865, 534 U.S. 1103, 151 L.Ed.2d 738, reversed 122 S.Ct. 2428, 536 U.S. 584, 153 L.Ed.2d 556, on remand 204 Ariz. 534, 65 P.3d 915.
2. "[B]oilerplate assertions are unsupported by specific facts relevant to the particular circumstances of this case and would be true of most if not all narcotics investigations." *United States v. Blackmon*, 273 F.3d 1204, 1210 (2001).
3. "It is insufficient just to show that gambling was the subject of the investigation and that gambling cases are difficult to solve." *State v. Politte*, 136 Ariz. 117, 127, 664 P.2d 661, 672 (1982).

4. Affidavits in support of wiretaps must deal in truthful specifics, not in untruthful specifics or vague generalities. The affidavit must show why traditional investigative techniques are or would be ineffective in the case at hand, not why such techniques are less than optimal in broad categories of cases. *United States v. Landeros-Lopez*, 718 F.Supp.2d 1058 (D.Ariz. 2010).

G. Hearing On Necessity Issue Alone Should Not Be Required

1. *United States v. Oregon-Cortez*, 244 F.Supp. 1167 (2003).

H. Necessity/Exhaustion & Spins:

1. All Documents Must Be Reviewed

- a. *United States v. Nelson-Rodriguez*, 319 F.3d 12, 33, fn. 3 (1st Cir. 2003)
- b. *United States v. Mack*, 272 F.Supp.2d 1174 (D.Colo., 2003)
- c. *People v. Campbell*, 678 P.2d 1035 (Colo.App.1983)(documents attached to and incorporated in an affidavit by reference fall within the four corners of the affidavit)
- d. *United States v. Merton*, 274 F.Supp.2d 1156 (D.Colo., 2003)(prior necessity findings are not negated when investigation spins to a new phone)
- e. *State v. Moore*, 309 S.W.3d 512 (Tenn.Crim.App.,2009)(because the application incorporated by reference the previous applications there was a sufficient showing of necessity)
- f. *People v. Gant*, 9 Misc.3d 611, 802 N.Y.S.2d 839 (N.Y.Co.Ct.,2005)("spin-off" affidavit was properly authorized even though no attempt was made to conduct an independent investigation to determine necessity of the eavesdropping warrants for the spin since probable cause existed for the authorization and no misleading statements were contained in the affidavit)
- g. *People v. Roberts*, 184 Cal.App.4th 1149, 109 Cal.Rptr.3d 736 (Cal.App.4 Dist., 2010)

2. All Prior Documents Should Be Incorporated, Not Compared

- a. Although the application for the Defendant's phone added no more information other than noting that without previous wiretaps police would not have discovered the extent or substance of the criminal association between the Defendant and the initial target, the previous applications were in fact incorporated by reference into this application. *State v. Moore*, 309 S.W.3d 512 (Tenn.Crim.App., 2009)

3. No Additional Investigation Required As Long As Explanation Given

- a. The Wiretap Act (of Tennessee) does not require the police to do additional investigation provided they explain why other investigative techniques reasonably appear to be unlikely to succeed if tried or to be too dangerous. "In our view, again, the information contained in previous wiretap applications and properly incorporated by reference into the [Defendant's telephone] application retains its relevance and applicability due to the Defendant's suspected membership in the drug-trafficking organization." *State v. Moore*, 309 S.W.3d. at 518 (2009).
- b. Appellate court rejected defendant's argument that the warrant applications to his phone were improper "spin-offs", that is, when law enforcement shifted its focus to him from the persons originally targeted and identified in the initial warrants, there was no attempt to conduct an independent investigation to determine the necessity of the eavesdropping warrants with respect to him. *People v. Gant*, 9 Misc.3d 611, 802 N.Y.S.2d 839 (N.Y.Co.Ct.,2005).

- c. "The Defendants' interpretation of 'independent' [investigation] is too literal. While it is true that the Government first learned of Mark Williams from wiretapping [one of the other targeted organization's] telephone, it does not follow that *all* of the information contained in the Government's 'full and complete statement' concerning the [other two] organizations is irrelevant to the 'full and complete statement' for the Mark Williams wiretap. There is necessarily some overlap in the analysis due to the interrelatedness of the [other two] and Mark Williams organizations as reflected in this Affidavit." *United States v. Merton*, 274 F.Supp.2d 1156 (D.Colo.,2003).
- 4. No Time Requirement on Spins
 - a. *People v. Roberts*, 184 Cal.App.4th 1149, 109 Cal.Rptr.3d 736 (Cal.App.4 Dist., 2010)(three weeks passed between initial interception and spin to new target's line)
 - b. *State v. Moore*, 309 S.W.3d 512 (Tenn.Crim.App., 2009)(spins to new lines varied from one day, to six days, to fourteen days, to seventeen days, to twenty-five days, with the first spin being only fourteen days).
 - 5. LE Must Pause To Consider
 - a. The Government "must always 'paus[e] to consider whether normal investigative procedures could be used effectively, particularly in light of any evidence obtained as a result of each succeeding wiretap.", *United States v. Hernandez-Sendejas*, 268 F.Supp.2d 1295 (D.Kan., 2003), *citing United States v. Castillo-Garcia*, 117 F.3d 1179, 1196 (10th Cir.1997).
 - 6. Boilerplate & Spins
 - a. "It is true that the Government included in each application a great deal of information from prior applications, but there is nothing improper in that fact. Each succeeding affidavit was updated with information gathered in the ongoing investigation, and the updated information served to bolster the Government's claim that normal methods of investigation were not adequate." *United States v. Hernandez-Sendejas*, 268 F.Supp.2d 1295 (D.Kan., 2003).
 - b. "Even though many of the same facts were previously offered in support of the [prior] wiretap, it is apparent that the nature of the investigation had not substantially changed in the intervening time period." *United States v. Garcia*, 232 F.3d 1309, 1315 (10th Cir.2000).

V. Minimization

A. In General

- 1. Wiretap met statutory requirement of being conducted so as to minimize interception of communications not otherwise subject to interception; wiretapping involved close judicial supervision, and minimizing the interceptions was made difficult by short duration of most intercepted calls, by the tendency of persons being investigated to jump from topic to topic in conversations and by uncertainty regarding the number of people involved in conspiracy. *State v. Ring*, 200 Ariz. 267, 25 P.3d 1139 (2001), certiorari granted 122 S.Ct. 865, 534 U.S. 1103, 151 L.Ed.2d 738, reversed 122 S.Ct. 2428, 536 U.S. 584, 153 L.Ed.2d 556, on remand 204 Ariz. 534, 65 P.3d 915.

2. Sufficient minimization of interception of communications occurred where orders authorizing taps required reports to be filed with judge every other day except weekends, judge visited wire intercept room to observe procedure being utilized, when pattern of innocent calls developed, officers ceased monitoring those calls, and monitoring was never done without recording conversations. *State v. Olea*, 139 Ariz. 280, 678 P.2d 465 (App. Div.1 1983).
3. Monitoring of calls between defendant and his wife spouse did not violate minimization requirements where defendant was principle in investigation and it was reasonable to attempt to determine nature of his activities, and officers legitimately anticipated that extent of defendant's participation in drug conspiracy would be disclosed in conversations with spouse. *State v. Olea*, 139 Ariz. 280, 678 P.2d 465 (App. Div.1 1983).
4. "Whether [an] intercept was conducted in a manner to minimize unauthorized interceptions must be determined objectively. *Scott v. United States*, 436 U.S. 128, 137-38, 98 S.Ct. 1717, 1723, 56 L.Ed.2d 168 (1978). Thus, the minimization inquiry turns on the 'objective reasonableness without regard to the underlying intent or motivation' of the law enforcement officers conducting the intercept. *Id.* at 138, 98 S.Ct. at 1723." *United States v. Moran*, 349 F.Supp.2d 425 (N.D.N.Y.,2005).
5. Factors to consider in determining whether the intercepts were objectively reasonable for minimization purposes include the focus of the investigation (widespread or narrow); the normal usage of the telephone; and the time during the authorized period when the nonrelevant calls were intercepted. *United States v. Moran*, 349 F.Supp.2d 425 (N.D.N.Y.,2005).
6. In determining whether there was proper minimization, it may be pertinent but not dispositive to look at the number of non-relevant calls compared to the total number of intercepted calls. *United States v. Moran*, 349 F.Supp.2d 425 (N.D.N.Y.,2005).
7. "The Government bears the initial burden of establishing that minimization requirements have been met." *United States v. Gotti*, 42 F.Supp.2d 252, 268 (S.D.N.Y.1999) (citing *United States v. Cirillo*, 499 F.2d 872, 880-81 (2d Cir.1974)). *United States v. Moran*, 349 F.Supp.2d 425 (N.D.N.Y.,2005).

B. Privileges

1. Attorney Client

- a. "The test for determining whether a communication is protected by the attorney-client privilege is a subjective one; it focuses primarily on the state of mind of the client. *Alexander v. Superior Court*, 141 Ariz. 157, 162, 685 P.2d 1309, 1314 (1984); *Foulke v. Knuck*, 162 Ariz. 517, 520, 784 P.2d 723, 726 (App.1989)." *State v. Fodor*, 179 Ariz. 442, 880 P.2d 662 (Ariz.App. Div. 1,1994).
- b. "The trial court must examine the circumstances under which the communication was made. *Alexander*, 141 Ariz. at 162, 685 P.2d at 1314; *Foulke*, 162 Ariz. at 520, 784 P.2d at 726. From those circumstances, the court must decide whether the party consulting the attorney believes that he or she is approaching the attorney in a professional capacity and with the intent of securing legal advice. *Alexander*, 141 Ariz. at 162, 685 P.2d at 1314; *Foulke*, 162 Ariz. at 520, 784 P.2d at 726." *State v. Fodor*, 179 Ariz. 442, 880 P.2d 662 (Ariz.App. Div. 1,1994).
- c. The fact that a consultation is relatively brief does not negate the establishment of an attorney-client relationship. *Foulke*, 162 Ariz. at 520, 784 P.2d at 726." *State v. Fodor*, 179 Ariz. 442, 880 P.2d 662 (Ariz.App. Div. 1,1994).

- d. **The “Crime-Fraud” Exception to the Attorney-Client Privilege:** “[T]he crime-fraud exception to the attorney-client privilege is recognized in Arizona. *Buell v. Superior Court*, 96 Ariz. 62, 68, 391 P.2d 919, 924 (1964); *Pearce v. Stone*, 149 Ariz. 567, 572-73, 720 P.2d 542, 547-48 (App.1986).” *State v. Fodor*, 179 Ariz. 442, 880 P.2d 662 (Ariz.App. Div. 1,1994).
- e. To assert that the crime-fraud exception, the state is obligated to make a *prima facie* showing that the attorney was retained by the client for the express purpose of promoting intended or continuing criminal or fraudulent activity. *State v. Fodor*, 179 Ariz. 442, 880 P.2d 662 (Ariz.App. Div. 1,1994), *citing United States v. de la Jara*, 973 F.2d 746, 748 (9th Cir.1992); *Buell*, 96 Ariz. at 68, 391 P.2d at 924; *Pearce*, 149 Ariz. at 572-73, 720 P.2d at 547-48.
- f. Other Jurisdictions
 - i. “[T]he mere fact that an attorney was involved in a communication does not automatically render the communication subject to the attorney-client privilege.’ *Motley v. Marathon Oil Co.*, 71 F.3d 1547, 1550-51 (10th Cir.1995), *cert. denied*, 517 U.S. 1190, 116 S.Ct. 1678, 134 L.Ed.2d 781 (1996).” *United States v. Johnston*, 146 F.3d 785 C.A.10 (Okla.),1998.
 - ii. In order to be covered by the attorney-client privilege, a communication between a lawyer and client must relate to legal advice or strategy sought by the client. *United States v. Johnston*, 146 F.3d 785 (C.A.10 (Okla.),1998).
 - iii. “We also find no merit in the defendant’s argument that the conversations were privileged because, rather than demonstrating that he was participating in a drug conspiracy, they show that he was actually providing legal advice to Jarvis regarding how to withdraw from a conspiracy. The district court rejected the argument in denying the motion to suppress, and the jury subsequently rejected it as well when it returned a guilty verdict against the defendant. ‘The attorney-client privilege does not apply where the client consults an attorney to further a crime or fraud.’ *In re Grand Jury Proceedings*, 857 F.2d 710, 712 (10th Cir.1988) (*citing Clark v. United States*, 289 U.S. 1, 53 S.Ct. 465, 77 L.Ed. 993 (1933)).” *United States v. Johnston*, 146 F.3d 785 (C.A.10 (Okla.),1998).
- 2. Physician Patient
 - a. Government’s interception of target’s conversations with her psychotherapists did not require suppression or a *Kastigar* hearing because the intercepted conversations were not compelled and the privilege at issue is not a constitutional one. *United States v. Squillacote*, 221 F.3d 542 (C.A.4 (Va.), 2000).
- 3. Marital Privilege
 - a. No per se bar in monitoring privileged calls as long as the agents’ minimization of such calls is conducted in a reasonable manner. *United States v. Goffer*, 756 F.Supp.2d 588 (U.S.D.C., N.Y., 2011).
 - b. No suppression of call between husband and wife was not warranted because agents’ acted reasonably. *United States v. Goffer*, 756 F.Supp.2d 588 (U.S.D.C., N.Y., 2011).

VI. Sealing the Lines

A. In General (AZ Law)

1. Seal need only be affixed to wiretap tapes after authorization for tap has expired or tap has been terminated by police. *State v. Olea*, 139 Ariz. 280, 678 P.2d 465 (App. Div.1 1983).
2. Where defendants expressly stipulated as to accuracy, completeness, and integrity of tapes, failure to seal tapes for more than eight days in case of one tape and more than 50 days following termination of tap by police in case of another tape did not require suppression of tapes. *State v. Olea* 139 Ariz. 280, 678 P.2d 465(App. Div.1 1983)

B. Other Jurisdictions

1. Under federal wiretapping statutes, orders extending the interceptions do not erase Government's obligation to seal, thus, sealing must occur at the expiration of the original orders. *United States v. Hermanek*, 289 F3d 1076 (9th Cir. 2002).

VII. Notification Requirements

A. In General

1. Government did not "deliberately and advertently" flout the statutory notification requirements, and, in any event, any delay in providing defendants with notice regarding the Title III intercepts did not prejudice them. Therefore, suppression of the interceptions was not required. *United States v. Robinson*, 513 F.Supp.2d 169 (M.D.Pa.,2007)

VIII. Emergency Wiretaps

A. Is A.R.S. § 13-3015 unconstitutional?

1. Arizona Courts are to presume that statutes are constitutional and should not declare an act of the legislative body unconstitutional unless satisfied beyond a reasonable doubt that the act conflicts with state or federal constitutions. *State ex rel. Thomas v. Foreman*, 211 Ariz. 153, 156 ¶ 12 (Ct. App. 2005). Furthermore, if possible, the courts are to interpret statutes to uphold their constitutionality. *Bus. Realty of Arizona, Inc. v. Maricopa County*, 181 Ariz. 551, 559 (1995)

B. Is A.R.S. § 13-3015 overbroad because it does not define "emergency situation"?

1. Primary consideration re: overbreadth is whether the statute is designed to punish activities that are not constitutionally protected and includes within its scope activities which are constitutionally protected. See *State v. Poshka*, 210 Ariz. 218, 221, 109 P.3d 113, 116 (App. 2005); *State v. Brown*, 207 Ariz. 231, 237, 85 P.3d 109, 115 (App. 2004).
2. "[I]n construing statutes, '[w]ords and phrases shall be construed according to the common and approved use of the language. Technical words and phrases and those which have acquired a peculiar and appropriate meaning in the law shall be construed according to such peculiar and appropriate meaning.' A.R.S. § 1-213 (2002)." *Bentley v. Building Our Future*, 217 Ariz. 265, 172 P.3d 860 (Ariz.App. Div. 1, 2007).

C. Does A.R.S. § 13-3015 violate the doctrine of separation of powers by allowing the executive branch to usurp the power of the judiciary to review wiretap orders?

1. Although the Arizona Constitution divides the powers of government into the legislative, judicial, and executive branches, common boundaries exist among the branches, and the doctrine of separation of powers does not require a "hermetic sealing off" of one branch from another. *State v. Prentiss*, 163 Ariz. 81, 84-85, 786 P.2d 932, 935-36 (1989); *State v. Gilfillan*, 196 Ariz. 396, 403, 998 P.2d 1069, 1076 (App. 2000).
2. "More than one department may have a legitimate and constitutionally permitted involvement in the same area [and] Department roles legitimately overlap in the attempt to prevent and punish criminal activity." *State v. Ramsey*, 171 Ariz. 409, 413, 831 P.2d 408, 412 (App.1992) (citations omitted).

D. What constitutes an emergency situation?

1. The United States Department of Justice United States Attorneys' Manual reads, "The only situation which will likely constitute an emergency are those involving an imminent threat to life, i.e., a kidnapping or hostage taking." U.S. Attys. Man. 9-7.112.
2. The defendant and two others kidnapped a bank manager and attempted to extort monies from the bank. The court held that an emergency situation existed within the terms of the federal statute to justify the emergency interception and retroactive judicial approval. *Nabozny v. Marshall*, 781 F.2d 83 (C.A.6 Ohio 1986).
3. During the course of a conventional wiretap, law enforcement learned that they had been inadvertently intercepting conversations of someone who was not a target of their investigation. When they advised the prosecutor of the error, the prosecutor instructed the officers to continue monitoring and advised them that they would need to seek an amendment of the original court-authorized wiretap. However, due to various circumstances, the government did not obtain the amendment until seventeen days later. In reviewing whether this seventeen-day delay should cause suppression of the interceptions obtained during that time frame, the Second Circuit deemed the delay to be synonymous to a warrantless wiretap and, therefore, looked to the emergency interception statute. It stated that the federal statute "prohibits warrantless eavesdropping, except under two specially defined circumstances, i.e. national security and an emergency." It then found that the failure to amend the eavesdropping warrant was not justified by national security considerations or by the presence of an emergency, and even if the circumstances that caused the delay could constitute an emergency, suppression was still warranted because it failed to secure court-authorization within the forty-eight hours of the initial "emergency interception". The Court went on to say that "Congress had in mind by use of the term 'emergency' an important event, limited in duration, which was likely to occur before a warrant could be obtained. Senate Rpt. No. 1097, 1968 U.S.Code Cong. and Admin. News, pp. 2112, 2193." *United States v. Capra*, 501 F.2d 267 (2d Cir.1974).
4. In suppressing the evidence from the emergency wiretap the District Court held:
[I]n this Court's view, the statutory requirement of immediacy mandates the imposition of a time limitation. [(Footnote omitted.)] The U.S. Attorney admitted, in response to questioning by this Court at oral argument, that if law enforcement agents know the bank robbery were going to take place in eight days, then no emergency would exist. The statute's provision, that an emergency must require interception before judicial approval can be obtained with due diligence, seems to indicate that there must be evidence that the event causing the danger of death or injury will take place in two days at the very most. Under certain facts even that time period may not qualify as sufficiently immediate.

In the present case, the affidavits in support of the emergency wiretaps contain no evidence indicating that the bank robbery was going to happen immediately or even within eight days. As of November 20, the date of the first emergency authorization, the authorities knew only that a confidential informant had stated twenty days ago, on October 31, that Dougherty and Conner were planning a 'big job' within the next sixty days. They also knew, through a conversation between Conner and Butcher that was intercepted on November 9, 1986, that Dougherty was sick and Conner had been unable to discuss the plan for the bank robbery with him. These facts certainly cannot support a finding of an immediate danger of death or serious bodily injury.

* * * * *

At no point did the situation rise to the level of an imminent danger of serious injury or death. The intercepted conversations revealed that the bank robbery was still in the planning stage. In fact, Butcher, who was going to participate in the robbery, was in a different part of the country from the other suspects when the first emergency wiretaps were authorized. . . . An emergency must arise quickly and before there is time to seek judicial approval.

E. Exhaustion and Emergency Wiretaps

1. "Often in criminal investigations a meeting will be set up and the place finally chosen almost simultaneously. Requiring a court order in these situations would be tantamount to failing to authorize the surveillance." *United States v. Crouch*, 666 F.Supp. 1414, 1416 (D.C.N.D., CA. 1987), *citing*, 1968 U.S. Code Cong. & Admin. News 2112, 2193.

F. Forty-Eight Hour Requirement

1. Although the eavesdropping statute required that the application for subsequent judicial approval be submitted within forty-eight hours of the intercept, the interceptions did not have to be suppressed because the application was submitted late, since the state made every effort to comply with the statutory safeguards and gained no tactical advantage). *People v. Rogers*, 141 Ill.App.3d 374, 490 N.E.2d 133 (Ill.App.2 Dist., 1986)

G. Is an Evidentiary Hearing Required?

1. "In *State v. Hocker*, 113 Ariz. 450, 455, fn1, 556 P.2d 784, 789 (1976), the Arizona Supreme Court examined Arizona Rule of Criminal Procedure 16.2 in relation to a defendant's threshold burden on a motion to suppress. The court in *Hocker* stated that "[d]efendant may fulfill this burden of going forward by bringing to the court's attention — through argument, legal theory or testimony — the defects in the state's argument." *Id.* Petitioner's argument in his motion to suppress and supplemental memorandum below raises colorable issues at least as to whether the County Attorney ordered the interceptions under "emergency" conditions and whether the State brought the matter to a judge "as soon as practicable" as required by A.R.S. § 13-3015. The threshold showing that mandates a hearing, however, does not determine the ultimate resolution whether evidence should be suppressed. To grant a defendant's motion to suppress, there must be proof that the intercept was legally unsupportable. *State v. Fimbres*, 152 Ariz. 440, 441, 733 P.2d 637, 638 (App. 1986)." Order of Ariz.Ct. of Apps. Div 1, December 19, 2007.

IX. *Franks v. Delaware*

A. Challenging the Truthfulness of the Affidavit/Burden

1. The United States Supreme Court declared in *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), that the truthfulness of factual statements contained in an affidavit supporting a warrant may be challenged by a defendant. *State v. Carter*, 145 Ariz. 101, 108, 700 P.2d 488, 495 (1985). See also *State v. Spreitz*, 190 Ariz. 129, 145, 945 P.2d 1260, 1276 (1997) and *State v. Buccini*, 167 Ariz. 550, 554, 810 P.2d 178, 182 (1991).
2. When such a challenge is made, the evidence seized pursuant to the warrant will be deemed inadmissible if the defendant can make a preliminary showing by a preponderance of the evidence that the affiant knowingly or intentionally made a false statement or omitted material information which was made in reckless disregard of the truth; and after excising the false information or after including the omitted material, the remaining information is insufficient to support a finding of probable cause. *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978).
3. To prove that the affiant acted in reckless disregard for the truth, the defendant must demonstrate that the affiant entertained serious doubts about the veracity of the affidavit. It is not sufficient to show mere innocent or negligent errors. *State v. Carter*, 145 Ariz. 101, 108, 700 P.2d 488, 495 (1985) and *State v. Poland*, 132 Ariz. 269, 279, 645 P.2d 784, 794 (1982).
4. "There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. They should point out specifically the portion of the warrant affidavit that is claimed to be false; and they should be accompanied by a statement of supporting reasons. Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained." *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978).

B. Hearing required?

1. Even after making a preliminary showing, a defendant is not entitled to a hearing if, after excising the allegedly false information from the affidavit and including the alleged omissions, "there remains sufficient content in the (wiretap) affidavit to support a finding of probable cause" or necessity. *United States v. Landeros-Lopez*, 718 F.Supp.2d 1058 (D.Ariz. 2010).
2. Affidavits in support of wiretaps must deal in truthful specifics, not in untruthful specifics or vague generalities. The affidavit must show why traditional investigative techniques are or would be ineffective in the case at hand, not why such techniques are less than optimal in broad categories of cases. *United States v. Landeros-Lopez*, 718 F.Supp.2d 1058 (D.Ariz. 2010).

X. Miscellaneous

A. "Nebbia" Hearings

1. Inquiry into the source of bond funds for defendant prosecuted for conspiracy to possess and transport marijuana, conducting an illegal enterprise, and money laundering could be justified if defendant posed a flight risk, within requirements of state constitution provision stating that one purpose of bail was to protect safety of community, statutes allowing court to impose conditions deemed reasonably necessary to ensure defendant's appearance, and rule allowing court to impose additional terms deemed necessary to defendant's release. *State v. Donahoe ex rel. County of Maricopa* 220 Ariz. 126, 203 P.3d 1186 (Ariz.App. Div. 1,2009)

B. Voice Identification

1. Evidence rule relating to requirement of authentication or identification permitted bilingual state witness, who had not heard defendants in person, to give foundation testimony that the voices on wiretap tapes were those of defendants based on a comparison with verified recordings of defendants, where witness was familiar with voices on wiretap recordings as result of many hours listening to them as a monitor, transcriptionist, and translator, and witness's fluency in Spanish allowed her to become familiar with nuances and inflections in defendants' voices that might not readily be apparent to non-Spanish-speaking listener. *State v. Miller*, 226 Ariz. 202, 245 P.3d 887 (Ariz.App. Div. 2, 2010).

C. Ten Day Reports

1. Because the wiretap statute does not require progress reports, thus allowing a judge to completely dispense with the requirement, the sufficiency of any progress reports required by a wiretap order is left to the discretion of the judge issuing the order and, therefore, not subject to suppression of the wiretap. *People v. Gallegos*, 251 P.3d 1056 (Colo. 2010).

D. Notification Requirement

1. Failure to comply with the notification provision does not make an interception unlawful since the provision exists to ensure that authorized interceptions eventually become known to the subject. *People v. Gallegos*, 251 P.3d 1056 (Colo. 2010).

E. Clerical Errors

1. Minor clerical errors do not invalidate a wiretap application or order. *People v. Gallegos*, 251 P.3d 1056 (Colo. 2010).