

# Human tracking technology in mutual legal assistance and police inter-state cooperation in international crimes

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# "The Real Godfather"

- "He **never** communicated by **telephone** or issued orders directly. Instead he ran his empire through "pizzinis", tiny type-written notes that were passed through dozens of messengers before reaching their final destination, written in a code that became known as "The Provenzano Code."
- It was these notes, occasionally intercepted by police, that eventually led to his capture."

[http://news.bbc.co.uk/2/hi/programmes/this\\_world/6988976.stm](http://news.bbc.co.uk/2/hi/programmes/this_world/6988976.stm)

# Provenzano Evaded Justice for 43 Years

- “Meanwhile, Provenzano adopted an almost feline caution, **shunning the telephone** and issuing orders through small, hand-delivered notes - "pizzini" - and revealing his whereabouts to only a handful of associates.”



<http://news.bbc.co.uk/2/hi/europe/4899512.stm>

# Surveillance Devices

- “His [an investigator] enthusiasm is inspired by the contents of Provenzano’s “pizzini” notes and what the Mafia “colonels” said at meetings recorded by **hidden microphones and cameras**. For a year, the devices were installed in the Via Catania flat used by Bonura as an office, and in the sheet-metal shed squeezed among the houses and villas along Viale Michelangelo.”

[http://www.corriere.it/english/articoli/2006/06\\_Giugno/21/pizzini.shtml](http://www.corriere.it/english/articoli/2006/06_Giugno/21/pizzini.shtml)

# What Can We Learn from the Provenzano Case?

- Criminals are increasingly becoming aware of technological devices used against them for surveillance purposes
- Big criminals 'opt-out' of using technology altogether (e.g. telephones) so they or their agents cannot be traced
- Consequences of slow capture of Mafia boss meant more deaths, more drugs, more crime etc.
- Interception of paper-based records is sometimes the only intelligence that can be gathered

# Various Forms of Digital Human Tracking Technology

- Closed Circuit Television
- Biometrics
- Mobile telephone
- Global Positioning System (GPS) receiver embedded in:
  - USB stick
  - Wristwatch
  - PDA
  - In-car Navigation Unit
- Radio-frequency identification
  - Bracelet, Anklet, Wristwatch, Pendant

# Examples of 'Continuous' Human Tracking Applications

- Bushwalking
- Car rental
- Fleet management
  - Taxis, trucks etc.
- Medical Applications
  - Wander Alerts
  - Fall-down Alerts
- Prison Inmates
- WhereRU Services
- What Do Devices Tell Us About a Person?
  - ID: who?
  - Location: where?
  - Time: when?
  - Speed: how fast?
  - Distance: how far?
  - Altitude: how high?
- Keeps a chronicle, history, breadcrumb

Date: Sun, 28 Oct 2007 10:26:05 +1100  
From: Trackstick Sales<sales@trackstick.com>  
Subject: Trackstick GPS device now available  
To: <katina@uow.edu.au>

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**Trackstick II Personal Tracker** Tracksticks are tiny GPS location recorders capable of continuously logging their own location histories for extended periods of time. The Trackstick records its own location, time, date, speed, heading and altitude at preset intervals. Traveled routes can be viewed directly in Google Earth. Includes GPX photo stamping feature for adding your favorite photos to you own maps., **\$179.00**

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ACCOUNT FUNCTIONS

STOREFRONT

LOGOFF

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## Select Locator

**STEP 1**

Timothy

Madison

Georgia

**STEP 2**

Choose a function from the left navigation bar. 'Locate' and 'Location History' functions are active for this demo. Click on 'Account Function' to see a sample user profile.

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Locator Contacted and  
Instructed to Report  
Location

GPS Assist Data  
Sent to Locator

Location  
Report  
Completed

29 October 2007

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**Locate For: Timothy / AB123456**

National Security



ZOOM OUT             ZOOM IN

SuperZoom for Aerial Maps

ZOOM + ZOOM ++ ZOOM +++

**Locator Tag/ ESN:**  
**Timothy / AB123456**

1) 08/07/2002 7:28:47 AM PST  
1000 Block of Heritage Oaks  
Cupertino, CA 95070

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2nd



ZOOM OUT             ZOOM IN

SuperZoom for Aerial Maps

ZOOM + ZOOM ++ ZOOM +++

**Locator Tag/ ESN:**  
**Timothy / AB123456**

1) 08/07/2002 7:28:47 AM PST  
1000 Block of Heritage Oaks  
Cupertino, CA 95070





Toggle back and forth between street and aerial view. Click through up to 12 levels of zoom. Directional buttons and center-on-click functions are not active for this demo

**STREET MAP**

**AERIAL MAP**



**Locator Tag/ ESN:**  
**Timothy / AB123456**

1) **08/07/2002 7:28:47 AM PST**  
 1000 Block of Heritage Oaks  
 Cupertino, CA 95070

ZOOM OUT [12 circles] ZOOM IN

┌ SuperZoom for Aerial Maps ┐

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Remote Unlocks	unlimited	unlimited	unlimited	unlimited
<b>Included Live Operator Assistance:</b>				
Locates, Pages or Remote Unlocks	3	4	5	5
Emergency 911 Panic Alert	4/yr	4/yr	4/yr	4/yr
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## Wherify's GPS Locator Phone



Through the convergence of Global Positioning System (GPS) and digital wireless technology - along with Wherify's patented location technologies - the GPS Locator Phone offers parents, family members and business people peace of mind knowing they can locate loved ones or valuable

property, 24-hours a day, seven days a week. The slim, small and lightweight GPS Locator Phone can fit almost anywhere...from a backpack to a purse to a coat pocket to the family car.

Whether at work, home or traveling simply use the Internet or any phone to quickly identify the location of the device within feet, in about a minute. In the event of an emergency use the 911-response feature and local police will be dispatched.

The GPS Locator Phone also gives the person carrying it a new level of security knowing they can also request an





# So What Do These Digital Devices Have to do with the Law?

- Formal mutual legal assistance was developed during the 1960s
- Based on the principle of comity, when the '... courts of one state address a request to those of another state for judicial assistance in the form of taking the testimony of a witness or securing tangible evidence.'
- MLA Treaties formalise this process



# Mutual Assistance Police-to-police interstate cooperation

- However, while law enforcement and intelligence cooperation is increasing, it is not regarded in the same way from a legal perspective. For instance, there are no treaties applicable to law enforcement or police cooperation as there are for mutual assistance, nor are there codes of conduct for how information should be gathered and shared between government agencies.

# Where is the Problem?

- When one considers the need for location surveillance and other forms of covert surveillance, particularly in the gathering of evidence, 'there are no legal or judicial safeguards to insure effective and regulated modalities of information-gathering and information-sharing between intelligence, law enforcement, and prosecutorial agencies.'

# MLATs and Human Rights

- MLATs in most instances contain provisions for human rights but through reservations and safeguards which are 'built-in' to protect the accused.
- MLAs can only be executed by remaining in accordance with the law of the requested state, without violating third party rights.
- *Search for and seizure of evidence* using location surveillance becomes important.

# The Nature of Evidence in Courts

- Evidence takes on two basic forms, that which is a written statement in place of oral transmission, and anything on which something can be recorded.
- High-tech gadgetry is becoming increasingly useful in storing recorded information digitally.
- 'Such evidence is deemed admissible if it contains information of probative value.'
- But digital evidence especially is prone to tampering.

# Evidence Collected Without a Warrant

- 'Implicit in the right to a fair trial is the rejection of evidence obtained in breach of fundamental human rights standards.'
- A frequent happening in international criminal proceedings is when a prosecutor does not wish to disclose their source of information for reasons of confidentiality, safety, or other.
- Quite often secret intelligence organizations are not prepared to tell the public how they obtained a particular record or document, and in many instances the evidence provided is still accepted.
- Courts are faced with a difficult choice when it is obvious that unlawful means have been used to obtain evidence- excluding the evidence may mean doing away with the reliable information, while admitting it legitimized illicit and irregular modes of investigations.

# U.S. Case Law: Beepers, GPS Tracking & Privacy

- *Olmstead v. United States*, 277 US 438 (1928)
- *Katz v. United States*, 389 US 347 (1967)
- *United States v. Knotts*, 460 US 276 (1983)
- *United States v. Karo*, 468 US 705, 707 (1984)
- *Kyllo v. United States*, 533 US 27 (2001)
- *State v. Jackson*, 76 P.3d 217, 220 (Wash 2003)
- *State v. Peterson*, (Cal 2004)
- *People v. Lacey*, Indictment No 2463N/02, 2004 WL 1040676 (Nassau, NY County Ct. May 6, 2004)
- *People v. Gant*, 9 Misc 3d 611 (Westchester, NY County Ct. 2005)

# What Do The U.S. Cases Teach Us?

- Contradictions abound:
  - Fourth Amendment vs State Legislation
    - Seemingly contradictory legislation
    - Some courts accept GPS as evidence while others do not
  - Only a few courts have specifically considered whether the monitoring of GPS tracking devices is distinguishable from the monitoring of the beepers in Knotts and Karo
- Consider these in an international context?

# The Divide Between a Private vs Public Space is Blurring

- Eavesdropping is different to tail-gating a vehicle in the public space
  - No reasonable expectation of privacy
- In *Kyllo v. United States* the Supreme Court declared
  - protections within the boundaries of the home were only limited to devices that were not in “general public use”.



# The Problem with GPS Tracking Devices

- “[U]se of GPS tracking devices is a particularly intrusive method of surveillance, making it possible to acquire an enormous amount of personal information about a citizen under circumstances where the individual is unaware that every single vehicle trip taken and the duration of every single stop may be recorded by the government.”

# New Innovations Pose Legal and Political Challenges

- New innovations pose legal and political challenges but a balance must be struck between their usage for legitimate purposes such as in the case of fulfilling an MLA request or formalised inter-state police cooperation, and those that may be considered illegal and a breach of citizen privacy.
- The growing problem is not that these technologies are diffused commercially but the possibility that if they are used for law enforcement purposes, they will eventually find their way into government mandated schemes for the general populous.
- Jacques Ellul said: "To be sure of apprehending criminals, it is necessary that everyone be supervised."

# Dilemma- Consent vs Conviction

- Do you tell a criminal you are tracking them so that you can gather evidence to convict them?
- Do you place faith in the warrant process to work appropriately?
- Is there adequate time to apply for a warrant or is the fugitive going to get away?
- Do you trust law enforcement agents to act appropriately in the collection and sharing of evidence?
- Do you think the technology is accurate enough, 24x7 to produce the right data characteristics?

# Four Recommendations: *The via media?*

- Parts of the solution may include the constitution of uniform procedures to be set up and adopted for inter-state police cooperation, just as there currently are treaties for MLA requests
- Police self-regulation to be more explicit about the acceptable use of human tracking technologies with embedded prohibitive clauses
- Mandate for warrants and court orders to be obtained prior to the implementation and monitoring of an individual
- Guarding against intrusive tracking technologies which may be injected within the body in the future if you are suspected of a crime