

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 03/29/2002

To: Counterterrorism  
Counterintelligence

Attn: Section and Unit Chiefs  
Section and Unit Chiefs

From: Office of the General Counsel  
National Security Law Unit (NSLU)/Room 7975

Contact: [Redacted]

Approved By: Bowman M E  
Williams Jeff

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Drafted By: [Redacted]

Case ID #: 66F-HQ-A1247863 (Pending)

Title: PROCEDURAL GUIDANCE RELATED TO  
NEW FISA PEN REGISTER AUTHORITY

Synopsis: Summarizes FISA pen register/trap and trace  
authorities and reiterates procedures for requesting such  
authority.

Reference: 66F-HQ-A1247863 Serial 70

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Details: Changes to FISA pen register/trap and trace authorities  
under the "USA Patriot Act" were summarized in the above  
referenced electronic communication. In response to requests for  
clarification of procedures relating to requests for FISA pen  
register/trap and trace authorities, the National Security Law  
Unit (NSLU) is providing the following guidance.

I. Legal Basis for Initiation of FISA Pen Register/Trap and Trace

The "USA Patriot Act" revised the legal standard for  
initiating a FISA pen register/trap and trace.<sup>1</sup> These Orders are  
now available whenever the FBI certifies that "the information  
likely to be obtained is foreign intelligence information not  
concerning a United States person, or is relevant to an ongoing  
investigation to protect against international terrorism or  
clandestine intelligence activities, provided that such  
investigation of a United States person is not conducted solely

<sup>1</sup> 50 U.S.C. § 1842

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upon the basis of activities protected by the First Amendment to the Constitution."<sup>2</sup>

Use of this technique is authorized in full investigations properly opened under the Attorney General Guidelines for FBI Foreign Intelligence Collection and Foreign Counterintelligence Investigations (FCIG). The FCIG require that full foreign counterintelligence investigations be personally authorized by the relevant Special Agent in Charge, or Assistant Special Agent in Charge with exclusive responsibility for a specific foreign counterintelligence program following written notification to FBIHQ.

## II. Process for Obtaining Pen Register/Trap and Trace Authority

No procedural changes were required as the result of revisions made by the "USA Patriot Act." Requests for pen register/trap and trace authority should be submitted with an appropriate letter head memorandum (LHM) to the Counterterrorism Division (CTD) or Counterintelligence Division (CD) unit with management responsibility for the program. The approval of the Unit Chief, Section Chief, and Assistant Director with oversight responsibility is required on the file copy of the LHM. The cognizant unit will forward the LHM to the NSLU, Office of the General Counsel, for legal review. Following approval of the request, the CTD or CD unit will forward the LHM to the Office of Intelligence Policy and Review, U.S. Department of Justice, which will prepare the filing and submit it to the FISA Court. A CTD or CD Supervisory Special Agent will be the affiant verifying the factual content of the application.

The following information should be included in the LHM: the name of subject; field office, case agent, point-of-contact information; type of authority requested (pen register/trap and trace); whether it is an original request or a renewal; a list of the telephone numbers or other communication devices that will be covered by the order along with carrier information; and a brief statement explaining the nature of the investigation and the relevance to that investigation of the information sought through the pen register/trap and trace.

NSLU and OIPR plan to develop additional guidance to further streamline this process. Questions relating to these matters may be directed to Assistant General Counsel [REDACTED]

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LEAD(S):

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<sup>2</sup> 50 U.S.C. § 1842(a)(1).

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Set Lead 1: (Adm)

ALL RECEIVING OFFICES

Distribute to relevant personnel involved in FCI/IT investigations.

CC:

- ◆◆ 1 - Mr. Parkinson
- 1 - Mr. Bowman
- 1 - NSLU Attorneys