

Kenney, Patricia (USACAN)

From: Waldinger, Kyle (USACAN)
Sent: Monday, May 23, 2011 12:48 PM
To: Beausey, Karen (USAMA); USACAN-Attorneys-Narcotics
Subject: RE: IMPORTANT INFORMATION RE: PEN REGISTERS

And just to be super clear, the agents may not use the term "WIT" (or "WITT") but rather may be using the term "Triggerfish" or the term "Stingray," so please make sure that the agents know what you are referring to.

From: Beausey, Karen (USACAN)
Sent: Monday, May 23, 2011 12:17 PM
To: USACAN-Attorneys-Narcotics
Subject: FW: IMPORTANT INFORMATION RE: PEN REGISTERS
Importance: High

Hi everyone. Miranda asks 4 questions, but I think we need an answer to a 5th one as well: whether or not the initial intended purpose of the pen register was to use the WIT technology to locate someone, did the agents eventually use the pen in that way? In other words, a pen might have started out as just a pen, and later the agents decided to use the order to also attempt to locate the target. They may or may not have told you about this decision. So, check in with your agents and find out whether they have been using pen register orders to locate targets with the WIT boxes, whether or not they started out intending to do so.

Thanks.

Karen

From: Kane, Miranda (USACAN)
Sent: Monday, May 23, 2011 11:55 AM
To: USACAN-Attorneys-Criminal
Subject: IMPORTANT INFORMATION RE: PEN REGISTERS
Importance: High

Effective immediately all pen register applications and proposed orders must be reviewed by your line supervisor before they are submitted to a magistrate judge.

As some of you may be aware, our office has been working closely with the magistrate judges in an effort to address their collective concerns regarding whether a pen register is sufficient to authorize the use of law enforcement's WIT technology (a box that simulates a cell tower and can be placed inside a van to help pinpoint an individual's location with some specificity) to locate an individual. It has recently come to my attention that many agents are still using WIT technology in the field although the pen register application does not make that explicit.

While we continue work on a long term fix for this problem it is important that we are consistent and forthright in our pen register requests to the magistrates which is why I am

adding this additional review. I anticipate that I will be able to eliminate the line supervisor approval requirement once we have an opportunity to discuss the issue with the bench and revise the language in our common application. In the meantime, I appreciate your cooperation in this matter.

In addition, if you have requested a pen register in the last six months – since January 2011 - please provide the following information to your supervisor as soon as possible: 1) Was the pen register approved by a magistrate? 2) Which magistrate reviewed it? 3) Was the purpose of the pen register to locate a person? 4) Did the agency requesting the pen register use WIT technology? This information will be extremely valuable to me in my discussions with the magistrate judges.

Again, thank you in advance for your assistance. I will update everyone about the status of this issue at our Criminal Division Meeting on June 7, 2011.

Miranda