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Can you hear me now? Feds admit FBI warrantless cellphone tracking 'very common'

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By [Shaun Waterman](#) - The Washington Times

Friday, March 29, 2013

[FBI](#) investigators for at least five years have routinely used a sophisticated cellphone tracking tool that can pinpoint callers' locations and listen to their conversations — all without getting a warrant for it, a federal court was told this week.

The use of the "Stingray," as the tool is called, "is a very common practice" by federal investigators, [Justice Department](#) attorneys told the U.S. District Court for Arizona Thursday, according to the [American Civil Liberties Union](#).

Installed in an unmarked van, Stingray mimics a cellphone tower, so it can pinpoint the precise location of any mobile device in range and intercept conversations and data, said [Linda Lye](#), staff attorney at the [ACLU](#) of Northern California in a blog post about the case.

In a rare public discussion of federal electronic surveillance capabilities and authorities, [Justice Department](#) lawyers told the court hearing that, instead of a warrant, the [FBI](#) operates Stingray and other cellphone-mimicking technology under the authority of "pen register" orders. These court orders, also known as "tap and trace" orders, are generally issued to allow investigators to collect only so-called "metadata" — like all phone numbers calling to or called from a particular number.

But Stingray collects much more than just phone numbers and also "sweep[s] up the data of innocent people who happen to be nearby," according to the [ACLU](#) filing.

Given the broad nature of the information Stingray collects and its ability to eavesdrop on conversations, many federal judges insisted that they should be told when its use was envisaged under a tap and trace order, the [ACLU](#) filing says.

Tap and trace orders are generally more easily granted than a warrant, which requires "probable cause" under the Fourth Amendment.

But [Justice Department](#) emails that the group obtained under the federal Freedom of Information Act and filed with their brief show that government lawyers were concerned some [FBI](#) agents were not properly disclosing their use of Stingray.

"It has recently come to my attention that many agents are still using [Stingray] technology in the field although the pen register application does not make that explicit," reads one May 2011 email from a [Justice Department](#) attorney.

"It is important that we are consistent and forthright in our pen register requests to the magistrates," the attorney concludes.

The [ACLU](#) has filed an amicus brief in the case *U.S. vs. Rigmaiden*. An amicus brief is filed not by the defendant or anyone on his behalf, but by another interested party.

In the case, first brought in 2008, Mr. Rigmaiden, charged with identity theft, is seeking to suppress evidence obtained by Stingray on the basis that using it constitutes a search and requires a probable cause warrant.

The [Department of Justice](#) declined a request for comment, as neither they nor the [FBI](#) generally speak about ongoing litigation.

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