

University of Michigan Journal of Law Reform Caveat

Volume 45 | Issue 1


2012

The Latest 4th Amendment Privacy Conundrum: "Stingrays"

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Recommended Citation

Max Bulinski, Comment, *The Latest 4th Amendment Privacy Conundrum: "Stingrays"*, 45 U. MICH. J. L. REFORM CAVEAT 12 (2012).
Available at: http://repository.law.umich.edu/mjlr_caveat/vol45/iss1/3

This Comment was originally cited as Volume 1 of the University of Michigan Journal of Law Reform Online. Volumes 1, 2, and 3 of MJLR Online have been renumbered 45, 46, and 47 respectively. These updated Volume numbers correspond to their companion print Volumes. Additionally, the University of Michigan Journal of Law Reform Online was renamed Caveat in 2015.

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only when the user dialed a telephone number; no information was recorded . . . unless the user attempted to make a call." Though the Patriot Act extended the scope of the Pen Register Act by including electronic communications, it also specified that the added information must be "generated by, and incidental to, the transmission of 'a wire or electronic communication.'"⁴ Because stingrays gather information from the phone which is not generated by the transfer of communication, such as location data, maybe tracking this way should not be governed by the Pen Register Act.

On the other hand, use of a stingray does not seem to intercept any *communication* at all. A police officer is free to follow a suspect, conducting surveillance. Tracking by cellphone clearly saves enormous amounts of resources. And if an individual thinks they are being followed, they can try to shake a tail. The digital version of shaking a tail in this case is fairly simple: turn off your cell phone.

4. 18 U.S.C. §3127(3).