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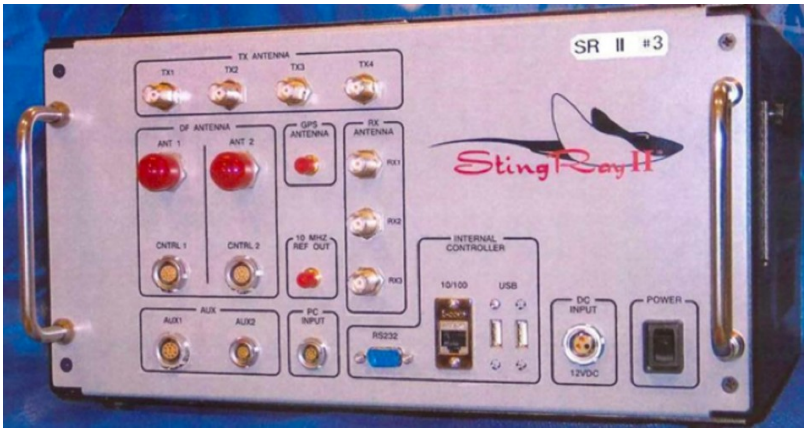
Written by **Joe Wolverton, II, J.D.** on December 21, 2015

Missouri Bill Would Block Unwarranted Stingray Surveillance



A Missouri legislator has prefiled a bill in the state senate aimed at protecting citizens' cellphones from being tracked by the so-called Stingray surveillance device. The same legislation looks to hobble the federal surveillance effort, too.

State Senator Will Kraus is the sponsor of Senate Bill 811, and on December 14 he offered the measure to be considered when the senate reconvenes in 2016.

Specifically, SB 811 would impose additional obstacles in the path of law enforcement's deployment of the Stingray device, an apparatus popular with the surveillance state's agents.

The suitcase-sized Stingray masquerades as a cell tower to trick cellphones into connecting to it. It can give police tracking identifiers for phones within a mile or more, depending on terrain. Given the mobility of the device, police who use it can triangulate a target's location with better accuracy than if they relied on data transferred by traditional cell towers. The latest iteration of the device enables the user to record conversations in addition to the tracking technology.

The text of the bill requires that law enforcement agencies to obtain a warrant before deploying the device and that the affidavit accompanying the request for a warrant contains specific information regularly required under existing state law for issuing warrants.

Additionally, the proposed law defines the precise process the courts must follow regarding how "any data, metadata, communication, or other information from a communications device obtained by the authorized use of a cell site simulator device" is disclosed or used in the prosecution of the subject of the surveillance.

In a provision providing additional levels of due process, the targets of the warrant — and any other party whose information is collected by the Stingray — must be notified of the use of the surveillance tower "no later than 90 days after the filing of the application or termination of the order."

Finally, SB 811 prohibits state surveillance resources from being used by the federal government. Specifically, the bill mandates: "No part of information obtained from a cell site simulator device and derivative evidence may be received in evidence in a proceeding of a court, grand jury, department, officer, agency, regulatory body, legislative committee or other authority of the United States, a state, or political subdivision, if the disclosure of the information would violate the statutes governing the interception of wire communications and use of cell site simulator devices."

This bill is yet another example of an attempt by a Missouri state lawmaker to stand as the barricade between the people and the forces of federal tyranny.

In the *Federalist Papers*, No. 46, James Madison expected the states to be the last line of defense between a federal government bent on breaking its constitutional chains. He expected the state

governments to serve as a "barrier against the enterprises of ambition" by those in power in the central government.

In a later document — the Virginia Resolution — Madison declared: "In case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them."

One of Madison's *Federalist Papers* co-authors, Alexander Hamilton, expressed the same sentiment this way, ""There is no position which depends on clearer principles, than that every act of a delegated authority contrary to the tenor of the commission under which it is exercised, is void. No legislative act, therefore, contrary to the constitution, can be valid."

Principles of state sovereignty and enumerated powers that couldn't be clearer to the Founders are inscrutable by contemporary politicians and pundits, however.

Fortunately, there are a few state legislators who understand the powers retained by the states or the people in every area where the federal government was not given authority by the states in the Constitution.

In the Kentucky Resolution (a companion measure to the one penned by Madison), Thomas Jefferson provided the historical details that established the proper relationship between state and federal authority:

> That the several states composing the United States of America are not united on the principle of unlimited submission to their general government; but that, by compact, under the style and title of a Constitution for the United States, and of amendments thereto, they constituted a general government for special purposes, delegated to that government certain definite powers, reserving, each state to itself, the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force; that to this compact each state acceded as a state, and is an integral party, its co-States forming, as to itself, the other party; that this government, created by this compact, was not made the exclusive or final judge of the extent of the powers delegated to itself, since that would have made its discretion, and not the Constitution, the measure of its powers; but that, as in all other cases of compact among powers having no common judge, each party has an equal right to judge for itself, as well of infractions as of the mode and measure of redress.

Again, very clear, very authoritative, very irrefutable — and very rarely practiced today.

The federal government has become the tail that wags the dog, and because of the states' substantial dependence on the former for their financial survival, the states are reluctant to set things right and force that federal beast back inside its constitutional cage.

When it comes to the Stingray, the reliance of states on the federal government's funds is very evident.

This equipment isn't cheap. According to published reports, each Stingray device costs about $350,000. Despite the cost, however, it has been reported that nearly 30 police departments admit to owning a Stingray, with about 50 other cities refusing to disclose whether or not they own one of these expensive surveillance devices.

State silence on the issue likely is an obligation imposed by "non-disclosure agreements" included by the federal government in its contracts with local and state law enforcement for purchase of the device.

While the feds paint the use of the Stingray surveillance tool as part of an "anti-terrorism" program, the truth of the matter is found in the workings of the device itself.

As explained above, the Missouri bill seeking to restrain the unwarranted use of the Stingray makes it clear that information (data, location, and communication content) from anyone within the range of the fake tower's sweep is collected along with that of the target of the tracking. That's why the bill requires law enforcement to notify anyone who was unwittingly caught in the surveillance net.

Clearly, there is no way that a law enforcement operation that permits people to be searched (even electronically) without a warrant can conform to the restrictions imposed by the Fourth Amendment.

When it comes to snooping on citizens of Missouri, state Senator Will Kraus is demanding that any agency looking to use a Stingray surveillance device must "Show Me" a warrant.