

Too Smart Phones?

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I've mentioned in previous articles that my cell phone is pretty ancient. It's a step above those old car phones that you carried around in faux leather bags. Well, our office decided that as attorneys, we need to be more accessible to our clients. Therefore, I am the proud owner of a new Android smart phone.

Now my clients can not only call me, but they can also send me email messages, text messages and I can even consult my calendar. I can dictate documents into my phone. It has a camera and also a camcorder. Some of my buddies at work showed me some applications, or apps, that I can download, allowing me to use my phone in countless other ways.

For example, I can turn my phone into a Star Trek communicator. I can take a picture of my son and turn him into Star Wars: Episode I's Darth Maul. I can also download music, movies, recipes, comic books and games.

I positively love my new phone. While I may have only used it to talk to two clients in the month I've had it, I have mastered Angry Birds. Compared to my prior phone, I can't believe what this new phone can do and how much information it can store.

I'm not alone in my reverence for smart phones – law enforcement officers also know a cell phone has a treasure trove of information in it.

For example, Abel Flores-Lopez was one of several defendants arrested in Indiana on drug charges. The police used his and his cohorts' cell phones to determine their phone numbers. With the numbers, the police subpoenaed three months' worth of each phone's call history to gather evidence on Flores-Lopez. The evidence helped convict Flores-Lopez, who was sentenced to ten years in prison.

Flores-Lopez's defense attorneys appealed his conviction, claiming that the police should have obtained a search warrant before studying his phone. The attorneys claim that without the warrant, the search was illegal; therefore, any evidence obtained from the search should be thrown out.

The U.S. Court of Appeal for the 7th Circuit disagreed. The three-judge panel compared a cell phone to a diary. The court's opinion stated, "It's not even clear that we need a rule of law specific to cell phones or other computers. If police are entitled to open a pocket diary to copy the owner's address, they should be entitled to turn on a cell phone to learn its number."

The opinion went on to say, "So opening the diary found on the suspect whom the police have arrested, to verify his name and address and discover whether the diary contains information relevant to the crime for which he has been arrested, clearly is permissible; and what happened in this case was similar but even less intrusive, since a cell phone's phone number can be found without searching the phone's contents, unless the phone is password-protected--and on some cell phones even if it is."

The court explained that during the time required to obtain a search warrant, the defendants could have wiped their phones' memories, destroying valuable evidence. The judges characterized the police's ability to obtain the phone number quickly as a "modest cost" in privacy invasion.

Hopefully I never get arrested. If I do, the police will be able to determine how many Big Macs I've eaten by viewing the history of my McDonalds app, which always shows me the way to the closest Golden Arches.