

Trends: Close Up

May 2016

Cellphones and Self-Represented Litigants

As our society becomes more dependent on mobile devices, the policy issues on allowing these devices into courtrooms become more complex.

This is particularly true for self-represented litigants in civil cases. Courts that allow attorneys to bring in these devices recognize that they are often critical for scheduling, communication, presenting evidence, and keeping up with a busy law practice.¹

The self-represented litigant is essentially the “attorney” for their own case. They are already at a disadvantage due to the lack of legal training and familiarity with court practices and procedures. Without their cellphones they are unable to communicate with family or jobs while waiting in a courtroom for their case to be called, which may take much longer than they had anticipated. Taking time off from work or being unable to fulfill family responsibilities can be especially problematic for low- and moderate-income litigants. For many individuals,

About the Series



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the cellphone or other mobile device is their only connection to the Internet. This group of individuals, described as “smartphone dependent,” are more likely to be in the 18-29 age cohort, have low income or low education, or be persons of color according to a Pew Research survey.²

The access-to-justice community has recognized the importance of providing mobile-friendly assistance to self-represented litigants not only in the United States but internationally.³ Document assembly programs using guided interviews are a tool for courts and legal aid organizations to assist self-represented litigants.

Prohibiting electronic devices in the courtroom can have a profound effect

1 Nora Sydow, *Can You Hear Me Now?*, COURT MANAGER, vol. 25, no. 2 (2010).

2 Aaron Smith & Dana Page, *U.S. Smartphone Use in 2015*, PEW RESEARCH CENTER, April 1, 2015, at http://www.pewinternet.org/files/2015/03/PI_Smartphones_0401151.pdf.

3 *4 Ways Mobile Phones Are Increasing Access to Justice* (2014) at <https://reinventingtherules.com/2014/06/17/4-ways-mobile-phones-are-increasing-access-to-justice/>.

4 *Access to Justice on a Smartphone*, IIT CHICAGO-KENT COLLEGE OF LAW, May 14, 2012, at <https://www.kentlaw.iit.edu/news/2012/access-to-justice-on-a-smartphone>.



“Civil case types, including domestic violence, debt collection, and housing, often involve a self-represented litigant who may not know that the evidence housed on their smartphone cannot get into the courthouse.”

“Criminal Cases give rise to concerns about security and witness or jury intimidation...”

on the “smartphone dependent” self-represented litigant.⁴

Many courts have cellphone policies that address the needs of attorneys, jurors, and other professionals such as social workers, but the needs of self-represented litigants are often left out of the equation. Vendors are recognizing the need to store digital evidence that may be housed on a personal electronic device. “Attorneys and pro se litigants use their own devices to prepare for court, take notes, and store evidence. CourtSmart helps courts manage the

costs and use of BYOD [bring your own device] technology.”⁵

Civil case types, including domestic violence, debt collection, and housing, often involve a self-represented litigant who may not know the evidence housed on their smartphone cannot get into the courthouse. Emails, text messages, voice mails, still photos, and videos may be the only evidence available to these litigants. The lack of skill in presenting digital evidence becomes moot when self-represented litigants cannot get their mobile device through the courthouse door.

5 Peter Gallagher, *Court Adopts Low Tech Solution to High Tech Evidence Problem*, PETE'S TAKE, October 20, 2015, at <http://www.petes-take.com/2015/10/court-adopts-low-tech-solution-to-high-tech-evidence-problem-.html>.

6 Marilyn Mosby, *Milwaukee Approach Would Put Baltimore Witnesses' Lives in Danger*, BALTIMORE SUN, August 5, 2015, at <http://www.baltimoresun.com/news/opinion/oped/bs-ed-mosby-commission-20150805-story.html>.

7 *Courthouse Cell Phone Ban Turns Some Visitors into Entrepreneurs*, CBS CHICAGO, April 15, 2013, at <http://chicago.cbslocal.com/2013/04/15/courthouse-cell-phone-ban-begins-today/>.

8 *Cell Phone and Electronic Device Policies Resource Guide*, National Center for State Courts, at <http://www.ncsc.org/Topics/Media/Court-Websites/Resource-Guide.aspx>.

9 Id at 1.

Even if evidence is not housed on the device, self-represented litigants may be forced to return their cellphones to their vehicles, which can delay arrival for their case. Many low-income litigants use public transportation and so do not have this option. Some courts are addressing these issues by providing lockers to store items that are not permitted into court. Without the calendar stored on their smartphone it may be difficult to schedule additional hearings. This seems particularly unfair when the self-represented litigant is facing an attorney who whips out their mobile device to schedule the next hearing.

Unlike civil cases, criminal cases give rise to concerns about security and witness or jury intimidation. Police and prosecutors struggle with the “no snitching” culture described by Marilyn Mosby, Baltimore’s state attorney in an article in the *Baltimore Sun* in August of 2015. “Unfortunately for my constituents, there is a real possibility that pursuing justice on behalf of a slain victim inside the courtroom may produce a second victim outside of it.”⁶ This issue may be exacerbated by the posting or threat of posting pictures of witnesses or jurors to social media.

A controversial electronic device ban introduced in Cook County had to be phased in so that individuals with cellphones received warnings for several weeks before the ban took place. Despite the provision of lockers in the courthouse, the number of litigants with cellphones far outpaced the available storage, and a business popped up in front of the courthouse to store cellphones for unwary litigants: “Hold ‘Em Up Lock ‘N Box.”⁷

Smartphone Dependents

Certain groups of Americans rely on smartphones for online access at elevated levels, in particular:

Younger adults

15% of Americans ages 18-29 are heavily dependent on a smartphone for online access.

Those with low household incomes and levels of educational attainment

Some 13% of Americans with an annual household income of less than \$30,000 per year are smartphone-dependent. Just 1% of Americans from households earning more than \$75,000 per year rely on their smartphones to a similar degree for online access.

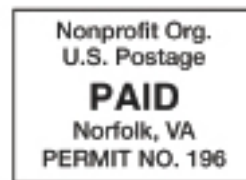
Non-whites

12% of African Americans and 13% of Latinos are smartphone-dependent, compared with 4% of whites.

Pew Research Center, April 2015. “The Smartphone Difference.” Available at: http://www.pewinternet.org/files/2015/03/PI_Smartphones_0401151.pdf



300 Newport Ave.
Williamsburg, Virginia 23185
(800) 616-6164
ncsc.org



The National Center for State Courts tracks cellphone and electronic device policies that are available online.⁸ These rules and policies appear in a number of different formats. Some states address them through a statewide court rule while others leave it up to the individual court. Even different courts housed in the same court building may have different policies, which can be problematic for frontline court staff. Some courts may provide information on courtroom decorum and electronic devices directly on the summons. Cellphone policies may be included with dress codes or with prohibitions on bringing firearms into courts.

Developing and implementing electronic device policies can be challenging for courts as new technologies are rapidly being deployed. Courts must determine what devices are covered while at the same time allowing for new devices that may enter the market. Courts must determine who the policy covers and if and when exceptions will be made.

Courts must also determine how to disseminate these policies and whether they will provide storage for banned devices inadvertently brought to court.⁹

The special needs of self-represented litigants must be taken into account so that they are extended the same opportunities to bring in a mobile device as attorneys. Security concerns must be balanced with access-to-justice issues. For many self-represented litigants the mobile device is their only connection to the Internet, their jobs, their families, their calendars, and their digital evidence. Courts without a statewide rule or policy must address these issues individually. This can lead to a confusing patchwork of rules across the state allowing, banning, or making exceptions for self-represented litigants bringing electronic devices into the courthouse.

Author: Deborah W. Smith, Senior Knowledge and Information Services Analyst

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