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Astronaut's wife alleges space crime; divorce and custody case will be tricky

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Is it a crime for one spouse going through a divorce to access the couple's joint bank account to check up on the spending habits of the other spouse? Does it make a difference if the spouse doing the looking is located in outer space?

A NASA astronaut, Anne McClain, says her use of a NASA computer from the International Space Station to monitor the bank account of her wife isn't a crime. Her

wife, Summer Worden, filed a complaint with the Federal Trade Commission claiming it is.

If criminal charges are brought, it'll be the first time since the Space Age began that a person in space is charged with a crime on earth.

It's hard to call this a crime, since apparently the account in question is a joint bank account, both women had the password, and McClain didn't take any money, she just monitored the transactions.

But one thing is certain: Discovery will be tricky in the pending divorce and child custody case, since NASA won't want to open its computers to temporal lawyers looking for evidence to bolster their clients' cases. National security, or billions of dollars' worth of competitive advantage, could be compromised.

There are two options: Either the judge can demand to see all the evidence, privately in chambers, and decide what will be admissible and what will be redacted in the name of national security, or NASA can make that decision before complying with the discovery request or subpoena. In my opinion, the latter is the way to go, because if the judge makes a mistake, classified information is out there, available to competing nations and private-industry competitors.

After all, divorce files are public — the litigants bring their dispute into public when they use the public court system to adjudicate it — unless there's a reason for the judge to keep the file private. I've represented FBI agents, including one whose divorce file was impounded because of the sensitive nature of some of the evidence. But in this space case, there's every expectation the file will be public. Therefore, NASA — a non-party in possession of some discoverable evidence — should be allowed some reticence when complying with discovery requests, unless the entire file is impounded.

Otherwise, there's nothing unusual about this case: When you put people in space, they'll bring their earthly problems with them, including domestic relations disputes. As Andrey B. Filipowicz, a veteran matrimonial lawyer at my firm, put it: "This now-famous couple and the 4-year-old boy at the center of their custody dispute are entitled to dignity, respect and a fair and unbiased legal system to adjudicate their competing

claims. Achieving such a fair and unbiased legal system poses greater challenges than the technological challenges of putting humans in space.”

As times change, our legal system will have to evolve to protect the ever-changing family, and national security interests.

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