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Should Anthony Weiner's and Huma Abedin's Divorce Records Be Public?

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It's time to leave Anthony Weiner and Huma Abedin to their own private shame.

The former mayoral hopeful and now famous sexter of crotch shots to under-age girls and his top Hilary Clinton aide wife were hoping to keep their divorce proceedings under wraps. But last week a judge denied a request by Abedin's lawyer, Amy Donehower, for the case to be filed as "Anonymous v. Anonymous." "Because there is a child involved, we'd like to keep these proceedings secret to the extent your honor will allow," she said.

Unfortunately, Manhattan Supreme Court Justice Michael Katz removed the designation from the case, explaining, "I appreciate the parties' request to keep this as quiet as possible, but as a practical matter, it does not appear to me that despite your attempt to have this be anonymous, it's particularly anonymous," he said.

But just because so much dirty laundry has been aired already, does that mean the couple needs to subject themselves and their son to even more humiliation?

In most cases, the answer is yes. As Walter Olson, a legal scholar at the Cato Institute, notes, "The Supreme Court has said court records, even of divorce, are presumptively public unless a court determines otherwise." Though this may surprise many people who see marriage and especially divorce as essentially a private matter, Olson explains that, "The public has an interest in observing how and that justice is done [and] misconduct aired in divorce may turn out to be relevant to third parties who are deprived of warning when records are sealed."

Robin Fretwell Wilson, an expert on family law at the University of Illinois College of Law, agrees that this is particularly important when thinking about cases in which there have been allegations of severe or even criminal misconduct made during a divorce case. The public may have an interest in this information. Wilson gives the example of politicians or CEOs of large companies or universities who may want divorce proceedings to be private so that no one learns of their misdeeds.

In fact, New York State already does more than most to protect the privacy of divorcing couples by sealing the record of the proceedings after the fact. But this does not help Weiner and Abedin

(or any well-known couple), whose case has already attracted rows of reporters in court each day. What good does it do to seal the proceedings later if the media is publishing a blow-by-blow of statements during the trial?

Again, there is an argument for transparency in divorce proceedings. There are also still a few states in which one party or the other must claim “fault” in order to get a divorce and in these cases the husband or wife might be able to get a divorce faster if, for instance, someone comes forward and suggests that the other party engaged in infidelity. Even in states like New York where it’s possible to obtain a “no-fault” divorce, the issue of fault still matters for things like custody.

Wilson cites supermodel Christie Brinkley’s divorce from Peter Cook, in which it came out that he was sleeping with an eighteen-year-old girl in the couple’s marital bed. Says Wilson, “She had two minor children and you better believe she was in a stronger position to get custody.” The more public the case the more likely it is that other people will come forward with information and the parties will be more likely to tell the truth in the first place.

But unless he or she has been hiding under a rock for the past three years it seems pretty unlikely someone is suddenly going to realize what Weiner has been up to and come forward with more allegations. And even if someone did, Weiner has just been sentenced in a criminal trial for encouraging a fifteen-year-old to send him suggestive pictures and perform certain sexual acts. Heck, the FBI also got access to his computer records. Do we really also need to hear the ups and downs of his relationship with his long-suffering wife?

Especially in an era when people don’t need to get married in the first place—and when they increasingly don’t bother—it seems like we are actually giving couples a disincentive to make their relationships official. If dissolving these legal bonds means that the most intimate details of your relationship are subject to public scrutiny, then maybe it’s not worth it after all.

According to New York State law, “The Family Court is generally open to the public ... However, the judge ... presiding over each case has the authority to exclude the public from the courtroom depending upon the nature of the case or the privacy interests of the parties.” Surely, Judge Katz can pity this sick man and his broken family. The rest of us can simply look away.