

The “Legal” Reason the FBI’s Password Blunder Could Kill its Case in #AppleVsFBI

On December 6, 2015, FBI investigators reset the password of Farook’s iCloud account, taking what it believed was the logical next step to gain access to the iCloud backup data. Turns out, that was the wrong move. The phone had not been backed up in nearly 2 months and, had FBI not reset the password, there is a reasonable likelihood that the phone would have automatically backed up to iCloud if it were connected to power and connected to an already-known WiFi network. ([Computerworld](#))

In other words, the FBI’s own actions may have been what caused it to be in the predicament it is in now, for which it is seeking court-mandated help from Apple to find its way out. The FBI claims that, regardless of whether its own actions contributed to the predicament, Apple is still obligated to assist under the All Writs Act, because it has the ability to assist. ([Computerworld](#)). The “law” on this issue may prove otherwise.

The All Writs Act provides in pertinent part: “The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651. The United States Supreme Court has found that “[t]he All Writs Act invests a court with a power essentially equitable and, as such, not generally available to provide alternatives to other, adequate remedies at law.” *Clinton v. Goldsmith*, 526 U.S. 529, 537 (1999). This “essentially equitable” language could be critical.

Historically, courts were either a court of law or court of equity. Today, most courts are of general jurisdiction which can sit in both law and equity, but the distinction between the two roles is key. Courts sitting in law are more rigid and formal, being bound by rules such as constitutional or statutory laws. Courts sitting in equity, on the other hand, are not shackled by such formalities but are courts of justice and conscience that focus on overall fairness. *Wilson v. Wall*, 73 U.S.

83, 90 (1867).

The Supreme Court has said that the All Writs Act power is equitable in nature, and equity focuses on the overall fairness and justice between the parties, on a case by case basis.

One of the key principles of equity jurisprudence is that the one seeking relief through equity not have been the one who caused the harm from which it now seeks relief. “Courts of equity will not grant relief merely upon the ground of accident where the accident has arisen without fault of the other party, if it appears that it might have been avoided by inquiry or due diligence.” *United States v. Ames*, 99 U.S. (9 Otto) 35, 47 (1878).

The principle set forth in *Ames*, while not dispositive, is one that the court should consider. Apple can argue that the FBI’s resetting of the iCloud password was a mistake that could have been avoided by further inquiry or due diligence. Therefore, because it is in this predicament that was at least partially of its own making, a court sitting in equity (applying the All Writs Act) will not grant relief upon such grounds.

There are many other equitable principles that could come into play, some of which would favor the government’s position as well. It remains to be seen how, or whether, the court will delve into these issues.

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