

THE INTERNET'S THE STORY OF AARON SWARTZ OWN BOY

A Case Study in Prosecutorial Ethics

The Internet's Own Boy: The Story of Aaron Swartz highlights what can happen when prosecutorial discretion, mandatory minimum sentencing, and outdated criminal statutes intersect. A documentary tracing the life of Aaron Swartz, a computer prodigy who became a digital rights crusader, ***The Internet's Own Boy*** takes viewers step-by-step through the final years of Swartz's life, which began with his arrest for hacking into the MIT computer network to download millions of academic journal articles from the JSTOR database. This triggered a federal indictment for computer crimes and an unrelenting prosecutorial effort to jail him, and finally caused Swartz to take his own life at age 26.

The story of Aaron Swartz is tragic from any perspective. From a legal perspective, however, it offers a powerful case study in prosecutorial ethics. Several congressional investigators who examined the case against Swartz consider it a classic example of "prosecutorial overreach." The U.S. Attorney General, on the other hand, described the case as "a good use of prosecutorial discretion." Weighing these alternatives and the evidence supporting them can provide law and law enforcement students with an opportunity to debate the professional responsibilities of criminal prosecutors and learn how ethical decisions in law almost inevitably hold a life in the balance.

PROGRAM COMPONENTS

- ***The Internet's Own Boy: The Story of Aaron Swartz***, which is scheduled for a television broadcast premiere on Pivot, Thursday, November 6, at 7pm ET. Find Pivot in your area at <http://find.pivot.tv>. Visit <http://www.takepart.com/iob> to buy the film online.
- An introduction to the film, which provides additional background on Aaron Swartz's role in advocating for social action to protect civil rights online.
- A timeline of the investigation and prosecution of Aaron Swartz by the U.S. Attorney for the District of Massachusetts, which for a time ran parallel to his involvement in the campaign to prevent passage of the Stop Online Piracy Act (SOPA).



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THE STORY OF AARON SWARTZ

HOW TO USE THIS PROGRAM

- Direct students to download the program materials at ymiclassroom.com/iob.
- Assign viewing of *The Internet's Own Boy* on Pivot TV, Thursday, November 6, at 7pm ET (or visit <http://www.takepart.com/iob> to buy the film online). Use the introduction to the film included in this program to familiarize students with the issues explored in this documentary.
- Have students review the timeline included in this program, which identifies the parties involved in the prosecution of Aaron Swartz and details the sequence of events through all stages of his arrest, indictment, and prosecution, up to the dismissal of his case following his suicide.
- Schedule the case study on prosecutorial ethics for class discussion. Have students use the links within the case study to view excerpts from *The Internet's Own Boy* on their mobile devices as part of this discussion.



to the MIT computer network and the JSTOR database, but neither MIT nor JSTOR pressed charges against him.

- **Should prosecutors have freedom to interpret the law without regard to legislative intent or ambiguities that have accumulated through legislative history?** Swartz was charged in large part under the Computer Fraud and Abuse Act, a federal law originally aimed at computer vandals which has evolved to prohibit any use of a computer network that does not comply with the network provider's terms of use, thereby giving service providers effective authority to determine what constitutes criminal behavior on the Internet.

• **Should prosecutors have discretion to consider factors outside the scope of a case when deciding whether to file an indictment?** Three years before his arrest, Swartz had downloaded and released millions of federal court documents held on the PACER database and signed a Guerilla Open Access Manifesto urging others to follow his example. Yet in this case he did not publicize his effort to "liberate" digital content and did not make that content available to others.

- **Should prosecutors have discretion to use the criminal justice system to "send a message" intended to intimidate a specific social group?** Swartz was a leader of the digital rights movement whose members saw his prosecution as a warning that civil liberty claims and good intentions afford no protection against severe punishment for violating federal law.

BACKGROUND

The decision whether to move forward with a criminal prosecution is in the prosecutor's discretion. In cases where a prosecutor sees an opportunity to "send a message," this element of discretion can become problematic. It vests tremendous power in prosecutors' hands, allowing them in principle to target defendants because they belong to specific groups within society and to shape the case against a defendant for maximum impact on members of that group. Apart from professional responsibility and professional ethics guidelines, there are few checks on this prosecutorial power.

The case of Aaron Swartz brings the problematic nature of prosecutorial discretion into sharp focus, raising a number of difficult questions:

- **Should prosecutors have the power to press criminal charges when there is no complaining victim?** Aaron Swartz was alleged to have caused harm

Your students will find documentary evidence to debate the pros and cons of all these questions in the materials provided with this program, which has been produced by curricular experts at Young Minds Inspired and is inspired by the award-winning documentary *The Internet's Own Boy* and made possible by Participant Media (www.participantmedia.com).



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