

## **Digital Dilemma: Defining Privacy in the Information Age**

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### **Abstract**

Recently, attention has been focused on analyzing the ethical framework used by educational leaders. The purpose of this study was to analyze some specific ethical dilemmas faced by a school district and one of its teachers. Several ethical questions are posed stemming from an allegation of inappropriate music videos found on Mr. Jones' personal computer hard drive. Ethical principles such as equal respect, benefit maximization, the ethic of care, the ethic of justice, and consequentialist and nonconsequentialist viewpoints are used to justify opposing answers to these questions. Mr. Jones' case illustrates the value of establishing a clear ethical framework to guide personal and professional decisions that may arise from technology-related issues.

*Keywords:* privacy, computers, ethics

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### **Background**

Imagine a passionate, innovative teacher with a promising future. Several years of success in the classroom made him a leader and rising star in the district. He was frequently called upon to lead professional development workshops to share his ideas. Visitors flocked to his classroom to observe him in action. He had received local and national recognition for his effort and innovation. He was even called to speak to thousands of employees at the district's opening convocation ceremonies. His name is Mr. Jones, and it seemed there was no limit to the difference he would make in the education of his community.

At the start of the school year, new administration took over Mr. Jones' campus, Companion Elementary School. Mrs. Saldivar, the new principal, assigned Mr. Jones to teach fifth grade and chose to place her own fifth-grade daughter, Ashley, in his classroom.

Companion Elementary School had seen its share of new leaders. As a matter of fact, at least one of the two campus administrators had been replaced every year Mr. Jones had worked there. With any new administration, there are adjustments to which the school must become accustomed. However, the changes this year seemed drastically different than in years past. Mandatory after-school meetings were numerous, and teacher planning periods were reduced to two per week. Paperwork seemed to have quadrupled, and many teachers were at their wits' end. Additionally, the principal's intention to revoke everyone's Professional Development and Appraisal System (PDAS) waiver in order to fairly evaluate the entire faculty was perceived as threatening.

This wasn't much of a concern for Mr. Jones. He knew as long as the principal's daughter was happy, then the principal was happy. Most veteran teachers know to concentrate on their students and do what is best for them, ignoring the forest and focusing on the trees. Nonetheless, many teachers were frustrated with the new regime.

Mr. Jones was one of those teachers to whom others turned for support in difficult times. It hurt him to see so many of his colleagues frustrated. One group even dubbed Mr. Jones "The Chosen One" and urged him to take a stand against the new administration. Since the new principal "liked him," who better to represent the concerns of the teachers? Mr. Jones declined, knowing that any favor he might have in the eyes of the boss was based merely on convenience rather than trust and mutual respect. Mr. Jones assured his coworkers that teachers always outlast administrators, especially at Companion.

Things were going smoothly for Mr. Jones' class. Ashley was a great student. She was use to adjusting to new schools each time her mom changed job assignments, and the Companion students welcomed her in. She was also doing well academically, showing marked improvement in reading and math. All year long she had consistently shown great behavior and good responsibility. All great students make mistakes. Mr. Jones firmly believed that teachers must not play favorites and should consistently follow through with consequences. So when Ashley chose not to complete her homework assignments one day, he felt it was fair to assign her detention just as he would for any other student in the same situation. The principal, however, did not agree with that decision.

Things escalated from that point. Mrs. Saldivar and her husband (an administrator from another campus in town) called a meeting with Mr. Jones and blamed the incomplete homework on the lesson being too difficult considering Ashley's 504 modifications. A 504 plan is a legal document falling under the provisions of the Rehabilitation Act of 1973. These modifications were designed to plan a program of instructional services to assist Ashley in the regular education setting. The special needs were not related to learning disabilities. Some of these accommodations were additional time to complete assignments and teachers notes from lectures. From then on, Mr. Jones' lesson plans were subjected to heightened scrutiny. Mr. Jones found himself spending all his time defending his teaching methods and providing extra documentation that was not required of other teachers. Tensions continued to rise to the point that Mr. Jones felt unable to do his job effectively.

He tried repeatedly to work things out with the principal, but the meetings and emails only seemed to make things worse. In one meeting, Mr. Jones received five separate write-ups

for incidents that occurred many months before the dispute began. Examples of the allegations were having an unapproved awards ceremony, singing a song about the presidents at a Parent Teacher Association program (at the music teacher's request) that the other classes in the grade level had not learned, and sending a text message to parents even though the principal herself instructed him to do so. Mr. Jones provided a rebuttal to each allegation. While he felt confident in his thorough documentation, he couldn't reconcile spending so much time writing rebuttals instead of planning great lessons.

In another meeting, Mr. Jones was notified that he was going to be considered a "Teacher in Need of Assistance" and would have to attend special training over the summer. The training was mandatory and was scheduled the same week he was supposed to receive a national education award from a major computer company out of state.

Mr. Jones decided the time had come to involve higher administration. While his colleagues suggested going straight to the superintendent, Mr. Jones felt it best to follow policy and file a formal grievance to contest the write-ups. Unfortunately, his grievance was first heard by the principal herself, who after careful consideration, decided she had done nothing wrong.

Another meeting was held and Mr. Jones confronted Mrs. Saldivar with several parts of the Texas Education Code she had broken, including Preparation and Planning Time (TEC 21.404) and the Teacher Paperwork Reduction Act (TEC 11.164). Mr. Jones presented these laws in his (and other teachers') defense, but Mrs. Saldivar took offense and was infuriated by the accusations.

This was the last straw for Mrs. Saldivar, and she quickly devised a plan for revenge. On his way back from recess the next day, Mr. Jones was intercepted and detained in the principal's office while swarms of workers arrived unannounced. Electricians began to inspect electrical connections and wiring in the ceiling, structural engineers tested the ceiling integrity, the Instructional Technology (IT) department tested the network settings, and auditors counted equipment for inventory. Lieutenant Raymond of the district's police department demanded that Mr. Jones hand over his laptop for inspection. He refused, but when the officer reached for Mr. Jones' laptop, he released it to avoid conflict with a uniformed official. Mrs. Saldivar placed Mr. Jones on administrative leave until the investigation was complete.

Little did Mr. Jones know there was a new provision, deep in the fine print of the district's IT policy, that allowed its personnel to confiscate and inspect any computer brought onto school grounds, regardless of who owned it. Mr. Jones' password was cracked, and the IT department proceeded to troll through his computer files searching for a violation. About a week later, they hit pay dirt! Of the over 500 music videos in his personal collection, five were determined to be inappropriate for students.

The district's attorney informed Mr. Jones that this violation was severe enough to result in the non-renewal of his contract. He was offered a short-term consulting contract and a favorable job reference in exchange for his resignation. Mr. Jones didn't want to stop working for the district. He felt his privacy was violated, and he needed vindication so that his students and co-workers would know he did nothing wrong. He declined the offer.

Sample clips of the rap music videos were shown to the conservative school board. This was enough for the board members to vote in favor of non-renewal of Mr. Jones' contract for the following school year. Mr. Jones had a good lawyer that was prepared to argue the legal issues raised in the case. By the time it was his turn to speak, the board members had already seen enough and were literally falling asleep.

The case was unsuccessfully appealed to the Texas Commissioner of Education. At this point, Mr. Jones could have appealed the decision to the district courts. There was also the possibility of filing a civil lawsuit. However, these proceedings were very costly, time-consuming, and could impact the likelihood of finding future employment.

A few months earlier, it had seemed the sky was the limit for Mr. Jones. Now things were looking pretty grim.

### **Minor Ethical Dilemmas**

There are a few minor ethical dilemmas presented in the early development of Mr. Jones' story that can be examined independently of the story's climax. There is the issue of teacher requests. Mr. Jones was hand-picked for Ashley based on his reputation and performance. This scenario is also ripe with issues involving favoritism. Teachers should not feel pressured to treat children of co-workers any different than other students in the class. Another issue is that of who has the authority to decide that personal material is obscene in nature. When videos are played on cable channels across the globe, at all hours of the day and night, can they really be deemed "obscene?" Of course, the most identifiable dilemma in this case is when is private property not really private?

### **Teacher Placement**

In some schools, parents are given the option to request which teacher they prefer to teach their child. In other schools, it is an administrative decision with no influence from the parents' personal preferences. But what if the administrator is also a parent? The authority to assign teachers to certain grade levels and then select the teacher whose class their child will attend is one that can easily be abused.

Should administrators be allowed to select the school their child attends while other parents are limited to their neighborhood boundaries? The principle of equal respect (Strike, Haller, & Soltis, 2005) is pertinent to issues that involve equal educational opportunity. It seems unfair that one parent has the ability to select the best teacher for her child while another is not granted that same opportunity.

### **Favoritism**

It is hard for teachers to not have favorite (and least favorite) students. As educators, it is important to not let that impartiality be expressed, as it can quickly create conflict with other students. Students are quick to detect even the slightest unfairness, and the ridicule of being labeled "teacher's pet" may actually cause harm to a student's self-esteem more than a "slap on the wrist" would.

There can be more pressure to favor the children of co-workers, and even more pressure to favor the children of one's immediate supervisor. Most districts have policies of nepotism that cover subordinates and superiors. Fewer districts have policies that protect conflicts of interest involving the children of educators or school board members.

Teachers, principals, and other administrators are often parents too. Their children sometimes attend the same schools at which they work. Districts and school leaders should use a firm ethical framework to guide policies and practices that aim to avoid situations where there may be unnecessary pressure to act impartially.

This ethical dilemma raises the following questions. Does a student who forgets her homework just once deserve a lighter consequence than the one who forgets it on a weekly basis? Does a student who is sweet and always tries hard deserve different consequences than one who is arrogant, disrespectful, or lazy? Is it worth upsetting a coworker or boss to enforce a consequence fairly with all students? Those with opposite answers to these questions may find themselves taking opposite stances with regard to Enomoto's (1997) ethic of care and ethic of justice stance.

### **Artistic or Obscene**

Throughout history, art has repeatedly been the subject of controversy. Another ethical dilemma raised by Mr. Jones' case was the question of whether music videos are artistic or obscene. District policy defined inappropriate material as "lacking artistic value." What is the difference in a topless dancer in a music video and a topless sculpture such as Venus de Milo? Clearly these two types of art would appeal to different audiences, but who is to judge whether music has artistic value or is simply obscene?

Ultimately, the answer in Mr. Jones' case is that the school board makes that judgment. The school board members, from Companion Elementary School, belonged to a conservative community and were a generation or two behind Mr. Jones and his students. To them, the word "Gaga" sounded like baby talk, whereas to others, "Gaga" is the recording artist and performer of Mr. Jones' most appalling music video. One must keep in mind that this was not a question of what is appropriate for students—admittedly, that would require a more conservative standpoint—rather; this was a question of what was appropriate for teachers to watch and listen to on their own time. According to Strike et al. (2005), school leaders may raise concerns with the moral integrity of their staff, even if it does not affect their teaching ability. Spencer and Hoffman (2001, p. 218) also speak to this:

Societal expectations of conduct for teachers have been far more restrictive than for the conduct of the population in general. The typical view has been that the teacher is an exemplar of appropriate behavior for students and therefore must meet the highest standards in personal conduct. Upon entering the teaching profession, individuals typically surrender a measure of freedom. A teacher may be legally free to be immoral but not legally free to teach while engaging in immoral conduct.

### **Major Ethical Dilemmas: Digital Privacy**

Computer forensics can reveal almost every detail of our lives. Information that in years past would have been stored in several locations in varied forms of media is now all stored on pocket-sized devices. Yet in the Information Age, the value of privacy has just as much (if not more) relevance than in the past. Legal issues, surrounding the use of computers, require careful

interpretation of the Fourth Amendment and other common law and common sense privacy rights.

Most issues of privacy involve a balancing of interests (Poteet, 1996). In a case like Mr. Jones, the school district had an obligation to keep inappropriate materials away from children while employees had a right to keep their personal matters private from employers. According to Strike et al. (2005), a distinction should be made between the *private* and *public* sides of an educator's life. Hooker (1995) suggests the school boards' right to demand superior conduct of teachers and the teachers' right to privacy has created tension for some time. Hooker continues by pointing out that there appears to be a trend of leniency towards teachers, asserting that only crimes and student-teacher sexual relationships constitute immorality in the courts. In Mr. Jones' case, one had to determine the likelihood of students actually accessing the inappropriate material. According to his class rules, Mr. Jones' students were prohibited from touching anything on his desk, including his computer. Furthermore, no student knew Mr. Jones' password, nor possessed the technical expertise and equipment to override it. The ethical question posed here is, does the mere presence of a digital file in a classroom mean that students "have access" to it? A more tangible example would be a teacher who keeps cigarettes in her purse or locked in her desk. Clearly this violates school policy, but are the students in danger of being exposed to tobacco?

The ability to confiscate and search personal property without consent raises several legal and ethical issues as well. Where should the line be drawn? If an entire computer can be searched, is an iPad also fair game? What about a cell phone? What if the device is kept in a brief case or in the employee's car? The Supreme Court has made it clear that closed computer files and hard drives are granted the same protection as a person's closed containers and closed personal effects (United States v. Barth, 1997). Thus, every click of the mouse is analogous to opening up an entirely separate container. Cracking a password is like using bolt-cutters to snip a padlock. Yet, Strike et al. (2005) point out that "administrators sometimes argue that it is okay to cut corners on matters such as a teacher's due process rights if the purpose is to benefit the school" (p. 88).

This leads to a fact in Mr. Jones' case with both ethical and practical significance: whether the location where a digital file is stored matters. It is undisputed that Mr. Jones neither acquired nor viewed the music videos while at work; they were simply stored on his computer. The same rap music videos contained on Mr. Jones' hard drive were readily accessible on any teacher's computer through YouTube. Is it not equally or more feasible that a student would use a school computer to find rap music videos on YouTube, rather than bypass his teacher's password-protected personal laptop and wander through his files?

A similar digital privacy concern involves the trend of cloud computing, in which computer files are stored on a remote server instead of on the device itself. If files are stored elsewhere but accessible via the internet, are they considered to be present on school grounds? Would an inappropriate video in a teacher's Dropbox account be a violation? What about an inappropriate picture or comment on her Facebook page?

The district may have taken a moral rather than a legal or technical standpoint. If a teacher enjoys watching rap music videos with scantily clad women dancing provocatively, how can he be trusted to educate children? The citizens of Companion's school district would generally view this behavior as immoral. On the other hand, Strike et al. (2005) offer a contention based on the ethical premise that "People can [be held] accountable by others only for

those actions that harm others. They cannot be denied the freedom to perform those actions that affect only their own welfare” (p. 34). This principle emerged when analyzing a case of a teacher who had a second job as an exotic dancer.

There are also ethical questions raised about the employer’s positive job reference in exchange for Mr. Jones’ resignation. If the district feels it can no longer employ a teacher, can it (with a clean conscience) provide a positive recommendation that another district do so? Should an employer’s job reference be contingent upon an employee’s willingness to depart amicably? Or should an objective answer be given regardless of the employee’s separation? According to the principles presented by Strike et al. (2005), nonconsequentialists might accept a lapse in honesty that serves the district’s best interest, while consequentialists would have a harder time reconciling it.

Lastly, Mr. Jones faced his own personal ethical decisions. Should he have accepted the offer and resigned, or tried to clear his name? Likewise, should he have sued the school district, knowing that it would only take resources away from the students he cared about? If he won his case, would it open the door for others to keep more sinister secrets private, potentially posing a threat to other students’ well being? Mr. Jones considered these dilemmas in light of his personal ethical beliefs when deciding the best resolution.

### **Personal Response**

Mr. Jones decided not to continue to appeal his case, nor sue the school district. There were several practical and ethical reasons for his decision.

A large factor in this decision was simply financial. Mr. Jones’ lawyer needed \$30,000.00 more to continue the case. Ultimately Mr. Jones decided pursuing the issue further wasn’t worth cashing out his retirement or selling his house. Some people would consider such actions throwing good money after bad, even though Mr. Jones had a strong desire to do so. It is unfortunate that people sometimes give up on causes they believe in simply because they lack the means to defend them.

The main ethical factor that caused Mr. Jones to relinquish his appeal is he feared what precedents might result from a favorable outcome in his privacy case. In many respects, the lawsuit had the potential and merit to end up being a landmark case for future decisions. A finding in Mr. Jones’ favor could subsequently result in greater privacy for teachers. However, Mr. Jones couldn’t bear to think that such a decision might eventually afford protection to child predators or other criminals in the classroom. He used the principle of benefit maximization (Strike et al., 2005), knowing that the greater good (for children at least) would be served at the expense of the liberty of adults.

The ultimate factor in his decision to stop pursuing the matter is that the school year came to an end. Even if he were reinstated for the next year, there was no way to go back and undo the damage that was done. Mr. Jones decided it didn’t matter if he was employed by the school district or not; he would always be “their teacher.” Frankl (1998) insightfully teaches that “forces beyond your control can take away everything you possess except one thing, your freedom to choose how you will respond to the situation” (p. x). Mr. Jones decided that while losing his job was beyond his control, his response would be to continue being the best leader he could be for his students, learn from his experiences, and move on to bigger and better things.

Mr. Jones continues to be an active role model in his students' lives, providing after school tutoring, attending sporting events and musical recitals, and advising for educational planning. Mr. Jones moved to an urban school district and found employment in a more supportive environment. He has, however, severed all ties with the Saldivar family. Incidentally, Mrs. Saldivar was demoted. She resigned, moved away, and decided to follow her dream of owning a coffee shop.

### Conclusion

Issues of digital privacy are likely to continue as technology evolves. Mr. Jones' story raised a myriad of ethical questions, and it is likely that it is not the last of its kind. Districts and school administrators need to be proactive in developing technology plans that balance the privacy of their employees with the welfare of its students. The Texas Association of School Boards (2010) caution that a district's ability to regulate employee technology is not unlimited, as some restrictions could violate employee's constitutional rights. Specifically, "A district has little reason to regulate an employee's personal use of electronic media if that use is strictly private, does not violate state or federal law, and does not interfere with the employee's ability to effectively perform his or her job" (p. 1).

Thanks to advances in technology, school districts have almost limitless capabilities in monitoring teachers' digital activities. Rather than be preoccupied solely with whether or not they *can* track an employee's every move, they should be concerned with whether or not they *should*.

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