

<http://www.chicagomag.com/Chicago-Magazine/October-2011/What-Happened-Between-David-Protest-and-Medill/>

<http://www.suntimes.com/news/7519190-418/judge-orders-medill-student-journalists-to-turn-over-500-e-mails.html>

Judge orders Medill student journalists to turn over 500 e-mails

BY RUMMANA HUSSAIN Criminal Courts Reporter/rhussain@suntimes.com
September 7, 2011 11:10AM

Updated: September 7, 2011 12:43PM

A Cook County judge Wednesday ordered Northwestern University to turn over roughly 500 e-mails student journalists exchanged with former Medill Innocence Project head David Protess detailing their probe into whether the wrong man was put behind bars for a three-decade-old Harvey murder.

The students were working under the direction of attorneys at the university law school's Center on Wrongful Convictions and were "acting as investigators in a criminal procedure," Judge Diane Gordon Cannon said.

"Although a book may be written or an article may be published ... the information is subject to rules of discovery," Cannon said.

Northwestern had argued that the e-mails were protected under the Illinois Reporter's Privilege Act and did not have to tender the materials to prosecutors.

Northwestern has ten days to file an appeal.

"We respect the judge's decision," Northwestern spokesman Mary Jane Twohey said.

“We will study it carefully and consider our options thoughtfully before we decide what our next steps will be.”

Assistant State’s Attorney Celeste Stack said Wednesday’s ruling was a welcome relief after a “frustrating” two years of legal wrangling on the case.

Save for the e-mails, Northwestern has turned in materials from the students related to McKinney after the prosecutors filed a subpoena.

But Stack noted that the original notes, memos and transcripts students had compiled were destroyed.

“The only reason we got what we got was because [investigators] searched hard drives of the Innocence Project’s computers,” she said.

McKinney remains in prison for the 1978 murder of Donald Lundahl while the state’s attorney’s office investigates the Innocence Project’s claims of his innocence.

Prosecutors have questioned Northwestern journalism students’ tactics on the McKinney case, accusing them of, among other things, paying for an interview. Protess retired from Northwestern last month — just after announcing his plans to step down amid the accusations and questions about his truthfulness in dealing with university lawyers in connection with the criminal case.

In an e-mail Wednesday, Protess said he was “disappointed” with Cannon’s ruling.

Medill students’ investigation in the McKinney case began in 2003 and the Center’s involvement did not begin until 2005, according to Protess.

“The facts show that my students investigated the McKinney case for two years with no involvement by defense lawyers,” he said.

“Every major reporting development in the case, including the recantations of the state’s witnesses and the confession of the alternative suspect, happened before the Center on Wrongful Convictions became McKinney’s lawyers. At no point did my students take direction from lawyers. Every reporting decision was made within the Medill team before students conducted interviews.”

<http://www.chicagotribune.com/news/local/breaking/chi-judge-rules-northwestern-students-must-turn-over-emails-in-murder-case-20110907,0,2082027.story>

Judge rules Northwestern students must turn over emails in murder case

By Jason Meisner Tribune reporter

10:29 a.m. CDT, September 7, 2011

A Cook County judge today ordered that more than 500 emails between former Northwestern University journalism professor David Protess and his students detailing their efforts to free a man serving a life sentence should be turned over to prosecutors.

After two years of legal wrangling, Judge Diane Cannon ruled that the Medill School of Journalism students were “acting as investigators in a criminal proceeding.”

“In this case, the Medill students worked at the direction of Anthony McKinney’s attorneys, conducting interviews, gathering evidence,” Cannon said. “While a book may be written or an article published...the information is subject to the rules of discovery.”

It has been almost three years since Northwestern lawyers petitioned for a new trial for McKinney, convicted of a 1978 shotgun slaying in Harvey. The request was based on an investigation by the Medill Innocence Project that included recanted testimony, new alibi witnesses and interviews with dozens of people involved in the case.

In response to a 2009 subpoena from the state’s attorney’s office, the university turned over student memos, emails and other class materials that had been shared with attorneys for the Center on Wrongful Convictions. But it has fought the release of internal emails, citing the reporter privilege law.

Meanwhile, the university launched its own investigation and concluded that Protess had lied about what information was shared with McKinney’s attorneys -- a charge Protess has denied. Protess has since left Northwestern.

Outside court today, Assistant State’s Attorney Celeste Stack said prosecutors were pleased with the ruling and looked forward to resolving McKinney’s case.

“It’s been a frustrating two years, but it was an important issue,” Stack said. “If the students had been working for a newspaper, there would have been no problem.”

A spokeswoman for Northwestern said in a statement that they “respect the judge’s ruling and need to examine their options before moving forward.

Cannon granted a 10-day stay on her ruling so lawyers for the university can consider an appeal.

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Court debate: Were NU students journalists or agents of defense lawyers?

BY RUMMANA HUSSAIN Criminal Courts Reporter rhussain@suntimes.com August 9, 2011 8:38PM

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David Protes, former Northwestern University professor and founder of the Medill Innocence Project. | AP file

Updated: August 10, 2011 4:54AM

Journalism students at Northwestern University conducted themselves like any other member of the press in their quest to prove Anthony McKinney innocent of murder and should be protected like “Walter Cronkite and the New York Times.”

That was the argument advanced at a hearing Tuesday by Gabriel Fuentes, the lawyer for the university’s Medill School .

Cook County prosecutors, however, contended that the students from the Medill Innocence Project, sometimes described by those they interviewed as “annoying and manipulative,” were not working as reporters during their five-year probe but as agents for attorneys at the university law school’s Center on Wrongful Convictions.

“It is not reporting,” assistant state’s attorney Celeste Stack said, arguing why the roughly 500 e-mails between students and former Innocence Project head David Protes should be turned over to prosecutors.

“Lawyers were running the show. They [students] were working for the attorneys to create evidence for the courtroom. It’s [journalism] supposed to be a search for the truth, not a strategy for court.”

Protest, in fact, discouraged a student from writing the story early on, telling him in an e-mail, “We don’t want you to scoop Tony’s [McKinney’s] lawyers,” Stack said. Protest said Tuesday he made those comments in jest and was referencing a student’s desire to talk about the case in a university speech — not an article.

Because prosecutors maintain that the students weren’t journalists, they believe their subpoena for the e-mails and additional notes does not violate the Illinois Reporter’s Privilege Act.

Fuentes countered that while the “McKinney Team” closely collaborated with Northwestern’s lawyers, they remained journalists. The advocacy journalists’ hard work eventually led to a 2008 article in the Sun-Times — days after a petition seeking to overturn McKinney’s conviction was filed, he pointed out, arguing for reporter’s privilege.

Judge Diane G. Cannon is expected to rule on the matter next month.

Tuesday’s hearing was part of McKinney’s effort to win a new trial.

McKinney, meanwhile, remains in prison for the 1978 murder of Donald Lundahl in Harvey while the state’s attorney’s office investigates the Innocence Project’s claims of his innocence.

Prosecutors have questioned the investigative journalism students’ tactics on the McKinney case, accusing them of, among other things, paying for an interview. In June, Protest said he would retire from Northwestern at the end of August amid these accusations and questions about his truthfulness in dealing with university lawyers in connection with the criminal case.

During Tuesday’s hearing, Stack said Protest recently turned over a 98-page binder he found related to the McKinney case when he cleaned out his Evanston office. Included in the documents was a 2006 memo from a former student, detailing how lawyers ordered students in the McKinney project, Stack said.

“Lawyers provide suggestions, not direction. As the instructor, I’m responsible for deciding whether we should interview a source and how the interview should be conducted. Of course, I’m always open to hearing suggestions from defense lawyers, police and prosecutors about the sources we should interview. But the final call is ours,” Protest said in an e-mail.

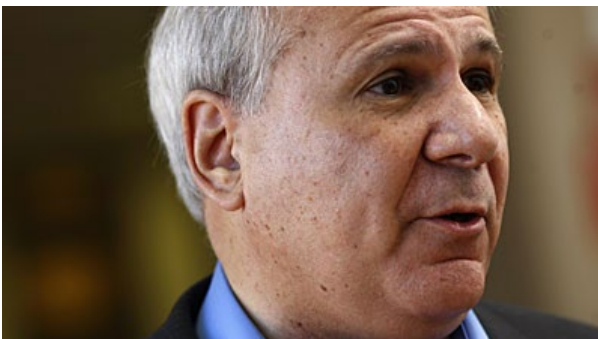
<http://www.chicagotribune.com/news/local/ct-met-protest-hearing-20110810,0,4583036.story>

State's attorney: Law shielding reporters doesn't protect Medill students

State says Innocence Project emails could prove collaboration with convict's lawyers

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August 10, 2011

More than 500 emails between beleaguered Northwestern University journalism professor David Protess and his students detailing their effort to free a man serving a life sentence should not be protected under state law that shields journalists from revealing unpublished work, Cook County prosecutors argued Tuesday.

In seeking the release of the communications, Assistant State's Attorney Celeste Stack said the student

journalists investigating the alleged innocence of Anthony McKinney were essentially "generating evidence" at the behest of Northwestern's Center on Wrongful Convictions, not acting as working reporters.

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Media Industry Journalism Colleges and Universities Prosecution "There was no business of collecting news for publication," Stack told Criminal Courts Judge Diane Cannon. "They collected evidence to present in court. ... It's clear that the lawyers were running the show."

Lawyers for the Medill School of Journalism argued that the state's law shielding reporters is broad and covers not only mainstream news media but also "advocacy journalism" that crusades for a cause or takes a certain point of view.

"Even yellow journalism is still journalism," said attorney Gabriel Fuentes.

It has been almost three years since Northwestern lawyers petitioned for a new trial for McKinney — convicted of a 1978 shotgun slaying in Harvey — based on the investigation by the Medill Innocence Project that included recanted testimony, new alibi witnesses and interviews with dozens of people involved with the case.

In response to a 2009 subpoena from the state's attorney's office, the university turned over reams of student memos, emails and other class materials that had been shared with attorneys for the Center on Wrongful Convictions, but it has fought the release of internal emails based on the reporter privilege law.

Meanwhile, the university launched its own investigation and concluded that Protess had lied about what information was shared with McKinney's attorneys, a charge Protess denied. The falling-out eventually led to Protess announcing in June he was leaving Northwestern to found his own innocence project. He is set to retire from the university on Aug. 31.

On Tuesday, Stack revealed that within the last two months, Protess found a binder containing 98 pages of documents on the McKinney investigation while he was cleaning out his office, in spite of the university's earlier assurances that it had turned over all the relevant evidence. The binder included a two-page memo from a former student detailing a meeting between Protess' students and McKinney's lawyers that further shows evidence of their collaboration, Stack said.

Prosecutors have also contended that in many cases verbatim notes and transcripts were never turned over to them and they were given only edited versions of some videotaped interviews.

Cannon said she will rule on Sept. 7

jmeisner@tribune.com

http://www.nytimes.com/2011/06/18/business/media/18proress.html?_r=2&src=tp&pagewanted=all

A Watchdog Professor, Now Defending Himself



Amanda Rivkin for The New York Times

"I have spent three decades exposing wrongful conviction only to find myself in the cross hairs of others who are wrongfully accusing me," David Protess said.

By [DAVID CARR](#) and [JOHN SCHWARTZ](#)

Published: June 17, 2011

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For the last two years, David Protess, a renowned journalist and professor who spent three decades fighting to prove the innocence of others, has been locked in a battle to do the same for himself. It hasn't gone as well.

Related

- [Freed by a Journalism Professor and His Students](#) (June 18, 2011)

Mr. Protes, who taught at the Medill journalism school at [Northwestern University](#), was the founder and driving force behind the Medill Innocence Project, which was instrumental in exonerating at least 12 wrongly convicted defendants and freeing them from prison, including five who were on death row in Illinois, and in prompting then-governor George Ryan to [clear the rest of death row](#) in 2003.

But during an investigation into a questionable conviction, the Cook County state's attorney turned her attention instead on Mr. Protes and his students. Since then, questions have been raised about deceptive tactics used by the Medill students, about allegations that Mr. Protes cooperated with the defense lawyers (which would negate a journalist's legal privilege to resist subpoenas) and, most damning, whether he altered an e-mail to cover up that cooperation.

Medill, which enjoys an international reputation, in significant part because of his work, removed him from teaching in April, and this week he retired from Northwestern altogether, and now runs the Chicago Innocence Project. It has been a breathtaking reversal for Mr. Protes, who says he believes he is being pilloried for lapses in memory and a desire to defend his students.

"I have spent three decades exposing [wrongful conviction](#) only to find myself in the cross hairs of others who are wrongfully accusing me," he said in an interview.

It is often said that academic politics are so vicious because the stakes are so low, but in the matter of Mr. Protes and the wrongly convicted men he helped to free, the stakes could not have been higher.

"He is in the hall of fame of investigative journalists in the 20th century," said Mark Feldstein, an associate professor of media and public affairs at George Washington University. "Using cheap student labor, he has targeted a very specific issue, and that work has reopened cases, changed laws and saved lives."

Dennis Culloton, a lawyer who served as press secretary for Governor Ryan, said that Medill's work led in part to the decision to essentially shut down Illinois's death row. "I think it would have been an academic discussion if not for David's work," he said.

Behind that public success, however, there were gnawing tensions within Medill. Mr. Protes's tendency to clash with authority did not end with law enforcement. He came into conflict with at least two deans of the Medill school, including the current one, John Lavine, who started in 2006 after a long career in newspapers.

Mr. Lavine is a polarizing figure at Medill: he is widely credited with stabilizing an institution that was suffering financially but he also led a successful effort to rename the school the Medill School of Journalism, Media, Integrated Marketing Communications, a change he said reflected the school's broader agenda but one that was widely ridiculed by alumni and journalists.

Mr. Protesch said the project initially received support from the dean, but now says that was a charade, "an attempt to seem as if he were fighting for the First Amendment when in fact he was undermining the Innocence Project at every turn." Mr. Lavine counters that he had no choice but to remove Mr. Protesch: "What I saw warranted the decision that I made."

Mr. Protesch (whose son Ben is a reporter for The New York Times) started the Innocence Project at Medill in 1999 after spending much of his career looking into questionable convictions for Chicago Lawyer magazine. Working with the Center on Wrongful Convictions, a sibling project at the Northwestern Law School, Mr. Protesch methodically vetted cases, laid out lines of inquiry for his student journalists and guided them through their reporting assignments.

As the list of exonerations grew, the global reputation of Medill — and Mr. Protesch — soared and students were drawn to the project to be trained in the real-life crucible of capital cases.

"His class was life-changing," said Evan S. Benn, a former student of Mr. Protesch who is now a reporter at The St. Louis Post-Dispatch.

It was an oddity of the Innocence Project that students rarely wrote their own articles (until 2008, when the project put them online). Instead, the students, sometimes working with private investigators, would produce one-page reports about their findings, then be partnered with well-known journalists to bring new information to light. The lack of direct journalistic output concerned at least one former dean.

"It was always kind of fuzzy whether he was engaged in journalism or a kind of guerrilla social justice law operation where the ends justified the means," said Michael Janeway, a dean at Medill from 1989 to 1996 who is now a professor of journalism at Columbia. "David was not totally irresponsible. He was zealot in pursuit of a cause, a cause you could not question."

Maurice Possley, a [Pulitzer Prize](#)-winning reporter and a collaborator with Mr. Protess, said that Mr. Protess was not well served by a culture of permission that came to surround him.

“In the structure of a newspaper, you have an editor who is not vested in the reporting who can push back. I don’t know if he had that kind of editor,” he said, adding “David is a character, but in my dealing with him, he’s always been incredibly professional.”

In 2003, the Innocence Project became involved in the case of Anthony McKinney, a man sentenced to life on a murder conviction. Nine teams of student journalists concluded that Mr. McKinney, who was convicted in 1981 of killing a security guard, was actually watching the Spinks-Ali championship fight at the time of the killing.

Two eyewitnesses who had identified Mr. McKinney recanted when students working with Mr. Protess questioned them, and a story by Mr. Possley, using some of the students’ work, was published in The Chicago Sun-Times in 2008.

The doubts raised by the Innocence Project led the Cook County state’s attorney to re-examine the case, but investigators found instances in which “we were not getting the same answers the students claimed to have gotten,” said Sally Daly, a spokeswoman for the state’s attorney’s office. In 2009, the state’s attorney Anita Alvarez filed a sweeping subpoena for Innocence Project materials, including students’ notes, summaries, e-mails and even grades, on the theory that they would report tendentiously in favor of innocence in the hope of getting a better grade.

Mr. Protess immediately objected, saying that, as journalists, he and his students were protected under Illinois’s shield law. He went further, saying that the prosecutor was more interested in going after students to discredit their reporting than getting to the bottom of what happened in the McKinney case.

Ms. Daly said that the state’s attorney spent two years investigating, interviewing dozens of people in six states, before asking the court to force Northwestern to produce the information.

“The professor framed it as a vendetta,” she said. “It was untrue.”

At first, the project had the school’s support. “At the time, I said if you are going to put a professor in jail because he is not turning over student grades and materials, all

of which I believed were covered by the shield law, you are going to have to put me in jail first,” said Mr. Lavine.

The attorney’s office did uncover several situations in which students pushed professional boundaries. In November 2006, one of Mr. Protes’s students identified herself as a census worker while trying to find a witness. In 2009, another student posed as a worker for the power company. In both cases, Mr. Protes says he didn’t know about the tactics in advance but has no professional issue with them.

Last year, Northwestern started an internal investigation into the group. In September 2009, Karen Daniel, Mr. McKinney’s lead counsel, made an explosive admission to university investigators: she received “a significant amount of materials” from Mr. Protes’s students. That would negate the journalist’s privilege that Mr. Protes had claimed in the hope of keeping the students’ work out of Ms. Alvarez’s hands.

Mr. Protes said then that it had been several years since the events and that he could not remember what he had and had not turned over. But in a search of Innocence Project computers, the university turned up an e-mail from Mr. Protes to his assistant in 2006 that indicated the students’ reporting memos had been shared with the defense.

“My position about memos, as you know, is that we share everything with the legal team, and don’t keep copies,” he wrote, referring to Mr. McKinney’s lawyers.

But the copy of the e-mail he provided to university lawyers was altered to read, “My position about memos, as you know, is that we don’t keep copies.”

Mr. Protes said that he altered the e-mail to reflect the actual practice of the Innocence Project as he remembered it.

“Everybody assigns sinister motives to what I did, but my intent was not to mislead; it was precisely the opposite,” he said. “My part was due to memory failure about the extent to which I had shared student memos with the defense, and then I stubbornly stuck to that position when I felt ganged up on by everybody else.”

With the discovery of the e-mail, what had been a publicly united front broke down behind the scenes. At a hastily called faculty meeting at Medill on April 6, Mr. Lavine presented his colleagues with a PowerPoint presentation of statements and actions

by Mr. Protess that the dean considered misleading, and asked for opinions. But by the time the faculty members got back to their desks, a press release had already been issued announcing Mr. Protess would not be teaching spring semester and making it clear he would not be welcomed back after that.

“The situation turned on a dime,” said Douglas Foster, an associate professor. “You have the most lionized member of the faculty suddenly becoming somebody who is summarily removed from teaching with no notice and subjected to a kind of banishment. It’s a textbook case of how not to manage conflict.”

Mr. Protess has since signed a negotiated agreement to leave the university. The work of the Innocence Project continues under the leadership of Alec Klein, a former investigative reporter for The Washington Post. At the beginning of June, the Innocence Project published a story students produced raising serious questions about the murder conviction of Donald Watkins, who was sentenced to 56 years in prison in 2007. Meanwhile, Mr. McKinney’s appeal is at a standstill.

Another of Mr. Protess’s former students, Jennifer Merritt, said that despite the difficulties, the Innocence Project should continue.

“The last thing I want is for the investigative journalism and the teaching to go away,” said Ms. Merritt, now an editor at The Associated Press. “There may be some things that people question, but the end results are amazing.”

This article has been revised to reflect the following correction:

Correction: June 18, 2011

An earlier version of this article incorrectly described the conclusion of David Protess's employment at Northwestern University. He retired, he did not resign.

This article has been revised to reflect the following correction:

Correction: June 18, 2011

An earlier version of this article incorrectly stated that Donald Watkins had spent 56 years in prison. He was sentenced to 56 years in 2007. He has not already spent 56 years in prison.

A version of this article appeared in print on June 18, 2011, on page A1 of the New York edition with the headline: A Watchdog Professor, Now Defending Himself.

<http://www.chicagotribune.com/news/local/ct-met-protess-retires-20110613,0,1091257.story>

Divisive Northwestern journalism professor to retire

David Protess, who gained fame then notoriety as head of the Medill Innocence Project, will step down Aug. 31

Northwestern's David Protess (William DeShazer/Tribune)

6:50 p.m. CDT, June 13, 2011

A controversial Northwestern University journalism professor who started a landmark program to investigate wrongful convictions will retire at the end of August.

David Protess, one of the university's most nationally renowned faculty members, went from making news for helping set prisoners free to becoming the focus of the headlines, as his actions with the university and his techniques came under fire in the last year.

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After years of promoting Protess' work and using it in a fundraising brochure, the university's announcement Monday said notably little. It included Protess' educational and career history, including that he joined Northwestern in 1981. He has been director of the Medill Innocence Project since he founded it in 1999. He will

retire effective Aug. 31.

"The work done by students who took classes that worked on Innocence Project cases contributed to the exoneration of 11 wrongfully convicted men, five of whom were on death row. That work will continue," the university said in a statement.

A settlement reached between Protes and the university this year includes terms that neither side is to blame and prevents either one from discussing it, a source told the Tribune. The agreement also includes undisclosed financial compensation.

Reached by telephone Monday, Protes said he has no comment on the announcement.

Protes' reporting class, which focused on investigating wrongful convictions, was one of the most popular at Medill. Work by the Medill Innocence Project spurred then-Gov. [George Ryan](#) to empty death row, and [Illinois](#) abolished the death penalty this year.

Protes was put on leave during the spring quarter after university officials said he misled them in connection with an ongoing investigation into whether Anthony McKinney was wrongfully convicted of murder more than 30 years ago.

Protes and Northwestern initially fought together against turning over class materials subpoenaed by prosecutors, arguing they were protected under a law that shields journalists from revealing unpublished work. But university attorneys then questioned whether Protes had been forthcoming about what he turned over to defense attorneys and ultimately concluded that he had lied about what information was shared.

The professor blamed a faulty memory and has called accusations of misleading the university "entirely disingenuous." He has said the university is using him as a scapegoat to shift responsibility from McKinney's attorneys.

A status hearing in McKinney's bid for a new trial is scheduled before Cook County Criminal Court Judge Diane Cannon on Wednesday.

The Tribune last month reported details of two instances in which Protes allowed his students to lie about their identities in the course of investigating prisoners' convictions. Protes defended the practice as a necessary means to a "higher social purpose."

Last week, Protes moved in to his new office at the Chicago Innocence Project, a nonprofit he founded to do work similar to that of the Medill Innocence Project. He continued working this spring with about a half-dozen Medill students as they investigated the conviction of Stanley Wrice, who says he was wrongly imprisoned

for rape nearly 28 years ago.

As of Monday, he has raised about \$30,000 for the project, Protess said.

"It's the first investigative reporting nonprofit to solely investigate wrongful convictions," he said.

NU's controversial 'Innocence Project' professor retires

BY KARA SPAK Staff Reporter/kspak@suntimes.com June 13, 2011 6:50PM

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FILE - In this Oct. 26, 2009 file photo, Northwestern University professor David Protess, founder of the Medill Innocence Project, is seen in Evanston, Ill. A university statement Monday, June 13, 2011, said that Protess, whose students are credited with helping free wrongfully convicted prison inmates, is retiring effective Aug. 13, 2011. (AP Photo/M. Spencer Green, File)

Updated: June 14, 2011 2:07AM

The 30-year academic career of one of Northwestern University's most heralded and more recently most controversial professors is ending.

David Protess, who led the Medill Innocence Project that helped free 11 wrongfully convicted men, is retiring.

Protess has been on leave from Northwestern since March after questions arose about tactics used by his investigative journalism students and about his own truthfulness when dealing with university lawyers in connection with a Cook County criminal case.

University officials said little about Protes in a statement Monday confirming his retirement. In April, Alan Cabbage, vice president of university relations, wrote that “Protes knowingly misrepresented the facts and his actions to the University, its attorneys and the dean of Medill on many documented occasions” in dealing with a 2009 Cook County state’s attorney subpoena to Medill. The subpoena involved the case of Anthony McKinney, serving a life sentence for a 1978 murder in Harvey, that Medill students were investigating.

“There’s been significant amount of time and resources put into this case by this office and by the students,” said Sally Daly, spokeswoman for Cook County State’s Attorney Anita Alvarez. “It’s just unfortunate that Professor Protes was not more forthcoming in this process.”

In an email Monday, Protes said he and Northwestern “parted on mutually agreeable terms.” After he was suspended from the university, he started the Chicago Innocence Project, a non-profit focused on wrongful convictions which opened offices in the Loop on Monday. Protes said the first group of students at the Chicago Innocence Project were from Northwestern but students from Roosevelt University and Columbia College would be involved in the fall.

The university and Protes reached a financial settlement which both sides agreed not to publicly discuss, a source said.

The Medill Innocence Project is continuing without Protes. Participating students last quarter questioned the conviction of Donald Watkins, serving a 56-year prison term for a 2004 murder.

In Focus: 'Dismantling of a legacy': The rise and fall of David Protes

After three decades, it looks like the high-profile professor's Northwestern career is over. Why?

By [Brian Rosenthal](#)

Published: Wednesday, May 11, 2011

Updated: Wednesday, May 11, 2011 16:05

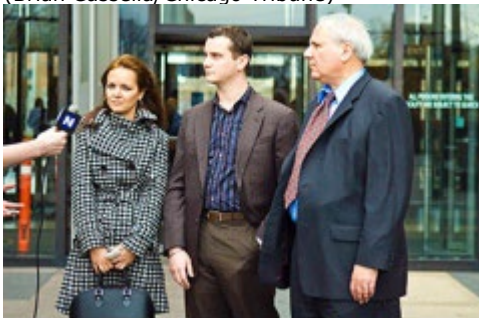
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Despite three decades of awards and attention from the press, Protes is reportedly no longer allowed in Fisk Hall. (Sharon Paravastu/The Daily Northwestern)



Former students and other sources have called into question the reporting tactics of David Protes and his Investigative Journalism class. The class has helped free 12 men from prison, including five from death row. (Brian Cassella/Chicago Tribune)



David Protes (right) and two former Innocence Project students who worked on the Anthony McKinney case speak with reporters outside of the Cook County Courthouse at a 2009 hearing about the subpoenaed student records. (Daily file photo).

More on Protes and the Medill Innocence Project

[In Focus: Investigative Journalism students used questionably ethical reporting tactics, sources say](#)

[Timeline: David Protes and the Medill Innocence Project](#)

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[Protes responds to allegations, accuses University of conducting a 'smear campaign'](#)

[Updated: Northwestern explains Protess decision, accuses professor of lying, doctoring emails](#)

[Editorial: Medill, Protess owe NU community full transparency](#)

[Protess on spring leave of absence from NU, Medill Innocence Project](#)

[NU, Protess feud after school chooses new professor for spring Investigative Journalism class](#)

[Latest Innocence Project hearing shows widening rift between Northwestern, Director David Protess](#)

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[David Protess and Northwestern at odds in subpoena of Innocence Project student records](#)

[Innocence Project receives subpoena for notes, tapes](#)

This is part two of a two-part series about the history and future of the Medill Innocence Project. Read part one [here](#).

A banner headline in the February 7, 1999 edition of the Chicago Tribune succinctly summarized the longtime reputation of Medill Prof. David Protess: "NU professor now a media superstar," the boldface font exclaimed.

Protess and students in his Investigative Journalism class had spent the prior decade helping to free seven wrongfully convicted men from prison, along the way inspiring books and movies, bringing positive publicity to Medill and enticing scores of prospective students to Northwestern.

Later that year, Protess would found the Medill Innocence Project, a hybrid journalism and advocacy group that uses Investigative Journalism student reporting to help free more innocent men from prison and bring attention to the then-inconspicuous issue of wrongful convictions.

Barely a decade later, Protess's legacy looks decidedly different. The once-king of Medill has been barred from teaching his trademark class, publicly vilified by his dean and pushed to take a "leave of absence" that few realistically think will ever end. The 29-year professor, whose face still lingers on multiple posters throughout Fisk Hall, is reportedly not allowed to enter the building.

Protest has agreed to never again teach at NU, the Chicago Tribune reported last week.

He still manages to lead an unofficial "underground" class at an on-campus location he refuses to disclose. The six NU students who attend the weekly meeting are the first batch of participants in the Chicago Innocence Project, an autonomous group with much the same mission as the Medill Innocence Project, which is continuing under new leadership.

But after years of awards and accolades, Protest's public falling out with the University he served for three decades has stunned the NU community and left the Medill faculty starkly divided.

"I think everything about the situation is tragic," Medill Prof. Michele Weldon said.

"It's tragic for David, the students, the faculty, the schools, the alums, all the people who are affected by the Innocence Project and individuals who hope to be recipients of the work of the Innocence Project."

But for some who have followed the history of Protest and the Medill Innocence Project, their parting is unsurprising.

In recent interviews, some former students and colleagues painted a picture of Protest as a man whose abrasive and egotistical personality got in the way of his unassailable intentions and obvious talents. That personality, combined with Protest's unexpected success, earned the professor enemies in law enforcement, local government and even the Medill faculty, the sources said. It also led Protest to push the boundaries of acceptable classroom activities — a practice which continued due to the University administration's decision not to oversee the unique class, critics said.

"When you're allowed to run a program without any real oversight, this is the kind of thing that happens," said former Investigative Journalism student Jennifer Merritt (Medill '98), who is now a markets editor at the Associated Press. "Something is going to go wrong, somebody is going to cross the line, and you're really going to lose your credibility."

Alec Klein, the Medill professor tasked with filling Protest's shoes, at least temporarily, said his job will be to restore that credibility. In his first interview since taking over the class this spring, Klein said he plans to establish strict guidelines governing ethical standards and safety procedures.

"The goal is to restore trust in the class and the project and rebuild it so that it becomes again a point of pride for students, faculty, alumni, Medill and

Northwestern," said Klein, cautioning he was not commenting on Protes's work. "It's a crown jewel for Northwestern, and we need to fix it."

Klein added he plans to ensure that both the Investigative Journalism course and the Medill Innocence Project operate as journalistic – not advocacy – entities.

Multiple former students and colleagues said Protes blurred the line between journalist and advocate. The critics contend Protes parted with Medill because he and his Innocence Project never really fit in there, despite the professor's attempts to lead the Innocence Project as an advocacy group and Investigative Journalism as a reporting class.

Ultimately, Protes's insistence on fitting a square into a circle — an advocacy organization into a journalism school — brought about his departure from both.

The fundamental question

While Protes claims to be both an advocate and a journalist, his background points toward the former.

The Brooklyn, N.Y. native, now 65, earned his undergraduate degree in political science at Roosevelt University, where he served as president of the student government. Later, he obtained a doctorate from the University of Chicago in social policy.

But in 1981, following brief stints as a research director at the Better Government Association and a political science instructor at Loyola University of Chicago, he joined NU as a journalism professor.

Like many Medill professors, Protes augmented his teaching position with a job in the industry. In his case, the job was at the investigative monthly Chicago Lawyer magazine, where Protes worked with award-winning journalist Rob Warden.

In 1990, Warden and Protes investigated the case of David Dowaliby, who had been convicted of killing his 7-year-old daughter. The pair's reporting uncovered evidence that led to the overturning of Dowaliby's conviction the next year.

"We watched him walk free, and it changed all of our lives," Protes said of the Dowaliby case, one of the first major exonerations in the country and the subject of a television movie starring Shannen Doherty and Kevin Dillon.

After Dowaliby, Protes converted his Investigative Journalism class into a vehicle to research potential cases of wrongful conviction. The students found success quickly, helping to free six more men that decade.

Their work garnered international media attention in 1996, when the students helped free four men, known as the Ford Heights Four, after securing confessions from

those actually responsible for a gruesome double murder. The attention came again three years later with the exoneration of high-profile death row inmate Anthony Porter, whose case has been credited with convincing former Illinois Gov. George Ryan to institute a moratorium on the use of the death penalty in the state. It was that case that earned Protesch the "media superstar" label.

But the Porter case nearly unraveled when prosecutors discovered the class's private investigator, Paul Ciolino, had used a videotape of an actor claiming to have seen alternate suspect Alstory Simon at the murder scene to get Simon to confess. Simon quickly recanted his confession, but he was convicted of the murder — a conviction he continues to fight today.

Ciolino's tactics led some to question the characterization of Protesch's work as journalism. Those early skeptics included then-Medill Dean Michael Janeway, who considered canceling the course, partially because he felt it was engaging in advocacy.

Janeway left Medill in 1997, and Protesch enjoyed strong support from his replacement, Ken Bode.

"My feeling was that the kind of journalism that Protesch was teaching is exactly what needs to be available at a top-drawer journalism school," Bode said.

But even as Protesch gained more support and attention, the journalism-or-advocacy question lingered.

In the aftermath of the Porter case, when the professor first established a formal group to work on wrongful convictions, he did so in NU's School of Law, co-founding the Center on Wrongful Convictions with Warden.

Less than a year later, Protesch left the Center on Wrongful Convictions to establish the Medill Innocence Project. The project, supported by a grant from the Chicago-based Alphawood Foundation, engaged in advocacy such as lobbying for a ban on the death penalty, signing amicus briefs before the U.S. Supreme Court and, most importantly, working on behalf of individual people who it believes has been wrongfully convicted.

But it did so based on evidence uncovered by student reporters in an Investigative Journalism class that featured "absolutely no advocacy," Protesch insisted.

"The goal in that class is to find the truth," he said.

The professor, who led both organizations, worked hard to make the relationship function. He used a simple model: The students dug up information about a case, and the Innocence Project decided how to use the evidence most effectively. That

model led to five more exonerations and a real-world investigative reporting education for the hundreds of students who flocked to the popular class.

"We viewed our work as journalism," said former student Mike Saccone (Medill '05), now a spokesman for the Colorado Attorney General's Office, echoing a refrain repeated by many former students. "David told us early on in the course that we weren't going to be rewarded for finding evidence to free someone. We were trying to move the ball down the field — in one direction or the other."

But other former students pointed to several problems with the set up. For starters, there was the formal affiliation with the advocacy-minded Innocence Project, which provided funding for the reporting done by the Investigative Journalism class. Plus, the "heart and soul" of the class, as former student Diane Haag Libro (Medill '00) put it, was Protess — an outspoken advocate.

Then there was the fact that the supposedly journalism class never really produced any journalism. While the Innocence Project now publishes news stories on its website, the site was not established until 2008. Before that, the only "publication" of student work came in the form of supplying information to outside media organizations.

"I don't think the class has very much to do with journalism," Liana Balinsky-Baker (Medill '10), a former student who is now a reporter at Reuters. "In every other Medill class, you end up with a final project that's an article."

Most importantly, some former students said the Investigative Journalism class shed its journalism label by actively seeking to influence the legal process, as opposed to simply raising questions about it. An example of that is how the class often worked closely with defense attorneys but mostly ignored prosecutors, the critics said.

"I do believe the core of the class is to find the truth," said Merritt, the former student. "But there's no question in my mind, or in anyone's mind, besides maybe David's, that the goal of the class is to free innocent prisoners."

Of the dozens of innocence projects in the United States, only three are housed in journalism schools: the Medill Innocence Project, the Justice Brandeis Innocence Project at Brandeis University and the Innocence Institute of Point Park University. At Medill, Protess's advocate mindset fueled his passion for freeing wrongfully convicted prisoners. To do so, he sometimes encouraged his students to rely on questionably ethical reporting tactics, according to multiple former students and other sources familiar with the class.

While concern about the tactics never appeared on students' universally positive Course and Teacher Evaluations, it often prompted academic debate about the goals and boundaries of the class, the sources said.

Safety first

As Protesse toed the line between journalism and advocacy, he also dealt with the issue of student safety.

While most NU courses center on work in a classroom or controlled off-campus environment, fieldwork in Protesse's Investigative Journalism class often took place in uncontrolled settings. As time passed and universities across the country became more conservative about student safety, the class continued to take up cases in areas such as the South Side of Chicago and Gary, Ind. Students occasionally interviewed alternate suspects — by definition, people who they believe may have killed.

"If anything was going to get the program, I imagined it would be from a safety perspective because you were doing real stuff," said former student Greg Lowe (Medill '05), who is now a grant writer for the nonprofit Summer Search. "I don't think I ever personally ended up in any situations where I felt unsafe, but it was on my mind, and I think there probably were other people in situations that could have been dangerous."

Despite the inherent safety concerns, NU administrators never reviewed the course's safety procedures. If they had, they would have encountered a short and unorganized collection of guidelines, according to sources with knowledge of the class.

Starting in 2003, teaching assistant and private investigator Sergio Serritella trained the students in "ghetto 101" and accompanied them in situations that might be dangerous. Serritella's presence was comforting, former student Jessica Hunt (Medill '09) said.

"We didn't have any safety problems," said Hunt, who is now working for Teach for America in Minneapolis.

But in general, it was far from routine for Protesse to send a private investigator with the students. Even when three students traveled to Las Vegas last quarter to interview an alternate murder suspect, they went alone.

Protesse said he always stresses the importance of safety. He pointed out that no students have been harmed while doing classwork. But safety concerns have led

Investigative Journalism students to take at least two actions that would normally be deemed illegal or unethical.

In a southern Illinois forest preserve in May 2004, students recorded a conversation with an alternate suspect without his consent, usually a crime in Illinois, so Serritella could hear the conversation and intervene if it got out of hand. And in 2009, a student posed as a ComEd worker to obtain a source's address, partially out of concern about the dangerous neighborhood.

Former students said one of the best things about the class was that it took them out of their comfort zone.

"One of the really great lessons in class is to teach you not to be scared of situations that the world has taught you to be scared of," said Jesse Abrams-Morley (Medill '05), who is now clerking for a federal judge in Philadelphia. "There's something really powerful about going there, doing the work and realizing that most of the people are just like you and me."

Protest being Protest

Dealing with safety issues, ethical boundaries and the journalist-advocate line may have been easier if the professor enjoyed universal support.

But in various interviews, some former students and colleagues described Protest as a polarizing figure whose easy-going approach and dismantling charm was sometimes betrayed by a penchant to be "pugnacious," "abrasive" and, most commonly, "a pain in the ass."

The volatile personality flared up in 1996 when Hollywood producers expressed interest in making a movie about the Ford Heights Four case. When the three students who worked on the case hired a literary agent to protect their ability to discuss the case in the future, Protest publicly accused them of greedily seeking to profit from the misfortune of others. Today, he calls the incident the "single worst mistake" of his career.

In addition to occasionally damaging relations with students, Protest's rough personality sometimes rubbed fellow professors, administrators and government officials the wrong way, Ciolino said.

"Dave, throughout the years, got a lot of heat for being Dave. Sort of like Manny being Manny," said the private investigator, referencing the controversial and recently retired Red Sox slugger.

Protest brushed off the criticism.

"I'm a muckraker," he said. "I'm not a people-pleaser. I'm not here to make friends."

Medill Prof. Doug Foster, a strong supporter of Protes, said his friend's work is "controversial by nature." But several other Medill professors said Protes's seemingly egotistical attitude and desire to bring attention to his work had divided the faculty for years.

It also led some prosecutors to think Protes was trying to show them up, critics said.

Dick Devine, a former Cook County state's attorney who went up against the professor on several cases, said he never operated with an "overall viewpoint toward an entity like the Innocence Project. You look at each case and the facts of each case, and you deal with that."

But Ciolino said personal issues definitely caused prosecutors to go after Protes and his Innocence Project.

"Prosecutors have memories like elephants — you shame them, you embarrass them, they never, ever forget it," he said. "It was a matter of time before they got Dave."

'Fishing expedition'

By "getting Dave," Ciolino was referring to a subpoena filed in May 2009 by Devine's successor, Cook County State's Attorney Anita Alvarez.

Alvarez filed the subpoena in response to defense attorneys who had cited evidence gathered by Investigative Journalism students to ask a judge to reopen the conviction of Anthony McKinney, who was sentenced to life in prison for the 1978 murder of a Harvey, Ill. security guard. The subpoena asked for 11 types of student documents related to the class's three-year investigation of the case, including homework, grades and syllabi.

Sally Daly, an Alvarez spokeswoman, said at the time that prosecutors felt they needed to examine the students' techniques and motivations after hearing from witnesses that the students engaged in unethical behavior.

"At the end of the day, all we're seeking is the same thing these students are: justice and truth," explained Daly, who declined to comment for this article.

But Protes thinks there was a different reason: revenge for years of students proving prosecutors wrong.

"I think what's in (Alvarez's) mind is, 'How can I destroy the Medill Innocence Project?'" said Protes, noting there is more evidence of innocence in the McKinney case than on any other case he's researched. "The rest of it is a contrivance."

Whatever her motivation, Alvarez's subpoena managed to shift the focus from McKinney's potential innocence to Protes's reporting methods.

Protes and NU attorneys spent months together fighting the subpoena on the grounds the documents had not been shared with anyone and thus amounted to internal reporter's notes. But the University changed its position in October when it learned that Protes had, in fact, shared the records with defense attorneys and then lied about it to avoid turning over the documents.

Protes maintains his false statements were due to memory lapses. Nevertheless, Medill Dean John Lavine decided the evidence of lying and doctoring emails warranted preventing Protes from teaching his class in the spring.

"The bigger story is that the state's attorney got exactly what she set out to do," said Foster, the Medill professor and Protes supporter, after hearing about the professor switch. "Hit with a sledgehammer, go on a fishing expedition and drive a wedge between a professor and his university."

The 'Quotegate' factor

Denouncing a county prosecutor as vindictive is one matter. But some Protes supporters are also claiming Lavine used the McKinney case as an excuse to settle personal grievances against Protes.

In particular, the supporters charge Lavine suspended Protes from teaching because of Protes's role in the 2008 "Quotegate" scandal about Lavine's use of quotes in a Medill alumni magazine article about an advertising class. Prompted by a column in The Daily, Protes contacted the students in the class and determined none of them said the quotes Lavine attributed to them.

An administrative committee formally cleared Lavine of any wrongdoing, but Protes publicly disagreed. Multiple Medill faculty members, who asked to speak anonymously for fear of retaliation, pointed out that others involved in Quotegate lost their positions on the faculty.

Last month, Protes called for an independent review of his suspension, in part to look into whether Lavine acted "in retaliation" for Quotegate. More than 35 investigative reporters joined Protes in that call; one of them, famed investigative journalist Lowell Bergman, said he thought Lavine's handling of Protes resembled a "star chamber proceeding."

When asked whether personal reasons influenced the professor switch, Lavine wrote in an email his decision "was made solely on the basis of the record that came from the Innocence Project computers and (Protes's) consistent misrepresentations."

Other Medill professors pointed out Lavine stood together with Protesse in fighting the subpoena for more than a year before learning Protesse had lied to him.

"At one point, John said, 'If David's going to jail, I'm going with him,'" Medill Prof. Roger Boye recalled. "He was extremely supportive, so I don't buy this line that it's about retribution."

'Checks and balances'

Other professors don't doubt Lavine's motives but are upset about the way the administration handled the professor switch. Last week, the NU Faculty Senate passed a resolution noting "deep concern" with the impact the process may have on academic freedom at NU.

The situation has "further divided an already divided faculty," Foster said.

Some have also expressed fear that the loss of such a famed professor may have a negative impact on admissions. Multiple former Investigative Journalism students cited Protesse and a desire to take the class as their biggest reason for attending Medill.

"The Innocence Project is such a big part of their marketing package," said Medill senior Kelsey Farabee, who took the class in the winter. "When you go to the Medill website, it's his face staring at you."

There has been no indication of any impact on admissions, University spokesman Al Cabbage said.

"There is no doubt that the work of the Innocence Project is something that has been important in establishing the very stellar reputation of Medill and what our students do," he said. "But I'm confident that that's going to continue."

Cabbage and Lavine each expressed strong support for the new professor, Klein, a former investigative business journalist at The Washington Post and best-selling author who taught the class in the fall when Protesse was on sabbatical.

The format of the class will not change, said Klein, adding his students have made "huge progress" on a wrongful conviction case this quarter.

Laura Samson, the executive director of the Alphawood Foundation, said the organization is unsure if it will continue to fund the Medill Innocence Project under Klein.

Klein said he has run the class under tighter safety procedures and rigorous ethical standards, and he plans to continue to make minor changes.

It is unclear if the administration has played any role in the reforms. Lavine declined to answer questions about whether he has asked Klein to change anything about the

class. James Young, NU's associate provost for faculty affairs, said the "deans of individual schools have authority over curriculum." Cabbage said as a general rule, professors dictate classroom guidelines. University President Morton Schapiro declined to comment.

"I'm keeping them in the loop," Klein said. "We're investigating murders, so I want the administration to know what's going on."

Merritt, the former student, said she hopes the administration establishes "checks and balances."

"Some clear rules would do it some good," she said. "It can't just be one person running it."

Meanwhile, it is unclear when the focus of the McKinney case will shift from the tactics of a group of NU students to the guilt or innocence of McKinney. Prosecutors have requested another six weeks to review NU student documents before deciding if they will request more.

"The fact that Anthony McKinney is still behind bars is a sin," said former student Evan Benn (Medill '04), who worked on the McKinney case. "The fact that the case has been derailed for this many years and it's taken the focus off of the plight of an innocent man, it's a shame."

Benn, a staunch supporter of Protes, added that "seeing the relationship between David and the University unravel has been very hard to watch."

While most expect Protes to continue to make a difference through his Chicago Innocence Project, the controversy with NU will likely remain a blemish on his career. Foster called the situation the "dismantling of a legacy."

Still, many former students and colleagues said Protes will ultimately be vindicated as someone who, despite some serious flaws, helped start a national movement against gross injustice.

"If you have a picture of fighting wrongful conviction in the dictionary, Protes should be the first one listed," Ciolino said. "If you look at this thing 30 to 40 years from now, Protes will be a beloved figure that they'll be building statues about."

b-rosenthal@northwestern.edu

Note: This article has been edited for clarity. The original version misstated the date Cook County State's Attorney Anita Alvarez filed a subpoena. The correct year is 2009. The Daily regrets the error.

In Focus: Investigative Journalism students used questionably ethical reporting tactics, sources say

Protest, former students defend work as in line with widely-accepted ethical norms

By [Brian Rosenthal](#)

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Former students and other sources have called into question the reporting tactics of David Protess and his Investigative Journalism class. The class has helped free 12 men from prison, including five from death row. (Brian Cassella/Chicago Tribune)

Students in Northwestern's most famous journalism class occasionally used questionably ethical reporting tactics while investigating potential wrongful conviction cases, according to multiple former students and other sources with knowledge of the Investigative Journalism course.

Among the questionable tactics, Medill Prof. David Protess encouraged his students to mislead interview subjects about their identities and intentions, party with potential sources, work closely with defense attorneys and attempt to convince eyewitnesses their original testimony may have been wrong, according to the sources.

In one 2009 incident, a student posed as a ComEd employee to obtain basic information about a witness. In a 2010 case, students used six similar-looking mug shots to suggest to a witness that his identification of a murderer may have been inaccurate.

"David's just willing to push some boundaries," said a former student, who requested anonymity to speak candidly about her experience. "I don't think he crosses them outright, but I think he pushes them to the very edge."

Despite the fame and prestige the Investigative Journalism class brought to NU, its reporting techniques have never been formally reviewed by administrators. Rumors about ethical violations have circulated but have never been publicly confirmed by those associated with the class.

Many of the sources spoke on the condition of anonymity due to the Medill Innocence Project's ongoing legal battle and the general sensitivity of the situation. But all information included in this article was confirmed by at least two sources, including, in several cases, the students who used the tactics.

Protest, the founding director of the Medill Innocence Project and a well-known investigative reporter who has won dozens of awards for his work, acknowledged he advocated several of the tactics, but he insisted his students always acted in accordance with industry norms and in the tradition of award-winning investigative reporting that has positively influenced society.

Few, if any, of the incidents identified by critics involve blatant violations of the law or journalism ethics. Still, the tactics are controversial enough that knowledge of their use may raise questions about nearly 20 years of groundbreaking work.

Reporting by Protest and his students, gathered during the Investigative Journalism class and then published or shared with attorneys in the legal case, has helped free 12 innocent men from prison, including five from death row, since the early '90s. Those men's guilt or innocence is unrelated to the reporting methods employed by a group of journalism students. But, if nothing else, the new information brings up questions about how best to teach investigative reporting at a journalism school, given the murky ethical nature of the craft.

Protest, a 29-year professor, is on leave after being barred from teaching his Investigative Journalism class this quarter and will not be teaching it next fall. The decision to remove him from teaching the class Spring Quarter was based on evidence the professor lied and doctored emails to avoid turning over documents to prosecutors who had accused Protest and his students of crossing ethical lines in investigating the murder conviction of Anthony McKinney. Protest claims his false statements were due to memory lapses and that he changed the emails to make them more accurate.

The professor switch had nothing to do with the reporting tactics Protest uses, University spokesman Al Cabbage said.

Few Medill professors realistically expect their colleague to ever return from his "leave of absence." He's currently focused on leading a newly launched independent nonprofit group, the Chicago Innocence Project.

It is unclear if the new professor, former investigative business reporter and best-selling author Alec Klein, will establish different ethical standards. Klein declined to comment for this story.

It is also unclear if the documents Protesse sought to protect include any information about questionable reporting tactics. A spokeswoman for the Cook County State's Attorney's Office, which is currently reviewing the documents, declined to comment. Investigative reporting experts noted their profession is fraught with ethical dilemmas. But many said some of the tactics used in Protesse's class seemed to cross the line.

"I don't like any of them, and I wouldn't use any of them, and while some of those tactics might get you to your goal more quickly, I don't think any of them are necessary to accurately and fairly report on an innocence case," said Mike McGraw, a longtime special projects reporter at the Kansas City Star who has worked on wrongful conviction stories in the past.

The vast majority of former students, on the other hand — even those involved in the controversial cases — strongly defended Protesse and insisted they never did anything that even approached the limits of ethical behavior.

"My litmus test is always: If I even need to ask the question then it's probably not right," said Evan Benn (Medill '04), who worked on the McKinney case and is now a reporter at the St. Louis Post-Dispatch. "And never did that litmus test fail in our reporting."

The identity game

For students like Christine Wachter (Medill '01), things are less black and white. The former Investigative Journalism student said the class "raised a lot of ethical issues" for her and the other students investigating the 1997 "Girl X" rape case against Patrick Sykes. She pointed to the practice of "playing up" their status as "just students," as opposed to professionals who can impact the legal process.

"I think people were a little more likely to talk to us because (we said), 'Oh, we're just some students working on a project for a class,'" said Wachter, a former Daily staffer, before adding "but that was 100 percent true."

The ways in which students described their identities and their intentions to potential sources was the questionable reporting tactic most commonly mentioned by critics. In some cases, the violations were more severe than in Wachter's example.

It was "routine" for students to misrepresent their identities to get basic information or during initial conversations with subjects, said a source familiar with the situation. Over the past decade, students have pretended to be a ComEd employee, a U.S. Census worker and, most commonly, attorneys, multiple sources said.

It is standard industry practice for journalists to identify their occupation, employer and general subject of the story before interviewing potential sources. The Medill Integrity Code "requires" students "be honest" and "not misrepresent" themselves, Medill Dean John Lavine wrote in an email.

The Code of Ethics of the Society of Professional Journalists mandates that journalists "avoid undercover or other surreptitious methods of gathering information except when traditional open methods will not yield information vital to the public. Use of such methods should be explained as part of the story."

Protest said he complies with the SPJ Code and adds the additional criteria of requiring his students to never break the law or directly lie to a source. He denied students have ever posed as attorneys, and he explained they posed as ComEd and Census workers because other methods had failed and student safety was a concern. In the ComEd incident, Protest wrote in an email, the students "were drawing attention, and proclaiming they were Northwestern students might have put them in harm's way. So, we discussed the Com Ed idea, purely as a way to LOCATE the witness on a particular block. Obviously, the witness wasn't interviewed by the student who posed as a Com Ed employee. Why would a utilities worker be asking her about a murder case?"

Other sources with knowledge of the incident offered a different perspective. They pointed out the students didn't even attempt to talk to the witness before resorting to the ComEd disguise, questioning whether "all traditional open methods" had been exhausted, and they added there was no planned disclosure of the technique.

The sources also suggested some students attempted to get information from witnesses through a very different technique — by buying them beer and drinking with them at social events.

In one 2010 case, some students were particularly concerned by the partying, sources said. Protest said he is familiar with the incident but couldn't comment because the facts are in dispute.

Many former students said "journalism of empathy" is an important part of the Investigative Journalism class. Sources are encouraged to "become part of" a source's world "without judging them," Protess wrote in an email.

"I have no problem with students grabbing a beer with sources. Mainstream journalists routinely buy drinks for sources," he wrote. "Our policy on this issue is clear: We will reimburse students for one drink only. That's because we want to be sure that the minds of both reporters and sources are clear."

Journalists must be careful to maintain a professional relationship with sources, said Bob Steele, a professor of journalism ethics at Depauw University and the Nelson Poynter Scholar for Journalism Values at The Poynter Institute.

"The journalist has a reporting obligation that is built upon an appropriate distance from those the journalist covers," said Steele, who specified he was not informed enough to speak specifically about NU's Investigative Journalism class. "That distance has to do with the nature of connection and relationships."

Another controversial technique students occasionally used to get information from potential sources was telling them they were working to free the innocent man whose conviction they were investigating, former students said. Posing the question in that way led friends of the convicted to consider how they might be able to help, the students said.

"You do sometimes say, 'We're here working for Aaron; we believe he's innocent,' and that's a pretty gray area," said Jennifer Merritt (Medill '98), who worked on the Aaron Patterson case.

Protess said he discourages the tactic.

Medill Prof. Tim McNulty, a former public editor at the Chicago Tribune, said the ethics of a reporter bringing up motives depends in part on his or her intent.

"A journalist could just as bluntly say, 'I'm working to win a Pulitzer Prize,'" said McNulty, stressing he was not speaking specifically about the Investigative Journalism class. "The question is: Are you trying to influence the answer?"

'Defense investigators'?

Another question is to what extent the students actually were working to free innocent men.

Every student interviewed for this article emphasized that Protess repeatedly told them their goal was to find the truth, not to find evidence of innocence. But some students said behind that explicit statement, there were complications.

"The only reason you're investigating the case is because of the possibility that this person may be innocent," said Greg Lowe (Medill '05), a former student who is now a grant writer for the nonprofit Summer Search. "There's no story if they're guilty. And I think that's why people are passionate about it — you want to free someone from prison, you want to get someone off death row."

But Lowe added that "at the same time, you're dealing with the facts. You're looking for the truth."

Protess put it even more simply: "The evidence is the evidence; the facts are the facts," he said.

Still, some former students pointed out that the Investigative Journalism class receives funding for its work from the Medill Innocence Project, a self-proclaimed advocacy organization. In addition, Protess provides the "heart and soul" of the class, as former student Diane Haag Libro (Medill '00) put it, and he too is well-known as an advocate for reform of the criminal justice system.

Another potential issue, the critics said, is Protess's practice of helping defense attorneys but not prosecutors. Multiple former students recalled "working closely" with defense attorneys throughout their investigation.

The class generally stops pursuing cases when conclusive evidence of guilt is uncovered. But in some cases when the facts were unclear or pointed toward innocence, evidence found to be detrimental to the convicted was withheld, the sources said.

"They were not journalists," said a source familiar with the situation. "I submit to you, they were defense investigators."

In the controversial and still-pending McKinney case, Protess acknowledged he provided evidence to the defense team that he did not give to prosecutors. But the professor said that was a "mistake" that was not representative of his "standard practice."

"My connections to law enforcement are deep and long-standing," he said.

"Throughout my career, I've prided myself on sharing information with prosecutors, who aren't happy initially, but get over it because they're professionals."

One book, six photos

The blurry line between reporter and "defense investigator" gets a little blurrier in cases in which students seemingly attempted to persuade witnesses their original testimony may have been wrong.

To do that, the students used the book "Picking Cotton." The nonfiction novel, required class reading, tells the story of a rape victim whose false identification of her attacker led to an innocent man's spending 11 years in prison. In recent years, Protesch has encouraged students to give copies of the book to witnesses whose identification of a criminal helped lead to a conviction.

"It's part of the technique to getting the witness to reconsider because witness misidentification is pretty common, if not rampant," said Liana Balinsky-Baker (Medill '10), who added she was comfortable with the strategy and strongly supported Protesch.

Balinsky-Baker, a former Daily staffer, said her teammates also employed another tactic to open the minds of witnesses: showing them an "array" of six black-and-white mug shots — the potentially wrongfully convicted man and five other men carefully chosen for their similar looks to the convicted.

The students then asked the witness to identify the killer. When he chose the wrong person, they informed him of his mistake. The students planned to interview the witness later to see if he would recant his testimony.

"It sounds a little sketchy, but it wasn't a big deal," Balinsky-Baker said.

One of her teammates, Corinne Lestch (Medill '10), a former Daily staffer, agreed, saying she had "no reservations" about using the photos.

"Investigative reporting exposes hidden truths," Protesch wrote in an email. "To achieve that goal, it often is necessary to challenge a source's recollection of events."

McGraw, the Kansas City Star reporter, has a different view.

"That sounds like a trick to me," said McGraw, who won the 2009 Investigative Reporters and Editors investigative reporting award for a series on human trafficking.

"It sounds like the kind of trick the police use to get the convictions in the first place. If we stoop to the same tactics that the police use to get wrongful convictions, then we're no better than they are, even if we get innocent people out of prison."

Do the ends justify the means?

McGraw's point gets at a central question in the ethics debate: Do the ends justify the means? Given that most of the controversial tactics are only in the "gray area" and lead to the freeing of innocent people from prison, is their use acceptable and even positive?

According to former students and other sources, the class is driven by the idea that the ends do justify the means.

"That's always been sort of the way David operated," one former student said.

But Protess denied the description.

"As a general rule, freeing the innocent doesn't justify reporting methods that would violate the SPJ Code," he wrote in an email. "In my class, we discuss this issue on a case by case basis. Ethical journalism involves reflection and debate, even if you don't arrive at an answer that everyone agrees with."

In the end, Protess said, the decision is up to the students.

"As long as I've been here, David's strategy has always been that the cases belong to the students. They make the decisions on the case," said Rebekah Wanger (Weinberg '97), the former program assistant of the Medill Innocence Project. "If a student can't have the risk of making a mistake in an educational setting where they can learn from it, where are they going to have that?"

Protess only steps in when there's danger to students, he said. That's what occurred in a southern Illinois forest preserve in May 2004, when students recorded a source without consent — usually a crime in Illinois. The students wore the wire so teaching assistant Sergio Serritella could hear the conversation and intervene if the situation became dangerous, Protess said. Prosecutors have latched onto that incident — along with allegations that students paid witnesses and flirted with witnesses — to argue that Investigative Journalism students crossed ethical lines.

Serritella declined to comment for this story.

Paul Ciolino, a former private investigator for the Investigative Journalism class, said Protess should not be held responsible for the actions of each of his students.

Ciolino added that any questionable reporting tactics employed by Protess and his students pale in comparison to the habitual misconduct of police and prosecutors.

"The bad behavior on the other side so outweighs anything that Dave does," Ciolino said. "I mean, they're killing people. They are knowingly killing people that they know are innocent."

Years from now, Ciolino said, Protess will be a "beloved figure," and few will care about the tactics that were used to free innocent people.

Former students voiced similar feelings.

Jesse Abrams-Morley (Medill '05) said there's a "danger in encouraging people" to not "be aggressive" in looking for the truth. Abrams-Morley, a former Daily staffer who took the class in 2004-05 and is now clerking for a federal judge in Philadelphia, added he hopes the public remembers the positive work the Investigative Journalism class has done.

"Whatever David was doing, and whatever was happening in the class," he said, "whether or not there have been some things that were wrong, there was a whole lot done that was right, and it's really, really important as this goes forward that people not lose sight of that."

This is part one of a two-part series about the history and future of the Medill Innocence Project. Please look for part two in our May 11 edition.

Northwestern professor teaching underground amid new scrutiny of ethics

By Jodi S. Cohen and Matthew Walberg Tribune reporters

11:14 p.m. CDT, May 4, 2011



From a fifth-floor classroom at Northwestern University, David Protess leans back in his chair, hands behind his head, listening as students dissect how they persuaded a source to talk.

It's a discussion he's led year after year at one of the country's most prominent journalism schools. His classes, which focus on investigating wrongful convictions, have produced results: More than 10 inmates have been set free, some from death row.

But the five journalism students gathered around the classroom's conference table this evening aren't getting credit and Protess isn't getting paid for teaching what he calls his "underground class" in a location he doesn't want disclosed.

He was placed on leave for the spring quarter — and has been barred from even going to his office — after university officials said he misled them in connection with a pending court case. He recently signed an agreement that he would no longer teach at Northwestern, a source told the Tribune. The settlement includes terms that neither side is to blame and prevents either one from discussing it. It includes undisclosed financial compensation, the source said.

Even as he teaches the clandestine class on campus and grapples with the end to his nearly 30-year official Northwestern career, Protess continues to be the target of allegations of ethical lapses. In two instances while investigating prisoners' convictions, Protess allowed his students to lie about their identities, the Tribune has learned.

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One student misrepresented herself as a U.S. Census Bureau employee in an attempt to learn the location of a potential source, while another posed as a ComEd worker to obtain the address and phone number of a witness.

"I don't dispute for a second that happened," Protess, who founded the Medill Innocence Project, said in a recent interview with the Tribune. "It is a technique we will use infrequently." The behavior is acceptable, he said, "if there is no other way to get the story and there is a higher social purpose, a higher social good."

Questions about journalistic ethics add another layer of controversy for a professor who is both ostracized by his university and lauded in student evaluations. According to copies provided by Protess, students routinely described his course as "life-changing." And last week more than 30 journalists and professors from around the country came to Protess' defense by asking for an "independent investigation" of the allegations against him.

"It is just really unfortunate that this happened. David and his students have done extraordinary things over a long period of time," Northwestern President Morton Schapiro said in a recent interview. "I am glad we still have the Innocence Project. No winners here."

The falling-out stems from an ongoing investigation of the alleged innocence of Anthony McKinney, convicted of murder more than 30 years ago.

Protess and Northwestern initially were on the same side as they fought against turning over class materials subpoenaed by prosecutors, arguing they were protected under a law that shields journalists from revealing unpublished work.

But after questions arose whether or not Protess had been forthcoming about what he turned over to McKinney's lawyers, the university hired a prominent law firm to look into the allegations as well as possible ethical breaches. The university ultimately concluded that Protess lied about what information was shared with McKinney's attorneys. Protess blames a faulty memory and said he altered an email to make it more accurate, calling accusations of misleading the university "entirely disingenuous."

Actions taken by the university regarding Protess were based on his response to the subpoenas, not on the reporting techniques he teaches to students, said university spokesman Alan Cubbage.

But details about how some of his students conducted their investigations continue to spark debate. In November 2006, journalism student Kendra Marr identified herself as a U.S. census worker when she called an Evanston man to ask about the location of his nephew, a witness in a murder case. Later, the man called Marr back on her personal cell phone and threatened to report her to census officials unless she explained why she misidentified herself.

Marr, who now works as a reporter for the news site Politico, said she regrets using deception.

"I was a student in the class, and I wish I hadn't done it," Marr said. "It wasn't my idea, and as a professional journalist, I haven't misrepresented myself since, nor do I intend to ever again."

Protess said the deception was the idea of Sergio Serritella, a private investigator then working as a teaching assistant with the Medill Innocence Project.

"At the time, there was no law that prevented them from doing that," Protess said. "When I found out it was legal and legitimate, I gave it the green light."

Serritella denied it was his suggestion. In an email after the incident, Protess congratulated Marr on finding the person and tried to calm her fears about getting in trouble.

"I don't see this as a big deal," Protess wrote in the email to Marr. "It's highly unlikely that (the man) will report you to the Census Bureau, and, if he did, those folks have a lot more on their mind than hassling you ... Eventually, they'll get bored and leave you alone. And you're right: at least your number didn't show up as 'Medill.'"

While investigating a separate case in 2009, a student posed as a ComEd worker when he knocked on the door of a South Side apartment to try to get contact information for a witness.

In a memo addressed to Protess and obtained by the Tribune, student Nomaan Merchant outlined the ruse.

"With a pen and notebook in hand, my pitch would go something like this: 'I'm out here today on behalf of ComEd. We wanted to confirm the name and address of the person living here, in case there are any service updates we need to let you know about,'" Merchant wrote.

Merchant, now a reporter for The Associated Press, declined to comment on the memo. But Protess said the technique was used out of concern for students' safety in a dangerous neighborhood.

"This was done with the purpose of locating a source," Protess said. "It was to find someone without students getting hurt."

Protess said misrepresentation should be used as a last resort, and he drew a distinction between using that method to get information such as a telephone number as opposed to during an interview.

He said the two instances are the only times his students used undercover techniques.

"It is problematic if you haven't exhausted other ways first," he said. "While I say they didn't cross the line, I respect the view that all misrepresentation is unacceptable."

The Society of Professional Journalists' code of ethics discourages the use of "undercover or other surreptitious methods of gathering information except when traditional open methods will not yield information vital to the public."

Kelly McBride, a senior faculty member for ethics at The Poynter Institute, said she is concerned that the Medill project's "substantial and beneficial" goals could be undermined by using deception.

"The bottom line is that I don't agree that these were justified deceptions," she said. "It seems to me that there were alternatives in both cases, and the harm is that the public may question all of their work."

Indiana University journalism professor Dave Boeyink said a "journalist's fundamental coin is truth telling" and that the use of deception raises questions about the commitment to the truth.

"The real question for me is whether the deception is a last resort," Boeyink said. He questioned whether the student posing as a census worker had exhausted all other avenues first. He was more sympathetic to the ComEd ruse, saying, "You certainly don't want to be putting students in a situation where they are at risk."

Protess continues to work with a handful of Northwestern students as part of the Chicago Innocence Project, a nonprofit organization he founded in March to continue the work he started at Northwestern. So far, he said, he's raised \$16,400.

Some of the money paid for the students' recent trip to Minnesota, where they met with a co-defendant of inmate Stanley Wrice, who says he was wrongly imprisoned for rape nearly 28 years ago. The students secured a sworn statement from the man that he never saw Wrice in the bedroom where the sexual assault took place.

During a recent class, students reviewed strategies they used to get the source to talk and how being empathetic worked in their favor. They role-played difficult conversations. They read aloud a story they were writing about the case and debated the ethics of naming a rape victim who is now deceased.

The students took diligent notes even as Protess joked that they could say whatever they wanted because he no longer was grading them.

Protess praised them for continuing to work on the case despite his own troubles.

"During this time, seeing the work going on ... is really inspirational," he said. "For that, you are to be congratulated."

Journalists call for independent investigation of Protess controversy at Medill



by [Jim Romenesko](#) Published Apr. 27, 2011 1:15 pm **Updated** Apr. 27, 2011 1:28 pm

Romenesko Misc.

The 35 people who signed the statement say they "are deeply concerned about what appears to be a retaliatory campaign by law enforcement authorities and Northwestern University against long-time investigative journalist and Professor David Protess." ([Full coverage](#).) The journalists continue:

We call on our colleagues, especially those covering the news media, to join in investigating what is happening at Northwestern University. We also ask university officials to present themselves in a public session to explain their actions, and to answer questions on why they have endangered one of the premier investigative reporting projects in the country.

Romenesko has the full statement.

STATEMENT IN SUPPORT OF AN INDEPENDENT INVESTIGATION INTO THE PROTESS CONTROVERSY

We are deeply concerned about what appears to be a retaliatory campaign by law enforcement authorities and Northwestern University against long-time investigative journalist and Professor David Protesch.

Professor Protesch has established a national reputation at Northwestern University by working with journalism students on investigations that have resulted in the release of a dozen innocent men from death row or long prison terms. His work and writings have inspired many to become investigative journalists and to the creation of innocence projects in their own communities.

This controversy began two years ago when the Cook County prosecutor began an unprecedented effort to obtain the notes, grades and emails of Professor Protesch's students, who worked on the case of a man who appears to have been unjustly convicted.

Now Professor Protesch's methods and honesty have been questioned not only by prosecutors, but by his employer, Northwestern University, and its attorneys. This month, in a highly unusual proceeding the University presented its case against Professor Protesch to a closed session of the journalism faculty. Professor Protesch was barred from the meeting, denying him an opportunity to confront the accusations. Then the university issued a press release making public the serious allegations against him, quickly adding that it would not comment any further.

Tarnished and isolated, Protesch has been the subject of news reports and leaks that further damaged his reputation. In response, he has asked for an independent investigation into the allegations against him as well as the conduct of all those involved.

We support such an investigation and we call on our colleagues, especially those covering the news media, to join in investigating what is happening at Northwestern University. We also ask university officials to present themselves in a public session to explain their actions, and to answer questions on why they have endangered one of the premier investigative reporting projects in the country.

*Affiliation listed for identification purposes only

Prof. Lowell Bergman, Logan Professor of Investigative Reporting, UC Berkeley

Prof. Mark Feldstein, George Washington University

Prof. Brant Houston, Knight Chair in Investigative Reporting, University of Illinois

David Cay Johnston, investigative reporter and author

Prof. Charles Lewis, American University

Prof. Belle Adler, Northeastern University

Laurie Becklund, writer and author

Bill Boyarsky, political writer, Truthdig

David Burnham, Investigative Reporter

John Camp, former senior investigative correspondent, CNN

John S. Carroll, Retired Newspaper Editor

Prof. Wendell Cochran, American University

Sheila Coronel, Toni Stabile Professor of Professional Practice in Investigative Journalism,
Columbia University

Prof. Stephen Doig, Knight Chair in Journalism, Arizona State University

Dan Gillmor, Walter Cronkite School of Journalism and Mass Communication, Arizona State
University, Author, "We the Media" and "Mediactive"

Prof. Theodore Glasser, Stanford University

Florence Graves, The Schuster Institute for Investigative Journalism & The Justice Brandeis
Innocence Project

Prof. Christopher Hanson, Merrill College of Journalism, University of Maryland

Ellen Hume, Annenberg Fellow in Civic Media, Central European University

Martin Koughan, former senior producer, CNN and CBS News

Prof. Jane E. Kirtley, Silha Professor of Media Ethics and Law, University of Minnesota

Prof. Marvin Kalb, Murrow Professor Emeritus, Kennedy School, Harvard University

Katherine Kross, ex-CNN and Bloomberg TV Washington bureau chief

Prof. David T. Z. Mindich, Media Studies chair, Saint Michael's College

Morton Mintz, Senior Advisor, Niemanwatchdog.org, former Washington Post reporter

Jim Naughton, Emeritus President of The Poynter Institute.

James Neff, investigative journalist, author

Mark Nykanen, author and journalist, former NBC News correspondent

Prof. William Serrin, New York University

Prof. Herman Schwartz, American University's Washington College of Law

Ira Silverman, former senior producer, NBC News

Prof. Edward Wasserman, Knight Professor of Journalism Ethics, Washington and Lee University

Prof. Steve Weinberg, author and emeritus professor, University of Missouri

Henry Weinstein, Professor the Practice of Law and Senior Lecturer in Literary Journalism,
University of California, Irvine

Tracy Wood, investigative reporter

Updated: Northwestern explains Protest decision, accuses professor of lying, doctoring emails

Innocence Project Director: Memory lapses reason for allegedly
'misleading' statements

By [Brian Rosenthal](#)

Published: Thursday, April 7, 2011

Updated: Thursday, April 7, 2011 05:04

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Related Articles

- [Full text: NU statement explaining removal of Protest as spring Investigative Journalism professor](#)

In the days after Northwestern officials removed Medill Prof. David Protest as the professor of his popular Investigative Journalism course last month, members of the NU community demanded an explanation.

The University delivered one Wednesday, accusing the 29-year professor of lying and doctoring emails to avoid turning over documents to prosecutors who had accused Protest and his students of crossing ethical boundaries in investigating the murder conviction of Anthony McKinney.

"In sum, Protest knowingly misrepresented the facts and his actions to the University, its attorneys and the dean of Medill on many documented occasions," University spokesman Al Cabbage wrote in a statement distributed after a Medill faculty meeting in which University Provost Dan Linzer and Medill Dean John Lavine released the findings of a review of the high-profile professor.

The five-month review, which centered on examinations of the hard drives of Protess's work and private computers, "uncovered considerable evidence" of misleading and altered e-mail messages, according to Cubbage's statement. Protess, the founder of the Medill Innocence Project, called the statement "blatantly false" and "malicious." If he made any misleading statements, Protess said, it was because attorneys asked him to remember specific emails sent five years earlier and while his wife was undergoing treatment for breast cancer. He added that misunderstandings were exacerbated by the "imprecise" nature of email communication.

Protess accused the University of "scapegoating" him to protect its reputation and cover up missteps by other officials attempting to respond to the a subpoena about the Medill Innocence Project's three-year investigation of the McKinney case.

"The truth of the matter is that there is a lot of blame to go around here, and I share it...but as in all complicated situations involving Northwestern University, when there is negative media attention, typically one person is assigned blame," said Protess, referring in part to a February controversy over a sex-toy demonstration in psychology Prof. John Michael Bailey's Human Sexuality class. "No matter how loyal I am, they will be disloyal to me as soon as things don't go right public relations-wise."

Cubbage declined further comment. Linzer and Lavine did not respond to phone messages seeking comment. New Investigative Journalism Prof. Alec Klein and longtime course teaching assistant Sergio Serritella each declined to comment. Several other Medill professors declined to publicly comment.

Prof. Douglas Foster called it a "heartbreaking day" for Medill and NU.

"It's heartbreaking that one of our most esteemed colleagues and the University find themselves at such terrible odds that both sides are flinging accusations back and forth," he said.

What does 'everything' mean?

The most dramatic accusation flung Wednesday involved an email sent by Protess to his program assistant, Rebekah Wanger, in November 2007.

In that email, Protess wrote to Wanger that his position on the memos about the Innocence Project's investigation of McKinney "is that we share everything with (McKinney's) legal team, and don't keep copies." But when University attorneys asked for emails related to the McKinney investigation, Protess allegedly provided a doctored message that simply said the position was that "we don't keep copies."

According to the University, Protess altered the message to hide that he had given student memos to McKinney's attorneys because he knew that if NU officials discovered that, they would be forced to turn over all of those memos to prosecutors investigating the case.

Protess admitted Wednesday to altering the email, but said the change was made to avoid misleading the University.

The word "everything," in that context, meant every document in the Innocence Project's official McKinney file, Protess said. But it did not mean every student document created during the investigation, because many of those documents were of a personal nature and thus not added to the file, he said. An uninformed reader of the email, then, would get the wrong idea about exactly which documents were turned over, Protess said.

"Everybody was on me to be more precise, so I removed something so it wouldn't be false or misleading," he said.

"I don't understand University officials that will quote from one line in one email message sent four years ago and try to make something out of it," he added. "It's ridiculous."

Wanger did not respond to a phone message seeking comment.

Lies or bad memory?

Protess also countered that instances in which University officials deemed him "misleading" were simply failures in his memory.

While the subpoena into the McKinney case was filed in 2008 and is still being processed, it concerns emails sent between 2003 and 2006, when the Innocence Project was actively investigating the McKinney case. That time lapse led to some issues, especially because his wife underwent treatment for breast cancer during that time.

"How in the world am I supposed to remember precisely what number of documents went from Medill to McKinney's attorneys", Protess said of his attempts to remember what he turned over.

NU has acknowledged the memory issue but has since changed its tune to concentrate blame on Protess, the professor said. In an attempt to prove his point, Protess provided a copy of an email sent to him by NU General Counsel Thomas Cline in October.

"I recognize that it is often difficult to recall fully and accurately matters that occurred several years ago," Cline wrote in the provided email. "It now

appears...that some of your statements and recollections regarding materials published to the Center may not have been completely accurate."

Cline could not be reached for comment.

'Tense' meeting

University officials took a decidedly different approach Wednesday.

During the faculty meeting, Lavine and Linzer discussed the review for an hour and took questions for 45 minutes, Foster said. Afterwards, the faculty voted to ask Protess to come to a similar meeting to tell his side of the story.

The mood was solemn but respectful, Foster said. Another Medill faculty member, who asked to speak anonymously due to the sensitivity of the subject, described the meeting as "tense," as some professors were completely convinced by the presentation and others had their doubts.

Foster, who described himself as one of the ones with doubts, expressed appreciation that Lavine responded to calls for an explanation for his decision last month to replace Protess as the professor of Medill's Investigative Journalism course. Last week, Protess announced he was taking a leave of absence from NU in the spring to create his own Chicago Innocence Project, which plans to draw students from several Chicago universities.

The Medill Innocence Project, which has freed 12 innocent men from prison, including five from death row, under Protess's watch, will continue under the direction of Klein, a former investigative business reporter at The Washington Post.

"The Medill Innocence Project's work and achievements have been instrumental in pursuing the truth and righting wrongs," Cabbage wrote in his statement.

"Northwestern University and Medill are committed to this work and its continuance."

Media / News Bites / News Northwestern Accuses Protess of of Rank Deceptions

Posted by [Michael Miner](#) on Wed, Apr 6, 2011 at 7:10 PM



Northwestern University Wednesday afternoon accused Medill professor David Protess of "knowingly making false and misleading statements to the dean, to University attorneys, and to others."

The statement issued by vice president for university relations Alan Cabbage continued, "Such actions undermine the integrity of Medill, the University, the Innocence Project, students, alumni, faculty, the press, the public, the State and the Court."

Protess's alleged misdeeds turn on the university's response to a subpoena issued by State's Attorney Anita Alvarez two years ago. Alvarez wanted a variety of documents that supposedly would help her evaluate a dossier submitted by Protess and students of his Medill Innocence Project concerning a 1978 murder in Harvey. After a three-year investigation, the Innocence Project concluded that Anthony McKinney, convicted of that murder, was innocent. Protess resisted the subpoena, and Medill and the university at first took his side; but they would come to the conclusion that Protess had been hiding the fact that the Innocence Project had improperly turned over far more information to McKinney's lawyers than it did to Alvarez's office.

For much more on the court fight, and on the breach that's opened between Protess and McKinney's lawyers and between Protess and the Northwestern and Medill administrations, see [my column this week](#).

Northwestern has gone so far as to image the hard drives of Project Innocence and Protess's personal computers. This imaging apparently led to what might be the gravest charge in the university's bill of particulars, that Protess sent Medill dean John Lavine "a falsified

communication in an attempt to hide the fact that the student memos had been shared with Mr. McKinney's lawyers. This communication included what Protess said was a copy of a November 2007 email, unredacted save for removal of 'personal information,' that he had sent to his program assistant. The email copy he provided stated that: 'My position about memos, as you know, is that we don't keep copies....' However, examination of the original 2007 email, which was only recently obtained by the University, revealed that the original wording actually was: 'My position about memos, as you know, is that we share everything with the legal team, and don't keep copies....'"

I asked Protess for comment on the statement.

"They accused me of lying to them about the memos sent to the Center, except this time Cubbage claimed I lied from the very beginning," Protess emailed me. "Unfortunately for Mr. Cubbage, I have proof that this issue didn't even arise for four months and, when it did, I replied by saying 'it had been years' and I wasn't sure."

Here's the university's complete statement:

Northwestern University generally does not discuss publicly actions regarding its faculty and staff. However statements in the media by Professor David Protess and our desire to be as forthcoming as possible on an issue of great importance to the University, its faculty, our students, alumni and our community prompt us to make the following statement.

This afternoon Medill Dean John Lavine shared information with his faculty that explained his decision several weeks ago not to assign teaching responsibilities to Professor David Protess this quarter. Protess is on leave from both teaching and directing the Medill Innocence Project this quarter.

Lavine's decision followed a thorough review by the University and its outside counsel, Jenner & Block, of the information provided by Protess to Lavine and University attorneys in connection with a court case and of the practices and procedures of the Medill Innocence Project, which has been led by Protess. The review uncovered numerous examples of Protess knowingly making false and misleading statements to the dean, to University attorneys, and to others. Such actions undermine the integrity of Medill, the University, the Innocence Project, students, alumni, faculty, the press, the public, the State and the Court.

Under Professor Protess' supervision, student journalists working with the Medill Innocence Project investigated the murder conviction of Anthony McKinney from Fall 2003 through spring 2006.

In May 2009, the Cook County State's Attorney's Office issued a court-approved subpoena to Medill seeking 11 categories of documents relating to the McKinney case, including a request for memoranda created by students as part of their investigative journalism work on the case. The University began working on a way to respond to the subpoena completely and accurately and also protect our students, their privacy and journalistic independence.

To be responsive to the subpoena, Northwestern needed to be certain which materials could be protected by a claim of reporter's privilege under Illinois law and not be relinquished to the State and what materials would have to be turned over because they had been published or shared with a third party outside Medill. University lawyers repeatedly made that distinction clear to Protess, and Northwestern relied on his representations, as the long-time director of the Innocence Project, regarding what had been shared outside Medill and for which privilege could therefore not be claimed. Based on the information provided by Protess, the University took the position that student memos were privileged.

However, in June 2010 the University discovered that there were many inconsistencies emerging between Protess' representations and the facts. Mr. McKinney's lawyers produced in court student memos they said were received from Protess or from the Medill Innocence Project at his direction — documents Protess had said were never shared outside Medill. As a result, it became clear that the position the University had taken in court concerning the students' memos was not supportable. Additionally, Sidley Austin, the law firm representing Protess and the University, informed the court that statements it had previously made were not accurate and withdrew its representation of Protess. Northwestern then hired Jenner & Block to determine what had happened in the subpoena response process.

Jenner & Block scrutinized relevant material obtained from computer hard drives related to the McKinney matter and conducted interviews with individuals with first-hand knowledge of the conduct regarding the subpoenas in the case.

The review uncovered considerable evidence that Protess: authorized the release of all student memos to Mr. McKinney's lawyers despite his repeated claims to the contrary; knew from the very beginning that doing so waived any claim of privilege; and repeatedly provided false and misleading information to the lawyers and the dean. As just one example, in December 2009 Protess sent them a falsified communication in an attempt to hide the fact that the student memos had been shared with Mr. McKinney's lawyers. This communication included what Protess said was a copy of a November 2007 email, unredacted save for removal of "personal information," that he had sent to his program assistant. The email copy he provided stated that: "My position about memos, as you know, is that we don't keep copies...." However, examination of the original 2007 email, which was only recently

obtained by the University, revealed that the original wording actually was: "My position about memos, as you know, is that we share everything with the legal team, and don't keep copies...."

In sum, Protess knowingly misrepresented the facts and his actions to the University, its attorneys and the dean of Medill on many documented occasions. He also misrepresented facts about these matters to students, alumni, the media and the public. He caused the University to take on what turned out to be an unsupportable case and unwittingly misrepresent the situation both to the Court and to the State.

Medill makes clear its values on its website, with the first value to "be respectful of the school, yourself and others - which includes personal and professional integrity." Protess has not maintained that value, a value that is essential in teaching our students. That is why Medill Dean John Lavine has assigned the course to another faculty member this quarter and Protess is on leave.

The Medill Innocence Project's work and achievements have been instrumental in pursuing the truth and righting wrongs. Northwestern University and Medill are committed to this work and its continuance, and the investigative journalism class related to the Project is now underway for the quarter with new leadership.

And here's documentation that according to Protess undercuts the accusations against him. It's an email to him, dated September 14, 2009, from a Sidley & Austin attorney then helping represent him, the Innocence Project, and Medill against Alvarez. It said, in part:

an issue has come up that we wanted to flag for you. We are still exploring it, but will likely want to have a call to discuss it later this week or early next week. Karen Daniel, McKinney's counsel, has indicated to us that she has a significant amount of materials from the investigation, including videos, transcripts, and student memos to David. Apparently she received these materials when she was first getting involved in the matter. It is her belief that some of these materials may not have been published. If that is true, it may create a waiver issue for us, at least with respect to those materials provided to McKinney's counsel.

My understanding at this time is that she has turned over to the State the videos and transcripts and intends to turn over to the Court for her review the remainder of the documents in response to discovery responses from the State's Attorney's Office. Ms. Daniel is obviously concerned about both complying with her discovery duties and also with representing McKinney to the best of her ability. I plan to talk with Ms. Daniel to further explore precisely what she has in her possession. At that point, we will likely want to have a call to discuss the status of the case and how best to proceed.

Protess replied, in part:

As for Karen Daniel, I asked her long ago what she'd kept, and she told me she only had the videos, audios and transcriptions from the interviews, which is what she'd told ASA Dalkin. The day before I left for vacation, she asked what we meant by the sentence on p. 2 of the brief about information we had "given" to her. When I said it had been several years and I couldn't remember, but thought it was just the tapes and transcriptions, she responded by saying it didn't matter since she hadn't saved anything besides the tapes. I'm befuddled that she's now suddenly claiming she has "student memos" and a "significant amount of materials."

Proteus's reply to me Wednesday evening continued:

"They also claimed I misled them by redacting something from an email I showed them. Trouble is, what I redacted was inaccurate, and I did it so as to NOT mislead them. They also didn't show the entire message or the email that preceded and followed it — only one sentence, out of context.

"Ugh. Now I know, for the first time, what it's really like when powerful people try to railroad someone to promote their own agenda. In this case, they screwed up by not imaging the computers when they learned on Sept. 14, 2009 that Karen's memory and mine diverged."

What Proteus removed from "My position about memos, as you know, is that we *share everything with the legal team, and don't keep copies....*" was the language I just put in italics. I asked Proteus what he meant by "what I redacted was inaccurate, and I did it so as to NOT mislead them."

He replied that the deleted passage wasn't literally true: "The clause was an over-generalization I casually made to my program assistant. (I used the word 'everything' but actually meant everything that was in her files.)" And he elaborated, "Who writes an email message that reads: I shared everything in the files but not the documents that didn't make it into the files in the first place?" Considering I was communicating with my program assistant who knew what "everything" meant, there was no need to elaborate....I take students' memos home and remove personal and private memos (which includes a lot, but nothing of evidentiary value) so that the file that ends up at the MIP office no longer contains everything. By definition, the Center could not have received everything

"About the Most Airtight Case of Innocence"

How a legal storm capsized a petition to free a man who's been imprisoned for three decades.

By [Michael Miner](#)

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More recent developments in this story are posted on the Reader blog [here](#).

Northwestern University professor David Protess became a pedagogic superstar 15 years ago, when a team of students he led helped clear the names of the convicted killers known as the Ford Heights Four. Stories acclaiming Protess's triumph ran in newspapers that ranged from the *New York Times* to the *National Enquirer*, whose headline screamed, "COEDS SOLVE 18-YEAR-OLD MURDER. They free four innocent men & track down real killers." The Disney studio approached Protess about a movie.

But though justice triumphed, in other ways the story ended badly. The three women students fell out with their professor and wouldn't sign with Disney. Protess belittled their role and called them greedy. A private detective involved in the investigation accused Protess of grandstanding. The Chicago ACLU withheld an award it believed Protess and the students deserved because it didn't want any part of the pissing match.

That's the story I chose to tell in a long *Reader* [column in 1996](#). Soon after it was published, the phone on my desk rang. A reporter from a national magazine—*Newsweek*, I think—was doing a piece on the Ford Heights Four, and she had a question for me:

Why did you take the angle you took? Why didn't you didn't write about what really matters—about why the Chicago dailies didn't lift a finger to free the Ford Heights Four and a journalism school had to?

I had no good answer. Protesch might be a load, but what he'd accomplished was extraordinary. And ever since, there have been students coming to Medill simply because it offered the opportunity to learn investigative reporting from Protesch in his Medill Innocence Project. Few seem to regret the experience.

Now Protesch is back in the news, more controversial than ever, and I don't want to make the same . . . not mistake, really, but second-guessable choice of priorities. Recent breathless headlines—Northwestern accuses Protesch, strips Protesch of class; Protesch takes leave, plans independent program—shouldn't turn our eye from what matters most here, the wretchedly compromised fate of Anthony McKinney.

Arrested in 1978 when he was 18 years old, McKinney has been behind bars ever since for a murder Protesch isn't alone in believing he didn't commit—the killing of a security guard in suburban Harvey. Today, McKinney is a long-term patient in the psychiatric unit of the state prison in Dixon, and his one hope of freedom is a 2008 petition asking criminal judge Diane Cannon to grant him another trial on the basis of compelling new evidence. Much of this evidence was developed from 2003 to 2006 by Protesch and his students in the Medill Innocence Project.

"Of all the many investigations I've ever been involved with, this was about the most airtight case of innocence," Protesch tells me—though I grant you prosecutors always seem to have an airtight case of guilt. If State's Attorney Anita Alvarez had behaved like state's attorneys before her, Protesch says, she'd have grudgingly accepted the Innocence Project evidence, followed up with her own investigation, and then done the right thing. "If the McKinney case had been handled the way law enforcement has handled every one of my cases," says Protesch, "Anthony McKinney would have been released two years ago."

But Alvarez, a careerist in the office she's headed since 2008, reacted to the McKinney petition as her predecessors might have been tempted to—as someone rubbed the wrong way by the righteousness of Protesch and his students and maybe a little creeped out by the tactics they might have used to wheedle admissions and confessions from the scum of the earth. Alvarez's spokesperson, Sally Daly, tells me the Innocence Project turned over a file in 2007 that consisted of single-page affidavits signed by the witnesses the students had interviewed and a videotape of one of those witnesses, Anthony Drake, claiming on camera that he'd been present at the murder and McKinney hadn't. When the state's attorney's office followed up, says Daly, it discovered "serious issues of credibility," particularly with Drake—who recanted his statement and said he'd been paid \$40 after his interview, the money coming to him from the students via a taxi driver who dropped him off at a crack house.

"We don't have the luxury of only exploring one side of the story," says Daly, and through 2008 her office negotiated with the Innocence Project for more documents. But that December Alvarez became state's attorney, and she decided on a more in-your-face approach: she slapped Protess and Medill with a subpoena in April of 2009 demanding the students' "notes, memoranda, reports and summaries." She also wanted to know the grades Protess gave the students, his course syllabus, and grading criteria—and lots more.

It was a fishing expedition that would bring the campaign to free McKinney to a standstill and turn Northwestern University into a house divided. Two years later, Judge Cannon's courtroom remains mired in side issues. Are the student journalists entitled to the reporter's privilege to withhold information? And what information was actually withheld, anyway? Daly says Alvarez now knows that the Innocence Project turned over a lot more information to McKinney's lawyers in 2005 than it gave the state's attorney two years later. When a document's given to either side the reporter's privilege is waived; and the other side must get it too.

Cannon's courtroom, June 24, 2010: The various sides had gathered, but an answer to the question of whether McKinney would get a new trial was nowhere on the horizon. "This is not [that] hearing," said Cannon sarcastically. "They're responding to respondents to respondents to motions to amendments to motions to responses. We're nowhere near a hearing to my dismay."

On hand were Karen Daniel of the Northwestern law school's Center on Wrongful Convictions, representing McKinney, attorney Richard O'Brien, representing Northwestern and Medill and the Innocence Project, and an assistant state's attorney.

The session was all about the students. "You're not getting their grades," Cannon told the ASA. However, if someone "wants to make an accusation against a student, that's their right." A few weeks earlier Daniel had tried to get out from under Alvarez's subpoena by submitting a revised petition for a new trial that left out Anthony Drake and other witnesses interviewed by Protess's students. Then she thought twice and kept them in.

Judge Cannon imagined an accusation far more flamboyant than padded cab fare being made against Protess's students, and if that happened, she wondered if they'd come to court and defend themselves. She told O'Brien, "If a witness came in here and said a student promised me a date or gave me a wink and a nod and I told her what she wanted because she spread her legs, and we have no students to say he's full of it, then it's a question of credibility."

And she wondered if reporter's privilege even applied to students doing a class assignment? Does posting findings on the Innocence Project website constitute publication? "Is someone who has a website a journalist?" Cannon inquired snarkily. "And if I'm going to make that decision, I think it will be good news to all the parents in this state that they now have journalists for children."

"We're not making that argument," O'Brien replied.

You'd expect Protess and Daniel to be allies—the one developing new evidence, the other presenting it. But they haven't spoken in months. "We stopped being on the same page in December of 2009," Protess says, "when she claimed that I'd given her all of my students' reporting memos and I claimed I'd only given her some." The truth, he says, is that he didn't give her them all but he did give her more than he'd said. "I should have done a better job of keeping track of records," he allows. "I'm definitely guilty of that. But my focus is on the innocence case. The record keeping was sloppy as hell. Now it is much tighter."

In Protess's view, O'Brien and Daniel made the mistake of trying to placate Alvarez. "Every time you yielded, the prosecutors have demanded something else," he says. "It's the equivalent of trying to negotiate with terrorists. I'm speaking metaphorically here. When people are completely unreasonable, you cannot reach an adequate compromise."

Daniel doesn't disagree: "There's no end to the additional documents they seem to be asking for." And Daly, Alvarez's spokesperson, says her office isn't satisfied yet. "We still don't have any student notes, the notes they'd have taken of interviews," she says. "Some of the potential witnesses say they were interviewed five or six or seven times. So we don't have any of those—if they exist. And that's something we've been requesting from the outset."

But progress is finally being made on that front, Daly says, because the university has imaged the hard drives of five computers containing Innocence Project data: three at the project's offices and two at Protess's home.

That Northwestern took such a dramatic step tells us all we might need to know about the collapse of anything resembling a united Wildcat front. Last fall O'Brien repudiated Protess as a client, the *Tribune* recently reporting that he wrote Protess to say, "We believe that you have displayed a lack of candor with us and have not cooperated with us." Not so, says Protess, who claimed he "fired" O'Brien and hired a lawyer of his own because O'Brien wanted to placate Alvarez with documents and Protess didn't.

Earlier last year, Daniel had repudiated Protess. In a court filing in February, she tried to make it clear that her Center on Wrongful Convictions "is a distinct entity from the Medill Innocence Project. . . . The two entities have different missions and do not share staff. Their governance is entirely independent of one another." There was something ridiculous and tragic about this declaration. It wasn't simply that both entities were arms of the same university, one focused on freeing the innocent, the other on freeing the wrongly convicted. It's also that one was run by Protess and the other by Rob Warden, longtime friends who have written two books together. Yet Alvarez got them at cross-purposes. "It was a divide and conquer strategy, and it worked," says Protess.

Says Warden: "The whole thing here is that poor Anthony McKinney is innocent, for God's sake, and in this whole hullabaloo that's the story. Look here, what is the state's attorney

saying? They're saying a couple of Protes's kids offered somebody \$40 to basically implicate himself in a capital murder. That is totally absurd. We have documented cases in which prosecutors have paid witnesses tens of thousands of dollars to implicate people the prosecution thought were guilty. For them to suggest this is absurd. They ought to be ashamed. Anita Alvarez ought to be ashamed of herself."

Meanwhile, Northwestern hired Anton Valukas, a former U.S. attorney, to investigate Protes's program. (Hence, the imaged computers.) And this was not the first close look someone took of it. In 2008 Medill's dean, John Lavine, asked lecturer Eric Ferkenhoff, a former *Tribune* reporter, to do a pedagogical study of Protes's investigative-reporting class. It was a request that flattered Protes. After all, it was probably the most celebrated course on campus, and Protes's magic needed to be studied and understood. But more than two years later, Ferkenhoff's project remains unfinished, and Ferkenhoff now has an attorney of his own, someone he thought he might need to head off prying investigators demanding *his* notes and *his* sources. And last November Protes's new attorney, Robert Stephenson, wrote Lavine a letter accusing Ferkenhoff of using "false promises and misrepresentations" to gather information "aimed at unjustifiably discrediting" Protes and the Innocence Project.

However ham-handedly Northwestern may have handled the Protes affair, it clearly lost confidence in Protes's judgment and veracity—which gave it no choice this spring but to remove him from the classroom. That left Protes with no choice but get out from under these faithless deans and administrators. Hence, his leave and his new plans.

"So, in the short term," he says, "what I'm doing is continuing to work with Medill students on the cases we were investigating last term. Five students from that class will work with me on a volunteer basis. We're reporting on two wrongful conviction cases. We're very close to freeing one of the two prisoners." (Alvarez is not a party to that case.)

And in the longer term, there's the Chicago Innocence Project he's putting together. "The reporting's still going to be done by students, but they're going to come from all over the city, including universities that draw upon working-class populations of students and who have decided diversity. Please don't read that as a shot at Medill."

But if Protes lands on his feet, what good will that do Anthony McKinney?

He's so mired in limbo that Judge Cannon actually had an occasion to pose as his only benefactor. At a March 2010 proceeding—during the time Daniel was proposing to strip Innocence Project-tainted witnesses from her petition for a new trial—Cannon asked for assurances that McKinney knew what she was doing and approved. "Because of the breath that is being taken out of your original petition, I believe it is incumbent on me to make sure that Mr. McKinney knows what's going on," the judge told Daniel. "I feel that someone has to step up to the plate for Anthony McKinney and that would be me today."

Trib:

By [Dan Hinkel](#) and Matthew Walberg, Tribune reporters

10:23 p.m. CDT, April 6, 2011



[Northwestern University](#) officials blasted a heralded journalism professor Wednesday, accusing him of doctoring records and repeatedly lying to his department's dean and the school's lawyers.

Star professor David Protess has been at odds with his university for months, but school officials launched their strongest offensive yet, saying his conduct could "undermine the integrity" of the university, its students and the news media.

The university made the accusations as Medill School of Journalism faculty members left a two-hour, closed-door meeting with journalism school Dean John Lavine. University officials said Lavine detailed how a review of Protess' conduct led to his removal from teaching for the ongoing spring quarter.

The move has roiled alumni and students who revere Protess, founder of a project that investigates potential wrongful convictions and has helped exonerate more than 10 inmates.

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"Medill makes clear its values on its website, with the first value to 'be respectful of the school, yourself and others — which includes personal and professional integrity,'" university spokesman Alan Cabbage wrote in a statement. "Protess has not maintained that value, a value that is essential in teaching our students."

The controversy began nearly two years ago when [Cook County](#) prosecutors subpoenaed notes, grades and recordings from Protess' students, who had challenged inmate Anthony McKinney's conviction for a 1978 shotgun slaying in Harvey.

Protess and the university accused prosecutors of overreaching and sought to block their access to some student materials, claiming those records were covered by journalistic privilege. But a lawyer hired by the university said in court that Northwestern did not seek to block access to records, including student memos that had been given to McKinney's legal team to try to win his freedom.

The lawyer hired by the university to represent the school and the professor abruptly quit representing Protess last fall, alleging Protess gave him inaccurate information about what materials had been shared with McKinney's lawyers. Northwestern officials then hired a former federal prosecutor to review Protess' conduct.

On Wednesday, university officials said the review found that in late 2009, the professor sent his lawyer an email that contained what Protess said was a copy of a 2007 email to his assistant about what materials had been shared. But Protess altered the 2007 email to "hide the fact that the student memos had been shared with McKinney's lawyers," Cabbage said.

"The email copy he provided stated that: 'My position about memos, as you know, is that we don't keep copies,'" Cabbage said.

"However, examination of the original 2007 email ... revealed that the original wording actually was: 'My position about memos, as you know, is that we share everything with the legal team, and don't keep copies.'"

Protest, who was not at the faculty meeting, said Wednesday that he changed the 2007 email because the statement that his program's policy was to "share everything" was written in a casual tone and not literal.

Protest has denied misleading the university and blamed a faulty memory for any inaccurate information he might have provided.

He said university officials are using him as a scapegoat and trying to shift responsibility from McKinney's attorneys at the law school's Center on Wrongful Convictions. A lawyer from the center admitted in court she lost or destroyed documents given to her by Protest's project.

On leave for the spring, Protest is setting up a nonprofit group to do work similar to that of the Medill Innocence Project, enlisting students from area colleges to investigate possible wrongful convictions. Protest said he has no plans for a court fight with Northwestern.

"I set up the Chicago Innocence Project because I wanted to move on with my life and do something constructive with student reporters from universities all over Chicago," he said.

As they streamed from their meeting with Lavine, Protest's journalism school colleagues declined to talk with reporters gathered at Northwestern's Fisk Hall to ask what the dean had said.

"I'll definitely get fired if I talk to you," one meeting attendee said as he hurried into an office.

Sun-Times:

When Northwestern University journalism professor David Protest was yanked last month as director of the college's Medill Innocence Project, administrators gave no reason for the decision.

On Wednesday, the university said in a statement that Protest was put on leave after he "knowingly" made "false and misleading statements" to the university and its attorneys. Northwestern spokesman Al Cabbage said the university was speaking publicly to counter comments Protest has made to the media and by "our desire to be as forthcoming as possible on an issue of great importance."

Medill Dean John Lavine put Protest on leave after a review of information Protest gave to the university and its lawyers in connection with a Cook County criminal case Protest's students were investigating, the university's statement said.

Protest was quoted Wednesday in an online Daily Northwestern story as saying, "These allegations are false and malicious."

Cook County prosecutors have subpoenaed the notes and grades of Protest's students in connection with their investigation into an alleged wrongful conviction. And the university has been investigating Protest and the Innocence Project over allegations of ethics violations.

Protest remains on leave this quarter from both teaching and directing the Innocence Project, whose students are credited with helping to free more than 10 innocent men from prison.

Stefano Esposito and AP

Updated: David Protest to take leave of absence from NU in spring

Protest to launch 'autonomous Innocence Project,' says 'future plans are indefinite'

By [Brian Rosenthal](#) Daily Northwestern

Published: Tuesday, March 29, 2011

Updated: Tuesday, March 29, 2011 22:03

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Two weeks after being told he will not be allowed to teach his Investigative Journalism class in the spring, 29-year Medill Prof. David Protest announced Tuesday he will leave Northwestern for the quarter.

Protest, the high-profile director of the Medill Innocence Project, will use personal leave, which he is entitled to as a University professor, to "establish a nonprofit organization devoted to investigative reporting of criminal justice issues," according to a statement.

In an interview Tuesday morning Protest said that the mission of the new initiative, to be called the Chicago Innocence Project, will closely resemble that of the Medill Innocence Project, which has freed 12 innocent men from prison, including five from death row, since Protest started it in 1996.

Protest said it will be staffed by students from Chicago area schools, including Northwestern. He plans for students to receive course credit for full-time and part-time internships with the project.

"My goal is to launch a project that I think Chicago needs – an autonomous Innocence Project," Protess said. "But that doesn't mean I'll stay to direct it. I'll revisit my future at the end of the spring,"

He added that though the initiative will be completely independent of NU, he hopes the University will recognize the project as a valid journalism residency for Medill students.

University spokesman Al Cabbage released a written statement Tuesday afternoon enumerating the terms of Protess's leave and reiterating that the class will continue without Protess for the quarter,,

The statement, the full text of which can be read below, said that Protess will not serve as head of the Medill Innocence Project nor have any faculty obligations to the University during spring quarter.

"This doesn't in any way sever my ties to NU," Protess said. "It simply allows me to have the time to do something...it does not compete with MIP (Medill Innocence Project)."

The University has been conducting a "review" of the "actions and practices" of Protess and the Innocence Project since last fall, amid allegations by Cook County prosecutors that Innocence Project students crossed ethical boundaries in investigating wrongful convictions.

Tensions between Protess and the administration have run high since the fall, as the University decided to reverse course and comply with prosecutors' subpoena of thousands of student documents related to the Innocence Project's investigation of convicted murderer Anthony McKinney. Protess has refused to turn over any documents.

The tension came to a head earlier this month as Medill Dean John Lavine informed Protess that he would be replaced as professor of the Investigative Journalism course in the spring by Medill Prof. Alec Klein, a former investigative business journalist at The Washington Post and best-selling author.

Cabbage and Protess publicly feuded following the decision on March 17. In a statement released the next day Cabbage did not directly address the professor switch and instead commented on the ongoing McKinney investigation as well as the University's continuing "review" of "Professor Protess and the actions and practices of the Innocence Project."

"The work of Professor Protess and the Medill Innocence Project has gained national recognition and brought credit to Northwestern and Medill. More importantly, that work has helped free wrongfully convicted individuals from prison. However, the

laudable goal of the Innocence Project would not justify any improper actions that may have been taken by Professor Protes, " the statement concluded.

Protes responded to Cubbage's statement on March 18 with an email to The Daily countering the allegation of 'improper action.'

"The primary 'improper action' in this case was the failure of the university's lawyers to promptly image our computers to find out whose memory about the documents was accurate," wrote Protes, referring to the disconnect between the two entities' responses to the subpoena. "It is apparently easier to cast blame elsewhere than to accept responsibility for mistakes that we both share."

Protes said Tuesday morning that he would reevaluate his plans for teaching at NU once spring quarter is over and he can take measure of his new initiative. He noted that the Innocence Network, which connects organizations that provide pro bono legal and investigative work targeted at redressing wrongful convictions, took nearly two years to establish.

"My future plans are indefinite...it will depend in large measure on where the Chicago Innocence Project stands in June," Protes said. "(It is) unrealistic to expect that I will be able to fully launch Chicago Innocence Project in just one quarter, that's why the timing is so good because I have summer too."

In his statement, Protes praised the "students, faculty and alumni" of NU.

"Of course, my heart will always be at Northwestern, a university whose students, faculty and alumni are among the finest in the country," he wrote. "For now, the leave sure feels good."

The text of Protes's full statement:

"I have decided to take a leave of absence from Northwestern during Spring quarter to establish a nonprofit organization devoted to investigative reporting of criminal justice issues. The organization will be the first of its kind to investigate and expose wrongful convictions and related problems. Of course, my heart will always be at Northwestern, a university whose students, faculty and alumni are among the finest in the country. For now, the leave sure feels good."

The text of Cubbage's full statement:

"Professor David Protes will be on leave from Northwestern University for Spring Quarter 2011. While on leave, Professor Protes will have no faculty responsibilities, including teaching or serving as Director of the Medill Innocence Project. During the Spring Quarter, the important work of both the class on investigative journalism and of the Innocence Project will continue under the direction of Medill investigative journalist and tenured full professor Alec Klein."

b-rosenthal@northwestern.edu

www.chicagotribune.com/news/local/northnorthwest/ct-met-protest-leave-of-absence-20110329,0,3180036.story

chicagotribune.com

Northwestern professor out as leader of Medill Innocence Project

By [Dan Hinkel](#) and Matthew Walberg, Tribune reporters

8:15 PM CDT, March 29, 2011

Professor David Protess has been replaced as leader of Northwestern University's Medill Innocence Project for the spring quarter and is taking a leave of absence to start a similar independent endeavor, casting further doubt on his future with the school.

Protess said the nonprofit Chicago Innocence Project will investigate possible wrongful convictions with an aim akin to the project he headed at Northwestern, which over the years helped exonerate more than 10 inmates

A dispute over one of the cases the Medill Innocence Project worked on has eroded relations between Protess and the university. Protess said his future with Northwestern could depend in part on the fortunes of his new project, which will employ student journalists from Chicago-area colleges without having a direct connection to any of them.

"Maybe the Chicago Innocence Project will be going great and I won't want to go back (to Northwestern) because of the hassle," Protess said. "Maybe it won't succeed and I will want to go back. Or maybe I'll want to go somewhere else, go to some other university. All of my options are on the table."

Northwestern spokesman Alan Cabbage would only confirm that Protess will not lead the Medill Innocence Project and will not have any "faculty responsibilities" during the spring quarter, which started Monday.

Protess' investigative reporting class and the Innocence Project duties are being taken over by Alec Klein, a Northwestern professor and former reporter for The Washington Post, Cabbage said.

Protest has the backing of many Medill students and alumni. "An awful lot of people feel like his class is one of the cornerstones of Medill, and now it's gone and no one has really explained why," said Tim Brightbill, a 1987 Northwestern graduate who took Protest's investigative reporting class.

Protest and the Medill Innocence Project have been dogged by controversy since Cook County prosecutors subpoenaed notes, recordings and grades of student journalists nearly two years ago. The subpoenaed material was connected to the project's investigation into the conviction of Anthony McKinney for a 1978 shotgun murder in Harvey.

Northwestern officials have questioned whether Protest has been forthcoming in what information he turned over to McKinney's lawyers, which would determine what materials should have been shared with prosecutors.

The university hired a former federal prosecutor several months ago to lead an inquiry into possible ethical breaches by Protest or students involved with the Medill Innocence Project.

Protest has denied misleading anyone and blamed the dispute on confusion between himself and McKinney's legal team.

dhinkel@tribune.com

mwalberg@tribune.com

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Protest, under fire, takes leave from NU, Medill Innocence Project

BY RUMMANA HUSSAIN Staff Reporter rhussain@suntimes.com Mar 29, 2011 9:31PM

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David Protest, Northwestern University's beleaguered director of the Medill Innocence Project, said Tuesday he will take a leave during the spring quarter to focus on his new non-profit start-up investigating wrongful convictions.

It's not going to look a lot different than what I've been doing at Medill," Protess said of his plans with The Chicago Innocence Project.

But Protess said instead of just working with Northwestern students, he will be seeking the assistance of all Chicago-area students to have a diverse pool of talent.

Protess said his decision to work independently from Northwestern has "absolutely nothing to do" with the Anthony McKinney case and Cook County prosecutors' assertion that his students paid for an interview related to their probe.

But he cited as a factor in his decision his realization that universities may not be as "autonomous" from the courts.

Earlier this month, Protess was notified by e-mail that he won't be teaching the investigative journalism class that helped gain him national recognition.

Protess said he will revisit the possibility of coming back to Northwestern at the end of the spring quarter.

The state's attorney's office has subpoenaed Protess' students' notes and grades, suggesting that they may have received better grades from the professor for uncovering evidence of McKinney's innocence for the 1978 killing of security guard Donald Lundahl in Harvey.

Protess and his students have helped free more than 10 innocent men from prison, including Death Row, since 1996.

By Matthew Walberg and Dan Hinkel, Tribune reporters

12:11 a.m. CDT, March 18, 2011

[Cook County](#) prosecutors sparked a media firestorm nearly two years ago when they subpoenaed notes, recordings and even the grades of [Northwestern University](#) student journalists who believed they had proof that Anthony McKinney had wrongly been convicted of a 1978 murder.

But the battle over press freedom has splintered into a feud between the university and the students' professor — David Protess, whose Medill Innocence Project has been the pride of the prestigious journalism school.

For years Protess has been a superstar journalism professor at Northwestern, leading teams of students whose dogged investigative efforts have led to more than 10 inmates wrongly convicted of murder being freed from prison, some from death row. One was just hours from execution.

The work of Protess and his students has influenced reforms in Illinois' criminal-justice system, including [Gov. Pat Quinn's](#) decision last week to abolish the death penalty and [George Ryan's](#) clearing of death row in his final hours as governor in 2003.

But Protes's future at Northwestern now appears in question. Last month in the student newspaper, Protes accused the university of waging a "war" against him. And this week, the university told students that Protes won't be teaching his investigative reporting course for the upcoming spring quarter as expected. Students planning to take the course signed a petition asking university officials to reconsider and threatening to drop the class.

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At the center of the dispute are memos written by students during their investigation of the McKinney prosecution —documents Protes turned over to McKinney's lawyers at Northwestern Law School's Center on Wrongful Convictions so they could try to win his freedom. Led by Protes to believe that only limited information had been shared, university officials said, they spent almost a year and hundreds of thousands of dollars in legal expenses fighting prosecutors' bid for all the student records.

But now Northwestern officials question if Protes was forthcoming about what he turned over to McKinney's lawyers. That information was crucial because those materials should also have been given to prosecutors.

In addition, a private lawyer hired by Northwestern to lead the court fight with prosecutors abruptly quit representing Protes in the matter last fall, alleging the professor of giving him inaccurate information about what student records had been turned over to McKinney's lawyers, according to documents recently obtained by the Tribune.

"We believe that you have displayed a lack of candor with us and have not cooperated with us," lawyer Richard O'Brien wrote Protes shortly before he withdrew from representing him, according to a copy of the e-mail.

Protes denied misleading the university or his lawyer, saying confusion between McKinney's legal team and himself led to the dispute. He also complained that the records obtained by the Tribune paint an incomplete picture of his handling of the dispute.

Meanwhile, the university hired former U.S. Attorney Anton Valukas of the Chicago law firm of Jenner & Block several months ago to lead an inquiry into Protes and the Innocence Project over possible ethical breaches in its reporting.

As the legal morass has thickened, McKinney, 48, has been left on the sidelines, continuing to serve out a life sentence in state prison for the murder of security guard Donald Lundahl in Harvey.

Protes's students said they found proof that key eyewitnesses could not have been at the scene during the killing and that Harvey police allegedly beat and coerced McKinney and the witnesses into implicating him.

The Innocence Project turned over its findings to McKinney's attorneys, who petitioned the court for a new trial in October 2008. Prosecutors became suspicious that volumes of students' materials had never been given to them, prompting the controversial subpoena for notes, interviews and grades.

O'Brien attacked prosecutors' demands as overly broad and invasive. In a filing in early 2010, he laid out a key legal argument that only materials shared with McKinney's lawyers would be given to prosecutors. The rest would be covered by journalistic privilege — a legal protection shielding reporters from demands to divulge confidential information.

At a testy court hearing last June, O'Brien voiced confidence that prosecutors had everything that Protess had given McKinney's lawyers. But Karen Daniel, McKinney's lawyer from the Center on Wrongful Convictions, said she had found several memos given to her by the Innocence Project that she thought she had previously thrown out or lost. That raised questions whether everything in fact had been given to prosecutors.

Attorneys for the university then launched an exhaustive search for documents, scouring Protess' work and home computers.

O'Brien unexpectedly withdrew as Protess' lawyer in October, telling the judge that he had since learned his earlier assertion that prosecutors had been given all the information shared with McKinney's lawyers was "not completely accurate." At about the same time, McKinney's attorneys turned over hundreds of pages of documents from the students' investigation that prosecutors had never seen.

O'Brien declined to comment on why he withdrew, but in the e-mail obtained by the Tribune, he told Protess at the time that he was dropping him as a client because Protess had given all the student memos to McKinney's attorneys, contrary to what he had told O'Brien.

"The university spent close to a year and hundreds of thousands of dollars protecting those things that we believed to be privileged," Alan Cabbage, Northwestern's spokesman, said in reference to the fight over the subpoena for student records. "That fight was based on the representations from Protess that those documents had not been provided to anyone else. And it was clear that what had not been turned over (to prosecutors) was in his possession."

Robert Stephenson, Protess' lawyer, said it was Protess who fired O'Brien based on his "belief that (O'Brien) was not representing his best interests or those of his students."

In a series of e-mails to the Tribune, Protess said that when prosecutors subpoenaed records he could not recall what student materials he had given to McKinney's lawyers years earlier when he was distracted by the serious health concerns of a loved one. He also said he "assumed" that Daniel "was keeping track of what she received for evidentiary purposes." Daniel has declined comment.

Additional e-mails obtained by the Tribune show that Protess had authorized one of his students in early 2006 to turn over all the student memos from the McKinney investigation to McKinney's attorneys at their request. He reiterated the point in October 2006, the e-mails indicate.

By September 2007, Protess learned from an attorney who works for him as part of the Innocence Project that it appeared they still had in their possession all the student memos from the McKinney investigation.

"I would have preferred not to have that many documents and videos in our possession, but at this point I feel obliged to leave both the files as is — for ethical and practical reasons," Protess responded the next

day. "I think it would be unconscionable to purge an entire file on active cases before criminal court judges at a time when we know that prosecutors will want to see what we've uncovered."

But less than two months later, as the state's attorney's office reviewed the evidence at the request of McKinney's attorneys, Protess said in an e-mail to his staff attorney that they should say they no longer had the memos and direct inquiries to McKinney's lawyers.

"Too bad if she (Daniel) destroyed them. That's not our problem," he wrote.

He later sent an e-mail to that staff attorney asking what she told the prosecutor.

"He did ask about the memos, and I told him that we turned it all over to Karen (Daniel) and then flushed our files (so to speak)," she replied.

Protess insisted that the controversy unfairly diverts attention from what he believes his students proved.

"Our reporting speaks for itself," he said. "Anthony McKinney is an innocent man, and this latest leak is yet another smoke screen to cover up his wrongful conviction."

Latest Innocence Project hearing shows widening rift between Northwestern, Director David Protess

Medill Innocence Project TA Serritella released from subpoena, not working with class this quarter

By [Brian Rosenthal](#)

Published: Thursday, January 20, 2011

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CHICAGO — For months, Northwestern University and one of its most high-profile faculty members, David Protess, stood united against Cook County prosecutors who sought student documents related to the Medill Innocence Project's investigation of convicted murderer Anthony McKinney.

But under the weight of growing criticism and national media attention, the alliance between University and professor began to show signs of strain. That strain was laid bare in October when the two sides hired separate lawyers. The University reconsidered its opposition to the records request while Protess, the project's director, maintained that no documents should be turned over to prosecutors.

A court hearing Thursday morning showed how far the relationship has fallen: intellectual disagreements over opinion and strategy have turned into pragmatic disagreements over basic facts.

In the crowded Chicago courtroom, an attorney representing the University asked for extra time to respond to the prosecutors' subpoena, claiming Protess had "just days ago" shared new documents with the NU lawyers handling the subpoena. For more than a year, NU had been demanding images — or copies — of three University-owned computer hard drives containing e-mail communication and other documents related to the Innocence Project's investigation of the McKinney case. NU lawyers finally received them last Friday, University spokesman Al Cabbage said.

But in a phone interview after the hearing, Protess insisted he gave the general counsel's office the material months ago.

"With all due respect, Al Cabbage doesn't know what he's talking about," said Protess, who did not attend Thursday's hearing. "I don't know what's going on. I really don't."

In a follow-up phone call for clarification, Cabbage acknowledged the hard drives were copied last summer, but said they were not provided to the University at that time.

"That's just not accurate," Cabbage said, adding Protess only agreed to have the computers imaged on the condition that they would not be given to the University. Medill Dean John Lavine said he didn't know which side is right.

Private e-mails, obtained by The Daily on Thursday, describe a copying process conducted in August with the knowledge of the NU General Counsel's Office. The e-mails indicate Chicago attorney Richard O'Brien searched the hard drives for relevant documents and planned to share them with both Protess and the General Counsel's Office.

At the time, O'Brien represented both Protess and the University. Each side is now represented by new and separate counsel. O'Brien has withdrawn from the case but is required to continue attending the hearings, adding to the unmasked absurdity of the complicated case.

The documents on the three computer drives, mostly e-mails between Protess, his students and officials at the NU Law School's Center on Wrongful Convictions, provide details of the Innocence Project's three-year investigation of the McKinney case.

The Innocence Project believes its investigation uncovered evidence proving McKinney was wrongfully convicted of murder in 1981. The Center on Wrongful

Convictions, which represents McKinney, is using that evidence to ask a judge to reconsider McKinney's guilt nearly 30 years after he was sentenced to life in prison. In a dramatic move in 2009, prosecutors publicly questioned the methods of Innocence Project students and subpoenaed all of the documents related to the investigation — including student memos, the class syllabus and individual grades. NU fought the request for more than a year, claiming the documents amounted to reporter's notes that were not shared with anyone and thus were protected from subpoena. But in November, the University abruptly changed course and released more than 800 pages of documents to prosecutors.

Sergio Serritella, the Innocence Project's teaching assistant, also turned over several documents, including a student memo describing an incident in which students taped a potential witness without the witness knowing — an act which is usually a crime in Illinois.

Serritella was released from the subpoena Thursday after prosecutors said he turned over all of the information they requested.

The teaching assistant, who has been with the Innocence Project for eight years, is not working with the class this quarter. NU has not given any public reason for his absence, but it is widely assumed to be related to the subpoena.

"Though I'm not aware of the reasons why I was asked to take a break from the Innocence Project Winter Quarter, I continue to lecture other Medill classes and work with students on special projects at the request of administrators and other professors," Serritella wrote in an e-mail.

Protest declined to comment on Serritella's absence because it is a personnel matter.

The Innocence Project director, who has been at NU for 29 years, said he believes the University should not give any more documents to prosecutors and has publicly stated that the General Counsel's Office "sold out" his students by releasing the records in October.

Protest has steadfastly refused to turn over documents on two more computers that University lawyers also requested more than a year ago. Those computers have been described as "personal."

"I don't think any faculty member in this university would allow their private documents on their private computer to be shared with anyone," he said.

Charles Sklarsky, the chief counsel for the University, said his office will need about a week to sift through the documents from the three computer images that Protest

just turned over. He will decide if any of the documents should be turned over to prosecutors.

It is unclear how the widening gulf between Protes and his administration will affect the work of the Innocence Project, which has freed 11 innocent men from prison, including five from death row, and recently received credit for helping persuade the Illinois Legislature to pass a bill permanently abolishing the state's death penalty. The University is currently reviewing the operations of the Innocence Project and expects to complete that process soon.

It is also unclear when the focus of the case will shift from documents to the potentially-innocent man who has been in prison for 30 years.

"At some point, hopefully, we will get back to the point of looking into the guilt or innocence of Anthony McKinney," Cabbage said.

b-rosenthal@northwestern.edu

www.chicagobreakingnews.com/news/local/chibrknews-nu-prof-dispute-wrongful-conviction-01202011,0,5441767.story

Chicago Breaking News

Wrongful conviction project cooperation disputed

By Matthew Walberg

7:02 PM CST, January 20, 2011

Advertisement

For more than a year, Northwestern University journalism professor David Protes refused to turn over hard drives from five computers sought in connection with subpoenas seeking information on how he and his students conducted an investigation of an allegedly wrongful conviction, university officials said today.

Copies of the hard drives of three of the computers were turned over late last week, attorney Charles Sklarsky said at a hearing today before Cook County Judge Diane Gordon Cannon, who is presiding over convicted murderer Anthony McKinney's bid for a new trial in the 1978 murder of a security guard in Harvey.

But Protes -- whose students allegedly obtained a confession from another man for the murder for which McKinney was convicted -- continues to refuse the university's

requests for copies of hard drives from two personal computers, said university spokesman Alan Cabbage.

Cabbage said that after repeated requests to turn over the hard drives, Protess agreed in July to allow an outside firm to make copies -- or images -- of each computer on the condition that attorneys from the law firm of Sidley Austin who were representing the university, Protess and others would not share them with the university's general counsel.

Sidley Austin abruptly withdrew from case in October with little explanation and was replaced by Sklarsky and other attorneys from the high-powered law firm of Jenner & Block. But attorneys from Sidley Austin, still bound by Protess' condition, could not release the hard drives to Jenner & Block without the professor's permission, Cabbage said.

"He has given no explanation for why he required the condition or why he has now waived it with the three computers," Cabbage said after the court hearing. "It certainly would be our hope that the members of our faculty would be cooperative with our general counsel's office, and we continue to hope that will be the case."

Protess, who directs the Medill Innocence Project, said Cabbage was "sadly mistaken."

"The first time that there was a request for imaging of Medill Innocence Project computers was in July of 2010, which is not a year ago," he said. "And I immediately agreed. I wholeheartedly agreed to the imaging of the computers."

Protess said Sidley Austin distributed the results of their search of all five hard drives to the university and the general counsel's office in August and he said he has e-mails documenting his full cooperation with the university.

"The university had this the minute I got it and they've had it every day since," he said. "The university has had unfettered access to the images of those hard drives."

Protess said he has denied Sklarsky's recent request for the hard drives of his two personal computers, contending they contain private information that the university isn't entitled to view. But he said he would scrub them for anything related to McKinney and turn the information over to the university.

The subpoenas from the state's attorney's office in May 2009 sought memoranda and host of other information created by Medill Innocence Project students and staff, sparking allegations from Protess and his supporters that prosecutors were gutting laws that protect journalists while distracting attention from the investigation that allegedly proved McKinney was innocent.

Prosecutors fought back with allegations that Medill students and staff paid the man they claim is responsible for the security guard's murder and illegally recorded their hours-long interview with him -- a charge denied by Protess.

In November, prosecutors filed a similar request for subpoenas in connection with convicted murderer Armando Serrano's quest for a new trial. That was another case investigated by the Medill Innocence Project in which Protess and his students obtained a statement from the key witness saying he was beaten and coerced by a corrupt police officer into falsely testifying about Serrano.

In that case, prosecutors unveiled documents obtained from Serrano's attorney, Northwestern law professor Jeffrey Urdangen, that suggested students and a private detective who works for Protess' project made unspecified promises to the witness and arranged for a female student to visit him in prison as "a treat" for him, according to court filings.

In addition to representing the university in the McKinney case, attorneys from Jenner & Block, including former U.S. Attorney Anton Valukas, were asked by university officials to investigate allegations of potentially unethical methods and practices employed by Protess and student from the Medill Innocence Project, sources have told the Tribune.

Protess has denied he was being investigated and said the attorneys were simply reviewing the project, a development he said he welcomed.

mwalberg@tribune.com

12-3-Faculty support Protesss

<http://www.dailynorthwestern.com/forum/letter-to-the-editor-medill-faculty-support-david-protess-1.2418865>

<http://www.chicagotribune.com/news/local/ct-met-medill-state-fight-20101130,0,1478614.story>

Memos hint ex-student's visit to prisoner was a 'treat'

November 30, 2010 10:46 PM | [No Comments](#)

Prosecutors on Tuesday unveiled documents that suggested students and staff with Northwestern University's Medill Innocence Project arranged a visit from a female student as a "treat" for a prisoner, in addition to making unspecified promises, before he recanted his testimony in a 1993 murder and armed robbery case.

The filing included three memos and an e-mail sent by students of Northwestern journalism professor David Protess to an attorney representing convicted murderer Armando Serrano, who is seeking a new trial.

The memos include suggestions that Francisco Vicente, who testified against Serrano but later recanted to the students, was upset that a private detective who works with Protess failed to come through with unspecified "considerations."

In addition, an e-mail sent by a student investigating the Serrano case stated that a female former student agreed to join a visit to Vicente in prison after he requested her presence.

"(The woman), a previous student of David's who worked on the case and formed a good relationship with (Vicente), will accompany us as a 'treat' for him, since he has requested to see her again," the student wrote in an April 2004 e-mail to Serrano's lawyer, Jeffrey Urdangen, a Northwestern law professor.

The woman's name, like those of the other students, was redacted from the motion.

The motion follows the state's efforts last year to obtain similar information in a separate case in which Protes and his students have alleged a convicted murderer is innocent.

In both cases, the state is arguing that it is entitled to all memos compiled by students during the investigation, not just those that were turned over to attorneys from the university's Center on Wrongful Convictions.

Circuit Judge Maura Slattery Boyle did not grant the state's request that Northwestern turn over additional documents in the Serrano case and gave Urdangen until Jan. 10 to file his response to the motion.

Northwestern spokesman Alan Cabbage declined to comment on Tuesday's filing.

Protes said he was unaware of the e-mail describing the female former student as a "treat."

"If I did see it, I would have told the student that that was inappropriate," said Protes, who accused the state of trying to divert attention from questions about Serrano's conviction.

The revelations were the latest in a series of embarrassing disclosures about the methods employed by Protes' students.

Sources told the Tribune last month that the university has launched a probe into Protes and his program, but Protes said he has been told it is a review and welcomes the scrutiny.

-- *Matthew Walberg*

www.chicagotribune.com/news/local/ct-met-medill-court-hearing-1118-20101117,0,1353169.story

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Northwestern's project to clear wrongfully convicted faces ethics probe

Prosecutors contend journalism students illegally recorded interview with convicted killer

By Matthew Walberg and Dan Hinkel, Tribune reporters

11:07 PM CST, November 17, 2010

Advertisement

Northwestern University journalism professor David Protess and his student reporters have shifted the course of Illinois legal history, helping to rescue innocent men from death row and influence former Gov. George Ryan's decision to halt executions.

Protess, the founder and public face of the Medill Innocence Project, is a media celebrity who co-wrote a book on a local murder case that was turned into a made-for-television movie.

Now the Innocence Project's methods are under scrutiny by its own university and Cook County prosecutors, who say the students crossed legal and ethical lines while investigating a decades-old murder.

Prosecutors — so often the antagonists in the Innocence Project's story — said in court Wednesday that students working on the investigation secretly recorded a witness, a practice prohibited under most circumstances in Illinois.

Northwestern has hired a former U.S. attorney to look into the project's investigation of the hotly contested case as well as other potential ethical violations by Protess and his students, sources said Wednesday.

Protess confirmed that there had been a secret recording made, but he denied that the investigation by high-powered attorney Anton Valukas is focusing on ethical violations. Northwestern spokesman Alan Cabbage said the university will review all the program's policies and procedures, including any use of a recording device. The university doesn't condone any class exercise that violates state law, Cabbage said.

State's Attorney Anita Alvarez said in a written statement that the recording revelation raises "serious legal and ethical questions about the methods that the professor and his students employed during their investigation."

Though he said he didn't authorize the recording, Protess said he doesn't think the students violated state law because they were wired so a nearby private investigator could listen in and intervene in case of trouble.

Protess said that since he learned of the recording, he has feared the wiretapping issue would create a distraction from his project's aim — to add Anthony McKinney to the list of more than 10 inmates freed from prison with students' help.

"I was right, and I'm not happy about being right," he said.

McKinney was convicted of killing security guard Donald Lundahl with a shotgun in

Harvey in 1978, and Protess' students' attempts to establish his innocence have fueled a running battle with prosecutors over the project's information-gathering tactics.

While the students and university-affiliated lawyers are pushing for a new trial, prosecutors have accused students of improperly paying witnesses. Protess has denied students made any ethically questionable payments. More than a year ago, prosecutors subpoenaed students' notes and grades, generating a storm of controversy. Wednesday's filing was part of a status hearing on that case.

More recently, a lawyer abruptly withdrew as Protess' lawyer in the case when he discovered not all the documents had been turned over to the state's attorney's office as promised.

According to an internal Innocence Project memo obtained by the Tribune, students went downstate in May 2004 to interview a man they believed might have been involved in Lundahl's killing. The students were concerned about the "possibility of bodily harm" by the man, described in the memo as a convicted killer, because they planned to confront him with audio-recorded accounts from people who blamed him for Lundahl's murder, according to the memo.

As one of the students wore a wire, the Innocence Project's private investigator, Sergio Serritella, listened to the interview in his car, ready to aid the students if necessary, the memo said. The man acted "erratically," pacing and raising his voice, then demanding money, after which Serritella started recording the conversation, according to the memo.

The Innocence Project-affiliated lawyer who wrote the memo in 2006, Rebekah Wanger, wrote that she didn't think the students violated the state's eavesdropping statute because the law exempts recordings made with "reasonable suspicion" the recorded party will commit a crime against the recording party on tape.

Wanger concluded the students didn't violate the law, but she noted that she didn't think the exemption had been tested in the courts.

Assistant State's Attorney Celeste Stack said it was unlikely criminal charges would be filed over the recording, because the statute of limitations has passed.

A second recording involving a cell phone took place in Wisconsin, which has less restrictive eavesdropping laws than Illinois, Protess said.

Protess said Serritella made the call to record the interview, and the professor said he was upset with the private investigator about that decision. Protess said he asked for the legal opinion after attorneys from the Northwestern University Law School's Center on Wrongful Convictions asked questions about the recordings. But that was about two years after the recording occurred, he said.

Serritella's lawyer, Thomas Breen, said he believes the recordings were legal, but his

reasoning won't likely be printed on any brochures for the Medill School of Journalism.

"It was an exceptional, very dangerous mission these students were on," Breen said.

That "dangerous mission" troubles media ethicists.

An experienced investigative reporter might understand and accept the legal consequences and safety risks of secretly taping a convicted murderer as he or she is confronted with unpleasant allegations, but a student shouldn't be asked to take that assignment, said Stephen Ward, a journalism ethics professor at the University of Wisconsin at Madison.

Harvard University media ethics professor Alex S. Jones compared the situation to deploying student journalists to a combat zone.

"This is not student stuff," he said. "This is dealing with murderers."

Cubbage, the Northwestern spokesman, said that if Medill was allowing students to go into dangerous situations, "it is clearly a matter of concern."

Lucy Dalglish, executive director of the Reporters Committee for Freedom of the Press, said any project as ambitious as this one merits the consultation of lawyers, but she disagreed on the danger factor.

"It's a really paternalistic attitude in a country where we expect young people to do all sorts of dangerous things," said Dalglish, a supporter of the program.

Medill Innocence Project students have spent the last 11 years fighting prosecutors for the freedom of prisoners, but the McKinney case has turned into an epic battle over the law and journalistic ethics. Knowing the project's audacious mission — which brings it into frequent conflict with the state's system of justice and punishment — Dalglish said she isn't surprised to see the project besieged.

"I'm actually surprised that something like this hadn't happened already."

Tribune reporter Lisa Black contributed to this report.

mwalberg@tribune.com

dhinkel@tribune.com

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<http://www.dailynorthwestern.com/david-protess-and-northwestern-at-odds-in-subpoena-of-innocence-project-student-records-1.2385575>

- [David Protess and Northwestern at odds in subpoena of Innocence Project student records](#)
- [Read the full e-mail: Northwestern lawyer to former students on David Protess and subpoena](#)
- [The Medill Innocence Project meets the U.S. Supreme Court](#)

CHICAGO — No one from the Medill Innocence Project was in the Cook County Criminal Courthouse Wednesday morning, but that didn't stop their actions six years ago in a southern Illinois forest preserve from becoming the latest flashpoint in the legal firestorm that the case of convicted murderer Anthony McKinney has become. In a dramatic hearing, prosecutors revealed a glimpse of what is contained in hundreds of student documents that Northwestern University and the Cook County State's Attorney's office have fought over for a year and a half, sparking a new legal debate and leaving the Innocence Project's next step in doubt.

Assistant State's Attorney Celeste Stewart Stack declared in court that Innocence Project students violated the law in investigating the McKinney case by illegally recording a conversation with a potential alternate suspect in a Belleville park. But Medill Prof. David Protess, who runs the project, insisted the taping was legal. The revelation came as prosecutors sifted through some 800 pages of student documents that were turned over last week by NU and a teaching assistant with the Innocence Project. Among the records was a copy of a recording made by an "eavesdropping device" in May 2004. In Illinois, it is illegal to record a conversation without permission or a court order.

In an interview outside the courtroom, Stack declined to speculate if any charges would result from the recording.

Medill Dean John Lavine, who attended the hearing, declined to comment.

"The University does not condone any activity that violates state law," University spokesman Al Cubbage said outside the courtroom. "The University certainly expects that students conduct themselves in ethical and legal ways. And professors."

NU is formally reviewing the procedures used by the Innocence Project, said Cubbage, although he declined to elaborate.

Protess was not in court Wednesday. But in a telephone interview later, he acknowledged lawyers approached him two weeks ago to request his cooperation with a review. However, he said reviewers haven't yet asked him any questions.

"When they ask me to come in and discuss what our policies and procedures are, I'll do it happily," he said. "This is a constructive effort."

Protess, whose work freeing wrongly accused prisoners has brought positive attention to NU, strongly insisted that all actions by Innocence Project students have been legal, including the recording mentioned in court. He cited a 1996 letter by then-Illinois Attorney General Jim Ryan, which described exemptions to the statute regarding secret recordings.

According to the letter, secret recording by a private citizen is allowable if the person being recorded is suspected of having committed a crime and "there is reason to believe that evidence of the criminal offense may be obtained by the recording."

That's exactly what happened in that situation, Protess said.

He added the primary reason that a student wore a wire was to allow teaching assistant and private investigator Sergio Serritella to respond if a dangerous situation arose. That decision was made by Serritella when the person being interviewed, convicted killer and potential alternate suspect Tony Drake, asked for the interview to be moved to a secluded forest reserve.

"What happens in class, to some extent, goes out the window in those circumstances," Protess said. "I'm quite sure that when the state attorney general's office looks at this, they will see there hasn't been a violation of the law."

Tom Breen, who represents Serritella and turned over the copy of the recording on his behalf, also argued the taping was legal because of the danger of the situation. Serritella also did not attend Wednesday's hearing.

While Protess defended the action's legality, he acknowledged that the ethics behind it were debatable because "there is no universal code" of ethical journalistic conduct. The Medill Integrity Code, which all Medill undergraduates must sign, does not make an explicit reference to the use of secret recording devices. Although she declined to comment on this case, Mary Nesbitt, the Medill associate dean for curriculum and professional excellence, said state law is most important in a situation such as this.

"The law always has to be obeyed, so that always comes first," she said.

Nesbitt also pointed out the Integrity Code only applies to students, not faculty.

The copy of the secret recording is the first significant product of a subpoena filed by prosecutors in May 2009, a year after lawyers from the Center on Wrongful Convictions — a program run by NU's law school — used evidence gathered by the Innocence Project as the basis for a motion to re-open the murder case of McKinney, who was accused of murder at age 18 and convicted three years later, in 1981.

In court Wednesday, prosecutors indicated they were still processing the 800 pages of submitted documents. Stack said prosecutors were not completely satisfied because they did not know how many other student memos regarding the McKinney case were created or even the names of former students who worked on the case. In order to "see what else is out there," she formally requested a log of student material the University is still withholding because they were never given to the Center on Wrongful Convictions and thus are not required to be turned over. "The University will fully cooperate with the state's attorney's office," said Charles Sklarsky, who is representing NU.

As he did in an interview last month, Protess accused the NU Office of the General Counsel of "selling out" former students by turning over private student documents that are irrelevant to the McKinney case. He called Wednesday's hearing another symbol of prosecutors' "ongoing effort to distract attention from the real issue in this case."

"Who's talking about the evidence about McKinney now?" he said. "The evidence of his innocence is powerful, but it's not being discussed because the discussion is on the methods of my students, and that's unfortunate."

McKinney himself was barely mentioned during the half-hour court hearing Wednesday, as seven attorneys representing various parties crowded around the bench of Judge Diane Gordon Cannon, tip-toeing through the legal intricacies which have overshadowed the question of McKinney's innocence.

One of those attorneys, Richard O'Brien, repeated his pleas to be released from the case. O'Brien, who for 17 months represented NU, Protess and Serritella in the case, requested to withdraw last month due to a split in his three clients' legal "interests." Cannon allowed him to withdraw from representing Protess and Serritella but mandated he remain as co-counsel with Sklarsky for NU. She reiterated her position Wednesday.

"You're not leaving this case unless you give me a reason other than you don't want to be here," she said. "I can't make it clearer."

No one was willing to guess in which direction the case may go from here. The next hearing is scheduled for Dec. 15.

"We are now over a year and 800 pages later with more to come," Cannon said.

"Everyone was outraged that they asked for them. Now they're happy to turn them over. The plot thickens."

b-rosenthal@northwestern.edu

bengeier@u.northwestern.edu

10-22-10

<http://www.chicagobreakingnews.com/2010/10/attorney-withdraws-in-northwesterns-battle-with-prosecutors.html>