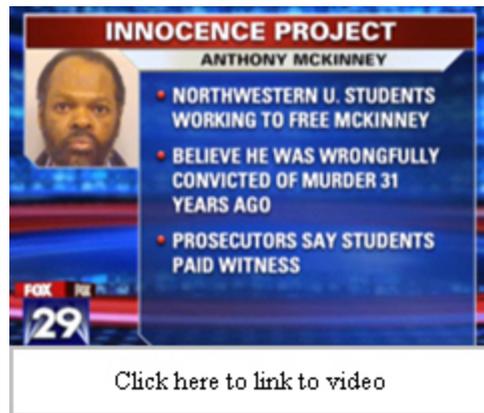


Posted 11/22/09

## PLAYING WITH FIRE

*Journalism students double as advocates for the wrongfully convicted*



By Julius (Jay) Wachtel. About the only thing not in dispute is that a life violently ended in a dark corner of a hardscrabble Illinois town some thirty-one years ago. On the evening of [September 15, 1978](#), in the Chicago suburb of Harvey, a man sitting in a car was killed by a shotgun blast to the head. Neither his wallet, the murder weapon or any other significant physical evidence were recovered. Within days officers arrested an 18-year old youth, Anthony McKinney. The sole person convicted, he remains in prison doing life without parole.

Fast-forward to 1999. As a youth, [Wayne Phillips](#) had testified that he saw McKinney shoot and rob the victim. Twenty-one years later, in a chance encounter with McKinney's younger brother, he tearfully confessed that he had lied. Phillips said that he and his friend Dennis Pettis, neither of whom saw the crime, were beaten by police into falsely identifying McKinney as the shooter (§34-38.)

McKinney's brother passed this on to the [Medill Innocence Project](#) at Northwestern University's Medill School of Journalism. (Northwestern's law school hosts a separate [Center on Wrongful Conviction](#).) Under direction of the project's founder, journalism professor David Protess, students collaborate with private investigators and lawyers to examine miscarriages of justice and "expose and remedy wrongdoing by the criminal justice system."

Medill's investigation began in 2003. It would be a tough slog. Aside from what Phillips said, students had to deal with the unpleasant fact that McKinney confessed to the murder. Although he recanted before trial – he said police beat him up – jurors didn't believe him. Considering the eyewitness testimony and his confession

McKinney was lucky that the judge didn't sentence him to death, the penalty that prosecutors sought.

Yet there had been concerns about the evidence all along. In a pre-trial statement to a defense investigator, [Dennis Pettis](#) confirmed that he and Phillips were forced to lie. Unfortunately, Pettis made himself scarce and couldn't be found in time for the trial (§39-44). His sister said she overheard Pettis and Phillips complain about being coerced by police but wasn't allowed to testify (§45-46). Neither were two men who heard a local hoodlum named Anthony Drakes say that he was present when the murder occurred and that McKinney wasn't involved (pg. 3).

McKinney's petition for post-conviction relief, filed last year, sets out compelling reasons for a new trial. Phillips and Pettis gave affidavits swearing that they didn't see the shooting (§34-44). There is also a stunning videotaped statement by Anthony Drakes. Drakes, *who has since done time for an unrelated shotgun murder*, admitted being present when a man named Roger McGruder robbed and shot the victim (but see 3/11/10 update, below.) Other witnesses said that Drakes, McGruder and a third man, Michael Lane, were members of a robbery crew and that Drakes and McGruder blamed the killing on each other (§60-72).

To win a retrial defendants must point to newly-discovered evidence that would have likely resulted in acquittal. After students videotaped Drakes the Cook County State's Attorney sent [two prosecutors and an investigator](#) to interview him. Surprise! Drakes recanted, claiming that he told the students nonsense because that's what they wanted to hear. His motive? Food and \$100, most of which he used to buy crack.

One of those students vehemently disagrees. [Evan Benn](#), now a reporter in St. Louis, said they gave a cabdriver \$40 to take Drakes home and had no idea that he intended to hop out after a few blocks and keep the change.

Students didn't interview McGruder. But they apparently spoke with [Michael Lane](#). According to a report filed by State's Attorney investigators, Lane said that the students were anxious to clear McKinney because they wanted a good grade. To that end they bought him an expensive meal, gave him \$50-100 and even had a girl flirt with him. In the end Lane told the students "I didn't have shit to do with the murder." He attributed rumors of his and McGruder's involvement to McKinney's brother, supposedly a member of a rival street gang.

Earlier this year prosecutors took the extraordinary step of issuing a [subpoena](#) demanding that Medill and its students turn over their entire work product, including notes, recordings, e-mails and even student grades. Citing Illinois reporter's privilege, [Medill refused](#). In a [response brief](#) the State's Attorney insisted that the materials

were needed to help determine whether witnesses were biased by cash payments and the students' desire for good grades. Prosecutors also argued that the Medill Innocence Project wasn't a protected activity under Illinois law as it was "an investigative agency, as opposed to a news gathering agency intent on publishing the news."

[Medill's reply](#) was unusually blunt. Defining its students' work as investigative journalism, it accused prosecutors of displaying a "surprising lack of comprehension" and "disturbing lack of sensitivity" to the First Amendment and Illinois law. Medill also chided the State's Attorney for filling its brief "with off-point and distracting arguments."

That caught the judge's eye. [In a recent hearing](#) she severely chastised Medill's lawyer for infusing his response with sarcasm. That things got this heated is understandable; after all, by issuing the subpoena the State was honing in on the project's core weakness. Unlike most innocence projects, which are directed by attorneys and staffed by law students, Medill can't avail itself of attorney-client privilege, a protection that's far more powerful than a reporter's shield. That naturally places it and its clients at a disadvantage.

Yet is Medill really doing journalism? Investigative journalism isn't normally associated with taking sides, and certainly not with tailoring facts to support a particular position. Would students pursue leads even if they jeopardized their client's case? Would they publish their findings? Looking through their comments on Medill's website one thinks not: they might look like impartial fact-finders on the outside, but on the inside they're rooting for their client. Although they've scored some impressive victories authorities are now pushing back, and if Medill persists in straddling legal aid and journalism it risks doing both poorly.

Meanwhile the mind-numbing legal process is on a brief furlough. Whether prosecutors get the access they seek won't be known until January, when a ruling on the subpoena is expected. One day there will be an evidentiary hearing and possibly a new trial. But whatever happens, uncertainty about what took place on the mean streets of Harvey three decades ago will doubtlessly linger. Indeed, with all the legal fisticuffs, self-serving moves and high-minded rhetoric, the victim of the shooting, a security guard named Donald Lundahl, has been all but forgotten.