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## The Curious Case of Anthony McKinney

*by: Kyle Berlin, t r u t h o u t | Report*

On September 15, 1978, 64,000 people flooded the Superdome in New Orleans to see the heavyweight championship rematch between Muhammad Ali and Leon Spinks, who had taken the championship from Ali that February. The aging Ali went 15 hard-fought rounds with Spinks and won by unanimous decision; the frenzied crowd poured into the ring while Ali held up three fingers - one for each of his record number of championships. During the fight, in the south Chicago suburb of Harvey, Donald Lundahl, a private security guard, was killed at close range by a single shotgun blast while sitting in his car in front of the local Masonic temple.

A coworker found Lundahl just a half an hour after Harvey police estimated he was shot, and the first officer to respond at the scene received a call at 10:03 PM, just as Round 10 of the fight was beginning. 153rd Street, where Lundahl was shot, was unusually active that night, owing to a large crowd of onlookers gathered near the scene of the shooting, mingling with cops looking for witnesses. One of the cops was Harvey police Detective Coleman McCarthy, who spotted a young man named Anthony McKinney running up nearby Loomis Avenue toward 153rd. McCarthy took Anthony, 18, and his younger brother Michael, who was in the crowd, into custody and held them overnight for questioning. When Anthony denied knowing anything about the murder, the cops let the McKinney brothers go, but not before promising them a \$500 reward for any information connected to the murder.

Four days later, Anthony McKinney was brought in to the Harvey police station again, but this time he was the main suspect. Based on

the testimony of two eyewitnesses, Wayne Philips and Dennis Pettis, Harvey police detectives declared they had found the murderer. In their statements to police, Pettis and Philips claimed to have run into each other shortly after the tenth round of the fight, and saw McKinney, from a block away, hold up a shotgun to a parked car and shout, "Your money or your life!" before firing into the vehicle. While Philips testified in the trial, Pettis only testified before a grand jury before going into hiding, his family refusing to divulge his whereabouts.

The prosecutor pursued the death penalty for McKinney, but he was convicted and sentenced to life in prison in 1981. Now, over three decades later, McKinney - still incarcerated at the downstate Dixon Correctional Facility - maintains his innocence, and a powerful group of attorneys, from Northwestern University's Center for Wrongful Convictions, have come to his defense.

McKinney's attorneys, Karen Daniel and Steven Drizin (both of whom declined to comment for this article), claim in a petition for a post-conviction hearing that the testimony of key witnesses, including McKinney's own signed confession, was obtained through intimidation, threats and beatings by Harvey police officers, including McCarthy. They also allege that the testimony given by Pettis and Philips to police, which places the boys at the scene of the shooting after the tenth round, does not match up with ABC's log of the fight, which records the end of the tenth round at 10:06 PM. At that point, Lundahl, who was shot sometime between 9:30 PM and 9:45 PM, had been dead at least 20 minutes. Pettis and Philips have since recanted their testimony in affidavits for the defense, saying that they were not present when Lundahl was murdered.

The petition itself is based on evidence gathered by students in the Medill Innocence Project, a part of the undergraduate journalism program at Northwestern University. The project, which exonerates the wrongfully convicted, is no stranger to national attention. In 2000, when Illinois Gov. George Ryan issued a moratorium on the death penalty in his state, he cited a case made by the project, led by Professor David Protess, which exonerated an innocent man only days before his scheduled execution

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But this time the project made headlines for a different reason when, on November 10, a filing by Illinois State's Attorney Anita Alvarez raised serious questions about the methods students used to gather evidence in a case currently in Cook County Circuit Court. Allegations include the paying of two witnesses, improper acts of coercion of witnesses and the withholding of allegedly relevant evidence. Legal experts say that what Alvarez revealed could have a profound impact not just on other innocence projects around the country - there is at least one for every state - but also on access to confidential student records currently protected by federal law, and what defines a reporter under Illinois law.

The case of Anthony McKinney looked to follow the same pattern as similar post-conviction hearings, but when Alvarez responded to the filing for a post-conviction hearing, it came with a surprise: a subpoena for class-related emails, class syllabi, interviews conducted that were not turned over to the prosecutor and even class grades. Medill refused the requests, citing Illinois laws that shield reporters and news outlets around the country. Others, including Truthout, came to the project's defense, many arguing that the state's attorney was looking to personally damage the project's reputation. "The only reason I can think that the prosecutors would issue such a broad subpoena is to take down the program," says Don Craven, the interim executive director of the Illinois Press Association and an expert on libel and First Amendment law.

In the filing, Alvarez showed her hand. It included interviews by state investigators with witnesses whose new testimony contradicts affidavits signed by the same witnesses, which were provided as exculpatory evidence in the McKinney case. The prosecutor alleged not only that certain witnesses were paid for their testimony, but also that the Innocence Project selected only those interviews that worked in McKinney's favor when petitioning for his case to be re-examined. Proffess called the filing, "so filled with factual errors that if my students had done this kind of reporting or investigating, I would have given them an F."

Lawyers for the Medill Innocence Project argue that any information beyond the interviews and affidavits presented in the post-conviction filing are protected under the Illinois Reporter's Privilege Act, which defines a reporter as "any person regularly engaged in the business of collecting, writing or editing news for publication through a news medium on a full-time or part-time basis." Medill's brief highlights the word "collecting," suggesting that even if the student investigations weren't immediately used in news stories, their work met the legal standard for protection. Some experts say that publication is not an essential prerequisite for being considered a journalist.

"[The students] are interviewing people, asking the hard questions, and trying to figure out what happened and what didn't happen," Craven says. "That's journalism." In the filing, the state's attorney argues, "the purpose of the class was to investigate and gather evidence, not to gather or report the news."

According to the filing, some witnesses described being bought dinner and drinks, given small cash payments (between \$50 and \$100) and stated that they only continued to converse with student investigators because they enjoyed flirting with them.

In one instance, a cab driver was allegedly given \$60 to drive an exculpatory witness, Anthony Drake, two miles - and left the witness with \$40, which the witness later allegedly used to buy crack cocaine. At the hearing, though, one of the students countered the assertion. Evan Benn, one of the journalism students who interviewed Drake, said he gave the cab driver the \$60, which was supposed to cover the cost of the fare - between \$45 and \$50, Benn said - and a tip for the driver. Benn said he gave the driver specific instructions not to give any of the money to Drake. When reached by phone, however, Benn said, "I've been advised not to comment."

Benn is one of eight students personally mentioned in the subpoena, some of whom, along with Protes, are considering the possibility of jail time if the judge rules the subpoena valid. Experts say that a broad inquiry into the methods of evaluation in the class is not only a

violation of the shield that protects journalist's work, but also of federal law - specifically, the Family Education Rights and Privacy Act (FERPA), which protects information about students, including grades, medical records and personal information.

"If the prosecutor wanted to argue that a student is unstable and that it's affecting their work, could they gain access to that student's medical records?" asked Larry Golden, co-director of the Downstate Illinois Innocence Project, and a professor emeritus at the University of Illinois-Springfield, who teaches classes on wrongful convictions. Golden said a judge's ruling in favor of the subpoena could establish a precedent that discourages student participation for fear of retaliation.

"If the state's attorney gets through the educational privilege, that's a huge concern for all projects that involve students - not just journalism students," Golden said. Although innocence projects run by journalists are rare, many are run by law schools, the students of which are crucial to each project's operation.

The court will next take up whether to quash the subpoenas on January 11. The judge may decide to grant the prosecutor's request that some or all of the documents and records be reviewed in camera - that is, in a secret meeting between the judge and attorneys for both sides - before rendering a decision about the subpoena.

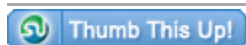
Tony Drake is not the only witness whose testimony will be under scrutiny, and these contested affidavits may influence how the judge rules. "The prosecutors are arguing that the contradictions make what they're looking for relevant," said James Carey, a law professor at Loyola University, who specializes in criminal defense. "The question is whether their material is credible enough to show a contradiction."

One example cited by the prosecutor is that of Francis Drake, who was eight years old at the time of the murder. He signed an affidavit for the defense 28 years after the murder, in January 2006. According to the affidavit, Francis said that his uncle, Anthony Drake, admitted that he had "shot a man next to the house."

When the prosecutor interviewed Francis Drake this year, however, he said that he made up the story, and that he had not witnessed his uncle admit to the murder. According to the filing, "Francis Drakes [sic] told Investigators he told the story to keep the pretty girls around to talk with him because he had nothing better to do." Drake was referring to teams of female Medill students who interviewed him in prison, with whom Drake said he "flirted."

Even if these witnesses are discredited, it may not sink the case. There is still substantial evidence that McKinney did not commit the murder, and the prosecutor's allegations currently focus on contradictory testimony from witnesses who are being accused by the defense of actually committing the murder, not those who say McKinney did not commit it.

Still, the attorney's actions have troubled many people, both inside the journalism community and out, about the potential for the state to intrude on investigative practices. "The focus on this case should be on the message, not on the messenger," Craven said. And while lawyers on both sides continue to battle over the subpoena in the coming months - and Proress and his students consider going behind bars themselves to protect their sources - it is worth remembering that fate of Anthony McKinney, now in his 31st year of incarceration, is what ultimately hangs in the balance.



*Kyle Berlin is an intern for Truthout.*