

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Plaintiff,)
)
v.)
)
ANTHONY McKINNEY,)
)
Defendant.)

No. 78-C-5267

FILED

JAN 11 2010


DOROTHY DROWN
CLERK OF CIRCUIT COURT

APPEARANCE

The undersigned attorney submits the appearance as local counsel for *Amici Curiae* Student Press Law Center, the Society of Professional Journalists, College Media Advisers, Inc., and the Association for Education in Journalism and Mass Communication.

Respectfully Submitted,

STUDENT PRESS LAW CENTER, THE
SOCIETY OF PROFESSIONAL
JOURNALISTS, COLLEGE MEDIA
ADVISERS, INC., AND THE
ASSOCIATION FOR EDUCATION IN
JOURNALISM AND MASS
COMMUNICATION

By: 
One of Their Attorneys

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CERTIFICATE OF SERVICE

I, Erin Bolan Hines, an attorney, hereby certify that I caused a true and correct copy of the attached Appearance as local counsel for *Amici Curiae* Student Press Law Center, the Society of Professional Journalists, College Media Advisers, Inc., and the Association for Education in Journalism and Mass Communication, a copy of which is attached, to be served upon:

Richard J. O'Brien
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One South Dearborn Street
Chicago, Illinois 60603

Celeste Stack
Christine Cook
Darren O'Brien
Assistant State's Attorneys
2650 South California Avenue
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Chicago, Illinois 60608

via hand delivery in open court, this 11th day of January, 2010.



Erin Bolan Hines

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NOTICE OF FILING

PLEASE TAKE NOTICE that on the 11th day of January, 2010, the Student Press Law Center, the Society of Professional Journalists, College Media Advisers, Inc., and the Association for Education in Journalism and Mass Communication filed a Motion for Leave to Appear to File, As *Amici Curiae*, Brief in Support of Motion to Quash and For Protective Order with the Clerk of the Circuit Court of Cook County, County Department, Criminal Division, 2650 South California Avenue, Room 526, Chicago, Illinois 60608, a copy of which is attached hereto and hereby served upon you.

Respectfully Submitted,

STUDENT PRESS LAW CENTER, THE
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JOURNALISTS, COLLEGE MEDIA
ADVISERS, INC., AND THE
ASSOCIATION FOR EDUCATION IN
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**MOTION FOR LEAVE TO APPEAR
AND TO FILE, AS *AMICI CURIAE*, BRIEF IN SUPPORT OF
MOTION TO QUASH AND FOR PROTECTIVE ORDER**

NOW COME the Student Press Law Center, the Society of Professional Journalists, College Media Advisers, Inc., and the Association for Education in Journalism and Mass Communication (collectively, "*Amici*"), by their attorney, Erin Bolan Hines, and state as follows:

I. INTRODUCTION

The Amici respectfully request this Court to grant them leave to file the attached Brief of *Amici Curiae* in support of the motion to quash and for protective order that has been filed by Northwestern University and David Protess (the "Movants"). (See *Amici's* Brief, Exhibit A.) Illinois courts have long recognized the practice of permitting the assistance of *amici curiae* "for any cause, which the court is at liberty to recognize as proper." *In re Guernsey's Estate*, 21 Ill. 443 (1859), 1859 WL 6767, *8 (Ill.) (admission of *amicus curiae's* affidavit in trial court). The Court's ruling in this matter may have nationwide repercussions for the rights of student journalists. No party currently before the Court directly represents the students who engaged in the reporting at issue in this case. By filing their separate brief, *Amici* seek to bring to the Court's attention the particular importance of protecting student journalists' source materials,

just as the source materials of professional journalists receive protection. The prosecution's subpoena must be quashed because the student journalists who participated in the Medill Innocence Project's investigation and publication of the facts and circumstances surrounding Anthony McKinney's conviction were "reporters" as defined by the Illinois Reporter's Privilege Act and are entitled to the protections provided by the Act.

II. INTEREST OF AMICI

The Student Press Law Center is a nonprofit, non-partisan organization which, since 1974, has been the nation's only legal assistance agency devoted exclusively to educating high school and college journalists about the rights and responsibilities embodied in the First Amendment to the Constitution of the United States. The SPLC provides free legal assistance, information, and educational materials for student journalists on a variety of legal topics. Through its network of volunteer legal counsel, it has helped college journalists invoke the protection of shield laws in opposing the compelled production of their journalistic work product.

The Society of Professional Journalists ("SPJ") is dedicated to improving and protecting journalism. It is the nation's largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior. Founded in 1909 as Sigma Delta Chi, SPJ promotes the free flow of information vital to a well-informed citizenry; works to inspire and educate the next generation of journalists; and protects First Amendment guarantees of freedom of speech and press.

College Media Advisers, Inc., ("CMA") is the professional association of collegiate educators who serve as faculty advisers to the student media in all forms. Established in 1954, the CMA serves as a leading provider of training and professional development for student

journalists and their advisers, and represents the interests of the student media through public outreach and through networking with the professional media. CMA works through its Adviser Advocate program to promote student free expression and to oppose the chilling of press freedoms.

The Association for Education in Journalism and Mass Communication (“AEJMC”) is a non-profit, educational association of journalism and mass communication faculty, administrators, students, and media professionals. Dedicated to promoting the highest standards for journalism and mass communication education, the Association provides an abundance of relevant resources, such as information about current issues, original research, career opportunities, and a multicultural network of educators from every facet of journalism and mass communication. Founded in Chicago in 1912, AEJMC, with 3,700 members worldwide, is the oldest and largest alliance of journalism and mass communication educators at the college level.

III. *AMICPS* INTEREST IN THIS MOTION

Amici’s mission is to ensure that student journalists be permitted to utilize their First Amendment rights and protections to the fullest extent provided by law. *Amici* have a special interest in this court’s decision regarding the Movants’ motion to quash the State’s subpoena demanding “notes, memoranda, reports and summaries” created by student journalists involved with the Innocence Project. To the extent that the prosecution’s position in this case presupposes that student journalists at the college level have lesser First Amendment interests than professional journalists, that position is unsupported by case law, and could stifle innovative investigative journalism across the country. Moreover, the Illinois Reporters’ Privilege Act recognizes no such distinction in applying its protections to “reporters” as defined by that Act.

As explained further in the Brief conditionally submitted herewith, the student journalists

associated with the Medill Innocence Project were “reporters” as defined by the Illinois Reporter’s Privilege Act when they conducted their newsgathering operations. Hence, they are entitled to the Act’s protections. They investigated the circumstances behind Anthony McKinney’s conviction with the intent to publish their findings -- and they did, in fact, publish those findings, both through collaboration with the *Chicago Sun-Times* and on the Project’s own publicly accessible Web site. The State’s attempt to create a distinction between a “journalist” (whose source materials are privileged) or an “investigator” working with such journalists (whose source materials would not be privileged) ignores the reality of how journalism works. Reporters routinely use investigative techniques to uncover facts; the liberty to gather information is every bit as important as the liberty to publish. Similarly, a reporter’s protection under the Illinois Reporter’s Act does not depend on the reporter’s political views or subjective bias. Nothing in the Act suggests that those reporters who are hoping that their investigation will yield a particular result, or prove a specific hypothesis, should be exempt from the Act’s protections. Any such distinction would be problematic in theory and unworkable in practice.

Illinois case law demonstrates that the materials sought by the State’s subpoena fall within the protection of the Illinois Reporter’s Privilege Act. This state’s courts have made clear that the Act protects both confidential and non-confidential materials, reports, and notes, as well as non-published information of the kind that the subpoena demands. That result should not change simply because the journalists are conducting their business under the aegis of a university journalism program.

Illinois courts have interpreted the Reporter’s Privilege Act to protect reporters so they can contribute to the public debate over controversial issues and help inform the public. The student journalists at the Medill Innocence Project did just that. Their work adds to the public

debate by shining a light on the effectiveness of the criminal justice system. Indeed, student journalists nationwide bring unique perspective, insights, and expertise to the coverage of educational institutions and the world beyond. Their role has become even more important as for-profit media outlets face declining newsgathering resources due to economic concerns. To deprive student journalists, like those at Medill, of the protections of the Reporter's Privilege Act would profoundly harm the public interest by handicapping a significant segment of the journalistic community. Whether they are compensated in dollars, in grades, or not at all, college students perform reporting functions for publication in a news medium are entitled, under Illinois law, to freedom from the compelled production of their newsgathering materials and chilling inquiries into their motives.

IV. CONCLUSION

Amici respectfully request leave to file the Brief conditionally submitted herewith, in order to explain to the Court how student journalism in general may be affected by the ruling in this case, and to explain why, in their view, it is imperative that this Court declare that the Illinois Reporter's Privilege Act applies to the student journalists who participated in the Medill Innocence Project's investigation of Anthony McKinney, and protects them from compelled production of the source materials sought pursuant to the State's subpoena.¹

Date January 11, 2010

Respectfully submitted,

By Erin Bolan Hines

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¹ Draft order is attached as Exhibit B.

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EXHIBIT A

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**BRIEF OF *AMICI CURIAE*
IN SUPPORT OF MOTION TO QUASH
AND FOR PROTECTIVE ORDER**

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STATEMENT OF INTEREST

This *amicus curiae* brief is respectfully submitted by the Student Press Law Center, the Society of Professional Journalists, College Media Advisers, Inc., and the Association for Education in Journalism and Mass Communication (collectively, “*Amici*”).

The Student Press Law Center (“SPLC”) is a nonprofit, non-partisan organization which, since 1974, has been the nation’s only legal assistance agency devoted exclusively to educating high school and college journalists about the rights and responsibilities embodied in the First Amendment. The Society of Professional Journalists (“SPJ”) is the nation’s largest and most broad-based journalism organization, dedicated to encouraging the free practice of journalism and stimulating high standards of ethical behavior.

College Media Advisers, Inc., (“CMA”) is the professional association of collegiate educators who serve as faculty advisers to the student media in all forms. The Association for Education in Journalism and Mass Communication (“AEJMC”) is a non-profit, educational association of journalism and mass communication faculty, administrators, students, and media professionals.

Because *Amici*’s work focuses on ensuring that student journalists can gather and report the news free from government intimidation, *Amici* have a special interest in how this Court will rule on the Medill Innocence Project’s motion to quash the State’s subpoena demanding “notes, memoranda, reports and summaries” created by student journalists involved with the Innocence Project. The student journalists served by *Amici*, including those working outside the confines of traditional newsrooms, are increasingly being relied upon to perform journalistic work once reserved for salaried professionals.

When they do work analogous to that done by journalists at established professional newspapers, broadcast outlets, and Web sites, students are entitled to the same quantum of protection against being conscripted as government investigators. *Amici* submit this brief in an effort to assist the court by explaining the importance of protection under the Illinois Reporter's Privilege Act ("the Act" or "the shield law") to the ability of students, as well as other "nontraditional" journalists, to perform their vital public watchdog function safely and independently.

BACKGROUND

On May 20, 2009, the Cook County State's Attorney subpoenaed "[a]ll notes, memoranda, reports and summaries" created by student journalists at the Northwestern University Medill School of Journalism who, on behalf of the Medill Innocence Project, researching the circumstances behind the conviction of Anthony McKinney. On August 13, 2009, Northwestern University and David Protes filed a motion to quash and for protective order. On September 14, the State's Attorney filed a request to deny the August 13 motion. On October 5, Northwestern and Protes filed a reply brief in support of their original motion. On November 10, the State's Attorney filed a supplemental response to the August 13 motion.

SUMMARY OF ARGUMENT

The student journalists associated with the Medill Innocence Project were "reporters" as defined by the Illinois Reporter's Privilege Act when they conducted their newsgathering operations. Hence, they are entitled to the Act's protections. They investigated the circumstances behind Anthony McKinney's conviction with the intent to publish their findings, and in fact they did so, both through collaboration with the

Chicago Sun-Times and on the Project's own website. The State's attempt to create a distinction between a "journalist" (whose source materials are privileged) and an "investigator" working with such journalists (whose source materials would not be privileged) ignores the reality of how journalism works. The fact that a journalist uses investigative techniques – even if doing so with the hope of proving a particular hypothesis – does not divest the journalist of "reporter" status under the Act.

The materials sought by the State fall squarely within the Act's protections against compelled disclosure. Illinois courts have made clear that the Act protects both confidential and non-confidential materials, reports, and notes, as well as non-published information of the kind that the subpoena demands.

The Illinois Reporter's Privilege Act plainly was intended to apply to situations like this one. Illinois courts have interpreted the Act to protect reporters so they can contribute to the public debate over controversial issues and help inform the public. The student journalists at the Medill Innocence Project were doing just that, and continue to do so. Their work shines a light on the effectiveness of the criminal justice system. It also adds to the public debate by allowing citizens to see how the system balances the rights of the victim against the rights of the accused. Journalists investigating crime stories, such as the Medill students here, often deal with people living on the margins of society, vulnerable to adverse consequences should their identities or information be disclosed. A reporter's ability to promise and deliver confidentiality is critical to that reporter's ability to investigate possible wrongdoing or irregularities of justice. Witnesses would be highly unlikely to talk to reporters if their every confidence, and the reporter's every mental impression, could be demanded by the State's Attorney's Office.

Student journalists need the protections of the Illinois Reporter's Privilege Act to be able to continue to serve the public interest. As shown by the results obtained by the Medill Innocence Project in previous cases, students' journalistic work can have, and has had, meaningful salutary impact on the justice system. Beyond the workings of the Medill project, student journalists nationwide lend uniquely valuable perspective and expertise to the coverage of educational institutions and the world beyond them, often relying on tips and sources that would dry up if they could not be assured of confidentiality. Particularly amidst changes in the newspaper industry, and a sagging national economy, it is increasingly the case that vital reporting is being done by students, freelancers, nonprofit organizations, and volunteer Web editors. No matter how they are compensated (whether in dollars, grades, or not at all) and regardless of the medium by which they disseminate their work product, student journalists are entitled to the same protections as professional journalists against the government's demands for their newsgathering materials and prosecutors' interrogations into their motives or political beliefs.

ARGUMENT

I. THE STUDENT JOURNALISTS WERE "REPORTERS" AS DEFINED BY THE ILLINOIS REPORTER'S PRIVILEGE ACT WHEN THEY WORKED WITH THE MEDILL INNOCENCE PROJECT.

The Illinois Reporter's Privilege Act prohibits any court from compelling "any person to disclose the source of any information obtained by a reporter." 735 ILCS 5/8-901. A "reporter" is defined very broadly: 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." 735 ILCS 5/8-902. The Act implicitly acknowledges that

one can be a “reporter” on a less than full-time basis. It includes no requirement that the “reporter” be paid for his or her work. Whether one is a “reporter” is determined with reference to the function that is being performed. By explicitly covering a person “who was a reporter at the time the information sought was procured or obtained,” *id.*, the Act acknowledges there is no durational requirement to qualify: One need not be a “reporter” by occupation or job title, so long as one is “regularly” engaged in investigative and information gathering functions for a news medium. Similarly, the legislature made it clear that whether one is a “reporter” does not depend on the specific medium by which the reporter intends to disseminate the information gathered. Rather, the intended “news medium” is defined as “any newspaper or other periodical issued at regular intervals whether in print or electronic format and having a general circulation” or a “news service whether in print or electronic format.” *Id.* In other words, anyone regularly engaged in reporting intended for a newspaper will qualify, as will anyone reporting for any news service or general-circulation print, broadcast, or electronic entity.

Illinois courts have made clear that the substance of the work done by the reporter – not the nature of the entity for which the reporter is working – is what determines entitlement to the protection of the Reporter’s Privilege Act. In *People v Degorski*, this court held that the Better Government Association – a nonprofit watchdog organization whose staff compiled and issued a report about a string of unsolved murders – was protected against a subpoena seeking access to notes and other original source materials gathered in the course of the investigation. 34 Med. L. Rptr. 1954, 1960 (Ill. Cir. Ct. 2005). The court noted, “It would be absurd to suggest the protections afforded by [the Act] hinge not on the substance of a journalist’s work, but upon whether or not a

journalist enjoys the status of a salaried employee.” *Id.* at 1960. The court suggested the Act could protect a party that does not “fit into preconceived category of journalism” or does not “regularly publish through its own news medium or a news medium controlled by others.” *Id.* at 1954, 1960. According to the court, a reporter hoping to take advantage of the Act must be regularly engaged in “the collecting, writing, or editing of news,” but “not regularly engaged with publication through any specific news medium.” *Id.* at 1960.

The student journalists here are entitled to the protections of the Illinois Reporter’s Privilege Act because they were acting as reporters when they worked on the Innocence Project. Under the auspices of their school’s journalism program, they were investigating the Anthony McKinney case with the expectation that their findings would be published in a “news medium” falling under the Act.

The State’s Attorney urges this Court to adopt an overly rigid and formalistic distinction under which a person may be either a “reporter” or an “investigator,” but not both. Using that rubric, the State’s Attorney argues that the students -- who were actively engaged in collecting news by interviewing witnesses and attempting to piece together the events that led to McKinney’s conviction – were mere “investigators” and not “reporters.”

That distinction, however, finds no support in the text of the Act itself. To the contrary, the Act’s definition of a “reporter” is disjunctive, not conjunctive: one can qualify by being engaged in “collecting” the news, *or* by “writing” the news, *or* by “editing” the news, 735 ILCS 5/8-902; one need not be engaged in all three. That definition is consistent with the norms and traditions of the journalistic craft. To apply the Act only to individuals engaged in every aspect of the newsgathering/writing/editing

process, and not to those who perform only one such function, would radically constrict the Act's scope. It would also blur the line separating those who qualify as "reporters" and those who are not, threatening the consistency of the Court's determinations.

A reporter who embarks on a newsgathering project typically does so in the hope that her work will result in a significant news story. But that individual is no less a "reporter" if her investigation ultimately reveals nothing that she, or her editors, deem newsworthy. Similarly, a reporter who discovers information suggesting that a man might have been wrongfully convicted of a capital crime – the focus of the Medill project – has uncovered a significant story. If the same reporter discovers that the witnesses stand by their trial testimony, the outcome of her investigation is no longer newsworthy – but she is no less a reporter.

If a *Chicago Sun-Times* reporter interviews a murder witness harboring the hope that the witness will furnish a newsworthy story by recanting his trial testimony, no one would seriously argue that the *Sun-Times* reporter has ceased to function as a reporter. The same would be true even if the *Sun-Times* reporter is a freelancer who publishes only one or two stories a year, or a correspondent who gathers information that is ultimately published under another reporter's byline.

That the Medill reporters worked in a nontraditional forum with only occasional publication does not defeat their entitlement to shield protection. The same could be said of freelance journalists who write magazine stories, or contributors to television newsmagazines such as "20/20," whose work may take months to gestate, yet who undeniably would be recognized as journalists entitled to protection of the shield law. There is no merit to the argument that the lack of recurring published articles by the

student journalists prevents them from invoking the protections of the Act. As the *Degorski* court noted, only regular collection of news, and not regular publication, is required for a reporter to be protected under the Act. The student journalists, who regularly collected news throughout the duration of their McKinney investigation, and are therefore “reporters” under the Act — so long as they were doing so “for publication through a news medium.”

There can be no question in this case but that the Medill reporters were collecting news for publication through news media. The journalism students conducted their investigation with the expectation that their investigation would result in the publication of a news article in a media outlet, on the Innocence Project’s Web site, or both. As it turned out, the results of the McKinney investigation were in fact published in the *Chicago Sun-Times* – indisputably a “news medium” under the Act. See Maurice Possley, *The fight & his life*, *Chicago Sun-Times*, Nov. 20, 2008, at 1. In addition, the Innocence Project published the student reporters’ findings as a news article posted on the Project’s Web site. See David Protes, *We Expose Wrongful Conviction of Chicago Area Man Incarcerated for 31 Years* (Nov. 19, 2008), <http://www.medillinnocenceproject.org/mckinney>. Both outlets amply satisfy the Illinois Reporter’s Privilege Act’s definition of a “news medium.” The coverage of the case on the Medill Innocence Project’s Web site is analogous to that on any other journalistic news blog: it was posted with the purpose and effect of informing the public about the results of newsgathering activity by journalists (in this case, student journalists). In an era where increasing numbers of citizens get their news from Web sites, it would be odd

indeed for a court to declare that a reporter is not entitled to protection under the shield law if her work is published on the Web instead of in print.

In support of its subpoena, the State says the student reporters forfeited any protection under the shield law because they were motivated by a particular point of view. That argument fails to pass muster even if one accepts the State's postulate that the reporters were gathering information with the sole intent of publishing whatever would help to put McKinney's conviction into question. The argument, however, is a red herring. Editorial writers, columnists and crusading reporters are every bit as protected by the shield law as reporters who cover the criminal courts. America has a long and respected tradition of "advocacy journalism." To deny "reporter" status to those who gather and present information with an advocacy agenda would withhold the reporter shield from such mainstream publications as *The Weekly Standard*, *The Nation*, *Mother Jones* and *National Review*. Courts cannot be in the business of putting journalists on "bias trial" to determine whether they are sufficiently objective to be called "reporters."

Increasingly, news is being gathered and delivered by journalists working for nonprofit organizations, including those pursuing a "reform" agenda. Freestanding investigative news outlets such as ProPublica (<http://www.propublica.org>) or the Center for Public Integrity (<http://www.publicintegrity.org>) engage in investigative journalism and then partner with other media outlets to publicize the results of the investigations. Their work has been recognized as journalistic by, among other indicia of legitimacy, consideration for awards by the leading professional journalistic organizations. Yet, under the restrictive criteria urged by the State's Attorney, their reporters might fall outside the protection of the Illinois Reporter's Privilege Act. The public's growing

dependence on such nontraditional purveyors of news illustrates the need for an adaptable, functional privilege that is agnostic as to the method by which news is delivered, the source and amount of the journalist's compensation, or the ideological tilt of the publication.

The State repeatedly refers to the Medill journalists' reporting on the McKinney case as an investigation by "the school," as if to suggest that the work was not legitimately journalistic because a college is not a news media outlet. This too is a false distinction that the Court should reject. The newsgathering that the State's subpoena seeks to invade is not the product of "the school" – it is the product of individual student journalists, who registered for a journalism course in the Medill School of Journalism in the expectation that they would perform journalistic work in preparation for careers in journalism.

Amici work with the collegiate media on a day-to-day basis, and it is their experience that many, if not most, college journalists work in a setting comparable to that of the Medill Innocence Project: a practicum course closely supervised by a faculty member, in which journalistic work is submitted for a grade. A decision that the Medill journalists are not entitled to claim protection of the reporter's privilege would cast a long shadow over the work of all of these newsgatherers, many of whom (as discussed below) are doing journalistic work equal in every respect to that of the paid professionals to whom the shield indisputably applies. What matters under the law is that the person claiming protection is a reporter and is gathering news for publication. The Medill students were, and they are entitled to the full benefit of the shield law.

II. ILLINOIS COURTS HAVE HELD THE TYPES OF DOCUMENTS SOUGHT BY THE STATE'S SUBPOENA TO BE PROTECTED FROM DISCLOSURE BY THE ILLINOIS REPORTER'S PRIVILEGE ACT.

The Illinois Reporter's Privilege Act prohibits any court from compelling "any person to disclose the source of any information obtained by a reporter." 735 ILCS 5/8-901. The Act defines "source" as "the person or means from or through which the news or information was obtained." *Id.* § 902.

Illinois courts have extended the Act's protections to cover a broad scope of reporters' materials because "[t]he compelled production of a reporter's resource materials is equally as invidious as the compelled disclosure of his confidential informants." *People ex. rel. Scott v Silverstein*, 89 Ill. App. 3d 1039, 1043 (1st Dist. 1980), *reversed on other grounds*, 87 Ill. 2d 167 (1981) (quoting *Gulliver's Periodicals, Ltd. v. Chas. Levy Circulating Co.*, 455 F. Supp. 1197, 1204 (N.D. Ill. 1978)). The statute's definition of source demonstrates that "the legislature clearly intended the privilege to protect more than simply the names and identities of witnesses, informants, and other persons providing news to a reporter." *People v. Slover*, 323 Ill. App. 3d 620, 624 (4th Dist. 2001). The Act does not condition its protections on whether the information is confidential, *People v. Palacio*, 240 Ill. App. 3d 1078, 1092 (4th Dist. 1993), nor on whether the material sought has been published, *see Slover*, 323 Ill. App. 3d at 624 (unpublished photograph considered a source). Illinois courts have applied the Act to source material such as memoranda, notes, and recorded statements, *see In re Arya*, 226 Ill. App. 3d 848, 851-52 (4th Dist. 1992), as well as to "written, audio, or video tape materials, reports, [and] handwritten or typed notes" used to develop a news article. *Degorski*, 34 Med. L. Rptr. at 1957-58.

The student reporters' notes, memoranda, summaries, and communications relating to their work on the McKinney case and sought by the State via subpoena fall comfortably within this broad category of privileged materials covered by the Act and not subject to disclosure. The reporters' source materials were the means from or through which the information for their investigative journalism was obtained. These materials contain information uncovered during the student journalists' newsgathering activities. Because the student journalists obtained news or information about the facts and circumstances of the McKinney case from and through sources reflected in their documents, the protections afforded by the Act and extended by Illinois courts prevent the compelled disclosure of these source materials.

III. THE SPIRIT OF THE ILLINOIS REPORTER'S PRIVILEGE ACT INDICATES IT WAS INTENDED TO APPLY IN THIS SITUATION.

The Illinois Reporter's Privilege Act "assures a better public, [by allowing] reporters to seek the truth wherever it is to be found, without fear that their sources will be cut off by unnecessary disclosures." *In re Arya*, 226 Ill. App. 3d. 848, 852 (4th Dist. 1992) (quoting Governor Richard B. Ogilvie's remarks when he signed the bill). The Act reflects "a paramount public interest in the maintenance of a vigorous, aggressive and independent press capable of participating in robust, unfettered debate over controversial matters, an interest which has always been a principal concern of the First Amendment." *People ex rel. Scott v. Silverstein*, 89 Ill. App. 3d 1039, 1043 (1st Dist. 1980), *rev'd on other grounds*, 87 Ill. 2d 167 (1981) (quoting *Baker v. F & F Investment*, 470 F.2d 778, 782 (2d Cir. 1972)). The reporter's privilege seeks "to preserve the autonomy of the press by allowing reporters to assure their sources of confidentiality, thereby permitting the

public to receive complete, unfettered information.” *In re Arya*, 226 Ill. App. 3d at 852. Its purpose “is to assure reporters access to information, thereby encouraging a free press and a well-informed citizenry.” *People v. Pawlaczyk*, 189 Ill. 2d 177, 187 (2000). The privilege “has evolved from a common law recognition that the compelled disclosure of a reporter's sources could compromise the news media's first amendment right to freely gather and disseminate information.” *In re Special Grand Jury Investigation of Alleged Violation of Juvenile Court Act*, 104 Ill. 2d 419, 428–29 (1984).

The student reporters at the Medill Innocence Project advance the policy goal of a better-informed public when they investigate and publish information about the facts and circumstances surrounding McKinney’s conviction. The students’ aggressive investigative reporting contributes to the ongoing debate about the effectiveness of the criminal justice system in protecting the rights of victim and accused. Their reporting also sheds light on an essential government function, fulfilling a need not fully met by any other media outlet. The students’ ability to gain access to information through independent interviews of witnesses, and the protection of their source materials that are produced as a result of these interviews, are necessary to ensure they can inform the citizens of Illinois about the efficiency or failings of the criminal justice system. In short, this vital journalistic work is exactly the type of work for which the reporters’ privilege was designed. The purposes of the Illinois Reporter’s Privilege Act support its application to the Medill Innocence Project’s student reporters.

IV. FAILURE TO PROTECT STUDENTS UNDER THE ILLINOIS REPORTER'S PRIVILEGE ACT WOULD HARM THE PUBLIC INTEREST.

It is anomalous for the State to urge that the Illinois Reporter's Privilege Act does not cover student journalists, at a time when student journalists play an increasingly important role in providing essential news and information to the public. *See, e.g.,* Kathleen McGrory, *College students embrace expanding role in journalism*, The Miami Herald, Dec. 6, 2009 (reporting, in discussion of new community-news Web site launched out of the University of Florida College of Journalism and Communications, "Students will do the shoe-leather reporting that local newspapers used to do in greater abundance."); Michael Schudson & Leonard Downie Jr., *University-Based Reporting Could Keep Journalism Alive*, The Chronicle of Higher Education (Nov. 15, 2009) ("[I]n recent years, more journalism schools have plunged into producing news for the public. Journalism schools are finding ways to use what might loosely be seen as a 'teaching hospital' model of professional education."). The impact of student journalism on informing the public discourse and promoting better government is readily apparent from a casual survey of the recent investigative work of collegiate journalists in Illinois:

- A 2005 investigation by *The Chicago Maroon* at the University of Chicago found that the university violated Illinois policy regarding the disposal of hazardous materials when it improperly discarded lab waste. *See* Daniel Gilbert, *Laboratory waste spills out of bounds*, The Chicago Maroon, May 19, 2005, available at <http://www.chicagomaroon.com/2005/5/19/laboratory-waste-spills-out-of-bounds>.
- In 2007, *The Daily Egyptian* at Southern Illinois University-Carbondale investigated the legitimacy of the university president's doctoral dissertation based on an anonymous tip that portions were plagiarized. *See* Editorial, *The report is in: You decide*, The Daily Egyptian, Aug. 31, 2007, available at <http://www.siude.com/2.7687/the-report-is-in-you-decide-1.832223>. Despite a finding that the president plagiarized portions

of the dissertation, he was allowed to keep his job – a decision that attracted prominent coverage in the “mainstream” news media. See Jodi S. Cohen, *Panel urges Poshard to fix thesis*, Chicago Tribune, Oct. 12, 2007, available at http://archives.chicagotribune.com/2007/oct/12/news/chi-poshard_siu_12oct12.

- A 2007 report by *The Northern Star* at Northern Illinois University based on university incident reports and county police reports obtained through Freedom of Information Act requests uncovered criminal acts and violations of the school’s social policy by 11 fraternities at the school. See Steve Brown, *In the books*, The Northern Star, Apr. 25, 2007, available at <http://www.northernstar.info/article.php?id=36301&old=1>.
- A 2009 investigation by *The Columbia Chronicle* at Columbia College found a college residence hall to be plagued by maintenance problems, including rodents, insects, and paint with lead levels almost ten times greater than permitted by a Chicago ordinance. See Timothy Bearden, *State of disrepair*, The Columbia Chronicle, Mar. 2, 2009, available at <http://columbiachronicle.com/state-of-disrepair/>.

Each of these stories were investigated and reported by student journalists in Illinois, yet the impact of each story was felt by a much wider public audience.

Student journalists need the protection of the Illinois Reporter’s Privilege Act to be able to continue their newsgathering free from fear of being compelled to disclose their sources or source materials. Without the protections of the Act, stories that are important to the citizens of Illinois may never get investigated or published. Informants’ tips will dry up if there is no assurance of anonymity. Interview subjects will hold back, knowing that an off-the-cuff remark captured in a video “outtake” could become a prosecutor’s exhibit. Because the work of student reporters informs the community as a whole, a decision depriving student reporters of the Act’s protections would cause significant harm to the public interest and diminish the media’s ability to perform its role as a watchdog of government.

CONCLUSION

The purpose of the Illinois Reporter's Privilege Act is to protect the integrity of the newsgathering process, not to protect any particular mode of delivery, any particular employment relationship, or any particular ideological disposition. The students who conducted their newsgathering while enrolled in Professor David Protes's course at the Medill School of Journalism are no less entitled to "reporter" status because they published infrequently, published in collaboration with other journalists, or published on a Web site funded by or affiliated with a school. The fundamental facts are that they gathered news for dissemination through the media with the goal of informing the public, as do tens of thousands of other college students each day. The work of these college journalists is essential both to the information needs of their campus communities and, increasingly, to the information needs of their larger communities as a whole. This Court should hold that they are entitled under the law to pursue this work with the same measure of protection from government intervention that the Reporter's Privilege Act has long been recognized as providing to other reporters.

Respectfully submitted,

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EXHIBIT B

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION**

THE PEOPLE OF THE STATE OF)	
ILLINOIS,)	
)	
Plaintiff,)	
)	No. 78 C 5267
v.)	
)	
ANTHONY McKINNEY,)	
)	
Defendant.)	

**ORDER GRANTING MOTION
FOR LEAVE TO APPEAR AS AMICI CURIAE**

This cause was heard on the Motion of the Student Press Law Center, the Society of Professional Journalists, College Media Advisers, Inc., and the Association for Education in Journalism and Mass Communication to appear as *Amici Curiae* in this proceeding to file a Brief in support of Movant's Motion to Quash and For Protective Order, all parties present, and the Court fully advised in the Premises,

IT IS THEREFORE ORDERED:

The Student Press Law Center, the Society of Professional Journalists, College Media Advisers, Inc., and the Association for Education in Journalism and Mass Communication may appear as *Amici Curiae* in the above-captioned proceeding to file a Brief in support of Movant's Motion to Quash and For Protective Order.

ENTERED:
