

Date: April 27, 2011
To: NU Faculty Senate
From: Faculty Rights & Responsibilities Committee
(Wesley Burghardt, Janet Barrett, Nicola Beisel, Douglas Foster, Manjot Gill,
Christiane Rey)
Re: David Protes

At the request of Professor David Protes, we initiated an inquiry into the decision of Medill Dean John Lavine to remove Protes as the instructor of the Investigative Journalism class that Protes had been scheduled to teach during the spring quarter. This decision was conveyed to Professor Protes at the end of winter quarter, on March 14, 2011. He contacted our committee on March 18. Since that time, committee members have met with both Professor Protes and Dean Lavine; we appreciate their cooperation. The AAUP has written letters to the NU administration expressing concern over this action. We have seen the AAUP statements, but not the NU responses.

Professor Protes and Northwestern have an ongoing legal dispute concerning a response to a court-issued subpoena of student records stemming from an investigation into the case of Anthony McKinney conducted by students in Protes's Investigative Journalism classes. These student investigations were supported by the Medill Innocence Project, also directed by Protes. Various aspects of this conflict have been heavily reported in the media. We have attempted *not* to delve into this broader dispute, but rather have focused our attention on the narrow question of Protes's removal from Spring Quarter teaching. Shortly after we initiated discussion of this case, it was announced that Professor Protes was taking academic leave in the spring quarter. We continued this work, however, on the principle that Protes's subsequent academic leave does not bear on the propriety of the earlier action to remove him from teaching.

Professor Protes argues that he has been denied 'due process' protections provided for in the *Faculty Handbook* (pp. 28-31) in cases of "termination or suspension" or other "severe sanctions" for cause. These procedures specify roles for, and actions by, the Senate Committee on Cause and the UFRPTDAP. Protes's position is that Dean Lavine's decision to remove him from spring quarter teaching constitutes 'suspension' or 'severe sanction' without the required due process.

Dean Lavine notes that the *Faculty Handbook* gives specific authority to Deans over teaching assignments (*Handbook*, p. 10): "Teaching responsibilities and specific course assignments are established by the school dean and/or department chair." Lavine asserts that his removal of Professor Protes falls within the authority granted under the terms of the *Handbook*.

The language on p. 10 of the *Handbook* is specific and clear. Conversely, there is little explanation of what constitutes 'suspension' or other 'severe sanction' in the discussion on pp. 28-31. Thus, there is ample opportunity for nuanced interpretation of these terms according to one's view of the question at hand. In our meeting, Dean Lavine declined to share his view of what constitutes 'suspension', but argued vigorously that the scope of

his action (re-assigning the instructor of one course in one quarter) did not rise to this level. On p. 29, in discussing the due process mechanisms, the *Handbook* states: “Pending a final recommendation by the Panel, the faculty member will not be suspended or assigned to other duties in lieu of suspension, unless immediate harm to the faculty member or others is threatened by continuance.” This language seems to at least to warn against imposition of ‘suspension by another name’.

Much, then, hinges on one’s interpretation of terms like ‘suspension’, ‘severe sanction’, etc. We have not reached definitive conclusions, and welcome discussion from the broader Senate on this case. We have, however, identified points that we do believe are of intrinsic concern from a faculty perspective:

1. On April 6 the University issued a press release that included the following statement:

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.” Protesch 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 Protesch is on leave.

This statement levels a charge that amounts to academic misconduct (a lapse of ‘professional integrity’), and explicitly states that this was the cause for Protesch’s removal from his Spring Quarter teaching assignment. As a matter of principle, we feel that actions of this nature should more appropriately fall under the domain of ‘University Disciplinary Procedures’ (*Handbook* pp. 28 – 31) rather than a Dean’s administrative authority over teaching assignments (p. 10).

2. In the case of Professor Protesch, there is very close interplay between his activities as an instructor of the Investigative Journalism class and his broader scholarly pursuits that included (prior to his Spring Quarter leave) directing the Medill Innocence Project. Protesch’s removal from his previously assigned Spring Quarter course thus constituted a more severe action than simply being told to take a quarter off from teaching.

3. In the April 6 press release, the University publicly levied allegations of misconduct, and revealed specific evidence supporting those allegations using a mechanism that is intrinsically one-sided. We question whether such a public airing of grievances against a faculty member is a productive use of Northwestern’s public relations apparatus, and are concerned that the disclosure of evidence in this way may undermine Professor Protesch’s rights should more formal proceedings (such as those outlined in the *Faculty Handbook*) be initiated in the future.

4. Taken at face value, the language on p. 10 of the *Faculty Handbook* implies unlimited authority of Deans and Chairs to withhold teaching at their discretion. Dean Lavine argues that his actions in this case were narrow and specific. Where, however, is the line drawn? How many quarters of withheld teaching duties would constitute ‘suspension’? Who draws this line?

While we have identified these areas of concern, at present we do not have specific recommendations for Senate action. Since the dispute between Professor Protes and the University does not appear to have yet reached final resolution, we consider it premature to initiate detailed discussion of the substance of the University's allegations against Protes, since it is possible that this case may yet be brought before the Senate Committee on Cause.

This case has, however, brought to light broader issues where dialog between the Senate leadership and University administration may be mutually beneficial to promote understanding that may reduce the likelihood for similar problems in the future:

1. It appears that many of the difficulties that have arisen in this case stem from an imperfectly defined relationship between Protes's and Northwestern's legal interests, and the divergence of these interests as the subpoena case progressed. It would be worth exploring whether it is possible to better delineate how legal representation should be structured to protect both faculty and University interests in such cases.
2. It would be beneficial to more firmly define the meaning of terms such as 'suspension', 'severe sanction' or 'minor sanction' that appear in the current *Faculty Handbook*, in order to create a more transparent environment in circumstances when the University feels disciplinary action is called for.