

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

NO. 15-7136

---

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

v.

JEFFREY R. MACDONALD,

*Defendant-Appellant.*

---

**JOINT APPENDIX  
VOLUME VI of VII**

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
AT WILMINGTON

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NOV. 30. 2006 3:15PM

NO. 050 P. 2/5

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
FAYETTEVILLE DIVISION

NO. 75-26-CR-3



UNITED STATES OF AMERICA :  
vs. : WARRANT FOR ARREST OF WITNESS  
JEFFREY R. MacDONALD :

TO: UNITED STATES MARSHAL: any SPECIAL AGENT of the FEDERAL BUREAU OF INVESTIGATION;  
and/or ANY OTHER OFFICIAL AUTHORIZED BY LAW TO EXECUTE THIS WARRANT

You are hereby commanded to arrest Helena Stoeckley, a/k/a Helena Worlie Stoeckley, Helena Welre Stoeckley, Helena Foster, and bring her forthwith before the District Court for the Eastern District of North Carolina in the city of Raleigh, North Carolina, for the reason that the testimony is material in this criminal proceeding and it has become impracticable to secure her presence by subpoena.

You are further commanded to detain her in your custody until she is discharged by the Court.

This Warrant for Arrest of a material witness has been issued pursuant to Title 18, United States Code Section 3149.

Upon order of Honorable F. T. Dupree, Jr., United States District Judge at the Eastern District of North Carolina, Raleigh, North Carolina, this thirteenth day of August of 1979.

F. T. Dupree, Jr.  
Judge

by RICH LEONARD  
J. RICH LEONARD  
Clerk

BY: [Signature]  
Deputy Clerk

(orig. to Marshal 8/13/79) -3588-

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FM CHARLOTTE (70-3669) (P)

TO COLUMBIA IMMEDIATE

BT

INCLAS

JEFFREY ROBERT MAC DONALD; COLLETTE S. MAC DONALD; ET AL - VICTIMS;  
 GEP - MURDER (A). OO: CHARLOTTE.

RE CHARLOTTE TELCALL TO SA FRANK MILLS, COLUMBIA, AUGUST 9,  
 1979.

TRIAL OF CAPTIONED SUBJECT CURRENTLY IN PROCESS AND DEFENSE  
 BEGAN PRESENTING EVIDENCE ON AUGUST 13, 1979.

ON AUGUST 13, 1979, U.S. DISTRICT JUDGE FRANKLIN DU PREE,  
 EDNC, RALEIGH, NC, SIGNED A MATERIAL WITNESS BENCH WARRANT AT  
 THE REQUEST OF THE DEFENSE FOR THE ARREST OF HELENA STOECKLEY, ALSO  
 KNOWN AS HELENA WOLPIE STOECKLEY, HELENA WELRE STOECKLEY, HELENA  
 FOSTER, DIRECTING SHE BE BROUGHT FORTHWITH BEFORE THE U.S. DISTRICT  
 COURT, EDNC, RALEIGH, NC, SINCE HER TESTIMONY IS MATERIAL TO THIS  
 TRIAL AND IT HAS BECOME IMPRACTICAL TO SECURE HER PRESENCE BY



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F.B.I.

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SUBPOENA. WARRANT ORDERS SHE IS TO BE DETAINED UNTIL SHE IS DISCHARGED BY THE COURT. WARRANT IS ISSUED PURSUANT TO TITLE 18, USC, SECTION 3149.

BENCH WARRANT WAS ISSUED UPON SWORN AFFIDAVIT SIGNED BY DEFENSE COUNSEL BERNARD L. SPRAL, AUGUST 13, 1979, TESTIFYING SHE IS A NECESSARY WITNESS AND EFFORTS BY THE DEFENSE TO LOCATE HER HAVE BEEN FRUITLESS.

AUSA JAMES BLACKBURN, EDNC, PALEIGH, NC, REQUESTS UPON HER APPREHENSION SHE BE INTERVIEWED CONCERNING PREVIOUS STATEMENTS SHE HAS MADE INDICATING SHE MAY HAVE PARTICIPATED IN THE MURDER OF THE SUBJECT'S WIFE AND TWO CHILDREN AT THEIR FT. BRAGG, NC, APARTMENT DURING THE EARLY MORNING HOURS, FEBRUARY 17, 1978; HOWEVER, DUE TO HEAVY DRUG USE, SHE CANNOT RECALL WHETHER OR NOT SHE WAS INVOLVED. SHE HAS MADE THESE STATEMENTS TO INDIVIDUALS BOTH IN THE FAYETTEVILLE, NC, AREA AND IN NASHVILLE, TENNESSEE.

SHE HAS BEEN HOSPITALIZED IN MENTAL INSTITUTIONS ON SEVERAL OCCASIONS AND APPARENTLY IS UNSTABLE AND A HEAVY DRUG USER.

STOCKLEY IS DESCRIBED AS A WHITE FEMALE, BORN JUNE 3, 1950 (UNCONFIRMED), APPROXIMATELY FIVE FEET FOUR INCHES TALL,

PAGE THREE CE 70-3668 UNCLAS

150 POUNDS, HEAVY BUILD, BROWN HAIR, REPORTEDLY HAS A SMALL TATTOO ABOVE ONE OF HER BREASTS.

COLUMBIA, AT WALHALLA, SC, WILL LOCATE AND APPREHEND STOECKLEY AND ADVISE CHARLOTTE DIVISION. BENCH WARRANT IN POSSESSION OF U.S. MARSHAL, EDNC, RALEIGH, NC. SUTEL RESULTS OF INVESTIGATION IMMEDIATELY.

IN VIEW OF STOECKLEY'S KNOWN DRUG USE AND MENTAL INSTABILITY CAUTION SHOULD BE USED IN APPREHENDING.

BT

2259310Z CO 1

FEDERAL BUREAU OF INVESTIGATION

GOVERNMENT  
EXHIBIT  
CASE  
NO. 3:75-CV-26-F  
EXHIBIT  
NO. 2002

Date of transcription 8/27/79

Helena Werle Stoeckley, also known as Gypsy, was arrested by Special Agents Mills and Donohue in a trailer located off Highway 24, Oakway Community, Oconee County. She was immediately advised of the identity of the arresting Agents and that the arrest was based on a material witness bench warrant issued on August 13, 1979 by United States District Judge Franklin Du Pree, Eastern District of North Carolina, Raleigh, North Carolina. Stoeckley was living at the above residence with Ernest T. Davis, whose permanent residence is 601 South Tugallo Street, Walhalla, South Carolina. Stoeckley advised that she was agreeable to talking to the FBI concerning any information she may have regarding the murder of Collette S. Mac Donald at Fort Bragg, North Carolina in 1970.

Stoeckley advised that at the time of the murder, she was residing on Clark Street at Marramount (phonetic) Hill, Fayetteville, North Carolina. She was living in an apartment with two other girls whose names she did not care to mention. She advised that she was a heavy user of drugs at that time and daily smoked pot, dropped acid, used heroin and opiate derivatives. She advised that she was an informant for the local authorities in drug matters and was also dealing in drugs herself. She advised that she had sold drugs to several doctors in the Fayetteville, North Carolina area, mostly pot. She stated that she has seen photographs of Dr. Mac Donald at his Court Martial subsequent to the murder, and she felt she had never seen him before. She stated that she is certain that she never sold any drugs to Dr. Mac Donald personally. She advised that during this time, she was under treatment at the Womack Army Hospital on Fort Bragg. She stated that in traveling from the Womack Hospital to her residence, she would pass by the Castle Drive Apartments, which she understood where the apartments occupied by Dr. Mac Donald and his family. Subsequent to the murder, she advised that she could never figure out how any band of hippies as alleged by Dr. Mac Donald, could have walked through an Officers Barracks section of Fort Bragg, inasmuch as there are numerous Military Police Patrols patrolling the area regularly. She further advised that at the same

Investigation on 8/14/79 at Oconee County, S. C. File # CO 70-2469-6  
by SA THOMAS JOHN DONOHUE  
SA FRANK J. MILLS, JR. EJM-jcc Date dictated 8/20/79

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.



CO 70-2469

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approximate time she and some of her friends were involved in witchcraft.

Stoekley advised that on the day preceding the murder, she had heavily used various types of drugs. She recalls at approximately 12:00 midnight, an enlisted man named Greg Mitchell described as a white male, attached to Fort Bragg, came by her apartment and met her outside the apartment. She stated she was alone at the time and he gave her a "hit" of mescaline. This drug completely knocked her out to the point that she had absolutely no recollection of any activities of hers for the rest of the night. She advised the next thing that she can remember was on the day of the murder or the day following, she was picked up for questioning by the Fayetteville Police Department. She believed she was interrogated by Officer Beasley. She recalls giving Beasley a number of different stories as to where she was during the time of the murder. She stated her reason for doing this was she felt that a lie would be more believable than if she was to tell the truth which was that she simply was so high on drugs she had no recollection of where she was or what she was doing.

Approximately four to six weeks later, she was contacted by a CID Officer named Mahon. She stated that he interrogated her concerning the murder and at that time, she told him that she simply did not know where she was or what she was doing. She stated she may have told him that she did not know whether or not she committed the murder because she had no idea of her activities that night. At that time, she was asked to take a polygraph examination but was afraid to do so. She advised the reason she did not want to take the polygraph was because she was a heavy user of drugs and she had heard that polygraph operators could obtain any results they want, particularly with regard to drug users.

Sometime thereafter, she left the Fayetteville, North Carolina area and was accepted on a conditional basis into Aquinas College, Nashville, Tennessee. She stated while she was attending this college, she was arrested for drugs. Following her arrest, she was again questioned concerning the murder in Fayetteville by Fayetteville Police Officer Beasley and CID Agent Mahon. She stated they traveled to Nashville

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3

to interview her. She stated that she worked out a deal with Mahon where he would have the local drug charges dropped if she would consent to take a polygraph examination regarding the murder. She agreed to do so. She stated that the polygraph examination was given to her over a two day period. She recalled that the first day she was so high on drugs that there was no possibility of obtaining an accurate polygraph examination. She stated that she does not know the outcome of this polygraph examination.

Stoeckley advised that she <sup>could</sup> honestly does not know what she did that night and therefore, <sup>could</sup> not categorically state that she was not involved in the murder. She stated that she has had a reoccurring dream since the murder in which she is pictured as being dressed in black with a candle in her hand with the words appearing on a wall of whatever room she is in with the inscription "Acid is Groovie, Kill the Pigs". She stated in this dream, she does not specifically see bodies or anyone being killed or anything of this nature. She stated that this dream could very well be based upon information that she has read in newspaper accounts of the murder.

Stoeckley is described as follows:

Race:	White
Sex:	Female
Date of birth:	June 7, 1952
Place of birth:	Cincinnati, Ohio (Hamilton County)
Height:	5'5"
Weight:	142
Hair:	Black
Eyes:	Blue



000000 2272007  
 OO CE  
 DE CO  
 O 152007Z AUG 79

FM COLUMBIA (78-2469) (P)  
 TO CHARLOTTE (78-3668) IMMEDIATE  
 BT  
 UNCLAS

JEFFREY ROBERT MAC DONALD; COLLETTE S. MAC DONALD; ET AL -  
 VICTIMS, CSR - MURDER (A), OO: CE  
 RECETEL TO CO, AUGUST 13, 1979.

HELENA WERLE STOECKLEY WAS ARRESTED 8:14 P.M. AT OCGREE  
 COUNTY, S. C. BY SA OF THE FBI WITHOUT INCIDENT. STOECKLEY  
 WAS INCARCERATED AT THE PICKENS COUNTY, S. C. JAIL. U. S.  
 MAGISTRATE AND U. S. MARSHAL, GREENVILLE, S. C. IMMEDIATELY  
 NOTIFIED.

STOECKLEY WAS INTERVIEWED FOLLOWING HER ARREST AND SUB-  
 STANCE OF THE INTERVIEW WAS FURNISHED BY TELEPHONE CALL FROM SA  
 FRANK J. MILLS, JR. TO AUSA, FAYETTEVILLE, N. C. AND FBI,  
 RALEIGH, . C.

70-3668-287  

SEARCHED	INDEXED
SERIALIZED	FILED
AUG 15 1978	
FBI - CHARLOTTE	

OO 70-2469, PAGE TWO, UNCLAS

STOECKLEY DESCRIBED AS WHITE FEMALE, DOB JUNE 7, 1952,  
5'5" TALL, 141 LBS., BLACK HAIR, BLUE EYES.

ON AUGUST 13, 1979, U. S. MARSHAL JOE WERLEY, GREENVILLE,  
S.C., ADVISED THAT THE SUBJECT HAD BEEN TRANSPORTED DIRECTLY  
FROM PICKENS COUNTY JAIL TO PALEIGH, N. C. ON AUGUST 13, 1979.  
COLUMBIA WILL FORWARD FD-302.

BT

227 2010Z CE 1

STATE USAGE  
*File copy only*

SIGNATURE OF PERSON FINGERPRINTED  
*X Helena W. Stockley*

THIS DATA MAY BE COMPUTERIZED IN LOCAL, STATE AND NATIONAL FILES

DATE *8-14* SIGNATURE OF OFFICIAL TAKING FINGERPRINTS  
*Marnis Kellegie*

CHARGE  
*MATERIAL WITNESS*

FINAL DISPOSITION

ALIASES  
*GYSPY*

CONTRIBUTOR ORI  
*SO PICKENS SC*

DATE ARRESTED OR RECEIVED DOA  
*8-14-79*

YOUR NO. OCA  
*5177*

FBI NO. FBI

SID NO. SID

SOCIAL SECURITY NO. SOC  
*244-90-3203*

CAUTION

FBI LEAVE BLANK

DATE OF BIRTH DOB  
Month *6* Day *7* Year *52*

PLACE OF BIRTH POB  
*CIANN, OHIO*

SEX *FW* RACE *65k* HGT. *142* WGT. *BLU* EYES *BLK* HAIR *CIANN, OHIO*

CLASS.

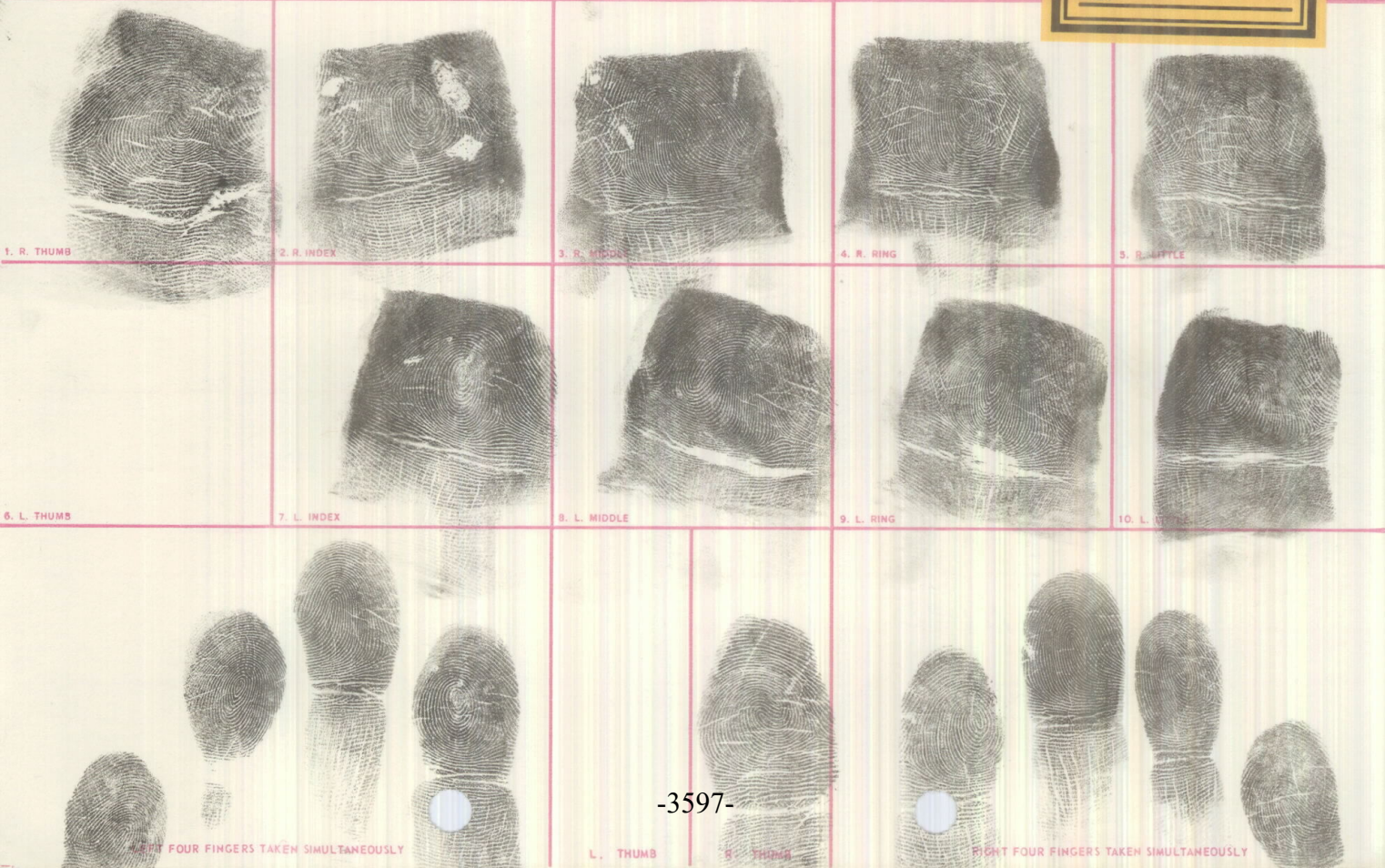
REF

NCIC

**GOVERNMENT EXHIBIT**

CASE NO. *3:75-CV-26-F*

EXHIBIT NO. *2006*



PALM PRINTS TAKEN? YES  NO

PHOTO AVAILABLE? YES  NO

IF AVAILABLE, PASTE PHOTO OVER INSTRUCTIONS  
IN DOTTED AREA.

(DO NOT USE STAPLES)

SINCE PHOTOGRAPH MAY BECOME DETACHED INDICATE NAME,  
DATE TAKEN, FBI NUMBER, CONTRIBUTOR AND ARREST NUMBER  
ON REVERSE SIDE, WHETHER ATTACHED TO FINGERPRINT CARD OR  
SUBMITTED LATER.

IF ARREST FINGERPRINTS SENT FBI PREVIOUSLY AND FBI NO. UNKNOWN,  
FURNISH ARREST NO. \_\_\_\_\_ DATE \_\_\_\_\_

STATUTE CITATION (SEE INSTRUCTION NO. 9) CIT

- 1.
- 2.
- 3.

ARREST DISPOSITION (SEE INSTRUCTION NO. 5) ADN

EMPLOYER: IF U. S. GOVERNMENT, INDICATE SPECIFIC AGENCY.  
IF MILITARY, LIST BRANCH OF SERVICE AND SERIAL NO.

UNEMPLOYED

OCCUPATION

RESIDENCE OF PERSON FINGERPRINTED

25 Beckmen DRIVE  
COLUMBIA, S.C.

SCARS, MARKS, TATTOOS, AND AMPUTATIONS SMT

SCAR ON ABOMEN

BASIS FOR CAUTION ICO

DATE OF OFFENSE DOO

SKIN TONE SKN

Med.

MISC. NO. MNU

ADDITIONAL INFORMATION

INSTRUCTIONS

1. UNLESS OTHERWISE PROVIDED BY REGULATION IN YOUR STATE, FINGERPRINTS ARE TO BE SUBMITTED DIRECTLY TO FBI IDENTIFICATION DIVISION. FORWARD IMMEDIATELY FOR MOST EFFECTIVE SERVICE.
2. FINGERPRINTS SHOULD BE SUBMITTED BY ARRESTING AGENCY ONLY (MULTIPLE PRINTS ON SAME CHARGE SHOULD NOT BE SUBMITTED BY OTHER AGENCIES SUCH AS JAILS, RECEIVING AGENCIES, ETC.). REQUEST COPIES OF FBI IDENTIFICATION RECORD FOR ALL OTHER INTERESTED AGENCIES IN BLOCK BELOW. GIVE COMPLETE MAILING ADDRESS, INCLUDING ZIP CODE.
3. TYPE OR PRINT ALL INFORMATION.
4. NOTE AMPUTATIONS IN PROPER FINGER BLOCKS.
5. LIST FINAL DISPOSITION IN BLOCK ON FRONT SIDE. IF NOT NOW AVAILABLE, SUBMIT LATER ON FBI FORM R-84 FOR COMPLETION OF RECORD. IF FINAL DISPOSITION NOT AVAILABLE SHOW PRE-TRIAL OR ARRESTING AGENCY DISPOSITION, e. g., RELEASED, NO FORMAL CHARGE, BAIL, TURNED OVER TO, IN THE ARREST DISPOSITION BLOCK PROVIDED ON THIS SIDE.
6. MAKE CERTAIN ALL IMPRESSIONS ARE LEGIBLE, FULLY ROLLED AND CLASSIFIABLE.
7. CAUTION - CHECK BOX ON FRONT IF CAUTION STATEMENT INDICATED. BASIS FOR CAUTION (ICO) MUST GIVE REASON FOR CAUTION, e. g., ARMED AND DANGEROUS, SUICIDAL, ETC.
8. MISCELLANEOUS NUMBER (MNU) - SHOULD INCLUDE SUCH NUMBERS AS MILITARY SERVICE, PASSPORT AND/OR VETERANS ADMINISTRATION (IDENTIFY TYPE OF NUMBER).
9. PROVIDE STATUTE CITATION, IDENTIFYING SPECIFIC STATUTE (example - PL for PENAL LAW) AND CRIMINAL CODE CITATION INCLUDING ANY SUB-SECTIONS.
10. ALL INFORMATION REQUESTED IS ESSENTIAL.

SEND COPY TO:

REPLY DESIRED? YES  NO

(REPLY WILL BE SENT IN ALL CASES IF SUBJECT FOUND TO BE WANTED)

IF COLLECT WIRE OR COLLECT TELEPHONE REPLY DESIRED, INDICATE HERE: (WIRE SENT ON ALL UNKNOWN DECEASED)

WIRE REPLY  TELEPHONE REPLY  TELEPHONE NO. AND AREA CODE \_\_\_\_\_

LEAVE BLANK

LEAVE BLANK

STATE USAGE

*Stoeckly Helena WERITE*

SIGNATURE OF PERSON FINGERPRINTED  
*X Helena W. Stoeckly*

ALIASES  
*Gypsy*

CONTRIBUTOR ORI  
SO  
PICKENS SC

DATE OF BIRTH DOB  
Month Day Year  
*6 7 52*

THIS DATA MAY BE COMPUTERIZED IN LOCAL, STATE AND NATIONAL FILES

DATE ARRESTED OR RECEIVED DOA  
*8-14-79*

SEX RACE HGT. WGT. EYES HAIR PLACE OF BIRTH POB  
*F W 52 142 BW BLK CANA OFFIC*

DATE SIGNATURE OF OFFICIAL TAKING FINGERPRINTS  
*8/14 Morris Helbope*

YOUR NO. OCA  
*5177*

LEAVE BLANK

CHARGE  
*Material Witness  
Federal Prisoner*

FBI NO. FBI

SID NO. SID

CLASS. \_\_\_\_\_  
REF \_\_\_\_\_

FINAL DISPOSITION

SOCIAL SECURITY NO. SOC  
*244-90-3203*

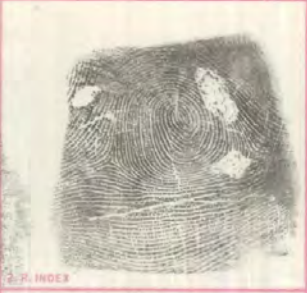
NCIC

CAUTION

**GOVERNMENT EXHIBIT**  
CASE NO. 3:75-CV-26-F  
EXHIBIT NO. 2007



1. R. THUMB



2. R. INDEX



3. R. MIDDLE



4. R. RING



5. R. LITTLE



6. L. THUMB



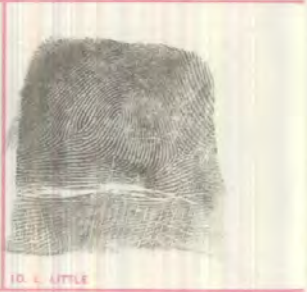
7. L. INDEX



8. L. MIDDLE

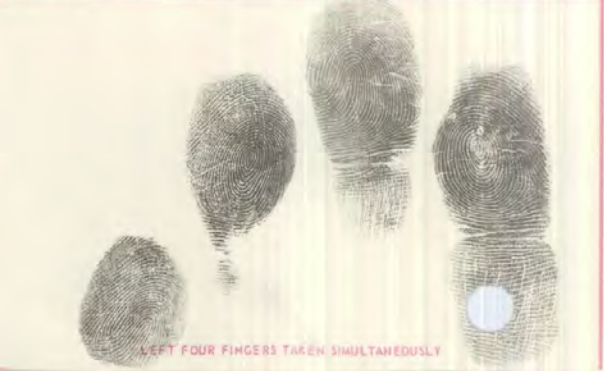


9. L. RING



10. L. LITTLE

*F. Thumb  
in  
cast*



LEFT FOUR FINGERS TAKEN SIMULTANEOUSLY



L. THUMB

R. THUMB



RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY

PALM PRINTS TAKEN? YES  NO

PHOTO AVAILABLE? YES  NO

IF AVAILABLE, PASTE PHOTO OVER INSTRUCTIONS  
IN DOTTED AREA.

(DO NOT USE STAPLES)

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FURNISH ARREST NO. \_\_\_\_\_ DATE \_\_\_\_\_

STATUTE CITATION (SEE INSTRUCTION NO. 9) CIT

1. T18 USC, SECT 3149
- 2.
- 3.

ARREST DISPOSITION (SEE INSTRUCTION NO. 5) ADN

EMPLOYER: IF U. S. GOVERNMENT, INDICATE SPECIFIC AGENCY.  
IF MILITARY, LIST BRANCH OF SERVICE AND SERIAL NO.

UNEMPLOYED

OCCUPATION

RESIDENCE OF PERSON FINGERPRINTED

90 EMMETT R. DAVIS  
601 S. TUGALLO ST.,  
WALNUT HILL, SC.

SCARS, MARKS, TATTOOS, AND AMPUTATIONS SMT

BASIS FOR CAUTION ICO

DATE OF OFFENSE DOO

SKIN TONE SKN

MISC. NO. MNU

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9. PROVIDE STATUTE CITATION, IDENTIFYING SPECIFIC STATUTE (example - PL for PENAL LAW) AND CRIMINAL CODE CITATION INCLUDING ANY SUB-SECTIONS.
10. ALL INFORMATION REQUESTED IS ESSENTIAL.

SEND COPY TO:

FBI, Columbia  
FBI, CHARLOTTE (70-

REPLY DESIRED? YES  NO

(REPLY WILL BE SENT IN ALL CASES IF SUBJECT FOUND TO BE WANTED)

IF COLLECT WIRE OR COLLECT TELEPHONE REPLY  
DESIRED, INDICATE HERE: (WIRE SENT ON ALL UNKNOWN DECEASED)

WIRE REPLY  TELEPHONE REPLY  TELEPHONE NO. AND AREA CODE \_\_\_\_\_

LEAVE BLANK

LEAVE BLANK



FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D. C. 20537

AUG 24 1979 95

Date \_\_\_\_\_

TO: South Carolina Fingerprint Contributors

The enclosed fingerprint card(s) and/or final disposition reports are being returned in compliance with a request from Mr. J. P. Strom, Chief, South Carolina Law Enforcement Division, Post Office Box 21398, Columbia, South Carolina. The South Carolina Law Enforcement Division has advised that effective March 1, 1977, all criminal fingerprint cards and final disposition reports from the State of South Carolina must be forwarded to their agency for processing prior to submitting them to the FBI Identification Division for a check of our files.

Since there is no indication that the enclosed prints and/or dispositions have been processed through the South Carolina Law Enforcement Division, they are being returned for submission through appropriate channels.

SC0390000	08/14/1979 00:00 Hrs.	<b>BOOKING REPORT</b> PICKENS CO SHERIFF	CASE NUMBER 1979610270
-----------	-----------------------	---	---------------------------

<b>PERSONAL DATA</b>	DEFENDANT NAME (LAST, FIRST, MIDDLE) STOKLEY HELENA WORLIE						RACE W	SEX F	DATE OF BIRTH 06/07/1952	DOCKET NUMBER		
	AGE	ETH.	HEIGHT	WEIGHT 0	HAIR	EYES	SOCIAL SECURITY NUMBER 244-90-3203		VISIBLE SCARS AND MARKS		NCIC	I.D. NUMBER
	ADDRESS (NUMBER AND STREET)						CITY	STATE	ZIP CODE	RESIDENT	PHONE NUMBER	
	ALIAS GYPSY			PLACE OF BIRTH			DRIVERS LICENSE NUMBER			STATE		
	EMPLOYER OR OCCUPATION			NEXT OF KIN			ADDRESS (CITY AND STATE)					
	BOOKING OFFICER'S NAME				NUMBER 9999	ARRESTING OFFICER ON FILE		AGENCY	NUMBER 9999			
	ARRESTEE ARMED <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO WEAPON TYPE:						<input type="checkbox"/> SEMI-AUTO	<input type="checkbox"/> ON VIEW ARREST	<input type="checkbox"/> SUMMONED	<input type="checkbox"/> CUSTODY		
	JUVENILE DISPOSITION: 1. <input type="checkbox"/> HANDLED, RELEASED 2. <input type="checkbox"/> REFERRED TO OTHER AUTHORITY						J - This Jurisdiction. S - State. O - Out of State. U - Unknown.					
	ADDITIONAL CASE NUMBERS				1979- 610,270				MORE IN REMARKS <input checked="" type="checkbox"/>			

<b>BOND CHARGE</b>	<b>IF HOLDING FOR ANOTHER AGENCY, CIRCLE CHARGE - A, B, C</b>												
	CHARGE I.D.	A				B				C			
	CHARGE	HOLD FOR OTHER AGENCY											
	STATUTE												
	BOND AMOUNT	0											
	BOND TYPE												
	RET. DATE	00/00/000											
	DISPOSITION												
		DAYS		AMOUNT		DAYS		AMOUNT		DAYS		AMOUNT	
	SENTENCE												
TIME SERVED													
GOOD TIME													
BALANCE													
PAID													
RECEIPT NUMBER													

RELEASE DATE 00/00/0	TIME 00:00	RELEASING OFFICER	NUMBER	AGENCY RELEASED TO
-------------------------	---------------	-------------------	--------	--------------------

SIGNATURE OF RECEIVING OFFICIAL X	LIST ANY REMARKS BELOW
REMARKS: 00/00/0 0:00	
IDHISTORY INPUT RECORD	
IDHISTORY - ID - ACCOUNT = 005177	
IDHISTORY - CREATION - DATE =	
IDHISTORY - CREATION - DATE =	
IDHISTORY - IDMO - NUMBER =	
IDHISTORY - IDMO - DATE =	
IDHISTORY - NCIC - FPC =	



DEFENDANTS PERSONAL PROPERTY RECEIPT				TOTAL CASH AT TIME OF ARREST > \$			
QTY/MEASURE	ITEM			QTY/MEASURE	ITEM		

I HEREBY STATE THAT THE PROPERTY LISTED ABOVE CONSTITUTES ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.

X \_\_\_\_\_  
DEFENDANT'S SIGNATURE AT TIME OF ARREST

\_\_\_\_\_ OFFICER

I HEREBY STATE, ON THE DATE OF MY RELEASE, THAT THE ABOVE LISTED PROPERTY WAS RETURNED TO ME, IN SATISFACTION OF ALL CLAIMS TO PROPERTY ON MY PERSON AT THE TIME OF MY ARREST.

X \_\_\_\_\_  
DEFENDANT'S SIGNATURE AT TIME OF RELEASE

\_\_\_\_\_ OFFICER

## Additional Narratives

00/00/0 0:00

IDHISTORY-NCIC-FPC-DATE =  
IDHISTORY-FBI-NBR =  
IDHISTORY-SID-NBR =  
IDHISTORY-DATE-LAST-UPDATED = 4/5/1989 0  
IDHISTORY-LAST-UPDATE-CLERK-INITIALS = SYS  
IDHISTORY-ARREST-DATE = 8/14/1979  
IDHISTORY-JAIL-REFERENCE-NUMBER = 000000000  
IDHISTORY-ARREST-CODE = 9131  
IDHISTORY-WARRANT-TICKET-NUMBER =  
IDHISTORY-WARRANT-CODE =  
IDHISTORY-ARRESTING-OFFICER-CODE = 9999  
IDHISTORY-DISP-DATE =  
IDHISTORY-DISP-REMARKS =  
IDHISTORY-EXPUNGEMENT-DATE =  
IDHISTORY-EXPUNGEMENT-REFERENCE =  
IDHISTORY-JUVENILE-FLAG =  
IDHISTORY-LAST-ACTIVITY-DATE = 4/5/1989 0  
IDHISTORY-LAST-UPDATE-CLERK-INITIALS =  
IDHISTORY-ACCOUNT-NUMBER = 014111

00/00/0 0:00

ACCOUNT RECORD INFORMATION :  
ACCT-NUMBER = 014111  
ACCT-NAME = STOKLEY;HELENA;WORLIE  
ACCT-ADDRESS1 =  
ACCT-ADDRESS2 =  
ACCT-CITY-STATE =  
ACCT-ZIP =  
ACCT-DATE-UPDATED-RESIDENT-DATA =  
ACCT-INITIALS-RESIDENT-DATA-UPDATED-BY =  
ACCT-COMMENTS = CREATED DURING DATA TRANSFER  
ACCT-MAILING-NAME =  
ACCT-MAILING-ADDRESS1 =  
ACCT-MAILING-ADDRESS2 =  
ACCT-MAILING-CITY-STATE =  
ACCT-MAILING-ZIP =  
ACCT-DATE-MAILING-DATA-UPDATED = 12/28/1992  
ACCT-MAILING-DATA-UPDATED-BY-INITIALS =  
ACCT-HOME-TELEPHONE-NUMBER =  
ACCT-TYPE-MARITAL-STATUS = S  
ACCT-RACE = W  
ACCT-SEX = F  
ACCT-HAIR-COLOR =  
ACCT-EYE-COLOR =  
ACCT-WEIGHT = 0  
ACCT-WEIGHT-DATE = :  
ACCT-SCARS-MARKS =  
ACCT-SCARS-MARKS-DATE = :  
ACCT-TATTOOS =  
ACCT-TATTOOS-DATE = :  
ACCT-HEIGHT =

00/00/0 0:00

ACCOUNT RECORD INFORMATION CONTINUED:  
ACCT-HEIGHT-DATE = :  
ACCT-SOCIAL-SECURITY-NUMBER = 244903203  
ACCT-DATE-OF-BIRTH = 06/07/1952:  
ACCT-PLACE-OF-BIRTH-CITY =  
ACCT-PLACE-OF-BIRTH-COUNTY = CINCINATTI  
ACCT-PLACE-OF-BIRTH-STATE = OH  
ACCT-MERGE-DATE =  
ACCT-JUVENILE-FLAG =  
ACCT-LOCAL-ID-NUMBER = 5177

ACCT-DRIVER-LICENSE-NUMBER =
ACCT-DRIVER-LICENSE-STATE =
ACCT-COMPANY-INDICATOR =
ACCT-ALIAS-NAMES = GYPSY
ACCT-ALIAS-DATES = 04/05/1989:
ACCT-EMPLOYMENT-OCCUPATION =
ACCT-EMPLOYER =
ACCT-EMPLOYER-ADDRESS =
ACCT-EMPLOYER-CITY-STATE =
ACCT-EMPLOYER-ZIP =
ACCT-EMPLOYER-DATE = :
ACCT-EMPLOYER-TELEPHONE-NUMBER =
ACCT-LAST-UPDATED-BY-INITIALS = SYS
ACCT-LAST-DATE-UPDATED = 04/05/1989
ACCT-LAST-TIME-UPDATED = 15:44:10
ACCT-RELATIVE-NAME =
ACCT-RELATIVE-ADDRESS1 =
ACCT-RELATIVE-ADDRESS2 =
ACCT-RELATIVE-CITY-STATE =
ACCT-RELATIVE-ZIP =
00/00/0 0:00
ACCT-RELATIVE-TELEPHONE = :
ACCT-MEDICAL-SCREENING-DATE =

Prisoners Committed

Dieted and Discharged

NO.	NAME	CAUSE OF COMMITMENT	BY WHOM COMMITTED	WHEN COMMITTED
1058	WILLIAMS, ROBERT L.	1 YR	D. SMITH	8-14-79
1059	Sheek DAVID ALLEN	Hold for Court	Aiker	8-14-79
1060	Baldwin Steve Gregory	Hold for Court	Aiker	8-14-79
1061	Stoekley Helena W	Material Witness	F.B.I	8-14-79
1062	Cannon, Marshall R.	Armed Bank Robbery	Miles	8-15-79
1063	Stephens Melford S.	" " "	Miles	8-15-79
1064	Saterfield, ALBERT M	PUBLIC DISORDERLY <sup>CONDUCT</sup>	CONE/BLYTHE	8-15-79
1065	DAVIS, RICHARD ALLEN	HOUSEBREAKING	ST. DUNCAN	8-15-79
1066	Rosen Lewis James Jr	Public Disorderly Viol. Leg. Law	Stephens / Clark	8-15-79
1067	Reeves Adolphus M	DUI more than 1 <sup>st</sup>	Stephens	8-15-79
1068	Roosevelt Rhodes	Viol. Check Law	Anthony / McHinnery	8-15-79
1069	Whitehead Ann	sent 6-month	Birkett	8-15-79
1070	Bartons, Sam	Contempt of Court	Simpson	8-16-79
1071	Wilburny Beverly Ann	Shoplifting	Easley P.D.	8-16-79
1072	Shipman Carolyn M.	Fraudulent Check	Constance	8-16-79
1073	Roach, Jimmy James	Ret. from State Hospital	Thompson	8-16-79
1074	Godfrey Johnny Frank	On wit	Nealy	8-16-79
1075	Durham, Bruce	uninsured vehicle non support	Cpl. Johnson	8-17-79
1076	Kelley, Thurmond	Public Disorderly	W. Kelley	8-17-79
1077	Collica, John Robert	60 days	Tule	8-17-79
1078	LAY, CLYDE FREEMAN	A/B W/ DEADLY WEAPON <sup>-3605-</sup>	SGT. TURNER/BOVEN	8-17-79

Aug

19 79

OMMITTED	WHEN DISCHARGED	NO. DAYS	WHITE	BLACK	AGE	MALE	FEMALE	\$ AMOUNT	CTS.	REMARKS
1-79	8-15-79				21					
-79	8-17-79		✓		17	✓				Sent to Intake
-79	8-17-79		✓		17	✓				Sent to Intake
1-79	8-15-79		✓		27		✓			Sent to Greenville Intake
79	8-16-79				22					Released to Federal Au
79	11-2-79				22					Rel to Fed Marshall
79	8-16-79									Rel to U.S Marshall
79	8-15-79		✓		22	✓				Rel per Mag Crouse
79	8-16-79		✓		59	✓				Released Per Mag. Fine
79	8-16-79		✓		47	✓				Released Pickens PD
79	8-15-79			✓	39	✓				Released Per Mag. Co
79	8-16-79		✓		25		✓			Released Per Mag. Co.
79	8-16-79		✓		67		✓			Sent to WCI
79	8-28-79			✓	20		✓			Released by Judge Road
79	8-16-79		✓		35					Released by Mag. Fenti
79	8-17-79		✓		29	✓				Released by Mag. Finley
79	9-7-79		✓		30	✓				Released Per Mag. Co
79	8-15-79		✓		32	✓				Rel to U.S. Marshall
79	8-17-79		✓		44	✓				Sent to Intake
79	8-17-79		✓		44	✓				Sent to Intake
79	8-20-79		✓		26	✓				Sent to State Hospit
79	8-20-79		✓		27	✓				Sent to Intake
79	8-20-79		✓		19	✓				Released by Mag. Fenti

for the Month of

Aug

19 79

KEYS PRINTING CO., GREENVILLE, S. C.

BLACK	AGE	MALE	FEMALE	\$	AMOUNT	CTS.	REMARKS
	21	✓					Sent to Intake
✓	17	✓					Sent to Intake
✓	17	✓					Sent to Greenville Intake
	27		✓				Released to Federal Authority
	<del>22</del>						
	22	✓					Rel. to Fed Marshall
		✓					Rel. to U.S. Marshal
							Rel per Mag Crowe
	22	✓					Released Per Mag. Finley
	59	✓					Released Pickens PD
✓	47	✓					Released Per Mag. Crowe
✓	39	✓					Released Per Mag. Crowe
	25		✓				Sent to WCT
	67	✓					Released by Judge Rood
✓	20		✓				Released by Mag. Finley
	35						Released by Mag. Finley
	29	✓					Released Per Mag. Crowe
	30	✓					Rel. to U.S. Marshal
	32	✓					Sent to State Hospital
	44	✓					Sent to Intake
	26	✓					Released by Mag. Finley
	27	✓					
	19						



**GOVERNMENT  
EXHIBIT**

CASE  
NO. 3:75-CV-26-F

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EXHIBIT  
NO. 2009





1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
3                                    WESTERN DIVISION

4  
5 United States of America,  
6                                    Plaintiff,

7                                    vs.

Case No: 75-CR-26-3  
5:06-CV-24-F

8 Jeffrey R. MacDonald,  
9                                    Defendant.

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14                                    SWORN STATEMENT OF VERNROY KENNEDY  
15  
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17                                    Pursuant to agreement, a sworn statement was  
18 taken in the above-entitled case on the 23rd day of  
19 August 2006, commencing at approximately 10:30 a.m.,  
20 attended as follows:  
21  
22  
23  
24  
25

Vernoy Kennedy

2

1 APPEARANCES:

2 John Stuart Bruce, Esquire  
 3 Assistant U. S. Attorney  
 4 Eastern District of North Carolina  
 5 301 New Bern Avenue, Suite 800  
 6 Raleigh, North Carolina 27601  
 7 Telephone: 919/856-4782

8 Brian M. Murtagh, Esquire  
 9 U. S. Department of Justice, Criminal Division  
 10 950 Pennsylvania Avenue, N.W.  
 11 Washington, D.C. 20530  
 12 Telephone: 202/305-2565

13 Robert D. Scott  
 14 FBI, Columbia Division  
 15 Greenville RA

16 Reported by:  
 17 Ruth Anne Maciag, RPR  
 18 Depositions And..., Inc.  
 19 P.O. Box 10268  
 20 Greenville, South Carolina 29603  
 21 (864) 235-3518

22  
 23 The attached 13 pages of sworn statement of  
 24 Vernoy Kennedy in the above matter is the work  
 25 product of Depositions And..., Inc., and not to be  
 copied or utilized in any manner without the express  
 written authorization of Depositions And..., Inc.

Vernoy Kennedy

3

I N D E X

WITNESS: VERNOY KENNEDY  
DATE: AUGUST 23, 2006

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Examination by Mr. Bruce .....	4
Certificate of Notary Public .....	15

EXHIBITS

Exhibit 1 .....	8
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Vernoy Kennedy

4

1 VERNOY KENNEDY, BEING FIRST DULY SWORN, TESTIFIED AS  
2 FOLLOWS:

3 EXAMINATION BY MR. BRUCE:

4 Q. Okay, Mr. Kennedy, would you state your name?

5 A. My first name is Vernoy, spelled V-E-R-N-O-Y, last  
6 name Kennedy.

7 Q. All right. And you're feeling all right today?

8 A. Feel fine.

9 Q. Okay. You are a former Deputy United States Marshal?

10 A. Correct.

11 Q. How long were you a Deputy Marshal?

12 A. For twenty years.

13 Q. From what year to what years?

14 A. From 1966 until 1986.

15 Q. And following your retirement -- well, first of all,  
16 prior to your work with the Marshal Service, what job  
17 did you have?

18 A. I worked with First Federal Savings and Loan  
19 Association here in Greenville.

20 Q. And after your retirement from the Marshal Service,  
21 what did you do?

22 A. For four years I worked for a private contractor who  
23 handled the court security for federal court here in  
24 Greenville.

25 Q. And following that, what did you do?

Vernoy Kennedy

5

- 1 A. Following that, I worked as a Greenville County  
2 Magistrate for two years.
- 3 Q. And then you completely retired?
- 4 A. And now I'm completely retired.
- 5 Q. What was your reason for retiring from the Marshal  
6 Service in 1986?
- 7 A. It was mandatory retirement, my age and time in  
8 service.
- 9 Q. During your 20 years with the Marshal Service, what  
10 kind of duties did you perform?
- 11 A. Oh, God.
- 12 Q. Just in general.
- 13 A. Here in general, you got pages.
- 14 Q. Well, for instance, did you transport prisoners?
- 15 A. All the duties of law enforcement.
- 16 Q. All right.
- 17 A. That's as general as I can put it.
- 18 Q. Is one of those duties transporting federal  
19 prisoners?
- 20 A. That's correct.
- 21 Q. All right. Did you do a lot of that?
- 22 A. Quite a bit. As a matter of fact, we handled all  
23 federal prisoners, Marshal Service did.
- 24 Q. All right. Now, did the Marshal Service have  
25 arrangements with various county jails to house their

Vernoy Kennedy

6

1 prisoners?

2 A. Yes, they did. They did not have a facility of their  
3 own to handle un-convicted.

4 Q. All right. Now, directing your attention to the year  
5 1979, were you given the task of picking up a  
6 prisoner by the name of Helena Stoeckley?

7 A. The name doesn't ring a bell, but you have filled me  
8 in on some details, and I concurred that I did.

9 Q. All right. Now, at the time that you were given this  
10 task, you were stationed here in Greenville at the  
11 Marshal Service?

12 A. That's correct.

13 Q. And do you remember approximately how many Deputy  
14 U.S. Marshals there were here at that time? Just  
15 approximately, I don't need an exact number.

16 A. There were three stationed here in Greenville.  
17 However, there were not always three on, on duty here  
18 at all times. Because there were times when some of  
19 the marshal would be assigned to other districts or  
20 assigned to other duties.

21 Q. Were you the only African American Deputy U.S.  
22 Marshal in Greenville at that time?

23 A. I was.

24 Q. All right. Now, how did you find out about your  
25 assignment to go pick up a prisoner, a female

Vernoy Kennedy

7

1 prisoner in Pickens?

2 A. I found it out through my supervisor. My supervisor  
3 was advised by our Columbia headquarters that this  
4 person needed to be transported.

5 Q. All right. Now, were you aware at the time that the  
6 murder trial of Jeffrey MacDonald was going on in  
7 federal court in North Carolina?

8 A. I was aware, because this was an ongoing news  
9 priority at that time.

10 Q. All right.

11 A. But during the Marshal Service, one crime did not  
12 exceed the other, I mean everything was treated  
13 alike.

14 Q. I understand.

15 Did you know when you were given the assignment  
16 that the prisoner that you were going to pick up was  
17 wanted as a material witness in the MacDonald case?

18 A. I might have been notified upon given the assignment  
19 that, who she was.

20 Q. All right. But you knew it was a female, obviously?

21 A. I knew it was a female.

22 Q. And because it was a female prisoner, what was the  
23 procedure?

24 A. Well, because it was a female, that meant that I had  
25 to get a female guard. We always used a female guard

Vernoy Kennedy

8

1 with a female prisoner.

2 Q. All right. And you and the female went to Pickens  
3 County and picked up the prisoner?

4 A. Yes.

5 (Exhibit 1 marked for identification,  
6 Kennedy statement, 8/23/06.)

7 CONTINUED EXAMINATION BY MR. BRUCE:

8 Q. All right. I want to show you, we looked at this  
9 before we got started, but let me show it to you  
10 again. I've marked it as Exhibit 1 for today,  
11 8/23/06.

12 And it's a xerox copy, is it not, or a  
13 photocopy?

14 A. Yes.

15 Q. The bottom part on the Exhibit 1 is a Commitment  
16 form, and it's dated 8/14/79, and it's signed by  
17 Thomas Donahue, Special Agent, FBI. Do you know him,  
18 or did you know him?

19 A. Yes, I know him.

20 Q. The top one says Release, and it's dated 8, or August  
21 15th, 1979. And it says that this prisoner, Helena  
22 Stoeckley, is being taken into custody for transfer  
23 to Raleigh, N.C.; do you see that?

24 A. Yes.

25 Q. All right. Now, at the bottom it says, it has a



Vernoy Kennedy

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1 signature line?

2 A. Um-hmm.

3 Q. Do you see that?

4 A. Yes.

5 Q. Is that your signature?

6 A. Yes, it is.

7 Q. All right. And for the record, it appears to say  
8 Vernoy Kennedy.

9 A. D-U-S-M.

10 Q. D-U-S-M.

11 A. Deputy U.S. Marshal.

12 Q. All right. Okay. So this would document that you  
13 picked up Helena Stoeckley at the Pickens County jail  
14 on August 15, 1979; is that right?

15 A. Um-hmm.

16 Q. Okay. Now you and the female guard picked her up and  
17 transported her where?

18 A. We transported her to an intersection, I believe it  
19 was a service station, at the intersection of  
20 Interstate 85 and Interstate 75, I mean Interstate 85  
21 and 77.

22 Q. I-85 and I-77?

23 A. Right.

24 Q. And that's in Charlotte?

25 A. Yes.

Vernoy Kennedy

10

1 Q. All right. Now let me, I got a little ahead of  
2 myself.

3 I meant to ask you, in Pickens County, when you  
4 picked her up at the detention facility, do you  
5 remember anybody in particular you dealt with?

6 A. No.

7 Q. Okay. But you signed the required form, and took  
8 charge of the prisoner; is that right?

9 A. Yes.

10 Q. And this is fairly routine, picking up federal  
11 prisoners at county jails?

12 A. Very routine.

13 Q. All right. And at the time -- by the way, how long a  
14 trip is it from Greenville over to Pickens?

15 A. Well, I don't remember exactly how many miles. You  
16 just average the speed limit and figure it out from  
17 there.

18 Q. Takes about how long? Or did in those days? I don't  
19 know, maybe it would take longer today.

20 A. Let's see. Two-and-a-half to three hours.

21 Q. That long? To get to Pickens?

22 A. I don't know the mileage. It was whatever, whatever  
23 speed limit and whatever.

24 Q. You're talking about the whole trip?

25 A. Yeah.

Vernoy Kennedy

11

1 Q. You're talking about the whole trip.

2 I'm just talking about from Greenville over to  
3 Pickens.

4 A. Oh, that's 30 minutes.

5 Q. Okay. All right. I understand now.

6 All right. So, and was there a reason in  
7 particular, as far as you know, why Helena Stoeckley  
8 was housed in Pickens County?

9 A. No. I had no knowledge of the case whatsoever, nor  
10 who she was.

11 Q. All right. And in 1979, were you using the  
12 Greenville County jail for federal prisoners?

13 A. No, were not.

14 Q. So you had to use other jails in the area, other than  
15 Greenville?

16 A. That's correct. A jail that was approved.

17 There came a time when even the Pickens County  
18 was not approved. And we had to go way to Columbia  
19 to commit them.

20 Q. All right.

21 A. It was just more or less depending upon who had the  
22 contract at that time, whether the contract was valid  
23 or not.

24 Q. All right. Okay, so you took Ms. Stoeckley to the  
25 I-77/I-85 intersection; is that right?

Vernoy Kennedy

12

1 A. Yes.

2 Q. And then there was a prearranged spot to meet; is  
3 that correct?

4 A. Yes, it was.

5 Q. And who had arranged that?

6 A. That was arranged through the Columbia office. And  
7 he had, he told the supervisor here in Greenville,  
8 who instructed me, where the meeting place was to be.

9 Q. And was the meeting place some sort of particular  
10 establishment at that intersection?

11 A. No, it was not.

12 Q. Well --

13 A. It was just a common place that we both knew.

14 Q. All right. Obviously you had to exit off the  
15 interstate to meet, right?

16 A. Yes, yes.

17 Q. Okay. And so what happened when you met at the  
18 prearranged spot?

19 A. Well, when we met at the prearranged spot, I  
20 delivered the prisoner to the marshals there; he gave  
21 me a receipt for the prisoner, and I returned to  
22 Greenville.

23 Q. Okay. And the marshal that, or deputy marshal that  
24 you met was someone from the Marshal Service in the  
25 Eastern District of North Carolina?

Vernoy Kennedy

13

1 A. That's correct.

2 Q. All right. And can you be certain as to who it was?

3 A. I can't be certain, because I have met with or worked  
4 with several different officers of the North Carolina  
5 district, and I can't say exactly who it was at that  
6 time.

7 Q. All right. So following the turn-over of  
8 Ms. Stoeckley to the deputy marshal from the Eastern  
9 District, you returned to Greenville?

10 A. Yes.

11 Q. During your transportation of Ms. Stoeckley, did she  
12 say anything about the case that she was going to be  
13 a witness in?

14 A. No.

15 And it was a strict regulation of the Marshal  
16 Service not to discuss their case with the marshals  
17 or anyone else in the marshal's presence.

18 In other words, if we had a guard who was not  
19 employed by the Marshal Service, it was the marshal's  
20 duty to instruct that person not to discuss their  
21 case with the inmate.

22 Q. Okay. So you made it a policy not to discuss the  
23 case with the prisoner that you were transporting?

24 A. I made it a policy; and as far as I'm concerned, it  
25 was a regulation.

Vernoy Kennedy

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Q. All right. Do you recall if Ms. Stoeckley was talkative or silent or, during the trip?

A. She was not exactly silent. But she just talked, and of course what she was talking about was of no interest to me, so I can't give you any verbalism of any of that.

Q. Okay. And she didn't give you any trouble --

A. No trouble.

Q. -- resistance, or anything like that.

Okay.

MR. BRUCE: Okay, I think that's about it, Mr. Kennedy. Anything you want to add?

THE WITNESS: No.

MR. BRUCE: Thank you very much.

(The sworn statement of Vernoy Kennedy ceased at 10:40 a.m. this same date.)

EXHIBIT  
 1  
 8/23/06

Form No. 103  
 July 1960

RELEASE

To: U.S. MARSHAL Columbia, S.C. (PLACE) 8-15 (DATE) 1979  
 Re: Helena Steckley  
 Born: U.S. Foreign Charged with W.D. Race W

Released from Pickens County Jail at 2:30 o'clock, this P M.

I took this prisoner into my custody for the purpose of Transfer to Raleigh, NC

I released this prisoner on  Recognizance  Bail, \$  
 Appeal bond, \$  Dismissal or acquittal  Probation  Exp. of sentence  
 Payment of fine, date  Indigent pris. oath, date  
 Parole  Cond. release  Transfer to  
 Other (specify) Raleigh, NC

NOTE: This card MUST be mailed to the U. S. Marshal immediately upon the prisoner's release.

GPO 10-82091-1

Form No. 103  
 July 1960

COMMITMENT

To: U.S. MARSHAL Columbia, S.C. (PLACE) 8/14 (DATE) 1979  
 Re: Helena Marie Steckley  
 Age 27 Sex F Race W Born: U.S.  Foreign

At 6:32 o'clock, this MID (received) this prisoner (to) (in) the Pickens County Jail  
 Charged with USPTIS No. 149

Committed by U.S. DIST. Judge F. Duke under a commitment Bail, \$ No Bond

Agency committing prisoner FBI imposed on Thomas Duke Special Agent

NOTE: This card MUST be mailed to the U. S. Marshal immediately upon the prisoner's commitment.

GPO 16-52090-1

Vernoy Kennedy

15

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION



United States of America,  
Plaintiff,

vs.

Case No: 75-CR-26-3  
5:06-CV-24-F

Jeffrey R. MacDonald,  
Defendant.

This is to certify that the foregoing sworn statement of Vernoy Kennedy was taken by the within court reporter, a Notary Public for the State of South Carolina, duly commissioned and qualified as such, on the 23rd day of August 2006, at 105 North Spring Street, Greenville, South Carolina.

That said court reporter is not a relative or employee of any of the parties or the attorneys, and further, is not of counsel or attorney for any of the parties to said action, and is not in any manner interested in the cause, financial or otherwise.

That the deponent was duly placed under oath and admonished to speak the whole truth. That the oral deposition was duly taken and transcribed as to the questions propounded and the answers given, that the



Vernoy Kennedy

16

1 foregoing 15 pages are a true, accurate, and correct record  
2 of the testimony given by the deponent.

3 That all offered exhibits, stipulations and  
4 objections, if any, involved in this cause are duly attached  
5 or included herein or retained by the parties.

6 In witness whereof, I have set my hand and official  
7 seal. Date: 9/8/06.

8

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\_\_\_\_\_  
Ruth Anne Maciag, RPR  
Notary Public for South Carolina.  
My commission expires 7/7/2008

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\* U. S. GOVERNMENT PRINTING OFFICE: 1976-213-487

ENTRIES MUST BE TYPED  
SEE SECT 645 OF FEDERAL BUREAU OF INVESTIGATION MANUAL FOR DETAILED INSTRUCTIONS

I - IDENTIFICATION DATA

1A. PRISONER'S NAME (LAST, FIRST, MIDDLE) <b>Stockley, Helena Werle</b>		7. AGE <b>27</b>	8. RACE (PLACE "X" IN PROPER BOX) <input checked="" type="checkbox"/> W-1 <input type="checkbox"/> N-2 <input type="checkbox"/> I-3 <input type="checkbox"/> C-4 <input type="checkbox"/> J-5 <input type="checkbox"/> O-6	4. DISTRICT OR INST. ABBR. <b>SC</b>	5. DIST. NO. <b>644-654</b>	6. PRISONER NUMBER <b>80703-071</b>
1B. PRISONER'S ALIAS		9. BIRTHPLACE (CITY & STATE, OR COUNTRY) <b>6/7/52</b>	10. SEX <input type="checkbox"/> M <input checked="" type="checkbox"/> F	11. COLOR HAIR <b>Blk</b>	12. COLOR EYES <b>Blu</b>	13. HEIGHT <b>5'5½</b>
1C. EMERGENCY ADDRESS <b>25 Beckon Hill Drive Columbia, SC</b>		17. OFFENSE (STATE SPECIFICALLY) <b>Material Witness</b>		17 A. SOCIAL SECURITY NO.		
15. VIOLATOR <input type="checkbox"/> PROBATION <input type="checkbox"/> PAROLE <input type="checkbox"/> MANDATORY RELEASE		16. PROPERTY IN CUSTODY <input type="checkbox"/> U. S. MARSHAL <input type="checkbox"/> JAIL		19. SENTENCE TYPE (IF APPLICABLE) <input type="checkbox"/> CON-CURRENT <input type="checkbox"/> MINORITY		

II - SENTENCE AND APPEAL DATA

18. SENTENCE	20. Date Sentence Begins	21. Date Appeal Filed	22. Date Elects Not Serve	23. Date Sentence Resumes	24. Reason Sentence Resumed <input type="checkbox"/> ELECTED <input type="checkbox"/> COURT	25. Detainer on File <input type="checkbox"/> YES <input type="checkbox"/> NO
26. COURT PROCEDURE						
<input type="checkbox"/> 18 USC 4244	<input type="checkbox"/> YOUTH ACT YCA-B	<input type="checkbox"/> YOUTH ACT YE	<input type="checkbox"/> 18 USC 4208 (A) (1)	<input type="checkbox"/> 18 USC 4208 (A) (2)	<input type="checkbox"/> 18 USC 4208 (B)	<input type="checkbox"/> 18 USC 3651 SPLIT SENTENCE
<input type="checkbox"/> 18 USC 4246	<input type="checkbox"/> YOUTH ACT YCA-C	<input type="checkbox"/> FJDA	<input type="checkbox"/> GENERAL PROCEDURE			

III - CHRONOLOGICAL PRISONER HISTORY

27. INSTITUTIONS TO WHICH COMMITTED (INCLUDE ALL TIME FROM DETENTION UNTIL FINAL DISPOSITION) <b>Pickens County Jail</b>	28. DATE COMMITTED (MO. DAY, YR.) <b>8-14-79</b>	29. DATE RELEASED (MO. DAY, YR.) <b>8-15-79</b>	30. DAYS BOARDED <b>2</b>	31. ACTION OR DISPOSITION (USE AUTHORIZED ABBREVIATIONS SEE PAGE 4 OF INSTRUCTION SHEET) <b>Tr J/D, USM, Raleigh, NC</b>
---	---	--	------------------------------	---

**GOVERNMENT EXHIBIT**

CASE NO. 3:75-CR-26-F

EXHIBIT NO. 2053

PRISONER CUSTODY, DETENTION, AND DISPOSITION RECORD

FORMERLY DJ-100 FORM USM-129

8-7-74

**GOVERNMENT  
EXHIBIT**

CASE  
NO. 3:75-CR-26-F

EXHIBIT  
NO. 2054

ENTRIES MUST BE TYPED  
SEE SECT. 645.01 OF [REDACTED] MANUAL FOR DETAILED INSTRUCTIONS

I - IDENTIFICATION DATA

1A. PRISONER'S NAME (LAST, FIRST, MIDDLE) <b>Stockley, Helena Werle</b>		2. FBI FINGERPRINT NO.	3. DATE CUSTODY ASSUMED <b>8-14-79</b>	4. DISTRICT OR INST. ABBR. <b>SC</b>	5. DIST. NO. <b>644-654</b>	6. PRISONER NUMBER <b>80703-071</b>
1B. PRISONER'S ALIAS		7. AGE <b>27</b>	8. RACE (PLACE "X" IN PROPER BOX) OTHER (EXPLAIN)			
1C. EMERGENCY ADDRESS <b>25 Beckon Hill Drive Columbia, SC</b>		9. BIRTHPLACE (CITY & STATE, OR COUNTRY) <b>6/7/52</b>	10. SEX <input type="checkbox"/> M <input checked="" type="checkbox"/> F			
15. VIOLATOR <input type="checkbox"/> PROBATION <input type="checkbox"/> PAROLE <input type="checkbox"/> MANDATORY RELEASE		16. PROPERTY IN CUSTODY <input type="checkbox"/> U. S. MARSHAL <input type="checkbox"/> JAIL		17. OFFENSE (STATE SPECIFICALLY)		

II - SENTENCE AND APPEAL DATA

18. SENTENCE					19. SENTENCE TYPE (IF APPLICABLE) <input type="checkbox"/> CON-CURRENT <input type="checkbox"/> MINORITY	
20. Date Sentence Begins	21. Date Appeal Filed	22. Date Elects Not Serve	23. Date Sentence Resumes	24. Reason Sentence Resumed <input type="checkbox"/> ELECTED <input type="checkbox"/> COURT	25. Detainer on File <input type="checkbox"/> YES <input type="checkbox"/> NO	
26. COURT PROCEDURE						
<input type="checkbox"/> 18 USC 4244	<input type="checkbox"/> YOUTH ACT YCA-B	<input type="checkbox"/> YOUTH ACT YE	<input type="checkbox"/> 18 USC 4208 (A) (1)	<input type="checkbox"/> 18 USC 4208 (B)	<input type="checkbox"/> 18 USC 3651 SPLIT SENTENCE	<input type="checkbox"/> GENERAL PROCEDURE
<input type="checkbox"/> 18 USC 4246	<input type="checkbox"/> YOUTH ACT YCA-C	<input type="checkbox"/> FJDA	<input type="checkbox"/> 18 USC 4208 (A) (2)	<input type="checkbox"/> OTHER (SPECIFY)		

**ATTENTION - SUBMITTING OFFICER**

STAMP OR WRITE DATE, NAME, AND IDENTIFICATION OF THE SUBMITTING OFFICER

FINGERPRINT CLASSIFICATION

FINAL DISPOSITION AND DATE

**DISPOSITION SHEET FOR FBI**

PRISONER CUSTODY, DETENTION, AND DISPOSITION RECORD

**I - IDENTIFICATION DATA**

1A. PRISONER'S NAME (LAST, FIRST, MIDDLE) <b>Stockley, Helena Werle</b>		2. FBI FINGERPRINT NO.	3. DATE CUSTODY ASSUMED <b>8-14-79</b>	4. DISTRICT OR INST. ABBR. <b>SC</b>	5. DIST. NO. <b>644-654</b>	6. PRISONER NUMBER <b>80703-071</b>	
1B. PRISONER'S ALIAS		7. AGE <b>27</b> <b>6/7/52</b>	8. RACE (PLACE "X" IN PROPER BOX) <input type="checkbox"/> W-1 <input type="checkbox"/> N-2 <input type="checkbox"/> I-3 <input type="checkbox"/> C-4 <input type="checkbox"/> J-5 <input type="checkbox"/> O-6 <input checked="" type="checkbox"/> <b>Blk</b>			OTHER (EXPLAIN)	
1C. EMERGENCY ADDRESS <b>25 Beckon Hill Drive Columbia, SC</b>		9. BIRTHPLACE (CITY & STATE, OR COUNTRY)	10. SEX <input type="checkbox"/> M <input checked="" type="checkbox"/> <b>F</b>	11. COLOR HAIR <b>Blk</b>	12. COLOR EYES <b>Blu</b>	13. HEIGHT <b>5'5½</b>	14. WEIGHT <b>141</b>
15. VIOLATOR <input type="checkbox"/> PROBATION <input type="checkbox"/> PAROLE <input type="checkbox"/> MANDATORY RELEASE	16. PROPERTY IN CUSTODY <input type="checkbox"/> U. S. MARSHAL <input type="checkbox"/> JAIL		17. OFFENSE (STATE SPECIFICALLY) <b>Material Witness</b>		17 A. SOCIAL SECURITY NO.		

**II - SENTENCE AND APPEAL DATA**

18. SENTENCE				19. SENTENCE TYPE (IF APPLICABLE) <input type="checkbox"/> CON-CURRENT <input type="checkbox"/> MINORITY		
20. Date Sentence Begins	21. Date Appeal Filed	22. Date Elects Not Serve	23. Date Sentence Resumes	24. Reason Sentence Resumed <input type="checkbox"/> ELECTED <input type="checkbox"/> COURT		25. Detainer on File <input type="checkbox"/> YES <input type="checkbox"/> NO
26. COURT PROCEDURE						
<input type="checkbox"/> 18 USC 4244	<input type="checkbox"/> YOUTH ACT YCA-B	<input type="checkbox"/> YOUTH ACT YE	<input type="checkbox"/> 18 USC 4208 (A) (1)	<input type="checkbox"/> 18 USC 4208 (B)	<input type="checkbox"/> 18 USC 3651 SPLIT SENTENCE	<input type="checkbox"/> GENERAL PROCEDURE
<input type="checkbox"/> 18 USC 4246	<input type="checkbox"/> YOUTH ACT YCA-C	<input type="checkbox"/> FJDA	<input type="checkbox"/> 18 USC 4208 (A) (2)	<input type="checkbox"/> OTHER (SPECIFY)		

**III - CHRONOLOGICAL PRISONER HISTORY**

27. INSTITUTIONS TO WHICH COMMITTED (INCLUDE ALL TIME FROM DETENTION UNTIL FINAL DISPOSITION)	28. DATE COMMITTED (MO. DAY, YR.)	29. DATE RELEASED (MO. DAY, YR.)	30. DAYS BOARDED	31. ACTION OR DISPOSITION (USE AUTHORIZED ABBREVIATIONS SEE PAGE 4 OF INSTRUCTION SHEET)
<b>Pickens County Jail</b>	<b>8-14-79</b>	<b>8-15-79</b>	<b>2</b>	<b>Tr J/D, USM, Raleigh, NC</b>

PRISONER CUSTODY, DETENTION, AND DISPOSITION RECORD

FORMERLY DJ-100 FORM USM-129

8-7-74

**GOVERNMENT EXHIBIT**

CASE NO. 3:75-CR-26-F

EXHIBIT NO. 2055

Form No. 102  
July 1956

# COMMITMENT

To: U. S. MARSHALS

*Atlanta, Ga. 8/14/77*

Re: *Heber Wehr* *Beckley*

Age *27* Sex *F* Race *W* Date: U. S.  Foreign

At *27* o'clock, this *14th* day of *August* (month) this prisoner (is) (isn't) (isn't)

Charged with *ESC* *18 USC 2384* Jail

Arrested by *SA [illegible]* *SA [illegible]* under a process issued

at *Atlanta, Ga.* by *SA [illegible]* *SA [illegible]*

in presence of *[illegible]* as interpreter *[illegible]*

*[illegible]* *[illegible]* *[illegible]*

NOTE: This card MUST be mailed to the U. S. Marshal immediately upon the prisoner's commitment.

<b>GOVERNMENT EXHIBIT</b>
CASE NO. <u>3:75-CR-26-F</u>
EXHIBIT NO. <u>2056</u>

Form No. 103  
July 1958

# COMMITMENT

To: U. S. Marshal

Beaufort, S.C. 8/14 1977

Re: Helena Weale Speckley

Age 27 Sex F Race W Born: U. S.  Foreign \_\_\_\_\_

At 4:32 o'clock, this 14th day of August (received) this prisoner (to)  (in) \_\_\_\_\_ Jail

Charged with USE FIRE ARMS

by Judge P. Dulac under a commitment

of \_\_\_\_\_ imposed on \_\_\_\_\_

by FBI \_\_\_\_\_  
Thomas D. Smith \_\_\_\_\_  
Special Agent \_\_\_\_\_

NOTE: This card MUST be mailed to the U. S. Marshal immediately upon the prisoner's commitment.

<b>GOVERNMENT EXHIBIT</b>
CASE NO. <u>3:75-CR-26-F</u>
EXHIBIT NO. <u>2057</u>

Form No. 102  
July 1959

# COMMITMENT

To: U. S. Marshal

Pickens, S.C. 8/14 1979

Re:

Helena Weale Speckley

Age

22

Sex

F

Race

W

Born: U. S.

X

Foreign

At 4:22 o'clock, this PM (received) this prisoner (to) (in)

the Pickens County Jail Jail

Charged with

USE FIRE ARMS -

by

U.S. DIST. Judge F. Dulace under a commitment

of

imposed on

agency constituting prisoner

FBI  
Thomas D. ... Special Agent

NOTE: This card MUST be mailed to the U. S. Marshal immediately upon the prisoner's commitment.

<b>GOVERNMENT EXHIBIT</b>
CASE NO. <u>3:75-CR-26-F</u>
EXHIBIT NO. <u>2058</u>

Form No. 103  
July 1950

RELEASE

To: U. S. MARSHAL

P. Helena Stockley

Columbia S.C. (PLACE)

8-15, 1979 (DATE)

Born: U.S.

Foreign

Age

Sex F

Race W

Charged with

BW

Released from

Judge Oberg  
Dickens Co

Jail, at 2:30

o'clock, this P. M.

I took this prisoner into my custody for the purpose of

Transfer to Raleigh N.C.

I released this prisoner on

Recognizance

Bail, \$

Appeal bond, \$

Dismiss. or acqu.

Probation

Exp. of sentence

Payment of fine, date

Indigent pris. oath, date

Parole

Cond. release

Transfer to

Other (specify)

Raleigh N.C.  
Venita Kenneth

Dum

NOTE: This card MUST be mailed to the U. S. Marshal immediately upon the prisoner's release.

U.S. GPO: 1950-400-111

GOVERNMENT  
EXHIBIT

CASE  
NO. 3:75-CR-26-F

EXHIBIT  
NO. 2059



Form No. 103  
July 1969

RELEASE

To: U.S. MARSHAL

Prisoner: *Helena Stockley*

Age

*8-16*, 1979

(DATE)

Race *W*

Born: U.S.

Foreign

Charged with

*Agg. Assault*  
*B.W.*

Released from

*Judge Oberg*  
*Pickens Co.*

Jail, at *2:30* o'clock, this *P* M.

I took this prisoner into my custody for the purpose of

*Transfer to Raleigh N.C.*

I released this prisoner on  Recognizance  Bail, \$

Appeal bond, \$  Dim. or acqu.  Probation  Exp. of sentence

Payment of fine, date  Indigent pris. oath, date

Parole  Cond. release  Transfer to

Other (specify) *Raleigh N.C.*

*Jerry L. Karmel*  
*Dum*

NOTE: This card MUST be mailed to the U. S. Marshal immediately upon the prisoner's release.

GOVERNMENT  
EXHIBIT

CASE  
NO. 3:75-CR-26-F

EXHIBIT  
NO. *2060*

Return to Addressee

Emergency Address:

25 Dickerson Dr  
Columbus, GA

Postmark (City & State)

6/7/52

Blank

Blue

5/1/52

141

**GOVERNMENT  
EXHIBIT**

CASE  
NO. 3:75-CR-26-F

EXHIBIT  
NO. 2061

\* U. S. GOVERNMENT PRINTING OFFICE: 1976-213-487

ENTRIES MUST BE TYPED  
SEE SECT.645.01 OF USM MANUAL FOR DETAILED INSTRUCTIONS

I - IDENTIFICATION DATA	1A. PRISONER'S NAME (LAST, FIRST, MIDDLE) <b>Stockley, Helena Werle</b>		2. FBI FINGERPRINT NO.	3. DATE CUSTODY ASSUMED <b>8-14-79</b>	4. DISTRICT OR INST. ABBR. <b>SC</b>	5. DIST. NO. <b>644-654</b>	6. PRISONER NUMBER <b>80703-071</b>	
	1B. PRISONER'S ALIAS		7. AGE <b>27</b>	8. RACE (PLACE "X" IN PROPER BOX) <input checked="" type="checkbox"/> W-1 <input type="checkbox"/> N-2 <input type="checkbox"/> I-3 <input type="checkbox"/> C-4 <input type="checkbox"/> J-5 <input type="checkbox"/> O-6			OTHER (EXPLAIN)	
	1C. EMERGENCY ADDRESS <b>25 Beckon Hill Drive Columbia, SC</b>		9. BIRTHPLACE (CITY & STATE, OR COUNTRY)	10. SEX <input type="checkbox"/> M <input checked="" type="checkbox"/> F	11. COLOR HAIR <b>Blk</b>	12. COLOR EYES <b>Blu</b>	13. HEIGHT <b>5'5½</b>	14. WEIGHT <b>141</b>
15. VIOLATOR <input type="checkbox"/> PROBATION <input type="checkbox"/> PAROLE <input type="checkbox"/> MANDATORY RELEASE		16. PROPERTY IN CUSTODY <input type="checkbox"/> U. S. MARSHAL <input type="checkbox"/> JAIL		17. OFFENSE (STATE SPECIFICALLY) <b>Material Witness</b>		17 A. SOCIAL SECURITY NO.		
II - SENTENCE AND APPEAL DATA	18. SENTENCE						19. SENTENCE TYPE (IF APPLICABLE) <input type="checkbox"/> CONCURRENT <input type="checkbox"/> MINORITY	
	20. Date Sentence Begins	21. Date Appeal Filed	22. Date Elects Not Serve	23. Date Sentence Resumes	24. Reason Sentence Resumed <input type="checkbox"/> ELECTED <input type="checkbox"/> COURT		25. Detainer on File <input type="checkbox"/> YES <input type="checkbox"/> NO	
	26. COURT PROCEDURE <input type="checkbox"/> 18 USC 4244 <input type="checkbox"/> YOUTH ACT YCA-B <input type="checkbox"/> YOUTH ACT YE <input type="checkbox"/> 18 USC 4208 (A) (1) <input type="checkbox"/> 18 USC 4208 (B) <input type="checkbox"/> 18 USC 3651 SPLIT SENTENCE <input type="checkbox"/> GENERAL PROCEDURE <input type="checkbox"/> 18 USC 4246 <input type="checkbox"/> YOUTH ACT YCA-C <input type="checkbox"/> FJDA <input type="checkbox"/> 18 USC 4208 (A) (2) <input type="checkbox"/> OTHER (SPECIFY)							
III - CHRONOLOGICAL PRISONER HISTORY	27. INSTITUTIONS TO WHICH COMMITTED (INCLUDE ALL TIME FROM DETENTION UNTIL FINAL DISPOSITION) <b>Pickens County Jail</b>		28. DATE COMMITTED (MO. DAY, YR.) <b>8-14-79</b>	29. DATE RELEASED (MO. DAY, YR.) <b>8-15-79</b>	30. DAYS BOARDED <b>2</b>	31. ACTION OR DISPOSITION (USE AUTHORIZED ABBREVIATIONS SEE PAGE 4 OF INSTRUCTION SHEET) <b>Tr J/D, USM, Raleigh, NC</b>		

**GOVERNMENT EXHIBIT**

CASE NO. 3:75-CR-26-F

EXHIBIT NO. 2062

PRISONER CUSTODY, DETENTION, AND DISPOSITION RECORD

FORMERLY DJ-100 FORM USM-129  
8-7-74

ENTRIES MUST BE TYPED  
SEE SECT.645.01 OF USM MANUAL FOR DETAILED INSTRUCTIONS

I - IDENTIFICATION DATA

1A. PRISONER'S NAME (LAST, FIRST, MID. I) <b>Stockley, Helena Werle</b>		2. FBI FINGERPRINT NO.	3. DATE CUSTODY ASSUMED <b>8-14-79</b>	4. DISTRICT OR INST. ABBR. <b>SC</b>	5. DIST. NO. <b>644-654</b>	6. PRISONER NUMBER <b>80703-071</b>
1B. PRISONER'S ALIAS		7. AGE <b>27</b>	8. RACE (PLACE "X" IN PROPER BOX) <input checked="" type="checkbox"/> W-1 <input type="checkbox"/> N-2 <input type="checkbox"/> I-3 <input type="checkbox"/> C-4 <input type="checkbox"/> J-5 <input type="checkbox"/> O-6 OTHER (EXPLAIN)			
1C. EMERGENCY ADDRESS <b>25 Beckon Hill Drive Columbia, SC</b>		9. BIRTHPLACE (CITY & STATE, OR COUNTRY)	10. SEX <input type="checkbox"/> M <input checked="" type="checkbox"/> F	11. COLOR HAIR <b>Blk</b>	12. COLOR EYES <b>Blu</b>	13. HEIGHT <b>5'5½</b>
15. VIOLATOR <input type="checkbox"/> PROBATION <input type="checkbox"/> PAROLE <input type="checkbox"/> MANDATORY RELEASE		16. PROPERTY IN CUSTODY <input type="checkbox"/> U. S. MARSHAL <input type="checkbox"/> JAIL		17. OFFENSE (STATE SPECIFICALLY)		

II - SENTENCE AND APPEAL DATA

18. SENTENCE					19. SENTENCE TYPE (IF APPLICABLE) <input type="checkbox"/> CONCURRENT <input type="checkbox"/> MINORITY	
20. Date Sentence Begins	21. Date Appeal Filed	22. Date Elects Not Serve	23. Date Sentence Resumes	24. Reason Sentence Resumed <input type="checkbox"/> ELECTED <input type="checkbox"/> COURT		25. Detainer on File <input type="checkbox"/> YES <input type="checkbox"/> NO
26. COURT PROCEDURE						
<input type="checkbox"/> 18 USC 4244	<input type="checkbox"/> YOUTH ACT YCA-B	<input type="checkbox"/> YOUTH ACT YE	<input type="checkbox"/> 18 USC 4208 (A) (1)	<input type="checkbox"/> 18 USC 4208 (B)	<input type="checkbox"/> 18 USC 3651 SPLIT SENTENCE	<input type="checkbox"/> GENERAL PROCEDURE
<input type="checkbox"/> 18 USC 4246	<input type="checkbox"/> YOUTH ACT YCA-C	<input type="checkbox"/> FJDA	<input type="checkbox"/> 18 USC 4208 (A) (2)	<input type="checkbox"/> OTHER (SPECIFY)		

ATTENTION - SUBMITTING OFFICER

STAMP OR WRITE DATE, NAME, AND IDENTIFICATION OF THE SUBMITTING OFFICER

FINGERPRINT CLASSIFICATION

FINAL DISPOSITION AND DATE

DISPOSITION SHEET FOR FBI

PRISONER CUSTODY, DETENTION, AND DISPOSITION RECORD

FORMERLY DJ-100 FORM USM-129

8-7-74

GOVERNMENT EXHIBIT

CASE NO. 3:75-CR-26-F

EXHIBIT NO. 2063

**GOVERNMENT  
EXHIBIT**

CASE  
NO. 3:75-CR-26-F

EXHIBIT  
NO. 2064

**Form No. 102**  
July 1950

**COMMITMENT**

To: U. S. MARSHAL

Pickens, S.C., 8/14, 1979  
(PLACE) (DATE)

RE: Heleana Weele Stoeckley

Age 27 Sex F Race W Born: U. S.  Foreign \_\_\_\_\_

At 6:32 o'clock, this P.M. (committed) (received) this prisoner (to) (in) the Pickens County Jail Jail

Charged with USC T18 Sec 3149 -

MATERIAL WITNESS under a commitment

issued by U.S. DIST. Judge F. Dubree Bail, \$ No Bond  
(NAME AND TITLE)

sentence of \_\_\_\_\_ imposed on \_\_\_\_\_

Agency committing prisoner FBI  
Thomas Dunbar Special Agent  
(NAME) (TITLE)

**NOTE: This card MUST be mailed to the U. S. Marshal immediately upon the prisoner's commitment.**

**GOVERNMENT  
EXHIBIT**  
CASE  
NO. 3:75-CR-26-F  
EXHIBIT  
NO. 2065

Prisoner's Alias: \_\_\_\_\_

Emergency Address: \_\_\_\_\_

25 Beckman Dr.  
Columbiana, S.C.

Birthplace (City & State) \_\_\_\_\_

6/7/52

Color Hair \_\_\_\_\_

Black

Color Eyes \_\_\_\_\_

Blue

Height \_\_\_\_\_

5'5 1/2"

Weight \_\_\_\_\_

141"

**GOVERNMENT EXHIBIT**  
 CASE NO. 3:75-CR-26-F  
 EXHIBIT NO. 2066

Form No. 103  
 July 1950

**RELEASE**

To: U. S. MARSHAL Columbia, S.C., 8-15, 1979  
(PLACE) (DATE)

Prisoner: Selena Stockley Age \_\_\_\_\_ Sex F Race W

Born: U. S. \_\_\_\_\_ Foreign \_\_\_\_\_ Charged with B.W.

Judge Ordered  
 Released from Pickens Co Jail, at 2:30 o'clock, this P M.

I took this prisoner into my custody for the purpose of Transfer to Raleigh NC

I released this prisoner on  Recognizance  Bail, \$ \_\_\_\_\_

Appeal bond, \$ \_\_\_\_\_  Dism. or acqu.  Probation  Exp. of sentence

Payment of fine, date \_\_\_\_\_  Indigent pris. oath, date \_\_\_\_\_

Parole  Cond. release  Transfer to \_\_\_\_\_

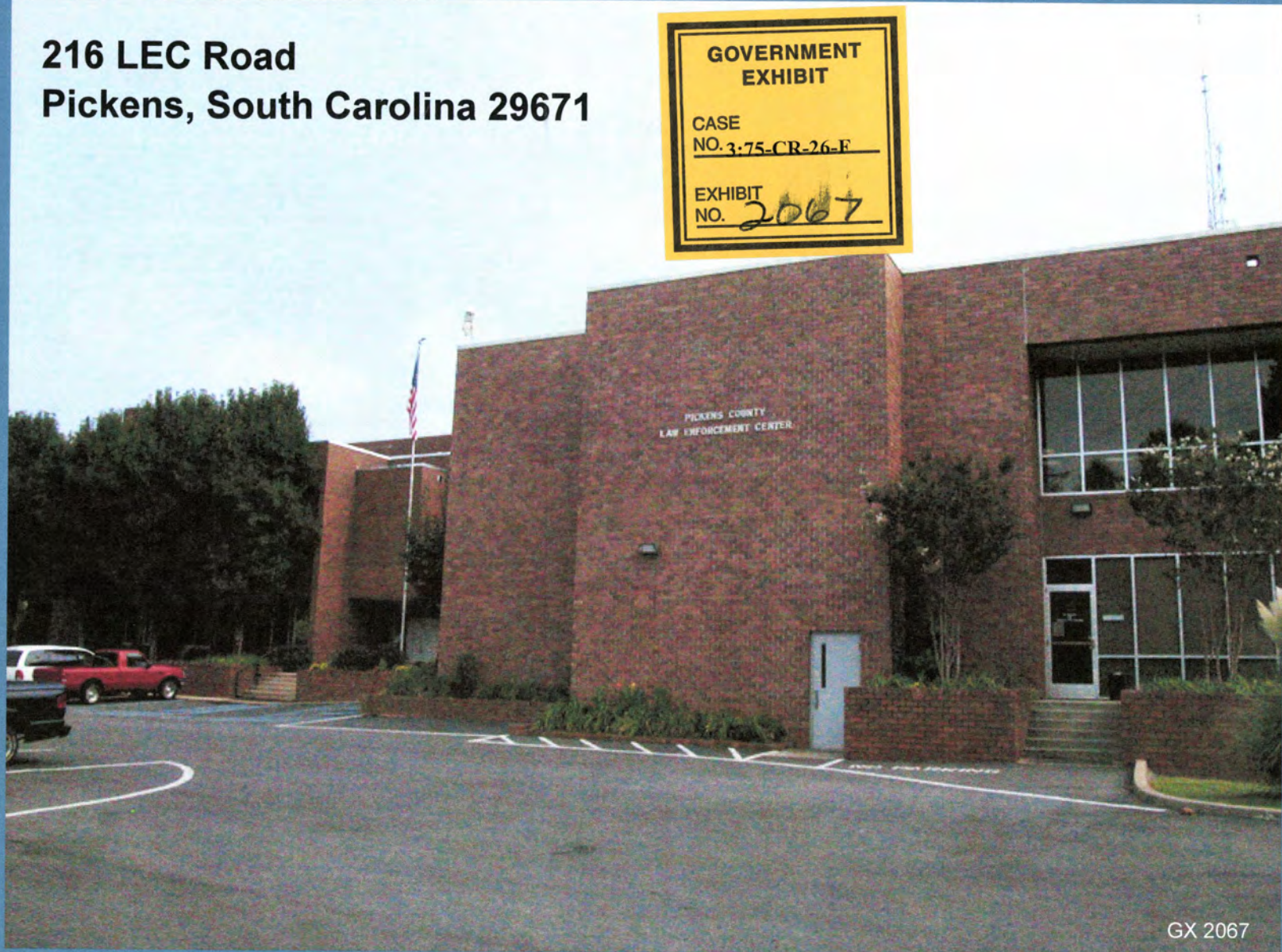
Other (specify) Raleigh NC  
Jerry Kennedy (NAME) Deputy (TITLE)

NOTE: This card MUST be mailed to the U. S. Marshal immediately upon the prisoner's release.

# PICKENS COUNTY LAW ENFORCEMENT CENTER

**216 LEC Road  
Pickens, South Carolina 29671**

**GOVERNMENT  
EXHIBIT**  
  
CASE  
NO. 3-75-CR-26-F  
  
EXHIBIT  
NO. 2067



GX 2067





**GOVERNMENT  
EXHIBIT**  
CASE  
NO. 3:75-CR-26-F  
EXHIBIT  
NO. 2068

JAIL  
BOOK  
1977

**GOVERNMENT EXHIBIT**

CASE NO. 3:75-CR-26-F

EXHIBIT NO. 2069

### Prisoners Committed

NO	NO	NAME	CAUSE OF COMMITMENT	BY WHOM COMMITTED
Pick	927	1058 WILLIAMS, ROBERT L.	1 YR	D. SMITH
	928	1059 SHECK DAVID ALAN	Hold for Court	Riker
	929	1060 Baldwin Steve Gregory	Hold for Court	Riker
	930	1061 Stockley Helena W	Material witness	F.B.I
	931	1062 Cannon, Marshall R.	Armed Bank Robbery	Miles
	932	1063 Stephens Melford S.	" " "	Miles
	933	1064 Saterfield, ALBERT M	PUBLIC DISORDERLY <sup>CONDUCT</sup>	CONE/BLYTH
	934	1065 DAVIS, RICHARD ALLEN	HOUSEBREAKING	ST. DUNCAN
	935	1064 Moser Lewis James jr	Public Disorderly viol. of Law	Steph / Clark
	936	1067 Reeves Adolphus M	DUI more than 1 <sup>st</sup>	Steph
	937	1068 Roosevelt Rhodes	Viol. Check Law	Anthony / M
	938	1069 Whitehead Ann	sent 6 months	Buckle
	939	1070 Bottobns, Sam	Contempt of Court	Simpson
	940	1071 Willman, Beverly Ann	Shoplifting	Easley P.D
	941	1072 Shipman Carolyn M.	Fraudulent Check	Constance
	942	1073 Roach, Jimmy James	Ret. from state Hospital	Thompson
	943	1074 Bodfroy Johnny Frank	On writ	Sealy
	944	1075 Durham, Bruce	uninsured vehicle Non Support	Cpl. John
	945	1076 Kelley, Thurmond	Public Disorderly	W. Kel
	946	1077 Collica, John Robert	60 days	Tate
	947	1078		

**GOVERNMENT EXHIBIT**

CASE NO. 3:75-CR-26-F

EXHIBIT NO. 2070

USE OF COMMITMENT	BY WHOM COMMITTED	WHEN COMMITTED	WHEN DISCHARGED
YR	D. SMITH	8-14-79	
for Court	Aiken	8-14-79	8-15-79
for Court	Aiken	8-14-79	8-17-79
ial witness	F.B.I	8-14-79	8-17-79
Bank Robbery	Miles	8-15-79	8-15-79
" "	Mills	8-15-79	8-16-79
CONDUCT DISORDERLY	CONE/BLYTHE	8-15-79	11-2-79
DISORDERLY	ST. DUNCAN	8-15-79	8-16-
Disorderly By Law	Stephen / Clark	8-15-79	8-15-
more than 1 <sup>st</sup>	Stephen	8-15-79	8-16-
Week Law	Anthony / McHannan	8-15-79	8-16-
6 months	Birkett	8-15-79	8-15-
of Court	Simpson	8-16-79	8-16-
has been	Easley PD	8-16-79	8-16-

**GOVERNMENT EXHIBIT**  
CASE NO. 3:75-CR-26-F  
EXHIBIT NO. 2071

For the Month of Aug

WHEN DISCHARGED	NO. DAYS	WHITE	BLACK	AGE	MALE	FEMALE	\$ AMOUNT	CTS.
8-15-79				21				
8-17-79		✓	<del>see</del>	17	✓			
8-17-79		✓	<del>see</del>	17	✓			
8-15-79		✓		22		✓		
8-16-79				<del>22</del>				
11-2-79				22				
8-16-79								
8-15-79		✓		22	✓			
8-16-79		✓		59	✓			
8-16-79		✓		47	✓			

**GOVERNMENT EXHIBIT**  
CASE NO. 3:75-CR-26-F  
EXHIBIT NO. 2072

Aug \_\_\_\_\_ 19 79 77

KEYS PRINTING CO., GREENVILLE, S. C.

MALE	\$	AMOUNT CTS.	REMARKS
			Sent to Intake
			Sent to Intake
			Sent to Greenville Intake
			Released to Federal Authority
			Rel. to Fed Marshall
			Rel to U.S Marshall
			Rel per Mag Crowe
			Released Per Mag. Finley
			Released Pickens PD
			Rel to Mag Crowe



**GOVERNMENT  
EXHIBIT**

CASE  
NO. 3:75-CR-26-F

EXHIBIT  
NO. 2073

The News and Observer, Raleigh, N. C.  
Friday, August 17, 1979

39

GOVERNMENT  
EXHIBIT

CASE  
NO. 3:75-CR-26-F

EXHIBIT  
NO. 2074

# MacDonald defense to call woman to testify today

By GINNY CARROLL  
Staff Writer

Jeffrey R. MacDonald's chief defense lawyer said Thursday that he planned to call Helena Stoeckley, a once-familiar name in the Fayetteville drug underworld, to the witness stand today at MacDonald's murder trial in federal court.

Miss Stoeckley, 27, has hinted to acquaintances that she might have knowledge of the Feb. 17, 1970, slayings of MacDonald's wife Colette and daughters Kimberly and Kristen Jean.

U.S. District Judge Franklin T. Dupree Jr. recessed MacDonald's trial for the day Thursday to allow defense attorneys and government prosecutors to interview Miss Stoeckley at length. She had been arrested in Walhalla, S.C., Tuesday, on a defense request, as a material witness in the case.

Miss Stoeckley, plump, with short, dark hair, bears little resemblance to a woman who MacDonald has described as one of four intruders who broke into his family's Fort Bragg apartment on the night of the slayings.

But Bernard L. Segal, MacDonald's chief coun-

sel, told reporters that Miss Stoeckley had, in her conference with him and colleague Wade M. Smith, "admitted to owning a blonde wig, a floppy hat and boots ...," elements of MacDonald's description of a woman who attacked him.

Assistant U.S. Attorney James Blackburn declined to comment on his interview with Miss Stoeckley.

"We have decided to put her on (the witness stand) as of this moment," Segal told reporters. "She has made it clear that she would not like to testify."

Segal said later that he would talk again with Miss Stoeckley this morning. If she refuses to testify, he will not try to force her, he said.

Defense attorneys showed her numerous pictures of the murder scene in the MacDonald apartment, Segal said. He refused to discuss her reaction.

Miss Stoeckley, who spent Wednesday night in the Wake County Jail and was returned there Thursday, was accompanied during the defense interviews by her fiance, Ernest Davis.



Staff photo by Dixie D. Vereen

Deputy Marshal Jim Britt escorts Helena Stoeckley ... her fiance, Ernest Davis, is in background



STATEMENT OF FACTS

I, Jimmy B. Britt, Retired Supervisory Deputy U.S. Marshal for the Eastern District of North Carolina, do voluntarily submit this Statement of Facts regarding the irregularities I observed during the trial of Jeffrey MacDonald at Raleigh, NC, July 1979 - August, 1979.

I volunteer without being coerced and/or promised financial gain of anything else of value and have agreed to meet at the office of Wade Smith, Fayetteville Street Mall, Raleigh, NC, on February 24, 2005. I am prepared to give a Statement of Facts under oath to Wade Smith and Tim Junkin, Attorneys at Law, who are representing Jeffrey MacDonald, defendant in this matter.

The specifics are too numerous to list in this Statement of Facts; however, I will list the names of the people involved in the irregularities that I observed while assigned as a Deputy U.S. Marshal at this trial.

The late Franklin Dupree, United States District Judge, who presided over the trial, Rich Leonard and John Edwards, Law Clerks for Judge Dupree, and Jim Blackburn, U.S. Attorney and the Foreman of the Jury.

I have requested as a witness on my behalf, Lee W. Tart, retired Inspector Witness Security Division, U.S. Marshals Service(30 years service) to be present at any and all meetings and any potential court hearings.

STATE OF N.C.  
County of WAKE

SWORN TO BEFORE ME ON 1-23-05

*Lee W. Tart*  
\_\_\_\_\_  
Notary Public

*Jimmy B. Britt*  
\_\_\_\_\_  
Jimmy B. Britt  
Retired Supervisory Deputy U.S. Marshal

2/23/05  
\_\_\_\_\_  
Date

My Commission Expires 2-26-08



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA

FAYETTEVILLE DIVISION

Docket No. 75-26-CR-3

UNITED STATES OF AMERICA

vs.

JEFFREY R. MACDONALD



---

INTERVIEW UNDER OATH OF  
JIMMY B. BRITT

---

Beginning at 1:17 p.m.  
at the Law Offices of Tharrington Smith  
209 Fayetteville Street Mall  
Raleigh, North Carolina  
Thursday, February 24, 2005  
Reported by Robbie W. Worley

Worley Reporting  
6370 Monterrey Creek Drive  
Durham, North Carolina 27713  
Phone/Fax (919) 806-2851 Toll-free (866) 223-1189  
info@worleyreporting.com

Transcript of the Proceedings  
United States of America v. Jeffrey R. MacDonald

APPEARANCES

Wade M. Smith, Esquire  
Tharrington Smith  
208 Fayetteville Street Mall  
P.O. Box 1151  
Raleigh, North Carolina 27602

Timothy D. Junkin, Esquire  
Moffett & Junkin, Chartered  
800 South Frederick Avenue, Suite 203  
Gaithersburg, Maryland 20877

In Attendance:

Lee W. Tart

Transcript of the Proceedings  
United States of America v. Jeffrey R. MacDonald

EXHIBIT INDEX

Exhibit	Description	Page Marked
1	Transcript excerpt (3 pages)	30
2	Transcript excerpt (2 pages)	30

Transcript of the Proceedings  
United States of America v. Jeffrey R. MacDonald

1

2

Whereupon,

3

Jimmy B. Britt,

4

having been first duly sworn,

5

was examined and testified

6

as follows:

7

8

MR. SMITH: Would you state your name,

9

please?

10

MR. BRITT: My name is Jimmy B. Britt.

11

MR. SMITH: And, Mr. Britt, where do you

12

live?

13

MR. BRITT: I live at 616 Wimberly,

14

spelled W-I-M-B-E-R-L-Y, Road, Apex, North

15

Carolina, 27523.

16

MR. SMITH: Mr. Britt, how long have you

17

lived in Apex?

18

MR. BRITT: I've lived at my address

19

since 1995.

20

MR. SMITH: And would you tell us what

21

your career has been, what -- what have you done in

22

the active working years of your life?

23

MR. BRITT: I began in law enforcement in

24

February of 1960 with the Smithfield Police

Transcript of the Proceedings  
United States of America v. Jeffrey R. MacDonald

5

1 Department and remained with them for four years,  
2 and was appointed by the county commissioners and  
3 the Johnston County ABC Board as one of the first  
4 ABC officers for Johnston County in 1990- -- 1964.

5 I remained there for 14 months and went  
6 to work with the State ALE office as an officer and  
7 worked there for approximately two-and-a-half years  
8 when I went to work with the United -- what is now  
9 referred to as the United States Marshals Service.  
10 And I remained with the Marshals Service for 22  
11 years, and I had three years military, so I had a  
12 total of 25 years government service, federal  
13 government service, and retired actually November  
14 30th of 1990.

15 However, there was a clause in -- which  
16 permitted me to leave in September of 1996 where I  
17 went to work with the Johnston County Sheriff's  
18 Office as the jail administrator and remained there  
19 for six years when I retired officially, September  
20 30th of 1996.

21 MR. SMITH: All right. And so how many  
22 years total have you had in law enforcement?

23 MR. BRITT: Since 1960 through September  
24 of '96.

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1 MR. SMITH: Okay.

2 MR. BRITT: And three years military.

3 MR. SMITH: So you've had nearly 40 years  
4 of law --

5 MR. BRITT: Yes, sir.

6 MR. SMITH: -- law enforcement?

7 MR. BRITT: Yes, sir.

8 MR. SMITH: And again, how many of those  
9 years were with the United States Marshals Service?

10 MR. BRITT: 22 years.

11 MR. SMITH: Do you have any social  
12 relationship with me, any --

13 MR. BRITT: No, sir.

14 MR. SMITH: -- close friendship with me?

15 MR. BRITT: No, sir.

16 MR. SMITH: How long has it been since  
17 you and I talked before you called me recently?

18 MR. BRITT: I don't know that you and I  
19 have ever talked, other than, "Hello, how are you,  
20 Mr. Smith," during the periods of time that you've  
21 appeared in court.

22 MR. SMITH: But in terms of whether we  
23 visit, go hunting together, do anything like that,  
24 we don't --

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1 MR. BRITT: No, sir.

2 MR. SMITH: -- is that true?

3 MR. BRITT: No, sir, we have no social  
4 relationship at all.

5 MR. SMITH: And Mr. Tim Junkin is here,  
6 who is my co-counsel. And you -- when did you  
7 first meet Tim Junkin?

8 MR. BRITT: Today, the 24th of February,  
9 19-- of 2005.

10 MR. SMITH: Mr. Britt, we are here to  
11 talk about a case that was tried in the Eastern  
12 District of North Carolina in 1979, and that is the  
13 MacDonald case. And would you tell us how it  
14 happened that you came to be meeting with us today?

15 MR. BRITT: I called Mr. Wade Smith,  
16 attorney at law, back a few weeks ago, a number of  
17 weeks ago. In fact, I talked with him on his car  
18 phone or cell phone, and he was en route to work.  
19 And told Mr. Smith that I would like to meet with  
20 him regarding the Jeffrey MacDonald trial, that I  
21 had some information that I would like to pass on  
22 to him regarding MacDonald.

23 MR. SMITH: Now, Mr. Britt, I think you  
24 indicated to me that you had been concerned or

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1           troubled or burdened about something over the  
2           years, and without getting into what that something  
3           is, would you tell us about the burden you felt?

4                   MR. BRITT: I have been burdened and  
5           troubled regarding this case since 1979.

6                   MR. SMITH: And have you had occasion  
7           during that period of time to speak with any of  
8           your friends about it to let them know that you  
9           were worried?

10                   MR. BRITT: Not until approximately two  
11           years ago.

12                   MR. SMITH: And with whom did you talk?

13                   MR. BRITT: I talked with Lee W. Tart,  
14           who is a retired inspector with the United States  
15           Marshals Service, with 30 years service.

16                   MR. SMITH: Did you talk with anyone  
17           else?

18                   MR. BRITT: No, sir, not at that time.

19                   MR. SMITH: Later, did you talk with  
20           anyone else?

21                   MR. BRITT: Yes, sir.

22                   MR. SMITH: And with whom did you talk  
23           later?

24                   MR. BRITT: I spoke again to Mr. Tart and



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1 Mr. Cecil Goins, who is also retired United States  
2 Deputy Marshal, who is now the sergeant-at-arms at  
3 North Carolina State Senate.

4 MR. SMITH: Did you talk with any family  
5 members?

6 MR. BRITT: I spoke with my wife about it  
7 a number of times, yes, sir.

8 MR. SMITH: And I take it that you  
9 decided that you needed to come forward and speak  
10 with someone about these things that worried you?

11 MR. BRITT: Yes, sir.

12 MR. SMITH: If you will, would you give  
13 us some insight into your feelings about why you  
14 weren't able to come forward until now?

15 MR. BRITT: Well, out of respect for the  
16 Honorable -- the late Franklin Dupree, who was the  
17 United States District Judge that presided over  
18 this case, and Richard Leonard, who is a United  
19 States Bankruptcy Judge over in Wilson, North  
20 Carolina. And I feel like that it was the late  
21 Senator -- I mean, John Edwards, who was a former  
22 United States Senator for the State of North  
23 Carolina.

24 MR. SMITH: And were those people working

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1 in the courts, with the courts, or with Judge  
2 Dupree at the time of the MacDonald trial?

3 MR. BRITT: Yes, sir, they were.

4 MR. SMITH: Now --

5 MR. JUNKIN: Can I just ask a couple of  
6 quick questions?

7 MR. SMITH: Yes, please. Yes, you can.

8 MR. JUNKIN: This is Tim Junkin, Mr.  
9 Britt. During your 22 years as a deputy United  
10 States Marshal, were you assigned to a particular  
11 courthouse or district?

12 MR. BRITT: No, sir. We had several  
13 courthouses throughout the district. Specifically,  
14 Raleigh, Fayetteville, Wilmington, Little  
15 Washington, and Elizabeth City.

16 MR. JUNKIN: Okay. So they were all  
17 federal district courts in North Carolina?

18 MR. BRITT: That's correct, yes, sir.

19 MR. JUNKIN: And that was -- that's how  
20 you spent your entire marshal's career in North  
21 Carolina?

22 MR. BRITT: No, sir. That's not how I  
23 spent my entire Marshals Service career.

24 MR. JUNKIN: Okay. So you were out of

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1 the state. How many of those years were you in  
2 North Carolina, I guess is what I was trying to  
3 understand?

4 MR. BRITT: I was in the Eastern District  
5 of North Carolina for 20 years, and I was an  
6 instructor at the United States Marshals Service  
7 Training Academy in Glynco, Georgia, for two years.

8 MR. JUNKIN: I see. And just to be  
9 specific about when you first contacted Mr. Smith  
10 about the MacDonald case, can you give me a  
11 month -- was it -- today's February 25th. Was it  
12 within the last, say, eight weeks?

13 MR. BRITT: Yes, sir. It was in January.  
14 It was in January of 2005.

15 MR. JUNKIN: Okay, thanks. That's all,  
16 thanks.

17 MR. SMITH: Mr. Britt, then, directing  
18 your attention to the year 1979, did you -- did  
19 there come a time that you were asked to perform  
20 some task related to the Jeffrey MacDonald case?

21 MR. BRITT: Yes, sir, I was.

22 MR. SMITH: What were you asked to do?

23 MR. BRITT: I was asked to travel from  
24 Raleigh, North Carolina, to Charleston, South

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1 Carolina, to assume custody of a protected  
2 witnesses -- a witness by the name of Helena  
3 Stoeckley.

4 MR. SMITH: Was the trial, the Jeffrey  
5 MacDonald trial in progress at that time? That is,  
6 was the trial going on?

7 MR. BRITT: Yes, sir, I think it was. I  
8 think -- I think that is correct, yes, sir.

9 MR. SMITH: And did you -- did you go and  
10 pick up Ms. Stoeckley?

11 MR. BRITT: Yes, sir. I went to  
12 Charleston and assumed custody of her.

13 MR. SMITH: And where was she in  
14 Charleston?

15 MR. BRITT: She was at the United States  
16 Marshals Office in Charleston, South Carolina.

17 MR. SMITH: Was anyone with her?

18 MR. BRITT: Yes, she had her boyfriend  
19 with her, by the name of Ernest.

20 MR. SMITH: And when you first saw  
21 Ms. Stoeckley, did you have an opportunity to form  
22 an impression about whether she was under the  
23 influence of any kind of narcotic drugs or pills?

24 MR. BRITT: At the time, she didn't

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1 appear to be under the influence of alcohol or  
2 drugs.

3 MR. SMITH: Do you remember how she was  
4 dressed? I know it's been 25 or 30 years, but do  
5 you remember how she was dressed?

6 MR. BRITT: Yes, sir. She had on a --  
7 she had on this floppy hat that's been described  
8 previously during the course of the investigation  
9 and trial, and she was dressed in a long skirt,  
10 hippie-type looking lady.

11 MR. SMITH: Did anyone accompany you on  
12 the -- on the journey?

13 MR. BRITT: Yes, sir. Jerry Holden, who  
14 was a -- an administrative person in the United  
15 States Marshals' Office here in Raleigh.

16 MR. SMITH: Now, when you picked up  
17 Ms. Stoeckley, did her friend Ernest accompany her  
18 and you back to North Carolina?

19 MR. BRITT: Yes, sir, they did.

20 MR. SMITH: Where did Ms. Stoeckley ride  
21 in the car, and where did her boyfriend Ernest  
22 ride?

23 MR. BRITT: They rode in the back seat of  
24 the car.

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1 MR. SMITH: And was she in a talkative,  
2 pleasant mood?

3 MR. BRITT: Yes, sir, she was.

4 MR. SMITH: I take it that she knew why  
5 she was coming back to North Carolina?

6 MR. BRITT: Yes, she did.

7 MR. SMITH: Did she know it was in  
8 connection with the MacDonald trial?

9 MR. BRITT: Yes, sir, she did.

10 MR. SMITH: Did she on her own, without  
11 any prompting from you, endeavor to talk any about  
12 the MacDonald case?

13 MR. BRITT: Yes, during the course of the  
14 travels from Charleston, South Carolina, to  
15 Raleigh, without any prompting from me whatsoever,  
16 she brought up the matter of the trial of  
17 MacDonald.

18 MR. SMITH: And what did she tell you  
19 about the trial?

20 MR. BRITT: She specifically told me in  
21 the presence of Jerry Holden, riding -- riding from  
22 Charleston to Raleigh, specifically made mention of  
23 a hobby horse, that she in fact was at Jeffrey  
24 MacDonald's home and/or apartment, and that she

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1           made reference to a hobby horse in Jeffrey  
2           MacDonald's living room.

3                   MR. SMITH: Now, of course, you knew as  
4           you were riding along that -- that this would be  
5           important, I mean --

6                   MR. BRITT: Yes, sir.

7                   MR. SMITH: And, Mr. Britt, I haven't  
8           asked you this before, but I take it that something  
9           that important, you were not about to forget?

10                   MR. BRITT: That's correct, yes, sir.

11                   MR. SMITH: Do you believe, as you sit  
12           here now, that you remember her words pretty  
13           clearly?

14                   MR. BRITT: Yes, sir, I do.

15                   MR. SMITH: Are they among the most  
16           important words you've ever heard in your life in  
17           connection with any case or any of your official  
18           work?

19                   MR. BRITT: Yes, sir, that's correct, and  
20           especially specifically the Jeffrey MacDonald  
21           trial, yes, sir.

22                   MR. SMITH: Yes. Now is there any doubt  
23           in your mind that she said, on the way up to North  
24           Carolina, that she had been in the MacDonald house?

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1 MR. BRITT: No doubt in my mind, sir.

2 MR. SMITH: And is there any doubt in  
3 your mind that she said to you that she had seen a  
4 hobby horse in that house?

5 MR. BRITT: No doubt in my mind, sir.

6 MR. SMITH: All right. Now, what  
7 happened next? You -- you made it to North  
8 Carolina, and then what happened?

9 MR. BRITT: I checked her in at the  
10 Holiday Inn hotel over on Hillsborough Street, and  
11 she and Ernest departed the lobby -- I gave them  
12 the key, and they departed the lobby and went up to  
13 their rooms. And I didn't see Helena or Ernest  
14 until the next morning when I went over to the  
15 motel -- or excuse me, the hotel, to pick them up  
16 and bring them to court.

17 MR. SMITH: And did you bring them over  
18 to the courthouse?

19 MR. BRITT: Yes, sir, I did. 310 New  
20 Bern Avenue.

21 MR. SMITH: What happened when you got to  
22 the courthouse?

23 MR. BRITT: I took Mrs. -- Stoeckley to  
24 your off- -- or to the office that is set aside for



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1 attorneys as a conference room or a room to  
2 interview witnesses on the seventh floor of the  
3 Federal Building.

4 MR. SMITH: And did you leave her there  
5 with -- with the attorneys for Jeffrey MacDonald?

6 MR. BRITT: Yes, sir. I left her there  
7 with Mr. Wade Smith, attorney, and Bernard Segal.

8 MR. SMITH: Now, after a while, when  
9 those lawyers finished with her, did you pick her  
10 up again?

11 MR. BRITT: Yes, sir, I did.

12 MR. SMITH: What happened after that?

13 MR. BRITT: I escorted her to the eighth  
14 floor to Jim Blackburn's office, who was at the  
15 time the United States Attorney.

16 MR. SMITH: And did you know at that time  
17 that Mr. Blackburn was assisting in the trial of  
18 Jeffrey MacDonald?

19 MR. BRITT: Oh, yes, sir, I knew, yes,  
20 sir.

21 MR. SMITH: You had seen him many times  
22 before?

23 MR. BRITT: Oh, yes, sir, yes, sir.

24 MR. SMITH: Now, when you -- when you

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1 delivered Helena Stoeckley to Mr. Blackburn, did  
2 Mr. Blackburn make any comment to you about  
3 remaining in the room?

4 MR. BRITT: Yes, sir. He asked me to  
5 remain in the room, and her boyfriend Ernest sat  
6 outside in the adjoining office.

7 MR. SMITH: Now, when you went in the  
8 room, did you sit around the conference table or  
9 just sit in chairs near his desk?

10 MR. BRITT: No, as I recall, there was  
11 not a conference table in his office, but he sat at  
12 his desk, and she sat in a chair in front of the  
13 desk, and I sat over to the side next to the  
14 window.

15 MR. SMITH: Now, do you remember anyone  
16 else being in the room?

17 MR. BRITT: No, sir, I don't recall  
18 anyone else being in the room.

19 MR. SMITH: All right. What happened  
20 after you got settled in the room? Did Mr.  
21 Blackburn talk with Ms. Stoeckley?

22 MR. BRITT: Yes, sir. He began to  
23 interview her.

24 MR. SMITH: Now, did Ms. Stoeckley speak

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1 freely with him?

2 MR. BRITT: Yes, I think Ms. Stoeckley  
3 spoke very freely with him.

4 MR. SMITH: Do you recall whether  
5 Ms. Stoeckley told Mr. Blackburn the same things,  
6 expressed the same ideas, that she had expressed to  
7 you on the way up to North Carolina from South  
8 Carolina?

9 MR. BRITT: Yes, sir. She spoke freely,  
10 I think, with Mr. Blackburn. And her -- her  
11 testimony, if it was testimony in the interview or  
12 whatever, she talked very freely to Mr. Blackburn  
13 and she specifically mentioned this hobby horse and  
14 various other things, told Mr. Blackburn that she  
15 had been inside of Mr. -- of Jeffrey MacDonald's  
16 home and/or apartment. And as I recall,  
17 Mr. Blackburn asked her why she was there.

18 MR. SMITH: All right.

19 MR. BRITT: And to my recollection, it  
20 was -- she was there to -- for drugs.

21 MR. SMITH: When you say "there," you  
22 mean --

23 MR. BRITT: At --

24 MR. SMITH: -- at the MacDonald house?

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1 MR. BRITT: At the MacDonald house. She  
2 was there for drugs.

3 MR. SMITH: All right. Let me interrupt  
4 you just for a moment to be sure I understand. Is  
5 it your testimony today that Mr. Blackburn asked  
6 her why she went to the MacDonald house?

7 MR. BRITT: Yes, sir, that's correct,  
8 yes, sir.

9 MR. SMITH: And she said she went for  
10 drugs?

11 MR. BRITT: Yes, sir, yes, sir.

12 MR. SMITH: Now, did Ms. Stoeckley tell  
13 Mr. Blackburn that she -- she had been in the  
14 MacDonald house?

15 MR. BRITT: Yes, sir, she did, yes, sir.

16 MR. SMITH: And again, you were  
17 absolutely aware at that moment of the importance  
18 of those words?

19 MR. BRITT: Yes, sir, I was.

20 MR. SMITH: And -- and are you sure as  
21 you sit here today that she told Mr. Blackburn that  
22 she was in the MacDonald house?

23 MR. BRITT: Yes, sir. She along with  
24 others.

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1 MR. SMITH: Yes.

2 MR. BRITT: Were in MacDonald's house.

3 MR. SMITH: Is there any doubt in your  
4 mind as you sit here today that she told Mr.  
5 Blackburn that she had been in the MacDonald house?

6 MR. BRITT: There's no doubt in my mind,  
7 no, sir.

8 MR. SMITH: All right. Now, in response  
9 to that, did Mr. Blackburn say anything to  
10 Ms. Stoeckley?

11 MR. BRITT: At the conclusion,  
12 Mr. Blackburn stated to Helena Stoeckley -- after  
13 she had given the history of her visit to Jeffrey  
14 MacDonald's home, Mr. Blackburn stated to Helena  
15 Stoeckley that, "If you go downstairs and testify  
16 before the jury as to what you have told me or said  
17 to me here in this office, I will indict you for  
18 murder."

19 MR. SMITH: Now, Mr. Britt, the  
20 importance of those words was not lost on you  
21 either?

22 MR. BRITT: No, sir, they were not. Have  
23 never been.

24 MR. SMITH: Is there any doubt in your

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1 mind as you sit here today that that's what  
2 Mr. Blackburn said?

3 MR. BRITT: No doubt in my mind,  
4 Mr. Smith, none.

5 MR. SMITH: All right. What happened  
6 next?

7 MR. BRITT: I took -- I took Helena  
8 Stoeckley from the eighth floor by elevator down to  
9 the seventh floor, and took her in the hallway down  
10 in the direction of Judge Dupree's chambers, where  
11 there is a door on the right that enters the  
12 courtroom. And I took Helena Stoeckley into the  
13 courtroom, and while in the process of this taking  
14 her in the courtroom, while in the process,  
15 Mr. Blackburn went into Judge Dupree's chambers.

16 MR. SMITH: All right. And how long  
17 would he have been in there, so far as you know?

18 MR. BRITT: Well, when I took Helena  
19 Stoeckley in the courtroom, there was -- none of  
20 the jurors were present; the judge was not present.  
21 And only the attorneys were present, that is, you  
22 and the other attorney.

23 MR. SMITH: Mr. Segal?

24 MR. BRITT: Mr. Segal. And a matter of

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1 about ten-plus minutes, maybe 15 minutes at the  
2 most, is when Judge Dupree and the U.S. Attorney,  
3 Jim Blackburn, came back into the courtroom.

4 MR. SMITH: Now, when you enter the door  
5 that Mr. Blackburn entered going toward or into  
6 Judge Dupree's chambers, is there any other room  
7 into which he could have been going other than the  
8 judge's office?

9 MR. BRITT: No, sir, no, sir.

10 MR. SMITH: In other words, there's not a  
11 hallway there he could have entered and --

12 MR. BRITT: That door is locked.

13 MR. SMITH: All right.

14 MR. BRITT: The door is locked in the  
15 hallway.

16 MR. SMITH: Yes.

17 MR. BRITT: The hallway door is locked.

18 MR. SMITH: Now, when you entered the  
19 courtroom after seeing Mr. Blackburn enter Judge  
20 Dupree's chambers, did you see Mr. MacDonald's  
21 lawyers in the courtroom?

22 MR. BRITT: Yes, sir, I did, yeah.

23 MR. SMITH: So -- so your testimony today  
24 is that there is no way those lawyers were also in

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1 Judge Dupree's chambers?

2 MR. BRITT: No, sir, they were not. You  
3 were not, no, sir.

4 MR. JUNKIN: Mr. Britt, let me ask you a  
5 question.

6 MR. SMITH: Tim Junkin, again.

7 MR. JUNKIN: Thank you. The first time  
8 that you ever told anyone other than perhaps your  
9 wife about the fact that Helena Stoeckley had told  
10 you that she had been inside the MacDonald home,  
11 and the fact that she had told Jim Blackburn in  
12 your presence that she had been inside the  
13 MacDonald home, who is the first person outside of  
14 your wife that you ever confided that information  
15 to?

16 MR. BRITT: Well, at the time,  
17 Mr. Junkin, my wife -- we live -- she and I, my  
18 first wife, she and I lived in Smithfield. And of  
19 course, I discussed it with her about my doubts  
20 that Jeffrey MacDonald was guilty of this murder.  
21 After the trial, after he was -- after he was  
22 sentenced, I went to the fourth floor of the  
23 Federal Building where there is a sandwich shop, a  
24 coffee shop, and sat down at the table.



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1                   And Jenny Carroll, who is now deceased,  
2                   she was a reporter for the Raleigh News & Observer,  
3                   graduated from University of North Carolina, degree  
4                   in journalism, she and I -- she sat down at the  
5                   table where I was at. And I looked -- apparently,  
6                   my appearance was bewildered, because she came over  
7                   and sat down at the table with me. And I knew her.  
8                   And we had a conversation, and Jenny Carroll said  
9                   to me, she said, "Jimmy, I know that you -- you  
10                  appear to have your doubts, but I have followed  
11                  this case since I was a student at the University  
12                  of North Carolina at Chapel Hill, and have followed  
13                  it up to this point in time." And she said, "I  
14                  know apparently you think he's not guilty," but she  
15                  said, "I can assure you he is guilty." That's the  
16                  first time I ever discussed it with anybody.

17                  MR. JUNKIN: Well, when is the first time  
18                  you ever told anyone about what you've told us  
19                  today?

20                  MR. BRITT: I spoke with a friend of  
21                  mine, Lee W. Tart.

22                  MR. JUNKIN: Is that the man sitting here  
23                  with you?

24                  MR. BRITT: Yes, sir, he's retired -- a

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1 United States inspector with the United States  
2 Marshals Service. 30 years of service. And he and  
3 I had the occasion to go to Mississippi. And en  
4 route to Mississippi, and probably back from  
5 Mississippi back to North Carolina as well, we had  
6 various conversations about it, because it has  
7 bothered me tremendously since I spoke with Jenny  
8 Carroll about it. That's the last person I spoke  
9 with about it outside of the immediate presence of  
10 my wife.

11 MR. JUNKIN: And when you spoke to  
12 Mr. Lee Tart, who I understand is a retired United  
13 States Marshal also --

14 MR. BRITT: Yes, sir.

15 MR. JUNKIN: -- about it, that was  
16 approximately how many years ago?

17 MR. BRITT: It's been approximately two  
18 years ago.

19 MR. JUNKIN: All right. And what was it  
20 that prompted you to contact Mr. Smith,  
21 Mr. MacDonald's attorney, and to tell us about this  
22 case?

23 MR. BRITT: Well, I had -- as I just  
24 testified, I had spoke to Mr. Tart about it. And

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1 Mr. Tart and Mr. Goins and I took a trip up to the  
2 western part of the state last year, last summer.  
3 And during our trip -- of course, we were  
4 reminiscing old times, good times and bad times,  
5 and this happened to be a bad time for me. And I  
6 spoke to -- again, to Mr. Tart and Mr. Goins about  
7 it. Now, that is, Cecil Goins, also a retired U.S.  
8 Marshal.

9 And I came home -- we came home -- we  
10 came -- returned to our residence, and I have not  
11 felt good about it. I have not felt good about it  
12 since the day Jeffrey MacDonald was sentenced. And  
13 it began to bother me to the extent that my wife  
14 and I discussed it, and she said, "Well, why don't  
15 you try to get this off your mind and call  
16 Mr. Smith, and tell him what you know about it?"

17 MR. JUNKIN: And is that --

18 MR. BRITT: That's when I called him in  
19 late January, yes, sir.

20 MR. JUNKIN: Of this year?

21 MR. BRITT: Of 2005, yes, sir.

22 MR. JUNKIN: Based on what you're -- you  
23 recall Mrs. Helena Stoeckley telling you, and based  
24 on what you witnessed her telling Mr. Blackburn, if

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1 Mr. Blackburn represented to the court during the  
2 trial, and I refer to page 5617 of the transcript,  
3 the following things, I'm going to ask you if these  
4 would be untrue.

5 If he said to the court that she, Helena  
6 Stoeckley, "specifically told us that she had been  
7 shown the photographs, and we asked her, 'Do you  
8 recognize any of the scenes in those photographs?'  
9 The answer was no." He said, "I asked her, 'Have  
10 you ever been in that house?' She said no. I  
11 said, 'Do you know anything about that?' 'No.'"

12 If Mr. Blackburn represented that to  
13 Judge Dupree --

14 MR. BRITT: He told a lie.

15 MR. JUNKIN: All right. And let me ask  
16 you one other question regarding the transcript,  
17 sir. Regarding page 5646.

18 MR. BRITT: Excuse me; let me rephrase  
19 that. I don't want to say anything ugly. I just  
20 want to say he misrepresented himself and his  
21 position to Judge Dupree.

22 MR. JUNKIN: And is it fair to say that  
23 he misrepresented what had actually occurred  
24 between he and --

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1 MR. BRITT: Yes, sir, he did misrepresent  
2 everything about it.

3 MR. JUNKIN: Okay. And if on page 5646,  
4 he elicited this testimony from Ms. Stoeckley,  
5 question, "Directing your attention to that  
6 photograph, and assuming for a moment, if you will,  
7 that the MacDonald apartment is this one right here  
8 (indicating), to your own personal knowledge,  
9 Ms. Stoeckley, have you ever been inside the  
10 MacDonald apartment before?" Answer, "No, sir."  
11 Question, "At any time?" Answer, "Not that type;  
12 no sir." Question, "I am sorry?" Answer, "Not  
13 that type of apartment, no, sir." Question, "It is  
14 fair then to say that it is your testimony that to  
15 your own personal knowledge, you have never been in  
16 that particular apartment at any time?" Answer,  
17 "Yes, sir."

18 If he elicited that testimony from  
19 Ms. Stoeckley before Judge Dupree, would that have  
20 been contrary to what she told him in your presence  
21 in his office?

22 MR. BRITT: Yes, sir, it would be  
23 contrary, misrepresentation to the judge.

24 MR. JUNKIN: Thank you, sir.

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1 MR. BRITT: Yes, sir.

2 MR. SMITH: Let's go off the record just  
3 for a second.

4 (DISCUSSION OFF RECORD, 1:46 - 1:47 P.M.)

5 MR. SMITH: Mr. Britt, that's all the  
6 questions we have of you today; thank you very  
7 much.

8 MR. BRITT: You're certainly welcome,  
9 sir.

10 MR. JUNKIN: We will add to the  
11 transcript excerpted portions -- add to your  
12 transcript, Madam Court Reporter, the excerpted  
13 portions of the trial transcript that we've read  
14 from and referred to today, which you can attach,  
15 if you will, to the transcript.

16 MR. SMITH: That's it.

17 \_\_\_\_\_  
18 (EXHIBIT NUMBERS 1 AND 2  
19 MARKED FOR IDENTIFICATION)  
20 \_\_\_\_\_

21 (WITNESS EXCUSED)

22 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED AT 1:47 P.M.)

23 (THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.)

24

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STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

CERTIFICATE

I, Robbie W. Worley, a Notary Public in and for the State of North Carolina, duly commissioned and authorized to administer oaths and to take and certify depositions, do hereby certify that on February 24, 2005, Jimmy B. Britt, being by me duly sworn to tell the truth, thereupon testified as above set forth as found in the preceding 30 pages, this examination being reported by me verbatim and then reduced to typewritten form under my direct supervision; that the foregoing is a true and correct transcript of said proceedings to the best of my ability and understanding; that I am not related to any of the parties to this action; that I am not interested in the outcome of this case; that I am not of counsel nor in the employ of any of the parties to this action.

IN WITNESS WHEREOF, I have hereto set my hand and affixed my official notarial seal, this the 26th day of February, 2005.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires  
12/8/2006

Robbie W. Worley  
Worley Reporting  
6370 Monterrey Creek Drive  
Durham, North Carolina 27713  
Phone/Fax (919) 806-2851

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GOVERNMENT

EXHIBIT

2087

3:75-CR-26-F

NORTH CAROLINA

WAKE COUNTY

**AFFIDAVIT OF JIMMY B. BRITT**

I, Jimmy B. Britt, of 616 Wimberly Road, Apex, North Carolina, affirm that the following statements are true and accurate to the best of my recollection:

1. I began my career in law enforcement in February of 1960 with the Smithfield Police Department, and remained with them for four years.
2. In 1964 I was appointed by the County Commissioners and the Johnston County ABC Board as one of the first ABC officers for Johnston County. I remained with the Johnston County ABC Board for fourteen months.
3. After leaving service with the County, I then worked as an officer for the State ALE Office for approximately two-and-a-half years.
4. In February, 1968, I began full time service as a Deputy United States Marshal for the United States Marshals Service. I remained with the Marshals Service in the Eastern District of North Carolina for 18 years, performing the full scope of duties attached to the Marshal position. I was selected to go to the Federal Law Enforcement Training Center where I was an instructor for two years. I was reassigned to Raleigh, North Carolina to serve as Supervisor of Operations. For 18 of the 22 years of my tenure, I worked in several Federal District Courts throughout the United States, including North Carolina. I also had three years of military service. I performed 25 years of federal government service (including military service) in good standing, and retired November 30, 1990.
5. After retiring from the U.S. Marshal's service, I worked at the Johnston County Sheriff's office as the jail administrator. I worked there for six years and retired completely in September of 1996. In total, I have served nearly 40 years in law enforcement.
6. I was one of the United States Marshals assigned to the proceedings of the trial of Jeffrey MacDonald in 1979.
7. In the summer of 2004, I took a trip with my friends, Lee Tart and Cecil Goins. Mr. Tart is a retired Inspector with the United States Marshals Service (30 years of service) and Mr. Goins is a retired Deputy United States Marshal who is now the Sergeant-at-Arms at the North Carolina Senate. During this trip, I shared a moral burden with Mr. Goins, one that I had shared previously with Mr. Tart. On the trip, I talked to both men about my being privy to some events that happened at the MacDonald trial. I also told them of the many years I had been carrying this moral burden, and how deeply it still troubled me.

8. Sharing my information and its effect on me with Mr. Goins and Mr. Tart did not ease my mind for long.

9. In January of 2005, I first contacted Mr. Wade Smith, Esq., of my own accord, and told him I would like to meet with him regarding the Jeffrey MacDonald trial.

10. I did not come forward previously with the information I shared with Mr. Smith, and which I now share with the court, out of respect for the late Judge Franklin Dupree, who presided over the trial, and others who were with the courts at the time of the MacDonald trial. Working on the side of law enforcement in the courthouse was my career. I did not want to betray, or appear to be betraying, the people I worked with and respected. I considered myself a loyal officer of the court, and I still do, but ultimately I decided that I had a duty to come forward.

11. What I shared with Mr. Smith is that during the Jeffrey MacDonald trial, in my capacity as a United States Marshal, assigned to the District Court where MacDonald was tried, I was assigned to travel to Greenville, South Carolina to assume custody of a witness by the name of Helena Stoeckley. I picked Ms. Stoeckley up at the County Jail in Greenville, South Carolina and drove her back to Raleigh.

12. In the course of my law enforcement career I have learned to identify persons who appear to be under the influence of alcohol or drugs. At no time, when Ms. Stoeckley was in my presence, did she appear to be under the influence of alcohol or drugs.

13. Ms. Jerry Holden, an administrative person in the United States Marshal's Office in Raleigh, accompanied me on the trip back to Raleigh with the witness. Ms. Holden is now deceased.

14. It was clear that Ms. Stoeckley knew she was being brought to Raleigh in connection with the MacDonald trial.

15. During the course of the travel from Charleston to Raleigh, without any prompting from me whatsoever, Ms. Stoeckley brought up the matter of the trial of MacDonald. She told me, in the presence of Jerry Holden, about a hobby horse in the MacDonald home, and that she, in fact, along with others, was in Jeffrey MacDonald's home on the night of the MacDonald murders.

16. I knew at the time that what Ms. Stoeckley had said was very important, and it was something I was not about to forget. I remember her words clearly, and they are among the most important words I've ever heard in my life in connection with any case or any of my official work.

17. I was the United States Marshal assigned to bring Helena Stoeckley to the Courthouse at 310 New Bern Avenue, Raleigh, North Carolina, the day after she made the statements to me in the car.

18. At the Courthouse, I first took Ms. Stoeckley to the office that was used by Jeffrey MacDonald's attorneys on the seventh floor of the Federal Building. I left her there with Mr. Smith and Mr. Bernard Segal. When the lawyers were finished, I escorted Ms. Stoeckley to the eighth floor to the U.S. Attorney's office.

19. I knew that Mr. James Blackburn, was one of the government attorneys trying Jeffrey MacDonald. I had seen Mr. Blackburn many times before. I also was aware of, and saw, Mr. Brian Murtagh and Mr. George Anderson during the course of the trial.

20. When I delivered Helena Stoeckley to the U.S. Attorney's office, Mr. Blackburn asked me to remain in the room. This was not an unusual occurrence – I had been asked to sit in the room by government attorneys many times in my career.

21. As I recall, Mr. Blackburn sat behind a desk that was set at an angle in the northeast corner of the office. There were several chairs positioned in front of the desk. Helena Stoeckley sat in the center chair in front of the desk and I sat over to the side next to the window.

22. After Ms. Stoeckley was settled in the room, Mr. Blackburn began to interview her. Ms. Stoeckley told Mr. Blackburn the same things she had stated to me on the trip from Charleston to Raleigh. She specifically mentioned the hobbyhorse and various other things, and specifically told Mr. Blackburn that she, along with others, had been inside Jeffrey MacDonald's home on the night of the murders. She also said that she had gone to the MacDonald house to acquire drugs.

23. When these statements were made, I was absolutely aware of the importance of Ms. Stoeckley's words to Mr. Blackburn. There is no doubt in my mind today, I am still absolutely certain, that Helena Stoeckley told James Blackburn that she was in the MacDonald house on the night of the MacDonald murders, with other people.

24. After Helena Stoeckley had given the history of her visit to Jeffrey MacDonald's home, Mr. Blackburn stated: "If you testify before the jury as to what you have told me or said to me in this office, I will indict you for murder."

25. The importance of Mr. Blackburn's words was not lost on me at the time, and never has been. I have no doubt that this is what Mr. Blackburn said to Helena Stoeckley in my presence.

26. I am not certain as to whether other attorneys besides Mr. Blackburn were in the room during the Stoeckley interview. It is possible George Anderson, the United States Attorney at the time, and/or Brian Murtagh, the other government prosecutor, or others associated with the prosecution were there, either when I entered the room with Ms. Stoeckley, or after I entered with her. They may have come in and left at some point, taken a break, or gone out of the room. I have a recollection of Ms. Stoeckley asking for a sandwich during the interview, and someone other than myself going to see about it. But

my clear recollection is that only Mr. Blackburn, Ms. Stoeckley and I were in the room at the time Mr. Blackburn said these words to Ms. Stoeckley.

27. Upon conclusion of the interview, I took Helena Stoeckley from the eighth floor by stairway down to the seventh floor, and took her into the Courtroom.

28. During the course of the trial I observed what I felt to be unethical standards by the United States District Court Judge, Franklin T. Dupree. Jurors asked me on two occasions to take cakes to Judge Dupree. I took the cakes and presented them to Judge Dupree and told him they came from the jurors. Judge Dupree came out of his chambers and thanked the jurors for the cakes. I observed the Judge and members of his staff eating the cakes.

29. I do not have a personal or social relationship with Mr. Wade Smith, Mr. Tim Junkin, Mr. Bernard Segal, Mr. James Blackburn, Mr. Brian Murtagh, Mr. George Anderson, the late Judge Dupree, or any other officials or attorneys who were/are directly involved in the MacDonald case. After my initial meeting with Mr. Smith, I met again with him and Mr. Junkin, and was asked about pertinent parts of the MacDonald trial testimony, in which Mr. Blackburn stated in court that Helena Stoeckley had told him she had not been in the MacDonald house. I told Mr. Smith and Mr. Junkin that such testimony by Ms. Stoeckley before Judge Dupree was contrary to what she said to Mr. Blackburn in my presence.

30. Subsequently, Mr. Smith suggested that I submit to a polygraph examination regarding the events and conversations I witnessed, as outlined in this sworn affidavit, and I agreed. The polygraph, which I passed.

31. I am currently 67 years of age and felt compelled to clear my conscience and come forward with what I witnessed, as I decided I could not shoulder the burden any longer.

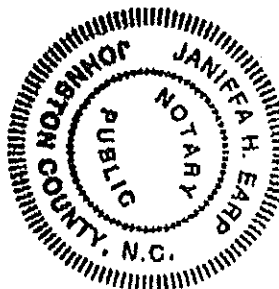
*Jimmy B. Britt*  
Jimmy B. Britt

Sworn and subscribed to before me  
this 26<sup>th</sup> day of October  
2005.

*Janiffa H. Earp*  
Notary Public

My Commission Expires: 5-13-06

0194089



NORTH CAROLINA

WAKE COUNTY

GOVERNMENT

EXHIBIT  
2088

3:75-CR-26-F

AFFIDAVIT OF JIMMY B. BRITT

I, Jimmy B. Britt, of 616 Wimberly Road, Apex, North Carolina, affirm that the following statements are true and accurate to the best of my recollection:

1. I began my career in law enforcement in February of 1960 with the Smithfield Police Department, and remained with them for four years.
2. In 1964 I was appointed by the County Commissioners and the Johnston County ABC Board as one of the first ABC officers for Johnston County. I remained with the Johnston County ABC Board for fourteen months.
3. After leaving service with the County, I then worked as an officer for the State ALE Office for approximately two-and-a-half years.
4. In February, 1968, I began full time service as a Deputy United States Marshal for the United States Marshal's Service. I remained with the Marshal's Service in the Eastern District of North Carolina for 18 years, performing the full scope of duties attached to the Marshal position. I was selected to go to the Federal Law Enforcement Training Center where I was an instructor for two years. I was reassigned to Raleigh, North Carolina to serve as Supervisor of Operations. For 18 of the 22 years of my tenure, I worked in several Federal District Courts throughout the United States, including North Carolina. I also had three years of military service. I performed 25 years of federal government service (including military service) in good standing, and retired November 30, 1990.
5. After retiring from the U.S. Marshal's service, I worked at the Johnston County Sheriff's office as the Jail Administrator. I worked there for six years and retired completely in September of 1996. In total, I have served nearly 40 years in law enforcement.
6. I was one of the United States Marshal's assigned to the proceedings of the trial of Jeffrey MacDonald in 1979.
7. In the summer of 2004, I took a trip with my friends, Lee Tart and Cecil Goins. Mr. Tart is a retired inspector with the United States Marshal's Service (30 years of service) and Mr. Goins is a retired Deputy United States Marshal who is now the Sergeant-at-Arms at the North Carolina Senate. During this trip, I shared a moral burden with Mr. Goins, one that I had shared previously with Mr. Tart. On the trip, I talked to both men about my being privy to some events that happened at the MacDonald trial. I also told them of the many years I had been carrying this moral burden, and how deeply it still troubled me.



8. Sharing my information and its effect on me with Mr. Goins and Mr. Tart did not ease my mind for long.

9. In January of 2005, I first contacted Mr. Wade Smith, Esq., of my own accord, and told him I would like to meet with him regarding the Jeffrey MacDonald trial.

10. I did not come forward previously with the information I shared with Mr. Smith, and which I now share with the court, out of respect for the late Judge Franklin Dupree, who presided over the trial, and others who were with the courts at the time of the MacDonald trial. Working on the side of law enforcement in the courthouse was my career. I did not want to betray, or appear to be betraying, the people I worked with and respected. I considered myself a loyal officer of the court, and I still do, but ultimately I decided that I had a duty to come forward.

11. What I shared with Mr. Smith is that during the Jeffrey MacDonald trial, in my capacity as a United States Marshal, assigned to the District Court where MacDonald was tried, I was assigned to travel to Greenville, South Carolina to assume custody of a witness by the name of Helena Stoeckley. I picked Ms. Stoeckley up at the County Jail in Greenville, South Carolina and drove her back to Raleigh.

12. In the course of my law enforcement career I have learned to identify persons who appear to be under the influence of alcohol or drugs. At no time, when Ms. Stoeckley was in my presence, did she appear to be under the influence of alcohol or drugs.

13. Ms. Jerry Holden, an administrative person in the United States Marshal's Office in Raleigh, accompanied me on the trip back to Raleigh with the witness. Ms. Holden is now deceased.

14. It was clear that Ms. Stoeckley knew she was being brought to Raleigh in connection with the MacDonald trial.

15. During the course of the travel from Greenville, South Carolina to Raleigh, without any prompting from me whatsoever, Ms. Stoeckley brought up the matter of the trial of MacDonald. She told me, in the presence of Jerry Holden, about a hobby horse in the MacDonald home, and that she, in fact, along with others, was in Jeffrey MacDonald's home on the night of the MacDonald murders.

16. I knew at the time that what Ms. Stoeckley had said was very important, and it was something I was not about to forget. I remember her words clearly, and they are among the most important words I've ever heard in my life in connection with any case or any of my official work.

17. I was the United States Marshal assigned to bring Helena Stoeckley to the Courthouse at 310 New Bern Avenue, Raleigh, North Carolina, the day after she made the statements to me in the car.

18. At the Courthouse, I first took Ms. Stoeckley to the office that was used by Jeffrey MacDonald's attorneys on the seventh floor of the Federal Building. I left her there with Mr. Smith and Mr. Bernard Segal. When the lawyers were finished, I escorted Ms. Stoeckley to the eighth floor to the U.S. Attorney's office.

19. I knew that Mr. James Blackburn, was one of the government attorneys trying Jeffrey MacDonald. I had seen Mr. Blackburn many times before. I also was aware of, and saw, Mr. Brian Murtagh and Mr. George Anderson during the course of the trial.

20. When I delivered Helena Stoeckley to the U.S. Attorney's office, Mr. Blackburn asked me to remain in the room. This was not an unusual occurrence – I had been asked to sit in the room by government attorneys many times in my career.

21. As I recall, Mr. Blackburn sat behind a desk that was set at an angle in the northeast corner of the office. There were several chairs positioned in front of the desk. Helena Stoeckley sat in the center chair in front of the desk and I sat over to the side next to the window.

22. After Ms. Stoeckley was settled in the room, Mr. Blackburn began to interview her. Ms. Stoeckley told Mr. Blackburn the same things she had stated to me on the trip from Greenville to Raleigh. She specifically mentioned the hobbyhorse and various other things, and specifically told Mr. Blackburn that she, along with others, had been inside Jeffrey MacDonald's home on the night of the murders. She also said that she had gone to the MacDonald house to acquire drugs.

23. When these statements were made, I was absolutely aware of the importance of Ms. Stoeckley's words to Mr. Blackburn. There is no doubt in my mind today, I am still absolutely certain, that Helena Stoeckley told James Blackburn that she was in the MacDonald house on the night of the MacDonald murders, with other people.

24. After Helena Stoeckley had given the history of her visit to Jeffrey MacDonald's home, Mr. Blackburn stated: "If you testify before the jury as to what you have told me or said to me in this office, I will indict you for murder."

25. The importance of Mr. Blackburn's words was not lost on me at the time, and never has been. I have no doubt that this is what Mr. Blackburn said to Helena Stoeckley in my presence.

26. I am not certain as to whether other attorneys besides Mr. Blackburn were in the room during the Stoeckley interview. It is possible George Anderson, the United States Attorney at the time, and/or Brian Murtagh, the other government prosecutor, or others associated with the prosecution were there, either when I entered the room with Ms. Stoeckley, or after I entered with her. They may have come in and left at some point, taken a break, or gone out of the room. I have a recollection of Ms. Stoeckley asking for a sandwich during the interview, and someone other than myself going to see about it. But

my clear recollection is that only Mr. Blackburn, Ms. Stoeckley and I were in the room at the time Mr. Blackburn said these words to Ms. Stoeckley.

27. Upon conclusion of the interview, I took Helena Stoeckley from the eighth floor by stairway down to the seventh floor, and took her into the Courtroom.

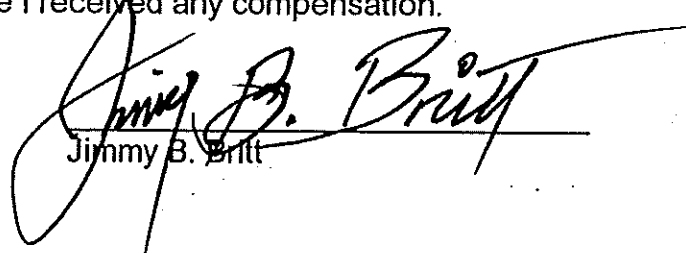
28. These events have remained with me. The interview with Mr. Blackburn and other conduct by representatives of the government which I felt was unethical all have moved me to take this action.

29. I do not have a personal or social relationship with Mr. Wade Smith, Mr. Tim Junkin, Mr. Bernard Segal, Mr. James Blackburn, Mr. Brian Murtagh, Mr. George Anderson, the late Judge Dupree, or any other officials or attorneys who were/are directly involved in the MacDonald case. After my initial meeting with Mr. Smith, I met again with him and Mr. Junkin, and was asked about pertinent parts of the MacDonald trial testimony, in which Mr. Blackburn stated in court that Helena Stoeckley had told him she had not been in the MacDonald house. I told Mr. Smith and Mr. Junkin that such testimony by Ms. Stoeckley before Judge Dupree was contrary to what she said to Mr. Blackburn in my presence.

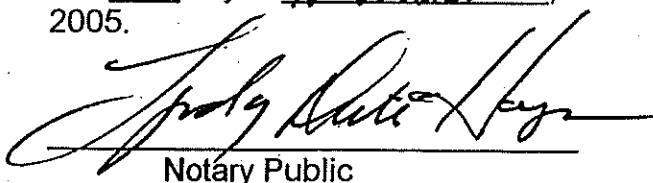
30. Subsequently, Mr. Smith suggested that I submit to a polygraph examination regarding the events and conversations I witnessed, as outlined in this sworn affidavit, and I agreed. The polygraph, which I passed.

31. I am currently 67 years of age and felt compelled to clear my conscience and come forward with what I witnessed, as I decided I could not shoulder the burden any longer.

32. I came forward to Mr. Wade M. Smith of my own free will and accord. I have not been promised any compensation nor have I received any compensation.

  
Jimmy B. Britt

Sworn and subscribed to before me  
this 3<sup>rd</sup> day of November,  
2005.

  
Notary Public

My Commission Expires: 9-4-2006

0194089

NORTH CAROLINA

WAKE COUNTY



ADDENDUM TO AFFIDAVIT OF JIMMY B. BRITT

On August 14, 1979, I was directed by Hugh Salter, United States Marshal for the Eastern District of North Carolina, to travel to Greenville, SC, to take custody of Helena Stoeckley and the late Geraldine Holden would accompany me. We met in the parking lot on Bloodworth Street, Raleigh, NC, on August 15, 1979, and traveled to the Greenville County Jail, Greenville, South Carolina, where I took custody of Helena Stoeckley on a material witness warrant. Geraldine Holden, Helena Stoeckley and I traveled to Raleigh, NC, where I committed her to the Wake County Jail.

On the morning of August 15, 1979, Ms. Holden and I went to the Wake County Jail and again took custody of Ms. Stoeckley and took her to the Federal Building, 310 New Bern Avenue, Raleigh, NC. We escorted her to the 7<sup>th</sup> floor to a designated room set aside for Bernard Segal and Wade Smith, Attorneys for Dr. Jeffrey MacDonald. At approximately 12:00 Noon at the conclusion of their interview, I escorted Ms. Stoeckley to the U. S. Attorney's Office. Ms. Smith, who was Mr. George Anderson's, U.S. Attorney, receptionist, notified them that we were present. Mr. Anderson, Jim Blackburn, lead prosecutor, and Brian Murtaugh, Special Prosecutor from U. S. Department of Main Justice, were present. I specifically remember asking if they wanted me to sit outside in Ms. Smith's Office. Mr. Blackburn stated to me "No, come in and close the door."


During the course of the interview, Mr. Blackburn in my presence, and Mr. Murtaugh has stated that he was present during the entire interview, stated to Ms. Stoeckley, "If you go downstairs and testify that you were at Dr. Jeffrey MacDonald's house on the night of the murders, I will indict you as an accessory to murder."

On August 17 I escorted Ms. Stoeckley from the Wake County Jail to the U. S. District Court and she took the witness stand before the Jury and stated in essence that she did not know anything about any murders. I might add that she was scared "to death".

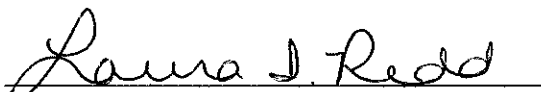
She was released on August 17 as a material witness by Judge Dupree. A subpoena was issued, which I served on Ms. Stoeckley and she was admonished by the court to appear when and if she was again called as a witness. This was done outside the presence of the Jury as Judge Dupree dismissed the Jury at approximately 1:00 p.m. I then took Ms. Stoeckley to a motel in Raleigh called "The Journey's End". On Sunday, August 19, someone called Judge Dupree at his home and told him that she and her boyfriend, Ernest, were fighting and the manager wanted them removed from the motel. Chief Deputy U.S. Marshal Eddie Sigmon called me at my residence and asked me to go to "The Journey's End" and check Ms. Stoeckley out of the motel and to register her at The Holiday Inn, Hillsborough Street, Raleigh, NC, which I did.

On Monday, August 20, Judge Dupree, outside the presence of the Jury, stated as a matter of record that he was not going to permit Ms. Stoeckley to testify again, stated that her brain was scrambled (like a egg). The jury was summoned and they were seated in the jury box. Judge Dupree directed the jurors not to consider any evidence by Ms. Stoeckley on Friday, August 17.

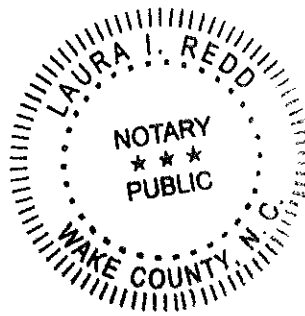
Hugh Salter, U. S. Marshal, asked me to go to the U.S. Marshal's Office and see Ms. Reddick and that she would give me a check for four (4) days of subsistence. He asked me to cash the check and go to the bus station and purchase Ms. Stoeckley a one-way ticket to Charleston, SC, in which I did and for me to go to The Holiday Inn, Hillsborough Street, Raleigh, and check her out of the hotel and take her to the bus station and make sure she got on the bus and give her the balance of her subsistence. This was on August 20, 1979, and I have not seen or heard from her since.

  
Jimmy B. Britt

Sworn and subscribed to before this 28<sup>th</sup> day of February, 2006.

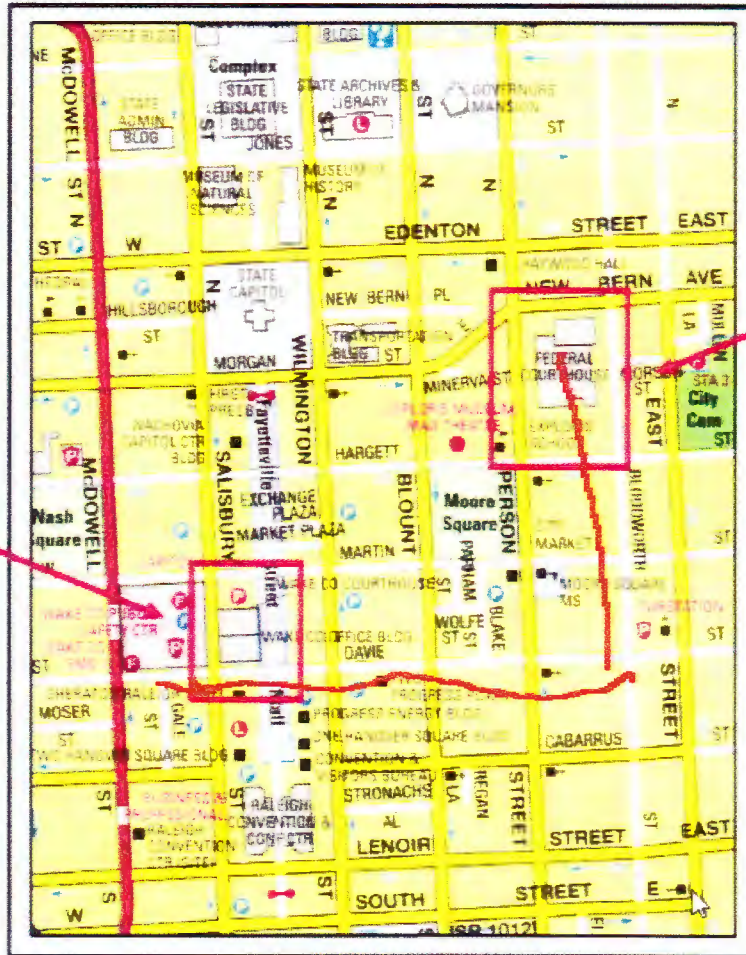
  
Notary Public

My Commission Expires: 10/05/09





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**GOVERNMENT EXHIBIT**  
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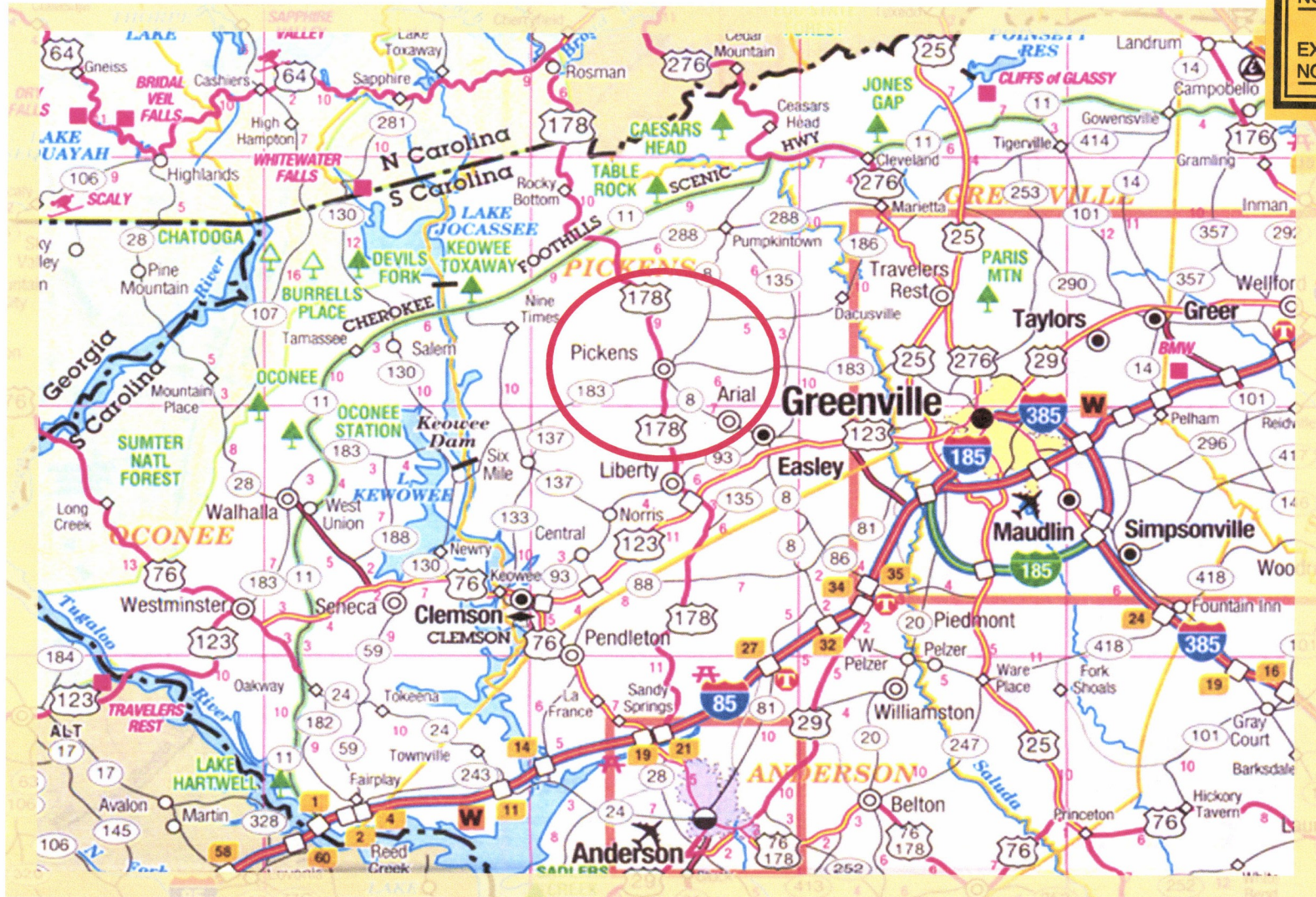


# GREENVILLE, SOUTH CAROLINA

**GOVERNMENT EXHIBIT**

CASE NO. 3:75-CR-26-F

EXHIBIT NO. 21046



Source: Map Supply South Carolina *The Palmetto State Map*





# FATAL VISION



# Joe McGinniss

## FATAL VISION / 525

flected the blows. That is, he deflected all but one. That one made a small cut in his right arm.

Now, Bernie Segal was on his feet. "Do you need a doctor, Mr. Murtagh?" he said, gesturing toward Jeffrey MacDonald. Murtagh declined the offer of medical aid, though a secretary was dispatched to find a Band-Aid.

When the laughter in the courtroom had subsided, Murtagh held up the pajama top. Many of the holes were elongated, ragged cuts—not perfectly cylindrical punctures.

Two persuasive points had been made. First, when a pajama top is wrapped around someone's wrists and used to fend off icepick blows, the resulting holes will not be round and clean. Second, even in a brief, restrained, courtroom demonstration, Jim Blackburn had been unable to avoid inflicting a puncture wound on Brian Murtagh's forearm.

Had it occurred to the jury to wonder why, in the course of a frenzied attack by intruders in a state of homicidal mania, no similar icepick wounds had been inflicted upon the forearms of Jeffrey MacDonald, though there had been forty-eight punctures in the pajama top which he said he'd had wrapped around his wrists, and which he said he had used as a shield?

John Thornton described the courtroom demonstration as "silly" and "rinky-dink," but John Thornton was not a member of the jury.

With his perimeter overrun and with even his inner lines of defense beginning to crumble, Bernie Segal recognized that the time had come to rush a real "mystery witness" into the breach. Helena Stoeckley had saved him—and Jeffrey MacDonald—once before, in 1970. Maybe she—or the invocation of her—could be made to do so again.

First, Segal subpoenaed Stoeckley's parents. Then Judge Dupree issued a bench warrant for Stoeckley herself on the grounds that she was a material witness in a homicide case.

Stoeckley's parents came to Raleigh and said they did not know where their daughter was. The last time they had seen her was in early June, when she had come to Fayetteville for a brief visit from a drug rehabilitation center in Columbia, South Carolina. She had said then that she planned to move to the small South Carolina town of Walhalla, to live with a man whom she had met at the rehabilitation center. "I don't know her address," Stoeckley's mother said, "and I don't want to know."

In a private interview with defense attorneys, the mother also

said that even if her daughter were found, it was not likely she could contribute much of value to the trial.

"She called up, must have been a year and a half ago, four o'clock in the morning, all befuddled. She said somebody was chasing her and had taken her car keys. Then it turned out she'd had a stroke. We got her home, she was like a vegetable. She couldn't talk, couldn't eat, her face quivered, saliva would run out of her mouth. We put her on a strict diet and let her rest and after about three weeks she was improved, but still she was not quite right."

She had left home again, this time for Daytona, Florida, where she said she planned to work in a hospital. The next thing her parents had heard was that she had been arrested for drunken driving.

"She's had her gallbladder removed," her mother said, "she's had three liver biopsies, and she's been spitting up blood and passing blood in her stools for years. She's not at all like she used to be. She's a physical and mental wreck. She's not even a human being anymore. You find her now, sure she'll talk. She'll always talk. But I'm telling you, she's gonna talk all kinds of nonsense."

Chain-smoking Virginia Slims cigarettes, Helena Stoeckley's mother described her daughter's original reaction to the murders. "It really hurt her. She was a very soft-hearted person and she especially loved little children. She said right away, 'Not a hippie around here would do a thing like that. Everybody's gonna pitch in and find out what happened. We've got to find out who did this.'

"I really believe it was Beasley who first put the idea in her head. Beasley was her Daddy image. He had a terrific amount of influence over her. She told me he had been up to talk to her right after it happened and then she said, 'Yeah, I've been thinking, and I don't really know where I was that night. I might have been there.' And I just knew right then that Daddy Beasley had talked her into it."

Obviously, it would not suit the defense's purposes to put Helena Stoeckley's mother on the witness stand, but Bernie Segal had assembled a cast of additional characters whose testimony seemed more likely to be useful: William Posey the laundry deliveryman, Jane Zilliox and another Nashville neighbor named Red Underhill, and Jim Gaddis of the Nashville police department, as well as the CID polygraph operator who had conducted the 1971 interview with Stoeckley, not to mention Prince Edward Beasley himself—now in retirement

and eager to testify about how, nine and a half years earlier, Helena Stoeckley had joked to him about her icepick and had said that in her mind she thought she might have been at 544 Castle Drive while the murders were being committed.

Then word was received that Stoeckley herself had been located: hiding in the back of a trailer on the outskirts of Walhalla, South Carolina. She was immediately transported to Raleigh in the custody of federal agents.

At four minutes before ten o'clock on the morning of Thursday, August 16, 1979—exactly one month after the trial of Jeffrey MacDonald had begun, and nine and a half years, to the day, since Monday, February 16, 1970—a day which had ended with her taking mescaline in her driveway on Clark Street in Fayetteville—Helena Stoeckley, escorted by a U.S. marshal, walked into a small office on the ninth floor of the Federal Building in Raleigh, where Bernie Segal was waiting for her, hoping to persuade her to confess.

She was neatly, even demurely attired in white shoes and a floral print dress. Her hair was black, her complexion sallow. She was many pounds overweight. Her eyes were dull and her thin lips unexpressive. She spoke in a soft voice almost entirely devoid of affect. Her left arm was in a cast. It had been broken in Cincinnati, two weeks earlier, when someone had hit her with a tire iron during a dispute involving narcotics. Her fiancé, Ernest Davis, whom she had met in the drug rehabilitation center in Columbia, South Carolina, paced barefoot, unwashed, and unshaved in a small corridor outside the office.

For almost a decade, in Bernie Segal's mind, Helena Stoeckley had been a figure of near-mythic proportion. Now here she was, three feet from him, politely declining his offer of coffee and doughnuts. She would, she said, be grateful for a can of diet soda.

Segal began to speak in a voice so quiet and so gentle that it was as if Helena were sleeping and he did not want to risk awakening her. Yet there was an almost painful intensity to his tone. This woman, he believed, had the power to set Jeffrey MacDonald free and to provide Segal with the greatest triumph of his career. His first words were like surgical instruments. Utilized with the utmost skill and delicacy, they might enable him to stride forth from this room and announce to the judge and the jury—and the press—that there was no need to proceed further with the trial: one of the real killers had just confessed.

Segal had, at his side, an album containing photographs of

the crime scene. He placed it on a table before Stoeckley. The first picture was not a particularly horrid one: all it showed was a portion of the kitchen of 544 Castle Drive. There was a calendar hanging on a wall. The top page of the calendar said February 1970.

"See that, Helena?" Segal said softly, leaning so close to her that he could have put his arm around her if he'd desired. "See that calendar? It has been there for nine years. Waiting. Waiting for somebody to tell us how this story should end."

She stared at the picture. There was absolutely no change of expression on her face. She took a sip of diet soda.

"I can't help you," she said tonelessly. "I wasn't in that house. I didn't have anything to do with any of this."

Bernie Segal began to shake his head. "No, Helena. That won't do. You can't get away with that anymore. It's got to end. We are at trial now. The time has come. I'm serious, Helena. You *were* in that house. I know it and you know it. Now let's talk about it. Don't go on punishing yourself."

She stared at the floor, shaking her head, still with no change of expression. "I don't know what you want to know. I was never in that house."

"Helena, believe me," Segal said. "If you talk to me here, if you tell me what happened, I can make this very short and painless. Helena, you can put it behind you forever. Now, for your own conscience. And for the sake of that man in the courtroom. That man who has been made to suffer unjustly for nine years."

"And, Helena, you will not be prosecuted. Nothing will happen to you. That I can promise you. The statute of limitations has expired. This is the end, Helena. Right now. Right here. All you have to do is talk to me."

For the first time, Stoeckley looked directly at Bernie Segal. "I can't help you," she said. "I can't tell you things I don't remember."

For nearly two hours, Segal persisted. His tone changed from soothing and protective to harsh and demanding and back again. It made no difference. He might as well have been a morning quiz show. Stoeckley was tuned to his station but she was only a viewer, nothing more. There was nothing he could do or say to move her.

"Helena, people have gone to the electric chair for having said *one-tenth* of what you've said about this case! *I've got six witnesses!* People to whom you've already confessed! They're waiting in the next room. One after another, I'm going to put

them on the stand and have them tell the jury what you've told them. Then, by law, I have to put you on the stand."

She looked at him coolly. In silence.

"Helena, the choice is yours."

"I can't help you."

"Helena, remember what you told Jane Zillioux? 'The blood . . . the blood . . . I remember the blood on my hands!'"

She shook her head. "I don't remember ever saying that."

"Do you think Jane Zillioux is lying?"

"I didn't say that. I just said I don't remember saying that." Still, there was no inflection, no spark—not even of resentment—in her voice. "Do you realize how much drugs I've taken since that happened? I'm not gonna sit there and say yes to things I didn't say, or things I don't remember saying. Besides," she said, "how do you know he's not guilty?"

Segal returned to the albums of crime scene and autopsy photographs. He turned to a picture of Kimberly. A picture that showed the fracture of her skull and the piece of cheekbone protruding through the skin of her face.

"That was his flesh and blood, Helena. What kind of father could do that to his own flesh and blood?"

"Somebody on drugs could do something like that. Not acid. Maybe speed. Did they do blood tests on him right away?"

"Yes, Helena. They did blood tests. There were no drugs. There was no alcohol."

"Has he been given psychiatric evaluation and everything?"

"Yes, Helena, he has been given all of that." Segal flipped to a picture of Colette. "Look at his wife, Helena. Look at this picture. Her jaw was broken. Both of her arms were broken. Her skull was fractured right down the middle. She was stabbed—with a knife, with an icepick—dozens of times. Helena, that was the work of a repulsive, crazy person. Dr. MacDonald is a normal, decent human being. Even the Army psychiatrists who examined him agreed to that."

Segal turned to a picture of Kristen. A colored picture, taken before the body had been removed from the bed. The bright red of her blood filled the room.

"Only somebody crazy or whacked out on drugs could have done something like that," Stoeckley said. "I don't know what anybody else is capable of, but I know I'm not capable of that."

"Helena, no one is asking you to say that you did that. You will not be touched. I promise you. You will not be indicted, ever. All you have to say is you were there, holding the candle.

JOE MCGINNISS / 530

Saying, "Acid is groovy." You don't remember hurting anybody. Then you ran out the back door."

He turned to another picture of Kimberly. "Helena, help us end it. I beg of you. Look at this child's face. For God's sake. To accuse the father of these babies of having done that to them . . . Helena, look at this! Look at this one. Smashed with a club. Come on, Helena, how much longer will that man have to sit there, accused of something so monstrous. You have it in your power, Helena, to end it. Right now. Otherwise, Helena, I guarantee you: I am going to take you into court."

"If I could remember," she told him, "I would say."

Segal stepped into an adjacent room, where his other witnesses had been waiting. One by one, like the ghosts of Christmas past, he brought them in to confront her with the things she had said to them years before. Beasley. Gaddis. Zillioux. Underhill. The polygraph man, whose name was Brisentine. And finally her ex-neighbor, Posey.

None of it mattered. She said hello. She said, nice to see you, how've you been? But whenever they asked her about the MacDonald case, she said "I don't remember any of that."

One by one, the witnesses trooped out of the room. Segal was admitting defeat. There would be no dramatic announcement. There would be no news bulletins on TV. No eight-column headlines across page one. There would just be a truculent, uncommunicative, apathetic witness—thirty pounds overweight and looking far less menacing than pathetic—telling the jury she didn't remember a thing.

Now, too late, Bernie Segal realized he would have been better off if she'd never been found. Much easier to have conjured up the image of a drug-crazed and murderous hippie from the distant and dangerous past and to have the jury seize upon that as an explanation than to present them with this burned-out woman and expect them to believe that she had ever stood over a couch on which Jeffrey MacDonald had been sleeping and had held a candle beneath her face while chanting, "Acid is groovy . . . Kill the pigs . . . Acid and rain . . ."

Segal left her, in the company of her fiancé, the barefoot and bedraggled Ernest Davis, while he went to inform the judge that he had completed his witness interview and that he was prepared for the trial to resume.

It was now lunchtime. Helena Stoeckley had been given a bologna sandwich. She sat quietly, placidly, chewing her food and slowly turning the pages of the crime scene and autopsy photo albums, as if she were browsing through a movie magazine.

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\* \* \*

On the witness stand, under oath, Helena Stoeckley denied that she had ever been found by a psychiatrist to be mentally ill or that she had ever been committed to a mental institution. This was, of course, untrue. She had been a psychiatric patient at the University of North Carolina medical center in the spring of 1971 and had been diagnosed as a paranoid schizophrenic, subject to delusions and hallucinations.

In describing her educational background, Stoeckley said she had attended Aquinas Junior College in Nashville during 1971 and 1972 and had studied police science there. In 1974, she said, she had taken a six-month operating room technician's course at a Fayetteville hospital. In 1975, at Daytona Beach Junior College, she said, she had taken nursing courses.

She then described the extent of her narcotics addiction during the early months of 1970. She had been injecting heroin and liquid opium intravenously six to seven times per day. She had also smoked marijuana and hashish on a daily basis; had consumed LSD "almost daily," and mescaline "about twice a week," in addition to using barbiturates and "angel dust."

On Monday, February 16, 1970, she had followed her usual pattern of drug consumption, topping it off with the tablet of mescaline given to her in her driveway by a soldier from Fort Bragg named Greg. She recalled reentering her apartment after having consumed the mescaline but said she remembered nothing after that until her return to the apartment at about 4:30 or 5 A.M., in a blue car with "two or three" soldiers from Fort Bragg. She said she could recall neither the owner of the car nor any of the other passengers.

She said she did not recall ever telling anyone that she thought she might have been involved in the MacDonald murders—only that she could not remember where she had been during the time that the murders had taken place. She added: "All I said to the CID whenever I talked to them was I didn't know where I was at that time."

This was by no means the startling testimony for which Bernie Segal had been hoping. It seemed, in fact, actively harmful to his case. Segal lost further ground when, on cross-examination, Jim Blackburn extracted from Stoeckley the remark that she had worn her blond wig "infrequently," and that she had not been wearing it on the night of Monday, February 16, because Greg, who had given her the mescaline, did not like it.

She also said she had never been inside 544 Castle Drive and that she had never seen Jeffrey MacDonald until that very morning when she had entered the courtroom to testify.

JOE MCGINNISS / 532

As Blackburn's cross-examination continued, Stoeckley came to seem more like the star witness for the prosecution than for the defense.

"To your own knowledge," he asked her quietly, "did you participate in the killings of the MacDonald family?"

"No, sir."

"How do you feel toward children?"

"I love children."

"Of your own personal knowledge, did you kill Colette MacDonald?"

"No, sir."

"How about Kristen?"

"No, sir."

"How about Kimberly?"

"No, sir."

"Did you try to kill Dr. MacDonald?"

"No, sir."

"Do you know who did?"

"No, sir."

"Do you recall ever being in the MacDonald apartment carrying a candle?"

"No, sir."

She also said that the night of February 16-17, 1970, had been by no means either the first or the last night on which she could not recall her whereabouts or activities. Given the level of narcotics she had been consuming at the time, this remark seemed her most clearly credible statement of the day.

Flustered and frustrated, Bernie Segal knew that the jury would have to hear—as soon as possible—from those to whom Helena Stoeckley had told a different tale. It was time for the parade of the Stoeckley witnesses—a last, desperate attempt to reincarnate the spirit of evil hippies. The prosecution, however, had no intention of standing idly by, mere spectators at such a parade. They, in fact, sought to have the marching orders countermanded.

In a criminal trial, when a witness is called to testify, he is, in general, permitted to speak only of what he did or had done to him directly, or of what he personally observed.

Were Helena Stoeckley to have told the jury that she remembered standing over the couch in the living room of 544 Castle Drive holding a candle, there might have been some question about how much weight the jury would have been inclined to give her testimony, but no dispute whatsoever regarding her right to deliver it.

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Whether it was equally proper for police officers Beasley or Gaddis or polygraph operator Brisentine or laundryman Posey, or ex-Nashville neighbors Zillioux and Underhill to relate what Stoeckley had told *them*, was a somewhat more complicated question.

Rule 804 (b) (3) of the Federal Rules of Evidence, which govern procedures in federal court, says, "A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement."

Out of the hearing of the jury, Judge Dupree heard the six "Stoeckley witnesses" describe what she had told them concerning her possible involvement. Having already heard Stoeckley say she had no recollection of having participated in the murders, he had now to decide whether the jury should hear statements also from those to whom she had been less unequivocal.

Understandably, the prosecution thought such "hearsay" evidence ought not to be admitted. Even more understandably, Bernie Segal believed the statements of these witnesses to be crucial to his defense. At the Kappa Alpha house, in light-hearted moments, he would hand out pens that said, "Your Criminal Lawyer: A Reasonable Doubt At A Price That's Right," and it was reasonable doubt—not absolute proof of innocence—for which he was striving now.

In conference with Judge Dupree, Brian Murtagh said that the statements of the Stoeckley witnesses, "because of their inherent lack of credibility" and because they were hearsay, ought not to be deemed admissible.

"We have no physical evidence whatsoever to tie her to the crime scene," Murtagh said. "You know, you say, 'Well, why do you think you were there?' and she says, 'Because I think I was there.' You know, you go round in circles on that."

Bernie Segal was reaching new heights of indignation. "The fact that the government might want to attack her statement," he told Judge Dupree, "does not deny the defendant the right to introduce it. If it was the United States prosecuting someone for murder and it had these kinds of statements and so-called admissions by the defendant, would the court for a moment hesitate to let the government introduce it?"

"I find it difficult to believe that any court would hesitate to let the government put it in. The fact that someone is crying and weeping when they are talking about a murder that is horrendous does not make it inadmissible.



"The fact that later on they say, 'I would like to pull it back and withdraw it,' can't affect admissibility. It goes to weight. That is the issue.

"We want everything that she said to come out. The fact that she both admits and denies, in my judgment and my experience, has never precluded a confession or admission from being put into evidence.

"Many a defendant has said, you know, to the police officer while being taken to the station, 'Yeah, I was involved.' Then he gets to the station and they get a formal statement. 'Oh, no, I will not admit that on paper,' the defendant screams. 'You cannot let that thing in. I mean, I said I didn't do it.' The court says, 'It's for the jury to decide which statements are admissible.'

"Why is the defendant here now being told that after he has done the job that should have been done by somebody else, he can't offer the evidence? It just seems to me that we have established beyond any reasonable argument the right to put this forward."

Responding, Brian Murtagh once again quoted that portion of Federal Rule 804 (b) (3) which pertained to trustworthiness of the statements. "Your honor," he said, "first of all, Ms. Stoeckley's statements are not clearly admissions of guilt. If anything, what they are is what has been brought out on direct and cross-examination: that the woman doesn't know where she was that night; that she was being constantly interrogated by the police; and that she began to have fears about not being able to account for where she was.

"And these statements cannot be taken out of that context and out of the context that the woman has been a drug addict, has had hepatitis, has been incoherent and—to use the description of one of the witnesses—hysterical. So it seems to me that these statements are not trustworthy, and they certainly are being offered to exculpate the accused."

Without commenting on whether or not her testimony at trial had seemed believable, Judge Dupree said, "I think her incompetency at the time she made at least some of the statements attributed to her has been more than adequately established."

"Your honor," Segal said, "I dare to disagree. As a matter of fact, there is a certain internal consistency that always has impressed me about what she has said. Now, while I truthfully do not think there is any evidence that Helena Stoeckley inflicted an injury, there is clearly evidence in my mind from all these witnesses that she carried a candle and was present."

Brian Murtagh would not budge. "Your honor," he said, "we are talking about whether a reasonable person making these statements at the time would so appreciate the gravity of the statements that they wouldn't make them unless they meant them.

"I don't think we have that in this case. What we are talking about here is somebody who is hysterical, perhaps hallucinating. Under those conditions, she makes various statements. Now, those statements are never of an unequivocal nature. It can all be drawn back to her lack of an alibi and the fact that she is constantly being interviewed, picked up, hassled by the police, and having to account for her whereabouts. I think you can't take it out of that context.

"And I still think, Judge, that the issue here is that the rule mandates that the statements should not be admitted unless there are corroborative circumstances which clearly indicate their trustworthiness. And I just don't see how Mr. Segal can argue that these various statements which are all over the lot are trustworthy or unequivocal."

"Your honor," Segal replied, "we are talking about the denial of the right of a defendant to show that there is evidence that could raise a reasonable doubt on his behalf, because it tends to show the involvement of someone else. Remember, that is all his burden is. And I think the fact that a great range of witnesses, coming from every side—police officers, people who do not know this person, people who wanted to help the person—this broad range of people coming forward to say that she has made statements which have the tendency to involve her in the crime are statements that deserve to be heard by the jury.

"And, as my last observation, your honor, I do say that these crimes were not committed by reasonable people. These acts are unreasonable. These acts are so consistent with the kind of culture, the kind of persons that Ms. Stoeckley was involved with, that they in themselves tend to be corroborative. I think we have a tendency—in our own sanity—to lose sight of the fact that we are dealing with, truly, acts of monstrous insanity."

"Your honor," said Brian Murtagh, "they've had Helena Stoeckley herself on the stand for the better part of the day. I think she was more than cooperative with both sides. The basic issue here is that the defendant has not been prejudiced by the exclusion of Helena Stoeckley's testimony. She was asked point-blank on the stand the sixty-four-dollar question about whether she was there or whether she did it. I think we have

more than satisfied constitutional requirements in that regard. These further statements are not her statements, they are the statements of other witnesses, and I do not believe they meet the applicable standard of trustworthiness as specified in 804 (b) (3)."

It was four o'clock on Friday afternoon, the last hour of the last day of the fifth week of the trial. Franklin T. Dupree said, "The Court will rule on this motion Monday morning at 10 A.M. Take a recess until that hour, please."

Helena Stoeckley spent the weekend in Raleigh, Bernie Segal still hoping that he might be able to turn her presence to advantage. Using Jeffrey MacDonald's money, he obtained a room for her and her fiancé at a motel called the Journey's End.

On Sunday morning, Segal received a phone call from the manager of the motel. She said that someone had just tried to drown Helena Stoeckley in the swimming pool. Segal immediately dispatched a female assistant—a San Francisco attorney named Wendy Rouder—to the scene.

Rouder was told that it had been Stoeckley's fiancé, Ernie Davis, who had been holding her head under water in the pool. In addition to her broken arm, Stoeckley, by Sunday morning, had a swollen and blackened eye where it appeared that someone had punched her. She told Rouder that this had occurred the day before when she had stepped into a hallway to buy a can of soda from a machine and a complete stranger had walked up to her and struck her.

Rouder, concerned that Ernie Davis, perhaps, was not reacting well to recent stresses, and fearing that he might have been the cause of the black eye as well as the "drowning" attempt, persuaded him to step into the motel corridor while she spoke privately to Stoeckley for a moment.

"Helena, do you want him to leave?" Rouder asked.

"Yes," Stoeckley said. "I want him to go." She immediately began placing his clothes and personal belongings in a suitcase, adding, as well, all the motel ashtrays she could find.

Red Underhill had accompanied Rouder to the Journey's End and was prepared to see Davis to the bus terminal and to give him twenty dollars (of Jeffrey MacDonald's money) for a one-way ticket out of town.

"Will you be all right?" Rouder asked. "Or would you like somebody to stay with you?"

Stoeckley said she would prefer to have a companion. "How about you?" she asked Rouder. "Could you stay?"

Rouder agreed to spend at least the afternoon with Helena Stoeckley, but left the room briefly to permit Stoeckley to inform her fiancé privately that his presence in Raleigh was no longer desired. Ten minutes later, the door swung open and Davis, bare-chested and carrying the suitcase, ran down the hall.

Reentering the room, Rouder and Red Underhill found Stoeckley in the bathroom, bleeding profusely from the nose. She said no, Davis had not hit her, she had simply walked into a door.

With Stoeckley holding towels to her nose and tilting her head back in an attempt to get the bleeding to stop, Wendy Rouder spent the afternoon with her in her motel room. As the bleeding gradually subsided, Stoeckley and Rouder began to talk. It was mostly small talk—Stoeckley described to Rouder how she had had, at one time, a magnificent singing voice, and how, had it not been for the stroke she had suffered, she might have had a career in opera.

Eventually, there came a lull in the conversation. Then Stoeckley said, "I still think I could have been there that night."

"What makes you think so?" Rouder asked.

"I don't know." There was another pause. Then Stoeckley said, "That rocking horse. That rocking horse in Kristen's room." Seeing the toy horse depicted in one of the crime scene photographs had brought back to Stoeckley a flash—of memory? of imagination?—in which she had been sitting on the horse, trying to ride it, but had been unable to, because "the wheels were broken and it wouldn't roll." (The rocking horse, as it happened, had been on runners, not wheels.)

Then, after another pause, Stoeckley added, "You know, Kristen. Kristen Jean. Those pictures. When I looked at those pictures, I knew I had seen her somewhere before."

Rouder kept talking to Stoeckley throughout the afternoon, taking notes on the conversation. At one point, she asked if Stoeckley still felt guilt about her involvement.

"Of course," Stoeckley replied. "What do you think I have taken all these damn drugs for?"

"If MacDonald were convicted," Rouder asked, "do you think you could live with that guilt, too?"

"I don't think so."

"Isn't there anything you could do to get rid of the guilt?"

"Maybe sodium pentathol, or hypnosis, or something," Stoeckley said.

JOE McGINNLS / 538

The conversation was interrupted by the manager of the Journey's End, who called to say that Stoeckley was no longer welcome at the motel.

A room was obtained for her at a nearby Hilton. Later in the afternoon, as Rouder and Stoeckley sat together in an automobile, en route from one motel to the other, Stoeckley again said, "I still think I was there in that house that night."

"Helena, is that a feeling you are having or a memory?" Rouder asked.

"It's a memory," Stoeckley said. "I remember standing at the couch, holding a candle, only, you know, it wasn't dripping wax. It was dripping blood."

Punctual as always, Judge Dupree strode quickly into the courtroom Monday morning and immediately asked to see counsel for both sides at the bench.

"Since court adjourned on Friday afternoon," he said, "I have spent a substantial portion of my waking hours researching and deciding the rather interesting evidentiary question which was posed—the question being whether statements by the witness Stoeckley should be admissible through other witnesses—statements made outside of court in far distant times.

"I will rule," he continued, "that these proposed statements do not comply with the trustworthy requisites of 804 (b) (3). In fact, far from being clearly corroborated and trustworthy, they are about as unclearly trustworthy—or, clearly untrustworthy, let me say—as any statements that I have ever seen or heard.

"This witness, in her examination and cross-examination here in court, has been, to use the government counsel's terminology, 'all over the lot.' The statements which she has made out of court were 'all over the lot,' also, so it can't really be said that the hearing of those statements would lead to any different conclusion than what the jurors got while she was here in open court.

"This testimony, I think, has no trustworthiness at all. Here you have a girl who, when she made the statements, was, in most instances heavily drugged, if not hallucinating. And she has told us that herself. She has stated that in person. I think that this evidence would tend to confuse the issues, mislead the jury, cause undue delay, and be a waste of time. She has already told this jury everything that you proposed to show by these witnesses.

"And, Mr. Segal, let me say that I did not reach this decision lightly. I spent roughly seven hours on this thing on Saturday.

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I spent the entire day Sunday until 11:30 last night wrestling with this thing. And, as I do routinely in criminal cases—I lean over backwards to make sure that no criminal defendant is ever deprived of a defense.

"But I am thoroughly convinced in my own mind that your position is without merit with respect to this particular evidence. I have ruled on it, and as I say, I did not reach that lightly because I am risking a terrible lot of judge time and juror time down the road if I make an error and it has to be retried. But I am confident of my position on this one."

Even in the face of Dupree's decision, Bernie Segal clutched at one final straw: the weekend's events involving Stoeckley and his assistant, Wendy Rouder. Not only had Stoeckley implicated herself in the MacDonald murders the day after they had occurred in 1970, she had done so again *within the preceding twenty-four hours*. Surely the jury was entitled to hear from Wendy Rouder about Stoeckley's remarks, and, in particular, about her professed fear of testifying truthfully in open court.

"I would ask the court," Segal said, "to consider the circumstances under which these most recent statements were made. There is no indication of hysteria, no indication of drug abuse, no indication of anything other than the fact that these statements were made because they weighed heavily on the mind of this person.

"The statements were made at Ms. Stoeckley's initiative and it seems to me that they so clearly reflect upon her state of mind that they ought to be heard again now. I think that if this testimony is heard, the jury would be in a far better position to make a determination as to evaluating Ms. Stoeckley's testimony, which we all struggled so hard to get. I think that all the instincts that surround this case cry out—*Let us know what Helena Stoeckley has said.*"

It was Jim Blackburn who responded this time, repeating that, as Murtagh had argued Friday afternoon, "statements by Helena Stoeckley are not trustworthy. They simply are not credible. And I would also say to your honor, in regard to the question of 'reasonableness'—she stated that the candle was dripping not wax but dripping blood. Candles, of course, don't drip blood."

"I don't know," Judge Dupree said. "With Helena they may. I remain of the opinion," he continued, "that this Stoeckley girl is, I think, one of the most tragic figures that I have ever had appear in court. She is extremely paranoid about this particular

*JOE McGINNISS / 540*

thing, and what she tells here in court and what she tells witnesses, or lawyers in a motel room, simply cannot have attached to it any credibility at all in my opinion.

“And, incidentally, Mr. Segal, I’m glad you mentioned it because I had neglected to tell you—just completely overlooked it—but I want you to know that among others called by Helena, she called me twice on Saturday night stating that she was living in mortal dread of physical harm by Bernard Segal, counsel for the defendant, and that she wanted a lawyer to represent her.

“I think the jury has got as clear a picture of this particular witness as they will ever have, even if you brought in not just Friday’s six witnesses or your new one today, or even a whole wagonload of people—everybody that you ever talked to about this thing.

“I will exclude the evidence. Let the jury come in.”

And so the trial of Jeffrey MacDonald continued, with the focus now, in the sixth week, shifting directly to the defendant himself.

**GOVERNMENT  
EXHIBIT  
2318  
3:75-CR-26-F**



FAYETTEVILLE, N.C., MAY 6, 1970

■ The call was logged at 3:42 A.M. by a telephone operator on the graveyard shift in Fayetteville, N.C. It showed up on the panel as an "O" light from the military housing complex at nearby Fort Bragg. The girl on the console patched in her headset and said, "Number please?"

A man's voice sounded in her earphone. It was faint and barely coherent, the way it would be if his face were too far from the mouthpiece.

"Operator," he said. "I need military police and an ambulance. I've been stabbed."

The girl rolled her swivel stool in tight against the console. She pressed her earphone close to the side of her head. "Sir," she said tensely, "in an emergency we're required to ask... Can you give me the address from which you're calling?" She was able to jot down his telephone number before he answered.

"Corregidor Courts," he said. The labored quality of his speech conveyed the impression of a man who was about to pass out from pain. "Number 544

# TALE of the GREEN BERET

by JAY ETTMAN

# The captain's grisly story of the murder of his wife and children by hippie cultists finally led to a shocking arrest

Castle Drive . . . Please hurry. Tell them to hurry. . . ."

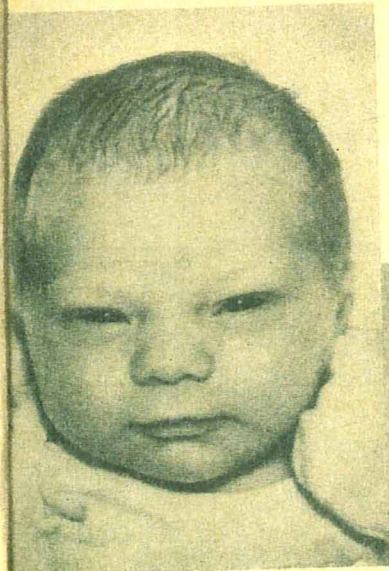
The operator plugged in on the direct line which put her through to the office of the Fort Bragg provost marshal. She interrupted the officer-of-the-day before he could finish saying his name. The key words were "Stabbing. 544 Castle Drive." Then she hung up and tried to call back the Castle Drive number.

There were four M.P. Jeep patrols on the roads which went through military personnel housing. In addition, a command car was on circle tour in the vicinity of central administration. All five vehicles responded to the alarm.

At Fayetteville telephone-central, the operator succeeded in raising the caller who had asked for help. It was impossible, however, to engage him in conversation. He repeated his address, "544 Castle Drive. Hurry . . . Hurry. . . ." Then his voice trailed off as if his head turned to one side or as if the phone had slipped from his fingers.

Castle Drive in the Corregidor Courts section of Fort Bragg was officers' country. The attached buildings, typical old

*continued on next page*



Found brutally stabbed to death in the MacDonald home were Kristen Jean, 2 (far left), Kimberly, 6 (L), and the Special Services doctor's attractive wife, Colette, 26 (above)



### TALE OF THE GREEN BERET

continued

Army base colonial in style, were of uniform height and proportion, red brick with white trim and black-sashed casement windows. Number 544 was the right half of one such double building.

The first Jeep on the scene disgorged two booted military policemen wearing helmet-liners, MP brassards and regulation side-arms. They ran up the walk and tried the door. It was locked. Above the bell-push the nameplate read: *J. MacDonald, Capt. M.C., 6th Special Forces*. One of the MPs pressed the doorbell.

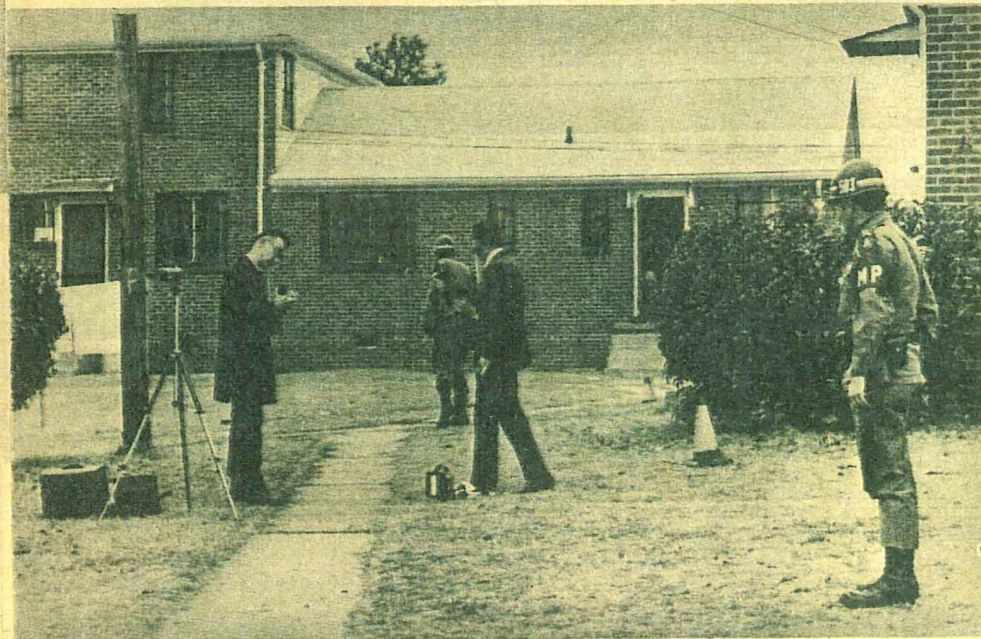
Two other vehicles braked to a stop at the curb. A Military Police lieutenant strode briskly up the walk. He glanced over at the slatted venetian blinds. No light showed through the openings.

"Whose place is it?" the lieutenant asked.

The MP at the door touched his fingertips to the brim of his helmet liner. "A Green Beret captain, sir," he answered. "In the Medical Corps. Captain MacDonald."

continued on page 20

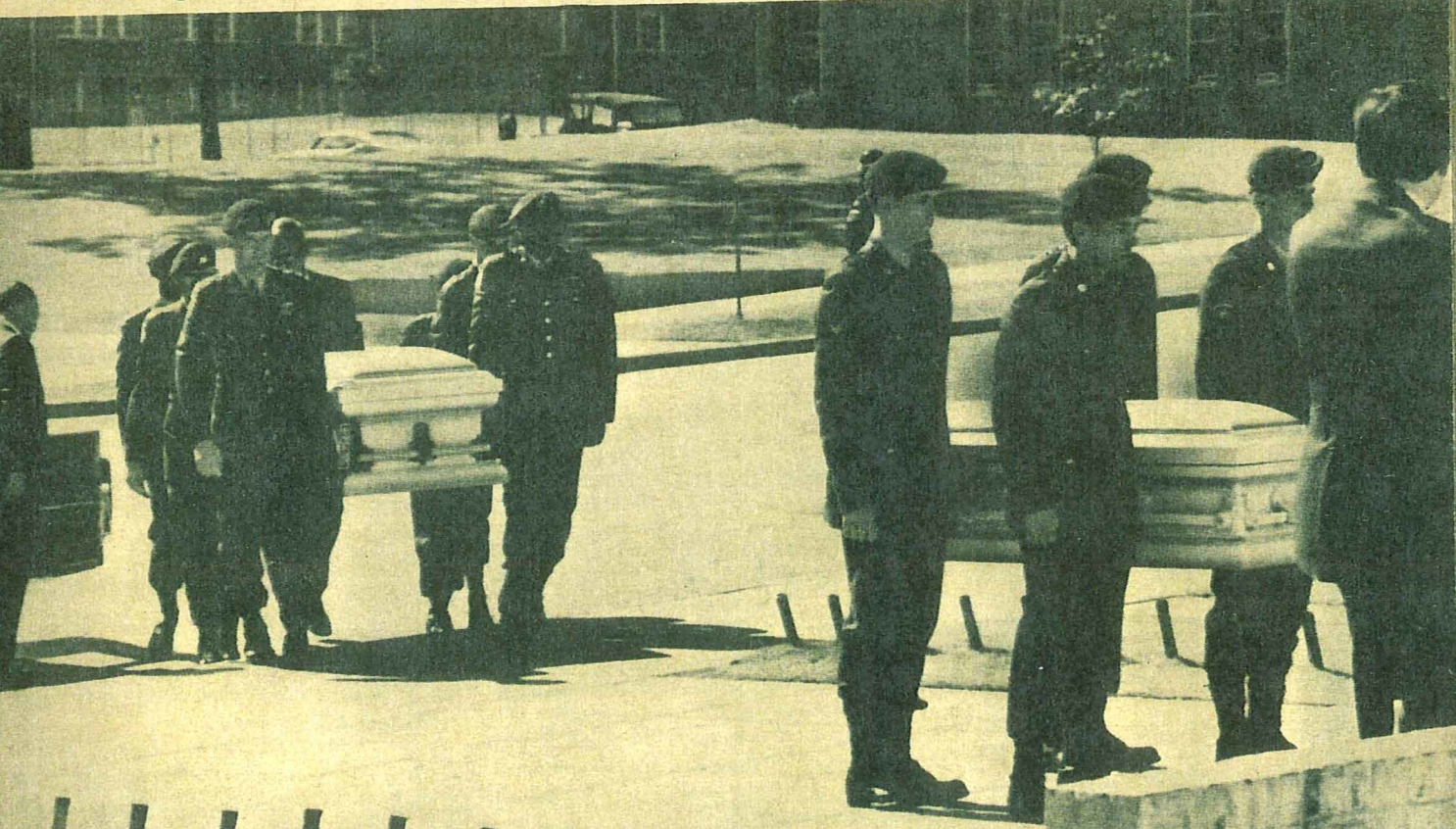
As crime lab technician worked inside house (L), ID specialists took photos and measurements in rear yard (bottom L) and MPs pyramided to search rooftop for any evidence.



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Dramatic photo through window of slain children's room keynoted tragedy initially. It was accented again as Green Berets carried coffins of victims to funeral services in chapel at Ft. Bragg.

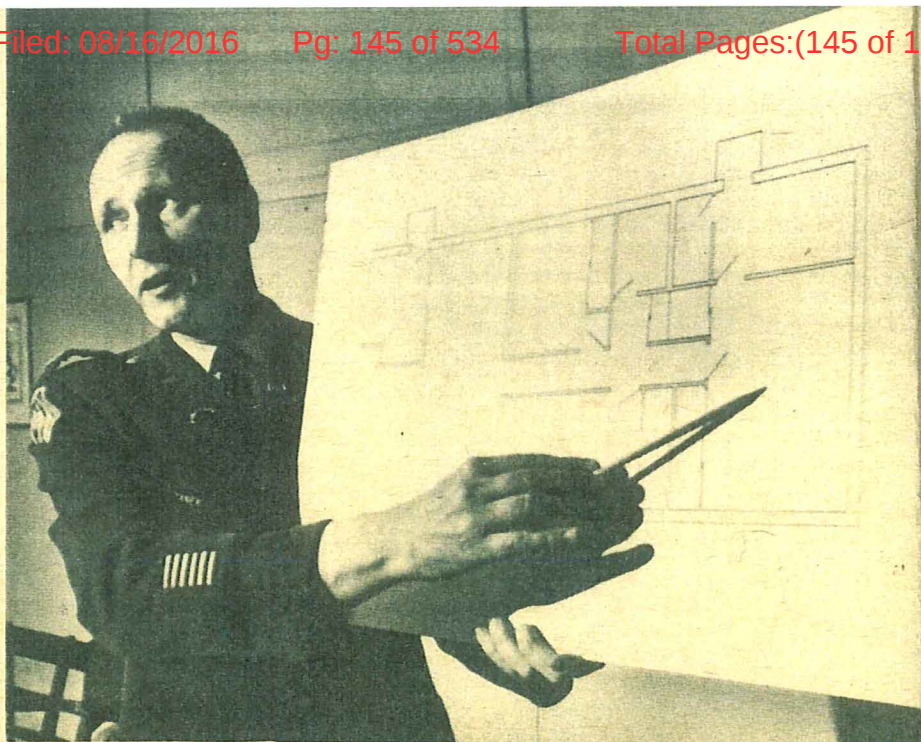




## TALE OF THE GREEN BERET

continued

Col. Kriwanek, the base provost marshal, reviewed death scene floor plan for newsmen as Maj. Jones demonstrated where blows struck tot. Sign in hippie hangout asked info.



Another Jeep pulled up behind the others. The lieutenant signaled the men to try the doors at the back of the building. The MPs strode across the lawn, following the beams of two powerful flashlights that lit up the evergreens which were planted along the brick wall. There were two rear doors to the MacDonald apartment. One led to a utility room and was ajar. The other, leading to the kitchen, was locked.

The utility room connected directly with a back bedroom. Proceeding cautiously across a floor which was strewn

with children's toys, one of the MPs found the light switch and flicked it on. In the sudden glare of illumination, the investigating party was immersed in the horrifying scene like sleepwalkers who had stepped off a dock in the dark.

There were two junior-sized beds separated by a palomino rocking horse, which was suspended by springs in a tubular frame. The walls consisted of stacked cubicles crammed with playthings of every description.

Sprawled across the beds were two fair-haired little girls. Both apparently

had been stabbed to death. Their pajamas were red with blood which had soaked into the blankets and bedding beneath them.

A short distance down the corridor the MPs found the master bedroom. Switching on lights as they progressed, the investigators noted that everywhere the furnishings were in shambles. Chairs and tables were overturned. Books lay scattered on the floor.

In the master bedroom, on the double bed, a partly dressed man lay groaning beside a woman who obviously was dead.

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There was blood on her nightgown, on the bedding, on the walls. From the grotesque angularity of her outflung arms, it was apparent that they had been broken.

Across the bed's headboard a single word had been written in blood in letters eight inches high. They spelled PIG.

A blood-stained paring knife lay on the floor. On the night table, the handset of a clicking telephone had been removed from its cradle. One of the MPs replaced it. A second telephone in another room of the apartment also was found to be off the hook.

The Fort Bragg provost marshal, Colonel Robert J. Kriwanek, arrived at the murder scene at about 4 A.M. By that time, the MP investigators were able to

provide him with a number of details.

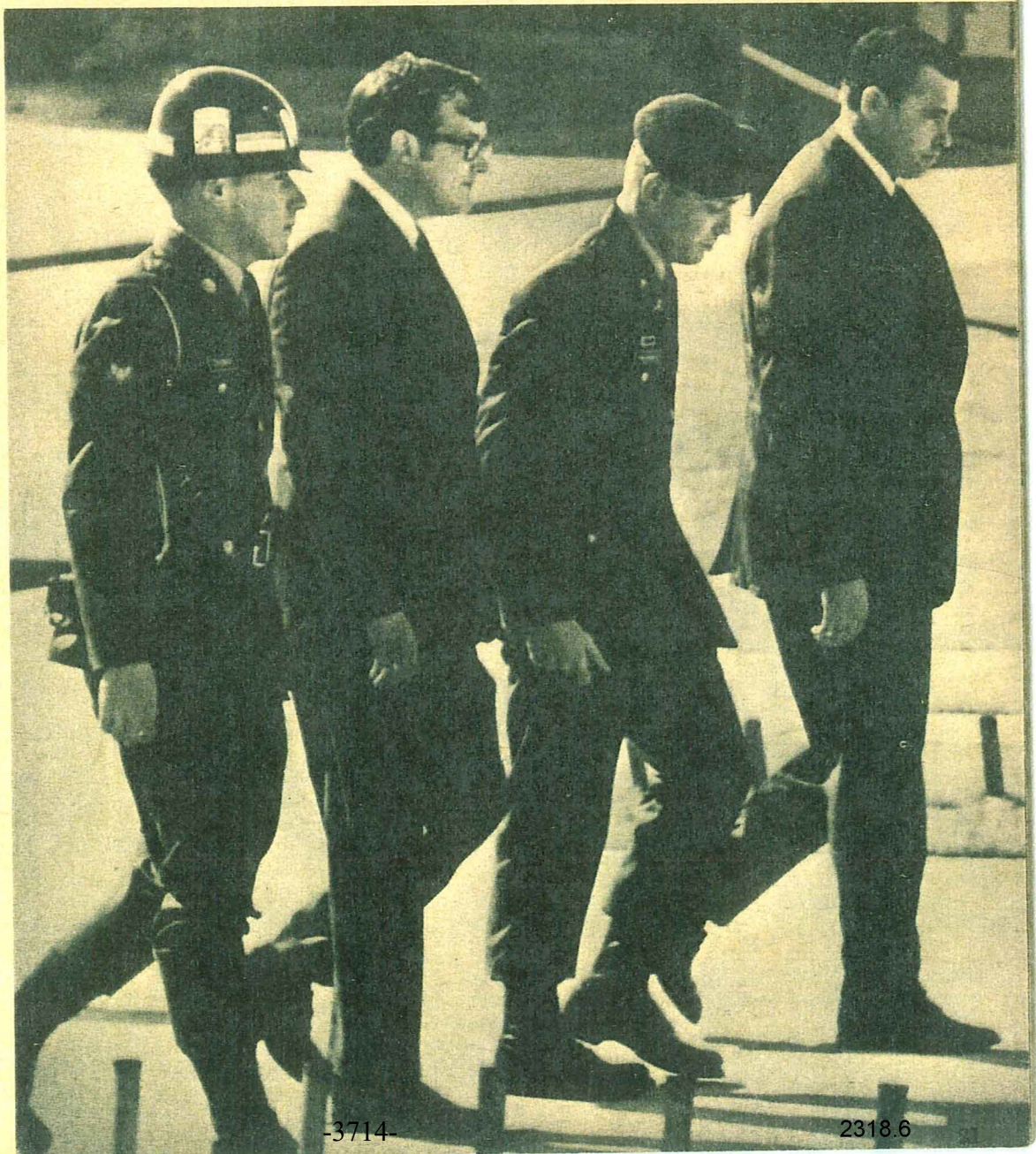
An ambulance from Womack Army Hospital, located on the Army base, was enroute to pick up Captain Jeffrey MacDonald, 26, the one survivor of the grisly carnage. The captain's 26-year-old wife, Colette, and his two small daughters—Kimberly, 6, and Kristen Jean, 2—were dead. The extent of MacDonald's injuries then were not known. Presumably he had been sadistically clubbed and repeatedly stabbed in the chest, upper arm and stomach.

Only partially lucid, Captain MacDonald had told the MPs of falling asleep while reading and vaguely watching the Johnny Carson "Tonight" show on television. He awakened to hear a scream from the master bedroom and caught a

brief glimpse of a "weird" gang which had invaded his apartment. Before "blacking out under blows from a club," the Green Beret captain reportedly got a look at his assailants. There were four of them: two white men, a Negro man, wearing an Army field jacket with sergeant's stripes, and a blonde girl, who wore a floppy hat and muddy high-topped boots and carried a lighted candle.

There seemed to be what MacDonald described as "a ritualistic aspect" to the attack. One of the first sounds of which he claimed to be aware when he awakened was a "kind of chant, a strange repeating of "acid is great...kill the pigs... hit 'em again!" Since "acid" is the hipsters (Continued on page 78)

Army CID agents in plainclothes flank grieving captain as he attended last rites for loved ones. Murder charge that came after lengthy probe proved surprise to all.



The FBI threw 300 agents into the search for the kidnaper, but without apparent result until Peareson talked. An FBI spokesman said attention first was focused on Miller because of the informant's reference to a "big score" by Miller, and also because of "similarities between his asserted robbery operation and the Young case."

The big break for the FBI, however, apparently came in February of this year when a second informant was contacted. He reportedly told the grand jury he had a relatively minor role in the kidnaping,

for which he was paid \$1,000. He was quoted as saying it involved standing watch a block away from the Young home with a walkie-talkie, ready to warn Miller to temporarily abandon his plans if police appeared.

During the secret day-long grand jury inquiry on March 31, Deputy District Attorneys Richard W. Hecht, who heads the district attorney's organized crime division, and Morio L. Fukoto, who probably will prosecute Miller, called 18 witnesses.

At his arraignment in Los Angeles on

the day following the indictment, Miller expressed shock at the kidnap charge. He said he not only found it to be "incredible," but "I didn't even know the name of the alleged victim."

The question of Miller's guilt is up to a jury. Miller can only hope it will find still another face for "the man of many faces—the face of innocence. ■

EDITOR'S NOTE: *The name Gary Peareson is not the actual name of the person who was in fact a participant in the incidents described in this article.*

## TALE OF THE GREEN BERET continued from page 21

most common term for LSD, the captain drew the inference that the quartet was under the influence of hallucinogenic drugs.

MacDonald remembered nothing else except crawling to the phone and afterward struggling to his wife's side where he collapsed. The entire attack, he believed, must have taken no more than from three to five minutes.

At Colonel Kriwanek's request, a series of roadblocks was set up in concentric rings around the military installation at Fort Bragg. The object was to cordon off central Cumberland County from the rest of North Carolina on the chance that the killers would be trapped within the ring.

"This is a gateless installation," an Army spokesman revealed in a public announcement, later that Tuesday of February 17, 1970. "The area is wide open. Route 87 runs right through the middle of the post. At the moment, we have no way of knowing whether the killers have left the area or are still right here."

In the pre-dawn hours, while the Fort Bragg personnel section checked into the known background and relatives of Captain MacDonald and his family, Colonel Kriwanek and his Military Police staff busied themselves at the murder scene in what can only be described as an intensive and highly professional investigation.

The similarity between the MacDonald slayings and the dramatic Sharon Tate murders in Los Angeles during August of last year, "struck us immediately," the provost marshal later related. It was, however, something to be concerned with when the more basic phases of the investigation were concluded.

A call was put through to Fort Gordon, Ga., where four Army specialists in criminal investigation made ready to fly to Fort Bragg to aid in the probe. While awaiting the arrival of the experts, Kriwanek and his aides assembled what physical evidence they could find.

Just outside the back door, the MPs picked up a piece of wood about 15

inches long. In the grass beside the path, they found a candle, a second paring knife and an ice pick. The articles, each bloodstained, were carefully preserved.

In the living-room of the MacDonald apartment, the MPs found a current copy of *Esquire* magazine. A sticker on the cover was emblazoned: THE NEW CULT OF EVIL. Special 25-page section on drugs, sex and the occult. A day on the Manson Ranch (referring to the Sharon Tate murders), plus assorted witches, warlocks, and amulets.

In his initial public statement about the investigation, Colonel Kriwanek pointed out that there was no sign of forceable entry into the MacDonald quarters. He also said that the MacDonald's closest neighbor, a warrant officer whose living quarters shared a common wall with the captain's unit, had heard no unusual sounds during the night. The MacDonald quarters, the colonel said, were similar to several hundred such apartments on the post, adding:

"The assailants were obviously familiar with the apartment's layout because it could not have happened so quickly had they not known exactly where to go."

The investigation, according to the provost's office, would be handled primarily by the Fort Bragg military with assistance, where needed, from city, county and state authorities. The FBI also would provide such help as might be required.

Fort Bragg, with a station and training complement of 46,000 troops, also was home to some 15,000 dependents who lived on post. There was a certain amount of drug activity, sale and use in the area and Charles Dunn, director of the State Bureau of Investigation, could be expected to work closely with the military if it became apparent that addicts actually were involved in the MacDonald murders.

News of the Fort Bragg massacre hit the national news service wires in time to make the morning editions of papers all over the country. Headlines blasted the complacency of readers who had just

about gotten over the spine-jolting revelations about the alleged Manson sex-and-slay commune in southern California. Typical of the headlines were: HUNT LSD GANG IN SLAYING OF THREE and "ACID IS GREAT GANG" KILLS MOM AND TWO KIDS.

The personnel section of the North Carolina military base had checked out the handsome Green Beret doctor whose home had been invaded and whose family apparently had been wiped out by hippies as the climax of an hallucinogenic drug orgy. The bloodbath was even the more horrendous because the murdered Colette MacDonald was pregnant and had been expecting the birth of her third child sometime during the summer.

According to newspaper reports, Jeff and Colette MacDonald had been high school sweethearts in Patchogue, Long Island, N.Y. Jeff was a three-letter man, who played varsity football, basketball and baseball. He was president of his senior class. Colette had been a cheerleader, a Patchogue High chorister and a member of the Pep Club. She was elected vice president of the high school student council.

After three years at Princeton and medical studies at Northwestern University, Jeff interned for a year at Columbia-Presbyterian Hospital in New York City. Colette attended Skidmore College in Saratoga Springs, in upstate New York, leaving school to marry Jeff in 1963.

Jeff, wishing to fulfill his military obligation, joined the Army Medical Corps in June, 1969. After indoctrination courses in Texas, he was sent to Fort Bragg, home of the Green Berets, the 18th Airborne Corps and the 82nd Airborne Division. He was assigned to the Preventive Medicine section of the 6th Special Forces, where, in conjunction with other duties, he saw a number of patients who were under treatment for drug abuse.

According to an Army spokesman, Captain MacDonald also worked in the emergency rooms at two nearby civilian medical institutions, the Cape Fear Valley Hospital at Fayetteville and the city

hospital at Hamlet, 55 miles from the case.

"We intend to check every patient who was treated by Captain MacDonald in recent months," the spokesman said. "The Federal Bureau of Investigation and the Army Intelligence Division will be involved in this phase of the investigation."

It was revealed by Cumberland County Sheriff William G. Clark that about 1500 young men and women, loosely characterized as "hippies," lived on the outskirts of the Fort Bragg military reservation. Many of the young people had been arrested during the preceding 12-month period on charges of drug violations. At least 300 of them were rounded up for questioning about the MacDonald case.

The national news media's hunger for fresh bulletins from Fort Bragg was literally unappeasable. But, by afternoon, the flow of available information had been pinched to a trickle. It was noted that Captain MacDonald was in "satisfactory condition" and had been transferred from the intensive treatment area of the base hospital to a room in the "general wing."

The nature of the captain's wounds appeared to be less serious than originally believed. It was not true that he had been stabbed in the stomach, as originally reported, hospital reports revealed. He had been stabbed in the chest, the point of the knife "nicking" his right lung. In addition, he had shallow puncture marks on his upper left arm, bruises on both forearms and a small one on the left side of his head.

ACCORDING to Lieutenant Michael Oertel, a spokesman at the base, MacDonald already had been questioned intensively by the Army's Criminal Intelligence Division officers. The interview had not been as productive as it might have been, because "the patient has been in a semi state of shock and under sedation.

"We plan to requestion him and see what further information we can develop," the lieutenant told the questioning reporters.

The Provost Marshal's office had been unable to elicit more detailed descriptions of the four assailants from Captain MacDonald. In fact, the descriptions seemed to become more hazy with each retelling of the circumstances of the attack. The girl with long blonde hair, who had carried a candle, had intoned a chant in which she claimed "Acid is groovy," not "Acid is great," as originally reported. She also said hit "him" again, not hit "em" again.

Colonel Kriwanek was quoted as saying: "The initial report by Captain MacDonald to the military police that the blonde woman with the floppy hat and muddy boots was carrying a candle sug-

gests that the slayings might have been 'ritualistic.' It's feasible, of course, that someone might have picked up a candle and held it up. But there is no indication of any ritual having taken place."

According to Captain MacDonald, it was revealed, there was no reason for both telephones in the murder apartment to have been off the hook. In calling the Fayetteville operator, he said, he had used only one phone.

A press conference, originally arranged by the military in which Captain MacDonald was to have talked with reporters, then unaccountably was called off. Neighbors of the MacDonalds were ordered by the authorities to give "no statements to the papers."

That order, perhaps, was the result of a published interview with a paratroop lieutenant, a close friend of the Green Beret captain. The lieutenant revealed that Jeff had been deeply affected by the "drugs, sex, and occult section" of the magazine which had been found after the tragedy in the MacDonald living room.

"I watched him leaf through the magazine," the young officer told reporters. In fact, the paratroop lieutenant remembered some of Jeff's musings as he read paragraphs about strange cults, devil worship and the killing of pregnant Sharon Tate, allegedly after a southern California drug binge.

"I've seen these people," Jeff MacDonald was quoted by his friend as saying. "They never change. They should be locked up. It's wild."

The magazine, examined both by Army intelligence officers and reporters, was most provocative. There were many bizarre parallels. Sharon Tate and Colette MacDonald were both pregnant. The word *pic* in blood-traced letters figured in the murders of both women. The Negro in the field-jacket with sergeant's stripes was not unlike a character described in one of the magazine articles. The girl with streaming blonde hair, a floppy hat and muddy, calf-length boots was very much like the murdered Sharon Tate herself!

The newsmen demanded news and a certain amount was forthcoming. Fingerprints had been found in the MacDonald case. The Army CID men ripped out sections of wall from the MacDonald apartment and sent them to the Fort Gordon crime laboratory for "definitive evaluation." Scrapings of "a dark brown substance," possibly blood, were collected from a sidewalk leading to the rear of the MacDonald apartment. The paring knives, ice pick and "club" already had been examined.

"People are scared out here," the operator of an area pawnshop told reporters. "I've sold out every weapon I had in stock. That's rifles, shotguns and military souvenirs. I've even had a run on billiard cues. They saw them off and

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make them into clubs. And locks? Man, man. I bet you can't buy a lock in any hardware store around. They're just out, that's all. People are buying. People are scared."

Two days after the tragedy, the Fort Bragg provost marshal's office announced:

"There will be no more daily news briefings. Until a major development occurs, there will be no announcements. Of course, we have no indication of just when that might be."

NEWS came from other sources, however. The roundup of known drug users continued without abatement.

"There's a lot of drug abuse here," Sheriff Clark said. "I've been in the law for 36 years and the drug scene right here is the worst I've ever seen."

Charles Dunn, State Bureau of Investigation chief, announced wholesale arrests of suppliers and users all over the state. He confessed to great alarm over "the apparent size and scope of the illegal drug problem in North Carolina."

"All totaled," Dunn said, "during the four-month period ending the last week of January, 1970, SBI agents opened nearly 500 cases involving alleged violations of North Carolina drug laws. Arrests have been made, or grand jury indictments have been returned, in 200 investigations."

"In spite of this activity in drug investigations by the SBI and local law enforcement agencies, illegal drugs are apparently still readily available in most areas of the state."

An unidentified Fort Bragg GI also was widely quoted in the papers. To the reporter who interviewed him, he said:

"Let me tell it the way it is, man, so you'll know where it's at."

"I'm a Beret, see. A returned Vietnam 'hero.' And don't think I don't know it. When you walk into a swamp that's infested with Cong, no one has to tell you about guts. You don't have guts, you don't walk in no swamp to blast the hell out of V.C. Charlie."

"Speed, hash, whammies, pot, pills; they're all over Vietnam. And they're all over here. So they're no good for you. A hole in the head is maybe better? You blow a little higher when you step on a Charlie land mine?"

"What the hell is to take a few drags on a joint, or to drop a little acid, or maybe shoot a little skag? You think you need long hair? The base commander don't like long hair, so we wear our hair short. But bein' a hippie is a life-style, man. It's a frame of mind."

According to the informant, there were communes on the outskirts of Fayetteville which could match any tribal setup in New York's East Village or New Mexico's Jornada del Muerto. Girls from all over the country followed the Green Beret glamor and the highly-pol-

ished paratroopers' jump boots to Fort Bragg's environs. Harems of the girls lived together in delapidated frame houses, which were rented for them by Fort Bragg GIs who wanted a change from counting cadence and from USO dances.

"This MacDonald killing has turned up the heat," the Vietnam veteran said. "The 'fuzz' is closing us out. They might not find no chick with a lighted candle, but they know where to look for a stash."

Although such revelations were disconcerting and cause for alarm, they pointed to no obvious solution to the MacDonald murders. The questioning of the Green Beret captain for the fifth time since the tragedy seemed, on the other hand, a circumstance not entirely devoid of implications.

Funeral services for Colette, Kimberly and Kristen Jean MacDonald were held in Fort Bragg's John F. Kennedy Chapel on the afternoon of February 21. Captain Jeffery MacDonald, escorted by two Army CID investigators, left his room in Womack Hospital to attend the services. He openly wept during the brief and touching ceremony.

A few days later, after the bodies of the victims had been sent north to Patchogue for burial, MacDonald was considered well enough to be returned to general duty. A statement released by post officials confirmed that the doctor would "resume his duties as a physician with the 6th Special Forces Group." It noted, in addition, "Captain MacDonald's status remains as a witness in the conduct of the investigation."

IN the weeks which followed, only little news of the continuing probe found its way into the papers. The FBI reportedly clamped a tight lid of secrecy over the inquiry. Reporters had to content themselves with statements from the civil authorities about stepped-up drug arrests, increased patrol activity in the Fayetteville area and the issuance of more than 90 gun permits to frightened townspeople.

In the 942-family complex, Corregidor Courts, where the MacDonalds had lived, there again was unrestricted access by the first week of March. Military police barriers were removed and the post engineering section had sent in workmen to ready the MacDonald flat for new occupancy. The captain no longer was living on Castle Drive; he was billeted in standard bachelor officers quarters.

The FBI itself made news in the case on March 11 with a brief announcement to the effect that its agents were "discontinuing their parallel investigation of the murders." The details were meager. The Army's CID team was not handling the inquiry on its own. Apparently the FBI had completed an investigation of

the possibility that civilians were involved.

The Fort Bragg provost marshal's office already had made a significant statement for the record. There were to be no further press conferences, Colonel Kriwanek told reporters, until there were new and significant developments in the case.

On Monday, April 6, there was a brief announcement that such a development had occurred. It came after Captain Jeffrey R. MacDonald was summoned to the head headquarters of his unit command, formally advised of his legal rights and told that he would be questioned as a suspect in the deaths of his wife and children.

"After six weeks of careful investigation," a provost marshal's spokesman said, "and examination of all evidence, we have been prompted to consider Captain MacDonald a suspect."

ALTHOUGH he was not charged, the captain was placed under restriction, relieved of his duties as a doctor and confined to his quarters. He was to be allowed to attend mess and other necessary facilities only under escort.

A partial medical report on the slayings was, on that occasion, released for the first time. Mrs. MacDonald and Kimberly had been bludgeoned and stabbed to death. Kristen Jean had been stabbed.

It was inevitable that a murder charge would follow. Such a proceeding, some newsmen theorized, was perhaps the result of complaints from the captain's relatives, who claimed that the military authorities were holding MacDonald a prisoner without charging him in direct violation of his constitutional rights. Colette MacDonald's family, in particular, reportedly objected to such treatment of the physician, who, they said, was unable to communicate with other persons except through his commanding officer.

On Friday, May 1, 1970, the Army announced that Captain MacDonald had been charged with premeditated murder. He still was drawing pay and had not been suspended from rank, an Army spokesman said. It was usual in such cases, the spokesman continued, for the charges to be referred to an investigating officer, a step similar to a preliminary hearing in a civilian court. Presumably, the officer would decide whether the captain was to appear before a formal courtmartial.

The Army spokesman would not comment on allegations that Jeffrey MacDonald had been held incommunicado without due process of law, that the telephones of members of his family had been tapped and that close relatives of the captain's murdered wife firmly believed in his innocence and expected to see the doctor's name cleared after his trial in the macabre tragedy.



- 1 -

## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 09/19/2007

Review of captioned case material revealed a handwritten draft of an interview report form (FD-302) reflecting interview of HELENA W. STOECKLEY on July 19, 1984, by SA RAYMOND MADDEN, JR. (retired). On September 19, 2007, this draft was transcribed and is as follows:

"Mrs. HELENA W. STOECKLEY, 315 Valley Road, Fayetteville, North Carolina, telephone number 919/484-0459, was contacted, advised of the identity of the interviewing agent, and thereafter advised as follows:

"Mrs. STOECKLEY was the mother of HELENA STOECKLEY, who is deceased. She had been previously interviewed on one occasion before by a government agent, identity and agency unrecalled. She was subpoenaed to the MACDONALD trial by the defense team and went to Raleigh, North Carolina, where she was interviewed by a female attorney, name unrecalled, who was a legal assistant to defense attorney BERNARD SEGAL. Mrs. STOECKLEY stated she told the attorney she did not know anything about the MACDONALD murders.

"She recalled that when HELENA came home after the MACDONALD murders, HELENA told her in a perfectly sober and non-drug state that HELENA knew absolutely nothing about the MACDONALD murders.

"In 1970, at the time of the MACDONALD murders, HELENA was not living at home with the family. Shortly before the murders, HELENA told her she had a man named "MAZEROLLE" arrested. HELENA was "snitching" for Detectives STUDER and BEASLEY. Mrs. STOECKLEY told HELENA, as her parents, they could not condone her drug usage and as long as she continued this activity, HELENA was not allowed to live at the house. HELENA then moved from the house into another residence in Fayetteville, North Carolina, with other individuals, names unknown.

"After the MACDONALD murders, her husband saw HELENA at which time HELENA told her husband she did not know anything about the murders. According to Mrs.

Investigation on 09/17/2007 at Raleigh, North Carolina

File # CE 70-3668

Date dictated 09/19/2007

by SA James J. Cherokee:egg

FD-302a (Rev. 10-6-95)

CE 70-3668

Continuation of FD-302 of HELENA W. STOECKLEY, On 09/17/2007, Page 2

STOECKLEY, her husband questioned HELENA about the murders as her name appeared in a newspaper article about the case. According to Mrs. STOECKLEY, her husband told HELENA to tell the truth. Mrs. STOECKLEY was of the opinion that HELENA could not have been present or committed them as she was not violent and loved children.

"Mrs. STOECKLEY was reluctant to discuss additional information because HELENA was not treated fairly by BEASLEY or TED GUNDERSON, a private investigator. She was of the opinion that HELENA's mind was "gone" especially when under the influence of drugs and/or alcohol. When doing drugs, HELENA thought about the MACDONALD case, but she was not involved.

"HELENA told her that during the trial, "they" wanted her to take drugs to help her remember details. Mrs. STOECKLEY was of the opinion HELENA was "used", but would not state by whom. She noted HELENA was "beaten up" during the MACDONALD trial in Raleigh, North Carolina, but was of the opinion it was not by her boy friend, ERNEST DAVIS.

"Mrs. STOECKLEY saved all the newspaper articles relative to the MACDONALD case. After the murders, HELENA returned home. Mrs. STOECKLEY then allowed HELENA to read all of the newspaper articles concerning the MACDONALD case. Mrs. STOECKLEY believes HELENA left their home in the fall of 1970. Mrs. STOECKLEY's knowledge about the case came from the articles she read in the newspaper.

"HELENA had been trying to quit drugs since 1970, and after her release from DOROTHEA DIX HOSPITAL, a mental health hospital in Raleigh, North Carolina, believed to be in 1976-1977, HELENA was struggling, not eating right, and had to move home. After her treatment at DOROTHEA DIX for alcoholism and mental problems, HELENA was never right.

"HELENA enjoyed the attention from the MACDONALD case. She was of the opinion the MACDONALD case would have been resolved if not for the persistence of PRINCE BEASLEY, who would not leave HELENA alone. Mrs. STOECKLEY stated she never met BEASLEY but talked to him

SEP-19-2007 15:00  
FD-302a (Rev. 10-6-95)

CE 70-3668

Continuation of FD-302 of HELENA W. STOECKLEY, On 09/17/2007, Page 3

on the telephone when he would call HELENA. BEASLEY called HELENA frequently when HELENA was informing.

"HELENA told her that when she testified at the MACDONALD trial, she told everything she knew and told the truth.

"HELENA told Mrs. STOECKLEY she was a heavy drug user, especially when she was in Nashville, Tennessee. HELENA had a lot of attention from investigators and attorneys.

"Before her death, HELENA was in terrible physical shape. It was about this time that HELENA gave a statement to a private investigator from California. When Mrs. STOECKLEY asked HELENA why she gave a statement, HELENA replied she thought she was at the murder scene."





# FBI FACSIMILE COVER SHEET

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7/19/84

Mrs. Helena W. Stoddy  
315 Valley Rd. Kille,  
484-0459.



mother of Helen Stoddy, who is  
deceased. Best witness in eye vision  
before before by some form of agency.  
Also ~~attorney~~ subject of some small  
trial by defense, ~~but~~ ~~was~~ not to  
Kille Rd, not a witness by any other  
name unaltered who ~~was~~ ~~not~~ ~~in~~ ~~the~~  
for Bezahl legal. Best told her  
didn't no more.

When Hel was he after some ten  
minutes - she told me ~~she~~ ~~was~~ ~~not~~  
perfectly clear now during that  
she knew absolutely nothing about Mose  
D. Cook.

In 1970 at the time Mose told me  
Hel was not being at home with family.  
Shortly before she had been read  
"Magedly" arrested at the time. Hel  
was not at the house of Mose.  
We told her parents did not go  
on as she was under in days could not  
continue this activity. She left really  
moved in golden & Clark St with  
Sue other girls, ~~names~~ unknown.

P. 2.

My husband said Hel after Mrs. D. murders told to tell about the  
she told my husband, Clarence R., she  
did not know anything about murders.  
He questioned her case but was in newspaper  
article, he was concerned wanted her to  
tell facts.

She also told me she was not  
involved in murders.

She of your Hel did not be present  
in court and not visit, had  
children.

She was reluctant to discuss  
admit up because she thought Hel  
was a rebel <sup>because</sup> enough by Besly and  
Tel Guder. Of your Hel's  
mind was "gone" herself when  
under influence drugs and in doubt.  
Use drugs on drugs, she thought  
about more hell did, other Hel  
not want.

Hel drug trial, the I then told  
me "tray" wanted her if necessary  
to take drugs or use alcohol to  
"help" her remember." details.

P.3.

Ms. S stated in her exam  
Helen was "used" by all and  
state by whom. She stated Hel  
was beaten up during trial of case  
in Phila. etc. but was of exam  
it was sent by her physician Ernest  
Dawson.

We had read all newspaper articles  
re case and after reading she  
stated to have not been read all  
newspaper articles but more D. and  
left on her side full 1970.  
(believe)

Helen has been very fragile since 1970.  
Helen had state after she was  
released from Dutton Dix, believe to  
be 1976-77. ? Stunke' before trial  
said state not entirely not right.  
Old not eat right, she due had to  
live @ us. Had fear her. I report  
for state in Phila. Hospital for  
her in hospital Phila. Then on she  
was never right. In Dutton Dix for  
children of mental problems.

Helen enjoyed at home of entire  
man Robert they, de<sup>3724</sup> sought of needs & others.

P.4



if not for your care and help we would have been  
who will not leave Hel alone, Don't  
believe even that Barry had helped to  
bring me here when he would call Hel  
called her for. when Hel was injured:

Hel told me that when she  
testified at trial that she told  
everything she knew of had told truth.

Hel told me she was being  
drug used especially while terrible, to  
of Hel had a lot of medications  
of all ways.

Before her death testified she  
was terrible stage psychotic stage.

When she got sent to PZ Calif  
asked why, she said is what she thought  
she was in under care.

My mind is not clear for me for myself

4 Pages

9-18-07

TO: SA Jim CHEROKE  
FROM: Butch MADDEN



Jim - pls. have GAYLE BROWN THING  
UP FOR ME LIKE SHE DID FOR 30 YRS

TKS  
Butch

LET ME KNOW IF YOU GOT IT OK.

910 - 328 - 3411

Sa Ram M. Jr.

9/19/84

①

MRS. HELENA W. STOCKLEY (W), 315 VALLEY RD, F. VILLG, N.C. telephone # 484-0459 was contacted & advised of the identity of the interviewing Agent & hereafter advised as follows:

MRS. STOCKLEY was the mother of HELENA STOCKLEY who is deceased. She had been previously interviewed on one occasion before by some government agency, identity & agency unrecalled. She was subpoenaed to the MAC DONALD trial by the defense team and went to Cal, N.C., where she was interviewed by a female attorney, name un-recalled, who was a legal assistant to defense attorney BERNARD SEARL. Mrs STOCKLEY stated she told the attorney she didn't know anything about the MAC DONALD murders.

She recalled that when HELENA came home after the MAC DONALD murders, HELENA told her in a perfectly sober and non-drug state that HELENA knew absolutely nothing about the MAC DONALD murders.

In 1970 at the time of the MAC DONALD murders, HELENA was not living at home with the family. Shortly before the murders, HELENA told her she had a man named "MAZENDOLLE" (phonetic). HELENA was "switching" for Det's STUBER & BEASLEY. Mrs. STOCKLEY told HELENA as her parents that they could not condone her drug usage and as long as she continued this activity, HELENA was not allowed to live at the house. HELENA then moved from the house into another residence in FIVILL with other individuals, names unknown.

After the MAC DONALD murders, her husband saw HELENA at which time HELENA told her husband she did not know anything about the murders.

-3727-

(2)

According to Mrs. Stockley, her husband  
 questioned HELENA about the murders as her name  
 appeared in a newspaper article about the case.  
 According to Mrs. Stockley her husband told  
 HELENA to tell the truth. Mrs. Stockley also  
 stated that HELENA told her she was not  
 involved in the murders. Mrs. Stockley was of  
 the opinion that HELENA could not have been  
 present or committed <sup>them</sup> as she was not violent and  
 loved children.

Mrs. Stockley was reluctant to discuss additional  
 information because HELENA was not treated fairly  
 by BOASLEY or TED SYDENHORN, a private  
 investigator. She was of the opinion that HELENA'S  
 mind was "gone" especially when under the influence  
 of drugs and or alcohol. When doing drugs, HELENA  
 thought about the Mac Dowell case, but she was not  
 involved.

HELENA told her that during the trial, "they"  
 wanted her to take drugs to help her  
 remember details. Mrs. Stockley was of the opinion  
 HELENA was "used", but would not state by whom.  
 She noted HELENA was "beaten up" during the  
 Mac Dowell trial in Raleigh, but was of the  
 opinion it was not by her boyfriend, ERNEST  
 CAVIS.

HELENA had been trying to quit drugs since 1970  
 and after her release from Donohoe Hospital,  
 a mental health hospital in Re., N.C., believed  
 to be in 1976-77, HELENA was struggling, not eating  
 right, and had to move home after her treatment  
 at Donohoe for alcoholism and mental problems,  
 HELENA was never right.

HELENA enjoyed the attention from the Mac Dowell  
 case. She was of the opinion the Mac Dowell case  
 would have been resolved if not for the

-3728-



(3)

perseverance of PRIME BEASLEY who would not leave HELENAS alone. MRS. STOCKLEY stated she never met BEASLEY but talked to him on the phone when he would call HELENAS. BEASLEY called HELENAS frequently when HELENAS was performing.

HELENAS told her that when she testified at the macdonald trial that she told everything she knew and told the truth.

HELENAS told MRS. STOCKLEY she was a heavy drug user especially when she was in Nashville, Tenn. HELENAS had a lot of attention from investigators and attorneys.

BEFORE her death, HELENAS was in terrible ~~shape~~ physical shape. It was about this time that HELENAS gave a statement to a private investigator from California. When MRS. STOCKLEY asked HELENAS why she gave a statement, HELENAS replied she thought she was at the murder scene.

731  
GOVERNMENT  
EXHIBIT  
2357  
3:75-CP-26F





The false assertions of Jimmy Britt

False assertion	Source	True facts	Evidence for hearing
<p>J. Dupree’s law clerks during trial were Rich Leonard and John Edwards</p>	<p><b>GX 2085</b> Statement of facts, 2/23/05 ¶ 3 &amp; 4</p> <p><b>GX 2086</b> Interview under oath, 2/24/05 at 9 ln 15 - 10 ln 3</p>	<p>Leonard served from ‘76 to ‘78;</p> <p>Edwards left for Nashville August ‘78</p> <p>Steve Coggins only law clerk working on case;</p>	<p>Testimony of Rich Leonard;</p> <p>Cross-ex of Wade Smith</p>

<p>Traveled from Raleigh to Charleston, SC, to transport Helena Stoeckley back to Raleigh during MacDonald trial</p>	<p><b>GX 2086</b> Interview under oath, 2/24/05 at 11 ln 23 to 12 ln 3</p> <p><b>GX 2087</b> Affidavit 10/26/05 at page 2 (¶ 15), page 3 (¶22)</p>	<p>Britt was not given this task;</p> <p>Stoeckley was not in Charleston—she was in Pickens County jail;</p> <p>DUSM Meehan was sent from Raleigh to meet DUSM Kennedy in Charlotte to transport Stoeckley to Raleigh</p>	<p>Testimony of Dennis Meehan</p> <hr/> <p>Janice Meehan</p> <hr/> <p><b>GX 2010</b> Sworn statement of Vernoy Kennedy pg 9 ln 12-25</p> <hr/> <p>booking records at Pickens County jail:</p> <p><b>GX 2006 &amp; 2007</b> (fingerprint card)</p> <p><b>GX 2008</b> (booking report)</p> <p><b>GX 2009</b> (arrest photo)</p> <p><b>GX 2064</b> (committment form)</p> <p><b>GX 2066</b> (release form)</p> <hr/> <p>TD 19.15 ln 15-16</p>
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<p>Picked up Stoeckley at USMS Office in Charleston, SC</p>	<p>GX 2086</p> <p>Interview under oath, 2/24/05 at 12 ln 13016</p>	<p>Stoeckley was in custody per warrant and was housed at Pickens County Jail</p>	<p>GX 2000 (warrant for arrest)</p> <hr/> <p>Testimony of Frank Mills</p> <p>GX 2064 (comittment)</p> <hr/> <p>Testimony of Dennis Meehan</p> <hr/> <p>Janice Meehan</p> <hr/> <p>GX 2010 Sworn statement of Vernoy Kennedy pg 9 ln 12-25</p> <hr/> <p>booking records at Pickens County jail:</p> <p>GX 2006 &amp; 2007 (fingerprint card)</p> <p>GX 2008 (booking report)</p> <p>GX 2009 (arrest photo)</p> <p>GX 2066 (release form)</p>
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<p>Traveled from Raleigh to Greenville, SC, to “assume custody” of Helena Stoeckley and transport her back to Raleigh during MacDonald trial;</p> <p>picked her up at County Jail in Greenville, SC</p>	<p>GX 2087</p> <p>Affidavit 10/26/05 at 2 ¶ 11)</p> <hr/> <p>GX 2088</p> <p>Affidavit 11/3/05 at 2 ¶¶ 11, 15)</p> <hr/> <p>GX 2089</p> <p>Addendum to affidavit 2/28/06 at 1 ¶1</p>	<p>After her arrest on 8/14/79, Stoeckley was taken to the Pickens County Jail in Pickens, SC;</p> <p>she was not housed in Greenville;</p> <p>DUSM Meehan was sent from Raleigh to meet DUSM Kennedy in Charlotte to transport Stoeckley to Raleigh;</p> <p>Britt was not involved in transport of Stoeckley from SC to Raleigh</p>	<p>GX 2000 (warrant for arrest)</p> <hr/> <p>Testimony of Frank Mills</p> <p>GX 2064 (comittment)</p> <hr/> <p>Testimony of Dennis Meehan</p> <hr/> <p>Janice Meehan</p> <hr/> <p>GX 2010</p> <p>Sworn statement of Vernoy Kennedy pg 9 ln 12-25</p> <hr/> <p>booking records at Pickens County jail:</p> <p>GX 2006 &amp; 2007 (fingerprint card)</p> <p>GX 2008 (booking report)</p> <p>GX 2009 (arrest photo)</p> <p>GX 2066 (release form)</p>
<p>Stoeckley was dressed in this floppy hat that had been described during the course of the investigation</p>	<p>GX 2086</p> <p>Interview under oath, 2/24/05 at 13 ln 6-10</p>	<p>Stoeckley not observed in such a floppy hat during her stay in Raleigh in 1979</p>	<p>Testimony of Wade Smith</p>

<p>Also transported Stoeckley's boyfriend Ernest from Charleston to Raleigh</p>	<p><b>GX 2086</b> Interview under oath, 2/24/05 at 13 ln 16-24</p>	<p>Ernest Davis was not in Charleston  he made his own way from Walhalla, SC, to Raleigh  bringing him along would have violated USMS policy</p>	<p>Testimony of Dennis Meehan  Janice Meehan</p>
<p>USMS employee Jerry Holden accompanied Britt to pick up Stoeckley to transport her to Raleigh</p>	<p><b>GX 2086</b> Interview under oath, 2/24/05 at pg 13 ln 11-15, pg 14 ln 18-21 _____</p> <p><b>GX 2087</b> Affidavit 10/26/05 at 2 (¶¶ 13, 15) _____</p> <p><b>GX 2088</b> Affidavit 11/03/05 at 2 (¶¶ 13, 15)</p>	<p>Holden did not go on trip to pick up Stoeckley;  Janice Meehan served as female matron while DUSM Meehan transported Stoeckley from Charlotte to Raleigh;  a female intern served this role as DUSM Kennedy transported Stoeckley from Pickens, SC, to Charlotte to meet Meehan</p>	<p>Testimony of Dennis Meehan, _____  Janice Meehan; _____  <b>GX 2010</b> pg 7 ln 22 sworn statement of Vernoy Kennedy</p>

<p>During transportation to Raleigh from SC, Stoeckley told Britt of presence inside MacDonald home on night of murders</p>	<p><b>GX 2086</b>                  Interview under oath, 2/24/05 at pg 14 ln 13 through pg 15 ln 2, pg 15 ln 22 through pg 16 ln 1</p> <hr/> <p><b>GX 2087</b>                  Affidavit 10/26/05 at 2 (¶ 15), 3 (¶ 22)</p> <hr/> <p><b>GX 2088</b>                  Affidavit 11/3/05 at 2 (¶ 15), 3 (¶ 22)</p>	<p>Stoeckley could not have told Britt this on ride from SC to Raleigh because Britt did not transport her to Raleigh</p>	<p>Testimony of Dennis Meehan</p> <hr/> <p>Janice Meehan</p> <hr/> <p><b>GX 2010</b>                  pg 9 ln 12-25, sworn statement of Vernoy Kennedy</p>
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<p>Upon arrival in Raleigh from S.C., Britt took Stoeckley and Ernest to Holiday Inn in Raleigh and they checked in and stayed there until he picked them up the next morning</p>	<p><b>GX 2086</b> Interview under oath, 2/24/05 at 16 ln 9-16</p>	<p>Stoeckley was in custody as material witness  upon arrival in Raleigh, DUSM Meehan put her in Wake County Jail  Ernest observed in area outside jail by Meehans  Britt and Holden transported Stoeckley from Wake County Jail to Federal Building the next Thursday morning and back in the afternoon  Stoeckley did not stay at Holiday Inn during entire stay in Raleigh  upon release on 8/17/79, she stayed first at Downtowner, then at Journey's End and then at Hilton Inn</p>	<p>Testimony of Dennis Meehan _____ Janice Meehan _____ <b>GX 2000</b> arrest order _____ TD 19.16 ln 7-10 transcript except re no bond _____ <b>GX 2074</b> photo showing 8/16/79 transport by Britt and Holden _____ Testimony of Wade Smith _____ TD 21.179 ln 13-25 _____ Testimony of Wendy Rouder _____ TD 22.134 ln 11-19 _____ TD 22.150 ln 19-22</p>
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At time of MacDonald trial, Jim Blackburn was U.S. Attorney-EDNC	GX 2086 Interview under oath, 2/24/05 at 17 ln 13-15	Blackburn was FAUSA  George Anderson was U.S. Attorney	Testimony of Wade Smith,  testimony of Jack Crawley  testimony of Jim Blackburn
After defense interview, Britt escorted Stoeckley to USAO at “approximately 12 noon”	GX 2089 Addendum to affidavit 2/28/06 at ¶2	Defense interview did not conclude until sometime after 2 p.m.  only after the conclusion of that interview was Stoeckley brought to USAO	Testimony of Wade Smith  transcript excerpt of TD 20.13 ln 3-18
Interview of Stoeckley by prosecution on 8/16/79 took place in Blackburn’s office	GX 2086 Interview under oath, 2/24/05 at pg 17 ln 13-15, pg 18 ln 10-14	Interview took place in the office of U.S. Attorney George Anderson	Testimony of Jack Crawley _____  Testimony of Jim Blackburn _____  GX 2082A

<p>Interview of Stoeckley by prosecution on 8/16/79 was in the office of the U.S. Attorney and the U.S. Attorney's desk was set an angle in the northeast corner of the office</p>	<p>GX 2087 Affidavit 10/26/05 at 3 (¶ 21)</p> <hr/> <p>GX 2088 Affidavit 11/3/05 at 3 (¶ 21)</p>	<p>U.S. Attorney's desk was set on the east side of his office and it was not set an angle</p> <p>it was set so that its front and back edges ran parallel with the east wall and when seated behind the desk, the occupant looked straight out the west window toward Person Street</p>	<p>Testimony of Jack Crawley</p> <hr/> <p>Testimony of Jim Blackburn</p> <hr/> <p>GX 2082A</p>
<p>Blackburn asked Britt to remain in room during prosecution interview of Stoeckley; not an unusual occurrence</p>	<p>GX 2086 Interview under oath, 2/24/05 at 18 ln 4-6</p> <hr/> <p>GX 2087 Affidavit 10/26/05 at 3 (¶ 20)</p> <hr/> <p>GX 2088 Affidavit 11/3/05 at 3 (¶ 20)</p> <hr/> <p>GX 2089 Addendum to affidavit 2/28/06 at pg 1 (¶ 2)</p>	<p>Blackburn did not ask for Britt to sit in on interview and Britt did not</p> <p>it was not the custom and practice of the USAO to have DUSMs sit in on witness interviews during trials</p>	<p>Testimony of Jack Crawley</p> <hr/> <p>Testimony of Jim Blackburn</p> <hr/> <p>Testimony of Dennis Meehan</p>

<p>No one other than Blackburn, Britt, and Stoeckley was in room during interview</p>	<p>GX 2086 Interview under oath, 2/24/05 at 18 ln 15-18</p>	<p>Present during interview were Blackburn, Anderson, Jack Crawley, and Brian Murtagh</p>	<p>Testimony of Jack Crawley _____ Testimony of Jim Blackburn</p>
<p>During interview, Stoeckley told Blackburn the same things she had told Britt during her transportation from S.C.</p>	<p>GX 2086 Interview under oath, 2/24/05 at 19 ln 4-9 _____ GX 2087 Affidavit 10/26/05 at 3 (¶ 22) _____ GX 2088 Affidavit 11/3/05 at 3 (¶ 22)</p>	<p>Stoeckley could not have told anything to Britt during transport from S.C. because Britt was not present</p>	<p>Testimony of Dennis Meehan _____ Janice Meehan _____ GX 2010 pg 9 ln 12-25, sworn statement of Vernoy Kennedy _____ GX 2066 (release form)  booking records at Pickens County jail</p>

<p>After Stoeckley admitted presence in MacDonald home on night of murders during interview, Blackburn threatened to prosecute her for murder if she so testified</p>	<p><b>GX 2086</b> Interview under oath, 2/24/05 at pg 21 ln 11-18</p> <hr/> <p><b>GX 2087</b> Affidavit 10/26/05 at 3 (¶ 24)</p> <hr/> <p><b>GX 2088</b> Affidavit 11/3/05 at 3 (¶ 24)</p> <hr/> <p><b>GX 2089</b> Addendum to affidavit 2/28/06 at pg 1 (¶ 3)</p>	<p>Blackburn did not threaten Stoeckley with prosecution because (1) she had not admitted any presence at, or role in, MacDonald murders, and (2) the prosecution had grave doubts about its ability to bring any new prosecution nine years after murders</p>	<p>Testimony of Jack Crawley</p> <hr/> <p>Testimony of Jim Blackburn</p> <hr/> <p>18 U.S.C. §§ 1111, 3281, 3282</p> <hr/> <p>Fatal Vision</p> <p><b>GX 2201.4 (¶ 7)</b></p> <hr/> <p>Testimony of Joe McGinniss</p>
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<p>Possible that others were in the room during prosecution interview of Stoeckley (Anderson, and/or Murtagh, or others)</p> <p>others may have come in and left at some point; but “clear recollection” is that only Blackburn, Britt, and Stoeckley were present in room when Blackburn threatened to prosecute Stoeckley</p>	<p><b>GX 2087</b> Affidavit 10/26/05 at 3-4 (¶ 26)</p> <hr/> <p><b>GX 2088</b> Affidavit 11/3/05 at 3-4 (¶ 26)</p>	<p>Anderson, Blackburn, Crawley, and Murtagh were present for interview and no others</p> <p>the others did not leave Blackburn alone in room with Stoeckley and Britt</p>	<p>Testimony of Jack Crawley</p> <hr/> <p>Testimony of Jim Blackburn</p>
<p>During prosecution interview, Stoeckley asked for a sandwich, and someone other than Britt went to see about it</p>	<p><b>GX 2087</b> Affidavit 10/26/05 at 3-4 (¶ 26)</p> <hr/> <p><b>GX 2088</b> Affidavit 11/3/05 at 3-4 (¶ 26)</p>	<p>Stoeckley did not eat during the prosecution interview; she had already been served a sandwich while in the seventh floor room for the defense team interview of her</p>	<p>Testimony of Jack Crawley</p> <hr/> <p>Testimony of Jim Blackburn</p> <hr/> <p>Testimony of Joe McGinniss</p> <hr/> <p>Testimony of Wade Smith</p> <hr/> <p><b>GX 2201.5 pg 530 last paragraph</b></p> <p>Fatal Vision</p>

<p>Following prosecution interview, Britt took Stoeckley from USAO to seventh floor courtroom being used for trial, where defense counsel were waiting, and while doing this, observed Jim Blackburn going into J. Dupree’s chambers for apparent ex parte communication</p>	<p><b>GX 2086</b>                  Interview under oath, 2/24/05 at pg 22 ln 5 through pg 24 ln 3  <hr/> <b>GX 2087</b>                  Affidavit 10/26/05 at 4 (¶ 27)  <hr/> <b>GX 2088</b>                  Affidavit 11/3/05 at 4 (¶ 27)</p>	<p>There would have been no reason to take Stoeckley to courtroom because (1) court had been adjourned at 1:17 p.m. that day (8/16/79) to allow for the completion of the defense interview of Stoeckley and the prosecution interview of Stoeckley (court was to resume at 9:00 a.m. on 8/17/79)</p> <p>Courtroom would have been locked</p> <p>Judge Dupree did not engage in substantive ex parte communication</p>	<p>Testimony of Wade Smith  <hr/>                 Testimony of Jim Blackburn  <hr/>                 Testimony of Judge J. Rich Leonard  <hr/>                 TD 20.13 ln 14-18</p>
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<p>On Sunday, 8/19/79, someone called J. Dupree to tell him that Stoeckley and Ernest were fighting and manager wanted them removed from Journey's End Motel</p>	<p><b>GX 2089</b></p> <p>Addendum to affidavit 2/28/06 at pg 1 (¶ 5)</p>	<p>Judge Dupree was called by Stoeckley herself on Saturday night, 8/18/79, to inform him that she was "in mortal dread of physical harm from Bernard Segal ..." and that she wanted a lawyer to represent her</p> <p>the request that Stoeckley leave the Journey's End came from the manager directly to Wendy Rouder and Stoeckley at the motel</p>	<p>TD 22.179 ln 3-10</p> <hr/> <p>TD 122.134 ln 11-13</p> <hr/> <p>Testimony of Wendy Rouder</p> <hr/> <p><b>GX 2201.9</b> pg 538 first paragraph</p> <p>Fatal Vision excerpt</p>
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<p>Britt, at direction of Chief DUSM Eddie Sigmon, checked Stoeckley out of Journey’s End Motel and registered her at The Holiday Inn, Hillsborough Street, Raleigh</p>	<p>GX 2089 Addendum to affidavit 2/28/06 at pg 1 (¶ 5)</p>	<p>Wendy Rouder, attorney on MacDonald’s defense team, and Red Underhill transferred Stoeckley from Journey’s End Motel to Hilton Inn on Hillsborough Street.  Stoeckley, during her visit to Raleigh for the trial, did not stay in the Holiday Inn, which was distinctive for its round architecture and was located several blocks closer to the courthouse than the Hilton Inn was  upkeep of Stoeckley after release on Friday 8/17/79 was responsibility of MacDonald defense team, not USMS</p>	<p>GX 2201.9 pg 538 (¶ 2) Fatal Vision excerpt _____ TD 22.134 ln 14-19 _____ TD 22.135 ln 11-13 Wendy Rouder testimony _____ Testimony of Eddie Sigmon _____ Testimony of Maddie Reddick _____ TD 22.111 ln 13-19 Red Underhill Testimony</p>
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<p>On Monday, August 20, Judge Dupree stated that he was not going to permit Ms. Stoeckley to testify again because her brain was scrambled like an egg</p>	<p><b>GX 2089</b> Addendum to affidavit 2/28/06 at pg 2 (¶ 1)</p>	<p>Judge Dupree did not prohibit Stoeckley from begin recalled to testify</p> <p>she was kept in Raleigh under defense subpoena until Friday, 8/24/79</p> <p>the defense repeatedly raised the possibility of recalling her to testify, which the judge urged them to do right away</p>	<p>Testimony of Wade Smith</p> <hr/> <p>Testimony of Jerry Leonard</p> <hr/> <p>TD 25.153 ln 23- 154 ln 15</p> <hr/> <p>TD 26.149 ln 17 - 25</p> <hr/> <p>TD 26.151 ln 17 - 152 ln 3</p>
<p>Judge Dupree directed jury on Monday 8/20/79 not to consider any evidence by Stoeckley on Friday 8/17/79</p>	<p><b>GX 2089</b> Addendum to affidavit 2/28/06 at pg 2 (¶ 1)</p>	<p>Judge Dupree gave no such instruction</p> <p>Stoeckley's testimony was fully considered by the jury</p>	<p>Testimony of Wade Smith</p> <hr/> <p>Testimony of Jim Blackburn</p> <hr/> <p>Testimony of Jack Crawley</p> <hr/> <p>TD 22.5 - 254</p>

<p>Britt, at direction of USM Hugh Salter, got a check for four days of subsistence for Stoeckley from Mattie Reddick of the USMS, cashed the check, purchased a one-way bus ticket to Charleston, SC, for Stoeckley, checked her out of the Holiday Inn, made sure she got on the bus, and gave her the balance of her subsistence</p>	<p><b>GX 2089</b>  Addendum to affidavit 2/28/06 at pg 2 (¶ 2)</p>	<p>After her release from custody on 8/17/79, Stoeckley’s subsistence was the responsibility of the MacDonald defense, not the USMS</p> <p>Stoeckley has no connection with Charleston, SC, which is about 260 miles from her residence in 1979 in Walhalla, SC</p> <p>Stoeckley never stayed in the Holiday Inn during her stay in Raleigh for the trial.</p>	<p>Testimony of Wade Smith</p> <hr/> <p>Testimony of Mattie Reddick</p> <hr/> <p>TD 22.135 ln 11-13</p> <p>Wendy Rouder testimony</p> <hr/> <p>TD 22.111 ln 13-19</p> <p>Red Underhill Testimony</p> <hr/> <p>Testimony of Eddie Sigmon</p> <hr/> <p><b>GX 2104</b></p> <p>map of SC</p>
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<p>Britt checked Stoeckley out of her hotel and made sure she got on the bus for Charleston on 8/20/79</p>	<p>GX 2089 Addendum to affidavit 2/28/06 at pg 2 (¶ 2)</p>	<p>Stoeckley remained in Raleigh under defense subpoena until Friday, 8/24/79.</p>	<p>Testimony of Wade Smith _____ Testimony of Jerry Leonard _____ TD 25.153 ln 23- 154 ln 15 _____ TD 26.149 ln 17 - 25 _____ TD 26.151 ln 17 - 152 ln 3</p>
<p>Britt told ex-wife Mary Britt that he was in on prosecution interview depicted in Fatal Vision</p>	<p>Testimony of Mary Britt</p>	<p>prosecution interview was not depicted in movie Fatal Vision, only defense interview was depicted</p>	<p>Testimony of Joe McGinnis</p>

[HOME](#)

[75 A](#)

[91A](#)

[58A \(1\)](#)



# United States VS Jeffrey MacDonald

Unsourced Hairs 75A, 91A and 58A (1)



# AFDIL SPECIMEN 75A

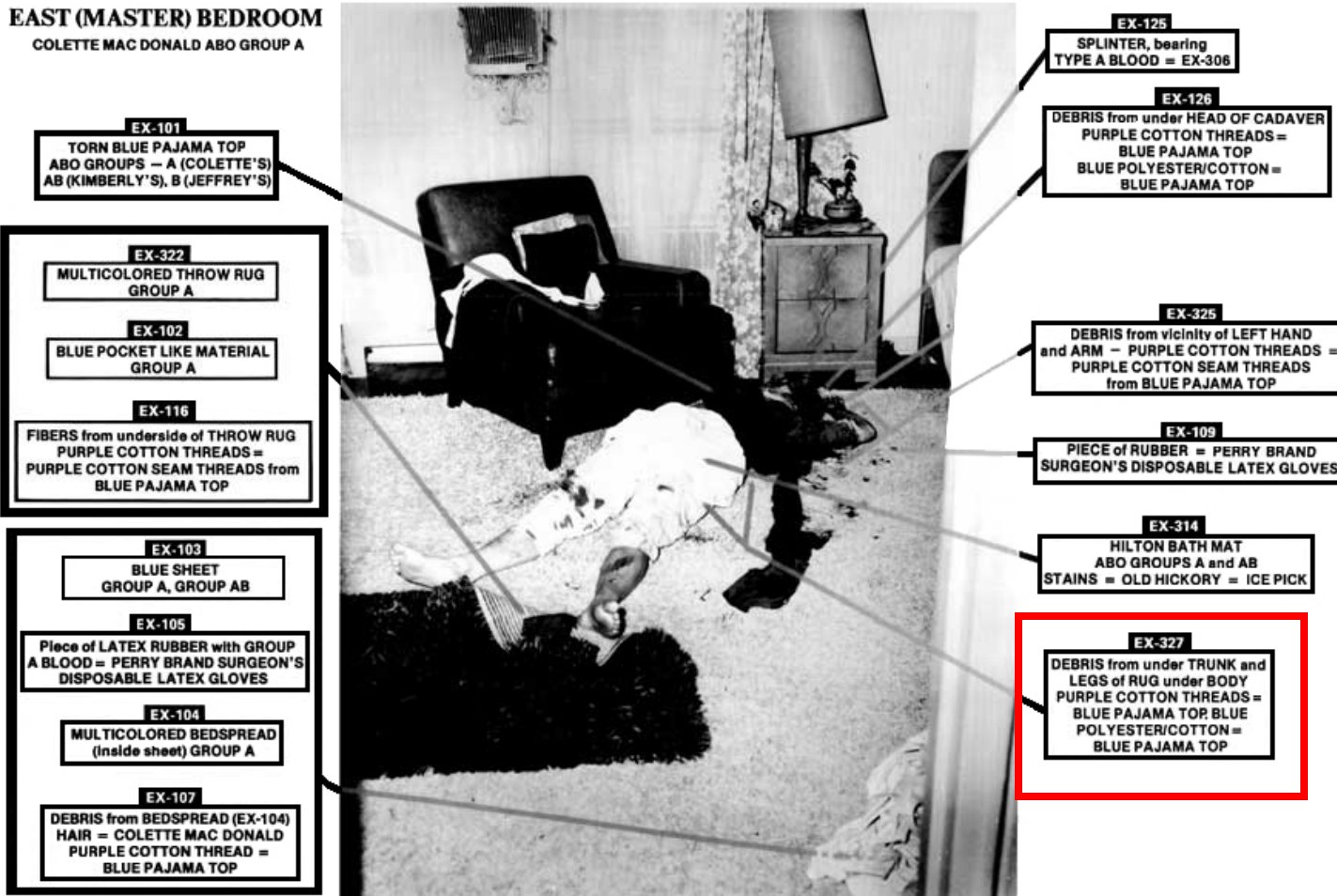
# East Bedroom Colette MacDonald

Ex-327 (E303, Q79)



# GX 984

## EAST (MASTER) BEDROOM COLETTE MAC DONALD ABO GROUP A



**EX-101**  
TORN BLUE PAJAMA TOP  
ABO GROUPS – A (COLETTE'S)  
AB (KIMBERLY'S), B (JEFFREY'S)

**EX-322**  
MULTICOLORED THROW RUG  
GROUP A

**EX-102**  
BLUE POCKET LIKE MATERIAL  
GROUP A

**EX-116**  
FIBERS from underside of THROW RUG  
PURPLE COTTON THREADS =  
PURPLE COTTON SEAM THREADS from  
BLUE PAJAMA TOP

**EX-103**  
BLUE SHEET  
GROUP A, GROUP AB

**EX-105**  
Piece of LATEX RUBBER with GROUP  
A BLOOD = PERRY BRAND SURGEON'S  
DISPOSABLE LATEX GLOVES

**EX-104**  
MULTICOLORED BEDSPREAD  
(inside sheet) GROUP A

**EX-107**  
DEBRIS from BEDSPREAD (EX-104)  
HAIR = COLETTE MAC DONALD  
PURPLE COTTON THREAD =  
BLUE PAJAMA TOP

**EX-125**  
SPLINTER, bearing  
TYPE A BLOOD = EX-306

**EX-126**  
DEBRIS from under HEAD OF CADAVER  
PURPLE COTTON THREADS =  
BLUE PAJAMA TOP  
BLUE POLYESTER/COTTON =  
BLUE PAJAMA TOP

**EX-325**  
DEBRIS from vicinity of LEFT HAND  
and ARM – PURPLE COTTON THREADS =  
PURPLE COTTON SEAM THREADS  
from BLUE PAJAMA TOP

**EX-109**  
PIECE OF RUBBER = PERRY BRAND  
SURGEON'S DISPOSABLE LATEX GLOVES

**EX-314**  
HILTON BATH MAT  
ABO GROUPS A and AB  
STAINS = OLD HICKORY = ICE PICK

**EX-327**  
DEBRIS from under TRUNK and  
LEGS of RUG under BODY  
PURPLE COTTON THREADS =  
BLUE PAJAMA TOP BLUE  
POLYESTER/COTTON =  
BLUE PAJAMA TOP







# AFDIL SPECIMEN 75A (E-303, Q79, GX 327)

**Debris from Body Outline on Rug, Master Bedroom  
(Trunk & Legs Area)**

Collected on 16 March 1970 by William Ivory (CID)



**15 Purple Cotton Threads = Seam Threads of  
Jeffrey MacDonald's Pajama Top - (Trial)**

**3 Blue Polyester/Cotton Yarns = Yarns of Jeffrey  
MacDonald's Pajama Top - (Trial)**



# DEFENSE CLAIMS - AFDIL SPECIMEN 75A

## A. Motion to Add an Additional Predicate DE-122, filed March 22, 2006

- “The petitioner submits that these unidentified hairs ... 75A ... a hair of over 2-inches in length with hair(sic) and follicle intact found under Colette’s body is profound new evidence that could not have previously been discovered through due diligence, and that when viewed in the light of the other evidence taken as a whole, entitles petitioner to have his sentence vacated.”

Id. Para.6, p.4.



# AFDIL SPECIMEN 75A (cont)

- B. **“Memorandum of Evidence and Points and Authorities in Support of Petitioner’s Motion to Add an Additional Predicate...namely newly discovered DNA Evidence Proving the Presence of Un sourced Hairs at the Crime Scene, (“Memo of Evidence”) filed March 22, 2006. DE-123**
- “Specimen #75A, is a ‘hair’ that was previously identified as CID exhibit E-303, and FBI exhibit Q79” ... In U.S. Army CID laboratory technician Dillard Browning’s handwritten notes (Browning collected the specimen), item Ex. E-303 is further described as fiber and debris from under the trunk and legs of Colette MacDonald, containing ‘one human pubic or body hair ...’ [Appendix 1, tab 7.]



# AFDIL SPECIMEN 75A (cont)

“Specimen 75A was described by the laboratory technicians at AFIP as a human hair with both hair root and follicular tissue attached ... Thus, it is clear that this unidentified hair was found underneath where Colette MacDonald’s body lay at the crime scene, and that it was a full length body or pubic hair. The fact that it had both the root and follicular tissue attached is indicative that it was pulled from someone’s skin and lends great weight to this specimen as probative that there were unknown intruders in the home with whom Colette struggled and from who she extracted a hair.”

DE 122 Id. at 9.



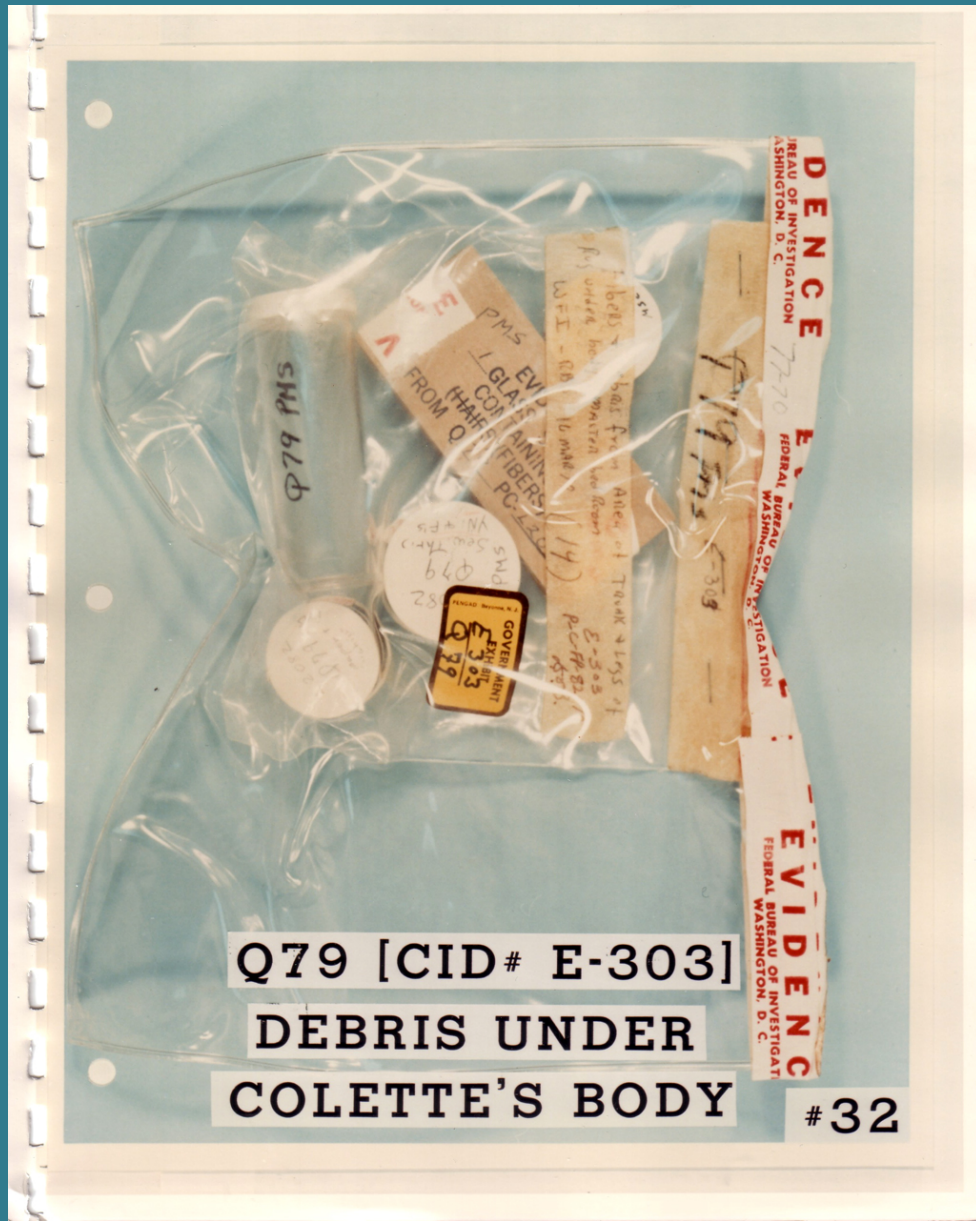
# AFDIL SPECIMEN 75A (E-303, Q79, GX 327) (cont)

Debris from Body Outline on Rug (Trunk & Legs Area)

Collected: 16 March 1970

- **Root with follicular tissue**
- **DNA-STR Analysis of Root =  
“No reportable results”**
- **mtDNA Analysis of Shaft =  
“Not consistent with any other sample  
tested.”**





Q79 [CID# E-303]

DEBRIS UNDER

COLETTE'S BODY

#32





Q79 [E-303]

ALL ITEMS

#33





Q79 SLIDE [HAIR]

#41



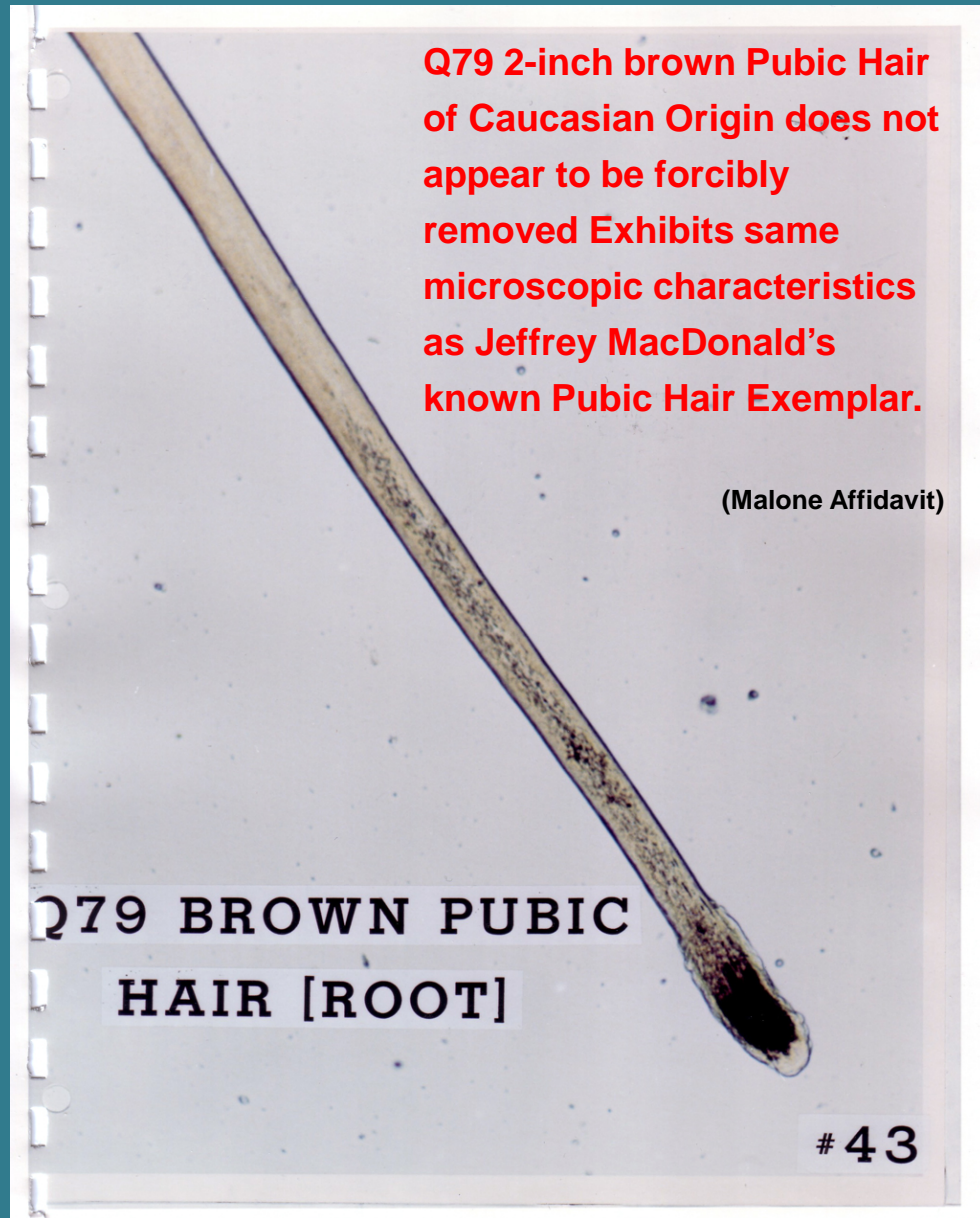




Q79 SLIDE [HAIR]

#42





**Q79 2-inch brown Pubic Hair of Caucasian Origin does not appear to be forcibly removed Exhibits same microscopic characteristics as Jeffrey MacDonald's known Pubic Hair Exemplar.**

**(Malone Affidavit)**

**Q79 BROWN PUBIC HAIR [ROOT]**

**# 43**



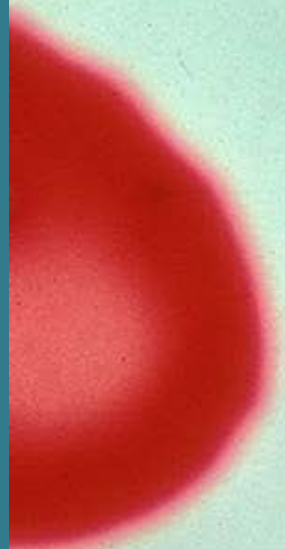
# 1999 AFDIL SPECIMEN 75A (E-303, Q79, GX 327)

**Debris from Body Outline on Rug Master Bedroom**

**(Trunk & Legs Area)**

Collected on 16 March 1970 by William Ivory (CID)

GOVERNMENT  
EXHIBIT  
3403  
3:75-CR-26-F



# 1999 AFDIL SPECIMEN 75A (E-303, Q79)

**“The hair has a Root and Adhering Follicular Tissue.”**

Report of M/SGT Grant Graham, OAFME, AFIP, 12/20/99



**“Contains 1 Human Hair with Root and Follicular tissue.”**

Bench Notes: 30 Nov 89 -  
M/SGT Grant Graham



**“Club Root” = Naturally Shed Hair.**

Robert FRAM, FBI LAB

**DNA STR Analysis of Hair Root = “No Reportable Results”**

**mtDNA Analysis of Hair Shaft = “Not Consistent with any other Sample Tested.”**

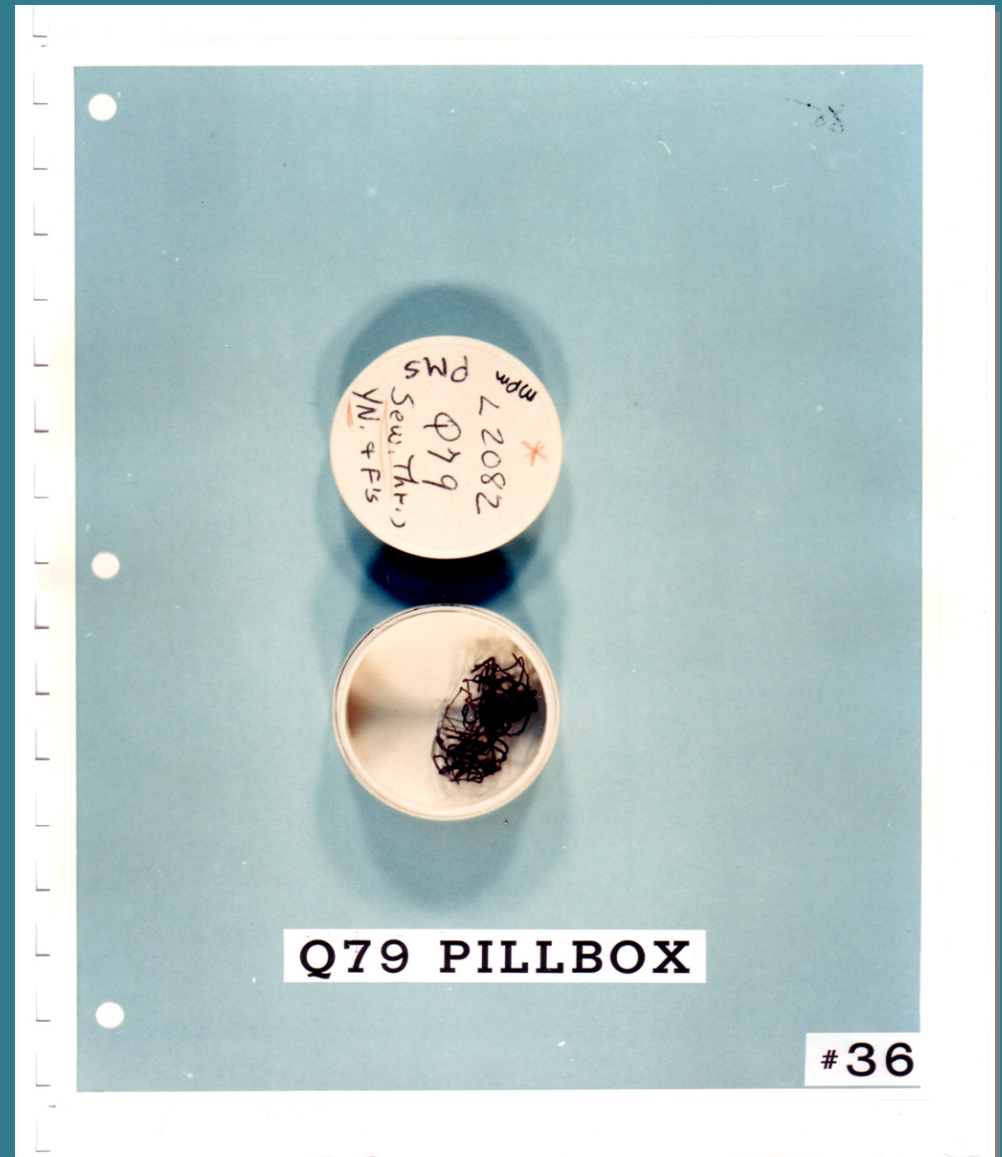


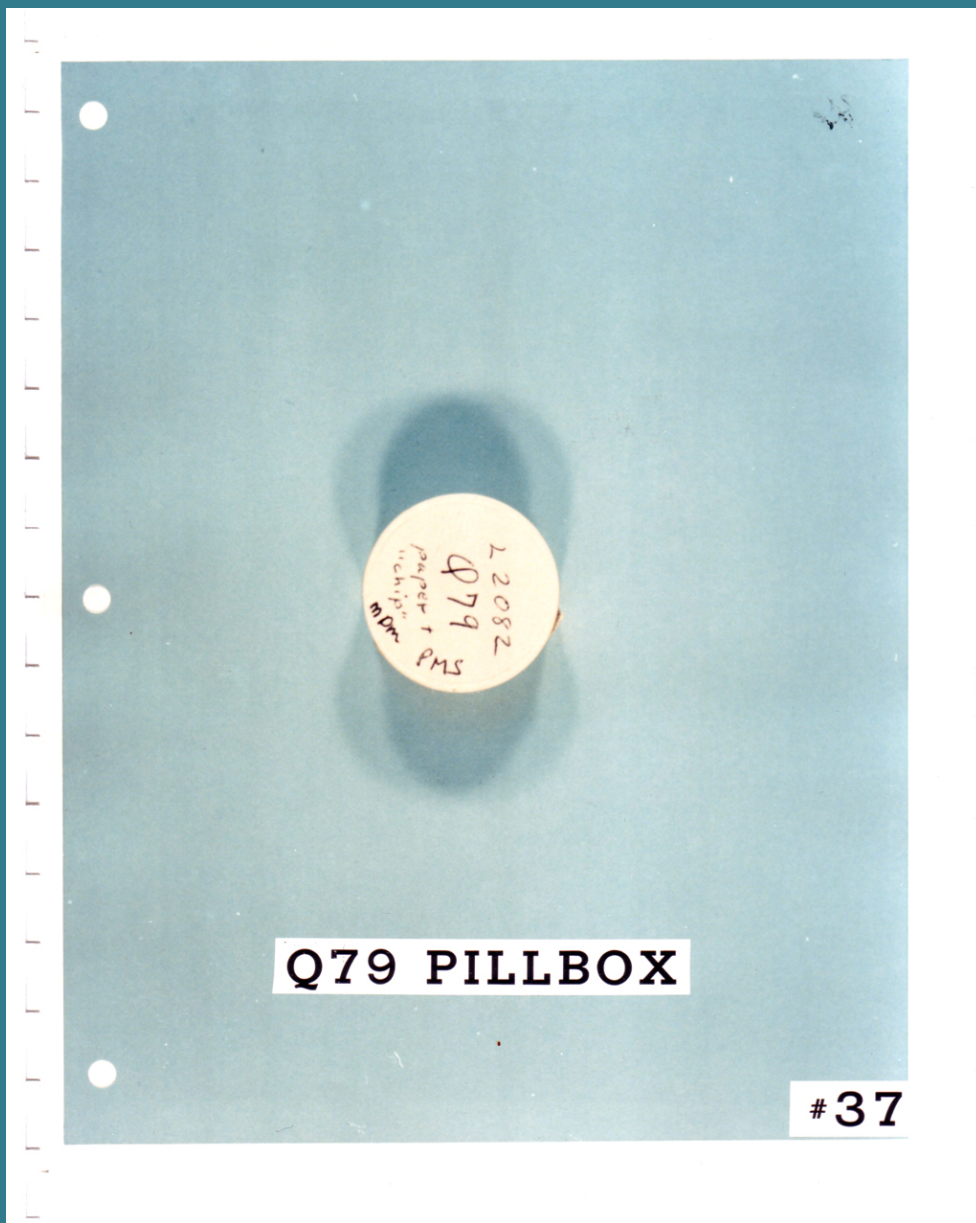
# Additional Evidence and Unsourced Debris within the Body Outline of Colette MacDonald



# GOVERNMENT EXHIBIT 327 (E-303, Q79)

- Debris from Body Outline on Rug Master Bedroom  
(Trunk & Legs Area)  
Collected on 16 March 1970 by William Ivory (CID)
- 15 Purple Cotton Threads = Seam Threads of Jeffrey MacDonald's Pajama Top
- 3 Blue Polyester/Cotton Yarns = Yarns of Jeffrey MacDonald's Pajama Top

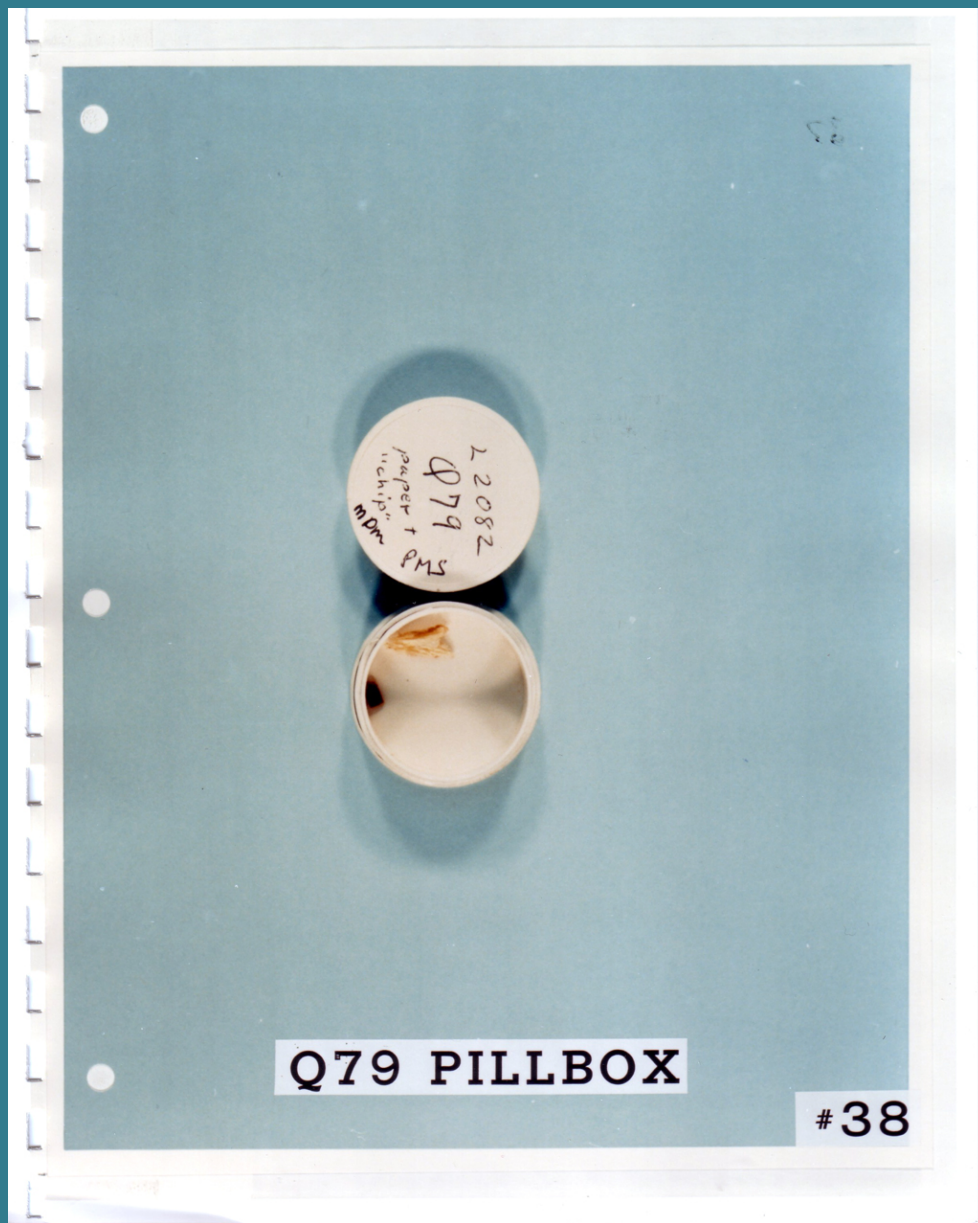




Q79 PILLBOX

#37



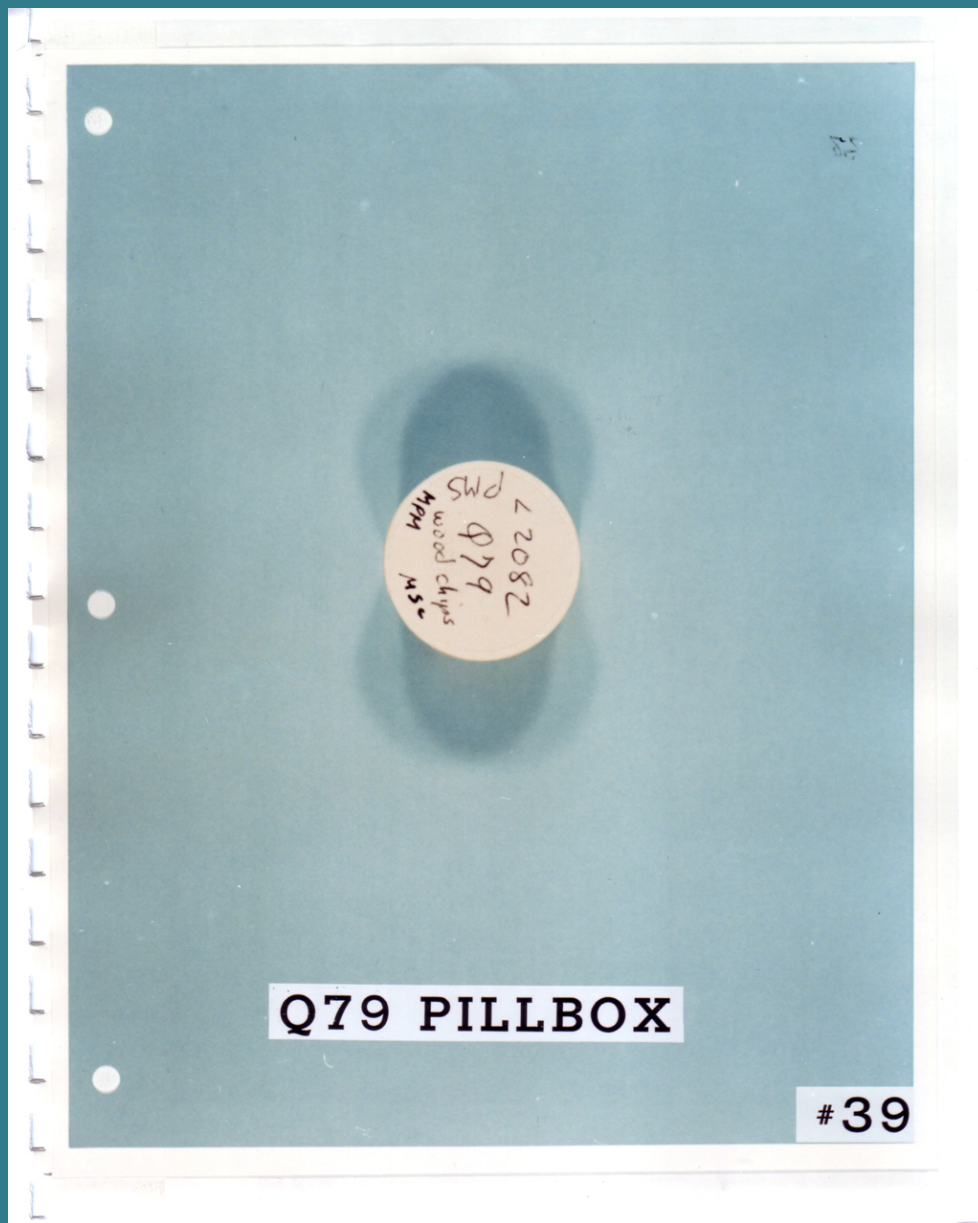


Q79 PILLBOX

#38



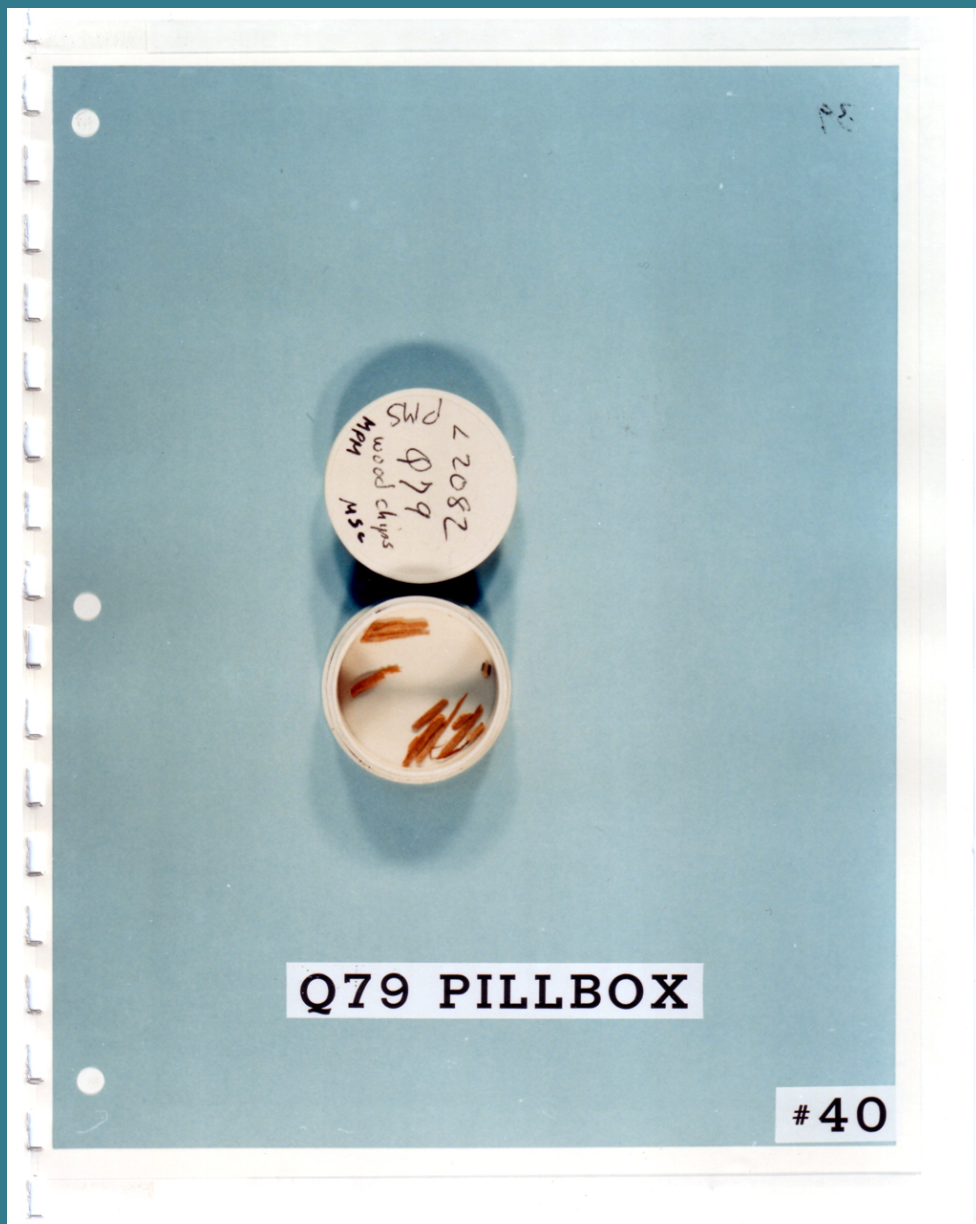


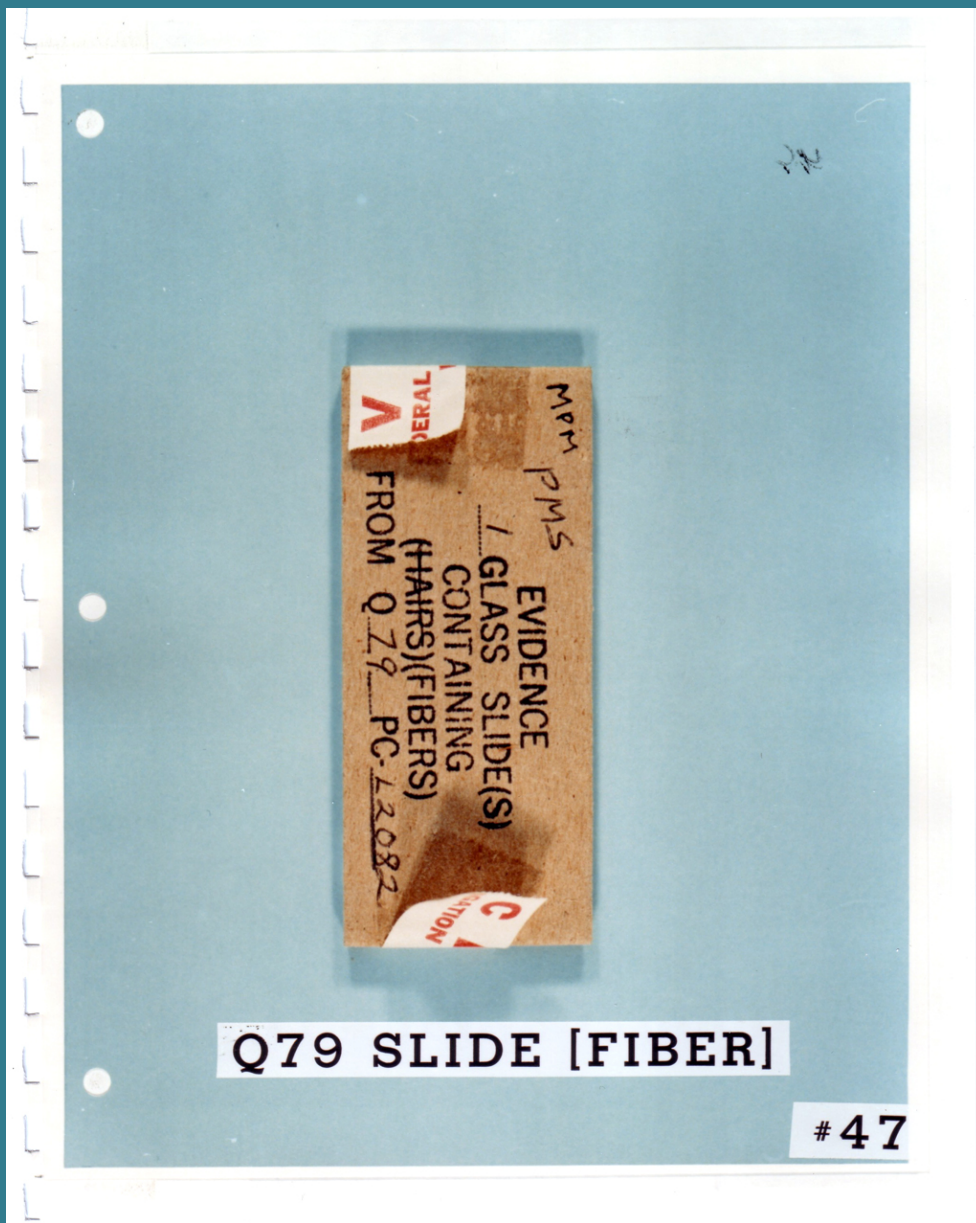


Q79 PILLBOX

#39







Q79 SLIDE [FIBER]

#47

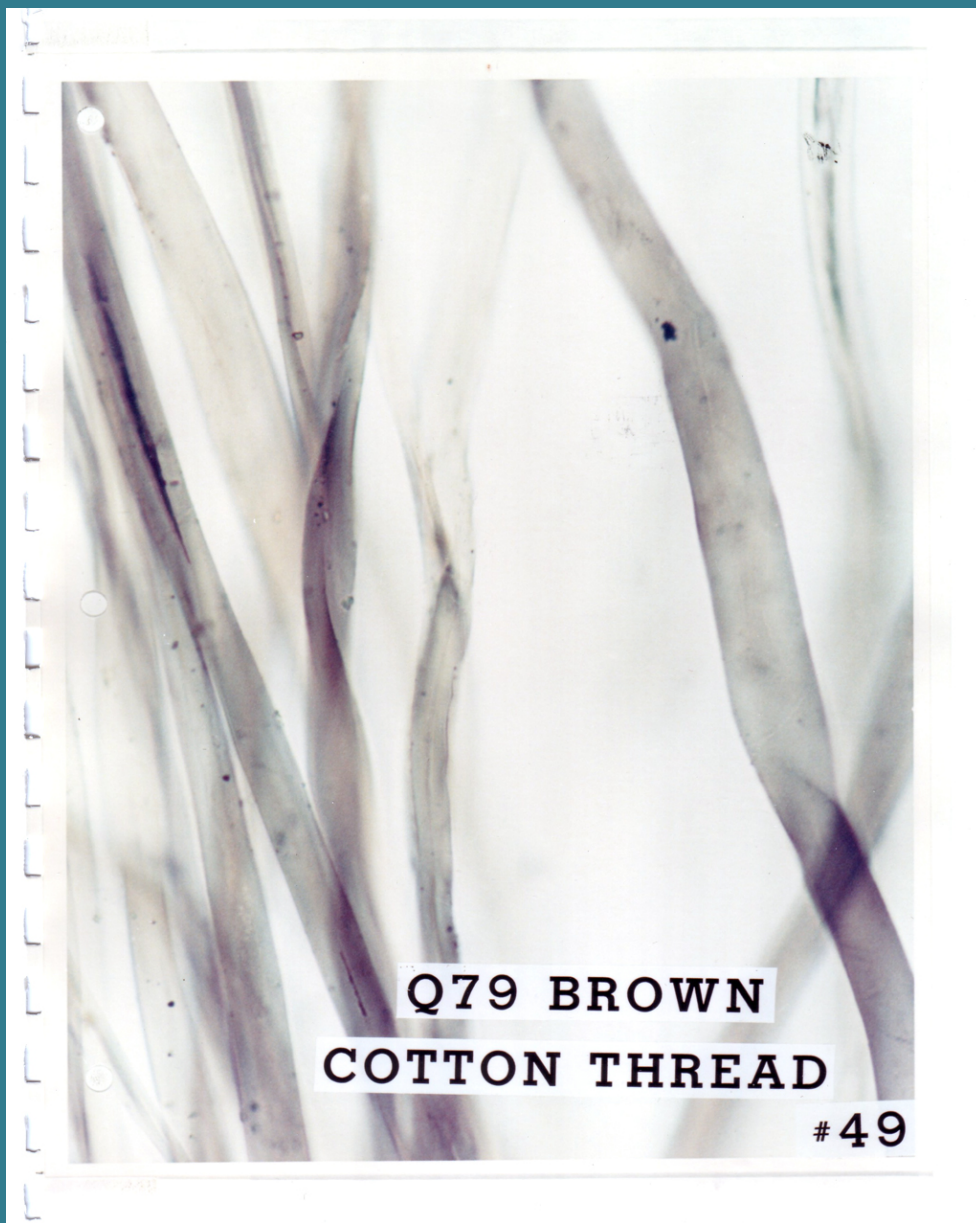




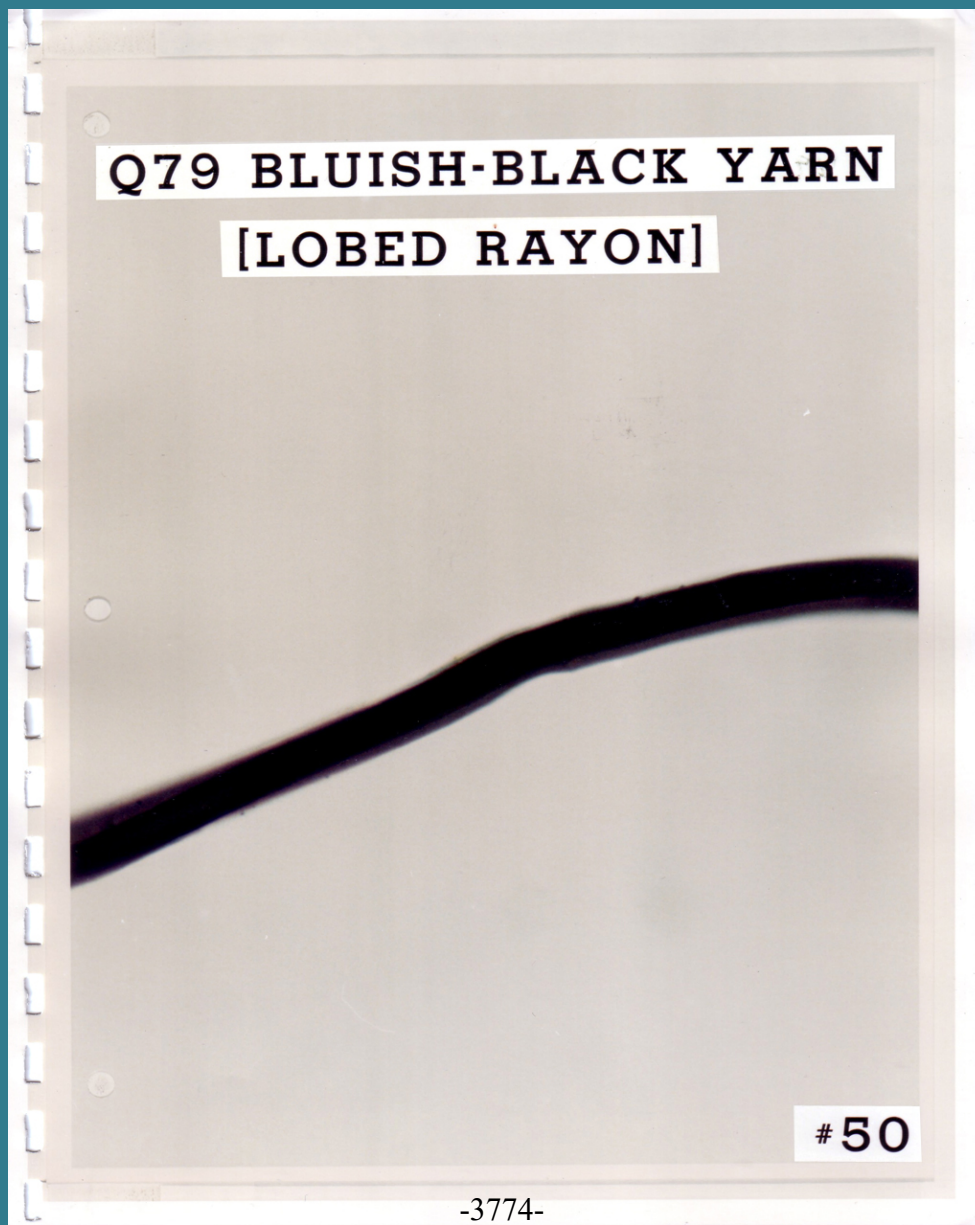
**Q79 SLIDE [FIBER]**

**#48**

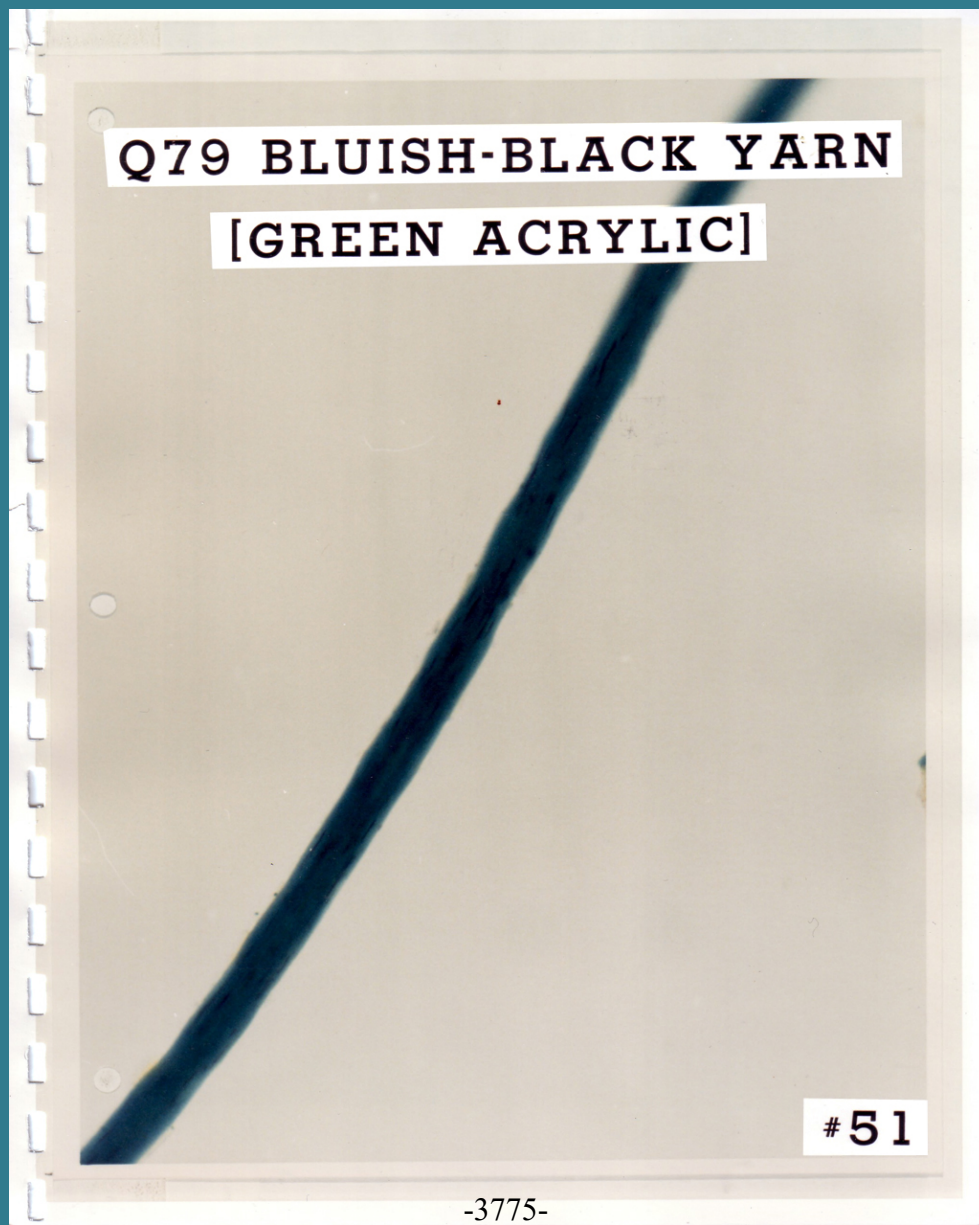




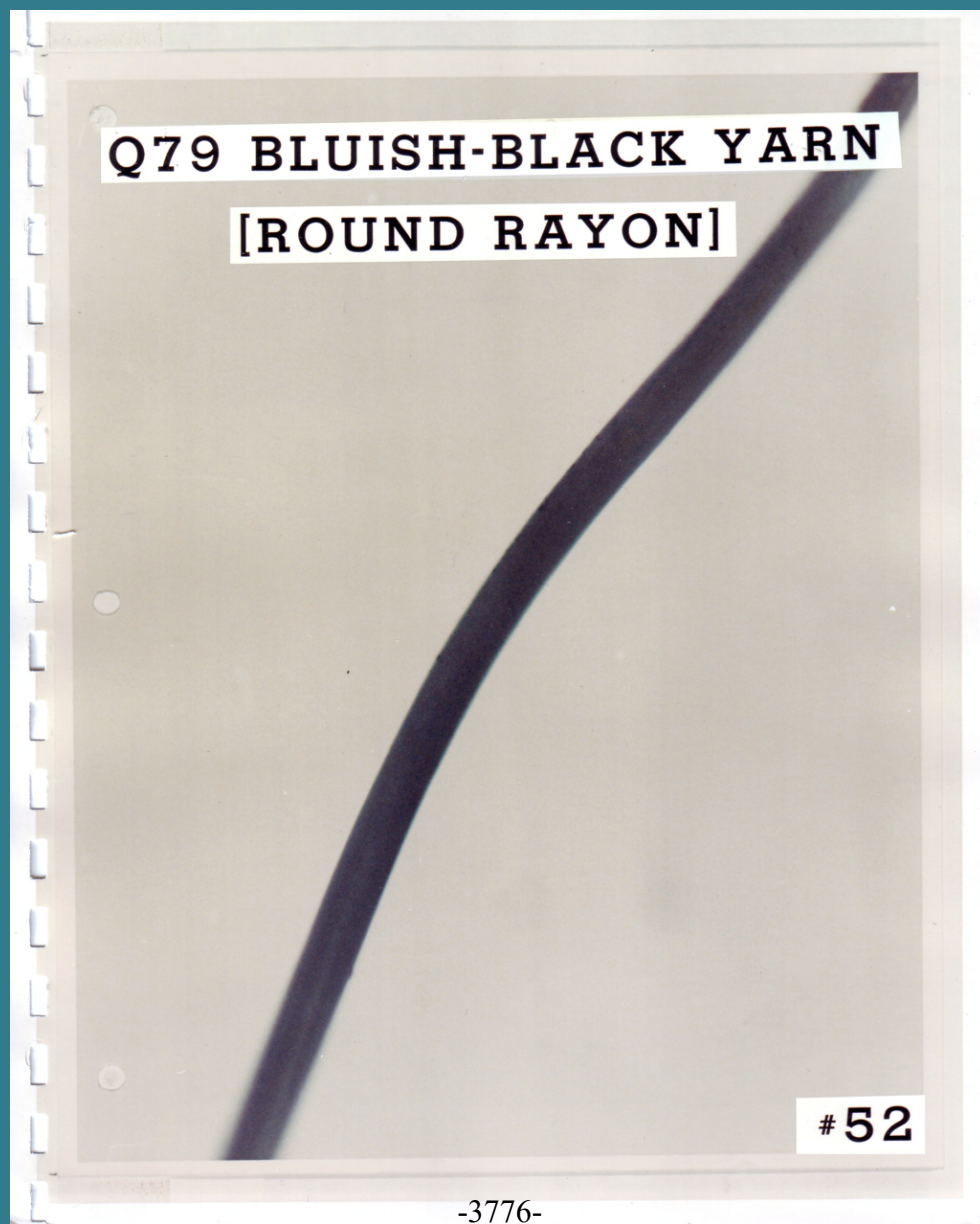
# Unsourced



# Un sourced



# Unsourced



-3776-





# AFDIL SPECIMEN 75A (E-303, Q79, GX 327)

Debris from Body Outline on Rug (Trunk & Legs Area)

Collected: 16 March 1970

- **Found on rug with other debris**
- **Does not appear to be forcibly removed**
- **Club Root = naturally shed hair**



**EAST (MASTER) BEDROOM**

COLETTE MAC DONALD ABO GROUP A



**EX-101**  
TORN BLUE PAJAMA TOP  
ABO GROUPS – A (COLETTE'S)  
AB (KIMBERLY'S), B (JEFFREY'S)

**EX-322**  
MULTICOLORED THROW RUG  
GROUP A

**EX-102**  
BLUE POCKET LIKE MATERIAL  
GROUP A

**EX-116**  
FIBERS from underside of THROW RUG  
PURPLE COTTON THREADS =  
PURPLE COTTON SEAM THREADS from  
BLUE PAJAMA TOP

**EX-103**  
BLUE SHEET  
GROUP A, GROUP AB

**EX-105**  
Piece of LATEX RUBBER with GROUP  
A BLOOD = PERRY BRAND SURGEON'S  
DISPOSABLE LATEX GLOVES

**EX-104**  
MULTICOLORED BEDSPREAD  
(inside sheet) GROUP A

**EX-107**  
DEBRIS from BEDSPREAD (EX-104)  
HAIR = COLETTE MAC DONALD  
PURPLE COTTON THREAD =  
BLUE PAJAMA TOP

**EX-125**  
SPLINTER, bearing  
TYPE A BLOOD = EX-306

**EX-126**  
DEBRIS from under HEAD OF CADAVER  
PURPLE COTTON THREADS =  
BLUE PAJAMA TOP  
BLUE POLYESTER/COTTON =  
BLUE PAJAMA TOP

**EX-325**  
DEBRIS from vicinity of LEFT HAND  
and ARM – PURPLE COTTON THREADS =  
PURPLE COTTON SEAM THREADS  
from BLUE PAJAMA TOP

**EX-109**  
PIECE of RUBBER = PERRY BRAND  
SURGEON'S DISPOSABLE LATEX GLOVES

**EX-314**  
HILTON BATH MAT  
ABO GROUPS A and AB  
STAINS = OLD HICKORY = ICE PICK

**EX-327**  
DEBRIS from under TRUNK and  
LEGS of RUG under BODY  
PURPLE COTTON THREADS =  
BLUE PAJAMA TOP BLUE  
POLYESTER/COTTON =  
BLUE PAJAMA TOP







# GOVERNMENT EXHIBIT 126 (E-24, Q87)

Debris Found Under Head of Colette MacDonald, 17 Feb 70

- **3 purple cotton sewing threads = MacDonald's blue pajama top**
- **1 blue cotton/polyester yarn = MacDonald's blue pajama top**





# AFDIL SPECIMEN 104A (1) HAIR (E-301, Q78)

**Hair #1** • “Has Root with Adhering Follicular Tissue”  
(Graham)

AFDIL SPECIMEN 104A(1) mtDNA SEQUENCE =  
Inconclusive Results



**Q78** Caucasian Pubic Hair (~1 3/4") Brown,  
Club Root, Tissue on Root (Small Amount)  
Dissimilar to Known Exemplar of Jeffrey MacDonald  
(FBI - FRAM)



# AFDIL SPECIMEN 104A (2) HAIR (E-301, Q78)

**Hair #2** • “Has Root with Small Amount of Adhering Tissue”  
(Bench Notes - Graham)

AFDIL SPECIMEN 104A(2) mtDNA SEQUENCE A  
= Colette MacDonald



**Q78** Brown Caucasian Body Area Hair (~1")  
Club Root (Pubic Area?)  
NSFCP

(FBI)

Naturally Shed

(FBI - FRAM)





# GOVERNMENT EXHIBIT 325 (E-301, Q78)

**Debris from Body Outline on Rug**

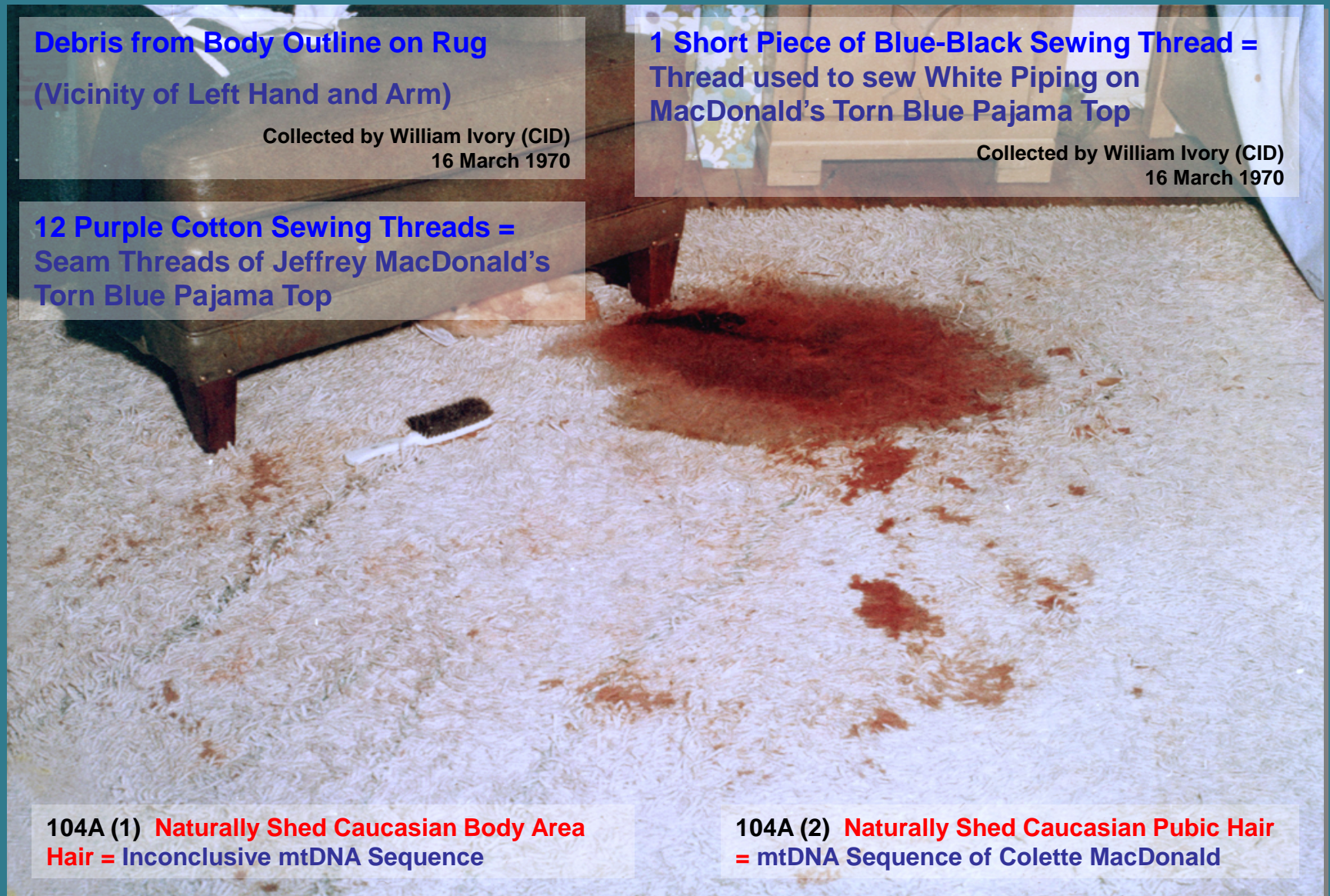
**(Vicinity of Left Hand and Arm)**

Collected by William Ivory (CID)  
16 March 1970

**1 Short Piece of Blue-Black Sewing Thread =  
Thread used to sew White Piping on  
MacDonald's Torn Blue Pajama Top**

Collected by William Ivory (CID)  
16 March 1970

**12 Purple Cotton Sewing Threads =  
Seam Threads of Jeffrey MacDonald's  
Torn Blue Pajama Top**



**104A (1) Naturally Shed Caucasian Body Area  
Hair = Inconclusive mtDNA Sequence**

**104A (2) Naturally Shed Caucasian Pubic Hair  
= mtDNA Sequence of Colette MacDonald**



# AFDIL 91A



# AFDIL SPECIMEN 91A

## Defense Contentions

- “One of three unidentified hairs found at the crime scene.”
- “Found with its root intact along with blood residue underneath the fingernail of three-year-old Kristen MacDonald, who at the crime scene was found murdered in her bed.”
- “Chemical analysis of the hair [D-237] by the CID indicated a finding of blood on the hair.”



# AFDIL SPECIMEN 91A

## Defense Contentions (cont)

- “It was described by the AFIP Lab Technicians as a human hair with root in tact (sic).”
- “Suggests that while she was defending herself against the blows from an intruder, she grabbed at or scratched back at the intruder such that as a result, the intruder’s hair came to reside under her fingernail.”
- “The hair is strongly probative of his innocence.”

DE-123, p. 2-3



## CRAIG CHAMBERLAIN'S INVENTORY NOTE, 26 FEB 70 (CID)

(35)

P-C-FP-82-70

26 Feb 70

CSC

~~D-230~~: one (1) white/peach colored pillow w/ gray/red  
 D-230 figure (from hospital w/ Cpt McDonald)

~~D-231~~: one (1) blue pillowcase w/ reddish-brown stains  
 D-231 (from hospital w/ Cpt McDonald)

(Exhibits 230 & 231 in same plastic bag)

D-232: Material, blue, appearing to come from pro-jama  
 top of McDonald (D-210)

D-233: Vial c/ fingernail scrapings marked "Left Hand"

D-234: Vial c/ fingernail scrapings marked "R. Hand Mother"

D-235: Vial c/ fingernail scrapings marked "R. Hand Kim"

D-236: Vial c/ fingernail scrapings marked "L. Hand Kim"

D-237: Vial c/ fingernail scrapings marked "L. Hand Chris"

D-238: Vial c/ fingernail scrapings marked "R. Hand Chris"

D-239: Vial c/ fingernail scrapings marked "Jeffrey"

-3789-



# JANICE S GLISSON'S SEROLOGY TEST RESULTS FOR "L.HAND CHRIS" 9 MARCH 70 (CID)

9 March 70  
P.C. FP. 82-70  
gss

### Repeat Crust Test

	A alb	B alb	C alb		
165	-	+	-		sealed plastic bag containing piece of
165	-	+	-		floor - stains taken from 2 sq. area
227	-	+	-		vial containing bloody fibres
227	-	+	-		"
64NB	-	+	-		area 2
64NB	-	-	-		area 2 - could be mixed
64NB	-	+	-		crusts from large blood stain (pool)
64NB	+	+	-		crusts from large blood stain (pool)
left hand 9/18/69 Mac	-	+	-		debris from left hand of Thos Mac. D-256
165	-	-	-		prints from ab. El. (L. hand)
165 (1)	-	-	-		numbers on the dip. pieces
165 (2)	-	+	-		of wood - 20 numbered
165 (3)	-	+	-		
165 (4)	-	-	-		
165 (5)	-	-	-		
165 (6)	-	-	-		
165 (7)	-	-	-		
left hand 1/18/70	-	-	-		
R Hand March	-	-	-	1	D-233
R Hand March	-	-	-	2	D-234
R Hand Columbian	-	-	-	3	D-235
L Hand Columbian	-	-	-	4	D-236
L Hand Columbian	-	-	-	5	D-237
R Hand Columbian	+	+	-	6	D-238
R Hand Columbian	-	-	-	7	D-239

} Chamberlain's  
Alpha - Numeric  
Designations



# JANICE S GLISSON'S SEROLOGY TEST RESULTS FOR "L.HAND CHRIS" (close up)

9 MARCH 70 (CID)

Chamberlain's  
Alpha  
Numeric  
Designations

<del>1st Hand</del>	-	-	1		D - 283
<del>2nd Hand</del>	-	-	2		D - 284
<del>3rd Hand</del>	-	-	3	larger child	D - 285
<del>4th Hand</del>	-	-	4	larger child	D - 286
<del>5th Hand</del>	-	-	5	smaller "	D - 287
<del>6th Hand</del>	+	+	6	smaller "	D - 288
<del>7th Hand</del>	-	-	7		D - 289

# BROWNING'S BENCH NOTES, 9 MARCH 70 (CID)

M.L.  
P.C. 11-82-70

(17)

9 March 70  
L.S.B.  
Horn & Johnson

green single strand nylon (green) identical  
to the green fiber from the multi-colored  
ring in the North bedroom.

Exhibit # D-237 - Fingernail scrapings  
from ~~Christina~~ left hand - Vial contained  
one microscopic piece of multi-strand  
polyester/cotton fiber identical to the  
fajama top material bloodstained but washed.

(1) Exhibit # E-7 - Hair-like substance  
removed from cage over arm chair in  
master bedroom - Vial contains one long  
blonde human head hair.

Exhibit # D-35 - White plastic hair brush  
with black bristles - Brush contained  
numerous dark brown hairs that appear  
to have been dyed - Base of hair is either  
gray or very light blonde. - Brush also  
contained numerous blonde hairs of  
various shades. - The conclusion as to  
origin of the various hairs.

G000220



## GLISSON'S BENCH NOTES, 27 JULY 70 (CID) (cont)

27 July 70  
P.F.A.D.C. - FD-82-70  
P-11 JH

Received in manila tape sealed box cont. br. paper bag labeled 137-70 cont two plastic bags stapled tog. 2 evid tags "13 plastic with cont. fingerprint samples, hair samples, fibers & veg. concerns taken from Victim at Wausau County Hospital" marked on bottom of right 17 Feb 70 BSH

#1 Notch - area around mouth. (Q&B)

fibers + one long hair

#2 right hand Notch (not marked by Browning)

on evid debris - 2 small fragments that could be hair, but no def. hairs found nothing was crossed up in the paper.

#3 anterior fibers smaller M. Donald child (Q&B)

one piece of straw like vegetation

#4 fingerprint samples right hand longer M. Donald female child (not labeled by Browning)

3 sm. frag. - + debris

#5 veg. sample ESB

#6 left hand (not labeled by Browning)

#7 fingerprint samples left hand smaller

female M. Donald (not labeled by Browning)

1 hair? - 2 fragments

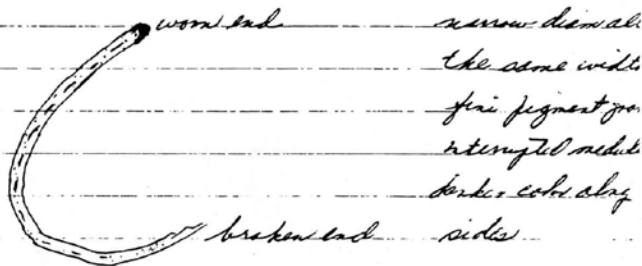
#8 fingerprint samples left hand longer M. Donald female child (not labeled by Browning) B



# GLISSON'S BENCH NOTES, 27 JULY 70 (CID) (cont)

#13 one hair - bloody

<sup>E-5</sup>  
#13 approx 1 inch - curved - worn end



E305 = too black

E306 = gray brown diam. varies - bulbous

E307 = gray brown

E308 = " " tapered

E309 = " " "

E310 = " " diam. varies - tapered - worn end but not

E311 = " " " " " like #13

E317 = black brown - diam. varies;

E318 = medulla too heavy; diam. varies; tapered

E-5 #13 <sup>compared</sup> to E306

mounted <sup>E-5</sup> between the two hairs of 306. The two hairs of 306 were not more pts. of same kind to each other than <sup>E-5</sup> had to them. Some areas

## GLISSON'S BENCH NOTES, 27 JULY 70 (CID) (cont)

ori. quite similar but the complex was so much  
 same as 306. - Calling 306 is tapered  
 slightly and <sup>E-5</sup> is all the same width and color.

#5 798 not similar to 300 thru 308

#10<sup>E-5</sup> approx 3" long - longer than any  
 from E-300 thru 308

medulla cont. & distinct for the most part  
 not intact; tapered end (rounded) \*

distinct pigment granules  
 not in E-300 thru 308; ~ #1 except  
 for length, but probably head hair.

#1 long head hair - bloody - long tapered end  
 not cut; distinct medulla - interrupted; \*

shrunken cont.; light brown chromatin.

Comparing <sup>E-5</sup> #33 - none of the hairs 300-308 had  
 the same type of wave, even shaft end.

did not label all the other visib. cont. fibers &  
 hairs (#1, #2, #8) but gave #2 & #8 correspond  
 to these #'s, since they are not going to  
 be reported by me.

#7

# "U.S. ARMY CHART OF EXHIBIT FINDINGS," (DEF. APP.1, TAB 3)

The following exhibits were processed by chemists at the US Army CI lab, Ft Gordon, GA. These chemists were Mrs. Janice S. GLISSON, SP4 Terry L. LABER, SP5 Larry L. PLINK, and SP4 Craig S. CHAMPERLAIN. All "Results" refer to blood type unless otherwise indicated.

- NOTE:
- a. The abbreviation's "BRBS" and "RBS" mean "bearing red-brown stains" and "red-brown stains", respectively.
  - b. If a stain has the result an indication of one type only, such as "indicated A", this means that the examiner considers the area type A, but has performed only one of the two complimentary blood typing tests (crust test or absorption-elution test).
  - c. The results of GLISSON'S comparison of Exhibits E-4 and E-5 with Exhibits E-305 thru E-313 are recorded with the results of BROWNING'S analysis, since this deals with hairs.

72-011

FOR OFFICIAL USE ONLY

Incl 5

1-S/17

Incl 5 - Exhibit S1 (Serology Tests) CID ROI - 71CID011-00015



**“U.S. ARMY CHART OF EXHIBIT FINDINGS,” (DEF. APP.1, TAB 3) (cont)**

Z1-C101-00015

EXHIBIT	DESCRIPTION	RESULTS
D-234	Fingernail scrapings from right hand of Collette MacDonald	indicated blood
D-235	Fingernail scrapings from right hand of Kimberly MacDonald	indicated blood
D-236	Fingernail scrapings from left hand of Kimberly MacDonald	indicated blood
D-237	Fingernail scrapings from left hand of Kristen MacDonald	indicated blood
D-238	Fingernail scrapings from right hand of Kristen MacDonald	indicated 0
D-239	Fingernail scrapings from Captain MacDonald	indicated blood
D-240(1-4)	White cabinet door BRBS from kitchen	indicated blood
D-241	Green sponge BRBS from kitchen	not blood
D-242	Yellow sponge BRBS from kitchen	not blood
D-243	Cap from baby food bottle BRBS from kitchen	not blood
D-244	Medical scrub brush BRBS from kitchen	indicated blood
D-245	Package containing surgeons gloves BRBS from kitchen	not blood
D-246	Plastic cover from "Kit" can BRBS from kitchen	not blood
D-247	RBS from inside of kitchen cabinet door	not blood
D-248	RBS from kitchen cabinet under sink between doors	indicated blood

RESULTS - SEROLOGY ONLY

S-1

Incl 5 - Exhibit S1 (Serology Tests) (cont.)



# "U.S. ARMY CHART OF EXHIBIT FINDINGS," (DEF. APP.1, TAB 3) (cont)

71-01011-0015

The following exhibits were given to Mr. D.O. BROWNING, Chemistry Division, US Army CI Lab, Fort Gordon, GA. The results of his analysis are summarized as follows. It should be noted in the interpretation of these results that

- a. The comparison samples of known hairs for Collette, ~~Kristen~~, and Kimberly MacDonald were obtained from their clothing
- b. An exhibit designation such as "D-210" in a column means that the listed exhibit is the same as Exhibit D-210, while a designation such as "-D-210" means that D-210 and the listed exhibit are different.
- c. This tabulation of data is only meant to be a handy summary of the report, not a substitute. For the exact interpretation of the laboratory analysis one should refer to the original report.
- d. For the sake of continuity of exhibit types, i.e. hairs, GLISSON'S comparison of hairs from E-4 and E-5 with E-305 thru E-313 is included in this tabulation.
- e. Blood results are included in this tabulation to show all the results for one exhibit in one place. These results were obtained by GLISSON, LAPER, FLINN, AND CHAMBERLAIN.

CONFIDENTIAL USE ONLY

EXHIBIT S-1

Jack

Incl 6 - Exhibit S1 (Browning & Serology Tests) (cont.)



# “U.S. ARMY CHART OF EXHIBIT FINDINGS,” (DEF. APP.1, TAB 3) (cont)

DA-CID 011-0015

EXHIBIT	DESCRIPTION	HAIRS	FIBERS	WOOD	PAINT	WAX	(BLOOD)
D-209	Clothing BRBS from Collette MacDonald	Collette					A.
D-221	Terry cloth robe BRBS	Kimberly	D-210				ind. blood
D-227	Green-blue-yellow throw rug BRBS from east bedroom	Collette Kimberly					A
D-229	Multicolored bed spread BRBS from east bedroom	Collette Kimberly	D-210				A
D-237	Fingernail scrapings from left hand of Collette MacDonald		D-210				ind. blood
D-48MB	RPS from floor near east side of bed from north bedroom	Kristen					0  S-1

Incl 6 - Exhibit S1 (Browning & Serology Tests) (cont.)





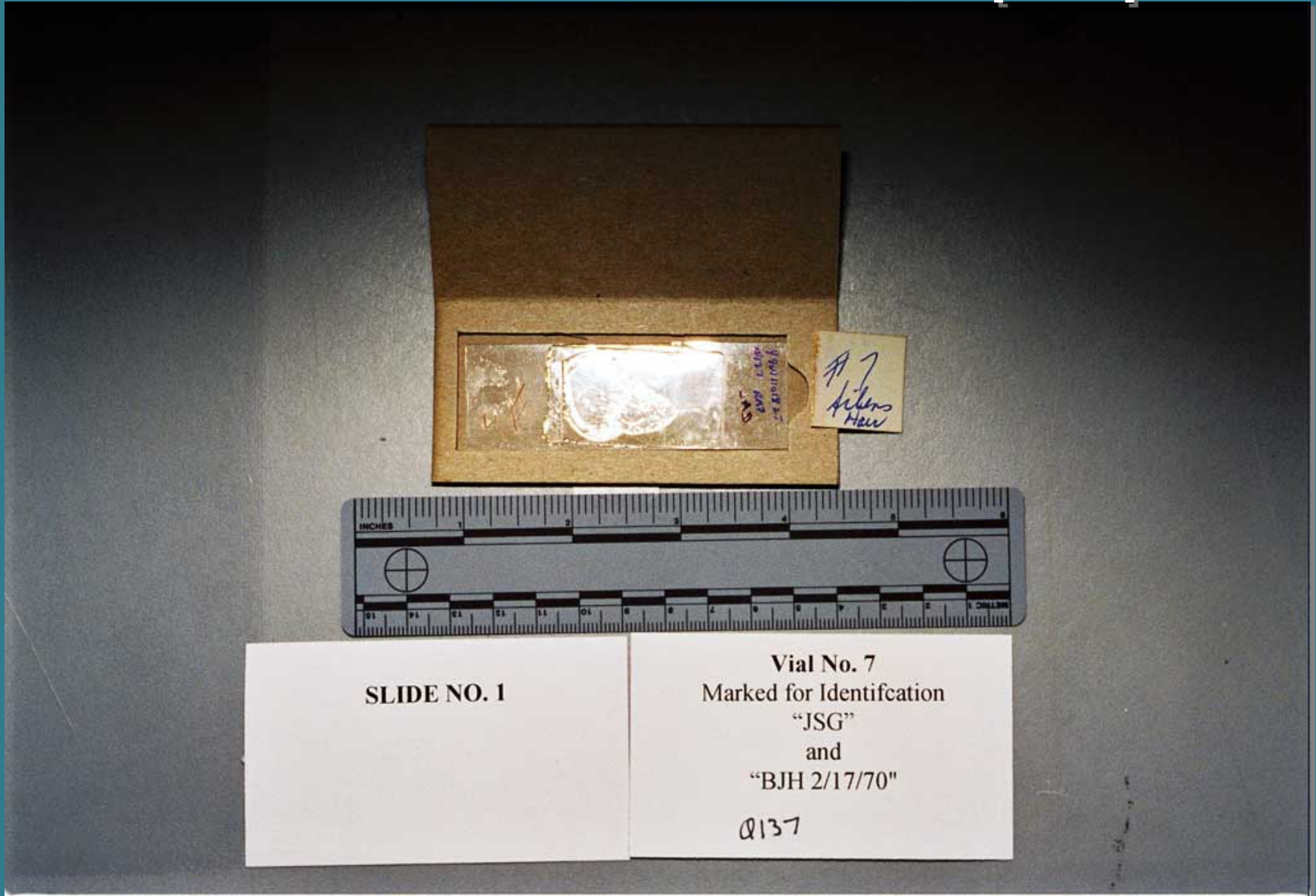
# GOVERNMENT'S PHOTOGRAPHIC SUBMISSIONS (GPS) FILED 1999-2000 / VOL-THREE #153 [FRAM]



Vial No. 7  
 Marked for Identification  
 "JSG"  
 and  
 "BJH 2/17/70"



# GOVERNMENT'S PHOTOGRAPHIC SUBMISSIONS (GPS) FILED 1999-2000 / VOL-THREE #156 [FRAM]



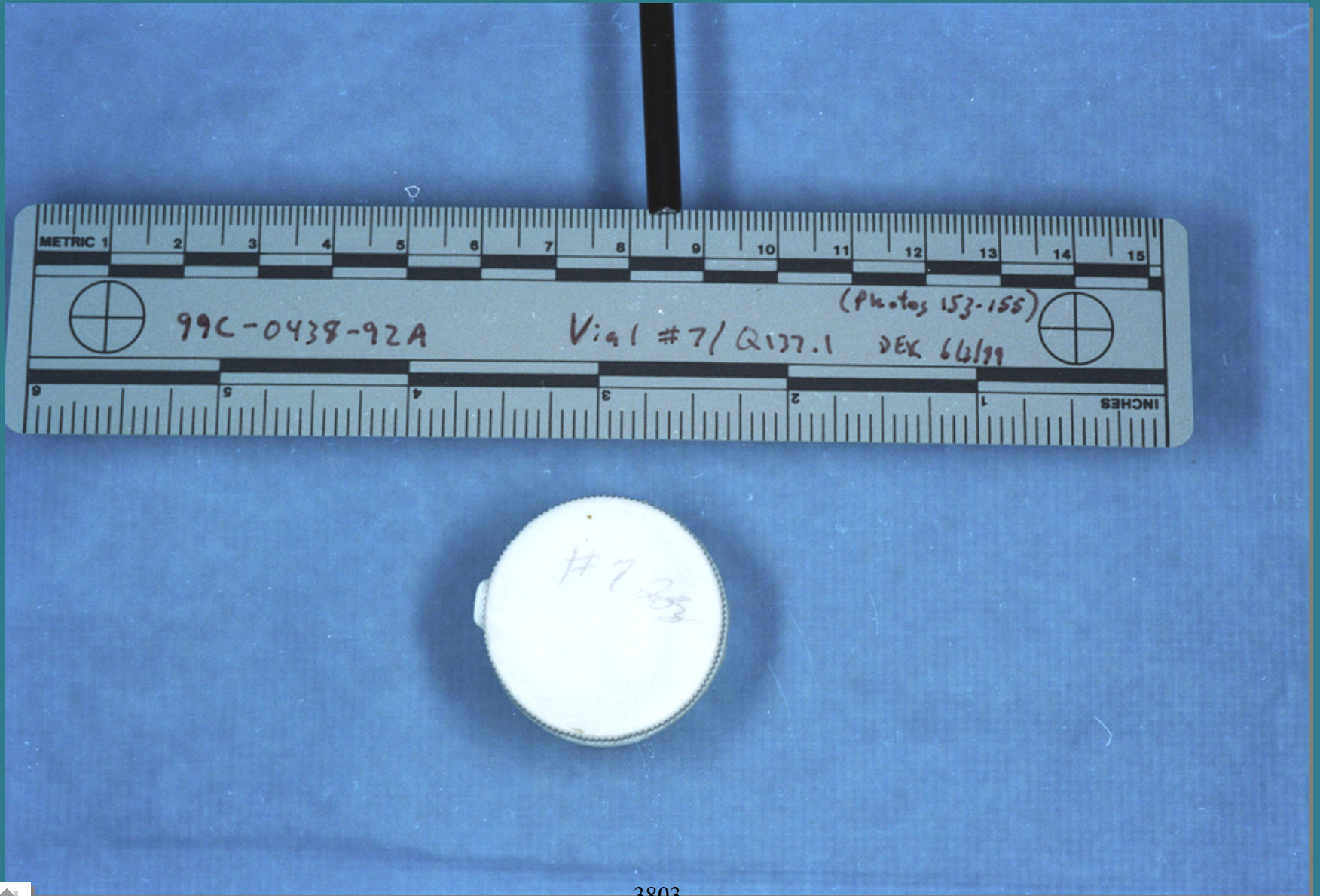
SLIDE NO. 1

Vial No. 7  
Marked for Identification  
"JSG"  
and  
"BJH 2/17/70"

Q137



# AFDIL



# AFDIL

VIAL MFI • “#7 JSG”

[Janice Glisson 07.27.70]



# AFDIL



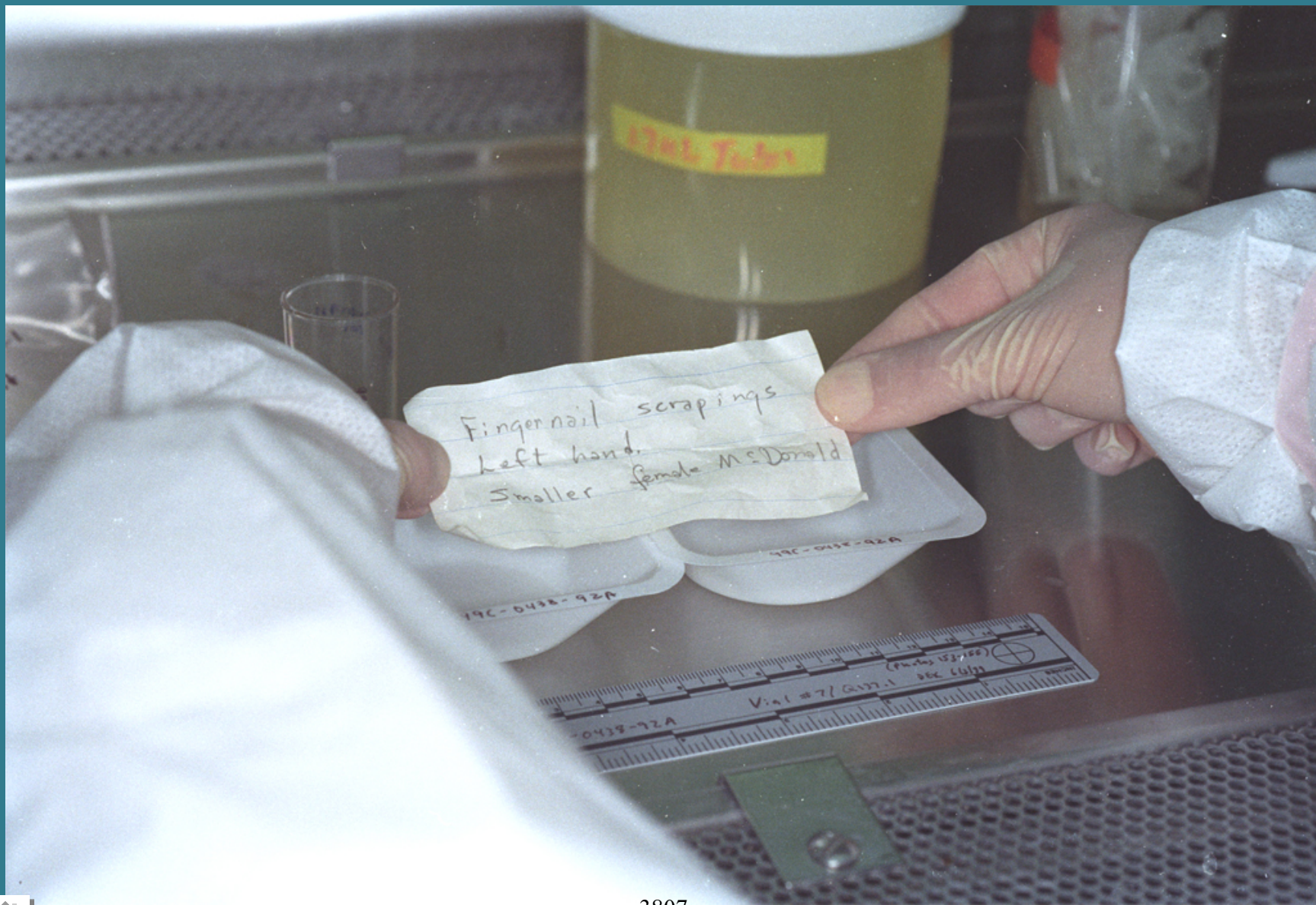
# AFDIL

**BJH • 17 Feb 1970**

**[Bennie J. Hawkins]**



# AFDIL



# AFDIL

## FBI Designation

Q137 = Slide #7 = 91A





# AFDIL



GOVERNMENT  
EXHIBIT  
3411  
3:75-CR-26-F



# SPECIMEN 91A (GX 285) (Q137)

from Autopsy Vial #7, Mounted by Janice Glisson 27 July 70)

**"#7 fibers + one light brown narrow hair, no medulla, striated; intact root; tapered end"**

"Not similar to 300 thru 308  
305 thru 313 correction"

(Bench Notes - Microscopic - Glisson 27 July 70)



**No Mention of "D-237"**

**No Mention of Blood Being Present**

**Mitochondrial DNA Analysis = Not consistent  
With any other sample tested  
[Stoeckley, Mitchell or MacDonald Family Members]**



# SPECIMEN 91A (GX 285) (Q137)

from Autopsy Vial #7, Mounted by Janice Glisson 27 July 70)

**“#7 fibers + one light brown narrow hair, no medulla, striated; intact root; tapered end”**

“Not similar to 300 thru 308  
305 thru 313 correction”

(Bench Notes - Microscopic Exam - Glisson 27 July 70)



**(No Mention of Blood Being Present)**

**Mitochondrial DNA Analysis = Not consistent  
With any other sample tested  
[Stoeckley, Mitchell or MacDonald Family Members]**



# SPECIMEN 91A (GX 285) (Q137)

from Autopsy Vial #7, Mounted by Janice Glisson 27 July 70

## Q137

- Caucasian Hair (~3/4")
- Club Root
- Very Fine
- NAT (Natural) Tip
- NSFSCP



(FRAM Affidavit)

Mitochondrial DNA Analysis = Not consistent  
with any other sample tested  
[Stoeckley, Mitchell or MacDonald Family Members]



# SPECIMEN 91A (GX 285) (Q137)

from Autopsy Vial #7, Mounted by Janice Glisson 27 July 70

## Slide 99c-0438-91A:

“Contains one human hair with root but no tissue.”

(Bench Notes-Graham)

“The slide is poor condition with dried mounting medium on top of the cover slip. Contains one fiber with red adhering material that appears to be blood. Fiber marked with red dot and “1” for better identification. Also contains one (1) human hair with root, but no tissue. Hair is white in color, approximately 5mm long, approximate maximum shaft diameter is 29.4 [microns].”



(OAFME Report, ¶13, 11/30/99 - Graham)

“Root of hair (human)”

(Photo Log - Graham)

**Mitochondrial DNA Analysis = Not consistent with any other sample tested [Stoeckley, Mitchell or MacDonald Family Members]**



# SPECIMEN 91A (GX 285) (Q137)

from Autopsy Vial #7, Mounted by Janice Glisson 27 July 70



“Hair Tip (Human)”

(Photo Log - Graham)

**Mitochondrial DNA Analysis = Not consistent  
With any other sample tested  
[Stoeckley, Mitchell or MacDonald Family Members]**



# SPECIMEN 91A (GX 285) (Q137)

from Autopsy Vial #7, Mounted by Janice Glisson 27 July 70

- **No Evidence of Blood Present**
- **No Pigment Down into Root**
- **Root Not Amorphous or Stretched out**
- **No Follicular Tag Present**
- **No Skin Sheath Present**
- **Hair Not Actively Growing (Telogen Phase)**
- **No Other Evidence of Forcible Removal**



Based on CID/FBI and OAFME Microscopic

**CONCLUSION: Naturally Shed Hair without any evidence of Blood**

**Mitochondrial DNA Analysis = Not consistent  
With any other sample tested  
[Stoeckley, Mitchell or MacDonald Family Members]**



# SPECIMEN 91A

## Evidence in Support of Refutation of Defense Contentions

- No evidence this hair was found at the crime scene.
- No evidence this hair was observed or found at autopsy under Kristen's fingernail.
- No evidence that CID LAB used "D-237" in reference to a hair.
- No evidence this hair was observed or noted during prior examination of "D-237".





# SPECIMEN 91A

## Evidence in Support of Refutation of Defense Contentions (cont)

- No evidence that Browning found a hair in the vial he referred to as “Exhibit D237- fingernail scrapings from Christine’s Left Hand.”
- No evidence that the (91A) hair had blood on it.
- If the (91A) hair had actually been under the fingernail it would have had blood on it.



# SPECIMEN 91A

## Evidence in Support of Refutation of Defense Contentions (cont)

- Presence of hair in vial was first recorded on July 27, 1970 by CID Chemist Janice Glisson.
- Glisson did not use “D-237” to refer to slide #7.
- No chemical analysis of the hair for the presence of blood was ever done at the CID Lab, and consequently, no report ever reflected the indication of blood on this hair.



# SPECIMEN 91A

## Evidence in Support of Refutation of Defense Contentions (cont)

- Glisson's Bench Notes of July 27, 1970 describe the hair on slide #7 as having an "intact root," but make no mention of blood.
- Glisson's use of the term "intact root" does not imply that the hair was forcibly removed.
- AFIP Technician Grant Graham did not describe the hair as having an "intact root," but rather as a "human hair with root, but no tissue".



# SPECIMEN 91A (Q137)

## Evidence in Support of Refutation of Defense Contentions (cont)

- No evidence of how a root without any tissue can be an “intact root”.
- MacDonald has offered no competent expert opinion to support his counsel equating an “intact root” of a hair with proof of forcible removal of the hair.
- Examination of the hair and photo-micrographs by a qualified FBI Expert reflects that the hair was naturally shed, and not forcibly removed.



# SPECIMEN 91A (Q137)

## Evidence in Support of Refutation of Defense Contentions (cont)

- The FBI Expert's conclusion is based upon the following observable characteristics:
  - The hair has a “club root,” indicating that it was not actively growing.
  - There is no observable pigment in the root.
  - The root is not amorphous or stretched out.
  - No skin sheath is present.
  - No follicular tag or tissue is present.
  - There is no other observable basis for concluding that the hair was forcibly removed.



# SPECIMEN 91A

## Evidence in Support of Refutation of Defense Contentions (cont)

- There is no evidentiary basis to support the defense suggestion that the hair was forcibly removed from an intruder or that it was found at the crime scene, or at autopsy, under Kristen's fingernail.
- Hair 91A's Mitochondrial DNA SEQUENCE also does not match that of specimen 58A(1), the naturally shed unidentified hair on Kristen's bedspread.



# SPECIMEN 91A

## Evidence in Support of Refutation of Defense Contentions (cont)

- Even if one assumes that the undetected hair was recovered at autopsy, there are other possible explanations for its presence.
- Kristen's bedding was contaminated with foreign debris, including other naturally shed hairs.



# SPECIMEN 91A

## Evidence in Support of Refutation of Defense Contentions (cont)

- Kristen's body was moved by the doctor who pronounced her dead.
- Kristen's hands were not "bagged" at the crime scene and the hair could have resulted from contamination during the process of her removal by Medics to the mortuary.
- Kristen's body was undressed and placed in a mortuary refrigerator prior to her autopsy.





# SPECIMEN 91A

## Evidence in Support of Refutation of Defense Contentions (cont)

- Under the circumstances of this case, the presence of an unsourced naturally shed hair, 5mm in length, is not strongly probative of MacDonald's innocence.
- The hair is merely specious evidence, in addition to that rejected by the jury, which does not in any way detract from the evidence at trial which established his guilt beyond a reasonable doubt.



# AFDIL 58A



# AFDIL 58A



# AFDIL SPECIMEN 58A(1) DEFENSE

## CONTENTIONS DE-123, p. 4

### Hair Removed from Kristen's Bedspread

- 58A(1) was a hair found at the crime scene on the bedspread of Kristen MacDonald.
- Kristen MacDonald was murdered in her bed.
- According to the AFIP Laboratory Notes of Grant Graham, "It is a hair with root intact."



# AFDIL SPECIMEN 58A(1) DEFENSE CONTENTIONS

## Hair Removed from Kristen's Bedspread (cont)

- “An intact root suggests that the hair was forcibly removed.”
- “The Mitochondrial DNA SEQUENCE was not consistent with any other sample tested.”
- “The unidentified hair is profound new evidence of intruders which could not have been previously discovered through the exercise of due diligence.”

DE-122, p. 3-4



# GX 982

## NORTH BEDROOM KRISTEN MAC DONALD— ABO TYPE O

**EX-378** [D-69 NB]  
STAINS on WEST WALL  
TYPE A BLOOD (COLETTE'S TYPE)

**EX-379** [D-70 NB]  
STAINS on WEST WALL  
TYPE A BLOOD (COLETTE'S TYPE)

**EX-372** [E-63 NB] (Q-83)  
DEBRIS from BOTTOM SHEET  
SPLINTER = EX-306 (A) (Q-14)

**EX-362** [E-52 NB] (Q-87)  
DEBRIS from BEDSPREAD  
PURPLE COTTON THREAD IDENTICAL  
to PURPLE COTTON SEAM THREADS of  
BLUE PAJAMA TOP

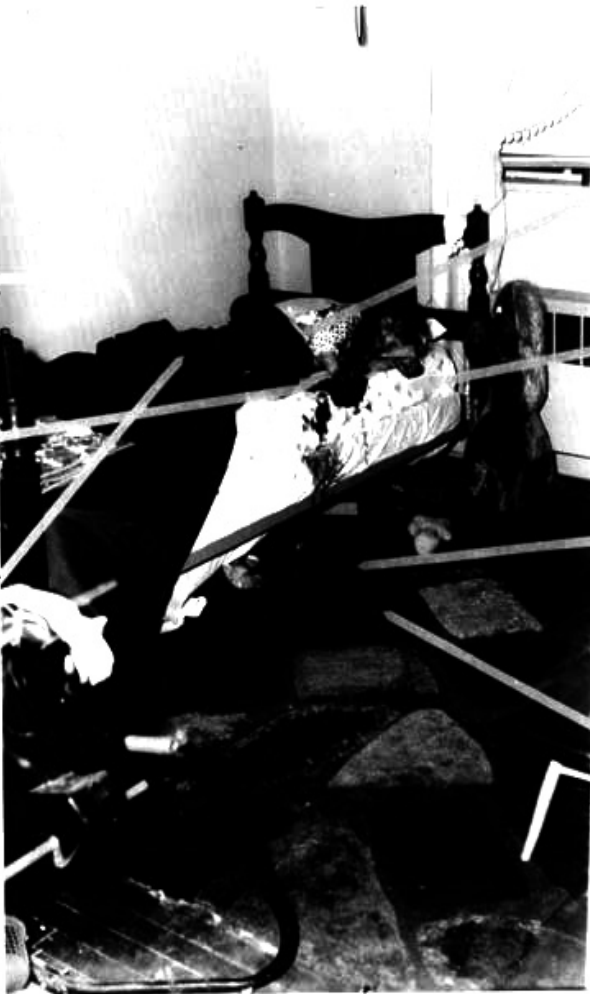
**EX-364** [D-56 NB]  
**EX-365** (STAIN #1) - TYPE A BLOOD (COLETTE'S TYPE)  
**EX-366** (STAIN #2) - TYPE A BLOOD (COLETTE'S TYPE)  
**EX-367** (STAIN #3) - TYPE AB BLOOD (KIMBERLY'S TYPE)

**EX-371** [D-60 NB]  
TOP SHEET from BED  
STAIN #4. TYPE A BLOOD (COLETTE'S TYPE)  
STAIN #5. TYPE A BLOOD (COLETTE'S TYPE)

**EX-373** [D-64 NB]  
BOTTOM SHEET  
STAIN #2. TYPE A BLOOD (COLETTE'S TYPE)

**EX-359** [D-48 NB]  
**EX-360** [D-49 NB] = TYPE O BLOOD (KRISTEN'S TYPE)  
**EX-361** [D-50 NB]

**EX-357** [D-36 NB] (Q-126)  
GREEN YARN from RUG  
TYPE O BLOOD (KRISTEN'S TYPE)  
GREEN YARN IDENTICAL to GREEN YARNS  
found on RIGHT TABLE, MASTER BEDROOM  
SAME TYPE of YARN KNOWN to HAVE  
BEEN WORN by COLETTE MAC DONALD



# NORTH BEDROOM

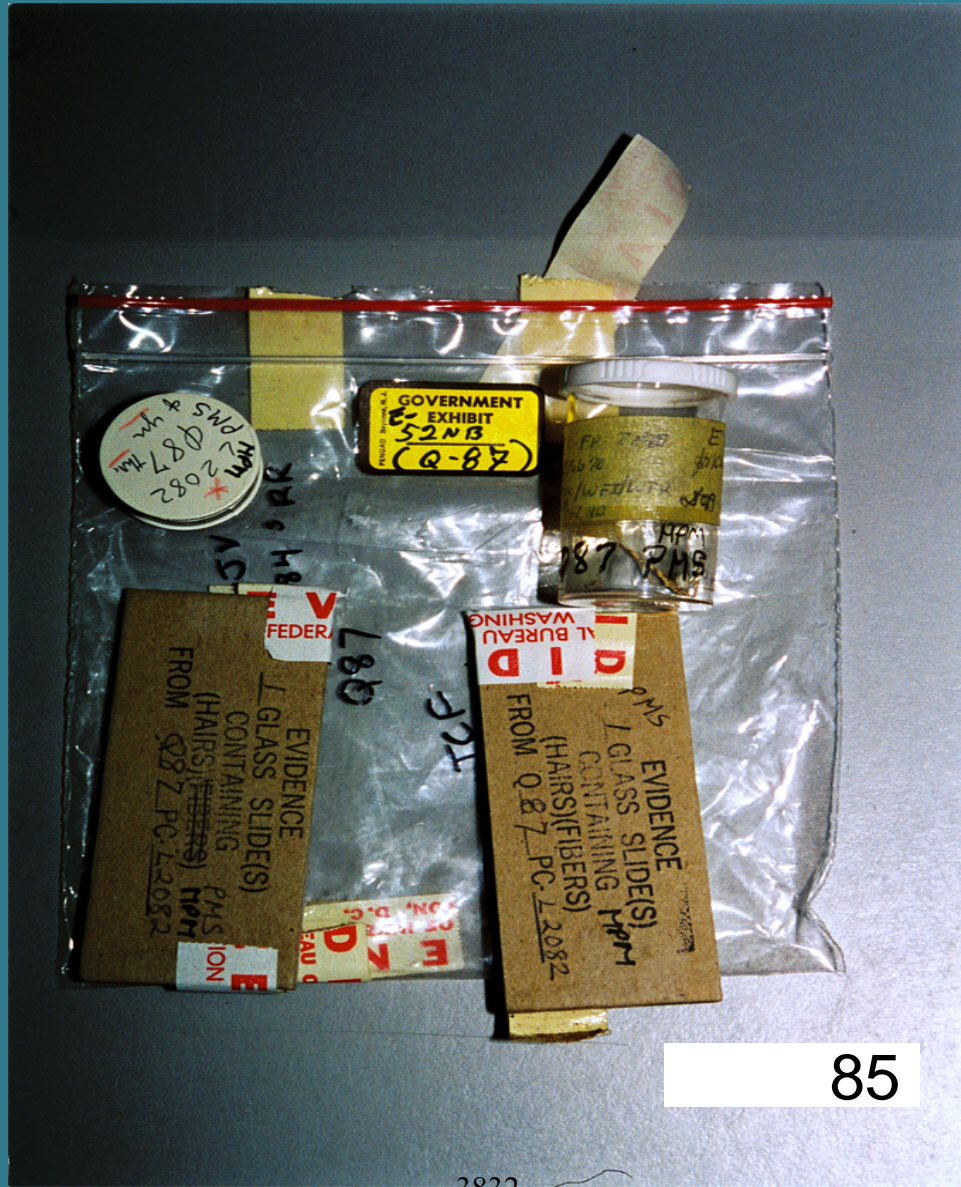
Kristen MacDonald

## GX-362 - Trial

- Debris from bedspread: purple cotton thread identical to purple cotton seam threads of blue pajama top



# GOVERNMENT'S PHOTOGRAPHIC SUBMISSIONS (GPS) VOLUME TWO



85



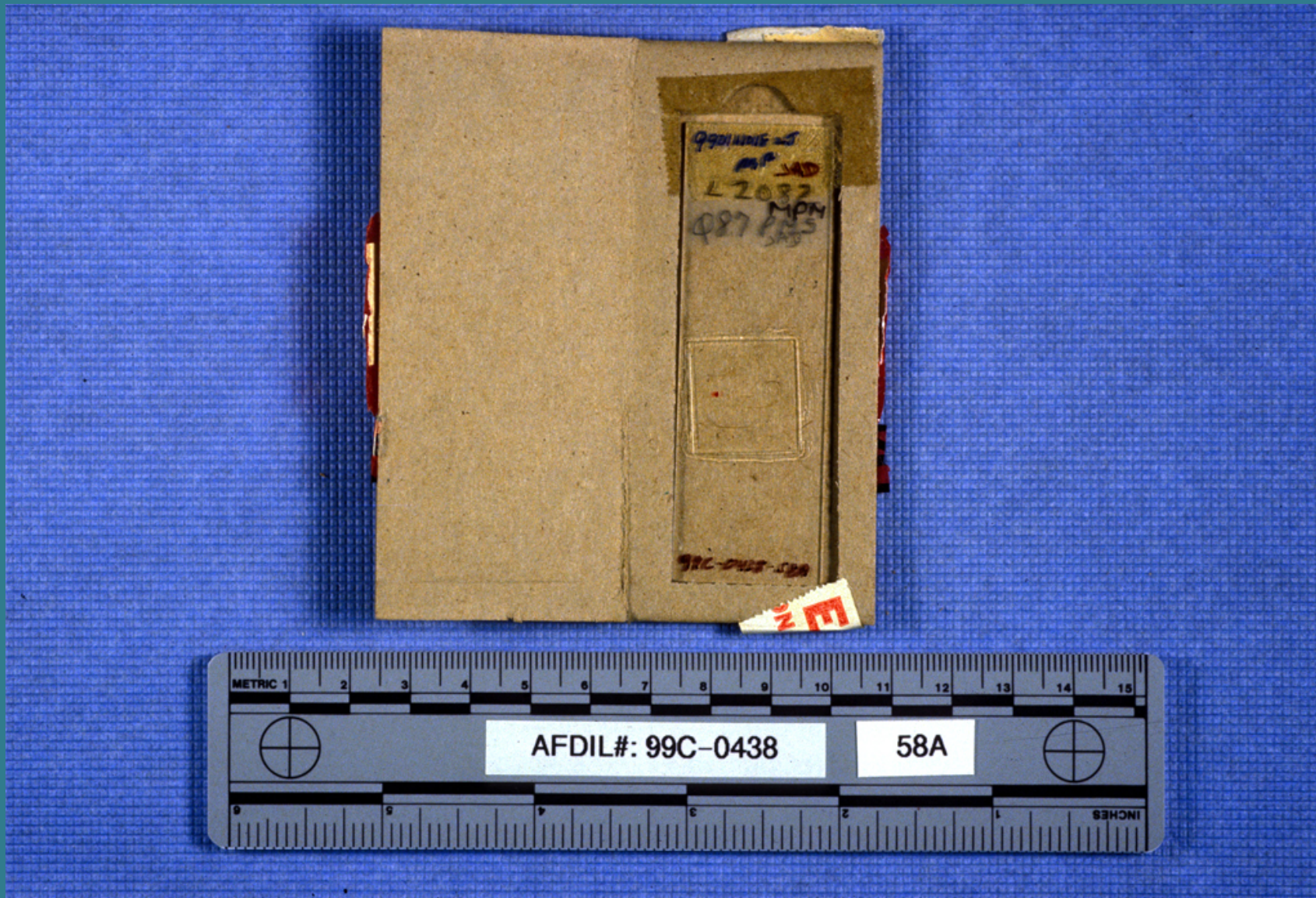


# GOVERNMENT'S PHOTOGRAPHIC SUBMISSIONS (GPS) VOLUME TWO



990/11018 28 NAF JMS  
 FROM (HAINES) NPM  
 Q8 Z PC-L2082  
 99C-0438  
 58A  
 DESIGNER  
 HEADLINE  
 CHING





# AFDIL SPECIMEN 58A (1) (E-52NB, Q87, GX362)

(Debris From Kristen's Bedspread)

## Slide 99C-0438-58A:

Contains Two Human Hairs.

Both have Roots but No Tissue.

**Hair #2: [Not marked with Red Dot]**

- Has a Slightly Rounded Tip.

(Bench Notes - Graham)

**AFDIL 58A(1) mtDNA SEQUENCE not consistent with any other Sample Tested**

[Stoeckley, Mitchell & MacDonald Family Members]



**Root of Hair #1 (Human)**

(Photo Log - Graham)



# AFDIL SPECIMEN 58A (1) (E-52NB, Q87, GX362) (Debris From Kristen's Bedspread)

**AFDIL 58A(1) mtDNA SEQUENCE not consistent  
with any other Sample Tested**  
[Stoeckley, Mitchell & MacDonald Family Members]



**Tip of Hair #1 (Human)**

(Photo Log - Graham)



# AFDIL SPECIMEN 58A (1) (E-52NB, Q87, GX362)

(Debris From Kristen's Bedspread)

- Root not amorphous or stretched out
- No follicular tag present
- No skin sheath present
- Hair not actively growing (Telogen phase)
- No other evidence of forcible removal

**CONCLUSION: NATURALLY SHED HAIR**

**AFDIL 58A(1) mtDNA SEQUENCE not consistent with any other Sample Tested**

[Stoeckley, Mitchell & MacDonald Family Members]



**Q87 Caucasian Body Area Hair Fragment**

- Approximately 1/8-inch
- Dark Brown
- Club Root

(FRAM) (GPS, Vol., Four, #220)



# AFDIL SPECIMEN 58A (2) (E-52NB, Q87, GX362) (Debris From Kristen's Bedspread)

## Slide 99C-0438-58A:

Contains Two Human Hairs.  
Both have Roots but No Tissue.

### Hair #2: [Not marked with Red Dot]

- Has a Slightly Rounded Tip.

(Bench Notes - Graham)

**AFDIL 58A(2) mtDNA SEQUENCE  
consistent with SEQUENCE B**

**mtDNA SEQUENCE B = Jeffrey MacDonald**

### Tip and Shaft of Hair #2 (Human)

(Photo Log - Graham)



# AFDIL SPECIMEN 58A (2) (E-52NB, Q87, GX362) (Debris From Kristen's Bedspread)

**AFDIL 58A(2) mtDNA SEQUENCE  
consistent with SEQUENCE B**

**mtDNA SEQUENCE B = Jeffrey MacDonald**



**Shaft of Hair #2 (Human)**

(Photo Log - Graham)





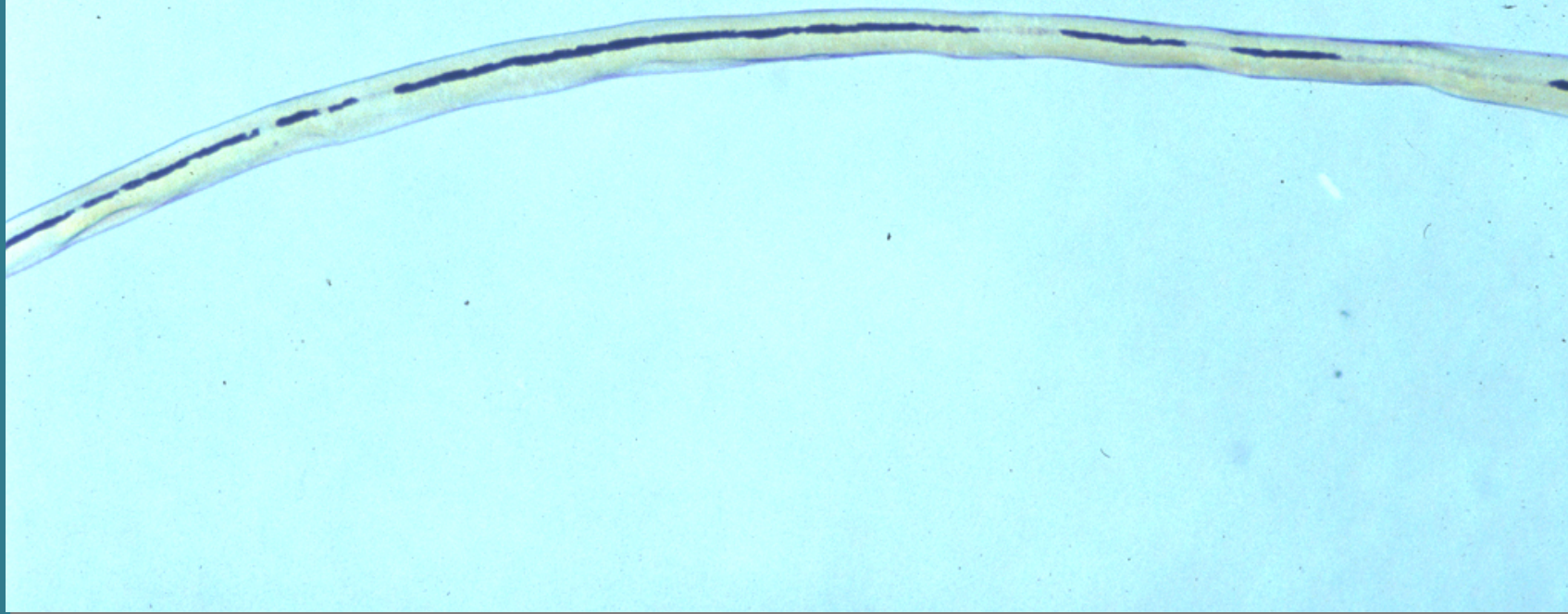
# AFDIL SPECIMEN 58A (2) (E-52NB, Q87, GX362) (Debris From Kristen's Bedspread)

**AFDIL 58A(2) mtDNA SEQUENCE  
consistent with SEQUENCE B**

**mtDNA SEQUENCE B = Jeffrey MacDonald**

**Shaft of Hair #2 (Human)**

(Photo Log - Graham)



# AFDIL SPECIMEN 58A (2) (E-52NB, Q87, GX362) (Debris From Kristen's Bedspread)

## Slide 99C-0438-58A:

Contains Two Human Hairs.

Both have Roots but No Tissue.

### Hair #2: [Marked with Red Dot]

- Has a Slightly Rounded Tip.

(Bench Notes - Graham)

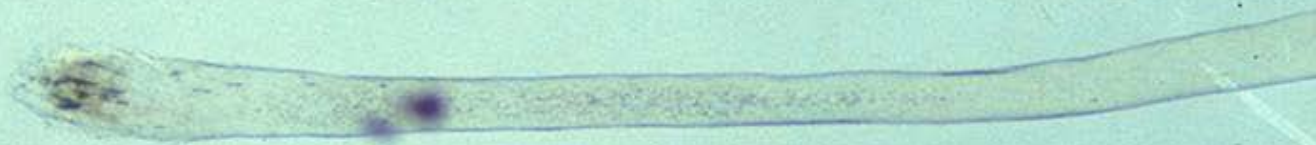
**AFDIL 58A(2) mtDNA SEQUENCE  
consistent with SEQUENCE B**

**mtDNA SEQUENCE B = Jeffrey MacDonald**



### Root of Hair #2 (Human)

(Photo Log - Graham)



# AFDIL SPECIMEN 58A (2) (E-52NB, Q87, GX362)

(Debris From Kristen's Bedspread)

## Slide 99C-0438-58A:

Contains Two Human Hairs.

Both have Roots but No Tissue.

**Hair #2: [Marked with Red Dot]**

- Has a Slightly Rounded Tip.

(Bench Notes - Graham)

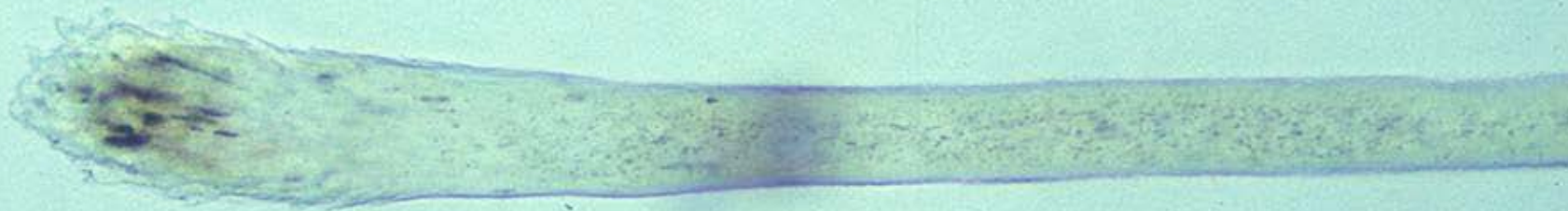
AFDIL 58A(2) mtDNA SEQUENCE  
consistent with SEQUENCE B

mtDNA SEQUENCE B = Jeffrey MacDonald



## Root of Hair #2 (Human)

(Photo Log - Graham)



# AFDIL SPECIMEN 58A (2) (E-52NB, Q87, GX362)

(Debris From Kristen's Bedspread)

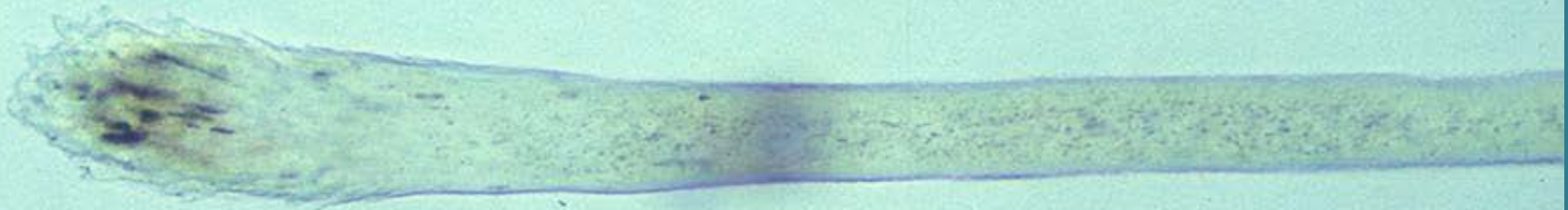
- Root not amorphous or stretched out
- No follicular tag present
- No skin sheath present
- Hair not actively growing (Telogen phase)
- No other evidence of forcible removal

**CONCLUSION: NATURALLY SHED HAIR**

**FRAM AFF. DE-219, p. 13**

**AFDIL 58A(2) mtDNA SEQUENCE  
consistent with SEQUENCE B**

**mtDNA SEQUENCE B = Jeffrey MacDonald**



**Q87 Caucasian Body Area Hair Fragment**

- **Approximately 1-inch**
- **Club Root**

(FRAM) (AFF. DE-219)



# AFDIL SPECIMEN 58A (1) (E-52NB, Q87, GX362)

(Debris from Kristen's Bedspread)

- **HAIR #1, 58A(1):**
  - Caucasian hair - approx. 5mm long
  - Root but no tissue
  - Club root
  - Naturally shed
  - mtDNA analysis not consistent with any sample tested



# AFDIL SPECIMEN 58A (2) (E-52NB, Q87, GX362)

(Debris from Kristen's Bedspread)

- **HAIR #2, 58A(2):**
  - Caucasian hair - approx. 43mm long
  - Club root
  - Root but no tissue
  - Naturally shed
  - mtDNA analysis = Jeffrey MacDonald's mtDNA SEQUENCE



- Additional unsourced debris from Kristen's bedspread found in E52NB (Q87)
- “Hairs and fibers from bedspread in North bedroom”



# EXHIBIT E-52NB (Q87, GX362)

(Debris from Kristen's Bedspread)

- Numerous unmatched synthetic fibers
- Unknown textile fibers of various types and colors
- Black dog hair with intact root
- White sponge-like substance
- 2 brown and white animal hairs
- Plant material



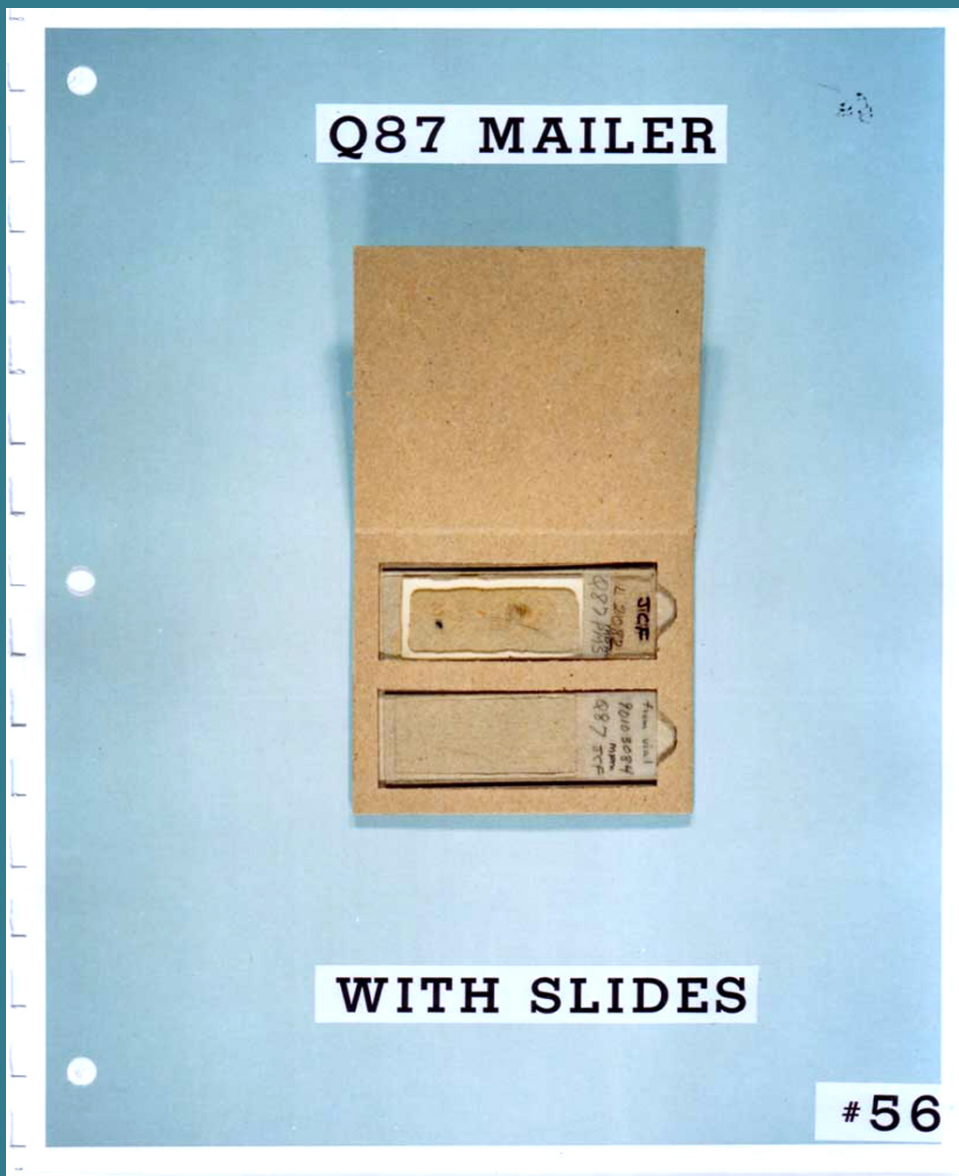


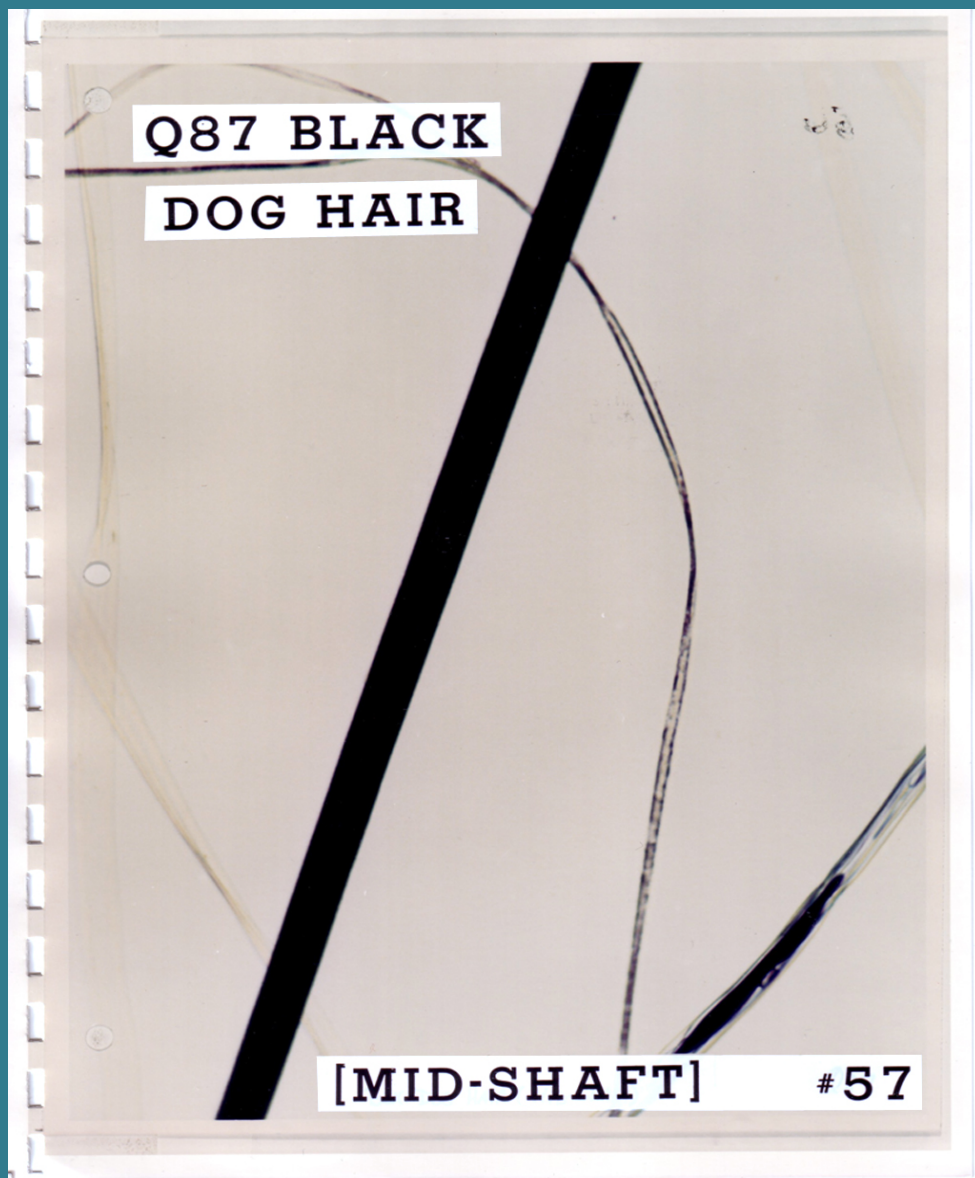


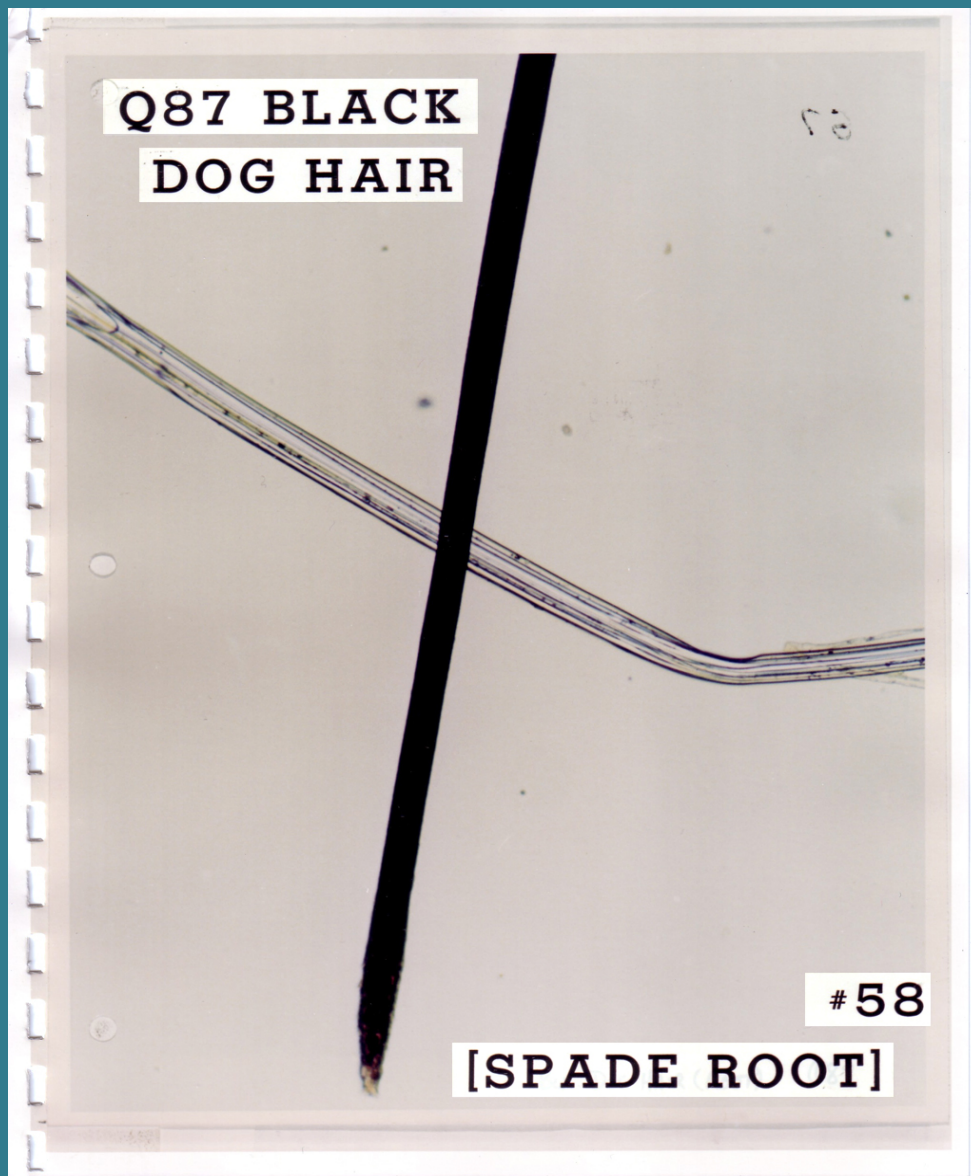
Q87 MAILER]

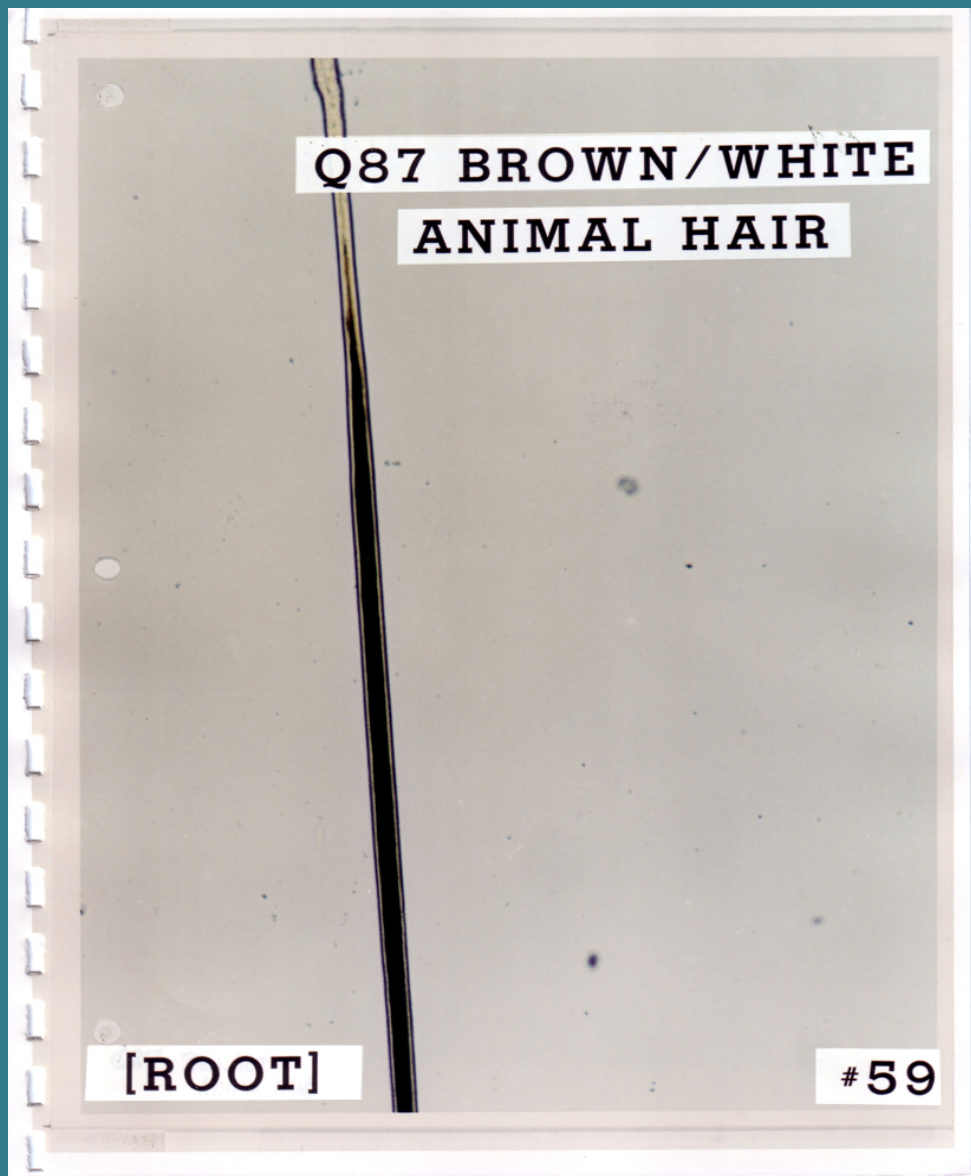
# 55

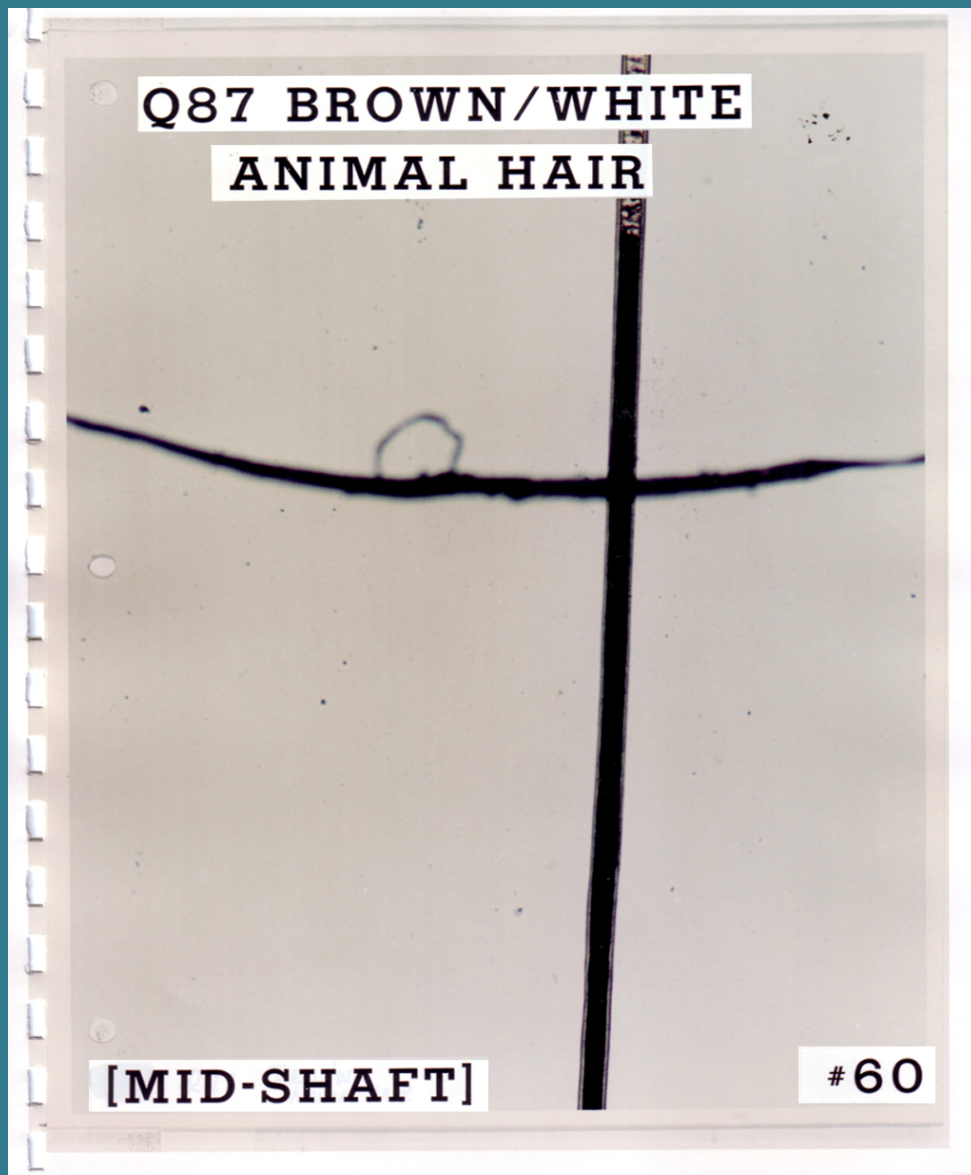






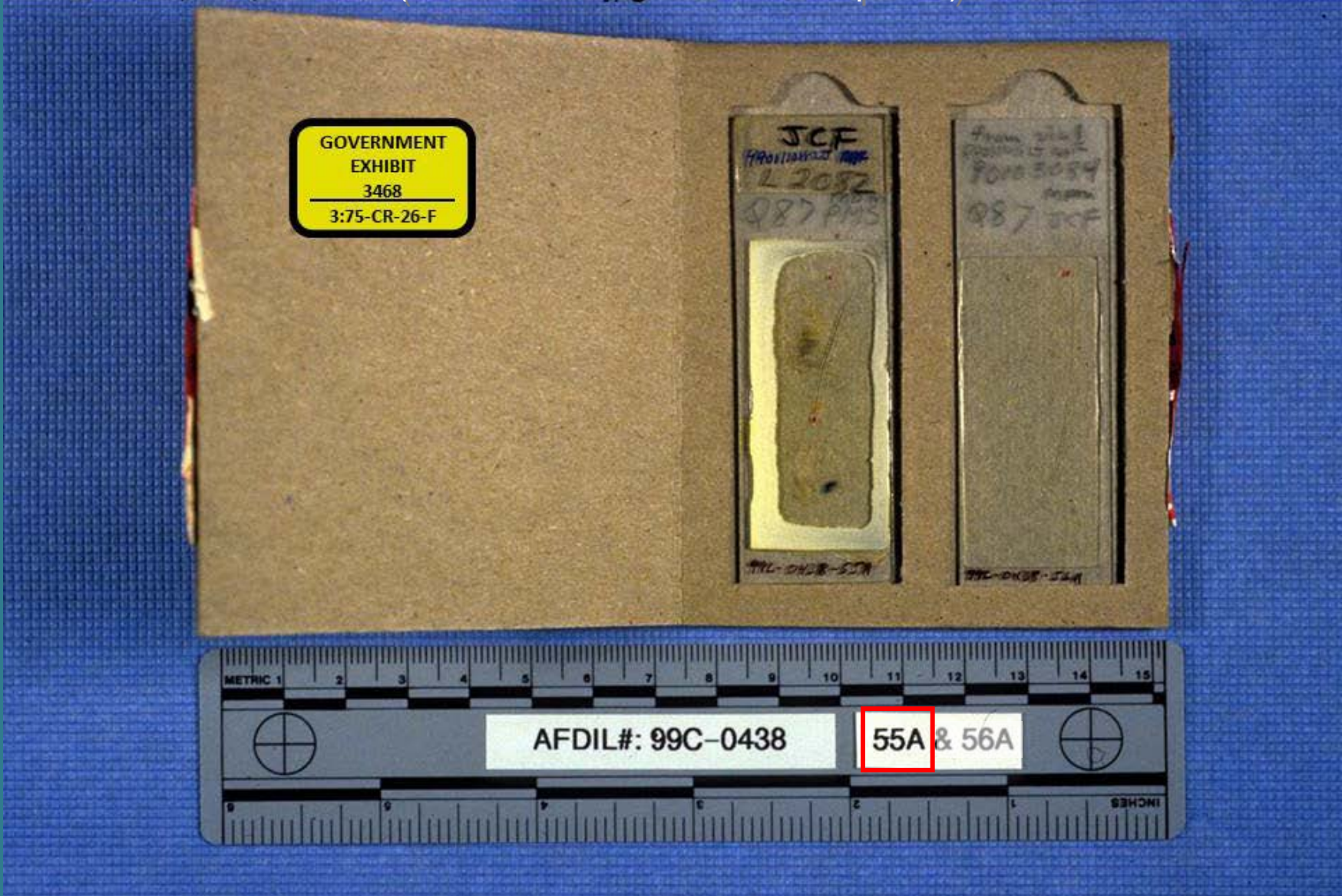






# 1999 AFDIL SPECIMEN 55A (E-52NB, Q87 GX 362)

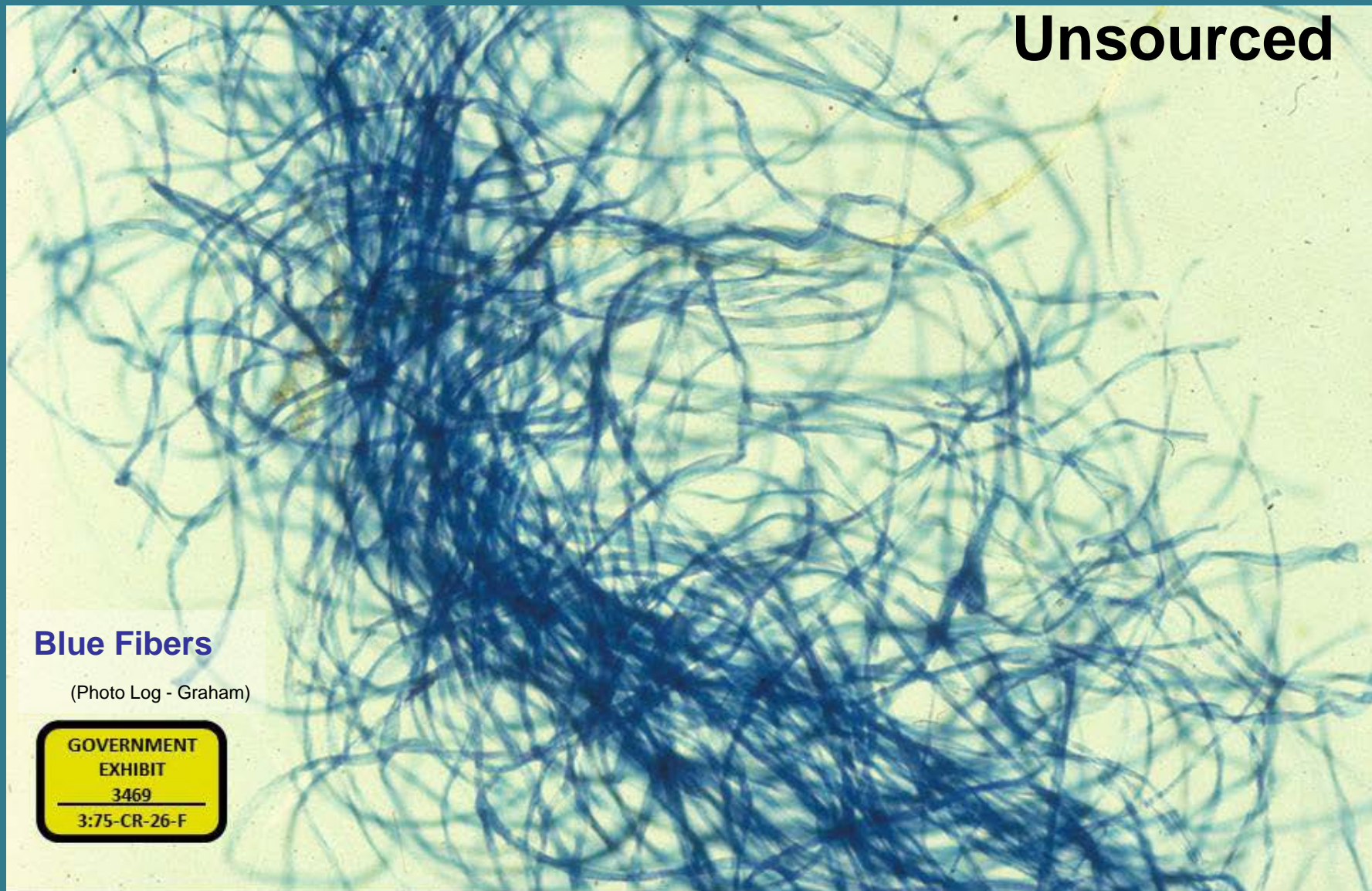
(Debris From Kristen's Bedspread)



# 1999 AFDIL SPECIMEN 55A (E-52NB, Q87 GX 362)

(Debris From Kristen's Bedspread)

**Unsourced**



**Blue Fibers**

(Photo Log - Graham)

GOVERNMENT  
EXHIBIT  
3469  
3:75-CR-26-F

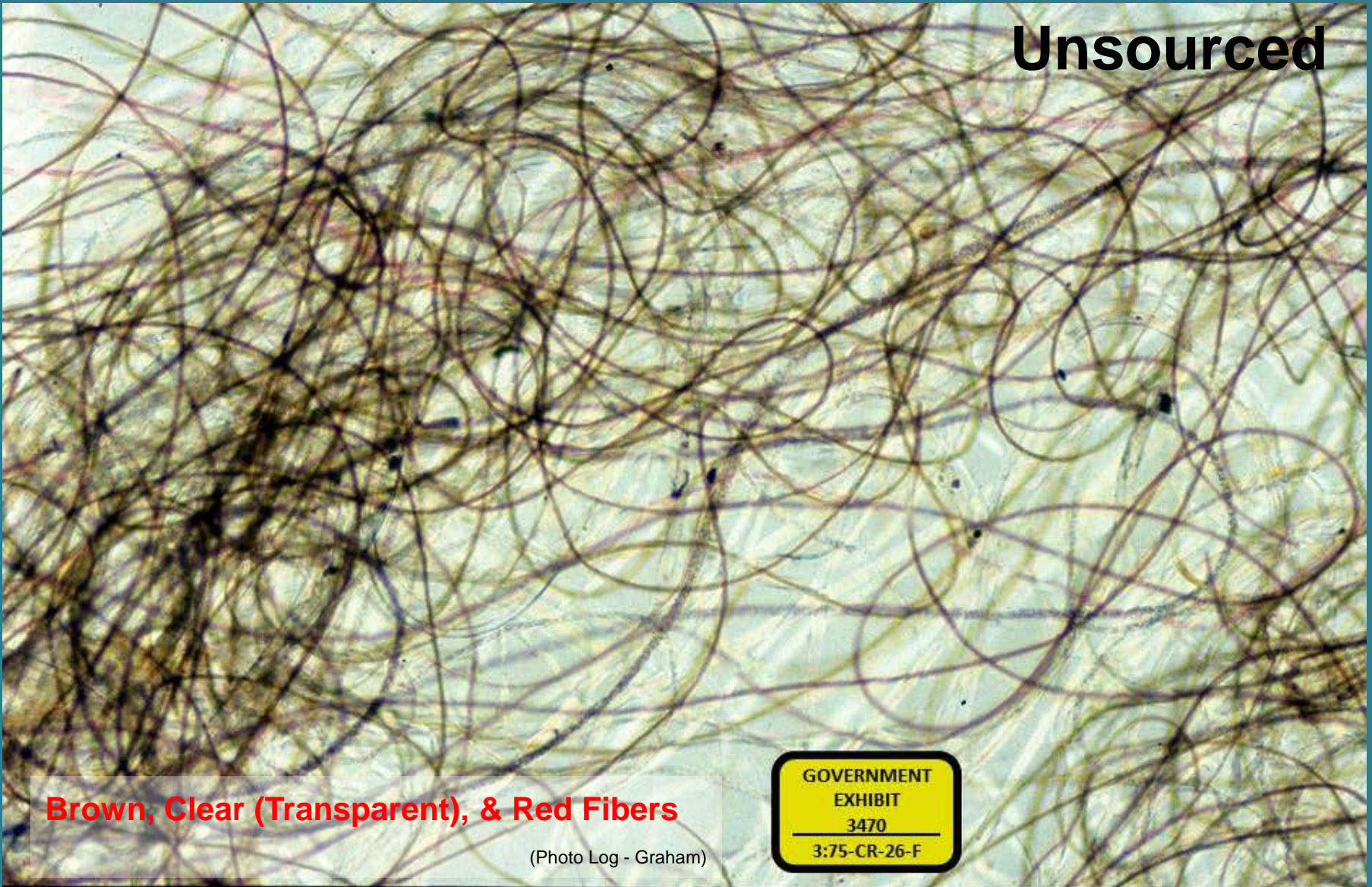




# 1999 AFDIL SPECIMEN 55A (E-52NB, Q87 GX 362)

(Debris From Kristen's Bedspread)

**Unsourced**



**Brown, Clear (Transparent), & Red Fibers**

(Photo Log - Graham)

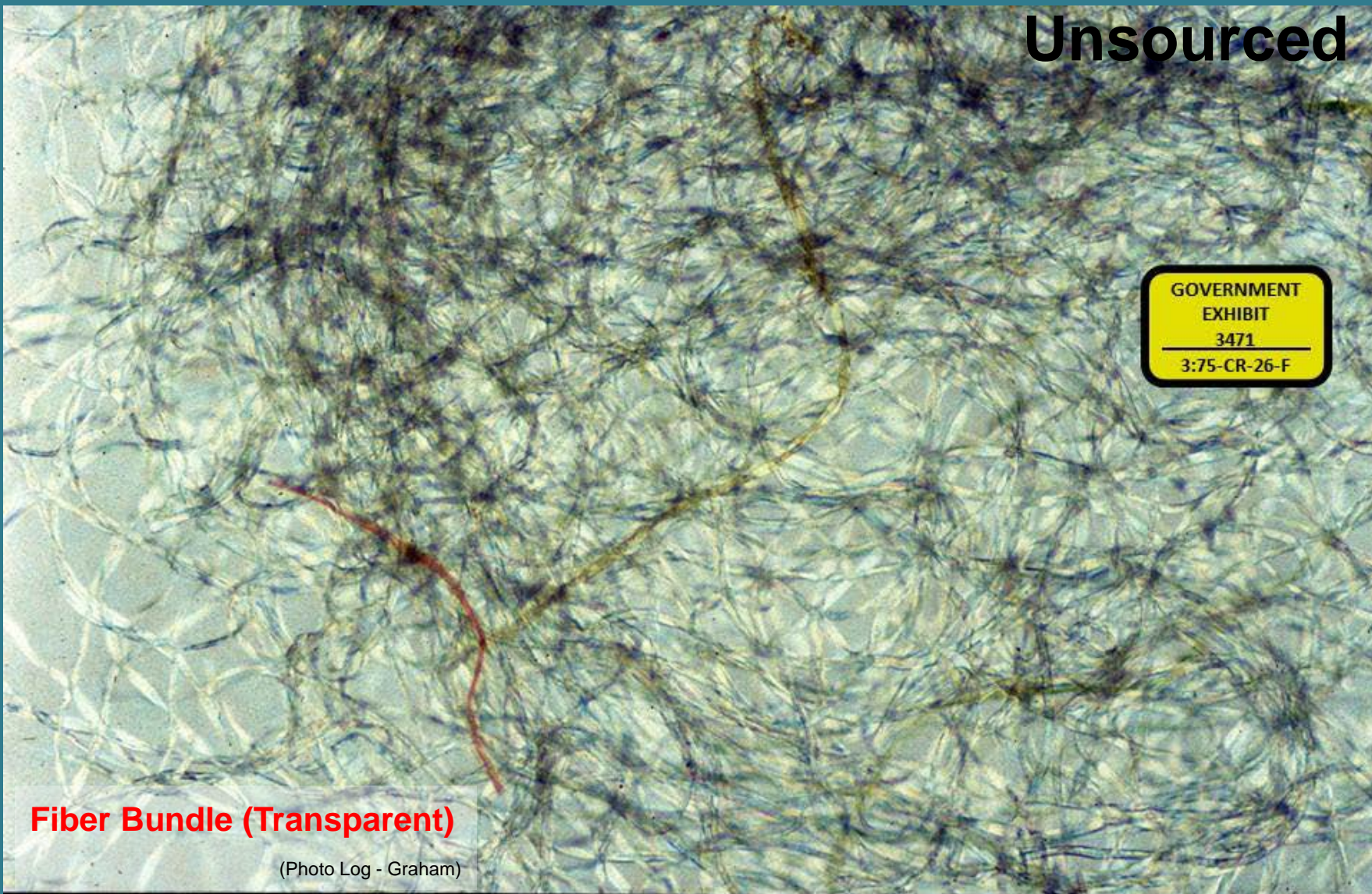
GOVERNMENT  
EXHIBIT  
3470  
3:75-CR-26-F



# 1999 AFDIL SPECIMEN 55A (E-52NB, Q87 GX 362)

(Debris From Kristen's Bedspread)

## Unsourced



GOVERNMENT  
EXHIBIT  
3471  
3:75-CR-26-F

**Fiber Bundle (Transparent)**

(Photo Log - Graham)



# 1999 AFDIL SPECIMEN 55A (E-52NB, Q87 GX 362)

(Debris From Kristen's Bedspread)

## Unsourced

GOVERNMENT  
EXHIBIT  
3472  
3:75-CR-26-F



**Hair Root (Non-Human)**

(Photo Log - Graham)



# 1999 AFDIL SPECIMEN 55A (E-52NB, Q87 GX 362)

(Debris From Kristen's Bedspread)

## Unsourced

GOVERNMENT  
EXHIBIT  
3473  
3:75-CR-26-F

**Root of Hair (Non-Human)**

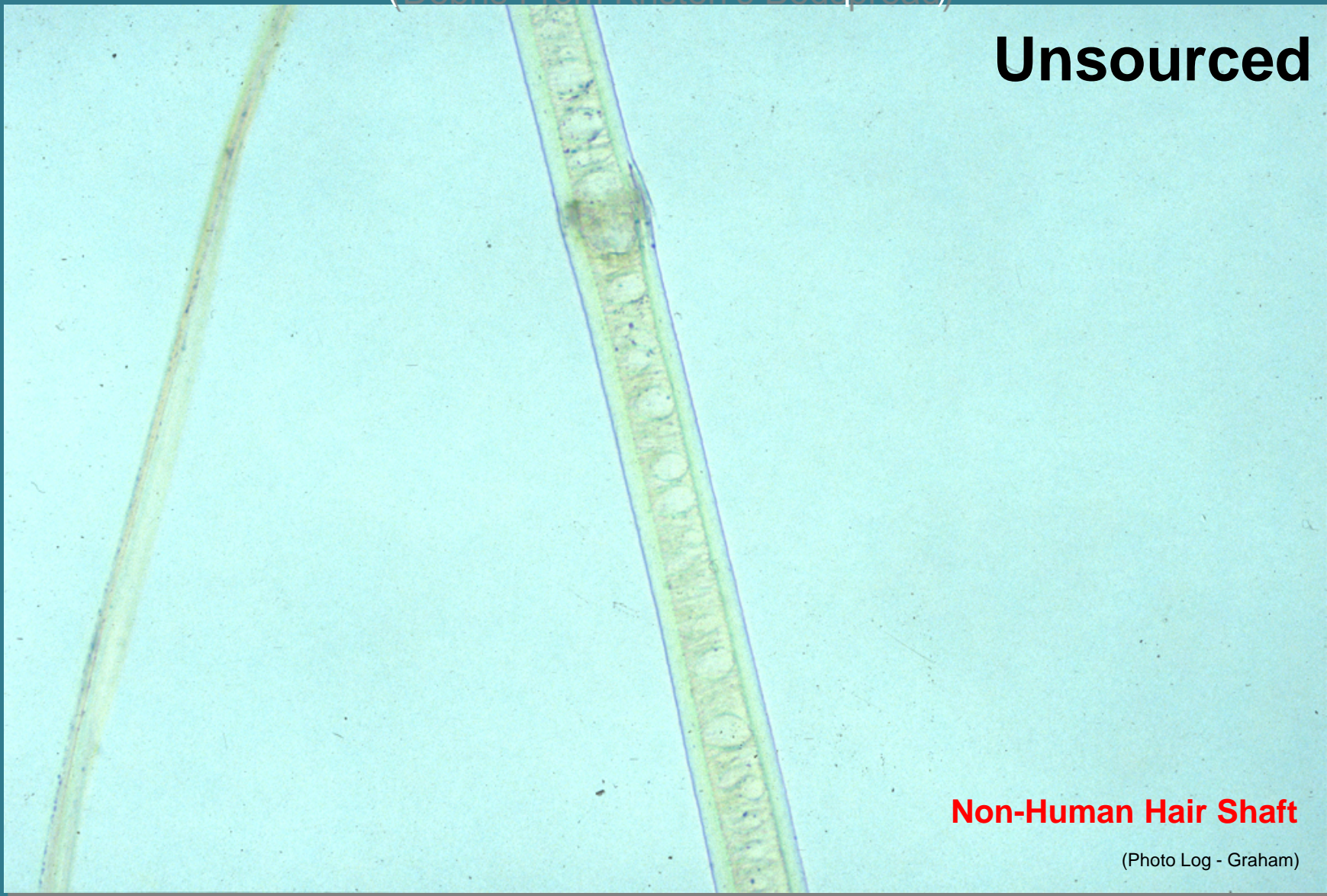
(Photo Log - Graham)



# 1999 AFDIL SPECIMEN 55A (E-52NB, Q87 GX 362)

(Debris From Kristen's Bedspread)

**Un sourced**



**Non-Human Hair Shaft**

(Photo Log - Graham)



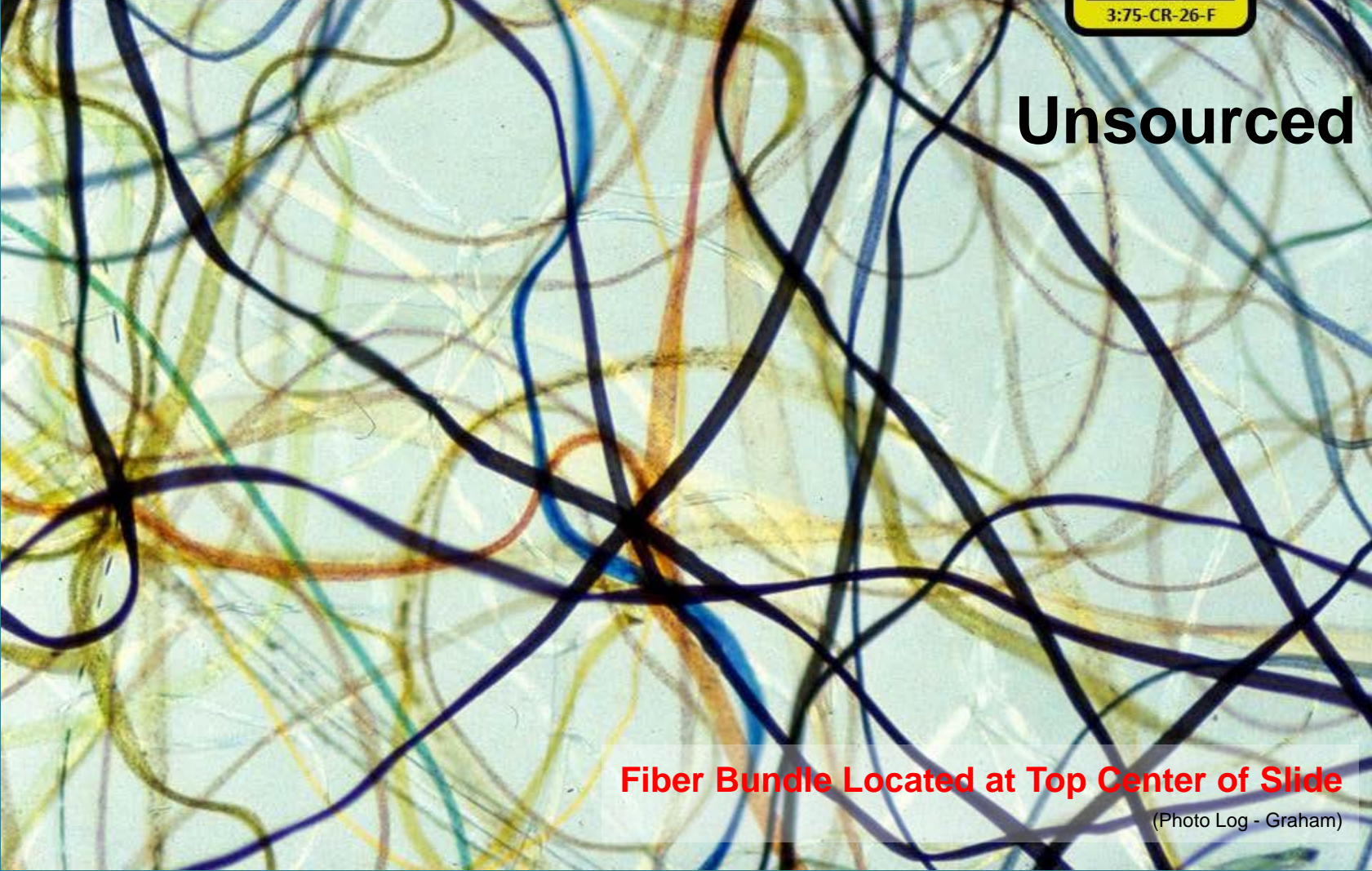
# 1999 AFDIL SPECIMEN 55A (E-52NB, Q87 GX 362)

(Debris From Kristen's Bedspread)

GOVERNMENT  
EXHIBIT  
3474  
3:75-CR-26-F

DE-147 EX 3, CD2, 99C-0438-55A Roll 4 Slide 06.jpg

**Unsourced**



**Fiber Bundle Located at Top Center of Slide**

(Photo Log - Graham)



# 1999 AFDIL SPECIMEN 55A (E-52NB, Q87 GX 362)

(Debris From Kristen's Bedspread)

**Unsourced**



**Non-Human Hair Root**

(Photo Log - Graham)

GOVERNMENT  
EXHIBIT  
3475  
3:75-CR-26-F



# 1999 AFDIL SPECIMEN 55A (E-52NB, Q87 GX 362)

(Debris From Kristen's Bedspread)

## Unsourced



**Non-Human Hair Shaft**

(Photo Log - Graham)





# 1999 AFDIL SPECIMEN 55A (E-52NB, Q87 GX 362)

(Debris From Kristen's Bedspread)

**Unsourced**



**Non-Human Hair Shaft**

(Photo Log - Graham)



# 1999 AFDIL SPECIMEN 55A (E-52NB, Q87 GX 362)

(Debris From Kristen's Bedspread)

**Unsourced**



**Fiber Shaft**

(Photo Log - Graham)



# AFDIL SPECIMEN 58A(1)

## REFUTATION OF DEFENSE CONTENTIONS

1. AFIP Technician Grant Graham did not describe the hair as having an “intact root,” but rather as a hair “with root but no tissue”.
2. No other Technician described hair 58A(1) as having an “intact root”.
3. MacDonald has offered no competent expert opinion to support his counsel’s equating an “intact root” as proving forcible removal of the hair.



# AFDIL SPECIMEN 58A(1)

## REFUTATION OF DEFENSE CONTENTIONS (cont)

4. Examination of the hair and photo-micrographs by a Qualified FBI Expert reflect that the hair was naturally shed, and was not forcibly removed.
5. The presence of a naturally shed hair on Kristen's bedspread is not forensically significant given the profusion of foreign fibers and hair (including MacDonald's own) on the bedspread.
6. The Defense has failed to prove when the hair got on the bedspread or to negate other possible innocent sources.



# AFDIL SPECIMEN 58A(1)

## REFUTATION OF DEFENSE CONTENTIONS (cont)

7. The presence of the unidentified naturally shed hair does not prove the presence of intruders.
  
8. If the characteristics of the Specimen 58(A)(1) hair (“root but no tissue”) demonstrate forcible removal, then MacDonald’s own hair, Specimen 58A(2), found on Kristen’s bedspread must also have been forcibly removed, because it too was “A hair with root but no tissue.”





GOVERNMENT  
EXHIBIT  
3500  
3:75-CR-26-F

# Jeffrey MacDonald

vs

# United States

"Q-137" / "91a"



# Dr. George Gammel

**February 17, 1970:**

*Scrapes fingernails –*

- Places the scrapings into something MFI “L.Hand Chris” which goes into vial.





# Dr. Frank Hancock

~ Writes ***“fingernail scrapings –Left hand, smaller – female McDonald”*** on ruled paper and also places in vial.

## **February 17, 1970:**

- Performs autopsy and prepares protocol for:  
***“MacDonald, Christine”***



# CID Agent Bennie J Hawkins

## February 17, 1970:

- Takes custody of vial on which he scratches *"BJH17FEB70"*
- Does not otherwise label the vial.
- Transfers Custody to CID Chemist Craig Chamberlain on 02/21/70.



# CID Chemist Craig S Chamberlain

## February 26, 1970:

- Recorded in his notes the alpha-numeric designations D-232 through D-239 for exhibits to be examined for the presence of blood and other trace evidence.
- Describes “D-237” in his notes as: Vial c/fingernail scrapings marked “L.Hand Chris”<sup>1</sup>
- Repeats the description of “D-232” through “D-239” on a separate page for each exhibit for later insertion of serology test results.

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1. The quotation marks appear in Chamberlain's note.



# CID Chemist Dillard O Browning

**March 9, 1970:**

Dillard Browning's note "Exhibit #D-237 fingernail scrapings from Christine's left hand – vial contains one microscopic piece of multi-strand polyester/cotton fiber identical to the pajama top material, bloodstained but washed. " 2

---

2. No Mention of a Hair.



# CID Chemist Janice S Glisson

## March 9, 1970:

- Glisson performs a 'repeat crust test' on "L.Hand Chris – smaller child".
- Glisson records these results, in addition to others, in tabular form in her notes.
- The results indicated only the presence of blood.
- Her notes make no mention of a "hair" in "L.Hand of Chris".



# CID Chemist Craig S Chamberlain

## March 9 – April 6, 1970:

- Annotates the right hand side of Glisson's March 9, 1970 serology bench note with the designations "D-233" through "D-239" corresponding to the descriptions used by Glisson on the left hand of the bench note to describe the origin of the exhibit.
- Writes "D-237" in juxtaposition to Glisson's notation "L.Hand Chris".
- Annotates his own single page note of 26 Feb 70 for Exhibit D-237:  
Vial c/fingernail scrapings marked "L.Hand Chris" to reflect Glisson's serology results.



# CID Chemist Janice S Glisson

**July 27, 1970:**

- Glisson's R-11 bench notes reflect her receipt of 13 vials which she numbers and initials on the vial cap.
- Glisson inventoried the contents of each vial and recorded any information about the origin of the contents previously recorded on any pieces of paper found in the vials.
- Glisson's notes reflect:  
"#7 Fingernail scrapings left hand, smaller female MacDonald (not labeled by Browning), 1 hair ? - 2 fragments."
- Glisson mounted hairs and fibers found in the vials on slides numbered to correspond to the numbers on the vials.



# CID Chemist Janice S Glisson

## July 27, 1970: cont-

- Glisson's notes of her microscopic examination of slide #7 reflect:  
"fibers + one light brown narrow hair, no medulla, striated, intact root, tapered end".
- Glisson's notes further reflect that the hair on slide #7 is not similar to 305-313 [The exemplar hairs of Jeffrey MacDonald.]
- Glisson's July 27, 1970 bench notes make no reference to anything marked "L.Hand Chris" as being present in vial #7.





# CID Chemist Janice S Glisson

## July 27, 1970: cont-

- Glisson's July 27, 1970 bench notes make no mention of any suspected blood stain having been present on the hair mounted on slide #7.
- Glisson's July 27, 1970 bench notes make no reference to her performing any serology testing on any of the contents of the 13 vials.



# FBI LAB Trace Evidence Examiner Robert B Fram

## February 1-3, 1999:

- Supervisory special agent (SSA) Fram receives numerous items of evidence submitted to the FBI Laboratory by the Charlotte Field Office of the FBI.
- Included within these items was a clear plastic folder marked “Government exhibit number 285/ 75-26 CR3” containing a clear plastic pill vial with folded piece of paper inside and marked “#7” on the lid, 1 glass microscope slide, and a loose paper label. (see GPS #39).
- SSA Fram marked slide “#7 with the FBI designation “Q137”, the laboratory case number (“990111018ZJ) and with his initials (“RBF”).



# FBI LAB Trace Evidence Examiner Robert B Fram

## February 1-3, 1999: cont-

- SSA Fram examined slide “#7/Q137” under the microscope and determined that it contained a hair and a fiber.
- The hair was:
  - A very fine Caucasian hair approximately  $\frac{3}{4}$  of an inch in length;
  - With a “club” root and a natural tip; and
  - “NSFSCP”.
- SSA Fram placed slide “#7/Q137” in a protective cardboard slide mailer which was also marked “Q-137” “990111018ZJ” and initialed “RBF”.



# FBI Mitochondrial DNA Unit Chief Joseph A DiZinno

## February 4, 1999:

- Examined hair mounted on slide marked “Q137” under a microscope for DNA suitability and divisibility purposes
- Recorded that the “Q137” hair was a very fine Caucasian hair, approximately  $\frac{3}{4}$  of an inch long, with a “club” root.
- Marked both the “Q137” slide and the “Q137 slide mailer” with his initials “JAD”.



# AFDIL Technician Dan E. Katz

**May 25, 1999:**

- Received slide mailer containing glass slide both marked “Q137”, “990111018ZJ”, and “RBF”.
- Marked both slide and slide marker with AFDIL case number (“99C-0438”), AFDIL specimen number (“91A”), the date (“5/25/99”) and his initials (“DEK”).



# AFIP-OAFME Trace Materials Analyst M/Sgt. Grant D Graham, USAF

## November 24-30 1999:

- Photo documentation in case no. 99C-0438 of receipt and opening of sealed container marked 91A.
- Takes photo micrographs of glass slide 99C-0438-91A as reflected in photographic log for roll 9, Fujichrome slides 21-28.
- Contemporaneously records in laboratory notes microscopic characteristics of slide 99C-0438-91A observed.



# AFIP-OAFME Trace Materials Analyst

## MSgt. Grant D Graham, USAF

### November 24-30 1999: cont-

- “Slide is in poor condition due to mounting medium being on top of cover slip.”
- “Contains unknown debris and yellow fibrous material that has red in color substance adhering to it that could be blood.”
- “Fiber marked with black dot and “1” for better identification.”
- “Contains one human hair with root but no tissue.”
- “Hair is approximately 29.4 $\mu$ m wide, approximately 5mm long.”







[HOME](#)

[52A](#)

[51A\(2\)](#)

[Pile of Bedding](#)

[113A](#)

[46A](#)

[112A.5](#)

[MacDonald  
Statements Introduced](#)



# United States VS Jeffrey MacDonald

DNA Results of Government's Trial and New Evidence



# AFDIL SPECIMEN 52A



# AFDIL SPECIMEN 52A (E-4, Q118, GX 280)

## Debris from RIGHT HAND - Colette MacDonald



GOVERNMENT  
EXHIBIT  
3424  
3:75-CR-26-F



# AFDIL SPECIMEN 52A (E-4, Q118, GX 280)

Debris from RIGHT HAND - Colette MacDonald



# AFDIL SPECIMEN 52A (E-4, Q118, GX 280)

Debris from RIGHT HAND - Colette MacDonald

TRIAL: Microscopically Identical to Known Head Hair of Colette MacDonald



DE-147 EX4, Cd 3, 99C-0438-52A Roll6 slide 01.jpg

GOVERNMENT  
EXHIBIT  
3426  
3:75-CR-26-F

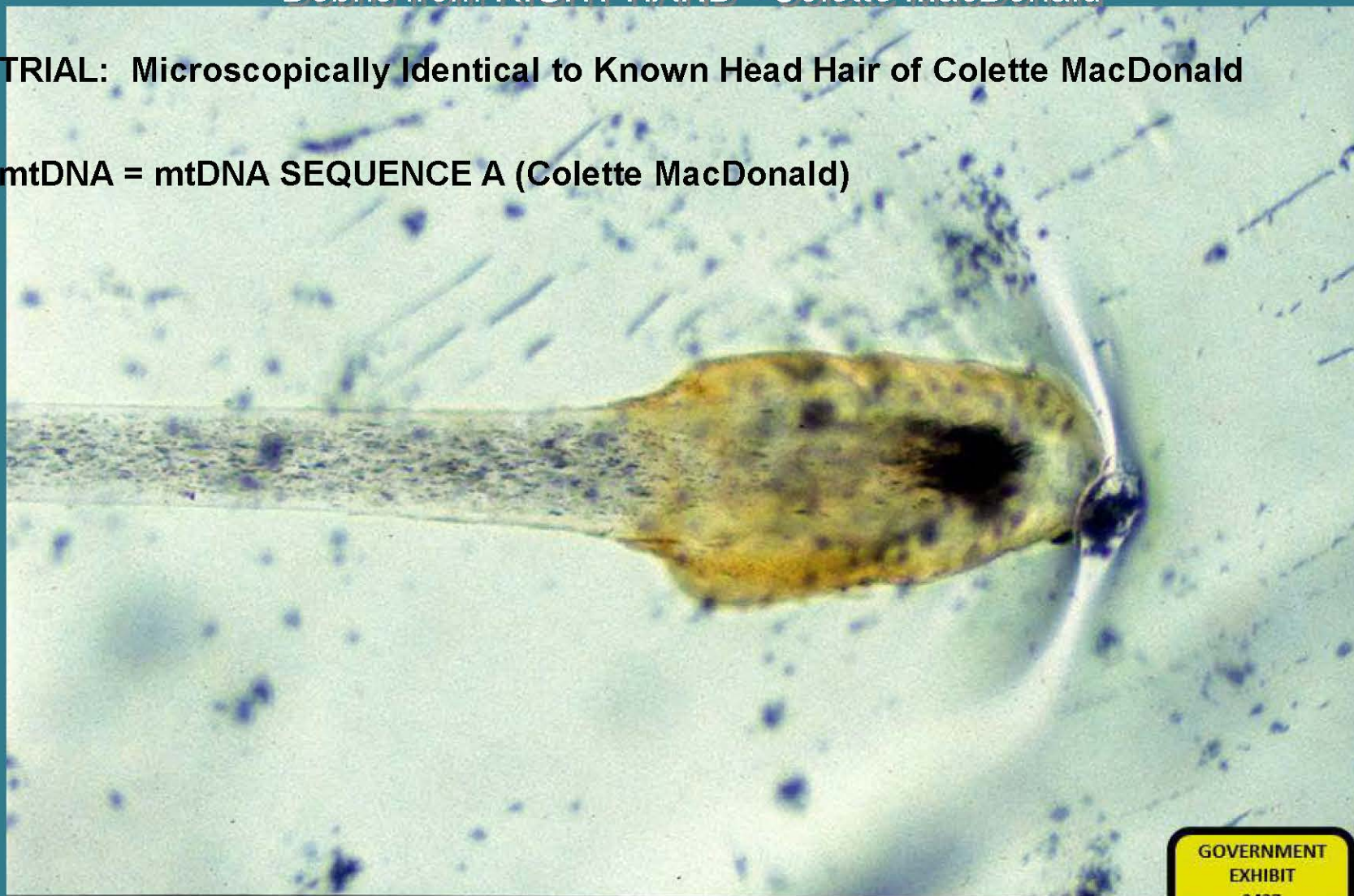


# AFDIL SPECIMEN 52A (E-4, Q118, GX 280)

Debris from RIGHT HAND - Colette MacDonald

**TRIAL: Microscopically Identical to Known Head Hair of Colette MacDonald**

**mtDNA = mtDNA SEQUENCE A (Colette MacDonald)**



GOVERNMENT  
EXHIBIT  
3427  
3:75-CR-26-F

DE-147 EX 4, CD 3,99C-0438-52A Roll5 slide 08.jpg

99C-0438-52A Roll5 slide 08.jpg



# AFDIL SPECIMEN

## 51A(2)

### Hair Found in Left Hand of

### Colette MacDonald



Debris from Left Hand -  
Colette MacDonald

GOVERNMENT  
EXHIBIT  
44  
75-76-CR-3

AFDIL SPECIMEN 51A(2)  
(E-5, Q119, GX 281)

Trial: Distal Portion of  
Caucasian Limb Hair,  
NSFCP





# AFDIL SPECIMEN 51A(2) (E-5, Q119, GX 281)

## Debris from Left Hand - Colette MacDonald

99C-0438-  
 48A  
 2/19/99  
 1  
 CONTAINING  
 (HAIRS)(FIBERS)  
 PMS  
 FROM Q 88 PC-L 2082  
 9901101825 RNF JMS

MPM  
 PMS  
 609-9  
 511  
 2873  
 EVIDENCE  
 GLASS SLIDE(S)  
 CONTAINING E-5  
 (HAIRS)(FIBERS)  
 Q119  
 9901101827  
 99C-0438-51A  
 2/19/99

GOVERNMENT  
 EXHIBIT  
 3428  
 3:75-CR-26-F



# AFDIL SPECIMEN 51A(2) (E-5, Q119, GX 281)

Debris from Left Hand - Colette MacDonald

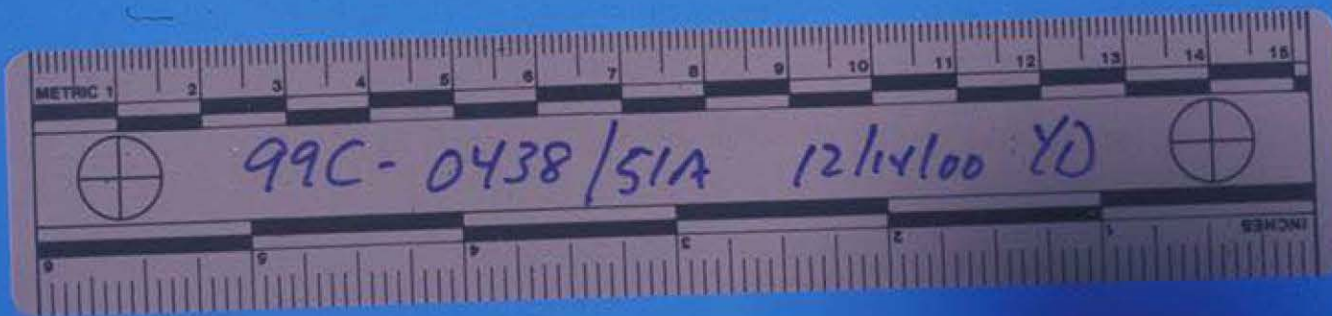


# AFDIL SPECIMEN 51A(2) (E-5, Q119, GX 281)

## Debris from Left Hand - Colette MacDonald

TRIAL: Distal Portion of Caucasian Limb Hair, NSFCP

GOVERNMENT  
EXHIBIT  
3435  
3:75-CR-26-F



# AFDIL SPECIMEN 51A(2) (E-5, Q119, GX 281)

## Debris from Left Hand - Colette MacDonald

### TRIAL: Distal Portion of Caucasian Limb Hair, NSFCP

GOVERNMENT  
EXHIBIT  
3436  
3:75-CR-26-F

990111016 2T  
99C-0438-51A  
DEX  
51A/11  
EVIDENCE  
GLASS SLIDE(S)  
MPM  
PMS  
E-5  
Q119 PMS  
12/14/00 YD

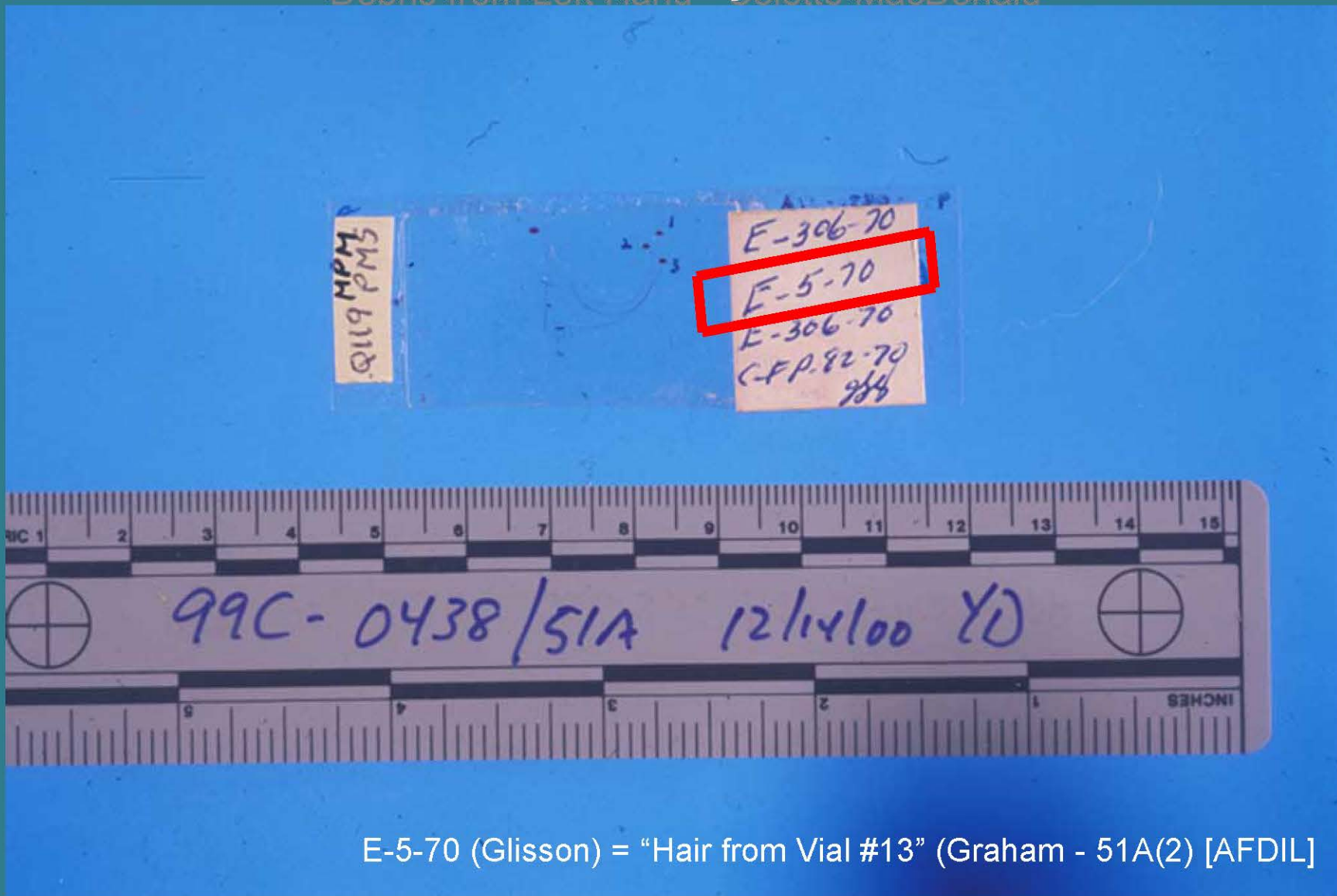
Q119 PMS  
F-306-70  
E-5-70  
E-306-70  
C-FP-92-70  
784

METRIC 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15  
99C-0438/51A 12/14/00 YD  
INCHES 1 2 3 4 5 6



# AFDIL SPECIMEN 51A(2) (E-5, Q119, GX 281)

Debris from Left Hand - Colette MacDonald



E-5-70 (Glisson) = "Hair from Vial #13" (Graham - 51A(2) [AFDIL])



# AFDIL SPECIMEN 51A(2) (E-5, Q119, GX 281)

Debris from Left Hand - Colette MacDonald

TRIAL: Distal Portion of Caucasian Limb Hair, NSFCP



**“End of hair #2 (human)”**

(Photo Log - Graham)

**mtDNA SEQUENCE = Group B (Jeffrey MacDonald)**

DE-123-2, p. 8



# AFDIL SPECIMEN 51A(2) (E-5, Q119, GX 281)

Debris from Left Hand - Colette MacDonald

TRIAL: Distal Portion of Caucasian Limb Hair, NSFCP



**“Broken End”**

DE-123-4, p. 8 (Graham)

**“End of hair #2 (human)”**

(Photo Log - Graham)

**mtDNA SEQUENCE = Group B (Jeffrey MacDonald)**

DE-123-2, p. 8



# AFDIL SPECIMEN 51A(2) (E-5, Q119, GX 281)

Debris from Left Hand - Colette MacDonald

TRIAL: Distal Portion of Caucasian Limb Hair, NSFCP



**“Rounded Tip”**

DE-123-4, p. 8 (Graham)

**“Tip of hair #2 (human)”**

(Photo Log - Graham)

**mtDNA SEQUENCE = Group B (Jeffrey MacDonald)**

DE-123-2, p. 8





# AFDIL SPECIMEN 51A(2) (E-5, Q119, GX 281)

Debris from Left Hand - Colette MacDonald

TRIAL: Distal Portion of Caucasian Limb Hair, NSFCP



**“Shaft of hair #2 - w- debris (human)”**

(Photo Log - Graham)

**“Tissue which appears to be blood and unknown debris”**

DE-123-4, p. 8 (Graham)

**mtDNA SEQUENCE = Group B (Jeffrey MacDonald)**

DE-123-2, p. 8



# AFDIL SPECIMEN 51A(2) (E-5, Q119, GX 281)

Debris from Left Hand - Colette MacDonald

TRIAL: Distal Portion of Caucasian Limb Hair, NSFCP



**“Shaft of hair #2 - w- debris (human)”**

(Photo Log - Graham)

**“Fiber fragment adhering along shaft”**

(Graham)

**“Tissue which appears to be blood and unknown debris”**

(Graham)

**mtDNA SEQUENCE = Group B (Jeffrey MacDonald)**



# AFDIL SPECIMEN 51A(2) (E-5, Q119, GX 281)

Debris from Left Hand - Colette MacDonald

## Defense Contentions:

- At Trial:

“The Government says also that there were no intruders in this case. There is no proof of intruders in this case. The list of evidence that supports Jeff’s story will surprise you when we pull it all together right now.”



# AFDIL SPECIMEN 51A(2) (E-5, Q119, GX 281)

Debris from Left Hand - Colette MacDonald

## Defense Contentions: (cont)

- At Trial

“Unidentified Hair — There is hair in this case. The Government has found and they have had MacDonald’s sample which was given to them and they still, to this day, cannot ascribe it to ANY member of the family.”

*Defense Counsel Bernard L. Segal  
Transcript Final Argument at 7266-7267  
August 28, 1979*



# AFDIL SPECIMEN 51A(2) (E-5, Q119, GX 281)

Debris from Left Hand - Colette MacDonald

## 2. Post DNA Testing Results:

“One of these [Specimens consistent with the DNA of Jeffrey MacDonald] #51A(2), was a hair without a root found in or on Colette MacDonald’s hand. The Defense contends that this is in no way inculpatory given that Jeff MacDonald testified that he repeatedly tried to revive his injured wife, and gave her mouth-to-mouth resuscitation, moved her body, etc.)”

*Motion to Add DNA Predicate, at n. 5.*

*DE-122, p. 3, n.5*



# GOVERNMENT'S REFUTATION

1. **Microscopic Examination revealed that the root end of the hair was “broken”.**

*(Bench Notes: Glisson and Graham)*

2. **The fact that this was “A hair without a root,” therefore, does not prove that this hair was naturally shed.**
3. **MacDonald is estopped from arguing that the presence of this hair in the victim’s hand has no evidentiary significance.**



# GOVERNMENT'S REFUTATION

4. The jury rejected MacDonald tale of life saving efforts to account for the presence of otherwise incriminating evidence.

*(e.g. The presence of Colette's Blood on his Pajama Top.)*

5. The Government is free to argue that Colette broke the hair from MacDonald's limb during the attack.
6. MacDonald can no longer rely on this hair to support his account of intruders.



# Pile of Bedding on Floor of Master Bedroom





GX 978

## Items found in pile of bedding on floor of master bedroom

EX. 103 [D-211] (Q-15)  
SHEET

1. **BLOODSTAINS:**  
A = COLETTE'S GROUP  
AB = KIMBERLY'S GROUP
2. **BLOOD PATTERNS**
  - a. EXTENSIVE SPATTERS
  - b. CONTACT STAINS
    - (1) AREAS A & B = RIGHT SLEEVE OF BLUE PAJAMA TOP (EX. 101)
    - (2) AREAS C & D = LEFT AND RIGHT HAND PRINTS
    - (3) AREA E = BARE SHOULDER PRINT & TORN LEFT SLEEVE OF EX. 101
    - (4) AREA F = LEFT SLEEVE OF COLETTE'S PAJAMA TOP (EX. 270)
    - (5) AREA G = RIGHT SLEEVE OF COLETTE'S PAJAMA TOP (EX. 270)
3. **DEBRIS REMOVED FROM SHEET**
  - a. PIECE OF RUBBER (EX. 105) BEARING TYPE A, (COLETTE'S TYPE) BLOOD = TRACE ELEMENTS IN PERRY BRAND PURE LATEX DISPOSABLE GLOVES FOUND UNDER SINK IN KITCHEN



EX. 104 [D-229] (Q-110)  
MULTICOLORED BEDSPREAD

1. **BLOODSTAINS:**  
A = COLETTE'S GROUP  
EX. 107
2. **DEBRIS REMOVED FROM BEDSPREAD**
  - a. PURPLE COTTON THREADS = PURPLE COTTON SEAM THREADS OF BLUE PAJAMA TOP FOUND ON COLETTE MAC DONALD
  - b. HAIR WHICH MICROSCOPICALLY MATCHES HEAD HAIR (EX. 388) OF COLETTE MAC DONALD. THIS HAIR WAS FOUND ENTANGLED WITH ONE OF THE PURPLE COTTON THREADS

# AFDIL SPECIMEN 113A



# **E-229 (GX107)**

## **Debris Removed from Bedspread**

**B. Hair which microscopically matches head hair (EX. 388) of Colette MacDonald. This hair was found entangled with one of the purple cotton threads.**



# AFDIL SPECIMEN 113A (Q96) (D229) (GX 107)

Debris removed from Bedspread - Pile of Bedding - Master Bedroom Floor

GOVERNMENT

EXHIBIT

3442

3:75-CR-26-F

Found entangled with Purple Cotton Thread which matches Seam  
Threads of Pajama Top of Jeffrey MacDonald Q56 (Trial)

Microscopically matches Head Hair of Colette MacDonald Q56 (Trial)

mtDNA SEQUENCE = mtDNA SEQUENCE INCONCLUSIVE

DE-123-2, p. 8



# AFDIL SPECIMEN 113A (Q96) (D229) (GX 107)

Debris removed from Bedspread - Pile of Bedding - Master Bedroom Floor

GOVERNMENT  
EXHIBIT  
3441  
3:75-CR-26-F

Found entangled with Purple Cotton Thread which matches Seam Threads of Pajama Top of Jeffrey MacDonald Q96 (Trial)

Microscopically matches Head Hair of Colette MacDonald Q96 (Trial)

mtDNA SEQUENCE = mtDNA SEQUENCE INCONCLUSIVE

DE-123-2, p. 8



# AFDIL SPECIMEN 113A (Q96) (D229) (GX 107)

Debris Removed from Bedspread - Pile of Bedding - Master Bedroom Floor



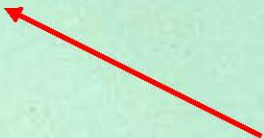
Found entangled with Purple Cotton Thread which matches Seam Threads of Pajama Top of Jeffrey MacDonald Q96 (Trial)

Microscopically matches Head Hair of Colette MacDonald Q96 (Trial)



mtDNA SEQUENCE = INCONCLUSIVE mtDNA SEQUENCE

DE-123-2, p. 8



Broken Shaft

DE-123-4, p. 8



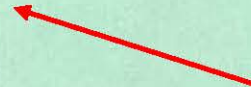
# AFDIL SPECIMEN 113A (Q96) (D229) (GX 107)

Debris Removed from Bedspread - Pile of Bedding - Master Bedroom Floor



Found entangled with Purple Cotton Thread which matches Seam Threads of Pajama Top of Jeffrey MacDonald Q96 (Trial)

Microscopically matches Head Hair of Colette MacDonald (Trial)



Broken End  
DE-123-4, p. 8

mtDNA SEQUENCE = mtDNA SEQUENCE INCONCLUSIVE

DE-123-2, p. 8



# AFDIL SPECIMEN 46A





GX 978

## Items found in pile of bedding on floor of master bedroom

EX. 103 [D-211] (Q-15)  
SHEET

**1. BLOODSTAINS:**

A = COLETTE'S GROUP  
AB = KIMBERLY'S GROUP

**2. BLOOD PATTERNS**

- a. EXTENSIVE SPATTERS
- b. CONTACT STAINS
  - (1) AREAS A & B = RIGHT SLEEVE OF BLUE PAJAMA TOP (EX. 101)
  - (2) AREAS C & D = LEFT AND RIGHT HAND PRINTS
  - (3) AREA E = BARE SHOULDER PRINT & TORN LEFT SLEEVE OF EX. 101
  - (4) AREA F = LEFT SLEEVE OF COLETTE'S PAJAMA TOP (EX. 270)
  - (5) AREA G = RIGHT SLEEVE OF COLETTE'S PAJAMA TOP (EX. 270)

**3. DEBRIS REMOVED FROM SHEET**

- a. PIECE OF RUBBER (EX. 105) BEARING TYPE A,  
(COLETTE'S TYPE) BLOOD = TRACE ELEMENTS IN PERRY BRAND PURE LATEX DISPOSABLE GLOVES FOUND UNDER SINK IN KITCHEN



EX. 104 [D-229] (Q-110)  
MULTICOLORED BEDSPREAD

**1. BLOODSTAINS:**

A = COLETTE'S GROUP  
EX. 107

**2. DEBRIS REMOVED FROM BEDSPREAD**

- a. PURPLE COTTON THREADS = PURPLE COTTON SEAM THREADS OF BLUE PAJAMA TOP FOUND ON COLETTE MAC DONALD
- b. HAIR WHICH MICROSCOPICALLY MATCHES HEAD HAIR (EX.388) OF COLETTE MAC DONALD. THIS HAIR WAS FOUND ENTANGLED WITH ONE OF THE PURPLE COTTON THREADS

# AFDIL SPECIMEN 46A (E-211, Q125)

**Debris from Top Sheet - Pile of Bedding - Master Bedroom Floor**

**Brown Body Hair of Caucasian Origin**

NSFCP (FBI)

**Tissue Attached to Basal Area -  
Consistent with Forcible Removal**

FRAM AFF. DE-219, p. 14

**Nuclear DNA STR's Consistent with Colette's STR's,**

**Excludes Kimberly and Kristen**

**mtDNA SEQUENCE - mtDNA SEQUENCE of Colette DE-123-2, p. 6**



# AFDIL SPECIMEN 46A (E-211, Q125)

**Debris from Top Sheet - Pile of Bedding - Master Bedroom Floor  
GX102**



**Root Present with Root Sheath and Follicular Tag  
and Attached Tissue**

GOVERNMENT  
EXHIBIT  
3460  
3:75-CR-26-F

FRAM, AFF. DE-219, p. 14 (FBI)



# AFDIL SPECIMEN 46A (E-211, Q125)

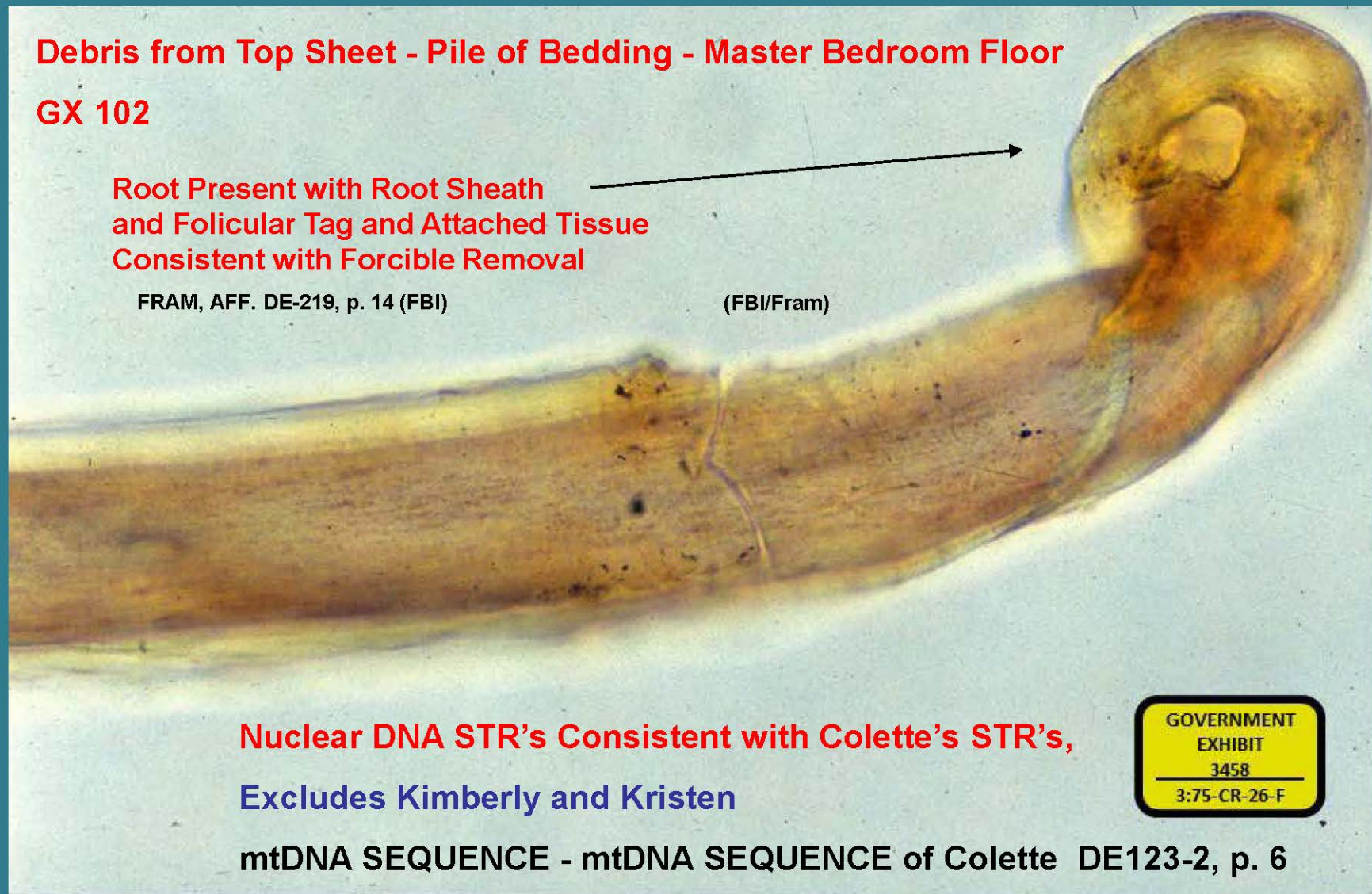
**Debris from Top Sheet - Pile of Bedding - Master Bedroom Floor**

**GX 102**

**Root Present with Root Sheath  
and Follicular Tag and Attached Tissue  
Consistent with Forcible Removal**

FRAM, AFF. DE-219, p. 14 (FBI)

(FBI/Fram)



**Nuclear DNA STR's Consistent with Colette's STR's,  
Excludes Kimberly and Kristen**

**mtDNA SEQUENCE - mtDNA SEQUENCE of Colette DE123-2, p. 6**

GOVERNMENT EXHIBIT 3458 3:75-CR-26-F
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# AFDIL SPECIMEN 112A.5



GX 978

## Items found in pile of bedding on floor of master bedroom

EX. 103 [D-211] (Q-15)  
SHEET

1. BLOODSTAINS:

A = COLETTE'S GROUP  
AB = KIMBERLY'S GROUP

2. BLOOD PATTERNS

- a. EXTENSIVE SPATTERS
- b. CONTACT STAINS
  - (1) AREAS A & B = RIGHT SLEEVE OF BLUE PAJAMA TOP (EX. 101)
  - (2) AREAS C & D = LEFT AND RIGHT HAND PRINTS
  - (3) AREA E = BARE SHOULDER PRINT & TORN LEFT SLEEVE OF EX. 101
  - (4) AREA F = LEFT SLEEVE OF COLETTE'S PAJAMA TOP (EX. 270)
  - (5) AREA G = RIGHT SLEEVE OF COLETTE'S PAJAMA TOP (EX. 270)

3. DEBRIS REMOVED FROM SHEET

- a. PIECE OF RUBBER (EX. 105) BEARING TYPE A, (COLETTE'S TYPE) BLOOD = TRACE ELEMENTS IN PERRY BRAND PURE LATEX DISPOSABLE GLOVES FOUND UNDER SINK IN KITCHEN



EX. 104 [D-229] (Q-110)  
MULTICOLORED BEDSPREAD

1. BLOODSTAINS:

A = COLETTE'S GROUP  
EX. 107

2. DEBRIS REMOVED FROM BEDSPREAD

- a. PURPLE COTTON THREADS = PURPLE COTTON SEAM THREADS OF BLUE PAJAMA TOP FOUND ON COLETTE MAC DONALD
- b. HAIR WHICH MICROSCOPICALLY MATCHES HEAD HAIR (EX.388) OF COLETTE MAC DONALD. THIS HAIR WAS FOUND ENTANGLED WITH ONE OF THE PURPLE COTTON THREADS

C. Forcibly Removed Head Hair =  
Kimberly MacDonald

**C. Q96.5 = Forcibly removed head hair  
= !!Kimberly MacDonald**

(FBI-Fram)



# AFDIL SPECIMEN 112A (5) = FBI Q96.5

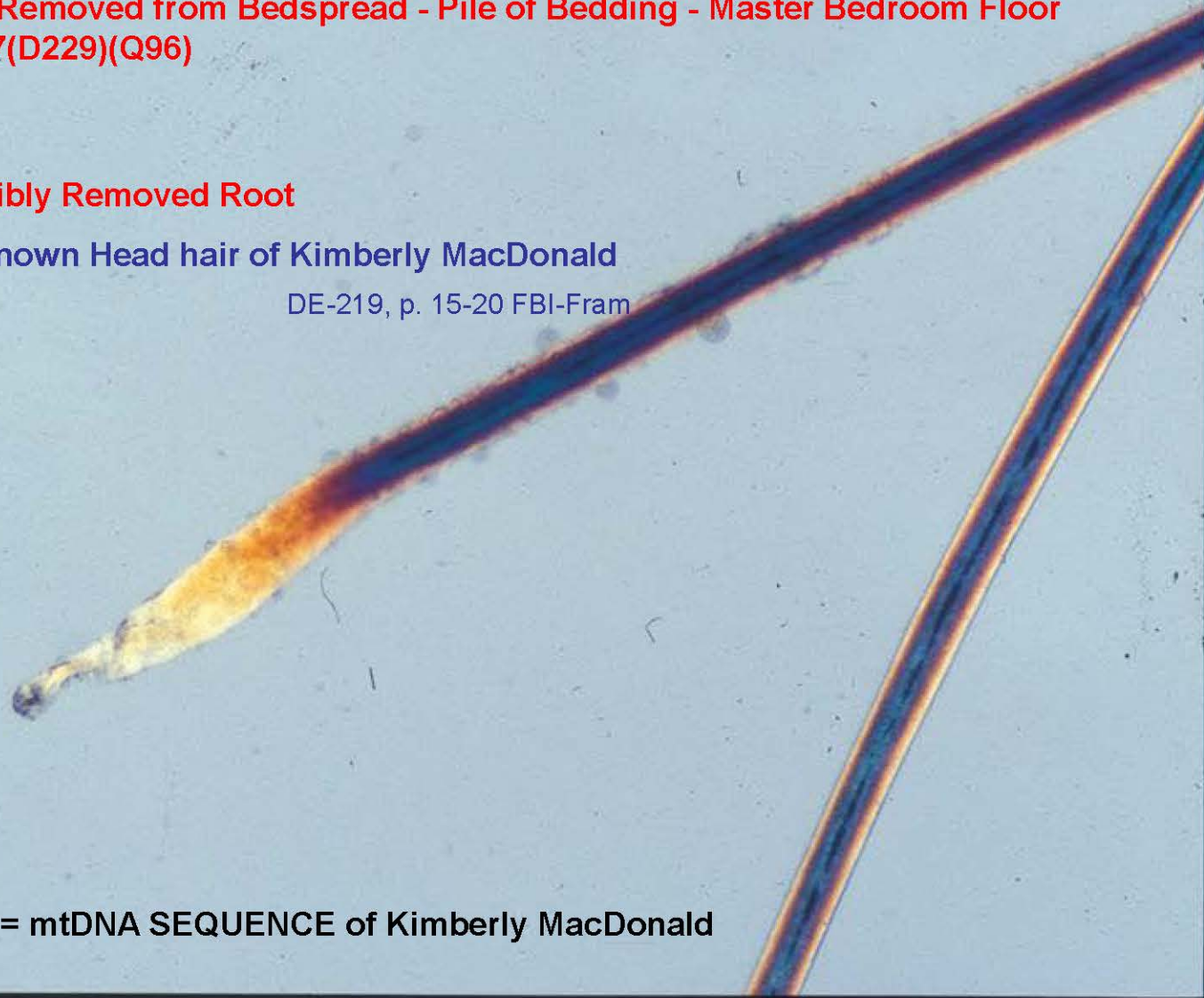
Debris Removed from Bedspread - Pile of Bedding - Master Bedroom Floor  
(GX 107(D229)(Q96))

GOVERNMENT  
EXHIBIT  
3453  
3:75-CR-26-F

Head Hair with Forcibly Removed Root

Microscopically = Known Head hair of Kimberly MacDonald

DE-219, p. 15-20 FBI-Fram



mtDNA SEQUENCE = mtDNA SEQUENCE of Kimberly MacDonald  
DE-123-2, p. 7





# Items Found in Pile of Bedding on Floor of Master Bedroom

## Trial Evidence Plus DNA Results

### EX. 102 [D-211] (Q-15) Sheet

1. Bloodstains:
  - A = Colette's Group
  - AB = Kimberly's Group
2. Blood Patterns:
  - a. Extensive spatters
  - b. Contact Stains
    - (1) Areas A & B = Right Sleeve of Blue Pajama Top (Ex. 101)
    - (2) Areas C & D = Left and Right Hand Prints
    - (3) Area E = Bare Shoulder Print & Torn Left Sleeve of Ex. 101
    - (4) Area F = Left Sleeve of Colette's Pajama Top (Ex.270)
    - (5) Area G = Right Sleeve of Colette's Pajama Top (Ex. 270)
3. Debris Removed From Sheet
  - a. Piece of Rubber (Ex. 105) bearing Type A, (Colette's Type) Blood = Trace Elements in Perry Brand Pure Latex Disposable Gloves found under Sink in Kitchen.
  - b. AFDIL SPECIMEN slide 46A (E-211, Q125)
    - Brown Body Hair of Caucasian Origin
    - Forcibly Removed - Tissue attached to Basal Area <sup>1</sup>
    - Not Sufficient for Microscopic purposes
    - Root Present with Root Sheath and Follicular Tag and Attached Tissue
    - Nuclear DNA STR's consistent with Colette's STR's, excludes Kimberly and Kristen
    - mtDNA SEQUENCE = mtDNA SEQUENCE of Colette



### EX. 104 [D-229] (Q-110) Multicolored Bedspread

1. Bloodstains:
    - A = Colette's Group
    - Ex. 107
  2. Debris Removed from Bedspread
    - a. Purple Cotton Threads = Purple Cotton Seam Threads of Blue Pajama Top Found on Colette MacDonald
    - b. Hair which Microscopically matches Head Hair (Ex.388) of Colette MacDonald. This Hair was Found Entangled with one of the Purple Cotton Threads.
- AFDIL SPECIMEN 113A  
Slide "H (From Thread) L 2082 Q96 PMS"
- mtDNA Testing = Inconclusive Sequence
- c. AFDIL SPECIMEN (D229, Q96, GX 107)
    - 1 Head Hair on Original Slide with forcibly Removed Root
    - Microscopically = Known Head Hair of Kimberly Remounted as 112A(5), Q96.5

mtDNA SEQUENCE of 112A(4), 112A(5), 112A(7) and 112A(9), Q96.4, Q96.5, Q96.9 Respectively = mtDNA SEQUENCE Group A<sup>1</sup>

<sup>1</sup> As mtDNA passes through the maternal line, Colette, and her two daughters all have the same mtDNA SEQUENCE ("Group A")



# MACDONALD'S STATEMENTS INTRODUCED AT TRIAL

## 6. CONCERNING THE SHEET ON THE FLOOR OF THE MASTER BEDROOM

**p. 21**

**GX 1141**



# TRIAL (p22)

**(a) JANUARY 21, 1975**

**Q: But I am going to ask you again, did you handle that sheet that night? Did you touch it? Did you have anything to do with it?**

**A: Not that I remember.**

*(Transcript Grand Jury, Vol. III, at p. 45).*

**p. 22**

**GX 1141**



# TRIAL (p23)

## **(b) JANAURY 21, 1975**

**Q: Dr. MacDonald, did you take Colette off the bed in Kris's room, lay her on top of the bedspread on the floor in Kris's room, cover her with this sheet, then pick her up and carry her out of Kris's room?**

**A: No, I did not do that.**

**Q: And lay her on the floor in the master bedroom?**

**A: No, I did not do that.**

*(Transcript Grand Jury, Vol.III at p. 47).*

**p. 23**

**GX 1141**



# TRIAL (p24)

## **(c) JANUARY 21, 1975**

**Q: Now, that night there was no argument or quarrel between you and Colette?**

**A: None whatsoever.**

**Q: And all of this evidence that I have told you about is fabricated?**

**A: I don't know what to make of it, Mr. Woerhelde. It doesn't make any sense to me. I have told you what I know to the best of my ability four years later.**

**Q: You didn't roll in the sheet on the floor?**

**A: Roll in the sheet?**

**Q: Yeah, to get your body prints all over it?**

**A: I don't even remember the sheet.**

**Q: And so far as you know, Colette was not in contact with that sheet?**

**A: I don't remember seeing the sheet. I was lying against Colette.**

*(Transcript Grand Jury, Vol.III, at pp. 50-51.)*

**p. 24**

**GX 1141**



# CONCLUSION

## DNA RESULTS:

- Do not undermine Government's evidence at trial.
- Confirm identification of hair in Colette's right hand.
- Identify MacDonald as source of broken, bloody hair in Colette's left hand.
- Identify Colette and Kimberly, respectively, as the source of forcibly removed hairs in sheet and bedspread linked to MacDonald and movement of Colette's body.



## ACTIVITIES

MONDAY 5<sup>th</sup> pm - 7:00, in the room  
 16 Feb  
 5:30 pm med - Am TUDS  
 17 Feb

We ate dinner together at 5<sup>45</sup> pm (all 4)  
 IT IS POSSIBLE I had a diet pill at this time. I do not remember, AND DO NOT THINK I had one, but it is possible. I had been running a weight control program for the 6<sup>th</sup> SFC Camp unit, AND I put my name at the top of the program to encourage participation. I had lost 12-15 lbs in the prior 3-4 weeks, in the process using 3-5 capsules of Eskatrol Spansule [15mg Dextroamphetamine ("speed") and 7.5mg Prochlorperazine (Compazine)] to counteract the excitability of the speed. I was also losing weight because I was working out with the boxing team AND the coach told me to lose weight. In any case, the reason I could have taken the pill was for 2 reasons - 1) to eat less in the evening when I "snacked" there most and 2) to try to stay awake after dinner since I was lonely-sitting. IT DIDN'T WORK if I did take a pill, because I think I had a 1/2 hr nap on the floor from 7<sup>30</sup>-8<sup>00</sup> after

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3:75-CR-26-F

## ACTIVITIES

CONT.

to nap on the floor. I ALSO have a very strong "nap urge" after a full meal, and knowing this, I would want to prevent the nap, at least until KRISTY was in bed.

AFTER DINNER, I put the dishes in the sink. COLETTE got ready for school and left 6<sup>15</sup> pm.

THE KIDS AND I played (I read to them, watched TV, etc). I put KRISTY to BED in HER OWN ROOM AT ABOUT 7<sup>15</sup>-7<sup>30</sup> pm AND TOOK A SHORT NAP ON THE FLOOR WAITING FOR "LAUGH-IN" TO COME ON - KIM AND I ALWAYS WATCHED LAUGH-IN TOGETHER ON MONDAY WHEN COLETTE WENT TO CLASS.

Put Kim to bed AT 9 pm AND RETURNED TO THE LIVING ROOM TO WATCH T.V. I THINK IT WAS THE GLEN CAMPBELL SHOW. COLETTE RETURNED HOME AT 9<sup>30</sup>-9<sup>40</sup> pm, HAVING DROPPED OFF ANOTHER SIAL. I THEN



5. Collette changed to pajamas and we watched T.V. together. She had at least 1 glass of liquor (BRAMBIE or Creme de menthe). AT about 12<sup>00</sup> midnight she went to bed (middle of JOHNNY CANSO).

6. She undoubtedly had an ANTI-NAUSEA pill (BENDECTIN) which is safe in pregnancy, and possibly had a BENADRYL pill for sleep (THIS IS UNLIKELY). TER BENADRYL IS AN ANTI-HISTAMINE, BUT ALSO MAKES YOU SLEEPY AND IS SAFE IN PREGNANT WOMEN AND IS SOMETIMES USED FOR SLEEP IN WOMEN OR OLDER PATIENTS.

7. I watched TV until CANSO show off. THEN I washed dishes in kitchen using either dish gloves (yellow rubber) or, more likely, (Larger) SURGICAL GLOVES that I had supplied for Collette's use. There were AT LEAST 2 PAIRS SURGICAL GLOVES OUT IN THE HOUSE, 1 ON SINK, AND 1 ON DRYER IN SMALL BACK ROOM OFF MASTER BEDROOM ADJACENT TO THE BACK DOOR USED

for entry that night by the  
ATTACKERS ("ALLEGEDLY"). ALSO, the  
yellow gloves were on the kitchen  
sink. ALSO, several unworn pairs of gloves  
were probably in hall closet.

8. I finished the dishes, put on  
the Fur STERNO, AND READ  
A MIKE HAMMERS MYSTORY & I  
finished it about (ABOUT) 2 AM,  
possibly 2:30 AM, AND went in  
to go to bed. KRISTY AND  
CRAWD INTO my side of  
the bed, AS USUAL, AND AND  
WRT THE BED (SHE STILL AND  
AT LEAST 1 bottle at night AND  
(Kris) often wet the bed). I put  
her into her own bed. I don't  
think I changed her because  
she stayed asleep while I moved  
her. I then went out to  
the couch AND went to  
bed. Collette had not awakened.  
The kitchen light AND THE MAID  
BATH light were left on. I  
did not check the doors (I  
usually did not - neither did Collette).  
I had been wearing my contacts  
until I was reading, then switched  
to glasses. I put my glasses  
on the coffee table next to

9. I was Awakened by a scream WHICH SOUNDED EXTREMELY LOUD TO me, (AND STILL SOUNDS LOUD). Then I heard Colette say "Help Jeff WHY ARE THEY DOING THIS TO me STOP STOP STOP WHY ARE THEY DOING THIS TO me". I ALSO HEARD Kim SCREAMING "DADDY, DADDY, DADDY". THE FAT NEIGHBOR ADJOINING OUR APT REPORTEDLY TOLD THE CID THEY DIDN'T HEAR ANYTHING (KALIN). THE NEIGHBOR ON THE OTHER SIDE IS A young girl married to a LT. from my OFFICE. He WAS ON DUTY THAT NIGHT, but reported to me Later AND TO Sgt James Williams, that his wife (JANE PONDLYSACK, wife of LT CHARLES PONDLYSACK) WAS AWAKENED BY SOUNDS AND HER DOG, who WAS EITHER "WAGGING" OR BARKING. SHE went back to sleep to be AWAKENED BY THE MP's, AMBULANCE etc. when they ARRIVED.

10. AS I sat up on the couch, I NOTED 3 men at the end of the couch. To my left approx ~ 5'10" (average Lt), Army Field Jacket WITH 8-6 Sgt stripes. IN THE MIDDLE, shorter (5'8"?) white

male with mustach (great + small) -  
 TO my RIGHT - ANOTHER AVERAGE  
 white male. NO HATS. NO RECOLLECTION  
 OF CLOTHES. THEN I SAW GIRL  
 BEHIND MEN - Long BLOND HAIR  
 (DARK ISLAND, NOT PEROXIDE WHITE)  
 WITD LARGE FLOPPY HAT. SHE  
 SEEMED TO HAVE LIGHT ~~IN~~  
 HANDS IN FRONT OF HER, SHINING  
 ON HER FACE / HAT. (CANDLE?  
 FLASHLIGHT?) I SUPPOSE ITS  
 POSSIBLE "SHE" WAS A MALE WITH  
 LONG HAIR.

SHE WAS SAYING "ACID IS  
 GROOVY - KILL THE PISS" - &  
 REPEATED THIS AT LEAST ONE MORE  
 TIME AND PROBABLY MORE. SEEMED  
 LIKE A GIRL'S VOICE, IN A MONOTONE.  
 I STARTED TO SIT UP AND  
 ASK WHAT THE HELL WAS  
 GOING ON. THE NEGRO STOPPED  
 TOWARDS ME, ~~RAISED~~ RAISED WHAT  
 APPEARED TO BE BASEBALL BAT AND  
 STRUCK AT ME. I WAS HIT  
 ON THE HEAD (LEFT SIDE) AS I  
 DUCKED BACKWARDS. I (LITERALLY)  
 SAW STARS AND WAS DIZZY. I  
 SAT UP AGAIN AND STRUGGLED  
 TO GET UP, KIND OF PUSHING  
 & HALF PUNCHING THE MEN IN

front of me. The Negro tried to  
 strike me but I partially hit his  
 arm and grasped the club. It  
 appeared to be wet (Blood or  
 Rain?). This is when I saw  
 the Sgt's stripes on his arm.  
 I felt a terrific pain in my  
 Right chest and felt somewhat short  
 of breath and remember thinking  
 to myself that he throws a  
 "HELLUM" punch. Apparently this  
 was the main chest stab wound.  
 I let go of the club and  
 grappled with the other two  
 men. I don't know if Colter  
 and Kim were still screaming  
 at this time - they keep asking  
 me this but I honestly don't  
 know. My hands and arms  
 were partially bound up with  
 my pajama top - I don't remember  
 it being pulled over my head so  
 it must have ripped. Sometime  
 during this struggle, (I know it  
 sounds idiotic) I thought I  
 saw a bare knee + upper leg. I  
 guessed, to the left, it was  
 the knee of the girl, who  
 must have been wearing a  
 skirt or shorts (?hippie?). It's  
 possible I was mistaken,

①

but it appeared to be a knee  
knee, AND the leg had a high  
tan roots (NO FRINGE ON TOP  
LIKE THE PAPERS SAID).

13.

During this part of the struggle,  
I grabbed AT LEAST one of  
the man's hands AND SAW A  
blade. (I didn't guess at this  
time it was an icepick - it could  
have been either a blade or an  
icepick). I grabbed hands several  
times during this part of the  
struggle. AT one time I thought  
a hand I was holding was  
GLASS - I TOLD THE CID AT  
THE INITIAL OR SECOND INTERVIEW  
I THOUGHT IT SEEMED LIKE A  
HEAVY RUBBER GLOVE. LATER ON,  
THEY MENTIONED THEY FOUND A  
"piece" of a surgical glove in  
the house. They didn't mention  
the two pairs of surgical  
gloves I initially TOLD THEM  
were present in the house. I  
SUSPECT the hand I held could  
have been a surgical glove but  
my instantaneous impression during  
THE STRUGGLE WAS A HEAVY  
RUBBER GLOVE

14.

After letting go of the club + struggling with the other man, I think I remember being struck from the left side again. Then the struggle continued and the next thing I know, I was lying on the hall floor, at the end near the couch + living room, facing the bedroom.

15.

The first thing I remember was the silence and my teeth were chattering. I thought I was going into shock. My chest was very painful and it hurt to breathe and I was very dizzy with pain in my head (mainly seemed left side, but it was vague).

I got up, went towards my bedroom, and saw Lorraine on the floor, sort of against the green chair, covered with blood. She was not moving and looked unresponsive (dead). A knife was in her upper chest. I pulled it out and throw it away. I had pulled the pajama top off my arms and hands and dropped it. I tried giving

(9)

6 cont.

mouth to mouth resuscitation BUT THE  
 AIR WAS COMING OUT HER NOSE  
 AND CHEST. I COVERED HER  
 PARTIALLY WITH MY PAJAMA TUB  
 AND (POSSIBLY) WITH A NEARBY  
 TOWEL OR BATHMAT. I DON'T  
 REMEMBER REALLY COVERING HER  
 WITH THIS TERRY CLOTH BATH MAT,  
 BUT THE CID SAID IT WAS  
 OVER IRA AND I REMEMBER TRYING  
 TO COVER HER (TO TREAT SHOCK).  
 I MOVED HER ARMS, AND READJUSTED  
 IRA POSITION TO LAY FLAT WHEN  
 I GAVE MOUTH-TO-MOUTH.

77.

I WENT TO KIM'S ROOM AND SAR  
 WAS ON THE RIGHT SIDE OF  
 THE BED WHERE SHE USUALLY  
 SLEPT, AND WAS ALSO COVERED  
 WITH BLOOD. I DON'T KNOW IF  
 I CHECKED FOR PULSES THIS  
 TIME, BUT SHE WASN'T BREATHING  
 AND LOOKED BAD.

78.

I WENT TO KAIS' ROOM AND SAR  
 WAS IN BED AND ALSO WAS  
 COVERED WITH BLOOD. AGAIN I  
 DON'T KNOW WHEN I CHECKED HER  
 PULSES, BUT IT PROBABLY WASN'T  
 THIS TRIP.

(10)



19.

AT THIS TIME, AFTER COMING OUT  
 OF KRISTY'S ROOM, I THINK I  
 LOOKED IN THE MAIN BATHROOM  
 MIRROR TO SEE WHY MY HEAD  
 HURT SO MUCH. I REMEMBER WIPING  
 MY HANDS ON SOME KLEENEX OR A  
 TOWEL - I SUPPOSE I DROPPED THEM  
 ON THE FLOOR, IN THE WASTE BASKET,  
 OR IN THE TUB. MY HEAD DIDN'T  
 LOSE REAL BAD, BUT I WAS  
 CONFUSED AND FELT DIZZY AND  
 SICK TO MY STOMACH. I WENT  
 INTO THE MAIN BATHROOM AND  
 CALLED THE OPERATOR, TOLD HER  
 MY NAME AND ADDRESS, TOLD HER  
 I NEEDED POLICE AND DOCTORS  
 AND AN AMBULANCE BECAUSE THERE  
 HAD BEEN A STRIBING. SHE  
 WANTED TO KNOW IF I WAS ON-  
 POST OR OFF-POST. I SAID  
 ON-POST AND SHE SAID I WOULD  
 HAVE TO CONTACT THE M.D. I  
 DROPPED THE PHONE, NOT KNOWING  
 WHAT TO DO. I NOTICED THE  
 BACK DOOR WAS OPEN, AND I  
 THINK I WENT TO THE BACK  
 DOOR, LOOKED OUT, DIDN'T SEE  
 ANYTHING AND WENT BACK TO  
 COLETTE. IT WAS SERIOUSLY  
 GETTING VERY HARD TO BREATHE  
 ... ..

20. I now checked Clotie's pulses -  
Femoral, CAROTID (neck), wrists. I  
did not feel a pulse. I then  
stayed on the floor, sort of  
on my hands and knees, getting  
my breath. I picked up my  
PIJAMA top, I think, to look at  
THE CHEST WOUNDS AND REPLACED  
THE PJ top. IT DEFINITELY WAS  
bloody.

21. I then went to Kim's room  
AGAIN, AND I KNOW I CHECKED  
ALL HER PULSES THIS TIME. I  
DON'T KNOW IF I TRIED MOUTH  
TO MOUTH, BUT I THINK I DID DO,  
EITHER NOW OR ON THE PREVIOUS  
TRIP. THEN I WENT TO KAI'S  
ROOM AND CHECKED HER PULSES  
WITHOUT SUCCESS.

22. WHEN I CAME OUT OF KAI'S ROOM  
I STOPPED AND CAUGHT MY BREATH  
AND TRIED TO THINK OF SOMETHING  
TO DO. I REMEMBER THINKING I  
COULD GO NEXT DOOR, THEN REJECTED  
IT, AND INSTEAD WENT TO  
THE KITCHEN PHONE. I DON'T  
KNOW WHY I WENT TO THE

(14)

Kifden phone except maybe I was trying to avoid the master bedroom again. I don't know. Anyway, the operator was on the phone when I picked up the receiver, apparently she had never broken the connection (and the bedroom phone was off the hook so the connection would stay open). I TOLD HER AGAIN THAT people had been SEIZED AND there were PROBABLY some dead people AND I was stabbed AND was probably DYING AND WE NEEDED POLICE, PARAMEDICS, DOCTORS AND AMBULANCES. SGT SAID HOLD ON AND CONNECTED me WITH THE MD's - (some SGT). I repeated the story AND he said help was coming AS SOON AS POSSIBLE (ASAP). I dropped the phone.

23. The rest is MAY. I think I stood at the sink and RINSED my hands AGAIN, but I'm not 100% sure. I don't know if I ~~did~~ DROD them ON A TOWEL OR my PJ BOTTOMS. I remember feeling SCARED ~~that~~ wasn't coming AND thinking what IF the ATTACKERS WERE STILL

NEARBY. IN ANY CASE, THIS IS ALL CONFUSED IN MY MIND - I REMEMBER LEAVING THE KITCHEN AND THE NEXT THING IS:

24.

I WAS LYING NEXT TO COLETTE AND AN MP WAS GIVING ME MOUTH-TO-MOUTH RESUSCITATION. I REMEMBER MY FIRST IMPULSE WAS TO STRUGGLE UP AND PUSH THEM AWAY AND FIGHT, BUT HE PUSHED ME DOWN AND SOMEONE TOLD ME TO RELAX THAT AN AMBULANCE WAS COMING.

I REMEMBER THERE SEEMED TO BE MANY MANY PEOPLE AROUND ME. I HEARD THINGS LIKE "HE'S A DOCTOR" - (HOW DID THEY KNOW?) - "DON'T TOUCH THAT" - "I'LL CALL FOR HELP" - "DON'T TOUCH HER", "WHERE THE HELL IS THE AMBULANCE?". THE ROOM SEEMED JAMMED WITH PEOPLE. I FELT LIKE I COULDN'T BREATHE AND TOLD THEM. SOMEONE ASKED ME WHAT HAPPENED AND I SAID 405 PEOPLE STARED US. I ASKED HOW THE KIDS AND COLETTE WERE, AND THEY SAID "FINE". I REMEMBER STRUGGLING TO GET OFF THE STRETCHER

(14)

and falling into Kim's room (XXXXXX)  
 I think (I guess they took me  
 out the front door, which  
 I had locked as Collette came  
 home at 9<sup>30</sup> pm.).

JS.

The next thing I remember was  
 being on the hospital stretcher  
 in the E.R. and someone was  
 asking who I was, and what  
 happened. I gave them my name,  
 and later my social security  
 number. I kept asking how my  
 wife and kids were but no one  
 would answer me. Then I  
 recognized someone - Dr. Jackson,  
 whom I had met one other  
 time (I took Sgt Frank Moore  
 to the hospital for Bolly-pain)  
 He wouldn't tell me anything  
 either. I saw bubbles coming  
 out of my chest & told him  
 I needed a chest tube. He briefly  
 examined me and said I needed  
 a chest X-ray. I remember him  
 looking at my forehead, but  
 he did not feel the rest  
 of my head for bumps and  
 did not do a neurological  
 exam. I remember this because  
 he asked me if I was

(15)

unconscious and I said I didn't know. Then I began to wonder if I had been unconscious, and wondered why he wasn't worried about a fractured skull or intracranial bleeding. He also never tested my extremities for range of motion, (in despite with the written records).

26. He (Dr Jacobson) told me after the Xray I had a pneumothorax, but was holding off doing a chest tube for the present. I was sent to ICU (Intensive Care Unit - or maybe they call it Recovery Room), and a short time later Dr Gemma came in and put in a chest tube.

27. I remember crying a lot, and seeing Dr. Merrill Brownstein, who told me about my family. He called my mother and in-laws. It seemed there were many people in and out including Col Kane and Capt MANLOW HIRSTAD (DR), my immediate boss.

(16)

28. AFTER my chest tube was put IN, the chest pain WAS WORSE. I felt very CONFUSED AND dizzy AND sick TO my stomach. I know I began to get medicines BECAUSE I WAS DOZING OFF AND ON.
29. The CID INTERVIEWED me at 8<sup>30</sup> AM. I gave them a (PROBABLY CONFUSED AND somewhat disoriented) VERSION of the NARRATIVE WHICH WAS PROBABLY DIFFERENT mainly in DETAIL AND LENGTH. (+FBI)
30. The CID & FBI interviewed me AGAIN later in the day AND the interview WAS PROBABLY different ONLY in more DETAIL AND SLIGHTLY CALMER ON my part. They finger / foot painted me when I WAS IN ICU.
31. My mother AND the KASSABs (called by Dr. Brownstein) ARRIVED IN the AFTERNOON. I TOLD THEM ONLY BRIEFLY WHAT

(17)

had happened. They had arrived  
UNAWARE.

32. The people who saw me EARLIEST  
DURING THIS PERIOD,
- A. MP'S AND Hospital Ambulance  
DRIVERS
  - B. Emergency Room NURSES AND  
ATTENDANTS.
  - C. DR. JACOBSON.
  - D. DR. BROWSTEIN
  - E. ICU NURSES
  - F. CHAPLAIN (LTC) PETERMAN
  - G. DR. Gemma
  - H. DR. Hiestand (my boss)
  - I. Col. Kane
  - J. CID & FBI X 2
  - K. Mother
  - L. KASSAB (IN-LAWS)
  - M. Capt James Williams (?)  
Don't remember how early  
he saw me.

33. THIS IS THE most complete  
AND ORDERLY ACCT I HAVE BEEN  
GIVEN. WRITING IT IS EASIER  
THAN TALKING ABOUT IT, AND  
CLEARED UP SEVERAL CONFUSING THINGS  
IN my mind. IT makes the time  
sequence seem more definite than I feel  
it to be, however.

(18)



# FATAL VISION



GOVERNMENT  
EXHIBIT  
4002

# Joe McGinniss

JOE McGINNISS / 610

"No."

"Did you ever wear it outside?"

"The robe?"

"Yes."

"Well, maybe to run to get something off the line, you know, or pick up—pick up the paper every morning, but not specifically, no. Now sometimes, you know, maybe the—the kids would dress up in those things and go outdoors and play for a minute, but that was considered good stuff and my mother—my mother, that's a Freudian slip—my wife would have, you know, called them back in and taken it off."

A Freudian slip. Not dissimilar, perhaps, from the other unconscious errors he had made during the April 6 interview, when, three times, he had said "bed" instead of "couch," in describing where his struggle against the intruders had taken place.

On my last day at the condominium, I found more pages of notes in Jeffrey MacDonald's handwriting. The heading said, "Activities—Monday, 16 Feb. 5:30 P.M.—Tues. in Hospital, 17 Feb."

This, too, was part of the detailed account which MacDonald had prepared at the request of his military attorney immediately after the April 6 announcement that he was being held as a suspect. The account which, he had told Victor Worheide at the grand jury, he had put in writing because the events were too painful for him to talk about. This, he had told Worheide, was the most accurate, most complete, most coherent account of the night of the murders which he had ever compiled. He had not, however, made it available to Worheide or to the grand jurors. He had not made it available to any investigator. He had given it to his lawyers for their use—not knowing, at the time, what the evidence against him might consist of—and, once it became clear, during the Article 32 hearing, that certain avenues were not to be pursued, this "most accurate" account had lain at the bottom of a cardboard box, covered by dozens of other files.

With the warm Southern California sun of late November shining brightly through the sliding glass doors, I started to read:

We ate dinner together at 5:45 P.M. (all 4). It is possible I had 1 diet pill at this time. I do not remember, but it is possible. I had been running a weight control program for

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my unit and I put my name at the top of the program to encourage participation. I had lost 12–15 lbs. in the prior 3–4 weeks, in the process using 3–5 capsules of Eskatrol Spansule (15 mg. Dextroamphetamine ("speed")) and 7.5 mg. Prochlorperazine (Compazine) to counteract the excitability of the speed. I was also losing weight because I was working out with the boxing team and the coach told me to lose weight. In any case, the reason I could have taken the pill was two-fold—1) to eat less in the evening when I 'snacked' the most and 2) to try to stay awake after dinner since I was baby-sitting. It didn't work if I did take a pill, because I think I had a ½ hr. nap on the floor from 7:30–8 P.M. after I put Kristy to bed. . . .

The CID knows nothing about the possible diet pill. . . . If I did take the pill, it is conceivable that my urine and blood 11:30 A.M. Tues. would still have some residue. We would have to research the breakdown and excretion of what was in the pill. We would also have to find out if the excretion products are definitely different than normal breakdown products of adrenaline from the body, which would be increased in the excitement of the attack, etc. Right now, I don't know if it is definitely possible to identify Dextroamphetamine from pills in the blood and the urine. I think I told the CID the only pills I usually took were aspirin, occas. cold pills, and Tetracycline (antibiotic). . . . Dr. Henry Ashton, now living in Salt Lake City, Utah, was the group surgeon before I arrived in Sept. 1969. If he remembers, he can testify that the bottle of Eskatrol from my house (with only a few missing) was left in the desk I took over when he left. If necessary, we can then contact the Smith Kline & French representative near here who can testify I never received another large bottle of sample Eskatrol. He did give me some small sample bottles for use in the weight control program. Colette had some diet pills of her own (used before she was pregnant). I think I threw them all out because they made her nervous, but possibly there was an old container left in the medicine cabinet. . . .

Having received a report from the Fort Gordon laboratory that an analysis of Jeffrey MacDonald's blood—made from a sample taken at 11:40 A.M. on February 17—"did not reveal the presence of any dangerous drugs or narcotics," Franz Joseph Grebner and all subsequent investigators had simply assumed,

JOE McGINNISS / 612

with some justification, that Jeffrey MacDonald's drug consumption had not been a factor in the commission of the murders.

An examination I made subsequently of the laboratory notes compiled by the Fort Gordon chemist who had actually performed the tests on MacDonald's blood, however, revealed that no attempt was ever made to determine from the sample whether Jeffrey MacDonald, in the hours or days that had immediately preceded the murders, had been ingesting amphetamines. The chemist had never been instructed to test for the presence of amphetamines, and, in fact, the equipment available at the CID laboratory at the time would not have enabled him to do so. In 1970 these drugs were widely prescribed and were consumed in considerable quantity not only by individuals attempting to lose weight, but by students, truck drivers—and physicians—who found it necessary to remain awake and alert for extended periods of time. In 1970, amphetamines were not considered a "dangerous" drug by military authorities attempting to combat a dramatic upsurge in the use both of hallucinogens and of opiates such as heroin and chiefly concerned with the widespread use of marijuana.

Ten years later, however, the potential hazards associated with Eskatrol consumption had received considerably wider attention. The drug is listed in *Pills That Don't Work*, the 1981 book by Sidney M. Wolfe, M.D., and Christopher M. Coley that is described on its cover as, "A consumers' and doctors' guide to over 600 prescription drugs that lack evidence of effectiveness."

Wolfe and Coley describe the drug as "not only ineffective but also dangerous . . . To use a combination of an 'upper' and a 'downer' both of which carry significant risks is asking for trouble." Among the possible side effects listed are: "Insomnia . . . restlessness, nervousness and dizziness." The authors also state that "psychosis (insanity) may occur with large doses."

Eskatrol is described in even more detail in the *Physicians' Desk Reference*, a standard medical reference book published by Medical Economics Company.

"Amphetamines have a significant potential for abuse," this text states. "In view of their short-term anorectic effect and rapid development of tolerance, they should be used with extreme caution and only for limited periods of time in weight-reduction programs."

According to his own notes—the notes which Victor Worheide had asked him to provide to the grand jury but which he

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had declined to do; the notes which had lain in the bottom of a file drawer since 1970 when MacDonald had learned that CID testing had failed to discover the presence of amphetamines in his blood—MacDonald had lost twelve to fifteen pounds in the three to four weeks preceding the murders.

That was a lot of weight to lose for an already fit, twenty-six-year-old Green Beret officer, fresh from paratroop training at Fort Benning. And boxing would not account for it: his last workout with the boxing team had come more than three weeks before the killings. Neither would an odd hour of basketball late on a rainy afternoon produce that sort of weight loss. And there had been nothing to suggest that MacDonald had embarked upon a formal diet. (Indeed, he'd been eating cookies with Ron Harrison on the night of Valentine's Day and drinking a sweet liqueur with his wife two nights later, and—he had said—one of the most appealing features of Hamlet Hospital was that the nurses served him steak for breakfast.)

"Three to five" Eskatrol Spansules over a three-to-four-week period also would not have accounted for the weight loss. Three to five per day, however, could have had a marked effect. That level of consumption could also have had a number of other consequences, such as, according to the *Physicians' Desk Reference*, "marked insomnia, tenseness and irritability, hyperactivity, confusion, assaultiveness, hallucinations, panic states," and "the most severe . . . psychosis."

"Cardiovascular reactions," the reference book states, "may include chilliness, pallor or . . . headache," all three of which symptoms Jeffrey MacDonald exhibited in the immediate aftermath of the murder of his family.

And it is not only the amphetamine component which can pose hazards. Again, as cited in the *Physicians' Desk Reference*, prochlorperazine—the sedative component of the Spansule—can cause "agitation, restlessness, and reactivation of psychotic processes."

The *Physicians' Desk Reference* also states that the drug was "so prepared that an initial dose is released promptly and the remaining medication is released gradually over a prolonged period." The prescribed dose was one capsule per day, to be taken in the morning.

"If appetite control is desired through evening hours," the *PDR* states, "shift dose to midmorning. Late afternoon or evening medication should be avoided because of the resulting insomnia."

-3955- Yet Jeffrey MacDonald—outstanding medical student though

he had been—was consuming the drug in a manner contrary to this recommendation. How much he might have been consuming will forever be, to employ a phrase used by Freddy Kassab before the grand jury, “a dark area,” but if the “three to five” were a daily dose it would have been enough—taken over a period of three to four weeks—to have caused chronic amphetamine psychosis, many of the symptoms of which MacDonald did, in fact, display. (In the hospital after the murders he also displayed symptoms associated with abrupt cessation of high dosages of the drug, such as [as cited in the *PDR*] “extreme fatigue and mental depression.”)

The chapter on amphetamines in *Disposition of Toxic Drugs and Chemicals in Man*, by Randall C. Baselt (Biomedical Publications, 1982) states that “Chronic usage is associated with a high incidence of weight loss, hallucinations, and paranoid psychosis.”

An even more detailed analysis of the effects of amphetamines and prochlorperazine is contained in *Goodman and Gilman's Pharmacological Basis of Therapeutics*, a widely used medical text edited by Alfred Goodman Gilman, Louis S. Goodman, and Alfred Gilman and published by Macmillan.

In the chapter titled “Drug Addiction and Drug Abuse,” Jerome H. Jaffee, M.D., professor of psychiatry at the University of Connecticut School of Medicine, writes, “the user [of amphetamines] is hyperactive and during a toxic episode may act in response to persecutory delusions. . . . The fully developed toxic syndrome from amphetamine is characterized by vivid visual, auditory, and sometimes tactile hallucinations.” (Such as, one cannot help but wonder, a hallucination involving an attack by three armed hippies and a girl with long blond hair holding a candle and chanting “Acid is groovy . . . Kill the pigs”?)

“Tolerance does not develop to certain of the toxic effects of amphetamines on the central nervous system,” Dr. Jaffee writes, “and a toxic psychosis may occur after periods of weeks.” He also states that “the syndrome may be seen as early as 36 to 48 hours after the ingestion of a single large dose . . . in apparently sensitive individuals, psychosis may be produced by 55 to 75 mg. of dextroamphetamine. With high enough doses, psychosis can probably be induced in anyone.”

Other psychopharmacologists have commented that rage reactions are not uncommon in individuals who are abusing amphetamines—particularly when the period of abuse involves sleep deprivation, outside stresses, and, most notably, any predisposition toward psychological instability, such as would be

the case with an individual suffering from a narcissistic personality disorder.

“Most observers,” Dr. Jaffee writes, “have noted considerable psychopathology in compulsive amphetamine users and their families, which appeared to have antedated the drug use.” Whether “considerable psychopathology” existed in the MacDonald family of Patchogue, Long Island, is perhaps another “dark area,” but it is fact that the father was given to outbursts of anger and that Jeffrey’s only brother was hospitalized after a psychotic episode involving violence.

It is also fact that if Jeffrey MacDonald were taking three to five Eskatrol Spansules daily, he would have been consuming 75 mg. of dextroamphetamine—more than enough to precipitate an amphetamine psychosis.

Chapter 19, “Drug Treatment of Disorders of Mood,” of Goodman and Gilman’s book discusses side effects of chlorpromazine, the category of drug which includes the prochlorperazine found in Eskatrol Spansules. The author, Ross J. Baldessarini, M.D., professor of psychiatry at the Harvard Medical School, writes that while tolerance to the sedative effects of this drug develops “over a period of days or weeks,” it retains a capacity to produce unpleasant side effects, including a syndrome known as akathisia, which is characterized by “the compelling need of the patient to be in constant movement . . . the patient feels that he must get up and walk or continuously move about . . . akathisia can be mistaken for agitation in psychotic patients.”

Certainly all reports from Womack Hospital indicate that Jeffrey MacDonald, in the first moments after his arrival—indeed, until Merrill Bronstein began intravenous administration of Vistaril, Nembutal, and Demerol—had felt a powerful urge to get up and walk about and that he appeared to be in a state of high agitation.

Concluding their discussion of Eskatrol Spansules in *Pills That Don't Work*, Wolfe and Coley write that the drug “should have been removed from the market long ago.” Late in 1980, as such medications were coming under closer scrutiny from the Food and Drug Administration, its manufacturer, Smith Kline & French, voluntarily ceased the manufacture and distribution of Eskatrol, despite the fact that its estimated retail sales at that time totalled more than \$6 million annually.

—3956— When Colette MacDonald—pregnant by accident once again—had left for her psychology class that cold and rainy February evening, her husband (whose pallor, fatigue, and changed per-

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sonality had been noted even by neighbors in the weeks immediately preceding the murders) had been so exhausted, from having worked a twenty-four-hour emergency room shift and then a full day at the office, followed by an hour of basketball and a trip with his daughters to feed the pony, that he had been on the verge of falling asleep without even putting his younger daughter to bed. His condition had been so noteworthy that Colette had commented on it to the friend whom she drove to class.

Yet upon her return he had stayed up with her watching television and sipping Cointreau. And then, even when she had gone to bed, he—having lost sexual interest in her since her pregnancy had begun to manifest itself (impotence and changes in libido are also among the adverse reactions to consumption of dextroamphetamine)—had remained up until 2 A.M. watching the remainder of Johnny Carson and finishing the Mickey Spillane book *Kiss Me Deadly*.

Even then, MacDonald had not been ready for bed. Instead, he said, he had donned a pair of rubber surgical gloves to wash the dishes at 2 o'clock in the morning.

This despite his previous state of exhaustion and notwithstanding the fact that he would have to be up again by 7 A.M. to put in another full day at the office.

And, this also notwithstanding that he had lost fifteen pounds in three weeks, that he was in the midst of devising a plan which would permit him to spend a fair portion of the late winter and early spring in the vicinity of New York City, where his old (or maybe not-so-old) girlfriend, Penny Wells, resided, while pregnant Colette cared for the two daughters and the pony, believing him to be in Russia all the while.

And, all this following an autumn which had brought not only the unexpected pregnancy but the unexpected breakdown of his older brother (following a period of amphetamine abuse) and such other frustrations as the demotion in authority, if not rank, which had ensued upon the departure of his idol, Colonel Kingston, for Vietnam.

He had lost fifteen pounds in three weeks while taking a drug that can cause insanity. He was suffering from short-term physical exhaustion and longer-term emotional stress. His life, in fact, had been one extended period of stress—financial, intellectual, psychological—ever since Colette had become pregnant and he had had to marry her and to leave Princeton early and to get through medical school while being husband to her and father to two daughters, and the glamour and titillation

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attendant upon his becoming a Green Beret had provided only a temporary escape.

Might it be too much to surmise that since early childhood he had been suffering also from the effects of the strain required to repress the "boundless rage" which psychological maladjustment had caused him to feel toward "child or woman, wife or mother . . . the female sex"?

And that on this night—this raw and somber military-base February Monday night—finally, with the amphetamines swelling the rage to flood tide, and with Colette, pregnant Colette, perhaps seeking to communicate to him some of her new insights into personality structure and behavioral patterns—indeed, possibly even attempting to *explain* him to himself—his defense mechanism, for the first and last time, proved insufficient?

Would it be too much to suggest that in that one instant—whatever its forever unknowable proximate cause might have been—a critical mass had been achieved, a fission had taken place, and that by 3:40 A.M. on February 17, 1970, the ensuing explosion of rage had destroyed not only Jeffrey MacDonald's wife and daughters, but all that he had sought to make of his life?

Perhaps. Yet his bloody footprint had been found on the floor and there were blue threads on the club outside the house and his wife—already dead or so near to it that the difference was of no import whatsoever—had been stabbed in the chest with an icepick twenty-one times after his blue pajama top had been laid across her. And when he had sat down to write his first account of the night's events—knowing that he was now considered the chief suspect—his consumption of a drug which is capable of triggering psychotic rage had been the thing he had felt it necessary to mention first.

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RECEIVED (MAR 31 1982) 9: 70 [Signature]

**MILITARY POLICE RECEIPT FOR PROPERTY**  
(AR 190-22)

COMPLAINT OR CASE NO. (If any)  
70-17023-1117

UNIT DESIGNATION OF RECEIVING HEADQUARTERS  
Detachment B, 3d MP Group (CI)

LOCALITY  
Fort Bragg, North Carolina

NAME OF PERSON FROM WHOM PROPERTY IS OBTAINED  
 OWNER CPT HALCOCK, William  
 OTHER

ADDRESS (Include ZIP Code)  
Womack Army Hospital  
Fort Bragg, North Carolina

LOCATION OF PROPERTY  
Received from Pathology Department, Womack Army Hospital, Fort Bragg, North Carolina

PURPOSE FOR WHICH OBTAINED  
Evidence

ITEM NO	QUANTITY	DESCRIPTION OF ARTICLES (Include make, serial no., identifying marks, condition, and value, when appropriate)
1	13	Plastic vials containing fingernail scrapings, hair samples, fibers and vaginal smears taken from victims at Womack Army Hospital by MAJ GANDEL, George E., and CPT HALCOCK, William. Marked BJK, 17 Feb 70
2	1	Plastic container containing hair samples of 3 year old victim, Christine McDONALD, marked BJK, 17 Feb 70.
3	1	Plastic container containing a wedding ring, gold in color, 14K inscribed on inside of ring. Container marked BJK, 17 Feb 70
4	1	Plastic bag containing one pair of pink colored panties; one gown bearing a floral print and a reddish stain which appears to be blood, taken from body of Kim McDONALD.
5	1	Plastic bag containing one pair of floral print panties; one child's undershirt and one pair of child's pajama's, white with red dots; all articles stained with a reddish stain which appears to be blood, taken from the body of Christine McDONALD.
6	1	Plastic bag containing one pair of pink pajama's bottom; one pajama's top or jacket; both articles stained with a reddish stain which appears to be blood, taken from body of Collette McDONALD.

WITNESSED BY: James C. King  
James A. KING  
Det. B, 3d MP Gp (CI)  
Ft. Bragg, NC

RECEIVED FROM: [Signature]  
William HALCOCK  
Womack Army Hospital

I CERTIFY THAT I HAVE RECEIVED AND HOLD MYSELF RESPONSIBLE FOR THE ARTICLES DESCRIBED.

DATE: 17 Feb 70  
TYPED NAME, GRADE AND BRANCH: Bennie J. HAWKINS, Crim Inves  
SIGNATURE: [Signature]

ITEM NO	DATE	RELINQUISHED BY	RECEIVED BY	PURPOSE OF CHANGE OF CUSTODY
1	21 FEB 70	TYPED NAME, GRADE AND BRANCH: Bennie J. Hawkins SIGNATURE: [Signature]	TYPED NAME, GRADE AND BRANCH: Craig S. Chamberlain SIGNATURE: [Signature]	2 CI LAB FOR ANALYSIS
4	27 MAR 70	TYPED NAME, GRADE AND BRANCH: Craig S. CHAMBERLAIN SIGNATURE: [Signature]	TYPED NAME, GRADE AND BRANCH: William F. Ivory, CP SIGNATURE: [Signature]	TO AFIP Subvoucher 1
4	16 APR 70	TYPED NAME, GRADE AND BRANCH: William F. Ivory, CP SIGNATURE: [Signature]	TYPED NAME, GRADE AND BRANCH: Craig S. CHAMBERLAIN SIGNATURE: [Signature]	Return to CI Lab
1	11 APR 70	TYPED NAME, GRADE AND BRANCH: Craig S. CHAMBERLAIN SIGNATURE: [Signature]	TYPED NAME, GRADE AND BRANCH: William F. Ivory, CP SIGNATURE: [Signature]	Return to Ft. Bragg

DA FORM 19-31 1 Jun 55

EXHIBIT C

Exhibit #1

GOVERNMENT EXHIBIT 6001

3:75-CR-26-F

Case: 08-8525 Document: 108 Date Filed: 08/02/2010 Page: 40

RECEIVED

MAR 31 1993

CHAIN OF CUSTODY (Continued)				
ITEM NO	DATE	RELINQUISHED BY	RECEIVED BY	PURPOSE OF CHANGE OF CUSTODY
1/6	2 May 70	TYPED NAME, GRADE AND BRANCH C. Thomas T. Jolley, Jr. SIGNATURE C. T. Jolley, Jr.	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. EVIDENCE CUSTODIAN SIGNATURE W. W. Blalock, Jr.	Evidence Room
4/6	25 MAY 70	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. EVIDENCE CUSTODIAN SIGNATURE W. W. Blalock, Jr.	TYPED NAME, GRADE AND BRANCH Robert S. Shaw, CID SIGNATURE Robert S. Shaw	Investigative Activity
4/6	27 MAY 70	TYPED NAME, GRADE AND BRANCH Rbt B. Shaw, CID SIGNATURE Robert S. Shaw	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. EVIDENCE CUSTODIAN SIGNATURE W. W. Blalock, Jr.	Evidence Room
1/6	9 Jun 70	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. EVIDENCE CUSTODIAN SIGNATURE W. W. Blalock, Jr.	TYPED NAME, GRADE AND BRANCH Willard A. Spassent SIGNATURE Willard A. Spassent	Change of Custodian
1/6	1 Jul 70	TYPED NAME, GRADE AND BRANCH Willard A. Spassent SIGNATURE Willard A. Spassent	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. EVIDENCE CUSTODIAN SIGNATURE W. W. Blalock, Jr.	Change of Custodian
1/6	26 Jul 70	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. EVIDENCE CUSTODIAN SIGNATURE W. W. Blalock, Jr.	TYPED NAME, GRADE AND BRANCH David L. Lewis, Staff SIGNATURE David L. Lewis	Hand Carry to CI Lab SV-1
2/6	14 Aug 70	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. EVIDENCE CUSTODIAN SIGNATURE W. W. Blalock, Jr.	TYPED NAME, GRADE AND BRANCH Registered Mail # 144120 SIGNATURE	To CI Lab
6/6	70 9 10	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. EVIDENCE CUSTODIAN SIGNATURE W. W. Blalock, Jr.	TYPED NAME, GRADE AND BRANCH FRANZ J. LARKNER, CWO SIGNATURE Franz J. Larkner	To Article 32 Board
6/6	70 9 19	TYPED NAME, GRADE AND BRANCH FRANZ J. LARKNER, CWO SIGNATURE Franz J. Larkner	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. EVIDENCE CUSTODIAN SIGNATURE W. W. Blalock, Jr.	Returns to Evidence Room
3/6	70 25	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. EVIDENCE CUSTODIAN SIGNATURE W. W. Blalock, Jr.	TYPED NAME, GRADE AND BRANCH Willard A. Spassent SIGNATURE Willard A. Spassent	Change of Custodian
3/6	70 10 16	TYPED NAME, GRADE AND BRANCH Willard A. Spassent SIGNATURE Willard A. Spassent	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. EVIDENCE CUSTODIAN SIGNATURE W. W. Blalock, Jr.	Change of Custodian
2/6	70 11 25	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. EVIDENCE CUSTODIAN SIGNATURE W. W. Blalock, Jr.	TYPED NAME, GRADE AND BRANCH W. F. FARRISH EVIDENCE CUSTODIAN SIGNATURE W. F. Farrish	Change of Custodian
1/6	70 12 11	TYPED NAME, GRADE AND BRANCH Reg Mail 27878 SIGNATURE	TYPED NAME, GRADE AND BRANCH W. F. FARRISH EVIDENCE CUSTODIAN SIGNATURE W. F. Farrish	EVIDENCE ROOM
4/5	71 1 18	TYPED NAME, GRADE AND BRANCH W. F. FARRISH EVIDENCE CUSTODIAN SIGNATURE W. F. Farrish	TYPED NAME, GRADE AND BRANCH William J. Ivory, CID SIGNATURE William J. Ivory	To Investigator

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(2)

1029-10

**MILITARY RECEIPT**  
(AR 190-22)

PRINT OR CASE NR (if any)  
-10623-1019V

**Exhibit #1**

UNIT DESIGNATION OF RECEIVING HEADQUARTERS  
Detachment B, 3d MP Group (CI) North Carolina

NAME OF PERSON FROM WHOM PROPERTY IS OBTAINED  
 OWNER CPT HANCOCK, William Army Hospital  
 OTHER 243-74-6961 Fort Bragg, North Carolina

LOCATION OF PROPERTY  
Received from Pathology Department, Womack Army Hospital, Fort Bragg, North Carolina

PURPOSE FOR WHICH OBTAINED  
Evidence

ITEM NR	QUANTITY	DESCRIPTION OF ARTICLES (Include model, serial Nr, identifying marks, condition, and value, when appropriate)
✓ 1	13	Plastic vials containing fingernail scrapings, hair samples, fibers and vaginal smears taken from victims at Womack Army Hospital by MAJ GAMBEL, George E., and CPT HANCOCK, William. Marked BJH, 17 Feb 70
✓ 2	1	Plastic container containing hair samples of 3 year old victim, Christine McDONALD, marked BJH, 17 Feb 70.
✓ 3	1	Plastic container containing a wedding ring, gold in color, 14K inscribed on inside of ring. Container marked BJH, 17 Feb 70
✓ 4	1	Plastic bag containing one pair of pink colored panties; one gown bearing a floral print and a reddish stain which appears to be blood, taken from body of Kim McDONALD.
✓ 5	1	Plastic bag containing one pair of floral print panties; one child's undershirt and one pair of child's pajama's, white with red dots; all articles stained with a reddish stain which appears to be blood, taken from the body of Christine McDONALD.
6	1	Plastic bag containing one pair of pink pajama's bottom; one pajama's top or jacket; both articles stained with a reddish stain which appears to be blood, taken from body of Collette McDONALD.

////////////////////// LAST ITEM //////////////////////////////////////

WITNESSED BY: James A. King  
James A, KING  
Det B, 3d MP Gr (CI)  
Ft. Bragg, NC

RECEIVED FROM: William Hancock  
William HANCOCK  
243-74-6961  
Womack Army Hospital

I CERTIFY THAT I HAVE RECEIVED AND HOLD MYSELF RESPONSIBLE FOR THE ARTICLES LISTED ABOVE.

DATE	TYPED NAME, GRADE AND BRANCH	SIGNATURE
17 Feb 70	Bennie J. HAWKINS, Crim Inves	<u>Bennie J. Hawkins</u>

CHAIN OF CUSTODY				
ITEM NR	DATE	RELINQUISHED BY	RECEIVED BY	PURPOSE OF CHANGE OF CUSTODY
1/6	21 FEB 70	TYPED NAME, GRADE AND BRANCH <u>Bennie J. Hawkins</u>	TYPED NAME, GRADE AND BRANCH <u>Craig S. Chamberlain</u>	CI LAB FOR ANALYSIS
		SIGNATURE <u>Bennie J. Hawkins</u>	SIGNATURE <u>Craig S. Chamberlain</u>	
4/6	27 MAR 70	TYPED NAME, GRADE AND BRANCH <u>Craig S. CHAMBERLAIN</u>	TYPED NAME, GRADE AND BRANCH <u>William F. IVORY, CID</u>	TO AFIP Subvoucher - 1
		SIGNATURE <u>Craig S. Chamberlain</u>	SIGNATURE <u>William F. Ivory</u>	
4/6	10 APR 70	TYPED NAME, GRADE AND BRANCH <u>William F. Ivory</u>	TYPED NAME, GRADE AND BRANCH <u>Craig S. CHAMBERLAIN</u>	RETURN TO CI LAB
		SIGNATURE <u>William F. Ivory</u>	SIGNATURE <u>Craig S. Chamberlain</u>	
1/6	11 APR 70	TYPED NAME, GRADE AND BRANCH <u>Craig S. CHAMBERLAIN</u>	TYPED NAME, GRADE AND BRANCH <u>William F. Ivory, CID</u>	RETURN TO FT BRAGG
		SIGNATURE <u>Craig S. Chamberlain</u>	SIGNATURE <u>William F. Ivory</u>	

DA FORM 19-31 JUN 55

13 VIALS - 5 OUT

59-70



CHAIN OF CUSTODY (Continued)				
ITEM NR	DATE	RELINQUISHED BY	RECEIVED BY	PURPOSE OF CHANGE OF CUSTODY
1/6	2 May 70	TYPED NAME, GRADE AND BRANCH William E. Zurey, JCS SIGNATURE	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. CID EVIDENCE CUSTODIAN SIGNATURE	Evidence Room
4/6	25 May 70	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. CID EVIDENCE CUSTODIAN SIGNATURE	TYPED NAME, GRADE AND BRANCH Robert B. Shaw, CID SIGNATURE	Investigative Activity
4/6	27 May 70	TYPED NAME, GRADE AND BRANCH Ebt B. Shaw, CID SIGNATURE	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. CID EVIDENCE CUSTODIAN SIGNATURE	Evidence Room
1/6	9 June 70	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. CID EVIDENCE CUSTODIAN SIGNATURE	TYPED NAME, GRADE AND BRANCH W. Ward A. Spasseet SIGNATURE	Change of Custodian
1/6	1 July 70	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. CID EVIDENCE CUSTODIAN SIGNATURE	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. CID EVIDENCE CUSTODIAN SIGNATURE	Change of Custodian
1	29 July 70	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. CID EVIDENCE CUSTODIAN SIGNATURE	TYPED NAME, GRADE AND BRANCH David L. Lewis, PMS SIGNATURE	Hand carry to CI Lab on SV-1
2	15 Aug 70	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. CID EVIDENCE CUSTODIAN SIGNATURE	TYPED NAME, GRADE AND BRANCH Registered Mail SIGNATURE	To CI Lab on SV-1
6	9 10	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. CID EVIDENCE CUSTODIAN SIGNATURE	TYPED NAME, GRADE AND BRANCH FRANZ J. GAEHNER, CN 3, MPC SIGNATURE	To Article 32 Board
6	9 11	TYPED NAME, GRADE AND BRANCH FRANZ J. GAEHNER, CN 3, MPC SIGNATURE	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. CID EVIDENCE CUSTODIAN SIGNATURE	Returned to Evidence Room
2	70 9 14	TYPED NAME, GRADE AND BRANCH Registered Mail SIGNATURE	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. CID EVIDENCE CUSTODIAN SIGNATURE	Received in Evidence Room
2/6	79 9 25	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. CID EVIDENCE CUSTODIAN SIGNATURE	TYPED NAME, GRADE AND BRANCH W. Ward A. Spasseet SIGNATURE	Change of Custodian
2/6	70 10 16	TYPED NAME, GRADE AND BRANCH W. Ward A. Spasseet SIGNATURE	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. CID EVIDENCE CUSTODIAN SIGNATURE	Change of Custodian
2/6	70 11 25	TYPED NAME, GRADE AND BRANCH CWO W. W. BLALOCK, JR. CID EVIDENCE CUSTODIAN SIGNATURE	TYPED NAME, GRADE AND BRANCH R. E. FARRISH EVIDENCE CUSTODIAN SIGNATURE	Change of Custodian
1	70 12 11	TYPED NAME, GRADE AND BRANCH Reg mail SIGNATURE	BRANCH:	EVIDENCE ROOM

11 Dec 70

GOVERNMENT  
EXHIBIT  
6002

3:75-CR-26-F

35

P-C-FP-82-70

26 Feb 70

CSC

Exhibit #2

~~D-230~~: one (1) white/peach colored pillow w/ gray/red  
D-230 figures (from hospital w/ Cpt McDonald)

~~D-231~~: one (1) blue pillowcase w/ reddish-brown stains  
D-231 (from hospital w/ Cpt McDonald)

(Exhibits 230 & 231 in same plastic bag)

D-232: Material, blue, appearing to come from pajama  
top of McDonald (D-210)

D-233: Vial c/ fingernail scrapings marked "Left Hand"

D-234: Vial c/ fingernail scrapings marked "R. Hand Mother"

D-235: Vial c/ fingernail scrapings marked "R. Hand Kim"

D-236: Vial c/ fingernail scrapings marked "L. Hand Kim"

D-237: Vial c/ fingernail scrapings marked "L. Hand Chris"

D-238: Vial c/ fingernail scrapings marked "R. Hand Chris"

D-239: Vial c/ fingernail scrapings marked "Jeffrey"

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20 Feb 70

CSC

D-230: one (1) white/peach colored pillow w/ gray 1/2  
 D-230 figures (from hospital w/ Cpt McDonald)

~~D-231~~: one (1) blue pillowcase w/ reddish-brown stains  
 D-231 (from hospital w/ Cpt McDonald)

(Exhibits 230 & 231 in same plastic bag)

D-232: Material, blue, appearing to come from pajama top  
 of McDonald (D-210)

D-233: Vial c/ fingernail scrapings marked "Left Hand"

D-234: Vial c/ fingernail scrapings marked "R. Hand mother"

D-235: Vial c/ fingernail scrapings marked "R. Hand Kim"

D-236: Vial c/ fingernail scrapings marked "L. Hand Kim"

D-237: Vial c/ fingernail scrapings marked "L. Hand Chris"

D-238: Vial c/ fingernail scrapings marked "R. Hand Chris"

D-239: Vial c/ fingernail scrapings marked "Jeffrey"

Exhibit #2

③



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  - b. August 24, 1979 ..... p. 4-7
  
- 2. ACTIONS UPON REGAINING CONSCIOUSNESS
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  - b. August 24, 1979 ..... p. 10-11
  
- 3. ACTIONS UPON FIRST ENTERING MASTER BEDROOM
  - a. August 23, 1979..... p. 13-15
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- 4. CONCERNING A PIECE OF WOOD, AN ICE PICK, AND TWO KNIVES
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  - b. August 24, 1979 ..... p. 21-29
  
- 5. CONCERNING BLOODY FOOTPRINTS AND A BLOODY SHEET IN KRISTEN'S ROOM
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**1. WEARING PAJAMA TOP WHEN ATTACKED IN  
LIVING ROOM**

**NO. 1****(a) August 23, 1979 (Trial Day 25)**

Segal:

After Kristie was given this bottle, then how did you make ready to go to bed?  
What did you do?

MacDonald:

Well, I was already in pajamas, and I probably brushed my teeth. I mean I brushed my teeth since I did every night and went in to go to bed. I was in pajamas at this time after 2:00 o'clock in the morning. I went in to go to bed in the master bedroom.

(Trial Transcript—Day #25—pg 6571—lines 12-17)

**(b) August 23, 1979 (Trial Day 25)**

Segal:

What did you do when you realized that she had wet the bed?

MacDonald:

I decided not to sleep in the wet spot. I went and got an afghan from Kristie's bed at the foot of her bed and went out to the couch to sleep.

(Trial Transcript—Day #25—pg 6574—lines 7-9)

**(c) August 23, 1979 (Trial Day 25)**

MacDonald:

At some point in my struggle, my arms were bound up in my pajama top.

Segal:

Now, can you describe for us in any more detail perhaps how the pajama top and your arms became entwined?

MacDonald:

I had a pain in my head. I was hit at least once in the head, possibly twice by now. I was holding onto someone's arm. Two other people were punching me. I was trying to think, "What the fuck is going on here?" I could hear Colette, and I couldn't make any sense out of what was happening. At some point, my hands were bound up in the pajama top.

(Trial Transcript—Day #25—pg 6586—lines 5-16)

**(d) August 23, 1979 (Trial Day 25)**

Segal:

But as far as having any precise memory, are you telling us you do or you don't have a memory as to how the pajama top got over your arms?

MacDonald:

I do not recall how the pajama top got over my arms.

(Trial Transcript—Day #25—pg 6587—lines 2-6)

**(e) August 24, 1979 (Trial Day 26)**

Blackburn:

Let me ask you this question: while you were holding the club, where was your pajama top?

MacDonald:

I don't know. I mean it originally had been on me. At some point during the struggle it was around my arms. I do not know when during the struggle it was either pulled over my head or pulled around from my back and ended up just around my arms.

Blackburn:

Well, at the risk of belaboring this, I want to go through this just a little bit. When you woke up the first time and heard your wife and child screaming, hearing those screams, then being hit by the club, am I correct in assuming at that point that the pajama top—you know—was still on you pretty much as it was when you went to bed?

MacDonald:

That's correct.

(Trial Transcript—Day #26—pg 6800—lines 2-16)

**(f) August 24, 1979 (Trial Day 26)**

Blackburn:

So, I guess what you are saying is that is possible that the pajama top then was not on your body like my shirt's on me.

MacDonald:

It's possible. Yes, it is.

Blackburn:

Well, is it possible in your opinion in thinking back that the pajama top was on you like it was when you went to sleep?

MacDonald:

I'm sure it's possible.

...

(Trial Transcript—Day #26—pgs 6803-6805—lines 18-25, 1-25, 1-24)

**(g) August 24, 1979 (Trial Day 26)**

Blackburn:

I take it when you went to bed the night on the 16<sup>th</sup> and wore this blue pajama top, it was not ripped?

MacDonald:

I don't believe so.

Blackburn:

Certainly not in this condition?

MacDonald:

No.

Blackburn:

Was there any blood on it when you went to bed that night?

MacDonald:

Not that I know of.

Blackburn:

Were there any puncture holes in it?

MacDonald:

Not that I know of.

...

(Trial Transcript—Day #26—pgs 6807-6811 , lines 15-25, 1-25, 1-25, 1-25, 1-6 )



**(h) August 24, 1979 (Trial Day 26)**

MacDonald:

My best recollection is I was partially in the hallway and down the steps, but my arms were under me.

Blackburn:

When they were under you, were they sort of folded like that?

MacDonald:

They were wrapped up in the pajama top and I was lying more on my right side than I was—you know—flush—prone—face down.

Blackburn:

Did you see any blood on you?

MacDonald:

See any blood where, sir?

Blackburn:

On you when you woke up.

MacDonald:

I did not look for any blood on myself. I did not recall seeing anything.

Blackburn:

Well, did you see any blood on the pajama top or on the floor?

MacDonald:

I have no remembrance of that at all. It is not what I was looking for.

(Trial Transcript—Day #26—pgs 6824-25 lines: 16-25, 1-6 )

**(i) August 24, 1979 (Trial Day 26)**

Blackburn:

Assume, Dr. MacDonald—or suppose, I suppose—that the jury should find from the evidence that in the master bedroom as a whole, there were 60 or more purple cotton sewing threads found which microscopically matched your blue pajama top and 18 blue polyester cotton yarns which microscopically matched the pajama top and one blue-black sewing thread which matched your pajama top. Assume for a moment that the jury should find that evidence to be true, do you have, sir, any explanation for that?

MacDonald:

With the understanding that they have not matched those fibers and threads against the pajama bottoms, no, I don't have any explanation for it.

Blackburn:

Assume for a moment that the jury should find from the evidence that no purple threads or blue polyester cotton yarns matching any of those found in your pajama top were found in the living room, do you have any explanation for that?

MacDonald:

It would lead me to feel that the shirt was pulled over my head rather than ripped from around my back.

Blackburn:

Do you remember it being pulled over your head?

MacDonald:

No; neither do I remember it being torn.

Blackburn:

I believe you said this morning that it was one or the other?

MacDonald:

That is a reconstruction of what, you know, probably had to have happened—one of the two.

(Trial Transcript—Day #26—pgs 6855-56 lines: 12-25, 1-14 )

## **2. ACTIONS UPON REGAINING CONSCIOUSNESS**

**NO. 2****(a) August 23, 1979 (Trial Day 25)**

Segal:

Now, had you or had you not been unconscious?

MacDonald:

Yes; I must have been.

...

Segal:

What was your first thought when you were aware that you were there in the house and it was quiet—the first thing that occurred to you?

MacDonald:

My teeth were chattering and I thought that I was going into shock.

Segal:

Tell us what you did and what you experienced at that point?

MacDonald:

Then the sounds of my wife and Kim came sort of like flooding back and so I realized the house was quiet and I didn't hear Colette so I got up to go to see Colette.

Segal:

Were you in the living room at that point—on the floor of the living room?

MacDonald:

Probably halfway in the living room and on the steps, and my best recollection was my chest was on the end of the hallway above the steps.

Segal:

Was that the first or second riser up?

MacDonald:

Right.

Segal:

Was there any sound at all that you could hear at that time?

MacDonald:

I heard no sounds.

Segal:

You decided to go see whether Colette was all right or not. What did you do?

MacDonald:

I got up and walked into our bedroom.

Segal:

Down the hallway?

MacDonald:

That's right.

(Trial Transcript—Day #25—pgs 6594-95—lines 19-25, 1-24)

**(b) August 24, 1979 (Trial Day 26)**

Blackburn:

Well, with respect to the second attempt—let's call it an attempt right now. When you got back up after seeing stars—being hit the first time—you grabbed what you believe was his right arm?

MacDonald:

Right.

Blackburn:

Let me ask you this question: did you grab it with one hand or both hands, if you can recall?

MacDonald:

I don't recall. At one time I had both hands like, on his jacket, and they slid down onto the club. And I also had it with one hand at one time.

Blackburn:

Was this during this same particular event of when he was trying to hit you a second time?

MacDonald:

It was after that. It was like a partially blocked second blow, at which time I had his arm.

. . . (demonstration)

(Trial Transcript—Day #26—pg 6797—lines 3-16)

(c) **August 24, 1979 (Trial Day 26)**

Blackburn:

You don't know how long you were unconscious, do you?

MacDonald:

No.

Blackburn:

When you woke up and went into the master bedroom to see Colette, what lights were on?

MacDonald:

I do not recall.

Blackburn:

Well, by the time you got to the master bedroom, did you turn the light on or off, or do you recall?

MacDonald:

I do not recall.

Blackburn:

What did you do when you went in there?

MacDonald:

I took the pajama top off—I took the pajama top off my wrists—hands—took the knife out of Colette.

Blackburn:

Where did you put the pajama top?

MacDonald:

I do not recall.

(Trial Transcript—Day #26—pg 6832—lines 2-15)

### **3. ACTIONS UPON FIRST ENTERING MASTER BEDROOM**

**NO. 3****(a) August 23, 1979 (Trial Day 25)**

Segal:

What did you see when you got there?

MacDonald:

Colette was on the floor.

Segal:

What did you see when you got there?

MacDonald:

Colette was on the floor.

...

Segal:

Can you tell us perhaps a little bit about how her position was when you—to the best you can recall—when you first saw her there?

MacDonald:

Her right shoulder was up against the green chair. She was leaning more on her left side.

Segal:

Now, did you come close to Colette at that point?

MacDonald:

Yes, I did.

Segal:

Did you see anything about her injuries at that time, Dr. MacDonald?

MacDonald:

All I could see was a lot of blood.

...

Segal:

What did you do when ?

MacDonald:

Colette was on the floor.



...

Segal:

What did you do when you saw your wife there?

MacDonald:

I took the pajama top off my wrists and I took a knife out of her chest.

Segal:

Would you show us, please, on your own body—just point if you would—where this knife was?

MacDonald:

It was somewhere in the central chest. I don't specifically remember. Roughly in the middle of the sternum.

Segal:

What did you do with the knife?

MacDonald:

Threw it away.

Segal:

When you say "threw it away," you mean in the room some place?

MacDonald:

I don't recall. I just remember taking it out and throwing it.

Segal:

Were you down on your hands and knees at that time?

MacDonald:

Either right then or immediately thereafter.

Segal:

All right, you described coming into the room and finding your wife and taking out the knife. Tell us whatever else you recall doing at that time in the bedroom.

MacDonald:

I gave her mouth-to-mouth resuscitation but the air was coming out of her chest.

Segal:

What did you do when you saw your wife there?

MacDonald:

I took the pajama top off my wrists and I took a knife out of her chest.

Segal:

You mean out of the stab wounds in her chest?

MacDonald:

That's right.

Segal:

Did you detect any sign of life in your wife's body?

MacDonald:

I did not.

(Trial Transcript—Day #25—pgs 6595-99—lines 25, 1 and 24-25, 15-25, 9-25, 1-16 )

**(b) August 24, 1979 (Trial Day 26)**

Blackburn:

So is it—and again, I don't want to beat this—but is it your best recollection that the first visit and the first trip—you know—to the master bedroom—at some point in there, you placed the blue pajama top on the chest of your wife?

MacDonald:

That is my best recollection of what happened; that's right.

Blackburn:

When you say you took the pajama off of her wrists (sic)—your wrists—and threw it down, you don't recall where you threw it?

MacDonald:

That is correct.

Blackburn:

You did not hear any ripping sounds at that time; is that correct?

MacDonald:

Mr. Blackburn, I was not listening for ripping sounds. I saw my wife covered with blood.

Blackburn:

I understand that, and I appreciate that. What I am asking is, did you hear any ripping sounds?

MacDonald:

No; I do not recall hearing ripping sounds.

Blackburn:

You saw the knife in your wife's chest; right?

MacDonald:

That is correct.

Blackburn:

Did you wipe the knife off?

MacDonald:

I have absolutely no remembrance of that.

Blackburn:

Do you know whether the knife was bloody when you pulled it out of your wife's chest?

MacDonald:

I have absolutely no remembrance. I saw it in my wife's chest and I took it out.

Blackburn:

So it could have been bloody or it could not have been bloody?

MacDonald:

Well, I would assume that having been in her chest it was bloody.

Blackburn:

Well, how was it that no blood or very little blood was found on the knife?

MacDonald:

I have no idea.

Blackburn:

Well, after you took the knife out of your wife's chest and put it somewhere or threw it somewhere, what did you do?

MacDonald:

I either checked her pulses or gave her mouth to mouth resuscitation.

Blackburn:

You said yesterday that you moved her, as I recall?

MacDonald:

Right.

Blackburn:

How much, if you know, did you move her?

MacDonald:

I don't recall how far. My best estimates would be six inches to a foot, to get her away from the green chair.

(Trial Transcript—Day #26—pg 6834-6836—lines 24-25,1-25,1-21)

**4. CONCERNING A PIECE OF WOOD, AN ICE PICK,  
AND TWO KNIVES**

**NO. 4****(a) August 23, 1979 (Trial Day 25)**

Segal:

What did you do when you saw your wife there?

MacDonald:

I took the pajama top off my wrists and I took a knife out of her chest.

Segal:

Would you show us, please, on your own body—just point if you would—where this knife was?

MacDonald:

It was somewhere in the central chest. I don't specifically remember. Roughly in the middle of the sternum.

Segal:

What did you do with the knife?

MacDonald:

Threw it away.

Segal:

When you say "threw it away," you mean in the room some place?

MacDonald:

I don't recall. I just remember taking it out and throwing it.

Segal:

Were you down on your hands and knees at that time?

MacDonald:

Either right then or immediately thereafter.

Segal:

All right, you described coming into the room and finding your wife and taking out the knife. Tell us whatever else you recall doing at that time in the bedroom.

MacDonald:

I gave her mouth-to-mouth resuscitation but the air was coming out of her chest.

Segal:

What did you do when you saw your wife there?

MacDonald:

I took the pajama top off my wrists and I took a knife out of her chest.

Segal:

You mean out of the stab wounds in her chest?

MacDonald:

That's right.

Segal:

Did you detect any sign of life in your wife's body?

MacDonald:

I did not.

(Trial Transcript—Day #25—pgs 6598-99—lines 9-25, 1-16 )

**(b) August 23, 1979 (Trial Day 25)**

Segal:

Did you stab your wife; did you club your wife?

MacDonald:

I did not.

Segal:

With those or any other weapons?

MacDonald:

I never struck Colette.

Segal:

Dr. MacDonald, I want to read to you the Second Count of the same indictment, and again ask you the same question. In that Count it is charged: "That on or about the 17<sup>th</sup> day of February, 1970, at Fort Bragg, North Carolina, upon lands acquired for the use of the United States and under the exclusive jurisdiction thereof, and within the Eastern District of "North Carolina, JEFFREY R. MacDONALD, with premeditation and malice aforethought, murdered Kimberly K. MacDonald, by means of striking her with a club and stabbing her, in violation of the provisions of Title 18, United States Code, Section 1111.

Is that true?

MacDonald:

It is not true. I never harmed Kimberly.

Segal:

I will read you, Dr. MacDonald, the Third Count of the indictment, and ask you to respond again.

That on or about the 17<sup>th</sup> day of February, 1970, at Fort Bragg, North Carolina, upon lands acquired for the use of the United States and under the exclusive jurisdiction thereof, and within the Eastern District of “North Carolina, JEFFREY R. MacDONALD, with premeditation and malice aforethought, murdered Kristen K. MacDonald, by means of stabbing her, in violation of the provisions of Title 18, United States Code, Section 1111.

Is that true, Dr. MacDonald?

MacDonald:

It is not true.

(Trial Transcript—Day #25—pgs 6739-40—lines 2-25, 1-23)

**(c) August 24, 1979 (Trial Day 26)**

Blackburn:

Dr. MacDonald, late yesterday afternoon, right as we were getting ready to adjourn, Defense Counsel showed you four weapons—a club, two knives, and an ice pick—and asked you whether or not you, of course, killed your family. What I would like to do now is to hand you once again the club, which is Government Exhibit 306, and ask you to take a look at it, sir, and tell us whether or not you know whether or not that club came from your house?

MacDonald:

I do not know.

Blackburn:

Could it have come from your house?

MacDonald:

It is conceivable.

Blackburn:

When was the first time that you can recall that you saw that club?

MacDonald:

I think Mr. Shaw showed it to me on April 6<sup>th</sup>.

Blackburn:

At the interview?



MacDonald:

That's right.

Blackburn:

Now, earlier in the trial in the Government's case, there was testimony from Government witnesses—specifically Mr. Hilyard Browning (sic) who stated, as I recall, that this club came from another piece of wood in your house—that was recovered from your house—that was a bed slat in Kimberly's bed. Do you recall that testimony?

MacDonald:

He discussed that, yes; he did not use the words that you just used. But he discussed that.

Blackburn:

Do you recall his testimony that the growth rings were identical?

MacDonald:

That's right.

Blackburn:

And do you further recall his testimony that the grain of the wood, so to speak, was the same?

MacDonald:

That is correct.

Blackburn:

And that the paint—the paint right here—was identical in composition to the paint on the bed slat. Do you recall that testimony?

MacDonald:

Yes; I do.

Blackburn:

And that he testified, as I recall it, that this piece of wood was at one time, in his opinion, a part of that bed slat? Do you recall that testimony?

MacDonald:

I think he said that; yes.

Blackburn:

Dr. MacDonald, I want to ask you this question: isn't it true that this piece of wood—the club—was once a part of Kimberly's bed slat—excuse me—a part of the piece of wood that was used as Kimberly's bed slat, and that the paint on this

piece of wood came from droppings where something was resting on it as furniture in Kimberly's was being painted?

MacDonald:

I have no specific knowledge of that.

Blackburn:

In other words, am I correct in assuming that you would say that prior to April 6<sup>th</sup>, 1970, you have never seen this piece of wood—

...

MacDonald:

I have no specific recollection of seeing that particular piece of wood, but I would like to explain the answer.

Blackburn:

Yes, Sir?

MacDonald:

There was a lot of wood at the house. There was wood in the well behind the house. There was wood in the shed that was locked behind the house. There was wood in the little laundry room—the utility room—at the back of the house. I do not specifically recall that piece of wood.

Blackburn:

Was wood ever kept inside your house?

MacDonald:

Not that I am aware of.

Blackburn:

Not in the utility room?

MacDonald:

There may have been some back there. I have no recollection of it.

Blackburn:

You did a lot of work on shelving; is that correct—in building shelves for the children?

MacDonald:

That's right.

Blackburn:

Now, when this would take place, did you always take the extra wood outside when you were through, or did you leave of it perhaps in the closet or the utility room?

MacDonald:

Oh, I am sure there was occasionally—the mess was left in the utility room.

Blackburn:

Now, with respect to the ice pick that was shown you late yesterday afternoon, do you recall the testimony of Mildred Kassab and Pamela Kalin, both of whom stated that they had at various times been in your kitchen and for various reasons had used an ice pick?

MacDonald:

Yes; I recall it.

Blackburn:

Now, I believe you have stated previously under oath on the 6<sup>th</sup> of April, 1970, and I think at the Article 32 proceedings, and I also believe at the Grand Jury proceedings in 1974, that your family did not own an ice pick; is that correct?

MacDonald:

To the best of my knowledge.

Blackburn:

Well, let me ask you this question: am I correct, then, in assuming that to the best of your knowledge you never saw an ice pick at your house?

MacDonald:

That is correct.

Blackburn:

You are not saying, I take it, that there could not have been an ice pick there?

MacDonald:

That is correct.

Blackburn:

And you are not saying that this piece of wood could not have come from your house?

MacDonald:

That is correct.

(Trial Transcript—Day #26—pgs 6752-56—lines 1-25, 1-25, 1-25, 1-25, 1-9)

**(d) August 24, 1979 (Trial Day 26)**

Blackburn:

Dr. MacDonald, the club that you were hit with—would you recognize it?

MacDonald:

No.

Blackburn:

What kind of club was it?

MacDonald:

I don't know. My recollection when I had a hold of it was that it was smooth. I did not recall a rough surface as the one you have shown me.

Blackburn:

In other words, this particular club you don't believe is the one that struck you?

MacDonald:

No; it does not fit my recollection of holding on to the club.

Blackburn:

Was your club something—that hit you—something like a baseball bat?

MacDonald:

That is what I would have guessed.

Blackburn:

Dr. MacDonald, can you tell me sir how two threads microscopically identical to purple sewing threads in your pajama top—got on this club outside the door of the utility room area, when you stated yesterday that you never went outside the house?

MacDonald:

I cannot.

Blackburn:

What position were you in, sir, when you were first struck by a club?

MacDonald:

I believe just attempting to sit up.

Blackburn:

Where were your hands, if you can recall?

MacDonald:

My left arm was up over me slightly in a defensive position.

Blackburn:

Like that (indicating)?

MacDonald:

Right.

Blackburn:

How about your right hand?

MacDonald:

I would presume I was pushing off the couch with that.

...

Blackburn:

The black man, as I think you said yesterday, hit you over the head and the arm with a club, is that right?

MacDonald:

That's right.

Blackburn:

If you would, sir, point out to the jury again where on your arm and where on your head you were struck first.

MacDonald:

I don't know where I was struck first.

Blackburn:

Correct me if I am mistaken. I thought you said—yesterday morning or afternoon, one—that the first blow hit you on the arm and the head; is that correct?

MacDonald:

That is my recollection of it; yes.

Blackburn:

That would be your left arm?

MacDonald:

That's right.

Blackburn:

The front part of your head—the forehead?

MacDonald:

I don't know if it was the front part or behind the ear; I don't know.

Blackburn:

All right; after the blow was struck, you went back out on the sofa and saw stars, as I recall what you said yesterday?

MacDonald:

That's right.

Blackburn:

And what happened then?

MacDonald:

I tried to get up again.

Blackburn:

You thought—and correct me if I am wrong—that you had better do something about the club?

MacDonald:

Right.

Blackburn:

And you grabbed the club?

MacDonald:

Yeah; on like a second swing.

Blackburn:

Did you grab it with one hand or two hands?

MacDonald:

It is not clear. I had a hold of his arm first--

...

Blackburn:

Well, when he struck you the first time—assume just for the sake of this question that this is the club—did he swing the club over the right shoulder or left shoulder, or did he swing it over his head?

MacDonald:

I didn't see it over his head. I saw it lateral—you know, to the right side of his shoulder.

(Trial Transcript—Day #26—pgs 6790-94, lines, 14-20, 1-25, 1-25, 1-10, 1-6)

**(e) August 24, 1979 (Trial Day 26)**

MacDonald:

That would be more like it. The reason I say it is because I never really saw the club. I assume if it had been over his head, I would have seen it. I do not have a picture of actually seeing the club. I saw his arm swinging around towards me.

(Trial Transcript—Day #26—pgs 6796, lines 21-25)

**(f) August 24, 1979 (Trial Day 26)**

Blackburn:

Do you know what kind of weapon it was?

MacDonald:

I just saw basically a glint of metal at one time when I had a hand. I thought that it was a knife.

Blackburn:

Did you ever tell anybody, in pointing to your wounds, that they stabbed you with an ice pick?

MacDonald:

No; I was told that.

Blackburn:

You never told Paul Connolly, who interviewed you in the hospital, "This is where they got me with the ice pick"?

MacDonald:

No.

(Trial Transcript—Day #26—pgs 6814, lines 1-10)

**(g) August 24, 1979 (Trial Day 26)**

Blackburn:

Should the jury find from the evidence—or suppose the jury should find from the evidence that the Old Hickory knife—the blood on it was wiped off on that bathmat,

and also the ice pick that was found outside the house was also wiped on it, do you, sir, have any explanation for that?

MacDonald:

Not unless the assailants did that.

Blackburn:

You did not do that?

MacDonald:

I did not do that.

(Trial Transcript—Day #26—pgs 6877, lines 12-20)



**5. CONCERNING BLOODY FOOTPRINTS AND A  
BLOODY SHEET IN KRISTEN'S ROOM**

**NO. 5****(a) August 24, 1979 (Trial Day 26)**

Blackburn:

Let me rephrase it again. Suppose the jury should find from the evidence that Type A blood is found on the top sheet of Kristen's bed in massive amounts and also on the wall over the side of the bed, splattered; do you, sir, have any explanation for that?

MacDonald:

Making the very large assumption that the CID could type blood, no.

Blackburn:

Do you know your wife's blood type?

MacDonald:

A.

Blackburn:

Do you know Kimberly's blood type?

MacDonald:

We have been told here many times.

Blackburn:

Did you know it in 1970?

MacDonald:

No.

Blackburn:

About Kristen's?

MacDonald:

No, I don't believe so. I don't believe I knew any of ours.

Blackburn:

Dr. McDonald, suppose the jury should find from the evidence that all the blood on the floor in Kristen's room, with the exception of the footprint, is that of Type O blood, and suppose further that the jury should find from the evidence that that is your footprint exiting the room, and suppose the jury should find further that that footprint is made in Type A blood; do you have any explanation?

...(objection)

MacDonald:

Well, I would probably agree that was my footprint since I was there. As far as the blood typing, again assuming the CID accurately typed the blood typing and patterns, assuming they are correct.

(Trial Transcript—Day #26—pgs 6867-68, lines 5-25, 1-14)

**(b) August 24, 1979 (Trial Day 26)**

Blackburn:

Dr. MacDonald, when we broke for lunch, as I recall, I had just asked you and I think you answered the question about the footprint and the blood in Kristen's room. Now, again, sir, should the jury find from the evidence that that is your footprint as you indicated it probably is and that the blood in that footprint is Type A blood, can you tell us at all where you got that Type A blood from?

MacDonald:

I have no idea.

Blackburn:

Dr. MacDonald, did you take the bedspread from the master bedroom off the floor and that sheet, place Colette on the bedspread, step in blood on that bedspread, and pick Colette up and carry her out of the room?

MacDonald:

I did not.

(Trial Transcript—Day #26—pgs 6870-71, lines 14-25, 1-3)

**6. CONCERNING THE SHEET ON THE FLOOR OF  
THE MASTER BEDROOM**

**NO. 6****(c) August 24, 1979 (Trial Day 26)**

Blackburn:

Now, I saw one of the photographs of the master bedroom after the crimes had been committed—a photograph of the bedsheet and the bedspread on the floor, I think, by the door in front of the closet. Do you recall seeing that particular photograph?

MacDonald:

Yeah; I have seen it. At some point, I saw a photograph with the sheet near the door; yes.

Blackburn:

Well, let me ask you if you would—is this what you recall seeing—this sheet and the bedspread?

MacDonald:

I guess so, yeah. I haven't seen most of the photographs.

Blackburn:

Well, that sheet and bedspread, did they belong to you all?

MacDonald:

If that is the same as has been identified here, I would—yes, they were ours.

Blackburn:

Let me ask you this, Dr. MacDonald, when you went back to see Kristen—or found Kristen in your side of the bed with your wife—did you rip the sheet and bedspread off the bed and put it on the floor?

MacDonald:

Did I?

Blackburn:

Yes, sir.

MacDonald:

No.

Blackburn:

You left them where they were?

MacDonald:

That's correct.

(Trial Transcript—Day #26—pgs 6781-83, lines 21-25, 1-2, 1-18)

**(d) August 24, 1979 (Trial Day 26)**

Blackburn:

That night, did you ever touch the bedsheet and the bedspread depicted in that photograph behind you?

MacDonald:

I have no recollection at all.

Blackburn:

Are you saying you did or didn't?

MacDonald:

I'm saying neither.

Blackburn:

I am reading from page 22 of the pamphlet given to counsel for the defense in your January, 1975 Grand Jury testimony, with respect to the blue sheet:

“Question: But I am going to ask you again: did you handle that sheet that night? Did you touch it? Did you have anything to do with it?

Answer: Not that I remember.”

Is that a fairly accurate statement?

MacDonald:

That is a fairly accurate statement.

Blackburn:

Can you tell us, Dr. MacDonald, how a fabric impression or contact print matching the right cuff of your blue pajama top got on that sheet?

(Bench Conference)

(Trial Transcript—Day #26—pgs 6848-49, lines 14-25, 1-7)

**(e) August 24, 1979 (Trial Day 26)**

Blackburn:

Dr. MacDonald, if the jury should find from the evidence that there is a fabric impression or contact print matching the right cuff of your blue pajama top on it, do you have any explanation for that?

MacDonald:

If the jury should find that?

Blackburn:

Uh-huh (yes).

MacDonald:

No.

Blackburn:

If the jury should find from the evidence that there is a fabric impression or contact print of hand prints and the left shoulder on that sheet, do you have any explanation for that?

MacDonald:

It is hard to answer, because the evidence that you claim to be evidence has been disproven. You want me to make a supposition based on something that--

Blackburn:

(Interposing) Well, suppose the jury disagrees with you, and does find that it has not been disproven, and finds what I said—do you have any explanation for that ?

Blackburn:

Dr. MacDonald, if the jury should find from the evidence that there is a fabric impression or contact print matching the right cuff of your blue pajama top on it, do you have any explanation for that?

MacDonald:

No.

Blackburn:

Suppose the jury finds from the evidence that in that bedspread there is a seam thread—purple cotton sewing thread—matching to your blue pajama top, and entwined around a hair with blood on its shaft matching that of your wife Colette—do you have any explanation for that?

MacDonald:

No.

(Trial Transcript—Day #26—pgs 6851-52, lines 1-25, 1-3)

## **7. CONCERNING INJURIES SUSTAINED**



**NO. 7****(f) August 23, 1979 (Trial Day 25)**

MacDonald:

At the same time that I was sitting up, there was a black male to the left of the three people right in front of me. He started to swing something at me.

Segal:

Could you see what it was?

MacDonald:

I could not.

Segal:

Go on and tell us in your own words what happened at that point?

...

MacDonald:

I raised my left arm, and I got hit, I believe partially on the arm and my head at the same time; then I was knocked back down on the couch.

(Trial Transcript—Day #25—pgs 6581-82—lines 23-25, 1-10)

**(g) August 23, 1979 (Trial Day 25)**

Segal:

Were you becoming aware of your head at some point—aware of some feeling in it?

MacDonald:

My head was hurting all through this, and I knew that I wasn't thinking very clearly, and I couldn't figure out what had happened. And I looked in the mirror in the bathroom to see if there was any massive or major appearing head wound to account for that pain in my head and the inability to think.

...

Segal:

Now, when you looked in the mirror, do you recall what you saw about yourself at that time?

MacDonald:

I saw a bruise on my forehead. There was some blood on my forehead, and there was blood around my mouth. That is all I remember.

Segal:

Do you recall looking at your torso and your chest or any part of your body above your waist?

MacDonald:

I looked at my chest at some time. I don't remember if it was in the bathroom or in the hallway or in the master bedroom; and I saw that I had what appeared to be a small wound in the right chest that was bubbling. I don't know where I was when I did that.

(Trial Transcript—Day #25—pgs 6597-98—lines 2-25, 1-2)

### **(h) August 23, 1979 (Trial Day 25)**

MacDonald:

After I was hit the first time and started to get up, my thought was that I better not get hit in the head again or I won't be able to get up. And so I attempted to grab the arm of the person who was using the club, which I did do at some time in the struggle. I at one point had a hold of an arm on which there were E-6 stripes.

(Trial Transcript—Day #25—pgs 6583—lines 22-25)

### **(i) August 23, 1979 (Trial Day 25)**

Segal:

Tell us, if you can, what happened? Did you get a hold of that arm, and what did you do when you had a hold of that arm?

MacDonald:

He was trying to jerk his arm back, and I was trying to hold on to his arm so he couldn't swing the club again. He kept jerking back and he was jerking back and pulling me forward.

Segal:

Toward the end of the sofa near the hallway door?

MacDonald:

Toward the end of the sofa

Segal:

All right, go ahead.

MacDonald:

So. I kept thinking, “If I let go of his arm, he is going to be able to hit me with the club again.” At some point in this struggle, my arms were bound up in my pajama top.

Segal:

Now, can you describe for us in any more detail perhaps how the pajama top and your arms became entwined?

MacDonald:

I had a pain in my head. I was hit at least once in the head, possibly twice by now. I was holding onto someone’s arm. Two other people were punching me. I was trying to think, “What the fuck is going on here?” I could hear Colette, and I couldn’t make sense of what was happening. At some point, my hands were bound in the pajama top.

(Trial Transcript—Day #25—pgs 6585-86—lines 9-25, 1-16)

### **(j) August 23, 1979 (Trial Day 25)**

Segal:

Go on and tell us in your own words what else you remember about the episode and what else was going on at that time?

MacDonald:

At some point during the struggle, I got what I perceived to be a sharp pain in my right chest. My immediate thought was—as a matter of fact, my exact thought was—it is one of the few things that is clear—was that, “He throws a hell of a punch.”

Segal:

That was a mental statement you made to yourself?

MacDonald:

I don’t know if I said it, but my recollection is that I thought to myself as I was holding on, at this time the club, and he was jerking me toward the end of the couch trying to get the club free. Someone else hit me in the right side, and I said, “That was a hell of a punch.” We struggled—at this point, somehow he got free. He pulled the club back free. I said to myself. “I’m in deep shit.”

(Trial Transcript—Day #25—pgs 6587—lines 7-24)

**(k) August 23, 1979 (Trial Day 25)**

Segal:

What else do you recall of the fight—struggle—of your own activities—your own observations at that time?

MacDonald:

I remember receiving what I thought were multiple—what I thought to be very effectual—punches to the abdomen and to the chest, some of which later turned out to be puncture wounds or stab wounds.

(Trial Transcript—Day #25—pgs 6589—lines 7-13)

**(l) August 23, 1979 (Trial Day 25)**

MacDonald:

I had a hold of hands several times during the struggle. It is very disconnected in my mind. I had a hold of a hand at one time in which I thought I saw a blade and at which time I said to myself, “I have just been stabbed,” referring back to the pain in the chest. At another time, I had my hands wrapped around another hand that I believe—that I believe were the hands of the black male holding the club.”

(Trial Transcript—Day #25—pgs 6590-91, lines 21-25, 1-4)

**(m) August 23, 1979 (Trial Day 25)**

Segal:

Tell us what you recall about what Dr. Gemma did and said and what you did and said when he was there.

MacDonald:

He came in and examined me briefly and said that, “You need a chest tube,” and I said something like, “I thought so.” . . . He eventually put a chest tube in.

(Trial Transcript—Day #25—pgs 6631-32, lines 21-25, 1, 12-13)

**(n) August 23, 1979 (Trial Day 25)**

Segal:

How long did you go on feeling discomfort or pain in your head?

MacDonald:

Weeks. At least weeks.

(Trial Transcript—Day #25—pgs 6637, lines 6-8)

**(o) August 24, 1979 (Trial Day 26)**

Blackburn:

And I believe, am I not correct, that at that particular point you stopped the second blow?

MacDonald:

Partially.

Blackburn:

Okay, if you would, sir, explain what you mean by “partially”?

MacDonald:

It seemed like my arm had slightly fended off the blow. Either his hand hit my arm or part of the club did and then my left shoulder and then I had his arm.

Blackburn:

He didn't hit you on the head again that particular time?

MacDonald:

I was hit several times. I don't recall when. I mean I can't tell you right now that that blow did not hit my head or did hit my head.

Blackburn:

Well, at this particular point when he struck at you and you turned toward him and stopped the blow, is this the time that you felt the pain in your right chest?

MacDonald:

It was all jumbled up. It was after I had hold of his arm. Okay, it seemed to me that it was after there was something around my wrists and I was still struggling and I couldn't get free and then I felt a pain, but that's at best a hazy recollection that I have tried to work out.

(Trial Transcript—Day #26—pg 6799—lines 7-23)

**(p) August 24, 1979 (Trial Day 26)**

Blackburn:

And you were hit with the club and knocked down and the bounced back up again to see what you could do? “Bounce” is my word.

MacDonald:

“Bounce” is your word. I tried to get back up; right.

Blackburn:

And then you thought about the club and tried to stop the blow from the club?

MacDonald:

Right.

Blackburn:

From the time that you started to stop the second blow from the club, at that particular time, had you tet had any altercation or struggle with the other two white males?

MacDonald:

That would have occurred simultaneously. The only thing that is clear is the first blow. As I was trying to fend off the second blow, the other assailants were hitting me; yes.

Blackburn:

Okay, let me read to you, sir, a portion of your Article 32 testimony, page 30 and 31, and see if this rings a bell with you:

“. . . I thought I was being punched. I, you know, I could feel like a rain of blows on my chest, shoulders, neck, you know, forehead or whatnot. I was just getting punched by what seemed like a lot of, what I thought was fists. While I was holding onto the club I suddenly get a very sharp pain in my chest, my right chest.

Question: Do you know the source of the pain?

Answer: No, I did not.”

Do you recall that testimony?

MacDonald:

Yes.

Blackburn:

What I am getting at is this: when you were being hit with the club—attempted to be being hit—the second time, is that the approximate time that you were stabbed in the right chest?

MacDonald:

No, it seems to have been—you know—a reasonable close time frame. We are talking about seconds. It's hard—

Blackburn:

Well, I recognize that.

MacDonald:

--it's hard to say “this was second ll of a 30-second altercation.” But at some time I had hold of the arm or I had already slid down onto the club and I felt pain in the chest.

Blackburn:

Let me read, sir, from your Grand Jury testimony, I think, in 1974, Volume II, page 151:

“Question: Now, where were you when you were struck with this blow that was particularly painful that seemed to take the breath out of you?

Answer: I was—I was holding onto the club at this point—you know—I mean—I was up—I don’t know if I was up or I was down yet. I don’t know if my left leg was up yet, but I was sitting upright if not my leg sliding down on the floor.”

Do you recall that testimony?

MacDonald:

Yes.

...

Blackburn:

Let me ask you this question: didn’t you get the pain from in the chest while you were holding on to the club the second time?

MacDonald:

It was in that time frame; yes. Somewhere in there that did occur.

Blackburn:

Well, are you saying that the time the second attempted blow was struck—now, when you were struck in the right chest with something—the pajama top was around your wrists at that time?

MacDonald:

It’s unclear to me. I really don’t know. It may or may not have been. I remember struggling with my hands bound up and thinking I couldn’t get my hands free, and I couldn’t get up, and there was a pain, and I was holding on to things, and it occurred to me relatively simultaneously. It was all occurring simultaneously, and it is hard to separate.

(Trial Transcript—Day #26—pg 6800-6803—lines 17-25, 1-25,1-25,1-17 )

**(q) August 24, 1979 (Trial Day 26)**

Blackburn:

What you are saying is that two fellows were at the end of the sofa, a black guy was over here. One of the white guys had a knife or an ice pick, I assume. And you don’t know whether the other did or not. And they were giving you a rain of blows to your chest; is that correct?

MacDonald:

That is correct.

Blackburn:

Did this rain of blows come while you were sitting on the sofa in the middle, while you were at the edge of the sofa, or while you were falling down or when?

MacDonald:

It must have started when I was in the middle of the sofa, but they seemed ineffectual.

Blackburn:

By “ineffectual” what do you mean—just didn’t hurt you very much?

MacDonald:

Yeah; I wasn’t alarmed until I got the pain in the chest about the blows coming from the angle.

Blackburn:

Did you get the pain in the chest before you got the other ineffectual blows or after?

MacDonald:

I had the ineffectual blows first, as I recall it. There was a pain in the chest. Then I remember letting go. Either he jerked his arm free or I eventually let go and turned to the other two—to the white males.

Blackburn:

Before you were hit with the club the very first time, were you struck by any blows in the chest?

MacDonald:

Before I was hit with the club? No.

Blackburn:

Was that the first thing that happened to you—getting hit on the head with the club?

MacDonald:

Yes; that’s right.

Blackburn:

That knocked you back down. Then you sat back up, and the black guy tried to hit you again with the club?

MacDonald:

That’s right.



Blackburn:

At some point in there you got a pain in the right side of the chest?

MacDonald:

That's right.

Blackburn:

Is what you are saying—that you were hit with some ineffectual blows, but between the time that you were holding on to the club and you got the pain in your right chest?

MacDonald:

That's right.

Blackburn:

Is that what you are saying? And they were ineffectual?

MacDonald:

That is my recollection; yes.

Blackburn:

Now, when they become effectual, when did they ever, besides the blow in the right part of the chest?

MacDonald:

It never seemed—I only distinctly remember one major blow.

Blackburn:

That is the one that caused the pneumothorax?

MacDonald:

I presume so.

Blackburn:

To the right side of the chest?

MacDonald:

Right; that's right.

(Trial Transcript—Day #26—pg 6815-6817—lines 17-25, 1-25, 1-18)

**(r) August 24, 1979 (Trial Day 26)**

Blackburn:

Dr. MacDonald, you did not receive any ice pick wounds in your hands or wrists or lower parts of your arms; did you?

MacDonald:

None that I recall.

Blackburn:

Then would it be your testimony that the reason that you didn't, I suppose, was because you were fending off with the pajama top?

MacDonald:

The two don't necessarily go together. I did not receive any ice picks on my hands and arms. My answer to that is yes, I did not receive any wounds on my hands and arms. Why I did not I cannot say.

(Trial Transcript—Day #26—pg 6821—lines 15-25)

GOVERNMENT  
EXHIBIT  
6076  
3:75-CR-26-F

FD-302 (Rev. 10-6-95)

- 1 -

## FEDERAL BUREAU OF INVESTIGATION

Date of transcription 03/22/2006

Jerry W. Leonard, attorney at law, 5 West Hargett Street, Suite 810, Raleigh, North Carolina, 27601, telephone number 919/831-4767, was advised of the identities of the interviewing agents and the nature of the interview. He the provided the following information:

Leonard advised he was appointed by Judge Dupree to represent Helena Stoeckley during the course of the MacDonald trial. Attorney/client privilege precludes Leonard from commenting on any statements Stoeckley may have made to him during the course of his representation. Notwithstanding, Leonard indicated he would answer questions with respect to this matter, exclusive of any statements made by Stoeckley.

Leonard indicated he has also been contacted by attorney Hart Miles and spoke with Miles subject to the same limitations.

Leonard's recollection was that Stoeckley had been arrested on a material witness warrant and that he was appointed by Judge Dupree after Stoeckley had been interviewed by both the defense and prosecution teams. Leonard did not recall Stoeckley testifying in open court, but added Hart Miles is of the impression that she did. Leonard noted that Stoeckley did not testify after he was assigned as her legal counsel. Likewise, Stoeckley was not interviewed by any member of the defense or prosecution after he was assigned as her counsel.

Leonard recalled that he attempted to locate a place for Stoeckley to stay during her time in Raleigh, and secured a room for her at the Brownstone Hotel. Leonard believes that he paid for at least the first night's lodging out of pocket, and was subsequently reimbursed by the court. Thereafter, Leonard feels the court provided a housing allowance for Stoeckley covering the duration of her stay. Leonard believes he spent about a week with Stoeckley in total. Most of this time was spent in the lawyer conference room, which he believes was located on the seventh floor of the Federal Building. Leonard noted that the Court Docket Sheets, if still available, should reveal the specific dates he was tasked with representing Stoeckley. During most of the time he spent with Stoeckley, he characterized his role as primarily "babysitting" Stoeckley.

Investigation on 03/21/2006 at Raleigh, North Carolina

File # CE 70A-3668Date dictated 03/22/2006

by SA James J. Cherokee  
SA C. Andrew Thomure

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FD-302a (Rev. 10-6-95)

CE 70A-3668

Continuation of FD-302 of Jerry W. Leonard, On 03/21/2006, Page 2

Leonard recalled that Stoeckley got into some sort of fight with her boyfriend over the weekend that she stayed in Raleigh. Leonard was also aware that Stoeckley alleged she was being harassed by Bernie Segal. Leonard recalled Stoeckley reported this directly to Judge Dupree.

Leonard noted that Stoeckley's arm was in a cast during the time of the trial, and that she may have suffered minor bruises as a result of the altercation she had with her boyfriend.

Leonard believes that there was a potential 10-year statute of limitations on the MacDonald murders, and that there would have been approximately six months left to pursue any type of action against Stoeckley. Leonard feels this also may have been a factor in Judge Dupree assigning him to represent Stoeckley.

Leonard reported no acts of misconduct by any of the attorney's involved in the case to the court. Likewise, there were no complaints filed with the court as a result of the actions of any attorneys involved. Leonard reported no threats against Stoeckley to the court or anyone else.

Leonard reported he previously served as Judge Dupree's law clerk and knew Judge Dupree well. During the time he was assigned to represent Stoeckley, he often used Judge Dupree's office and library to work and conduct legal research. Leonard recalled that he, on occasion, had lunch with Judge Dupree. Had any matter concerning Stoeckley needed to be addressed with Judge Dupree, he had access and a relationship which would have facilitated the reporting thereof.

During the time of the MacDonald trial, Leonard knew Jimmy Britt to be a Deputy United States Marshal and would refer to him as "Mr. Britt". Leonard and Britt knew each other from the time that Leonard clerked for Judge Dupree. Jimmy Britt never came to Leonard and indicated that Stoeckley had been threatened by Jim Blackburn or any member of the prosecution. Leonard did not have an understanding that Jimmy Britt sat in on an interview with Stoeckley.

Leonard reiterated that he could not comment on any statements made to him by Stoeckley during the course of his representation. If approached, he would discuss the general matters addressed above with members of the MacDonald defense team.

# I KNOW. I KNOW. I KNOW.

GOVERNMENT  
EXHIBIT  
7000  
3:75-CR-26-F

I wanted to know when James Blackburn met with Helena Stoeckley, what did he say? What happened in the room? I started by tracking people who were with Stoeckley the week of the trial.

I first saw his name in a brief filed on September 20, 2011, by Hart Miles, one of MacDonald's attorneys:

Mr. Leonard is a licensed attorney in Raleigh, North Carolina, who was appointed to represent Helena Stoeckley shortly after she testified in the 1979 trial. His communications with Helena Stoeckley shortly after her testimony could be additional evidence of innocence if Mr. Leonard is ordered by the court to reveal those communications in the interest of justice.<sup>1</sup>

Well, until then I had been unaware that Helena Stoeckley *had* an attorney. (It is hard to read through the documents on this case without finding a new name from the inexhaustible cast of characters.)

I called Leonard. He was surprisingly forthcoming, although *not* about what Stoeckley had or had not said to him, more specifically about whether Stoeckley had once again confessed to being in the MacDonald house on February 17.

**JERRY LEONARD:** There are some things I can talk about; other things I can't talk about. What I'm speaking about is stuff that might be client/attorney privilege.

There's a special rule [in North Carolina] that before I can talk about what Helena told me that might be incriminating, the judge has to order me to respond to the questions. So as to what Helena told me that might relate to the actual commission of the crime, I'm not at liberty to talk about.

**ERROL MORRIS:** Fair enough.

**JERRY LEONARD:** If you want me to talk to you about Helena Stoeckley as a person, then I certainly can.

**ERROL MORRIS:** That's terrific. There are so many recorded interviews with Helena linking her to the crime scene. So I would welcome talking about those aspects of Helena that we *don't* know about.

**JERRY LEONARD:** I knew she had a military brat background. Her father was a high-ranking officer. I was thinking he was a colonel.

**ERROL MORRIS:** Yes, I believe he was a lieutenant colonel when he retired. I may be wrong.

**JERRY LEONARD:** And when I met her, she had boyfriend problems. She had a broken forearm—she had a cast on it—because her boyfriend had beaten her up. And one of my jobs was to keep her away from her boyfriend. [*Chuckling.*] As well as to make sure that she was around the courthouse every day.

**ERROL MORRIS:** Did you meet the boyfriend?

**JERRY LEONARD:** No, I didn't. I don't think I did. You know, it's been thirty-two years.

**ERROL MORRIS:** Yes.

**JERRY LEONARD:** I enjoyed talking to her. She was smart, and she would ask questions about you. She was in one heck of a predicament, but yet she would say, "Where are you from originally? Da-da-da. What do you like to do? Da-da-da." Stuff like that. She was a pretty pleasant person to be around. I'm sure she was a pleasant person to everybody.

At the beginning of our discussion, I had talked about how Stoeckley was pulled in opposite directions like a piece of taffy—by the defense and the prosecution.

**JERRY LEONARD:** Yes, MacDonald was pulling her one way, the government's pulling her another way. Part of my job was to keep her from being pulled apart.

**ERROL MORRIS:** A hard job.

**JERRY LEONARD:** I just kept her isolated. I found a room at the courthouse for us, and we just sat in the room all day long for a number of days until the trial was over. Until it was determined she was not gonna be used as a witness and then she was released. I've got somewhere—I don't know where I put it—she wrote a

poem, and she said, "I am onstage, people laugh at me and make fun of me and then they eat their popcorn." But it rhymed. And she drew a picture, which I do have somewhere. That's how she was feeling at that particular time when she was involved in these court proceedings.

ERROL MORRIS: If you could find any of the writing or the picture, I would—

JERRY LEONARD: I'll try.<sup>2</sup> I can say this. I got a call from the FBI or whoever was working for the government to keep this case from being overturned at one point. The question was, "Did anybody try to influence her testimony?" And the answer was, "Not to my knowledge, because I kept her sequestered." We might walk down the hall, but everybody would purposely totally ignore her. They were concerned at that time as to whether or not the prosecutors had told her that if she testified that she was in the house that night, she was going to be prosecuted for first-degree murder. Ah, but you know, I didn't know anything about that. There was no contact between the attorneys or anybody on either side. Not that I knew of.

ERROL MORRIS: And how did you get this job—

JERRY LEONARD: Of representing Helena?

ERROL MORRIS: Yes.

JERRY LEONARD: I was the judge's first law clerk, in 1971. He didn't have any sons, and so he and I stayed real close. He had two daughters, and he stayed real close to all of his clerks. There were annual parties, birthday parties, given by the clerks, for Judge Dupree. I had been head of Legal Aid here after I left Judge Dupree, so he thought I could understand Helena, because probably I had a drug background or something. I'm kind of kiddin' about that. But he told me he thought I could communicate with her better. He didn't have a great opinion of her mental stability. *[Chuckling.]* So that wasn't much of a compliment. The reason why I say that is because he basically discredited her testimony. He would not let her testify before the jury because of her alleged past drug use—I mean, that was my job to keep her from testifying. Whatever she might have said on the witness stand, whether or not it was true, could have gotten her charged with a crime. Could have, depending on what she said. *[Pause.]* Are you writing? What are you doing?

ERROL MORRIS: No, I'm thinking.

JERRY LEONARD: *[Chuckling.]* Okay.

ERROL MORRIS: But you said something that I am curious about. You said that your job was to keep her from testifying.

JERRY LEONARD: Well, my job was to protect her. I was her lawyer. She was there in custody. She was picked up on a warrant for her arrest. And my job was to keep—protect her legally as best I could. And you never want somebody to take a

witness stand knowing that if they said something wrong, they might be charged with it. And I knew her history.

ERROL MORRIS: So as her lawyer, is the job to prevent her from saying anything that can be incriminating to herself?

JERRY LEONARD: Right. The job is to keep her from being charged with any crime.

ERROL MORRIS: But what if she has information helpful to MacDonald?

JERRY LEONARD: I would have lunch with the judge every day in the court chamber, but I wasn't really party to what was going on as far as who wanted her and who didn't. I just had her there every day in her little room. I actually think that MacDonald's [lawyers] were the ones who tried to get her arrested, as I remember.

ERROL MORRIS: I believe that's true, yes.

JERRY LEONARD: And he was the one who probably wanted to put her on the witness stand. Even if she said, "I was there. No, I wasn't there. Yes, I was there. No, I wasn't there." You see what I mean? Somebody was gonna say, "Well, maybe she was there." And maybe that might be reasonable doubt for some of the jurors. But you want me to comment on the trial?

ERROL MORRIS: Well, whatever you would be willing to comment on.

JERRY LEONARD: Here's the scene. You got a federal judge in a monstrous courtroom who graduated from law school at age nineteen and has a photographic memory. That was Judge Dupree. The court in Raleigh draws its jurors from eastern North Carolina, and you're talking about 1979, so you're talking about farmers, you're talking about rednecks, you're talking about—I believe there was a guy there that was in the military as an enlisted man. You got a judge who was raised on a farm and who would say, "Ladies and gentlemen of the jury, we're expecting thunderstorms this afternoon to begin around four thirty or five o'clock, so I'm gonna adjourn court at three o'clock so you can go home and protect your crops." You see what I mean?

ERROL MORRIS: Yes.

JERRY LEONARD: So they loved this judge. So the judge has control over the courtroom, and usually the jury has utmost respect for that judge because the judge was looking after the jury. And you had Bernie Segal, coming in from San Francisco. And I knew who he was, and I knew he was smart. As a matter of fact, he wrote one of my law books. And he came in with his long gray ponytail and brought with him some law students that were working on the case with him. They were all girls, and they were all—no bras, good-looking, long hair—hippie girls from San Francisco. He had with him as local counsel a guy named Wade Smith, who's from eastern North Carolina and then captain of the North Carolina

football team. Was a Morehead Scholar. And could really talk to a jury in eastern North Carolina. And you had MacDonald dressed up like a Chicago model—perfectly coiffed hair and very, very tailored suits. So that was the scene. Segal acted like he was above everybody and smarter than everybody, and he was particularly disrespectful to the judge.

ERROL MORRIS: Uh-huh.

JERRY LEONARD: And the judge just handled him wonderfully. But would not give way, and that kind of frustrated Segal. He wouldn't let Wade Smith handle anything, hardly anything in the case. At the closing argument, Segal took the whole time the judge allots—like an hour for each side to do their closing arguments. And Segal used the whole hour.

ERROL MORRIS: If it had been a different lawyer, do you imagine a radically different outcome to the trial?

JERRY LEONARD: I think so, yes. I really think so. Well, let's put it this way, if you could identify more with Jeffrey MacDonald—if he looked more like an emergency room doctor from Huntington Beach than some model from Chicago—they might be able to identify him as a doctor, you see what I mean?

ERROL MORRIS: Yes.

JERRY LEONARD: If he'd come in with these doctor shoes that—I mean, every time I see a new doctor, they have shoes that are comfortable, you see what I mean? Maybe rubber-soled shoes or even tennis shoes. He just didn't stand a chance with Segal. The jury just didn't like him as MacDonald's representative. If he had a different lawyer and he had a different—if he postured himself in a different manner, I think he would have been a whole lot better off.

ERROL MORRIS: Would Wade Smith have won the case for him?

JERRY LEONARD: Yes. Uh-huh.

Could the question of MacDonald's fate have come down to Bernie Segal and inappropriate footwear?

ERROL MORRIS: Here's a question for you. Do you have an opinion about MacDonald's guilt or innocence? Maybe you can't answer that.

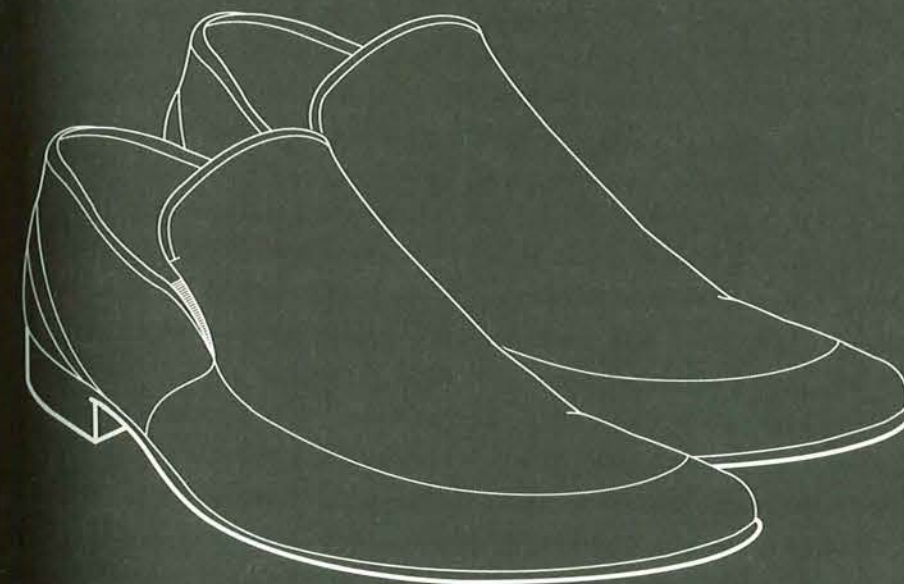
JERRY LEONARD: I can't answer that. You're right, I can't answer that, okay?

ERROL MORRIS: Had to ask it anyway.

JERRY LEONARD: I know. I know. I know. I know. I know.

ERROL MORRIS: I didn't ask you about Judge Dupree—

JERRY LEONARD: He's passed away. He would be a hundred years old, I guess.



ERROL MORRIS: Judge Dupree wouldn't allow Helena Stoeckley to testify because of her previous drug use. The presumption was that she was a disorganized, confused, addled person.

JERRY LEONARD: Uh-huh.

ERROL MORRIS: From Judge Dupree's decision, I never got the feeling that she was intelligent. That she was a credible person. That you could carry on a conversation with her. That she was likable. That she related to other people—

JERRY LEONARD: I just didn't see a lack of focus or any effect of overuse of drugs or what have you. She was fine, as far as I was concerned.

Jerry Leonard had arranged a chaperone, Kay Reibold, to sit with Stoeckley during the remainder of the trial. Reibold had effectively replaced Wendy Rouder.

I called Kay Reibold. She didn't recall much about her time with Helena Stoeckley, but fortunately, there is a detailed statement she gave to Ted Gunderson in Wade Smith's office about five months after the trial. Here is the statement.

During the trial of Dr. Jeffrey MacDonald in August of 1979, I was asked by Jerry Leonard, the attorney who represented Helena Stoeckley, if I would spend time with her acting as a companion and friend to her. It was understood that I spend time with her to and from her hotel room, in her hotel room and in the witness room at the courthouse. Mr. Leonard requested I not discuss Dr. MacDonald's case with her. I agreed. I also explained to Mr. Leonard at this time that I felt he should know that I believed in Dr. MacDonald's innocence. He stated that it was permissible for me to listen to Helena's comments and feelings regarding the case as she volunteered them, but not to request information from her or ask her questions regarding the case.

My experience with Helena Stoeckley took place over a three-day period of time. [Most likely, from Monday, August 20, to Thursday, August 23.] During this time, we established a rapport and in our conversations, she made some statements that I felt were significant . . . At one point when we were discussing her involvement with children at the Tammy Lynn Center [a center for children with disabilities in Raleigh], she hung her head and said quietly, "I still remember Kristen's face. Her face seems familiar to me." This statement was repeated at least one other time when we were discussing her love for children and in particular, an epileptic child she had cared for. Other significant remarks were

made in a similar context; that is, a feeling or an image seemed to push to the front of Helena's mind and into her conversation with me. She stated to me that she "still felt" she "was there" at least three times during our experience together. She recalled at one time she "remembered Dr. MacDonald on the couch." She recalled at least two times that she remembered the hobbyhorse being broken.<sup>3</sup>

Stoeckley and Reibold are sitting in a witness room while the trial continues—waiting for a call from the courtroom in the same building. A call that never comes. Stoeckley pipes up once again. But only Reibold is listening, as the trial moves inexorably to a conclusion.

The last day that I spent with Helena as we were sitting in the witness room, she stated to me that she had not indicated on the witness stand the extent to which she was involved in witchcraft. She told me that she was "into it" "much heavier" than she had testified. She also noted that she intended to return to it (her involvement with it). [Here, she is presumably referring to witchcraft.] It was at this same time that she confided that when "everything was over" she was going to disappear and no one would ever find her.

Other than the statements made above, I do not recall any other statements Helena made, pertaining to the trial, that were significant.

During the time I spent with Helena, she seemed depressed and in ill health, but I felt that her state of mind was lucid. I had the impression she had undergone some horrendous experiences considering the extent of her involvement with drugs; however I felt that her feelings and her remarks were reliable.

Lucid and reliable. Reibold had been told by Leonard that it was "permissible for [her] to listen to Helena's comments but not to request information from her." Reibold didn't have to request information. Stoeckley wasn't waiting to be asked.

And so, here we have another series of 1979 confessions from Stoeckley. Three. Reibold, Britt, and Rouder. Well, four. There was also Lynne Markstein, a patient in the emergency room in Raleigh where Helena was taken by Rouder and Red Underhill after her "fight" with Ernie Davis at the motel. Markstein was in the emergency room waiting for an X-ray. Stoeckley started talking to her and told Markstein that she was in the MacDonald house during the murders and that she remembered seeing a bloody child.



She said she was at the MacDonald house during the murders and she remembers looking down and seeing the small child in the crib. She said she was standing over the crib looking at the child who was covered in blood. I believe she said the child's throat was cut but I'm not sure. However, she did say something about a lot of blood and how horrible it was. She also said something to the effect, "Can you imagine someone like me doing that to those babies?" The reason I remember this statement is because it stood out above the others. I remember it because of her hand motions and it was weird . . . According to her there was no doubt in her mind about being at the crime scene. Not once did she say she "thought" she was there . . .<sup>4</sup>

I prepared a time line of all of the confessions that Stoeckley had made during the course of her stay in Raleigh. It raised even more questions.

I called Jerry Leonard a second time.

**ERROL MORRIS:** I'm confused.

**JERRY LEONARD:** You told me that last time!

**ERROL MORRIS:** Well, it's probably true! Stoeckley arrives on a Wednesday—I believe she was put up in jail. And subsequently moved to a hotel. She was interviewed by the defense and the prosecution on Thursday. And she testified on Friday, outside of the presence of the jury.

**JERRY LEONARD:** Yes, and the judge was of the opinion that she'd taken too many drugs in the past to offer reliable testimony. Those were the issues that I was dealing with as far as trying to keep her from testifying.

**ERROL MORRIS:** Keep her from testifying?

**JERRY LEONARD:** Lawyers don't like for their clients to talk to juries, anyway. The bottom line is anything they say can be taken out of context and used against them. Are you still confused?

**ERROL MORRIS:** Yes. How come she didn't get a lawyer until after she had testified?

**JERRY LEONARD:** She was arrested as a material witness, put in jail. She should have been allowed a lawyer at all stages, but she wasn't assigned one.

**ERROL MORRIS:** But why not?

**JERRY LEONARD:** I can't remember. I think there was no one there. Somebody needed to step up and say, "Hey, she's entitled to a lawyer at this stage." And no one did. I was appointed as an afterthought. You know, court systems are not perfect. She was arrested, and I bet until Friday she didn't even have any—"Ma'am, you're entitled to have a lawyer, da-da-da-da. If you cannot pay, we will

appoint one for you." When she was subjected to whatever she was subjected to prior to my being appointed.

**ERROL MORRIS:** She wasn't read her rights?

**JERRY LEONARD:** Not until I was appointed.

Doesn't every schoolboy know that you're supposed to be read your rights? Okay, she wasn't read her rights because she wasn't a suspect. But why wasn't she a suspect? What do you have to do to be a suspect?

But of course the government wasn't particularly interested in listening to what Stoeckley had to say.

**JERRY LEONARD:** The government called me about two years ago—some FBI agents, I assume. So I said, "I'm not gonna talk to you about what she told me, but I'll hear your questions and make a decision as to whether or not I can answer them." But the questions were, "Has anybody made any threats to her on either side to make her testify one way or the other?"

**ERROL MORRIS:** Right.

**JERRY LEONARD:** They didn't ask me anything about what Stoeckley had to say. And then a marshal submitted an affidavit that said that she told him that she was there. Are you familiar with that?

**ERROL MORRIS:** I am, actually. James Britt.

**JERRY LEONARD:** And of course Britt didn't have a [legal] privilege in relation to Helena. I can tell you that Britt was very well respected. He certainly wasn't defense oriented. He was one of these hard-nosed marshals that you couldn't get to smile. He wasn't really about being for any defendants.

**ERROL MORRIS:** And so this story is not something he would just make up?

**JERRY LEONARD:** No, no, no, no, no. It certainly wasn't in his best interest to be sitting there and saying something that could be used against the government.

What was going on? Stoeckley told people she was at the crime scene at least six times during that week. Before her appearance with the defense attorneys and with the prosecutors on Thursday. And after her appearance on the stand on Friday. How do you explain it? Her story was remarkably consistent—except for those two days. The obvious explanation is that she was threatened. Britt tells us

## STOECKLEY AT TRIAL, AUGUST 1979

<b>Mon 13</b>	Franklin Dupree issues a bench warrant for Stoeckley.
<b>Tue 14</b>	Stoeckley is arrested by the FBI in Walhalla, South Carolina, and is committed to Pickens County Jail.
<b>Wed 15</b>	Stoeckley is turned over to U.S. marshals, who bring her to Raleigh. She spends the night in Wake County jail.
<b>Thu 16</b>	Stoeckley is brought to the courthouse. She confesses to U.S. Marshal Jimmy Britt. <b>9:30 am-1:00 pm</b> Stoeckley is interviewed by the defense. According to Segal, she claims "that she has a recollection of standing outside the house looking at her hands and saying, 'My God, the blood; oh my God, the blood.'" <b>2:00 pm</b> Stoeckley is interviewed by the prosecution. According to Jimmy Britt, Blackburn threatened Stoeckley.
<b>Fri 17</b>	Stoeckley is brought to the courthouse. <b>9:00 am</b> Defense and prosecution agree that Stoeckley does not need an attorney. <b>~10:00 am</b> Stoeckley takes the stand. Segal claims Stoeckley is a hostile witness. Dupree replies: "I have detected nothing in the demeanor or answers . . . to indicate any hostility whatever to your questioning. She has answered the questions forthrightly and intelligently . . ." <b>1:59 pm to 3:58 pm</b> The six Stoeckley witnesses testify outside the presence of the jury.
<b>Sat 18</b>	Stoeckley is brought to the Journey's End motel. <b>1:00 pm</b> Red Underhill meets her there. She has a black eye.
<b>Sun 19</b>	<b>11:30 am</b> Stoeckley and Ernest Davis are ejected from the Journey's End motel. Red Underhill and Wendy Rouder pick up Stoeckley. They go from one hotel to another, ending up at the Hilton. Rouder receives a call from Judge Dupree. <b>LATER</b> Stoeckley is taken to the emergency room. Stoeckley tells Lynne Markstein that she remembers standing over a child covered in blood. Red Underhill keeps watch on Stoeckley at the Hilton overnight; she tells him she knows the names of the murderers.

<b>Mon 20</b>	Jerry Leonard is appointed as Stoeckley's lawyer. Kay Reibold becomes her chaperone. <b>10:00 am</b> Judge Dupree rules on the Stoeckley confessions: they "are about as unclearly trustworthy—or clearly untrustworthy, let me say—as any statements that I have ever seen." <b>2:32 pm</b> Rouder and Underhill testify that Stoeckley made inculpatory statements over the weekend. Dupree rules them inadmissible.
<b>Tue 21</b>	<b>~3:00 pm</b> Dupree lashes out at Segal over Stoeckley: "I think that I have gone just as far as I could to give you every consideration . . . [You] took all day to interview this Stoeckley . . . with your people going with her all over motel rooms and all over the lot . . ."
<b>Wed 22</b>	Dorothy MacDonald, Jeffrey MacDonald's mother, testifies. Helen Fell, a friend of the family, testifies. Stoeckley confesses.
<b>Thu 23</b>	<b>2:30 pm</b> Stoeckley is released from custody, despite the protestations of the defense. <b>JAMES BLACKBURN:</b> Her lawyer, Jerry, is still around. <b>JUDGE DUPREE:</b> I asked Mr. Segal—I said, "What is he still doing here?" <b>WADE SMITH:</b> I talked to Jerry Leonard at great length, Your Honor, this morning—talked to him for a long time, and this woman continues to say things that tie her to this case . . .
<b>Wed 29</b>	MacDonald is convicted of the three murders and sentenced to three consecutive life sentences in prison.

that indeed is what happened. One reason we should believe Jimmy Britt is that, without his affidavit, what happened in the courtroom doesn't make sense.

But there is still something deeply puzzling. Leonard was not appointed by Dupree as Stoeckley's attorney until Monday, August 20. She had arrived in Raleigh the previous Wednesday, August 15. She was a material witness—possibly an accessory to the murders. Shouldn't she have been given an attorney promptly on arrival in Raleigh—maybe even before? But she wasn't given an attorney. An oversight? I find that hard to believe.

It could have gone down differently. Imagine the following hypothetical situation. Stoeckley arrives in Raleigh and the court appoints an attorney for her. She appears on the witness stand on Friday, takes the Fifth—refusing to answer any questions. Segal moves to put the six Stoeckley witnesses on the stand. And that is what the prosecution feared—as much as the possibility of Stoeckley testifying under oath that she had been in the house.

In retrospect that is probably what the defense SHOULD have done. They *should* have insisted that she have an attorney. But Segal was so convinced that Stoeckley would confess that he seemed utterly surprised—indeed, dumbfounded—when she turned out to be a hostile witness.

Here's my theory. On the stand Stoeckley performed as the prosecution expected. Having been threatened, she remembered nothing. Or so she claimed. And as a result, the corroborating witnesses were eliminated because they supposedly no longer had anything to corroborate. Once Dupree had decided to throw out the six witnesses—saying the Hearsay Rule didn't apply—the prosecution (and perhaps Dupree as well) was worried that Stoeckley would change her mind and agree to appear as a FRIENDLY defense witness. To prevent this from happening, Stoeckley was appointed an attorney to keep her from offering any further testimony.

I found an additional document, a statement given by Jerry Leonard on January 23, 1980, to John Dolan Myers, a defense investigator.

Jerry Leonard is the attorney appointed to "represent-protect-etc." Helena Stoeckley while she was in Raleigh for the MacDonald trial. He was appointed to represent Ms. Stoeckley by the court.

Mr. Leonard stated, "They called me from the courthouse and told me that Helena had asked for a lawyer and asked would I be interested in representing her."

Leonard stated that he never received any suggestions or instructions from the court regarding Ms. Stoeckley after he was appointed to represent her.

Mr. Leonard stated that he received permission from Ms. Stoeckley to discuss the things she told him with attorney Wade Smith. Mr. Leonard stated that he had a conference with Mr. Smith and told him what Helena had told him. He stated that he also gave Mr. Smith some insight as to his impressions of Ms. Stoeckley . . .

Mr. Leonard stated that he had several private conversations with Judge Dupree about Helena Stoeckley. Mr. Leonard stated that he was not sure if, as an officer of the court, these conversations were privileged information. He did state that anything Judge Dupree might or might not have told him concerning the Judge's feelings about the guilt or innocence of Jeff MacDonald seemed to have been expressed by his mood and actions in the courtroom during the trial . . .

NOTE: Mr. Leonard stated that he did not know if MacDonald was guilty or innocent; however, he stated that he did feel that the prosecution did not prove their case. He stated that he thought MacDonald had been screwed.<sup>5</sup>

I called Leonard again.

**ERROL MORRIS:** I have so many questions about this document. Let me see how I can start off simply. Why did you contact Wade?

**JERRY LEONARD:** I don't know. I don't remember doing it.

**ERROL MORRIS:** You don't have any memory of it at all?

**JERRY LEONARD:** No, I sure don't. It would be very interesting to know what I told Wade. I just do not know, and I don't remember the circumstances at all. Honestly, my memory is not one hundred percent, and for anything that I say to be reliable even as I'm trying to fill in the facts for you, it's fairly dangerous, I think, because honestly I'm wrong on some key facts.

**ERROL MORRIS:** There are things about the trial that just seem wrong. The feeling that I get is that you were used. I can just lay it out on the table. You were used by the court in a way that seems to me unsavory.

**JERRY LEONARD:** Okay. I think I was used, but unsavory because of what?

**ERROL MORRIS:** Because the judge was watching Stoeckley like a hawk, because he maneuvered this deal to keep her testimony away from the jury. It seems to me deeply wrong and unethical.

**JERRY LEONARD:** Okay. Well, I can't dispute that one way or the other.

**ERROL MORRIS:** Let me give you my interpretation, and you can tell me if you think I'm completely off base. Stoeckley said things to you and implicated her in these murders. What she said, how she implicated herself, I don't know. But you went to Wade Smith because you believed the defense should know about it.

JERRY LEONARD: Okay. Well, that is a logical interpretation. But you have to ask Wade. I'd like to be a little shining light, but I just don't know that I can. What happened was I got this call from the clerk—it wasn't Judge Dupree—asking if I would represent a hippie girl. My job, I had been thinking all of these years, was just to fade away, keep her out of the courtroom. I didn't even know that she had testified.

ERROL MORRIS: Well, you were appointed the week after she took the stand. Perhaps with the intention of keeping her off the stand in the future.

JERRY LEONARD: I can't imagine that I was not told that she testified. I would have thought I would have ordered a transcript of her testimony right away. Obviously, I didn't. I just remember sitting there, and it seemed pretty boring to me. The pay at that time was thirty-five dollars an hour, and you were losing money running an office on thirty-five dollars an hour. I take it back; back then it was thirty-five dollars an hour for out of court and forty-five dollars for in court, so I guess that was in court.

ERROL MORRIS: Here is another issue. In Myers's deposition, you indicate to Myers that you had had several conversations with Dupree about Stoeckley. It seems to me—and you know this stuff better than I do—isn't it improper for Dupree to do that?

JERRY LEONARD: Well, it may have been. In hindsight, it certainly would have been better not to do that.

ERROL MORRIS: Had Dupree already made up his mind?

JERRY LEONARD: I don't remember any exact words, okay, but my impression was that Dupree thought that MacDonald was guilty; and I focus on the word "thought."

ERROL MORRIS: If Stoeckley spoke with you about her involvement, would you have said something also to the judge about that?

JERRY LEONARD: I don't know. My thoughts are that I was trying my best to keep her from being a witness.

ERROL MORRIS: But she would have pled the Fifth if she had been called, would she not?

JERRY LEONARD: Do you know when the murders occurred?

ERROL MORRIS: On February 17, 1970.

JERRY LEONARD: Okay. And the jury trial was August of 1979?

ERROL MORRIS: Right.

JERRY LEONARD: There was a ten-year statute of limitations on murder in the federal system. And that was my concern. If I could get her past that ten-year period, she was clear. They couldn't indict her.

ERROL MORRIS: It was not very far off. It would have been February 1980. Six months.

JERRY LEONARD: Yes. That was key in my mind.

she has a recollection of standing outside the house looking at her hands and saying, "My God, the blood; oh my God, the blood."

She said that took place February 17, 1970. There are witnesses to each of these things. I must say, Your Honor, there were persons present the entire time this took place.

I intend to now ask her directly each of these questions. If she refuses or denies her statements, I ask for leave to confront her: "Did you not say that yesterday when you were confronted with these photos?"<sup>1</sup>

I called Wade Smith hoping to get the bottom of it. What had Stoeckley said?

**ERROL MORRIS:** Here is what puzzles me. Helena testifies on Friday, but she

was interviewed by you and Segal the previous day. Can you tell me about it?

**WADE SMITH:** We sat down in a room, at a little table, a little wood table. There were four of us sitting around the table. Joe McGinniss was there. Helena was there. Bernie was there. And I was there. Helena looked nothing like I would have thought she would look. I imagined her as a lady with a blond wig and a floppy hat. I imagined her as she would have looked ten years earlier. I imagined her as being a very attractive woman, hippie-like and so on. But she was a terribly wasted, terrible-looking woman. Much, much overweight. She looked like Mrs. Khrushchev. Do you want me to go on?

**ERROL MORRIS:** Absolutely, yes.

**WADE SMITH:** So, I'm thinking, how would I do this? She came in, and she sat down in her chair. And Bernie was sort of steepling his hands, you know, doing push-ups with his fingers in his hands, and looking into the distance.

And he said to her, "Helena, it is rare in one human life when a person has an opportunity to make something wonderful happen in an instant. And you have the power to do that. You have the power to make something wonderful happen. And you have the power to end this agony for this man, to put it all to rest for him, and to let it be ended. And I hope you will do that today. I hope you will do it."

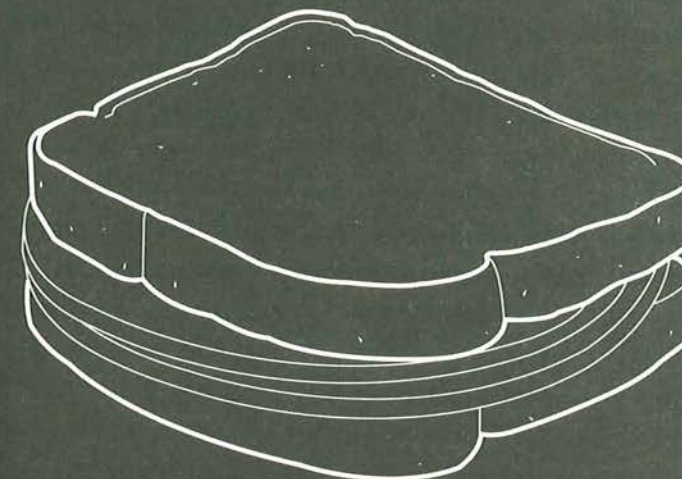
And there was this moment.

And she said, "I don't know anything about it. I certainly wasn't there. And I think he did it. And you promised me some food. And no one has given me any food. And you promised me I'd get something to eat." It had gone from sublime hope to deepest of ridiculous statements. And she sat there, as she ate her sandwich, and leafed through the bloody photographs that were exhibits in the case and seemed completely and totally unmoved by them.

GOVERNMENT

EXHIBIT  
7001

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ERROL MORRIS: Quite a turn of events.

WADE SMITH: And we hoped that after she had some food, we would be able to persuade her. But we never were. We never were. She stuck to that story. And she certainly stuck to it when she testified.

ERROL MORRIS: You were all shocked?

WADE SMITH: Yes, we were. We had our hopes so built on the idea that this was the way to finally put the case to rest.

ERROL MORRIS: So, here's the problem that I have. Bernie Segal is now dead. I can't ask him. But I can't reconcile it with—

WADE SMITH: With what Bernie was asking, what Bernie was saying?

ERROL MORRIS: That's correct. And here's a quote from you. "Judge, here, I think, is where we are. Generally, she said to us the same thing and that is, 'I don't remember.' But in two or three or four instances—whatever the list would reveal—she says something, which would give an interesting insight into her mind. I would submit that we have a right to cross her on those. If she denies them, they have a right to impeach her on those statements or show that she did not say anything like that."

How do I reconcile this with what Segal says in court?

WADE SMITH: Well, let's see if there's anything to reconcile. For example, remember what I said: that, from my perspective, we didn't get what we wanted, but what we wanted was a flat-out admission that she was there. But I mean, and I confess to you that I do not have the detailed recollection of her looking down and saying, "I do seem to remember," though I mean and I confess to you that I believe that is true. I mean and I know that there must have been a number of little things she said that would cause us, as lawyers, to pick up a few little crumbs, you see what I'm saying?

ERROL MORRIS: Yes.

WADE SMITH: We didn't get the whole cake, but we did see a few crumbs fall down on the floor and we're gathering those up. And that's what we're asking the court to give us an opportunity to go into.

ERROL MORRIS: Here's Segal again: "She has a recollection of standing there during the early morning hours of February 17, 1970. She further stated yesterday, and I intend to ask her now, that she has a recollection of standing outside the house, looking at her hands, and saying, 'My God, the blood; oh my God, the blood.'"

WADE SMITH: Yes, I remember that. I remember that.

ERROL MORRIS: You remember her saying that?

WADE SMITH: Yeah. Wait, let's back up. Because it is, I mean, history will not tolerate my misstating this one iota. I remember her saying, "My God, the blood, the

blood." But I honestly can't tell you, as I sit here right now, if she said it in that meeting. But I know that she said it. She had said it before. I will never be able to remember, I know, whether she said that to us in our meeting with her the day before. But I know that she had said that. Now, it could be that she said it to Jane Zillioux and Red Underhill, and it may be that that's where we got it.

ERROL MORRIS: Or do you think that Bernie just imagined this?

WADE SMITH: No. I would say this: there is one principle that I believe I could go to my grave on, and that is that Bernie would not have told the judge an untruth. Nor would I.

ERROL MORRIS: Let me go back over this for a second. It's so peculiar. Here's Segal again: "She also stated yesterday she remembered standing at the end of the sofa holding a candle. She also said when she saw the body of Kristen MacDonald—the one when she was clothed, with the baby bottle—that that picture looked familiar to her. That scene looked familiar. She also said when she was shown the photograph of Colette MacDonald—the same one I showed her today—that she said that the face in that picture looked familiar, except that the chin was broken and made it a little hard."

WADE SMITH: All of that may absolutely have been things that she said in that meeting with us. I don't doubt it one bit. I mean, I don't doubt it. It could be, but it's been so long, I don't know whether she said those things right then. I just don't know.

ERROL MORRIS: Memory is so weird. Here is something else that bothers me. And if you think it's completely off base, I'd love being corrected. I asked myself, "How come the prosecutors didn't give her an attorney?" Jerry Leonard was not appointed, by his own account, until the following Monday. I think they didn't appoint an attorney because the attorney would have told her to plead the Fifth. And then the jury would have had to have been aware of that fact. I know this may seem far-fetched.

WADE SMITH: Well, I don't think what you're saying is far-fetched. Judge Dupree believed that Jeff was guilty. I thought the world of Judge Dupree. He was, in so many ways, a father figure to me. But I don't think Judge Dupree gave him a fair trial. I think Judge Dupree had his mind made up. And there were many instances in the trial, when maybe unwittingly, he telegraphed to the jury how he felt.

What you say may be a possibility, but it's always made a little bit more sense to me that they started thinking, "Wait a minute. Wait a minute. We've brought this woman in here in the custody of the FBI. We have turned her over to people to examine her. She's been on the witness stand. Whoa. We better at least let her have counsel to help her to feel that she's been treated properly." And I've always

thought they appointed her a lawyer to protect themselves.

**ERROL MORRIS:** Another thing that puzzles me is if prosecutors had any access to Stoeckley before you interviewed her?

**WADE SMITH:** Not that we know of, not that they have ever said.

**ERROL MORRIS:** When Stoeckley blurts out this stuff, and then demands the sandwich, you don't remember what kind of sandwich, by the way, do you?

**WADE SMITH:** It was a bologna sandwich.

**ERROL MORRIS:** Oh good grief.

**WADE SMITH:** That's true. I'm so sorry to tell you. That's my memory. That's my recollection. I may be wrong. That's a pretty tiny fact for me to store away for thirty-one or thirty-two years.

**ERROL MORRIS:** Do you believe that she was there in the house?

**WADE SMITH:** Well, yes I do. I mean, the fact that she told her own mother that she was there, and the fact that she said it over and over. Now, I know that people get fixations and things like that. But it's so strange that this woman who was described by MacDonald in his earliest statements to the police, would, in effect, say, "Yeah. You know, he's right. I was there." We should have won. There was a reasonable doubt. The government did not prove their case beyond a reasonable doubt. It is still an enduring mystery. And if he's found guilty, it should not be a mystery.

---

Following my last conversation with Leonard, I called Smith again. He once again tried to recall what Stoeckley had said that day in Segal's office. This time, he rummaged around for a copy of *Fatal Vision* and started reading from the book. It included the detail about the bologna sandwich.<sup>2</sup> Here was one of MacDonald's principal defense attorneys, and it was as if his memories were gone, and all that remained was McGinniss's account.

As for what Leonard had said to Wade Smith, neither of them remembered the conversation.

**WADE SMITH:** Well, I can't say that I never had that conversation with Jerry. If he says I had it, I would trust him.

Although, I can't remember what Jerry would have told me, this woman [Stoeckley] had the ability to dance around and dance around this tantalizing, unbelievably delectable morsel as to was she in the house. She would say things like "I still remember all the blood, all the blood"; and just when you would think,

"Okay, she has said once and for all that she didn't do it," she would say, "But somehow I still can't help but remember," and it would be like some tantalizing series of words that caused you to come back. You had flown away and you'd come back; and that may be what Jerry told me.

Over the years I've had at least one conversation with Jerry, maybe ten years ago, where I said, "Jerry, isn't there something dramatic that you need to tell me?" And I always was left believing there may be, but that he wouldn't just tell me.

**ERROL MORRIS:** Although she gave him permission to talk you, clearly.

**WADE SMITH:** Yes. But I never have believed that Jerry has felt comfortable telling me everything he knows.

It was a conversation mentioned in a transcript and a statement, but otherwise forgotten.<sup>3</sup> Has Leonard waited so long to reveal what Stoeckley told him that now, his memories have faded and there's nothing to reveal?

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Britt's affidavit was filed at the Wake County courthouse on November 3, 2005. Britt died of congestive heart failure on October 19, 2008. He had been ill with cancer for several years.<sup>4</sup> Judge James C. Fox, Judge Dupree's friend and successor—he gave the eulogy at Dupree's funeral—finally ruled on November 4, 2008. It was fifteen days after Britt's death. Even if Britt was telling the truth, Fox wrote, it would not have mattered: "MacDonald has not demonstrated that the Britt affidavit, taken as true and accurate on its face and viewed in light of the evidence as a whole, could establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found MacDonald guilty of the murder of his wife and daughters."<sup>5</sup>

GOVERNMENT  
EXHIBIT  
7010  
3:75-CR-26-F

596

## IN THE SUPREME COURT

## IN RE LEONARD

[339 N.C. 596 (1995)]

reviewing the record, briefs and oral arguments, we now conclude that plaintiffs' petition for discretionary review was improvidently allowed.

[1] With reference to their appeal based on the dissent in the Court of Appeals, plaintiffs contend that the trial court should have allowed their motion to supplement their complaint so as to satisfy the seven-year requirement for color of title. As noted by a majority of the Court of Appeals' panel, this question was not properly before that court, since plaintiffs failed to properly give notice of their intent to appeal the denial of their motion. Accordingly, this issue is also not properly before this Court. *See Falls Sales Co. v. Board of Transp.*, 292 N.C. 437, 443, 233 S.E.2d 569, 573 (1977).

[2] Plaintiffs also contend that the trial court erred in granting summary judgment for defendants because a genuine issue of material fact existed regarding the adequacy of the description in plaintiffs' deed. However, regardless of the adequacy of the description in plaintiffs' deed, summary judgment for defendants would still be proper if the seven-year statutory period had not run at the time this action was instituted. As noted earlier, the Court of Appeals held that the seven-year statutory period under N.C.G.S. § 1-38 had not run at the time this action was instituted. There was no dissent as to this issue, and this issue is dispositive of plaintiffs' appeal. Therefore, plaintiffs' appeal is dismissed.

DISCRETIONARY REVIEW IMPROVIDENTLY ALLOWED;  
APPEAL DISMISSED.

Justice ORR did not participate in the consideration or decision of this case.

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IN RE: INQUIRY CONCERNING A JUDGE, NO. 182, JERRY W. LEONARD,  
RESPONDENT

No. 454A94

(Filed 10 February 1995)

**Judges, Justices, and Magistrates § 36 (NCI4th)—censure of  
district court judge—behavior resulting from alcohol use**

A former district court judge is censured for conduct prejudicial to the administration of justice that brings the judicial office



## IN THE SUPREME COURT

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## IN RE LEONARD

[339 N.C. 596 (1995)]

into disrepute based upon the following conduct; (1) his behavior while publicly intoxicated in Key West, Florida which resulted in his arrest and a negotiated plea of *nolo contendere* to the criminal offense of trespass after warning; (2) his behavior while publicly intoxicated in Raleigh, North Carolina which resulted in his conviction of the criminal offense of indecent exposure; and (3) his continuing refusal, even after admitting psychological dependency, to abstain from the consumption of alcohol, the use of which caused the aforementioned incidents and conduct.

**Am Jur 2d, Judges § 19.****Power of court to remove or suspend judge. 53 ALR3d 882.**

This matter is before the Court upon a recommendation by the Judicial Standards Commission (Commission), filed with the Court 20 September 1994, that Judge Jerry W. Leonard, formerly a Judge of the General Court of Justice, District Court Division, Tenth Judicial District of the State of North Carolina, be censured for conduct prejudicial to the administration of justice that brings the judicial office into disrepute, in violation of Canons 1 and 2A of the North Carolina Code of Judicial Conduct.

*William N. Farrell, Jr., Senior Deputy Attorney General, Special Counsel for the Judicial Standards Commission.*

*Merriman, Nicholls & Crampton, P.A., by Nicholas J. Dombalis, II, for respondent.*

## ORDER OF CENSURE.

The conduct upon which the Commission based its recommendation that the respondent be censured included: (1) the respondent's behavior while publicly intoxicated in Key West, Florida on 28 December 1992 which resulted in his arrest and in a negotiated plea of *nolo contendere* to the criminal offense of trespass after warning; (2) the respondent's behavior while publicly intoxicated in Raleigh, North Carolina in November of 1993 which resulted in his conviction of the criminal offense of indecent exposure; and (3) the respondent's continuing refusal, even after admitting psychological dependency, to abstain from the consumption of alcohol, the use of which caused the aforementioned incidents and conduct.

In his answer, the respondent "admitted that the conduct above constitutes conduct not in conformity with the Code of Judicial Con-

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## IN THE SUPREME COURT

**BENTON v. THOMERSON**

[339 N.C. 598 (1995)]

duct." Also, the respondent acknowledges that, "such conduct was a product of the voluntary consumption of intoxicating alcohol, a willful act." During the formal hearing before the Commission, the respondent offered evidence in the form of numerous affidavits in support of his capabilities as a jurist.

After reviewing the record in this case and the recommendation of the Commission, this Court concludes that the respondent's conduct constitutes conduct prejudicial to the administration of justice that brings the judicial office into disrepute within the meaning of N.C.G.S. § 7A-376. The Court approves the recommendation of the Commission that the respondent be censured.

Now, therefore, it is, pursuant to N.C.G.S. §§ 7A-376, 377, and Rule 3 of the Rules for Supreme Court Review of Recommendations of the Judicial Standards Commission, ordered that Judge Jerry W. Leonard be, and he is hereby, censured for conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Done by the Court in Conference this the 9th day of February 1995.

Orr, J  
For the Court

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BENNY BENTON, PLAINTIFF V. HUGH CLIFTON THOMERSON, JR., DEFENDANT AND  
THIRD-PARTY PLAINTIFF V. CLAUDE E. McCLAIN, THIRD-PARTY DEFENDANT

No. 78A94

(Filed 10 February 1995)

**Pleadings § 63 (NCI4th)— third-party complaint—reversal of sanctions against attorney**

The Court of Appeals decision affirming the trial court's award of Rule 11 sanctions against defendant's attorney on the grounds that a claim for contribution alleged in a third-party complaint was not well-grounded in law or fact and was filed for



From Suzanne Lever <SLever@ncbar.gov>

Sent Friday, May 11, 2007 1:50 pm

To hartmiles@nc.rr.com

Cc

Bcc

Subject Ethics inquiry

Hart,

Thank you for your inquiry.

Inquiry #1:

When an attorney represents an individual that has testified as a witness in a criminal trial and learns through conversations with the client that the client committed perjury during the trial and the also has information probative of the defendant's innocence which the client did not disclose during the trial, can the attorney disclose those communications when 1) the client is deceased and all statutes of limitations on any civil actions against the client's estate have expired; and 2) the defendant may have been wrongfully convicted and wrongfully imprisoned because of the client's fraud on the court?

Opinion #1:

When an attorney learns that his client has committed perjury, the attorney should take reasonable and seasonable remedial measures. Rule 3.3(b). The appropriate remedial measure may be to reveal information to the tribunal that would otherwise be protected by Rule 1.6. The attorney has a duty to act before a third party relies on the false testimony. See Rule 3.3 comment [10]. Pursuant to Rule 3.3(c), the conclusion of the proceeding terminates an attorney's obligation to rectify false evidence.

Therefore, if the proceeding has terminated, the attorney has no obligation to remedy his client's perjury and the communications remain protected by Rule 1.6. Any disclosure is only as allowed by exceptions to Rule 1.6.

Inquiry #2:

Are communications by a client to an attorney that relate to a third party's innocence in a criminal case outside the attorney-client privilege when the third party has been convicted and imprisoned and the client is now deceased?

Opinion #2

I cannot give a legal opinion as to whether the communications are protected by the attorney-client privilege. Information protected by the attorney-client privilege is subsumed within the definition of information protected by the duty of confidentiality. The rules of ethics provide that, absent consent, an attorney must assert all nonfrivolous claims that information sought is protected. See Rule 1.6

comment [14].

Rule 1.6 governs the disclosure by an attorney of information acquired during representation of a client. The obligation of confidentiality continues after the client's death. Without consent, there are limited circumstances under which disclosure is permissible. These circumstances are set out in Rule 1.6(b). Communications by a client to an attorney that relate to a third party's innocence do not fall within any of the exceptions of 1.6(b). Whether Imprisonment constitutes "bodily harm" under Rule 1.6(b)(3) is not resolved by the current ethics opinions, rules or comments, and must be addressed by the full Ethics Committee.

Please let me know if you have any further questions or concerns.

Suzanne S. Lever  
Assistant Ethics Counsel

-----Original Message-----

From: hartmiles@nc.rr.com [mailto:hartmiles@nc.rr.com]  
Sent: Thursday, May 10, 2007 1:54 PM  
To: Suzanne Lever  
Subject: Re: RE:

Suzanne: Attached are two inquiries we would love you to respond to...thanks for your help.

Hart

----- Original Message -----

From: Suzanne Lever <SLever@ncbar.gov>  
Date: Thursday, May 10, 2007 12:40 pm  
Subject: RE:  
To: hartmiles@nc.rr.com

> Please email me a written request. I am working on a response, but it  
> will not be approved by the full committee.

>

> -----Original Message-----

> From: hartmiles@nc.rr.com [mailto:hartmiles@nc.rr.com]  
> Sent: Wednesday, May 09, 2007 1:18 PM  
> To: Suzanne Lever  
> Subject:

>

> Suzanne: Given my client's situation, is there anyway to expedite an  
> opinion on my question? I am in the process of getting an affidavit  
> from the brother of the privilege holder indicating that he would  
like  
> the privilege waived in the interest of justice. I think my best  
> argument may be that communications involving a third party that are  
> probative of that third party's actual innocence in a case where he  
> was convicted of a crime and imprisoned, are outside the privilege.  
> Can you respond?

Adopted July 24, 1997; Amended March 1, 2003

#### ETHICS OPINION NOTES

CPR 122. An attorney representing the defendant in divorce action, when advised by the client that parties have not been separated a year, must file an answer denying the allegation of separation even though the client does not wish to contest the divorce.

CPR 321. It is improper for an attorney to file motions and pleadings for the mere purpose of delay.

2003 FEO 13. Opinion rules that an attorney may file a time-barred claim on behalf of a client, even when the defendant is unavailable and can only be served by publication.

2006 FEO 9. If the lawyer concludes that pursuit of a lawsuit filed against a defendant is frivolous, but the GAL for the minor client insists on continuing the litigation, the lawyer must either move to withdraw from the representation or seek to have the GAL removed.

### RULE 3.2: EXPEDITING LITIGATION

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

#### Comment

[1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

History Note: Statutory Authority G. 84-23

Adopted July 24, 1997; Amended March 1, 2003

#### ETHICS OPINION NOTES

CPR 321. It is improper for an attorney to file motions and pleadings for the mere purpose of delay.

### RULE 3.3: CANDOR TOWARD THE TRIBUNAL

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

#### Comment

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(n) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adjudicative proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of material fact or law or evidence that the lawyer knows to be false.

#### *Representations by a Lawyer*

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also Rule 8.4(b), Comment.

#### *Legal Argument*

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

#### *Offering Evidence*

[5] Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. See Comment [9].

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(g). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9] Although paragraph (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer

proof that the lawyer reasonably believes is false. Offering evidence that reflect adversely on the lawyer's ability to discriminate in the selection and thus impair the lawyer's effectiveness as an advocate. The special protections historically provided criminal defendants. Rule does not permit a lawyer to refuse to offer the testimony of a witness where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. *See also* Comment [7].

#### Measures

When a lawyer has offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's examination or in response to cross-examination by the opposing party. In such situations or if the lawyer knows of the falsity of testimony offered by the client during a deposition, the lawyer must take reasonable remedial measures. The lawyer's action must also be reasonable: depending on the circumstances, reasonable remedial measures do not have to be taken immediately, however, the lawyer must act before a third party is or her detriment upon the false testimony or evidence. The advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate should seek to withdraw if that will remedy the situation. If withdrawal from the representation is not permitted or will have the effect of the false evidence, the advocate's only option may be to disclose the existence of false evidence to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine whether a mistrial or perhaps nothing.

The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the client's confidence and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. *See* Rule 1.2(d). Moreover, unless it is clearly understood that the lawyer will act upon the disclosure of the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to the deception of the court.

#### Maintaining Integrity of Adjudicative Process

Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, Rule 1.6(b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

The general rule that an advocate must reveal the existence of perjury with respect to a material fact—even that of a client—applies to defense counsel in criminal cases, as well as in other instances. However, the definition of the lawyer's ethical duty in such a situation may be qualified by constitutional provisions for due process and the right to counsel in criminal cases. These provisions have been construed to require that counsel present an accused as innocent if the accused wishes to testify, even if counsel knows the testimony will be false. The obligation of the advocate under these Rules is subordinate to such a constitutional requirement.

#### Duration of Obligation

(a) A practical time limit on the obligation to rectify false evidence or omissions of material fact or law has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when no

matters in the proceeding are still pending before the tribunal or the proceeding has concluded pursuant to the rules of the tribunal such as when a final judgment in the proceeding is affirmed on appeal, a bankruptcy case is closed, or the time for review has passed.

#### Ex Parte Proceedings

[15] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

#### Withdrawal

[16] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

History Note: Statutory Authority G. 84-23

Adopted July 24, 1997; Amended March 1, 2003

#### ETHICS OPINION NOTES

CPR 92. An attorney who knows that criminal clients gave arresting officers fictitious names should call upon the clients to disclose their true identities to the court and, if they refuse, seek to withdraw. (*See also* Rule 3.3(a)(3))

CPR 122. An attorney representing the defendant in divorce action, when advised by the client that parties have not been separated a year, must file an answer denying the allegation of separation even though the client does not wish to contest the divorce.

CPR 284. An attorney may seek alimony for a wife although he has evidence of the wife's adultery so long as he does not have to offer perjured testimony or other false evidence.

RPC 33. If an attorney's client testifies falsely regarding a material matter, such as his or her name or criminal record, the attorney must call upon the client to correct the testimony. If the client refuses, the attorney must seek to withdraw in accordance with the rules of the tribunal. (*See also* Rule 3.3(a)(3))

RPC 203. Dismissal of an action alone is not sufficient to rectify the perjury of a client in a deposition and the lawyer must demand that the client inform the opposing party of the falsity of the deposition testimony or, if the client refuses, withdraw from the representation. (*See also* Rule 3.3(a)(3))

98 FEO 1. Opinion rules that a lawyer representing a client in a social security disability hearing is not required to inform the administrative law judge of material adverse facts known to the lawyer.

98 FEO 5. Opinion rules that a defense lawyer may remain silent while the prosecutor presents an inaccurate driving record to the court provided the lawyer and client did not criminally or fraudulently misrepresent the driving record to the prosecutor or the court, and further provided, that on application for a limited driving privilege, there is no misrepresentation to the court about the client's prior driving record.

98 FEO 20. Opinion rules that, subject to a statute prohibiting the withholding of the information, a lawyer's duty to disclose confidential client information to a bankruptcy court ends when the case is closed although the debtor's duty to report new property continues for 180 days after the date of filing the petition.

99 FEO 16. Opinion rules that a lawyer may not participate in the pres-

May 21, 2007

The Honorable James C. Fox  
United States District Court Judge  
P.O. Box 5006  
Wilmington, NC 28402



Re: USA v. Jeffrey MacDonald  
75-26-CR-3

Dear Judge Fox:

I am writing this letter in response to an Ethics Inquiry submitted to the NC State Bar by one of Mr. MacDonald's attorneys. The opinion relates to my ethical duties in regard to the MacDonald case. I am enclosing a copy of that Ethics Opinion.

I should explain that I was appointed by Judge Dupree to represent Helena Stoeckley during the MacDonald trial proceedings. I was appointed after she had been interviewed by both Parties and after she had testified. I spent a lot of time with her at the Courthouse as the trial proceeded. The idea was that there was a possibility that Ms. Stoeckley would be recalled to the witness stand. However, she was not recalled and she was released as a material witness before the trial ended.

Over the years I have been contacted by at least one representative of Mr. MacDonald and more recently by investigators for the Government. I have always asserted her attorney-client privilege even though I was aware of Ms. Stoeckley's death. I have never revealed to the Parties anything concerning my professional conversations with Ms. Stoeckley.

Last week I had a conference with two of MacDonald's attorneys and was presented with the Ethics Opinion and the enclosed Affidavit from Eugene B Stoeckley. My reading of the Opinion #1 is that I have a duty to communicate to the tribunal certain communications that I had with Ms. Stoeckley during the course of my representation of her. I have been told the proceeding technically has not concluded, implying that any ethical duty to the Court still exists. I feel like I am stuck between the proverbial "rock and hard place."

I was asked to submit a sealed affidavit to be delivered to you by MacDonald's attorneys to you. However, I think the attorney-client privilege exists unless and until there is a judicial determination that the interests of justice outweigh the interests protected by the privilege. I feel my duty is directly to the Court and is to report my concerns to you, not through a Party, and to

await instructions, if any, from the Court.

I should let you know that the attorneys for Mr. MacDonald probably know that I am writing this letter, but I have not discussed the content with them. I have not had any contact from the Government except for the one referenced above and do not believe that they have knowledge of this communication to you.

I would do appreciate any attention that you can give this matter. I realize that this proceeding has gone on and on and I do not want to contribute to a prolonging of it even further.

With the best regards, I am

Sincerely,

Jerry W. Leonard



3837 35

1 BY MR. SEGAL:

2 Q Mr. Browning, again, you were asked--were  
3 you not--to make some comparisons of other matters other  
4 than the threads and fibers, wood and paint back in  
5 1970; is that right?

6 A Yes; I was.

7 Q And you enumerated several of them  
8 including wax, I think you said.

9 A Yes.

10 Q Did you receive a briefing from anyone as to  
11 the general circumstances of the crime or general  
12 facts of the crime that the lab team was operating with  
13 when they brought the evidence back?

14 A I'm not quite sure I understand what you  
15 mean by "general facts." I understood the same things  
16 that I've heard in this courtroom--that Dr. MacDonald  
17 was attacked by hippies and this evidence was collected--  
18 and I was looking for certain things that would prove or  
19 disprove that.

20 Q Did anybody tell you why they were  
21 interested in seeing whether or not the wax that was  
22 found in the house could be traced to any other wax  
23 that belonged to the MacDonald family?

24 A No; I don't remember being asked that at the  
25 time. I was requested to examine the wax found on, I

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PITTSBORO 542-3374

1 belic , three locations and see f it matched six  
2 candles, I think it was, sent to me from the MacDonald  
3 house.

4 Q All right, now, first of all, if you could  
5 tell us please, where in the MacDonald house were these  
6 three unidentified wax samples taken from; do you have  
7 anything in your records, sir, that would indicate to  
8 us where they came from?

9 A Yes; I do. Let me check. I have listed  
10 D-123, purple bedspread, Kimberly's bedroom; G-131,  
11 chair, Kimberly's bedroom; and G-201, coffee table,  
12 living room.

13 Q So you were given, I understand, wax that  
14 was scraped or lifted from them by Mr. Chamberlain; is  
15 that right?

16 A Yes; Mr. Chamberlain.

17 Q And what did Mr. Chamberlain do with the  
18 unidentified wax found in the house? Did he put in a  
19 vial of some sort?

20 A No; it was cut out on the--I remember the  
21 chair--I received a piece of the leather upholstery or  
22 the plastic upholstery from the chair with the stain  
23 attached and the bedspread still had the wax on it when  
24 received in the laboratory. As I remember, Mr. Laber  
25 removed that and gave it to me.



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1 Q And the wax from the coffee table--how  
2 did you obtain that unidentified wax?

3 A Let me check this again. That was received  
4 in a vial.

5 Q Received in a vial; and did it have  
6 collected by whom?

7 A It doesn't say. Let's see if there is  
8 anything else on that. I'm sorry the number I was  
9 looking at is 211.

10 Q Now, 211 is the identifying number for which  
11 one of these three samples of wax?

12 A It's 201 is the identifying sample of the  
13 wax. From my notes here I just referred to, it was not  
14 201; it was 211. I don't---

15 Q (Interposing) Pardon me. Just so we have  
16 the record clear. Which of these unidentified samples  
17 of wax should be referred to as 211?

18 A Neither; 201 is the sample of wax which  
19 occurred on the table in the living room.

20 Q That's the coffee table in the living room?

21 A The coffee table in the living room; in my  
22 records of examination here I don't have any record of  
23 201 being examined in this group so, obviously, I got  
24 it at a later date. I have it listed here again as  
25 "wax substance Exhibit G-201, wax substance taken from

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1 coffee table in living room."

2 Q Does that later note indicate to you who  
3 collected the wax substance from the living room?

4 A No, sir; it doesn't. In most cases I  
5 received evidence with one or two exceptions from  
6 Mr. Chamberlain--the one or two exceptions being one  
7 exhibit from Mr. Laber and one or two exhibits from  
8 Mr. Ivory.

9 Q Based upon those general circumstances,  
10 would you conclude that it was Mr. Chamberlain who  
11 collected this unidentified wax off the coffee table in  
12 the living room?

13 A Well, as I said earlier, I really don't  
14 know, but this would be a possibility.

15 Q Now, you were given, as I understand, a  
16 number of wax candles and wax samples that were found  
17 in the MacDonald house; were you not?

18 A Yes; originally I received six candles.

19 Q Now, could you tell us when you received  
20 those six candles and who provided those to you?

21 A Well, I received those from Mr. Chamberlain.  
22 They were obviously picked up during the initial  
23 working at the house.

24 Q And those were household candles?

25 A Yes; in most cases, household candles.

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1           Shor y later thereafter, I received two candles, I  
2           believe, in wine bottles, to make a total of eight at  
3           that time.

4           Q       When you say two candles in wine bottles,  
5           you mean that somewhere someone had sort of fastened  
6           the candle, pushed it into the top of the wine bottle  
7           and let it melt down around it a little bit?

8           A       Yes; it is one of these wine bottles where  
9           the material had run down the side and it formed a  
10          pattern.

11          Q       So that, ultimately, you had, I gather,  
12          eight different candles taken from the MacDonald house  
13          to make a comparison against these three unidentified  
14          candles; is that right?

15          A       At the time of the initial examination; yes.

16          Q       And as a result of the comparision that you  
17          made, were you able to establish that, first of all, the  
18          wax that was found on the chair in Kimberly's room, was  
19          that wax the same as or similar to the wax that was  
20          found elsewhere in the MacDonald house?

21          A       No; it was not.

22          Q       It was not. What about the wax that was  
23          found on the bedspread in Kimberly's room? Was that the  
24          same as the known samples of wax taken from the  
25          MacDonald house?

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DURHAM 471 3528

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PITTSBORO 542 3374

1 . No; it was not.

2 Q What about the wax that was found in the  
3 living room? Was that the same as the known samples of  
4 wax in the MacDonald house?

5 A No; all three samples differed.

6 Q Now, were the three samples--the three  
7 unknowns--were they identical to each other; that is,  
8 did they come from the same single source, a single  
9 candle, or some single paraffin source?

10 A No; they did not.

11 Q How many different types of wax were there  
12 in these three different unknowns?

13 A Well, wax itself is pretty much the same.  
14 It's very difficult to distinguish, but there were  
15 three different types of wax. One of the unknowns was  
16 a multicolored type of wax that physically matched  
17 beautifully with the candle in the bottle.

18 However, on analysis, I received some  
19 fluorescence under ultraviolet light in the unknown  
20 that I did not receive in the known, so I eliminated it  
21 and said it did not have a common source. The other two  
22 as I remember, I believe one was a pale green color.  
23 I just don't remember the color of the other.

24 Q The conclusion was, Mr. Browning, was that  
25 the three unknowns were, first of all, unlike the eight

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1 know. wax samples in the MacDona house; is that  
2 right, first of all?

3 A Yes.

4 Q And that the three unknowns were not  
5 similar to each other; is that also true?

6 A This is correct.

7 Q Now, later on, after this initial  
8 examination of wax, were you not asked to make some  
9 further comparisons of these three unknowns with other  
10 samples that may have been taken in the MacDonald house?

11 A Yes; I received six more candles. If I  
12 remember correctly, three of those were unburned  
13 candles or unused candles. The other three had been  
14 used.

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CHAPEL HILL 933-3754

PITTSBORO 542-3374

1 BY MR. SEGAL:

2 Q And when did you receive the six additional  
3 candles?

4 A This came the latter part of 1970, I think,  
5 or the first of 1971.

6 Q And do you know who sent those to you?

7 A Yes, they were sent by the CID at Fort Bragg.

8 Q And again you were asked to determine whether  
9 the three unidentified samples found in the MacDonald  
10 house were similar to or the same as the six additional  
11 samples the CID sent you?

12 A Yes, I was.

13 Q Did you make the comparison between the  
14 three identified and the six additional candles?

15 A Yes, I did.

16 Q And what did you conclude?

17 A They did not match.

18 Q So then as I understand your testimony, you  
19 compared 14 different waxes, candles, or other similar  
20 paraffin materials, known to come from the MacDonald  
21 house, with the three unidentified waxes found  
22 in the MacDonald house?

23 A Yes.

24 Q And that none of these 14 known waxes,  
25 candles, or paraffin from the MacDonald house were the



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A Yes, I remember.

Q What search did you make to find whether there were other pajama tops which were similar or identical to that?

A Well, no specific search. I have not seen any in my observation of pajama tops, but I have never made a scientific study of that.

Q Well, in other words, then, your answer was, no, you had never seen one identical to it, but you really had not made a systematic or a scientific search to find any others, is that right?

A Yes, I think this would be right.

MR. SEGAL: I have nothing further, thank you, Mr. Browning.

THE COURT: Redirect?

MR. MURTAGH: Yes, Your Honor, a few questions.

REDIRECT EXAMINATION (2:44 p.m.)

BY MR. MURTAGH:

Q Now, Mr. Browning, with respect to wax, which you were asked about on cross-examination, if you know, sir, was any wax collected from the area of the steps leading to the living room submitted to you for examination?



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1 A No, it was not.

2 Q Okay, with respect to the wax that was  
3 submitted, that is, from the coffee table and the arm of  
4 the chair in Kimberly's room, and I believe one of the  
5 bedspreads in Kimberly's room, could you tell us, sir,  
6 if you have an opinion satisfactory to yourself, whether  
7 this was new wax or old wax or what?

8 A Well, the wax present was more or less  
9 brittle and flaky. I haven't made a study of this  
10 either; however---

11 MR. SEGAL: (Interposing) I OBJECT,  
12 Your Honor. We have no scientific basis for that. If  
13 he does, we would be glad to hear him.

14 THE COURT: Well, you are assuming  
15 that he doesn't have any scientific basis for it. Let's  
16 let him finish the answer.

17 MR. SEGAL: Your Honor, I thought I  
18 heard him say he has not made a study, but I only  
19 wanted to find out whether Mr. Murtagh wants to establish  
20 whether he has a basis; otherwise I don't know whether  
21 it helps or not.

22 THE COURT: Were you going to comment?

23 THE WITNESS: Yes, sir.

24 THE COURT: Well, say it.

25 THE WITNESS: I continued to work with

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1 the wax submitted, and the wax melted fresh remained  
 2 soft and pliable for several weeks. This seemed to be  
 3 brittle and dry, which would indicate to me that it was  
 4 at least several weeks old when I received it.

5 BY MR. MURTAGH:

6 Q Mr. Browning, let me ask you a question. You  
 7 have testified, I believe, on cross-examination that  
 8 some 14 candles were submitted to you for comparison  
 9 purposes, is that correct?

10 A What conclusion, if any, would you draw  
 11 from the fact that 14 candles were found in the  
 12 MacDonald household?

13 MR. SMITH: OBJECTION.

14 MR. MURTAGH: I will withdraw the  
 15 question, Your Honor.

16 BY MR. MURTAGH:

17 Q Now, Mr. Browning, I believe you testified  
 18 about the hair comparisons that you did, is that correct,  
 19 sir?

20 A Yes.

21 Q And is it correct that you personally never  
 22 compared known head--or any hair exemplars from the  
 23 Defendant?

24 A No, I did not--well, not in relation to other  
 25 hairs. I actually examined the hairs from the Defendant,

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1 Q Mr. Browning, could you tell us on what  
2 date you did the examination on the wax?

3 A The initial examination of the first batch  
4 received was probably around the 6th of March.

5 Q That's about three weeks after the murders  
6 in this case; is that right?

7 A Yes.

8 MR. SEGAL: I have nothing further  
9 of this witness.

10 THE COURT: Call your next one.

11 MR. BLACKBURN: Your Honor, may we  
12 approach the bench on another matter?

13 THE COURT: All right.

14 B E N C H C O N F E R E N C E

15  
16 MR. BLACKBURN: Your Honor, I wish to take  
17 up something we said on our last conference on not  
18 playing a tape. We have talked among ourselves in the  
19 last few minutes, and we do think probably this  
20 afternoon we will seek to play a tape-recording.  
21 Mr. Segal, of course, asked me if he could hear it  
22 prior to it being heard. I gave him an updated version of the  
23 transcript, although he has had the other one a long time.  
24 The updated version is some clarification, different  
25 paragraphs, and sentence structure. He has not heard

DECLARATION OF JIMMY FRIAR

1

2 State of South Carolina )  
3 County of Spartanburg ) s.s.

4

5 I, JIMMY FRIAR, the undersigned, declare:

6 1. I presently reside at Dutchman Correctional Facility,  
7 Enoree, South Carolina.

8 2. In February, 1970 I was an in-patient at the Womack  
9 Army Hospital in Fort Bragg, North Carolina.

10 3. Before I was at Womack hospital I had been at Walter  
11 Reed Hospital in Washington, D.C. Dr. Richard MacDonald had  
12 treated me when I was at Walter Reed Hospital. While I was  
13 his patient he and I had become friendly because we were both  
14 from South Carolina.

15 4. Prior to February 17, 1970, at a time I was a patient  
16 at Walter Reed Hospital, I had gotten drunk on a couple of  
17 occasions and needed to get help to get back to the hospital.  
18 On those occasions I had called Dr. Richard MacDonald and he  
19 helped me out, either picking me up himself or sending someone  
20 to pick me up.

21 5. On the evening of February 16, 1970 I persuaded an  
22 orderly to let me out and cover for me so that I could go  
23 to Fayetteville to drink and shoot pool.

24 6. When I decided to go back to Fort Bragg the buses had  
25 stopped running and I had no money left to get a taxi.

26 7. At that time, I attempted to contact Dr. Richard  
27 MacDonald, who had previously treated me, to attempt to get  
28 his help to get back to the base.

1           8. I tried to contact Dr. Richard MacDonald from the  
 2 Wade Hampton Hotel. I was disoriented at the time and thought  
 3 I could contact Dr. MacDonald by phone, thinking I was still  
 4 in Washington, D.C. I called the base operator and represented  
 5 myself as a doctor who was a friend of Dr. MacDonald, without  
 6 specifying Dr. MacDonald's first name. The operator gave me  
 7 a number.

8           9. I called the number which had been given to me and  
 9 I asked for Dr. MacDonald. The woman who answered was laughing  
 10 and I heard someone in the background say, "Hang up the God-  
 11 damned phone." The phone was disconnected at that time.

12           10. I made the call sometime around 2:00 a.m. I recall  
 13 that it was about that time because I had decided to leave for  
 14 Fort Bragg sometime a little before 2:00 a.m.

15 ~~I did not tell this to anyone until after Dr. Jeffrey~~  
 16 ~~Macdonald was tried and convicted for the murders of his wife~~  
 17 ~~and children. I spoke with the F.B.I. about this incident.~~

18           I declare under penalty of perjury that the foregoing is  
 19 true and correct.

20           Executed this 25<sup>th</sup> day of July, 1983 at  
 21 Crossville, South Carolina.

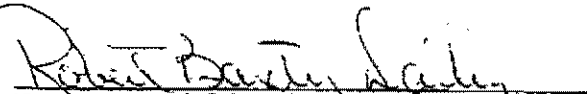
23 Jimmy Friar  
 24 JIMMY FRIAR

25           On July 25, 1983, before me, the undersigned,  
 26 a Notary Public in and for said County and State, personally  
 27 appeared JIMMY FRIAR, personally known to me or proved to  
 28 me on the basis of satisfactory evidence to be the person

1 whose name is subscribed to the within instrument and  
2 acknowledged that he executed the same.

3 WITNESS my hand and official seal.

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DECLARATION OF ANN SUTTON CANNADY

State of North Carolina )  
County of Cumberland ) ss.

I, Ann Sutton Cannady, the undersigned, declare:

1. I reside in Fayetteville, North Carolina where I have lived for the past 26 years. In the early part of 1971, I was working with a ministry in Fayetteville, North Carolina called "The Manor." The work of this ministry was to provide counseling and help to young people who had problems with alcohol and addictive drugs who were seeking assistance with their problem.

2. The Manor maintained a house in the 900 block of Hay Street in the Haymont section of Fayetteville. It was at that house that most of the work of The Manor was done. The house had facilities for meetings as well as facilities for the overnight accommodation of people seeking assistance.

3. In addition, The Manor had a house in the countryside off Highway I-95 outside Fayetteville which was being fixed up by work teams made up of people working with The Manor for use as a separate facility by The Manor.

4. On a Wednesday in the early part of March 1971, a young man came to The Manor on Hay Street looking for a place to stay. He was a thin blond young man approximately 20 years old who was highly nervous and tense.

5. On the Saturday after he arrived, this young man came to the regular Saturday night session which was attended by those



1 people who were staying in The Manor's house. The Saturday night  
2 meetings were ministering sessions at which people shared  
3 experiences and prayed together.

4 6. On the Saturday night the young man was in attendance he  
5 said he was part of a cult in Fayetteville and that the cult  
6 worked together. He confessed that he had been a drug user and  
7 that he had murdered people. During the session, he was asking  
8 for God's forgiveness for his actions.

9 7. On the following Sunday morning, the young man who had  
10 made the confession was gone from The Manor house. He had  
11 apparently taken with him all the clothes of Reverend Randy  
12 Phillips the young minister who worked with the people at The  
13 Manor.

14 8. Late on Sunday afternoon, I went with Reverend Phillips  
15 and Juanita Sisneros to the farmhouse to see that the house was  
16 secure. Ordinarily somebody checked out the house on a regular  
17 basis. As we pulled up the road to the farmhouse, we saw the  
18 young man who had made the confession on Saturday night run out  
19 the back door. He was with another person and they ran into the  
20 wooded area behind the house. Because this event frightened us,  
21 we went back to a gas station on I-95 and called the Sheriff's  
22 Department asking for someone to come with us to the farmhouse.

23 9. When the Sheriff's Deputy arrived, we went through the  
24 house with him. I walked into the bedroom which adjoined the  
25 living room and saw written in bright red paint on the wall, "I  
26 killed MacDonald's wife and children." It was written in four  
27 rows rather erratically across the wall and the red substance,  
28 which was apparently paint, was sort of dripping down. Mrs.

1 Sisneros and the Sheriff's Deputy came into the room and saw the  
2 message on the wall.

3 10. None of us had a camera and the Sheriff's Deputy asked  
4 us to let him return the next morning with a camera so that he  
5 could take a picture of the wall when it was light. We told him  
6 he could do so.

7 11. The following Saturday, we went to the farmhouse to do  
8 more work and someone had been there and painted over the entire  
9 wall so that the sign was no longer visible.

10 12. I was shown 20 photographs by Raymond Shedlick, a  
11 private investigator, and selected from those photographs a  
12 photograph of a man who I believe was the young man who came to  
13 The Manor, made the confession and painted the sign on the wall.  
14 Mr. Shedlick advised me that the identity of that man whose  
15 picture I selected was Gregory Mitchell. A copy of the  
16 photograph is attached hereto as Exhibit A.

17 I declare under penalty of perjury that the foregoing is  
18 true and correct.

19 Executed this 27 day of May, 1983 at Hope Mills,  
20 North Carolina.

21  
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23   
24 ANN SUTTON CANNADY

25 On 5-27, 1983, before me, the undersigned, a Notary  
26 Public in and for aid County and State, personally appeared ANN  
27 SUTTON CANNADY personally known to me or proved to me on the  
28 basis of satisfactory evidence to be the person whose name is

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subscribed to the within instrument and acknowledged that she executed the same.

WITNESS my hand and official seal.

*James J. DePlessis*  
*My Comm Expires 9-13-84*



EXHIBIT A  
(PHOTOGRAPH)

DECLARATION OF NORMA LANE

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County of Mecklenburg )  
 ) s.s.  
State of North Carolina )

I, Norma Lane, declare:

1. I am a resident of Charlotte, North Carolina where I live with my husband Bryant Lane.

2. In 1972 I met Greg Mitchell, who was then employed with my husband at the Toledo Scale Company. Greg and Pat Mitchell became good friends with my husband and me.

3. Greg Mitchell was a heavy drinker and would drink when he was depressed. I remember one instance in 1977 when he was visiting at our house my husband asked Greg what was wrong with him and he replied that he could not tell my husband or anyone, not even his wife, about what depressed him. He said it was too horrible to talk about.

4. In 1982, shortly before Greg Mitchell entered the hospital, he contacted my husband and wanted to talk to him about some trouble that he had when he was in the service. After my husband told me about that conversation Greg Mitchell visited my house a few days later.

5. When Greg came to my house he was shaking and crying and said he was trying to get some money to leave the country because, he said, "the FBI is after me and is hot on my trail."

6. I told Greg that if he hadn't done anything wrong that he had nothing to worry about. Greg stated that he did do something wrong and he was guilty of a serious crime that happened a long time ago at Ft. Bragg, North Carolina. We

1 did not discuss the crime any further. When my husband came  
2 home he loaned Greg some money.

3 7. When I read the news story in the Charlotte  
4 Observer about the Ft. Bragg murders in which Greg Mitchell's  
5 name was mentioned I realized that what Greg had told my husband  
6 and me was that he had taken part in the murders. I contacted  
7 Dr. Jeffrey MacDonald's lawyers at that time.

8 I declare under penalty of perjury that the foregoing  
9 is true and correct.

10 Executed this 14<sup>th</sup> day of April, 1984 at Charlotte,  
11 North Carolina.

12  
13 Norma Lane  
14 NORMA LANE

15  
16 STATE OF NORTH CAROLINA  
17 COUNTY OF MECKLENBURG

18 I, the undersigned Notary Public for said County and  
19 State do certify that Norma Lane personally appeared  
20 before me and acknowledge the due execution of the  
21 foregoing declaration.

22 WITNESS my hand and notarial seal this 14th day of  
23 April 1984.

24 William J. Sullivan  
25 Notary Public

26 My Commission expires 8-31-88

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28

DECLARATION OF BRYANT LANE

1  
2 County of Mecklenburg            )  
  ) s.s.  
3 State of North Carolina        )

4           I, Bryant Lane, declare:

5           1.     In 1972 my wife and I lived in Charlotte, North  
6 Carolina and I worked at the Toledo Scale Company with a man  
7 named Greg Mitchell with whom I became friendly. My wife, Pat  
8 Mitchell, Greg and I became close friends over time.

9           2.     In 1977 while Greg Mitchell was visiting my wife  
10 and me at our home and was in a depressed condition, I asked  
11 him what was bothering him and he stated that he could not  
12 tell me or anyone about what was bothering him, not even his  
13 wife Pat, because it was too horrible to even talk about.

14           3.     In 1982, before Greg Mitchell entered the hospital  
15 where he died in June 1982, Greg called me by telephone and told  
16 me he wanted to speak with me about something. He said he did  
17 not want to talk on the telephone, however, as he believed his  
18 phone might be tapped. I agreed to meet with Greg and we did  
19 meet and when we met he was very pale and visibly upset.

20           4.     I began the meeting by asking Greg what the  
21 trouble was and he told me, "it's something that happened back  
22 when I was in the service. If they find out about it I'm going  
23 to have to leave the country and live in Haiti or something."  
24 Greg did not tell me anything specific about what happened.  
25 However, shortly after our conversation he came to our house  
26 again where he spoke with my wife and told her that the reason  
27 he was trying to get some money to leave the country was because  
28 the FBI was after him. He told my wife that he was guilty of

1 a crime that happened a long time ago at Ft. Bragg and that he  
2 was concerned about being prosecuted.

3 5. When I read the news story in the Charlotte  
4 Observer about the Ft. Bragg murders in which Greg Mitchell's  
5 name was mentioned I realized that what Greg had told my wife  
6 and me was that he had taken part in the murders. I contacted  
7 Dr. Jeffrey MacDonald's lawyers at that time.

8 I declare under penalty of perjury that the foregoing  
9 is true and correct.

10 Executed this 4-14-84 day of April, 1984 at Charlotte,  
11 North Carolina.

12  
13   
14 BRYANT LANE

15  
16  
17 STATE OF NORTH CAROLINA  
18 COUNTY OF MECKLENBURG

19 I, the undersigned Notary Public for said County and  
20 state do certify that Eryant Lane personally appeared  
21 before me and acknowledge the due execution of the foregoing  
22 declaration.

23 WITNESS my hand and seal (notarial) this 14th day  
24 of April, 1984

25 My Commission expires on 8-31-88

26  
27   
28 Notary Public



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA,

v.

JEFFREY R. MacDONALD

No. 75-26-CR-3

AFFIDAVIT OF ELLEN DANNELLY

I, Ellen Dannelly, being first duly sworn, state under oath the following:

1. I am a self-employed, licensed private investigator in the State of North Carolina (License No. 1194). I have been licensed since July 14, 1989.

2. My father, Raymond R. Shedlick, Sr., was retained by Dr. Jeffrey R. MacDonald ("Dr. MacDonald") as a private investigator in 1982. I began to assist my father with the investigation in March of 1983.

3. In the course of my work for Dr. MacDonald, I was responsible for reviewing materials released post-trial to his attorneys pursuant to the Freedom of Information Act ("FOIA"). My objective in reviewing these "FOIA" materials was to determine the entire body of scientific data compiled by the Army Criminal Investigation Division ("CID") and Federal Bureau of Investigation ("FBI") forensic laboratories about each piece of physical evidence taken from the crime scene.

4. Initially, I compiled an inventory of physical evidence taken from the crime scene that had been examined or

-2-

analyzed by the CID and FBI laboratories. The CID and FBI had assigned exhibit numbers to the pieces of evidence prior to conducting the examinations. I collected and organized all of the information that the CID and FBI lab technicians had recorded for each CID and FBI exhibit number. The information I collected was obtained from handwritten laboratory notes that had been released to Dr. MacDonald's attorneys under FOIA and the typewritten FBI and CID laboratory reports that had been disclosed to the defense prior to trial.

5. In the course of collating and organizing the FOIA materials, I examined handwritten laboratory notes which indicate that in early 1979, the FBI examined certain pieces of physical evidence taken from the MacDonald home. (Attached hereto as Exhibit 2) I conclude that these notes are the work product of FBI laboratory technicians, based on the fact that the notes contain FBI exhibit numbers which begin with the letter "Q."

6. In the course of examining the FBI handwritten notes contained in Exhibit 2, I noted that the FBI lab technicians examined (1) debris taken from the right bicep area of Colette MacDonald's pajama top (designated as Q-88), debris removed from the wooden club murder weapon (designated as Q-89), and debris removed from the mouth area of Colette MacDonald (designated as Q-100).

7. In reviewing these materials, I discovered that the

-3-

FBI laboratory technicians had discovered the presence of black, green, and white wool fibers for which the technicians could find no known source within the MacDonald home. The handwritten laboratory notes indicate that the technicians found one black wool fiber and one white wool fiber in the debris taken from the right bicep area of Colette MacDonald's pajama top (Q-88); two black wool fibers and one green wool fiber in the debris removed from the wooden club murder weapon (Q-89); and, two black wool fibers in the debris removed from the mouth area of Colette MacDonald (Q-100).

8. After reviewing these handwritten notes, I examined a typewritten unsigned FBI laboratory report, dated March 14, 1979. (Attached hereto as Exhibit 3) In my review of this report, I noted that the FBI had omitted any reference to its findings of black, green, and white wool fibers in the debris taken from the body of Colette MacDonald and the wooden club murder weapon.

9. In October of 1989, I compiled a conclusory report for Dr. MacDonald which contained the results of my findings, including those outlined above.

*Ellen Dannelly*  
 Ellen Dannelly *70 E. Bay St. #64500*

Signed and sworn to before me this 12th day of October, 1990.

*Ruth S. Jewett*  
 Notary public

My commission expires 1/21/93.

FD-302 (Rev. 3-10-82)

FEDERAL BUREAU OF INVESTIGATION

June 6, 1984

Date of transcription

1

NORMA DARWIN LANE, [redacted] Charlotte, North Carolina, home telephone number [redacted] employed by [redacted] Charlotte, North Carolina, telephone [redacted] was contacted and advised of the identities of the interviewing agents and thereafter furnished the following information:

Her husband is NOAH BRIAN LANE, JR., and he is employed by [redacted] Charlotte, North Carolina, [redacted] She married her husband on May 26, 1969, at which time he was working at the TOLEDO SCALES COMPANY in Charlotte, North Carolina. Sometime in 1972 or thereabouts, GREG MITCHELL began work at the TOLEDO SCALES COMPANY and became friendly with her husband. She subsequently met GREG's wife, PAT, and they became friends and socialized frequently. As a couple, she and her husband saw more of GREG who visited their house on a fairly regular basis.

B7C

GREG eventually went into business for himself, believed to be sometime in late 1970's or early 1980's and formed a company known as WORLD SATELLITE with [redacted] At about that time her husband left TOLEDO SCALES COMPANY and obtained another job.

Before MITCHELL's death, he visited she and her husband on a fairly regular basis at her residence. She did not know GREG to use hard drugs, but noted that he smoked "pot". Sometime ago, while at her residence, MITCHELL told she and her husband that he previously had used hard drugs, specifically heroin in the service, but had kicked the habit. She stated that GREG drank a lot of booze, mostly beer and that she did not know whether or not he was an alcoholic, but advised GREG drank beer on a daily basis sometimes from early morning to late evening.

[redacted]

She was of the opinion that GREG died from liver disease; however, she also remembers GREG mentioning to her that he had been a victim of agent orange while in Vietnam.

Investigation on 5/23/84 at Charlotte, N.C. File # CE 70A-3668 7352

SA [redacted]  
SA [redacted]

5/29/84

CE 70A-3668

NORMA DARWIN LANE

5/23/84

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Continuation of FD-302 of

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Page

Within the last six months or so, she and her husband had been visited by RAY SHEDLICK, a private investigator from Raleigh, North Carolina. This visit was in response to her telephone call to Attorney BRIAN O'NEILL, in Los Angeles, California. She called O'NEILL to inform him of her knowledge of GREG MITCHELL and the MAC DONALD case. She was subsequently interviewed by SHEDLICK who did not inform them of any of the facts of the MAC DONALD case.

At this point, Mrs. LANE was furnished a "Declaration of NORMA LANE", dated April 14, 1984, and advised that this affidavit was accurate and she had affixed her signature thereto. In reference to Section 3 of this declaration, Mrs. LANE advised GREG MITCHELL made a statement to her sometime in her house to she and her husband believed to be in 1977 while he was drinking and depressed, and she asked him what was wrong and he replied that he could not talk about it as it was too horrible to talk about. She stated she could add nothing additional to this section of the declaration and by this statement interpreted that GREG MITCHELL had had a terrible experience that he did not care to talk about with them. She could not describe this experience, whether it was in the UNITED STATES ARMY, Vietnam, etc. as MITCHELL did not confide in her.

BT

In reference to Section 4 of her declaration, she advised sometime before GREG MITCHELL became sick and eventually died in Charlottesville, Virginia, that he contacted her husband. She could not recall the time frame as in weeks or months prior to MITCHELL being admitted to the hospital in Charlottesville, Virginia. GREG initially called her husband and a few days later came to her house and had a discussion with her husband. She later learned from her husband, MITCHELL wanted to borrow money from him as he had told her husband that the FBI was after him. In reference to the statement she made in Section 5 of her declaration, "The FBI is after me and is hot on my trail," Mrs. LANE advised that this statement was not made directly to her by MITCHELL, but was told to her by her husband. She stated her husband loaned MITCHELL [REDACTED] but does not know what MITCHELL intended to do with the money.

According to Mrs. LANE, GREG MITCHELL seemed to be a stable individual, but at times had a tendency to exaggerate things. MITCHELL never said anything to her about the MAC DONALD murders; however, she recently read the book "Fatal Vision" and observed GREG MITCHELL's name in the book and at that time realized that it was the same GREG MITCHELL that she and her husband were acquainted with in Charlotte, North Carolina. She subsequently read a newspaper article in the CHARLOTTE OBSERVER and attempted to call the FBI Office in Charlotte, North Carolina, to furnish

CE 70A-3668

NORMA DARWIN LANE

5/23/84

3

Continuation of FD-302 of

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the above information.

She also remembered that GREG, while in the UNITED STATES ARMY, had been assigned in Vietnam and had told her and her husband on numerous occasions that he did many things in Vietnam of which he was not proud. It was her opinion that GREG started to use drugs while in Vietnam and told them that numerous soldiers had used drugs while in Vietnam. MITCHELL always seemed to talk about these types of things when he was drinking and to the best of her recollection from 1977 through 1982, MITCHELL never made any statements about the MAC DONALD murders. She does recall on one occasion, probably in 1977 or before, that MITCHELL made the statement to her that he did not think that Dr. MAC DONALD was guilty.

She has always had somewhat of an interest in the MAC DONALD case and after reading the book, "Fatal Vision", and reading a newspaper article about GREG MITCHELL and others who were possibly involved in the crime, and by the statements MITCHELL made to her and her husband, she concluded that MITCHELL had been involved in the murders and noted this was purely an assumption on her part. She noted that MITCHELL's statements were ambiguous and that he did not explain the meaning of them, and that her interpretations of MITCHELL's statements were purely assumptions on her part.

**AFFIDAVIT**

I, Helena Stoeckley, of 2346 Barrington Circle, Fayetteville, 28303, being of sound mind, solemnly swear and aver that the following statement is the full truth as I know it:

- 1) I am the mother of Helena Stoeckley (Davis), who is now deceased.
- 2) I was very close to my daughter and held her confidences.
- 3) After the murders of Jeffrey MacDonald's wife and children on Ft. Bragg, NC, on two separate occasions, my daughter confided in me that she was present in the MacDonald house during the murders on February, 17, 1970.
- 4) The first occasion was after the trial and prior to her moving to South Carolina. The second occasion was shortly before her death in 1983. My daughter did not appear to be under the influence of any type of illicit drugs or alcohol at the time she made these two separate admissions to me.
- 5) On the second occasion when she confided in me, my daughter knew she was dying. She wanted to set the record straight with her mother about the MacDonald murders, and that she wished she had not been present in the house and knew that Dr. MacDonald was innocent.
- 6) Helena told me that she and Greg Mitchell, her boyfriend at the time, and two other men who was friendly with went to the MacDonald apartment during the early morning hours of February 17, 1970 to "intimidate" Dr. MacDonald because she and her friends believed he was being too hard on drug users in the Fayetteville community.
- 7) She stated that she and the others did not go there to harm anyone. Helena was high on drugs at the time, as were the men, but she told me she absolutely knew what was happening: That she saw a hobby horse in a child's bedroom and that she saw one of the men stab Dr. MacDonald.
- 8) She then told me that Greg Mitchell and one of the other men went "out of their minds" and when she became aware that Mitchell and the other man were killing the family, she and the other male fled.
- 9) My daughter tried to tell the truth- that she was in Dr. MacDonald's home and that Greg Mitchell and another man were responsible for the deaths of the MacDonald family, not Dr. MacDonald, but the FBI and other law enforcement officials told her to keep quiet.
- 10) My husband, Clarence Stoeckley and I were contacted several times after the murders. The FBI told us that they wanted Helena to stop contacting them.

11) On the second occasion during which she confided in me, she told me she could no longer live with the guilt of knowing she had been in the house but lied about it at the trial. She told me she was afraid to tell the truth because she was afraid of the prosecutor.

12) I am currently 86 years old. After the death of my husband in 2002, my youngest son Eugene, began asking me questions about Helena and if it was true that she was involved in the MacDonald murders. My son wanted to know the truth-he was only 10 years old at the time of the murders and this was not a subject my husband and I discussed with our children- but approximately 2 years ago, I told Eugene what Helena had told me- what I am swearing to now.

13) As her mother, I felt Helena was telling me the full truth about being in the MacDonald house on the night of the murders. She stated to me that she wanted "set things straight" before she died.

14) I've decided to give my statement now because of my advanced age and because I don't believe he should be in prison.

15) I have never met Jeffrey MacDonald, or his current attorney Tim Junkin. Until today, I had never met or spoken with Kathryn MacDonald or attorney Hart Miles. I met Kathryn MacDonald at the request of my son, Eugene, who had contacted her recently because he also wanted to do the right thing and corroborate that I had told him exactly what I am saying in this sworn statement.



Untitled

*Helena Stoeckley* & *G. Stoeckley*

SIGNED

\_\_\_\_\_

Helena Stoeckley

DATE:

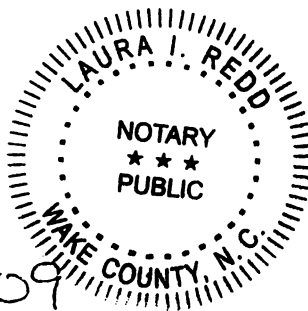
*3-31-07*

*Grady Peterson*  
\_\_\_\_\_  
Witness Grady Peterson

*Gene B. Stoeckley*  
\_\_\_\_\_  
Witness Gene B. Stoeckley

Sworn to and subscribed this the 31<sup>st</sup> day of March, 2007.

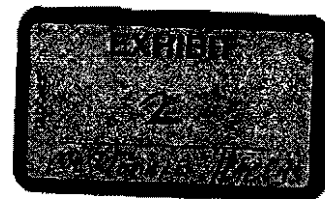
*Laura D. Redd*  
\_\_\_\_\_  
Notary Public



My Commission Expires: 10/05/09

**Davenport Associates**

P.O. Box 5785  
Cary, NC 27512-5785  
(919) 387-3533



**CLIENT:** Wade M. Smith  
Attorney At Law  
P.O. Box 1151  
Raleigh, NC 27602

**SUBJECT:** Jimmy Bluther Britt  
616 Wimberly Road  
Apex, NC 27523

**SOCIAL SECURITY #:** XXX-XX-3764

**DATE OF EXAMINATION:** May 24, 2005

**PLACE OF EXAMINATION:** Raleigh  
North Carolina

**ISSUE:** Integrity

**EXAMINER:** Steve Davenport  
333-P

**FILE NUMBER:** 05333429

At the request of Wade M. Smith, Attorney At Law, I conducted a polygraph examination to JIMMY BLUTHER BRITT on May 24, 2004, in Raleigh, North Carolina. Prior to the to the examination Mr. Britt signed a Consent and Release Agreement giving me his permission to administer the examination and then release the results to Mr. Smith. All questions asked Mr. Britt during the in-test phase of his examination were reviewed with him before any attachments were placed on his person.

The purpose of this examination was to determine Mr. Britt's truthfulness regarding his statement that he had overheard a conversation between Helena Stokely and Jim Blackburn.

EXAMINATION RESULTS:

I asked Mr. Britt the following relevant questions on multiple tests during the in-test phase of his examination, and he gave the indicated answers:

-Did you hear Helena Stokely tell Jim Blackburn she had seen a broken hotby horse while she was inside the MacDonald home?

Answer: YES

-Did you hear Jom Blackburn tell Helena Stokely he would have her indicted for murder if she testified she had been inside the MacDonald home?

Answer: YES

-Are you now lying about the conversation between Jim Blackburn and Helena Stokely.

Answer: NO

At the conclusion of all testing I conducted an analysis and numerical evaluation of Mr. Britt's physiological reactions when he answered the above questions as shown. Based on that evaluation it is my opinion there were no reactions indicative of deception to those relevant questions.

If you have any questions about this examination or need any additional information, please do not hesitate to call me.

Sincerely,

  
Steve Davenport, Examiner

**Davenport Associates**

P.O. Box 5785  
Cary, NC 27512-5785  
(919) 387-3533

**STEVE DAVENPORT  
FORENSIC POLYGRAPH EXAMINER****EDUCATION:**

Bachelor of Business Administration, Campbell College,  
Butes Creek, North Carolina, May 1971

**INVESTIGATIVE QUALIFICATIONS:**

Completed the third session of the SBI Academy, October 1971.  
Served as a Special Agent with the State Bureau of Investigation (SBI)  
from 1971 to 1993. Was Special Unit Supervisor from 1980 to 1993.  
Principal assignment was Polygraph Examiner-Interrogation Specialist.

**POLYGRAPH TRAINING:**

Basic polygraph training was at the National Training Center of Polygraph  
Science, New York, February 1974. Advanced courses were completed  
at the National Training Center, Virginia School of Polygraph, Reid  
College, the Academy of Polygraph Science and Methodology, University  
of North Carolina at Charlotte, Delta College, and Behavioral Measures &  
Forensic Sciences, L.L.C.

**POLYGRAPH EXPERIENCE:**

Have administered in excess of 5,000 specific polygraph examinations  
dealing with criminal (felony) cases and in excess of 3,000  
pre-employment security screening examinations. Have lectured on  
polygraph theory and methodology at the SBI Academy, law enforcement  
agencies, local colleges, District Attorneys' Conferences, civic groups,  
and various professional seminars and colloquiums. Was a staff instructor  
at the Academy of Polygraph Science and Methodology from 1981 to 1986.  
Licensed Private Examiner since 1993.

**PROFESSIONAL AFFILIATIONS:**

Society of Former Special Agents of the SBI  
Elected a Distinguished Fellow in the Academy of Certified Polygraphists  
Founder and past President of the North Carolina Polygraph Association  
Charter member and former Director of the American Association of  
Police Polygraphists  
Certified Sex Offender Testing

NORTH CAROLINA

WAKE COUNTY

**AFFIDAVIT OF JIMMY B. BRITT**

I, Jimmy B. Britt, of 616 Wimberly Road, Apex, North Carolina, affirm that the following statements are true and accurate to the best of my recollection:

1. I began my career in law enforcement in February of 1960 with the Smithfield Police Department, and remained with them for four years.
2. In 1964 I was appointed by the County Commissioners and the Johnston County ABC Board as one of the first ABC officers for Johnston County. I remained with the Johnston County ABC Board for fourteen months.
3. After leaving service with the County, I then worked as an officer for the State ALE Office for approximately two-and-a-half years.
4. In February, 1968, I began full time service as a Deputy United States Marshal for the United States Marshals Service. I remained with the Marshals Service in the Eastern District of North Carolina for 18 years, performing the full scope of duties attached to the Marshal position. I was selected to go to the Federal Law Enforcement Training Center where I was an instructor for two years. I was reassigned to Raleigh, North Carolina to serve as Supervisor of Operations. For 18 of the 22 years of my tenure, I worked in several Federal District Courts throughout the United States, including North Carolina. I also had three years of military service. I performed 25 years of federal government service (including military service) in good standing, and retired November 30, 1990.
5. After retiring from the U.S. Marshal's service, I worked at the Johnston County Sheriff's office as the jail administrator. I worked there for six years and retired completely in September of 1996. In total, I have served nearly 40 years in law enforcement.
6. I was one of the United States Marshals assigned to the proceedings of the trial of Jeffrey MacDonald in 1979.
7. In the summer of 2004, I took a trip with my friends, Lee Tart and Cecil Goins. Mr. Tart is a retired inspector with the United States Marshals Service (30 years of service) and Mr. Goins is a retired Deputy United States Marshal who is now the Sergeant-at-Arms at the North Carolina Senate. During this trip, I shared a moral burden with Mr. Goins, one that I had shared previously with Mr. Tart. On the trip, I talked to both men about my being privy to some events that happened at the MacDonald trial. I also told them of the many years I had been carrying this moral burden, and how deeply it still troubled me.

8. Sharing my information and its effect on me with Mr. Goins and Mr. Tart did not ease my mind for long.

9. In January of 2005, I first contacted Mr. Wade Smith, Esq., of my own accord, and told him I would like to meet with him regarding the Jeffrey MacDonald trial.

10. I did not come forward previously with the information I shared with Mr. Smith, and which I now share with the court, out of respect for the late Judge Franklin Dupree, who presided over the trial, and others who were with the courts at the time of the MacDonald trial. Working on the side of law enforcement in the courthouse was my career. I did not want to betray, or appear to be betraying, the people I worked with and respected. I considered myself a loyal officer of the court, and I still do, but ultimately I decided that I had a duty to come forward.

11. What I shared with Mr. Smith is that during the Jeffrey MacDonald trial, in my capacity as a United States Marshal, assigned to the District Court where MacDonald was tried, I was assigned to travel to Greenville, South Carolina to assume custody of a witness by the name of Helena Stoeckley. I picked Ms. Stoeckley up at the County Jail in Greenville, South Carolina and drove her back to Raleigh.

12. In the course of my law enforcement career I have learned to identify persons who appear to be under the influence of alcohol or drugs. At no time, when Ms. Stoeckley was in my presence, did she appear to be under the influence of alcohol or drugs.

13. Ms. Jerry Holden, an administrative person in the United States Marshal's Office in Raleigh, accompanied me on the trip back to Raleigh with the witness. Ms. Holden is now deceased.

14. It was clear that Ms. Stoeckley knew she was being brought to Raleigh in connection with the MacDonald trial.

15. During the course of the travel from Charleston to Raleigh, without any prompting from me whatsoever, Ms. Stoeckley brought up the matter of the trial of MacDonald. She told me, in the presence of Jerry Holden, about a hobby horse in the MacDonald home, and that she, in fact, along with others, was in Jeffrey MacDonald's home on the night of the MacDonald murders.

16. I knew at the time that what Ms. Stoeckley had said was very important, and it was something I was not about to forget. I remember her words clearly, and they are among the most important words I've ever heard in my life in connection with any case or any of my official work.

17. I was the United States Marshal assigned to bring Helena Stoeckley to the Courthouse at 310 New Bern Avenue, Raleigh, North Carolina, the day after she made the statements to me in the car.

18. At the Courthouse, I first took Ms. Stoeckley to the office that was used by Jeffrey MacDonald's attorneys on the seventh floor of the Federal Building. I left her there with Mr. Smith and Mr. Bernard Segal. When the lawyers were finished, I escorted Ms. Stoeckley to the eighth floor to the U.S. Attorney's office.

19. I knew that Mr. James Blackburn, was one of the government attorneys trying Jeffrey MacDonald. I had seen Mr. Blackburn many times before. I also was aware of, and saw, Mr. Brian Murtagh and Mr. George Anderson during the course of the trial.

20. When I delivered Helena Stoeckley to the U.S. Attorney's office, Mr. Blackburn asked me to remain in the room. This was not an unusual occurrence – I had been asked to sit in the room by government attorneys many times in my career.

21. As I recall, Mr. Blackburn sat behind a desk that was set at an angle in the northeast corner of the office. There were several chairs positioned in front of the desk. Helena Stoeckley sat in the center chair in front of the desk and I sat over to the side next to the window.

22. After Ms. Stoeckley was settled in the room, Mr. Blackburn began to interview her. Ms. Stoeckley told Mr. Blackburn the same things she had stated to me on the trip from Charleston to Raleigh. She specifically mentioned the hobbyhorse and various other things, and specifically told Mr. Blackburn that she, along with others, had been inside Jeffrey MacDonald's home on the night of the murders. She also said that she had gone to the MacDonald house to acquire drugs.

23. When these statements were made, I was absolutely aware of the importance of Ms. Stoeckley's words to Mr. Blackburn. There is no doubt in my mind today, I am still absolutely certain, that Helena Stoeckley told James Blackburn that she was in the MacDonald house on the night of the MacDonald murders, with other people.

24. After Helena Stoeckley had given the history of her visit to Jeffrey MacDonald's home, Mr. Blackburn stated: "If you testify before the jury as to what you have told me or said to me in this office, I will indict you for murder."

25. The importance of Mr. Blackburn's words was not lost on me at the time, and never has been. I have no doubt that this is what Mr. Blackburn said to Helena Stoeckley in my presence.

26. I am not certain as to whether other attorneys besides Mr. Blackburn were in the room during the Stoeckley interview. It is possible George Anderson, the United States Attorney at the time, and/or Brian Murtagh, the other government prosecutor, or others associated with the prosecution were there, either when I entered the room with Ms. Stoeckley, or after I entered with her. They may have come in and left at some point, taken a break, or gone out of the room. I have a recollection of Ms. Stoeckley asking for a sandwich during the interview, and someone other than myself going to see about it. But

my clear recollection is that only Mr. Blackburn, Ms. Stoeckley and I were in the room at the time Mr. Blackburn said these words to Ms. Stoeckley.

27. Upon conclusion of the interview, I took Helena Stoeckley from the eighth floor by stairway down to the seventh floor, and took her into the Courtroom.

28. During the course of the trial I observed what I felt to be unethical standards by the United States District Court Judge, Franklin T. Dupree. Jurors asked me on two occasions to take cakes to Judge Dupree. I took the cakes and presented them to Judge Dupree and told him they came from the jurors. Judge Dupree came out of his chambers and thanked the jurors for the cakes. I observed the Judge and members of his staff eating the cakes.

29. I do not have a personal or social relationship with Mr. Wade Smith, Mr. Tim Junkin, Mr. Bernard Segal, Mr. James Blackburn, Mr. Brian Murtagh, Mr. George Anderson, the late Judge Dupree, or any other officials or attorneys who were/are directly involved in the MacDonald case. After my initial meeting with Mr. Smith, I met again with him and Mr. Junkin, and was asked about pertinent parts of the MacDonald trial testimony, in which Mr. Blackburn stated in court that Helena Stoeckley had told him she had not been in the MacDonald house. I told Mr. Smith and Mr. Junkin that such testimony by Ms. Stoeckley before Judge Dupree was contrary to what she said to Mr. Blackburn in my presence.

30. Subsequently, Mr. Smith suggested that I submit to a polygraph examination regarding the events and conversations I witnessed, as outlined in this sworn affidavit, and I agreed. The polygraph, which I passed.

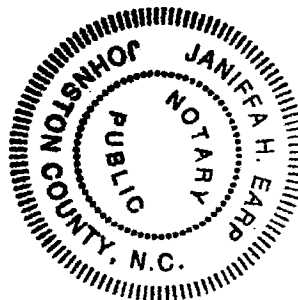
31. I am currently 67 years of age and felt compelled to clear my conscience and come forward with what I witnessed, as I decided I could not shoulder the burden any longer.

*Jimmy B. Britt*  
Jimmy B. Britt

Sworn and subscribed to before me  
this 26<sup>th</sup> day of October,  
2005.

*Janiffa H. Earp*  
Notary Public

My Commission Expires: 5-13-06



0194089





NORTH CAROLINA

WAKE COUNTY

**AFFIDAVIT OF JIMMY B. BRITT**

I, Jimmy B. Britt, of 616 Wimberly Road, Apex, North Carolina, affirm that the following statements are true and accurate to the best of my recollection:

1. I began my career in law enforcement in February of 1960 with the Smithfield Police Department, and remained with them for four years.

2. In 1964 I was appointed by the County Commissioners and the Johnston County ABC Board as one of the first ABC officers for Johnston County. I remained with the Johnston County ABC Board for fourteen months.

3. After leaving service with the County, I then worked as an officer for the State ALE Office for approximately two-and-a-half years.

4. In February, 1968, I began full time service as a Deputy United States Marshal for the United States Marshal's Service. I remained with the Marshal's Service in the Eastern District of North Carolina for 18 years, performing the full scope of duties attached to the Marshal position. I was selected to go to the Federal Law Enforcement Training Center where I was an instructor for two years. I was reassigned to Raleigh, North Carolina to serve as Supervisor of Operations. For 18 of the 22 years of my tenure, I worked in several Federal District Courts throughout the United States, including North Carolina. I also had three years of military service. I performed 25 years of federal government service (including military service) in good standing, and retired November 30, 1990.

5. After retiring from the U.S. Marshal's service, I worked at the Johnston County Sheriff's office as the Jail Administrator. I worked there for six years and retired completely in September of 1996. In total, I have served nearly 40 years in law enforcement.

6. I was one of the United States Marshal's assigned to the proceedings of the trial of Jeffrey MacDonald in 1979.

7. In the summer of 2004, I took a trip with my friends, Lee Tart and Cecil Goins. Mr. Tart is a retired inspector with the United States Marshal's Service (30 years of service) and Mr. Goins is a retired Deputy United States Marshal who is now the Sergeant-at-Arms at the North Carolina Senate. During this trip, I shared a moral burden with Mr. Goins, one that I had shared previously with Mr. Tart. On the trip, I talked to both men about my being privy to some events that happened at the MacDonald trial. I also told them of the many years I had been carrying this moral burden, and how deeply it still troubled me.

8. Sharing my information and its effect on me with Mr. Goins and Mr. Tart did not ease my mind for long.

9. In January of 2005, I first contacted Mr. Wade Smith, Esq., of my own accord, and told him I would like to meet with him regarding the Jeffrey MacDonald trial.

10. I did not come forward previously with the information I shared with Mr. Smith, and which I now share with the court, out of respect for the late Judge Franklin Dupree, who presided over the trial, and others who were with the courts at the time of the MacDonald trial. Working on the side of law enforcement in the courthouse was my career. I did not want to betray, or appear to be betraying, the people I worked with and respected. I considered myself a loyal officer of the court, and I still do, but ultimately I decided that I had a duty to come forward.

11. What I shared with Mr. Smith is that during the Jeffrey MacDonald trial, in my capacity as a United States Marshal, assigned to the District Court where MacDonald was tried, I was assigned to travel to Greenville, South Carolina to assume custody of a witness by the name of Helena Stoeckley. I picked Ms. Stoeckley up at the County Jail in Greenville, South Carolina and drove her back to Raleigh.

12. In the course of my law enforcement career I have learned to identify persons who appear to be under the influence of alcohol or drugs. At no time, when Ms. Stoeckley was in my presence, did she appear to be under the influence of alcohol or drugs.

13. Ms. Jerry Holden, an administrative person in the United States Marshal's Office in Raleigh, accompanied me on the trip back to Raleigh with the witness. Ms. Holden is now deceased.

14. It was clear that Ms. Stoeckley knew she was being brought to Raleigh in connection with the MacDonald trial.

15. During the course of the travel from Greenville, South Carolina to Raleigh, without any prompting from me whatsoever, Ms. Stoeckley brought up the matter of the trial of MacDonald. She told me, in the presence of Jerry Holden, about a hobby horse in the MacDonald home, and that she, in fact, along with others, was in Jeffrey MacDonald's home on the night of the MacDonald murders.

16. I knew at the time that what Ms. Stoeckley had said was very important, and it was something I was not about to forget. I remember her words clearly, and they are among the most important words I've ever heard in my life in connection with any case or any of my official work.

17. I was the United States Marshal assigned to bring Helena Stoeckley to the Courthouse at 310 New Bern Avenue, Raleigh, North Carolina, the day after she made the statements to me in the car.

18. At the Courthouse, I first took Ms. Stoeckley to the office that was used by Jeffrey MacDonald's attorneys on the seventh floor of the Federal Building. I left her there with Mr. Smith and Mr. Bernard Segal. When the lawyers were finished, I escorted Ms. Stoeckley to the eighth floor to the U.S. Attorney's office.

19. I knew that Mr. James Blackburn, was one of the government attorneys trying Jeffrey MacDonald. I had seen Mr. Blackburn many times before. I also was aware of, and saw, Mr. Brian Murtagh and Mr. George Anderson during the course of the trial.

20. When I delivered Helena Stoeckley to the U.S. Attorney's office, Mr. Blackburn asked me to remain in the room. This was not an unusual occurrence – I had been asked to sit in the room by government attorneys many times in my career.

21. As I recall, Mr. Blackburn sat behind a desk that was set at an angle in the northeast corner of the office. There were several chairs positioned in front of the desk. Helena Stoeckley sat in the center chair in front of the desk and I sat over to the side next to the window.

22. After Ms. Stoeckley was settled in the room, Mr. Blackburn began to interview her. Ms. Stoeckley told Mr. Blackburn the same things she had stated to me on the trip from Greenville to Raleigh. She specifically mentioned the hobbyhorse and various other things, and specifically told Mr. Blackburn that she, along with others, had been inside Jeffrey MacDonald's home on the night of the murders. She also said that she had gone to the MacDonald house to acquire drugs.

23. When these statements were made, I was absolutely aware of the importance of Ms. Stoeckley's words to Mr. Blackburn. There is no doubt in my mind today, I am still absolutely certain, that Helena Stoeckley told James Blackburn that she was in the MacDonald house on the night of the MacDonald murders, with other people.

24. After Helena Stoeckley had given the history of her visit to Jeffrey MacDonald's home, Mr. Blackburn stated: "If you testify before the jury as to what you have told me or said to me in this office, I will indict you for murder."

25. The importance of Mr. Blackburn's words was not lost on me at the time, and never has been. I have no doubt that this is what Mr. Blackburn said to Helena Stoeckley in my presence.

26. I am not certain as to whether other attorneys besides Mr. Blackburn were in the room during the Stoeckley interview. It is possible George Anderson, the United States Attorney at the time, and/or Brian Murtagh, the other government prosecutor, or others associated with the prosecution were there, either when I entered the room with Ms. Stoeckley, or after I entered with her. They may have come in and left at some point, taken a break, or gone out of the room. I have a recollection of Ms. Stoeckley asking for a sandwich during the interview, and someone other than myself going to see about it. But

my clear recollection is that only Mr. Blackburn, Ms. Stoeckley and I were in the room at the time Mr. Blackburn said these words to Ms. Stoeckley.

27. Upon conclusion of the interview, I took Helena Stoeckley from the eighth floor by stairway down to the seventh floor, and took her into the Courtroom.

28. These events have remained with me. The interview with Mr. Blackburn and other conduct by representatives of the government which I felt was unethical all have moved me to take this action.

29. I do not have a personal or social relationship with Mr. Wade Smith, Mr. Tim Junkin, Mr. Bernard Segal, Mr. James Blackburn, Mr. Brian Murtagh, Mr. George Anderson, the late Judge Dupree, or any other officials or attorneys who were/are directly involved in the MacDonald case. After my initial meeting with Mr. Smith, I met again with him and Mr. Junkin, and was asked about pertinent parts of the MacDonald trial testimony, in which Mr. Blackburn stated in court that Helena Stoeckley had told him she had not been in the MacDonald house. I told Mr. Smith and Mr. Junkin that such testimony by Ms. Stoeckley before Judge Dupree was contrary to what she said to Mr. Blackburn in my presence.

30. Subsequently, Mr. Smith suggested that I submit to a polygraph examination regarding the events and conversations I witnessed, as outlined in this sworn affidavit, and I agreed. The polygraph, which I passed.

31. I am currently 67 years of age and felt compelled to clear my conscience and come forward with what I witnessed, as I decided I could not shoulder the burden any longer.

32. I came forward to Mr. Wade M. Smith of my own free will and accord. I have not been promised any compensation nor have I received any compensation.

  
Jimmy B. Britt

Sworn and subscribed to before me  
this 3<sup>rd</sup> day of November,  
2005.

  
Notary Public

My Commission Expires: 9-4-2006

0194089



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
FAYETTEVILLE DIVISION  
Docket No. 75-26-CR-3  
UNITED STATES OF AMERICA  
vs.  
JEFFREY R. MACDONALD

---

INTERVIEW UNDER OATH OF  
LEE W. TART

---

Beginning at 1:48 p.m.  
at the Law Offices of Tharrington Smith  
209 Fayetteville Street Mall  
Raleigh, North Carolina  
Thursday, February 24, 2005  
Reported by Robbie W. Worley

Worley Reporting  
6370 Monterrey Creek Drive  
Durham, North Carolina 27713  
Phone/Fax (919) 806-2851 Toll-free (866) 223-1189  
info@worleyreporting.com

Transcript of the Proceedings  
United States of America v. Jeffrey R. MacDonald

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APPEARANCES

Wade M. Smith, Esquire  
Tharrington Smith  
208 Fayetteville Street Mall  
P.O. Box 1151  
Raleigh, North Carolina 27602

Timothy D. Junkin, Esquire  
Moffett & Junkin, Chartered  
800 South Frederick Avenue, Suite 203  
Gaithersburg, Maryland 20877

In Attendance:

Jimmy B. Britt

Transcript of the Proceedings  
United States of America v. Jeffrey R. MacDonald

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Whereupon,

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Lee W. Tart,

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having been first duly sworn,

5

was examined and testified

6

as follows:

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8

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MR. SMITH: Would you state your name,

9

please, sir?

10

MR. TART: Lee W. Tart.

11

MR. SMITH: And that's T-A-R-T?

12

MR. TART: T-A-R-T is correct.

13

MR. SMITH: Mr. Tart, where do you live?

14

MR. TART: I live -- I have two homes.

15

One is 802 Vandora Avenue in Garner, North

16

Carolina. I have one at 1451 Old Goldsboro Road,

17

Newton Grove, North Carolina.

18

MR. SMITH: And, Mr. Tart, what do you do

19

for a living?

20

MR. TART: I'm retired from the United

21

States Marshals Service.

22

MR. SMITH: How long were you --

23

MR. TART: I do -- I do operate a process

24

serving business, court papers and what have you.



Transcript of the Proceedings  
United States of America v. Jeffrey R. MacDonald

4

1 MR. SMITH: How long were you with the  
2 United States Marshals Service?

3 MR. TART: Actual service was 29 years  
4 and 10 months.

5 MR. SMITH: And before you went with the  
6 U.S. Marshals Service, what did you do?

7 MR. TART: North Carolina State Highway  
8 Patrolman.

9 MR. SMITH: How long were you with the  
10 Highway Patrol?

11 MR. TART: Three years.

12 MR. SMITH: So what would be your total  
13 commitment to law enforcement through the years?

14 MR. TART: 32 1/2 years.

15 MR. SMITH: Mr. Tart, do you know Jim  
16 Britt, or Jimmy Britt?

17 MR. TART: Yes, sir.

18 MR. SMITH: How long have you known him?

19 MR. TART: Since about 1957 or '8,  
20 somewhere in there.

21 MR. SMITH: Were you with the United  
22 States Marshals Service during the years of the --  
23 or during the period of the Jeffrey MacDonald  
24 trial?

Transcript of the Proceedings  
United States of America v. Jeffrey R. MacDonald

5

1 MR. TART: Yes, I was.

2 MR. SMITH: Do you remember that trial?

3 MR. TART: Yes. I didn't have the  
4 occasion to work it but very little, but I do  
5 remember the trial.

6 MR. SMITH: You remember it. Mr. Tart,  
7 during the past year or two, has Mr. Jimmy Britt  
8 come to you to speak with you about an important  
9 matter that concerned him relating to the Jeffrey  
10 MacDonald trial?

11 MR. TART: The first time that Mr. Britt  
12 spoke to me about it, we were on a trip to the  
13 University of Mississippi, at Oxford, Mississippi.  
14 I had invited him to go with me if he -- if he so  
15 would like to, and he agreed to go and he  
16 appreciated the opportunity to go.

17 MR. SMITH: Yes.

18 MR. TART: And best I recall, he brought  
19 this up. We weren't far out of Raleigh, or I would  
20 say it was around maybe Asheboro, en route. And I  
21 noticed it was on Mr. Britt's mind.

22 MR. SMITH: How could you tell?

23 MR. TART: I could tell he was -- he  
24 wanted to talk about it.

Transcript of the Proceedings  
United States of America v. Jeffrey R. MacDonald

6

1 MR. SMITH: He was troubled?

2 MR. TART: We would go into other areas,  
3 and he'd come right back to this. He seemed to be  
4 troubled about it.

5 MR. SMITH: And what happened next?

6 MR. TART: We continued -- we spent the  
7 first night at Harrah's Hotel in Cherokee, and I  
8 noticed the next morning at breakfast, he brought  
9 it up again.

10 MR. SMITH: And what did he bring up?

11 MR. TART: The same story about his --  
12 what he observed during the Jeffrey MacDonald  
13 trial, and it was irregular, he thought.

14 MR. SMITH: All right.

15 MR. TART: He said that in his opinion it  
16 was irregular.

17 MR. JUNKIN: May I interject something,  
18 Mr. Tart? Tim Junkin, hi.

19 MR. TART: Pardon?

20 MR. JUNKIN: I want to interject a  
21 question if I could --

22 MR. TART: Oh, okay.

23 MR. JUNKIN: -- Mr. Tart. How long ago  
24 was this trip?

Transcript of the Proceedings  
United States of America v. Jeffrey R. MacDonald

7

1 MR. TART: This trip was -- we left on  
2 the trip -- I believe it was the 28th -- the 29th  
3 of September, 19-- -- 2002.

4 MR. JUNKIN: 2002.

5 MR. TART: Yes, sir.

6 MR. JUNKIN: So two-and-a-half years ago,  
7 roughly, was the first time?

8 MR. TART: Approximately, yes.

9 MR. JUNKIN: And since that time, has  
10 there been at least one other occasion when  
11 Mr. Britt has talked to you about his recollections  
12 of the MacDonald trial?

13 MR. TART: Yes. It was the weekend after  
14 the Democratic convention. The convention ended on  
15 Thursday, and we left, I believe, on Sunday,  
16 following the Democratic convention, and we spent  
17 the first night in Cherokee at the Ramada Inn. And  
18 I don't recall when he mentioned it on that trip  
19 the first time, but I believe that we weren't far  
20 out of town before he mentioned it again.

21 MR. JUNKIN: Okay. Now, on both of those  
22 occasions, did he tell you -- well, you've heard  
23 him testify today --

24 MR. TART: Yes, I have.

Transcript of the Proceedings  
United States of America v. Jeffrey R. MacDonald

8

1 MR. JUNKIN: -- in this deposition,  
2 correct?

3 MR. TART: Yes, I have.

4 MR. JUNKIN: And you heard how he  
5 answered all the questions?

6 MR. TART: Yes, I have.

7 MR. JUNKIN: And you heard how he -- his  
8 recollection was of being with Mrs. Stoeckley, what  
9 she told him, and what she told Mr. Blackburn in  
10 his presence?

11 MR. TART: Yes, I have.

12 MR. JUNKIN: On each of the other  
13 occasions that Mr. Britt has confided to you about  
14 his recollections, have they been the same as he  
15 told us today, or different in any material way?

16 MR. TART: It's been -- it's been the  
17 same every time he has discussed it with me.

18 MR. JUNKIN: It has been absolutely  
19 consistent?

20 MR. TART: Yes, he has.

21 MR. JUNKIN: From the very first time he  
22 mentioned it?

23 MR. TART: Yes, he has.

24 MR. SMITH: Let me ask one additional

Transcript of the Proceedings  
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9

1 question. Mr. Tart, you've known Mr. Britt for  
2 three decades or more. Do you know his reputation  
3 in this community and in the North Carolina  
4 community for truthfulness and honesty?

5 MR. TART: I know how I feel about it.

6 MR. SMITH: What is it?

7 MR. TART: He will tell nothing but the  
8 truth.

9 MR. SMITH: That's all. I think that's  
10 it. No further questions.

11 (WITNESS EXCUSED)

12 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED AT 1:53 P.M.)

13 (THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.)

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Transcript of the Proceedings  
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1 STATE OF NORTH CAROLINA  
COUNTY OF DURHAM

2 CERTIFICATE

3 I, Robbie W. Worley, a Notary Public in and for the  
4 State of North Carolina, duly commissioned and authorized  
5 to administer oaths and to take and certify depositions, do  
6 hereby certify that on February 24, 2005, Lee W. Tart,  
7 being by me duly sworn to tell the truth, thereupon  
8 testified as above set forth as found in the preceding 9  
9 pages, this examination being reported by me verbatim and  
10 then reduced to typewritten form under my direct  
11 supervision; that the foregoing is a true and correct  
12 transcript of said proceedings to the best of my ability  
13 and understanding; that I am not related to any of the  
14 parties to this action; that I am not interested in the  
15 outcome of this case; that I am not of counsel nor in the  
16 employ of any of the parties to this action.

17 IN WITNESS WHEREOF, I have hereto set my hand and  
18 affixed my official notarial seal, this the 26th day of  
February, 2005.

19

(SEAL)

\_\_\_\_\_  
Notary Public

20

My Commission Expires  
21 12/8/2006

Robbie W. Worley  
Worley Reporting  
6370 Monterrey Creek Drive  
Durham, North Carolina 27713  
Phone/Fax (919) 806-2851

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<p><b>A</b></p> <p>ability 10:12 absolutely 8:18 action 10:14,16 Actual 4:3 additional 8:24 administer 10:5 affixed 10:18 ago 6:23 7:6 agreed 5:15 AMERICA 1:3 answered 8:5 APPEARANCES 2:1 appreciated 5:16 Approximately 7:8 areas 6:2 Asheboro 5:20 Attendance 2:8 authorized 10:4 Avenue 2:6 3:15</p> <hr/> <p><b>B</b></p> <p>B 2:9 back 6:3 Beginning 1:7 believe 7:2,15,19 best 5:18 10:12 Blackburn 8:9 BLANK 9:13 Box 2:3 breakfast 6:8 bring 6:10 Britt 2:9 4:16,16 5:7,11 7:11 8:13 9:1 Britt's 5:21 brought 5:18 6:8 business 3:24</p> <hr/> <p><b>C</b></p> <p>Carolina 1:1,8,22 2:4 3:16,17 4:7 9:3 10:1,4,23 case 10:15 CERTIFICATE 10:2 certify 10:5,6 Chartered 2:5 Cherokee 6:7 7:17 come 5:8 6:3 Commission 10:20 commissioned 10:4 commitment 4:13</p>	<p>community 9:3,4 concerned 5:9 CONCLUDED 9:12 confided 8:13 consistent 8:19 continued 6:6 convention 7:14 7:14,16 correct 3:12 8:2 10:11 counsel 10:15 COUNTY 10:1 court 1:1 3:24 Creek 1:21 10:22</p> <hr/> <p><b>D</b></p> <p>D 2:5 day 10:18 decades 9:2 Democratic 7:14 7:16 deposition 8:1 depositions 10:5 different 8:15 direct 10:10 discussed 8:17 DISTRICT 1:1,1 DIVISION 1:2 Docket 1:2 Drive 1:21 10:22 duly 3:4 10:4,7 Durham 1:22 10:1 10:23</p> <hr/> <p><b>E</b></p> <p>EASTERN 1:1 employ 10:16 en 5:20 ended 7:14 enforcement 4:13 Esquire 2:2,5 examination 10:9 examined 3:5 EXCUSED 9:11 Expires 10:20</p> <hr/> <p><b>F</b></p> <p>far 5:19 7:19 Fayetteville 1:2,8 2:3 February 1:9 10:6 10:18 feel 9:5 first 3:4 5:11 6:7 7:7,17,19 8:21 following 7:16</p>	<p>follows 3:6 foregoing 10:11 form 10:10 forth 10:8 found 10:8 Frederick 2:6 further 9:10</p> <hr/> <p><b>G</b></p> <p>Gaithersburg 2:6 Garner 3:15 go 5:14,15,16 6:2 Goldsboro 3:16 Grove 3:17</p> <hr/> <p><b>H</b></p> <p>hand 10:17 happened 6:5 Harrah's 6:7 heard 7:22 8:4,7 hereto 10:17 hi 6:18 Highway 4:7,10 homes 3:14 honesty 9:4 Hotel 6:7</p> <hr/> <p><b>I</b></p> <p>important 5:8 info@worleyre... 1:24 Inn 7:17 INTENTIONALLY 9:13 interested 10:14 interject 6:17,20 INTERVIEW 1:5 invited 5:14 irregular 6:13,16</p> <hr/> <p><b>J</b></p> <p>Jeffrey 1:4 4:23 5:9 6:12 Jim 4:15 Jimmy 2:9 4:16 5:7 Junkin 2:5,5 6:17 6:18,20,23 7:4 7:6,9,21 8:1,4,7 8:12,18,21</p> <hr/> <p><b>K</b></p> <p>know 4:15 9:2,5 known 4:18 9:1</p> <hr/> <p><b>L</b></p>	<p>law 1:7 4:13 Lee 1:5 3:3,10 10:6 left 7:1,15 9:13 little 5:4 live 3:13,14 living 3:19 long 3:22 4:1,9,18 6:23</p> <hr/> <p><b>M</b></p> <p>M 2:2 MacDonald 1:4 4:23 5:10 6:12 7:12 Mall 1:8 2:3 Marshals 3:21 4:2 4:6,22 Maryland 2:6 material 8:15 matter 5:9 mentioned 7:18 7:20 8:22 mind 5:21 Mississippi 5:13 5:13 Moffett 2:5 Monterrey 1:21 10:22 months 4:4 morning 6:8</p> <hr/> <p><b>N</b></p> <p>name 3:8 Newton 3:17 night 6:7 7:17 North 1:1,8,22 2:4 3:15,17 4:7 9:3 10:1,4,23 notarial 10:18 Notary 10:3,19 noticed 5:21 6:8</p> <hr/> <p><b>O</b></p> <p>OATH 1:5 oaths 10:5 observed 6:12 occasion 5:4 7:10 occasions 7:22 8:13 Offices 1:7 official 10:18 Oh 6:22 okay 6:22 7:21 Old 3:16 operate 3:23</p>	<p>opinion 6:15 opportunity 5:16 outcome 10:15 Oxford 5:13</p> <hr/> <p><b>P</b></p> <p>PAGE 9:13 pages 10:9 papers 3:24 Pardon 6:19 parties 10:14,16 Patrol 4:10 Patrolman 4:8 period 4:23 Phone/Fax 1:23 10:24 please 3:9 preceding 10:8 presence 8:10 proceedings 9:12 10:12 process 3:23 Public 10:3,19 p.m 1:7 9:12 P.O 2:3</p> <hr/> <p><b>Q</b></p> <p>question 6:21 9:1 questions 8:5 9:10</p> <hr/> <p><b>R</b></p> <p>R 1:4 Raleigh 1:8 2:4 5:19 Ramada 7:17 recall 5:18 7:18 recollection 8:8 recollections 7:11 8:14 reduced 10:10 related 10:13 relating 5:9 REMAINDER 9:13 remember 5:2,5,6 reported 1:9 10:9 Reporting 1:20 10:21 reputation 9:2 retired 3:20 right 6:3,14 Road 3:16 Robbie 1:9 10:3 10:20 roughly 7:7 route 5:20</p>	<p><b>S</b></p> <p>seal 10:18,19 September 7:3 service 3:21 4:2,3 4:6,22 serving 3:24 set 10:8,17 sir 3:9 4:17 7:5 Smith 1:7 2:2,2 3:8,11,13,18,22 4:1,5,9,12,15 4:18,21 5:2,6 5:17,22 6:1,5 6:10,14 8:24 9:6,9 South 2:6 speak 5:8 spent 6:6 7:16 spoke 5:12 state 3:8 4:7 10:1 10:4 States 1:1,3 3:21 4:2,22 Stoekley 8:8 story 6:11 Street 1:8 2:3 Suite 2:6 Sunday 7:15 supervision 10:11 sworn 3:4 10:7</p> <hr/> <p><b>T</b></p> <p>take 10:5 talk 5:24 talked 7:11 Tart 1:5 3:3,10,10 3:12,13,14,18 3:20,23 4:3,7 4:11,14,15,17 4:19 5:1,3,6,11 5:18,23 6:2,6 6:11,15,18,19 6:22,23 7:1,5,8 7:13,24 8:3,6 8:11,16,20,23 9:1,5,7 10:6 tell 5:22,23 7:22 9:7 10:7 testified 3:5 10:8 testify 7:23 Tharrington 1:7 2:2 think 9:9 thought 6:13 three 4:11 9:2 Thursday 1:9 7:15</p>
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AFFIDAVIT OF WENDY P. ROUDER, ESQ.

I, Wendy P. Roudier, of 16 Bronte Street, San Francisco, California do hereby aver under the penalty of perjury that:

1. I am an attorney licensed to practice law in the states of California and New York and in the Ninth Circuit federal courts. I was admitted to the California State Bar in 1979 and to the New York State Bar in 1980.

2. Since 1984, my practice has been exclusively civil. From 1984 to 2000, I worked as a deputy city attorney for the City of Oakland (California) where I headed the labor and employment law unit of the office. Since 2000, I have been a labor arbitrator and neutral workplace investigator. I am on the ADR panel of neutrals for the United States District Court for the Northern District of California.

3. Upon graduating from law school in 1979, I was offered a position as a clerk to attorney Bernard Segal, chief defense counsel for Jeffrey MacDonald. My primary responsibility was law and motion work in regard to the case *United States vs. Jeffrey R. MacDonald*.

4. I was involved in the subsequent filing of the first trial appeal brief in the above-referenced case. Following that filing, I had no professional involvement in the MacDonald case.

5. In August, 2005, I was contacted by Jeffrey MacDonald's wife, Kathryn MacDonald. She told me she was working on her husband's behalf, in a paralegal capacity. Kathryn MacDonald asked me if I could recall any further details about my interactions with witness Helena Stoeckley, during her time in Raleigh, in August of 1979. I related to her the information I recite below.

6. I was present, assisting Bernard Segal, and other members of the defense, during Jeffrey MacDonald's trial in the summer of 1979. It was at that time that I first met the key witness in the case, Helena Stoeckley.

6. On a weekend morning (I believe the weekend of August 18, 1979) I was alone in our counsel office, when Mr. Segal asked me to investigate a complaint allegedly made by the management of the motel where Helena Stoeckley had been registered to stay during her time in Raleigh. The complaint by motel management was that Ms. Stoeckley was being assaulted by someone the motel manager did not identify, and that Ms. Stoeckley was causing trouble for the motel.

7. Upon arrival at the motel, called the Journey's End, I found Ms. Stoeckley in a room with a person I understood to be her boyfriend. I recall his first name was "Ernie" and I believe his last name was Davis. I inquired of Ms. Stoeckley as to her well-being, and informed her of the motel manager's complaint. She indicated she wanted Mr. Davis gone from her presence, and eventually he did leave. At that time I was alone with Ms. Stoeckley in the motel room.

8. I have testified, previously, in *voir dire* as to comments Ms. Stoeckley made to me after Ernie Davis's departure from the room, about her involvement in the MacDonald family murders- that she had seen a hobby horse in the MacDonald home, that she was there the night of the murders, and that she could name the people who killed Dr. MacDonald's family.

9. Kathryn MacDonald informed me that a new witness had come forward- a United States Marshal- to whom Helena Stoeckley had made remarkably similar statements. She told me this same United States Marshal had sworn that, also in his presence, one of the prosecutors, James Blackburn, had threatened to indict Ms. Stoeckley for murder if she were to make the same admissions regarding her involvement in the MacDonald murders in the courtroom.

10. My first statement to Mrs. MacDonald was "*Now it all makes sense.*" She asked me what I meant, and I said that after Helena Stoeckley had made her statements to me –totally unsolicited – I had asked her why she was making admissions to me in private when she had made public denials at the courthouse, and why she did not testify in court as to what she was telling me. She had then responded: "I can't. I'm afraid." I asked her what she was afraid of. I *fully expected* her to say that she was afraid of the people with whom she was involved the night of the MacDonald family murders, or the person or persons who the motel manager had reported as having assaulted her. Thus, I was very surprised when Ms. Stoeckley responded that she could not testify as to what she was sharing with me because of "*those damn prosecutors sitting there.*" And she added words to the effect of "*They'll fry me*".

11. Helena Stoeckley may have said "*burn me*" or "*hang me*" instead of "*fry me*". My specific recall, after 26 years, is that the words she used expressed, in the vernacular, her fear of the prosecution imposing adverse consequences on her, were she to testify truthfully.

12. When Kathryn MacDonald told me of the United States Marshal's statements, Helena Stoeckley's unexpected response to my questions in August of 1979 then made sense to me.

13. I also recalled that, upon my arrival to Ms. Stoeckley's room, the phone rang and the hotel operator had asked for me specifically. The call was from Judge Franklin Dupree. He addressed me by name, and asked me why I was there with Helena Stoeckley, and warned me not to ask her any questions. For years afterward, I had wondered how Judge Dupree came to know that I had arrived on a weekend to see about Ms. Stoeckley's well-being, and why he was concerned about what she might be saying or being asked. Now, in August of 2005, hearing of Mr. Britt's statement, this bizarre occurrence also made sense to me.

13. My memory of Ms. Stoeckley's statement about the prosecutors is distinct and sharp now, some 26 years after the statement was made, because I was surprised to hear her express fear of the prosecution, given that I was aware she had made criminally inculpatory statements over a decade prior to the trial about her involvement in the MacDonald family murders.

14. Prior to August of 2005, I did not know of former U.S. Marshal James Britt's sworn statement that then U.S. Attorney James Blackburn – just a day or two before my conversation with Ms. Stoeckley at the Journey's End Motel - had threatened Stoeckley with severe adverse consequences. I had never spoken to Kathryn MacDonald prior to August of 2005.

15. Further, I did not even realize that Mr. Blackburn had met with Ms. Stoeckley, as I had thought he would have had to Mirandize her, and that if he did so, she would refuse to speak with him, or if she pleaded the Fifth Amendment in court, this alone would raise reasonable doubt regarding her involvement in the MacDonald murders.

16. After sifting through further recollections of my time with Helena Stoeckley, I recalled a United States Marshal coming to move Ms. Stoeckley from the Journey's End motel to another motel, because of the trouble she and Mr. Davis had caused. I did not know then (or now) how the court knew of the trouble. I recall also going to the second motel, and that Ms. Stoeckley eventually needed assistance because her nose was broken or injured during the assault she had endured.

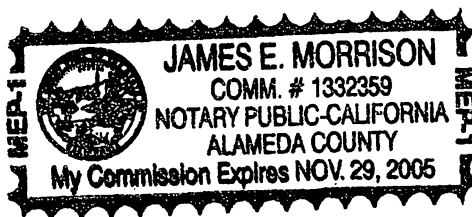
17. The fact that Helena Stoeckley's admissions to me were discounted after *voir dire* has always troubled me, and I felt compelled to bring my further recollections to the court's attention, given the testimony of Mr. James Britt.

*Wendy P. Rouser*  
Wendy P. Rouser, Esq.

Signed and sworn to this 6th day of SEPT. 2005.

*James E Morrison*  
Notary Public

My commission expires 11-29-05



"Jan 25, 1980

"Library - Wade Smith's  
Office

"Raleigh, N. C.

"I, Kay Reibold, make the following free and voluntary statement to Ted L. Gunderson, a private investigator from Los Angeles, Calif. and Ann Oliver, a bookkeeper and office manager with Tharrinton, Smith and Hargrove - attorneys, Raleigh, North Carolina.

"I presently reside at Rt. 4 Box 641 A Yates Pond Rd. Raleigh, N. C. 27606. My phone is 833-7885. I am currently employed by Wake County Opportunities, Inc., the local anti-poverty agency in Raleigh, N. C. I also do consultant script-writing on a free-lance basis.

"During the trial of Dr. Jeffrey Mac Donald in August of 1979, I was asked by Jerry Leonard, the attorney who represented Helena Stoeckley, if I would spend time with her acting as a companion and friend to her. It was understood that I spend time with her to and from her hotel room, in her hotel room and in the witness room at the courthouse. Mr. Leonard requested I not discuss Dr. Mac Donald's case with her. I agreed. I also explained to Mr. Leonard at this time that I felt he should know that I believed in Dr. Mac Donald's innocence. He stated that it was permissible for me to listen to Helena's comments and feelings regarding the case as she volunteered them, but not to request information from her or ask her questions regarding the case.

"My experience with Helena Stoeckley took place over a 3 day period of time. During this time, we established a rapport and in our conversations, she made some statements that I felt were significant. I took notes during this period of time. Subsequent to the time spent with Helena, I contacted her attorney, Jerry Leonard, and discussed with him significant statements she had made.

"During general conversations with Helena she would occasionally jump from one topic to another, and exclaim something that seemed to be troubling her. At one point when we were discussing

her involvement with children at the Tammy Lynn Center, she hung her head and said quietly, 'I still remember Kristen's face. Her face seems familiar to me.' This statement was repeated at least one other time when we were discussing her love for children and in particular, an epileptic child she had cared for. Other significant remarks were made in a similar context; that is, a feeling or an image seemed to push to the front of Helena's mind and into her conversation with me. She stated to me that she 'still felt' she 'was there' at least three times during our experience together. She recalled at one time she 'remembered Dr. Mac Donald on the couch.' She recalled at least two times that she remembered the hobby horse being broken.

"The last day that I spent with Helena as we were sitting in the witness room, she stated to me that she had not indicated on the witness stand the extent to which she was involved with witchcraft. She told me that she was 'into it' 'much heavier' than she had testified. She also noted that she intended to return to it (her involvement with it.) It was at this same time that she confided that when 'everything was over' she was going to disappear and no one would ever find her.

"Other than the statements made above, I do not recall any other statements Helena made, pertaining to the trial, that were significant.

"During the time I spent with Helena, she seemed depressed and in ill health, but I felt that her state of mind was lucid. I had the impression she had undergone some horrendous experiences considering the extent of her involvement with drugs; however I felt that her feelings and her remarks were reliable.

"In closing, I would point out that I felt compelled to discuss these matters with Mr. Wade Smith, Dr. Mac Donald's attorney after I had received permission from Jerry Leonard, Helena's attorney. There are several reasons why there was a period of 4 months before I contacted Mr. Smith's office. Firstly, I have been somewhat afraid and uncomfortable with this information Helena shared with me. Secondly, I was uncertain about my role with Helena in relation to the attorney-client privilege Jerry Leonard had with her. Thirdly, I



was not sure that the comments Helena made to me were significantly different than remarks she had made to others.

"I have read this 4-page statement and it is true and correct to the best of my knowledge.

/s/ "Kay Reibold

"Jan. 25, 1980

"Witness:

/s/ "Ann Oliver 1/25/80

/s/ "Ted L. Gunderson 1/25/80"

Reviewed  
KEEP IN OPEN COURT  
ON 9/20/12 SE  
Julie A. Richards, Clerk  
US District Court  
Eastern District of NC

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 75-CR-26-3-F


No. 5:06-CV-23-F

UNITED STATES OF AMERICA, )  
 )  
 v. )  
 )  
 JEFFREY R. MacDONALD, )  
 Movant )

**AFFIDAVIT OF**  
**JERRY W. LEONARD**  
(submitted under seal)

JERRY W. LEONARD, after being duly sworn, deposes and says that, if ordered to testify at the hearing of *United States of America v. Jeffrey R. MacDonald*, his testimony regarding his communications with Helena Stoeckley would be as follows:

1. I am an attorney licensed to practice law in the State of North Carolina, and have been licensed to practice in North Carolina since 1971.
2. In August, 1979, I was appointed to represent Helena Stoeckley in the United States District Court for the Eastern District of North Carolina sitting in Raleigh. Ms. Stoeckley was a witness in the matter of *United States of America v. Jeffrey R. MacDonald*. At the time of my appointment, she had already testified before the jury, but had not been released from the original subpoena because there was a possibility that she would be re-called as a witness. I was told by the Court to make sure she was available until she was released from the subpoena. An attorney conference room on the seventh floor of the courthouse was made available for our use during Court hours.
3. According to my best recollection, I was appointed on Sunday, August 19<sup>th</sup>, 1979, and my representation of Ms. Stoeckley lasted until she was released from the subpoena about a week later. During that period of time, I was alone with her the better part of each day.
4. During the period of time that I represented Ms. Stoeckley, to my knowledge she had no contact whatsoever with representatives of either the prosecution or the defense.

Initials (JWL): 

5. When I first met Ms. Stoeckley, she appeared very distraught and very apprehensive of her boyfriend. She had a cast on her forearm/wrist and she had a black eye. When I first met her I do not think that she had slept in at least 24 hours.
6. I spent several hours in conversation with her on the first day (Sunday, August 19<sup>th</sup>). I was trying to introduce myself and get to know her as a person, and to understand what I was dealing with. Basically, the Court had placed her in my custody. I had to arrange her lodging, and I needed to be sure she would not leave Raleigh and that I could get her to each Court session. I did not talk to her in depth about her legal situation until the morning of Monday, August 20<sup>th</sup>, which was our first day together at the federal courthouse in Raleigh.
7. On that Monday morning, I explained to her my role as her attorney and made sure she realized that either side could ask her to testify again on a moment's notice. I made sure that Ms. Stoeckley clearly understood that what she told me was just between me and her, and that she should not talk about the case to anyone except me. I told her that I wanted to help her and would help her, but that I needed to know the truth, no matter what it was, in order to help her.
8. At this early stage, we discussed the federal penalty for murder. We talked about the death penalty not being in effect at the time and that the maximum penalty for these murders was three life sentences, but that there was a possibility for reduced charges even if she was part of a group that committed the murders, if she told an accurate account of the crime and identified the other people who were involved. We talked about the statute of limitations and I remember telling her I thought it was up in the air because the United States Supreme Court had not decided the issue since an earlier decision had declared the death penalty unconstitutional as implemented.
9. Ms. Stoeckley initially told me she did not remember anything about the night of the MacDonald murders because she was very high on drugs. She could remember the day before and the morning after the murders, but she claimed she had a totally blank memory about the period of time within which the murders occurred. We talked about how unlikely it seemed that she could associate that temporary loss of memory with the date of the

Initials (JWL):



Affidavit of Jerry W. Leonard, Page 2 of 4

crimes. She told me that almost everyone had heard almost immediately about the murders, and that she was interviewed by investigators not long after the crimes.

10. At no time did Ms. Stoeckley represent to me that specific threats had been communicated to her by either the prosecution team or the defense team.
11. That was the end of my inquiry into her involvement, as far as I was concerned. I did not push her and I dropped the subject, believing she was firm in her assertion that she just could not remember.
12. Sometime on Monday afternoon, Ms. Stoeckley asked me what I would do if she actually had been “there”. I recall telling her that I would still help her, but that she had to tell me the truth. She then told me she had been scared to tell me the truth, but that the truth was “not as bad as everybody thought”. Shortly thereafter she began telling me that she was, in fact, at the MacDonald residence at the time of the murders. She said she did not actually hurt anyone, nor did she anticipate that the MacDonalds would be hurt.
13. She stated that she belonged to a cult. This cult had a core group of followers and a larger group of people that came to some of the cult’s larger meetings. She said the core group did rituals and believed in witches, and that she was part of the core group. I remember Ms. Stoeckley saying Mrs. MacDonald was pregnant, and she said something to the effect that the cult associated newborn babies with the devil.
14. According to what Ms. Stoeckley told me, the idea to go to the MacDonald residence came up one night when she was doing drugs with some of her friends. These friends were part of this cult’s core group. At least one man in the group had an issue against Dr. MacDonald because the man felt MacDonald discriminated against hard drug users in his work at a drug treatment program—something to the effect that heroin users would be recommended for court marshal or discharge and would not receive treatment, while others got more favorable treatment. Ms. Stoeckley said this man talked them into going to Dr. MacDonald’s house to confront MacDonald about this unfair treatment and, therefore, they went to his house on the night of the murders. Ms. Stoeckley said the end result was that things got out of hand and the people she was with committed the murders.

Initials (JWL):

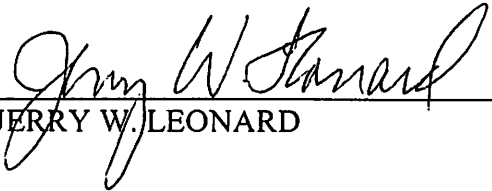


Affidavit of Jerry W. Leonard, Page 3 of 4

- 15. Ms. Stoeckley also said that, during the violence, the MacDonalds' home phone rang and she answered the phone. She hung up quickly after one of her friends yelled at her to hang up the phone. She also said she noticed a toy rocking horse at the MacDonald home, and that the horse was broken. Ms. Stoeckley said one of the springs was not attached to the horse and she took that fact as a sign that Dr. MacDonald did not care for his children.
- 16. Our plan thereafter was for Ms. Stoeckley to refuse to answer any questions if re-called as a witness. We had the script written down for her to read from the stand in order to properly invoke her Fifth Amendment rights.
- 17. Ms. Stoeckley was not re-called as a witness. I did not hear from her again after the trial.

**FURTHER AFFIANT SAYETH NOT.**

SWORN TO this 20th day of September, 2012, by:

  
 \_\_\_\_\_  
 JERRY W. LEONARD

STATE of NORTH CAROLINA

COUNTY of NEW HANOVER


SWORN TO and SUBSCRIBED before me by Jerry W. Leonard, affiant, this the 20th day of September, 2012.

  
 \_\_\_\_\_  
 NOTARY PUBLIC

Seal:



My Commission Expires: 3-25-2016

Initials (JWL): 

## UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NORTH CAROLINA

POST OFFICE DRAWER 27585

RALEIGH, NORTH CAROLINA 27611

FRANKLIN T. DUPREE, JR.  
JUDGE

September 26, 1979

TELEPHONE: (919) 755-4200

Ms. Wendy Phyllis Rouder  
333 Presidio Avenue No. 4  
San Francisco, California 94115

RE: Clerkship

Dear Ms. Rouder:

As I told you during the course of the MacDonald trial, I was very much impressed with the quality of the work which you did in that case, and for this reason when I found that you were interested in a law clerkship I encouraged you to make an application with us. At that time I confidently expected that the jury would return a not guilty verdict in the case, but since the case will now be appealed and you will doubtless keep working on it, it will not be possible for me to appoint you to a clerkship position.

Even so, I want you to know that I was most impressed with your qualifications and that I wish you the best of success in your further endeavors.

With kindest regards,

Sincerely,

  
F. T. DUPREE, JR.

FTDjr/na

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

---

NO. 15-7136

---

UNITED STATES OF AMERICA,

*Plaintiff-Appellee,*

v.

JEFFREY R. MACDONALD,

*Defendant-Appellant.*

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**JOINT APPENDIX  
VOLUME VII of VII**

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
AT WILMINGTON

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Counsel for Appellant

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 3:75-CR-26-F

No. 5:06-CV-24-F

**FILED**  
**IN OPEN COURT**  
**SEP 17 2012**  
JULIE A. RICHARDS, CLERK  
US DISTRICT COURT, EDNC  
DEP CLK  
BY SE

UNITED STATES OF AMERICA )

)

v. )

STIPULATIONS

)

JEFFREY R. MacDONALD, )

Movant )

It is stipulated and agreed, as specifically delineated herein, between Jeffrey R. MacDonald, Movant, and the United States of America, Respondent, in the above captioned case that:

1. On May 17, 1999, pursuant to the orders of the District Court entered on March 26 and April 14, 1999 [DE-96 and DE-99, respectively] a Special Agent of the Federal Bureau of Investigation (FBI) hand delivered to Suzanne M. Barritt, Senior DNA Analyst at the Armed Forces DNA Identification Laboratory (AFDIL), Armed Forces Institute of Pathology (AFIP) facility located at 1413 Research Boulevard, Rockville, MD, 20850-3125, various items of evidence from FBI Laboratory Case No. 990111018 (the above-captioned case) for DNA testing pursuant to the aforementioned orders.

2. On May 17, 1999, AFDIL Case No. 99C-0438 was assigned to the items submitted for DNA testing received from the FBI.

3. Between May 17 and June 1, 1999, AFDIL DNA Analysts, including Suzanne M. Barritt and Daniel E. Katz ("DEK") described the articles received from the FBI on a DNA Form 219 (a continuation sheet for DA Form 4137 - "Evidence/Property Document") consisting of pages 2-33, which is hereby incorporated by reference as Exhibit 1 of this stipulation.

4. In the process of inventorying and describing the articles received from the FBI, AFDIL item numbers 01A through 188A were assigned to articles as described in Exhibit 1, and the corresponding items and/or their containers were physically marked for identification with those AFDIL item numbers. Included within this category was AFDIL Item 05A, the head hair reference sample for Helena Stoeckley. Subsequently, the AFDIL "item numbers" from Exhibit 1 became the AFDIL "Specimen Nos."

reflected in Appendix 1 at 6-10, to the March 10, 2006, AFDIL Consultation Report entitled "MacDonald, Jeffrey," as more fully described in Exhibit 1. See DE-123-2 at 10-14.

5. Pursuant to the order of the District Court of March 26, 1999 [DE-96], as amended by its order of May 18, 1999 [DE-103], on June 3-4, 1999, the contents of 17 vials were inventoried by Senior DNA Analyst Suzanne M. Barritt at the AFIP's Rockville, MD, facility in the presence of defense DNA expert Dr. Terry Melton, Ph.D., Mitotyping Technologies, LLC. The results of that inventory are reflected in the attachment (Exhibit 3) to Suzanne Barritt's letter of July 28, 1999 (Exhibit 2). Pursuant to the order of the District Court, detailed still photographs of the entire inventory process, accompanied by written explanations, were generated and subsequently filed with the Court as Photographic Submissions, Volumes Seven and Eight, Photographs 282-373, filed July 16, 1999. DE-105. See also DE-147, Ex.4, CD 3 of 3.

6. On August 30, 1999, a Notice of Filing of Jeffrey MacDonald's Waiver Concerning the Armed Forces Institute of Pathology's (AFIP's) Utilization of Master Sergeant Graham To Conduct Preliminary Microscopic Examinations of Hair and Other Biological Evidence Prior to DNA Testing was filed. DE-108.

7. Between November 24-26, 1999, U.S. Air Force Master Sergeant Grant D. Graham Sr. ("M.Sgt. Graham"), Chief, Forensic Trace Materials Analysis, Office of the Armed Forces Medical Examiner (OAFME), 1413 Research Blvd., Bldg. 102, Rockville, MD 20850, received three sets of slides contained in a heat-sealed, ziplock-type bag from Senior Analyst Suzanne Barritt, AFDIL. DE-123-4 at 7. The bag was marked with the AFDIL Case No. 99C-0438 and slide specimen numbers: 45A, 46A, 48A, 51A, 52A, 55A, 56A, 58A, 62A, 63A, 75A, 76A, 91A, 93A, 94A, 98A, 104A, 112A, 113A, and 115A. Id.

8. Commencing on November 24, 1999, and continuing until August 18, 2000, M.Sgt. Graham exposed 16 rolls of Fujichrome slide film of AFDIL Specimens, including macro-photographs of 45A, 46A, 48A, 51A, 52A, 55A, 56A, 58A, 62A, 63A, 75A, 76A, 91A, 93A, 94A, 98A, 104A, 112A, 113A, and 115A, in and out of their slide mailers/containers, as well as photomicrographs of the specimens mounted on the glass microscope slides. In some instances, M.Sgt. Graham took multiple photographic slides of the same image using different photographic exposures (i.e. same exact picture taken at different "f-stops or exposures), all as accurately reflected in M.Sgt. Graham's "Photographic Log". See

DE-216-1 at 1-16. Upon receiving the developed 2" x 2" photographic slides, M.Sgt. Graham accurately transferred the information identifying the macro photographs and photomicrographs of the specimen from his Photographic Log to the paper border of each photographic slide.

9.(a) In 2007, Kimberly B. Murga ("KBM"), Assistant Technical Leader, Nuclear DNA Section, AFDIL, caused the images from the retained 2"x 2" slides from the 16 rolls of film exposed by M.Sgt. Graham to be scanned to digital images contained on CD 2 of 3. DE-147-2 at 1. In this process, AFIP did not scan the duplicate slides of the same images of the same specimen taken at different exposures by M.Sgt. Graham, and, further, did not indicate the number of the duplicate slide which had not been scanned, but rather numbered the scanned images of the slides consecutively, as reflected on the screen-captured index provided by AFDIL. See DE-147, Ex. 3, and DE-147-2, at 1.

9.(b) In addition to containing the digital images of the slides originally exposed by M.Sgt. Graham, which had been scanned, CD 2 of 3 contains "Thumbnail" or Icon images which reflect the AFDIL case number (99C-0438), the specimen number (e.g. 91A) and the film roll and photographic slide number of the scanned images (e.g., Roll 9 slide 26.jpg). The parties stipulate that the identifying information as to AFDIL case number, specimen number, film roll and slide number was accurately recorded in his Photographic Log by M.Sgt. Graham, and that he accurately transferred the information to the borders of the 2" x 2" slides.

9.(c) The parties further stipulate that the aforementioned information was accurately transferred to the digital icons contained on CD 2 of 3, except in those instances where the duplicate images were not scanned, and consequently, the photographic slide number does not correspond on the icon, or the screen captured index, to the slide number in M.Sgt. Graham's photographic log. DE-147, Exhibit 3. In those instances, the case number, Specimen number, and film roll number have been included, but the slide number has not. (See Draft Pre-Trial Order of 8/30/12, Exhibits 3402, 3415, and 3416.) The parties further stipulate that either party may utilize or publish digital images or photographs to which has been added the same identifying information as contained in the Photographic Log of M.Sgt. Graham or the digital icons contained in CD 2 of 3. DE-147, Exhibit 3, except as provided in subparagraph 9(b), supra.

10. Beginning on November 26, 1999, and continuing through August 21, 2000, M.Sgt. Graham accurately entered his observations relating to his microscopic examination of the Specimens in AFDIL Case No. 99C-0438 in his "AFIP/OAFME Trace Materials Analysis Laboratory Notes." See DE-123-4 at 7-14. The parties stipulate that either party may cite to M.Sgt. Graham's Laboratory Notes, provided that any such citation or assertion in regard to a particular specimen or specimens involves a verbatim quotation without any omission or substitutions of words from the notes.

11. On November 30, 1999, M.Sgt. Graham submitted a report reflecting his findings with respect to Specimens: 46A, 52A, 113A, 48A, 51A (Hair #1, Hair #2, and Hair #3), 63A, 75A, 58A (Hair #1 and Hair #2), 112A (Hair #1, Hair #2, Hair #3, and Hair #4), 98A, 104A (Hair #1 and Hair #2), 93A, and 91A. DE-216-3 at 1-5. On December 20, 1999, M.Sgt. Graham submitted a report reflecting his findings with respect to Specimens 99A and 100A, which contained no human hairs. DE-216-3 at 6-8. The parties stipulate that either party may cite to M.Sgt. Graham's laboratory reports, provided that any such citation or assertion in regard to a particular specimen or specimens involves a verbatim quotation without any omission or substitutions of words from the Report.

12. By letter of April 2, 2001, AFDIL Supervisory DNA Analyst Jacqueline S. Raskin ("JSR") informed counsel for the parties that on March 30, 2001, after removing the cover slip on slide 112A, she found 9 hairs of varying lengths. This letter is hereby incorporated by reference as Exhibit 4 of this stipulation. Further, according to the previous analysis by M.Sgt. Graham, slide 112A contained only 4 hairs, of which Hairs #1, #2 and #3 did not appear to have roots or tissue. Hair #4 was reported to have had a root with tissue on it. Id. Ms. Raskin sought guidance as to how to identify, among the 9 hairs, the hair (#4) which was previously reported to have had a root, and whether all 9 hairs should be processed. Id.

13. The existence of 9 hairs, or pieces of hair, from AFDIL Specimen 112A precipitated extensive correspondence between counsel. Ultimately, it was agreed that defense expert Dr. Peter DeForest, Ph.D. ("PD"), would examine the 9 hairs at AFDIL on August 6, 2001, and would provide copies of his notes and any report to the Government. Additionally, it was agreed that if further examination of the hairs by the FBI laboratory was deemed necessary, the Government would provide the defense

with copies of the examiner's report and bench notes. Dr. DeForest did examine the 9 hairs at AFDIL on August 6, 2001, and, in the process, mounted the 9 hairs on separate glass microscopic slides each marked for identification "112A #1-#9 JR 06 Aug 01 PD". Dr. De Forest's notes are attached as Exhibit 5 to this stipulation.

14. Subsequently, the 9 hairs were referred to the FBI laboratory in an effort to determine if any of the 9 hairs had ever been joined to the 4 hairs on the slide previously observed by Supervisory Special Agent Robert Fram (infra, ¶ 15) and M.Sgt. Graham. The November 1, 2001, Report of the FBI laboratory reflecting Special Agent Fram's examination of microscope slides marked, Q96.1 through 96.9, is attached as Exhibit 6, and his corresponding bench notes as Exhibit 7.

15. It is agreed that the Caucasian head hair observed by Special Agent Fram on a glass microscope slide labeled "Q-96 19 ½" during his 1999 examination (attached as Exhibit 8 to this stipulation) is the same hair observed by M.Sgt. Graham, which Graham designated as Hair #4 on Specimen 112A. It is further agreed that the hair mounted by Dr. Peter De Forest on a glass microscope slide marked "112A #5 JR PD" on August 6, 2001, is the root or proximal end of Hair #4 which has been cut or broken distally from the root in the process of demounting the hair from the slide. It is further agreed that the root end of the hair mounted on slide "112A #5 JR 06 Aug 01 PD" is the same hair as subsequently microscopically examined by Special Agent Fram in October 2001 and designated Q96.5. It is further agreed that AFDIL DNA test results for Specimen 112A #5 JR PD are equally applicable to FBI Q96.5.

16. In addition to the unique situation involving Specimen 112A #1 JR PD - 112A #9 JR PD described above, AFDIL subdivided and labeled specimens in which multiple hairs were mounted on a single glass microscopic slide, such as: 51A(1), 51A(2), 51A(3), 58A(1), 58A(2), 104A(1), and 104A(2).

17. In addition to the photographic slides taken by M.Sgt. Graham, each of the DNA analysts photo-documented their processing of the specimens. This process involved photographing the specimen to be examined, typically a microscope slide, with a scale or ruler in the picture which had been labeled with the AFDIL case number (99C-0438), the specimen number, the analyst's initials, and the date, followed by photomicrographs of the hair as it was processed. As happened with the 16 rolls of slide film exposed by M.Sgt. Graham described above, in 2007, Kimberly

B. Murga caused the images from the 2" x 2" slides from the rolls of film exposed by the DNA Analysts to be scanned to digital images contained on CD 1 of 3, and 3 of 3. DE-147-2 at 1. In addition to containing the digital images of the slides originally exposed by the DNA analysts, including photomicrographs, CDs 1 and 3 contain "Thumbnail" or Icon images which reflect the AFDIL case number (99C-0438), the Specimen number (e.g. 112A #5) and the photographic slide number (e.g. 99C-0438-112A #5 JR root end (difexp2).jpg). The parties stipulate that the identifying information as to AFDIL case number, specimen number, and film exposure or slide number was accurately transferred to the digital icons contained on CDs 1 and 3. DE-147, Exhibits 1, 4. The parties further stipulate that either party may utilize or publish digital images or photographs to which has been added the same identifying information as contained in the digital icons contained in CDs 1 and 3. DE-147, Exhibits 1, 4.

18. On August 31, 2004, AFDIL received from the AFIP Repository paraffin blocks with tissue that had been collected in 1970 at the autopsies of Colette, Kimberly, and Kristen MacDonald. These reference samples were assigned Specimen Numbers 195A through 195T (Colette MacDonald), 196A through 196J (Kimberly MacDonald), and 197A through 197E (Kristen MacDonald). DE-123-2 at 16.

19. On January 5, 2005, AFDIL received from the University of Virginia Health System in Charlottesville, VA, a Paraffin block with tissue, No. 82-5026, which was designated Specimen 198A, the reference sample for Gregory Mitchell.

20. On November 17, 2005, LTC Louis Finelli, Medical Corps, U.S. Army, drew two tubes of blood from Jeffrey R. MacDonald at the Federal Correctional Institution, Cumberland, Maryland. These two purple top tubes of blood were subsequently transported to the AFDIL Rockville, MD, premises and designated as Specimens 199A and 199B.

21. AFDIL conducted DNA testing of the reference samples using mitochondrial (mtDNA) and nuclear Short Tandem Repeat (STR) systems, and obtained mtDNA and/or STR DNA profiles as indicated below:

Autosomal STRs

AFDIL Specimen No. Specimen Reference

195A/195E/195J Paraffin Blocks Colette MacDonald

196A/196G Paraffin Blocks Kimberly MacDonald

197A/197E Paraffin Blocks Kristen Macdonald

198A Paraffin Blocks Gregory Mitchell  
199A Blood Jeffrey MacDonald

#### Mitochondrial DNA Sequences

AFDIL Specimen No. Specimen Reference

195A/195B Paraffin Blocks Colette MacDonald  
196A/196E Paraffin Blocks Kimberly MacDonald  
197A/197E Paraffin Blocks Kristen Macdonald  
199A Blood Jeffrey MacDonald  
05A Hair Helena Stoeckley  
198A Paraffin Blocks Gregory Mitchell  
See DE 123-2 at 6.

22. AFDIL performed mtDNA and/or nuclear DNA (STR) testing on 29 questioned hair and vial contents specimens, identified as follows: 46A, 48A, 51A(2), 52A, 58A(1), 58A(2), 71A(1), 71A(2), 71A(3), 75A, 91A, 93A, 97A(1), 98A, 101A(1), 101A(2), 104A(1), 104A(2), 112A(1), 112A(2), 112A(3), 112A(4), 112A(5), 112A(6), 112A(7), 112A(8), 112A(9), 112B(2), and 113A.

23(a). The following samples yielded autosomal STR profiles consistent with one another: 46A, 98A, 195A/195E/195J.

23(b). Based upon autosomal STR analysis, the following specimens were not consistent any other evidentiary samples tested: 196A/196G, 197A/197E, 198A, and 199A.

23(c). Based upon autosomal STR analysis, the following specimens yielded insufficient data to render a conclusion: 05A, 52A, 195B, 196E, and 197C.

23(d). Based upon autosomal STR analysis, the following specimens yielded no reportable results: 48A, 75A, 104A(1), 104A(2), 112A(5), and 195N.

23(e). Based upon mitochondrial DNA analysis, the following specimens yielded inconclusive sequence information: 48A, 71A(2), 93A, 104A(1), 112A(1), 112A(2), 112B(2), 112A(6), and 113A.

23(f). Based upon mitochondrial DNA analysis, the following specimen yielded no mitochondrial DNA sequence information: 112A(8).

24. Of the 29 questioned specimens, 2 yielded nuclear or STR profiles consistent with one another and with the STR profile of Colette MacDonald: 46A and 98A.



25. Of the questioned hair specimens, 13 (Group A) yielded mtDNA profiles that were consistent with each other and with the reference samples of Colette, Kimberly, and Kristen MacDonald, who all have the same maternal mtDNA sequence: 46A, 52A, 71A(1), 71A(3), 97A(1), 98A, 101A(1), 101A(2), 104A(2), 112A(4), 112A(5), 112A(7), and 112A(9).

26. Of the 29 questioned specimens, 3 (Group B) yielded mtDNA sequences which were consistent with each other and with Specimen 199A, the reference blood sample of Jeffrey MacDonald: 51A(2), 58A(2), and 112A(3).

27. Based upon nuclear and mitochondrial DNA analysis, AFDIL Specimen Nos. 46A and 98A are consistent with originating from Colette MacDonald. Based upon nuclear DNA analysis, Kimberly and Kristen MacDonald are excluded as being the contributors of AFDIL Specimens 46A and 98A.

28. Based upon mitochondrial DNA analysis, the following specimens were not consistent with any other sample tested: 58A(1), 75A, 91A, 05A, and 198A.

29. The parties stipulation to the AFDIL-AFIP DNA test results set forth above in paragraphs 21 through 28, inclusive, are subject to agreement and adherence by the parties to each of the following conditions set forth below in paragraphs 30-35.

30. Without calling witnesses to testify at the evidentiary hearing, either party may rely upon any of the DNA test results for any of the tested specimens as listed in this stipulation (including reference samples), for which reportable DNA results were in fact reported by AFDIL, for purposes of inclusion or exclusion of a person as being the source of the biological material tested, and may also rely on AFDIL's determination based on its DNA testing that an individual cannot be excluded as the source of any biological material tested.

31. Neither party will contest, or in any way call into question, including by expert opinion by anyone who did not conduct the actual testing, the methodology, protocol, or accuracy of any AFDIL mtDNA or STR DNA test results, including the comparison of DNA sequences obtained.

32. Neither party will contest, or in any way attempt to dispute, any of the conclusions or assessments of any of the AFDILAFIP DNA analysts to the effect that any specimen tested yielded insufficient data to render a conclusion, yielded no reportable results, or yielded inconclusive sequence information.

33. Neither party will contest, or in any way attempt to dispute, any of the suitability or non-suitability for DNA testing assessments made by any AFIP personnel during the course of the DNA testing in this matter.

34. Neither party may rely on any statement in the AFDIL Report of March 10, 2006, filed by the Government (see Notice of Filing DE-119) pursuant to the order of the Court of March 26, 1999 (DE-96), or filed March 22, 2006, by Petitioner as part of *Appendix One to Memorandum of Evidence and Points And Authorities In Support of Petitioner's Motion To Add An Additional Predicate...* (see DE-123-2, pp 4-37) for any assertion with respect to the identity or provenance of any item examined, or tests performed or not performed by the Army CID or FBI laboratories prior to delivery of said item(s) to AFDIL on May 17, 1999, except as reflected in Exhibit 1 to this Stipulation or Appendix 1, pages 6-10 of the AFDIL Report of March 10, 2006. See DE-123-2 at 10-14.

35. The hair designated as AFDIL Specimen 58A(1) and the hair designated as AFDIL Specimen 58A(2), both mounted on a glass microscope slide marked by the FBI Laboratory as Q87, are the same hairs originally collected from the green bedspread on Kristen MacDonald's bed on February 20, 1970, by USACIL Chemist Walter F. Rowe ("WFR"), who placed them in a pill vial marked "Hair & Fibers from bedspread, WFR 20 Feb 70," all as witnessed by CID Agent William F. Ivory. The pill vial was later designated "E-52NB" at USACIL.

36. The hair designated as AFDIL Specimen 75A, along with other debris, was originally collected on March 16, 1970, in a pill vial (#14) by CID Agent William F. Ivory ("WFI"), from the trunk and legs area of the body outline of Colette MacDonald, on the rug of the master bedroom at 544 Castle Drive, Fort Bragg, NC, and placed in a plastic bag with a piece of masking tape marked "Fibers and debris from area of trunk and legs under body Master bedroom - WFI -RBS- 16 Mar 70." Upon receipt at USACIL, Chemist Dillard O. Browning marked the masking tape "E-303 PC-FP-82-70 DOB." Upon receipt at the FBI Laboratory, USACIL Exhibit E-303 was designated Q79, and "one human pubic or

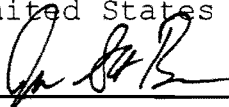
body hair" (as previously described by USACIL; see DE-123 at 9 and DE-123-4 at 21) from the vial was mounted on a glass microscope slide marked for identification as "H L2082 Q79 PMS." Following receipt at AFDIL on May 19, 1999, the glass microscope slide marked "H L2082 Q79 PMS" was designated AFDIL Specimen 75A, and was so marked for identification.

37. The hair removed from the unnumbered pill vial on July 27, 1970, by USACIL Chemist Janice Glisson, a vial which she marked "#7 JSG" and subsequently mounted on a glass microscope slide, which she numbered to correspond to the vial as "#7 fibers Hair," is the same hair on the same slide the FBI marked as Q137, and AFDIL subsequently marked and tested as AFDIL Specimen 91A.

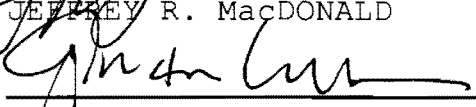
38. A breach of any of the conditions set forth in paragraphs 30-34 by either party renders the entire stipulation null and void.

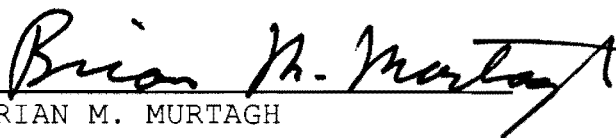
This the 17<sup>th</sup> day of September, 2012.

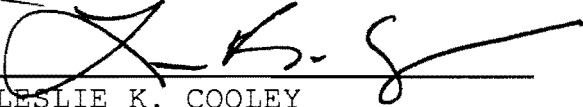
THOMAS G. WALKER  
United States Attorney

  
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N.C. Bar No. 19333

**EXHIBIT INDEX**

Exhibit #1 AFDIL Case No. 99C-0438 Continuation of DA Form 4137, pages 2-**33**

Exhibit #2 Suzanne M. Barritt, letter dated July 28, 1999

Exhibit #3 Attachment to Barritt letter, list of vials for AFDIL Case No. 99C-0438

Exhibit #4 Jacqueline S. Raskin letter, dated April 2, 2001

Exhibit #5 Handwritten notes of Dr. Peter DeForest regarding 112A #1-9, 06-Aug-2001

Exhibit #6 Robert Fram Report of Examination, dated November 1, 2001, re: Q96

Exhibit #7 Handwritten notes of Robert Fram re: examination of Q96

Exhibit #8 Robert Fram Report of Examination, dated May 19, 1999

**INDEX OF EXHIBITS**

- Exhibit #1      Hearing Stipulation - U.S. v. MacDonald, September 17, 2012
- Exhibit #2      AFDIL Case No. 99C-0438 Continuation of DA Form 4137, pages 2-31
- Exhibit #3      Suzanne M. Barritt, letter dated July 28, 1999
- Exhibit #4      Attachment to Barritt letter, list of vials for AFDIL Case No. 99C-0438
- Exhibit #5      Jacqueline S. Raskin letter, dated April 2, 2001
- Exhibit #6      Handwritten notes of Dr. Peter DeForest regarding 112A #1-9, 06-Aug-2001
- Exhibit #7      Robert Fram Report of Examination, dated November 1, 2001, re: Q96
- Exhibit #8      Handwritten notes of Robert Fram re: examination of Q96
- Exhibit #9      Robert Fram Report of Examination, dated May 19, 1999

## **EXHIBIT 2**



EXHIBIT #2

EVIDENCE/PROPERTY CUSTODY DOCUMENT		MPV010-SEQUENCE NUMBER		
For use of this form see Ar 190-45 and AR 195-5; the proponent agency is US Army Criminal Investigation Command		AFDIL Case 99C-0438		
RECEIVING ACTIVITY AFDIL		LOCATION 1413 Research Blvd, Bldg 101 FDU, 2010 Rockville, MD 20850		
NAME, GRADE AND TITLE OF PERSON FROM WHOM RECEIVED <input type="checkbox"/> OWNER SA PETER C. MURPHY <input checked="" type="checkbox"/> OTHER FBI		ADDRESS (Include Zip Code) 601 4th ST., N.W. WASH., D.C. 20535		
LOCATION FROM WHERE OBTAINED FBI HQ LABORATORY, ROBERT FRAMM		REASON OBTAINED DNA Analysis	TIME/DATE OBTAINED 5/17/99 1458	
ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES <small>(Include model, serial number, condition and unusual marks or scratches)</small>		
1	6	Received 6 sealed boxes. All in good condition (seals intact.) described as follows: - Box 1 of 6 labelled, "... Fed Ex Tracking # 4455 9520 3277..."		
2	6	- Box 2 of 6 labelled, "... Fed Ex Tracking # 4308 8163461..."		
3	6	- Box 3 of 6 labelled, "... 70A-CE-3668 1B19..."		
4	6	- Box 4 of 6 labelled, "... 70A-CE-3668-1B4..."		
5	6	- Box 5 of 6 labelled, "... 70A-CE-3668... 1B19..."		
6	6	- Box 6 of 6 labelled, "... 70A-CE-3668... 1B4..."		
LAST ITEM SA 5.17.99 Complete description continued on p. 2				
CHAIN OF CUSTODY				
ITEM NO.	DATE	RELEASED BY	RECEIVED BY	PURPOSE OF CHANGE OF CUSTODY
1-6	5/17/99	SIGNATURE SA Peter C. Murphy NAME, GRADE OR TITLE SA PETER C. MURPHY	SIGNATURE Sgt M. Barta NAME, GRADE OR TITLE Sgt M. Barta	Receipt - Storage in cage, room temp. @ 11.2599
		SIGNATURE Sgt M. Barta NAME, GRADE OR TITLE Sgt M. Barta	SIGNATURE Suzanne M. Barritt NAME, GRADE OR TITLE Suzanne M. Barritt, Analyst	Transfer to Graham for analysis.
	11/24/99	SIGNATURE Suzanne M. Barritt NAME, GRADE OR TITLE Suzanne M. Barritt, Analyst	SIGNATURE Grant D. Graham Sr. NAME, GRADE OR TITLE Chief, Trace Materials Lab	Transfer to AFDIL for Analysis (storage in cage, room temp - DEC 11/20/99)
		SIGNATURE Daniel E. Kote NAME, GRADE OR TITLE Chief, Trace Materials Lab	SIGNATURE Daniel E. Kote, Analyst III NAME, GRADE OR TITLE DANA	Receipt and storage cage, room temp.
		SIGNATURE Daniel E. Kote NAME, GRADE OR TITLE DANA	SIGNATURE Suzanne Barritt, Analyst NAME, GRADE OR TITLE Suzanne Barritt, Analyst	Transfer to Graham for analysis
	12/15/99	SIGNATURE Sgt M. Barta NAME, GRADE OR TITLE Sgt M. Barta	SIGNATURE Suzanne M. Barritt NAME, GRADE OR TITLE Suzanne M. Barritt, Analyst	Transfer to Graham for analysis

45A, 46A, 47A, 51A, 52A, 55A, 56A, 57A, 58A, 59A, 60A, 61A, 62A, 63A, 64A, 65A, 66A, 67A, 68A, 69A, 70A, 71A, 72A, 73A, 74A, 75A, 76A, 77A, 78A, 79A, 80A, 81A, 82A, 83A, 84A, 85A, 86A, 87A, 88A, 89A, 90A, 91A, 92A, 93A, 94A, 95A, 96A, 97A, 98A, 99A, 100A

DA FORM 4137 1 JUL 78

Replaces DA FORM 4137, 1 Aug 74 and DA FORM 4137-R Privacy Act Statement 28 Sep 75 Which are Obsolete.

LOCATION FOLDER 1 OF 46

DOCUMENT NUMBER

PAGE 7 B OF 134





CHAIN OF CUSTODY (Continued)

ITEM NO.	DATE	RELEASED BY	RECEIVED BY	PURPOSE OF CHANGE OF CUSTODY
70A, 91A, 112A	4/1/00	SIGNATURE: <i>S. M. Barrett</i> NAME, GRADE OR TITLE: Suzanne M. Barrett, Analyst	SIGNATURE: <i>Grant D. Graham Sr.</i> NAME, GRADE OR TITLE: Grant D. Graham Sr., Chief, Trace Lab	Transfer of evidence
94A, 95A, 96A, 97A, 98A, 115A, 116A, 117A, 118A, 119A, 120A, 121A, 122A, 123A, 124A, 125A, 126A, 127A, 128A, 129A, 130A, 131A, 132A, 133A, 134A, 135A, 136A, 137A, 138A, 139A, 140A, 141A, 142A, 143A, 144A, 145A, 146A, 147A, 148A, 149A, 150A, 151A, 152A, 153A, 154A, 155A, 156A, 157A, 158A, 159A, 160A, 161A, 162A, 163A, 164A, 165A, 166A, 167A, 168A, 169A, 170A, 171A, 172A, 173A, 174A, 175A, 176A, 177A, 178A, 179A, 180A, 181A, 182A, 183A, 184A, 185A, 186A, 187A, 188A, 189A, 190A, 191A, 192A, 193A, 194A, 195A, 196A, 197A, 198A, 199A, 200A	1/12/00	SIGNATURE: <i>S. M. Barrett</i> NAME, GRADE OR TITLE: Suzanne M. Barrett, Analyst	SIGNATURE: <i>Grant D. Graham Sr.</i> NAME, GRADE OR TITLE: Grant D. Graham Sr., Chief, Trace Lab	Transfer of evidence
91A, 70A, 112A, 94A, 95A, 96A, 97A, 98A, 115A, 116A, 117A, 118A, 119A, 120A, 121A, 122A, 123A, 124A, 125A, 126A, 127A, 128A, 129A, 130A, 131A, 132A, 133A, 134A, 135A, 136A, 137A, 138A, 139A, 140A, 141A, 142A, 143A, 144A, 145A, 146A, 147A, 148A, 149A, 150A, 151A, 152A, 153A, 154A, 155A, 156A, 157A, 158A, 159A, 160A, 161A, 162A, 163A, 164A, 165A, 166A, 167A, 168A, 169A, 170A, 171A, 172A, 173A, 174A, 175A, 176A, 177A, 178A, 179A, 180A, 181A, 182A, 183A, 184A, 185A, 186A, 187A, 188A, 189A, 190A, 191A, 192A, 193A, 194A, 195A, 196A, 197A, 198A, 199A, 200A	June 2000	SIGNATURE: <i>S. M. Barrett</i> NAME, GRADE OR TITLE: Suzanne M. Barrett, Tech. Lead	SIGNATURE: <i>S. M. Barrett</i> NAME, GRADE OR TITLE: Suzanne M. Barrett, Tech. Lead	Transfer of evidence stored in Box 6 of 6
51A, 63A, 64A, 65A, 73A, 131A, 132A, 31A	10 July 2000	SIGNATURE: <i>S. M. Barrett</i> NAME, GRADE OR TITLE: Suzanne M. Barrett, Tech. Lead	SIGNATURE: <i>Grant D. Graham Sr.</i> NAME, GRADE OR TITLE: Grant D. Graham Sr., Chief, Trace Lab	Transfer of evidence
51A, 63A, 64A, 65A, 131A, 132A, 31A	30 Aug 2000	SIGNATURE: <i>S. M. Barrett</i> NAME, GRADE OR TITLE: Suzanne M. Barrett, Tech. Lead	SIGNATURE: <i>S. M. Barrett</i> NAME, GRADE OR TITLE: Suzanne M. Barrett, Tech. Lead	Transfer of evidence stored in Box 5 of 6
Box 1-6 (All)	13 Dec 2000	SIGNATURE: <i>S. M. Barrett</i> NAME, GRADE OR TITLE: Suzanne M. Barrett, Tech. Lead	SIGNATURE: <i>Yasser Daoud</i> NAME, GRADE OR TITLE: Yasser Daoud, DNA Analyst	Case Transfer
Box 1-6 (All)	Jan. 23, 2001	SIGNATURE: <i>Yasser Daoud</i> NAME, GRADE OR TITLE: Yasser Daoud, Supv. DNA Analyst	SIGNATURE: <i>Jacqueline S. Raskin</i> NAME, GRADE OR TITLE: Jacqueline S. Raskin, Analyst	CASE TRANSFER
112A (all slides)	9 October 2001	SIGNATURE: <i>Jacqueline S. Raskin</i> NAME, GRADE OR TITLE: Jacqueline S. Raskin, Supv. DNA Analyst	SIGNATURE: <i>FedEx</i> NAME, GRADE OR TITLE: Tracking # 829347590076	Sample Transfer to FBI

FINAL DISPOSAL ACTION

RELEASE TO OWNER OR OTHER (Name/Unit)

DESTROY

OTHER (Specify)

FINAL DISPOSAL AUTHORITY

ITEM(S) ON THIS DOCUMENT, PERTAINING TO THE INVESTIGATION INVOLVING (Grade)

(Name)

(Organization)

(IS) (ARE) NO LONGER

REQUIRED AS EVIDENCE AND MAY BE DISPOSED OF AS INDICATED ABOVE. (If article(s) must be retained, do not sign, but explain in separate correspondence.)

(Typed/Printed Name, Grade, Title)

(Signature)

(Date)

WITNESS TO DESTRUCTION OF EVIDENCE

THE ARTICLE(S) LISTED AT ITEM NUMBER(S) (WAS) (WERE) DESTROYED BY THE EVIDENCE CUSTODIAN, IN MY PRESENCE, ON THE DATE INDICATED ABOVE.

(Typed/Printed Name, Organization)

Page 36 of 134  
Folder 10146



### Continuation of Casework Chain of Custody for DA Form 4137

AFDIL Case No. 99C-0438

Item No.	Date	Released By	Received By	Purpose of Change of Custody
Box 1-6 See Case Note dated 4/17/03 - waf 4/17/03	30 Jan 2002	Signature: <i>Jacqueline Rastin</i> Name, Grade, or Title: <i>Supr. DNA Analyst</i>	Signature: <i>Michael A Fasano</i> Name, Grade, or Title: <i>DNA Analyst III</i>	Case transfer
04A, 07A, 08A, 09A, 10A, 11A, 12A, 13A, 14A, 15A, 16A, 17A, 18A, 19A, 20A, 21A, 22A, 23A, 24A, 25A	4/10/03	Signature: _____ Name, Grade, or Title: _____	Signature: _____ Name, Grade, or Title: _____	Bag 1 of 4 repackaged from box 3 of 6 to freezer 1446 -20°C top shelf
32A, 33A, 34A, 35A	4/10/03	Signature: _____ Name, Grade, or Title: _____	Signature: _____ Name, Grade, or Title: _____	Bag 2 of 4 repackaged from box 4 of 6 to freezer 1446 -20°C top shelf
04A-Original Item, 05A-Original Item, 06A, 07A, 08A, 09A, 10A, 11A, 12A, 13A, 14A, 15A, 16A, 17A, 18A, 19A, 20A, 21A, 22A, 23A, 24A, 25A	4/14/03	Signature: _____ Name, Grade, or Title: _____	Signature: _____ Name, Grade, or Title: _____	Bag 3 of 4 repackaged from box 5 of 6 to freezer 1446 -20°C top shelf
129K	4/14/03	Signature: _____ Name, Grade, or Title: _____	Signature: _____ Name, Grade, or Title: _____	Bag 4 of 4 repackaged from box 6 of 6 to freezer 1446 -20°C top shelf
58A(1), 91A 58A(2) - Eff tube only	10/23/03	Signature: <i>Michael A Fasano</i> Name, Grade, or Title: <i>Supervisor</i>	Signature: <i>Robert M. Fisher</i> Name, Grade, or Title: <i>DNA Analyst</i>	Transfer + Storage 12019 top shelf as bag 5 of 5
63A Slide in plastic holder	12/17/03	Signature: <i>Michael A Fasano</i> Name, Grade, or Title: <i>Supervisor, DNA Analyst</i>	Signature: _____ Name, Grade, or Title: _____	Transfer to Robert R. Deforest
112A(1), 112A(8), 112A(9)	4/27/04	Signature: <i>Michael A Fasano</i> Name, Grade, or Title: <i>Supervisor, DNA Analyst</i>	Signature: <i>Robert M. Fisher</i> Name, Grade, or Title: <i>DNA Analyst</i>	Transfer + Storage 12019 top shelf
46A + 98A	8/10/04	Signature: <i>Michael A Fasano</i> Name, Grade, or Title: <i>Supervisor, DNA Analyst</i>	Signature: <i>Robert M. Fisher</i> Name, Grade, or Title: <i>DNA Analyst</i>	Evidence Transfer
64A, 65A, 71A, 77A, 101A	1/25/04	Signature: <i>Michael A Fasano</i> Name, Grade, or Title: <i>Supervisor, DNA Analyst</i>	Signature: <i>Robert M. Fisher</i> Name, Grade, or Title: _____	Evidence Transfer Refer to AFDIL Chain of Custody for initiated checklist for continuation
62A, 64A, 65A, 71A, 77A, 95A, 12A, 91A, 112A(8), 112A(9)	10/25/04	Signature: <i>Robert M. Fisher</i> Name, Grade, or Title: _____	Signature: <i>Michael A Fasano</i> Name, Grade, or Title: <i>Supervisor, DNA Analyst</i>	Evidence Transfer
91A	4/3/05	Signature: <i>Michael A Fasano</i> Name, Grade, or Title: <i>Supervisor, DNA Analyst</i>	Signature: _____ Name, Grade, or Title: _____	Transfer to Robert Fraum - FBI Labord off
A-703A, 06A → 45A 7A → 75A, 59A → 72A, 2A → 70A, 72A → 70A, 2A, 94A → 71A, 95A → 70A, 10A, 103A, 105A → 711A, 112A → 713A, 132A → 155A, 157A → 188A		Signature: <i>Michael A Fasano</i> Name, Grade, or Title: <i>Supervisor, DNA Analyst</i>	Signature: <i>Kim Murga</i> Name, Grade, or Title: <i>ATL</i>	Transfer to Kim Murga

MAF 4/14/03

to 62A, 64A, 65A, 71A, 77A, 95A, 12A, 91A, 112A(8), 112A(9)  
waf  
4/17/03

Comments: Page 32 of 3233 waf 11/30/02

Packaging only: 40A, 93A, 97A, 107A, 58A, 104A  
waf 7/20/06

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PAGE 35B OF 134



### Continuation of Casework Chain of Custody for DA Form 4137

AFDIL Case No. 1999 00438

Item No.	Date	Released By	Received By	Purpose of Change of Custody
4A-703A, 06A-745A 7A-757A, 59A-707A, 0A-770A, 72A-790A, 2A, 94A-96A, 98A-100A, 12A, 103A, 105A-111A, 13A-130A, 132A-155A, 15A-188A, 40A, 58A, 93A, 97A, 101A, 104A packaging only	7/21/00	Signature <i>[Signature]</i>	Signature <i>[Signature]</i>	Return to Submitta
		Name, Grade, or Title <i>[Name]</i>	Name, Grade, or Title <i>SSA, FBI</i>	
		Signature	Signature	
		Name, Grade, or Title	Name, Grade, or Title	
		Signature	Signature	
		Name, Grade, or Title	Name, Grade, or Title	
		Signature	Signature	
		Name, Grade, or Title	Name, Grade, or Title	
		Signature	Signature	
		Name, Grade, or Title	Name, Grade, or Title	
		Signature	Signature	
		Name, Grade, or Title	Name, Grade, or Title	
		Signature	Signature	
		Name, Grade, or Title	Name, Grade, or Title	
		Signature	Signature	
		Name, Grade, or Title	Name, Grade, or Title	
		Signature	Signature	
		Name, Grade, or Title	Name, Grade, or Title	
		Signature	Signature	
		Name, Grade, or Title	Name, Grade, or Title	
		Signature	Signature	
		Name, Grade, or Title	Name, Grade, or Title	

Comments:

Page 33 of 33

Page (5) 18 e/134  
Folder 10146



CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C-0438

Page 2 of 3132

33

Submitting Agency Case No. 99D111018

MAF 1/20/06

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
----------	----------	-------------------------

1

Box 1 of 6 contains the following:

- 1 sealed box labelled, "990202004 2J... Results 0128... 70A-CE-3668-1B19... containing <sup>unsealed</sup> a plastic evidence bag labelled, "70A-CE-3668-1B19 containing <sup>unsealed</sup> a plastic bag labelled, "990202004 2J containing one ziplock bag labelled, "990202004 2J containing one glass slide containm labelled, "96103084 sec... 0128 containing one slide labelled, "0128 ... E-5 fibers..." containing one or more mounted fibers.
- Zip lock bag also containing smaller ziplock bag containing plastic vial labelled "#13..." containing one piece of paper labelled, "Left Hand Mother..." and one small wood-like piece or splinter.
- Box 1 of 6 also contained filler paper & bubble wrap

1/OIA

1/OZA

Continued on p. 3 as 5.17.99

DNA Form 219

FOLDER 1 OF 46  
PAGE 48 OF 134

MAF





CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C-0438

Page 3 of 2132 <sup>33</sup>  
MAY 11 12 12/06

Submitting Agency Case No. 990111018

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
----------	----------	-------------------------

2  
03

Box 2 of 6 contains the following:  
 - One sealed box labelled, "70A-CE-3668-1B4  
 99031801820 ..." containing one  
 plastic evidence bag labelled, "70A-CE-  
 3668-1B4, 9903180182J...K6-K22..."  
 containing one plastic evidence bag  
 labelled "70A-CE-3668-1B4" containing  
 25 slide mounts containing mounted  
 hairs from Jeffrey MacDonald. (As

depicted in pictures 200-206  
File paper also included in Box 2 of 6

Box 3 of 6 contains the following:

04A

- one plastic container labelled, "293"  
 "Government Exhibit 293... Hair samples  
 from head of Kristen Mac Donald ..."  
 containing blonde hair (multiple)  
 (autopsy sample).

05A

- one plastic evidence bag (ts) containing  
 labelled, "70A-CE-3668-1B19," containing  
 one small ziplock bag w/ a tag labelled  
 "...Head hair of Helena Stockley..."  
 containing one box labelled, "P-FA-D-CFP-  
 82-70-225..." (As depicted in photos  
 278 and 279)

DNA Form 219

FOLDER 1 OF 46  
PAGE 38 OF 134

MAF



CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C-0438

Page 4 of 34 <sup>33</sup>

Submitting Agency Case No. 990111018

MAF 1/20/06  
1/20/06

Continuation of "DESCRIPTION OF ARTICLES":

<u>ITEM NO.</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF ARTICLES</u>
		Box 3 of 6 (Continued) (ts)
		- one plastic evidence bag labelled, "704-CE-3668-1B19, Q25-Q39 containing one smaller plastic bag labelled, "990412040..." containing
06A		- one ziplock bag labelled "Q25..." containing brown hairs
07A		- one ziplock bag labelled, "... Mr M <sup>s</sup> Donald. Q26..." containing multiple blonde hairs
08A		- one ziplock bag labelled, "... Q27..." containing blonde hairs
09A		- one ziplock bag labelled, "... Q28..." containing blonde hairs
10A		- one ziplock bag labelled, "... Q29..." containing fibrous material and blonde hairs
11A		- one ziplock bag labelled, "... Q31..." containing black hairs or fibres
12A		- one ziplock bag labelled, "... Q32..." containing blonde hairs
13A		- one ziplock bag labelled, "... Q33..." containing fibres and hairs

FOLDER 1 OF 46  
PAGE 32 B OF 134

DNA Form 219

MAF



CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C-0438

Page 5 of 3182

Submitting Agency Case No. 9901101P

33  
M: RM  
1/20/02 7/20/00

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
Box 3 of 6 (Continued)		
14A		- one ziplock bag labelled, "... Q30..." containing blonde hairs
15A		- one ziplock bag labelled, "... Q34..." containing a blonde hair
16A		- one ziplock bag labelled, "... Q35..." containing blonde hairs
17A		- one ziplock bag labelled, "... Q36..." containing brown hairs
18A		- one ziplock bag labelled, "... Q37..." containing hairs
19A		- one ziplock bag labelled, "... Q38..." containing hairs and fibers
20A		- one ziplock bag labelled, "... Q39..." containing brown hairs
21A 21		- one <sup>(ts)</sup> plastic evidence bag labelled, "990412040..." containing one (ts) envelope containing 3 <sup>(*)</sup> slide mailers labelled, "... K 27..." each containing <sup>mounted</sup> hairs (As depicted in photos 247-249) (Donald Kalin browns)
22		- one plastic evidence bag (unsealed) containing one (ts) envelope labelled, "... K26... Pamela Kalin Head Hair..." containing one paper envelope labelled, "... K26 Hairs..." containing hairs and <sup>mounted</sup> hairs (As depicted in photos 247-249) (Pamela Kalin head hairs)

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... containing mounted hairs (As depicted in photos 247-249)



CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C-0438

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Submitting Agency Case No. 99011018

MAY 1/30/02 1/20/06

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.      QUANTITY

DESCRIPTION OF ARTICLES

23A

24

25

26A

- Box 316 G (Continued) -
- one (ts) plastic evidence bag labelled, "70A-CE-366F-1E containing Government Exhibit Tag labelled, "395... and one plastic bag (ts) labelled, "...K25..." containing one (ts) envelope labelled, "Violet M. Kalin..." containing one comb as depicted in photo (244)
  - and 4 (ts) slide mailers labelled, "...K25..." containing mounted hairs
  - one (ts) plastic evidence bag labelled, "70A-CE-366F-1B19..." containing one (ts) envelope labelled "...K24..." containing and labelled, "ss 61799" " ... Paul Kalin..." containing 2 slide mailers labelled, "...K24..." containing mounted hairs on slides labelled, "...K24..."
  - One (ts) plastic evidence bag labelled, "70A-CE-366F-1B19..." containing one (ts) envelope labelled, "Head hairs Mrs KASSAB 28 Feb 71..." w/ a tag labelled, "... Envelope containing numerous head hairs of Mrs KASSAB..." containing one comb. No hair visible

Continued on p. 7

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CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C-043P

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~~32~~ <sup>1/30/12</sup> ~~1/20/10~~

Submitting Agency Case No. 99011101P

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.      QUANTITY      DESCRIPTION OF ARTICLES

27A      Box 3 of 6 (Continued)  
- one plastic evidence bag (ts) labelled,  
"70A-CE-3668-1B19..." containing one  
ziplock bag w/ tag labelled, "...Miss Vicki  
Kalin... 25 samples of Kalin's head hair...  
containing hairs

28-30      - one plastic evidence bag (ts) labelled,  
"70A-CE-3668-1B19" containing one (ts)  
plastic bag labelled, "...Q22-Q24..." and  
tag labelled "3 vials containing hairs; MFI:  
#E-7, #E-9, #E-15" containing 3 white topped  
vials and one tape sealed cardboard slide  
mailer. One vial labelled "Hair <sup>Q23</sup> samples obtained from  
clothing in closet in north bedroom E-9..." One  
vial labelled "Hair <sup>Q-24</sup> samples obtained from the  
dress on hanger in north bedroom closet..."  
One vial & mailer taped together and labelled  
"Q22 E-7 Hair..."  
(Pictures 268-270)

29A (Q23)  
~~28-30~~ 45.7.99  
30A (Q-24)

28A (Q22)

31      - one plastic evidence bag (ts) labelled "70A-CE-3668-1B19"  
containing 1 (ts) plastic bag w/ paper label  
labelled, "... Dorothy M. MacDonald... hair  
sample... K23..." containing one (ts) plastic  
envelope labelled, "... K23..." containing  
3 (ts) slide mailers labelled, "... K23..." containing  
marked

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CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C-0438

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MUF RM  
1/10/12 1/20/06

Submitting Agency Case No. 99011101P

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.      QUANTITY      DESCRIPTION OF ARTICLES

Box 4 of 6 contains the following:

- One tape sealed plastic bag labelled "70A-CE-3668-1B4" on <sup>one side</sup> one side + "990412090 ZJ RM7" on other side containing: one heat sealed plastic bag labelled "990412040 ZJ RM7" containing one staple sealed/heat sealed plastic bag labelled "Q18, Q19, Q20 + Q21 PMS" containing 4 white topped vials. One vial is labelled <sup>Q20</sup> "Hair samples from Blue Coat on Hook in South Bedroom" One vial is labelled <sup>Q19</sup> "Hair samples taken from dress lying on chair in south bedroom..." One vial is labelled <sup>Q18</sup> "Hair samples on pillows in closet, south bedroom..." One vial is labelled <sup>Q21</sup> "Hair samples from yellow coat (abilds) in closet south Bedroom..." (pictures 265-267)
- One tape sealed plastic bag labelled "70A-CE-3668-1B4 Q79..." containing one tape sealed blue plastic slide case labelled "Q79 00319036RQ" (pictures 262-264) containing 2 slides. One slide is labelled "E-313 C-PP-42-70 JS6" One slide is labelled "Pubic Hair JS6".

34A (Q20)  
33A (Q19)  
32A (Q18)  
35A (Q21)

36A  
37A

continued on p. 9

DNA Form 219

8 5.17.99

FOLDER 1 OF 46



CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C-0438

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MAR 13/06  
1/20/06

Submitting Agency Case No. 99011018

Continuation of "DESCRIPTION OF ARTICLES":

<u>ITEM NO.</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF ARTICLES</u>
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- 39A - One tape sealed plastic bag labelled "70A-CE-3668-18" containing 2 tape sealed cardboard slide mailers. One mailer is labelled "E321 stick + grey root..." One mailer is labelled "E321 black no root Q53..." (Pictures 259-261)
- 38A - One unsealed box labelled "70A-CE-3668-184" containing one unsealed bubble wrap bag labelled "990412040 ZT..." containing one stapled zip lock plastic bag labelled "70ACE-3668-184" containing one erlenmeyer with a test tube labelled "F-2 Known Blood from J.R note B..." and one black screw top test tube labelled "D-239 CSC..." (Pictures 255-258)

40A

41A

Box 5 of 6 contains the following:

- one <sup>(#)</sup> plastic evidence bag labelled "99011018Z" containing one plastic evidence bag <sup>(#)</sup> labelled "99011018Z Q136-Q136.1..." containing one <sup>(#)</sup> slide mailer labelled "... Q136..." containing one slide labelled "#6 fiber" and nothing appears to be mounted on the slide and one plastic bag labelled "#6..."

12A

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43A



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AFDIL Case No. 99C-0438

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Submitting Agency Case No. 99011101R

1/20/06

1/20/06

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
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(Box 5 of 6 continued)

44A

- one plastic bag ziplocked labelled, "9901110182J Resub @125..." containing
- one plastic vial labelled, "@125... Debris removed from shut on MSE floor..." containing
- one plastic vial labelled "25280 ..." containing debris and
- one slide mailer(ts) labelled, "...@125..."

45A

containing:  
one slide labelled, "...@125..." with fibers mounted and

46A

one slide labelled, "... Hair... @125..." with one mounted hair

- one plastic bag (ziplock) labelled, "9901110182J..." containing one tag labelled "@88 fibers from Collete ..." and one (ts) plastic bag labelled "...9901110182J..." containing:

47A

- one plastic vial labelled, "FIBERS/HAIRS FROM COLETTE MACDONALD'S Pickup Area ...". Vial appears to be empty.

48A

- Also contains one slide mailer (ts) labelled, "...@88..." containing one slide labelled, "...@88..." w/ one mounted hair

49A DNA Form 219

- Also contains one slide mailer(ts) labelled, "...@88..." containing one slide labelled, "...@88..." w/ mounted hair or hairs

FOLDER 1 OF 46

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SDA

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CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C-0438

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max 1/20/16 PM 7/20/06

Submitting Agency Case No. 99011101P

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
		Box 5 of 6 (continued)
51A		- One tape sealed plastic bag labelled "9901110182J... Q117-Q119, Q118.1..." containing: - One unsealed slide mailer labelled "9901110182J... Q119... E-5 L2873..." containing one slide labelled "Q119... 9901110182J... E-306-70 E-5-70 E-306-70 CFP-82-70..." containing several mounted hairs.
52A		- One tape sealed slide mailer labelled "9901110182J... Q118..." containing one slide labelled "Q118... 9901110182J..." containing a mounted hair.
53A		- One ziplocked bag labelled "9901110182J... Q117, Q118.1..." containing: - One slide mailer (tape sealed) labelled "9901110182J... Q117" containing no slide labelled "Q117... 9901110182J... E-4 hairs" containing mounted fibers.
54A		- One white topped vial labelled "#10... 9901110182J... Q118.1..." containing index card labelled "H... hand mother" but no apparent hairs.
55A		- One ziplocked bag labelled "9901110182J... Q87..." containing one tape sealed plastic bag labelled "9901110182J... L2082 JV 90103084... Q87..." containing: - One slide mailer (tape sealed) labelled "9901110182J... Q87... 90103084..." containing two slides in which one slide is labelled "JCF... 9901110182J... L2082... Q87..." and contains a mounted hair + - one slide is labelled "from vial 90103084... 9901110182J... Q87" and contains a mounted hair.
56A		

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continued on page 12

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33  
MAY 11 1979  
VPM  
7/20/80

Submitting Agency Case No. 990111018

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
		So. 5 of 6 (continued)
57A		- One slide mailer (tape sealed) labelled "990111018ZJ... Q87..." containing nothing.
58A		- One slide mailer (tape sealed) labelled "990111018ZJ... Q87... L2082..." containing <del>nothing</del> <sup>slide</sup> one slide labelled "990111018ZJ... L2082... Q87..." containing a mounted hair.
<del>59A</del> 59 DEK 5/19/79		- One unsealed round container labelled "990111018ZJ... L2082... Q87..." containing two colored fibers.
60A		- one white topped vial labelled "Q87... 990111018ZJ... P-C-FP... 20 Feb 70... LSC/WFE/WFK..." containing apparent skin and small, round, white material.
61A		- One tape sealed plastic bag labelled "990111018ZJ... Q139-Q139.1..." containing one tape sealed plastic bag labelled "990111018ZJ... Q139-Q139.1..." containing - one white topped vial labelled "89... 990111018ZJ... Q139.1..." containing index card and apparently nothing else.
62A		- one tape sealed slide mailer labelled "990111018ZJ... Q139..." containing one slide labelled "990111018ZJ... Q139..." containing mounted fibers.

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DEK  
5/19/79

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AFDIL Case No. 99C-0438

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11/20/16

Submitting Agency Case No. 990111018

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
		Box 5 of 6 (Continued)
63A		- one (ts) plastic bag labelled, "9901110182J @138-Q138.1..." containing one (ts) plastic bag labelled "9901110182J @138-Q138.1..." containing - one slide mailer (ts) labelled, "...@138.1..." containing one slide labelled, "...#8 fiber hair..." w/ nothing appearing to be on the slide.
64A		- one plastic vial w/ a piece of paper inside. Nothing else appears to be in the vial. - vial labelled, "...@138.1..."
65A		- one (ts) plastic bag labelled, "9901110182J @135-Q135.1..." containing one (ts) plastic bag labelled, "9901110182J @135-Q135.1..." containing - one plastic vial labelled, "...@135.1..." containing a piece of paper. Nothing appears to be inside the vial
66A		- one (ts) slide mailer labelled, "9901110182J @135..." containing on slide labelled, "...Fibers..." Nothing appears to be on the slide.
67A		- one (ts) <sup>unsealed</sup> plastic bag labelled, "9901110182J @134-Q134.1..." containing one (ts) plastic bag labelled, "...@134-Q134.1..." containing - one plastic vial labelled, "check fibers... @134.1..." containing a piece of paper. Nothing appears to be in the vial.
68A		- one (ts) slide mailer labelled "...@134..." containing one slide labelled, "...Fibers..."

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AFDIL Case No. 99C-0438

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RM  
1/20/06

Submitting Agency Case No. 990111018

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
		Box 5 of 6 (Continued)
		- one (ts) plastic bag labelled, "... Q79... Fibers and Debris from Area of Trunk + legs of Rug under body - master bed room ..." containing
69A		- one container labelled, "... Q79..." <sup>5/19/99</sup> containing fibers
70A		- one <sup>(ts)</sup> container labelled, "... Q79..." containing wood chips ...
71A		- one plastic vial labelled, "... Q79..." Nothing appears to be inside the vial
72A		- one (ts) container labelled, "... Q79... paper + "chip" ..." containing paper and a wood chip.
73A		- One slide container (ts) containing: - one slide labelled, "... BLUE/BLK Y.N. Q79..." <sup>5/19/99</sup> w/ mounted fibers
74A		- one slide labelled, "... BROWN Y.N. Q79..." w/ mounted fibers
<sup>5/19/99</sup> <del>75A</del> 75A		- one slide mailer(ts) labelled, "... Q79..." containing one slide labelled, "... Q79..." w/ one mounted hair
<sup>5/19/99</sup> <del>76A</del> 76A		- one slide mailer(ts) labelled, "... 9901110182J..." containing one slide labelled, "... Q79..." w/ mounted hairs or fibers

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<sub>1/20/02</sub>

Submitting Agency Case No. 99011018

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
		Box 5 of 6 (Continued) 5/25/99
		- one (ts) plastic bag labelled, "... Q " FIBERS... Q80, Q81, Q82, Q83, Q87, Q88, Q89, Q92, Q100, Q105, Q124 and Q125 containing
77A		- one (ts) slide mounter labelled, "... Q81..." containing one slide labelled, "... Q81" w/ mounted fibers
78A		- one (ts) slide mounter labelled, "... Q80..." containing one slide labelled, "... Q80..." w/ mounted fibers
		- one (ts) double slide mounter labelled, "... Q80..." containing
79A		- one slide labelled, "from vial... Q80..." w/ a mounted fiber
80A		- one slide labelled, "... Q80..." w/ mounted fiber(s)
		- one (ts) double slide mounter labelled, "... Q80..." containing
81A		- one slide labelled, "A" ... Q80... w/ a blue mounted blue fiber
82A		- one slide labelled, "B" ... Q80... w/ a mounted red fiber
		- one (ts) double slide mounter labelled, "... Q82..." containing
83A		- one slide labelled, "Lt. Blue Yarn" ... Q82... w/ mounted blue fiber
84A		- one slide labelled, "from vial... Q82..." w/ mounted hair
85A		- one slide labelled, "... Q82..." w/ mounted hairs & on fiber

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AFDIL Case No. 99C-0438

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1740 1/22/0

Submitting Agency Case No. 990111018

Continuation of "DESCRIPTION OF ARTICLES":

<u>ITEM NO.</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF ARTICLES</u>
		Box 5 of 6 (Continued) 5/25/99
86A		- one (1) slide mounter labelled, "... Q83..." containing one slide labelled, "... Q83..." w/ mounted fibers
87A		- one (1) slide mounter labelled, "... Q92..." containing one slide labelled, "... Q92..." w/ mounted fibers & 100 hairs
88A		- one (1) slide mounter labelled, "... Q124..." containing one slide labelled, "... Q124..." w/ 2 mounted hairs & fibers
89A		- one (1) double slide mounter labelled, "... Q105..." containing - one slide labelled, "HAIR-7E" ... Q105..." w/ mounted hair
90A		- one slide labelled, "FIBERS ... Q105..." w/ mounted hair & fibers

continued on p. 17 8/25/99



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AFDIL Case No. 99C-0438

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Submitting Agency Case No. 990111018

MAF  
1342-174  
1/20/06

Continuation of "DESCRIPTION OF ARTICLES":

<u>ITEM NO.</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF ARTICLES</u>
		Box 5 of 6 (continued)
91A		- One tape sealed plastic bag labelled "9901110182J... Q137-Q137.1..." containing one partially tape sealed plastic bag labelled "9901110182J... Q137-Q137.1" containing:
92A		- One tape sealed slide mounter labelled "9901110182J... Q137" containing one slide labelled "9901110182J... Q137..." with nothing visible mounted. - One white top snap vial labelled "9901110182J... Q137.1..." containing folded up index card and nothing else visible to the eye.
93A		- One tape sealed plastic bag labelled "9901110182J... Resub Q9" containing one zip-locked plastic bag labelled "9901110182J" containing:
94A		- One tape sealed slide mounter labelled "Q93... L2082... 9901110182J" containing one slide labelled "9901110182J... L2082... Q93..." with one mounted hair. - One tape sealed slide mounter labelled "Q93... 9901110182J..." containing one slide labelled "9901110182J... L2082... Q93..." with several mounted hairs and/or fibers.
95A		- One white top snap vial labelled "Q93... 9901110182J..." Hairs, Fibers #129..." containing nothing visible to the eye.

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Continued on page 18



CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C-0438

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33A

Submitting Agency Case No. 99D11018

1/14/02 120/00

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
96A		<p>Box 5 (b) (6) (Continued) 8/5/2014</p> <p>- one ziplock bag labelled, "vial 1 ... Debris from mouth area - Colette ..." containing</p> <p>- one (1) slide mailer labelled, "... Q100..." containing one slide labelled, "... Q100..." w/ mounted hair &amp; or fibers</p> <p>- one (1) plastic bag labelled, "... Q100, Q1001..." containing</p>
97A		<p>- one plastic vial containing a piece of paper. Nothing else appears to be in the vial</p>
98A		<p>- one slide mailer (1) labelled, "... Q100, 1..." containing one slide labelled, "... Q100" w/ a mounted hair</p>
99A		<p>- one ziplock bag labelled, "... Q89..." containing</p> <p>- one (1) double slide mailer labelled, "... Q89..." containing</p> <p>- one slide labelled, "... Q89..." w/ mounted hair &amp; or fibers</p>
100A		<p>- one slide labelled, "... from vial ... Q89..." w/ mounted hair &amp; or fibers</p>
101A		<p>- one (1) bag labelled, "... Q89..." containing</p> <p>- one empty evd bag labelled, "... Q89..."</p> <p>- one ziplock bag labelled, "... Q89..." containing</p> <p>- one plastic vial labelled, "... from hair, fibers removed from club ..." containing a small black speck of something</p> <p>- one empty slide mailer (not sealed)</p> <p>- one (1) container labelled, "... Q89..."</p>
102A		
103A		

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MAY 12/12 PM 1/20/00

Submitting Agency Case No. 990111018

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
		Box 5 of 6 (Continued)
		- One tape sealed plastic bag labelled "9901110182J... Rens Q78" & stapled containing:
104A		- 2 tape sealed slide mailers wrapped with a rubber band - One slide mailer labelled "Q78... L2082... 9901110182" containing one slide labelled "...L2082... Q78... 9901110182" with two mounted hairs.
105A		- One slide mailer labelled "Q78... 2082... PIECES OF SEW. THR... 9901110182J..." containing one slide
106A		labelled "R.S.-THR... L2082... Q78... 9901110182J..." with two mounted bluish fibers.
107A		- One slide mailer labelled "9901110182J... Q78..." containing one slide labelled "For. Fy. R.S.-Thr... L2082... Q78... 9901110182J..." with what appears to be several mounted hairs and/or fibers.
108A		- 1 tape sealed round container labelled "9901110182J... L2082... Q78 Sew. Thr..."
109A		- 1 tape sealed round container labelled "9901110182J... L2082... Wood chips... Q78..."
		- 1 tape sealed zip lock bag labelled "9901110182J... E-301... Q78" containing one white top snap vial labelled "15... Q78..." with what appears to be one large white fiber. Also contains piece of paper labelled "HAIRS AND FIBERS Recovered by Ivory from vicinity - final position of cadaver's left hand & arm; MPR..."

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Continued on page 20



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33A

MMT  
1/20/06

Submitting Agency Case No. 990111018

Continuation of "DESCRIPTION OF ARTICLES":

<u>ITEM NO.</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF ARTICLES</u>
		Box 5 of 6 (Continued) 5/25/99
110A		- one (ts) plastic bag labelled, "9901110182J... Q96..." containing one (ts) ziplock bag labelled, "9901110182J..." containing
111A		- one plastic vial labelled, "Q96... hairs, fibers, d" containing a wood chip and piece of foil
112A		- one container labelled, "... Q96 thr, yn..."
113A		- one slide mount labelled, "... Q96..." containing one slide labelled, "19 1/2" ... Q96..." w/ mounted hair
114A		- one slide mount labelled, "... Q96..." containing one slide labelled, "H (from thread, ... Q96..." w/ mounted hair
115A		- one slide mount labelled, "... Q96..." containing one slide labelled, "Yn. Pag... Q96..." w/ mounted fibers
116A		- one slide mount labelled, "... Q96..." containing one slide labelled, "... Q96..." w/ mounted hair and/or fibers
		- one stapled plastic bag labelled, "9901110182J..." containing one (ts) plastic bag containing one vial labelled, "... area #3..." containing stained fabric

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MAF 11/11/12  
1924  
12/01/06

Submitting Agency Case No. 990111018

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
		<p><sup>6/11/99</sup> Box 6 of 6 contains the following items:            - one (1) plastic bag containing, labelled, "...990111018 2J ... Government Exhibit 29 ..." containing</p>
117A		<p>- one unsealed, unlabelled slide mount containing one slide labelled, "E-314-70 w/ one mounted hair or fiber</p>
118A		<p>- one unsealed, unlabelled slide mount containing one slide labelled, "E-315-70 w/ one mounted hair or fiber.</p>
119A		<p>- one unsealed, unlabelled slide mount containi            one slide labelled, "E-316-70" w/ one mounted hair or fiber AND</p>
120A		<p>- one slide labelled, "EXE-320..." w/ three mounted hair or fibers</p>
121A		<p>- one unsealed, unlabelled slide mount containi            - one slide labelled, "E-317-70 w/ one mounted hair or fiber</p>
122A		<p>- one unsealed, unlabelled slide mount containing one slide labelled, "E-318-70 w/ one mounted hair or fiber</p>
123A		<p>- one unsealed, unlabelled slide mount containing one slide labelled, "E-319-70 w/ one mounted hair or fiber.</p>

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MAY 11/12/06

Submitting Agency Case No. 990111018

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
		Box 6016 6/1/99 K35
		- one (TS) plastic bag labelled "9901110182J... ... " containing 1 zip-lock bag labelled "PC-4913 JU K3 PMS 9901110182J" containing - 1 (TS) <sup>6/1/99</sup> slide marker labelled "9901110182J..." evidence containing (hair) from K3 PC-L1 ... " containing one slide labelled "L1913 K3 PMS" - 1 (TS) double slide marker <sup>6/1/99</sup> labelled "9901110182J... " slide(s) containing hair from K3 PC-4913... " containing 2 slides labelled "PC-4913 Rep Sample -> B" ... " and "PC-4913 Rep. Samp. -> 7 1/2" ... " - 1 (TS) double slide marker labelled "9901110182J... " Evidence ... containing (hair) from K3 PC-4913... " containing 2 slides labelled "L1913 K3 PMS" and "L1913 K3 PMS" - 1 zip-lock bag labelled "K-3 PMS K3 Kristen MacDonald 11:12 AM 9/17/74... " containing blond/red hair with brown clumpy substance on the end - 1 zip-lock bag labelled "... PC-L1913J K3 PMS ... 9901110182J... " containing a round evidence (TS) ... PC-L1913... K3 PMS
124 A		
125 A		
126 A		
127 A		
128 A		
129 A		
130 A		

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33  
MAR 11 11 42 AM '06  
1/20/06

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
		Box 6 of 6 (Continued) 6/1/99
131A		- one partially (tk) & stapled plastic bag labelled "... 90111018 ZJ ..." containing one ziplock bag labelled, "... K2 ..." containing the following - one ziplock bag labelled, "K2... KIMBERLY MAC DONALD ..." containing a mass of hair
132A		- one (tk) container labelled, "PC-L1913... K2... - Not opened
133A		- one (tk) slide mount labelled, "... K2 ..." containing one slide labelled, "... 104 ..." w/ mounted hairs - one (tk) double slide mount labelled, "... K2 ..." containing - one slide labelled, "Rep. Samp. -> 13 3/4" "K2..." w/ multiple mounted hairs - one slide labelled, "③... K2..." w/ multiple mounted hairs - one (tk) double slide mount labelled, "... K2 ..." containing - one slide labelled, "... Rep. Samp. -> 13 3/4" "K2..." w/ mounted hairs AND - one slide labelled, "① -> 14 3/4" "... K2 ..." w/ mounted hairs
134A		
135A		
136A		
137A		

DNA Form 219

FOLDER 1 OF 46

PAGE 130 OF 134

Continued on p. 24 6/1/99



CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C-0438

Page 24 of 313 <sup>33</sup>  
4/1/12  
7/20/08

Submitting Agency Case No. 99011101P

Continuation of "DESCRIPTION OF ARTICLES":

<u>ITEM NO.</u>	<u>QUANTITY</u>	<u>DESCRIPTION OF ARTICLES</u>
		Box 6 of 6 6/11/99 KBS
		1 yellow evidence envelope (TS) labelled "99011101B2D...." containing 1/2 blue box containing
138 A		- 1 small orange cardboard box labelled "...K15... Rt upper arm, outside...." Box not opened by KBS, but sealed w/ evidence tape
139 A		- 1 film canister labelled "K18 PUS... Left Forearm Top #17....". Canister not opened by KBS but sealed w/ evidence tape
140 A		- 1 (TS) blue box labelled "...K7... TH Center of forehead #2". Box not opened by KBS
141 A		- 1 (TS) round evidence container labelled "K14... Rt Back of head 9...." Box not opened by KBS
142 A		- 1 (TS) round evidence container labelled "K20... chest....". Box not opened by KBS
143 A		- 1 (TS) round evidence container labelled "K12... back L side of head...." container not opened by KBS
144 A		- 1 (TS) round evidence container labelled "K13... S Back center of chest...." container not opened by KBS

DNA Form 219

FOLDER 1 OF 46



CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C-0438

Page 25 of 31

33  
per  
KBS  
7/20/06

Submitting Agency Case No. 99011018

Continuation of "DESCRIPTION OF ARTICLES"

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
145A	- 1 round (TS) evidence container	labelled "K21 (F. Navel...." container not opened by KBS.
4/1/99 125 146A	- 1 round (TS) evidence container	labelled "K19 ... 12 Rt chest...." container not opened by KBS.
147A	- 1 (TS) round evidence container	labelled "...K11 ... 6 over rt ear..." container not opened by KBS
148A	- 1 (TS) round evidence container	labelled "...K10 ... #5 center of head", container not opened by KBS.
149A	- 1 round (TS) evidence container	labelled "...K22 ... 15 Pubic ...". container not opened by KBS
150A	- 1 (TS) green box	labelled "...K8 ... Rt Temple ...". container not opened by KBS
151A	- 1 (TS) green box	labelled "K9 ... # 4 above L. ear". Box not opened by KBS
152A	- 1 (TS) blue box	labelled "...K6... Left Temple area". Box not opened by KBS
153A	- 1 film canister (TS)	labelled "Rt Forearm Top ...". canister not opened by KBS
154A	- 1 (TS) orange box	labelled "...K17... Left Upper arm outside ...". Box not

DNA Form 219



CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C-0438

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33  
AM  
12/10/06

Submitting Agency Case No. 990111018

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
155A		Box 6 of 6 (Continued) ss 6.1.99 -one small (ts) ziplock bag labelled, "990 1110182J, containing one (ts) slide marker labelled, "077... containing one slide labelled, "...077..." w/ one mounted hair
156A		-one partially (ts) plastic bag labelled, "990111018; ..." containing one ziplock bag labelled, "...K1..." containing the following: -one ziplock bag labelled, "...COLETTE MACDONALD ... K1..." containing a mass of hair
157A		-one (ts) container labelled, "...K1..." Not opened.
158A		-one unsealed double slide marker labelled, "...K1..." containing -one slide labelled, "...Rep Samp. ->17"... K1..." w/ mounted hair AND
159A		-one slide labelled, "...Rep Samp. ...K1..." w/ mounted hair
160A		-one unsealed double slide marker labelled, "...K1..." containing -one slide labelled, "① 6" -> 15" ...K1..." w/ mounted hair
161A		-one slide labelled, "② 2" -> 12" ...K1..." w/ mounted hair

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FOLDER 1 OF 46  
PAGE 108 OF 134





CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C-043P

Page 27 of 3132

Submitting Agency Case No. 990111018

37  
MMF  
1/20/08

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
162A		Box 6 of 6 (Continued) s# 61.99 - one unsealed double slide main labeled, "...K1..." containing x <sup>#61.99</sup> - one slide labelled, "④ 1 3/4" → 3 1/2" "...K1..." w/ mounted hair
163A		- one slide labelled, "⑤ 5" → 14" "...K1..." w/ mounted hair - one unsealed double slide main labeled, "...K1..." containing
164A		- one slide labelled, "⑤ 3 1/4" → 10 3/4" "...K1..." w/ mounted hair
165A		- one slide labelled, "...Rep Samp. → 15 1/4" "K1..." w/ mounted hair

Continued on p. 28 s# 61.99



CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C-0438

Submitting Agency Case No. 990111018

Page 28 of 37 <sup>33</sup>  
MMF 1/24/08  
1/20/08

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
----------	----------	-------------------------

166A

Box 6 of 6 61199 KBS  
 1 (TS) plastic bag labelled  
 "9901110182J...." containing 3  
 rubber-banded slide mailers labelled  
 "Q40, Q41 & Q42 PMS...."  
 - 1 (TS) slide mailer labelled "Q42 PMS..."  
 A = E-324...." containing one slide  
 labelled "A 9901110182J...." containing  
 a hair

167A

- 1 (TS) slide mailer labelled "Q41 PMS..."  
 A = E-324...." containing one slide  
 labelled "A... 99011101825...." containing  
 a hair

168A

- 1 (TS) slide mailer labelled "Q40 PMS  
 ... A = E-324...." containing one  
 slide labelled "A 9901110182J...."  
 containing a hair

Continued on p. 29



CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C-0438

Page 29 of 33

33  
7/20/06

Submitting Agency Case No. 990111018

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
		Box 6 of 6 (Continued) 86.199
169A		-one (ts) plastic bag containing labelled, "...99011101 825..." containing the following: -one slide labelled, "E.308 E.309..." w/ mounted hair
170A		-one unlabelled slide w/ mounted hair
171A		-one unlabelled slide w/ one mounted hair
172A		-one unlabelled slide w/ mounted hair
173A		-one unlabelled slide w/ mounted hair
174A		-one slide labelled "305" w/ mounted hair
175A		-one unlabelled slide w/ mounted hair
176A		-one slide labelled, "...Left Leg" w/ mounted hair
177A		-one unlabelled slide w/ mounted hair
178A		-one slide labelled, "... Left Arm MacD" w/ mounted hair
179A		-one slide labelled, "Head ..." w/ mounted hair

Continued on p. 30 86.199



CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C-0438

Page 30 of 31

33  
MAY 11/2016

Submitting Agency Case No. 990111018

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
180 A		- 1 Plastic Vial labelled "Hair Sample from Right Leg of CPT MacDonald" with identification tag attached. Vial appears empty
181 A		- 1 Plastic Vial labelled "Hair Sample From head of CPT Jeffrey MacDonald 20 July 70" with ID tag attached. Vial appears empty
182A		- 1 plastic vial labelled "Hair Sample from left arm pit of CPT Jeffrey MacDonald ...". Vial appears empty (ID tag attached)
183A		- 1 plastic vial labelled "hair sample from left leg of ...." with ID tag attached. Vial appears empty
184A		- 1 plastic vial labelled "hair sample from left arm of CPT MacDonald ..." with ID attached. Vial appears empty
185A		- 1 plastic vial labelled "hair sample from pubic area of cpt. MacDonald" with ID Tag attached. Vial appears empty
186A		- 1 plastic vial labelled "hair sample from right arm of Capt. MacDonald" with ID tag attached. Vial appears empty

FOLDER 1 OF 46  
PAGE 6 B OF 134

DNA Form 219





CONTINUATION OF DA FORM 4137

AFDIL Case No. 99C0438

Page 31 of 31

Submitting Agency Case No. 990111018

37  
MAY 1/30/12  
1/20/08

Continuation of "DESCRIPTION OF ARTICLES":

ITEM NO.	QUANTITY	DESCRIPTION OF ARTICLES
<del>187A</del> 187A	6-1.99	Box 6 of 6 (Continued) ss 6.1.99 -one plastic vial labelled, "HAIR sample from Chest of Cpt. MacDonald..." Vial appears empty - Jcy attached
188A		-one plastic vial labelled, "HAIR sample from right Acmpit of Cpt. MACDONALD..." Vial appears empty - Jcy attached
----- LAST ITEM ss 6.1.99 -----		

DNA Form 219

FOLDER 1 OF 46  
PAGE S B OF 134

MAY

U.S.A.



**EXHIBIT 3**



**EXHIBIT #3**REPLY TO  
ATTENTION OF**DEPARTMENT OF DEFENSE  
ARMED FORCES INSTITUTE OF PATHOLOGY  
WASHINGTON DC 20306-6000**

July 28, 1999

AFIP-CME-DNA (40-31a)  
1413 Research Blvd., Building 101  
Rockville, MD 20850

U.S. Department of Justice  
Criminal Division  
Brian M. Murtagh  
Deputy Chief, Terrorism and Violent Crime Section  
601 D. St. N.W., Suite 6500  
Washington D.C. 20530

Dear Mr. Murtagh,

Per your request, I have attached a list of the vials and their contents examined during our June 3-4 meeting in addition to the associated AFDIL Case Numbers.

If you need additional information, please feel free to contact me at (301)319-0271.

Sincerely,

A handwritten signature in black ink that reads "Suzanne M. Barritt".

Suzanne M. Barritt  
Senior DNA Analyst

Printed on Recycled Paper



**EXHIBIT 4**





**EXHIBIT #4**

AFDIL Case No. 99C-0438

<u>Vial #</u>	<u>CID Lab Report #</u>	<u>Description</u>	<u>AFDIL #</u>	<u>Contents</u>
1	Q100	Mother, Area around mouth	97A	Dark colored flecks
2	Q134.1	Right hand, Mother	67A	Appears Empty
4	Q135.1	Fingernail scrapings, Right hand, Larger McDonald, Female child	65A	White fleck
6	Q136.1	Left hand	43A	Appears Empty (Vial cracked)
7	Q137.1	Fingernail scrapings, Left hand, Smaller female McDonald	92A	Appears Empty
8	Q138.1	Fingernail scrapings, Left hand, Larger McDonald, female child	64A	Appears Empty
9	Q139.1	Fingernail scrapings, Right hand, Smaller McDonald, female	61A	Appears Empty
10	Q118.1	Hair, Right hand mother	54A	Appears Empty
13	Q128	Left hand, mother	02A	Wood-like splinter
None	E-303/Q79	No description on vial	71A	Dark colored flecks-Not opened and not photographed
None	E-211/Q125	Debris removed from sheet on MBR floor	44A	Piece of latex-like material
None	E-209/Q88	Fibers/hairs from Colette MacDonald's PJ top, right bicep area	47A	Appears Empty
None	E52NB/Q87	No description on vial	60A	Straw-like material and white styrofoam-like material
None	Q89	Hairs, fibers removed from club	101A	Dark colored fleck
None	E301/Q78	Hairs and fibers recovered by Ivory from vicinity-Final position of cadaver's left hand and arm; MBR	109A	Fiber
None	D229/Q96	Hairs, fibers, etc.	110A	Straw-like material and foil-like material
None	E124/Q93	Hairs, fibers	95A	Appears Empty



**EXHIBIT 5**



**EXHIBIT #5**

4- 6-Q1: 7:41AM:

:1234567

# 3/ 3

REPLY TO  
ATTENTION OF**DEPARTMENT OF DEFENSE  
ARMED FORCES INSTITUTE OF PATHOLOGY  
WASHINGTON DC 20306-8000**

2 April 2001

AFIP-CME-DNA (40-31a)

1413 Research Boulevard  
Building 101  
Rockville, MD 20850-3125Philip G. Cormier, Esq.  
Silvergate & Good  
83 Atlantic Avenue  
Boston, MA 02110-3711Re: United States v. Jeffrey R. McDonald

Dear Mr. Cormier,

I would like to inform you that on Friday, 30 March 2001, I attempted to start processing sample 112A(#1).

According to previous analysis by MSgt Grant Graham, slide 112A contained 4 hairs. Hairs #1, 2, and 3, approximately 3.1 cm, 6.1 cm, and 2.7 cm, respectively, did not appear to have roots or tissue on them. Hair #4 was thought to be about 14.5 cm and had a root with tissue on it. However, once the cover slip was removed from this slide, it was revealed that there were actually 9 hairs of varying lengths, thicknesses, and shades of blonde/brown on this slide. Therefore, I will need to look at each of the hairs closely to find the one that was said to have the root attached to it.

I would like to be advised how you would like me to proceed with these hairs, i.e. if you would like all 9 of the hairs processed.

If you have additional inquiries, please feel free to contact me at (301) 319-0236.

Sincerely,

Jacqueline S. Raskin  
Supervisory DNA Analyst  
Armed Forces DNA  
Identification Laboratory

cc: Brian Murtagh, Esq. (by fax)

4



## EXHIBIT 6





EXHIBIT #6

SEP-07-01 16:01 From: SILVERGLATE & GOOD

6175237554

T-766 P.07/09 Job-998

06-AUG-2001 (CLAD)

19

APP 2

- 8/22 CLOSER VIEW OF ROOT OF HAIR #4
  - 8/23 MORE DISTAL VIEW OF #4
  - 8/24 "OVERALL OF HAIR STUMP"
  - 8/24 "OVERALL OF HAIR STUMP" 2 8 HAIR SHAPES IN FIELD OF VIEW
  - 13/8 THE AREA OF THIS MICRO SHOT SHOWS THAT TWO POSSIBLE SIBOT SEGMENTS SEEN WITHIN A LOOP OF HAIR #3 DEPICTED IN THE OVERALL MACRO POINT (DESCRIBED) EARLIER ARE ATTACHMENTS OF THE HAIR IN THE TRUE POINT DISCUSSED ABOVE (THIS POINT IS 13/4)
- WILL NOW MOVE TO EXAMINATION OF INDIVIDUAL HAIRS.

#112A-1JR

HAIR IN SEALED ZIP COE TARE BAG LABELED 99C-0438 112A(4)

JSR 7/10/01 ~ 2cm

THIS WAS STRAIGHTENED AND MEASURED @ 2.8cm  
2 POL VACUOLS AND MEDULLARY FRACTIONS SEEN  
≥ TWO CRUSHED AREAS / APP HIGH TENSURE

OCCULAR MICROMETER CALIB

10X OBJ 100 DIV OCL = 995.0 μm  
 10 DIV = 99.5 μm  
 1 DIV = 9.95 μm

50X OBJ 50 DIV OCL = 100 μm = 10 DIV SCALE  
 5 DIV OCL = 10 μm  
 1 DIV OCL = 2 μm

PROXIMAL END OF THIS HAIR IS BROKEN / SECTION OF CORTEX MISSING / ABOUT TRUNK.

DIAM = 50X OBJ 34 X 2 = 68 μm

DISTAL END - JAGGED / BROKEN LOWER REPRESENTATIVE ABOUT. DIAM @ 50X AS 31 X 2 = 62 μm

VACUOLS PRESENT FOR ENTIRE LENGTH / DENSED BOLLICY

#112A - 2JR

HAIR TWO APPROXIMATES TO ABOVE 99C-0438 112A(2)

JSR 7/13/01 ~ 5cm

IN STRAIGHTENED & CLEAR TIPS BROKE INTO TWO SEG 1.6cm + 4.2cm APP ONE HAIT

1.6cm SEGMENT HAS A MASS OF CLEAR / TRAIL Debris edging to shaft.

STEEPED FRACTURE ON ONE END / OTHER END IS BRUSH-LIKE - UNKNOWN DISTRIBUTION OF VACUOLS APPARENT MEDULLARY FRACTIONS

STEEPED FRACTURE ON ONE END 34 OCL DIV 2.68 μm 4.2 cm

CURVED PIECE ONE END & GLASS-LIKE CAP AND DAMAGED ~ 65 μm

#112A-3JR

HAIR ONE LIKE ABOVE

SHAFT CURVED SEGMENT. I WILL NOT ATTEMPT TO STRAIGHTEN.



SEP-07-01 16:01 From: SILVERGLATE & GOOD

6175237554

T-766 P.08/09 Job-998

16 AUG 2001 (cont)

(20) | AF" (5)

- 112A #4 JSR REMOVED FROM SIMILAR PKG AS ~~POSSIBLE~~ ~~ADDED~~  
NO ATTEMPT MADE TO MEASURE LENGTH AS A  
KINK OR POSSIBLE WEAK SPOT WAS NOTED.  
MOUNTED IN REMOUNT 5 A10 OF KYURAN.
- 112A #5 JSR REMOVED FROM SIM PKG -  
MEASURED @ 9.8 cm - MOUNTED IN REMOUNT  
2 A10 OF KYURAN
- 112A #6 JSR REMOVED FROM SIM PKG  
MEASURED @ 10.1 → 10 cm
- 112A #7 JSR REMOVED FROM PICK SIM TO ADDED  
THIS HAS A TEND IN SHARP. I MAY NOT AT.  
MEASMT. IT IS LABELED ~ 5cm. I WILL  
ASSESS THIS AFTER I OPEN THE PKG  
THIS IS OMOLE SHARP. I WOULD ESTIMATE  
2.6 cm  
SIMILAR THIS IS IN THE FORM OF A CLOSED  
"C" SHAP. IT IS PROBABLY LONGER THAN THE  
2.3 m estimated by JACKIE. I WOULD ESTIMATE  
2.4 cm.
- 112A #9 JSR SIMILAR PKG - SEEN THROUGH AIR BTO  
THIS IS A SHARP CURVE SEGMENT THE  
JACKIE ESTIMATED @ 2.2 cm, I WOULD  
ESTIMATE 2.5 cm THIS HAIR LOOKS AS  
THOUGH IT MIGHT BE DAMAGED BY STRETCHING  
STRAIGHT

#112A 8 JR 2  
FRAG

POL SCOPE APP HHH FRAG  
VERY THIN DIFFICULT TO OBSERVE CUTICLE.  
~~HEAD LIKE BLOB AT ONE~~  
RESIN LIKE BLOB AT ONE END - APPARENT GLASS  
CUTS AT THIS END ? DISTAL ? PROXIMAL ?  
2 6cm dia STRETCHED IN MIDDLE PART.  
2 5cm in thin middle part  
SOME ASSEMBLY IN THE HEAD IS PROBABLY POLYMER  
THE LIGHT END  
THE END DISCUSSED ABOVE HAS DAMAGE 10-15 CM  
FROM END

112A 7JR 2 POL  
FRAG.

ANGLE "C" ON ONE END THIS IS PROXIMAL END  
BENT JUST DISTAL TO THIS. REMAINS THINEST SEEN  
VARIABLES AT VARIOUS POINTS  
OTHER END OUT OF POINT - AIR INTRODUCED TO  
MOUNT - TAPERED GLASS CUT

112A 6JR 2 POL  
FRAG

ONE END 2.45 "CUT" APPARENT PROX END  
BLOB OF RESIN-LIKE MATERIAL AT VARIOUS POINTS  
ON SHARP  
THE OTHER END CONFIRMED AS DISTAL BLOB ON  
END - PHYSICAL SOME SPLITTING - SEVERAL  
AREA OF DAMAGE / DEGRADATION.



SEP-07-01 16:01 From: SILVERGLATE & GOOD

6175237554

T-766 P.09/09 Job-998

16 Aug-2001 (cont)

(21)

AFIP (4)

12A #5 JR E POL

ANAGEN ROOT CUT BROKEN DISTALLY SCATTERED MEDIAN - VACUOLAR PIGMENTATION CHANGES ALONG LENGTH

112A #4 JR E POL FRAG

275° Cut - Low radial internal (PROX) DAMAGE AT VARIOUS POINTS ALONG SHAF CUTICLE FAIRLY THICK AT 45° END / SHAF OTHER END IS RAUGH CUT / BRUSH - CLEARLY DISTAL - SCALES APPARENT & DIRECTIONAL? YCR PLATE AT SUBSTRUCTURE RETROGRADE BLOSS + DAMAGE ALONG SHAF

112A #3 JR E POL FRAG

IRREGULAR SHAF SHAPE DISTAL END APPROX / ROUND SOME DAMAGE TO SHAF AT POINTS PROXIMAL END IS BROKEN / CRUSHED

112A #9 JR E POL

FRAGMENT E GLASS CUTS / DARK STREAKED CLUSTERS - GLASS CUTS DIRT ENDS MUCH OF THE STREAKING IS DUE TO VACUOLAR CRUSHES IN AREAS

112A #2 JR E POL 2 FRAGS

VERY LIGHT HAIR WITH DAMAGE - VACUOLAR SEEN - THIS THE LONGER GROWED HAIR GLASS CUTS ON PROXIMAL END - VACUOLAR SQ TENSILE FINE DISTAL END / THIN CUTICLE 65µm diam

SHAF STRAIGHT HAIR - TENSILE FINE ONE END BRUSHY ON OTHER - THIS APPEARS TO BE ONE DISTAL END I.E., BRUSHY DISTAL - TENSILE FINE

112A #3 JR E POL - DIAM MEAS

35µm in hair areas 65µm in thick areas 75µm in wider areas

17:11 WRAPPING UP

17:35 LAD TOUR

18:05 DINNER

19:11 FINISH DINNER / TO DULLES

20:30 IN BOARDING LOUNGE FOR FLIGHT # 7196 BOARDING @ 21:15

21:28 ON BOARD # 7196

DELAYED ON GROUND

23:30 @ HPN

23:55 @ office / PAT ASHER

07-AUG-2001

0656 e-mail #9 sent / NCR

DEPART 11:36



## **EXHIBIT 7**





**EXHIBIT #7**

7-1a (Rev. 5-18-99)



FEDERAL BUREAU OF INVESTIGATION  
WASHINGTON, D. C. 20535

**Report of Examination**

Examiner Name: Robert Fram

Date: November 1, 2001

Unit: Trace Evidence

Phone No.: (202) 324-4344

Case ID No.: 70A-CE-3668

Lab No.: 011010030 ZJ

**Results of Examinations:**

The Q96.1 through Q96.9 glass microscope slides contain hairs which are identified as being the hairs removed from the Q96 glass microscope slide (FBI Laboratory number 990111018 ZJ) by Supervisory DNA Analyst Jacqueline S. Raskin of the Armed Forces DNA Identification Laboratory.

The original Q96 glass microscope slide contained four (4) hairs, a head hair with a forcibly removed root, two head hair fragments and a body hair without a root. Present on the Q96.1 through Q96.9 slides are:

- Q96.1 - light brown Caucasian head hair approximately 1 inch long, broken at both ends
- Q96.2 - two (2) blonde Caucasian head hairs, one approximately 1-1/2 inches long, one approximately 5/8 inch long, both broken at both ends
- Q96.3 - brown Caucasian body area hair, no root, approximately 3/4 inch long
- Q96.4 - light brown Caucasian head hair, cut at root end and broken at tip end, approximately 5 - 6 inches long
- Q96.5 - light brown Caucasian head hair with forcibly removed root, cut at tip end, approximately 4 inches long; cut tip end similar to cut root end of Q96.4
- Q96.6 - light brown Caucasian head hair, broken at both ends, approximately 4 inches long
- Q96.7 - light brown Caucasian head hair, cut at root end and broken at tip end, approximately 2 - 3 inches long
- Q96.8 - blonde Caucasian head hair, cut/broken at one end and broken at other end, approximately 2-1/4 inches long
- Q96.9 - blonde Caucasian head hair, broken at both ends, approximately 1 inch long.

Other than the tip end of the Q96.5 hair being similar to the root end of the Q96.4 hair, no conclusions could be reached as to which of these hairs might have, at one time, been joined to other of these hairs. It should be noted that the Q96.3 body area hair is consistent with the body area hair found on the original Q96 slide in terms of being a brown

TEU - Page 1 of 2

This Report is Furnished for Official Use Only



body area hair without a root. This hair is dissimilar from all of the other hairs on the Q96.1 through Q96.9 slides. It should also be noted that the Q96.5 head hair with a forcibly removed root is consistent with the forcibly removed Caucasian head hair found on the original Q96 slide that was reported as being consistent with having originated from KIMBERLY MACDONALD (FBI Laboratory report dated May 19, 1999), in that both hairs are described as a light brown Caucasian head hair with a forcibly removed root. The Q96.5 hair is considerably shorter than the original Q96 head hair.

TEU - Page 2 of 2  
011010030 ZJ



**EXHIBIT 8**



EXHIBIT #8

4/1

1/27

(10/15/01)

O1101007 25

Rec'd 9 slides, each in a blue plastic slide holder - 1 slide/holder - Each slide is labelled "112A" and "06 Aug 07".  
slides are numbered 1-9

096.1 (Slide 1) 1 thin CONN (~1" long) broken prox & dist

096.2 (Slide 2) 2 blades CONN, (~1 1/2" & ~5/8") both with prox & dist ends broken - hair that is ~1 1/2" - crushed/broken near prox end

096.3 (Slide 3) 1 thin hairy area <sup>CO</sup> hair, prox broken prox, tip rounded (~3/4")

096.4 (Slide 4) 1 thin CONN, cut prox, broken dist (~5-6")

096.5 (Slide 5) 1 thin CONN, fine, cut dist (~4") cut dist end similar to cut prox end of 096.4

096.6 (Slide 6) 1 thin CONN, broken prox & dist (~4")

096.7 (Slide 7) 1 thin CONN, cut prox & broken dist (~2-3")

096.8 (Slide 8) 1 CONN, blade, cut/broken one end, other end broken (seeks not visible) (~2 1/4") continuous ped

096.9 (Slide 9) 1 blade CONN, both ends broken (~1") disruptions throughout hair

1/27 7





## EXHIBIT 9



7-1a (2-5-98)

## EXHIBIT #9


 FEDERAL BUREAU OF INVESTIGATION  
 WASHINGTON, D. C. 20535

## Report of Examination

Examiner Name: Robert Fram

Date: 5/19/99

Unit: Trace Evidence

Phone No.: (202) 324-8915

Case ID #: 70A-CE-3668

Lab No.: 990111018 S ZJ

990202004 S ZJ

990318018 S ZJ

990412040 S ZJ

## Results of Examinations:

A forcibly removed Caucasian head hair found on one of the Q96 resubmitted glass microscope slides, (labeled "19 1/2" on the slide), exhibits the same microscopic characteristics as hairs in the K2 specimen. Accordingly, this hair is consistent with having originated from KIMBERLY MACDONALD, the identified source of the K2 specimen. Two Caucasian head hair fragments found on this same slide are microscopically similar to hairs in the K2 specimen; however, these hairs are too limited for significant comparison purposes. A Caucasian body area hair found on this slide is not suitable for significant comparison purposes.

A Caucasian pubic hair found on one of the Q78 resubmitted glass microscope slides, (labeled "H's" on the slide), is dissimilar microscopically to hairs in the K22 specimen, and accordingly, is not consistent with having originated from JEFFREY MACDONALD, the identified source of the K22 specimen. A Caucasian body area hair found on the same slide, is not suitable for significant comparison purposes.

Hair comparisons are not a basis for absolute personal identification.

No other hair comparisons were conducted on the submitted items.

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freestanding claim of actual innocence. Finally, the Supreme Court has expressed doubt as to whether any prisoner can ever obtain habeas relief based on such a claim.<sup>1</sup>

## II. FACTS ADDUCED AT THE EVIDENTIARY HEARING

### A. Helena Stoeckley at the 1979 Trial

Trial in the case of United States of America v. Jeffrey R. MacDonald began on Thursday July 19, 1979, in Raleigh, North Carolina, with the Honorable Franklin T. Dupree presiding. TTr. 1200.<sup>2</sup> The parents of Helena Stoeckley were subpoenaed by the defense in an unsuccessful effort to try to locate their daughter on Monday, August 13, 1979. TTr. 4846. AUSA Jim Blackburn informed the Court that the Government had issued a subpoena for Helena Stoeckley and had the Federal Bureau of Investigation looking for her, but that she had not yet been located. TTr. 4849. At that time, Judge Dupree issued a material witness warrant for the arrest of Helena Stoeckley, and the FBI was instructed by AUSA Blackburn to apprehend her. GX 2000, 2001.

While in Raleigh, the parents of Helena Stoeckley were interviewed by the defense team. GX 2201.2; HTr. 961-964. Mrs. Stoeckley informed the defense team, “[s]he called up, must have been a year and a half ago, four o’clock in the morning, all befuddled. She said somebody was chasing her and had taken her car keys. Then it turned out she’d had a stroke. We got her home, she was like a vegetable. She couldn’t talk, couldn’t eat, her face quivered, saliva would

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<sup>1</sup> MacDonald’s motions under the Innocence Protection Act (“IPA”) for a new trial and for new DNA testing (DE-176) were not part of the evidentiary hearing and thus are beyond the scope of this memorandum. See Order DE-266. The Government renews its request that both motions be denied for the reasons explained in DE-212, DE-227, and DE-265. The factual showings in those Government filings and the affidavits filed with them are an important part of the evidence pertaining to the § 2255 unsourced hairs claim. The Government relied on them at the evidentiary hearing and also does so in this memorandum.

<sup>2</sup> For purposes of this memorandum, citations designated “TTr.” reference the original trial transcript and those designated “HTr.” reference the evidentiary hearing transcript. “GX” citations refer to physical or documentary Government exhibits, and “GXP” citations refer to photographic Government exhibits. “DX” citations refer to defense exhibits.

run out of her mouth ... after about three weeks she was improved, but still she was not quite right.” HTr. 963; GX 2201.3. She continued, “[s]he’s not at all like she used to be. She’s a physical and mental wreck. She’s not even a human being anymore. You find her now, sure she’ll talk. She’ll always talk. But I’m telling you, she’s gonna talk all kinds of nonsense.” Id. They discussed the MacDonald murders and Helena’s reaction to them. HTr. 964. Mrs. Stoeckley said that Helena was very hurt by the murders and told her that no hippie would do such a thing. Id. At that time, Mrs. Stoeckley believed that it was Prince Beasley who had put the idea of Helena’s involvement in the murders into her head. Id. She told the defense, “Beasley was her daddy image. He had a terrific amount of influence over her. She told me he had been up to talk to her right after it happened and then she said ‘Yeah, I’ve been thinking, and I don’t really know where I was that night. I might have been there.’ And I just knew right then that Daddy Beasley had talked her into it.” Id.

On August 14, 1979, FBI Special Agents Thomas Donohue and Special Agent Frank Mills located Helena Stoeckley at the Oakway Trailer Community in Oconee County, near Walhalla, South Carolina, arrested her, and interviewed her. HTr. 474-475; GX 2002. Helena told the agents that she had consumed so many different drugs on the day of the MacDonald murders that she had no recollection of where she was or what she did that day. Id. Special Agents Mills and Donohue transported Helena Stoeckley to the Pickens County Jail for booking. HTr. 477-489. No one else was in the car with Helena Stoeckley and Agents Mills and Donohue. Id. She was logged into the jail by Special Agent Donohue at 6:32 p.m., and fingerprinted. Id.; GXP 2006-2009, 2053-2074. Special Agent Mills sent a teletype to the FBI’s Charlotte field office relaying the details of the arrest. HTr. 483-484; GX 2003. Helena Stoeckley spent that night at the Pickens County Jail, and on August 15, 1979, was released to the United States Marshals Service

trial. HTr. 78-89, 969-981; GX 2201. Helena told the defense team that she was not in the MacDonald house, nor did she have anything to do with the murders. Id. Mr. Segal had each of the “Stoeckley witnesses<sup>3</sup>” confront Helena one by one about the statements that she had allegedly made to them, but she did not change her story. Id. Helena was given a bologna sandwich and left by Segal and Smith with notebooks containing all of the crime scene photographs while the defense team left to give a status report to Judge Dupree.<sup>4</sup> Id. at 977.

At one o’clock, court reconvened and Wade Smith informed Judge Dupree that the defense would need more time to finish interviewing Helena. TTr. 5496-97. Because the Government had yet to meet with Stoeckley, Judge Dupree released the jury, to reconvene on August 17, 1979, at nine o’clock in the morning. Id. The defense did not further interview Helena Stoeckley, and she was brought to the United States Attorney’s Office on the eighth floor of the Federal Building at approximately two o’clock for her government interview. HTr. 980-81, 605.

Present for the government interview were United States Attorney George Anderson, First Assistant United States Attorney Jim Blackburn, Assistant United States Attorney Jack Crawley, and Department of Justice Trial Attorney Brian Murtagh. HTr. 607-08, 721. No one else was present during the interview, nor was it customary for a Deputy United States Marshal to sit in during an interview of a trial witness. Id. Helena Stoeckley told the prosecution team the same thing she had told the defense team, that she was neither present for, nor involved in the MacDonald murders. HTr. 248-249, 610, 722-725. At no time during the prosecution interview was Helena Stoeckley threatened. HTr. 248, 610-611, 912, 940, 947, 1124-1126; GX 2332,

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<sup>3</sup> Jane Zillioux, Prince Beasley, James Gaddis, Red Underhill, Robert Brisenstine, and William Posey.

<sup>4</sup> In an interview with Errol Morris, Wade Smith described Stoeckley as saying in the defense interview: “I don’t know anything about it. I certainly wasn’t there. And I think he did it. And you promised me some food. And no one has given me any food. And you promised me I’d get something to eat.’ It had gone from sublime hope to deepest of ridiculous statements. And she sat there, as she ate her sandwich, and leafed through the bloody photographs that were exhibits in the case and seemed completely and totally unmoved by them....And we had hoped that after she had some food, we would be able to persuade her. But we never were. We never were. She stuck to that story. And she certainly stuck to it when she testified.” GX 7001.



6076; DX 5113 at ¶10. At the conclusion of her interview by the prosecution, Helena Stoeckley was returned to the Wake County Jail for the night because Judge Dupree refused to release her from custody pending her trial testimony. TTr. 5506.

On Friday August 17, 1979, Helena Stoeckley testified before the jury from nine o'clock in the morning until almost one-thirty in the afternoon. TTr. 5512-5678. During this time, she detailed her extensive history of drug use. Id. at 5554. In her testimony, Stoeckley explained that the course of the day and night on February 16, she had six or seven intravenous injections of a mixture of heroin and opium, had used marijuana all day, and had taken a "hit" of mescaline shortly before midnight, which had been given to her by Greg Mitchell, with whom she had conversed in her driveway. TTr. 5552-52. The next thing she recalled was returning to her house in a car driven by other soldiers at approximately 4:30 a.m. TTr. 5555-57. She denied any involvement in the murders and admitted that her knowledge of the killings was the result of what she heard on the radio news bulletin and what others had told her. TTr. 5652-54. Helena told the jury about her involvement in witchcraft and the rituals she had performed involving the use of a candle. Id. at 5542-47, 5654-55. Stoeckley told the jury that she did own a blond wig, a floppy hat, and pairs of both white and brown boots of varying heights, but that she started to wear them less and less and eventually got rid of them altogether because they tied her to the murders, and people continuously approached her about being involved. Id. at 5588-5604, 5644-5646.

She recounted for the jury her various interviews with Army CID and Detective Beasley in both Fayetteville and Nashville, Tennessee. Id. at 5604-5613. She was questioned about her recollection of conversations with each of the "Stoeckley witnesses." Id. at 5557-5578, 5663-64. At that time, she admitted to talking with her neighbor William Posey about the MacDonald

murders back in 1970, and stated that she could not recall her whereabouts on the night they were committed. Id. She recalled talking with Jane Zillioux, Red Underhill, Officer James Gaddis and CID Agents Dick Mahon and Robert Brisenstine in Nashville about the MacDonald murders, but did not remember what she said during those conversations. Id. Helena told the jury that each of the many times she spoke with the CID she told them the same thing: that she could not remember where she was during the murders. Id.

She was shown several crime scene photographs while on the stand, including those depicting what she described as a “hobby horse,” those of Kristen MacDonald’s body in her bed after having been murdered, and a photograph of the MacDonald’s living room. Id. at 5579-5582. Mr. Segal tried to get Helena to say that she recognized the photographs and the people and places therein, but she did not. Id. Helena told the jury that, when she had viewed the photograph of the “hobby horse” the day before her testimony during the defense interview, that it had appeared broken to her in the photograph, even though Segal openly challenged her on this fact in court. Id. at 5624-27. Helena told the jury that she had never been to 544 Castle Drive before and had never seen the “hobby horse” in person. Id. After Helena Stoeckley denied recognizing those items or being at 544 Castle Drive, Mr. Segal asked to approach the bench, where he moved to treat her as a hostile witness and proceed as if on cross-examination. Id. at 5614-5618. At that time, Mr. Segal made representations to the Court that, during the defense interview the previous day, Helena had said that she had ridden the rocking horse and that she remembered standing at the end of the MacDonalds’ couch with a candle. Id. Segal also told Judge Dupree that Helena had stated she remembered standing outside of the MacDonald house and saying “My God, the blood; oh my God, the blood.” Id. at 5616. Mr. Blackburn then told the Court that not only had Helena said nothing of that sort during the prosecution interview, but

also that he had run into Wade Smith after both interviews the previous day and Mr. Smith had relayed to him that she had, similarly, said nothing helpful to the defense case during the defense interview. TTr. 5617; HTr. 102-103, 109-114, 612-620. Mr. Smith then responded to the Court that Mr. Blackburn was correct, that generally Helena had told the defense that she didn't remember, but that several things that she said would give an "interesting insight into her mind."<sup>5</sup> Id. No other member of the defense team reported hearing any of the things Mr. Segal represented to the Court regarding Helena Stoeckley's statements during the defense interview. HTr. 78-89, 102-103, 109-114, 969-981, 986-991; GX 2201. Judge Dupree then asked Helena, in the presence of the jury, whether she had told the same thing to both the prosecution and the defense, and she stated that she had. HTr. 5618-19. When direct examination resumed, Stoeckley told the jury that she had had a dream where she saw a body on MacDonald's sofa and she was holding a candle. Id. at 5631-32. She admitted to hanging funeral wreaths outside her home the week after the murders. Id.

During cross-examination, Stoeckley told the jury that she had never been in the MacDonald apartment, did not know any member of the MacDonald family, and did not participate in the murders. HTr. 5646-5648. She further stated that her neighbor, William Posey, had tried to get her to say things about the murder that she didn't want to say, and that he had offered to give her an alibi. Id. at 5663-64.

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<sup>5</sup> When Mr. Smith was questioned about this exchange at the evidentiary hearing he stated: "Let me just put it this way, I was absolutely devoted to this case and upheld my role as counsel and I'm still devoted to this case, but I did not hear Helena Stoeckley say useful things for us. It is certainly possible. And I mentioned a while ago, maybe I was out of the room. I do not know the answer. But I can only speak for myself and that is that when I was present she did not say things that helped us." HTr. 114. This is corroborated by the testimony of author Joe McGinniss as well. Mr. McGinniss stated: "You know, I talked to Wade Smith after the trial and he told me he felt that he had been between a rock and a hard place because he couldn't stand up there and undermine his co-counsel by telling the court Mr. Segal's not telling the truth, but on the other hand, he's not – as an officer of the court, he's not going to participate in trying to fabricate anything or put up – you know, say anything that was not true ... he walked a fine line and he was very happy when he got to the other end." HTr. 990.

Once Helena Stoeckley finished testifying, she was released from federal custody, but placed under subpoena by the defense. TTr. 5677-78, 5686-88. The Court then proceeded to conduct a voir dire of the “Stoeckley witnesses,” in order to make a determination as to the admissibility of their testimony. TTr. 5688-5774. The first to testify was Jane Zillioux, a neighbor of Helena Stoeckley’s in Nashville. TTr. 5688-5703. Zillioux testified that Helena had told her she had been involved in “some murders” but that she didn’t know whether she committed them or not, and that she had been a drug user for so long that she couldn’t remember. TTr. 5693-94. Helena allegedly told Zillioux that she remembered being in the rain with three boys and being terrified. Id. Helena had told her that she looked down and saw the blood on her hands and then went home and got rid of her clothing. TTr. 5697. Zillioux also testified that Helena had told her she was wearing her wig and white boots, and remembers both of them getting wet in the rain. TTr. 5699. Zillioux detailed for Judge Dupree her conversation with another neighbor, Bonnie Hudgins, and how Bonnie had told her that she knew it was the Green Beret murders that Helena had been involved in. TTr. 5695. On cross-examination, Zillioux admitted that Helena was shaky and almost incoherent at times during their conversation, and that she never said she committed the murders, only that she was “involved.” TTr. 5701.

The second of the “Stoeckley witnesses” to testify was James Gaddis, a Nashville narcotics detective. TTr. 5704-5710. He told the Court that Helena had told him on different occasions both that she thought she had been there but had tripped out on mescaline and LSD, and also that she knew who had done it but wasn’t there. Id. at 5704. Several of the times she gave him information about the MacDonald murders she was under the influence of drugs. Id. at 5707. On cross-examination, Mr. Blackburn drew out the inconsistencies in Stoeckley’s statements to Gaddis; that sometimes she said that she witnessed the murders but was not involved, sometimes

she told him she knew who was involved but couldn't give him names, sometimes she said that she only had suspicions of who was involved, and sometimes she told him that Dr. MacDonald himself committed the murders. TTr. 5708.

Next, Red Underhill testified. TTr. 5711-5715. Underhill knew Helena Stoeckley from her time in Nashville and testified about an interaction that he had with Helena one day when he went to her house. He told the Court that he had found Helena crying hysterically and all she could say to him was "they killed her and the two children." Id. at 5712-13.

Robert A. Brisenstine was an Army Polygrapher who interviewed Stoeckley about the MacDonald murders twice in April of 1970. He testified that, during these interviews, Stoeckley vacillated between believing she was involved and denying any involvement. TTr. 5715-5737. He told Judge Dupree that Helena "was convinced that she participated in the murder of Mrs. MacDonald and her two children; that she presently is of the opinion that she personally did not actively participate in these homicides, but may have been physically present at the time of the murders; [and] that prior to the homicide she had heard the hippie element was angry with Captain MacDonald as he would not treat them by prescribing methadone for their addiction to drugs." Id. at 5717. Helena then retracted those statements and denied any knowledge of MacDonald, telling Brisenstine that she had been admitted to the hospital for drug addiction and "she was not always oriented as regards time, dates, and surroundings." Id. at 5718. She further went on to explain the dreams she had been having were caused, she believed, by the large quantity of drugs she was consuming. Id. These dreams included seeing the word "pig" on a bed headboard, and a vision of MacDonald pointing at her and holding an icepick that was dripping blood. Id. at 5719-20. She told Brisenstine that she owned, at the time of the murders, a pair of white boots, a floppy hat, and a blond wig; and that she did display wreaths and wear

black the week after the homicides.<sup>6</sup> Id. She claimed to know the identities of the persons who killed the MacDonald family, and then later told him that she had been lying when she told him that because “four hippies could not have entered Captain MacDonald’s home without being observed by neighbors or causing dogs to bark.” Id. at 5722. The individuals she named as potentially having been involved were Don Harris, Bruce Fowler, Janice Fowler, Joe Kelley, and a black man named Eddie.<sup>7</sup> Id. Brisenstine testified that during both interviews Stoeckley was under the influence of drugs. Id. at 5724-25. He told Judge Dupree that, during these interviews, Stoeckley never told him anything about the crime scene or murders that he didn’t already know, or that would indicate an insider’s knowledge. Id. at 5729.

After Brisenstine, the Court heard from Prince Beasley, the Fayetteville narcotics detective who Helena’s mother felt was responsible for putting the idea in Helena’s head that she had something to do with the MacDonald murders. TTr. 5738-5751; see supra, at 3. Beasley went to Helena’s apartment on the night after the MacDonald murders to ask her if she was involved. He told Judge Dupree that when he asked Helena whether or not she had participated in the crime she said to him, “in my mind, it seems that I saw this thing happen; but... I was heavy on mescaline.” TTr. 5742. He later went to Nashville to interview her again, at which time she told him “basically the same thing” that she had told him in Fayetteville. Id. at 5744. On cross-examination, however, the prosecution brought to Beasley’s attention the statement that he had written after his Nashville visit. In this statement, dated March 1, 1971, Beasley wrote:

“She stated that she did not remember anything that happened on the night of the murders except that she did remember getting into a blue car she thought

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<sup>6</sup> These are all things that Helena, herself, had already told the trial jury during her testimony earlier that day.

<sup>7</sup> The FBI conducted an investigation into these and other individuals that Helena Stoeckley claimed had been involved in the MacDonald murders. They were able to determine that none were viable suspects for a host of reasons. See generally, HTr. 880-949 (Testimony of former FBI Special Agent Raymond Madden detailing his efforts to locate these named individuals), Government’s Response to Motion for New Trial: Memorandum of Points and Authorities, filed 7/13/84; Affidavit of Richard J. Mahon, filed 7/20/84; Government’s Response to Motion for New Trial, Appendix Volume I, Appendix Volume II, filed 7/20/84. DE 117-4.

was a Mustang and it belonged to one Bruce Fowler ... She again told me she had no knowledge of this night after 12:30 a.m. and that she does not know for sure what happened ... It is *my conviction* that she is involved in the MacDonald case or at least she thinks she is or that she is doing this just to get all the attention she possibly can.”

TTr. 5747 (emphasis added).

The last of the “Stoeckley witnesses” was William Posey, Helena’s neighbor in Fayetteville. TTr. 5751-5774. He told the Court that, on the night of the MacDonald murders, he had seen her come home in a blue mustang; knew her to wear white boots, a floppy hat and a blond wig; and saw the funeral wreaths outside her apartment the week of the MacDonald funerals. *Id.* at 5753-5755. Approximately two days before his testimony at the Article 32 hearing he went to see Helena and she told him that all she did was “hold the light,<sup>8</sup>” and that she remembered a “kid’s horse thing” that wouldn’t “roll.” *Id.* at 5759-5760. She also told him that she was involved in witchcraft but that she was a “good witch.” *Id.* at 5763. On cross-examination, however, it was established that Posey had actually sought out Bernie Segal at his hotel during the Article 32 hearing to tell his story. *Id.* at 5765-5766. After his Article 32 testimony, he was given \$150.00 by MacDonald’s army lawyer to help with his “moving expenses.”<sup>9</sup> *Id.* at 5771; GX 2330.

After hearing arguments regarding the admissibility of alleged out-of-court statements by Stoeckley to the “Stoeckley witnesses,” Judge Dupree stated that he would issue his ruling on Monday morning, and recessed court. *Id.* at 5799.

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<sup>8</sup> At the Article 32 Hearing, Posey testified that he is the one who suggested to Helena “well, you could have just been holding the light, you know.” GX 2338.31-32.

<sup>9</sup> On June 13, 1971, Posey was polygraphed to determine if he had been telling the truth during his Article 32 testimony. The polygraph examiner determined that several of Posey’s polygraph answers were untruthful and confronted him with that fact during a post-polygraph interview. At that time, Posey admitted that he did not actually see Helena Stoeckley on the night of February 17, 1970, and the reason that he testified as such was that a month or two after the murders he had a dream that he saw her in that car. He also admitted that the basis of his opinion that Stoeckley was involved in the murders was the way she talked about the murders, the fact that she was on drugs that night, the fact that she could not account for her whereabouts, and her manner of dress. *See* GX 2331.

At the close of court on Friday August 17, 1979, Mr. Segal provided Helena Stoeckley with a subpoena and check for witness fees for subsistence over the weekend. TTr. 5951. Helena called Segal on Friday night to inform him that she was staying at the Downtowner Motel. Id. She had seen a television story about the testimony on Friday and wanted to ask Segal whether people had really said such things about her. Id. at 5952. Segal informed Stoeckley that the defense team and witnesses were moving to the Downtowner on Saturday, and that she would need to move to a different hotel, because it would be inappropriate for her to be in the hotel with the defense team. Id.

On Saturday morning, August 18, 1979, Ernest Davis, Stoeckley's fiancé, called Segal to inform him that they were moving to a different hotel, but did not tell him where they were going. Id. That evening, Helena Stoeckley called Judge Dupree at home and told him that she was "living in mortal dread of physical harm by Bernard Segal, counsel for the Defendant, and that she wanted a lawyer to represent her." TTr. 5980. She told Judge Dupree that she was staying at the Journey's End Motel. Id.

Red Underhill also learned that Helena Stoeckley was staying at the Journey's End Motel. TTr. 5919. At that time, he got information from the motel manager that Helena had been involved in an altercation in the swimming pool with Ernest Davis, and had a black eye. TTr. 5953. He called Mr. Segal to inform him of what he had learned. TTr. 5952. Mr. Segal then decided to send a member of the defense team, Wendy Rouder, to check on Helena. TTr. 5954; HTr. 346.

On Sunday, August 19, 1979, Wendy Rouder and Red Underhill went to the Journey's End Motel. TTr. 5897-5899, 5908, 5929; HTr. 346. When they arrived, Helena had a black eye, and was disheveled. TTr. 5898, 5908-5911; HTr. 347, 1075-1079; GX 2201. Ernest was still



present, but left shortly thereafter to return to South Carolina. TTr. 5930. Because Ernest did not have any money for his return bus ticket, Red Underhill loaned him the bus fare. TTr. 5926.

Underhill and Rouder were told by the manager at the Journey's End that, due to the disturbance, Helena was no longer welcome to stay there. TTr. 5909, 5935; HTr. 347. While Mr. Segal's secretary made arrangements for Helena to check into the Hilton Hotel, Rouder stayed with Stoeckley at the Journey's End. TTr. 5931-5935; HTr. 347-349. During that time, they discussed a variety of things related to the MacDonald murders. Helena allegedly told Rouder that she thought she could have been there that night and that after seeing the photographs of the rocking horse and of Kristen in her bed that the scene looked familiar. Id.

Once the reservations were made at the Hilton, Rouder and Underhill drove Helena there and checked her in. TTr. 5912, 5936; HTr. 349. It was decided that Rouder could not stay at the Hilton with Helena, but Red Underhill would. TTr. 5912, 5936. Once Helena was checked in, the three drove back to the Downtowner so that Mr. Underhill could get his clothes. TTr. 5937; HTr. 349-351. While waiting for him in the car, Stoeckley and Rouder discussed the MacDonald murders again, at which time Helena allegedly said that she remembered standing at the end of MacDonald's couch holding a candle that was not dripping wax, but dripping blood. TTr. 5937. When Rouder asked Stoeckley why she didn't say that in court, Stoeckley told her that she couldn't with those "damn prosecutors sitting there." TTr. 5937; HTr. 350-351.

Wendy Rouder then drove Stoeckley and Underhill back to the Hilton and dropped them off, but it was not fifteen or twenty minutes before she was called back to the Hilton to take Stoeckley to the hospital to get her nose treated. TTr. 5944. While there, Stoeckley allegedly met Lynn Markstein, a woman who was also being treated at the hospital Sunday evening. DE-126-2 at 13. Markstein told defense investigators that Stoeckley had told her that evening that

she was at the MacDonald house on the night of the murders. Id. The defense, though they were aware of these alleged statements, chose not to produce Markstein at trial. TTr. 6896-97. After being treated at the hospital, Stoeckley returned to the Hilton, where she spent the night. TTr. 5899-5900, 5913-5916, 5921. While at the Hilton Sunday night, and again on Monday morning before court, she and Red Underhill discussed the MacDonald case. Id. Underhill later testified that Stoeckley had told him during this time that she could name three individuals involved in the MacDonald case, but that she was afraid for her life so she would not.<sup>10</sup> TTr. 5914.

As Rouder and Underhill were helping Stoeckley change hotels on Sunday, Steve Coggins, law clerk for Judge Dupree, was busy trying to find a lawyer for Stoeckley. TTr. 5980-5981. It proved difficult to do on a Sunday afternoon, but he was able to secure the services of Jerry Leonard, who appeared in court on Monday to represent Stoeckley.<sup>11</sup> Id.

On Monday morning, August 20, 1979, Judge Dupree issued his ruling as to the admissibility of the testimony of the “Stoeckley witnesses” at trial. TTr. 5806-5815. After careful consideration of the transcript of the witnesses’ testimony, the briefs of both parties, and all of the relevant case law he could find on point, he ruled “that these proposed statements do not comply with the trustworthy requisites of [Federal Rule of Evidence] 804(b)(3) or (b)(5); that far from being clearly corroborated and trustworthy, that they are about as unclearly trustworthy – or clearly untrustworthy, let me say – as any statements that I have ever seen or heard.” TTr. 5807.

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<sup>10</sup> This is the third time in less than 24 hours that Helena Stoeckley had told someone she was afraid. Each time, it was fear of a different person, but none of them were members of the prosecution team.

<sup>11</sup> Jerry Leonard wrote an affidavit prior to his testimony at the September 2012 evidentiary hearing in this case, which was later filed as DX 5113. In that affidavit, he stated that he was responsible for securing lodging for Helena Stoeckley on Sunday, August 19, 1979. This is in direct contravention to the testimony of Wendy Rouder and Red Underhill at trial, and the representations of Bernie Segal as established by the trial transcript. See supra at 13-15. During his testimony at the evidentiary hearing, Leonard went into some detail about how he had picked Helena up at the federal building, and how she had spent Sunday night on a recliner chair in his living room. HTr. 1110. He further stated that he checked her into the Hilton hotel himself on Monday August 20, 1979. Id. Again, this assertion is disproven by the testimony of the defense witnesses at trial regarding the events of that weekend. See supra at 13-15. Leonard admitted as much during his testimony at the evidentiary hearing in September of 2012. HTr. 1177.

He noted that her statements, both in court and out of court, were “all over the lot.” Id. at 5807-5808. Importantly, Judge Dupree also held that any hearsay testimony of the “Stoeckley witnesses” would be cumulative given that “[Stoeckley] has told everything – she told this jury everything that [the defense] proposed to show by these witnesses that she told them.” Id. at 5809. He did permit the defense to call several of the “Stoeckley witnesses,” however, who had information regarding Stoeckley’s whereabouts and actions around the time of the MacDonald murders. Id. at 5816-5821. The defense proceeded to call Beasley, Zillioux, Underhill, Posey, and Gaddis, five of the six who testified on voir dire.<sup>12</sup> TTr. 5822-6031.

Prince Beasley told the jury that he had seen Helena Stoeckley often during the relevant time period wearing a blond wig and floppy hat, and associating with two white men and a black man wearing a fatigue jacket with E-6 stripes. TTr. 5831-5833. He testified that he was unable to locate Stoeckley on the night of the murders after receiving MacDonald’s description of the alleged intruders, but that he saw Helena at her house on the night after the murders and she was with at least three males in a car. TTr. 5836. Beasley stated that he called dispatch and told them he had some suspects in custody regarding the MacDonald murders and to come take a look, but that no one ever came. TTr. 5839. He also told the jury that Helena had, in fact, later given him the floppy hat and blond wig. Id. at 5840. Further, he identified a drawing of an individual Helena had named as a suspect in the MacDonald murders as Alan P. Mazzarole.<sup>13</sup> Id. at 5859. Judge Dupree asked Beasley what the names of the individuals were who he saw with Stoeckley that night, but he could only name Greg Mitchell. TTr. 5862.

Next, the defense called Jane Zillioux to testify before the jury. TTr. 5867. After covering some preliminary topics, how she knew Stoeckley and what her demeanor was like in Nashville,

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<sup>12</sup> Only Army Polygrapher Robert Brisenstine was not re-called to testify in front of the jury.

<sup>13</sup> Later investigation by the FBI revealed that Mazzarole could not have been present for the murders because he was incarcerated at the time. HTr. 926-929. See infra at 52.

Segal proceeded to ask Zillioux a series of questions about what happened during the portion of the defense interview of Helena Stoeckley that Zillioux witnessed on Thursday, August 16, 1979. TTr. 5872-5885.

Red Underhill was called to testify about his interaction with Stoeckley in Nashville, and more recently in Raleigh during trial. TTr. 5890-5900. Unable to get into evidence any of Stoeckley's statements to Underhill in Nashville, Segal switched tactics and started having Underhill explain the events of the preceding weekend. Id. at 5897. Underhill explained when he had first seen Helena that weekend at the Journey's End Motel, and the time he spent with her at the Hilton, but when Segal began to ask him what Stoeckley said to him, the prosecution objected and the jury was sent out. Id. at 5900. Underhill detailed for Judge Dupree the events of the weekend and the things that Stoeckley said to him. See supra at 13-15.

Segal then called Wendy Rouder to expound upon Underhill's description of events and tell the Judge what statements Stoeckley had allegedly made in her presence. Id. After hearing the arguments of both sides, Judge Dupree further excluded this hearsay testimony and said, "but the picture emerges, though, of a person whose mind is so far impaired and distorted by this drug addiction that she has become and remains in an almost constant state of hallucination. That she is extremely paranoid about this particular thing, and that what she tells here in court and what she tells witnesses, lawyers in a motel room, simply cannot have attached to it any credibility at all in my opinion. I think it is not as required by [Federal Rule of Evidence] 803(b)(3) clearly trustworthy. It is perhaps the most clearly untrustworthy evidence that I have had put before me." TTr. At 5976-5977. He went on to say that the jury, having heard Stoeckley testify and having heard most of the "Stoeckley witnesses" themselves, are in the best position to evaluate her credibility. Id. At a bench conference after this ruling, Judge Dupree informed counsel that

Helena had called him on Saturday night, and that he had, therefore, appointed Jerry Leonard to represent her. TTr. 5980.

Even though the alleged out-of-court statements of Stoeckley to Underhill and Rouder had been excluded, Judge Dupree permitted the defense to call two additional “Stoeckley witnesses” to testify before the jury. William Posey testified, as he had during voir dire, that he saw Helena the night of the MacDonald murders, and told the jury about Helena’s manner of dress and actions after the murders.<sup>14</sup> TTr. 5983-6031. He also told the jury about Helena’s interest in witchcraft and her association with Alan Mazzarole. Id. at 6000-6002.

The final “Stoeckley witness” heard by the jury was James Gaddis. TTr. 6069-6077. After having Gaddis describe the nature of his relationship with Stoeckley, namely that she was his criminal informant, Segal began a series of questions carefully crafted so as to convey the answer within the question. Id. at 6073. Objections were sustained as to most of the questions before Gaddis could answer, and so the examination proceeded more like a narrative by Segal of his own version of events. TTr. 6074-6077; see also DE-150 at 14. The prosecution did not cross-examine Gaddis, and the defense moved on to its other witnesses, unrelated to Helena Stoeckley. Id. at 6077.

Helena Stoeckley and her lawyer, Jerry Leonard, remained in the courthouse, subject to recall, until Monday, August 27, 1979. TTr. 6898-6899. During this time, neither side was allowed access to Stoeckley, but Leonard did have conversations with Wade Smith regarding whether the defense would recall her as a witness.<sup>15</sup> TTr. 6647; GX 7000.7. Closing arguments

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<sup>14</sup> The majority of Posey’s testimony was discredited by his own confession subsequent to a polygraph examination. See supra at 12 n. 9.

<sup>15</sup> The defense included DX 5084 in its pre-hearing submission. It is the statement of a woman named Kay Reibold who was a friend of Jerry Leonard at the time of the MacDonald trial. The statement claims that Reibold was asked by Leonard to chaperone Stoeckley in the courthouse during the trial. It claims that, during that time, Stoeckley made incriminating statements to her. She allegedly gave this statement to defense investigator Ted Gunderson in 1980, witnessed by the office manager at Wade Smith’s office. The defense, although aware of this statement for

were heard on August 28 and 29, 1979. After only six and a half hours of deliberation, the jury found MacDonald guilty of two counts of second degree murder and one count of first degree murder.

B. Stoeckley's 1982 statements to her mother

Helena Stoeckley died on January 9, 1983, from pneumonia and cirrhosis of the liver. HTr. 500. The investigation into her statements, however, continued after her death. As a part of this investigation, Special Agent Raymond "Butch" Madden contacted Mrs. Helena W. Stoeckley (Helena's mother), and interviewed her on July 19, 1984. HTr. 942; GX 2332-2334. He interviewed her at her residence and she did not have any difficulties with her memory or sight. HTr. 946. Mrs. Stoeckley told SA Madden that "when Helena came home after the MacDonald murders, [she] told her in a perfectly sober and non-drug state that [she] did not know anything about the MacDonald murders." Id. She also relayed that her husband, Mr. Stoeckley, had questioned Helena after the MacDonald murders and told her to tell the truth, but that Helena told him, too, that she did not know anything about the murders. HTr. 944; GX 2332. It was Mrs. Stoeckley's opinion that Helena could not have been involved because she was not violent and loved children. Id. Mrs. Stoeckley did not believe that Helena had been treated fairly by Ted Gunderson and Prince Beasley. Id. She told SA Madden that Helena's mind was "gone," especially when she was drinking or doing drugs, and that when she was under the influence she often thought about the case but she was not involved. Id. It was Mrs. Stoeckley's opinion that Helena was "used," but she did not say by whom. Id. at 945. Mrs. Stoeckley said that, during the trial, "they" wanted her to take drugs to help her remember the details. Id. Mrs. Stoeckley

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more than 32 years, never sought to use it as part of its post-conviction claims of innocence. The statement bears no signature or notarial acknowledgement. Notably, the defense included it in the Pre-hearing Order, but chose not to argue it at the hearing or in its post-hearing brief after the affidavit and testimony of Jerry Leonard made no mention of any third party present during his representation of Stoeckley. This statement should be given no weight.

had saved all the newspaper articles about the MacDonald trial, and when Helena returned home she allowed her to read them. Id. Helena struggled with drugs throughout the '70's, and was committed to Dorothea Dix Hospital for mental health treatment. Id. When she was released from treatment in 1977 she moved home and she was "never right." Id. Mrs. Stoeckley told SA Madden that she believed Helena enjoyed the attention that the MacDonald case had brought her, and that the only reason these issues kept arising is because Prince Beasley would not leave Helena alone. Id. Helena told her mother that her testimony at trial was the truth and that it was the extent of her knowledge. Id. at 946. Not long before her death, Helena was in terrible physical shape and that is when she gave a statement to private investigators in California, and told them that she thought she was at the murder scene. Id. At no time during this conversation did Mrs. Stoeckley ever tell SA Madden that Helena had been threatened by Jim Blackburn or any other member of the prosecution team. Id. at 947. She also did not mention Helena telling her anything about a hobby horse. Id. at 948.

### C. Jimmy Britt

#### 1. Personal life

In the decades between the trial and his affidavits in 2005-2006, much occurred in the life of Jimmy Britt, a Deputy United States Marshal who was present during parts of the MacDonald trial. At the time of the trial, Jimmy was married to Mary Britt. HTr. 222. In the late 1980's, Mary and Jimmy began to have marital troubles. Mary found out that Jimmy had been cheating on her with another woman at the United States marshals Service, named Nancy Williams. GX 2131. Mary and Jimmy divorced in 1989, but the equitable distribution of their assets remained ongoing. HTr. 241, 254-255; 2127, 2128. On November 1, 1990, Jimmy Britt applied for retirement with the USMS, and in doing so, signed a 'Statement Regarding Former Spouses,'

at 3. The day after Blackburn signed the waiver, Smith called him and told him he could come by his office and read the affidavit that the defense was going to file. HTr. 645. Blackburn didn't even finish reading the affidavit before he confronted Smith with the falsity of the allegations and asked him how he could file such a thing. Id. at 646. Blackburn reminded Smith of Bernie Segal's blatant misrepresentations to Judge Dupree at trial and asked him how he could just stand by. Several hours after that conversation, Smith called Blackburn and told him he was going to withdraw from the case. Id. Blackburn later consented to one of Smith's law partners, Hill Allen, representing MacDonald. GX 2013 at 5.

#### D. FBI interview of Jerry Leonard

On March 22, 2006, after the filing of the § 2255 motion based on the Britt affidavit, the FBI interviewed Jerry Leonard, Helena Stoeckley's attorney during the trial. HTr. 1126; GX 6076. Leonard told the FBI that while Helena had gotten into a fight with her boyfriend and had reported to Judge Dupree that she had been harassed by Bernie Segal, she, at no time, informed him of any threats made to her by any member of the prosecution team. Id. Additionally, Leonard knew Jimmy Britt, and told the FBI that he never came to Leonard to report any threats made to his client, nor was it his understanding that Britt sat in on Helena Stoeckley's interview. HTr. 1126-1128; GX 6076 at 2. Leonard conveyed that he was a former law clerk to Judge Dupree and had a relationship with him such that if anything had been amiss during trial he could have reported it to him. Id.

#### E. Affidavit of the elder Helena Stoeckley

In early 2007, Eugene Stoeckley allegedly had a conversation with his mother, the elder Helena Stoeckley, about his sister's involvement in the MacDonald murders. HTr. 284-285. At this time, the elder Mrs. Stoeckley was in an assisted living facility and suffering from macular



degeneration, in need of oxygen therapy, and had ongoing heart problems. HTr. 302. According to Gene Stoeckley, it was then that his mother told him his sister had confided in her (during Helena's last visit home in the fall of 1982) that she was present at the scene of the MacDonald murders.<sup>27</sup> Instead of calling the FBI or any other law enforcement official with this information, Gene Stoeckley contacted Kathryn MacDonald, the defendant's current wife, via the Jeffrey MacDonald website. HTr. 306. The two exchanged phone numbers and Gene called Kathryn during his lunch break on Friday, March 30, 2007. Id. at 307. Kathryn drove from Maryland down to North Carolina that same day, and on Saturday, March 31, 2007, Gene and Kathryn spent several hours over lunch discussing the case. Id. at 308. In the late afternoon, they got in the car together and drove to Fayetteville so that Kathryn could speak to Mrs. Stoeckley. Id. at 309. While they were en route to the assisted living facility, Gene's wife called his brother Clarence to tell him what was going on. Id. Clarence was not supportive of this undertaking and encountered Gene and Kathryn at the assisted living facility and protested their being there. Id. at 310. Gene and Kathryn persisted, however, and went in to speak with Mrs. Stoeckley. Kathryn requested that a statement be prepared, and called attorney Hart Miles in Raleigh, who drove down immediately with his paralegal, Laura Redd. Id. at 311. While waiting on Mr. Miles and his paralegal, Kathryn MacDonald typed a draft of Mrs. Stoeckley's affidavit on the assisted living facility's computer. HTr. 312-313. Once Mr. Miles and Laura Redd arrived, Redd and Kathryn MacDonald took turns typing on the computer in the facility's office until an affidavit was completed. HTr. 413-414. The affidavit was a total of 3 pages; the first two pages were typed in numbered paragraphs, 1 to 15. DX 5051. Neither of the first two pages was initialed by the elder Mrs. Stoeckley, nor were they numbered. The third page was a

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<sup>27</sup> This encounter between Helena and her mother occurred mere months before Mrs. Stoeckley's interview with the FBI in which Mrs. Stoeckley was adamant that Helena was not involved in the murders. See supra at 19-20.

signature page with the word “Untitled” centered at the top of the page, and “Page 1” centered at the bottom of the page. Id. There are no staple holes on the pages of the affidavit. HTr. 698, 700. Gene allegedly read the affidavit to his mother and then allowed her to make corrections. HTr. 315. According to Gene, “[s]he had the pen in her hand and I just placed her hand in the general area of the document where the line is.”<sup>28</sup> HTr. 320. The affidavit was signed by the elder Helena Stoeckley, Gene Stoeckley, and Grady Peterson, and notarized by Laura Redd. DX 5051. Mrs. Stoeckley’s signature was not on the signature line, rather, it was above and to the right, signed at an angle.

Gene and Kathryn had arrived at the nursing home between three and four in the afternoon, and Hart Miles and Laura Redd arrived around six or six-thirty in the evening. HTr. 320, 411. The time period from that the call to Hart Miles (after Gene and Kathryn had separately interviewed Mrs. Stoeckley) until the time the affidavit was completed was about six or seven hours, making the time of completion somewhere between nine and ten o’clock. HTr. 416.

On May 6, 2007, the defense filed a Motion to Supplement Applicant’s Statement of Itemized Material Evidence, attaching Mrs. Stoeckley’s affidavit (DE-144-1) in support of their previously filed 2255 motion. DE-111. Upon becoming aware of this new affidavit by the elder Helena Stoeckley, the FBI requested a second interview with her. HTr. 328. Gene Stoeckley requested to be present during this interview. HTr. 329. During an interview on April 25, 2007, Mrs. Stoeckley told Special Agent Jim Cherokee that Helena loved children and old people, and that she believed Helena would do whatever Prince Beasley told her to do. HTr. 329. Mrs. Stoeckley told Agent Cherokee that she had never made up her mind about MacDonald’s guilt.

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<sup>28</sup> At the time of the affidavit, Gene Stoeckley was the one responsible for the care of his mother and often got her to sign documents that he needed. HTr. 319-320.

HTr. 331. At that time, Gene Stoeckley told Agent Cherokee that this interview was going quite differently than the earlier interview with Kathryn MacDonald and Hart Miles. Id. at 332

F. Other events prior to evidentiary hearing

On May 21, 2007, Jerry Leonard wrote a letter to the Court regarding potential attorney-client privilege issues with respect to Helena Stoeckley.<sup>29</sup> HTr. 1215-1217; GX 7017. The impetus for this letter was an ethics inquiry made by Hart Miles to the North Carolina State Bar. GX 7015. This was the first time in the nearly 28 years since trial that any question had arisen as to Stoeckley's confidential communications being relevant to this case. HTr. 1221.

Jimmy Britt died on October 28, 2008. DE-149-2. On November 4, 2008, the Court issued a detailed Order denying defendant's motion to add an additional predicate and motion to supplement the statement of itemized evidence for failure to apply for, and receive, a pre-filing authorization from the Fourth Circuit. DE-150 at 19. The Court also denied MacDonald's Motion to Expand the Record (DE-126), leaving only the original 2255 motion or 'Britt claim' for the Court's gatekeeping consideration. DE-150 at 21-22. With regard to the Britt claim, the court held that "MacDonald has not demonstrated that the Britt affidavit, taken as true and accurate on its face and viewed in light of the evidence as a whole, could establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found MacDonald guilty of the murder of his wife and daughters." DE-150 at 46.

On April 19, 2011, the Fourth Circuit reversed and remanded the case for further proceedings. See infra at 165-166, 180-181, 190-191. Subsequently, the defense filed a Request for Hearing as to both the Britt and DNA claims on September 20, 2011. DE-175. The Government concurred with the request for hearing as to the Britt claim, but requested that the Court hold the issue of hearing on the DNA claim in abeyance until the Government responded

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<sup>29</sup> The Government was not provided with a copy of this letter and did not learn of its existence until April 2012.

admissions to the witnesses. HTr. 148. Regarding his conversations with Jerry Leonard during trial, Smith clarified that, of the many “tantalizing” things that she had said to witnesses, none of them came from Jerry Leonard, but rather, from Wendy Rouder. HTr. 153. Smith recalled discussing his conversations with Jerry Leonard with Errol Morris in an interview for his book, and telling Morris that he would run into Jerry from time to time over the years and kid about whether Leonard had something helpful to tell him about this case, but that Leonard never made any disclosures to him about what Stoeckley might have told Leonard. HTr. 154.

Regarding the Britt affidavits, Smith testified that, before the evidentiary hearing, he had never seen Britt’s first affidavit, dated February 23, 2005. HTr. 165-167; GX 2085. Smith could not specifically recall if Britt first brought forth these allegations to the defense team before or after January 17, 2005. HTr. 171. Smith relayed his efforts to contact Geraldine Holden, stating that he learned her health was very bad and never got a chance to talk to her. HTr. 171-172. With regard to his efforts to have Mr. Britt polygraphed, Smith testified that he was aware that the polygrapher, Steve Davenport, had suffered a stroke near the time of the Britt polygraph, did not have any records associated with the polygraph, and was now unavailable to answer questions as to whether he established a baseline for truthfulness before conducting the examination. HTr. 184-185.

b. Mary Britt

The second defense witness was Mary Britt, former wife of Jimmy Britt. She discussed how emotionally invested Britt was in the trial. HTr. 225, 252, 265. Mary Britt also said that Jimmy had told her the night before he went to get Stoeckley that he was going to South Carolina the next day to pick up a witness.<sup>31</sup> HTr. 242. She said that, while the trial was ongoing, Britt

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<sup>31</sup> There was no direction from the Court to bring Stoeckley to Raleigh until the morning of August 15, 1979, when Segal requested she be brought “forthwith.” TTr. 5256-57. This was the same day as the transport.

over Helena. HTr. 328. He recalled the FBI interview of his mother after the completion of the affidavit, where she told Agent Cherokee that Helena loved kids and old people, and could not have hurt them. HTr. 329 - 330. He could not recall that his mother told Agent Cherokee that Helena never told her she was afraid of the prosecutor, but he did recall telling Agent Cherokee that the interview was going much differently than the one with Hart Miles and Kathryn MacDonald. HTr. 332. Gene Stoeckley testified that he was unaware of the interview that his mother had given to the FBI in 1984. HTr. 336-341.

d. Wendy Rouder

The next defense witness to testify was Wendy Rouder. She was a member of the defense team during the trial. HTr. 345. Rouder testified that she received a phone call indicating that Helena Stoeckley would need to be moved from her current hotel to another hotel during the trial. HTr. 346. Rouder said that she went to the Journey's End Motel with Red Underhill, picked up Stoeckley, and moved her to the Hilton. HTr. 348-349; See supra at 13-15. During this time, Stoeckley allegedly made statements to Rouder implicating herself in the MacDonald murders. Id. Rouder testified about an affidavit created in 2005 in response to Kathryn MacDonald informing her of the Britt Allegations. HTr. 351-357. She admitted that the affidavit was somewhat different from her voir dire testimony at trial. HTr. 357. On voir dire, she had testified that Helena told her she couldn't tell the truth because of "those damn prosecutors sitting there," but in her affidavit, she added "they'll fry me" or "burn me" or "hang me," stating that she didn't remember those additional words until Kathryn MacDonald contacted her. HTr. 357. She admitted that she made notes about her conversation with Helena, and used them to testify on voir dire at trial, but that the phrases "fry me," "burn me," and "hang me," did not appear in her voir dire testimony, even though Segal would likely have asked her

about them had they been in her notes. HTr. 376, 388. Rouder testified that she did not prepare the affidavit herself, rather, Kathryn MacDonald prepared it and faxed or mailed it to her. HTr. 366. She testified that the only thing on the last page of her affidavit, DX 5080, is her signature line and the notary seal, and that she did not make any amendments to the affidavit once she received it, she just signed it as is. HTr. 367. She could not say that she was certain that the contents of the affidavit, as they appear on DX 5080, are like they were when she signed it. HTr. 368. Additionally, Rouder admitted that her memory was likely better when she testified on voir dire the day after the alleged events occurred than it was when she signed the affidavit in 2005. HTr. 368-369.

e. Laura Redd

Laura Redd, the paralegal for Hart Miles who notarized Mrs. Stoeckley's affidavit, testified next. She recalled leaving Raleigh to drive to Fayetteville around two or three o'clock in the afternoon on the day of the interview. HTr. 401. Redd testified that when she arrived, it was a joint effort between her and Kathryn MacDonald to get the affidavit typed. HTr. 403-404. On cross-examination, Redd admitted that the first two pages of the affidavit were prepared on one computer and the signature page on another. HTr. 414. She testified that from the time that she got involved until the affidavit was completed was six or seven hours. HTr. 416.

f. Sara McMann

The next defense witness was Sara McMann. Mrs. McMann and her husband allowed Helena Stoeckley to live with them for a time just after Helena's son was born. HTr. 420-421. At some point, Mrs. McMann realized that she was Helena Stoeckley from the MacDonald case that had been in the newspapers. HTr. 422. During direct, McMann was adamant that she and Helena both knew MacDonald was not guilty and that McMann wanted to see him freed. HTr.

424. McMann testified Helena and three men went to “rough MacDonald up” and told her that she could become a wizard in an occult group if she went with them. HTr. 435-436. On cross-examination, McMann admitted to writing to the defendant and telling him that she knew he was innocent prior to her testimony at the hearing. HTr. 439. She testified that she was in court to do her part to help him. HTr. 440

## 2. Bench conference regarding Jerry Leonard

Next, the defense called Jerry Leonard to the stand. HTr. 443. A bench conference was held at which Mr. Widenhouse informed the Court that his understanding was that Mr. Leonard would assert the attorney-client privilege. HTr. 444. A discussion ensued about the relevant case law and the Government requested that, in light of the First Amendment, that the conversation regarding the law of attorney-client privilege be held in open court. HTr. 447, 452, 461. Additionally, the Government made clear that it did not have any opposition to the privilege being lifted and Mr. Leonard being allowed to testify regarding his conversations with Helena Stoeckley. HTr. 448, ln. 18-19. The hearing was recessed for the evening so that the Court could have an opportunity to read the relevant case law. HTr. 462. The next morning, the Court, having reviewed Swidler & Berlin v. United States, 524 U.S. 399 (1998), ruled that the privilege survived Helena Stoeckley’s death. HTr. 467.

## 3. The Government’s case

### a. Frank Mills

Frank Mills, a retired Special Agent for the FBI, testified that he was assigned to the Greenville, SC, office at the time of the MacDonald trial in 1979. HTr. 470. He received a phone call from the U.S. Attorney’s Office in Raleigh and a teletype from the FBI Office on August 13, 1979, informing him of the bench warrant for Helena Stoeckley. HTr. 471; GX

witnesses, was also polygraphed by the CID, which detected deception when Posey said that he did not lie at MacDonald's Article 32 hearing. HTr. 818-21; GX 2331. Ivory testified that Posey, during his post-polygraph interview, admitted that he did not actually see Helena Stoeckley on the night of the murders, as he had previously testified. HTr. 821-822.

Ivory also testified about his tape-recorded interview with Jeffrey MacDonald on April 6, 1970, and how MacDonald said that he was the one who put the pajama top on top of Colette's chest. HTr. 872-873. With regard to the unknown fibers and hairs, Ivory testified that an investigator would generally be unable to determine when any fiber came to be present in the house, but that with respect to the threads from the pajama top, they were able to say for certain that they were deposited there the night of the murders given the evidence of the struggle and the testimony of the defendant that the shirt was his and it was ripped that night. HTr. 877-878.

m. Raymond "Butch" Madden

After Ivory, the Government called former FBI Special Agent Raymond "Butch" Madden to testify. Madden explained that he was tasked with investigating information given to the FBI by the MacDonald defense team during post-conviction proceedings. HTr. 881. This mainly involved investigating various statements of Helena Stoeckley naming individuals who may have participated in the MacDonald murders—Greg Mitchell, Dwight Edwin Smith, Shelby Don Harris, Bruce Johnny Fowler, and Allen Mazerolle. HTr. 882-883. Madden testified that he also interviewed both Helena Stoeckley and her mother, the elder Helena Stoeckley, as well as defense investigators Ted Gunderson and Prince Beasley. HTr. 883. The interviews with Helena Stoeckley occurred over a two-day period in September of 1981. HTr. 884. During the first interview, Helena told Madden, along with SA Frank Mills, that Beasley had arrested her fiancé Ernest Davis in South Carolina and taken him to Fayetteville, and that he had promised to



bail Ernest out if Helena would go with him to Ted Gunderson's office in Los Angeles and give a statement. HTr. 887-888. He also promised her that they would pay to relocate Helena and Ernest to California and that they would find them jobs, financing, and new identities. Id. Madden testified that Helena told him she was interviewed in California for a period of three to four days from the early morning into the late evening for more than twelve to fifteen hours a day. HTr. 889. Madden further testified that, as an experienced investigator, this type of interrogation would be considered unethical, if not illegal, because it could lead people to say things that were untrue. Id. During his first interview with her, Stoeckley told Madden that she was not involved in the MacDonald murders and signed a statement to this effect.<sup>35</sup> HTr. 891. The next day, Helena gave Madden a second interview, at which time she told him that the statements she made to Ted Gunderson were things she thought or dreamed happened, not things she recalled, and further, that she still does not know where she was during the murders. HTr. 892. Madden testified that Stoeckley informed him that Beasley brought Fred Bost to see her and that the two of them were working on a book deal related to the MacDonald case. HTr. 910. The profit split for the book deal was supposed to be twenty percent for Helena, twenty percent for Beasley, and the rest divided between Bost and a publisher. Id. At that time, Beasley told Helena only to deal with him and not to talk to anyone from the FBI or the Department of Justice. Id. Madden testified that Helena felt used by Prince Beasley and Ted Gunderson, At no time during their conversations did she ever mention being threatened by the prosecution or Jim Blackburn. HTr. 912. Helena gave Madden copies of letters she had written to Ted Gunderson telling him that she felt he had used her as a pawn and coerced her into signing the defense statements. HTr. 913-915.

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<sup>35</sup> All of the documents discussed in SA Madden's testimony are available in the Joint Appendix to the Fourth Circuit at the citations given in the hearing transcript.

Madden also conducted an interview, audio-recorded and later transcribed, of Ted Gunderson and Prince Beasley regarding the statement they took from Helena Stoeckley. HTr. 917. Madden testified that Gunderson admitted to spending a day and a half interviewing Stoeckley for hours on end before she would agree to give them a written statement, and that her statements were disjointed and disorganized so he retyped them and had her sign the 53-page statement. HTr. 920-923. During the interview with Gunderson, Madden stated that Gunderson told him he had contacted several individuals about a book or movie deal regarding the MacDonald murders. HTr. 935-936. Madden testified that he also talked to Beasley about the book deal with Fred Bost that Helena had told him about, and Beasley confirmed the percentage split that Helena had quoted. HTr. 937. The interview Madden conducted with Beasley and Gunderson was seventy-eight transcribed pages, but at no time during that interview did either of them mention that Helena had reported any threat to her by Jim Blackburn. HTr. 940.

Gunderson had given Madden the names of individuals Helena had implicated in the MacDonald murders (Bruce Fowler, Greg Mitchell, Don Harris and Allen Mazerolle) but told him that he had not run down those leads because he had not been paid to do so. HTr. 926. Madden testified that he then conducted an independent investigation into the possibility of these individuals being involved and was able to learn that during the MacDonald murders Allen Mazerolle was in jail. HTr. 926-929. With regards to Dwight Edwin Smith, Madden was able to interview him and he denied any involvement in the murders and stated that he did not know the other named individuals. HTr. 929-931. Madden testified that Shelby Don Harris was interviewed and said that he knew Helena Stoeckley, but that he had nothing to do with the murders and volunteered to take a polygraph examination. HTr. 932- 934; See infra at 135, 140.

Madden also had occasion to interview the elder Helena Stoeckley on July 19, 1984, as a part of his investigation. HTr. 940; GX 2333, 2334, 2332. This interview was conducted after the death of her daughter Helena. HTr. 942. He testified that Mrs. Stoeckley told him that the younger Helena told her, her husband, and Bernie Segal that she didn't know anything about the murders. HTr. 943-944; GX 2332. Mrs. Stoeckley believed that Helena could not have been present because she was nonviolent and loved children, and that she was not treated fairly by Gunderson and Beasley. Id. Mrs. Stoeckley told Madden that Helena's mind was "gone," especially when she was under the influence of drugs, and that when doing drugs she thought about the case but that she was not involved. HTr. 945; GX 2332. Mrs. Stoeckley said that she saved all the newspaper clippings regarding the trial and allowed Helena to read them. Id. She also believed that Helena enjoyed all the attention from the MacDonald case and that when she asked her why she gave a statement to defense investigators, Helena told Mrs. Stoeckley that she thought she was at the murder scene. HTr. 945-946; GX 2332. Madden testified that, at the time of the interview, Mrs. Stoeckley was in good health, living at home, and appeared to have all her faculties. HTr. 946. At no time during their conversation did Mrs. Stoeckley ever mention a threat to Helena by Jim Blackburn. HTr. 947.

n. Joe McGinniss

The last witness for the Government was Joe McGinniss, author of *Fatal Vision*, the 1984 book about the MacDonald trial. McGinniss was approached by MacDonald to come to the trial and write a book about it, in exchange for MacDonald receiving a percentage of the royalties. HTr. 954-955. He was given unfettered access to any "incidents, characters, dialogues, action scenes and situations" that he desired in connection with the publication of the book. HTr. 955. He joined the trial team and lived with them at a fraternity house in Raleigh during the trial.

persons, as well as circumstances... In essence, then, Dr. MacDonald, in personal and social adjustment is in need of continuous consistent psychotherapeutic intervention coupled with psychiatric attention.

HTr. 1085-1086; GX 6075.

On cross-examination, McGinniss was asked whether he had read the psychiatric evaluation of Dr. Sadoff, prepared for the defense at trial, in which he stated that he could not see anything in MacDonald's make-up that could account for the homicide. HTr. 1088. McGinniss testified that he had actually talked to Dr. Sadoff after the trial and Sadoff told him that if he had known then the things that he learned later about MacDonald's Eskatrol use and other matters, that his opinion would have been very different. HTr. 1089.

#### 4. Jerry Leonard testimony

After McGinniss testified, the Government rested its evidence, and Mr. West, attorney for Jerry Leonard, made another plea to the Court to take Leonard's testimony in camera or in a closed courtroom. HTr. 1096. The Government opposed this motion, and requested that the testimony be taken in open court. HTr. 1096-1106. The Court agreed, and Jerry Leonard was then called as a defense witness. HTr. 1106.

Leonard testified for the defense on direct that he was called by Judge Dupree's office one weekend during the MacDonald trial and asked to represent Helena Stoeckley, who was a material witness. HTr. 1108-1109. He testified that he picked her up late on a Sunday afternoon, and couldn't recall from where, but thought that it might have been the federal building. HTr. 1109. Leonard claimed that he had to find her lodging and so he took her to his house, and she slept on a recliner chair at his house that night. HTr. 1109-1110. Leonard stated that he had to drive her to court on Monday morning and that, on the way there from his house, he checked her in to the Hilton Hotel. HTr. 1110. He testified that he stayed with her in the

assigned room in the courthouse almost all day, but couldn't remember if they went out for lunch. HTr. 1111. Leonard couldn't remember if he brought up the issue of the statute of limitations or if Stoeckley did. HTr. 1112. They also discussed what her testimony would be if she were to take the stand, and she told him that she did not remember anything about the evening of the murders. HTr. 1112-1113. Leonard alleged that, later that day, Stoeckley asked him what he would do if she told him she were at the MacDonald house, and then she told him she had been there. HTr. 1114. He claimed that she told him that while she was in the MacDonald house that the phone rang and she answered it, and she told him about a hobby horse. HTr. 1115-1116. He did not give any further specific details from memory during his testimony, rather, Mr. Widenhouse pulled Leonard's affidavit up on the courtroom monitor and had Leonard read it into the record. HTr. 1116-1124. After reading his affidavit into the record, direct examination abruptly ended and the Government proceeded to its cross-examination. HTr. 1124; DX 5113.

Leonard was first asked whether Stoeckley, at any time, represented to him that a member of either the defense or prosecution teams had threatened her, and he said that she did not. HTr. 1124-1125. He recalled speaking with the FBI in 2006 and telling them that Stoeckley had not told him of any threats. HTr. 1125-1126. Leonard could not remember, however, the exact timeframe of this interview, nor did he recall that its purpose was to ask about whether Jimmy Britt ever came to him and told him about threats to Helena Stoeckley by the prosecution. HTr. 1126-1127. He testified that he never received any information that Jimmy Britt sat in on any interview with Helena Stoeckley. HTr. 1127-1128.

Leonard stated that it is his opinion that MacDonald did not receive a fair trial because of how Bernie Segal conducted himself in front of the jury. HTr. 1129-1131. He was then shown a

copy of Government's Exhibit 7000.1, an excerpt from Errol Morris' book detailing a conversation between Jerry Leonard and MacDonald defense investigator John Dolan Myers about five months after the MacDonald trial. HTr. 1132. Leonard did not recall the date of this interview, nor did he recall telling Myers that he did not feel the prosecution had proved its case and that MacDonald had been "screwed." HTr. 1134-1135; GX 7000.1. Leonard was then questioned about statements he made to Errol Morris concerning the composition of the MacDonald jury and Wade Smith's chances of winning the trial, but could not specifically recall making those statements to Errol Morris, even though he admitted that the interview with Morris had taken place only six months prior to his testimony.<sup>36</sup> HTr. 1136-1137.

Leonard was questioned about how he came up with the date of August 19, 1979, as the day he was appointed to represent Helena Stoeckley and said that he "put it together." HTr. 1139-1140. He admitted that when he met with the Government in preparation of the evidentiary hearing on August 24, 2012, that he did not know at that time what date his representation began, but thought it was Saturday night. HTr. 1139-1140. He further stated that he went back to try to determine the date when he was asked to prepare his affidavit for the evidentiary hearing. HTr. 1142. When he spoke with author Errol Morris, Leonard speculated as to the reasons Judge Dupree appointed him to represent Helena Stoeckley. GX 7000.2; but see TTr. 5980-81.

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<sup>36</sup> Leonard told Morris that given that the jury was composed of people from Eastern North Carolina, that would mean "farmers" and "rednecks." HTr. 1136-37; GX 7000.2. Even though his interview with Morris was less than six months before the evidentiary hearing, Leonard could not remember telling Morris about the jury, however, he did admit that it "sounds like something I might have said." HTr. 1136. The jury was actually composed of mostly educated individuals, including an accountant, a chemist, the son of a prominent doctor, a Green Beret Sergeant, and a retired North Carolina State policeman. HTr. 957.

Leonard was next questioned about his interview with FBI Special Agents Jim Cherokee and Andy Thomure. He did not recall telling them that the statute of limitations may have been a factor in Judge Dupree appointing him to represent Stoeckley. HTr. 1143; GX 6076. He was next asked about the statement in his affidavit that, at the time of his appointment, Stoeckley had already testified in front of the jury, and whether that was his clear recollection. HTr. 1147. Leonard responded that he only recently found out she had actually testified in front of the jury. Id. He could not recall telling agents Cherokee and Thomure that he did not remember Stoeckley testifying in open court. HTr. 1148. He admitted that the first time he heard that Stoeckley had testified in front of the jury was when Hart Miles told him that during the course of Miles' representation of Jeffrey MacDonald, which began in 2005. HTr. 1149. He could not recall the date of his interview with Hart Miles, and thought that it was after his interview with the FBI, but then conceded it must have been before, since he told the FBI agents that he had been interviewed by Hart Miles. HTr. 1149.

Leonard was questioned about additional statements made to Errol Morris. HTr. 1151. He said that it was possible he had told Morris that Judge Dupree would not let Stoeckley testify because of her past drug use. He said "I could have. You know, what happens is you find out stuff later and then you confuse that with what actually you knew at a particular time." HTr. 1152; GX 7000.5. When asked about his presence in the courtroom during Judge Dupree's ruling on the Stoeckley witnesses, Leonard could not recall being present but said that he "apparently" was because he appears in the transcript at a bench conference that day. HTr. 1154. Additionally, he admitted that, as recently as his conversations with Errol Morris, he was under the impression that Stoeckley had testified outside the presence of the jury, but then admitted that he told Morris she had not testified at all. HTr. 1157; GX 7000.8. He did recall telling Morris

that he just remembered sitting there and it “seemed pretty boring.” HTr. 1159; GX 7000.8. The following colloquy ensued between Mr. Leonard and Government counsel:

Q. All right. So, at the time that you were speaking to Errol Morris in 2012, you seem to be wondering whether you knew she had testified at all, whether you knew in 1979 that she had testified at all.

A. I don't – I can't testify to you that I knew then that she had testified.

Q. All right.

A. My – ***and then you hear things*** and obviously I heard that she had testified and I was thinking surely she did not testify before the jury. And Judge Dupree's statements could have been – well, I'm making explanations, but just because it was said at a bench conference where there were as many lawyers as you have here or maybe as many, that I heard it. I mean, I could have been sitting over where the clerk sits, you know.

Q. So, as I understand your testimony, you're saying that it's sometimes difficult to distinguish what you learned in 1979, and what you've learned since?

A. ***Yeah, and that's the danger. And I haven't talked to – I've tried real hard not to talk to people about this.*** I've tried real hard not to – I mean, I'm talking about the trial in general, although I have obviously. ***And what happens is you hear stuff at a later date and it all becomes part of what you know and it's hard to peel away the context that you heard one thing from the other.***

HTr. 1159-1160 (emphasis added).

Leonard agreed that he told Agents Cherokee and Thomure in 2006 that he had to secure lodging for Stoeckley at the Hilton, and that Judge Dupree provided a court allowance to cover the duration of her stay. HTr. 1161-1165; GX 6076. When confronted with portions of the trial transcript proving that it was Wendy Rouder and Red Underhill of the defense team who checked Stoeckley in to the Hilton on Sunday, Leonard stated that it was still his memory that he had done so. HTr. 1165-1178. When confronted with the fact that Stoeckley was already



staying at the Hilton when he was appointed he stated: "I don't remember that, I really don't." HTr. 1175.

Next, Leonard was asked about the statement in his affidavit concerning his conversation with Stoeckley about the statute of limitations and how he remembered telling her it was "up in the air." HTr. 1178. He did recall telling Agents Cherokee and Thomure in 2006, and telling Errol Morris in 2012, that there was a potential ten-year statute of limitations, six months of which would have been left at the time of trial, but stated that he has since realized that what he told Cherokee, Thomure, and Morris was an incorrect legal proposition. HTr. 1178-1181; GX 7000.8. He recalled wanting to keep Stoeckley off the stand because she was "all over the place." HTr. 1182. When asked if Monday, August 20, 1979, was the first day of his representation of Helena Stoeckley, he replied that based on the transcripts he had read, that was correct. HTr. 1184-85.

Leonard was next questioned about the preparation of his affidavit, and he testified that he prepared it himself, only a few days before the evidentiary hearing began. HTr. 1186-1188. He stated that Stoeckley's mention of the hobby horse was not necessarily connected to her presence at the crime scene, but just a random statement. HTr. 1188. He also mentioned that he had been given access to the crime scene photographs himself during the trial, and saw the photograph of the horse, and that in the photograph it appeared broken to him. HTr. 1189-1190. Leonard was then asked to recall the specifics of what Helena Stoeckley had told him, without the aid of his affidavit on the courtroom monitor, and was able to say that she told him she was a member of a cult who went to the MacDonald house, but was unable to give the level of detail present in his affidavit. HTr. 1191-1194. Leonard further testified that Stoeckley had told him that there were four or five males with her at the MacDonald house, but that he did not put that in his affidavit

and that he “just added that number” to his testimony at the evidentiary hearing. HTr. 1199. He stated that although he did not put it in his affidavit, he had conversations with Stoeckley about how she could help herself by giving information to the government. HTr. 1201.

Leonard testified that at the time Stoeckley allegedly made these admissions to him, he never brought it up with the Court or asked the State Bar for guidance on the issue. HTr. 1201-1203. He admitted that during his interview with the Government in August of 2012, he stated that he didn’t remember needing to talk to anybody about Stoeckley’s statements at the time of the trial. HTr. 1207. He did not recall ever having a conversation about the case with Wade Smith. HTr. 1206; GX 7000.7. Leonard testified that he did try to contact the State Bar in 2007, but then admitted that it was actually Hart Miles, attorney for MacDonald, who had made the inquiry. HTr. 1214-1215; GX 7017, 7015. Similarly, Leonard stated that he was aware that Helena Stoeckley died in 1983 but that her death did not change his opinion regarding attorney-client privilege and whether he should come forward with any information. HTr. 1212. He testified that neither the decision regarding the Supreme Court case involving Vince Foster<sup>37</sup>, nor the North Carolina case involving Raleigh attorney Rick Gammon<sup>38</sup> caused him to feel that he needed to come forward with any information regarding Stoeckley’s statements. HTr. 1217-1221. Leonard testified that his representation of Stoeckley “seemed boring,” and the fact that she had allegedly made admissions to him in one of the most famous murder cases in North Carolina did not trigger a response in him because she had told so many conflicting stories. HTr. 1222.

Leonard admitted the truth of statements made to author Errol Morris, specifically, the following: “Honestly, my memory is not a hundred percent and for anything that I say to be

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<sup>37</sup> Swidler & Berlin v. United States, 524 U.S. 399 (1998)

<sup>38</sup> In re Miller, 358 N.C. 364 (2004)

reliable, even as I'm trying to fill in the facts for you, is fairly dangerous I think because honestly I'm wrong on some key facts" and "I'd like to be a little shining light but I just don't know that I can." HTr. 1223; GX 7000.7, 7000.8.

The Government then asked to approach the bench and tendered an exhibit to the Court, without asking Mr. Leonard about it in open court, offered as part of the evidence as a whole in considering the likely credibility and probable reliability of Mr. Leonard's evidence. HTr. 1225. This was GX 7010, the North Carolina Supreme Court decision in 1995 publicly censuring Leonard for:

"(1) his behavior while publicly intoxicated in Key West, Florida which resulted in his arrest and a negotiated plea of *nolo contendere* to the criminal offense of trespass after warning; (2) his behavior while publicly intoxicated in Raleigh, North Carolina which resulted in his conviction of the criminal offense of indecent exposure; and (3) his continuing refusal, even after admitting to psychological dependency, to abstain from the consumption of alcohol, the use of which caused the aforementioned incidents and conduct."

Finally, Leonard was asked about a poem that Stoeckley had written for him during the trial, and admitted that he had it framed and put it on his wall, and later mailed a copy to Jim Blackburn. HTr. 1227-1228; GX 6077. He testified that he opened that sealed letter to Blackburn in front of Government attorneys during his interview in preparation for the evidentiary hearing, and allowed the Government to keep a copy. HTr. 1228.

On redirect, Leonard stated that he believed the things Stoeckley had told him were no different than the things to which she had already testified, and had already told other people with regards to the case, and so it didn't trigger a need to tell anyone about them. HTr. 1231.

##### 5. Exhibit of MacDonald's statements

At the conclusion of Leonard's testimony, the Government offered an exhibit; a compilation of MacDonald's statements during his testimony at trial, to be considered with

Further examination by the surgical resident, Dr. Jacobson, and an X-ray revealed that MacDonald had a laceration type wound on the right side of his chest at the seventh intercostal space (between the 7th and 8th ribs). TTr. 2858. This wound caused a small pneumothorax (air between the lung and the inner wall of the chest), a condition which is “well-tolerated” by someone of MacDonald’s “relative good health and robustness.” TTr. 2865-66.

At trial, while on cross-examination, Dr. Jacobson was asked a hypothetical question, as he had been during his Article 32 testimony, about whether a doctor who inflicted a stab wound on himself at this location would have been able to control the depth of the wound. Dr. Jacobson responded that his opinion at the Article 32 hearing had been that “if one were to grab the handle of a knife and stab himself, he wouldn’t be able to control the depth of how far you stab simply because you don’t know how sharp the knife is, you don’t know how tough your skin is, and sometimes you don’t know how hard your muscles are working.” TTr.2877. Dr. Jacobson continued, “[s]ince then I have had a chance to reflect simply because of the procedures we do—biopsy procedures—we can control the depth; and the way we do it such as doing a spinal tap, is we set a little depth gauge ahead of time, and we go in that far and that is as far as we go. Reflecting on that, I thought that if one were to grab a knife carefully, one could by grabbing the handle and grabbing part of the blade, just go only up to your thumb and you would only go into as far as you wanted to go. Your thumb would stop you.” TTr.2877-78.

Dr. Jacobson further testified: “I recall that he had a pair of pants or a pair of pajama bottoms, I have mentioned this before, that they seemed to be more like pants because the material in them was rather dense, and as I recall, nice material. I don’t know why I recall that.” TTr.2850-51.

MacDonald was also attended in the Intensive Care Unit by Dr. Merrill Bronstein, who had previously met MacDonald while both were moonlighting at local hospitals. TTr.2951-52. Dr. Bronstein gave MacDonald “a pretty thorough examination because I was very upset—he was upset. He was tearful and very obviously anxious and I guess I was very intent on relieving his discomfort—his general agitation and I wanted to give him medication to calm him down.” TTr. 2954-55. Because MacDonald said he had been “knocked out,” Dr. Bronstein wanted to make sure he was not medically compromising MacDonald by administering narcotics or sedatives and “felt that he should examine his head very carefully.” *Id.* After examining MacDonald’s head and only finding one bruise, Dr. Bronstein gave MacDonald medication. TTr.2955. Dr. Bronstein “looked him over pretty carefully” for other wounds. TTr. 2956. He described one of the three wounds as follows: “he had a cut on his left upper abdomen. In medical terms, it is below his costal margin, below the edge of the ribs, maybe two inches down. And it was about an inch and a half or two inches long, and it was through the skin and the fat.” *Id.* “It went through the fat. You could see the fascia. It is kind of a flat tendon of the middle muscle of the belly called the rectus muscle—rectus abdominus. I could see the white fascia, but it wasn’t bleeding. It was not superficial, in that it went through the skin and through the subcutaneous tissue, but was not through the fascia.”<sup>46</sup> TTr.2957.

The first CID agent to interview MacDonald was Paul Connolly. Connolly attempted to get a better description of the alleged intruders. TTr.2681. MacDonald described being attacked by four individuals in the living room, one of whom he said struck him with a club. TTr.2684. When asked by Connolly to describe the club, MacDonald said: “Well, I think it was a baseball bat...When I reached up to grab it, it was slippery like, you know, it had blood on it.” TTr. 2684.

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<sup>46</sup>Given the precision of Dr. Bronstein’s description of this abdominal wound, the Court should accord no weight to the misstatement in movant’s Reply: “And Dr. Bronstein testified at trial that MacDonald suffered...a two inch *deep* wound in his abdomen that went through both the skin and fat.” DE-142 at 9, ¶11. (Emphasis added).

pajama top, nor tracked Colette's blood out of Kristen's room. In essence, the Government proved that MacDonald's account was—to use his phrase—“a lie of incredible proportions.” TTr. 6710

a. The icepick

MacDonald had glibly told the CID he didn't have an icepick. He bought ice cubes. The Government proved this was not true through the testimony of Pamela Kalin Cochran, his next door neighbor, who “often” babysat in the MacDonald's apartment. TTr. 3555. Her duties required her to go throughout the apartment. She testified that in the utility room they kept tools and “old scraps” of wood. TTr. 3559. On occasion, Pamela Kalin would need to get popsicles out of the refrigerator freezer for the children. “They used to keep a lot of food in the freezer. It would always be packed, and because of it, the frost would get over the food. And I would have to, once in a while, get the icepick to chop away the ice to get my popsicles for the kids or food for me to eat—the ice cream.” TTr. 3560. “It was a smooth-handled icepick in a light color.” Id. Pamela Kalin didn't know where the icepick was always kept. “I remember reaching for it on top of the refrigerator.” Id. Pamela Kalin also recalled that “most of the time” Kimberly would want to sleep “in her parents bed,” and that Kristen wanted to sleep “in Kim's bed.” TTr. 3558-59.

Colette's mother, Mildred Kassab, also testified that at Christmas 1969 she needed space in the refrigerator for hors d'oeuvres, and finding no place cold enough; “had to use an icepick to jimmy some ice trays out.” TTr. 3266. She got the icepick “out of the kitchen drawer.” Id.

b. Officer Mica

Being aware of the defense put on by MacDonald at the Article 32 Hearing, at trial the Government presented in its case-in-chief evidence to rebut these defenses, e.g., the testimony of MP Spec-4 Kenneth Mica.

At approximately 3:40 a.m. on the morning of February 17, 1970, while responding to a “domestic disturbance” radio call on Castle Drive, Mica was in a clearly marked “Military Police” jeep with an illuminated red fender light, driven by his partner Spec-4 Morris. TTr. 1400-03. Mica testified to what he saw when the jeep braked for a red light before proceeding through the intersection: “I observed what I feel was a female standing on the corner of—it would have been Honeycutt Road and South Lucas.” TTr.1400-01. This observation took place through a canvas side curtain with heavy plastic, as Mica’s military jeep did not have windows like a civilian vehicle. Id. Mica continued: “To the best of my recollection, she had on a dark-colored raincoat and what appeared to be a type of a dark colored rain hat, and I believe I could see part of her legs below the raincoat.” TTr.1401-02. “As I recall, sir, this hat was a sort of a wide, like a rain-type hat that women wear. I don’t know what it is called.” TTr.1402. “It was dark. I believe it matched her raincoat.” Id. Asked what color her hair was, Mica replied: “I don’t know, sir.” Id. Asked whether the girl he saw had on muddy white boots, as MacDonald had described to him, Mica replied: “I don’t recall them, no, sir.” TTr. 1596-97.

Mica testified that on the corner where he saw the girl there was a gas station, and directly across the street was a small “PX type” shopping center. TTr.1403. Although these businesses were closed at that hour, Mica testified that if someone were seeking to buy something, there were a number of vending machines in front of the gas station. TTr. 1595. Asked on cross-examination if he customarily saw people like this at that time of the morning, Mica answered: “It was unusual—it was not uncommon.” TTr.1451. Asked by Segal if the girl “was somewhere

between the ages of 18-25 or so,” Mica answered, “I was under the general impression that she was in the 20's to 30-year range.” TTr. 1452-53. Segal attempted to get Mica to change his description of the woman’s rain hat to a “floppy hat”. Mica would only go so far as to say, “I would say it was wide-brimmed and it was full-sized—it appeared to be somewhat ‘floppy’ – yes, sir.” TTr. 1453. Asked on cross about his testimony on direct that the distance from the intersection where the woman was located to the MacDonald house “was something about ½ mile,” Mica corrected Segal, “I believe I said it was something in excess of a half mile.” TTr.1454. Segal then tried to get Mica to agree that the distance was “about five blocks,” Mica replied, “I would say at least five country blocks.” TTr. 1455. Mica was not shown any photograph of Helena Stoeckley, nor asked by Segal to look at either artist’s sketch drawn from MacDonald’s description of the girl in the floppy hat.<sup>52</sup> TTr. 1445-1994, 1597-1599.

c. The debris in Colette’s hand

FBI Examiner Paul Stombaugh testified to his examination of the hairs found in Colette’s hands. Stombaugh’s examination of the blond hair in Colette’s right hand (GX 280/E-4/Q118) revealed that it was a hair that microscopically matched the known exemplars of hair removed at exhumation from Colette’s head, and in his opinion could have come from Colette.<sup>53</sup> TTr.4157. Stombaugh’s examination of the hair found in Colette’s left hand (GX 281/E-5/Q119) revealed that was the tip [distal] portion of a Caucasian limb hair and did not have enough points of comparison to be of value for comparison purposes. TTr. 4157-60. Because it was a limb hair, Stombaugh could not identify it as belonging to anyone. TTr.4158. In his final argument, Segal claimed that this was evidence of intruders. “Unidentified hair—there is hair in this case. The

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<sup>52</sup> MacDonald claims that en route Mica had seen a woman “who bore a striking resemblance to the woman described by MacDonald.” DE-126 at 4. Clearly this overstated assertion is not supported by Mica’s trial testimony.

<sup>53</sup> This hair was later labeled by AFDIL as 52A. See infra at 170, 176.



Shaw had seen at the end of the hallway. Shaw stated, “I remember seeing a tangled bunch or ball of threads or fibers. As I recall they were a blue color.” TTr. 2480-81.<sup>55</sup>

During cross-examination Ivory was asked if there was a speck of blood on the step leading to the hallway, and stated that there was. TTr. 2056-2057. On direct examination, Shaw described searching the living room for possible blood stains with Craig Chamberlain. “There was a spot on the entrance to the hallway—that would really be the hallway floor. There was a spot there we collected. TTr. 2377. During the cross-examination of Chemist Craig Chamberlain, Segal sought to adduce that there was a “place in the living room in the MacDonald house where there was blood recovered and which was later on subject to examination for dried blood stains in the laboratory.” TTr. 3474. Segal could not recall the exhibit number, which Chamberlain needed in order to find the results in his notes. TTr. 3474. Chamberlain also asked Segal to define what he meant by “living room.” TTr. 3475. After much back and forth, Segal asked Government counsel to supply the exhibit number. TTr. 3476-3478. Prosecutor Murtagh stated, “I believe counsel is referring to D-144, which... Mr. Chamberlain would know by the same number.” TTr. 3478. Chamberlain then testified, “[t]here was a stain on the hall floor as I described it at the west entrance to the living room.” TTr. 3479. Segal then had Chamberlain mark on the crime scene model (GX 1) where Exhibit D-144 was

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<sup>55</sup> MacDonald now points to the Government’s final argument that “no blue pajama top threads and yarns” and “no Type B blood” were found in the area of the living room, where MacDonald claimed to have been attacked, as being an improper suggestion “that proved the lie to [MacDonald’s] account.” DE-126 at 7, 23; DE-343 at 87. MacDonald’s claim is based on two assertions: that based upon Shaw’s testimony, supra, MacDonald’s pajama top “fibers” were found on floor of the hall at entrance to the living room, and post-trial release of USACIL reports under FOIA “show that ‘Type B’ in Exhibit D-144 was found precisely where Macdonald said he struggled.” Id. Neither of these factual assertions withstands close scrutiny. There was no further testimony elicited at trial to establish what these threads or fibers described by Shaw were made of or whether any of them matched the composition of MacDonald’s pajama top. In 1974, Specimen Q94 (#32), described as a “Vial w/ yarns from hall,” was examined at the FBI Lab by Shirley Green. GX 3062.99. As her notes reflect, she mounted 1 slide of fibers, and placed in a pillbox “1 long drk blue yn (9”, 1 ply Z, del acrylic-not like Q12).” Id. (emphasis added). “Q12” was the FBI’s exhibit number for MacDonald’s pajama top (GX 101). In other words, Green found a 9 inch long dark blue delustered acrylic yarn which was dissimilar to MacDonald’s pajama top. Id. Regarding D-144, see supra at 76, and infra at 104 n.56.

found. TTr. 3480. Segal never established what the serology results were for D-144 through any of the four serologists who testified, including Terry Laber, who actually tested D-144. GX 3021.19.<sup>56</sup>

e. MacDonald's eyeglasses – the Type O blood

On cross-examination, Segal challenged Ivory's testimony that there was no blood found in the living room near the sofa. When asked if a pair of eyeglasses were found by the sofa, Ivory said, "I would consider that more by the window than by the sofa. Yes, sir. It did have some blood." TTr. 2056; GXP 24B. Ivory recalled that the blood was on the outer surface of the lens of MacDonald's glasses, the side in contact with the floor. TTr. 2056; GXP 27. On direct examination, Craig Chamberlain had not been asked anything about MacDonald's eyeglasses or the collection of any blood from them. TTr.3367-3451. On cross, Segal sought to establish there was another place in the living room where blood was found. TTr. 3473. Chamberlain replied, "there were some eyeglasses on which a small portion of apparent blood stain was recovered." TTr.3473. Chamberlain had not found the eyeglasses himself, nor had he collected them, and he wasn't sure he had transported the glasses—as opposed to the suspected blood stain—to the laboratory. TTr. 3473-74. Segal sought to have Chamberlain mark the location on the model where the eyeglasses had been found based upon a photograph but did not seek to adduce from Chamberlain the serology test results for D-33. TTr. 3481, 3482-99.

On redirect, Chamberlain testified, "I performed the crust test and found a weak indication of anti-A, a weak indication of anti B." TTr. 3507-08. MacDonald's claim that "it is unclear even what blood type was on the glasses," misrepresents Chamberlain's testimony, changing it to "a

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<sup>56</sup> Thus, MacDonald's claim that he only discovered through post-trial FOIA releases that blood was found on the hall floor at the west entrance to the living room (Exhibit D-144) is false. DE-126 at 23; DE-336 at 78. He also overstates that testing of D-144 revealed the presence of "Type B blood". DE-343 at 87. In fact, the results for D-144 "indicated same to be the International Blood Group B or O." DE-123-2 at 50, ¶14; DE-123-3 at 16.

weak indication of antigen A and antigen B. [Tr.3507-08].” DE-142 at 6. As Chamberlain testified, the crust test is a test for the presence of antibodies, and only Kristen’s Type O blood contained both the antibodies “anti A and anti B”. TTr. 3379-3385; GX 638. Antigens (A, AB, B, and H) are detected by the absorption-elution test. Id. There is no question that Chamberlain’s use of the terms “anti A” and “anti B” refers to the antibodies found in Type O blood. TTr. 3381; GX 638.<sup>57</sup>

In closing argument and in an attempt to show the presence of MacDonald’s blood in the living room corroborating his account of the struggle, Segal pointed to the eyeglasses;

There was also blood someplace else. There were spectacles of Dr. MacDonald found in the room with a speck of blood, but in all these hints—these dark hints by the Government that maybe he got it the night he worked at Hamlet Hospital. Well, you know he worked in the hospital and he treated the young lady there and the suggestion was from the question that maybe that is how it got to be there. If anything you have learned physically about Dr. MacDonald is what—is he a sloppy man? Is he a man likely to walk around with a blood spot on his reading glasses having to read for several hours? It does not seem to me that there is evidence to sustain such a conclusion. It is an equally likely inference in this case that the blood spot is a product of the struggle that he had in the living room. Even if you cannot say that you accept that, you have to say to yourself ... that the Government has not proved beyond a reasonable doubt that there was no blood of Dr. MacDonald’s in that room.

TTr. 7217-18.

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<sup>57</sup> On re-cross, Segal established how stain D-33 came to be collected. Chamberlain testified- “A pair of eyeglasses was shown to me. I took the suspected blood stain, placed it between two glass slides, put the slides together, sealed them, and put it in a plastic evidence bag, and this was placed in a larger box, and it was transported along with most of the other evidence.” TTr. 3517. In response to a question as to how he had removed the speck of blood from the glasses to the slide, Chamberlain testified, “It was pried off with a sharp point of a knife. A laboratory knife, and placed on a slide. TTr. 3518. Chamberlain had been handed the glasses by Shaw, who returned them to the floor, after Chamberlain had removed the spot of suspected blood. TTr. 2377.

In his initial argument AUSA Blackburn referred to the blood on the eyeglasses in passing, and then only in the context of Segal’s attack on the processing of the crime scene. “... if you believe that Bob Shaw in picking up the glasses and looking for a fleck of blood—interestingly enough found to be consistent with the same type as that of Kristen— if you believe that these things—along with letting the garbage can be emptied before they looked into it— if you think that all of these things are so important and so bad that you have got no choice but to acquit the Defendant, then I think you ought to do it—smoke a cigarette and do it.” TTr.7119.

asked at some point to examine a fiber that was taken from a pair of eyeglasses in the living room, I think it was identified as E-33 on your list?” Browning: “No, I was not.” “Do you know whether there was such an exhibit as E-33 that represented a fiber found on the glasses? Browning: “I don’t have an E-33 listed in my notes.” “Which would mean what, Mr. Browning?” “It would mean that I did not receive such an exhibit.” “And you are unable to tell us from your notes who else would have worked on E-33?” Browning: “No.” TTr. 3879. The four USACIL reports from 1973, furnished in pretrial discovery, clearly identify Janice Glisson as the chemist who tried to identify the pink fiber.

Notwithstanding the fact that Segal never established that an unidentified pink fiber was found on MacDonald’s eyeglasses, he argued to the jury that it was evidence of intruders. “What about the fiber found on Jeff’s glasses in the living room? They have tried and tried and they cannot find any source from within the MacDonald house where that fiber came from. Where do they think it came from? It flew in the window? You have a right to believe that fiber is one more piece of physical evidence that supports an opposite inference from what the Government wants.” TTr. 7266.<sup>60</sup>

g. Unidentified fingerprints

In Defendant’s Substitute Post-Hearing Memorandum, filed June 10, 2013 (DE-343), MacDonald asserts for the first time that “[a] significant number of fingerprints taken from key locations in the apartment including the headboard and footboard of the bed in the mater (sic) bedroom, as well as the backdoor in the master bedroom, remain unidentified.” DE-343 at 53.

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<sup>60</sup> MacDonald has again raised the issue of the unidentified pink fiber found on his glasses. HTr. 850-54. If the jury had found this fiber proved the presence of intruders, they would have acquitted MacDonald. That they didn’t so find may be attributed to the fatal flaw in Segal’s argument, namely, that the fiber could only have become attached to the glasses inside his house during an attack by intruders, even though MacDonald wore the glasses outside the house—at Hamlet Hospital, for example—and said he was not wearing his glasses when he was awakened from sleep and attacked. MacDonald’s current posture with regard to the presence of the blood and the fiber on his glasses is internally inconsistent: the blood got on the lens at Hamlet Hospital, but the fiber on his glasses could only have resulted from pink clad intruders inside the house.

MacDonald also reveals that the locations “included unidentified fingerprints and a bloody hand print on the footboard of the MacDonald master bed.” *Id.* at 54. No citation to the record is provided for any of these factual assertions. *Id.* at 53-54.

Although this is the first time that the alleged bloody hand or palm print has surfaced in this § 2255 proceeding, it was first described in 1997—not in Cormier Affidavit No.2—but rather in MacDonald’s Memorandum filed in the Court of Appeals on September 17, 1997. *Memorandum in Support of Jeffrey R. MacDonald’s Motion For an Order Authorizing the District Court For the Eastern District of North Carolina to Consider A Successive Application for Relief Under 28 U.S.C. § 2255*, filed September 17, 1997, USCA-4, No. 97-713 at 3. At that time, MacDonald told the Court of Appeals that there was “[e]vidence that is of the sort which traditionally has been considered to be the most powerful exculpatory evidence imaginable...a bloody palm print, not MacDonald’s deposited on the footboard of the master bed... [which] has never been considered by any court.” *Id.* at 2-3. Having waited almost 14 years, until after the evidentiary hearing and the filing of his first Post-Hearing Memorandum (DE-336) on April 1, 2013, MacDonald now presents this belated, overstated, and erroneous claim. DE-343 at 53-54.

Regarding the headboard, there are no unidentified fingerprints, palm prints, or other latent areas on the headboard of the MacDonald master bed, which did bear the word “PIG” written in Colette’s blood type. DE-217-14 at 26, ¶ 8, and 18, ¶ 8; GX 130. The footboard of the bed revealed “one *latent* partial palm print.” *Id.* (emphasis added). This partial latent palm print, designated as “XXX-30, is depicted in GXP 1003 as being located several inches from the left hand corner of the top edge of the footboard. DE-217-14 at 26, ¶ 8. Visible in the extreme left hand corner of the footboard (top and exterior side edges) is a red stain (D-29), which indicated

the presence of Type A (Colette) or Type O (Kristen) blood. See GXP 41, 42, 47; DE-217-14 at 19, ¶ 17.

As can be seen by comparing the photograph depicting the placard marked “XXX-30” with an arrow pointing to the area of the footboard darkened with fingerprint powder where the latent palm print was developed (GXP 1003), and the photographs of the bloodstains (GXP 41-42), these are two contiguous but different areas. This is a partial latent palm print, which is not in blood; otherwise it would be described in the USACIL report as a “patent” or “bloody” palm print. DE-217-14 at 26, ¶ 8. The latent partial palm print remains unidentified, and there is no evidence as to when it was deposited on the footboard—it could have come from the movers, for example. Located adjacent to latent area XXX-30 is what the USACIL Consolidated Lab Report lists as D-29, D-29b, and D-29c, which it described not as a bloody hand or palm print, but as “[r]ed-brown stain(s) from footboard in east bedroom.” DE-217-14 at 6. There is no “bloody” hand print or palm print on the footboard of the MacDonald master bed. DE-343 at 54.<sup>61</sup>

MacDonald also claims that there are “unidentified fingerprints ... on the back door of the master bedroom, among other places.” DE-343 at 54. Again, there is no citation to the record in support of this assertion, including to any testimony by Hilyard Medlin, pertaining to any latent image on this door. Id. At trial, MacDonald called former New York Police Department crime scene technician, Professor James W. Osterberg, who testified to his examination of the crime scene, and that, in his opinion, “the crime scene was grossly under processed” for fingerprints. TTr. 4965. Using photographs that were taken in his presence on August 11, 1979 (D-59-64), Osterberg explained in detail how the swinging door between the utility room and the master

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<sup>61</sup> This legerdemain is an attempt to overcome the fatal flaw that exists in all of MacDonald’s arguments that unidentified or unsourced items indicate the presence of intruders on February 17, 1970. As has been apparent to the jury and every court to consider this case, there were scores of unsourced items in the MacDonald apartment that accumulated over the years. They would only be probative if shown to have been deposited there during the murders. So, MacDonald tries to create the impression that this unidentified latent palm print was made in the blood of the victims. It simply was not.

bedroom, and in particular the back of that door had been, in his opinion, inadequately dusted for fingerprints. TTr. 5006-5014. Osterberg did not testify that he developed any latent prints, or otherwise identified any such prints, on this door. Id. There is no unidentified latent finger or palm print on the swinging door between the utility room and the master bedroom. Moreover, as depicted in GXP 51, this door was found in the open position on the night of the murders, with the back pushed up to the utility room wall.

At trial, the Government called Hilyard Medlin, the USACIL fingerprint examiner who processed the crime scene. The problems encountered, what was developed, what was lost, what was identified, and what remained unidentified were fully explored during his cross-examination. TTr. 3085-3123, 3129-31, 41, 3142-3228, 3250-3233, 3234-3235. In summation, Segal contended that the unidentified fingerprints were evidence of intruders. “There are fingerprints. We talked about the ones that were found and what was not lifted properly, the ones that were found and were not identified or partially or not complete, the ones that were never found because they did not process the crime scene.” TTr. 7265-67. Significantly, MacDonald does not link the unidentified fingerprints to the weapons or any other item of relevant evidence. DE-343 at 98-99.

h. MacDonald’s footprint

MacDonald falsely claims that the Government suppressed the opinions of two investigators which were consistent with the defense’s position that the bloody footprint was not his. DE-343 at 52. Not only is this claim false, but it is one that he expressly abandoned at the oral argument on his Motion to Set Aside Judgment of Conviction, on January 14, 1985, as both the hearing transcript and Judge Dupree’s Memorandum of Decision reflect. Mr. Smith stated, “[a]nd in going through the Freedom of Information material, your Honor, we came across some items.

Upon reflection, we think that we were wrong about two (2) or three (3) of them and that—and this morning we will want to abandon our motion as to a couple of them.” DE-136 at 19-20. Wade Smith described the four items they were not abandoning, and then stated, “[t]here were some negatives of fingerprints which were lost and there was evidence about a bloody footprint. We made—we raised those points in our motion that we think the Government’s position is well taken as to those and we do not this morning rely upon those matters in this motion to set aside.” DE-136 at 23. Judge Dupree’s decision, quoting Mr. Smith’s statement, reflects, “[t]he court concludes from this statement that MacDonald has abandoned his claims of suppression with respect to any evidence other than the bloody half-filled syringe, bloody clothes and boots, missing piece of skin, and photograph of the letter “G.” Unites States v. MacDonald, 640 F. Supp. 286 n.8 (EDNC 1985).

MacDonald now claims that he disputed at trial that he was the person who left the bare footprint in Colette’s blood exiting from Kristen’s room. DE-343 at 52. In fact, MacDonald never disputed that it was his footprint. “I am sure I had bloody feet,” he told the Grand Jury. DE-132-21 at 22. At trial he said, “well I would probably agree that was my footprint since I was there.” TTr. 6870. Moreover, the Government proved that it was Jeffrey MacDonald’s bare left footprint in Colette’s blood type. As explained during the Evidentiary Hearing, Hilyard Medlin compared the ridge lines in the bloody footprint in situ with MacDonald’s record footprint (GX 668-69) and made the identification. HTr. 1342-43. Medlin testified that after being asked by the FBI to identify the footprint he made a direct examination. “This is what I did using a 200-watt light bulb in a lamp. I move it around until I could see impressions in the bloody footprint at which time I got down on my hands and knees with my viewing [magnifying] glass and using the record footprint ... I made a direct comparison ... I found more than 14 points



of comparison between the fixed footprint in the blood and the record footprint of Jeffrey MacDonald's left foot." TTr.3104-3106. He then testified to his opinion the left footprint exiting from Kristen's bedroom belonged to Jeffrey MacDonald. Id. Medlin next explained that he asked USACIL Photographer Harold Page to photograph the bloody footprint, but because the light bulb would shine directly into the camera lens, "[e]very time he would snap the shutter, it would pick up the light bulb." TTr. 3106-07. Eventually, Page was able to take a scale photograph of the bloody footprint in situ, from which a photo transparency (GXP 569) was made for comparison with a similar transparency of MacDonald's record footprint (GXP 669,670). TTr. 3106, 3112-14.

Contrary to MacDonald's abandoned 1984 claim that the Government suppressed the contrary opinions of two other CID investigators, Medlin explained on direct that the policy of the CID lab was not to base a fingerprint identification on the opinion of a single examiner. TTR. 3109-10. "I was the only one who could see the footprint as it was in the room at that time because I was the only examiner there. So later when the planks were sawed up to be removed to the laboratory they came apart. The photographs that were taken did not show all of the ridge detail which I could see myself ... the other two when they looked at the print, could only see one or two characteristics, but they did not see the 14 or more that I saw. So therefore, I believe the way that the chief of the section said the report would be written was that the size, design, and shape of the foot was that of Jeffrey MacDonald." TTr. 3110. The Consolidated USACIL Report at ¶12 states, "[t]he foot impression, appearing on Exhibit D-215, matches in general shape, outline, and size, the record footprint of CPT. J. MacDonald. However, due to the absence of individual ridge characteristics in the photograph taken of this Exhibit, a positive identification could not be made by the examiner." DE-217-14 at 27. On cross-examination

Segal covered the same ground with Medlin. TTr. 3202-11. Segal took the above-quoted language from the USACIL report and had Medlin “read every single word at the bottom there so no one misunderstands what people were signing.” TTr. 3207.

The issue at trial was never really about the identity of the defendant as the person who made the bloody footprint in Colette’s blood type, the issue was when and how the footprint was made. Where did MacDonald get Colette’s blood on his foot—if he didn’t track it in, how did he track it out? As stated in the Government’s initial summation, “If you find, as we would argue, that footprint could only have been made during the commission of the crime between the time when Colette was in the north [Kristen’s] bedroom, as we contend the physical evidence shows, and the time when she wound up on the floor of the master bedroom, it [character testimony] doesn’t matter.” TTr. 7060.

i. The unsourced wax

MacDonald’s counsel again points to the presence of three different deposits of unsourced wax found in the crime scene as proving the presence of intruders. DE-343 at 53. In the process, he overstates MacDonald’s contention about the alleged female intruder. MacDonald described the female as having a “flickering light,” but never went so far as to state that “she appeared to be carrying one or more lit and dripping candles.” Id.

At trial, the jury heard from Dillard Browning that three wax samples were collected from the arm of a chair and a bedspread in Kimberly’s room, as well as from the coffee table in the living room. TTr. 3389. The questioned wax samples were “more or less brittle and flaky.” Id. Browning testified that, ultimately, he compared the questioned samples with 14 candles found in the MacDonald house, and none of the three questioned samples matched each other, or the known candles. TTr. 3842-45. In closing, Segal suggested that the unsourced wax was proof of

intruders. “What about the wax? Three different candles produced three different types of wax. They went and they rounded up everything in the MacDonald house. They found 14 candles. They took it to the lab. When they got done with their best efforts, what did they find? That the wax was found in the MacDonald house—in the living room where Jeff says that he remembers a woman with a flickering light—which I think is a reasonable conclusion where they are talking about a woman with a candle...What I am saying to you is that the reasonable conclusion that you ought to draw is that the wax found in the house unidentified to this day is consistent with Jeff’s story of the flickering light in the hand of the woman.”<sup>62</sup> TTr. 7266-67. However, the jury could reasonably have inferred that the presence of the 14 candles proved the MacDonalds liked candles, had candles in the house, that candles by their very nature are consumed by burning, that the three different deposits of unsourced wax came from three different candles which the MacDonald’s had previously lit, and either consumed entirely, or discarded the remnants.

j. The latex gloves

Through the testimony of Wade Smith at the evidentiary hearing, MacDonald sought to show that the pieces of latex rubber found in the master bedroom “did not come from the rubber in the gloves under the sink,” and therefore proved the presence of intruders. HTr. 22. MacDonald, without any citation, incorrectly ascribes to the Government the “inconceivable” theory that MacDonald, having committed the first act of violence against Colette, “stopped to go to the kitchen and put on a pair of rubber gloves while Colette waited for the violence to continue.” DE-343 at 48.

At trial, the Government offered the testimony of Michael Hoffman, an expert employed in the ATF lab. Hoffman testified that he performed Neutron Activation Analysis (NAA) on the

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<sup>62</sup> Since it was proven at trial that the murder weapons were already present in the house prior to the murders, is the Court to assume that the gang of attackers came to the apartment with their own candles but did not bring any weapons?

MacDonald to the finger section of latex found in the sheet (even if it was of a different production batch), and for which he had no explanation. TTr. 7134-35.<sup>63</sup>

k. Source of pajama threads and yarns

As he did at trial, MacDonald argues that the incriminating threads and yarns matched to his pajama top could have come from his pajama bottoms that were, he overstates, “ripped from ankle to crotch,” and which “he was wearing at all times in his home ... thereby exposing threads.” DE-343 at 94. According to his logic, if the threads and yarns came from the pajama bottoms rather than the top, then all the incriminating inferences fall by the wayside. Id.

During cross-examination of USACIL Chemist Browning, Segal established that Browning could not tell whether the “threads and fibers” came from the pajama top or “the pajama bottoms related to that top.” TTr. 3876-77. This was a hypothetical question that assumed a fact not in evidence—that the pajama bottoms were identical in composition to the pajama top. Browning’s answer was also hypothetical because he never examined the pajama bottoms.

On cross-examination, MacDonald was asked hypothetically to assume “that the jury should find from the evidence that in the master bedroom as a whole, there were 60 or more purple cotton threads found which microscopically match your blue pajama top and 18 blue polyester cotton yarns which microscopically matched the pajama top and one blue-black sewing thread which matched the pajama top. Assume for a moment that the jury should find that evidence to be true, do you have, sir, any explanation for that?” MacDonald answered, “[w]ith the understanding that they have not matched those fibers and threads against the pajama bottoms, no, I don’t have any explanation for it.” TTr. 6855.

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<sup>63</sup> It is not surprising that the jury found it more plausible that the latex glove pieces found at the crime scene were attributable to physician Jeffrey MacDonald rather than a gang of drug-crazed hippie attackers who brought with them their own latex gloves (and candles), but no weapons.

There was, and is, no evidence as to the composition of the pajama bottoms, but even if it is assumed they were identical, the pajama-bottoms-as-the-source-of-all-threads hypothesis still does not withstand rigorous analysis. This hypothesis does not account for the presence in the master bedroom of the bloodstained pocket (GX 102) torn from the pajama top, nor for the blue-black cotton thread used to sew the white beading on the pajama top cuff (GX 325), both of which originated from the pajama top. If the pajama bottoms were in fact “ripped from ankle to crotch,” then it should have been shedding threads and yarns wherever MacDonald went in the house. This hypothesis doesn’t explain the absence of any pajama threads or yarns in the living room couch area, nor in places like the kitchen, where he says he used the phone and washed his hands.<sup>64</sup>

MacDonald’s pajama-bottoms hypothesis also fails to reckon with the fact that, in some instances, whether the thread or yarn came from the pajama top or the bottoms, its presence is equally inculpatory. For example, consider GX 107/Q96, the purple cotton thread entangled with Colette’s bloody hair found in the bedspread, which MacDonald claims never to have touched on the night of the murders, and for whose presence he had no explanation. TTr. 6854-55; DE-132-21 at 24. It would make no substantive difference whether the cotton pajama fiber in the actual fingernail scrapings from Kristen’s left hand, found by Dillard Browning on March 9, 1970, came from the pajama bottoms or the top. DE-215 at ¶¶8-11.

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<sup>64</sup> Further, hypothecating the pajama bottoms as the exclusive source of the threads and yarns found inside the house requires an incredible leap of faith: none of the recovered threads and yarns came from the pajama top-but all came from the bottoms. First it requires the acceptance that a total of 81 pajama top threads and yarns in the master bedroom came not from the top, but from the pajama bottoms. The same is true for Kimberly’s room where 19 threads and yarns were recovered. For all the threads and yarns found inside Kimberly’s bedding to have come from MacDonald’s pajama bottoms, he would have had to climb into her bed. Conversely, this hypothesis, involving a pajama top that has approximately 5 feet of torn seams (GXP 600, 607), and approximately 2 feet of torn fabric (GXP 602, 604), demands an explanation as to where the seam threads and fabric yarns from the top went, if not in the bedrooms.

Whether the pajama threads and yarns came from the pajama top or bottoms was an issue that was fully litigated at trial and resolved against MacDonald by the jury's verdict. He has proffered no new evidence calling into question the trial evidence on this point. The Supreme Court appropriately treated is as a settled issue in 1982, stating "[t]hreads from MacDonald's pajama top, supposedly torn in the living room, were found in the master bedroom, some under his wife's body, and in the children's bedroom, but not in the living room." United States v. MacDonald, 456 U.S. 1, 4 n.2 (1982).

1. The pajama top reconstruction

As he has since the trial, MacDonald contests the pajama top reconstruction, which demonstrated the identical pattern made by inserting 21 probes through the 48 puncture holes in his pajama top with the pattern made by the 21 icepick wounds in Colette's chest. DE-343 at 95-96; DE-115 at 35-36; DE-142 at 2-3. All of the alleged flaws in the methodology employed by Paul Stombaugh and Shirley Green set forth in these recent pleadings, were previously explored during the lengthy and vigorous cross-examination of these witnesses at trial. TTr. 4198-4303, 4310-4409, 4418-4419, 4475-4539, 4550-4594. Also, defense expert Thornton testified that, because Green had not followed Stombaugh's 1971 bench notes on exit and entry holes, this "negates the validity of this reconstruction." TTr. 5311-17. Thornton had to concede on re-cross that Stomabugh's 1971 report reflected that the frequent handling of the specimen Q12 had caused the yarns surrounding the holes to return to their original positions, thus preventing a definite conclusion as to whether each hole is an entry or exit hole. TTr. 5322.

In summation, Segal stated that the pajama top reconstruction was "not scientific evidence. That is sheer fakery. There is no basis for that." TTr. 7240. Referring to the directionality issue (the exit versus entry holes), he called Shirley Green's alleged failure to follow Stombaugh's

placed on his wrists, Blackburn was asked to “flail away with an icepick,” as Murtagh moved his arms. TTr. 5234. Although not “part of the act,” Blackburn hit Murtagh in the arm with the icepick. Id. The demonstration pajama top sustained a number of tears. Id.

a. James Milne

MacDonald called James A. Milne, who had come forward for the first time in early 1979. Milne was a former Army pilot who had served in Viet Nam and testified, without further explanation, “that my service was terminated in April of ‘70.” TTr. 5446-47. From March 1969 to April 1970, Milne was stationed at Ft. Bragg while awaiting the termination of his service, and resided at 232 North Dougherty Street in a duplex apartment facing onto a courtyard. TTr. 5447. Castle Drive runs into North Dougherty Street, and the line of sight across the courtyard of Milne’s duplex to the MacDonald quarters was “virtually unobstructed.” TTr. 5449. Milne estimated the distance to be approximately 120 yards. TTr. 5450; GXP 968.

On the morning of February 17, 1970, Milne observed the MP, and “knew something was going on, but I did not know what.” TTr. 5463. Milne then went to work in his capacity as the “buildings and grounds officer ... an additional duty... in charge of individuals maintaining the [Aviation] company area.” TTr. 5451. During a discussion with one of these individuals about “the incident” involving “the death of three people,” someone within the group “mentioned the fact that somebody had entered the rear door.” TTr. 5451. Milne testified that when he was told “three individuals had entered the rear door, an impact on me was tremendous, from the standpoint that I had previously seen three individuals the night before.” TTr. 5451-52.

Milne explained that on the night of February 16, after his wife had gone to bed, he was constructing model airplanes in his “workshop” in an unused bedroom in the front of his duplex. Id. Sometime between 11:45 p.m. and 12:15 a.m., while he was waiting for the “epoxies” to dry,

“all of a sudden I just heard voices.” TTr. 5453. Milne further explained that because of the “obnoxious odors” of the epoxies “which I did not care to smell nor did my wife who is really the commandant of that outfit...I had to cross ventilate. My window ... was open and the rear door was open. The cross-ventilation I would get would take the fumes right on out the window and the reverse would go out the back door.” TTr. 5453-54. Milne continued, “[p]rior experience, particularly in Viet Nam... an instinct—an alarm system went off within me. I immediately rushed to the rear door...I pulled [the door] open and looked out and three people are standing ten or 15 feet from me going up the walk—up the chart away from me but out far enough so I could kind of see abreast of them.” *Id.* “These three individuals were wearing white sheets, and I specifically saw the center individual to be a girl and two males on either side and they were all carrying candles. The girl, I specifically saw holding a candle. She was holding it in her right hand and cupping it from the movement of walking up the walk with her left.” TTr. 5454-55.

Milne continued, “[t]hese three individuals continued to talk, and I distinctively respond to that visual effect when I opened that door what I saw. Looking to the left, ‘Gee, where is the parade?’ I looked back to the left, ‘No, not a parade, choir practice.’” TTr. 5455. Milne continued to watch these individuals until he lost sight of them, so he returned back to his “hobby room.” *Id.* Subsequently, he saw these people emerge and continue walking. “At that particular point, I did not pay too much attention to what they were doing except walking.” *Id.* “I recall the last instance I glanced again to see what had happened and they were near the end of the courtyard on the walkway approaching North Dougherty Street. That is the last that I ever saw of these three individuals.” TTr. 5455-56. “I would estimate about 40 yards from the MacDonald home.” He described the woman’s hair as slightly below shoulder-blade length in



the middle of her back, straight “light brown—almost to a blondish color down the middle of her back.” TTr.5457. Milne was never shown a photograph of Helena Stoeckley nor the artist’s sketch of the alleged female intruder for purpose of identification.

Asked by Wade Smith why he had not come forward and let the CID or the MPs know this information, Milne went into a lengthy explanation about his pressing military duties, the many issues he faced in leaving the Army “for termination of service,” and adjusting to entering college. TTr. 5461. “I had never been in civilian life with a family. I had deep responsibilities, and I had deep thoughts about what I was going to do in the future ... I felt that I was overloaded virtually with problems, and the CID or the FBI were professionals in this area in reviewing the matter that was concernable (sic) to the case. I felt possibly if anything was relevant, they would surely come by and ask—particularly living this close to the area.” TTr. 5461-62.

Asked on cross-examination how the investigators could know what was relevant until he came forward and disclosed what he knew, Milne responded, “[w]ell, sir, the aspect of what I saw, I drew an analogy to. The aspect of what these three people were doing made no attempt whatsoever to hide from my view. They were very obvious in their walking behind my house as well as along the side of the courtyard. The analogy was—was that I drew—was that if somebody had possibly done this to the MacDonalds, then these people could have done the same to me. As far as relevancy as to whether or not they actually did anything, I don’t know, sir.” TTr. 5465-70. Asked about whether the item the girl was wearing was a sheet or a choir robe, Milne responded, “[i]t resembled a choir robe with folds in the back—that could have possibly been.” TTr. 5473. They didn’t have hoods. TTr. 5474. All three individuals were white. Id. All three were carrying lit candles. Id. The girl didn’t have anything on her head, including a floppy hat, nor did either of the two males. TTr. 5475, 5483. They weren’t carrying

weapons, and he didn't see anybody carrying the club, or any club. TTr. 5479. He didn't recall what the girl was wearing on her feet. TTr. 5483. The jury apparently did not credit Milne's testimony.<sup>66</sup>

b. Helena Stoeckley and the Stoeckley witnesses

The salient facts concerning the trial testimony of Helena Stoeckley and the Stoeckley witnesses is set forth supra, at 6-19.

c. The Rock Report

MacDonald unsuccessfully sought to introduce before the jury the report of Colonel Warren Rock, the Article 32 Investigating Officer, who failed to find probable cause to recommend forwarding the charges for trial before a court-martial under the UCMJ, citing Fed. R. Evid. 803(8)(c). Forty-two years later, MacDonald again lodges the Rock Report (DX 5076) with this Court, and offers it and Colonel Rock's justifications as further evidence of MacDonald's innocence. DE-343 at 84-86. In light of the Fourth Circuit's mandate, this Court should consider the report and the evidence as a whole, and ascribe whatever weight to it the Court deems appropriate.<sup>67</sup>

d. Jeffrey MacDonald on direct

MacDonald took the witness stand in his own defense. He was carefully led by Segal through his account of "the struggle" with the intruders, and his movements through the crime scene after they had allegedly fled. TTr. 6533-6742. In contrast to his statement of April 6,

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<sup>66</sup> Citing Milne's testimony, and that of MP Mica, MacDonald now claims that "trial testimony established that a woman matching her [Stoeckley] had been seen by several people near the crime scene at or around the time of the murders." DE-126 at 10. Clearly, Milne's hatless, bed sheet-clad chorister, carrying a lighted candle doesn't match Mica's woman in a dark raincoat and rain hat that he claims to have seen over 3 hours later, and in excess of a half mile away. Nor does either description match that of Stoeckley.

<sup>67</sup>The Rock Report is not to be considered a prior adjudication of MacDonald's innocence. See United States v. MacDonald, 585 F.2d 1211, 1212 (4th Cir. 1978).

confessors, such as Neil Braswell, and prison inmates Shields and Rhodes, who had also said “I was there.” DE-136-12 at 59-60. Judge Dupree invited O’Neill to respond, “Mr. Murtagh is correct. There is a phenomenon of aberrant mental patients, people who read about an event and are looking to take part in this event through this bizarre phenomenon of claiming. Wacky as it is, we know it exists.” *Id.* Stoeckley, Mitchell, and Perry, are all examples of this phenomenon, and they all have the common denominator of substance abuse.

Accordingly, the Court should regard the affidavits of Lane, Buffkin, and Morse, with due consideration for the probable reliability and likely credibility of the unavailable declarant Mitchell, (and in the case of the alleged statements to Bryant Lane, Mitchell’s auditor as well), and assign no weight to those statements.

#### G. The 1984 Motion to Set Aside Judgment of Conviction

In 1984, MacDonald also moved pursuant to 28 U.S.C. § 2255 to set aside his conviction, based upon four items of allegedly newly discovered evidence: “the half-filled bloody syringe,” “the bloody clothes and boots,” “the skin found under Colette MacDonald’s fingernail,” and “the photograph of the letter ‘G’.” 640 F.Supp. at 300-09. Following an evidentiary hearing in September 1984, and oral argument in 1985, Judge Dupree ruled, “[a]fter reviewing the evidence and arguments on both sides, the court concludes that the government did not suppress evidence and, in any event, there has been an insufficient showing that the four items would have been favorable to the defense if introduced at trial.” 640 F.Supp. at 300. Now, 29 years later, MacDonald recycles these claims based upon the same evidence from 1984, contending that they constitute “newly discovered evidence” “previously suppressed” by the Government, “which corroborates the presence of Ms. Stoeckley and drug seeking associates at the crime.” DE-343 at

46-47, 70, 97-98, 117-119.<sup>72</sup> The Government incorporates by reference that ruling as set forth at 640 F. Supp. at 300-309, and repeats only so much of it as is necessary. Nothing that Helena Stoeckley ever said, or now is purported to have said to Britt, Leonard, or her mother changes the evidence upon which Judge Dupree ruled in 1984. Nor does MacDonald even attempt to make a showing that it does.

Further, under the rubric of the evidence as a whole, MacDonald attempts to re-litigate the very existence of contested evidence, the allegedly half-filled bloody syringe, for example, which Judge Dupree determined did not exist. MacDonald asserts that there was “a bloody syringe half filled with a liquid found in a hall closet in the MacDonald house by a CID investigator which was destroyed and never tested.” DE-343 at 97. As Judge Dupree’s decision makes clear, this assertion is false. No CID Investigator ever found such a syringe, and its alleged existence is based upon a misinterpretation of second hand information reflected in an ambiguous statement contained in an FBI report. Judge Dupree found that:

[t]he only evidence that a ‘half-filled bloody syringe’ ever existed is contained in Medlin’s somewhat ambiguous statement to [FBI] Agent Tool ... He [Medlin] had no first-hand knowledge of the contents of the closet and denies ever seeing a half-filled syringe which bore blood stains. The implication of his statement and its secondhand nature is that Medlin misunderstood what the other investigators told him about the contents of the closet. In fact this is what must have occurred, for investigative agents having firsthand knowledge of the contents of the hall closet state, or would state if called to testify at trial, that no ‘bloody half-filled syringe’ or other half-filled syringe was found in the closet. (citations omitted) Measured against these statements by four witnesses having first-hand knowledge of the evidence gathered at the crime scene, MacDonald’s argument, based as it is upon the statement of one witness summarizing information conveyed to him by others, that the government has suppressed evidence of a ‘half-filled bloody syringe’ is simply not plausible.

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<sup>72</sup> The mislabeling of these claims as “newly discovered evidence” must be rejected, as should the attempt to re-litigate the previous claims of suppression of this evidence by the Government, in the absence of any truly newly discovered evidence that calls into question Judge Dupree’s prior ruling.

640 F. Supp. 286, 301-302 (citations omitted). The Court found that MacDonald “failed to offer enough evidence from which the court could find that the syringe, assuming its existence, or evidence derived therefrom, would have been of value to him either before or during his trial.” Id. at 302. “Similarly, even if the government suppressed Medlin’s statements to Agent Tool...knowledge of Medlin’s statements would have been to no avail to MacDonald since the underlying evidence did not exist.” Id.

MacDonald also offers up as purported corroboration of Stoeckley’s “confessions” Cathy Perry, described as a “member of Stoeckley and Mitchell’s group” and as an alternative suspect who confessed. DE-343 at 70. Further, Perry is alleged to have been in possession of blood-stained boots and clothing belonging to Helena Stoeckley, which she had been asked by Stoeckley to hold for her, and which the Government ultimately suppressed. DE-343 at 70, 76-77, 111.

MacDonald provides no citations for the assertions that Perry was a member of Helena Stoeckley’s group nor for the statement, attributed to Stoeckley, that she asked Perry to hold her boots and clothes after the murders. DE-343 at 111. In these instances relating to Perry, the only source we have been able to find is the Declaration of Prince Beasley. See DX 5019 at ¶ “o”; DE-126-2. Judge Dupree wrote of Beasley that he “cannot consistently distinguish fact from fiction.” 640 F.Supp. at 325.

Judge Dupree carefully reviewed the convoluted history of Perry’s possessions. “Summarizing, a pair of beige boots was undoubtedly received by the CID on January 6, 1971. Similarly, it is clear that the CID did not take custody of any clothing and the boots were unstained by blood or any other substance connecting them to the MacDonald murders. Accordingly, the court finds that there was never any reason for CID agents to suspect the boots

were relevant to the case and they properly returned them to Mrs. Garcia after testing [for blood]. Although MacDonald in his filing is unsure who owned the boots, Stoeckley or Cathy Perry Williams, it makes no difference for the court has been unable to find that the government suppressed the evidence.” 640 F.Supp. at 305.

Next, MacDonald claims that “on November 17, 1984, Perry stated to the FBI that she was involved in the murders of the pregnant wife and two female children of a doctor who turned on drug users.” DE-343 at 70; DX 5034. Perry had indeed given a statement to the FBI, in which, inter alia, she told the agents that two young boys were killed, and that it took place “upstairs.” Judge Dupree considered this FBI interview of Perry in the context of MacDonald’s Motion For A New Trial, and observed, “[t]his statement is yet another example of the bizarre behavior that the case has evoked from people who for some reason find it fascinating and see themselves as having played a part in the gruesome story. Apparent from the most superficial reading of Williams’ statement is that the facts retold by her are completely at odds with the known facts and those MacDonald claims were confessed to by Stoeckley. For example, (1) there was no evidence that MacDonald received an injection of any kind on that night; (2) the front door to the MacDonald apartment was not tampered with; (3) the weather that night was rainy and cold, not warm and clear; (4) the MacDonald apartment did not have an upstairs; (5) Colette MacDonald was not stabbed in the leg or abdomen; and (6) the MacDonalds had two daughters, not sons.” 640 F. Supp. at 329.

#### H. The “black wool” fibers on the club

For the second time, MacDonald makes mutually inconsistent claims regarding the presence of black wool fibers on the club (GX 306), which he further asserts could only have come from Helena Stoeckely, whom he claims always wore black wool. Compare DE-343 at

49-50 and DE-343 at 101 with DE-126 at 21-22. In DE-343, MacDonald states that “the government suppressed the fact that the FBI analysts in 1978 reexamined the fibers on the club, determining that in addition to the purple cotton fibers there were black wool fibers – fibers that did not match any fabric in the MacDonald home.” DE-343 at 49, n.19 (emphasis added) “Despite this reexamination in 1978, prosecutor’s (sic) elicited testimony from selected experts at the 1979 trial that the murder weapon had on it the blue cotton fibers of MacDonald’s pajama top without also disclosing the presence of unmatched black wool fibers.” Id.

But in 2006, in describing this same “reexamination,” Junkin represented to this Court that “[t]he FBI found no fibers matching Jeff MacDonald’s pajama top.” Junkin claimed that “[t]he defense was not aware of this FBI report at the time of the trial and had no way to dispute or call into question the inaccurate testimony regarding the fibers found on the murder weapon outside the MacDonald home.” DE-126 at 21-22. The only authority cited for this claim that the Government had knowingly elicited false testimony from Dillard Browning (TTr. 3784) was the affidavit of defense investigator Ellen Dannelly and its exhibits. DE-126 at 21; DE-126-2 at 63-90. Junkin further asserted that in final argument, the Government exploited this misidentification by telling the jury that the presence of the two pajama top threads was one of the most critical pieces of evidence. DE-126-2 at 22; TTr. 7136-37.

In DE-343, MacDonald also claims that “FBI investigator Kathy Bond, in her handwritten notes, reported that at least some of the purple cotton fibers previously identified on the murder weapon [the wooden club] as matching the sewing threads on MacDonald’s pajama top were not such, in fact they were black wool fibers. These black wool fibers were never matched to any known fabric in the MacDonald home.” DE-343 at 101. No citation to the record or copies of any laboratory notes identified by “Kathy Bond” and containing this astonishing

discovery have been provided to the Court. The reasons for this omission are straightforward: Kathy Bond played no role in these examinations, the notes previously misidentified by Gunderson as being from “Kathy Bond” were “unequivocally” identified in 1991 by Shirley Green as her own, and they say nothing about any misidentification of pajama top threads. DE-138-12 at 8, ¶ 2. Consequently, there is no evidentiary support for “Kathy Bond’s” alleged discovery of pajama top thread misidentification touted in MacDonald’s Memorandum. DE-343 at 101.<sup>73</sup>

Junkin had previously relied not upon Kathy Bond, but rather upon the Affidavit of defense investigator Ellen Dannelly to support his claims of misidentification and false testimony. DE-126 at 22. Dannelly’s affidavit makes no mention of any pajama top threads or yarns, much less the misidentification of them. DE-126-2 at ¶¶1-9. Rather, all Dannelly says is that based upon her review of FBI bench notes from 1979, attached as Exhibit 2 to DE-126-2, the corresponding typed FBI Laboratory dated March 14, 1979, (Exhibit 3) “had omitted any reference to its findings of black, green, and white wool fibers in the debris taken from the body of Colette MacDonald and the wooden club murder weapon.” *Id.* at ¶¶7-8. In other words, all Dannelly’s affidavit talks about is alleged suppression of fiber evidence and, like the notes of Kathy Bond, provides no evidentiary support for the alleged misidentification and related false testimony claim.

The “black wool” arguments, based solely on the alleged suppression of laboratory bench notes pertaining to the club (Q89), and other similar arguments involving black wool in the area

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<sup>73</sup> MacDonald’s 1990 habeas claim asserted that there were black wool fibers found on the club in addition to the purple cotton seam threads which the Government matched to MacDonald’s pajama top and the Government suppressed the black wool fiber evidence. This claim was rejected by the District and Circuit Courts. Starting in 2006 and continuing with his recent memorandum (DE-343), MacDonald has morphed his previous argument into a totally unsupported claim that the purple cotton seam threads were not on the club at all because the black wool fibers were misidentified as purple cotton threads. This Court should reject this sleight of hand as not reliable or credible.



around (not “in” or “on”) Colette’s mouth (Q100) and biceps area of Colette’s pajama top (Q88), were first raised in MacDonald’s second petition for post-conviction relief pursuant to 28 U.S.C. § 2255, filed in 1990. 778 F.Supp. at 1351. The Government responded not only to the claims of suppression of the bench notes, but also addressed the actual physical evidence, based upon additional examinations by the FBI Laboratory. See DE-10.

After further briefing, MacDonald, through his attorney Harvey Silverglate, expressly declined Judge Dupree’s invitation to hold an evidentiary hearing stating “there is no conflict of material fact in the record” and instead expressly requested an opportunity to appear “for the purpose of conducting an oral argument.” See DE-22. Oral argument was held on June 26, 1991. DE-117-4 at 22. Judge Dupree, in a meticulous opinion, addressed all of MacDonald’s claims—suppression, deprivation of due process etc.—and found them to be without merit and denied relief under 28 U.S.C. § 2555. 778 F.Supp. 1342. As an alternative grounds for denying relief, Judge Dupree found that MacDonald’s claims predicated upon the bench notes, allegedly released subsequent to MacDonald’s 1984 § 2255 petition, constituted an abuse of the writ under McCleskey v. Zant, 499 U.S. 467 (1991). 778 F.Supp. at 1359-1360 (In 1984, “MacDonald either possessed or could have discovered through reasonable investigation the information upon which the [1990] petition is based.”)

In the process of rejecting MacDonald’s black wool and other fiber claims, Judge Dupree made some findings which, 22 years later, have relevance to MacDonald’s pending claims. Contrary to his recent assertions that “not only were these inexplicable black wool fibers found on the murder weapon but similar black wool were found on Colette’s mouth and body” (DX 5027), Judge Dupree found that “no two of these fibers appear to be from the same source.” 778 F.Supp. at 1351. Further, Judge Dupree noted that the reason these woolen fibers could not be

matched “to any known source in the MacDonald household [was] in part due to the fact the MacDonald family’s possessions are no longer available for forensic comparisons.” *Id.* In fact, by 1990, when this issued was first raised, there were no black woolen exemplars at all available for comparison purposes, even though Colette was photographed wearing a black wool sweater and stocking cap. *See* DE-10 at 9, photographs 116-118. Consequently, for MacDonald to now claim that these black wool fibers “did not match any fabric in the MacDonald home” is misleading. DE-343 at 49.

As the Government has previously explained in much greater detail in its Memorandum In Support of the Response of the United States To Petitioner’s Motion to Expand the Record, DE-139 at 11-16, as well as in Volume X of the Appendix of the United States, DE-138-2, DE-138-6 at 1-10, DE-138-7 at 1-10, DE-138-8 at 1, DE-138-9 at 1-6, DE-138-10 at 1-4, DE-138-11 at 1-8, DE-138-12 at 1-39, and DE-138-13, there were unidentifiable black woolen fibers on the club in addition to the two purple cotton threads (Q89) which matched MacDonald’s pajama top, and numerous rayon fibers which matched the throw rug (K30) in the master bedroom (upon which other pajama top threads and the torn pajama pocket were also found). *Id.*<sup>74</sup>

In substance, Dannelly ignored the 1974 FBI Laboratory Report reflecting the match of the two purple cotton threads in Q89 (DE-138-9 at 6) and Shirley Green’s related bench notes (DE-138-12 at 18, DE-89-13 at 1), despite the statement in her affidavit that, “I collected and organized all of the information that the CID and FBI lab technicians had recorded for each CID and FBI exhibit number.” DE-126-2 at 64, ¶4. Instead, Dannelly focused entirely on the 1979 Lab Report (DE-138-10) and the related bench notes (DE-138-12 at 28), while ignoring that in those notes Green wrote that the Q89 “Pillbox contains 2 short pc’s sew. thr (like Q12 [the

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<sup>74</sup> The Government presented this same information to this Court at the evidentiary hearing, without any challenge or proffered evidence to the contrary from defense counsel. HTr. 1347-48.

pajama top]).” Most importantly, Dannelly ignored the express statement in the 1979 FBI Lab report pertaining to examinations of “specimens retained in but not previously examined by the FBI Laboratory,” which shows that the 1979 report did not in any way constitute a re-examination of the specimens previously identified in 1974. GX 3064. Dannelly and MacDonald’s counsel (past and present) all ignore the fact that the Government had also elicited the same testimony from Paul Stombaugh about the two purple cotton threads on the club matching the seam threads of MacDonald’s pajama top. TTr. 4098. To have acknowledged this fact would have undercut their misidentification contention by recognizing that there were two distinct examinations conducted by the FBI: one in 1974 by Stombaugh involving the comparison of the questioned purple cotton threads and polyester cotton yarns to MacDonald’s pajama top; and the other in 1978-79 by James C. Frier involving the examination for the first time of residual fibers from some of the same exhibits, which had not been previously compared to anything. GX 3064. Shirley Green was the Evidence Technician for both examinations. DE-138-12 at 7-10. Consequently, this Court should reject as unsupported by any reliable or credible evidence, the preposterous defense claim that the purple cotton threads from the club were actually black wool and were thus misidentified by both the CID and the FBI Labs, or that the Government elicited false testimony from both Browning and Stombaugh.<sup>75</sup> This Court should find that on the club (GX 306), in addition to two purple cotton threads matching MacDonald pajama top (GX 3207) and numerous rayon fibers (matching the multi-colored throw rug (GX 322)) in the master bedroom (TTr. 4612), were black wool fibers—not threads—which did not match any other questioned sample, and could not be identified due to the absence in

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<sup>75</sup> Judge Dupree rejected the notion any Government experts testified falsely at the trial, 778 F.Supp. at 1355, and noted that “the jury was told by Browning that ‘there were many single fibers or loose fibers’ found in the MacDonald home...” *Id.*

1990 of known exemplars. DE-138-12 at 2-4, ¶¶ 6-7. These facts are not new and not exculpatory in any way.<sup>76</sup>

The Court should further consider that the presence of both the pajama top seam threads and the rayon fibers from the throw rug support the inference that the club (GX 306), stained with Colette and Kimberly's blood, came in contact with the throw rug after MacDonald's pajama top was torn in the master bedroom, and before he threw the club out the back door. The throw rug (GX 322) is further linked to the assault on Colette in the master bedroom because its rayon fibers were not only found on the club, but also in the debris (Q88) removed from the right biceps area of Colette's pajama top, in the debris removed from her left hand (Q128) (the same hand in which MacDonald's broken limb hair (AFDIL-51A(2)) was also found), and on MacDonald's pajama top. GX 111, 3062.92, 3064.1.

I. The blond synthetic (saran) fibers

In DE-343 at 50, MacDonald attempts, for at least the third time, to re-litigate his claim, based upon laboratory bench notes of USACIL Chemist Janice Glisson obtained under FOIA in 1983-84, that the presence of synthetic fibers in Colette's clear-handled hairbrush could only have come from a wig worn by Helena Stoeckley. In his initial Post-Hearing Memorandum (DE-336), MacDonald alleged that these synthetic hairs "had been found in a hairbrush in the dining room of the MacDonald home." DE-336 at 42. In his substitute Post-Hearing Memorandum (DE-343 at 50), MacDonald now claims that the blond synthetic hairs had "been found in a hairbrush in the kitchen of the MacDonald home." This hairbrush was on a table in the dining room. See GXP 28. Further, he argues that the Government's evidence to the

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<sup>76</sup> The Court should consider that MacDonald denied that the club marked GX 306 was the smooth club or "bat" he said he was struck with; testified that he was wearing his pajamas (top and bottoms) when he first went into the master bedroom after "the struggle" and a period of unconsciousness; and said he never went outside the house. DE-132-1 at 17; See GX 1135 at 12-13, 45, 84-86. If the club used in the murders of Colette and Kimberly had already been placed outside the house by the "real killers" before MacDonald awoke and wore his pajamas into the master bedroom, how did the two seam threads from his pajamas get on the club?

contrary was false and constituted a fraud upon the court. DE-343 at 50-52, 105-106. In contrast to the task faced by this Court in 1997, when first confronted with the saran fiber issue in the context of alleged suppression by the Government, MacDonald says the Court must now consider the presence of saran fibers as part of the evidence as a whole. DE-343 at 107-109. The present analysis is different, according to MacDonald, because “MacDonald now can prove Helena Stoeckley admitted her participation by a preponderance of the evidence and DNA results that are reliable show evidence of intruders.”<sup>77</sup> Id.

The Court is not required, in the absence of any relevant newly discovered evidence, to entertain again the suppression and fraud on the court claims of 1990 and 1997. 778 F.Supp. 1342; Unites States v. MacDonald, 979 F.Supp. 1057 (EDNC 1997); aff’d per curiam, 161 F.3d 4 (4th Cir. 1998). Similarly, the Court is not required to entertain again MacDonald’s 1997 Motion For New Trial, based upon his post-1992 investigation involving the locating of several individuals who aver that saran fibers were manufactured in tow form and were used in wigs prior to 1970. This new trial motion was contained within MacDonald’s Motion To Reopen, which this Court properly transferred to the Fourth Circuit for certification as required by 28 U.S.C. § 2255. 979 F.Supp. at 1067-68. On October 17, 1997, the Fourth Circuit, while granting MacDonald’s motion for DNA testing, and in an order entered at the direction of Judge Russell, with the concurrence of Judge Murnaghan and Senior Judge Butzner stated: “[i]n all other respects, the motion to file a successive application is denied.” Nor is the Court required to entertain additional collateral attacks on the credibility or competency of FBI Examiner Michael Malone, based upon pre-September, 2012, newspaper accounts which are not in the record. DE-

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<sup>77</sup>Of course, there is nothing in Stoeckley’s alleged admissions to Britt, her mother, or to Jerry Leonard that pertains to wigs or saran fibers. Certainly, she never told anybody that during the commission of the triple homicide and while holding a candle, she took off her floppy hat and brushed her wig with Colette’s hair brush that was on the dining room sideboard next to Colette’s purse. 640 F.Supp. at 315-323.

343 at 50-51.<sup>78</sup> In 1997, when similar articles and official documents referring to unrelated cases in which Malone had been a witness were offered in support of the fraud on the court claim, this Court accorded little weight to “[t]his thin and collateral ‘evidence’”. 979 F.Supp. at 1067.

MacDonald repeats his refrain that the “numerous blond synthetic hairs ... could not be matched to any known items in the MacDonald home.” DE-343 at 50. What he fails to tell the Court is that some of the synthetic fibers (Q48) in this same clear-handled hairbrush, which were composed of acrylonitrile and vinyl chloride/vinylidene chloride (also known as “modacrylic”) did match Colette’s hair piece or fall (K47). See 778 F.Supp at 1350. Modacrylic fibers matching Colette’s fall (K47) were also recovered from the blue-handled hairbrush (Q132/E-322) found on the master bedroom floor under the green armchair, when Colette’s body was removed. See GXP 44 (with body), GXP 71 (after removal of body); DE-10(8). Malone also examined two black polyvinyl chloride (PVC) fibers (Q43 and Q44) which had been removed from this blue-handled hair brush (Q132/# J/ E-322) found under Colette’s body, and opined that “these fibers are consistent with the type of fibers which were once used in the production of wigs. The source of these PVC fibers (Q43, Q44) is unknown at this time.” Id. at ¶13. Thus, the Government’s expert clearly states that unsourced wig hairs were found in a hair brush under

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<sup>78</sup>This is particularly applicable to the allegations made against Malone in the case of Donald Gates. DE-343 at 51. What neither the Washington Post article, nor MacDonald, informed the reader was that the “key” to the *Motion To Vacate Convictions On Ground of Actual Innocence* filed on Gates’ behalf in the Superior Court of the District of Columbia, Crim. No. F-6602-81, was the following statement contained in the motion: “The results of DNA testing [attached] definitively exclude Mr. Gates as the source of the sperm left in the victim by the perpetrator. This new evidence clearly and convincingly establishes that Mr. Gates is actually innocent of the June 22, 1981, rape and murder of Catherine Schilling for which he has served twenty-eight years in prison.” Id. at 1. It is true that the motion filed by the DC Public Defender takes Malone to task for his “erroneous” testimony that “two ‘Negroid’ pubic hairs combed from Ms. Schilling’s body at the crime scene were microscopically identical to Mr. Gates pubic hair.” Id. at 5-8. But it is quite clear from the motion that the physical evidence later subjected to DNA testing was not these hairs Malone testified about, but rather “vaginal slides ... located at the D.C. Medical Examiner’s Office.” Id. at 2. Of course, a reader of the article relied upon by MacDonald would not know this fact, and would draw the intended conclusion that Malone falsely or negligently testified the hairs were microscopically identical when they in fact weren’t, and the DNA test results proved it. As we have previously demonstrated through the Affidavit of Joseph A. DiZinno, the occurrence of microscopically identical hairs which could have, but in fact didn’t, originate from a suspect is the result of different technologies with different discriminating powers. DE-218 at ¶¶18-19.

the body of the murder victim. The dilemma for the defense is that these are black wig hairs and that doesn't fit their Stoeckley-brushing-her-blond-wig hypothesis, so no mention of these wig hairs appears in any pleading filed by MacDonald, because it would reveal the weakness of his contention that all unsourced fibers could only have come from a wig worn by an intruder who paused to brush her wig during a frantically violent triple-murder while the unconscious Jeffrey MacDonald lay a few feet away.<sup>79</sup>

MacDonald also claims the Government countered the blond synthetic hairs evidence "by submitting an affidavit from an FBI agent, Michael P. Malone, who opined that the blond synthetic hairs were not wig hairs, but were made of a saran fiber used only in doll's hair. MacDonald has since learned Malone's affidavit was false." DE-343 at 50. No citation to the record has been provided for these assertions. Malone did not opine that the blond synthetic fibers were "saran." That determination was made by SA Robert F. Webb, who used "a Fourier Transform Infrared Spectrophotometer (FTIR) with a Bach-Shearer FTIR Microscope accessory attachment and Sirius 100 computer controller" to determine that fibers Q46 and Q49 were composed of polyvinylidene chloride, also known as "saran." See DE-10(8).

What Malone actually said regarding these and other saran fibers he removed from the clear-handled hair brush, was, "[a]ll of these saran fibers (Q-46, Q49, Q131A) are consistent with the type of fibers normally used in the production of doll hair and are similar to a known sample of saran doll hair from the FBI Laboratory reference collection (See Photo Exhibit 12)."

Id. at 7. "These fibers (Q-46, Q-49, Q-131A) are not consistent with the type of fibers normally

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<sup>79</sup> There are far more plausible explanations for the presence of saran fibers in the clear-handled hair brush. The most likely is that one of the MacDonald girls used her mother's hairbrush to comb a doll's hair, either within or outside the MacDonald apartment. The clear-handled hairbrush was quite portable and was found next to Colette's purse in the dining room, not in a bathroom or bedroom. See GXP 28. If MacDonald's unlikely contention that the fiber came from a wig for humans is true, then the probable explanation is that Colette or one of her friends used it to brush a wig—within or outside the apartment. Recall that black wig fibers in the blue-handled hairbrush, not cited by MacDonald as evidence of intruders because they were not blond, also could not be sourced to anything in the MacDonald apartment. DE-10(8).

used in the manufacture of wigs, and based on my comparisons, are not like any of the known wig fibers currently in the FBI Laboratory reference collection.”<sup>80</sup> Id. There has never been any evidence proffered contesting those statements. Given this Court’s detailed exposition of the saran fiber controversy, there is no need here to repeat the arguments here. See 979 F.Supp. at 1057. Now, as in 1997, “MacDonald histrionically mischaracterizes both the nature and magnitude of the dispute now before the court.” Id. at 1068.

In considering whether saran was manufactured in tow form and was regularly used in cosmetic wigs worn by humans in the period prior to 1970, as MacDonald claims, the Court should give due consideration to the extensive efforts by the defense, reflected in Cormier Affidavit No.1 (DE-48), to establish this hypothesis, which culminated in the discovery of a manikin of an Indian woman wearing a black wig made of saran, found in the Mexico City Museum of Anthropology and History in 1993. DE-48 at ¶¶ 65-69. This discovery was the result of a telephone interview on November 24, 1993, of Jaime Ribas, the deceased as of 1997 former chief executive officer of Fibras Omni in Mexico City, and MacDonald defense counsel Philip Cormier and Harvey Silverglate. DE-48 at ¶¶ 65-66. According to Cormier, Ribas said that his company manufactured saran during the period 1955 to 1975 pursuant to a license from Dow Chemical. Id. at ¶66. “Ribas told us that while he considered Saran to be too hard and too course a fiber to have been used extensively in commercial wigmaking, he knew for a fact that wigs had been made with Saran.”<sup>81</sup> Ribas explained that in 1967 he assisted the Museum of Anthropology and History in Mexico City by making approximately 100 wigs for what he called ‘dummies’ in various diorama types of exhibits.” Id. at ¶66. “[Ribas] also told us that

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<sup>80</sup> “In this regard, my use of the term ‘wig’ unless otherwise specified, means a head covering made of synthetic fibers or human hair, which substitutes for the wearer’s own hair, and which is worn by a human being, usually female, for cosmetic purposes.” DE-27.

<sup>81</sup> Significant by its absence is any statement attributed to Ribas that saran wigs were exported to the United States in the period 1955-1970.



occasionally Saran wigs were made for pageants, and he stated that he had a couple of dozen wigs made for school plays and theaters. As an example [ ] for a ‘pastorela’ (Christmas pageant) at the Museum of Colonial Art, he had Saran wigs made for all the angels and shepherds in the pageant, and the wigs for the angels contained blond Saran fibers. Ribas further told us that he had no way of determining whether any of these Saran wigs still exist.” *Id.* at ¶67. Leaving aside the issue of the reliability of defense counsel’s account of a telephone interview with a now-dead witness, and viewing this information in the light most favorable to MacDonald, all it establishes is, at best, that on at least one occasion in 1967 black saran fibers were used to make wigs for manikins (“dummies”) used in dioramas by the Museum of Anthropology and History in Mexico City. And “occasionally,” but on unspecified dates, blond saran fibers were used for wigs (which are no longer extant) worn by the angels who appeared in Christmas “pastorelas” put on by the Mexican Museum of Colonial Art. Of course, there is no evidence that Stoeckely was ever in Mexico. The current state of the evidence is that the blond saran fibers do match the FBI’s doll hair exemplar. DE-10(8). The defense has been unable to match any of the saran fibers to any blond wig worn by any manikin, and certainly not by any human being, in the United States. DE-48. There has never been any nexus established between the saran fibers from the hairbrush and any wig Stoeckley ever wore.<sup>82</sup> Similarly, if saran wigs were actually manufactured “routinely” as MacDonald claims, no exemplar has ever been offered by the defense.<sup>83</sup> DE-343 at 52.<sup>84</sup>

#### J. MacDonald’s pajama bottoms

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<sup>82</sup> This issue is illustrative of how far afield MacDonald has gone in the vain search for truly exculpatory evidence. The only reason he wants to discuss wigs is that he described the female “intruder” as having long blond hair. This is one of the many ways in which his description of the “intruder” did not match Helena Stoeckley. So, he must posit that she wore a blond wig and stretch to argue that a probable doll hair in the hairbrush of the mother of two young daughters actually came from Stoeckley’s wig and was deposited there on February 17, 1970.

<sup>83</sup> No evidence was offered on this issue at the evidentiary hearing.

<sup>84</sup> “The most that can be said about the evidence is that it raises speculation concerning its origins.” 966 F.2d at 860.

probative that there were unknown intruders in the home with whom Colette struggled and from whom she extracted a hair.

DE-123 at 3-4.

91A

Found with its root intact along with blood residue underneath the fingernail of three year old Kristen MacDonald, who at the crime scene was found murdered in her bed ... and it is noted that chemical analysis of the hair indicated a finding of blood on the hair ... Thus, to find an unidentified hair, mixed with blood residue, with root intact, underneath one of her fingernails, strongly suggests that while she was defending herself against blows from an intruder she grabbed at or scratched back at the intruder such that as a result, the intruder's hair came to reside under her fingernail.

DE-123 at 1-3.

58A(1)

According to the [AFDIL] laboratory notes, it is a hair with root intact, and measured approx. 5mm in length. [Appendix 1, tab 5, (p.3).] Thus, this unidentified hair was found on the bedspread on the bed where Kristen MacDonald was found murdered.

DE-123 at 4.

Although a number of AFDIL and CID documents were contained in the accompanying Appendix One, no affidavit from any expert or other witness was offered to support the contentions that the hairs were bloody, forcibly removed, or, as to Specimen 91A, found under Kristen's fingernail. The Government opposed this motion on jurisdictional grounds. DE-135.

On November 4, 2008, this Court entered an order denying, inter alia, MacDonald's motion to add an additional predicate based on DNA test results, citing lack of jurisdiction in the absence of a Prefiling Authorization (PFA) from the Fourth Circuit. MacDonald appealed. On April 19, 2011, the Fourth Circuit remanded the case for further proceedings. United States v.

MacDonald, 641 F.3d 614, 617 (4<sup>th</sup> Cir. 2011). Regarding the DNA claim filed in 2006, the Fourth Circuit granted MacDonald a PFA so that this Court could proceed directly to § 2255(h)(1) gatekeeping evaluation.<sup>89</sup> Id. at 616.<sup>90</sup>

After the remand and in response to DE-176,<sup>91</sup> the Government refuted MacDonald's overstated factual claims about the characteristics and provenance of the unsourced hairs contained in DE-122 and DE-123, using the affidavits of USACIL chemists Craig Chamberlain (DE-214), Dillard Browning (DE-215), Janice Glisson (DE-217), AFIP Analyst Grant D. Graham, Sr., as well as FBI Examiners Dr. Joseph A. DiZinno (DE-218), and Robert Fram (DE-219) (hereinafter "Government's Forensic Affidavits").<sup>92</sup>

Read together, the affidavits of Chamberlain, Browning, and Glisson demonstrate that the actual fingernail scrapings from Kristen's left hand were further contained in a receptacle (most likely a folded piece of paper marked "L. Hand Chris"), which was designated, but not marked, "D-237." When examined on March 9, 1970, by Browning at Ft. Gordon, Ga. (having been transported there by Chamberlain), it did not contain any hair but did contain a cotton fiber matching MacDonald's pajama top. Id. Serology testing on the fingernail scrapings contained in "L. Hand Chris" by Janice Glisson, also on March 9, revealed the presence of blood, but no serology testing was performed on any hair, because none was present. Id. These items were returned to Ft. Bragg on April 11, 1970.

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<sup>89</sup> The Fourth Circuit also stated that this Court should consider the 2006 DNA test results as part of the "evidence as a whole" in its gatekeeping analysis of the Britt claim. 641 F.3d at 614.

<sup>90</sup> On September 20, 2011, MacDonald filed new motions relating to DNA and the Innocence Protection Act. See DE-175 and DE-176. The IPA claims were not the subject of the evidentiary hearing and are not the subject of this post-hearing memorandum. See DE-266 at 3; see also Section V, infra, at 195 n.131.

<sup>91</sup> The Government's response (DE-212) to MacDonald's IPA-based request in DE-176 for a new trial based on the 2006 DNA results, and the Government's Forensic Affidavits filed therewith, are highly relevant to a factual analysis of MacDonald's freestanding unsourced hairs claim—originally filed as DE-122 and as to which the Fourth Circuit issued a PFA in 2011—that along with the Britt claim were the subjects of the evidentiary hearing to which this memorandum is addressed. See Orders DE-266 at 3 and DE-305. These affidavits were the focal point of the Government's presentation regarding the unsourced hairs claim at the evidentiary hearing. See infra at 171-178.

<sup>92</sup> Regarding AFDIL Specimen 91A, see DE-212 at 22-30, ¶¶ 38-46; AFDIL Specimen 75A, see id. at 30-32, ¶¶ 47-51; and AFDIL Specimen 58A(1), see id. at 32-33, ¶¶ 52-54.

When the vial which had previously contained the actual fingernail scrapings from Kristen's left hand was transported from Ft. Bragg and received on July 27, 1970, by Janice Glisson, at USACIL, at Ft. Gordon, the paper receptacle marked "L. Hand Chris" was no longer present. Id. Glisson removed a small hair from the vial which she mounted on a slide that she marked "#7," to correspond to the vial which she also marked #7. Id. Glisson performed no serological testing on the hair from vial "#7," and did not record the presence of blood or any indication that the hair had been forcibly removed. Id. The hair mounted on the slide marked "# 7" would later be marked for identification by FBI Special Agent Fram as "Q137," and "91A" by AFDIL. DE-306 at 10, ¶37. Slide #7/Q137/91A was examined microscopically by Robert Fram and Joseph DiZinno, prior to the DNA testing, and both recorded that the hair had a "club root," indicating that it had been naturally shed, and neither recorded the presence of blood on the hair. Id.

Similarly, both Fram and DiZinno examined the Caucasian pubic hair designated 75A (Q79/E-303); neither recorded the presence of blood, and both noted that the hair had a "club" root. DE-219 at 11, ¶ 16; DE-218 at 14, ¶ 23; DE-218-3 at 1. Both opined that the presence of some follicular tissue on the root was not uncommon in the case of naturally shed pubic hairs, and this did not indicate that the hair had been forcibly removed. Id.

Dr. DiZinno, who was a qualified hair examiner, had also examined the 75A/Q79 hair in 1991, and confirmed that Malone's determination that the Q79 pubic hair "exhibits the same individual microscopic characteristics as the pubic hair of Jeffrey MacDonald, and accordingly, is consistent with having originated from Jeffrey MacDonald," was consistent with the results of his own examination.<sup>93</sup> DE-218 at ¶17. Dr. DiZinno, the former FBI Assistant Director in charge of the Laboratory Division, earlier in his career had developed the FBI's mitochondrial (mtDNA) program. He explained in his 2011 affidavit that he did not find the 2006 AFDIL

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<sup>93</sup> This 1991 comparison played no role in the 1979 trial.

result—that 75A did not contain the mtDNA sequence of Jeffrey MacDonald—at odds with his 1991 determination because microscopic comparison of hairs and the subsequent development of DNA sequencing are based upon entirely different technologies, with different capabilities to discriminate between donors, and it has long been recognized by the FBI that hair associations are not an absolute basis for personal identification. DE-218 at ¶18. Citing sources, Dr. DiZinno stated that “although not common, as later research has shown, it is possible for two hairs to exhibit the same microscopic characteristics, although subsequent DNA comparison demonstrates they originated from different donors.” *Id.* at ¶19.

The Affidavit of Grant Graham established that he made no determination that any of the three hairs (75A, 91A, and 58A(1)) were bloody or forcibly removed, and further that defense counsel Junkin had misquoted his bench notes regarding these hairs. DE-216 at ¶¶ 15-21.

In DE-237, MacDonald asserted that “the [DNA test] results constitute additional evidence to be considered in conjunction with MacDonald’s assertion of actual innocence ... .”<sup>94</sup> DE-237 at 1. No affidavit from any fact or expert witness contesting the Government’s Forensic Affidavits accompanied MacDonald’s reply. In fact, these affidavits aren’t even mentioned in the reply. Instead, MacDonald noted that while AFDIL’s “report of DNA test results released in 2006 did not conclusively state that the hairs tested were ‘bloody or forcibly removed and not naturally shed’ [DE-212 at ¶35], the opposite—that the hairs were naturally shed—was also not stated.”<sup>95</sup> DE-237 at 3, ¶ 4. “Thus, the Government’s conclusion that the hairs were naturally shed, as

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<sup>94</sup> MacDonald made this assertion in his Reply to Government’s Response to Motion for New Trial Pursuant to 18 U.S.C. § 3600, as part of an attempt to argue that his IPA motion was timely, but also stated that the DNA results “are to be considered as part of the ‘evidence as a whole’ with respect to MacDonald’s successive petition for writ of habeas corpus.” DE-237 at 1. It is in the latter context, that is, the unsourced hairs claim and the “evidence as a whole” relating to the Britt claim, that MacDonald’s assertions in DE-237 are addressed here.

<sup>95</sup> The IPA new trial motion (DE-176) had cited nothing but the AFDIL March 10, 2006, report in support of its contentions that the hairs were bloody and forcibly removed. In its Response, the Government had pointed out, in pertinent part, that “[t]he AFDIL DNA test results reported in 2006...do not and cannot, prove when, where, and by whom the three unsourced hairs were found (the so called ‘critical places’). Nor can the AFDIL Report prove that the hairs were bloody or forcibly removed and not naturally shed.” DE-212 at 21, ¶ 35.

indicated by its reference to the hairs as ‘naturally shed unsourced hairs’ [DE-212 at ¶36], is incorrect and unsupported by AFDIL’s report.”<sup>96</sup> Id. Insisting that the fact that the hairs were naturally shed “has not been proven,” MacDonald pronounced that “[t]he appropriate time to argue the issues of whether the hair was naturally shed or forcibly removed and when the hair was deposited in the crime scene is during an evidentiary hearing.” DE-237 at 4.

On June 8, 2012, this Court entered an order stating that MacDonald’s § 2255 unsourced hairs claim and his § 2255 Britt claim would be the subject of the evidentiary hearing. DE-266 at 3. MacDonald was given the opportunity to depose Government experts but did not do so. See DE-273.

#### B. The DNA stipulation

The parties entered into a detailed stipulation which covered the results of the DNA testing conducted by AFDIL, and limited agreements on chain of identification of the 29 specimens tested by AFDIL<sup>97</sup>, and the photographic and digital images generated in the process by Master Sergeant Grant D. Graham, Sr. DE-306. Ultimately, this stipulation was filed as Exhibit 1 of the Corrected Proposed Joint Pre-Hearing Order on September 15, 2012. DE- 292, pending final approval of the movant.<sup>98</sup> Summarized simply, the parties’ stipulation means that:

1. A hair found on Kristen’s bedspread (58A(1)), the hair from the rug within the body outline of Colette (75A), and the hair that MacDonald has alleged was recovered from under the fingernail of Kristen (91A) did not originate from a common source, from Helena Stoeckley, from Greg Mitchell, or from any member of the MacDonald

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<sup>96</sup> Of course, the Government had just expressly stated in the previous paragraph that the AFDIL Report was silent on these issues. Obviously, the Government was relying on its Forensic Affidavits to support its contention that the hairs with “club roots” were naturally shed.

<sup>97</sup> MacDonald states that AFDIL tested “28 specimens,” in fact, 29 specimens were tested. HTr. 1251-52

<sup>98</sup> Jeffrey MacDonald, along with counsel, signed the Stipulation which was then filed in open court on September 17, 2012. DE-306.

family. These three hairs have come to be known in this litigation as “the unsourced hairs.”

2. The hair found in Colette’s left hand (51A(2))<sup>99</sup>, an additional hair from Kristen’s bedspread (58A(2)), and one of the hairs removed from the bedspread on the floor of the master bedroom (112A(3)) are all consistent with each other and originated from Jeffrey MacDonald.
3. The forcibly removed hair adhering to the top sheet in the pile of bedding on the master bedroom floor (46A) is consistent with originating from Colette, and Kimberly and Kristen are excluded as sources of this hair.<sup>100</sup> The blond hair found in Colette’s right hand (52A) originated from Colette. The hair found adhering to the bedspread on the master bedroom floor (112A(5)) has the same mtDNA sequence as Colette, Kimberly, and Kristen.

### C. The Pre-Hearing Order

On September 15, 2012, the parties filed a “Corrected Proposed Joint Pre-Hearing Order.”<sup>101</sup> DE-292. Included by the Government as part of the Joint Pre-Hearing Order were extensive indices of documentary and photographic exhibits pertaining to the unsourced hairs claim. See GX 3019-3488. Of particular relevance are three summary exhibits in the form of PowerPoint slides: GX 3499, “Unsourced Hairs 75A, 91A, and 58A(1),” corresponding to the hairs which are the basis of MacDonald’s unsourced hairs claim; GX 3500, “Q-137/91A,” which details the chain of evidence in regard to the hair claimed to have been found under Kristen’s fingernail; and GX 3501, “DNA Results of Government’s Trial and New Evidence,” which sets forth the

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<sup>99</sup> This hair was cited at trial by the defense as evidence of “intruders.” See TTr. 3646-48, 7266.

<sup>100</sup> In 1997, MacDonald argued to the Fourth Circuit that if this hair were found to have originated from someone outside the MacDonald family, this would be persuasive evidence of MacDonald’s innocence. See, supra, at 163.

<sup>101</sup> This final document, approved by the Court, was filed on September 17, 2012, as DE-307.

DNA test results that weaken MacDonald's trial claims regarding other then-sourced hairs and thus now strengthens the Government evidence. No objection to any of these DNA-related exhibits was lodged, nor was any objection made to any of the Government's Forensic Affidavits filed with DE-212. See DE-292 at 43-44.

In the Pre-Hearing Order, MacDonald identified 8 witnesses he intended to call at the hearing, none of whom were expert or fact witnesses proposed to testify about any of the contested issues involving the unsourced hairs claim. DE-292 at 44-45. MacDonald listed 109 documentary exhibits, only 8 of which pertained to the unsourced hairs claim (DX 5102-09), 7 of which had been previously filed (DX 5102-08).<sup>102</sup> DE-292 at 11.

D. The evidentiary hearing on the unsourced hairs claim

During the evidentiary hearing held between September 17-25, 2012, the defense called no fact or expert witnesses to meet MacDonald's burden of proof in relation to his unsourced hairs claim under 28 U.S.C. § 2255, or to refute the Government's contentions.

1. 91A

MacDonald did not offer any prior testimony of Drs. Gammel or Hancock from the Article 32 Hearing, the Grand Jury, the trial, or by affidavit to the effect that either pathologist had observed the presence of a hair under Kristen's fingernails, in her fingernail scrapings, or otherwise in her hand, or collected a hair from such a location. The only evidence that the defense presented as to whether there was an unsourced hair found in any of these places was to project parsed portions of the trial testimony of Dr. Hancock (TTr. 2533, 2562, 2602), CID Agent Bennie J. Hawkins (TTr. 3042, 3050-51), and the first page of Janice Glisson's July 27,

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<sup>102</sup> The only new exhibit was DX 5109, a letter dated 12/20/04 from AFDIL, informing counsel for the parties that the same mtDNA sequence found in AFDIL Specimen 75A was also the mtDNA sequence of an AFIP staff member who was not involved in the handling or testing of the specimens. As mtDNA sequences are not unique, this disclosure has no relevance to the issues before this Court.



1970, bench notes (DE-217, Ex. 2). HTr. 1252-55. These projected images were accompanied by argument of defense counsel in an attempt to show that the fingernail scrapings from Kristen MacDonald went from Dr. Hancock, who collected them in a vial, to Bennie Hawkins, who was present, and then directly and without any intervening examinations to Janice Glisson, who received the vial on July 27, 1970. HTr. 1252-54. The narrative continued that Glisson then marked the vial identified as “fingernail scrapings, left hand, smaller female MacDonald” as “number 7,” and found that it contained a hair “that came from the autopsy.” “That hair becomes number seven. It’s later marked AFDIL 91A, when it’s tested by AFDIL. The results of hair seven, the results of 91A, was that it didn’t match Jeffrey MacDonald. It did not match Colette, Kimberly or Kristen, it didn’t match Helena Stoeckley or Greg Mitchell it is, therefore, an unsourced hair.” HTr. 1254-55.

In response, SAUSA Brian Murtagh began by drawing the Court’s attention to the 1970 Article 32 testimony of Drs. Gammel (GX 3053) and Hancock (GX 3055), in which Dr. Gammel testified that he took the fingernail scrapings from all of the victims prior to the autopsy of Kristen, and Dr. Hancock testified that he assisted in the process by putting little slips of paper in the vials identifying the origin of the scrapings. HTr. 1298. Next, Murtagh used GXP 778, a photograph of the wounds on Kristen’s right hand, and Dr. Hancock’s trial testimony to refute the contention that Dr. Hancock had, in effect, testified that Kristen had struggled with her assailant. HTr. 1299-1300.<sup>103</sup> Next, Murtagh addressed the contention that CID Agent Bennie Hawkins had witnessed the autopsies and had taken custody of the fingernail scrapings directly. Rather than going through Hawkins’ entire trial transcript, Murtagh represented to the Court that

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<sup>103</sup> Dr. Hancock testified that Kristen had several small wounds on her right hand as well as one large incised wound on her right ring or middle finger. HTr. 1298-1300; GX 775, 778. Hancock testified at trial that this was consistent with defense wounds if she had been fending off a knife, or it could be consistent with being stabbed through her hand and into her chest. Id. Neither such action would be consistent with scraping her attacker with the fingers of her right hand, let alone her left hand.

an examination of Hawkins' testimony would show that he arrived after the autopsies. Hawkins took custody of items that had been collected during the autopsy, but he was not the agent who had been present during the autopsy itself.<sup>104</sup> HTr. 1301.

Murtagh then projected GX 6001, the Military Police Property Receipt, DA-Form 19-31, which Hawkins had typed up reflecting his receipt of the items from Dr. Hancock, and the subsequent chain of custody. HTr. 1301-02. Murtagh pointed out that, contrary to the defense contention that Kristen's fingernail scrapings had gone directly from Hawkins to Janice Glisson on July 27, 1970, Hawkins had, in fact, relinquished custody of the autopsy items on February 21, 1970, to chemist Craig Chamberlain for transportation to USACIL, Ft. Gordon. Id.; GX 6001. Next, Murtagh projected GX 6002, which is also Exhibit Two of Chamberlain's affidavit reflecting his February 26, 1970, inventory of items in his custody that he was going to distribute to other chemists at USACIL. Id. In particular, Murtagh drew the Court's attention to the designation by Chamberlain of "D-237: vial c/fingernail scrapings marked 'L. Hand Chris.'"<sup>105</sup> Id. Murtagh then displayed GX 3499, the "Un sourced Hairs" PowerPoint, with particular emphasis on the defense contentions that hair 91A was bloody and forcibly removed. HTr. 1303-1304. Murtagh drew the Court's attention to the March 9, 1970, bench note of Janice Glisson in GX 3499 that reflects the results of serology testing on "L. Hand Chris" and reveals the presence of blood<sup>106</sup>, but makes no mention of the presence of a hair. HTr. 1304; see also Exhibit 1, DE-217-2 at 1. Murtagh further pointed to the bench note of Dillard Browning, also dated March 9, 1970, reflecting his examination of D-237, which states: "fingernail scrapings from Christine's left hand, vial contained one microscopic piece of multi-strand polyester cotton

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<sup>104</sup>As stated at 81-82, supra, and in the trial transcripts of Hawkins at 3041-42, 3049-51, Hawkins had indeed come to the morgue after the autopsies to obtain fingerprints, and was asked by Dr. Hancock to take custody of the various items, including vials containing fingernail scrapings.

<sup>105</sup> Chamberlain did not physically mark the vial with "D-237" or anything else.

<sup>106</sup> Chamberlain wrote "D-237" beside this entry on Glisson's serology notes. HTr. 1304; GX 3499.

fiber, identical to pajama top material, bloodstained but washed.” HTr. 1305; see also Exhibit 3, DE-215-3 at 1. Again, there is no mention of a hair.

Regarding Janice Glisson’s July 27, 1970, bench note, which Movant’s counsel had offered for the proposition that Hawkins took custody of the vials from the autopsy and sent them directly to Glisson, Murtagh explained, “[i]n point of fact, the vials had already been to the CID Lab [at Ft. Gordon], had been examined by Browning, and at least the fingernail scrapings contained in “L. Hand Chris” had been tested for blood by Janice Glisson.” HTr. 1307.<sup>107</sup> On July 27, 1970, Glisson receives 13 vials from Ft. Bragg with Hawkins’ initials on them, so she numbers them 1 through 13. HTr. 1307; GX 3499. Vial number 7 is “fingernail scrapings left hand smaller female McDonald (not labeled by Browning) 1 hair ? 2 fragments.” HTr. 1307; GX 3499. “So, this is the origin of the 91A hair. It has no provenance before July 27, 1970. Glisson finds it in the vial, which she apparently has not examined before, and mounts it on a slide number seven.” HTr. 1308. “[T]he actual fingernail scrapings were in some piece of paper, something that was capable of being marked “L. Hand Chris,” because Chamberlain has it in quotes, and that’s where the blood was. Whatever was actually in those fingernail scrapings was in “L. Hand Chris.” It appears to have been consumed in analysis, certainly by April 6, 1970,<sup>108</sup> and it doesn’t exist as of July 27th 1970.”<sup>109</sup> HTr. 1311; GX 3499.

Murtagh also explained that 91A was shown to be a naturally shed hair by FBI Expert Robert Fram, as is evidenced by the photomicrographs taken by Grant Graham of AFDIL. HTr. 1312;

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<sup>107</sup> The vials were then returned to Ft. Bragg in April 1970 and then, after several changes of evidence custodians, transported back to Ft. Gordon in July 1970. GX 6001.

<sup>108</sup> This is the date of the preliminary CID lab report reflecting, inter alia, the serology results.

<sup>109</sup> Glisson clearly states in her affidavit that there was no paper marked “L. Hand Chris” present in the vial when she received it on July 27, 1970. DE-217 at 13, ¶ 17.

GX 3499. Moreover, it is unlikely that the hair was ever under Kristen's fingernails because they were covered in blood, and no blood was found on 91A. HTr. 1315.<sup>110</sup>

## 2. 58A(1)

Concerning AFDIL Specimen 58A(1), the defense presentation was limited to the argument by counsel: "58A.1 (sic) is collected from Kristen's bedspread. It's unsourced ... and even if it's naturally shed, as opposed to forcibly removed, it could have been shed by an intruder while that intruder was attacking Kristen in her bedroom." HTr. 1258-59.

With regard to AFDIL Specimen 58A (FBI Q87), Murtagh explained that this was collected from the Kristen's bedspread in the north bedroom. HTr. 1318; GX 3499. When Graham examined the slide (Q87) he discovered that there were actually two hairs on it, which he designated 58A(1) and 58A(2). *Id.* Hair 58A(1) is a naturally shed hair with a mitochondrial DNA sequence not matching any other sample tested (the MacDonald family, Helena Stoeckley, Greg Mitchell, or the other unsourced hairs), while 58A(2) is also a naturally shed hair with an mtDNA sequence consistent with that of Jeffrey MacDonald. HTr.1319; GX 3499, GXP 3417. Murtagh pointed out that the "defense has failed to prove when this hair got on the bedspread. And I think that's the key issue with respect to all of the unsourced hairs, when did they get there ... And it's their burden." HTr. 1322. Also located on Kristen's bedspread were hundreds—if not thousands—unsourced fibers of "every color in the rainbow," as well as black dog hair. HTr. 1320-1322; GX 3499; GXP 3469-76.<sup>111</sup>

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<sup>110</sup> The most likely explanation is that this small hair got into the vial on one of the occasions that it was opened prior to July 27, 1970. It is possible that a hair from emergency personnel or the environment stuck to one of Kristen's fingers as her body was removed from the crime scene, since her hands were very bloody and not bagged during this process, *see* HTr. 1315, but this is unlikely because no blood was found on hair 91A. *See supra* at 167-168.

<sup>111</sup> The MacDonalds did not own a dog. If every unsourced hair found in the MacDonald apartment is indicative of an intruder on February 17, 1970, then the evidence points to this black dog as one of the intruders. MacDonald's account of the murders contains some bizarre details, as do some of the various "confessions" of Helena Stoeckley,

### 3. 75A

Movant's counsel argued: "Finally, 75A, the hair that was found in the trunk leg areas of the body outline of Colette MacDonald on the rug in the master bedroom. So, that's where it was found. You've got the body outline, the hair is there in the body outline, in the trunk and legs area of the outline. It's unsourced, meaning it didn't come from Jeffrey MacDonald, didn't come from anybody in the MacDonald family. And again, whether it's naturally shed or forcibly removed, it is a piece of evidence that an intruder could have shed while attacking Colette MacDonald." HTr. 1259.

Murtagh explained that hair 75A was indeed found within Colette's body outline. HTr. 1323; GX 3499. This naturally shed pubic hair did not yield an mtDNA sequence matching any other sample tested. HTr. 1323-25; GX 3499; GXP 3404. There was a lot of other debris found on the rug where 75A was found, and other than the threads and yarns from MacDonald's pajama top, which indisputably was torn on February 17, 1970, there is no way to determine when any of the unsourced hairs and other household detritus were deposited on the rug. HTr. 1325-26; GX 3499.

### 4. "Sourced" hairs

Murtagh also explained that other DNA test results had actually strengthened the Government's case. HTr. 1329. Using PowerPoint GX 3501 "DNA Results of Government's Trial and New Evidence," Murtagh pointed out that DNA testing had confirmed the microscopic comparison testimony that the hair in Colette's right hand (52A/E-4/Q118/GX 280) was her own. HTr. 1331-32; GXP 3427.

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but none of them contain a claim that a dog was part of the band that supposedly invaded the MacDonalds' small apartment that night.

Next, Murtagh explained how the previously un-comparable Caucasian limb hair found in Colette's left hand (GX 281/E-5/Q1190), which Segal had pointed to as proof of intruders<sup>112</sup>, now designated AFDIL 51A(2), was shown to have Jeffrey MacDonald's mtDNA sequence. HTr. 1332-33; GX 3501; GXP 3428-3432. Murtagh then addressed MacDonald's current stance that the presence of this hair in Colette's hand was "in no way inculpatory, because he touched her body, gave her mouth to mouth, etc." HTr. 1333; DE-122 at 3, n 5. "The problem is that it is a broken hair and it's broken off at the root end ... it has debris in the tissue which appears to be blood and unknown debris ... [w]e believe it is inculpatory. You've got ... MacDonald's broken bloody hair in the victim's hand, we certainly think that ... does not support the theory of intruders at all, but rather points to MacDonald." HTr. 1333; GX 3501, GXP 3431-33. Describing MacDonald's argument, Murtagh said: "For ... 30 odd years this was the hair of the murderer clutched in the victim's hands. When it turns out to be his hair, it's suddenly innocuous." Id.

Projecting trial summary chart GX 978 ("Items found in pile of bedding on floor of master bedroom"), Murtagh pointed out that the microscopic identification of Colette's broken head hair, entwined with a seam thread from MacDonald's pajama top, both found adhering to the bedspread which MacDonald claimed never to have touched, is still intact because the DNA results were inconclusive. HTr. 1334-35; DE-292-2; DE-307-2, ¶ 23(e); GX 3501; GXP 3440-44.

Murtagh next addressed the hair in AFDIL Specimen 46A, as depicted in GXP 3457, which was found adhering to the sheet on the floor of the master bedroom (GX 978). HTr. 1335. Because AFDIL had been able to do nuclear DNA testing, they were able to exclude Kimberly and Kristen as the source of the STR DNA sequence and to conclude this was Colette's hair. Id.;

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<sup>112</sup> See TTr. 3846-48, 7266.

DE-292-2; DE-307-2, ¶27. Murtagh explained how FBI Expert Robert Fram had determined that because of the presence of the root with sheath and follicular tag and attached tissue depicted, the 46A (Q125/E-211) hair was consistent with having been forcibly removed.<sup>113</sup> HTr. 1335; GXP 3458.

Murtagh addressed the results of the DNA and microscopic examinations of AFDIL hair 112A(5)<sup>114</sup> (Q96.5), which was also found adhering to the bedspread on the floor of the master bedroom. HTr. 1336. Using the photomicrograph of the root of this hair (GXP 3453), Murtagh explained how the mtDNA sequence for 112A(5) was the same as that of Kimberly, Kristen, and Colette, but that the hair microscopically matched Kimberly's known exemplar. *Id.* Further, FBI Expert Robert Fram had determined that the Q96.5 hair—which is stipulated to be the same as the AFDIL 112A(5) hair—had been forcibly removed. *Id.*

#### 5. MacDonald rebuttal argument on unsourced hairs claim

MacDonald's counsel did not challenge any Government assertion made concerning the DNA evidence, including the Forensic Affidavits. HTr. 1396-1398. In response to a question from the Court, he conceded that none of the unsourced hairs were bloody or forcibly removed:

Mr. Widenhouse: I'm not saying that they're forcibly removed.

\* \* \*

The Court: I'm asking you whether they have blood on them.

Mr. Widenhouse: No, they don't seem to have blood on them.

HTr. 1397. Counsel further noted that "it's not as good [evidence of an intruder], I admit, as if it's a forcibly removed hair . . . or if there's blood on it . . .," yet maintained that "it is still positive evidence of an intruder . . ." HTr. at 1398.

#### E. Movant's Post-Hearing Memorandum

<sup>113</sup> This is the same hair which MacDonald told the Court of Appeals was the "result of a struggle between the victims and the person who committed the murders." *Supra* at 164.

<sup>114</sup> Also referred to as "112A.5" and "112A#5".

In relation to the alleged newly discovered evidence resulting from the DNA test results, MacDonald contends in DE-343 that he now has “DNA evidence substantiating the presence of intruders when the murders occurred.” DE-343 at 20. He lists hairs 91A, 58A(1)<sup>115</sup>, and 75A. “The most important is 91A. It is a hair found in the fingernail scrapings or from the hand of Kristen MacDonald. She had exhibited what could be described as a defense wound. (Tp. 2577) That an unsourced hair was found in her hand or in fingernail scrapings from her hand, whether forcibly removed or naturally shed, is powerful, circumstantial evidence of intruders. In tandem it with other information in the ‘evidence as a whole,’ it would have led a reasonable jury to find MacDonald not guilty.” DE-343 at 11. No citation other than the reference to Dr. Hancock’s description of the wound to Kristen’s right hand (TTr. 2577) is provided for either the previous contention that the 91A hair was found in the fingernail scrapings from Kristen left hand, or the new contention that the hair “was found in her hand.”<sup>116</sup> MacDonald repeats his contention that the fingernail scrapings went from Bennie Hawkins to Janice Glisson, but omits any reference to the prior erroneous assertion Glisson examined the fingernail scrapings for the first time on July 27, 1970. DE-343 at 11-12.

MacDonald also claims that the other two unsourced hairs are likewise exculpatory. “Specimen 75A establishes that a hair, unmatched to MacDonald or any other known sample, was found under the body of Colette MacDonald. The hair had both root and follicular tissue

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<sup>115</sup> MacDonald refers to the hair found in Kristen’s bedspread as “58A.1.” The precise designation employed by AFDIL is 58A(1).

<sup>116</sup> Apparently realizing that he has failed to prove that hair 91A came from under Kristen’s fingernails, MacDonald for the first time appears to argue that the hair may have come from Kristen’s hand. DE-343 at 11 (“found in the fingernail scrapings or from the hand of Kristen...”); *id.* at 41 (“lodged under her fingernail or found in scrapings from her hand”); *but see id.* at 42 (“most powerful DNA evidence is the hair from the fingernails scrapings of the left hand of Kristen”). There is no evidence that a hair was recovered from Kristen’s hands, which were covered with blood. Moreover, after asserting—without proof—for seven years that hair 91A was found “... underneath one of [Kristen’s] fingernails,” DE-129 at 9, abruptly changing the assertion to “found in her hand” constitutes an implicit admission that MacDonald has failed to prove what he claimed in 2006. This new, even weaker position has no support in the record.



attached, indicative that it was pulled from someone's skin." DE-343 at 43. No citation is provided for the renewed assertion of forcible removal, which is in stark contrast to counsel's concession at the evidentiary hearing. HTr. 1397.

Nowhere in his Post-Hearing Memo does MacDonald address any of the other DNA results which strengthened the evidence of MacDonald's guilt, see supra, at 176-178. These results are an important part of "the evidence as a whole" which the Court is obliged to consider in its gatekeeping function regarding the unsourced hairs claim.

## V. LEGAL ARGUMENT

### A. Overview

In the section of the prehearing order (DE-292) on issues and contentions, the Government set forth the legal road map from the Fourth Circuit for consideration of MacDonald's two pending 28 U.S.C. § 2255 claims. With regard to the "Britt claim,"<sup>117</sup> the Government stated that the Court should:

. . . consider the proffered evidence . . . –with due regard for "the likely credibility" and "the probable reliability" thereof . . . –to determine if it, in combination with the newly discovered Britt evidence [if proven], would be sufficient to establish [by clear and convincing evidence] that no reasonable juror would have found MacDonald guilty. If so, MacDonald would merely pass the procedural bar [gatekeeping] to having the Britt claim considered on the merits, and he would yet be obliged to prove the constitutional violation alleged in that claim before obtaining any § 2255 relief thereon.

DE-292 at 2, citing United States v. MacDonald, 641 F.3d 596, 614 (4th Cir. 2011). See also 28 U.S.C. § 2255(h)(1). Similarly, as to the "unsourced hair claim,"<sup>118</sup> the Government stated:

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<sup>117</sup> The "Britt claim" was originally filed on January 17, 2006 (DE-111), supported by a memorandum filed on January 19, 2006 (DE-115) and numerous exhibits. The newly discovered evidence that formed the basis of the claimed constitutional violation was the November 3, 2005, Affidavit of Jimmy B. Britt. DE-115-1, Ex. 1. See Order DE-266 at 2-3 and n.2.

<sup>118</sup> The "unsourced hairs claim" was originally filed as a motion to add an additional predicate to Movant's previously filed § 2255 Britt claim. See DE-122 and DE-123. For the ensuing procedural history of this claim, see supra at 163-69. See also Order DE-266 at 2-3 and n.2.

heard of Friar's story from many different sources other than his discussions with Stoeckley in August 1979. See *infra* at 27 n.33, 31 n.40.

Leonard's contention that he had prepared Stoeckley to plead the fifth if recalled, and that he carefully kept secret whatever revelations Stoeckley made to him on Monday, August 20, never revealing them until September 2012, is belied by other evidence in the record. There are repeated references in the trial transcript for the week of August 20-24 to the defense's ongoing deliberations as to whether to recall Stoeckley. See TTr. 5980-81, 6467-68, 6647, 6898-99. On Thursday, August 23, 1979, Judge Dupree inquired as to why Leonard was still present in the courthouse, because the judge thought Stoeckley had been released from her subpoena after court on Wednesday. In explaining to the judge why the defense needed to keep Stoeckley present and under subpoena, Wade Smith said:

I talked to Jerry Leonard at great length, Your Honor, this morning—talked to him for a long time, and this woman continues to say things that tie her to this case. I will be frank with Your Honor, we have no plans to use her at this moment, but we have got too much at stake. It is too important a case, and she has said too much for us to just, you know, out of hand say, “Oh, sure, go on. Go away. We will never see you again. Go back in hiding and let the years roll by.” She is here. The Defendant is on the stand, and we feel that we need to be able to talk with Jerry and have her available at least for this afternoon.

TTr. 6647 (emphasis added). The court relented and Stoeckley was kept in Raleigh under subpoena at least through Friday, August 24, 1979. TTr. 6896-6900.

On January 23, 1980, just five months after the trial, when Leonard's recollection of the trial is certain to have been better than it was 33 years after the trial, Leonard spoke to MacDonald defense team investigator John Dolan Myers. Myers prepared a memorandum of the interview. Among other things, Leonard told Myers:

Mr. Leonard stated that he received permission from Ms. Stoeckley to discuss the things she told him with attorney Wade Smith. Mr. Leonard stated that he had a conference with Mr. Smith and told him what Helena told him. He stated that he also gave Mr. Smith some insight as to his impressions of Ms. Stoeckley. He stated that he did not have permission to discuss these matters with anyone else.<sup>26</sup>

Exhibit 3 attached (emphasis added). During his hearing testimony, Leonard was asked about this interview, while being shown GX 7000.7, in which the complete text of Myers' interview report is set forth by author Errol Morris. See HTr. 1132-35.<sup>27</sup> Leonard admitted that he has been interviewed by Myers after the MacDonald trial, though "he thought it was a couple of years later" than 1980. HTr. at 1131. At the time of Myers' interview of him, Leonard knew that Myers was working for Wade Smith and the MacDonald defense team.<sup>28</sup> HTr. 1133.

The contemporaneous statements of Wade Smith to the trial judge and the interview report of defense investigator Myers, prepared just five months after the trial, are reliable evidence of the nature of any conversations between Stoeckley and Leonard during the trial and his actions with respect to such conversations—far more reliable than the affidavit Leonard put together from his memory 33 years after the trial. Therefore, it is likely that, as Myers reported, Leonard received permission to tell Wade Smith what Stoeckley had told him and did just that on

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<sup>26</sup> Investigator Ted Gunderson compiled a series of reports detailing the investigation he and others conducted on behalf of the defense. At the September 19, 1984 evidentiary hearing the Government introduced Volume I of Gunderson's reports as Government Exhibit 9, which is referred to in the transcript of the September 19, 1984 evidentiary hearing. Vol. I at TR-00000130, see also DE-136 at 30. The report of Investigator John Dolan Myers, who interviewed Jerry Leonard on January 23, 1980, regarding Leonard's conversations with Helena Stoeckley was included in GX 9 at 370. See Exhibit 3, Report of Myers Interview of Leonard, 1/23/1980, attached hereto. References to items contained in 1984 evidentiary hearing GX 9 are hereinafter referenced as "Gunderson Report" and include page number citations.

<sup>27</sup> As noted in the citation above, Myers' signed report of his January 1980 interview of Leonard is a part of the record of this case. It was not marked as an exhibit at the September 2102 hearing. Instead, government used GX 7000.7 to question Leonard about Myers' interview of him.

<sup>28</sup> During this interview, Leonard revealed his bias toward the defense in the MacDonald case. Leonard opined that "he did feel that the prosecution did not prove their case" and that "he thought MacDonald had been screwed." Ex. 3 attached hereto; GX 7000.7. Leonard held this opinion even though he only observed about one hour of the 9-week trial (HTr. 1130, 1135), "never saw any of the Government's presentation," (HTr. 1131), and does not "even know what the Government's case was." (Id.).

at least one occasion on Thursday, August 23, 1979, as Smith told Judge Dupree. This was three days after Monday, August 20, which is when Leonard now recalls that Stoeckley “confessed” to him. If Stoeckley’s statements to Leonard consisted of the detailed confession that Leonard set forth in his September 2012 affidavit, and he reported this to Smith, then the defense certainly would have recalled Stoeckley, because this would have been the polar opposite of the complete denials in her testimony before the jury on Friday, August 17, 1979. This would be the testimony that the defense was seeking all along. See HTr. 78; GX 2201.5. MacDonald is surely not now arguing Smith’s statement to the Court in 1979 and Myers’ affidavit included in the Gunderson report are false. See DE-351 at 21 n.14 (MacDonald citing Smith’s credibility as a witness).<sup>29</sup>

In order to square the documented statements of Smith and Myers—demonstrating that Leonard shared Stoeckley’s confidential statements with Smith in 1979—with Leonard’s September 2012 assertions that he had never told anyone about Stoeckley’s alleged confidential statements to him, MacDonald’s would have to argue that Leonard only shared with Smith part of what Stoeckley said to Leonard, perhaps just some “things that tie her to this case” (TTr. 6647) and not the detailed confession recounted in GX 5113. But it does not make sense for an attorney for a witness to get his client’s permission to tell a party’s lawyer what the witness has confided, and then withhold from the party’s lawyer the most important information from such

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<sup>29</sup> The Government is not questioning the veracity of Mr. Smith and, contrary to the implication in MacDonald’s reply, id., there is no conflict of testimony between Jim Blackburn and Wade Smith as to Blackburn’s waiver of the conflict of interest and Smith’s later withdrawal from representing MacDonald. Compare HTr. 642-47, GX 2013 with DE-351-3 at 2. But Mr. Smith’s memory of events that are 33 years old is probably not perfect because no one’s would be. When he was questioned at the hearing about his statements to Judge Dupree at TTr. 6647, he might well have forgotten that Leonard had received permission from Stoeckley to divulge to Smith statements she made to Leonard during the week of August 20-24. So, Smith, the first witness in the hearing, sought to interpret his own statements reflected in the trial transcript consistent with the attorney-client privilege, not recalling that Stoeckley had waived the privilege for purposes of the Leonard/Smith conversations during the trial. HTr. 153. Government counsel did not have at the hearing a copy of Myers’ report (Ex. 3 attached hereto). Had government counsel been able to anticipate the startling assertions that Leonard would make later in the hearing, counsel could have used GX 7000.7 (containing the verbatim text of Myers report) to refresh Smith’s recollection about Leonard’s discussions with Smith during the trial.

confidences. If the confidences constitute an incriminating confession from the client, which the attorney wishes to keep secret unless and until prosecution of his client is not possible, the attorney would not disclose any part of his client's statements about the case. Indeed, this is exactly what the September 2012 Jerry Leonard claims he did. But this is flatly contradicted by the more credible statements of Smith and Myers made at or near the time of the events.

The most likely explanation is that Stoeckley did make some statements to Leonard that were of the same vague, dreamlike nature that she made to Wendy Rouder. See DE-344 at 17. Leonard secured her permission to share these statements with Wade Smith. Apparently, whatever the statements were, neither Stoeckley nor Leonard were concerned that they were particularly incriminating to Stoeckley. Otherwise, Leonard would not have asked her for permission to pass these on to Smith, Stoeckley would not have given it, and Leonard would not have disclosed these confidences to Smith. The statements were obviously not probative enough to persuade the defense team to recall Stoeckley. Whatever the exact nature of the statements, of one thing this Court can be certain, based on all the evidence on this point: Leonard's stated September 2012 recollections that "I feel real sure that I didn't talk to Wade [Smith during the trial] (HTr. 1207) and "I don't remember having any contact whatsoever with . . . the defense during this trial" (HTr. 1160) are inaccurate.

The Government respectfully requests that this Court find that the affidavit and testimony of Jerry Leonard, offered by MacDonald as part of the evidence as a whole to support his Britt and unsourced hairs claim, is neither likely credible nor probably reliable. As Mr. Leonard himself put it:

Honestly, my memory is not one hundred percent, and for anything that I say to be reliable even as I'm trying to fill in the facts for you, it's fairly dangerous, I think, because honestly I'm wrong on some key facts.

broken, bloody hair found in Colette's left hand which matches MacDonald's DNA. DE-344 at 179-181.

MacDonald begins by misstating that: "[t]he parties stipulated to the DNA evidence." Id. at 29. This is not the case. As the Stipulation expressly provides: "[t]he parties stipulation to the AFDIL-AFIP DNA test results set forth in paragraphs 21-28, inclusive, are subject to agreement and adherence by the parties to each of the following conditions set forth below in paragraphs 30-35." DE-306 at 8 ¶29 (emphasis added). In pertinent part, ¶ 34 of DE-306 provides that: "[n]either party may rely on any statement in the AFDIL Report of March 19, 2006 ...(DE-119)... for any assertion with respect to the identity or provenance of any item examined by the Army CID or FBI laboratories prior to delivery of said item examined, or test performed or not performed by the Army CID or FBI laboratories prior to delivery of said item(s) to AFDIL on May 17, 1999, except as reflected in Exhibit 1 to this stipulation ..."<sup>50</sup>

With respect to the 91A hair he claims came from underneath Kristen's fingernail, the stipulation expressly provides that: "the hair removed from the unnumbered pill vial on July 27, 1970, by USACIL Chemist Janice Glisson, a vial which she marked "#7 JSG" and subsequently mounted on a glass microscope slide, which she numbered to correspond to the vial as "#7 fibers Hair," is the same hair on the same slide the FBI marked as Q137, and AFDIL subsequently marked and tested as AFDIL Specimen 91A." DE-306 at 10, ¶37. There is no further stipulation or other agreement with respect to the provenance before July 27, 1970, of the 91A hair or its

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<sup>50</sup> The Government insisted on the insertion of this provision because at the court of appeals in 2010, in his Supplemental Reply Brief, MacDonald raised for the first time a claim that the AFDIL report established that the 91A hair was the same as the CID's exhibit D-237. Case No.08-8525, Document-108 at 25 n.6. We have previously explained why the CID never referred to the hair from Vial #7 as D-237, that "D-237" was USACIL's designation for blood residue and the pajama top fiber. DE-212 at 22-30. When MacDonald requested a stipulation to avoid having to call witnesses to prove the DNA testing results, the Government made sure that the stipulation did not support the erroneous claims MacDonald made about D-237 at the Fourth Circuit. We note that following remand from the Fourth Circuit, MacDonald has not reasserted this claim in this Court, probably because it would have been inconsistent with his claim that the autopsy vial went directly from Hawkins to Glisson.

characteristics. By no stretch of the imagination did the Government stipulate to any of the “DNA Evidence” claims MacDonald made previously, at the evidentiary hearing, or in his subsequent memoranda.

MacDonald proclaims: “[t]he parties do not dispute what was examined.” *Id.* at 29. By persisting in maintaining that “[t]here were 28 specimens available for testing”, despite having previously stipulated that AFDIL tested “29 questioned hair and vial contents specimens”, and having twice been corrected by the Government, MacDonald perpetuates a further dispute between the parties as to even the number of questioned specimens examined. *See* DE-351 at 29; DE-306 at ¶¶ 22, 24, 26; HTr. 1251-52; and DE-344 at 172 n.97.<sup>51</sup>

MacDonald begins his attempt to prove that the 91A hair was collected from under Kristen’s fingernail by Dr. Hancock with a reference to Dr. Gammel’s trial testimony on cross-examination, when Gammel was being asked by Wade Smith whether, ideally, the hands of the bodies should be protected by plastic bags to prevent contamination. DE-351 at 30. Dr. Gammel was then asked if he had discovered “material under the fingernails of Colette MacDonald?” To which Dr. Gammel replied: “I did what would be a routine fingernail scraping. I just took a fingernail file and scraped out any material that was there. I thought on the left small finger [of Colette MacDonald] there might have been a little fragment of skin there and I collected that and put it in one of the vials. TTr. 2533. MacDonald then transitions to Dr. Hancock testimony about performing the autopsies “on the two children, Kimberly and Kristen.” DE-351 at 30. Without citation, MacDonald tells the Court: “He [referring to Dr. Hancock] took fingernail scrapings.” *Id.* The false impression MacDonald seeks to create, once again, is that

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<sup>51</sup> Not knowing which of the 29 questioned specimens MacDonald may dispute AFDIL tested, the following are the 29 specimens that AFDIL reported testing in the March 10, 2006, report MacDonald has filed as part of his Motion to Add An Additional DNA Predicate, *see* DE-123-2 at 19: 46A; 48A; 51A(2); 52A; 58A(1); 58A(2); 71A(1); 71A(2); 71A(3); 75A; 91A; 93A; 97A(1); 98A; 101A(1); 101A(2); 104A(2); 104A(1); 104A(2); 112A(1); 112A(2); 112A(3); 112A(5); 112A(6); 112A(7); 112A(8); 112A(9); 112B(2); and 113A.

hand carried from Fort Bragg, to USACIL at Fort Gordon, Georgia in July of 1970. On July 27, 1970, as her bench notes reflect, Janice Glisson received the “13 plastic vials cont. fingernail scrapings, hair samples.” See DE-217-3, Exhibit 2 at 1.

When Janice Glisson received this unmarked pill vial on July 27, 1970, the fingernail scrapings from Kristen MacDonald, i.e the folded paper labeled “L. Hand Chris” and its former contents, were no longer present in the vial. DE-217 at 13, ¶17. Consequently, whatever remained in the vial subsequently marked “#7 JSG” was not, as MacDonald claims: “... fingernail scrapings and whatever might be included in those scrapings, that came from the autopsy in this case.” HTr. 1255. A naturally shed hair with no evidence of blood, and whose presence had not been previously detected by Browning’s microscopic examination of the actual fingernail scrapings, was likely an artifact. In that sense, it was akin to the piece of paper in the vial upon which Dr. Hancock had written “Fingernail scrapings, left hand smaller female McDonald,” which had found its way into the vial after the fingernail scrapings had been placed there. See photo DE-217-8, Ex. 7.

While we do not dispute the AFDIL DNA test results for the hair designated 91A, we most emphatically have disputed, and do dispute, that the 91A hair was ever under a fingernail of Kristen’s left hand, in the fingernail scrapings marked “L. Hand Chris,” or otherwise in or on her left hand. Consequently, the Government disputes that AFDIL ever performed any DNA testing of a hair whose provenance has been established to have come from the body of Kristen MacDonald, and which was ever described as Exhibit D-237, in any USACIL report or document.

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February 1970 until July 20, 1970 when they were “hand carri[ed] to CID Lab” at which time CID Chemist Glisson performed her analysis and noted the presence of the exculpatory hair.” See Case 08-8525, Document 108 at 27, and Addendum 1-3.



Nevertheless, MacDonald has remained obdurate in his contention that the vial went directly from Hawkins to Glisson, without any intervening examinations, for reasons which are self-evident. By this device, MacDonald seeks to avoid having to deal with any of the evidence contained in the Government's Forensic Affidavits, and presented at the evidentiary hearing, which prove that when Glisson received the vial on July 27, 1970, the actual fingernail scrapings ("L. Hand Chris") were no longer present. MacDonald made a tactical decision in the current phase of the litigation not to introduce evidence supporting his previous contention that USACIL "Exhibit D-237" refers to a hair, and that it is the same hair as "AFDIL 91A," because it would have required an acknowledgment that the actual fingernail scrapings from Kristen's left hand were examined at USACIL in March, 1970. Acceptance of this indisputable fact would have been totally inconsistent with his claim that Kristen's fingernail scrapings went directly from the autopsy to Glisson via Hawkins on July 27, 1970. To follow this stratagem is MacDonald's prerogative, but it comes at a price. That price is that he should be deemed to have waived the "D-237" = "91A" claim, so as to preclude him from raising it again, should there be a subsequent appeal.

MacDonald's failure to reply to the "L. Hand Chris" evidence should be taken as a tacit admission that he has no evidence to rebut the Government's evidence on this point. But he has the burden of proving not only that the hair is unsourced, but also the provenance of the 91A hair as originating from under Kristen's fingernail, as well as the temporal aspect that this occurred during a struggle with an intruder. He has failed to prove any of these things. Further, MacDonald asserts that "whether MacDonald accurately describes this hair as coming from Kimberly's (sic Kristen's) fingernail or hand... the distinction is unimportant. The significance is it is an unsourced hair associated with Kimberly (sic, Kristen) and is circumstantial evidence of

intruders.” *Id.* at 31 n.19. This position represents a considerable retreat from MacDonald’s starting point (bloody, forcibly removed hair under Kristen’s fingernail), and his Substitute Post-Hearing Memorandum (hair found “in the fingernail scrapings *or* in the hand of Kristen”). Now apparently it is sufficient that the hair simply be *associated with Kristen* in order to prove intruders. While MacDonald is certainly free to argue that an unsourced, naturally shed hair could only have come from an intruder, it is an argument without any merit in light of the evidence as a whole. For MacDonald to prove that any of the 91A, 75A, or 58A(1) hairs is “positive evidence of intruders,” as he claims, then MacDonald must adduce reliable and credible evidence that establishes that each hair could only have come from an intruder during the commission of the crime. In other words, not only must he prove provenance of the particular hair, but he must prove when it got to the location in which it was later found, and also how it got there. All these burdens he has failed to meet regarding the 91A hair and, although it is not in dispute where the 58A(1) and 75A hairs were found, MacDonald has failed to prove the requisite “when” and “how.”

As we have previously explained, the absence of any indication of blood on the 91A hair is inconsistent with this hair having ever been under Kristen’s fingernail, or even on her hand, given the fact that her hands were totally covered in blood.<sup>57</sup> HTr. 1315; DE-344 at 167-68, 175, n.110. Assuming for the sake of argument, however, that MacDonald had been able to prove that the unsourced 91A hair had been collected from the left hand of Kristen MacDonald at autopsy—which he failed to do—that circumstance alone would not have been exculpatory. He would still have to eliminate the possibility that the hair was artifact resulting from environmental or other contamination in order to prove that it could only have come from an

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<sup>57</sup> This is in contrast to the “bloody” polyester-cotton fiber matching MacDonald’s pajama top that Browning found in the fingernail scrapings from the left hand of Kristen on March 9, 1970. See DE-215 at ¶¶8-11.

intruder. First, it is a naturally shed hair which could have been shed weeks or months before, and second, as MacDonald himself brought out during the cross-examination of Drs. Gammel and Hancock, Kristen's hands were not covered with plastic bags at the crime scene before she was taken to the mortuary. TTr. 2533, 2600-01. As Dr. Gammel testified on cross-examination, when there has been such a failure to protect the hands they are "apt to either lose material or collect material on the way in." TTr. 2533. MacDonald has failed to prove that Kristen's hands could not have collected a hair from the stretcher, the sheet with which she was covered, or otherwise during the process of being undressed in the mortuary. Consequently, MacDonald has failed to prove that the 91A hair could only have come from an intruder.<sup>58</sup>

For all these reasons, as well as those previously stated, we ask the Court to reject MacDonald's unsourced hairs claim. In particular with respect to the 91A hair, we ask the Court to reject the contention that the fingernail scrapings from Kristen's left hand went directly from the custody of CID Agent Bennie J. Hawkins to USACIL Chemist Janice Glisson, without any intervening examination of the vial and its contents between February 17, 1970 and July 27, 1970. Rather, we ask the Court to find, based upon the unchallenged affidavits of Craig Chamberlain (DE-214), Dillard Browning (DE-215), and Janice Glisson (DE-217): (1) that the actual fingernail scrapings from the left hand of Kristen MacDonald were further contained within the pill vial in a container marked "L. Hand Chris;" (2) that the contents of the vial, as well as the contents of "L. Hand Chris" were examined for the presence of hairs and fibers (by Browning) and blood residue (by Glisson) between February 26, and March 9, 1970; (3) neither examiner recorded the presence of a hair; (4) that when Janice Glisson examined the contents of

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<sup>58</sup> As stated in the Government's Post-hearing Memorandum, the only way that the DNA results could constitute materially exculpatory evidence would be if one of the tested samples had matched the DNA of Stoeckley or Mitchell. See DE-344 at 194-95, citing Memorandum in Support of Response of the United States to Petitioner's Motion to Add an Additional Predicate to his Previously Filed Motion for Relief Under 28 U.S.C. § 2255, and Suggestion in the Alternative, to Transfer to the Court of Appeals, filed 4/17/06, at 7, attached hereto as Exhibit 11. None did. See DE-306 at 6-7 (¶ 21), 8 (¶ 28).

**EXHIBIT NO. 3**



TLC, VOL I  
4/11/80

Case of Dr. Jeffrey R. MacDonald  
Murder I  
Attorneys: Segal & Smith

Statement of Mr. Jerry Leonard  
115 $\frac{1}{2}$  Morgan St.  
Raleigh, N.C.  
ph: 834-0779

January 23, 1980

Jerry Leonard is the attorney appointed to "represent-protect-etc." Helena Stoeckley while she was in Raleigh for the MacDonald trial. He was appointed to represent Ms. Stoeckley by the court.

Mr. Leonard stated, "They called me from the court house and told me that Helena had asked for a lawyer and asked would I be interested in representing her."

Leonard stated that he never received any suggestions, or instructions from the court regarding Ms. Stoeckly after he was appointed to represent her.

Mr. Leonard stated that he received permission from Ms. Stoeckley to discuss the things she told him with attorney Wade Smith. Mr. Leonard stated that he had a conference with Mr. Smith and told him what Helena had told him. He stated that he also gave Mr. Smith some insight as to his impressions of Ms. Stoeckly. He stated that he did not have permission from Ms. Stoeckley to discuss these matters with anyone else.

Mr. Leonard stated that he had several private conversations with Judge Dupree about Helena Stoeckley. Mr. Leonard stated that he was not sure if, as an officer of the court, these conversations were privileged information. He did state that anything Judge Dupree might or might not have told him concerning the Judge's feelings about the guilt or innocence of Jeff MacDonald seemed to have been expressed by his mood and actions in the court room during the trial.

John Dolan Myers  
Private License #464

*John Dolan Myers*  
NOTE: Mr. Leonard stated that he did not know if MacDonald was guilty or innocent, however, he stated that he did feel that the prosecution did not prove their case. He stated that he thought MacDonald had been screwed.

Exhibit 3

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**EXHIBIT NO. 4**





## STATEMENTS ATTRIBUTED TO HELENA STOECKLEY

LEONARD AFFIDAVIT  
(DX 5113)GUNDERSON DECLARATION  
(DX-5015)

She had no memory of the night-was high on drugs. ¶9	"At midnight, Ms. Davis [Stoeckley] and Greg Mitchell took mescaline and she has little memory of what occurred until approximately 2:00.a.m." ¶14. <sup>1</sup>
What would I do if she actually had been there? ¶12	
She was scared to tell the truth, but the truth was not as bad as everybody thought. ¶12	
She was in fact in the MacDonald residence at the time of the murders, but she didn't hurt anyone. ¶12	"The group entered the MacDonald apartment through a door which led into what Stoeckley believed was a kitchen. Because the light in the house was dim Stoeckley lighted a candle that she brought with her." ¶18 "Stoeckley went into the living room with others and found Dr. MacDonald asleep on the couch." ¶19 "As soon as they began striking Dr. MacDonald, Stoeckley said "Acid is groovy, kill the pig"." ¶22
She didn't anticipate that the Macdonalds would be hurt. ¶13	"Physical violence against MacDonald and his family, including the possibility of murder was discussed. Stoeckley believed, however, that they would merely "rough up" Dr. MacDonald." ¶11
She was part of the core group of a witchcraft cult that did rituals. ¶13	"She was a member of a group that practiced witchcraft and satanism. The group was heavily involved in the use of narcotics and hallucinogens." ¶8
Mrs. MacDonald was pregnant and the cult associated newborn babies with the devil. ¶13	But see: October 25, 1980 Statement of Helena Stoeckley, DX-2 at 6, "One reason I ran into the bedroom was because I knew Colette was pregnant. This fact was discussed during our ritual."
The idea to go to the residence came up one night while doing drugs	"During the months prior to the murders, the group developed a plan concerning Dr. MacDonald. In that connection, they conducted surveillance and learned

<sup>1</sup>All of the statements between October 24, 1980, and May 27, 1982, attributed to Stoeckley by Gunderson are from the "Declaration of Ted L. Gunderson" filed as DX 5015 at the 2012 evidentiary hearing and previously as DE-126-2 at 4-9 in 2006, and as an Attached Declaration to the Motion For New Trial in 1984. The instant copy is unsigned and not notarized, but is purported to have been prepared in 1984; paragraph "13" has been crossed out and initialed "TLG 4/3/84."

Exhibit 4



## STATEMENTS ATTRIBUTED TO HELENA STOECKLEY

LEONARD AFFIDAVIT  
(DX 5113)GUNDERSON DECLARATION  
(DX-5015)

with friends who were part of the core group. ¶14	where he lived and learned that Mrs. MacDonald attended North Carolina State University Extension at Ft. Bragg." ¶10
At least one man in the group had an issue against Dr. MacDonald because he discriminated against drug users in his work at a drug treatment program - they would get court-marshal(sic) or discharged but no treatment. ¶14	" Because Dr. MacDonald had refused to treat local drug users for addiction, had refused to supply them with drugs and had threatened to report drug users to their military superiors, Dr. MacDonald was in disfavor with local drug users, including the members of Stoeckley's group, who considered him a "pig"." Id.¶9
This man talked them into going to Dr. MacDonald's house to confront him. Aff. ¶14	"On the evening of February 16, 1970, Stoeckley and at least six members of her group, including Greg Mitchell, met to discuss Dr. MacDonald. They decided to go to his home that night and demand he procure drugs for them..." ¶11 "Most of the talking during the half-hour meeting was done by Mitchell." ¶12
Therefore they went to the house on the night of the murders. ¶14	"Stoeckley stated that at 2:00 a.m. on February 17, 1970, she and the others, including Greg Mitchell, Don Harris, Bruce Fowler and a black male named "Smitty" or "Zig Zag" [and Allan Mazzerole] rode in Fowler's automobile to the vicinity of Dr. MacDonald's home..." ¶15
The end result was that things got out of hand and the people she was with committed the murders. ¶14	"They awakened Dr. MacDonald and began asking him for drugs. He put up physical resistance, but then said he would make a phone call for them to get drugs. He attempted to call the M.P.'s instead from a wall phone in the kitchen but was stopped by some group members. It was at this point that everything "went out of control." ¶20  "Members of the group began to attack Dr. MacDonald. It appeared they were using a sharp object because blood appeared on his upper chest when they struck him." ¶21 "Stoeckley went to the master bedroom where she saw Greg Mitchell and another hitting Colette." ¶24
During the violence, the MacDonald's home phone rang and she answered the phone. ¶15	"Sometime while the group was in the MacDonald house, the telephone rang and Stoeckley answered it. When the caller asked for Dr. MacDonald, She began to laugh..." ¶25
She hung up quickly after	"Someone in the house told her to hang up the phone



## STATEMENTS ATTRIBUTED TO HELENA STOECKLEY

LEONARD AFFIDAVIT  
(DX 5113)GUNDERSON DECLARATION  
(DX-5015)

one of her friends yelled at her to hang up the phone. ¶15	Stoeckley did so. She wiped her fingerprints off the receiver with her blouse." ¶25
She noticed a toy rocking horse, and the horse was broken. ¶15	"At some point, Ms. Davis entered another bedroom and saw a child covered with blood. She appeared to be dead. Ms. Davis leaned back against a rocking horse that was in the room and noticed that one of the springs on it was broken." ¶26
One of the springs was not attached to the horse. ¶15	"Ms. Davis leaned back against a rocking horse that was in the room and noticed that one of the springs on it was broken." ¶26
She took that as a sign that Dr. MacDonald did not care for his children. ¶15	



**EXHIBIT NO. 5**





LEONARD AFFIDAVIT

USA v. MacDonald, 640 F.Supp. 286 (E.D.N.C. 1985)

She had no memory of the night - she was high on drugs. ¶9	
What would I do if she actually had been there? ¶12	
She was scared to tell the truth, but the truth was not as bad as everybody thought. ¶12	"Stoeckley perjured herself in order to escape prosecution." At 322
She was in fact in the MacDonald residence at the time of the murders, but she didn't hurt anyone. ¶12	"The group ... entered the home through a utility room door. It was dark inside the house and Stoeckley lit a candle to help the group find their way." "During the fight Stoeckley chanted "acid is groovy; kill the pigs." At 321
She didn't anticipate that the MacDonalds would be hurt. ¶13	"Some members of the group shook MacDonald to awaken him so that they could talk to him about drugs but upon awakening he became excited and began to fight with them." At 322
She was part of the core group of a witchcraft cult that did rituals. ¶13	"Stoeckley was a member of a satanic cult which was angry with military physicians, MacDonald among them, because they refused to help drug users with their problems." At 321
Mrs. Macdonald was pregnant and the cult associated newborn babies with the devil. ¶13	
The idea to go to the residence came up one night while doing drugs with friends who were part of the core group. ¶14	"At approximately 10:30 p.m. [on February 16, 1970], Stoeckley, Greg Mitchell, Shelby Don Harris, Bruce Fowler, and Dwight Edwin Smith met at Stoeckley's apartment where they discussed their plans to go to MacDonald's apartment to seek his cooperation." At 321
At least one man in the group had an issue against Dr. MacDonald because he discriminated against drug users in his work at a drug treatment program - they would get court-marshal(sic) or discharged but no treatment. ¶14	"...one cult member had talked to Macdonald in his apartment for about an hour and half two weeks before the murders trying to get MacDonald to cooperate in treating drug addicts." At 320
This man talked them into going to Dr. MacDonald's house to confront him. ¶14	"The leaders of the cult decided to approach MacDonald in an attempt to obtain drugs from him and persuade him to treat drug addicts." At 321
Therefore they went to the house on the night of the murders. ¶14	"The Stoeckley group left a Dunkin Donuts restaurant at about 2:00 a.m. and drove to the MacDonald residence." At 321

Exhibit 5



## LEONARD AFFIDAVIT

USA v. MacDonald, 640 F.Supp. 286 (E.D.N.C. 1985)

The end result was that things got out of hand and the people she was with committed the murders. ¶14	"According to Stoeckley, things "got out of control" at this point and she heard Colette MacDonald calling to her husband for help from the master bedroom. Stoeckley went to the room where she saw Colette being assaulted by Greg Mitchell and another member of the group" At 322
During the violence, the MacDonald's home phone rang and she answered the phone. ¶15	"Stoeckley then heard a telephone ring and another member of the group told her to answer it. She answered the telephone and heard a soft voice ask for "Dr. MacDonald." At 322
She hung up quickly after one of her friends yelled at her to hang up the phone. ¶15	"whereupon she began to laugh until someone in the group ordered her to hang up the telephone." At 322
She noticed a toy rocking horse, and the horse was broken. ¶15	"Stoeckley left the master bedroom and went into one of the children's rooms where she saw... a hobby horse which she noted was broken." At 322
One of the springs was not attached to the horse. ¶15	
She took that as a sign that Dr. MacDonald did not care for his children. ¶15	



**EXHIBIT NO. 6**



Exhibit 6

The News and Observer, Raleigh, N. C.  
Wednesday, August 22, 1979

## Witnesses attest to MacDonald's trust, compassion

By GINNY CARROLL  
Staff Writer

Former Green Beret doctor Jeffrey R. MacDonald was described Tuesday as a model husband, loving father, trustworthy comrade and compassionate doctor with special concern for abused children.

Headed by MacDonald's mother, a string of witnesses took the witness stand at his murder trial in U.S. District Court to praise MacDonald for traits exhibited from childhood through his current life as director of emergency medicine at a

large Southern California hospital.

The character witnesses appeared during the 27th day of MacDonald's trial on charges of killing his wife Colette and daughters Kimberly and Kristen Jean on Feb. 17, 1970 in the family's Fort Bragg apartment.

One of the witnesses, Maj. James Williams, recalled his reaction when he heard early on that morning of a murder at the MacDonald home. "Oh, my God, the drug abusers have killed him," flashed through Williams's mind, he said.

MacDonald had been spearheading a program at Fort Bragg to treat Vietnam veterans returning home with drug addictions, Williams said. A confrontation between MacDonald and a suspected abuser had occurred on the afternoon before the family was slain, he said.

Sharon Shaw, who taught Colette MacDonald a course in the American novel at an N.C. State University extension at Fort Bragg, said that at the time of the killings, there was a strong anti-Green Beret senti-

ment on the base.

During a class discussion one night, Colette became angry at the characterization of Green Berets as murderers, Mrs. Shaw said. "My husband is a Green Beret, and he's no murderer," Colette MacDonald told the class.

Williams's and Mrs. Shaw's testimony was part of a continuing effort by defense attorneys Bernard L. Segal and Wade M. Smith to support MacDonald's claim that his family was killed

See DOCTOR, page 38

Case 3:75-cr-00026-F Document 352-7 Filed 09/23/13 Page 2 of 3





## Doctor called 'trustful, loving'

Continued from page 15

by drug-crazed intruders — three men and a woman with long blond hair.

To that end, the defense attorneys also filed a request Tuesday to secure testimony from James E. Friar, 30, an inmate serving a 10-year sentence for fraud at the medium-custody state prison unit in McDowell County.

Friar was convicted April 6, 1977, in Richmond County of writing a check with a fake name and address for men's clothing. Superior Court Judge William Z. Wood, who sentenced Friar, recommended that he receive psychiatric treatment.

Friar told an investigator for MacDonald that about 3 a.m. on the morning of Feb. 17, 1970, he was in Fayetteville. He said he telephoned the MacDonald house by mistake, looking for another doctor named MacDonald.

According to an affidavit by defense investigator John Myers, a woman answered the phone and began laughing when Friar asked for Dr. MacDonald. A male voice in the background said, "Hang the damn phone up," according to the affidavit.

Dupree late Tuesday had not ruled on the request to bring Friar to Raleigh for possible testimony.

The trial testimony Tuesday was aimed at portraying MacDonald to the jurors as a man who could not have committed the savage slaying of his wife and daughters.

"He was a very fine child (with) a sunny disposition," recalled Dorothy "Perry" MacDonald, the defendant's mother.

Describing Colette MacDonald as "responsive, sensitive, delightful," Mrs. MacDonald said that her son and daughter-in-law had a warm and loving relationship that began in high school and strengthened with the passage of time and the birth of their children.

Kimberly, she said, "was an elegant child, probably not the world's greatest beauty but a very intelligent child. She had the sensitivity of Colette."

"Kristy was blonde with blue eyes, more of a little tomboy. On the beach as we would walk down, people would comment on their beauty," Mrs. MacDonald said.

On the New Year's Eve before the killings, she recalled, the adults of the family were going to an officers' club to celebrate. "I remember Jeff embraced her and said she looked truly beautiful," she said.



**EXHIBIT NO. 7**



UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
FAYETTEVILLE DIVISION

FILED

AUG 16 1979

J. RICH LEONARD, CLERK  
U. S. DISTRICT COURT  
E. DIST. NO. CAR.

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CRIM NO. 75-26-CR-3
	)	
vs.	)	<u>MOTION FOR WRIT OF HABEAS CORPUS</u>
	)	<u>AD TESTIFICANDUM TO COMMAND</u>
JEFFREY R. MacDONALD,	)	<u>JIMMY FRIAR TO APPEAR FOR TESTIMONY</u>
	)	<u>IN OPEN COURT</u>
Defendant.	)	

Defendant, JEFFREY R. MacDONALD, by his undersigned attorneys, moves this Court for a Writ of Habeas Corpus Ad Testificandum commanding that Mr. Jimmy Friar, presently incarcerated at the McDowell County Prison Unit in Marion, North Carolina, be brought to this Court forthwith to give testimony in the above-captioned matter. In support of this Motion, defendant submits herewith the Affidavit of John D. Myers.

This the 16 day of August, 1979.

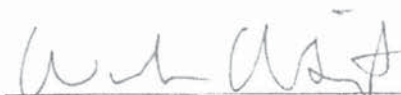
Respectfully submitted,



BERNARD L. SEGAL, Esquire  
914 BB&T Building  
Raleigh, North Carolina

Attorney for Defendant  
Jeffrey R. MacDonald

and with him



WADE M. SMITH, Esquire  
300 BB&T Building  
Raleigh, North Carolina

Exhibit 7



**EXHIBIT NO. 8**





UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
FAYETTEVILLE DIVISION

FILED

AUG 16 1979

J. RICH LEONARD, CLERK  
U. S. DISTRICT COURT  
E. DIST. NO. CAR.

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CRIM NO. 75-26-CR-3
	)	
vs.	)	<u>AFFIDAVIT OF JOHN D. MYERS</u>
	)	
JEFFREY R. MacDONALD,	)	
	)	
Defendant.	)	

I, JOHN DOLAN MYERS, having been duly sworn,  
depose and say as follows:

1. I am a private investigator licensed by the State  
of North Carolina.

2. As part of my investigative duties on the case of  
United States v. Dr. Jeffrey R. MacDonald, I interviewed by  
phone on Tuesday, July 24, 1979, Mr. Jimmy Friar.

3. Mr. Friar is presently incarcerated at McDowell  
County Prison Unit in Marion, North Carolina.

4. Mr. Friar related the following facts to me:

a) On the night of February 16-17, 1970, he  
was in Fayetteville, North Carolina.

b) Sometime between the hours of 1:30 and 3:00 a.m.,  
on February 17, 1970, he called the residence of Dr.  
Jeffrey MacDonald.

c) A woman answered the telephone.

d) He asked if Dr. MacDonald was in.

e) The woman began laughing.

f) Mr. Friar heard two or more male voices in the  
background.

g) A male voice said, "hang the damn phone up".

Exhibit 8



h) Someone hung the telephone up, banging it against the body of the telephone as he did so.

This the 16 day of August, 1979.

*John Dolan Myers*  
John Dolan Myers

Sworn and subscribed to before me this 16<sup>th</sup> day of August, 1979.

*Jamilla H. Adams*  
Notary Public

My commission expires: 3/9/81





RECEIVED  
U.S. ATTORNEY  
AUG 16 2 46 PM '79  
RALEIGH, N.C.



**EXHIBIT NO. 9**





FD-302 (REV. 3-8-77)

FEDERAL BUREAU OF INVESTIGATION

August 20, 1979

Date of transcription

1

JAMES EARL FRIAR was contacted at the McDowell County Prison Unit, and was advised by SA STEPHEN P. WHITE, III that the FBI was interested in any information in his possession regarding the events which had occurred at the residence of Dr. JEFFREY MAC DONALD on February 16-17, 1970, in Fayetteville, North Carolina. FRIAR was advised that the United States Attorney's Office in Raleigh, North Carolina, had requested that the FBI interview him. FRIAR stated that he would not talk to the FBI until he had consulted with Raleigh Attorney WADE SMITH. SA WHITE then telephonically contacted WADE SMITH in Raleigh, North Carolina, through FBI Agent DONALD M. MURRAY, and Mr. SMITH consented to the interview of FRIAR by the FBI regarding his knowledge of Dr. JEFFREY MAC DONALD.

FRIAR then volunteered the following information:

During the past several years he has undergone psychiatric treatment in various prison units, and had been incarcerated in 1970 at the North Carolina Central Prison in Raleigh, North Carolina. He had been a patient at Cherry Hospital in Goldsboro, North Carolina, where he was released on February 6, 1970. At that time officers from the North Carolina Department of Correction (NCDC) escorted him back to Central Prison (CP) in Raleigh, North Carolina, where he stayed for three or four days. He was then taken to a state prison camp outside Greensboro, North Carolina, where he stayed an additional one or two days. At that time a Guilford County Deputy Sheriff took him to the courthouse in Greensboro, North Carolina, where he appeared before a District Court Judge. This judge noll prossed pending charges against him, which consisted of several worthless check charges. Since at this time he was in the military service, and had been absent without leave from Walter Reed Army Hospital in Bethesda, Maryland, Primary Military Investigators (PMI) from Fort Bragg, North Carolina, picked him up the next day and took him to Fort Bragg, North Carolina. FRIAR could not furnish an exact date when he arrived at Fort Bragg, but he estimated he arrived there probably around February 13 or 14, 1970. He was not locked up, but was placed in a special barracks which contained mentally as well as physically disabled soldiers.

Investigation on 8/17/79 at Marion, N.C.

File # CE 70-3668 - 803

by SA STEPHEN P. WHITE, III:eg

8/17/79

This document contains neither recommendations nor conclusions  
it and its contents are not to be distributed outside your agency.

and is loaned to your agency:

*White*



CE 70-3668

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As he had been unable to do at Walter Reed, FRIAR then was able to leave the Army base whenever he wanted by slipping money to a military policeman (MP) at Fort Bragg, whose name he could not recall. He stated another MP by the name of JOHN (LAST NAME UNKNOWN), who had been shot in the stomach and discharged in 1973 or 1974, could verify FRIAR's bribing of the other MP.

The one military doctor who made a lasting impression on FRIAR was a Dr. RICHARD M. MC DONALD who consulted with FRIAR on many occasions at Walter Reed Army Hospital. Dr. RICHARD MC DONALD is a psychiatrist who was a major in rank when he was at Walter Reed Hospital. Dr. RICHARD MC DONALD then worked at Letterman Army Hospital in Presidio, California, and it is FRIAR's understanding that this doctor is now located overseas. Dr. RICHARD MC DONALD never treated FRIAR while FRIAR was at Fort Bragg, North Carolina.

On February 16, 1970, FRIAR stated that he had consumed quite a bit of alcohol during the day, had bribed the MP and had then taken the last shuttle bus from Fort Bragg into Fayetteville, North Carolina. FRIAR could not recall the exact time when he had left the base, but he thought that the last shuttle bus departed Fort Bragg at 10:30 P.M.

FRIAR stated during this period in his life that he not only drank heavily, but that he was also taking prescribed medical drugs for his mental condition which included Navine and phenobarbital. On February 16, 1970, FRIAR stated he had taken these two drugs in conjunction with his drinking of beer.

Upon his arrival in Fayetteville, North Carolina, he walked to the Green Lantern Bar, an after hours bar, where he had a few drinks. He recalled that this bar was near the Greyhound Bus Station. He then walked to an old hotel located on Hay Street which he estimated to be one half to one mile from the Green Lantern Bar. He stayed in the hotel lobby for approximately 30 minutes to one hour and then walked back to the Green Lantern Bar. He stayed there a short time and then returned on foot to the old hotel. FRIAR could not remember the name of the hotel, but he stated it was located on Hay Street in Fayetteville next to a Sears or Belk's Department Store. He stated that Leo's Restaurant was also nearby, and that a taxicab stand was next to it.

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FRIAR stated that several pay telephones are located in the lobby of this hotel. He stated when you enter the front door of the hotel, the pay telephones are to the left. He stated after returning to the hotel for the second time that he went to one of these pay telephones in the hotel in order to call Womack Army Hospital at Fort Bragg, North Carolina. FRIAR stated he could not remember what number he called, but he was interested in contacting Womack Army Hospital and that he did make telephonic contact with the hospital. FRIAR told the individual that answered the telephone that he was a psychiatric patient of Dr. MC DONALD at Walter Reed Hospital in Bethesda, Maryland, that he was AWOL from the Army and he wanted to get in touch with Dr. MC DONALD.

FRIAR stated at this point in time he did not know his doctor's first name, which was RICHARD M., he only knew the physician who had treated him at Walter Reed as Dr. MC DONALD. The individual who answered the telephone at Womack Army Hospital told FRIAR that Dr. MAC DONALD was not on duty. FRIAR then got upset and stated that he needed to get in touch with Dr. MC DONALD and therefore his call was switched to an individual who FRIAR thinks was the officer on duty at Womack. FRIAR then told this individual that he needed Dr. MC DONALD's telephone number, but the second individual refused to give it to him.

FRIAR then hung up, waited a few minutes and then called Womack Army Hospital again. During the second call, he represented himself as being a doctor and stated an emergency existed and that he needed to get in touch with Dr. MC DONALD. Womack Army Hospital then gave him the residence telephone number of Dr. MAC DONALD.

FRIAR then called the operator at the same pay telephone told her that he had just lost 10 cents in the telephone, and requested her to dial the telephone number which Womack Army Hospital had given him. The operator dialed the number and a female answered the telephone. FRIAR asked for Dr. MAC DONALD and the female broke into hysterical laughter. FRIAR asked again to speak to MAC DONALD and this same female continued to laugh. In the background, FRIAR heard other voices which he thought to be male voices. He could not say how many male voices he heard in the background and he could not recall hearing any background conversation. He stated that to his best recollection,

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the background noise sounded like noise made by individuals who had either been drinking or using drugs. FRIAR stated he heard no music in the background, no screams, no groans, and no yells. He heard no gunshots. The only words which FRIAR could recall being said were: "Hang up the goddamn phone." He recalled that a male made this comment and that the male was talking to the female who had answered the telephone since she then proceeded to hang up the telephone. FRIAR stated the male's comment was not made in a threatening tone, and that when the female attempted to place the receiver on the body of the telephone, that she either dropped the receiver on the floor or caused the body of the telephone to fall, since he then heard a large noise. He then stated the line went dead, but he could not recall whether or not the deading of the line was caused by the hanging up of the telephone or the receiver of another telephone finally being put down. He stated it was difficult to recall these events since they had occurred nine years ago and since at that time he had been drinking and had been taking drugs.

FRIAR stated the only sound which he could recall, not described above, was a sound which sounded like an object being turned over. He stated there had been a lot of noise in the background while he was talking on the telephone, and the only specific sound he could recall other than the male voices, was the sound of some object falling over.

FRIAR stated that he could not fix a specific time for the telephone calls which he had made to Womack Army Hospital and to Dr. MAC DONALD's residence, but he felt that these calls had been made sometime between 12:30 A.M. and 3 A.M. on February 17, 1970. After making these telephone calls, he stated his primary interest was returning to Fort Bragg prior to 7 A.M. so he would not be missed.

FRIAR did not think anything of these telephone calls until he read about the murders of Dr. JEFFREY MAC DONALD's family in the paper the next day. Subsequent to his learning of the MAC DONALD murders, FRIAR stated that he only then became aware that his doctor's name was RICHARD M. MC DONALD and not JEFFREY MAC DONALD. He stated he had not related the details of his telephone conversations with the MAC DONALD residence until this time inasmuch as he was having serious mental problems and was drinking heavily. He stated that he





CE 70-3658

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had only recently solved his drinking problems, and he felt that he had by now straightened himself out. He stated that he was motivated only by his conscious which caused him to write a letter to the courthouse in Raleigh, North Carolina, in July, 1979, in order to relate the details of the above described telephone conversation which had occurred on February 17, 1970.

FRIAR insisted on being interviewed by only SA STEPHEN P. WHITE, III since he did not want the details of the interview to be made known to the prison officials. FRIAR advised that he had been arrested by the FBI on Mail Fraud charges in South Carolina in June, 1976, and was currently serving a ten year sentence on State Fraud charges in North Carolina. He advised he would be eligible for parole on November 7, 1979. FRIAR described himself as being a "con man and manipulator."

The following description was obtained from observation and interview:

Name:	JAMES EARL FRIAR
Race:	White
Sex:	Male
Date of Birth:	[REDACTED]
Place of Birth:	Florence, South Carolina
Height:	5 feet 11 inches
Weight:	189 pounds
Eyes:	Green
Hair:	Brown
Social Security Account Number:	[REDACTED]



**EXHIBIT NO. 10**



UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA	:	
	:	Criminal No. 75-26CR-3
v.	:	
	:	Civil No. 84-41CIV-3
JEFFREY R. MACDONALD	:	

AFFIDAVIT OF RAYMOND MADDEN, JR. #5

Raymond Madden, Jr., being duly sworn does depose and say that:

1. I am a Special Agent of the Federal Bureau of Investigation (hereafter FBI) assigned to the Raleigh Resident Agency, Charlotte Division, and as such I am currently assigned as the FBI case agent in the above-captioned matter.

2. I had no previous direct involvement in this case until August, 1980, following Jeffrey MacDonald's August 1979 convictions in the United States District Court for the Eastern District of North Carolina.

3. On March 22, 1983, Jimmy Friar, inmate, South Carolina Department of Corrections, Inmate No. 114504, was contacted and advised that he was to be interviewed regarding any knowledge concerning the MacDonald murders at Fort Bragg, North Carolina in February 1970. Friar was interviewed at the Psychiatric Unit in the presence of Psychologist Steven Shea. Friar furnished the following information:

4. He was arrested on January 9, 1983 at Gaffney, South Carolina, for Breaking and Entering and noted at that time he was



- 2 -

living in Gastonia, North Carolina, was not employed and was on parole with the State of North Carolina.

5. He entered the U.S. Army in 1966 and had Army RA serial number 11936621. He re-enlisted in the Army in 1967 and was assigned RA #11822640. His Social Security Number is 251-84-5649.

6. In February, 1970, he was in the U.S. Army assigned to Fort Bragg, North Carolina, and traveling back and forth to Walter Reed Hospital, Washington, D.C. At Walter Reed, he was being treated for shrapnel wounds. At Womack Hospital, he was awaiting a transfer to a permanent assignment. Friar advised that he suffers from grand mal epilepsy and is prone to seizures. The Womack Army Hospital, Ft. Bragg, North Carolina, in February, 1970, was treating him medically for his wound problems and epilepsy, but was not treating him for any mental illness.

7. Concerning the dates February 16-17, 1970, he stated he specifically remembered he was in the town of Fayetteville, North Carolina and was away from Womack Army Hospital. During the a.m. hours of February 17, 1970, Friar stated he missed the last bus returning to Ft. Bragg and went to a public phone booth where he called the information operator and inquired as to the number of Womack Army Hospital at Ft. Bragg, North Carolina. He stated he recalled being drunk at this occasion and once he got the information operator, he was put through to the "post" operator at which time he asked to speak to Womack Hospital. When he got someone at Womack Army Hospital, he asked to speak to Dr. Mac Donald (phonetic) and

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was allegedly told that Dr. Mac Donald was not on duty. Friar advised the reason he asked for Dr. Mac Donald was that he was he was being treated by a Dr. Richard M. Mac Donald (phonetic) at Walter Reed Hospital. Friar explained that Dr. Mac Donald was a Medical Doctor at Walter Reed Hospital. He was informed by the person on the telephone that Dr. Mac Donald was not on duty. Friar stated he hung up and 10 to 15 minutes later, he telephonically contacted the officer on duty (OD) at Womack Army Hospital and told the OD that he (Friar) was a doctor and that it was an emergency, that he needed to talk to Dr. Mac Donald. The OD patched him through immediately to Dr. Mac donald's home. He has no idea specifically about the time of this alleged called, but stated it was early a.m. on February 17, 1970.

8. After being patched through to Dr. Mac Donald's residence, a woman answered the telephone and Friar asked to speak to Dr. Mac Donald. The woman laughed at Friar and Friar heard background noise, including laughter and a male voice stated something like, "Hang up the goddamn phone." Friar heard a noise and assumes the phone had been thrown down on the floor. According to Friar, it sounded like a wild party in progress and as he could not speak with anyone, he hung up. He then hitchhiked back to Womack Army Hospital and later recalls reading the newspapers about Dr. Mac Donald's family being killed. Several days later, he was transferred back to Walter Reed Hospital.

9. Friar advised he has never met Dr. Jeffrey Mac Donald and has never been treated by Dr. Mac Donald at any time. Friar stated



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that he was interviewed by the FBI at Marion, North Carolina, believed to be the time of Mac Donald's trial (1979) concerning the above information. At about this time, he was interviewed also by John Meyers, who is a private Detective from Raleigh, North Carolina. To the best of his recollection, he informed Myers basically of the above information. Friar also recalled being interviewed by Wade Smith, who was one of Mac Donald's attorneys in Raleigh, N.C.

10. In June, 1982, he was released from prison in North Carolina and was on parole in Gastonia, North Carolina. In August, 1982, he was contacted by Eve Grayson, who is with the local parole office in Gastonia, who informed him that newspaper columnist Jack Anderson was trying to get in touch with him. Eventually, Friar was contacted by a Donald Goldberg, who identified himself to Friar as an associate and employee of Jack Anderson. After talking with Goldberg on the telephone about the Mac Donald case, Goldberg sent Friar a round-trip plane ticket in order that Friar could travel to Washington, D.C. Friar went to Washington, D.C., and was picked up at the airport on approximately August 17, 1982 by Donald Goldberg. They immediately went to Walter Reed Hospital in an attempt to verify that a Dr. Richard Mac Donald was at Walter Reed in 1970 and had treated Friar at that time. To the best of his recollection, they could not verify this information.

11. After the preceding event, Friar and Goldberg then went by Jack Anderson's office and eventually to a producer's home where Jack Anderson and Goldberg introduced him and eventually interviewed him on a TV video recorder. Present during the taping were Goldberg,



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a camera man and assistant, two "narcotics agents", a Sergeant with a Police Department, and four or five other individuals. Ted Gunderson and Helena Stoeckley were not present, but he learned during conversations with the above individuals that Stoeckley had been previously interviewed and taped on video by Goldberg and Gunderson in South Carolina. The tapes, according to Goldberg, were not good and after the taping session Goldberg called a former Detective in Fayetteville, North Carolina because the Helena Stoeckley tapes were also "bad" and he (Goldberg) needed to find Stoeckley again. This detective, possibly by the name of Beasley, wanted expense money from Goldberg which Goldberg apparently agreed to. According to Friar, Stoeckely was to fly in the next day to Washington, D.C., for additional taping sessions, however, he did not meet her as he returned to North Carolina on the same day.

12. He has been arrested 15 or 16 times, six or seven of which have been for felony charges. On one of his first arrests in Charleston, South Carolina, believed to be 1967 or so, he was charged with mail fraud and pled insanity, but was convicted. Friar executed a release of medical and psychiatric records for the FBI.

13. Since August, 1982, he has talked to Goldberg several times on the telephone. A newspaper reporter, identity unknown, also talked to him about the above events and believes the reporter was from Spartanburg, South Carolina.

14. Concerning his mental health, Friar advised that with the exception of epilepsy and nerve problems, he has had no mental

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illness and has never been treated for same at either Womack Army Hospital or Walter Reed Hospital. As far as medication is concerned, he has taken valium on a fairly regular basis as well as dilaudid, which he alleges is to control epileptic seizures.

15. At the present time while confined as an inmate with the South Carolina Department of Corrections, he is refusing medical and psychiatric treatment. He is presently taking dilaudid and he is petitioning to receive outside medical rather than prison treatment.

16. Friar also advised that while incarcerated in the Marion Prison Unit sometime in January, 1980, he allegedly received two phone calls from an anonymous male individual who allegedly threatened his life and inferred to him it was for his best interest to forget about the Mac Donald case. He also advised while on work release from the Marion Prison Unit, he was employed by Master Craft, Inc., Spindale, North Carolina. While on the third shift one night in January, 1980, he was pushed around the parking lot by four or five masked men. There were no witnesses to this incident, however, he allegedly reported this assault to the prison unit. He attributes this assault to his knowledge about the Mac Donald case. While on work release at the above time, he remembers that someone from California was trying to contact him and that this individual was allegedly a private investigator.

17. In December, 1982, he got a phone call at his residence in Gastonia, North Carolina from an unknown female, who identified herself as Helena Stoeckley and immediately hung up.

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18. On April 18, 1983, the attached letter was received by your affiant from Jimmy Friar, 114504, Route 1, Box 323, Enoree, S.C., 29335.

Further your affiant sayeth not.



RAYMOND MADDEN, JR.  
Special Agent, FBI

Subscribed and sworn to before me this 21<sup>st</sup> day of July, 1984.

  
NOTARY PUBLIC

My Commission Expires May 31, 1985



Jimmy FRIAR 114504

RT #1 Box 303

Enoree, SC 29335

Dear Mr Mudden,

In your reply to my being in any mental hospitals, well the answer is yes. I have been in the mental wards at Walter Reed, Warrick Fort Bragg Fort Jackson Mental Ward Columbia, SC SC State Hospital 3 or 4 times, The Columbia VA mental ward 2 or 3 times, VA mental hospital Linwood Augusta Ga, Pittsburg VA hospital Mental Ward, Canada Mental Hospital Hammonden Ont. Can, Cherry Hospital Goldsboro, NC. plus I have seen Doctors at Swack, Mt. Mental Health Clinic in Hazledwood, NC. Dr Zack Russ, VA. hospital (Oteen) Asheville, NC VA. hospital Salisbury, NC. VA. Outpatients in Winston Salem, N.C. and several others

over

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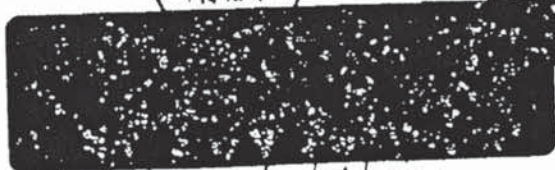
2

I am sorry for the problems in  
my record, But I hope this will  
help you

Sincerely  
Jim Green

P.S Please let me know if you  
get this letter, by dropping me  
a note.

J. Green  
P-1, Box 323  
Greenville, SC 29635



Butch Madder  
PO Box 26416  
Raleigh NC 27611

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and FBI Lab examiners, consist primarily of hairs and blood debris found in extraordinarily telling locations -- namely, under the fingernails of the victims, on their hands, on their bodies, or in their bedding. The lab notes reveal that the government's lab examiners had attempted to source these hairs by comparing them to known hairs taken from the victims and from Dr. MacDonald, but they were never able to match these hairs to any member of the MacDonald family, resulting in the obvious and highly exculpatory conclusion that these strategically-located hairs came from outsiders, thus corroborating MacDonald's account. With respect to certain blood debris found under the fingernails or on the hands of the victims, the government was able to determine the blood type in some instances but not in others. See Affidavit of Philip G. Cormier No. 2 — Request for Access to Evidence to Conduct Laboratory Examinations — in Support of Jeffrey R. MacDonald's Motion to Reopen 28 U.S.C. § 2255 Proceedings and for Discovery (hereafter "Cormier Aff. No. 2") which describes these hairs and blood debris in detail.

MacDonald sought access to this highly specific and crucial category of physical evidence for the purpose of subjecting these unsourced hairs and blood debris to DNA testing in an effort to further establish MacDonald's innocence by demonstrating definitively that these items did not originate from any MacDonald family member nor from MacDonald himself, but instead originated from one or more of the intruders whom MacDonald described seeing in his home on the night of the murders.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 3:75-CR-00026-F  
No. 5:06-CV-00024-F

UNITED STATES OF AMERICA, )  
 )  
 v. )  
 )  
 JEFFREY R. MacDONALD, )  
 Movant. )  
 )

ORDER

This matter is back before the court following the opinion of the Fourth Circuit Court of Appeals, *United States v. MacDonald (MacDonald XI)*, 641 F.3d 596 (4th Cir. 2011), vacating this court’s decision<sup>1</sup> to deny Movant Jeffrey MacDonald’s Motion to Vacate, Set Aside or Correct pursuant to 28 U.S.C. § 2255 [DE-111]<sup>2</sup> and remanding for further proceedings. After conducting an evidentiary hearing, receiving voluminous supplementary briefing, and examining the evidence as a whole, the court finds that MacDonald has failed to establish, by clear and convincing evidence, that no reasonable factfinder would have found him guilty of the murder of his wife and two daughters. Alternatively, the court finds that MacDonald has failed to adequately establish the merits of any of his claims. Accordingly, for the reasons more fully set forth below, MacDonald’s Motion to Vacate [DE-111] is DENIED.

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<sup>1</sup> See *United States v. MacDonald (MacDonald X)*, Nos. 75-CR-26-3, 5:06-CV-24-F, 2008 WL 4809869 (E.D.N.C. Nov. 4, 2008).

<sup>2</sup> For purposes of this Order, “DE” designates the docket entry on the court’s official Docket Sheet. “Ttr.” refers to the transcript from the trial. “Htr” refers to the transcript from the September 2012 evidentiary hearing, and “GX” and “DX” refer to exhibits offered by the Government and MacDonald, respectively, at the September 2012 hearing. “GXP” refers to photographic Government exhibits.



## PROCEDURAL BACKGROUND

Although this order presumes some familiarity with this long-running case, the court nevertheless finds it necessary to review some of the procedural background.

In the early morning hours of February 17, 1970, Jeffrey MacDonald's pregnant wife, Colette, and his two young daughters, Kristen and Kimberly, were murdered in their home. MacDonald, a physician and Captain in the Army Medical Corps, sustained non-life threatening injuries. From that date, MacDonald has consistently maintained that his Fort Bragg apartment was invaded by a band of drug-crazed hippies, including a woman with long blonde hair who wore a floppy hat and boots.

Law enforcement initially accepted MacDonald's story. However, as the investigation continued, physical evidence was discovered which cast doubt on MacDonald's version. In fact, investigators came to believe that MacDonald had killed his wife and daughters and staged the crime scene to cover up their murders.

The Army eventually charged MacDonald with the murders of his family. The Army's charges were ultimately dismissed on October 23, 1970, following a formal pre-court martial investigation and hearings conducted pursuant to Rule 32 of the Uniform Code of Military Justice. The investigating officer recommended that civil authorities investigate Helena Stoeckley as a possible suspect. Stoeckley was a Fayetteville, North Carolina, resident who was known to be a heavy drug user, and known to wear clothing similar to that described by MacDonald. Stoeckley had also, on numerous occasions, given conflicting statements as to whether she participated in the murders of MacDonald's family.

Just as the statute of limitations was about to expire, MacDonald was indicted by a grand jury for the Eastern District of North Carolina for the murders of his wife and his two daughters. The seven-week trial of MacDonald's case was held during July and August of 1979. The Honorable Franklin T. Dupree, Jr., United States District Judge, presided over the trial.<sup>33</sup> The Government's case against MacDonald was presented by James L. Blackburn, Assistant United States Attorney for the Eastern District of North Carolina, and Brian Murtagh, an attorney with the Department of Justice. MacDonald's defense team included Wade M. Smith of Raleigh, North Carolina, and Bernard Segal of the San Francisco, California bar.

The trial included testimony from both MacDonald and Stoeckley, the latter of which is detailed more fully later in this order. Stoeckley's testimony at trial was not what MacDonald or his defense team wanted or expected to hear. In short, she denied any involvement in the murders, and could not recall anything from shortly before midnight on February 16, 1970 until approximately 4:30 a.m. on February 17th due to the large amounts of drugs she had ingested. At the conclusion of the 29-day trial, it took the jury only six hours of deliberation to find MacDonald guilty of second degree murder of his wife and his daughter Kimberly and first-degree murder of his daughter Kristen. MacDonald was sentenced to three consecutive life sentences.

Thereafter, MacDonald filed a direct appeal to the Fourth Circuit Court of Appeals raising a number of issues. *See United States v. MacDonald*, 632 F.2d 258 (4th Cir. 1980). A divided panel reversed MacDonald's convictions, on the basis that his Sixth Amendment right to a speedy trial had

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<sup>3</sup> Judge Dupree presided over the trial and all subsequent proceedings in the MacDonald case held in the District Court until his death in December of 1995.

been violated. *Id.* at 267.<sup>4</sup> The Supreme Court, however, reversed the Fourth Circuit and remanded for further proceedings. *See United States v. MacDonald*, 456 U.S. 1, 9-11 (1982). On remand, the Fourth Circuit assessed MacDonald's remaining appellate arguments, found no error, and affirmed his convictions. *United States v. MacDonald (MacDonald II)*, 688 F.2d 224 (4th Cir. 1982). In the following years, MacDonald filed several motions in this court for post-conviction relief. The first two of these were denied. *United States v. MacDonald (MacDonald III)*, 640 F. Supp. 286 (E.D.N.C. 1985) (denying motions for a new trial and for a writ of habeas corpus), *aff'd (MacDonald IV)*, 779 F.2d 962 (4th Cir. 1985) (affirming denial of motions for recusal, new trial, and habeas relief), *cert. denied*, 479 U.S. 813 (1986); *United States v. MacDonald (MacDonald V)*, 778 F. Supp. 1342 (E.D.N.C. 1991) (denying MacDonald's second motion for habeas relief), *aff'd (MacDonald VI)*, 966 F.2d 854 (4th Cir. 1992), *cert. denied*, 506 U.S. 1002 (1992).

In 1997, MacDonald filed a motion, pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, to reopen the proceedings on his second post-conviction motion which was filed in 1990. MacDonald alleged fraud by the Government concerning the 1990 motion, and sought an order permitting new DNA testing of certain evidence that had been collected from the crime scene. This court denied the motion insofar as it sought to reopen the 1990 motion, and transferred the remaining matters to the Fourth Circuit Court of Appeals for consideration as a petition for leave to file a successive § 2255 motion. *See United States v. MacDonald (MacDonald VII)*, 979 F. Supp. 1057, 1069 (E.D.N.C. 1997).

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<sup>4</sup> Prior to trial, MacDonald filed an interlocutory appeal, and the Fourth Circuit found that his speedy trial rights had been violated. *United States v. MacDonald*, 531 F.2d 196 (4th Cir. 1976). The Supreme Court later reversed the Fourth Circuit, on the basis that the argument was not ripe for review prior to trial. *United States v. MacDonald*, 435 U.S. 850 (1978).

There were two appeals to the Fourth Circuit from this court's 1997 decision. In the first appeal, the Fourth Circuit denied MacDonald authorization to file a successive § 2255 motion, but remanded the matter to this court to oversee mitochondrial DNA testing. *See In re MacDonald (MacDonald VII)*, No. 97-713 (4th Cir. Oct. 17, 1997) (unpublished). With regard to the second appeal, the Fourth Circuit affirmed this court's denial of MacDonald's Rule 60(b) motion to reopen the proceedings. *See United States v. MacDonald (MacDonald IX)*, No. 97-7297, 161 F.3d 4 (4th Cir. Sept. 8, 1998) (unpublished) (per curiam).

On remand, this court entered orders setting the parameters for DNA testing. It took nine years for the testing protocol to be agreed upon by the parties, the tests to be conducted, and the results submitted. The DNA report from the Department of Defense Armed Forces Institute of Pathology was issued on March 10, 2006.

Just before the DNA report was issued, MacDonald sought and received a pre-filing authorization from the Fourth Circuit, pursuant to 28 U.S.C. § 2244(b) and § 2255, permitting him to submit his proposed successive § 2255 motion to determine whether he meets the requirements for a successive § 2255 motion. MacDonald promptly filed his proposed successive § 2255 motion [DE-111] in this court on January 17, 2006.

This proposed successive § 2255 motion asserted what has become known as the "Britt claim." Specifically, MacDonald sought to have his convictions vacated and set aside on the grounds of "newly discovered evidence," the 2005 affidavit of former Deputy United States Marshal Jim Britt, the presentation of which MacDonald asserts would result in his acquittal. In brief summary, Britt averred that Stoeckley confessed to him in 1979 that she had been present in the MacDonald home on the night of the murders. Britt also declared that he was the only witness to an exchange

between AUSA Blackburn and Stoeckley when, after Stoeckley made the same statement to Blackburn that she made to Britt, Blackburn threatened to indict her for first degree murder if she so testified. In this proposed motion, MacDonald contends that Britt's affidavit proves AUSA Blackburn's threat of prosecution intimidated Stoeckley into changing her intended trial testimony. MacDonald also asserts that Blackburn lied to Judge Dupree at trial the following day by representing that Stoeckley told the Government she had *not* been involved in the MacDonald murders, and could not remember where she had been on the night the crimes took place. MacDonald contends that Britt's withholding this evidence for almost 30 years must be attributed to the Government, and that its suppression of the facts revealed in the affidavit constitutes prosecutorial misconduct requiring that his conviction be vacated and set aside. In addition to the Britt affidavit, this motion incorporated numerous other exhibits, including the affidavits of three other witnesses swearing that Stoeckley's boyfriend at the time of the MacDonald murders, Greg Mitchell, had confessed to murdering the MacDonald family.

On March 22, 2006, after the results of the DNA testing became available, MacDonald filed a "Motion to Add an Additional Predicate to His Previously Filed Motion Under 28 U.S.C. § 2255" [DE-122], or what has become known as the "DNA claim." In this motion, MacDonald sought to add a new claim for relief to his proposed successive § 2255 motion, based on the newly discovered results of the mitochondrial DNA testing. Specifically, MacDonald sought to raise a freestanding actual innocence claim based on the DNA evidence, as well as having the court consider the DNA evidence as part of the "evidence as a whole" in assessing the Britt claim.

Just one day after MacDonald filed his DNA motion, he filed a "Motion, Pursuant to Rule 7 of the Rules Governing Section 2255 Proceedings, to Expand the Record to Include the Itemized

Authenticated Evidence Set Forth Herein” [DE-124]. MacDonald requested that the court expand the record to include specific authenticated evidence as part of the court’s duty to assess his § 2255 motion viewing the evidence “as a whole.” This itemized statement of evidence included, in part (1) evidence which was excluded at trial, which included the testimony of witnesses offered to impeach Stoeckley’s testimony; (2) evidence which was submitted (and rejected) in connection with prior post-conviction motions, including evidence of blond synthetic hair-like fibers found at the crime scene, and (3) more recently discovered evidence, e.g., the DNA test results and the three affidavits detailing the confessions allegedly made by Mitchell. Thereafter, the Government filed a motion to strike the affidavits concerning the alleged Mitchell confessions.

Months later, MacDonald filed a “Motion to Supplement Applicant’s Statement of Itemized Material Evidence” [DE-144]. Therein, he sought to add to the body of “evidence as a whole” by adding the March 31, 2007 affidavit of Helena Stoeckley’s mother,<sup>5</sup> wherein she related that her daughter twice confessed to having been present during, and having participated in, the murders of MacDonald’s family members.

In an order filed November 4, 2008 [DE-150], this court (1) allowed the government’s motion to strike the Mitchell confession affidavits from the § 2255 motion; (2) denied the DNA motion; (3) denied MacDonald’s motions to expand the record with itemized evidence and to supplement that evidence, and (4) denied MacDonald leave to file the § 2255 motion, i.e., the Britt claim.<sup>6</sup> *See MacDonald X*, 2008 WL 4809869. As to the Government’s motion to strike the Mitchell

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<sup>5</sup> Helena Stoeckley’s mother also was named Helena Stoeckley. For this reason, the court will refer to her as the “elder Stoeckley.”

<sup>6</sup> The Government subsequently filed a motion to publish and modify the Opinion on November 24, 2008. This court allowed for some minor revisions on “clerical, non-substantive matters.” *United*

confession affidavits, the court agreed with the Government's assertion that such evidence should be excluded because (1) MacDonald's claims relating to Mitchell's confessions previously were considered and rejected in the court's earlier post-conviction orders, and (2) because the evidence was untimely. *Id.* at \*11.

With regard to the DNA claim motion, as well as MacDonald's motion to supplement his proposed statement of itemized material evidence with the affidavit of the elder Stoeckley, this court viewed the motions as "seek[ing] to add discrete factual bases to" the § 2255 motion raising the Britt claim. *Id.* at \*12. This court found that because "[t]he only grounds upon which MacDonald sought or obtained [pre-filing authorization] are contained in his [§ 2255 motion] concerning the Britt affidavit," MacDonald's "DNA and the elder Stoeckley affidavit motions are bootstrapping, 'piggybacking' attempts." *Id.* Accordingly, this court concluded that the claims in the DNA and the elder Stoeckley affidavit motions were "untimely, successive and independent, and this court lacks subject matter jurisdiction over them." *Id.* The court observed, however, that "MacDonald is free to seek authorization from the Fourth Circuit Court of Appeals to raise these grounds in yet another successive § 2255 motion." *Id.*

As to MacDonald's motion to expand the record, the court observed that MacDonald's apparent intent in the motion was "to assemble in one filing a relatively concise statement of his theory of the case," specifically, the "'Itemized Statement of Material Evidence' [DE-126] consist[ing] of 48 numbered paragraphs of text setting forth his version of what is proved by the universe of evidence he has compiled to date—old and new, admitted and rejected." *Id.* at \*13. This court rejected MacDonald's "suggestion that this court is required, under the circumstances

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*States v. MacDonald*, No. 75-CR-26, slip op. at 2 (E.D.N.C. Jan. 9, 2009).

presented by the case, to expand the record and to consider every manner of supplementary material he deems supportive of his position, regardless of its source or competence.” *Id.* Accordingly, the court denied the motion to expand the record.

Finally, this court considered MacDonald’s proposed successive § 2255 motion concerning the Britt claim. In so doing, this court noted that “[a] movant must pass through two ‘gates’ before the merits of a successive § 2255 motion may be entertained in the district court.” *Id.* at \*15 (citing *Bennett v. United States*, 119 F.3d 468, 470 (7th Cir. 1997)). This court found that MacDonald had passed through the first gate – as to the Britt claim only – by having obtained pre-filing authorization from the Fourth Circuit Court of Appeals. *Id.* As to the second gate, this court observed that its role is to “examin[e] each claim of the proposed successive application without reaching the merits, and dismiss[] those that fail to satisfy the ‘requirements for the filing of such a motion’ under 28 U.S.C. § 2244(b)(4) or § 2255.” *Id.* (citing Rule 4(b), Rules Governing § 2255 Proceedings). This examination is required to be thorough. *Id.*

In conducting this examination, this court determined that the applicable standard was that found in 28 U.S.C. § 2244(b)(2)(B). *Id.* Under § 2244(b)(2)(B), the movant must open two “locks” to pass through the second gate. Specifically, the movant must show (1) that “the factual predicate for the claim could not have been discovered previously through the exercise of due diligence,” § 2244(b)(2)(B)(i), and (2) that “the facts of the underlying claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the [movant] guilty of the underlying offense.” 28 U.S.C. § 2244(b)(2)(B)(ii). As to the first lock, this court “afford[ed] MacDonald the assumption that he exercised due diligence in discovering Britt’s assertions.” *Id.* at \* 17. This court



found, however, that MacDonald could not open the “second lock” because he failed to demonstrate “that the Britt affidavit, taken as true and accurate on its face and viewed in light of the evidence as a whole, could establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found MacDonald guilty of the murder of his wife and daughters.” *Id.* at \*28. Accordingly, MacDonald’s motion for leave to file a successive § 2255 petition was denied.

On appeal, the Fourth Circuit vacated this court’s November 4, 2008, Order. *See MacDonald XI*, 641 F.3d 596. In its opinion, the Fourth Circuit first concluded that this court erred by applying the standard set forth in 28 U.S.C. § 2244(b)(2)(B)(ii), as opposed to § 2255(h)(1), to the Britt claim. *Id.* at 609. The Fourth Circuit explained that § 2244(b)(2) is applicable to state prisoners, while § 2255(h) sets forth the standard applicable to those prisoners who are in federal custody. *Id.* Even so, the Fourth Circuit determined that the error in identifying the applicable standard was “probably harmless” because of the similarities between the standard in § 2244(b)(2)(B)(ii) and that set forth in § 2255(h)(1). *Id.* at 610.

The Fourth Circuit did conclude, however, that this court committed prejudicial error by taking an overly restrictive view of the “evidence as a whole,” and denying MacDonald’s motions to expand the record. According to the Fourth Circuit: “Simply put, the ‘evidence as a whole’ is exactly that: all the evidence put before the court at the time of its § 2244(b)(2)(B)(ii) or § 2255(h)(1) evaluation.” *Id.* Interpreting “the evidence as a whole” standard, the Fourth Circuit further explained:

[A] court must make its § 2244(b)(2)(B)(ii) or § 2255(h)(1) determination—unbounded by the rules of admissibility that would govern at trial—based on all the evidence, including that alleged to have been illegally admitted [and that] tenably claimed to have been wrongly excluded or to have been available only after the trial. Or, to say it another way, the court must consider all the evidence,

old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under [evidentiary rules].

*Id.* at 612 (internal quotations and citations omitted; alterations in original). Importantly, however, the Fourth Circuit qualified that although a district court must consider “all the evidence,” this does not mean that a movant “is to be accorded the benefit of every doubt.” *Id.* Rather, “the court must give due regard to the unreliability of the evidence . . . and may have to make some credibility assessments.” *Id.* at 612-13 (internal quotations and citations omitted). Indeed, because such an evaluation “involves evidence the trial jury did not have before it,” a district court must “assess how reasonable jurors would react to the overall, newly supplemented record.” *Id.* at 613 (quoting *House v. Bell*, 547 U.S. 518, 538 (2006)).

Because this court refused to consider an expanded record of the evidence, the Fourth Circuit remanded this matter “for a fresh analysis of whether the Britt claim satisfies the applicable standard of § 2255(h)(1).” *Id.* at 614. The Fourth Circuit instructed this court that any such assessment must include the DNA test results, the affidavit of the elder Stoeckley, evidence of blond synthetic hair-like fibers, and three affidavits describing confessions by Greg Mitchell, as well as “other evidence not mentioned, if it is part of the ‘evidence as whole’ properly put before the court.” *Id.* That is, the court must consider “the proffered evidence – with due regard for the likely credibility and the probable reliability thereof . . . – to determine if it, in combination with the newly discovered Britt evidence, would be sufficient to establish that no reasonable juror would have found MacDonald guilty.” *Id.* (internal quotations and citations omitted). “If so, MacDonald would merely pass the

procedural bar to having the Britt claim considered on its merits, and he would yet be obliged to prove the constitutional violation alleged in that claim before obtaining any § 2255 relief thereon.”

*Id.*

As to the issue of whether this court lacked jurisdiction over the freestanding DNA claim as a result of MacDonald’s failure to receive pre-filing authorization, the Fourth Circuit concluded that this court erred in deeming itself to be without jurisdiction. *Id.* at 615. Specifically, the Fourth Circuit explained that “because we granted 28 U.S.C. § 2244(b)(3) pre-filing authorization for the § 2255 motion raising the Britt claim, the district court possessed jurisdiction over the separate DNA claim insofar as MacDonald had timely and appropriately sought to add it to the pending § 2255 motion.” *Id.* at 615. Accordingly, where a prisoner seeks to assert additional claims after receiving a pre-filing authorization from a circuit court of appeals, the district court must assess whether the proposed amendments to the § 2255 motion are proper under Federal Rule of Civil Procedure 15(a), which provides the standards for amending pleadings. *Id.* at 616. Because this court did not perform such an analysis, the Fourth Circuit vacated the denial of MacDonald’s DNA claim and remanded for further proceedings. Rather than instructing this court “to conduct a belated Rule 15(a) assessment of MacDonald’s request to add the DNA claim to the pending § 2255 motion, presumably to be followed by an evaluation of the DNA claim under the standard of § 2255(h)(1),” the Fourth Circuit found it to be “a more efficient use of judicial resources . . . to simply grant MacDonald pre-filing authorization for the DNA claim so that [this court] may proceed directly to the § 2255(h)(1) evaluation.” *Id.*

After the Fourth Circuit issued its mandate in this case, the court scheduled the matter for hearing. One day prior to the scheduled hearing, MacDonald filed a Motion Pursuant to the

Innocence Protection Act of 2004, 18 U.S.C. § 3600, for New Trial based on DNA Testing Results and Other Relief [DE-176].<sup>7</sup>

In September 2012, after a series of briefing and motions by the parties, the undersigned conducted an evidentiary hearing. At the hearing, the Government was represented by First Assistant United States Attorney John S. Bruce, Assistant United States Attorney Leslie K. Cooley, and Special Assistant United States Attorney Brian M. Murtagh. MacDonald was represented by M. Gordon Widenhouse, Jr., from Chapel Hill, North Carolina and Keith Williams, from Greenville, North Carolina. The evidentiary hearing lasted seven days, and the court heard testimony from 19 witnesses and received numerous exhibits as evidence. The evidence received by the court is more fully detailed later in this order. At the conclusion of the hearing, and with the parties' agreement, the court directed MacDonald to file his post-hearing memorandum within 60 days of the filing of the official transcript of the evidentiary hearing, and directed the Government to file its memorandum within 60 days thereafter [DE-305].

After extensions of time for both MacDonald and the Government, the parties' post-hearing briefing is now complete. MacDonald has filed a Post-Hearing Memorandum [DE-336], Substitute Post-Hearing Memorandum<sup>8</sup> [DE-343], and a Reply [DE-351]. The Government has filed a Post-Hearing Memorandum [DE-344] and a Sur-Reply [DE-352]. This matter is now ripe for disposition.

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<sup>7</sup> The Innocence Protection Act motion is not addressed in this Order. A separate order ruling on that motion will be forthcoming.

<sup>8</sup>On April 1, 2013, MacDonald filed a Post-Hearing Memorandum [DE-336]. The court later granted MacDonald's Consent Motion to file a Substitute Post-Hearing Memorandum to correct what MacDonald's counsel characterized as a "sizable number of non-substantive technical, formatting, and grammatical errors and omissions in the pleading." [DE-341]

## STANDARD OF REVIEW

Title 28, United States Code Section 2255 provides, in pertinent part:

A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by the law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside, or correct the sentence.

28 U.S.C. § 2255(a). A prisoner is limited, however, in the number of motions he may make under § 2255. Specifically, under 28 U.S.C. 2244, as amended by the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-134, tit. VIII, 110 Stat. 1321, 1321-66 (1996) (“AEDPA”):

[n]o circuit or district judge shall be required to entertain an application for writ of habeas corpus to inquire into the detention of a person pursuant to a judgment of a court of the United States if it appears that the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255.

28 U.S.C. § 2244(a); *see also In Re Vial*, 115 F.3d 1192, 1194 (4th Cir. 1997) (“Under the AEDPA, an individual may not file a second or successive . . . § 2255 motion to vacate [his] sentence without first receiving permission to do so from the appropriate circuit court of appeals.”). Section 2255, in turn, provides in pertinent part as follows:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain-

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

28 U.S.C § 2255(h).

As the court already has recounted, the Fourth Circuit has certified, pursuant to § 2244(b)(3), that MacDonald has made a prima facie showing that his Motion to Vacate [DE-111] meets the requirements for successive motion. The task on remand for this court, therefore, is to “conduct a more searching assessment of whether that motion satisfies” the standard set forth in § 2255(h). *MacDonald XI*, 641 F.3d at 604. The parties agree that only subsection (h)(1) is implicated in this case.

Accordingly, the court must determine whether MacDonald has proffered newly discovered evidence, that if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found MacDonald guilty. 28 U.S.C. § 2255(h)(1); *MacDonald*, 641 F.3d at 614. In making this assessment, the court must consider “all the evidence, old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under the [evidentiary rules].” *MacDonald XI*, 641 F.3d at 612 (internal quotations and citations omitted; alterations in original). In so doing, “the court must give due regard to the unreliability of the evidence . . . and may have to make some credibility assessments” and must “assess how reasonable jurors would react to the overall, newly supplemented record.” *Id.* at 612-13 (internal citations and quotations omitted).

If the court determines that MacDonald has met his burden of proving, by clear and convincing evidence, that no reasonable juror would have found him guilty, then he will have cleared the procedural, gatekeeping bar set forth in § 2255(h), which will allow the court to consider his § 2255 claim(s) on the merits.

#### **EVIDENCE AS A WHOLE**

Any attempt to capture in writing every piece of the evidence as a whole that the undersigned

has reviewed in this long-running case likely is a futile task. Nevertheless, the court will attempt, to the best of its ability, to highlight the portions of the evidence as a whole that are relied upon by the parties in making their arguments.

**A. The Crime Scene**

At approximately 3:45 a.m. on February 17, 1970, military police (“MP”) were summoned to the apartment of Jeffrey MacDonald, then a Captain in the U.S. Army Medical Corps assigned to the Special Forces at Ft. Bragg, North Carolina. Ttr. 1254. Once arriving at 544 Castle Drive, the MPs found that the front door of the MacDonald residence was locked, but they were able to gain entrance through the unlocked utility room door at the rear of the ground-level apartment. Ttr. 1258-59. Upon entering the master bedroom, which was immediately adjacent to the utility room, MP Sergeant Richard Tevere and Specialist-Four Kenneth Mica observed Jeffrey MacDonald, clad only in his pajama bottoms, lying on the shag rug adjacent to, and partially covering, his wife’s body. Ttr. 1260, 1274, 1281. Initially Specialist Mica thought MacDonald was dead Tr. 1406. After MacDonald regained consciousness, he repeatedly asked the MPs about his children, and in response to questions from the MPs, told them that intruders had come into his house; specifically, a band of four hippies, including a blond female wearing muddy boots and floppy hat and carrying a candle, two white males, and an African-American male wearing an Army field jacket with sergeant stripes. Ttr. 1270, 1323, 1500-01. MacDonald reported that the female said, “Acid is groovy; kill the pigs.” Ttr. 1270, 1503-04. MacDonald reported that he had been stabbed, and that he may go into shock. The MPs began performing mouth-to-mouth resuscitation on him. Ttr. 1265.

The MPs also walked through the apartment to check on MacDonald’s children. They found MacDonald’s daughter Kimberly, age 5 ½, tucked into her bed in the front (or south) bedroom. Ttr.

1271, 1327-28. Kristen, age 2 ½, was found in the back (or north) bedroom. Ttr. 1272-73; 1337-38.

One of the MPs, Mica, while responding to the crime scene, had observed a woman standing outside in the rain or mist on a street corner approximately one-half mile from the MacDonald residence. The woman had shoulder-length hair and was wearing a wide-brimmed hat. Had he not been responding to an emergency, Mica would have stopped to investigate this woman. Ttr. 1450-54. In any event, upon hearing the description MacDonald gave of his alleged assailants, Mica advised his supervisors of the woman he had seen and suggested that a patrol be sent to find her. Ttr. 1598.

About ten minutes after the MPs arrived at the MacDonald residence, an ambulance came and transported MacDonald to Womack Army Medical Center. Ttr. 1285.

The investigation of the crime scene by Army Criminal Investigation Detachment (“CID”) agents and the MPs, after MacDonald was removed from the scene, showed the following. Colette’s chest was partially covered by MacDonald’s blue pajama top, and her abdomen was partially covered by a Hilton Hotel bath mat. Ttr. 1613-14. Inside the master bedroom, the investigators observed blood splatter on the walls and the ceiling in Type A blood, the same as Colette.<sup>9</sup> GX 643, 645. The word “PIG” was written in blood, later determined to be Type A, on the headboard of the master bed. Ttr. 1268. The bottom sheet on the bed in the master bedroom had a large urine stain on the right-hand side, and was partially pulled up as if the bed were being changed. GXP 47. Lying adjacent to the doorway was a pile of bedding, consisting of the top sheet from the master bed and the bedspread inside the sheet, both bloodstained. Ttr. 1626-28, GXP 210-212. A pocket torn from MacDonald’s pajama top was found on the upturned side of the multi-colored throw rug adjacent to Colette’s left

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<sup>9</sup> It is undisputed that each member of the MacDonald family had a different blood type: Colette=Type A, Jeffrey=Type B, Kimberly=Type AB, Kristen=Type O. Ttr 3382-3383.



foot. Ttr. 1683. The pocket was stained in what was revealed to be Type A blood, and later testing indicated that the staining occurred after the pocket was torn off, because the corresponding area of the pajama top from which the pocket had been ripped was soaked in blood, but the inner surface of the pajama pocket was not stained with blood. Ttr. 3606-14.

In Kristen's bedroom, they found blood splatters on the wall above her bed, a large soaking stain on the top sheet adjacent to her right hip, and a stain on the bottom sheet. All these stains were Type A blood. A knotted and broken thick green acrylic yarn, identical to those typically used by Colette to tie her hair, and stained with Type O blood (like Kristen's) was found on the throw rug. Ttr. 4611. A large pool of blood, also Type O blood, was found beside the bed. Additionally, MPs observed two bloody bare footprints on the door exiting Kristen's room. These prints were later determined to be in Type A blood, like Colette's, and a fingerprint examiner, Hilyard Medlin, identified them as having been made by MacDonald's bare left foot. Ttr. 3106, 3675-76.

CID agents also found dark threads both within and near Colette's body outline, which prompted a search of the entire crime scene for similar threads and yarns. Ttr 1689-90. Later examination of MacDonald's blue pajama top showed that it was made of polyester yarns, which were a blend of 65% polyester and 35% cotton fibers. The top was sewn at the seams with purple cotton "two ply Z twist" thread; and the white piping on the sleeve cuffs was sewn with a blue-black cotton thread. Ttr. 4089-91, 4095. His pajama top had been torn from the yoke of the "V" neck through the midline of the front panel, as well as through the left inseam, left shoulder, and left sleeve seams to the white piping on the left cuff. Ttr. 4069-70. The search of the scene for threads yielded the following findings.

In the master bedroom, seventy-nine pieces of material that could have originated from

MacDonald's pajama top were found: sixty-one sewing threads, seventeen blue polyester-cotton yarns from the fabric, and the bloodstained and torn pocket. Specifically, three purple sewing threads were found in the debris under Colette's head. Ttr. 4100. Twelve purple cotton sewing threads and one blue-black two ply Z twist sewing thread were found in the debris from the rug in the vicinity of the left hand and arm of Colette. Ttr. 4099. Fifteen purple cotton sewing threads and three blue polyester warp yarns were found in the debris from the rug within the body outline of the trunk and legs of Colette. Ttr. 4100. Three purple cotton sewing threads and four blue polyester-cotton warp yarns were found on the underside of the upturned throw rug adjacent to Colette's foot, and the torn, stained pocket was found on top of the throw rug. Ttr. 4099. Additionally, three matching purple cotton seam threads were found on the rug in the master bedroom, in the area near the largest bloodstain. Ttr. 4098. Located in the debris from the master bedroom rug, in the area of the north corner of the footboard of the master bed, were two matching purple cotton threads. Ttr. 4101. The debris from the bottom sheet on the master bed contained fifteen matching purple cotton threads and seven matching blue polyester cotton yarns. Ttr. 4101-02. The debris from the pillowcase on the master bed contained four matching purple cotton threads and two blue polyester cotton yarns. Ttr. 4103. In the debris located on the multi-colored bedspread found inside the sheet in the pile of bedding on the floor of the master bedroom, were two matching purple cotton seam threads and one matching blue polyester cotton yarn. Ttr. 4103. On the master bedroom floor, by the east wall, was one purple cotton sewing thread. Ttr. 4101.

In Kristen's bedroom, on the green bedspread, investigators located one purple cotton thread and one blue polyester cotton yarn that could have come from MacDonald's pajama top. Ttr. 4097.

In Kimberly's bedroom, nineteen pieces consistent with MacDonald's pajama top – fourteen

threads and five yarns – were found in or on Kimberly’s bed. Specifically, in the debris from the bedding that had been pulled back, the search yielded two polyester cotton warp yarns and one purple cotton sewing thread, both matching MacDonald’s pajama top. Ttr. 4094. In the debris from the bottom sheet, investigators found two matching purple cotton sewing threads. Ttr. 4094-95. Two matching blue polyester-cotton yarns and ten matching purple cotton sewing threads were found on Kimberly’s purple bed cover. Ttr. 4095. Finally, in the debris removed from the north pillow of Kimberly’s bed, investigators collected one matching purple sewing thread and one blue polyester-cotton yarn. Ttr. 4093.

Despite what investigators characterized as an “extensive search,” they found “nothing of evidentiary value” in the living room. Ttr. 1727-28. Specifically, no fibers, threads, bloodstains or splinters were found. *Id.* CID agent Shaw did find, however, a bunch of tangled blue fibers at the south side of the hallway at the entrance to the living room. Ttr. 2410-12, 2480-81.

Once it started to get light outside, CID agents and MPs began to search the exterior perimeter of the quarters. Ttr. 2337-38. They did not find footprints, but they did find a piece of long wood lying on the ground with what looked like red stains, hair and fibers on it. Ttr. 2238-40. Subsequently, the club would be determined to have bloodstains in both Colette’s (Type A) and Kimberly’s (Type AB) blood groups. The club also bore two purple cotton seam threads like those in MacDonald’s pajama top, numerous rayon fibers matching the composition of the throw rug in the master bedroom, and three matching purple cotton sewing threads. Ttr. 3534-37, 4097-98.

CIDs also found an “Old Hickory” brand paring knife and an icepick under a large bush at the corner of the quarters. Ttr. 2342-43. Inside the master bedroom, a “Geneva Forge” paring knife with a bent blade was found. Ttr. 2364.

No splinters were found in the living room where MacDonald said he was attacked; however, a large splinter, bearing Type A blood like Colette's, was found in the area where Colette's head had lain and where three matching purple cotton seam threads had also been found. Ttr. 1728, 3404-05, 3426-27, 3657-58, 4098. This same splinter was later fitted back into the club. Ttr. 3802-04. Another splinter, identical in composition to the club, was found in the debris from the rug where the trunk and legs of Colette had lain in the master bedroom. Ttr. 3806. Additionally, splinters identical in composition to the club were found in the debris removed from the bottom sheet of Kristen's bed, although there was no other evidence suggesting that Kristen was struck with the club. Ttr. 3806-07.

Deep soaking stains in Type AB blood, like Kimberly's, were found on the rug at the hall entrance to the master bedroom, spattered on the top sheet from the master bedroom, and on the front of MacDonald's pajama top. Ttr. 3648-50, 3664, 3668-69.

On the rug of the master bedroom, adjacent to the left elbow of Colette MacDonald, a piece of bloodstained latex was found. Ttr. 1729-30. A finger section of what appeared to be a latex glove, also stained with Type A blood, was found inside the sheet in the pile of bedding on the floor of the master bedroom. Ttr. 1730-31, 3667. Packages of Perry brand disposable latex surgeon's gloves were found in a cabinet below the kitchen sink. Ttr. 1743, 1760-61. Leading to this cabinet was a series of blood droplets in Type B blood like Jeffrey MacDonald's. Ttr. 3443, 3682-83.

Type B blood also was found on the sliding door of the linen closet, where a large quantity of medical supplies, including disposable scalpel blades and hypodermic syringes, were kept. Ttr. 3670. Type B blood also was found on the rim of the sink beneath the mirror in the hall bath. Ttr. 3670.

In the living room, blood was found on an *Esquire* magazine, and later testing revealed a

mixture of Types A and AB, Colette and Kimberly's blood types, respectively. MacDonald's eyeglasses were found lying on the floor near the living room window, with a red speck, believed to be blood, visible on the outer surface of one of the lenses. Ttr. 3133. A blood stain from the hall floor at the entrance to the living room was also found, and later testing indicated that it was either Type B or Type O blood. No other evidence of blood was found in the living room.

The scene also was processed for fingerprints. In total, forty-four useable latent fingerprints and twenty-nine useable palm prints were lifted from the scene. Ttr. 3116. Of these, twenty-six fingerprints and eleven palm prints were matched with MacDonald family members or other investigators or individuals whose prints were available for comparison. Ttr. 3141. A fingerprint that could not be matched with any known comparison print was found on a drinking glass located on a table directly at the head of the sofa. Ttr. 3132-33.

The physical evidence collected at the scene also included wax drippings taken from three different locations: the coffee table in the living room; the chair in Kimberley's bedroom, and the bedspread in Kimberley's bedroom. Ttr. 3838. None of these samples matched any of the candles found in the MacDonald home and submitted by investigators for comparison, nor did they match each other. Ttr. 3841-43. Hilyard Medlin, a CID examiner, testified that the three wax samples were brittle and dry, which indicated to him that the wax was at least several weeks old when he received it. Ttr. 3889-90. He received the samples approximately three weeks after the murders. Ttr. 3899.

**B. Macdonald's treatment at the hospital**

MacDonald was first seen in the Emergency Room of Womack Army Hospital by Michael Newman, a Senior Clinical Technician and combat medic. According to Newman, MacDonald's vital signs were stable, he had wounds on his right chest, upper left arm, and upper left abdomen.

Ttr. 2644-49. MacDonald had a lump or abrasion on his left forehead which was not bleeding, but seeping fluid. *Id.* Newman did not observe any wounds on MacDonald's back, or icepick wounds on any part of MacDonald's body. Ttr. 2649-50, 2661.

Further examination by a surgical resident and an X-ray revealed that MacDonald had a laceration type wound on the right side of his chest at the seventh intercostal space (between the 7th and 8th ribs). Ttr. 2858-59.

MacDonald also was attended in the Intensive Care Unit by Dr. Merrill Bronstein, who found one bruise on MacDonald's head. Ttr. 2956. Dr. Bronstein described the wound on MacDonald's upper left abdomen as being "below his costal margin, below the edge of the ribs, maybe two inches down" with it being "about an inch and a half or two inches long, and it was through the skin and fat." Ttr. 2956. Dr. Bronstein explained that the wound "was not superficial, in that it went through the skin and through the subcutaneous tissue, but [it] was not through the fascia." Ttr. 2957.

MacDonald was treated for a punctured lung and other knife and stab wounds. He suffered at least a 20% and perhaps a 40% collapse of his right lung. MacDonald remained in the intensive care unit for several days and then in the hospital for nine days.

The first CID agent to interview MacDonald was Paul Connolly, who attempted to get a better description of the alleged intruders. Ttr. 2681. MacDonald told Connolly he had been attacked by four individuals in the living room, one of whom he said had struck him with a club. Ttr. 2684. MacDonald told Connolly the club was like a baseball bat, and when he reached to grab it, it was slippery like it had blood on it. *Id.*

On February 17, 1970, MacDonald was interviewed as a victim/witness by FBI Special Agent Robert Caverly. Ttr. 2885. MacDonald told Caverly that during his struggle with the four intruders,

he pushed the African-American intruder and a white male away from the couch into the hallway, and both of the men tore at his pajama top. Ttr. 2891. MacDonald reported that when he awoke from being unconscious, he was on the floor in the hallway with his pajama top torn, bloody, and twisted around his wrist. Ttr. 2891-92.

On February 18, 1970, Agent Caverly again interviewed MacDonald, who provided some additional information. Specifically, MacDonald told Caverly that he had not checked either the back or front door, and that he may have gone into the hall bath to stop his bleeding. Ttr. 2899-2900. He also thought that the shorter white male intruder, who was wielding an icepick, was wearing light weight gloves that may have been surgical gloves. *Id.*

### **C. Autopsies of Colette, Kimberly and Kristen**

Major (Dr.) George E. Gammel performed the autopsy on Colette on February 17, 1970. The autopsy revealed that, although the cause of death had been loss of blood due to stab wounds, she had also sustained massive blunt trauma injuries which, but for the subsequent stab wounds, she could have survived. Ttr. 2507-08. In Dr. Gammel's opinion, Colette's blunt trauma injuries, two broken arms, and at least five separate lacerations to her forehead and scalp, were consistent with a frontal assault and could have been caused by a blunt instrument such as the club. Ttr. 2491-98. Dr. Gammel characterized some of the injuries – the laceration to the back of the hands and the broken arms– as defensive wounds. Ttr. 2494-95. Colette also had a “pattern bruise” with “sharp margins and angulations” on her chest, resulting from blunt force, and consistent with the side or end of the club. Ttr. 2498-99. She sustained sixteen deep penetrating stab wounds to her neck and chest, which had been inflicted in a perpendicular manner while she was flat on her back. Ttr. 2500-02. Dr. Gammel opined that these stab wounds were caused by a single-edged sharp knife, and were

consistent with the Old Hickory paring knife found outside the rear of the quarters. Ttr. 2502-03. Additionally, Colette sustained twenty-one puncture wounds to her chest, inflicted in a perpendicular manner, such as would be caused by an icepick. Ttr. 2503-04.

Kimberly also sustained blunt trauma injuries consistent with the club, and lethal incisional stab wounds. She sustained at least two blows to her head, one on either side of her face. Ttr. 2565-67. The blow to the right side of her face fractured her skull. Ttr. 2567. Kimberley's eight to ten incisional wounds to her throat and neck could have been inflicted by the Old Hickory knife. Ttr. 2568.

Kristen did not sustain any blunt trauma injuries, but had five gaping incisional stab wounds to her chest and twelve incisional stab wounds to her back; some of the stab wounds penetrated her heart. Ttr. 2577-78. The stab wounds were consistent with having been inflicted by the Old Hickory knife. Ttr. 2589. Kristen also sustained approximately ten superficial puncture wounds to her chest, consistent with having been inflicted by the icepick. Ttr. 2576, 2589. Seven puncture wounds were found in the front of her undershirt and found in back of the undershirt, but none were found in her pajama top. This led investigators to conclude that Kristen's assailant had lifted her pajama top before inflicting the icepick wounds. Ttr. 4039-40, 4043-44, 4048-50. Kristen also sustained minor lacerations on both hands and a significant wound on her right hand, which the CID pathologist characterized as either "defensive wounds or these could be wounds incurred in the process of other types of wounds happening." Ttr. 2577.

**D. MacDonald's pretrial statements**

On April 6, 1970, MacDonald appeared voluntarily at the Ft. Bragg CID Field Office, and waived his privilege against self-incrimination and his right to the presence of counsel. What he told



the CID during this interview was tape-recorded and later transcribed.

MacDonald told CID agents that on the evening of February 16, 1970, Colette returned home from a class she had attended, they watched television, and Colette retired to bed first. GX 1135 at 33-35. At approximately 2:00 a.m., he decided to retire and, upon entering the master bedroom, he found that his youngest daughter Kristen had gotten into bed with his wife and had wet his side of the bed. *Id.* at 3. MacDonald returned Kristen to her own bed, and then went to sleep on the living room couch. *Id.* The next thing he knew, MacDonald heard Colette screaming, “Jeff, Jeff, why are they doing this to me?” and his daughter Kimberly screaming, “Daddy, Daddy, Daddy.” *Id.* at 3, 48-49. MacDonald saw four individuals, one of whom was a girl, with a wavering light on her face, who was chanting, “acid is groovy; kill the pigs.” *Id.* at 3-5. MacDonald also described his struggle in the living room, including the fact that his pajama top was removed from his body:

Well, all I know is that when I was struggling— now after I had been hit the first time, I was struggling with these guys; and my – somehow, my pajama top – I don’t know if it was ripped forward or pulled over my head. I don’t think it was pulled over my head. I don’t remember actually – like backing my head through it.

But all of a sudden, it was around my hands and it was in my way. And I remember that I was holding this thing in my hand – the guy’s hand –that I couldn’t maneuver very well. My hands were kind of wrapped up in that thing.

And as they were punching me, I was kind of using that a little bit, you know holding it – right exactly – cause this guy, I thought was really punching me in the chest, you know, and in the stomach ‘cause I was getting hit across here (pointing to the mid-section of his body).

So, in effect, I was blunting everything by, you know, holding this up; and I couldn’t get my hands free out of this thing. And I remember I ended up, when I was laying on the floor – it was still around my hands and everything, and I took it off as I was going in the bedroom. And after I took this knife out of my wife’s chest, I – you know, keeping her warm. You know, to treat shock, that would (inaudible) and keeping them warm.

GX 1135 at 12-13.

During the interview, MacDonald recounted his movements throughout the apartment. He

indicated that he lost consciousness after the struggle in the living room, and when he came to, he went the master bedroom where he found Colette, removed a knife from her chest, and performed artificial resuscitation on her and covered her with his pajama top. GX 1135 at 6-7. He checked on both his daughters, and then called an operator from the phone in the master bedroom. GX 1135 at 23-24. He then checked Colette and his daughters for a pulse, and then used the telephone again, this time in the kitchen. GX 1135 at 24. At some point during his movement throughout apartment, he washed his hands in the hall bath sink. GX 1135 at 80. He looked out the back door, which was open, once. GX 1135 at 84.

At one point in the interview, MacDonald was asked how the pocket from his pajama top found on the throw rug by Colette's feet had only a very minute amount of Colette's Type A blood on it, while the pajama top was soaked with her blood and also had Kimberly's blood on it. He answered:

I laid it – I laid it over her. . . . I'm sure I had blood all over my hands from everyone, when I was checking for pulses and stuff. . . . I mean, I had blood all over me, you know. I mean I checked – I know I checked carotid pulses in everyone, and I'm sure I got some blood on me from everyone. And I went back in to see my wife again.

*Id.* at 69-70. He also hypothesized that the intruders tracked the pocket into the bedroom after his struggle with them. *Id.* at 74.

MacDonald denied recognizing the club, and stated his family did not have an icepick. GX 1135 at 45, 47. He also denied that his family owned a Geneva Forge knife or an Old Hickory paring knife. *Id.* at 41, 43, 45, 47. MacDonald himself learned during this interview that many threads and yarns identical to those of his pajama top were found in the master bedroom, including under

Colette's body. GX 1135 at 68. He also learned that investigators believed Kimberly had been struck in the master bedroom. GX 1135 at 95.

**E. Article 32 Hearing**

On May 1, 1970, the Army formally charged MacDonald with murder. On May 15, 1970, a formal investigation commenced pursuant to the requirements of Article 32, Uniform Code of Military Justice ("UCMJ"), 10 U.S.C. § 830. The Government presented twenty-seven witnesses. MacDonald called twenty-nine witnesses in his defense and testified himself.

At the conclusion of the evidence, the investigating officer, Colonel Warren V. Rock, filed a 90-page report, summarizing more than 2,000 pages of transcript testimony, and recommending that the charges against MacDonald be dropped, and that the appropriate civilian authorities investigate Helena Stoeckley. DX 5076. In his report, Colonel Rock noted:

There is conflicting evidence as to the degree the crime scene was preserved from the time the first MP arrived on the scene and until photographs were taken some minutes later. The controversy specifically relates to the fact of whether or not the white towel or blue pajama top were on Colette's body when first seen by the MPs, the location of the handset in the [master] bedroom, the relocation of the white flower pot holder in the living room by some unknown individual and the number (12 to 14) of military police, CID agents, and medical personnel initially in the apartment and their movements through the rooms with the chance of inadvertently altering the crime scene.

DX 5076 at 1674.

Following the dismissal of the charges under the UCMJ, MacDonald remained at Fort Bragg pending his hardship discharge from the Army in December 1970. Sometime prior to this discharge, MacDonald spoke to Alfred "Freddy" Kassab, Colette's step-father, by telephone. During this conversation and in subsequent letters, MacDonald told Kassab that he had caught one of the "assailants" in a bar in Fayetteville, dragged him out of the bar, beaten a confession out of him, and

then “terminated him with extreme prejudice.” Ttr. 6700-10. MacDonald later admitted that this “was a lie of incredible proportions that I should never have told them, and I was doing it to try to give myself some space to rebuild my own life and to keep Freddie and Mildred<sup>10</sup> off my back.” Ttr. 6710-11.

#### **F. Post-hearing forensic evidence and additional MacDonald statements**

After MacDonald’s discharge, both the Army CID and FBI laboratories conducted additional examination of the physical evidence. The examinations revealed that one of the alleged weapons, the club, had once been part of a 2x4, which was later used as a bed slat for Kimberly’s bed.

The Army CID lab also performed serology tests on the “Hilton” bath mat that MacDonald stated he placed on Colette’s abdomen. The tests revealed the presence of blood stains in Type AB (the same type as Kimberly) on the bottom side and Type A (the same type as Colette) on the top side. Ttr. 3646-47. Later examination by the FBI Lab led the examiners to believe that the stain with the Type AB blood could have been caused by the Old Hickory knife. Ttr. 4118-23. The examiners also determined that another stained area on the mat had the general shape of the icepick, and the bloodstains resulted from the items either being placed on the bath mat or the bath mat being “used to wipe the items off.” Ttr. 4124-25. Notably, when the Old Hickory knife and icepick were found, no blood was found on either blade or pick, but blood was detected underneath the handles of both weapons. Ttr. 3419.

In June 1971 the FBI Lab conducted examinations of the clothing of the MacDonald family in order to determine the number of cuts or punctures, and whether they could be associated with any of the knives or the icepick found at the crime scene. Ttr. 4031-33. Paul M Stombaugh of the FBI

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<sup>10</sup> Mildred Kassab was Colette’s mother.

Lab examined both knives found at the crime scene, and determined that the Geneva Forge knife, which MacDonald stated he pulled from Colette's chest, had a dull, bent blade. Ttr. 4033-34. He determined that the Old Hickory knife, however, had a very sharp blade. Ttr. 4034.

Stombaugh's examination of Colette's pajama top showed a total of thirty puncture holes in the front of the garment, which he found to be consistent with having been made with the icepick. Ttr. 4051-53. He also found a total of eighteen clean cuts on the front of the garment, which he determined were consistent with having been made by the Old Hickory knife. *Id.* Stombaugh opined that it was extremely doubtful that the Geneva Forge knife could have made the cuts in Colette's pajama top, given its dull blade. Ttr. 4054. As to MacDonald's pajama top, Stombaugh found two cuts, and opined that these cuts could have been made by the Geneva Forge knife because they were not clean cuts, but more or less tearing cuts. Ttr. 4063. Stombaugh also determined that MacDonald's pajama top had forty-eight puncture holes, with all but nine holes being in the back and right shoulder of the garment. Ttr. 4056-58. Stombaugh noted that none of the puncture holes were in the torn left panel or left sleeve. Ttr. 4062. All puncture holes were consistent with having been made by an icepick, although some varied in size. Ttr. 4058.

In 1974, Stombaugh was furnished photographs of the crime scene, as well as photographs taken at Colette's autopsy, and was asked to ascertain whether or not the puncture wounds to her chest could have been made through MacDonald's pajama top. Working with Physical Science Technician Shirley Green, Stombaugh determined that when MacDonald's pajama top was turned right-sleeve inside-out, and the left front panel is draped alongside – as both are depicted in the photo of Colette with the garment on her chest – twenty-one puncture holes were visible on the upper most layer of the pajama top. Ttr. 4185-87, 4192-93. Starting with the twenty-one puncture holes visible

on the top layer of MacDonald's pajama top, Green was able to insert simultaneously twenty-one probes through all forty-eight puncture holes in the top. Ttr. 4429-4431. A comparison of the Green's "reconstruction" of the probe through the puncture holes corresponded exactly to the pattern made by the twenty-one icepick wounds on Colette's chest depicted in the autopsy photo. Ttr. 4193-96. Accordingly, Stombaugh concluded that the puncture damage to Colette's chest could have been made through the pajama top while it was on her body. Ttr. 4197.

By consent, on August 14, 1974, MacDonald was photographed from the waist up by the FBI, in the presence of defense counsel. MacDonald would point to an area of his body with a felt tip pen, and would then describe an injury, how it was inflicted, and whether or not it had left a scar. One FBI agent would take notes, and another agent took "location shots" with one camera and close up shots with another camera. Ttr 2616-20. This procedure was utilized to document fourteen locations on MacDonald's body—but MacDonald did not indicate that he had suffered any injuries to his back. *See* "Subject Matter of Statements" [DE-132-21] at 37.

### **G. Trial**

On January 24, 1975, the grand jury indicted MacDonald for the murders of his family. After a series of pretrial motions and interlocutory appeals, the seven-week trial commenced in July of 1979. In the Government's own words, its case-in-chief consisted of:

evidence from the crime scene, the events at the hospital, MacDonald's pre-trial statements, and the results of the analysis of the physical evidence through the testimony of expert witnesses. . . . It was the Government's theory that MacDonald's account—that he was being attacked in the living room while his wife and children were being murdered in their respective bedrooms—was a false exculpatory statement evidencing consciousness of guilt. It was further the Government's theory that MacDonald's account of his movements throughout the crime scene after purportedly gaining consciousness, were in fact attempts to account for otherwise incriminating

physical evidence (e.g., his wife's blood on his pajama top), and to rearrange the crime scene so as to make it correspond to his false account.

Gov't Post-Hearing Mem. [DE-344] at 98. Much of the Government's evidence consisted of testimony the court already has recounted in this Order. As Judge Dupree later observed, "the prosecution . . . introduced an almost overwhelming amount of physical and circumstantial evidence in support of its theory of the case." *MacDonald III*, 640 F. Supp. at 310.<sup>11</sup> In summary, "[t]he government was able to prove through laboratory analysis and expert testimony that the club, two knives and icepick were the murder weapons," and although MacDonald denied any knowledge of the weapons, "the government offered evidence from which the jury could have found that the weapons came from the MacDonald home." *Id.* at 311; *see also* Gov't Post-Hearing Mem. [DE-344] at 99. The Government also proffered evidence, through the pajama demonstration and testimony about the pajama top pocket, that "supported the Government's theory that MacDonald had put the garment on his wife and then stabbed her with an icepick to make his account of the murders more believable." *MacDonald III*, 640 F. Supp. at 313. Proffering evidence that the pieces of latex glove found in the master bedroom were stained by blood of Colette's type and were similar to latex surgeon gloves found near the kitchen sink, the Government contended that "MacDonald had worn latex gloves while murdering his family to avoid fingerprints and had written the word "PIG" in his wife's blood on the master bed headboard while wearing the gloves since there were no ridge lines in the writing as there would have been had the writing been made by a bare finger." *Id.* The Government also introduce evidence about blood the same type of Kristen's being found on MacDonald's eyeglasses, MacDonald's footprint in blood outside of Kristen's bedroom, and

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<sup>11</sup> The reader would be well-served to review Judge Dupree's meticulous summary of the trial.

extensive testimony regarding blood splatterings and the Government's reconstruction of the crime scene.

As Judge Dupree observed, the physical evidence collected by investigators at the apartment yielded little evidentiary support for MacDonald's account of events:

There were no threads, yarns, splinters, or blood, except on the Esquire magazine, found in the living room, the area where MacDonald said he struggled with the intruders. Although approximately seventy different medicines were found in the hall linen closet, the "intruders" did not take any of the drugs nor did they ransack the family's closets because the clothes in these closets were undisturbed. Similarly, although MacDonald had claimed that he was attacked by club-wielding assailants who stabbed at him while his pajama top was wrapped about his hands, he sustained only very limited injuries and, most importantly, no head wounds nor icepick wounds on his hands. Furthermore, despite MacDonald's contention over the years that four people which he later identified in some detail had been the assailants on the night of the murders, none of their fingerprints were ever found in the apartment.

*Id.* at 314-15.

MacDonald's defense "consisted primarily of his own testimony, character witnesses, and impeachment of the integrity of the crime scene and evidence offered by the prosecution."

*MacDonald III*, 640 F. Supp. at 290.

MacDonald also presented the testimony of James Milne, who resided across the street from the MacDonald family at the time of the crime. Milne testified that on the night of February 16, 1970, he was constructing model airplanes in his workshop, an unused bedroom in the front of his duplex. Ttr. 5451-53. Sometime between 11:45 p.m. and 12:15 a.m., he heard voices, and opened the rear door of the duplex to investigate. Ttr. 5453-55. He saw three Caucasian individuals – two males and one female – walking behind his residence. All were wearing white sheets, and were carrying lit candles. Ttr. 5454-55, 5474. The female had hair which "was slightly below shoulder-blade length in the middle of the back, straight" and a "light brown—almost to a blondish color." Ttr.



5457. He testified that the sheet the female was wearing resembled a choir robe with folds in the back. Ttr. 5473. None of the individuals were carrying weapons. Ttr. 5479. When Milne last saw the individuals, they were approximately 40 yards from the MacDonald residence. Ttr. 5456. Milne did not report what he saw to any authorities, even after learning of the crime at the MacDonald residence.

### **1. Testimony of Helena Stoeckley**

During the course of the trial, Judge Dupree issued a material witness warrant for Helena Stoeckley's arrest, and FBI Special Agents were able to locate her in South Carolina. Later in this order, the court will detail the evidence about the Stoeckley's arrest, transportation to Raleigh, and her communication with the prosecution, defense, and her own attorney during the trial. At this juncture, the court will simply note that Judge Dupree suspended the trial on Thursday, August 16, 1979, while Stoeckley was first interviewed by the MacDonald defense team in the Raleigh federal building for more than three hours. She then was interviewed by the prosecution.

Before Stoeckley was called by the defense to testify the next morning, AUSA Blackburn inquired of Judge Dupree whether an attorney should be present to represent Stoeckley's interests. Ttr. 5513. Defense counsel Smith responded, "We will do whatever Your Honor wishes to do – but I feel that we will just go ahead with her and see what happens." *Id.* Stoeckley did not have the benefit of counsel before or during her interviews by the parties or her testimony at trial, but was appointed counsel over the weekend, after she had completed her testimony. Ttr. 5980-81.

Defense counsel Bernie Segal began the examination of Stoeckley. During that examination, Segal showed Stoeckley photographs of the crime scene, repeatedly reminding her that he had discussed them with her the day before. *See, e.g.*, Ttr. 5532-34. The form of his questions concerning

the photographs plainly conveyed the message that Stoeckley's in-court responses were not consistent with what she had led the defense team to believe the day before, and were not what the defense wanted to hear.

During one bench conference at which Segal sought leave to question Stoeckley as a hostile witness, Judge Dupree responded, "I have detected nothing in the demeanor or answers or anything else in this witness to indicate any hostility whatever to your questioning." Ttr. 5538. He later commented, "You [Segal] are up here just to see if you may vary the form of the questioning, so that you may give her the answers in the question, and that is what I am precluding your doing right now under the present circumstances, so ask your question." Ttr. 5540.

Segal continued his direct examination of Stoeckley, during which she testified that around the time of the murders, she wore a blond wig as a joke at times. Ttr. 5588-89. She also testified that around February 17, 1970, she owned a pair of brown boots that went up to her knee, and a pair of white boots which went up to her thigh. Ttr. 5589-5590. She also testified that at that time she owned an old floppy hat, but it was stolen six or seven months later. Ttr. 5599, 5602. She got rid of the wig around February 19 or 20, 1970, because she felt the wig connected her to the murders. Ttr. 5602-03. She also testified that during the week of February 17th through 21st of 1970, she set up several funeral wreaths along a fence near her house. Ttr. 5633. She noted, however, that it was probably just a coincidence that she did so because she frequently picked up discarded wreaths and flowers from a florist located up the street. *Id.* at 5634.

Segal continued the direct examination, and after he thoroughly had established that Stoeckley had been addicted to heroin and opium, and was a heavy, regular user of all manner of hallucinogenic drugs during the period in question, and had quizzed Stoeckley about Charles

Manson, witchcraft, and the effects of her drug use, Segal sought another bench conference, detailed below:

MR. SEGAL: . . . . I represent to the Court that during the interviews with me and with other persons present she stated that when she looked at the [photograph] she had a recollection of standing over a body holding a candle, seeing a man's body on the floor.

I also may say, Your Honor, we are now down to the bottom five or six critical things that she revealed yesterday. I have a feeling, based upon her answer to this one now, that when and if I ask her in direct fashion, that I may get negative answers.

I had no anticipation of that, because yesterday throughout the time that she made these statements, we accepted them, did not expect contrary.

We have not had any different statements from her and we feel that we are entitled to the plea of surprise as well as the fact, I think, at this point – the extent of her hostile relationship not in terms of manner but the hostility of her interest to the Defendant.

I am going to tell Your Honor the other things that she has said. . . .

. . . . .

The photograph that I showed her of the bedroom of Kristen MacDonald: during the interview yesterday, she stated that she remembered riding the rocking horse when she looked at that picture.

She also stated yesterday she remembered standing at the end of the sofa holding a candle. She also said when she saw the body of Kristen MacDonald – the one when she was clothed, with the baby bottle – that that picture looked familiar to her.

. . . . She also said when she was shown the photograph of Colette MacDonald – the same one I showed her today – that she said that the face in that picture looked familiar, except that the chin was broken and made it a little hard.

She also stated . . . that she was standing of [sic] the corner of Honeycutt across from Melony Village.

She has a recollection of standing there during the early morning hours of February 17th, 1970. She further stated yesterday, and I intend to ask her now, that she has a recollection of standing outside the house looking at her hands and saying, "My God, the blood; oh my God, the blood."

She said that took place February 17, 1970. There are witnesses to each of these things. I must say, Your Honor, there were persons present the entire time this [interview] took place.

Ttr. 5614-16.

Segal went on to explain to Judge Dupree that he intended to question Stoeckley again on the stand concerning each of these representations, and if she denied having made the representations to him the previous day, he would impeach her "under the rules." Ttr. 5616. AUSA Blackburn spoke up:

MR. BLACKBURN: Of course, I was not there when she talked with the Defense yesterday, but in her interview with the Government none of those statements were made. She specifically told us –

THE COURT: (Interposing) Did you ask her any?

MR. BLACKBURN: Yes, sir. She specifically told us that she had been shown the photographs and we asked her, "Did you recognize any of the scenes in those photographs?"

The answer was no. I asked her, "Have you even been in that house?" She said no. I said, "Do you know anything about that?" "No." "Who do you think did it?" "Dr. MacDonald." You know, it just went one right after the other.

I discussed – I told [defense attorney] Mr. Smith last night what she told us. I was under the impression to this very moment that what she told us was essentially what she told them.

It is difficult for me – you know – I am not saying that they are not saying what she said. I just don't know what way it is, because she has not indicated anything to the Government.

[DEFENSE COUNSEL] MR. SMITH: Judge, here I think is where we are. Generally, she said to us the same thing and that is, "I don't remember." But in two or three or four instances – whatever the list would reveal – she says something which would give an interesting insight into her mind. . . .

....

THE COURT: I am not going to cross the hostility thing until there is a reason shown to indicate it; but I am going to ask the witness a question myself.

(Bench conference terminated.)

Ttr. 5617-18. Among the questions Judge Dupree asked Stoeckley was, “Now, did you tell both sides the same story?” to which Stoeckley answered, “As far as I know, yes, sir.” Ttr. 5619.

Upon further questioning by Segal, Stoeckley reiterated that she did not recognize the crime scene photographs, and denied stating that she had touched or used a rocking horse depicted in one of the photographs, commenting that it appeared in the photograph to be broken. She also denied having discussed the rocking horse with defense counsel. Ttr. 5621-27.

On cross examination by AUSA Blackburn, Stoeckley continued to claim failure of recollection, and testified consistently with her testimony on direct examination. She testified that she did not have the blond wig on when she was talking with her boyfriend, Greg Mitchell, in the driveway on February 16, 1970, because Mitchell did not like when she wore it. Ttr. 5645. She also testified that as a result of not having a recollection of her whereabouts the night of the murders, but after being questioned a number of times, she eventually became worried about her involvement in the murders. Ttr. 5659.

## **2. The Stoeckley Witnesses**

When Stoeckley was excused for the day, Segal sought to call a number of witnesses (hereinafter, the “Stoeckley Witnesses”)<sup>12</sup> who Segal explained would impeach Stoeckley by relating that she had confessed some personal knowledge or belief to them at some time in the past. Some were

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<sup>12</sup> The “Stoeckley Witnesses” were Jane Zillioux, James Gaddis, Charles (“Red”) Underhill, Robert Bristentine, Jr., Prince E. Beasley, and William Posey.

persons who purportedly had attended the defense team's interview of Stoeckley the previous day. Segal argued that the Stoeckley Witnesses' hearsay testimony was admissible to impeach Stoeckley because it contained statements against her penal interests. Ttr 5780-85.

Judge Dupree excused the jury and permitted Segal to *voir dire* the six Stoeckley Witnesses, *see* Ttr. 5689-5774, concerning what Stoeckley had said about the MacDonald murders in the relatively distant past, then recessed for the weekend to consider whether to allow Segal to examine them in the presence of the jury. The pertinent portions of each Stoeckley Witness *voir dire* is set forth below.

**a. Jane Zillioux**

The first to testify was Jane Zillioux, a neighbor of Helena Stoeckley in Nashville. Ttr. 5688-5703. Zillioux testified that in November 1970, when Stoeckley was suffering from hepatitis, Zillioux went to check on her. During Zillioux's visit, Stoeckley told her that she had been involved in "some murders" but that she didn't know whether she committed them or not, and that she had been a drug user for so long that she couldn't remember. Ttr. 5693-94. Stoeckley allegedly told Zillioux that she remembered being in the rain with three boys and being terrified. *Id.* Stoeckley had told her that she looked down and saw the blood on her hands and then went home and got rid of her clothing. Ttr. 5697. Zillioux also testified that Stoeckley had told her she was wearing her wig and white boots, and remembers both of them getting wet in the rain. Ttr. 5699. Zillioux detailed for Judge Dupree her conversation with another neighbor, Bonnie Hudgins, and how Bonnie had told her that she knew it was the Green Beret murders that Helena had been involved in. Ttr. 5695. On cross-examination, Zillioux admitted that Stoeckley was shaky and almost incoherent at times during their conversation, and that she never said she committed the murders, only that she was "involved." Ttr. 5701.

**b. James Gaddis**

The second of the “Stoeckley witnesses” to testify was James Gaddis, a Nashville narcotics detective. Ttr. 5704-5710. He told the court that Stoeckley had told him on different occasions both that she thought she had been there but had tripped out on mescaline and LSD, and also that she knew who had done it but wasn’t there. Ttr. 5704. At times, when she gave him information about the MacDonald murders she was under the influence of drugs. Ttr. 5707. On cross-examination, Gaddis testified to inconsistencies in Stoeckley’s statements to Gaddis; sometimes she said that she witnessed the murders but was not involved, sometimes she told him she knew who was involved but couldn’t give him names, sometimes she said that she only had suspicions of who was involved, and sometimes she told him that Dr. MacDonald himself committed the murders. Ttr. 5708.

**c. Red Underhill**

Red Underhill knew Helena Stoeckley from her time in Nashville and testified about an interaction that he had with Helena when he went to her house one day in December, 1970. Ttr. 5711-15. He told the court that he had found Helena crying hysterically and all she could say to him was “they killed her and the two children.” Ttr. 5712-13.

**d. Robert Brisenstine**

Robert A. Brisenstine was an Army Polygrapher who interviewed Stoeckley about the MacDonald murders twice in April of 1970. He testified that, during these interviews, Stoeckley vacillated between believing she was involved and denying any involvement. Ttr. 5715-37. He told Judge Dupree that during an interview on April 23, 1970, Stoeckley stated that:

during a period of three to four months subsequent to the homicides in the MacDonald residence, she was convinced that she participated in the murder of Mrs. MacDonald and her two children; that she presently is of the opinion that she personally did not

actively participate in these homicides, but may have been physically present at the time of the murders; [and] that prior to the homicide she had heard the hippie element was angry with Captain MacDonald as he would not treat them by prescribing methadone for their addiction to drugs.

Ttr. at 5717. Stoeckley then retracted those statements and denied any knowledge of MacDonald, telling Brisenstine that she had been admitted to the hospital for drug addiction and “she was not always oriented as regards time, dates, and surroundings.” Ttr. at 5718. She further went on to explain the dreams she had been having were caused, she believed, by the large quantity of drugs she was consuming. *Id.* These dreams included seeing the word “pig” on a bed headboard, and a vision of MacDonald pointing at her and holding an icepick that was dripping blood. Ttr. 5719-20. She told Brisenstine that she owned, at the time of the murders, a pair of white boots, a floppy hat, and a blond wig; and that she did display wreaths and wear black the week after the homicides. *Id.*

In another interview on April 24, 1970, she claimed to know the identities of the persons who killed the MacDonald family, and then later told him that she had been lying when she told him that because “four hippies could not have entered Captain MacDonald’s home without being observed by neighbors or causing dogs to bark.” Ttr. 5722. The individuals she named as potentially having been involved were Don Harris, Bruce Fowler, Janice Fowler, Joe Kelley, and a black man named Eddie. Ttr. 5721-22. Brisenstine testified that, at least during the interview on April 23, she was under the influence of drugs. Ttr. 5724-25. He told Judge Dupree that, during these interviews, Stoeckley never told him anything about the crime scene or murders that he didn’t already know. Ttr. 5729. Brisenstine also told the court that “she honestly believed in her mind that what she was telling me was true.” Ttr. 5737.



**e. Prince Beasley**

After Brisenstine, the Court heard from Prince Beasley, a retired Fayetteville narcotics detective. Ttr. 5738-5751.<sup>13</sup> Beasley went to Helena's apartment on the night after the MacDonald murders to ask her if she was involved. He told Judge Dupree that when he asked Helena whether or not she had participated in the crime she said to him, "in my mind, it seems that I saw this thing happen; but . . . I was heavy on mescaline." Ttr. 5742. He later went to Nashville to interview her again, at which time she told him "basically the same thing" that she had told him in Fayetteville. *Id.* at 5744. On cross-examination, however, the prosecution brought to Beasley's attention the statement that he had written after his Nashville visit. In this statement, dated March 1, 1971, Beasley wrote:

She stated that she did not remember anything that happened on the night of the murders except that she did remember getting into a blue car she thought was a Mustang and it belonged to one Bruce Fowler . . . . She again told me she had no knowledge of this night after 12:30 a.m. and that she does not know for sure what happened. . . . It is my conviction that she is involved in the MacDonald case or at least she thinks she is or that she is doing this just to get all the attention she possibly can.

Ttr. 5747.

**f. William Posey**

The last of the Stoeckley Witnesses was William Posey, Helena's neighbor in Fayetteville. Ttr. 5751-5774. He told the court that, on the night of the MacDonald murders, he had seen her come home in a blue mustang; knew her to wear white boots, a floppy hat and a blond wig; and saw the funeral wreaths outside her apartment the week of the MacDonald funerals. *Id.* at 5753-5758. Approximately two days before his testimony at the Article 32 hearing he went to see Helena and she told him that all she did was "hold the light," and that she remembered a "kid's horse thing" that wouldn't "roll." *Id.*

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<sup>13</sup> It is undisputed that Stoeckley served as an informant for Beasley when he worked for the Fayetteville Police Department. *MacDonald III*, 640 F. Supp. at 325.

at 5759-5760. She also told him that she was involved in witchcraft but that she was a “good witch.” *Id.* at 5763. On cross-examination it was established that Posey had actually sought out Bernie Segal at his hotel during the Article 32 hearing to tell his story. *Id.* at 5765-5766. After his Article 32 testimony, he was given \$150.00 by MacDonald’s army lawyer to help with his moving expenses when he felt unsafe after testifying at the hearing. *Id.* at 5771, 5773.

On Monday, August 20, 1979, having observed Stoeckley’s testimony and that of the proffered Stoeckley Witnesses, Judge Dupree denied Segal’s motion to introduce Stoeckley’s out-of-court statements through the Stoeckley Witnesses under Rule 804(b)(3) (“statements against interest”) because he concluded, “the defense failed to sufficiently show that [Stoeckley’s statements] were trustworthy when made and the testimony would only have served to confuse the jury.” *MacDonald III*, 640 F. Supp. at 318 (citing Ttr. 5806-10; Fed. R. Evid. 403 and 804(b)(3); *United States v. MacDonald (MacDonald I)*, 485 F. Supp. 1087, 1091-94 (E.D.N.C. 1979), *aff’d MacDonald II*, 688 F.2d at 230-34, *cert. denied*, 459 U.S. 1103 (1983)). Three of the Stoeckley Witnesses – Prince Beasley, Jane Zillioux, and William Posey – later were permitted to testify in the presence of the jury concerning their prior relationships with Stoeckley, but were not permitted to repeat anything Stoeckley allegedly said to them concerning the MacDonald case. Nevertheless, the transcript reflects that the defense team was able to craft many of its questions to these witnesses so that the Government’s objections were rendered useless. For instance, Segal asked Jane Zillioux:

SEGAL: Did Ms. Stoeckley say anything to you within the time that you were in the room – witness room with her – about having carried a lighted candle in February of 1970?

MR. BLACKBURN: Objection.

THE COURT: Sustained.

Ttr. 5885-86.

Additionally, after Judge Dupree made his ruling about the Stoeckley Witnesses, he also heard additional *voir dire* testimony from Underhill and an attorney working as a law clerk for Segal, Wendy Rouder. The impetus for this *voir dire* testimony were statements Stoeckley had made over the course of August 18-19, 1979, during a weekend recess from the MacDonald trial.<sup>14</sup> The circumstances surrounding these statements are as follows.

After Stoeckley had completed her testimony on Friday, August 17th, the defense team served her with a subpoena so that she could be released from the bench warrant, and had provided her with the means to rent a motel room over the weekend, with the instruction that she return to court on Monday. Ttr. 5951. Mid-morning on Sunday, August 19, 1979, Segal dispatched Rouder to the Raleigh motel where Stoeckley was staying. Ttr. 5929. The motel management had complained of a disturbance involving Stoeckley and the complaint had gotten back to Segal. Rouder explained, "Mr. Segal had informed me that Ms. Stoeckley had been beaten and possibly had been subjected to a drowning. He asked me to check into her well-being. The rumor or the hearsay as you might say had been that her fiancé had inflicted this attack upon her and it would be best if in some way I could help separate them for her own safety." *Id.* Rouder drove to the motel with Underhill, *see id.*, located and talked with Stoeckley, who had acquired a black eye and bloody nose since she had been in court.<sup>15</sup> Stoeckley

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<sup>14</sup> In addition to making statements to Underhill and Rouder, Stoeckley also called Judge Dupree during the weekend recess. Judge Dupree informed the attorneys during a bench conference: "I want you to know that among others called by Helena, she called me twice Saturday night stating that she was living in mortal dread of physical harm by Bernard Segal, counsel for the Defendant, and that she wanted a lawyer to represent her." Ttr. 5980.

<sup>15</sup> Rouder believed Stoeckley had been assaulted by her then-boyfriend, Ernest Davis, who also was present at the original motel. Red Underhill also testified on *voir dire* that he observed the black eye and bloody nose. Ttr. 5907-08. Stoeckley had told him that an unknown person had approached her at the motel and punched her in the face, blackening her eye. Ttr. 5925. Stoeckley told both Underhill and

wanted her fiancé, Mr. Davis to leave, and she packed his suitcase. Ttr. 5930.

Rouder arranged for Stoeckley to relocate to the Hilton, and drove her and Underhill there. Ttr. 5929-30; 5935, 5943-44. Stoeckley told Rouder that she was afraid and wanted someone to stay with her.<sup>16</sup> Ttr. 5931; 5936. While the packing, driving and relocating took place, Rouder talked privately with Stoeckley about the substance of Stoeckley's trial testimony. Ttr. 5932-34, 5937; 5939-42.

According to Rouder's *voir dire* testimony in 1979, with the aid of her notes made at Segal's request, *see* Ttr. 5932, Stoeckley had said she still thought she "could have been there that night," *see* Ttr. 5932; 5938-39, because of the rocking horse, *see* Ttr. 5939; that when she saw the crime scene photographs of one of the children she "knew" she had seen her somewhere before, *see* Ttr. 5932; that she remembered being on that concrete driveway, *see id.*; and that she had a memory of "standing at the couch, holding a candle, only – you know – it wasn't dripping wax. It was dripping blood." Ttr. 5937, 5945. Rouder had remarked, "It must have been difficult living with the guilt all these years," to which Stoeckley allegedly responded, "yes . . . . Why do you think I've taken all those damned drugs?" Ttr. 5941. Rouder asked Stoeckley, "Isn't there anything you think you can do to help get rid of the guilt," to which Stoeckley allegedly suggested, "I just want to take sodium pentothol or hypnosis or something." Ttr. 5934. When Rouder asked Stoeckley why she didn't say this in court, Stoeckley responded: "I can't with those damn prosecutors sitting there." Ttr. 5937.

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Rouder that she had fallen in the bathroom and bloodied her nose. Ttr. 5925, 5944.

<sup>16</sup> Underhill related during *voir dire* that Stoeckley had wanted him to stay with her over the weekend because she was afraid. She had told him that, "her life would not be worth five cents out on the street, because, said [sic], 'They'll kill me for sure.'" *Id.* at Ttr 5922; *see also id.* at Ttr. 5913-22. Underhill also testified that Stoeckley was "deathly scared" of Allen Mazzarole, *id.* at Ttr. 5924, whose name had been tossed around during the trial suggesting he might have been one of the "hippies" who had committed the MacDonald murders.

Blackburn cross-examined both Underhill and Rouder, but neither he nor the defense team ever called Stoeckley back as a witness. Judge Dupree refused to permit either Rouder or Underhill to testify in the presence of the jury concerning the weekend's activities and Stoeckley's alleged statements. *See* Ttr. 5976-77.<sup>17</sup>

Closing arguments were heard by the jury on August 28 and 29, 1979. After six and a half hours of deliberation, the jury found MacDonald guilty of two counts of second degree murder and one count of first degree murder.

#### **H. Evidence presented in 1984 new trial motion**

MacDonald filed a series of motions in 1984, including a motion for new trial pursuant to Rule 33 of the Federal Criminal Rules of Procedure. The new trial motion was premised on alleged confessions made by Stoeckley to various individuals, including a series of confessions she gave to

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<sup>17</sup> Specifically, Judge Dupree remarked:

I also remain of the opinion, gentlemen – let me say this: this Stoeckley girl I think is one of the most tragic figures that I have ever had to appear in court.

A girl coming out of high school at 15 years of age and going on into the drug culture, and absolutely burning her mind out with opium, heroin, mescaline, LSD, and marihuana, and having gone, now, what must 11 or 12 years in this –one of the most tragic figures that I have ever seen in a courtroom.

But the picture emerges, though, of a person whose mind is so far impaired and distorted by this drug addiction that she has become and remains in an almost constant state of hallucination.

That she is extremely paranoid about this particular thing, and that what she tells here in court and what she tells witnesses, lawyers in a motel room, simply cannot have attached to it any credibility at all in my opinion.

. . . . It is perhaps the most clearly untrustworthy evidence that I have had put before me.

. . .

I think this jury having heard her for the better part of a day would be in a good position now to evaluate her and her story, and everything about it, as they'll ever be if you brought not just these Friday's six witnesses, or these three who have testified today, but if you brought a wagon load of people—everybody that you ever talked to about this thing.

I still think this jury has got and should have a clear picture of this particular witness as they will ever have.

Ttr. 5975-77.

Prince Beasley and private investigator Ted Gunderson during the period of October 1980 to May 1982. MacDonald also proffered statements by Greg Mitchell and Cathy Perry, as well as affidavits of other witnesses which allegedly corroborate the involvement of Stoeckley, Mitchell, and Perry in the murders. Judge Dupree denied MacDonald's motion for new trial, reasoning that the new evidence would not produce a different result in a new trial. *MacDonald III*, 640 F. Supp. at 333. The evidence supporting the MacDonald's motion for a new trial is recounted below.

### 1. Stoeckley's confessions

Judge Dupree summarized<sup>18</sup> the substance of Stoeckley's confessions,<sup>19</sup> in the light most favorable to MacDonald,<sup>20</sup> as follows:

Stoeckley was a member of a satanic cult which was angry with military physicians, MacDonald among them, because they refused to help drug users with their problems. The leader of the cult decided to approach MacDonald in an attempt to obtain drugs from him and persuade him to treat drug addicts.

Stoeckley was assigned responsibility for determining the whereabouts of Colette MacDonald on the night of February 16, 1970 and made a pretext phone call to the MacDonald residence at about 6:30 p.m. that evening and learned that Colette would be attending school at a North Carolina State University Extension at Fort Bragg that evening. She and several other members of the cult later went to the North Carolina State University Extension and spoke with her in an unsuccessful attempt to persuade her to talk to her husband about the cult's concerns.

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<sup>18</sup> The court reiterates that it has independently reviewed the record as whole. Given Judge Dupree's succinct and accurate summary of Stoeckley's statements, the court sees no reason to reinvent the wheel in laying out the record in this case.

<sup>19</sup> Judge Dupree was not presented with the recordings or transcripts of Stoeckley's statements; rather, MacDonald submitted the declaration of Beasley and the unsigned unsworn declaration of Gunderson.

<sup>20</sup> Judge Dupree noted that Stoeckley's statements "contain numerous inconsistencies rendering it almost impossible to reconcile them into one cohesive statement of events," but in order to give MacDonald "the benefit of all doubts" he chose "to recite in large part what MacDonald claims Stoeckley's statements prove occurred on the night of the murders and thereafter." *MacDonald III*, 640 F. Supp. at 321. n.22.

Later that evening, at approximately 10:30 p.m., Stoeckley, Greg Mitchell, Shelby Don Harris, Bruce Fowler, and Dwight Edwin Smith met at Stoeckley's apartment where they discussed their plans to go to MacDonald's apartment to seek his cooperation. Stoeckley thereafter took some mescaline offered to her by Greg Mitchell and the group went to two local restaurants where they stayed until the restaurants closed.

The Stoeckley group left a Dunkin Donuts restaurant at about 2:00 a.m. and drove to the MacDonald residence. Bruce Fowler then parked the car nearby and the group walked along the sidewalk to the rear of MacDonald's apartment and entered the home through a utility room door. It was dark inside the house and Stoeckley lit a candle to help the group find their way. They walked through the house and into the living room where they found MacDonald asleep on the living room couch with a book across his chest and a Valentine's Day card on the couch next to him. Stoeckley noticed that the television was on but there was no picture because there was no programming that late.

Some members of the group shook MacDonald to awaken him so that they could talk to him about drugs but upon awakening he became excited and began to fight with them. During the fight, Stoeckley chanted "acid is groovy; kill the pigs." When the group finally subdued MacDonald, they told him that they wanted drugs and he agreed to call a friend of his to see if he could get some. He went to a wall telephone in the kitchen but instead of calling a friend, he attempted to call the military police. The group overheard the conversation and again assaulted MacDonald, this time knocking him unconscious.

According to Stoeckley, things "got out of control" at this point and she heard Colette MacDonald calling to her husband for help from the master bedroom. Stoeckley went to the room where she saw Colette being assaulted by Greg Mitchell and another member of the group. She noted that one of the MacDonald children was in the master bedroom with her mother but appeared to be asleep. Stoeckley left the master bedroom and went into one of the children's bedrooms where she saw a record player, some books and a hobby horse which she noted was broken. She then heard the sound of running water in a bathroom and looked in to see Greg Mitchell washing his hands at the sink.

Stoeckley then heard a telephone ring and another member of the group told her to answer it. She answered the telephone and heard a soft voice ask for "Dr. MacDonald" whereupon she began to laugh until someone in the group ordered her to hang up the telephone. The group became scared and left in a hurry, leaving all of the murder weapons behind except for a pair of scissors.

After leaving MacDonald's apartment, the group went to a Dunkin Donuts where Stoeckley went inside and washed her hands. She was eventually taken home at about 4:30 a.m. When asked by her roommate a few days after the murders why she had participated in the crimes, Stoeckley told her roommate that the MacDonalds deserved to die. She disposed of her floppy hat which she had been wearing during the murders and gave her blood-stained clothes and boots, which she had also worn, to a friend of

hers, Cathy Perry. She told Perry to dispose of all of these items. The members of her cult eventually moved away from the Fayetteville, North Carolina area and lost contact with each other.

Called to testify at MacDonald's trial nine years later, Stoeckley perjured herself in order to escape prosecution. She eventually decided to confess to the crimes to clear her conscience.

*MacDonald III*, 640 F. Supp. at 321-22. Judge Dupree observed that Stoeckley's numerous statements were predominated by contradictions and inaccuracies, including: (1) varying the size and composition of the group of intruders from statement to statement; (2) changing whether the events took place at all depending on whether she was speaking to MacDonald's investigators or the FBI; (3) stating on several occasions that an individual, Allen Mazerolle, was with the group of intruders when prison records confirmed that he was in jail the three weeks before and after the murders; (4) claiming that the group talked with MacDonald for eight minutes after awakening him, which was inconsistent with MacDonald's own version of events; and (5) stating she had been in the apartment prior to the murders and had stolen jewelry. *Id.* at 322-23. Judge Dupree also took note of the conditions under which Stoeckley rendered her confessions to Beasley and Gunderson. *Id.* at 319 n. 20 (referencing evidence showing that "Gunderson and Beasley interviewed Stoeckley for hours upon hours, day after day" and observing that the "heavy-handed tactics . . . call into question the voluntariness and truth of Stoeckley's confessions despite her statements to the contrary").

## **2. Greg Mitchell's statements**

MacDonald also proffered the declarations of individuals who claimed that Greg Mitchell – someone Stoeckley implicated in her statements to Beasley and Gunderson – also confessed to the murders.



**a. The Manor**

The Manor was a ministry in Fayetteville, North Carolina, in the 1970s that provided counseling and help to young people who had problems with alcohol and drugs. Anne Sutton Cannady, who worked at the Manor, stated that a man fitting Greg Mitchell's description arrived at The Manor, on a Wednesday in the early part of March 1971. Several days after his arrival, the man attended a prayer session, where he said he was part of a cult in Fayetteville and had murdered people. Decl. of Anne Sutton Cannady, DX 5023. Reverend Randy Phillips, who worked at the Manor, stated in a declaration that he understood that the man "said something to the effect that he was partly responsible for the MacDonald slayings." Decl. of Randy Phillips, DX 5022. The man left the following day after having stolen clothes belonging to Phillips.

Following the man's departure, Phillips, Cannady and another individual went to a farmhouse owned by The Manor to make sure it was secure. Upon their arrival, they saw the man who had confessed run out the backdoor with another person and into a wooded area. Inside the house, Cannady saw the phrase "I killed MacDonald's wife and children" written on one of the bedroom walls in red paint. When Phillips and Cannady later returned to the farmhouse, someone had painted over the walls.

Anne Sutton Cannady later identified, from a photo array, a photograph of Greg Mitchell as showing the man who had confessed to the murders and painted on the farmhouse wall.

When ruling on the 1984 motion, Judge Dupree characterized this evidence as "at best speculative and circumstantial," noting that neither Cannady nor Phillips "personally knew Mitchell and only Cannaday [sic] heard the statement by a young man to the effect that he had 'murdered people.'" *MacDonald III*, 640 F. Supp. at 328. Judge Dupree declined to "accept this one statement to Cannaday [sic] over fourteen years ago by a man she did not know was evidence of any substance that

Greg Mitchell confessed to the MacDonald murders” and he also found the statement that “two unidentified men were seen running from a farmhouse which had been vandalized” to be “only weakly connected to Mitchell.” *Id.*<sup>21</sup>

**b. The Lanes**

MacDonald also submitted the declarations of Norma and Bryant Lane, a couple Greg Mitchell befriended in Charlotte, North Carolina, in the 1970s. Both Norma and Bryant stated that they recalled a incident in 1977 where Mitchell was depressed and when they inquired about what was bothering him, Mitchell replied that he could not tell anyone because it was too horrible to talk about. Later, in 1982, Mitchell, visibly upset, visited the Lane’s house, seeking money to leave the country because the FBI was after him. He told Norma Lane that he was guilty of a crime that happened a long time ago at Fort Bragg. DX 5024A, DX 5024B.

Judge Dupree found the Lane declarations to be unpersuasive “because Mitchell made no specific reference to having been involved in the MacDonald slayings and voluntarily appeared at the Charlotte, North Carolina office of the FBI in late 1981 where he denied any knowledge of the murders.” *MacDonald III*, 640 F. Supp. at 328.

**3. Cathy Perry’s statements**

On November 17, 1984, Cathy Perry,<sup>22</sup> who was a resident of Fayetteville, North Carolina in the early 1970s, gave a statement to an FBI agent. At the time she gave the statement, she had been diagnosed as a schizophrenic and was under a doctor’s care. In her statement, Perry said that on the

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<sup>21</sup> Judge Dupree’s characterization of the evidence before him and the rulings thereon are not now binding on the court.

<sup>22</sup> At the time she gave the statement, Cathy Perry was known as “Cathy Perry Williams.” The court will refer to her as Cathy Perry in this Order.

evening of February 16, 1970, she was outside a “head shop” in Fayetteville when she was persuaded to get into a white stationwagon with two white females and five or six white males. The group broke into the front door of a house, where the group found a white male lying on the couch. Someone in the group shot the white male up with some sort of narcotic and the male collapsed. Perry was not permitted to leave, and she was forced to take a pill. She said that a male in the group said the man who lived in the house was a doctor and he turned people in who used drugs.

Perry told the FBI that everyone went upstairs, and some of the group started beating a baby in a blanket. Perry said she tried to hide another male child in a closet while the baby boy was killed in the bathroom. Perry also described trying to wake the mother of the children and persuade her to jump out a window to escape, but eventually being forced to kill the mother. Perry reported that after murdering the mother, she wrote in blood on the wall, “Fuck you pigs from all of us to you,” along with the year. She reported being in the house from approximately 11 p.m until 4 or 5 a.m., and described the weather as being warm with no rain. *MacDonald III*, 640 F. Supp. at 329. *See also* DX 5034.<sup>23</sup>

#### **4. Additional statements**

MacDonald also presented the declarations of more than 20 witnesses and offered testimony from several witnesses to corroborate the involvement of Stoeckley, Perry, and Mitchell in the murders. Of particular note, MacDonald offered the declarations of Keith Bowen, Mable Campbell, John Humphries, Frankie Bushey, Marion Campbell, Joan Sonderson, Addie Willis Johnstone, Edith Boushey, Carlos Torres, Dorothy Averitt, Prince Beasley, Jimmy Friar, Lynne Markstein and Richard Comisky.

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<sup>23</sup> Judge Dupree observed that “[a]pparent from the most superficial reading of [Perry’s] statement is that the facts retold by her are completely at odds with the known facts and those MacDonald claims were confessed to by Stoeckley.” *Id.*

**a. Keith Bowen**

In a declaration, Keith Bowen stated that Stoeckley associated with a group of people which included Cathy Perry, Shelby Don Harris, Greg Mitchell, Jackie Don Wolverton, and a black man who wore an Army jacket with E-6 stripes known as “Moses.” According to Bowen, everyone in the group used LSD on a regular basis. DX 5068.

**b. Mable Campbell**

Shortly before February 17, 1970, Mable Campbell was on her way to work when she observed four individuals – two white males, one black male, and one white female – standing next to a dark colored vehicle at a drive-in, in Fayetteville. The female was wearing a floppy hat and boots. Campbell later picked out a photograph of Greg Mitchell from a photo array as one of the men she had seen and said that a female in a floppy hat depicted in a police artist’s sketch resembled the woman. DX 5070.

**c. John Humphries**

John Humphries, a former military policeman, owned a rock shop on Bragg Boulevard in Fayetteville. On the evening of February 16, 1970, between 6 and 7 p.m., three men –two white and one black – came into his shop. Humphries could tell the men were high. After Humphries displayed his gun, the group left his store and got into an eggshell white van parked outside. He saw a woman sitting in the van wearing a big white floppy hat. Humphries reported what he saw to both the FBI and the CID, but he received no response from either agency. DX 5067.

**d. Frankie Bushey**

At approximately 11:15 p.m. on February 16, 1970, Frankie Bushey and some friends stopped to eat at a Dunkin’ Donuts. Around midnight, four “hippies” – a white female and three males – entered the restaurant. The female had blond hair and wore a light colored floppy hat and a light colored jacket.

She carried a large shoulder bag and appeared to be on drugs. A husky, unshaven, bushy-haired man was holding on to the woman. The second man had a dark complexion and slanted eyes, and the third was short, had a fair complexion, squinted eyes, and walked with a slouch. When Bushey left Dunkin' Donuts at approximately 12:55 a.m., the four people were seated in a booth behind her. DX 5046.

**e. Marion Campbell**

Marion Campbell also was at the Fayetteville Dunkin' Donuts. She arrived with her husband at approximately 12:50 a.m. on February 17, 1970. While she and her husband were eating, she saw a group composed of a white man, black man, and white woman walking out the aisle. The woman wore a white mini-skirt and a white blouse with a light sweater, white boots which came to just below her knee that had clay-like stains on them, and a white straw-like hat with a floppy brim. The woman was blond, and appeared to be 19 years old and dazed. The white man also appeared to be dazed. The black man had on an olive drab field or fatigue jacket.

After the group left the restaurant, Campbell saw a black or blue van stopped parallel to the window near where she was sitting. The white woman was in the passenger seat, and the black man was driving. A white man on a black motorcycle pulled up near the van, and the black man said to him, "We'll see you there." The black van pulled out of the parking lot and headed in the direction toward Fort Bragg around 1:30 a.m. DX 5071.

**f. Joan Sonderson**

Joan Sonderson worked as a waitress at a drive-in restaurant on Fort Bragg. When she arrived at work between 8:00 a.m. and 9:00 a.m. on the morning on February 17, 1970, she noticed a two-tone car parked in her service area, apparently passengerless. She later discovered that three individuals, including a white woman and a black male, had been sleeping in the car. The white woman had long

hair and wore a floppy hat and boots. The woman asked Sonderson if she knew that the MacDonalds had been murdered the previous night. While the woman was talking with Sonderson, the black male exited the vehicle to use the restroom. He wore an army fatigue jacket. DX 5020.

**g. Addie Willis Johnstone**

MacDonald represents that Addie Willis Johnstone saw four individuals standing at the intersection of Hillsborough and Western Boulevards in Raleigh, North Carolina, at noon on February 17, 1970. The group included a white woman with stringy blond hair, wearing a beige floppy hat and boots; a black man in an Army fatigue jacket, and two white males.<sup>24</sup>

**h. Edith Boushey**

In February 1970, Edith Boushey taught English and coordinated the Modern Languages program at the North Carolina State University Extension program at Fort Bragg. Boushey stated that at about 9:40 p.m. on February 16, 1970, she walked past a group of people near a stairwell of a building on campus and saw a man whom she identified as Greg Mitchell talking to a woman she identified as Colette MacDonald. As Boushey walked by, she heard Greg Mitchell say: "If you go along, I think it will be alright." She heard Colette reply, "I dread . . ." but could not hear the remainder of the response. Boushey stated that the group included at least three other women, including two wearing floppy hats. DX 5044.

Judge Dupree noted that Boushey's account was directly contradicted by the affidavit of Elizabeth Ramage, who accompanied Colette to class on the evening of February 16, 1970, and was with her at all times until Colette dropped Ramage off on the way home from class. Ramage stated that she and Colette left between 9:20 and 9:30 p.m. *MacDonald III*, 640 F. Supp. at 326. Judge Dupree

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<sup>24</sup> No declaration or affidavit of Johnstone was submitted in the latest filings with the court.

also noted the inconsistencies between Stoeckley's version of the meeting with Colette and Boushey's declaration. Accordingly, the court found Boushey's statements to be "of no corroborative value." *Id.*

**i. Carlos Torres**

As Judge Dupree recounted, Torres testified at the hearing on MacDonald's motion for new trial that

he was stationed at Fort Bragg, North Carolina, in February of 1970 and was working part-time at the post NCO club. Torres left the club about 2:00 a.m. and proceeded up Bragg Boulevard until he stopped at a stoplight near Castle Drive. While stopped at the light, he noticed a blue 1962 or 1964 Volkswagen stationwagon parked on the side of the road. He observed one person in the van, one outside the van, and two other people walking toward the van from a wooded area but was unable to identify any of the four people.

*MacDonald III*, 640 F. Supp. at 326-27; *see also* September 19, 1984 Hearing Transcript [DE-136-4] 14-25. Judge Dupree found Torres' testimony to be not credible as corroboration of Stoeckley's confessions, noting that Stoeckley said her group was riding in a Ford Mustang, and not a Volkswagen van, on the night of the murders. Judge Dupree also noted that on cross-examination, Torres admitted that in early 1970 he had just returned from Vietnam, was in the process of a divorce, and "'wasn't in a condition to reveal this and get any more nervous and attention.'" *Id.* at 327.

**j. Dorothy Averitt**

MacDonald also offered the testimony of Dorothy Averitt, who stated that on February 17, 1970, she drove to a grocery store at 4625 Murchison Road in Fayetteville. *See* September 19, 1984 Hearing Transcript [DE-136-3] at 25. When she pulled into the parking lot, she saw two men sitting in the backseat of a dark car parked outside the store. *Id.* at 26. Upon entering the store, Averitt saw a woman who was wearing a blond wig that was falling off and exposing her dark hair, a wide-brimmed weather hat, a light cream colored plastic coat, a dark skirt, and 3/4 length white boots

covered by a dark substance. *Id.* at 28-30. According to Averitt, the woman smelled like a “hog killing” and seemed to be in a fog. *Id.* at 31. When Averitt attempted to speak with her, a black man in an Army field jacket directed the woman to leave with him. *Id.* at 32-33.

**k. Prince Beasley**

In addition to offering Prince Beasley’s testimony as to the substance of Helena Stoeckley’s confessions, MacDonald also offered Beasley’s testimony and statements to corroborate Stoeckley’s confessions. Specifically, Beasley stated that on February 16, 1970, he was on duty as a Fayetteville police detective, and saw Stoeckley and a black male exit a blue Ford Mustang near the Village Shoppe restaurant around 10:50 p.m. He said that Stoeckley was wearing a blond wig, a floppy hat, and was carrying a light colored hand bag. He said the black male was wearing an Army jacket with E-6 insignia. Beasley also stated that he stopped Stoeckley and some male companions at approximately 2:15 a.m. on February 18, 1970, because he believed Stoeckley and her friends matched the description of the suspects. Beasley asserted he radioed the police department and asked them to call the Army CID and tell them he had located suspects in the MacDonald murders. After waiting an hour, he let Stoeckley and her companions go because they were threatening him. DX 5019. Beasley gave somewhat similar *voir dire* testimony at MacDonald’s trial. *See* Ttr. 5741-42. MacDonald also proffered the declaration of Blane O’Brian, who was a Cumberland County deputy sheriff in February 1970. He stated that on February 18, 1970, at about 2:30 a.m., he heard Beasley call the Fayetteville police dispatcher regarding suspects in the MacDonald murders. O’Brian heard the dispatcher respond that he would inform Army CID. O’Brian also heard Beasley call the dispatcher again an hour later, and the dispatcher respond that no one from Fort Bragg could meet with Beasley. DX 5032.

With regard to Beasley’s statements, Judge Dupree observed:



Former Fayetteville detective Prince Beasley figures prominently in MacDonald's motion for a new trial because of his relationship to Helena Stoeckley. Stoeckley worked for Beasley as an informant in Fayetteville in 1970 and their friendship appears to have lasted until the time of Stoeckley's death. The court's impression from the record is that Stoeckley looked up to Beasley and Beasley gave her the attention which she seems to have at times sought. At all stages of the case, the defense has obtained information from Stoeckley by using Beasley as its contact with her.

Beasley has given a series of statements, trial testimony and affidavits over the years which substantiate Stoeckley's involvement in the crimes. These statements have rarely been accurate. Upon hearing Beasley's *voir dire* testimony at trial to the effect that he had stopped Stoeckley and several of her male companions for about an hour on the morning of the murders and then let them go when CID agents did not arrive on the scene, this court noted that

[i]f it is within the province of this court to pass on the trustworthiness of a witness who proposes to testify . . . this court would be constrained to hold Officer Beasley's testimony to be unreliable. It is simply incredible that any self-respecting, competent police officer who really thought that he had a substantial lead toward solving these sensational murders would allow the suspects to go after waiting only an hour for the Army investigators . . . .

[*MacDonald I*], 485 F. Supp. at 1092.

The court's evaluation of the trustworthiness of Beasley in 1979 is left unchanged by his most recent statements and the court's observation of the demeanor of this witness during the evidentiary hearing on the post-trial motions. While the court does not believe this seriously ill man to be lying, medical records introduced by the prosecutors clearly show that he cannot consistently distinguish fact from fiction.

*MacDonald III*, 640 F. Supp. at 325.

#### **I. Ernest Davis**

Ernest Davis was engaged to Stoeckley at the time of the MacDonald trial and the two married the next year. In 1983, he signed a declaration stating that after the trial, Stoeckley told him she thought she had been in the MacDonald home the night of the murders. DX 5018. Davis stated that Stoeckley told him that she had gone into Dunkin' Donuts the night of the murders with blood on her hands and

washed them there. Davis also stated that Stoeckley told him she remembered: (1) “standing in her driveway the night of the murders and taking two hits of mescaline with Greg Mitchell”; (2) “going into a bedroom to keep the kids quiet” and that “[w]hen she came out, MacDonald was already stabbed and Colette MacDonald was screaming” and “[t]he next thing she remembered was standing in the living room, holding a candle” with “[b]lood dripping off her hand”; (3) that someone went in the MacDonalds’ jewelry box and took some things out; and (4) leaving in a hurry and leaving all the weapons, other than a pair of scissors behind.” She told Davis that “she acted confused at the trial in order to fool the judge.” DX 5018.

**m. Greg Mitchell’s left-handedness**

MacDonald also proffered the declaration of Greg Mitchell’s widow, Pat, who stated that Greg was left-handed. DX 5049. He also proffered the declaration of Ronald K. Wright, M.D., stating that he was of the opinion that

based upon the location of the injuries suffered by Colette MacDonald and the nature of those injuries . . . the blow which fractured Colette MacDonald’s skull was struck with a club that was in a left-handed swing by a person facing Mrs. MacDonald at the time she was standing [and because] the blow was very forceful I have concluded that it is consistent with someone who is left-handed.

DX 5049. Dr. Wright, however, later admitted on September 4, 1984, that

[i]ndividuals intoxicated with psychomimetic drugs or enraged by their wife cannot be presumed to strike with their handed side. Therefore, while perhaps slightly more often forceful blows delivered from a deceased’s right to left are delivered by lefthanded folk (adjusting for their minority status); it is certainly not unusual to see such a blow delivered by a righthanded individual.

*MacDonald III*, 640 F. Supp. at 328.

**n. Jimmy Friar**

In a declaration dated July 25, 1983, Jimmy Friar stated that he was an in-patient at the Womack Army Hospital at Fort Bragg in February 1970. Prior to being treated at Womack, he had been a patient at Walter Reed Hospital in Washington, D.C., where he had been treated by Dr. Richard MacDonald. While there, Friar became friendly with Dr. Richard MacDonald. On a couple of occasions while he was being treated at Walter Reed, Friar had gotten drunk, and he would call Dr. Richard MacDonald for help in getting back to the hospital.

Friar stated that on the evening of February 16, 1970, he persuaded an orderly to let him leave the hospital so he could go to Fayetteville to drink and shoot pool. When Friar eventually decided to return to Fort Bragg, he had no money to use a taxi and the buses had stopped running. Friar, who stated he was disoriented at the time and thought he was still in Washington, D.C., decided to try to contact Dr. Richard MacDonald. He stated that while at the Wade Hampton Hotel he called the base operator, and represented himself as a doctor who was friends with “Dr. MacDonald.” He did not specify Dr. MacDonald’s first name. The operator gave him a number, which he called around 2:00 a.m. A woman, who was laughing, answered the phone, and Friar asked for Dr. MacDonald. Friar stated that he heard someone in the background say, “Hang up the God-damned phone” and the phone was disconnected. DX 5021.

**o. Lynne Markstein**

On August 20, 1970, Lynne Markstein was in a traffic accident in Raleigh and taken to a hospital for treatment. DX 5017 ¶ 1. Markstein stated that while she was waiting in the x-ray waiting room, Stoeckley introduced herself and told Markstein she was in town to testify in the MacDonald trial. Stoeckley also told Markstein that she was at the MacDonald house when the murders occurred,

and she remembered standing over an uncovered bloody child in a bed. DX 5017 ¶ 3. Stoeckley asked Markstein: “Can you imagine someone like me doing that to those babies?” *Id.* She also told Markstein that she was under the influence of drugs at the time of the murder, and that she had been unable to remember any facts about the MacDonald murders until the time of trial. DX 5017 ¶ 4.

**p. Richard Comisky**

MacDonald also proffered the declaration of Richard Comisky, a man who resided in Fayetteville in 1970 and knew Stoeckley. DX 5016. Comisky stated that sometime between August and October 1970, he had a conversation with Stoeckley and another young, white man in “Skag” Park in Fayetteville. During the course of the conversation, Stoeckley told Comisky that “we did the MacDonald thing,” and when he asked what she meant, she replied, “we did the killings.” DX 5016 ¶ 3. She told Comisky that when the police questioned her, she was wearing the same clothes she had worn during the murders, including a wig, a hat and boots, all of which she later burned. DX 5016 ¶ 4. Stoeckley also asked Comisky whether fingerprints could be obtained from wax; Comisky stated that he did not know. DX 5016 ¶ 6.

**I. Evidence underlying 1984 § 2255 motion**

In 1984, MacDonald also moved pursuant to § 2255 to set aside his conviction, arguing the Government suppressed exculpatory evidence which, had it been introduced at trial, would have caused the jury to acquit him of the murders. The allegedly suppressed evidence included: “(1) a half-filled bloody syringe; (2) bloody clothes and boots claimed to have belonged to either Helena Stoeckley or Cathy Perry . . . ; (3) skin found under Colette MacDonald’s fingernail; and (4) photographs of the letter “G” printed on the wall of Helena Stoeckley’s apartment in Nashville, Tennessee.” *MacDonald III*, 640 F. Supp. at 299. Judge Dupree denied this motion, concluding that the Government did not

deliberately suppress anything and had acted in good faith, and also finding that this evidence did not meet the materiality requirements of *Brady v. Maryland*, 373 U.S. 83 (1963). See *MacDonald III*, 640 F. Supp. at 309. The evidence supporting this motion is recounted below.

### 1. Syringe

MacDonald proffered a document in which FBI agents summarized their debriefing of Robert Shaw, who was in charge of the CID investigation, and Hilyard Medlin, who was in charge of the United States Army Crime Laboratory Forces dispatched to help CID investigators process the MacDonald crime scene. Both men were debriefed on February 21, 1970. The report included, in pertinent part, the following:

Mr. Medlin also advised that a half filled syringe that contained an as yet unknown fluid was located in a hall closet, which also contained some evidence of blood. In this connection, Medlin said that it appeared that someone with a bloody hand had reached into this cabinet containing medical supplies for some purpose.

DX 5079.

Noting that “[t]he only evidence that a ‘half-filled bloody syringe’ ever existed is contained in Medlin’s somewhat ambiguous statement to Agent Tool,” Judge Dupree found that there was insufficient evidence from which the court could conclude that a “half-filled bloody syringe” in fact existed. *MacDonald III*, 640 F. Supp. at 301. Specifically, Judge Dupree observed that

Medlin’s affidavit indicates [that] when he made his statement to Agent Tool he was only summarizing the information provided to him by other members of the crime scene processing team. . . . He had no first-hand knowledge of the contents of the closet and denies ever seeing a half-filled syringe which bore blood stains. The implication of his statement and its second-hand nature is that Medlin misunderstood what the other investigators told him about the contents of the closet. In fact this is what must have occurred, for investigative agents with firsthand knowledge of the contents of the hall closet state, or would state if called to testify at trial, that no “bloody half-filled syringe” or other half-filled syringe was found in the closet. . . . Moreover, the chemist who processed the hall closet for blood stains, Craig Chamberlain, and the

agent who inventoried the medical supplies in the closet, Hagan Rossi, state without reservation that no syringe of any kind was found during the crime scene investigation.

*Id.* Accordingly, Judge Dupree found MacDonald's assertion that the half-filled syringe existed to be not plausible.

## **2. Bloody clothes and boots**

MacDonald also asserted that in early 1971, the CID came into possession of bloody clothes or boots belonging either to Stoeckley or Cathy Perry. The evidence presented to Judge Dupree showed that in late 1970 or early 1971, Cathy Perry, after stabbing her roommate Jackie Don Wolverton, moved into Betty Garcia's home for a few days. *MacDonald III*, 640 F. Supp. at 302-03. Wolverton gave Garcia some of Perry's belongings that were in his apartment. When Perry was thereafter admitted to a mental hospital, Garcia asked Wolverton to collect the remainder of Perry's belongings. Wolverton then went to various places where Perry had stayed, and gathered items that he thought belonged to her, but also could have belonged to other people, and eventually gave them to Garcia. When going through clothing, Garcia found a pair of beige boots, and other non-specified items which led her to believe that Perry was involved in the MacDonald murders. *Id.* at 303.

Garcia provided all of Perry's possessions to her attorney, Charles Kirman, who in turn gave the items to James R. Nance, an attorney who had represented MacDonald in a civil action. On the afternoon of January 6, 1971, Nance went to the offices of Captain James Douthat, MacDonald's appointed military counsel at the Article 32 proceedings, and released the Perry items to CID agents William Ivory and Peter Kearns. Ivory prepared a Military Police Receipt for Property listing the items received by Nance, which was signed by Nance, Ivory and Douthat. No clothes were listed on the receipt, but the items did include a "Pair of Woman's boots, beige, w/tag THE GREAT BOOTS by

GOLD SEAL.” *Id.* at 303. The receipt did not indicate that the boots, or any other items, were blood-stained. When routine laboratory analysis failed to provide any link between the boots and the MacDonald case, the boots and other items were returned to Garcia.

Judge Dupree concluded that “[t]here is no evidence from which the court can find that any items other than those listed on the military property receipt were given to CID Agents Ivory and Kearns.” *Id.* Judge Dupree also found that the boots were not blood-stained, crediting the affidavits of Agents Kearns and Ivory and Kearns’ sworn statement in April 1972 concerning the boots, especially when compared to the affidavits of Nance and Garcia regarding a possible brown stain on the boots. *Id.* at 304.<sup>25</sup>

### **3. Skin found under Colette’s fingernail**

The evidence before Judge Dupree was that a small fragment of skin was found under one of Colette’s fingernails during her autopsy, but that sometime between February 28, 1970, and December 19, 1970, the piece of skin was lost.

### **4. Photographs of the letter “G”**

MacDonald also proffered evidence showing that in December of 1970, CID photographer Frank M. Toledo took photographs of the walls of Stoeckley’s former apartment in Nashville,

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<sup>25</sup> The only other evidence before Judge Dupree concerning the existence of bloody clothing or boots was the declaration of Prince Beasley, wherein he stated that Garcia told him Perry asked her to hold a bundle of clothing for her because the police were after her. Garcia looked through the materials and saw some clothing and boots had blood on them. A few weeks later, Garcia received a phone call from Perry’s parents asking her to destroy the materials. Garcia threw out the clothing, but kept the boots and other items, including a calendar with the date February 17, 1970, circled on it. DX 5019. Beasley’s testimony before Judge Dupree was that Stoeckley knew that Perry had taken some clothes and given them to Garcia, but that Stoeckley did not specify to whom the clothes belonged. Transcript of Beasley’s Hearing Testimony [DE-136-9] at 20.

Tennessee. *MacDonald III*, 640 F. Supp. at 308. Toledo had previously worked on the MacDonald case and saw the crime scene.

Stoeckley had put palm and fingerprints on the walls in paint, and also had written on the walls in paint. “As he was photographing the words written on the walls, Toledo had a ‘flashback’ to the MacDonald crime scene and thought the letter ‘G’ in words such as ‘Good’ and ‘Gemini’ on the walls resembled the letter ‘G’ in the word ‘PIG’ which was written in blood on the headboard in the master bedroom of the MacDonald apartment.” *Id.* He wrote this observation down in his handwritten notes accompanying the exposures. *Id.*

In an affidavit prepared prior to the hearing before Judge Dupree, Toledo stated “that not only did the ‘G’s’ on the walls resemble the ‘G’ on the headboard at the MacDonald apartment, they also looked like ‘G’s’ which Toledo had seen in MacDonald’s military course notebooks.” *Id.* The Government also proffered evidence of FBI analysis finding that “the letters do not have sufficient distinguishing characteristics to enable the FBI or anyone else to determine whether they were made by the same hand.” *Id.*

**J. Evidence underlying the 1990 and 1997 § 2255 motions**

In 1990, MacDonald filed another petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255, arguing that “the prosecution failed to disclose prior statements of witnesses at trial, withheld laboratory notes written by government agents which would have aided the defense, and exploited the suppression of the prior statements and the lab notes by knowingly presenting a false and perjurious picture of the evidence and underlying facts.” *MacDonald V*, 778 F. Supp. at 1344. Specifically, MacDonald’s motion was premised, in part, upon his discovery of (1) laboratory bench notes from United States Army Criminal Investigation Laboratory (“USACIL”) Chemist Janice Glisson indicating



that she had found three blond synthetic hairs, up to twenty-two inches in length, on a clear handled brush found in the MacDonald home, and (2) government scientists' handwritten notes showing they "had discovered the presence of one black wool fiber and one white wool fiber in the debris taken from the right biceps area of Colette's pajama top, two black wool fibers and one green wool fiber in the debris removed from the wooden club murder weapon, and two black wool fibers in the debris removed from the mouth area of Colette, none of which were matched to any known source in the MacDonald home." *MacDonald V*, 778 F. Supp. at 1348-49; *see also* DX 5025 ¶ 5; DX 5027 ¶¶ 5-8. MacDonald argued, in part, that the lab notes identifying the saran fibers and unsourced fibers corroborated his story of intruders murdering his wife and children.

In response to MacDonald's motion, the Government offered two affidavits of Michael P. Malone, then a senior examiner of the Hairs and Fibers Unit of the FBI Laboratory in Washington, D.C. Malone had examined the hairs and fibers at issue at the request of the Government in response to MacDonald's 1990 petition. With regard to the hairs, Malone stated in his original February 14, 1991, affidavit that it was likely that the saran fibers came from a doll and not from a wig. Specifically, he stated:

All of these saran fibers . . . are consistent with the type of fibers normally used in the production of doll hair from the FBI laboratory reference collection . . . . These fibers . . . are not consistent with the types of fibers normally used in the manufacture of wigs, and based on my comparisons, are not like any of the known wig fibers currently in the FBI Laboratory reference collection. . . .

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[A] grey delustered modacrylic [modified acrylic] fiber, previously removed from the clear handled hairbrush . . . and exhibits the same microscopic and optical properties as the grey delustered modacrylic fibers found in the . . . [hair piece] previously owned by Colette MacDonald. . . .

In connection with this matter I examined a blue handheld hairbrush . . . . I removed a grey delustered modacrylic fiber . . . from this item. This fiber . . . exhibits the same microscopic and optical properties as the grey delustered modacrylic fibers found in the

composition of the previously mentioned . . . [hair piece] of Colette MacDonald, and accordingly, is consistent with having originated from the [hair piece].

DX 5025, Ex. 1, ¶¶ 12-13. In his May 21, 1991, supplemental affidavit, Malone stated:

4. . . . [T]o the extent that petitioner contends that the “22-inch blond synthetic fibers” . . . are consistent with having originated from a cosmetic blond wig allegedly owned by Helena Stoeckley, there is no factual or scientific basis for this conclusion. I base my statement on the following facts and observations.

5. . . . [O]ne [saran fiber] matched the FBI Laboratory’s known saran doll hair reference exemplar . . . and did not match any wig exemplar in the reference collection.<sup>26</sup> Similar examinations performed on [another saran fiber] revealed a single light blond striated saran fiber, which was 22-inches in length, and also did not match any wig exemplar in the FBI reference collection. Lastly, similar examinations performed on [a third saran fiber] revealed a single grey, declustered, modacrylic fiber which was approximately 5-inches in length, and which matched modacrylic fibers removed from the . . . hair piece or “fall” worn by Colette MacDonald. Therefore, I can state that the only blond synthetic fibers which are 22-inches or longer and which were removed from Exhibit K, E-323 [the clear-handled hairbrush], are saran, which does not resemble human hair, and not modacrylic, which does resemble human hair.

6. In addition to performing physical examinations in this case, I have consulted numerous standard references (see Exhibits 1-6 attached to this affidavit) which are routinely used in the textile industry and as source material in the FBI Laboratory, concerning the industrial applications for fibers, including saran. None of these standard references reflect the use of saran fibers in cosmetic wigs; however, they do reflect the use of saran fibers for wigs for dolls and manikins, in addition to such uses as dust mops and patio screens.

7. Further, based upon my own investigation and research in this case, I can state that saran has the following physical characteristics which make it unsuitable for use in cosmetic wigs, in which the objective is to have the wig hair appear indistinguishable from natural human hair. Saran is very straight, is only manufactured as a continuous monofilament, does not lay down or drape like human hair, and is also too shiny to resemble human hair. Lastly, saran can not be manufactured as a “tow” fiber<sup>27</sup>, which is essential to the cosmetic wig manufacturing process.

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<sup>26</sup> [Affidavit Footnote] The FBI Laboratory’s reference collection of fibers has been maintained for over forty years. Among other items, it contains numerous samples from wigs, all of which I have personally examined and none of which revealed a known wig exemplar of saran. Rather, all of the known wig exemplars are composed of polyvinyl chloride (PVS), modacrylic or human hair.

<sup>27</sup> [Affidavit Footnote] A “tow” is a large group of continuous filaments, without any definite twist, which is cut into definite lengths.

DX 5025, Ex. 2. (second footnote omitted in original).

With regard to the fiber evidence, Malone examined the relevant fibers and found that the source of most of the fibers was unknown, “due to the absence at this time of known standards for comparison.” DX 5025, Ex. 1, ¶¶ 16-18. He found that the white wool fibers found on the right bicep area of Colette’s pajama top and on the wooden club were consistent with having originated from a shag rug in the MacDonald’s master bedroom. DX 5025, Ex. 1, ¶¶ 16-17.

The Government also proffered the affidavit of Shirley S. Green, an FBI physical science technician. *See* Aff. of Green [DE-138-11]. Therein, Green identified certain laboratory bench notes as “unequivocally” hers and not that of Kathy Bond, another laboratory technician. *Id.* ¶ 2. She also recounted that the Government requested that fibers and debris removed from the club (Q89) be compared to two throw rugs found in the MacDonald home. *Id.* ¶ 6. After receiving this directive, Green “made an additional slide of fibers from the Q-89 debris.” *Id.* In her affidavit, she specifically clarified that “[i]t should be noted that this examination was in addition to the comparison of the debris from Q-89, with the known threads from Q-12 [MacDonald’s pajama top] performed by Mr. Stombaugh in 1974.” *Id.* With regard to the 1974 examination, Green’s notes indicate that after receiving the vial of debris from the club on September 24, 1974, she placed 2 short pieces of purple cotton thread, like Q12, in a pillbox. She also stated:

Exam by PMS – notes + yn comp’s

“ ” MSC – notes + wood comp’s

Results (10-17-74) to Charlotte

2 pcs purp. cot. sew. thr like used in constr of Q12  
were found in Q89

Results (11-5-74) to Charl.

Wood particle in Q89 could not be fitted into Q14, but may have come from  
Q14.

Evid. retained in Lab.

See Bench Notes [DE-138-13]. In 1974, Stombaugh examined the debris, identified two purple sewing threads, and later opined at trial that they could have originated from MacDonald's pajama top. Ttr. 4097-98; see also 1974 Report from Stombaugh [DE-138-8] at 6.

Judge Dupree denied MacDonald's 1990 petition, relying on three separate independent grounds. First, Judge Dupree found that the new evidence was not material. *MacDonald V*, 778 F. Supp. at 1350-51. Judge Dupree also found that the Government attorneys did not violate the mandates of *Brady v. Maryland*, 373 U.S. 83 (1963). *Id.* at 1353-54. Finally, Judge Dupree found the 1990 petition to be barred by the doctrine of the abuse of the writ. *Id.* at 1356-60.<sup>28</sup>

MacDonald appealed Judge Dupree's decision. The Fourth Circuit affirmed Judge Dupree's decision on the third ground, abuse of the writ, and did not reach the merits of MacDonald's 1990 petition. *MacDonald VI*, 966 F.2d at 856, *cert. denied*, 506 U.S. 1002 (1992).

On April 22, 1997, MacDonald file a motion to reopen the 1990 Petition, arguing that the affidavits of Malone were materially false and misleading. MacDonald also sought an order permitting new DNA testing of certain evidence that had been collected form the crime scene. In support of his motion, he submitted evidence that two standard reference texts on textiles stated that saran could be manufactured in "tow" form and was used in the manufacture of wigs. See DX 5025, Aff. of Cormier No. 1, ¶¶ 17-18. MacDonald also submitted evidence suggesting that the FBI reference library included these two standard reference texts. *Id.* ¶ 24. Additionally, MacDonald submitted evidence regarding

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<sup>28</sup> Also in connection with the 1990 petition, MacDonald submitted a second declaration from Bryant Lane, executed on July 15, 1988 [DX 5033]. The court discusses this declaration in the context of the 2006 Britt Claim filings.

interviews the Government and the defense team conducted with a manufacturer of synthetic fibers and two employees of Mattel Toys, Inc.

With regard to the manufacturer, MacDonald submitted the FBI's interview summary ("Form 302") of its conversations with A. Edward Oberhaus, Jr., an executive of the Kanecka America Corporation, which was at the time the world's largest producer of modacrylic fibers. Aff. of Cormier No. 1, Ex. 12 [DE-48]. The Form 302 reflects that Oberhaus said he was familiar with the production and use of saran fibers, both at the time of the interview and prior to 1969-70. The FBI then drafted an affidavit consistent with the information in its 302 form, but Oberhaus refused to sign it, because he did not consider himself to be an expert on the uses of saran. Aff. of Cormier No. 1, Ex. 10 ¶ 9 [DE-48]. Oberhaus did, however, draft his own affidavit, which stated that wigs and hairpieces manufactured after 1960 "have most often been manufactured with human hair, modacrylic fibers, other fibers, or a combination of any of these filaments." Aff. of Cormier No. 1, Ex. 11 ¶ 8 [DE-48].

MacDonald also proffered affidavits of Judith Schizas and Mellie Phillips, two employees of Mattel, Inc., who were knowledgeable about dolls, along with the Form 302s summarizing the FBI's interviews with the women. Both women stated they were unaware of any Mattel doll having hair the length of 22 or 24 inches; Schizas, however, also told the FBI that it was possible – although not probable – that hair fiber that length came from a doll if the fiber was doubled over in the rooting process. Aff. of Cormier No. 1, Ex. 13 ¶¶ 7, 10; Ex. 14 ¶ 5 [DE-48]. Phillips also told MacDonald's investigative team that she recalled telling the FBI that saran could be manufactured in tow form. Aff. of Cormier No. 1, Ex. 14 ¶ 4 [DE-48].

Additionally, MacDonald proffered evidence of what he characterized as a "pattern of deception" by Malone in other cases, in the form of excerpts from the Final Report of Department of

Justice Inspector General Michael R. Bromwich, *The FBI Laboratory: An Investigation into Laboratory Practices and Alleged Misconduct in Explosives-Related and Other Cases*, and an April 16, 1997 article from the *Wall Street Journal*. Aff. of Cormier No. 2, Ex. 1, Ex. 3 [DE-49].

Finally, MacDonald presented affidavits from individuals in the fiber and wig manufacturing industries who stated that saran fibers were manufactured in tow form and were used in wigs prior to 1970. Aff. of Cormier No. 1, Exs, 15, 17, 18, 22, 23.

This court denied MacDonald's 1997 motion, insofar as it sought to reopen the 1990 petition, finding that MacDonald had not shown that Malone's testimony was material to the outcome of the litigation on the 1990 petition. *MacDonald VII*, 979 F. Supp. at 1063. This court also found that MacDonald had shown insufficient evidence of a fraud upon the court. *Id.* at 1064-67. The court also ruled that MacDonald's "claim that newly gathered evidence that saran fibers were in fact used in the manufacture of human wigs prior to 1970, added to the weight of previously amassed exculpatory evidence, demonstrates his factual innocence and that he is entitled to a new trial, is TRANSFERRED to the United States Court of Appeals for the Fourth Circuit." *Id.* at 1069.

With regard to the matters transferred, the Fourth Circuit ruled that "the motion with respect to DNA testing is granted and this issued is remanded to the district court" but that "[i]n all other respects, the motion to file a successive application is denied." *MacDonald VII*, No. 97-713 (4th Cir. Oct. 17, 1997). In a separate opinion, the Fourth Circuit affirmed this court's denial of the motion to reopen. *MacDonald IX*, 161 F.3d at 4. On remand, this court entered orders setting the parameters for DNA testing. It took nine years for the testing protocol to be agreed upon by the parties, the tests to be conducted, and the results submitted, which are discussed in more detail below.

**K. Current § 2255 motion**

As this court has recounted, in 2006 MacDonald sought and received a pre-filing authorization from the Fourth Circuit, pursuant to 28 U.S.C. § 2244(b) and § 2255, permitting him to submit his proposed successive § 2255 motion to determine whether he meets the requirements for a successive § 2255 motion. MacDonald promptly filed his proposed successive § 2255 motion [DE-111] in this court on January 17, 2006, alleging that he had newly discovered evidence that proved a constitutional error occurred. Specifically, he argued that the evidence – the affidavit of former Deputy United States Marshal Jimmy Britt – showed that Stoeckley was prepared to testify at MacDonald’s trial that she and her accomplices were responsible for the murders, but that prosecutor James Blackburn threatened her into changing her testimony and proceeded to misrepresent to both the court and defense counsel what Stoeckley said to him.

Shortly thereafter, MacDonald filed a motion to add an additional predicate to his proposed § 2255 motion, in what has become known as the “DNA claim” or “unsourced hairs claim.” Relying on the March 10, 2006 mitochondrial DNA test results [DE-123-1], MacDonald sought to add a claim for relief to his proposed successive § 2255 motion, and also asked the court to consider the DNA results as part of the evidence as a whole. Finally, over a year later, MacDonald filed a motion asking the court to consider the affidavit of Helena Stoeckley’s mother as part of the evidence as a whole.

The evidence MacDonald proffered for his current proposed § 2255 motion is summarized below.

**1. November 3, 2005, Affidavit of Jimmy Britt**

The first piece of evidence attached to MacDonald’s 2006 proposed § 2255 motion was the November 3, 2005 affidavit of Jimmy Britt. *See* November 2005 Aff. of Britt [DE-115-2] at 2-5; *see*

also DX 5058. Therein, Britt averred that he was one of the deputy marshals assigned to the proceedings of the MacDonald trial in 1979, and that as part of his duties he was assigned to travel to Greenville, South Carolina, to pick up Stoeckley. DX 5058 ¶¶ 6, 11. He stated that he picked up Stoeckley at the county jail in Greenville, and that Ms. Jerry Holden, another employee of the Marshal Service, accompanied Britt as he drove Stoeckley to Raleigh. DX 5058 ¶¶ 11, 13. Britt asserted that during the course of transporting Stoeckley to Raleigh, she brought up the MacDonald trial, and said that she, along with others, were in the MacDonald house on the night of the murders, and specifically mentioned a hobby horse. DX 5058 ¶ 15.

Britt also stated he was assigned to escort Stoeckley to the courthouse the day after she made these statements. Once there, he first took Stoeckley to meet with MacDonald's attorneys on the seventh floor of the building. DX 5058 ¶¶ 17-18. He then escorted her to the United States Attorney's office on the eighth floor. DX 5058 ¶ 18. Britt stated that James Blackburn asked Britt to remain in the room, and Britt did so. According to Britt, during Blackburn's interview of Stoeckley, she told Blackburn the same things she had said to Britt the day before. Namely, she mentioned the hobby horse and that she and others were inside MacDonald's home on the night of the murders. DX 5058 ¶¶ 20, 22. She also said she had gone to the MacDonald house to acquire drugs. DX 5058 ¶ 22. Britt claimed that in response, Blackburn told Stoeckley: "If you testify before the jury as to what you have told me or said to me in this office, I will indict you for murder." DX 5058 ¶ 24.

Britt also stated that he previously told this information to two of his friends – and former employees of the Marshal Service – Cecil Goins and Lee Tart, but that he had refrained from coming forward to the court out of respect for the late Judge Dupree. DX 5058 ¶¶ 7, 10. Britt also took a polygraph examination regarding the matters he set forth in the affidavit, and MacDonald attached the



report stating that the examiner's opinion that Britt showed "no reactions indicative of deception." Davenport Report [DE-115-2] at 6-7.

## 2. Affidavit of Lee Tart

MacDonald also submitted the affidavit of Lee W. Tart, another former Deputy United States Marshal. Tart stated that in 2002, Britt told him about Stoeckley's statements that she had been in the MacDonald house on the night of the murders, and that she said the same to Blackburn. Tart also indicated that he thought Britt would tell nothing but the truth. Aff. of Tart [DE-115-2] at 9-10.

## 3. Affidavit of Wendy Rouder

MacDonald also proffered an affidavit from Wendy Rouder, the law clerk for Segal who gave *voir dire* testimony at the trial regarding Stoeckley's comments over a weekend recess. In the affidavit, Rouder averred that when she was contacted by MacDonald's present wife Kathryn about Jimmy Britt's November 2005 affidavit, "Helena Stoeckley's unexpected response to my questions in August of 1979 then made sense to me." Aff. of Rouder [DE-115-3] at 49-51. In her September 2005, affidavit, Rouder recalled that Stoeckley had admitted "her involvement in the MacDonald family murders – that she had seen a hobby horse in the MacDonald home, that she was there the night of the murders, and that she could name the people who killed Dr. MacDonald's family." *Id.*<sup>29</sup> Rouder recalled:

I had asked her why she was making admissions to me in private when she had made public denials at the courthouse, and why she did not testify in court as to what she was telling me. She had then responded: "I can't. I'm afraid." I asked her what she was afraid of. I *fully expected* her to say that she was afraid of the people with whom she was involved the night of the MacDonald family murders, or the person or persons who the motel manager had reported as having assaulted her. Thus, I was very surprised

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<sup>29</sup> Ms. Rouder did not testify in 1979 that Stoeckley told her that she could name MacDonald's killers. It was Red Underhill who repeatedly testified on *voir dire* that Stoeckley had said to him that she could "name three people," but would not do so because "I doubt if [sic] I live if I do." *See, e.g.,* Ttr. 5923.

when Ms. Stoeckley responded that she could not testify as to what she was sharing with me because of “*those damn prosecutors sitting there.*” And she added words to the effect of “*They’ll fry me.*”

*Id.* at 51, ¶ 10 (emphases in original); *see also* Ttr. 5928-50. Rouder added that while she was in the motel room talking with Stoeckley, “the phone rang and the hotel operator had asked for me specifically. The call was from Judge Franklin Dupree. He addressed me by name, and asked me why I was there with Helena Stoeckely, and warned me not to ask her any questions.” *Id.* ¶ 13.<sup>30</sup>

#### **4. Affidavit of Everett Morse**

Another affidavit filed with the proposed § 2255 motion was that of Everett Morse, who lived in the same apartment complex as Greg Mitchell during 1972-74. Morse stated that in the spring or summer of 1973, he mentioned to Mitchell that he needed golf balls. A few days later, Mitchell produced a case of new golf balls. When Morse refused to pay for them, Mitchell became angry and told Morse that if he did not take and pay for the golf balls, he would murder him as he had murdered Jeffrey MacDonald’s family. According to Morse, Mitchell then said that if Morse ever mentioned Mitchell’s involvement in the MacDonald murders, he would kill him. Aff. of Morse [DE-115-3] at 54-55.

#### **5. Declaration and Affidavit of Bryant Lane**

MacDonald also filed another affidavit of Bryant Lane.<sup>31</sup> *See* 2005 Aff. of Lane [DE-115-3] at 56-58. This was the third such document executed by Lane; the second, a declaration executed in 1988,

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<sup>30</sup> Rouder had not included this detail in her *voir dire* testimony in 1979.

<sup>31</sup> As explained above, Mitchell befriended Lane and his wife when he was living in Charlotte in the 1970s.

was filed in connection with the 1990 § 2255 motion. *See* DX 5033. The court will review the contents of both documents.

The 1988 declaration provides much more detail about Greg Mitchell's statements than Lane's first declaration, which was filed in connection with MacDonald's 1984 motion for new trial. Specifically, Lane stated that soon after Mitchell quit his job at the Toledo Scale Company, Mitchell was "depressed and drinking" and "broke down in tears and said that he had killed the MacDonald family." DX 5033 ¶ 3. Lane stated that Mitchell said, "I personally know MacDonald is innocent, because I was the one that killed the MacDonald family." *Id.* Lane promised Mitchell that he would never tell anyone what he said. *Id.*

In a later conversation, Mitchell told Lane that he was being harassed by the FBI and he thought his phone was bugged. During another conversation where Lane's wife was present, she told Mitchell that he shouldn't have anything to worry about if he wasn't guilty, and Mitchell responded with tears in his eyes: "Well that's it. I did do it, I am guilty." DX 5033 ¶¶ 4-5. A few months before Mitchell passed away in 1982, he told Lane's wife that "[h]e was guilty of a crime he committed at Fort Bragg years ago, and he might have to go away to Haiti or somewhere to live." DX 5033 ¶ 11.

Lane asserted that his wife, after reading the novel *Fatal Vision*, called the FBI to report what Mitchell had said. After calling the FBI back twice and not getting a satisfactory response, Lane then contacted MacDonald's then-lawyer, who arranged for Ray Shedlick to take their statements. Lane noted that he only told Shedlick what Mitchell had said to his wife, because he was not comfortable telling strangers the whole story. DX 5033 ¶¶ 12-13. Thereafter, the FBI contacted Lane and his wife. Lane still did not tell the FBI everything that Mitchell had said, because he found the FBI agent to be sarcastic. DX 5033 ¶ 14.

The 2005 affidavit from Lane repeats many of the same statements he previously attributed to Mitchell in the 1988 declaration. DX 5033 ¶¶ 7, 10. Lane also, however, provided information about another statement from Mitchell. He said that approximately six months before he died, Mitchell told Lane that

in 1970, he was addicted to heroin, and that “MacDonald could have helped him.” Mitchell thought Macdonald knew an intermediary who could supply Mitchell with methadone, in order to kick hard drugs. Mitchell stated to me that he and his friends went to the MacDonald home on February 17, 1970, to “teach him a lesson” and intended to “whup ‘em.” Mitchell told me he was high on at least four drugs: Mescaline, angel dust, PCP and one other and said that “things got bad” and that “you don’t realize what you’re doing” when you are so high on drugs. Mitchell told me that Jeff MacDonald being alive was simply “lucky” because the group “didn’t know what they were doing” and “didn’t mean to kill anybody.”

2005 Aff. of Lane [DE-115-3] at 57, ¶ 8. Lane also said that Mitchell claimed to have tried to turn himself in on numerous occasions. *Id.* at ¶ 9. Lane also said that Greg Mitchell’s former business partner said that Mitchell “had confessed to his involvement in the MacDonald murders on many occasions.” 2005 Aff. of Lane [DE-115-3] at 56, ¶ 7.

#### **6. Affidavit of Donald Buffkin**

MacDonald also offered the affidavit of Donald Buffkin, a man who frequented the Hull Bar in Charlotte, North Carolina, where he met Mitchell in 1980. Aff. of Buffkin [DE-115-3] at 59-61; DX 5031. Buffkin reported being at the Hull Bar at least once a month during the period of 1980-82, and speaking to Mitchell, who he characterized as a “definite alcoholic and pot smoker,” each time he was there. DX 5031 ¶¶ 6-7. According to Buffkin, Mitchell told him on at least two occasions that he was “involved” and was there at the MacDonald murders. DX 5031 ¶ 6. According to Buffkin,

Gregory Mitchell stated to me that “what they [the government] said about MacDonald isn’t true. Gregory Mitchell also stated to me that his reason for being involved in the murders was that Jeffrey MacDonald “wouldn’t do what they [Mitchell and his friends]

wanted.” . . . Gregory Mitchell also stated that he was “mad” at Jeffrey MacDonald because he and some friends from Vietnam were involved in sending heroin back to the United States in bodybags and that he believed MacDonald was “on the receiving end.” He went to the MacDonald home to demand money or “dope.”

DX 5033 ¶ 6. Although Buffkin did not believe Mitchell at the time he made the statements, and believed the statements to be “bar talk,” he eventually contacted MacDonald’s attorneys in 2003, because after seeing television programs about the case, he began “to think that Mitchell’s statements were true and worth reporting.” DX 5033 ¶ 1.

#### **7. Hamlet Hospital records**

MacDonald also proffered an FBI report summarizing patients MacDonald had treated the day before the murders in the emergency room at a hospital in Hamlet, North Carolina. *See* Investigation Concerning Blood Types [DE-115-3] at 62-64; *see also* DX 5045. Those records indicated that MacDonald treated at least five patients who had Type O blood, including a patient he treated for a puncture wound to the left foot.

#### **8. James Blackburn conviction**

MacDonald filed the Judgment and Commitment Order for James Blackburn, arising out of his 1993 conviction for embezzlement and obstruction of justice. *See* Judgment and Commitment [DE-115-3] at 142-43.

#### **9. FBI reports**

MacDonald also proffered FBI reports, asserting that these reports showed Type B blood was present in the area where he said he struggled with his attackers. Specifically, he proffered the U.S. Army CID Preliminary Laboratory Report [DE-123-1] of April 6, 1970, which lists “Exhibit D-144 Portion of hall floor at west entrance bearing red-brown stains.” *See* DX 5103 at 5. He also proffered

the U.S. Army CID Chart of Exhibit Findings with Chemical Analysis, which showed that serology testing results for D-144 to be human blood that was indicated to either blood group type B (the same as Jeffrey MacDonald) or O (the same as Kristen MacDonald). DX 5104 at 10.

#### **10. Mitochondrial DNA test results**

In 2006, the Armed Forces Institute of Pathology's DNA Identification Laboratory ("AFDIL") reported its DNA testing results. Of particular importance, AFDIL found that three specimens – 75A, 91A, and 58A(1) – could not be matched to any other sample tested. DX 5102 at 5. MacDonald's arguments as to each of the three unsourced hairs were:

75A

Thus, it is clear that this unidentified hair was found underneath where Colette's body lay at the crime scene, and that it was a full length body or pubic hair. The fact that it had both the root and follicular tissue attached is indicative that it was pulled from someone's skin and lends great weight to this specimen as probative that there were unknown intruders in the home with whom Colette struggled and from whom she extracted a hair.

Mem. in Supp. of Mot. to Add an Additional Predicate [DE-123] at 3-4.

91A

Found with its root intact along with blood residue underneath the fingernail of three year old Kristen MacDonald, who at the crime scene was found murdered in her bed . . . and it is noted that chemical analysis of the hair indicated a finding of blood on the hair . . . . Thus, to find an unidentified hair, mixed with blood residue, with root intact, underneath one of her fingernails, strongly suggests that while she was defending herself against blows from an intruder she grabbed at or scratched back at the intruder such that as a result, the intruder's hair came to reside under her fingernail.

*Id.* [DE-123] at 1-3. MacDonald also proffered laboratory reports purporting to show that 91A was, in fact, a human hair, with the hair root intact, found underneath the fingernail of Kristen MacDonald.

*See* DX 5103; DX 5104. With regard to the third hair, MacDonald argued:

58A(1)

According to the [AFDIL] laboratory notes, it is a hair with root intact, and measured approx. 5mm in length. [Appendix 1, tab 5, (p.3).] Thus, this unidentified hair was found on the bedspread on the bed where Kristen MacDonald was found murdered.

Mem. in Supp. of Mot. to Add an Additional Predicate [DE-123] at 4.

**11. Affidavit of the elder Stoeckley**

Finally, MacDonald proffered the affidavit of the elder Stoeckley [DE-143-2]. Therein, the elder Stoeckley stated that on two separate occasions, her daughter confided in her that she was present in the MacDonald house during the murders on February 17, 1970. Aff. of Elder Stoeckley [DE-143-2] ¶ 3. The first occasion was after the trial and prior to Helena Stoeckley moving to South Carolina. The second occasion was shortly before her death in 1983, when Helena Stoeckley knew she was dying. *Id.* ¶ 5. On the second occasion, Helena Stoeckley told her mother she was afraid to tell the truth because she was afraid of the prosecutor. *Id.* ¶ 11. The elder Stoeckley stated that Helena told her that she and Greg Mitchell, along with two of their friends, went to MacDonald apartment in the early morning hours of February 17, 1970, to intimidate MacDonald because they believed he was being too hard on drug users in the Fayetteville community. *Id.* ¶ 6. Although Helena told her mother that she and three other men were all high on drugs at the time, she still “absolutely knew” what was happening; she saw a hobby horse in a child’s bedroom and saw one of the men stab MacDonald. Once Greg Mitchell and one of the other men “went out of their minds” and were killing the family, she and the other man fled. *Id.* ¶¶ 7-8. Helena also told her mother that she tried to tell the truth but that the FBI and other law enforcement officials told her to keep quiet. *Id.* ¶ 9.

## **L. September 2012 Evidentiary Hearing Testimony**

Following the remand from the Fourth Circuit, and after various motions practice and briefing from the parties, the court held an evidentiary hearing in September 2012. MacDonald presented his evidence first, followed by the evidence from the Government.

### **1. Wade Smith**

The first witness called to testify was Wade Smith, one of MacDonald's attorneys during the trial. Htr. 21. Smith explained that the basic defense theory at trial was that MacDonald was in his home sleeping on the couch when intruders came into house and killed his family and wounded him. Htr. 22. Accordingly, any evidence supporting this theory was crucial to MacDonald's case. Htr. 23-24.

Smith testified that in January 2005, Jimmy Britt<sup>32</sup> called him and said "that something had worried him and had been heavy on his mind and heart for all these years since the MacDonald case and he needed to talk to me about it and sort of unload his soul." Htr. 25. Smith invited Britt to his office, where Britt told Smith that during the MacDonald trial, he had been dispatched to South Carolina to retrieve Stoeckley, and during her transport she voluntarily made statements that indicated she was in the house when the murders occurred. Htr. 26. Britt also told Smith that he was present for the Government's interview of Stoeckley, and that Stoeckley had told the prosecutor that she was in the MacDonald house. Britt stated that the prosecutor informed Stoeckley that if she made such statements in court, he would indict her for first degree murder. Htr. 26-27.<sup>33</sup>

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<sup>32</sup> Britt died shortly before this court issued its 2008 ruling in this case.

<sup>33</sup> After meeting with Smith, and prior to giving a statement under oath, Britt apparently executed a "Statement of Facts" that was notarized by his friend and former deputy marshal, Lee Tart. Therein, Britt said he was voluntarily submitting the Statement of Facts "regarding the irregularities I observed during the trial of Jeffrey MacDonald." GX 2085. According to Britt, "[t]he specifics are too numerous to list in this Statement of Facts" but he listed "the names of the people involved in the



Smith recognized the importance of what Britt told him, and subsequently engaged a court reporter and took a statement from him under oath. Htr. 27; DX 5055. In this statement, Britt said he waited to come forward about his concerns about the MacDonald trial out of respect for Judge Dupree, Rich Leonard, and John Edwards, all of whom he said were working for the court during the time of the MacDonald trial. DX 5055 at 9-10. Britt also stated that he was asked to travel to Charleston, South Carolina, to pick up Stoeckley, and he assumed custody of her at the United States Marshals Office in Charleston. DX 5055 at 12. He recounted that when he picked up Stoeckley, she was wearing a floppy hat, and he transported both Stoeckley and Ernest Davis to Raleigh, where he checked them into the Holiday Inn on Hillsborough Street in Raleigh. DX 5055 at 13-16. Britt said that he picked Davis and Stoeckley up at the hotel the following morning and transported them to court, where he escorted her to the defense interview, and then to Blackburn's office. DX 5055 at 16-17. Britt claimed that Blackburn was the United States Attorney at the time. DX 5055 at 17. According to Britt, Stoeckley told Blackburn that she was in the MacDonald home on the night of the murders to get drugs, and she mentioned a hobby horse. Britt stated that Blackburn told her that if she testified to that, he would indict her for murder. DX 5055 at 19-21. Following the interview with Blackburn, Britt took Stoeckley immediately to the courtroom, at which time he saw Blackburn going into Judge Dupree's chambers, and then approximately ten to fifteen minutes later, Blackburn and Judge Dupree returned to the courtroom. DX 5055 at 22-23.

Smith also asked Steve Davenport, who formerly worked for the State Bureau of Investigation, to conduct a polygraph examination of Britt. Htr. 40-44; DX 5057. Davenport opined that Britt showed

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irregularities." *Id.* This list included "[t]he late Franklin Dupree, United States District Judge, . . . Rich Leonard and John Edwards, Law Clerks for Judge Dupree, and Jim Blackburn, United States Attorney, and the Foreman of the Jury."

no reactions indicative of deception. Htr. 44. Smith also testified that he was aware Davenport suffered a stroke sometime prior to 2006, did not have any record associated with the polygraph, and was now unavailable to answer questions about his conduct of the exam. Htr. 184-85.

Smith also obtained two affidavits from Britt; one was executed on October 26, 2005, the other in November 2005. Htr. 44-52; DX 5058; DX 5059. The October affidavit stated, in at least one paragraph, that Britt transported Stoeckley from Charleston to Raleigh; the November affidavit states that he transported her from Greenville to Raleigh. DX 5058 ¶ 15; DX 5059 ¶ 15; *see also* Htr. 40 (“Sometimes he said Charleston. Sometimes he said Greenville.”). The October affidavit also mentions what Britt felt was unethical behavior – Judge Dupree accepting cakes made by jurors – during the MacDonald trial. DX 5058 ¶ 28.

In February 2006, Britt executed an addendum to his affidavit, which included more detail than his previous affidavits. Htr. 199; GX 2089.<sup>34</sup> Specifically, Britt stated that he and Holden transported Stoeckley to the courthouse on August 15, 1979, for her interviews with the parties. GX 2089. He also stated that the defense interview of Stoeckley concluded around noon, and he then escorted her to the U.S. Attorney’s office. Britt again asserted that he was present during Stoeckley’s interview with the Government, and quoted Blackburn as telling her: “If you go downstairs and testify that you were at Dr. Jeffrey MacDonald’s house on the night of the murders, I will indict you as an accessory to murder.” *Id.* Britt also stated that after Stoeckley testified on August 17, 1979, he took her to The Journey’s End motel, and was later directed by Chief Deputy Marshal Eddie Sigmon on Sunday, August 19, 1979, to check Stoeckley out of that motel and to register her at the Holiday Inn. Britt

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<sup>34</sup> Smith had not seen the addendum to the affidavit just before the September 2012 hearing. Htr. 199-200.

recounted that on Monday, August 20, 1979, Judge Dupree “stated as a matter of record that he was not going to permit Ms. Stoeckley to testify again, [and] that her brain was scrambled (like an egg).” According to Britt, Judge Dupree instructed the jurors not to consider the testimony Stoeckley had given on Friday, August 17th. Finally, Britt stated:

Hugh Salter, U.S. Marshal, asked me to go to the U.S. Marshal’s Office and see Ms. Reddick and that she would give me a check for four (4) days of subsistence. He asked me to cash the check and go to the bus station and purchase Ms. Stoeckley a one-way ticket to Charleston, SC, in which I did and for me to go to The Holiday Inn, Hillsborough Street, Raleigh, and check her out of the hotel and take her to the bus station and make sure she got on the bus and give the balance of her subsistence. This was on August 20, 1979, and I have not seen or heard from her since.

GX 2089.

Smith also testified as to his recollection of specific events in the MacDonald trial. Smith reviewed the portions of the trial transcript indicating that Stoeckley had been taken into custody pursuant to a material witness warrant, and that she was to make an initial appearance in South Carolina. Htr. 64-70. Smith noted that once Stoeckley was in Raleigh, he and Segal interviewed her, in the presence of Joe McGinniss, who was embedded as part of the defense team during the trial, in order to later write a book. Htr. 59, 77. Smith testified that Stoeckley made no indication that she was ever in the MacDonald house, and did not vary her answers even in response to Segal adjusting his interviewing tactics. Htr. 79-80. Segal told Stoeckley that the statute of limitations had run, and also confronted Stoeckley with crime scene photographs and the “Stoeckley witnesses” who all claimed that she had made inculpatory statements to them over the years. Htr. 80-90. Stoeckley did not change her response. Smith also reviewed portions of the trial transcript detailing a conference held before Judge Dupree, indicating that MacDonald was a non-indigent defendant, and once Stoeckley was released from her material witness custody, she would be placed under subpoena by the defense. Htr. 100.

Smith also recalled bumping into Blackburn in the federal building following the prosecution's interview of Stoeckley. Blackburn told Smith that Stoeckley had not said anything meaningful in his interview, and Smith said much the same thing. Htr. 102-03. The following day, Stoeckley took the stand. When Smith was questioned about Segal's representations to Judge Dupree during a bench conference regarding Segal's account of what Stoeckley had told the defense team and his request to treat her as a hostile witness, Smith said:

It was – It was certainly – let me just put it his way, I was absolutely devoted to this case and upheld my role as counsel and I'm still devoted to this case, but I did not hear Helena Stoeckley say useful things for us. It is certainly possible. And I mentioned [a] while ago, maybe I was out of the room. I do not know the answer. But I can only speak for myself and that is that when I was present she did not say things that helped us.

Htr. 114.

Smith also testified about his recollection of conversations he had with Jerry Leonard, the attorney appointed to represent Stoeckley during the MacDonald trial. He clarified that his knowledge of Stoeckley's comments that seemingly tied her to the case came from Wendy Rouder, and not Leonard. Htr. 153-54. Smith also testified that Leonard has never told him anything that Stoeckley said to Leonard. Htr. 154.

## **2. Mary Britt**

MacDonald's second witness was Mary Britt, the former wife of Jimmy Britt. Mary married Jimmy in 1957, and for most of their marriage he worked as a deputy United States Marshal. Mary remembered that Jimmy worked the MacDonald trial, and she specifically recalled that he came home one day during the trial and said the following day he would be traveling to South Carolina to pick up a witness. Htr. 223, 242. When he got home after transporting the witness from South Carolina, he was "very excited . . . because he felt the woman talked in the car coming back about her involvement, that

he said, in his words, she described the inside of the apartment where the MacDonalds lived . . . to a T[,] even to the fact of a child's hobby horse that was broken." Htr. 223.

Mary testified that she was anxious for Jimmy to return home the next day because she wanted to know what happened during the trial. Htr. 225. Jimmy told her that "they can't use her testimony because her brain is fried from the use of drugs." *Id.* Jimmy also told Mary that during the trial, he arrived at the hotel where Stoeckley was staying and found that she had been "beaten . . . to a pulp" by her boyfriend," and that he was upset with Stoeckley's boyfriend for doing so. Htr. 245-46. Jimmy also expressed his displeasure with the fact that some jurors brought in cakes for Judge Dupree. Htr. 247. Although Jimmy told Mary that Stoeckley had been interviewed, he never told her that Blackburn threatened Stoeckley. Htr. 248. Later, after MacDonald was found guilty, Jimmy told her that he refused to take MacDonald into custody. Htr. 226.

Mary and Jimmy eventually separated and divorced. During their separation, Mary saw the mini-series *Fatal Vision*, and later asked Jimmy if he had seen it. According to Mary, Jimmy answered through gritted teeth: "It's not accurate. They had me standing in the hall. I was in that room. I heard every word that was said." Htr. 227. He still did not, however, mention any threat from Blackburn.

### **3. Gene Stoeckley**

Gene Stoeckley, the youngest brother of Helena Stoeckley, was called as MacDonald's third witness. Gene testified that he was approximately ten or eleven years old at the time of the MacDonald family murders, and that his sister's ties to the case had an impact on both him and his family. Htr 268-70. He was harassed at school, and his family received threatening phone calls. Gene testified that he held his sister accountable for much of the harassment he encountered, and eventually when he was in high school he confronted her about it when she had returned to the house for a visit. Htr. 270-71.

Gene said that her response was to tell him “to be careful because she had certain friends” and that “she also had an ice pick.” Htr. 271.

Gene stated that his family did not talk about the MacDonald case, although he knew that his parents were in Raleigh for the trial. Htr. 272-73.

He testified that his sister Helena died in January 1983, and that he did not have much contact with her between the time of the trial in 1979 until her death. Htr. 274. He did, however, recall seeing his sister in the fall of 1982 when both he and Helena came to their parents’ house for a visit at the same time. Htr. 274-75. She had brought her infant son with her. Helena passed away a few months later, but at the time of her visit she did not appear to be sickly to Gene, although she was jaundiced. Htr. 275-76.

Gene’s father passed away in 2002. His mother, the elder Helena Stoeckley, eventually moved to an assisted living facility in Fayetteville, North Carolina, due to health problems. Htr. 279. Gene, who lived in Fuquay-Varina, North Carolina, oversaw her financial and medical needs and saw her about once a week. Htr. 280. Near the end of the summer of 2006, she became seriously ill and was admitted to the hospital, at which time Gene was told that she wasn’t going to survive. Htr. 281. However, she recovered, and moved back into the assisted living facility. *Id.*

Gene began having intimate discussions with his mother about their family, and specifically questioned his mother about his sister’s involvement in the MacDonald case. Htr. 283. Gene testified that his mother said that “Helena was there that night” and that “Helena had confided in her during that visit in Fayetteville when she had brought David to see her.” *Id.* His mother said she thought Helena confided in her during that visit because she knew she was dying, and that MacDonald was not guilty of the crimes. Htr. 284.

Gene stated that his mother's comments

weighed heavily on my mind. I didn't really know what to do with the knowledge. It was something I considered carefully. The last thing I wanted to do was draw attention to the remaining family members, but, by the same token, I felt somehow morally obligated to tell somebody.

So, I discussed it in more detail with my mother, asked her if she cared to divulge this information to somebody outside the family. . . .

She said that if there was someone who would listen and that where she thought it might do some good, she would be willing to do so.

Htr. 284-85.

After thinking about it for several weeks, Gene eventually went on the internet, found a website maintained by MacDonald's wife, Kathryn, and contacted her. Htr. 286. Kathryn immediately came down to North Carolina, and met with Gene at a restaurant in Fuquay-Varina on March 31, 2007. Htr. 287, 307. Gene set forth ground rules for talking with his mother, which included that if at any time his mother did not want to go forward, he would stop it. Htr. 287-88.

Kathryn and Gene then traveled to the facility in Fayetteville, arriving around 3:00 or 4:00 p.m. Htr. 320. His mother appeared to be having a physically good day, and agreed to meet with Kathryn. Gene also testified that his mother's mental state was "always sharp" and he had no problem communicating with her on the day Kathryn MacDonald came. Htr. 289-90. His mother told Kathryn that his sister had been in the MacDonald house on the night of the murders, and Kathryn then asked if MacDonald's then-attorney, Hart Miles, could be involved. Kathryn called Miles, and he and his paralegal, Laura Redd, came to the facility, arriving "well into the early evening." Htr. 292-93; 322.

The elder Stoeckley again related that her daughter had said she present on the night of the murders, and also said that her daughter had been intimidated. The elder Stoeckley "said an FBI agent had contacted them directly and told them to find a way to keep Helena's mouth shut and to keep her

out of – her nose out of the business.” Htr. 294. Redd and Kathryn MacDonald used a computer in a small office adjoining the nurse’s station to compose the affidavit, and Gene then read the affidavit to his mother. Htr. 295. A few corrections, “mainly just the verbiage,” were made. Htr. 296. The elder Stoeckley then signed the affidavit, after Gene read it to her word for word. Htr. 296-97; DX 5051. Gene testified that he was very much confident that his mother knew what was in the affidavit when she signed it. Htr. 344.

Gene then was contacted by the FBI, and Agent Cherokee met with Gene, his mother, and his wife on April 25, 2007, at the facility. Htr. 328. During the interview, the elder Stoeckley told Agent Cherokee that someone from the FBI called her and said to tell her daughter to stop calling the FBI. Htr. 335. She also indicated in the interview that she had struggled with the issue of MacDonald’s guilt. Htr. 331.<sup>35</sup>

#### **4. Wendy Rouder**

MacDonald also called as a witness Wendy Rouder, now a practicing attorney in California, who served on the defense team during the MacDonald trial. She testified to answering a phone call that came into the defense team office on a weekend morning during the trial. Htr. 346. The manager of The Journey’s End motel had called asking that Stoeckley be removed from the motel. Htr. 346-47. Segal instructed her to go to the motel and find out what was going on. Htr. 346.

Rouder and Red Underhill arrived at The Journey’s End and were escorted to Stoeckley’s room, where they found her with a bleeding nose, yelling at Ernie Davis. Htr. 347. Davis left, and Stoeckley

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<sup>35</sup> It is unclear from the record what, exactly, the elder Stoeckley told Agent Cherokee during the April 25, 2007, interview. Although on cross-examination the Government asked Gene Stoeckley if he recalled his mother stating various things during the interview, he generally answered that he did not recall his mother making such statements. Htr. 329-36. No other evidence was presented as to the substance of Agent Cherokee’s interview of the elder Stoeckley.



then asked Rouder to stay with her. Rouder spent the next several hours with her. Htr. 348. Rouder testified that every once in a while, Stoeckley would raise issues with her involvement with the MacDonald murders, saying that she thought she was there, she felt guilty, and that she wished she could purge her guilt. Htr. 348. Stoeckley also remembered there being a rocking horse. Htr. 349.

Stoeckley had been asked to leave The Journey's End, so Rouder made arrangements for her to stay at the Hilton. Stoeckley continued to make comments about her involvement, and Rouder asked her why she failed to testify on the stand as to what she was telling Rouder. Htr. 350. Rouder testified that Stoeckley answered, "I can't with those damn prosecutors sitting there." Htr. 350-51. Rouder also testified that she believed Stoeckley said that "they'll burn me, fry me, hang me" or other words to that effect. Htr. 351. Rouder admitted that she did not include that statement regarding "burn me" or "fry me" when she testified on *voir dire* during the MacDonald trial, but that she remembered those words when she was contacted by Kathryn MacDonald in 2005. Htr. 357. She also admitted that the trial transcript reflects the fact that she made notes of her conversation with Stoeckley. Htr. 388.

Rouder testified that Kathryn contacted her in August 2005, and told her that a United States Marshal had come forward with information about statements that Stoeckley had made to him, which were similar to the statements Stoeckley had made to Rouder in 1979. Kathryn also told Rouder about the marshal's allegation that Blackburn had threatened to indict Stoeckley for murder if she made admissions about her role in the MacDonald murders while testifying. Htr. 353-54. According to Rouder, this information "rang a bell" for her. "The bell that rang was, ah-ha, that's why she said she can't testify with those damn prosecutors sitting there." Htr. 354. After speaking with Kathryn, Rouder was sent an affidavit which she signed. Htr. 351; DX 5080. In addition to the details about what Stoeckley told her, Rouder also stated that while she was staying with Stoeckley, Judge Dupree called

the room, asked for Rouder specifically, and warned her not to ask her any questions. DX 5080 ¶ 13. Rouder stated: “For years afterward, I had wondered how Judge Dupree came to know that I had arrived on a weekend to see about Ms. Stoeckley’s well-being, and why he was concerned about what she might be saying or being asked. Now, in August of 2005, hearing of Mr. Britt’s statement, this bizarre occurrence made sense to me.” *Id.*

#### **5. Laura Redd**

Laura Redd, the paralegal for Hart Miles who notarized the elder Stoeckley’s affidavit, testified next. She testified that on the afternoon of Saturday, March 31, 2007, she received a call from Miles asking her to ride with him to Fayetteville to take and notarize an affidavit from the elder Stoeckley. Htr. 401. When she arrived with Miles, and talked to the elder Stoeckley, she found her to be “very sharp.” Htr. 402.

Someone originally composed the elder Stoeckley’s affidavit on a laptop, but the laptop was not compatible with the printer at the assisted living facility. Htr. 403-04. Consequently, Redd and the others had to re-type the affidavit on the facility’s computer to be able to print it. Htr. 404. Redd testified that they “had a really hard time and it took a long time.” *Id.* Redd testified that from the time she received the phone call from Miles until the time the affidavit was signed and notarized was about six or seven hours. Htr. 416.

#### **6. Sara McMann**

MacDonald’s next witness was Sara McMann, who testified that she and her husband invited Stoeckley and her infant son to live with them from October 1982 until December 1982. Htr. 420-21. Shortly after meeting Stoeckley, McMann realized that she was Helena Stoeckley from the MacDonald case. Htr. 422. When McMann told Stoeckley that she knew who she was, Stoeckley told McMann that

three other men went to rough up MacDonald, and they asked her to go along. In exchange for going with them, Stoeckley was to become a wizard in an occult group. Htr. 423, 435-36. Stoeckley told McMann that the men murdered the MacDonald family members, and she ran out of the MacDonald home screaming. Htr. 423. McMann stated that both she and Stoeckley knew MacDonald was innocent and wanted him freed. Htr. 424. After Stoeckley died in January 1983, McMann and her husband became legal guardians of her infant son. Htr. 426.

#### **7. Bench conference regarding Jerry Leonard**

At the conclusion of McMann's testimony, MacDonald called Jerry Leonard, the attorney appointed to represent Stoeckley during the trial. A bench conference was then held, at which MacDonald's counsel informed the court that he anticipated that Leonard would assert the attorney-client privilege. Leonard's counsel was present at the conference. The court recessed the hearing for the evening to review the relevant caselaw. Htr. 443-62. At the start of the hearing the next day, the court ruled that based on *Swidler & Berlin v. United States*, 524 U.S. 399 (1998), the attorney-client privilege survived Stoeckley's death. MacDonald then rested, and the Government commenced its presentation of evidence.

#### **8. Frank Mills**

The Government's first witness was Frank Mills, a retired Special Agent for the FBI. At the time of the MacDonald trial in 1979, he was assigned to the Greenville, South Carolina office. Htr. 470. On August 13, 1979, he received a phone call from the U.S. Attorney's Office in Raleigh, followed by a teletype from the FBI, informing him of the bench warrant issued for Helena Stoeckley. Htr. 471; GX 2001. On August 14, 1979, Mills and Special Agent Tom Donohue located Stoeckley at a trailer near Walhalla, South Carolina, and transported her to the Pickens County Jail. Htr. 474-76.

Mills testified that they did not take her to Greenville to be housed because, at the time, Greenville was not a federally approved facility for prisoners. Htr. 479-80.

Per the instructions he received in the FBI teletype, Mills interviewed Stoeckley on the way to Pickens. Htr. 480. Mills testified that Stoeckley told him that she had been a heavy drug user for a number of years, and she remembered the night of the murder because of newspaper articles the next day. Htr. 480. She also said she not only used drugs, but she also sold them, and some of her buyers were doctors in the Fayetteville area, but MacDonald was not one of them. Htr. 480. According to Mills, Stoeckley said on the night of the murders, as every other night, she was using drugs. Htr. 481. Shortly before midnight she met with Greg Mitchell, who gave her a hit of mescaline, and she did not remember anything after that until the following morning. Htr. 481. Stoeckley said that Prince Beasley had contacted her in the following days about the murders, and she told him that she just could not remember what happened that night. Htr. 481.

Mills and Donohue booked Stoeckley in the Pickens County Jail, where she was held overnight. Htr. 484-87; GX 2006, 2007, 2064. Mills relayed the news of Stoeckley's arrest via a return teletype, and a phone call to the U.S. Attorney's office on August 15, 1979. Mills testified that Stoeckley was picked up the next day by Vernoy Kennedy, a tall black man he knew to be a deputy U.S. Marshal. Htr. 488, GX 2066.

Shortly thereafter, Mills summarized his interview with Stoeckley in an Form 302. In addition to what he already testified to, his summary in the Form 302 noted that Stoeckley said that "she could never figure out how any band of hippies as alleged by Dr. MacDonald, could have walked through an Officers Barracks section of Fort Bragg, inasmuch as there are numerous Military Police Patrols patrolling the area regularly." GX 2002. He also noted that Stoeckley told him that at the time of the

murders, she and her friends were involved in witchcraft. GX 2002. Stoeckley told Mills that when Beasley interrogated her shortly after the murders, she gave him “a number of different stories as to where she was during the time of the murder,” because “she felt that a lie would be more believable than if she was to tell the truth which was that she simply was so high on drugs she had no recollection of where she was or what she was doing.” GX 2002. Mills further summarized:

Stoeckley advised that she honestly does not know what she did that night and therefore, could not categorically state that she was not involved in the murder. She stated that she has had a recurring dream since the murder in which she is pictured as being dressed in black with a candle in her hand with the words appearing on a wall of whatever room she is in with the inscription, “Acid is Groovie, Kill the Pigs.” She stated in this dream, she does not specifically see bodies or anyone being killed or anything of this nature. She stated that this dream could very well be based upon information that she has read in newspaper accounts of the murder.

GX 2002.

Mills also testified that he interviewed Stoeckley on September 10, 1981, along with Special Agent Butch Madden. Htr. 496. Mills talked with Stoeckley about the interviews she had given to Prince Beasley and Ted Gunderson. Htr. 496-97. Stoeckley told Mills she was unhappy with Beasley and Gunderson because they were harassing her. Htr. 497-98.

Finally, Mills testified about the investigation into Stoeckley’s death in 1983. Htr. 498. In 1983, Mills contacted a detective in Seneca, South Carolina, who told him that Stoeckley had died in early January 1983, and she had been in her apartment for several days before anyone found her. Htr. 499-500. At the time her body was found, her infant son was found, alive, underneath his crib. Htr. 499. Stoeckley’s cause of death was pneumonia with cirrhosis of the liver as a contributing factor. Htr. 500.

## **9. Vernoy Kennedy**

Over MacDonald’s objection, the Government next read into the record the sworn statement of former Deputy U.S. Marshal Vernoy Kennedy, who died on June 11, 2007. In his sworn statement,

Kennedy said he transported Stoeckley from the Pickens County Jail to a meeting spot in Charlotte, North Carolina. GX 2010.9. Kennedy also identified his signature on Stoeckley's release form from the Pickens County Jail on August 15, 1979. *Id.* He stated that he, along with a female guard, transported Stoeckley to the intersection of Interstate 85 and Interstate 77 in Charlotte, North Carolina, where he met a deputy U.S. Marshal from the Eastern District of North Carolina and made the prisoner transfer. GX 2010.9-.10, .12. Kennedy also stated that he did not interview Stoeckley. GX 2010.13-.14.

**10. Dennis Meehan**

The Government's next witness was Dennis Meehan, a former Deputy U.S. Marshal. Meehan testified that on August 15, 1979, he was tasked by Chief Deputy Eddie Sigmon to travel to Charlotte, North Carolina, to pick up Stoeckley and transport her to Raleigh. Htr. 518-20. Because he was transporting a female inmate, he had to take a guard matron with him. Htr. 520. His office did not employ any female deputies, so Meehan's wife, Janice, was hired as a guard matron for the transport. Htr. 520.

Meehan drove to the pre-arranged meeting spot near the intersection of Interstate 85 and Interstate 77. Htr. 519, 521. Meehan testified that he could not remember the name of the deputy marshal from whom he received Stoeckley, but he did remember that he was tall black man. Htr. 522. Meehan then drove Stoeckley directly to the Wake County Jail via Salisbury Street and drove into the underground parking area, arriving around 4:30 to 5:00 p.m. Htr. 523-25. The news media were present, and Meehan recalled seeing footage of himself and his wife booking Stoeckley on the local news. Htr. 525. Meehan also recalled that the next morning, August 16, 1979, Jimmy Britt and Geraldine Holden transported Stoeckley from the Wake County Jail to the Federal Building, a trip of about six blocks. Htr. 526-27. Meehan opined that a picture of Stoeckley, Ernest Davis, and Jimmy

Britt published in the *News & Observer* on August 17, 1979, depicted them exiting the Federal Building on August 16, 1979, because he highly doubted that Stoeckley was at the Federal Building on August 15. Htr. 528-31, GX 2074. Meehan also testified that he never sat in an interview of a witness by an Assistant United States Attorney. Htr. 532.

#### **11. Janice Meehan**

Janice Meehan, Dennis Meehan's former wife, was the next witness called by the Government. She testified that she rode with her husband to pick up Stoeckley and that they picked her up from another deputy U.S. Marshal in a parking lot that was located approximately two to three hours from Raleigh. Htr. 538. She remembered a black male and a white male being with Stoeckley when they met her. Htr. 541. She said that on the way to Raleigh, Stoeckley mumbled, but Janice couldn't really hear her. Htr. 539. Janice also remembered media being present when Stoeckley was booked in jail, and seeing footage of herself later that evening. Htr. 539-40.

#### **12. Eddie Sigmon**

Eddie Sigmon, former Chief Deputy United States Marshal for the Eastern District of North Carolina, next testified for the Government. Htr. 543. Sigmon served as Chief Deputy during the MacDonald trial, and was responsible for handing out assignments to the deputy marshals. Htr. 546. He explained that at the time of the MacDonald trial, there was a policy that a female matron must be present when a marshal was transporting a female prisoner. Htr. 547. His office did not employ any female deputies at the time, so if possible, he would choose a deputy who had a wife available to transport a female prisoner. Htr. 547-48. He testified that, when transporting a female prisoner, if he had to choose between sending a deputy and a female clerical employee, or a deputy and his wife, he would choose the deputy who had a wife because he needed his clerical staff in the office to perform

their duties. Htr. 548. Sigmon also testified that if one of his deputies overheard a confession of someone in connection with a murder trial, he would hope that the deputy would tell him about it. Htr. 549. No such confession of Stoeckley was reported to him. Htr. 549. Sigmon also characterized Jimmy Britt as “an attention seeker.” Htr. 550.

Sigmon also testified that once a material witness is released from custody and becomes a witness under subpoena, the United States Marshal no longer handled transportation of the witness. Htr. 557. He also testified that he did not call Jimmy Britt on August 19, 1979, and instruct him to get Stoeckley from The Journey’s End Motel, noting he would not have authority to do so. Htr. 557. He also offered his opinion that former United States Marshal Salter did not instruct Jimmy Britt to deliver a subsistence check and purchase a bus ticket for Stoeckley, because it would be outside Marshal Service regulations. Htr. 558-59.

### **13. William Berryhill**

William “Bill” Berryhill, former United States Marshal for the Eastern District, testified that he supervised Jimmy Britt during his tenure. Htr. 563-64. When asked to describe Britt as an employee, he said: “I would say he was a very marginal employee. I found Jimmy Britt to be rather large in ego and rather small when it came to veracity.” Htr. 564.

### **14. Maddie Reddick**

The Government’s next witness was Maddie Reddick, who worked for the United States Marshal Service for 30 years as Supervisor Administrative Assistant of Office Work. Htr. 571-72. In that capacity, she was the disbursing officer for the Marshal Service, and was tasked with writing checks for the salaries for federal employees, as well as checks for jurors and witnesses. Htr. 572.



Reddick testified that she did not remember writing a subsistence check for Stoeckley, and she said for her to have done so would have been highly unusual because she would need a discharge form from the U.S. Attorney's office first. Htr. 573. She also testified that material witnesses who were housed in jail did not get pay, because the fee would have been disbursed to the jail providing housing and food. Htr. 574. Reddick said that she would not have been tasked with issuing checks to a defense witness, unless the defendant was indigent. Htr. 575, 578.

Reddick also testified that sometime around 2004, she received a phone call from Jimmy Britt, asking if Reddick knew where Gerry Holder was living. Htr. 577. Reddick told Britt what she knew, and testified she was surprised to have heard from Britt. Htr. 577.

**15. J. Rich Leonard**

J. Rich Leonard, who at the time of the hearing was a United States Bankruptcy Judge for the Eastern District of North Carolina, was called next by the Government. He testified that he served as a law clerk for Judge Dupree from 1976 to 1978. Htr. 586. During the second year of his clerkship, his co-clerk was John Edwards. Both of their clerkships ended at the same time. *Id.*

Leonard had taken the position as Clerk of Court just prior to the MacDonald trial. Htr. 587. Judge Dupree's law clerks during the trial were Steve Coggins, William Pappas, and Jeffrey Howard. Htr. 587. Leonard testified that during a recess during the MacDonald trial, the courtroom would have been locked to maintain chain of custody on the large number of exhibits in the trial. Htr. 589.

**16. James Blackburn**

James Blackburn, one of the prosecuting attorneys during the MacDonald trial, testified next. Blackburn stated that the prosecution began their interview of Stoeckley around 2:00 p.m. on August 16, 1979. Htr. 604, 605. The interview took place in the office of George Anderson, then the United

States Attorney for the Eastern District of North Carolina. Htr. 607. According to Blackburn, he, Anderson, Assistant United States Attorney Jack Crawley, and Assistant United States Attorney Brian Murtagh were the only people present for the interview with Stoeckley. Htr. 607-08. Blackburn testified that he asked Helena “words to the effect, Helena, are you involved in this case? Were you there? Did you participate in these murders?” and she said to him “very clearly, ‘no I did not. I was not there.’” Htr. 610. She also asked Blackburn if the Government had evidence that she was there, and he responded that they did not, other than statements she had made over the years. Htr. 610. Blackburn maintains that he did not threaten to prosecute Stoeckley for the murders of the MacDonald family members. Htr. 611.

There was no other court session in the case for the remainder of the day on August 16, 1979. Htr. 611. After the conclusion of the Government’s interview with Stoeckley, which lasted about an hour, Blackburn ran into Wade Smith in the Federal Building. Htr. 611-12. He does not recall Smith telling him anything about the defense interview, but he does remember telling Smith that Stoeckley had told the Government that she was not present in the MacDonald apartment and she did not participate in the murders. Htr. 612. He also testified that Jimmy Britt was not present during the interview with Stoeckley, and that Britt never approached him with any concerns about the trial. Htr. 640-41.

Blackburn also testified that he had no idea of what Stoeckley was going to testify to when called by the defense, and he noted that the trial transcript reflects that when court began on August 17, 1979, he brought up the issue of whether an attorney should be appointed to represent Stoeckley. Htr. 613-14. The defense wanted to proceed without one. Htr. 614. He also testified that he first learned

during court on August 17 of Stoeckley's various weekend activities, including her contacting Judge Dupree. Htr. 626-28.

Blackburn also was questioned about his actions which led to his 1993 disbarment and convictions for embezzlement, obstruction of justice, and forgery, among other crimes. Htr. 634-38; 653-81. In summary, approximately twelve years after the MacDonald trial, while he was in private practice, Blackburn made numerous misrepresentations to clients, including that he had filed actions on their behalf and/or was continuing to prosecute civil actions on their behalf. In the course of doing so, he forged judges' signatures to purported orders from the court to show the clients. He also misappropriated funds from his law firm's trust account to make payments to various clients, and forged one of his client's signatures to a promissory note. *Id.*, DX 5014A, 5014B, 5014C. Blackburn also testified about a promissory note he executed in 2001, promising to repay \$50,000 advanced to him if he did not complete a book on the MacDonald trial. Htr. 688-89. Blackburn never completed the book, and has not repaid the money. Htr. 689-90.

Wade Smith was one of the attorneys who represented Blackburn in his state court criminal proceedings. In 2005, Smith contacted Blackburn, letting him know about some of the general updates in the MacDonald case. Blackburn agreed to execute a waiver of any conflict of interest, but made clear that he was not agreeing with the suggestion he ever said anything improper to Stoeckley. Htr. 643-47; GX 2013. The day after Blackburn signed the waiver, he was invited to Smith's office to review the Britt affidavit and some supporting documents. Htr. 645. When Blackburn read the affidavit, he had what he characterized as a heated discussion with Smith regarding what he viewed as the falsity of Britt's statements. Htr. 645. Blackburn also accused Smith of standing by while his co-counsel Segal made misrepresentations about Stoeckley's statements at trial. Htr. 646. A few hours later, Smith called

Blackburn to say that he was withdrawing from representing MacDonald. Blackburn later consented to one of Smith's law partners, Hill Allen, representing MacDonald. Htr. 646-47.

**17. Jack Crawley**

Jack Crawley, who served as an Assistant United States Attorney during the MacDonald trial, also testified for the Government. His role during the trial was to serve as an advisor on trial procedure and evidence, because of his previous trial experience. Htr. 714. Crawley testified that he was present for the interview with Stoeckley, along with Brian Murtagh, Jim Blackburn, and George Anderson. Htr. 721. He does not remember anyone else being present during the interview, and specifically he did not recall any deputy marshal, including Jimmy Britt, being there. Htr. 721. Accordingly to Crawley, Stoeckley told the prosecution team that she was not involved with or present at the MacDonald murders. Htr. 722. He also noted that if she had so confessed, he along with the other members of the prosecution team would have had a duty to disclose that information under *Brady v. Maryland*, 373 U.S. 83 (1963).

Crawley also testified to the fact that when he was in private practice in the mid-1990s, he had a grievance filed against him with the state bar, resulting in the bar filing a complaint against him charging that he failed to act with reasonable diligence with regard to two cases. A disciplinary hearing panel found that he had in fact failed to act with reasonable diligence, in violation of the rules of professional responsibility. Htr. 730. His license to practice law was suspended, and eventually he was found to be disabled to practice law, and was transferred to disability inactive status in 1997. Htr. 731.

**18. Bill Ivory**

The next Government witness was William "Bill" Ivory, the original Army CID Investigator assigned to the case. Htr. 759. Ivory testified about the crime scene search and the collection of

evidence at the MacDonald residence. He identified a great number of photographs of the crime scene, and described the evidence collected and noted by investigators. *See generally* Htr. 766-804. Ivory noted that during the crime scene search, investigating agents focused extensively on the area around the couch in the MacDonald living room, looking for debris and signs of a struggle, because that is where MacDonald claimed he was attacked. Htr. 775-77. Ivory testified that nothing was found in the carpeting in that area, particularly none of the blue threads that were found in other rooms throughout the house, and he also noted that the lamp in the room was upright and the pictures were hanging straight on the wall. *Id.* Ivory explained that investigators were able to “date” when the fibers consistent with MacDonald’s pajama top were shed in the house, because of MacDonald’s own statements and the blood. Htr. 878. Ivory also testified that several of the crime scene photographs show a rocking horse in Kristen’s bedroom, but none of the springs of the rocking horse appear to be broken in any picture. Htr. 797, 823-32.

Ivory also testified about the ongoing investigation after the crime scene search. He stated that when he interviewed Greg Mitchell on May 25, 1971, Mitchell denied any involvement with the MacDonald murders and said that he didn’t think Stoeckley, his girlfriend at the time, was involved either. Htr. 804-09; GX 2199. Ivory also testified about the use of polygraphs in the investigation, and how he felt it was not only the results of a polygraph that were important, but also how those results were used in a post-polygraph interview to obtain admissions from a person. Htr. 810. With regard to Mitchell, Ivory testified that Robert Brisenstine conducted a polygraph examination of Mitchell, and he concluded that Mitchell was being truthful when he denied involvement in the MacDonald murders and denied knowing the identify of the perpetrator(s). Htr. 813-816, GX 2200. Ivory also testified that Brisenstine also conducted a polygraph examination of William Posey, one of the Stoeckley Witnesses,

and concluded that Posey was not truthful when he denied giving false information in the Article 32 proceeding, and when he made statements to CID investigators. Brisenstine also concluded that Posey was not truthful when he said he thought his residence was broken into following his testimony in the Article 32 hearing. Htr. 817-22; GX 2331. During Posey's post-polygraph interview, he admitted that he did not observe Stoeckley dismount from an automobile on the morning of February 17, 1970, and only observed her walking from an automobile to her residence. GX 2331. Furthermore, he was not positive that the morning he observed Stoeckley walking to her residence was the same date of the murders. *Id.*

With regard to the crime scene, Ivory testified that at least six people were inside the MacDonald residence by the time he arrived on the scene. Htr. 834. He also stated that candle wax was found on the coffee table, the bedspread in Kimberley's bedroom, and the arms of a chair in Kimberley's room. Htr. 838-39. The candle wax found in those locations did not match any other candle found in the house, and all three differed from each other. Htr. 847-50. He noted, however, that the candle wax found throughout the house had been set for quite a while, and had household debris in it. Htr. 874. In Ivory's opinion, "it was not like the candles were just burnt that night." *Id.* Ivory also stated that when the *Esquire* magazine was examined, it showed the fingerprints from at least two investigators, as well as an unidentified finger print. Htr. 856-58. Ivory also recognized that the processing of the crime scene yielded 17 unidentified fingerprints and 14 unidentified palm prints. Htr. 860. None of the unidentified prints matched Mitchell's prints. Htr. 878.

#### **19. Butch Madden**

After Ivory, the Government called former FBI Special Agent Raymond "Butch" Madden to testify. Madden explained that he was tasked with investigating information given to the FBI by the

MacDonald defense team during post-conviction proceedings. Htr. 881. This mainly involved investigating the various statements of Helena Stoeckley naming individuals who may have participated in the MacDonald murders – Greg Mitchell, Dwight Edwin Smith, Shelby Don Harris, Bruce Johnny Fowler, and Allen Mazerolle. Htr. 882-83.

Madden testified that he also interviewed both Helena Stoeckley and her mother, the elder Helena Stoeckley, as well as defense investigators Ted Gunderson and Prince Beasley. Htr. 883, 917. The interviews with Helena Stoeckley occurred over a two-day period in September of 1981. Htr. 884. During the first interview, Stoeckley told Madden, along with SA Frank Mills, that Beasley had arrested her fiancé Ernest Davis in South Carolina and taken him to Fayetteville, and that he had promised to help out Davis if Stoeckley would go with him to Ted Gunderson's office in Los Angeles and give a statement. Htr. 887-88. He also promised her that they would relocate Stoeckley and Davis to California and help them find employment, financing, and new identities. Htr. 888. Madden testified that Stoeckley told him she was interviewed in California for a period of three to four days from the early morning into the late evening for sometimes twelve to fifteen hours a day, and that the questioning seemed non-stop. Htr. 889. Madden opined, as an experienced FBI agent, that this type of interrogation would be considered unethical and possibly illegal. *Id.* At the conclusion of this first interview with Madden, Stoeckley signed a statement in which she said that the statements she previously signed for Gunderson and Beasley were "basically accurate." Htr. 892. She went on to clarify: "However, the statements and the facts of the statements are what I think happened or dreamed and are not a positive recollection of events of February 16th-17th, 1970." *Id.* She also said, "The fact remains and the truth of the matter is that I do not actually know where I was during the early morning

hours of February 17th, 1970, and I do not know if I was present or participated in the MacDonald murders.” *Id.*

The next day, Stoeckley gave Madden a second interview, stating she wanted to make corrections to her first statement. Htr. 911. In her second statement, she told Madden that Beasley brought Fred Bost to see her in South Carolina in January 1981. Bost was writing a book about the MacDonald murders, and Beasley asked that Stoeckley submit to an interview by Bost. Stoeckley told Madden that Beasley told her she should deal specifically through Beasley, and not through Gunderson or Bost. Beasley also told Stoeckley not to talk to the FBI, the Department of Justice, or anyone else involved with the MacDonald case. Htr. 910. Madden also testified that Stoeckley told him that she and Beasley were each supposed to receive 20% of the profits from Bost’s book, with the remainder of the profits being split between Bost and the publisher. Htr. 910-11. She also told Madden that she remembered seeing MacDonald at some point prior to the trial, and that she was unsure what she did the evening of the MacDonald murders or the next morning. Htr. 912. Stoeckley reported feeling used by both Gunderson and Beasley, and stated that Gunderson coerced a confession out of her. Htr. 912-13. Stoeckley gave Madden a copy of a letter she wrote to Gunderson telling him she felt he had used her as a pawn. Htr. 913-15.

Madden also conducted an interview, audio-recorded and later transcribed, of Ted Gunderson and Prince Beasley regarding the statement they took from Helena Stoeckley. HTr. 917. Madden testified that Gunderson admitted to spending a day and a half with Stoeckley before she would agree to give him a written statement, and that she started talking at around 9 p.m. to 10 p.m., and he decided to continue with her until he was finished with the statement at 2:00 or 3:00 a.m. Htr. 920. When he reviewed the statement the next day, it was disorganized and disjointed. Accordingly, he reorganized



and retyped the statement and Stoeckley then signed the 53-page statement. Htr.921-22. Gunderson told Madden that he had contacted several individuals about a book or movie deal regarding the MacDonald murders, although he said that was not his primary goal. Htr. 935-36. Madden testified that he also talked to Beasley about the book deal with Fred Bost that Helena had told him about, and Beasley confirmed the percentage split that Helena had quoted. Htr. 937. The interview Madden conducted with Beasley and Gunderson was seventy-eight transcribed pages, but at no time during that interview did either of them mention that Helena had reported any threat to her by Jim Blackburn. Htr. 940.

Gunderson had given Madden the names of individuals Helena had implicated in the MacDonald murders (Bruce Fowler, Greg Mitchell, Don Harris and Allen Mazerolle) but told him that he had not run down those leads because he had not been paid to do so. Htr. 926. Madden testified that he then conducted an independent investigation into the possibility of these individuals being involved and was able to learn that during the MacDonald murders Allen Mazerolle was in jail. Htr. 926-29. With regards to Dwight Edwin Smith, Madden was able to interview him and he denied any involvement in the murders and stated that he did not know the other named individuals. Htr. 929-31. Madden testified that Shelby Don Harris was interviewed and said that he knew Helena Stoeckley, but that he had nothing to do with the murders and volunteered to take a polygraph examination. Htr. 932-34.

Madden also had occasion to interview the elder Helena Stoeckley on July 19, 1984, after the death of her daughter, Helena. Htr. 940, 942-43; GX 2332, 2333, 2334. He testified that the elder Stoeckley told him that the younger Helena told her and her husband that she did not know anything about the murders. Htr. 943-44; GX 2332. Mrs. Stoeckley believed that Helena could not have been present during the murders because she was nonviolent and loved children. She also believed her

daughter was not treated fairly by Gunderson and Beasley. *Id.* The elder Stoeckley told Madden that Helena's mind was "gone," especially when she was under the influence of drugs, and that when doing drugs she thought about the case. She reiterated, however, that she did not believe her daughter was involved. Htr. 945; GX 2332. Mrs. Stoeckley said that she saved all the newspaper clippings regarding the trial and allowed Helena to read them. *Id.* She also believed that Helena enjoyed all the attention from the MacDonald case and that when she asked her why she gave a statement to defense investigators, Helena told Mrs. Stoeckley that she thought she was at the murder scene. Htr. 945-46; GX 2332. Madden testified that, at the time of the interview, Mrs. Stoeckley was in good health, living at home, and appeared to have all her faculties. Htr. 946. At no time during their conversation did Mrs. Stoeckley ever mention a threat to Helena by Jim Blackburn. Htr. 947.

## **20. Joe McGinniss**

The last witness for the Government was Joe McGinniss, author of *Fatal Vision*, a 1984 "true crime" book about the MacDonald trial. McGinniss testified that he was approached by MacDonald to come to the trial and write about it, in exchange for MacDonald receiving a percentage of the royalties. Htr. 954-55. He was given "unfettered access to any incidents, characters, dialogues, action scenes and situations that [he] desired in connection with the publication of the book." Htr. 955-56. He lived with a majority of the trial team in a fraternity house in Raleigh during the trial. Htr. 956.

McGinniss testified that he was present for interviews of some witnesses and potential witnesses, including Helena Stoeckley's parents. Htr. 956, 961. According to McGinniss's book, which he testified was accurate, during this interview Stoeckley's parents said that they did not know where their daughter was, but when they had last seen her in early June 1979, she had said she had planned to move to Walhalla, South Carolina, to live with a man she met at a rehabilitation center. Htr. 962,

GX 2201.2. The elder Helena Stoeckley also told defense attorneys that even if they could find her daughter, she didn't think it would be likely that she could contribute anything of value to the trial. Htr. 963; GX 2201.3. Specifically, the elder Stoeckley said of her daughter:

“She called up, must have been a year and a half ago, four o'clock in the morning, all befuddled. She said somebody was chasing her and had taken her car keys. Then it turned out she'd had a stroke. We got her home, she was like a vegetable. She couldn't talk, couldn't eat, her face quivered, saliva would run out of her mouth. We put her on a strict diet and let her rest and after about three weeks she was improved, but still she was not quite right.”

...

“She's had her gall bladder removed . . . she's had three liver biopsies, and she's been spitting up blood and passing blood in her stools for years. She's not at all like she used to be. She's a physical and mental wreck. She's not even a human being anymore. You find her now, sure she'll talk. She'll always talk. But I'm telling you, she's gonna talk all kinds of nonsense.”

Htr. 963-64; GX 2201.3. The elder Stoeckley also described her daughter's reaction to the MacDonald murders, including her daughter's comment that “not a hippie around here” would do that. Htr. 964; GX 2201.3. The elder Stoeckley also blamed Prince Beasley for putting the idea that she was involved in the murders into her daughter's head:

“Beasley was her Daddy image. He had a terrific amount of influence over her. She told me he had been up to talk to her right after it had happened and then she said, ‘Yeah, I've been thinking, and I don't really know where I was that night. I might have been there.’ And I knew right then that Daddy Beasley had talked her into it.”

Htr. 964; GX 2201.3

McGinniss testified that he was present for the defense interview of Stoeckley. Htr. 965. According to McGinniss, Stoeckley maintained, even in the face of each “Stoeckley witness” being brought in the room to confront her, that she had no memory of being present during the murders. Htr. 969-77, GX 2201.3-.4. He also stated that Stoeckley's testimony on the stand the following day was consistent with what she said during her interview with the defense. Htr. 982.

McGinniss reviewed the transcript from the bench conference during Stoeckley's testimony where Bernie Segal told Judge Dupree about the things that Stoeckley allegedly said during the defense interview. Htr. 982-87. McGinniss said he "absolutely" did not hear Stoeckley make any statements that Segal represented she made. Htr. 987. He also indicated that Segal had provided him with a copy of the trial transcript, including the allegedly full volume of bench conferences, but this particular bench conference was omitted from the materials. Htr. 989-90. McGinniss also testified that he talked to Wade Smith after the trial, and that Smith said he had been between a rock and a hard place because he could not undermine his co-counsel, but he also could not participate in a fabrication. Htr. 990.

Following MacDonald's conviction, McGinniss continued to work on the book, and MacDonald invited him to stay in his condominium in southern California, near where MacDonald was imprisoned, and gave McGinniss permission to go through all of his files in the condo. Htr. 993-94. In the materials in the condo, McGinniss found the handwritten notes that MacDonald had made for his military lawyer during the Article 32 hearing in 1970. Htr. 995, GX 4000. In these notes, MacDonald wrote that on the evening of the murders he had possibly taken one diet pill when he had dinner with his family. Htr. 998; GX 4000. He indicated in his notes that in the three to four weeks preceding the murders, he had lost 12-15 pounds using 3-5 capsules of Eskratole Spansule, which consisted of 15 milligrams of dextroamphetamine and 7.5 milligrams of prochlorperazine. Htr. 998, GX 4000. The notes did not specify over what time period MacDonald had taken 3-5 capsules; in other words, there is no indication whether he had taken 3-5 per day, or over the course of the entire preceding 3 to 4 weeks, or some other time period. GX 4000; Htr. 1008. McGinniss also wrote in *Fatal Vision* that MacDonald stated the following in his hand-written notes:

The CID knows nothing about the possible diet pill . . . . If I did take the pill, it is conceivable that my urine and blood 11:30 A.M. Tues. would still have some residue.

We would have to research the breakdown and excretion of what was in the pill. We would also have to find out if the excretion products are definitely different than normal breakdown products of adrenaline from the body, which would be increased in the excitement of the attack, etc. Right now, I don't know if it is definitely possible to identify Dextramphetamine from pills in the blood and the urine. I think I told the CID had the only pills I usually took were aspirin, occas. cold pills, and Tetracycline (antibiotic). . . . Dr. Henry Ashton, now living in Salt Lake City, Utah, was the group surgeon before I arrived in Sept. 1969. If he remembers, he can testify that the bottle of Eskatrol from my house (with only a few missing) was left in the desk I took over when he left. If necessary, we can then contact the Smith Kline & French representative near hear who can testify that I never received another large bottle of sample Eskatrol. He did give me some small sample bottles for use in the weight control program. Colette had some diet pills of her own (used before she was pregnant). I think I threw them all out because they made her nervous, but possibly there was an old container left in the medicine cabinet. . . .

GX 4002.2; Htr. 998-99.<sup>36</sup>

## 21. Jerry Leonard

As already recounted, prior to the Government's presentation of its evidence, this court ruled that the attorney-client privilege survived Stoeckley's death, based on the Supreme Court's decision in *Swidler & Berlin v. United States*, 524 U.S. 399 (1998). Htr. 468. Subsequently, the Government asked the court to reconsider the matter of waiver of attorney-client privilege with regard to Leonard's testimony, in light of a footnote in *Swidler*. Htr. 706-07; 524 U.S. at 409 n.3 (recognizing that "exceptional circumstances implicating a criminal defendant's constitutional rights might warrant breaching the [attorney-client] privilege"). The court directed Leonard to prepare an affidavit and submit it for *in camera* review. Htr. 708-09.

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<sup>36</sup> GX 4000, the copy of MacDonald's notes, does not include this quoted language. The court assumes this was an oversight on the part of the Government, and this language was not fabricated by McGinniss. The court makes this assumption based on defense counsel's cross-examination of McGinniss, which focused, in part, on language McGinniss omitted from MacDonald's notes when quoting them in *Fatal Vision*. The court can only assume that defense counsel would have similarly questioned McGinniss about the above-quoted language if it was not accurate. See Htr. 1020-21.

After receiving and reviewing Leonard's affidavit [DE-302], the court informed the parties on September 20, 2012, that the privilege would be breached and Leonard could testify. Htr. 899. Accordingly, when the Government rested on September 24, 2012, MacDonald called Leonard to testify. Leonard's counsel made the request that the court conduct Leonard's examination *in camera*, which the court denied. Htr. 1106.

Leonard, an attorney in Raleigh, testified that he served as a law clerk to Judge Dupree after graduating from law school in 1971. Htr. 1106-07. He then went into private practice, about 30% of which involved criminal cases. Htr. 1107-08. Leonard testified that during the MacDonald trial, he received a phone call from Judge Dupree's law clerk asking if he would represent Stoeckley as a material witness in the case. Htr. 1108; 1118.<sup>37</sup> He agreed. Leonard testified that when he was appointed, "I had understood that she had been arrested as a material witness, that she had testified, that she was subject to recall, and I was being appointed and I needed to have her at court each and every day that court was in session." Htr. 1109. Although Leonard knew she had testified under oath, he cannot remember if he thought she had testified before the jury or on *voir dire*. Htr. 1147. As recently as the past 10 years, he thought she had testified to the judge under oath and outside the presence of the jury. Htr. 1157.

According to Leonard, he picked up Stoeckley, possibly at the Federal Building, late Sunday afternoon. Htr. 1109. He felt that he had to build trust with Stoeckley, and he also was worried about where she would stay and securing lodging for her. Htr. 1109. Leonard took her to his home where they

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<sup>37</sup> Leonard stated in his affidavit that to the best of his recollection, he was appointed on Sunday, August 19, 1979. Aff. of Leonard [DE-302] ¶ 3. He admitted on cross-examination that when he was interviewed by the Government in preparation for the evidentiary hearing, he stated he thought he was first contacted by Judge Dupree's law clerk on Saturday night. Htr. 1140.

talked, and Stoeckley spent the night on his recliner. Htr. 1110. According to Leonard, the next day, he checked her into the Hilton before taking her to court. Htr. 1110.

At the courthouse, Leonard and Stoeckley had a room on the seventh floor to themselves. Htr. 1111. He explained to Stoeckley that his role as her attorney was to help her, and that anything she said was between him and her. Htr. 1111. They also talked about the statute of limitations, and Leonard told her he really didn't know the answer. Htr. 1112. He asked Stoeckley what her testimony would be if she was called to the stand again. Htr. 1112. Stoeckley told him she did not remember anything about the evening of the murders. Htr. 1113.

Leonard questioned how she knew she couldn't remember a particular night, and Stoeckley explained that everybody knew of the murders right after they happened. Htr. 1113. Stoeckley said she had spoken with investigators very soon after the murders, and that is how she knew she had no recollection of the night of the murders. Htr. 1113. Leonard testified that "that was it as far as I was concerned." Htr. 1113.

That afternoon, however, Stoeckley asked Leonard, "What would you do if I was there?" Htr. 1114. Leonard responded that he would still represent her, and that he needed to know the truth. Htr. 1114. Stoeckley then told Leonard she was there, and told him the story of what happened that evening. Htr. 1114. According to Stoeckley, she was there but did not participate in the actual murders. Htr. 1115. Stoeckley said she did not hurt anyone, nor did she anticipate that any of the MacDonalds would be hurt. She explained that at the time of the murders, she belonged to a cult, which had a core group of followers that engaged in rituals and believed in witches. Aff. of Leonard [DE-302] ¶ 13; Htr. 1191. Stoeckley told Leonard that the cult associated newborn babies with the devil. Htr. 1192. She also said that one of the members of the core group wanted to confront MacDonald about his discrimination

against heroin users in a drug treatment program, because heroin users were recommended for court marshal or discharge, while other drug users received more favorable treatment. Aff. of Leonard [DE-302] ¶ 14; Htr. 1191, 1198. This man talked the rest of the group into going. The end result, according to Stoeckley, was that things got out of hand and the people she was with committed the murders. Aff. of Leonard [DE-302] ¶ 14; Htr. 1191. Leonard told her that she could not take the stand again and testify, and that he would help her to assert her Fifth Amendment right against self-incrimination. Htr. 1114.

Leonard said that during the remainder of the week, Stoeckley would initiate conversations about the murders and offer additional random details. For example, she said that while she was in the MacDonald home, the phone rang, and she picked it up. One of the people she was with told her to put the phone down and hang up. Htr. 1115; 1194. She also, apparently out of context, spoke about a broken hobby horse in the MacDonald home, and remarked that the parents had not fixed it. Htr. 1189.

On cross-examination, Leonard was asked to read portions of the trial transcript detailing how Rouder and Underhill met Stoeckley at The Journey's End on Sunday, August 19, 1979, and secured her new lodging at the Hilton that day. Htr. 1167-77. He also reviewed the Government's notes of an FBI interview with him in 2006, where he told them that he paid for Stoeckley's first night at the Hilton out of his pocket, but was subsequently reimbursed by the court. Htr. 1164-65. He admitted that based on the information contained in the trial transcripts, it sounded like he would have had no need to secure lodging for Stoeckley on Sunday evening, but he nevertheless had the memory of having to do so. Htr. 1175-78. He also stated that while representing Stoeckley, he saw crime scene photographs, including one that showed the hobby horse. Htr. 1190.



Leonard was also questioned on cross-examination about statements he made to Errol Morris, who has authored a book about the MacDonald case. Specifically, he said that it was possible he told Morris that Judge Dupree would not let Stoeckley testify because of her past drug use. Htr. 1150, 1152. Leonard candidly stated, "I could have. You know, what happens is you find out stuff later and then you confuse that with what actually you knew at a particular time." Htr. 1152. Leonard was also questioned about his apparent statement to Morris that, at the time of his appointment, he did not know Stoeckley had testified at all:

- Q. All right. So, at the time that you were speaking to Errol Morris in 2012, you seem to be wondering whether you knew she had testified at all, whether you knew in 1979 that she had testified at all.
- A. I don't – I can't testify to you that I knew then that she had testified.
- Q. All right.
- A. My – and then you hear things and obviously I heard that she had testified and I was thinking surely she did not testify before the jury. And Judge Dupree's statements could have been – well, I'm making explanations, but just because it was said at a bench conference where there were as many lawyers as you have here or maybe as many, that I heard it. I mean, I could have been sitting over where the clerk sits, you know.
- Q. So, as I understand your testimony, you're saying that it's sometimes difficult to distinguish what you learned in 1979, and what you've learned since?
- A. Yeah, and that's the danger. And I haven't talked to – I've tried real hard not to talk to people about this. I've tried real hard not to – I mean, I'm talking about the trial in general, although I have obviously. And what happens is you hear stuff at a later date and it all becomes part of what you know and it's hard to peel away the context that you heard one thing from the other.

Htr. 1159-60.

Leonard does not remember talking to anyone, including Wade Smith, about the case. Htr. 1207. He did send a poem written by Stoeckley to Blackburn, although he apparently did not remember doing so. Htr. 1227-28. He also did not remember hearing anything about Stoeckley being threatened or intimidated by either the Government or the defense, and nor did he remember Jim Britt ever telling him that Stoeckley had been threatened by Blackburn. Htr. 1127. He also did not receive any

information that Britt had sat in on Stoeckley's interview with the Government. Htr. 1128. He explained that he did not feel a need to contact the State Bar to ascertain what his duty was with regard to reporting what Stoeckley told him:

She told me two different things and so my – to me, it was my duty – I didn't see a duty to go and say, hey, this witness who I didn't represent is now saying such and such because she was – part of it seemed to be what she had testified to before Judge Dupree or the jury. And so – she had a history, as I understood, of telling people she was there and then apparently on the witness stand she didn't incriminate herself.

Htr. 1231.

The Government also introduced, as part of the evidence as a whole, a 1995 North Carolina Supreme Court opinion censuring Leonard for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. GX 7010.

**M. DNA or “Un sourced Hairs” evidence and arguments**

As the court already has detailed, the Fourth Circuit has directed this court to consider DNA test results evidence from AFDIL, both as part of the evidence as a whole in assessing the Britt claim, and in support of a freestanding claim itself. At the September 2012 evidentiary hearing, MacDonald did not call any fact or expert witnesses with regard to the DNA evidence, nor did the Government. The parties did, however, agree to certain stipulations with regard to the DNA evidence, which were filed as Exhibit 1 to the parties' Corrected Joint Pre-Hearing Order [DE-306]. In pertinent part, the parties stipulated to the following:

- AFDIL performed mtDNA and/or nuclear DNA (STR)<sup>38</sup> testing on 29 questioned hair and vial contents specimens;<sup>39</sup>
- AFDIL'S DNA test results, subject to certain qualifications;<sup>40</sup> and
- the photographic and digital images generated by Master Sergeant Grant D. Graham, Sr., in the identification process of the specimens.<sup>41</sup>

The parties also designated a large number of exhibits and affidavits pertinent to the DNA evidence in the Corrected Joint Pre-Hearing Order [DE-307]. The parties relied upon the Stipulations, the designated exhibits, and other evidence in the record in making their arguments regarding the unsourced hairs at the evidentiary hearing.

At the outset, the court observes that the record shows that the parties agree upon the following:

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<sup>38</sup> “MtDNA” is shorthand for mitochondrial deoxyribonucleic acid, and “STR” is short hand for short tandem repeats. “Generally speaking, every cell contains two types of DNA: nuclear DNA, which is found in the nucleus of the cell, and mitochondrial DNA, which is found on the outside of the nucleus in the mitochondrion.” *United States v. Beverly*, 369 F.3d 516, 528 (6th Cir. 2004). “MtDNA . . . is inherited only from the mother and thus all maternal relatives will share the same mtDNA profile, unless a mutation has occurred.” *Id.* at 529. With nuclear DNA, however, “half is inherited from the mother and half from the father, and each individual, with the exception of identical twins, almost certainly has a unique profile.” *Id.* Accordingly, mtDNA has been said to be a test of exclusion, rather than one of identification, like nuclear DNA testing. *Id.* That being said, mtDNA “has some advantages over nuclear DNA analysis in certain situations.” *Id.* Because there are a vast number of mitochondria in each cell, as opposed to just one nucleus, a significantly greater amount of mtDNA usually can be extracted by a lab technician as opposed to nuclear DNA; accordingly, mtDNA testing is “very useful for minute samples or ancient and degraded samples.” *Id.* Additionally, mitochondrial DNA can be extracted from sources that do not have a nucleus, like bone samples or a hair without a root segment. *United States v. Coleman*, 202 F. Supp. 2d 962, 965 (E.D. Mo. 2002).

<sup>39</sup> The specimens were identified as follows: 46A, 48A, 51A(2), 58A(1), 58A(2), 71A(1), 71A(2), 71A(3), 75A, 91A, 93A, 97A(1), 98A, 101A(1), 101A(2), 104A(1), 104A(2), 112A(1), 112A(2), 112A(3), 112A(4), 112A(5), 112A(6), 112A(7), 112A(8), 112A(9), 112B(2), and 113A. *See* Stipulations [DE-306] ¶ 22.

<sup>40</sup> *See* Stipulations [DE-306] ¶ 29. Of note, one of the qualifications was that “[n]either party may rely on any statement in the AFDIL Report of March 10, 2006, filed by the Government . . . for any assertion with respect to the identity and provenance of any item examined, or tests performed or not performed by the Army CID or FBI laboratories prior to delivery of said item(s) to the AFID on May 17, 1999, except as reflected in Exhibit 1 to this Stipulation . . . .”

<sup>41</sup> *See* Stipulations [DE-306] ¶¶ 5, 9-11.

- A hair found on Kristen's bedspread (58A(1)), a hair from the rug within the body outline of Colette (75A), and another specimen designated as 91A, did not originate from a common source, from Helena Stoeckley, from Greg Mitchell, or from any member of the MacDonald family. These are referred to by the parties as "the unsourced hairs."<sup>42</sup>
- The hair found in Collete's left hand (51A(2)), an additional hair from Kristen's bedspread (58A(2)), and one of the hairs removed from the bedspread on the floor of the master bedroom (112A(3)) are consistent with each other and originated from Jeffrey MacDonald.<sup>43</sup>
- A forcibly removed hair adhering to the top sheet in the pile of bedding on the master bedroom floor (46A) is consistent with originating from Colette, and Kimberly and Kristen are excluded as sources of this hair.<sup>44</sup>
- The blond hair found in Colette's right hand (52A), and the hair found adhering to the bedspread on the master bedroom floor (112A(5)) have the same mtDNA sequence as Colette, Kimberly, and Kristen.<sup>45</sup>

The parties disagree, however, as to the import of these findings. More importantly, the parties disagree as to where one unsourced hair, specimen 91A, was collected.

### **1. Specimen 91A**

The evidence referencing specimen 91A, and relied upon by the parties at the evidentiary hearing and in their briefing, is as follows.

#### **a. MacDonald's contentions**

MacDonald has noted that Dr. William Franklin Hancock, Jr., testified at trial that he conducted the autopsies on Kimberly and Kristen. Ttr. 2562. He participated directly in taking fingernail scrapings from both bodies, and gave those to CID agents who were in the autopsy suite at Womack Army Hospital. Ttr. 2601-02. One of the CID agents there was Bennie Hawkins, who testified at trial that he

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<sup>42</sup> See Stipulations [DE-306] ¶¶ 28, 35, 36, 37.

<sup>43</sup> See Stipulations [DE-306] ¶ 26.

<sup>44</sup> See Stipulations [DE-306] ¶ 27.

<sup>45</sup> See Stipulations [DE-306] ¶ 25.

collected, among other things, fingernail scrapings of the victims at the morgue in Womack Army Hospital. Ttr 3042. On cross-examination, Hawkins testified that the pathologist had collected items from the bodies and placed them in plastic vials. Ttr. 3049-50. He explained, “I took possession of vials containing what the doctor told me it contained at that point.” Ttr. 3050. He specifically stated that he received the collected items from Dr. Hancock. Ttr. 3050. He marked each vial with the following notation, “BJH, 17 February ‘70.” Ttr. 3051.

MacDonald next referenced the July 27, 1970, bench notes of Janice Glisson [DE-217-3]. The first page of the notes state that she received 13 plastic vials containing fingernail scrapings, hair samples, fibers and vaginal smears taken from the victims at Womack Army Hospital. The notes state that the vials were marked on the bottom with the notation “17 Feb 70 BHJ.” The notes show that Glisson labeled each vial, and listed their contents. With regard to Vial number 7, Glisson stated:

fingernail scrapings, left hand smaller female MacDonald (not labeled by Browning)

1 hair? – 2 fragments

Bench Notes [DE-217-3] at 1. The notes also indicated that after microscopically examining the contents of the vials, Glisson wrote that Vial number 7 contained fibers and “one light brown narrow hair, no medulla . . . intact root . . . .” *Id.* at 2. MacDonald’s counsel asserted at the hearing, and in the post-hearing briefing, that the hair from Vial number 7 becomes hair number seven, which was later marked 91A by AFDIL. Htr. 1256; MacDonald’s Post-Hearing Reply [DE-351] at 31; *see also* Stipulations [DE-306] ¶ 37.<sup>46</sup>

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<sup>46</sup> Paragraph 37 provides:

The hair removed from the unnumbered pill vial on July 27, 1970, by USACIL Chemist Janice Glisson, a vial which she marked “#7 JSG” and subsequently mounted on a glass microscope slide, which she numbered to correspond to the vial as “#7 fibers Hair,” is the same hair on the same slide the FBI marked as Q137, and AFDIL subsequently marked and tested as AFDIL Specimen 91A.

MacDonald also highlighted the trial testimony of Dr. Hancock, who testified that some of Kristen's wounds could be "defined as defensive wounds or these could be wounds incurred in the process of other types of wounds happening." Ttr. 2577.

Based on the foregoing, MacDonald's counsel argued at the hearing that Specimen 91A constitutes positive circumstantial evidence of intruders. Specifically, he argued that the chain of custody establishes that Specimen 91A was a hair that came from fingernail scrapings of Kristen MacDonald, and tests show that it is an unsourced hair. When coupled with Kristen's defensive wounds, according to MacDonald, the hair is evidence that an intruder inflicted harm upon Kristen. Htr. 1258.

**b. Government's contentions**

The Government highlighted the following evidence with regard to Specimen 91A. First, the Government noted the testimony of Drs. Gammel and Hancock in 1970 in the Article 32 proceedings. Their testimony showed that Dr. Gammel collected the fingernail scrapings from all the victims prior to the autopsy of Kristen, and Dr. Hancock assisted in the process by putting slips of paper in the vials identifying the origin of the scrapings. GX 3053.9; GX 3055.16-.17.

Next, the Government referenced the trial testimony of Dr. Hancock. As previously noted, Dr. Hancock testified that some of Kristen's wounds could have been defined as defensive wounds. A larger portion of trial transcript puts Dr. Hancock's testimony in better context:

- Q. With respect to the hands of Kristen MacDonald, what, if any, did you observe there, sir?
- A. There was multiple minor lacerations – cuts basically – on both hands if I recall from reading my protocol and, in addition, there was a more significant wound. I think it was on the right hand—the right hand on either the ring or middle finger. There was a fairly large – it looked like a incised or cut wound – approximately an inch and a half or so on the side of the finger. But the hand

also had some minor cuts on it in other places which basically did not cause any bleeding, but the large wound that I described was down basically to the bone.

Q. Do you have an opinion, sir, satisfactory to yourself, as to the type or classification of the wound that was on her finger?

A. I would say as a general reference these could be defined as defensive wounds

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Ttr. 2576-77; *see also* Ttr. 2587 (identifying GXP 778 as showing Kristen's hand); GX 5035.22 (testifying at the Article 32 hearing that he did not have a photo of the left hand). The Government also noted that CID Agent Bennie Hawkins did not testify that he was present during the autopsies of the victims.

The Government next noted GX 6001, which was a copy of a military property receipt. This shows that Bennie Hawkins relinquished custody of the autopsy items on February 21, 1970, to chemist Craig S. Chamberlain for transportation to USACIL for analysis. GX 6001; *see also* Supp. Aff. of Chamberlain [DE-213] ¶ 11. This same receipt also shows an entry for a “[p]lastic container containing hair samples of 3 year old victim, Christine McDonald, marked BJH, 17 Feb 70.” GX 6001; Supp. Aff of Chamberlain [DE-213] ¶ 12, Ex. 1. Chamberlain has stated in an affidavit that at USACIL at Fort Gordon, Georgia, he was responsible for distributing the various items for testing. Supp. Aff of Chamberlain [DE-213] ¶ 13. For purposes of note taking and report listing, suspected blood stains were given the prefix “D” followed by a number. *Id.* ¶ 15. Hairs and fibers that were not being subject to serological testing were given the prefix “E” followed by a number. *Id.* ¶ 16.

On February 26, 1970, Chamberlain made an inventory of the items in his custody that he was going to distribute to other chemists at USACIL. Supp. Aff. of Chamberlain [DE-213] ¶ 17; GX 6002. In that inventory, he included the following: “D-237: Vial c/ fingernail scrapings marked ‘L. Hand Chris.’” GX 6002. In his supplemental affidavit, Chamberlain explained:

The use of quotation marks, and the word “marked” indicates that something bore the writing “L. Hand Chris”, which contained the fingernail scrapings of Christine (sic)

MacDonald. That exhibit D-237 was not described as a vial marked *finger nail scrapings L. Hand Chris*, but rather the exhibit was described as a Vial c/ fingernail scrapings marked “L. Hand Chris” indicates that the words “L. Hand Chris” were written on some surface (possibly a piece of paper) that was associated with the plastic pill vial.

Supp. Aff. of Chamberlain [DE-213] ¶ 19. Chamberlain further averred that his notes indicate that Glisson conducted any possible blood testing on D-237. *Id.* ¶ 22. He stated he has no personal knowledge of what constituted D-237, beyond what is reflected in his notes, and does not have knowledge of the serological or chemical analysis conducted on D-237, other than what is in his charts. *Id.* ¶¶ 22-23.

The Government next noted the bench notes of both Glisson and USACIL Chemist Dillard O. Browning. For his part, Browning was assigned to complete examination of the trace evidence. Aff. of Browning [DE-215] ¶ 4. His bench notes show that on March 9, 1970, he examined D-237, and observed:

-Fingernail scrapings from Kimberly's Christine's left hand – vial contains one microscopic piece of multi strand polyester/cotton fiber identical to the pajama top material Bloodstained but washed.

Aff. of Browning [DE-215] ¶ 8; Ex. 3 [DE-215-3]. Browning testified to this identification before the grand jury in 1974. Aff. of Browning [DE-215] ¶ 9; Ex. 4 [DE-215-4]. Browning stated in his affidavit that “[t]here is no question in my mind . . . that what I removed from the bloody fingernail scrapings of Exhibit # 237 was a fiber, not a hair.” Aff. of Browning [DE-215] ¶ 10. After microscopically comparing the fiber to MacDonald's pajama top, Browning did not return the fiber to the pill vial, and recalls that it was “consumed in the course of further examinations.” *Id.* ¶ 11. Browning then turned over the residual fingernail scrapings to Glisson so she could type the blood. *Id.* ¶ 12.



Glisson's affidavit, and accompanying bench notes and other exhibits [DE-217], show that she conducted serology tests on materials from Kristin's left hand. Aff. of Glisson [DE-217] ¶¶ 9-13; Ex. 1 [DE-217-2]. Although she observed blood on the materials, Glisson's notes do not reflect that she identified the presence of a hair in the materials or that she performed any chemical analysis on any hair, and she stated that she would have recorded any such finding or testing in her notes. Aff. of Glisson [DE-217] ¶ 13. Glisson also explained in her affidavit that she did not use "D-237" in her notes, and that someone later added that designation, most likely Chamberlain. *Id.* ¶ 10.

Further, Glisson stated that during the course of the Article 32 hearings, due to the temporary unavailability of Browning, she was assigned to compare the known hair exemplars of Jeffrey MacDonald with hairs recovered from Colette's hands. As part of this process, she received from the Fort Bragg CID, on July 27, 1970, thirteen plastic vials reported to contain fingernail scrapings, hair samples, and other items collected from the MacDonald victims at autopsy. Aff. of Glisson [DE-217] ¶ 16; Ex. 2 [DE-217-3]. She explained that she numbered the vials, which were otherwise unmarked except for "17Feb70 BJH" on the bottom" and marked them with her initials "JSG" on the cap. After conducting a macroscopic inventory of the contents of the vials, she made notes about their contents and their origin. Aff. of Glisson [DE-217] ¶ 16. As noted by MacDonald, with regard to Vial 7 she stated:

fingernail scrapings, left hand smaller female MacDonald (not labeled by Browning)

1 hair? – 2 fragments

Bench Notes [DE-217-3] at 1. Glisson observed in her affidavit that the description in her notes corresponds exactly with the words written on the piece of ruled paper depicted in GPS Photo No. 314. Aff. of Glisson [DE-217] ¶ 17; Ex. 7 [DE-217-8]. She also notes that she did not record in her notes

the contents or origin of this vial as being from “L. Hand Chris,” “237” or “D-237.” *Id.* Based on this she concluded that she had not previously examined the contents of this vial as presented on July 27, 1970. She also concluded that the container that Craig Chamberlain had described on February 26, 1970 as fingernail scrapings marked “L. Hand Chris”, the contents of which she had previously subjected to serology tests, was not present on July 27, 1970. *Id.*

Glisson mounted the hair on a glass microscope slide, examined it, and recorded her observations. Aff. of Glisson [DE-217] ¶ 19. In her affidavit, she stated:

I have no basis to believe that prior to July 27, 1970 I had ever seen this hair before. From the absence of any mention in my notes of suspected blood stains, or red brown stains, I conclude that I observed nothing on the hair under the microscope which indicated that this hair was, or had been, bloodstained. In any case, prior to mounting this hair on a slide #7, I performed no chemical analysis for the presence of blood. Nor did I wash this hair. Had I observed any indication of blood I would have recorded this in my notes, as I did in the case of the long “bloody” head hair (E-3) in vial #1, the debris around the mouth of Colette MacDonald, the “bloody” hair (E-4) from vial # 10, “R. Hand Mother” and the “bloody” hair (E-5) from vial #13, “left hand Mother.”

*Id.*; Ex. 2 [DE-217-3]. She also stated that her use of the term “intact root” in relation to this hair was not meant to imply that the hair was pulled or otherwise forcibly removed. Aff. of Glisson [DE-217] ¶ 20.

The Government next noted that the hair on slide #7 came to be known as Specimen 91A, and expert analysis showed it to be a naturally shed hair. *See* Aff. of Fram [DE-219] ¶¶ 9-11.

Based on the foregoing, the Government argued that MacDonald had not, in fact, shown that Specimen 91A came from Kristen’s left hand, let alone from under her fingernail. Nor, according to the Government, did MacDonald show that Speciman 91A was bloody or forcibly removed. The Government asserts that the provenance of the hair in Vial #7 was unknown prior to July 27, 1970, when Glisson first recorded her observations of it. Moreover, given that no blood was observed on

Specimen 91A, the Government argues that it is much more likely that the hair constitutes an artifact or debris, rather than a hair that was found in Kristen's hands which were covered in blood.

## **2. Specimen 58(A)(1)**

The parties have stipulated that a hair found on Kristen's bedspread (58A(1)) is an unsourced hair. At the hearing, MacDonald argued that regardless of whether the hair was naturally shed or forcibly removed, it could have been shed by an intruder while that intruder was attacking Kristen in her bedroom, and is therefore positive, circumstantial evidence of his theory of intruders. Htr. 1258-59.

The Government, for its part, noted that Specimen 58A(1) was one of two hairs collected from Kristen's bedspread. FBI examiners determined that both hairs were of Caucasian origin, and that both hairs had "club" roots, indicating that they were naturally shed. Htr. 1319; Aff. of Robert Fram [DE-219] ¶¶ 19-21. As the court has noted, Specimen 58A(1) is one of the unsourced hairs. Specimen 58A(2), however, has a mtDNA sequence consistent with that of Jeffrey MacDonald. Htr. 1319; Stipulations [DE-306] ¶ 26. The Government argued that the presence of Specimen 58A(1), an unsourced, naturally shed hair, is no more probative than the presence of Specimen 58A(2), Jeffrey MacDonald's naturally shed hair, because there is no evidence as to when either hair was shed. Htr. 1320. The Government argued that this was especially the case, given the presence of numerous other unsourced fibers and unsourced black dog hairs. Htr. 1320-22.

## **3. Specimen 75A**

The parties also have stipulated that a hair found on the rug in the master bedroom within the body outline of Colette (75A) is unsourced. MacDonald asserted in his post-hearing memorandum that "[t]he hair had both root and follicular tissue attached, indicative that it was pulled from someone's skin." Def. Post-Hearing Mem. [DE-343] at 37. Regardless, MacDonald argues that whether this hair

is naturally shed or forcibly removed, it is a piece of evidence that an intruder could have shed while attacking Colette. Htr. 1259.

The Government noted that Specimen 75A was collected almost a month after the murders. Htr. 1324; Aff. of Browning [DE-215] ¶¶ 3-6. The Government also noted an FBI examiner explained that naturally shed pubic hairs frequently have some follicular tissue attached, so the presence of follicular tissue does not mean that the hair was forcibly removed. Aff. of Fram [DE-219] ¶ 18. This same examiner opined that the pubic hair was naturally shed. *Id.* The Government posited that other debris was found on the rug, and that – other than the threads and yarns that are consistent with MacDonald’s pajama top, which was indisputably torn on February 17, 1970 – there is no way to determine when Specimen 75A or the other debris were deposited on the rug. Htr. 1325-26.

#### **4. Sourced hairs**

The Government also argued that the DNA testing results regarding the “sourced” hairs strengthens the case against MacDonald.

First, the Government observed that DNA testing showed that Specimen 52A, a hair found in Colette’s right hand, showed an mtDNA sequence identical to Colette, Kristen and Kimberly, who all share the same maternal mtDNA sequence. Stipulations [DE-306] ¶ 25. The Government asserted that this confirms earlier testimony that a microscopic comparison indicated this hair belonged to Colette. Htr. 1332.

Second, the Government noted that a previously uncomparable hair found in Colette’s left hand, which MacDonald’s trial counsel had pointed to as proof of intruders (and now designated as 51A(2)), was shown to have Jeffrey MacDonald’s mtDNA sequence. Htr. 1332-33; Stipulations [DE-306] ¶ 26; Ttr. 3846-48, 7266. The Government noted that bench notes described the hair as having a rounded tip

and broken end, and noted that the hair bore tissue that appeared to be blood as well as unknown debris. The hair also had a fiber fragment along the shaft. *See* Bench Notes Graham [DE-123-4] at 8.

Third, the Government observed that Specimen 46A, a hair found adhering to the bedsheet on the floor in the master bedroom, was consistent with having originated from Colette, and Kimberly and Kristen were excluded as contributors. Stipulations [DE-306] ¶¶ 25, 27; AFDIL Laboratory Summary [DE-123-2] at 6. The Government also observed that an FBI examiner had determined that because of the presence of the root with sheath and follicular tag and attached tissue, this hair was consistent with having been forcibly removed. Htr. 1335; Aff. of Fram [DE-219] ¶¶ 22-24. The Government also noted that MacDonald had previously argued to the Fourth Circuit Court of Appeals that this hair could be highly persuasive evidence of MacDonald's innocence because the hair more than likely was deposited as a result of a struggle between the victims and the person who committed the murders.

Finally, the Government observed that a hair found adhering to the bedspread in the master bedroom (Specimen Q112A(5)) had the same mtDNA sequence as Kimberly, Kristen, and Colette, but the hair microscopically matched Kimberly's known exemplar. Htr. 1336; Aff. of Fram [DE-219] ¶¶ 26, 29. An FBI examiner also opined that this hair had been forcibly removed. Aff. of Fram [DE-219] ¶ 31. The Government posited that this result is notable because according to MacDonald's account, Kimberly should not have had contact with the bedspread in the master bedroom, and MacDonald also asserted that he had no contact with the bedspread or sheet. Htr. 1336.

#### **N. Post-hearing submissions**

Each side submitted post-hearing briefing. In connection with their memoranda, the parties filed additional exhibits.

## 1. MacDonald's filings

Specifically, MacDonald filed four periodical articles. The first was one authored by his former attorney, Harvey Silvergate, offered as support for MacDonald's assertion that the Government failed to disclose significant exculpatory or favorable evidence to MacDonald prior his trial. *See* DX 5114, Harvey Silvergate, *Reflections on the Jeffrey MacDonald Case*, THE CHAMPION, May 2013, at 52. Two other articles touch upon Michael Malone's testimony and suggest "Malone has engaged in misconduct." *See* DX 5119, Ruth Shalit, *Fatal Revision*, THE NEW REPUBLIC, May 26, 1997, at 18; DX 5120, Laurie P. Cohen, *Strand of Evidence: FBI Crime-Lab Work Emerges as New Issue in Famed Murder Case – Jeffrey MacDonald's Lawyer Alleges Fraud by Agent with History of Problems –Mystery of Blond Fibers*, WALL STREET JOURNAL, Apr. 16, 1997, at A1. The remaining article appears to cover MacDonald's 2005 filing regarding his Britt claim allegations. *See* DX 5118, Laurie P. Cohen, *Fatal Revision: The Plot Thickens in Famed Murder Case; Dr. MacDonald Pins Hope on U.S. Marshal's Account of What a Suspect Said*, WALL STREET JOURNAL, Dec. 14 2005, at A1.

MacDonald also filed the affidavits of two of his former attorneys, Hart Miles and Wade Smith, along with the affidavit of Robert L. Saddoff, M.D., a psychiatrist who examined MacDonald in 1970 and testified at the Article 32 hearing. Miles' affidavit concerns his recollection of how the elder Stoeckley's affidavit came about, and specifically states that the elder Stoeckley's participated voluntarily and with understanding as to what she was doing. DX 5115. Smith's affidavit seeks to clarify the record, and states, in part, that he does not think that Britt would have used him to perpetrate a fraud on the court. DX 5116. Saddoff's affidavit is offered in response to the hearing testimony of McGinniss; specifically, McGinniss's testimony that Saddoff stated that his opinion about MacDonald would have been very different had he known about MacDonald's possible use of drugs on the night

of the murders. Sadoff states that he has no recollection of making any such statement to McGinniss, and that his opinion has not changed throughout the case. DX 5117.

## **2. Government's filings**

The Government also attached numerous exhibits to its sur-reply, some of which already were in the record of the case.

One such exhibit was the report of private investigator John Dolan Myers, regarding his January 23, 1980, interview of Jerry Leonard. In pertinent part, the report states:

Mr. Leonard stated that he received permission from Ms. Stoeckley to discuss the things she told him with attorney Wade Smith. Mr. Leonard stated that he had a conference with Mr. Smith and told him what Helena had told him. He stated that he also gave Mr. Smith some insight as to his impressions of Ms. Stoeckley. He stated that he did not have permission from Ms. Stoeckley to discuss these matters with anyone else.

Myers Report [DE-352-4].

The Government also filed the affidavit of Myers, which was filed in support of MacDonald's motion for writ of habeas corpus testicandum for Jimmy Friar on August 16, 1979 [DE-352-9]. In response to the writ, Friar was interviewed by the FBI on August 17, 1979, at the McDowell County Prison Unit in South Carolina. The Government has filed the report of Special Agent Stephen P. White, FBI, summarizing the interview [DE-352-10]. The Government also filed an article that was printed in the August 22, 1979 issue of the *News & Observer* [DE-352-7], which described the filing of the writ to obtained Friar's testimony and quoted the Myers affidavit. The Government also filed the affidavit of Butch Madden [DE-352-11], regarding his March 23, 1983, interview of Friar at the Psychiatric Unit of the South Carolina Department of Corrections facility.

## ANALYSIS

Having recounted the highlights of the “evidence of the whole,” the court turns to its gatekeeping duty of assessing whether MacDonald’s claims satisfy the applicable standard of § 2255(h)(1). At the outset, the court notes that the Fourth Circuit’s opinion explicitly remanded this case “for further consideration of both the Britt claim and the DNA claim.” *MacDonald XI*, 641 F.3d at 599. Again, MacDonald’s original claim under § 2255 – the Britt claim – asserted that the allegations of Jim Britt showed that his Fifth and Sixth Amendment rights had been violated. The DNA claim, or “unsourced hairs” claim, asserted a freestanding actual innocence claim. Additionally, buried in a footnote in his post-hearing Reply memorandum, MacDonald appears to try to resurrect a claim he asserted in 1990. *See* Deft. Post-Hearing Reply [DE-351] at 9 n.6 (asserting that he has shown a constitutional violation because “the government failed to disclose significant exculpatory or favorable evidence to MacDonald before his trial”); *see also MacDonald V*, 778 F. Supp. at 1342 (denying MacDonald’s 1990 § 2255 petition premised upon the Government’s alleged suppression of exculpatory and favorable evidence). Out of an abundance of caution, the court will construe Macdonald’s assertion – argued for the first time since the remand of this matter in a single sentence in a footnote in a reply memorandum – to be a motion to amend to assert a third § 2255 claim. Pursuant to Rule 15(a), the court **ALLOWS** MacDonald’s motion to amend to assert this claim.

Notwithstanding the Fourth Circuit’s lengthy opinion instructing this court to conduct “a more searching § 2255(h)(1) evaluation” of both the Britt and unsourced hairs claim, the parties still disagree as to how this court should go about applying § 2255(h)(1). Moreover, assuming that any of MacDonald’s claims survive the more searching § 2255(h)(1) inquiry, the parties also disagree as to how the court should assess the claims on the merits.



The Government seemingly contends that each of MacDonald's claims must be evaluated, for gatekeeping purposes, separately, although the evidence underlying each is considered as part of the evidence as a whole. In other words, the Government argues that for purposes of the § 2255(h)(1) analysis, the "newly discovered evidence" is the evidence underlying each § 2255 claim. *See* Gov't Post-Hearing Mem. [DE-344] at 183-85; 191-93. Moreover, the Government asserts that as to the merits, MacDonald is tasked with proving that a constitutional violation underlies *each* of his claims. *See* Gov't Post-Hearing Mem. [DE-344] at 193-95; Gov't Post-Hearing Reply [DE-346] at 50-52.

MacDonald, however, relying on the plain language of § 2255(h)(1) and authorities interpreting the statute, contends that all the newly discovered evidence – the evidence surrounding Britt's allegations, evidence of Stoeckley's statements to her mother and to Leonard, along with the evidence of the unsourced hairs – must be examined for gatekeeping purposes, untethered to any particular claim. Def. Post-Hearing Mem. [DE-343] at 8-10. MacDonald contends that this new evidence, after being considered against the backdrop of the evidence as a whole, serves to propel his § 2255 claims through the second gate. Furthermore, seizing upon the undersigned's comments at the evidentiary hearing that gatekeeping and merits assessments were conflated, MacDonald argues that to succeed on the merits, he need only make the identical showing required by the gatekeeping process. In other words, MacDonald argues that he need not prove a constitutional violation to succeed on the merits of any of his claims.

For the reasons more fully set out below, the court agrees with MacDonald regarding the standard of review, for gatekeeping purposes, under § 2255(h)(1). Nevertheless, the court concludes that MacDonald has failed to meet that standard for any of his claims. In other words, the court concludes that MacDonald has not demonstrated that the newly discovered evidence, viewed in light

of the evidence as a whole, is sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found MacDonald guilty of the murders of his wife and daughters. Moreover, even if the court assumes that MacDonald's claims survive the § 2255(h)(1) inquiry, the court concludes that the claims fail on the merits.

**A. 28 U.S.C. § 2255(h)(1)**

As MacDonald observes, § 2255(h)(1) provides the starting point for this court's analysis at the gatekeeping stage. He also observes that to some extent, the language of the statute tracks the same procedure for a successive § 2255 motion as exists for a successive petition filed under § 2254 by a prisoner who was convicted in state court. Indeed, this court originally conducted the gatekeeping analysis under 28 U.S.C. § 2244(b)(2)(B)(ii), and although the Fourth Circuit concluded that this court erred, it also observed that the error was "probably harmless" because of the similarities between the two provisions. Notwithstanding the Fourth Circuit's characterization of the two provisions as "materially identical," *see MacDonald XI*, 641 F.3d at 610, MacDonald posits that crucial differences exist between the statutes, and these differences impact the court's gatekeeping analysis. The court agrees.<sup>47</sup>

As the Tenth Circuit Court of Appeals has observed, § 2255(h)(1) and § 2244(b)(2)(B)(ii) differ in at least two ways. "First, § 2255(h)(1) refers to 'newly discovered evidence,' whereas subparagraph (B)(ii) refers to 'the facts underlying the claim.'" *Case v. Hatch*, 731 F.3d 1015, 1035 (10th Cir. 2013). "[S]econd, § 2255(h)(1) omits the phrase 'but for constitutional error,' which appears in subparagraph (B)(ii)." *Id.* Accordingly, for gatekeeping purposes, § 2255(h)(1) allows "'newly discovered evidence'

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<sup>47</sup> As discussed later in the order, the court does not, however, agree with MacDonald's argument that § 2255(h)(1) ultimately alters his burden on the merits.

to ‘establish’ a petitioner’s innocence and omits any requirement that the new evidence be rooted in constitutional error at trial.” *Id.* (contrasting § 2244(b)(2)(B)(ii) which “requires the ‘*facts underlying the claim*’ to ‘establish’ a petitioner’s innocence, and requires those facts to be attributable to some ‘constitutional error’ in the underlying trial proceedings”) (emphasis in original); *see also Ferranti v. United States*, 480 F. App’x 634, 637 (2nd Cir. 2012) (“The district court thus imposed on Ferranti the additional requirement, not applicable to successive petitioners under § 2255, of demonstrating that the exclusion of exculpatory evidence from his trial was the result of constitutional error.”); 2 RANDY HERTZ & JAMES S. LIEBMAN, *FEDERAL HABEAS CORPUS PRACTICE & PROCEDURE*, § 41.7 (6th ed. 2011) (observing that § 2255(h) “appears to adopt the same *procedure* for section 2255 cases as applies to successive state-prisoner habeas corpus petitions” but “adopts a *standard* for section 2255 cases that is significantly different from the comparable provision for state-prisoner successive petitions”) (emphasis in original).

In applying this standard, the court sees no need to assess, for gatekeeping purposes, MacDonald’s claims separately. Indeed, MacDonald himself does not attempt to assess his claims separately. Rather, he asks the court to consider all four categories of the newly discovered evidence (the Britt allegations, the alleged confessions to the elder Stoeckley and Leonard, and the unsourced hairs) in tandem, along with the rest of the evidence as a whole. *See* Def. Post-Hearing Reply [DE-351] at 10. Moreover, given that the new evidence proffered in support of each claim must also be evaluated as part of the evidence as a whole, distinguishing the claims for gatekeeping purposes makes little sense.<sup>48</sup> The court, accordingly, will assess whether all the newly discovered evidence, viewed in light

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<sup>48</sup> Additionally, it appears that MacDonald is effectively seeking to amend his two claims to include evidence regarding Stoeckley’s alleged confessions to her mother and Leonard. *See* Def. Post-Hearing Reply [DE-351] at 7 (explaining that “the Britt claim” “label was adopted before Jerry Leonard

of the evidence as a whole, is sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found him guilty of the murders of his wife and daughters.

**B. MacDonald has not met his burden under § 2255(h)(1)**

MacDonald has proffered four categories of new evidence in support of his § 2255 claims: (1) the three unsourced hairs; (2) Britt's allegations; (3) Stoeckley's alleged confession to her mother; and (4) Stoeckley's alleged confession to Leonard. None of the new evidence, considered against the whole panoply of evidence that MacDonald has marshaled over the past forty-plus years as well as the evidence presented at trial, would preclude a reasonable juror from finding him guilty.

**1. The unsourced hairs evidence**

Although MacDonald characterizes the DNA test results as “highly exculpatory,” the court cannot agree. Looking at the actual evidence – as opposed to unsupported assertions in motions and memoranda – the DNA test results show the presence of three unsourced hairs: 58A(1) (found on Kristen's bedspread); 75A (found on the rug in Colette's body outline) and 91A (a hair found in a vial on July 27, 1970, containing fingernail scrapings from Kristen). A careful review of the evidence in the record shows that none of these hairs were forcibly removed, nor were they bloody. *See supra* pp. 120-26. Indeed, despite MacDonald's latest arguments to the contrary in his post-hearing memoranda,

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revealed what Stoeckley told him while he represented her during the MacDonald trial” and asserting that “[t]he important determination is what Stoeckley would have said if she had been called as a witness, free of any fear of subjecting herself to criminal liability in these homicides”); *id.* at 35 (“[A] jury hearing the newly discovered evidence from Jerry Leonard, Gene Stoeckley, Mary Britt and Wade Smith, as well as the DNA evidence of the unsourced hairs, would undoubtedly acquit MacDonald based on this evidence alone.”). The court is, of course, cognizant of the Fourth Circuit's observation that this court previously has erred by viewing items of evidence proffered by MacDonald “as being submitted in support of claims separate and distinct from the Britt claim and each other.” *MacDonald XI*, 641 F.3d at 614. Still, out of an abundance of caution, the court construes MacDonald's latest arguments as seeking to amend the two § 2255 claims. Pursuant to Rule 15(a), the court ALLOWS MacDonald's request to amend his § 2255 claims to include allegations relating to Stoeckley's confessions to her mother and Leonard.

his counsel conceded as much at the hearing in this matter.<sup>49</sup> To be sure, as MacDonald's counsel argues, the presence of an unsourced hair – even if it is naturally shed, and not bloody – could be considered as evidence of an intruder by a juror. It would be equally as easy for a juror to reach the conclusion, however, that the unsourced hairs were mere artifacts or debris, and not indicative of intruders. This is especially the case here, where the trial jury was presented with evidence MacDonald argued was supportive of his testimony that he and his family were attacked by intruders – other unsourced hairs; unsourced fingerprints and palm prints; unsourced wax; and the existence of a pink fiber in MacDonald's eyeglasses – and found him guilty anyway. *See* Ttr. 7266-68. Moreover, a juror

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<sup>49</sup> Defense counsel's concession occurred during the parties' closing arguments on September 25, 2012:

Mr. Widenhouse: . . . So, if there are unsourced hairs that are present at the crime scene that is some circumstantial evidence of intruders that was not available at trial.

The Court: Well, excuse me. I understood the Government's discussion - - Mr. Murtagh's discussion of the unsourced hairs to be that they weren't as probative as they would be if they had been demonstratively forcibly removed and had blood on them.

Mr. Widenhouse: Well, certainly, if they were forcibly removed they're more probative than they would be if they're not.

The Court: All right. Do you say that the evidence still supports that?

Mr. Widenhouse: Yes. The evidence supports that they're an unsourced - -

The Court: You have read the affidavits attached - -

Mr. Widenhouse: I'm not saying they're forcibly removed.

The Court: Well, that's what I'm asking you.

Mr. Widenhouse: No. I'm saying that the evidence from the DNA - -

The Court: I'm asking you whether they have blood on them.

Mr. Widenhouse: No, they don't seem to have blood on them.  
Htr. 1396-97.

also would consider that the DNA results revealed that a hair found in Colette's left hand, which MacDonald's trial counsel had pointed to as proof of intruders, was shown to have Jeffrey MacDonald's mtDNA sequence. Htr. 1332-33; Stipulations [DE-306] ¶ 26; Ttr. 3846-48, 7266. Although MacDonald argues that the presence of this hair is not inculpatory, because his hair could have been discarded into Colette's hand during his efforts to save her life, a juror could reject that argument. A juror also could consider that the DNA tests showed that none of the tested hairs were consistent with coming from Stoeckley or Mitchell – two of the individuals MacDonald contends were involved in the murders of his family. In sum, the unsourced hairs evidence is not necessarily exculpatory scientific evidence. Furthermore, this evidence – even when considered against the record as a whole – is far from clear and convincing of MacDonald's actual innocence.

In this regard, the unsourced hairs evidence is similar in value to the other evidence of intruders proffered by MacDonald over the years; namely, unsourced fibers, saran fibers, and the alleged presence of a bloody syringe. For example, MacDonald has argued that the presence of black wool fibers found on the club and near Colette's mouth is evidence of intruders, because the fibers did not match any known exemplar from the MacDonald home. As indicated by previous findings by Judge Dupree and the Fourth Circuit, however, a juror could easily find the fiber evidence to constitute another example of household debris. *See MacDonald V*, 778 F. Supp. at 1351 (observing that “no two of these fibers appear to be from the same source” which diminishes the significance of the fibers, and that the fibers are unmatched “in part due to the fact that the MacDonald family's possessions are no longer available for forensic comparisons”), *aff'd MacDonald VI*, 966 F.2d at 854 (“The most that can be said about the evidence is that it raises speculation concerning its origins. . . . [T]he origins of the

hair and fiber evidence have several likely explanations other than intruders.”).<sup>50</sup> Furthermore, the cumulative evidence regarding the saran fibers found in Colette’s hairbrush can be viewed as “equivocal” as to whether the fibers originated from a wig or a doll. *MacDonald VI*, 1998 WL 637184, at \*4. Ultimately, the saran fiber evidence engenders speculation as to the origin of the fibers; it by no means compels a conclusion that the three blond saran fibers are a product of Stoeckley brushing her wig with Colette’s hair brush. Finally, the court, much like Judge Dupree before it, finds that there is little reliable evidence supporting the proposition that a “half-filled, bloody syringe” was recovered from the crime scene. *See supra* pp. 62-63. Like the unsourced fibers, saran fibers, and alleged presence of the bloody syringe, the presence of three unsourced hairs at the crime scene, even when considered in light of all the other evidence of intruders MacDonald has marshaled over the years, does not sufficiently rebut the Government’s evidence of guilt. A juror presented with the evidence of the unsourced hairs and who considers the entire record in the case, could draw a number of reasonable, non-exculpatory inferences from the fact that three unsourced hairs were found at the scene.

In sum, the court finds that the unsourced hairs evidence does not constitute exculpatory scientific evidence. Moreover, even if it did, and even if it was considered against the entire record of evidence in this case, it does not serve to establish that no reasonable juror could find MacDonald guilty of the murders of his family.

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<sup>50</sup> Presumably it would not be lost on a juror that a possible reason that these fibers did not match any known exemplar from the MacDonald home is because the MacDonald family possessions were no longer available for comparison, having been returned to Jeffrey MacDonald and disposed of by him.

## **2. The alleged confessions of Stoeckley**

The other new evidence MacDonald largely relies upon are the confessions Stoeckley allegedly made to Britt, Leonard, and her mother. The court finds that none of the proffered evidence constitutes reliable, credible evidence which would support the conclusion that no reasonable factfinder would have found MacDonald guilty of the murders of his wife and daughters.

### **a. Confession to Britt**

As part of his new evidence, MacDonald proffers Britt's sworn statements that while he was transporting Stoeckley from South Carolina to Raleigh for the MacDonald trial she told him that she and others were in the MacDonald house on the night of the murders and that she mentioned that there was a hobby horse at the MacDonald home. After considering the various sworn statements of Britt, along with other evidence and testimony proffered at the September 2012 hearing, the court finds Britt's statements to be neither probably reliable nor likely credible.

First, the court notes that Britt's sworn statements contain material inconsistencies. For example, in the November 3, 2005 affidavit, Britt states that he was assigned to go to Greenville, South Carolina to pick up Helena Stoeckley, and in fact did pick her up at the County Jail in Greenville. DX 5059 ¶ 11. In his sworn interview on February 24, 2005, however, he stated that he went to Charleston, South Carolina, and assumed custody of her at the United States Marshal's Office there. DX 5055 at 12. Additionally, in his February 2005 sworn interview, he stated that upon arriving in Raleigh, he checked Stoeckley – who had been arrested on a material witness warrant – into the Holiday Inn on Hillsborough Street. DX 5055 at 16. In his February 2006 addendum to his affidavits, however, he stated that he committed her to the custody of the Wake County Jail. DX 5056. Perhaps the first inconsistency – Britt's assertions as to where he picked up Stoeckley – can be attributed to the fading



memories of Britt. The second inconsistency, however, between whether he committed Stoeckley to the custody of the Wake County Jail or whether he checked her into a hotel, calls into question the validity of any of Britt's memories, given that she had been arrested on a material witness warrant.

In addition to the inconsistencies between his own statements, Britt's various statements are also contradicted by a host of other evidence before this court. The testimony of Frank Mills establishes that he arrested Stoeckley on August 14, 1979, and committed her to the Pickens County Jail. Htr. 474-75. His testimony was supported by documentary evidence. *See* GX 2008 (booking report and materials from Pickens County Jail); GX 2064 (commitment form). The documentary evidence also showed that Stoeckley was released the next day to Deputy United States Marshal Vernoy Kennedy. GX 2066 (release form). Kennedy confirmed this fact in his August 23, 2006, sworn statement. GX 2010. Additionally, Kennedy stated that he and a female guard then transported Stoeckley to a prearranged spot at the intersection of Interstate 85 and Interstate 77 in Charlotte, where he turned Stoeckley over to a Deputy Marshal for the Eastern District of North Carolina. GX 2010 at 12-13. This evidence, which the court finds a reasonable juror would credit as credible and reliable, directly contradicts Britt's assertions that he traveled to South Carolina to transport Stoeckley to the trial.

The testimony of former Deputy Marshal Dennis Meehan and his former wife, Janice Meehan, also directly contradict Britt's assertions. Dennis Meehan testified that he and his wife, who was acting as a matron, were tasked with picking up Stoeckley in Charlotte and transporting her to Raleigh. He testified that he picked Helena up at a prearranged stop at the intersection of Interstate 85 and Interstate 77 in Charlotte from another deputy marshal, whom he described as a tall, black man. He then transported Stoeckley directly to the Wake County Jail. Janice Meehan confirmed this same version of events in her testimony. The Meehans' testimony, which the court perceives to be credible and

reliable, greatly discredits the idea that Stoeckley confessed to Britt during a long transport from South Carolina to Raleigh.

Additionally, the record as a whole establishes the high unlikelihood of other events Britt mentions in his sworn statements. In his Addendum to his affidavit, Britt states that on Sunday, August 19, 1979, he checked Stoeckley out of The Journey's End motel and then registered her at the Holiday Inn. DX 5056. This conflicts with the testimony of Wendy Rouder, who testified that she and Red Underhill retrieved Stoeckley from The Journey's End and subsequently checked her into the Hilton. Britt also asserted that on August 20, 1979, he was tasked with obtaining a subsistence check for Stoeckley from a Marshals Office administrator, cashing the check, and checking Stoeckley out of the Holiday Inn. Britt stated he did so, and followed his instructions to purchase a one-way bus ticket to Charleston for Stoeckley. DX 5056. The rest of the record reflects, however, that Stoeckley stayed in Raleigh through at least August 24, 1979, meaning that Britt could not have placed her on a one-way bus to Charleston on August 20, 1979. Additionally, testimony from Marshals Office employees establishes that it was highly unlikely that the government would be responsible for a subsistence check where Stoeckley, after August 17, 1979, was under a subpoena from MacDonald, a non-indigent defendant. Htr. 559, 572-75. Attributing these major inconsistencies to fading memories is extraordinarily difficult; rather, it is more likely that these details are fabrications or confused memories, which in turn render all of Britt's statements incredible and unreliable.

**b. Confession to Leonard**

Similarly, the court is constrained to find Leonard's testimony regarding Stoeckley's confession to be unreliable. Again, Leonard was appointed to represent Stoeckley after she had testified in front of the jury, and after a series of bizarre events over a weekend, including Stoeckley calling Judge

Dupree and telling him she was in fear of defense attorney Segal and requesting an attorney. Leonard testified that on August 20, 1979, Stoeckley originally told him that she could not remember the events of the early morning hours of February 17, 1970, but later that afternoon she changed her story, telling Leonard that she was present in the MacDonald home during the murders but did not participate. During the week she waited at the federal courthouse under subpoena from MacDonald, she offered up other details to Leonard, including that there was a broken hobby horse in the MacDonald home, and that while she was in the MacDonald home, she answered a ringing telephone, but hung up when one of the people she was with told her to do so.

Like Britt's statements about Stoeckley's confession, Leonard's recitation of the events surrounding his representation of Stoeckley is contradicted by other matters in the record. For example, he testified that he remembers picking Stoeckley up on a late Sunday afternoon, possibly at the federal courthouse, and taking her to his house. He spoke with her for several hours, and she eventually fell asleep on a recliner at his house. Leonard testified that he was responsible for her lodging, so he checked her into the Hilton prior to taking her to the courthouse on Monday morning. Htr. 1109-11. The record indicates, however, that Stoeckley spent most of Sunday, August 19, 1979, in the company of Rouder and Underhill, who arrived at The Journey's End motel around 11:00 or 11:30 a.m. Rouder spent several hours with Stoeckley at The Journey's End, and then drove her to the Hilton where Stoeckley and Underhill checked in. Stoeckley then accompanied Rouder and Underhill to the The Downtowner Hotel so Underhill could retrieve his belongings. Shortly after Underhill and Stoeckley returned to the Hilton, Rouder was summoned to transport Stoeckley to the hospital, for treatment for her nose. Underhill spent the night in an adjoining room, and Stoeckley spoke to Underhill on both Sunday evening and Monday morning. Ttr. 5897-5949. Leonard's version of his initial contact with

Stoeckley cannot be reconciled with the *voir dire* testimony at trial from Underhill and Rouder, or Rouder's hearing testimony in this matter. As was the case with Britt's allegation, Leonard's assertions as to something that seemingly did not happen calls into question the reliability of all of his testimony.

Similarly, Leonard testified that after Stoeckley told him that she was present in the home during the MacDonald murders, he instructed her to plead the Fifth Amendment if she was recalled to testify. He also stated that he did not discuss what Stoeckley told him with anyone, including Wade Smith. Ttr. 1206-07, 1211. Evidence in the record, however, calls into question this account. In open court discussions with Judge Dupree, Smith stated that he had talked with Leonard at length on the morning of August 23, 1979, regarding the defense's need to keep Stoeckley under subpoena because she continued to "say things that tie her to this case." Ttr. 6647. Additionally, on January 23, 1980, shortly after MacDonald's trial, Leonard spoke with John Dolan Myers, a defense team investigator. According to Myers' memorandum of the interview, Leonard said that with Stoeckley's permission, he had a conference with Smith during which Leonard told Smith what Stoeckley had told him. He also gave Smith insight into his impressions of Stoeckley. *See* Report of Myers Interview of Leonard [DE-352-4]. Again, these differing statements are hard to reconcile, and result in great questions about the overall reliability and credibility of Leonard's testimony.

This is the case, even though Leonard's account of Stoeckley's confession seemingly is corroborated by the July 25, 1983 declaration of Jimmy Friar. Therein, Friar stated that around 2:00 a.m. on February 17, 1970, he called the Fort Bragg base operator from a payphone at the Wade Hampton Hotel, in Fayetteville, attempting to get in contact with a Dr. Richard MacDonald, a doctor who had treated him while he was a patient at Walter Reed Hospital in Washington, D.C. He asked for "Dr. MacDonald" without specifying the first name. The base operator gave him a number, which he

called. Friar stated that a laughing woman answered the phone, and he heard someone say “Hang up the Goddamned phone.” DX 5021. Friar’s account corresponds to what Stoeckley allegedly told Leonard; namely, that during the time she was in the MacDonald house she answered the phone and hung it up when told to do so by one of the others with her.

The problem, however, is that Friar’s declaration is neither likely credible nor probably reliable. As Friar himself sets forth in his declaration, he was disoriented on the night of the alleged phone call, having drunk alcohol and played pool in Fayetteville after persuading an orderly to let him sneak out from Womack Army Hospital at Fort Bragg. DX 5021 ¶¶ 3, 5, 6, 8. Indeed, in an interview with the FBI during the MacDonald trial, Friar stated that he had consumed quite a bit of alcohol during the day, in addition to taking prescribed medications for a mental condition. *See* Form 302 of Aug. 17, 1979, Interview of Friar [DE-352-10]. Moreover, in this interview Friar stated that he had undergone psychiatric treatment in various prison units, and, during the time of the MacDonald murders, he was being held in a special barracks at Fort Bragg, apparently as a result of being absent without leave from Walter Reed Army Hospital. *Id.* In a later interview with the FBI, however, he denied receiving any mental treatment, and stated he was only receiving treatment for shrapnel wounds and grand mal epilepsy. Subsequently, Friar admitted in correspondence with the FBI to being a frequent patient in the mental wards of numerous hospitals. *See* Aff. of Madden [DE-352-11]. He also described himself as a “con man and manipulator” to the FBI, and admitted to a criminal history that included convictions for fraud. *See* Form 302 [DE-352-10]; Aff. of Madden [DE-352-11]. Friar’s history of mental illness, criminal convictions, and inconsistent statements, in addition to his admitted intoxication and

disorientation during this alleged phone call, makes him an inherently unreliable and incredible witness.<sup>51</sup>

Additionally, as Leonard candidly admitted during his testimony, “what happens is you hear stuff at a later date and it all becomes part of what you know and it’s hard to peel away the context that you heard one thing from the other.” Htr. 1159. Information about the Friar phone call has been known to the public since Wednesday, August 22, 1979, and has been recounted in an opinion from the Fourth Circuit. *See* Ginny Carroll, *Witnesses Attest to MacDonald’s Trust, Compassion*, NEWS & OBSERVER, Aug. 22, 1979 at 25 [DE-352-7];<sup>52</sup> *MacDonald VI*, 966 F.2d at 855 n.7. Given Leonard’s seemingly poor memory about the events of August 1979, the court finds it entirely plausible that he is “remembering” information he learned at a later date. In sum, the court respectfully finds that Leonard’s testimony is not likely credible nor probably reliable.

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<sup>51</sup> Additionally, the court agrees with the Government’s assertion that Friar related a “belated tale of improbable coincidences, that is riddled with contradictions and uncorroborated by any reliable or credible evidence.” Gov’t Post-Hearing Sur-Reply [DE-352] p. 38. It is telling that MacDonald ultimately chose not to call Friar as a witness at the 1979 trial.

<sup>52</sup> The article stated, in relevant part:

[T]he defense attorneys also filed a request Tuesday to secure testimony from James E. Friar, 30, an inmate serving an 10-year sentence for fraud at the medium-custody state prison unit in McDowell County.

Friar was convicted April 6, 1977, in Richmond County of writing a check with a fake name and address for men’s clothing. Superior Court Judge William Z. Wood, who sentenced Friar, recommended that he receive psychiatric treatment.

Friar told an investigator for MacDonald that about 3 a.m. on the morning of February 17, 1970, he was in Fayetteville. He said he telephoned the MacDonald house by mistake, looking for another doctor named MacDonald.

According to an affidavit by defense investigator John Myers, a woman answered the phone and began laughing when Friar asked for Dr. MacDonald. A male voice in the background said, “Hang the damn phone up,” according to the affidavit.

*Id.*

**c. The reliability and credibility of Helena Stoeckley**

Moreover, even if the court could find the statements of Britt and Leonard regarding Stoeckley's confessions to be credible and reliable, and if the court assumes that the elder Stoeckley's sworn statements are likely credible and probably reliable,<sup>53</sup> at bottom they are repeating the statements of Helena Stoeckley herself. As this court observed in 2008, with regard to Stoeckley's confessions, the relative credibility of Britt – or anyone else repeating Stoeckley's statements – is not especially relevant. *MacDonald X*, 2008 WL 4809869, at \*17. "Regardless of the credentials of the person relating them, however, Stoeckley's 'confessions' were untrustworthy in 1970, in 1979, in 1990, and in 2005, and they remain so [today]." *Id.* "Neither the passage of time nor the identity of the hearsay witness improves the reliability of what Stoeckley said or believed about the night of February 17, 1970." *Id.*

Judge Dupree, who had the opportunity to observe Stoeckley during the trial, wrote in 1985:

Helena Stoeckley testified before the court at trial and the court has reviewed her statements, the affidavits relating to her, and the videotape supplied by MacDonald of a television program featuring her, all of which lead to the conclusion that this woman is not reliable.

The court's conclusion that Stoeckley is not a reliable confessor should not be construed to mean necessarily that she was not telling what she believed to be the truth when she confessed to the MacDonald murders. From the very beginning, she said that she could not remember what she had done on that night because she had taken so many drugs. Based upon MacDonald's account of the murders, the Fayetteville police, military police and the FBI investigated members of the drug culture in Fayetteville and Stoeckley, quite understandably, became anxious because she could not recall where she was during the crimes. This anxiety, her drug-induced state of confusion, and the

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<sup>53</sup> The court recognizes that the Government challenges whether the elder Stoeckley's 2007 statements are likely credible or probably reliable. It is true that the elder Stoeckley's failure to tell the FBI in 1984 about her daughter's confessions raises questions about the credibility of her 2007 statements. Her daughter had already died at the time of the September 1984 interview, and therefore the elder Stoeckley would not have had the motivation to shield her daughter from criminal liability. Nevertheless, the court will assume that a reasonable juror could find the elder Stoeckley's 2007 statements credible and reliable.

observations of her friends and Detective Beasley that she met the description of the woman involved in the murders led Stoeckley to believe that she might have participated in them but had a mental block about the night which prevented her from recalling details.

Stoeckley's uncertainty and the relentless attention the case focused upon her undoubtedly tortured her over the years. Her drug abuse of the late 1960's and early 1970's gave way to alcohol abuse in the late 1970's which contributed to her premature death in 1983. The confluence of her drug and alcohol abuse and uncertainty over her role in the crimes appears to have ultimately led her to believe that she was involved and to piece together her fragmented memory of 1970 into an explanation which MacDonald says amounts to a confession. Whether this was done innocently or by design to gain the attention which she craved is unclear from the record. What is clear is that considering all of the circumstances, neither Stoeckley nor her "confessions" are reliable. Thus, although the inconsistencies in Stoeckley's confessions and contradictions of the statements by the facts of the case and the affidavits of other witnesses would be more than enough to lead the court to conclude that the confessions are untrue, Stoeckley's unreliability adds even greater force to this conclusion.

*MacDonald III*, 640 F. Supp. at 324. The court does not see how the fact that Stoeckley also allegedly confessed to a marshal, her attorney, and her mother (prior to Stoeckley's death)<sup>54</sup> changes the utter unreliability of Stoeckley herself.<sup>55</sup> Indeed, it reinforces earlier conclusions by this court that Stoeckley's statements, being "all over the lot" lacked any measure of trustworthiness. Ttr. 5808. Accordingly, any "confessions" from Stoeckley cannot constitute credible, reliable evidence to support the conclusion that no reasonable juror would find MacDonald guilty.

Nor does the consideration of the affidavits and declarations from numerous other witnesses about Stoeckley's activities around the time of the murders change this conclusion. Although Judge Dupree's findings and conclusions are not now binding, the court nevertheless agrees with his

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<sup>54</sup> It appears that with regard to the confessions to Leonard and her mother, Stoeckley was in fact recanting earlier versions of the stories she had told these individuals.

<sup>55</sup> For the same reason, Stoeckley's confession to Sara McMann fails to constitute credible, reliable evidence.



assessment that the statements of the witnesses “suffer from either factual inaccuracies or contradictions which render them of no use to MacDonald in proving that Stoeckley and her group committed the murders,” or serve only “to place Stoeckley and her friends in Fayetteville at locations close to where she and other members of the group lived in 1970.” *MacDonald III*, 640 F. Supp. at 325-27.

As to the latest affidavits relating the confessions of Greg Mitchell, the court cannot find the confessions themselves to be probably reliable or likely credible. Years prior to making these confessions, Mitchell had given a sworn statement to CID investigators disavowing any involvement in the murders, and had subsequently passed a polygraph examination. Most of the confessions that occurred years later came when Mitchell was under the heavy influence of alcohol, marijuana, or both. The court cannot find Mitchell’s confessions to be reliable, due to his alcohol dependency, nor credible, given its contradiction to earlier sworn statements.

### **3. The alleged threat to Stoeckley and fraud on the court**

The last category of evidence upon which MacDonald relies is Britt’s assertions that (1) Stoeckley confessed her involvement in the murders to prosecutor Blackburn; (2) in response, Blackburn threatened to indict her for murder if she so testified; and (3) Blackburn subsequently misrepresented to the court and defense counsel what Stoeckley said to him. As the court already has observed, Britt’s various sworn statements are replete with major inconsistencies and contradictions with the rest of the record, in such a manner that almost all of Britt’s statements – including those regarding what Stoeckley said to prosecutor Blackburn and what he said in response to her – are rendered likely incredible and probably unreliable. Additionally, his assertions regarding the interview and threat are contradicted by two other witnesses who were present during the interview: prosecutors

Blackburn and Crawley. Although MacDonald attacks the relative credibility of Blackburn and Crawley, neither witness is inherently more incredible than Britt. Blackburn admittedly has engaged in fraudulent acts in the past, including forging orders of a court to present to clients, and ultimately lost his license to practice law. The record shows, however, that Britt likely submitted a fraudulent document to a court; namely an affidavit in a 2000 divorce proceeding stating, under oath, that he and his then-wife, Nancy, were no longer compatible, could no longer live together as husband and wife, and there was no possibility that they could reconcile. GX 2017. Other documents in the record, however, indicate that he and Nancy continued to live together through at least 2005. *See* GX 2123 (Jimmy Britt's 2005 Bankruptcy Petition listing Nancy's address as 616 Wimberly Road in Apex, NC); GX 2086 (Jimmy Britt's 2005 sworn statement, wherein he states that he lived at 616 Wimberly Road in Apex).<sup>56</sup>

Furthermore, according to Britt, at the conclusion of Stoeckley's interview with the prosecution on the eighth floor of the Terry Sanford Federal Building, he escorted her to the courtroom on the seventh floor. GX 2086 at 22. He stated, under oath, that at the same time he was taking Stoeckley into the courtroom, Blackburn was entering Judge Dupree's chambers, and stayed in the chambers for 10 to 15 minutes, while MacDonald's attorneys remained in the courtroom. GX 2086 at 22-23. The record reflects, however, that on the day of the Stoeckley interviews, Judge Dupree recessed court at 1:17 p.m. in order to allow time for the completion of the defense interview and to allow the prosecution to interview her. Judge Dupree ordered that court would resume at 9 a.m., the following day. Ttr. 5498-

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<sup>56</sup> The Government suggests that Britt was motivated to move to Nevada for six weeks to obtain the divorce from Nancy because of a provision in the will of Nancy's mother, which provided that a large amount of land would be held in trust for the benefit of Nancy until one of two conditions were satisfied: Nancy's death, or her divorce from Jimmy Britt. GX 2023.

99, 5506. Both Smith and Blackburn testified that, in fact, neither side returned to court that afternoon because of the adjournment. Htr. 103; 610. Accordingly, again the court is presented with assertions from Britt of events that appear to never have happened. And, again, whether these assertions were a product of a faulty memory or of a nefarious motive, the end result is that the court cannot find any of Britt's statements to be likely credible or probably reliable.

#### **4. The new unreliable evidence against the record as a whole**

Neither the unsourced hairs evidence, nor the evidence regarding Stoeckley's confessions, given its likely incredibility and probable unreliability, are sufficient to show by clear and convincing evidence that no reasonable factfinder would have found MacDonald guilty – even when this new evidence is considered in light of all the evidence that MacDonald has marshaled to date that intruders were responsible for the murders. This is especially so when it is considered in the context of the evidence presented by both the Government and MacDonald at trial.

Again, at trial “[t]he government’s theory of the case was that MacDonald and his wife were having marital problems and began arguing on the night of the murders over their youngest daughter’s bedwetting.” *MacDonald III*, 640 F. Supp. at 210. “Already fatigued from long hours at work, MacDonald flew into a rage and killed his wife and oldest daughter.” *Id.* The Government argued that MacDonald “attempted to avoid prosecution and punishment by killing his youngest daughter and staging the crime scene to make it appear as if the murders had been committed by intruders.” *Id.*

First, the Government presented evidence showing that the Old Hickory brand steel paring knife, the icepick, and a blood-stained piece of wood – all found outside the utility room door at the rear of the MacDonald apartment – along with a Geneva Forge Company paring knife, were the murder

weapons. Although MacDonald denied knowledge of the murder weapons,<sup>57</sup> the Government offered evidence from which the jury could have found that the weapons in fact came from within the MacDonald home.

The Government also offered evidence it argued showed that MacDonald's account of the attack, and his actions thereafter, were false. Specifically, the Government offered evidence showing that numerous threads and yarns consistent with MacDonald's pajama top were found throughout the home, even though MacDonald maintained that he took off his pajama top upon entering the master bedroom and finding his wife. Very few threads or yarns – if any – were found in the living room where MacDonald said he was attacked. The Government also proffered evidence, through the pajama top demonstration and testimony about the pajama top pocket, that “supported the Government's theory that MacDonald had put the garment on his wife and then stabbed her with an icepick to make his account of the murders more believable.” *Id.* at 312-13.

MacDonald countered this evidence by noting that fibers of some sort were found in the living room, and thoroughly assailing the CID's processing of the crime scene and subsequent examinations. *See* Ttr. 7172 (arguing that the ineptitude of the CID “unalterably and forever prevented this crime scene from serving as the basis for all the invention and hypothesis and invention of theories and speculation by government counsel”), 7176 (arguing that it would be wrong to conclude that the numerous MPs did not disturb or move fibers during their initial efforts on the scene), 7180 (arguing that if the top were ripped where there was no seam, there would be very few fibers shed, and also noting that fibers were found near the south edge of the hallway), 7181-83 (arguing that the gurney and

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<sup>57</sup> *See* Ttr. 7268-73 (arguing that the alleged murder weapons were consistent with MacDonald's theory of intruders, and that the evidence did not support the conclusion that the weapons came from the MacDonald home).

feet of the ambulance drivers had the potential to disturb any fibers), 7189 (arguing the CID “didn’t understand that the living room was an important part of the crime scene and they didn’t understand how to protect it and preserve the physical evidence and trace evidence in that room” and therefore “the inferences or conclusion that the Government asks you draw from it are simply unjustified and unfounded”), 7210-11 (arguing that it was reasonable to find that MacDonald had fibers on his body from the pajama top that were distributed in rooms other than the master bedroom and that it would be reasonable to find that his pajama bottoms were the source of the fibers), 7238-46 (criticizing the “pseudoscience” of the pajama top demonstration).

The Government also proffered evidence that the pieces of a latex glove found in the master bedroom were stained by blood of Colette’s type and were similar to latex surgeon gloves found near the kitchen sink, arguing that “MacDonald had worn latex gloves while murdering his family to avoid fingerprints and had written the word ‘PIG’ in his wife’s blood on the master bed headboard while wearing the gloves since there were no ridge lines in the writing as there would have been had the writing been made by a bare finger.” *MacDonald III*, 640 F. Supp. at 313. MacDonald attacked the Government witnesses’ findings and conclusions as to the latex glove, and also the lack of processing for fingerprints on the headboard. Ttr. 7223-24, 7266 (arguing that MacDonald’s expert witness – “the world’s leading authority on the use of neutron activation analysis in forensic matters” – testified that it was unlikely the samples of gloves found in the house were made from the same batch found in the bedroom); 7232-33 (criticizing how the headboard where “PIG” was written was processed for prints).

Evidence also was offered regarding a footprint – which MacDonald conceded was his and probably stained in his wife’s blood – that was found leading out from Kristen’s bedroom. The Government noted that no prints were shown entering Kristen’s bedroom, and argued that

inconsistency was support for its theory that Colette had been assaulted in Kristen's room and carried back to the master bedroom. The Government also offered extensive testimony regarding blood splatterings and the Government's reconstruction of the crime scene were also presented. MacDonald attacked all of the Government's theories. Ttr. 7235, 7278.

The Government also highlighted that no splinters from the wooden club or blood were found in the living room, where MacDonald said he was attacked, with the exception of a stain on an *Esquire* magazine. That blood was a mixture of Colette and Kimberly's blood types. The magazine contained an article about the Charles Manson murders, and the Government hypothesized that MacDonald had probably read the article before the murders and perhaps had referred to it on that night to stage the crime scene such that it would appear that a crazed cult had murdered his family. In addition to attacking this theory, MacDonald also attacked the idea that no blood was found in the living room. Ttr. 7217 (arguing that the CID's failure to properly process the crime scene prevented a reliable finding that there were no blood splatterings in the living room). Specifically, the defense noted that his spectacles were found with a blood spot on them, which they contended could have been a product of the struggle he had in the living room. Ttr. 7217-18. The defense specifically rejected the idea that the blood could have come from MacDonald's activities as an emergency room doctor, arguing: "If anything you have learned physically about Dr. MacDonald is what – is he a sloppy man? Is he a man likely to walk around with a blood spot on his reading glasses having to read for several hours?" Ttr. 7217.<sup>58</sup>

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<sup>58</sup> The Government argued that the inference to be drawn was that the blood – which was Type O like Kristen's – came on the glasses during MacDonald's attack on his family.

In addition to attacking the CID's handling of the crime scene, the Government's evaluation and testing of the evidence and the Government's theories in general, MacDonald offered his own testimony, including his assertion that intruders, including a blond woman, murdered his family. His defense also highlighted what it considered to be evidence of the intruders: (1) the existence of a pink fiber found on MacDonald's glasses; (2) unsourced hairs; (3) unidentified fingerprints; and (4) unsourced candlewax. Ttr. 7266-68. MacDonald also called Stoeckley as a defense witness. Her testimony established that at the time of the crimes, she owned a blond wig, a floppy hat and boots. Her testimony also established that she had been an addict and continual user of all manner of drugs around the time of the MacDonald murders, and indeed on February 16, 1970, she had injected herself six or seven times with heroin and opium, and also smoked marijuana "all day." Ttr. 5553-54. Her last memory was standing in her driveway with Greg Mitchell around midnight, when she took a hit of mescaline and Greg left. *Id.* She testified that her next memory was being dropped off at her apartment by two to three soldiers, in a blue car, around 4:30 to 5:00 a.m. Although she testified that to her knowledge, she was not involved in the MacDonald murders, she also testified that because of her lack of memory and lack of alibi, she was concerned. Ttr. 5648-49; 5652-53.

Presented with that evidence, the jury found MacDonald guilty.

Against this trial evidence, and considered against the entire record of this long-running case, the court cannot find that any of the new evidence, given its unreliability and incredibility, is sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found MacDonald guilty of the murders of his wife and daughters. Accordingly, MacDonald has not met his burden under § 2255(h)(1)'s procedural gatekeeping bar.

**C. MacDonald's claims fail on the merits**

Even if the court could somehow find that MacDonald has met his burden of passing through § 2255(h)(1)'s gate, thereby allowing the court to consider his claims on the merits, the court nevertheless finds that MacDonald has failed to prove any of his claims.

In so finding, the court rejects MacDonald's argument that by satisfying § 2255(h)(1)'s procedural gatekeeping requirements, he thereby automatically succeeds on the merits of his claims. As the Fourth Circuit stated in its 2011 opinion, § 2255(h)(1) is merely a procedural bar; if MacDonald can pass through the bar, he is entitled to have his claims "considered on [their] merits." *MacDonald XI*, 641 F.3d at 614. Indeed, as to the Britt claim, the Fourth Circuit specifically stated that as to the merits, MacDonald "would yet be obliged to prove the constitutional violation alleged in that claim before obtaining any § 2255 relief thereon." *Id.* ("We emphasize, however, that today's decision is not intended to signal any belief that the Britt claim passes muster under § 2255(h)(1) or ultimately entitles *MacDonald* to habeas relief.") (emphasis added). MacDonald discounts this language as dicta, and cites authorities which point out the difference between the gatekeeping statute for federal prisoners (§ 2255(h)(1)) and the one for state prisoners (28 U.S.C. § 2244(b)(2)(B)(ii)). As the court already has stated, it agrees with MacDonald that there are notable differences in the gatekeeping statutes. The court does not discern from the authorities cited by MacDonald, however, how these differences in the *gatekeeping* statutes translate into a different showing on the *merits*. See *Hatch*, 731 F.3d at 1034 (explaining that § 2255(h)(1) "permits a successive petition" if satisfied); *Ferranti*, 480 Fed. App'x at 636-37 (explaining that § 2255(h)(1), and not § 2244(b)(2)(B)(ii), was the proper "gatekeeping provision" to apply to see if a claim presented in a successive § 2255 motion must be dismissed); HERTZ & LIEBMAN § 41.7 (explaining that the standard for gatekeeping of § 2255 and § 2254 claims



are different). MacDonald has pointed to no persuasive authority that for successive § 2255 claims, the gatekeeping analysis and the merits analysis should always be collapsed into one inquiry.<sup>59</sup> The court declines to make the logical leap advocated by MacDonald, and will instead follow the directive of the Fourth Circuit. In so doing, the court finds that he has failed to establish either of his constitutional claims by a preponderance of the evidence. *See Miller v. United States*, 261 F.2d 546, 547 (4th Cir. 1958) (per curiam) (“Because the proceeding under 28 U.S.C. § 2255 is a civil collateral attack upon the judgment of conviction, the burden of proof is upon petitioner to establish [his claim] by a preponderance of evidence.”). He also has failed to meet the high burden required to establish his freestanding actual innocence claim.

### 1. The Britt Claim

As MacDonald’s latest briefing indicates, the “Britt Claim” is premised on the idea that “Blackburn, (1) heard Helena Stoeckley admit she was in the MacDonald house when several people with her killed his family, but falsely told the district court that he had not, and (2) told Helena Stoeckley he would indict her for murder if she testified she was in the MacDonald House.” Deft. Post-Hearing Mem. [DE-343] at 9 n.6. According to MacDonald, “[t]hese actions—a failure to disclose material evidence and a threat leading a witness to perjure herself—constitute independent constitutional

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<sup>59</sup> It appears to the court that the only time the inquiry would be “virtually identical” is where a petitioner asserts a freestanding actual innocence claim, as discussed later in this order. MacDonald has done so in this case, leading to the court’s observation that the inquiries were somewhat conflated. *See In re Davis*, No. CV409-130, 2010 WL 3385081, at \*45 (S.D. Ga. Aug. 24, 2010) (concluding that for a freestanding actual innocence claim, a petitioner “must show by clear and convincing evidence that no reasonable juror would have convicted him in light of the new evidence”); *see also Hunt v. McDade*, 205 F.3d 1333, 2000 WL 219755, at \*2 (4th Cir. Feb. 25, 2000) (per curiam) (suggesting that “[t]o be entitled to relief, . . . petitioner would at the very least be required to show that based on proffered newly discovered evidence and the entire record before the jury that convicted him, no rational trier of fact could [find] proof of guilt beyond a reasonable doubt.”) (quoting *Herrera v. Collins*, 506 U.S. 390, 429 (1993) (White, J., concurring)).

violations.” *Id.* (citing *Kyles v. Whitley*, 514 U.S. 419, 432-34 (1995) and *United States v. Golding*, 168 F.3d 700, 703 (4th Cir. 1999)). Specifically, MacDonald contends that his Fifth and Sixth Amendment rights were violated.

With regard to his Fifth Amendment rights, in *Brady v. Maryland*, 373 U.S. 83 (1963), the Supreme Court held “that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution.” *Id.* at 87. In order to prove a *Brady* violation, a defendant must meet three requirements: (1) the evidence must be favorable to the accused, (2) the government must have suppressed it, and (3) the defendant must suffer prejudice. *See Strickler v. Greene*, 527 U.S. 263, 280 (1999); *United States v. Wilson*, 624 F.3d 640, 660-61 (4th Cir. 2010).

As to his Sixth Amendment rights, as this court has previously recognized, a defendant’s constitutional right “to present a defense [is] violated if [the] Government intimidates a defense witness into changing her testimony or refusing to testify.” *MacDonald X*, 2008 WL 4809869, at \*21 (also recognizing that it would be a violation of a defendant’s Fifth Amendment due process rights); *see United States v. Golding*, 168 F.3d 700, 703 (4th Cir. 1999) (“The authorities are uniform that threatening a witness with prosecution and comment about the absence of a witness who has a privilege not to testify are a violation of the Sixth Amendment right of a defendant to obtain witnesses in his favor.”). The intimidation of a witness may violate a defendant’s rights if it amounts to “substantial government interference with a defense witness’ free and unhampered choice to testify.” *United States v. Saunders*, 943 F.3d 388, 392 (4th Cir. 1991) (internal quotations omitted). Importantly, a defendant must make “a plausible showing that an act by the government caused the loss or erosion of testimony that was both material and favorable to the defense.” *Griffin v. Davies*, 929 F.2d 550, 553 (10th Cir.

1991). If “a defendant is able to establish a substantial government interference, the inquiry moves to the question of whether it was prejudicial or harmless error.” *Saunders*, 942 F.3d at 392; *Golding*, 168 F.3d at 703-05.

The court concludes that MacDonald has not shown that either his Fifth or Sixth Amendment rights were violated, because he has failed to show, by a preponderance of the evidence, that Stoeckley confessed to Blackburn, or that Blackburn intimidated her into changing her testimony. For the reasons already detailed in this order, the court finds Britt’s sworn statements, as a whole, to be unreliable and incredible, and specifically finds his assertions as to Stoeckley’s confession to Blackburn and Blackburn’s threat to be untrue.

Nor does the court find the testimony of Rouder or the affidavit of the elder Stoeckley to provide support for the idea that Blackburn intimidated Stoeckley into altering her trial testimony. *See* Htr. 355 (testifying that Stoeckley told her she couldn’t tell the truth at trial because of “those damn prosecutors sitting there” and stating that “they’ll fry me”); DX 5051 ¶ 11 (“She told me she was afraid to tell the truth because she was afraid of the prosecutor.”). The elder Stoeckley’s affidavit lacks any context showing precisely why Stoeckley allegedly was afraid of the prosecutors – whether her fear was the result of a “threat” from Blackburn, or the realization on her own account that she could be subject to prosecution. The same holds true for Rouder’s testimony. Both only allow for speculation that Stoeckley falsely testified *because* Blackburn threatened her.

Gene Stoeckley’s testimony comes the closest to showing that Stoeckley told her mother she did not testify truthfully because of a threat from the prosecutor. Htr. 331 (“What my mother would say along those lines was that they wouldn’t let her testify, she wanted to testify, but she was threatened with prosecution for murder.”). Notably, however, the elder Stoeckley allegedly told Gene that Helena

was not “allowed” to testify at trial, not that Helena lied on the stand because of a threat. Htr. 331-32 (“Q. Regardless of the threat, the statement was that your sister was not allowed to testify at the trial? A. Correct.”). Helena Stoeckley, of course, *did* testify at trial; no one prevented her testimony. Nevertheless, assuming that Helena Stoeckley did in fact tell her mother that she was not “allowed” to testify, this only serves to highlight what this court already has observed: Helena Stoeckley herself was not credible or reliable. The court cannot find, based on this hearsay statement from the unreliable Stoeckley, that she was in fact threatened by Blackburn and therefore induced to testify falsely.

The court also agrees with the Government that it is telling that, other than her mother, “no person to whom Stoeckley spoke, or allegedly spoke about this subject, from the completion of the prosecution interview on August 16, 1979 to her death in 1983, reported that Stoeckley told him or her about a threat from Blackburn and its supposed impact on her trial testimony.” Gov’t Post-Hearing Mem. [DE-344] at 186. This list includes Judge Dupree, Red Underhill, Lynn Markstein, Jerry Leonard, Kay Reibold, Ted Gunderson, Prince Beasley, Homer Young, Butch Madden, Ernest Davis and Sara McMann.<sup>60</sup>

Having found that MacDonald has failed to show that Stoeckley confessed to Blackburn, the court also finds that MacDonald has not shown that Blackburn misrepresented to the court the substance of the prosecution’s interview with Stoeckley. Additionally, as the court observed in its 2008 Order, this “fraud upon the court” theory “depends on the truth of Segal’s representations to Judge

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<sup>60</sup> In contrast, and as this court noted in 2008, the trial transcript reveals that over the weekend of August 18-19, 1979, Stoeckley had expressed her mortal fear of an unknown person who had punched her in the face at the motel, the “damn prosecutors,” defense counsel Bernard Segal, unidentified persons who rendered her life “not worth five cents on the street,” Allen Mazzarole, and possibly her fiancé, Ernest Davis.

*MacDonald X*, 2008 WL 4809869, at \*27 n.28.

Dupree that Stoeckley essentially had cleared MacDonald of the crimes by her admissions during the defense team's interview in the presence of half a dozen or more witnesses the day before." *MacDonald X*, 2008 WL 4809869, at \*20. The record, fully supplemented by the September 2012 evidentiary hearing, indicates that Stoeckley made no such statements during the defense interview. *See* Ttr. 5617 (Smith informing Judge Dupree, "Generally, she said to us the same thing and this, 'I don't remember.' But in two or three or four instances – whatever the list would reveal – she says something which would give an interesting insight into her mind."); Htr. 114 (Smith testifying: "I was absolutely devoted to this case and upheld my role as counsel and I'm still devoted to this case, but I did not hear Helena Stoeckley say useful things for us. It is certainly possible. And I mentioned [a] while ago, maybe I was out of the room. I do not know the answer. But I can only speak for myself and that is that when I was present she did not say things that helped us."); Htr. 969-77 (McGinniss testifying that Stoeckley maintained throughout the defense interview that she had no memory of being present during the murders).

In sum, MacDonald has failed to show, by a preponderance of the evidence, that (1) Stoeckley confessed to Britt; (2) Stoeckley confessed to Blackburn; (3) Blackburn threatened Stoeckley such that she was intimidated into altering her testimony; or (4) Blackburn misled the defense and the court as to the prosecution's interview of Stoeckley. Accordingly, as to the merits, the "Britt claim" is DENIED.

## **2. The Footnote Claim**

As this court has observed, MacDonald argues, in a footnote in his post-hearing Reply memorandum, that he has shown a constitutional violation because "the government failed to disclose significant exculpatory or favorable evidence to MacDonald before his trial." *See* Post-Hearing Reply [DE-351] at 9 n.6. The sole support for this assertion is a citation to an article written by one of

MacDonald's former attorneys. *See id.* (citing Harvey Silverglate, *Reflections on the Jeffrey MacDonald Case*, THE CHAMPION, May 2013 at 52). This article raises essentially the same points MacDonald argued in his petition for habeas corpus filed pursuant to § 2255 in 1990; namely, that the Government "withheld laboratory bench notes written by government agents which would have aided the defense, and exploited the suppression of . . . the lab notes by knowingly presenting a false and perjurious picture of the evidence and underlying facts." *MacDonald V*, 778 F. Supp. at 1344; compare Silverglate, at 54-55 (arguing that "[a]s a result of the failure of the prosecution to turn over *Brady* material in a format and at a time when it could be useful to the defense at trial, some enormously potent exculpatory evidence was not available for use by MacDonald's lawyers at his trial," including the bench notes of Glisson identifying the presence of long blond synthetic hairs in a brush at the crime scene and the report of a government examiner showing the presence of black wool fibers on the club and Colette).

The court will assume, without deciding, that MacDonald is not otherwise barred from raising this successive claim.<sup>61</sup> Nevertheless, the court finds that MacDonald has not shown that he is entitled to relief thereon, and this claim is DENIED on the merits.

Again, MacDonald raised a seemingly identical claim in his § 2255 petition filed in 1990, arguing that the government suppressed exculpatory evidence in violation of *Brady* and also presented its case in a manner intentionally designed to conceal the exculpatory evidence, which also violated his due process rights. The exculpatory evidence “consist[ed] of government forensic lab notes describing (1) three blond synthetic hairs found in a hairbrush located in the MacDonald home and (2) black and green wool fibers, not matched to any source in the MacDonald home, found on the murder weapon and on Colette MacDonald’s body.” *MacDonald V*, 966 F.2d at 856-57 (footnote omitted).

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<sup>61</sup> It is well settled that 28 U.S.C. § 2244(b)(1) bars claims raised by a state prisoner in a second or successive § 2254 petition that were previously presented in a prior application. *See* 28 U.S.C. § 2244(b)(1) (“A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.”); *see also United States v. Winestock*, 340 F.3d 202, 204-05 (4th Cir. 2003). What is unsettled, however, is whether § 2244(b)(1) applies to § 2255 motions filed by federal prisoners, like MacDonald. Section 2255’s provision applicable to second or successive motions does not contain the same language found in § 2244(b)(1), leading some commentators to conclude that “[r]ead literally, § 2255(f) provides that a second or successive motion may be filed, regardless of whether a claim was presented in a prior motion, so long as the motion is certified by the court of appeals to satisfy one of two exceptions for newly discovered evidence or new rules of constitutional law.” BRIAN R. MEANS, *POSTCONVICTION REMEDIES* § 27:4. Nevertheless, some courts have held that the term “prior application” in § 2244(b)(1) encompasses a motion under § 2255. *See White v. United States*, 371 F.3d 900, 901 (7th Cir. 2004) (“It would be odd if Congress had intended that a federal prisoner could refile the same motion over and over again without encountering a bar similar to that of section 2244(b)(1), and we have therefore held that ‘prior application’ in that section includes a prior motion under section 2255.”); *see also Green v. United States*, 397 F.3d 101, 102 n.1 (2d Cir. 2005) (per curiam); *Charles v. Chandler*, 180 F.3d 753, 758 (6th Cir. 1999) (“Charles is not entitled to file a successive § 2255 motion to vacate because he seeks permission to file the same claims that have already been denied on the merits.” (citing § 2244(b)(1))). The Fourth Circuit Court of Appeals has yet to weigh in on the issue. *See Winestock*, 340 F.3d at 205 (“Although [§ 2244(b)(1)] is limited by its terms to § 2254 applications, some courts have also applied it to § 2255 applications. . . . We need not decide here whether to follow this approach.”); *see also MacDonald XI*, 641 F. 3d at 614 n.9 (“[I]t is an open issue in this Circuit – one we need not resolve today – whether § 2244(b)(1) applies to successive claims presented in second or successive § 2255 applications.”).

Judge Dupree denied the petition, for several alternative reasons. First, Judge Dupree determined that the allegedly suppressed evidence was not material; i.e., he had not shown either a reasonable probability or any reasonable likelihood “of a different result had MacDonald been given access to the lab notes at trial.” *MacDonald V*, 778 F. Supp. at 1351-53. Alternatively, Judge Dupree found that the Government’s attorneys had not violated *Brady* because they allowed MacDonald the opportunity to examine and test all of the physical evidence, including the actual fibers, and because the Government attorneys had not read the lab notes regarding the fibers and were not aware of any potentially exculpatory materials therein. *Id.* at 1353-54. Finally, Judge Dupree found the 1990 petition to be procedurally barred under the then-applicable doctrine of abuse of the writ. *Id.* at 1356-60.

Assuming that the article by Mr. Silverglate – again, the sole support for MacDonald’s successive claim – can constitute some sort of evidence or argument in support of MacDonald’s claim, nothing therein dictates a different result from the one reached by Judge Dupree. The court has reviewed the transcript of the motion hearing held before Judge Dupree on June 26, 1991, and Silverglate’s recent article reiterates the same arguments he made in open court on that date. Even if the court assumes – and it does not – that the additional evidence MacDonald has compiled since 1990 could change Judge Dupree’s finding on materiality, Judge Dupree also denied the petition on the basis that the prosecution complied with its duties under *Brady* by affording MacDonald an opportunity to examine and test any of the physical evidence, irrespective of tendering the lab notes. *See MacDonald V*, 778 F. Supp. at 1353 (citing *United States v. Wolf*, 839 F.2d 1387, 1391 (10th Cir. 1988) (“If the means of obtaining the exculpatory evidence has been provided to the defense, however, a *Brady* claim fails, even if the prosecution does not physically deliver the evidence requested.”); *United States v. Page*, 828 F.2d 1476, 1479 (10th Cir. 1987) (“[A] new trial is not warranted by evidence which, with



reasonable diligence, could have been discovered and produced at trial.”); *United States v. Ramirez*, 810 F.2d 1338, 1343 (5th Cir. 1987) (“[A] *Brady* violation does not arise if, with reasonable diligence, [a defendant] could have obtained the information.”)). Judge Dupree also found that MacDonald had presented no evidence showing that the prosecution attorneys were aware of the contents of the lab notes at issue. *See id.* at 1354, 1355. The court does not make different findings or reach an opposite conclusion because of Silverglate’s article.

Accordingly, to the extent that MacDonald asserts a separate claim in footnote 6 of his post-hearing Reply memorandum, that claim is DENIED on the merits.

### 3. The Unsourced Hairs Claim

MacDonald’s unsourced hairs claim is an “actual innocence” claim; that is, he argues that he is entitled to habeas corpus relief solely because he is actually innocent of the murders of his family members. The United States Supreme Court has never explicitly recognized a freestanding actual innocence claim,<sup>62</sup> although it has recognized the *possibility* of such a claim, “assum[ing], for the sake of argument . . . , that in a capital case a truly persuasive demonstration of ‘actual innocence’ made after

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<sup>62</sup> As one commentator has observed:

Critical to understanding freestanding claims of actual innocence is the distinction between actual innocence and legal innocence. A defendant seeking relief based on legal innocence, or “legal insufficiency,” contends that the prosecutor has failed to produce sufficient evidence at a criminal trial to establish guilt beyond a reasonable doubt. Conversely, a defendant seeking relief based on actual innocence contends that he or she did not commit the crime alleged, regardless of the judge or jury’s finding of legal innocence. Unlike [] legal innocence, actual innocence focuses entirely on the factual predicate of the offense. . . .

. . . .When a defendant claims actual innocence independent and unaccompanied by any other [constitutional] claim . . . it is referred to as a “freestanding” actual innocence claim. For claims of freestanding actual innocence, a prisoner seeks only to rebut the factual findings of the crime for which he was convicted.

Matthew Aglialoro, Note, *A Case for Actual Innocence*, 23 CORNELL J.L. & PUB. POL’Y 635, 639-40 (2014) (footnotes and citations omitted).

trial would render the execution of a defendant unconstitutional.” *Herrera v. Collins*, 506 U.S. 390, 417 (1993). In *Herrera*, the Court explained that “the threshold showing for such an assumed right would necessarily be extraordinarily high,” and found that the petitioner’s evidence was “far short of that which would have to be made in order to trigger the sort of constitutional claim which we have assumed, *arguendo*, to exist.” *Id.* at 417, 418-19. Whether a freestanding actual innocence claim is cognizable remains an open question. *McQuiggin v. Perkins*, \_\_\_ U.S. \_\_\_, 133 S.Ct. 1924, 1931 (2013) (“We have not resolved whether a prisoner may be entitled to habeas relief based on a freestanding claim of actual innocence.”); *District Attorney’s Office for the Third Judicial District v. Osborne*, 557 U.S. 52, 71 (2009) (recognizing that the Court has assumed, *arguendo*, that there is a federal constitutional right to be released upon proof of “actual innocence” but also “noting the difficult questions such a right would pose and the high standard any claimant would have to meet”); *House v. Bell*, 547 U.S. 518, 554-55 (2006) (declining to resolve the issue of whether a freestanding actual innocence claim is cognizable). Similarly, although the Fourth Circuit has in the past stated that precedent prevents it from recognizing freestanding actual innocence claims, *see Royal v. Taylor*, 188 F.3d 239, 243 (4th Cir. 1999),<sup>63</sup> in later cases the court appears to have assumed, without deciding, that such claims are cognizable. *See Teleguz v. Pearson*, 689 F.3d 322, 328 n.2 (4th Cir. 2012) (stating in

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<sup>63</sup> The *Royal* court stated:

Royal maintains that his actual innocence in and of itself renders his conviction and execution violative of the Eighth and Fourteenth Amendments. Precedent prevents us from granting Royal’s habeas writ on this basis alone. Because federal habeas relief exists to correct constitutional defects, not factual errors, “[c]laims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state proceeding.”

188 F.3d at 243 (quoting *Herrera*, 506 U.S. at 400). The *Royal* court also observed that as in *Herrera*, the petitioner had a forum in the State – an executive clemency process – to pursue a claim of actual innocence, and, accordingly, it could not grant him “habeas relief based simply on his assertion of actual innocence due to newly discovered evidence.” *Id.*

dicta that “[a] petitioner may also raise a freestanding innocence claim in a federal habeas petition”); *MacDonald XI*, 641 F.3d at 616-17 (observing that the Supreme Court “has yet to come across any prisoner who could make the ‘extraordinarily high’ threshold showing for such an assumed right”); *Hunt*, 2000 WL 219755, at \*2 (“Even granting *Hunt* all necessary analytical assumptions to overcome the procedural bars imposed by *Herrera*, his claim that the PCR/DNA test results exonerate him of the murder of Mrs. Sykes cannot survive *Herrera*’s stringent evidentiary standard.”). *See also* Kathleen Callahan, Note, *In Limbo: In re Davis and the Future of Herrera Innocence Claims in Federal Habeas Proceedings*, 53 ARIZ. L. REV. 629, 636 n.41 (2011) (“The Fourth Circuit has used somewhat contradictory language in describing the cognizability of *Herrera* innocence claims, in one case noting that the *Herrera* decision held “that claims of actual innocence are not grounds for habeas relief even in a capital case,” *Rouse v. Lee*, 339 F.3d 238, 255 (4th Cir. 2003), and in other cases treating *Herrera* claims as if they could, possibly, be cognizable in capital habeas proceedings, *Wilson v. Greene*, 155 F.3d 396, 404-05 (4th Cir. 1998)).

Like the Supreme Court and the Fourth Circuit, this court will assume, *arguendo*, that a freestanding actual innocence claim is cognizable. The court nevertheless finds that MacDonald has not met the “extraordinarily high” burden required for this court to grant the relief he requests. This raises the question, of course, as to exactly what the “extraordinarily high” burden entails. The Supreme Court has not yet articulated the burden. *See Teleguz*, 689 F.3d at 328 n.2 (“The Supreme Court has not articulated the standard under which these claims should be evaluated, but has made clear that the threshold for any hypothetical freestanding innocence claim [is] extraordinarily high.”) (internal quotation marks omitted). The Fourth Circuit, for its part, appears to have used a standard that is *at least* as rigorous as the “clear and convincing” gatekeeping standard under § 2255(h)(1). In *Hunt v.*

*McDade*, the Fourth Circuit stated that “[t]o be entitled to relief, . . . petitioner would at the very least be required to show that based on proffered newly discovered evidence and the entire record before the jury that convicted him, ‘no rational trier of fact could [find] proof of guilt beyond a reasonable doubt.’” 2000 WL 219755, at \*2 (quoting *Herrera*, 506 U.S. at 429 (White, J., concurring) (quoting *Jackson*, 443 U.S. at 324 (1979)));<sup>64</sup> see also *Hazel v. United States*, 303 F. Supp. 2d 753, 760 n.13 (E.D.Va. 2004) (observing that the standard used in *Hunt* is “essentially similar to that prescribed in § 2244 for successive petitions,” and observing the similarities between § 2244(b)(2)(B) and § 2255(h)). Indeed, one would expect that to prove the merits of a freestanding actual innocence claim, a movant would have to satisfy a more demanding burden of proof than that set forth in the gatekeeping statute.

Nevertheless, even if the court assumes that the standard for evaluating a freestanding actual innocence claim is identical to the standard employed in the court’s gatekeeping duties under § 2255(h)(1), for the reasons the court already has discussed, MacDonald has failed to meet this “extraordinarily high” burden. Although the court has viewed the evidence in the record as a whole, it is worth noting that the new evidence upon which MacDonald most heavily relies is (1) the unsourced hairs; (2) the saran fiber evidence; and (3) the alleged confessions of Stoeckley and Mitchell. It bears repeating that neither the unsourced hairs evidence, nor the saran fiber evidence, are as exculpatory as MacDonald contends. The saran fiber evidence ultimately just invites speculation as to the source of the fibers, and by no means compels a conclusion that the fibers came from a wig worn by Stoeckley. As to the unsourced hairs, it is true that the presence of naturally shed, non-bloody

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<sup>64</sup> In *Hunt*, the Fourth Circuit evaluated newly discovered DNA test results, “along with the entirety of the evidence introduced at both trials,” and was “unable to conclude that no rational jury would have convicted Hunt of the murder.” *Hunt*, 2000 WL 219755, at \*3.

unsourced hairs *could* be evidence of intruders; it also could be like other random household debris, and not indicative of intruders. In this manner, the unsourced hairs evidence is similar to evidence that MacDonald argued at trial was indicative of intruders: other unsourced hairs, unsourced fingerprints and palm prints, unsourced wax, and the existence of a pink fiber in his eyeglasses. The presence of three additional naturally shed unsourced hairs is of minimal additional probative value.

That leaves, of course, the alleged confessions of Stoeckley and Mitchell. Even if the court accepts, as credible and reliable, the live testimony and affidavit testimony of the individuals who allegedly heard these confessions, the court cannot, on the record before it, consider Stoeckley or Mitchell to be credible or reliable themselves. Stoeckley's credibility and reliability problems have been exhaustively detailed in numerous opinions over the years; again, the fact that she may have confessed to her mother or attorney (presumably after telling them earlier, conflicting stories) does nothing to bolster her credibility or reliability. Nor can the court find Mitchell to be credible and reliable, in light of his previous sworn statements that contradict his late-in-life hearsay confessions. Even when the court considers, as a body, all of the evidence marshaled by MacDonald throughout the history of the case, the court cannot conclude that MacDonald has shown, by clear and convincing evidence, that no reasonable juror would have found him guilty.

Comparing the instant case to the record before the Supreme Court in *House v. Bell* reinforces this conclusion. In that case, House faced the death penalty for killing Carolyn Muncey, whose body was discovered in underbrush on an embankment up the road from her driveway in rural Tennessee. 547 U.S. at 522. Key pieces of evidence offered against House included testimony that blood found on jeans he wore the night of the crime was consistent with Muncey's blood and that it was "impossible" that the blood was House's. *Id.* at 528-29. Evidence also was presented indicating that

semen found on the victim's nightgown and underwear appeared to be consistent with House. *Id.* at 529. The prosecutor argued at trial and sentencing that House, who had a previous conviction for sexual assault, committed the murder during a sexual assault on the victim. *Id.* at 532-33.

After failing to obtain relief in the state court of appeals, House filed an untimely federal habeas petition, bringing forward new evidence showing that semen found on the victim's clothing belonged to her husband, and not him. House also presented testimony showing that blood evidence used against him appeared to have been deposited on the victim's clothing after the autopsy, and not when the victim was alive, which raised "substantial questions about the blood's origin." *Id.* at 542-48. House also presented evidence from "multiple sources" that Muncey's husband regularly abused his wife, testimony from two witnesses who said Muncey's husband had confessed to the crime, and testimony from another witness indicating that the husband attempted to construct a false alibi the morning after the crime. *Id.* at 548-53. The Supreme Court found that this new showing of evidence was enough to satisfy the lower standard<sup>65</sup> to enter the gateway for federal review of his otherwise barred claims, but it was *not* enough to establish "whatever burden a hypothetical freestanding innocence claim would require." *Id.* at 555.

MacDonald's evidence in this case is less compelling than the evidence presented in *House*. Unlike in *House*, where new DNA evidence contradicted the "only forensic evidence at the scene that would link House to the murder," *id.* at 541, in this case MacDonald's new forensic evidence serves to only create additional speculative questions as to the possible origins of the unsourced hairs and

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<sup>65</sup> In *Schlup v. Delo*, 513 U.S. 298 (1995), the Supreme Court held that prisoners asserting innocence as a gateway to defaulted claims must establish that, in light of the new evidence, "it is more likely than not that no reasonable juror would have found [the] petitioner guilty beyond a reasonable doubt." *Id.* at 327.

saran fibers. While the evidence undoubtedly has some probative value, it does not do much to bolster the argument, originally presented at trial, that intruders committed the murders. It also does nothing to exclude MacDonald as the perpetrator of the crime, nor does it strongly suggest that some other specific individual was the perpetrator. It follows, accordingly, that if the new evidence in *House*, which included significant evidence calling into question “the central forensic proof connecting House to the crime” in addition to confessions by another suspect, was not enough to establish actual innocence, then the additional equivocal forensic evidence in this case, combined with the confessions of Stoeckley and Mitchell, are not enough to do so, even when considered against the other evidence proffered by the parties. Again, because MacDonald has not established, by clear and convincing evidence, that no reasonable juror would find him guilty of the murders of his family, his actual innocence claim is DENIED on the merits.

### CONCLUSION


For the foregoing reasons, the court finds that MacDonald has not established, by clear and convincing evidence, that no reasonable factfinder would have found him guilty of the murder of his wife and two daughters, and therefore he has failed to satisfy the gatekeeping standard set forth in 28 U.S.C. § 2255(h)(1). Alternatively, assuming that MacDonald can satisfy the gatekeeping standard, the court finds that he has failed to establish any of his constitutional claims by a preponderance of the evidence, and has failed to establish any assumed actual innocence claim. His Motion to Vacate [DE-111] is therefore DENIED.

Having denied MacDonald’s motion, the court must determine if he has made a sufficient showing to entitle him to a certificate of appealability. A certificate of appealability will not issue absent “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When

the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). However, when a district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85. Here, Macdonald has not made the requisite showing, and therefore, a certificate of appealability is DENIED.

SO ORDERED.

This the 24<sup>th</sup> day of July, 2014.

  
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James C. Fox  
Senior United States District Judge



UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF NORTH CAROLINA  
 WESTERN DIVISION  
 3:75-CR-26-3  
 5:06-CV-24-F

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UNITED STATES OF AMERICA	)
	)
v.	)
	)
JEFFREY R. MacDONALD	)
Defendant	)

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**MOTION TO ALTER OR AMEND JUDGMENT  
 and  
 INCORPORATED MEMORANDUM OF LAW**

NOW COMES defendant, Jeffrey R. MacDonald, by and through his undersigned counsel, and moves this Court to alter or amend its judgment entered on 24 July 2014. [DE 354] *See* Fed. R. Civ. P. 59(e). The judgment should be amended to reflect the new evidence regarding Michael Malone, and the motion to vacate should be granted. In the alternative, this Court should amend the judgment to grant a certificate of appealability. In further support of this request, defendant shows the following:

## PROCEDURAL BACKGROUND

This matter came back to this Court on remand from the United States Court of Appeals for the Fourth Circuit for determination of defendant's motion to vacate. The resolution of the claims was to be assessed on the basis of the "evidence as a whole" under 28 U.S.C. § 2255(h)(1). *United States v. MacDonald*, 641 F.3d 596, 610-17 (4<sup>th</sup> Cir. 2011). As this Court noted in its comprehensive order, the materials considered were voluminous. In light of this Court's thorough statement of the procedural history and applicable facts, the procedural and factual background need not be repeated. [DE 354 at 2-13, 15-128]

## REASONS TO ALTER OR AMEND THE JUDGMENT

### **I. This Court Should Amend the Judgment Regarding Michael Malone and Grant the Motion to Vacate.**

As noted in the briefing in this matter, the defense learned of the existence of handwritten lab notes that revealed numerous blond synthetic hairs, up to twenty-two inches in length, had been found in a hairbrush in the kitchen of the MacDonald home following the murders. These hairs could not be matched to any known items in the MacDonald home. The analyst who testified as a government witness at the trial never mentioned finding these long blond synthetic hairs. Synthetic hairs possibly coming from a wig would have been powerful corroborating evidence of intruders as Dr. MacDonald's consistent accounts of the evening included a female intruder who

appeared to be wearing a wig with long blonde hair. Furthermore, Helena Stoeckley had been known to have and wear a blonde wig during the time of the incident at the MacDonald home.

The government countered this new evidence with an affidavit from FBI Agent, Michael P. Malone, who opined the blond synthetic hairs were not wig hairs, but were made of a saran fiber used only in doll's hair. Dr. MacDonald later learned Malone's affidavit was false.

The Department of Justice and FBI spent the last several years reviewing Michael Malone's work-product and trial testimony to determine whether Malone provided invalid, unreliable, or false hair identification testimony. The DOJ criticized Malone's testimony because he failed to perform his tests in a scientifically acceptable manner. The DOJ also claimed that Malone's hair statistics overstated the hair evidence's significance.

Synthetic saran fibers found in the hairbrush were routinely used in the manufacture of wigs at the time of the murders. This evidence significantly corroborated Dr. MacDonald's account.

The Office of Inspector General of the DOJ has recently issued its comprehensive report, *An Assessment of the 1996 Department of Justice Task Force Review of the FBI Laboratory* [hereinafter Report]. The report is attached as an

exhibit to this motion. It devotes an entire chapter to forensic analysis and testimony by Malone, who “repeatedly created scientifically unsupportable lab reports and provided false, misleading, or inaccurate testimony at criminal trials.” [Report at 45] The report notes “Malone became well known to many judges and the law enforcement community because of his forensic work on several high profile cases, including those of Jeffrey MacDonald . . . .” [Report at 45] Although Malone’s credibility became the subject of criticism as early as 1985, which was before he provided the false affidavit in this case, both the FBI and the DOJ did not take disciplinary action against him. He retired from the FBI in 1999. [Report at 46] The report noted “the independent scientists were finding almost all of the cases involving hair or fiber evidence analyzed by Malone to be seriously flawed.” [Report at 53]

The report was not considered by this Court in its analysis. It is startling in its depth as to the knowledge within the FBI and the government regarding Malone’s unprofessional conduct, along with the false evidence and testimony he produced. This information should have been disclosed to the defense. Setting aside the constitutional implications and due process concerns from this non-disclosure, this analysis of Malone by the Office of the Inspector General is highly disturbing. It calls into question any conviction obtained, in part, by the analysis and or testimony by Malone. Indeed, the report itself noted Malone gained fame through his work in

helping to secure Dr. MacDonald's conviction. [Report at 45]

In its ruling in this proceeding, this Court accepted an earlier rejection of the claims regarding these saran fibers by the district court. [DE 354 at 65-71, 135-36, 149-50] The earlier determination rejected several constitutional claims, including a violation of *Brady v. Maryland*, the use of false evidence, and fraud on the court, was based in substantial part on the affidavit of Malone. [DE 354 at 66-68, 160-61] The revelation of the critical analysis of Malone in the report counsels in favor of amending the judgment and granting the motion to vacate.

## **II. This Court Should Amend the Judgment and Grant a Certificate of Appealability.**

This Court summarily denied Dr. MacDonald a certificate of appealability. [DE at 168-69] It did so without the issue being addressed by the parties. There are sound reasons to grant a certificate of appealability in this case.

“If an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue.” Fed. R. App. P. 22(b)(1). The standard for granting a certificate is not high. Dr. MacDonald need not show this Court's decision was incorrect. Indeed, district courts often issue certificates of appealability where they have rejected the merits of the claims and the Fourth Circuit affirms the rulings. *See Longworth v. Ozmint*, 377 F.3d 437, 441 (4<sup>th</sup> Cir. 2004) (district court denies relief but grants

appealability on four of nineteen claims, including ineffective assistance and counsel's conflict of interest; ruling ultimately affirmed), *cert. denied*, 543 U.S. 1156(2005). Indeed, the Fourth Circuit often grants certificates of appealability even though it later rejects a claim on the merits. *See Meyer v. Branker*, 506 F.3d 322, 364, 366-68 (4<sup>th</sup> Cir. 2007) (granting certificate of appealability on voluntariness of guilty plea; ultimately finding plea acceptable), *cert. denied*, 128 S.Ct. 2975 (2008).

While the issuance of a COA is not automatic, a petitioner seeking to appeal from the denial of a petition for writ of habeas corpus “need only demonstrate a ‘substantial showing of the denial of a constitutional right.’” *Miller-El v. Cockrell*, 537 U.S. 22, 327 (2003). A reviewing court may not deny a COA on the grounds that the petitioner will not succeed on the merits. Rather, a COA should be granted where the petitioner has “demonstrate[ed] that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Id.*, citing *Slack v. McDaniel*, 529 U.S. 473, 481 (2000). That is, a court “should be confident that petitioner’s claim is squarely foreclosed by statute, rule or authoritative court decision, or is lacking any factual basis in the record ... before dismissing it as frivolous.” *Barefoot v. Estelle*, 463 U.S. 880, 894 (1983).

The standard for granting a certificate has been clearly articulated and is a low

threshold.

“A COA should issue if the applicant has ‘made a substantial showing of the denial of a constitutional right,’ which we have interpreted to require that the petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.

*Tennard*, 540 U.S. at 282 (citations omitted).

A prisoner seeking COA [is not required] to prove, before the issuance of a COA, that some jurists would grant the petition for habeas corpus.

*Miller-El*, 537 U.S. at 338 (internal quotations omitted). This Court must not rely on its adjudication of the merits of a claim in deciding whether to issue a COA. It “should not decline the application for a COA merely because it believes the applicant will not demonstrate entitlement to relief.” *Miller-El*, 537 U.S. at 337. The question is merely whether reasonable jurists could find the district court’s assessment of the constitutional claims debatable or wrong. *Slack*, 529 U.S. at 484.

This Court has explained in detail the factual underpinnings of Dr. MacDonald’s claims that necessitated the remand from the Fourth Circuit. Moreover, at the hearing in this matter, Dr. MacDonald developed and presented, for the first time, new evidence of statements Helena Stoeckley made to her attorney during the trial in 1979. This information was not previously available because of the attorney-client privilege. Whatever assessment this Court might make as to the reliability or

credibility of this new evidence, reasonable jurists could disagree both as to its reliability or credibility and as to its impact on the trial jury. In tandem with the testimony of Gene Stoeckley, as well as the statements of deceased United States Deputy Marshal Jimmy Britt and the testimony of his former wife, Mary Britt, reasonable jurists could debate whether Dr. MacDonald has carried his burden.

On the question of whether a certificate of appealability should be granted, this Court should recall the Fourth Circuit's statement when it decided the initial appeal of this conviction, "Had Stoeckley testified as it was reasonable to suspect she might have testified [admitting being present during and participating in the crimes], the injury to the government's case would have been incalculably great." *United States v. MacDonald*, 632 F.2d 258, 264 (4<sup>th</sup> Cir. 1980), *rev'd*, 456 U.S. 1 (1982). Likewise it should recall the sobering words the late Judge Francis Murnaghan, "this case provokes a strong uneasiness in me" because "MacDonald would have had a fairer trial if the Stoeckley related testimony had been admitted." *United States v. MacDonald*, 688 F.2d 224, 236 (4<sup>th</sup> Cir. 1983) (Murnaghan, J., concurring), *cert. denied*, 459 U.S. 1103 (1983). Notably, this Court learned at the hearing that the trial judge himself had considered the evidence against Dr. MacDonald less than overwhelming. As he stated in a letter after the trial, "At that time I confidently expected that the jury would return a not guilty verdict in the case . . . ." [Defense



Exhibit 5115] Surely these observations indicate reasonable jurists could disagree with the resolution of the issues in this case.

Moreover, courts have very recently granted certificates of appealability on issues involving claims of actual innocence and the emerging legal standards regarding them. *See United States v. Baxter*, 2014 WL 3882427 (D.C. Cir. 2014) (granting certificates on two claims of actual innocence); *United States v. Teleguz*, 689 F.3d 322, 325(4<sup>th</sup> Cir. 2012) (granting certificate on need for evidentiary hearing on claim of actual innocence). The appropriateness of a certificate in these types of cases is underscored by the type of review involved. An analysis of a claim of actual innocence “requires a holistic judgment about ‘all the evidence’ and its likely effect on reasonable jurors applying the reasonable-doubt standard.” *House v. Bell*, 547 U.S. 518, 539 (2006) (quoting *Schlup v. Delo*, 513 U.S. 298, 328 (1995)). In this determination, “the inquiry does not turn on discrete findings regarding disputed point of fact” as it is not this Court’s independent judgment about whether Dr. MacDonald would have been acquitted. *Id.*

Given the nature of the new evidence presented at the hearing, the substantial materials favorable to Dr. MacDonald previously submitted in this matter, and the numerous challenges to a substantial portion of the government’s trial evidence, reasonable jurists could debate the impact on the trial jury. *See Stewart v. Cate*, 2014

WL 1707033 (9<sup>th</sup> Cir. 2014) (panel divided on whether new evidence satisfied gateway showing of actual innocence under *Schlup*). Just as the reasonable jurists in *Stewart* disagreed, reasonable jurists could disagree here on both the gateway showing and on the determination of the merits. Thus, a certificate of appealability should be granted on the questions of whether Dr. MacDonald made the requisite showing to pass through the procedural, gatekeeping requirement and, if so, whether he has presented new evidence, especially the exculpatory statements of Helena Stoeckley under circumstances showing their inherent reliability, that would lead no reasonable juror to convict him.

## CONCLUSION

WHEREFORE, Jeffrey R. MacDonald respectfully requests that this Court alter and amend its judgment as set forth herein.

This the 21<sup>st</sup> day of August, 2014.

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**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on 21 August 2014, I electronically filed the foregoing Motion to Alter or Amend Judgment and Incorporated Memorandum of Law with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel of record in this matter.

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Stombaugh then compared the contents of Q96 H (from thread) to Q12 (MacDonald's pajama top), and found that two pieces of purple cotton sewing thread like that of the pajama top were present. GX 3060 at 6. He then stated that subsequent to this report dated October 17, 1974, a further report would be issued regarding the hair comparisons. Id.

### **2. The November 5, 1974, FBI Lab Report**

On November 5, 1974, Stombaugh issued a follow-up to the October 17, 1974, report that included a hair comparison of Q96 H(from thread). It stated, "[l]ight brown to blond head hairs that microscopically matched the K1 head hairs of COLETTE MAC DONALD were found in specimens ... Q96...The Q96 hair was found entangled around a purple cotton sewing thread like that used in the construction of the Q12 pajama top. Further this hair had bloodlike deposits along its shaft." GX 3061 at 2; DE-363-4. In 2014, The FBI 2014 reviewers examined the November 5, 1974, laboratory report and found no error. DE-363-3 at 5.

### **3. Larry Flinn Trial Testimony**

At trial, CID Chemist Larry Flinn was called to testify regarding the collection of evidence from items retrieved at the crime scene and sent to him at the CID lab. TTr. 3526. Flinn identified GX 104 as the bedspread found on the master bedroom floor, and the vial marked "Hairs, Fibers, Et Cetera, D-229" was received into evidence as GX 107. TTr. 3538. Flinn was not cross-examined regarding his collection of the debris from the bedspread. Id. at 3545-52.

### **4. Dillard Browning Trial Testimony**

On August 6, 1979, CID Chemist Dillard Browning was called by the Government to testify about his examinations of items other than hair. TTr. 3754-3831. On cross-examination, MacDonald defense counsel Bernard Segal chose to examine Browning as his own witness in an

attempt to undermine Stombaugh's anticipated testimony. TTr. 3831-3888. The following colloquy between Segal and Browning occurred before the jury concerning the limits of hair comparison testimony:

- Q. While we're talking about hair, it would be correct to say, would it not, Mr. Browning, that human hairs do not have unique individual characteristics the same way as fingerprints have unique individual characteristics?
- A. They have unique individual characteristics, but not sufficient unique individual characteristics that you can give a specific determination, like fingerprints.
- Q. When you say 'specific determination,' you mean with fingerprints you find a fingerprint and it matches that which comes from a given individual. You know there is no one else in the world that is going to have that print?
- A. That's right, yes.
- Q. When it comes to hair, what is the most you can say when you find a sample of hair that you compare with one known to come from a person?
- A. Once again, we use the could have opinion.
- Q. You could say it generally resembles the hair of a known person; is that right?
- A. Well, I never used that term generally. I would say 'grossly similar' or microscopically identical. In that case, I would give the report that they could have originated from a common source.
- Q. But you're not able, from such a gross examination, to make a specific identification of whose hair it actually is as you are looking at it?
- A. No, there would have to be many unique abnormalities or something very unique to the two samples to say definitely that one hair originated from the head of a certain individual.

TTr. 3846-47. Although Segal was in possession of the CID lab reports and Article 32 testimony (GX 3057 at 9) indicating that Browning had examined the debris collected from the bedspread in the master bedroom (D229, later Q96), he did not question Browning about the D229/Q96 H(from thread)/GX 107 hair entangled with the purple cotton sewing thread which Stombaugh had reported microscopically matched Colette MacDonald. See TTr. 3831-3888, 3898-3899. In fact, Segal did not ask Browning about his examination of D229/Q96/GX 107 at all. Id.

#### 5. Paul Stombaugh Trial Testimony

On August 8, 1979, two days after Dillard Browning's testimony, Paul M. Stombaugh testified about his examination of 18 vials of debris collected from the crime scene and from items seized as a result of the crime scene search. See GX 654. The location of each of these items, as well as the results of Stombaugh's comparisons of threads and yarns with known exemplars from MacDonald's pajama top have been previously discussed and will only be repeated as necessary to address Macdonald's current claims. See DE-344 at 70-73.

With respect to D229/Q96/GX 107, the debris removed by Flinn from the bedspread found in the pile of bedding on the master bedroom floor, Stombaugh testified that that he found one yarn fragment and two purple sewing threads, which he compared with Macdonald's pajama top. TTr. 4103-4104. Stombaugh rendered the opinion that the threads and yarns could have originated from the pajama top. Id. Stombaugh was then asked about the hair present in D229/Q96 H(from thread)/GX 107. He testified that there was "one head hair wrapped around the sewing thread-tangled" which thread he had previously testified could have come from MacDonald's pajama top. TTr. 4109-4110. He further explained that the hair, which had blood-like deposits

thread) hair conducted by Stombaugh has since been augmented by stipulated post-conviction DNA results, and the DNA results did not contradict Stombaugh's findings. See DE-119-3; DE-306 at 7, ¶23(e).

**B. The Pajama Top Reconstruction**

On June 10, 1971, CID Agent William F. Ivory delivered thirteen items of evidence to the FBI Laboratory pursuant to a request for additional laboratory examination from Colonel Henry H. Tufts, the Commanding Officer of the U.S. Army CID Agency. See Exhibit 2, attached.<sup>5</sup> The CID's request letter was not accompanied by crime scene photos and did not reflect that the pajama top was found, right sleeve inside out, on Colette's chest. Id. Agent Examiner Paul M. Stombaugh was assigned to conduct the examinations. He conducted all the 1971 examinations without any assistance from Technician Shirley S. Green, who had no involvement in the MacDonald Case before 1974. TTr. 4483; see also DE-10, Attachment 5, Affidavit of Shirley Green at 1.

In pertinent part, the July 2, 1971, Stombaugh report concluded that 48 puncture holes were located in the pajama top (not necessarily from 48 different thrusts), made by "a sharp pointed object such as an ice pick like specimen Q3." See Exhibit 3 at 2-3, attached. Stombaugh noted that the holes did "not contain enough individual characteristics to be associated with a particular instrument." Id. at 3. Further, Stombaugh concluded that the frequent handling of these garments caused "the yarns surrounding the holes to return ... to their original positions thus

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<sup>5</sup> The items consisted of the two paring knives (Q1 and Q2), the ice pick (Q3), the clothing removed from Kristen's body (Q4, Q5, Q6 and Q7), the clothing removed from Colette's body (Q8 and Q9), the clothing removed from Kimberly's body (Q10, Q11), the Q-12 torn blue pajama top, and the Q13 pocket allegedly from the Q12 pajama top. All of these items had previously been examined by the CID, and all would eventually be the subject of testimony at trial and ultimately entered into evidence. In the interest of clarity, both the laboratory numbers and the trial exhibit numbers will be used in this document.





preventing a definite conclusion to be made as to whether each hole is an “entry” or “exit” hole.”

Id. He did go on to state, however, that in the present condition, six of the holes had the general appearance of “entry” holes and five had the general appearance of “exit” holes. Id. The specific holes to which he attributed these characteristics were not listed in the report.

On September 24, 1974, during the grand jury investigation, additional specimens were submitted to the FBI for testing. GX 3060. In addition to the new items to be examined, both knives, the ice pick, Colette’s pajama bottoms and top, and MacDonald’s pajama top and its torn pocket (Q1-3, 8, 9, 12, and 13 respectively) were re-submitted to Stombaugh. In his report dated October 17, 1974, Stombaugh described the process by which, using crime scene photographs depicting the Q12/GX 101 pajama top on the body of Colette MacDonald, it was refolded in the same manner—right sleeve inside out—and the 48 puncture holes were aligned with 21 probes to produce a pattern of 5 and 16 thrusts. GX 3060 at 4-6.<sup>6</sup>

The July 2, 1971, Lab Report (Exhibit 3), October 17, 1974, FBI Lab Report (GX 3060), and a subsequent report dated November 5, 1974 (GX 3061, DE-363-4), all prepared by Stombaugh, were furnished to defense counsel Bernie Segal in 1975, in the normal course of post-indictment discovery. See DE-1, Vol. IV at 13, ¶27.

The trial in this matter commenced on July 16, 1979, and on or about July 30, 1979, a defense subpoena was served upon the FBI for the personnel records of Paul Stombaugh. See DE-117-4 at 15. The afternoon of July 31, 1979, the Court excused the jury to take up motions, including those related to the pending subpoena. TTr. 3246(10).<sup>7</sup> In explaining the rationale for

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<sup>6</sup> This demonstration was referred to at trial as “the reconstruction.”

<sup>7</sup> As the Reporter’s Note reflects, the afternoon proceedings were not transcribed with the testimony at the time on a daily copy basis, and the pages were later inserted using the last number of the morning transcript with a series of numbers in parentheses. TTr. 3246(1).



subpoenaing Stombaugh's personnel records, Segal stated, "[w]e seriously doubt, Your Honor, that he is qualified to do what he says he did. But we have no way of knowing until after he has testified." TTr. 3246(12). Judge Dupree noted that Stombaugh would be present and would be able to be cross-examined about his qualifications, and denied Segal's fishing expedition regarding the personnel records. TTr. 3246(12)-3246(14). Segal persisted, stating that "[w]hat I am concerned, Your Honor, is the fact that I doubt very much ... that the Bureau stands behind the experiments in this case. I think that his supervisors do not concur that what he did was scientific, supported with scientific methodology, or worth a damn." TTr.3246(15). Judge Dupree pointed out that the defense could subpoena Stombaugh's supervisors to testify at trial, but Segal complained that the Government had all of the information that he could use to impeach Stombaugh and that they should be forced to turn it over. TTr. 3246(16)-3246(17). The Court noted that Brady applied to the situation at hand, to which the Government agreed. TTr. 3246(17). The following colloquy then ensued:

THE COURT: ...if you have anything—he says that you have a file full of stuff on old Stombaugh and it shows that he is a stumble bum.

MR. MURTAGH: No.

THE COURT: And so, if you have, I will tell you right now, you had better not put him up there and vouch for his expertise, and come back here on a motion six months from now, if you should be lucky enough to get a conviction in this case, and try to sustain it, because there is going to be a record of what you told me this afternoon.

MR. MURTAGH: Well, in that case, Your Honor, let me make the record as clear as I possibly can: one, we have no files on Mr. Stombaugh. I assume he has a personnel file, like every other past and present employee of the FBI. I have never seen it. I have no reason to believe that he was other than an examiner in the FBI Laboratory for some years 16 years. Prior to that, he was a street agent in St. Louis. Prior to that, I believe he was in the United States Navy. I know he has a bachelor's



Degree in chemistry from, I believe, the University of South Carolina. He is a qualified examiner.

TTr. 3246(18)-3246(19). The Court went on to deny the issuance of the subpoena, stating:

Gentlemen, I do not feel that at the end of the 12th day of a trial of this case that the Court ought to uphold a subpoena for materials which, at best, are speculative as to what they show—some of them of questionable admissibility. And I think that if the Defendant has shown anything at all in this case, he has succeeded admirably and in depth in showing that there were just hundreds of things that these investigators could have done which they didn't do. So, from that standpoint, I think they're all right.

Ttr. 3246(21).

**1. Stombaugh's Direct Examination Regarding the Pajama Top**

On August 7, 1979, the Government called Paul Stombaugh, who had retired from the FBI in 1976, and was then employed by the Greenville, South Carolina, Police Department as the Director of the Police Services Bureau. TTr. 3989-3990. Stombaugh testified about a wide range of items he had examined at the FBI Lab in 1971 and 1974. Since the Government has discussed those examinations supra, and in other filings, at this time we will address only the examination of Stombaugh regarding the pajama top reconstruction.

Following a lengthy voir dire, which included questions regarding his personnel file, the defense informed the Court that they had no objection to Stombaugh's qualifications regarding hair and fiber examination, but that they would still challenge his expertise in the area of fabric damage or fabric impressions, and renewed their request for his personnel file. TTr. 3994-4026. The Court ruled that Stombaugh would "be qualified as an expert in hair fibers, fabric damage, stains and fabric impressions. The credibility and the probative force of his testimony will be for this jury to say." TTr. 4029.



In preparation for Stombaugh's testimony regarding the pajama top reconstruction, the Government had laid a foundation for much of the relevant evidence through independent sources. CID Agent Bill Ivory testified to his observation of MacDonald's torn pajama top, found on Colette's chest, as depicted in the crime scene photos. TTr. 1612-13, 1693-94; GXP 40-45. Dr. George Gammel, MD, the pathologist who performed the autopsy on Colette, testified regarding the sixteen deep penetrating stab wounds to her neck and chest, and twenty-one puncture wounds to her chest, all of which had been inflicted in a perpendicular manner. TTr. 2500-2504; GXP 763, 2362. The stab wounds were "very consistent" with the Old Hickory paring knife, and the puncture wounds were consistent with those that would be caused by an ice pick. Id. The twenty-one ice pick wounds were in two distinct groups on Colette's chest: sixteen on the left side and five on the right side. TTr. 2520; GXP 763. On cross-examination, Dr. Gammel testified that the absence of tearing of the skin in the areas where the punctures were found indicated that Colette's body was not moving at the time the ice pick wounds were inflicted. TTr. 2545. Emergency Room Senior Clinical Technician Michael Newman testified that MacDonald had no ice pick injuries and no injuries to his back. See DE-344 at 80.

The Government had also introduced the prior statements of Jeffrey MacDonald, including the tape-recorded, non-custodial CID interview of April 6, 1970, in which he claimed to have placed his pajama top on Colette's chest after the alleged assailants had left the house. See DE-344 at 89. Further, the Government produced MacDonald's testimony before the grand jury, in which he stated that he did not claim to have sustained any injuries to his body, including any from an ice pick. DE-132-21 at 37; DE-344 at 93; GX 1022.





The foundation for the pajama top reconstruction also included the results of Stombaugh's 1971 examination of the weapons and clothing, pre-dating the reconstruction. With respect to the examination of Colette's pajama top (Q9/GX 270), Stombaugh noted that it had sustained 30 punctures which could have been made with the ice pick (Q3/GX 312). TTr. 4052. In addition, the front of Colette's pajama top sustained 18 cuts "made by a very sharp cutting instrument with a single cutting edge." TTr. 4052-53. Stombaugh conducted test cuts using the Old Hickory knife (Q2/GX 313), and concluded that it could have made the cuts to Colette's pajama top. TTr. 4053. In contrast, Stombaugh found that it was "extremely doubtful" that the cuts could have been made with the Geneva Forge knife (Q1/GX 311), the duller of the two knives, which had been found on the floor of the master bedroom. TTr. 4054; GXP 49-50. MacDonald's contention was that, upon entering the master bedroom, after the "intruders" had left, he pulled a knife out of Colette's chest and threw it somewhere. GX 1135 at 13.<sup>8</sup>

With respect to his 1971 examination of MacDonald's pajama top (Q12/GX 101), Stombaugh testified that he found a total of 48 puncture holes in the pajama top which he numbered with a white pencil, and indicated that they could have been caused by the ice pick. TTr. 4058. "The holes varied slightly in size. The biggest measuring 1/8 of an inch across, which conformed to the width of the ice pick blade at the hilt." *Id.* With respect to the front panel of the pajama top, Stombaugh found one 5/8 inch long tearing cut. TTr. 4060-61. On the left sleeve, Stombaugh found an additional cut. TTr. 4062. "From the test cuts made in the laboratory, the two cuts on [MacDonald's] pajama top could have been made by the Geneva Forge knife, the dull

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<sup>8</sup> The Old Hickory knife was found just outside the utility room door of the MacDonald household along with the ice pick and the wooden club. TTr. 2342-2343; HTr. 802-803; GXP 79, 80, 81, 262, 1162. As the sharper of the two knives, the Old Hickory knife was determined to be consistent with the cuts inflicted on Colette's chest as well as with the cuts to her pajama top. *See supra* at 16.



knife.” TTr. 4063. When asked about the sharp Old Hickory knife, Stombaugh responded, “[w]ell, here again it could have, but it is doubtful because these cuts aren’t clean; they are more or less tearing cuts.” Id. Stombaugh next identified a series of laboratory photographs for the jury, depicting the circled and numbered puncture holes in the pajama top. See GXP 600, 600(b), 600(a), 602(a); TTr. 4066. Stombaugh further stated that, “[h]ad the garment been in motion when a sharp instrument was struck into it, the holes would not be perfectly symmetrical like they are. There would be tearing of the yarns in the area from the force of the garment being moved. I found no such tearing and therefore concluded that the garment itself was stationary at the time the punctures were made.” TTr. 4075.

Stombaugh went on to testify about his conclusions regarding how the pajama top pocket could have been torn off, when certain blood stains got on the pajama top, how bloody fabric impressions found on the sheet could have come from the cuffs of each of the pajama tops, the comparison of numerous threads and yarns with known exemplars from MacDonald’s pajama top, as well as the comparison of questioned hairs with known exemplars from the MacDonald family. See TTr. 4086-4161.

Before Stombaugh was asked to testify about the pajama top reconstruction, the Government requested a bench conference to determine whether there would be additional voir dire outside the presence of the jury. TTr. 4161. At the bench, the Government was candid that Stombaugh did not conduct the pajama top reconstruction, rather, that it was conducted by Shirley Green, who would testify later. Id. It was the Government’s contention, however, that Stombaugh could testify as to his knowledge of the reconstruction, given that he was present while Green was conducting the reconstruction and that he was her supervisor. TTr. 4161-4162. Segal



vehemently objected, stating, “[m]y information is not that Mr. Stombaugh supervised Ms. Green. He was a supervisor, but our information is that she worked three weeks on this and he was almost never in the room. She did this by herself and as a foundation. And he simply talked about what she was doing periodically. He didn’t supervise her in any of the known scientific senses of the word.” TTr. 4163. Judge Dupree denied the motion for additional voir dire and allowed Stombaugh’s testimony about the pajama top reconstruction to proceed, noting, “I verily anticipate that your witness will be subjected to a most searching cross-examination and possibly a destruction of his testimony.” TTr. 4178-4179.

Stombaugh testified that when he examined the blue pajama top in 1971, he had no knowledge of where it had been found. TTr. 4181. When he was asked to re-examine it in 1974, he was supplied at that time with many crime scene photos, including ones which depicted the blue pajama top in situ on Colette’s chest. He was also supplied with the autopsy report of Colette MacDonald, which reflected that she had sustained 21 puncture wounds in her chest. TTr. 4182-83. Stombaugh identified for the jury an autopsy photograph taken of Colette MacDonald’s chest, after the blood had been washed off, and which he had annotated by circling and numbering all 21 puncture wounds, and encasing each stab wound with a rectangle and an alphabetical designation “A” through “G.” TTr. 4182-83; GXP 786. Stombaugh also identified the photographs depicting MacDonald’s pajama top on Colette’s body that he and Shirley Green had used to identify the various seams, determine that the right shoulder seam was inside out, and that the torn left panel was trailing off the body. TTr. 4185-4187; GX 1137-1139; GXP 41, 43, 44.

Stombaugh explained that the purpose of this new examination was “to ascertain whether or not the ... puncture wounds, to Colette could have been made through this pajama top—if it



were in fact on top of her body. So, the purpose of using the photographs was to fold the pajama top as near as possible to the way it was folded on top of the body at the time these photographs were taken.” TTr. 4187-4188. He then went on to describe the process of folding the pajama top so that the two separate groups of puncture wounds in Colette’s chest—five holes in the right chest area and sixteen in the left chest area—aligned with the twenty-one holes visible in the top layer of the folded pajama top. TTr. 4191-4193. When asked whether the twenty-one holes visible in the top layer of the pajama top were ever able to be aligned with the grouping of puncture wounds in Colette’s chest, he stated that, “[a]fter a lengthy period of time, Ms. Green succeeded in lining up all the holes.” TTr. 4193. The Government asked Stombaugh to identify and explain Government Exhibit 787, a photograph taken in 1974 depicting the completed pajama top reconstruction, and further how he and Shirley Green came to the conclusion that twenty-one thrusts could have created forty-eight holes in the pajama top. TTr. 4194-4196. Stombaugh clarified that while “the puncture damage to [Colette’s] chest could have been made through this pajama top while it was on her body...[i]n the photographs the pajama top is lower down on the chest and it appears to have been moved. If it was in the exact location, then you would be a little more assured that this happened. The pajama top is not—it appeared from the photographs to have been moved more down towards the abdomen.” TTr. 4197.

## 2. Stombaugh’s Cross-Examination Regarding the Pajama Top

The cross-examination of Paul Stombaugh was extensive, lasting for the better part of two days. See TTr. 4198-4303, 4310-4409, 4418-4419.<sup>9</sup> Segal spent a great deal of time attempting

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<sup>9</sup> During this time, the defense requested a copy of the notes that Stombaugh had been using to testify, and was provided with them after court recessed on the first day of Stombaugh’s testimony. TTr. 4254-4255. The defense expert, Dr. Thornton, acknowledged that these notes were primarily focused on the pajama top reconstruction. DE-1, Vol. V, Exhibit 16, ¶17. Stombaugh’s bench notes were, therefore, available to Segal for use during his





to discredit the pajama top reconstruction. Stombaugh explained that he did not attempt to line up the stab wounds in Colette's chest with the two cuts in MacDonald's pajama top, and that he had counted eighteen cuts in Colette's pajama top in addition to the thirty puncture holes. TTr. 4357-4361. He readily admitted that there were likely other combinations by which the forty-eight puncture holes in the pajama top could be lined up with the twenty-one puncture wounds in Colette's chest, but that he did not know how many possibilities existed. TTr. 4371. He told Segal, "[s]ir, I have no idea. All I'm saying is that we used up all 48 holes with 21 thrusts, and we're just saying that it can be done. We are not saying this actually took place. We are saying this can be done. It could have taken place, and that's all this demonstration represents." Id. Segal fully explored how, in 1971, Stombaugh recorded the location of the puncture holes on a diagram of the pajama top shown in his notes, and the fact that some of the holes appeared to be deep "up to the hilt type holes," but at no time did he ask Stombaugh about the conclusions in the July 2, 1971, lab report regarding the "general appearance" of some holes as "entry" or "exit" holes, as recorded in his 1971 bench notes. TTr. 4375. Segal spent a great deal of time focusing on the size of the holes in the pajama top versus the size of the holes in Colette's chest with which they were paired in the reconstruction. Stombaugh informed the jury that Shirley Green was the one who had lined up the holes in the folded pajama top with the pattern of puncture wounds in Colette's chest, and stated, "[i]t is a very time-consuming job. We both worked on it for a while, and then Ms. Green took over; and it took her a very long length of time to see if it could be done." TTr. 4379-4380. Segal was unrelenting in his examination of Stombaugh regarding the difference in hole sizes between the pajama top and wounds in Colette's chest. See TTr. 4380-4384. Finally Stombaugh told him:

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cross-examination.



[W]e were not trying to line up holes with particular damage to the body itself. We were just trying to determine if the 21—or the 48 holes could have been made by 21 thrusts, and if so what the pattern would be. And we did get a pattern of five holes and 16 holes, and accounted for all 48 holes. As I say, again, we are not saying this is actually what took place. We made this demonstration to see if it could have taken place.

TTr. 4381. The gist of Segal's cross-examination was to try to show that Stombaugh's testimony before the grand jury was different than his statement in the October 17, 1974, lab report and trial testimony, but Stombaugh stood by his statements. TTr. 4393. At the conclusion of cross-examination, Segal asked Stombaugh if he had prepared the re-make of the pajama top reconstruction that the Government subsequently marked as GX 789-796 and used during the examination of Shirley Green. TTr. 4461-4474. Stombaugh indicated that he had not. Id.

### 3. Shirley Green's Direct Examination

Shirley Green testified immediately after Paul Stombaugh. TTr. 4423. Green was not offered as an expert witness, but testified that she was a Physical Science Technician, employed by the FBI Lab in the Microscopic Analysis Unit. Id. She had been employed by the FBI for 28 years, 25 of them in the Microscopic Analysis Unit, but had never previously testified in court. TTr. 4424. She testified that, in the fall of 1974, she was working in the "attic of the old building" which she further identified as Department of Justice Building, and there came a time when Paul Stombaugh moved into her office space and she began assisting him in conducting laboratory examinations in this case. TTr. 4429-4430.

Green identified a photo enlargement, GX 787(a), depicting the 1974 pajama top reconstruction with the probes, and GX 1140, the actual probes themselves. Id. She further identified the numbers on the paper tabs affixed to the probes as being her own, and stated that she



had done the reconstruction herself. TTr. 4431. Green then walked the jury through the pajama top reconstruction process, indicating which holes corresponded to a single thrust, and how she color-coded them to reflect as much when the pajama top was unfolded. TTr. 4431-4435; See GX 787, 1142. She did not force any of the probes through the holes in the pajama top. TTr. 4438.

Green further testified that she was never able to align the twenty-one probes through the pajama top in any other way, and that it had taken her over a week to find this one solution. TTr. 4458.<sup>10</sup> She went on to explain a series of photographs taken in 1978-1979 of the grouping patterns reflected on graph paper of the holes in both the pajama top reconstruction and the autopsy photo, created by inserting push pins into each that resulted in groupings of holes on graph paper, demonstrating the similarity between the left and right grouping patterns in both the pajama top and the body. TTr. 4461-4474; GX 789-798, 1070, 1143. All of these items of evidence were admitted and published to the jury. Id.

#### 4. Shirley Green's Cross-Examination

During Green's cross-examination, she informed the jury that she did not attempt to line up the two cuts in MacDonald's pajama top with any cuts to Colette's body because she was not asked to do so as a part of her examination. TTr. 4476-4477, 4483. She testified that she had not seen the pajama top in 1971, and that in 1974, she did not examine the pajama top holes before she began the reconstruction process because Stombaugh had done that, but that the holes all seemed to be approximately the same size. TTr. 4491-4493. Further, Green explained how she and Stombaugh determined the positioning of the pajama top on Colette's body, and that she believed

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<sup>10</sup> As used in this memorandum the term "the solution" refers exclusively to the numbering of the 48 holes in GX 101(Q12), and the sequence of holes through which the 21 probes were inserted by Shirley Green in order to produce the pattern of two groups of 5 and 16 thrusts. See GX 1076, Exhibit 5.



that it had likely been moved as a result of MacDonald lying on Colette's body. TTr. 4495. Green was asked about alternative arrangements for fitting the forty-eight holes into twenty-one thrusts and she acknowledged that that there "could possibly be more; it could possibly be less; but it can be 21 holes exactly and come out into the same pattern as the pattern of the punctures on the victim." TTr. 4498. Green also acknowledged that she could not tell which were entry and which were exit holes, and that although Stombaugh had noted that he had identified what appeared to be some of each, she did not have a copy of any report indicating as much. TTr. 4568-4570. She recalled that there were "possibly five exit and six entrance [holes] or vice versa." TTr. 4570. Although she did not have any notes to that effect, she recalled that holes 6, 14, and 20 were exit holes, but had not tried to accommodate the reconstruction to any of the other holes that she could not remember. TTr. 4572. Segal never asked Green about her own notes regarding the solution to the pajama reconstruction (Exhibit 5), nor about Stombaugh's notes (Exhibit 4).

##### 5. Dr. John Thornton's Testimony

On direct examination, Dr. John I. Thornton, a Professor of Forensic Science at the University of California at Berkley and witness for the defense,<sup>11</sup> challenged a number of Stombaugh's conclusions regarding the bloody fabric impressions on the bed sheet. Thornton did not address any of Stombaugh's conclusions based on his comparison of questioned threads or yarns with known exemplars from MacDonald's pajama top, or his comparison of questioned hairs with known hair exemplars. TTr. 5128-5218. The only challenge from Thornton relating to Stombaugh's testimony about the reconstruction was to Stombaugh's 1971 conclusion that the

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<sup>11</sup> MacDonald had several experts assisting his defense team during the trial. TTr. 5147, 5149-5151, 5313-5314.





absence of torn areas surrounding the 48 puncture holes indicated to Stombaugh the pajama top was stationary when the puncture holes were made in the garment.<sup>12</sup>

On re-direct examination, Thornton rendered the opinion that Shirley Green's reconstruction was "impossible." TTr. 5310-5311. He elaborated that, because Green had failed to follow Stombaugh's 1971 notes regarding the directionality of five of the pajama top holes, the validity of the reconstruction was negated.<sup>13</sup> TTr. 5312-5318.

On re-cross-examination, Thornton conceded that whether the pajama top had been right side out or inside out when the holes were inflicted would affect the determination as to which way the threads pointed. TTr. 5322-5324. Thornton further agreed that, by 1974, the yarns in the pajama top would have returned to their normal position, and thus any determination as to directionality made by Stombaugh in 1971 could not be confirmed in 1974. Id. at 5325.

## 6. Segal's Final Argument

In his final argument, Segal vehemently attacked the pajama top reconstruction as "not scientific evidence" and "sheer fakery." TTr. 7240. He took Shirley Green to task for disregarding Stombaugh's directionality analysis, and her alleged failure to determine whether the

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<sup>12</sup> The challenge was in the form of an "experiment" in which Thornton used slides to illustrate his testimony. He described how a 3/4 inch piece of plywood or "sled" had a "screw eye" at either end of the sled. "By whipping the loose end of the cord...the sled can be placed into motion to and fro." TTr. 5158. "On the sled is affixed a target. Over the target is placed a piece of cloth which is 65% polyester and 35% cotton. The whipping to and fro produced "a harmonic oscillation" which approximated "the maximum motion of a human ...thrashing around on the floor or some hard surface." TTr.5159. Thornton made 50 test punctures with an ice pick into the "target material." Id. When the fabric was removed from the target material and the punctures examined, circular puncture marks, as opposed to elongated tears were revealed and photographed. TTr. 5159-5160. Thornton compared his test punctures with the results of his own examination of MacDonald's pajama top and found them similar. TTr. 5165. On cross-examination, Thornton admitted that the "target material" was a ham. TTr. 5251.

<sup>13</sup> Thornton testified that he used a 1971 "worksheet" of Stombaugh as well as a "worksheet" of Shirley Green, identified as GX 1076(a), to make his assessment. The 1971 "worksheet" of Stombaugh apparently refers to the same documents as DE-1, Vol V, Exhibit 16 at 82-85, also attached as Exhibit 4 hereto. GX 1076(a) is a photographic enlargement of GX 1076, a single page prepared by Shirley Green in which the "Victim Ice Pick Hole #'s" are juxtaposed to "Hole #'s in Q12 Shirt," and bears the Lab No, L2082, indicating that was prepared in connection with the October 17, 1974, FBI Laboratory Report in which the pajama top reconstruction was described. See GX 3060, 3060.4 (Shirley Green's "solution"). A copy of GX 1076 is attached as Exhibit 5 hereto.



sizes of the various holes matched in finding her solution. TTr. 7241. Segal argued, “[o]n every basis you can think of, it is a fake.” TTr. 7242.

#### 7. The Notes From the Jury

On August 29, 1979, at 9:47 a.m., following Judge Dupree’s charge, the jury retired to deliberate. See DE-9 at 12. The Jury’s first note requesting exhibits, preserved by the Clerk’s Office, was received at 10:40 a.m., and included “PJ Tops.” See Exhibit 6 at 1, attached. Judge Dupree annotated this note, writing, “[a]ssembled all counsel + sent to jury room. 10:50 a.m.” Id. Judge Dupree then had MacDonald’s pajama top sent back along with another note, “To the jury— If these are not all of the exhibits or the exact ones you want, send another note. 8/29/79 10:55 a.m.” Exhibit 6 at 2. The jury foreman annotated this note, “Can we have the other PJ Top.” Id. The demonstration pajama top (GX 1081), was then sent back to the jury. At 12:30 p.m., the final request by the jury for exhibits was received:

Chart of PJ Top with graffh [sic] paper (Mrs Green)  
Fiber Chart  
Picture of Colette in Bedroom  
Colette PJ Top

Exhibit 6 at 4. These items exhibits were assembled and sent back to the jury.<sup>14</sup> At 4:24 p.m., on August 29, 1979, the jury returned with verdicts of guilty on all three counts. See DE-9 at 4.

#### 8. Fourth Circuit Rejects MacDonald’s Challenge to Reconstruction on Direct Appeal

Following his conviction, MacDonald appealed on numerous grounds, including that the introduction of the evidence of the pajama top reconstruction was reversible error. MacDonald’s 1979 Brief of the Appellant devoted thirty-three pages to the alleged errors involving the reconstruction. Brief of the Appellant, No. 79-5253 at 178-210 (1979). Following remand from

<sup>14</sup> GX 1070, 654, 39-45, and 270, respectively.



the Supreme Court,<sup>15</sup> on June 9, 1982, Judge Albert V. Bryan, Sr., writing for a panel which included Judges Murnaghan and Sprouse, described the circumstances leading to the reconstruction. United States v. MacDonald, 688 F.2d 224 (4th Cir. 1982). In pertinent part, Judge Bryan noted,

When the police first arrived at the MacDonald home, the defendant was lying across his wife's body. To administer first aid, an officer rolled him off his wife and onto the floor. This process, the defense argued, inevitably disturbed the positioning of the pajama top before the photographs of the scene were taken. Although some variation of the posture of the shirt may have been occasioned by this act, we think it unlikely that the most crucial aspect of the shirt's configuration—that is, the right sleeve being turned inside out—would be affected noticeably by this movement.

Id. at n.8.

Further, counsel poses the possibility that the shirt was moved before it was photographed at the crime scene, the potentially infinite ways to align the 48 holes into a pattern of 21, and a variety of plausible shortcomings in the methods employed by the Government investigators. Each of these points merits scrutiny, and each was advanced, without limitation, before the jury.

Id. at 229. The Fourth Circuit found no abuse of discretion in the admission of this evidence. Id.

### **C. The Malone Report and AFDIL Specimen 75A**

#### **1. The 1990 Suppression Claim**

Michael Malone first became involved in the MacDonald case during the 1990 litigation of MacDonald's Petition For Post Conviction Relief Pursuant to 28 U.S.C. Section 2255, alleging government suppression of exculpatory evidence in the form of laboratory "bench notes," obtained from the FBI and CID laboratories under FOIA, which he claimed constituted "newly discovered

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<sup>15</sup> The Supreme Court held that MacDonald's speedy trial rights had not been violated. United States v. MacDonald, 456 U.S. 1 (1982).



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 3:75-CR-00026-F

No. 5:06-CV-00024-F

UNITED STATES OF AMERICA, )  
 )  
 v. )  
 )  
 JEFFREY R. MacDONALD, )

ORDER

This matter is before the court on the Motion to Alter or Amend Judgment [DE-357] filed by Jeffrey MacDonald. The matter has been fully briefed and is ripe for ruling. For the reasons stated below, the motion [DE-357]<sup>1</sup> is DENIED.

**I. BACKGROUND**

This order presumes some familiarity with the court’s July 24, 2014 Order [DE-353] denying Jeffrey MacDonald’s Motion to Vacate under 28 U.S.C. § 2255 [DE-354] which is the basis for the Judgment [DE-355] MacDonald seeks to alter or amend. In summary, the court found that MacDonald failed to meet his burden under the procedural gatekeeping bar set forth in § 2255(h)(1) because he did not proffer new evidence that was sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found him guilty of the murders of his wife and daughters. The court alternatively assumed that MacDonald could satisfy the gatekeeping burden under § 2255(h), but found that he had failed to prove any of his claims on the merits.

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<sup>1</sup> For purposes of this Order, “DE” designates the docket entry on the court’s official Docket Sheet. “Tr.” refers to the transcript from the trial. “GX” and “DX” refer to exhibits offered by the Government and MacDonald, respectively, at the September 2012 evidentiary hearing. References in this order to page numbers are to those page numbers assigned by CM/ECF in the instant proceeding as opposed to page numbers in the original documents.



Specifically, as to MacDonald's first claim, the court concluded that he failed to show, by a preponderance of the evidence that Helena Stoeckley confessed to Assistant United States Attorney Jim Blackburn, or that Blackburn intimidated her into changing her testimony, and therefore MacDonald had not established a violation of his Fifth or Sixth Amendment rights. As to the second claim, the court also concluded that MacDonald had failed to show a Fifth Amendment *Brady*<sup>2</sup> violation with respect to the Government's alleged suppression of government forensic lab notes describing (1) three blond synthetic hairs found in a hairbrush located in the MacDonald home and (2) black and green wool fibers, not matched to any source in the MacDonald home, found on the murder weapon and on Colette MacDonald's body. Specifically, the court found that the prosecution complied with its duties under *Brady* by affording MacDonald an opportunity to examine and test any of the physical evidence, irrespective of tendering the lab notes. The court also found that there was no evidence showing that prosecution attorneys were aware of the contents of the lab notes at issue. As to MacDonald's third claim, the court assumed, *arguendo*, that a freestanding actual innocence claim is cognizable, but nevertheless found that MacDonald failed to establish, by clear and convincing evidence, that no reasonable juror would find him guilty of the murders of his family. Finally, the court concluded that MacDonald failed to make the requisite showing which would entitle him to a certificate of appealability.

On August 21, 2014, MacDonald filed the instant Motion to Alter or Amend Judgment [DE-357]. Therein, MacDonald argues that the judgment should be amended to reflect new evidence regarding Michael Malone, a Federal Bureau of Investigation ("FBI") Agent who submitted affidavits in response to MacDonald's 1990 § 2255 petition. Specifically, MacDonald argued that

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<sup>2</sup> *Brady v. Maryland*, 373 U.S. 83 (1963).

a report entitled *An Assessment of the 1996 Department of Justice Task Force Review of the FBI Laboratory* [DE-357-1], issued by the Department of Justice, Office of the Inspector General in July 2014 (the “2014 OIG Report”), should be considered by the court, and that such evidence supports the vacating of his convictions. Alternatively, MacDonald argues that the court should amend the judgment to issue him a certificate of appealability.

The Government responded in opposition [DE-358]. Days before MacDonald’s reply was due, the Government filed a Notice of Filing Relating to Movant’s Pending Rule 59(e) Motion [DE-363]. Attached to the Notice was a letter from Norman Wong, Special Counsel to the United States Department of Justice (“DOJ”). *See* September 17, 2014 Letter [DE-363-2]. In the letter, Mr. Wong advised that the DOJ and the FBI had reviewed “laboratory reports and testimony by FBI Laboratory examiners in cases involving microscopic hair comparison analysis.” *Id.* at 1. Mr. Wong further advised:

We have determined that the microscopic hair comparison analysis testimony or laboratory report presented in this case included statements that exceeded the limits of science and were, therefore invalid: (1) the examiner stated or implied that the evidentiary hair could be associated with a specific individual to the exclusion of all others – this type of testimony exceeded the limits of science; (2) the examiner assigned to the positive association a statistical weight or probability or provided a likelihood that the questioned hair originated from a particular source, or an opinion as to the likelihood or rareness of the positive association that could lead the jury to believe that valid statistical weight can be assigned to a microscopic hair association – this type of testimony exceeded the limits of science. (A copy of the documents upon which our determination is based is enclosed.) We take no position regarding the materiality of the error in this case.

*Id.* at 2 (footnote omitted).

Enclosed with the letter was a document entitled “Microscopic Hair Comparison Analysis: Result of Review” [DE-363-3]. This report reflects the conclusion of the FBI lab review team, with

the concurrence of the Innocence Project (“IP”). Based on its review of the lab reports and trial testimony in the MacDonald case, the FBI/IP identified three errors:

1. A lab report by Michael Malone, dated 2/4/1991, contained an “Inappropriate Statement” on page 2 (“ . . . consistent with having originated from Jeffrey MacDonald.”).
2. A lab report by Robert Fram, dated 5/19/1999 contained an “Inappropriate Statement” on TEU 1 (“ . . . consistent with having originated from KIMBERLY MACDONALD.”).
3. The trial testimony of Paul Stombaugh on August 7-9, 1979, contained “Inappropriate Statements,” found in Trial Transcript 4294, Lines 1-6:
  - 1 A. Sir, the only conclusion on the hair
  - 2 examination that I was going to make was its origin.
  - 3 Q. That is pretty serious about whose hair it
  - 4 is. That is a fundamental question you were being
  - 5 asked.
  - 6 A. That is correct.

[DE-363-3] at 5-6; Ttr. 4294 [DE-363-8].

Two days later, MacDonald filed a Reply [DE-364], arguing that new information contained in the report attached to Wong’s letter justifies amending the judgment, or alternatively, requires new briefing. The court thereafter ordered supplemental briefing from the parties.

In MacDonald’s supplemental briefing, he argues that the “revelations of misfeasance and malfeasance by Michael Malone, Paul Stombaugh and Robert Fram in this litigation are ‘new evidence’” justifying amending the judgment. Supplemental Mem. [DE-379] at 8. MacDonald also argues that “their unacceptable behavior in this litigation, under the auspices of the federal government and the Department of Justice, must be rectified to prevent ‘manifest injustice.’” *Id.* In its supplemental response [DE-382], the Government states that it has no objection to the court considering any of the new evidence, but it asserts that the new evidence should not change the

court's previous findings as to MacDonald's showing as to the gatekeeping or the merits of his claims.

## II. STANDARD OF REVIEW

Rule 59(e) permits a court to alter or amend a judgment. Fed. R. Civ. P. 59(e). Although the rule itself does not set forth any guidelines as to when such a motion should be allowed, the Fourth Circuit has recognized three grounds for an amending a judgment pursuant to Rule 59(e): "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available [previously]; or (3) to correct a clear error of law or prevent manifest injustice." *Sloas v. CSX Transp., Inc.*, 616 F.3d 380, 386 n.2 (4th Cir. 2010) (alteration added & citation omitted). "It is an extraordinary remedy which should be applied sparingly." *Mayfield v. Nat'l Ass'n for Stock Car Auto Racing, Inc.*, 674 F.3d 369, 378 (4th Cir. 2012). A "district court has considerable discretion in deciding whether to modify or amend a judgment." *Gagliano v. Reliance Standard Life Ins. Co.*, 547 F.3d 230, 241 n.8 (4th Cir. 2008).

## III. EVIDENCE UNDERLYING THE MOTION TO ALTER OR AMEND

As the court has recounted above, the new evidence upon which MacDonald relies is the 2014 OIG Report and the "Microscopic Hair Comparison Analysis: Result of Review."

The 2014 OIG Report addresses:

how the Criminal Division Task Force (Task Force), created by the [DOJ] in 1996 and whose mission was redefined in 1997, managed the identification, review, and follow-up of cases involving the use of scientifically unsupportable analysis and overstated testimony by FBI Lab examiners in criminal prosecutions. We analyzed the Task Force's review of cases involving 13 FBI examiners the Task Force determined had been criticized in the 1997 OIG report. We included in our review a close examination of cases handled by 1 of the 13 examiners, Michael Malone, the Lab's Hairs and Fibers Unit examiner whose conduct was particularly problematic.

2014 OIG Report [DE-357-1] at 2. In the portion of the Report concerning the close examination of cases handled by Malone, the OIG stated that Malone “repeatedly created scientifically unsupportable lab reports and provided false, misleading, or inaccurate testimony at criminal trials.” *Id.* at 45. The OIG’s purpose in closely examining Malone’s work was “to illustrate the significance of the problems that became known to the Task Force about Malone’s work and testimony in criminal cases” and to highlight “the lack of a corresponding response by the [DOJ], the Task Force, or the FBI . . . .” *Id.* Other than the statement that “Malone became well known to many judges and law enforcement community because of his forensic work on several high profile cases, including those of Jeffrey MacDonald, a Green Beret Army surgeon convicted of murdering his wife and children at Fort Bragg, North Carolina” there is no other mention of Malone’s work in the instant case. *Id.*

The “Microscopic Hair Comparison Analysis: Result of Review” does, however, specifically reference evidence and testimony introduced throughout the 40-plus-year history of the instant case, and identifies three statements, detailed above, that the reviewers deemed invalid because the statements exceeded the limits of science. It bears repeating that the task before this court when it issued the July 2014 Order was determining, for gate-keeping purposes, whether MacDonald had proffered newly discovered evidence, that if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found MacDonald guilty of the murder of his wife and two daughters. In making this assessment, the court had to consider “all the evidence, old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under the [evidentiary rules].” *United States v. MacDonald*, 641 F.3d 596, 612 (4th Cir. 2011) (internal quotations and citations omitted);

alterations in original). Given that the task before the court was to evaluate MacDonald's newly discovered evidence in light of "the evidence as a whole," the court finds it necessary to briefly recount the role the evidence underlying the three invalid statements has played in this litigation.

**A. Inappropriate statement in the 2/4/1991 Lab Report of Michael Malone**

The first inappropriate statement identified in the "Microscopic Hair Comparison Analysis: Result of Review" is contained in the February 4, 1991, Lab Report of Malone [DE-363-6]. Malone first became involved in this litigation after MacDonald filed his 1990 Petition for Post Conviction Relief Pursuant to 28 U.S.C. Section 2255. In the 1990 Petition, MacDonald alleged the Government suppressed exculpatory evidence in the form of laboratory bench notes, which he argued showed the presence of unsourced hairs and fibers. One of the unsourced hairs was the Q79/E303 hair from within the body outline of Colette MacDonald. This hair would later come to be known as AFDIL<sup>3</sup> specimen 75A. In response to the 1990 Petition, the Government offered evidence of Malone's 1990-91 examination of the actual hairs and fibers.

In the February 4, 1991, Lab Report regarding the Q79 hair, Malone stated:

This hair [Q79] was compared to the pubic hair sample of JEFFREY MACDONAL (specimen K22). This hair exhibits the same individual microscopic characteristics as the pubic hairs of JEFFREY MACDONALD, and accordingly is consistent with having originated from JEFFREY MACDONALD.

[DE-363-6] at 3. Malone also qualified that "hair comparisons do not constitute a basis for absolute personal identification. *Id.* The "Microscopic Hair Comparison Analysis: Result of Review" states that Malone's assertion that Q79 "exhibits the same individual characteristics as the pubic hairs of [MacDonald], and accordingly is consistent with having originated from [MacDonald]" was invalid

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<sup>3</sup> Armed Forces Institute of Pathology's DNA Identification Laboratory.

because it “assigned to the positive association a statistical weight or probability or provided a likelihood that the questioned hair originated from a particular source . . . .”September 17, 2014 Letter [DE-363-2] at 3; “Microscopic Hair Comparison Analysis: Result of Review” [DE-363-3].<sup>4</sup>

As the court recounted in the July 24, 2014, Order, the 1990 Petition was denied. Eventually, the Q79 specimen was subjected to DNA testing, and was identified as AFDIL specimen 75A. The results of the DNA testing showed that the specimen was “not consistent with any other sample tested,” and therefore did not belong to Jeffrey MacDonald. Accordingly, the DNA testing rendered Malone’s 1991 observations irrelevant. The Q79/AFDIL Specimen 75A was one of the three “unsourced hairs” MacDonald relied on in asserting his actual innocence claim.

#### **B Inappropriate Statement in 5/19/1999 Lab Report by Robert Fram**

The second inappropriate statement identified in the “Microscopic Hair Comparison Analysis: Result of Review” is found in the lab report by Robert Fram, dated 5/19/1999. Fram was an examiner in the FBI Lab Hairs and Fiber Unit, and tasked with generating still photographs of the entire inventory of materials that were to undergo DNA examination at the AFDIL lab pursuant to this court’s order, as well as photographing the unpackaging and mounting process. Prior to this assignment, Fram had no involvement in this case. Aff. of Fram [DE-219] ¶ 7.

In preparing the evidence for transfer to the AFDIL lab, Fram documented the contents of the slides, including whether hair was present and, if it was, what the observable characteristics of the hairs were. *Id.* During this process, Fram examined a glass microscope slide marked for identification “19 ½ L2082 Q96 PMS,” which contained four hairs. *Id.* ¶ 26. He observed that one

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<sup>4</sup> Malone’s December 31, 1990 Lab Report also was reviewed, but no inappropriate statements were identified in it.

of hairs was a Caucasian head hair with what he observed to be a forcibly removed root. *Id.* He compared this to the known sample from Kimberly MacDonald, and documented the results of the examination in his May 19, 1999 Lab Report:

A forcibly removed Caucasian head hair found on one of the Q96 resubmitted glass microscope slides, (labeled “19 ½” on the slide), exhibits the same microscopic characteristics as hairs in the K2 specimen. Accordingly, this hair is consistent with having originated from KIMBERLY MACDONALD, the identified source of the K2 specimen.

May 19, 1999 Lab Report [DE-363-7] at 7. The statement that the hair is consistent with having originated from Kimberly MacDonald is the one identified as being invalid. Fram later stated in the report that “[h]air comparisons are not a basis for personal identification.” *Id.*

After Fram’s examination, the Q96 “19 ½” slide was submitted to AFDIL for DNA testing, and AFDIL designated this slide as 112A. Stipulations, Ex. 2 [DE-306-2] at 24. In the process of removing the slip cover from the 112A slide, the four hairs therein were broken into nine fragments and had to be remounted at AFDIL as 112A(1) through 112A(9). *See* Aff. of Fram [DE-219] ¶ 28. Before these samples were tested for DNA, they were resubmitted to Fram to determine if he could tell if any of the nine hair fragments could be associated with the Q96 “19 ½” hair with root. *Id.* Fram issued a second report on November 1, 2001, regarding this re-examination in which he concluded that Q96.5 (AFDIL 112A(5)), contained a light brown Caucasian head hair with a forcibly removed root, and is the same hair as the original Q96 “19 ½” hair with root that he had previously examined. *Id.* ¶ 29. AFDIL testing of Specimen 112A(5) confirmed that this hair had the same mtDNA sequence as Colette, Kimberly and Kristen. AFDIL DNA Report [DE-119-3] at 3.

The May 19, 1999 report of Fram was first introduced in this case in 2011, when the Government attached it as an exhibit to Fram’s affidavit filed as a part of its response to



MacDonald's Motion for a New Trial Pursuant to 18 U.S.C. 3600. Prior to the 2012 evidentiary hearing, MacDonald and the Government stipulated that the Q96 "19½" hair with root was the same as that later designated Q96.5 by Fram and 112A(5) by AFDIL, and had the mtDNA sequence of Colette, Kimberly and Kristen. *See* Stipulations [DE-306] ¶¶ 15, 25. This hair was *not* one of the unsourced hairs underlying MacDonald's actual innocence claim.

**C. The trial testimony of Paul Stombaugh found in Trial Transcript 4294, Lines 1-6.**

The third invalid statement identified in the "Microscopic Hair Comparison Analysis: Result of Review" is found in six lines of Paul Stombaugh's trial testimony, and concerns a hair collected from a bedspread found on the floor of the master bedroom and identified by the FBI as "Q96 H(from thread)."

This hair, which was entangled with a purple cotton thread matching those of MacDonald's pajama top, was discovered in 1974 by Shirley Green, a Physical Science Technician with the FBI Lab. *See* Gov't Response to Def's Petition for Post-Conviction Relief [DE-10], Attachment 5, Appendix at 221. Green's bench notes reflect that she soaked the thread in water to remove the hair, which she then mounted on a slide marked "Q96 H (from thread)." *Id.*; Aff. of Fram, Ex. 46 [DE-225-2].

Stombaugh, who was then a FBI special agent in charge of the Chemistry Branch of the Chemistry and Physics Section of the FBI crime laboratory, eventually examined the Q96 thread and hair, and issued laboratory reports. In a report dated November 5, 1974, Stombaugh included the results of his hair comparison of Q96 H (from thread). He stated:

Light brown to blond head hairs that microscopically match the K1 head hairs of COLLETE MACDONALD were found in specimens . . . Q96 . . . . The Q96 hair

was found entangled around a purple cotton sewing thread like that used in the construction of the Q12 pajama top. Further, this hair had bloodlike deposits along its shaft.

November 5, 1974, Lab Report [DE-363-4] at 3.<sup>5</sup>

Stombaugh later testified at MacDonald's trial, from August 7, 1979 to August 9, 1979. Judge Dupree qualified Stombaugh as an expert on hairs and fiber identification, with no objection from MacDonald. Ttr. at 4025-31. MacDonald did object, however to Stombaugh being qualified as an expert in fabric damage, stains, and fabric impressions, which Judge Dupree overruled. Ttr. at 4029.

Stombaugh testified to, among other things, his examination of 18 vials of debris collected from the crime scene and from items seized as a result of the crime scene search. With regard to Q96 H (from thread), Stombaugh testified that he examined debris from the bedspread on the floor in the master bedroom and found that it consisted of one yarn fragment and two purple sewing threads, and opined that the threads and yarns could have originated from MacDonald's pajama top. Ttr. 4103-04. He also testified that he found a hair present in Q96, specifically, "one head hair wrapped around a sewing thread—tangled." Ttr. 4109. He stated that "this hair—in conducting a comparison examination with the comparison microscope, microscopically matched the head hairs of Colette MacDonald." Ttr. 4110.

Stombaugh testified to other matters, which the court will partially recount below. He also was subject to cross-examination by MacDonald's counsel, Bernard Segal. With regard to Q96H (from thread), Segal questioned Stombaugh about how or why the hair would be wrapped around

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<sup>5</sup> This report was reviewed by the FBI in 2014 and no error was found. *See* Microscopic Hair Comparison Analysis: Result of Review [DE-363-3] at 5.

a thread during Stombaugh's 1974 examination, when it was collected in 1970 and had been in the custody of the CID Laboratory at Fort Gordon, Georgia. Ttr. 4290-93. Stombaugh confirmed that although he was aware that the CID Laboratory had done prior hair examinations in their investigation of the MacDonald family murders, he did not ask anyone whether someone at the lab had previously examined the hair found in Q96. Ttr. 4292. He confirmed that he had no knowledge of what had happened to the item between being collected in 1970, and the day he opened the vial in 1974. Segal and Stombaugh then had the following exchange:

- 6 Q. And you, of course, expressed no curiosity  
7 of how they were still wrapped around together after four  
8 years of having been in the laboratory custody?  
9 A. I was curious about why they were wrapped  
10 entwined around each other, but as to how it took  
11 place, you can only report the condition of items  
12 as they are received in the laboratory. You have no  
13 control over what happened to them before.  
14 Q. Doesn't it make a difference to you to find  
15 out what treatment or handling a hair would  
16 have had before you examined it in the laboratory?  
17 A. The hair was not mounted sir, as were  
18 many other ones in this submission. We opened the vials  
19 up and identified what was inside. If they were  
20 hairs, we would mount it on a slide and then they were compared.

Ttr. 4293. Segal then asked, "Mr. Stombaugh, the question was: weren't you concerned with what might have been done to that hair that might possibly lead you to a wrong conclusion unless you found out what they had done with it?" *Id.* Stombaugh's answer to this question and Segal's follow-up question, set forth below, are the testimony that the FBI identified as inappropriate in the Microscopic Hair Comparison Review:

- 1 A. Sir, the only conclusion on the hair  
2 examination that I was going to make was its origin.  
3 Q. That is pretty serious about whose hair it  
4 is. That is a fundamental question you were being

5 asked.

6 A. That is correct.

Ttr. 4294.

Post-trial, the Q96 H(from thread) specimen was one of the pieces evidence subject to this court's order regarding DNA testing. AFDIL gave it the designation of AFDIL specimen number 113A. The DNA results for AFDIL 113A were found to be inconclusive. Stipulations [DE-306] ¶ 23(e). MacDonald did not include it in his unsourced hairs claim.

**D. Evidence regarding the pajama top demonstration**

Although neither the 2014 OIG Report nor the “Microscopic Hair Comparison Analysis: Result of Review” discuss the pajama top demonstration that was presented to the jury at trial, the parties both discuss it extensively in their briefing. Consequently, the court will recount the necessary facts.

In 1971, pursuant to a request from the Commanding Officer of the U.S. Army CID Agency, the FBI Laboratory conducted examinations of several items, including MacDonald's pajama top. *See* June 7, 1971 Letter [DE-382-3]. Stombaugh conducted the examinations. *See* July 2, 1971 Report [DE-382-4].<sup>6</sup> In a July 2, 1971, report, Stombaugh concluded that 48 puncture holes were located in the pajama top, although they were not necessarily made from 48 different thrusts. *Id.* at 2. He opined that the “puncture holes were made by a sharp pointed object such as an ice pick like specimen Q3; however, the holes do not contain enough individual characteristics to be associated with a particular instrument.” *Id.* at 3. Stombaugh stated that “[t]he apparent frequent handling [of

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<sup>6</sup> MacDonald states in his briefing that Green took part in the 1971 examinations; however, the record evidence shows that she was not involved in the MacDonald case until 1974. *See* Aff. of Shirley Green ¶ 2 [DE-10, Attachment 5].

the garments he examined] has caused the yarns surrounding the holes to return for the most part, to their original positions thus preventing a definite conclusion to be made as to whether each hole is an 'entry' or an 'exit' hole." *Id.* He nevertheless reported that "based upon a microscopic examination . . . six holes in [MacDonald's pajama top] had the general appearance of being 'entry' holes and five holes had the general appearance of being 'exit' holes." *Id.* He did not designate in his report which of the holes had the appearance of being entry or exit holes. A June 10, 1971 laboratory worksheet prepared by Stombaugh, however, designates the "entry" and "exit" holes. *See* June 10, 1971 Laboratory Work Sheet [DE-382-5] at 3-4.

During the grand jury investigation in 1974, additional items were submitted to the FBI testing, along with the pajama top and other items for re-examination. Stombaugh also was supplied with photographs of the crime scene, which he did not have in 1971. Ttr. at 4182. Some of the photographs showed MacDonald's pajama top on top of Colette's body. Ttr. at 4185. He was asked to determine whether the puncture wounds to Colette could have been made through MacDonald's pajama top, if it were in fact on top of Colette's body. Ttr. at 4187. He used the photograph and worked with technician Green "to fold the pajama top as near as possible to the way it was folded on top of the body at the time these photographs were taken." Ttr. at 4187-88. After a lengthy period of time, Green was able to fold the pajama top so that all 48 holes in the pajama top roughly corresponded to the 21 puncture wounds in Colette's chest. Ttr. at 4192-4194; GX 3060 at 4-6 (October 17, 1974 Laboratory Report).

Both Stombaugh and Green testified at the trial. On direct examination, Stombaugh opined that the "puncture damage to [Colette's] chest could have been made through this pajama top while it was on her body." Ttr. at 4197. Stombaugh qualified, however, that in the photographs he was

provided “the pajama top is lower down on the chest and it appears to have been moved. If it was in the exact location, then you would be a little more assured that this happened. The pajama top is not—it appeared from the photographs to have been moved more down towards the abdomen.” *Id.*

On cross-examination, MacDonald’s attorney established that Stombaugh did not attempt to line up the stab wounds in Colette’s chest with the two cuts in MacDonald’s pajama top, and that he had counted 18 cuts in Colette’s pajama top in addition to 30 puncture holes. Ttr 4357-61. Stombaugh agreed that there were other combinations by which the 48 puncture holes in MacDonald’s pajama top could be lined up with the 21 puncture wounds in Colette’s chest, but he had no idea how many combinations there could be:

All I’m saying is that we used up all 48 holes with 21 thrusts, and we’re just saying that it can be done. We are not saying this actually took place. We are saying this can be done. It could have taken place, and that’s all this demonstration represents.

Ttr. 4371. He admitted that he “never experimented or attempted to compute in any way the number of possible combinations in which the same thing could be done[.]” Ttr. 4372. MacDonald’s counsel also thoroughly established that Stombaugh and Green did not account for differences between the sizes of holes in MacDonald’s pajama top and the size of wounds on Colette’s chest. Ttr. 4372-84.

On direct examination, Green identified a photo enlargement depicting the pajama top reconstruction with the probes, and the actual probes themselves. Ttr 4430. She stated that she had done the reconstruction herself. Ttr 4431. Green described the pajama top reconstruction process, and indicated which holes corresponded to a single thrust, and how she color-coded them to reflect as much when the pajama top was unfolded. Ttr 4431-35. She also testified that she was never able to align the 21 probes through the pajama top in any other way, and that it had taken over a week to find this one “solution.” Ttr. 4458. Green also testified regarding a series of photographs taken in

1978-1979 of the grouping patterns reflected on graph paper of the holes in both the pajama top reconstruction and the autopsy photos, created by inserting push pins into each that resulted in groupings of holes on graph paper. Ttr 4461-4474; GX 798-98, 1070, 1143. Green testified that graph paper showed similar left and right patterns in the graph paper for both the pajama top and Colette's body. *Id.*

During Green's cross-examination, she testified that she did not attempt to line up the two cuts in MacDonald's pajama top with any cuts to Colette's body. Ttr. 4476-77. When asked why she did not attempt to match the knife cuts, Green responded that she had not been asked to do so. Ttr. 4482. Green also testified that she had not seen the pajama top in 1971, and that in 1974, she did not examine the pajama top holes before she began the reconstruction process, but that Stombaugh had examined the holes. Ttr. 4483. According to Green, once she identified the "solution," she did not attempt to figure out other possible combinations, but she admitted there "could possibly be more; it could possibly be less; but it can be 21 holes exactly and come out into the same pattern as the pattern of the punctures on the victim." Ttr. 4498. She also testified that she did not attempt to line up the holes in MacDonald's pajama top with those present in Colette's pajama top. Ttr. 4501-02.

Green told the jury that while she was working on the pajama top reconstruction, she did not know which holes were entry holes and which holes were exit holes. Ttr. 4568. She knew that Stombaugh had previously reported that some holes may be entry or exit holes, but she did not have a copy of that report. Ttr. 4570. She recalled "there were possibly five exit and six entrance or vice-versa." *Id.* She recalled holes number 6, 14 and 20 were exit holes, but she did not make any notes about accommodating any other holes. Ttr. 4572.

During the time when Stombaugh testified, MacDonald requested, and was provided, a copy of the notes that Stombaugh had been using to testify. Ttr. 4254-55. Those notes included the June 10, 1971 Laboratory Work Sheet on which Stombaugh designated “entry” and “exit” holes in the pajama top. *See* 1990 Section 2255 Petition [DE-1], Vol 5, Aff. of John I. Thornton at ¶ 17, Ex. 16.

With regard to the pajama top, MacDonald offered his own expert witness, Dr. John I. Thornton, a Professor of Forensic Science at the University of California at Berkley. Dr. Thornton testified that he disagreed with Stombaugh’s opinion that the pajama top was likely stationary when the puncture holes were made. Ttr. 5151-52. He also testified that, in his opinion, it was not possible for “Green, using the information that she had, to have made the reconstruction of the pajama top as she did.” Ttr. 5218. Dr. Thornton examined the 1971 worksheet of Stombaugh that identified “entry” and “exit” holes, as well as a sheet prepared by Green, in which the “Victim Ice Pick Hole #s” are juxtaposed to “Hole #s in Q12 Shirt.” After the examining the sheets, Dr. Thornton determined that Green’s reconstruction had at least six discrepancies with Stombaugh’s notes regarding the direction of the holes. Ttr. 5312-18. In other words, holes that Stombaugh had designated as an exit hole, were designated as entrance holes in Green’s reconstruction, and vice-versa. *Id.*

On cross-examination, Dr. Thornton agreed with the Government’s attorney that whether the pajama top had been right side out or inside out when the holes were inflicted would affect the determination as to which way the threads pointed. Ttr. 5333-34. He also agreed that by 1974 the yarns in the pajama top would have returned to their normal position, and thus any determination as to directionality made by Stombaugh in 1971 could not be confirmed in 1974. Ttr. 5325.



In closing, Segal argued that the pajama top reconstruction was “sheer fakery” and “not scientific evidence,” noting that “no scientific criminal investigator” asked the question of whether the 48 puncture holes could be lined up to 21 puncture wounds; instead, it was a question posed by prosecutors. Ttr. 7239-40. Segal also argued:

Stombaugh testified—contrary to my recollection of what the Government said—Stombaugh testified that he identified a certain number of holes as being exit holes in the pajama top and a certain number of holes as being entry holes. John Thornton testified and the Government never called Stombaugh or Shirley Green back to deny it that when they did—that was following Shirley Green’s notes—that she used exit holes and entry holes and exit holes and entry holes and totally disregarded the principal finding that he made. Yes, Stombaugh did not identify every hole as entry or exit holes, but a dozen of them, he did.

Shirley Green did not follow his findings. How in the name of heaven and rationality or justice are we supposed to say that you should draw any kind of inference from a demonstration that demonstrated nothing in the first instance and in the second instance, to state that it is false on its own terms. It doesn’t do what it says it does. .

..

....

On every basis you can think of, it is a fake. Now those are not easy words, but you ought to draw a conclusion. They did not in any way come back in here and say, “John Thornton made a mistake. John Thornton did not understand what Shirley Green did.” They did not because they couldn’t. This piece of evidence strikes me as the clearest singular example of the distortion in the name of pseudo-science done by the Government. It is an example of a demonstration which no scientist says could prove anything valid. . . .

Ttr. 7240-42.

#### IV. ANALYSIS

MacDonald proffers two reasons why this court should allow his motion to alter its judgment and allow his motion to vacate his conviction. First, he contends that new evidence supports altering the judgment. Second, he contends that altering the judgment is necessarily to “prevent manifest injustice.”

**A. The new evidence does not support altering or amending the judgment**

Having reviewed the 2014 OIG Report and the “Microscopic Hair Comparison Analysis: Result of Review”, the court concludes that MacDonald still has not met his gatekeeping burden under § 2255(h)(1). Additionally, and alternatively, the court concludes that MacDonald still has failed to adequately establish the merits of any of his claims.

First, none of the new evidence changes this court’s conclusion that MacDonald failed to establish, by clear and convincing evidence, that no reasonable factfinder would have found him guilty of the murder of his wife and daughters. The 2014 OIG Report, while calling into question Malone’s overall credibility, does not reference any of Malone’s statements in the instant litigation. Additionally, when the court ruled in July 2014, it already had similar evidence which was unfavorable to Malone’s credibility, offered by MacDonald to show a “pattern of deception” by Malone in other cases, in the form of excerpts of the Final Report of Department of Justice Inspector General Michael R. Bromwich, *The FBI Laboratory: An Investigation into Laboratory Practices and Alleged Misconduct in Explosives-Related and Other Cases*, and an April 16, 1997 article from the *Wall Street Journal*. See July 24, 2014, Order [DE-354] at 70-71 (citing Aff. of Cormier No. 2, Ex. 1, Ex. 3 [DE-49]). Moreover, as the court noted in the July 2014 Order, even if the court accepts MacDonald’s invitation to find Malone to be a wholly incredible witness, and therefore find that Malone falsely testified regarding the saran fiber evidence, the remaining evidence in the record “ultimately engenders speculation as to the origin of the fibers; it by no means compels a conclusion that the three blond saran fibers are a product of Stoeckley brushing her wig with Colette’s hair brush.” *Id.* at 136. Accordingly, the 2014 OIG Report does not, as MacDonald argues, “casts serious

doubt on a large portion of the government's theory of Dr. MacDonald's guilt." Suppl. Mem. [DE-379] at 13.

Similarly, the portion of the "Microscopic Hair Comparison Analysis: Result of Review" finding that Malone erred in his 1991 lab report when he stated that the Q79 hair "exhibits the same individual characteristics as the pubic hairs of [MacDonald], and accordingly is consistent with having originated from [MacDonald]" does nothing to impact the court's gatekeeping analysis. As this court has detailed, the Q79 hair was eventually the subject of DNA testing, which (1) revealed that it was "not consistent with any other sample tested," and therefore did not belong to Jeffrey MacDonald, and (2) rendered Malone's prior opinion irrelevant. The Q79 hair, later denominated AFDIL 75A for DNA testing, was one of the three unsourced hairs the court considered when it issued the July 2014 Order. The fact that Malone's prior, irrelevant opinion was invalid does nothing to alter the court's finding that the unsourced hairs evidence (1) does not constitute exculpatory evidence and (2) does not serve to establish that no reasonable juror could find MacDonald guilty of the murders of his family. July 24, 2014 Order [DE-354] at 136 ("A juror presented with the evidence of the unsourced hairs and who considers the entire record in the case, could draw a number of reasonable, non-exculpatory inferences from the fact that three unsourced hairs were found at the scene.").

The evidence regarding Fram's invalid statement in this 1999 lab report—that the Q96 hair with root was consistent with the hair of Kimberly MacDonald—similarly has no effect on the court's previous gatekeeping analysis. As this court has recounted, AFDIL testing of the hair revealed that it had the same mtDNA sequence of Colette, Kimberly and Kristen. *See* AFDIL DNA Report [DE-119-3] at 3. Thus, while MacDonald is correct that the Q96 hair was part of "pivotal"

DNA testing before this court when it issued its July 2014, Order, *see* Suppl. Mem. [DE-379] at 19, the court does not discern how Fram's 1999 conclusion, in light of the later superseding DNA testing revealing that it was consistent with slain MacDonald family members, has any impact on the conclusion that MacDonald failed to establish, by clear and convincing evidence, that no reasonable juror could find him guilty of the murder of his family.

MacDonald's arguments about Stombaugh's invalid statement, made in six lines of cross-examination testimony, also does not alter the court's gatekeeping analysis. MacDonald's own briefing, wherein he devotes little time discussing the actual invalid testimony, demonstrates the minimal importance the testimony has on the court's assessment of the "evidence as a whole." Instead, he attempts to connect the improper cross-examination testimony to the evidence regarding the pajama top reconstruction, arguing:

The impact of this new evidence on Stombaugh's credibility would have been devastating to the government, as he was the architect of the experiment regarding the pajama top, which the government has consistently touted as the seminal evidence against Dr. MacDonald. . . . Indeed, the materials incorporated into the recent DoJ and FBI report reference tree days of trial that encompassed Stombaugh's testimony. . . . This testimony was largely devoted to the pajama top. Had the jury known of Stombaugh's misfeasance and malfeasance, particularly his proclivity to overstate the reliability of his purportedly scientific findings, including the creation of laboratory reports that exceeded the limits of science, it likely would have disregarded all of his testimony. If so, the pajama top experiment—the lynchpin of the government's circumstantial case—would have crumbled and been disregarded.

Suppl. Mem. [DE-379] at 16-17.

MacDonald's argument overstates the impact of Stombaugh's invalid statement. First, six lines of testimony concerning a response to a cross-examination question does not a "proclivity" make. Second, there is no evidence in the record that Stombaugh created laboratory reports that exceeded the limits of science; rather, the only evidence is that his brief response on cross-

examination to a question concerning a single hair did so. Third, it is by no means clear that had jury known that the six lines of testimony on cross-examination exceeded the limits of science, it would have correspondingly rejected all of Stombaugh's testimony. As the Government notes, the thrust of the cross-examination question on the hair was to question how it became entangled with the pajama top thread prior to examination in the lab, and was not directed to the microscopic comparison of the hair. The court agrees with the Government that given the FBI found there were no other errors in Stombaugh's testimony with regard to hair comparison, it is unlikely that a reasonable juror would find the brief response on cross-examination to render all of Stombaugh's testimony as unreliable or unbelievable.

Finally, the court observes that it was Green, and not Stombaugh, who ultimately identified the "solution" to the pajama top reconstruction. Moreover, Segal thoroughly attacked the methodology used by Green and Stombaugh. *See* Ttr. 4357-61 (establishing on cross-examination that Stombaugh did not attempt to line up the stab wounds in Colette's chest with two cuts on MacDonald's pajama top); Ttr. 4372 (Stombaugh admitting on cross-examination that he never attempted to compute the number of possible combinations that 48 holes in the pajama top could fit into 21 holes); Ttr. 4378 (Stombaugh admitting that they did not attempt to account for the differences between the sizes of the holes in MacDonald's pajama top and the size of the wounds in Colette's chest); Ttr. 4476-76 (Green admitting that she did not attempt to line up the two cuts in MacDonald's pajama top with any stab wounds in Colette's body); Ttr. 4498 (Green admitting that she did not attempt to determine other "solutions"); Ttr. 4051-02 (Green testifying that she did not attempt to line up the holes in MacDonald's pajama top with those present in Colette's top); Ttr. 5218, 5312-18 (MacDonald's expert, Dr. Thornton, testifying that it Green's reconstruction was "not

possible” because she did not take into account Stombaugh’s 1971 observations of the directionality of the holes); Ttr. 7239-40 (in closing arguments, MacDonald’s attorney argued”Did you hear anybody who was a scientist in criminal cases—forensic scientist or criminal—say to you that it would be a valid way of determining whether or not Mrs. MacDonald was stabbed through the pajama top to line up the fabric over the holes of the body and come up with 48 to 21? No”); Ttr. 7240-41 (defense counsel arguing that Green did not follow Stombaugh’s 1971 findings on directionality). This new evidence regarding Stombaugh’s invalid statement, solicited on cross-examination and regarding a hair, adds little to nothing to the analysis of the pajama top

reconstruction.<sup>7</sup> In sum, MacDonald still has not shown, by clear and convincing evidence, that no reasonable juror would find him guilty of the murder of his wife and children.

Nor can the court say that any of the new evidence—the 2014 OIG Report or the Microscopic Hair Comparison Analysis: Result of Review—alters any of the court’s findings and conclusions as to the merits of his § 2255 claims. The new evidence is either irrelevant to the determination of the merits of MacDonald’s claims, or of minimal additional probative value.

In sum, the new evidence neither alters the court’s earlier conclusion that MacDonald failed to meet the gatekeeping burden, nor does it alter the court’s determination as to the merits of his §

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<sup>7</sup> For similar reasons, the court finds MacDonald’s assertions regarding Janice Glisson’s alleged 1971 attempt to “reconstruct” the pajama top to be unavailing. Specifically, MacDonald asserts that in 1971, after receiving the directionality data from Stombaugh, Glisson attempted to fold the pajama top so that all its ice pick holes would align over the puncture wounds in Colette’s chest. Suppl. Mem. [DE-379] at 14. According to MacDonald, Glisson abandoned the exercise because she was unable to adjust the folds that the thrust holes remained compatible with Stombaugh’s findings on directionality. *Id.* MacDonald’s sole citation in support of this assertion is to the book *Fatal Justice*. *Id.* at 14-15. In an endnote, the authors of *Fatal Justice* state that “Glisson’s failed experiment was disclosed in a CID laboratory note discovered by defense investigators at the CID Records Holding Facility in Baltimore, Maryland, on May 7, 1990.” See Jeffrey Allen Potter & Fred Bost, *Fatal Justice* 421-22 n.12 (1995). The authors of *Fatal Justice* provide no citation to the laboratory note. Nor has MacDonald ever referenced such a discovery in any other filing before this court, including when he filed the 1990 Petition based on defense investigators’ discovery of laboratory bench notes regarding the discovery of synthetic hairs and fibers. The affidavit of John J. Murphy offered in support of MacDonald’s 1990 Petition explained that Murphy, defense investigator Fred Bost (one of the authors of *Fatal Justice*), and an attorney visited the United States Army Criminal Investigations Records Division on May 7, 1990. Murphy’s affidavit details his review of laboratory bench notes and his conclusion that certain exculpatory information had been withheld. Mr. Murphy did not mention *any* laboratory notes regarding the pajama top reconstruction in his affidavit. Rather, he detailed bench notes regarding synthetic hairs and fibers. See 1990 Section 2255 Petition [DE-1], Vol. 3, Aff. of John J. Murphy.

Accepting as true that Glisson did attempt to fold the pajama top in 1971 (and that defense investigators found notes indicating as much in 1990 yet MacDonald did not act on it for almost 25 years), it does not alter this court’s conclusion as to MacDonald’s gatekeeping burden. Again, MacDonald offered evidence and thorough argument at his trial that Green ignored Stombaugh’s 1971 findings regarding directionality when she found the “solution” to the pajama top reconstruction. Any additional evidence regarding Glisson’s alleged unsuccessful attempt therefore adds little to the court’s assessment of the evidence as whole.

2255 claims. Accordingly, the new evidence does not support altering or amending the judgment pursuant to Rule 59(e).

**B. Altering or amending the judgment is not necessary to prevent manifest injustice**

MacDonald also argues that the “unacceptable behavior [of Malone, Stombaugh, and Fram] in this litigation, under the auspices of the federal government and the Department of Justice, must be rectified to ‘prevent manifest injustice.’” Suppl. Mem. [DE-379] at 8. As the court has explored in the preceding analysis, however, the three invalid statements of Malone, Stombaugh, and Fram have little to no impact on the court’s analysis of MacDonald’s § 2255 claims, so it cannot be said that allowing the court’s July 24, 2014 judgment to stand would work a manifest injustice.

To the extent that MacDonald argues that his motion to alter or amend the judgment be allowed because the court committed “clear error” in denying a certificate of appealability, his motion fails. In a similar context, the Fourth Circuit has explained that a prior decision does not qualify as clearly erroneous or working manifest injustice “by being ‘just maybe or probably wrong; it must . . . strike us as wrong with the force of five week-old, unrefrigerated dead fish.’ . . . It must be ‘dead wrong.’” *TFWS, Inc. v. Franchot*, 572 F.3d 186, 194 (4th Cir. 2009) (citations omitted) (discussing the “clear error or work a manifest injustice” standard in the context of the law-of-the-case doctrine); *Fontell v. Hassett*, 891 F. Supp. 2d 739, 742 (D. Md. 2012) (applying the “dead wrong” standard to a Rule 59(e) motion). The court stands by its initial decision to deny the certificate of appealability, and therefore cannot say that it is “dead wrong.” Consequently, MacDonald has failed to establish “clear error” or “manifest injustice.”




## V. CONCLUSION

For the foregoing reasons, the court finds that MacDonald has failed to show that the new evidence justifies altering or amending the court's July 24, 2014 Judgment, or that the Judgment was the result of clear error or will work a manifest injustice. Accordingly, his Motion to Alter or Amend Judgment [DE-357] is DENIED.

SO ORDERED.

This the 18 day of May, 2015.

  
\_\_\_\_\_  
James C. Fox  
Senior United States District Judge

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:06-CV-00024

No. 3:75-CR-00026

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UNITED STATES OF AMERICA )  
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 v. )  
 )  
 JEFFREY R. MacDONALD )  
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**NOTICE OF APPEAL**

NOW COMES, Jeffrey R. MacDonald, by and through his undersigned counsel, and gives Notice of Appeal to the United States Court of Appeals for the Fourth Circuit from the order and final judgment of this Court denying MacDonald’s motion to vacate, under 28 U.S.C. § 2255, entered on 24 July 2014, (DE 354), and the order and final judgment of this Court denying MacDonald’s motion to alter or amend the judgment, under Fed. R. Civ. P. 59(e), entered on 18 May 2015. (DE 383) *See* Fed. R. App. P. 4(a)(1)(A).

This the 16<sup>th</sup> day of July, 2015.

**RUDOLF WIDENHOUSE & FIALKO**

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**ATTORNEYS FOR JEFFREY R. MacDONALD**

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**CERTIFICATE OF SERVICE**

I hereby certify that on 16 July 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the appropriate registered users.

Respectfully submitted this the 16<sup>th</sup> day of July, 2015.

**RUDOLF WIDENHOUSE & FIALKO**

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