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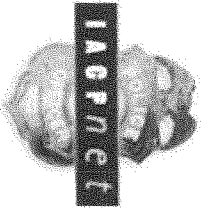
INDEX OF REFERENCES
 Relating to:
RESPONSE BRIEF FOR APPELLANT
 Case No. 14-7543
 Filed 12.15.2015

The following is provided to the Court in hopes that it will clarify where in the (already sent) reference entitled FATAL JUSTICE by Potter and Bost, the Court may find elaboration on and government documentation of statements made by the Defendant in the above captioned matter, and the source of other statements

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*PROSECUTOR ADMITS TO
DRAPY VIOLATIONS*

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Title: "Fatal Vision" Revisited: The MacDonald Murder Case
Author: Brian M. Murtagh and Michael P. Malone
Attributed: The Police Chief
Last Updated: 09/09/1993

*CO-AUTHORED WITH NOW-
DISGRACED & DISCREDITED
FBI ANALYST DURING
MACDONALD'S 1990-1997
APPEAL*

Summary:

An examination of the new and old evidence in the prosecution of Jeffrey R. MacDonald for the murder of his wife and daughters showed that MacDonald's request for a new trial was not warranted.

Document Text:

"Fatal Vision" Revisited: The MacDonald Murder Case

By Brian M. Murtagh, Assistant U.S. Attorney, Washington, D.C., and Supervisory Special Agent Michael P. Malone, Senior Examiner, Hair and Fibers Unit, FBI Laboratory, Washington, D.C.

Editor's note: Mr. Murtagh was the prosecuting attorney in the 1979 MacDonald murder trial. Mr. Malone has been a central figure in the hair and fiber analysis required throughout the post-trial appeals process.

The trial of United States v. Jeffrey R. MacDonald commenced on the morning of July 19, 1979, in U.S. District Court for the Eastern District of North Carolina, in Raleigh, and was to continue until his conviction on August 29, 1979. The prosecution's theory was that MacDonald's exculpatory account of the murder of his wife and two small daughters by intruders was false and was therefore evidence of his consciousness of guilt. In particular, the prosecution focused on MacDonald's own account of his movements in the crime scene after the "intruders" had allegedly fled into the night. Here, the purpose was to demonstrate that MacDonald's alibi that he was in the living room when his family was being attacked in the bedrooms was false. Ultimately, it was proven beyond a reasonable doubt that the crime scene had been rearranged and that only MacDonald could have rearranged it. In effect, the jury was asked to determine whether to give credence to MacDonald's account or to the story told by the physical evidence.

MacDonald's defense involved several themes:

1. the intruders did it;
2. the crime scene's integrity was destroyed by the military police;
3. physical evidence that cannot be linked to the household or its occupants proves the presence of intruders;

4. unlike the government experts, the defense experts have correctly examined the physical evidence; and
5. there is no evidence to prove that MacDonald was other than a loving husband and "a wonderful Daddy."

Fortunately for the prosecution, MacDonald's account was well documented and consisted principally of a tape-recorded interview on April 6, 1970, and his subsequent testimony before the Army's Article 32 investigating officer and the federal grand jury. The case focused on Jeffrey MacDonald's torn and bloody blue pajama top, found on top of Colette MacDonald's body, which was lying in a supine position on the shag rug of the master bedroom. When Colette's body was lifted off the rug, a CID agent spotted a dark thread in a blood clot on the rug in the area where her head had been. The agent's hunch that the thread might have come from the blue pajama top (later confirmed by laboratory examination) prompted an immediate search for threads in the body outline, as well as in the living room where MacDonald said he had been attacked and his pajama top torn.

The results of this search were informative: a total of 60 threads and yarns were found in the master bedroom. Thirty-four were found under Colette's body, and one was found on the floor beneath the headboard that bore the word "PIG" written in Colette's blood type. Nineteen were found inside bedding in which Kimberly's body was wrapped, and three were found on Kristen's bedspread. Significantly, neither threads nor yarns from MacDonald's pajama top were found in the area of the living room where he claimed to have been attacked.

What was found in the living room was a blood-stained Esquire magazine containing an account of the recent Tate-LaBianca murders perpetrated by Charles Manson's hippie family. In addition, MacDonald's eyeglasses, which he claimed not to have been wearing during or subsequent to "the struggle," were found in the living room, with Kristen's blood group on the side of the lens that was in contact with the floor.

The pocket from MacDonald's blue pajama top was found on the upturned corner of a multicolored throw rug adjacent to Colette's feet. When CID agents questioned MacDonald about the disparity between the lightly bloodstained pocket and the blood-soaked top from which it had been torn, MacDonald provided the following explanation: Upon regaining consciousness in the living room, and still wearing his pajama top (which had been torn in the struggle with an ice pick-wielding assailant), he had gone directly to the master bedroom and shed his pajama top. He then described how he had covered his wife with his pajama top and a "towel" to treat her for shock. Attempting to explain how the pajama pocket could have been torn in the living room, but fallen off in the master bedroom, MacDonald was emphatic that he had not made a "circuit" of the other rooms before removing his pajama top.

This statement kept MacDonald from explaining away the results of subsequent laboratory examinations, which revealed the following: some of the blood stains in Colette's blood type on MacDonald's pajama top were bisected by tears on the front of the pullover-type pajama top. This indicated that Colette's blood, which by MacDonald's account could only have gotten on the pajama top when he placed it on her body, was there before it was torn. The location where the pajama top was torn, according to MacDonald, was the living room. However, this was controverted by the profusion of pajama top threads in the master bedroom. Furthermore, the pocket was stained with Colette's blood type as the result of direct contact before it was ripped from the pajama top.

The compelling blood evidence further demonstrated that MacDonald's assault on his wife and older child, Kimberly, had originated in the master bedroom. Due to the fact that each of the four members of the MacDonald family had a different ABO blood group,⁽¹⁾ and all had bleeding injuries, it was possible to reconstruct, to a degree, the locations where the assaults had taken place. The presence of contact blood stains in both Kimberly's and Colette's blood types on the master bedroom rug, on splinters from the club (which was found outside the utility room door) and other blood spatters showed that both Kimberly and Colette had been assaulted with the club in the master bedroom. In Kimberly's room, spatters in Kimberly's and Colette's blood groups on the wall adjacent to the bed where her body was found indicate that Kimberly was assaulted with the club a second time, after it had been stained with Colette's blood. MacDonald is linked to these assaults by the presence of a stain in Kimberly's blood type on his pajama

top, which—according to his account—he was not wearing when he went into Kimberly's room. In addition, threads from his pajama top were found on the club, which also bore fibers from the throw rug upon which the pocket and threads from MacDonald's pajama top had fallen. As the club was stained with both Colette's and Kimberly's blood groups, the logical inference is that the club came in contact with the throw rug and acquired the rug's fibers, as well as other foreign fibers (such as the pajama top threads) that were present on the rug.

According to MacDonald's account, the only place he was in contact with the club was in the living room, where no splinters, pajama top threads or blood spatters were found. As MacDonald claimed that he had brought the pajama top into the master bedroom after the club had been dropped outside the utility room door, it follows that the club, the throw rug and threads torn from MacDonald's pajama top could never have been in the master bedroom at the same time.

MacDonald had initially denied owning the club, or any lumber of similar 2" x 2" dimension. However, investigation revealed that the club was not of 2" x 2" dimension, but rather had been cut from a 2" x 4" used as a bed slat for Kimberly's bed. As demonstrated by the configuration of paint stains of identical chemical composition, the club had been used to support a leg of Kimberly's bed when the bed was painted. Furthermore, the club was similar in dimension to homemade shelf supports that MacDonald had constructed for the master bedroom.

Whether Colette MacDonald went to Kristen's bedroom to rescue her baby or because MacDonald was already in the room will never be known. However, it has been proven that Colette was assaulted with the club by Jeffrey MacDonald in Kristen's room while he was still wearing his torn pajama top. These inferences are supported by Colette's blood type spattered on the wall above Kristen's bed, and in large stains on the top sheet of Kristen's bed. In addition, splinters from the club and threads from MacDonald's pajama top were found on Kristen's bedspread. Because Kristen, unlike Colette and Kimberly, sustained no blunt-trauma injuries, it can be inferred that Colette was assaulted in this room with the club by MacDonald, who was wearing the torn pajama top. As the body of Colette MacDonald was found in the master bedroom, the conclusion that her body was moved after she was assaulted in Kristen's room becomes inescapable. That only MacDonald could have moved her body is equally clear when the interrelation of key pieces of evidence is analyzed. The most probative of these evidentiary items was MacDonald's bare bloody footprint in Colette's blood group, exiting from Kristen's room. The significance of this footprint was initially overlooked, until it was discovered that no other sources of Colette's blood type were present on the floor of Kristen's bedroom.

Since MacDonald had tracked Colette's blood out of—rather than into—Kristen's room, the question arose as to the source of Colette's blood in Kristen's room (on which MacDonald must have stepped before tracking the blood out of the room). Whatever the source of Colette's blood had been, it had been removed before the investigators arrived. Subsequent laboratory examinations were to answer these questions.

On the floor of the master bedroom, investigators had found a pile of bedding from the master bed. The bedspread was found inside the top sheet; both items bore numerous bloodstains, predominantly in Colette's blood group. The sheet also had spatters in Kimberly's blood group, which was consistent with the sheet having been present when Kimberly was assaulted in the master bedroom. In addition, the sheet bore numerous fabric impressions in Colette's blood group. Some of these fabric impressions matched the sleeves of both Colette's and Jeffrey MacDonald's pajama tops, each of which also had corresponding bloodstains in Colette's blood group. Further, purple cotton seam threads from MacDonald's pajama top were removed from the bedspread, one of which was entangled with a crushed head hair that matched Colette's hair.

Taken together, this evidence refuted MacDonald's denial of any contact with the bedding or with having moved Colette's body from Kristen's room. Additionally, as was argued to the jury, the presence of MacDonald's footprint in Colette's blood type, exiting from Kristen's room, can be explained by the following scenario: After assaulting Colette and rendering her unconscious in Kristen's room, MacDonald—still wearing the torn pajama top stained with Colette's blood type—obtained the bedding from the master bedroom. Placing the bedspread on the floor to shield it from Colette's blood, he then placed Colette's body, covered with the sheet, on the spread. The quilt-like bedspread absorbed a large quantity of Colette's blood and also picked up the pajama top thread entangled with Colette's hair.

As the result of contact between the sheet and the sleeves of Colette's and Jeffrey's pajamas, fabric impressions in Colette's blood were transferred to the sheet. In the process, MacDonald's bare foot became coated with Colette's blood, most probably from the bedspread. MacDonald then tracked the blood out of Kristen's room. Colette's body was then deposited on the master bedroom shag rug, where the majority of threads from his pajama top had been previously deposited when the pajama top was first torn. Thus viewed, the bloody footprint could only have been left by MacDonald during the removal of Colette's body from Kristen's room.

The pajama top, rather than the footprint, was still the most probative evidence in disproving MacDonald's account. In addition to refuting his account of where the pajama top was torn, laboratory examinations demonstrated the falsity of his explanation for the presence of 48 puncture holes in the pajama top. MacDonald had given a vivid "blow-by-blow" description of his attack by intruders, one of whom was allegedly armed with an ice pick. MacDonald described how his pajama top was pulled over his head and on to his arms, which he then used to absorb the thrusts of the ice pick.

However, none of the resulting 48 puncture holes exhibited any evidence of tearing, which indicated that the garment had been stationary at the time the ice pick holes were made. The defense expert attempted to challenge this conclusion by stabbing a ham wrapped in a similar pajama top, in order to demonstrate that it was theoretically possible to puncture a moving pajama top without tearing.

Because MacDonald's account had the unsupported portion of the pajama top between his arms, sustaining the punctures during a violent struggle, the prosecution responded with an "in-court" demonstration. One prosecutor placed a similar pajama top on his arms while the other stabbed at the moving garment with an ice pick. As was readily apparent to the jury, it was impossible to stab at the unsupported pajama top with an ice pick without tearing it or hitting the arms of the wearer. Since MacDonald had no documented ice pick wounds, and claimed no such wounds on his arms, the credibility of his account was further damaged. Additionally, MacDonald's initial, emphatic denial that the family had owned an ice pick was disproved by the testimony of two witnesses.

Only a single small stain of MacDonald's own blood type was found on his pajama top. This stain conformed to a defect on the left sleeve of the garment, which was consistent with having been made by the dull blade of the Geneva Forge-brand paring knife found on the floor of the master bedroom. It was this knife that MacDonald had spontaneously stated--on three occasions--he had pulled from his wife's chest. However, neither the wounds in Colette's chest nor the cuts in her pajama top were consistent with having been made by the Geneva Forge knife. MacDonald's fingerprints were not on the Geneva Forge knife, but a speck of his wife's blood type was present.

If the knife was not used on Colette or either of the children, what was its role in the crime? The evidence supports the inference that Colette used the knife to defend Kimberly from her father.

Contrary to MacDonald's assertion, the older daughter, Kimberly, suffered from enuresis (involuntary bed-wetting). In addition, as established by the testimony of a classmate from a child psychology course attended by Colette on the night she was murdered, Colette and Jeffrey disagreed on how to deal with the recurrent problem of the children climbing into the parents' bed. MacDonald admitted they talked about the class discussion when Colette returned from class, but claimed that Colette's solution was for the displaced parent to sleep elsewhere. MacDonald claimed that when he finally went to bed that night, Kristen had wet his side of the bed, so he returned to sleep on the living room couch, where he was subsequently attacked. The presence of the antigen A in the urine stain from the master bed is inconsistent with Kristen's blood type, but is consistent with a deteriorated sample from Kimberly's type.

Colette's chest bore a pattern bruise from the end of the club, as if she had been struck at arm's length by a bayonet-type thrust. Given the other evidence, which establishes that MacDonald's pajama top was torn in the master bedroom and that Colette and Kimberly were struck there with the club, it is entirely consistent that the initial focus of the confrontation was Kimberly. As Kimberly screamed in response to her father's blows, Colette picked up

the Geneva Forge knife and attempted to stab MacDonald. In response, MacDonald grabbed the club, and in the fray, struck Kimberly and fractured her skull.

In contrast to MacDonald, Colette had sustained 21 ice pick wounds to the upper chest area. The tightly grouped wounds--five on the right side and 16 on the left side--were in addition to the 16 deep, penetrating, elliptical knife wounds to her chest that caused her death. The ice pick wounds had been inflicted in a perpendicular manner, while her body was in a supine position. When MacDonald's pajama top was folded right sleeve inside out, as it had been found on Colette's chest, it was possible to insert 21 probes simultaneously through the 48 ice pick holes in the pajama top. The pattern that results from the insertion of the 21 probes through the ice pick holes in the pajama top corresponds exactly with the two groupings of the 21 ice pick wounds in Colette's chest (see photo on page 16). This graphically demonstrates that Colette MacDonald was stabbed through Jeffrey MacDonald's pajama top while it lay on her chest.

It was argued to the jury that MacDonald had initially put the pajama top on Colette to provide an explanation for the presence of her blood type on his garment. Subsequent to the infliction of the fatal knife wounds, MacDonald stabbed his wife through his pajama top with an ice pick in order to suggest, by the use of different weapons, the presence of multiple assailants inflicting ritualistic-type wounds. Further forensic examinations established that the ice pick and steel paring knife had been wiped clean on a Hilton bathmat, which was found draped across Colette's abdomen, and which bore stains in Kimberly's and Colette's blood groups. This was the "towel" that MacDonald had claimed to have placed over Colette to prevent shock.

Other attempts to make the crime scene appear Manson-esque also implicated MacDonald. The word "PIG" in Colette's blood type on the headboard appeared, due to the absence of ridge lines, to have been written by a person wearing rubber gloves. This was supported by the presence of fragments of latex glove bearing Colette's blood type that were found on the floor and in the pile of bedding in the master bedroom. MacDonald's blood type was found on the kitchen floor leading to a cabinet in which packages of disposable surgeon's latex gloves were found. Examinations of the glove fragments and the exemplar gloves revealed the presence of similar trace elements.(2) A thread from MacDonald's pajama top was also found on the floor beneath the headboard where "PIG" had been written.

In addition to glowing character testimony and an attack by defense experts on the government's forensic evidence, the defense presented the testimony of Helena Stoeckley in an attempt to corroborate MacDonald's account.(3)

Initially, the defense had sought to get Stoeckley's various admissions admitted through the testimony of third parties to whom she had made various conflicting statements over the years. The trial judge ruled that the under the Federal Rules of Evidence, such exceptions to the hearsay rule are not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. Far from being corroborated, Stoeckley's conflicting admissions and denials of involvement were, in the court's view, about as untrustworthy as they could get. Consequently, Stoeckley's out-of-court statements were ruled inadmissible.

However, the prosecution had sought a material witness warrant for Stoeckley, who was arrested by the FBI and brought to the courthouse. The trial judge recessed the trial, and made Stoeckley available to the defense. In their subsequent interview, the defense showed Stoeckley the crime scene photos in an attempt to refresh her recollection.

Called to the witness stand by the defense, Stoeckley testified, in the presence of the jury, to her extensive consumption of opiates and cannabis on February 16, 1970. After consuming a "hit of mescaline" around midnight, Stoeckley could not recall her whereabouts until she returned to her apartment early on the morning of February 17, after the news of the murders had been announced on a local radio station. Contrary to earlier statements in which she "thought" she might have been involved, at trial Stoeckley testified that she didn't believe that she had participated in or witnessed the murders. Stoeckley did admit that she owned a floppy hat and boots, and sometimes wore a blond wig, although she was not wearing it on the night of the murders.(4) Stoeckley subsequently destroyed the hat and wig. During the Army Article 32 Hearing, and in subsequent interviews by the CID,

MacDonald had not identified Stoeckley's photographs, nor did he identify Stoeckley during his trial testimony. The defense also sought to demonstrate the existence of intruders by pointing to the presence of unidentified fingerprints, unmatched fibers and candle drippings found in the crime scene. However, as the critical evidence involving the pajama top stained with Colette's blood, the puncture holes matching the pattern of Colette's ice pick wounds, the pajama top fibers on the club and elsewhere, the bloody footprint and the fabric impressions on the sheet could only be accounted for by MacDonald's rearrangement of the crime scene, the jury rejected his intruder defense. After six and one-half hours, the jury found Jeffrey MacDonald guilty of the second-degree murders of Colette and Kimberly, and murder in the first degree of Kristen. He was immediately sentenced to three consecutive terms of life imprisonment.

The Direct Appeal

In July 1980, the U.S. Court of Appeals for the Fourth Circuit reversed MacDonald's conviction on the grounds of denial of his right to a speedy trial, and cited as trial prejudice Helena Stoeckley's loss of memory of her whereabouts. The government petitioned the U.S. Supreme Court for writ of certiorari, which was granted. On March 31, 1982, after briefing and oral argument on the merits, the Supreme Court found no denial of speedy trial rights, reversed the Fourth Circuit and reinstated MacDonald's conviction. The case was remanded for disposition of remaining issues, and MacDonald was returned to prison the same day. A subsequent appeal on the conduct of the trial, including the exclusion of Stoeckley's out-of-court statements, was rejected by the Fourth Circuit and the Supreme Court.

While MacDonald's conviction had theoretically become final by 1984, several collateral attacks on the conviction were mounted.

The 1984 Collateral Attack

In 1984, MacDonald filed a motion for a new trial on the grounds of newly discovered evidence in the form of detailed post-trial confessions by Helena Stoeckley. Also filed at this time were petitions for writ of habeas corpus, challenging the conviction on the grounds of alleged suppression of exculpatory physical evidence. The "exculpatory" evidence had been obtained by the defense under the Freedom of Information Act, and included laboratory bench notes from both the FBI and the CID. These claims were also rejected by the trial court, appellate court and Supreme Court.

The 1990 Collateral Attack

In 1990, MacDonald's third set of lawyers filed a third petition for habeas corpus, based exclusively on "critical new" evidence from "previously unreleased" documents that had been purportedly obtained under the Freedom of Information Act in 1989-90. In fact, the FBI and CID laboratory bench notes involved had been released in 1983-84 to MacDonald's prior habeas counsel, who had raised other matters from the same releases. The actual physical evidence had been made available for examination by defense experts prior to trial.

This subsequent habeas petition, based upon information that was available but not raised in the first habeas petition, was held to be an abuse of the writ. The final portion of this article, however, will address only the forensic aspects of this petition, and will demonstrate that not only was the evidence not new, but it wasn't exculpatory. Furthermore, these items in no way altered the evidence upon which MacDonald had been originally convicted. The newly discovered "exculpatory" evidence would fall into three main categories: (1) unidentified blond and grey "wig" fibers. (2) unidentified dark wool fibers and (3) unidentified hair found on or near Colette's body and in both children's bed clothing. The unidentified "wig" fibers were crucial to MacDonald's defense because of where they were found and because they supposedly "linked" Helena Stoeckley, now deceased, to the crime scene. Two hairbrushes, a clear-handled hairbrush found on a sideboard near the kitchen phone and a blue-handled hair brush found under Colette's body, became important.

The defense scenario alleged that at some point during the crimes, Helena Stoeckley, wearing a blond wig, had answered the kitchen telephone in the

MacDonald residence. If actual unidentified human "wig" fibers, which did not originate from the MacDonald household, were found in these hairbrushes, this would tend to corroborate Stockley's presence and would be "exculpatory" to the government's case.

The "blond synthetic hair" and "grey synthetic hair" had been originally discovered in the clear-handled hairbrush early in the CID investigation by an Army CID laboratory examiner. The presence of these blond synthetic fibers was noted in the CID examiner's bench notes; however, they were never mentioned in the final CID laboratory reports. They had never been disclosed to the defense prior to the 1979 trial. **BRADY VIOLATION**

The first step in the re-examination of these "wig" fibers was to determine if they were, in fact, true wig fibers and then to attempt to determine their source. The grey "wig" fibers were examined using the standard light microscope, the polarizing light microscope and two of the most discriminating techniques that can be used with synthetic fibers--the microspectrophotometer(5) and the Fourier Transform Infrared analyses.(6) They were identified as modacrylic fibers, the most common type of synthetic fiber used in the manufacture of human hair goods.

Investigation revealed that a blond fall, once owned and worn frequently by Colette MacDonald, was still available for analysis. When the fall was examined, it was found to be composed of a combination of human hair and modacrylic wig fibers. It was also found that the grey modacrylic wig fibers from the hairbrush matched the grey modacrylic wig fibers found in the composition of the fall. Accordingly, these grey wig fibers were consistent with having originated from Colette's fall (see photos on page 18).

Therefore, while "true" wig fibers were found at the crime scene, the source of these modacrylic wig fibers could be accounted for--they came from Colette MacDonald's fall.

The source of the "blond synthetic hair" from the clear-handled hairbrush posed more of a problem. Again, the same microscopic, optical and instrumental techniques were used, ultimately determining that the "blond synthetic hairs" were composed of saran fibers. Due to problems in manufacturing and the physical properties of saran fibers, they are not suitable for human wigs. They do not look like or "lay" like human hair; therefore, they are not used to make human hair goods.

One of the main uses of saran fibers during the time frame of the murders was for doll hair. These "blond synthetic hairs" were very similar to blond doll hair in the FBI reference collection (see photos on page 18). In fact, the early "Barbie" dolls made by Mattel had hair made of saran fibers.

Since the MacDonald girls were known to have owned dolls with blond hair, and since little girls are known to brush the hair of their dolls, it can be inferred that the "blond synthetic hair" found in the hairbrush probably came from a doll belonging to the MacDonald girls or one of their friends. Unfortunately, none of the dolls originally belonging to Kimberly or Kristen are available today for testing purposes.

A second area of "exculpatory" evidence as noted in the defense petition concerned unidentified woolen fibers found on Colette MacDonald's body and on the club. These fibers had been noted in an early FBI examination, but not included in the FBI report. These consisted of dark-colored woolen fibers and white woolen fibers. The dark-colored fibers were important to MacDonald's defense in order to fit the latest defense scenario, which alleged that the "intruders" were wearing dark-colored clothing. The bluish-black woolen fiber from the biceps area of Colette was determined, by means of microspectrophotometry, to be different from the bluish-black woolen fiber removed from the club. Additionally, both of these fibers were different from the two dark purple woolen fibers found on the mouth area of Colette's body. The white woolen fibers found on Colette's bicep and on the club were eventually matched back to the white shag wool rug upon which Colette's body was lying.

This fact was very important to the prosecution's theory of the case. According to the Transfer Theory of Locard,(7) upon which all hair and fiber work is based, an individual is constantly exchanging both hairs and/or fibers with his environment, so that the hairs and fibers found on an individual at any one time are reflective of his latest environment. Since the white woolen fibers on Colette's body were reflective of her latest environment--the master

bedroom rug--it follows that the dark-colored woolen fibers probably were also from the rug. As for the original source of the woolen fibers, it is a known fact that Colette owned many dark-colored clothing items, such as sweaters, coats and knit hats. These items had been returned to MacDonald in 1970 and were no longer available for testing. The final area of "exculpatory" evidence, as noted by the defense, concerned unidentified human hairs found under Colette's body and in the bed clothing of all three victims. These hairs had been originally discovered by the CID laboratory examination and had been noted in the bench notes. This information was not disclosed to the defense.

Brady violator

If a suitable pubic hair is matched to a particular individual, this leads to a strong association to that individual.(8) A brown Caucasian pubic hair was found under the body of Colette MacDonald. This hair remained unmatched for over 20 years. Finally, as a result of a recent FBI Laboratory examination, this hair was matched to the pubic hairs of Jeffrey MacDonald, and accordingly, is consistent with having originated from Jeffrey MacDonald. *DNA found that this hair was not MacDonald's (2007)*

The unidentified hairs from the master bedding, Kristen's bedspread and Kimberly's quilt were also re-examined and were found to be either limb hairs or body hairs. Accordingly, they did not possess sufficient characteristics to be of value for significant comparison purposes.

DNA found they were not MacDonald's (2007)

In summary, as a result of numerous re-examinations, all of the alleged "exculpatory" evidence deemed so important to the latest defense scenario probably originated from ordinary, everyday items found in the MacDonald household, and in no way suggests the presence of outside "intruders." Had Colette MacDonald's parents not retained their daughter's blond fall, however, MacDonald could have successfully argued that "blond wig hairs," unmatched to any item from the MacDonald household, were found at the crime scene. While this would have been "literally" true, the inference that the "blond wig hairs" established the presence of "intruders" would have been false.

The Outcome

On Monday, July 8, 1991, U.S. District Judge Franklin T. Dupree, Jr., who presided over MacDonald's original trial in 1979, denied Jeffrey MacDonald's petition for a new trial, stating: "[T]he fiber evidence presented here for the first time would have been insufficient to alter the result at trial, and if a new trial were held, the jury would again reach the almost inescapable conclusion that [Jeffrey MacDonald] was responsible for these horrible crimes."

On June 2, 1992, the U.S. Court of Appeals for the Fourth Circuit again denied MacDonald's petition and upheld Judge Dupree's prior ruling. Commenting on the "newly discovered" evidence in its lengthy opinion, the Appeals Court stated, "The most that can be said about the evidence is that it raises speculation concerning its origin. Furthermore, the origin of the hair and fiber evidence has several likely explanations other than intruders." The court goes on to state, "We have carefully reviewed the

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The Police Chief

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"FATAL VISION" REVISITED



Kristen and Kimberly MacDonald at play at the home of their maternal grandparents, Mr. and Mrs. Alfred G. Kassab, in Long Island, New York, in the summer of 1969. This photo—a print made from an 8mm home movie taken by Mr. Kassab—proves that the MacDonald girls had at least one blond haired doll, and thus helped to account for the "blond synthetic hair" found in a hairbrush at the crime scene. Inset, the Army booking photo of Jeffrey MacDonald taken following 2nd arrest for the murder of his wife and two daughters.

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"FATAL VISION" REVISITED: The MacDonald Murder Case

By Brian M. Murtagh, Assistant U.S. Attorney, Washington, D.C., and Supervisory Special Agent Michael P. Malone, Senior Examiner, Hair and Fibers Unit, FBI Laboratory, Washington, D.C.

Editor's note: Mr. Murtagh was the prosecuting attorney in the 1979 MacDonald murder trial. Mr. Malone has been a central figure in the hair and fiber analysis requested throughout the just final appeals process.

The trial of *United States v. Jeffrey A. MacDonald* commenced on the morning of July 19, 1979, in U.S. District Court for the Eastern District of North Carolina, in Raleigh, and was to continue until his conviction on August 29, 1979. The prosecution's theory was that MacDonald's exculpatory account of the murder of his wife and two small daughters by intruders was false and was therefore evidence of his consciousness of guilt. In particular, the prosecution focused on MacDonald's own account of his movements in the crime scene after the "intruders" had allegedly fled into the night. Here, the purpose was to demonstrate that MacDonald's alibi that he was in the living room when his family was being attacked in the bedrooms was false.

Ultimately, it was proven beyond a reasonable doubt that the crime scene had been rearranged and that only MacDonald could have rearranged it. In effect, the jury was asked to determine whether to give credence to MacDonald's account or to the story told by the physical evidence.

MacDonald's defense involved several theories:

1. the intruders did it;
2. the crime scene's integrity was destroyed by the military police;
3. physical evidence that cannot be linked to the household or its occupants proves the presence of intruders;
4. unlike the government experts, the defense experts have correctly examined the physical evidence; and
5. there is no evidence to prove that

MacDonald was other than a loving husband and "a wonderful Daddy."

Fortunately for the prosecution, MacDonald's account was well documented and consisted principally of a tape-recorded interview on April 6, 1970, and his subsequent testimony before the Army's Article 32 investigating officer and the federal grand jury.

The case focused on Jeffrey MacDonald's torn and bloody blue pajama top found on top of Colette MacDonald's body, which was lying in a supine position on the shag rug of the master bedroom. When Colette's body was lifted off the rug, a CID agent spotted a dark thread in a blood clot on the rug in the area where her head had been. The agent's hunch that the thread might have come from the blue pajama top (later confirmed by laboratory examination) prompted an immediate search for threads in the body outline, as well as in the living room where MacDonald said he had been attacked and his pajama top torn.

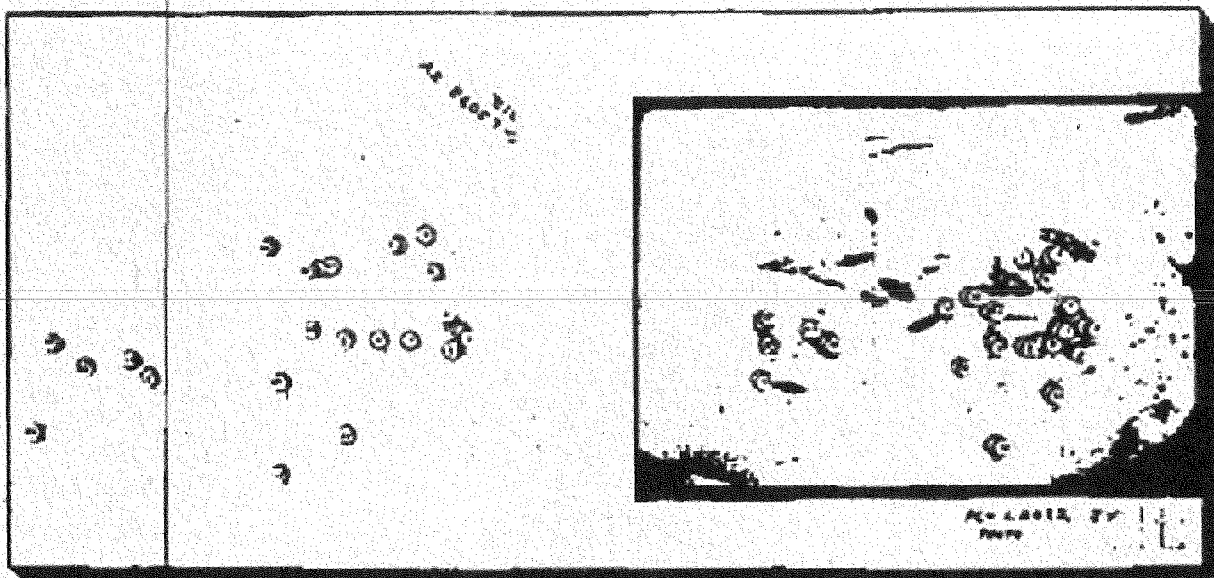
The results of this search were in-

formative: a total of 60 threads and yarns were found in the master bedroom. Thirty-four were found under Colette's body, and one was found on the floor beneath the headboard that bore the word "PIG" written in Colette's blood type. Nineteen were found inside bedding in which Kimberly's body was wrapped, and three were found on Kristen's bedspread. Significantly, neither threads nor yarns from MacDonald's pajama top were found in the area of the living room where he claimed to have been attacked.

What was found in the living room was a blood-stained *Esquire* magazine containing an account of the recent Tate-LaBianca murders perpetrated by Charles Manson's



Contrary to Jeffrey MacDonald's assertion that the unidentified dark wadded fibers found at the crime could not have belonged to anyone in his family—and must have come from the dark clothes of the "hippies intruders"—this family photograph shows Colette with baby Kristen in a dark coat and hat.



Although Jeffrey MacDonald contended that the 48 ice pick holes in his pajama top were the result of a violent struggle with an ice pick-wielding assailant, he sustained no such wounds himself. In fact, when the pajama top was folded right screw inside out, as it had been found on Colette's chest, it was possible to insert 21 probes simultaneously through the 48 ice pick holes in the pajama top. The resulting pattern above, left corresponds exactly with the two groupings of the 21 ice pick wounds in Colette's chest (above, right).

hippie family. In addition, MacDonald's eyeglasses, which he claimed not to have been wearing during or subsequent to "the struggle," were found in the living room, with Kristen's blood group on the side of the lens that was in contact with the floor.

The pocket from MacDonald's blue pajama top was found on the upturned corner of a multicolored throw rug adjacent to Colette's feet. When CID agents questioned MacDonald about the disparity between the lightly bloodstained pocket and the blood-soaked top from which it had been torn, MacDonald provided the following explanation: Upon regaining consciousness in the living room, and still wearing his pajama top (which had been torn in the struggle with an ice pick-wielding assailant), he had gone directly to the master bedroom and shed his pajama top. He then described how he had covered his wife with his pajama top and a "towel" to treat her for shock. Attempting to explain how the pajama pocket could have been torn in the living room, but fallen off in the master bedroom, MacDonald was emphatic that he had not made a "circuit" of the other rooms before removing his pajama top.

This statement kept MacDonald from explaining away the results of subsequent laboratory examinations, which revealed the following: some of the blood stains in Colette's blood type on MacDonald's pajama top were bisected by tears in the frons of the pullover-type pajama top. This indicated that Colette's blood, which by

MacDonald's account could only have gotten on the pajama top when he placed it on her body, was there before it was torn. The location where the pajama top was torn, according to MacDonald, was the living room. However, this was controverted by the profusion of pajama top threads in the master bedroom. Furthermore, the pocket was stained with Colette's blood type as the result of direct contact before it was ripped from the pajama top.

The compelling blood evidence further demonstrated that MacDonald's assault on his wife and older child, Kimberly, had originated in the master bedroom. Due to the fact that each of the four members of the MacDonald family had a different ABO blood group, and all had bleeding injuries, it was possible to reconstruct, to a degree, the locations where the assaults had taken place. The presence of contact blood stains in both Kimberly's and Colette's blood types on the master bedroom rug, on splinters from the club (which was found outside the utility room door) and other blood spatters showed that both Kimberly

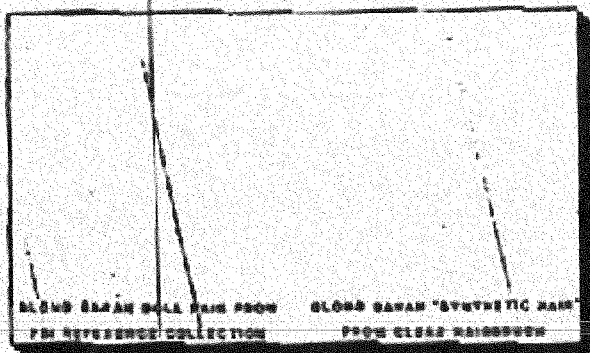
and Colette had been assaulted with the club in the master bedroom.

In Kimberly's room, spatters in Kimberly's and Colette's blood groups on the wall adjacent to the bed—where her body was found—indicate that Kimberly was assaulted with the club a second time, after it had been stained with Colette's blood. MacDonald is linked to these assaults by the presence of a stain in Kimberly's blood type on his pajama top, which—according to his account—he was not wearing when he went into Kimberly's room. In addition, threads from his pajama top were found on the club, which

also bore fibers from the throw rug upon which the pocket and threads from Mac-



Another family photo shows Kristen and Colette, wearing the blood foil whose fibers were shown to match the unidentified "wig" fibers that supposedly linked Helena Sorenson to the crime scene.



The defense scenario alleged that at some point during the crimes, Melvin Mackley, wearing a blond wig, had answered the kitchen telephone in the MacDonald residence and left a clear-handled ashtray on a sideboard near the phone. The "wig" fibers found in this hairbrush were analyzed with the following results. The blond synthetic hair was found to be a coarse fiber often used for doll hair; at far left is a blond paron ball hair from the FBI reference collection for purposes of comparison. The grey modacrylic wig fiber found in the hairbrush (far right) was found to match a grey modacrylic wig fiber from the blond fall Colette was known to wear.

Donald's pajama top had fallen. As the club was stained with both Colette's and Kimberly's blood groups, the logical inference is that the club came in contact with the throw rug and acquired the rug's fibers, as well as other foreign fibers (such as the pajama top threads) that were present on the rug.

According to MacDonald's account, the only place he was in contact with the club was in the living room, where no splinters, pajama top threads or blood spatters were found. As MacDonald claimed that he had brought the pajama top into the master bedroom after the club had been dropped outside the utility room door, it follows that the club, the throw rug and threads torn from MacDonald's pajama top could never have been in the master bedroom at the same time.

MacDonald had initially denied owning the club, or any number of similar 2" x 2" dimension. However, investigation revealed that the club was not of 2" x 2" dimension, but rather had been cut from a 2" x 4" used as a bed slit for Kimberly's bed. As demonstrated by the configuration of paint stains of identical chemical composition, the club had been used to support a leg of Kimberly's bed when the bed was painted. Furthermore, the club was similar in dimension to homemade shelf supports that MacDonald had constructed for the master bedroom.

Whether Colette MacDonald went to Kristen's bedroom to rescue her baby or because MacDonald was already in the room will never be known. However, it has been proven that Colette was assaulted with the club by Jeffrey MacDonald in Kristen's room while he was still wearing his torn pajama top. These inferences are supported by Colette's blood type spattered on the wall above Kristen's bed, and in large stains on the top sheet of Kristen's bed. In addition, splinters

from the club and threads from MacDonald's pajama top were found on Kristen's bedspread. Because Kristen, unlike Colette and Kimberly, sustained no blunt-trauma injuries, it can be inferred that Colette was assaulted in this room with the club by MacDonald, who was wearing the torn pajama top.

As the body of Colette MacDonald was found in the master bedroom, the conclusion that her body was moved after she was assaulted in Kristen's room becomes inescapable. That only MacDonald could have moved her body is equally clear when the interrelation of key pieces of evidence is analyzed. The most probative of these evidentiary items was MacDonald's bare bloody footprint in Colette's blood group, existing from Kristen's room. The significance of this footprint was initially overlooked, until it was discovered that no other sources of Colette's blood type were present on the floor of Kristen's bedroom.

Since MacDonald had tracked Colette's blood out of—rather than into—Kristen's room, the question arose as to the source of Colette's blood in Kristen's room (on which MacDonald must have stepped before tracking the blood out of the room). Whatever the source of Colette's blood had been, it had been removed before the investigators arrived. Subsequent laboratory examinations were to answer these questions.

On the floor of the master bedroom, investigators had found a pile of bedding from the master bed. The bedspread was found inside the top sheet; both items bore numerous bloodstains, predominantly in Colette's blood group. The sheet also had splatters in Kimberly's blood group, which was consistent with the sheet having been present when Kimberly was assaulted in the master bedroom. In addition, the sheet bore numer-

ous fabric impressions in Colette's blood group. Some of these fabric impressions matched the sleeves of both Colette's and Jeffrey MacDonald's pajama tops, each of which also had corresponding bloodstains in Colette's blood group. Further, purple cotton seam threads from MacDonald's pajama top were removed from the bedspread, one of which was entangled with a crushed head hair that matched Colette's hair.

Taken together, this evidence refuted MacDonald's denial of any contact with the bedding or with having moved Colette's body from Kristen's room. Additionally, as was argued to the jury, the presence of MacDonald's footprint in Colette's blood type, existing from Kristen's room, can be explained by the following scenario: After assaulting Colette and rendering her unconscious in Kristen's room, MacDonald—still wearing the torn pajama top stained with Colette's blood type—obtained the bedding from the master bedroom. Placing the bedspread on the floor to shield it from Colette's blood, he then placed Colette's body, covered with the sheet, on the spread. The quilt-like bedspread absorbed a large quantity of Colette's blood and also picked up the pajama top thread entangled with Colette's hair.

As the result of contact between the sheet and the sleeves of Colette's and Jeffrey's pajamas, fabric impressions in Colette's blood were transferred to the sheet. In the process, MacDonald's bare foot became coated with Colette's blood, most probably from the bedspread. MacDonald then tracked the blood out of Kristen's room. Colette's body was then deposited on the master bedroom shag rug, where the majority of threads from his pajama top had been previously deposited when the pajama top was first torn.

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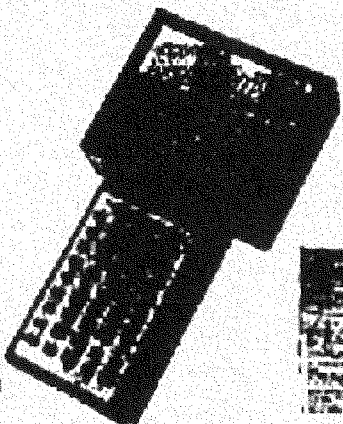
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Thus viewed, the bloody footprint could only have been left by MacDonald during the removal of Colette's body from Krusen's room.

The pajama top, rather than the footprint, was still the most probative evidence in disproving MacDonald's account. In addition to refuting his account of where the pajama top was torn, laboratory examinations demonstrated the falsity of his explanation for the presence of 48 puncture holes in the pajama top. MacDonald had given a vivid "blow-by-blow" description of his attack by intruders, one of whom was allegedly armed with an ice pick. MacDonald described how his pajama top was pulled over his head and on to his arms, which he then used to absorb the thrusts of the ice pick.

However, none of the resulting 48 puncture holes exhibited any evidence of tearing, which indicated that the garment had been stationary at the time the ice pick holes were made. The defense expert attempted to challenge this conclusion by stabbing a ham wrapped in a similar pajama top, in order to demonstrate that it was theoretically possible to puncture a moving pajama top without tearing.

Because MacDonald's account had the unsupported portion of the pajama top between his arms, sustaining the punctures during a violent struggle, the prosecution responded with an "in-court" demonstration. One prosecutor placed a similar pajama top on his arms while the other stabbed at the moving garment with an ice pick. As was readily apparent to the jury, it was impossible to stab at the unsupported pajama top with an ice pick without tearing it or hitting the arms of the wearer. Since MacDonald had no documented ice pick wounds, and claimed no such wounds on his arms, the credibility of his account was further damaged. Additionally, MacDonald's initial, emphatic denial that the family had owned an ice pick was disproved by the testimony of two witnesses.

Only a single small stain of MacDonald's own blood type was found on his pajama top. This stain conformed to a defect on the left sleeve of the garment, which was consistent with having been made by the dull blade of the Geneva Forge-brand paring knife found on the floor of the master bedroom. It was this knife that MacDonald had spontaneously stated—on three occasions—he had pulled from his wife's chest. However, neither the wounds in Colette's chest nor the cuts in her pajama top were consistent with having been made by the Geneva Forge knife. MacDonald's fingerprints were not on the Geneva Forge knife, but a speck of his wife's blood type was present.

If the knife was not used on Colette or either of the children, what was its role in the crime? The evidence supports the inference that Colette used the knife to defend Kimberly from her father.

Contrary to MacDonald's assertion, the older daughter, Kimberly, suffered from enuresis (involuntary bed-wetting). In addition, as established by the testimony of a classmate from a child psychology course attended by Colette on the night she was murdered, Colette and Jeffrey disagreed on how to deal with the recurrent problem of the children climbing into the parents' bed. MacDonald admitted they talked about the class discussion when Colette returned from class, but claimed that Colette's solution was for the displaced parent to sleep elsewhere. MacDonald claimed that when he finally went to bed that night, Kristen had wet his side of the bed, so he returned to sleep on the living room couch, where he was subsequently attacked. The presence of the antigen A in the urine stain from the master bed is inconsistent with Kristen's blood type, but is consistent with a deteriorated sample from Kimberly's type.

Colette's chest bore a pattern bruise from the end of the club, as if she had been struck at arm's length by a bayonet-type thrust. Given the other evidence, which establishes that MacDonald's pajama top was torn in the master bedroom and that Colette and Kimberly were struck there with the club, it is entirely consistent that the initial focus of the confrontation was Kimberly. As Kimberly screamed in response to her father's blows, Colette picked up the Geneva Frege knife and attempted to stab MacDonald. In response, MacDonald grabbed the club and in the fray, struck Kimberly and fractured her skull.

In contrast to MacDonald, Colette had sustained 21 ice pick wounds to the upper chest area. The tightly grouped wounds—five on the right side and 16 on the left side—were in addition to the 16 deep, penetrating, elliptical knife wounds to her chest that caused her death. The ice pick wounds had been inflicted in a perpendicular manner, while her body was in a supine position.

When MacDonald's pajama top was folded right sleeve inside out, as it had been found on Colette's chest, it was possible to insert 21 probes simultaneously through the 21 ice pick holes in the pajama top. The pattern that results from the insertion of the 21 probes through the ice pick holes in the pajama top corresponds exactly with the two groupings of the 21 ice pick wounds in Colette's chest (see photo on page 16). This graphically demonstrates that Colette MacDonald was stabbed through Jeffrey MacDonald's pajama top while it lay on her chest.

It was argued to the jury that MacDonald had initially put the pajama top on Colette to provide an explanation for the presence of her blood type on his garment. Subsequent to the infliction of the fatal knife wounds, MacDonald stabbed his wife through his pajama top with an ice pick in order to suggest, by the use of different weapons, the presence of multiple assailants inflicting ritualistic-type wounds. Further forensic examinations established that the ice pick and steel paring knife had been wiped clean on a Hilton bathmat, which was found draped across Colette's abdomen, and

which bore stains in Kimberly's and Colette's blood groups. This was the "towel" that MacDonald had claimed to have placed over Colette to prevent shock.

Other attempts to make the crime scene appear Manson-esque also implicated MacDonald. The word "PIG" in Colette's blood type on the headboard appeared, due to the absence of ridge lines, to have been written by a person wearing rubber gloves. This was supported by the presence of fragments of latex glove bearing Colette's blood type that were found on the floor and in the pile of bedding in the master bedroom. MacDonald's blood

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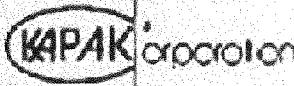
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type was found on the kitchen floor leading to a cabinet in which packages of disposable surgeon's latex gloves were found. Examinations of the glove fragments and the exemplar gloves revealed the presence of similar trace elements.² A thread from MacDonald's pajama top was also found on the floor beneath the headboard where "TIG" had been written.

In addition to glowing character testimony and an attack by defense experts on the government's forensic evidence, the defense presented the testimony of Helena Stoeckley in an attempt to corroborate MacDonald's account.³

Initially, the defense had sought to get Stoeckley's various admissions admitted through the testimony of third parties to whom she had made various confiding statements over the years. The trial judge ruled that the under the Federal Rules of Evidence, such exceptions to the hearsay rule are not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement. Far from being corroborated, Stoeckley's confiding admissions and denials of involvement were, in the court's view, about as untrustworthy as they could get. Consequently, Stoeckley's out-of-court statements were ruled inadmissible.

However, the prosecution had sought a material witness warrant for Stoeckley, who was arrested by the FBI and brought to the courthouse. The trial judge received the trial and made Stoeckley available to the defense. In their subsequent interview, the defense showed Stoeckley the crime scene photos in an attempt to refresh her recollection.

Called to the witness stand by the defense, Stoeckley testified, in the presence of the jury, to her extensive consumption of opiates and cannabis on February 16, 1978. After consuming a "hit of marijuana" around midnight, Stoeckley could not recall her whereabouts until she returned to her apartment early on the morning of February 17, after the news of the murders had been announced on a local radio station. Contrary to earlier statements in which she "thought" she might have been involved, at trial Stoeckley testified that she didn't believe that she had participated in or witnessed the murders. Stoeckley did admit that she owned a floppy hat and boots, and sometimes wore a blond wig, although she was not wearing it on the night of the murders.⁴ Stoeckley subsequently destroyed the hat and wig. During the Army Article 32 Hearing, and in subsequent interviews by the CID, MacDonald had not identified Stoeckley's photographs, nor did he identify Stoeckley during his trial testimony.

The defense also sought to demonstrate the existence of intruders by pointing to the presence of unidentified fingerprints,

unmatched fibers and candle drippings found in the crime scene. However, as the critical evidence involving the pajama top stained with Colette's blood, the puncture holes matching the pattern of Colette's ice pick wounds, the pajama top fibers on the club and elsewhere, the bloody footprint and the fabric impressions on the sheet could only be accounted for by MacDonald's rearrangement of the crime scene, the jury rejected his intruder defense. After six and one-half hours, the jury found Jeffrey MacDonald guilty of the second-degree murders of Colette and Kimberly, and murder in the first degree of Kristen. He was immediately sentenced to three consecutive terms of life imprisonment.

The Direct Appeal

In July 1980, the U.S. Court of Appeals for the Fourth Circuit reversed MacDonald's conviction on the grounds of denial of his right to a speedy trial, and cited as trial prejudice Helena Stoeckley's loss of memory of her whereabouts. The government petitioned the U.S. Supreme Court for writ of certiorari, which was granted. On March 31, 1982, after briefing and oral argument on the merits, the Supreme Court found no denial of speedy trial rights, reversed the Fourth Circuit and reinstated MacDonald's conviction. The case was remanded for disposition of remaining issues, and MacDonald was returned to prison the same day. A subsequent appeal on the ground of the trial, including the exclusion of Stoeckley's out-of-court statements, was rejected by the Fourth Circuit and the Supreme Court.

While MacDonald's conviction had theoretically become final by 1984, several collateral attacks on the conviction were mounted.

The 1984 Collateral Attack

In 1984, MacDonald filed a motion for a new trial on the grounds of newly discovered evidence in the form of detailed post-trial confessions by Helena Stoeckley. Also filed at this time were petitions for writ of habeas corpus, challenging the conviction on the grounds of alleged suppression of exculpatory physical evidence. The "exculpatory" evidence had been obtained by the defense under the Freedom of Information Act, and included laboratory bench notes from both the FBI and the CID. These claims were also rejected by the trial court, appellate court and Supreme Court.

The 1990 Collateral Attack

In 1990, MacDonald's third set of lawyers filed a third petition for habeas corpus, based exclusively on "mitral new"

evidence from "previously unreleased" documents that had been purportedly obtained under the Freedom of Information Act in 1989-90. In fact, the FBI and CID laboratory bench notes involved had been released in 1983-84 to MacDonald's prior habeas counsel, who had raised other matters from the same releases. The actual physical evidence had been made available for examination by defense experts prior to trial.

This subsequent habeas petition, based upon information that was available but not raised in the first habeas petition, was held to be an abuse of the writ. The final portion of this article, however, will address only the forensic aspects of this petition, and will demonstrate that not only was the evidence not new, but it wasn't exculpatory. Furthermore, these items in no way altered the evidence upon which MacDonald had been originally convicted.

The newly discovered "exculpatory" evidence would fall into three main categories: (1) unidentified blond and grey "wig" fibers, (2) unidentified dark wool fibers and (3) unidentified hair found on or near Collette's body and in both children's bed clothing.

The unidentified "wig" fibers were crucial to MacDonald's defense because of where they were found and because they supposedly "linked" Helena Stoeckley, now deceased, to the crime scene. Two hairbrushes, a clear-handled hairbrush found on a sideboard near the kitchen phone and a blue-handled hair brush found under Collette's body, became important.

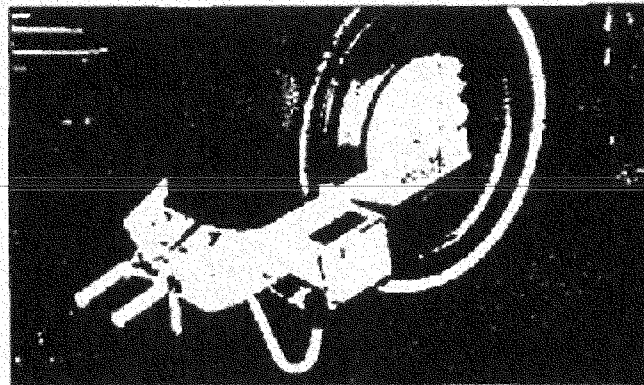
The defense scenario alleged that at some point during the crimes, Helena Stoeckley, wearing a blond wig, had answered the kitchen telephone in the MacDonald residence. If actual unidentified human "wig" fibers, which did not originate from the MacDonald household, were found in these hairbrushes this would tend to corroborate Stoeckley's presence and would be "exculpatory" to the government's case.

The "blond synthetic hair" and "grey synthetic hair" had been originally discovered in the clear-handled hairbrush early in the CID investigation by an Army CID laboratory examiner. The presence of these blond synthetic fibers was noted in the CID examiner's bench notes; however, they were never mentioned in the final CID laboratory reports. They had never been disclosed to the defense prior to the 1979 trial.

The first step in the re-examination of these "wig" fibers was to determine if they were, in fact, true wig fibers and then to attempt to determine their source. The grey "wig" fibers were examined using

Continued on page 64

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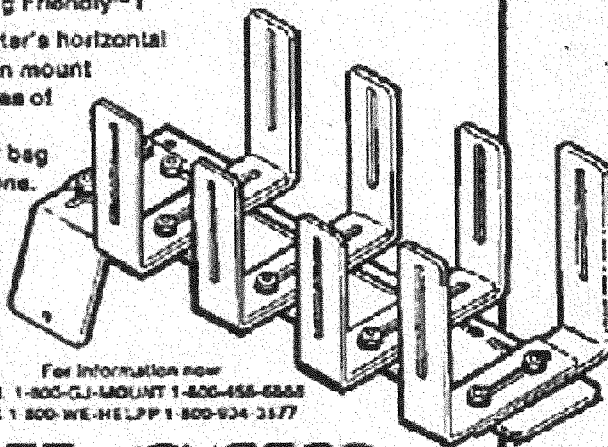


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"Fatal Vision" Revisited

Continued from page 23

the standard light microscope, the polarizing light microscope and two of the most discriminating techniques that can be used with synthetic fibers—the microspectrophotometer³ and the Fourier Transform Infrared analyzer.⁴ They were identified as modacrylic fibers, the most common type of synthetic fiber used in the manufacture of human hair goods.

Investigation revealed that a blond fall once owned and worn frequently by Colette MacDonald, was still available for analysis. When the fall was examined, it was found to be composed of a combination of human hair and modacrylic wig fibers. It was also found that the grey modacrylic wig fibers from the hairbrush matched the grey modacrylic wig fibers found in the composition of the fall. Accordingly, these grey wig fibers were consistent with having originated from Colette's fall (see photos on page 18).

Therefore, while "true" wig fibers were found at the crime scene, the source of these modacrylic wig fibers could be accounted for—they came from Colette MacDonald's fall.

The source of the "blond synthetic hair" from the clear-handled hairbrush posed more of a problem. Again, the same microscopic, optical and instrumental techniques were used, ultimately determining that the "blond synthetic hairs" were composed of saran fibers. Due to problems in manufacturing and the physical properties of saran fibers, they are not suitable for human wig. They do not look like or "lay" like human hair; therefore, they are not used to make human hair goods.

One of the main uses of saran fibers during the time frame of the murders was for doll hair. These "blond synthetic hairs" were very similar to blond doll hair in the FBI reference collection (see photos on page 18). In fact, the early "Barbie" dolls made by Mattel had hair made of saran fibers.

Since the MacDonald girls were known to have owned dolls with blond hair, and since little girls are known to brush the hair of their dolls, it can be inferred that the "blond synthetic hair" found in the hairbrush probably came from a doll belonging to the MacDonald girls or one of their friends. Unfortunately, none of the dolls originally belonging to Kimberly or Kristen are available today for testing purposes.

A second area of "exculpatory" evidence as noted in the defense petition concerned unidentified woolen fibers found on Co-

lette MacDonald's body and on the club. These fibers had been noted in an early FBI report, but not included in the FBI report. These consisted of dark-colored woolen fibers and white woolen fibers. The dark-colored fibers were important to MacDonald's defense in order to fit the latest defense scenario, which alleged that the "intruders" were wearing dark-colored clothing.

The bluish-black woolen fiber from the biceps area of Colette was determined, by means of microspectrophotometry, to be different from the bluish-black woolen fiber removed from the club. Additionally, both of these fibers were different from the two dark purple woolen fibers found on the mouth area of Colette's body. The white woolen fibers found on Colette's bicep and on the club were eventually matched back to the white shag wool rug upon which Colette's body was lying.

This fact was very important to the prosecution's theory of the case. According to the Transfer Theory of Locard,⁵ upon which all hair and fiber work is based, an individual is constantly exchanging both hairs and/or fibers with his environment, so that the hairs and fibers found on an individual at any one time are reflective of his latest environment. Since the white woolen fibers on Colette's body were reflective of her latest environment—the master bedroom rug—it follows that the dark-colored woolen fibers probably were also from the rug.

As for the original source of the woolen fibers, it is a known fact that Colette owned many dark-colored clothing items, such as sweaters, coats and knit hats. These items had been returned to MacDonald in 1970 and were no longer available for testing.

The final area of "exculpatory" evidence, as noted by the defense, concerned unidentified human hairs found under Colette's body and in the bed clothing of all three victims. These hairs had been originally discovered by the CID laboratory examination and had been noted in the bench notes. This information was not disclosed to the defense.

If a suitable pubic hair is matched to a particular individual, this leads to a strong association to that individual.⁶ A brown Caucasian pubic hair was found under the body of Colette MacDonald. This hair remained unmatched for over 20 years. Finally, as a result of a recent FBI Laboratory examination, this hair was matched to the pubic hairs of Jeffrey MacDonald, and accordingly, is consistent with having originated from Jeffrey MacDonald.

The unidentified hairs from the master bedding, Kristen's bedspread and Kimberly's quilt were also re-examined and were found to be either limb hairs or body

hairs. Accordingly, they did not possess sufficient characteristics to be of value for significant comparison purposes.

In summary, as a result of numerous re-examinations, all of the alleged "exculpatory" evidence deemed so important to the latest defense scenario probably originated from ordinary, everyday items found in the MacDonald household, and in no way suggests the presence of outside "intruders." Had Colette MacDonald's parents not retained their daughter's blond hair, however, MacDonald could have successfully argued that "blond wig hairs," unmatched to any item from the MacDonald household, were found at the crime scene. While this would have been "literally" true, the inference that the "blond wig hairs" established the presence of "intruders" would have been false.

The Outcome

On Monday, July 8, 1991, U.S. District Judge Franklin T. Dupree, Jr. who presided over MacDonald's original trial in 1979, denied Jeffrey MacDonald's petition for a new trial, stating: "The fiber evidence presented here for the first time would have been insufficient to alter the result at trial, and if a new trial were held, the jury would again reach the almost

inevitable conclusion that [Jeffrey Mac-Donald] was responsible for these horrible crimes."

On June 2, 1992, the U.S. Court of Appeals for the Fourth Circuit again denied MacDonald's petition and upheld Judge Dupree's prior ruling. Commenting on the "newly discovered" evidence in its lengthy opinion, the Appeals Court stated, "The most that can be said about the evidence is that it raises speculation concerning its origin. Furthermore, the origin of the hair and fiber evidence has several likely explanations other than intruders." The court goes on to state, "We have carefully reviewed the voluminous record of evidence in this case, beginning with the original military Article 32 proceedings through the present habeas petition, which contains over 4,000 pages. Yet we do not find anything to convince us that the evidence introduced here, considered with that previously amassed, would have raised reasonable doubts in the minds of the jurors."

In October 1992, the U.S. Supreme Court denied Jeffrey MacDonald's petition for writ of certiorari to review the appellate court's decision.

At this writing, MacDonald is serving his sentence at the Federal Corrections

Institution in Sheridan, Oregon. He is currently eligible for parole. *

* Jeffrey MacDonald has blood group B. Colene MacDonald had blood group A, Kimberly MacDonald had blood group AB and Kristen MacDonald had blood group B. The chances of this occurring in a family are extremely low.

* A neutron activation analysis revealed that the trace elemental composition of the finger section of the latex surgical glove was similar to the trace elemental composition of the patches of latex surgical gloves found in the MacDonald kitchen cabinet.

* Helena Sceptily was a known drug addict and member of a local hippie community who emerged shortly after news of the MacDonald murders became known locally.

* MacDonald stated that when he initially awoke in the living room, he saw a blond girl wearing a floppy hat and boots, carrying a candle and chanting "acid is groovy, kill the pigs."

* K.K. Ljung and M.D. Jansen, "The Examination of Paints and Fibers by Microspectrophotometry," House Office Crime Research Establishment, Report Number 39, British Crown Copyright, 1983.

* Mary W. Fungel, Edward C. Sarnet and Massimo Altieri, "Analysis of Single Polymer Fibers by Fourier Transform Infrared Microspectrophotometry. The Results of Case Studies," Journal of Forensic Science, vol. 34, pp. 1027-1043, July 1991.

* Edmond Locard, "The Analysis of Dust Traces," The American Journal of Police Science, vol. 1, pp. 246-298, 1910.

* B.D. Cordette, "Probabilities and Human Tissue Hair Compositions," Journal of Forensic Science, pp. 311-317, July 1975.

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Translation of the above article as I read it to be

For over 12 years, I have been deeply committed to seeing justice prevail for my husband, Jeffrey R. MacDonald. The struggle to overturn his wrongful conviction continues to be a torturous journey – and a nightmare for Jeff that dates back 39 years.

Background of the Case

Jeff was a 26-year-old Army captain at Ft. Bragg, North Carolina when his young wife Colette and two daughters, Kimberley, 5 and Kristen, 2, were brutally murdered in the early morning hours of February 17, 1970.

Jeff was found wounded and unconscious by military police. Upon resuscitation, he described intruders who had entered his home: A woman with long blond hair, a floppy hat and boots, at least one white male, and a black male wearing an Army jacket with E-6 Sergeant stripes.

As he pleaded with medics to check his family, Jeff was rushed to the hospital and remained in the ICU for nine days. He was treated for severe injuries including multiple stab wounds, a collapsed lung, and a blow to the head.

In spite of his injuries and descriptions of the assailants, authorities focused on Jeff as a suspect. He was investigated and cleared by the Army, then honorably discharged.

Rebuilding a Productive Life

In an effort to rebuild his life after such unspeakable loss, Jeff took a job in Long Beach, California, entering the fast-paced environment of emergency medicine. He became an innovator in the field, and the first honorary member of the area Police Association, having saved so many officers' lives.

Years passed as the murders remained "unsolved". The Army tribunal had recommended an investigation of Helena Stoeckley, a woman who matched Jeff's description and was well-known to police as a drug user and reliable drug informant. Although she had no alibi for the night of the murders and

had admitted her involvement to several people, she was not pursued as a suspect. Instead, military authorities (CID) continued to focus

Thirty Year Quest For Justice – U.S. v. Jeffrey R. MacDonald

By Kathryn MacDonald

on Jeff, even after he became a civilian. Army lawyer Brian Murtagh, who had been involved in the case, then transferred to the U.S. Department of Justice (DOJ) and was assigned to investigate Jeff.

The 1979 trial

Nine years after the murders, Jeff stood trial in 1979. He was prosecuted in federal court because the murders occurred on a military base. The government's theory was that during a fight with Colette because daughter Kristen had wet the bed, he used a club to strike at Colette and accidentally struck and killed his daughter Kim who was trying to intervene. Then, to cover-up his misdeed, he killed Colette, and then killed and mutilated Kristen to make it look like a cult slaying. The prosecution alleged that Jeff either wounded himself to defer suspicion or was wounded by Colette. Jeff's defense was simple – he was innocent.

The evidence the government presented to support its bizarre theory was circumstantial. To undercut Jeff's account, the government interwove the theme that there was "no physical evidence of intruders".

Helena Stoeckley was a key defense witness, and she was held in custody on a material witness warrant. When she took the stand she claimed amnesia as to her whereabouts during the murders. However, she did admit to destroying the blond wig, floppy hat, boots and clothes she said she was wearing on the night of the crimes, "because they connected her to the murders". Stoeckley had been a reliable prosecution witness in drug cases. Yet the judge ruled she was an unreliable defense witness because she was a drug user, so he barred the testimony of six witnesses to whom she had confessed to being present during the murders.

Jeff was convicted and sentenced to three consecutive life terms. A year later his conviction was overturned by the Fourth Circuit Court of Appeals on the ground he had been denied his constitutional right to a speedy trial. He was released from prison and returned to his work in California as Director of the ER at St. Mary Medical Center in Long Beach. His ordeal appeared to be over. It was until 1982, when the U.S. Supreme Court reinstated his conviction and life sentences, and he was returned to prison.

Fatal Vision's author sued and damages paid for fraud

While it is extremely difficult to overturn any conviction, the burden is tenfold when one has been vilified in the national media, as Jeff was by the grotesque portrait painted of him in the 1983 book *Fatal Vision*. The book was made into a highly-rated television mini-series in 1984. Before his trial, Jeff took the unprecedented step of giving a writer full access to his defense and personal life. He had nothing to hide and was badly in need of funds to pay his legal bills.

However, the book's publisher wanted a titillating novel that would sell lots of copies, not the true story of a man wrongly convicted in a legal charade. Consequently author Joe McGinniss juxtaposed and fabricated events and conversations to portray Jeff as a "golden boy" whose affability masked a homicidal rage.

Jeff sued McGinniss for fraud. In order to do so, he requested a transfer to a prison in California in 1986. The government had one stipulation – that Jeff agree to be housed in solitary confinement for the duration.

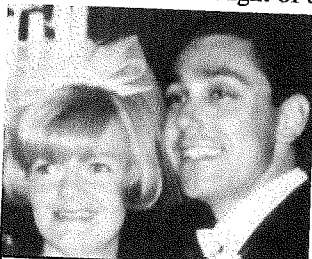
Although McGinniss later admitted his perfidy in open court and Jeff was paid a settlement of \$325,000, the damage was done. To this day, the press still calls him "The Fatal Vision Doctor".

In 1995 the book *Fatal Justice: Reinvestigating the MacDonald Murders* was published. Written by author Jerry Potter and reporter Fred Bost, the book dissected the government's case using its own documentation, dispelling many of the myths the government's prosecutors had perpetuated.

Post-Conviction

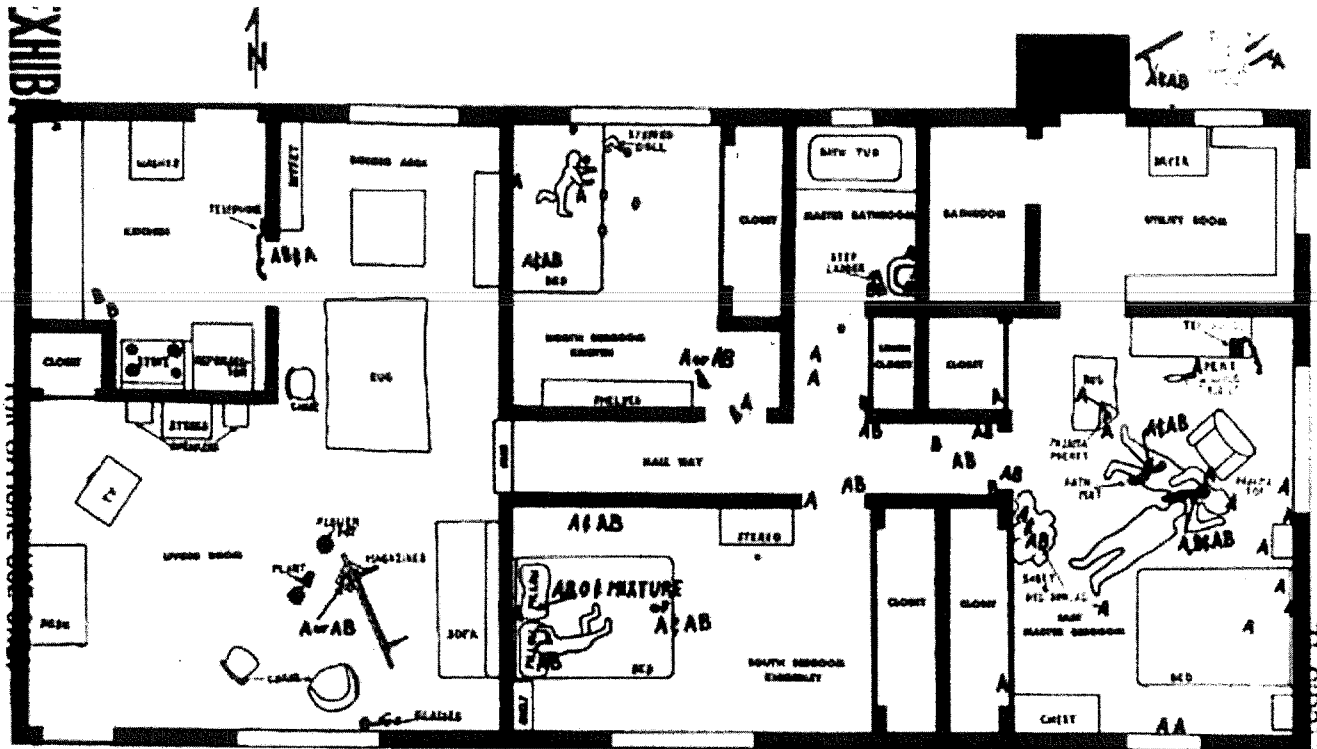
Jeff's post-conviction appeals in 1985 and 1991 were considered by his trial judge, Franklin Dupree, who declined to recuse himself. Opposition to Jeff was led by Brian Murtagh, who was one of his trial prosecutors after leaving the Army for the DOJ. Lead trial prosecutor James Blackburn was promoted to U.S. Attorney for North Carolina after winning the MacDonald case.

Helena Stoeckley and her boyfriend Greg Mitchell – both 18-years-old at the time of the MacDonald murders – had long since gone their separate ways. However they continued to confess independently to others (including law enforcement officials and clergy) of their involvement in the murders.



Colette and Jeff at a friend's wedding in 1968.

(Used with permission of Kathryn MacDonald)



BLOOD TYPE

Colette MacDonald	A	Kimberly MacDonald	AB
Jeffrey MacDonald	B	Kristen MacDonald	O

BLOOD CHART PRESENTED TO
1979 JURY AS PROOF
BASED ON BLOOD TYPING

"Fatal Justice"

Insert photo pg
@ 7 of 16

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MACDONALD POLYGRAPH

Dr. David C. Raskin, Professor from the University of Utah, and one of the leading polygraph experts in the country recently performed a polygraph (lie detector) on Dr. Jeffrey MacDonald at the federal correctional institution in Phoenix, Arizona. Dr. Raskin asked Dr. MacDonald the following questions:

Did you inflict any of the injuries which resulted in the deaths of your wife and children?
Answered "No".

Did you yourself directly cause the deaths of your wife and children?
Answered "No".

Did you arrange with or directly assist anyone to cause the deaths of your family?
Answered "no".

Dr. Raskin concluded that Dr. MacDonald gave truthful answers to all of these questions and was, in fact, telling the truth when he stated that he did not kill his family.

Dr. Raskin has testified before the Senate, acted as an expert in the Patricia Hearst and DeLorean cases, and is recognized as a pioneer in using computer analysis of polygraph results so that the operator's subjective feelings do not enter into the analysis of the results. Using all of the above described methods, Dr. Raskin is convinced of Dr. MacDonald's innocence.

Dr. Raskin also consults with several government investigatory agencies as an expert in the polygraph including the Central Intelligence Agency and the Federal Bureau of Investigation.

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Re: Jeffrey MacDonald

Dear Al:

Confirming our telephone conversation, after reviewing the Army file on Captain MacDonald, I have had my First Assistant, Weldon Hollowell, and the Chief of the Criminal Section, Edwin Kearns, devote a great deal of the summer reviewing and re-reviewing all of the year-long investigation into the MacDonald murders.

It is the consensus of opinion of this office that there is little likelihood of conviction and, therefore, we are declining prosecution of Captain MacDonald at this time.

Very truly yours,

Warren H. Coolidge
WARREN H. COOLIDGE
United States Attorney

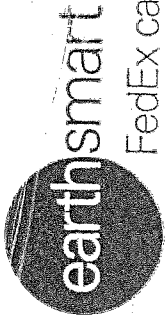
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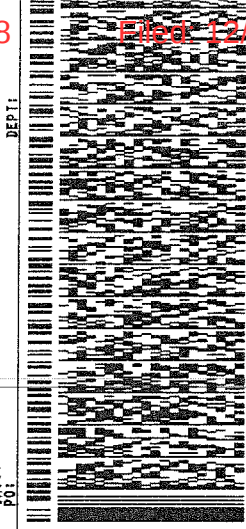
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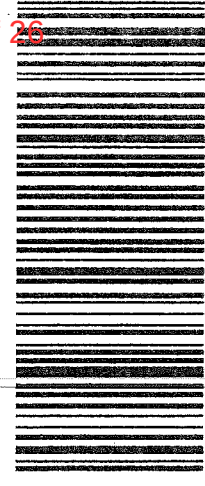
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