BYLINER ORIGINALS

FINAL

VISION

JOE McGINNISS

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The Last Word on Jeffrey MacDonald

By Joe McGinniss

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Colette MacDonald with daughters Kristen (left) and Kimberly.

Courtesy of www.thejeffreymacdonaldcase.com

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For press inquiries, please contact media@byliner.com

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1. The Murders

We were young at the start.

MacDonald, the murderer; Murtagh, his nemesis; and me.

Now we are old. And still the case won't die.

It is the longest-running criminal case in U.S. history, *United States of America* v. *Jeffrey R. MacDonald*. It has lasted forty-two years and remains at least three or four years from closure.

If you know about the case, at least some of what you know is probably wrong. If you don't know about it, you should, because it's a story that reveals as much about America—the best and the worst of it—as any other you'll hear.

At 3:42 a.m. on February 17, 1970, military police at Fort Bragg, North Carolina, near Fayetteville responded to an emergency call placed by a man requesting assistance at 544 Castle Drive, in a sectio of the base that housed married officers.

Arriving at the address within ten minutes, military policemen found three bodies awash in a sea o blood. Twenty-five-year-old Colette MacDonald had had her skull fractured by a club. She'd been stabbed nine times in the neck and seven times in the chest with a knife, and twenty-one times in the chest with an ice pick. Both of her arms were broken.

Her five-year-old daughter, Kimberly, had had her skull, cheekbone, and nose fractured by a club. She'd been stabbed eight to ten times in the neck with a knife. Her two-year-old daughter, Kristen, ha been stabbed twelve times in the back, four times in the chest, and once in the neck with a knife, and approximately fifteen times in the chest with an ice pick.

The autopsy showed that Colette had been five months pregnant with a baby boy.

The MPs also found twenty-six-year-old Green Beret captain Jeffrey MacDonald lying motionless next to his wife on the floor of the master bedroom, wearing only a pair of pajama bottoms. On the headboard of the bed, the word *PIG* had been written in blood.

Jeffrey MacDonald was alive. He moaned and then cried out, "Check my kids."

He said he'd been sleeping on the living room couch when two white men and one black man attacked him. With them was a white woman who had long blond hair and was wearing high boots an a floppy hat. She was holding a lit candle and chanting, "Acid is groovy … Kill the pigs." He'd tried to fight off the three men, but they'd knocked him unconscious. He said he was a doctor and that he thought he was going into shock. If that happened, he said, the MPs should elevate his legs, keep him warm, and make sure he didn't swallow his tongue.

And so it began: the saga of the Princeton-educated Green Beret doctor who never served in Vietnam, never saw combat, and killed no one other than his own wife and children.

Brian Murtagh first got involved in 1971, as a twenty-five-year-old military attorney. He stayed involved throughout a forty-year career as a Justice Department prosecutor. It was by no means his only assignment: he was also lead U.S. prosecutor in the case that arose from the bombing of Pan Am Flight 103 over Lockerbie, Scotland, in 1988. But for more than thirty years, every time MacDonald tried to argue his way out of prison, he found Murtagh there, barring the door with impeccably prepared legal briefs.

As for me, I got involved in 1979. I had planned to write only a newspaper column about MacDonald. I wound up writing a book about the case, *Fatal Vision,* first published in 1983. All these years later, the story has yet to let me go.

* * *

MacDonald told investigators he'd been knocked unconscious in a struggle against four murderous intruders who burst into his home and attacked him as he slept on his living room couch.

But despite the massacre of his wife and children, MacDonald was almost unharmed. Other than a small, neat chest incision that caused the partial collapse of one lung, he had two superficial stab wounds, neither of which required stitches, and a bruise on his forehead that hadn't even broken the skin.

From the start, investigators found this discrepancy suspicious. They were also troubled by the relatively undisturbed condition of the living room where MacDonald said he'd fought his life-and-death battle. A coffee table lay on its side, atop magazines scattered on the floor. A plant had spilled from its pot. That was it. There were no other signs of a struggle. Nothing was stolen. The large stash of drugs MacDonald kept in a hall closet—including syringes, scalpel blades, and eighteen fifty-milligram vials of liquid Thorazine—was untouched.

Nonetheless, the FBI and the Army's Criminal Investigation Division (CID) spent weeks pursuing leads involving Fayetteville-area drug dealers, anti-war hippies, and any other groups that might have wanted to copy the murder of actress Sharon Tate and four others, six months earlier, in her Los Angeles home by followers of Charles Manson. They got nowhere.

The CID formally questioned MacDonald for the first time on April 6, 1970. The investigation had been hampered by a number of amateurish mistakes: a hospital orderly had discarded MacDonald's pajama bottoms, military police had allowed garbage men to collect the household trash, lab technicians had used the toilets inside the apartment, an ambulance driver had stolen MacDonald's wallet, and a piece of skin found under Colette's fingernail had been lost at the laboratory.

Despite these blunders, the CID had gathered and analyzed evidence that was inconsistent with MacDonald's early and sketchy accounts. On April 6, as detectives questioned him in detail for the first time, they quickly realized he wasn't telling them the truth. Unbeknownst to MacDonald, the physical evidence from the crime scene contradicted his story again and again.

MacDonald would give many later accounts: at the military hearing that summer, to other CID investigators in the early 1970s, to a grand jury in 1974 and 1975, and at trial in 1979. In each instance, he changed his story slightly as he attempted to match it to his understanding of the physical evidence that existed at the time. But he never caught up. In many ways, his ultimate fate was sealed on the morning and afternoon of April 6, 1970. As Brian Murtagh said years later, "The physical evidence only comes into focus when it is viewed through the prism of MacDonald's false accounts."

(*Fatal Vision* contains a comprehensive description of the physical evidence and a detailed explanation of how, as it developed over time through more sophisticated laboratory analysis, it proved the guilt of Jeffrey MacDonald.)

The Army charged MacDonald with three counts of murder on May 1, 1970. After a preliminary hearing that summer, the Army abruptly dropped the charges and gave him an honorable discharge. H

moved to Southern California and began work as an emergency room physician. The Army continued to investigate, pursuing leads that pointed to other possible suspects. The more evidence they gathered, however, the more convinced investigators became that MacDonald was, indeed, guilty.

In 1974, a grand jury was convened. They indicted MacDonald on three counts of murder in Janua 1975. Legal maneuvering ensued as MacDonald sought to avoid standing trial. That went on for four more years.

I met him in June 1979. By then he knew he would be returning to North Carolina in July to be trie for the murders committed nine years before. He told me how much he admired my work. He suggested that I write a book about his case. He said that during the trial I could live in Raleigh with him, his legal team, and his mother and friends in a fraternity house they were renting on the campus of North Carolina State University.

I told MacDonald that his proposal sounded interesting but that I'd have to have total editorial control. He said that was fine; he knew that a responsible writer would insist on nothing less. Then he told me I was the one and only writer he wanted to work with, the one and only writer who he knew would get the story right.

But there was a catch. He needed money. In return for exclusive access to him during and after the trial and for total access to the case files and his personal memoranda, he wanted a minor share of the proceeds from the book.

Only years later did I learn that, after brunch with me, MacDonald went to lunch with the popular crime writer Joseph Wambaugh. He told Wambaugh that he was the one and only writer he wanted to work with, the one and only writer who he knew would get the story right. Savvier than I was, Wambaugh said no. He'd been a Los Angeles Police Department homicide detective before becoming an author, and he spotted MacDonald as a fraud immediately.

In my naïveté, I did not. I thought he seemed a likable guy. His lawyer, Bernie Segal, and my agent made a deal. At the start, knowing none of the facts of the case, I had no clue as to whether or not MacDonald was guilty. As jurors were instructed to do, I granted him the presumption of innocence, but that is not the same as belief. Contrary to countless media stories that have appeared in the years since, I did not start off believing that MacDonald was innocent. There was no way I could form an opinion about his guilt or innocence until I saw and heard the evidence presented in court.

We got along well. We were about the same age (mid-thirties at the time) and shared common interests in books, music, and sports. After full days in court and on weekends, I'd jog with him around the NC State track, eat dinner with him, have a beer, shoot a game of pool.

Along the way—although I never told him so—he convinced himself that my book would portray him as an innocent victim of a justice system run amok. Because I wanted to stay as close to him as I could for as long as I could, in order to learn as much about him as possible, I did not disabuse him of that notion.

As the trial progressed, however, I began to grow uncomfortable. MacDonald and his lawyers expressed only contempt for the prosecution's case, but privately I was finding it extremely persuasive. By the time the jury began its deliberations, I was convinced beyond a reasonable doubt that this bright and charming man with whom I'd just spent the summer had murdered his wife and children. Despite missteps the Army had made in its initial investigation, the evidence was undeniable. MacDonald was found guilty on three counts of murder and sentenced to three terms of life imprisonment, to be served consecutively.

But once I got home and began to receive anguished, imploring letters from MacDonald from prison, my doubts revived. He was such a good guy, how *could* he have done such a terrible thing? I

must have missed something. The prosecution must have fooled me, and the jury, with sleight of han

For more than a year, I expressed sympathy to MacDonald. Finally, I came to believe he was a psychopath who'd been consciously seducing me in the hope I'd write a book that proclaimed him innocent. At that point, I stopped expressing sympathy. This made him uneasy. Psychopaths have supreme confidence in their seductive abilities. MacDonald did not want to believe he had failed. *Fatal Vision*, published four years after the trial, showed him that he had.

Despite the releases he'd signed at the start of the book project, MacDonald sued me in 1984 for fraud, breach of contract, breach of the covenant of good faith and fair dealing, and intentional infliction of emotional distress. The seven-week trial of that suit—it lasted longer than MacDonald's murder trial—ended in a mistrial in 1987. My publisher's insurance company then settled, paying MacDonald $325,000 to avoid the cost of a new trial. (The first trial had cost them far more than that Soon afterwards, MacDonald's father-in-law, Freddy Kassab, sued him under California's "Son of Sam" law (enacted to keep criminals from profiting from events related to their crimes) and won almost all of the proceeds.

Over the years, MacDonald filed many appeals of the guilty verdicts and motions for a new trial based on "newly-discovered evidence." All were denied until 2011, when the Fourth Circuit Court of Appeals decreed that MacDonald's new claims should be considered in light of "the evidence as a whole."

The district judge convened an evidentiary hearing in Wilmington, North Carolina, in September 2012. Because of certain things I'd written in *Fatal Vision*, the Justice Department subpoenaed me to testify. I would be the prosecution's final witness, probably the last person who would ever testify against Jeffrey MacDonald in a court of law.

2. The Never-Ending Story

How did it come to pass that a domestic homicide in which the jury had deliberated for only six hour before returning three guilty verdicts became such an unwieldy, generation-spanning Dickensian spectacle, the never-ending story of the United States criminal justice system?

There is no short, simple answer. And the long one must take into account the differences between the military and civilian justice systems, the cumbersome bureaucracy of the Justice Department, the craving for publicity that motivates certain members of the criminal bar, the American predilection for conspiracy theories, and the personality of Jeffrey MacDonald himself.

In 1985, Franklin T. Dupree Jr., the federal judge who'd presided over MacDonald's 1979 trial, summarized MacDonald's story of the attacks and some of the reasons why investigators were skeptical of it:

> MacDonald told investigators that … the three attackers continued to club and stab him until he lost consciousness. When he awoke on the hall steps to the living room, MacDonald stated that he got up and went to the master bedroom where he found his wife dead. He said that he pulled a Geneva Forge knife out of her body and covered her with his pajama top and a bathmat. He then went to his children's rooms and unsuccessfully tried to revive them. After going to the bathroom to wash himself and calling the military police, he again lost consciousness. …
>
> Although MacDonald had said that his pajama top was torn during his struggle with the three assailants in the living room, no fibers from the pajama top were found in that room. Fibers were found, however, inside and outside the body outline of Colette MacDonald in the master bedroom and in the rooms of Kristen and Kimberly MacDonald. A piece of a plastic surgeon's glove, stained with Colette MacDonald's blood, was found inside a sheet in a pile of bedding at the foot of the master bed. Moreover, although there were numerous unidentified fingerprints in the apartment, no direct evidence of the alleged intruders was found to support MacDonald's version as to what happened on the night of the murders. From this and similar evidence, investigators became convinced that MacDonald had killed his family and staged the crime scene to cover up the murders.
>
> The Army eventually charged MacDonald with the murders and a formal pre-court martial investigation was conducted and hearings held pursuant to Article 32 of the Uniform Code of Military Justice.

The purpose of an Article 32 hearing is to determine whether criminal charges against an individu should proceed to court-martial—the military equivalent of a jury trial. By July 1970, when MacDonald's hearing began, the U.S. Army was in disarray, its public image at an all-time low. The 1968 Tet Offensive had made it clear that the U.S. was not winning the Vietnam War. In November 1969, journalist Seymour Hersh broke the story of the My Lai Massacre, describing how American soldiers had wantonly slaughtered hundreds of defenseless Vietnamese civilians, many of them

women and children. In May 1970, National Guard troops fired on students at Kent State University, killing four and wounding nine.

The last thing the Army wanted only months after My Lai and Kent State was a public spectacle surrounding a hearing to determine whether there was probable cause to prosecute a Green Beret officer for murdering his wife and children.

In retrospect, the outcome seems obvious. The hearing was so rushed that it began while the CID was still investigating and before laboratory testing of physical evidence from the crime scene was complete.

In October, the Army announced that charges against MacDonald had been dismissed due to "insufficient evidence." MacDonald was quickly granted an honorable discharge. The Army washed its hands of him. He was somebody else's problem now.

* * *

Despite the fact that the Article 32 hearing was closed to press and public, there had been print and broadcast coverage, and MacDonald was obsessed with it. His public image seemed to be his primary concern. On June 16, 1970, he wrote in his diary: "The publicity … was very good. Page one in the Sunday *Raleigh News and Observer* and was a good human interest story except we are sorry they used a picture of me in my convertible …"

On July 7: "Yesterday's press fairly good to me … Evening TV coverage excellent."

Two days later: "It is apparent that the press is strongly behind me."

Later in July, CID agents forcibly removed MacDonald from his car in order to take a hair sample he would not provide voluntarily, despite being ordered to do so. His civilian lawyer, Bernie Segal, called a press conference to protest. "The news was out immediately," MacDonald noted. "It appears to be the biggest story in weeks. Headlines all over, TV, radio … Jack Anderson's column in Washington—everyone is interested. The AP and UPI told Freddy [Kassab, his father-in-law] in Long Island that it is world wide, not just national."

When Kassab held a news conference of his own to demand that the Article 32 hearing be opened t the public, MacDonald noted that it was attended "by two major TV stations, multiple radio stations, AP, UPI, local newspapers."

By October, even as he was awaiting the investigating officer's Article 32 decision, MacDonald ha begun to contact writers.

He wrote to John Sack of *Esquire*:

> This letter is being written to you for the purpose of interesting you in writing a major article and/or book regarding the events of the last 9 months. … The case has received nation-wide publicity on several occasions … [It] certainly has all the emotional impact any case could have, and in addition has some interesting sidelights, such as a fund-raising drive by a prominent NY socialite … My lawyers are currently in contact with *Look* magazine regarding a possible article, but I am more partial to your style …"

On the same day, he wrote to Jack Nelson of the *Los Angeles Times*:

> I have recently read of your exploits in the world of exposé as chronicled by *Time* magazine —it occurs to me that you are well-suited to write a major article on my case. … My lawyers are currently in some first-stage talks with *Look* and *Esquire,* but nothing has been firmed up …

After Sack turned him down, MacDonald wrote to Robert Sherrill, author of a newly published boo titled *Military Justice Is to Justice as Military Music Is to Music*:

> This letter is an attempt to stimulate your interest in writing a major article and/or book regarding my case. My lawyers are having some very preliminary-type discussions with *Look* regarding the case, but nothing is finalized. They will agree with me on whomever I choose to write the article/book, and I like your style.

But no one took the bait. Frustrated, MacDonald, now a civilian, reached out to late-night televisio show host Dick Cavett. It was an act whose consequences would prove disastrous.

On the show, MacDonald alternated between joking with Cavett and excoriating the Army for having had the gall to accuse him of the murders. "There was no evidence," he told Cavett indignantl He denounced the "charade" of the hearing he'd been forced to endure. He displayed no grief, and gave not the slightest indication that he was still mourning the loss of his wife and children. It was as if the murders had been a mere prelude to the crimes committed against *him.*

In addition, he claimed to have suffered twenty-three wounds in the attack, "some of which were potentially fatal." MacDonald's in-laws, Freddy and Mildred Kassab, were incredulous as they watched the show. Twenty-three wounds? Some potentially fatal?

"There wasn't so much as a Band-Aid on him," Mildred said later, recalling how he looked when she saw him the day of the murders. "Not even Mercurochrome." Freddy remembered MacDonald's first night in the hospital. He was "sitting up in bed and eating dinner with apparent enjoyment."

MacDonald's inappropriate affect and false claims about his injuries planted the first seeds of dou in the minds of the Kassabs, who had been his most outspoken supporters. Freddy, in fact, watched th Cavett show on the night of his return from Washington, D.C., where he'd hand-delivered to member of Congress five hundred copies of a letter demanding a hearing into the Army's mishandling of the case and a reinvestigation of the crimes.

MacDonald's own accusations against the Army, made to a national television audience, brought matters to a boil. The CID command in Washington evaluated the charges leveled by MacDonald and Kassab. They concluded that while the investigation had not been "a model of its kind," neither had i been "the amalgamation of incompetence, perjury and malicious prosecution" that both Kassab and MacDonald alleged.

Stung by MacDonald's accusations on the Cavett show, the CID launched a reinvestigation of the murders in January 1971. Agents under the command of Colonel Jack Pruett pursued leads in thirty- two states, Vietnam, Okinawa, Germany, the Canal Zone, and Puerto Rico. They conducted dozens of new tests at the crime scene and analyzed thirty-four additional laboratory reports. They interviewed 699 people and took sworn statements from 151. On June 1, 1972, the CID delivered a three-thousand page report to the Justice Department concluding that evidence clearly pointed to MacDonald's guilt

But despite the best efforts of Brian Murtagh, whose point of view was "If we believe this man murdered his wife and children, we have a moral obligation to prosecute him," the Justice Departmen dithered. Two years passed before a grand jury was convened in the Eastern District of North Carolin

The jury indicted MacDonald in January 1975.

Bernie Segal quickly filed motions in federal district court in Raleigh, arguing that a trial would constitute double jeopardy, because MacDonald had already been, in effect, tried and found not guilty at the Article 32 hearing. Segal also argued that the nearly five years between the Army's first charging MacDonald in 1970 and the grand jury's indictment was a violation of his Sixth Amendment right to a speedy trial.

District Court judge Franklin Dupree denied both motions. He ruled that, unlike a general court-martial, the Article 32 hearing had been an investigative proceeding, not the equivalent of a jury trial. He also stated that the Sixth Amendment speedy-trial clock does not start ticking until after an individual is formally accused of a crime, and that "in this case, [accusation] did not occur until the indictment had been returned."

The judge set a trial date of August 18, 1975. On August 15, however, the Fourth Circuit Court of Appeals, in Richmond, Virginia, ordered a stay and agreed to hear MacDonald's appeal of Dupree's rulings.

A panel of three Fourth Circuit judges heard oral arguments in October, and in January 1976, by a 2–1 vote, they found that "the four and one-half-year delay after formal accusation and arrest by the Army and before indictment was denial of [MacDonald's] constitutional right of speedy trial." The appeals court instructed Dupree to dismiss all charges.

And so Jeffrey MacDonald could continue to enjoy his Southern California lifestyle, with no cloud of worry hanging over his head.

But the Justice Department, however dilatory it had been in the early 1970s, was now determined to bring MacDonald to trial. Government attorneys appealed to the Supreme Court, which agreed to hear the case. In an 8–0 vote (Justice William Brennan abstaining), they reversed the Fourth Circuit decision and ruled that MacDonald's trial could proceed. Justice Harry Blackmun, perhaps best known for writing the *Roe* v. *Wade* opinion that legalized abortion in 1973, expressed no view of the merits of MacDonald's position but ruled that, as a matter of law, the denial of a speedy-trial claim could not be appealed *before* the trial was held. MacDonald, in other words, could properly present his argument only after he'd actually been tried.

In July 1979, more than nine years after having been charged with three counts of murder by the Army, and four and a half years after being indicted, Jeffrey MacDonald finally went to trial.

* * *

Not surprisingly, in the years that followed that notorious trial and the publication of my book, other writers became attracted to the case. Janet Malcolm of *The New Yorker* wrote about her view of MacDonald's grievances against me in two articles later published as a book called *The Journalist and the Murderer*. (My response to her can be found on my website and in the 2012 edition of *Fatal Vision*.)

The latest high-profile book about the case is *A Wilderness of Error*, by Errol Morris, published in September 2012.

Morris, who is primarily a filmmaker (*The Thin Blue Line*, *The Fog of War*), takes the position that regardless of whether or not MacDonald murdered his wife and children, he deserves our sympathy

because he did not receive a fair trial. In regard to the case, he writes, “We may never be able to prov with absolute certainty that Jeffrey MacDonald is innocent. But there are things we *do* know. We know that the trial was rigged in favor of the prosecution. … We know that Jeffrey MacDonald was railroaded.”

Morris, who did not attend the trial, contends that the prosecution knowingly suppressed exculpatory evidence and that Dupree’s evidentiary rulings revealed a bias against MacDonald so strong as to have rendered his trial unfair and his conviction unjust. But no appellate court that has considered MacDonald’s myriad claims of unfairness has found either improper conduct by the prosecution or any abuse of judicial discretion by Dupree. Morris alleges some sort of grand conspiracy against MacDonald—a plot involving the U.S. Army, the FBI, the U.S. Attorney’s Office, the highest levels of the Justice Department, and at least one federal judge—but he offers no explanation of why this particular Ivy League physician who was serving in the Special Forces shoul have been targeted. He fails to demonstrate that the trial was “rigged,” much less by whom or for wh purpose. Nor does he offer plausible motivation for those who he says “railroaded” MacDonald. Whi making dozens of reckless allegations, impugning the integrity of Brian Murtagh in particular (and, yes, my integrity too) Morris averts his eyes from the mountain of undisputed physical evidence that led to MacDonald’s conviction. He could have learned, for example, that MacDonald’s self-inflicted scalpel wound was on the right side of his chest, not the left, and thus did not endanger his heart. He could have learned that the rocking horse was in Kristen’s bedroom, not the living room, and that—despite the fabricated recollection of a young drug addict named Helena Stoeckley—it wasn’t broken He could have learned that the position of the overturned coffee table, about which he writes at some length, was not even mentioned by prosecutors at trial. But if he’d allowed fact, not fantasy, to guide him, he would have found himself without a book.

Morris quotes, uncritically and at length, those who agree with his conspiratorial hypothesis, neve acknowledging that they constitute only a fringe minority of the large population of individuals who have extensive knowledge about the case. And because he’s a polemicist, not a journalist, he doesn’t bother to talk to anyone who has learned the truth at which he scoffs: that the physical evidence prov MacDonald’s guilt.

I attended every minute of every session of MacDonald’s trial in 1979. In *Fatal Vision,* I did not hesitate to criticize Judge Dupree.

He was, I wrote, “possessed of an unusually mobile, expressive face, and from the earliest days of the trial the expression most often seen upon it as Bernie Segal conducted cross-examination was one of distaste. … With even casual spectators openly remarking on the judge’s expression, it seemed on logical to assume that it would, to some degree, indicate to the jurors where his sympathies (or lack o sympathy) lay, and possibly even suggest to some where their own belonged.”

During interviews I conducted months later, however, jurors made it clear that their verdict was based solely on the evidence and was not influenced by the judge’s impatience with Segal, which mo of them found comical.

Morris has many misconceptions about what occurred during the six-week trial. This can happen when you write about the details of a complex proceeding you did not witness personally.

One of Morris’s most egregious errors concerns the jury. He apparently accepts at face value a statement by Jerry Leonard, the lawyer appointed by Dupree to represent Helena Stoeckley, the drug addict who had made many addled statements over the years suggesting she might have participated the crimes. Leonard, who attended only small portions of the trial, said the jury was composed of “farmers” and “rednecks.” In fact, eleven of the twelve members had at least some college education

As I wrote in *Fatal Vision*, the jurors included "two accountants, a chemist, the son of a socially prominent Raleigh physician [and] a former Green Beret sergeant from Fort Bragg."

Segal hired the late John B. McConahay, from the Duke University Institute of Policy Sciences and Public Affairs, to help him pick the jury. In using an academic to guide jury selection, Segal felt he was well ahead of the curve. Until the verdicts were delivered, he was delighted with the results. (Morris also writes that the jurors were sequestered during the trial. They were not.)

A larger and more serious point that Morris fails to recognize is that *Fatal Vision* did nothing to determine MacDonald's fate. He writes that my book "locked [MacDonald] in a far more sinister prison" than the Federal Correctional Institution in Cumberland, Maryland, where he's incarcerated. "[A] prison from which there is no escape. A prison where truth is drowned out by narrative."

That statement is not only illogical, it's absurd. Morris has an inflated sense not only of his own importance but of mine. Franklin Dupree did not base his evidentiary rulings in a 1979 trial on a point of view expressed in a book published four years later.

Twelve jurors convicted MacDonald based on the evidence presented in court. That conviction was upheld by appellate courts before *Fatal Vision* was published. Nothing I wrote put MacDonald in prison or has played a role in keeping him there. Because he murdered his wife and children and got caught, MacDonald would be locked up today even if I'd never heard of him.

Morris's distorted view of the role *Fatal Vision* has played in the case is one he shares with MacDonald himself. In a 1988 letter to Janet Malcolm, MacDonald wrote that "by altering the known facts," I had constructed "an evil thing," *Fatal Vision.*

"By lying for money," MacDonald complained, "by selling an artificial view of reality, McGinniss has stolen from me (or anyone) the ability to ever get the full truth out."

Not once, not even during the seven-week trial of his lawsuit against me, have MacDonald or his lawyers been able to point to a single factual error in *Fatal Vision.* More important, as has been demonstrated repeatedly over the thirty-three years since MacDonald's conviction, the full truth about the murders *did* come out at his trial. The failure of wave after wave of MacDonald attorneys to ever persuade an appellate court otherwise proves that.

Twenty-four years ago, Errol Morris made a movie that showed a convicted man to be innocent. *The Thin Blue Line* is an admirable piece of work, but not all convictions are alike. Even the most aggressive of defense attorneys will admit that the vast majority of those found guilty are guilty. To try to make MacDonald an exception requires journalistic sins of both omission and commission.

In his attempt to deconstruct the narrative of *Fatal Vision* and replace it with one of his own devising, Morris utterly ignores the vast body of physical evidence that proved MacDonald's guilt beyond a reasonable doubt. Yet every bit of it has stood the test of time. To simply wish it away by pretending it doesn't exist is as ineffective as it is irresponsible.

In terms of commission: Morris claims that evidence that might have demonstrated MacDonald's innocence was either destroyed by incompetent investigators or suppressed by prosecutors such as Brian Murtagh, who were more interested in victory than in justice. Even a cursory examination of the case record exposes both allegations as false.

There are also constant drumbeats heralding the discovery of "new evidence": fibers, hairs, candle wax, pieces of latex gloves that supposedly demonstrate the presence of intruders in the MacDonald home during the early-morning hours of February 17, 1970. What Morris fails to acknowledge is that there is *nothing new about any of this.* Bernie Segal presented it all in his closing argument, but the jury didn't buy it and convicted MacDonald after only six hours of deliberation. In talking to jurors afterwards, I learned that not one of them thought MacDonald might have been innocent. The only

reason they took even six hours was because they wanted to be fair to him, to be sure that none of them had the slightest doubt about his guilt.

It strains the facts of the case to claim that startling new evidence has recently been discovered. Every moonbeam and mote of dust that could not be linked to a member of the MacDonald family wa presented to jurors as evidence of intruders in 1979, rejected by them, and litigated in district and circuit courts for years afterwards.

3. The Girl in the Floppy Hat

Much of Morris's book involves the troubled young woman Helena Stoeckley, who testified as a witness for the defense at the 1979 trial. Morris bays about her like a hound dog who thinks he's got a raccoon trapped up a tree, but in the end it's much ado about nothing. He's not wrong to consider her as part of his hypothesis, but he's grossly mistaken to suggest that investigators turned a blind eye toward her because they were so obsessed with pinning blame on MacDonald.

Stoeckley's name was first mentioned in connection with the murders almost before the sun rose over Fort Bragg on February 17, 1970. I can assure you that it will be mentioned in the very last judicial opinion written about this case. Her aura, like a fog that obscures a coastline that otherwise could be charted with precision, has pervaded the MacDonald case for more than forty years.

She was seventeen at the time of the murders, the daughter of a retired lieutenant colonel from For Bragg, and already addicted to hard drugs. She'd been thrown out of her home and was living in the drug-infested Haymount section of Fayetteville, considered at the time the hippie district.

Stoeckley paid for her drugs by working as an informant for a Fayetteville Police Department narcotics detective named Prince Edward Beasley. He knew that she sometimes wore a floppy hat, owned a blond wig, and wore high boots, like many other hippie wannabes. The day after the murders finding her in the company of several young men, he questioned her. He told her she resembled MacDonald's description of the female intruder and asked whether she was involved.

She made a joke in response. When Beasley told her to get serious, she said, according to his later recollection, "In my mind it seems that I saw this thing happen, but I was heavy on mescaline."

Beasley told investigators that he then took the whole group into custody. He said he called the CI at Fort Bragg to say he had people he thought they should talk to, but when nobody showed up after a hour and a half, he let them go.

Stoeckley, like hundreds of other Fayetteville-area hippies, was questioned repeatedly in the days that followed the murders. She was even quoted by name in a newspaper story, complaining, "Every time I go out, they pull me in." She told a reporter that her problem was "I don't have an alibi. The night it happened, nobody saw me."

Stoeckley resurfaced in connection with the case in August 1970, when a linen-service deliveryma named William Posey bumped into Bernie Segal outside the lawyer's Fayetteville motel room.

Eager to claim the $5,000 reward that Freddy and Mildred Kassab had offered for information leading to the arrest of the killers, Posey told Segal that he should look into a girl named Helena, who was a drug addict, a drug dealer, and a member of a witchcraft cult. He said she was about seventeen years old and frequently wore a blond wig, high boots, and floppy hat. At the time of the murders, he been living next door to her in the Haymount neighborhood.

Posey said that on February 17, he'd gotten up to go to the bathroom at about 4:00 a.m. Looking ou the window, he'd seen a car pull into the driveway shared by residents of his house and the house nex door. He'd seen two or three men in the car and heard them laughing. Then he'd seen the girl named Helena get out of the car and go inside.

On the day of the MacDonald family funerals, Posey told Segal, Helena had dressed in black and

had hung funeral wreaths from the porch of her apartment. After that, she no longer wore her wig, boots, or floppy hat.

Posey said he'd seen her again recently. For the first time, he asked if she'd been involved in the murders. She replied, "I don't remember what I did that night."

Segal wasted no time putting Posey on the witness stand at the Article 32 hearing, where he repeated his story.

The CID promptly sent agent William Ivory, who'd been the first CID investigator to the crime scene and who had questioned Stoeckley early in the investigation, to interview her again.

Ivory said that Stoeckley told him she remembered going out alone that night, taking a friend's ca for a drive, but did not recall where she'd gone or what she'd done, because she'd been smoking marijuana. She said that if she had been involved in the murder, she was sure she would remember it.

By the time he interviewed Stoeckley, Ivory was so certain MacDonald had murdered his family that he didn't even bother to take notes. Under Segal's withering cross-examination, the CID detectiv came across as a dull-witted bungler whose tunnel vision had prevented him from pursuing a viable lead.

In his recommendation that charges against MacDonald be dismissed, the Article 32 investigating officer recommended that Stoeckley be further scrutinized. The job fell to the CID's director of internal affairs, Colonel Jack Pruett, and Chief Warrant Officer Peter Kearns. Until Pruett and Kearns came along, no one connected to the case except Bernie Segal had taken Stoeckley seriously. The two new investigators took her very seriously indeed.

They assigned agent Richard J. Mahon to learn all he could about Stoeckley. She had moved from Fayetteville to Nashville, but Mahon interviewed her during one of her visits home, in December 1970. She refused to take a polygraph or be fingerprinted, but she told Mahon she couldn't recall wha had happened on February 17 because she had taken so many drugs.

Mahon spoke with Stoeckley's parents concerning their daughter's behavior after the crimes. They said she had joked about a newspaper article that suggested she might have been involved but that as time passed, and as she'd taken more drugs, she began to say she wondered whether it might not be true.

Mahon learned that in April 1970 Stoeckley had been admitted to Womack Army Medical Center, at Fort Bragg, suffering from symptoms of drug addiction. Her father told a military psychiatrist that she was "a girl who was always seeking constant attention."

The psychiatrist noted, "Using Seconal, heroin, and many other drugs, she said she would shoot up almost constantly." He found that "currently, she feels terribly worthless and unwanted." He recommended that she be transferred to the University of North Carolina Medical Center, in Chapel Hill, for "long term psychotherapy."

She was admitted and placed on methadone. She told the admitting psychiatrist that she had been taking "everything available, including heroin, opium, LSD, cocaine, methadone and barbiturates."

The Chapel Hill doctors' final diagnosis was "narcotics addiction in a schizoid personality." Stoeckley was discharged in May. Less than a month later, she was readmitted to Womack with hepatitis.

Pruett and Kearns devoted months of attention to Helena Stoeckley. They learned that she'd supposedly told a neighbor in Nashville, "I can't ever go home again. I was involved in some murder My family don't want me around."

Then she'd said to the neighbor, "I don't know whether I did it or not. I've been a heavy drug user and when you are on drugs you do funny things. … And other things that you think happened really

didn't. So I don't know. I can't remember. When I came to myself I was in the rain. It was raining an I was terrified. So much blood, so much blood. I couldn't see or think of anything except blood."

The neighbor, Jane Zillioux, told investigators that Stoeckley had said the men she'd been with ha killed a woman and two small children, and that she'd been wearing a blond wig and white boots.

Pruett and Kearns located another Nashville acquaintance of Stoeckley's, a man named Charles "Red" Underhill, who'd once heard her scream, "They killed her and the two children! They killed th two children and her!"

In January 1971, Stoeckley wrote to the narcotics detective, Prince Edward Beasley, whom she sometimes called Daddy. "What does the CID want of me? I didn't murder anyone?!! Are they going to keep hassling me?"

In March, the Nashville house where Stoeckley was living was raided by narcotics detectives. Stoeckley approached one of them, a tall, handsome man named James Gaddis, to tell him that she was a suspect in the MacDonald murders and that she'd like to work for him as an informant.

Gaddis began to use her in that capacity. She talked incessantly about the MacDonald case. "She told me a lot of things," he reported to the CID. "She also contradicted herself. On one occasion she told me that she definitely knew who had killed the MacDonald family but she didn't give me any names. On another occasion she told me that she only had suspicions. … On one occasion she even told me that Dr. MacDonald did it himself."

On April 23, 1971, a CID agent and an Army polygraph operator went to Nashville. Stoeckley agreed to take a polygraph examination but said she wanted to talk to Gaddis first.

"She again told me she wasn't involved in the murders, but that she knew who the killers were," Gaddis said. "She said she had been there and had witnessed the murders, but she wouldn't give me any details. She also mentioned that Dr. MacDonald had once refused to give one of her addicted friends any methadone."

The polygraph examiner reported that "she repeatedly acknowledged knowing the identity of the persons who committed the murders," but that her heavy drug use prevented him from evaluating her truthfulness.

Stoeckley took another polygraph. This time she described frequent dreams in which she was on th couch in MacDonald's living room with MacDonald standing over her, holding an ice pick that dripped blood. She repeated that she knew the killers and that if she received a grant of immunity she'd provide both names and motive. The CID told her she would not get immunity. She retracted h previous statements and said MacDonald had killed his family himself.

That night, at the behest of the CID, Gaddis took her out to dinner. At the end of the meal, he snuc her wineglass into a napkin and put it in his pocket. Then he took her to a local lover's lane and embraced her, running his hands through her hair, thereby obtaining a hair sample to go along with th fingerprints she'd left on the wineglass. He turned both over to the CID. Laboratory testing revealed that neither the hair nor the prints matched any found at 544 Castle Drive.

On April 26, 1971, Stoeckley arrived for a third polygraph examination, but then refused to take it The next day, she wrote to Gaddis: "Please believe I was not in that house!!!!! I really and truly don' know anything about the whole mess."

The polygraph operator, Robert Brisentine, reported that, "due to Miss Stoeckley's state of mind and excessive drug use during the period of the homicides, a conclusion could not be reached as to whether she knew who committed the homicides or whether she was present at the scene."

The CID eventually tracked down, interviewed, and polygraphed every person whom Stoeckley ha ever named as possibly being involved in the crimes. All denied involvement, and all denials were

supported by cross-checking stories and through polygraph results.

The one person who flunked his polygraph was Posey, the delivery man. His results indicated that his Article 32 testimony had not been truthful. Posey then admitted that he had not, in fact, seen Stoeckley get out of a car during the early-morning hours of February 17. In fact, he wasn't sure he'd seen her at all that day. He'd been trying to collect the reward.

After months of investigation, Pruett and Kearns tallied up what they'd learned about Stoeckley. She was a drug addict who, even without the drugs, was mentally disturbed. She had a reputation for making up stories. She desperately craved attention. She had no information about the murders that indicated she'd ever been anywhere near 544 Castle Drive. Some days, she said she might have participated; other days, she said she knew MacDonald had committed the crimes. Not a single investigator who focused on Stoeckley came away believing that there was even the slightest chance that she or anyone she knew had been involved in the murders.

Pruett and Kearns also knew that the more sensational the crime, the more semi-demented people crawl out of their lairs and try to gain a moment's notoriety by falsely claiming involvement. In addition, the reinvestigation and fresh analysis of crime-scene evidence by the FBI were turning up more and more information that strengthened the case against MacDonald.

After one of the most exhaustive and extensive investigations they'd ever conducted, Pruett and Kearns decided that they could safely discount Stoeckley as a suspect.

For Errol Morris or anyone else to say, forty years later, that "the girl in the floppy hat" was never fully investigated is preposterous.

4. The Speedy Trial Seesaw

Jeffrey MacDonald was convicted of murder in August 1979 because incontrovertible physical evidence demonstrated his guilt beyond a reasonable doubt.

The evidence presented at trial was far more compelling than the preliminary version the Army wa still assembling at the time of the Article 32 hearing in 1970. By 1979 the FBI had shown that MacDonald had stabbed Colette twenty-one times with the ice pick through his pajama top *after* placing it on her chest; that he'd wrapped her body in a bedspread in Kristen's room and carried it back to the master bedroom, leaving a footprint in Colette's blood on Kristen's floor; that the bent paring knife he said he'd removed from Colette's chest had never been in her chest; that the forty-eight holes in his pajama top were clean and cylindrical and could not have been made while the top was in motion, being used to fend off blows from intruders. There was much, much more.

As Murtagh said years later, "The jury convicted him on the basis of physical evidence that could only have come from him … and which could not be explained by the actions of intruders. The only thing that ever separated MacDonald from being a murderer was the purported credibility of his account of intruders." That evaporated when the jury heard him testify that an account he had given t Freddy Kassab of having gotten some buddies together to torture a confession out of one of the intruders and then kill him had been "a lie of incredible proportions."

The jury decided, as I did, too, that almost nothing MacDonald said about the murders was *not* a li

Initially, MacDonald's lawyers didn't want to address the evidence. Instead, following his conviction, they renewed their claim that he'd been denied his constitutional right to a speedy trial.

In July 1980, again by a 2–1 vote, a Fourth Circuit panel agreed. Writing for the majority, Judge Francis D. Murnaghan found that the Justice Department had "vacillated over and postponed decisio on whether to seek indictment" to such an extent that it constituted "sheer bureaucratic indifference." He and the concurring judge, James Marshall Sprouse, ruled that the two years the Justice Departmer had taken before convening a grand jury constituted "unreasonable and inexcusable" delay. "It contributed to the dissipation of recollections," Murnaghan wrote.

Particularly disturbing was the effect of the delay on the memory of Helena Stoeckley, who testified at the trial that she couldn't remember the events of February 17, 1970. "In a bizarre way," h wrote, "she had made remarks to others on several occasions in 1970, 1971, and 1979 which, while fa from precise or complete, indicated that she was one of a group of intruders whose supposed entry in the MacDonald home and killing of his wife and children constituted the essential defense offered by MacDonald."

Murnaghan found that "the consequences of having put on a witness who was to have verified MacDonald's own version of a Manson-like intrusion, only to have her fail to do so, may well have been disastrous to the defense. … The possible reasons why Stoeckley did not so testify are several. But the reason she asserted under oath was failure of memory. The government's inexcusable delay o over two years' duration cannot be eliminated as a potential, indeed a probable cause of that memory lapse."

In a stinging dissent, Judge Albert V. Bryan noted that MacDonald's "guilt and sanity were

established to the satisfaction of the trial jury beyond a reasonable doubt. Nevertheless, this court absolves him forever of this hideous offense, shockingly laying his release exclusively on the failure of the government to prosecute within a shorter time than it did."

Bryan was not persuaded that Stoeckley would have testified differently if the case had come to trial sooner. "Stoeckley herself in her trial testimony explains that her inability to recall the pre-dawn events of February 17, 1970, resulted from her consumption, earlier in the evening, of large quantities of drugs; she in no way indicated that time had weakened her recollection." He characterized the statements Stoeckley had made over the years as "vague, fragmented and contradictory" and observed that "they do not indicate simply a gradually fading memory, eroded by time."

On August 22, three weeks after the Fourth Circuit decision, Dupree approved MacDonald's release on bail of $100,000.

MacDonald returned to work at St. Mary Medical Center, in Long Beach, California. He traded in his Citroën-Maserati for a Jaguar, purchased a condominium at the Mammoth Mountain Ski Area to complement his waterfront condo in Huntington Beach, and began dating a new girlfriend.

The federal appellate process permits the side that loses a decision made by a three-judge panel to request that the full court consider the questions on which the panel ruled. In August 1980, the government filed a motion seeking such a review, known as an *en banc* rehearing, in the Fourth Circuit.

In December, in a 5–5 tie vote, the Fourth Circuit effectively denied the government motion. (A majority must agree to hear the case *en banc*, or before the full bench: in this game, a tie goes to the side that's already won.)

But the lack of resolution was a clarion call to the Supreme Court to again consider issues raised by the MacDonald case. It was a call that the nation's highest court soon answered.

* * *

In March 1981, the Justice Department filed a petition for a writ of certiorari with the Supreme Court. That's legalspeak for asking the Supreme Court to review a circuit court decision—in this instance, the Fourth Circuit panel's decision that had set MacDonald free.

Ninety percent of petitions for writs of certiorari are denied. Rule 10 of *Rules of the Supreme Court of the United States*, titled "Considerations Governing Review on Certiorari," states in part that "a petition for a writ of certiorari will be granted only for compelling reasons." On May 26, 1981, the Supreme Court granted the writ. Oral arguments were heard in Washington on December 7.

On March 31, 1982, by a 6–3 decision, the Supreme Court reversed the Fourth Circuit panel. In his opinion, Chief Justice Warren Burger wrote that the facts of the case were not at issue. He noted, however, "The jury that heard all of the witnesses and saw the evidence unanimously decided that respondent murdered his wife and children." Focusing on the speedy-trial claim, the chief justice wrote:

> Once charges are dismissed, the speedy trial guarantee is no longer applicable. At that point, the formerly accused is, at most, in the same position as any other subject of a criminal investigation. …

> In this case, the homicide charges initiated by the Army were terminated less than a year after the crimes were committed; after that, there was no criminal prosecution pending on which MacDonald could have been tried until the grand jury, in January 1975, returned the indictment.

Burger also absolved the Justice Department from any blame for the delay. He wrote:

> Plainly the indictment of an accused—perhaps even more so the indictment of a physician—for the heinous and brutal murder of his pregnant wife and two small children is not a matter to be hastily arrived at. … The care obviously given the matter by the Justice Department is certainly not any indication of bad faith or deliberate delay.

Thurgood Marshall, who wrote the dissent, disagreed. He cited "indifference … and neglect" on th part of the Justice Department. He also found that the majority's decision was "hopelessly at odds with any sensible understanding of speedy trial policies."

In Marshall's view,

> Nothing in the language [of the Sixth Amendment] suggests that a defendant must be continuously under indictment to obtain the benefits of the speedy trial right. Rather, a natural reading of the language is that the Speedy Trial Clause continues to protect one who has been accused of a crime until the government has completed its attempts to try him for that crime.

Nonetheless, the majority view had the force of law. Within an hour of the announcement of the Supreme Court decision, Dupree signed an order revoking bail. When FBI agents arrested MacDonal at his Huntington Beach condo, they found in his nightstand a .44 Magnum revolver and a full box of ammunition.

5. Case Closed?

Once again, the MacDonald case sat in the laps of Fourth Circuit judges Bryan, Murnaghan, and Sprouse. In June 1982, the panel heard oral arguments on MacDonald's remaining grounds of appeal. In August, they unanimously upheld his 1979 conviction.

In doing so, they found that Dupree had *not* committed reversible error by:

- not allowing testimony by MacDonald's psychiatrist to the effect that he didn't seem the sort of person who would have committed such a horrible crime;
- allowing the government to demonstrate that the pattern of puncture holes in MacDonald's pajama top matched the pattern of ice-pick wounds in Colette's chest, indicating that the pajama top had been on her chest before she was stabbed, which contradicted his story;
- not allowing into evidence the findings of the Article 32 investigating officer; and
- excluding the testimony of seven witnesses whom MacDonald wanted to call to testify abou what Helena Stoeckley had told them at various times.

The Fourth Circuit panel found no evidence to support the allegation that Errol Morris would mak so many years later—that the trial had been "rigged in favor of the prosecution."

(They describe their reasoning in detail in their opinion, which can be found at *U.S.* v. *MacDonald 688 F.2d 224, 11 Fed. R. Evid. Serv. 474 [4th Cir. (N.C.) Aug 16, 1982] [NO. 79-5253]*, available to the public via PACER [Public Access to Court Electronic Records] at www.pacer.gov.)

The only hint of disagreement came in regard to the "Stoeckley Seven": Prince Edward Beasley an William Posey of Fayetteville; James Gaddis, Jane Zillioux, and Red Underhill, from Nashville; the Army polygraph operator, Robert Brisentine; and Wendy Rouder, a young lawyer on MacDonald's defense team who had spent time with Stoeckley in Raleigh after she testified.

Segal had wanted each of the Stoeckley Seven to testify about what Stoeckley had told them regarding the murders. Dupree listened to them all out of the presence of the jury. He then ruled their testimony inadmissible because it was hearsay.

At trial, Dupree said at a bench conference, "This Stoeckley girl is, I think, one of the most tragic figures I have ever had appear in court. She is extremely paranoid about this particular thing, and wh 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."

Then, speaking specifically to Segal, the judge said, "I want you to know that Helena called me twice on Saturday night stating that she was living in mortal dread of physical harm by Bernard Sega 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."

It didn't matter whether the judges on the Fourth Circuit panel would have made the same rulings the trial. At issue was only whether Dupree had abused his discretion. "No such abuse is evident here Bryan declared.