

JUSTICE DENIED

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The Magazine for the
Wrongly Convicted

US SUPREME COURT OKs IMMUNITY FOR ADMINISTRATIVE PROSECUTORS

SEE P. 16

Mashelle Bullington

Exonerated 13 years
after burglary conviction
in California.
See page 7



Robert "Bob" Doyle

Posthumously awarded
\$129,000 for 2-1/2
years of wrongful imprisonment
in Alabama.
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Claude McCollum

Michigan prosecutor fired for
failing to disclose video exonerating
McCollum of murder.
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Clay Bennett

Released after 3 years
imprisonment in New
York for a rape that
never happened.
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Romeo Phillion

Conviction of
1967 murder
overturned by
proof he was
180 miles
from the crime scene. Served
31 years in prison.
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Jeong Won-Seop

Acquitted of murder
35 years after 1973
conviction.
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Message From The Publisher

Lonnie LaBonte’s story of being convicted of a double murder in Montgomery County, Texas was in *JD* Issue 34, Summer 2006. The Innocence Project of Texas became involved in his case and over the dogged opposition of the prosecution, on January 13, 2009 the Texas Court of Appeals granted DNA testing of the prosecution’s key evidence. Swabs from spots on the exterior of LaBonte’s truck tested positive for the possible presence of iron, and the prosecution claimed at trial it was the victim’s blood. If the spots prove to not be blood, the prosecution will have no physical evidence tying him to the crime, and he can petition for a new trial.

Karlyn Eklof’s story of being convicted of a Springfield, Oregon murder was in *JD* Issue 35, Fall 2006. On March 2, 2009 the US Supreme Court declined to review the lower federal court’s denial of her writ of habeas corpus. Anthony Bornstein with the Federal Public Defenders Office in Portland, Oregon wrote brilliant briefs on Karlyn’s behalf, but he was unable to convince the federal judges that evidence of her innocence concealed from the jury by the prosecution’s *Brady* violations wasn’t procedurally barred from consideration on its merits. Erma Armstrong, the retired music teacher who discovered the concealed evidence, is now spearheading the effort to prepare a clemency petition for submission to Oregon’s governor.

William “Bill” Coleman’s 18 month refusal to eat solid food to protest what he claims is the injustice of his conviction for allegedly raping his wife, is unusual for this country. (See article on p. 12) One of the most well known hunger strikes was in 1981 at Northern Ireland’s Long Kesh prison that resulted in the starvation death of ten IRA prisoners. *JD’s* Bookshop now carries the book *Ten Men Dead*. (See p. 21)

The underhanded tactic of prosecutors concealing exculpatory evidence is rarely exposed to the light of media publicity. Fortunately for Claude McCollum (See p. 19) and Ted Stevens (See *JD* Editorial on p. 5), publicity in their cases contributed to overturning their convictions.

Hans Sherrer, Publisher

Justice:Denied - the magazine for the wrongly convicted
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Justice: Denied’s logo represents the snake of evil and injustice climbing up on the scales of justice.



Information About *Justice:Denied*

Six issues of *Justice:Denied* magazine costs \$10 for prisoners and \$20 for all other people and organizations. Prisoners can pay with stamps and pre-stamped envelopes. A sample issue costs \$3. See order form on page 23. An information packet will be sent with requests that include a first-class stamp or a pre-stamped envelope. Write: Justice Denied; PO Box 68911; Seattle, WA 98168.

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If you have an account of a wrongful conviction that you want to share, send a first-class stamp or a pre-stamped envelope with a request for an information packet to, Justice Denied, PO Box 68911, Seattle, WA 98168. Cases of wrongful conviction submitted in accordance with *Justice:Denied’s* guidelines will be reviewed for their suitability to be published. *Justice:Denied* reserves the right to edit all submitted accounts for any reason.

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Justice:Denied volunteers directly contributing to this issue:
 Natalie Smith-Parra, Editor; Terri Smith, Mailing; Katha McDonald, Mailing;
 and Hans Sherrer.

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



Colette and Jeff at a friend's wedding in 1968.
(Used with permission of Kathryn MacDonald)

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.

MacDonald cont. on page 4

MacDonald cont. from page 3

Both died in the early 1980's due to substance abuse.

After the McGinniss trial, Jeff learned that his mother was seriously ill and asked to stay in California to be near her. For four years total, he continued to live in solitary confinement, depending on friends to bring his mother to visit until her death in 1990.

He used those years of isolation to pore over thousands of pages of government documents obtained through the Freedom of Information Act. Exculpatory evidence, suppressed at trial, slowly came to light.

Not only was there physical evidence of intruders, but the evidence corroborated Jeff's account. Among the items the government suppressed were: 22" long blond wig fibers; black wool fibers on the body of Colette and the murder club; and blood in the exact location where Jeff said he had been knocked unconscious.

Jeff's FOIA requests were controlled by the DOJ, which doled them out over many years. By providing the documents piecemeal over time, there was no way to present the suppressed evidence in court all at once. Then, when a new item of evidence was discovered it was ruled to have been found "too late" or "not enough by itself" to overturn the case. Although the evidence had been secreted from him, Jeff had to show due diligence by filing a habeas in a timely manner, or be procedurally barred from ever relying on that new evidence.

Perjury by FBI expert and Blackburn imprisoned

In 1997, on Jeff's behalf defense attorneys Harvey Silverglate, Andrew Good and Phil Cormier filed a habeas petition based on fraud on the court. The petition relied on new evidence that FBI crime lab expert Michael Malone had falsely sworn synthetic blond hairs found at the crime scene were not from a wig. Malone left the FBI in disgrace three years later, when he was found to have lied in several other cases. Jeff's petition also requested DNA testing of biological evidence.

Judge Dupree had died, and in proceedings that took place in 1993 and 1994, Jeff's prosecutor Blackburn was disbarred, and charged with 12 felony counts of dishonesty that included embezzlement and changing court documents. After his conviction Blackburn faced up to 110 years in federal prison, but was sentenced to 7 years and was released after serving only 3 months.

Jeff's case was now being presided over by Judge James Fox. Admittedly close to the late Judge Dupree, he declined to recuse himself. Instead, he signed a waiver stating that he could be impartial. In addition, DOJ attorney Murtagh remained in control of the case for the government.

DNA testing ordered

In 1997, Judge Fox denied the habeas in total. Jeff appealed, and the Fourth Circuit upheld Fox's ruling regarding Malone, but granted DNA tests, remanding the matter back to Judge Fox to supervise them.

The defense sought to have all remaining biological evidence tested – some 50 exhibits that had been in FBI custody for 35 years. Innocence Project co-founder Barry Scheck and attorney Andy Good argued for the defense. DOJ attorney Murtagh opposed the inclusion of all exhibits, in particular any blood evidence. Judge Fox granted limited DNA testing.

Of the approximately 15 exhibits approved for testing, several specimens were found to be contaminated or missing. They were not replaced with other available exhibits. The scope of the testing became increasingly narrow.

Many years passed as we awaited the DNA test results. During that time, I became a paralegal in an effort to better assist the lawyers. Over the ensuing years, three witnesses contacted the defense website set-up in 2000, and that is overseen by volunteers. (www.themacdonaldcase.org) The three men, who did not know each other, signed sworn statements that Greg Mitchell had confessed to killing the MacDonald family.

A U.S. Marshal with a conscience

In 2005, former Deputy U.S. Marshal Jimmy B. Britt contacted Jeff's lawyers Wade Smith, who had remained of counsel since 1979, and Tim Junkin, who joined the defense in 2004. Mr. Britt explained that his conscience was weighing on him. He was the federal law enforcement official who escorted Helena Stoeckley during Jeff's trial. Consequently, he was present during a meeting in prosecutor Blackburn's office during which Stoeckley admitted her involvement in the murders. He also witnessed Blackburn threaten Stoeckley with indictment for murder if she so testified in front of the jury. The next day she capitulated to Blackburn's threat and lied on the stand.

Mr. Britt signed an affidavit as to what he saw and heard. He had a sterling reputation for integrity and passed a polygraph. The impor-



U.S. Marshal Jimmy Britt following Helena Stoeckley during Jeffrey MacDonald's 1979 trial. (AP photo)

tance of his revelations cannot be overstated. As the Fourth Circuit pointedly wrote in 1980:

"Stoeckley's statement on the stand at trial that she had no recollection of her whereabouts or activities during the critical period of midnight to 4:30 AM on the night of the crimes (although she remembered in detail events immediately prior and immediately subsequent to that crucial interval) had a great potential for prejudice to MacDonald, given the substantial possibility that she would have testified to being present in the MacDonald home during the dreadful massacre.

Had Stoeckley testified as it was reasonable to expect she might have testified, the injury to the government's case would have been incalculably great." (*U.S. v. MacDonald*, 632 F.2d 258 (4th Cir., 7-29-1980))

In 2005 a 4th habeas petition is filed

In late 2005, our attorneys (now including Hart Miles) filed a successive habeas petition seeking to vacate Jeff's conviction based on new evidence of his factual innocence. In addition to Jimmy Britt's explosive revelations, the petition included the three Mitchell confession affidavits, and two other affidavits corroborating Mr. Britt's statements. Those affidavits were from former U.S. Marshal Lee Tart and attorney Wendy Rouder, who had spent considerable time with Helena Stoeckley during Jeff's trial.

The standards of the gate keeping process for having a successive habeas petition reviewed on its merits are exceedingly high. One must make out a *prima facie* case for actual innocence, with new evidence so strong that had it been known at trial, no reasonable juror would have voted to convict. In January 2006 a three-judge panel of the Fourth Circuit Court unanimously agreed that Jeff had met that standard, and remanded the case back to Judge Fox for review.

MacDonald cont. on page 5

MacDonald cont. from page 4

DNA tests completed in 2006

In March 2006, after an 8-1/2 year wait, the DNA tests were completed. Before the results were released to Judge Fox, the government issued a press release falsely stating that the DNA results confirmed Jeff's guilt. The truth was the opposite. A hair forcibly removed with its root intact was found under the fingernail of 2-year-old Kristen – and the hair was not Jeff's. Another human hair, found on Kristen's bed also did not match Jeff's, and a third human hair, found underneath the body of his wife Colette, likewise did not match Jeff's hair. In later filings Murtagh dismissed the three hairs as unimportant.

The DOJ opposed Jeff's petition, and after the DNA testing, Murtagh requested that Judge Fox wait for the US Supreme Court's decision in *House v. Bell*. At issue was whether or not a defendant who passes the habeas threshold for a claim of actual innocence is entitled to a review of the totality of the evidence in his case. In June 2006 the Supreme Court decided in favor of such defendants.

The wait for Judge Fox's decision ensued. It seemed reasonable that, as mandated by *House v. Bell*, the court would order a hearing at which Britt, Rouder, Blackburn, and the three Mitchell witnesses would be heard, and at which the DNA results and all the other exculpatory evidence amassed over time would be reviewed. The government opposed a hearing, arguing that *House v. Bell*, the very decision Murtagh had asked the judge to wait on, did not apply to Jeff.

Helena Stoeckley's mother comes forward

Then, in March 2007, the younger brother of Helena Stoeckley, Gene, contacted our website. He stated that when Helena was dying she had confessed to their mother that she was indeed present during the murders. Their father, an Army Lt. Colonel, was now deceased. The MacDonald murders were not a topic for discussion while he was living. With the case back in the news, Gene's conscience compelled him to come forward. Helena told her mother that she lied on the stand at Jeff's trial, "because she was afraid of the prosecutor."

Attorney Hart Miles and notary Laura Redd met me to draft and witness Mrs. Stoeckley's sworn statement in front of Gene. It was filed in April 2007. The FBI immediately descended on Mrs. Stoeckley, as it had on Mr. Britt. Murtagh filed an opposition to Mrs. Stoeckley's affidavit, arguing that she was delusional, and that I had coerced her into signing a false statement.

Judge Fox remains silent as Jimmy Britt's health fails

In the summer of 2007, our lawyers wrote Judge Fox about the failing health of our witnesses. They stood ready to testify at any hearing he might order, but they were gravely ill. (Mr. Britt was dying of congestive heart failure, as was Mrs. Stoeckley.) Judge Fox did not respond.

In the fall of 2007, the defense wrote Judge Fox once again, requesting a status conference. The government objected, arguing there was no need, despite a year and a half of complete silence. Judge Fox did not respond.

In early 2008, Mr. Britt was holding on for dear life, desperate for his day in court. Soon after, Mrs. Stoeckley entered hospice care.

Jimmy Britt died on October 19, 2008.

Two weeks later, on November 4, Judge Fox issued a blanket denial of Jeff's petition. In his opinion, he accepted Jimmy Britt's sworn statement as true. Nonetheless, he denied Jeff relief, stating that since Helena Stoeckley was dead, no one could ever know whether Blackburn's threat affected her testimony. Judge Fox also refused to consider the evidence as a whole as mandated by *House v. Bell*, including the exculpatory DNA. He asserted that he didn't need to hold a hearing because there was no evidence Jeff could ever present that would make any difference to him.

Current Status

In December, 2008, federal appellate attorney Joe Zsezotarski joined the defense. Mrs. Stoeckley died on February 2, 2009. Two weeks later, on February 19, 2009, we filed a brief with the Fourth Circuit Court of Appeals requesting an appeal of Judge Fox's decision. An *Amicus* brief advocating for Jeff is expected to be filed in early April with the Fourth Circuit by Barry Scheck on behalf of the Innocence Project, and co-signed by the North Carolina Center on Actual Innocence and the New England Innocence Project.

Through 30 years of incarceration, my husband has never wavered from his initial account of events. Now 65 years old, he has always maintained his factual innocence. His courage and perseverance through the most unimaginable of circumstances continues to inspire me, and we move forward with an unshakable belief in the power of the truth.

There is extensive documentation about the Jeffrey MacDonald case at his official website, www.themacdonaldcase.org

JD Editorial Comment About Jeffrey MacDonald's Case

Brian Murtagh was an Army captain in his mid-20s, when in 1971 he became involved in the investigation of the murder of Jeffrey R. MacDonald's wife and two daughters at Ft. Bragg, North Carolina. After the Army cleared MacDonald and he left the Army, Murtagh continued investigating him. As an Army officer Murtagh assisted the US Department of Justice with the grand jury's indictment of MacDonald in 1975. Murtagh then accepted an offer to resign from the Army and take a DOJ job assisting with MacDonald's prosecution. Murtagh became co-counsel to lead prosecutor AUSA James Blackburn by claiming he "would assure a conviction."

Murtagh was true to his word. MacDonald was convicted in 1979 after Blackburn (with Murtagh remaining silent) failed to disclose exculpatory evidence and suborned perjury by key defense witness Helena Stoeckley.

For the past 30 years Murtagh has remained the government's point man in fighting to prevent MacDonald's retrial by a jury that would hear the truth about Stoeckley's participation in the murders, as well as additional testimonial and DNA evidence supporting that intruders murdered MacDonald's wife and children ... just as he has maintained since the day of the crime.

Murtagh became involved in MacDonald's case 38 years ago. The evidence supporting MacDonald's innocence has reached the point that Murtagh's opposition to a new trial can be interpreted as a strategy to avoid conceding MacDonald should not have been indicted ... much less imprisoned for 30 years. At what point does a prosecutor's zeal lose legitimacy and become a "truth be damned" psychotic obsession?

U.S. Attorney General Eric Holder announced on April 1, 2009 that "in the interests of justice" the DOJ filed a motion to dismiss the indictment and set aside former Alaska Senator Ted Stevens' October 2008 convictions for making false financial statements. The DOJ acted in response to media stories about the federal prosecutor's failure to disclose exculpatory evidence to Steven's lawyers in order to ensure his conviction.

Murtagh and Blackburn acted with the same "win at all costs" mentality as Stevens' prosecutors. The evidence of MacDonald's innocence is compelling, and AG Holder should act in "in the interests of justice" and order Murtagh and his DOJ allies to cease opposing a new trial for MacDonald, or in the alternative to move for dismissal of his indictment and to set aside his convictions.