



# NACDL NEWS RELEASE

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FOR IMMEDIATE RELEASE

## Long-Suppressed Evidence Will Be Key to Jeffrey MacDonald's Day in Court

WASHINGTON, DC (Sept. 14, 2012) – After spending the past 33 years in prison resulting from an unfair trial and a wrongful conviction, former Army Captain and medical doctor Jeffrey R. MacDonald is scheduled to get a meaningful day in court on Monday. The date is fortuitous, yet auspicious – September 17 is Constitution Day, commemorating the date that the Constitution was signed in Philadelphia 225 years ago.

There is no question that the crime was horrific. There is also no longer any question that MacDonald's conviction was due to failures by the prosecution to live up to its constitutional duties to disclose evidence favorable to his defense and allow the defendant to present witnesses in his defense. Today's hearing will also examine the written testimony of a former U.S. Marshal, now deceased, who was present when the lead prosecutor at MacDonald's trial coerced a defense witness into changing her testimony and then lied about it to the court.

### Discovery Reform Is Long Overdue

In America, if you are accused of a crime, you have the constitutional right to all information in the government's possession that is favorable to your case. That was the U.S. Supreme Court's ruling nearly fifty years ago in *Brady v. Maryland*, 373 U.S. 83 (1963), and it was the law of the land in 1979 when MacDonald was indicted for three murders he almost certainly did not commit. Yet it is a law that still has no teeth. Evidence is all too often withheld from the defense, negligently or intentionally to gain a strategic advantage for the prosecution, and there is very little the courts can do to correct the errors, even in the unlikely cases where such misconduct is later discovered.

The National Association of Criminal Defense Lawyers, which joined the Innocence Project and others in an *amicus curiae* brief on MacDonald's behalf [\[LINK\]](#), has long sought changes in the federal discovery rules. Model legislation drafted by NACDL's Discovery Reform Task Force [\[LINK\]](#) would require the government to disclose to the defense all information favorable to the accused in relation to any issue to be determined in a federal criminal case and provide a range of sanctions for failure to do so.

Bipartisan discovery reform legislation [\[LINK\]](#) was introduced in the Senate earlier this year. If such legislation had been in effect at the time of MacDonald's trial, he would have had an opportunity to present *all* the evidence to the jury, if the case had gone to trial at all.

(more)

## The MacDonald Case

“At long last, the U.S. District Court for the Eastern District of North Carolina will begin the process of examining the evidence in the MacDonald case,” said NACDL President-Elect Jerry J. Cox on the eve of the hearing. “Not just the evidence against the defendant, as appeals courts usually do, and as the federal courts in the MacDonald case have done in the past, but the newly-discovered evidence of his innocence, and evidence that was withheld or suppressed at his 1979 trial. Most of that newly-discovered evidence has been in the possession of the government for over 40 years. MacDonald is only now getting his day in court where that evidence will be presented and, under instructions of the U.S. Court of Appeals for the Fourth Circuit, fully considered.”

According to the Fourth Circuit’s decision [\[LINK\]](#), the provisions of the *habeas corpus* statute mandate that “all the evidence” be viewed “as a whole.”<sup>1</sup>

“As the Fourth Circuit pointed out last year when it reversed Senior Judge James Fox’s decision denial of relief, Judge Fox declined to take into account evidence of innocence that has been submitted in prior proceedings over the years. What’s worse is he also precluded other newly-discovered evidence – specifically, the DNA results and the affidavit of the mother of a key defense witness, Helen Stoeckley. The appeals court has finally instructed Judge Fox to consider *all* the evidence, as the *habeas* rules and case law require,” Cox explained.

Since the night of the murders, on February 17, 1970, Jeffrey MacDonald has maintained that the murders were committed by four intruders. After moving his youngest daughter Kristen to her own bed, he said he lay down on the couch and fell asleep:

Sometime later, he was awakened by his wife and oldest daughter's screams and looked up to see a woman with blonde hair wearing a floppy hat, boots and a short skirt carrying a lighted candle and chanting “acid is groovy; kill the pigs.” He said that three men, two white and one black, standing near the couch then attacked him, pulling or tearing his pajama top over his head which he then used to ward off their blows. 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.<sup>2</sup>

The story was considered fantastic, and then-Capt. MacDonald was soon arrested by military police on suspicion that he killed his wife daughters in a fit of rage and tried to cover it up by tampering with the crime scene. A military judge found the charges “not true” the following October. Nine years later, MacDonald was indicted, tried and convicted in an unfair trial in federal court for the same crimes.

MacDonald has litigated his innocence and deprivation of his Fifth and Sixth Amendment right to a fair trial long enough. The “newly-discovered” DNA evidence was submitted to the Armed Forces DNA Identification Lab (AFDIL) in 1998. The lab’s analysis, which turned up unidentified DNA proving the presence of intruders, took eight more years.<sup>3</sup> The DNA evidence came from “unsourced” human hairs found at the crime scene. One hair was found with blood residue *under the fingernail of daughter Kristen MacDonald* and one two-inch hair *with root and follicle intact* found under the body of MacDonald’s wife, Colette.

It has been seven years since former deputy United States Marshal Jimmy B. Britt, now deceased, revealed that a trial prosecutor threatened defense witness Helen Stoeckley,<sup>4</sup> [\[LINK\]](#) who would have testified that she was with the three men who invaded MacDonald’s home and who murdered

MacDonald's family.

“Nine years passed between the murders and MacDonald's trial. Thirty-three years more have passed since the verdict. The exculpatory evidence in the case is powerful. The delays in the case have been tragic. The government's refusal to correct its own errors demands a prompt resolution, for justice delayed is justice denied,” Cox said. “We need to reform the discovery rules to make sure a case like this does not happen again.”

For more information, visit NACDL's Discovery Reform website at <https://www.nacdl.org/Advocacy.aspx?id=21754&libID=21724>

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#### Notes

<sup>1</sup> *United States v. MacDonald*, 641 F.3d 596, 612 (4<sup>th</sup> Cir. 2011) (“[T]he court must consider all the evidence, old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted” at trial). The Fourth Circuit opinion can be found on NACDL's website at

<https://www.nacdl.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=16121&libID=16091>.

<sup>2</sup> *Id.*, 641 F.3d at 599-600.

<sup>3</sup> *Id.*, Brief of The Innocence Project, North Carolina Center on Actual Innocence, New England Innocence Project, and National Association of Criminal Defense Lawyers as *Amici Curiae* in Support of Defendant-Appellant and Reversal of the District Court's Judgment, filed 6/15/10. Brief available at

<https://www.nacdl.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=16122&libID=16092>.

<sup>4</sup> Affidavit of Jimmy B. Britt dated 11/3/2005, available at

<http://www.wildernessoferror.com/woe/download.py?q=20051103%20-%20Jimmy%20Britt,%20affidavit.pdf>

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*The National Association of Criminal Defense Lawyers is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. A professional bar association founded in 1958, NACDL's approximately 10,000 direct members in 28 countries – and 90 state, provincial and local affiliate organizations totaling up to 40,000 attorneys – include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal justice system.*

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