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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.