



ORIGINAL

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
Vs.)
)
JEFFREY R. MacDONALD,)
)
Movant/Defendant,)

Crim. No. 75-26-CR-3
No. 5:06-CV-24-F
Judge Fox

EXHIBITS TO
MOVANT'S REPLY TO THE RESPONSE OF THE GOVERNMENT
TO HIS MOTION UNDER 28 U.S.C. § 2255 TO VACATE HIS
SENTENCE

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EXHIBIT # 1



DEPARTMENT OF THE ARMY
WOMACK ARMY HOSPITAL SPECIALIZED TREATMENT CENTER
FORT BRAGG, NORTH CAROLINA 28307

71-01011-0015

AJBWH-RG

13 Apr 70

STATEMENT

I certify that this is a true and correct copy of medical records of CPT Jeffrey R. MacDonald, SSAN 112-34-8378, of his inpatient stay in Womack Army Hospital, Fort Bragg, N. C. 17 February 1970 through 26 February 1970.

RICHARD L. HENDERSON
2LT, MSC
Assistant Registrar

This statement accompanied 2 copies of complete medical record which were released to Lt. Jane F. Douthett, 225-58-9219, legal officer, associate of Cpt. MacDonald.

R.L.H.

111 V

FOR OFFICIAL USE ONLY

ACID011-00015

CLINICAL RECORD COVER SHEET (For Address, 1962, Office of the Surgeon General.

For use of this form, see AR 40-400 (AR 40-2 for preparation of Admitting Plate); the proponent, 1962, Office of the Surgeon General.

1. ADMISSION NOTES <p style="text-align: center; font-size: 2em;">EVID OF A OR N YES NO</p>	2-21. PATIENT DATA 717-655 MACDONALD JEFFREY R CPT M 27 CAU RA C 6M 17FEB70 20-1234-93 78 HMO 6 SFG 251 0415 N NONE 3100 MC W 27JUN71 17FEB70 DIRECT DOROTHY-M 182 WASH AVE PATCHOGUE NY MULT STAB WOUNDS H R NO STRAUB RD JR	LINE LEGEND (2-21) 1 REGISTER NO.-NAME-GRADE OR RATING 2 SEX-AGE-RACE-DEPT(USA, USAF, etc.)-RELIGION-LENGTH OF SERVICE - TIME OF ADM-DATE OF ADM 3 SERVICE NO.-ORG-WARD NO.-CASUALTY CODE INDICATOR 4 FLYING STATUS-AERONAUTICAL RATING OR DESIGNATION-MOS-BR U SERVICE-NATIONALITY-PREVIOUS ADM-EXPIRATION DATE 5 DATE OF INITIAL ADM-SOURCE OF ADM 6 NAME OF SPONSOR OR PERSON TO BE NOTIFIED-RELATIONSHIP 7 ADDRESS OF SPONSOR OR PERSON TO BE NOTIFIED 8 AND 9 (For any local use desired at individual facility) (See AR 40-2 for complete explanation)
22. ADMITTING OFFICER	23. DIAGNOSES (See instructions for recording as shown on reverse side. Include all required related data)	

Dg. 8602 - Pneumothorax, traumatic, 40%, right side. LD: Undetermined

AI - Allegedly attacked by unknown assailants approximately 0400 hours, 17 Feb 70, at residence, Ft. Bragg, N.C.

24. OPERATIONS AND SPECIAL THERAPEUTIC PROCEDURES (Show date for each; show anesthetic for each operation)

17 Feb 70 - 271 Tube thoracotomy, closed, 1st ribs. Anes: 1 1/2 Local Xylocaine.

18 Feb 70 - 271 Tube thoracotomy, closed, 2nd ribs. Anes: 1 1/2 Local Xylocaine.

25. SELECTED ADMINISTRATIVE DATA (Show nature of and dates for board proceedings; show fact of and dates for leave, AWOL, subsisting elsewhere, detached service, etc.)

SPECIALIZED TREATMENT - General Surgery

PHYSICAL PROFILE													
TYPE	SERIAL						SUFFIX					PROFILE UNCHANGED	
	P	U	L	H	E	S	R	T	D	O	N		
PREVIOUS													<input checked="" type="checkbox"/>
REVISED													<input type="checkbox"/>
26. DAYS DURATION THIS FACILITY													
ALL	9	IN HOSPITAL OR INFIRMARY		9	SUBSISTING ELSEWHERE		QUARTERS OR DISPENSARY		LEAVE		OTHER		
27. NATURE OF DISPOSITION										28. DATE OF DISPOSITION			
DUTY										26 Feb 70			
29. SIGNATURE OF ATTENDING PHYSICIAN							30. SIGNATURE OF REGISTRAR OR MEDICAL RECORDS OFFICER						
FRANK E. GARDNER, LTC, M.C.							<i>[Signature]</i>						
31. NAME AND LOCATION OF MEDICAL TREATMENT FACILITY										32. REGISTER NUMBER			
PILGRIM SPECIALIZED TREATMENT CENTER, MAJOR, MSC, N.C.										71-055			

DA FORM 108-2 5-2

EDITION OF 1 JUL 62, IS OBSOLETE

CLINICAL RECORD COVER SHEET (For Addressograph)
 For use of this form, see AR 40-400 (AR 40-2 for preparation of Admitting Plate); the proponent agency is Office of the Surgeon General.

<p>1. ADMISSION NOTES</p> <p style="text-align: center; font-size: 2em; font-weight: bold;">EVID OF A OR N YES NO</p>	<p>2-21. PATIENT DATA</p> <p>717-655 MACDONALD JEFFREY R OPT M 27 CAU RA C 2M 17FEB70 20-1234-83 79 HNO 6 SFG 2DI 0415 N NONE 3100 WC N 27JUN71 17FEB70 DIRECT DOROTHY-W 192 WASH AVE PATCHOGUE NY MULT STAB WOUNDS H R NO STRAUE RD JR</p>	<p>LINE LEGEND (2-21)</p> <p>1 REGISTER NO-NAME-GRADE OR RATING 2 SEX-AGE-RACE-DEPT(USA, USAP, etc.)-RELIGION-LENGTH OF SERVICE-TIME OF ADM-DATE OF ADM 3 SERVICE NO-ORG-WARD NO-CASUALTY CODE INDICATOR 4 FLYING STATUS-AERONAUTICAL RATING OR DESIGNATION-MOS-BR O SERVICE-NATIONALITY-PREVIOUS ADM-EXPIRATION DATE 5 DATE OF INITIAL ADM-SOURCE OF ADM 6 NAME OF SPONSOR OR PERSON TO BE NOTIFIED-RELATIONSHIP 7 ADDRESS OF SPONSOR OR PERSON TO BE NOTIFIED 8 AND 9 (For any local use desired at individual facility) (See AR 40-2 for complete explanation)</p>																																																																	
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<p>24. OPERATIONS AND SPECIAL THERAPEUTIC PROCEDURES (Show date for each; show anesthetic for each operation)</p> <p>271 17 Feb 70 Tube thoracotomy closed 7th RICS 18 Feb 70 " " " 2nd RICS</p>																																																																			
<p>25. SELECTED ADMINISTRATIVE DATA (Show nature of and dates for board proceedings; show fact of and dates for leave, AWOL, substituting elsewhere, detached service, etc.)</p> <p style="text-align: center; font-size: 1.5em;">ST. G.S.</p> <p style="text-align: right; font-size: 1.2em; transform: rotate(-15deg);">Discharged 27 Feb 70 F.P.</p>																																																																			
<p>26. PHYSICAL PROFILE</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th rowspan="2">TYPE</th> <th colspan="10">SERIAL</th> <th colspan="4">SUFFIX</th> <th rowspan="2">PROFILE UNCHANGE:</th> </tr> <tr> <th>P</th><th>U</th><th>L</th><th>H</th><th>E</th><th>S</th><th>R</th><th>T</th><th>D</th><th>O</th><th>N</th> <th></th><th></th><th></th><th></th> </tr> </thead> <tbody> <tr> <td>PREVIOUS</td> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> <td><input checked="" type="checkbox"/></td> </tr> <tr> <td>REVISED</td> <td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td> <td></td> </tr> </tbody> </table>			TYPE	SERIAL										SUFFIX				PROFILE UNCHANGE:	P	U	L	H	E	S	R	T	D	O	N					PREVIOUS																<input checked="" type="checkbox"/>	REVISED																
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71-01011-00015

CLINICAL RECORD		NARRATIVE SUMMARY		rw
DATE OF ADMISSION	DATE OF DISCHARGE	NUMBER OF DAYS HOSPITALIZED		
17 Feb 70	26 Feb 70	9		

(Sign and date at end of narrative)

HISTORY OF THE PRESENT ILLNESS: This 26-year-old, white male was attacked in his home by unknown assailants at approximately 4 a.m. on the day of admission. He sustained a blow to the head and multiple small stab wounds.

PAST MEDICAL HISTORY: Noncontributory.

PHYSICAL EXAMINATION: This is a well-developed, well-nourished male in moderate distress. Blood pressure - 128/70. Pulse - 88. HEENT - swelling and hematoma in the midline on the forehead. Dried blood was around the mouth. Eyes - pupils were round, regular and reactive to light and accommodation. Chest - symmetrical; 1 cm stab wound in the 6th intercostal space in the midclavicular line; decreased breath sounds on the right; no rales or rhonchi. Abdomen - several superficial lacerations, not extending into the subcutaneous tissue; also several small puncture wounds that may have been from an instrument, such as an ice pick. Abdomen was soft with no rebound. Bowel sounds were active. External genitalia - within normal limits. Extremities - full range of motion.

LABORATORY DATA: Hematocrit - 43%. White blood count - 12,647 with 83 segs, 17 lymphs. Urinalysis - within normal limits. Chest X-ray - 20% right pneumothorax on admission; 17 Feb 70 - chest X-ray showed chest tube in 7th intercostal space with persistent 20% pneumothorax on the right and no infiltrates or gross effusion. 18 Feb 70 - right angle chest tube in 2nd intercostal space; lower chest tube removed; lungs now re-expanded. 20 Feb 70 - chest tube was removed and lung remained well expanded; minimal blunting of right costophrenic angle. 23 Feb 70 - minimal pleural effusion on the right; re-expansion of right middle lobe; lungs clear; heart, mediastinum and hony thorax remained within normal limits.

HOSPITAL COURSE: Following admission, the patient was taken to the Intensive Care Ward where a # 36 argyle chest tube was inserted in the 7th intercostal space in the midclavicular line and attached to low Gomco suction. The tube could not be passed to the apex and the upper and middle lobes did not expand well. Therefore,

(Use additional sheets of this form (Standard Form 502) if more space is required)

SIGNATURE OF PHYSICIAN	DATE	IDENTIFICATION NO. OR ORGANIZATION	
FRANK E. GEMA, LTC, MC	12 Mar 70	20-11234-83 78	HHQ 6 SFG
PATIENT'S IDENTIFICATION (For typed or written entries give: Name - last, first, middle, grade, date, hospital or medical facility)		REGISTER NO.	WARD NO.
		717-655	2D

MAG DONALD JEFFREY R CPT
 WOMACK ARMY HOSPITAL SPECIALIZED TREATMENT CENTER
 FORT BRAGG, NORTH CAROLINA

NARRATIVE SUMMARY
 Standard Form 502
 502-107-02

FOR OFFICIAL USE ONLY

CLINICAL RECORD		NARRATIVE SUMMARY page 2 rw	
DATE OF ADMISSION	DATE OF DISCHARGE	NUMBER OF DAYS HOSPITALIZED	
17 Feb 70	26 Feb 70	9	

(Sign and date at end of narrative)

a # 34 right angle chest tube was placed in the 2nd intercostal space on the following day with good re-expansion of the lung. The patient had had a previous pneumonia which may have resulted in adhesions which trapped the lower chest tube. This tube was removed following adequate function of the right angle chest tube. Followup chest X-rays revealed the lungs to remain expanded. There was no air leak and the right angle tube was removed on 20 Feb 70. The lung remained well-expanded on chest X-ray on 23 Feb 70 and the patient was discharged on 26 Feb 70 to duty with no profile change.

DIAGNOSIS: Traumatic pneumothorax.

OPERATIONS:
 17 Feb 70 - Tube thoracotomy, closed, 7th intercostal space. Anes: Local.
 18 Feb 70 - Tube thoracotomy, closed, 2nd right intercostal space.

(Use additional sheets of this form (Standard Form 502) if more space is required)

SIGNATURE OF PHYSICIAN	DATE	IDENTIFICATION NO.	ORGANIZATION
FRANK E. GEMMA, LTC, MC	12 Mar 70	20-1234-83 78	HHQ 6 SFG
PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle; grade; date; hospital or medical facility)		REGISTER NO.	WARD NO.
MAC DONALD JEFFREY R CPT WOMACK ARMY HOSPITAL SPECIALIZED TREATMENT CENTER FORT BRAGG, NORTH CAROLINA		717-655	2D

NARRATIVE SUMMARY
 Standard Form 502
 512-107-02

FOR OFFICIAL USE ONLY

CLINICAL RECORD

HISTORY—Part I

NATURE AND DURATION OF COMPLAINTS (Include circumstance of admission)

17 Feb 76

Stabbed at home.

HISTORY OF PRESENT ILLNESSES

Some Patient

26 y 6 W M physician was stabbed this morning. His wife + children were killed by the same group that stabbed him at 544 Cottle Dr. Complaint of pain in the Rt chest and pain to inspiration. Small stab wound 7th interspace.

This incident occurred about 0400 17 Feb 76. No abdominal complaint - no sweating or water complaints pertinent to exam. Patient does not know if he was unconscious.

S. J. [Signature]

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give Name - last, first, middle, grade, date; hospital or medical facility)

REGISTER NO.

WARD NO.

McDONALD JEFFREY CPT
717-651 20-11031-83 78
2D

HISTORY—Part I
Standard Form 504
504-105

EXHIBIT



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71-CIB011-C0015

CLINICAL RECORD

HISTORY—Part 2

PAST HISTORY

INSTRUCTIONS.—Include (1) OCCUPATION (Civilian and military), (2) MILITARY HISTORY (Include geographic locations and dates) (3) HABITS (Alcohol, tobacco, and drugs), (4) FAMILY HISTORY, (5) CHILDHOOD ILLNESSES, (6) ADULT ILLNESSES, (7) OPERATIONS, (8) INJURIES, and (9) DRUG SENSITIVITIES AND ALLERGIC REACTIONS.

- ① Army physician
- ③ Habits Smoke \bar{o}
~~None~~ ETOH - socially
Drug non.
- ④ FH - Father died at 47 of pulmonary fibrosis
- ⑤ CAT - usual & unremarkable
- ⑥ AI - minor back trouble.
- ⑦ Operation \bar{o}
- ⑧ None
- ⑨ Allergic to bee stings

S. J. [Signature]

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle, grade, date; hospital or medical facility)

REGISTER NO.

WARD NO.

McDONALD JEFFREY CPT
717-651 20-11234-83 78

HISTORY (Parts 2 and 3)
Standard Form 505
505-105

EXHIBIT

2D
V

USE ONLY

77-1-CID011-00015

CLINICAL RECORD			PHYSICAL EXAMINATION				
DATE OF EXAM.	HEIGHT	WEIGHT			TEMPERATURE	PULSE	BLOOD PRESSURE
		AVERAGE	MAXIMUM	PRESENT			
17 Feb 70	5'11"			186		88	128/70

INSTRUCTIONS.—Describe (1) General Appearance and Mental Status; (2) Head and Neck (General); (3) Eyes; (4) Ears; (5) Nose; (6) Mouth; (7) Throat; (8) Teeth; (9) Chest (General); (10) Lungs; (11) Cardiovascular; (12) Abdomen; (13) Hernia; (14) Genitalia; (15) Rectum; (16) Prostate; (17) Back; (18) Extremities; (19) Neurological; (20) Skin; (21) Lymphatics.

- 1) Excited coherent health young male
 - concerned about family
- 2) Head & neck - unremarkable; blood about mouth. Swelling + tenderness - midline forehead.
- 3) Eye PERRLA - 5mm 20M's
 normal
- 4) Ear - clear - neg.
- 5) Nose
- 6) Mouth no blood teeth intact
- 7) Throat - no blood. good air way.
- 8) Intact.
- 9) Chest - 1 cm break in skin
 Rt ant chest at 7th ICS - small amount
 of leakage of air. ↓ breath sounds on
 Rt. X-rays show 20% pneumothorax
 on Rt.

(Continue on reverse side)

PATIENT'S IDENTIFICATION (For typed or written entries give: Name—last, first, middle; grade; date; hospital or medical facility)	REGISTER NO.	WARD NO.

McDONALD JEFFREY CPT
 717-651 20-11034-35 78

PHYSICAL EXAMINATION
 Standard Form 508
 506-104



FOR OFFICIAL USE ONLY.

PHYSICAL EXAMINATION

~~71-01011-00015~~

CV - Pulse 88 B.P. $\frac{124}{70}$
Peripheral pulses good.

Abdomen - Superficial laceration RUQ
no pain to palpation - No lumps
palpable.

Adult of genitalia testes Rectal defecated.
Rectum ok.

Ext laceration - 1.5 cm ant @ upper
arm. - no neuro deficit.

Neuro - intact.

Imp ① 20% Rt
pneumothorax

② Multiple superficial
lacerations.

③ Contusion of forehead
[Signature]

INITIAL IMPRESSION

SIGNATURE OF PHYSICIAN

EXHIBIT

IV

FOR OFFICIAL USE ONLY

U.S. GOVERNMENT PRINTING OFFICE 1968 O-214-648

EXHIBIT 2

SWORN DECLARATION OF JEFFREY R. MacDONALD

I, Jeffrey R. MacDonald, under the penalties of perjury, hereby state and affirm that the following is true to the best of my knowledge:

1. In August, 1979, in the case of *U.S. v. MacDonald*, I was wrongly convicted of the murders of my wife, Colette, and two children, Kimberley and Kristen. Prior to and during my trial, my attorneys, Bernard Segal, Wade Smith, and Michael Malley, spent countless hours investigating the case, seeking discovery from the government and the U.S. Army, interviewing witnesses, pursuing evidentiary leads, and searching for and examining forensic evidence. During the trial (both before and after witness Helena Stoeckley testified) my lawyers Bernard Segal and Wade Smith, and Segal's assistant, Wendy Rouder, interviewed Helena Stoeckley at length and numerous times trying to get Stoeckley to candidly tell the entire truth of what she knew. While Stoeckley did tell Wendy Rouder that she was afraid of the prosecutors, despite the efforts of my legal team to get Stoeckley to tell the whole truth, Stoeckley never divulged that she had admitted to participating in the crimes to a deputy U.S. Marshal, or to prosecutor James Blackburn, or that prosecutor James Blackburn had threatened and intimidated her into changing her testimony and claiming amnesia as to her whereabouts on the night my family was murdered.
2. Since the time of my trial and conviction, I have done everything in my power to continue to investigate the circumstances of the crime (including continuing to try and get Helena Stoeckley to tell the entire truth of what she knew), in an effort to prove what is true, which is that I did not commit this crime, but that it was committed by a group of intruders.
3. I have both hired and utilized the free assistance of numerous attorneys, investigators, investigative journalists, paralegals, law students, and other interested parties to pursue and examine every available lead, to interview anyone with any information concerning the crime, to interview Helena Stoeckley (while she was alive) to try and get her to truthfully tell what happened, to obtain the complete investigative reports, lab notes, and files from the government, and to search for any way to prove my innocence.
4. I have spent all of my money in this effort, and have no money left in my possession or under my ownership or control.
5. In this regard, following my conviction in 1979, during the period in 1979 to 1982 when my conviction was reversed and I returned to work, and for the remainder

of 1982 when my conviction was reinstated, my trial attorney, Bernard Segal, with the assistance of many others, pursued my appeals. I also hired attorney Ralph Spritzer, and investigators Ted Gunderson, Prince Beasley, and Homer Young, and utilized the services of many volunteers to pursue the investigation of my innocence, to interview Helena Stoeckley, and attempt to elicit from her the truth of what she knew. Several of these individuals working on my behalf spent many days interviewing Stoeckley trying to learn all that she knew. While Helena Stoeckley did admit to Gunderson, Beasley, and other investigators on several occasions that she was present when others in her group killed my wife and two daughters, despite the significant efforts of my investigators to get her to tell all, Stoeckley never divulged that she had told these facts to deputy U.S. Marshal Jim Britt during her trip to Raleigh, N.C. to testify. She also never divulged to anyone that the day before she testified, she admitted her involvement in the crime to prosecutor James Blackburn and that he threatened her with a murder prosecution if she so testified, and that as a result of that threat, she changed her testimony and claimed to have amnesia concerning her whereabouts at the time the murders of my family occurred. These investigators working on my behalf were also directed to continue to investigate the crime and to follow all leads no matter how speculative, and they did so. In their efforts they interviewed many individuals with potential knowledge of the crime. They also pursued information contained in the government files obtained through numerous Freedom of Information Act requests. In 1982, I enlisted the legal assistance of attorneys Brian O'Neill, and others, as well as the investigative services of John O'Connell and Ray Shedlick, to assist in this ongoing effort, and to pursue all investigative evidentiary leads in order to prove my innocence. The cumulative efforts of all of these people led to the motions for post conviction relief filed on my behalf in 1984, and to the dozens of affidavits and exhibits attached thereto.

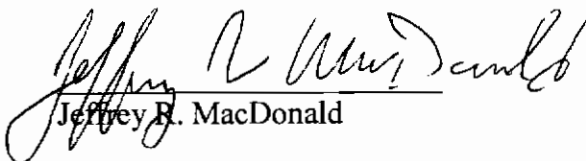
6. Following my conviction, and from 1986 through the 1990's, I received the assistance of investigative journalists Fred Bost and Jerry Allen Potter who spent thousands of hours reviewing the crime, the course of the litigation, searching to uncover new information that would lead to the truth coming to light. Bost and Potter accumulated and reviewed thousands of documents concerning the evidence, interviewed numerous witnesses and potential leads, and wrote a book called *Fatal Justice*, published in 1995, detailing their work, strongly arguing the case for my innocence. Fred Bost has remained as an investigator to the present time, and Jerry Potter remained until his death in 2004.
7. Following the denial of my 1984 motions for post-trial relief, I enlisted the assistance of the law firm of Silvergate and Good, in Boston, Ma., as well as attorney Alan Dershowitz, and these and other lawyers continued to pursue investigating the circumstances of the crime, continued to pursue all potential leads as to new information concerning the crime, and continued to study and analyze any information contained in the government files that could be obtained through numerous FOIA requests. These lawyers interviewed many people in their efforts to uncover new information that would exonerate me. The work of

these lawyers, and Barry Scheck (who began lending his assistance in 1997) led to the motions for relief filed on my behalf in 1990 and 1997 and to the many affidavits and exhibits attached thereto.

8. From the date of my conviction through the present, attorney Wade Smith of Raleigh, N.C., has continued to remain my counsel and at my request has pursued every reasonable evidentiary lead concerning new evidence concerning the crime. He, and members of his law firm, Tharrington Smith, have interviewed numerous people in an effort to uncover the truth about the crime. It was to Wade Smith that former deputy U.S. Marshal Jim Britt first made his disclosure of new evidence in January of 2005.
9. Since the late 1990's to the present time, volunteers working on my behalf have maintained a website (www.themacdonaldcase.org) and established an e-mail address (contact@themacdonaldcase.org) in an effort to encourage potential witnesses and others with new information to contact the defense. Leads procured via the website have been thoroughly evaluated and actively pursued by volunteers, investigators, paralegals, and the attorneys.
10. In the autumn of 2004 my wife, Kathryn, enlisted the additional representation of the law firm of Moffett & Junkin, and attorneys Timothy Junkin and John Moffett of such firm located in Gaithersburg, Md., to continue examining the trial record, the documents associated with the investigation, and to continue looking for new evidence that might lead to my exoneration and new ways for me to regain my freedom. Moffett and Junkin also were enlisted to assist my other lawyers (principally Wade Smith, and Silverglate & Good (now Good & Cormier), in their efforts to complete certain DNA testing that in 1997 had been ordered by the 4th Circuit to be conducted. Additionally, in December, 2005, attorney J. Hart Miles, Jr., located in Raleigh, N.C., was hired to assist in my representation. On my behalf, these new attorneys have pursued the investigation of my case, and sought to follow up on every reasonable lead concerning new information that would lead to relief in my 26 year struggle to prove my factual innocence.

May 1st, 2006

These statements I swear and affirm under the penalties of perjury are true to the best of my knowledge.


Jeffrey B. MacDonald

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA,)
)
v.) NO. 75-26-CR-3
)
JEFFREY R. MacDONALD,)
)
Defendant.)

TRIAL BEFORE
THE HONORABLE FRANKLIN T. DUPREE, JR.
UNITED STATES CHIEF DISTRICT JUDGE
AND A JURY

AT RALEIGH: THURSDAY, JULY 26, 1979

PAGES 2403-2640 TRIAL DAY SIX

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THE COURT: Very well; let him come

back.

(Whereupon,

ROBERT B. SHAW

the witness on the stand at the time of recess, resumed the stand and testified further as follows:)

CROSS - EXAMINATION 9:31 a.m.

BY MR. SEGAL:

Q May I ask you, prior to taking the witness stand yesterday after luncheon break, had you spoken to anyone during the luncheon break about this case or about your testimony?

A Yes; I was interviewed by Government Counsel.

Q Was that between 1:00 and 2:30 yesterday afternoon?

A Yes, sir; I believe so.

Q Was that about your proposed testimony here in Court yesterday and today?

A Well, it was the fact that I would testify. We talked about that.

Q How long did you talk with Government Counsel at the lunch break yesterday?

A About this case?

Q Yes; about this case.

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1 A Or fibers; I am not certain which.

2 Q Well, perhaps if you would just first take a
3 look at the model--I think we have a pointer up there.
4 Could you indicate to us where is this particular loca-
5 tion that you saw fibers or threads? Let me just move
6 this, Mr. Shaw, and if you would like to come around be-
7 hind it so the members of the jury can see?

8 A At the end of the hallway. I testified yes-
9 terday that there were some pieces of clothing and a
10 doll's head and some bobby pins, as I remember, and right
11 here at the end of the hallway.

12 Q All right; that would be, if we could de-
13 scribe it, right in or about the doorway that connects
14 the hallway into the living room; is that correct?

15 A Yes, sir.

16 Q That would be on the south side of the door-
17 way, as opposed to the north side?

18 A Correct.

19 Q How about the fibers and threads? Were there
20 any in that vicinity?

21 A That is the third place that I saw fibers or
22 threads.

23 Q You are telling us, I think, two different
24 things: one, that you saw some clothing which--although
25 I know you did not describe it--was it red and

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red-patterned clothing in or about that area?

A Yes.

Q All right, then. In addition to that, you saw fibers and threads in and about the same area?

A Correct.

Q Can you be any more precise?

A Here in this area (indicating).

Q All right; you are indicating---

A (Interposing) The south side of the hallway at the entrance to the living room.

MR. SEGAL: All right; would you go back, Mr. Shaw?

BY MR. SEGAL:

Q Now, did you personally collect those fibers and threads that were near the entrance to the living room?

A I don't think so, Mr. Segal. I don't remember.

Q I am sorry; I couldn't hear you.

A I don't remember.

Q Do you have any idea who else, if anyone, collected the fibers and threads that were located near the entrance to the living room?

A It could have been Mr. Ivory, or one of the members of the laboratory team.

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1 Q In the course of that work, did you ever
 2 find anyone who said that they had knowledge or had heard
 3 that Jeffrey MacDonald had ever beaten, struck or as-
 4 sailed his wife, Colette MacDonald, at any time?

5 A No, sir.

6 Q During the course of that investigation
 7 period from February 17 and to the beginning of the mili-
 8 tary proceedings, did you ever find any witness who told
 9 you that Jeffrey MacDonald had ever struck or beaten
 10 either Kristen or Kimberly MacDonald?

11 A No, sir.

12 MR. SEGAL: I have no further questions
 13 of this witness, Your Honor.

14 THE COURT: Any redirect?

15 MR. BLACKBURN: Yes, sir.

16 THE COURT: All right.

17 R E D I R E C T E X A M I N A T I O N 11:06 a.m.

18
 19 BY MR. BLACKBURN:

20 Q Mr. Shaw, when you spoke earlier this morning
 21 with respect to the fibers or threads that you found in
 22 the hallway near the living room---

23 A (Interposing) Yes, sir.

24 Q Do you recall approximately how many you saw?

25 A I remember seeing a tangled bunch or ball of

1 threads or fibers.

2 Q What color were they?

3 A As I recall, they were a blue color.

4 Q Now, with respect, sir, to Government Exhibit
5 165(b)--do you recall, sir, when you first walked around
6 to that back area what time it was?

7 A Yes; it was about 6:30 in the morning, Febru-
8 ary 17th.

9 Q Was it daylight?

10 A There was light in the sky, but I had to use
11 a flashlight to see any kind of details.

12 Q Now, you spoke of some interviews with Dr.
13 MacDonald; is that correct? You are aware of the Paul
14 Connolly interview at the hospital?

15 A Yes, sir.

16 Q Are you aware of any other interviews that
17 were conducted with respect to Dr. MacDonald prior to
18 April the 6th?

19 A Yes, sir; I know that Mr. Hodges interviewed
20 Dr. MacDonald, I believe, and Mr. Caverly from the FBI.
21 How many times each of them might have interviewed him,
22 I don't know; but I think that those three individuals
23 did.

24 Q You interviewed him on April 6th; is that
25 correct?

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA,)
)
v.)
) NO. 75-26-CR-3
JEFFREY R. MacDONALD,)
)
Defendant.)

TRIAL BEFORE
THE HONORABLE FRANKLIN T. DUPREE, JR.
UNITED STATES CHIEF DISTRICT JUDGE
AND A JURY

AT RALEIGH: FRIDAY, JULY 27, 1979

PAGES 2641-2902 TRIAL DAY SEVEN



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THIS CAUSE came on for further trial before The Honorable Franklin T. Dupree, Jr., United States Chief District Judge, and a jury, on Friday, July 27, 1979, at Raleigh, North Carolina.

(The following proceedings were held in the presence of the jury and alternates.)

THE COURT: Good morning, ladies and gentlemen. Any further evidence for the Government in this case?

MR. BLACKBURN: Yes, sir.

THE COURT: Call your witness.

MR. BLACKBURN: Your Honor, we call Michael Newman.

(Whereupon,

MICHAEL DOUGLAS NEWMAN

was called as a witness, duly sworn, and testified as follows:)

DIRECT EXAMINATION 9:01 a.m.

BY MR. BLACKBURN:



1 BY MR. SMITH:

2 Q What parts of his face, if you recall?

3 A If I recall correctly, it was on his
4 forehead and I believe there was some smeared on the
5 cheeks.

6 Q On both cheeks?

7 A Sir, I really don't recall about the cheeks.
8 I think there was some smeared on the cheeks. It
9 appeared the blood had been smeared with his hands. His
10 hands were also bloody.

11 Q Mr. Newman, unfortunately, the pajama
12 bottoms were thrown away; weren't they?

13 A Yes, sir; they were.

14 Q I know that you regret that. Would you
15 describe the pajama bottoms as you last remember seeing
16 them?

17 A Sir, as I recall, there was blood on the
18 pajama bottoms. The inseam of the pajama bottoms was
19 ripped out from about mid-thigh all the way across. I
20 was the one who went ahead and threw them away, and
21 when we started cleaning up, the CID had been there and
22 everybody else had been around, and no one had picked
23 them up.

24 They were left in the crash room, and I
25 picked them up and threw them away.

1 Q You assumed, I take it, that if anyone
2 had wanted them at that point, something would have been
3 done to preserve them or store them.

4 A Yes, sir.

5 Q Were they just tossed in the trash basket or
6 what happened to them?

7 A Yes, sir; they were thrown into the garbage
8 can.

9 Q Do you know whether any effort was made to
10 retrieve them?

11 A Sir, I really don't know.

12 Q Do you know whether any sample was taken or
13 any cutting was taken from the pajamas of any blood on
14 the pajama bottoms?

15 A I really don't believe there was because
16 they were thrown on the floor there in the crash room
17 and I don't think anyone bothered them until they were
18 picked up and thrown out.

19 Q Do you know how long Dr. MacDonald was in
20 the hospital recuperating?

21 A No, sir; I really don't know exactly.

22 Q How many times did you take his blood
23 pressure or his temperature?

24 A I really don't recall whether I took his
25 blood pressure or not. I had two corpsmen working with

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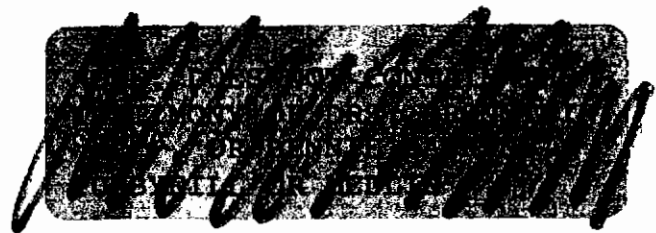
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TRIAL BEFORE
THE HONORABLE FRANKLIN T. DUPREE, JR.
UNITED STATES CHIEF DISTRICT JUDGE
AND A JURY

AT RALEIGH: MONDAY, JULY 30, 1979

PAGES 2903-3124 TRIAL DAY EIGHT



1 A To the best of my recollection; yes, sir.

2 Q And, of course, all this information that you
3 have given to us on both Friday and today are the same
4 facts that you gave in 1970, in the military proceedings
5 in this case?

6 A To the best of my recollection; yes, sir.

7 MR. SEGAL: I think so, too. No
8 further questions.

9 MR. BLACKBURN: We have no further
10 questions, Your Honor.

11 THE COURT: Call your next witness.

12 (Witness excused.)

13 MR. BLACKBURN: Your Honor, we call Dr.
14 Merrill Bronstein.

15 (Whereupon,

16 DR. MERRILL L. BRONSTEIN
17 was called as a witness, duly sworn, and testified as
18 follows:)

19 DIRECT EXAMINATION 10:53 a.m.

20
21 BY MR. BLACKBURN:

22 Q Please state your name, sir?

23 A Merrill Hersch Bronstein.

24 Q Dr. Bronstein, please, if you would, speak
25 loudly enough so everyone can hear you. Dr. Bronstein,

EX

ml 1 BY MR. BLACKBURN:

2 Q Now, in your examination of his head, how
3 many bumps or lumps or bruises could you find?

4 A I only found one bruise. It was a contusion
5 of his forehead and, as I recall, it was on the left side
6 just above the eye.

7 Q After you examined his head area, what next
8 part of his body did you observe?

9 A I looked him over pretty carefully, and he
10 had a couple of lacerations and a stab wound, and some
11 abrasions.

12 Q Now, where were the lacerations?

13 A He had a cut on his left upper outer arm, and
14 it was, I guess, an inch or so long; and he had a cut on
15 his left upper abdomen. In medical terms, it is below
16 the costal margin, below the edge of the ribs, maybe two
17 inches down. And it was about an inch and a half or two
18 long, and it was through the skin and through the fat.

19 Q Well, with respect to the first laceration
20 that you mentioned--the one on the left arm--what medica-
21 tion, if any, did you use to treat that?

22 A I don't recall that I did anything to treat
23 it, other than clean it off.

24 Q How would you classify that wound?

25 A As a laceration.

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Q As a superficial or non-superficial?

A It was non-superficial, in that it was through the skin, but it did not appear to be deeper than that, and there was no bleeding from it. And there was no compromise of the motion of the arm.

Q With respect to the second wound that you mentioned, you said it went down to the fat; is that correct?

A It went through the fat. You could see the fascia. It is kind of a flat tendon of the middle muscle of the belly called the rectus muscle--rectus abdominus. I could see the white fascia, but it wasn't bleeding. It was not superficial, in that it is through the skin and through the subcutaneous tissue, but was not through the fascia.

Q What about with respect to the third wound that you mentioned?

A He had a stab wound of his right chest. I think it was over the top of about the sixth rib, and it was in what we call the anterior axillary line, which is a line that you would draw from the front of your armpit down your side.

Q Approximately how long was this, if you can remember?

A I would say a centimeter and a half--a little

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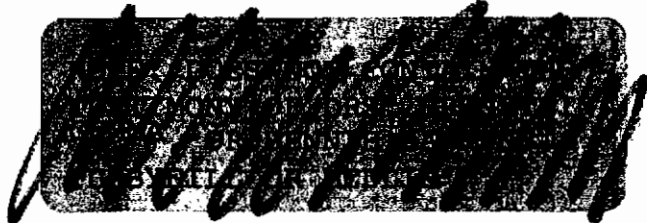
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
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UNITED STATES OF AMERICA,)
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TRIAL BEFORE
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UNITED STATES CHIEF DISTRICT JUDGE
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AT RALEIGH: MONDAY, JULY 30, 1979

PAGES 2903-3124 TRIAL DAY EIGHT



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(Whereupon,

DR. FRANK E. GEMMA

was called as a witness, duly sworn, and testified as follows:)

D I R E C T E X A M I N A T I O N 11:20 p.m.

BY MR. BLACKBURN:

Q State your name, please?

A Frank E. Gemma.

Q Dr. Gemma, if you would, sir, please speak loudly enough, please, sir, so everyone can hear you. Dr. Gemma, where do you presently live?

A Presently in Heidelberg, Germany.

Q What do you do?

A I am a Surgical Consultant for the Army in Europe.

Q What is your education and training, sir? Where did you go to college?

A I went to college at West Virginia University and graduated in 1956, at the Medical School at West Virginia University, and in Medical College of Virginia, graduating in 1960, with an MD Degree, internship, four years of surgical residency, completed in 1967, at Maddigan General Hospital, Tacoma, Washington.

Q In February of 1970, did you have an occasion

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collapsed lung on the right side and two, provide an exitway for any blood that could accumulate as a result of the stab wound.

Q Now, when you say that you "examined him in Intensive Care Ward," what do you mean?

A My examination was primarily the chest, although I observed other injuries, but I didn't have him turn over and examine his legs and a complete physical examination which had been done previously by Dr. Jacobson and somewhat also by Dr. Bronstein.

Q How many ice pick wounds, if any, did you observe on his body?

A I did not count or actually pay much attention to any of the ice pick wounds. There were none of the ice pick wounds that were in any way associated with the chest or were so severe on any part of the body that seemed to cause any complications with his treatment.

Q Now, you speak of the wounds that you saw on his body, besides the chest area, where were they located, sir?

A The one primary wound that was the one of concern was the stab wound just under the nipple on the right-hand side of the chest.

Q Could that also be termed an incised wound?

1 A Yes, it could be, but any fairly sharp
2 instrument is going to make a wound. If an instrument
3 were very dull, it could puncture, say--say, a dull
4 knife--a very dull knife--a thick, heavy, forged steel
5 type of knife which is practically rounded on each edge--
6 could contuse the wound edges. That was the reason that
7 in previous testimony, some significance was placed on
8 calling it incised. It was just that the edges were
9 smooth rather than contused.

10 Q Now, how long was it before you examined
11 him that you determined to put a chest tube into his
12 body?

13 A Well, the determination was made almost
14 immediately. The chest x-rays that were taken in the
15 Emergency Room and subsequently with an expiratory film
16 showed at least a 40 percent collapse of the right lung,
17 and the previous radiologist who had been on duty either
18 had not had him expire and take a film or had had that
19 done and possibly not seen it because he had called it
20 20 percent.

21 Q When you speak of "expiratory," what are you
22 talking about?

23 A Ordinarily, when you go for a chest x-ray,
24 the technician will tell you to take a deeper breath
25 and hold it and then they snap the film. The diaohraom

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1 goes down when you take a deep breath and the
 2 radiologist then is able to see as much of the lung
 3 tissue or at least where it should be by that maneuver.
 4 With a pneumothorax, the full extent of it will not be
 5 quite as apparent because with a deep breath, frequently,
 6 the lung will expand considerably and almost fill up the
 7 chest space and not show but a small area of what looks
 8 like collapsed lung--partially collapsed. Then, when
 9 you exhale and let all of that air out of the lung, the
 10 full extent of the degree of pneumothorax is better--you
 11 can tell better exactly the degree with letting the air
 12 out of the lung by exhaling--expiratory.

13 MR. BLACKBURN: Your Honor, if I may
 14 approach the witness?

15 BY MR. BLACKBURN:

16 Q Dr. Gemma, if you would, sir, take a look at
 17 what is Government Exhibit 973. I don't see the
 18 pointer, but if you would, perhaps with your finger,
 19 point out where the incised wound to Dr. MacDonald was
 20 located?

21 A It was approximately in this area here
 22 (indicating). The nipple is usually over the fourth
 23 interspace. This was in the sixth interspace, so it was
 24 two ribs below where the nipple usually is approximately
 25 and right in line with the nipple.

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Q When did you put the first test tube in-- almost immediately?

A According to my notes, it was around 7:00 or 7:30 in the morning.

Q And for what purpose were you putting the chest tube in?

A At first, to get full re-expansion of the lung. If there is a leak from the perforation of the lung, it could continue to accumulate, and if it did not escape through the stab wound itself, it could become a serious complication called tension pneumothorax. That is one reason. The other reason, if you allow the lung to expand slowly on its own, as this air gets absorbed, if you have a case where there isn't a stab wound and there is a spontaneous collapse of the lung from some defect on the surface--a rupture like a blowout on a tire--if a pneumothorax develops in that way so that there is no possible entry of air from the outside but just through lung tissue, then you conceivably might allow a small pneumothorax to resolve by itself watching carefully that a tension pneumothorax doesn't develop. However, with a stab wound, there is always a chance of air either going one way or another through the stab wound. There is always a chance of bleeding that is unrecognized from the chest x-ray. A

1 hemothorax developing might have an accumulation of
2 up to a pint of blood that would not show up on x-ray
3 early. It would have to accumulate more than that. It
4 would be hidden more or less behind the way the lung
5 comes down over the liver on either side, so for that
6 reason, a chest tube was placed in the seventh inter-
7 space over from this side at this point (indicating)
8 and directed upward in hopes of taking care of any
9 blood that would accumulate as well as release the air
10 that was accumulated and would have come to the
11 outside. There were really three reasons--first, to get
12 the lung to expand as quickly back to normal as possible.
13 This keeps you from developing pneumonia for one thing;
14 two, to allow an exit for any blood if secondary
15 hemorrhage from a blood vessel that had been lacerated
16 and stopped bleeding would start bleeding in the middle
17 of the night while the patient was asleep. There could
18 be significant hemorrhage that he would not recognize,
19 and the nurse would have a way of recognizing it right
20 away before any shock developed--possibly, because it
21 would flow right to the outside into the chest bottle;
22 and thirdly, the reason of having the lung completely
23 expanded prevents the possibility of adhesions forming
24 and sort of trapping the lung and keeping it from expanding
25 in the future and impairing your ability to breathe well.

BY MR. BLACKBURN:

Q How long did you remain Dr. MacDonald's doctor?

A For the extent of his hospitalization and possibly for a week or so later while he was around to be sure that there were no complications from the treatment.

Q How long did he stay in the hospital?

A Approximately eight or nine days.

Q Now, during the time that you were Dr. MacDonald's doctor, did you ever see evidence of a hemothorax?

A No, not really. The first tube did not function well. Dr. MacDonald, at some time earlier in his life, had had some pneumonia on that side and probably some adhesions had formed along this area, so when I inserted the first chest tube, it only got up to about this level (indicating) where we would link it up way up at the top to relieve all of the air, and although the lung expanded somewhat with the first chest tube, it never completely re-expanded. By the next morning, there was further collapse because this tube had sort of been enveloped by the expanded lung and sealed all of the holes so that no further air from higher up could escape through it. The holes were not

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functioning as far as showing any blood coming out.
There was blood-tinged fluid that just could have been
from the insertion of the chest tube, so it was elected
to put another tube in the second interspace.

I discussed this with Dr. MacDonald because
nobody likes to have these procedures done. I would not
have it done on myself if I did not need it. We tried
a lesser procedure of taking a small needle and
catheter which is ordinarily used to start intravenous
fluids and inserted it and tried to withdraw air from
this space to see if that would let the lung expand.
This was unsuccessful; and therefore, it was necessary to
place the second tube. When the second tube was placed,
we then removed the lower tube.

Q During the time that you treated Dr.
MacDonald, did he ever have a tension pneumothorax?

A No, he never had a tension pneumothorax, and
the second tube was completely successful. The lung did
expand fully x-rays showed later, and we were able to
remove the second tube in approximately three days and
the lung remained expanded.

Q This means then that from the time Dr.
MacDonald went into the hospital, it was three days
before all tubes were removed; is that what you are
saying?

1 A Well, it was approximately four days
2 before all tubes were removed. The exact dates are in
3 the record, but they are not really that pertinent.

4 Q Well, you have testified this morning that
5 one of the reasons for putting in a chest tube into his
6 body was to prevent a tension pneumothorax; is that
7 correct?

8 A That is right.

9 Q Dr. Gemma, in your professional opinion,
10 do you have an opinion satisfactory to yourself, sir,
11 as to the statistical chances of receiving a tension
12 pneumothorax once a chest tube is inserted into the body
13 and working properly?

14 A As long as the chest tube functioned
15 properly, there was no chance of a tension pneumothorax
16 developing, but as you can see, the first tube did not
17 function completely properly. Nothing is ever foolproof.
18 Consequently, you have to monitor the fluctuation of the
19 fluid in the bottle to which the chest tube is attached.
20 If this is not fluctuating with every respiration, the
21 nurse knows to call the doctor and you can examine by
22 listening to the lung and percussing it as well as
23 checking blood pressure, pulse, and so on if you are
24 concerned about the possibility of developing a tension
25 pneumothorax. If his lung had been completely

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re-expanded the next morning with the other tube not functioning, we still may have removed that tube and not inserted another tube at that point in time because at least 24 hours had passed and the likelihood of hemorrhage--secondary hemorrhage from a lacerated vessel--would be that much more remote. Since the tube was no longer functional, it would have been removed at the time we removed it; however, the second tube was necessary again for the very same reasons to re-expand the lung to be sure that a tension pneumothorax would not develop because there was a good possibility that there was still further leakage of air from lacerated lung from the initial stab wound.

Q I believe you testified already this morning that you never saw any evidence of blood leaking out; is that correct?

A No, I didn't. I said no evidence of a hemothorax which would imply a significant amount of blood. This fluid that came out was blood-tinged. It does not take but a few drops of blood in the body fluids that sort of lubricate the lung surfaces to make the entire bottle of water rather bloody, but it was not an amount that concerned me that he had any undue bleeding more than might have been from the incision that I made to insert the chest tube.

1 Q Now, I believe you did testify that he
2 stayed in the hospital eight or nine days; is that
3 correct?

4 A That is right.

5 Q What was the purpose of his staying in the
6 hospital those days after the final chest tube was
7 taken out?

8 A Well, the main reason was the investigation
9 that was going on as well as no real home for him to go
10 to to relax and recuperate.

11 Q Now, I believe you stated that you spent
12 most of your time observing the chest wound?

13 A That is correct.

14 Q Did you ever examine any of his other
15 wounds at all?

16 A The only other significant wound--well, I
17 shouldn't--the only other significant wound that I
18 examined thoroughly to a certain extent was the head
19 wound. This was a contusion, abrasion that quite possible was
20 enough to render him unconscious. There was another
21 wound--probably this one--that I am embarrassed to say
22 that I did not examine it as thoroughly as I probably
23 should have in light of what is going on now because
24 Dr. Bronstein said that this wound went down to the
25 fascia. There is no record that this, in fact, is true.
This is what he remembers. (please turn page)

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA,)
v.) NO. 75-26-CR-3
JEFFREY R. MacDONALD,)
Defendant.)

TRIAL BEFORE
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UNITED STATES CHIEF DISTRICT JUDGE
AND A JURY

AT RALEIGH: THURSDAY, AUGUST 2, 1979

PAGES 3501-3748 TRIAL DAY ELEVEN

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3 THIS CAUSE came on for further
4 trial before The Honorable Franklin
5 T. Dupree, Jr., United States Chief
6 District Judge, and a jury, on
7 Thursday, August 2, 1979, at Raleigh,
8 North Carolina.

9
10 (The following proceedings were held in the
11 presence of the jury and alternates.)

12 THE COURT: Good morning, ladies and
13 gentlemen. Were there further questions of this witness?
14 I believe you had redirect examination.

15 MR. MURTAGH: Just a few, Your Honor.

16 (Whereupon,

17 DR. CRAIG S. CHAMBERLAIN

18 the witness on the stand at the time of recess, resumed
19 the stand and testified further as follows:)

20 R E D I R E C T E X A M I N A T I O N 9:31 a.m.

21
22 BY MR.. MURTAGH:

23 Q Dr. Chamberlain, yesterday, I believe, on
24 cross-examination you were asked by Defense Counsel about
25 who went first with relationship to the chemistry or

1 finger, -int processing of the cri scene. Do you re-
2 call that?

3 A Yes.

4 Q My question, sir, is--as I understood your
5 testimony to Mr. Segal, it was that you and Mr. Medlin
6 first went into a room. I think you said the master bed-
7 room; is that correct?

8 A Yes; we did first go into a room.

9 Q Is it correct, or was it your testimony that
10 you, as the chemistry technician--well what did you do
11 first as the chemistry technician?

12 A Well, first I examined the area with the
13 other people.

14 Q What did you examine it for?

15 A To locate potential blood stains.

16 Q What did you do to those areas at that time
17 which you thought contained potential blood stains?

18 A They were marked.

19 Q Did you do a number of areas like that in the
20 room?

21 A Yes, sir.

22 Q After those areas were marked--let me ask you,
23 did you mark all areas of potential blood stains in the
24 master bedroom that you saw at that time?

25 A Yes, sir; I believe so.



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1 Q If you know, sir, what did Mr. Medlin do
2 next?

3 A Well, I wasn't with him, but I assume---

4 MR. SEGAL: (Interposing) That is
5 OBJECTED to, Your Honor. We don't need assumptions.

6 THE COURT: Medlin has testified. Go
7 on to something else.

8 BY MR. MURTAGH:

9 Q Dr. Chamberlain, on cross-examination you
10 were asked about the eyeglasses from which you collected
11 a suspected blood stain. Do you recall that, sir?

12 A Yes, sir.

13 Q Could I ask you, please, do you recall col-
14 lecting a stain from the eyeglasses?

15 A Yes, sir; I did.

16 Q Okay; did you subsequently transport that
17 stain to the laboratory?

18 A Yes, sir; I did.

19 Q Did you perform any tests on that stain?

20 A Yes, sir; I did.

21 Q Do you recall what the results of those tests
22 were?

23 A Yes, sir.

24 Q Would you please tell the Court and jury what
25 you found?

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A I performed the crust test and found a weak indication of anti A, a weak indication of anti B.

Q You found both, sir?

A Yes, sir.

Q Now, also on cross-examination--and if I may approach the witness, Your Honor--I believe at the time the chart 651 was up on the board, you were asked with respect to Government Exhibit 341, 342 and 343, which I believe you testified were suspected stains--or suspected blood stains--that you collected from the living room wall. Do you recall that?

A Yes, sir.

Q I believe on direct examination you had testified to the results as indicated on that chart. Do you recall that?

A Yes, sir.

Q Okay; now, my question is--on cross-examination, Mr. Segal asked you whether the benzidine test was specific for blood. Do you recall that?

A Yes, sir; I do.

Q Please explain to the Court and jury what your understanding is of the term "specific for the presence of blood"?

A It means if the test is positive, it is extremely likely that the stain was blood.

1 Q And then I believe Mr. Segal asked you,
2 "Isn't there some literature or some scientific basis
3 that says the benzidine test is not specific in the ab-
4 sence of a Takayama test?" Do you recall that?

5 MR. SEGAL: I OBJECT to that. That is
6 not what I said, Your Honor. I will be glad to repeat
7 what I did say.

8 MR. MURTAGH: Why don't we read the
9 transcript?

10 MR. SEGAL: If the Government would let
11 the Defense see it also, that would be very helpful.
12 They spend the taxpayers' money---

13 MR. MURTAGH: OBJECTION.

14 THE COURT: All right.

15 MR. MURTAGH: Your Honor, I think I can
16 proceed without further ado.

17 BY MR. MURTAGH:

18 Q Do you have an opinion, Dr. Chamberlain,
19 satisfactory to yourself and based on a reasonable scien-
20 tific certainty, as to whether the benzidine test detects
21 the presence of blood? That is my first question.

22 A Yes, sir; it does detect the presence of
23 blood.

24 Q Okay; how minute--if you know, sir--a stain
25 will the benzidine test detect?

1 A It can detect a stain which may not be
2 visible to the eye that is fairly dilute.

3 Q Can you give us any percentage on that of one
4 part per so many, or whatever?

5 A No; I don't think I would like to do that.

6 Q But you testified, I believe, that the benzi-
7 dine test on the areas on the wall above the couch was
8 negative?

9 A Yes, sir.

10 Q What confirmatory test, if any, would be re-
11 quired--in other words, if I understand your testimony,
12 you are saying that there was no blood on the wall?

13 A Yes, sir; that is correct.

14 Q What relevancy, if any, does a confirmatory
15 test have in that situation?

16 A In general, I would say no relevancy, sir.

17 Q Is it correct that the Takayama test, if it
18 is indicated at all, is indicated when the benzidine test
19 is positive?

20 MR. SEGAL: I would suggest that Mr.
21 Murtagh try to refrain from leading his own witness, Your
22 Honor.

23 THE COURT: Are you objecting?

24 MR. SEGAL: Yes.

25 THE COURT: I will SUSTAIN the

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objection to the leading questions.

BY MR. MURTAGH:

Q Dr. Chamberlain, do you have an opinion satisfactory to yourself based on a reasonable degree of scientific certainty as to whether the benzidine test is capable of a false negative?

A Yes, sir; I have that opinion.

Q Would you please tell us what that is, sir?

A In general, I would say that in the hands of someone used to using the benzidine test, it will not give a false negative--that is, were such a reaction to occur, a worker would recognize it as such.

MR. MURTAGH: Thank you. I have no further questions of this witness.

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THE COURT: All right, call your next witness.

MR. SEGAL: Your Honor, I would like some questions on recross if I may.

MR. MURTAGH: Your Honor, I don't believe I brought out any new matters.

THE COURT: I do not recall that he did.

MR. SEGAL: As a matter of fact, there is a new matter here. I think if I am permitted to ask.

THE COURT: Let me see you at the bench. Maybe you can refresh my recollection.

B E N C H C O N F E R E N C E

MR. SEGAL: He has testified, for instance, that he transported the speck of blood which he did not testify yesterday in direct or cross. I want to go into how he did that. Secondly, he has now contradicted his testimony about false negatives that he gave yesterday. I also want to ask, Your Honor, and I intend to make it the first question--did he discuss this matter with counsel last night because I understand that to be in violation of the order that no witness is to talk to the attorneys until their examination is complete once they go on the stand.

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If he says he has in fact spoken to the attorneys over night, then I am going to move to strike, Your Honor, all of the testimony this morning because we have been prohibited from doing that, and I cannot understand, if I suspect that is what happened, why the Government is allowed to do this while the Defense can't talk to any witness even for the other side.

I also have some other matters here. He has given testimony this morning about the crust test and what he found on the eyeglasses. There was no testimony on that yesterday either on direct or cross.

THE COURT: I don't recall any on that yesterday.

MR. MURTAGH: Your Honor, I did not ask him anything on direct about the eyeglasses. Mr. Segal asked him about the eyeglasses on cross. Mr. Segal asked him about the benzidine test on cross as to the false negative. The question was misleading in the sense that the results the witness had testified to were negative results, and the relevancy of the Takayama test, if any, is when there was a false positive.

Mr. Segal opened that door as to the business about transporting it to the lab. I recall, Your Honor, that on direct examination the witness testified that, in addition to the exhibits which he collected at the

1 scene himself, he received exhibits from other agents.
2 He transported them and he went through how he got them
3 on the plane, and nobody tampered with them. Mr. Segal,
4 I think, opened the door and all I did was clarify
5 points that were brought out on cross-examination.

6 I don't think I raised any new matter and,
7 further, Your Honor, I did not talk to this witness.

8 MR. SEGAL: That's fine if you did not
9 talk to him. Your Honor, he has testified differently---

10 MR. MURTAGH: (Interposing) He hasn't---

11 MR. SEGAL: (Interposing) Excuse me.
12 I haven't interrupted you. Please don't interrupt me.

13 THE COURT: Now, all right, let me
14 tell you. I am going to let you ask the questions, but
15 the reason I want you both up here: it has been
16 apparent to me from the very first time that the two of
17 you appeared in this court that there was a certain
18 amount of friction and animosity between you two. I
19 quite understand.

20 I sat out there for 34 years in the dog days
21 of August and during the third week of a trial. You may
22 spurt off something that you, on reflection, would not
23 have done. You did that yesterday. You were just about
24 to do it again today, and, again, I must say, and this
25 applies to both of you.

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MR. MURTAGH: Yes, sir.

THE COURT: I am not going to have it, but the thing that I am apprehensive about is this: one or the other of you, if you show these displays of temper and hostility and animosity, are going to prejudice your client. I am here to see that this trial is conducted fairly, and it cannot be, and I am not going to tolerate its being tried in a climate of hostility for either side.

We are going to try it calmly. It ain't your case, and it ain't yours. It belongs to the parties in the case, and you are just here in a representative capacity--both of you--and I am expecting both of you on all sides to so conduct yourselves.

The last thing I ever would do, if I could avoid it, would be to embarrass a lawyer in front of a jury or his client. But if I have to do it in order to maintain order in this court and conduct this trial like it is supposed to be, that is what I am going to do.

MR. MURTAGH: Your Honor, I apologize to the Court.

THE COURT: Listen, I am not complaining with anybody, but I am just reminding you again what the rules are, and keep your cool about the thing if you can do so in 80 degree temperature.



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Q Okay; did you subsequently transport that stain to the laboratory?

A Yes, sir; I did.

Q Did you perform any tests on that stain?

A Yes, sir; I did.

Q Do you recall what the results of those tests were?

A Yes, sir.

Q Would you please tell the Court and jury what you found?

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