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## A haunted case

Filmmaker Earl Morris weighs in on a 40-year-old debate: Did Jeffrey MacDonald kill his wife and children, or is his case one of history's greatest injustices?

By: Sharon McCloskey | September 7, 2012

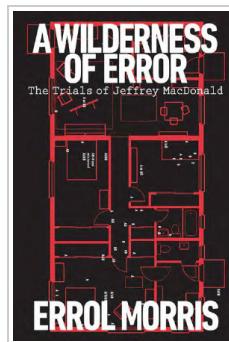
It's been more than 40 years since Jeffrey MacDonald was accused of brutally murdering his pregnant wife and two young daughters in their house on Castle Drive in Fort Bragg.

Stabbed several times himself, MacDonald told military police on the scene that a group of hippies – including a woman in a white floppy hat chanting "acid is groovy" and "kill the pigs" – were to blame.

A military panel later released him of all charges, but the case dogged MacDonald. In early 1975, a grand jury indicted him on three counts of murder and in 1979, before U.S. District Judge Franklin T. Dupree in Raleigh, a jury found him guilty on all counts.

MacDonald has steadfastly proclaimed his innocence while imprisoned these last three decades, and next week, in a federal courtroom in Wilmington, his case will once again be reviewed. The 4th U.S. Circuit Court of Appeals ruled in April 2011 that the district court, in connection with a MacDonald motion for post-conviction relief, failed to consider newly surfaced evidence, including DNA test results and an affidavit from former deputy U.S. marshal Jim Britt, who accused lead prosecutor Jim Blackburn of threatening the supposed "woman in the floppy hat," Helena Stoeckley.

Britt, now deceased, said he was present when Stoeckley told Blackburn she and others were in MacDonald's house the night of the murders, and Blackburn told her that if she so testified he would indict her for first degree murder. The next day she changed her testimony to say that she couldn't remember what happened the night of the murders.



Like many, Academy Award-winning filmmaker and former detective Errol Morris has been riveted by the MacDonald investigation and trial – which he describes as an "utter and complete mess." His new book, *A Wilderness of Error*, published last week, is the culmination of his own digging through evidence and interviewing witnesses.

Lawyers Weekly spoke with Morris about the book, about the trial, and about conclusions he's drawn after being steeped in his own investigation. Only one thing's certain, he said: Jeffrey MacDonald did not receive a fair trial. And Morris will be in the courtroom in Wilmington on September 17 to see if that wrong will be righted.

What first caught your attention about the MacDonald case, and when did you really begin to dig in?

I'm not really sure when I first heard about it. Certainly it was a case that received international attention. Sometime in the early 1990s I really started to think what I could do with what I was learning. As I read more – Joe McGinnis' "Fatal Vision," Janet Malcom's "The Journalist and the Murderer" — it seemed to me that there really was an important story to tell.

This is a book about all of these errors, judicial and otherwise, over the last 40-plus years. But it's also a story about a person who became lost in all of the maneuverings about the case, and that of course is Helena Stoeckley.

You spoke to MacDonald in 2003. Was that the only time, or have you spoken to him since?

We've talked on the phone, though not recently. But I think his voice is very much a presence in the book. To me, it's not about him pleading for his innocence, because we can always say, "Why believe what he has to say because it has an element of self interest." But look at the totality of the evidence in this case. Look at the scope of the evidence.

There are two versions of the case. Story A, Jeffrey was telling the truth, there were intruders in the house and the intruders killed his family and attempted to kill him. And then there's story B, that there were no intruders, that Jeffrey killed his family and then tried to make it look as though intruders had been responsible. And then break it down. What is inculpatory and exculpatory in each scenario?

There are some things that you simply can't dismiss as coincidence. Ken Mica [an MP at the initial scene] did see a woman on that roadway that night, the description he gave was similar enough to the description to the one that Jeffrey MacDonald gave on the morning of the crime, and there was a woman matching that description known to the narcotics police in Fayetteville who started confessing, saying "I was there with this group who killed MacDonald's family." Was Jeffrey MacDonald lucky enough that he had made up a story out of whole cloth, and evidence of that story just miraculously appeared out of nowhere?

And what's the evidence that Stoeckley is telling the truth? The fact that she repeated it so consistently over such a long period of time and continued to repeat it until she died.

Though the book is about the trials of MacDonald, it also speaks to the larger issue of how we investigate crimes, create a narrative and then, with the help of the media and the courts, turn that narrative into what we perceive to be the truth. Can you talk a bit about how that played out in the MacDonald case?

The book is about justice, the legal system, about the nature of evidence, about journalism. But at its heart it's about narrative versus the truth. How a narrative can take over and blind us to the world around us. It actually can take the place of investigation or trying to determine what really happened.

And that's by and large what happened in this case. From the earliest moments, the criminal investigation division of the Army was not only convinced that MacDonald was guilty, they were convinced that he had covered the case up. He tried to make it look like others had committed the crime, and he had done a botched job of it. He had done it so badly that it was laughable, easy to detect, that he had been involved in this cover up, that not only was he a killer but he was an incompetent and devious killer. And that view persisted. Even though it was essentially thrown out by the military in the 1970 Article 32 hearing, it resurfaced again and again until they finally made it stick in 1979 in federal court in Raleigh.

You spoke to Jerry Leonard, then a young attorney in Raleigh who was appointed, presumably by Judge Dupree, to represent Stoeckley after she testified in 1979, about the comings and goings in the courtroom and in Raleigh during the trial. What does he add to the story?

What has become clear is that he was used to babysit Stoeckley once she had testified, and that he himself was privy to all of these shenanigans without really understanding what was going on behind the scenes.

I knew that Dupree was a Nixon appointee, and that he had very limited criminal experience as a judge. This might have been his first criminal case. I think it's pretty clear that he was strongly biased towards the prosecution. And biased in a way that really severely undermined MacDonald's chances at trial.

I'm loathe to blame any one person for all of this. It was just an utter and complete mess. And I took the Edgar Allan Poe quote — "seeking an oasis of fatality amid a wilderness of error," to mean looking for some kind of certainty in this kind of mess.

I've never been a great believer in conspiracies, because I think that people are so much at cross purposes with each other, it's hard to imagine them conspiring effectively for so long to do anything. But there's kind of deeper kind of nightmare, much more frightening to me than conspiracy — it's a kind of world of confusion, sloppiness, wishful thinking, self-serving argument, uncritical thinking. Do I believe in this case that the prosecutors set out to convict an innocent man? I do not. I think they really truly believed that Jeffrey MacDonald was guilty, and given that belief they had to do whatever was necessary in order to secure a conviction. But does that justify really everything that went down?

There seem to be so many problems with how the murders were investigated and the case was tried — crime scene contamination, evidence not disclosed, testimony from or about possible witnesses or suspects excluded? Which, of any of these, is most egregious to you?

The thing that I find most appalling is that the journalists who should have known better fell into line with Joe McGinnis. I remember seeing this Stoeckley video on YouTube, and I didn't know where it came from. It was an hour-long video where she goes into enormous detail about the events of that night. What I didn't know until really recently was that the video had chopped off the slate at the very beginning, and then I was given the unexpurgated video, and guess what — the slate has "60 Minutes" on it with the name J. Wershba, who was the "60 Minutes" producer.

Here you have this video done and paid for by "60 Minutes," which chose not to use it. Instead they went with



McGinnis and the diet pills [theory], with no indication to their audience [that there was this video]. It was almost like the perfect storm – "60 Minutes" was seen by a lot of people, "Fatal Vision" was read by a lot of people, and the TV movie was seen by supposedly the largest TV audience in history at that time, so tens of millions of people are branded with this narrative. And "60 Minutes" had this tape, which remained unknown.

The Britt affidavit will once again be a focus at the hearing in September. Britt died in 2008, but you spoke to Jim Blackburn, who flatly denies what Britt says. What's your impression of the conflicting accounts?

Of course I was not there – so what I say is based on assessing Britt's credibility versus Blackburn's credibility. Did Britt have a reason to lie? I don't think so. The main issue is, did he remember correctly about the threat.

There's something so weird about Stoeckley's behavior in Raleigh that week she testified. She confessed to so many people then — to members of the defense team, in the emergency room the weekend after she testified. She was assigned a lawyer presumably by Judge Dupree to essentially babysit her, and she confessed to him. So how do you explain all of the confessions, versus her behavior on the stand, where she could remember virtually nothing? One of the arguments I make in the book is that Jimmy Britt helps explain Stoeckley's otherwise inexplicable behavior. The prosecution can say that she was all over the place, that she was an undependable, unreliable witness. But from what I know, she was pretty consistent – the one inconsistency is what she said on the stand. And she continued to say it until the day she died. So if there's any inconsistency to explain, it's what she said while on the stand in federal court.

Speaking of Blackburn, he was one of several lawyers whose fate took a turn for the worse after the trial. You spoke about that with Harvey Silvergate, one of MacDonald's appellate attorneys for a time — about how the case seemed to haunt some of them. He said the case was like the third rail. Except for Wade Smith – you've spoken to him too. Why not him?

I don't know. I think everybody who's been involved in this case has been affected by it, and I don't know Wade Smith well enough to know if he's been affected in a major way as well. Wade still believes passionately that MacDonald is innocent, and that has to weigh on any defense attorney.

After 20 years of researching and writing, has the case weighed on you too?

It weighs on me. Even if we do not know for certain what happened in that house on Castle Drive in Fort Bragg, we can know that the trial was unfair. Things were done which were improper, and the case should be overturned as a result, pure and simple.

You've spoken to Barry Scheck, who said in 2009, "I'm convinced he was wrongly convicted and I have a deep intuition that he's innocent." Have you spoken to him since?

Certainly. He's just as convinced now. And I lean toward innocence without being able to prove it. I can't see any reason to discard all of those confessions of Stoeckley. There's just too many of them for too long a period of time. I wish there was just one slam dunk piece of evidence, but there never really is. Is there any proof that Jeffrey did it? And I would say no. The forensic evidence in my view is not compelling for many reasons. Many of the demonstrations I believe are based on faulty logic and a misstatement of the actual evidence in hand. Proof that he didn't do it – I don't think that's there either. Proof that Stoeckley is telling the truth – I think there's this overwhelming pattern, but is it proof, I'm not so sure.

One thing though that's not in doubt is whether this was a fair trial. That's not in question. This was a very, very bad trial.

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