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Blinded with science

Forensic evidence, the 'infallible' death penalty, and the Green Beret murder case

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GOVERNOR MITT ROMNEY is seeking an "airtight" death-penalty system, based on "incontrovertible" scientific evidence that, as he says, will "guarantee that we've identified the guilty." To those who have long been immersed in the criminal-justice system, Romney's search evokes the Greek philosopher Diogenes, who, before his death in 320 BC, wandered the streets of Athens with a lighted lantern, hunting day and night for an honest man.

To no avail, of course. And that impossible quest to eradicate all doubt also dogs any attempt to use modern science as the magic bullet that will make it possible for a decent society to execute human beings without the lingering fear of having put innocent persons to death. Even if the science seems absolutely reliable, or nearly so, human flaws invariably make even the best scientifically based system fallible.

The case of Army Captain Dr. Jeffrey MacDonald, on which we've been working for some 14 years, illustrates the point better than any polemic possibly could.

MACDONALD WAS indicted in 1975 for the vicious 1970 murders of his pregnant wife, Colette, and their two daughters inside their apartment at Fort Bragg, North Carolina. Tried and convicted in federal district court in Fayetteville, North Carolina, in 1979, MacDonald was sentenced by the late judge Franklin Dupree to three consecutive life terms — the most severe penalty the judge could administer under prevailing law at the time.

Trial participants and observers told us that if Judge Dupree could have sentenced MacDonald to death, he would have done so without hesitation, so convinced was he of the Green Beret trauma surgeon's guilt. However, Judge Dupree could not impose such a draconian sentence, because in 1972 the Supreme Court, in *Furman v. Georgia*, had declared the death penalty as then administered unconstitutional. In subsequent cases, the high court changed course and reinstated the death penalty for those systems that had been tinkered with enough to suggest a veneer of fairness and rationality. MacDonald, however, could not be resentenced to death retroactively. His life secured, he set about enlisting volunteer lawyers and investigators to help him prove his innocence.

The jury's finding of guilt was based on science. The prosecution presented impressive scientific evidence, claiming that its experts could reconstruct nearly every one of MacDonald's moves at the murder scene. More important, they were able to use the same evidence to contradict, with the certitude of science, MacDonald's account of what happened: that he and his family had been attacked by a group of intruders who broke into their home in the middle of the night. Indeed, prosecutor James Blackburn argued to the jury that the government's forensic investigation proved that MacDonald had lied: "I can only tell you from the physical evidence in this case that things do not lie, but I suggest to you that people can and do lie." Similarly, in one of its subsequent appellate briefs, the government summarized the reliability of its forensic case this way: "The government's case from the outset has consisted almost exclusively of physical evidence culled from the crime scene, the testimony of scientific experts interpreting that evidence and the logical inferences to be drawn therefrom. The reliability of such evidence did not diminish with the passage of time, nor did the ability of defense experts to offer contrary interpretations of its significance."

It was only after trial that MacDonald, together with his investigators and lawyers, was able to reconstruct precisely how the government put together a cleverly misleading forensic-science case. A Freedom of Information Act (FOIA) investigation unearthed laboratory "bench notes" that had not found their way into completed forensic reports turned over to MacDonald's trial counsel. Those bench notes belied the government's claims and documented the presence of physical evidence at the crime scene that affirmatively supported MacDonald's account that intruders had committed the crime. Had this information been disclosed and then presented to the jury, it almost certainly would have led to his acquittal.

What kind of information had not been shared with MacDonald's defense team? Here's just one example. Much evidence surfaced before trial that a woman named Helena Stoeckley and a group of her friends had broken into the MacDonalds' home that awful night and attacked the family. MacDonald told emergency personnel and investigators who responded to his 911 call that he had been awakened, stabbed, and clubbed by four intruders in his living room, one of whom was a woman with shoulder-length blond hair who was wearing a floppy hat and boots. Indeed, a military police officer who responded to MacDonald's call for help observed en route to the crime scene a blond-haired woman with a floppy hat standing on a street corner less than half a mile from the MacDonalds' residence. And, within days of the murders, Stoeckley, who had naturally brown hair, but who wore a shoulder-length blond wig at the time, confessed to at least six friends and neighbors that she had been present inside the MacDonald home with others who carried out the murders.

MacDonald called Stoeckley as a witness at his trial. While she refused to repeat her earlier self-incriminating statements, she acknowledged that at the time of the murders she owned a shoulder-length blond wig, boots, and a floppy hat, and that she always dressed in black or dark-purple clothing. Stoeckley oddly could not recall her whereabouts at the time of the murders and testified that she had destroyed the boots, wig, and hat for fear that the items would implicate her.

According to government reports disclosed to the defense before trial, the only blond hairs found at the crime scene were natural blond hairs traced to Colette MacDonald and her daughters; there was no mention of finding any black or purple fibers. Unbeknownst to MacDonald's trial team, however, several long blond synthetic fibers, likely from a woman's wig, had been found at the murder scene in a strategic location — a hairbrush that, other evidence indicated, Stoeckley had likely used in the apartment that night. Moreover, laboratory bench notes from another analyst revealed that black and dark-purple wool fibers had been found on Colette MacDonald's body around her mouth and arm, and on a wooden club that the government claimed was one of the murder weapons. These dark wool fibers matched no item of clothing in the MacDonald household; hence, they almost certainly were left by a person who was wearing such clothing, and not by Dr. MacDonald. Indeed, given her testimony that she always wore black and dark-purple clothing, this was further damning evidence of Stoeckley's involvement in the murders.

Yet this crucial evidence — the long blond wig fibers in the hair brush and the dark wool fibers found at the murder scene — was omitted from the forensic reports turned over to MacDonald's defense lawyers. Due to this deception, MacDonald's claim to have encountered a woman with blond hair found no support in the scientific picture drawn for the jury by the military and FBI lab experts. The exclusion of this forensic evidence left the prosecution's damning "scientific" case unrebutted in front of the jury. Worse yet, the trial judge actually refused to allow the defense to introduce any evidence of Stoeckley's earlier out-of-court confessions to supplement her sudden lack of memory during trial testimony because, he said, those confessions, which she refused to repeat in court, could not be deemed reliable by the jury in the absence of forensic or other such corroboration.

Put more simply, had the forensic presentation not been hampered by the suppression of strong physical evidence of Stoeckley's presence at the crime, the jurors would have been able to consider scientific findings that corroborated the account given by MacDonald to military police while he lay bleeding at the crime scene. It also would have caused jurors to hear witnesses testify to Stoeckley's confession about her role in the crime and that of her cohorts. One simply cannot imagine a jury convicting MacDonald under those circumstances.

WE ARE STILL struggling to exonerate Dr. MacDonald. Because of restrictive procedural rules devised by the Supreme Court and, later, Congress, that severely limit post-conviction challenges to a verdict, we have yet to obtain a court hearing. Once we get before a court, we are convinced that MacDonald's conviction and sentence will be vacated. We did, however, obtain permission from the Court of Appeals for the Fourth Circuit to conduct DNA tests to bolster our claim to a hearing. Those tests are now in progress.

Had MacDonald been executed, the suppression of scientific evidence that could clear him of guilt would never have been discovered. The curtain would have closed on both him and the case. The public would have assumed that scientific forensic evidence, so certain and so true, did its just work and convicted a vicious killer beyond any real doubt. But because MacDonald

lived, he was able to dig out the forensic evidence the jurors did not see, which put the lie to the government's "certain" scientific case — a case that had doomed him.

The problem, of course, was not the science. It lay, rather, in the fact that human beings administer this otherwise "perfect" system.

MacDonald's painful journey from 1970 to the present illustrates the wisdom of the adage, "Where there's life, there's hope." We might add that where there's life, there's also the promise of eventual justice. The governor, it appears, has a lot to learn about both.

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