

## Convicted Murderer Jeffrey MacDonald Seeks New Trial; Defense Says Key Evidence Was Suppressed in '79 Trial

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### General Information

<b>Source:</b>	NBC Nightly News	<b>Resource Type:</b>	Video News Report
<b>Creator:</b>	Tom Brokaw/Brad Willis	<b>Copyright:</b>	NBCUniversal Media, LLC.
<b>Event Date:</b>	01/19/1990	<b>Copyright Date:</b>	1990
<b>Air/Publish Date:</b>	01/19/1990	<b>Clip Length</b>	00:03:33

### Description

A decade after being convicted of the 1970 murders of his pregnant wife and two daughters, Jeffrey MacDonald seeks a new trial, claiming prosecutors in his 1979 murder trial suppressed FBI and U.S. Army crime scene evidence of other people in his apartment the night of the murders.

### Keywords

Jeffrey MacDonald, Murder, Murderer, Convicted, New Trial, Grounds, Evidence, Suppressed, Prosecution, Prosecutor, Murder Trial, Intruder, Person Unknown, Present, Scene of the Crime, Evidence, Crime Scene, Hair, Synthetic, Wig, Blond, Fiber, Wool, Mouth, Victim, Wife, Pregnant, Collette, Daughter, Club, Notes, Handwritten, Crime Lab, FBI, U.S. Army Criminal Investigation, Freedom of Information Act, FOIA, Confession, Confessed, Helena Stoeckley, Cult, Drug-Crazed, Break-In, Apartment, Fort Bragg, North Carolina, Chant, "Acid Is Groovy", "Kill The Pigs", Police, Drug Informant

, Testimony, Not Admitted, Life in Prison, Wrongly Accused, Trace Evidence, Forensics, Forensic Science

## Citation

### MLA

"Convicted Murderer Jeffrey MacDonald Seeks New Trial; Defense Says Key Evidence Was Suppressed in '79 Trial." Brad Willis, correspondent. *NBC Nightly News*. NBCUniversal Media. 19 Jan. 1990. *NBC Learn*. Web. 28 March 2015

### APA

Willis, B. (Reporter), & Brokaw, T. (Anchor). 1990, January 19. Convicted Murderer Jeffrey MacDonald Seeks New Trial; Defense Says Key Evidence Was Suppressed in '79 Trial. [Television series episode]. *NBC Nightly News*. Retrieved from <https://archives.nbclearn.com/portal/site/k-12/browse/?cuecard=47728>

### CHICAGO MANUAL OF STYLE

"Convicted Murderer Jeffrey MacDonald Seeks New Trial; Defense Says Key Evidence Was Suppressed in '79 Trial" *NBC Nightly News*, New York, NY: NBC Universal, 01/19/1990. Accessed Sat Mar 28 2015 from NBC Learn: <https://archives.nbclearn.com/portal/site/k-12/browse/?cuecard=47728>

## Transcript

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MATT LAUER, co-host:

When the Justice Department released its report last week criticizing the FBI crime lab and some of its agents for sloppy work, it was widely believed that many of those convicted of crimes involving the FBI crime lab would appeal. That's exactly what will happen tomorrow in North Carolina in a triple murder case that dates back to 1970. Here's NBC's Pete Williams.

PETE WILLIAMS reporting:

During the more than 15 years he's been in federal prison, Jeffrey MacDonald has always insisted he's innocent in the sensational murder case that's now entering a new chapter. It all began in 1970. MacDonald was an Army doctor, a former Green Beret stationed at Fort Bragg, North Carolina, and living in this house, where one February night someone killed his pregnant wife, Collette, and his two children Kimberly, age five, and Kristin, age two. All of them, brutally beaten and stabbed.

An Army investigation at first blamed Dr. MacDonald, not believing his story that he and his family were attacked by drug-abusing hippies. But when the Army dropped the charges and MacDonald moved his medical practice to California, his wife's stepfather began a campaign to have him charged with the

murders. Nine years after that February night, a jury found MacDonald guilty, in a trial that grabbed the nation's attention and inspired "Fatal Vision," a book by Joe McGinniss, later a television movie. In fact, there was a woman, a heavy drug user who told police she was in the house that night.

Ms. HELENA STOECKLEY (1982): I chanted, "Acid is groovy, kill the pigs, hit him again" or something like that.

WILLIAMS: But the judge found her so untrustworthy that her testimony wasn't allowed. And MacDonald has lost repeated appeals of his case, all the way to the Supreme Court.

Dr. JEFFREY MacDONALD: I'm innocent of the charges and always have been innocent.

WILLIAMS: But now, his lawyers think they have another chance, based on MacDonald's claim that that woman intruder wore a blonde wig. When his lawyers argued before that blonde hairs were found in the house, an FBI hair expert said they could not have come from a wig and were likely from a doll. But that FBI expert was Special Agent Michael Malone, strongly criticized in last week's report on the FBI crime lab for his testimony in a different case, where colleagues complained that he made several false statements and offered testimony that was not true. The crime lab report says nothing about MacDonald's trial, but his lawyers are hoping it will cast enough doubt on the FBI's expert to get the case opened up yet again. For TODAY, Pete Williams, NBC News, Washington.

LAUER: Harvey Silverglate represents Jeffrey MacDonald and he'll be filing the motion in court tomorrow.

Mr. Silverglate, good morning to you.

Mr. HARVEY SILVERGLATE (Jeffrey MacDonald's Attorney): Good morning.

LAUER: How much of your push for a new trial is based on the Justice Departments report on the FBI crime lab and its handling of evidence in other cases?

Mr. SILVERGLATE: Well, we are looking to reopen the motion from the trial proceedings based on the crime lab information. The actual motion for a new trial is based on a huge quantity of evidence that shows that MacDonald didn't do the crime, evidence, which was hidden for decades in government files in which over the years we have pulled out through the Freedom Of Information Act.

LAUER: But over the years other courts have turned down an appeal based on that evidence, so this new evidence based on the crime lab handling of evidence must be what you think is important enough to get this case reopened?

Mr. SILVERGLATE: Yes, because you see a few years ago the court turned down the motion for new trial because it said that the key piece of evidence that we discovered in the government file, which was 22 and 24-inch blond synthetic fibers, were not from a wig, because Agent Malone filed two affidavits saying the material they were made from, Saran, was never used to make wigs. It was used only to make doll hair.

LAUER: And you found what?

Mr. SILVERGLATE: We found in a four-year investigation that Malone did a field--did field interviews of experts all over the country, was told that these fibers very likely were wig fibers, that Saran was used for wigs, and he couldn't find an expert to say otherwise, and so he filed his own affidavit saying that Saran was not used for wigs.

LAUER: Do you think that Michael Malone lied in his written testimony in the MacDonald case?

Mr. SILVERGLATE: Yes, Michael Malone lied, and Michael Malone lied under oath.

LAUER: What chance...

Mr. SILVERGLATE: And--and I might add, the court specifically dismissed our motion for a new trial based upon Malone's perjured affidavit testimony.

LAUER: All right, Mr. Silverglate, hang on, because also with us is David Fisher, who's book "Hard Evidence," chronicled the workings of the FBI lab.

Mr. Fisher, good morning to you.

Mr. DAVID FISHER (Author of "Hard Evidence"): Good morning.

LAUER: What do you know about the specifics in the MacDonald case and the evidence that was handled by the FBI crime lab?

Mr. FISHER: Well, not only was this evidence not hidden or not suppressed, when Mike Malone got the hairbrush in which the original Saran fiber was found, he found two more. So if he was actually trying to hide the evidence, the last thing in the world he would do is bring forward more evidence. He then went to one of the leading manufacturers of fibers in the world, and they told him Saran had never been used in human hair wigs. Now, that's important, because there's a differentiation here between human hair wigs and mannequin wigs. In the report it says very clearly that Saran was never used in cosmetic or human hair wigs. That's what he was told by one of the leading manufacturers of wig fibers. He then went to Mattel. Mattel told him they use Saran commonly. It was commonly used as the fiber in dolls' hair, in Barbie's hair. Jeffrey MacDonald father-in-law went through all the home movies and he found pictures, frame-by-frame he went through these things, he found pictures of Jeffrey MacDonald's children playing with a doll with blonde hair.

LAUER: Then what you're telling me is you think the hairs--the fibers got in the brushes because the children used the brush to comb the doll's head?

Mr. FISHER: Actually, one of the things that Mattel does is that when they introduce a new doll, they put children in a room. And what they found is the first thing children do, when they're--little girls do, when they're with a doll and the parents will tell you the same thing, they comb the doll's hair. So it's highly likely. They also found other wig fibers—Mike MacDonald--Mike Malone also found other wig fibers in the brush. Those were a type commonly used in human hair wigs. There's a big difference here, because the report, I am told, and I don't know if this is in the report or was told to the defense, makes a clear differentiation between human hair wig and mannequin wigs.

LAUER: So Mr. Silverglate, obviously what we're hearing from Mr. Fisher here, is there's a very good chance that these fibers came from a doll wig, not a human hair wig and why would the judge reopen that case based on that small possibility?

Mr. SILVERGLATE: Because what you've just heard is utter nonsense. This is somebody who obviously doesn't record of this case and hasn't seen the numerous affidavits that we have of experts who spoke to Michael Malone and told him precisely the opposite of what you just heard, and yet Malone files his own affidavits because he couldn't find a real expert, he made himself an expert and filed affidavits that were 180 degrees at odds with what he learned. And we will have that...

Mr. FISHER: When--when Malone went to interview the experts, he actually went with a U.S. District Attorney and he went with another member of--a— FBI case agent. They were all there when the interviews were conducted. Now, he also makes suppositions that this evidence was hidden. This evidence was never hidden. It was sitting in a box. When they in the 1991--when they tried to reopen the case, they didn't hire their own forensic expert. They did not have anybody look at these things. This evidence has been sitting there since 1970.

Mr. SILVERGLATE: The question is not whether the strands were hidden.

The question is whether the analysis was perjured and that's the point here. Of course the strands aren't hidden. We've got those. It's the analysis that was wrong.

LAUER: Mr. Silverglate, what do you say to the people who say you're a pretty good opportunist here and that you're using this negative Justice Department report as an opportunity to open the door to a new trial when there really isn't much new evidence here?

Mr. SILVERGLATE: The answer is, that we have been conducting this investigation of Malone's affidavits for four years. The affidavits we have and the witnesses we found all preceded this scandal about the FBI lab. We were prepared to file our petition before we heard about the lab scandal and, in fact, we were a couple of weeks away from doing so when we heard about it.

LAUER: Ten seconds. I don't know if you're a betting man? What are the odds you get a new trial?

Mr. SILVERGLATE: We'll get a new trial. All of this evidence is chronicled in a new book, "Fatal Justice." It's in paperback in the bookstores. Read it and you'll see what really happened.

LAUER: Mr. Fisher, what are the chances that we see a new trial here?

Mr. FISHER: I doubt it. I mean, the evidence is overwhelming.

LAUER: Harvey Silverglate, David Fisher, thanks very much.