REPLY BRIEF FOR APPELLANT

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Case No. 14-7543

UNITED STATES OF AMERICA v. JEFFREY R. MACDONALD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

REPLY BRIEF OF APPELLANT JEFFREY R. MACDONALD

BY: JEFFREY R. MACDONALD
Appellant
PO BOX 1000 Unit C-2
Cumberland, MD 21051
Responding *Pro Se*

INTRODUCTION

Jeffrey MacDonald ("MacDonald") was a 26-year old Army captain and doctor stationed at Fort Bragg when his pregnant wife and two young daughters were brutally murdered on 17 February 1970.

MacDonald was severely wounded and found unconscious by military police. Since his first statement to responders to his emergency call on that date, MacDonald has consistently maintained that the murders of his family were committed by a group of intruders.

Upon resuscitation, MacDonald described a woman with long blond hair wearing a floppy hat, who along with at least three others entered his home in the middle of the night and attacked him and killed his family.

Now 72 years old, MacDonald has never wavered from his initial account of these events, nor his assertion that he is innocent. He has now been imprisoned for almost 35 years.

MacDonald was convicted at a trial in the United States District Court for the Eastern District of North Carolina in 1979 -- nine years after the murders, and after he had been cleared of the crimes by a military tribunal.

The Government's case at trial was entirely circumstantial, and there was no direct proof of MacDonald's alleged involvement in the murders.

In 1970, shortly after recovering from wounds sustained in the attacks at his family's apartment,[1] MacDonald voluntarily submitted to lengthy interrogation by the Army CID without legal representation because he knew he himself was not involved in the crimes and understood that spouses are, perhaps necessarily, initially viewed as suspects in such investigations. He recounted the events of that tragic night in hopes that the intruders he had described would be apprehended and brought to justice.[2]

MacDonald, then a young man of 26, with no history of violence or breaking the law, did not know that the lead CID investigator, William Ivory, approximately age 24 at the time, had made an immediate and incorrect decision that the crime scene looked "staged". Therefore, as evidenced by his own first interview, Ivory centered on MacDonald as the murderer and set about seeking evidence to support his theory, dismissing anything that supported MacDonald's account.[3]

In June, 1970, the Army convened an Article 32 hearing. This tribunal- the precursor to a Court Martial- was held to determine which was accurate: The CID's theory or MacDonald's voluntary account. After approximately 7 weeks of testimony and evidence, including Ivory's presentation of the evidence he thought looked "staged", the presiding authority (Colonel Warren Rock) determined that the allegations

against (Captain) MacDonald were "*not true*". He added that "the alibis of Helena Stoeckley and her associates should be pursued".[4]

MacDonald was honorably discharged from the Army, and returned to his native New York where he worked at a local hospital and moonlighted making medical house calls.

MacDonald's parents-in-law (Alfred and Mildred Kassab) then brought charges against the young, inexperienced investigators who had forced the Army hearing and the perjured themselves on the stand. William Ivory, Robert Shaw and Franz Grebner were brought up on charges of FILL IN PLUS FOIA DOC

Colonel Rock was approached by another CID agent, Peter Kearns, to investigate the charges against Ivory, Shaw and Grebner.

In less than a week, Kearns cleared the three of any wrongdoing and in tandem, organized his own "re-investigation" of the murders with Ivory, Shaw and Grebner in charge, the very men who had been called on the carpet for their incompetence, complicity and perjury.[6]

Kearns subsequently submitted an entirely "new" account, concluding that MacDonald should be cleared because of "insufficient evidence". This second, bizarre and unwarranted "re-investigation" was subsequently adopted by the Department of Justice in later years as the "official" Army position, rather than the Tribunal's determination that the charges against MacDonald were "not true".[7]

Additionally, Army lawyer Brian Murtagh arranged transfer to the DOJ in order to pursue MacDonald as a civilian. He promised the DOJ, that if assigned to prosecute MacDonald he would "guarantee a win"[8]FILL IN PLUS DOCS

Contrary to government assertions, and later dramatizations in books and television, MacDonald's father-in-law (Kassab) did not "turn" on MacDonald due to concluding, as William Ivory proposed, that the crime scene had been "staged". In fact, the evidence Ivory believed was "staged" was disposed of at the Article 32 hearing in 1970, some four years before the DOJ's determination to construct a case against MacDonald as a civilian, no matter the facts.[9]

As documented by witnesses in attendance, Kassab was incensed when, in 1972 CHECK YEAR MacDonald told his in-laws that he had accepted a job in a hospital on the west coast. Living in New York, where he had grown up and met and married his young wife, Colette, only served to remind him of happy times he could not regain. He wanted to get a fresh start after the loss of his family and the ordeal of the Army hearing. However, the Kassabs viewed MacDonald's actions as "abandoning" them. Kassab vowed that "If you do this, you will live to regret it."[10] FILL IN WITH DOC

MacDonald moved to Long Beach, California and became Director of Emergency Services at St. Mary Hospital, supervising a staff of FILL IN doctors and nurses. He was an innovator in state of the art life-saving techniques which were taught and published. On more than one occasion, he risked his own life to save others and in FILL IN became the first Honorary Member of the Long Beach Police Association not only because he had only saved several officers' lives, but because he had risked his own life in the process.[11]

Indeed, when MacDonald was indicted by a Grand Jury, it was the LBPA that organized and funded a dinner dance to raise funds for his defense.

In 1979, when MacDonald's federal trial was held, St. Mary Hospital kept his job open for him. Even post-conviction, his job was kept open for him, and the American Medical Association (ABA) kept his medical license(s) in good standing.

In 1980, when MacDonald was released on appeal by this Court, he returned to position at St.Mary and continued to practice medicine until 1982 when the USSC reinstated his conviction. At that time, the ABA wrote to say they still did not want to revoke his license; instead, MacDonald voluntarily surrendered it, believing that, because he was innocent, he would soon be released again and have his privileges reinstated.ABA DOC

Through the ensuing decades of imprisonment, MacDonald sought to uncover evidence not available to the trial jury via the Freedom of Information Act (FOIA). Many requests were disallowed; what did result were largely highly redacted documents, released piece meal over decades of time.

When something highly exculpatory surfaced, perhaps by accidental oversight, procedure dictated that MacDonald move the Court to reverse his convictions on that one piece of evidence alone (within one year of discovering something the government had known all along) or lose the right to appeal forever.

In this manner, the government systematically doled out long-suppressed evidence in its keeping over decades of time; decades in which each piece of exculpatory evidence that came to light was deemed "not enough" (by itself) to overturn MacDonald's conviction.

However, over time MacDonald had amassed enough evidence, including newly discovered evidence, that this Court was moved to reverse the District Court's November 2008 denial (May 2010) leading to an evidentiary hearing (September 2012) in which, for the very first time the "totality of the evidence" was to be considered "as a whole".[12]

Incredibly, new exculpatory evidence arose during the evidentiary hearing itself, as well as after it, and even after the district court's 2015 decision, once again denying MacDonald relief. FOOTNOTE

Despite specious and hyperbolic media accounts, myths proliferated by own our government, and the inherent difficulties of fighting for one's innocence without resources or access to evidence long-held by federal authorities, MacDonald has held fast to his belief that the Truth matters and responds herein to the government's brief regarding his request for appeal relating to the Innocence Protection Act.

STATEMENT OF FACTS

Facts and Procedural detail Regarding IPA Motion

The government continues to repeat that the evidence of MacDonald's guilt was "overwhelming". Yet several experienced judiciary officials thought otherwise.

Just months after the murders in 1970, after an exhaustive 7 week Army hearing, replete with 78 witnesses and the presentation of all of the authorities' evidence, the military tribunal headed by Colonel Warren Rock concluded that the charges against MacDonald were "not true".

Trial Judge Franklin Dupree declared in 1979, in a letter to defense paralegal Wendy Rouder that he "fully expected MacDonald to be acquitted".

Judge Francis Murgnahan wrote in 1985(?) that this case left him "with a sense of uneasiness", and pondered the fairness of MacDonald's trial given that seven witnesses to the confessions of key witness Helena Stoeckley were disallowed. He also stated that "The way in which a finding of guilt is determined is at least as important as the finding of guilt itself."? Was it Murgnahan/when/exact words?

As late as 2012, former North Carolina Judge (what kind?) Jerry Leonard stated QUOTE FROM HEARING

The reality is that the government's statement has been contradicted, not only by the plethora of exculpatory evidence that has come to light, but by the faultiness and inherent weakness of the government's "evidence" itself , which has been methodically articulated to the Court. 13JUNKIN ITEMIZED MATERIAL EV>

I. Facts Regarding the Blood Evidence in this Case

The government quotes the trial judge [Page 5 at 13-19] regarding the importance of the blood evidence as presented to the 1979 jury:

> **As fate would have it, MacDonald, his wife and two daughters all had different blood types: Colette MacDonald- Type A, Jeffrey MacDonald- Type B, Kimber(ley) MacDonald –Type AB and Kristen MacDonald- Type O. This allowed investigators to reconstruct the sequence of events occurring in the Macdonald apartment on the night of the murders.**

One can only imagine the devastating impact these words had on the jury, and yet they are totally false. Science dictates that blood "typing" is nothing more than a designation- it is not a means to determine a sequence of events, much less to reveal the identity of the person(s) involved. FOOTNOTE

The judge's words to the jury here are yet another example of the incredible amount of faulty evidence that infected MacDonald's trial. If the *trial judge* believed that blood typing could be used to reconstruct what occurred in the MacDonald apartment, who was defense counsel Bernard Segal, much less MacDonald, to tell them otherwise?

In its current brief, the government states [pg 6 at3-5]:

> **"…..the issue at trial was not the identity of the contributor of a typed [blood] stain, but rather when, and how, it was deposited at the crime scene."**

Yet the *identity* of the contributors of blood at a murder scene IS the issue. For the government to contend otherwise is absurd, and simply shows how unscientific the prosecution's presentation at trial was at its very core. How could the identity of who contributed the typed stains not be the *only* relevant detail as to their value in the course of a murder trial? *Without knowing WHO contributed the typed stains, what does it matter when and how they were deposited?*

When and how the blood was deposited (which also cannot be determined by blood typing) is irrelevant if the identities of those who shed the blood is indeterminate.

It is incomprehensible that the prosecution was permitted to mislead the jury in this grossly injurious fashion. Like the "pajama top experiment" it so heavily relied on as "proof of guilt" at trial, the "reconstruction of events" using a blood type chart was completely without scientific merit. It is yet another indication of the inherent weakness of the government's case.

The government relied so heavily on the blood type chart shown to the jury that, in fact, it somehow "left off" one particular blood stain consisting of Type B blood [Jeffrey MacDonald's "type"] in the

hallway adjacent to the living room. *Given that the jury believed it was looking at a "road map" of what happened in the MacDonald apartment that night, and the blood stain was located at the precise location where MacDonald said he first fell unconscio*us, omitting it was a particularly cruel example of prosecutorial misconduct. FOOTNOTE ABOUT WHEN WE LEARNED THAT POST-TRIAL VIA FOIA

The jury, believing there was no blood of any "type", much less MacDonald's, at the location where he said he had been wounded and knocked unconscious, was another government "evidentiary" item that wrongly led them to disbelieve MacDonald's account of events.

As Judge Dupree noted mid-way through MacDonald's trial:

"QUOTE ABOUT ALL THERE IS WHETHER JURY BUYS MACDONALD'S STORY"

This is why DNA testing of the blood evidence in this case has always been crucial: Since the early 1990's, DNA has been proven to be a 100% accurate scientific way to learn the identity of who contributed the blood at the MacDonald crime scene, yet the government vehemently opposed any DNA testing in this case in 1997, and now in 2015. If any of the blood was DNA tested and found <u>not</u> to be the blood of a MacDonald family member, it would be <u>astoundingly powerful new evidence of intruders.</u>

Importantly, *<u>why does the government continue to vehemently oppose DNA testing ?</u>*

The blood evidence was central to the government's case at trial- but its nothing more than a bold assumption- an assumption that egregiously misled the jury- to state that all of the blood stains belonged to MacDonald family members. Given that millions of people have each of the four blood "types" present at the crime scene, and that science dictates blood cannot be identified as belonging to a certain individual based on "type", how in the world could the government's "blood charts" even have been introduced as evidence?

The government goes to great length to explain away the folly of blood typing as a tool to determine guilt or innocence. It contradicts itself by stating [Page 6 , FN 12] "that defense counsel DID raise the issue about each blood type belonging to millions of people", but then stating [Page 7 at 10-11] that defense counsel" did NOT contest any of the blood-type evidence."

Further, the defense was hamstrung by the trial judge's decision to admit the blood type chart into evidence and advising the jury that "investigators were able to reconstruct the crime" using this information. MacDonald should not be held accountable for the trial judge's decision to overrule all objections relating to this matter.

II. <u>Facts Regarding the 1997 DNA Testing</u>

The government selectively edits sections of the wording from MacDonald's 1997 request for DNA to paint a picture of thoroughness and transparency throughout the process. Nothing could be further from the truth.

The District Court summarily denied MacDonald's request for DNA tests, and it was only on remand from this Court (1997) that the tests were ultimately allowed.

(Defense attorney) Philip Cormier had requested (in the initial 1990 appeal) DNA testing on items "such as" (with accompanying examples). The District Court sided with the government and did not allow exhibits "such as" those specifically identified, but rather, ONLY those specifically identified.

Rather than taking a broader view, the judge adopted the narrowest view, thus limiting the testing to specific exhibits, several of which the government conceded had been destroyed or missing in the designated vials- while under its jurisdiction for decades.

MacDonald 1998 Motion to Compel Access to All Biological Evidence and for DNA Testing was denied by the District Court.

In addition, the District Court mandated that the limited DNA tests also exclude any exhibit that would be destroyed in the testing process.

Why would the government care if exhibits were destroyed? By insisting that a portion of each tested exhibit be "kept" by the government, potentially exculpatory exhibits were prohibited from being tested. Moreover, such opposition is contrary to the government's continual demands for "finality" in this case. *Why would the government oppose testing evidence that would be destroyed in the process unless it expected a need to refute exculpatory results or subject the same exhibits to testing by even more modern means in the future?*

No "replacements" were allowed to be substituted for the "missing" exhibits the defense was held to, despite having merely suggested particular exhibits as examples, not a concrete list.

MacDonald respectfully suggests that this game of symantics was simply a tactical move by the government to keep the full range of remaining biological evidence –especially blood-from being DNA tested.

If finding the truth is the goal, why did the government fight to limit the scope of the original testing in any way? How many cases do you have where the defendant is begging for ALL of the remaining evidence to be DNA tested and the government is vehemently opposed to such access?

In its current brief, the government continues to point out procedural reasons why DNA tests should be disallowed on the remaining evidence, but fails to provide a moral reason.

A man's very life is at stake here; shouldn't everything humanly possible be done to get to the truth?

What does the Office of the Attorney General's (OAG's) mandate that "no procedural bars" should be erected by the Department of Justice (DOJ) to obstruct DNA tests or any other means of investigation into the cases of those affected by the malfeasance of its own experts(including MacDonald) mean if the DOJ is permitted to erect such barriers ? FOOTNOTE

Yet despite the very limited number of exhibits ultimately tested, three (3) were found to be highly exculpatory: Unsourced hairs under the body of MacDonald's wife Colette, in the bedsheet of his eldest daughter Kimberley and most tellingly, lodged beneath the fingernail, with bloody root intact, under the fingernail of his 2 year old, Kristen. All three exhibits were in strategic locations, and they were not MacDonald's hair.

The government executed an agreement with the defense that the DNA results obtained by the AFIP (Armed Forces Institute of Pathology) would not be disputed by either party. Then, it set about doing exactly that- but only in the case of the three (3) exculpatory exhibits.

After almost a decade, the government tried to explain away the results, their location and their meaning, and ultimately grasped on to the notion that of all the exhibits tested, these three alone must have been contaminated. FOOTNOTE

How is it possible that, despite years of litigation in which the government's sole mission was to successfully limit the parameters of the DNA tests (and it prevailed) it could then claim "contamination" of the three exhibits consistent with proving that MacDonald is innocent?

Adopting this position on "contamination" calls *all* of the government-held evidence in to question; yet it ultimately chose it because admitting that these three results were exculplatory would be an insurmountable blow to their case: Hard evidence of innocence. The real contamination here was suffered by the trial jury, to which government "experts", now known to be anything but, presented junk science as fact

FBI INVENTORY and AFIP Preliminary EXAMINATIONS

The statements espoused by the government here are simply greater indicia of its resorting to procedural bars and tactical omissions to obstruct the truth.

2006 DNA CLAIM

In attempting to obstruct MacDonald's access to the blood evidence by condoning the District Court's denial of his qualification under the IPA, the government quotes Judge Fox as follows [Page 12 at 15-22]:

> The record shows that Y-STR and mini-STR testing and analysis are useful mainly where conventional testing cannot or does not yield accurate results. *See Aff. of Delgado [DE-228] at 12-13 (explaining that MiniSTR analysis should only be used when samples have been subject to degradation or the quality is poor and that because [t]he DNA profiles will be the same…there is no additional benefit in using miniSTR analysis over conventional methodologies);* & 14('Y-STR analysis does provide valuable information when the overwhelming amounts of female DNA prevent the detection of male DNA in lower concentration, typically in cases of sexual assault.); &15 ([T]he applications of [miniSTR and Y-STR] methodologies are quite specific and don't replace conventional STR typing.). Out of the at least 79 exhibits that MacDonald now seeks to test, approximately only 23 of them were previously examined by AFDIL . . . The 56 remaining items have never been subjected to conventional STR analysis. Given that neither miniSTR nor Y-STR testing are meant to replace conventional STR analysis, it is difficult to attribute MacDonald's delay in filing his IPA motion to advancement in those methodologies . . . The belated nature of MacDonald=s IPA motion does not, therefore, appear to be caused by the advancements in DNA testing. The court accordingly

concludes that the fact that MacDonald now seeks miniSTR and Y-STR testing does not rebut the presumption of untimeliness, pursuant to ' 3600(a)(10)(B)(ii). DE-356 at 15-16.

How is it possible that the same district court judge, who just one year prior to the evidentary hearing in this case admitted, *"Well, I need to get an education in DNA anyway."* FOOTNOTE could then formulate such an extensive analysis, including references, on scientific data he professed (in the vernacular) to know nothing about?

THE SEPTEMBER 2011 STATUS CONFERENCE

This statement from the judge was made in response to defense counsel's concern that the district court had already expressed "futility" in any further proceedings by denying MacDonald relief. November, 2008: [Doc 193 at Page 40 9.21.11]

Further, how is it possible that, having overseen the original DNA testing for nine (9) years (1998-2007), and making numerous decisions about the process, and ultimately denying MacDonald's claims relating to the results, the district court could profess in 2011 that it needed an education in DNA?

Additionally, it is difficult to reconcile the district court's denial of MacDonald's IPA claim when it admitted as early as September, 2011 to having *never read* the 1979 trial transcript, despite being the presiding judge in this case since 1997.

At its September 2011 Status Conference, the district court stated:

> THE COURT: WELL, YOU KNOW, I'VE THOUGHT ABOUT THAT, VIEWING THE EVIDENCE AS A WHOLE, AND I'VE GONE BACK AND READ -- STARTED IN READING THE TRANSCRIPT. DO YOU HAVE ANY IDEA HOW LONG IT WOULD TAKE ME TO READ THE ENTIRE TRANSCRIPT ASSUMING I HAVE SOMETHING ELSE TO DO?"
>
> I MEAN, THE RECORD WOULD BE TREMENDOUS AND, ALSO, IN MY ATTEMPTS TO DO THAT I CANNOT CONVEY TO YOU THE DIFFICULTY IN FOLLOWING A TRANSCRIPT, WHICH IS DISCUSSING ITEMS AND PHOTOGRAPHS THAT ARE NOT BEFORE YOU.
>
> IN A SENSE -- I DON'T MEAN THIS CRITICALLY, BUT IT'S JUST TRUE, IT WOULD BE A MONUMENTAL TASK TO GO BACK AND VIEW THE EVIDENCE IN THE CONTEXT IN WHICH IT CAME OUT IN COURT. IT WOULD BE JUST STAGGERING. IN FACT, I DON'T THINK ANYBODY'S CAPABLE OF DOING IT. I STARTED IN THAT AND STARTED MAKING THE EFFORT IN THAT REGARD. I MADE -- I CAME TO THE CONCLUSION AFTER REVIEWING THE FIRST WEEK OF THE TRIAL TESTIMONY THAT I WOULD HAVE TO KIND OF ZERO IN ON WHAT I CONSIDER TO BE SIGNIFICANT, PICKING PORTIONS OF THE TRANSCRIPT TO READ,

BECAUSE I DON'T THINK I COULD POSSIBLY READ IT ALL IN LESS THAN HALF A YEAR.

How could the district court come to any decision about the quality of the evidence presented to the jury in 1979, much less the totality of the evidence in this case, having never read the transcript upon which much of his decision depended, in a case he had presided over for nearly 15 years?

THE INNOCENCE PROTECTION ACT OF 2004 (IPA)

Given the increasingly alarming number of wrongful convictions being identified since the advent of DNA testing, the IPA was enacted as one means of providing post-conviction relief for those who are actually innocent. FOOTNOTE

The government does not contest that MacDonald meets the IPA rules and procedures for federal inmates, and instead relies solely on trying to erect a procedural bar rather than advocating for any and all information that might shed (even further) light on the truth.

At the September 2011 Status Conference, the government stated "We're going to object to any new DNA testing for sure" [Doc 193 pg. 3 at 24-25], which prompted the district court to directly ask "Why?" (especially since the North Carolina Center on Actual Innocence (NCCAI) had just told the court that it was willing to pay for the tests.)

> **"If we order new DNA testing, which you oppose, or new procedures, why would----I'm just curious, if it would produce more information, what would be the objection to it?"**
> [DE 193 pg.5 at 15-18]

The transcript shows the government's various reasons for opposing including:
"We need to look into these new technologies…"
"The high risk of contamination….."
"The case does not fit the paradigm of how DNA exculpates people"
"….too late, we content to come back and say we want to test more…"

And
"….continuing to come up with unsourced things, liked unsourced hairs, adds nothing to the mix."

This last statement by the government is telling in that it seems to be conceding that, although all of the evidence in this case has been in its sole possession since day one, that unsourced evidentiary items will "continue to come up".

Why, if the crime scene was so well managed, the investigation so thorough, and all evidence, inculpatory or exculpatory been identified, would there be unsourced items continuing to surface?

Why, if the government truly believes that its case against MacDonald is "overwhelming" would it be concerned with what might surface?

Further, the District Court asked:

> **"Well, I mean if they were hits [DNA matches] from unknown people, would it be relevant?"** [DE 193 pg. 6 at 7-8]

To which the government replied:

> **"No, we agree with that, and that's why we don't see the need for further DNA testing."** [DE 193 pg. 6 at 9-10]

Clearly, this makes no sense.

The blood "evidence" proffered to the jury as fact has been shown to be not only misleading, but false. This blood evidence was central to the government's case in chief in 1979. Thus, it is a prime source of relevant evidentiary material in this case, should this Court decide that something more is needed to decide whether MacDonald is, as he has steadfastly maintained through nearly 35 years of imprisonment, actually innocent.

If there is additional information that can be obtained via DNA testing items such as the blood exhibits , central to the government's case, using newer testing methods now available, why in the world would the government object?

SUMMARY

The government asserts in its brief that allowing MacDonald to pursue his rights under the Innocence Protection Act would amount to nothing more than a "fishing expedition".

How can continuing to look for something that may be valuable in proving a man's innocence be categorized so cavalierly?

What reasonable explanation does the government have to oppose available testing on exhibits that still exist if one is interested in the truth?

The government consistently maintains that this case must be "finalized". MacDonald maintains that his case needs to be *resolved* before it can be finalized, and believes that the information proffered within his current appeal involving the 2255 habeas petition will move this Court to reverse his convictions.

However, as long as there are unanswered questions in this case, justice demands that they be answered.

MacDonald is now 72 years old; he has spent the better part of his life imprisoned for crimes he did not commit. To deny him any avenue of recourse that is still available to him in his quest to prove his innocence would be a manifest injustice.

What is to be gained by allowing the government to use procedural bars to protect remaining evidence in its care from scrutiny?

What does the government stand to lose if additional DNA tests are needed in order to establish MacDonald's actual innocence? Keeping MacDonald's convictions intact?

By relentlessly trying to narrow the picture rather than widen it, the government appears to be much more concerned about keeping MacDonald in prison –innocence be damned- then about its duty to seek out the truth and uphold justice.

Blackstone's seminal tenant in criminal law reverberates:

> **All presumptive evidence of felony should be admitted cautiously; for the law holds it better that ten guilty persons escape, than that one innocent party suffer.**

And, as the Founding Father John Adams phophetically espoused:

> **" It is more important that innocence should be protected, than it is, that guilt be punished; for guilt and crimes are so frequent in this world, that all of them cannot be punished.... when innocence itself, is brought to the bar and condemned…….the subject will exclaim, 'it is immaterial to me whether I behave well or ill, for virtue itself is no security.' And if such a sentiment as this were to take hold in the mind of the subject that would be the end of all security whatsoever."**

CONCLUSION

For the reasons stated herein, the order of the district court denying MacDonald's motion pursuant to the IPA should be reversed.

Respectfully submitted, this 15th day of December, 2015.

_____

Jeffrey R. MacDonald

Appellant
PO BOX 1000 Unit C-2
Cumberland MD, 21051

CERTIFICATE OF SERVICE

I hereby certify that I this date served a copy of the foregoing document upon the Appellee in this action by placing a copy of same in the United Sates mail, postage prepaid and addressed as follows:

John S. Bruce
First Assistant U.S. Attorney
310 New Bern Avenue, Suite 800
Raleigh, North Carolina 27601