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'HOUSE V. BELL': Restoring habeas corpus
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The law, as Dickens famously said in *Oliver Twist*, can be "a ass, a idiot." Due to legal restrictions enacted in the past 20 years, limiting the ability of prisoners to re-open cases because of new evidence, the criminal justice system was in danger of dispensing more gamesmanship and less justice.
However, on June 12, in *House v. Bell*, the U.S. Supreme Court took a step toward redeeming the promise of law to punish only the guilty. It instructed lower courts, when faced with newly discovered evidence after appellate finality, to examine the entire factual picture, not just the latest isolated piece of evidence. This is likely to result in the first reconsideration in a quarter century of the conviction of Dr. Jeffrey R. MacDonald, a former Green Beret military surgeon in federal prison since 1982 for the 1970 murders of his wife and two daughters at Fort Bragg, N.C.-crimes that we and his other lawyers are confident he did not commit.

Looking at the whole picture
The Supreme Court used this opportunity to instruct recalcitrant lower courts to examine the full factual records of cases, partly because recent experience, triggered by the advent of DNA science, demonstrates how often the system errs. Even with DNA, an obstacle to correcting wrongful convictions has been the unwillingness of state and federal courts to examine all accumulated evidence after appeals have been exhausted.

Lawyers trying to free the wrongly convicted have been frustrated since the mid-1980s, when the Supreme Court, responding to pressure from law-and-order and death penalty advocates, began to restrict the power of federal courts to review convictions, especially in capital cases. Those steps narrowed the circumstances in which a prisoner could file a habeas corpus petition to present newly discovered evidence after direct appeals have been exhausted. The obstacles erected by the Rehnquist court, supplemented by Clinton administration legislation, along with state procedural bars, made it virtually useless for prisoners to present new evidence, for unless that evidence on its own demonstrated factual innocence, the courthouse doors remained shut. "Finality" was the name of the game-and it was indeed a game.

In *House*, recently obtained DNA evidence showed that semen attributed at trial to the defendant in fact belonged to the husband of the rape-murder victim. Suddenly the trial theory that Paul Gregory House had committed rape was discredited, as was the surmise that he murdered the victim after (and because) having raped her. Yet the fact that House had not raped the victim did not absolutely prove that he had not murdered her; hence, the courts refused to re-open the case. But, said the Supreme Court, the DNA, combined with the other known evidence, produced sufficient question such that reasonable jurors would not convict.

Impact on the 'MacDonald' case
This is common sense, not some technicality. One wonders why it took two decades in coming. (Dickens may have had the best explanation.) We have been representing MacDonald since 1989 in what's become known as the "*Fatal Vision* murder case," made famous by author Joe McGinniss' book that concluded that MacDonald was guilty. Despite the fact that investigative reporters Jerry Potter and Fred Bost, in their 1995 tome *Fatal Justice* thoroughly debunked the McGinniss book, McGinniss' version has held sway with the public and, importantly, the courts. That is, until now.

Our representation of MacDonald has been consistently frustrated by procedural bars. After extensive re-investigation, we filed a habeas corpus petition (the second filed in the case) in 1991. Immediately, the Supreme Court began to erect the first procedural barriers. We were stonewalled because the trial judge found that our new evidence did not demonstrate the requisite "actual innocence." In one of MacDonald's earlier appeals, a member of the 4th U.S. Circuit Court of Appeals had written about his discomfort over the failure of the jury to see a "rounded picture" of all the relevant evidence, but he nonetheless voted to affirm. All subsequent efforts to have courts review the steadily accumulating mountain of evidence failed to upset the verdict, as each new piece of evidence has been evaluated on the basis of whether it, by itself, demonstrated innocence.

MacDonald's case ended up back in court several months ago when a new team of lawyers was contacted by a retired deputy U.S. marshal who said that he had observed a critical defense witness being threatened by one of the prosecutors (since disbarred) before her disastrous trial testimony. This development provided an explanation for why this crucial witness-who admitted to several people to having participated, with others, in the murders-suddenly had a purported memory loss on the witness stand. In addition, recently obtained DNA evidence bolsters MacDonald's innocence, since it demonstrates the presence of DNA, on or near the victims' bodies, that does not belong to MacDonald.

While any single piece of this evidence might not, in itself, meet the "actual innocence" standard, the totality is overwhelming. The question, at long last, will be whether the "rounded picture" demonstrates that no conscientious, fully informed juror could have voted to convict.

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