

TO: DEFENSE TEAM

FROM: JEFFREY R. MACDONALD, M.D.

DATE: DECEMBER 17, 1988

SUBJECT: 1. JAMES FRIER STIPULATION AT TRIAL
2. MURTAUGH'S DECEPTION REGARDING BLACK WOOL
3. EXCULPATORY EVIDENCE SUPPRESSED BY PROSECUTION

We just received pages 4,610-4,760 from Friday, August 10, 1979, during the trial. Shirley Green had finished her testimony (following Paul Stombaugh) on Friday. Murtaugh then requested that he be allowed to read stipulations into the record that he had discussed with Bernie Segal.

The key pages are 4,610-4,613. The majority of pages 4,614-4,760 is a reading of Esquire magazine excerpts.

Key points to remember while reading lines 4-17 on page 4,612 are:

1. CID handwritten notes of 1970, show that Exhibit 307 (at trial) was CID Exhibit E-205 (debris from club). CID findings: two "purple cotton fibers matching pajama top" and "blue, green and yellow nylon fibers from rug".
2. Paul Stombaugh in 1974 said that E-205 contains "two purple cotton fibers like those in pajama top". FBI number is Q89.
3. James Frier's 1979 handwritten notes withheld from the defense show that CID E-205 is now Q89 and the findings are:
"Two black woolen fibers--source unknown"
"One green woolen fiber--source unknown"
 plus
"two green, three blue and one gold fiber, all rayon, from rug"
 plus
"numerous white cotton fibers"
4. The 1979 FBI typed report of Frier's findings, dictated by Morris Clark and not Frier, does not mention the crucial black wool findings.
5. Frier is listed as a government witness in the 1979 spring and summer witness lists and was in Raleigh, North Carolina, on standby to testify. He never testified.

6. In June, 1979, the FBI was doing fiber studies on sweaters from 544 Castle Drive, apparently trying to match the mystery fibers.

7. Back in March, 1979, Murtaugh personally picked up the original and carbon copies of the fiber report disguising Frier's real findings.

8. At trial, Dillard Browning from the CID testified two fibers on the club were matched to the pajama top (i.e. that E-205/Q89 had two purple cotton fibers in it matching my pajama top). He also stated there were only two fibers in the exhibit!

9. At trial, Stombaugh, as the FBI "fiber expert", testified he found two purple sewing threads in Q89 (i.e. debris from club). Importantly, he said he looked at them on slides, which Frier's report refutes.

10. The crucial deception: See page 4,612. Murtaugh, the only person besides Frier who knew of the black wool, lies to the court and Bernie Segal. We stipulate that we agree Frier would testify to the other fibers, i.e. the rayon fibers matching the throw rug. No mention is made of Frier's crucial finding of two black wool fibers! Since we stipulate, Frier does not go on the stand; we can't cross-examine him, and we can't discover the crucial notes. Murtaugh has, as a safety valve, made the FBI typed report, but no mention is made of Frier's crucial finding in it (in addition, we do not believe the defense received the typed report anyway).

Thus, through clever slight-of-hand, Murtaugh has intentionally and knowingly suppressed the single most crucial piece of exculpatory material in the case other than the (also hidden) loss of the piece of skin from Colette's hand on which the blood type of Greg Mitchell was found!

The black wool fibers put assailants at the scene because the black wool on the club (and in Colette's mouth and on her pajama top) is not from a source in the house.

11. Then, almost unbelievably, the government prosecutor asks me on cross-examination (page 6,791, Friday, August 24, 1979) to explain "two purple sewing threads identical to those from the pajama top". My answer: "I cannot".

But, the fibers were known by Murtaugh to be black wool from outside the house.

12.

The final blow is in the closing argument. On August 28, 1979, Brian Murtaugh tells the jury that the government took two purple cotton sewing threads from the club. Then, Blackburn takes over and states they would throw out the whole shooting match except for two things: the pajama top and the club because two purple threads on the club matched the pajama top and I can't explain it.

And so, the crux of the government case is a knowing lie. The fibers on the club not only weren't blue cotton or purple cotton (they were black wool), but they also were from outside the house. And, when I couldn't answer the government's query based on a lie, I was convicted. The government had subverted discovery for so long we could never do our own testing, and Murtaugh ingeniously had us stipulate to the one witness most dangerous to the government cover-up and lie, James Frier. If he testified, his cross examination and notes would have provided the defense with knowledge of the real, exculpatory facts, and, would have implicated Frier, Clark and Murtaugh in the obstruction of justice (and probably Murtaugh in perjury).

JRM/gfb

1 inspires further interrogation on that point alone

2 I will hear you.

3 (No response.)

4 THE COURT: You'd better go.

5 THE WITNESS: Thank you.

6 (Witness excused.)

7 THE COURT: Any further evidence for
8 the Government?

9 MR. MURTAGH: Yes, Your Honor. We have
10 some testimony that we would like to read into the
11 record, and I believe we have some stipulations which
12 I would like to confer a moment on.

13 THE COURT: All right, sir.

14 (Counsel confer.)

15 MR. BLACKBURN: Your Honor, also at this
16 point we would move into evidence Government Exhibit
17 139, which is the Esquire magazine.

18 THE COURT: Very well.

19 (Government Exhibit No. 139 was
20 received in evidence.)

21 (Counsel confer.)
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MR. MURTAGH: Your Honor, may it please the court-- Counsel have agreed that if Mr. James Frier, an examiner at the FBI Laboratory assigned to the Microscopic Analysis Unit, examined certain exhibits and would testify in regard to them as follows: that he examined Government Exhibit 381, also identified by the CID as E-51NBR, and described on the property receipt as "Multicolored strands of yarn removed from the northernmost night stand in the east bedroom."

He said he compared those yarns with Government Exhibit 357, which is described by the CID as 36NB, "A green yarn found on the multicolored throw rug in Kristen's room" and about which Mrs. Glisson has testified there was Type O blood, that he compared these two yarns and found that the green yarn found in Kristen's room microscopically matched one of the green yarns found on the night stand in the master bedroom.

THE COURT: Very well.

MR. MURTAGH: And at this time, Your Honor, we would move 357, which I believe at one time appeared in the record as 375. It was a typo. And 381 into evidence.



(Government Exhibit Nos. 357 and 381 were received in evidence.)

MR. MURTAGH: Mr. Frier would also testify that he examined Government Exhibit 307, which Mr. Flinn identified as the vial containing the debris removed from Government Exhibit 306, a piece of wood found outside the utility room door; that he examined fibers--that is, single strands--found in this vial and compared those with Government Exhibit 322, which is the multicolored throw rug found by the feet of Colette MacDonald in the master bedroom; and that fibers found in the vial which had been removed from the piece of wood microscopically matched the fibers composing the composition of the multicolored throw rug, and in his opinion, they could have a common source.

It is also stipulated between counsel that in regard to Government Exhibit Q-96 which I believe has the Government Exhibit number of Exhibit 107, which was described by Mr. Flinn as the debris which he removed from the multicolored bedspread found inside the sheet on the floor of the master bedroom, that Mr. Browning, if called to testify, would testify that, after examining a blue yarn or a purple thread

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1 found in that vial, when he returned the contents
2 of that vial to the vial, he did not knot or in any
3 way entangle hair which was also found in that vial
4 and has been identified by Mr. Stombaugh as
5 microscopically matching the head hair of Colette
6 MacDonald.

7 Your Honor, in the interest of time, and
8 with respect to those two exhibits which I just
9 mentioned, we would move into evidence all exhibits
10 previously marked and identified by the clerk but not
11 offered, we would now offer them in evidence and ask
12 that be received.

13 THE COURT: Very well.

14 (All exhibits marked previously
15 by the Government were
16 received in evidence.)

17 THE COURT: That ends the
18 stipulation?

19 MR. BLACKBURN: No, sir; we have one
20 additional one.

21 THE COURT: Well, perhaps it would
22 be appropriate to state to the jury at this time that
23 counsel, in the interest of time, sometimes stipulate
24 certain facts. When they have then stipulated, as the
25 ones just recited to you by counsel, then they become

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ml 1 BY MR. BLACKBURN:

2 Q In other words, this particular club you
3 don't believe is the one that struck you?

4 A No; it does not fit my recollection of
5 holding on to the club.

6 Q Was your club something--that hit you--some-
7 thing like a baseball bat?

8 A That is what I would have guessed.

9 Q Dr. MacDonald, can you tell me, sir, how two
10 threads--two threads microscopically identical to purple
11 sewing threads in your pajama top--got on this club out-
12 side the door of the utility room area, when you stated
13 yesterday that you never went outside that house?

14 A I cannot.

15 Q What position were you in, sir, when you were
16 first struck by a club?

17 A I believe just attempting to sit up.

18 Q Where were your hands, if you can recall?

19 A My left arm was up over me slightly in a
20 defensive position.

21 Q Like that (indicating)?

22 A Right.

23 Q How about your right hand?

24 A I would presume I was pushing off the couch
25 with that.

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[YET WITH THE REALIZATION BY MURTAGH THAT HE HAD DEPENDDED UPON INCOMPETENT LABORATORY TECHNICIANS, WITH THE KNOWLEDGE THAT THEIR WORK HAD BEEN PROVED WRONG, THE PROSECUTOR CONTINUED TO PUSH THE LIE.]

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In his closing argument to the jury on August 28, 1979, Brian Murtagh said this:

* * *

. . . Now, when they got the piece of wood to the laboratory, they removed from the club two purple cotton seam threads or two purple cotton threads which were identified as being identical to those of the seam threads of the defendant's pajama top found on Colette's body I will ask you to remember and bear in mind these two purple cotton threads. We will come back to it. [Page 7072]

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Jim Blackburn, in his closing arguments to the jury on August 28, 1979, also continued the lie--but perhaps without knowing he was continuing a lie. The question is, to what extent had Murtagh told him the truth? Here is one of Blackburn's statements:

* * *

Perhaps the most telling thing of all, ladies and gentlemen, you come back to two pieces--you could throw the whole shooting match away except for two pieces of evidence. Brian will disagree with me, but I think you could just hold onto two--these two (holding up the club and pajama top). Why are they so important?

Well, you remember, he said that he hadn't seen this until April 6th, and he didn't think this was the club that he was hit with. The club, the knives, and the ice pick were outside the door. He didn't go outside the door, but he went to it. They had A and AB blood on it and some threads which matched--or some yarns which matched the throw rug in the master bedroom. They had two little purple threads on them matching identically in composition with these (indicating). This sounds sort of minor, really, until you think about something. How did they get there? If he never touched them, if he never saw them, if the pajama top was not taken off of his body in the hall or the living room until this club was out the door, how in the name of all that is reasonable did they walk out the door and get on the club and stick to it? . . . [Pages 7136-7]

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[THE BIG LIE WAS SUCCESSFUL, AND DR. MACDONALD WAS CONVICTED BY INNOCENT JURISTS WHO WERE CONVINCED (ACCORDING TO INTERVIEWS) THAT ANYTHING PRESENTED TO THEM BY THE FBI LABORATORY HAD TO BE THE TRUTH. THE JURISTS WERE ASSURED BY PROSECUTORS THAT THERE WAS NO EVIDENCE OF

INTRUDERS IN THE MURDER APARTMENT. JURY MEMBERS NEVER LEARNED, AS WE HAVE JUST LEARNED, THAT A COLLECTION OF FIVE UNIDENTIFIED BLACK WOOLEN FIBERS WERE FOUND--TWO ON THE BLOODY CLUB, ONE ON COLETTE'S PAJAMA TOP, AND TWO ON HER CRUSHED AND BLEEDING MOUTH, ALONG WITH AN UNIDENTIFIED PINK FIBER.

MURTAGH KNEW THE JURORS WOULD HAVE SEEN THE TRUTH; THAT THE FIBERS--BECAUSE THEY MATCHED NOTHING WORN BY DR. MACDONALD, AND MATCHED NOTHING IN THE HOUSE--MUST SURELY HAVE BEEN LEFT BY INTRUDERS.

SO THE JURY WAS DELIBERATELY FED FALSE INFORMATION.

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It is ironical that Blackburn, in his closing arguments, pinpointed the factor in this case that caused Dr. MacDonald's conviction.

Blackburn said:

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. . . I can only tell you from the physical evidence in this case that things do not lie, but I suggest that people can and do lie.

[Page 7114]

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[AND WE KNOW THIS TO BE TRUE; AND WE KNOW WHO DID THE LYING.]

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