

# The Burger Court Opinion Writing Database

## *United States v. MacDonald*

456 U.S. 1 (1982)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



To: Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: The Chief Justice

Circulated: MAR 1 1982

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-1582

UNITED STATES PETITIONER *v.*  
 JEFFREY R. MACDONALD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE FOURTH CIRCUIT

[February —, 1982]

CHIEF JUSTICE BURGER delivered the opinion of the  
 Court.

We granted certiorari to decide whether the time between dismissal of military charges and a subsequent indictment on civilian criminal charges should be considered in determining whether the delay in bringing respondent to trial for the murder of his wife and two children violated his rights under the Speedy Trial Clause of the Sixth Amendment.

### I

On the night of February 17, 1970, respondent's pregnant wife and his two daughters, aged 2 and 5, were brutally murdered in their home on the Fort Bragg, North Carolina, military reservation. At the time, MacDonald, a physician, was a captain in the Army Medical Corps stationed at Fort Bragg. When the military police arrived at the scene following a call from MacDonald, they found the three victims dead and MacDonald unconscious from multiple stab wounds, most of them superficial, but one a life-threatening chest wound which caused a lung to collapse.

At the time and in subsequent interviews, MacDonald told of a bizarre and ritualistic murder. He stated that he was asleep on the couch when he was awakened by his wife's screams. He said he saw a woman with blond hair wearing a

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

RECEIVED  
OFFICE OF THE  
CHIEF JUSTICE

1982 MAR 3 AM 9 22

March 2, 1982

80-1582 United States v. MacDonald

Dear Chief:

Although I join your opinion, I write to suggest that my opinion in Barker v. Wingo certainly seems relevant, and at least should be cited.

Barker v. Wingo identified four factors to be considered in speedy trial cases. It was decided by a unanimous Court, and has been cited - I believe - in each of our subsequent speedy trial cases. It was decided after Marion and has a somewhat fuller discussion of the purpose of the speedy trial provisions.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

*Thanks  
Will do  
WFB*

pp 1, 6, 7



- Justice Brennan
- Justice White
- Justice Marshall
- Justice Blackmun
- Justice Powell
- Justice Rehnquist
- Justice Stevens
- Justice O'Connor

From The Chief Justice

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Recirculated: **MAR 19 1982**

3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

No. 80-1582

UNITED STATES, PETITIONER *v.*  
JEFFREY R. MACDONALD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[March —, 1982]

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## I

The facts in this case are not in issue; a jury heard and saw all the witnesses and saw the tangible evidence. The only point raised here by petitioner involves a legal issue under the Speedy Trial Clause of the Sixth Amendment. Accordingly, only a brief summary of the facts is called for. On the night of February 17, 1970, respondent's pregnant wife and his two daughters, aged 2 and 5, were brutally murdered in their home on the Fort Bragg, North Carolina, military reservation. At the time, MacDonald, a physician, was a captain in the Army Medical Corps stationed at Fort Bragg. When the military police arrived at the scene following a call from MacDonald, they found the three victims dead and MacDonald unconscious from multiple stab wounds, most of them

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

December 14, 1981

RE: No. 80-1582 United States v. MacDonald

Dear Thurgood and Harry:

We three are in dissent in the above. Would you,  
Thurgood, mind taking on the dissent?

Sincerely,

A handwritten signature in cursive script, appearing to read "Bul", is written over the typed name "Justice Marshall".

Justice Marshall

Justice Blackmun

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

March 4, 1982

RE: No. 80-1582 United States v. MacDonald

Dear Chief:

I await the dissent in the above.

Sincerely,



The Chief Justice  
cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 22, 1982

RE: No. 80-1582 United States v. MacDonald

Dear Thurgood:

Please join me in your dissent in the above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Justice Marshall

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 3, 1982

Re: 80-1582 - United States v. MacDonald

Dear Chief,

I agree.

Sincerely yours,



The Chief Justice

Copies to the Conference

cpm

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 1, 1982

Re: No. 80-1582 - United States v. MacDonald

Dear Chief:

In due course I will circulate a dissent.

Sincerely,

*T.M.*

T.M.

The Chief Justice

cc: The Conference

MAR 18 1982

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-1582

UNITED STATES, PETITIONER *v.*  
JEFFREY R. MACDONALDON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[March —, 1982]

JUSTICE MARSHALL, dissenting.

On February 17, 1970, in the early morning, Dr. Jeffrey R. MacDonald called military police and requested help. When police arrived at the family quarters, they found him unconscious and suffering from multiple stab wounds, including one that threatened his life. His wife and two young children had been murdered. On May 1, 1970, the Army formally charged him with the murders. The Army dropped those charges on October 23, 1970, but reopened the investigation at the request of the Justice Department and handed over a comprehensive report in June 1972. The Justice Department did not convene a grand jury until August 1974, more than two years later. The Court of Appeals charged this delay to government "indifference, negligence, or ineptitude." *United States v. MacDonald* 531 F. 2d 196, 207 (CA4 1976) (*MacDonald I*). On January 24, 1975, MacDonald was indicted by a civilian grand jury on three counts of murder, the same charges that the military authorities had dropped. Trial commenced in the summer of 1979.

Confronted with these facts, the majority reaches the facile conclusion that the speedy trial right is not implicated at all when the same sovereign initiates, drops, and then reinitiates criminal charges. That conclusion is not justified by the language of the Speedy Trial Clause or the teachings of our

FP, 15

MAR 19 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1582

UNITED STATES, PETITIONER v. JEFFREY R. MACDONALD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[March —, 1982]

JUSTICE MARSHALL, dissenting.

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P. 1

To: The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

From: **Justice Marshall**

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Recirculated:     MAR 26 1982    

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-1582

UNITED STATES, PETITIONER, *v.*  
 JEFFREY R. MACDONALD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE FOURTH CIRCUIT

[March —, 1982]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN and  
 JUSTICE BLACKMUN join, dissenting.

On February 17, 1970, in the early morning, Dr. Jeffrey R. MacDonald called military police and requested help. When police arrived at the family quarters, they found him unconscious and suffering from multiple stab wounds, including one that threatened his life. His wife and two young children had been murdered. On May 1, 1970, the Army formally charged him with the murders. The Army dropped those charges on October 23, 1970, but reopened the investigation at the request of the Justice Department and handed over a comprehensive report in June 1972. The Justice Department did not convene a grand jury until August 1974, more than two years later. The Court of Appeals charged this delay to government "indifference, negligence, or ineptitude." *United States v. MacDonald*, 531 F. 2d 196, 207 (CA4 1976) (*MacDonald I*). On January 24, 1975, MacDonald was indicted by a civilian grand jury on three counts of murder, the same charges that the military authorities had dropped. Trial commenced in the summer of 1979.

Confronted with these facts, the majority reaches the facile conclusion that the speedy trial right is not implicated at all when the same sovereign initiates, drops, and then reinitiates criminal charges. That conclusion is not justified by the

Supreme Court of the United States  
Washington, D. C. 20543

March 5, 1982

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

Re: No. 80-1582 - United States v. MacDonald

Dear Chief:

I shall await the dissent in this case.

Sincerely,

*H.A.B.*

The Chief Justice

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

March 24, 1982

Re: No. 80-1572 - United States v. MacDonald

Dear Thurgood:

Please join me in your dissent.

Sincerely,

*H. A. B.*

Justice Marshall

cc: The Conference

March 2, 1982

80-1582 United States v. MacDonald

Dear Chief:

Although I join your opinion, I write to suggest that my opinion in Barker v. Wingo certainly seems relevant, and at least should be cited.

Barker v. Wingo identified four factors to be considered in speedy trial cases. It was decided by a unanimous Court, and has been cited - I believe - in each of our subsequent speedy trial cases. It was decided after Marion and has a somewhat fuller discussion of the purpose of the speedy trial provisions.

Sincerely,

The Chief Justice

lfp/ss

Supreme Court of the United States  
Washington, D. C. 20543



CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

March 2, 1982

80-1582 United States v. MacDonald

Dear Chief:

Please join me.

Sincerely,

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

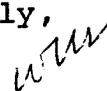
March 2, 1982

Re: No. 80-1582 United States v. MacDonald

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

March 3, 1982

Re: 80-1582 - United States v. MacDonald

Dear Chief:

You have written a most persuasive opinion but, consistent with my uncertainty at Conference, I shall await Thurgood's dissent.

Respectfully,



The Chief Justice

Copies to the Conference

March 18, 1982

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Renquist  
Justice O'Connor

80-1582 - United States v. MacDonald

From: Justice Stevens

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3/18/82

JUSTICE STEVENS, concurring in the judgment.

For the reasons stated by JUSTICE MARSHALL in Part II of his opinion, I also conclude that MacDonald's constitutional right to a speedy trial was not suspended during the period between the Army's dismissal of its charges in 1970 and the return of the civilian indictment in 1975. JUSTICE MARSHALL also is clearly correct in stating that the question whether the delay was constitutionally unacceptable is "close." Post, at 11. Since his opinion fairly identifies the countervailing factors, I need only state that the interest in allowing the Government to proceed cautiously and deliberately before making a final decision to prosecute for such a serious offense is of decisive importance for me in this case. I therefore concur in the Court's judgment.

 81

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice O'Connor  
Justice Stevens

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MAR 19 82

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**SUPREME COURT OF THE UNITED STATES**

No. 80-1582

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JEFFREY R. MACDONALD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FOURTH CIRCUIT

[March —, 1982]

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

March 1, 1982

No. 80-1582 United States v. MacDonald

Dear Chief,

Please join me in your opinion in the  
referenced case.

Sincerely,



The Chief Justice

Copies to the Conference