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Honorable Terence M. McAuliffe
Governor of the Commonwealth of Virginia
State Capital
Third Floor
Richmond, VA 23219

Re: Petition for Pardon submitted by Jens Soering

Introduction

My name is J.E. "Chip" Harding. I am currently the Sheriff of Albemarle County. Jens Soering's attorney, Steven Rosenfield, approached me weeks ago and asked if I would review the investigation that led to the conviction of Mr. Soering for the murders of Derek and Nancy Haysom. Mr. Rosenfield was aware of the fact that I had assisted the Innocence Project in an investigation of the conviction of Michael Hash in Culpeper a few years ago. Hash had served 10 years of a life sentence for the murder of Thelma Scroggins in 1996 when I first got involved. His case has now been *nolle prosequere* based in part on evidence that was obtained during my investigation. Mike has now gotten married, employed and reportedly (Richmond Times Dispatch) settled the civil case for his wrongful conviction for \$500,000.00

I make two observations in this case based on my years of investigative experience and my extensive work on this case: 1) Soering would not be convicted today on the evidence that has since surfaced or was improperly submitted or omitted from the jury and 2) the evidence appears to support a case for his innocence

Throughout this report, references to “Exhibit” comes from the record supporting Soering’s Petition for Pardon.

My Background

I have been working in Virginia’s Justice System in some fashion for the past 48 years. While a student at VCU I worked one summer at the Beaumont Juvenile Correctional Center. I then interned at the Richmond City Jail for a year. I worked as an OAR Volunteer and interned in a halfway house my senior year in college. After graduation, I was a Juvenile Probation Officer from 1974-1978. I performed background investigations for the court as well as supervised a caseload.

I joined the Charlottesville Police Department at the end of 1978 and served almost 30 years before leaving to become the Sheriff of Albemarle County on January 1, 2008. Almost my entire career with Charlottesville was in investigations. I worked as an investigator for my first 8 years and in various levels of supervision over general investigations, narcotics and forensics. I often served as “acting Chief of Police” when the Chief was out of town and retired with the rank of Captain. I was the lead investigator in my first high profile murder case in 1980. I attended dozens of specialty schools for law enforcement and I graduated from the F.B.I. National Academy. I was the first local officer selected in central Virginia to supervise a DEA Drug Task Force. I have been recognized in Federal Court as an expert witness. I have investigated and helped file charges in hundreds of crimes all resulting in convictions. I mention that because I pride myself on being thorough, professional and sensitive to both victims of crime and offenders charged. I have served as Chairman of the State Board of Juvenile Justice.

In 1999 I did an investigation as to why Virginia was only getting two to three hits a year in the DNA Databank. I founded “Citizens for DNA” and successfully lobbied to get the funding into Governor Allen’s outgoing budget. A back log of 140,000 samples were analyzed that had been sitting in refrigerators for 10 years. In two years Virginia started having matches at a rate of two to three a day.

In 2007 I concluded, after my own investigation, that the databank was missing over 20% of the samples that law enforcement had failed to take. I wrote the Governor and a task force was formed that went back into our correctional and probation system looking for mistakes. I was proven right, samples were collected and new laws written detailing when and by whom samples were to be collected.

More recently I have been pushing an effort to enhance DNA collection by recommending certain misdemeanor convictions be included in DNA sampling based on powerful evidence coming out from New York State and Wisconsin.

I have become interested in lessons learned from DNA Exoneration cases and have called publicly for a Virginia Justice Commission to review, research and put forward model policies governing such as videotaping of interviews/interrogations, line up procedures for in-person and photographic identification, etc. I have assisted, *pro bono*, in several Innocence Project Investigations. I am working *pro bono* in this case.

In 2007, I was selected as one of the “Top 10 Cops in America” by Parade Magazine and the International Association of Chiefs of Police and presented an award in New Orleans.

Investigation

I have spent more than 200 hours reviewing this case. I have read trial transcripts, lab reports, Mr. Soering’s Petition for Pardon and supporting records, habeas petition appeal briefs, the entire DFS forensic file and books written about this case. I have seen the uncut version of the documentary “The Promise” and I have interviewed Jens Soering in the Buckingham Correctional Facility. I have reviewed the conclusions of Chuck Reid (who was one of the lead detectives on this case in the beginning) and interviewed him in depth. I have read the report from Dave Watson (former homicide detective and first president of the Virginia Homicide Association, who worked on this case as a private investigator). I have interviewed reporter Carlos Santos, who covered the trial in person and spoken with Richmond Times Dispatch reporter Frank Green. I have had extensive interviews with Soering’s counsel Steven Rosenfield.

I undertook this examination with a “blank slate.” All I knew of the case was the little bit I had seen in the news over the past few years. I assumed Soering was probably guilty. I remembered that Governor Kaine tried to get him sent back to Germany. Based on what little I knew at the time, I was not in favor of that decision.

Reaching my Conclusion

Based on what was so skillfully and powerfully presented by Prosecutor James Updike, with very little defense rebuttal, it is easy to see why Jens Soering was convicted.

Soering’s lead attorney, Richard Newton, was from Detroit. Years after the trial he had

his license revoked by the Michigan Attorney Discipline Board. In answering one complaint to the board Neaton said he had suffered from a “mental or emotional disability which materially impaired his ability to “practice law” since January 1989 –eighteen months before Soering’s trial. pg. 213 “A Far, Far, Better Thing”

The approach to my review was to look at each and every argument made by the trial prosecutor, James Updike, and to see if the evidence he identified in support of conviction holds merit today. In my experience, prosecutors explain to the jury each piece of evidence introduced and the relevance or significance of that evidence in supporting their theory of guilt. I will introduce some of the more “weighty” closing arguments that prosecutor Updike made to the jury because he will be emphasizing what he hopes proves his theory. These closing segments include both the opening closing argument and the prosecutor’s rebuttal closing argument because, of course, they have the burden of proof and get the last word to the jury. I will conclude my analysis with some minor points raised by the prosecution to help their theory, but I will also demonstrate when evidence unfavorable to them is omitted or diffused in the presentation.

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Blood Evidence

Trial Transcript

“You have got O blood there, his blood type. It’s not Nancy’s, it’s not Derek’s; Nancy’s got type AB, Derek got Type A. It’s not Elizabeth Haysom, Elizabeth has got type B. Now where did that Type O blood come from? That blood was put there at the time of the killing, and the person that put it there was injured during the course of the killings, which would make sense in a knife fight like this.” Tr. Transcript pg. 82.

“He says when he leaves he wipes off the door itself; we have type O again, haven’t we? See the door handle, 6 and the photograph is over here, you can actually still see on the door handle itself the little bit of red staining. When you reach out and you touch that door handle you’re going to get some of your blood on it.” Tr. Transcript pgs.83-84.

Findings

Updike made a lengthy and compelling argument that Soering was cut and left his blood behind. DNA results now conclude that the blood described by Updike DOES NOT belong to Jens Soering. Virginia Department of Forensic Science, report dated September 24, 2009, states, “Items 2FE and 6FE were both type O and testable, eliminating Jens Soering as a contributor.” Exhibit 4. Who left the blood at the crime scene is unknown at this time.

Sock Print Evidence

The transcript references are to James Updike’s closing arguments. In the testimony of his “sock witness” Robert Hallett, Hallett was allowed to speak as an expert testifying that he thought a particular portion of a photograph represented a “slide” of a foot in a sock, that he “presumed in his examination” where the heel was located, that he “could not eliminate” whether a foot impression matched, that he added markers to an exhibit photograph, and that the photograph showed a “double impression of the heel.” **Hallett was refused “expert witness” status**, but nevertheless gave expert testimony throughout his examination by Updike. This constitutes outrageous conduct by the prosecutor knowing full well that this witness was a “fact” witness and was not allowed to give an opinion or make presumptions or examine and comment

on a photograph. Yet, Updike relies on Hallett's testimony to make a connection between a photograph alleging to be a sock print that was never established through a competent witness and a bare foot print taken of Soering. None of this should have been shown to the jury and competent counsel today would not have allowed it. Exhibit 17C.

Trial Transcript

“And Jens Soering, here's this particular one with the markings, that's designated Jens Soering, you can see that, and you can see what Bob Hallett did concerning designating this as his, the different features that he saw as to his foot.” Tr. Transcript, pg. 90.

“Miss Haysom doesn't have enough foot to make that big impression. This is not Elizabeth's footprint. You can do the same with all the others, but I'm running out of time. Maybe we ought to talk about Mr. Soering here for a second.” He starts pointing out to the jury all of the points he says Soering's bare foot matches the sock. Tr. Transcript, pg. 92.

“Well the person who made this LR-3, you have some space in there, you haven't got the stem showing up, the toe stem. Well you look at Jens Soering's foot, this is where he stepped on the paper, you see you haven't got any stems there either. And you pull that out and it matches and it fits like a glove. And you have the O type blood, and you have numerous other circumstances that you start adding to it, which we're going to add to it as we make our argument, and what you have got is you have got Jens Soering over here guilty of first degree murder.” Tr. Transcript, pg. 87.

Findings

On June 7, 1985, Rick Johnson, a fully qualified forensic examiner at the (then) Virginia Bureau of Forensic Science, filed a Certificate of Analysis , stating that the bloody sock print LR3 “corresponds to a size 6 ½ to 7 ½ woman's shoe or size 5 to 6 man's shoe.” Exhibit 17A. It should be noted that at the time of Johnson's opinion, Soering was not a suspect. Johnson was never called to the stand nor was his finding presented to the jury. Soering's shoe size is much larger. Instead the prosecution called Robert Hallett to testify about the sock print. Hallett had worked at one point as an FBI technician analyzing tire and belt impressions. Footprints were his hobby, and he produced no formal qualifications in this area. No expert was called to refute the representations of Hallett or Updike.

Since then, real experts contradict Hallett and specifically exclude Soering from the crime

scene based on the so-called sock print.” Russell W. Johnson’s affidavit in Exhibit 17G provides his credentials and concludes that the “crime scene print matches in size only with Ms. Haysom’s print.” His final analysis states. “A comparison of LR-3 with the known prints of Jens Soering provides no evidence whatsoever that Mr. Soering was at the scene of the crime.” Mr. Johnson came forward after reading a newspaper article. He stated he was outraged by the indication that the jury gave this sock print so much credibility.

Likewise, expert Frederick Webb concludes in his affidavit that Hallett’s testimony was “quite misleading.” Exhibit 17H. Webb adds, “Overall, a false impression of precision and matching ‘detail’ is exhibited by the exhibit which has no basis in fact.” Webb worked 32 years as a Special Agent with the FBI assigned to the FBI Crime Lab. He was an expert in impression evidence and photographic evidence. After retiring from the FBI, he worked 11 years for the Commonwealth of Virginia as a forensic impressions scientist testifying as an expert in Virginia courts over 200 times. Exhibit 17H.

On June 26, 1995, a member of the Soering Trial Jury, Jake Bibb, supplied a sworn affidavit. In it he states when deliberations began, there was a six-six split on the verdict. He states, “The single most important piece of evidence to me was the overlay of the footprint with the sock print left at the crime scene and the red dots and arrows matching the two. Had it not been for the sock print and the testimony concerning it, I for one would have found it more difficult, if not impossible, to place him at the scene of the crime. Footprints are almost like fingerprints and each person walks a certain way. It was this piece of evidence, presented through Commonwealth’s witness, Mr. Hallett, that convinced me that Jens Soering had been present at the scene of the crime.” Exhibit 17E.

In March 2009 the Virginia Law Review published a landmark study by Brandon Garrett and Peter Neufeld on “Invalid Forensic Science Testimony and Wrongful Convictions.” They report that, in the case State of Idaho v. Charles I. Fain, Robert B. Hallett testified to a shoe print impression being consistent with Fain’s and his very shoe possibly made the impression. He also goes on to say although it was a common type shoe, the wear patterns on the shoe individualized the print. He said the shoe print from the scene and Fain’s would indicate that the individual who walked with those shoes has the same walking gait. Shoe print analysis of this type has never been validated. Charles Fain was convicted of the murder, rape and kidnapping of the young Idaho girl in 1982. He was sentenced to death. It was a good thing he was not executed quickly because, after 18 years on death row for a murder he did not commit, DNA exonerated him. He

is now a free man trying to get his life back.

Shoe Impressions in Blood

Trial Transcript

Updike describes to the jury the movements that he speculates that Soering makes as he is attacking the Haysoms. He describes various locations of what appear to be tennis shoe impressions that are made in blood at various locations: "He (Soering) says that he's wearing tennis shoes. He says that he gets up and walks behind Derek Haysom. Well here's one of them right here (shoe impression), not the best one of them." Commonwealth's exhibit 103. "See right there, you can see those ridges. Tennis shoes coming around the head of the table, just like he said. They're the athletic shoes, they've got those ridges, just like shown on this picture over here, of the Converse tennis shoe. In fact, here it is ridges like that. Now we don't know this is the shoe, because he threw the shoe away and we never had one to compare to it. You have got those here and you have got them in the kitchen that we'll speak about in a few minutes. You have got them in the living room. You have got them on LR-2, the big chunk of floor, one of the big chunks of floor that was cut up. Consistent shoe patterns throughout the house. He states he walks behind Derek Haysom, says he is wearing tennis shoe, later throws them away, well, there are the shoe impressions, comes on around behind him." Tr. Transcript pg. 68-69.

Findings

Updike does tell the jury that they never had Soering's shoe to compare to the prints in blood. What he and no expert tells the jury is that Soering was excluded from those tennis shoe prints as having a larger foot/shoe size. There was a Sheriff's Office report by Deputy C.L. Baker, Exhibit 23, stating the shoe print belonged to a woman or a small man or boy size 6 ½ to 7 ½ . Soering wore a man's 8 ½.

In a letter dated June 18, 1985, from Jim Updike to attorney Thomas Phillips, Mr. Updike writes, "It is my opinion that the attached statement, if made under oath in a proper affidavit form, would provide a sufficient basis for issuance of a search warrant." Part of what the statement said was, "This affiant also viewed at the scene bloody footprints which measured nine and one-half inches long. Further examination determined that such is consistent with a size six and one-half to seven ½ women's shoe, and that said Mary (last name crossed out) has been

observed wearing shoes of this approximate size.”

The Recanted Soering Confession

Trial Transcript

Urdike uses what he represents to be portions of Soering’s statements to the detectives in his closing argument. It appears he misrepresents parts of those statements and left out the discrepancies. This is understandable because they weaken his case.

Urdike states Soering said, “And he’s sitting back over there, he’s pushed back in the corner, hits his head against the window, well that’s where it’s located, says it wasn’t a very serious injury, and Derek sits back down.” Tr. Transcript pg.67-68.

Urdike did not tell the Jury that Soering told police a number of statements in his confession that did not match the evidence at the scene evidence.

Findings

Soering’s first three interrogations in London after his arrest are partially memorialized via audio tape. However, when he made his alleged confession, Investigator Gardner did not record or take a signed statement. At trial, he testified from his notes. I have not seen his actual notes but rely on his testimony.

Large numbers of inconsistencies make the confession questionable. Many of his statements do not match with the actual evidence. These inconsistencies were not brought up to the jury by Urdike. That makes sense if a prosecutor is out for a “win”: he would hope these facts would not make it to the jury.

An example of unreliability would be 1) Soering told the detectives that Nancy Haysom was wearing jeans the night of the murders, but in fact she was wearing a flowery housecoat.

2) Soering says he cuts each victims throat and runs out of the house. Their throats were cut, but in addition Derek was stabbed 11 times in the chest and 14 times in the back, and Nancy stabbed multiple times as well. Soering never talks about that, and this point is not questioned at the time his alleged confession is given. Tr. Transcript pg. 48- 49. I am amazed this was not questioned.

3) There was blood evidence indicating someone likely took a shower after the murders, but Soering never mentions doing that.

4) Soering said that after Mr. Haysom pushed him, “He fell back into the corner and he

bumped the back of his head, hit the back of his head on the wall.” Tr. Transcript pg. 847. But in the crime scene photos, there was a window there, not a wall.

I could continue to give examples, but I would just be repeating most of what is contained in a report done by an expert in the field: Dr. Andrew Griffiths. He was initially hired by Soering’s attorney Steven D. Rosenfield, but he stopped charging a fee after he realized the strong likelihood that Soering was innocent. Dr. Griffiths reviewed the Robert Davis case, *pro bono*, and his conclusion that Mr. Davis’s confession was unreliable was proved correct. Davis received a Pardon last year. Dr. Griffith’s report is at Exhibit 7, along with his very impressive credentials in police interrogation, himself a longtime police officer.

The Alibi and Night of the Crime

Trial Transcript

E. Haysom and Soering each say that they stayed behind in Washington, D.C. while the other left. Soering has maintained that Haysom told him she was leaving to meet with her drug supplier waiting for her in Charlottesville, and that he set up an alibi in case she got into trouble and wanted to establish that she never left Washington. Updike spends hardly any time in his direct closing argument on the alibi. In rebuttal argument, however, Updike offers a weak explanation. Updike told the jury that Soering’s claim to have bought movie tickets proves nothing “because, ladies and gentlemen, that ticket, that ticket shows the time that the movie was supposed to be played, now doesn’t it, 10:15? It doesn’t show the time when the ticket was purchased.” Updike produced no evidence that it was bought earlier or could have been bought much earlier. Tr. Transcript, pg.173.

Updike may have decided not to highlight E. Haysom’s version of her alibi or to dwell on she said occurred in Washington, D.C. in his closing argument because it was so suspect. One of the statements made by E. Haysom in testimony at her sentencing hearing in 1987 was, “He drove up and he was –wasn’t on my side of the road, he was on the opposite side of the road. And I crossed through traffic, and I opened the car door, and when I opened the car door the light came on, and he was wearing some kind of white sheet, and he was covered in blood from head to toe.” Exhibit 30. E. Haysom’s testimony went on to say that Soering told her to clean the blood up with Coco-Cola, which she said she did. E. Haysom’s truthfulness in this statement is highly suspect because the absence of luminol reaction proves that no blood was removed from

the car, contrary to her assertion. The rental car agent's trial testimony said that the car came back clean and orderly on Sunday, the day after the murders. There was no evidence of any stains from Coca-Cola or from blood. Testimony from trial in "The Promise"

Haysom gave a statement that while Soering was gone the night of the murders, she was in the hotel room and at one point ordered room service. Soering gave a statement to police and testified that while Haysom was gone, he, in fact, ordered room service and identified precisely what he had. He said that he signed the bill. She said she forged his name. Soering also told the investigators that he had cashed a personal check that Saturday evening because Haysom had taken all the cash with her. She did not mention the check in her statement probably because she did not know he had done that while he remained in D.C. Tr. Transcript, pgs.169, 175, 179.

Findings

During the trial, Elizabeth had given a couple of versions about when she purchased movie tickets. In one of her two versions, she said bought tickets at 2 p.m. and 4 p.m. Tr. Transcript pg.172.

Soering's father testified that he found movie tickets in his son's dorm room, when he was cleaning it out, and those were introduced into evidence. Months after the trial was concluded, Soering's lawyers made contact with the movie theater that had sold the tickets for the 10:15 p.m. showing of "Stranger than Paradise." The tickets had specific numbers on them. Box office records showed the chronology of the tickets. On March 30, 1985, records showed ticket numbers 27014 through 27263 were sold for the 6, 8, and 10:15 p.m. shows. Soering's tickets bore numbers 27149 and 27141.

The theater representatives felt confident that the earliest those particular tickets would have been sold was 8 p.m. It is clear that the fact the tickets were found in Soering's room, and his version of when he purchased them was corroborated by the theater, would tend to make him believable over Haysom, who was constantly changing her story and had no corroboration. Updike produced no evidence that tickets were bought earlier. "A Far, Far, Better Thing", p. 198.

Detective Ricky Gardner stated that the car was subjected to luminol testing, and no trace of blood was found. "Had there been just a minute spot of blood or whatever, the luminol would have showed up for that." Exhibit 31. Bedford County Senior Investigator Chuck Reid performed the luminol test on the car and agreed with Gardner. Exhibit 32. Haysom's

truthfulness in this statement is highly suspect because there is no evidence corroborating it.

In addition, it is odd that she spotted Soering at just the moment he arrived at the busiest time on a Saturday night in Georgetown. That was either some extraordinary coincidence or pure fabrication.

Every homicide investigation of which I have been involved and where the defendant has attempted to remove any form of blood evidence from a vehicle, whether using a cleaning agent or not, luminal still led us to blood. Haysom's lie is more revealing than most because the science is so crystal clear that traces of blood would surely have been discovered, but none was.

At the time Soering made his alibi statement he had no way of knowing the investigators would be unable to locate the room bill or the check, both of which could have potentially greatly added his alibi. His father did discover the cancelled check when cleaning out his son's room months later and produced it to the authorities. However the check showed the cashed date only on Saturday and not the time. Too much time had passed: as with the room service bill, no hotel employee could remember.

E. Haysom's Confession and Likely Role at the Murder Scene

Trial Transcript

E. Haysom confessed during one interview with law enforcement that she killed her parents. "Q – You knew he was going to do it, didn't you? Did you? A – I did it myself. Q – Don't be silly. A – I got off on it. Q – You did what? What does that mean? A – I was being facetious. Q – Ok then. Now tell me the truth, please, without being facetious. You did hate your parents? A– I did not hate my parents."

Here, the investigator possibly stopped a full confession. I have never seen an investigative response like this when interviewing a murder suspect. Updike did not address this in his closing argument. Commonwealth vs E. Haysom, Tr. Transcript pgs. 109-110.

As mentioned under Motive below, a trained and seasoned F.B.I. agent said that the crime was committed by someone the Haysoms knew well and felt it was a female. He made his assessment before Elizabeth and Jens left the country and before they were suspects.

Findings

It is beyond belief to me that law enforcement did not follow up on this astounding

confession by E. Haysom. Like the absence of confronting Soering with the many errors in his confession not matching up with the evidence, nothing more was done with Haysom's confession.

At her sentencing, her court appointed doctors reported that Haysom had a personality disorder and lied regularly. E. Haysom's trial testimony was presented to convince the jury that Jens was the murderer, but what part of her story is believable? The following factors help support a conclusion that E. Haysom was at the crime scene : 1) E. Haysom's type B blood was found near her mother's body; less than 11% of population has this type. 2) Merit cigarettes, the type she smoked, were found outside the front door and back door. 3) The shoe print found at the crime scene in a bloody area was consistent with her shoe size. 4) She openly hated her mother. 5) She testified that she was aided by her roommate Christine Kim in devising an alibi time line 6) She had the best opportunity to shower afterward and to change into clothes at her own house, thus leaving no blood in the rental car. 7) She worked out a plea agreement favorable for her to lie because Updike wanted Soering tried. 8) She confessed to the killings. 9) Her fingerprints were found on a vodka bottle which bottle near her father's body. This bottle was located away from the other liquor bottles.

Motive

Trial Transcript

Updike avoided discussing motive in his initial closing argument, but raised it in his rebuttal closing. He argued that E. Haysom hated her parents and got Jens to do the killings." Motive for killing them, it was not sexual assault, it was not robbery, it wasn't monetary, it was pure hatred and revenge." Tr. Transcript pg. 209

He also argued that you could see "how this was building up in him over a period of time, by virtue of his writings." Tr. Transcript pgs. 209-211 of Rebuttal.

Updike's argument was misleading and fictitious. First, the period of time was a mere three months that Haysom and Soering were dating and second, no such writings purported to have mentioned any hatred toward the parents. Second, not even E. Haysom testified that Soering hated her parents. Third, no evidence whatsoever was admitted into evidence, that I could find, showing Soering hated the Haysoms. Fourth, no evidence was admitted showing that Soering had a temper or showed rage at any time.

Updike omitted explaining to the jury that Haysom had confessed to law enforcement

that she killed her parents.

Findings

There was no evidence put on that revealed that Soering hated the Haysoms. Indeed, here was an 18 year old, smitten with his first girlfriend, who had been dating her for only a few months. Chuck Reid, one of the original lead investigators, said his instincts told him there was no way that this meek kid could have carried out such brutal murders. Interview in “The Promise”

In addition, it is undisputed, except by Ricky Gardner, that Ed Sulzbach was a Special Agent of the F.B.I. called to the crime scene; that he authored a suspect profile; and that he told documentary filmmakers that he considered E. Haysom the likeliest killer. (“I settled on her daughter,” Exhibit 13.) In a letter Updike wrote another suspect’s attorney dated June 18, 1985, he refers to a statement he has included that he could use to aid getting a search warrant. The statement says “Special Agent Edward F. Sulzbach of the F.B.I. who is trained in the field of compiling profiles of criminal suspects viewed the scene and the evidence gathered during this investigation and stated that the suspect was a female and knew the victims.” Exhibit 54.

One of E. Haysom’s half-brothers and a close family friend also testified they suspected she was at the crime scene when the murders were occurring. Exhibit 27.

I recently interviewed Carlos Santos, who covered the trial as a reporter for the Richmond Times Dispatch. I also recently spoke to reporter Frank Green, another reporter with the Richmond Times Dispatch. Both told me that, in interviewing E. Haysom in the years following the trial, she had admitted to committing perjury at Jens Soering’s trial. She admitted to them that her mother had been sexually abusing her for years prior to the murders. E. Haysom has never been prosecuted for perjury.

The Letters

Updike spoke to the jury about the letters. He interpreted what he thought Haysom and Soering were saying to each. Although I agree there are suspect passages, I do not see any outright admissions to murder. If you ask my opinion if the letters indicated pointed stronger towards Haysom or Soering committing the murders I would be at a lost.

I do feel Elizabeth Haysom would have had much stronger motives because of the highly probable sexual abuse.

For the purposes of developing a position on Soering's guilt or innocence, I am not moved in either direction by the letters because there would be too much speculation on my part on exactly who was trying to say what and for what motivation.

Serology and DNA

Trial Transcript

Updike argued to the jury that the type O blood was Soering's, see section "Blood Evidence."
Tr. Transcript pg. 82-84.

Findings

Serology was the best science at the time in 1985. Before the trial began in 1990 the DNA Databank had been established in Virginia. Virginia had also achieved the first murder conviction in the United States using DNA. DNA evidence was used to convict Serial killer Timothy Spencer, the "Southside Strangler" in 1988. I wish this blood evidence at the Haysom home had been tested for DNA at the time, when it was less degraded. If DNA testing had been done prior to trial Updike may have even re-evaluated prosecuting Soering for the murders. Certainly with two unknown males bleeding in the crime scene investigators would have worked hard to get them identified and likely charged with this crime.

Serology has been overtaken by DNA because DNA is more accurate, however, the serology report from 1985 should not be ignored.

Nothing refutes the findings of Mary Jane Burton, a nationally renowned serologist in 1985. Although there is one ambiguity where her written notes disclose that item 2FE is A type blood, her written report and chart show it to be type O, and she testified under oath it was type O. Putting aside this ambiguity, the remaining items found on or near the front door are type O blood without contradiction. DNA test results from blood on the door handle 6FE eliminated Soering as the contributor and further points to an unknown male assailant leaving it behind.

In addition, the 1985 serology report identified items 7FE #1 and 23K #1 as being type AB blood and the 2009 DNA report revealing a "Y" chromosome, indicating a male contributor . However, the only victim with that type was Nancy Haysom, who of course did not have a "Y"

chromosome.

Just this week, Dr. Moses Schanfield, an expert in the field of DNA teaching, publishing and testifying as an expert witness in this field, concludes that the serology tests from 1985 cannot be disproved by the 2009 DNA report. Schanfield observed that BODE Laboratory which tested the DNA, reported that they were able to take three swabs of the relevant items tested and reported. This confirms that Ms. Burton had sufficient samples from which to test the blood, and that she was not presented with fragments or small dosages that may have corrupted her findings.

Dr. Schanfield has reviewed the data regarding the serology findings from 1985 and the DNA results rendered by BODE and adopted by the Virginia Department of Forensic Science (DFS). He also reviewed a newspaper articles where a lawyer with forensic science experience made comments about the BODE report. Dr. Schanfield observed that the lawyer made comments without viewing the notes of DFS scientist, without talking to DFS scientist and without doing any homework regarding the DNA report she was asked to review. One of the findings that had been a concern for me was when I read the DFS report stating that 8 samples (6 with A blood types and 2 with O blood) had all “originated from a common male contributor.” I read it to mean the same person had two different blood types which would be impossible and might imply Mary Jane Burton, the DFS serologist got the blood typing wrong. . I was confused. Dr. Schanfield has responded that this is pure speculation unsupported by science. The DFS certificate shows many loci as identical, but scientifically, there are not enough alleles to say they are from the same person. When the DFS reports consistency with a single male contributor it is misleading since consistency improperly suggests identical or the same. There is no scientific reason for calling something consistent with so few alleles. Further, Dr. Schanfield notes, that Jens Soering is not consistent with these samples at 7 loci, effectively excluding him as the donor of the blood on the door handle , regardless of the ABO blood type.

It must be concluded, that absent evidence to the contrary, not only was Soering not a contributor of blood found at the crime scene, but two men left blood at the scene. This theory has great weight when considering the enormous strength that was needed to overcome two fighting victims while inflicting such severe damage. It is a far stretch to think one small to medium size man or woman could have done committed these acts alone.

Dr. Schanfield’s full six page report will be released by Attorney Steven Rosenfield shortly. Dr. Schanfield is a highly respected nationally renowned expert in his field. He has a MA from Harvard University and a Ph D. in Human Genetics from the University of Michigan.

He was the director of the Monroe County Public Safety Laboratory, in Rochester ,NY which was a full service crime laboratory serving eight counties in upstate New York. Prior to that he was director of Analytical Genetic Testing Center, Inc. in Denver, Co, a private laboratory that was on the forefront of developing DNA technology for forensic science, and was involved with many of the early forensic DNA cases. He currently is a professor of forensic science and an expert witness testifying in trials all over the country and before Congress on DNA related issues.

My Theory

When conducting the case review above, I did my best to let the evidence speak for itself. I tried to show the reader what was presented to the jury and the true state of that evidence today.

I am sure people will ask me the question, “Do you disagree with Updike’s theory of what happened, and if so what do you speculate happened?”

Based on the evidence I reviewed and the recent DNA findings, I feel that E. Haysom was at her parents’ home at the time of the murders and was assisted by two men. These two men accidentally left their blood behind at the murder scene. The DNA is representative of each of these men. They are there, I cannot see their faces, but they are present. I do not see the face of Jens Soering because there is nothing from him in the crime scene. E. Haysom has a much greater motive to kill her parents. She has told reporters that her mother sexually abused her for 8 years. Investigators found pictures her mom had been taking of her in the nude in her late teenage years. I feel sorry for her and all victims of child incest. This type of abuse can cause severe mental disorder. The psychologist that tested her shortly after her arrest concluded she showed signs of suffering from borderline personality disorder, a serious and detrimental mental illness. She admittedly had been using heroin and other illegal substances years. She had friends in the drug culture that she had developed over the years of living in Virginia. Jens Soering was not a drug user and had only moved to Virginia to go to UVA in the fall of 1984 – just 7 months before the murders. It is highly unlikely he would have had relationships with two men strong enough to get them involved in this crime of hate (nothing stolen and overkill attack style).

Conclusion

Elizabeth Haysom wrote in one of her letters, “I had always believed that I made men fall

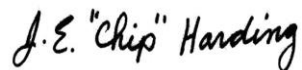
in love with me so that I could take out all the hatred I felt for them by humiliating them. I despised their cheap lust and easy passions. And in the end I made them hate themselves for loving me and the torture I inflicted.” She wrote this letter approximately 3 months before the murders. Commonwealth vs. E. Haysom Transcript pg. 39.

Commonwealth Attorney Jim Updike said, “On one hand she freely admitted that her parents wouldn’t be dead if not for her. She wanted them dead. On the other hand, she was great assistance to me.” Updike said Haysom helped him gather evidence against Soering and even outlined the whole case for him. Carlos Santos, “Parole Board denies Haysom early release,” Richmond Times-Dispatch, May 24, 1995.

Based on my training and experience, almost every piece of evidence raised by the prosecution is subject to inaccuracies, unreliabilities, and scientific contradictions. The jury was misled in many places, and the lead defense lawyer was mentally ill and later disbarred. The result was that the defense counsel was mediocre at best. The jury was not aware of significant evidence contradicting the prosecution’s case, and the defense failed to raise those contradictions.

This was not a just outcome for the many reasons raised above. In my opinion, Jens Soering would not be convicted if the case were tried today, and the evidence appears to support a case for his innocence.

Sincerely,

A handwritten signature in cursive script that reads "J.E. 'Chip' Harding".

J.E. "Chip" Harding, Sheriff Albemarle County, VA