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Member, Supreme Court of the United States

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The Honorable Bob McDonnell
Richmond, Virginia

Dear Governor McDonnell:

This letter to you today is a follow-up to my previous letter, conversations, and telephone conference with your staff, to urge you to support the parole and deportation of Jens Soering. Even though I understand that Virginia law may forbid you from directly ordering his parole, I am confident as Governor you have many opportunities and means of ensuring that your goals are attained.

Providing for the parole and deportation of Jens Soering would be a courageous move on your part, yet it would serve the ends of justice and confirm the Commonwealth's reputation for fairness and equity. Moreover, as a traditional conservative and a Christian, you personally have dedicated your public career to ensuring equal protection under the law for everyone—even those who have been publicly excoriated, as Jens Soering has been this past year. You have a unique opportunity here, Governor McDonnell, to demonstrate your impartiality in the pursuit of truth and justice, as well as your political courage in defending “the least among us.”

As I will explain below, new evidence has recently come to light that does not prove Jens Soering's innocence conclusively, but raises such powerful new doubts about his alleged guilt that his continued incarceration risks becoming an intolerable injustice and an enormous embarrassment to our beloved Virginia. This new evidence takes the form of DNA tests performed under the Post-Conviction DNA Testing Program by the Virginia Department of Forensic Sciences (“VDFS”), making the source unimpeachable. Unfortunately, for reasons I will elucidate below, Jens Soering is time-barred from seeking relief in the courts or under the Writ of Actual Innocence. Only you, Governor McDonnell, can ensure that he receives justice, and that Virginia's sterling reputation remains such.

Allow me to explain. After three prisoners were cleared of rapes they did not commit through DNA testing of biological samples discovered in old case files, Governor Mark Warner launched the Post-Conviction DNA Testing Program in 2005. The VDFS reviewed 534,000 case files from 1973 to 1988 to locate biological samples left there by forensic serologist Mary Jane Burton. Roughly 800 files were found that contained samples and that had led to a conviction. In addition, there were only 68 cases in which the DNA found in their files did not match the person convicted.

Jens Soering's case is one of the 68. On September 24, 2009, the VDFS issued a Certificate of Analysis referencing 42 samples that were found and tested. Those testing results established that Jens Soering definitely did not match any of the blood at the crime scene.

The VDFS testing result is significant because of the following:

- a) Other case files submitted usually contained four (4) or five (5) samples, whereas Jens Soering's contained 42.
- b) The prosecution and police have claimed for 20 years that Jens Soering cut himself while killing the Haysoms and bled at the crime scene. They had 42 opportunities to prove that theory and failed 42 times.
- c) The Certificate of Analysis states that Derek Haysom (one of the victims) could not be eliminated as a possible contributor of the unknown male blood that did not belong to Jens Soering because, regrettably, the VDFS did not retain a reference sample of Mr. Haysom's blood.

Along with this letter I am sending for your consideration a summary of the case evidence, with numerous attachments, entitled, "Why the Haysom/Soering Case Warrants Reconsideration." This summary explains all of the major pieces of evidence used to convict Jens Soering at trial. Each and every one of these pieces has been discredited over the past 20 years. Governor, I am certain that much of the information in this summary will be new to you, so I ask you, as a former Attorney General of Virginia, to read it dispassionately, with the eyes of a county Commonwealth's Attorney seeing the evidence for the first time. Then, against this background, consider the new DNA evidence reviewed above and in section IV of the summary.

I am convinced that your objective legal conclusion will be the same as mine. If this case were presented to a jury today, then the prosecution's many failures to find Jens Soering's DNA would raise a reasonable doubt in many jurors' minds. One of those 42 blood samples recently tested should have been his!

As an experienced former prosecutor, Governor, you would not feel comfortable in bringing this case to trial. And for that reason, we respectfully ask for you to grant my request and arrange for the parole and deportation of Jens Soering.

The new DNA test results will persuade many that Jens Soering could easily be innocent—not necessarily that he is innocent (I understand that the tests are not conclusive), but that he could be. This possibility raises the specter that an innocent man has spent nearly a quarter of a century in prison for a crime he did not commit. That would be an affront to justice—and also a huge potential embarrassment to Virginia.

The potential for embarrassment is heightened by the fact that the Certificate of Analysis claims that no reference sample of Derek Haysom's blood was retained for DNA comparison. This assertion gives an opening to those who may suggest intentional malfeasance instead of inadvertent error.

Therefore, not only justice, but also caution and wisdom should seem to demand that Jens Soering be removed from the Commonwealth and returned to Germany.

And this was, indeed, the plan and intent of the repatriation. Repatriating Jens Soering would have rid Virginia of this potential problem, without having to call the jury's verdict into question via a conditional pardon. I understand that repatriation is no longer an option for you, Governor—but arranging for Jens Soering's parole and deportation remains on the table. This would allow you to send him overseas without calling the judgment at trial into question.

Moreover, your intervention in this case is now the only means of resolving it. Jens Soering is time-barred under the Writ of Actual Innocence and from seeking relief in the courts.

The Certificate of Analysis was issued on September 24, 2009, and Jens Soering received it on October 2, 2009. Under the Writ of Actual Innocence, he therefore had until December 2, 2009, to file for relief in Bedford County Circuit Court. However, on October 19, 2009, Governor Timothy M. Kaine gave Jens Soering's supporters a verbal assurance that he would permit Mr. Soering repatriation before he left office. With this apparent guarantee of imminent freedom, Jens Soering chose not to pursue a Writ of Actual Innocence, but to return to his native land by the quickest way possible. This was a reasonable and wise decision at the time but, as you know, the repatriation was stopped by U.S. Attorney General Eric H. Holder. And as a direct result, Jens Soering now finds himself forced to raise the issue of the DNA test results with you.

Mr. Soering has told me that he is willing to sign a written waiver of any and all past, present and future claims against the Commonwealth. Also, he is willing to sign a statement to the effect that he accepts the trial jury's verdict—not that he is guilty, but that he accepts the verdict. (This might be compared to an Alford plea.) He is willing to consider any other terms you may wish to impose as conditions for arranging his parole and deportation. His only wish is to return home.

As you may know, Jens Soering has not incurred a single institutional infraction during his entire 24 ½ year term of incarceration, a record that is nearly unique. Earlier this year he took the Department of Correction's COMPAS-test, a comprehensive version, which measures recidivism-risk; his score was unusually low, meaning that he will almost certainly not re-offend. He has been eligible for parole since 2003, and the only reason given for the denial of his parole is the "serious nature and circumstances of the crime"—not future dangerousness. Also, you yourself, Governor McDonnell, told me on July 29, 2010, that you are "convinced he (meaning Mr. Soering) is fully rehabilitated."

Therefore, there is ample justification for granting parole to Jens Soering completely apart from the matter of DNA test results. By rewarding his efforts to rehabilitate himself—for instance, by writing books that have been published—you would demonstrate political astuteness, moral magnanimity and Christian forgiveness. The DNA test results could not possibly have influenced the parole decision, since grants of parole are based on an assumption of guilt.

In conclusion, Governor McDonnell, I would like to tell you that I have known Jens Soering for several years. I met him because of his work as a sponsor of Catholic converts through the RCIA program at Brunswick Correctional Center. He is more than a client for me—in fact, I now represent him pro bono—he has become a friend. I beg you, Governor, please be the man I know you to be, from our nearly 20 years of friendship, and grant my friend Jens the help he deserves.

Thank you for your kind consideration in this matter. I remain

Very truly yours,

Gail A. Ball, Esquire