

Wrongful Conviction with Jason Flom

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Did a Fatal Attraction Lead to a Wrongful Conviction? The Story of Jens Soering



Jason Flom
"JF"



Sheriff J.E. "Chip" Harding
"JH"



John Grisham
"JG"



Jens Soering
"JS"

JF Welcome back to Wrongful Conviction with Jason Flom. It's me, I'm your host and today we have an episode that is going to rock your world. We have three guests today. I'm going to save the best for last, but we have John Grisham in the studio with us. John, welcome!

JG Delighted to be here.

JF And Sheriff Chip Harding of Albemarle County.

JH Yes Sir, good to be here.

JF And on the phone is Jens Soering, one of the most remarkable people I know and one of the most extraordinary cases of injustice that we've ever covered on this show. So, Jens. As I always say, I'm happy you're here, but I'm sorry you're here.

JS Thank you for having me, I really appreciate this, Jason. And thanks to Chip and John as well.

JF So, this is a case that takes us back to the 80's, believe it or not, a case that has all the makings of a John Grisham novel actually, because this goes back to, Jens, when you were an exchange student from Germany, a brilliant young scholar from everything I'm been told, this is a Jefferson Scholar, freshman at the University of Virginia and, Jens, do you want to take us back there and tell us how this started?

JS Sure. This was in 1984 in the fall. I arrived at the University of Virginia as a freshman, as they call first year students there, and I met a young woman there who was 2 ½ years older than I was, Elizabeth Haysom, and we were both in the same dormitory. She had entered the university late because she had had an adventurous youth, she had gone to an English boarding school and run away with her girlfriend to Europe, things like that. And so she came UVa quite a bit older than the rest of us in that dormitory and I was not an American citizen, my father was a German diplomat, that's why I was living in the United States and her family came from South Africa and from

Canada. So, we were drawn to each other as being foreigners, not Americans. And in the course of that fall semester in 1984, we fell in love. And it was quite a surprise to everybody else in the dormitory, because she was very experienced and very mature and I was, I guess, a nerd, an über nerd, and a virgin, so she was my very first girlfriend.

JF You were a German über virgin nerd, that's quite a combination, Jens. And she was a beautiful young woman, a striking woman who anyone in your situation would have probably fallen head over heels for, considering the circumstances. But it was, of course, a fateful star-crossed love affair.

JS Yes. And it was a very short lived love affair as well. Three months after we started dating or maybe four months after we started dating, we went to Washington D.C. to spend a weekend together and in the course of that weekend, she told me that she was still using drugs, which she had previously told me she had stopped doing, and that she needed to use our rental car to run some drugs from Washington D.C. to her dealer, who was also a university student, back in Charlottesville. And I wanted to come along, but she wouldn't let me, because he said that I was such a nerd, no drug dealer would want to do business around me. So, she drove off in the car by herself and came back eight hours later and told me she had killed her parents. And she said that the drugs had made her do it and they had deserved it anyway and if I didn't help her, she would be executed, she would be – back then they used the electric chair – she said that they would fry her. She said that I should be her alibi and tell the police that she was with me in Washington and I told her that that would never ever work, because the police never believe boyfriends or husbands or wives, people like that. So, I came up with this brilliant idea based on Charles Dickens' A Tale of Two Cities of all things that I would take the blame for her, that I would take the rap for her and save her life. That was based on a character in this Charles Dickens novel, Sidney Carton, who did that in Charles Dickens' novel. The difference was that, in the novel, that particular character did actually get executed, whereas my father was a German diplomat and I thought I had diplomatic immunity. I thought that I could take the blame for her crime and all that would happen with me was that I would be sent back to Germany and put in prison there, in a juvenile prison, for about 10 years. And I thought that giving 10 years of my life was worth saving her life from the electric chair.

JF It's sort of a twisted nobility. It's sort of very hard to imagine, but at the same time, people do crazy things for love all the time and, as you and I have spoken on the phone at length about this, Jens, in fact, the fact is wars have been started over love, so, you know, you're not the only person by far that's ever done something so crazy, but this is certainly an extreme example.

JS I was going to say it's a bit like the end of the movie Titanic, right? When Leonardo DiCaprio lifts Kate Winslet onto that door to save her life and then he sort of sinks away and gives his life for her. Except, I didn't lift Kate Winslet up on that door, I lifted Sharon Stone from Basic Instinct up on that door and then sacrificed myself for her.

JF Yes, we were talking about this earlier, Jens, and I said it's such a strange fate that you happened to have been with only one woman and she turned out to be the devil. It's really something that is unimaginable.

JS Calling her the devil is a little oversimplified. She was later diagnosed with a very severe personality disorder, so she actually had serious mental health issues and, of course, she then claimed that her mother had sexually abused her with the knowledge and cooperation of her father and there is some indication that that may have actually been true. Of course, we will never know for sure now, but she was a troubled young woman.

JF I want to fast forward a little bit, because I want to get into the current circumstance and how we can hopefully make a difference and get you home where you belong, but as things developed, you

initially were not suspects, but then at some point you decided to make a getaway and this was back in the days when - for people don't remember - in the 80's you could sort of travel the world under a different name and it wasn't so tightly monitored or regulated, so you guys went around the world and ultimately ended up in England which is also sort of a crazy adventure to think about. These two lovers, running away from the authorities, travelling the world with a suitcase and it sounds kind of romantic and adventurous and cinematic at the same time. And you ended up in England and that's when things began to go wrong, you were ultimately arrested for passing bad checks, as I understand it, and then we get to the point where the false confessions come in, your false confession comes in.

JS The police took both Elizabeth and me back from the jail to the police station and they actually wrote into the police station logbook that I was "to be held incommunicado", in other words I was to be isolated from the outside world and not given access to my lawyer. And that's exactly what they did. For four days, they interrogated me, four days, many many hours, dozens and dozens and dozens of hours and then finally on the fourth day, I decided to keep me promise to Elizabeth that I had made 15 months earlier and I decided to take the blame for what she did. And that's what I did. I told them the story that she and I had cooked up and, of course, that false confession contained many mistakes that the real killer would not have made. I described the clothing of one victim incorrectly and I placed the other victim in the wrong room and there were numerous mistakes like that, which should have alerted the police to the fact that I might not be telling the truth. In addition to that, of course, at that time the police who were interrogating me were in possession of an FBI crime scene profile by one of the people who invented crime scene profiling. One of the leading special agents and that profile said that the crime had been committed by a woman in a close relationship to the victims. And, of course, I was a man and I didn't know the victims. I met them one time for 20 minutes. So, they should have known that the story I was telling them was not true. And then, of course, the other thing that happened was that just a couple of hours after I told the police that I did it, Elizabeth told the police that she did it. She said "*I did it myself, I got off on it.*" By that stage, the police had decided that I was the guilty one, so that they actually let her withdraw that confession, which is hilarious in a way, because they found her fingerprints at the crime scene, and not mine, and it's quite incredible that they let her withdraw that confession, but they did and so they ended up charging me with being the killer and they charged her with being an accomplice and in 1990, they put me on trial and convicted me of something that I did not do. And when we get back, Jason, I can talk about the blood which they used at the trial and what changed later on, ok? So, let me hang up and call back.

JF We are back! So, there's a lot of things wrong with this case, so many it's hard to even fit them into an episode of the show, but one that I talk about, as you know, we've known each other for some time and I have been advocating alongside this amazing team of people that you have and what I say to anyone who will listen to me is this is an unusual situation, because normally in false confession cases you have people who are trying not to implicate themselves and who may be of limited mental abilities as well in some cases. In your case, you were trying to implicate yourself, right? So, there would have been no reason for you not to tell the truth if, in fact, you knew what it was, but the reason that you were wrong about these details was because you just didn't know. So, here you had a guy, you were actually the smartest guy in the room and you were trying your best to save who you thought was the love of your life and yet you were unable to get almost anything right because of the fact that you weren't there. So, that makes it hard. And I do want to bring John and Chip into the conversation now just too, just to talk about this scenario that took place in England and the immediate aftermath of it. John you want to jump in here?

JG It goes back to a false confession, because there is no other proof to convict Jens of the murder, so all you have is a confession. And with any false confession case what you would hope that the authorities do, once they manage to extract the confession, whatever tactics they use to do that, is that they will match it up to the physical evidence to see if it in fact matches and false confessions

virtually never match up, because there are too many details, too many specifics in a murder, the method of murder, the place, the blood, the blood splatter, the clothing, the room, whatever you know there's a whole lot of fingerprints, footprints, there's a long list of items that the police go through in any investigation and with a false confession it's usually fairly simple to realize, once you start matching the confession given by somebody who wasn't there, it's impossible for them to remember all the details that the real killer would actually know. Where he left the bodies. How he killed them. Who did what. What was on the kitchen table. What was knocked over. What was spilled. These are all - it's fairly common sense. And in Jens' case, there were so many discrepancies between his confession and the actual physical crime scene, you just want to scream and say *"Why didn't somebody put these together, match 'em up"* And somebody, whether the cops - and the local boys are not always that reliable, especially in a rural county like Bedford, Virginia where they don't see a lot of murders and the cops are not that well trained and sophisticated. You want to say *"Why can't you guys look at what's obvious?"* What frustrates me is when you get to trial and you have what you think should be a competent defense lawyer who cannot walk through the confession step by step by step and show the discrepancies between the confession and the actual crime scene. I'm not sure if this was done or attempted in Jens' case, but it certainly was not effective. And that's what we always start on a wrongful confession case, let's match it up with the proof and it never matches up.

JF It never does and this was a crazy case, because on top of all the other factors that led to his wrongful conviction, I think there was an inherent bias. I can't prove this, because of the fact that it was Bedford County which ironically is the county that lost more soldiers in WW II to the Germans per capita than anywhere else in the United States, it's why the WW II memorial is there. And so I think that there is at least an argument that there could have been - that the odds were stacked against Jens from the beginning. I want to bring Sheriff Harding into the conversation. Sheriff Harding has been in law enforcement for several decades, four decades right? And has been recognized by - I mean, his resume is nuts when you look at the number of accreditations he has and the number of awards he's won and he's one of the most accomplished people in law enforcement in the United States. And you've dived into this case with all guns blazing, so to speak, and is it possible, Sheriff, you've examined this evidence 18 ways from Sunday. Is it theoretically possible that Jens committed this crime?

JH Is it possible? I mean he could have been dropped down from a spaceship and done it, but is it logical he was there when these murders occurred? It is extremely unlikely that he was there. There is nothing that puts him there other than his false confession and as John was saying earlier, the confession did not match the crime scene. When you look at it, there were some huge discrepancies that weren't followed up. Yet a young investigator his first homicide case he had ever investigated and I'm reading the transcript going *"You have got to be kidding me! You didn't do any follow-up plus you didn't tape the confession."* So, it gets to court, very skillfully the prosecutor only asked questions that were consistent with the crime scene and the event and omitted the inconsistencies. As John was pointing out, he had a very ineffective defense attorney that didn't bring that to the attention of the jury.

JF Among other things. And Jens, take us back from your perspective. This is a nightmare that no one can imagine living through. You had been in jail in England for quite some time before you even came to trial. You had nothing in your life experience that would prepare you for any of this. And now here you are in the grip of the justice system in Virginia as sort of an arch villain, right? And what was this like for you to go through this at the time? Did you believe that you'd actually win this case?

JS Can I throw in a couple of other factors and then answer your question? As far as details that corroborate the confession, at the time of the trial, the prosecutor pointed out to the jury 26 times that the police found some O type blood at the crime scene and that I was the only person

involved in the case who had type O blood. The victims did not have type O blood and my girlfriend did not have type O blood. The only person involved in the case with type O blood was me. This is what the prosecutor told the jury 26 times. And it would take another two and a half decades to find out through DNA testing that indeed that was type O blood that was left by somebody else. So, the fact that seemed to corroborate the confession at the time of the trial is now shown to actually disprove the confession. Chip can talk more about that.

JF Sheriff Harding, what percentage of the population has this type of blood? I think it's about 45 percent, isn't it?

JH It's pretty high.

JF Right. So, I mean, it's a ridiculous thing to try to pin anything on and yet the prosecutor mentioned it 26 times. It's also worth mentioning that Jens' lead trial lawyer was disbarred a few years after your wrongful conviction. And he was disbarred because of mental illness, drugs was a factor in all of this, and it was shown that he was suffering from this profound problem during the time of your trial. So, that's just another important thing to recognize.

JS You wanted to know what it felt like? At that stage, in 1990, I had already been in prison for four years fighting extradition from England to the United States. For most of those four years, I was convinced and all my lawyers were convinced, everybody thought, that I would definitely be sentenced to death. So, I spent four years in prison in effect psychologically on death row. Everybody, including my own team, told me that I had no chance of avoiding the electric chair. And then, at the last minute, that was avoided. We won an appeal at the ECHR. And I was brought back to America. And that sort of thing has an effect on you, psychologically. Living in prison for four years, believing that you're going to die pretty gruesomely in the electric chair. Then I got brought back to Virginia and everybody hated me. Everybody was convinced I was guilty and it was really scary. It was a very frightening experience and I did not handle it well. I did not handle it well. But again, you have to put it against the background of my having just spent three years under imminent threat of death and coming to this atmosphere and having to see Elizabeth Haysom, the woman I had sacrificed myself for, get up on the stand and perjure herself and tell all these lies to put me away in prison – and when I say that she perjured herself, that's not just a claim that I make, 26 years later, she actually admitted that in a newspaper interview. She admitted that she perjured herself at my trial. At that time, nobody knew that and nobody cared. They just wanted a witness to point the finger at me and she did that job. She pointed the finger at me and that and my own false confession and the type O blood, that's what did me in.

JF And the sock print, of course, was a ridiculous piece of evidence that no serious person should have ever - it shouldn't be allowed in court and the way it was done was very devious. But I want to go back to John and Chip here, because John, you were a criminal defense lawyer in your younger years and Chip, you're obviously a very accomplished investigator. How would you guys have handled this and what could have been done to save Jens and if you were representing him back then, what would you have said?

JG It's difficult to project myself into that situation, especially now, many years later. I only practiced law for ten years and my dream, when I was very young, was to become an accomplished courtroom lawyer, a big time trial lawyer and to do that I volunteered for all of the cases that I could possibly get, because but also, it got me in the courtroom and within two years of finishing law school, I had tried two murder cases by myself. No second chair. They weren't capital cases, but they were murder cases and I won both of them. Not guilty. So, I was in the courtroom a lot. I didn't win many cases, because they weren't supposed to be won. Most of my clients went to prison. But anyway, that was my world back then, criminal defense law, and I wanted to parlay that into the courtroom resume for big cases, so that was very much the way I lived back then. And

when I read these cases, and I read a lot of them now, being on the board of the Innocence Project and working with innocence cases, you see some of the defense work by lawyers and this was a private attorney that Jens' family provided. A guy who was not even from the area, I think he was from Detroit or some place. But to see the incompetence of defense lawyers and the lack of effort, the lack of integrity in challenging the prosecution, even challenging the judges – it's extremely frustrating and we see it all the time in wrongful conviction cases where you have all the reasons, all of the factors that lead to wrongful convictions, whether it's junk science or jailhouse snitches or false confessions or whatever, you have a list. But the one thing that irritates me a lot is the incompetent defense work, because there is no excuse for it. It's a question of simple hard work or saying no to a case you shouldn't take to begin with. So, I can't tell you specifically what I would have done 30 years ago to save Jens. I can't do that. I'm not that smart. But there's really no substitute for hard work and fortitude and challenging the facts. And I didn't see it in this case.

JF And Sheriff Harding, I want to talk to you, because it's interesting to me that Jens has assembled this remarkable team, that's a great credit to him, and you're an interesting character in this, because you're a conservative guy, a guy who is obviously a law and order guy and yet you have devoted yourself selflessly and spent time that you could have been doing anything else to hundreds of hours to this case. Can you talk about that? And then can you talk about the actual forensic evidence?

JH His attorney Steven Rosenfield asked me to take a look at part of the pardon petition to see if I could find a way to strengthen it or to see if he's missed something in it and I told Steve at the beginning I felt like Jens was guilty based on everything I had seen. I know Governor Kaine had tried to send him back to Germany. I was opposed to that, because I felt like he was guilty. He shouldn't be given any special consideration just because he was German. Steve gave me the case and said it would only take me a couple of hours. Well, I ended up taking much of the stuff home that night. My wife thought I had lost my mind, because I spent basically the whole weekend, the dining room table covered with material that Steve gave me. I said *"OMG, this is nothing like what was represented"* and in conclusion, I ended up writing a 19-page letter to the governor breaking down the closing arguments of the case, the strength of the government's case. I broke that down and after that was published, I had another investigator who worked with me for 25 years who said *"Let me help"*. A former FBI agent that I know that I worked on a case with jumped in and one of the original Bedford investigators said he felt like Jens had been railroaded and was innocent also, so the four of us have been working collectively, we've given a couple thousand hours and you want me to talk briefly about the forensics: The O blood was very powerful, as was mentioned. And I will say, if I was on that jury, I would have convicted him based on the way the evidence was represented skillfully by the prosecutor. The O blood now we know absolutely, no one contests the fact that it is not Jens Soering. He's not been detected in the crime scene, but two other males, one with AB blood and one with O blood, have been detected at the crime scene and we have not identified these people and in my opinion, Bedford County should consider having an open homicide investigation. Then you look at the next piece of evidence that was pretty powerful. The Commonwealth originally got a Certificate of Analysis from the State Bureau of Forensics saying that the shoe and sock size was consistent with a 6 ½ to 7 ½ women's shoe, men's 5 to 6. They originally had, and this blew my mind, they originally had a small female as a prime suspect in this thing and the prosecutor wrote a letter – we've got a copy of it attached with a draft affidavit – saying that he wanted this woman's blood, fingerprints and shoe impressions, because her shoe was consistent with what was in the crime scene. And then you turn and you go trial and you don't want to hear anything, the defense attorney brings nothing up. They bring in a non-qualified individual to testify. He did a – we like to refer to it as a magic trick, created an overlay of an impression of Jens' foot and said it basically fits like a glove. Reminds you of OJ. And he even instructed that he could not testify as an expert, but when you look at the closing arguments of the prosecutor, he says *"It can only fit one man. One man in the world could this fit"* and he points at Jens Soering. And we know that that's hoopla. That's junk evidence. And the same man that put

this on in front of the jury, Robert Hallett, did same thing in another case where a man was given the death penalty. And thank God – it took a few years – he did not get executed. DNA proved he absolutely didn't do it. So, here you have the same junk science being used again. There was a juror that gave an affidavit to the attorneys which said it as tied 6:6 in the jury room. They wanted to take a look at the sock and shoe evidence again and he said that's what turned the tide. We know now that's ludicrous. There are really two parts – you've got a false confession and you've also got a false alibi. You've got Elizabeth who claims she stayed at the hotel room and when Jens came back, she said Jens comes back that night after midnight in a sheet covered in blood from head to toe in the rental vehicle. And Jens asked her to clean it up with Coca Cola. Yet, that vehicle was tested with luminol and I've never had a case where blood had been present, even bleach ain't gotten it all out. No indication of any blood at all and there was testimony from the folks at the rental agency that the car was in an immaculate conditions, no signs of any Coca Cola. We have since learned in digging into the limited information we can see that there was actually blood found in the trap of the shower in the master bedroom and that shower wall illuminated like 4th of July, so it gives us the impression as investigators that at least one of the participants in this homicide took a shower. So why would he be covered in blood from head to toe? It's impossible. And there are three or four more things that Elizabeth says that occurred, we can disprove with her alibi. As a matter of fact now, everything that has come out of that woman's mouth we can either prove – it's provable that she's lying or its highly suspect that she's lying. We've looked very hard at everything that Jens has said and we have not caught him in a lie. Everything that he said, we have no reason not to believe him.

JF There's a book that Jens wrote with Bill Sizemore called A Far, Far Better Thing and on page 220, I'm going to read this: Russel Johnson, a fully qualified footprint expert, was so outraged that he wrote a letter to the Editor of the Roanoke newspaper declaring that the sock print evidence was worthless junk science. He said there appeared to have been a slide in the heel before it came to rest, which of course would invalidate any attempt to size the thing up and then he made a very strong point that said that the bloody sock print "*provides no evidence whatsoever that Mr. Soering was at the scene of the crime.*" So, the idea that this was the thing that the jurors cite as the thing that broke them from a 6:6 tie to ultimately a unanimous guilty verdict, it should be offensive to anyone who believes in truth and justice and it certainly is to us, which is why we are here now. John, you look like you have something on your mind.

JG I'm just fascinated by the level of junk science that permeates our courtrooms still today. Whether it's sock print analysis or bite mark analysis or hair analysis or boot print analysis. There is a long sad list of these analyses that have put so many people in prison uttered by people who are not qualified. You can go to a weekend seminar and study blood splatter analysis and get a certificate and call yourself an expert and some prosecutor can call you in in a murder trial and you pretty much say whatever he wants you to say. At the Innocence Project, we are laboring to provide some national standard for forensic scientists to get to clean up the courtroom and get all the crap out of it, so we have good qualified experts who give valid scientific opinions about things that are really really important. The Ron Williamson case, the book I wrote about, The Innocent Man, he was convicted in part because of hair analysis provided by the Oklahoma state crime lab and this expert took some scalp and pubic hair from the crime scene and said "*It matches Ron*" and the jury ate that up. And ten years later the same hair – when Ron was tried in 87, there was no DNA, ten years later we had DNA and all 17 hairs were excluded by DNA from Ron Williamson and then later, a few years ago, the FBI admitted that when it comes to hair analysis, 95 percent of their own FBI examiners got it wrong. That's the FBI. That's the cream of the crop. Can you imagine what the numbers are for the state crime labs? So, the junk science is just sickening and Jens is in prison today because of junk science.

JF And there is so much because this case – we're talking about a case in which a couple was brutally murdered, stabbed multiple times, each of them, very bloody crime scene, rich with biological

evidence from the actual killers. In theory you also had a logical explanation for this in that Elizabeth had said multiple times that she had been sexually abused by her mother, that her father may have been involved in this in some way, there was a clear motive in that sense. We had drugs, no one every claimed that you were on drugs, but we know she was doing hard drugs and that she was running with a very nefarious crew back then and would have had access to the type of people who might commit a murder like this. People who knew you back then, including some people from law enforcement said, even Elizabeth said, it was ludicrous to think that you could have committed a brutal crime like this because you're not a physically imposing guy who could have overpowered two adults. None of it ever made any sense and it should have been relatively simple. Now, of course, so many people have weighed in on this including Chuck Reid, one of the original investigators in the case who has said in emphatic terms that it could not have been you, that he doesn't believe it was you. And yet we still find ourselves in this situation where we still all try to get you out. And it's also worth talking about the fact that you have, while in prison, distinguished yourself in ways that are almost unprecedented, writing 9 books, widely published, educating yourself, becoming a Tai Chi master, a meditation teacher and of course having had an absolutely perfect record behind bars. We often talk about the fact that, to my knowledge, you've never even spilled your coffee. So, it's remarkable in what it says about you and also about the idea that we are a nation supposedly of second chances, of forgiveness. So why anyone would want to keep you in, even if they are unwilling to look at or unable to understand the scientific evidence of your innocence, the idea that we still keep you behind bars – it's an affront to anyone who believes in just decency.

JS It's been very, very difficult for me, especially over the last two and a half years the pardon petition was submitted based on the DNA evidence. Really difficult for me. Because for 30 years, we thought there was no DNA evidence in this case that could prove my innocence. And then, after 30 years in prison, it was actually I on the phone with my lawyer Steve Rosenfield flipping through some old forensic reports, I found the DNA evidence. And that's what the pardon petition is based on, but 2 ½ years later, we cannot get anybody to act on it. For 30 years, I was wishing for DNA and then I finally get the DNA evidence and then nobody is willing to listen or accept it or do anything about it.

JF Let me jump in for a second, because we have here an interesting – such an amazing group, right? We have John Grisham who is one of the most famous, if not the most famous Virginian. A legendary figure from from the literary world and who is certainly no stranger to politics or justice. And we have Sheriff Harding, who knows his way around law enforcement way better than anyone else in the state and maybe you guys can try to give me some insight as to why this case is such a difficult one to resolve in the face of such overwhelming evidence of innocence and such a strong group behind Jens? When I say strong group, Angela Merkel spoke to President Obama on several occasions about Jens. When have we ever heard that the former president of Germany flew to Virginia just for the purpose of meeting with the parole board to say *"Send him home, I'll take care of him, I will house him, I will get him a job, I will mentor him"*. I mean, you have one of our most important allies in the word who have made it a national priority at the highest levels to extricate Jens from the impossible situation and bring him back to his own country. And yet, here we are. Can you guys touch on this? How do you explain this?

JG I'll touch on it. I can't explain and I think you know Jason, from your work in the innocence world, as frustrating as this is, it's not unusual. We've had cases before where we have to fight tooth and nail to obtain DNA testing for one of our clients and we get the DNA testing albeit the objections of the local prosecutors and local law enforcement, we get the DNA testing, it clears our client / inmate and so he's cleared, ok. Then it takes a year, procedurally, to get him out, oftentimes the prosecutor will say *"Well, I don't really believe the DNA results, we are going to try you again."* And so they bring him back to the local jail where they can keep him forever and a year goes by, two years go by – this is not – again, as frustrating as it is, as maddening as it is, I'm ashamed to say it's

not that unusual. I think in Jens' case though, we are pressing ahead on many fronts, we are cautiously optimistic that the right people are listening to us, we are almost sanctimonious in our belief that we are right and everybody else is wrong and it's time to make something good happen. And that's why we are going to these efforts and we're not going stop, slow down or be quiet. We are just going to get more and more vocal and push harder and harder until we get justice.

JF Sheriff Harding, on top of all the other evidence and FBI agents like Ed Sulzbach who came forward and others to say that evidence had been hidden or not turned over or disclosed in the way the law mandates that it must be, there is also in chapter 18 of the book that I referenced before, there is the story of the car in the woods, right? You would think that this alone would be enough to send Jens home. And I'm going to quote from the book again: In 2011, Tony Buchanan, the retired owner of a Lynchburg area auto transmission shop said that three to five months after the murders in 1985, a car was towed into his shop for repairs, its undercarriage matted with grass and mud as if it had been sitting in the woods for a while. The tow truck driver told Buchanan the two-door Chevrolet belonged to "some college kids" and here's the important part, he said in his one statement that when he looked inside, he saw that the floorboard on the driver's side was "full of dried blood," beside the console, between the front seats, also covered in dried blood was a single edged hunting type knife, the same type that was used to kill the Haysoms. Now, I'm sitting here, I've got chills just reading that and this same guy testified or swore an affidavit that none of those people was Jens. Jens was not one of the people who returned the car. Elizabeth was one and somebody else was the other. But yet, here we go again.

JH It's just a shame so much time has passed. He claimed that he called and spoke to Ricky Gardner, who was the lead investigator, now Chief Deputy in Bedford, and told him about this. Gardner denies that, says it didn't happen. So much time has passed, some of the investigators did work that lead and we ran it out because time was not on our side. We tried to find any documentation, did material checks and all that kind of stuff, but if it had been followed up on properly at the time, same way if they had sent investigators to the hotel they had stayed at. It would have cleared it up right away that Jens was there, she wasn't. His story of what he purchased was consistent with the hotel bill, what she said she purchased when she stayed there was very inconsistent, it was way over what the bill showed. The bottom line, what's frustrating for me is the law enforcement. I'm in law enforcement and I hope I'm respected in law enforcement. I'm a sitting Sheriff and yet the sitting Sheriff in Bedford County refuses to meet with me and even discuss the case. The lead investigator won't meet with the four of us that have given thousands of hours pro bono – we are just looking for justice – for one hour and he doesn't have time. However, we do have him caught on videotape saying a few years ago "This happened 30 years ago. He was convicted in court. Why do we need to go any further then?" I think that's the attitude which is – it's really shut down from an investigator's standpoint, we have not had access to the investigative files for any further testing because I'm out of my jurisdiction and getting absolutely no cooperation from Bedford. We have proved absolutely that they lied and concealed the fact that there was an FBI profile done. My buddy, who is a retired FBI agent – we had asked the FBI several times and they couldn't find any information. Ricky Gardner said absolutely 100 percent positive it was not done. We now have actual documents from 1985 from the FBI that indicate a profile was done in Quantico, Virginia. So, my buddy the former FBI agent said, if the lie about that and they won't cooperate, what else is there? It certainly raises a red flag with us as investigators. Do we have any form of corruption or wrongdoing?

JF They won't even allow you to test the DNA of 2 guys that we know are in for committing similar crimes in another county of Virginia. We have no idea whether they committed this crime or not, but there's some reason to believe that they -

JH These two guys knifed a man multiple times to death within a few days and it was not far from the Haysom residence where those victims were located and these two folks, one of them at least, was

a crackhead and was involved in heavy drugs in Lynchburg area, as we believe Elizabeth was. She was an admitted heroin user and the DNA should be in the databank. They're both doing life for that murder and we simply asked: Would you take those profiles and compare them to the crime scene? And the state says: Can't do it. It has to come from the jurisdiction where the offense occurred. They have to request it. And to our knowledge, they're not doing anything.

JF Which is just remarkable, right? When you think about the idea that they just refuse to test something that can only prove, one way or another, these guys did it or they didn't. Why wouldn't we want to know?

JH We want to know from an investigative standpoint, do we want to keep following those two guys as a lead or can they be excluded based on the DNA? It's very simple. It would take about three or four minutes to compare those barcodes, it's so frustrating. I'm used to working in my own jurisdiction. If I want something tested, I ask the lab to do it, if I want a search warrant, I get it, if I have witnesses and we have two or three people that need to be interviewed in this case who refuse to cooperate whatsoever, I have authority to serve a subpoena on them. I really feel for the Innocence Project, I see what they go through now. Now that I'm on the other side of the fence, I feel like you're operating with both hands tied behind your back. Everything is working against you. So, you've got to put a lot more work and effort into it then you really should in trying to get to the truth, which we all should want. But apparently we don't all always want the truth and justice.

JF It's also something I want to touch on before I turn over to John for a second. Back in 2008 or 2009, with the support of Bishop Sullivan and other luminaries – both religious and political figures – Governor Kaine granted a conditional pardon I guess that would have allowed you to go back to Germany and this is such an unbelievable thing to even think about, when I hear myself tell the story to people, I don't even believe it myself, but I know it's true. Literally, as you were packing your bags, the new governor came in, Governor McDonnell, and he revoked for the first time in the then 240 year old history of Virginia, he revoked the previous governor's order and decided that you would be kept in prison for the rest of your life, which is just an unbelievable thing to process and it is remarkable going back and thinking about the number of people and the quality of people that have come to your defense and even now the support of amazing people from journalism, The Washington Post, who are even here today covering the story. So many – they're really the finest organizations and the leaders of different, from all parts of the country, have taken up this cause and I wanted to ask you John, of all the millions of things you could be doing with your time right and now and we know estimates are five percent of people in prison in America, which is about 100,000 people are innocent. There are so many innocent people. And again, there are so many other things that you, the Sheriff, me, the pro bono lawyers who have helped Jens throughout the years and still help him now, Steven Rosenfield, Steve Northup and others – why are you so obsessed with this case?

JG I wouldn't say I'm obsessed. I'm very concerned about it. Since The Innocent Man was published in 2006 and I joined the board of the Innocence Project in New York, I've done a lot of this type of work and I haven't done as much as you have, Jason, but as individual members, we tend to get involved in cases that we hear about, I'm still involved with two guys in Oklahoma, there's a case in Mississippi that I'm involved with. I've known about the Jens Soering case here for 25 – we've lived here 25 years, in Charlottesville and I read about the case a long time ago, didn't pay much attention to it, I saw there was a confession and figured, well, ok they got the right guy. I was never too involved in the case and then a couple of years ago, I talked to Steve Rosenfield. We had a call and talked about the case and he asked me to take a look at it and by then, the case had been looked at so many different ways by so many different people and Chip Harding also spoke about the case and by then, he had five hundred hours on the case, he's probably got five thousand now, but I started reading about the case, read the book, saw the movie and realized that this took place very close to where I live and I became convinced it was a huge miscarriage of justice and became

fascinated with it. And I thought about writing a story. I thought about writing a book. These innocence cases always inspire me to write the story, because the stories - almost all of them - are so fascinating, compelling, heart breaking, but they're just good, deep, complicated stories and I love that type of a story. So, I talked to you, Jason. We've known each other for a long time, became involved in the case after you and here we are. And the more work that I do, I'm still catching up to you guys, but the more we work together, the more determined we are to get a just decision in this case and we have several avenues left. It's not hopeless by any means. We don't view it as hopeless, we think we can smell victory.

JS John was just speaking about the multiple avenues available. Most innocence cases have only one real option and that is a pardon. And that's usually a full pardon. And that makes it very difficult, because somebody has to admit that they made a terrible mistake. My case is a little bit unusual in that the state actually has three options: they have the option of an absolute pardon, which would be to declare my innocence and actually admit what really happened, which was that this is a wrongful conviction. But they have two further options: they have a conditional pardon, which would be just to say that there's a lot of doubts, but not to say I'm actually innocent, just to say there's a lot of questions and a lot of doubts, you can't be sure. And then there's a third option and that would be parole. So, one of the mystifying things to me about my case in comparison to other cases is that they have a whole smorgasbord of options to choose from: a full pardon or absolute pardon, a conditional pardon and then parole. And they're choosing not to exercise any of these options and I find that puzzling.

JF Sheriff Harding, I'm going to put the same question to you. I mean, I have my own reasons. Different cases affect all of us differently. You're both Virginia guys, I'm a New York guy, but I recognize injustice when I see it and I also recognize in this case the added tragedy of human potential in that Jens - and he and I have talked about this at length - the idea that Jens could be - I mean he has contributed a lot to society, even from the inside of these maximum security prisons he's been stuck in for all these years, but the idea that he could be out doing great things with his intellect and with his spirit and his courage, but what is it about this case in particular that makes you want to devote your free time? And again, you could be out fishing or whatever it is, playing golf.

JH Well, this just came to me and I'm captivated by it. Like you say, you really have to dig into it and it will grab hold of you. I first got really interested in this type of work, innocence work, by reading John Grisham's book back when it first came out, *The Innocent Man*, and then I became friends with Brandon Garrett who used to be a professor here at UVA, he's at Duke University now, he has a book out, *Wrongful Convictions - How Criminal Prosecutors Went Wrong*, and he's got a lot of research data. I'm not bragging, but I worked as an investigator and investigative supervisor for over 30 years and I never lost a case and I always thought I did it right. After reading John's book, well Holy Toledo! I don't think I ever wrongly convicted, but the opportunity surely was there. You tend to get tunnel vision just like these folks did here. You tend to go on those grey areas that you think, because you think you've got the right guy, you're doing the right thing to protect your community. And you're not necessarily doing that. So, in looking at this case, I'm seeing all of those things. I'm seeing tunnel vision, I'm seeing junk science, I'm seeing so much that's - If I had to sit in jail like Jens - but I'm finding it a fascinating case to dig into. I read some of the letters and it just blew me away. There was one by Elizabeth that she wrote 90 days before the murder that said "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." So, she might be enjoying him sitting there. The other part of it is looking at Jim Updike. I give him credit for that he did a good, masterful job of winning the case. I don't know if it was about justice. He wrote in an interview that I've got a copy of *On one hand, she freely admitted that her parents would not be dead if not for her.* (I agree with that.) *"She wanted them dead. On the other hand, she was of*

great assistance to me". Updike said Haysom helped him gather the evidence against Soering and even outlined the whole case for him. You have got to be kidding me. But, you see this stuff all over the country, right now I've got a lot invested in this as do the other investigators and we'll do anything we can to prove his innocence. We do feel like he is innocent.

JF And we will prevail, because - as John said - we're not going to stop. We are going to keep fighting until we get him out and then we'll move on to the next one. But until that's done, we're just going to get noisier and we're going to more efficient and we're going to ultimately prevail. I think that we do have a state here where, I think, there's a number of very good people in the system. I think the people on the parole board are very well-meaning people and I think the governor is a good governor who cares about this stuff and cares about justice. I don't think that's true in all states by any means, but I think that that is true here. And we're going to find out just how true it is by shining a light on all these different aspects of the case. Jens, before we close, I did want to ask you about your current team, what they have meant to you as well as Gail Starling Marshall. If you can just touch on that?

JS I had a really, really bad trial lawyer who was eventually disbarred, like you've mentioned. But I've also had really, really fantastic lawyers fighting for me, including the former Deputy Attorney General Gail Starling Marshall; also Gail Ball, who is in the movie; and of course Steve Rosenfield who has suffered with me for so many years; and Steve Northup. Lawyers catch a lot of blame, but there are some really wonderful lawyers as well. And that is really hopeful to me, to know that not everybody in the legal profession is awful. There are some really, really fantastic human beings working as lawyers. I've had wonderful people like you and John Grisham and Martin Sheen who just had a letter to the editor published yesterday in the Richmond Times-Dispatch. You know, people who really have really more important and better things to do in their lives than to worry about me, stepping into my life and trying to help me, that's really important and has given me hope. And it gives me hope to try and hold on a little while longer to see if this can be resolved in some way before I die of old age. I've been in here for - I can tell you exactly: 11,945 days. 11,945 days I've been in here. 32 years, 8 months and 11 days. And it hasn't been easy, but that's what's carried me, these wonderful people behind me.

JF You do have an extraordinary team, including the leaders of Germany, past and present. I want to tell the audience there's the movie Killing for Love; the book is A Far, Far Better Thing by Jens Soering and Bill Sizemore. A Far, Far Better Thing. And for audience members who want to get involved, you can send an email to alena.yarmosky@governor.virginia.gov or you can go to the website, which is www.governor.virginia.gov and then this is the part of the show that we've become known for. I think it's everyone's favorite part of the show. It's mine. And this is the part of the show where I get to thank our guests, in this case of course John Grisham - John, thanks for being here - and Sheriff Chip Harding of Albemarle County and of course you, Jens, thanks for participating in this and sharing your thoughts and experience and educating our audience. I want to turn it over to each of you just for brief closing thoughts and of course we'll end with you, Jens. John, final thoughts?

JG As far as - I've said it before, these wrongful conviction stories are always compelling and tempting from my point of view to write about, to tell the fantastic stories as sad as they are, but to hopefully also raise awareness. Had I not written The Innocent Man, published it 13 years ago, there would not be the Netflix series now which is getting far more attention than the book, which is all good, but as far as these stories go, I've got my top five innocence stories that I've come across in the past 12 years and Jens' case has got to be in the top three. It's just such a compelling story of a wrongful conviction, all the different ways that things go wrong with our system and also the relationship with his accuser is fantastic. I hope there is a happy ending. We believe there is going to be a happy ending, because we're all working hard with a game plan to get Jens out and get him back to Germany and Jens and I have this kind of a running gag that one day soon we're

going to be drinking a beer together in Munich at the Oktoberfest.

JF I'm coming too. And, by the way, he and I have the same deal, so I don't want to make you feel not special, but we've got the same deal.

JH Me too. He said you'd be paying for it, John.

JG We're all invited. We're all invited to the Oktoberfest.

JF Sheriff Harding, final thoughts?

JH Until I got involved in this kind of work, I always thought that you were found guilty beyond a reasonable doubt, but it looks like in America, once you're found guilty, to be found innocent or pardoned, it almost has to be you're innocent beyond a shadow of a doubt. The standard is way too high. It's shameful for me to have 50 years in the justice system and to see the push back, not just in this case. I've read 300 or 400 cases from prosecutors in law enforcement that don't man up and step up and admit they make mistakes and seek the truth. And no one is ever held accountable. In the first 250 cases that Brandon Garrett examined, in many cases, prosecutors withheld exculpatory evidence, so did law enforcement and not one single case that went off should ever have gone to trial or spent one day in jail. So, if we can't police ourselves, how do we anticipate the public is going to the confidence in us to police them?

JF And now saving the best for last. Jens, your final thoughts?

JS Thank you. I think it's important for your audience to realize that there are an estimated 100,000 wrongfully convicted prisoners in the United States. That's a small city. I am far from the only one. I'm really really so grateful to the three of you - John Grisham, Chip Harding and Jason Flom - for drawing attention to my case, but let's not forget the other 99,999 victims of miscarriages of justice. One of the things that I really would hope for is that, if I'm ever released, I can maybe help draw attention to all those other people and work towards systemic changes, so that things like this don't happen to other people. This is something to think about. 100,000 innocent people in prison in the United States. Somebody should be really bothered by that and I hope your audience thinks about them as well and I want to thank you for giving me this opportunity to speak today and talk about my case. Thank you.

JF John Grisham, Sheriff Chip Harding of Albemarle County, and Jens Soering. Jens - thank you.