

Why the Haysom/Soering Case Warrants Reconsideration

Overview

- I. Prominent attorneys, investigative reporters and others consider Soering innocent, or believe he should not have been convicted, or have publicly questioned the case against him.4
 - A. Gail Starling Marshall, former Deputy Attorney General of Virginia
 - B. Dennis Dohnal, U.S. Magistrate
 - C. Ian Zack, Charlottesville Daily Progress
Carlos Santos, Richmond Times-Dispatch
Bill Sizemore, Virginian Pilot
 - D. Walter Sullivan, Bishop Emeritus, Diocese of Richmond

- II. All four major pieces of evidence used to convict Soering in 1990 have been discredited over the last twenty years. 5
 - A. Confession 5
 - 1. Seven major errors in Soering’s alleged confession, including: wrong clothing, wrong room (location of one victim), wrong type and wrong location of knife
 - 2. Two news articles on the now-recognized phenomenon of false confessions; 25% of DNA exonerations involve defendants who confessed falsely.

 - B. Sockprints 6
 - 1. Juror affidavit, stating that sockprint overlay used at trial was the decisive piece of evidence.
 - 2. Affidavits by a retired FBI Special Agent and a retired New Jersey State Police impressions expert:
 - a) The trial overlay was “worthless” and “misleading.”
 - b) Elizabeth Haysom and Jens Soering could equally well have made the crime scene sockprint.
 - 3. 1997 appellate brief by Assistant Attorney General John McLees, conceding that the sockprints “could not be sized with precision.”

| | |
|---|----|
| C. Sneaker Prints | 7 |
| 1. Sheriff's Department report, stating that the sneaker print belonged to "a woman or a small man or boy." | |
| 2. Definitive study on sneakers, showing that the crime scene print was too small to have been left by Soering. | |
| D. Co-defendant's testimony and evidence implicating co-defendant | 7 |
| The evidence against Elizabeth Haysom is stronger than the evidence against Jens Soering and includes: | |
| 1. Her confession | |
| 2. Blood of her type | |
| 3. A sockprint resembling hers | |
| 4. A sneaker print of her size | |
| 5. Her fingerprints | |
| 6. Her testimony about a likely triggering event | |
| 7. Her half-brother's testimony | |
| 8. Her psychiatric reports | |
| 9. Her five different stories about the alibi movie tickets | |
| III. Soering's trial was marred by serious procedural problems which, collectively and retrospectively, call into question whether he received a fair trial. | 10 |
| A. Judicial bias – failure to recuse | 10 |
| 1. Judge Sweeney was a friend of the victims' family for over 40 years. | |
| 2. He failed to disclose the full extent of his relationship. | |
| 3. On the day Soering's trial began, a local magazine published an interview with him in which the judge was quoted as saying that Soering "took the dare" and committed the crime. | |
| B. Ineffective assistance of counsel | 10 |
| 1. Soering's defense lawyer later lost his license for misappropriating funds and mishandling Soering's appeal, among other charges. | |
| 2. The lawyer's defense was that he suffered from an "emotional or mental disability" during a period that included Soering's trial and appeals. | |
| C. Change of venue | 11 |
| 1. Four years of pre-trial publicity included calls for Soering's execution. | |
| 2. Soering's trial was the first nationally televised high-profile trial in Virginia. | |
| 3. Judge Sweeney imported a jury from another county covered by the same Lynchburg-area media which, according to his own ruling, had tainted the Bedford County jury pool. | |

- IV. There is new as well as previously neglected evidence that strongly suggests Soering was wrongfully convicted in 1990: DNA (2009) and sexual abuse (1987) 12
- A. New evidence: DNA (2009) 12
1. Background: Post-Conviction DNA Testing Program launched by Governor Mark Warner in 2005.
 2. Forty-two blood samples were found in Soering’s file, forgotten there since 1985. Testing established that Soering definitely did not match any of the blood at the crime scene.
 3. For 20 years the prosecution has claimed that Soering cut himself while killing the Haysoms and bled at the crime scene. It had 42 opportunities to prove that theory and failed 42 times.
 4. If this case were presented to a jury today – with all of the discrepancies in Soering’s false confession; with the new sockprint analyses by recognized experts; with all of the evidence implicating Elizabeth Haysom – then the prosecution’s 42 failures to find Soering’s DNA would raise a reasonable doubt in many jurors’ minds. One of those 42 blood samples surely should have been his!
- B. Previously neglected evidence: sexual abuse (1987) 12
1. Background: At the time of Elizabeth Haysom’s and Jens Soering’s trials, sexual abuse was still a taboo and little-understood subject.
 2. At Elizabeth Haysom’s sentencing hearing in 1987, Nancy Haysom’s best friend Annie Massie, a court-appointed psychiatrist, and Elizabeth Haysom testified that Nancy Haysom had sexually abused her daughter, with the knowledge of Derek Haysom. Nude photographs and a psychiatric report were entered into evidence and placed under seal.
 3. At Soering’s trial in 1990, his attorney deliberately avoided all mention of this subject.
 4. As a result, the jury was never given a persuasive reason why Elizabeth Haysom would kill her parents in such a brutal manner.
 5. If this case were to be presented to a jury today – with the nude photographs, psychiatric report, and Mrs. Massie’s testimony substantiating the sexual abuse; with the far greater public awareness of the destructive impact of sexual abuse – many jurors would reasonably conclude that the carnage at the crime scene can only be explained by a very emotional, highly personal motive, and that Elizabeth Haysom was the only one with such a motive. Soering met the Haysoms just once, for lunch, two months prior to the murders.
- C. Explanatory Note re: DNA 13

Arguments

- I. Prominent attorneys, investigative reporters and others consider Soering innocent, or believe he should not have been convicted, or have publicly questioned the case against him.
 - A. Gail Starling Marshall, former Deputy Attorney General of Virginia
 1. Convinced “to a moral certainty” of Soering’s innocence; considers him one of only two genuinely innocent prisoners in her own professional experience, the other being Earl Washington, Jr.
 2. See: Letter to Virginia Parole Board by Gail Starling Marshall, May 5, 2003, available at www.jenssoering.com
 - B. Dennis Dohnal, U.S. Magistrate, expert witness during Soering’s habeas corpus proceedings in 1998.
 1. Affidavit stating that Soering would not have been convicted but for his defense attorney’s ineffective assistance of counsel. See III. B. and also II.B.1.d., II.C.1.c, III.A.7, III.C.6, and IV. B.5.
 2. Testimony at Soering’s 1996 evidentiary hearing that, as a separate and independent issue from 1, above, Soering also would not have been convicted but for the prosecution’s failure to disclose evidence relating to two drifters who committed a similar murder in Roanoke within days of the Haysoms’ murders in Bedford. See III.A.5.
 3. See: Petition for Writ of Habeas Corpus, U.S. Court of Appeals for the Fourth Circuit, and Joint Appendix; David Reed, “Judge asked to overturn convictions,” Associated Press, December 10, 1996, available at www.jenssoering.com
 - C. Three Virginia journalists who wrote lengthy investigative reports on the Haysom/Soering case, laying out the doubts and questions surrounding his conviction
 1. Ian Zack, “Trial and Error?”, Charlottesville Daily Progress, January 21, 1996.
 2. Carlos Santos, “Life focused on winning freedom,” Richmond Times-Dispatch, March 24, 1996.
 3. Bill Sizemore, “No hope for Jens Soering,” Virginian Pilot, February 18, 2007.
 4. Zack’s and Sizemore’s articles won journalism awards.
 5. See: www.jenssoering.com
 - D. Bishop Emeritus Walter Sullivan
 1. Convinced of Soering’s innocence based on long personal relationship.
 2. Has decades of experience in prison ministry.
 3. See: Sizemore, “No hope,” I.C.3.

II. All four major pieces of evidence used to convict Soering in 1990 have been discredited over the last twenty years.

A. Confession

1. What changed?

- a) At his 1990 trial, Soering claimed that he had confessed falsely in 1986 to protect Elizabeth Haysom from the electric chair, under the mistaken belief that his father's diplomatic immunity extended (at least partially) to him.
- b) Thanks to the subsequent phenomenon of DNA exonerations, we now know that false confessions are much more common than was once believed. Of the more than 250 prisoners exonerated by the Innocence Project, 25% had confessed to crimes they definitely had not committed.

2. Seven major errors in Soering's alleged confession that the real killer would not have made:

- a) Nancy Haysom wore a flowery housecoat, not jeans as he claimed.
- b) He claimed he sat to Derek Haysom's right at the dining room table where the altercation began. However, crime scene photos show the second place setting to Derek Haysom's left. This makes his description of the fight impossible.
- c) He sketched Derek Haysom's body in the dining room, but it was found in the living room.
- d) He identified a double-edged "butterfly" knife as the murder weapon, but medical evidence established that a single-edged "buck"-type knife was used.
- e) He claimed he discarded the knife in a dumpster near the Haysom residence. However, at his trial Elizabeth Haysom testified that the murder weapon was a blood-stained, single-edged steak knife found in the dining room table's drawer. This knife was passed around to the jury as an exhibit.
- f) His confession contained a major fundamental implausibility: that one person could kill two people in two different, non-adjacent rooms with a knife. Nancy Haysom was found in the kitchen; no one was found in the dining room; and Derek Haysom was found in the living room.
- g) The forensic evidence clearly establishes the presence of two perpetrators. See IV.C.
 - i. All four blood types were found at the crime scene: the victims' (A and AB), as well as B (on a damp rag in the washing machine next to Nancy Haysom) and O (a single drop in the bedroom). See II.D.2.b and IV.C.

- ii. Apart from the victims' footprints, there was both a sneaker print (LR2) and sockprints (LR3 and LR5). See II.B. and II.C.
- iii. Both victims had two types of dramatically different wounds: very shallow stab wounds (only one was deeper than one inch) and very deep slash wounds to the neck.
- iv. Luminol testing revealed that the perpetrator(s) washed off blood in the master bedroom's bathroom sink. In the drain was a human hair that did not belong to the victims or to Soering. (N.B.: This hair has not been DNA tested. See IV.C.)
- v. Both victims had very high blood alcohol levels (.22). On a side table near Derek Haysom's body was a shot glass with his fingerprints on one side and unidentified fingerprints on the other side. (N.B.: These fingerprints have not been run through AFIS. See II.D.2.e. and IV.C.)

h) See: Habeas petition and Joint Appendix; Soering's trial transcript.

3. Two articles on the now-recognized phenomenon of false confessions:

- a) Zak Stambor, "Can Psychology Prevent False Confessions?", Monitor on Psychology/American Psychological Association, September 2006.
- b) Lisa Ferrari, "False Confessions," WCAV (CBS, Charlottesville, VA), November 2, 2006.
- c) Both available at www.jenssoering.com.

B. Sockprints

1. What changed?

- a) At Soering's 1990 trial, prosecution witness Robert Hallett (not qualified as an expert) showed jurors an overlay of a crime scene sockprint and Soering's sample ink footprint. Jurors later stated that this overlay convinced them of Soering's guilt; until they examined the overlay closely in the jury room, the panel was split 6-6. See below: 2.b, Bibb affidavit.
- b) In 1996, two qualified impressions experts – one from the FBI Crime Lab, the other from the New Jersey State Police – provided affidavits describing Hallett's overlay as "worthless" and "misleading" because it appeared to create correspondences that did not exist. The sockprint could equally well have been left by Elizabeth Haysom or Jens Soering. In length, it matched only her, not him. See below: 2.d and 2.e, Webb and Johnson affidavits.
- c) In a 1997 appellate brief, Assistant Attorney General John McLees conceded that the sockprints "could not be sized with precision." (At trial, Commonwealth's Attorney James Updike had said they "fit like a glove.") See below: 2.f, McLees brief.
- d) Because of Virginia's "21-Day Rule," Soering's habeas attorney was not able to present this expert testimony as new evidence, but only as evidence of his trial lawyer's ineffective assistance of counsel. See III.B.

2. Sockprint documents from Joint Appendix to Petition for Writ of Habeas Corpus, U.S. Court of Appeals for the Fourth Circuit.
 - a) Juror Jake Bibb's affidavit.
 - b) Forensic examiner Rick P. Johnson's Certificate of Analysis, June 7, 1985 – before Soering became a suspect – stating that the crime scene sockprint “corresponds to a size 6 ½ to 7 ½ woman's shoe or a size 5 to 6 man's shoes.” Soering wore a size 8 ½ man's shoe.
 - c) Trial transcript excerpts, showing that prosecution witness Robert Hallett was not qualified as an expert – yet was allowed to testify as if he were, explaining his overlay and alleged correspondences and “double-hits.”
 - d) Expert affidavit by Frederick Webb, FBI Special Agent.
 - e) Expert affidavit by Russell W. Johnson, New Jersey State Police.
 - f) Excerpt from Asst. A.G. John McLees's 1997 appellate brief for Commonwealth.

C. Sneaker prints

1. What changed?
 - a) At Soering's trial, both prosecution and defense ignored the LR2 sneaker print – even though a 1985 Bedford County Sheriff's Department report stated that it “would be a woman or a small man or boy...a 6 ½ to 7 ½ shoe.” Soering wore an 8 ½ shoe.
 - b) Shortly after the trial, Soering's trial lawyer located the definitive forensic study on sneakers manufactured in the 1980s.
 - c) As with the sockprints – see II.B.1.d. – Soering's habeas attorney was barred from introducing this as new evidence. See III.B.
2. Sneaker print documents from Joint Appendix to Petition for Writ of Habeas Corpus, U.S. Court of Appeals for the Fourth Circuit.
 - a) 1985 Sheriff's Department report.
 - b) Forensic study on sneaker prints.

D. Co-defendant's testimony and evidence implicating co-defendant

1. What changed?
 - a) At Soering's trial, Elizabeth Haysom was an essential prosecution witness – the “star” witness, in fact.
 - b) Thanks to the subsequent phenomenon of DNA exonerations, we now know that so-called “snitch's” testimony – whether by fellow prisoners or alleged co-conspirators – is one of the two leading causes of wrongful convictions, along with mistaken eyewitness identifications. Elizabeth Haysom had very strong reasons to lie: By claiming the role of an accessory who was not even present at the crime scene, and by helping to prosecute the purported killer, she could reasonably expect to improve her chances at early parole. (Because of the abolition of parole in 1995, and the dramatic reduction of the parole rate since then, her plan failed.)

2. The evidence against Elizabeth Haysom is, in fact, stronger than the evidence against Jens Soering.
 - a) Her confession
 - i. On June 8, 1986, during a tape recorded interrogation, she told police, “I did it myself. ...I got off on it.”
 - ii. The police allowed her to explain this away as “being facetious.”
 - b) Blood of her type
 - i. B-type blood was found on a damp rag in the washing machine next to Nancy Haysom. Elizabeth Haysom has B-type blood, as do 10% of the population. See II.A.2.g.i. and IV.C.
 - ii. At the prosecution’s insistence, forensic serologist Mary Jane Burton reluctantly testified that there was a remote possibility that the blood-typing test could have malfunctioned in this one instance.
 - c) Sockprints resembling hers
 - i. In 1996, impressions experts from the FBI Crime Lab and the New Jersey State Police provided expert affidavits, stating that Jens Soering and Elizabeth Haysom could equally well have left the crime scene sockprint – but that in length it matched only her, not him. See II.B.2.d.
 - ii. As his trial witness, Commonwealth’s Attorney James Updike chose Robert Hallett to present the sockprint evidence, even though he was not qualified as an expert. (One wonders: why?)
 - d) Sneaker print resembling hers
 - i. A 1985 Bedford County Sheriff’s Department report stated that the crime scene sneaker print “would be a woman or a small man or boy...a 6 ½ to 7 ½ shoe.” Soering wore an 8 ½ shoe. See II.C.
 - ii. Both prosecution and defense ignored the sneaker print at Soering’s trial.
 - e) Her fingerprint
 - i. Both victims had very high blood alcohol levels (.22). On the front row of the living room liquor cabinet, near Derek Haysom, police found a vodka bottle with Elizabeth Haysom’s fingerprints on the top and bottom, with the middle wiped clean. See II.A.2.g.v.
 - ii. The prosecution theorized that she could have left her fingerprints when she visited her parents one week prior to the murders. See IV.C.
 - f) Her testimony about a likely triggering event. See IV.B.5.
 - i. At Soering’s trial, she testified that one week prior to the murders, she stole some of her mother’s jewelry; and on the weekend of the murders, she was once again using drugs, including heroin. See IV.C.
 - ii. Neither prosecution nor police pursued Soering’s theory that Elizabeth Haysom’s drug dealer – whose mother was a Lynchburg General District Court

judge – might have been her accomplice in an (unfortunately common) “junkie”-type murder. See IV.C.

- g) Her half-brother’s testimony
 - i. At Elizabeth Haysom’s October 4 and 5, 1987, sentencing hearing, Dr. Howard Haysom testified, “I think that she has lied to me in the past and, frankly, continues to lie. ... I think Elizabeth was in the house at the time of the crime.” See IV.C.
 - ii. Judge Sweeney ruled this to be irrelevant, since Elizabeth Haysom had pled guilty as an accessory who was not present at the crime scene.

- h) Her psychiatric reports
 - i. In 1986, before being extradited to Virginia, Elizabeth was diagnosed as a borderline schizophrenic and pathological liar by Dr. John Hamilton and Dr. Henrietta Bullard, British forensic psychiatrists. (Borderline schizophrenia is now known as borderline personality disorder and strongly associated with sexual abuse.) In 1987, Virginia court-appointed psychiatrist Dr. C. Showalter essentially confirmed this diagnosis. See IV.B.2.c.
 - ii. Judge Sweeney placed his report under seal.

- i) Her five different stories about the alibi movie tickets
 - i. Both Jens Soering and Elizabeth Haysom testified that they stayed in Washington DC and attended movies, while the other drove to Bedford County and committed murder.
 - ii. However, firstly, the movie ticket stubs were found in Soering’s college dorm room, not in Elizabeth Haysom’s possession.
 - iii. And, secondly, Elizabeth Haysom gave at least five different stories about whether she attended any movies at all; which movies; and at what times. None of her stories came close to matching the ticket stubs.
 - iv. See: I.C.3., Bill Sizemore, “No hope for Jens Soering,” February 18, 2007, which contains an excellent sidebar tracking her different stories about the tickets – and also about the murder weapon.
 - v. Nevertheless, Commonwealth’s Attorney chose to believe that his star witness, Elizabeth Haysom, was the one who remained in Washington.

- j) Sources
 - i. For all except (g): Habeas petition and Joint Appendix
 - ii. For (g): Transcript of Elizabeth Haysom’s October 4 and 5, 1987, sentencing hearing. But see IV.B.3.

III. Soering's trial was marred by serious procedural problems which, collectively and retrospectively, call into question whether he received a fair trial.

A. Judicial bias – failure to recuse

1. Judge Sweeney acknowledged at a pre-trial hearing that he had known Risque Benedict, the brother of Nancy Haysom, for over 40 years. The judge referred to him by his first name and pointed him out in the court. Also, he acknowledged attending a party in honor of Derek and Nancy Haysom.
2. Judge Sweeney acknowledged attending the Virginia Military Institute (VMI) with Risque Benedict. However, he failed to acknowledge – and it was discovered only after Soering's trial – that they had also attended E.C. Glass High School in Lynchburg together, participating in the Chemistry Club and the Honor Society among other such organizations.
3. In a letter opinion dated February 13, 1990, Judge Sweeney claimed that he “was careful not to comment on the guilt or innocence of Jens Soering.” However, on June 1, 1990, the first day of Soering's trial, “Albemarle” magazine published an interview with the judge in which he was quoted as saying that Soering “took the dare” and committed the crime.
4. See Habeas petition and Joint Appendix; Jennifer L. Berghom, “Judge rejects Soering appeal,” Lynchburg News & Advance, March 5, 2003, available at www.jenssoering.com.
5. Judge Sweeney also presided over the 1996 habeas corpus evidentiary hearing. See I.B.2.
6. The Canon of Judicial Ethics requires judges to recuse themselves to avoid even the appearance of impropriety.
7. Because Soering's trial attorney failed to “federalize” this issue on direct appeal, his habeas attorney was not able to raise this claim in federal court – except as yet another instance of his ineffective assistance of counsel. See below, III.B.

B. Ineffective assistance of counsel

1. Soering's trial lawyer, Richard A. Neaton, lost his license to practice law in 1995 because he failed to handle Soering's appeals properly, misappropriated several thousand dollars, submitted fictitious notary signatures as proof of his work, and refused to return Soering's file to him.
2. Neaton's defense was that his “ability to practice law [was] materially impaired by an emotional or mental disability” over a three-year period that included Soering's trial and both direct appeals.
3. See: Habeas petition and Joint Appendix; Ian Zack, “Soering's ex-lawyer suspended,” Charlottesville Daily Progress, July 28, 1996, available at www.jenssoering.com.
4. See I.B.: In 1996, expert witness Dennis Dohnal (now a U.S. Magistrate) determined that Soering would not have been convicted but for Neaton's inadequate work. See also: II.B.1.d., II.C.1.c., III.A.8., III.C.6., and IV.B.5.

C. Change of venue

1. Soering's extradition from England to Virginia lasted nearly four years, from 1986 to 1990. Because Elizabeth Haysom returned to Virginia in 1987 and pled guilty as an accessory, media coverage left no doubt who the primary culprit was: Jens Soering.
2. In 1990, Bedford County was one of only two courts in Virginia participating in a "cameras in the courtroom" experiment. Soering's trial was the first televised high-profile trial in the state.
3. Judge Sweeney refused to change venue to a non-televised court. Instead, he imported jurors from Nelson County – which was covered by the same Lynchburg-area media that, according to his own ruling, had tainted the Bedford County jury pool.
4. Fifteen out of the 38-member pool of Nelson jurors – an unusually high number for an out-of-town case – said they believed Soering guilty before the trial began and said the burden was on him to prove his innocence.
5. See: Direct appeal briefs: Zack, "Trial and Error?", see I.C.1.
6. Because Soering's trial attorney failed to "federalize" this issue on direct appeal – as he failed to do with the judicial bias issue, see III.A.8. – Soering's habeas attorney was barred from raising this issue in federal court. See III.B.

IV. There is new as well as previously neglected evidence that strongly suggests Soering was wrongfully convicted in 1990: DNA (2009) and sexual abuse (1987).

A. New evidence: DNA (2009)

1. Background: 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 Department of Forensic Sciences reviewed 534,000 old case files from 1973 to 1988 to locate biological samples filed there by forensic serologist Mary Jane Burton. Roughly 800 files were found that contained samples and that led to a conviction. Of these, there were 68 cases in which the DNA found did not match the person convicted.
2. Soering's case is one of the 68. On September 24, 2009, the Department of Forensic Sciences issued a Certificate of Analysis stating that 42 samples were found and tested, and none matched Soering.
3. This is significant because:
 - a) Other old case files usually contained four or five samples, whereas Soering's contained 42.
 - b) The prosecution and police have claimed for 20 years that 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 could not be eliminated as a possible contributor of the unknown male blood that did not belong to Soering because, supposedly, the Department of Forensic Sciences has no reference sample of his blood for comparison. This claim is not plausible.
4. If this case were presented to a jury today – with all of the discrepancies in Soering's false confession; with the new sockprint analyses by recognized experts; with all of the evidence implicating the prosecution's star witness, Elizabeth Haysom – then the prosecution's 42 failures to find Soering's DNA would raise a reasonable doubt in many jurors' minds. One of those 42 blood samples should have been his!
5. See: Frank Green, "Va. cases shed light on false convictions," Richmond Times-Dispatch, January 12, 2009; Dena Potter, General Assignment Night Reporter at The Associated Press, Richmond, VA, "DNA test indicates wrong man convicted of rape," AP, August 11, 2010, published under Paul Fletcher's by-line.

B. Previously neglected evidence: sexual abuse (1987)

1. Background: At the time of Elizabeth Haysom's and Jens Soering's trials, sexual abuse was still a taboo and little-understood subject. Few people knew (or would have believed) that one-third of all women report a history of sexual victimization. The related phenomenon of sexual abuse victims lashing out at their abusers was even less

- well understood – until the publication and subsequent public discussion of Paul A. Mones’s seminal book When a Child Kills in 1990.
2. At Elizabeth Haysom’s sentencing hearing on October 4 and 5, 1987:
 - a) Annie Massie, Nancy Haysom’s best friend, testified that Nancy had taken nude photographs of Elizabeth and shown them to her friends as “art.”
 - b) The nude photographs were placed into evidence.
 - c) A court-appointed psychiatrist, Dr. C. Showalter, testified to the existence of a sexual relationship between Nancy and Elizabeth Haysom. See II.D.2.h.i.
 - d) His psychiatric report was placed into evidence.
 - e) Elizabeth Haysom testified that she had been sexually abused by her mother, with her father’s knowledge. Under harsh cross-examination by Commonwealth’s Attorney James Updike, she retracted her testimony on the stand – photos and psychiatric report notwithstanding.
 - f) Judge Sweeney placed the nude photographs and the psychiatric report under seal. (For Sweeney, see III.A.)
 3. In 2008 researchers from the cable TV production company M2 Pictures (Hampton, Va.) visited Bedford County Courthouse and asked to see the transcript of Elizabeth Haysom’s sentencing hearing. They were told that it had been thrown away to save space. The transcript consists of two slim volumes. Soering has a certified copy of the transcript – possibly the only one in existence.
 4. At Soering’s trial, his attorney deliberately avoided all mention of the subject of sexual abuse to avoid inflaming the jury. As a result, anyone reviewing “the Soering case” – for instance the Fourth Circuit record – remains completely unaware of this central feature of the case.
 5. Because of his trial attorney’s decision to exclude sexual abuse, Soering’s jury was never given a persuasive reason why Elizabeth Haysom would kill her parents in such an especially brutal fashion. An argument over stolen jewelry (see II.D.2.f.) cannot by itself explain the savagery of the attack. Lacking a key piece of information, the jury reached the wrong verdict. (For lawyer, see III. B.)
 6. If this case were to be presented to a jury today – with the nude photographs, psychiatric report, and Mrs. Massie’s testimony substantiating the sexual abuse; with the far greater public awareness of the destructive impact of sexual abuse – many jurors would reasonably conclude that the carnage at the crime scene can only be explained by a very emotional, highly personal motive, and that Elizabeth Haysom was the only one with such a motive. Soering met the Haysoms just once, for half an hour, two months prior to the murders.
- C. Explanatory Note re: DNA – As noted in II.A.2.g.i., all four blood types were found at the crime scene. As noted in II.D.2.b., B-type blood was found on a damp rag in the washing machine next to Nancy Haysom. Elizabeth Haysom has B-type blood, as do 10% of the population. Subtyping was not possible. The Certificate of Analysis of September 24,

2009, shows that testing was performed on “Item 38K – Rags from washer in kitchen.” The result: “No DNA typing results were obtained.”

A drop of O-type blood was found in the bedroom. Jens Soering has O-type blood, as do 43% of the population. Subtyping was not possible, and the sample was “destroyed in testing.” (See trial transcript; habeas petition and Joint Appendix.) The Certificate of Analysis of September 24, 2009, contains no reference to any sample found in the bedroom. The presence of O-type blood fits the defense’s theory, articulated throughout Soering’s trial, that Elizabeth Haysom committed the murders with an accomplice other than Soering. (For evidence of two perpetrators, see II.A.2.g. For possible accomplice, see II.D.2.f.ii.)

There is other evidence that has not been subjected to modern tests: the hair in the blood-stained bathroom sink (DNA) and the fingerprint on the shot glass near Derek Haysom (AFIS). (See: II.A.2.g.iv. and v.) The Certificate of Analysis of September 24, 2009, makes no reference to the hair.

However, the Certificate does refer to one other possibly significant piece of evidence: “Item 1FE: Cigarette butt,” for which, again, “No DNA typing results were obtained.” The “FE” stands for “front entrance.” Before Soering’s trial, his attorney told him that the cigarette butt was found on the grass just outside the front door; that it belonged to an unusual brand; that this unusual brand happened to be Elizabeth Haysom’s favorite brand; and that this was one of the main reasons why some of her half-siblings – not just her half-brother Howard (see II.D.2.g.) – believed that she was at the crime scene.

It is important to understand that finding Elizabeth Haysom’s DNA at the crime scene would not prove Soering’s innocence. In 1996, his habeas attorney determined that, even if such a piece of evidence were found, the Commonwealth would merely argue that Elizabeth Haysom left it at the crime scene one week earlier, when she stole her mother’s jewelry. (See II.D.2.e.ii. and f.i.) That is how the prosecution explained away her fingerprints on the vodka bottle near her intoxicated father.

Moreover, no judge would order new DNA tests in this case under the Writ of Actual Innocence because the statute’s evidentiary bar is set too high: “no rational trier of fact would convict,” but for the new evidence. When making this determination, the judge would not be permitted to take into account any of the other new evidence presented in this document; in fact, he would be required to assume that Soering properly confessed, the sockprint matched his, and Elizabeth Haysom was a reliable witness. Under this framework, a “rational trier of fact” could still convict Soering, despite hypothetical new DNA results. Therefore, a judge would rightly refuse to order new tests.

There exists no legal vehicle – apart from parole or the governor’s clemency powers – that would permit a holistic, collective, and cumulative evaluation of all of the new evidence and the procedural problems in the Haysom/Soering case.