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Gail A. Ball, Esquire  
*Member, Supreme Court of the United States*

March 7, 2011

Governor Robert F. McDonnell  
Governor's Office

Richmond

Dear Governor McDonnell:

My client, Jens Soering, has asked me to respond to Major Ricky Gardner's letter to you of February 26, 2011, in which he asks you to "deny clemency to Jens Soering." Major Gardner's three-and-a-half page letter contains an astonishing 19 errors of fact or significant omissions, and thus we cannot allow it to remain unchallenged. Unfortunately, because of the sheer number of distortions, our response will necessarily be lengthy.

1. Page 1, heading  
What Gardner said: In the heading, he referred to a "Jens Soering Clemency Petition."  
What he got wrong: As my letters of January 19 and February 18 made clear, my client is deliberately and specifically not asking you for clemency, but for parole and deportation.
2. Page 1, paragraph 1, line 1  
What Gardner said: He called himself "Major/Chief Deputy with the Bedford County Sheriff's Office."  
What he left out: He would not have achieved the rank of Major—or even remained employed with the Bedford County Sheriff's Office, see 3 below—but his "success" in "solving" the Haysom case. Gardner's entire career is based on this one great "achievement." If it were now to be acknowledged that he helped convict an innocent man, the foundation of his life's work would be discredited. Thus Mr. Gardner has a great stake in maintaining Mr. Soering's "guilt." He is far from a neutral party.
3. Page 1, paragraph 1, line 4  
What Gardner said: He claimed he was the "lead investigator" in "April, 1985."  
What he got wrong: Another, more experienced, older investigator had the lead, Mr. Chuck Reid. After my client and his girlfriend fled the U.S., Mr. Reid left the Bedford County Sheriff's Office. He later became the chief jailer in the Roanoke Jail. See 2, above: "Failure" in this case is a career-ender, so Mr. Gardner will never admit his mistake.

4. Page 1, paragraph 3, line 2  
What Gardner said: “Jens Soering confessed on three separate occasions.”  
What he left out:
- a) My client’s “confessions” contained numerous errors that the real killer would not have made. See the case summary “Why the Haysom/Soering Case Warrants Reconsideration,” Which I submitted to you on January 19 (hereafter “Summary”), pages 5 and 6: My client described one victim’s clothing incorrectly, placed another victim in the wrong room, identified the wrong knife, and failed to explain the overwhelming forensic evidence (including the presence of all four blood types) that two perpetrators committed this crime, among other errors.
  - b) Of the over 250 prisoners exonerated by the Innocence Project, 25% had “confessed” to crimes they definitely had not committed—including Earl Washington, Jr. and the “Norfolk 4” here in Virginia.
  - c) The real perpetrator, Elizabeth Haysom, confessed on tape on June 8, 1986, “I did it myself...I got off on it.” See Summary, page 8.
5. Page 1, paragraph 4, lines 4 and 5  
What Gardner said: “At trial, the state’s examiner was not allowed to give his opinion” about the bloody sock prints.  
What he got wrong: The “state’s examiner,” Rick P. Johnson, was not allowed to testify at trial at all, because his findings eliminated Mr. Soering as a suspect. See Summary, pages 6 and 7, and all of the sock print reports and affidavits in the Appendix.
- a) On June 7, 1985, before Mr. Soering became a suspect, the “state’s examiner” filed a Certificate of Analysis stating that the sock print “corresponds to...a size 5 to 6 man’s shoe.”
  - b) After Mr. Soering’s arrest, he was determined to have a size 8 ½ man’s foot, thus eliminating him.
  - c) For this reason, the prosecution never called the “state’s examiner” Rick P. Johnson at trial and instead called Robert Hallett to present so-called “overlays” of sock prints.
  - d) The trial judge did not qualify Mr. Hallett as an expert because of uncertainty over the validity of his methods, and because he was a former tire and belt analyst—not a finger and foot print analyst.
  - e) During habeas corpus proceedings, forensic reports by fully qualified FBI Crime Lab and New Jersey State Police finger and foot print experts were introduced. They determined that Mr. Hallett’s overlays were “misleading” and that the sock print matched only Elizabeth Haysom—not Mr. Soering—in length.
  - f) In a 1997 brief, Assistant Attorney General John McLees admitted that the sock prints “could not be sized with precision.”

6. Page 1, paragraph 4, last line  
Page 2, paragraph 1, first line  
What Gardner said: “Neither of the victims had type O blood. Both of these pieces of evidence found at the crime scene [i.e., drops of O blood] were corroborated in Soering’s confessions. Jens Soering has type O blood.”  
What he left out:
  - a) In fact, all four blood types—the victim’s A and AB, as well as B and O—were found at the crime scene, indicating the presence of two perpetrators. See Summary, page 5.
  - b) Elizabeth has type B blood. Thus, this evidence corroborated her confession, “I did it myself...I got off on it.” See Summary, page 8.
  - c) Neither the O nor the B blood could be subtyped. 43% of the population has O blood, and only 10% of the population has B blood. Thus the blood typing evidence incriminates Elizabeth Haysom more than Jens Soering. However, roughly 800,000 Virginians have B blood, and approximately 3.5 million have O blood, so this evidence is, in fact, inconclusive.
  
7. Page 2, paragraph 1, line 2 et seq.  
What Gardner said: “...the exterior front door light was on. Jens Soering could not locate the light switch to turn off the light.”  
What he left out: The fact that the exterior light was on does not prove which of the potential perpetrators forgot to turn it off. There was no testimony at all that Mr. Soering “could not locate the light switch”—in fact, the exact opposite is true. In a typed summary of Mr. Soering’s “confessions” of June 8, 1986, Mr. Gardner specifically wrote that Mr. Soering told him he had turned off the light. The fact that the light was on is yet another mistake that the real perpetrator would not have made. See 4 above.
  
8. Page 2, paragraph 2, line 6  
What Gardner said: Elizabeth Haysom “was quick to give us her fingerprints, blood samples and foot impressions.”  
What he got wrong: In fact, in April 1985, she did not provide foot impressions. Then, in June 1985, while cleaning the Haysom residence for sale, Nancy Haysom’s best friend, Annie Massie, observed Elizabeth removing her shoe and comparing her foot to the bloody sock print. Mrs. Massie reported this to the police, who then obtained Elizabeth Haysom’s sample foot prints in the fall of 1985. Shortly afterward, she and Mr. Soering fled the country.
  
9. Page 2, paragraph 4, lines 2 and 3  
What Gardner said: During a preliminary interview in October 1985, Jens Soering “was uncooperative and refused to give us his fingerprints, blood sample and foot impressions”  
What he left out: Investigator Reid told Mr. Soering that he was “99% sure” Mr. Soering did not commit the crime, and he confirmed that investigators had no probable cause to seek his samples.

10. Page 2, paragraph 5, lines 4 and 5  
What Gardner said: “If that was true [i.e., if Mr. Soering was innocent], then why did he refuse to give us his physical evidence on October 6, 1985, and leave the country less than a week later?”  
What he left out:
- a) Mr. Soering testified about this at trial, so Mr. Gardner knows the answer! After police obtained Elizabeth Haysom’s foot impressions in the early fall of 1985, see 8 above, she and Mr. Soering decided they had to flee because the police were closing in. They realized they would spend the rest of their lives on the run. Thus Mr. Soering decided not to provide any physical samples that could be used to identify him if he were arrested years later, living under an assumed name.
  - b) At trial, the judge ruled that the jury could draw no conclusions from Mr. Soering’s refusal to provide samples because that was his right under the Fourth Amendment: there was no probable cause.
11. Page 2, last paragraph, line 6  
What Gardner said: The diary found by police “was co-authored by Soering and Haysom.”  
What he left out: Trial testimony established that the first half of the diary—the part with the “incriminating” passages—was written by Elizabeth Haysom only. This becomes important below.
12. Page 3, paragraph 1, lines 2 and 3  
What Gardner said: He quotes a sentence out of the diary, written by Elizabeth Haysom, see 11 above: “Perhaps fingerprints on the coffee mug used by Jens in the Bedford interview gave him away.” (Please note use of third person by Elizabeth Haysom.)  
What he left out:
- a) Mr. Soering’s fingerprints were not found at the crime scene! Only Elizabeth Haysom’s fingerprints were found there, and they were in an incriminating location: on a vodka bottle near Derek Haysom’s body. Both victims had blood alcohol levels of .22. See Summary, page 8.
  - b) In the very same diary passage in which Elizabeth Haysom wrote about Mr. Soering’s fingerprints on a coffee mug, she also wrote about meeting an Irish terrorist named “Rover” who was supposed to provide false passports, and about undergoing experimental laser brain surgery just prior to going on the run.
  - c) Why did Elizabeth Haysom fantasize in the diary? Because she was a “borderline schizophrenic” and a “pathological liar,” according to court-appointed British forensic psychiatrists Dr. John Hamilton and Dr. Henrietta Bullard, who examined her six months later. A few months after this diagnosis, the court-appointed Virginia psychiatrist Dr. C. Showalter confirmed their finding. (Today “borderline schizophrenia” is known as borderline personality disorder.) At Elizabeth Haysom’s 1987 sentencing hearing, her brother, Dr. Howard Haysom, testified that she lied and

fantasized constantly.

13. Page 3, paragraph 2, lines 4, 5, 7 and 8  
What Gardner said: He quotes a letter written by Jens Soering to Elizabeth Haysom in December 1984: “I have the dinner scene planned out.” He then concludes that this “means Jens and Elizabeth were making plans to kill her parents three months prior to the murders.”  
What he got wrong: This letter contains absolutely no mention of murder or violence at all—if anything, the complete opposite. It was a confused, love-struck teenager’s rambling poem to the power of love! “Love [is the] ultimate ‘weapon’” that would solve their problems; note the quotation marks he put around “weapon.” Love would cause Derek and Nancy Haysom “to lose their wits, get heart attacks, or become lovers in an agape kind of way of the rest of the world.” This is what he imagined would happen at the “dinner scene”: His girlfriend’s parents would be overwhelmed by his love for their daughter. – Please note that Mr. Gardner knows very well that this letter by Mr. Soering contains no mention at all of murder or violence. It is, however, written in an intentionally rambling, “stream-of-consciousness” style a la Jack Kerouac, so it sounds strange.
14. Page 3, paragraph 3  
What Gardner said: He recounts Mr. Soering’s statement to him on June 8, 1986.  
What he left out: On June 7, 1986, the day before, Mr. Soering had the following tape recorded (!) exchange with Detective Sergeant Ken Beever, in Mr. Gardner’s presence:  
Beever: Would you consider, taking into account your answer, pleading guilty to something you didn’t do?  
Soering: Would I consider that?  
Beever: Yes.  
Soering: I can’t say for sure right now, but I can see, I can see it happening, yes. I think it’s a possibility. I think it happens in real life.  
Beever: I disagree with you, but don’t let’s get into any legal arguments right now. I’m sorry. I think you answered my question.  
Soering: I mean, you know. I couldn’t answer that question right now. I certainly hope that, I hope very much that it’s not going to come to something like that.  
But the very next day, it did come to something like that: Mr. Soering gave a false confession to Mr. Gardner. Mr. Gardner has known about this for 25 years, since he was present at both statements. This is one of the reasons why he will never admit that he helped convict an innocent man.
15. Page 3, paragraph 4, line 1  
What Gardner said: “Later that Sunday evening [of June 8, 1986], Elizabeth confessed to her part of the murders.”  
What he left out: See 4-c above, she actually confessed, “I did it myself... I got off on it.”

16. Page 3, paragraph 5, lines 3 and 4  
What Gardner said: “At the end of the day, Jens and Elizabeth had confessed and their confessions were identical.”  
What he left out: In fact, their stories did not match. Both confessed to committing the crimes by themselves. But only one of the confessions is corroborated by forensic evidence: Elizabeth Haysom’s. It was her fingerprint that was found at the crime scene, and the sock print matched only her foot in length.

17. Page 3, paragraph 6, lines 3 and 4  
What Gardner said: “At Jens’ trial, a gentleman testified that ‘while attending the Haysom’s memorial service, he noticed that Jens had a bruise under his eye.’”  
What he left out: The “gentleman’s” name is Donald Herrington, and it is no wonder that Mr. Gardner left it out. He is the only person who claims he saw any injuries on Mr. Soering at the memorial service! And all of the victims’ relatives and friends attended that service, and all of them later attended Mr. Soering’s trial. Yet not one of them stepped forward to corroborate Mr. Herrington’s testimony—though they sure had cause to “remember” injuries. Please note that Mr. Herrington only contacted authorities after Mr. Soering’s arrest, approximately 1 ½ years after the memorial service.

However, Mr. Gardner’s recollection of Mr. Herrington’s testimony is also strangely inaccurate. At trial in 1990, Mr. Herrington not only claimed he saw bruises on Mr. Soering, as Mr. Gardner states in his letter, but also bandages on Mr. Soering’s fingers. This alleged observation supposedly confirmed one of Mr. Soering’s false confessions in which he claimed to have cut his fingers while killing Derek and Nancy Haysom.

At trial, and for the next 21 years, Mr. Gardner has always, without exception, emphasized that the alleged cuts on Mr. Soering’s hand, and Mr. Herrington’s claim to have seen bandages on his fingers, were further confirmed by the discovery at the crime scene of O type blood—Mr. Soering’s type. Not once, for over two decades, has Mr. Gardner failed to stress this apparent trifecta of evidence—until now, until after the release of the DNA test.

Now that the DNA at the crime scene has turned out not to be Mr. Soering’s, Mr. Gardner has changed his story and only mentions Mr. Herrington’s claim to have seen bruises, but not his newly-discredited claim to have seen bandages. When a suspect in a crime changes his story this is usually seen as evidence of guilt. It follows that when a witness changes his story, it could be seen as evidence of a complete breakdown of that witness’ credibility.

18. Page 4, paragraph 1, line 3  
What Gardner said: Mr. Soering “was going to kill me if Elizabeth had not stopped him.”

What he left out: Mr. Gardner cannot possibly believe Elizabeth Haysom's ridiculous claim, that she—Ms. Haysom—saved his life from Mr. Soering! This tall tale by Ms. Haysom is yet another pathological lie by a borderline schizophrenic, along the lines of the Irish terrorist “Rover” and experimental laser brain surgery, see 12 above. If Mr. Gardner really believes that Ms. Haysom saved his life, it would follow that he should petition you, Governor McDonnell, for clemency in her case. Anything less would appear to be profoundly ungrateful.

19. Page 4, paragraph 1, lines 3 and 4

What Gardner said: “I think these facts alone should disqualify him [i.e., Mr. Soering] from any special treatment.”

What he go wrong: Once again, Mr. Soering is not asking for clemency or any other “special treatment,” but merely for parole and deportation, for which he has been eligible since 2003.

In conclusion, Governor McDonnell, I must point out a glaring, even shocking omission in Mr. Gardner's letter: Nowhere does he mention the DNA!

For over twenty years, Mr. Gardner has claimed repeatedly and vehemently that Mr. Soering cut his fingers while murdering Derek and Nancy Haysom, and that he left O type blood at the crime scene. This claim actually makes sense: As any experienced investigator will confirm, perpetrators of knife assaults and knife murders almost always injure themselves and leave their own blood at the crime scene. (Please, Governor, ask Mr. Hennig of the clemency office to confirm this!) So one would definitely expect to find Mr. Soering's blood at the Haysom crime scene. Mr. Gardner was not wrong about that for the last twenty years!

Unfortunately, the 42 DNA tests established that it was not Mr. Soering's blood at the crime scene, but someone else's—presumably, Elizabeth Haysom's accomplice. (There were definitely two perpetrators, see Summary, pages 5 and 6. One of them is Ms. Haysom, and the other left his or her DNA—and is not Mr. Soering.) Once again, Governor: We do not claim that the DNA tests conclusively prove Mr. Soering's actual innocence. But the DNA tests certainly establish far more than a reasonable doubt. And nowhere in his letter does Mr. Gardner even allude to the DNA!

If you want to give my client, Jens Soering, what he deserves—grant him a conditional pardon. If you want to give him what he is requesting—grant him parole. In either case, he will be deported and barred from returning to the U.S.

Respectfully yours,

Gail A. Ball, Esquire

Attachment: Major Ricky Gardner's February 26, 2011, letter to Governor McDonnell

cc: Mr. Greg Hennig  
Attorney General Ken Cuccinelli  
U.S. Representative Bob Goodlatte  
Senator Stephen D. Newman  
Delegate Lacey E. Putney