

Emails — Nance-Soering

-----Original Message-----

From: Jens Soering < >
Sent: Thursday, July 7, 2022 8:42 AM
To: Wes Nance < >
Subject:

Dear Mr. Nance,

A recent podcast misrepresented my views on DNA testing, and I am writing you to clarify my position.

I asked for DNA testing in 2017, and I again ask for DNA testing today.

In 2017, Albemarle County Sheriff J. E. “Chip” Harding and Charlottesville P.D. Detective Sergeant (ret.) Richard L. Hudson met with you at my request to ask for DNA testing. They offered to prepare evidence items for shipment to a lab. Also, Liberty University Professor J. Thomas McClintock offered to arrange the most advanced kind of genetic testing available.

At that time, you declined my request for DNA tests.

My position has not changed: I stand by my request of 2017, and I renew that request in this letter.

In the podcast you indicate that you have changed your position. That makes me happy because — again — I am asking for DNA tests.

But if I understood your statements in the podcast correctly, you will not order DNA tests on your own initiative. You will only agree to testing if I file a “petition” first.

I find this confusing. Do you support DNA testing or not?

Your insistence on a “petition” puzzles me. We both know that, legally, you do not need a “petition” from me or anyone else to order DNA testing. As Commonwealth’s Attorney, you are authorized to order any kind of forensic test of evidence under your control, at any time. That’s the law.

Please write me to help me understand why you want a “petition” from me that you do not require legally.

Given my past, you will surely understand that I cannot sign any court papers that I am not legally obligated to sign. If a “petition” were necessary, I would sign. But it is clearly not necessary, and I do not understand your motives in insisting upon one.

You were elected by the citizens of Bedford County to make difficult decisions in life-and-death cases. No one can take the burdens of office from your shoulders. You have to make the decision and carry the consequences.

However, I do want to help, so I have contacted Mr. Harding, Mr. Hudson and Dr. McClintock again after release of the podcast. All three assured me that they are still willing to assist in arranging DNA testing, just as they were in 2017.

Again: I am asking for DNA tests. Harding, Hudson and McClintock will help. Now you have to decide: “yes” or “no.”

Sincerely yours,

Jens Soering

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Am 07/07/2022 um 20:56 schrieb Wes Nance < >:

Mr. Soering,

Thank you for reaching out and clarifying your position. It is greatly

appreciated. I will gladly clarify mine as well.

If we could be guaranteed valid DNA results only from the Spring of 1985, I would be open to sending the evidence for additional testing. From the experts that I have spoken to, however, I don't believe such results can be guaranteed. For years the items in question have been handled by untold numbers of individuals. From the time the items were identified at trial and submitted into evidence, chain of custody has not been maintained. Until very recently, all the evidence in the case had been available for public inspection. That was, and is, very important for transparency with the criminal justice system but the trade off is the evidence is subject to contamination. In fact, with the increased proficiency of DNA testing, we have exponentially increased the chances of getting touch DNA results from any number of individuals who have handled the evidence in the years since trial. Since no property log exists that I am aware of, there is no way to eliminate DNA profiles of the reporters, defense team members, attorneys, and amateur sleuths that have touched and handled this evidence since it was introduced at trial. It would be impossible to differentiate from a contamination profile and a profile that has actual evidentiary value.

I am unaware of a way, at the present time, to eliminate this concern. Thus, I have not pursued the matter. The podcasters tried to line up a visual examination of the evidence to mitigate my concerns about contamination. To my understanding that was the only step that had been agreed to, not a full examination.

Thank you again for reaching out.

Sincerely,

Wes Nance

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From: Jens Soering < >
Sent: Friday, July 8, 2022 3:31 PM

To: Wes Nance < >

Subject:

fDear Mr. Nance,

thank you for your email. In my view, it was reasonable, honest and in good faith. I truly appreciate that.

Let me respond in kind by saying: I understand and respect your view of DNA testing.

However, the podcast presents the situation completely differently. According to the podcast:

- (1) DNA tests can reveal the truth;
- (2) you agreed to DNA tests, but only if I submit a petition; and
- (3) I am holding up testing, because I refuse to sign the podcast producers' petition.

None of that is true. And I believe you and I are of one opinion on this.

Unfortunately, the podcast producers have publicly backed me into a corner. I have now been asked repeatedly why I do not sign the podcast producers' petition if I have nothing to hide.

My answer is:

- (1) I have nothing to hide. I stand by my request of 2017.
- (2) A petition is not legally necessary.
- (3) You, as Commonwealth's Attorney, can order DNA tests on your own initiative, without a petition.

(4) Because of my history, I cannot sign any court papers if I am not required by law to do so.

For these reasons, I asked you in my last email to order DNA tests, if you believe they can be useful. I stand by that.

Your email to me provides a good, understandable response to my last email: You believe DNA testing would **not** be useful in this case because of inadvertent contamination and chain-of-custody issues.

Essentially, you are saying that I cannot meet the legally necessary requirements under A.(ii) and A.(iii) if I were to file a petition under §19.2-327.1.

I agree.

However, because the podcast producers have publicly backed me into a corner, I now have to defend myself publicly.

On the basis of your reasonable, honest and good-faith email, I will not do so without first offering you a cooperative approach.

I propose that you and I draft a joint letter to the podcast producers, their business partners in New York and the Netflix team in Germany and Los Angeles. Below you will find a first draft. I suggest we send this back and forth until we find mutually agreeable wording.

I do not want to harm anyone, and I do not want to present anyone's views incorrectly. I simply want a neutral, factually correct answer to the implicit accusations made against me — an answer like your email to me.

Please understand that I need to make that answer public, since I have been attacked publicly.

But I would rather do so with you.

I believe a neutral, factually correct answer would serve the interests of impartial justice. If we present that answer together,

then that answer cannot be instrumentalized by anyone for their TV project.

Hoping you agree and looking forward to hearing from you, I remain

Sincerely yours,

Jens Soering

DRAFT LETTER

Date: July ?, 2022
From: Wesley W. Nance, Commonwealth's Attorney
for the County of Bedford
Jens Soering

To: Courteney Stuart, Rachel Ryan, Jaclyn
Piermarini (Charlottesville)
Big Fish Entertainment (New York)
Fruitmarket Arts & Media (Cologne)
Netflix (Los Angeles)

Both WN's and JS's views were not presented fully and accurately on the podcast "Small Town Big Crime."

Both WN and JS support DNA testing, if it could be performed reliably and in compliance with § 19.2-327.1 sections A.(ii) and A.(iii).

Both WN and JS have concluded that this is not possible due to inadvertent contamination and chain-of-custody issues.

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Von: Wes Nance < >

Datum: 8. Juli 2022 um 22:45:00 MESZ

An: Jens Soering < >

Betreff: RE:

Thank you Mr. Soering for your kind words of appreciation. It is very reassuring to see that common ground can be found on such a serious issue. I also believe that you have correctly summarized my opinion on the matter.

Furthermore, I think your suggestion to be extremely reasonable under the circumstances. Please let me think it over this weekend as I have had a very long day in the office and courtroom. I will be in another jurisdiction on Monday morning for a special prosecution but will try to respond by Monday afternoon, my time.

I can go ahead and advise you to please feel free to use my last email in any way that you see fit. You now have control over it and its contents. Thus, even if I do not join in a letter to the podcasters, I have no objection in you using it to defend your position on the matter with them or anyone else.

Thank you again,
Wes Nance

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From: Jens Soering < >
Sent: Saturday, July 9, 2022 9:26 AM
To: Wes Nance < >
Subject:

Dear Mr. Nance,

thank you very much for your thoughtful and reasonable response. As in my last email to you, I again would like to respond in kind by expressing my appreciation for your honesty and openness. Finding common ground is very important for me as well.

I want to assure you that I will not do anything until I have heard from you again on Monday.

My only goal is a neutral, fact-based response to the accusations made against me in the podcast.

Thank you for granting me permission to use our emails to defend myself. That is very kind of you indeed. But, again, I will not do anything until I hear from you on Monday.

Please consider my draft letter only as a suggestion. Conceivably, we could **simultaneously** issue **separate** letters with the same three points. But I am open to other ideas and look forward to hearing yours.

In conclusion, let me say once more how much I appreciate your approach in this matter.

Wishing you a pleasant weekend,
Jens Soering

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Am 11/07/2022 um 20:52 schrieb Wes Nance < >:

Mr. Soering,

Thank you for allowing me additional time to consider your offer. I find it to be a very reasonable and practical response to your concerns about the podcast.

Ultimately, I must politely decline but I would like to explain why, and once again provide my position on the reexamination of the evidence. As I consider these emails to be public discourse, you may utilize them as you see fit.

I thoroughly understand the power that a letter coauthored by you and I would have on a recipient such as the podcasters. That is

part of the reason that I must decline. I consider it similar to the position that I take in reference to your prosecution and conviction. You see, when talking to third parties about the investigation, and subsequent prosecutions arising from the deaths of the Haysoms, I do not hold myself out to be an expert on the details. I have a number of very serious, violent crimes that are presently pending in our courts. Those cases, and the other responsibilities I owe to the citizens of Bedford County, do not allow me to thoroughly research what, for all practical criminal justice purposes, is an ended case.

Since that is the case, however, I attempt to allow myself to consider defense requests, and third party questions, in a somewhat neutral way. I owe an ethical duty to those prosecuted in this jurisdiction, but also to the victims of that crime, and those that worked on the investigation and prosecution.

In that same way, I cannot claim to be an expert on, and subsequently criticize, a podcast that I have not listened to and do not intend on listening to. It would be unfair for me to pass judgment on representations of a podcast that I have not personally listened to. In fact, in my time speaking to and meeting with the podcast team I found them to be cordial, transparent, and easy to work with. Once I spoke to them "on the record," much like this email, my statements are theirs to interpret, summarize, or place in *their* context as they see fit. The podcasters may have made the executive decision to simplify for their listeners the re-evaluation process that we considered and worked through together. If they did so, I find no fault in that. I understand, however, how those same characterizations you may take great issue with, and why you may feel it necessary to respond.

As far as my understanding of where things stood with the reevaluation of the physical evidence, that same consideration or process applies that I referenced above. I owe you an ethical obligation as the Commonwealth Attorney of Bedford County. I also have no fear of accurate, relevant results from DNA analysis that give us insight into 1985. We would go where the legitimate answers led us. If I believed there was a way toward the goal of absolute clarity, I would take no issue with a resubmission. In consideration of a resubmission, from both requests of your team

and during the parole investigation, the concern of contamination came quickly to the forefront of my concerns. We know that the evidence in this case has been handled by multiple third parties in the years since it was introduced into evidence. What we don't know is who all of those people are, or their DNA profiles. Thus, if they did contaminate the items, there would be no way to differentiate between a relevant profile from 1985 and a red herring from 1995, 2005, etc.

We considered trying a limited test, to only confirm the ID of the partial profile. There is really not a way to do this, however, without leading back to the exact same dilemmas. Let me explain. In my experience DNA testing has become more and more sensitive since the early nineties. Nearly every result that I get back these days is a mixture of some sort from multiple contributors. An ethical DNA analyst would have to report the finding of a minor contributor, even if they were attempting to just ID the partial profile from the scene. (Pro-conviction members believe this to belong to Mr. Haysom). Even if that was found to be Mr. Haysom, the defense team would not be representing your best interests without pointing out that the minor contributor may, in fact, be the "real killer." Pro-conviction advocates could rightly argue that this was a contamination profile that means nothing to 1985. There would be no way, at the present time, to determine the time that the minor contributor's profile came to be on the evidence. Thus, we would trade one unknown profile for another, with no way to definitively determine its relevancy. Thus, although I have an ethical responsibility to you, I similarly have one to the Haysom family. I cannot proceed with a test that is likely to inject unanswerable questions into the case.

Thus, these concerns were, and are, paramount in my unwillingness to request a retesting. The podcasters thoroughly reviewed items collected in 1985 hoping to identify some items that may provide clarity without creating new questions. Finally, that led them to ask for an expert to visually examine the evidence to see if that expert had ideas to eliminate my concerns. I agreed to allow them to proceed with this visual examination and consultation, not a DNA analysis. This expert, however, acknowledged that he did not know who all had handled the evidence since its introduction, no one does. It was my opinion, without having yet heard this expert,

that he would be unlikely convince me that concerns of contamination could be eliminated. Thus, I was always of the belief that a full DNA analysis would not likely proceed. I am still of that opinion now. Perhaps, someday, scientific progress will eliminate my concerns; but we are not there yet.

I hope I have provided some insight into my reasoning. Thank you for reaching out and for your thoughtful consideration of my responses. It is genuinely appreciated.

Sincerely,
Wes Nance

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Mr. Soering,

For transparency's sake I wanted to provide the answers I provided to a local reporter who reached out to me about our conversations. Her questions are highlighted in black. My answers are everything else. The only change in the form I sent to her are a few lines I have underlined for your consideration. As these issues have been on my mind since you first reached out, I have a doubt about the details of my recollection. I wanted to share it with you so you may consider it as you see fit.

Wes Nance

Good Morning Noreen,

Thank you for the email. The emails appear, at a quick glance, to be complete correspondence between Mr. Soering and myself. I have no reason to doubt otherwise.

I will be glad to answer your questions as I am able, however, please remember this is an attempt to summarize, simplify, and give context to well over a dozen separate conversations between myself, DNA experts, podcasters, representatives of Mr. Soering, attorneys, parole investigators that have occurred over the course of several years.

Just one question right off the bat—I thought that there was already DNA tested on the viable samples still left from the case, and Soering’s (and Haysom’s) DNA was eliminated from the items tested. Are they talking about OTHER items that were not tested in that round? Do you happen to know why EVERYTHING wasn’t tested when the state ordered that old cases get tested when DNA testing was available? If I’m recalling correctly, the state tested every item still left that had viable material to test.

I believe we are referencing two different things: Biological swabs that were in the possession of DFS which never introduced into evidence and the physical evidence from the crime scene that was introduced at trial and in the possession of the Circuit Court Clerk’s Office. It is my understanding that the resubmissions were of the swabs only. We have verified that those samples/swabs were completely used up during that reevaluation and there is nothing left to test. Thus, after that avenue was eliminated as a possibility, attention turned to the physical evidence that was introduced at Soering’s trial.

Also I thoroughly read your argument for why testing would do no good, and I’ve also read the code section. I understand your concern of it pulling up all kinds of people’s DNA, but couldn’t it also still confirm or eliminate someone whose DNA you DO have for comparison? Could it be requested that a purpose of retesting would solely be to confirm or eliminate that Soering’s DNA is there, and to for the testers to disregard in their report other DNA it might pick up? Or is that not allowed by law?

I attempted to address this in my correspondence with Mr. Soering. I think you could ask an expert to “just try to identify the main

contributor.” However, when an analysis is run the results are what they are. An expert would have to note that a mixture was developed. Mr. Soering’s attorneys would be remiss to not argue that the new minor contributor was a relevant DNA profile and was likely the “real killer.” Those who believe in Soering’s guilt would argue that the new profile is nothing but contamination. There would be no way to break that tie as all of the people who have handed the evidence over the years are not known. I have spoken to experts who suspect that the partial profile actually belongs to Mr. Haysom but there is just not enough profile to verify those suspicions. In attempting to answer questions surrounding that profile it’s my concern that we would inevitably inject new completely unanswerable questions into this case. This is something I will not do.

In reference to your question about the legal definition of the chain of custody, ***a chain of custody sufficient to establish that the evidence has not been altered, tampered with, or substituted in any way.*** Let me avoid a lengthy legal analysis and attempt to explain the practical issues surrounding this evidence. With Mr. Soering’s conviction, trials associated with the death of the Haysoms concluded. After that, physical evidence was available for public inspection as a matter of course and for transparency within the criminal justice system. The Clerk’s Office had to allow access to those wanting to review evidence in an ended case. There was little formality in this process and no definitive log was taken as to who handled what items, but we know that has taken place time and time again. In fact, I have been advised that there is video of a member of the defense team holding up a piece of clothing from that night without gloves. Only recently, as DNA and forensic evidence becomes much more commonplace, have statutes been put in place to allow for potential biological evidence to be stored *after trial*. These safeguards now call for the storage of that evidence in a way that valid results can be assured, if they become necessary for some reason years after trial. Just as a footnote, the evidence in Soering’s trial was moved out of the courthouse several years ago (when I was Deputy CA) when there was a statewide movement to secure items from the general public that may contain a biological risk. I don’t recall the exact year that this occurred but I was privy to the conversations when it had to be done.

Also, the podcasters in the short clips he provided to me do state several times that they got you to agree, and have your signature on a petition for DNA testing in his case, that only needs Jens' signature. Just to confirm, are you saying you never signed any such thing? Also Soering is stating in these emails that no one has to file a petition for this, that you, Wes, can just ask for it, and I see the law spells out that the defendant *may* file a petition.

I had multiple conversations over the course of many months with the podcasters. I am confident that they are accurately, or attempting to accurately, summarize my conversations with them. I have no issue with them or their podcast.

What I recall is that we had a Zoom meeting with an expert who was willing to do a visual inspection of the physical evidence to see if they could mitigate my concerns about contamination. I was willing to hear the expert out, but since no one can identify all the individuals that have handled this evidence since Mr. Soering's trial, I had no confidence that he could assure me that there was a way to only obtain valid DNA profiles associated with the crime.

What I don't completely recall is whether the podcaster's proposed petition and order called for this observation step or whether they decided to jump over that step and go directly to asking for a reevaluation. The petition and order would definitively answer this but I do not have them in front of me. My apologies for not recalling that detail. Regardless, when such a petition is filed I can respond three different ways: *Seen and Agree* (basically, Judge please sign off on this), *Seen and Objected to* (Judge please don't do this), or simply *Seen* (I take no formal position and defer to the Court). I signed their proposed order as *Seen*.

The Substitute Judge (because of Judge Updike's conflict) found that that the podcasters did not have standing to ask for the resubmission. It would need to come from a defendant or the Commonwealth. That leads to me to your final question...

And really finally, couldn't the DNA testing just put all these decades of speculating to rest, instead of making it seem (as Soering has always said, not me) that the county doesn't want the public to know? I mean his DNA could be there right?

I'm afraid the answer to that question is no. If I were assured that the only DNA profiles that we get were from that terrible night in 1985, I would not hesitate to send the evidence off. I would greatly appreciate further clarity for those who doubt Mr. Soering's conviction. In this case, however, we know evidence has been handled without gloves (not criticizing those individuals as hindsight is twenty/twenty) and thus contaminated. Thus, we cannot assure the only profiles obtained are relevant profiles. If profiles were obtained individuals who handled the evidence from any other point after the commission of the crime and the trial, it would only add confusion and uncertainty to the case. Those individuals who handled this evidence cannot be identified, much less DNA samples obtained from them. Instead of lending clarity to this case, it would inject chaos.

Thank you for providing me the opportunity to give my position on these matters. I would be glad to discuss them further when it is convenient for us both.

Sincerely,
Wes Nance