

October 23, 2017

The Hon. Terry McAuliffe
c/o Noah Sullivan, Legal Counsel
Office of the Governor
Patrick Henry Building
1111 East Broad Street
Richmond, VA 23219

Dear Gov. McAuliffe:

In 1993 when I was Deputy Attorney General and head of the Criminal Division of the Virginia Attorney General's Office, it was my duty to review the entire file of an inmate, Earl Washington, whose appeals were over and whose execution date was about to be set. I diligently combed the entire file as I had not been involved in his case before and I came to the strong conviction that he was not guilty. Working with the then Attorney General, Steve Rosenthal, we found that the original vaginal swab from the rape-murder victim still existed. Next we secured Mr. Washington's permission to take his DNA sample (mandatory DNA sampling was not in place at the time of his arrest nor was DNA testing available at the time of his trial). The rest of the story is well known (*see An Expendable Man: The Near Execution of Earl Washington, Jr.* by Margaret Edds, 2003). The forensic tests confirmed Mr. Washington was not the perpetrator and further tests resulted in a cold hit on the actual murderer. Mr. Washington was subsequently given an absolute pardon by Governor Gilmore who stated that a jury hearing current evidence would not convict him.

There has been only one other time in my forty- nine- plus years of practicing law that I have reached the conclusion to a moral certainty that someone convicted of a crime was in fact innocent. Jens Soering was the second such instance.

In 1994, after leaving the Attorney General's office and returning to private practice, I was asked to undertake post-appeal, habeas briefing for Mr. Soering. After an exhaustive review of the lengthy trial record and evidence, I identified multiple Constitutional errors in the trial, many resulting from ineffectiveness of counsel and I argued that without these errors the jury would have reached a very different verdict. Although DNA analysis was not available at the time, the physical evidence the prosecutor repeatedly touted to the jury was spurious. The so-called "sockprint evidence" is now universally considered "junk science," although Mr. Soering's attorney never offered any rebuttal. Similarly, the presence of O type blood was referred to again and again before the jury as proof that Mr. Soering was the murderer as he has O type blood, despite the fact that forty five per cent of the population also has that type.

Now, with actual DNA analysis we know that the O type blood was NOT Mr. Soering's and that it belongs to some other, so- far unidentified male and that Mr. Soering was eliminated from all the samples tested. The prosecutor's consistent theory – that Mr. Soering committed these horrible crimes and that he did so alone- is now completely blown apart. Every new bit of evidence that has come up confirms my strong conviction of years ago that Mr. Soering was wrongly convicted.

In summary, it is beyond dispute that if the trial were held today no conviction would be obtained. To this I would add that Mr. Soering has already served over thirty years behind bars, a length of time that is about the mean for current, Virginia sentences for murder. These facts fully justify action by the Commonwealth to release Mr. Soering, a totally compliant and nondangerous individual, to return to his home country.

It is my prayer that you will see your way to this just result.

Sincerely,

Gail Starling Marshall
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