

## *Another helping of forensic politics - Texas style*

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The conviction and execution of Cameron Todd Willingham continue to grab headlines.

Willingham was executed by Texas authorities in 2004, thirteen years after being convicted of committing a fatal arson that activists now claim was not arson at all.

Willingham was innocent, according to his outspoken supporters.

*Crime Lab Report* devoted its last editorial to this case and for the first time in our short history, we will issue back-to-back commentaries on this fascinating and uniquely instructive case.

Since our last report, Texas Governor Rick Perry enraged innocence activists by removing four members from the state's nine-member Forensic Science Commission. The shakeup, which has been characterized as the "Saturday Night Massacre" (an apparent reference to President Richard Nixon's dismissal of key figures in the Justice Department during the Watergate scandal), came just days before the Commission was scheduled to begin hearings on the Willingham case.

But a closer look at the Commission and the political maneuvering that was apparently clouding its proceedings suggests that Governor Perry may have done the people of Texas a huge favor.

Governor Perry is authorized to appoint four members to the Commission pursuant to House Bill (HB) 1068, which was passed by the state legislature in 2005. Two appointees must have expertise in forensic science. One must be a prosecuting attorney chosen from a list of ten names submitted for consideration by the Texas District and County Attorneys Association. Another must be a defense attorney that the governor selects from a similar list of names submitted by the Texas Criminal Defense Lawyers Association.

The other five members are appointed by the Lieutenant Governor and the Attorney General; but again, there are specific guidelines concerning eligibility. Moreover, the governor appoints the presiding officer of the commission.

Each member of the Commission serves a two-year term. Those appointed by the Governor and Lt. Governor have terms that expire on September 1st of odd years. So *Crime Lab Report* is perplexed as to why there has been such an outcry when Governor Perry simply exercised his right to make new appointments pursuant to Texas law.

Perhaps the Willingham case represents much more to innocence activists than they would have the people of Texas believe.

*Crime Lab Report* has studied the history, tactics, and rhetoric of the innocence network going back as far as 1932 when Yale law professor Edwin Borchard wrote his groundbreaking book

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titled *Convicting the Innocence*. Over time, what was once a field of study invigorated by an objective and scholarly examination of criminal cases has been overtaken by self-proclaimed activists who advocate for a sweeping battery of justice reforms. And at the heart of this agenda is the termination of capital punishment in America.

*Crime Lab Report* celebrates the right of these activists to pursue their agenda and all of its elements. We also understand that reasonable people can make a persuasive and intelligent argument against the death penalty. But we are troubled by what we perceive to be an astounding lack of professional integrity in the way that the Willingham case, and other cases around the country, are being exploited.

Finding cases where innocent people were tragically executed seems to be a reasonable approach to fulfilling the objectives of the innocence campaign. And what better place to mount an offensive than Texas, where more persons have been executed than any other state.

But when the agenda becomes more important than the facts, and when overwhelming evidence of guilt is dismissed in favor of politically convenient theories, the citizens of Texas, and their governor, have a reason to be outraged.

It just may be that the tactics of many post-conviction litigators are now creating a demand for new professional oversight, continuing education, and codes of conduct for attorneys who present forensic evidence in post-conviction proceedings. The situation has gotten so out-of-hand, and there are now so many instances where forensic evidence appears to have been misinterpreted during the post-conviction process, that leaders in the legal and judicial communities should step forward immediately.

In Texas, the Forensic Science Commission has no choice but to subject the Willingham case to intense scrutiny. The local media, however, do have a choice. They must stop their unfair and biased coverage. It is obvious to us that many reporters have not taken the time to read the twenty-one page letter to the Commission from Chief Donald McMullan of the Corsicana Fire Department, not to mention the 64 page report from fire-expert Craig Beyler, only a portion of which is devoted exclusively to the Willingham case and is highly critical of the original investigation.

In Beyler's report, he concludes that the investigation of the Willingham fire "did not comport with either the modern standard of care" expressed by the National Fire Protection Association's *Guide for Fire and Explosion Investigations* (NFPA 921)."

According to Beyler, "the investigators had poor understandings of fire science and failed to acknowledge or apply the contemporaneous understanding of the limitations of fire indicators. Their methodologies did not comport with the scientific method or the process of elimination. A finding of arson could not be sustained based upon the standard of care expressed by NFPA 921, or the standard of care expressed by fire investigation texts and papers in the period 1980–1992."

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As Chief McMullan explained in his letter, Beyler's emphasis on NFPA 921 as the modern *standard of care* fails when you consider the fact that it was not published until 1992, which is after the fire occurred. McMullan, who admits that he was not involved with the original investigation, points out numerous discrepancies and mischaracterizations in Beyler's report.

Furthermore, Beyler does not offer a single opinion as to what actually caused the fatal fire that claimed the lives of Willingham's three children that fateful December morning. In fact, his opinion that a "finding of arson could not be sustained" seemed to conflict with his own statement that "there is no available evidence that an outside individual was considered as the fire setter."

According to an article that appeared in the October 15<sup>th</sup> edition of the *Dallas Morning News*, Beyler went so far as to call for the new Commission appointees to step down and seek the reinstatement of the people who were replaced.

A spokesman for Governor Perry remarked that Beyler's statement "demonstrates that he was never an objective scientist looking only at forensic facts. He clearly had another agenda."

We are confident that the Commission can now be more objective. But the Willingham case illustrates how easily forensic science commissions can become plagued by political wrangling and special interests.

We can only assume that Governor Perry recognized that the Commission was losing its objectivity when he exercised his right to make changes. We respect his actions at a time when too much of the media have lost their own objectivity and become vitriolic advocates for Willingham's post-mortem exoneration.

With Perry facing opposition in next year's gubernatorial race, both inside and outside of his party, it could wind up being a campaign issue.

No doubt, there is much more at stake in the Willingham case than meets the eye. The forensic science community should pay close attention to how this all shakes out. \*\*\*\*\*

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demonstrated to be erroneous. We welcome opposing viewpoints and will publish responses from our readers, which may be edited for economy and clarity.