

## *Post-conviction activists ‘contaminate’ evidence in Texas*

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When you hear the phrase *evidence contamination*, you probably imagine a police officer who forgot to wear gloves while handling a suspect firearm, or perhaps you think of a degraded DNA sample that was collected thirty years ago before crime scene personnel routinely searched for biological evidence.

Contamination is generally thought of as being physical in nature, requiring appropriate quality control measures to minimize its likelihood of occurrence.

*Crime Lab Report*, however, is alarmed by a newer kind of contamination that is being introduced by post-conviction litigators and innocence activists. It is called contextual contamination, and it can be as dangerous and risky as the physical contamination we are usually most concerned with.

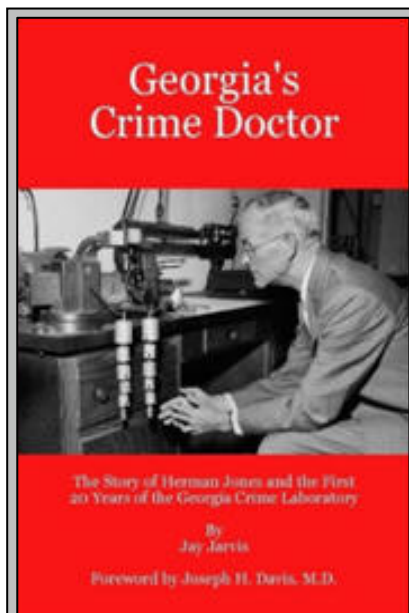
Managing editors John Collins and Jay Jarvis documented their concerns in an article that is pending publication in a major law review this fall. As they pointed out, contextual contamination means that “certain circumstances and conditions can cause scientific findings to be misconstrued as confirming guilt or innocence when, in fact, they do not. It also means that forensic evidence and testimony presented at trial can be unfairly characterized as faulty when, in fact, it was not.”

Collins and Jarvis highlighted several high profile cases where the risk of contextual contamination was especially high. But another controversy brewing in Texas provides an up-close look at how this problem manifests itself when biases are allowed to distort the meaning of investigative and scientific facts.

The story begins two days before Christmas in 1991 when a fire broke out just after 10:30 am in a small, one-story wooden frame house in the small town of Corsicana, Texas, about fifty-five miles south of Dallas. At home at the time of the fire was Todd Willingham, along with his three daughters, 2 year old Amber and one year old twins Karmon and Kameron. The girls’ mother, Stacy, had left earlier to go pick up Christmas gifts.

Two doors down, a young girl playing in the yard smelled smoke. She alerted her mother, who ran to the home to investigate. She saw Todd Willingham standing on the front porch, wearing only a pair of blue jeans, screaming for help. The neighbor ran to call the fire department, which by all accounts, responded quickly but too late to save the three children.

An investigation was conducted by a team that included a thirty-one-year veteran of the Corsicana Fire Department, a deputy state fire marshal that had investigated over 1,200 fires, and a local police sergeant assigned to his first fire investigation. Because Todd Willingham was the only survivor of the fire, investigators naturally



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wanted to question him.

Willingham initially told investigators that Amber came into the master bedroom and awoke him, at which point he saw heavy smoke and fire. Willingham claimed that he made several attempts to rescue the children but was driven back by the intense heat.

But later, Willingham apparently offered conflicting explanations on possible causes, including that a stranger had entered the home, that his 2-year-old daughter had accidentally started it, that squirrels in the attic had caused an electrical short, and that a gas space heater in the children's bedroom started the fire. As investigators, one by one, discredited the explanations offered by Willingham, they were also puzzled about a few other things. Why did he not grab Amber and carry her out of the house after she awoke him? Why was Willingham more concerned about moving his car away from the house than he was about saving his children? At the emergency room, why did Willingham complain incessantly about his own relatively minor burns while doctors worked frantically trying to save his daughter?

Criminal investigations do not always center on science. Often times, motive, opportunity, and behavior speak louder than physical evidence.

In the Willingham case, all indications suggest that investigators looked at the totality of the evidence and concluded that Todd Willingham had intentionally set the fire that claimed the life of his children. They arrested him just sixteen days after the fire and charged him with murder.

In Texas, due to the multiple murders, the prosecution was legally permitted to seek the death penalty. But instead, Willingham was offered a deal to plead guilty and receive a life sentence. His attorneys advised him to take it but he refused.

Willingham's trial in August 1992 lasted only two days. The jury needed only one hour to find him guilty.

Todd Willingham was subsequently sent to death row, which is where the controversy begins.

A formidable legal team comprised of death penalty opponents and representatives of the Innocence Project filed petitions before and after the execution challenging nearly all of the findings pertaining to the fire investigation. The team criticized the interpretation of physical evidence arguing that investigators judged the fire to be intentional based on observations that could not scientifically rule out an accident.

Barry Scheck was quoted as saying "as long as our system of justice makes mistakes-including the ultimate mistake – we cannot continue executing people."

Advances in fire science have undoubtedly called into question some traditional techniques that have been around for decades. Well-controlled experiments conducted at fire-science laboratories using modern building materials and furnishings, and monitored with sophisticated devices, have given investigators new insights into how fires behave.

It is a mistake, however, to prematurely assume that the investigators' conclusions were based entirely on physical evidence. It is also a mistake to assume that questions surrounding the crime scene interpretations equate to factual innocence.

This is contextual contamination at its core, and must be corrected.

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Janet Jacobs, writing for the *Corsicana Daily Sun*, has been one of the few reporters willing to present some of the lesser-known facts about this tragic case.

According to investigators, Todd Willingham had his blood tested at a local hospital after the fire. It was determined that his carbon monoxide levels were no higher than if he had just smoked a cigarette.

Alan Bristol, a prosecutor assigned to the Willingham case, was quoted as saying “none of the stories he told us panned out. I think he would have been convicted whether we had arson evidence or not.”

Willingham’s ex-wife Stacy (they divorced after his conviction), according to Jacobs, came to believe that Todd Willingham had in fact murdered her children.

The most damning statement, however, probably came from Willingham’s own attorney, David Martin, who was also convinced his client was guilty. “He had no conscience,” Martin said of Willingham.

Martin was also critical of the reports from the defense experts, calling it “propaganda from anti-death penalty supporters. The Innocence Project is an absolute farce... a bunch of hype, in my opinion.”

What *Crime Lab Report* finds so interesting about the Willingham case is that many experts have come forward to present compelling evidence that some of the physical evidence interpretations *may* have been faulty. But by the same token, they have not presented viable, alternative theories as to how the fire actually started.

If Todd Willingham did intend to murder his three children, as the prosecution has asserted, he could very well have started the fire in a manner that would mimic an accidental fire.

Another unfortunate aspect to this case is the typical assertion by the Innocence Project that forensic science failed. *Crime Lab Report* is not distracted by this rhetoric and understands that crime scene processing is separate and distinct from forensic laboratory testing. We are confident that the Innocence Project’s tendency to characterize every conceivable problem or complication with physical evidence as being a failure of forensic science is rooted in political strategy and surprising to nearly no one.

*Crime Lab Report* has no opinion about Willingham’s guilt or innocence in this case. We do, however, have a strong opinion about the willingness of post-conviction activists to mischaracterize forensic evidence for the purpose of achieving desired political and judicial outcomes.

Only Todd Willingham knows whether he intentionally started the fire on that tragic December morning in 1991. But there is no doubt that his strange behavior after the fire and during the investigation is relevant.

As the Texas Forensic Science Commission reviews this matter, it must ensure that the crime scene evidence is not contextually contaminated by activists who may be committed to demonstrating Willingham’s innocence or guilt by any means necessary. \*\*\*\*\*

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