

DOJ: TEXAS EXECUTED AN INNOCENT MAN

Before a national audience, experts confirm what was long suspected



By *Julius (Jay) Wachtel*. “It was a crock.” That’s how renowned fire expert [John Lentini](#) characterized the official investigation of a [1991 Corsicana house fire](#) that killed three girls and led to their father’s execution thirteen years later.

In “Rising from the Ashes – What We Have Learned from the Cameron Todd Willingham Case,” the opening plenary panel of the [2010 conference](#) of the National Institute of Justice, the author of *Scientific Protocols for Fire Investigation* ripped claims by Texas authorities that the fire had been deliberately set. According to Lentini burn patterns on the floor and crazed windows weren’t the products of a super-hot fire fed by accelerants, as a fire marshal testified, but occurred naturally, the first when the premises became fully engulfed in a natural phenomenon known as “flashover,” and the latter as firefighters sprayed water on hot glass.

Lentini wasn’t the only expert to suggest the fire was accidental. Well before Willingham’s execution, [Dr. Gerald Hurst](#), a Cambridge-trained chemist known for debunking arson myths, said so in a report that Texas Governor Rick Perry regrettably chose to ignore. Several months after Willingham was put to death the *Chicago Tribune* asked Hurst, Lentini and other experts to review Dr. Hurst’s findings. They did, and concurred. And that wasn’t the end of it. Two years later [a comprehensive report](#) by a distinguished panel of experts (including Lentini) confirmed it all over again. It wasn’t arson. Just like Cameron Willingham had insisted, he was an innocent man.

Willingham isn't the only victim of Texas forensic "science." Eight months after the lethal cocktail coursed through his veins another death-row inmate, [Ernest Ray Willis](#) was exonerated when a prosecutor concluded that experts who testified that he deliberately set the fire that killed two women relied on faulty science – the same faulty science that was responsible for Willingham's execution.

Fears that Texas forensic "experts" were out of control led legislators to pass a [bill](#) in May 2005. Signed by Governor Rick Perry, it created a new entity, the [Texas Forensic Science Commission](#), and charged it with regulating the practice of forensic science in the Lone Star state. In 2008, after three years of organizing, [the commission announced](#) it would conduct public hearings into the Willis and Willingham cases. But in fall 2009, just as the inquiry was getting under way, Governor Perry abruptly [removed three commissioners](#), stalling the inquiry for the foreseeable future. Some accused Perry of trying to avoid embarrassment. But his decision nonetheless stands.

Arson prosecutions require physical evidence that fires are of incendiary (i.e., purposeful) origin. There must also be proof that someone set the blaze. In Willingham the "who" came from a seedy jailhouse informer who testified that Willingham admitted his guilt. David Grann, whose September 2009 piece in *The New Yorker*, "[Trial by Fire](#)," exhaustively debunked the charges against Willingham, spoke at the conference. Among other things Grann said that when he interviewed the stoolie the man asked whether he could still be prosecuted for perjury.

Other speakers in "Rising From the Ashes" included Itiel Dror, a cognitive neuroscientist who criticized the failure to keep detectives, witnesses and experts from influencing each other, and Dallas County assistant D.A. Mike Ware, who accused Governor Perry of "[jerking] the rug out from under the forensic science commission." (Dallas County, which formed a [Conviction Integrity Unit](#) to rectify and prevent miscarriages of justice, was never involved in the Willingham case.) But it was the moderator's comments that proved the most telling. Introducing the panel, Deputy Assistant Attorney General Mary Lou Leary described its purpose as an attempt "to help us learn from our mistakes."

Mistake? Willingham's conviction was an abomination. Think that's too harsh? Consider what one of the fire marshals who worked on the case [said years later](#):

"At the time of the Corsicana fire, we were still testifying to things that aren't accurate today. They were true then, but they aren't now...Hurst [Dr. Gerald Hurst] was

pretty

much right on...We know now not to make those same assumptions.” (p. 42)

Of course, given the circumstances it's impossible to be as confident in Willingham's innocence as in a DNA exoneration, where the genetic profile of the real perpetrator is there for everyone to see. Yet if absolute certainty isn't required to convict (it's not) it's hardly fair to demand irrefutable proof of innocence. If Texas prosecutors knew then what they know now Willingham would never have been charged, let alone taken to trial. A posthumous pardon, such as Governor Perry granted to [Timothy Cole](#), a wrongfully convicted man who died in prison, seems well in order.

During the next weeks we'll post more reactions to the 2010 NIJ conference. Meanwhile let's make a couple of observations. [Once again](#) the pressing issue of officer misconduct was virtually ignored. About as close as we got were remarks by University of Maryland professor Charles Wellford, co-chair of IACP's Research Advisory Committee, who bemoaned that police leadership and management issues draw little research attention. As to that we can only add, Amen!

Police body armor also continues to get short shrift. We came away with the impression that [protecting patrol officers from rifle rounds](#) isn't a priority; indeed, our suggestion for a "Marshall Plan" to develop wearable vests that resist high-velocity projectiles drew puzzled looks. If there's a light at the end of this tunnel, we can't see it. (Check below for related postings).

More on these and other issues after we recover from jet lag. See you next week!