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HOUSE OF CARDS

Evidence isn't better just because there's lots of it: it must also be true



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“I am an innocent man, convicted of a crime I did not commit. I have been persecuted for 12 years for something I did not do.”

By *Julius (Jay) Wachtel*. That's what [Cameron Todd Willingham](#) reportedly said as the poison dripped into his veins. On February 17, 2004 he was executed by lethal injection for deliberately setting fire to his Corsicana (Tex.) home, resulting in the deaths of his three infant girls, Karmon, Kameron and Amber. As it turns out, though, the fire was of accidental origin.

Yes, that's right. Texas executed an innocent man.

Willingham refused to plead guilty in exchange for a life term. At his trial Corsicana's fire chief and a deputy State fire marshal testified that an accelerant caused a “superhot” fire that quickly consumed the home and crazed its windows. But several months before the execution a renowned fire expert retained by the [Chicago Tribune](#) called the officials' testimony bunk and said that the blaze was accidental.

Two years later the [Innocence Project](#) announced that a distinguished scientific panel concluded that the Willingham fire was indeed accidental. A common phenomenon known as “flashover” was blamed for setting the floor on fire, thus lending the appearance that accelerants were used, while the crazing was caused by firefighters pouring cold water on hot glass. After reviewing the report a Texas state fire marshal who helped on the Willingham case admitted that he and his colleagues got their science wrong:

“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 [the *Tribune's* expert] was pretty much right on...We know now not to make those same assumptions.”

Too late! The consequences of their error couldn't be taken back. Still, the forensic testimony had only “proved” that a crime had been committed, not by whom. For that the authorities turned to [jailhouse stoolie](#) Johnnie Webb. A drug user with a serious criminal history, he testified that Willingham told him he set the fire to cover up injuries that one of the girls sustained in a beating by her mother. Webb later tried to recant his words, but to no avail.

To convince jurors that Willingham was capable of killing his own children prosecutors got a psychologist and a psychiatrist to testify that he was a sociopath. Known in local circles as “Doctor Death” for his ability to secure convictions, the psychiatrist was later expelled from the American Psychiatric Association for ethical misdeeds. By then, of course, the trial was ancient history.

In 1993 three Arkansas teens -- the [West Memphis Three](#) -- were convicted of the brutal murder of three boys in what police and the media quickly termed a “Satanic ritual.” The victims had been stabbed to death and dumped in a wooded area. Their bodies were covered with wounds and one of the boys' genitals was removed.

There were no obvious suspects. However, the cult-like appearance of the crime drew suspicion on a local teen, Damien Echols, 18, and his two disciples, Jason Baldwin, 16, and Jessie Misskelley, a mentally retarded 17-year old. Echols dressed in black, listened to heavy metal music and affected a Goth-like demeanor. He also bragged about practicing the Wiccan religion.

Witchcraft!

Police zeroed in on the weakest link, Misskelley. After hours of isolation Misskelley broke, giving a fantastic, rambling confession in which he admitted helping Echols and Baldwin kidnap, sexually abuse and stab the boys. He also accused Baldwin of cutting off a victim's penis with a knife (the transcript of the confession, which was the only part of the interview that police recorded, is [here](#) and [here](#)). Misskelley's account was replete with inaccuracies, forcing officers to repeatedly step in and offer suggestions (at one point he said that the killings happened at noon, while the victims were in school.) Misskelley later recanted but it was too late. Tried and convicted, he got life plus forty years.

Echols and Baldwin were tried next. Misskelley refused to testify, so there was little hard evidence against the pair (their legal briefs, which include detailed accounts of the trial, are [here](#).) A medical examiner testified that some of the wounds were caused by a serrated blade; a knife with a serrated blade was pulled from a lake behind Baldwin's home. Echols was also said to have such a knife, which is hardly a unique item. Much was also made of his manner of dress and preoccupation with the occult. Dale Griffis, supposedly an expert in such matters (his degrees are by mail order) testified that the prosecution's evidence was consistent with the profile of a ritual killing. And so on.

Given the weakness of the case against Echols and Baldwin witnesses were badly needed to directly connect them to the crime. Prosecutors found three. Two girls, one twelve, the other fifteen said that they heard Echols brag about the killings at a baseball game. A jailhouse informer, Michael Carson, testified that Baldwin admitted he cut off a victim's penis and sucked on its contents.

Jurors convicted both. Baldwin got life without parole; Echols, death.

At this writing the West Memphis Three have been imprisoned fifteen years. Their current lawyers have sought hearings and retrials based on inadequate representation, admission of improper evidence, and misconduct by prosecutors and jurors (the foreperson at the Echols/Baldwin trial supposedly brought up Misskelley's confession during deliberation.) Their [briefs](#) contain highly detailed point-by-point rebuttals of the prosecution's evidence. For example, what the girls heard Echols say wasn't intended to be taken literally but was directed at youths who were taunting him as being the killer. Well-known forensic experts have debunked the ritual-killer theory, offering convincing proof that the wounds and castration were caused by animals. And the jailhouse informer that fingered Baldwin was denounced as a liar by his counselor and members of the jail's custody staff.

After fifteen years on death row, Echols will soon learn whether he'll get a new trial. Meanwhile Baldwin and Misskelley are waiting for a court to decide about habeas hearings. Considering how slowly the wheels of justice are turning, by the time the three get to the Federal courts they'll be old men.

That unholy alliance of junk science, character assassination and jailhouse informers that figured prominently in the Willingham and West Memphis Three was also responsible for the conviction of [Bruce Lisker](#) (see "[Never Say Die](#)," below). Lisker was recently ordered freed by a Federal judge after serving twenty-six years for a crime that by all appearances he didn't commit.

These cases share another characteristic. From the bloody footprint in Lisker, to the “arson” testimony in Willingham, to the ritual castration in the West Memphis Three, virtually every piece of prosecution evidence that was used in court has been proven false or highly misleading. There was a bloody footprint, but it wasn’t Lisker’s. There was no arson (hence no crime) in Willingham. The child victim allegedly castrated by Baldwin wasn’t, thus refuting both Misskelley’s confession and the testimony of the jailhouse snitch.

How could things go so wrong? Pressures to solve serious crimes can cause the theory of a crime to form prematurely, leading authorities to uncritically gather evidence that is consistent with that notion regardless of its merit or plausibility. As statements, objects and observations accumulate they reinforce and lend weight to each other, deluding cops and prosecutors -- and ultimately, jurors -- into believing that they accurately depict what they purport to depict. By trial’s end, the cumulative weight of all that evidence makes other explanations seem highly unlikely.

In fact, all that’s been built is a [house of cards](#). Put another way, it’s like trying to come up with the number one by adding up a string of zeroes. In the highly consequential world of criminal justice, that can easily lead to tragedy.