

The Controversial Willingham Case: What Rick Perry Knew and When
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By Mark Benjamin

On the day in 2004 that her first cousin Cameron Todd Willingham was scheduled to be executed in Texas, Patricia Cox had good reason to believe he was innocent.

Willingham was convicted of murder for killing his three daughters in a late-1991 house fire following a prosecution that was based almost entirely on a forensic fire analysis performed by an assistant fire chief and a state deputy fire marshal in the days after the blaze. Two weeks before Willingham's execution date, though, Cox managed to get famed arson analyst Gerald Hurst to take a fresh look at the case.

Working pro bono, Hurst reviewed the evidence and drafted a study that devastated the original findings. While Hurst's conclusions relied on his own skills, arson forensics had become far more advanced and standardized in the previous 13 years. "A contemporary fire origin and cause analyst might well wonder how anyone could make so many critical errors in interpreting the evidence," Hurst's report began.

Hurst found that there was, in fact, no arson at all. Hurst and Willingham's attorney rushed the report to the office of Governor Rick Perry on Feb. 13, just four days before the scheduled execution, Cox says.

(PHOTOS: [Rick Perry's Life and Career in Politics](#))

Little is known about why the Hurst report did not compel Perry to use his authority to delay Willingham's execution for further review. The governor's office has resisted legal efforts to pry loose Perry's most sensitive deliberative documents on the Willingham execution. "The governor's office has been a giant black hole of information," says Walter Reaves, Willingham's post-conviction attorney.

Cox's frantic correspondence with the governor's staff in the days and hours before Willingham's death, as described by Cox and detailed by Perry's office to TIME, provide a new window on those events.

In 1991 Willingham, then 24, was a poor white unemployed auto mechanic who sometimes drank too much. His young wife Stacy had been out at the Salvation Army picking up Christmas gifts for the kids on the morning of the fire. His trial lasted just two days, focusing almost exclusively on the forensics, and Willingham remained in prison until his 2004 execution. Willingham, his family and some close friends were among his only allies until the Chicago *Tribune* reviewed the case in the months after his death, which drew in death-penalty opponents and even more press.

Then David Grann explored the Hurst report in an extraordinary September 2009 article in the *New Yorker*. According to the report, what the initial investigation said were "pour patterns" of gasoline or another accelerant in the house were instead simply the scars typically left behind by a conventional, hot, racing, "post flashover" fire. Hurst also found no evidence that the fire started in multiple locations, a telltale sign of arson.

Hurst disagreed with the original investigators' determination that charred wood under an aluminum door threshold suggested that an accelerant had burned there. "Liquid accelerants can no more burn under an aluminum threshold than can grease burn in a skillet even with a loose-fitting lid," Hurst wrote. He also flatly dismissed the first

investigators' finding that strange patterns in the glass of Willingham's windows, called "crazed glass," proved the use of an accelerant.

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Instead, Hurst noted that crazed glass forms when firefighters spray cold water on hot windows when extinguishing a fire. Finally, Hurst said, the early investigators misunderstood the significance of "V pattern" heat scars on walls. "Most of the conclusions reached by the fire marshal would be considered invalid in light of current knowledge," Hurst wrote.

Since the execution, scientific opinions have accumulated in the conclusion that there was no arson at the Willingham home in 1991. After Willingham's death, the New York-based Innocence Project commissioned a panel of five arson experts to take another look at the case. The group's 2006 report matched Hurst's findings that the evidence showed a conventional fire, not arson. "The artifacts examined and relied upon by the fire investigators ... are the kind of artifacts routinely created by accidental fires that progress beyond flashover," the panel's report said.

In 2008 the Texas Forensic Science Commission, charged with guarding the integrity of Texas forensics investigations, started to probe the case. The commission hired Craig Beyler, an arson investigator with a résumé nearly as impressive as Hurst's. Beyler's Aug. 17, 2009, report echoed Hurst's findings. "A finding of arson could not be sustained," Beyler found.

But in late September 2009, just days before the commission was set to hear testimony from Beyler — and when Perry was within a few months of facing U.S. Senator Kay Bailey Hutchison in what was expected to be a heated primary — Perry dismissed the chairman of the commission, Austin defense attorney Sam Bassett, and two other commission members. That dampened the commission's investigation.

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Bassett said of Perry, "I think he was very uncomfortable with what we were doing in that investigation."

One lingering question has been whether Perry was dismissive of the Hurst report in the hours before Willingham's execution. Cox says this is where the governor erred.

Cox's contact in Perry's office at that time was Mike Schofield, then Perry's assistant general counsel. Cox has nothing but kind words to say about Schofield. "For the 10 days prior to the execution, I talked with him daily," Cox says, describing Schofield as polite, engaged and prompt in returning her calls. "He told me he would be the one to brief the governor on the morning of the execution."

Cox, who took notes on her interactions with the governor's office, talked to Schofield on Feb. 16, the day before that briefing. She says she was convinced that Schofield understood the import of Hurst's findings. "Mike Schofield told me he had the Hurst report in his possession," she says of that talk. "I know that for a fact." Schofield said he had discussed the Hurst report with other attorneys serving the governor, Cox says.

Schofield did not respond to efforts to contact him through his associates and Perry's office.

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The next day, Feb. 17, Cox went to work as usual. She waited anxiously for the phone to ring with news of a last-minute stay. The call never came.

Cox talked to Schofield again the next day, after Willingham was dead. "He did give his condolences to myself and the rest of the family," she recalls. She asked about the briefing with Perry. "I asked him, 'Did you take the Hurst report?' He told me he absolutely did," Cox says. "He said the governor felt like, in light of the time that had passed since the conviction, a stay in the execution would only delay an event that would ultimately happen anyway."

The closest Perry has come to explaining his decision to proceed with Willingham's execution was covered in a Sept. 18, 2009, *Dallas Morning News* story. In the article, Perry seems to dismiss the advances in arson forensics since 1992 and belittle the qualifications of experts who had studied the Willingham case more recently.

"I'm familiar with the latter-day supposed experts on the arson side of it," Perry said. The newspaper reported that Perry formed quotation marks with his fingers to emphasize his skepticism.

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Lucy Nashed, Perry's deputy press secretary, confirms that Perry's office did obtain a copy of Hurst's report, but not until the day of the execution, and that Perry's staff had to retrieve a copy from the Texas attorney general late that afternoon. "It was only through the efforts of Governor Perry and his staff that the report was obtained at all by our office," Nashed says.

Regardless of when it arrived, Nashed confirms that Perry was aware of the Hurst report and its contents. "As with any execution, the governor was previously briefed on all of the facts of the case. He was briefed on this report once our office obtained it late that afternoon," she says.

"After the document — which was four pages — was requested, obtained and reviewed, Governor Perry shared the opinion of the state and federal judiciary that the report was not enough to merit a stay of execution," she says.

Nashed is referring to the frantic efforts by Willingham's post-conviction attorney, Reeves, to get various courts to look at Hurst's report prior to Perry's last-minute review. The courts, however, were barred from reviewing anything that wasn't classified as new evidence, rather than new science applied to old evidence, so the courts rejected Hurst's findings on a technicality. "The stuff I put in that report had never been reviewed before," Hurst says. "The courts are not technical. They don't know what is new. We just know a hell of a lot more about post-flashover fires than they did then."

As part of his last-minute review, the governor can examine whatever he wants, according to attorneys familiar with Texas law. Still, Nashed says Perry's decision was "similar" to that of the courts and that Hurst's findings were "no more than an opinion that offered no new facts."

At the Republican presidential debate on Sept. 7, NBC's Brian Williams brought up the subject of executions in Texas, noting that Perry had presided over the execution of 234 people as governor. "Have you struggled to sleep at night with the idea that any one of those might have been innocent?" Williams asked.

Perry didn't hesitate. "No, sir. I've never struggled with that at all," he said, reiterating his faith in the judicial and appeals process in Texas. Then he stared hard at Williams and added in a Texas drawl, "But in the state of Texas, if you come into our state and you kill one of our children, you kill a police officer, you're involved with another crime and you kill one of our citizens, you will face the ultimate justice in the state of Texas, and that is, you will be executed." The audience broke into a round of applause.

Cox says she does not know for sure why Perry did not delay Willingham's execution, but she has an opinion. "I can tell you why he did not pick up the phone," she says. "It was his lack of moral integrity and his political aspirations."

Correction: A previous version of this article stated that Cox and Willingham's attorney sent the Hurst report to Perry's office; Cox did not provide the document. In addition, a prior version omitted the word "moral" from Cox's statement about Perry's motivation.

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