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TEXAS FORENSIC SCIENCE COMMISSION: “SOUR GRAPES”

By Richard Schulte

The Texas Forensic Science Commission met on Friday, September 17, to consider the Willingham residence fire investigation and the subsequent conviction and execution of Cameron Todd Willingham for arson/murder. The fire in question occurred on December 23, 1991 in Corsicana, Texas and resulted in the death of Willingham’s three young daughters. Willingham was executed for this crime on February 17, 2004.

At Willingham’s trial, the defense was unable to present the opinions of any fire investigator due to the fact that attorneys for the defendant were unable to find any fire investigator willing to testify for the defense. Subsequent to Willingham’s conviction, and prior to his execution, a fire investigator came forward to indicate that it was his opinion that the original investigation by the State Marshal’s Office was flawed and that the fire was not a case of arson.

Somewhere in the time line, a second investigation of the original investigation was conducted and the second investigation also concluded that the fire was not arson.

Given the questions surrounding the fire at the Willingham residence, the Texas Forensic Science Commission retained the services of a third fire investigation expert to review the fire and render an opinion regarding whether or not the original fire investigation was flawed. The report on the third investigation of the original fire investigation was released on August 17, 2009. This report titled “*Analysis of the Fire Investigation Methods and Procedures Used in the Criminal Arson Cases Against Ernest Ray Willis and Cameron Todd Willingham*” was developed by Dr. Craig Beyler of Hughes Associates, Inc.

The Commission was scheduled to meet to discuss the “Beyler Report” in late September 2009, however, the governor of Texas, Governor Rick Perry, replaced the chairman of the Commission prior to the meeting and the late September meeting never occurred. After the appointment of a new chairman, the Commission spent time reorganizing.

The Commission was scheduled to meet to discuss the “Beyler Report” in late September 2009. . .

After the cancellation of the late September meeting, Dr. Beyler sent a letter to the Commission coordinator, Ms. Leigh Tomlin, which included the following excerpts:

“Sadly, the political influence which has been exercised with respect to the commission has compromised the integrity of the enterprise.”

“[Perry] had a personal role in the Willingham case. Under these circumstances, he should have recused himself from making appointments. His failure to recuse himself is both unethical and injurious to the cause of justice.”

Beyler also had this to say about the Commission:

“Something has to happen to get that credibility back.”

To clarify the above, the following is an excerpt from the article which served as the source from which Beyler’s statements above were taken:

“And he [referring to Beyler] said that Perry, a Republican, should recuse himself from making appointments to the panel because -- having signed off on the execution despite a last minute bid from the convicted man's lawyer for a postponement -- the governor has a "conflict of interest.””

Source: TPMMuckraker website; Zachary Roth, October 16, 2009, 10:10 AM; the webpage address for the above information is:

http://tpmmuckraker.talkingpointsmemo.com/2009/10/arson_expert_perrys_conflict_hurts_panels_credibil.php#more

The following are excerpts from an article written by Jeff Carlton, a writer for the Association Press (AP) which appears on the cbs11tv.com website. The article is titled *“Texas Panel Ready to End Disputed Arson Inquiry”* and is dated September 14, 2010 and was posted at 5:50 PM:

“A state commission that planned last year to review a report finding fault with an arson investigation that led to a Texas man's execution — until Gov. Rick Perry reshuffled the panel — is now considering a report with a much different conclusion.”

“The new report concludes Texas fire investigators adhered to professional standards that existed at the time, while acknowledging standards have evolved. The report also says the state fire marshal's office should adopt standards published by the National Fire Protection Association for all current fire investigations.”

“The report contradicts one written for the commission last year by fire expert Craig Beyler. . .”

“The report contradicts one written for the commission last year by fire expert Craig Beyler, chairman of the International Association of Fire Safety Science.”

“Willingham's conviction was upheld nine times.”

“Beyler, however, said he cited 15 textbooks referring to professional standards of the time and specifically pointed out how those standards weren't met in the Willingham case.”

“Willingham's conviction was upheld nine times.”

(Webpage address: <http://cbs11tv.com/wireapnewstx/Texas.panel.ready.2.1912488.html>)

On September 7, this writer weighed in on the controversy with a letter addressed to the Texas Forensic Science Commission. Excerpts from this letter include the following:

“Given my experience having worked with Dr. Beyler on two projects in the last 11 years, it is my opinion that Dr. Beyler's ethical standards are questionable at best and that the Commission should be aware of this fact. My opinion is based upon the following attached documents:

1. ***Texas Supreme Court decision, Case No. 09-0224, June [18,] 2010***
2. ***Ethics Complaint Letter-Dr. Craig Beyler, Society of Fire Protection Engineers, August 20, 2009***
3. ***Response to Petition for Review, Texas Supreme Court, Case No. 09-0224, July 28, 2009***
4. ***Petition for Review, Texas Supreme Court, Case No. 09-0224, May 8, 2009***
5. ***Smoke Vent Task Group Teleconference Minutes -March 24, 2009***
6. ***Ethics Complaint-Dr. Craig Beyler, Society of Fire Protection Engineers, September 9, 2008***

Texas Supreme Court decision, Case No. 09-0224, June [18,] 2010

Smoke Vent Task Group Teleconference Minutes - March 24, 2009

Apparently this letter was distributed at the September 17, 2010 meeting of the Commission. That morning an e-mail was received which included the following excerpt:

"I am not sure of the rub you have with Dr. Beyler. The report he wrote was excellent. Moreover, it is substantial agreement with the reports already issued by Dr Hurst and by the Tetra Team. Persons similarly trained and similarly educated are all coming to the same conclusions – this could not legitimately be called an arson fire.

I would caution you that the letter received that you authored smells of sour grapes. It will only serve to diminish your own character."

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Discussion

Prior to launching a discussion of the above, it will be helpful to also take a look at a letter written to the Commission by the Fire Chief of the Corsicana Fire Department, Chief Donald McMullan, on September 29, 2009. Excerpts from Chief McMullan's letter to the Commission include the following:

"Contrary to what has been reported in the media, Dr. Beyler did not conclude that the cause of the fire was accidental or natural and he didn't conclude that the fire was not arson. In addition, Dr. Beyler did not prove (or apparently attempt to prove) that Todd Willingham did not murder his children."

"Dr. Beyler's suggestion, which he makes several times, that fire investigation prior to NFPA 921 was "folklore" seems a bit strong (p. 3). If that were the case, every arson case investigated prior to the late 1990s would be without a scientific basis. I don't believe that to be the case."

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"Dr. Beyler's factual description of the Willingham incident appear to overlook or contradict many of the known facts regarding this incident. . ."

"Fireman Franks also said that after the fire, Mr. Willingham came back to his house and poured a large bottle of British Sterling cologne on the floor from the bathroom to the room in which the twins had died and said that if any more samples were taken from the floor, those samples would have cologne on them."

“No one has been able to explain how the 2 year old got out of the bedroom with the child’s gate being in place. Mr. Willingham said he stepped over it going into the child’s room and he stepped over it coming back out of the child’s room. He was certain his 2 year old daughter was in the children’s bedroom when the fire started (except when he says she woke him up by jumping on his bed) but her body was found in the master bedroom.”

*“No one has been able to explain how Mr. Willingham did not sustain injuries to his feet (although his 2 year old daughter did) even though he was in the hall and, according to at least one of the versions of his escape, he kicked the front door down [with his bare feet] **while it was burning** in order to get out of the house.”*

“In support of his position, Dr. Beyler notes that cigarette lighters were found in the house. It is not an issue of fire science to decide whether a 2 year old is capable of finding a lighter, and lighting it so that a serious fire results. But, importantly there is no evidence that the lighters were found anywhere near the area where the fire burned or near where the 2 year old child was found. The fire investigators were free to discount that particular theory as being remotely possible, but not likely. The jury could evaluate that evidence. . . .”

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“Dr. Beyler also implies on page 46 that a spill of charcoal lighter fluid on the concrete front porch could account for the presence of lighter fluid under the threshold in the house. The testimony regarding the slope of the porch (away from the front door) and the fact that there was a hole or crack separating the concrete porch from the front door appears to rule out that possibility.”

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“Dr. Beyler suggests that the fire may have started in the bedroom, growing to involve the hallway. Dr. Beyler doesn’t offer any support for why the fire turned right, rather than left, if it started in the front bedroom. The presence of an accelerant in the hallway is certainly some explanation as to why the fire, if it did start in the bedroom turned right rather than left when it entered the hallway. Traces of an accelerant were found in the front door area, under the threshold. And, according to Todd Willingham, there was fire in the hallway before he opened the front door. And, Mr. Willingham said he had already opened the hallway door into the kitchen. Why did the fire turn right, not left, or not burn in both directions?”

“In summary. . . I encourage the Commission to read the trial testimony and police report (with witness statements) to establish actual testimony. . .”

Prior to beginning the discussion of the above, it should be noted that this writer has no expertise in “cause and origin” investigation or fire investigation. Hence, this writer has no opinion on whether or not the fire was arson based upon the technical evidence found at the fire scene. Simply because one has no background in “cause and origin” investigation or fire investigation does not necessarily mean that one cannot comment on non-technical evidence however.

“In summary. . . I encourage the Commission to read the trial testimony and police report (with witness statements) to establish actual testimony. . .”

If you read the “Beyler Report”, you will see that the report is very short on facts in the case of the Willingham fire. Many of the issues identified in Chief’s letter to the Commission are not even noted, much less addressed.

An arson investigation not only includes an evaluation of the technical evidence at the fire scene, but also involves the questioning of witnesses and the observation of suspects both before, during and after the fire. It seems reasonable to note as a layman that a fire still may be a case of arson, even if the fire scene yields no evidence of arson if no other accidental cause for the fire is determined. Hence, questioning of both a suspect and witnesses and the observation of the suspect could yield a determination of arson.

After reviewing both the “Beyler Report” and Chief McMullan’s letter dated September 29, 2009, it is my opinion that Chief McMullan’s letter pretty much has convinced me that the detective work was more than adequate to prove that the fire at the Willingham residence was a case of arson and that the jury came to the correct verdict, assuming that Chief McMullan has his facts straight. And there seems to be no reason to believe that Chief McMullan doesn’t have his facts straight.

Could the fire investigation been better? There is no doubt that that is the case. Was the fire investigation inadequate when judged by present day standards? That's a rather dumb question to ask if you ask me. Of course it was. Judging a fire investigation conducted in 1991/1992 by the fire investigation standard of care in 2009/2010 and finding the investigation doesn't meet today's standards isn't too difficult. One certainly doesn't need to be an expert to figure that one out.

With respect to the style of the Beyler Report itself, a few points of note. First, Beyler's citations of various references is "standard Beyler". If you review a report developed by Beyler, you will see that all the reports are written in a similar style. It appears that the purpose of providing multiple citations is to impress the reader with the breath of the author's knowledge.

What would be more impressive is if Beyler actually provided excerpts from all his citation to demonstrate that the citation is actually of any interest. (See the style above.) Certainly, Beyler does not expect that a reader of his report will also read each and every one of his citations from cover to cover in order to get his point. Hence, in my opinion, Beyler's citations in this report and other of his reports are simply "fluff". While the "fluff" may impress some readers, knowledgeable readers will not be fooled and will simply ignore this "fluff".

Hence, in my opinion, Beyler's citations in this report and other of his reports are simply "fluff". While the "fluff" may impress some readers, knowledgeable readers will simply ignore the "fluff".

The second point of note is Beyler's reference to the use of "mysticism" and "psychic" powers by the fire investigator, Manuel Vasquez. The use of these two terms is rather disrespectful to both Vasquez and to fire investigation professionals throughout the nation. Would Beyler have used these two terms if Vasquez was not deceased, knowing that he might have to face Vasquez before the Commission? I'll use my "psychic" powers to speculate that Beyler would have found other terms to use if Vasquez was able to defend himself.

In my opinion, the use of the terms "mysticism" and "psychic" in the Beyler Report was unprofessional.

The use of the terms "*mysticism*" and "*psychic*" in the Beyler Report is unprofessional to say the least.

Perhaps, most interesting, is Dr. Beyler's use of the terms "*integrity*", "*unethical*" and "*injurious to justice*" in his comments regarding the Commission, the consideration of "Beyler Report" and Governor Rick Perry. It has been well documented on the Commentary web-page of this website that Dr. Beyler improperly utilized fire modeling on at least two occasions. The first occasion was in the litigation referred to as *Ian David McAuslin et al v. Grinnell Corporation, et al*, while the second occasion was in his fire modeling work on the concept of the "ganged" operation of roof vents in buildings provided with sprinkler protection.

In *McAuslin v. Grinnell Corporation*, Beyler utilized a fire model (LES3D) to predict the activation times of multiple sprinklers, the number of sprinklers which will operate and the effect of sprinkler water spray discharge on a fire. Beyler asserted in sworn deposition testimony that the capability of the fire model to accurately and reliably predict this information had been "validated".

Beyler's expert report in this litigation was issued on February 5, 1999. In the very same month, February 1999, Beyler also issued a report that stated that the fire model used in research on the interaction between sprinklers and smoke/heat vents conducted at Underwrites Laboratories in 1997/1998 was unable to accurately predict the activation times of sprinklers, other than the first sprinkler to activate. In other words, Beyler contradicted his own sworn testimony in *McAuslin v. Grinnell Corporation* in work for another client, the Smoke Vent Task Group, in the same month.

In Beyler's research work on the concept of the "ganged" operation of smoke/heat vents in sprinklered buildings, Beyler once again asserted in his report (issued on February 18, 2008) that the fire model used in the research work, the Fire Dynamics Simulator (FDS), was capable of reliably and accurately predicting sprinkler activation times and the total number of sprinklers which would operate. In two presentations in a debate on the use of smoke/heat vents in sprinklered buildings held before the ICC Code Technology Committee (CTC), one in May 2008 and the other in November 2008, Beyler stated that the FDS was "validated" for the purpose which the model was used in response to a direct question regarding "validation".

After Beyler was unable to back up his assertion regarding "validation" and refused to support his research work, Beyler's client, the Smoke Vent Task Group, characterized his work as "*worthless*" in a teleconference held on March 24, 2009.

Dr. Beyler also acted as an expert for the plaintiffs in litigation referred to as *Merrell vs. Wal-Mart Stores, Inc.* On May 8, 2009, Wal-Mart's attorneys filed an appeal with the Texas Supreme Court regarding Dr. Beyler's expert testimony. On July 28, 2009, Wal-Mart's attorneys filed additional documentation with the Supreme Court regarding Beyler's testimony in this litigation.

On June 18, 2010, the Texas Supreme Court published a ruling on the Wal-Mart's appeal in *Merrel vs. Wal-Mart Stores, Inc.* (Case No. 09-0224). The following are excerpts from the Court's decision:

"Most importantly, while Beyler laid a general foundation for the dangers of halogen lamps, his specific causation theory amounted to little more than speculation. Evidence that halogen lamps can cause fires generally (assuming that the lamp here was a halogen lamp) does not establish that the lamp in question caused this fire."

". . .his specific causation theory amounted to little more than speculation."

"Dr. Beyler may be qualified in fire research, but his testimony in this case lacks objective, evidence-based support for its conclusions. See Coastal, 136 S.W.3d at 232 ("[I]t is the basis of the witness's opinion, and not the witness's qualifications or his bare opinions alone, that can settle an issue as a matter of law; a claim will not stand or fall on the mere ipse dixit of a credentialed witness." (quoting Burrow v. Arce, 997 S.W.2d 229, 235 (Tex. 1999))). Because Beyler's testimony was legally insufficient to support causation, we do not reach Wal-Mart's remaining issues. See Whirlpool Corp. v. Camacho, 298 S.W.3d 631, 643 (Tex. 2009). Without hearing oral argument, we reverse the court of appeals' judgment and render judgment that Merrell take nothing. TEX. R. APP. P. 60.2(c)."

"Evidence that halogen lamps can cause fires generally (assuming that the lamp here was a halogen lamp) does not establish that the lamp in question caused this fire."

In essence, the Texas Supreme Court told Dr. Beyler and the Texas Forensic Science Commission that Dr. Beyler was doing exactly the same thing as Dr. Beyler accused Vasquez of doing in 1991/1992. Certainly, the Court's ruling strikes at Dr. Beyler's credibility as an expert.

Given Dr. Beyler's track record in *McAuslin v. Grinnell Corporation*, in his research on the concept of the "ganged" operation of smoke/heat vents and in *Merrell vs. Wal-Mart Stores, Inc.*, it does not seem unreasonable to conclude that Beyler's "integrity" is questionable at best. Making false statements in sworn deposition testimony in *McAuslin v. Grinnell Corporation* is both "unethical" and "injurious to justice". Using "mysticism" and his "psychic" powers in *Merrell vs. Wal-Mart Stores, Inc.*, while at the same time making allegations that Vasquez did the same thing, is simply "too rich".

Based upon the above, it seems reasonable that the “Beyler Report” should be discounted and ignored. Dr. Craig Beyler is simply not a credible expert based upon his past track record.

As was indicated above, the Willingham case has been reviewed nine separate times and each time the conclusion is the same. One definition of the term “insanity” is “doing the same thing over and over again and expecting a different result”. It would seem that looking at this issue nine times is “insanity”, much less looking at this issue one more time.

One definition of the term “insanity” is “doing the same thing over and over again and expecting a different result”.

As Chief McMullan so eloquently stated:

“Dr. Beyler did not conclude that the cause of the fire was accidental or natural and he didn’t conclude that the fire was not arson.”

There’s not a whole lot more that needs to be said. It’s time to bury this whole issue and let Willingham’s former wife find some peace. It’s difficult enough to lose three children in a fire and have your former husband executed, but to have this loss turned over and over and over for 18 years makes no sense.

It’s time to bury this whole issue and let Willingham’s former wife find some peace.

A jury of Willingham’s peers found the evidence strong enough to recommend conviction of Todd Willingham. Did the jury make a mistake? Not based upon anything that I’ve seen so far, and certainly not based upon the “Beyler Report”.

Did the jury make a mistake?

Conclusion

To quote James Lewis:

“Science is nothing without truth-telling and honesty, and you’re no scientist.”

Mr. Lewis was referring to another charlatan when he wrote the quote above, but, in my opinion, the quote applies equally to Dr. Craig Beyler.

“Science is nothing without truth-telling and honesty, and you’re no scientist.”

“*Sour grapes*” or “sour science”? Looks like what we have here is a case of “sour science”, not “*sour grapes*”.

Editor’s Note: Of course, the opinions expressed about are solely the opinions of the author and not necessarily the opinions of Richard Schulte. Hey, wait a minute. . .

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