

To: Members of the Forensic Science Commission

From: Samuel E. Bassett

Date: August 10, 2010

Re: Willis/Willingham Investigation

I am writing to provide input into the process and substance of the Willis/Willingham investigation. Your work on this important case is appreciated.

Process of Investigation

You must know that by now that this investigation is of vital importance on many levels. How this investigation is conducted and concluded is critical to the credibility of the Commission. The Commission must set a precedent that its emphasis will be to improve the science used in the justice system in Texas. The eyes of the State and nation are upon you, not just for the result of your work on this case, but the manner in which the result is achieved.

Because of the importance of this investigation and because of the significant issues raised, *public* deliberation and discussion of the investigation are crucial. It is very important to permit individuals involved in the case (i.e. Dr. Beyler, the State Fire Marshall's Office, the Corsicana Fire Department, members of the arson science community) to speak publicly to the Commission as well as to be questioned by Commission members in public. It is important for varying and diverse opinions on the situation to be aired transparently in public view.

The assignment of panels to conduct the majority of the work on a given case can be a good idea. John Bradley's suggestion and the Commission's approval of such panels can help speed along some investigations involving sensitive personnel issues within laboratories, facilities or entities. The Willis/Willingham case is not appropriate for such closed door review because of the age of the case, the significance of the investigation to fire science and the controversy surrounding the complaint. A public analysis of this case seems optimal and in the best interest of all stakeholders.

As revealed at the last meeting, it was of concern that the Willis/Willingham panel had "met" on two (2) occasions privately and telephonically in working toward its "preliminary conclusions." One of the panel members participated one time. Many on the panel were critical of portions of Dr. Beyler's report. However, it seems that Beyler was never questioned by the panel. It is important to question Dr. Beyler regarding his conclusions that the standards of arson/fire science, given the standards of the early 90's, were not met in the investigation. This issue needs follow up with Dr. Beyler and/or others. The Commission should be specific in the source(s) of its information and seek all available perspectives before reaching its final conclusions regarding the issues in the case, including the important questions of negligence and misconduct.

Substantive Issues – Final Conclusions/Final Report

Based upon my review of facts available while on the Commission, it is credible that that “fire investigators” involved in Willis and Willingham did not individually engage in “misconduct” or “professional negligence.” However, the *forensic scientists* on the Commission should carefully review the testimony of both Douglas Fogg and Manuel Vasquez and analyze whether or not the testimony offered at the trial was within those parameters. An appropriate query might be whether or not Mr. Vasquez exceeded ethical standards of science with some of his opinions expressed in court. This concern might be rooted in a legal perspective rather than a scientific perspective. Therefore, the forensic scientists on the Commission should carefully review this issue and address it in the final report.

Regardless of conclusions reached by the Commission on the issue(s) of whether or not professional negligence or misconduct occurred individually on the part of the “fire investigators,” the report should include a summary of the evolution of fire science standards over the past 20 years. This is of contextual importance for both the Willis/Willingham cases and the future of fire science/arson analysis in Texas. It is also critical so that entities may take any corrective action necessary to examine cases involving arson conclusions under the old standards. As one Commission scientist stated at the last meeting, “flawed science” was used at the time of the Willis and Willingham investigations. Another scientist commented that we now realize that many of the analytical tools used in Willis and Willingham are of little or no predictive value in concluding that a fire was intentionally set. The report must elaborate on these issues to provide an objective and contextual framework for the future.

Important questions to be answered should include: In what context was flawed science used in cases at the time of the investigation of Willis and Willingham? For how long did this flawed science continue to be used in Texas? When did the State Fire Marshal’s Office in Texas adopt NFPA 921 as an accepted protocol and methodology for arson investigations? (The Fire Marshal’s General Counsel told the Criminal Justice Integrity Unit that it was in 1993) Once it was adopted, what did the State Fire Marshal’s Office do to disseminate the information to law enforcement, fire departments, courts and prosecutors in Texas? Did the Fire Marshal’s Office commit professional negligence or misconduct in failing to disseminate the new fire science standards in a timely manner?

These questions are best answered by the scientists on the Commission, not the lawyers. Lawyers are influenced by professional biases related to their career path. For the credibility of the Commission to reach its highest level, the emphasis should be on science, not legal issues such as guilt or innocence. For instance, hypothetically suppose that there was a scientific breakthrough in the area of DNA analysis which demonstrated that an old methodology was flawed. Would the DNA scientific community and/or law enforcement community have an obligation to inform law enforcement, prosecutors, courts and/or laboratories about the change?

These are important questions to address in the final report. Thank you.