

Barry C. Scheck, Esq.  
Peter J. Neufeld, Esq.  
Directors

Maddy deLone, Esq.  
Executive Director

Innocence Project  
100 Fifth Avenue, 3<sup>rd</sup> Floor  
New York, NY 10011

Tel 212.364.5340  
Fax 212.364.5341

[www.innocenceproject.org](http://www.innocenceproject.org)

Debbie Lynn Benningfield, Chair  
Texas Forensic Science Commission

Dear Chairwoman Benningfield and Members of the Commission:

The purpose of this letter is to bring before the Commission very important evidence of serious scientific negligence or misconduct in the investigations, reports, and testimony of Texas State Fire Marshal investigators in the arson murder cases of Ernest Willis and Cameron Willingham. As explained below, the negligence or misconduct involved substantially affected the integrity of the results of the forensic analysis conducted by the State Fire Marshal in these two cases and, more broadly, calls into question the validity of other convictions based on similar arson analyses.

Both of these men were sentenced to death based on virtually identical assumptions, findings, and conclusions by state and local arson investigators in 1986 and 1992 respectively that each man had set fire to houses and killed people. Eventually, the conviction of Ernest Willis was vacated and, on remand, after submission of a report by Dr. Gerald Hurst at the request of Pecos County District Attorney Ori White, the prosecution concluded that the assumptions, findings and conclusions of arson investigators had no scientific merit. The indictment against Mr. Willis was dismissed in 2004, and ultimately, the State of Texas agreed Mr. Willis was actually innocent and provided him maximum compensation under the state's wrongful conviction statute.

Mr. Willingham, on the other hand, despite an affidavit in support of clemency from Dr. Hurst submitted to the Texas Board of Pardons and Paroles and to the Governor's office that raised precisely the same criticisms as the Willis case, was executed in February 2004. Open Record Act requests we have filed reveal no written responses were solicited or received from any independent expert and sent to either the Board of Pardons and Paroles or the Governor's office in response to Dr. Hurst's affidavit.



These two outcomes are mutually exclusive. Willis cannot be found “actually innocent” and Willingham executed based on the same scientific evidence. Based on substantial scientific evidence, including a Peer Review Panel discussed below, it is clear that Willis was innocent and Willingham was wrongfully executed.

Before bringing such a serious allegation before the Commission, the Innocence Project asked a leading arson expert, and author of a recently published textbook in the field, John Lentini, to assemble a peer review panel to examine the arson evidence in the Willingham and Willis cases. On a pro bono basis, and with no input from the Innocence Project other than our provision of transcripts and data from the trials, the Peer Review Panel has issued a comprehensive and powerful report supporting the view that the State Fire Marshal arson analysis in both cases was unreliable and reflected a set of serious, fundamental scientific misconceptions that surely have affected other arson cases.

We therefore ask that, pursuant to your authority under Chapter 38, Article 38.01, Section 4(b)(2), of the Texas Code of Criminal Procedure, that the Commission investigate the Willingham case and direct a re-examination of other forensic analyses conducted by the Texas State Fire Marshal or its contractors that may involve the same kind of erroneous arson analysis, and recommend corrective action. As you well know, Section 4(d) of the law enables the Commission to require that the entity investigated pay any costs incurred to ensure compliance with your written report on this matter.

The cause of justice will be well served by your work in this arena. I have enclosed the above referenced report from John Lentini and his colleagues, as well as a CD containing the relevant documents and underlying data from the Willis and Willingham cases. I hope you will find these helpful to your investigation.

Sincerely,

A handwritten signature in black ink that reads "Barry C. Scheck". The signature is written in a cursive, slightly slanted style.

Barry C. Scheck, Esq.  
Co-Director