

Yokel, LLC
presents

INCENDIARY: THE WILLINGHAM CASE

Directed by Steve Mims and Joe Bailey, Jr.
102 minutes, HD, 1.78:1

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For a complete press kit, please visit: www.incendiarymovie.com

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Synopsis

In 1991, Cameron Todd Willingham's three daughters died in a Corsicana, Texas house fire. Tried and convicted for their arson murders, Willingham was executed in February 2004 despite overwhelming expert criticism of the prosecution's arson evidence. Today, Willingham's name has become a call for reform in the field of forensics and a rallying cry for the anti-death penalty movement; yet he remains an indisputable "monster" in the eyes of Texas Governor Rick Perry, who ignored the science that could have saved Willingham's life. Equal parts murder mystery, forensic investigation and political drama, INCENDIARY documents the haunted legacy of a prosecution built on "folklore."

Winner of the 2011 Louis Black South by Southwest Award, INCENDIARY garnered wide critical acclaim in a limited theatrical release. Anne Hornaday of the Washington Post wrote: "Nonfiction filmmaking at its most classic. Crime, punishment, morality and hardball politics make for an explosive narrative mix all their own." "Alarming viewing for anyone who cares about the American justice system," wrote Sheri Linden of the Los Angeles Times. Art Levine of the Huffington Post called INCENDIARY: "A gripping, visually stunning indictment of a miscarriage of justice as great as that chronicled in Errol Morris's groundbreaking THE THIN BLUE LINE."

About the Film / INCENDIARY QUOTES

"Nonfiction filmmaking at its most classic. Crime, punishment, morality and hardball politics make for an explosive narrative mix all their own." **Ann Hornaday, THE WASHINGTON POST (critic's pick)**

"Justice, this strong documentary asserts, is at risk..." **David DeWitt, THE NEW YORK TIMES**

"...Incendiary," alarming viewing for anyone who cares about the American justice system."
Sheri Linden, THE LOS ANGELES TIMES

"A gripping, visually stunning indictment of a miscarriage of justice as great as that chronicled in Errol Morris's groundbreaking THE THIN BLUE LINE..." **Art Levine, THE HUFFINGTON POST**

"A compelling justice-denied doc with implications reaching far beyond the specifics of one event, INCENDIARY: THE WILLINGHAM CASE argues that factions in the Texas government put an innocent man to death." **John DeFore, THE HOLLYWOOD REPORTER**

"A doc that successfully inflames one's righteous indignation at government-sanctioned anti-intellectualism, even as it leaves slightly open the question of its deceased subject's actual guilt." **Nick Schager, THE VILLAGE VOICE (Critic's Pick)**

"Unsettling account of how dubious 'science' possibly led to an irreversible miscarriage of justice." **Joe Leydon, VARIETY**

"INCENDIARY achieves greatness as a deeper divide in the perspective of its characters is revealed. The directors tell the story of an arson investigation gone horribly wrong, but they tell it from the dispassionate perspective of the scientific method. And through this lens, anti-death penalty protesters, politicians, attorneys and even family members of deceased children-basically anyone who is likely to lack objectivity concerning the case-are viewed suspiciously." **Shannon M. Houston, PASTE**

"...Everything's bigger in Texas, including the irrational hostility toward science, toward learning, toward temperance, as Mims and Bailey's well-made, deeply disheartening film demonstrates." **Kimberly Jones, THE AUSTIN CHRONICLE**

"Riveting...stunning...a blockbuster ending." **Dave Mann, THE TEXAS OBSERVER**

"In the end, INCENDIARY leaves you on a note best described as unnerved and uncomfortable. No matter where the battle ends up or who uses Willingham's case as their poster case, there are two very simple, disturbing questions that need to be answered: Was an innocent person murdered, and is corruption in our government that bad? Mims and Bailey ultimately want you to decide that for yourself, but they give a hell of a persuasive start.
GRADE: A- , **Mike Finkelstein, POP GOES THE WEEK**

"[4/4 stars] Thought-provoking. Intriguing. Compelling." Cary Darling, **THE FORT WORTH STAR-TELEGRAM**

"This isn't a film about the rightness and wrongness of the death penalty. It is about human unwillingness to admit a mistake, even at the cost of an innocent human life. Tragedy compounds tragedy in "Incendiary: The Willingham Case," showing that, in Texas, the main interest of those who govern is self-interest." **Marshall Fine, HOLLYWOOD AND FINE**

"...let it be noted that the picture is crisply and confidently assembled, that Steve Mims's cutting is sharp, that Graham Reynolds's music is tense and effective. It respects the patience and intelligence of its viewers, particularly in its willingness to get down into the muck of various meetings, compliants and hearings. And it presents its final, infuriating bits of information without comment, because no comment is necessary." **Jason Bailey, DVD TALK**

"...cracklingly combines politics, forensic investigation, justice, the death penalty and the rights of a defendant--raises a bunch of questions, whose answers raise even more." **James van Maanen, TRUSTMOVIES**

"Riveting, flawlessly executed and painfully relevant, INCENDIARY is the sort of provocative documentary the Powers That Be don't want you to see. Which is all the more reason to see it." **Don Clinchy, SLACKERWOOD**

"A visually beautiful, enigmatic film that fully immerses its audience in a world where fire dynamics meet human dynamics and mystery thrives." **Nick Barbieri, THE AUSTINIST**

"It might not be possible for a movie to change the world, but INCENDIARY will probably accomplish the next best thing and make you re-think about the issue at stake-not just the death penalty and wrongful conviction, but arson investigation and politics taking precedence over justice." **Joseph Gibson, SCREENJUNKIES**

Like an onion, as layer upon layer is pulled away in Steve Mims' and Joe Bailey, Jr.'s film "Incendiary: The Willingham Case," more and more is revealed and exposure to the deeper layers pulls at the tear ducts both in frustration and sadness." **Neely Swanson, EASY READER NEWS**

"...I found it terrifically interesting." **Andy Klein, FILMWEEK**

"...surprisingly crowd-pleasing." **GORDONANDTHEWHALE.COM**

"A wildly and broadly appealing documentary...a fundamental enigma...gorgeous, riveting. If there's an overriding theme to a film that puts science first, it is that science and advocacy are not friends." **John Pierson for THE NEW YORK TIMES**

"[4.5/5 stars, Top 10 Film of 2011] Through the use of visuals and extensive visuals, Mims and Bailey have turned the Willingham case into a gripping saga." **Charles Ealy, THE AUSTIN AMERICAN-STATESMAN**

"Highly engaging. Convincing, meticulous...nimble cut...It's one thing to have a provocative idea, and quite another to turn that idea into a compelling film. Mims and Bailey succeed on both counts." **Chris Vognar, THE DALLAS MORNING NEWS (Critic's Pick)**

Cast Biographies

Gerald Hurst

Gerald L. Hurst is a Cambridge Ph.D. chemist with a lifetime of experience in explosives and incendiaries. He developed the trade secret formulas for Liquid Paper, patented the “Mylar” balloon, Astrolite A-1-5 and Kinepak binary explosive. He has testified as to cause and origin of fires and reviewed arson/murder cases for over thirty years.

John Lentini

John Lentini has personally conducted more than 2,000 fire scene inspections and has been accepted as an expert witness on more than 200 occasions. He is a frequent invited speaker on the subject of the standard of care in fire investigation and laboratory analysis of fire debris, as well as on the progress of standardization in the forensic sciences.

Elizabeth Gilbert

Elizabeth Gilbert is a Houston teacher and playwright who befriended Todd Willingham through a letter-writing campaign at her church while Todd was on death row. She investigated and wrote about Todd’s case, and contacted Gerald Hurst to review the forensic evidence.

Sam Bassett

Sam Bassett served as Chairman of the Texas Forensic Science Commission until he was removed by Governor Rick Perry. He practices family and criminal law in Austin, Texas with Minton, Burton, Foster & Collins, P.C.

David Martin

David Martin served as Cameron Todd Willingham’s defense lawyer at trial, appointed by the Navarro County Court, along with co-counsel Robert Dunn. Before becoming an attorney, Martin had a career as a Texas State Trooper. His current law practice focuses primarily upon insurance litigation.

John Bradley

John Bradley served as Chairman of the Texas Forensic Science Commission from October 2009-June 2011. He is also District Attorney of Williamson County. Bradley was appointed to both positions by Texas Governor Rick Perry.

Cast Biographies, continued

Charlie Baird

Judge Charlie Baird served on Texas' highest appellate court, the Court of Criminal Appeals, during the original Willingham procedure. In 2010, he conducted a Court of Inquiry looking into the case. He currently practices as Chief of the Criminal Law section of The Fowler Law Firm in Austin, Texas.

Johnny Sutton

Johnny Sutton is a former U.S. District Attorney currently practicing with the Ashcroft Group, a multinational consulting and legal firm founded by former Attorney General John Ashcroft. Sutton appears in the film representing Stacy Kuykendall, Todd Willingham's ex-wife.

Mark White

Mark White served as Governor of Texas from 1983 to 1987, Texas Attorney General from 1979 to 1983, and Texas Secretary of State from 1973 to 1977. White assisted in representing the Willingham family during the 2010 Court of Inquiry proceeding. He currently practices law in Houston.

Rick Perry

Rick Perry is the current governor of Texas, having held the office since December 2000. A member of the Republican party, Governor Perry was reelected to three full terms in 2002, 2006 and 2010, an unprecedented feat in Texas political history. Perry is the longest-serving current U.S. governor.

Barry Scheck

Barry Scheck is an attorney, and cofounder of the Innocence Project. He received national media attention while serving on O.J. Simpson's defense team, winning an acquittal in the highly publicized murder case. More recently, his work with the Innocence Project has exonerated over 267 people, largely through DNA testing.

Gerald Goldstein

Gerald Goldstein is a nationally renowned defense lawyer with a storied career in Texas and Federal Court. Goldstein led the team representing the family of Todd Willingham during the 2010 Court of Inquiry proceeding. He currently practices law in San Antonio with Goldstein, Goldstein & Hilley.

Timeline of Events, INCENDIARY: The Willingham Case

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October, 1990 - Duvall County, Florida prosecutors contact fire investigator John Lentini to review a fatal fire determined by state investigators to be intentionally set with flammable liquids. Lentini's lab and ten colleagues find no detectable levels of accelerant in debris samples.

Anticipating a strong case from defense counsel, the prosecution then asks Lentini to help bolster their case by setting fire to a vacant house two doors down from the defendants with exactly the same floor plan and furnishings, to compare the outcome with state's evidence.

Expecting to debunk the defense theory that the fire was accidental, Lentini and fellow investigators (including Kirk's Fire Investigation author John DeHann, recruited from California to assist) are instead astonished to see the room reach flashover in four-and-a-half minutes, without the use of a liquid accelerant. They are also startled to observe carbon monoxide levels in the home rising no faster than room temperature, remaining relatively low outside of the "thermal cloud" in the room of origin.

Lentini describes the "Lime Street" experience as "an epiphany." Principles that had long been understood by scientists in thermodynamics had not yet been applied in any uniform way to field investigation of fires. At the time, myths were codified into investigator manuals without being subject to the rigors of the scientific method.

"I had come within 24 hours of giving testimony that could well have sent an innocent person to Florida's electric chair," said Lentini. "Needless to say, I was chastened by the experience. My professional life was never the same again."

Dec. 23, 1991 – Todd Willingham's three daughters (Amber, two years; Kameron and Karmon, one) die of smoke inhalation from a fire in their home in Corsicana, Texas. Willingham escapes the blaze.

Jan. 8, 1992 – Willingham is charged with the arson murder of his children when investigators believe they find indicators of arson. Willingham is offered a life sentence by the Navarro County District Attorney's Office in exchange for a guilty plea. Willingham declines, while maintaining his innocence, and is incarcerated.

Jan. 17, 1992 - The first edition of NFPA 921: A Guide to Fire and Explosion Investigations, is published by the National Fire Protection Association, laying out principles of basic fire science and insisting that the scientific method always be used in fire investigations.¹ NFPA 921 is disseminated through the ranks of fire investigators, its standards adopted inconsistently and often grudgingly by veterans who value field experience over laboratory findings.

Timeline of Events, **INCENDIARY: The Willingham Case (continued)**

Aug. 18, 1992 - State of Texas v. Willingham commences at the Navarro County Courthouse in Corsicana, Texas.

The State's first witness, jailhouse informant Johnny Webb, testifies that Willingham confessed to setting the fire by pouring lighter fluid in an "X" pattern in the children's bedroom, after being asked verbatim by District Attorney John Jackson if that's what the defendant confessed to him. Webb is under heavy psychiatric medication at the time of testimony.

Texas Fire Marshals Manny Vasquez and Doug Fogg are certified as expert witnesses, and testify that the fire was conclusively an "incendiary," or arson, fire. They make this determination based upon floor burn patterns and other indicia that they believe indicate the use of an accelerant. Laboratory tests for accelerant inside the Willingham home are negative, except for the porch threshold, which tests positive for liquid petroleum distillate. Later, independent expert peer reviews cite this result as caused by charcoal lighter fluid kept on the porch with a barbecue pit, since all thirteen samples of interior floor material returned negative results from the lab.

With no expert witness testimony for the defense--a local expert hired to consult concurred with the Texas Fire Marshal's arson finding--Willingham's counsel, David Martin, questions Texas Fire Marshals' conclusions through cross-examination. The Marshals comment upon Willingham's character and behavior, asserting that "fires don't lie; people lie."

Aug. 20, 1992 - Willingham is convicted of capital murder by the jury panel at the end of trial on-the-merits. During punishment phase, Dr. James Grigson testifies that Willingham exhibits characteristics of a psychopath and sociopath, who could not be rehabilitated. Dr. Grigson makes this declaration based upon general professional experience, having not interviewed the defendant. Three years later, Dr. Grigson is expelled from the American Psychiatric Association and the Texas Society of Psychiatric Physicians for violating ethics code by "arriving at a psychiatric diagnosis without first having examined the individuals in question, and for indicating, while testifying in court as an expert witness, that he could predict with 100 percent certainty that the individuals would engage in future violent acts." Todd Willingham's wife, Stacy Kuykendall Willingham, joins friends and relatives in testifying as to belief in her husband's innocence. District Attorney John Jackson "begs" jurors to impose the death penalty, quoting biblical scripture and words from heavy metal posters hung in the defendant's house.

After two hours of deliberations, the jury is unanimous in sentencing Todd Willingham to die by lethal injection.

Timeline of Events, **INCENDIARY: The Willingham Case (continued)**

Oct. 12, 1992 - Jailhouse informant Johnny Webb's conviction for aggravated robbery is retroactively reduced to robbery, under order from DA John Jackson.

1995 - Texas courts grant arson-murder defendant Sonia Cacy a new sentencing hearing. Scientist and inventor Dr. Gerald Hurst looks at her case as a favor to her attorney, whom he knew from testifying in civil cases. "I was blown away," Hurst said. "I had never seen such bad work. It was primitive." Hurst begins accepting criminal cases pro-bono after a long career in thermodynamics, and twenty-three years testifying as an expert in civil cases. Sonia Cacy is released by the Board of Pardons and Paroles in 1998, after serving six years of a 99 year sentence, largely based upon Hurst's findings. The Pecos County DA and Bexar County medical examiners stand by their original investigation, even while scientific experts nationwide join Dr. Hurst in concluding that it was faulty, and led to a wrongful conviction. Cacy remains on parole, and is seeking a finding of actual innocence.

June 3, 1997 - Jailhouse informant Johnny Webb's sentence is commuted by John Jackson, the DA who prosecuted Willingham, now a Navarro County Judge.

May 4, 1998 - The Eleventh Circuit US Court of Appeals rules against an International Association of Arson Investigators amicus brief that "fire investigation is an art, not a science," affirming a lower court's exclusion of fire investigator testimony that had been offered without a rational scientific basis. The IAAI is thereafter forced to fully adopt NFPA 921 into its certification program, in order to ensure that IAAI members are qualified to testify in court, under the Daubert rule.

March 30, 2000 - Recently convicted and back in prison, Johnny Webb files a handwritten "Motion to Recant Testimony," asserting "I was made to lie by the District Attorney's office...Mr. Willingham is innocent of all charges."

April 3, 2000 - Webb's Motion to Recant is received and dated by Judge John Jackson, but kept out of the Willingham official court file. Willingham's appellate defense counsel Walter Reaves is not notified of the document's existence.

Sept. 17, 2000 - Johnny Webb files a complaint with the Navarro County District Court, stating that he testified against Willingham in exchange for "certain benefits." Again, Navarro County officials fail to meet their Constitutional duty under the Brady rule, withholding this evidence from Willingham's defense counsel.

Timeline of Events, INCENDIARY: The Willingham Case (continued)

December 2000 - Lieutenant Governor Rick Perry assumes the position of Governor of the State of Texas when George W. Bush resigns to be sworn in as President of the United States. Governor Perry is later reelected to full terms in 2002, 2006 and 2010, becoming the longest serving governor in Texas History.

December 2001 - John Bradley is appointed as District Attorney of Williamson County by Governor Rick Perry. Bradley had served as First Assistant District Attorney for five years and a felony prosecutor in Williamson County for six years. Bradley wins reelection in 2002 and is uncontested in 2004 and 2008.

December 2, 2002 - Governor Rick Perry appoints Greg Abbott to serve out John Cornyn's remaining term as Texas Attorney General, after Cornyn resigns to run for US Senate. Abbott had been appointed to the Texas Supreme Court by George W. Bush, and was twice re-elected to the state's highest court before, winning election in 2002 to serve a full term as Attorney General.

February 2004 - Having exhausted all traditional avenues for appeal, Willingham's post-conviction attorney Walter Reaves sends the complete Willingham investigation file and court transcript to renowned fire scientist Dr. Gerald Hurst for review.

Feb. 13, 2004 - Dr. Gerald Hurst submits a detailed report to Texas Governor Rick Perry and the Texas Board of Pardons and Paroles, rebuking all 20 indicia of arson that convicted Willingham as having no basis in science. The report is attached to a clemency petition by Willingham's appellate lawyer Walter Reaves.

The Navarro County DA's Office files an affidavit by Stacy Kuykendall's brother Ronnie Kuykendall, stating that Stacy—now Willingham's ex-wife—called a family meeting in which she disclosed that Todd had confessed to her at a prison meeting a week before the execution date (Feb. 8, 2004).

In a recorded interview with the Corsicana Daily Sun after the same meeting with Todd on Feb. 8, Stacy says Todd maintained his innocence, even though she had begun to suspect his guilt, and refused to help him with his clemency bid. Stacy would corroborate this version of events (Todd always maintaining his innocence) in a 2004 interview with The Chicago Tribune, as well as a 2009 interview with The New Yorker.

The Board of Pardons unanimously denies Willingham's petition for clemency, leaving Governor Perry the option of granting the thirty-day stay to review the evidence, as requested in the Hurst report.

Timeline of Events, INCENDIARY: The Willingham Case (continued)

Feb. 17, 2004 - Governor Perry receives a summary of the case against Willingham in a fax from legal counsel at 11:30 am. He receives the Hurst report by fax from the Office of Attorney General Greg Abbott at 4:42 pm.

Governor Perry refuses to grant a 30-day stay of execution.

At 6:20 pm, Cameron Todd Willingham is pronounced dead, executed by lethal injection.

Willingham's last words are recorded by the state:

"Yeah. The only statement I want to make is that 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. From God's dust I came and to dust I will return - so the earth shall become my throne. I gotta go, road dog. I love you Gabby...[tirade against Stacy Kuykendall, who attended the execution, redacted from state records for obscenity]."

Oct. 6, 2004 - Death Row Inmate Ernest Willis is released from death row and awarded nearly \$430,000 for 17 years of wrongful imprisonment. The evidence used to convict Willis of arson murder mirrored the evidence used to convict Willingham in every scientific respect.

Texas state court judge Royal Ferguson had thrown out Willis' conviction in August 2004, ordering the state of Texas to release Willis or retry the case. Pecos County District Attorney Ori White declined to file new charges against Willis, after consulting with Dr. Gerald Hurst and determining that there was no evidence to support a finding of arson.

Dec. 9, 2004 - Steve Mills and Maurice Possley publish an investigative report of the Willingham case in The Chicago Tribune, "Man executed on disproved forensics." The report evaluates the Willingham fire evidence and observes broad shifts in standard practices in fire investigation. For the article the Tribune sought out John Lentini and several other fire investigators to review the fire evidence. Each of the investigators concurs with Dr. Hurst's findings that the evidence offered at trial in State v. Willingham did not include any reliable indicators of arson. In an interview with the Tribune, Stacy Kuykendall disputes her brother Ronnie's affidavit, and explicitly denies that any confession was made by Willingham. She does offer that, over the years studying the evidence and trial testimony, she began to suspect Willingham's guilt.

Spring 2005 - The Texas Forensic Science Commission (TFSC) is created by the Texas legislature to examine instances of professional negligence or misconduct in forensics. The legislature doesn't immediately fund the Commission, but members begin to meet, nevertheless, traveling on their own dime to fulfill the legislative mandate.

Timeline of Events, **INCENDIARY: The Willingham Case (continued)**

May 1, 2006 - The first official complaint is received for review by the TFSC and Chairman Sam Bassett. Filed by New York-based Innocence Project, the complaint alleges negligence by the Texas Fire Marshal's Office in handling the Willingham and Willis cases. The complaint primarily cites the office's failure to uphold a professional duty to correct in the years between Willingham's conviction and execution as investigative field practices caught up to fire science.

Attached to the complaint is an 81 page report by the Arson Review Committee, a volunteer peer review panel of five renowned arson experts from across the United States, headed up by John Lentini.

Forensic Science Chairman Sam Bassett and Commissioner Alan Levy, Tarrant County District Attorney, consult with Assistant Texas Attorney General Barbara Deane, and conclude they have legal jurisdiction to consider the Willingham case. The full Commission votes unanimously to accept the complaint and undertake an investigation.

Feb. 6, 2009 - District Court Judge Charlie Baird conducts a Court of Inquiry proceeding into the case of Tim Cole, who died in prison of an asthma attack. DNA evidence and a confession by the actual rapist were presented before the court, and Judge Baird found that "to a 100 percent moral, factual and legal certainty" that Tim Cole did not commit the rape. The Texas Senate and House of Representatives thereafter passed legislation to exonerate Cole, and on March 2, 2010, Governor Rick Perry granted Tim Cole the state's first posthumous pardon.

Aug. 2009 - A report by Dr. Craig Beyler, hired by the Texas Forensic Science Commission to review the Willingham and Willis cases, determines that "a finding of arson could not be sustained."

Sept. 7, 2009 - David Grann publishes "Trial By Fire" a 16,000 word exploration of Willingham's story, in *The New Yorker*, attracting considerable national attention to the case.

Fall 2009 - Steve Mims and Joe Bailey, Jr. begin work on **INCENDIARY: The Willingham Case**.

Sept. 30, 2009 - Two days before Dr. Beyler was to testify before the Texas Forensic Science Commission, Governor Rick Perry replaces the chair of the Commission and two other members. The new chair, John Bradley, a close ally of the Governor, cancels the October 2nd meeting—sparking accusations that Governor Perry had interfered with the investigation to avoid controversy in the midst of an embattled Republican primary campaign.

Timeline of Events, INCENDIARY: The Willingham Case (continued)

October 2009 - Perry's move with the Forensic Science Commission draws criticism nationally from press, and within the Texas Governor's race. Republican primary challengers—U.S. Senator Kay Bailey Hutchison, GOP Activist Debra Medina, as well as Democratic candidate Bill White, question the Governor's motivations.

Hutchison: “[I’m a] steadfast supporter of the death penalty...[but] I want to make sure that we have every technological advance in evidence, to assure that we are executing a person who is actually guilty, and the right person. The fact that this panel was going forward to try to determine if there is now new technical evidence on whether a person is an arsonist or had an accident in a fire is very important. And I just think the governor made a mistake in trying to ramrod a covering-up of what might be more evidence for the future.”

Medina: “This constant changing of the guard when he doesn’t like the findings is more evidence that the governor behaves more and more like a tyrant, ‘off with their heads’ when people don’t agree with him.”

White: “No one in public life should ever be afraid of the truth.”

The Willingham case never becomes a significant issue in the race. The Hutchison campaign decides not to press the issue when a focus group of primary voters fail to register outrage over Perry's presiding over the execution of a possibly innocent man. (“It takes balls to execute an innocent man,” offered one member of the group.) In the general election, Governor Perry refuses to debate opponent Bill White, Mayor of Houston.

Oct. 25, 2009 – Todd Willingham's ex-wife, Stacey Kuykendall, tells the Fort Worth Star Telegram that during a final prison meeting Willingham admitted to setting the fire. Journalists familiar with the case note that her statement, ambiguously worded as to Willingham's confession, explicitly contradicts previous comments in recorded interviews from before and after the execution (including one with the Corsicana Daily Sun after the meeting in question), as well as her testimony at trial.

Oct. 27, 2009 - The Houston Chronicle sues Governor Rick Perry to release the full clemency report he received before denying a stay of execution to Cameron Todd Willingham under the Freedom of Information Act. The Governor claims attorney-client privilege.

Nov. 10, 2009 - John Bradley, Governor Perry's new appointee to Chair the Texas Forensic Science Commission, testifies to the Texas Judiciary Committee that he believes the commission should meet behind closed doors.

Timeline of Events, INCENDIARY: The Willingham Case (continued)

Nov. 14, 2009 - The Texas Dept. of Criminal Justice denies having “any responsive information” to an open records request regarding logs, tapes or records of visitations to Todd Willingham on death row, or to TDCJ policy with regards to keeping such records.

Jan. 29, 2010 - The first Texas Forensic Science Commission meeting under Chairman John Bradley’s leadership is held in Harlingen near the southernmost point of Texas’s border with Mexico. Before the meeting begins, Bradley bars INCENDIARY directors Joe Bailey, Jr. and Steve Mims from filming the meeting, in violation of the Texas Open Meetings Act. The filmmakers call the Attorney General’s office in Austin, and show the statute of the Open Meetings Act to attending Assistant Attorney General Barbara Deane on their phone.

Having set the agenda without input from fellow commissioners, Bradley proposes hierarchical and procedural changes to the commission, and does not allow for public comment. Commissioners appear frustrated, but willing to work with Bradley to continue moving forward with Commission work.

Meanwhile, Rick Perry and Kay Bailey Hutchison face off in Dallas, Texas for a second Republican Primary debate for Governor of Texas.

March 2, 2010 - Governor Rick Perry grants Timothy Cole the state’s first posthumous pardon. Cole had been exonerated through a Court of Inquiry conducted by Travis County 299th District Court Judge Charlie Baird.

March 3, 2010 - Governor Rick Perry wins the Republican nomination for Texas Governor, defeating Kay Bailey Hutchison and Debra Medina.

July 23, 2010 - After months of procedural delays, the Texas Forensic Science Commission publicly discusses the substance of the Willingham Case for the first time under John Bradley’s leadership. Bradley writes a memo questioning the Commission’s jurisdiction, and first denies being the sole author, offering it as a consensus document from committee. When other Commissioners deny having had any input, he admits that he was the “person whose fingers were hitting the keys.” Innocence Project Director Barry Scheck and Bradley get into a fracas after Bradley does not grant Scheck permission to speak and clarify the nature of the original Willingham complaint before Commissioners move with a vote. During the public comment period, Scheck reiterates that the complaint is against the Texas Fire Marshal’s Office for their negligence and failure of their professional duty to correct past errors in testimony, not against individual investigators, and that addressing the complaint falls clearly within the Commission’s jurisdiction and legislative mandate.

Timeline of Events, INCENDIARY: The Willingham Case (continued)

Sept. 19, 2010 - The Texas Forensic Science Commission refuses to adopt Chairman John Bradley's draft report to bring the Willingham investigation to a close. Commissioners emphasize the need to hear expert testimony and to meet publicly with the Texas Fire Marshal's Office. Bradley grows agitated and lashes out at fellow commissioners for "shirking their duties."

Oct. 2010 - After months insisting that Commissioners not speak to the press regarding pending cases, Forensic Science Commission Chairman John Bradley remarks in an interview with the Associated Press: "What they are interested in is finding the poster boy for the abolition of the death penalty. And they want to make Willingham that poster boy. And they chose poorly, because Willingham is a guilty monster."

At the next regularly scheduled meeting of the Forensic Science Commission on October 15, Bradley's fellow commissioners chide him for these remarks, concerned that they undermine the credibility of the Forensic Science Commission's work. Commissioner Jean Hampton—a reserved presence during prior meetings—speaks up, urging fellow commissioners to re-open all commission meetings, including investigative subcommittee meetings, to public view. Rolling back procedural changes made by Chairman Bradley, the Commission votes unanimously to post all meeting times and hold all meetings open, subject to the Texas Open Meetings Act. The Commission also votes to solicit public testimony from fire experts regarding the Willingham case evidence as well as from the Texas Fire Marshal's Office.

Eugenia Willingham and Patricia Cox, Willingham's stepmother and cousin, file a lawsuit against the State of Texas 299th District Court, seeking a judgment of official oppression in the handling of Todd Willingham's case, and the restoration of Willingham's reputation, through a Court of Inquiry proceeding. Judge Charlie Baird takes up the case and conducts a hearing, under similar procedure used in the posthumously exoneration of Tim Cole the previous spring (the first posthumous exoneration in Texas history; see above).

Judge Baird denies a motion by Navarro County District Attorney Lowell Thompson that Eugenia Willingham does not have standing to bring suit. (Thompson had alleged that because Eugenia had adopted Willingham as an infant and was not his blood relative, that she could not bring a reputation-based claim.) Thompson asks Judge Baird to recuse himself for having served on the Texas Court of Criminal Appeals during the original Willingham appellate process. Judge Baird denies that motion as well, and proceeds with the hearing.

Judge Baird hears testimony from Dr. Gerald Hurst and John Lentini regarding the arson evidence in the Willingham case. He also accepts into evidence affidavits and motions filed by jailhouse informant Johnny Webb. These documents state that Webb was forced to testify

Timeline of Events, INCENDIARY: The Willingham Case (continued)

against Willingham by the District Attorney's office, that he was promised benefits for his testimony, and that, ultimately, he recanted his testimony and declared "Mr. Willingham is innocent of all charges."

Court documents entered into evidence reveal that a charge of aggravated robbery against Webb was retroactively reduced in the months following his initial testimony in the Willingham case by prosecutor John Jackson, who soon became Navarro County Judge. Webb's recantation and motions alleging benefits due were never entered into the official court record, nor was Willingham's appellate counsel Walter Reaves advised of the documents' existence in the years leading up to Willingham's execution.

As the Court of Inquiry begins in the 299th District Court, Johnny Sutton, partner in the Ashcroft Group law firm and former United States District Attorney, conducts a press conference on the same Travis County Courthouse steps. Todd Willingham's ex-wife, Stacy Kuykendall, delivers a prepared statement to the press, choking back tears while reading about the loss of her children, and alleging that two weeks before Willingham's execution, in a meeting on death row, Todd "told me he did it—he stood and watched while their tiny bodies burned." Journalists ask Ms. Kuykendall for a clarification as to the specifics of that statement, or as to whether she will testify in the court of inquiry. Johnny Sutton draws the conference to a close and escorts Kuykendall to exit. (See above for prior statements re: alleged confession.)

Navarro County District Attorney Lowell Thompson files an emergency Writ of Mandamus in the Texas Third Court of Appeals urging a halt to the court of inquiry proceeding. The court receives the Writ, and Judge Baird is barred from issuing a decision until the court can rule on the merits of the Writ.

Nov. 2, 2010 - Governor Rick Perry is elected to a third term, becoming the longest serving governor in Texas history.

Dec. 17, 2010 - Travis County District Judge Suzanne Covington refuses to disclose documents to attorneys for The Houston Chronicle from the Willingham clemency report to Governor Perry. The attorneys had requested to review the documents to better frame their legal argument for making public release of the documents under the Freedom of Information act.

Dec. 21, 2010 - The Texas Third Court of Appeals grants Navarro County District Attorney Lowell Thompson's Writ of Mandamus, issuing an emergency stay preventing Judge Charlie Baird from proceeding further in the Willingham Court of Inquiry. Judge Baird retires, as previously scheduled, on December 31, 2010. The outcome of the Willingham Court of Inquiry hearing remains suspended.

Timeline of Events, INCENDIARY: The Willingham Case (continued)

Jan. 7, 2011 - Thirteen months after he was originally scheduled to testify before the Forensic Science Commission, Dr. Craig Beyler appears before the Forensic Science Commission. Joined by John DeHann, author of Kirk's Fire Investigation, Beyler and DeHann reaffirm his report's conclusions that no valid evidence of arson was presented by the Texas Fire Marshal's Office in the Willingham case.

Texas Fire Marshal Paul Maldonado greets the commission, and quickly turns the podium over to his Deputy Fire Marshal, attorney Ed Salazar, who makes a powerpoint presentation. Salazar lambasts outside scrutiny of the case, and the experts in attendance, but does not provide valid scientific analysis or theories in support of the investigation. His presentation consists of a restatement of the Fire Marshal's original findings with powerpoint images from the house.

After a combative cross-examination of fire scientists Beyler and DeHann (eliciting suppressed laughter from the audience, deriding scientific testimony as "just your opinion," only to have testifying experts restate that it was not their own opinion they were relaying, but rigorously-tested, established thermodynamics and physical laws), Chairman John Bradley joins Deputy Fire Marshal Ed Salazar in decrying the unfair, retrospective scrutiny cast upon the Fire Marshal's Office.

When questioned after the meeting by reporters to comment on Deputy Fire Marshal's Salazar's presentation, one scientist on the commission offers: "It was embarrassing."

Jan. 21, 2011 - Forensic Science Commission members express frustration at lack of progress in the Willingham case. Chairman John Bradley moves to seek an opinion from Attorney General Greg Abbott regarding the Commission's jurisdictional reach, before the Commission draws any conclusions on negligence or misconduct. He warns the Commission that exceeding their legislative mandate could subject individual commissioners to personal tort liability. The commission agrees to seek the opinion—despite having consulted Assistant Attorney General Barbara Deane about the Commission's jurisdiction before accepting the Willingham complaint in May 2006 (see above). Deane advisory seat on the commission is now filled by the Commission's own staff attorney, hired at the insistence of Chairman Bradley.

March 9, 2011 - John Bradley is not confirmed to continue as Chairman of the Texas Forensic Science Commission by the Texas Senate; his chair will therefore expire at the end of the regular legislative session in May 2011. Senators from the left and right criticize him for his "combative behavior."

Timeline of Events, INCENDIARY: The Willingham Case (continued)

March 12, 2011 - INCENDIARY: The Willingham Case makes its World Festival Premiere at the South by Southwest Film Festival's historic Paramount Theatre, winning critical and audience acclaim. Jury panelists Marjorie Baumgarten (The Austin Chronicle), Elvis Mitchell (KCRW-Los Angeles) and Robert Wilonsky (The Dallas Observer) award INCENDIARY the inaugural Louis Black Award. Subsequent SXSW screenings are at-capacity, and the film receives noteworthy festival buzz and media coverage.

April 15, 2011 - The Texas Forensic Science Commission issues a report calling for improvements in fire investigations. The report reserves comment on the negligence or misconduct of fire investigators in the Willingham Case, but emphasizes an ethical "duty to correct" previous convictions based upon similar evidence.

June 23, 2011 - INCENDIARY makes its East Coast Festival Premiere at the American Film Institute/Discovery Channel SILVERDOCS 2011, in Silver Spring, Maryland, just outside of Washington, DC. Screening amongst ten outstanding American documentaries in the Sterling US Feature Competition, the film garnered rave reviews and recommendations from the Atlantic, PopMatters, The Huffington Post, Salon, the Washington Post, and the Washingtonian, among others. As with SXSW, sold-out crowds remained long after the end credits to engage the filmmakers in dialogue about the film.

July 29, 2011 - Texas Attorney General Greg Abbott advises the Forensic Science Commission that it had no jurisdiction to evaluate the physical evidence used in the Willingham case.

Sept. 9, 2011 - Led by new Chairman Nizam Peerwani, Forensic Science Commission members deliberate about how to amend the Willingham report without subjecting themselves to personal liability. FSC staff attorney warns them that an amendment may result in exceeding their statutory authority as outlined in the Attorney General's opinion.

Sept. 23, 2011 - INCENDIARY: The Willingham Case opens Violet Crown Cinema in Austin Texas, the first opening of a Fall 2011 Limited Theatrical Release.

Oct. 28, 2011 - The Forensic Science Commission approves recommendations to create a review program of past arson cases in Texas with the aim of improving arson investigation practices. Though confined in its own jurisdiction by the AG Opinion, the Commission is able to bring the Innocence Project of Texas and the Texas Fire Marshals Office together to conduct a voluntary, comprehensive review of cases involving actively incarcerated inmates convicted of arson.

Dec. 12, 2011 - Texas Fire Marshal Paul Maldonado, who defended the Fire Marshal's Office's work in the Willingham investigation under severe criticism from the scientific community, abruptly resigns after seven years of service.

The Innocence Project of Texas and Fire Marshal's Office review of Texas arson convictions is currently underway.

Filmmaker's Statements

Steve Mims, co-director

David Grann's excellent NEW YORKER article, TRIAL BY FIRE, drew me to Willingham's story. An exhaustive piece, the Texas setting and the cast of characters seemed real and familiar, and the narrative's exposé of junk science in the courtroom seemed extremely relevant during a time when, 152 years after publication, ORIGIN OF SPECIES remained controversial.

In October of 2009, a random, after class discussion with my student Joe Bailey led to my recommendation of Grann's story. Joe read it and proposed making a documentary about it. I've worked on many films, and the scope of this story seemed daunting, but I found myself suggesting that we go ahead and do it anyway and we started collecting interviews. By early December we'd shot chemist-inventor Gerald Hurst, writer Elizabeth Gilbert and fire scientist John Lentini. Thrilled by the material, we thoroughly committed ourselves to make the film. From there we shot for over a year, collecting interviews and documenting an on-going examination of the original fire investigation by the Texas Forensic Science Commission. As reflected in the film, those meetings took us all over Texas and would deliver to us an entirely new and controversial chapter in the Willingham story. Last October Willingham's family filed suit to have Cameron Todd exonerated posthumously, and many of our protagonists re-entered the film, under oath in a court of law. A godsend for us, we carved that into the climax of our film and it delivers gravity and closure to a story that remains in the headlines at the present time.

Independent film expert John Pierson agreed to watch an early cut of the movie and was intrigued enough to screen it for his advanced film producing class at the University of Texas. By then we had edited new material from the trial into the film and John took the film on as the class project. Subsequently we ran many more cuts and thanks to excellent class feedback made tremendous progress in a short period of time, eventually winding up with a very rough, but mostly complete version by early December. Editorial work continued right into early March to deliver the draft we're premiering at SXSW.

Joe and I own the gear we used to make the film and we paid our expenses and donated our time to get it done. (We also received a \$3,000.00 grant from the Austin Film Society.) Once we started we never considered not doing the work. My original concerns about the scope of the project were borne out over and over, but the real delight in getting to see the film unfold for us made it all worth it. Joe and I wound up

getting along very well. His sunny disposition and willingness to tolerate my 'old school' ways made the whole thing possible.

From the outset we viewed this film as a movie, not a piece of journalism. Our goal was a cinematic tale that plays out as a scientific murder mystery. We've worked to make the science in the film accessible and beautiful and the story a real brain-teaser. It is a film loaded with genuine drama and unexpected moments of hysterical comedy. It asks the audience to ponder puzzles large and small, and we hope that it will haunt them long after the final, disturbing shot. If I have a single ambition for the film, it is that it exist, long after the Willingham case is forgotten, as a genuinely entertaining film.

Since age twelve I've loved filmmaking. It's the most challenging work you can do and, at the same time, the most fun. INCENDIARY has been the most difficult documentary project I've undertaken and, at the same time, an absolute pleasure to make. We've learned a great deal and met and become friends with some of the smartest people in the world along the way. Who could ask for more than that?

Joe Bailey, Jr., co-director

Steve and I set out making this film like anyone first confronted with the Willingham story—we had to get to the bottom of it, for ourselves. We knew we would wind up traversing the criminal justice system through to the aftermath of the case; but first, we had to start at the most elemental level, where we had the most to learn: understanding the dynamics of fire.

Gerald Hurst, then John Lentini, methodically led us through the history of arson investigation and the physical properties of fires. Both did so with humor, charm and wit, and a rapt curiosity about evidence that was infectious. Animating their words with Steve on set, deploying fire against water, glass and steel, was one of the most fun things I've done, ever.

What we couldn't have predicted was that the legal and political elements of the story would be reanimated before our lenses just as vividly. I'm thankful for the film's unpredictable turn into a comedy of errors; an unusual feast for connoisseurs of social awkwardness. It was just what I needed to keep me engaged and sane to the end.

Most of all, I'm thankful to have worked with Steve Mims, and to have met people like Gerald Hurst, John Lentini, David Martin, Stephen Saloom, Barry Scheck, Sam Basset, Elizabeth Gilbert and Eugenia Willingham. To be able to engage them in conversation, and at the end of the day call it work, is a beautiful life to me.

Filmmaker Bios

Steve Mims

Steve Mims's award-winning short films have screened widely in festivals and on television. The New York Times' Vincent Canby called his film AUNT HALLIE "A treasure...which belongs on everybody's list of the top ten funniest films ever made." Mims's 2010 SXSW Showcase HONORARIUM was hailed as "a stunner of a short" by Marc Savlov for the Austin Chronicle. His feature film THE PERFECT SPECIMEN premiered at SXSW and on SHOWTIME. He has made music videos for Webb Wilder, Stephen Bruton, Los Straitjackets, the Austin Lounge Lizards and Billy Joe Shaver that have aired on MORE MUSIC, TNN, CMT, GAC, CMT EUROPE, M2 and MTV. Television broadcasts include ITALIAN PUBLIC TELEVISION, CAMPUS NETWORK, USA NETWORK, ARTS AND ENTERTAINMENT, THE LEARNING CHANNEL and PBS. Mims teaches filmmaking at the University of Texas at Austin and works as producer for client films.

Joe Bailey, Jr.

INCENDIARY is Joe Bailey, Jr.'s first feature-length film. After graduating from the University of Texas School of Law, Joe began working as a cinematographer and sound recordist in Austin. Finishing up a postdoctoral fellowship at the law school in 2009, he enrolled in Steve Mims' Production Two course at the insistence of his wife, a Travis County Prosecutor. A conversation after class about clemency, criminal process, and forensic science went on for days, and became this film.

Credits**a film by**

Steve Mims & Joe Bailey, Jr.

Produced by

Steve Mims & Joe Bailey, Jr.

Associate Producers

Jim Fatheree
Richelle Fatheree
Reid Nelson

Art Direction

Kakii Keenan

Cinematography

Steve Mims &
Joe Bailey, Jr.

Editor

Steve Mims

Assistant Editor

Joe Bailey, Jr.

Location Sound

Joe Bailey, Jr.

Original Music by

Graham Reynolds

Music Recordist

Graham Reynolds

Music Editor

Buzz Moran

Music recorded at
Red House Studio,

Austin, TX

Audio Mix

Korey Pereira

Additional Camera

Aaron Bratcher

Fernando Del Rio

John Mace

Additional Location Sound

Randall Lucas

CAST

(In Order of Appearance)

John Lentini

Elizabeth Gilbert

Eugenia Willingham

Sam Bassett

Dr. Gerald Hurst

Dr. Craig Beyler

David Martin

Walter Reaves

Stephen Saloom

Governor Rick Perry

Rick Casey

Gloria Rubac

Barry Scheck

Patricia Cox

Judy Willingham Cavnar

Johnny Sutton

Stacy Kuykendall

Gerald Goldstein

Cynthia Orr

Dan Greenberg

Alan Glickman

Yocheved Cohen

Chris Giampapa

Evan Smith

Governor Mark White

Texas Attorney General Greg Abbott

The Texas Forensic Science Commission

Dr. Garry Adams

John Bradley

Asst. Texas Attorney General Barbara Deane

Dr. Art Eisenberg

Lance Evans

Dr. Norma J. Farley

Dr. Stanley R. Hamilton

Dr. Jean Hampton

Dr. Sarah Kerrigan

Dr. Nizam Peerwani

Leigh Tomlin