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An independent weekly internet magazine
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October 22, 2009 - Issue 347

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Cover Story **Governor Rick Perry and His Texas Death Machine Are In Big Trouble** **Color of Law**

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When criminals are about to be caught, they try to hide their wrongdoing. When drug dealers hear the police sirens, they dump the stash in the alley or flush it down the toilet. When the Nazi officers in the concentration camps heard the allied forces approaching, they destroyed—and in many cases murdered—the evidence. There's something about the light of day when it shines its truth upon you.

And when a Texas state commission started looking into a report that a faulty arson investigation apparently put an innocent man to death, Gov. Rick Perry replaced the commission and called the dead man a monster.

Because that's what Southern hick town justice is all about.

Cameron Todd Willingham is now a free man, but unfortunately it took death to release him from the confines of his prison bars. He was executed on February 17, 2004 for the 1991 arson deaths of his three children. Gov. Perry refused to grant him a 30-day stay, despite questions about his guilt. According to a bogus forensics report, Willingham's house was intentionally burned down.

In 2005, Texas instituted a forensic science commission to investigate mistakes and wrongdoing by forensic scientists. Baltimore fire expert Craig Beyler, who was hired by this commission to look into the Willingham case, concluded that there were no scientific grounds to characterize the fire as an act of arson. As [The New Yorker](#) reported, Beyler said the approach of the arson investigator in the case denied rational

reasoning, was based on "folklore and mysticism rather than science," and violated "not only the standards of today but even of the time period." This, in a state whose fire investigators typically had a high school diploma, and unlike other states, no requisite experience and no specialized training or qualifications.

So, the Texas commission was reviewing Beyler's report, and Gov. Perry, running for reelection, eliminated the members of the commission before they could issue their findings. Pure politics. After all, we don't want people going around and talking about the execution of innocent people.

Meanwhile, Judge Sharon Keller, presiding judge of the Texas Court of Criminal Appeals, that state's highest criminal court, could find herself in deep trouble. The State Commission on Judicial Conduct initiated impeachment proceedings against Keller for incompetence, violating her duties as a judge and casting public discredit on the court. For a state such as Texas— with such abysmal standards of integrity in its criminal "justice" system—you must wonder what she did to stand out among the crowd.

Keller refused to keep the court open after 5pm when she knew Michael Richard, a death row inmate, sought a last-minute appeal challenging the constitutionality of his punishment of lethal injection. The inmate was unable to file an appeal and was executed. Also, Keller rejected a new trial for Roy Criner, a mentally retarded man convicted of rape and murder, even though DNA evidence showed that he did not rape the victim. "We can't give new trials to everyone who establishes, after conviction, that they might be innocent," Judge Keller said. "We would have no finality in the criminal justice system, and finality is important. When witnesses testify, and when jurors return a verdict, they need to know that they can't come back later and change their minds."

Keller was unrepentant, and Perry said the execution of Willingham was appropriate based on the "totality of the issues". Ex-governor Mark White suggests that [Texas might have to do away with the death penalty altogether](#), given that it does not deter crime and is unfairly administered, with a risk of executing the innocent. Bad habits are hard to break, and with [423 executions since 1974](#), including 152 under Gov. George W. Bush, Texas has the most voracious appetite for capital punishment. But perhaps the Willingham case is what is needed to end the barbaric practice.

My take on this subject is that the death penalty never was intended to be fair, as it is a holdover from Jim Crow lynching. Capital punishment was an effort to transplant lynchmob justice into the courtroom and make lynching official, if not respectable. A broken system that was designed to be broken—just clean it up and no one will notice, they thought. Guilt or innocence is of little concern here, as finality reigns supreme. And Judge Keller essentially said as much. It is no accident that the states of the former Confederacy— the states with the most violent racial history, a deep legacy of extrajudicial terror and killings— have been among the most enthusiastic executioners. Interestingly, those states also seem to have the lowest educational and health standards. Typically, the inmates on death row are people of color, and poor white folk like Mr. Willingham, those who lack resources and are unable to afford the best justice money can buy. We will never know how many people have been wrongfully executed. But Cameron Todd Willingham certainly would not have been the first. And perhaps we will never know how many opportunistic individuals have built their political careers on the corpses of the executed, whether guilty or innocent.

Rick Perry and Sharon Keller now have ethical clouds hanging over their heads. They utilized death as a political tool, but now, ironically, the death machine that helped

bolster their careers could be their undoing. Yet, both are appropriate spokespersons for the death penalty. They have helped perpetuate an inherently unjust, incompetent and capricious system that legalized the lynchmob.

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