

High Country News

For people who care about the West

The Fiery Touch

by John N. Maclean

When a jury returns to a packed courtroom to announce the verdict in a capital murder case, every noise -- even a chair scraping or a door opening -- cracks like a rifle shot. That's how it was at the trial of Raymond Lee Oyler, accused of murder for setting Southern California's Esperanza Fire, which fatally burned five men on a U.S. Forest Service engine crew. As the jurors filed into the Riverside County Superior Court room on March 6, 2009, they had to work to keep their decision off their faces.

The spectators, who hurried back to the courtroom when they learned that the jury had concluded deliberations, separated like families at an uncomfortable church wedding. Firefighters, relatives of the victims and their supporters filled pew-like benches on the side nearest the jury box. Some had driven many miles and arrived breathless at the last minute. The fire people looked clean, upright and unspeakably sad.

On the other side of the courtroom sat Oyler's family and friends from the Banning Pass area, where Oyler -- a 38-year-old auto mechanic who was in many ways an unlikely suspect -- had lived and where the fatal wildfire had burned. They were scattered along a couple of rear benches, as far from the jury as possible. Several had dozed off or nodded or cast hostile glances during the trial, but there had been no unruly behavior. (Oyler's brother-in-law, Christopher Vaughn Hillman, had put newspaper articles with disallowed information from the trial on the windshields of jurors' cars, and was later found guilty of jury tampering.)

The Oyler clan appeared both hopeful and apprehensive. They had reason for a glimmer of optimism, for the trial had been difficult. The prosecution had no hard physical evidence to tie Oyler to the Esperanza Fire. Instead, prosecutors sought to prove that a string of 23 arson fires in Banning Pass in 2006 -- including Esperanza -- were the work of one person, and that person was Oyler. The ignition devices and the fires' locations showed unmistakable similarities and followed a classic evolutionary pattern, becoming more efficient -- and destructive -- over time. DNA analysis, witnesses, tire tracks and surveillance camera images linked Oyler to several of the other fires, and the Esperanza followed the general pattern: The ignition device, for example, like many of the others, consisted of stick matches bound by a bluish-green rubber band to a Marlboro, Oyler's favorite brand of cigarettes. The prosecution's case depended on whether the jury accepted that the totality of evidence showed a pattern of destruction plotted by a single person "bent on destruction," as the chief prosecutor said.

Adding to the suspense was the fact that no one had ever been convicted of murder for setting a wildfire. The jurors -- eight women and four men -- took their seats and stared straight ahead. "I didn't want to give it away when we walked in," recalls one, Janis McManigal. The prosecutors had wanted women on the jury, they said later, because women can sew facts together.

The jury foreman handed the court bailiff a thick sheaf of verdict forms. Judge W. Charles Morgan, with 23 years on the bench, needed a full five minutes to read the forms, and the tension grew almost unbearable. Oyler faced 45 felony charges: Five counts of first-degree murder with special circumstances, 23 counts of arson, and 17 counts of illegal use of an ignition device. The real issue, though, was the Esperanza Fire and the murder charges. The other counts were added, prosecutors said, only to show that Oyler was responsible for the series that culminated with the lethal fire. The effort to prove that connection had dragged the trial to nearly two months.

"It felt almost like we were in church or at a funeral while the judge read the verdict forms," recalls Vivian Najara, the aunt of one victim. She noted that several members of Oyler's family had come into court

crying. "They seemed to know. His sister had a face full of tears."

Prosecutors -- and many people in the nationwide wildfire community -- hoped for more than a precedent-setting determination of guilt and punishment. They wanted to demonstrate absolute toughness to discourage wildfire arsonists, who burn hundreds of thousands of acres each year and trap random victims in the havoc.

The Esperanza Fire started shortly after 1 a.m. on Oct. 26, 2006, in the San Jacinto Mountains above Banning Pass, also known as the San Gorgonio Pass, the main path into the Los Angeles basin from the desert to the east. Ultimately, it burned 41,000 acres and destroyed dozens of houses. Forest Service Engine 57 rolled in to help defend the Twin Pines neighborhood, about 30 houses on a steep ridge face -- typical "wildland-urban interface," where development chews into previously wild and still unforgiving territory. The ground was bone-dry, crumbly and covered with tall chaparral.

As dawn broke, a Santa Ana wind, blowing hot air from the desert toward the sea, struck the flames and turned a fire that had been behaving normally into an unpredictable and deadly creature. The wind poured into a gulch that ran straight as the flight of an artillery shell up from the floor of the pass to an eight-sided home called the Octagon House, where Engine 57's five-man crew was deployed. Small fires already were burning in the gulch, under a blanket of heavy smoke. When the blast of oxygen entered the gulch from below, the smoke at the top of the drainage, a mile and a half away, blew out like a cork. Flames and superheated gases erupted in what is called an "area ignition" -- about as close to instantaneous fire as imaginable. In five to seven seconds, the fire raced at least three-quarters of a mile and swept the Octagon House.

"It was a cauldron of fire -- there was no measurable fire progression," recalls Chris Fogle, captain of another Forest Service fire engine, who watched the ignition from nearby. "There was a solid churning, as though someone had laid down a flamethrower in the canyon. There was a simultaneous ignition over a large area. It lit up the whole place."

It would not be entirely true to say Engine 57's crew never had a chance. They had been at the site for over an hour. They had radio contact with other Forest Service engines, including Fogle's crew, which had just endured runs of fire while defending other homes. A supervisor later said he warned Engine 57's captain, Mark Loutzenhiser, that big trouble was on the way. Loutzenhiser had 20 years of experience and a reputation as a careful leader, but instead of retreating, his crew set a portable pump in a swimming pool behind the Octagon House and laid out hose lines from the pool. They apparently planned to light a backfire to meet the advancing fire front.

But once the area ignition erupted, none of their preparations made the slightest difference. Flames overran the crew with a swiftness that left no time for more hose lays, burnouts or last words -- except for one unintelligible radio transmission, the haunting cry of a never-identified young man in extreme distress. The blast of flame killed two crewmen virtually where they stood: The terribly burned bodies of Jess McLean and Jason McKay, who were both 27 and considered fire veterans, were found near the fire engine, which was parked in front of the garage. Fire investigators estimated that the heat blast there topped 1,600 degrees Fahrenheit.

Loutzenhiser, 43, and Pablo Cerda, 23, who was in his second season on Engine 57, were found on the dirt driveway, badly burned but alive. They might have been on the road or behind the house when the heat struck them; there is no way to tell. Loutzenhiser lived for a few hours, Cerda for almost a week, but neither recovered enough to speak of their ordeal. Daniel Hoover-Najara -- Vivian Najara's 20-year-old nephew, who'd been on the crew less than two weeks -- ran, stumbled or fell down a slope below Loutzenhiser and Cerda, leaving behind a trail of gear, until he was stopped by a burning tree, where his body was found. Had these three men been behind the house and jumped into the swimming pool there, investigators believe they might have lived. But who can say what choices they had, if any, in those final seconds?

It took less than a day to identify Raymond Oyler as the prime suspect, less than a week to charge him, and less than three years to bring him to trial, altogether an extraordinary achievement for the legal

system. This was not by chance. Southern California is the nation's top hotspot for wildfire and one of the top three in the world, along with Australia and southern France. Sensitivity to the issue runs high. Fireline deaths happen virtually every season, but never before had an entire Forest Service engine crew been wiped out by flames, not in Southern California or anywhere else.

The speedy arrest came about after a Riverside County homicide detective, Scott Michaels, traced a Ford Taurus license plate to Oyler. A surveillance camera hidden on a utility pole had recorded the Ford at the site of another arson fire four days earlier. Michaels, assigned to the Esperanza case on the fatal morning, backtracked and quickly found the car's registered owner, who said he'd sold it to Oyler, who had failed to register the car in his own name.

The sense of heightened priority also energized the state Department of Justice, where technicians worked through the weekend analyzing evidence from previous wildfires in the arson series, none of which had been destructive enough to justify the heavy expense of DNA and other testing. Within days, the lab technicians found DNA residue on the cigarette portion of ignition devices from two of those fires. They matched it to Oyler's DNA.

Oyler did not appear to fit the standard profile for serial arsonists, which is similar to the one for serial killers: a white male blue-collar loner under the age of 27, with a history of being abused or ignored as a child, unable to establish relationships with women or stick with a job, and with no significant support group. Oyler, who had been raised in the Banning Pass area, worked in an auto shop in Beaumont. He learned his trade from his father, held steady jobs and was considered good at his work. There was no evidence that he been abused as a child. He'd had a series of relationships, fathering at least four children by three women, and spent a lot of time with family members, including three siblings. He was living with a girlfriend and their six-month-old child.

But Oyler was also an admitted drug user who had served time in state prison on charges related to drug possession. (He admitted only to using marijuana, but some of his relatives said he also used methamphetamine.) There were "full-sleeve" jailhouse tattoos of flames and skulls on both his arms, concealed under a suit jacket during his trial. If he fit any category of arsonist, investigators said, it was this one: Arson can act like a drug, creating excitement and the need for greater and greater stimulation.

The district attorney for Riverside County, Rod Pacheco, responding to public outrage, decided not only to file murder charges against Oyler, but also to seek the death penalty.

Wildfire arson has become an increasingly serious problem as the wildland-urban interface expands. In California, fire authorities have traced 7 to 12 percent of wildfires in recent years to arsonists. The picture varies depending on the locale, but extrapolating from California, arson likely accounts for 10,000 to 12,000 wildfires a year nationwide. In California alone in the past 10 years, 13 people have died in wildfires that were either confirmed or suspected arson.

But wildfire arson convictions don't come easily. Typically the crime scene is empty country; witnesses are few or nonexistent. The arsonist may be long gone by the time the flames spring to life, and the simple ignition devices are often destroyed; a single match is enough to start a blaze in light grass. Evidence is also often obliterated by firefighters hosing water, digging fireline and driving fire engines. And the wildland arsonist's motives are harder to fathom than those of his urban counterparts, who often ignite buildings simply to collect insurance or to kill a particular person.

For many decades, deliberately set wildfires were treated more as a nuisance than as a major crime. Rural communities not only tolerated arson in their backyards; they often practiced it as a cultural prerogative, to stimulate new grass on grazing land or to create jobs on fire crews.

The 1953 Rattlesnake Fire, which killed 15 firefighters in California's Mendocino National Forest, became a stark example of tolerance for wildfire arson. A young man named Stan Pattan, the ne'er-do-well son of a prominent Forest Service engineer, ignited it, hoping to find work on the fire crew. Pattan did get a job as a fire-camp cook, but raised the suspicions of an arson detective as he served the lawman breakfast. That was a different age: A grand jury refused even to indict Pattan for murder. He had not intended to kill

anyone, people said, and make-work or "job fires," as they are still known, were part of country living, typically taking their toll in unoccupied forest where no one got hurt. Pattan confessed only after he was confronted with photos of the dead. "The pictures certainly helped break him," said the sheriff who arrested him. "When he saw those, I believe he realized for the first time what he had done." Pattan was only charged with two counts of "willful burning" and served just three years in San Quentin prison. Yet the Rattlesnake Fire set a lasting mark: Those 15 deaths remain the greatest loss of firefighters on a wildfire since 1953.

As wildfires occur more often in the wildland-urban interface, the penalties for arson have ratcheted upward. Until Oyler, the most notorious wildfire arsonist was probably Terry Lynn Barton, a seasonal Forest Service employee whose duties ironically included spotting smoke. Barton touched off Colorado's 2002 Hayman Fire, which burned a state record of 138,000 acres, destroying 133 homes and 466 other structures, and causing the evacuation of 8,000 people. One evacuee happened to be Edward Colt, the state court judge who later handled Barton's trial and gave her a long prison sentence (12 years, which was reduced to six after an appeal). Barton offered several explanations, including that she'd started the fire accidentally while burning a letter from her estranged husband, but investigators concluded that her actions were deliberate. She pled guilty to arson and served the six-year prison term -- for a fire that caused no major injuries, double the time that Pattan served for a fire that cost 15 lives.

Since then, many fire starters, intentional or otherwise, have discovered that the public is fed up. In 2004, for example, a man named Matt Rupp was driving his mower over a field of dry grass in Northern California on an especially hot day. A passerby suggested he stop, on account of the heat and drought conditions. Rupp reportedly responded, "Go to hell." Instead, he went to state prison after his mower blade hit a rock and sparked a fire that gutted 86 homes. Rupp was sentenced to four years and handed a bill for \$2.5 million in damages. Even his defense attorney, Jean Marinovich, who said Rupp had been "hammered" by the judgment, acknowledged that sentences in such cases "have to be harsh enough for people to pay attention."

The wildfire community has closely followed the case of Van Bateman, a Forest Service fire management officer and one-time incident commander of an elite national incident management team. Prosecutors charged that in 2004, Bateman set two unauthorized fires on the Coconino National Forest south of Flagstaff, Ariz., to burn brush and give his crew a bit of work. The fires barely burned 22 acres, but they publicly exposed a long-standing and more or less accepted brush-clearing practice.

"I'm not lily-white on this," said Bateman, who admitted to setting the fires when confronted with global positioning data from his cell phone. He claimed that his actions were sanctioned by tradition, and more than 50 fellow firefighters sent letters to support him. "I'm saying ... I was doing my job. Did I obtain the proper authorization? I did not. But I wasn't trying to start an arson fire. I was trying to clean this piece of country up. I would be shocked if there's anybody who has spent their career in forest management who hasn't done this."

Eventually, the arson charges against Bateman were dropped, but a federal judge sentenced him to 24 months behind bars for starting the technically illegal blaze.

The prosecution of Oyler was a far more complex and challenging effort. Not only had no one ever been convicted of murder for setting a wildfire, the case against Oyler hung by a thread: The notion that a series of fires started with stick matches, cigarettes and rubber bands was the work of a single person. It helped that Oyler's DNA was present on ignition devices for two of the non-lethal fires, that all the fires were close together and near Oyler's home, and that the series evolved from small and ineffective blazes to larger and more destructive ones, one sign of a serial arsonist.

When the prosecution and defense finally rested, the jurors filed into their deliberation room, and a sheriff's deputy locked the door behind them. The room was small and sparsely furnished. A table with chairs occupied most of the space and whiteboards hung on a wall. For nearly two months, jurors had been forbidden to talk with family and friends or even each other about the disturbing narrative that had unfolded in the courtroom. Now they were free to speak and argue over interpreting the evidence.

The jurors introduced themselves, selected a foreman and took a quick vote to see how matters stood: Nine hands went up for guilty, three for not guilty. The foreman, Don Estep, cast one of the not-guilty votes, he said later, to make sure the process continued to the discussion stage. But he soon joined the majority.

Two women, identified here as Stephanie and Amanda (not their real names), could not accept the prosecution's theory that one man had set all the fires. Three other women, by chance seated at the opposite end of the table, confronted them day after day, using photographs, documents and maps from the trial. And day after day, the vote split 10 to 2.

Stephanie "had had a hard life and saw Raymond Oyler as an underdog, and she was an underdog too," says Janis McManigal, an events coordinator, who was one of the three who confronted Stephanie and Amanda. But Amanda, she says, "had trouble seeing the pattern, the connections" between the fires and the similarities of the ignition devices. She repeatedly asked, "How could one person have started all these fires?"

Exhibits studded with yellow memo notes went up on the walls. Scribbles and connecting arrows criss-crossed the dry-erase boards. "Everyone was congenial, it was a nice bunch of people, though I had to cool it down once or twice," Estep recalls. "There was a lot of venom in that room," says McManigal. Finally, in their fifth day of dispute, the jurors separated the 23 fires into groups, based on the weight of the evidence for each. Stephanie and Amanda agreed that Oyler was guilty of starting some fires but refused to go along on three relatively inconsequential ones, for which there was virtually no evidence.

The jurors took a final, secret ballot -- unanimous on all but those three fires. Exhausted, they went home for a night to recover. They returned to the open courtroom the next day, and the long ordeal came to an end at last.

When Judge Morgan finished reading the documents, he handed them to the bailiff, Gina Gurrola. In a strong, clear voice and without hesitation, Gurrola read out the verdicts. "Guilty," she said, for each of the crucial five counts of first-degree murder. She repeated the same word for 17 counts of criminal use of incendiary devices and 20 of the 23 counts of arson. Morgan dismissed the charges on the three fires on which the jury deadlocked.

There was no outburst. On the firefighter side of the courtroom, people bowed their heads and held each other. Several wept, and some left the courtroom to recover. There were also tears on the Oyler side. Oyler had appeared unemotional -- even blank -- throughout most of the trial, only occasionally exchanging a look with his supporters. At the conclusion of this day, however, as he was led from the courtroom in shackles, he cast a long, sad glance over his shoulder in the direction of his family, which included his 22-year-old daughter, Heather.

The guilty verdicts were not the final act in the courtroom drama. They led to a second phase of the trial, in which the same judge and jury would decide whether the death penalty was justified. The most wrenching testimony and evidence had been withheld from the first phase, so as not to prejudice the jury as it determined guilt or innocence. Only in the penalty phase would the families of the fallen firefighters take the stand; only then would investigators speculate on the final moments of Engine 57's crew. Only then would photographs of the five men, from childhood to death, be projected onto television screens in the courtroom. Only then would their loss be truly measured.

A fatal fire does not stop burning when flames are extinguished and the mop-up crew heads home. A fatal fire burns down through generations, scarring forever the lives of the survivors who knew the risks but held onto the hope that a much-loved face would always turn up again at the kitchen door, tired and dirty but smiling and alive. Even in a tragedy, the survivors have the consolation of what are called the "gifts of the fire" -- the outpouring of compassion, a reaffirmation of the brotherhood of fire, the lessons learned. But the penalty phase of the Oyler trial was not about gifts. Rather, it was about what is left when the embers have cooled, the memorial services are over, and the reality of irretrievable loss settles in.

When Maria Loutzenhiser, the first of the family members to take the stand, testified about the loss of her husband, Mark, she had trouble completing a sentence. She could not tell her story in proper sequence.

She stammered and stumbled over words and struggled with her emotions. Yet the audience understood her message.

She turned in the witness box and looked straight at the jurors as she spoke. Mark had been the foundation upon which her life rested. She drove him nuts sometimes because she called him so often at work, just to hear his voice and feel the calm of his presence. They had beautiful children, a house in the cozy mountain town of Idyllwild, and loving friends who rallied for her after Mark's death. The wife of a fellow captain virtually moved in to the Loutzenhiser home for most of a year. Friends, neighbors and a community group remodeled the house, basically rebuilding it from the ground up; money donated by friends and strangers had poured in. Maria had an abiding faith in God, but the place Mark had occupied in her life was now a great emptiness.

By the time she finished speaking, many listeners were in tears. The lead prosecutor, Michael Hestrin, called for a break and left the courtroom. A few minutes later, in the corridor outside, he had tears running down his cheeks.

When the hearing resumed, Jess McLean's older brother, Jason, managed to articulate the common rage of the survivors. Jess had been a brat, his brother said, but after their father died and Jason moved away, he stepped into the man's role in the family. Jess had been small for a firefighter but intensely dedicated -- working himself so hard that he became a hotshot sawyer, a job usually reserved for big men. Everyone, Jason said, had been able to count on Jess.

"What does his loss mean to you?" the prosecutor asked.

"The way he died pisses me off," Jason McLean said. "If my brother would have died in a fire that was started by lightning, it would have been easier to deal with. My brother got murdered, and that's something I don't know how to deal with. He should not be dead. I have a rage that I can't even explain to you. He knew the risks of his job. (But) it will never be right."

After six days of such testimony, on March 18, 2009, the jury decided promptly and unanimously recommended the death penalty. On June 5, 2009, the judge formally imposed that sentence.

The required appeals will keep the Oyler case dragging on for many years. But Oyler's prosecution has already been used as a model in another wildfire arson case. Last October, prosecutors in San Bernardino County, adjacent to Riverside County, brought murder and arson charges against Rickie Lee Fowler, saying that he set the 2003 Old Fire, which burned 91,000 acres in the L.A. area and arguably caused at least five residents' fatal heart attacks. (Fowler was already in prison on unrelated charges.)

Last September, investigators concluded that the Station Fire, which burned 160,000 acres in the L.A. area last summer and killed two firefighters, was also arson. No one has been charged in connection with that fire yet, but in the wake of Oyler, murder charges look more likely.

This year marks the centennial of the Big Burn of 1910, the most politically potent wildfire in U.S. history. The Big Burn, which scorched more than 3 million acres in Montana and Idaho and killed no fewer than 85 people, ushered in the modern era of organized firefighting. The Forest Service hierarchy, horrified at the destruction and loss of life, vowed that such a catastrophe would never happen again. All wildfires would be extinguished, it was decreed, with the federal government providing the necessary resources for the job. A century later, the resulting fuels buildup on wildlands is a familiar problem.

A host of changes have come to fire country, and today almost nothing seems the same. There are more homes and more people in harm's way, more efforts to build fire-resistant homes and questions about whether homes should be defended so intently, more social and cultural diversity that complicates everything. There are policy adjustments, more and better firefighting equipment, less tolerance for negligent burning and arson and firefighter mistakes, and much more litigation. One thing, though, has not changed. Fire itself remains elemental, wild and sometimes deadly.

The conviction of Raymond Oyler for murder would have been unthinkable a century or even a few decades

ago. Swift justice will not bring any of the victims back to life, but it sends a new and unequivocal sign of community respect for those who suffer irretrievable loss while engaged in defense of lives and property. The Oyler case stands as a warning to every would-be fire starter: Tolerance for the torch has gone the way of the Old West.

Sidebars

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The Fiery Touch is adapted from a forthcoming book by John N. Maclean, the author of a series of books on fatal wildland fires. A former longtime Washington, D.C., correspondent for The Chicago Tribune, he divides his time between a family cabin in Montana and his home in D.C. He can be reached at <http://JohnMacleanBooks.com>.

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