

OUTLOOK

Commentary and Opinion

Is Texas Justice a Little Too Blind?

By Hugh Aynesworth and Jim Henderson

DALLAS—In the American ideal, there is no injustice. The scales are balanced by 200 years of constitutional refinement. Foremost among the law's grand promises is this: Life and liberty will not be taken lightly.

That's the way it is in classrooms and bad movies. In the real world, criminal justice is imperfect and imprecise. Cops get sloppy. Prosecutors cut corners. Judges cover their political rumps. You don't have to do the crime to do the time. Sometimes, you don't have to do anything.

Marvin Wells, a 22-year-old former high

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school basketball star from Flint, Mich., was released from jail here in September after eight months of waiting to be tried for a murder he did not commit. The judge and the prosecutors perfunctorily rejoiced in the discovery of the real killer and proclaimed it further evidence that the criminal justice system works. Marvin Wells, after all, emerged as a free man.

More aptly, though, the case is a study in the system's defects: The cops failed to follow a lead pointing to the man who later confessed to the killing; prosecutors were willing to ask for the death penalty with no significant evidence other than statements from witnesses who could not make positive identification; a judge, after learning Wells was innocent, left him behind bars for several more days partly to avoid the accusation that he was soft on crime.

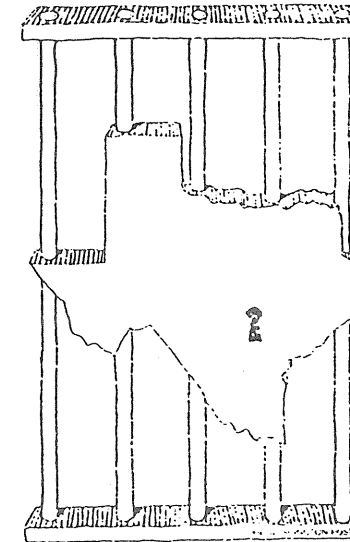
In the past few years, courthouses in Texas have contributed a body of gloomy

lore to support the notion that something has gone awry in the quest for a safe and decent society; that in a system preoccupied with retribution, justice too casually can be forsaken for a pound of flesh.

Two years ago another young black man was found to be innocent after serving 16 months of a life sentence for a Dallas County robbery. Currently, taxpayers in El Paso are in an uproar over the prospect of spending half a million dollars to prosecute a murder case in which there is no physical evidence against the defendant and in which there has been, in fact, strong exculpatory testimony.

Wells' case embodies all of the flaws that run, in various measure, through each of the others: the egotism of cops and prosecutors, the political insecurity of judges and the eagerness of jurors, their commu-

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Texas Justice: Too Blind?

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ities covering before gargantuan crime statistics, to convict on meager evidence.

What happened to Wells was not an isolated incident. At a meeting of the American Association of Criminology last year, Prof. Michael Radelett of the University of Florida and Hugo Bedau of Tufts University reported that their study of 7,000 convictions in potential capital cases between 1900 and 1982 had found 439 instances in which the defendants, 23 of whom were executed, later were determined to be innocent. That represents an error rate of 1 in 20. Five of those cases were in Texas, not the worst record among the states over that span.

In November of 1985, three black men robbed a convenience store in Carrollton, a Dallas suburb, and, while the store's security camera rolled, shot and killed a young customer who walked in on the crime. They took a sheepskin coat and wrist watch from another customer and fled with several cartons of cigarettes. A rookie officer sent to investigate failed to secure the crime scene and preserve any physical evidence, such as fingerprints, so the police relied on the video tape of the robbery, played on local television newscasts, to help find the killers.

Among the more than 200 tips they received was one from a parole officer, who said the gunman resembled a parolee named Andre Anthony Lewis. For reasons they have never explained, the Carrollton police ignored that tip and focused instead on one from a "confidential informant" who identified the man as Marvin Wells.

With his arrest, the police shut down their investigation and the parole officer's tip about Andrew Lewis was never pursued, although no convincing case against Wells could be developed. The customer whose coat was taken could not identify him as the robber. Small wonder. The man on the tape's grainy image was at least 50 pounds heavier than Wells and his face was partially hidden by a cap. The store clerk made only a tentative identification. "It looks like him," he said, "but it doesn't sound like him." Wells' girlfriend was questioned and, she told a Dallas reporter, threatened with jail if she refused to cooperate. "They scared me, so finally I said it could be him," she said.

On the shaky word of a "confidential informant," an uncertain victim and a frightened girlfriend, the district attorney's office obtained an indictment for capital murder. Under those circumstances, could death by lethal injection be a serious possibility for Marvin Wells? Of course.

The death penalty is no abstraction here. Texas has the nation's second largest death row population and since 1976 has executed more prisoners than any other state. Juries can be harsh—life sentences were once common punishment for possession of small amounts of marijuana. And in a land where lawmen have historically been wrapped in the threads of mythology, juries can be underquiding and willing to accept a cop's suspicion as proof of guilt.

In a case with striking similarities to Wells',

Lenell Geter was prosecuted by the same district attorney's office and received a life sentence for robbery on evidence equally unconvincing.

Lenell Geter moved to Texas from South Carolina at the beginning of 1982 to take a \$24,000-a-year engineering job with E-Systems, a major defense contractor, at its plant in Greenville, 60 miles from Dallas. He spoke softly, didn't drink or smoke, had no criminal record and was considered bright and hard-working by his colleagues. He often spent his lunch hours reading and feeding the birds in a municipal park.

Greenville is a town with a mean history of race relations. As recently as the late 1960s, a sign on Main Street boasted that it was home to "The Blackest Land—The Whitest People." Six months after he arrived in town, Geter, who is black, was arrested for robbery after an elderly woman, who testified that his frequent presence in the park "upset" her, noted his car tag number and gave it to the local police. On that basis alone, the police began showing Geter's photograph to victims and witnesses to robberies in the area. Eventually, he was charged with robbing a Kentucky Fried Chicken restaurant in the Dallas suburb of Balch Springs.

Geter's co-workers testified that he was at work the afternoon of the robbery and the prosecution's case rested entirely on the testimony of witnesses who could not agree on a description of the robber. Geter, 6 feet tall, wore short hair and was clean shaven. One witness described the robber as 5-foot-6; another said he



Embarrassing Confessions

Henry Lee Lucas embarrassed authorities by fraudulently confessing to hundreds of murders. Now, despite a death sentence and five life terms for other crimes, he again faces trial based on a dubious confession.

had a bushy mustache; another said he had a small beard; another remembered no facial hair; two said he carried a blue-and-white bag; two others said the bag was brown. No gun, fingerprints or other physical evidence was produced at the trial and no suggestion of a motive was offered by prosecutors.

Largely through the efforts of his co-workers, a lawyer provided by the NAACP and publicity about the discrepancies in his case, Geter was released from prison and before he could be retried, another man confessed to the Balch Springs robbery.

Assistant District Attorney David Lewis said he was glad Geter had been cleared, adding, "This is just one of the problems of living in our society."

A week before Wells' trial was to begin last August, an inmate held for robbery in a neighboring county told an investigator that he and his two nephews had robbed the Carrollton convenience store and that one of them, Andre Anthony Lewis, had killed the young customer. His confession had some credibility because he mentioned the sheepskin coat taken from another customer and told the investigator where to find it.

Informed that they might have the wrong man, the Carrollton police department did not respond, so the investigator passed the information to the Dallas district attorney's office. Chief Prosecutor Norm Kinne interviewed the inmate and obtained a confession from the other nephew but allowed Wells' trial to begin without telling the judge or defense attorneys of the new developments.

Kinne later told a reporter that he did not believe the inmate's confession. Asked about the corroborating evidence, Kinne said, "What do you think I'm here for? I don't work for the defense."

Judge Ed Kinkeade learned of the confessions from a fellow judge in the county where the inmate had confessed, but decided to keep him in jail pending the results of a voice-print analysis, something that the police and prosecutors had failed to conduct earlier. On Monday, Sept. 8, the judge learned that Well's voice did not match that of the gunman on the video tape. Wells was innocent and there was no further reason to hold him.

Kinne pleaded for time to arrest Lewis before releasing Wells, but the reason for wanting the delay appeared more political than strategic. A retirement party was scheduled the following Thursday night for Henry Wade, the district attorney who had become something of a law enforcement legend in his 34 years in office. Shrewd, folksy and stern, Wade's stature had become such that judges and other local politicians courted his favor and feared his wrath. For a Dallas County office-seeker, one of the most prized trophies is a billboard that says, "Endorsed by Henry Wade."

His retirement party was to be keynoted by none other than Attorney General Edwin Meese. An assistant district attorney asked Kinkeade not to free Wells until it was over.

Kinkeade acknowledged to the Dallas Times Herald that he feared Wade would accuse him of being soft on crime if Wells were released. He had suffered some criticism the week before when his order to relieve jail overcrowding

caused the release of some minor offenders. He told a reporter he fretted over a headline that might say: "Kinkeade—The Judge Who Frees Everyone From Parking Violators to Capital Murderers."

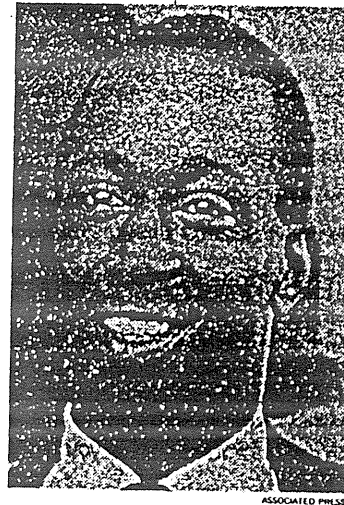
Wells, innocent, remained in jail until Friday.

"It is unfortunate, but it happens," Brunson Moore, a district judge in El Paso, said of the political pressures that come to bear on the administration of justice.

Moore is the presiding judge in the capital murder case of Henry Lee Lucas; a 50-year-old derelict who took lawmen on a two-year hayride with bogus confessions to hundreds of murders. While he was in the custody of the Texas Rangers, Lucas owned up to more than 600 crimes he knew nothing about and sniggered as authorities from across the United States and Canada indulged in an orgy of case closings. The Rangers wiped nearly 40 of their cases off the books and other agencies closed 200-250.

He was exposed as a fraud in the spring of 1985 and many lawmen quietly reopened cases he had "solved" for them and prosecutors dropped indictments. Few episodes have so bruised the ego and tarnished the image of the Texas Rangers. They had either been conned by a snaggle-toothed geek with an I.Q. of 84 or they had fed him information to help him confess. The evidence suggested both.

Perhaps to vindicate themselves, the Rangers pushed for another conviction. Jim Adams, a former deputy director of the FBI and head of the Texas state police, frequently cited an El Paso murder as "the best case against Lucas" and he pledged to assign a Ranger full-time to the investigation, even though the indictment had been returned months earlier and, presumably, there would be little left to investigate.



Embarrassing Conviction

Engineer Lenell Geter was sentenced to life for robbery although no physical evidence or motive was presented at his trial. A barrage of publicity finally freed him, and before he could be retried another man confessed.

In El Paso, the case is widely viewed as little more than a costly exercise—the tab could be more than \$500,000—in face-saving. In a lengthy pre-trial hearing this fall, El Paso residents got a glimpse of the case against Lucas.

Lucas' confession to killing Librada Apodaca in her home on May 27, 1983, was seriously flawed. He failed to lead police to the house. He said he entered through a rear door. The killer entered through a window. He said he beat her to death near the front door. She was killed with an ax in her bedroom. He said he took money from a purse on a night stand. Her purse was found in the closet with \$80 in it. He said he raped her. Lab tests determined that the semen found on the victim was not his. More than 70 identifiable fingerprints were found in the house. None was Lucas'.

Besides the confession, the prosecution had a single witness, a waitress who told police she bought a crock pot, similar to one Mrs. Apodaca had owned, from a man who visited the truck stop where she worked on the weekend of the murder. In her first statement to the police, she did not remember Lucas' glass eye. In a later statement, she remembered it. Rod Ponton, Lucas' court-appointed attorney, discovered that the waitress had paid for the crock pot with a check and it was dated one month after the murder. Too, Ponton produced a string of witnesses who placed Lucas in Stoneburg, 600 miles away, the weekend of the murder.

District Attorney Steve Simmons was criticized, in broadcast editorials and in political circles, for pursuing the case. The county commissioners expressed their displeasure by cutting the D.A.'s salary by \$10,000 a year. Simmons and his top assistant each said it is for the other to decide to dismiss the case.

What is at stake in the trial? Certainly not the danger of putting Henry Lee Lucas on the streets again. He already has been sentenced to death once and to life five times. By insisting that it was the "best case against Lucas," Adams put the reputation of the Rangers on the line, and the Rangers are not taken lightly, especially by politically ambitious prosecutors.

Whether justified or not, the Lucas case has generated an element of dread in the El Paso County courthouse. After Maryland State Trooper Fran Dixon, who had knowledge of Lucas' activities in that state, testified that a Texas Ranger once suggested that he fabricate information about Lucas' whereabouts, Judge Moore escorted him down a corridor and warned him, "Be careful going to the airport. If you have any trouble, call me."

There is a uniqueness to the American system of justice that is corrupted when the "rule of law" is replaced by whim or passion. Ideally, one segment of the criminal-justice system does not fear another; standards of evidence are not compromised for convenience; the burden of proof is truly a burden, and convictions are not counted like so many runs batted in. Simple diligence would have prevented the errors that cost Wells and Geter their freedom.

The menace is not limited to a few unfortunate. Each time an innocent "suspect" is locked up, the guilty one remains free. Neither justice nor society's safety is served when innocent men are locked up.