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# Prosecutor on defensive

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## McLennan district attorney caught in whirlwind of accusations

By Jim Phillips

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WACO — Vic Feazell, district attorney of McLennan County, says he still sees himself as he once was, a shy little boy who did not like to go outside and play with the other children.

Feazell has been playing with the big boys lately, and now they are threatening to take away all of his toys.

A federal grand jury in Austin has been investigating Feazell, and although prosecutors will not talk about the focus of the inquiry, sources say many of the witnesses have been former criminal defendants in McLennan County.

For the 34-year-old Feazell and his supporters, the issues are simple: He endangered himself by criticizing the Department of Public Safety investigation of Henry Lee Lucas, and everything that has happened since is part of a retaliatory plot.

For everyone else, the issues are contradictory, obscured, or convoluted.

Feazell's popularity appeared unassailable only a few months ago. He came across to much of the public as a tough, no-nonsense prosecutor who did not mind stepping on anyone's toes to obtain justice.

He had taken on the school district in a child abuse investigation, and his office had successfully brought charges and obtained convictions in the slayings of three teen-agers at Lake Waco in 1982.

When Feazell, who was lead prosecutor in the murder trials, returned from the latest triple-murder trial in Cleburne last April, he was on top of the world.

"It was like I was everybody's hero. I was known as a hard-hitting, successful prosecutor," he said. "Then came Henry Lee Lucas. Between April and July, you can see how everything has changed."

The changes include the federal investigation, a series of television news stories that portrayed him as a weak prosecutor — especially on alcohol-related charges — and a decision by the county Republican Party to target the district attorney's race next year as an election they can win.

FBI agents and DPS investigators have been questioning a number of people, including several with connections to criminal cases used as examples in the series of stories that began in June on a Dallas television station. The stories raised questions about the dismissals of drunken driving and drug cases against defendants who knew Feazell or someone in his office. Several cases were dismissed after the defendants paid attorney fees described by the television reporter as unusually high.

Feazell denies the implications of the television reports, and points to his high conviction rate as proof that his office is not soft on crime.

The stories, and the first public knowledge of the federal investigation, came two months after Feazell began a grand jury investigation into Lucas' confessions to three McLennan County homicides.

That investigation, aided by Attorney General Jim Mattox and expanded to cover many of Lucas' other claimed crimes, touched off a firestorm when Feazell and Mattox said they believed Lucas had been fed information by investiga-

Lucas had confessed to hundreds of killings across the country and in Canada. Publicly he retracted those admissions after he was brought to Waco under a bench warrant. Lucas was brought to Waco April 12, two days before lengthy stories in the *Dallas Times-Herald* used work records and other data to cast doubt on Lucas' ability to be within hundreds of miles of the sites of many of the "cleared" killings.

Col. Jim Adams, director of DPS, used to be second-in-command of the FBI. He grew up in Mexia, and went to school with David Smith, now Waco city manager. According to the retaliation theory, Adams started a DPS investigation of Feazell and persuaded friends in the FBI to do the same, while Smith started a city investigation of Feazell and encouraged the Waco police chief to criticize the prosecutor. Chief Larry Scott has said weak prosecution has hurt police morale, and said his department will be taking more cases to federal prosecutors rather than Feazell.

That theory has many supporters.

Roy Minton, the Austin attorney who represents Feazell, said, "Don't you think it's a little naive to ignore the fact that nobody is looking at any of this until (Feazell) gets crossways with some of the heavies in law enforcement?"

Tom Moore, who was district attorney in Waco for eight years in the 1950s and later served in the Legislature, said, "I can't help but feel that this is two departments sticking their tongues out at each other."

Angered by the claims that he initiated the investigation to get even with Feazell, Adams said last week, "Any allegation that any in-

vestigation in place is retaliatory is just absolute rubbish.

"What we do in an investigation is a matter of record (that) is available for review when the time comes."

Some in Waco and elsewhere say the investigation of Feazell began long before the district attorney took an interest in Lucas, and say they believe Feazell started the Lucas inquiry as a smoke screen and a convenient way to claim retaliation by DPS.

Feazell is not averse to comparing himself to Jesus Christ. He took the opportunity again when saying he may be down, but is not defeated.

After Jesus raised Lazarus from the dead, "when he rode into Jerusalem they laid palm branches in front of him," Feazell said. "It wasn't too long after that they crucified him. But you can't keep a good man down."

Biblical references come naturally to Feazell. The son of a Baptist minister and an ordained minister himself, Feazell once was pastor of two Temple-area churches and still preaches sermons to area congregations on Sundays.

A graduate of Leander High School, Feazell ran for the Waco City Council in the late 1970s and lost. In 1982, he mounted a more successful, and much more expensive, race for district attorney against six-year incumbent Felipe Reyna.



Photo by Rod Aydelotte, Waco Tribune-Herald

Prosecutor Vic Feazell: 'I hope I haven't let John Wayne down lately.'

One of his selling points during the campaign was that he had won a then-record jury award in a civil trial against a Waco bank. The suit was over the bank having foreclosed on the man's property, a perfect case for a populist candidate.

Feazell in fact was second-chair during the trial, which was led by Gary Richardson, an Oklahoma lawyer who initially had the case and brought in Feazell to assist as local counsel. Richardson later developed his own reputation as hard-hitting and fearless when he was a U.S. attorney and obtained convictions on a number of public officials in Oklahoma.

Richardson, who has offices in Oklahoma and Dallas, now represents Henry Lee Lucas. He was brought in by a court-appointed Waco lawyer who obtained his name from Feazell.

A former motivation instructor and salesman, Richardson said he had a contract with Lucas that allowed him to pick the cases in which he will get involved. Asked if he had a book or movie deal with Lucas, he said he did not discuss his contracts with clients.

One of Richardson's first acts was to file a lawsuit against DPS investigators and Williamson County officials who had housed Lucas for almost two years.

The Williamson County connection in the Lucas case was the first issue raised by detractors of Feazell and Mattox when they began their high-profile grand jury investigation. Ed Walsh, as Williamson County district attorney, had obtained the only death penalty against Lucas. Walsh had switched to the Republican Party in January, and was considering a race for attorney general.

The scenario presumed that one motive of the Waco grand jury inquiry was to discredit Walsh as a potential opponent of Mattox, or Feazell if Mattox decided to run for governor and Feazell chose to run for attorney general.

Feazell's response was to dismiss Walsh, who later announced for attorney general, as a "gnat" unworthy of such concern. He also suggested Walsh was too ugly and talked too slowly to be a serious threat to Mattox.

Told of the gnat comment, Mattox said last week, "I'm glad he said that."

As to the anti-Walsh charge, he said, "I don't consider him a seri-

He said the grand jury investigation was simply an attempt to "clean up a mess that's been made" by law enforcement officials.

Adams disputed the charges that investigators fed Lucas information, and that police agencies blindly accepted Lucas' claims at face value.

"I think there has been a lack of recognition that the police agencies conducting these investigations have determined by themselves in many, many cases that Henry Lee Lucas was not telling the truth."

He said Texas Rangers and local agencies rejected claims by Lucas or his occasional companion, Ottis Toole, to 47 Texas slayings. And, Lucas described 69 killings in which no matching cases could be found. "It's nothing new that Lucas has claimed to have killed far more people than he committed."

One of the few people who will confirm being questioned by federal investigators regarding Feazell is Tony Duty, a Waco defense lawyer. Duty said he was quizzed about buying \$1,000 in tickets for a Feazell fund-raiser, and was asked if the purchases were connected to a decision by Feazell's office to dismiss a DWI case against Duty's daughter.

Duty said the two events were unrelated, and said his daughter was worried by Feazell that if she got into trouble again he would prosecute her. His daughter was arrested again for DWI, and she received an uncommonly stiff sentence, he said.

The Dallas television reports referred to a number of other dismissals by Feazell's office. Feazell readily acknowledged that several of the cases were dismissed for reasons other than legal problems with the evidence.

But during his 1982 campaign, Feazell had said, "We need to cut out the plea bargaining and the cases that are swept under the

The practice of dropping cases because of extenuating circumstances is called, especially in McLennan County, prosecutorial discretion. In some places it is called the good-old-boy system.

It is a practice that has withstood the test of time, except in Travis and a few other counties where policies have been changed in the past few years. In McLennan County, defense attorneys and two former district attorneys said, prosecutorial discretion has been a part of the judicial system for many years. If anything, these sources said, Feazell was less likely to drop a case than many of his predecessors.

"I've never heard any difference between the way things are done now and the way they have been done for the last four or five DAs that I know of," said former District Attorney Don Hall.

None of this means, as Mattox and others pointed out, that Feazell might not be found to have committed crimes.

Mattox said he is convinced the federal government stepped up the investigation of Feazell because of the Lucas inquiry. The attorney general said: "Regardless of why it started, if it produces evidence of wrongdoing by Feazell he should be held accountable for that."

"I think he's a courageous young man. That doesn't mean he couldn't have done anything dishonest."

The political fallout from the investigation has been difficult for the Waco political establishment to assess.

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Moore, the former district attorney and legislator, expressed confidence in Feazell but said the investigation is "very detrimental to the profession, the county, the courthouse, and all of us."

If Feazell emerges from the investigation unscathed, "he's going to be king of the world," Moore said. "I think there's a lot of sympathy for him."

There is not much sympathy in the county Republican Party, where chairman Craig Reid said, "In the entire leadership of the community, I think there's been a great deal of political damage done. I think the average voter still supports Vic, but I think that's eroding quickly."

"We are targeting that race," he said, adding that a few months ago Feazell was considered unbeatable.

"I think Vic's ability to work with law enforcement has been damaged, and that may not be repairable."

Feazell said the adverse publicity he has received in the past six weeks has only strengthened his support, at least among the people he said elected him. "The farmers, the union people, the blacks, the Hispanics, they're all with me."

But he said the events of the past few months, primarily the investigation of his activities, have been "a real awakening."

"I never thought of myself as a naive person," he said. "Now I realize that naivete is just a matter of degrees."

Asked if he would pursue the Lucas investigation, if he had it to do over again, Feazell said: "I don't know. I doubt it. My opinions haven't changed that I've done the right thing. I've always considered myself a very strong person, so it's a sad commentary to sit here and tell you I don't know."

Two of Feazell's heroes are John Wayne and Audie Murphy, because one could always count on

them, and, one senses, because they were always right.

Feazell has a large picture of Wayne on his office wall, and said, "I hope I haven't let John Wayne down lately. I'm a lot more cautious than I used to be. I used to just put my head down and charge ahead."

Despite the full-speed-ahead mentality, and the fact that he has a staff member who serves as a full-time administrative assistant, press aide, and political adviser, Feazell denies claims that he is an ego-driven, publicity-crazed politician. "I was always a shy boy. I didn't like recess. I still see myself as a shy little boy."

After saying the whole Lucas-as-mass-murderer saga was "a big hype," he compared himself to the little boy in the fairy tale *The Emperor's New Clothes*.

"The little boy says he's naked, and I'm that little boy, and I've got the king mad at me."