

# The Law and Lefty Fowler

perry mason had nothing on john lee smith  
only this legal battle was no mystery novel

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'60journ

ON November 22, 1960, a 48-year-old ex-policeman emerged from the State Prison at McAlester, Oklahoma. He had served 12 long years of a life sentence—and now the state had ruled that he had been tried illegally, due process of law had been violated, and he was free to take up the threads of his interrupted life.

The story of E. L. "Lefty" Fowler's conviction, imprisonment and the fight for his release is a yarn straight from the detective magazines with the plot turning on a chance meeting between the creator of *Perry Mason* and an O.U. law student, a meeting which destined John Lee Smith, '54Law, to play a big role in freeing Lefty Fowler. But the story really begins in Duncan, Oklahoma, long before either Erle Stanley Gardner or John Lee Smith had ever heard of Lefty Fowler.

In 1948 Fowler was a part-time policeman in Duncan, a short distance from his home in Waurika. At the time the city of Duncan was experiencing a "crime wave." The local situation was tense and explosive. The citizens wanted action; the cry went up for a wholesale clean-up.

Then a brutal murder was discovered. A Duncan waitress who had been missing for several weeks was found, her body stuffed in the trunk of an automobile near her

rooming house. Understandably, this crime only increased the clean-up demands. A grand jury was called into session and recommended the ouster of certain law officers, who later figured in solving the murder case.

Shortly after the waitress had disappeared, Fowler had just walked off his job and returned home. Later he was arrested in Waurika and jailed for drunkenness. Then a second prisoner was put in Fowler's cell. When the new cellmate was to be released, he offered to obtain Fowler's release at the same time. In return Fowler was to drive the man and his lawyer to Chickasha.

Near Duncan, an Oklahoma Highway Patrol car sired the car Fowler was driving to the side of the road. Fowler was told that the car was stolen, and he was arrested. Not until four days after being put in the Duncan jail did Fowler learn that he was being held on suspicion of murder.

A complete curtain went down; his relatives could not find him; he was held completely incommunicado. Then, out of the blue, on March 28, came the announcement that E. L. Fowler had confessed to the Duncan murder.

The two men supposedly traveling to Chickasha with Fowler that day were Okla-

homa State Crime Bureau agents. When they were stopped, one of the men had jumped from the "stolen" car and yelled for Lefty to run. Fowler refused.

The arresting trooper had told Fowler that the car was stolen; yet at the preliminary hearing he testified that the arrest was "on investigation of murder," but he had stopped the car for reckless driving. Under cross-examination he admitted that the car was not stolen and he never did know to whom it belonged. No charges other than murder were ever lodged against Fowler, and it was later revealed that the "stolen" car actually belonged to a relative of the county attorney.

After the curtain of secrecy had gone down, Fowler had been taken to the Grady County jail in Chickasha. Yet the records show he was still being held in the Stephens County jail in Duncan—a prisoner in two different jails, in two different counties, at the same time.

In 1953, Fowler presented a petition to the State Pardon and Parole Board and in this lengthy document can be found a part of this jumbled picture:

"Late in the afternoon, the exact day he doesn't know, he and three other suspects were taken out of the Duncan jail and told that they were going to be taken to Okla-





While Fowler waited in his McAlester prison cell, John Lee Smith, '54Law, joined forces with Erle Stanley Gardner to secure his release.

homa City for a truth serum or lie detector test. This was what Fowler had asked for and he felt a sense of relief at the news. He believed that he would be proved innocent and soon released. But the officers stopped at Chickasha and the four suspects were lodged in . . . jail.

From this point on, Fowler says that he was never questioned about the death. . . . He was *told* he was going to sign a confession to it."

Following this is a long description of ill treatment that Fowler claims he received over the period of time since he was first arrested. He contended that this treatment was responsible for his confession of guilt. The court records show that he signed four different statements.

Confusing? To say the least. And this confusion is probably a good part of the reason why Fowler spent 12 years in prison. A mixed-up case with jumbled facts was complicated a tragically confused Fowler.

After being sentenced to life, Lefty Fowler sat in prison waiting for his case to be appealed by his lawyer. The appeal was never filed. Fowler was now a forgotten man, as far as most people were concerned.

When Fowler learned that his case was not being appealed, he contacted the hope

of many a convict serving time for a crime but claiming innocence—*Argosy Magazine's* now-defunct Court of Last Resort. This department of the magazine had been set up to aid these men when all other sources of help had been exhausted.

The Court had certain requirements. It would not get involved with any case where the applicant had more than one conviction, and a certain number of persons from his community had to sign an affidavit stating they believed in his innocence. Fowler could meet the requirements, and his case attracted the special interest of the Court's chief, famed mystery writer Erle Stanley Gardner. Gardner took up the case, and a long series of investigations on Fowler's behalf began.

John Lee Smith had never heard of the Fowler case in 1953 when he walked into an auditorium at the University of Oklahoma. A junior in law school, he had come to hear a guest speaker, one Marshall Houts.

"Houts was an investigator for the Court of Last Resort, and he devoted almost his entire talk to the Fowler case," Smith recalls. "I thought it was highly interesting at that time, but little did I ever dream that one day I would have a part in releasing that very man from prison."

Just the next year, however, Smith and

Gardner were to meet, an important meeting that would one day bring Smith into the case.

As president of the O.U. student bar association, Smith had certain duties at Law Day that year. One of these duties was to meet the principal speaker, Erle Stanley Gardner.

At the outset of the Fowler case, Gardner had obtained the services of several prominent Oklahoma lawyers to work on the case, and a pardon and parole was applied for, but to no avail. Gardner was looking for another lawyer to continue his work in 1958, when he was referred to Smith. He remembered the law student whom he had met some years ago and thought Smith might be worth a try.

Gardner was looking for a smart, young lawyer, one who would not let anything sway him from his purpose. The Court of Last Resort had now become defunct, and after the agreement was reached, it was just Smith and Gardner.

As a retainer Gardner paid Smith's expenses only. The challenge that lay ahead provided the incentive that Smith would need to carry him through almost 2½ years of work.

Stacks and stacks of correspondence, rec-

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ords and research testify to the work that went into Lefty Fowler's release. Besides talking to Gardner once personally, and many times by telephone, Smith and the author kept up a steady correspondence on the case. About half of Smith's entire work was gathering evidence and documentary materials, while the other half was comprised of legal research and development of legal basis for appeal.

"The evidence that I was relying on was mainly from people that had no particular interest in the case personally," Smith explains. "I suppose this is why I ran into no special trouble in gathering my case."

Smith's biggest help came from the 1953 pardon and parole board hearing. Although the "Last Resort" attorneys had failed to obtain Fowler's release at this time, their investigation presented such a strong case and uncovered so many startling facts that Smith was able to start with a solid background and considerable encouragement. From the hearing records, the young attorney learned just what facts he would be able to use and what he couldn't, whom he could talk to and whom he couldn't.

The years of work, frustration, and defeats finally ended on November 7, 1960, when the State Court of Criminal Appeals ordered Fowler's release. The ruling followed a habeas corpus action filed June 25, 1959, by Smith.

The guilt or innocence of Fowler does not enter into his release. He was freed because of the tactics used in obtaining his confession.

Fowler could possibly have been retried and sentenced to the electric chair. Smith pointed this out to Fowler before beginning work on his case.

From another standpoint, this case is a landmark in the state's judicial history, since this is the first time that the courts have ever reversed a decision that has stood over such a long period of time.

In this reversal, the court went on to say that "The defendant was brought to justice by the most malvolent methods. From its very inception the plan reeked with official conspiracy to violate the law, and to practice fraud and deception upon Fowler."

"We cannot overlook the illegality of official conduct in the denial of his fundamental rights, which he was in no position to assert while being held incommunicado."

But what sent this man to prison was certainly the confession. And while a confession sounds like final condemnation, is it really?



E. L. "Lefty" Fowler prepares to leave prison.

As Smith explains it, Fowler told him that he confessed because he actually believed his life was in danger if he didn't; he was mentally whipped. As a former police officer, he thought he knew enough about the law to know that his confession could not be used against him in a trial without corroborating evidence and because of the long period he had been under arrest before he confessed.

"Fowler, like a lot of persons, thought he knew more about the law than he actually did. Of course, this confession should never have been used against him in the trial," Smith says quietly.

"A confession may not be what the average person thinks it usually is," the attorney explains. "A lot of interrogators, working in shifts, can make someone confess to just about anything. They can break a person's will easier than you think. You may say that it wouldn't happen to you, but if you are under constant pressure for a long period of time, believe me, it's entirely different. You get a real beating, not physically, but mentally, and pretty soon you'll confess to anything just to get relief."

Fowler's story even had an unusual twist after his release. The first person that he went to see after leaving prison was a 72-year-old woman in Oklahoma City. When

she first read about the case some 12 years ago, she wrote to Fowler and told him that she believed he was innocent. Since that time, Mrs. Cammie Morrison and her husband, who died recently, kept up a steady contact with Fowler, writing him often and even visiting him several times at McAlester.

During his time in prison, Fowler had been divorced by his wife; his mother had died enroute to the prison to visit him, and he had lost all contact with his family, who had moved to various parts of the country during the 12 years. Since his release he has seen only his father.

Fowler had a perfect prison record while at McAlester, and became an expert in dairying. He traveled extensively after becoming a trusty and visited dairy shows in all parts of the country. Lefty plans to try to find work somewhere around Oklahoma City.

Smith worked long and hard to obtain Fowler's release, but he was rather uneasy when Lefty wished to return to his home in Waurika shortly after his release.

"I was worried about him going back there," Smith says, "but he wanted to see what he had left. It wasn't much, but he got a heart-warming reception. He came back and told me how people came up and shook his hand, talked to him, and seemed genuinely friendly. He was given a room in the hotel and a free steak dinner. It meant a lot to him."

Smith is a member of the law firm of Fuller, Smith, Mosburg and Davis, in Oklahoma City, a firm full of O.U. law graduates such as G. M. Fuller, '42ba, '47 Law; Lewis Mosburg, '54ba, '56Law; Ted J. Davis, '57Law, and Dan Gibbens, '59 Law. Smith has an outstanding civic and professional record, having served as special municipal judge for five years in Oklahoma City, and presently is vice-chairman of the state alumni council on higher education.

The release of E. L. Fowler, in which he played such an important part, made national headlines. Smith has received letters and notes of congratulations on his work from coast to coast from people who read about the case or heard it mentioned in newscasts.

Most people who read about this case express concern that this could have happened in the United States. But as Smith puts it, something like this is extremely unusual. But to recall that it *has* happened would seem to be the most important aspect of the entire story.