

**A Difficult Investigation: The Supreme Court of Texas Comments on the Mothers and Children from the Yearning For Zion (YFZ) Ranch
July 17, 2008**

Based upon a telephone call, the authenticity now in doubt, and subsequent investigation, the Texas Department of Family and Protective Services removed 468 children, boys and girls of various ages, from the 1700-acre complex near El Dorado, Texas, known as the Yearning For Zion Ranch. As required by law, an adversary hearing was conducted at the District Court on April 17, and 18, 2008, which found sufficient evidence to suggest there was a continuing danger to the physical health or safety of the children who had been removed. Concerning the sect's religious practices governing marriage, the Department's lead investigator's opinion, as found in the Texas Court of Appeals' decision, was that "The male children are groomed to be perpetrators of sexual abuse and the girls are raised to be victims of sexual abuse..." The mothers of the children appealed to the Texas Court of Appeals, Third District, claiming that the District Court had abused its discretion in sustaining the emergency removal of the children.

The Court of Appeals found that the Department of Family and Protective Services did not carry its burden of proof under section 262.201 of the Texas Family Code and that the District Court had abused its discretion in failing to return the children to their parents. The appeals court held that the Ranch, which consisted of numerous households on the compound, could not be reasonably treated as a single household. It also ruled that the sect's religious practices concerning marriage did not necessarily constitute a danger to the physical health or safety of these children. The appeals court opinion states:

Evidence that children raised in this particular environment may someday have their physical health and safety threatened is not evidence that danger is imminent enough...

This record does not reflect any reasonable effort on the part of the Department to ascertain if some measure short of removal and/or separation from parents would have eliminated the risk the Department perceived with respect to any of the children of Relators. [mothers]"

The Texas Department of Family and Protective Services appealed to the Supreme Court of Texas, which after reviewing the testimony given at the adversary hearing before the District Court, agreed with the Appeals Court decision. All the children were returned to the YFZ Ranch.

Three of the Supreme Court of Texas Justices filed an opinion concurring in part and dissenting in part with the majority decision. Justice O'Neill writes:

Evidence presented in the trial court indicated that the Department began its investigation of the YFZ Ranch on March 29th when it received a report of sexual abuse of a sixteen-year-old girl on the property. On April 3rd, the Department entered the ranch along with law-enforcement personnel and

conducted nineteen interviews of girls aged seventeen or under, as well as fifteen to twenty interviews of adults. In the course of these interviews, the Department learned that there were many polygamist families living on the Ranch; a number of girls under the age of eighteen living on the Ranch were pregnant or had given birth; both interviewed girls and adults considered no age too young for a girl to be “spiritually” married; and the Ranch’s religious leader, “Uncle Merrill,” had the unilateral power to decide when and to whom they would be married. Additionally, in the Trial Court, the Department presented, “Bishop’s Records” – documents seized from the Ranch – indicating the presence of several extremely young mothers or pregnant “wives” on the Ranch: a sixteen-year-old “wife” with a child, a sixteen-year-old pregnant “wife,” two pregnant fifteen-year-old “wives,” and a thirteen-year-old who had conceived a child. The testimony of Dr. William John Walsh, the families’ expert witness, confirmed that the Fundamentalist Church of Jesus Christ of Latter Day Saints accepts the age of “physical development” (that is, first menstruation) as the age of eligibility for “marriage.” Finally, child psychologist Dr. Bruce Duncan Perry testified that the pregnancy of the underage children at the Ranch was the result of sexual abuse because children of the age of fourteen, fifteen, or sixteen are not sufficiently emotionally mature to enter a healthy consensual sexual relationship or a “marriage.”

Concerning the behavior of mothers and children encountered at the Ranch by the Texas Department of Family and Protective Services, Justice O’Neill writes:

Evidence presented in the trial court indicated that the actions of the children and mothers precluded the Department from pursuing other legal options. When the Department arrived at the YFZ Ranch, it was treated cordially and allowed access to children, but those children repeatedly pled “the Fifth” in response to questions about their identity, would not identify their birth-dates or parentage, refused to answer questions about who lived in their homes, and lied about their names – sometimes several times. Answers from parents were similarly inconsistent: one mother first claimed that four children were hers, then later avowed that they were not. Furthermore the Department arrived to discover that a shredder had been used to destroy documents just before its arrival.

Thwarted by the resistant behavior of both children and parents on the Ranch, the Department had limited options. Without knowing the identities of family members or particular alleged perpetrators, the Department could not have sought restraining orders under section 262.1015 as it did not know whom to restrain... Likewise, [the Department] could not have barred any family member from access to a child without filing a verified pleading or affidavit, which must identify clearly the parent and the child to be separated.

Concerning the Texas Court of Appeals and the Supreme Court of Texas, all the Justices were apparently in agreement that given the circumstances of this unusual case, there was no evidence that the boys were in any danger of abuse and that there was no evidence that prepubescent girls were at risk for abuse. Upon the return of these children to the Ranch,

it was widely reported in the media that the religious sect declared it would now comply with state law concerning age of consent for marriage.

News/Event:

Media interest in the YFZ Ranch, these children and mothers was great. The religious polygamous marital practices, and the large number of children and families involved made this case unique and memorable.

Analysis:

The courts followed the law and struggled to apply concepts of “danger” and “urgent need to protect” to this complex matter.

Application:

Forensic psychiatrists, in light of Justice O’Neill’s opinion, will have trouble applying this case to similar cases because the children and some mothers thwarted the Department’s investigation. The quality of the investigation of alleged child abuse always matters when courts deal with issues of “danger” and “urgent need to protect,” and look to expert testimony to assist them.