



Fostering Hope

How Paul Yetter made a federal case out of the state’s foster-care program

BY CARLOS HARRISON



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Paul Yetter was looking to make a difference in his community. Little did he know it would take him 12 years, two battles against class-certification challenges, a pair of clashes over interlocutory appeals, and—after the declaration of a federal judge that Texas’ long-term foster-care system was hopelessly broken—a struggle against yet another appeal by the state to block the appointment of two special masters to oversee reforms.

And counting.

“I see light at the end of the tunnel,” Yetter says of *M.D. v. Abbott*, a landmark case with Texas-size impact. “But there’s still a lot of tunnel left.”

Raised in El Paso, Yetter, now the father of seven grown sons, followed his own father into the law, then followed his wife-to-be, Patti, to Houston, where he rose to partner status at Baker Botts before leaving to establish what is now Yetter Coleman. The high-stakes business and technology litigation firm’s clients include American Airlines, Southwestern Energy, Apache and IBM.

About a dozen years ago, the firm went looking for a pro bono project of real consequence. Several people pointed Yetter toward the children in the long-term care of the state’s Department of Family and Protective Services.

They heard horror stories. The child whose initials gave the case its name spiraled through a worsening series of psychiatric diagnoses, repeatedly complained of sexual and physical abuse while in foster care, and kept running away. The last time authorities saw her, she said she was

“high on crack” and trying to get back to the man who sold her for sex. In another case, an 8-year-old boy was repeatedly raped by two teenage boys in a foster home while the sole caregiver slept downstairs.

“The stories of these individual children were tragic, but the real tragedy was that they were not isolated stories,” Yetter says. “The system was endangering thousands of children every day, every year. So the most shocking and surprising thing I learned as we were investigating the cases was that isolated incidents of abuse and neglect were not at all isolated. They were systemic. And it wasn’t a secret. The state knew about it.”

In fact, Texas had created panels to look into the foster-care system “every five or six years” for at least the previous 20. Each found numerous problems. Each made recommendations.

“Nothing ever really changed,” says Yetter.

So he took a different tack.

Yetter’s firm teamed up with the New York-based nonprofit Children’s Rights, and Dallas-based Haynes and Boone’s senior counsel Barry McNeil. They wound up representing a class comprising 12,000 kids in permanent care in the Texas foster-care system, and filed a federal lawsuit on their behalf in 2011.

“What we realized was that this was not a system that was going to change itself,” says Yetter. “There was no political will to reform. And so the only institution that can change a badly broken state child-welfare system is the federal courts.”

TIMELINE

November 2004
Pro bono effort and investigation of foster-care system begins

March 2011
M.D. v Abbott lawsuit filed

August 2013
Order granting class certification

December 2014
Case goes to trial

December 2015
U.S. District Judge Janis Jack rules foster-care system is “broken” and calls for special masters

The lawsuit contended the state had violated the children's 14th Amendment rights to due process. Texas called it federal intrusion and spent, according to a *Dallas Morning News* analysis, over \$7 million on the legal battle.

In December 2015, U.S. District Judge Janis Graham Jack issued a scathing 255-page opinion siding with the plaintiffs.

"Texas' foster-care system is broken, and it has been that way for decades," she wrote. DFPS workers, she continued, had "impossible workloads" and the kids in long-term foster care "almost uniformly leave state custody more damaged than when they entered. ... Plaintiffs have a 14th Amendment substantive due process right to be free from an unreasonable risk of harm caused by the state. Texas currently violates that right."

Jack demanded changes based on the recommendations of the special masters she appointed. Among them: Limit the number of children per DFPS worker, and establish private monthly meetings between kids and their caseworkers so the children can report any abuse.

"The impact is monumental," McNeil says. "Her ruling would reengineer the way Texas government deals with foster children."

But he's disheartened by the continued resistance of the state, which is expected to file yet another appeal fighting the federal court's order once the judge enters her final remedy later this year.

"We've got a very well-regarded federal judge telling the state of Texas that it's got to fix its broken


system," says McNeil. "And the state at this point is doing nothing, really, other than denying, denying, denying. That's what, to me, is so sad about this."

Still, Yetter sees encouraging signs.

"When we brought the case, this was a political hot potato," he says. "I think, at the time, the state dug in for political reasons. They were unwilling to have what they thought was an outsider—the federal court—examining their child-welfare system and giving it a grade. Once the report card came out and the system got an across-the-board F, I think they're taking a fresh look at things."

Yetter notes that Gov. Greg Abbott successfully called on the Legislature at the start of this year's session to allocate \$250 million in each of the next two years to fix the foster-care system. Nevertheless, he adds, "Money alone is not the answer. The system needs more resources, better policies, and much improved enforcement. The Legislature is only focused on resources at this point."

Still, he notes, it's a start. "The judge's order was really, I believe, a clarion call to reform," says Yetter. "There has been a groundswell of public opinion, media attention and, finally, legislative focus on the situation with these children. So I'm optimistic, because I think the governor wants to do the right thing. The Legislature has focused on it this session."

He adds, "We will see this through to the end. I have hope, for the children's sake, it is not another 12 years; but we will do what we need to do." 

April 2016
State seeks to stop appointment of special masters

July 2016
Court rejects state petition

November 2016
Special masters issue report

January 2017
Gov. Greg Abbott asks Legislature to fund reforms

May 2017
Gov. Abbott signs law providing over \$500 million to Family & Protective Services, mainly for foster care

