



Board Chair Jim George addresses Capitol press on TYC's misuse of pepper spray.

Texas Appleseed Challenges TYC To Reduce Pepper Spray Use

Having settled their lawsuit against the Texas Youth Commission (TYC) earlier this month, Texas Appleseed and Advocacy Inc. are continuing to monitor the TYC's use of pepper spray in its juvenile detention facilities.

Texas Appleseed Board Chair Jim George, lead counsel in the suit, said the settlement "should ensure that no young person will be physically or psychologically harmed by misuse or threatened use of pepper spray."

Under the settlement, TYC agreed to rescind an August 2, 2007, directive by Acting Director Dimitria Pope that instructed employees to use pepper spray before attempting physical

holds and other options to restrain youth. George said this directive violated TYC's own use of force rules limiting use of pepper spray to a "last resort"—and never in cases involving children with disabilities.

The suit was filed on behalf of three teens seriously harmed by the use or threatened use of pepper spray. Each of the plaintiffs has a mental illness or serious emotional disability—and one suffered skin burns after being sprayed three times with pepper spray to prevent him from harming himself.

A Blue Ribbon panel of experts commissioned by TYC has issued its own report criticizing TYC's pepper spray policy as promoting "punishment and intimidation." Since early August, there have been 196 pepper-spray incidents in TYC facilities—more than all reported pepper spray incidents in 2006.

School Discipline: A Gateway to the Juvenile Justice System?

Texas Appleseed has released a new report examining the link between school discipline policies, escalating dropout rates, and "gateways" to the juvenile system—the first report in a multi-year project examining Texas' school-to-prison pipeline.

Texas Appleseed is advocating expanded school-community partnerships to improve access to mental health services to students and families, increased state oversight over Disciplinary Alternative Education Programs, and more training for schools that significantly exceed statewide averages for disciplinary referrals.

"We are losing too many children to the school-to-prison pipeline in Texas and, sadly, the overwhelming majority of children who find themselves on this downhill slope are Black, Hispanic, or in special education," said Texas Appleseed Chair Elect **Ron Lewis, Marshall & Lewis LLP**, Houston.

Vinson & Elkins LLP enlisted a team of more than 40 attorneys and paralegals at nine pro bono law firms and corporations, to conduct extensive field interviews in nine school districts on behalf of Texas Appleseed. Working with the Population Research Center at The University of Texas, Appleseed also analyzed disciplinary referral data (2001-06) obtained from the Texas Education Agency.

The resulting report, *Texas' School-to-Prison Pipeline, The Impact of School Discipline and Zero Tolerance*, is generously funded by the **Houston Endowment** and the **Meadows Foundation**, with additional support from

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Challenges Facing Texas' Foster Children

Texas Appleseed is joining with other advocacy groups to press for more funding and better staffing of Texas' overburdened foster care system, now serving more than 17,500 children.

Our decision to report on the status and ongoing needs of foster care was a natural progression from our earlier work.

For more than a decade, Texas Appleseed has been involved in a wide range of juvenile justice issues—and over the past year, has been researching the links between school disciplinary practices, dropout rates, and gateways to the criminal justice system.

Children in foster care are particularly vulnerable to the school-to-prison pipeline. Nationwide, they are more likely to perform poorly in school, experience discipline problems, and become involved in the juvenile justice system.

However, the data also shows that when a foster system works well, these children succeed in school and become productive, successful adults.

Texas Appleseed is deeply grateful to **Stephen M. Ryan**, attorney with **Dewey & LeBoeuf LLP**, Houston, for preparing a report for us on the status of foster care reform in Texas.

In our testimony late last month before the Texas Supreme Court, I cited this report when identifying the biggest challenges facing foster care today—insufficient state funding to address escalating caseloads and a lack of trained caseworkers with the necessary experience to provide the services foster children desperately need.

Texas Appleseed spoke in favor of creating a **Judicial Commission for Children, Youth, and Families** to help address critical issues that, even with the judicial system and the Texas Department of Families & Protective Services heavily involved, still manage to fall between the cracks.

Foster care needs this kind of close scrutiny. The foster care reforms of 2005 were primarily aimed at improving child welfare investigations to remove children from harmful situations.

But with improved investigations came larger numbers of children needing foster care placement—with not enough caseworkers to find them safe, permanent homes.

The numbers of children needing foster care increased from around 35,000 in fiscal year 2004 to more than 46,000 in 2007—making it nearly impossible for caseworkers to provide the kind of oversight and assistance these children need.

With the help of our pro bono partners, Texas Appleseed will continue to monitor foster care issues and look for ways to improve the plight of children who find themselves under the State's care.



Rebecca Lightsey
Executive Director, Texas Appleseed

STAFF WELCOME

Fernando Guerrero is Texas Appleseed's new Office Manager. A former membership manager for the State Bar of Texas, Fernando is a graduate of the Portfolio Center, an art and design school in Atlanta, GA., where he also worked before joining Appleseed. He serves on the Austin board of directors for the American Institute of Graphic Arts. Welcome, Fernando!

New Board Members

Texas Appleseed welcomes the following new members to the Texas Appleseed Board of Directors:

Dennis P. Duffy, with **Baker Botts L.L.P.**, Houston, represents management in all aspects of labor and employment law. Prior to joining the firm, Mr. Duffy was vice president and associate general counsel for labor and employment for Time Warner Inc. Early in his career, he served as first general counsel of the U.S. Office of Compliance, charged with enforcing civil rights and workplace laws in the U.S. Congress and its associated agencies.

Edward Fernandes, with **Akin Gump Strauss Hauer & Feld LLP**, represents domestic and international clients involved in complex business litigation. He is a director of the State Bar of Texas and has served as a director of the Houston Bar Association, president of the Houston Lawyer Referral Service, and steering committee member of the State Bar of Texas Minority Counsel Program. He has been recognized as one of “the nation’s top litigators” by *The National Law Journal*.

Elizabeth Mack, with **Locke Lord Bissell & Liddell LLP**, Dallas, is a leader in environmental litigation and has been named one of *Texas Lawyer’s* “Best Lawyers in Texas.” Ms. Mack has received numerous honors for her pro bono work, including being named “Outstanding Law Firm Pro Bono Coordinator” by the Dallas Bar Association. She is currently serving on the Texas Supreme Court Task Force to Expand Legal Service Delivery to the Poor.

Donald C. Templin, with **Haynes and Boone, LLP**, Dallas, is a fellow of the American College of Trial Lawyers, with more than 30 years of experience as a trial lawyer in business disputes. He was longtime head of the firm’s Business Litigation section, practices intellectual property law, and is a senior member of the firm’s First Amendment and media defense practice.

Eduardo R. Rodriguez – 2007 Good Apple Award Recipient

Texas Appleseed will present **Eduardo R. Rodriguez**, former President of the State Bar of Texas (2005-06) and Senior Partner in the Brownsville law firm of **Rodriguez, Colvin, Chaney & Saenz, L.L.P.**, with the *2007 J. Chryse Dougherty Good Apple Award* for his work to champion pro bono legal service and diversity in the legal profession.

“We are pleased to honor an outstanding attorney who has served as a role model to fledgling lawyers and as a mentor to young people on every rung of the educational ladder,” said Texas Appleseed Executive Director **Rebecca Lightsey**.

Rodriguez will be feted at the Good Apple Dinner on November 8th at the Four Seasons Hotel, Austin.

After earning an undergraduate degree from George Washington University in 1965 and his Juris Doctorate from The University of Texas School of Law in 1968, Rodriguez practiced criminal, family, and admiralty law with **Hardy & Sharp** in Brownsville.

His active involvement in pro bono legal work for the indigent—including serving on the Board of the Cameron County Legal Aid Society—attracted the attention of Governor Dolph Briscoe, who appointed him to the first Texas Advisory Council of the Legal Services Corporation.

In 1998, *Texas Monthly* recognized Eduardo Rodriguez as Best Defense Lawyer in South Texas. In 2000, he received the Honorary Order of the Coif from The University of Texas School of Law, where he has been active in efforts to recruit minority law students and has served as President of both the Alumni Association and the Alumni Executive Committee. He serves as a member of the Development Board of The University of Texas at Brownsville.



Eduardo R. Rodriguez
2007 Good Apple Award Honoree

Also being recognized at the Good Apple Dinner is **Vinson & Elkins LLP**, recipient of the *2007 Pro Bono Service Award* for outstanding service to the children of Texas through the firm’s work on Texas Appleseed’s school-to-prison pipeline project.

Texas Appleseed also will honor **Greenberg Traurig, LLP** for their exceptional pro bono leadership, including work on school discipline and disaster relief, and will recognize **Dewey & LeBoeuf LLP** for their work on foster care and **Mayer Brown LLP** for their help on hurricane disaster relief.

For more information about the Good Apple Dinner, contact Development Director Ann Starr at 512-473-2800 x102, or astarr@texasappleseed.net.

Immigrant Banking Work Enters International Arena

Texas Appleseed’s senior policy analyst will address an international conference on micro-finance and sustainable development next month in Cotonou, Benin, in western Africa.

Ann Baddour, who built Texas Appleseed’s immigrant banking project over the past four years, will join a Nobel Prize winner, heads of state, and international development practitioners to share our efforts to bring immigrant into the financial mainstream.

Baddour, whose ground-breaking work has been replicated in Appleseed offices in other states, coordinates national Appleseed initiatives to:

- Improve pricing transparency for foreign remittance transactions in a Fair Exchange “seal of approval” pilot modeled after Fair Trade coffee marketing practices;
- Education Latino immigrants about mainstream banking products and practices; and
- Encourage financial institutions to recognize the economic viability of serving immigrant consumers and to offer products to better serve this population.



Appleseed honors Fair Exchange partners for bringing greater transparency to pricing international remittance transactions. Attending the Washington, D.C. dinner were (left to right): Daniel Ayala, **Wells Fargo**; Marc Fleischaker (Co-Chair); Michael Barr (consultant), Annette LoVoi, Ann Baddour, Betsy Cavendish, and Eric Gutierrez, **Appleseed**; Sandra Reilly, **Citi**; Paul Dwyer, **Viamericas**; James Maloney, **Mitchell Bank**; and Robert Mallet (Co-Chair), **Appleseed**.

“This is an exciting opportunity for us to learn from and to share our strategies with an international community confronting its own challenges to expand economic opportunity and stability to poor and historically disenfranchised people,” said Baddour, who was invited by **Dr. Manuel Orozco** of **Inter-American Dialogue** to the conference sponsored by the **International Network of Alternative Financial Institutions**.

One of those strategies is the development of a series of brochures, available in English

and Spanish, that introduce immigrant and low-income consumers to the workings of a formal banking system.

Citi has used the brochures in outreach to immigrant communities in New York City, and hundreds of thousands have been distributed through nonprofit groups across the country, most recently in Louisiana and Georgia where there has been a dramatic increase in new immigrants.

School Discipline

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the **Simmons Foundation** and a recent grant award from the **Harold Simmons Foundation**.

“This report would not have been possible without the leadership of **Scott Fletcher** and **Elizabeth Pannill** at Vinson & Elkins and the commitment and hard work of our team of pro bono attorneys at **Ahmad, Zavitsanos & Anipakos, P.C.**; **Denton, Navarro, Rocha & Bernal, PC**; **Escamilla & Poneck, Inc.**; **ExxonMobil**; **Greenberg Traurig, LLP**; **Mayer Brown LLP**; **Patton Boggs LLP**; and **Weil, Gotshal & Manges LLP**,” said Texas Appleseed **Executive Director Rebecca Lightsey**.

Texas Appleseed’s findings are already attracting national attention and were

featured on National Public Radio’s *All Things Considered*. For example:

- More than 100,000 students are sent to DAEPs each year—two-thirds of them at the discretion of school districts.
- High recidivism (almost 30 percent) and high dropout rates underscore the failure of DAEPs to meet the needs of large numbers of students—a problem compounded by the lack of state oversight.
- Where a child attends school—and not the nature of the offense—is the greater predictor of the likelihood of a student’s receiving a disciplinary referral.
- In some Texas school districts, minority and special education students are overrepresented in discretionary disciplinary referrals at

rates two to six times their representation in the overall student population.

- Texas school districts referred about 500 pre-K and kindergarten students and about 2,700 first graders to DAEPs in 2001-06—a practice that contributes to early alienation from school, according to leading educational experts.

Texas Appleseed Legal Director Deborah Fowler noted that a 2005 report from the Public Policy Research Institute at Texas A&M University concluded that “*the single greatest predictor of future involvement in the juvenile system is a history of disciplinary referrals in school.*”

To download a copy of the report, visit our website at www.texasappleseed.net.

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Updates: Protecting the Rights of Disaster Victims

Two years after Katrina and Rita devastated the Gulf Coast, hurricane victims are still struggling to get the disaster benefits they are entitled to from the Federal Emergency Management Agency (FEMA).

"Disaster victims should not be denied the help they need because of something as minor a spelling mistake—and it shouldn't take over a year of appeals to fix that mistake," said **Madison Sloan**, Texas Appleseed's Equal Justice Works Katrina Fellow.

Appleseed has joined with a half dozen law firms and advocacy groups in a class action suit against FEMA to ensure that the agency does not wrongfully cut off rental assistance or ask hurricane survivors to repay money they do not owe.

Working with Appleseed are **Weil, Gotshal & Manges, LLP**; **Public Interest Law Project**; **Steptoe & Johnson, LLP**; **National Center for Law and Economic Justice**; **National Center on Homelessness & Poverty**; **Loyola University Law Clinic**; and **The Mississippi Center for Justice**.

While the trial court granted a preliminary injunction in favor of the plaintiffs, FEMA appealed to the 5th Circuit Court of Appeals,

which will hear oral argument in early November.

Appleseed is also working to ensure the rights of hurricane victims to full and unbiased legal advice. Sloan testified in a suit against FEMA brought by Texas Rio Grande Legal Aid and ACORN to gain attorney access to FEMA's disaster recovery centers. FEMA had barred attorneys from the centers if they refused to abide by a contract between FEMA and the Young Lawyers Division of the American Bar Association (ABA) that prohibited attorneys from advising or representing hurricane evacuees in their efforts to obtain FEMA benefits.

Under pressure of the suit, FEMA has agreed to remove this barrier and renegotiate its entire contract for disaster legal services with the ABA.

In another project, **Greenberg Traurig, LLP** has worked with **Loyola Law School's Katrina Clinic** and Texas Appleseed to help residents of Jefferson Parish facing eviction from their FEMA trailers under a local zoning ordinance. Their efforts resulted in hearings being held and disabled trailer residents receiving an opportunity to obtain an extension to look for alternative housing.

APPLESEED BRIEFS

Summer Interns Make a Difference

Texas Appleseed is grateful to our Legal Fellows for providing us with valuable legal research and analysis this summer. They are: Todd Bellaire, Kathryn Freeman, and Liz Overton, University of Texas School of Law; and Brian Schaeffer, University of Houston Law Center.

Strides in Representing Clients with Mental Disabilities

Travis County's Mental Health Public Defender office is fully staffed—and Harris County is creating a separate attorney appointment wheel to better represent clients with mental disabilities. Texas Appleseed worked with both counties on these projects—and applauds both for meeting this need.

Also, Texas Appleseed's handbook *Opening the Door: Justice for Defendants with Mental Retardation* has been replicated by Georgia Appleseed and tailored to meet the needs of attorneys in that state.

Kudos for Helping Client with Mental Illness

Texas Appleseed would like to thank Dallas attorney Sean Bajuk for accepting our referral of a client in need.

A mother, whose son is diagnosed with schizophrenia, sought legal help after her son pled guilty seven years ago to burglary of a habitation and other charges, even though his competency was in doubt. Mr. Bajuk convinced the Court of Criminal Appeals to order a retrospective competency hearing this summer—and the jury found that the defendant had been incompetent to enter guilty pleas back in 2000. A new trial is anticipated. Thank you Sean Bajuk!

When Systems Fail Our Children

When systems fail our children, as the Texas Youth Commission (TYC) did by expanding the use of pepper spray to subdue incarcerated youth, then those systems must be challenged.

Texas Appleseed's lawsuit, mounted in partnership with Advocacy Inc., challenged TYC for illegally implementing a major policy change affecting thousands of young people incarcerated in facilities across the state without required public input.

The settlement should restore TYC's "use of force" rule limiting the use of pepper spray to a restraint of "last resort"—and one that should never be used to subdue a young person with a mental or emotional illness.

TYC must also provide plaintiffs' counsel with data on the use of pepper spray in its facilities, from January 2007 forward—including dates and locations of pepper spray use, the behavior that prompted its use, and whether TYC first attempted other restraints.

This data is important because the settlement does not end the pepper spray debate.

TYC's own Blue Ribbon Task Force of juvenile justice experts has condemned the use of pepper spray for promoting "punishment and intimidation," yet TYC is considering a new "use of force" rule that could resurrect the issue.

For us, the bottom line holds: We have a responsibility to see that no child in the care of the State of Texas is ever again physically or psychologically harmed by misuse or threatened use of pepper spray in TYC facilities.

The systems put in place to protect and rehabilitate children cannot be allowed to fail.

In their September 2007 report, the TYC Blue Ribbon Task Force: "Schools and school districts play a critical role in the Texas juvenile justice system. Unfortunately, some schools create conditions in which low achieving and badly performing students are more likely to be detained and/or committed to the TYC....

"While some students may be removed from the general school program to an

alternative school because of serious violations of the school disciplinary code, many students are removed for problem behavior that should be resolved within the school."

The systems of school discipline, juvenile justice, and adult prison are linked by escalating dropout rates and growing alienation from our institutions of education and law enforcement. When systems fail children, we need to look for systemic solutions.

Jim George
Chair, Texas Appleseed

