

# The Dallas Morning News

DallasNews.com

June 13, 2004

## **A state of neglect**

### **Cases show agency did little to fix elderly's deplorable conditions**

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Edition: SECOND

Section: NEWS

Page: 1A

Dateline: EL PASO

Article Text:

Probate Judge Max Higgs and lawyer Terry Hammond have witnessed a lengthy parade of horrors involving the city's elderly and the state agency responsible for protecting them.

Old people have been left to sleep in rusting cars through freezing winters and desert summers after workers from the Texas Department of Family and Protective Services documented that their homes were too full of filth and vermin to be inhabitable. People with failing bodies and fading minds were left alone in roach-infested apartments and feces-laden homes after the agency closed their cases, saying their situations were simply lifestyle choices.

Amid the agency's investigations, the elderly lost savings, homes and other property to scheming caregivers, relatives and acquaintances.

The judge has presided over case after case, and the elder-law specialist has represented some of the victims while Adult Protective Services caseworkers did little but document the misery. They've long heard from agency workers and other Texas probate judges that similar cases exist across the state.

This spring, after years of trying to get the state government's attention, the judge and the lawyer declared war.

In March, Judge Higgs launched a "public awareness campaign" to document the failures of Adult Protective Services. He sent detailed case studies and transcripts to state officials and newspapers, and he asked Mr. Hammond to take on the grisliest elder-abuse cases in his court. Mr. Hammond hauled agency officials into court, subpoenaed agency documents and used nonstop hearings to analyze the agency.

The two men have gotten the state's attention.

Gov. Rick Perry rushed representatives to El Paso in late March and launched a statewide investigation in April. The Texas Department of Protective and Family Services, Adult Protective Services' parent agency, also dispatched an Austin lawyer, who complained in a May hearing that Mr. Hammond was grandstanding and the judge was abusing his power.

"We're going to have trouble ... if you're going to go on trying to find cover-ups and stuff like that," agency lawyer Duke Hooten warned.

But the judge said his efforts wouldn't end anytime soon, "because, Mr. Hooten, if this court does not look at these issues, the department will be able to continue

to bury its mistakes."

Mr. Hooten declined to comment. An agency spokesman said Adult Protective Services has been ordered to refer all questions to the Health and Human Services Commission, which recently was given oversight of the state's protective services programs and is conducting the ongoing inquiry. State protective services head Thomas Chapmond, who recently announced his retirement, told The Dallas Morning News in early May that his agency was doing its best with "an issue that was larger than what we could handle."

Complaints confirmed

An interim investigative report sent to Mr. Perry on May 19 confirmed complaints from El Paso and said problems there appeared "fundamental and systemic" in Adult Protective Services.

The report concluded that the agency's five-question test used to assess the mental capacity of its clients was "ineffective" and its policy "overemphasized" clients' freedom to choose at the expense of their safety. Another interim report is expected in July.

Judges elsewhere and agency critics say that what the investigation has already found is no surprise. They've long contended that Adult Protective Services workers don't understand or use state laws that grant broad authority to enter private property, bring in experts to determine mental capacity and move vulnerable clients from dangerous environments to prevent further abuse, exploitation or self-neglect.

Some critics fear there could be even worse problems outside the 10 urban Texas counties with probate judges and court investigators. In other counties, such cases are handled by county judges, who lack staff and often have no legal training.

Gregg Phillips, deputy Texas health and human services commissioner, who is leading the investigation of Adult Protective Services, said state leaders are committed to addressing agency problems and have already begun to make changes.

"I think we go a long way toward fixing things just by saying we're going to do the right thing from now on," he said.

He credits Mr. Hammond and Judge Higgs for "screaming bloody murder" until Austin took notice. "I don't think I've seen anyone more committed."

Even an Adult Protective Services supervisor recently suspended over agency failures in far West Texas praises Judge Higgs and Mr. Hammond for forcing a public examination of an agency whose problems have festered unseen for years.

"I may not agree with the tactics that they've used," said Mark Schobert, the El Paso supervisor, "but I can't defend any of those cases."

He said he's certain that similar problems exist statewide in an agency that he and others say suffers from chronic underfunding and a fiscal structure that rewards field offices that close cases quickly and cuts funding and staff of those that don't. "They're following the same policy that we're following here. The same handbook, the same training," he said. "The policy causes these things to happen."

## A quirky duo

The bookish lawyer and self-styled "old hippie" judge say their efforts have been less a joint plan than a shared compulsion to make Adult Protective Services do what the law requires.

"The real problem is in the structure and the system that APS has developed," Judge Higgs said. "Look at the desensitization that has occurred to get to the point where you can go out and see these people, write up these reports and close these cases. ... How do you go to bed at night?"

"I asked them one time from the bench: Why do we need you?" he said. "Why don't we let these people live in misery without you?"

He and Mr. Hammond make a quirky team. Judge Higgs wears Merrell moccasins and drives a white Ford pickup littered with books about Eastern Orthodox spirituality, his newly adopted faith. Mr. Hammond tools around El Paso in an immaculate Acura SUV, and his restored Victorian office seems more like a museum than a law firm.

Mr. Hammond, 47, grew up in Bryan and was the first in his family to attend college. He taught history before deciding to try law school, and he had just finished when his beloved grandfather choked to death on nursing home food. Mr. Hammond said he couldn't get personal injury lawyers to sue after learning that the nursing home lost his grandfather's dentures and workers then fed him chopped steak. "The lawyers ... told me: What is the value of the life of an 83-year-old man with senile dementia?" Mr. Hammond said.

The loss drew him to focus his El Paso law practice on protecting the elderly. He specialized in guardianships - cases in which lawyers or others are appointed to oversee finances and care of people incapable of caring for themselves.

Judge Higgs, 60, a native of Abilene, began his legal career in Harris County probate courts. He moved to El Paso to handle child support and abuse cases and in the mid-1980s worked briefly as a regional lawyer for the agency overseeing Adult Protective Services.

He became El Paso County's first probate judge when the court was established in 1991 to handle guardianships, wills, estate cases and involuntary mental commitments.

It was the smallest patch of real estate in the courthouse and a legal niche that even many lawyers consider as impenetrable as tax law.

"Probate court usually gets attention when there's a gazillion dollars in money involved or a gazillion inches of cleavage," the judge said.

## Scandals

By 1999, his court was getting notice. Late that year, Judge Higgs heard the case of Thea Savage, a woman left in squalor for years after Adult Protective Services was called about her mental instability. There were also several cases involving longtime residents whom the agency refused to help because they were undocumented immigrants.

And a scandal surfaced in a local retirement home that the agency regularly used to house elderly clients. Police summoned by a late-night 911 call discovered that the home had twice the number of residents it was licensed to care for - including 10 found sleeping on a concrete floor in each other's excrement.

Judge Higgs said he had asked Adult Protective Services officials to investigate the home the year before because it seemed to be shuttling too many residents through. He said the agency never responded.

The judge said he sent records of several disturbing cases to legislators but heard nothing back. He said he also tried working internally with Adult Protective Services. "I'd get one wave after another of people coming out here and telling me that they had changed and everything was going to be better," he said.

Other judges were also complaining. Adult Protective Services had moved to centralize its operations in 1999, requiring abuse reports to be called into Austin instead of local offices.

Judge Higgs, other probate judges and officials who work with the elderly - and even agency workers - said that distanced the agency from the communities it was supposed to serve.

#### Resources drained

Agency data confirm that resources were drained from local offices and cases. The agency's overall budget has grown almost 20 percent over the last five years, reaching \$30.68 million in fiscal 2004, but the number of workers investigating abuse and neglect cases statewide has dropped 12 percent. Its funding for short-term emergency services such as utilities, home cleanups and temporary shelter has fallen 18 percent in that period.

A spokesman said much of the increased spending paid for new accountants and other expenses for a guardianship program created in 1999. The guardianship division was intended to help the state's indigent, mentally incompetent people with no families or friends available to oversee their care.

But judges and others said the program created a new, unwieldy layer of internal review in which cases often hung in limbo for weeks and sometimes months without action. "In the meantime, the clock is ticking on an elderly person who is at risk," said Pat Ferchill, a Tarrant County probate judge.

Agency workers previously could go directly to courts, ensuring that problem cases were quickly addressed, he said.

Judge Ferchill and other judges said Adult Protective Services court referrals fell precipitously and they began seeing a disturbing number of cases involving elderly people investigated but never assisted by the agency.

"They specifically instructed their field people to avoid the probate courts at all costs," said Denton County Probate Judge Don Windle.

"I'm not favorable of going out and running a guardianship on everybody that's eccentric. After all, this is Texas," he said. "But you don't leave people in squalor. You don't leave them without medical care."

Judge Ferchill said he demanded a meeting with agency administrators after a series of botched Adult Protective Services cases in Fort Worth. He said he learned that cases clearly needing intervention "had been closed as lifestyle choice to clear the [Adult Protective Services] employee's desk."

#### Beyond El Paso

By 2000, Mr. Hammond was president of the National Guardianship Association, as well as a Texas guardianship advisory board member, and was hearing about problems with elder abuse investigations nationwide.

"When people were saying this is just an El Paso problem, I knew for a fact that it wasn't," he said.

In 2001, a local accountant alerted the lawyer to a new Adult Protective Services horror story, involving Frank Milstead. The mentally ill 67-year-old engineer was left for months in a trashed apartment with an estimated million roaches despite weekly landlord calls to the agency.

The agency caseworker later testified that she believed that Mr. Milstead was mentally ill and knew he'd had a brain injury. She said she knew that he had been treated before at a veterans hospital for manic depression. She also got written warnings from the veterans hospital that Mr. Milstead's living conditions were "a risk to client's health."

But she said she believed Mr. Milstead could make decisions for himself, so she followed policy in repeatedly closing his cases without action. "If our clients refuse our services, we have to accept that is what they want," the caseworker testified. "He didn't want me to intervene."

Under questioning, the worker acknowledged she never considered getting Mr. Milstead evaluated by mental health experts or taking his case to court. She testified that she wasn't familiar with how guardianship proceedings worked and had never heard of the state law that gives her agency emergency power to take clients from their homes without a court order if its investigators find imminent safety or health threats.

Judge Higgs immediately ordered Mr. Milstead removed from his home. He then summoned agency officials to court on a Sunday. In a recorded meeting, he demanded "dramatic change" and said the Milstead debacle was only the latest involving Adult Protective Services.

He noted that the agency had recently refused to help a senile widow found at a convenience store at 3 a.m., even when police explained that they had no place to take her but jail. Officers finally got an Alzheimer's Association official to help after being told that local Adult Protective Services workers wouldn't be available until their office opened at 8:30 a.m.

"I think we are going to continue to have problems unless there is tremendous change in your mind-set," the judge warned.

Lawyer Nancy Revelette attended that meeting as a new regional counsel for Adult Protective Services' parent agency. She said in a recent interview that she told Adult Protective Services workers after the judge's scolding to send her all of El Paso's "really bad cases."

Ms. Revelette said she red-flagged 10 to 15 cases with serious problems - most with frail elderly people left in horrific living conditions with severe physical and mental impairments - but she said she was told by an out-of-town supervisor to quit interfering with Adult Protective Services.

"APS hid those cases. They just didn't bring them to court. They'd send a crew out to clean up a house when somebody needed a guardianship," said Ms. Revelette, who left in June 2002 after working for the agency for a year. "Any moron could see what the problem was. They just acted as if it didn't exist. ... I finally just gave up, to be honest with you."

She and others said cases in El Paso and elsewhere grew worse as caseworkers

statewide were told to begin using a five-question screening test to assess their clients' mental capacity. If the clients correctly answered questions about what to do if a fire broke out, they needed or were asked for money or ran out of medicine, they were declared mentally competent, even if other evidence strongly suggested otherwise. If they then refused help, agency policy prompted workers to close the case as a lifestyle choice.

Judge Higgs began hearing from Adult Protective Services workers that the agency preferred its brief test to having to arrange and pay for an outside doctor's assessment or performing 30-minute "mini-mental" exams used by mental health agencies.

The judge said he saw the results in a 2002 case involving Kenneth Delia, an alcoholic whose decline was documented as a lifestyle choice in cases closed by the agency over the previous two years. And in late November 2002, an elderly bachelor named John Marshall burned to death in his apartment hours after an agency worker visited.

Judge Higgs said he saw personally how the agency dealt with relatives of alleged abuse victims when his wife tried to get the agency to intervene in 2003 to help a dying sister who was being financially exploited. The judge said the agency worker assigned to the case and an agency supervisor in Houston never returned his wife's phone calls.

Ready to fight

By the end of 2003, Mr. Hammond said, he was ready for a public fight with Adult Protective Services. Instead of five or six "really horrible cases" a year, he said, "we were getting five or six a month."

He was particularly upset by a string of financial exploitation cases ignored by the agency, including a deaf 94-year-old man conned into taking a home equity loan, fleeced of the loan money and forced out of his beloved home. "He died of a broken heart," Mr. Hammond said.

The judge had also had enough. He told his investigator to prepare summaries and "particularly outrageous testimony" about cases involving mentally ill people left isolated in deplorable living conditions. He decided to appoint Mr. Hammond to every case with "an APS screw-up" and give him wide latitude to explore mistakes and policy flaws long hidden in agency case confidentiality rules. "They have used client protection as a sword rather than as a shield to protect the clients. They've used it to protect their mistakes," the judge said. "I didn't think they couldn't stand the public scrutiny."

After an 87-year-old widow almost died when Adult Protective Services left her living in a car through the El Paso winter, the judge began mailing case studies to state leaders and media outlets. He held hearings almost daily, allowing Mr. Hammond to keep calling witnesses and subpoenaing agency records in cases after clients died.

Mr. Schobert, the former El Paso Adult Protective Services supervisor, came to court in late March, just before being suspended, and offered testimony as a whistle-blower. He acknowledged that workers were sent into the field untrained. He said his office was plagued by low morale and high turnover, and a regional supervisor had told his caseworkers that "taking a case to court is a failure in

regards to the client." (The agency declined to comment on his suspension.) Mr. Phillips, who went to El Paso in late March to start the governor's investigation, said he was horrified when the judge showed him the city's worst Adult Protective Services cases.

"Folks may mistake that [the judge] is a little kooky or crazy," he said. "The reality is that people would call me an activist or a nut if I had to sit there every day, day in and day out, and look at the stuff that he sees in his courtroom every day. It would make you sick."

Mr. Phillips said his auditors recently began examining cases in Tarrant County and may also go to Houston before wrapping up. He said detailed reviews elsewhere may not be needed because investigators have already identified and started addressing systemic flaws "that need to be fixed, whether it is El Paso or Beaumont."

But Mr. Hammond said detailed audits of all recent Adult Protective Services cases might be the only way to ensure protection of elderly clients previously ignored.

"A question someone's going to have to find out - how many people have died in the system? That's one of those things that keeps you up at night," he said. "I have to believe that there have been cases which have never been revealed, and people have perished while an APS investigation was open."

The judge and lawyer say the agency has recently filed a flurry of new cases and carried out nearly a dozen emergency removals of vulnerable clients in El Paso. And Judge Higgs said he's hopeful that state leaders are serious about fixing a badly broken system. With more senior citizens living longer in an increasingly rootless society, he said, Texas will soon face far bigger problems if Adult Protective Services doesn't undergo top-to-bottom reforms.

"Some of the people for whom the system has not worked have outlived friends, family and peers. Some of them have outlived their minds, and some have outlived their money," the judge said. "There is every reason to anticipate that the population of people who will need protective services as adults in the future is going to grow."

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Caption:

PHOTO(S): (ERICH SCHLEGEL/Staff Photographer) 1. El Paso lawyer Terry Hammond says that by the end of last year, he was ready for a public fight with Adult Protective Services. He says he was upset by a string of financial exploitation cases ignored by the agency. 2. Lawyer Terry Hammond inspects the El Paso home of Doris McKeon. Her home was riddled with animal excrement and piled with boxes of merchandise from the Home Shopping Network. She is now in an assisted-living home. 3. El Paso County Probate Judge Max Higgs is determined to document the failures of Adult Protective Services. 4. In March, El Paso County Probate Judge Max Higgs began holding hearings almost daily. He also sent case studies to state leaders and media outlets. CHART(S): 1. A STATE OF NEGLECT 2. TEXAS ADULT PROTECTIVE

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Record Number: 219000922

