

LONE STAR PROJECT

Fighting Back... with Facts



(703) 589-5509 - Fax (202) 547- 8258

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Contact: Matt Angle

On the web at <http://www.lonestarproject.net/>

U.S. Justice Department Dropped Texas Youth Commission Indictment

DOJ staffers prepared a federal indictment in the TYC child sex abuse scandal that was pulled by officials up the "chain of command"

The **Lone Star Project** has obtained the email written by Texas Ranger Brian Burzynski and sent to Texas AG official William Tatum confirming that both the US Department of Justice and the Texas Attorney General's office were aware of the sordid sexual and

physical abuse of juveniles taking place at Texas Youth Commission facilities more than a year before the story broke in the press. **Most notably, the email details that two Department of Justice investigators interviewed abuse victims and prepared a federal indictment to prosecute the case. The indictment was abandoned, however, after final approval from "up their chain of command" was denied.**

(Source: Ranger Burzynski's email to AG's office, February 21, 2006) Ultimately, neither the US Department of Justice nor the Texas Attorney General took any action, official or unofficial, to stop the abuse, punish the abusers or even publicize the abuse taking place.



[Read the email HERE](#)

US Attorney General Alberto Gonzales is currently under intense fire for allowing partisan political priorities to trump legal and policy considerations at DOJ. (Source: Washington Post, March 14, 2007) Meanwhile, Texas AG Greg Abbott has been criticized for using both federal and state resources to aggressively prosecute minority seniors using a flawed mail ballot statute while ignoring sexual and physical abuse of children under State care. (Source: Austin American-Statesman, September 27, 2006)

Clearly, a high profile child sex abuse scandal at TYC facilities last year might have proven politically embarrassing for both Governor Rick Perry and other statewide Republicans on the Texas ballot in 2006. Rather than assist the TYC prosecution directly or to even extend themselves unofficially to publicize and draw further scrutiny to the abuse, Gonzalez and Abbott relied on legal technicalities and bureaucratic loopholes to avoid providing any meaningful assistance.

Here are the facts:

DOJ Attorneys investigated and prepared an indictment to prosecute TYC

Ranger Burzynski's email plainly describes federal involvement in the TYC investigation and the preparation of federal indictments. It states:

"...I decided to file the case federally. An Assistant US Attorney out of San Antonio and one out of Washington D.C. came down and interviewed the victims. Following that, they prepared an indictment..."

(Source: Ranger Burzynski's email to AG's office, February 21, 2006)

Federal prosecution Dropped

Burzynski's email then explains that the federal investigators' superiors at DOJ would not approve moving forward with the indictment. The email reads:

"...they [DOJ Attorneys] prepared an indictment but had to pass it up their chain of command for approval to prosecute. In the end, they didn't get that approval..."

(Source: Ranger Burzynski's email to AG's office, February 21, 2006)

Bureaucracy, loopholes and bizarre logic were used to avoid assisting Texas child abuse prosecution

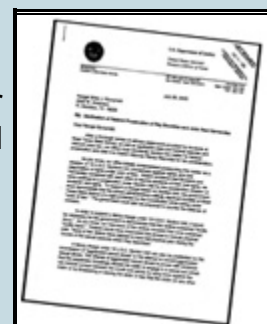
Rather than look for ways to assist prosecution efforts to stop the abuse, both the Federal and State AG offices resorted to cynical technicalities to stay out of the case and avoid providing any help.

Bizarre DOJ letter acknowledges sexual assault but declines to federally prosecute

In a letter sent from assistant U.S. Attorney Bill Baumann to Ranger Burzynski, the Department of Justice acknowledges that at least two

administrators at the West Texas TYC facility engaged in "sexual assaults" against incarcerated youth, yet incredibly they declined to prosecute under either federal civil rights or criminal statutes. The DOJ letter defines grounds for federal prosecution in remarkably narrow terms, but in the face of state inaction, federal action was clearly warranted.

The letter aggressively looks for reasons not to prosecute, but a simple review of publicly available information reveals that the key arguments are easily challenged.



[Read the DOJ Letter Here](#)

Claim

The DOJ's rejection letter states:

- *"Although both men are technically employees of the state as*

administrators in a Texas Youth Commission facility, I believe that a jury would consider their assaults of these students to be the actions of individuals and not the actions of persons acting 'under color of law'"(Source: DOJ letter to Texas Ranger Burzynski, July 28, 2005)

Conflicting Facts

The DOJ website however clearly states that:

- "under "color of law" include acts not only done by federal, state, or local officials within the their lawful authority, but also acts done beyond the bounds of that official's lawful authority,... Persons acting under color of law within the meaning of this statute include police officers, prisons guards and other law enforcement officials, as well as judges, care providers in public health facilities, and others who are acting as public officials"
(Source: Department of Justice Website)

Claim

The DOJ's rejection letter states:

- "A felony charge under 18 U.S.C section 242 ([Link](#)) can also be predicated on the commission of "aggravated sexual abuse" ([Link](#)) or the attempt to commit aggravated sexual abuse. The offense of aggravated sexual abuse is proven with evidence that the perpetrator knowingly caused his victim to engage in a sexual act ...by using force against the victim. ... **Although none of the victims admit that they consented to the sexual contact, none resisted or voiced any objection to the conduct.**" [emphasis added] (Source: DOJ letter to Texas Ranger Burzynski, July 28, 2005)

Conflicting Facts

Putting aside legal argument over whether a minor can give consent to rape with an official who has legal authority over them, one thing is clear: A Texas Youth Commission "Investigative Report for the Analysis of Administrative Violations" details that a staff member confirmed that in at least one case, a child actively resisted the sexual advances of a TYC official

"[John Doe] was sitting at his desk when Mr. Brookins approached him and place his foot on the desk, while his crotch was in [John Doe]'s face. Mr. Brookins put his hand on [John Doe]'s neck and started rubbing."
(Source: Investigative Report for the Analysis of Administrative Violations, Case: #05-0064)

This account was confirmed by a Juvenile Correctional Officer, Mr. Barrera, with an emphasis on the youth's resistance:

- "Mr. Barrera (JCO Dorm 2) described the incident as youth [John Doe] trying to get away from Mr. Brookins, but Brookins would not take his

hands off of [John Doe]'s shoulder. Barrera also described Mr. Brookins as having his leg up pretty high and close to [John Doe]. Mr. Barrera described the incident as lasting from 3 to 5 minutes. During this time frame Mr. Brookins never took his hand off of [John Doe] **despite the youth trying to get away from him**"[emphasis added]

(Source: Investigative Report for the Analysis of Administrative Violations, Case: #05-0064)

Texas AG Abbott's office painstakingly avoided assisting a TYC prosecution

Despite detailed knowledge of the abuse taking place at TYC, Abbott's office sat passively and relied on a bureaucratic technicality requiring that the local DA formally request his assistance.

- Burzynski appealed directly and specifically to the Texas Attorney General for help. His email to Assistant AG William Tatum read, "Is this something that the [Texas] AG's office could review and perhaps consider a prosecution on, or perhaps assist the local prosecutor with?" (Source: Ranger Burzynski's email to AG's office, February 21, 2006)
- The email further reveals that Abbott's office was provided with details of the abuse taking place. It read, "I have attached the report...I will attach some of victim statements as well." (Source: Ranger Burzynski's email to AG's office, February 21, 2006)

Rather than immediately contact the local DA and offer assistance, Abbott's office "responded two days later saying his office does not have jurisdiction over the case and would have to receive a request from the local district attorney to get involved." (Source: Associated Press, March 10, 2007)

More telling, Abbott revealed his real priorities when, just four days earlier, William Tatum was deployed to Bowie County to present evidence before a grand jury on a mail ballot election code violation, **in a case in which the local District Attorney HAD NOT requested assistance from the AG.** (Source: Attorney General Press Release, February 17, 2006)

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6 E Street, SE
Washington, DC 20003

