

CHAMBERS

Volume 37, Number 3

Summer, 2010

CHAMBERS

Plus: Leadership Nominations
Upcoming Events
and more!

*Addressing Addictions in Court:
Rethinking Recovery and Relapse
(part two)*

Winds of Change:
Procedural Innovations in Polish Law

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This is the printable version of *In Chambers* online, the official publication of Texas Center for the Judiciary. The magazine is published four times a year and funded in part by a grant from the Texas Court of Criminal Appeals. *In Chambers* strives to provide the most current information about national and local judicial educational issues and course opportunities available for Texas judges. We keep the Texas Center’s mission of “Judicial Excellence Through Education” as our guiding premise.

Readers are encouraged to write letters to the editor and submit questions, comments, or story ideas for *In Chambers*. To do so, please contact Ric De Barros, Publications Coordinator, at 512.482.8986 or toll free at 800.252.9232, or via email at ricd@yourhonor.com.

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Letter from the Chair

The Honorable David D. Garcia

Dear Judges,

This past year has flown by but at the same time has been filled with many challenges. Ethics Opinion 484 and the challenges of replacing the longest tenured Executive Director in Texas Center history has been a full-time job. I have been extremely fortunate this year having many of our fellow colleagues who have served selflessly on various committees that have provided meaningful input into the effectiveness of our organization. I want to especially acknowledge those members who have comprised our Board of Directors. I have witnessed these colleagues giving selflessly of their time and expertise to insure that we adhere to long-standing core principles on which the Texas Center was founded, yet still remain open to innovative change. I value the opportunities to which I have been exposed.

The past year has also taught me the value of having great employees at the Texas Center. It is comforting to know that we have a wonderful staff and we appreciate how hard they work to insure that the needs of our judiciary are met. Please take the time at the next conference you attend to express your gratitude for their work and dedication to our organization.

It's very sad to be saying goodbye to Mari Kay Bickett but at the same time we know she leaves us in good shape. It was she who helped build the very foundation that has made the Texas Center such a success. Yet with change comes a new beginning and the Board of Directors is excited to welcome Randy Sarosdy as the Texas Center's newest Executive Director. We are confident that Randy's extensive trial and management experience combined with his talents and vision will insure that the Texas Center will provide cutting edge education and training to our judiciary. Your Board of Directors has made it possible for the Texas Center to continue to provide the highest quality of educational programs that insure a qualified and knowledgeable judiciary can administer justice with fairness, efficiency, and integrity.

I will also be greatly relieved to turn over the honor and responsibility of being chair of our judicial organization to the most capable Chair-elect, Roger Towery. I know the Texas Center will be well served!

I am looking forward to seeing you all in Corpus Christi at the Annual Judicial Education Conference.

A handwritten signature in black ink, appearing to read "David D. Garcia". The signature is fluid and cursive, with a long horizontal line extending to the right.

Hon. David D. Garcia

Special Notice!

Leadership Nominations

The Nominating Committees for the Texas Center for the Judiciary has slated the following officers for its open leadership positions:

Chair-Elect – Justice Gina Benavides

Place 2 – Chief Justice David Chew

Place 6 – Judge Chris Oldner

Place 9 – Judge Larry (Rusty) Ladd

If you are interested in serving on any committees during the 2010-11 term, please contact Hon. Roger Towery at 940.538.4314.

Note: Additional nominations may be made from the floor at the Judicial Section Annual Conference meeting.

As a courtesy, we are printing the nominations for the 2010-2011 Judicial Section Board.

Chair – Justice Liz Lang-Miers

Appellate – Justice Evelyn Keyes

Dist – Judge Alfonso Charles

Dist – Judge Aida Salinas Flores

CCL – Judge Jean Hughes

CCA – Judge Mike Keasler

Sup – Justice Phil Johnson

Note: Additional nominations may be made from the floor at the Judicial Section Annual Conference meeting.

New Administrators of Justice

As of August 15, 2010

Margaret Barnes

Judge, 367th District Court
Denton

Jay Bender

Judge, County Court at Law #6
McKinney

James Bridwell

Judge, 342nd District Court
Fort Worth

Vincent Dulweber

Judge, County Court at Law #2
Longview

Natalie Fleming

Judge, Co. Criminal Court at Law #3
Houston

Lee Gabriel

Justice, 2nd Court of Appeals
Fort Worth

Paula Goodhart

Judge, Co. Criminal Court at Law #1
Houston

Debra Lehrmann

Justice, Supreme Court
Austin

Lisa Michalk

Judge, 221st District Court
Conroe

Joe Moss

Judge, County Court at Law
Bonham

Robert Ramirez

Judge, County Court at Law #2
Denton

David Rippel

Judge, County Court at Law #4
McKinney



In Memoriam

**Our hearts go out to the families of those honorable souls who
have passed before us and served the bench so well.
Please join us in remembering:**

Hon. Wilfred Aguilar

Former Judge
Austin

Hon. James E. Barlow

Senior District Judge
San Antonio

Hon. Garvin Germany

Retired Judge
Angleton

Hon. Curt Frank Steib

Senior Justice
San Angelo

Hon. Jack Young

Senior Judge
Muleshoe



by **Hon. K. Michael Mayes**

Editors's Note: This is the second of a three-part series on Addiction in Court.

Relapse Occurs Before the Addict Uses

Truth #3: The mere non-use of drugs and alcohol does not mean the addict is in a successful recovery. Drug or alcohol abuse does not just occur out of thin air or at some singular point in time when the addict says, "Well, I guess I will use some cocaine right now." The abuse is always preceded by defective or distorted thinking that spiral the addict downward. As a consequence, a solid recovery is dependent on a recovering addict staying a "healthy thinking" course in an upward and positive way even when things are going well and in fact especially when things are going well. To let one's guard down is deadly. Most addicts never reach a totally successful recovery because of a failure to control their "addictive thinking." This is not a bad thing, it is reality. This does not mean they are bad people, it is their disease. This does not mean they are failures, only that they must continue to learn and grow in their recovery, onward and upward.¹

Virtually every addict lives with addictive thinking every day and as a result their success at recovery must be viewed on a continuum that measures where they are at any given moment in their recovery. As a result, if we only measure an addict's success at recovery by whether they have "used" or not we are missing the point. An addict may be totally clean of all chemicals but be obsessed with addictive thoughts that are only a day away from causing the addict to use.

You will meet Tracy below. He graduated from one of our Recovery Court Programs, proving that

he could sustain a recovery where he was sober, clean, working, happy and healthy. Following his graduation, he had for some time avoided several opportunities to relapse when confronted with the triggers of old friends. Enter his brother, an addict not in recovery, who Tracy had not seen in years. Despite Tracy's knowledge of addiction, his desire to stay clean and his proven ability to stave off temptation, he relapsed. Tracy's relapse started in his thinking when his brother returned to the scene. Tracy had been clean and sober over a year and he even remained so for the first few days of his brother's return. During those few days, however, Tracy's thinking deteriorated such that he ultimately was unable to fend off the desire to abuse. During those first few days, his recovery began to slide down a relapse slope until he ultimately abused cocaine. If I had tested Tracy on the third day after his brother returned, he would have tested negative for drugs or alcohol, but his relapse mode was in full throttle downward.

Dysfunction in the form of addictive thinking can occur due to changes in the addict's life, such as (1) a reduction in eating, quiet time, sleep, spirituality, trust, spending time with others or exercise, or (2) an increase in stress, sensitivity, anger, paranoia, edginess or blaming others.² Interestingly, the propensity for addictive thinking to occur is probably most prevalent during the first few months of an addict's new-found sobriety since he will be feeling emotions and stressors that he previously handled by numbing himself with drugs or alcohol.³ When dysfunction does occur, the addict is in a relapse mode. At this point, not after the abuse of some drug or alcohol, she must be able to stop the tendency toward further relapse before she descends to the bottom of the incline and starts using again. If the addict fails in reversing this "stink'n thinking"⁴ and returns to using, her relapse is

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Addiction

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complete.

Asking an addict to be totally free of addictive thoughts is like asking a love-struck teenager to stop thinking of her boyfriend. This is simply not going to happen in most cases. Consider the teenager who is obsessed with the young man of her dreams and who continuously communicates with him through myspace.com.⁵ Even if her grades have suffered and she has been grounded, it is likely that her thoughts will trigger her to use the computer even knowing that punishment is sure to follow when she is caught. She is not having evil thoughts, she does not want to hurt anyone, she simply wants to use myspace to feed her obsession.

Addictive thoughts trigger the addict's relapse back into an "immediate gratification" kind of thinking that, left unchecked, leads inevitably to the abuse of drugs or alcohol. We are misleading ourselves if we conclude an individual is thinking clearly and without obsession just because the teenager has not yet turned on her computer or the addict has not yet tested dirty. Truth #4: The real truth about the addict whose recovery is weakening is that he is moving down the recovery continuum, toward the bottom of the recovery incline, in a "relapse mode" that is overtaking him. Something must stop him or he will crash. The question is whether he is in a position to stop the relapse before drugs or alcohol overtake him, or must some other intervention take place to help prevent the fall.⁶ If he previously has been educated about addictive thinking his chances of avoiding a complete relapse are extremely high. If he never has been taught healthy thinking skills that can guide his recovery effort, nor internalized the rehabilitation tools that can defend against his insidious disease, then the likelihood of total relapse is very high.

Recovery is a never-ending journey that cannot be travelled alone

While a few addicts successfully fight this battle alone, the vast majority fail without strong intervention and non-enabling support. Many an

addict have tried to sober up alone and have failed. Truth #5: To successfully recover, an addict must have a willingness to rely on another person, group, power, someone or something outside himself to succeed.⁷ There simply is a need for another source of strength that arises from the very nature of the disorder. Since addiction causes denial in its victims, there is an inability by the addict to realize she is sick or how sick she is, and once she engages a recovery process her denial mechanism will always be in the background whispering that her recovery is not needed. Where denial exists, recovery cannot. As a result, an addict must always be in touch with someone or something outside herself to remind her and convince her of the existence and severity of her mental disorder and her need to address her addictive thinking. She also needs this outer source of support to encourage and support her daily recovery work. Group meetings, individual counseling sessions, personal support of a loved one -- anyone or anything that maintains an objective distance from the addict but which shores up the addict's tendencies to falter -- can fulfill this necessary component of a recovery.

Imagine an individual who has been diagnosed with cancer. He is told that a daily regimen of treatment for an extended period of time is needed to arrest the condition and then periodic treatments thereafter will be needed to avoid any recurrence. The person knows he has cancer and knows treatment is necessary to stabilize and maintain the condition, but he also is in denial as to its severity and so refuses to regularly seek the treatment that is needed. "I will get to it someday," he thinks. "I feel strong today." This man is in denial and is avoiding the very treatment he needs to survive. It is obvious he needs a strong loved one or some outside power that can and will remind him of the true facts of his condition and keep him on task, in a way that encourages him to accept his continued need for treatment.

We have all heard the common statements of addicts. "I can quit anytime I want." "I will stop drinking some day." "I will quit snorting coke when things get better at home." "I will quit pot when my back stops hurting." "I don't need help whipping this." These are not lies; the addict truly believes them. That is why the maintenance of a successful recovery from

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Contempt

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addiction necessitates a strong outer source, another resource of reason as it were, that will keep the addict on task with their treatment. Needing this additional support does not reflect on the addict's character any more than the need for such help by the cancer patient discussed above. It is not an issue of weakness or lack of courage. It is an issue of the disease.

Truth #6: Experts now agree and recent studies have shown that forced recovery programs are as effective as voluntary ones.⁸ In this regard, we must understand that an addict will never recognize his need for help if he has neither hit rock bottom nor been forced to accept reality.⁹ Once addictive thinking resurfaces, the depth of the relapse depends on both the addict's ability to recover and/or the intervention of some outside force that causes them to reengage their recovery with new vigor. It is imperative that an addict's recovery be rejuvenated as soon as possible and that it be grounded in effort which rebuilds a framework upon which the addict can stand to face future temptations and triggers to relapse. Consequently, ongoing support and/or compulsory recovery programs can provoke a keen awareness of what triggered the addict's relapse in thinking and how to address its seductive lure. As a result, as discussed more below, a judge's ability to mandate the beginning of a recovery should be used not ignored.

The good news is that there is, along the recovery journey, whether voluntarily undertaken or not, a confidence that grows in consistent recovery work. Of course this confidence must be earned by the addict. It cannot be bought nor can others give it to him as a gift nor can they do the work for him. In the end this is why the hard work of recovery is so good, because from the sweat of recovery work arises an inner strength that guides the addict's thinking and ultimately his sobriety.

A STRONG RECOVERY DOES NOT FORECLOSE THE POSSIBILITY OF A RELAPSE IN THINKING

At its best, recovery leads the addict to a sobriety full of character changes that become habitual and

which the addict relies upon to prevent a back slide.¹⁰ These character changes include positive growth in trusting, accepting criticism, finding healthy solutions to stress, not blaming others, and finding a spirituality that comforts. Truth #7: At any stage of recovery, however, an addict can return to a relapse in thinking that, left unchecked, can ultimately lead to the abusing of drugs or alcohol.¹¹

Imagine that you started a new workout program with the intention of losing weight and gaining physical strength. You started with the best intentions. The first few months were a roaring success and your new self had been the talk of the gym. Sometime in the fifth month you looked at yourself in the mirror and you felt quite satisfied with the results and prospective success. One day you find that you are spending more time at the computer or watching TV. A few weeks into the sixth month you discover that you are back to your starting weight and pants size. Instead of acting immediately to stop the obvious decline in your program you tell yourself:

I look healthy otherwise. A small improvement is better than none and I'm not so bad looking anyway. I can always pick up the pace later on if I really need to.

A few more weeks go by and when you next check your weight and waistline, you are worse off than when you started. Your overall program looks as if it is going to fail without some extra effort and time. You probably can salvage things if you commit yourself to working extra hard the next month or so, but the necessary effort does not seem quite worth any expected success, especially since the end result of total failure seems so certain. Consequently, you give up.

If you had asked a good friend to ride herd as a workout partner, not do it for you but stay involved enough to talk sense to you when you overlooked your necessary daily maintenance, your workout program would have been a success. This would not have meant you were incompetent or weak, but simply that you knew your weakness for TV and the computer and that you needed support to stay the course without letting these obsessions, and impatience or lack of commitment, derail your program. It would not have made your work easier, but it would have helped you

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Addiction

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maintain a workout program that led to a successful year of exercise and health. As it turned out, your stubborn denial of any need for help, your avoidance of the daily maintenance that was so crucial, your narcissistic reliance the short term success you enjoyed, and your fear that failure was a certainty at the first sign of trouble all combined for a lost effort.

The analogy to recovery is obvious. If an addict learns to address any negative turn of events as they arise they will have fewer problems in their recovery. But because this is so difficult alone, as successfully recovering addicts know very well, recovery from addiction requires another person or power to help the addict stay the course. This does not mean the addict is weak or incompetent, but just that he is an addict and a positive outside agency is necessary to help him restart or maintain his recovery when his thinking moves southward. For those that appear in court, this other person or power may well be the judge. That being the case, the importance of immediate judicial intervention cannot be overstated.

The workout analogy is apt with one exception. Depending on the severity of an addict's disorder and relapse, there may not be another chance to restart the program. There may only be an obituary.

Be sure to check out the conclusion of this series in the next edition of In Chambers!

ENDNOTES

- 1 Recovery is a process, not a destination, or as the 12 Step groups put it, "Recovery is progress, not perfection."
- 2 Compare Gorski and Miller, *Staying Sober, A Guide For Relapse Prevention* (1986).
- 3 Id.; Gorski and Miller describe in detail these withdrawal symptoms and their acute and post-acute phases.
- 4 A phrase coined by the 12 Step programs.
- 5 mspace.com, facebook.com, and twitter.com accounts are fertile locations to gain information about defendants on probation. Virtually every defendant under the age of 30 will have an online page or blog and our staffs have gained invaluable information on these pages about what the defendant is really thinking and doing (e.g., gang and drug involvement).
- 6 For example, jail can be a vital and positive intervention in recovery. See Mayes, *Recovery Courts and Character Changes* (July 2006), <http://co.montgomery.tx.us/410dc/recoverycourtsandcharacterchanges.pdf>
- 7 12 Step programs call this a Higher Power or "God as we understand Him."
- 8 HBO Documentary Films, *Addiction*, 14 Part Series (2007), http://www.hbo.com/addiction/treatment/37_getting_someone_into_treatment.html
- 9 Mayes, *Recovery Courts and Character Changes (How Jail Plays a Role in Recovery)* (July 2006); *Compare Twelve Steps and Twelve Traditions*, at pp. 21-24 (2002).
- 10 Mayes, *Recovery Courts and Character Changes* (July 2006), <http://co.montgomery.tx.us/410dc/recoverycourtsandcharacterchanges.pdf>
- 11 See Berger, *12 Stupid Things That Mess Up Recovery* (2008)



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by **The Honorable John McClellan Marshall**
Senior Judge, 14th Judicial District of Texas

I imagine a system of pretrial procedure that does not include the discovery methods that are familiar to us, such as depositions, requests for admission, interrogatories, or requests for production. In short, the concept of “voluntary disclosure” is practically unknown in the Polish system. If an attorney should desire to obtain documents from the opponent, then a request is sent to the presiding judge who initially decides whether to ask the opposing attorney to turn them over and, if so, whether to turn them over to the judge for a preliminary review as to relevance and authenticity. It is then the prerogative of the trial judge to turn them over to the requesting attorney, or not. In addition, the opposing attorney is under no legal obligation to turn them over to the judge anyway. All of this is over and above the notion that a deposition must be taken in the presence of the judge who rules on objections on the spot, thus taking up a lot of the judge’s time in pretrial rulings that will have a heavy impact on the trial. At the end of the day, there is no mechanism to force compliance with the court’s request. This is what remains of a system bequeathed to post-Communist Poland and represents a combination of Napoleon and Karl Marx.



Judge Marshall addressing the Iustitia conference in Lublin in the spring on ADR.

For the past 17 years, it has been my privilege to teach a course in American Legal Studies in the Faculty of Law at Marie Curie Skłodowska University (UMCS) in Lublin, Poland, during the spring term. The procedural and trial differences between the common law and civil law systems have been significant in the past, to be sure. With the modern globalization of the economy and the need for lawyers to understand different legal systems, the course has evolved to meet the more modern problems that Polish lawyers might encounter in an American court. Over the years, the graduates of this course and the demonstration jury trial that is part of it have become trial attorneys, law professors, and judges.

In the spring of 2009, one of my former students, now a judge and the head of the administrative division of the “district” court in Lublin, approached me to discuss with some of the other judges how our procedural rules dealt with certain problems that they were experiencing in the Polish courts at present. There was a small meeting with a group of younger judges who were interested in these issues, and, as it developed, they asked me to come back in the autumn to address a meeting of the Polish Judges’ Association “Iustitia” in Warsaw on the subject of pretrial procedure in America. The notion that I would be addressing judges from all over Poland, including their Supreme Court judges, the Minister of Justice, and law professors from all of the major universities added a certain focus and edge to the topic.

In October, there actually were two presentations, one in Lublin and then the one to the larger audience at the University of Warsaw. In each case, it was important to have an excellent interpreter who was himself a former student of mine and a judge, so there was no problem of translating the legal concepts. It

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Winds

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was the concepts themselves that were novel to our Polish colleagues. In particular, the notion of voluntary disclosure and sanctions seemed to dominate their thought process when discussing potential reform of their system along the lines of our practice.

Voluntary disclosure of documents or production of things, which we tend to take for granted in the United States, has become increasingly important as a pretrial concept in Central Europe as more and more commercial interaction with the West expands in quantity and complexity. After all, if an attorney can obtain the necessary documents from an opponent quickly, it may avoid litigation altogether. Similarly, turning material items over for examination by an expert is difficult at best. In the Polish system, neither of these things normally occurs without the presence of the court in some capacity. Of course, as noted above, the resisting attorney may not turn them over at all. It is at this point that the questions from the audience turned to the sanctions mechanisms discussed in our rules.

Based upon my research and discussions with Polish judges, I had learned that there was no such procedure as contempt of court, criminal or civil, whereby the judge could enforce his or her orders directly on an offending party. In the most abstract sense, the contempt power has its roots in the notion that the court represents the judicial power of the Republic in the context of the dispute before it. As a result, to refuse to obey the order of the court is, quite simply, an insult to the Republic that should not be allowed to go unpunished, lest the Republic be diminished in some way.

In the course of the lecture, the Minister of Justice (newly appointed) was making notes on our requirements of due process in relation to civil contempt. To place someone in jail to coerce, but not overtly to punish, was clearly a novel thought. Based upon the reaction of the judges in the audience, it was also a popular idea. That revealed that some aspects of courts and lawyering are universal, particularly in being stubbornly adversarial. For the younger judges, it was apparent that they were looking at sanctions as part of

the reform of the pretrial procedure so as to allow the court greater flexibility in management of discovery issues. The prevailing view seemed to be that this would lessen the burden of the administrative aspects of the judicial activity and free the judge to be more of a judicial official.

Following the conference in Warsaw, it was proposed that when I returned in the spring of 2010, Iustitia in Lublin would host a conference on alternative dispute resolution. It has only been relatively recently that ADR as we know it, particularly mediation in private litigation, has become a formal part of the judicial process. Of course, arbitration, particularly in international commercial transactions, has been in Poland even during the period from 1945 to 1990. During that time, mediation existed on a purely voluntary and local level outside of the judicial system. The reason was purely practical: no one wanted to go into a court dominated by Marxist legal concepts if they could settle it with their neighbors locally. Again, it was the mechanisms by which ADR operated in the American system that was the focus of the lectures. In this case, there were two lectures, one to Iustitia and one as a “graduate” seminar at the Law Faculty of UMCS.



Judge Marshall's lecture at UMCS on the topic of mediation as “we do it in Texas”.

In the midst of this judicial intellectual ferment, the Polish Ministry of Justice and Supreme Court have recognized the need for a formal judicial education program, and they have created the National School for Judges and Prosecutors. It has two divisions, one that is in Kraków for newly appointed judges. The other, as it happens, is located in Lublin, and it has the mission of developing continuing judicial education

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programs for the judiciary on a national level. As it happens, two of the judges on the faculty of the School are former students. The immediate consequence of this is that a conference has been planned for spring 2011 the topics of which will be legal ethics (The Texas Rules of Disciplinary Procedure) and the Code of Judicial Conduct. For this effort, the faculty will include a criminal attorney and a civil attorney to discuss the role of legal ethics in the litigation context, both as to the clients and in relation to the court. In addition, the Executive Director of the Texas Commission on Judicial Conduct has graciously volunteered to make a presentation on the rules that govern judges in our system and what happens to judges who transgress those rules.

There are two impressions of the Polish system and how the American system might relate to it in a positive way that emerged from this series of

lectures. First, the pretrial discovery and sanctions concepts clearly have application in the commercial and personal injury contexts and, with only slight modifications from what we know in Texas, could fit in the Polish model very well. Second, the ADR systems, particularly mediation, seem to fit in private litigation most conveniently in the domestic relations law. While there was no discussion of collaborative law as we know it in our domestic relations cases, it would appear that that could be a next step.

On the judicial side, it is apparent that continuing judicial education is recognized as an important component of maintaining a competent judiciary in which the public can have confidence. For my part, it is truly humbling to think that we have had such a great opportunity to support the recovery of a Europe that has suffered so much for so long by the addition of a little touch of the New World.



The Texas College for Judicial Studies is an annual program, designed to take three to four years, in which judges complete a core curriculum of 16 hours and an additional curriculum of 9 hours and are awarded a diploma. To read more about the Texas College, go [here](#).

Congratulations to this year's graduating class!



Back row: Robert Vargas, Amado Abascal, Nanette Hasette, William Savage, Monica Guerrero, B. Michael Chitty, Ron Pope, Gary Steele.

Front row: Lamar McCorkle, Elsa Alcalá, Carter Schildknecht, Deborah Oakes-Evans, Guadalupe Flores.

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