SB

168

Paula Smith

Senate Health, Education and Social Services Committee

Legislation Checklist

Bill number: SB 168

Sponsor:

Date referred to committee:

Synopsis completed:

Fiscal note:

Further referrals:

CONTACTS: Ed Heim

Sen. Rockey

Karen Donnely 780-6088
6540 Glacier Hwy # 215

Pam Cary, Pres. of Juneau Assoc. of Deaf
VP of AK " " 780-4551

Al Burke, Exec. Sec. of AK Assoc. of
9241 B st. Suite 201
Anch 99503

James Omvig, Sensory Impairment Center 272-7223

Art Snowden

~~Rocky in Sen. Elasos~~ is

Paula Smith - DOE - 2814 will testify

Karla Forsythe, Courts 264-0634

Janet Bradley, Human Rts Commission 276-7474

Mike Morgan 2814 Div. Voc Rehab. DOE (Reda Ellis)

John Katcher, PADD 274-3654

Dot Truran, Gov's Council 479-6940

COMMITTEE REPORT

SENATE

FURTHER: JUDICIARY

2/20/85

Date 4/1/85

Mr. President

The Committee on RESS considered SB 168

rights of deaf, blind, and disabled persons.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

[X] do pass

[ ] do pass with attached amendment(s)

[ ] replace with/or adopt CS for _____
[ ] new title
[ ] same title and recommends _____

[ ] and attached a "LETTER OF INTENT" [ ] NEW FISCAL NOTE

[ ] reports it back without recommendation

[ ] recommends referral to _____ Committee

MEMBERS SIGNING
DO PASS

MEMBERS HAVING
OTHER RECOMMENDATIONS

Betty Lochenberg
Chairman

Chairman recommendation

Hein
5/8/85

Original sponsors: Duncan, Collins
and Gruenberg

IN THE HOUSE BY THE JUDICIARY COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 172 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the rights of physically and mentally disabled persons."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 09.20.010 is amended by adding new subsections to read:

(b) A person is not disqualified to act as a juror solely because of the loss of hearing or sight in any degree or a disability that substantially impairs or interferes with the person's mobility.

(c) The court shall provide, and pay the cost of services of, an interpreter or reader when necessary to enable a person with impaired hearing or sight to act as a juror.

* Sec. 2. AS 18.06.020 is amended to read:

Sec. 18.06.020. RIGHTS. (a) The [BLIND, THE VISUALLY HANDICAPPED, AND THE OTHERWISE] physically <u>or mentally</u> disabled have the same right as the able-bodied to the full and free pedestrian use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(b) The [BLIND, THE VISUALLY HANDICAPPED, AND THE OTHERWISE] physically <u>or mentally</u> disabled are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by

law and applicable alike to all persons.

(c) Persons who are physically or mentally disabled [TOTALLY OR PARTIALLY BLIND PERSONS] have the right to be accompanied or assisted by a service animal that is certified by a training facility for service animals as being able to function in a public setting [GUIDE DOG, ESPECIALLY TRAINED FOR THE PURPOSE], in any of the places listed in (b) of this section without being required to pay an extra charge for the service animal [GUIDE DOG]; however, the person with the animal [GUIDE DOG] is liable for any damage done to the premises or facilities by the animal [DOG].

* Sec. 3. AS 18.06.030 is amended to read:

Sec. 18.06.030. RIGHTS AS PEDESTRIANS. The driver of a motor vehicle approaching a physically or mentally disabled [TOTALLY OR PARTIALLY BLIND] pedestrian who is carrying a cane predominantly white or metallic in color, with or without a red tip, using special equipment for mobility, or using a service animal [GUIDE DOG] shall take all necessary precautions to avoid injury to the pedestrian, and a driver who fails to take all necessary precautions and causes injury to the pedestrian is liable in damages for the injury caused. A physically or mentally disabled [TOTALLY BLIND OR PARTIALLY BLIND] pedestrian not carrying a cane as described in this section or using a service animal [GUIDE DOG] in any of the places, accommodations or conveyances set out under AS 18.06.020 has all of the rights and privileges conferred by law upon other persons, and the failure of a physically or mentally disabled [TOTALLY OR PARTIALLY BLIND] pedestrian to carry a cane as described in this section or to use a service animal [GUIDE DOG] is not by itself evidence of [CONTRIBUTORY] negligence.

* Sec. 4. AS 18.06.040 is amended to read:

Sec. 18.06.040. PENALTY FOR DENYING RIGHTS. A person who denies or interferes with admittance to or enjoyment of the public facilities set out in AS 18.06.020 or otherwise interferes with the rights of a physically or mentally [TOTALLY OR PARTIALLY BLIND OR OTHERWISE] disabled person is guilty of a class B misdemeanor [AND UPON CONVICTION IS PUNISHABLE BY A FINE OF NOT MORE THAN $1,000, OR BY IMPRISONMENT FOR NOT MORE THAN 60 DAYS, OR BY BOTH].

* Sec. 5. AS 18.06.040 is amended to read:

Sec. 18.06.040. ENFORCEMENT AND PENALTY [FOR DENYING RIGHTS]. Enforcement of this chapter shall be by the state Human Rights Commission under AS 18.80.010 - 18.80.145. A person who denies or interferes with admittance to or enjoyment of the public facilities set out in AS 18.06.020 or otherwise interferes with the rights of a physically or mentally [TOTALLY OR PARTIALLY BLIND OR OTHERWISE] disabled person is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $1,000, or by imprisonment for not more than 60 days, or by both.

* Sec. 6. AS 18.06.050 is amended to read:

Sec. 18.06.050. DEFINITIONS. In this chapter "physically or mentally disabled" has the meaning given in AS 18.80.300 [TOTALLY BLIND" OR "PARTIALLY BLIND" MEANS A PERSON WHOSE VISUAL ACUITY DOES NOT EXCEED 20/200 IN THE BETTER EYE WITH CORRECTING LENSES OR WHOSE WIDEST DIAMETER OF VISUAL FIELD SUBTENDS AN ANGLE NO GREATER THAN 20 DEGREES].

* Sec. 7. AS 18.80.060(a) is amended to read:

(a) In addition to the other powers and duties prescribed by this chapter the commission shall

(1) appoint an executive director approved by the governor;

(2) hire other administrative staff as may be necessary to

the commission's function;

(3) exercise general supervision and direct the activities of the executive director and other administrative staff;

(4) accept complaints under AS 18.80.100;

(5) study the problems of discrimination in all or specific fields of human relationships, and foster through community effort or goodwill, cooperation and conciliation among the groups and elements of the population of the state, and publish results of investigations and research as in its judgment will tend to eliminate discrimination because of race, religion, color, national ancestry, physical or mental disability [HANDICAP], age, sex, marital status, changes in marital status, pregnancy or parenthood;

(6) make an overall assessment, at least once every three years, of the progress made toward equal employment opportunity by every department of state government; results of the assessment shall be included in the annual report made under AS 18.80.150;

(7) enforce AS 18.06.

* Sec. 8. AS 18.80.200 is amended to read:

Sec. 18.80.200. PURPOSE. (a) It is determined and declared as a matter of legislative finding that discrimination against an inhabitant of the state because of race, religion, color, national origin, age, sex, physical or mental disability, marital status, changes in marital status, pregnancy or parenthood is a matter of public concern and that such discrimination not only threatens the rights and privileges of the inhabitants of the state but also menaces the institutions of the state and threatens peace, order, health, safety and general welfare of the state and its inhabitants.

(b) Therefore, it is the policy of the state and the purpose of this chapter to eliminate and prevent discrimination in employment, in

credit and financing practices, in places of public accommodation, in the sale, lease, or rental of real property because of race, religion, color, national origin, sex, age, physical or mental disability, marital status, changes in marital status, pregnancy or parenthood. It is not the purpose of this chapter to supersede laws pertaining to child labor, the age of majority or other age restrictions or requirements.

* Sec. 9. AS 18.80.210 is amended to read:

Sec. 18.80.210. CIVIL RIGHTS. The opportunity to obtain employment, credit and financing, public accommodations, housing accommodations and other property without discrimination because of sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, race, religion, color or national origin is a civil right.

* Sec. 10. AS 18.80.220(a) is amended to read:

(a) It is unlawful for

(1) an employer to refuse employment to a person, or to bar the person [HIM] from employment, or to discriminate against the person [HIM] in compensation or in a term, condition, or privilege of employment because of [HIS] race, religion, color or national origin, or because of [HIS] age, physical or mental disability [HANDICAP], sex, marital status, changes in marital status, pregnancy or parenthood when the reasonable demands of the position do not require distinction on the basis of age, physical or mental disability [HANDICAP], sex, marital status, changes in marital status, pregnancy or parenthood;

(2) a labor organization, because of a person's sex, marital status, changes in marital status, pregnancy, parenthood, age, race, religion, physical or mental disability, color or national

origin, to exclude or to expel the person [HIM] from its membership, or to discriminate in any way against one of its members or an employer or an employee;

(3) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication, or to use a form of application for employment or to make an inquiry in connection with prospective employment, which expresses, directly or indirectly, a limitation, specification or discrimination as to sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, age, race, creed, color or national origin, or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(4) an employer, labor organization or employment agency to discharge, expel or otherwise discriminate against a person because the person [HE] has opposed any practices forbidden under AS 18.80.200 - 18.80.280 or because the person [HE] has filed a complaint, testified or assisted in a proceeding under this chapter;

(5) an employer to discriminate in the payment of wages as between the sexes, or to employ a female in an occupation in this state at a salary or wage rate less than that paid to a male employee for work of comparable character or work in the same operation, business or type of work in the same locality; or

(6) a person to print, publish, broadcast or otherwise circulate a statement, inquiry or advertisement in connection with prospective employment which expresses directly, a limitation, specification or discrimination as to sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, age, race, religion, color or national origin, unless based upon a bona fide occupational qualification.

* Sec. 11. AS 18.80.230 is amended to read:

Sec. 18.80.230. UNLAWFUL PRACTICES IN PLACES OF PUBLIC ACCOMMODATION. It is unlawful for the owner, lessee, manager, agent or employee of a public accommodation

(1) to refuse, withhold from or deny to a person any of its services, goods, facilities, advantages or privileges because of sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, race, religion, color or national origin;

(2) to publish, circulate, issue, display, post or mail a written or printed communication, notice or advertisement that [WHICH] states or implies

(A) that any of the services, goods, facilities, advantages or privileges of the public accommodation will be refused, withheld from or denied to a person of a certain race, religion, sex, physical or mental disability, marital status, color or national origin or because of pregnancy, parenthood, or a change in marital status, or

(B) that the patronage of a person belonging to a particular race, creed, sex, marital status, color or national origin or who, because of pregnancy, parenthood, physical or mental disability, or a change in marital status, is unwelcome, not desired or solicited.

* Sec. 12. AS 18.80.240 is amended to read:

Sec. 18.80.240. UNLAWFUL PRACTICES IN THE SALE OR RENTAL OF REAL PROPERTY. It is unlawful for the owner, lessee, manager or other person having the right to sell, lease or rent real property

(1) to refuse to sell, lease or rent the real property to a person because of sex, marital status, changes n marital status,

pregnancy, race, religion, physical or mental disability, color or national origin; however, nothing in this paragraph prohibits the sale, lease or rental of classes of real property commonly known as housing for "singles" or "married couples" only;

(2) to discriminate against a person because of sex, marital status, changes in marital status, pregnancy, race, religion, physical or mental disability, color or national origin in a term, condition or privilege relating to the use, sale, lease or rental of real property; however, nothing in this paragraph prohibits the sale, lease or rental of classes of real property commonly known as housing for "singles" or "married couples" only;

(3) to make a written or oral inquiry or record of the sex, marital status, changes in marital status, race, religion, physical or mental disability, color or national origin of a person seeking to buy, lease or rent real property;

(4) to offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or sources in connection therewith because of a person's sex, marital status, changes in marital status, pregnancy, race, religion, physical or mental disability, color, national origin or age;

(5) to represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to refuse a person to inspect real property because of the race, religion, physical or mental disability, color, national origin, age, sex, marital status, change in marital status or pregnancy of that person or of any person associated with that person;

(6) to engage in blockbusting;

(7) to make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement, with respect to the sale or rental of real property that indicates any preference, limitation, or discrimination based on race, color, religion, physical or mental disability, sex, or national origin, or an intention to make the preference, limitation or discrimination.

* Sec. 13. AS 18.80.250(a) is amended to read:

(a) It is unlawful for a financial institution or other commercial institution extending secured or unsecured credit, upon receiving an application for financial assistance or credit for the acquisition, construction rehabilitation, repair or maintenance of a housing accommodation or other property or services, or the acquisition or improvement of unimproved property, or upon receiving an application for any sort of loan of money, to permit one of its officials or employees during the execution of the official's or the employee's [HIS] duties

(1) to discriminate against the applicant because of sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, race, religion, color or national origin in a term, condition or privilege relating to the obtainment or use of the institution's financial assistance or credit, except to the extent of a federal statute or regulation applicable to a transaction of the same character;

(2) to make or cause to be made a written or oral inquiry or record of the sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, race, religion, color or national origin of a person seeking the institution's financial assistance or credit, unless the inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the

particular extension of credit and is not made or used in order to discriminate in a determination of creditworthiness;

(3) to refuse to extend credit, issue a credit card or make a loan to a married person, who is otherwise creditworthy, if so requested by the person;

(4) to refuse to issue a credit card to a married person in that person's name, if so requested by the person, provided, however, that the person so requesting a card may be required to open an account in that name.

* Sec. 14. AS 18.80.255 is amended to read:

Sec. 18.80.255. UNLAWFUL PRACTICES BY THE STATE OR ITS POLITICAL SUBDIVISIONS. It is unlawful for the state or any of its political subdivisions

(1) to refuse, withhold from or deny to a person any local, state or federal funds, services, goods, facilities, advantages or privileges because of race, religion, sex, color or national origin;

(2) to publish, circulate, issue, display, post or mail a written or printed communication, notice or advertisement which states or implies that any local, state or federal funds, services, goods, facilities, advantages or privileges of the office or agency will be refused, withheld from or denied to <u>a physically or mentally disabled person or</u> a person of a certain race, religion, sex, color or national origin or that the patronage of <u>a physically or mentally disabled person or</u> a person belonging to a particular race, creed, sex, color or national origin is unwelcome, not desired or solicited<u>; it is not unlawful to post notice that facilities to accommodate the physically or mentally disabled are not available;</u>

<u>(3) to refuse or deny to a person any local, state, or federal funds, services, goods, facilities, advantages or privileges</u>

because of physical or mental disability; however, this paragraph may not be construed to require alteration or remodeling of buildings or facilities owned or operated by the state or its political subdivisions to any extent not required by other law.

* Sec. 15. AS 18.80.300 is amended by adding new paragraphs to read:

(15) "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(16) "physical or mental disability" means

(A) a physical or mental impairment that substantially limits one or more major life activities,

(B) a history of, or a misclassification as having, a mental or physical impairment that substantially limits one or more major life activities; or

(C) having

(i) a physical or mental impairment that does not substantially limit a person's major life activities but that is treated by the person as constituting such a limitation;

(ii) a physical or mental impairment that substantially limits a person's major life activities only as a result of the attitudes of others toward the impairment; or

(iii) none of the impairments defined in this paragraph but being treated by others as having such an impairment;

(D) a condition that may require the use of a prosthesis, special equipment for mobility or service animal;

(17) "physical or mental impairment" means

(A) physiological disorder or condition, cosmetic

disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory including speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(B) mental or psychological disorder, including mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

* Sec. 16. AS 18.80.300(13) is repealed.

SB 113

HB 287

SB 21

HB 88

Sec. 09.20.010. Qualification of jurors. A person is qualified to act as a juror if the person is

(1) a citizen of the United States;

(2) a resident of the state;

(3) at least 18 years of age;

(4) of sound mind;

(5) in possession of the person's natural faculties; and

(6) able to read or speak the English language. (§ 2.01 ch 101 SLA 1962; am § 3 ch 245 SLA 1970; am § 1 ch 66 SLA 1981)

Effect of amendments. — The 1981 amendment substituted "18" for "19" in paragraph (3).

NOTES TO DECISIONS

Qualifications subject for legislation. — To define the qualification of jurors and prescribe the mode of their selection is a rightful subject of legislation. Tynan v. United States, 297 F. 177 (9th Cir.), cert. denied, 266 U.S. 604, 45 S. Ct. 91, 69 L. Ed. 463 (1924).

Exclusionary method of jury selection held invalid. — Any method of jury selection which is in reality a subterfuge to exclude from juries systematically and intentionally some cognizable group or class of citizens in the community must be held invalid. Hampton v. State, Sup. Ct. Op. No. 1487 (File No. 2741), 569 P.2d 138 (1977), cert. denied, 434 U.S. 1056, 98 S. Ct. 1225, 55 L. Ed. 2d 757, rehearing denied, 435 U.S. 981, 98 S. Ct. 1634, 56 L. Ed. 2d 75 (1978).

Quoted in City of Kotzebue v. Ipalook, Sup. Ct. Op. No. 588 (File No. 1033), 462 P.2d 75 (1969).

Collateral references. — Unfamiliarity with English as affecting competency of juror, 34 ALR 194.

Effect of exclusion of women from jury list, 52 ALR 922.

Intelligence or character test of qualifications of juror, 126 ALR 507.

Religious test of qualifications of juror. 126 ALR 526.

Loyalty test of qualifications of juror, 126 ALR 529.

Women as jurors, 157 ALR 561.

Deafness of juror as ground for impeaching verdict; waiver of objection thereto, 15 ALR2d 534, 537.

Validity of requirement of oath of allegiance, 18 ALR2d 294.

Proper procedure upon illness or other disability of civil case juror, 99 ALR2d 684.

Claustrophobia or other neurosis of juror as subject of inquiry on voir dire or of disqualification of juror, 20 ALR3d 1420.

Validity of enactment requiring juror to be an elector or voter or have qualifications thereof, 78 ALR3d 1147.

Validity of requirement of practice of selecting prospective jurors exclusively from list of registered voters, 80 ALR3d 869.

Sec. 09.20.020. Disqualification of jurors. A person is disqualified to act as a juror if the person

(1) has served as a juror in the state within one year of the time of examination for service;

(2) has been convicted of a felony and the civil rights of the person have not been restored. (§ 2.02 ch 101 SLA 1962)

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3600

M E M O R A N D U M December 7, 1984

SUBJECT: Rights of the disabled
(Work Order No. 14-0015)

TO: Senator Patrick M. Rodey

FROM: Edward H. Hein EHH
Legislative Counsel

Enclosed is the draft bill requested by your assistant, Pat Corbett. I drafted this after discussing the matter with John Katcher, an attorney with PADD in Anchorage, who replaced Jeff Jesse. Please note that in section 1 of the bill we have required the court system to provide and pay the costs of interpreters. Article IV, section 15 of the Alaska Constitution gives the state supreme court authority to set its own rules of administration. Since providing for interpreters is an administrative matter, the provision in the bill may run afoul of the separation of powers doctrine. If you want me to research this question further, let me know.

EHH:ojb
J10/002

ALASKA STATE COMMISSION FOR HUMAN RIGHTS

1984 ANNUAL REPORT

TABLE OF CONTENTS

COMMISSION OFFICE LOCATIONS

HEADQUARTERS OFFICE
431 West 7th Avenue, Suite 105
Anchorage, Alaska 99501
(907) 276-7474

HEARING UNIT
431 West 7th Avenue, Suite 107
Anchorage, Alaska 99501
(907) 272-5541

SOUTHCENTRAL REGIONAL OFFICE
431 West 7th Avenue, Suite 101
Anchorage, Alaska 99501
(907) 274-4692

NORTHERN REGIONAL OFFICE
675 Seventh Avenue, Station H
Fairbanks, Alaska 99701
(907) 456-8306

SOUTHEASTERN REGIONAL OFFICE
Pouch AH
314 Goldstein Building
Juneau, Alaska 99811
(907) 465-3561

COMMISSIONERS:

James H. Chase, Chairperson

Virgie King, Vice-Chairperson

Arlene Dilts-Standiford

John C. Gonzales

Bienvenido E. Holganza

Jacqueline Lindauer

Morgan P. Solomon

February 7, 1985

The Honorable Bill Sheffield, Governor, State of Alaska;
The Honorable Don Bennett, President, Alaska Senate; and
The Honorable Ben F. Grussendorf, Speaker, Alaska House of Representatives
Juneau, Alaska

It is with mixed emotions that the Alaska Human Rights Commission transmits to you the report of our activities in 1984. We on the one hand are pleased with what has been accomplished and at the same time are frustrated because our goals were not achieved to the degree to which we had aspired.

This report summarizes our efforts to respond to the declared needs of the growing number of Alaskans. They still hear the promise of the Alaska Legislature, when 20 years ago it declared via its policy and the Alaska Human Rights Law, that unlawful discrimination would be eliminated and prevented. These Alaskans demand, expect and deserve the fulfillment of that promise. Alaskans suffering from unlawful discrimination are, in increasing numbers, demanding the promised service from the Human Rights Commission. In the early years of my term as Commissioner, I found the resources of the Commission to be throughly taxed in the effort to keep the promise. This was so even as other agencies of State Government were expanding their capability to do their mandated tasks. More recently I find the resources of the Human Rights Commission being reduced. In other words, we were not included during the expansion phase of State Government, but have shared in the loss of resources during the reduction and reallocation phase. Our response has been to do more and better with less. We are proud of what has been accomplished, but we nevertheless understand that we are fast approaching the point of diminishing returns.

What has been accomplished is reflected in the staff narrative reports, the case processing statistics and perhaps most realistically in the sanitized case histories drawn from the investigative files of the Commission. We have made progress, but even these 20 years of progress cannot be portrayed as eliminating discrimination.

The Commission is dismayed that the general Alaskan public would accept with amusement the formation of the Alaska Association of White Men. We shudder as we recall that the Ku Klux Klan was also perceived as humorous by many people who were disbelieving of the bigotry of its purpose. We hope that this is not an omen for Alaska's future. Many parts of this nation are suffering the ills of discriminatory harassment. Many local and state governments have enacted legislation prohibiting this type of harassment. Alaska's needs are no different as the seeds of such illegal behavior have been sown here and could prosper if not thwarted. We implore you to react favorably to the enactment of legislation prohibiting discriminatory harassment. Additionally, we Commissioners call upon the Sheffield Administration and the members of the Fourteenth Legislature to signal your continued support for the promise made to Alaskans that unlawful discrimination be eliminated and prevented. We have the motivation and the mechanism. We, the Alaska State Commission for Human Rights, need the resources.

James H. Chase
Chairperson
Alaska State Commission for Human Rights

AGENCY OVERVIEW

Janet L. Bradley

Program activities of the Human Rights Commission during 1984 were characterized by growth: growth in number of Alaskans served; growth in the agency's capability in providing its services; and growth in the staff's public education efforts to prevent unlawful discrimination. In 1984, more cases were filed, more cases were resolved and more settlements were negotiated through the Commission. The number of complaints filed in 1984 increased by 29 percent over 1983; the number of closures rose by 17 percent and the settlement benefits awarded to Complainants totaled $1,574,276 - an increase of 12 percent over the previous year.

In response to the continuing trend of increased filing of new complaints in the face of reduced staff resources, the Human Rights Commission embarked on a course of major program improvements and expanded public education efforts in 1984.

Foremost among the array of management innovations during the past twelve months was the adoption of a new case processing strategy implemented in April 1984. This new approach to investigation and resolution of complaints utilizes goal setting, timeframes for investigations, resource shifting, and other management tools to increase the number of case resolutions per investigator resulting in higher staff productivity. The previous approach to case processing provided for an early resolution attempt on all incoming cases with those cases failing early settlement becoming a backlog to be assigned for further investigation as staffing resources permitted. In contrast, the new strategy sets a goal of 180 days for completion of each case filed after April 1, 1984. The new standards for processing these cases mandate that on individual complaints:

1) either a resolution conference be held to

HUMAN RIGHTS COMMISSION
HEADQUARTERS OFFICE

Janet L. Bradley	Executive Director
Katherine Goodell Shirlee Clarke	Administrative Assistant
C. Briley Williams	Commission Secretary
Frances Rabago	Docket Clerk

ANALYSIS OF 1984 FILINGS
ALL REGIONS

By Sex:	Female	226
	Male	222
	TOTAL FILINGS	448
By Race:	Caucasian	208
	Black	108
	Alaska Native	76
	Hispanic	22
	Asian	14
	American Indian	5
	Other	15
	TOTAL FILINGS	448
By Basis:	Race	161
	Sex	89
	Multiple Bases	68
	Marital Status	28
	Physical Handicap	26
	Retaliation	22
	Age	22
	National Origin	11
	Pregnancy	9
	Religion	7
	Parenthood	4
	Change/Marital Status	1
	TOTAL FILINGS	448

attempt settlement or that discovery be issued and responses analyzed within 45 days of assignment
2) a case analysis memorandum be completed by the investigator and approved by the supervisor within 90 days of assignment
3) investigation of cases alleging retaliation for filing a complaint be completed within 90 days of filing and
4) cases over 180 days in process be identified for special management review.

Because these new standards apply only to newly filed cases, a special Inventory Reduction Project was commenced simultaneously shifting existing staff resources throughout the agency to resolve cases already in process over 180 days. Based on the success of this project- -more than two-thirds of the original pool of 74 cases have been resolved resulting in over $35,416 in benefits to Complainants- -the Commission assigned new duties at year end to Southeastern Region Director and leader of the Inventory Reduction Project, Patsy Fletcher. Fletcher, as Case Processing Coordinator, will monitor cases in the investigative units and serve as agency liaison with worksharing agencies.

Compliance monitoring of the new case processing standards was facilitated by the implementation of a computerized docket of cases. This management information system (MIS), developed by an agency task force headed by Administrative Assistant Katherine Goodell, utilizes new wordprocessing equipment purchased in 1983. The MIS not only logs cases but also captures milestones in the processing of each case, computes elapsed days in process, and tabulates other case characteristics. These technological capabilities enable regional managers and the executive director to audit compliance with the case processing standards, to correct imbalances in the unit workloads, to evaluate the overall effectiveness of the program, and to provide other special assessments of the inventory of cases as needed.

Case production in 1984 was further boosted by the professional staffs' growth in technical knowledge and in [illegible]

ANALYSIS OF 1984 FILINGS BY TYPE

TYPE	REGION	NUMBER
EMPLOYMENT	Southcentral	252
	Northern	88
	Southeastern	70
TOTAL EMPLOYMENT		410
GOVERNMENT PRACTICES	Southcentral	9
	Northern	4
	Southeastern	3
	Systemic	1
TOTAL GOV'T PRACTICES		17
HOUSING	Southcentral	9
	Northern	1
	Southeastern	1
TOTAL HOUSING		11
FINANCE	Southcentral	2
TOTAL FINANCE		2
PUBLIC ACCOM.	Southcentral	2
	Northern	5
TOTAL PUBLIC ACCOMODATIONS		7
COERCION	Southeastern	1
TOTAL COERCION		1
TOTAL 1984 FILINGS		448

tive skills. Five investigators completed on-the-job training modules and were promoted through the flexible staffing system in the Human Rights Field Representative series.

Several professional growth activities took place throughout the year. During the second week in April an in-house training session coordinated by Northern Regional Director Cathi Carr-Lundfelt brought investigators and managers together for intensive classroom training on case law, Commission Decisions and Orders, legal theories of discrimination, and investigative and conciliation techniques. Commission Attorney Nancy Gordon, Hearing Advocate Mark Ertischek and senior staff members served as trainers in addition to Chairperson James Chase who presented his unique approach to understanding affirmative action, Commissioner of Administration and former Human Rights Commissioner Lisa Rudd who recounted the historical events leading to the creation of the Commission in 1963, and Anchorage Equal Rights Commission Executive Director Paul Connerty who shared his special expertise in crisis intervention. Other training opportunities afforded staff during 1984 were attendance at federally funded conferences on housing discrimination and case management. Senior staff attended the Employment Discrimination Law Workshop sponsored by the Alaska Chapter of the American Association for Affirmative Action held in Anchorage in late May. Legal training for Commissioners is a regular part of each Commission meeting and legal advice and updates on court decisions are routine agenda items at senior staff meetings.

As part of management's continuing search for efficiency in case processing, agency procedures have been streamlined and new regulations adopted in 1984. Standardization of the plan of investigation and case analysis memorandum, elimination of cover letters and the routinization of case actions were streamlining measures developed during the past year. Agency regulations were amended to simplify reconsideration procedures, eliminate most certified mail requirements, and clarify record-keeping requirements. Revisions to the agency procedures manual reflecting these changes are now in

SEXUAL HARASSMENT ON THE JOB

An Alaska Native female alleged that she had been denied a job as a kitchen helper because she refused the sexual advancements of the project manager. Although the project manager denied making any sexual advances, the staff found there was substantial evidence to credit the allegation. As a result of conciliation, Complainant received $4,000 in backpay.

BIAS AGAINST MALE APPLICANTS

A male job applicant was told at the time of his application that the owner of the business did not like to hire males. The Commission staff found that sex was not a factor in the decision not to hire the Complainant, but the business owner agreed to maintain a work atmosphere free of bias and to guard overt expressions of bias by her em[illegible]es.

progress. This revised manual will provide a handy reference for staff on standard operating procedures and will contain new forms and formats for agency documents adapted for word-processing equipment.

Finally, another essential component of the new case processing strategy was the strengthened commitment to worksharing with other civil rights enforcement agencies whose enabling legislation and case processing provides comparable rights and remedies for Complainants. The Alaska Commission which has participated in worksharing with the U.S. Equal Employment Opportunity Commission (EEOC) since 1973 and with the U.S. Department of Housing and Urban Development (HUD) since 1982 was pleased to support the Anchorage Equal Rights Commission (ERC) in efforts to obtain federal funding for complaint resolutions. In July, the ERC was awarded a contract from the EEOC bolstering the municipal agency's capacity to investigate cases. Through worksharing agreements with ERC and the EEOC, the Commission is able to provide the broadest protection for Complainants by dual-filing complaints with these agencies. While the case is in process at the worksharing agency, the Commission refrains from investigation. When the worksharing agency has entered its final action on the case, the Commission adopts the determination on the case when the requirements of state law have been met, avoiding duplication of effort. The MIS serves this relationship by generating reports on cases in process throughout the worksharing system. The EEOC, which is now moving toward a telecommunications linkage with Fair Employment Practice Agencies across the nation, recently surveyed its contracted agencies to determine the status of case data retrival systems in use throughout the nation. The Alaska Commission is in the vanguard of agencies now using computer-based case management systems.

Informing the public about the Alaska Human Rights law is a daily educational activity in all the offices of the Commission as staff respond to inquiries by telephone, by mail or personal contact. Over 2,538 such inquiries were handled in 1984. Because the Commission's three offices are located in urban centers, collect calls are accepted from rural

NON-DISCRIMINATORY DISCHARGE

An Alaska Native female complained of race and parenthood discrimination after she was discharged from her housekeeping position. The investigation showed that neither her race nor the fact that she had two children was a factor in Respondent's decision. Commission staff found no substantial evidence of discrimination and the case was closed.

UNLAWFUL RACIAL STEREOTYPING

A Black maintenance worker alleged that he was disciplined and ultimately discharged because his appearance and lifestyle suggested the stereotype of a drug dealer. Investigation revealed that, while the Black workers' performance was marginal, a White worker with similar behavior and poor performance was not disciplined and continued to be employed until he abandoned the job. The Black employee received a monetary settlement of $4,000.

Alaskans seeking the advice on matters pertaining to discrimination or referral to other sources of assistance.

A major public education effort took place in February 1984 when the Commission responded to the invitation of the Seafood Advisory Committee to conduct a two-day workshop on equal employment opportunity and affirmative action. The Seafood Advisory Committee is part of the Alaska Job Service Employer Committee formed under the Alaska Department of Labor Job Service Improvement Program. The Commission enlisted the services of the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Programs, the Washington State Human Rights Commission, the Seattle Human Rights Department and the Tacoma Human Relations Commission to provide a comprehensive picture of the federal, state and local civil rights enforcement agencies with jurisdiction over the employment practices of the Washington and Alaska based seafood processors. This joint public education effort was well attended and enthusiastically received by the industry.

Another example of the cooperative efforts of federal and state civil rights agencies was the Equal Employment Opportunity Commission's Voluntary Technical Assistance Program for Alaskan employers held in August 1984 in Anchorage. Both Commission Attorney Nancy Gordon and the Executive Director were featured speakers together with top civil rights staff from the EEOC District X, Seattle and the EEOC headquarters in Washington, D.C. including EEOC Commissioner William Webb.

The Commission's educational efforts in the area of housing discrimination were closely allied with the Anchorage Equal Rights Commission. The Commission co-sponsored with ERC the a Fair Housing Seminar in Anchorage on September 11, 1984. Aimed at landlords, realtors, and property owners who must comply with state, federal and municipal fair housing laws, the seminar featured speakers of national and local renown and was videotaped for replay to other audiences.

The Commission's other outreach effort in the housing sector

DISCHARGE BEFORE RETIREMENT

A 64 year-old-man filed a complaint of age discrimination alleging that his employer discharged him from his auto mechanic position after four years of employment and one year before he could be vested in the company's retirement plan. During the resolution conference, the parties agreed to a predetermination settlement giving Complainant a total of $16,383.

REFERENCES REASON FOR REJECTION

A female filed a sex complaint alleging that a gas station owner refused to hire her as a station attendant. At the resolution conference, the owner showed that only two people applied, the Complainant who had bad references and a male with good references who was hired. The owner also showed that females were employed as station attendants at this station and others that he owned. The staff found no substantial evidence to support the allegations.

has been through membership on the Community Housing Resource Board (CHRB). As a group of community representative, the CHRB monitors compliance with the Voluntary Affirmative Marketing Agreement concluded between the Alaska Board of Realtors and the U.S. Department of Housing and Urban Development in 1982.

During the past two years, the Commission in conjunction with the U.S. Department of Justice, Community Relations Service and the Anchorage Equal Rights Commission, has worked extensively with a Task Force composed of Anchorage based community groups to determine the need for legislation prohibiting discriminatory harassment. In September 1983, a community forum on Malicious Harassment was sponsored by the Anti-Defamation League of B'nai B'rith, the Alaska Black Caucus, Alaska-Korean Human Rights Commission, the Anchorage Native Caucus, Congregation Beth Shalom, the National Association for the Advancement of Colored People, and the League of United Latin American Citizens. A large audience gathered to hear Washington State Senator George Fleming speak on the Washington statute prohibiting acts of discriminatory harassment. That same evening, pledges were made by Senator Joe Josephson and Representative Joe Hayes to introduce such legislation in Alaska in the 1984 session. SB 406, prohibiting acts of discriminatory harassment was introduced by Senator Josephson in February 1984 with a much amended version passing the Senate at the end of the session. The Legislature adjourned before Josephson's bill was calendared in the House.

The Task Force, undaunted, approached the Commissioners seeking assistance in August 1984. Long-standing advocates of the concept of such legislation, the Commissioners responded by asking Governor Sheffield to include a bill prohibiting discriminatory harassment in the Administration's legislative package. At year's end, the Task Force received word that the Governor had responded favorably to the Commission's request and that working with the Commission Attorney, new legislation would be drafted for introduction in the Fourteenth Legislature in 1985.

NO REASONABLE ACCOMMODATION

A physically-handicapped male complained that he had been terminated for an allegedly poor work performance. The Commission staff found that the employer had made no meaningful attempt to reasonably accommodate his handicap. The employee was reinstated into his former position with 3 years' back pay.

FLEX TIME ON FRIDAYS

A member of the Worldwide Church of God complained that his employer refused to accommodate his need for Sabbath observances required by his religion. During the resolution conference, the staff negotiated a pre-determination settlement whereby the employer agreed to allow Complainant to start work on Fridays 30 minutes prior to the normal 8:00 a.m. reporting time so that Complainant could complete a full work day prior to sunset on Fridays.

SOUTHCENTRAL REGION

Evelyn A. Ramos

The Southcentral Region covers the most densely populated areas of the state. Its boundaries extend from Unalakleet to Delta Junction on the north, the Copper River Basin on the east, from Kodiak Island to the Aleutian Chain on the south, including the populous Municipality of Anchorage and the Matanuska-Susitna Borough, and from Bristol Bay to the Kuskukwim and Lower Yukon rivers to the west. Because it serves almost three-quarters of the state's population, the Southcentral Regional Office is responsible for more than half the total number of cases filed in all three Commission offices.

In 1984, a dramatic surge in the population of the City of Anchorage, the neighboring Matanuska-Susitna Borough, and in other parts of the region brought about a fierce competition for jobs in a region whose economy is dependent primarily on government, and on fishing, service and construction industries. As more and more people competed for limited employment opportunities, an increasing number of Alaskans suffered economic hardships and many of them, who felt that their difficulties were caused in whole or in part by discriminatory practices, turned to us for help. Such requests for assistance were manifested by the large increase in the number of inquiries received from the public and, more significantly, in the increased number of new complaints filed in our office.

Thus, the staff in the Southcentral Regional Office was challenged more than ever during 1984 to manage a much larger case inventory. To meet this challenge, we expended most of our time and effort in case processing. At the beginning of the year, we continued the practice begun in mid-year of 1983 of dividing investigative resources, half on the processing of incoming complaints and the other half on the processing of earlier-filed cases. As the volume of inquiries and new complaint-filings increased, in mid 1984

SOUTHCENTRAL REGIONAL OFFICE

Evelyn Ramos	Regional Director
Robert Bacolas	Investigator
Kimberly Martus	Investigator
Charles Turner	Investigator
Lisa Waters	Secretary
Renee Sakurada	Clerk

ANALYSIS OF 1984 FILINGS
SOUTHCENTRAL REGION

By Sex:	Female	139
	Male	135
	TOTAL FILINGS	274
By Race:	Caucasian	127
	Black	84
	Alaska Native	29
	Hispanic	11
	Asian	7
	Unknown Race	11
	American Indian	3
	Other	2
	TOTAL FILINGS	274
By Basis:	Race	102
	Sex	50
	*Multiple	35
	Marital Status	26
	Physical Handicap	18
	Retaliation	15
	Age	12
	Religion	6
	Pregnancy	5
	National Origin	5
	Parenthood	1
	Change/Marital Status	1
	TOTAL FILINGS	274

three of the four Southcentral investigators were assigned to incoming cases.

In 1984, careful planning of staff travel throughout the region facilitated and expedited case processing resulting not only in the rise in the number of new complaint-filings from rural Alaskans, but also in the expedited filings and investigation of complaints filed by some Alaska Native construction workers before construction season ended.

Other factors which also helped us manage our burgeoning inventory included worksharing with the Anchorage Equal Rights Commission and the transfer of a large number of our cases to the Inventory Reduction Project. Finally, the transfer of cases where the State is Respondent to the Southeast Regional office for processing allowed us to focus our energies on the remaining cases in the Southcentral inventory.

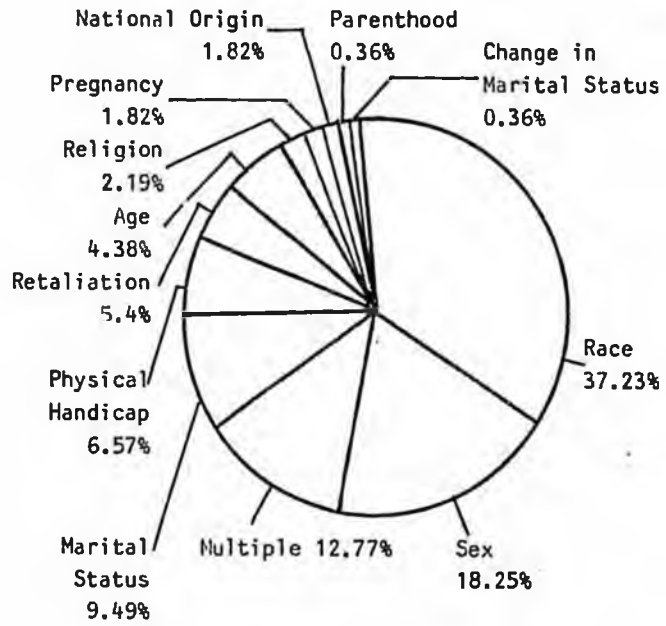
During 1984 we have sensed a need by the communities under our jurisdiction for a better understanding of the Commission's purpose and mission. More and more employers call on us for assistance on how they may comply with the law and an increasing number of persons seek our help in resolving situations which, however unfair they may appear, do not fall within the scope of the Alaska Human Rights Law. Our regional public education activities had been largely limited to those conducted by staff during investigative travels. In 1985 our challenge will be to create better ways and means to fill our public education needs in the face of our case processing priorities.

*ANALYSIS OF MULTIPLE BASES FILINGS
SOUTHCENTRAL REGION 1984

Race and Sex	8
Sex and Age	5
Race and Age	4
Physical Handicap and Age	3
Race, Sex and Age	2
Race and Retaliation	2
Race and Religion	2
Race and Marital Status	2
Race and Pregnancy	1
Race and National Origin	1
Race and Physical Handicap	1
Sex and Marital	1
Sex and Physical Handicap	1
Sex, Marital Status and Change in Marital Status	1
Sex and Change in Marital Status	1

TOTAL MULTIPLE BASES FILINGS 35

BASES OF 1984 FILINGS
SOUTHCENTRAL REGION



NORTHERN REGION

Cathi Carr-Lundfelt

For the most part, it has been a productive year in the Northern Region. The agency has been able to improve its level of services to northern constituents, even when faced with greater funding restrictions than in previous years.

Regional staff members increased their technical knowledge and improved their ability to conduct investigations by participating in agency-wide training activities. This meant in real terms that, as investigators gained technical knowledge and experience, they approached their work with greater confidence and less time was required to move cases toward resolution. At the same time, administrative staff improved their ability to manage the regional case loads.

Acknowledging that processing cases is an agency-wide, rather than a regional responsibility, the staff participated in two separate reviews of cases in process over 180 days pulled from Southcentral and Northern inventories. As a consequence, a number of these were assigned for special attention to the Inventory Reduction Project or to other units for processing This has meant that during 1984 none of the regional offices has had to suffer unduly from constraints of increases in complaint intake and/or decreases in staffing.

The staff also worked very hard to implement the agency's new case processing standards. Establishment of time lines for preparing the investigative plan and serving the complaint on the appropriate party, for holding investigative conference or obtaining responses to discovery, for submitting case analysis memos, and for completion of casework put everyone on short period. Completion of the required 90-day case analysis memo made our investigators "bite the bullet" on evidentiary questions because it takes as much analytical work to complete that memo as it does to do the predetermination memo recommending closure or conciliation. As

NORTHERN REGIONAL OFFICE

Cathi Carr-Lundfelt	Regional Director
Penny Forsmo	Investigator
Eleanor Gutierrez	Investigator
Jerry Woods	Investigator
Sharon Jaeke	Secretary

ANALYSIS OF 1984 FILINGS
NORTHERN REGION

By Sex:	Female	50
	Male	48
	TOTAL FILINGS	98
By Race:	Caucasian	45
	Black	21
	Alaska Native	19
	Hispanic	7
	Asian	3
	Unknown Race	1
	American Indian	1
	Other	1
	TOTAL FILINGS	98
By Basis:	Race	37
	Sex	26
	*Multiple Bases	12
	Marital Status	2
	Physical Handicap	3
	Retaliation	3
	Age	7
	Religion	1
	Pregnancy	2
	National Origin	3
	Parenthood	2
	Change/Marital Status	0
	TOTAL FILINGS	98

a consequence, only cases needing significant additional investigation were being held in process much longer than 90 days.

The Commission has also improved its accessibility to northern constituents in a number of ways. The Commissioners held two of their quarterly meetings within Northern Regional boundaries: the first in Fairbanks in February and the second in Kotzebue at the end of May. When Commission meetings are held in such areas, local residents have a better chance to establish lines of communication, to present their views or their questions for agency consideration. These meetings were the first held in several years in the region and were well received.

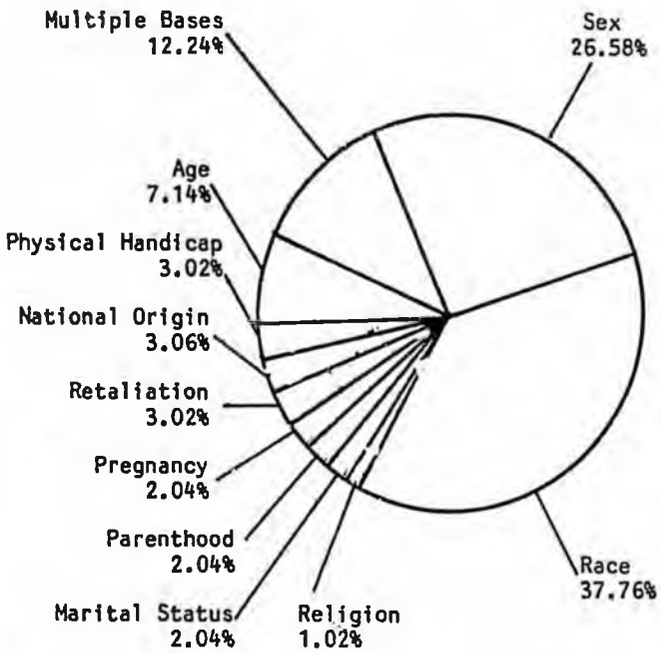
In addition, staff members continued to meet with the Fairbanks City Human Rights Commission and with members of other groups who have expressed interest in the implications of state laws against discrimination. Although the staff did not seek out opportunities to make presentations, they took advantage of those which did not conflict with their investigative duties. They also handled a variety of constituent inquiries concerning rights and responsibilities under the provisions of the Alaska Human Rights Law. Such inquiries represented approximately 15 times the number of actual complaints. Many were from employers who requested information on how to implement policies and procedures which would not violate employees' rights. Such inquiries are encouraging because they represent a more positive view of our agency's functions.

Finally, thanks chiefly to the efforts of Trudy Cain, the Governor's Special Assistant in Fairbanks, parties to complaints and persons making inquiries may meet with staff in greater privacy.

*ANALYSIS OF MULTIPLE BASES FILINGS
NORTHERN REGION 1984

Race and Sex	3
Race and Age	2
Race, Sex and Age	1
Race, Age and Other	1
Race and Parenthood	1
Sex and National Origin	1
Sex and Pregnancy	1
Sex and Age	1
Age and Physical Handicap	1
TOTAL	12

BASIS OF 1984 FILINGS
NORTHERN REGION



SOUTHEASTERN REGION

Patsy M. Fletcher

The past year in the Southeastern Region has been one of change and increased productivity. Starting off 1984 with an extremely low case inventory, our workload has gradually increased not only through cases transferred from the Northern and Southcentral regions but also through an almost doubling of new complaints filed by Southeast residents.

A tremendous amount of energy has been expended to get t new case processing system instituted in April working an serviceable; however, it is paying off. Of the complaints filed after April 1, 1984, and being processed by the Southeast staff, over half have been closed with an average processing time of less than three months. The average age of those still open is just over four months old.

Another management decision effective in April has alleviated some of the case processing problems of all the regions. That decision proposed that all complaints filed against the State of Alaska after April be processed in the Juneau office regardless of origin. At first, the idea was met with some resistance, primarily from outside the agency. However, it has contributed to the equalization of the regional workloads. Southeast has established a productive relationship with the Division of Equal Employment Opportunity (which represents the State on all Human Rights complaints against the State of Alaska) resulting in resolution of over forty percent of State cases filed in other regions. Additionally, work on those transferred State complaints was completed in less than four months from the date of filing.

Because of the agency's case processing priority, Southeast efforts in the area of public education have been limited. We have served a record number of inquirers but have been unable to actively seek interaction with the public. Intercourse of that sort frequently has a broader impact on the elimination of discrimination than investigations of

SOUTHEASTERN REGIONAL OFFICE

Patsy M. Fletcher	Regional Director
Shirley Dean	Investigator
Rebecca Pixler	Investigator
Ella St. Clair	Secretary

ANALYSIS OF 1984 FILINGS
SOUTHEASTERN REGION

By Sex:	Female	38
	Male	37
	TOTAL FILINGS	75
By Race:	Caucasian	36
	Black	3
	Alaska Native	26
	Hispanic	5
	Asian	4
	American Indian	1
	TOTAL FILINGS	75
By Basis:	Race	22
	Sex	13
	*Multiple	21
	Physical Handicap	5
	Retaliation	6
	Age	3
	National Origin	3
	Pregnancy	2
	Parenthood	0
	Marital Status	0
	Religion	0
	Change/Marital Status	0
	TOTAL FILINGS	75

complaints filed by individuals.

While many of our new complaints are still generated by Juneau citizens, the majority of our increasing numbers of inquiries and filings are from smaller Southeast communities like Petersburg, Hydaburg, and Klawock. For example, one resident of a tiny Southeast village claimed that her son of mixed ethnic heritage was being denied library privileges at the small school he attends because of his race and because she had filed a previous complaint against the school. Another small town resident has alleged that a company failed to rehire her for a seasonal heavy equipment job because of her sex. She claims that the company owner told her he only hired her the previous year because of the EEO requirements of the federal contract he held but this year the contract was let through the State of Alaska and female hiring was not a specific requirement. Many of the complaints from the communities like Ketchikan, Wrangell and Hoonah reflect the depressed economic conditions and the tight competition for the few jobs which exist.

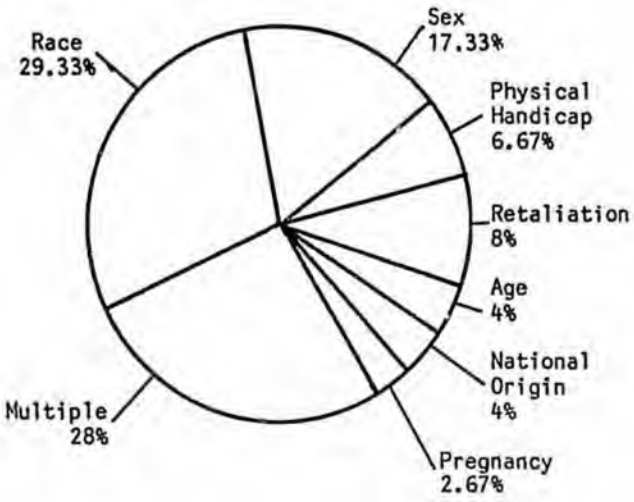
Although many Southeastern complainants list more than one basis of discrimination, almost half of all Southeastern complainants felt discriminated against on the basis of race or national origin while only one in five felt some bias on the basis of sex. Another one in five complainants alleged they suffered discrimination because of their ages or physical handicaps. Again, many of these complainants list age or physical handicap in combination with another basis such as race or sex. These statistics may reflect typical small town prejudices against persons of ethnicities different from the community majority, although a few of the race or national origin complaints were filed by white males.

In summary, 1984 was a productive year both in terms of output of cases as well as progress in maximizing staff resources.

*ANALYSIS OF MULTIPLE BASES FILINGS
SOUTHEASTERN REGION 1984

Race and National Origin	5
Race and Sex	4
Race and Age	2
Race, Sex and Physical Handicap	1
Race and Physical Handicap	1
Race and Religion	1
Age and National Origin	1
Age and Physical Handicap	1
Retaliation and Physical Handicap	1
Sex, Marital Status and Parenthood	1
Sex and Age	1
National Origin and Retaliation	1
Marital Status and Retaliation	1
TOTAL MULTIPLE BASIS FILINGS	21

BASES OF 1984 FILINGS
SOUTHEASTERN REGION



HEARING UNIT

Mark A. Ertischek

HEARING UNIT

Mark A. Ertischek	Human Rights Advocate
'ames K. Nall	Investigator
Diane Barr	Legal Secretary

With a full staff in the Hearing Unit for the second consecutive year, we have made great progress in moving cases through the hearing process. At the beginning of 1984, thirty-seven open cases were listed on the hearing docket with an average age of over five years. By the end of the year, only nine cases remained open with the average age of cases down to two years. This analysis counts cases from certification of conciliation failure by the Executive Director through the proposed decision by the Hearing Examiners, and excludes cases in deliberation by the Commissioners. Also excluded are cases in which the parties have agreed to a settlement and cases remanded to the Commission by an appellate court. Two such remanded cases were in process by the Hearing Unit at the beginning of the year, one of which has been settled. Thus in 1984 the Hearing Unit has been successful in breaking the log jam of cases on the hearing docket by completing work on virtually all cases filed in previous years. Furthermore, due to our commitment to expedite the hearing process, in 1984 as soon as the investigative unit concluded that further attempts to conciliate the case were fruitless, the case was sent to the Hearing Unit for review and certification of conciliation failure. To the extent that funding is available in 1985, the Hearing Unit will further accelerate the progress of cases through the public hearing process.

Williams v. Union Oil - The Complainant alleged that he had been the victim of physical handicap discrimination. The hearing in this case was held during the last fiscal year. The Proposed Decision in favor of the Complainant, awarding him $38,956.84 plus interest at the rate of $8.40 per day from November 2, 1984 until paid, has been issued by the Hearing Examiner. We are awaiting Commission action on this case.

Bradley v. Ketchikan Gateway Borough School District - The

Complainant alleged pregnancy discrimination in employment. The hearing was held in June, 1984, and the parties have submitted their post-hearing briefs. We are presently awaiting a proposed decision from the Hearing Examiner.

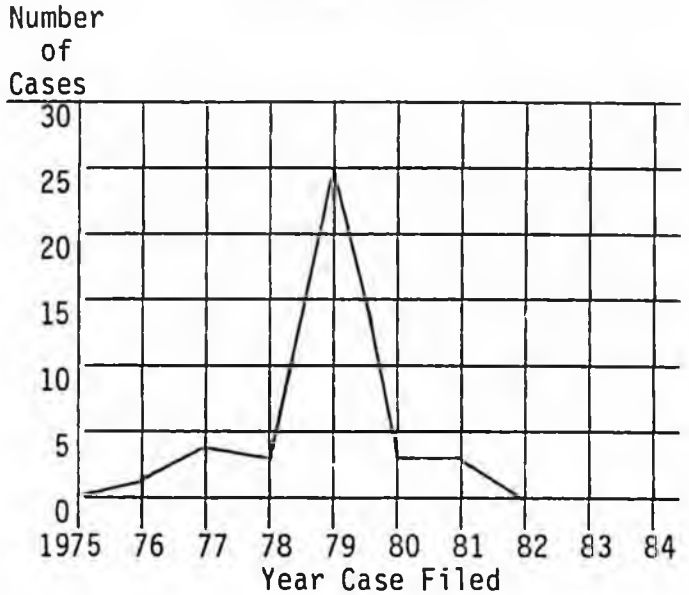
Jordan v. Alascom and Teamsters - The Complainant in this matter alleged religious discrimination due to the Respondent's failure to accommodate the Complainant's religious practices. The hearing was held in June of 1983, and the Proposed Order of the Hearing Examiner, finding in favor of the Complainant and awarding her $92,275, was entered on November 16, 1983. The Commission adopted the order on March 8, 1984. The Respondents chose not to appeal the case and paid the award.

Willets v. Fluor - The Complainant alleged retaliatory discharge after complaining of sexual harassment. The case was heard in February of 1983. The post-hearing briefing was completed in that year. On February 20, 1984, the Hearing Examiner issued a Proposed Decision finding in favor of the Respondents. The Commission adopted the Proposed Decision on June 15, 1984.

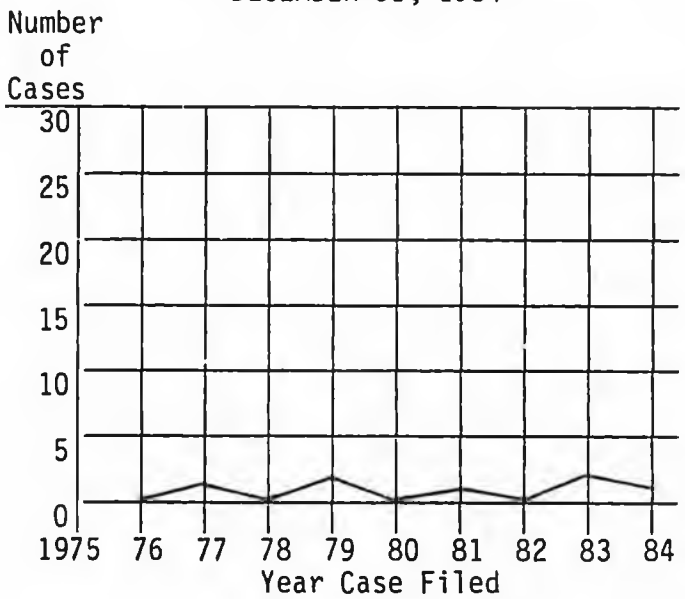
Nicholson v. O'Neill Investigations - The Complainant alleged failure to hire because of sex and age. The hearing was held during the summer of 1983. The Proposed Decision, finding in favor of the Complainant and awarding her $9,436 plus interest, was entered on June 15, 1984. The Commissioners have not yet entered a decision on the case.

Bradley, et al v. SOA, Dept. of Health and Social Services, and Dept. of Administration - The Complainants alleged sex discrimination in employment because of the failure to pay incumbents of a female-dominated job classification the same as a male-dominated job classification though the incumbents of both job classes performed comparable work. The hearing in this case was held during September and October of 1983 and lasted approximately seven weeks. The parties completed the last of their very extensive post-hearing briefs in June of 1984, and on November 23, 1984, a Proposed Decision, finding in favor of the Respondents, was issued by the

AGE OF OPEN CASES
JANUARY 1, 1984



AGE OF OPEN CASES
DECEMBER 31, 1984



Hearing Examiner. Objections to the Proposed Decision have been filed. The case has not yet been reviewed by the Commissioners.

Frank v. SOA-Health and Social Services, Division of Corrections - The Complainant alleged sex discrimination in wages. The case was settled prior to commencement of hearing. The settlement awarded the Complainant $10,085.
Hawkins v. Alaska International Construction - The Complainant alleged failure to hire because of age discrimination. The case was settled the day before the hearing was to begin. The settlement awarded the Complainant $15,000.

Wallace v. Fluor Alaska - The Complainant alleged that he had been a victim of discriminatory employment practices and a retaliatory discharge. An Order finding against the Complainant on the discriminatory practices issue and in favor of the Complainant on the retaliatory termination was entered by the Commission. On appeal, the Commission's Order in favor of the Complainant on the retaliation issue was overturned, and the matter was remanded to the Commission for further hearings. The parties have agreed to a settlement, and the paperwork is presently being processed.

Ella Johnson v. International Brotherhood of Painters - The Complainant alleged sex discrimination in the dispatch of painters to union jobs. The parties have agreed to a settlement, and the paperwork is presently being processed.

Walker v. Jean Peters, d.b.a. My Apartments - The Complainant alleged discrimination in the rental of apartments. The parties have agreed to a settlement; the paperwork is being processed.

Laakso v. Southgate Hub - The Complainant alleged wrongful termination because of physical handicap discrimination. We are currently engaged in the discovery process, and we anticipate bringing the case to hearing in February, 1985.

Sullivan v. Black Angus Restaurant - The Complainant alleges that he was terminated because of his race. We anticipate

INDIVIDUAL RELIGIOUS BELIEFS PROTECTED

Three employees who objected to labor union membership because of religious beliefs requested exemption from payment of union dues even though they were not members of an organized church whose tenets prohibited union membership. Their labor union claimed such an accommodation could only be granted to persons who belonged to a church or other organized religious body. The Commission staff concluded that Alaska Human Rights Law covered individuals with sincere beliefs which occupy the place religious beliefs occupy in the life of a believer.

bringing the case to hearing during the spring of 1985.

Perry v. State of Alaska, Dept. of Public Safety, Div. of Fish and Wildlife - The Complainant alleged physical handicap discrimination. The parties are engaged in settlement discussions.

We have certified the failure of conciliation efforts in the following cases: Pease v. Apollo Restaurant; Barletta v. SOA, Dept. of Education, Comm. on Post-Secondary Education; Corpus v. Totem Packing Company; Topacio v. Sheffield Enterprises, Inc. d.b.a. Baranof Hotel; and Myers v. Skagway City Schools. We have requested that the Attorney General's office obtain hearing examiners for each of these cases. We hope that hearings can be scheduled during the spring and summer of 1985. We have not completed our review of one case which was referred to the Hearing Unit. We anticipate completing this process in January 1985.

The mission of the Commission's Systemic Program is to identify major issues of discrimination throughout Alaska and to address such issues by initiating large-scale investigations and enforcing comprehensive settlement agreements. The Systemic Program also provides substantive training and technical assistance to employers, landlords, and others who are subject to Alaska's anti-discrimination statutes. In July of 1984, the Systemic Program's Director, Daveed Schwartz, resigned from the Commission. Subsequently, the Director's position has not been filled permitting management to absorb the loss of one position as required in FY 85 and to avoid layoff of current employees. As a result, the Systemic Program has been handled as an adjunct to the Hearing Unit. Its new role is to identify and initiate the investigation of discrimination with systemic implications and to conduct special investigations assigned by the Executive Director.

During the last calendar year, we continued to monitor compliance with agreements between the Commission and various Respondents and to conduct the investigations assigned to the unit. During the last year, we have conducted six investigations.

DISPUTED BACK PAY CLAIM

A woman filed a complaint alleging that she was forced to resign from her job because her employer sexually harassed her. The employer did not deny Complainant's sexual harassment allegations. The staff and Respondent could no agree on the amount of back pay claim and the case has been forwarded to the hearing unit.

SPOUSAL FRINGE BENEFITS REDUCED

A married couple worked for the same employer and received employee health benefits. Their employer told them that they could not claim each other as dependents even though employees with spouses who did not work for the employer were allowed to claim their spouses as a dependent. The staff concluded they were discriminated against when they received a less valuable fringe benefit because of their marital status.

LITIGATION SUMMARY

Nancy R. Gordon

DEPARTMENT OF LAW

Nancy R. Gordon — Assistant Attorney General
Jill Gordon — Legal Secretary

Supreme Court, Decided

Pipeliners Union 798, United Association v. Alaska State Commission for Human Rights (ASCHR): The Court held: 1) AS 18.80.135(a) provides the exclusive means of reviewing an order issued by the Commission and therefore an order cannot be reviewed in an enforcement action filed pursuant to AS 18.80.135(b); 2) when an enforcement action is filed while an appeal under AS 18.80.135(a) is pending, the two actions should be consolidated; 3) the Union need not seek a stay of an administrative order that is not self-enforcing; 4) in a consolidated appeal and enforcement action a court may issue a judgment enforcing the Commission's order before that order is reviewed unless the court imposes a stay of the enforcement cause of action. Remanded to Superior Court.

Supreme Court, Pending

Pipeliners Union 798, United Association v. (ASCHR): Whether the Commission's backpay awards to six individual claimants were supported by law and substantial evidence. Argued before the Supreme Court November 16, 1984.

Adams v. ASCHR, Pipeliners Union 798: Whether the Human Rights Commission's order for quota relief, compelling the Union's ranks of welder helpers to mirror the racial composition of the Alaskan work force, constituted a prejudicial abuse of discretion. Argued before the Supreme Court November 16, 1984.

Sheehan v. University of Alaska, ASCHR and Cathi Carr-Lundfelt: Whether the Superior Court abused its

discretion by dismissing Sheehan's appeal. Submitted for decision on October 8, 1984.

Superior Court, Appeals

Hubbard v. ASCHR: The Commission's decision dismissing a complaint for lack of substantial evidence was reversed. The Superior Court held that substantial evidence did exist to support appellant's sex discrimination claim. Case remanded to ASCHR for further proceedings pursuant to AS 18.80.120.

Superior Court, Civil

Konigsberg v. University of Alaska, et. al.: The Court held AS 18.80.145(d) gives a complainant the right to pursue a civil action in Superior Court if the Commission has not held a hearing or otherwise resolved the case on its merits. A file closure by the Commission prior to hearing for lack of substantial evidence does not constitute an adjudicative ruling on the merits.

ASCHR v. Pipeliners Union 798, United Association: Complaint filed seeking enforcement of Commission's order requiring the Union to submit reports semi-annually detailing the individuals applying for membership, identifying them by race, sex, date of application, and action taken on each application. Case pending in Superior Court.

Other

The Commission has monitored the progress of eight civil actions being litigated by private counsel pursuant to AS 18.80 et seq.

RURAL PROGRAM

Catalino Barril

The primary activity of the Commission's Rural Program Director in 1984 was the creation of a comprehensive plan to educate Alaskans about the rights and responsibilities of human rights law. Other activities included the updating and publication of the Commission's statute and regulation handbook, conducting or participating in civil rights workshops, and liaison between the Commission and other civil rights agencies and organizations.

The comprehensive plan creates an educational program consisting of (1) a poster that will state the purpose of the Commission, the protected classes, the basis of discrimination, as well as the location of each of the regional offices, and will be printed in English, Yupik and Inupiat, (2) a booklet that will describe in very general terms the bases of discrimination, the procedures for filing a complaint, the investigative process and answer questions commonly asked by the complainant, (3) a series of pamphlets that will address subjects, such as employment, pregnancy in employment, sexual harassment, housing, and other subjects. Also planned as part of the educational program are public service announcements, a newsletter to be printed quarterly and, of course, workshops. Distribution of the posters printed in Yupik and Inupiat will be to local governments, village stores, and native regional and village corporations. All of the printed educational materials will be made available upon request, used as handouts at workshops, and/or mailed to state and local governments, as well as to the private sector.

The public education program will certainly generate more interest in civil rights in rural Alaska and as a direct result more complaints to our regional offices. The question then arises, "Does the Commission have the resources (a travel budget and trained investigators) to service rural Alaskans adequately and effectively? For if we cannot even

RURAL PROGRAM

Catalino Barril Director

PUBLIC EDUCATIONAL ACTIVITIES
by Statewide Staff

Workshop for Seniors, Tanana Valley Community College

Training Session for Supervisors and Managers, Alaska Court System

Presentation on Comparable Worth to Graduate Management Class, Alaska Pacific University

Presentation on Sexual Harassment McDonald's Restuarant, Fairbanks

Resource Table at Older Alaskans Workshop, Fairbanks

Presentation on Human Rights Law to Juneau Paralegal Association

Speech to North to the Future Business and Professional Women's Club

Appearance on Mid-Week, KAKM-TV

Workshop on EEO/Affirmative Action, Anchorage Personnel Association

Presentation to the Fairbanks Chapter, National Association for the Advancement of Colored People

Session on EEO in "Introduction to Personnel" course, Tanana Valley Community College

Presentation, Senior Center, Bethel

Presentation, State Conference on Community Eductation

Booth at Older Alaskans Resource Fair, Juneau

Workshop, fire service officers, Fire Protection Mgt. Course

minimumly service the rural Alaskans' needs, then we are giving false promises of assistance to their basic civil rights. We have in essence a two-edged sword.

Early in 1984, the Commission was invited by the Alaska Seafood Advisory Committee to conduct a workshop on equal employment opportunities and affirmative action. The U.S. Equal Employment Opportunity Commission, the Office of Federal Contract Compliance Program, the Washington State Human Rights Commission, the Seattle Human Rights Department and the Tacoma Human Relations Commission joined with the Alaska Commission staff in producing a two day program for managers and front line supervisors employed by seafood processing companies doing business in Washington and Alaska.

The Rural Program Director also served as the Commission's liaison with the Anchorage Equal Rights Commission in producing two workshops. The first was a workshop on contract compliance for unions, and the second was a fair housing workshop directed primarily at realtors, project managers and developers in the Anchorage area. The Rural Director also conducted a workshop on civil rights in Barrow. Attending were members of the North Slope Personnel Committee and major contractors doing business with the Borough. During the year, many top-level Native corporate managers have expressed their need to know more about both federal and state civil rights laws and affirmative action. To accommodate these requests, the Rural Director is currently planning a workshop in conjunction with the Office of Federal Contract Compliance Program.

The year was filled with researching, planning and preparation. The year that is upon us will see the implementation of what was accomplished in 1984.

Presentation on Developments in Alaska Human Rights Law, Employment Discrimination Workshop sponsored by the AAAA

Speech to the American Society for Training and Development, Fairbanks

Presentation on Human Rights Law, Seward Chamber of Commerce

Address, Alaska Native Brotherhood and Sisterhood Convention, Sitka

Workshop on Discrimination Law, for AK Department of Labor, Fairbanks

Speech to the Anchorage Chapter of the National Organization of Women

Address to graduates, Clerical Skills Training Program, Fairbanks

Workshop, AK Native Women's Conference, Anchorage

Appearances, Tundra View, KYUK-TV, Bethel

Presentation on Fair Employment Practices, Anchorage Employment Cntr.

Speech, annual convention of Pacific Seafood Processors Assoc., Anch.

Workshop on Human Rights Law, Alaska Skills Center, Seward

Speech, Soroptimists of Cook Inlet

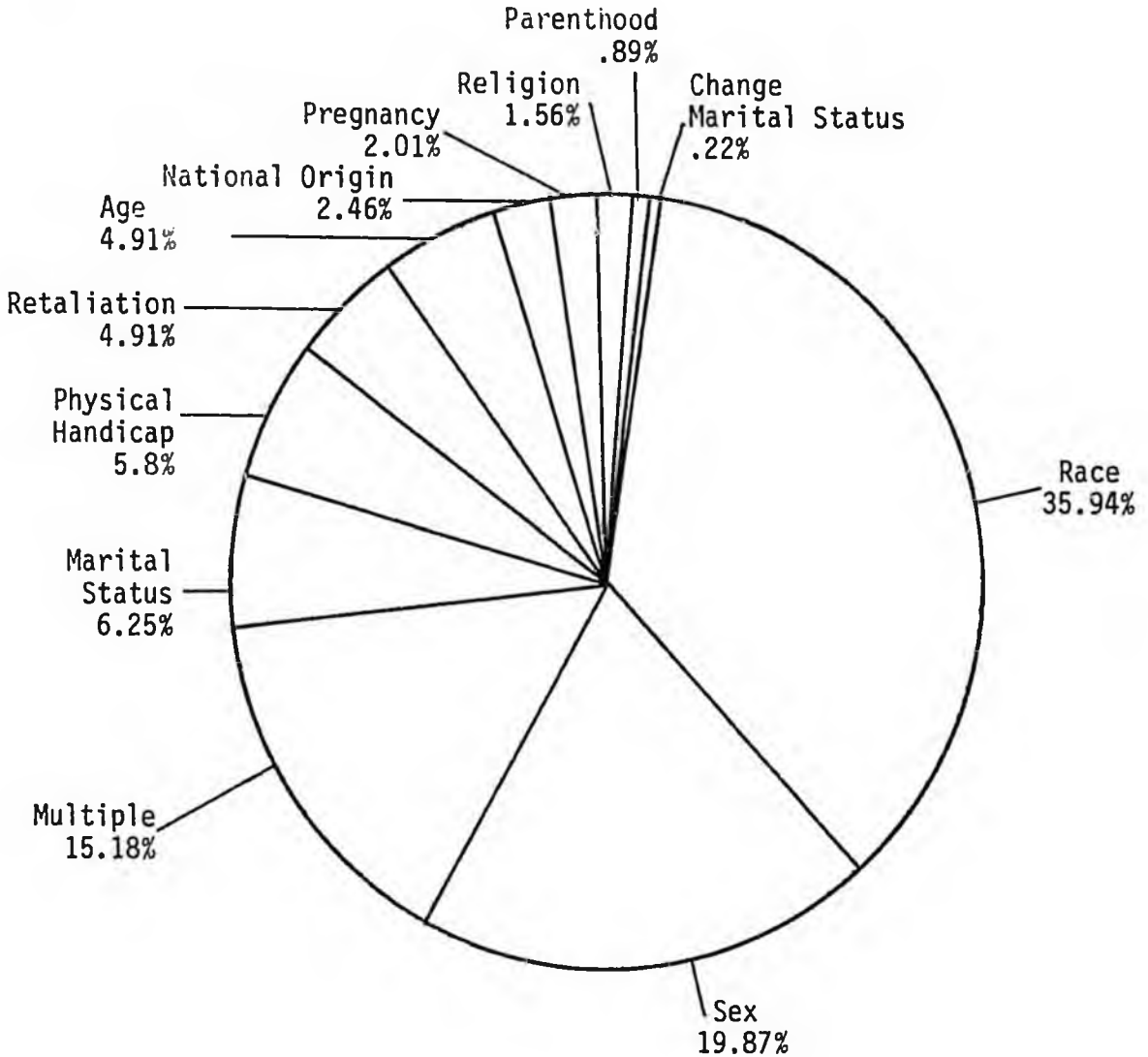
Address, Fairbanks Chapter, Association for Women in Science

Presentation, Women in Management University of Alaska, Juneau

Talk Show, "Yuk to Yuk," KYUK Radio, Bethel

1984 CASE PROCESSING STATISTICS

FILINGS:



TOTAL NUMBER OF COMPLAINTS BY BASIS

Basis	Number
Race	161
Sex	89
Multiple Bases	68
Marital Status	28
Physical Handicap	26
Retaliation	22
Age	22
National Origin	11
Pregnancy	9
Religion	7
Parenthood	4
Change in Marital Status	1
TOTAL FILINGS	448

CLOSURES:

SUMMARY OF CLOSING ACTIONS
1982 - 1984

Reason for Closure	1982 No.	1982 %	1983 No.	1983 %	1984 No.	1984 %
Conciliation/Settlement Closures	92	28.8	95	30.7	120	33.2
Not Substantial Evidence	136	42.6	118	38.2	131	36.2
Administrative Closures	83	26.1	95	30.7	105	29.0
Hearing Closures	8	2.5	1	.3	6	1.7
TOTAL CLOSURES	319		309		362	

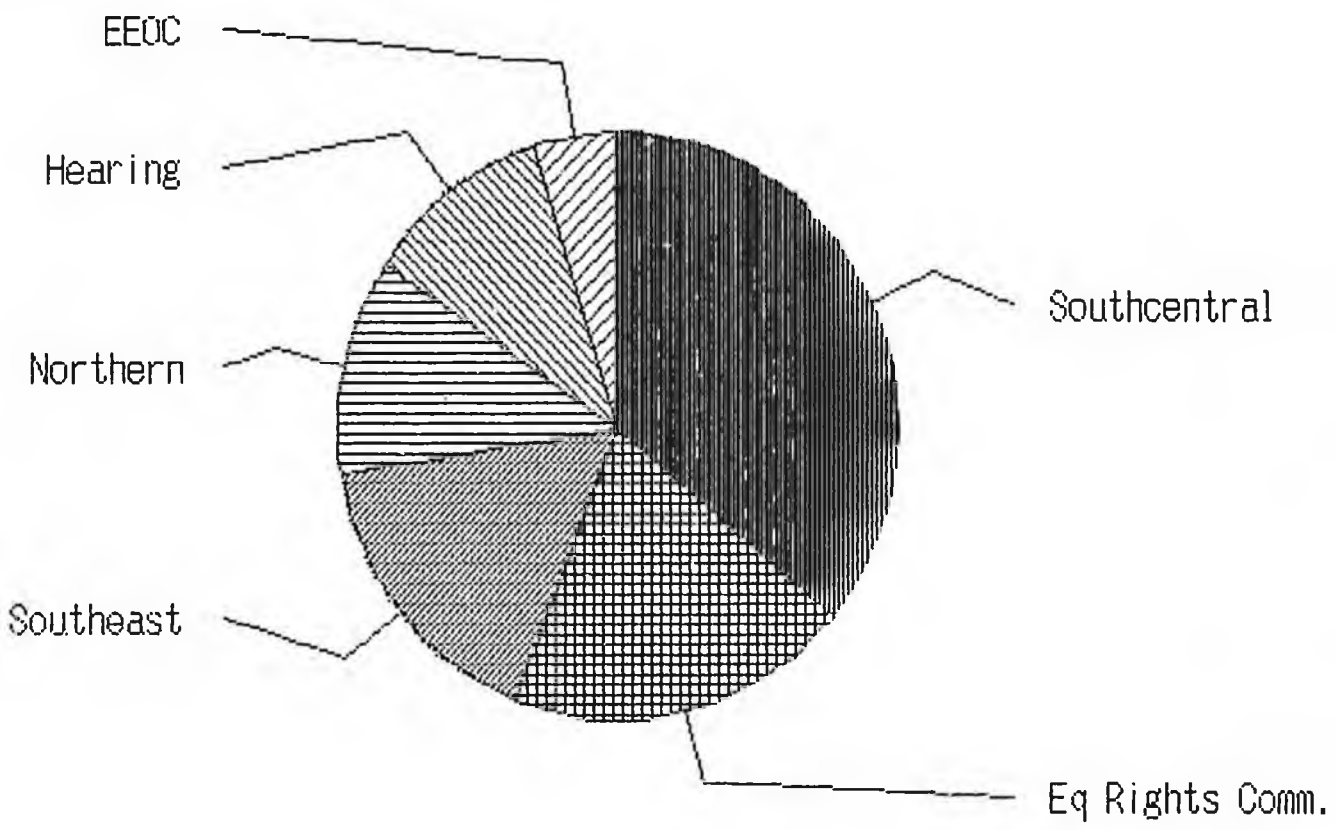
SUMMARY OF CASES FILED AND CLOSED
1982 - 1984

YEAR	BEGINNING INVENTORY	NUMBER OF CASES FILED	NUMBER OF CASES CLOSED	ENDING INVENTORY
1984	397	448	362	486*
1983	360	346	309	397
1982	387	292	319	360

*Includes three cases reopened in December, 1984.

ANALYSIS OF 1984 CLOSURES

Reason for Closure	Number of Closures	Percentage of Total
ADMINISTRATIVE CLOSURES:		
Complaint Withdrawn	39	10.77%
Complaint Not Timely	1	.28%
Lack of Jurisdiction	10	2.76%
Complainant Not Available	12	3.31%
Failure of Complainant to Proceed	35	9.67%
Complainant in Court	5	1.38%
Administrative Dismissal	3	.83%
Subtotal	105	29.00%
CONCILIATION/SETTLEMENT CLOSURES		
Pre-Determination Settlement	93	25.69%
Successful Settlement	19	5.25%
Substantial Evidence/ Conciliation Agreement	6	1.66%
Substantial Evidence/Full Relief Rejected by Complainant	2	.55%
Subtotal	120	33.15%
NOT SUBSTANTIAL EVIDENCE	131	36.19%
HEARING CLOSURES		
Hearing Decision for Complainant	2	.55%
Hearing Decision for Respondent	1	.28%
Pre-hearing Settlement	3	.83%
Subtotal	6	1.66%
TOTAL 1984 CLOSURES	362	100.00%



AGE OF CASES OPEN 12/31/84
BEING INVESTIGATED BY ASCHR

Year Filed	No. Open Cases	%
1978	1	.20
1979	2	.41
1980	11	2.26
1981	19	3.91
1982	22	4.53
1983	67	13.79
1984	192	39.51
Subtotal	314	
Hearing Unit	*52	10.70
Cases at ERC	96	19.75
Cases at EEOC	24	4.94
TOTAL OPEN CASES	486	

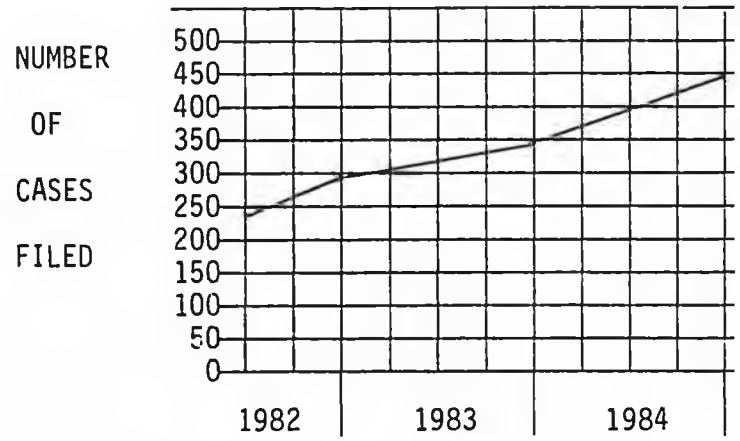
Includes special investigations.

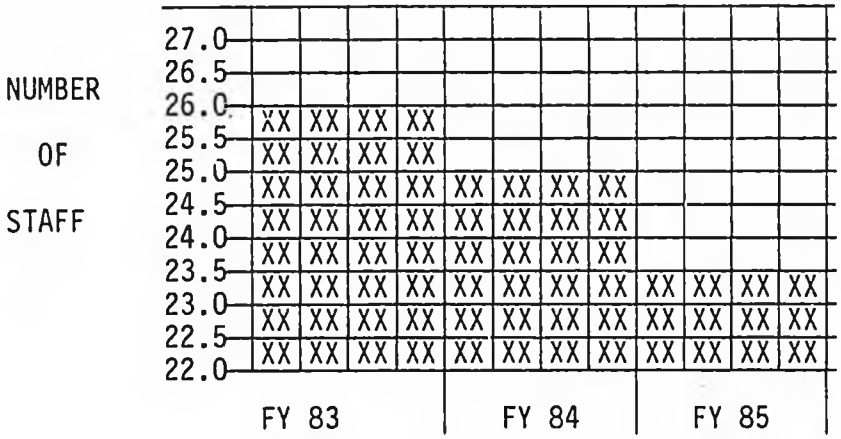
LOCATION OF OPEN CASES
12/31/84

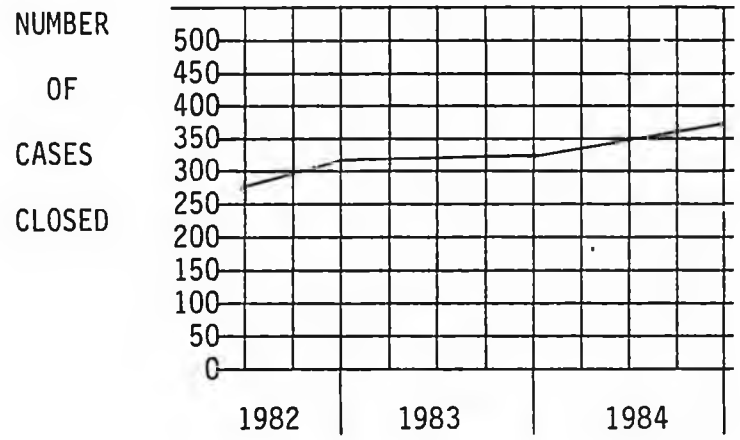
Investigator	No. Open Cases	%
Southcentral	176	36.2
Southeast	80	16.4
Northern	58	11.9
Hearing	*52	10.7
EEOC	24	4.9
ERC	96	19.7
TOTAL OPEN CASES	486	

*Includes special investigations.

LOCATION OF OPEN CASES - 12/31/84



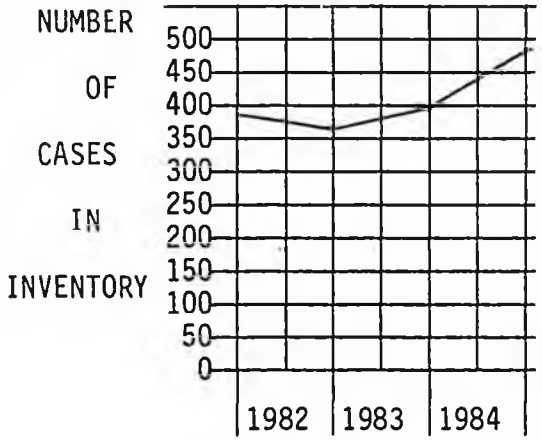




SUMMARY: CASES FILED, CASES CLOSED AND ENDING INVENTORY, 1982 - 1984

These charts illustrate the success of the Commission in increasing productivity by resolving more cases over the past 3 years with fewer staff investigators.

During the same period, however, the number of cases filed each year has increased. This increased demand for services--despite increased case resolutions--has resulted in a growing inventory of cases in process at year end.



EQUAL EMPLOYMENT OPPORTUNITY IN ALASKA STATE GOVERNMENT

Patsy M. Fletcher

The Alaska State Commission for Human Rights Commission is required by AS 18.80.060 (a)(6) to:

> make an overall assessment, at least once every three years, of the progress made toward equal employment opportunity by every department of state government. Results of the assessment shall be included in the annual report made under Section 150 of this chapter.

Although time and resource constraints limited our assessment, this report attempts to present an accurate though brief evaluation of equal employment opportunity in the Executive Branch of Alaska State Government over the past two years. Rather than editorialize on statistics, a cursory assessment of the qualitative aspects of EEO progress will be discussed instead. Readers may draw their own conclusions from a review of statistical data.

The sources for this report include interviews with various EEO personnel and management professionals within state government; the Alaska State Commission for Human Rights Annual Reports for 1982 and 1983; Division of EEO Executive Branch Monthly Workforce Status Report, January 31, 1984 and October 31, 1984; and Administrative Orders No. 75 and 81.

During the past 20 years, employers have come to realize that an effective EEO program is the key to practicing sound, preventive law. Such a program also demonstrates the commitment of management to identify problems and to implement change voluntarily. The State of Alaska as an employer has made a such a commitment, articulated in Adminstrative Order 59 and later reemphasized by the current administration through Administrative Order 75 in April 1983:

STATE OF ALASKA WORKFORCE
AS OF OCTOBER 15, 1984
(Permanent Full-Time Employees)

RACE	NUMBER MALES	NUMBER FEMALES	TOTAL
WHITE	5,258	4,184	9,442
BLACK	166	144	310
HISPANIC	55	75	130
ASIAN/ PACIFIC ISLANDER	99	153	252
ALASKA NATIVE/ AMERICAN INDIAN	221	307	528
TOTAL	5,799	4,863	10,662

It is the policy of the Executive Branch of Alaska Government that all employees and applicants for employment shall be afforded equal opportunity in all aspects of personnel management.

Procedures for implementation which accompanied the anti-discrimination policy set forth in Administrative Order 75 were distributed to all departments and divisions. The policy required--for the first time--that agencies display a poster describing the state's EEO policy. The order also called for the establishment of departmental Affirmative Action Advisory Committees and set up an internal complaint procedure. In late 1984, the Governor signed a stronger policy and variation of Administrative Order 75, namely Administrative Order 81 which prohibited "discriminatory harassment," especially sexual harassment.

Other measures undertaken in the past two years towards the development of an effective EEO program included an attempt to codify the Division of EEO and its responsibilities through Senate Bill 395, introduced during the Thirteenth Alaska Legislature. After significant community interest and testimony, the measure died in the Senate Finance Committee. It was felt by many supporters of SB 395 that giving the Division of EEO statutory authority would preserve the State's current EEO stance and would protect it from later and perhaps less sympathetic administrations.

Since December 1983, departments have been required to provide monthly work force statistics on women and minorities to the Governor through the Division of EEO. This data is reviewed at cabinet meetings, where individual commissioners are called upon to comment on their departments' performance in the area of equal employment opportunity/affirmative action. Departmental staff have complained about the added paperwork burden created by new executive branch EEO reporting requirements. However, most departments admit the practice of discussing each department's compliance with the procedure at the cabinet level conveys the message that equal employment opportunity/affirmative action is a serious subject with the current administration.

STATE OF ALASKA WORKFORCE
AS OF OCTOBER 15, 1984
(Permanent Part-Time Employees)

RACE	NUMBER MALES	NUMBER FEMALES	TOTAL
WHITE	29	148	177
BLACK	1	5	6
HISPANIC	1	2	3
ASIAN/ PACIFIC ISLANDER	5	7	12
ALASKA NATIVE/ AMERICAN INDIAN	5	14	19
TOTAL	41	176	217

STATE OF ALASKA WORKFORCE
AS OF OCTOBER 15, 1984
(Seasonal Employees)

RACE	NUMBER MALES	NUMBER FEMALES	TOTAL
WHITE	557	298	855
BLACK	7	1	8
HISPANIC	5	3	8
ASIAN/ PACIFIC ISLANDER	3	1	4
ALASKA NATIVE/ AMERICAN INDIAN	30	17	47
TOTAL	602	320	922

Recognizing the important role recruitment plays in EEO, several departments have taken affirmative steps to expand their applicant pools through extensive outreach especially to Native communities. The Division of Personnel, Department of Administration, for example, conducted an extensive applicant search in Bethel and the surrounding communities for staff for the new state facility in Bethel. Community and civic groups, newspapers and other media were contacted to publicize the vacancies and visits were made to all the surrounding villages. In cooperation with Native organizations, other community organizations and Job Service, Division of Personnel staff conducted numerous workshops for managers and the general public on the application process. Testing and retesting was done locally with follow-up to ensure that the State's commitment was understood and that potential applicants were not missed or allowed to fall by the wayside. These efforts, though extensive and costly, resulted in a highly qualified staff of whom 60 percent are Native and, as an added benefit, 95 percent are local hires. In addition to the benefits of economic integration of this facility into the community, the department benefited from these efforts in two ways: their EEO statistics were enhanced; and their turnover rate will undoubtedly be lower because the facility will be staffed by local residents.

Other departments, Public Safety for example, have changed their recruitment periods to eliminate the conflict with traditional hunting or fishing seasons. Still others (Education and Fish & Game) have developed departmental recruitment bulletins and applicant assistance sheets. Job fairs have also been presented to teach prospective applicants about the complicated state application process and to provide information about available jobs to the public and particularly to the minority community. Many departments have active EEO/AA committees and have a departmental EEO officer.

Over the past year, new State Personnel Rules governing the register of eligible applicants have been implemented, expanding the certification procedure. This new expanded

NUMBER OF MINORITIES AND FEMALES EMPLOYED BY THE STATE OF ALASKA 1981 - 1984

YEAR	FEMALES	%	MINORITIES	%
1981	5014	43.8	1079	9.7
1982	5437	44.8	1176	9.6
1983	5410	44.8	1136	9.4
October 1984	5359	45.4	1326	11.2

NUMBER OF ALASKA NATIVES EMPLOYED BY THE STATE OF ALASKA 1981 - 1984

YEAR	NUMBER EMPLOYED	PERCENT OF TOTAL WORKFORCE
1981	539	4.68
1982	572	4.65
1983	528	4.36
1984	594	5.03

NUMBER OF BLACKS EMPLOYED BY THE STATE OF ALASKA 1981 - 1984

YEAR	NUMBER EMPLOYED	PERCENT OF TOTAL WORKFORCE
1981	252	2.18
1982	275	2.23
1983	275	2.27
1984	324	2.75

certification procedure requires that consideration be given to at least one member from each identified underutilized group for every classified job vacancy. As with other measures, EEO awareness has been heightened.

There have been criticisms of the data base employed by the Division of EEO in determining which groups are underutilized. Other critics contend that the expanded certification procedures still do not allow hiring authorities to reach obviously underrepresented minorities because white males are included as a "protected class". The general consensus, however, is that these procedures are more effective than the previous "5x5" registers which also sought to expose hiring authorities to qualified minority or female applicants.

Another drawback acknowledged by most users of the expanded certification procedures is the lack of clarity and affirmative initiative in the requirement to "consider" members of the underutilized groups. To "consider" an applicant could mean simply reviewing the application. There is no requirement to interview the candidate. Thus as pointed out by many, the success of the expanded certification procedures in increasing minority and women hires relies too heavily as with other current equal employment opportunity/affirmative action tools upon the goodwill of conscientious managers.

The degree of success of most equal employment opportunity programs is determined through quantitative measurements: increases in minorities and women in hiring, promotions, pay ranges, and non-traditional jobs, etc. While statistics can often be manipulated so that the true profile is not revealed and miniscule successes are inflated, they are often the best and certainly the easiest measures of progress. At the writing of this report Division of EEO had not compiled its end of the year report. Moreover, the Division of EEO has not developed an approved statewide Affirmative Action Plan in over two years. Division of EEO is currently working on a shell plan which will later be tailored to the particular department. This master plan is due for release within the next few months.

NUMBER OF HISPANICS EMPLOYED BY
THE STATE OF ALASKA
1981 - 1984

YEAR	NUMBER EMPLOYED	PERCENT OF TOTAL WORKFORCE
1981	103	.89
1982	106	.86
1983	111	.92
1984	141	1.19

NUMBER OF ASIANS EMPLOYED BY
THE STATE OF ALASKA
1981 - 1984

YEAR	NUMBER EMPLOYED	PERCENT OF TOTAL WORKFORCE
1981	185	1.60
1982	223	1.81
1983	216	1.79
1984	268	2.27

The Division of EEO has predicted the end-of-the-year report will show an almost 2% increase in hiring of minorities over the prior year; however, its report will contain no statistics regarding the upward mobility of minorities and women within the system, the number of hires resulting from the expanded certification procedures nor the number of women and minorities terminating service in State government. Neither will it contain data regarding the status of the aged or physically handicapped, other groups which are covered by Alaska Human Rights Law. Thus, while the number of minorities entering State service has increased, we have no information concerning the number leaving.

Overall, the percentage of minorities and women in State Government has increased since 1982:

> Minorities have increased from 9.6 percent to 11.2 percent;
>
> Females have increased from 44.8 percent to 45.4 percent.

On the other hand, the number of total state workers has decreased by 4 percent (by 489) as has the actual number of female employees (by 78) while there are a larger number of minorities (by 150) employed than in 1982.

Alaska Natives continue to be the largest minority group at 5.03 percent, followed by Blacks and Asians, at 2.75 percent and 2.27 percent respectively; and finally Hispanics at 1.19 percent. Blacks and Asians have seen the greatest increase.

In terms of salary, 81 percent of the females employed in State government still make less than $2999 per year as compared with 43 percent of all males in that same salary range. Of the minority males and females employed by the State, only 23 percent make above $3,000/-month. In the $72,000+/year salary range the number of women represented has increased from one in 1982 to nine in 1984. There have been no increases in the number of minorities at this range which remains at one.

DISTRIBUTION OF MALES BY EEO-4 CATEGORY
OCTOBER, 1984

EEO CATEGORY	NUMBER EMPLOYED	PERCENT/TOTAL WORKFORCE
Officials/ Administrators	258	4.5
Professionals	2705	46.6
Technicians	200	3.5
Protective Services	1036	17.8
Para-Prof.	63	1.1
Office/ Clerical	437	7.5
Skilled Craft	797	13.7
Service/ Maintenance	303	5.2
TOTAL MALES	5799	54.4

DISTRIBUTION OF FEMALES
BY EEO-4 CATEGORY
OCTOBER, 1984

EEO CATEGORY	NUMBER EMPLOYED	PERCENT/TOTAL WORKFORCE
Officials/ Administrators	78	1.6
Professional	1394	28.7
Technicians	193	4.0
Protective Service	170	3.5
Para-Prof.	253	5.2
Office/ Clerical	2384	49.0
Skilled Craft	14	.2
Service/ Maintenance	377	7.8
TOTAL FEMALES	4863	45.6

The number of females in State Government has decreased slightly at the same time that their average pay has increased. This could reflect promotions of women to higher paying jobs or result from women being hired at higher salaries; it could also be attributable to cost of living increases. In fact, the salaries for all groups have increased, with males enjoying the greatest average increase and minorities the lowest. A larger proportion of minorities are represented at the lowest pay ranges. Is it because minorities are not promoted as quickly as whites or is it simply because women and/or whites are not applying for low paying positions thereby increasing the opportunity for minority hire? Although the State salary system is set by pay range with associated dollar amounts, the statistics are maintained by broad salary amounts encompassing several pay ranges which does not sharply focus the representation of minorities and women. More complete statistical data would have provided a broader picture of the treatment of minorities and women in the State system and would leave less room for speculation and self-aggrandizement.

On the other hand, from many comments, the amount of time expended on data gathering for statistical reports could be better spent developing and conducting training, particularly for managers, to assist them to overcome their personal racial and sexual prejudices, and to demystify the concept of equal employmnet opportunity as a sound management tool. As stated previously, the extent to which tools such as executive commitment, expanded certification, and affirmative action plans effectuate positive equal employment opportunity change is dependent upon cooperation from supervisors and managers making employment decisions. Some have suggested that achievement in the area of equal employment opportunity be given more weight and added as a separate criterion in supervisory performance evaluations. The imposition of discipline as a result of negative equal employment opportunity performance is one of the more acclaimed aspects of Administrative Order 81 but is the only instance where state managers who discriminate or ignore discrimination suffer any penalties. Departments whose employees have been found to have intentionally or uninten-

DISTRIBUTION OF MINORITIES
BY EEO-4 CATEGORY
OCTOBER, 1984

EEO CATEGORY	NUMBER EMPLOYED	PERCENT/TOTAL WORKFORCE
Officials/ Administrators	22	1.8
Professionals	267	21.9
Technicians	41	3.4
Protective Services	153	12.5
Para-Prof.	54	4.4
Office/ Clerical	422	34.6
Skilled Craft	88	7.2
Service/ Maintenance	173	14.2
TOTAL MINORITIES	1220	11.4

tionally violated the human rights of another person must absorb the liabilities themselves; but because of the lack of an established progressive disciplinary system, punitive action against discriminators has not been taken.

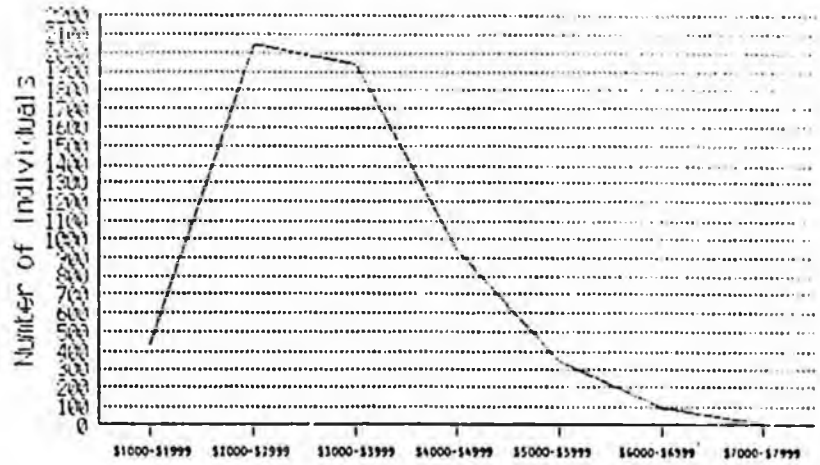
Other possible personnel deterrents to effective equal employment opportunity include the application rating system, employee service credits, mandatory consideration of collective bargaining unit members, and extensive use of departmental registers. Each of these factors favor promotion of employees within the system limiting opportunities for minorities seeking State employment. The classification study currently being conducted by Division of Personnel may assist in eliminating barriers to the employment of minorities and women through its review and recommendations regarding minimum qualification examinations and job classes. It may lead to the development of a workable upward mobility program, essential to the increase in equal opportunity for minorities and females. Clearly the State's outmoded method of classification has served in the past to keep minorities out of state government and relegated females to the lowest paying positions. A more modern approach adopted as a result of the study may go a long way toward correcting past problems.

In summary, the recent efforts in equal employment opportunity and affirmative action have resulted in an increase in the number of minorities in state government and an increase in the average pay of female workers. We have no information on the movement of these groups within the system nor on the effects of management tools such as the expanded certification procedures or the action plans outlined in Administrative Order 75. The data base and resultant statistics are uninstructive though there are plans for expansion. Thus, at this point, the minimal gains shown here are probably more the result of the increase in information disseminated coupled with subsequent goodwill of a handful of managers and frontline supervisors.

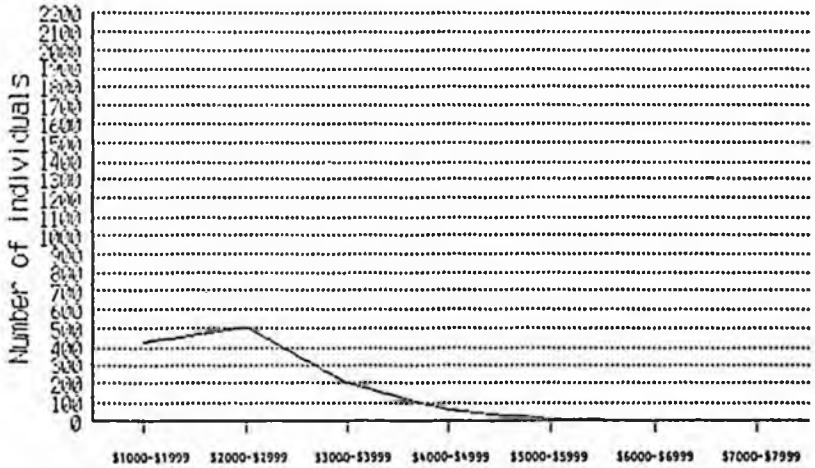
MONTHLY STATE SALARY DISTRIBUTION
OCTOBER, 1984

SALARY	MALE	%	FEMALE	%	MINORITIES	%	TOTAL	%
$7999-$7000	6	.1					6	.1
$6999-6000	88	.8	9	.1	1	.0	97	.9
$5999-$5000	345	3.2	50	.5	12	.1	395	3.7
$4999-$4000	945	8.9	198	1.9	63	.6	1143	10.7
$3999-$3000	1937	18.2	669	6.3	204	1.9	2606	24.4
$2999-$2000	2041	19.1	1974	18.5	513	4.8	4015	37.7
$1999-$1000	437	4.1	1963	18.4	427	4.0	2400	22.5
TOTALS	5799	54.4	4863	45.6	1220	11.4	10662	100.0

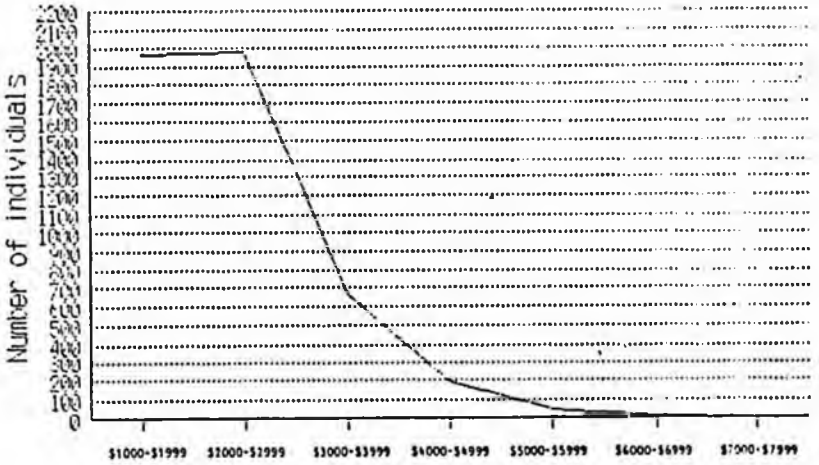
MONTHLY STATE SALARY DISTRIBUTION FOR MEN
OCTOBER, 1984

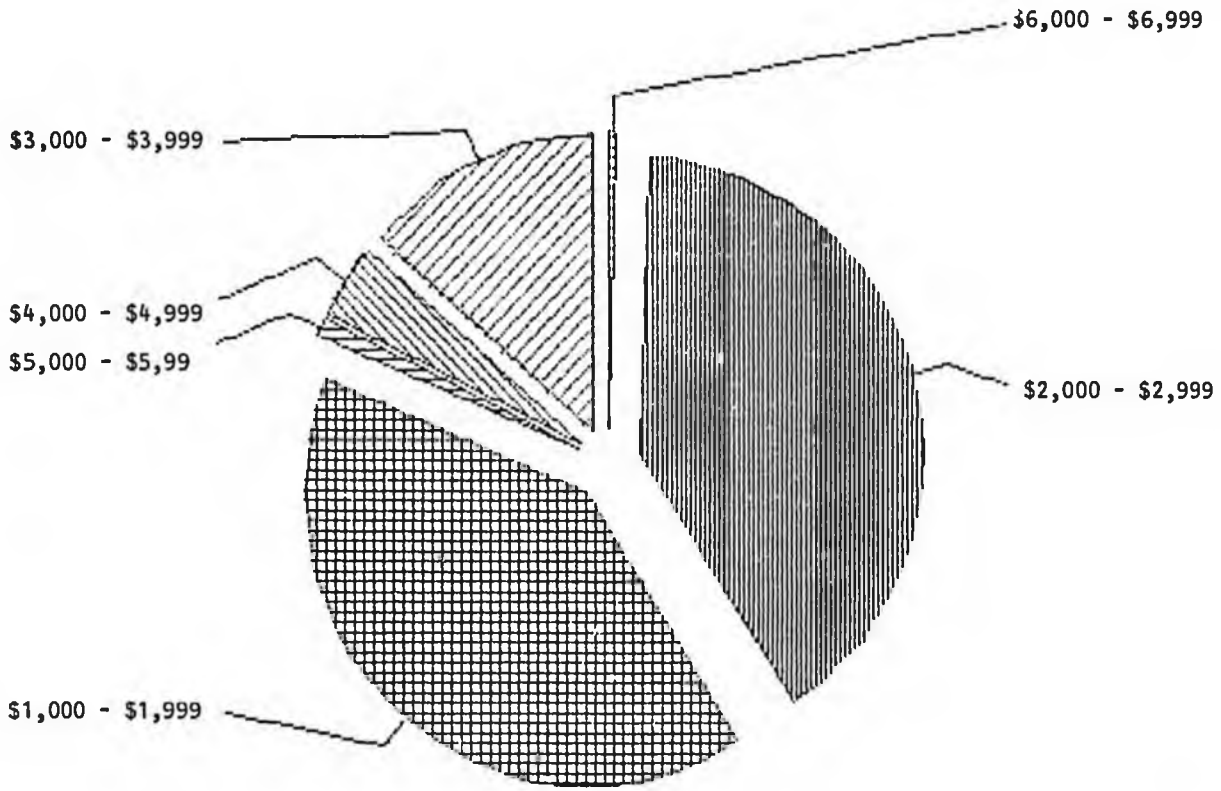


MONTHLY STATE SALARY DISTRIBUTION FOR MINORITIES
OCTOBER, 1984



MONTHLY STATE SALARY DISTRIBUTION FOR WOMEN
OCTOBER, 1984





WOMEN IN ALASKA STATE GOVERNMENT
MONTHLY SALARY LEVELS

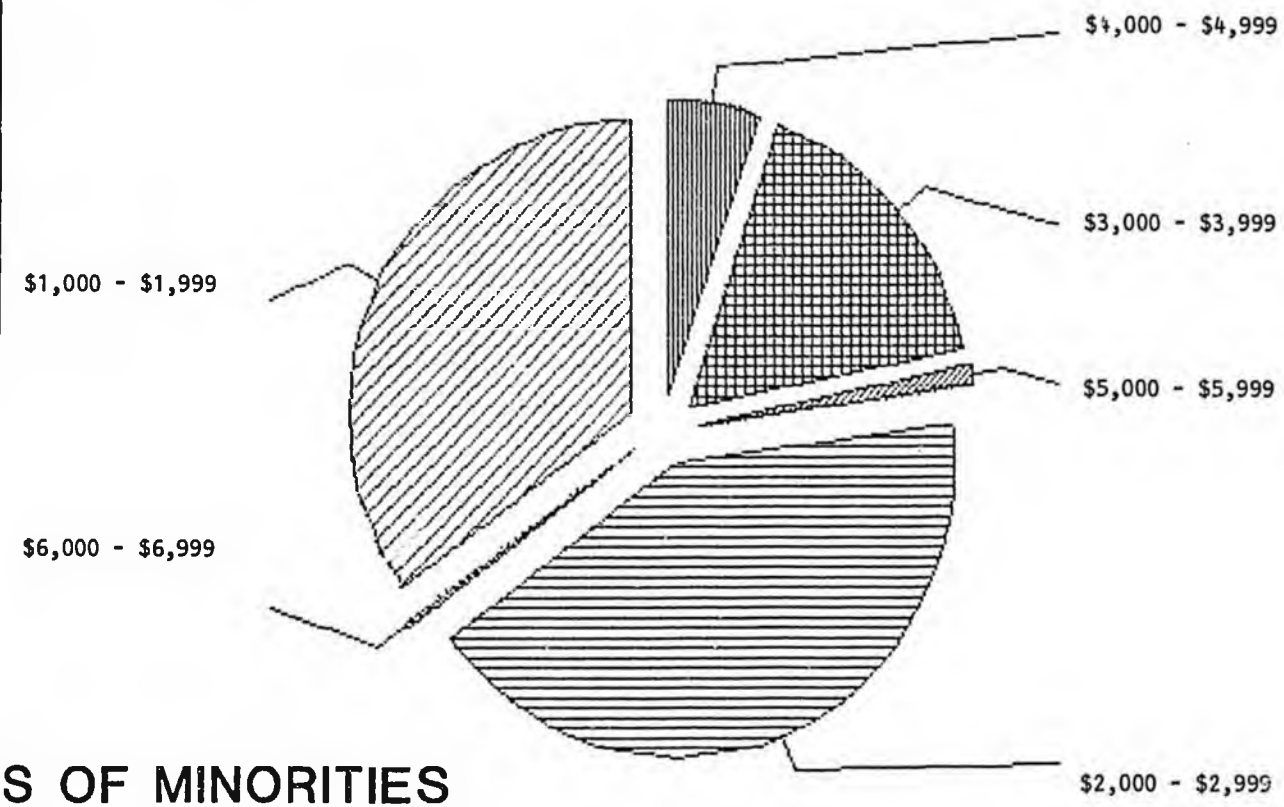
SALARY GROUP	NUMBER OF WOMEN	PERCENT OF TOTAL WORKFORCE
$6,999-$6,000	9	.1%
$5,999-$5,000	50	.5%
$4,999-$4,000	198	1.9%
$3,999-$3,000	669	6.3%
$2,999-$2,000	1,974	18.5%
$1,999-$1,000	1,963	18.4%
TOTAL	4,863	45.6%

MONTHLY SALARIES OF WOMEN IN ALASKA STATE GOVERNMENT

October 15, 1984

MINORITIES IN ALASKA STATE
GOVERNMENT
MONTHLY SALARY LEVELS

SALARY GROUP	NUMBER OF MINORITIES	PERCENT OF TOTAL WORKFORCE
$6,999-$6,000	1	0.0%
$5,999-$5,000	12	0.1%
$4,999-$4,000	63	0.6%
$3,999-$3,000	204	1.9%
$2,999-$2,000	513	4.8%
$1,999-$1,000	427	4.0%
TOTAL	1,220	11.4%



MONTHLY SALARIES OF MINORITIES

IN ALASKA STATE GOVERNMENT

October 15, 1984

STATE OF ALASKA EMPLOYMENT PROFILE
BY DEPARTMENT
FOR THE YEARS 1982 AND 1984
(Permanent Full-Time Employees)

DEPARTMENT	1982					1984				
	TOTAL EMPLOYEES	NUMBER MINORITIES	PERCENTAGE MINORITY	NUMBER FEMALES	PERCENTAGE FEMALE	TOTAL EMPLOYEES	NUMBER MINORITIES	PERCENTAGE MINORITY	NUMBER FEMALES	PERCENTAGE FEMALE
Office of the Governor	219	32	14.6%	143	65.3%	219	39	17.8%	151	68.9%
Administration	1,015	111	10.9%	612	60.3%	1,062	184	17.3%	647	60.9%
Commerce & Economic Development	441	32	7.3%	229	51.9%	410	40	9.8%	197	48.0%
Community & Regional Affairs	169	64	37.9%	105	62.1%	177	37	20.9%	107	60.5%
Corrections (created by Executive Order March 9, 1984)	778	97	12.5%	245	31.5%	879	138	15.7%	270	30.7%
Education	412	45	10.9%	270	65.5%	420	51	12.1%	267	63.6%
Environmental Conservation	213	82	38.5%	9	4.2%	215	6	2.8%	86	40.0%
Fish and Game	968	44	4.5%	329	34.0%	787	41	5.2%	267	33.9%
Health & Social Services	1,544	217	14.1%	1,004	65.0%	1,524	236	15.5%	979	64.2%
Labor	586	64	10.9%	341	58.2%	534	60	11.2%	303	56.7%
Law	288	19	6.6%	182	63.2%	315	31	9.8%	201	63.8%
Military & Veterans' Affairs	94	10	10.6%	29	30.9%	96	7	7.3%	28	29.2%
Natural Resources	883	39	4.4%	392	44.4%	801	39	4.9%	362	45.2%
Public Safety	828	67	8.1%	302	36.5%	831	82	9.9%	287	34.5%
Revenue	353	43	12.2%	214	60.6%	333	38	11.4%	207	62.2%
Transportation & Public Facilities	2,314	194	8.3%	550	23.8%	2,059	191	9.3%	504	24.5%

STATE OF ALASKA
EMPLOYMENT PROFILE BY EEO-4 OCCUPATION CATEGOY
October 15, 1984
(Permanent Full-Time Employees)

EEO CATEGORY	TOTAL EMPLOYEES	NUMBER MALES	PERCENTAGE MALES	NUMBER FEMALES	PERCENTAGE FEMALES	NUMBER MINORITES	PERCENTAGE MINORITIES
Officials/ Administrators	336	258	76.8	78	23.2	22	6.5
Professionals	4,099	2,705	66.0	1,394	34.0	267	6.5
Technicians	393	200	50.9	193	49.1	41	10.4
Protective Services	1,206	1,036	85.9	170	14.1	153	12.7
Para-Professional	316	63	19.9	253	80.1	54	17.1
Office/ Clerical	2,821	437	15.5	2,384	84.5	422	15.0
Skilled Craft	811	797	98.3	14	1.7	88	10.9
Service/ Maintenance	680	303	44.6	377	55.4	173	25.4
T O T A L	10,662	5,799		4,863		1,220	

Report design and preparation: C. Briley Williams
Shirlee M. Clarke
Frances Rabago

File - Handicapped
equal access
SB 168

ybstnrgl
ybstnrjr

z4229ybstn
r u bc-handicapped 2-20 0322

^Bill would allow handicapped equal access to state programs@<
@^By ROBB FULCHER@=

JUNEAU, Alaska (UPI) _ An Anchorage senator introduced a measure Wednesday that would require the state to pay for interprators for deaf or hearing-impaired Alaskans who want to serve on juries or attend university classes.

Senate Bill 168, sponsored by Pat Rodey, D-Anchorage, aims to guarantee equal access to state programs and facilities for deaf, blind and otherwise disabled people.

The bill would broaden existing anti-discrimination laws to forbid discrimination against the handicapped in employment, wages and housing.

It would set a maximum penalty of 60 days in jail and a $1,000 fine for denying a handicapped person his or her equal rights as an Alaskan.

Albert Berke, executive secretary of the Alaska Association for the Deaf, said the provisions of the bill pertaining to deaf students and jurors is especially importnat.

``Right now the law discriminates against people who don't have their natural faculties,'' Berke said in sign language, through an interprator.

Berke said he also was pleased that the bill would require the state to pay fees that would amount to about $20 per hour for interprators, to give deaf and hearing impaired Alaskans a chance to attend university courses.

About 250 Alaskans are hearing impaired, but only one deaf student is taking University of Alaska courses, and the student's interprator is paid for by the state Division of Vocational Rehabilitation, Berke said.

``The university refuses to pay for interprators. The students just go to community colleges instead,'' Berke said.

About 10 deaf students attend classes at community colleges in Alaska, he said.

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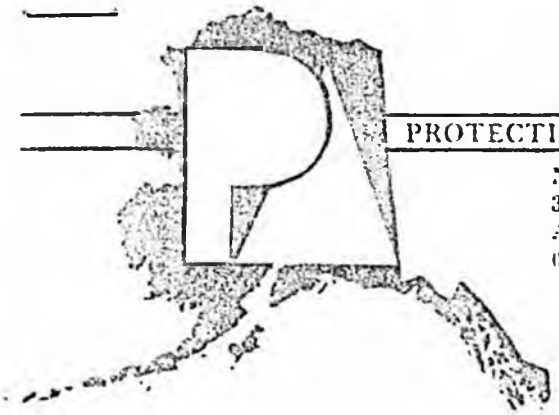


PROTECTION AND ADVOCACY FOR THE DEVELOPMENTALLY DISABLED

MAIN OFFICE
325 East 3rd, 2nd Floor
Anchorage, AK 99501
(907) 274-3658

SOUTHEAST
REGIONAL OFFICE
127 S. Franklin, Suite 2
Juneau, AK 99801
(907) 586-1627

NORTHERN
REGIONAL OFFICE
763 7th Ave.
Fairbanks, AK 99701
(907) 456-1070

PROPOSED LEGISLATION WITH GUARANTEE RIGHTS OF THE DISABLED

Senator Patrick Rodey (D. Anch.) will be submitting to the 1985 Alaska Legislature a bill which will very favorably affect the rights of disabled persons in Alaska. The bill will address two important areas: 1) assuring the rights of disabled persons to sit on juries: 2) extending to disabled persons the general civil rights which are enforced by the Alaska Human Rights Commission.

JURIES

Under present Alaska law, a person may not serve as a juror if they are not in possession of their "natural faculties". This has been interpreted to disqualify deaf, blind, and mobility impaired persons from jury services. The injustice of this provision was recently brought to the public's attention when jury service was denied to Mr. Al Berke. Berke is deaf and is the Executive Director of the Alaska Association for the Deaf. Had the court provided Berke with an interpreter, he would have been perfectly capable of serving as a juror.

Senator Rodey's bill would prevent similar discrimination by changing the definition of what is a qualified juror. The bill states that deafness, blindness, or mobility impairment do not alone disqualify a person from jury service. The bill further requires the court system to pay for an interpreter to enable a deaf person to act as a juror.

Similar laws prohibiting discrimination against disabled jurors are in effect in a number of states including California, Colorado, Oklahoma, Washington, and Texas.

HUMAN RIGHTS COMMISSION

The Alaska Human Rights Commission was created by the legislature to eliminate and prevent discrimination against all Alaskans on the basis of their race, religion, color, national origin, age, sex, marital status, change in marital status, and pregnancy or parenthood. The Human Rights Commission is charged with eliminating and preventing discrimination in employment, credit and financing practices, places of public accommodations, and the sale, lease or rental of real property.

In recent years, disabled persons and their advocates have felt the need for similar protection. Senator Rodey's bill affirmatively states that discrimination based on disability is contrary to the general welfare of

the state and its inhabitants. Senator Rodey's bill adds "disability" to the list of other classes, such as race and religion, and prohibits discrimination against the disabled.

The bill's definition of a "person with a disability" closely tracks the Federal Department of Health & Human Service's Non-Discrimination on the Basis of Handicapped Regulations which were promulgated pursuant to Section 504 of the Rehabilitation Act of 1973. This is intended to tie into the large body of federal case law that has addressed the issue.

In addition, the bill makes it an affirmative obligation on the part of a state or local government to provide and pay the cost of an interpreter when a deaf person seeks access to local or state funds, services, goods, facilities, advantages or privileges.

The extension of basic civil rights to disabled persons will enhance their ability to more meaningfully participate in all aspects of our society and thereby enrich the lives of every citizen of our state. We at P.A.D.D. sincerely hope that the unified front on the part of all concerned will help bring about the passage of this very important piece of legislation. For more information on how you can assist in this process, contact Al Berke at the Alaska Association for the Deaf, 563-4713, or David Maltman or Jon Katcher at P.A.D.D.

Re: Bill of Rights
(Blind deaf + disabled)

Sectional Analysis:

Sec.1. Allows: blind deaf & disabled to serve on juries
p1 ln11 "other disability" should read "a disability"
p1 ln13 subsection (c) there is a question about whether we can require the court to pay for this

Sec.2. Prohibits discrimination against physically handicapped

Sec.3-8. Adds disability to existing Human Rights Commission statutes. Changes personal pronouns.

Sec.9. PADD would like to add an amendment to this section requiring the state to pay for interpretors for a person dealing with the state

not in HB
in SB

Sec.10. Definition of Disabled
work draft definition not workable
see PADD amendments

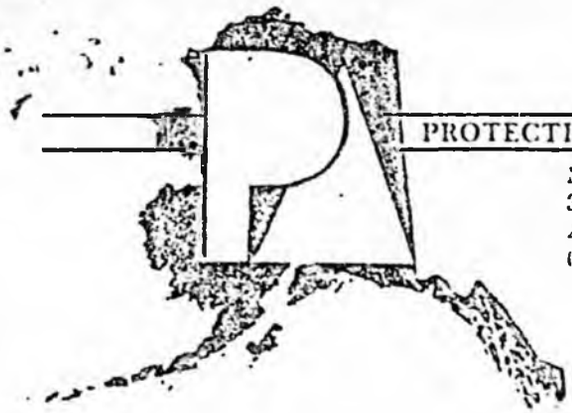
p8.ln24 delete references to "psychological disorder" and "emotional or mental illness". We want to deal with physical disability only.

still in HB

Amendments: In addition to the ones mentioned above and attached as PADD amendments, we need to delete blind from text but be sure it is included in the defintion of physically disabled. p.1 ln 20.

Material Enclosed:
Request for Draft
Draft
Amendments drafted by PADD

Related Background Material



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REGIONAL OFFICE
763 7th Ave.
Fairbanks, AK 99701
(907) 456-1070

March 1, 1985

Ms. Dorothy Truran, Director
Governor's Council for the
Handicapped & Gifted
600 University Avenue, Suite C
Fairbanks, Alaska 99701

RE: SB168: An Act Relating to the Rights of Deaf, Blind, and Disabled Persons.

Dear Dot:

This position paper is offered to the Governor's Council with the hope that the Council will support SB168. The bill has four conceptual parts. The first part addresses the rights of disabled persons to serve on state jury panels. The second part requires state and local governments to provide an interpreter whenever a deaf person seeks funds, services, goods, facilities, advantages, or privileges from that government. The third section amends the statute providing penalties for interfering with admittance to or enjoyment of public facilities by clarifying that disabled means physically disabled in that statute and adding deaf to that statute. The fourth section amends the Human Rights Commission statute. At present the Human Rights Commission statute prohibits discrimination in employment, credit and financing, public accommodations, and housing on the basis of race, religion, color, national origin, sex, age, marital status, changes in marital status, pregnancy, or parenthood. The bill adds deafness, blindness, and disability to this list of inappropriate discriminatory criteria.

(1) Jury Service. At present, deaf, blind and mobility impaired persons are not legally qualified to serve on state jury panels. This disqualification has nothing to do with whether the disabled person is actually capable of hearing the case and rendering a rational judgment based upon the facts presented. Rather, it appears to be based upon the archaic presumption that persons who are not in possession of their "natural faculties" are unable to reach a fair and impartial verdict. Nothing in the literature or experience supports this conclusion. The bill is an attempt to eradicate this unjustified denial of a basic civil right to disabled persons.

To date the Alaska Association for the Deaf has documented the denial of jury service to at least four deaf persons merely because they are deaf. At least one member of the Governor's Council would be disqualified from serving on a state jury because of his deafness. Another member of the Governor's Council had been denied the opportunity to serve on the state jury because of her disability even though this disability does not interfere with her powers of judgment.

Similar laws prohibiting discrimination against disabled jurors are in effect in a number of states including California, Colorado, Oklahoma, Washington, and Texas.

A recent law review article has addressed the issue of deaf persons serving on juries. Jury Selection: The Courts, The Constitution, and The Deaf, 11 Pacific Law Journal 967 (1980), effectively refutes all the arguments against deaf jurors. Its well reasoned analysis convincingly demonstrates that deaf people are perfectly capable of fairly considering a case and that the assistance of an interpreter would in no way interfere with the deliberative process or its secrecy. Furthermore, the article goes on to demonstrate that jury service is a constitutional right, the denial of which to persons on the basis of their disability is highly inappropriate. We have enclosed a copy of the law review article for your consideration.

Providing interpreters for deaf people to serve on juries should not be prohibitively expensive. Qualified interpreters are already serving in the Alaska Court System for purposes of testimony. They could just as readily interpret for purposes of a juror. There will be some expenses associated with rendering jury boxes accessible to the mobility impaired. However, this should be minimal and it does not justify the denial of the right to jury service for these persons. Finally, there is absolutely no justification for denying jury service to blind persons.

(2) Interpreters for deaf persons seeking access to governments. This section would require all state and local governmental units, including the University of Alaska, to provide an interpreter whenever a deaf person seeks access to funds, services, facilities, advantages, or privileges. The merits of this provision are apparent on its face. In order for deaf people to meaningfully participate in a society where the overwhelming majority of its civil servants are unable to communicate with the deaf, it is incumbent upon the government to provide a means by which the deaf can make use of the government which their taxes go to support. The deaf are unique vis-a-vis other non-English speaking peoples. In almost all non-English speaking communities, there is always someone who can interpret for a citizen who is attempting to communicate with the government. With the deaf, very few people are able to interpret. Therefore, the responsibility should shift to the governments to assure the right of access for deaf people.

It should be noted that the fiscal impact of this section should not be overwhelming. In Alaska deaf people are concentrated in the urban centers of Fairbanks, Juneau, and Anchorage. Interpreter services exist to some extent in all those communities. This section will merely require upgrading of those interpreter services.

(3) Penalty for denying rights. This amendment supplements and clarifies the section providing penalties for persons who deny or interfere with admittance to or enjoyment of a public facility. The amendment would make clear that it is inappropriate to deny admittance to a deaf person to public facilities. It also clarifies that this penalty provision is meant to only apply to physically disabled persons. This clarification is justified because the statutory chapter is entitled "Rights of Blind and Otherwise Physically Disabled Persons," and was, therefore, not intended to apply to mental disabilities.

(4) Human Rights Commission. The Alaska Human Rights Commission, which is under the Governor's office, is vested with the power to investigate and prescribe remedies to eliminate inappropriate discriminations against all Alaskan citizens. The Commission deals with complaints on a case by case basis. If the Commission finds the complaint to be justified, it has the power to fashion remedies which will prevent the discriminatory practice from continuing. At present, the Commission's mandate is limited to discrimination against Alaskan's on the basis of race, religion, color, origin, age, sex, marital status, changes of marital status, pregnancy or parenthood, or in the case of employment, physical handicap.

The bill would amend the human rights statute by adding deafness, blindness, and disability to the list of inappropriate discriminatory criteria. If a deaf, blind or disabled person is being discriminated against by any person, entity, or government in the areas of civil rights, employment, housing, or financial practices, the Commission would have the power to address the situation.

There would be a two-fold benefit to adding deafness, blindness, and disability to the human rights statute. First, it would give all deaf, blind, disabled persons another forum through which to remedy the plethora of abuses which these persons have been subjected to. Second, by codifying the illegality of discriminating against deaf, blind, and disabled persons, we would be enhancing the dignity, self-perception, and status of these otherwise devalued persons. The effect would be felt not only within the disabled community, but also in the community at large, as society as a whole is forced to recognize that disabled persons are entitled to the same rights and privileges of all other persons.

The bill's definition of "Disability" closely tracks the Federal department of Health and Human Services Non-Discrimination on the Basis of Handicap regulations which were promulgated pursuant to Section 504 of the Rehabilitation Act of 1973. This is intended to tie into the large body of federal case law that has addressed the issue.

We anticipate that this bill will be well received and vigourously supported by the Governor's Council. It represents an affirmative step in the quest for equal rights for all handicapped persons, regardless of their disability. If the Governor's Council is interested in more information about the bill, please feel free to contact either of the undersigned with your questions and comments.

Sincerely,

Jon hon A. Katcher
Supervising Attorney
P.A.D.D.

Albert Berke
Director
Alaska Association of the Deaf

STATE OF ALASKA 1985 LEGISLATIVE SESSION

FISCAL NOTE

Revision Date: 4/11/85

REQUEST

Bill/Resolution No.: SB 168

Title: Rights of Deaf, Blind and Disabled Persons /Kerttula

Sponsor: Rodey, V. Fischer, Jos[illegible]

Requestor: Fahrenkamp

Date of Request: 4/10/85

FISCAL DETAIL

Agency Affected: Due Process

Program Category Affected: Human Rights Commission

SBV Program or Subprogram(s) Affected:

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 85	FY 86	FY 87	FY 88	FY 89	FY 90
OPERATING						
100 PERSONAL SERVICES		46.4				
200 TRAVEL		7.5				
300 CONTRACTUAL						
400 SUPPLIES		.5				
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		54.4				
CAPITAL		-0-				
REVENUE		-0-				

FUNDING: (Thousands of Dollars)

GENERAL FUND		54.4				
FEDERAL FUNDS		-0-				
OTHER		-0-				
TOTAL		54.4				

POSITIONS:

FULL-TIME		1.0				
PART-TIME						
TEMPORARY						

ANALYSIS: Attach a separate page if necessary

O[illegible] Human Rights Field Representative III, Range 18, plus attendant travel and supplies.

Prepared By: Michael A. Nizich, Director Phone: 465-3616

Division: Administrative Services Date: 4/11/85

Approved by Commissioner: Laura J. Urma Date: 4-11-85

Agency: Office of the Governor

Distribution (by Agency preparing fiscal note):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

7/1/84

1.	POSITION TITLE Human Rights Field Rep. III			RANGE/STEP 18A	BARG. UNIT X	PAGE/LINE	COV.	APPROV.	DISAPP.
2.	TYPE OF POSITION PFT	STAFF MONTHS 12	RP NUMBER	PCN NUMBER	BRU PRIORITY	LOCATION Anch.	ELECTION DISTRICT	LEG.		
3.	CONTINUATION LEVEL		ADDITION						

4.	TYPE OF EXPENDITURE		AMOUNT
	1	2	3
	PERSONAL SERVICES		
5.	Salary	35.8	
6.	Benefits	10.6	
7.	Supplemental Benefits		
8.	Fixed Benefits		
9.	TOTAL PERSONAL SERVICES	01	46.4
10.	Travel	02	7.5
11.	Contractual	03	
12.	Commodities	04	.5
13.	Equipment	05	
14.	Other		
15.	TOTAL COST		54.4

	RECEIPT CODE	FUNDING SOURCE		
16.		Federal Receipts	1002	
17.		G.F. Match	1003	
18.		General Funds	1004	54.4
19.		I-A Receipts	1005	
20.		Program Receipts	1028	
21.		Other		

FOR BSM USE ONLY
KEY NUMBER __ __ - __ __ - __ __ - __ __ - __ __

JUSTIFICATION

This position will handle increased caseload (intake and processing) of complaints anticipated to be filed by disabled persons due to SB 168.

REQUEST FOR NEW POSITION

AGENCY Office of the Governor

PROGRAM Due Process

BRU Human Rights Commission

COMPONENT

Page of

Revised Date

FY 86

01-113617/82)-13

Courant Staff Writer

The lawmakers leaned forward in rapt attention, listening carefully to two women they could not hear.

The women were deaf. Unable to voice their concerns, they were using their hands.

They wanted, they told the Judiciary Committee in sign language, a right many state residents often take for granted and sometimes avoid: to serve on a jury.

And by the time they finished making their case at a public hearing Monday, their message — relayed to the committee by two interpreters who translated their rapid hand movements to words — had come in loud and clear.

And struck a chord.

"You know, I don't have any questions to ask you, just a comment," said Rep. Thomas Dudchik, R-Ansonia. "So many people won't even register to vote because they don't want to be on jury duty. The only thing I can say is that I admire that you are here today."

Before the committee was a bill that would make it illegal to exclude any of the 25,000 profoundly deaf and additional 170,000 hearing-impaired Connecticut residents from a jury.

Currently, there is no specific legal provision that bars them. But the law does say no one can be considered who has a "permanent disability impairing their capacity to serve."

The point Shirley Turner of New Haven, a telephone company worker, wanted to make was that profound hearing loss — she has been deaf from birth — does not fit that definition.

"I think I can serve on a jury just like a hearing person," she insisted through her interpreter.

Richard B. Schreiber, deputy director of the state Commission on the Deaf and Hearing Impaired, told the committee four states — California, Louisiana, Colorado and Iowa — have adopted statutes allowing the hearing impaired to serve.

"The time has come to bring deaf citizens into the mainstream," he said. "They don't want equal rights. They want equal responsibility."

See Deaf, Page B4

Steve Silk / The Hartford Courant

Charlotte Lynch of the State Commission on the Deaf and Hearing Impaired translates for deaf people who testified at a hearing of the legislature's Judiciary Committee Monday. She used sign language and repeated the words silently for lip reading.

Courant 2-26-85 (HARTFORD CT)

Deaf, Hearing Impaired Seek Right of Jury Duty

Continued from Page B1

Schreiber said nothing in the proposal would keep an attorney from seeking to exclude a deaf or hearing-impaired potential juror from a case if it hinged on the ability to hear. "If there's a clear, substantive need for hearing ... then of course the person may be excluded," he said.

He estimated the bill's requirement that interpreters be hired to translate testimony and assist during jury deliberations would cost the state "only about $1,500 a year."

But, initially, the committee — consisting largely of lawyers — raised several concerns.

Sen. Thomas F. Upson, R-Waterbury, wondered if common law would prevent interpreters from entering the usually secret deliberations in a jury room.

But Schreiber said the states that allowed hearing-impaired jurors simply swore in interpreters with the jurors and required them to follow the same instructions not to discuss testimony.

Rep. William L. Wollenberg, R-Farmington, the committee co-chairman, wondered if the presence of a non-juror in the jury room might have a "chilling effect" on discussion.

Susan V. Pedersen, president of the Connecticut Association of the Deaf and herself hearing impaired, responded: "I think they would have to be educated and they would get used to it. I think they would trust the deaf and consider their feelings."

The request seemed to have a profound impact on the committee. The initial skepticism quickly withered.

After the hearing, Rep. Maureen M. Baronian, R-West Hartford, said, "We're often confronted by people who take their rights for granted.

"I'm encouraged that these people would very much like to be part of the process. And it seems to me they shouldn't be denied."

5. SELF-DIRECTION

2. RECEPTIVE AND EXPRESSIVE LANGUAGE

Table A-9. -- Persons 3 Years of Age and Over With an Activity Limitation by Type of Limiting Health Condition

(Numbers in thousands)

Characteristics	Total with a limiting health condition	Percent reporting any of the health conditions listed below:							
		Mentally retarded	Hard of hearing or deaf		Speech impairment	Serious difficulty in seeing or blind	Seriously emotionally disturbed	Crippled (orthopedic handicap)	Any other health condition
			Total	Deaf					
Persons 3 years of age and over...	38,155	3.1	7.2	1.3	2.2	7.0	2.5	8.5	82.8
AGE									
3 and 4 years.....	178	7.9	6.7	0.7	12.7	4.8	1.3	10.2	69.4
5 to 13 years.....	2,008	7.1	8.8	2.3	9.4	6.8	4.4	6.7	65.0
14 to 17 years.....	1,217	8.0	5.2	1.7	3.5	4.4	3.7	9.8	70.8
18 to 21 years.....	919	9.9	4.3	1.6	4.0	5.2	3.9	9.4	67.9
22 to 34 years.....	3,041	7.7	3.5	1.0	2.2	4.0	3.9	10.1	73.0
35 to 54 years.....	6,836	2.9	3.7	0.6	1.3	4.3	3.3	8.5	83.2
55 to 59 years.....	2,769	1.3	4.8	0.8	1.4	4.9	2.2	8.5	88.7
60 to 64 years.....	3,053	0.5	6.4	1.0	1.0	5.7	1.4	7.7	87.5
65 years and over.....	8,135	0.4	13.0	1.9	1.3	12.1	0.9	8.1	86.6
RACE AND SPANISH ORIGIN									
White.....	23,894	2.9	7.6	1.4	2.2	6.7	2.2	8.6	83.2
Black.....	3,968	4.0	5.1	0.8	2.3	8.4	3.8	7.4	81.1
Of Spanish origin.....	1,040	2.9	5.7	1.0	1.9	6.2	2.1	6.8	81.9

Table 20. -- Limitation of Activity Status of Persons 5 Years of Age and Over by State and Type of Limiting Health Condition

(Numbers in thousands)

Divisions, regions, and States	Total persons 5 years of age and over	With an activity limitation									
		Total	Percent reporting any of the health conditions listed below:								
			Mentally retarded	Hard of hearing or deaf		Speech impairment	Serious difficulty in seeing or blind	Seriously emotionally disturbed	Crippled (orthopedic handicap)	Arthritis or rheumatism	Trouble with back or spine
				Total	Deaf						
United States, total.....	196,071	27,977	3.0	7.2	1.3	2.2	7.0	2.5	8.4	21.7	17.6
REGIONS AND DIVISIONS											
Northeast.....	45,605	5,899	2.8	6.6	1.4	1.8	6.2	2.7	7.4	20.1	15.2
New England.....	11,275	1,433	2.6	7.4	1.7	2.6	7.0	2.4	6.9	17.8	15.8
Middle Atlantic.....	34,329	4,466	2.8	6.4	1.3	1.5	5.9	2.8	7.6	20.9	15.0
North Central.....	52,768	7,115	3.1	7.3	1.3	2.2	6.6	2.1	8.3	21.5	17.5
East North Central.....	37,464	5,067	3.1	7.3	1.2	2.2	6.5	2.2	8.4	21.6	17.6
West North Central.....	15,304	2,047	2.9	7.2	1.4	2.4	6.8	1.9	8.1	21.3	17.3
South.....	62,844	10,345	3.5	7.8	1.2	2.4	8.2	2.6	8.6	24.0	17.5
South Atlantic.....	31,205	5,016	3.6	7.3	1.3	2.3	8.4	2.9	8.5	24.9	18.0
East South Central.....	12,445	2,312	3.6	7.8	1.1	2.5	8.2	2.4	8.8	24.2	16.2
West South Central.....	19,133	3,017	3.2	8.5	1.1	2.6	8.0	2.1	8.5	22.5	17.6
West.....	35,855	4,618	2.4	6.5	1.4	1.9	5.8	2.4	9.7	19.0	21.0
Mountain.....	8,994	1,170	2.1	7.9	1.4	2.1	6.6	1.8	9.4	21.8	19.8
Pacific.....	26,951	3,448	2.5	6.1	1.4	1.8	5.5	2.7	9.8	18.0	21.4
STATES											
New England:											
Maine.....	983	138	2.6	6.4	1.5	1.2	6.3	3.7	8.1	19.3	17.1
New Hampshire.....	760	95	3.1	6.3	1.5	2.3	7.3	2.1	9.3	17.9	16.0
Vermont.....	434	60	3.7	8.4	2.1	2.4	6.6	3.4	7.0	22.0	16.2
Massachusetts.....	5,376	671	2.3	7.9	1.9	3.6	7.1	2.2	6.4	17.6	15.4
Rhode Island.....	852	123	2.8	7.5	1.8	1.4	5.8	2.8	7.6	20.2	16.0
Connecticut.....	2,871	345	2.8	7.0	1.6	2.0	7.4	2.3	6.6	15.9	15.7

Table 20. -- Limitation of Activity Status of Persons 5 Years of Age and Over by State and Type of Limiting Health Condition (Continued)

(Numbers in thousands)

Divisions, regions, and States	Total persons 5 years of age and over	With an activity limitation									
		Total	Percent reporting any of the health conditions listed below:								
			Mentally retarded	Hard of hearing or deaf		Speech impairment	Serious difficulty in seeing or blind	Seriously emotionally disturbed	Crippled (orthopedic handicap)	Arthritis or rheumatism	Trouble with back or spine
				Total	Deaf						
STATES (Continued)											
Middle Atlantic:											
New York	16,731	1,992	3.5	5.6	1.1	1.2	5.5	3.3	8.0	22.9	15.7
New Jersey	6,724	866	1.8	6.5	1.5	2.0	6.4	3.2	7.7	16.6	14.2
Pennsylvania	10,675	1,608	2.5	7.3	1.4	1.7	6.1	2.0	7.0	20.8	14.4
East North Central:											
Ohio	9,791	1,405	3.1	6.4	1.2	1.9	6.9	2.7	8.7	21.4	18.6
Indiana	4,841	657	2.9	8.1	0.9	2.1	7.5	2.5	6.8	21.1	16.4
Illinois	10,160	1,337	3.8	6.8	1.2	2.3	6.6	1.4	8.3	20.6	16.3
Michigan	8,413	1,149	2.4	8.5	1.7	2.6	6.1	2.9	8.6	21.3	18.7
Wisconsin	4,259	519	3.2	7.2	0.6	1.8	5.1	1.3	9.9	20.8	17.1
West North Central:											
Minnesota	3,603	476	3.0	7.2	1.8	2.2	6.3	2.1	8.8	18.4	20.2
Iowa	2,626	320	3.7	7.6	1.9	1.9	7.2	2.1	8.7	20.1	17.2
Missouri	4,335	665	3.0	6.4	0.9	2.6	6.9	2.1	7.5	22.4	13.9
North Dakota	574	72	2.0	6.7	1.0	1.4	5.9	0.9	7.4	20.7	18.8
South Dakota	623	80	2.7	8.0	1.1	3.0	5.8	1.2	7.7	22.9	22.2
Nebraska	1,409	158	2.6	8.0	1.3	3.6	6.4	1.4	9.6	21.5	17.9
Kansas	2,075	276	2.5	8.4	1.6	2.4	7.7	1.8	6.9	24.6	18.6
South Atlantic:											
Delaware	533	68	3.0	7.2	0.9	2.5	7.3	3.1	7.5	19.2	15.6
Maryland	3,758	452	2.9	7.0	1.7	2.3	7.1	3.1	9.8	20.6	14.9
District of Columbia	649	101	4.4	4.7	0.3	1.8	7.0	3.1	9.1	25.8	15.1
Virginia	4,585	651	3.9	6.6	0.8	2.3	7.6	3.4	9.0	22.9	14.7
West Virginia	1,678	372	3.2	9.9	1.4	2.0	8.1	3.2	9.1	28.5	18.8
North Carolina	5,017	789	3.4	7.3	0.4	2.2	7.4	3.7	8.2	20.4	19.4
South Carolina	2,571	425	3.7	8.8	0.9	3.7	9.9	3.4	10.5	25.3	17.4
Georgia	4,522	881	3.3	10.7	2.1	2.8	10.0	2.1	8.5	26.7	20.3
Florida	7,052	1,278	2.7	4.9	1.4	1.5	8.6	2.3	7.5	23.0	18.5

Table 20. -- Limitation of Activity Status of Persons 5 Years of Age and Over by State and Type of Limiting Health Condition (Continued)

(Numbers in thousands)

Divisions, regions, and States	Total persons 5 years of age and over	With an activity limitation									
		Total	Percent reporting any of the health conditions listed below:								
			Mentally retarded	Hard of hearing or deaf		Speech impairment	Serious difficulty in seeing or blind	Seriously emotionally disturbed	Crippled (orthopedic handicap)	Arthritis or rheumatism	Trouble with back or spine
				Total	Deaf						
STATES (Continued)											
East South Central:											
Kentucky	3,113	602	2.1	9.1	2.0	2.3	8.1	1.9	8.3	22.7	14.8
Tennessee	3,868	687	3.7	7.0	0.6	3.1	8.1	2.7	8.9	22.8	19.3
Alabama	3,312	614	4.5	7.3	0.6	1.6	8.5	2.6	8.3	26.8	19.0
Mississippi	2,132	409	4.0	7.7	1.6	3.3	8.1	2.5	9.8	24.9	15.0
West South Central:											
Arkansas	1,973	404	3.1	9.4	1.3	3.1	8.7	1.4	10.3	27.2	20.7
Louisiana	3,437	617	4.7	7.5	0.7	2.6	8.6	3.8	7.3	24.1	16.7
Oklahoma	2,482	449	3.0	9.6	1.2	2.0	8.0	1.5	8.8	28.9	20.8
Texas	11,241	1,547	2.8	8.3	1.2	2.6	7.5	1.8	8.5	18.9	16.2
Mountain:											
Montana	691	100	2.3	8.7	1.5	2.3	7.0	1.2	9.8	22.0	20.1
Idaho	754	104	2.0	9.5	1.8	2.1	5.9	1.7	9.6	22.7	22.0
Wyoming	346	41	2.3	8.2	1.3	2.0	6.7	1.1	11.1	21.0	19.4
Colorado	2,340	270	2.2	8.1	1.1	1.7	5.9	1.8	9.3	19.6	20.2
New Mexico	1,057	137	2.5	7.7	1.7	2.6	6.8	2.2	8.7	24.5	17.8
Arizona	2,080	320	1.8	7.3	1.1	2.5	7.8	2.0	8.9	24.2	19.0
Utah	1,078	130	2.2	7.8	2.0	1.3	5.5	2.0	8.3	19.6	22.8
Nevada	556	67	1.5	6.9	1.7	1.6	6.1	1.8	12.6	17.0	20.8
Pacific:											
Washington	3,239	441	2.5	8.2	1.7	2.6	5.2	1.8	9.1	19.3	23.7
Oregon	2,126	308	1.2	6.0	1.4	2.7	4.9	1.5	11.5	19.3	22.9
California	19,500	2,601	2.5	5.7	1.4	1.6	5.7	3.0	9.8	17.9	21.0
Alaska	314	2	2.3	7.6	1.8	3.1	5.1	1.5	11.7	12.4	20.9
Hawaii	772	74	4.6	7.3	1.5	1.9	4.6	1.5	6.3	8.9	18.0

Sensory Impairment Center

(907) 272-7223 3710 E. 20th Ave. • Anchorage, Alaska 99508

MAR 4 - 1985

February 27, 1985

The Honorable Betty Fahrenkamp
Alaska State Senate
Pouch V (MS3100)
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

Enclosed for your information is a copy of a letter which I have sent to Representative Ron Larson requesting a supplement for the adult rehabilitation programs of the Sensory Impairment Center. I recognize that this material is quite lengthy. However, it did not seem reasonable to me to request supplemental funding without providing thorough justification.

I hope that we can count on your support as these line item requests work their way through the legislative process. If you have questions, please feel free to contact me at any time.

Respectfully,

James H. Omvig, Director
SENSORY IMPAIRMENT CENTER

JHO/skl

Enclosure

Can I rely on your support?

Sensory Impairment Center

(907) 272-7223 3710 E. 20th Ave. • Anchorage, Alaska 99508

February 19, 1985

The Honorable Ronald Larson, Chairman
House Finance Sub-Committee on Education
Alaska State Legislature
Pouch V (MS3100)
Juneau, Alaska 99811

SUBJECT: Line Item Budget Requests for Interpreter Referral Services, and the Rehabilitation Programs of the Louise Rude Sensory Impairment Center

Dear Representative Larson:

Pursuant to your request, I herewith provide you with information concerning funding needs for Interpreter Referral Services in Alaska, and budget needs for our rehabilitation programs for blind and deaf adults from throughout the State. I apologize for the length of this letter. However, it did not seem appropriate to me to make these requests without providing you with a thorough explanation of our needs.

The purpose of the interpreter referral services is to make certain that deaf Alaskans have full opportunity to communicate, through qualified interpreters, with employers, governmental agencies, other service providers, colleges, and doctors, etc. We coordinate such services by receiving and filling requests made either by deaf or hearing persons.

As I told you, the Division of Vocational Rehabilitation (DVR) had requested $127,500 in its budget for FY 1986 to provide these services. Somewhere in the budget review process this item was completely eliminated. Attached for your information is the page from the DVR budget request which included the $127,500 line item. It is imperative that this item be restored so that these services can be continued.

In our case in Anchorage, for example, we have funding from the Municipality to operate our program through June of 1985. The grant was made through June with the understanding that, as of July 1, DVR would have state funding available not only to continue our program but also to support programs in Fairbanks and Juneau. Therefore, if state funding is not made available, our program will terminate as of June 30 since, as you probably know, the Municipality of Anchorage has already allocated all of its limited social service grant money.

To show you something of the scope of our service, we began to operate the Anchorage Referral Service in February of 1984 (it had previously been run by the Suicide Prevention and Crisis Center). From February through December, our coordinator made 1178 individual referrals. Requests for referrals have been on the increase as the public and the deaf community have become more aware of this vital service.

I hope that it will be possible to restore the $127,500 line item to the DVR budget. As you know, I have discussed this issue with numerous individuals, including the governor, and virtually all have agreed that this item must be restored.

Line Item For the Pre-Vocational Rehabilitation
Programs for Blind & Deaf Adults for FY 1986

I am also requesting that line item amounts be placed in the DVR budget for our state-wide training programs for blind and deaf adults. For our Orientation and Adjustment Program for Blind Adults, we need a total operating budget of $429,521.92 (copy attached). For our Pre-Vocational Training Program for Deaf Adults, we need a total operating budget of $355,959.75 (copy attached). If these requests seem high, it is not a commentary upon the request but upon the level of past funding.

Our society decided more than 60 years ago that it made sense to rehabilitate adults with disabilities rather than let them sit out their lives in idleness, frustration and dependency. A state-federal vocational rehabilitation program was established, and every state has some type of rehabilitation agency which provides services using both state and federal funding. In Alaska, our state-federal program is operated by DVR.

Also, in many states the vocational rehabilitation agency establishes and operates its own training centers. In others, such as Alaska, the rehabilitation agency elects to contract with private agencies for needed training and related services.

Until approximately 8 years ago, DVR sent deaf or blind adults "outside" for needed training. At the urging of Louise Rude and the other blind and deaf of the State, our program was established so that Alaska citizens could receive training in Alaska. Therefore, while we are a private agency, we are an integral part of the rehabilitation process.

I assumed my duties as director of the Sensory Impairment Center on October 15, 1984. As I review our situation, I find that our funding level is woefully inadequate. In my judgment, pre-vocational training should be the first vital link in the entire rehabilitation process. To provide such training, it takes a lot of somebody's time and it takes highly trained and qualified professionals; that is, if we intend to provide the kind of training which will equip blind or deaf adults to function independently and competitively for the rest of their lives.

Now, let me summarize our current situation and make some comparisons. For this fiscal year, our program for the blind is operating on a total budget of $230,660, and our program for the deaf has $113,973. The current Director, who has 15 years of experience in the rehabilitation field, receives $44,000 per year. Our teachers, who are all highly trained and experienced professionals with Masters Degrees range from $26,670 to $33,770. Of these, three teachers work 10 months, one work 4/5 time, and one works 11 months. To compound the inequity, one has worked 7 years, one has worked 6 years, one for 5 years, one for 3 years, and one for 1 1/2 years.

By contrast, rehabilitation counselors for the Division of Vocational Rehabilitation receive from $35,580 to $48,276 per year. First line supervisors receive from $41,678 to $56,328 per year. A good orientation and adjustment center teacher is as valuable as and should be on a par with a good rehabilitation counselor.

To continue the contrast, while our program for deaf adults operates on a total annual budget of $113,973, the State Program for the Deaf has an annual budget of $1,300,000. While we have 2 teachers to serve deaf adults from throughout the state, the State Program has a total of 32 professional and clerical staff members to serve 53 deaf youngsters. Professionals in this program earn from $28,500 to $50,000 per year. The social worker, for example, earns $43,000 per year. The supervisor of this program can earn up to $52,000.

Finally, the Alaska Resource for Moderately & Severely Impaired has a budget of approximately $1,400,000. This program serves blind youngsters outside of Anchorage along with children with other disabilities. The teachers for blind students have a starting salary of $35,700 per year for 10 months, and a supervisor of the teachers for the blind currently receives

$47,000 per year. The director of this program receives $52,000 per year. From these figures, it is easy to see that our staff members are not receiving compensation on a par with those of other vital service agencies. In addition, our operating funds are inadequate to meet the need.

Now, let me discuss our specific needs for each program. In our Orientation & Adjustment Program for Blind Adults we are currently serving 9 full time blind students, and we are receiving additional referrals almost daily because of our increased public relations effort. Three teachers do the very best that they can to teach braille reading and writing, home economics and other daily living skills, independent mobility with the long white cane, typing, sewing, and computer technology, etc. In each of these areas, a newly blinded adult needs a great deal of individualized instruction and observation if the training is truly to be effective. It is not difficult to see that three teachers are simply spread too thin, and the blind students are the ones who suffer.

But our problem is even worse than this discussion would indicate. Other states have what is called a "home teaching" program for the blind. Our SIC responsibility is, at least on paper, to provide such "on-site" teaching and follow-up services throughout Alaska. However, we have no specific individual or individuals to make such visits. In the past, we have sent one of our three teachers to visit and train people in their homes when we could but, as our training center student body has increased, it has become almost impossible to make home visits using one of our three teachers. Right now, several individuals are waiting for home teaching services, not only in Anchorage but in other communities throughout the State.

Accordingly, to improve the quality of our services, we need at least four full-time teachers in the Center: typing, braille, home economics, and independent white cane travel. These four teachers could also handle sewing, computer, etc. In addition, we need at least one (we should have more) home teacher to provide teaching and follow-up services on-site, and to encourage newly blinded individuals from throughout the State who could benefit from it to come to the Center for intensive training.

Finally, we wish to continue our program of providing screening in "low vision" aids. This program meets two importa..t objectives: First, we can often identify specific optical aids which can help an individual to use his or her remaining vision

more effectively. Secondly, through this program people become acquainted with our training center and are more apt to use our services if low vision aids do not work for them.

In our Pre-Vocational Training Program for Deaf Adults, we also face a crisis situation. Two highly qualified teachers do the best that they can to train deaf adults from throughout the State, both those who come to the Center for full-time training and those who call upon us for specific needs. Right now 8 individuals come for training on a regular basis and several "drop in" for help with specific problems. As with the blind, deaf adults need a great deal of individualized training and observation if our services are to be effective. Our two teachers try to evaluate the training needs of new referrals, teach communication skills, prepare needed training materials, teach pre-vocational work concepts, money management, shopping, hygiene, sex education, food and nutrition, etc. In addition, they leave the Center to teach deaf adults how to find suitable housing, to use community resources, driving and getting driving licenses, etc. Obviously, this arrangement means that no deaf "full-time" student is receiving anything like full-time teaching.

To provide the kind of training deaf Alaskan adults have the right to expect, we should have a full-time Program Supervisor who can give overall direction, provide guidance and counseling, maintain community contacts and serve as a role model for deaf adults. We need a Program Secretary/Teacher's aide to handle clerical matters and to assist teachers in collecting and preparing necessary training materials. We need an Evaluation Specialist to determine what type of individualized training is needed for each new referral, since deaf persons who are referred to us vary greatly in their background and training. This Specialist would spend several weeks with each new referral and would help develop training plans so that we can make sure that all needs are met.

We also need four full-time teachers so that we can provide training all day long to each deaf student:

1. A Pre-Vocational & Work Skills teacher would teach work concepts, how to conduct job searches, career awareness, personnel practices, proper dress and appearance, etc.

2. A Communication Skills teacher would develop "total communication" techniques: how to express thoughts and receive

information using telecommunication devices, sign language, written English, body language, etc. It should be noted that most deaf adults read and write English at approximately a 3rd grade level. We must take steps to improve this situation for our students.

3. An Independent Living Skills (classroom) teacher is needed to teach money management, shopping, personal hygiene, sex education, home economics, including foods and nutrition, etc.

4. An Independent Living Skills (on-site) teacher is needed to go outside of the Center to teach students how to locate suitable housing and to learn about lease or purchase agreements, to learn to drive and to secure driver's licenses, to use public transportation systems, to learn to locate and use available community resources, to provide instruction concerning civil rights and responsibilities, and to visit deaf persons and their families in their homes. As with the program for the blind, these teachers would be flexible enough to take on additional responsibilities and to rotate in specific teaching assignments.

In conclusion, I know that these requests will seem high to some and that, indeed, there may be those who will make reference to "pie-in-the-sky" wishes. I can assure you that these needs are real. The blind and deaf of Alaska have the right to expect quality training, and the entire State will be the beneficiary if we are able to provide it. Also, our present staff members are highly qualified but they are also overworked and underpaid. If we cannot find the funds to hire additional staff members, and if we cannot establish both comparable salaries and benefits, the odds are that we will begin to lose the staff we have. Why should they continue to work for us when they could get better salaries and benefits elsewhere with less pressure?

It is my earnest hope that you and other members of the 1985 Legislature will see fit to grant these requests. In return, we will do the very best that we can to provide quality services to blind and deaf adults so that they will have the opportunity to lead meaningful, productive and independent lives. If you have questions concerning these requests, please contact me at any time.

Respectfully,

James H. Omvig

Director

JHO/mb

P.S. Effective rehabilitation pays off! As I pointed out in a recent newspaper article (you may have seen it) I am sure that the Iowa State Commission for the Blind spent more than $10,000 on me. However, I now intend to work for about 40 years. If the initial investment had not been made, I would have received approximately $400,000 during my lifetime in social security and welfare benefits. Because I am now a trained professional, I will pay taxes back to society of approximately another $400,000. Therefore, the initial investment will save society approximately $800,000. While all successful rehabilitation efforts will not produce such dramatic results because of age or occupation, these aren't bad returns.

P.P.S. I thought you would like to see the attached letter concerning Mr. Darrel Nather. Darrel was the first blind Alaskan to receive training in our Center.

enclosures

cc: Rep. Walt Furnace
Rep. Dave Thompson
Rep. Al Adams
Mike Morgan, Director, Division of Vocational Rehabilitation
Bill O'Connor, Director, Alaska Treatment Center

DDE/DHSS COMBINED BUDGET INCREMENTS BY OBJECTIVES, UNITS TO BE PROVIDED, AND $ AMOUNTS PER INCREMENT
(figures in parentheses are proposed capital costs)

Objective	Governor's Level FY 85	Increment 1	Increment 2	Increment 3	Increment 4	Increment 5	Increment 6	Increment 7	Increment 8	Increment 9	Increment 10	Increment 11	Increment 12	Increment 13
A RESPITE	277 334,600					107 144,450								
B VOCATIONAL	198 1,732,000					10 85,000				28 360,000		16 140,800	15 132,000	4 35,200
C RESIDENTIAL	217 4,469,300			8 416,000 (300,000)		9 203,914 (337,500)				12 259,329 (450,000)	10 220,000 (375,000)	18 392,400 (675,000)	10 360,000 (375,000)	19 445,822 (712,500)
D DEV. DIS. CONTRACT MAN	2 136,200			1 84,000		1 60,000								
E TRANSITIONAL PROJECT	311 136,000		436 393,700											
F INTERPRETER SERVICES	301 30,100		170 127,500											
G PERSONAL CARE ATTENDANTS	0							19 349,000						
H VOC. REHAB. CASE MANAGEMENT	0						—	2 114,070						
I INFANT LEARNING PROGRAM	644 2,242,200	135 495,000					135 495,000		135 495,000					
J INFANT LEARNING ADMINISTRATION	1.5 90,000						1 78,000		.5 12,500					
K EDUCATION FOR DEAF STUDENTS	5 107,400				9 314,219 (337,500)									
TOTAL	1670.5 9,850,700	135 495,000	606 521,200	9 500,000	9 314,219	132	136	21						

ORIENTATION AND ADJUSTMENT

PROGRAM FOR BLIND ADULTS

EXPENDITURES FY '86

STAFF SALARIES, BENEFITS AND TAXES

1. Director
2. Secretary/Administrative Assistant
3. Orientation Center Teachers:
   Typing
   Braille
   Home Economics
   Independent White Cane Travel
4. Home Teacher (On Site)
5. Part-time Low Vision Aid Specialist

	$268,576.56	
6. Benefits & Taxes @19%	51,029.46	
7. Total Personnel		$319,606.02

PROGRAM AND OPERATING EXPENDITURES

7. Supplies	$ 5,000.00	
8. Telephone Utilities	3,000.00	
9. Travel	20,000.00	
10. Staff Training/Development	5,000.00	
11. Equipment	3,000.00	
12. Professional Fees	500.00	
13. Total Program & Operating		$ 36,500.00
14. Subtotal	$356,106.02	
15. Administration @15%		53,415.90
16. Subtotal	409,521.92	
17. Rent		20,000.00
18. Total		$429,521.92

PRE-VOCATIONAL TRAINING PROGRAM

FOR DEAF ADULTS

EXPENDITURES FY '86

STAFF SALARIES, BENEFITS AND TAXES

1. Program Supervisor
2. Secretary/Teacher's Aide
3. Evaluation Specialist
4. Program Teachers:
   - Pre-Vocational & Work Skills
   - Communication Skills
   - Independent Living Skills (Classroom)
   - Independent Living Skills (On-site)

	$233,500.00	
3. Benefits & Taxes @19%	44,365.00	
4. Total Personnel		$277,865.00

PROGRAM AND OPERATING EXPENDITURES

5. Supplies	$ 3,000.00	
6. Telephone & Utilities	1,300.00	
7. Travel	10,000.00	
8. Staff Training Development	5,000.00	
9. Equipment	2,000.00	
10. Professional Fees	800.00	
11. Total Program & Operating		$ 22,100.00
12. Subtotal	$299,965.00	
13. Administration @15%		44,994.75
14. Subtot	$344,959.75	
15. Rent		11,000.00
16. Total		$355,959.75

COMMISSIONER OF INTERNAL REVENUE

Washington, DC 20224

15 OCT 1984

Mr. Darrel E. Nather
Internal Revenue Service
Collection Division
Anchorage, Alaska

Dear Darrel:

It gives me great pleasure to inform you that you have been selected as one of IRS' Outstanding Handicapped Employees of the Year. This honor is well deserved; your exemplary courage and determination serve as a model for all IRS employees.

You should be especially proud of the fact that you were nominated for this honor by your managers and the Western Region. Your nomination serves as a representative tribute to all of our fine, dedicated employees.

Please accept my personal thanks and congratulations.

With kind regards,

Sincerely,

Roscoe Egger

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

M E M O R A N D U M March 15, 1985

SUBJECT: Research request concerning confidentiality and privilege inherent to electronic translators for the deaf

TO: Senator Patrick Rodey
Attention: Roger Lewis

FROM: George W. Edwards GWE
Legislative Counsel

This is in response to your request for research on the status of the law concerning confidentiality and evidentiary privileges that protect electronic communications carried out by the deaf through human translators.

It is my understanding, based upon a conversation with Roger Lewis, that the principle concern here is assuring that deaf persons have the legal capacity to extend their evidentiary privileges to apply to third parties who electronically translate conversations for which the deaf person otherwise has a privilege. A secondary concern, I gather, is that there be some assurance that such a translator have a general obligation of confidentiality.

With regard to the matter of privilege, current rules of evidence appear to address the question posed here. Relevant sections are attached. Evidence Rule 503, concerning lawyer-client privilege provides in section (a)(5):

> A communication is confidential if not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

The rule states further in section (b):

> A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client . . .

The Commentary to Rule 503 lends emphasis to the applicability of the privilege to persons involved in the communication itself by noting in section (a)(4):

> The definition of "representative of the lawyer "recognizes that the lawyer may, in rendering legal services, utilize the services of assistants in addition to those employed in the process of communicating.

The controlling factor in a situation like that being considered here is the intent of the client, in this instance the deaf person. The Commentary to Rule 503 states in section (a)(5):

> The requisite confidentiality of communications is defined in terms of intent. A communication made in public or meant to be relayed to outsiders or which is divulged by the client to third persons can scarcely be considered confidential . . . . The intent is inferable from the circumstances. Unless intent to disclose is apparent, the attorney-client communication is confidential . . .

The significance of the client's intent is recognized in Blackmon v. State, 653 P.2d 669 (Ak, 1982) in which the court determined a conversation between a defendant and his attorney to be privileged even when carried on or within earshot of a police officer.

Legal treatises uphold this interpretation. Weinstein's Evidence, section 503(a)(4) at page 503-30 states:

> Disclosure to those reasonably necessary for transmitting the communication has readily been recognized as not destroying the privilege. Secretaries, clerks and interpreters fall within this category.

McCormick on Evidence, 3rd ed., states at page 188:

> ...if the help of an interpreter is necessary to enable the client to consult the lawyer his presence would not deprive the communication of its confidential and privileged character.

Evidence Rule 504, concerning the physician and psychotherapist-patient privilege, is similar in concept to Rule 503 and provides in section (a)(4):

> A communication is confidential if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication...

Evidence Rule 506, concerning communications of clergymen, states at section (a)(2):

> A communication is confidential if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

The Commentary for Rule 506 notes that "confidential" communication is consistent in meaning within Rules 503, 504, and 506.

It is my opinion, based upon the information set forth above, that any privilege afforded a deaf person under the referenced rules can be extended by the deaf person to apply to a third party intermediate communicator, including a translator who communicates through electronics.

With regard to the matter of confidentially, AS 42.20 appears to have in place law that requires confidentiality of a translator who communicates electronically by wire or radio.

Under AS 42.20.300 a person who receives or assists in receiving or who transmits or assists in transmitting a communication by wire or radio is prohibited from divulging the communication except to designated persons. A copy of the law is attached. As the translators of concern here transmit and receive by wire, they are clearly obligated to maintain the confidentiality of a deaf client under this statute.

If you feel there remains a need for legislation in this area please let me know and I will be glad to prepare a draft bill.

GWE:csh
c3/051

Rule 503. Lawyer-Client Privilege.

(a) **Definitions.** As used in this rule:

(1) A client is a person, public officer, or corporation, association, or other organization or entity, either public or private, who is rendered professional legal services by a lawyer, or who consults a lawyer with a view to obtaining professional legal services.

(2) A representative of the client is one having authority to obtain professional legal services and to act on advice rendered pursuant thereto, on behalf of the client.

(3) A lawyer is a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(4) A representative of the lawyer is one employed to assist the lawyer in the rendition of professional legal services.

(5) A communication is confidential if not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.

(b) **General Rule of Privilege.** A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client, (1) between himself or his representative and his lawyer or his lawyer's representative, or (2) between his lawyer and the lawyer's representative, or (3) by him or his lawyer to a lawyer representing another in a matter of common interest, or (4) between representatives of the client or between the client and a representative of the client, or (5) between lawyers representing the client.

(c) **Who May Claim the Privilege.** The privilege may be claimed by the client, his guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the lawyer at the time of the communication may

receive different treatment on evidence questions in courts of law merely because of differences in financial structure.

If, for example, A runs a taxi service as a sole proprietorship with several employees, and one employee driver is involved in an accident for which A is sued, the employee's statements to A's attorney are not within the attorney-client privilege, even though A may order his employee to talk with the lawyer. If A incorporates, the ruling should not change. It should be sufficient that A and other corporate officers having the capacity to seek legal advice and to act on it can claim the benefits of the privilege for private communications with counsel. A more permissive privilege would result in suppression of information conveyed to attorneys by employees who are more like witnesses than clients and who have no personal desire for confidentiality.

(3) A "lawyer" is a person licensed to practice law in any state or nation. There is no requirement that the licensing state or nation recognize the attorney-client privilege, thus avoiding excursions into conflict of laws questions. "Lawyer" also includes a person reasonably believed to be a lawyer. For similar provisions, *see,* Cal. Evid. Code § 950 (West 1966). Administrative practitioners are not lawyers under Rule 503 (a) (3), but may be included as "representatives of the lawyer" under Rule 503 (b) (4).

(4) The definition of "representative of the lawyer" recognizes that the lawyer may, in rendering legal services, utilize the services of assistants in addition to those employed in the process of communicating. Thus the definition includes an expert employed to assist in rendering legal advice. It also includes an expert employed to assist in the planning and conduct of litigation, though not one employed to testify as a witness. The definition does not, however, limit "representative of the lawyer" to experts. Whether his compensation is derived immediately from the lawyer or the client is not material.

Rule 503 does not expressly deal with communications from an insured to his insurance company. If the insurance agent to whom the information is forwarded were viewed as a "representative of the lawyer" under Rule 503 (a) (4), the privilege

would apply. This is the rule in most state courts. *See* McCormick (2d ed.) § 91 at 190. Some federal courts have been unsympathetic to this line of reasoning because of the peculiar nature of the insurance "situation." *See, e.g., Gottlieb v. Bresler,* 24 F.R.D. 371 (D.D.C. 1959). The demand for privilege is greater when there is a close connection between lawyer and agent and they rely upon confidentiality in their relationship. Thus, the result in any particular case may turn on the specific facts involved. However, it is clear that no privilege is available when a statement is being sought in a controversy between the insured, or one claiming under the insured, and the insurance company. McCormick (2d ed.) § 91, at 190-91; Annot., *Privilege of Communications or Reports Between Liability or Indemnity Insurer and Insured,* 22 A.L.R.2d 659 (1952).

(5) The requisite confidentiality of communication is defined in terms of intent. A communication made in public or meant to be relayed to outsiders or which is divulged by the client to third persons can scarcely be considered confidential. *See LaMoore v. United States,* 180 F.2d 49, 9th Cir. (1950); McCormick (2d ed.) § 95. The intent is inferable from the circumstances. Unless intent to disclose is apparent, the attorney-client communication is confidential. Taking or failing to take precautions may be considered as bearing on intent. "Communications which were intended to be confidential but were intercepted despite reasonable precautions remain privileged." *See* Subdivision (b) *infra; see also* J. Weinstein & M. Berger, Weinstein's Evidence, § 503(a)(4)[01] (1979).

Practicality requires that some disclosure be allowed beyond the immediate circle of lawyer-client and their representatives without impairing confidentiality, Hence the definition allows disclosure to persons to whom disclosure is in furtherance of the rendition of professional legal services to the client, contemplating those in such relation to the client as "spouse, parent, business associate, or joint client." Cal. Evid. Code § 952, Comment (West 1966).

(b) **General Rule of Privilege.** This subdivision sets forth the privilege, using the previously defined terms: client, representative of the client, lawyer, representative of the lawyer,

Rule 504. Physician and Psychotherapist-Patient Privilege.

(a) **Definitions.** As used in this rule:

(1) A patient is a person who consults or is examined or interviewed by a physician or psychotherapist.

(2) A physician is a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be.

(3) A psychotherapist is (A) a person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction, or (B) a person licensed or certified as a psychologist or psychological examiner under the laws of any state or nation or reasonably believed by the patient to so be, while similarly engaged.

(4) A communication is confidential if not intended to be disclosed to third persons other than those present to further the interest of the patient in the consultation, examination, or interview, or persons reasonably necessary for the transmission of the communication, or persons who are participating in the diagnosis and treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(b) **General Rule of Privilege.** A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of diagnosis or treatment of his physical, mental or emotional conditions, including alcohol or drug addiction, among himself, his physician or psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the physician or psychotherapist, including members of the patient's family.

(c) **Who May Claim the Privilege.** The privilege may be claimed by the patient, by his guardian, guardian ad litem or conservator, or by the personal representative of a deceased patient. The person who was the physician or psychotherapist

Rule 506. Communications of Clergymen.

(a) **Definitions.** As used in this rule:

(1) A clergyman is a minister, priest, rabbi, or other similar functionary of a religious organization, or an individual reasonably believed so to be by the person consulting him.

(2) A communication is confidential if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) **General Rule of Privilege.** A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to a clergyman in his professional character as spiritual adviser.

(c) **Who May Claim the Privilege.** The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The clergyman may claim the privilege on behalf of the person. His authority so to do is presumed in the absence of evidence to the contrary. (Added by Supreme Court Order 364 effective August 1, 1979)

Rule 506. Communications to Clergymen.

The considerations which dictate the recognition of privileges generally seem strongly to favor a privilege for confidential communications to clergymen. During the period when most of the common law privileges were taking shape, no clear-cut privilege for communications between priest and penitent emerged. 8 Wigmore § 2394. The English political climate of the time may well furnish the explanation. In this country, however, the privilege has been recognized by statute in about two-thirds of the states and occasionally by the common law process of decision.

(a) **Definitions.** Paragraph (1) defines a clergyman as a "minister, priest, rabbi, or other similar functionary of a religious organization." This concept is not so broad, however, to include all self-denominated "ministers." A fair construction of the language requires that the person to whom the status is sought to be attached be regularly engaged in activities conforming at least in a general way with those of a Catholic Priest, Jewish rabbi, or minister of an established Protestant denomination, though not necessarily on a full-time basis. No further specification seems possible in view of the lack of licensing and certification procedures for clergymen, However, this lack seems to have occasioned no particular difficulties in connection with the solemnization of marriages, which suggests that none may be anticipated here. For similar definitions of "Clergyman" see Cal. Evid. Code § 1030 (West); N.J. Rev. Stat. or Stat Ann. (West) § 29.

The "reasonable belief" provision finds support in similar provisions for lawyer-client in Rule 503 and for physician and psychotherapist-patient in Rule 504. A parallel is also found in the recognition of the validity of marriages performed by unauthorized persons if the parties reasonably believed them legally qualified.

(2) The definition of "confidential" communication is consistent with the use of the term in Rule 503(a)(5) for lawyer-client and in Rule 504(a)(4) for physician and psychotherapist-patient, suitably adapted to communications to clergymen.

(b) **General Rule of Privilege.** The choice between a privi-

42.20.150. The notice shall be printed in type which is no smaller than any other type on the same page and shall be preceded by the word "warning." This section does not apply to directories distributed solely for business advertising purposes, commonly known as classified directories. (§ 4 ch 102 SLA 1957)

Sec. 42.20.150. Definitions. In AS 42.20.120 — 42.20.150

(1) "emergency" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential;

(2) "party line" means a subscriber's line telephone circuit, consisting of two or more main telephone stations connected with it, each station with a distinctive ring or telephone number. (§ 1 ch 102 SLA 1957)

Article 4. Eavesdropping and Wiretapping.

Collateral references. 74 Am. Jur. 2d, Telecommunications, §§ 209 — 218.

86 C.J.S., Tel. & Tel., Radio & Television, § 287.

What constitutes an "interception" of a telephone or similar communication forbidden by the Federal Communications Act (47 USC § 605) or similar state statutes, 9 ALR3d 423.

Wiretapping, 29 Am. Jur. POF, pp 591 — 639.

Sec. 42.20.300. Unauthorized publication or use of communications. (a) A person who receives or assists in receiving, or who transmits or assists in transmitting a communication by wire or radio may not divulge or publish the existence, contents, substance, purport, effect, or meaning of the communication, except through authorized channels of transmission or reception to

(1) the addressee or the agent or attorney of the addressee;

(2) a person employed or authorized to forward a communication to its destination;

(3) proper accounting or distributing officers of the various communicating centers over which the communication may be passed;

(4) the master of a ship under whom the person is serving;

(5) another on demand of lawful authority; or

(6) in response to a subpoena issued by a court of competent jurisdiction.

(b) A person not authorized by a party to the communication may not intentionally intercept a communication or divulge or publish the existence, contents, substance, purport, effect, or meaning of the intercepted communication to any person.

(c) A person who is not entitled to a communication but who has received the communication may not use it or any information contained in it for personal benefit or another's benefit.

(d) A person who has received a communication and who knows or reasonably should know that the communication and the information contained in it was obtained in violation of this section may not divulge or publish the existence, contents, substance, purport, effect, or meaning of the communication or any part of the communication.

(e) A person who has become acquainted with a communication or the information contained in it, and who is not entitled to the communication, may not use the same for personal benefit or another's benefit, or divulge or publish the existence, contents, substance, purport, effect, or meaning of the communication or any part of the communication. (§ 1 ch 133 SLA 1966; am § 22 ch 166 SLA 1978)

Revisor's notes. — Formerly AS 11.60.280. Renumbered in 1980.

Legislative history reports. — For report on ch. 133, SLA 1966, see 1966 House Journal, p. 522.

NOTES TO DECISIONS

This section makes no exception for law enforcement officers. — A law enforcement officer is subject to the same penalties as a private citizen who violated the provisions of the statute. Roberts v. State, Sup. Ct. Op. No. 550 (File No. 934), 453 P.2d 898 (1969), cert. denied, 396 U.S. 1022, 90 S. Ct. 594, 24 L. Ed. 2d 515, rehearing denied, 397 U.S. 1059, 90 S. Ct. 1368, 25 L. Ed. 2d 681 (1970).

Nor does it change law as to evidence obtained by eavesdropping devices. — In regard to evidence obtained by wiretap or other eavesdropping devices being used in court proceedings, this section does not in any way change the existing law of Alaska. The admittance or rejection of such evidence is left to case law and the rules governing the admissibility of evidence as interpreted by the court. Roberts v. State, Sup. Ct. Op. No. 550 (File No. 934), 453 P.2d 898 (1969), cert. denied, 396 U.S. 1022, 90 S. Ct. 594, 24 L. Ed. 2d 515, rehearing denied, 397 U.S. 1059, 90 S. Ct. 1368, 25 L. Ed. 2d 681 (1970).

No provision excluding testimony obtained by eavesdropping had been enacted in conjunction with this section. J.M.A. v. State, Sup. Ct. Op. No. 1201 (File No. 2391), 542 P.2d 170 (1975).

Interception alone constitutes prohibited activity. — Subsection (b) of this section deals with the initial acquisition of a message by persons through the interception of the message at any time. The section contemplates an intentional interception. It should be noted that under this section, the interception alone constitutes a prohibited activity. There is no need to prove interception and divulgence, although the latter activity is also prohibited by this section. Roberts v. State, Sup. Ct. Op. No. 550 (File No. 934), 453 P.2d 898 (1969), cert. denied, 396 U.S. 1022, 90 S. Ct. 594, 24 L. Ed. 2d 515, rehearing denied, 397 U.S. 1059, 90 S. Ct. 1368, 25 L. Ed. 2d 681 (1970).

Sec. 42.20.310. Eavesdropping. A person may not

(1) use an eavesdropping device to hear or record all or any part of an oral conversation without the consent of a party to the conversation;

(2) use or divulge any information which the person knows or reasonably should know was obtained through the illegal use of an eavesdropping device for personal benefit or another's benefit;

Jury Selection: The Courts, The Constitution, and the Deaf

Traditionally, handicapped persons have been almost universally excluded from jury service regardless of qualifications that might offset their particular disabilities.[1] California, followed by several other states, has recently amended its Code of Civil Procedure to allow blind and wheelchair-bound persons to be jurors,[2] but deaf persons are apparently still excluded.[3] Recent developments suggest that the prohibition against deaf jurors may have little remaining vitality. Legislation recently introduced in the California Assembly would allow deaf per-

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1. Typical modern jury selection statutes require that the prospective juror be "in possession of his or her natural faculties." *See, e.g.*, CAL. CIV. PROC. CODE §198(2); N.Y. JUD. LAW §510 (Consol.). In construing this language in the predecessor of Section 510 in the New York statute, the New York courts held that a blind man who was a professor at a state university was not "in possession of his natural faculties," and was thus incompetent to be a juror. Lewinson v. Crews, 28 App. Div. 2d 111, 282 N.Y.S.2d 83 (1967), *aff'd mem.*, 21 N.Y.2d 898, 236 N.E.2d 853 (1968), *remittitur amended*, 21 N.Y.2d 1004, 238 N.E.2d 326, *appeal dismissed*, 393 U.S. 13 (1968).

2. California Code of Civil Procedure Section 198(2) provides "that no person shall be deemed incompetent [for jury service] solely because of the loss of sight in any degree or other disability which substantially impairs or interferes with the persons's mobility. . . ." The Oregon statute is perhaps a bit broader, prohibiting exclusion "on the basis of blindness or *physical handicap* alone" (emphasis added). ORE. REV. STAT. §10.030. *See also* WASH. REV. CODE §2.36.070 (exclusion based on blindness prohibited). Some statutes are entirely silent on the matter of a juror's physical capabilities and conceivably, otherwise qualified deaf persons and blind persons could be considered under such statutes. *See, e.g.*, FLA. STAT. ANN. §40.07; VA. CODE §8.01-338.

3. In a suit brought by a deaf woman who had been dismissed from a jury panel in Los Angeles, the superior court sustained the demurrer of the jury commissioner, finding, *inter alia*, that Code of Civil Procedure Section 198 disqualifies deaf persons from jury service. Meyer v. Zolin, No. C 307883 (L.A. Super Ct., Dec. 20, 1979) (copies of Complaint, Demurrer, and Ruling on Demurrer on file at the *Pacific Law Journal*). The case has been appealed to the Second District Court of Appeal.

While the prohibition against deaf jurors is not explicit in the terms of Section 198, the legislative history of SB 1525 (1977-78 Reg. Sess.) makes it clear that the legislature was not willing to abrogate the traditional prohibition. SB 1525 amended Section 198 to allow wheelchair-bound persons to serve as jurors. *See* CAL. STATS. 1978, c. 301, §2. As originally introduced, the bill "provide[d] that a person shall not be excluded from jury duty because of *any* physical handicap." SB 1525, Legislative Counsel's Digest, *as introduced*, February 13, 1978 (emphasis added). The term "physical handicap" was interpreted to include deafness. *See* Bill Digest on SB 1525 prepared by Senate Committee on Judiciary (copy on file at the *Pacific Law Journal*). An amendment introduced in the Assembly on May 25, 1978, changed "any physical handicap" to "disability which substantially impairs or interferes with the person's mobility." *See* JOURNAL OF THE CALIFORNIA ASSEMBLY 14843 (1977-78 Reg. Sess.) This version was enacted. CAL. STATS. 1978, c. 301, §2. Also enacted as part of the Assembly amendment was the following caveat:

> The Legislature hereby declares that failure to include any specific category of disabled persons within the proviso in subdivision 2 of Section 198 of the Code of Civil Procedure . . . shall not be interpreted as legislative intent to either qualify or disqualify such persons from jury service.

CAL. STATS. 1978, c. 301, §4. The net result of of the legislature's evasive action was to leave intact the common law prohibition against deaf jurors.

sons to be considered for jury service.[4] Deaf persons have actually been seated as jurors in two recent criminal cases[5] and there has been litigation in California and elsewhere on the issue of whether deaf persons have a right to sit on juries.[6]

Case law and statutes excluding deaf persons from jury service have generally done so on the ground that a deaf juror's presence would infringe a litigant's right to a fair trial.[7] Courts have held that deafness is a physical disability that substantially interferes with the performance of the tasks of a juror, thereby depriving litigants of the right to a fair trial.[8] That right, however, is arguably threatened more by the exclusion of deaf persons from the jury selection process than by the potential effects of a juror's deafness during a trial. This comment will contend that the sixth amendment guarantees a trial by a jury chosen from a pool that includes deaf persons. Certainly, the practical impact of a deaf juror on the trial process cannot be dismissed as unimportant, but as will be demonstrated, no aspect of this impact is so insurmountable that a total exclusion of deaf persons, without regard to individual capabilities, is required. Furthermore, to subject deaf persons to a blanket exclusion from jury service while other groups with similar perceptive disabilities are statutorily guaranteed the opportunity to serve, raises equal protection problems. The initial concern, however, must center around the rights of the litigants whose interests in the outcome of the trial are at stake.

Deaf Jurors And The Right To A Fair Trial

The nexus between deaf jurors and the right to a fair trial has two

4. AB 3285, 1979-80 Regular Session, *as introduced*, March 12, 1980.

5. John O'Brien was seated as a juror in a criminal case in Seattle, Washington. State v. Robert J. Scalese, Crim. Cause No. 90771 (King Cty. Super. Ct., August 14-16, 1979). The defendant was acquitted. Charles Peck was seated as juror in a criminal case in Oakland, California in October, 1979. Because the defendant was acquitted of violating California Penal Code Section 647(b) in a case that attracted widespread media attention, it is not deemed appropriate to use his name. This case will hereinafter be cited as Oakland Deaf Juror Case. *See* Letter from Thomas Deal, Alameda County Deputy District Attorney, to Harold Craig Manson, March 11, 1980 [hereinafter cited as Letter on Oakland Deaf Juror] (copy on file at the *Pacific Law Journal*).

6. Eckstein v. Kirby, 452 F. Supp. 1235 (E.D. Ark. 1978); Meyer v. Zolin, No. C 302883 (L.A. Super. Ct., Dec. 20, 1979).

7. *See, e.g.*, 452 F. Supp. 1235; Commonwealth v. Brown, 332 A.2d 828 (Pa. Super. 1974); No. C 302883 (L.A. Super. Ct., Dec. 20, 1979).

8. 332 A.2d at 831. There is no "legal" definition of deafness. The term "deaf" in this comment refers to persons "totally deaf," that is, "[t]hose in whom the sense of hearing is nonfunctional for the ordinary purposes of life." R. Bender, The Conquest of Deafness 11 (1970). A considerable body of case law purporting to treat the issue of "deaf" jurors deals with persons who are "hard of hearing," *i.e.*, "those in whom the sense of hearing, although defective, is functional, with or without a hearing aid." *Id.*; *see* 47 Am. Jur. 2d *Jury* §109; 31 Am. Jur. *Jury* §130; 15 A.L.R. 2d 534. Nearly 14 million Americans have some hearing impairment; of these, nearly two million are deaf as defined above. J. Schein & M. Delk, The Deaf Population of the United States 4 (1974).

aspects. First, the litigant is en
Second, the litigant is entitled t
separate issues raised by these

A. *Fairness in the Jury Selecti*

A "fair trial" in California
"cross-section" of the communi
group within the community b
process.[11] California courts ha
principle developed over severa
tion of this principle is per se
trial.[13]

Recently, the United States S
forth a three part test to estab
section principle. First, the e
distinctive group in the commu
plainant must show that the
from which juries are selected
the number of such persons i
established that the group's u
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With respect to the exclusi
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Since deaf persons are not re
ess, no mathematical analysis
representation is not fairly or
community. The fact that the

9. Taylor v. Louisiana, 419 U.S.
United States, 329 U.S. 187 (1946); Th
United States, 315 U.S. 60 (1942); Smit

10. Mullaney v. Wilbur, 421 U.S.
Murchison, 349 U.S. 133 (1965).

11. *See generally* People v. Wheele

12. *See id.*; People v. Carter, 56 Ca
White, 43 Cal. 2d 740, 278 P.2d 9 (1954
cross-sectionalism, *see* J. Van Dyke, Ju
ment to Representative Panels (
Cross-sectionalism in Jury Selection P
(1975) [hereinafter cited as Daughtrey]

13. Taylor v. Louisiana, 419 U.S.
United States, 329 U.S. 187 (1946); Th
United States, 315 U.S. 60 (1942); Sm

14. 439 U.S. 357 (1979). *See* Com
Washburn L.J. 160 (1979).

15. 439 U.S. at 364.

16. *Id.*

17. *Id.*

aspects. First, the litigant is entitled to a *fair jury selection process*.[9] Second, the litigant is entitled to a *fair consideration of the case*.[10] The separate issues raised by these two aspects merit individual treatment.

A. Fairness in the Jury Selection Process

A "fair trial" in California is a trial before a jury representing a "cross-section" of the community, from which no "cognizable" class or group within the community has been excluded in the jury selection process.[11] California courts have generally followed the analysis of this principle developed over several decades in the federal courts.[12] Violation of this principle is per se a denial of a litigant's right to a fair trial.[13]

Recently, the United States Supreme Court in *Duren v. Missouri*[14] set forth a three part test to establish a prima facie violation of the cross-section principle. First, the existence of an excluded "cognizable" or distinctive group in the community must be shown.[15] Second, the complainant must show that the representation of this group in the pool from which juries are selected is not fair and reasonable in relation to the number of such persons in the community.[16] Finally, it must be established that the group's underrepresentation is caused by systematic exclusion of the group from the jury selection process.[17]

With respect to the exclusion of deaf persons, it is not necessary to dwell at length over the second and third elements of the *Duren* test. Since deaf persons are not represented *at all* in the jury selection process, no mathematical analysis is required to conclude that their current representation is not fairly or reasonably related to their numbers in the community. The fact that the exclusion is the result of a legislative act

9. Taylor v. Louisiana, 419 U.S. 522 (1975); Peters v. Kiff, 407 U.S. 493 (1972); Ballard v. United States, 329 U.S. 187 (1946); Thiel v. Southern Pac. Co., 328 U.S. 217 (1946); Glasser v. United States, 315 U.S. 60 (1942); Smith v. Texas, 311 U.S. 128 (1940).

10. Mullaney v. Wilbur, 421 U.S. 684 (1975); Taylor v. Hayes, 418 U.S. 488 (1974); *In re* Murchison, 349 U.S. 133 (1965).

11. *See generally* People v. Wheeler, 22 Cal. 3d 258, 583 P.2d 748, 148 Cal. Rptr. 890 (1978).

12. *See id.*; People v. Carter, 56 Cal. 2d 549, 364 P.2d 477, 15 Cal. Rptr. 645 (1961); People v. White, 43 Cal. 2d 740, 278 P.2d 9 (1954). For an overview of the federal history of the principle of cross-sectionalism, *see* J. VAN DYKE, JURY SELECTION PROCEDURES: OUR UNCERTAIN COMMITMENT TO REPRESENTATIVE PANELS (1977) [hereinafter cited as JURY SELECTION]; Daughtrey, *Cross-sectionalism in Jury Selection Procedures after Taylor v. Louisiana*, 43 TENN. L. REV. 1 (1975) [hereinafter cited as Daughtrey].

13. Taylor v. Louisiana, 419 U.S. 522 (1975); Peters v. Kiff, 407 U.S. 493 (1972); Ballard v. United States, 329 U.S. 187 (1946); Thiel v. Southern Pac. Co., 328 U.S. 217 (1946); Glasser v. United States, 315 U.S. 60 (1942); Smith v. Texas, 311 U.S. 128 (1940).

14. 439 U.S. 357 (1979). *See* Comment, *Systematic Exclusion in the Jury Selection Process*, 19 WASHBURN L.J. 160 (1979).

15. 439 U.S. at 364.

16. *Id.*

17. *Id.*

clearly qualifies the exclusion as "systematic."[18] Thus, in order to show that the exclusion of deaf persons from the jury selection process deprives litigants of a fair trial, only the first element of the *Duren* test need be analyzed. This requires a showing that deaf persons are a distinctively cognizable group in the community whose exclusion deprives juries of a representative cross-section of the community. Before specifically addressing that issue, it is appropriate to discuss the development of the cross-section principle in order to comprehend its full import to the right to a fair trial.

1. Development of the Cross-section Principle

The germ of the cross-section principle is in the sixth amendment guarantee of criminal trials "by an impartial jury of the State and district wherein the crime shall have been committed. . . ."[19] The principles developed under the sixth amendment are logically applicable to civil trials.[20] In 1940, the United States Supreme Court, in *Smith v. Texas*,[21] interpreted "impartial jury" to mean one drawn from a cross-section of the community. In an oft-quoted passage now regarded as "seminal,"[22] the Court declared: .

> It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community. . . . [T]he exclusion from jury service of otherwise qualified groups not only violates our Constitution and the laws enacted under it, but is at war with our basic concepts of a democratic society and a representative government.[23]

The decision in *Smith* was placed upon equal protection grounds since the sixth amendment did not then apply to the States.[24] The Supreme Court in its supervisory role then gradually extended the

18. Meyer v. Zolin, No. C 302883 (L.A. Super. Ct., Dec. 20, 1979) (ruling on Demurrer, at 2) (copy on file at the *Pacific Law Journal*).

19. U.S. CONST., amend. VI.

20. The sixth amendment did not apply to the states, and states were not required to have jury trials in criminal prosecutions prior to the decision in *Duncan v. Louisiana*, 391 U.S. 145 (1968). *Duncan* applied the sixth amendment to the states through th due process clause of the fourteenth amendment. The seventh amendment right to jury trial in civil cases has not been incorporated into the fourteenth amendment and theoretically states need not have juries in civil cases. Minneapolis & St. Louis R.R. Co. v. Bombolis, 241 U.S. 11 (1916). *But see* CAL. CONST., art. I, §16 (jury trial "inviolate right" in both civil and criminal actions).

In the pre-*Duncan* era, however, and today with respect to civil trials, the theory was and is that if a state chooses to provide jury trials, it must do so on terms that comport with notions of due process and equal protection. *See* Peters v. Kiff, 407 U.S. 493, 501 (1972) (plurality opinion per Marshall, J.).

21. 311 U.S. 128 (1940).

22. People v. Wheeler, 22 Cal. 3d 258, 267, 583 P.2d 748, 755, 148 Cal. Rptr. 890, 896 (1978).

23. 311 U.S. at 130. Some evidence suggests that the cross-sectional jury dates to the thirteenth century. *See* JURY SELECTION, *supra* note 12, at 12.

24. See note 20 *supra*.

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26. Williams v. Florida, 399 U.S. 78,
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365 F.2d 698 (5th Cir. 1966).

27. 43 Cal. 2d 740, 278 P.2d 9 (1954)

28. *Id.* at 754, 278 P.2d at 18. *See al*
Cal. Rptr. 890 (1978); People v. Carter, 56
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Co., 328 U.S. 217, 220 (1946).

29. 22 Cal. 3d 258, 583 P.2d 748, 14

30. *Id.* at 272, 583 P.2d at 758, 148

31. Taylor v. Louisiana, 419 U.S. 52
(9th Cir. 1977); United States v. Gast, 4
(1972); United States v. DiTomasso, 405 F
Simmons v. United States, 406 F.2d 456

32. 43 Cal. 2d at 749, 178 P.2d at 1

33. 419 U.S. at 538; Carter v. Jury-

34. 419 U.S. at 538, citing Fay v. N
"6 U.S. 404 (1972). *See also* 22 Cal. 3

35. See text accompanying note 23

cross-section requirement to federal criminal and civil actions.[25] Cross-sectionalism was finally read into the sixth amendment in 1970.[26] In the meantime, however, the California Supreme Court had adopted the cross-section requirement, saying in *People v. White*:[27]

> The American system requires an impartial jury drawn from a cross-section of the entire community and recognition must be given to the fact that eligible jurors are to be found in every stratum of society.[28]

Later, in *People v. Wheeler*,[29] the court explained that cross-sectionalism is a requirement under the state constitution as well as the federal constitution.[30]

An observation about the practical meaning of the cross-section principle is in order. Cross-sectionalism does not require representation of every group in the community on every or any jury actually chosen.[31] As the California Supreme Court aptly noted in *White*, "The principal requirement is that there be no systematic or intentional exclusion of any group or groups of citizens from the prospective jury lists."[32] Further, cross-sectionalism leaves the states free to prescribe juror qualifications as long as the pool of qualified persons is representative of the community.[33] A litigant is not entitled to a jury of any specific composition.[34]

Given the foregoing, it might seem sufficient to say that the exclusion of deaf persons is condemned by the cross-section requirement alone. The argument would be that deaf persons are a group within the community and should therefore be included.[35] This approach, however, would not distinguish deaf persons from any other collection of persons. Not just any "group" is entitled to equal consideration in the jury

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25. *See* 407 U.S. at 500 n.9.

26. Williams v. Florida, 399 U.S. 78, 100 (1970). Actually, the effect of the requirement on the states is much more apparent in *Taylor v. Louisiana*, 419 U.S. 522 (1975). Professor Daughtrey asserts that the Fifth Circuit Court of Appeals had constitutionalized cross-sectionalism and made it binding on the states as early as 1966. Daughtrey, *supra* note 12, at 29-30; *see* Labat v. Bennett, 365 F.2d 698 (5th Cir. 1966).

27. 43 Cal. 2d 740, 278 P.2d 9 (1954).

28. *Id.* at 754, 278 P.2d at 18. *See also* People v. Wheeler, 22 Cal. 3d 258, 583 P.2d 748, 148 Cal. Rptr. 890 (1978); People v. Carter, 56 Cal. 2d 549, 364 P.2d 477, 15 Cal. Rptr. 645 (1961). The court's language in *White* was a paraphrase of two sentences found in *Thiel v. Southern Pacific Co.*, 328 U.S. 217, 220 (1946).

29. 22 Cal. 3d 258, 583 P.2d 748, 148 Cal. Rptr. 890 (1978).

30. *Id.* at 272, 583 P.2d at 758, 148 Cal. Rptr. at 899.

31. Taylor v. Louisiana, 419 U.S. 522, 538 (1975); *see* United States v. Potter, 552 F.2d 901 (9th Cir. 1977); United States v. Gast, 457 F.2d 141 (7th Cir. 1972), *cert. denied*, 406 U.S. 969 (1972); United States v. DiTomasso, 405 F.2d 385 (4th Cir. 1969), *cert. denied*, 394 U.S. 934 (1969); Simmons v. United States, 406 F.2d 456 (5th Cir. 1969).

32. 43 Cal. 2d at 749, 178 P.2d at 15; *see* 419 U.S. at 538.

33. 419 U.S. at 538; Carter v. Jury Comm'n of Greene County, 396 U.S. 320 (1970).

34. 419 U.S. at 538, citing Fay v. New York, 332 U.S. 261 (1947) and Apodoca v. Oregon, 406 U.S. 404 (1972). *See also* 22 Cal. 3d at 277, 583 P.2d at 762, 148 Cal. Rptr. at 903.

35. See text accompanying note 23 *supra*.

selection process. A group must be constitutionally "cognizable" for this purpose.

2. The Cognizability Factor

The principle of "cognizability" in the jury selection process is universally said to have had its genesis in *Hernandez v. Texas*,[36] wherein the United States Supreme Court stated:

> When the existence of a distinct class is demonstrated, and it is further shown that the laws as written or as applied, single out that class for different treatment not based on some reasonable classification, the guarantees of the Constitution have been violated.[37]

The task of defining cognizability was left to the lower federal courts.[38] Not surprisingly, the results have varied.[39] The Court of Appeals for the Ninth Circuit observed that "[a] precise definition of what constitutes a cognizable group is lacking in the decided cases . . . . [C]ognizability will necessarily vary with local conditions."[40]

The case that has been praised as the "most thoughtful analysis"[41] of cognizability is *United States v. Guzman*.[42] In deciding that 18 to 21 year-olds do not constitute a cognizable group, the District Court for the Southern District of New York set out three factors defining such a group. First, the group must have a definite and unshifting membership.[43] This requires some characteristic that limits the group.[44] Second, there must be a "common thread" of ideas, attitudes, or

36. 347 U.S. 475 (1954).

37. *Id.* at 478. *See also* United States v. Potter, 552 F.2d 901, 905 (9th Cir. 1977); Daughtrey, *supra* note 12, at 13; JURY SELECTION, *supra* note 12, at 48. Of particular interest also is Gewin, *An Analysis of Jury Selection Decisions* (appended to the opinion in *Foster v. Sparks*, 506 F.2d 805, 811 (5th Cir. 1975)). Judge Gewin's report was originally prepared for the Committee on the Operation of the Jury System, Judicial Conference of the United States. Judge Gewin observes that the language in the text quoted from *Hernandez* "could be deemed the precursor of the suspect classification terminology," which he says the Court introduced only a short time later in *Bolling v. Sharpe*, 347 U.S. 497 (1954). 506 F.2d at 820 n.41. (It appears that the "suspect" class terminology actually originated in *Korematsu v. United States*, 323 U.S. 214, 216 (1944)). Nonetheless, "cognizability" and "suspect classification" are not identical. A class may be "cognizable" for sixth amendment purposes, yet not "suspect" for fourteenth amendment purposes. Some groups are both "cognizable" and "suspect" *e.g.*, racial groups. Women are clearly a cognizable group, *see* Taylor v. Louisiana, 419 U.S. 522 (1975); Duren v. Missouri, 439 U.S. 357 (1979); yet classifications based on sex have not been anointed "suspect" by a majority of the Court, *see* Stanton v. Stanton, 421 U.S. 7 (1975). *But see* Frontiero v. Richardson, 411 U.S. 677 (1973) (plurality of four Justices held sex to be a "suspect" classification).

38. In fact, the Supreme Court has rarely, if ever, used the term "cognizability" to describe the principle announced in *Hernandez*. The term most likely originated with a lower court, although which court, and when and where do not appear in the relevant literature.

39. For a summary of the cognizability decisions to 1975, *see* Daughtrey, *supra* note 12, at 14-15 n.49.

40. United States v. Potter, 552 F.2d 901, 903 (9th Cir. 1977).

41. Daughtrey, *supra* note 12, at 13-14 n.49.

42. 337 F. Supp. 140 (S.D.N.Y. 1972), *aff'd*, 468 F.2d 1245 (2d Cir. 1972), *cert. denied*, 410 U.S. 937 (1973).

43. *Id.* at 143.

44. *Id.*

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48. 12 Cal. 3d 55, 524 P.2d 37[illegible], 11
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523, 529 (1971).

49. 12 Cal. 3d at 60, 524 P.2d at 3

50. *Id.* at 66, 524 P.2d at 383, 115

51. 24 Cal. 3d 93, 593 P.2d 595, 1

52. *Id.* at 98, 593 P.2d at 598, 154

53. *Id.*

experiences that gives the group cohesion.[45] Finally, the group must share a community of interest that cannot be adequately represented by other groups or individuals in the population.[46] In addition to these factors, courts have sometimes required that the particular class be thought of as distinct and identifiable by the larger community.[47]

The California Supreme Court first articulated the concept of cognizability in *Adams v. Superior Court*,[48] where it was held that persons resident in the state for less than one year do not constitute a cognizable class. The court did not attempt an independent definition of cognizability; rather, the opinion adopted the "common thread" requirement of *Guzman* without comment or citation.[49] Justice Mosk, dissenting, believed the mere fact that a "group" was being discussed proved the cognizability of the group, and that any further determination was unnecessary.[50]

For nearly five years, cognizability in California hung by the *Guzman-Adams* "common thread." In 1979, however, Justice Mosk embraced the philosophy he had eschewed in *Adams* and authored the majority opinion in *Rubio v. Superior Court*.[51] Rejecting a claim that ex-felons and resident aliens are cognizable groups, Mosk laid out his own interpretation of the "common thread" and adopted the third *Guzman* requirement that the group's interests not be adequately represented by other members of the community.[52]

The "common thread" Mosk described as "a common perspective arising from . . . life experience in the group" that "impart[s] to its possessors a common social or psychological outlook on human events."[53] The explanation for adoption of the third *Guzman* require-

45. *Id.* This element is not to be narrowly construed since obviously "no racial, ethnic or socioeconomic group has a rigorous ideological cohesiveness." JURY SELECTION, *supra* note 12, at 69. Additionally, as Professor Van Dyke points out, *id.*, this "common thread" requirement appears to conflict with Justice Marshall's observation in *Peters v. Kiff* that

> [i]t is not necessary to assume that the excluded group will consistently vote as a class in order to conclude, as we do, that their exclusion deprives the jury of a perspective on human events that may have unsuspected importance in any case that may be presented.

407 U.S. 493, 504 (1972). On the other hand, the *Guzman* "common thread" requirement need not be viewed as demanding that the group have a predictable decisional outlook. The common thread may be seen as referring to "a flavor, a distinct quality" which would be lost if the group were excluded. *See* Ballard v. United States, 329 U.S. 187, 193-94 (per Douglas, J.)

46. 337 F. Supp. at 143-44.

47. *See* United States v. Potter, 552 F.2d 901, 905 (9th Cir. 1977), citing Quadra v. Superior Court, 403 F. Supp. 486 (N.D. Cal. 1975).

48. 12 Cal. 3d 55, 524 P.2d 375, 115 Cal. Rptr. 247 (1974). Actually, the first use of the term in California appears to have been in *People v. Hoiland*, 22 Cal. App. 3d 530, 540, 99 Cal. Rptr. 523, 529 (1971).

49. 12 Cal. 3d at 60, 524 P.2d at 378, 115 Cal. Rptr. at 250.

50. *Id.* at 66, 524 P.2d at 383, 115 Cal. Rptr. at 255.

51. 24 Cal. 3d 93, 593 P.2d 595, 154 Cal. Rptr. 734 (1979).

52. *Id.* at 98, 593 P.2d at 598, 154 Cal. Rptr. at 737.

53. *Id.*

ment was that the cross-section principle was designed to broaden the representation of *attitudes*, not *groups* as such.[54]

Applying the *Rubio* definition, it is apparent that deaf persons are a cognizable group. Deafness is the characteristic that gives the group a definite composition. There can be no doubt that deafness[55] supplies a "common thread" to the group that it afflicts. In the terms of *Rubio*, deaf persons share a common perspective on human events arising from their common life experience. Because deaf persons have, as a group, a life experience vastly different from the majority of citizens, it is unlikely that the interests shared by deaf persons could be adequately represented by any other group in the community. Deaf persons represent the same sort of "discrete and insular minority"[56] as

54. *Id.* In a bitter but persuasive dissent, Justice Tobriner, who had joined Mosk's dissent in *Adams*, attacks what he calls the " 'vicarious representation analysis'." *Id.* at 106, 593 P.2d at 603, 154 Cal. Rptr. at 743 (Tobriner, J., dissenting). From Tobriner's precise analysis of prior United States Supreme Court decisions, it is obvious that the cross-section rule was not fashioned merely to provide representation of attitudes wherever they might be found, but also to compel the inclusion of groups. For example, the plurality opinion in *Peters v. Kiff* pointed out:

> [T]he exclusion from jury service of a substantial and identifiable class of citizens has a potential impact that is too subtle and too pervasive to admit of confinement to particular issues or particular cases. . . . When *any* large and identifiable segment of the population is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable.

407 U.S. 493, 503-04 (1972) (emphasis added). See also note 45 *supra*.

The effect of the "vicarious representation" element is to exclude groups based on presumptions about group attitudes, presumptions which "fl[y] squarely in the face of the cross-section rule." 24 Cal. 3d at 112, 593 P.2d at 608, 154 Cal. Rptr. at 747 (Tobriner, J., dissenting). As Judge Gewin points out, judicial sanctions can be imposed against jury discrimination without regard to whether or not a technical "cross-section" has been achieved for the reason that "state fostered or imposed discrimination is simply inimical to the Constitution." Gewin, *An Analysis of Jury Selection Decisions*, 506 F.2d 811, 820 (1975).

The "vicarious representation" element considers perhaps the interests of the judicial system and litigants, but ignores the interests of a group excluded for the sole reason that its views are shared by another group. Also, as between two groups whose interests could somehow be divined as similar, the decision that one but not the other should represent these interests could only be made on arbitrary grounds unrelated to the ability of individual group members to perform as jurors.

Exclusion of qualified groups from jury service is essentially an equal protection issue with respect to the excluded groups, no matter what labels or standards of review may be applied. Justice Mosk had earlier recognized that in his *Adams* dissent. *See* 12 Cal. 3d at 67, 524 P.2d at 383, 115 Cal. Rptr. at 255. No other equal protection issue turns on whether or not the victims of discrimination have their interests adequately represented by other members of society.

Justice Tobriner's dissent in *Rubio* thus clearly states the correct view. Ironically, Justice Mosk's now-repudiated dissent in *Adams* remains an outstanding essay on the law in jury discrimination cases. In light of both opinions, the "vicarious representation" element of *Rubio* and *Guzman* is unquestionably erroneous. It would appear then that cognizability, an historical accident and largely a creation of the lower federal courts, has evolved far past its usefulness. The concept was essential in 1954, but is troublesome in 1980. The ends of the sixth amendment would be better served by discarding cognizability entirely. In challenges to a jury selection system brought by members of the excluded group, the more usual modern equal protection analysis should apply. In challenges brought by allegedly wronged litigants, the litigants should be allowed to assert the equal protection rights of the excluded group. *See* Peters v. Kiff, 407 U.S. 493 (1972); Barrows v. Jackson, 346 U.S. 249 (1953).

55. See note 8 *supra*.

56. United States v. Carolene Products Co., 304 U.S. 144, 153 n.4 (1938). Although this phrase arose in the context of substantive due process and has particular significance in discus-

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61. 349 U.S. 133 (1965).

62. *Id.* at 136.

63. See text accompanying

64. 452 F. Supp. 1235 (E.D
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other groups declared "cognizable" for jury selection purposes.[57] Finally, the entire social history of the treatment of deaf persons, from educational segregation[58] to the imposition of legal disabilities,[59] reveals that deaf persons have been thought of as a distinct class by the greater community.[60] The status of deaf persons as a cognizable group is meaningless, however, if their presence on juries interferes with a fair consideration of the cases before them.

B. *Fairness in the Consideration of the Case*

The United States Supreme Court pointed out in *In re Murchison*:[61] "A fair trial in a fair tribunal is a basic requirement of due process."[62] The terms "fair trial" and "due process" are synonymous with "fairness in the consideration of the case." As previously noted, courts have adhered to the position that the inability of a deaf juror to perceive the evidence precludes a fair consideration of a case and thus denies a litigant due process.[63]

In *Eckstein v. Kirby*,[64] a federal district court sitting in Arkansas sus-

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sions of equal protection, it is the most accurate description of the cognizability factor to be found anywhere.

57. See the cases cited in Daughtrey, *supra* note 12, at 14-15, n.49.

58. *See generally* Glass, *Deafness and Its Effects*, EDUCATIONAL AND PSYCHOSOCIAL ASPECTS OF DEAFNESS 66 (R. Hardy & J. Culls, eds. 1974) [hereinafter cited as Glass].

59. See note 60 *infra*.

60. In early history, deaf persons were thought to be possessed by evil spirits. *See Mark* 9:17-26. False notions about deafness continue to result in social discrimination against the deaf to this day. One popular notion is that deaf persons are "intellectually slower than hearing persons." *See* Glass, *supra* note 58. This idea arose from the common tendency to equate intelligence with language skills, and the deaf are admittedly lacking in language skills. See note 69 *infra* and accompanying text. Science has repudiated the idea that deaf persons lack the intellectual capacity of hearing persons, *see* Glass, *supra* note 58; yet even the most educated and seemingly enlightened persons refer to deaf persons as "deaf and dumb." This offensive phrase is not "just an expression" any more than "nigger" is "just an expression."

At one time, the deaf were *personae non standi judicio*. *See generally* Alex v. Matke, 151 Mich. 36, 115 N.W. 251 (1908). Modern case law dealing with discrimination against deaf persons is sparse. One reason for the paucity of litigation is that a private right of action under relevant federal law has only recently been recognized. *See* Lloyd v. Regional Transp. Auth., 548 F.2d 1277 (7th Cir. 1977); Kampmeier v. Nyquist, 553 F.2d 296 (2d Cir. 1977); United Handicapped Fed'n v. Andre, 558 F.2d 413 (8th Cir. 1977). A few cases have attracted national attention. In *Southeastern Community College v. Davis*, 439 U.S. 1065 (1979), the Supreme Court held that no federal law was violated when a college refused to admit a deaf licensed practical nurse to its nursing degree program. A state university denied a deaf graduate student interpreter services, thus effectively terminating his program, in *Crawford v. University of North Carolina*, 440 F. Supp. 1047 (M.D.N.C. 1977). The same issue arose in *Barnes v. Converse College*, 436 F. Supp. 635 (D.S.C. 1977).

Despite the lack of extensive litigation, it is apparent that social, economic, and employment discrimination against deaf persons is common. *See* R. BENDER, THE CONQUEST OF DEAFNESS (1970); Stewart, *A Truly Silent Minority*, 2 PROFESSIONAL REHABILITATION WORKERS WITH THE ADULT DEAF, DEAFNESS 1 (1972).

61. 349 U.S. 133 (1955).

62. *Id.* at 136.

63. See text accompanying note 8 *supra*.

64. 452 F. Supp. 1235 (E.D. Ark. 1978). In a suit of first impression in American courts, plaintiff, a deaf woman who had been dismissed from a jury panel, sought a declaratory judgment that the Arkansas jury selection statute violated the fourteenth amendment in excluding deaf per-

tained the exclusion of a deaf person from a state court jury panel on the basis of fairness to litigants, among other reasons.[65] Finding that the deaf person "might not be able to give a litigant a fair trial,"[66] the court outlined several potential obstacles to a fair consideration of a case by a deaf juror.

First, it was urged in *Eckstein* that deaf persons necessarily have limited vocabularies and therefore verbatim translations of court proceedings would be impossible even with the aid of a skilled interpreter.[67] The court suggested that complex medical testimony or other evidence of a highly technical nature could not be satisfactorily conveyed to a deaf juror without significant delay.[68] There is no dispute that the expressive and receptive language skills of deaf persons are, *on the average*, quite deficient compared to the language skills of hearing persons.[69] But contrary to former belief, language proficiency is not a measure of intelligence,[70] and it is intelligence that is the critical factor in a juror's ability to evaluate evidence and drawn the necessary conclusions. Beyond this fact, it is documented that deaf persons participate in a number of professions with highly specialized jargon, including medicine, education, engineering, and law.[71] It may be in fact much more difficult to convey highly technical information to a hearing person of limited intelligence or education than it would be to convey the same information to a deaf person of average or above average intelligence.

Another potential obstacle to a fair consideration of a case by a deaf juror raised in *Eckstein* was the apparent inability of a deaf juror to perceive the "more subtle nuances of verbal communication" in assessing the credibility of a witness.[72] There are some "subtle nuances of verbal communication" such as hesitancy that would be visually obvious to a deaf person. Likewise, other clues perceptible to a deaf person, such as visible discomfort, wringing hands, sweating, and so forth,

sons. Jurisdiction was granted pursuant to Title 42, United States Code, Section 1983. The challenged provision declared:

> The following are disqualified to act as grand or petit jurors:
>
> . . .
>
> (c) Persons who are unable to speak or understand the English language.
>
> . . .
>
> (f) Persons whose senses of hearing or seeing are substantially impaired.

ARK. STAT. ANN. §39-102 (1977).

65. 452 F. Supp. at 1242. The court also decided that the plaintiff had no fundamental right to sit on a jury. *Id.* at 1241. See notes 125-139 and accompanying text *infra*.
66. 452 F. Supp. at 1242.
67. *Id.* at 1237.
68. *Id.* at 1242.
69. *See generally* H. FURTH, THINKING WITHOUT LANGUAGE (1966).
70. Glass, *supra* note 58, at 66-67.
71. P. CRAMMATTE, DEAF PERSONS IN PROFESSIONAL EMPLOYMENT 72-87 (1968).
72. 452 F. Supp. at 1237.

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77. 452 F. Supp. at 1242.

78. *See* Letter on Oakland D

might reveal a witness' apparent confusion or misrepresentation.[73] Furthermore, a hearing juror may fail to grasp the significance of some "subtle nuances" of voice inflection, and this fact will rarely be know to the parties. Finally, there is no conclusive authority that perception of voice inflection or any other "nuance" of verbal communication leads juries to "truer" or "more just" findings. In fact, authority suggests that juries base their credibility judgments more on their *visual* perception of a witness than on voice inflection, or even the substantive content of testimony.[74] Thus the excluded deaf person may be a "better" juror than the blind person now permitted to serve on California juries.

The *Eckstein* court also asserted that a deaf juror would have to keep his or her eyes constantly on the interpreter and would not be able to watch the facial expressions of witnesses as they testified.[75] This problem is easily resolved by placing the interpreter next to or behind the witness.[76] Nonetheless, this hardly seems a valid reason to exclude deaf persons as a group since blind persons who are allowed to be jurors cannot see the facial expressions of the witnesses at all. Regardless of whether an interpreter could be strategically located, the deaf juror would at least be able to see the witness before and immediately after anything was said.

Of all the potential obstacles to a fair consideration of a case identified by the court in *Eckstein*, the most serious was that a deaf juror's participation in deliberations would be impeded or delayed by having "each remark made by each juror" relayed by the interpreter.[77] This observation has not been borne out by actual trial experience with a deaf juror.[78] A hearing juror, being able to comprehend only one con-

73. *See* Letter on Oakland Deaf Juror, *supra* note 5. The "appealing notion" that deaf persons compensate for hearing loss with heightened sensitivity to nonverbal conduct is apparently without merit. B. BOLTON, PSYCHOLOGY OF DEAFNESS FOR REHABILITATION COUNSELORS 4 (1976). The visual clues referred to in the text are those that hearing persons would just as readily perceive. Also false is the idea that deaf persons, as a group, are extremely proficient at lipreading. *See id.*

74. H. KALVEN & H. ZIESEL, THE AMERICAN JURY 382-83 (1966).

75. 452 F. Supp. at 1242. Deaf persons communicate in a variety of ways, but the preferred method is through the use of American Sign Language or "Sign." Bornstein, Woodward, & Tully, *Language and Communication* in PSYCHOLOGY OF DEAFNESS FOR REHABILITATION COUNSELORS 22 (B. Bolton, ed. 1976). Sign is not English nor is it based on English. *Id.* Thus an interpreter is needed, just as with any foreign language, when a user of Sign wishes to communicate with an English-speaker. It should be pointed out that not all deaf persons identify with Sign as a means of communication, and there are Sign-English hybrid languages and other modes of deaf communication. *Id.* But each mode requires a qualified interpreter to complete the communication process.

76. This procedure was used in the Oakland Deaf Juror Case. *See* Letter on Oakland Deaf Juror, *supra* note 5, at 2. California Evidence Code Section 754, considered more thoroughly at note 102 *infra*, requires that an action involving a deaf party or witness not proceed until the interpreter is "spatially situated to assure proper communication with the deaf person or persons involved."

77. 452 F. Supp. at 1242.

78. *See* Letter on Oakland Deaf Juror, *supra* note 5.

versation at a time, cannot always hear "each remark made by each juror."[79] The solution to this problem, if it is a problem, lies in the voluntary cooperation of the other jurors. If they seem unwilling to cooperate, and this appears unlikely,[80] the judge could impose rules for the conduct of deliberations in order to insure a fair consideration of the case. That a jury has a duty to include each juror in discussions is clear.[81] A verdict rendered without the participation of one juror is not the verdict of each juror to which a litigant is entitled.[82] Such a verdict could be impeached on the ground that a "fair and due consideration of the case has been prevented."[83] Furthermore, the common law right to a jury of twelve individuals is guaranteed by the California constitution[84] and exclusion of one juror from deliberations would violate that right.[85]

Another vital aspect of the right to a fair trial deserves particular mention. The court in *Eckstein* observed that the presence of a thirteenth person in the jury room during deliberations "violates the secrecy of the jury room and thereby deprives an accused person of their [sic] right to a fair trial under the Sixth and Fourteenth Amendments to the United States Constitution . . . ."[86]

There is no doubt that an interpreter would be necessary to assist a deaf juror in deliberations. The presence of an outsider during deliberations, it is said, however, prevents a fair consideration of the case by chilling free discussion of the issues.[87] An outsider might interfere with

79. On *voir dire* in the Oakland Deaf Juror Case, Prosecutor Deal queried deaf juror Peck on the problem of multiple conversations. Through the interpreter, Peck replied, "How many people can *you* listen to and understand at one time?" Letter on Oakland Deaf Juror, *supra* note 5, at 2.

80. At the conclusion of the trial in the Oakland Deaf Juror Case, the other jurors "gave the deaf man a standing ovation and were generally extremely pleased to have sat on the jury with him. They apparently encountered no problems while deliberating. They all made a conscientious effort not to speak when another person spoke and to make sure the deaf man was able to express his views." Letter on Oakland Deaf Juror, *supra* note 5, at 3.

81. CALIFORNIA JURY INSTRUCTIONS—CIVIL (BAJI) No. 15.30 directs in part: "Each of you must decide the case for yourself but you should do so only after a consideration of the case with the other jurors." *See also* NEW YORK PATTERN JURY INSTRUCTIONS, No. 1:28; *Jury Instructions and Forms for Federal Criminal Cases*, 27 F.R.D. 39, 97-98 (1961). Instructions of this nature were tacitly approved in *Philbrick v. Weinberger*, 228 Cal. App. 2d 681, 39 Cal. Rptr. 617 (1964) and *Hutton v. Brookside Hospital*, 213 Cal. App. 2d 350, 28 Cal. Rptr. 774 (1963).

82. *See* People v. McKee, 80 Cal. App. 200, 251 P. 675 (1926) (held, error to refuse instruction that both defendant and People entitled to individual opinion of each juror). *See also* CALIFORNIA JURY INSTRUCTIONS—CRIMINAL (CALJIC) No. 17.40.

83. California Penal Code Section 1181 permits a new trial to be granted on this ground.

84. People v. One 1941 Chevrolet Coupe, 37 Cal. 2d 283, 231 P.2d 832 (1951).

85. *See* People v. Ames, 52 Cal. App. 3d 389, 124 Cal. Rptr. 894 (1975).

86. 452 F. Supp. at 1244. *See also* United States v. Beasley, 464 F.2d 468 (10th Cir. 1972); People v. Knapp, 42 Mich. 267, 3 N.W. 927 (1879); Birgman v. State, 350 P.2d 321 (Okla. Crim 1960); Acosta v. State, 126 Tex. Crim 618, 72 S.W.2d 1074 (1934). The *Knapp* case seems to be the seminal American decision on the matter.

87. People v. Valles, 24 Cal. 3d 121, 131, 593 P.2d 240, 245-46, 154 Cal. Rptr. 543, 548 (1979) (Mosk, J., dissenting). *See also* United States v. Virginia Erection Co., 335 F.2d 868 (4th Cir. 1974).

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the decisionmaking process so that the verdict is not one rendered by the jury alone based upon evidence presented in court. Even if the nonjuror is orally mute, he or she might convey attitudes or opinions to the jurors by intentional or unintentional nonverbal conduct.[88] So pervasive is the reverence for inviolate deliberations that, as the court in *Eckstein* noted, the prohibition against outsiders in the jury room has been extended even to alternate jurors who are not allowed to vote anyway.[89] Close scrutiny reveals, however, that the so-called "cardinal principle"[90] of jury secrecy is not as immutable as it seems.

The rule precluding additional persons in the jury room is found primarily in cases dealing with the presence of the judge, a bailiff, or counsel.[91] The presence of these persons is a matter entirely different than the presence of a disinterested interpreter. A judge might be tempted to, or be asked to, reinstruct the jury or comment on the evidence; a bailiff may by mere presence coerce a hasty verdict or raise a reasonable apprehension that the content of discussions will be reported; counsel may express an opinion or reargue the case being decided. An interpreter, not being an officer of the court as such, is not cloaked in judicial authority and would not by mere presence inhibit or coerce a jury as might a judge, counsel, or bailiff.

The California Supreme Court most recently considered the thirteenth juror problem in *People v. Valles*.[92] The court approved the distinction between the presence of an officer of the court and the presence of an alternate juror who had been with the jury throughout the trial, receiving with the other jurors the admonitions of the judge as to jury behavior.[93] The court adopted the theory of the better reasoned cases which hold there is no error in the mere presence of a nonparticipant in the jury room absent a showing of actual prejudice.[94] The *Valles* rationale applies logically to an interpreter for a deaf juror. Like an alternate juror, an interpreter would be treated identically to the

88. 24 Cal. at 131, 593 P.2d at 245-46, 154 Cal. Rptr. at 548.

89. 452 F. Supp. at 1244. *See* United States v. Beasley, 464 F.2d 468 (10th Cir. 1972); People v. Britton, 4 Cal. 2d 622, 52 P.2d 217 (1935); People v. Adame, 36 Cal. App. 3d 402, 111 Cal. Rptr. 462 (1973); People v. Bruneman, 4 Cal. App. 2d 75, 40 P.2d 891 (1935).

90. 335 F.2d at 872.

91. *See, e.g.*, Bowman v. State, 192 N.E. 755 (Ind. 1934) (bailiff); Hunsicker v. Waidelich, 302 Pa. 224, 153 A. 335 (1931) (judge).

92. 24 Cal. 3d 121, 593 P.2d 240, 154 Cal. Rptr. 543 (1979).

93. *Id.* at 127, 593 P.2d at 243, 154 Cal. Rptr. at 546, citing Johnson v. State, 369 N.E.2d 623, 625 (Ind. 1977).

94. *Id.* at 128, 593 P.2d at 243, 154 Cal. Rptr. at 546-47; *see* People v. Adame, 36 Cal. App. 3d 402, 411, 111 Cal. Rptr. 462, 467 (1973) (Brown (G.A.), P.J., concurring in result); People v. Orchard, 17 Cal. App. 3d 568, 95 Cal. Rptr. 66 (1971); People v. Martinez, 264 Cal. App. 2d 906, 70 Cal. Rptr. 918 (1968). To the same effect are *Weston v. State*, 506 S.W.2d 948 (Tenn. Crim. App. 1974), *Jardine Estates v. Donna Brook Corp.*, 42 N.J. Super. 332, 126 A.2d 372 (1956), and *Callahan v. Hester*, 181 S.W.2d 294 (Tex. Civ. App. 1944).

participating jurors and would not affect the outcome of the deliberations by mere presence.

But even if the *Valles* rule is limited to the factual situation of an alternate juror, the strict traditional rule against outsiders in the jury room has been set aside for reasons far less compelling than the necessity of an interpreter for a deaf juror.[95]

To the extent that the presence of an interpreter in the jury room threatens the integrity of the deliberative process, several remedial measures are available. The interpreter would be under the same obligation as a juror not to disclose the progress or nature of deliberations. Presumably, the court could require the interpreter to take an oath to this effect. Misconduct by the interpreter in the jury room could be proved, on motion for new trial[96] or vacation of judgment, in a juror's affidavit.[97] Furthermore, an interpreter who misbehaves in the jury room could be punished under existing provisions of the Penal Code.[98] Interpreter misconduct, however, is highly unlikely since courtroom interpreters for the deaf adhere to a stringent code of ethics.[99]

95. In *People v. Weston*, 32 Cal. App. 571, 163 P. 691 (1917), the court of appeal found no error in allowing a doctor to attend a juror who had a stomachache in the course of deliberations, even though the doctor had been a principal prosecution witness. The Texas courts thought it perfectly proper in *Newton v. State*, 26 S.W.2d 233 (Tex. Crim. App. 1930), that a "negro" was allowed to be present in the jury room to serve food to hungry jurors during deliberations. Minnesota's highest court had no problem, absent a showing of actual prejudice, in allowing the trial judge in the jury room during deliberations in *Helmbrecht v. Helmbrecht*, 31 Minn. 504, 18 N.W. 449 (1884). Of the utmost curiousity is the New York case of *People v. Flack*, 57 Hun. 83, 10 N.Y.S. 475 (Sup. Ct. Gen. Term 1890), *rev'd on other grounds*, 125 N.Y. 324 (1891), wherein the court was not the least concerned by the presence of a newspaper reporter in the jury room!

96. In civil cases, a new trial may be had for "irregularity in the proceedings of the court, jury or adverse party" or for "misconduct of the jury." CAL. CIV. PROC. CODE §657. For a similar rule in criminal cases, see note 83 and accompanying text *supra*.

97. In California, a juror's affidavit may be used to show any "misconduct on the part of either jurors or *third parties* that should be exposed, misconduct upon which no verdict should be based." People v. Hutchinson, 71 Cal. 2d 342, 350, 455 P.2d 132, 137, 78 Cal. Rptr. 196, 201 (1969) (emphasis added). Such an affidavit is limited to proof of objective facts, that is, "overt conduct, conditions, events and statements" or other "improper influences" perceived by "sight, hearing, and the other senses." 71 Cal. 2d at 349-50, 455 P.2d at 137, 78 Cal. Rptr. at 201; *see* CAL. EVID. CODE §1150. No evidence is admissible to show the effect of such misconduct on the minds of the jurors. CAL. EVID. CODE §1150(a). By its own terms, Section 1150 allows proof of misconduct "within or without the jury room, of such a character as is likely to have influenced the verdict improperly." *Id.* This provision, as interpreted in *Hutchinson*, would appear to cover almost any conceivable misconduct on the part of an interpreter allowed in the jury room. The *Hutchinson* case dealt with improper remarks by a bailiff to the jury in the course of its deliberations.

98. California Penal Code Section 95 provides:

> Every person who corruptly attempts to influence a juror or any person summoned or drawn as a juror . . . in respect to his verdict in, or decision of any cause, or proceeding, pending, or about to be brought before him . . . is punishable by fine not exceeding five thousand dollars or by imprisonment in the state prison.

99. The code referred to is that of the National Registry of Interpreters for the Deaf. A copy is on file at the *Pacific Law Journal* or may be had from the National Association of the Deaf, 814 Thayer Avenue, Silver Spring, Maryland 20910. Courtroom interpreters for the deaf in California are required to subscribe to this or an equivalent set of standards. *See* CAL. EVID. CODE §754 (discussed at note 102 *infra*).

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Finally, it should be noted that none of the "thirteenth juror" problems apparently arose in the two cases previously mentioned in which deaf persons were jurors.[100] Interpreters accompanied these individuals into the jury rooms and as far as is known, there were no breaches of the juries' confidentiality.[101] This actual trial experience should serve to substantially abate concerns about the interpreter's presence during deliberations.[102]

In assessing all of the potential obstacles to the fair consideration of a case posed by a deaf juror, it is essential to point out that actual trial experience with deaf jurors resulted in no diminution of the litigants' rights to a fair trial.[103] Furthermore, the solution in any given case is not the total exclusion of deaf jurors. Rather, a deaf potential juror incapable of rendering a fair consideration in any given litigation could be challenged for cause.[104] As one judge has pointed out, "In each

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100. *See generally* Letter on Oakland Deaf Juror, *supra* note 5.

101. See *id.* In California, it is a crime for a nonjuror to record, observe or listen to a jury's deliberations or a jury's voting without the jury's consent. CAL. PENAL CODE §167. Where an interpreter is needed to assist a deaf juror, it would be necessary, absent a statutory change, to obtain the jury's consent in order for the interpreter to accompany the deaf juror into deliberations. Understandably, there has been little judicial interpretation of Penal Code Section 167; hence, it is not clear whether "consent of the jury" requires the consent of each juror or whether consent of a majority of the jury would be sufficient. In the Oakland Deaf Juror Case, Judge Kawaichi required the consent of each juror, as well as that of the attorneys on both sides, and the defendant himself. Additionally, the interpreter swore that he would "offer no opinions or other utterances except to translate to the other jurors what the deaf man said." Letter on Oakland Deaf Juror, *supra* note 5, at 2.

102. There are, however, several other issues relating to interpreters, including the manner of selecting an interpreter, the criteria to govern an interpreter's competency, and the cost of an interpreter. A convenient framework for resolving these issues currently exists in the recent revision of California Evidence Code Section 754. *See* CAL. STATS. 1977, c. 1182, §1, at 3873-74; 9 PAC. L.J., REVIEW OF SELECTED 1977 CALIFORNIA LEGISLATION 485 (1978). This statute requires that the court appoint an interpreter in any criminal action and certain other proceedings where a deaf person is a party or witness and required to be present. CAL. EVID. CODE §754(b). The appointed interpreter must be certified by the National Registry of Interpreters for the Deaf or any other agency with equivalent standards. *Id.* §754(c). Additionally, the interpreter must be included on a list of recommended interpreters maintained by the court. *Id.* These same provisions should govern the appointment of interpreters in all actions where a deaf person has been seated as a juror.

Interpreters appointed under Section 754 are paid by the city or county at the rate paid to other interpreters. *Id.* §754(e). This should be the rule when a deaf person is a juror in a criminal case. No significant burden would result on the public fisc since the seating of a deaf juror would be a fairly rare occurrence. It appears that federal funds may be available to the state to bear part, if not all, of the cost. The federal Rehabilitation Act of 1973 permits federal grants to states to establish interpreter services and interpreter training programs, which shall be made available to deaf persons and any public or private nonprofit organization providing assistance or services to the deaf. *See* 29 U.S.C. §§774(d)(1), 777e (1976). In a civil case, the interpreter's fee should be taxed as a cost to the parties.

103. *See generally* Letter on Oakland Deaf Juror, *supra* note 5.

104. *See* McLaughlin, *Civil Practice, 1967 Survey of N.Y. Law*, 19 SYRACUSE L. REV. 501, 529 (1967). *See also* Lewinson v. Crews, 282 N.Y.S.2d 83, 88-89 (1967) (Hopkins, J., dissenting). At the same time of the amendment allowing blind jurors, California Code of Civil Procedure Section 602 was changed to allow a challenge for cause based on "a defect in the visual or auditory functions of the body." CAL. STATS. 1977, c. 591, §3, at 1957. *See* 9 PAC. L.J., REVIEW OF SELECTED 1977 CALIFORNIA LEGISLATION 392 (1978). The most recent amendment to Section 602 permits a challenge for cause for

any incapacity which satisfies the court that the challenged person is incapable of per-

case, the acceptance of the juror hangs on the assessment of his qualities to serve in the *particular* litigation."[105]

Given that there is not necessarily prejudice to a fair consideration of a case and that inclusion is mandated by the principle of cross-sectionalism, the statutory exclusion of deaf jurors appears to deny litigants a fair trial. The rights of deaf persons with respect to jury service must also be considered in analyzing the exclusion.

Equal Protection For Deaf Persons in Jury Selection

A. *The Equal Protection Concept*

The fourteenth amendment guarantee of "equal protection of the laws"[106] essentially means that persons similarly situated must be treated similarly by the government.[107] Under the traditional equal protection analysis, however, laws that treat similar persons differently are presumptively valid if they bear some rational relationship to a legitimate state objective.[108] No presumption of validity attaches to legislation that in purpose or effect classifies persons according to criteria regarded as inherently "suspect" by the courts.[109] Such "suspect classification" legislation can withstand an equal protection challenge only if the classification is necessary to further a compelling state interest[110] that cannot be achieved by less drastic or less restrictive means.[111] This strict standard of judicial scrutiny also applies to legislation that impinges upon a "fundamental" right.[112] Between the polar standards of "rational relationship" and "compelling state interest," legislation that treats persons differently meets the requirements of equal protection if it is substantially related to the achievement of important governmental objectives.[113] Legislation in

forming the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party.

Cal. Civ. Proc. Code §602(2), as amended by Cal. Stats. 1978, c. 301, §3. (emphasis added); *see* 10 Pac. L.J., Review of Selected 1978 California Legislation 369 (1979). The availability of the challenge for cause in this situation gives the litigant the best of both worlds, so to speak. This litigant has the benefit of a cross-sectionally representative panel from which to select jurors, as well as a device to protect the litigant's interest in a fair consideration of the case.

105. Lewinson v. Crews, 282 N.Y.S.2d 83, 89 (1967) (Hopkins, J., dissenting).

106. U.S. Const., amend. XIV, §1.

107. Reynolds v. Sims, 377 U.S. 533 (1964); *see* New York City Transit Auth. v. Beazer, 440 U.S. 568, 587 (1979); Tussman & tenBroek, *The Equal Protection of the Laws*, 37 Calif. L. Rev. 341 (1949) *Developments in the Law—Equal Protection*, 82 Harv. L. Rev. 1065 (1969).

108. Parham v. Hughes, 441 U.S. 347, 351 (1979); Massachussets Bd. of Retirement v. Murgia, 427 U.S. 307, 312 (1976); San Antonio School Dist. v. Rodriguez, 411 U.S. 1, 60-61 (1973) (Stewart, J., concurring).

109. 441 U.S. at 351; *see* 427 U.S. at 312; 411 U.S. at 60-61 (Stewart, J., concurring).

110. 411 U.S. at 17; *see* 427 U.S. at 312.

111. Shelton v. Tucker, 364 U.S. 479 (1960); Dean Milk Co. v. City of Madison, 340 U.S. 349 (1951); *see* Kahn v. Shevin, 416 U.S. 351, 357-58 (1974) (Brennan, J., dissenting).

112. 411 U.S. at 17; Hawkins v. Superior Court, 22 Cal. 3d 584, 592, 586 P.2d 916, 921, 150 Cal. Rptr. 435, 440 (1979).

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113. Craig v. Boren, 429 U.S. 190, 197 (
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23 (1977). The courts, however, continue t
See Hawkins v. Superior Court, 22 Cal. 3d
concurring).

114. 22 Cal. 3d at 601, 586 P.2d at 92

115. *Id.* at 600, 586 P.2d at 926-27, 15

116. *Id. See, e.g.*, Serrano v. Priest, 1
(education a fundamental right); Sail'er In
(1971) (sex a "suspect" classification). *Cf.*
"suspect" classification treament); San An
cation not a fundamental right).

117. See text accompanying notes 61-

118. See text accompanying notes 67-

119. See text accompanying notes 67-

120. See text accompanying notes 75

121. See text accompanying notes 86-

122. See text accompanying notes 72

123. *See* Letter on Oakland Deaf Ju

124. See note 2 *supra*.

mental objectives.[113] Legislation involving "rights important—but not 'fundamental'," or "classifications sensitive—but not 'suspect' " may be judged by this intermediate standard.[114]

The California Supreme Court has generally followed the United States Supreme Court in equal protection analysis,[115] but occasionally has found "fundamental" rights and "suspect" classifications where the federal high Court would not.[116]

If the jury selection statute fails to accord similar treatment to persons similarly situated, it is subject to review under equal protection analysis. Since the legislative goal is a fair trial for litigants, persons capable of rendering a fair consideration of a case must be regarded as similarly situated for jury selection purposes. Deaf persons, as has been illustrated, are capable of rendering a fair consideration of a case.[117] With the aid of an interpreter, a deaf juror can perceive the relevant spoken proceedings of the trial.[118] The use of an interpreter does not diminish the deaf juror's ability to fairly consider the case.[119] The interpreter can be strategically, but unobtrusively, placed in the courtroom.[120] Several measures exist to prevent an interpreter from influencing jury deliberations.[121] The deaf juror can visually evaluate the credibility of witnesses just as other jurors do.[122] Finally, actual trial experience has shown deaf jurors to be essentially similar to hearing jurors in terms of rendering a fair consideration of a case.[123]

Since the basic objection to both blind and deaf jurors is the alleged inability to perceive evidence, it would appear that persons with perceptive disabilities are similarly situated for jury selection purposes. The fact that blind persons are allowed to sit on juries[124] in California

113. Craig v. Boren, 429 U.S. 190, 197 (1976). It has been observed that it is presently unlikely that equal protection can be isolated at two polar positions or even at three distinct centers of review. *See* L. TRIBE, AMERICAN CONSTITUTIONAL LAW 1089 (1978); Karst, *The Supreme Court, 1976 Term—Foreword: Equal Citizenship under the Fourteenth Amendment*, 91 HARV. L. REV 1, 23 (1977). The courts, however, continue to apply a definitely stratified equal protection analysis. *See* Hawkins v. Superior Court, 22 Cal. 3d at 601, 586 P.2d at 927, 150 Cal. Rptr. at 446 (Mosk, J., concurring).

114. 22 Cal. 3d at 601, 586 P.2d at 927, 150 Cal. Rptr. at 446 (Mosk, J., concurring).

115. *Id.* at 600, 586 P.2d at 926-27, 150 Cal. Rptr. at 445.

116. *Id. See, e.g.*, Serrano v. Priest, 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976) (education a fundamental right); Sail'er Inn v. Kirby, 5 Cal. 3d 1, 485 P.2d 529, 95 Cal. Rptr. 329 (1971) (sex a "suspect" classification). *Cf.* Stanton v. Stanton, 421 U.S. 7 (1975) (sex not accorded "suspect" classification treament" San Antonio School Dist. v. Rodriguez, 411 U.S. 1 (1973) (education not a fundamental right).

117. See text accompanying notes 61-105 *supra*.

118. See text accompanying notes 67-71, 77-85 *supra*.

119. See text accompanying notes 67-85 *supra*.

120. See text accompanying notes 75 & 76 *supra*.

121. See text accompanying notes 86-102 *supra*.

122. See text accompanying notes 72-76 *supra*.

123. *See* Letter on Oakland Deaf Juror, *supra* note 5.

124. See note 2 *supra*.

while deaf persons are excluded is another indication that the jury selection statute fails to treat similar citizens in a similar manner. The statute is thus subject to equal protection scrutiny.

B. *The Compelling State Interest Test*

In order to examine the exclusion of deaf persons from jury service under the compelling state interest test, it is necessary to show that citizens have a fundamental right to serve on a jury or that deafness is a suspect classification with respect to jury service. If either is shown, the exclusion is unconstitutional unless it can be justified by a compelling state interest.

1. *Jury Service as a Fundamental Right*

In *Adams v. Superior Court*,[125] Justice Clark, writing for the majority, asserted:

> While trial by jury is constitutionally implanted in our system of justice, an individual's interest in serving on a jury cannot be held a fundamental right. The guarantee of the Sixth Amendment is primarily for the benefit of the litigant—not persons seeking service on the jury.[126]

The federal district court in *Eckstein* found this a "thoughtful" and "cogent" observation and quoted this passage in support of its conclusion that a deaf woman had no fundamental right to serve as a juror.[127]

The United States Supreme Court has defined a "fundamental" right as one explicitly or implicitly guaranteed by the Constitution.[128] The idea that jury service is a fundamental right has been implicit in recent jury selection decisions of the Court. In *Carter v. Jury Commission of Greene County*,[129] the Court unanimously upheld the right of members of an excluded group, rather than a litigant, to challenge a jury selection system.[130] The Court thereby recognized the right of equal opportunity to serve on a jury. Justice Stewart declared on behalf of the Court that a state can no more discriminate with respect to jury service than it can with respect to the elective franchise.[131]

The comparison in *Carter* of jury service and the right to vote, which

125. 12 Cal. 3d 55, 524 P.2d 375, 115 Cal. Rptr. 247 (1974).
126. *Id.* at 61, 524 P.2d at 379, 115 Cal. Rptr. at 251. *See also* JURY SELECTION, supra note 12, at 72-77; Van Dyke, *Jury Service is a Fundamental Right*, 2 HASTINGS CONST. L.Q. 27 (1975) [hereinafter cited as *Fundamental Right*].
127. Eckstein v. Kirby, 452 F. Supp. 1235, 1241 (1978).
128. San Antonio School Dist. v. Rodriguez, 411 U.S. 1, 33-34 (1973); Karst, *The Supreme Court, 1976 Term—Foreword: Equal Citizenship under the Fourteenth Amendment*, 91 HARV. L. REV. 1, 3 (1977).
129. 396 U.S. 320 (1970).
130. 396 U.S. at 329-30; *see* JURY SELECTION, *supra* note 12, at 58.
131. 396 U.S. at 330. *See* Adams v. Superior Court, 12 Cal. 3d at 67, 524 P.2d at 383, 115 Cal.

is a fundamental right,[132] clearly ascribed to jury service. Relying o served in *Bradley v. Judges of Los*

> It is well established that action person of the opportunity to serv secured by the U.S. constitution

Jury service, then, falls within t considered a fundamental right u Even absent such a determinatior California Supreme Court might f right under the state constitutio greater protection of individual in courts, the California Supreme C as fundamental "tho[illegible]dividual core of our free and [illegible]epresentativ nition does not require an explicit the federal definition.

Justice Clark's declaration in *A* mental right was based on then mental rights,[137] especially as set *Rodriguez*.[138] Thus *Adams*, inso mental rights, may bear reasses Court subsequently in *Serrano* United States Supreme Court h facts.[139] But whether or not jury either the federal or state const may still violate equal protectio ated a "suspect" classification.

2. *Deaf Persons As a "Suspe*

The concepts of suspect classif

Rptr. at 255 (Mosk, J., dissenting); *Fundam supra* note 12, at 74.
132. Harper v. Virginia Bd. of Election garded as a more important right than votin in the processes of government than does il temporally and spatially immediate. *See* 1 255 (Mosk, J., dissenting). For an opposite *Rubio v. Superior Court*, 24 Cal. 3d 93, 114
133. 372 F. Supp. 26 (C.D. Cal. 1974), 413 (9th Cir. 1976).
134. *Id.* at 30.
135. 18 Cal. 3d 728, 557 P.2d 929, 135
136. *Id.* at 767-68, 557 P.2d at 952, 13
137. *See* 12 Cal. 3d at 61, 524 P.2d at
138. *See* 411 U.S. at 33-39.
139. 18 Cal. 3d at 767-68, 557 P.2d at

is a fundamental right,[132] clearly indicates the status the Court has ascribed to jury service. Relying on *Carter*, a federal district court observed in *Bradley v. Judges of Los Angeles Superior Court*:[133]

> It is well established that action by a state in aritrarily depriving a person of the opportunity to serve on a jury is a violation of a right secured by the U.S. constitution . . . .[134]

Jury service, then, falls within the *Rodriguez* definition and can be considered a fundamental right under the United States Constitution. Even absent such a determination under the federal constitution, the California Supreme Court might find jury service to be a fundamental right under the state constitution. Demonstrating a penchant for greater protection of individual interests than is afforded by the federal courts, the California Supreme Court in *Serrano v. Priest*[135] described as fundamental "those individual rights and liberties which lie at the core of our free and representative form of government."[136] This definition does not require an explicit or implicit textual guarantee as does the federal definition.

Justice Clark's declaration in *Adams* that jury service is not a fundamental right was based on then existing *federal* notions about fundamental rights,[137] especially as set forth in *San Antonio School District v. Rodriguez*.[138] Thus *Adams*, insofar as it addresses the issue of fundamental rights, may bear reassessment since the California Supreme Court subsequently in *Serrano* found a fundamental right where the United States Supreme Court had not found such a right on similar facts.[139] But whether or not jury service is a fundamental right under either the federal or state constitution, the exclusion of deaf persons may still violate equal protection if the jury selection statute has created a "suspect" classification.

2. *Deaf Persons As a "Suspect" Class*

The concepts of suspect classification and cognizability are similar in

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Rptr. at 255 (Mosk, J., dissenting); *Fundamental Right*, *supra* note 126, at 29; JURY SELECTION, *supra* note 12, at 74.

132. Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966). Jury service may even be regarded as a more important right than voting since it affords a a more direct form of participation in the processes of government than does the franchise and the effects of participation are more temporally and spatially immediate. *See* 12 Cal. 3d at 66-67, 524 P.2d at 383, 115 Cal. Rptr. at 255 (Mosk, J., dissenting). For an opposite view, see the dissenting opinion of Justice Tobriner in *Rubio v. Superior Court*, 24 Cal. 3d 93, 114-16, 593 P.2d 595, 609-10, 154 Cal. Rptr. 734, 748-49.

133. 372 F. Supp. 26 (C.D. Cal. 1974), *aff'd in part, appeal dismissed in part as moot*, 531 F.2d 413 (9th Cir. 1976).

134. *Id.* at 30.

135. 18 Cal. 3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976).

136. *Id.* at 767-68, 557 P.2d at 952, 135 Cal. Rptr. at 368.

137. *See* 12 Cal. 3d at 61, 524 P.2d at 379, 115 Cal. Rptr. at 251.

138. *See* 411 U.S. at 33-39.

139. 18 Cal. 3d at 767-68, 557 P.2d at 952, 135 Cal. Rptr. at 368.

some respects.[140] Many groups that are cognizable for jury selection purposes are also "suspect" for other purposes. Indeed the California Supreme Court seems to regard the elements of cognizability as somewhat necessary though insufficient conditions of suspectness.[141]

In *San Antonio School District v. Rodriguez*,[142] the United States Supreme Court outlined the "traditional indicia" of suspectness as

> . . . such disabilities, or . . . such a history of purposeful unequal treatment, or . . . such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.[143]

These indicia clearly apply to deaf persons. Deafness is so obviously a "disability" in a social and economic sense as much as it is in a physical sense that elaboration is hardly necessary.[144] Educational segregation and the imposition of legal disabilities show the social history of the deaf to be one of "purposeful unequal treatment."[145] Finally, as one commentator, himself deaf, has pointed out, deaf persons are truly a "silent minority."[146] They have never marched; they have never rioted; they have nothing that might be symbolically burned; they have never occupied buildings or taken hostages; no presidential candidate has championed their cause. Thus, deaf persons stand in need of "extraordinary protection from the majoritarian political process" just as much, if not more than any minority.[147]

In *Eckstein v. Kirby*, the district court concluded that Arkansas' statutory exclusion of deaf persons from jury service did not create a suspect classification.[148] The court did not, however, examine the *Rodriguez* indicia of suspectness. Instead, the court based its conclusion on the fact that the statute excluded deaf persons "of all races, ethnical groups, sexes, religions and socio-economic backgrounds."[149] By such reasoning, a statute which excluded blacks could likewise be

140. See note 37 *supra*.
141. *See* 12 Cal. 3d at 61, 524 P.2d at 379, 115 Cal. Rptr. at 251.
142. 411 U.S. 1 (1975).
143. *Id.* at 28.
144. See note 60 *supra*.
145. See note 60 *supra*.
146. Stewart, *A Truly Silent Minority* in 2 PROFESSIONAL REHABILITATION WORKERS WITH THE ADULT DEAF, DEAFNESS 1 (1972).
147. Judicial recognition of the handicapped as a class requiring extraordinary protection has been isolated. *But see In re* G.H., 218 N.W.2d 441 (N.D. 1976). Applying the criteria of suspectness to handicapped persons has been the subject of strong, well-reasoned scholarly commentary. *See, e.g.*, Burgdorf & Burgdorf, *A History of Unequal Treatment: The Qualifications of Handicapped Persons as a Suspect Class under the Equal Protection Clause*, 15 SANTA CLARA LAW. 855 (1975); Krass, *The Right to Public Education for Handicapped Children: A Primer for the New Advocate*, 1976 U. ILL. L.F. 1016 (1976); Comment, *The Right to a Meaningful Education in California: Should Dollars Make the Difference?*, 10 PAC. L.J. 991 (1979).
148. 452 F. Supp. 1235, 1240 (E.D. Ark. 1978).
149. *Id.*

said not to create a suspect classificati blacks of both sexes, and all reli grounds. The fact that a group's mer teristics with respect to which they clude a finding of invidious discrimir characteristic of the group.

In *Sail'er Inn, Inc. v. Kirby*,[150] th cording "suspect" treatment for the on sex,[151] described suspect classificat traits, usually fortuitious circumstanc an individual's ability to contribute t court's determination of a suspect "stigma of inferiority and second-cla classification.[153]

Like the federal factors of suspec suspect classifications clearly embra is "a status into which the class mer birth."[154] The adventitiously deaf a tus through circumstances beyond ously noted, deafness alone does no contribute as a juror.[155] Furthermc cally accorded deaf persons[156] is a s second-class citizenship. Deaf perso ered a suspect class in California.

3. *The State's Compelling Intere*

It appears from the foregoing that tion scrutiny should apply to Cali from jury service since either the ex the infringement of a fundamental eral or state constitution. Thus, if t

150. 5 Cal. 3d 1, 485 P.2d 529, 95 Cal. Rptr.
151. *Id.* at 18, 485 P.2d at 540, 95 Cal. Rptr
152. *Id.*
153. *Id.* Most of this language, which seems *Equal Protection*, 82 HARV. L. REV. 1065, 1173-7 *Richardson*, 411 U.S. 677, 686 (1973). For this part of the federal indicia of suspectness. *See capped Children: A Primer for the New Advocate* majority of the Court did not join the *Frontiero* among the federal criteria of suspectness.
154. 5 Cal. 3d at 18, 485 P.2d at 540, 95 Ca
155. See text accompanying notes 61-105 *su*
156. See note 60 *supra*.

said not to create a suspect classification as long as it applied equally to blacks of both sexes, and all religions and socioeconomic backgrounds. The fact that a group's members may possess certain characteristics with respect to which they are treated equally does not preclude a finding of invidious discrimination with respect to the primary characteristic of the group.

In *Sail'er Inn, Inc. v. Kirby*,[150] the California Supreme Court, according "suspect" treatment for the first time to a classification based on sex,[151] described suspect classifications as those based on immutable traits, usually fortuitious circumstances of birth, that bear no relation to an individual's ability to contribute to society.[152] Another factor in the court's determination of a suspect classification was the historical "stigma of inferiority and second-class citizenship associated with" the classification.[153]

Like the federal factors of suspectness, the California definition of suspect classifications clearly embraces deafness. Congenital deafness is "a status into which the class members are locked by the accident of birth."[154] The adventitiously deaf are likewise condemned to that status through circumstances beyond their control. As has been previously noted, deafness alone does not bear on an individual's ability to contribute as a juror.[155] Furthermore, the unequal treatment historically accorded deaf persons[156] is a stigma of inferiority and a badge of second-class citizenship. Deaf persons, therefore, are properly considered a suspect class in California.

3. The State's Compelling Interest

It appears from the foregoing that the strict standard of equal protection scrutiny should apply to California's exclusion of deaf persons from jury service since either the existence of a suspect classification or the infringement of a fundamental right may be shown under the federal or state constitution. Thus, if the exclusion is to be constitutionally

150. 5 Cal. 3d 1, 485 P.2d 529, 95 Cal. Rptr. 329 (1971).
151. *Id.* at 18, 485 P.2d at 540, 95 Cal. Rptr. at 340.
152. *Id.*
153. *Id.* Most of this language, which seems to have originated in *Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065, 1173-74 (1969), was used nearly verbatim in *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973). For this reason, these factors are considered by some to be part of the federal indicia of suspectness. *See* Krass, *The Right to Public Education for Handicapped Children: A Primer for the New Advocate*, 1976 U. ILL. L.F. 1016, 1038-39 (1976). Since a majority of the Court did not join the *Frontiero* opinion, these elements are not properly placed among the federal criteria of suspectness.
154. 5 Cal. 3d at 18, 485 P.2d at 540, 95 Cal. Rptr. at 340.
155. See text accompanying notes 61-105 *supra*.
156. See note 60 *supra*.

valid, it must be necessary in the furtherance of some compelling state interest.

Clearly, the responsibility to secure a fair trial to litigants is a compelling state interest. But a total exclusion of deaf jurors is neither necessary, nor the least restrictive means, to achieve that goal. Not *every* potential deaf juror in *every* case raises the spectre of an unfair consideration of the case. As has been pointed out, jury service is a matter of individual capabilities in the context of a particular case.[157] Thus, a total ban on deaf jurors overreaches the state's interest. The least restrictive means to accomplish the goal of a fair trial for litigants is the availability of a challenge for cause against those individual jurors in those particular cases where it appears that a litigant's right to a fair trial may be in jeopardy.[158]

C. *The Lesser Standards of Review*

The discussion of the compelling state interest test was premised upon finding jury service to be a fundamental right or deafness a suspect classification. Dismissing these rigorous requirements, however, it is apparent that jury service, if not fundamental, is an "important" right, and deafness, if not suspect, is a "sensitive" classification with respect to jury service. Thus, in *Meyer v. Zolin*,[159] the first equal protection challenge to California's exclusion of deaf persons from jury service, the plaintiffs urged, and the trial court found, the exclusion properly reviewable under the intermediate equal protection analysis.[160] This standard requires that the exclusion be substantially related to achievement of an important state objective.[161]

Since actual trial experience with deaf jurors has resulted in no apparent diminution of the right to a fair trial,[162] the total exclusion cannot be said to be substantially related to achievement of that objective. Likewise, applying the traditional equal protection analysis,[163] actual trial experience makes it doubtful that the exclusion is even rationally related to the goal of a fair trial in many instances.

Conclusion

Experience in actual trial settings has shown that the right to have a case fairly considered is not necessarily infringed by the seating of a

157. See text accompanying note 105 *supra*.
158. See note 104 and accompanying text *supra*.
159. No. C 302883 (L. A. Super. Ct., Dec. 20, 1979); see note 3 *supra*.
160. *Id.* (ruling on Demurrer, at 2) (copy on file at the *Pacific Law Journal*).
161. See text accompanying note 113 *supra*.
162. *See* Letter on Oakland Deaf Juror, *supra* note 5.
163. See text accompanying note 108 *supra*.

deaf juror. While there exist theor
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Likewise, the state has no basis f
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interest in guaranteeing that juries
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Action by the legislature and the
rights of both litigants and deaf
Code of Civil Procedure Section 1
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Code Section 754 is required to ex
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In the judicial sphere, the decis
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164. No. C 302883 (L.A. Super. Ct., D

deaf juror. While there exist theoretical obstacles to a fair consideration by a deaf juror, these do not support a total ban on deaf jurors without regard to the circumstances of particular cases. The state thus has no basis for infringing the right of litigants to have deaf persons considered for jury service as members of the community.

Likewise, the state has no basis for stripping deaf persons of a valuable participatory opportunity in the form of jury service. The state's interest in guaranteeing that juries will render a fair consideration of the cases before them can be accomplished by a means less restrictive than denying all deaf persons the chance to exercise a prerogative of citizenship.

Action by the legislature and the courts is necessary to safeguard the rights of both litigants and deaf persons. The jury selection statute, Code of Civil Procedure Section 198, must be amended to provide that no person shall be deemed incompetent as a juror solely because of the loss of hearing in any degree. Additionally, extension of Evidence Code Section 754 is required to explicitly govern procedures for selecting an interpreter when a deaf person is a juror. The legislature must remove all bars to the presence of an interpreter in the jury room during deliberations. At the same time, however, the grounds for a new trial as stated in Code of Civil Procedure Section 657 and Penal Code Section 1181 must be amended to include instances of misconduct on the part of an interpreter during deliberations.

In the judicial sphere, the decision in *Meyer v. Zolin*,[164] denying deaf persons equal protection in jury selection, must be reversed. The trial courts must insure cooperation on the part of all persons involved in a trial to minimize disruptions from the normal routine when a deaf juror is seated.

Such actions on the part of the legislature and the courts will demonstrate the state's commitment to conferring the full privileges of citizenship on the "truly silent minority."

Harold Craig Manson

164. No. C 302883 (L.A. Super. Ct., Dec. 20, 1979).

APPENDIX

Following the completion of this comment, a mock trial featuring two deaf jurors was conducted in the Center for Legal Advocacy ("Courtroom of the Future") at McGeorge School of Law. The trial was sponsored by the *Pacific Law Journal* and the McGeorge Trial Advocacy Program, in cooperation with the California Association of the Deaf. Most of the concepts regarding a fair consideration of a case discussed in the comment were illustrated in the trial. The proceedings were recorded by the courtroom's videotape cameras. The trial was a regularly scheduled proceeding of the Trial Advocacy Program, in which third year law students prepare and pursue cases from pleadings through trial. Typically, members of the local bar or bench serve as judges. Juries usually consist of first year law students, college students, and other members of the community.

The mock "deaf juror" trial involved a damage suit for personal injuries. The plaintiff was allegedly shot and beaten by a grocery store security guard who had accused the plaintiff of stealing a small food item. The defendant in the case was the security guard's corporate employer. This case was selected at random for the deaf juror experiment.

Four third year law students were attorneys in the case. A member of the California bar with six years' experience in civil litigation presided as trial judge. The jury consisted of first year law students, two deaf persons, and the hearing wife of one of the deaf men. The deaf persons, both over sixty, were Mr. F.A. Caligiuri, Executive Director of the California Association of the Deaf, and Mr. Willis Berke, a retired draftsman. The interpreters were Debra Parker of the Nor-Cal Center on Deafness in Sacramento, and Ed Santillanes of the California Association of the Deaf. Ms. Parker has had extensive experience interpreting legal proceedings for deaf persons. Both interpreters are members of the National Registry of Interpreters for the Deaf.

The attorneys were informed approximately two weeks prior to trial that a deaf person might be included on the jury. The *Pacific Law Journal* provided the attorneys with a package entitled "Trial with a Deaf Juror: Selected Materials for Attorneys." This package, which the attorneys received one day before the trial, included a list of suggested voir dire questions; a copy of the Code of Ethics for Interpreters; and a copy of the letter from Assistant Alameda County District Attorney Thomas Deal regarding the Oakland "deaf juror" trial discussed in this comment. The attorneys did not receive any information about the deaf persons. The attorneys were told not to make any adjustments in their planned trial presentations.

The judge likewise was provided with a package prepared by the *Pacific Law Journal*, entitled "Trial with a Deaf Juror: Selected Materials for the Court." This package, which the judge received the morning of the trial, included an explanatory letter; all the materials given the attorneys; and California Evidence Code Sections 750, 752, and 754. Copies of the attorneys' materials and the judge's materials are on file at the *Pacific Law Journal*.

The deaf persons were not given any information about the case prior to the

trial. In fact, the seating of Mr. Berke
before the trial commenced.

During the attorneys' opening staten
slightly behind the attorneys before th
nesses, the interpreter was seated on a
the deaf jurors were able to observe th
well as the interpreter. The two inter
switching during natural breaks in te
point, however, the interpreters switc
called by the plaintiff. This was accor
tions with the deaf jurors.

A considerable amount of medical t
direct contradiction to the contention
the comment, the deaf jurors had no
This became apparent in discussions
was also apparent in the jury's delib
cameras.

Problems during the presentation of
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another point for the interpreter to a
little slower. Finally, during the testi
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terpreters.

Jury deliberations in this mock ca
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per cent.

trial. In fact, the seating of Mr. Berke as a juror was decided only minutes before the trial commenced.

During the attorneys' opening statements, the interpreter stood next to and slightly behind the attorneys before the jury. During the testimony of witnesses, the interpreter was seated on a raised chair next to the witness. Thus, the deaf jurors were able to observe the facial expressions of the witnesses as well as the interpreter. The two interpreters took turns interpreting, usually switching during natural breaks in testimony or between witnesses. At one point, however, the interpreters switched during the testimony of a doctor called by the plaintiff. This was accomplished with no break in communications with the deaf jurors.

A considerable amount of medical testimony was put on by the plaintiff. In direct contradiction to the contention made in *Eckstein v. Kirby*, discussed in the comment, the deaf jurors had no difficulty understanding this testimony. This became apparent in discussions with the deaf jurors after the trial, but was also apparent in the jury's deliberations, which were taped by hidden cameras.

Problems during the presentation of evidence were virtually nonexistent. At one point, the interpreter indicated that she could not hear the rather soft-spoken trial judge. This observation benefitted several of the hearing jurors who were also having difficulty at times hearing the judge. It was necessary at another point for the interpreter to ask a nervous student attorney to speak a little slower. Finally, during the testimony of a defense witness, the interpreter received an emergency call on her electronic pager, requiring a change of interpreters.

Jury deliberations in this mock case were especially insightful. One interpreter accompanied the two deaf jurors into the jury room. Both deaf jurors and the interpreter sat at the end of the oblong jury table. The jury foreman sat across from the deaf men. The other jurors made an effort to speak one at a time. Occasionally, however, several conversations began at once. The interpreter kept up with as many as possible. The jury usually returned to order within moments. No critical information was lost to the deaf jurors.

The deaf jurors were valuable participants in the deliberations. In fact, the jury accepted two suggestions made by Mr. Caligiuri. There were two theories of liability against the corporate defendant. The jury had dismissed the first theory, *respondeat superior*, and was prepared to discount the other theory, negligent supervision, when Mr. Caligiuri pointed out a flaw in the defense on this point. Accepting his reasoning, the jury found for the plaintiff. On the issue of plaintiff's damages for lost future wages, several jurors were prepared to accept the amount suggested by counsel. Mr. Caligiuri noted that the suggested figure was premised upon the plaintiff never working at *any* job *ever* again. The evidence, Mr. Caligiuri said, indicated that the plaintiff was not totally disabled and in fact was capable of working at a number of jobs. The jury then reduced the proposed award of lost future earnings by nearly fifty per cent.

After the verdict was announced, all participants and several observers received questionnaires about the trial. All respondents were impressed with the capabilities of the deaf persons in the trial. Nearly all respondents said they would not object to having their own cases, civil or criminal, tried by a jury that included a deaf juror. Most had no suggestions as to how the proceedings could have been more efficiently conducted. Those who did make suggestions said that speaking more slowly by all parties, in their opinion, might have been helpful.

The deaf persons felt that no adjustments would be needed to improve their participation. They said they enjoyed the experience and had no trouble understanding the evidence.

The interpreters both agreed that the trial presented no problems for them at all. They indicated that the medical testimony was not at all difficult to convey. The one interpreter who had not previously participated in legal proceedings said he enjoyed the experience so much that he hoped to do more legal interpreting, perhaps on a permanent basis.

As noted previously, the trial was recorded by videotape cameras. The tape reveals a virtually flawless trial with respect to the presence of the deaf jurors. There were no delays whatsoever attributable to the deaf persons.

Copies of the various materials discussed in this appendix, including the questionnaires given to participants and observers, are on file at the *Pacific Law Journal*. The videotape of the trial is available at the Law Library at McGeorge School of Law. Further information about the videotape is available from the *Pacific Law Journal*.

Permanent Tempor
College Teachers a
Process Clause

At the outset it may be observed
the provisions of the school code

State educational policy requir
cilable goals. On one hand is th
teaching personnel whose memb
and able to give continuity to th
the need for flexibility in meetin
course demands. This dilemma
most states, by the adoption of a
sonnel. Contract[2] and regular[3] e
tricts for long-term stability a
substitute[4] and temporary[5] teach
flexibility in the hiring, assignm
dichotomy between these two cl

1. 58 Cal. App. 189, 190, 208 P. 356, 3
2. Contract employees were formerly
CODE §87602(a). The purpose of this classifi
board sufficient opportunity to evaluate the t
The governing board is strictly limited to t
§§87476, 87604, 87605.
3. Regular employees were formerly t
ferred to as tenured teachers. Classification
tions 87601(d) and 87602(b) of the Educatio
elected to the position by the community c
failure of the community college district to te
v. Fullerton Union High School Dist., 24 Cal
working of the temporary teacher reclassifi
infra.
4. The substitute teacher classification
for elementary and secondary school teache
between temporary and substitute employee
tion Code. *See* CAL. EDUC. CODE §87604.
5. The word temporary has become a
tion see Sections 87478 and 87480-87482 of t
18-27 *infra*.
6. Peralta Fed'n of Teachers, Local 1
369, 390 n.6, 595 P.2d 113, 126 n.6, 155 Cal.
v. Peralta Junior College Dist., 11 Cal. 3d 82
92 (1974). For the role played by temporary
Los Rios Community College Dist., EERB