Following the recommendations of its Task Force on Pro Bono Service, the State Bar Association of North Dakota (SBAND) has approved a committee to design an implementation plan “to expand and improve the opportunities for lawyers to provide legal services to those who cannot afford them.” The implementation committee, chaired by Mary Kae Kelsch, is working towards a plan to be presented to the SBAND Board of Governors at their September meeting.

The Task Force on Pro Bono Services, consisting of eighteen members, was appointed in the Spring of 2009, by then SBAND President David Maring. The Task Force was chaired by current SBAND President Sandi Tabor. The Task Force reviewed a number of topics including:

- pro bono services generally
- expanding lawyer participation in pro bono programs
- local bar legal aid clinics
- the judicare model
- unbundled legal services
- case triage
- Volunteer Lawyer Program staffing and the roles of the judiciary technology, UND Law School, law firms, corporations and SBAND in providing pro bono services.

Just some of the recommendations of the Task Force include:

- Establish a Pro Bono fund to received donations from lawyers who chose to discharge their pro bono responsibilities through financial support of organizations that provide legal services to low-income North Dakotans.

- Have the Bar Foundation’s Board of Directors administer the Pro Bono Fund and determine which organizations to provide funding.

(Continued on page 3)
A View From the Top
By: Jim Fitzsimmons, Executive Director

“Dogs come when they are called; cats take a message and get back to you.” ~ Mary Bly

I had a unique opportunity the first week of August to review operations at three (3) Legal Clinics in Ontario, Canada. Legal Clinics in Ontario are similar to civil Legal Services programs in the states. It proved to be an incredibly educational experience for me. I visited clinics in Ottawa, Renfrew, and Vanier (a French speaking community in Northeast Ottawa).

It took me a while to master new legal terms such as, duty counsel, the Crown, certificates, article (to serve a ten month legal internship), etc., but once I had that down, the insights shared with me by Gary Stein, Laura Hunter, Audrey Brousseau, and others were invaluable. I will always remember sitting in the clinic in Vanier (called “Clinique Juridique Francophone De L’est D’Ottawa”) and talking at length with three Canadian lawyers who spoke both French and English fluently about their work. Both Ottawa and Vanier are experiencing a growth in immigration work while Renfrew, a rural community about the size of Valley City, sees virtually nothing in that area.

One thing I noticed was the strong provincial (state) governments in Canada. In Ontario, the provincial government puts a serious amount of money into legal assistance for low income folks. Legal Aid of Ontario is a $360 million + public corporation which in turn funds 79 legal clinics throughout the province, as well as providing around $200 million in certificates to low income people for representation in criminal and family law cases.

In Ontario, family law and criminal law are provided for through a judicare type model with the funder providing certificates (vouchers). Over 4,000 lawyers participate in the system. Clients provide the certificate to a private lawyer who is ultimately paid for the case by the province via Legal Aid of Ontario. The remaining civil problems (housing, public assistance, immigration, etc.) are handled by attorneys at the 79 Legal Clinics. Of those clinics, roughly 20 are specialty Legal Clinics and the remainder are general Clinics.

I am still in the process of analyzing all of the differences and similarities between the delivery systems. I can say without reservation, that just as within the states, there are some very dedicated and committed lawyers in Ontario who believe strongly in equal justice and work tirelessly for their clients. Keep up the good work. Au revoir, mes amis!

Additionally, during the summer of 2010, Legal Services of North Dakota was fortunate to have as one of our summer law clerks, Cheryl Feinberg, a third year student from Vermont Law School. Vermont Law School is one of the top environmental law schools in the country.

I asked Ms. Feinberg to share her insights on the recent oil spillage in the Gulf of Mexico. I think you will find them very informative in the article on page 8.
(Pro Bono Continued from page 1)

- Explore with local bar leaders and encourage, facilitate and support efforts to expand pro bono efforts at the local level.

- Seek changes in the Rules of Civil Procedure and Rules of Professional Conduct to encourage more utilization of limited representation options in pro bono cases.

- Continue to investigate all ways in which technology can be used to encourage, support and facilitate the provision of pro bono services.

- Explore a joint effort between the UND School of Law and SBAND Volunteer Lawyer Program to develop a mixture of pro bono activities and public interest work that would include public interest fellowships and externships with law firms as well as a pro bono law clinic program.

Legal Services of North Dakota thanks the State Bar Association of North Dakota and their leadership for this significant effort to increase legal services to low-income North Dakotans.

**Summer Fun Facts**

~ **Mosquitoes** are insects that have been around for 30 million years. They have chemical sensors that can detect mammals from 100 feet away; they have heat sensors to detect warm-blooded creatures; and they have visual sensors that detect movement and contrast in colors. The first activity of an adult mosquito is to mate. The females lay their eggs and then live from days to months afterward. The male mosquito dies within days after mating.

~ **Watermelon** is actually a VEGETABLE! It is from the botanical family Cucurbitaceae and is most closely related to cucumbers, pumpkins and squash. The watermelon is composed of 92% water and early explorers often used hollowed out watermelons as canteens.

~ In 1905, an 11-year-old boy named Frank Epperson invented the first **Popsicle**. He created it completely by accident. Frank accidentally left a mixture of powdered soda and water, with a stirring stick, on his porch. He awoke the next morning and found a frozen pop! He first named his frozen pop an "Epsicle", but when he got older his kids asked for "Pop's" sicle and the new name was born. Popsicles are more popular than ever today, with Cherry being the number one favorite flavor.

~ **Sharks** are one of the oldest living creatures in the sea. There is evidence that the shark species has been around for more than 400 million years. Current sharks are much smaller than those from dinosaur times. The sharks that lived in the dino-age were up to 80 feet long, where today’s largest shark, the Great White, grows to lengths of only 25 feet.
Rule 69 interrogatories are written questions that a bill collector or creditor can ask to find out if you have any assets to pay a judgment. Creditors can ask if you have a bank account and how much is in it, if you have a job and how much you make, whether you have vehicles and their value, and so forth. In other words, Rule 69 interrogatories allow a creditor to ask you how much property you have and how much it’s worth.

That sounds like an invasion of privacy. What gives some bill collector the right to make you tell them how much money you’ve got? And what’s the deal about jail?

Before a bill collector or creditor can use Rule 69 interrogatories, the creditor has to get a judgment. The way to get a judgment is to sue you in court. Whenever someone gets sued, they get a copy of the court papers, so they know they’re being sued. When you get sued, you can respond and go to court and have a trial. Sometimes people who get sued don’t respond. They figure, “well, I don’t have any money to pay the bill, so it won’t do any good to go to court.” If you don’t respond when you get sued, the creditor will most likely get a judgment.

Whether you respond or not, if the creditor wins in court, the result is a judgment. A judgment says how much you owe the creditor. When a creditor gets a judgment against you, you’ll know, because you’ll get a copy. Creditors must sue you and win and get a judgment before they can use Rule 69 interrogatories.

After a creditor gets a judgment, the next thing the creditor has to do is figure out if you have any money or other property that can be used to pay the judgment. Rule 69 of the North Dakota Rules of Civil Procedure says creditors can ask questions about your assets and their value. The most common way to ask is by written questions. In the legal world, written questions are called interrogatories. That’s why post-judgment questions about your assets are called Rule 69 interrogatories.

Where does the part about jail come into all this? Jail can enter the picture if you don’t answer the Rule 69 interrogatories and ignore court warnings for long enough.

You’ve got 30 days to answer the Rule 69 interrogatories. If you don’t answer, then the creditor can ask the court for an “order to show cause.” That’s where you go to court and explain to a judge why you shouldn’t be held in contempt. Much of the time, a court will say you can make the contempt go away by answering the interrogatories, and give you a deadline to answer.

If you don’t answer the interrogatories or keep ignoring the court’s orders to explain why you haven’t answered them, the court can issue a “warrant of attachment.” That’s an order to the sheriff to arrest you and bring you to court to explain why you still haven’t answered the interrogatories. The court can allow you to give an undertaking, which is like putting up bond money to get out of jail. The amount of the undertaking is up to the judge. If you give an undertaking, you still have to go to court and explain why you haven’t answered the interrogatories. If you give an undertaking and don’t show up for court, the court keeps the money (or may give it to the creditor in the form of damages or attorney’s fees) and can issue another warrant of attachment.

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If the warrant of attachment doesn’t say anything about an undertaking, or if you can’t afford to pay the undertaking, then the sheriff must take you into custody. Custody doesn’t always mean jail. It might mean jail, however, if the sheriff thinks you won’t show up for court.

When you finally show up for court, the judge will ask you to explain why you haven’t answered the Rule 69 interrogatories. If he doesn’t think your explanation is adequate, he can hold you in contempt of court and impose “remedial sanctions.” If the judge thinks you have intentionally disobeyed or resisted the court’s orders, you can be put in jail for up to 6 months. The judge can also impose a forfeiture of up to $2,000 a day for each day the contempt continues, or make any other order that will make you answer the interrogatories.

If you receive Rule 69 interrogatories from a creditor, the best thing to do is answer them. Telling some creditor how much property you have, where it’s located, and how much it’s worth is no fun, especially when you know the creditor will try to take that property away to pay a judgment. Even if you don’t have much property, or if it isn’t worth much, you still have to answer.

Not answering the interrogatories may seem easier, but things will only get worse if you don’t answer. Most, if not all, judges in North Dakota will give a person more than one chance to answer Rule 69 interrogatories. Judges do not like to throw people in jail just for the fun of it. However, if you do not answer the interrogatories, at some point a judge will lose patience with you and may well impose jail time. That’s how something as boring as Rule 69 interrogatories can, get you put in jail.

Did you know... You can donate to Legal Services of North Dakota!

As a nonprofit organization, Legal Services of North Dakota (LSND) relies on contributions to continue providing free legal services to low-income persons and our many advocacy projects. Any donation, large or small, supports the vital role we play in the struggle for equal justice.

LSND is a 501 (c)(3) organization, meaning that all contributions are fully tax deductible. You can make checks payable to Legal Services of North Dakota which can be sent to us at:

Legal Services of North Dakota
PO Box 1893
Bismarck, ND 58502

Your support will help LSND promote dignity, self-sufficiency and justice through civil legal aid for those with no place else to turn. Legal assistance stabilizes families and communities, saves taxpayers money, helps prevent legal problems that would otherwise further clog the courts, and helps people become self-sufficient and participate effectively in society. LSND works with other providers to remove the barriers that may prevent people from participation in programs designed to assist them. If you have any questions regarding donations, please contact Keith Engbrecht at kengbrecht@legalassist.org or call (701)222-2110.
This fall, you will enter the first phase of your legal career as you begin law school. Many of you will approach this experience with hopes and dreams that you will change the world for the better. You will be told about the honorable profession of the law and how you must help the poor in the pursuit of justice as everyone is equal under the law. After completing three years of law school, you will have an overall understanding of equality and fairness in the law.

Unfortunately, as you venture into practicing law, you may learn the cold reality that as the law changes, sometimes not all changes promote equality. Here is an example from juvenile court.

In 1969, North Dakota enacted the Uniform Juvenile Court Act. The Act granted a child and the child’s parents the right to a court-appointed attorney if they could not afford one. During the 1970s, 80s, and 90s, the right to an attorney for indigent children and their parents remained in place. But in 2007, that changed.

In 2007, the law was amended so that indigent parents get a court appointed attorney for only part of a juvenile delinquency case. Before, an indigent parent could receive a court appointed attorney for both the adjudicatory (trial) stage and the disposition (sentencing) stage. Now, an indigent parent may receive a court appointed attorney in a delinquency matter involving their child only at the disposition (sentencing) stage.

Parents may hire a private attorney to represent their interests at the adjudicatory (trial) stage. But court appointed attorneys are not available to indigent parents at the adjudicatory stage. Parents who cannot afford an attorney are left to represent themselves during the trial stage of a juvenile delinquency case.

After trying a couple of hundred juvenile matters before and after this change, I have seen the problems created first-hand. I cringe watching an indigent parent “represent” their interests. These parents lack a legal education and they usually have very little experience with formal court proceedings. Many of them do not fully understand what their rights and interests are and are unable to articulate those things in a courtroom. Furthermore, there are effects on the children, such as the failure to have their parents’ wishes heard on the matter. This is not a good introduction to the law for our children, nor is it the fairness that I tried to learn in law school.

After personally witnessing these follies that resulted from this one change to the Juvenile Court Act, I turn to the incoming law students, as they are our future, and hope that equality under the law can somehow be renewed. Unfortunately the ideals you will learn over the next three years can get lost in the real world. Sometimes the goal of equality under the law can be met not with change, but simply by leaving things alone. From a former law student to new law students, I hope you can remember those lessons of equality long after you graduate. I hope you carry the notions of equality and fairness with you into your legal careers, whether in juvenile court or elsewhere. Good luck in your studies.
Padilla v. Kentucky

The non citizen defendant in this case, Jose Padilla, was legally admitted to the United States and had lived in the United States for more than 40 years prior to his arrest on drug charges. His criminal defense lawyer advised him that he “did not have to worry about immigration status since he had been in the country so long.” Because of that advice, Mr. Padilla pled guilty to drug charges which resulted in automatic deportation under federal immigration statutes. Mr. Padilla unsuccessfully appealed to the Supreme Court of Kentucky. The Kentucky Court ruled that the Sixth Amendment does not apply to the guarantee of effective assistance of counsel when the advice concerns deportation, as deportation was only a collateral consequence of his criminal conviction.

Mr. Padilla then appealed to the U.S. Supreme Court, who accepted his case to decide whether Mr. Padilla’s attorney was required to advise him that pleading guilty to the criminal charge would result in deportation from the United States.

On March 31, 2010 the United States Supreme Court held that under the Sixth Amendment to the United States Constitution defense attorneys “must inform” non citizen clients whether a “plea (to a criminal charge) carries a risk of deportation.” If this advice is not provided to clients who are criminal defendants, the representation under the Sixth Amendment is constitutionally deficient. The Court specifically ruled that deportation is a critical part of any criminal penalty which could be given to non citizen defendants who plead guilty to crimes which, under the Immigration and Nationality Act, require deportation from the United States.

The reasoning of the Court was based on its analysis of the history of deportation as a consequence of criminal conduct pursuant to the implementation of the Immigration and Nationality Act of 1917 (INA). The Court found that under the original INA, judges presiding over criminal proceedings involving non citizens had broad discretion to override what otherwise would have been an automatic deportation due to a conviction for crimes listed in the INA. In 1948, the U.S. Supreme Court termed deportation as a “drastic measure”. As recently as 1986, after expansion of the list of deportable offenses, federal courts presumed that possible deportation based on a criminal conviction was a central issue to be addressed in the sentencing process. It clearly was not envisioned as a mere collateral matter outside of the standard criminal sentencing process. Therefore it was not considered outside the defense attorney’s scope of criminal representation.

By 1997 Congress had eliminated all judicial discretion and almost all similar discretion given by law to the U.S. Attorney General. Today, more than a decade later, Congressional

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Years after Exxon Valdez, another environmental disaster devastates the United States:
WHAT HAVE WE LEARNED SINCE 1989?

By: Cheryl Feinberg, LSND Law Intern

The Exxon Valdez oil spill occurred in Alaska’s Prince William Sound just after midnight on March 24, 1989. It is considered one of the worst human-caused environmental disasters in United States history. The oil tanker spilled nearly 11 million gallons (or 250,000 barrels) of Prudhoe Bay crude oil into the Sound, covering 1,200 square miles of the ocean. The remote location of the spill, frigid temperatures and rocky coves of Alaska, and Exxon’s response time, all made the impact of the disaster much worse. Thousands of animals died immediately. Additionally, critical spawning areas for salmon and herring were also hit, destroying billions of eggs. Now, 21 years later, a biomarker for oil in ducks is still abnormally high in populations in the area surrounding where the spill occurred.

Most of the oil could not be cleaned up, despite utilizing more than 11,000 people, $2 billion, and the best technology available at the time. Best estimates say that only 8% of the total oil spilled was recovered at sea. About 20 percent of the oil evaporated, 50 percent contaminated beaches, and the rest floated out to the North Pacific Ocean, where it formed tar balls that eventually washed up elsewhere or sank to the ocean floor. While the ecosystem has pretty much recovered since the spill, one can dig down into the intertidal zone and find oil just below the surface which has yet to degrade. In its 20th Anniversary Status Report, the Exxon Valdez Oil Spill Trustee Council listed only 10 of the 31 injured resources and services they monitor as recovered and ten more are listed as recovering. However, the population of Pacific herring, for example, is listed as not recovering. Human services that depend on those natural resources were also devastated. These services will continue to be listed as recovering until the resources they depend on are fully restored. They include commercial fishing, passive use, recreation and tourism, and subsistence. The Exxon Valdez oil is decreasing at a rate of 0.4 percent annually. At this rate, it could take decades for the oil not visible to the naked eye to fully degrade.

On April 20, 2010, the United States once again experienced an oil-related environmental disaster. The Deepwater Horizon oil spill in the Gulf of Mexico, was coined by President Obama as the worst man-made environmental disaster in our nation’s history on June 1, 2010. The Deepwater Horizon oil rig, owned by Transocean and operated by British Petroleum, is located about 80 miles off the coast of Louisiana. On April 20, an explosion caused the rig to sink, and faulty equipment caused three separate leaks deep under water to begin gushing oil into the Gulf. Conservative estimates place the amount of oil which leaked per day (before BP outfitted a temporary cap in early July) at around 5,000 barrels. However, some scientists estimate that the amount which continued to leak for nearly three and one-half months was actually equal to one Exxon Valdez spill every six to ten days. Oil reached the shorelines of Louisiana, Mississippi, Alabama, and Florida. As history shows, once the oil reaches the shoreline, cleanup efforts become significantly less effective.

It is too early to tell what the exact environmental impact of the oil spill will be; however, there are many endangered species living in the Gulf and it’s surrounding marshlands that are now covered in sludge. Additionally, the shrimp and oyster industries in the Gulf have essentially shut down. There is international concern that the oil spill has reached

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critical wintering zones for migratory birds that fly to the Gulf from the upper United States and Canada. Further, one of the biggest tourism seasons in the Gulf area is non-existent this year; oil slicked sand is not a tourist draw.

BP’s recovery effort has fallen vastly short of the estimates it submitted in its March 24, 2010 filing with federal regulators. Since the explosion, BP has skimmed or burned about 60 percent of the amount of oil it promised it could remove in a single day. BP began downgrading expectations only two days after the rig explosion, but remained optimistic, saying they could release a “flotilla of vessels and resources” to handle the task. Yet, efforts have been hampered not only by slow response times, but also by poorly trained volunteers, inadequate supplies, and hurricane season. Further, one of the two companies that BP’s March response plan said it would deploy for their expertise, trained staff, and equipment (Marine Spill Response) was never asked whether it could hit the marks BP originally set.

It took the Exxon Valdez tragedy to force the United States government and the individual states to review oil transportation practices. There had not been a major incident in Prince Edward Sound for the 12 years prior to the spill. This contributed to lax enforcement standards, and the overall opinion that a spill of that nature was extremely unlikely. We now know that it only took the negligence of one man to run the ship aground and cause over two decades worth of damage to the once pristine Sound. Because of that spill, new safety legislation was passed, and all oil tankers traveling in U.S. waters must be double-hulled by the year 2015. Unfortunately, despite the fact that one of the biggest environmental disasters in our nation’s history occurred only two decades ago, we have moved on to the riskier business of drilling deep below the sea where only robots can operate, and safety proposals are not being checked for accuracy. One would think that because of the inherent risks in drilling so far below sea level (and so close to the already fragile gulf environment) where the amount of oil capable of gushing into the ocean is unknown, and the fact that Prince William Sound still has not recovered from the damage done to it would make us take a very close look at offshore drilling companies and the spill response plans they have in place. It seems, though, that because of the optimistic report filed by BP and the lack of major incidents in the U.S. recently, enforcement and regulation standards were once again dropped. It is unclear if the explosion which caused the leaks is actually because of gross negligence, but it is clear that the United States Justice Department is suspicious; they launched a criminal investigation into the cause of the spill to find out.

Attorneys have a special role in uncovering new avenues that can lead to change. Many of corporate America’s most guilty secrets came to light because of the efforts of plaintiff’s attorneys. For example, the asbestos and tobacco industries knew they were risking lives and made calculated decisions to maximize their profits. Lawsuits assured that not only were the victims able to recover damages, but also the suits caused the public to demand change once the information contained in the litigation came to light. In the arena of oil spill litigation, attorneys will be able to use the discovery process to uncover at least some of the truth behind what occurred. The cases currently filed in the Gulf show the attorneys involved are more dedicated than ever to ensuring that their clients are compensated for the damages they incurred and that the companies involved think twice before starting a new drilling site. Because of the funds set up by BP to limit civil suits, attorneys are becoming increasingly more creative with their filings. We will have to wait to see what types of suits environmental groups bring, but it could take years to assess the full extent of the damage the explosion and subsequent oil leaks caused to the Gulf Coast environment. In the meantime, it remains to be seen how the new approaches taken by attorneys in the Gulf will play out. If nothing else, it will show companies that while we may not have learned anything from past oil leaks in regards to prevention and clean up, the legal community has learned since Exxon Valdez and is using what it learned to its advantage.
The American Recovery and Reinvestment Act of 2009 was generally intended to stimulate the economy in various ways. However, Congress put other provisions in the Act that aren’t directly related to economic stimulus. One of those provisions had to do with certain types of Indian property, and Medicaid eligibility.

Congress amended the Medicaid Act so that certain types of “Indian-specific” property are not included as resources in determining eligibility for Medicaid. Generally, this property is Indian trust property like trust land or minerals or funds in Individual Indian Monies (IIM) accounts, although it also includes other things.

The types of Indian property that Congress said cannot be counted for Medicaid eligibility includes:

1. Property that is held in trust, subject to Federal restrictions, or otherwise under the supervision of the Secretary of the Interior, which is located on a Federally recognized tribe’s reservation, or is an Indian allotment on or near a reservation as approved by the Bureau of Indian Affairs. This includes real property and improvements to real property.

2. Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources) resulting from the exercise of federally-protected rights.

3. Ownership interests in or rights to use things not covered above that have unique religious, spiritual, traditional, or cultural significance, or rights that support subsistence or a traditional lifestyle according to applicable Tribal law or custom.

In Medicaid, income is usually something a person receives. A resource is generally something a person owns. Under the new law, some forms of Indian property are now always excluded as a resource, while others can be excluded one month, and counted in the next.

Here’s an example. Frank, an Indian living on the Ft. Berthold Reservation, has 50 acres of trust land he inherited from his mother. Frank also owns the minerals to the 50 acres. The mineral rights are leased to the Gigantic Oil Company, which is producing oil on Frank’s land. Each month, the Gigantic Oil Company sends a royalty check of $300 to Frank’s IIM account. Each month, after the $300 is received in Frank’s IIM account, the Office of Special Trustee (which is in charge of IIM accounts) sends the $300 along to Frank.

If Frank were to apply for Medicaid, his 50 acres of trust land and his 50 acres of trust minerals would not be counted as a resource by Medicaid. In North Dakota, a single person like Frank is allowed up to $3,000 of property in resources and is still considered eligible. However, not everything a person owns is counted as a resource by Medicaid. Some things, like clothes, one vehicle, and, in this example, trust property, are not counted towards the $3,000 limit. Frank cannot sell or lease his trust land or minerals without the approval of the Secretary of the Interior (through the Bureau of Indian Affairs). Frank’s trust land and minerals are subject to the restriction that they cannot be sold without government permission. Because of this restriction, the Medicaid statute says Frank’s trust land and minerals cannot be counted as a resource.

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Whether the $300 in royalty payments that Frank gets every month is a resource depends on the situation. If the $300 came from a source such as a job or Social Security payments, it would normally be considered income (not a resource) by Medicaid. But because the $300 in this example basically comes from a resource (trust property) that is not counted, the $300 is also not counted as a resource during the month it is received.

If Frank gets a $300 royalty check in June, and spends the money on food, so that none is left in July, the $300 is not counted as a resource in July, because it is gone. If Frank spends $200 on food and puts $100 in his savings account, the $100 in savings is counted as a resource beginning in July. If Frank uses the $300 as a down payment for a pickup truck in June, which is his only vehicle, then the $300 is not counted as a resource. That’s because it has gone from being one excludable resource (trust property) to being another excludable resource (a vehicle).

If Frank has property that has traditional significance, like a ceremonial headdress, that would also be excluded as a resource. Under the new statute, Medicaid cannot tell Frank he has to sell his headdress and use the money to pay medical bills before he will be eligible.

These examples are not the only situations where Medicaid cannot count Indian property as a resource, but they are fairly common ones in North Dakota. For those of you who really like to read federal laws, the changes discussed in this article are at 42 U.S. Code section 1396a(ff). These changes by Congress became effective July 1, 2009.
action has added more types of conduct and broadened the definitions of that conduct as deportable offenses. At the same time and as a result, the risk of deportation for non citizens has increased dramatically. As the U. S. Supreme Court stated in Padilla, “The importance of accurate legal advice for non citizens has never been more important. These changes confirm our view that, as a matter of federal law, deportation is an integral part—indeed, sometimes the most important part—of the penalty that may be imposed on non citizen defendants who plead guilty to specified crimes.”

What this means for non citizens charged with a criminal offense, is that the attorney representing them in the criminal case must clearly advise them if a plea of guilty to the offense charged or any charge under consideration would subject the client to deportation. If the charge being pled to is not a clearly deportable offense, then the defense attorney must, at a minimum advise the client that there is a possibility of deportation.

Although the focus of this decision was the constitutional right to effective assistance of counsel, the Supreme Court addressed the prosecuting attorney’s role. First, it is to be aware that when a guilty plea is entered on a criminal charge which can trigger deportation, the deportation is a criminal penalty in addition to any statutory jail time or fine in any sentence imposed. Second, the prosecuting attorney has an obligation to see that justice is done based on the crime and in light of a deportation removing all U.S. liberties and privileges.

In his concurring opinion, Justice Alito contends that following what the majority of the Court believes is feasible and fairly straightforward by way of deportation advice to defendants, is a serious simplification of the complexity of immigration law and its application. Until there is a solid track record of the outcome to defendants of this new standard and the consistency of decisions in the federal circuits about the application of the Padilla decision, defense attorneys must strive to provide advice on clear cut deportation situations and general deportation risk advice to defendants. This standard is more than has ever been required in the past and has two benefits. First it will help educate and prepare defendants for any serious potential immigration consequences they will or may face. Second, it is supposed to make plea agreements reflect the best interest of justice if deportation is likely.

In North Dakota, the North Dakota Commission on Legal Counsel for Indigents is providing training and legal resources to public defenders and private criminal defense attorneys who contract to provide indigent criminal defense to ensure clients are afforded the legal advice and benefits expected by the Court as a result of its ruling in Padilla.
Legal Services of North Dakota

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Keith Engbrecht, Fiscal Administrator
Meredith Vukelic, Juris Doctorate
Willa Rhoads, PAI Coordinator
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**Immigration Law Project**
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Anna Stenson, Attorney
Ismail Pease, Extern (UND)

**Belcourt Law Office**
Ed Reinhardt, Senior Attorney
Rhonda Belgarde, Tribal Advocate
LSND Hires Three UND Law Graduates:
This summer Legal Services of North Dakota hired three (3) new staff for attorneys positions in the program. The new hires include Sarah J. S. Flores, Mikayla Jablonski and Meredith Vukelic. Ms. Flores is a 2009 graduate of the University of North Dakota School of Law while Vukelic and Jablonski graduated in May of 2010 from UND.

Ms. Jablonski will begin work in late August in the Bismarck Law office of LSND. Originally from the Bismarck/Mandan area, Mikayla did her undergraduate work at Bismarck State College and Minot State University majoring in criminal justice and psychology.

Sarah Flores started working as a Staff Attorney in the Fargo Law Office of LSND in early June. Ms. Flores graduated from Minnesota State University in Moorehead in 2004 with a BSW in social work. Originally from Linton, North Dakota Sarah worked for Access of the Red River Valley prior to starting law school.

Meredith Vukelic will staff a newly created position with LSND in Bismarck, beginning in September. Ms. Vukelic is from Bismarck, North Dakota and did her undergraduate studies at the University of Minnesota - Morris where her primary fields of study included Sociology and Psychology. Meredith will provide legal support to the five regional offices of LSND as well as the administrative office and Immigration Law Project.

LSND Provides Valuable Experience for Law Students:
During the summer of 2010, Legal Services of North Dakota provided internships to five (5) law students. Three of the legal interns come from the University of North Dakota School of Law.

Jordan Moe has helped out in the Minot office this summer under the tutelage of Rich LeMay and Ed Reinhardt. Jordan was raised in Oregon and will be returning to the UND School of Law for his third year in August.

Bismarck is the host for two law students this summer. John Ward, a local boy, just completed his first year at Appalachian School of Law and he will attend UND Law School this fall. Vermont Law School student Cheryl Feinberg, has been interning under the supervision of Brad Peterson this summer. Cheryl has one year of law school left. She hails from the state of Kentucky and attended undergrad at Emory University in Georgia.

Michael Leeser and Brianna McAleer are working in the Fargo LSND office this summer. Brianna was featured in our Spring newsletter and will return for her 3rd year of law school at UND in August.

Michael Leeser is originally from Moorehead, Minnesota and has completed two years of law school at UND. Last summer he clerked in the Clay County Attorney’s Office in Moorhead, Minnesota. Michael completed his undergraduate studies in the state of Utah and is a serious Minnesota Twins fan.
Listed below are the cities and locations where Legal Services of ND conducts legal outreach. The dates and time vary; however, if you check our web site at www.legalassist.org, under the Legal Outreach Calendar you will find a current schedule complete with dates and times.

*Outreach involves our attorneys and paralegals going into the rural areas of our state to provide needed legal help and community education.

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<th>City</th>
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<td>Belcourt</td>
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<td>Bismarck</td>
<td>Burleigh County Senior Center</td>
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<td>Devils Lake</td>
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<td>Fargo</td>
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<tr>
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<td>Williston</td>
<td>Heritage Center</td>
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