

Defense Group's New Chief Hopes to Improve Bar's Appeal

BY SANDRA BODOVITZ
RECORDER STAFF WRITER

Alan Ellis seems an unlikely attorney to have his name scrawled on bathroom walls in prisons around the country.

He's low key, has an unassuming office in Mill Valley and spends his free time either walking along Stinson Beach or relaxing on his Sausalito houseboat.

But Ellis, a native Philadelphian who has adopted Marin County as home, is also a nationally recognized post-conviction expert and president-elect of the nation's largest association of criminal defense attorneys.

Prisoners, who Ellis says make up about 40 percent of his clients, pass his name along by word of mouth or by graffiti. The rest of his clients, he says, are referred by other attorneys.

On Aug. 18, Ellis will be sworn in as the 32nd president of the 6,400-member National Association of Criminal Defense Lawyers, a group



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PRISONER'S PAL: Alan Ellis, a post-conviction specialist from Mill Valley, is president-elect of the National Association of Criminal Defense Lawyers.

that represents more than 20,000 criminal defense attorneys in affiliated groups.

Colleagues say Ellis' soft-spoken manner and good organizational skills will serve him well.

"He doesn't have a huge ego and doesn't think he's God's gift to elocution," says Michael Bender, a partner at Denver's Bender & Treece and an active member of the lawyers' association. "He's willing to spend the time to learn how to massage and work an extremely large national group of lawyers."

As president, Ellis plans to open up the group — long-viewed as the elite bastion of white male attorneys with white-collar

or drug-lord clients — to public defenders and minority attorneys. Along the way, he hopes to improve the public image of the criminal defense bar.

Ellis talks in decidedly California terms about improving the "quality of life" for criminal attorneys. He already has established a task force to examine such issues as stress management and to figure out ways to take over cases and provide financial support for attorneys in crisis situations.

Ellis also plans to continue the criminal defense bar's fight against the Internal Revenue Service for its attempts to get attorneys to reveal the names of clients who pay their fees with more than

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\$10,000 in cash. Defense attorneys call the IRS' effort a violation of the attorney-client privilege and a government ploy to locate drug lords; they fear that yielding to the IRS' demands will turn attorneys into informants.

In the first case to come to court, U.S. District Judge Vincent Broderick of the Southern District of New York ordered two New York attorneys in March to give the IRS the names of clients, but he did not make a blanket ruling that non-disclosures could never be allowed.

A NATIONAL PRACTICE

Ellis is the senior partner of the Law Offices of Alan Ellis, a six-attorney firm with offices in Mill Valley, Philadelphia and Alexandria, Va. The boutique firm specializes in sentencing, appeals and other types of post-conviction representation of federal criminal defendants.

About 50 percent of Ellis' cases involve white-collar crimes and the rest are large-scale drug cases. Most clients are already in jail, Ellis says, but have families or friends willing to help pay his \$350-an-hour fee.

Ellis says the firm collects about 85 percent of what it bills. "We get a re-

tainer," he says, "and bill on an hourly basis against the retainer."

Associates in the firm bill at a lower rate, Ellis says, with the lowest being \$150 an hour.

Some of the firm's more well-known clients include former Atlantic City Mayor Michael Matthews and Steven Kalish, a key government witness against Panamanian General Manuel Noriega.

Matthews — who was sentenced in 1984 to 15 years in prison for accepting a bribe — was referred to Ellis by Alan Silber, a partner at Hoboken, N.J.'s Hayden, Perle & Silber. Silber says that for more than a decade he has chatted with Ellis before entering into plea bargains for clients.

"[Ellis] is one of the two or three recognized experts in the country," Silber says.

Kalish, accused of running a drug-smuggling operation and of laundering his proceeds in Panama, was sentenced to 10 years after pleading guilty to a continuing criminal enterprise in a case separate from Noriega's.

Kalish, a well-known informant in

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South Florida, contacted Ellis directly for help.

"He knew he didn't have a triable case," Ellis says, "so he decided to retain a post-conviction lawyer."

Most post-conviction work, Ellis says, is done by solo practitioners in prison communities, which is one reason that his firm, with its various experts, has gained prominence. It now is acknowledged as the largest of its type in the country.

Ellis, who says a lot of his work is supervisory, shares the workload with two senior attorneys — Peter Goldberger in Philadelphia and Alan Chaset in Alexandria, Va.

Goldberger, of counsel to the firm and a former criminal law professor at Philadelphia's Villanova Law School, "was always considered to be one of the brilliant young political activist lawyers in Philadelphia," Ellis says. Ellis sought Goldberger's help on a few cases before bringing him on board.

Ellis knew Chaset from Chaset's days as special counsel to the U.S. Sentencing Commission and as an attorney for the U.S. Parole Commission. Chaset trained federal judges in sentencing and post-conviction remedies while he worked for the Federal Judicial Center in Washington. So it worked out well for Chaset to run Ellis' D.C. area office.

Each office is fairly autonomous — which Goldberger and Chaset say they like — but Ellis, who is considered the firm's rainmaker, discusses cases with the other two attorneys in conference calls every two weeks. Things may change soon because Chaset and Goldberger say they expect the association presidency to take about 50 percent of Ellis' time: in fact, Ellis says his billings already have gone down about that much over the last six months as he has prepared to take over the organization from outgoing president Neal Sonnett, a criminal defense attorney with Miami's Sonnett Sale & Kuchne.

A DECADE OF WORK

Ellis has been actively involved in the National Association for Criminal Defense Lawyers for 10 years. He first gained attention in 1980 when he headed the group's Amicus Curiae Committee. Under his direction, the committee went from filing about three briefs a year to more than 40 in a three-year period.

Briefs have been filed by the committee with state and federal appellate courts — including the U.S. Supreme Court — in cases involving such issues as the right to counsel and the fair administration of justice.

"As a result of this," he says, "NACDL became the recognized authority on criminal defense law in the country." And Ellis made a name for himself within the association.

"Alan proved himself one of the best chairs of the Amicus Curiae Committee we ever had," says past association president Ephraim Margolin, a San Francisco solo practitioner. "He's a dynamo. He's very well organized."

Ellis was elected to the board of directors in 1981 — and was again in the spotlight in 1983 when he founded the group's Lawyers Assistance Strike Force, which offers support to criminal defense attorneys who are being prosecuted, subpoenaed and harassed for work on behalf of their clients.

For example, prosecutors trying to prove drug defendants made large sums of money through an illegal enterprise have subpoenaed their attorneys to find out how much they are being paid. That puts the attorneys in the untenable position of testifying against their clients.

Since the strike force was formed, Ellis says, "Our success rate is over 90 percent."

He attributes that to the association's prestige. "I think it's very effective when an attorney comes in and says I'm here on behalf of 25,000 NACDL members and affiliates, and we're outraged by this," he says. "I think the judge pays more attention."

Ellis even testified as an expert witness on behalf of the association in a New Hampshire drug case involving five lawyers who were subpoenaed by a grand jury to reveal who was paying their fees. Prosecutors hoped to show that one of the defendants — a drug kingpin — was paying the fees of all the attorneys, Ellis says.

A motion by the superior court to quash the subpoena was upheld in 1984 by the First Circuit U.S. Court of Appeals in *In Re Grand Jury Matters*, 751 F.2d 13 (1st Cir. 1984).

Attorneys who have worked with Ellis in and out of court describe him as organized and hard-working.

"He's gentle in demeanor and he's not a screamer," says Keith Stroup, executive director of the criminal defense attorneys' association.

Gordon Zubrod, chief of the criminal division in the U.S. attorney's office for the Middle District of Pennsylvania, has gone up against Ellis numerous times, mostly in drug cases.

"He works incredibly hard for his client," Zubrod says. "He constantly and graciously has his teeth sunk into your leg."

Zubrod says he's "never met anyone who I've respected as a prosecutor who has had a low opinion of him."

Robert Mueller, an assistant to Attorney General Richard Thornburgh at the Justice Department and a specialist in criminal affairs, calls Ellis a sentencing expert. The two have worked together on sentencing seminars for judges and attorneys.

Judge William Wilkins Jr., of the Fourth Circuit U.S. Court of Appeals and chairman of the U.S. Sentencing Commission, praised Ellis for his effective

representation of the defense bar before the commission.

One of Ellis' goals with the association is to increase membership, which already is increasing at a rate of 10 percent per year. Ellis says the flow of new members may be due to a feeling of being under seige.

"The war on crime and drugs has clearly become an attack on criminal defense lawyers," he says. As an example, he notes the IRS attempts to have attorneys indirectly identify clients who might be drug dealers.

He hopes to attract more new members by dispelling the notion that the association is largely composed of attorneys handling federal cases. "Only 15 percent of our members do criminal defense work on the federal level," he says.

Ellis also hopes to work on the somewhat tarnished image of criminal defense attorneys, who often are seen by the public as helping criminals at the expense of innocent victims and society.

"It's time to get our message out," he says. "We're there to be the bulwark against an overly aggressive totalitarian government."

Ellis cites one of the association's slogans: "We are liberty's last champions."

Although Americans seem to be having a hard time buying that, Eastern Europeans who have more recent experience with repression are interested. Ellis says he formed the Emerging Democracies

Project after some Eastern European governments expressed interest in having help from lawyers in establishing an American-style criminal defense bar.

FROM PROF TO PRESIDENT

Ellis, a graduate of Villanova Law School, came to his criminal defense practice in a roundabout way.

He became a professor at Golden Gate University School of Law in San Francisco, but says he soon learned that he didn't have enough experience to be teaching. So he packed up and moved to Mendocino County to become a general practice attorney with the Mendocino Law Collective, which he says was paid "mostly in squash and chicken."

It was then back to Philadelphia. He first practiced in State College, Pa., representing Penn State students busted for marijuana possession and sales. He eventually expanded his practice throughout the state and then shifted from the state to federal courts.

He joined the National Association of Criminal Defense Lawyers in 1976 after attending a two-week session of the National College of Criminal Defense, which included a free one-year membership to the organization. Fourteen years later he's about to become its president.

But far from approaching his new job in the laid-back style associated with both Mendocino and Marin counties, Ellis says he has been going full-speed since March. "I'm not going to miss out on the opportunity to make a difference."