

**A PROSECUTOR'S EXPANDED RESPONSIBILITIES UNDER
*PADILLA***

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Collateral consequences have been imposed on offenders from the beginning of this country. The significance of these consequences has grown as additional consequences have been added and criminalization of conduct has increased. These consequences, imposed by law upon conviction, are, however, not uniformly considered by prosecutors in charging or plea bargaining. With over 2,300 elected prosecutors and thousands of assistant prosecutors exercising discretion as to how justice might be achieved in a particular situation,¹ it should be no surprise significant variation exists in their decisions. Some prosecutors give no consideration to such consequences, while others may carefully consider the impact of a conviction upon an offender.

Inconsistency in prosecution policy and judgment is the product of the structure of prosecution systems in the fifty states. Each state creates its own structure. In some states, elected prosecutors and their assistants only have responsibility for criminal prosecution.² In these offices, they may have jurisdiction in all matters from traffic offenses to homicides. In other states, the elected prosecutor may also have corporate counsel responsibilities.³

The offices also vary significantly in size. Large offices, like the Los Angeles County prosecutor, may have a thousand assistants.⁴ In very small counties with a population of a few thousand, the prosecutor is a single part-

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1. CAROL J. DEFRANCES, U.S. DEP'T OF JUSTICE, PROSECUTORS IN STATE COURTS, 2001 11 app. (2002).

2. See Joan E. Jacoby, *The American Prosecutor in Historical Context*, PROSECUTOR, May/June 1997, at 33, 36.

3. U.S. DEP'T OF JUSTICE, UNITED STATES ATTORNEYS' MANUAL § 9-28.100 (1997) (amended 2008).

4. L.A. CNTY. DIST. ATTORNEY'S OFFICE, PREPARING FOR A CAREER AS A DEPUTY DISTRICT ATTORNEY (2011), available at <http://da.co.la.ca.us/pdf/career.pdf>.

time position.⁵ A very significant percentage of prosecutors' offices are composed of a few attorneys or less.⁶

Because of this remarkably decentralized elected prosecution system, there is little organized effort to develop consistent or progressive criminal justice policy. While elected prosecutors in nearly every state participate in a state prosecutors' organization, most of their efforts are focused on advocacy training or lobbying their legislatures for or against legislation that "improves" the criminal laws in their state. The reality of the system, dominated by small offices pressed to simply resolve cases and led by elected prosecutors who may have little experience in criminal justice matters, militates against the development of thoughtful policy. This prosecution structure results in uneven and delayed adoption of developments in criminal justice policy and law. Policy developments in areas like child abuse and domestic abuse moved slowly and unevenly across the country and are not fully embraced even now.⁷ Scientific developments, like DNA analysis and use, had similar problems being accepted.⁸ The acceptance of reentry practices and use of evidence-based practices, which hold great promise to reduce recidivism, are subject to the same problems. So, too, is the recognition of how collateral consequences are an important factor in achieving justice and improving public safety.⁹ Nevertheless, even with the difficulties presented by the structure of our prosecution system, there now exists an opportunity to do both, justice and improve public safety. The Supreme Court's decision in *Padilla v. Kentucky* will have both a direct and indirect influence on prosecutors' consideration of collateral consequences.¹⁰ In order to consider fully how the Court's decision influences prosecutors' actions, the responsibilities of prosecutors in discretionary decisions must be considered.

Traditionally, prosecutors are guided in exercising their discretion by criminal justice standards and court decisions.¹¹ These authorities call on

5. DEFRANCES, *supra* note 1, at 2 tbl.2.

6. STEVEN W. PERRY, U.S. DEP'T OF JUSTICE, PROSECUTORS IN STATE COURTS, 2005 3 tbl.2 (2006) (showing that prosecutors' offices serving a population of under 250,000 employed on average three attorneys).

7. See Deborah Epstein, *Effective Intervention in Domestic Violence Cases: Rethinking the Roles of Prosecutors, Judges, & the Court System*, 11 YALE J.L. & FEMINISM 3, 14-16 (1999).

8. Travis C. Pratt et al., *This Isn't CSI: Estimating the National Backlog of Forensic DNA Cases and the Barriers Associated with Case Processing*, 17 CRIM. JUST. POL'Y REV. 32, 33 (2006).

9. Hon. Ron Spears, *Foreseeing the "Four C's" (Collateral Consequences of Criminal Convictions)*, 98 ILL. B.J. 432, 432 (2010).

10. 130 S. Ct. 1473 (2010); see also Spears, *supra* note 9, at 433.

11. ABA STANDARDS FOR CRIMINAL JUSTICE: PROSECUTION FUNCTION AND DEFENSE FUNCTION Standards 3-1.2(b), 3-3.4 (3d ed. 1993); NATIONAL PROSECUTION STANDARDS Standards 43.1, 44.1 (Nat'l Dist. Attorneys Ass'n 1991); *Berger v. United States*, 295 U.S. 78, 88 (1935).

prosecutors to seek justice, not merely to convict offenders.¹² In seeking justice, however, prosecutors are charged with the question of what justice itself entails. “Justice” in any particular situation is fact specific. The primary objectives of felony sentencing are protecting the public from future crime by the offender and punishing the offender.¹³ However, each circumstance of an offense may be different.¹⁴ Each offender is, by their very nature, unique.¹⁵ The question is what aspects of the offense and what aspects of the offender should be considered in achieving “justice.”

In order to appreciate the importance of this question, the power of the prosecutor in our criminal justice system must be appreciated. There is no more noteworthy position in the common law criminal justice system than the prosecutor. Police may detain and jail offenders, but no serious criminal matter may proceed to conviction without the decision of a prosecutor to bring charges.¹⁶ By the crime charged, a prosecutor greatly influences sentencing and, if the prosecutor charges and convicts a person of a crime carrying a mandatory minimum, the prosecutor effectively sentences the person convicted.¹⁷ Prosecutorial discretion in charging and later plea bargaining has become the primary method of determining guilt and sentencing.¹⁸

Generally speaking, there is no appeal from the decision of a prosecutor.¹⁹ Of course, if a person is found not guilty following a trial, the prosecutor’s decision is effectively reversed, but such a result occurs in a very small number of the cases charged.²⁰ Every day, thousands of decisions are made by prosecutors as to what crime to charge or what is an acceptable plea. Often, a number of crimes may be charged out of one incident, and a plea may be made

12. See NATIONAL PROSECUTION STANDARDS Standard 1.1 (“The primary responsibility of prosecution is to see that justice is accomplished.”).

13. Burt W. Griffin & Lewis R. Katz, *Sentencing Consistency: Basic Principles Instead of Numerical Grids: The Ohio Plan*, 53 CASE W. RES. L. REV. 1, 5 (2002).

14. *Id.* at 15.

15. *Id.*

16. Jacoby, *supra* note 2, at 33.

17. Rachel E. Barkow, *Institutional Design and the Policing of Prosecutors: Lessons from Administrative Law*, 61 STAN. L. REV. 869, 877 (2009).

18. See Gabriel J. Chin & Margaret Love, *Status as Punishment: A Critical Guide to Padilla v. Kentucky*, CRIM. JUST., Fall 2010, at 21, 23.

19. *Wayte v. United States*, 470 U.S. 598, 607 (1985) (“In our criminal justice system, the Government retains ‘broad discretion’ as to whom to prosecute. ‘[S]o long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion.’” (citations omitted)).

20. DIR. JAMES C. DUFF, ADMIN. OFFICE OF THE U.S. COURTS, JUDICIAL BUSINESS OF THE U.S. COURTS 242 tbl.D-4 (2010) (showing that of the U.S. District Court cases in 2010 not dismissed or disposed by plea agreement, 423 individuals were acquitted by either the court or jury compared to 2,323 individuals who were convicted by either the court or jury).

to any of a number of crimes arising out of that incident. The decision of what crime to charge or what crime to plead to is one for the prosecutor alone.

With all this power in the criminal justice system, the question of what the prosecutor should consider in trying to achieve justice becomes particularly important. Historically, many prosecutors have limited their consideration of consequences of a criminal conviction to those within the authority of a judge at sentencing.²¹ They will consider the crime of conviction with similar crimes carrying alternate potential sentences. In some jurisdictions, prosecutors may limit the length of incarceration in jail or prison or bargain for particular conditions of probation.²² They typically will not, and often have no authority to, negotiate civil consequences of a conviction outside the authority of a judge to impose at sentencing.²³

The view that civil consequences of a conviction are beyond the consideration of a judge at sentencing or a prosecutor in charging or plea bargaining has long had the support of courts.²⁴ Additionally, the ability of a judge to impose a sentence that effectively addresses reducing recidivism is greatly reduced by the increasingly limited information available about the offender and their needs.²⁵ Such facts ignore the reality of civil consequences for an offender. The civil consequences of a criminal conviction are often far greater than any consequence imposed by a judge at sentencing.²⁶

These consequences are both formal and informal. Informal consequences impact the ability of a person convicted of a crime to find employment, housing, and many other opportunities influenced by the public nature of criminal records.²⁷ These informal consequences, as real as they are, are beyond the scope of this Article. Formal civil consequences of a criminal

21. Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 HARV. L. REV. 2463, 2470 (2004).

22. See, e.g., *People v. Winston*, 737 N.E.2d 304, 305 (Ill. App. Ct. 2000); see also Gabriel J. Chin & Richard W. Holmes, Jr., *Effective Assistance of Counsel and the Consequences of Guilty Pleas*, 87 CORNELL L. REV. 697, 699 (2002) (stating it is typical for an individual pleading guilty for the first time without jail time, but with some collateral consequences).

23. See generally Ethan V. Torrey, Note, "*The Dignity of Crimes*": *Judicial Removal of Aliens and the Civil-Criminal Distinction*, 32 COLUM. J.L. & SOC. PROBS. 187 (1999).

24. See *Padilla v. Kentucky*, 130 S. Ct. 1473, 1491–92 (2010) (Alito, J., concurring) (citing Chin & Holmes, *supra* note 22, at 699 (noting that virtually all jurisdictions including eleven federal circuits, more than thirty states, and the District of Columbia hold that defense counsel need not discuss with their clients the collateral consequences of a conviction)).

25. Roger K. Warren, *Evidence-Based Practice to Reduce Recidivism: Implications for State Judiciaries* 30–33 (Mar. 31, 2008) (unpublished manuscript), available at http://works.bepress.com/roger_warren/1.

26. Gabriel J. Chin, *Race, The War on Drugs, and the Collateral Consequences of Criminal Conviction*, 6 J. GENDER RACE & JUST. 253, 253 (2002).

27. Christopher Uggen, *Dirty Bombs and Garbage Cases*, 74 SOC. RES. 707, 707 (2007).

conviction are erected by statute or rule as a result of a conviction.²⁸ Such consequences range from insignificant disqualifications, for example, prohibiting offenders from employment they do not seek, to life changing actions, such as deporting offenders to a country they have known nothing of since they were a toddler.²⁹ It may mean sex offender registration, effectively ostracizing an offender from society, or something as simple but significant as revoking a driver's license.³⁰ Consequences such as these have grown over the years to the degree that any person convicted of a felony faces hundreds of such consequences.³¹ This separation from society by law and rule is to the degree that it has been labeled "civil death" in some states.³²

The question continues as to whether these consequences should be considered by prosecutors in their pursuit of justice? Some prosecutors, of course, do consider these consequences whether driven by their own values or by defense counsel. By choice of crime of conviction, they may avoid deportation, sex offender registration, gun possession, or other consequences which may disproportionately affect an offender.³³ There is no definitive answer to this question. The view that collateral consequences should not be considered in the charging and resolution of a criminal case is about to change. The Court's decision in *Padilla* confirmed years of work and recommendations by various national organizations seeking collateral consequences to be addressed by all members of the criminal justice system, including prosecutors.³⁴

Beginning early in 1997, the Criminal Justice Section of the American Bar Association recognized the significance of collateral consequences.³⁵ The Section undertook to address the significance of these consequences to public

28. See Chin & Love, *supra* note 18, at 24 (listing numerous statutes that affect rights of convicts).

29. See, e.g., 20 U.S.C. § 7115(b)(2)(E)(xx) (2006) (outlining the inability of convicted criminals to be hired as teachers); see also *Padilla v. Kentucky*, 130 S. Ct. 1473, 1481 (2010).

30. See ABA STANDARDS FOR CRIMINAL JUSTICE: PLEAS OF GUILTY Standard 14.3.2(f) cmt. (3d ed. 1999).

31. See, e.g., THE REENTRY OF EX-OFFENDERS CLINIC, UNIV. OF MD. SCH. OF LAW, A REPORT ON THE COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTIONS IN MARYLAND (2007).

32. Alec C. Ewald, "Civil Death": *The Ideological Paradox of Criminal Disenfranchisement Law in the United States*, 2002 WIS. L. REV. 1045, 1049 & n.13 (2002).

33. See Stephanos Bibas, *Regulating the Plea-Bargaining Market: From Caveat Emptor to Consumer Protection*, 99 CALIF. L. REV. 1117, 1138 (2011).

34. See *Padilla*, 130 S. Ct. at 1482.

35. ABA STANDARDS FOR CRIMINAL JUSTICE: PLEAS OF GUILTY Standard 14.3.2(f) ("To the extent possible, defense counsel should determine and advise the defendant, sufficiently in advance of the entry of any plea, as to the possible collateral consequences that might ensue from entry of the contemplated plea.").

safety.³⁶ As the collateral consequences project evolved, the Section began working on Criminal Justice Standards for Collateral Consequences.³⁷ It understood the weight and numbers of civil consequences had grown but were not considered in the processing of a criminal case.³⁸ This action was one of the first recognitions of the significance of collateral consequences on public safety.³⁹

Additional recognition of the burden of collateral consequences is found in the Report of the National Reentry Council produced by the Council of State Governments.⁴⁰ This report focused on increasing public safety by decreasing recidivism.⁴¹ It recognized the barriers to offenders' reentry and suggested methods to help offenders reenter society.⁴² As an important aspect of the reentry effort, collateral consequences are recognized as a problem to be overcome.

Efforts of both the ABA and the Council of State Governments continued the attention on collateral consequences. As recognition of the barriers that collateral consequences imposed on offenders' efforts to reintegrate increased, states worked to find a balance between appropriate visibility of criminal records and the problems such visibility caused in preventing reentry.⁴³ The ABA Criminal Justice Section continued its work by creating the Commission on Effective Criminal Sanctions.⁴⁴ This commission developed several policies that were endorsed by the National District Attorneys Association and approved by the ABA House of Delegates.⁴⁵ Among the policies adopted were the following: that government agencies should inventory and repeal employment restrictions not specifically related to the employment of the individual or that would protect public safety;⁴⁶ establishment of judicial or administrative methods for mitigating or relieving collateral consequences

36. *See generally* Warren, *supra* note 25, at 7–8 (emphasizing effective sentences should strive to promote public safety).

37. ABA STANDARDS FOR CRIMINAL JUSTICE: COLLATERAL SANCTIONS AND DISCRETIONARY DISQUALIFICATION OF CONVICTED PERSONS (3d ed. 2004).

38. *Id.* at intro.

39. *Id.*

40. THE RE-ENTRY POLICY COUNCIL, CHARTING THE SAFE AND SUCCESSFUL RETURN OF PRISONERS TO THE COMMUNITY 406–07 (2005), *available at* <http://reentrypolicy.org/publications/1694;file>.

41. *Id.* at 26, 33–34.

42. *Id.* at xviii–xx.

43. ABA COMM'N ON EFFECTIVE CRIMINAL SANCTIONS ET AL., REPORT TO THE HOUSE OF DELEGATES 103D 2–4 (2007).

44. *ABA Commission on Effective Criminal Sanctions*, REENTRY.NET, www.reentry.net/library/attachment.149448 (last visited Jan. 16, 2012).

45. *Id.*

46. ABA COMM'N ON EFFECTIVE CRIMINAL SANCTIONS, REPORT TO THE HOUSE OF DELEGATES 103C 1 (2007).

imposed by law, and standards by which a person should be judged for such relief;⁴⁷ and that prosecutors should be advised of the potential collateral consequences associated with a particular plea.⁴⁸

All this work led to the adoption by the National Conference of Commissioners on Uniform State Laws of a Uniform Law on Collateral Consequences.⁴⁹ This Act, the Uniform Collateral Consequences of Conviction Act (hereinafter "Uniform Act"), addressed a number of issues regarding the imposition of collateral consequences.⁵⁰ Among other things, the Uniform Act addresses the treatment of consequences as former offenders move from state to state,⁵¹ permits a judge to relieve an offender from a specific collateral consequence at sentencing,⁵² and permits relief from all state collateral consequences after a period of time if certain findings are made.⁵³ Additionally, the Uniform Act operates as a resource guide for both defense counsel and prosecutors by allowing each to easily consider collateral consequences when bargaining and charging.⁵⁴

Pulling all these efforts together, the ABA Criminal Justice Section, working under a grant from the National Institute of Justice, is identifying and collecting into a searchable data base the collateral consequences in all fifty states.⁵⁵ Currently, over 25,000 statutes have been identified containing collateral consequences.⁵⁶ When completed, defenders and prosecutors will be able to identify these consequences and address them in determining an appropriate plea.

Thus, the stage was set for the Court's opinion in *Padilla v. Kentucky*.⁵⁷ In *Padilla*, the Court found the deportation of the defendant to be of such consequence that defense counsel must advise their client of the deportation consequences of a conviction to fulfill their responsibility to provide reasonable effective assistance of counsel.⁵⁸ In doing so, the Court recognized "[d]eportation as a consequence of a criminal conviction is, because of its close

47. *Id.* at 2.

48. ABA COMM'N ON EFFECTIVE CRIMINAL SANCTIONS, REPORT TO THE HOUSE OF DELEGATES 103E 1 (2007).

49. UNIF. COLLATERAL CONSEQUENCES OF CONVICTION ACT (2010).

50. *Id.* at prefatory note.

51. *Id.* § 9.

52. *Id.* § 10.

53. *Id.* § 11.

54. Margaret Love & Gabriel J. Chin, *The "Major Upheaval" of Padilla v. Kentucky: Extending the Right to Counsel to the Collateral Consequences of Conviction*, CRIM. JUST., Summer 2010, at 36, 42.

55. *Adult Collateral Consequences Project*, AM. BAR ASS'N, <http://www.accproject.org/in dex.cfm> (last updated Feb. 5, 2012).

56. *Id.*

57. 130 S. Ct. 1473 (2010).

58. *Id.* at 1486.

connection to the criminal process, uniquely difficult to classify as either a direct or a collateral consequence.”⁵⁹

As a number of Justices spoke to the issue in *Padilla*, they recognized the significance of collateral consequences beyond deportation.⁶⁰ In addition to Justice Stevens acknowledgement of the blurred line between collateral and direct consequences of a conviction and the importance of both to the accused,⁶¹ Justices Alito and Scalia commented on how the principal the Court adopted could easily be applied to other collateral consequences.⁶² All of the Justices, including those dissenting from the opinion, recognized that in at least a perfect world, all serious collateral consequences would be addressed by counsel prior to entering a guilty plea.⁶³

The efforts of the American Bar Association, in conjunction with other similar national organizations, may have influenced the Court in its recognition of how significant collateral consequences have become in criminal cases.⁶⁴ This recognition by the Court in *Padilla* will influence prosecutors in their own deliberations to weigh the collateral consequences of a particular conviction as opposed to a different resolution of a case. Surely, prosecutors will individually and collectively begin to discuss how these consequences might be considered. However “justice” might be defined by a prosecutor, the Supreme Court’s recognition of the importance of collateral consequences to a just resolution of a matter should influence a prosecutor’s views.

Beyond prosecutors undertaking a weighing of the collateral consequences of a conviction on their own initiative, there will be a number of external forces causing prosecutors to undertake consideration of collateral consequences. A primary agent forcing such consideration is the defense attorney. Under *Padilla*, defenders must advise of possible deportation consequences.⁶⁵ From deportation consequences, it is a very small step to advising an accused of other possible consequences. Several Justices in the *Padilla* decision seemed to say that advice beyond deportation consequences was required to fully represent an accused.⁶⁶ In *Bauder v. Department of Corrections*, the court applied *Padilla* to civil commitment cases.⁶⁷ Here, the defendant had been misadvised regarding his eligibility for civil commitment

59. *Id.* at 1482.

60. *Id.* at 1488 (Alito, J., concurring).

61. *Id.* at 1482, 1483 (majority opinion).

62. *Id.* at 1487–88 (Alito, J., concurring); *id.* at 1496–97 (Scalia, J., dissenting).

63. *Padilla*, 130 S. Ct. at 1494 (Scalia, J., dissenting).

64. *See id.* at 1482–83 (majority opinion); *see also* Brief of the Am. Bar Ass’n as Amicus Curiae in Support of Petitioner, *Padilla*, 130 S. Ct. 1473 (No. 08-651).

65. *Padilla*, 130 S. Ct. at 1486.

66. *See id.* at 1491 (Alito, J., concurring); *id.* at 1496 (Scalia, J., dissenting).

67. 619 F.3d 1272, 1275 (11th Cir. 2010).

during plea negotiations.⁶⁸ The Eleventh Circuit Court of Appeals found that civil commitment was a collateral consequence of a sex offense condition, and counsel had an obligation to advise his client appropriately to such.⁶⁹

Once advice is given by a defender regarding collateral consequences and an accused strongly and reasonably objects to a particular collateral consequence of conviction, presumably the defender will seek to avoid a conviction that carries that particular collateral consequence. As the defender discusses possible plea bargains with the prosecutor, the issue of collateral consequences is put into play. Though be it indirectly, this will force the prosecutor to consider the matter and, if a resolution is to be reached, an accommodation should be reached. In *Padilla*, the Court discusses such a situation.⁷⁰ By addressing collateral consequences during plea negotiations, both sides are benefitted. The prosecution gains leverage through the powerful incentive for the defendant to plead guilty to an offense that doesn't mandate such consequences, while the defense may help his client avoid such consequences.⁷¹

Legislation may play a significant role in facilitating the resolution of cases in which collateral consequences are preventing such resolutions. The Uniform Act, if adopted by a state legislature, would permit a judge at sentencing to waive a state collateral consequence.⁷² If given that authority by the legislature, prosecutors and defenders, subject to the discretion of the judge accepting the plea, will likely be better able to craft a plea bargain which will be a just resolution of the case.

Judges will also influence prosecutors to consider collateral consequences in their charging and plea bargaining. Some judges currently sentence or allow withdrawal of pleas if they believe the collateral consequences are unjust. Because a conviction would have caused deportation, a judge allowed withdrawal of a plea in Minnesota after the prison sentence was served and then challenged the prosecutor to try the case.⁷³ In another case, defense counsel tried a case to the court in the face of overwhelming evidence when the judge indicated she found deportation too severe and a virtually automatic a consequence.⁷⁴ The trial court issued multiple orders of continuance for

68. *Id.* at 1273.

69. *Id.* at 1274–75.

70. *Padilla*, 130 S. Ct. at 1486.

71. *Id.*

72. UNIF. COLLATERAL CONSEQUENCES OF CONVICTION ACT § 9 (2010).

73. E-mail from Robert M.A. Johnson, Fmr. Anoka County Attorney, to Robbie J. Hinz, Managing Editor, Saint Louis University Public Law Review (Jan. 19, 2012, 08:07 CST) (on file with author).

74. *State v. Selyukov*, Nos. C5-00-1617, C9-00-1619, 2001 Minn. App. LEXIS 144, at *1-3 (Minn. Ct. App. Feb. 6, 2001).

dismissal because deportation was the consequence of a conviction.⁷⁵ In Minnesota, the prosecutors asked the legislature to moderate sex offender registration in juvenile matters because judges were simply finding cases not proven when they thought registration was too onerous.⁷⁶ As judges become more familiar from defender advocacy, they will influence prosecutors to engage in an effort to appropriately deal with collateral consequences.

As the lower courts and individuals within the criminal justice system become more familiar with the requirements of *Padilla*, the duties of each participant in the system will change, in some cases dramatically. The prosecutor's duty to the offender may come to incorporate a duty to inform the offender of collateral consequences when they are proceeding pro se, similar to other procedural information. Given Justice Alito's concurrence, it is unclear how far this duty will extend.⁷⁷ Defendants, under Justice Alito's discussion, have their own duty to get definitive answers regard these issues and are thought to have assumed the risk of collateral consequences where they do not seek such answers.⁷⁸ Judges and prosecutors alike should and will seek to have a discussion of collateral consequences added to the plea agreement or plea colloquy. By doing so, each will not only have a stronger argument for preserving a guilty plea but will have a better opportunity to find justice.

This evolution of thinking, the consideration of collateral consequences, will be recognized as important to finding justice. In addition to finding justice, such consideration will improve public safety as offenders find a productive place in society. This effort will require legislative action adopting the Uniform Act and recognition by prosecutors that justice requires dealing with all consequences of a conviction.

75. *Id.* at *7 (reversing the continuances in the absence of "special circumstances" of clear prosecutorial misconduct).

76. *See generally* H.R. 1019, 2007 Leg., 85th Sess. (Minn. 2007); E-mail from John P. Kingrey, Exec. Dir., Minnesota County Attorneys Association, to Robert M.A. Johnson, Fmr. Anoka County Attorney (Jan. 19, 2012, 04:57 CST) (on file with author).

77. *See Padilla v. Kentucky*, 130 S. Ct. 1473, 1487–94 (2010) (Alito, J., concurring).

78. *Id.* at 1494.