

Increasing Awareness of Collateral Consequences Among Participants of the Criminal Justice System: Is Education Enough?

by

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Howard B. came to the United States from Jamaica when he was six. He became a legal permanent resident, attended school here, and joined the army. He married an American citizen and had two children. Believing that he had become American through his service in the armed forces, Howard never became a naturalized citizen, even though his parents, brothers and sisters did. Last year, Howard was arrested for selling a small amount of marijuana to an undercover officer. When he was seized by police, he had no marijuana or money in his possession. At his arraignment, about 20 hours after his arrest, Howard was offered a plea of guilty in exchange for a sentence of time-served. Wanting to put the matter behind him and not wanting to risk missing days at work, Howard accepted the plea bargain, even though he had a good case. Neither his lawyer nor the court advised him about any potential immigration consequences that could result from the plea. Within a few months, Howard was placed into immigration custody and deported to Jamaica, a country he had not lived in since early childhood.

This story is a common one, because deportation from the United States for non-citizens is one of many “collateral” consequences that can flow from the conviction for a crime. If convicted of even a petty crime, a person may become ineligible for federally funded health care benefits, food stamps, housing assistance, federal student loans. She can be evicted from public housing, will be unable to enlist in the military, and her driver’s license will be suspended. She may not be able to serve on a jury or, in some jurisdictions be allowed to vote. Arrest, alone, can result in the suspension of professional licenses for security guards, taxi drivers, barbers, nurses. The imposition of many of these sanctions, most significantly deportation and eviction from housing, is virtually automatic following conviction for any of a large number of crimes.

These so-called “collateral” consequences of convictions can have devastating effects on the lives of those convicted and their loved ones. For example, deportation of non-citizens, even long time legal permanent residents or green card holders, can wreak havoc on their lives and their families’ lives in ways that even incarceration does not. Frequently deportees are held in pre-deportation detention for extended periods of time and far removed from their families. They may be thrown back into a country in which they have not lived since childhood, where they may not speak the language, where their education or training is not recognized, and where they lack any familial support network. They may be persecuted for political or religious reasons but will be unable to seek asylum in the United States because of their conviction. Their families – children, husbands, wives – will face the Hobson’ choice of abandoning their loved one forever or returning to a country where they do not want to live, have no ties, and may even

be in danger. As the Second Circuit Court of Appeals has described it, deportation is “a sanction in severity [which] surpasses all but the most Draconian criminal penalties.”¹

Eviction from public housing can have similar traumatic effects. Many poor people in this country depend on the housing assistance they receive from the federal government or the states. Yet eviction from public housing and ineligibility for housing assistance is virtually automatic for certain convictions. Not only does this consequence affect the person convicted, but other members of the household may be cast on the street as a result of the conviction. Or families may face the choice of letting their loved one become homeless or take her back and risk eviction themselves. The ramifications of convictions can be quietly devastating.

The focus of this paper, however, is not to debate whether collateral consequences are too draconian. State legislatures and Congress have written laws that expose people convicted of crimes to a wide array of civil sanctions. Ultimately, the democratic process must address the wisdom of these penalties. But given their severity, and in the context of a system where the vast majority of criminal cases are resolved by guilty pleas, the players in that system – judges, lawyers, and even teachers of lawyers – share the responsibility to make sure that people are fully aware of the consequences of pleading guilty before they do so. The decision to plead guilty is ultimately an assessment of risk: What are the chances of winning at trial on the one hand, and what are the consequences suffered by pleading guilty versus the possible consequences suffered if convicted after trial on the other hand? There is no question that among the vast number of people who plead guilty every day, there are those who are innocent of the crime charged, and those whose guilt the prosecution could not prove beyond a reasonable doubt at trial. Particularly for these people it is crucial to be aware of the actual consequences of their plea of guilty, because their assessment of risk might be significantly altered by such knowledge. Even people who are virtually certain to be convicted after trial, and whose options are therefore more limited, can use knowledge of actual consequences to arrive at plea bargains that take such consequences into account.

Clearly defense lawyers are in the best position to advise clients about consequences of criminal convictions. This paper discusses what defense lawyers, as well as other participants in the system should do, at a minimum, to increase awareness of collateral consequences. Ultimately, though, these efforts will remain ineffectual without a fundamental shift in how such consequences of convictions are treated by the courts. Courts must recognize that most “collateral” consequences are real and automatic, and cannot be distinguished from “direct” consequences. Even though such recognition brings additional obligations for judges, defense lawyers, and prosecutors – it is the only way for defendants to reach educated and knowing decisions about whether to plead guilty.

Defense Attorneys

Defense attorneys and the advice they give are crucial to ensure informed decisions by their clients. Indeed, defenders are frequently the only advocates in a position to inform

defendants of potential consequences and to strategize so as to avoid them. Defense lawyers, therefore, must absolutely be aware of collateral consequences; they can no longer turn a blind eye to them or proceed as if they do not affect representation. Certainly, awareness has increased over the last few years, with bar associations and CLE providers making efforts to reach defense lawyers and offer trainings on at least the most common collateral consequences. But all too often, lawyers remain uninformed and uninterested – with absolutely devastating consequences to their clients.

1. Obstacles

There are many reasons why defense lawyers resist educating themselves about collateral consequences. For one, it requires them to greatly broaden their level of speciality and to learn about other areas of the law in which they may not be interested. Those areas, such as housing and, especially, immigration law, can be enormously complex and difficult to grasp. Criminal defense lawyers, particularly public defenders and court appointed attorneys rarely feel that they have the time to devote to new areas of study. With high case loads and limited resources, defenders are over-extended and all too frequently short-shrift areas of practice that fall outside their narrow definition of what it means to represent a client in a criminal proceeding. Moreover, since courts treat collateral consequences as exactly that – collateral – and do not hold lawyers responsible for their failures to inform clients about them, it is not surprising that defense lawyers take their cue from the courts and also treat these concerns as secondary. Overburdened courts with high daily dockets also contribute to the problem. Judges and prosecutors expect quick resolutions and add to the pressure felt by defenders and their clients to make instantaneous decisions about whether to plead guilty, especially in misdemeanor cases. What public defender in a high volume court has not experienced the situation where a very advantageous-seeming plea offer is made with the caveat that it must be accepted right then and there or it will be withdrawn. Even defenders with a general awareness of potential consequences may succumb to the pressure exerted by judges seeking to clear their dockets and prosecutors' threats – not to mention the entreaties of a desperate and unknowing client who sees the plea bargain as an opportunity to get out of jail – and decide to push ahead with the plea.

In addition, of course, defense lawyers know (or think they know) that in many situations, a decision not to plead guilty would be disastrous for their client. Indeed, a failure to advise a client to plead guilty can, in certain cases, be grounds for a finding of ineffective assistance of counsel.² Defense lawyers have always seen their role as doing what they can to minimize the pain their clients suffer. Traditionally, that pain has been defined as incarceration. The severity of collateral consequences has changed the parameters of that calculation. More variables are now at play, and attorneys must not only overcome the institutional problems of too many cases and unsympathetic adversaries, but also must reorient their thinking about what minimizing their clients' pain now means.

2. Proposed Solutions

What can be done to overcome the obstacles thrown in the way of increased awareness?

For public defender offices, whose lawyers represent the great majority of people affected by collateral consequences, the answer is holistic representation. In this new world where their clients have many concerns beyond the fear of incarceration, public defender offices must broaden their approach. Holistic defense offices that see their representation as extending beyond the criminal issues of the case, have specialists in-house who can advise the criminal defense attorneys on collateral consequences. For example, they will have taught the defenders to interview every client about her immigration, housing, and employment status. If a red flag comes up – because a client is a permanent resident or has a professional licence, for example – that client will be referred to the specialist to discuss her options. Having received crucial information from both specialists – the criminal defender and the civil attorney – the client will be in a position to make an informed and knowing decision about whether to plead guilty. Indeed, simply the presence of in house specialists will foster an atmosphere of learning among defenders and enhance awareness.

Precisely because the workload and mindset of defenders sometimes stand in the way of continuing education, it is crucial to have others in the office whose knowledge of collateral consequences is their primary responsibility and interest. Yet not all defender offices have the cooperation of their funding sources or the wherewithal to fund raise successfully for such specialists. In those situations, defender offices must join forces with existing free-standing organizations, such as immigration advocacy groups, law school clinics, or legal services offices to fill this need. Law students can also be used as triage and to corral information, which will allow defenders to be far more effective in advising their clients.

An even greater challenge confronts solo practitioners appointed to represent criminal defendants. Without even the limited resources of an office behind them, these lawyers tend to rely on periodic CLE trainings as the only source of new information. Keeping abreast of changes in criminal procedure and substantive law is daunting enough; educating themselves in other areas of the law is often out of the question. Moreover, unlike the lawyers in public defender offices, private practitioners are usually further removed from law school, tend to be more set in their ways, and call on knowledge acquired earlier on in their careers without recognizing that the landscape for their clients has dramatically changed.

For attorneys like these, perhaps increased and specific CLE requirements are the answer. Such practitioners must recognize that awareness of collateral consequences – and a corresponding duty to advise clients about them – is a professional and ethical obligation that can no longer be avoided. They must find ways to collaborate with specialists in other fields. But ultimately, their motivation may only be spurred by a recognition that a failure to take these measures will result in findings that their practice falls below reasonable norms.

Prosecutors

It may not be immediately apparent that prosecutors also should be aware of collateral consequences and also have an interest in ensuring that criminal defendants make a knowing and

informed decision to plead guilty. However, prosecutors have a dual role: not only should they pursue convictions, but they must also see that justice is done. Justice and fairness concerns in this context encompass an appreciation of the true impact of convictions. This is not only utopian thinking about the benevolence of prosecutors. As Robert M.A. Johnson, the past president of the National District Attorneys Association stated to the membership, prosecutors “must consider [collateral consequences] if we are to see that justice is done. . . . [Prosecutors] must comprehend this full range of consequences that flow from a crucial conviction. If not, we suffer the disrespect and lose the confidence of the very society we seek to protect.”³ Indeed, the national prosecution standards promulgated by the National District Attorneys Association all but dictate that collateral consequences should be considered. The standards note that “undue hardship caused to the accused” and the “availability of adequate civil remedies” may be considered in charging decisions as well as in making plea offers.⁴ The United States Attorneys Manual also suggests that prosecutions may be declined or plea offer decisions affected by the existence of alternative consequences.

Increased awareness of collateral consequences is also important for prosecutors because such consequences can become bargaining chips in plea negotiations. Prosecutors may care more, in certain cases, about ensuring that the defendant is removed from the community through deportation than the length of the sentence he serves. Voluntary removal may be an option offered by the defense that would be palatable to the prosecution and acceptable to a client who has virtually no chance to avoid conviction. Prosecutors may also respond to the inherent unfairness of certain draconian consequences, especially the effect of such consequences on innocent family members, and fashion plea offers that avoid these effects. They can only do so, however, if they are aware of the consequences. Prosecutors must recognize that their decisions, too, have an effect beyond the direct punishment imposed as part of a conviction.

Prosecutors suffer from the same institutional hurdles to increased awareness as defenders do. And there is even less incentive for prosecutors to take on the added task to educate themselves about the existence and impact of collateral consequences. For prosecutors, true motivation will only come from above – from the courts and the legislatures.

Law Schools

Even though many attorneys like to claim that law school never taught them anything practical, law schools do train lawyers. Criminal law and criminal procedure are standard parts of the curriculum, and many prosecutors and defenders find their first exposure to the criminal courts in law school clinics. Unfortunately, law schools tend to have fairly conventional notions of legal advocacy and ideas of how to teach them. Just as judges, lawyers, and prosecutors must alter their mindset for awareness to increase, law teachers need to recognize that a complete understanding of that system now has to include knowledge of collateral consequences and their impact. Collateral consequences of convictions must be taught to law students just as direct consequences and other practical and theoretical ramifications of convictions have been taught

for years.

Law school clinics can probably have the greatest impact in this area. Professor Anthony Thompson's experience teaching an Offender Reentry Clinic at New York University Law School is particularly instructive. He describes that a main objective of the clinic was to "familiarize students with the range of legal, administrative, and social restrictions imposed on individuals with criminal records as well as on their families and communities."⁵ In addition, students simulated a range of scenarios that involved both criminal and civil problems – to break down for students the traditional divide between criminal and civil issues. This pedagogical process educated students entering the criminal justice system about the interplay between conviction and civil consequences in ways that more conventional law teaching has not accomplished.

If the mission of law schools is to prepare their students to be successful and ethical legal professionals, they should recognize the small but important responsibility they shoulder in this particular area. One way for law schools to promote knowledge of this issue is to invigorate their clinical programs, and insist that collateral consequences be an important component of any criminal defense, prosecution, or reentry clinic. It is also worth noting that participation in law school clinics has historically been considered a significant factor in the hiring of young lawyers in defender offices and prosecutor offices. Whether the applicant has obtained an awareness and appreciation of collateral consequences through her participation in a clinic perhaps should be an added factor in assessing the qualifications of the applicant.

The Courts

It is well settled that due process requires pleas of guilty to be knowing and voluntary. One of the core concerns underlying this principle is that people who plead guilty should know and understand the consequences of their guilty plea. As the Supreme Court has held, a decision to plead must be done with knowledge of the "relevant circumstances and likely consequences of that plea."⁶ Yet the consequences of which defendants must be aware in order, under the law, to plead guilty are drastically limited by courts. Courts and counsel need only advise defendants of "direct" consequences of their guilty pleas, and those direct consequences have been narrowly interpreted. Most courts have defined direct consequences of a guilty plea as only those over which the sentencing judge has direct control – such as the length of sentence, the term of supervision, the amount of fine. Under the current system, courts shoulder virtually no responsibility for ensuring that defendants are adequately aware of the consequences they face after conviction. There is no duty to inquire about a defendant's knowledge during the plea allocution, and no oversight of the advocates to make sure that a defendant was sufficiently informed.

The area of immigration consequences is only slightly better. In several jurisdictions, including in New York, legislatures have made a warning about the potential immigration consequences of a conviction a requirement of the court's plea inquiry.⁷ While a step in the right

direction, such legislative efforts are half-hearted at best. For one, statutes like this make clear on their face that the court's failure to warn defendants of immigration consequences is not a ground for vacating the plea. Further, because the admonition is a blanket warning for every defendant, citizen or not, delivered as part of the plea mantra and done without any inquiry about whether this is a topic the defendant has discussed with her counsel, such warnings are largely ineffective. In any case, only warnings concerning immigration consequences are required under the statute, leaving out a whole range of other potentially devastating collateral consequences.

At a minimum, even in a system that requires little from judges in this area, courts should include certain basic admonitions in their standard plea inquiry. First, courts should advise defendants that if they are not a citizen, their plea of guilty will very likely cause them to be deported. The reality is that since 1996, immigration judges have minimal discretion about whether to order deportation. If a person is convicted of an aggravated felony – an ever-expanding list that includes many misdemeanors – deportation is automatic. It is misleading to advise defendants that their conviction “might” result in deportation when in reality such removal is a certainty. Judges, just like defenders, can have access to charts that list immigration consequences by type of conviction, and they should consult those charts when allocuting defendants during a guilty plea. Furthermore, courts should inquire whether defendants have had enough opportunity to consult with their attorney about the possible immigration ramifications. This question will also force defense lawyers to actually discuss this topic with their clients.

Second, courts should advise defendants that their plea of guilty will probably result in their eviction from public housing, and their inability to apply for housing assistance for a certain period of time. Again, judges can consult reference charts in order to determine whether housing eviction is a possibility. In this area, too, judges should ask whether defendants have discussed these issues with their lawyers and whether they have had enough opportunity to do so.

While these two areas – deportation and eviction – cover only a small range of the possible consequences people face after conviction, they are the two most significant ones, affecting liberty and shelter. Courts cannot be expected to go through the litany of potential ramifications – indeed a long laundry list would probably dilute the effect of the warnings – but even a thorough admonition about immigration and housing consequences would have considerable effect. All this depends, of course, on courts' willingness to give defendants time and room to react to the courts' warnings, and to discuss the matter further with their lawyers.

The problem is that absent legislative action, courts currently have no obligation to ensure that defendants are informed about collateral consequences. Even where statutes require a discussion of immigration consequences during the plea allocution, courts face no ramifications if they fail to advise defendants. Pleas are not vacated, convictions are not overturned. Without any type of pressure on trial judges to make defendants' knowledge of collateral consequences their business, little movement will occur.

Real Change

1. Direct Versus Collateral Consequences

Even assuming there is consensus that criminal defendants should be fully knowledgeable about the potential consequences of their guilty pleas, and agreement that the participants of the criminal justice system all must do better to increase awareness of collateral consequences, fundamental change will remain elusive as long as courts continue to uphold the fictitious distinction between direct and collateral consequences. It is hard to see how a person's decision to plead guilty is truly knowing and intelligent when she has not been informed that her plea will cause her, for instance, to be deported from the United States. The distinction between direct and collateral consequences absolves courts of any responsibility to ensure that a defendant's plea of guilty is actually knowing and intelligent. It perpetrates a fiction that in the current legal landscape of virtually automatic consequences stands in the way of true progress toward greater awareness. In contrast, an acknowledgment by courts that the distinction between direct and collateral consequences must be abandoned would result in dramatic change and lead to a system where all defendants make truly knowing decisions about whether to plead guilty.

There are two reasons for this. Due process requires courts to advise pleading defendants of their rights and to ensure that their plea is knowing and voluntary. If collateral consequences, particularly such fundamental ones as deportation and eviction, are treated as direct consequences, courts will have no choice but first to educate themselves on the existence and ramifications of such matters, and second to actually make sure pleading defendants are aware of the true consequences of their conviction. An omission of such a crucial component of the plea allocution could permit vacature of the plea or reversal on appeal. The effect would be dramatic. Not only would courts be extraordinarily careful in the plea inquiries so as to avoid reversal, prosecutors would be forced to pay attention and familiarize themselves with this area because they, too, would want to avoid reversal of the conviction. Indeed, while some prosecutors might increase their awareness of collateral consequences for the reasons discussed above, only the risk of losing a conviction would spur others to make collateral consequences an issue worth their time.

The second reason why an elimination of the distinction between direct and collateral consequences would have a fundamental impact on awareness is because it would render the failure of attorneys to properly advise their clients on this issue ineffective assistance of counsel. Currently, in New York, like in many jurisdictions, counsel's lack of advice to a client on potential collateral consequences, such as deportation, is not ineffective.⁸ While an affirmative misrepresentation about deportation does fall below an objective standard of reasonableness under the *Strickland* test,⁹ it is acceptable to neglect to discuss the possible (or automatic) immigration consequences of a guilty plea. Following the principles applicable to courts accepting guilty pleas, courts assessing the question of ineffective assistance of counsel have uniformly held that as long as counsel informed her client of the "direct" consequences of her plea, the failure to advise about "collateral" consequences was not ineffective.

If courts were to broaden their definition of direct consequences to include immigration and housing ramifications, or were to eliminate the distinction altogether, defense counsel would also be held to a higher standard. To avoid the stigma of ineffective assistance of counsel, lawyers would feel compelled to increase their knowledge of collateral consequences. Moreover, they would have little choice but to devote time and effort to working through these issues with their clients, leading inevitably to more knowledgeable clients and informed choices.

One way to bring about fundamental change is through legislative action. Another approach is to reexamine the judicial definition of “direct” consequences. In New York, for example, the Court of Appeals defined deportation as a collateral consequence “because it is a result peculiar to the individual’s personal circumstances and one not within the control of the court system.”¹⁰ At the same time, the court identified a direct consequence as “one which has a definite, immediate and largely automatic effect on defendant’s punishment.”¹¹ Because of the 1996 amendments to the Immigration and Nationality Act, deportation is now a virtual certainty for an alien convicted of an aggravated felony. Given the changes in the legal landscape, deportation has become a “largely automatic effect” of the defendant’s conviction for a number of specified crimes. Even under the Court of Appeal’s definition, a strong argument could be made that deportation at least, and perhaps also eviction, should be considered to be direct consequences.¹²

In 2003, the American Bar Association adopted new standards on collateral consequences entitled *Criminal Justice Standards on Collateral Sanctions and Discretionary Disqualifications of Convicted Persons*. These standards encourage courts to treat “collateral sanctions,” which they define as automatic consequences arising from convictions, as ones that judges would be required to discuss with pleading defendants during the allocution: “Before accepting a guilty plea or imposing a sentence, sentencing judges would be required to ensure that the defendant had been informed of the full range of mandatory consequences of the conviction.”¹³ The commentary to the standards notes that to the extent that deportation is automatic after certain convictions, deportation must be regarded as a “collateral sanction.” Presumably, the same argument could be made for mandatory eviction or denial of housing benefits.

The standards promulgated by the ABA represent a good first step, but for real progress in this area to be made, courts must go further. For one, under the standards, a court’s failure to advise a defendant of the mandatory consequences does not permit the plea to be vacated. Moreover, the standards’ new distinction between “collateral sanctions” and “discretionary disqualifications” appears to re-create the same problem experienced by the direct versus collateral distinction. Many of the most severe consequences, including immigration, housing, and employment decisions that retain an element of discretion by another agency, however slight, are taken out of the rubric of collateral sanctions and require no court action. Nonetheless, the very existence of the ABA’s new standards reflects the legal system’s recent progress in recognizing the fundamental issues involved and hopefully represents only the beginning in this quest.

2. *Ineffective Assistance of Counsel*

Even if courts maintain their current approach to collateral consequences, ineffective assistance of counsel jurisprudence should be untangled from courts' analyses of their own duties toward defendants in guilty pleas. Even if a court has satisfied its obligation to a defendant during a guilty plea it does not necessarily follow that the defendant's lawyer has rendered effective assistance of counsel. *Strickland v. Washington*¹⁴ set forth the standard for evaluating effectiveness under the Sixth Amendment by establishing a two-prong test. For the first prong to be met, counsel's conduct must fall below an objective standard of reasonableness, while the second prong requires a showing of prejudice. With respect to the first prong, the Supreme Court has declined to state specifically what does or does not constitute ineffectiveness. However, it has identified "prevailing norms of practice" as a guide and has noted that these norms are "reflected in American Bar Association standards and the like."¹⁵ The ABA's Standards for Criminal Justice establish the following norm: "To the extent possible, defense counsel should determine and advise the defendant, sufficiently in advance of the entry of any plea, as to the collateral consequences that might ensue from entry of the contemplated plea."¹⁶ The ABA Model Rules of Professional Conduct also suggest that effective or competent representation requires attorneys to thoroughly investigate and advise their clients to allow for informed decision-making.¹⁷ The Supreme Court itself observed in a footnote in *INS v. St. Cyr*, that "competent" counsel would advise clients about potential immigration consequences of their pleas.¹⁸ While that reference was not intended to set standards for effectiveness, observers note that it is a "tacit nod" to the ABA Model Rules of Professional Conduct.¹⁹

Even under existing standards of objective reasonableness, courts could therefore conclude that the failure to inform a client of the consequences of the plea represents ineffective assistance of counsel. This notion has already been adopted in California, where, again in the immigration context, courts have imposed upon defense counsel the obligation to investigate how the client's immigration status will be impacted by the entry of a plea of guilty. Failure to do so is unreasonable, satisfying the first prong of the *Strickland* test.²⁰

Conclusion

Increasing awareness of collateral consequences is a goal easily supported but difficult to achieve. This paper has suggested some ways for the participants in the criminal justice system to build knowledge in this area. But ultimately such efforts will remain modest absent a more fundamental change in the way "collateral" consequences are treated by the courts and the legislature. An acknowledgment by courts that collateral consequences of convictions are actual consequences will be the engine that drives education and awareness for all the other players in the criminal justice system. Plea allocutions will be more thorough and searching. Lawyers will have no choice but to become more knowledgeable because their failure to advise clients about mandatory consequences will lead to ineffective assistance claims actually recognized by courts. Prosecutors will be forced to acknowledge that they, too, have a stake in making sure defendants are properly advised, so as to eliminate the possibility of losing convictions to appellate

reversals. Finally, law schools will see that knowledge of collateral consequences and their impact is a crucial component of the skill set students need to acquire as they prepare to become members of the criminal justice community.

It is worth observing that these changes would not cause wholesale chaos in the criminal justice system. The vast majority of pleas would continue to occur as they have before because the assessment about whether to risk a conviction after trial would remain the single most significant determining factor in the decision about whether to plead guilty. This proposal would not lead to vast numbers of ineffective assistance of counsel claims or reversals of convictions because attorneys would quickly adapt to the new requirements and would adequately advise their clients. Moreover, the prejudice prong of *Strickland* would serve as a gatekeeper for frivolous claims.

What the proposal might accomplish, however, is the possibility of a fairer system, a system where the notion of a “knowing and intelligent” waiver of the right to trial is taken seriously, where decisions by defendants that can have enormous impacts on their lives are, at least, informed and educated. That should not be such an unreasonable aspiration.

Endnotes

1. *Lok v. INS*, 548 F.2d 37, 39 (2d Cir. 1977).
2. *See Boria v. Keane*, 90 F.3d 36 (2d Cir. 1996).
3. Gabriel Chin and Richard Holmes, Jr., *Effective Assistance of Counsel, and the Consequences of Guilty Pleas*, 87 CORNELL L. REV. 697, n. 202 (2002), citing Robert M.A. Johnson, *Collateral Consequences, Prosecutor* (Nat’l Dist. Attorneys Ass’n, Alexandria, Va.) May/June 2001 at 5.
4. *Id.* at 720.
5. Anthony C. Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry*, 45 B.C. L. REV. 255, 299 (2004).
6. *Brady v. United States*, 397 U.S. 742, 748 (1970).
7. *See e.g.* New York Criminal Procedure Law 220.50(7) (McKinney 2004).
8. *See People v. Ford*, 86 N.Y.2d 397, 404 (1995).
9. *See People v. McDonald*, 1 N.Y.3d 109, 115 (2003).
10. *People v. Ford*, 86 N.Y.2d at 403.

11. *Id.*
12. The Second Circuit addressed but did not decide this very argument in *United States v. Couto*, 311 F.3d 179, 188 (2d Cir. 2002).
13. Margaret Colgate Love & Gabriel J. Chin, *Old Wine in a New Skin: The ABA Standards on Collateral Sanctions and Discretionary Disqualifications of Convicted Persons*, 16 FED. SENT. R. 232 (2004).
14. 466 U.S. 668 (1984).
15. *Id.* at 688.
16. ABA Standards for Criminal Justice 14-3.2(f) (1997).
17. Model Rules of Prof'l Conduct R. 1.1 (2004).
18. 533 U.S. 289, 323 n. 50 (2000).
19. John J. Francis, *Failure to Advise Non-Citizens of Immigration Consequences of Criminal Convictions: Should This Be Grounds to Withdraw a Guilty Plea?*, 36 U. MICH. J. L. REF. 691, 723 (2003).
20. *See People v. Soriano*, 240 Cal. Rptr. 328 (Cal. App. 1987).