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## The Hidden Impact of a Criminal Conviction: A Brief Overview of Collateral Consequences in Alaska

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*"It is not, as a rule, the good people who commit crime."* — Justice David J. Brewer, *Hawker v. New York*, 170 U.S. 189 (1898).

*"Still, the prisoner is a person; still, he or she is part of the family of humankind."* — Justice Anthony M. Kennedy, Speech to the ABA (August 2003)

The quotations above encapsulate the historic tension in our justice system between condemnation for an offender and reintegration. With the expansion of the war on drugs and the war on terror, reintegration has increasingly taken a backseat to other concerns. The recent case of a former University of Alaska Anchorage student denied admission to the School of Social Work highlights the difficulties faced by former offenders seeking reentry into mainstream society. M.P. enrolled at the University after serving 20 years for a murder he committed as a teenager. Although he was successful in his foundational courses and, for a time, served as president of the school's Social Work Club, the School of Social Work twice

denied him admission into the social work degree program. A superior court decision held that the University was within its rights in denying his application (3AN-05-0937CI).

The story of the case received extensive coverage in the media, but omitted from most reports was any discussion of Alaska's regulatory framework controlling the licensure of social workers. Those statutes and regulations provide that a felony or misdemeanor conviction is grounds for the state to deny an otherwise qualified applicant a license to practice social work. This licensing scheme, and its indirect impact on M.P., is a classic example of the phenomenon often labeled *collateral consequences*. The term refers to the myriad, often unforeseen, ways in which state and federal laws disadvantage those with criminal convictions as they seek to engage in the ordinary activities of American life. In Alaska, these laws run the gamut from impairing the right to vote to limiting access to food stamps to barring an individual from working as a fisheries observer. At the federal level, these laws may impair access to public housing, render students ineligible for financial aid, bar individuals from various forms of federal employment, and, for noncitizens, trigger deportation proceedings. (The term *collateral consequences* is used here to refer generally to the effect of any measure that might increase the negative consequences of a criminal conviction. Note, however, that in proceedings for post-conviction relief the term carries a specific meaning. In Alaska courts, a collateral consequence is one that originates outside of the trial court. Thus, a consequence that will flow inevitably from a conviction may be deemed collateral, provided it does not originate in the original trial court proceeding, to the same extent as those consequences that are mere possibilities. Sex offender registration, for example, is deemed a civil regulatory matter collateral to the imposition of an offender's sentence.)

At both the state and federal level, the collateral consequences of a criminal conviction fall roughly into three categories. The first is impaired access to, or enjoyment of, the ordinary rights and benefits associated with citizenship or residency, such as voting or driving. The second is impaired economic opportunity, primarily through reduction of the range of available employment. The third is increased severity of sanctions in any subsequent criminal proceeding brought against the offender.

These indirect but significant consequences of a felony or misdemeanor conviction are receiving increasing attention from policy makers, ethicists, and the bar. Setting aside issues of constitutional or statutory rights, the growing web of civil disabilities triggered by a criminal conviction raises fundamental questions about what makes sense as a matter of public policy. The questions encompass both economic considerations and our values as a democratic people.

### Policy Considerations: Criminal Administration, Economics, and Public Safety

Alaska's Constitution spells out the policies underlying administration of our criminal justice system. They are: "the need for protecting the public, community condemnation of the offender, the rights of victims of crimes, restitution from the offender, and the principle of reformation" (Alaska Const. art. I, § 12). Of these, the need for protecting the public, community condemnation, and reformation or rehabilitation figure most significantly in the collateral consequences debate. There is, of course, an inherent tension between the community's interest in public safety and the criminal defendant's interest in full restoration of civic rights. Legislators and regulatory agencies seeking to adjust

### HIGHLIGHTS INSIDE THIS ISSUE

- An examination of recidivism among graduates of felony-level therapeutic courts programs (page 2).
- A look at disproportionate minority contact with the juvenile justice system in the Fairbanks North Star Borough (page 3).
- Results from a community survey of residents of the Matanuska-Susitna Borough (page 5).

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## Therapeutic Courts and Recidivism

An Alaska Judicial Council evaluation of the three felony-level therapeutic courts has revealed that graduates of the programs have been rearrested and re-convicted far less frequently than comparison offenders who did not participate in the programs. Moreover, the longer the participants remained in the programs, the less likely they were to recidivate, even if they did not graduate.

The evaluation followed 117 offenders who participated in one of the three programs—the felony alcohol problem courts in Anchorage and Bethel or the felony drug court in Anchorage—and compared results with those for 97 offenders who did not participate. The evaluation tracked offenders for one year after they completed or left their programs and followed offenders in the comparison group for one year after they had completed their sentences. Most of the offenders had originally been convicted of a Class C felony at the time of their admission to the therapeutic court programs; a few had been convicted of a Class B felony, and a few in the Bethel program had only a serious misdemeanor conviction. All program participants showed evidence of serious drug or alcohol problems.

The findings of the study included the following:

- The longer the participants stayed in the program, the less likely they were to recidivate even if they did not graduate.
- Fifty-four percent of the participants in these projects graduated.
- Thirteen percent of graduates were re-arrested within one year after completing a therapeutic court program compared to a 32 percent re-arrest rate for matched comparison offenders.
- Participants who were discharged from the programs or who left voluntarily had about the same rate of re-arrests as offenders charged with felonies in 1999.
- Older participants were less likely to be re-arrested than younger participants.
- Participants in the Anchorage Felony DUI Court were less likely to be re-arrested than those in the Anchorage Felony Drug Court and the Bethel Therapeutic Court.
- No participants in the programs who were re-convicted within the first year were convicted of an offense at a more serious level than the one on which they entered the therapeutic courts. None were

convicted of a drug or sexual offense. In contrast, 3 percent of the comparison offenders were convicted of offenses at a more serious level. In the Council's companion report on recidivism among 1999 offenders, about 15 percent of most types of offenders were convicted of offenses at a more serious level.

- Native participants responded as well to the therapeutic court programs as did Caucasian participants. Blacks and other ethnicities did not do as well as Caucasian participants.

The Council recommended that the state should develop further information about the costs and benefits of therapeutic court programs; should explore the reasons for the relative success of Native participants in the programs; and should determine why ethnic groups other than Natives and Caucasians did not do as well in the programs.

*The information presented in the previous article is taken from **Recidivism in Alaska's Felony Therapeutic Courts**, Alaska Judicial Council, February 2007, <http://www.ajc.state.ak.us/>.*

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## Disproportionate Minority Contact in the Fairbanks North Star Borough

André B. Rosay and  
G. Matthew Snodgrass

The gateway to the juvenile justice system is at arrest and referral. Disparities with regard to race or ethnicity that begin at this point are likely to continue through the entire juvenile justice process, so it is important to understand disproportionate minority contact at this initial stage of the process.

In simple terms, disproportionate minority contact occurs when the rate of referral for minority youth exceeds the rate of referral for white youth. As an example, minority contact would be disproportionate if the rate of referral for minority youth was 100 referrals per 1,000 minority youth in the population while the rate of referral for white youth was only 50 referrals per 1,000 white youth in the population. Using this example, we could compare the two rates (100 per 1,000 versus 50 per 1,000) to conclude that the rate of referral for minority youth is twice the rate of referral for white youth (i.e., 100/50 = 2). This statistic or index is called a relative rate index, or an RRI. It depicts the rate of referral for minority youth relative to the rate of referral for white youth. An RRI of 2 indicates that the rate of referral for minority youth is twice the rate of referral for white youth.

Previous studies by the Justice Center and

the Division of Juvenile Justice clearly show that the rates of referral for minority youth in Alaska significantly exceed the rates of referral for white youth. The 2002 reauthorization of the federal Juvenile Justice and Delinquency Prevention Act requires participating states, including Alaska, to address delinquency prevention and system improvement efforts in order to reduce this disparity. In order to do so effectively, it is important to conduct thorough assessment studies that more clearly identify for whom minority contact is most disproportionate. The Justice Center recently completed a new assessment study for youth referred to the Fairbanks office of the Division of Juvenile Justice. This short article summarizes the key results from this new study.

To conduct our analysis, we examined all youth referred to the Fairbanks office of the Division of Juvenile Justice during fiscal years 2005 and 2006 (i.e., from July 1, 2004 to June 30, 2006). During these two fiscal years, the Fairbanks office of the Division of Juvenile Justice received a total of 1,363 referrals. From these referrals, we selected youth with a known and valid address, youth of a known race, and youth who resided inside the Fairbanks North Star Borough. This created a sample of 1,049 referrals (i.e., 77% of all referrals). For each referral, we noted the youth's race, gender,

home census tract, and referral type (person crimes, property crimes, other crimes, and probation/conduct violations). This sample of 1,049 referrals included 657 individual juveniles. Of these 657, most (70%) were only referred once. The others (referred multiple times) accounted for 591 (56%) of the 1,049 referrals.

In Table 1, we examine these referrals by race, gender, and referral type. White and Native youth consistently accounted for the majority of referrals to DJJ. When considered together, white and Native youth accounted for 79 percent of referrals for person crimes, 85 percent of referrals for property crimes, 85 percent of referrals for other crimes, and 86 percent of referrals for probation or conduct violations (results not shown). For males, white youth outnumbered Native youth in referrals for person crimes, property crimes, and other crimes while Native youth outnumbered white youth in referrals for probation or conduct violations. For females, white youth outnumbered Native youth in all referral types.

We then examined rates of referrals by comparing these statistics on the volume of referrals to DJJ to the population of youth-at-risk (defined as youth between the ages of 10 to 17). Rates were calculated by race, gender, and referral type. These rates of referral (per 1,000 youth) are presented in Table 2. Within this table, we also compare the minority rates of referral to the white rates of referral, using the RRI statistic previously described. Again, RRIs above one indicate how much greater the minority rate is relative to the white rate, while RRIs below one indicate how much lower the minority rate is relative to the white rate.

Although white youth had the highest number of referrals, as shown in Table 1, the highest rates of referral were for Native youth. This was true for all types of referrals and for both Native males and Native females. Significant differences in the rates of referrals across racial groups are shown in bold. Results indicate that Native males were 5.62 times more likely to be referred for person crimes than white males, 4.88 times more likely to be referred for property crimes, 3.91 times more likely to be referred for other crimes, and 12.69 times more likely to be referred for probation and conduct violations. Native females were also referred to DJJ at significantly higher

**Table 1. Number of Referred Youth by Race, Gender, and Referral Type**

Race by gender		Column percentages							
		Person crime		Property crime		Other crime		Probation	
		N	%	N	%	N	%	N	%
<b>Male</b>									
White	77	49.4 %	197	55.3 %	140	58.6 %	50	36.5 %	
Black	25	16.0	41	11.5	25	10.5	18	13.1	
Native	45	28.8	100	28.1	57	23.8	66	48.2	
Asian	0	0.0	1	0.3	1	0.4	0	0.0	
Pacific	0	0.0	1	0.3	1	0.4	0	0.0	
Other minority	4	2.6	0	0.0	6	2.5	0	0.0	
Multiracial	5	3.2	16	4.5	9	3.8	3	2.2	
<b>Total</b>	<b>156</b>		<b>356</b>		<b>239</b>		<b>137</b>		
<b>Female</b>									
White	40	48.2 %	69	59.0 %	40	54.1 %	18	47.4 %	
Black	7	8.4	8	6.8	3	4.1	2	5.3	
Native	27	32.5	35	29.9	30	40.5	16	42.1	
Asian	0	0.0	1	0.9	0	0.0	0	0.0	
Pacific	0	0.0	0	0.0	0	0.0	0	0.0	
Other minority	3	3.6	1	0.9	0	0.0	0	0.0	
Multiracial	6	7.2	3	2.6	1	1.4	2	5.3	
<b>Total</b>	<b>83</b>		<b>117</b>		<b>74</b>		<b>38</b>		

Source of data: Alaska Division of Juvenile Justice (FY05/06)

Please see *Minority contact*, page 4

## Minority contact (continued from page 3)

rates than white females, for all types of offenses. More specifically, Native females were 5.21 times more likely to be referred for person crimes than white females, 3.91 times more likely to be referred for property crimes, 5.79 times more likely to be referred for other crimes, and 6.86 times more likely to be referred for probation and conduct violations. For all types of referrals, and for both males and females, Native youth were referred at significantly higher rates than white youth. Black males were also referred at significantly higher rates than white males for person crimes (RRI = 4.25), property crimes (RRI = 2.73), other crimes (RRI = 2.34), and probation or conduct violations (RRI = 4.71). By comparison, black females were not referred to DJJ at significantly higher rates than white females. Overall, disproportionate minority contact in referrals to DJJ occurred primarily for Native males, Native females, and black males. In addition, disproportionate minority contact was slightly greater for probation and conduct violations than for person, property, or other crimes.

Finally, we examined whether the disproportionality noted for Native males, Native females, and black males was geographically concentrated in specific census tracts within the Fairbanks North Star Borough. Understanding the geographical distribution of disproportionate minority contact can be helpful in identifying possible causes and developing solutions. Overall, Native males had a higher risk of referral than white males in every census tract. Native females also were disproportionately referred to DJJ from all census tracts except one. Black youth were referred at a higher rate than white youth in 17 of 18 tracts. (One tract was excluded from analysis because no black youths resided there.) In some tracts, black

**Table 2. Rates of Referral per 1,000 Youth and Relative Rate Indices by Race, Gender, and Referral Type**

Race by gender	Person crime		Property crime		Other crime		Probation	
	Rate	RRI	Rate	RRI	Rate	RRI	Rate	RRI
<b>Male</b>								
White	1.8	—	4.5	—	3.2	—	1.2	—
Black	7.6	<b>4.25</b>	12.4	<b>2.73</b>	7.6	<b>2.34</b>	5.4	<b>4.71</b>
Native	10.0	<b>5.62</b>	22.2	<b>4.88</b>	12.6	<b>3.91</b>	14.6	<b>12.69</b>
Asian	0.0	0.00	1.1	0.23	1.1	0.33	0.0	0.00
Pacific	0.0	0.00	5.6	1.22	5.6	1.72	0.0	0.00
Other minority	4.4	2.50	0.0	<b>0.00</b>	6.7	2.06	0.0	0.00
Multiracial	1.0	0.59	3.3	0.73	1.9	0.58	0.6	0.54
<b>Female</b>								
White	1.0	—	1.8	—	1.0	—	0.5	—
Black	2.1	2.02	2.4	1.34	0.9	0.87	0.6	1.28
Native	5.4	<b>5.21</b>	6.9	<b>3.91</b>	6.0	<b>5.79</b>	3.2	<b>6.86</b>
Asian	0.0	0.00	1.1	0.59	0.0	0.00	0.0	0.00
Pacific	0.0	0.00	0.0	0.00	0.0	0.00	0.0	0.00
Other minority	3.4	<b>3.31</b>	1.1	0.64	0.0	0.00	0.0	0.00
Multiracial	1.3	1.27	0.7	0.37	0.2	0.21	0.4	0.94

**Source of data:** Alaska Division of Juvenile Justice (FY05/06) and 2000 U.S. Census (SF1)

and Native males were referred at rates six times greater than those for white males. Maps illustrating the findings by census tract are available at <http://justice.uaa.alaska.edu/forum/24/3fall2007/cmmaps.html>.

To conclude, minority overrepresentation in referrals to the Fairbanks office of the Division of Juvenile Justice clearly exists. In particular, Native males, Native females, and black males were referred to DJJ at significantly higher rates than their white counterparts. This was true for all types of referrals (property, person, other, and probation). Disproportionate minority contact was more prevalent for Native youth than for black youth and was slightly more prevalent in referrals for probation and conduct violations than in referrals for person crimes, property crimes, or other crimes. Although these analyses do not explain why disproportionate minority contact occurred, they do provide insights on the scope of the problem. By gaining a more detailed

understanding of disproportionate minority contact, we become much better prepared to identify its causes and to develop promising evidence-based solutions.

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## Related Materials on Disproportionate Minority Contact in Alaska

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## Mat-Su Community Survey

Shel Llee Evans

To better understand the perspectives, neighborhoods, and service use patterns of the community, the Matanuska-Susitna Borough and the University of Alaska Anchorage Justice Center have been conducting community surveys in the Borough for the last two years. This partnership has assembled some of the first data available on Borough residents' attitudes toward their community and Borough government. By revisiting communities we can construct a robust picture of each community's characteristics and their effects on public governance, safety, and quality of life. Such a longitudinal approach helps to identify and measure community change in a way that allows us to evaluate the efficacy of programs or the need for new solutions. The data from this survey are being used by Borough government to prioritize projects, improve services, and better plan for community growth. The Justice Center has been using the data to advance community research and to begin mapping patterns in the Borough's community council areas and also to grasp difference between the Mat-Su and Anchorage, where the Center has conducted similar surveys.

The 2007 questionnaire was distributed to 2,478 residents of the Mat-Su Borough. The results presented here draw on the 1,388 questionnaires returned during the data collection period, a response rate of approximately 56 percent. Table 1 presents the demographics for respondents. Items in the questionnaire asked respondents to evaluate the quality of Borough services, to provide opinions about Borough decision-making, and to consider their experience of community within their neighborhoods.

Though Anchorage and the Mat-Su Borough are right next to one another, they are very different. Anchorage has a population more than three-and-a-half times the size of the Mat-Su's 77,174 people, but the geographical spread of the Mat-Su—24,502 square miles—dwarfs Anchorage, which covers 1,956 square miles. More than half of the Borough's residents live in the incorporated cities of Wasilla, Palmer, and Houston, leaving much of the land in the Borough sparsely inhabited or undeveloped. In the context of this study, residents of these three incorporated cities are labeled as living in urban environs while those outside of incorporated cities are considered rural.

With 44 percent of the workforce employed outside of the Borough, Mat-Su residents do considerably more commuting than their Anchorage counterparts. The Alaska

Department of Labor estimates that at least 33 percent of Mat-Su residents commute to Anchorage for work, while less than one percent of Anchorage residents commute to the Mat-Su. Higher wages in Anchorage complement the lower cost of living in the Mat-Su Borough, providing Mat-Su commuters the best of both worlds, at the cost of a forty or fifty-mile drive for many workers. Still other Mat-Su residents commute even farther to work in construction, mining, oil, and fishing industries.

Within the Borough, survey respondents' perspectives and opinions reflected more similarities than differences. Community council areas around the Mat-Su generally exhibited very similar perspectives on Borough services, neighborhoods, and reactions to taxation. Some differences, however, did emerge by residents' urban/rural location, household income, and levels of formal education. Across the board, those with higher levels of income and education were more likely to express an opinion—whether negative or positive—about items in the questionnaire, while those with lower levels of each more often selected the *no opinion* option. This relationship, like most reported here, was linear, with each progressive level of income or education being more likely than the previous level to voice an opinion.

In general, Mat-Su residents rated the services the Borough provides, such as emergency services, K-12 education, and recreational facilities, as good, although zoning enforcement services and dissemination of news and information by the Borough government were rated below average. People with higher educational attainment and higher incomes were much less likely to have any opinion to report about fire and ambulance services, but when they did voice an opinion, those with higher education expressed lower satisfaction with those services. Residents with higher incomes and education levels were more satisfied with plowing services received during the snowy winter months. Those with more education reported more dissatisfaction with both the zoning enforcement and the recycling services available than did other groups.

More than 80 percent of respondents stated they use the Borough's libraries and recreational areas, with the Wasilla swimming pool and the Mat-Su's nature trails the most popular recreational areas. Libraries in Wasilla, Palmer, and Big Lake showed the highest use. High school graduates were the least likely to use either the libraries or the recreational facilities, while middle-income residents were more likely to use recreational areas than high or low-income residents. MASCOT, the Borough's bus service, was used by only seven percent of Borough respondents; those who did use it were more likely to have lower incomes and to live in urban areas where bus service is more extensive.

In addition to asking residents about their experiences with government services, the Mat-Su Borough government sought feedback about the interactions residents have with Borough staff, perspectives on appropriate use of tax dollars, and preferences for the means of taxation in the future. Nearly half of all respondents stated that they were satisfied with their opportunities to provide input on Borough decisions, but urban residents were more positive about

Please see *Mat-Su survey*, page 6

**Table 1. Mat-Su Community Survey 2007:  
Selected Demographic Characteristics\***

	N	%
<b>Sex</b>		
Female	716	52.0 %
Male	624	45.3
<b>Urban/rural</b>		
Urban	252	19.5 %
Rural	1,041	80.5
<b>Income (Average: \$50,000-\$74,999)</b>		
Less than \$20,000	98	7.1 %
\$20,000 - \$34,999	126	9.2
\$35,000 - \$49,999	146	10.6
\$50,000 - \$74,999	288	20.9
\$75,000 - \$99,999	231	16.8
\$100,000 or more	267	19.4
<b>Education (Average: Some college, no degree)</b>		
Less than a high school diploma	63	4.6 %
H.S. diploma or GED	283	20.6
Some college, no degree	416	30.2
AA or other two-year degree	167	12.1
Bachelor's degree	222	16.1
Graduate degree	122	8.9

\* 1377 respondents provided demographic information. Not all respondents answered in all categories so percentages do not add to 100.

## Mat-Su survey

(continued from page 5)

these opportunities than were rural residents, who may find it difficult to attend council meetings in the urban core. Most respondents had no opinion about the ease of using the Borough's official website or the utility of its content. Most agreed that when they phoned the Borough, they received the information they needed in a timely manner from polite, professional staff. The higher the educational level, the more satisfied residents were with the information on the website and the timely, thorough manner in which staff responded to their inquiries.

While those with higher educational attainment were more satisfied, more than half of the respondents did not believe that they were getting their money's worth for their tax dollars. Nearly 60 percent of respondents believed that current road maintenance is not as good as it should be, given the taxes they pay, but those with higher incomes, greater education, and an urban location evaluated road maintenance more positively, concluding that the roads are a good return on their tax dollars. Most taxation possibilities received little support from Mat-Su residents, but those with more education were more likely to support virtually every suggested tax than were other residents. Strongest reactions came against imposition of a local gasoline tax (88% opposed) and increased property tax (87%).

Most respondents stated that the Borough government needs to improve growth management, with some noting that growth

has been too rapid and unplanned and others complaining that it has been too slow and hampered by government intervention. Whether they envision a more urban modern borough or a more traditional rural one, most respondents reported being generally happy with their neighborhoods and their feeling of community with neighbors. The single most commonly encountered undirected comment was that the Mat-Su as a whole is a great place to live. Respondents rated their neighborhoods highly, stating that their neighbors were trustworthy, get along, and were willing to help one another, but only 44 percent were willing to call their neighborhood close-knit. Rural residents rated their neighborhoods more positively than urban residents, with more saying that they would miss their neighborhood if they were forced to move. Rural residents also visited more often with neighbors, knew more of their neighbors, and had more friends and relatives in their neighborhoods than urban residents, although most residents reported substantial neighborhood interactions.

The majority of respondents viewed their neighbors as willing to intervene in cases of juvenile delinquency (although truancy seemed less likely to produce that intervention than other forms of delinquency). If their local fire station were threatened, a majority believed neighbors would intervene. Rural and higher income residents stated that their neighbors would be particularly likely to intervene if a fight broke out in front of their homes. Higher income respondents were also significantly more likely to believe their neighbors would rally to oppose

closure of a local fire station.

Manifestations of physical disorder—conditions of buildings, cars, lots, etc.—seemed to be fairly common in respondents' neighborhoods, with poor lighting and empty lots the most frequently reported. Manifestations of social neighborhood disorder, however—such as public drinking/drug use, prostitution, graffiti, etc.—were quite uncommon, reported by between only one percent and 17 percent of respondents.

In general, respondents reported very low crime in their neighborhoods, but lower-income residents experienced more crime than higher-income residents. Fewer than seven percent of respondents reported being victimized in their neighborhoods. Across the board, respondents reported little or no fear of crime in their neighborhoods, and fear of crime rarely—if ever—prevented their normal activities in the neighborhood. Seventy-two percent of respondents reported taking some kind of precaution against crime in their home.

Continued regular surveys of the area will provide a usable longitudinal picture of the Mat-Su, allowing for trend analysis in Alaska's fastest growing borough. Borough governments can use this measurement tool to gauge public sentiment and desires for future improvements.

*Shel Llee Evans is a research associate with the Justice Center. Results from the survey discussed in this article, "The Matanuska-Susitna Borough Community Survey, 2007," are available on the Justice Center website as part of the Community Indicators Project at <http://alaskaindicators.org/>.*

## Consequences

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this tension must evaluate those measures that truly advance public safety, those that are merely punitive or reflect "community condemnation," and those that, despite the legitimacy of the foregoing policies, unduly impede the defendant's reformation.

Although an offender's constitutional right to rehabilitation does not extend beyond release from custody, Alaska law recognizes a *public* interest in rehabilitation. From a policy standpoint, the appropriate question is, "What opportunities should be available to the released offender that will advance the interests of the community as a whole?" Certainly, the community's interests are advanced when former offenders are reintegrated as working, tax-paying members of society, with adequate resources to provide for themselves and their families. (It should be noted, in this regard, that a

majority of those incarcerated in the nation's prisons are parents of children under the age of 18.) A released offender's inability to find work often further impoverishes his or her family and places a concomitant burden on the social welfare system.

In addition to boosting the tax rolls and decreasing the welfare burden, providing released offenders with adequate opportunity for employment also serves the interest of public safety. Studies show a statistical relationship between lack of employment and increased risk of recidivism. There is an economic aspect to this as well: Increased recidivism translates into increased public expense associated with court administration, prosecutors, public defenders, incarceration, probation, and parole.

For all of these reasons, unduly restricting an offender's access to employment is antithetical to the public interest. This is not to suggest that restrictions on post-offender employment are never warranted.

Few would argue, for example, that there is no legitimate public safety interest in keeping serial DUI offenders from getting behind the wheel of school buses, but any regulatory measure that excludes an offender from a given form of employment should be carefully calibrated to ensure there is a reasonable relationship between the requirements of the job, public safety, and the scope of the exclusion. While some Alaska statutes already meet this standard, others do not.

### Policy Considerations:

#### Ethics and Fundamental Fairness

Fundamental fairness is a recurring theme in our constitutional doctrines. It encompasses both notice and proportionality. The tangled web of collateral consequences presently existing under state and federal law raises troubling questions on both fronts.

## Notice

Plea bargaining is indispensable to the machinery of justice in the United States,

where approximately 90 percent of criminal cases are resolved without trial. Its legitimacy in our system is premised on the defendant's informed choice regarding his

fate. Thus, under Alaska's criminal rules, a court may not accept a plea of guilty or

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**Table 1. General Civil Disabilities**

This table collects various provisions of Alaska law that automatically affect or have the potential to affect adversely an offender's ability to enjoy the ordinary benefits of citizenship or residency. It includes both those adverse consequences triggered by any conviction, and those associated only with particular crimes. This list is merely representative of the range of consequences that may accompany a criminal conviction. A more complete list may be found at <http://justice.uaa.alaska.edu/workingpapers/>. The laws listed are summarized in general terms, but the list is not intended to serve as a complete description of the measures' legal effect or scope. Readers are cautioned to review the entire text of any authority on which they intend to rely. In addition, please note that the laws listed were current as of October 2007. Changes published since that time will not be reflected here.

<b>Voting</b>	Conviction of a felony involving moral turpitude under either state or federal law will suspend voting rights in federal, state and municipal elections until the date of unconditional discharge.	Alaska Const. art. 5, Sect. 2; AS 15.05.030(a); AS 33.30.241(a). See also AS 15.60.010(9) (defining felony of moral turpitude); AS 12.55.185 (defining unconditional discharge); AS 15.07.135 (cancellation of registration of convicted persons).
<b>Jury service</b>	A felony conviction will disqualify an individual from serving as a juror until the conviction is unconditionally discharged.	AS 09.20.020(2); 33.30.241(b). See also AS 12.55.185 (defining unconditional discharge).
<b>Permanent Fund eligibility</b>	An individual is not eligible for a dividend if during the qualifying year the individual was sentenced or incarcerated on a felony conviction or was incarcerated on a misdemeanor conviction following a prior felony or two or more prior misdemeanors.	AS 43.23.005(d); AS 43.23.028 (public notice).
<b>Loss of parental rights</b>	Incarceration of a parent may, under some circumstances, be grounds for determination that a child is a child in need of aid. Conviction for sexual assault or sexual abuse of a minor may result in termination of parental rights.	AS 47.10.080 (o); AS 25.23.180(c). See also AS 47.10.011 (conditions that may lead to state intervention include incarceration of parent without adequate arrangement for child, sexual abuse of child, leaving child alone with convicted sex offender and exposing the child to specified offenses against the person by one household member against another).
<b>Ability to adopt a child or serve as guardian</b>	The state's home study will include the results of a criminal background check of all adults living in the home and suitability of the home in light of such history. A home will not ordinarily be approved where a person in the home appears on the Department of Health and Social Services Centralized Registry.	7 AAC 56.660.
<b>Inclusion of record in state central repository of criminal justice information / disclosure to third parties</b>	The state maintains a central repository of criminal history record information. The information is available to third parties under various conditions and subject to varying levels of protection.	AS 12.62.110. See also 13 AAC 68.310 (disclosure to any person); 13 AAC 68.315 (disclosure to interested persons); 13 AAC 68.320 (disclosure pursuant to state or federal law); AS 12.62.900 (definitions).
<b>Sex offenses registration</b>	Persons convicted of sex offenses or child kidnapping are required to register with the Department of Public Safety, which maintains a central registry of sex offenders and child kidnapers; the registry is available to the public over the Internet. The public may view the defendant's photo and his or her home address, employer, and employer's address.	AS 12.63.010; AS 18.65.087. See also AS 12.63.020 (duration of registration requirement, including lifetime requirement for designated offenses); AS 12.63.030 (provision for notification of FBI and for notification of officials in new home state upon notice an offender intends to move from Alaska).
<b>Loss of driving privileges</b>	Conviction of various offenses associated with use of a motor vehicle, including vehicle theft, is grounds for driver's license revocation. Prior convictions will increase the revocation period.	AS 28.15.181. See also AS 28.35.030 (conviction for driving under the influence of alcohol, inhalants or controlled substances will result in license revocation; a subsequent criminal offense during the period of revocation is grounds for refusal of reinstatement.); 2 AAC 90.440 (habitual users of alcohol or drugs).
<b>Eligibility for food stamps and temporary assistance to needy families</b>	Under federal guidelines, individuals convicted of certain felony drug offenses are ineligible for food stamps and temporary assistance to needy families.	See AS 47.05.040; 21 U.S.C. 862a.
<b>Subsequent civil proceedings</b>	Persons who plead guilty or no contest to a felony, or who are tried and found guilty, are later barred from contesting the facts of the essential elements of the crime in a later civil proceeding. The bar may extend to related criminal proceedings.	<i>Douglas v. State</i> , 166 P.3d 61, 85 (Alaska Ct. App 2007) (considering effect of Alaska Evidence Rule 803(22) and general principles of collateral estoppel). See also <i>Wilson v. MacDonald</i> , Op. 6175 (Oct. 19, 2007).

**Table 2. Occupational / Enterprise Disabilities**

A criminal conviction carries with it a significant limitation on the kinds of employment subsequently available to the offender. In Alaska, as in most states, these occupational limitations generally fall into one of three categories: those that require evidence of "good character" as a prerequisite to employment, those that prohibit employment following conviction of a crime of "moral turpitude," and those that prohibit employment following conviction of a crime (including misdemeanors) arising from behavior deemed incompatible with the requirements of a given profession. Some of these regulatory prohibitions are limited to relatively recent offenses; others encompass criminal conduct no matter how dated. Some flow inevitably from the conviction, others are subject to provisions allowing for a variance or exemption.

This table demonstrates the wide range of employment and occupations to which these restrictions attach. It is a partial list only; for a more complete list of the range of employment opportunities potentially affected by a criminal conviction please see <http://justice.uaa.alaska.edu/workingpapers/>. The laws listed are summarized in general terms, but the list is not intended to serve as a complete description of the measures' legal effect or scope. Readers are cautioned to review the entire text of any authority on which they intend to rely. In addition, please note that the laws listed were current as of October 2007. Changes published since that time will not be reflected here.

<b>State employees generally</b>	Application forms require applicants to report misdemeanor convictions within the preceding five years, and felony convictions regardless of date. The conviction may disqualify the applicant; factors include the seriousness and date of the offense and requirements of the position.	2 AAC 07.086; 2 AAC 07.091. See also 2 AAC 07.416 (employee who violates federal or state law may be subject to disciplinary action, including dismissal, if there is a clear nexus between the offense and the employee's duties or the violation impairs the employee's ability to perform; employees must report citations requiring court appearance and arrests or convictions for misdemeanor or felony).
<b>Individuals seeking licensure, certification, approval, employment or eligibility to receive payment from the Department of Health and Social Services</b>	The Department of Health and Social Services has identified a series of "barrier crimes," offenses deemed inconsistent with departmental licensure and certification standards; the barrier to employment may be permanent or for a ten-year, five-year, three-year or one-year period depending on the nature of the offense. A variance may be available.	7 AAC 10.905. See also 7 AAC 10.900 (scope and statement of purpose; barrier extends to employees of providers); 7 AAC 10.925 (monitoring and notification requirements); 7 AAC 10.955 (creating centralized registry); 7 AAC 10.930 (available variances); 7 AAC 10.935 (evaluation of variance requests); 7 AAC 10.990 (definitions).
<b>Social workers</b>	"Good moral character" is a prerequisite for licensing; a felony conviction or conviction of a misdemeanor reflecting on the ability to practice is grounds for disciplinary sanctions.	AS 08.95.110; AS 08.95.050. See also 12 AAC 18.140 (history of felony or misdemeanor convictions may be grounds for denial of license; persons convicted of certain felonies against the person in preceding ten years are ineligible for licensure); 12 AAC 18.100 (application disclosure requirements); 12 AAC 18.990 (definitions).
<b>Bankers, trust companies and financial institutions</b>	Prior conviction will bar employment in a variety of capacities associated with finance. For example, a felony conviction or conviction for crime involving moral turpitude or breach of trust will bar work as director of a trust company unless the Department of Commerce and Economic Development consents in writing.	AS 06.26.510. See also AS 06.05.344 (state bank officers must be of good character); AS 06.05.435 (state bank director may be removed on indictment for felony or other crime involving moral turpitude or breach of trust); AS 06.50.310 (disclosure requirement for deferred deposit advances licensees); AS 06.15.040 (mutual savings bank incorporators must be of good character).
<b>Insurance</b>	An individual who has been convicted of a felony involving dishonesty or breach of trust may not participate in the business of insurance without prior written consent of the director of the Division of Insurance.	AS 21.36.355. See also AS 21.27.410 (revocation or denial of license for conviction of felony); AS 21.09.100 (good character required of management personnel); AS 21.09.150 (officer or director convicted of felony involving fraud, dishonesty or moral turpitude).
<b>Teachers and school personnel</b>	A teacher's certification may be revoked or suspended for crimes involving moral turpitude and noncompliance with school laws; initial certificates may not be issued to persons who have been convicted of a crime or attempted crime involving a minor. Notice of a certificate's suspension or revocation for a crime of moral turpitude is sent to all other states.	AS 14.20.030; AS 14.20.020; 4 AAC 12.425. See also AS 14.20.170 (crime involving moral turpitude or noncompliance with school laws as grounds for dismissal); AS 14.20.175 (nonretention); 4 AAC 12.300(j) (certificate may be denied or renewal refused for crime involving moral turpitude or noncompliance with school laws); 20 AAC 10.035 (defining moral turpitude).
<b>Police, probation, parole and correctional officers / Village Police Officers</b>	Public safety officers must generally be free of recent criminal convictions. Good moral character is considered in the application process.	AS 18.65.240 (standards for police officers). See also 13 AAC 85.010 (person convicted of various crimes, including domestic violence by a civilian court, may not be hired as police officer); 13 AAC 85.210 (standards for probation, parole and correctional officers require good character, absence of domestic violence conviction, absence of conviction for various offenses within preceding ten years.); 13 AAC 85.900 (good character may be deemed to include absence of illegal conduct); 13 AAC 89.010 (standards for village police officers).
<b>Morticians</b>	Conviction of a felony involving moral turpitude is grounds for suspension, revocation or refusal to issue license.	AS 08.42.090(13).
<b>Accountants</b>	License may be suspended or revoked for conviction of a felony or conviction of any crime of dishonesty or fraud.	AS 08.04.450(5),(6). See also 12 AAC 04.520.
<b>Department of Fish and Game Fisheries Onboard Observer</b>	An observer may not have been convicted of a misdemeanor or felony involving fraud or dishonesty, an offense against the person, arson or a fish and game misdemeanor in the seven years preceding application.	5 AAC 39.142.

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*nolo contendere* (no contest) without first determining that the defendant understands the nature of the charge. The court must also inform the defendant of a “maximum possible punishment under the statute defining the offense for which a plea is offered.”

However, because collateral consequences laws are so widespread and so varied, and because they are largely buried in regulatory schemes unrelated to the criminal code under which an individual is prosecuted, they pose a special danger in this area. The absence of a central repository for all of these statutes and regulations makes it entirely possible that with respect to a given proposal, neither

the prosecutor, defense counsel, nor judge—not to mention the defendant—will fully understand all the consequences triggered by a guilty or *nolo* plea. Notwithstanding this fact, in Alaska, as in the vast majority of jurisdictions, there is no obligation under the rules to inform a defendant of all of the

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**Table 3. Effect on Subsequent Prosecution and Sentencing**

The most readily identifiable of the indirect consequences arising from a criminal conviction is the inflation of a subsequent offense. Once an individual stands convicted, that conviction may alter that status of a second offense and will almost certainly increase the severity of any penalties imposed. Even for experienced practitioners, accurate interpreting the impact of an earlier conviction on a subsequent prosecution can be challenging. See, e.g., *Mooney v. State*, 157 P.3d 81, 82 (Alaska Ct. App. 2007) (“during the plea negotiations, both the prosecutor and the defense attorney shared the same mistaken belief” concerning whether prior offenses counted in such a way as to render the defendant a second felony offender or third felony offender).

This table sets out a partial list of statutes and regulations addressing the effect a conviction may have on any subsequent criminal proceeding involving the same offender. A complete list is provided at <http://justice.uaa.alaska.edu/workingpapers/>. The laws listed are summarized in general terms, but the list is not intended to serve as a complete description of the measures' legal effect or scope. Readers are cautioned to review the entire text of any authority on which they intend to rely. In addition, please note that the laws listed were current as of October 2007. Changes published since that time will not be reflected here.

<b>Sentencing factors generally</b>	A defendant's conviction will be a factor in the court's consideration of an appropriate sentence for any subsequent crime.	AS 12.55.005(2); AS 12.55.185 (definitions).
<b>Authorized sentences generally</b>	Should a defendant commit a subsequent crime, imprisonment is more likely to be imposed as a result of the defendant's prior conviction.	AS 12.55.015(b)(1); AS 12.55.185 (definitions). See also Alaska R. Crim. P. 32.1(c), (f).
<b>Sentences of imprisonment for felonies</b>	A conviction will trigger enhanced penalties on a subsequent conviction for various offenses.	AS 12.55.125; AS 12.55.145 (limits, definitions); AS 12.55.185 (definitions).
<b>Aggravating factors</b>	Prior felony or misdemeanor convictions will probably serve as aggravating factors to support a sentence above the presumptive range. This includes juvenile offenses that would have been felonies if committed by an adult.	AS 12.55.155; AS 12.55.185 (definitions).
<b>Suspended imposition of sentence</b>	Certain misdemeanor convictions or a felony conviction may render an individual ineligible for suspended imposition of sentence in a subsequent prosecution.	AS 12.55.085.
<b>Parole release</b>	A conviction may be considered a prior aggravating factor which may support a decision to delay parole beyond Department of Corrections guidelines.	22 AAC 20.142.
<b>Minor treated as adult</b>	Prior adjudication as a delinquent or conviction as an adult of specified crimes may lead to minor being prosecuted, sentenced and incarcerated as an adult. In addition, an offense committed as a juvenile may be considered as an aggravating factor in later prosecutions.	AS 47.12.030; AS 12.55.155(19).
<b>Offenses related to alcohol and controlled substances</b>	Previous conviction for refusal to submit to chemical test triggers enhanced penalties and classification of offence on subsequent conviction; prior conviction for driving under the influence of alcohol, inhalants or controlled substances triggers enhanced penalties on subsequent conviction.	AS 28.35.032; AS 28.35.030.
<b>Forfeiture and seizure of property used in crimes involving alcoholic beverages</b>	Prior conviction for one of specified felonies or status as probationer or parolee will trigger forfeiture of aircraft, vehicle or watercraft used in certain crimes involving alcohol.	AS 04.16.220 (2007).
<b>Commercial fishing violations</b>	Previous conviction for variety of commercial fishing violations will trigger enhanced penalties on subsequent conviction.	AS 16.05.723; AS 16.10.265 (fish buyers).

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possible collateral consequences of a guilty or *nolo* plea.

The courts' refusal to hold that defendants have a right to be notified of all the potential consequences of a plea may make sense, given the enormous range of possibilities and the fact that many of these potential disabilities are essentially hidden in statutory schemes far removed from a jurisdiction's penal code. A contrary holding might set a standard virtually impossible to meet under the extant system, with concomitant implications for establishing knowing and voluntary pleas and effective assistance of counsel. Nevertheless, whether or not they have a *right* to know, the desirability of providing all defendants with as much information as

is reasonably possible is indisputable. The Alaska Rules of Criminal Procedure recognize that certain collateral consequences are sufficiently grave that they must form part of the court's colloquy with the defendant. If the defendant is not a U.S. citizen, the court must advise that the conviction may affect the offender's immigration status. In addition, the court must provide written notice of Alaska's sex offender registration requirements to defendants charged with a statutorily-defined sex offense or child kidnapping.

Taken together, Alaska's rules of procedure reflect that expectation of fair play on which our constitutional doctrines rest. Given this standard, the fact that it is presently so difficult to find all of the information necessary to provide such notice casts a shadow of unfairness over the entire

plea bargaining process.

### Proportionality

Just as troubling as the absence of complete notice is the lack of proportionality resulting from the vast network of regulatory measures barring offenders from full civic and economic participation. In many cases, the conflation of collateral consequences with the actual sentence imposed results in punishment far beyond what most would consider just.

First, the collateral consequences of a conviction may impose on the defendant lifelong stigmatization, a result contrary to the policy of rehabilitation underlying Alaska's criminal administration. In addition, collateral consequences are associated with a diminution of overall

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life chances—the ability to obtain safe housing, adequate nutrition and medical care, higher education, and economic independence. The combined effect of the regulatory barriers triggered by a criminal conviction may include, as noted above, ineligibility for public housing assistance and food stamps, denial of student loans, revocation of driver's licenses, destruction of family bonds, and a host of employment limitations. The financial impact of a criminal conviction, moreover, is not limited to the employment limitations imposed by statute or regulation. Private employers in all sectors of the economy have historically discriminated against those with a criminal history. (For some employers, the potential threat of a negligent hire lawsuit adds economic impetus to this practice.) Thus, for as long the law continues to permit private employment discrimination on the basis of criminal history, the actual percentage of the job pool unavailable to former offenders will be far larger than that represented by those jobs placed off limits by statute or regulation. In addition, the recent practice of providing public access to criminal prosecution information over the internet means that, with next to no effort, every potential employer may review an applicant's local criminal history. The Alaska Court System's CourtView program, for example, provides information about criminal (and civil) cases, including traffic cases and other minor offenses, in Anchorage, Barrow, Fairbanks, Kotzebue, Nome, Palmer, and Unalakleet.

In sum, the combined effect of legally denying access to certain jobs and the reluctance of employers to hire offenders even for those jobs for which they are legally qualified creates a formidable barrier to economic success and life satisfaction. The net effect on overall life chances will be, for many offenders, a far harsher penalty than that imposed under the state's penal code.

More disturbing than all of the foregoing, however, is the disproportionate impact of collateral consequences on certain ethnic groups. Throughout the country, a complex network of economic and political disadvantages has led to the overrepresentation of discrete groups in the incarcerated population. Statistically, Alaska Natives/American Indians and African-Americans are disproportionately represented in Alaska's offender population. Thus, to the extent the civil disabilities imposed on former offenders unduly impede their economic success and civic involvement, these groups as a whole are impoverished and disenfranchised to a greater extent than ethnic groups with lower levels of representation in the offender population.

### Challenges for the Bar and the Movement toward Change

As the number of statutory and regulatory measures negatively affecting offender re-entry continues to grow, the bar has begun examining its role in shaping a more just and humane system. To facilitate these efforts, the American Bar Association's Criminal Justice Section has established the Re-entry and Collateral Consequences Committee.

Justice Anthony Kennedy of the U.S. Supreme Court gave considerable impetus to this movement in an August 2003 speech to the American Bar Association, in which he addressed the justice system's failure to concern itself with the post-incarceration fate of offenders. He observed that a criminal justice system, the purpose of which is "to degrade or demean individuals is not acceptable in a society founded on respect for the inalienable rights of the people." He urged lawmakers and lawyers in both civil and criminal practice to turn their attention to what happens to prisoners after they are locked away, "to help find more just solutions and more humane policies for those who are the least deserving of our citizens, but citizens nonetheless."

During the same month Justice Kennedy issued his call for action, the American Bar Association House of Delegates approved standards designed to provide a legislative model for mitigating the overly harsh effect of extensive federal and state restrictions on the civic participation of former offenders. The standards include recommendations for limiting the sheer number of restrictions, ensuring that restrictions bear a legitimate relationship to the risks posed by the offenders' criminal conduct, gathering restrictions in one place so that legal professionals, offenders, and the public may find them, requiring notice of collateral restrictions in the sentencing process, prohibiting unreasonable public and private discrimination against former offenders, and increasing the availability of methods for obtaining relief from extant restrictions.

Of these, the recommendation calling for collection of collateral consequences statutes has received the most ready response. The recommendation, however, only calls for collecting automatic disqualifications. For a great many defendants, discretionary disqualifications—those disabilities that do not flow automatically from a conviction, but which may be imposed by virtue of an individual's particular circumstances—may be even more devastating. Consider, for example, the recent case of J.P., who was sentenced to six months in jail, five years probation, and payment of restitution after pleading no contest to forgery and

theft. Approximately four years after her sentencing, J.P. applied for certification as a nurse's aide. Her probation officer supported the application, stating that she had made "noted progress" during probation. The Board of Nursing, however, denied the application, finding, pursuant to its statutory authority, that the facts surrounding the applicant's criminal conduct were incompatible with the duties of a nursing assistant. For J.P., the inability to work in her chosen profession may well be a greater penalty than her actual sentence. To take this example one step further, assume hypothetically that J.P. someday finds herself unable to bear children, and she and her husband decide to adopt. Under current Alaska law, her criminal history may prevent her from ever adopting a child or serving as a legal guardian.

It may be that in the foregoing example, Alaska's professional licensing system worked exactly as it should. The board reasoned that, because J.P.'s criminal conduct victimized older persons, vulnerable to her actions, she should not have contact with those who might be vulnerable because of their medical condition. But, even if this particular case struck the right balance between public safety and reintegration, it is doubtful that J.P. understood the full range of career options that would be potentially unavailable following her plea, or the potential ramifications the plea might carry for her in the future, such as posing a barrier to adoption or guardianship. For that reason alone, jurisdictions should make every reasonable effort to increase the visibility of both automatic and discretionary or potential collateral consequences. Leaving in place a complex system of regulatory penalties that is essentially hidden from most defendants contravenes basic ideals of fair play and justice.

### Locating Collateral Consequences in Alaska

In Alaska, statutes and regulations potentially affecting an offender's civic and economic reintegration occupy well over one hundred different sections of the Alaska Statutes and Alaska Administrative Code. Other limitations imposed on offenders may be found only through careful perusal of the rules of evidence, rules of court, or unpublished agency policies. In this, Alaska is like every other state: The task of identifying all of the legal disabilities potentially triggered by a criminal conviction is enormously difficult. For an individual without time, resources, or training, it is

## Consequences (continued from page 11)

likely to be impossible.

The tables accompanying this article illustrate the range of Alaska statutes, regulations, and other rules that affect or have the potential to affect adversely a convicted offender's transition back into full civic and economic participation (local ordinances, which often contain similar restrictions, are omitted here). Table contents have been selected for illustrative purposes from a more complete, although still preliminary, listing, which is available at <http://justice.uaa.alaska.edu/workingpapers/>.

\* \* \*

This is the first of a series of articles looking at this issue. It is intended merely as a starting place for analysis. (For further reading, see "Further Reading on Collateral Consequences" in this issue.) A thorough review of the complex questions of public policy raised by the issue of collateral consequences is beyond the scope of this essay. Pending such review, however, it may be well to remember Justice Kennedy's admonishment that "a people confident in its laws and institutions should not be ashamed of mercy."

*Deborah Periman is an assistant professor with the Justice Center. A slightly different version of this article, with complete*

*legal citations, can be found at <http://justice.uaa.alaska.edu/workingpapers/>.*

## New Appointment to Justice Center

Marny Rivera has joined the Justice Center as an assistant professor. Dr. Rivera received her Ph.D. in 2002 from Indiana University of Pennsylvania. Her dissertation was entitled "All the News Unfit to Print: A Multi-Method Analysis of Corporate Wrongdoing Conceptualization and the Presence of Influential Factors in News Stories of Corporate Offenses."



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