PREFACE

No longer can any person involved in the criminal justice system ignore the vast array of restrictions and disqualifications that are triggered by a criminal conviction. Judges, defense lawyers, prosecutors, probation officials and, of course, accused persons themselves must recognize that much more is at stake in a criminal prosecution than the court-imposed sentence. Even minor offenses trigger serious and potentially life-altering statutory and regulatory penalties. These so-called “collateral consequences” are scattered throughout statutes, regulations, and municipal ordinances. They are difficult to find, and are too frequently ignored during plea negotiations and at sentencing. When it becomes apparent how many opportunities and privileges have been lost as a result of a conviction there may be little the convicted person can do about it. For this reason, collateral consequences have become an increasingly important part of civil practice areas as diverse as employment, government contracts, civil rights, immigration, housing, and family law. This volume seeks to ensure that the parties involved in a criminal case can identify and understand the full range of disabilities and disqualifications that accompany conviction. It also seeks to provide a comprehensive resource for civil practitioners whose clients are seeking to mitigate the effects of collateral consequences, as well as policy advocates and public officials seeking to reform the way the legal system treats those with a conviction record.

In 2010, the Supreme Court brought the problem of collateral consequences to the forefront for all actors in the criminal process with its decision in Padilla v. Kentucky, in which the Court held that a noncitizen defendant had a constitutional right to be told by his lawyer about the immigration consequences of pleading guilty. Since that time, the bench and bar have become increasingly aware of their responsibility to consider collateral consequences in the context of a criminal prosecution, and to assist convicted persons in dealing with their effects after the fact. NACDL established a task force to examine laws and practices on restoration of rights and status after conviction and in May 2014 released an important report entitled Collateral Damage: America’s Failure to Forgive or Forget in the War on Crime—A Roadmap to Restore Rights and Status After Arrest or Conviction,

* 130 S. Ct. 1473 (2010).
whose recommendations are included in Appendix B. Margaret Love was key to the launch of the Collateral Consequences Resource Center (CCRC), a web-based source of news and practice resources. CCRC and three partner organizations, including NACDL, maintain the Restoration of Rights Project, an online database of laws on restoration of rights and status in all 50 states that is updated in real time by the CCRC staff. In other recent developments, the Reentry Resource Center of the Council of State Governments is now responsible for keeping up the work begun by the ABA on a computerized inventory of collateral consequences in each state; and the American Law Institute completed work on its Model Penal Code: Sentencing, which includes proposals for integrating collateral consequences directly into the framework of the criminal case.

Perhaps most impressive and telling, since the first issue of this treatise was published in 2013 almost every state in the Nation has taken at least some steps to mitigate the impact of collateral consequences. More than half have enacted comprehensive new relief schemes, including the regulation of occupational licensing. This impressive record of law reform is documented in the CCRC report contained in Appendix A.

This volume was conceived by NACDL and West in 2011 as the first systematic and comprehensive resource for lawyers and judges on the collateral consequences of conviction. It discusses the history of collateral consequences and their effects on the persons to whom they apply, catalogues the areas of law in which they are found, describes the mechanisms for challenging their application and mitigating their effects, and includes a fully updated state-by-state guide to mechanisms for restoration of rights and status first published by Margaret Love in 2006. The result is the present volume, which brings together and makes visible for the first time all aspects of this “invisible punishment.” We commend this volume to the profession and the public in the hope and expectation that a better understanding of the enduring burdens imposed by a criminal conviction will lead to a fairer and more effective justice system.

Norman L. Reimer
Executive Director, NACDL