ABA Criminal Justice Section Chair Mathias H. Heck Jr. emphasized in testimony last month that collateral consequences of conviction often are at odds with public safety when they work to prevent ex-offenders from finding employment and becoming productive citizens.

Heck, testifying during a June 26 hearing before the House Judiciary Task Force on Over-Criminalization, explained that collateral consequences, labeled the “hidden world of punishment” by Supreme Court Justice Anthony M. Kennedy, encompass a wide range of restrictions on ex-prisoners that include disenfranchisement, deportation, loss of professional licenses, felon registration, and ineligibility for certain public welfare benefits. At Kennedy’s urging, the ABA undertook a comprehensive national examination of federal and state criminal justice policies in 2003 that led to numerous recommendations and creation of the ABA Commission on Effective Criminal Sanctions.

In his testimony, Heck acknowledged that some collateral consequences serve important and legitimate public purposes, such as keeping firearms out of the hands of persons convicted of crimes of violence or barring persons recently convicted of fraud from positions of public trust. He explained, however, that other restrictions, particularly those applied automatically across the board to whole categories of convicted persons, are more difficult to justify.

“The indiscriminate imposition of collateral penalties has serious implications, not only in terms of fairness to the individuals involved, but also in terms of the resulting burdens on the community,” he testified. The association’s Collateral Consequences of Conviction Project, a six-year effort funded by the National Institute of Justice, recently completed a state-by-state database listing more than 45,000 collateral consequences that exist in every jurisdiction’s code of laws and regulations.

According to Heck, the vast majority of collateral consequences identified by the project are employment-related, and he highlighted the fact that state correctional systems spend millions of dollars on job training programs in prisons, only then to bar re-entering individuals from obtaining licenses that would allow them to work in the fields for which they were trained.

The free database developed by the project may be accessed by everyone, including the public, attorneys, prosecutors and defense attorneys, judges and policymakers. “The hope is that this project will provide everyone with a readily accessible resource and tool,” Heck said, and that stakeholders in the criminal justice system and the general public “can propose and deliver on appropriate reforms of unfair and unjust collateral consequences.”

see “Collateral consequences,” page 4
### LEGISLATIVE BOXSCORE

<table>
<thead>
<tr>
<th>ABA LEGISLATIVE PRIORITY</th>
<th>HOUSE</th>
<th>SENATE</th>
<th>FINAL</th>
<th>ABA POSITION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gun Violence.</strong> S. 150 and H.R. 437 would limit the future sale and transfer of assault weapons and ammunition devices that hold more than 10 bullets. S. 54 and H.R. 452 seek to combat the practices of straw purchasing and illegal trafficking of firearms. S. 374 would strengthen background checks. S. 649, a comprehensive bill, includes numerous gun violence prevention provisions. H.R. 437 was referred to the Judiciary Committee on 1/29/13; H.R. 452, on 2/4/13.</td>
<td>H.R. 437 was referred to the Judiciary Committee on 1/29/13; H.R. 452, on 2/4/13.</td>
<td>Judiciary Committee held hearings and approved S. 54 on 3/7/13; S. 53, on 3/11/13; and S. 374, on 3/12/13. Judiciary subc. held a hearing on 2/12/13. Senate began consideration of S. 649 on 4/8/13.</td>
<td>Supports steps to prevent gun violence by strengthening the nation’s gun laws.</td>
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<td><strong>Immigration.</strong> S. 744 would overhaul the nation’s immigration system. Numerous House bills address immigration issues, including: H.R. 2131 (visas for skilled workers); H.R. 1772 (E-verify program); H.R. 1773 (farmworkers); H.R. 2778 (state and local law enforcement); and H.R. 1417 (border security). President Obama requested additional funds and resources to address crisis of unaccompanied children at southwest border. S. 744 would overhaul the nation’s immigration system. Numerous House bills address immigration issues, including: H.R. 2131 (visas for skilled workers); H.R. 1772 (E-verify program); H.R. 1773 (farmworkers); H.R. 2778 (state and local law enforcement); and H.R. 1417 (border security). President Obama requested additional funds and resources to address crisis of unaccompanied children at southwest border.</td>
<td>Judiciary Cmte. approved H.R. 2131, H.R. 1772, H.R. 1773 and H.R. 2778. Homeland Security Cmte. approved H.R. 1417.</td>
<td>Judiciary Cmte. approved S. 744 on 5/21/13. Senate passed S. 744 on 6/27/13.</td>
<td>Supports comprehensive immigration reform that promotes legal immigration based on family reunification and employment skills and a path to legal status for much of the undocumented population currently residing in the United States. See page 3.</td>
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</tbody>
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ABA urges legal representation for unaccompanied children

ABA President James R. Silkenat, while acknowledging the serious challenges presented by the unprecedented surge in unaccompanied children entering the country, cautioned last month that the country cannot abandon the principles of fairness and due process in rushing to address the situation.

When President Obama asked Congress June 30 for supplemental appropriations and additional legal authorities for the Department of Homeland Security to deal with the significant increase in the numbers of unaccompanied children entering the United States, the ABA raised concerns about a proposal that may change current law to expedite the removal of these children without appropriate due process protections.

“Fundamental principles of fairness and due process demand that these vulnerable children receive legal representation and guardians to represent their interests throughout the immigration process,” Silkenat said in a statement submitted for the record of a June 25 House Judiciary Committee hearing on the crisis. He emphasized that the majority of the children are not in a position to determine on their own whether they might qualify for legal relief and may not be able to understand the nature of, much less be able to meaningfully participate in, their immigration proceedings.

Silkenat pointed out that the number of children being apprehended by authorities at the southwest border has increased more than ten-fold over the past three years from approximately 6,500 in 2011 to a projected number of more than 90,000 in 2014. The reasons that children immigrate to the United States are often complex and multifaceted, he explained. They include abuse and threats by powerful and violent street gangs, which frequently engage in forced recruitment of teenage boys, sexual slavery of teenage girls, and targeted extortion efforts often focusing on children with parents and extended family members in the United States.

A more recent phenomenon, he said, is children are fleeing because of threats by multinational drug trafficking organizations that demand that children act as drug mules or lookouts for illicit cartel activities. There is no question, he said, that increasing violence and lawlessness in El Salvador, Guatemala and Honduras are major causes of the recent influx.

In his statement, Silkenat recommended that all children receive an in-person legal rights presentation and an individual, child-friendly screening by a qualified legal advocate before being reunited with an approved family member or other adult sponsor. The association also recommends that government-appointed counsel be provided for children who are not otherwise able to obtain legal representation.

Recognizing that not all of these children will be eligible for relief, Silkenat said the ABA recommends that repatriation of children include formal intercountry child welfare agency involvement and adherence to intercountry protocols designed to address concerns regarding the safety of the child during the repatriation process as well as the process of returning the child to a stable environment.

Silkenat also highlighted in his statement the work of the South Texas Pro Bono Asylum Representation Project (ProBAR), which was established by the ABA in 1989 largely in response to the influx of asylum-seekers into South Texas at that time who were fleeing civil war and violence in Central America.

ProBAR staff and volunteers provide legal rights presentations and pro bono representation to indigent detained immigrants and asylum-seekers held in facilities in the Rio Grande Valley.

LSC develops Grant Assurances for 2015 with only minor modification after comments

The Legal Services Corporation (LSC) has made only minor modifications in the Grant Assurances that the LSC will use when it enters into grants with LSC recipients in 2015.

During an extended comment period on possible revisions to the Grant Assurances, ABA Governmental Affairs Director Thomas M. Susman expressed the ABA’s concerns June 20 about proposed changes to Grant Assurance #10 regarding government access to the records of LSC recipients. The ABA comments were prepared in coordination with the association’s Standing Committee on Legal Aid and Indigent Defendants and the Center for Professional Responsibility.

The current language of Grant Assurance #10, which will be retained for 2015, requires LSC recipients to give LSC and the U.S. Comptroller General access to all records to which they are entitled under the provisions of the LSC Act and other “applicable” law. The proposed change would have required LSC recipients to provide access to all requested records, except “such materials that may be properly withheld under federal law,” including those “subject to the federal attorney-client privilege.” This change, according to the ABA comments, would have weakened the current language of
Collateral Consequences

continued from front page

The ABA also has adopted a comprehensive set of standards to encourage awareness of the full legal consequences of a criminal conviction and to focus on the impact of collateral consequences on convicted individuals as they reenter the free community.

Also testifying during the hearing was Rick Jones, executive director of the Neighborhood Defender Services of Harlem. Jones, who was representing the National Association of Criminal Defense Lawyers, echoed the ABA’s concerns. The problem of collateral consequences calls for “a fundamental shift in the national mindset,” Jones said, and he called on Congress to reauthorize the Second Chance Act, a law also backed by the ABA that supports reentry programs to ensure that persons released from prison are given a second chance to become contributing members of society.

Later that day, House Judiciary Committee Ranking Member John Conyers Jr. (D-Mich.) and task force Ranking Member Rep. Robert C. “Bobby” Scott (D-Va.) hosted a forum giving those suffering the adverse effects of collateral consequences an opportunity to tell their stories.

Those appearing were former New York City Police Commissioner Bernard Kerik; Piper Kerman, author of the memoir Orange is the New Black: My Year in a Women’s Prison; internationally known spoken-word artist LaMont Carey; and poet Anthony Pleasant.

Legal Services Corporation

continued from page 3

Grant Assurance #10, which protects materials that may properly be withheld “due to applicable law or rules,” including “records subject to the attorney-client privilege.”

According to LSC, the change was proposed in response to the July 2013 decision of the Court of Appeals for the District of Columbia Circuit in U.S v. Cal. Rural Legal Assistance, 722 F 3d. 424 (D.C. Cir. 2013). In that case, the court ruled that federal law regarding privilege, not state law, governed in an action to enforce a subpoena for documents held by the LSC recipient.

After reviewing the comments from the ABA, other groups and LSC recipients, LSC determined that the existing “applicable law” language incorporates the U.S v. CLRA decision and that changing it could create unnecessary and unintended problems.

In its comments, the ABA stated that the law governing disclosure of confidential client materials remains unsettled, and an important applicable federal law is the LSC Act, which states that the corporation shall not interfere with attorneys in carrying out their professional responsibilities as determined by the ABA’s legal ethics rules nor abrogate the authority of a state to enforce its applicable attorney ethical standards. “Thus, that federal law seems to turn to the state professional responsibility rules for its content, since only the states dictate ‘attorneys’ professional responsibilities’ (at least for practice in state courts, where much of an LSC grantee’s work is performed),” according to the comments. “Even if the decision in U.S v. CRLA means that only federal professional responsibility law applies, such an approach is not sufficient to provide clarity regarding what rules apply and

see “LSC,” page 5
ABA says keep it simple and fair with cash accounting

ABA President-elect William C. Hubbard urged a House panel this month to protect the ability of personal service businesses, including law firms, to use the cash method of accounting because it is simple and generally correlates with the manner in which they do business — on a cash basis.

Hubbard also warned that the proposal by House Ways and Means Committee Chairman Dave Camp (R-Mich.) to require accrual accounting for many law firms would add unnecessary complexity and cause serious financial harm to these firms.

“In addition to promoting simplicity, the cash method of accounting also produces a sound and fair result because it properly recognizes that the cash a business actually receives in return for the services it provides — not the business’ accounts receivable — is the proper measure of its true income,” Hubbard said in a statement submitted for the record of a July 10 hearing before the House Small Business Subcommittee on Economic Growth, Tax and Capital Access.

Subcommittee Chairman Tim Rice (R-S.C.) convened the hearing to examine how the cash accounting method is utilized by small businesses and whether current policies should be changed to allow small firms more flexibility in choice of accounting methods. Witnesses included representatives of the National Conference of CPA Practitioners, National Association of Enrolled Agents, the Kogod Tax Center at American University, and the South Carolina Farm Bureau, who each echoed Hubbard’s concerns over the harm that mandatory accrual accounting would cause to many small businesses around the nation.

Under current law, businesses generally are only allowed to use the simple straightforward cash receipts and disbursement method of accounting — in which income is not recognized until cash or other payment is actually received and expenses are not taken into account until they are actually paid — if their average annual gross receipts for a three-year period are $5 million or less. However, all individuals, partnerships, S corporations, law firms, and other personal service businesses also are permitted to use the cash method irrespective of their annual revenue unless they have inventory.

In his statement, Hubbard emphasized the ABA’s strong opposition to the Camp proposal, which would dramatically change current law by raising the gross receipts cap to $10 million while eliminating the existing exemption for law firms, other personal service business, and other entities that can currently use cash accounting regardless of their annual income. This would force those businesses to use the accrual method of accounting, in which income is recognized when the right to receive the income exists rather than when payment is received, and would require affected firms and other businesses to pay taxes on income long before it is received.

“If the tax rules are changed to disconnect cash collections from how income is taxed, the very business model upon which many law firms and other personal service businesses operate will be turned on its head,” Hubbard said.

Camp’s proposal — contained in Section 3301 of his draft “Tax Reform Act of 2014” — would create “unnecessary complexity and compliance costs,” according to Hubbard, and adversely affect businesses in several ways. In particular, the bill would:

• require personal service businesses, including many law firms, to pay taxes on “phantom” income they have not yet received and may never receive;
• cause the legal profession to suffer even greater financial hardships than other professions because many lawyers and law firms are not paid by their clients until long after the work is performed;
• adversely affect clients, interfere with the lawyer-client relationship, and reduce the availability of legal services in various ways; and
• constitute a major tax increase on small and medium-sized businesses and discourage economic growth.

According to the Joint Committee on Taxation, Section 3301 would generate $23.6 billion in new taxes over 10 years.

Hubbard said the ABA has been working in close cooperation with a broad and diverse coalition of associations, law firms and other organizations to raise awareness of the Camp proposal and its unintended harmful consequences. He emphasized that the mandatory accrual accounting issue has become one of the most important issues to the ABA and many state and local bars throughout the country because of the serious negative effects the proposal would have on law firms and many other types of small and medium-sized businesses.

LSC

continued from page 4

what materials are protected,” the comments continued, “and the court did not discuss the meaning in the LSC Act of the terms “statements of professional responsibility and attorneys’ professional responsibilities.”

The association also recommended that LSC include a clause in Grant Assurance #10 stating that a violation “will not be presumed to have automatically occurred if a recipient withholds certain documents under a colorable claim that they are protected under applicable law.”
Human Rights Lobby Day draws participants to Capitol Hill

The second annual Human Rights Lobby Day, coordinated by the ABA Section of International Law’s Human Rights Committee and the Governmental Affairs Office in conjunction with the action network of Global Solutions, brought dozens of participants to Capitol Hill June 19 to urge congressional action on several international treaties and to support increased U.S. support for the International Criminal Court.

The event was organized by Human Rights Committee Co-Chairs Elizabeth Turchi and Joe Federici, and ABA participants included Sara Elizabeth Dill, Ryan McClure, Gigi Nikpour, Becky Farrar, Fatima Ahmad, Anita Castro, Will Pons, Renee Dopplick, Sophia Thelusma, Thomas Butler, and Edison Dick.

During their visits, participants highlighted the importance of U.S. ratification of two treaties: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of Persons with Disabilities. The week after the event on June 24, the Senate Foreign Relations Subcommittee on International Operations and Organizations, Human Rights, Democracy, and Global Women’s Issues held a hearing on efforts to combat violence and discrimination against women around the world, including the ratification of CEDAW and enactment of the proposed International Violence Against Women Act.

Judicial Vacancies/Confirmations—113th Congress* (as of 7/15/14)

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<th>Court</th>
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<th>Confirmations</th>
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<tr>
<td>US Courts of Appeals (179 judgeships)</td>
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<td>3</td>
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<tr>
<td>US District Courts (678 judgeships)</td>
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<td>78</td>
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<tr>
<td>Court of International Trade (9 judgeships)</td>
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<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Totals</td>
<td>61</td>
<td>29</td>
<td>100</td>
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*Includes territorial judgeships
OLDER AMERICANS ACT: The ABA urged the House Education and the Workforce Committee to move ahead expeditiously on H.R. 4122, a bill introduced June 13 to reauthorize the Older Americans Act of 1965. “The Older Americans Act authorizes and oversees many vital programs and services, and it provides critical legal assistance to protect the rights of vulnerable seniors,” ABA Governmental Affairs Director Thomas M. Susman wrote in letters sent June 16 to committee Chairman John Kline (R-Minn.) and Ranking Member George Miller (D-Calif.). “We view reauthorization as an important opportunity for Congress to reaffirm and refine our country’s commitment to a safe, secure and dignified life for all older Americans,” Susman wrote. He applauded the bill’s increased focus on combating elder abuse, particularly provisions defining the term “adult protective services” to include legal services. The ABA adopted policy in 2002 and 2010 recognizing the importance of legal assistance under the act. Susman noted that even though the bill does not include all the elements that the ABA supports, such as encouraging development of a coordinated legal services delivery system and strengthening legal developers, he said that the ABA recognizes the legislation “as a critical step forward in ensuring that the rights of older Americans are supported and protected under federal law.” In addition, the association applauded language in the bill focusing on the independence and avoidance of conflicts for long-term care ombudsmen. Last fall, the ABA expressed support for S. 1562, similar Senate legislation that was approved in January by the Senate Health, Education, Labor and Pensions Committee and is pending on the Senate calendar.

SOCIAL SECURITY ADMINISTRATION (SSA): A new study launched by the Administrative Conference of the United States (ACUS) is analyzing SSA’s laws, regulations, policies, and practices concerning evaluation of claimants’ symptoms, including pain, in the adjudication of Social Security disability claims. The results of the study will be used by ACUS to advise the SSA on how to improve consistency in disability determinations, reduce complaints of bias and misconduct against SSA adjudicators, and lessen the frequency of remands attributable to credibility evaluation. In comments submitted July 2 to ACUS, ABA Governmental Affairs Director Thomas M. Susman emphasized the role of the administrative law judge (ALJ) as the independent fact finder in administrative proceedings who must determine, based on the record, that the claimant has an impairment which reasonably can be expected to cause pain. “There is no known exact test to measure the degree of pain,” he said, explaining that the proper evaluation of pain requires the ALJ to carefully evaluate the relevant facts, medical science, and the credibility of the claimant. “Only by providing the claimants with a fair, impartial, and independent ALJ who follows the law and regulations, as provided in the Administrative Procedure Act, can the claimants be assured that they are receiving a decision that is based on a transparent and fair process as intended by the applicable laws and regulations,” he concluded. Susman noted in his comments that the ABA has a longstanding interest in the SSA’s disability benefits decision-making process, and has worked actively for over two decades to protect the adjudicative independence of the administrative judiciary and promote increased efficiency and fairness in the system. “As the national voice of the legal profession, the ABA has been able to draw upon the considerable expertise of our diverse membership — including many claimant representatives, ALJs, academicians and agency staff who are active in the ABA — to develop a wide-ranging body of recommendations on the administrative adjudication process,” he wrote.

VETERANS’ CLAIMS ASSISTANCE: The ABA has launched the new Veterans’ Claims Assistance Network (ABA VCAN) to recruit volunteer lawyers to provide free assistance to unrepresented veterans who request their help in completing their disability claims before the Department of Veterans Affairs (VA). Even though the VA has made progress in the past year toward reducing the claims backlog, the department is facing an unprecedented recent increase in the number of claims from those who have been wounded and disabled as a result of their military service. Nearly half of the 558,000 pending claims -- 274,000 -- have been waiting more than 125 days for adjudication. Under a memorandum of understanding finalized by the VA and ABA in June, the lawyers will focus on pending claims of unrepresented veterans that have had only preliminary, if any, development. ABA VCAN will begin as a pilot project operating in Chicago and St. Petersburg, Florida, and running through 2015. Approximately 3,300 veterans in those areas will receive a letter from the VA explaining their options for representation, including assistance through ABA VCAN. Lawyers interested in volunteering their services must register at ABAVCAN.org and receive training to qualify for VA accreditation to provide representation. “The ultimate goal is to help these men and women who served our country break free from the backlog and help ensure positive outcomes for their claims,” according to ABA President James R. Silkenat. Those working directly on developing ABA VCAN included staff of the ABA Governmental Affairs Office and the association’s Divisions for Legal Services and Public Services.
Voting law changes raise concerns after Shelby County

Voting law changes adopted by states in the wake of last year’s Supreme Court ruling in Shelby County v. Holder, 570 U.S. ___ (2013), are raising the specter of potential voting discrimination.

In response, the ABA is urging enactment of S. 1945, a bill that would restore and strengthen Voting Rights Act (VRA) provisions.

The court’s 5-4 decision, issued last June, struck down the formula in Section 4 of the VRA that determined which jurisdictions had a history of discriminatory voting practices. The designated jurisdictions were required under Section 5 of the act to submit any proposed changes in their voting procedures for preclearance by the Department of Justice or a three-judge panel of the U.S. District Court of the District of Columbia. The decision left in place the provisions in Section 2 of the act that allow litigation to be brought against jurisdictions after a voting change is already in place.

“The Voting Rights Act has been critical to the expansion of our democratic franchise to all eligible citizens, and S. 1945 will restore a key component to the act’s arsenal of tools to combat voting discrimination,” ABA President James R. Silkenat wrote to the Senate Judiciary Committee on June 25, the day the committee held a hearing on the legislation. Silkenat explained that the remedy in Section 2 alone “is not sufficient to prevent the fundamental harms to representative government that voting discrimination causes” and that litigation under Section 2 is “extremely complex, time consuming and costly.”

He cited a recent report from the Leadership Conference on Civil and Human Rights outlining more than 148 separate instances of violations of the VRA’s antidiscrimination provisions since 2000. Another report by the Brennan Center for Justice found that 22 states have passed new voting restrictions since 2010.

S. 1945 and its House companion bill, H.R. 3899, would create a Section 4 formula that would allow federal courts to order preclearance if they determine that a state has adopted voting policies that have the effect of discriminating against minorities. The bills also would establish new rules automatically triggering preclearance if a state is shown to have committed five or more voting rights violations during the past 15 years.

Silkenat said the ABA supports the legislation because it includes a new, flexible coverage formula that would be updated annually to require preclearance for all changes in places with numerous recent voting rights violations. The legislation, he said, also would create new nationwide transparency requirements to help keep citizens informed about voting changes in their communities and would continue the federal observer program.

During the hearing, which was chaired by bill sponsor Sen. Patrick J. Leahy (D-Vt.), Sherrilyn Ifill, president and director-counsel of the NAACP Legal Defense and Educational Fund Inc., testified that it is “clear that political entities previously covered by Section 5 have begun to use the Shelby County decision as license to enact discriminatory measures across the full panoply of electoral processes.” She urged Congress to move quickly to enact S. 1945. Also supporting the legislation before the committee were Texas State Sen. Sylvia R. Garcia and Francys Johnson, president of the Georgia State Conference of NAACP Branches.

Other witnesses, however, opposed the bill. Michael A. Carvin, a partner at Jones Day law firm, argued that Section 5 of the Voting Rights Act was always intended to be a temporary and limited supplement to Section 2, which he said is more than adequate to address any unconstitutional discrimination. Abigail Thernstrom, adjunct scholar at the American Enterprise Institute, testified that the statute today needs no updating. “Its permanent provisions provide ample protection against electoral discrimination,” she said.

Meanwhile, Leahy maintained that his legislation “updates and strengthens the foundation of the original law to combat both current and future discrimination” and “does so in a way that is based on current conditions and recent history.”