Message from the President
Carl Lisman
President

Wow! It isn’t often that I get to say “Wow!” But I’m saying it now. The dictionary definition of “Wow” is “an expression of astonishment or admiration.”

My astonishment arose from the both the technological skill and depth of understanding I saw during our remote meeting in July. For an organization that’s been around for 130 years, the ULC has proven it can be nimble and innovative to adjust to forces outside its control. Commissioners, reporters and observers learned the utility of Zoom technology and engaged in (mostly) spirited debate. Kudos to Immediate Past President Anita Ramasastry for steering the ULC into this new world!

I know that a few Commissioners struggled with the technology but almost all of us have learned to adapt. The pre-meeting training sessions were very useful to those who took advantage of them. Greg Young and others in the Chicago office were very helpful in responding to individual questions and needs. I suspect (and saw some evidence that) children, grandchildren, spouses, neighbors and others were conscripted from time to time - evidence that the old case holding (any port in a storm) is as true today as it ever was!
My admiration arose from the number of Commissioners who participated in the debate on the three Acts that received overwhelming approval in the vote by the States: The Uniform Public Expression Protection Act, the Uniform Pretrial Release and Detention Act and the Uniform Easement Relocation Act.

Thanks to the chairs and members of the Drafting Committees - and the Division Chairs, reporters, observers and others who worked diligently under stressful conditions to bring these projects to successful completions. And a special thanks to the Commissioners who attended the pre-meeting sessions on each of the Acts and those who engaged in the debates on the final reads.

New Projects

At the July meeting, the Executive Committee approved drafting projects on five new subjects and the study of four other subjects.

The Committee to update the Uniform Unincorporated Associations Act will be chaired by Commissioner Lisa Jacobs (PA)

The Committee to draft an act granting state and local governments the authority to conduct meetings and hearing during public health emergencies using communications technology and alternative forms of voting will be chaired by Commissioner Mark Glaser (NY)

The Committee to draft an act addressing debt collection efforts by third-party debt collectors or buyers based on default judgments will be chaired by Commissioner Ray Pepe (PA)

The Committee to draft an act to provide a mechanism giving college athletes compensation for the use of their names, images and likenesses will be chaired by Commissioner Dale Higer (ID)

The Committee to draft an act on non-compete covenants will be chaired by Commissioner Rich Cassidy (VT)

The Committee to study whether we should draft a statute or court rule addressing family court procedures in times of emergency will be chaired by Commissioner Paul Kurtz (GA)

The Committee to study whether we should draft an act addressing priority rules and related matters applicable to mortgage modifications will be chaired by Commissioner Jack Burton (NM)

The Committee to study whether we should draft an act on cybercrime will be chaired by Commissioner Michelle Timmons (MN)

The Committee to study whether we should revise the Uniform Determination of Death Act will be chaired by Commissioner Sam Thumma (AZ)

The Committee to study whether we should draft an act to address criminalization of K-12 student discipline will be chaired by Commissioner Diane Boyer-Vine (CA)

More Meetings!

The pandemic and resultant cancellation of in-person meetings may have had a silver lining: Our committees can meet more often online than they have in person! (This brings to mind W.C. Fields’ quip: “First prize was a week in Philadelphia. Second prize was two weeks.”)

For example, a drafting committee might decide to hold two-hour remote meetings every other week, using each session to address a discrete issue in the act. Over a period of a few months, an act can be carefully vetted. That’s very different from how we use our time at our traditional fall and spring weekend meetings and we may find that we can do more and be more productive remotely.

However, as soon as it is safe and we are allowed to travel, we will resume our in-person weekend drafting meetings. As successful as we might be in remote sessions, much more is accomplished by physically being in the same room. Commissioners know well the nuance of a phrase, the subtle nod of the head and body language tell as much as words, and these can be observed only by sitting at the same table.

The pandemic might allow us to move more expeditiously than in the past. If we have a well-crafted short act, we may want to consider expediting it. That would, of course, require waiver of our requirement of readings at two annual meetings.
Chicago Staff

Everyone must know by now just how valuable our Chicago-based staff is to the success of the ULC. If you attended any of the July sessions, you may not have been aware just how busy they were, making sure that the meetings ran smoothly. Thanks to all of them, from Tim and Elizabeth through Greg to Ben and Katie, the legislative lawyers – Lindsay, Kaitlin and Libby – and to Rachel and Leang, Kari, Gloria and Odessa, and our ULC Fellow Cameron. And to Joleen on the financial books and Lucy for generating the drafts, amendments and final versions. We applaud you all!

And the Future?

No one knows when lives will return to “normal,” whatever that means. Until then, we’ll take advantage of technology and do the best we can.

Until we meet again in-person, be safe!

Fall, 2020

Our fall schedule will be busy - five drafting committees will be presenting first reads in September and then we’ll have meetings, albeit remotely, throughout October and November, with some committees meeting in early December.

Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act prompts $40,000 damages award in Colorado

On August 3, a woman obtained the first victory under Colorado’s Civil Remedies for Unauthorized Disclosure of Intimate Images Act. The uniform act, finalized by the ULC in 2018, addresses the disclosure of private images of nudity or sexual conduct without consent. Though most states have a criminal law to address such disclosures, very few states have a civil law. The uniform act creates a civil cause of action, protects victims’ identities, and provides various remedies.

The Colorado woman sued after a man she dated sent an explicit video of her to her estranged husband. After a one-day bench trial, the judge ordered the man who sent the video to pay $40,000 in damages.

The uniform act became law in Colorado in 2019 and was sponsored by Senator Bob Gardner and Representative Kerry Tipper, Colorado Uniform Law Commissioners.
Legislative Update

The 2020 legislative year has been unlike any other in recent memory. By mid-March, nearly every state legislature had adjourned, or was restricted to activity only related to budget issues or covid-19 issues.

Although many state legislatures have already adjourned for the year or are limiting the business that may be taken up at this time due to the current public health crisis, there is still a lot of positive news to report this year. We currently report 155 introductions and 37 enactments, with more enactments expected in the next few months.

Mississippi and Virginia are tied for most enactments in 2020, each with four enactments. Mississippi enacted a comprehensive probate bill, which included three uniform acts: Uniform Disclaimer of Property Interests Act, Uniform Estate Tax Apportionment Act, and Uniform Real Property Transfer on Death Act. Mississippi has also enacted the Uniform Partition of Heirs Property Act. Virginia enacted the Revised Uniform Athlete Agents Act and the 2018 Amendment to that act, along with the Uniform Directed Trust Act and the Uniform Partition of Heirs Property Act.

New York got things started with the first two enactments of the legislative year – enacting the Uniform Partition of Heirs Property Act and the Amendments to the Uniform Voidable Transactions Act. Kentucky, Utah, Washington, West Virginia, and Wisconsin got off to a great start, with three enactments in each state. Florida, Nebraska, Pennsylvania, and South Dakota were not far behind, each enacting two acts this session.

Other major highlights of the year include:

- Model Veterans’ Treatment Court Act was enacted in its first state: Utah.
- Uniform Electronic Transactions Act was enacted in its 50th state: Washington.
- Uniform Registration of Canadian Money Judgments Act was enacted in its first state: Colorado.
- Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act has been enacted in its third state: South Dakota.
- Revised Uniform Parentage Act has been enacted in its fourth state: Rhode Island.
- Uniform Wills Recognition Act (formerly the Uniform International Wills Act) has been enacted in its 20th state: Nebraska.

The Revised Uniform Athlete Agents Act, or its 2019 Amendment, has been introduced in more than 15 states, and so far enacted in six. The Uniform Partition of Heirs Property Act has been introduced so far in 11 states and enacted in four. The Revised Uniform Law on Notarial Acts, with its provisions on remote notarization, has been introduced in seven states to date and enacted in one.

Covid-19 Crisis in the States

By mid-March, nearly every state legislature had adjourned, or was restricted to activity only related to budget issues or covid-19 issues. During this time of limited legislative activity, the Legislative Council worked with the Legislative Staff to put together two memos: the first to highlight the Uniform Emergency Volunteer Health Practitioners Act, and the second a memo on ULC acts that may be helpful in the current crisis. These memos were sent to all legislative liaisons and are available here.

Legislative staff has been monitoring the various executive orders from the states which impact ULC acts. For instance, more than 20 states have adopted emergency measures to enable remote notarization. Legislative staff and Legislative Council will follow up in those states, to determine if these emergency measures can be made permanent by the enactment of various uniform acts.
ULC Approves Three New Uniform Acts

Uniform Pretrial Release and Detention Act
Most states rely on cash bail as the mechanism to ensure that a defendant will appear in court. Individuals who cannot pay the bail set by the court are detained, placing a disproportionate burden on low-income defendants. Recent studies indicate that approximately two-thirds of the 740,000 people held in local jails are awaiting trial, and at least 27% of all pretrial defendants were unable to afford bail. The Uniform Pretrial Release and Detention Act (UPRDA) provides mechanisms for states to limit the use of pretrial detention. The Act does not aim to eliminate all pretrial detention, nor to eliminate all uses of bail. UPRDA provisions address: (1) the use of citations in lieu of arrest for minor offenses; (2) a time limit on when a hearing must be conducted for an individual who is arrested; (3) appointment of counsel; (4) a pretrial risk determination by a court to individualize release or detention; (5) review of a defendant’s financial condition so that inability to pay a fee does not lead to detention; and (6) an obligation on the court to consider restrictive conditional release as an alternative to detention.

Uniform Easement Relocation Act
An access easement gives the owner of one parcel of real estate the legal authority to travel across another person’s property. Think of a driveway that runs from a public road across one property to access another. In many, but not all, states, the owners of both properties must consent to relocate an easement. When the owner of the burdened property asks to relocate an access easement to allow further development, an easement holder in a state that follows the mutual consent rule can withhold consent to prevent the development or demand a ransom payment before agreeing to the change. The Uniform Easement Relocation Act allows the burdened property owner to obtain a court order to relocate an easement if the relocation does not materially impair the utility of the easement to the easement holder or the physical condition, use, or value of the benefited property. The burdened property owner must file a civil action, give other potentially affected real-property interest owners notice, and bear all the costs of relocation. These conditions build upon the rule contained in the Restatement (Third) of Property: Servitudes, whose approach to easement relocation has been fully or partially adopted in a number of states. The Uniform Easement Relocation Act excludes conservation easements and public-utility easements from its scope and contains a number of additional safeguards, not found in the Restatement, to protect the easement holder’s interest in the use and enjoyment of the easement during and after the relocation.

Other drafts which will be debated at continuing remote sessions in September include the Economic Rights of Unmarried Cohabitants Act; Disposition of Community Property Rights at Death Act; Collection and Use of Personally Identifiable Data Act; Common Interest Ownership Act; and Unregulated Transfers of Adopted Children Act.

Uniform Public Expression Protection Act
The purpose of the Uniform Public Expression Protection Act is to provide a remedy for defendants involved in lawsuits called “Strategic Lawsuits Against Public Participation,” or “SLAPPs.” SLAPPs are abusive civil lawsuits that may be brought against individuals, corporate entities, or government officials. The topics of these lawsuits range from education and zoning to politics and the environment. Though the claim of the lawsuit may be defamation, tortious interference, invasion of privacy, or something else, the real goal of a SLAPP lawsuit is to entangle the defendant in expensive litigation that stifles the defendant’s ability to engage in constitutionally protected activities. The Uniform Public Expression Protection Act creates a clear process through which SLAPPs can be challenged and their merits fairly evaluated in an expedited manner. The Act protects individuals’ rights to petition and speak freely on issues of public interest while, at the same time, protecting the rights of people and entities to file meritorious lawsuits for real injuries.
New Committees

At its recent July 2020 Meeting, the Executive Committee of the Uniform Law Commission (ULC) authorized the appointment of five new drafting committees and five new study committees.

The new drafting committees are:

**Drafting Committee on College Athlete Name, Image, and Likeness Issues**
This drafting committee will draft a uniform or model law addressing college athlete name, image, and likeness issues. Issues to be considered may include a mechanism for providing college athletes with a meaningful opportunity to receive compensation for their NIL rights; parameters to protect college athletics and college athletes from misuse or abuse of NIL deals; whether the act should create a right of action for college athletes if their NIL rights are violated; a mechanism for certifying and regulating agents and third party professionals; and whether and to what extent the act should apply to high school, youth, and recreational sports. The project was proposed by the study committee on the same topic. *Dale Higer, Chair; Levi Benton, Vice Chair.*

**Drafting Committee on Covenants Not to Compete**
This drafting committee will draft a uniform or model law addressing covenants not to compete, including topics such as the extent to which noncompetes are enforceable against low-wage workers and others, notice and other procedural requirements, enforceability standards, choice of law issues, and remedies. The project was proposed by the study committee on the same topic. *Richard Cassidy, Chair; Clay Walker, Vice Chair.*

**Drafting Committee on Debt Collection Default Judgments**
This drafting committee will draft a uniform or model law or rule applicable to debt collection efforts by third party debt collectors or buyers based on default judgments. This project was proposed by the study committee on the same topic. *Ray Pepe, Chair; Gail Hagerty, Vice Chair.*

**Drafting Committee on Public Meetings During Emergencies**
This drafting committee will draft a uniform or model act granting state and local agencies the authority to conduct meetings and hearings during emergencies using communication technology and alternative forms of voting, subject to minimum standards relating to technologies used, security, record retention, public access, the protection of the rights of parties to contested cases, training to establish competency to use remote communication technologies effectively, and other relevant requirements. This project was proposed by the Study Committee on State Governance During Public Health Emergencies. *Mark Glaser, Chair; Claire Levy, Vice Chair.*

**Drafting Committee to Update the Uniform Unincorporated Organization Acts**
This drafting committee will develop amendments to the Uniform Partnership Act, the Uniform Limited Partnership Act, and the Uniform Limited Liability Company Act, with understanding that the update does not include wholesale policy revisions. This project was proposed by the JEB/Uniform Unincorporated Organization Acts. *Lisa Jacobs, Chair.*
The new study committees are:

**Study Committee on Criminalization of Student Discipline**
This study committee will study the need for and feasibility of a uniform or model act on the relationship of in-school disciplinary procedures to criminal law enforcement. *Diane Boyer-Vine, Chair.*

**Study Committee on Cybercrime**
This study committee will study the need for and feasibility of a uniform or model act on cybercrime. Issues to be addressed include the gaps and lack of uniformity in existing state criminal law schemes, the desirability of providing for civil remedies in addition to criminal penalties, and the extent to which existing state and federal statutes may be outdated due to technological developments. *Michele Timmons, Chair; Alberto Gonzales, Vice Chair.*

**Study Committee on Updating the Uniform Determination of Death Act.**
This study committee will study the need for and feasibility of updating the Uniform Determination of Death Act (1980), which has been enacted in 44 states. Issues to be considered include lack of uniformity in the medical standards used to determine death by neurologic criteria, the relevance of hormonal functions, and whether notice should be provided before a determination of death. *Sam Thumma, Chair.*

**Study Committee on Family Court Emergency Procedures**
This study committee will study the need for and feasibility of a uniform or model act addressing family court procedures in time of emergency. Issues to be addressed may include use of automatic continuances, suspension of statutes of limitation, prioritization of certain categories of disputes for in-person hearings, and utilization of technology, as well as considering the feasibility of incorporating provisions relating to existing uniform acts to ensure their effective operation during times of emergency. This project was proposed by the JEB/Uniform Family Law. *Paul Kurtz, Chair.*

**Study Committee on Mortgage Modifications.**
This study committee will study the need for and feasibility of a uniform or model act addressing mortgage modification issues. Topics to be addressed include whether the modification of some of the terms of a mortgage loan requires the execution and recordation of an instrument modifying the currently recorded mortgage document, as well as the extent to which the mortgage retains its priority to secure repayment of the debt as modified. This project was proposed by the JEB/Uniform Real Property Acts. *Jack Burton, Chair.*
ULC and the Covid-19 Crisis
New Study Committees Working

This spring, the ULC Executive Committee authorized the appointment of three study committees to address various legal issues relating to the current COVID-19 crisis and to address future epidemics and pandemics.

Study Committee on Public Health Emergency Authorities
This committee has studied the need for and feasibility of one or more uniform state laws addressing the authority of state governments to respond to epidemics, pandemics, and other public health emergencies. The committee has considered such topics as quarantines, social distancing, business closures, collective purchasing mechanisms, and rules for medical practice. The committee reported to Scope at its July 2020 meeting, and requested that it be continued. The Committee on Scope and Program determined that the study committee be continued, and requested that the study committee further evaluate whether public health emergency laws granting state officials the power to suspend laws, regulations or orders during public health emergencies should be considered as outlined in the report of the Study Committee on State Governance during Public Health Emergencies.

Study Committee on Mitigation of Public Health Emergency Business Disruptions
This committee has studied the need for and feasibility of one or more uniform state laws providing special rules and procedures to mitigate the impact of an epidemic, pandemic, or other public health emergency on the operation of businesses. The committee has considered such topics as non-liquidating receiverships, business interruption insurance, and the application of force majeure and impossibility doctrines. The committee reported to Scope at its July 2020 meeting, and requested that it be continued. The Committee on Scope and Program determined that the study committee be continued for at least six more months, and one year if necessary.

Study Committee on State Governance during Public Health Emergencies
This committee has studied the need for and feasibility of one or more uniform state laws addressing the operation of state government during public health emergencies. The committee has considered such topics as temporary suspension of laws through executive action, judicial procedures during emergencies and the use of remote meetings. The committee reported to Scope at its July 2020 meeting, and requested the appointment of a drafting committee on public meetings of state and local agencies during emergencies. Scope and Program recommended the appointment of a drafting committee, and the Executive Committee approved that request. The Study Committee on State Governance during Public Health Emergencies has completed its work and has been discharged.

A Drafting Committee on Public Meetings During Emergencies has been authorized. This drafting committee will draft a uniform or model act granting state and local agencies the authority to conduct meetings and hearings during emergencies using communication technology and alternative forms of voting, subject to minimum standards relating to technologies used, security, record retention, public access, the protection of the rights of parties to contested cases, training to establish competency to use remote communication technologies effectively, and other relevant requirements.
William M. Hannay, Co-Chair of the JEB for International Law, passed away unexpectedly in August. Bill represented the American Bar Association on the IJEB, and served as co-chair with Commissioner Henry Gabriel. Bill had been a partner with the Chicago-based law firm Schiff Hardin LLP, concentrating his practice in litigation and counseling with respect to competition and international trade regulation law at home and abroad. Bill chaired the American Bar Association’s Section of the International Law and Practice in 1998-99 and later served as Chair of the ABA’s Africa Law Initiative Council in 2000-02. He served as a member of the ABA House of Delegates for six years. He is survived by his wife Donna Hannay and his children. Our sincere condolences go out to Bill’s family.

Robert R. Fullerton, who served as uniform law commissioner from Colorado from 1977-1983, and again from 1984 to 1986, passed away in Denver on May 25, 2020, at the age of 91. Bob earned his law degree from the University of Denver and became a judge at the age of 29. He spent most of his career in Denver district court, serving on the bench for over 40 years. He received the Judicial Excellence Award from the Denver Bar Association in 1987. He was also an adjunct professor at the University of Denver for many years. Bob is survived by his wife Beverlee, and his children and grandchildren. Our sincere condolences go out to Bob’s family.

New Members of the ULC Family!

The ULC family continues to grow!

Kaitlin Wolff, ULC Legislative Counsel, and her husband Josh Wolff recently welcomed their first child – a baby girl. Lillian Catherine Wolff was born on June 30, and weighed 5 pounds 6 ounces. Kaitlin and Josh and baby Lily are all home and doing fine. Congratulations Kaitlin!

Tim Schnabel, ULC Executive Director, and his wife Amy Schnabel recently welcomed their second child, another baby girl! Natalie Jane Schnabel was born on July 16. The parents and baby Natalie, along with big sister Mara, are all home and also doing just fine. Congratulations Tim!