

REPORT OF THE

**COMMISSIONERS
FOR THE PROMOTION OF
UNIFORMITY OF LEGISLATION**

**TO THE GOVERNOR
AND THE GENERAL ASSEMBLY OF VIRGINIA**



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Up-to-date information is available on the website of the National
Conference of Commissioners on Uniform State Laws
www.uniformlaws.org/

**Report of the
Commissioners for the Promotion of Uniformity of
Legislation
to
The Governor and the General Assembly of Virginia
Richmond, Virginia**

January 1, 2019 - December 31, 2019

HISTORY OF THE CONFERENCE

In 1889, the New York Bar Association appointed a special committee on uniformity of laws. The following year, the New York legislature authorized the appointment of commissioners

. . . to examine certain subjects of national importance that seem to show conflict among the laws of the several commonwealths, to ascertain the best means to effect an assimilation or uniformity of the laws of the states, and especially whether it would be advisable for the State of New York to invite the other states of the Union to send representatives to a convention to draft uniform laws to be submitted for approval and adoption by the several states.

In the same year, the American Bar Association passed a resolution recommending that each state provide for commissioners to confer with the commissioners of other states regarding legislation on certain issues. In August of 1892, the first National Conference of Commissioners on Uniform State Laws (Conference) convened in Saratoga Springs, New York.

By 1912, every state was participating in the Conference. Since then, the Conference has steadily increased its contribution to state law and has attracted some of the most outstanding members of the legal profession. Prior to his more notable political prominence and service as president of the United States, Woodrow Wilson became a member in 1901. Former Supreme Court Justices Brandeis, Souter, and Rutledge, and former Chief Justice Rehnquist, and such legal scholars as Professors Wigmore, Williston, Pound, and Bogart have all served as members of the Conference. This distinguished body has guaranteed that the products of the Conference are of the highest quality and are enormously influential upon the process of the law.

The Conference, also known as the Uniform Law Commission (ULC), began more than 100 years ago because of the interests of state governments in improvement of the law and interstate relationships. Its purposes remain to serve state governments and improve state law.

OPERATION OF THE CONFERENCE

The ULC convenes as a body once a year. Throughout the year, drafting committees, composed of commissioners, work over several weekends on drafts of legislation to be considered at the annual meeting. The work of the drafting committees is read line by line and thoroughly debated at the annual meeting. Each act must be considered over a number of years; most are read and debated by the Conference two or more times. Those acts deemed by the ULC to be ready for consideration in the state legislatures are put to a vote of the states. Each state caucuses and votes as a unit.

The governing body of the ULC, the Executive Committee, is composed of officers elected by vote of the commissioners, ex officio members, and members who are appointed annually by the president of the ULC. Certain activities are conducted by standing committees. For example, the Committee on Scope and Program considers all new subject areas for possible uniform acts. The Legislative Committee superintends the relationships of the Conference to the state legislatures.

The ULC maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which provides advisers to all ULC drafting committees and many ULC study committees. Additionally, liaison is continually maintained with the American Law Institute, the Council of State Governments, the National Conference of State Legislatures, the National Association of Secretaries of State, the Conference of Chief Justices, and the National Center for State Courts on an ongoing and as-needed basis. Other organizations are frequently contacted and advised of Conference activities as interests and activities necessitate.

At the national office in Chicago, a small staff provides administrative and clerical assistance to the ULC and the individual members, as well as advice and coordinating assistance in securing the passage of uniform acts. The ULC contracts with “reporters” for professional services to aid in drafting. Reporters are engaged at modest honoraria to work with drafting committees on specific acts. The annual budget and audit report of the Conference are available on request.

The work of the ULC strengthens the state and federal system of government. In many areas of the law, the states must solve problems through cooperative action or the issues are likely to be preempted by Congress. The ULC pursues solutions to problems on a cooperative basis by the states. Without the ULC, more legislative activities would undoubtedly shift from the state capitals to Washington, D.C.

VALUE FOR VIRGINIA AND THE STATES

The process of drafting a uniform act is lengthy and deliberate. A committee is appointed from the membership of the ULC. The American Bar Association is invited to appoint an adviser to each drafting committee. The bylaws of the ULC require at least two years for drafting and two readings of the draft at annual meetings of the ULC.

Uniform Law Commissioners donate their professional services, spending hundreds of hours on uniform state laws as a public service because of their commitment to good law. The cumulative value of this donated time in the development of uniform and model acts averages between \$1 and \$2 million per project.

The average revision of an article of the Uniform Commercial Code takes four years, with three to five committee meetings per year. The original Uniform Probate Code took a full decade to develop and promulgate. Each of these comprehensive projects costs much more than the actual budget of the ULC and represents much larger contributions—in terms of time—from the ULC membership.

Major committees of the ULC draw advisory and observer groups into the drafting process. Meetings of the Uniform Commercial Code committees regularly draw advisers and observers in a ratio of two or three to one commissioner. These advisers and observer groups represent various interests, provide outside expertise, and facilitate dissemination of the act. It is impossible to place a dollar value on their input, which state funds do not pay.

It is also not possible to measure the worth of the intellectual participation by all who are involved. There is no process at either the state or federal level of the United States government today that compares to the uniform law process—intense, nonpartisan scrutiny of both policy and execution of the law.

STATE APPROPRIATIONS

The ULC is a state service organization that depends upon state appropriations for its continued operation. All states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands are asked to contribute a specific amount, based on population, for the maintenance of the ULC. In addition, each state delegation requests an amount to cover its commissioners' travel expenses for the Conference's annual meeting. The total requested contribution of all the states to the operation of the ULC is \$3,027,850 in fiscal year 2020. The smallest state contribution is \$19,950 and the largest is \$175,350. Virginia's dues for FY 2020 are \$62,400. The annual budget of the ULC for FY 2020 is \$4,252,013. Of this amount, \$932,949 goes directly to drafting uniform and model acts and includes travel expenses for drafting committee meetings, printing and publication costs, and editing and personnel costs. The research process, which includes the work of study committees and the ULC Committee on Scope and Program, is \$352,359. In addition, \$760,482 is spent in assisting state legislatures with bills based on uniform and model acts. This amount includes salaries and travel expenses. About \$547,531 is spent on the annual meeting. Public education for uniform and model acts costs about \$157,452 and includes contractual services, materials costs and travel expenses. The remainder of the budget pays general administrative costs, governance costs, and occupancy expenses.

OTHER FINANCIAL CONTRIBUTORS

Grants from foundations and the federal government are occasionally sought for specific educational and drafting efforts.

The Uniform Commercial Code (UCC) is a joint venture between the ULC and the American Law Institute (ALI). In the 1940s, the Falk Foundation supported the UCC's original development. Proceeds from copyright licensing of UCC materials replenish the original funds. Whenever work on the UCC commences, a percentage of ULC and ALI costs are paid from endowment income.

In addition, the Commission has established royalty agreements with major legal publishers, which reprint the ULC's uniform and model acts in their publications.

The Conference will not take money from any source except on the understanding that its drafting work is completely autonomous.

PROCESS FOR CREATION OF UNIFORM AND MODEL ACTS

The procedures for drafting an act are the result of long experience with the creation of legislation. The Scope and Program Committee, which consists solely of commissioners, considers new subject areas of state law for potential uniform or model acts. The Committee reviews suggestions for uniform or model acts from many sources, including organized bar groups, state governments, and private persons. If a subject area cannot be adequately studied by the Scope and Program Committee, it is likely to be given to a special study committee. Study committees report back to the Scope and Program Committee. The recommendations of the Scope and Program Committee go to the ULC Executive Committee.

Once a subject receives approval for drafting, a drafting committee is selected, and a budget is established for the committee work. A reporter is usually engaged, although a few committees work without professional assistance.

Advisers and participating observers are solicited to assist the drafting committee. The American Bar Association appoints official advisers for every committee. Participating observers may come from state government or organizations with interest and expertise in a subject, and from the ranks of recognized experts in a subject. Advisers and participating observers are invited to work with drafting committees and to contribute comments. They do not make final decisions with respect to the final contents of an act; only the commissioners who compose the drafting committee may do this.

A committee meets according to the needs of the project. A short act may require two or three committee meetings. Major acts may require many more meetings for a considerable period of time—several years, in some instances. A committee may produce a number of successive drafts as an act evolves.

At each annual meeting during its working life, the drafting committee must present its work to the whole body of the ULC. The most current draft is read and debated. This scrutiny continues from annual meeting to annual meeting until a draft satisfies the whole body of the commissioners. No act is promulgated without at least two years' consideration, meaning every act receives at least one interim reading at an annual meeting and a final reading at a subsequent annual meeting. There is often more than one interim reading and a drafting process that exceeds two years in duration. An act becomes official by a majority vote of the states (one vote to each state). The vote by states completes the drafting work, and the act is ready for consideration by the state legislatures.

The cost of this process to the states is in travel expenses, paper and publication costs, and meeting costs. Nearly all the services are donated, thereby eliminating the single greatest cost factor.

THE IMPORTANCE OF VIRGINIA'S CONTRIBUTION

Virginia's participation, both in terms of appointing uniform law commissioners and contributing funds, is essential. Virginia benefits from the excellent body of law created for its consideration. The Conference, and all the states, benefit from having Virginia's direct contribution to the work of the ULC.

THE VIRGINIA COMMISSIONERS

The Governor is authorized to appoint three members, each to serve a four-year term (§ 30-196, Code of Virginia). Mary P. Devine, of Manakin-Sabot, Thomas Edmonds, of Richmond, and Christopher R. Nolen, of Glen Allen, are gubernatorial appointees.

In addition to the Governor's appointments, the Constitution of the Conference authorizes the appointment of life members upon recommendation of the Executive Committee. Virginia's life members are Ellen F. Dyke, of Vienna, H. Lane Kneedler, of Charlottesville, Esson McKenzie Miller, Jr., of Richmond, and Carlyle C. Ring, Jr., of Alexandria. Mary P. Devine, of Manakin-Sabot was appointed as a life member during the 2019 Annual Meeting.

The Constitution of the Conference also grants membership as an associate member to the principal administrative officer of the state agency "charged by law with the duty of drafting legislation," or his designee. Mark J. Vucci, then the Director of the Division of Legislative Services, became a member in 2016. Emma E. Buck, attorney with the Division, has been designated an associate member.

ACTIVITIES OF THE 2019 SESSION OF THE VIRGINIA GENERAL ASSEMBLY

The following actions regarding uniform laws were taken by the 2019 Session of the Virginia General Assembly.

Uniform Law-Related Bills Passed By the 2019 Session of the General Assembly and Signed By the Governor of Virginia

Uniform Protected Series Act

H.B. 2272; Delegate Webert. Limited liability companies; Protected Series Act. Provides for the creation by a limited liability company (LLC) of one or more protected series. The measure provides that each protected series may have different ownership, management structures, assets, and liabilities. Each protected series may function in a manner analogous to a separate legal entity within the LLC that established the protected series, which is referred to as the series LLC. The measure provides a process through which debts and obligations of one protected series are neither the debts nor obligations of any other protected series nor of the series LLC. Under the measure, a separate public filing is required to establish each protected series of a series LLC. The measure specifies rules for disregarding the internal liability shields that protect the assets of one protected series from the creditors of another. The measure provides that assets not properly associated with a protected series may be subject to the claims of creditors even if the internal shields among series remain intact. The measure is based on the Uniform Protected Series Act prepared by the National Conference of Commissioners on Uniform State Laws. The measure has a delayed effective date of July 1, 2020.

Updates to the Uniform Transfers to Minors Act

S.B. 1307; Senator Edwards. Uniform Transfers to Minors Act; age 25. Permits a transferor to transfer property under the Uniform Transfers to Minors Act to an individual under the age of 21 to be paid, conveyed, or transferred to such individual upon his attaining 25 years of age, unless the minor attaining age 21 years of age delivers a written request therefor to the custodian. Under current law, such property must be paid, conveyed, or transferred upon the individual's attaining 18 years of age, or 21 years of age if specifically requested by the custodian.

Uniform Law-Related Bills Introduced and Not Passed

Uniform Partition of Heirs Property Act

S.B. 1190; Senator Dance. Uniform Partition of Heirs Property Act. Creates the Uniform Partition of Heirs Property Act, which preserves the right of a cotenant to sell his interest in inherited real estate, while ensuring that the other cotenants will have the necessary due process, including notice, appraisal, and right of first refusal, to prevent a forced sale. If the other cotenants do not exercise their right to purchase property from the seller, the court must order a partition in kind if feasible, and if not, a commercially reasonable sale for fair market value. The provisions of the bill apply to partition actions filed on or after July 1, 2019.

REPORT OF PROCEEDINGS OF THE 2019 ANNUAL MEETING

The 2019 annual meeting of the Conference was held July 11 to July 18 in Anchorage, Alaska. Commissioners Buck, Devine, Dyke, Edmonds, Kneedler, Miller, and Vucci attended.

The following uniform acts or amendments to uniform acts were approved at the annual meeting:

- *Uniform Automated Operation of Vehicles Act*
- *Uniform Electronic Wills Act*
- *Uniform Registration of Canadian Money Judgments Act*
- *Uniform Athlete Agents Act Amendment*
- *Uniform Probate Code Amendments*

In addition to the approved acts listed above, the following uniform acts, or amendments to them, and their accompanying reports were considered by the Conference at its annual meeting:

- *Non-Parental Rights to Child Custody and Visitation Act*
- *Tort Law Relating to Drones Act*
- *Alternatives to Bail Act*
- *Fundraising Through Public Appeals Act*
- *Unregulated Transfers of Adopted Children Act*
- *Easement Relocation Act*

2019 ADOPTIONS BY CONFERENCE

SUMMARIES

Summaries of the acts adopted or amended by the Conference are as follows:

Uniform Automated Operation of Vehicles Act

The Uniform Automated Operation of Vehicles Act regulates important aspects of the operation of automated vehicles. This act covers the deployment of automated vehicles on roads held open to the public by reconciling automated driving with a typical state motor vehicle code. Many of the act's sections—including definitions, driver licensing, vehicle registration, equipment, and rules of the road—correspond to, refer to, and can be incorporated into existing sections of a typical vehicle code. This act also introduces the concept of automated driving providers (ADPs) as a legal entity that must declare itself to the state and designate the automated vehicles for which it will act as the legal driver when the vehicle is in automated operation. The ADP might be an automated driving system developer, a vehicle manufacturer, a fleet operator, or another kind of market participant that has yet to emerge. Only an automated vehicle that is associated with an ADP may be registered. In this way, the Automated Operation of Vehicles Act uses the motor vehicle registration framework that already exists in states—and that applies to both conventional and automated vehicles—to incentivize self-identification by ADPs. By harnessing an existing framework, the act also seeks to respect and empower state motor vehicle agencies.

Uniform Electronic Wills Act

The Uniform Electronic Wills Act permits testators to execute an electronic will and allows probate courts to give electronic wills legal effect. Most documents that were traditionally printed on paper can now be created, transferred, signed, and recorded in electronic form. Since 2000, the Uniform Electronic Transactions Act (UETA) and a similar federal law, E-SIGN have provided that a transaction is not invalid solely because the terms of the contract are in an electronic format. But UETA and E-SIGN both contain an express exception for wills, which, because the testator is deceased at the time the document must be interpreted, are subject to special execution requirements to ensure validity and must still be executed on paper in most states. Under the new Electronic Wills Act, the testator's electronic signature must be witnessed contemporaneously (or notarized contemporaneously in states that allow

notarized wills) and the document must be stored in a tamper-evident file. States will have the option to include language that allows remote witnessing. The act will also address recognition of electronic wills executed under the law of another state. For a generation that is used to banking, communicating, and transacting business online, the Uniform Electronic Wills Act will allow online estate planning while maintaining safeguards to help prevent fraud and coercion.

Uniform Registration of Canadian Money Judgments Act

The Uniform Registration of Canadian Money Judgments Act (“Registration Act”) creates an administrative procedure for the registration and enforcement of a Canadian money judgments in an enacting state. Once the Canadian judgment is successfully registered in the state, the judgment is enforceable in the same manner as a judgment rendered in that state. The Registration Act only applies to a Canadian judgment if it (1) grants or denies recovery of a sum of money; (2) is final, conclusive, and enforceable in Canada; and (3) its recognition is sought in order to enforce the judgment. The Registration Act supplements the Uniform Foreign Country Money Judgments Recognition Act (“Recognition Act”) by providing an alternative method to seeking recognition and enforcement of a foreign judgment. If a state has not enacted the Recognition Act, it may enact this Act at the same time it adopts the Recognition Act as a companion Act. The Registration Act offers an efficient alternative to filing a lawsuit to recognize and enforce a Canadian money judgment in the United States.

Uniform Athlete Agents Act Amendment

The Revised Uniform Athlete Agents Act (RUAAA) updates the 2000 version of the act for the ever-evolving sports commercial marketplace and the increasing activity between athlete agents and student athletes. The RUAAA protects the interests of student athletes, academic institutions, and athlete agents by regulating the activities of athlete agents. The 2015 revision updates the definition of “athlete agent;” requires reciprocal agent licensing; creates a central licensing process; enhances notice requirements to educational institutions; and revised administrative remedies arising from damages resulting from improper athlete agent conduct. An Amendment to the Uniform Athlete Agents Act, approved in 2019, applies to changes that the NCAA made to its bylaws in August of 2018 to provide student athletes playing basketball with more freedom and flexibility to explore the possibility of going professional while retaining their college eligibility. Under the new NCAA bylaws, certified sports agents can cover limited expenses of prospective or enrolled college

basketball players and their family for meals, hotel, and travel in connection with the agent selection process. Because the NCAA bylaw changes were in conflict with the Athlete Agents Acts, the NCAA asked the ULC to amend the two Uniform Athlete Agents Acts so they will not conflict with the bylaw changes. The Section 14 Amendment was drafted to clear up the conflict; it was also drafted so that it applies beyond the current bylaws to ensure that the ULC will not have to go to state legislatures every time the NCAA broadens its bylaws. The amendment does, however, set forth appropriate safeguards so that it only applies if the NCAA makes further changes.

Uniform Probate Code Amendments

The promulgation of the Uniform Parentage Act (2017) has necessitated amendments to the Uniform Probate Code's intestacy and class-gift provisions. The 2019 Amendments to the Uniform Probate Code provide a more consistent formula for determining intestate shares within blended families, remove outdated terminology, and incorporate the concept of de facto parentage. The intestacy formulae will also account for the possibility that a child may have more than two parents, and therefore more than two sets of grandparents.

NEW DRAFTING PROJECTS

At the 2019 Annual Meeting, the ULC Executive Committee authorized the appointment of four new drafting committees and new study committees. The committees are:

Drafting Committees

Drafting Committee on Collection and Use of Personally Identifiable Data. This drafting committee will draft a uniform or model law addressing the collection and use of personally identifiable data, including provisions governing the sharing, storage, security, and control of the personal data of others. The collection and use of personal data are important features of our modern economy, but raise significant issues of privacy and control. A uniform or model act on this subject would serve as a comprehensive legal framework for the treatment of data privacy.

Drafting Committee on Registration and Licensing of Direct-to-Consumer Sales of Wine and the Prevention of Illegal Sales. This committee will draft a uniform or model law addressing registration and licensing of the direct sale of wine to consumers and the prevention of illegal sales. Currently, more

than 40 states permit direct-to-consumer (DTC) sales of wine, though few existing DTC statutes adequately address compliance with other registration, reporting, or tax requirements, and most existing statutes do not adequately address sales to persons who are prohibited from purchasing alcohol.

Drafting Committee on Common Interest Ownership Act and the Uniform Condominium Act. This drafting committee will develop revisions to the Uniform Common Interest Ownership Act (UCIOA) and the Uniform Condominium Act (UCA). UCIOA deals comprehensively with the complex issues posed in condominiums, cooperatives, and planned communities – the three forms of real estate ownership in which multiple persons each own a separate parcel of real estate, and all those persons collectively own other parcels of real estate in common. The ULC has devoted substantial resources for more than 50 years to the regulation of these forms of shared real estate ownership and has a significant interest in making sure that both UCIOA and UCA are kept up to date.

Drafting Committee on Disposition of Community Property Rights at Death. This drafting committee will revise the Uniform Disposition of Community Property Rights at Death Act, originally promulgated in 1971 and adopted in 16 states. The act provides rules for disposing of a decedent's property, originally acquired as community property, when the decedent's estate is probated in a non-community property state. This act is intended to be enacted only in common-law property states. The Joint Editorial Board for Uniform Trust and Estate Acts recommended updating the act to address recent legal developments.

Study Committees

Study Committee on Uniform Commercial Code and Emerging Technologies. The Joint Study Committee on the Uniform Commercial Code and Emerging Technologies, with members from the American Law Institute and the Uniform Law Commission, will review the Official Text of the Uniform Commercial Code with a view to recommending or possibly drafting amendments or revisions to the Uniform Commercial Code to accommodate emerged and emerging technological developments. The committee will consider, among other technologies, distributed ledger technology and virtual currency and other digital assets.

Study Committee on Default Judgments in Debt Collection Cases. This committee will study the need for and feasibility of state legislation on default judgments in debt collection cases brought by third-party debt collectors and debt buyers. Significant changes in debt collection practices in recent years have

resulted in dramatic growth in the industry which, in turn, has placed considerable pressure on court dockets and raised concerns about fairness to debtors. These developments may justify a model or uniform law to regulate the processes and information required before the entry of a default judgment in debt collection cases.

Study Committee on Special Deposits. This committee will consider the need for and feasibility of state legislation on special deposits. A special deposit resembles a prefunded letter of credit with three parties: a funder, a bank, and a beneficiary. The bank pays the beneficiary if a specified condition occurs. If the specified condition does not occur, the special deposit reverts to the funder. A special deposit is not assignable and is not subject to legal process. The law of special deposits has not developed much since the 1930s, and a uniform or model act on special deposits could provide greater clarity in this area.

Study Committee on Fines and Fees. This committee will consider the need for and feasibility of a uniform or model law addressing the impact of fines and fees on people of limited means. The impact of fines and fees on those with means can be a mere inconvenience, but for the poor and working poor who are unable to pay, those same fines and fees can be devastating, resulting in thousands of dollars of debt and functioning as a poverty trap. The committee will consider three major areas which might be addressed in a uniform or model law: (1) suspension of driving privileges because of unpaid fines and fees even when unrelated to public safety; (2) fines and fees imposed on juveniles and their parents in the juvenile justice system; and (3) fines and fees imposed without consideration of ability to pay because of adult criminal offenses.

Study Committee on Third-Party Funding of Litigation. This committee will study the need for and feasibility of a uniform or model law governing third-party funding of litigation and arbitration. Third-party funding, in its traditional form, is a non-recourse loan from the funder to a party in arbitration or litigation in return for a contingent right to receive a portion of the potential proceeds of a settlement, judgment, award, or verdict obtained for a legal claim. Within the last decade, the picture has become more complex. New forms of funding include portfolio financing of large numbers of cases at a law firm or corporation, equity investment products that finance litigation in exchange for shares in a company, and crowdfunding. Current state legislation on third-party funding varies in terms of the issues addressed and the policy solutions provided.

Study Committee on Disposition of Human Embryos and Gametes. This committee will study the need for and feasibility of state legislation governing the disposition of human embryos and gametes at divorce, separation, or death.

Study Committee on Telehealth. This committee will study the need for and feasibility of state legislation on telehealth, focusing on the doctor-patient relationship through telemedicine, the corporate practice of telemedicine, and broader emerging issues of telehealth including the use of mobile devices and artificial intelligence.

Study Committee on Jury Selection and Service. This committee will study the need for and feasibility of updating the Uniform Jury Selection and Service Act, originally promulgated in 1970 and adopted in eight states.

Study Committee on Event Data Recorders in Cars. The Study Committee on Event Data Recorders in Cars is studying the need for and feasibility of uniform or model state legislation concerning event data recorders and all generated vehicle data. The committee has considered the issues raised by the installation of data recorders in vehicles, including privacy issues; disclosure requirements; ownership of data; use of EDR data as evidence; access to and data retrieval for use by law enforcement or others; use required by or retrieved by insurers; and use of EDR data as evidence in legal proceedings.

REQUEST FOR TOPICS APPROPRIATE FOR CONSIDERATION AS UNIFORM ACTS

The Virginia Commissioners welcome suggestions from the Governor, the General Assembly, the Attorney General, the organized bar, state governmental entities, private interest groups, and private citizens on ideas for new uniform or model acts. Appropriate topics are those where (i) uniformity in the law among the states will produce significant benefits to the public and (ii) it is anticipated that a majority of the states would adopt such an act.

Respectfully submitted,

H. Lane Kneedler, Chairman
Emma E. Buck
Mary P. Devine
Ellen F. Dyke
Thomas Edmonds
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