

MEMORANDUM

Date: May 12, 2015 (with Co-Signers as of September 30, 2015)

From: Undersigned ALI Members and Advisers

To: ALI Director, Deputy Director, Project Reporters, Council and Members

Subject: Revisions to Sexual Assault Provisions of the Model Penal Code

Dear Colleagues:

As you are aware, the American Law Institute (ALI) has undertaken a review of the sexual assault provisions of the Model Penal Code. The undersigned members of ALI are concerned about the direction the project has taken. Although the drafts have generated little attention outside of the project itself and although the project has been criticized for late distribution of drafts (*see e.g.*, ALI Reporter, Summer 2014 at 23), we hope that you will consider our concerns both before and during the upcoming Annual Meeting session on Tuesday, May 19 at 9:00 a.m. when Discussion Draft No. 2 dated April 28, 2015 will be considered.

If there is political consensus on anything in the United States today, it is the consensus that our government has overcriminalized and overincarcerated the American public. *See, e.g.*, http://www.nytimes.com/2015/04/28/us/politics/being-less-tough-on-crime-is-2016-consensus.html?emc=edit_th_20150428&nl=todaysheadlines&nid=58186502 and <http://www.bipartisansummit.org>. In his message to the Bipartisan Summit, President Obama said that, “[T]here is an increasing realization that what we’re doing is wrong.” <http://www.cut50.org/summit1>. The ABA also is actively working to reduce overcriminalization and you are aware that ALI itself is running a project to revise the Model Penal Code provisions on sentencing and to reduce the collateral consequences of criminal convictions. Earlier this year in *Yates v. United States*, No. 13-7451, Slip op. (U.S. February 25, 2015), http://www.supremecourt.gov/opinions/14pdf/13-7451_m64o.pdf, a decision in which all nine justices agreed that overcriminalization needs to be reined in¹, Justice Kagan wrote:

That brings to the surface the real issue: overcriminalization and excessive punishment in the U.S. Code.... §1519 is a bad law -- too broad and undifferentiated, with too high maximum penalties, which give prosecutors too much leverage and sentencers too much discretion. And I’d go further: in those ways, §1519 is unfortunately not an outlier, but an emblem of a deeper pathology in the federal criminal code. (*Id.* at 18-19, dissenting on other grounds).

Against this political consensus and judicial backdrop, the current ALI draft is an extreme deviation, focused on expanding criminal sanctions for sexual behavior and expanding the problems cataloged by Justice Kagan.

¹ Justice Kagan addressed overcriminalization directly while the plurality labored to more quietly limit it by ruling that a fish is not a “tangible object” for purposes of the Sarbanes-Oxley Act.

Some of the flaws in the draft are described in comments already posted to the ALI website by Professor Abbe Smith, Professor Laird Kirkpatrick, Professor Kimberly Ferzan, George Liebmann, Guy Struve and others to which the undersigned invite your attention. Because of the length of the draft (250 single-spaced pages), this memorandum can only address a modest subset of the problems found in the draft as a whole.

To understand the draft, please consider a most common behavior in the following hypothetical: Person A and Person B are on a date and walking down the street. Person A, feeling romantically and sexually attracted, timidly reaches out to hold B's hand and feels a thrill as their hands touch. Person B does nothing, but six months later files a criminal complaint. Person A is guilty of "Criminal Sexual Contact" under proposed Section 213.6(3)(a).

How can this be? The draft explains:

Section 213.0(5) defines "sexual contact" expansively, to include any touching of any body part of another person, whether done by the actor or by the person touched. Any kind of contact may qualify; there are no limits on either the body part touched or the manner in which it is touched.... (*Discussion Draft No. 2, Substantive Material, at 31*).

The offense arises because Person A failed to obtain the draft's requisite prior "positive agreement" to the "sexual contact." Section 213.0(3). The draft repeatedly "makes clear that when a complainant's behavior has been passive—neither expressly inviting nor rebuking the defendant's sexual advances, that behavior cannot be considered sufficient to show affirmative permission." (*Discussion Draft No. 2, Substantive Material, at 54*) Person A's guilt is absolute because, "feeling romantically and sexually attracted" and feeling "a thrill as their hands touch," Person A has no defense against the accusation that the touch included the "purpose of sexual gratification... or sexual arousal." Section 213.0(5)

The draft purports to preserve *mens rea* as an element of the offense, but that is no comfort because it is proven with barely an effort from the prosecutor: "Person A, When walking down the street side by side with your date, you knew, or knew of the risk, that Person B had not expressed prior positive agreement that you could reach out and hold B's hand, didn't you? In fact, that's exactly why you were "timid" about it, right?" To avoid making the prosecutor's task so simple, Person A must not testify but, as shown below, Person A will have great need to testify because of the shifting of the evidentiary burden that is caused by the "positive agreement" standard. Note that Person A is still guilty even if they were both wearing gloves. Section 213.0(5) ("clothed or unclothed")

Consider the same couple, but now Person B responds to the criminal hand-holding by pausing to kiss Person A on the cheek. Person A remains guilty since there is no mechanism for retroactive consent, but now Person B is also guilty because Person A has not expressed prior positive agreement for this particular escalation. Under this scenario, the actions of both A and B would satisfy the elements of the offenses. Thus, they would be adjudicated as sex offenders,

would be required in many states to register as such and would suffer the other collateral consequences of conviction for a sex offense.

At every stage of every physical relationship, the “perpetrator” is at risk with no safe harbor of any type. If the initiator got positive agreement “sufficient to show affirmative permission” (*Discussion Draft No. 2*, Substantive Material, at 54) to initiate a kiss, the initiator is still at risk because the accuser can always counter by asserting, “I didn’t say you could kiss me *that way*.” If the initiator got positive agreement “sufficient to show affirmative permission” and did the kiss the right way, the initiator is still at risk with the next identical kiss because, “I didn’t say you could kiss me twice.” The draft acknowledges that its standard “requires the fact finder to focus on the existence of consent regarding each of the disputed sex acts.” *Id.* and Section 213.0(3).

With passivity expressly disallowed as consent, the initiator quickly runs up a string of offenses with increasingly more severe penalties to be listed touch by touch and kiss by kiss in the criminal complaint. This sweeping standard would bring in countless individuals for conduct that heretofore has been innocent.

Objectors to the foregoing analysis might say that prosecution of these offenses and the other examples provided throughout this memorandum would surely be declined or dismissed, but that would require an assumption that every prosecutor, judge, and jury in the country would ignore the Black Letter Law endorsed by ALI. It would also ignore the real problems of strategic accusations that already plague divorce and child custody matters. An accusation can be devastating even when no prosecutor chooses to pick up the accusation in a formal indictment. The draft is devoid of concern for any of these matters despite such factors as the long recognized reason for the elimination of “heart balm” torts:

Those actions for interference with domestic relations which carry an accusation of sexual misbehavior—that is to say criminal conversation, seduction, and to some extent alienation of affections—have been peculiarly susceptible to abuse. . . it is notorious that they have afforded a fertile field for blackmail and extortion by means of manufactured suits in which the threat of publicity is used to force a settlement... and that no preventive purpose is served, since such torts seldom are committed with deliberate plan. (Prosser and Keeton, *Torts* (5th ed. 1984) sec.124, at 929).

There is also the long acknowledged problem of sexual defamation for political and other purposes. *See, e.g.*, David Reisman, Democracy and Defamation, Fair Game and Fair Comment, 42 COLUM. L. REV. 1085, 1282 (1942). The draft here proposes to bring back the power of sexual accusation but this time as part of the criminal code and in a very expansive way.

The expansive definitions of the offenses also work to reshape the evidentiary burden when the prosecutor needs merely to say, “Ladies and Gentlemen of the jury, you must find for the prosecution because there has been no evidence presented to prove that prior positive agreement was obtained.” With guilt as the default outcome in the absence of evidence, the Defendant will

be pressed to waive Fifth Amendment rights and testify, trying to cobble together recollections of subtle behaviors sufficient to create a reasonable doubt that, perhaps, “positive agreement” that is “sufficient to show affirmative permission” (not passivity) did occur. The lowered standards for what constitutes a crime become doubly worrisome when considered together with the uniquely restrictive rules of evidence that limit the presentation of defensive evidence only in sex crime trials.

None of this is inadvertent or the result of loose drafting. To the contrary, the intentionality of the draft is fully disclosed in the announcement that its purpose is to create very expansive statutes and standards with a “default position” of overcriminalization:

[T]he appropriate default position clearly is to err in the direction of protecting individuals against unwanted sexual imposition. (*Discussion Draft No. 2, Substantive Material*, at 53).

Of course, a legal standard requiring the affirmative expression of consent to sex will—inevitably—entail many false negatives, in the form of findings of unwillingness when in fact passionate desire was present. But the contrary standard now prevalent in American law will—just as inevitably—entail many false positives, assumptions of willingness and subsequent sexual intrusion when such intimacy was entirely unwanted. Section 213.2(2) reflects the judgment that the harms that arise under the latter standard present far greater reason for concern. (*Id.*).

The draft also expressly states that its intention is to equate silence with unwillingness and criminal victimization:

The argument has been made—and no doubt will be repeated—that equating silence with unwillingness, as Section 213.2(2) does, “patronizes” or “infantilizes” women, treating them as if they were incapable of expressing their own desires. (*Id.*).

The draft defends this rule by equating it to a doctor obtaining “informed consent” before performing surgery (*Id.*), but it does not acknowledge any of the differences between the risks of surgery and ordinary human contact. Most importantly, the claimed analogy fails to recognize that medical informed consent is a precaution chosen by the doctor as a safeguard against possible civil damages for malpractice, not as a required behavior to avoid criminal liability.

The draft also acknowledges that it is not reflecting any existing social norm or consensus about behavior that should be deemed so extreme as to warrant criminal sanction. Instead, it clearly states that its intention is to coerce conformity to its own choice of new norms for behavior:

On the one hand, it is customary—at least for serious felonies—to reserve the social opprobrium and strong penalties of the criminal law for conduct that is universally condemned as intolerable. By this measure it would be acceptable, perhaps even obligatory, to define the sexual offenses quite narrowly, restricting them to clearly aberrational behavior and declining to

attach penal sanctions to conduct that significant segments of our society regard as predictable, harmless, or even valuable in some circumstances. On the other hand, a vitally important function of the criminal law is to identify and seek to deter behaviors that pose unjustifiable risks, even when those risks are not yet universally understood.... [The law] must often be called upon to help shape those norms by communicating effectively the conditions under which commonplace or seemingly innocuous behavior can be unacceptably abusive or dangerous. (*Discussion Draft No. 2, General Commentary, at 11*).

Beyond the draft's "positive agreement" problem, the draft's expansion of criminal liability includes many elevations in the seriousness of existing crimes and the creation of many new crimes between competent, consenting individuals. Among other offenses, the draft criminalizes conduct between professionals (mental health providers, lawyers, executives, etc.) and those under their supervision or in their care. Indeed, the relationship creates a per se rule, a conclusive presumption of criminality. The issues are complex, far more complex than the draft suggests.

For example, Section 213.4(2)(a) creates a per se felony if the actor "is engaged in providing professional treatment, assessment or counseling for a mental or emotional illness, symptom or condition," regardless of whether the provider is in a position that requires professional licensing, and engages in a sexual relationship "substantially contemporaneous" with the time of the treatment period. Likewise, Section 213.4(2)(b), creates a per se felony for criminal defense lawyers and for domestic relations lawyers who enter a sexual relationship with a client.

The draft asserts that existing licensing rules, ethical requirements, and civil liabilities are not sufficient to catch all of the cases that should be caught but, if so, the solution is not necessarily an expansion of criminal liability, and a substantial one at that. According to the draft's comments, there are approximately one million mental health providers in the United States, of whom about 20 percent (200,000) have become sexually active with a client at some point in their careers. *Discussion Draft No. 2, Substantive Material, at 87*.

In all of these cases, the draft creates a conclusive presumption that the relationship constitutes felonious sexual exploitation regardless of whether the relationship has continued through years of marriage, and regardless of whether the "victim" objects to any prosecution. The draft acknowledges that these new crimes, "are largely a new departure for American law" (*Discussion Draft No. 2, Substantive Material, at 100*) and worries that critics will say it "patronizes" or "infantilizes" its mandatory victims. *Id.* at 53. That worry is well placed.

Perhaps least well defined and very much subject to abuse is Section 213.4, Sexual Intercourse by Coercion, particularly Section 213.4(1)(a)(iii), which creates a third degree felony (ten years) where the actor "obtains that person's consent by threatening to take or withhold action in an official capacity, whether public or private, or cause another person to take or withhold action in an official capacity, whether public or private." The commentary acknowledges that extortion, criminal coercion, and other laws already exist to deal with such things as corrupt officials (*Discussion Draft No. 2, Substantive Material, at 75-76*), but the draft explicitly states its intent to create new sex crimes on top of the existing law. *Id.*

The draft has no *de minimis* threshold for a “threat” that is criminalized so long as the complainant claims that the “threat” was the cause of the consent to sexual intercourse, thereby nullifying the coerced consent. Section 213.4(1)(a)(iii). Suppose that Person A “threatens” to vote for the contestant not preferred by Person B, the sex partner of Person A, during the viewer voting phase of the television show “American Idol.” Six months later, Person B files a criminal complaint alleging that this “threat” was the means by which Person A “obtains consent” to sexual intercourse with Person B. Person A is guilty of a ten-year felony because of this “threat” to “cause another person [the recorder of “American Idol” votes] to take or withhold action in an official capacity, whether public or private.” *Id.* Yes, that is an absurd result but this model statute intended for promulgation to the states invites this result as well as many others that would work to overcriminalize and overincarcerate.

The draft states that it is difficult to distinguish “threats” from mere “offers” of a benefit to which the benefitted party is not entitled and, accordingly, the draft chooses to treat “offers” as the equivalent of “threats.” *Id.* at 77-80. Thus, an offer to vote in favor of your sex partner’s preferred “American Idol” contestant is also a third degree felony if the complainant later asserts that the offer was the cause of the consent to sexual intercourse. The draft candidly admits that it “represents a largely new direction for legislation in this area.” *Id.* at 75.

As this memorandum is being circulated, the U.S. Supreme Court, in Johnson v. United States, Docket No. 13-7120, argued April 20, 2015, has under consideration the question of whether the Armed Career Criminal Act so completely fails to articulate what conduct it punishes as to be unconstitutionally vague. *See, e.g.*, http://www.washingtonpost.com/politics/courts_law/court-considers-limits-to-vagueness-in-statutes/2015/04/20/80bd39b2-e78a-11e4-9767-6276fc9b0ada_story.html. That statute is a model of clarity (and restraint) in comparison to proposed Section 213.4(1)(a)(iii).

In addition to creating new offenses, other offenses are elevated up to and including life imprisonment for “aggravating factors.” For example, Section 213.8 elevates rape to the level of first degree murder if the rape occurs in conjunction with a commercial sex act. Section 213.1(1)(b) elevates rape to the level of first degree murder if the rapist utilized a lookout. Many other elevations are found throughout the draft without any demonstration of need for even longer sentences in a prison system that is already over-burdened with geriatric prisoners. *See, e.g.*, Jamie Fellner, Graying Prisoners, N.Y. TIMES, August 18, 2013. The multiplication and elevation of offenses also magnifies the problem identified in the quotation by Justice Kagan (above) about statutes that “give prosecutors too much leverage” and coerce pleas to lesser offenses. *See also* Jed S. Rakoff, Why Innocent People Plead Guilty, N.Y. REV. OF BOOKS, Nov. 20, 2014.

As is well known, the criminal law has an unfortunate history of excessive punishment in the name of protecting women especially when issues of race are present. *See Coker v. Georgia*, 433 U.S. 584 (1977) (holding death penalty to be unconstitutionally excessive in case of rape of adult women); Brief Amici Curiae of the American Civil Liberties Union, the Center for Constitutional Rights, the National Organization for Women Legal Defense and Education Fund, the Women's Law Project, the Center for Women Policy Studies, the Women's Legal Defense Fund, and Equal

Rights Advocates, Inc., In Support of Petitioner (acknowledging the history of rape prosecutions as both racist and sexist and rejecting “the notion that destruction of men’s lives served to protect and honor women”). As with other areas of criminal law, expanding the statutes in the ways set forth in the draft would fall particularly hard on individuals of color who are represented disproportionately at each stage of the criminal justice system.

We invite the ALI Council and Members to thoroughly examine the proposed draft. At virtually every turn, the draft creates new sex crimes and elevates the punishment of existing sex crimes, with all of this occurring at the same time as the rest of the nation and ALI itself (in the Sentencing Project) have become united in recognition of the need to reduce overcriminalization and overincarceration.

The United States is “indisputably the world leader in locking up human beings behind bars.” David Cole, Punitive Damage, N.Y. TIMES, May 18, 2014, at BR24. Even after the release from prison, the consequences of a conviction linger long and burdensome with approximately seven million currently on post-release supervision. See Lauren E. Glaze & Erinn J. Herberman, Correctional Populations in the United States, 2012, U.S. Department of Justice, Bureau of Justice Statistics, Dec. 19, 2013, <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4843> and Too Many Laws, Too Many Prisoners: Never in the Civilized World Have So Many Been Locked Up for So Little, THE ECONOMIST, July 22, 2010, <http://www.economist.com/node/16636027>.

Federal and state data uniformly show that sexual assaults are decreasing. See, e.g., U.S. Department of Justice. *National Crime Victimization Survey*. 1993-2013, <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=245>. Even the draft concedes that “victimization rates for sexual assault, like those for violent crime generally, have dropped significantly in recent decades.” *Preliminary Draft No. 4*, Substantive Material, at 20.

The ALI should not be working so aggressively to create new crimes and to elevate the punishment of existing crimes. This is particularly the case where the draft’s commentary does so little to show that the current law is inadequate and does so little to consider non-criminal options for less serious behavior where some would like to see a shift in social norms. Among other deficiencies, the current draft contains no acknowledgement of the ongoing ALI project to revise the Restatement on Intentional Torts to Persons which clearly can provide an adequate remedy for many concerns about sexual behavior. Further, the draft contains no analysis of its impact on convictions and imprisonment contrary to standard practice in most revisions of criminal offenses. Accordingly, ALI members are left with no idea of how many thousands or millions of new sex offenders are being created by the draft proposal.

We believe that the Sexual Assault Project needs a fundamental rethinking. While the Project is not strictly limited as would be the case with a proposed Restatement, we believe that the stunning expansion of criminalization proposed by the draft is unwise, unjust, and contrary to the national consensus regarding the need to reduce the already existing problem of overcriminalization and overincarceration.

We urge the ALI Council and members to become more fully involved because it will be you and your organization whose names will be on the final product. We hope that you will attend and speak at the Annual Meeting on May 19, 2015 and that you will submit comments on the draft. We hope that you share our concerns about the dramatic expansion of criminal liability contained in the current draft.

To facilitate communication with any interested member, we invite you to contact Chris at sa.mpc.revisionconcerns@gmail.com to allow efficient routing of inquiries to our group.

John M. Burkoff
Professor
University of Pittsburgh School of Law
Pittsburgh, PA

Paul D. Carrington
Harry R. Chadwick, Sr. Professor Emeritus of
Law
Duke University School of Law
Durham, NC

Roger S. Clark
Board of Governors Professor
Rutgers School of Law
Camden, NJ

Donna Lee Elm
Tampa, FL

Theodore H. Frank
Washington, DC

Eric M. Freedman
Siggi B. Wilzig Distinguished Professor of
Constitutional Rights
Hofstra University School of Law
Hempstead, NY

Nancy Gertner
Retired Judge, U.S. District Court (D. Mass)

Senior Lecturer
Harvard University School of Law
Cambridge, MA

Ronald Henry
Washington, DC

Kathryn M. Kase
Houston, TX

George Liebmann
Liebmann & Shively, P.A.
Baltimore, MD

Henry R. Lord
Partner Emeritus
DLA Piper LLP (U.S.)
Baltimore, MD

Christopher B. Mueller
Henry S. Lindsley Professor of Law
University of Colorado
Boulder, CO

David Patton
New York, NY

Michael Pinard
Professor

University of Maryland School of Law
Baltimore, MD

William Reynolds

ALI Life Member
Jacob A. France Professor of Judicial Process
Emeritus
University of Maryland School of Law
Baltimore, MD

D. Michael Risinger

ALI Life Member
John J. Gibbons Professor of Law
Associate Director,
Last Resort Exoneration Project
Seton Hall University School of Law
Newark, NJ

David Rudovsky

Senior Fellow, Penn Law School
Founding Partner, Kairys, Rudovsky, Messing,
and Feinberg, LLP
Philadelphia, PA

Stephen A. Saltzburg

ALI Life Member
Washington, DC

Jon Sands

Phoenix, AZ

Felicia Sarner

Philadelphia, PA

Virginia E. Sloan

Washington, DC

Abbe Smith

Professor of Law
Director, Criminal Defense & Prisoner
Advocacy Clinic and Co-Director, E. Barrett
Prettyman Fellowship Program
Georgetown University Law Center
Washington, DC

David L. Shapiro

William Nelson Cromwell

Professor of Law, emeritus
Harvard University School of Law
Cambridge, MA

Kate Stith

Lafayette S. Foster Professor of Law
Yale Law School
New Haven, CT

Robert Cottrol

Harold Paul Green Research Professor of Law
The George Washington University Law
School
Washington, DC

Daniel S. Kleinberger

Professor Emeritus – William Mitchell College
of Law
Research Director, Joint Editorial Board on
Uniform Unincorporated Organization Acts
St. Paul, MN

Andrew L. Frey

New York, NY

William Leahy

Director
Office of Indigent Legal Services
Albany, NY

C. Allen Foster

Washington, DC

Dianne Bennett

Retired, Managing Partner
Hodgson Russ LLP
Buffalo, NY

Stephen K. Huber

Professor Emeritus
University of Houston Law Center
Life Member, American Law Institute
Houston, TX

Victor A. Vilaplana

of Counsel

Foley and Lardner, LLP
San Diego, CA

Ronald J. Allen

John Henry Wigmore Professor of Law
Northwestern University
Chicago, IL

Kenneth G Dau-Schmidt, JD, PhD

Willard and Margaret Carr
Professor of Labor and Employment Law
Indiana University--Bloomington
Maurer School of Law
Bloomington, IN

Frank W. Elliot

ALI Life Member
Professor of Law
Texas A&M University
Fort Worth, TX

John S. Beckerman

Visiting Professor
Rutgers University School of Law
Camden, NJ

Thomas R. Newman

New York, NY

W. Amon Burton

Austin, TX

Allen Shoenberger

Professor
Loyola University School of Law
Chicago, IL

Ira M. Feinberg

Hogan Lovells US LLP
New York, NY

Corinna Barrett Lain

Professor of Law and Associate Dean for
Faculty Development
University of Richmond School of Law
Richmond, VA

Alan D. Hornstein

New York, NY
Professor Emeritus of Law
University of Maryland
Francis King Carey School of Law

Bradley Y Smith

New York, NY

Christiane C. Wendehorst

Professor of Law
University of Vienna
Vienna, Austria

Jeannie Suk

Professor of Law
Harvard Law School
Cambridge, MA

Hon. Benjamin Lerner

Senior Judge, Court of Common Pleas
First Judicial District, Commonwealth of
Pennsylvania
Philadelphia, PA

Glenn Koppel

Professor of Law
Western State College of Law,
Fullerton, CA

Joan G. Wexler

Dean and President Emerita
Professor of Law
Brooklyn Law School
Brooklyn, NY

Thomas C. Arthur

L.Q.C. Lamar Professor
Emory University School of Law
Atlanta, GA

Joan Steinman

Distinguished Professor of Law
Chicago-Kent College of Law
Chicago, IL

John Olson

Distinguished Visitor from Practice
Georgetown Law Center
Partner, Gibson, Dunn & Crutcher, LLP
Washington, DC

David Ellenhorn

New York, NY

Elizabeth K. Ainslie

Philadelphia, PA

Ved P. Nanda

Thompson G. Marsh Professor of Law
University of Denver, Sturm College of Law
Denver, CO

Richard Blau

Tampa, FL

James B. Craven III

Durham, NC

Reginald L. Robinson

Professor of Law
Howard University
Washington, DC

George M. Newcombe

Palo Alto, CA

Margaret P. Mason

LeClairRyan
New Haven, CT

John G. Crabtree

Key Biscayne, FL

Cynthia Lee

Washington, DC

Ira Ellman

Charles J. Merriam Distinguished Professor of
Law
Sandra Day O'Connor College of Law
Arizona State University
Tempe, AZ

Hon. Evelyn Keyes

Justice
First Court of Appeals
Houston, TX

Joan Flynn

St. Louis, MO

Sabrina Safrin

Professor of Law and Arthur L. Dickson
Scholar
Rutgers University School of Law
Newark, NJ

Aya Gruber

Adviser
Professor of Law
University of Colorado
Boulder, CO

Ellen S. Podgor

Gary R. Trombley Family White-Collar Crime
Research Professor
Stetson University College of Law
Gulfport, FL

Mark J. Loewenstein

ALI Life Member
Monfort Professor of Commercial Law
University of Colorado
Boulder, CO

Hon. Bridget Mary McCormack

Justice
Michigan Supreme Court
Lansing, MI

Theodore O. Rogers Jr.

New York, NY

Virginia E. Hench

Professor
W.S. Richardson School of Law
University of Hawai`i - Manoa
Honolulu, HI

Neal Millard

Partner
Musick, Peeler & Garrett LLP
Los Angeles, CA

Terry Calvani

Nashville, TN

Ralph Jacobs

Philadelphia, PA

John A. Humbach

White Plains, NY

James E. Felman

Partner
Kynes, Markman, & Felman
Tampa, FL

Arthur D. Hellman

ALI Life Member
Professor
University of Pittsburgh School of Law
Pittsburgh, PA

Kenneth C. Kettering

Lecturer in Law
Columbia University School of Law
New York, NY

Frederic N. Smalkin

Chief U.S. District Judge, D.Md. (Ret.)
Jurist-in-Residence and Professor of Law
University of Baltimore School of Law
Baltimore, MD

Robert Berger

Retired Partner, Mayer Brown LLP
Senior Counsel, Krasnow Saunders Kaplan &
Beninati LLP
Lecturer, University of Chicago Law School
Chicago, IL

Mary Massaron

Plunkett Cooney, PC
Bloomfield Hills, MI

Stephen Saltonstall

Tucson, AZ