



The Future of Newcomb College

**Center for Excellence in Higher Education
Donor Intent and the Future of Higher Education Philanthropy
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**Remarks by Renée F. Seblatnigg
President, The Future of Newcomb College, Inc.**

www.newcomblives.com

I am president of The Future of Newcomb College, Inc. We are a nonprofit organization whose mission is to restore Newcomb College as the coordinate women's college at Tulane University. We are funding the donor intent lawsuit, *Howard v. Tulane*, which is the only vehicle open to us to achieve that end.

When we started this process, we thought we were on an island—one group upholding the intent of a generous donor to save a college. Now we know that what seemed a small island is a much larger land mass, and that we are one of a number of efforts that occupy common ground, trying to enforce the intentions of a variety of donors to educational institutions. And that is what brings us all here today.

I graduated from Newcomb College, the coordinate women's college of Tulane University, and I moved on. Except for reading alumnae news notes and sending an occasional check, I did not involve myself with the life of the college, or run back for frequent class reunions. So it may seem curious that I and many like me are so deeply, and even passionately, involved in our present struggle. This is our compelling story:

History of the Newcomb donations

Newcomb College was founded in 1886 by Josephine Louise Lemonnier Newcomb, a wealthy widow living in New York. Born in Baltimore, she had lived and married in New Orleans in 1845, moved to Louisville before the Civil War and later to New York. Her husband, Warren Newcomb, died suddenly in 1866, leaving her alone with her beloved daughter, Sophie, on whom she doted. In 1870 the greatest tragedy occurred when Sophie died of diphtheria in her mother's arms.

In her grief, Mrs. Newcomb dedicated herself to finding a memorial to Sophie. For years, she looked at many possible uses for her money, discarding one charitable idea after another. In 1886 she determined to endow a college for women and to name it in her daughter's honor, H. Sophie Newcomb Memorial College. Probably influenced by her

friend whose husband was president of Tulane, which was only two years old at the time, she established the college as a “department” of Tulane, creating the first coordinate women’s college within a university in the United States.¹

In a letter accompanying her \$100,000 gift, she declared that she “entrust[ed]” to the Tulane Board of Administrators “the execution of [her] design.” The board replied with great clarity:

Resolved That the Administrators of the Tulane Educational Fund, accept the gift of One hundred Thousand Dollars (\$100,000) made to them, by Mrs. Josephine Louise Newcomb for the purpose of establishing the “H. Sophie Newcomb Memorial College, in the Tulane University of Louisiana, for the higher Education of white girls and young women.

Be it further resolved that the gift is accepted **under the terms and conditions** expressed in the letter of Mrs. Josephine Louise Newcomb, addressed to the Administrators of the Tulane Educational Fund, on the Eleventh of October, Eighteen hundred and Eighty-Six.

...

Be it further resolved, That this Board accepts the gift not only with a profound sense of gratitude to Mrs. Newcomb, but also with deep conviction as to the wisdom and utility of the good work founded by her. That in undertaking the high **duties which the donation imposes**, the members of this Board trust, that with the aid of divine Providence they will so be able to perform them as to fully realize the noble purposes of Mrs. Newcomb - the opening to young women of a higher sphere of culture and usefulness in life.

As her fortune grew, so did her concern about what would happen to the money upon her death. She wrote a New York will leaving money in trust for the college, but she was not comfortable that the New York will was well enough protected in the event of a legal challenge. On the advice of James McConnell, a New Orleans lawyer and a member of the Tulane Board of Administrators, she established New Orleans as her domicile, buying a house near the Newcomb campus. She wrote a new will, by hand, which under Louisiana law would be protected from a challenge of undue influence. The will states:

I have...made the City of New Orleans as my permanent home, because I here witness and enjoy the growth of the “H. Sophie Newcomb Memorial College”, a Department of the Tulane University of Louisiana, which I have founded and has been named in honor of the memory of my beloved daughter. I have implicit confidence that the Administrators of the Tulane Educational Fund will continue to use and apply the benefactions and property I have bestowed and may give for the present and future development of...the “H. Sophie Newcomb Memorial College,” which engrosses my thoughts and purposes and is endeared to me by such hallowed association.²

¹ Other colleges followed the Newcomb model, the closest in time being Barnard, which became Columbia’s coordinate college three years later.

In a letter placed in the minutes of the Tulane Board, Mr. McConnell memorialized the drafting of the will: "... assuring her as I did, that the Board of Administrators of the Tulane Educational Fund would devote the property bequeathed by her to them entirely to the benefit and development of the H. Sophie Newcomb Memorial College as a Department of the Tulane University of Louisiana."

Throughout her lifetime, Mrs. Newcomb continued to make financial gifts to the college, and took a personal interest, calling it her "life's work," and even declaring that "in this college my daughter lives again to me. She does not seem to be dead, but lives again in this college and in these girls." In 1892 the *New York Times* reports she had given more than \$500,000 for its maintenance. There came a time a few years later when she learned that the Board of Administrators were putting some of her money to collateral uses, not directly for the college. She was infuriated and threatened to withdraw her support and to move her college from Tulane to Thomasville, Georgia. Fortunately, the board agreed to restore the misdirected funds and Newcomb's relationship with Tulane continued.

Tulane's actions after Mrs. Newcomb's death

Mrs. Newcomb died on April 1, 1901. When Tulane finally received her inheritance in 1908, her estate was worth more than \$2,00,000, c. \$75 million in present value. For more than 100 years Newcomb College continued to grow in size and stature, its operation reflecting many of the changes that affected colleges across the country.

Even when the Tulane Board modified the operation of Newcomb College to conform to changing times, the Board reaffirmed its commitment to a separate, coordinate Newcomb College. As recently as the 1990s, Tulane's board formally reinforced its pledge to Newcomb:

The Board of Administrators of the Tulane Educational Fund hereby affirms that Newcomb College has been, is now, and will continue to be a viable and vital college of Tulane University. Newcomb has a special mission to educate women: this will continue to be its primary goal. In order to ensure the integrity of this mission, Newcomb College will continue to function as a distinct collegial entity within the University. It will retain a separate clearly defined identity comprising features that enable and enhance the fulfillment of its academic mission and are consonant with the goals of the University.

* * * * *

The Board believes that the resolutions described below constitute a forceful and positive reaffirmation of Newcomb College as Tulane's coordinate college for the liberal arts education of women. The Board intends to preserve the fundamental spirit and unique qualities of Newcomb that distinguished it during its first century and to create new opportunities for the College which will result in its attaining an even greater degree of distinction

² *Matter of Newcomb*, 192 N.Y. 238, 84 N.E. 950, 1908 N.Y. LEXIS 876 (N.Y. 1908).

and excellence in the fulfillment of its historic and valuable mission as it enters its second century.

So Newcomb College continued, surviving hurricanes, floods, yellow fever epidemics, two world wars and a Great Depression. In September 2005, Newcomb had a student body of more than 2,000 women. It was alive and well and financially sound. The college, along with the other departments of the university, closed for a semester after Hurricane Katrina, while colossal cleanup and repairs restored the campus to its pristine condition. The students returned in January, 2006, expecting that their college life would continue as planned.

Post-Katrina

In the meantime, the Board of Administrators, looked to the president for guidance in planning for the university's post-Katrina recovery. To deal with problems in many parts of the university, the Tulane Board enacted a Renewal Plan for a major reorganization. It included such sweeping changes as firing tenured and untenured faculty, eliminating the School of Engineering, and very quietly, without calling attention to what was happening, dissolving Newcomb.

No financial concern led to the decision to close Newcomb; no hardship would have occurred in continuing Newcomb's operation. Tulane made no *cy pres* application to the court for permission to repurpose the gifts in Mrs. Newcomb's will because of impossibility or impracticality. As we have since learned from published investigation reports (by the American Association of University Professors), this plan had apparently been around for some time, and –to paraphrase the university president in an article in *Fast Company* magazine—the administration apparently found that a crisis was a terrible thing to waste.

The months that followed the announcement of the Renewal Plan were marked by much confusion. Many believed that the board's actions were both wrong and wrongful, and groups and individuals developed alternative plans that would allow the Renewal Plan to be effected while leaving Newcomb intact. Activists attempted to dissuade the administration and tried to speak directly to the Board of Administrators, to no avail. (During this period, the Board moved forward in driving the final nail in the college's coffin by diverting the income from the Newcomb endowments to a new entity, a Newcomb "institute," which the university later described as an umbrella organization to house the extracurricular programs that had served Newcomb College.)

When it was apparent that the Board would not be allowed to hear any opposing views, some of us formed an *ad hoc* lawyers committee and, acting as virtual law firm, brought a federal court action seeking a preliminary injunction. We searched for collateral heirs of Mrs. Newcomb to join us in the action, with little luck. But the night before our federal court appearance, one of our volunteer lawyers, who is an amateur genealogist, working online with her mother, finally found Mrs. Newcomb's relatives, and they were plenty angry about what was happening. This paved the way for a donor intent cause of action in state court, and the heirs filed their action in May, 2006.

Howard v. Tulane

In *Howard v. Tulane*, Mrs. Newcomb's heirs are suing to enforce the terms of her lifetime gifts and her will. It is Tulane's position that, because the Board of Administrators is named universal legatee, they can do whatever they want with the money, in spite of Mrs. Newcomb's clear restrictions and Tulane's acceptance of her terms at the time of the gifts. One of the principal points at issue is the heirs' standing. Louisiana has good law that says that heirs can sue for the revocation of donations; Tulane says that this rule does not extend to heirs suing to enforce injunctive relief.

In June of 2006, the trial court denied plaintiffs' application for a preliminary injunction, even while ruling that, "[a] clear reading of Mrs. Newcomb's will shows that she intended for Tulane, as universal legatee, to use the balance of her estate to maintain a women's higher education college."

Plaintiffs took an appeal to Louisiana's 4th Circuit, which handed down a puzzling appellee's 2-1 decision. However, an authoritative dissent by Judge Max Tobias provides clarity on the issue of donor intent:

Tulane Board's decision to abandon Newcomb **College**, not only violates, but completely ignores, Mrs. Newcomb's intent—she wanted her money to be used for the "H.Sophie Newcomb Memorial **College**" [emphasis supplied].³

Tobias's dissent opines on the appropriate result for plaintiffs' lawsuit:

Having found that the intent of Mrs. Newcomb's bequest to the Tulane Board was so "clear," Louisiana law mandates the trial court to implement that intent; that is, the court must ensure that Mrs. Newcomb's donations to the Tulane Board are used to maintain a "women's higher education **college**" [emphasis added]—*not* a "women's institute."⁴

Plaintiffs are now applying to the Louisiana Supreme Court. We should know in a matter of weeks if the court will hear this very important case.

Stay tuned.

³ *Howard v. Administrators of the Tulane Educational Fund*, 2006 CA 1276 (LA App. 4 Cir. 10/22/2007), p.8

⁴ *Id.*