

LOUISIANA STATE LAW INSTITUTE

MEETING OF THE COUNCIL

May 19, 2023

Friday, May 19, 2023

Persons Present:

Bowers, Clinton M.	Kunkel, Nick
Braun, Jessica G.	Lavergne, Luke A.
Carroll, Andrea B.	Lee, Amy Allums
Castle, Marilyn	Manning, C. Wendell
Crigler, James C., Jr.	Norman, Rick J.
Curry, Kevin C.	Philips, Harry "Skip", Jr.
Davis, Mark	Pittman, Richard
Davrados, Nikolaos A.	Price, Donald W.
Dawkins, Robert G.	Reynolds, Jonathan
Doguet, Andre'	Richardson, Sally Brown
Dyess, Desiree Duhon	Riviere, Christopher H.
Edwards, Claire Bergeron	Roussel, Randy
Forrester, William R., Jr.	Scalise, Ronald J., Jr.
Gregorie, Isaac M. "Mack"	Stephenson, Gail S.
Hall, Derion S.	Stuckey, James A.
Hamilton, Leo C.	Swinburn, Chastity R.
Hawthorne, George "Trippe"	Thibeaux, Robert P.
Hayes, Thomas M., III	Tucker, Zeldia W.
Hogan, Lila Triticco	Ventulan, Josef
Holdridge, Guy	Waller, Mallory C.
Holthaus, C. Frank	Weems, Charles S., III
Hunter, Rebecca	Ziober, John David

President Thomas M. Hayes, III called the May Council meeting to order at 10:00 a.m. on Friday, May 19, 2023 at the Lod Cook Alumni Center in Baton Rouge. After asking Council members to briefly introduce themselves, the President called on Professor Andrea B. Carroll, Reporter of the Marriage-Persons Committee, to begin her presentation of materials.

Marriage-Persons Committee

Professor Carroll began by presenting a final report in response to House Resolution No. 109 of the 2021 Regular Session, which requested that the Law Institute study provisions of law relative to consent of a curator to the abortion or sterilization of an interdict. She explained that the Marriage-Persons Committee worked with representatives of Disability Rights Louisiana and Louisiana Right to Life to propose changes and add a process, legal standard, burden of proof for sterilization or abortion procedures, and legal protections for a person with a disability who is faced with the possibility of forced sterilization or forced abortion. Although the Committee had not yet finalized this proposal, its work served as the basis of House Bill No. 146 of the 2022 Regular Session. The Reporter noted, however, that the legislation failed to pass due to push back from parental curators who did not want to have to endure additional procedures and expenses to make these decisions for their children. Furthermore, due to the developments in federal and state law relating to abortion, as well as the enactment of Louisiana's Supported Decisionmaking Agreement Act, which passed in 2020 to provide interdicts with greater involvement in decisions affecting their health and well-being, the Committee ultimately concluded that no change to Louisiana law should be made at this time. After the Reporter accepted an amendment on page 5, line 45 of the materials, the Council approved the final report.

Professor Carroll next introduced House Concurrent Resolution No. 92 of the 2021 Regular Session, which requested the Law Institute to study the law on partition of community property with a view toward preventing extended litigation as a continuation of domestic abuse when one party may have a financial advantage over the other party. The Reporter explained that, in accordance with the resolution, the Marriage-Persons Committee worked with representatives from Louisiana Appleseed Center for Law and Justice, the Louisiana Coalition Against Domestic Violence, the Domestic Violence Clinic at Tulane Law School, the New Orleans Family Justice Center, and the United Way of Southeast Louisiana during this study. Advocates from these groups requested recommendations to allow partial partitions, but the Committee immediately recognized several areas of concern with allowing only partial partition of community assets, such as reimbursement claims, lawyerly games, and full court dockets. As an alternative solution, the Committee proposes to amend R.S. 9:374 relative to possession and use of community movables and immovables and the advance of community funds pending final resolution. The proposed amendments would strengthen judicial discretion to ensure access to the assets and liabilities at the time of the hearing for the purpose of liquidation for the continuation of the household and the payment of the expenses of the litigation. Furthermore the proposal would grant additional judicial recognition of special circumstances relative to abusive and controlling relationships.

The Council questioned whether Subparagraph (G)(2)(f) should reference coercive control, and in response, the Reporter explained the need to keep the language broad; additionally, one Council member noted that courts are already considering this as a matter of practice even though it is not explicitly provided in the statute. Another member asked about the phrase "during the marriage," and Professor Carroll clarified that after the marriage, issues of financial control are addressed with injunctions. Next, the Reporter informed the Council that the Committee voted to strike Paragraph (G)(3) from existing law on page 6, lines 18 and 19, and therefore the materials contain a coding error. The Committee believes that an accounting is not yet possible at this early stage in the proceedings, and final accountings are done later in accordance with Civil Code Article 2369. Several Council members, however, expressed that they like having this as a tool for judges even though practitioners continued to note that it is confusing and unnecessary. Ultimately, the motion to delete Paragraph (G)(3) failed to pass, and the Council approved R.S. 9:374 with revisions as follows:

R.S. 9:374. Possession and use of family residence or community movables or immovables

* * *

G. (1) In a proceeding for divorce or thereafter, a summary proceeding shall be undertaken by the court upon request of either party to allocate the use of community property, including monetary assets, bank accounts, savings plans, and other divisible movable property pending partition. The authority to make these allocations shall not be limited to a specific dollar amount or percentage and the court shall have the right to allocate any monetary asset, in whole or in part.

(2) The court shall determine allocation of community property after considering:

(a) The custody of the children and exclusive use and occupancy of the family residence.

(b) The total community property, including the liquidity of community assets, and spousal management rights in community assets and liabilities.

(c) The need of a spouse for funds to maintain a household prior to partition.

(d) The need of a spouse to receive legal representation during the course of the proceedings.

(e) The history of domestic abuse during the marriage.

(f) The history of financial control by one of the parties during the marriage.

(3) Upon court order, each spouse shall provide the other a complete accounting of all allocated community property to demonstrate compliance with Civil Code Article 2369.3.

Professor Carroll explained that in further response to concerns of delays and litigation abuse raised by stakeholders, the Committee also proposes to specifically allow an award of attorney fees in the partition litigation as a deterrent. In this context, members of the Council expressed concern that both parties could be blamed for legitimate delays and a possible award of attorney fees could have a chilling effect on litigation. The Reporter noted that due to the discretionary language, the court could ensure that one party is disadvantaged by a delay prior to making an award because strategic delays are not the same as unreasonable delays. The following proposal was ultimately approved:

R.S. 9:375. Award of attorney fees

A. When the court renders judgment in an action to make executory past-due payments under a spousal or child support award, or to make executory past-due installments under an award for contributions made by a spouse to the other spouse's education or training, it shall, except for good cause shown, award attorney fees and costs to the prevailing party.

B. When the court renders judgment in an action to enforce child visitation rights it shall, except for good cause shown, award attorney fees and costs to the prevailing party.

C. In an action in accordance with R.S. 9:374, the court may award attorney fees and costs when it determines that either party has caused unreasonable delays.

Revision Comment

A party's failure to respond to a court order amounts to contempt of court and is punishable under the provisions of Louisiana law. See, e.g., C.C.P. Arts. 221-227. This revision extends the availability of attorney fees and costs beyond acts involving contempt of court and frivolous filings to purposeful unreasonable delays. Attorney fees and costs are not available for delays that are intentional, but reasonable.

With both reports having been approved, Professor Carroll provided the Council with a brief update of the remaining resolutions pending before the Marriage-Persons Committee on topics including collaborative divorce, mental health evaluations, and standardizing the *Bergeron* case, for which legislation for the 2024 Regular Session is likely, as well as a few continuous revision projects. Professor Carroll then concluded her presentation, and the President called on Professor Sally Brown Richardson, Reporter of the Property Committee, to begin her presentation of materials.

Property Committee

Professor Richardson began by introducing to the Council House Concurrent Resolution No. 114 of the 2022 Regular Session, which urges and requests the Law Institute to study the feasibility of codifying certain prevailing appellate and Supreme Court cases interpreting R.S. 38:113 relative to levee and drainage districts having control over and preserving the efficiency of public drainage channels or outfall canals. She explained that the underlying theme in the list of cited cases in the resolution is that a private landowner claims that a governmental body has overstepped its authority to control and maintain public drainage channels and outfall canals. The Committee spent time carefully reviewing the lead case, *Terrebonne v. Matherne*, along with the other

jurisprudence, and concluded that the requirements for the application of the statute are clear from the actual text and have been agreed upon and repeated in all of the reported cases.

First, there are three prerequisites for a drainage channel or outfall canal to fall under R.S. 38:113, namely (1) the drainage channel or outfall canal must have been either previously improved by the drainage district or adopted without prior improvement as a necessary part of or extension to improved drainage channels, (2) the drainage channel or outfall canal must be public, and (3) the drainage channel or outfall canal must be selected by the drainage district and recommended and approved by the Office of Public Works. Second, the action by the drainage district must be part of the "ordinary maintenance" or "maintaining the efficiency of the public drainage canals." Professor Richardson explained that although the cases provide that "maintenance" is the allowable action and set forth actions that go beyond maintenance, attempting to legislate a laundry list of various acceptable actions, instead of favoring judicial discretion, seems impossible given that each drainage canal is slightly different. Therefore, the Committee recommends reporting to the legislature that no proposed changes to the law are needed at this time but that the Law Institute will continue to monitor the applicable law and corresponding jurisprudence. After the correction of one typographical error, the Council approved the report as presented. The Reporter then provided an update concerning the ongoing projects being considered by the Property Committee, including the classification of modular and manufactured homes, issues concerning utility servitudes and enclosed estates, and the reclassification of other constructions permanently attached.

Professor Richardson then concluded her presentation, and the President called on Professor Ronald J. Scalise, Jr., Reporter of the Successions and Donations, Trust Code, Prescription, and Signification of Terms Committees, to provide updates on behalf of those groups.

Committee Updates

Professor Scalise began his presentation with an update on behalf of the Successions and Donations Committee, noting that the group's priority was incorporating provisions of the Uniform Partition of Heirs Property Act drafted by the Uniform Law Commission pursuant to a legislative resolution regarding the adoption of this Act in Louisiana. He explained that the Committee was also considering will formalities and attestation clauses with a view toward simplifying wills in Louisiana, as well as several other issues. Turning to the Trust Code Committee's work, Professor Scalise explained that the group was considering whether to extend the maximum term for trusts in Louisiana pursuant to a resolution asking the Law Institute to study perpetual trusts. Additionally, the Trust Code Committee was considering modernizing the provisions with respect to class trusts and updating several other provisions of Louisiana's Trust Code. The Reporter also explained that the Signification of Terms Committee was wrapping up its work on various definitions in the Civil Code, and the Prescription Committee had not met in some time because it did not have any pending projects. Professor Scalise then concluded his presentation, and the President called on Mr. John David Ziober, Chairman of the Membership and Nominating Committee, to present proposed amendments to the Law Institute's By-Laws.

By-Laws Amendments

Mr. Ziober began his presentation by explaining that the first proposed amendment to the by-laws is intended to temporarily or permanently remove members who are suspended from the bar or disbarred. Specifically, Mr. Ziober explained that a member who is suspended from the practice of law for one year or less will be temporarily removed as a member of the Law Institute until reinstated by the bar; however, a member who is suspended from the practice of law for more than one year or who is disbarred will no longer be a member of the Law Institute at all. After several questions from Council members concerning specific applications of these rules in the context of positions with terms, interim suspensions, and ex-officio offices, a motion was made and seconded to adopt proposed Sections D and E as presented, and the motion passed with no objection.

Turning to the second proposed by-laws amendment, Mr. Ziober explained that the language on lines 34 through 39 is intended to address quorum concerns by providing that a senior officer who has not attended a Council meeting in three years will be reclassified as an emeritus honorary member. Emeritus honorary members will remain members of the Council but will not be permitted to vote or be counted for quorum purposes unless reinstated by the Executive Committee. A motion was made and seconded to approve the proposed language, as well as the technical changes on pages 1 and 2, and the motion passed with no objection.

Mr. Ziober then concluded his presentation, and the President called on Mr. Randy Roussel, Professor Mark Davis, and Mr. Richard Pittman to present updates on behalf of their Committees.

Committee Updates

Mr. Randy Roussel, Reporter of the Common Interest Ownership Regimes Committee, provided the Council with an update concerning the Committee's proposed Planned Community Act, which received much attention at the legislature and has since been reviewed by many associations and other stakeholders who have been participating in meetings. He noted that the Committee is also working on proposed revisions to the Condominium Act, and its plan is to begin presenting both sets of revisions to the Council in the fall. Turning to the Water Code Committee, Professor Mark Davis provided the Council with background information concerning the inception of the Committee and its charge to develop a comprehensive Water Code for Louisiana. He discussed the value of water as a natural resource of the state, as well as the reasons for developing a framework by which to manage it, both internally and in dealings with other states. Professor Davis explained that the Committee has studied the laws of other states and civil law jurisdictions around the world along with many other issues concerning the science of water and will begin drafting proposals for inclusion in the Water Code. Mr. Richard Pittman, the newly selected Reporter of the Children's Code Committee, then explained that the Committee would be meeting to discuss its ongoing work with respect to child in need of care cases, treatment of nonparent custodians, guardianship and birth certificates, and other issues pertaining to the Children's Code.

At this time, the President called on Professor Ronald J. Scalise, Jr. to present a tribute in honor of Mr. Thomas B. Lemann, a copy of which is attached. The Council then adjourned for lunch, and upon its return, the President called on other Reporters in attendance to present updates on behalf of their Committees.

Mr. Robert P. Thibeaux, Reporter of the Lease of Movable Act Committee, explained that the Committee had been working on fairly narrow revisions to Civil Code Articles 520 and 525 as well as the concept of "financed leases," but a much more comprehensive revision of the Lease of Movable Act would be forthcoming. Mr. Charles S. Weems, III reminded the Council that the Constitutional Laws Committee had just issued a report in response to a legislative resolution concerning the language of the Constitution and that its next biennial report on laws that have been declared unconstitutional or preempted will be issued in 2024. Mr. Skip Philips and Mr. Donald Price then provided the Council with an update concerning the Torts and Insurance Committee's work on the Governmental Claims Act and uninsured motorist waivers. One Council member questioned the outcome of the proposed legislation on bad faith insurance claims. The Co-Chairs responded that recent hurricanes had complicated the political landscape such that legislating on the issue had grown more fraught. The Co-Chairs noted that they did not expect the issue to be re-visited soon, but that they would be perfectly willing to try again if someone picked up the bill.

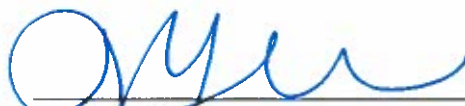
Next, the Director provided updates on behalf of the Code of Civil Procedure and Code of Criminal Procedure Committees. With respect to the Code of Criminal Procedure Committee, Judge Holdridge explained that postconviction relief legislation had been enacted to, notably, add a ground for actual innocence, but that many of the Committee's other proposals were not included in the legislation that ultimately passed; as a result, the Committee had been discussing which other of its revisions could be introduced in a future session, taking into account recent jurisprudence concerning retroactivity and other

issues. Additionally, the Committee is still discussing domestic abuse in coordination with the Marriage-Persons Committee, as well as no-cash bail and other revisions to the bail system, electronic notice to criminal defendants, and other updates to the Code of Criminal Procedure. Turning to the Code of Civil Procedure Committee's work, Judge Holdridge noted that the Committee was considering revisiting an old proposal concerning the interruption of prescription when suit is filed in an improper venue, issues concerning abandonment – particularly in the court of appeal, expert qualifications under Article 1425, and legislative resolutions concerning electronic filing and record retention as well as notice requirements. The President then called on Mr. James A. Stuckey, Reporter of the Uniform Commercial Code Committee, who explained that the proposed legislation to update the UCC to create, incorporate, and address certain new categories of digital asset had been met with political opposition around the country amid concerns about central bank digital currency. As a result, the Committee's bill had been tabled while additional developments and political climates were monitored.

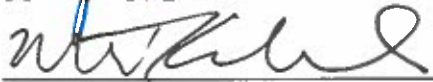
At this time, the Law Institute's staff attorneys provided additional updates on the remaining Committees' work. Ms. Mallory C. Waller discussed the work of the Corporations Committee in updating Louisiana LLC law based primarily on ULLCA and the LBCA, along with the work of the Possessory Actions Committee, whose legislation was progressing through the legislature and should hopefully pass, at which point the Committee would become inactive. Ms. Waller also discussed the Security Devices Committee's bill concerning online judicial sales, noting that substantive changes had been made resulting in the proposed Comments needing to be updated, such that it was likely that Mr. Cromwell would be presenting the necessary revisions in the fall. Ms. Waller also discussed the proposed legislation on remote operations of public entities, which is intended to apply more broadly to all agencies as opposed to having separate and differing rules applicable to each specific entity. She discussed how this legislation would affect the Law Institute's current remote meeting procedures, including the need to conduct "hybrid" meetings and to provide an anchor location to allow members and guests to attend in person. Several Council members expressed concern with respect to the recordation and preservation requirements included in the bill and suggested that perhaps the Law Institute should take a more active role with respect to the proposed legislation.

Next, Mr. Josef P. Ventulan provided an update on behalf of the Employment Law Committee, noting that the group was created in response to a resolution to study barriers to employment for previously incarcerated individuals and had begun to review recent legislation, identify conflicting provisions, and reach out to various stakeholders with respect to the issue. Finally, Mr. Nick Kunkel discussed the work of his Committees, beginning with the Notaries Committee in the enactment of its remote online notarization legislation and in the consideration of creating a new class of notaries with limited authority. Turning to the Mineral Law Committee, Mr. Kunkel explained that the group's proposed legislation to "clean up" language of the Mineral Code was progressing through the legislature and, with respect to the Alternative Dispute Resolution Committee, the group was working to update Louisiana's arbitration law by incorporating provisions of the RUAA and would then turn to mediation law. Finally, concerning the Tax Sales Committee, Mr. Kunkel explained that the group was still drafting revisions to relevant provisions of Title 47 and the Constitution to update Louisiana's tax sale procedure.


Mr. Kunkel then concluded his presentation, and the May 2023 Council meeting was adjourned.




Jessica G. Braun



Nick Kunkel



Josef Ventulan



Mallory C. Waller

Resolution Dedicated to the Memory of Thomas B. Lemann

We pause today to remember and celebrate the life and career of Thomas B. Lemann, distinguished lawyer, long-time member of this Council, and all-around Renaissance man.

Thomas B. Lemann was born in New Orleans on January 3, 1926, to Nettie Hyman Lemann, a surgical nurse, and Monte M. Lemann, a prominent lawyer in the Monroe Lemann law firm and a member of the Wickersham Commission. Monte was the only member to refuse to sign the Committee's report advocating for stricter enforcement of Prohibition and instead advocated for its repeal. When Monte, Tommy's father, died in 1959, Justice Felix Frankfurter of the United States Supreme Court wrote to the New York Times as follows:

That the *Times* left unreported the death of Monte M. Lemann must surely be due to one of those rare mishaps in the comprehensive newsgathering by what has been rightly characterized [as] the nation's greatest paper of record. You could not have left unnoticed by choice the end of so notable a life. Monte Lemann was, to be sure, a leading citizen of New Orleans, but his significance was national.

So too we shall not leave unnoticed the notable life of Monte's son, Tommy, whose family roots in Louisiana stretch far back to the early nineteenth century. And, despite Tommy's always well-appointed appearance and penchant for classical languages, his family origins are from humble stock, as his great-grandfather had emigrated from Germany in 1836 and served as a peddler in Louisiana.

Tommy himself was graduated in 1943 from Metairie Park Country Day School. Despite being deferred from service in World War II because of poor eyesight, Tommy nonetheless signed up and served his country. During World War II, he was a member of the Army Signal Corps and served as cryptographer in both New Guinea and the Philippines.

After the war, Tommy enrolled at Harvard College, from which he was graduated in 1949 with highest honors and as a member of Phi Beta Kappa. Three years later, he was graduated from Harvard Law School. During his time at Harvard, Tommy met his future wife, Barbara London, who was a graduate student in psychology. Tommy and Barbara were married in 1951 and both are survived today by two successful and accomplished children, Nicholas Lemann, a writer for *The New Yorker* and former dean of the Columbia University Graduate School of Journalism, and Nancy Lemann, a journalist and novelist.

In 1953, Tommy earned a master's degree in law from Tulane University and thereafter practiced at Monroe & Lemann. His first case as a litigator was against Huey Long's personal lawyer, Charles Revett, and Tommy was always quick to acknowledge that

much of his success came from the lessons he learned from his adversaries in court, including Solomon Goldman, Harry Kelleher, Maurice Dennery, Harry McCall, and many others. Tommy's legal career in the field of successions, trusts, and tax is groundbreaking and spanned 61 years.

In the early 1960s, Tommy was appointed to the Trust Code Committee of the Louisiana State Law Institute, which was charged with bringing the 1938 Trust Code up to date. As the junior member of the Committee at the time, Tommy was appointed secretary, a position he held in Emeritus capacity until his death. He was elected as the Assistant Secretary of the Council in 1961 and then as a practicing attorney member from 1969 to 1981, after which he took Senior Officer status. In addition to his fifty years of service on the Council, Tommy was also a dedicated Committee member, not just on the Trust Code Committee but also as a member of the Community Property Committee, the Publications Committee, the Conditional Charitable Donations Committee, the Committee on the Organization of the Institute, the Uniform Prudent Management of Institutional Funds Act (UPMIFA) Committee, and the Coordination and Semantics Committee.

Tommy was also a great philanthropist and patron of the arts. He served as the first Chair of the Arts Council of New Orleans, and on the boards for Metairie Park Country Day School and the Louisiana Civil Service League.

Tommy was devoted to his hometown of New Orleans, refusing to initially leave during Hurricane Katrina, until he was escorted by armed convoy out of the city after the water was turned off and to his – in his words – two month “exile” in Houston. When asked about the prospects of the city after Katrina, Tommy, as was his characteristic way, took the long historical view and correctly predicted its recovery, noting that it had in the past successfully weathered other storms and fires, in addition to malaria, smallpox, the British invasion during the War of 1812, and occupation during the Civil War.

In addition to charitable and artistic endeavors, Tommy was – as some have called him – “a collector of obscure facts” or, as the Crescent City Jewish News noted, a “pursuer of many eccentric hobbies.” Prior to Hurricane Katrina, Tommy was famous for his detailed and meticulous notes on the quality of the oysters that he would consume daily at the now-closed CBD restaurant, *The Pearl*.

One of Tommy's more ordinary pursuits was the study and recitation of classical Greek. Videos of Tommy reciting obscure classical poems in ancient Greek are still available on YouTube. The blending of the old and the new was part of the character, charm, and contradiction of Tommy. Frequently clad in his seersucker suits and fascinated by all things classical, he also thoroughly enjoyed the latest technologies and trappings of the modern day.

And he even took the opportunity to inject ancient Greek where you might not otherwise think it belongs. Tommy, along with Colonel John Tucker, founded the Society of Bartolus in 1970. The Society, named for the 14th Century Italian jurist, who is largely

credited with reviving the study of Roman law, was organized in 1970 for purpose of “having a dinner club ... for the presentation and discussion of civil law questions.”¹ “From Tommy’s interest in the ancient Greeks was derived the title of Colonel Tucker as the president spirit of the Society of Bartolus – he was called the ‘Panhypersebastos,’ which roughly translates as “Over and above all Worshipful and August.”²

In 1998, Tommy joined the Liskow & Lewis law firm after Monroe and Lemann dissolved. Tommy’s first wife, Barbara, also died a year later in 1999. Tommy thereafter married the New Orleans writer, Sheila Bosworth, who was his companion to the end and who survives him today.

On a personal note, I first got to know Tommy well when I joined the Trust Code Committee in 2005. After our first meeting, which then was held at Liskow and Lewis, he escorted me back to his office to show me pictures and correspondence that Tommy’s father and Justice Felix Frankfurter from the United States Supreme Court would exchange in ancient Greek. When I sheepishly explained that I could not read ancient Greek, Tommy casually responded, “Well, I suppose these days one can still enjoy a moderate degree of success without being fluent.”

Despite advancing age, Tommy remained active in not only his hobbies but also in his professional and legal obligations. Those of us on the Coordinating and Semantics Committee remember well arriving for our committee meeting to be greeted by a FedEx Overnight Envelope that contained Tommy’s handwritten corrections to the draft Law Institute legislation, most notably his unfailing capacity to change every non-restrictive use of the word “that” to proper word “which” and to place a comma preceding the relative pronoun.

At the spry age of 89, Tommy was also still doing public speaking before professional organizations. Perhaps one of the last legal topics to animate Tommy was the characterization of the trust in Louisiana law. Despite being defined in the trust code as a “legal relationship,” Tommy came to believe later in life that the trust should be treated as a separate legal entity. He and I sparred over email in friendly fashion for years on this topic. In 2017, I sent Tommy a long law review article that I had written on trusts advocating for, among other things, my position in this debate. Tommy with his characteristic close read sent back an email observing a spelling error and a few accent marks I had omitted, and then sarcastically noting:

P. 36, just before sec. III: my copy is missing Sec. II A 3: Trust as Entity.
Could you send me that missing section?

Not to be outdone by my article, Tommy took his case to the public and gave a speech during the American College of Trust and Estate Counsel’s regional meeting on the “Trust as Entity.” Lawyers from around the area wrote in to say that Tommy’s presentation was the “absolute highlight of [the] program.”

¹ Albert Tate Jr., *Tucker and the Society of Bartolus*, 45 LA. L. REV. 1017, 1018 (1985).

² *Id.*

In 2014, at the youthful age of 90, Tommy finally retired from the practice of law. Even in retirement, however, Tommy was still an active traveler and eager participant on Law Institute material.

Shortly before his retirement, the Trust Code Committee, as instructed by the legislature, had drafted a pet trust statute for Louisiana. Tommy, who often found the new legislation a source of amusement, sent the following note to me one day while waiting to fly to Rome:

I'm sitting here in the Houston airport reading today's WSJ and waiting for British Airways to waft us to Italy, when what do I see on page 1 but an article that puts our work on Pet Trusts far in the shade: a crying need for Plant Trusts! Call it up on your computer; an old gal wants to care for her philodendron tree, others have asparagus ferns, long-lived bonsais, etc. We'd be the first state to authorize plant trusts, your reputation as creative Reporter will be made, your κλεος αφθιτον εσται, as the Homeric hero said: your fame will last forever!³

Although Tommy officially resigned from the Council in 2019, he remained active as an elder statesman of the law and emeritus secretary of the Trust Code Committee.

Tommy's passing on Sunday, February 12, 2023, at the age of 97 brought sadness and a sense of loss to all who knew him. He was an old-fashioned gentleman, and perhaps one of the best representatives of a classic academic style lawyer who would be just as comfortable in the courtroom as the classroom. In addition to all his practical work, Tommy was also a prolific author and wrote law review articles on topics as varied as tax law, trusts, forced heirship, and simulations. His interest in law led not only to success for his clients but also to the betterment of the profession and the improvement of the law as an academic discipline.

And, so, as fellow members of the legal profession, colleagues on the Council, and kindred students of the law, we pray for Tommy, much as Catullus did, "*Atque in perpetuum, frāter, avē atque valē.*"

Presented to the Council, at Baton Rouge, Louisiana, this 19th day of May, A.D. 2023.

Ronald J. Scalise Jr., Tulane Law School Faculty and Member of the Council

³ Email from Thomas B.Lemann to Ronald J. Scalise Jr. (May 5, 2014).