

# THE END OF THE GOLDEN AGE OF AMERICAN LEGAL EDUCATION: MY YEAR AS INTERIM DEAN

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## 1. THE END OF AN ERA

I was the interim dean at St. Mary's University School of Law in San Antonio, Texas, for a single year, which began on June 1, 2019 and ended May 31, 2020. That was a fleeting span of time, but it was long enough for everything in American legal education to change. Indeed, academic year 2019-2020 marked the end of one era of legal education and the beginning of another. Not just at St. Mary's, but at law schools across the United States. The immediate cause of this educational upheaval was the novel coronavirus<sup>1</sup> and the Covid-19 Pandemic,<sup>2</sup> which by fall of 2020 was described by United Nations secretary general António Guterres as "out of control" and the number one "global security threat" in the world.<sup>3</sup> "[S]chools of every type and size, and in every state"<sup>4</sup> reported potentially deadly infections. "Colleges and universities . . . [became] hot spots for . . . transmission"<sup>5</sup> of the disease.<sup>6</sup>

This article is part of the story of my year as interim dean. The year began without a sign of trouble anywhere on the horizon and ended with an empty campus,<sup>7</sup> cancellation of traditional law school events,<sup>8</sup> face-mask<sup>9</sup> and social-distancing<sup>10</sup> requirements, uncertainty about whether new law graduates would be

1. See Centers for Disease Control and Prevention, *About COVID-19*, <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#:~:text=A%20novel%20coronavirus%20is%20a,like%20the%20common%20cold> (May 7, 2021) ("COVID-19 is a new disease, caused by a novel (or new) coronavirus that has not previously been seen in humans.").

2. *Id.* ("On February 11, 2020 the World Health Organization announced an official name for the disease that is causing the 2019 novel coronavirus outbreak, first identified in Wuhan China. The new name of this disease is coronavirus disease 2019, abbreviated as COVID-19.").

3. United Nations, *Press Conference by Secretary-General António Guterres at United Nations Headquarters* (Sept. 16, 2020), <https://www.un.org/press/en/2020/sgsm20258.doc.htm>.

4. See Shawn Hubler and Anemona Hartocollis, *How Colleges Became the New Covid Hot Spots*, N.Y. TIMES, <https://www.nytimes.com/2020/09/11/us/college-campus-outbreak-covid.html> (Oct. 26, 2020).

5. *Id.*

6. See Simon Romero *et al.*, *'We May Be Surprised Again': An Unpredictable Pandemic Takes a Terrible Toll*, N.Y. TIMES, <https://www.nytimes.com/2020/09/20/us/coronavirus-us-update.html> (Sept. 24, 2020) (noting "worries of a resurgence of the virus as universities and schools reopen. . . ."); Laura Meckler and Valerie Strauss, *School Outbreak Figures Lower Than Feared*, SAN ANTONIO EXPRESS-NEWS, Sept. 24, 2020, at A4 (noting "explosive outbreaks" at colleges).

7. See Hubler and Hartocollis, *supra* note 5, at A6 ("Universities have struggled financially since March, when the threat of the virus forced students to disperse for their safety.").

8. See *infra* Part 13.

9. See Robert L. Klitzman, M.D., *Navigating the Complicated Social Expectations Around Masks*, N.Y. TIMES (Sept. 13, 2020) ("[M]asks are crucial in protecting us and others from Covid-19, but no one likes wearing them. They're hot and uncomfortable, impede breathing, steam up eyeglasses, cloak facial expressions, hamper communication and are inconvenient.").

10. See Centers for Disease Control and Prevention, *Social Distancing*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html> (last visited Sept. 13, 2020) ("Social distancing, also called 'physical distancing,' means keeping a safe space between yourself and other people who are not from your household.... [S]tay at least 6 feet (about 2 arms' length) from other people ... in both indoor and outdoor spaces.").

able to take the bar exam,<sup>11</sup> and furloughs and layoffs of law school personnel.<sup>12</sup> As my year drew to a close, dozens of American law school deans were meeting online every Friday to share information about how to cope with the challenges of the Covid-19 Pandemic and the uncertainties of this new era in legal education.<sup>13</sup>

## 2. THE GOLDEN AGE OF AMERICAN LEGAL EDUCATION

Looking back on the past 150-years of American legal education<sup>14</sup> from the vantage point of fall 2020, it is easy for me to see that the era just ended was the “Golden Age.”<sup>15</sup> It is hard to pin down precisely when the Golden Age of American Legal Education began, but at least by 1985,<sup>16</sup>—thirty-five years ago—American

11. See Karen Sloan, *Will October’s Online Bar Exams Implode? Takers Request ‘Stress Tests’ to Find Out*, LAW.COM, (Sept. 4, 2020), <https://www.law.com/2020/09/04/will-octobers-online-bar-exams-implode-takers-request-stress-tests-to-find-out/> (“Upwards of 30,000 people are slated to take online bar exams in October, but virtually no jurisdiction is planning to hold so-called “stress tests” to see if the software platform delivering the test will hold up under the strain.”); Sara Randazzo, *Coronavirus Pandemic Creates Bar Exam Chaos*, WALL ST. J. (July 17, 2020, 9:00 AM), <https://www.wsj.com/articles/coronavirus-pandemic-creates-bar-exam-chaos-11594990800> (“Support rises to skip test this year, as some states plan in-person exams even as virus cases increase”).

12. See Greg Luca, *Pandemic Forces St. Mary’s to Enact Financial Cutbacks*, SAN ANTONIO EXPRESS-NEWS (May 26, 2020) at D9 (“St. Mary’s announced ... that 24 university staff members will be laid off and 57 employees will be furloughed, with many others taking salary reductions of 10 percent or less.”).

13. See Email from LSAC [Law School Admissions Council] to Vincent Johnson (May 21, 2020), Subject: Deans Dialogue Webinar May 22, 3 PM ET (The webinar enabled “law school deans to engage on critical updates and discussion during the COVID-19 crisis.”).

14. Although there had been law schools and law professors before 1870, that year is useful point of reference since it marked the introduction of the Socratic method of teaching law. As my colleague Michael S. Ariens has explained:

The law school model successfully championed by Harvard Law School Dean Christopher Langdell and Harvard University President Charles Eliot beginning in 1870 not only triumphed over all other competitors, but it remains with us today. Langdell’s vision of law as a science necessitated a ‘new method of teaching, . . . new structural standards, and [a] new type of educator.’ The case method replaced the lecture method of teaching, and that development required the professionalization of law teaching. As Jerold Auerbach put it, “As long as lectures provided the staple of legal education, teaching was an avocation rather than a profession; to qualify, an aspirant displayed credentials earned outside the law school.” The case (or Socratic) method of teaching demanded full-time teachers, not those whose authoritativeness was based on their work as judges or practitioners. ....

Michael Ariens, *Law School Branding and the Future of Legal Education*, 34 ST. MARY’S L.J. 301, 307–09 (2003).

15. See Golden Age, <https://www.merriam-webster.com/dictionary/golden%20age?src=search-dict-box> (last visited Sept. 7, 2020) (defining “golden age” as “a period of great happiness, prosperity, and achievement.”).

16. Dean Emeritus of California Western University Steven R. Smith used different terminology and set the starting of the era more flexibly and perhaps somewhat earlier. In 2012, he wrote that, “‘The good old days’ generally refers to the last twenty-five to forty years in legal education.” Steven

law schools enjoyed a privileged status and widely shared prosperity.<sup>17</sup> Law professors were reasonably well paid,<sup>18</sup> facilities were generally excellent,<sup>19</sup> and programs were robust.<sup>20</sup> Complimentary copies of the newest textbooks from law book publishers regularly landed on professors' desks.<sup>21</sup> Law schools competed to erect the most impressive buildings,<sup>22</sup> motivated by what was sometimes mocked

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R. Smith, *Financing the Future of Legal Education: "Not What It Used to Be"*, 2012 MICH. ST. L. REV. 579, n.2 (2012). "The forty-year period, beginning in 1971 to 1972, was just following the initial law school baby boom and reflected the sustained growth in legal education following that initial influx of baby boomers." *Id.*

17. There are ways to define a "Golden Age" of legal education other than in terms of widely shared prosperity. See, e.g., David B. Wilkins, *The Professional Responsibility of Professional Schools to Study and Teach About the Profession*, 49 J. LEG. EDUC. 76, 77 (1999) ("[C]ritics of contemporary legal education ... tend to mourn a "Golden Age" of legal education when law schools were more closely connected to the profession they served.... [T]here has never been a period in the history of legal education when law schools seriously studied the profession.").

18. See Smith, *supra* note 16, at 582 ("faculty salaries were increasing substantially"); Arthur Austin, *Law Professor Salaries*, 2 GREEN BAG 2D 243 (1999) ("Law professors are paid more than their colleagues in the arts and humanities. The disparity is in part the result of their professional status as lawyers and the implied threat that the option to leave the academy to make more money in practice carries with it."); Bruce D. Fisher & Paul Bowen, *The Law School Compensation Systems at Three Top Quartile State Law Schools: Factors Correlating with Law Professors' Salaries and Suggestions*, 19 N. ILL. U.L. REV. 671, 701 (1999) (discussing factors that bear upon law faculty compensation).

19. In the early 1980s, the facilities at St. Mary's University school of Law moved from very good to excellent. See Charles E. Cantú, *An Oral History of St. Mary's University School of Law (1961-2018)*, 50 ST. MARY'S L.J. 309, 363 (2019) ("[T]he building of the Sarita Kenedy East Law Library [which opened in 1984] totally transformed the law school campus.... Together, the three original buildings of the law center, and the Sarita Kenedy East Law Library, form a perfect quadrangle. We had, for the first time, a quad at the law school.").

20. Cf. Smith, *supra* note 16, at 580 ("Past financial good times allowed law schools to make some wonderful improvements in their programs. Instructional programs have changed significantly during the last forty years. The improvement in the teaching and research efforts of law schools has been possible largely as a result of the decrease in the student-faculty ratios of law schools."); *id.* at 581 ("Clinical programs were once rare, but they are now a standard part of law schools."); *id.* at 581-82 (discussing seminars, legal writing, and scholarly publications); *id.* at 583 (discussing career services, development, alumni relations, and information services).

21. It was nice to receive the latest textbooks merely because the publisher's representatives knew those were one's subjects. But it was also something of an extravagance for publishers. Unwanted books found their way into the second-hand textbook market. That undercut sales by publishers in the new book market and made new books more expensive. The vast rise in the price of law school textbooks paralleled the rise in the law school tuition. See Tim Wu, *Opinion, How Professors Help Rip Off Students*, N.Y. TIMES, Dec. 11, 2019, <https://www.nytimes.com/2019/12/11/opinion/textbook-prices-college.html> (last visited Sept. 7, 2020) ("Having grown at many times the rate of inflation ... a law school casebook plus supplement can cost \$277."); Dee Gill, *Buyers Find the Tomes Heavy, Costly and Too Frequently Revised, While Sellers Might Like to Kill the Used Book Market Entirely*, UCLA ANDERSON REVIEW, Apr. 3, 2019, <https://www.anderson.ucla.edu/faculty-and-research/anderson-review/college-textbooks> (last visited Sept. 7, 2020) ("[C]ollege textbook publishers, if only they could drive a stake through the heart of the used book market, might enjoy profits 42.6 percent higher than under current conditions."). In my experience, during the last few years, unsolicited complimentary copies have largely disappeared from law schools.

22. The Sarita Kenedy East Law Library at St. Mary's University, which opened in 1984, was typical of the confidence found in law school architecture of the era. As I explained in another article:

as an “edifice complex.”<sup>23</sup> As the years passed, an increasing number of American law school study abroad programs opened around the globe,<sup>24</sup> and recruitment of foreign students to American campuses expanded.<sup>25</sup> Clinical education programs were vastly enlarged.<sup>26</sup> Law school student bodies became more diverse and inclusive.<sup>27</sup> An ever-greater array of technology supported professors engaged in teaching and scholarship. Indeed, it was a “Golden Age.”

During those years, law schools were often an important source of revenue for their parent institutions,<sup>28</sup> so more law schools were opened and the number of

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[T]he Kenedy Law Library eschewed a sober and symmetrical arrangement of architectural elements, in favor of a more playful exterior design in which pre-cast stone arches confidently bounce across the north facade, and then around the west side, eventually ending mid-way on the south facade. The energy ... is amplified by other stone and brick arches that wrap around the curved enclosure leading to the main entry of the building, the balconies overlooking the courtyard, and the colonnade-like wall.... The new library symbolized a bold, energetic, modern approach to legal education.

Vincent R. Johnson, *Turning Points in the History of St. Mary's University School of Law (1980-1988)*, 50 ST. MARY'S L.J. 521, 548–49 (2019) (hereinafter “*Turning Points*”).

23. See Andrew Martin, *Building a Showcase Campus, Using an I.O.U.*, Dec. 13, 2012 (“Some call it the Edifice Complex. Others have named it the Law of More, or the Taj Mahal syndrome.”); cf. *The 50 Most Impressive Law School Buildings in the World*, <https://www.bestchoiceschools.com/50-most-impressive-law-school-buildings-in-the-world/> (last visited Sept. 7, 2020).

24. See Louise Harmon & Eileen Kaufman, *Innocents Abroad: Reflections on Summer Abroad Law Programs*, 30 THOMAS JEFFERSON L. REV. 69, 103–04 (2007) (“In 1975, there were five ABA approved summer abroad law programs. In the last quarter of the twentieth century, summer abroad law programs sprung up like mushrooms throughout the legal academy. By 1995, “103 programs were offered by fifty schools in forty countries.” And, in 2008, a staggering number of programs are being offered by 115 different schools in forty-nine countries.”); see also Vincent R. Johnson, *Legal Malpractice in International Business Transactions*, 44 HOFSTRA L. REV. 325, 338 (2015) (“During the past three decades, thousands of American law students have taken courses on the law governing international sales ... at scores of foreign sites where American law schools operate study abroad programs.”)

25. Cf. *The Absent Student*, THE ECONOMIST (Aug. 8, 2020), <https://www.economist.com/leaders/2020/08/08/covid-19-will-be-painful-for-universities-but-also-bring-change> (“The annual trek of more than 5m students is a triumph of globalization. Students see the world; universities get a fresh batch of high-paying customers.”).

26. See Cantú, *supra* note 19, at 369 (discussing the expansion of clinical education at St. Mary's); Sue Bentsch, *A History of the Law Clinics at St. Mary's University School of Law*, 46 ST. MARY'S L.J. 285, 287–88 (2015) (“Dean [Barbara] Aldave was determined to install properly funded and accredited law clinics at St. Mary's—clinics that adhered to the American Bar Association's Standard 302 requiring case supervision by law school faculty and the award of hard credits for students, a goal which she set to work on as soon as she began her tenure in 1989.”).

27. St. Mary's University School of Law is a good example of a law school that is much more diverse today than, say, 35 years ago. See Vincent R. Johnson, *A Note from the Dean of St. Mary's University School of Law*, Feb. 18, 2020 (“Our Law School today, in every respect, is richly diverse and welcomingly collegial. Female, minority and foreign students excel in all of our programs. The J.D. class of 261 day and evening students that was admitted last fall was 53% female, 50% Hispanic or Latino, 38% Caucasian, 4% black, 3% Asian, and 1% Native American.”).

28. See Thomas L. Shaffer, *Why Does the Church Have Law Schools?*, 78 MARQ. L. REV. 401, 401 (1995) (“Churches do make money on their law schools. I was on the American Bar

American Bar Association-approved law schools climbed.<sup>29</sup> The ABA accreditation standards were an important part of the Golden Age infrastructure.<sup>30</sup> Those provisions were demanding<sup>31</sup> and they tended to ensure that legal education was well-funded<sup>32</sup> and staffed by persons with excellent credentials and records of accomplishment.<sup>33</sup> The standards pushed up faculty salaries until that arrangement came to an abrupt end. As my colleague Michael Ariens has explained:

In June 1995, after a year-long investigation, the Justice Department filed suit against and announced a proposed settlement with the ABA. The Department of Justice

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Association's (ABA) accreditation committee for six years (1974—1980)... I concluded that there are no church-related law schools that do not make money for their universities....; Cantú, *supra* note 19, at 343 (In the 1970s at St. Mary's, "the university was taking anywhere from 52 to 54% of our tuition income.").

29. See Smith, *supra* note 16, at 590 ("In 1950, there were 117 approved law schools; in 1970, 148 schools. By 1990, there were 175, and now [in 2012] there are 200.").

30. For the current version of the Standards, see Am. Bar Ass'n, Standards: 2020-2021 Standards and Rules of Procedure for Approval of Law Schools, [https://www.americanbar.org/groups/legal\\_education/resources/standards/](https://www.americanbar.org/groups/legal_education/resources/standards/) (last visited Sept. 7, 2020).

31. See *id.* Standard 3.03 (Curriculum) provides:

(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:

- (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members;
- (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and
- (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement, as defined in Standard 304.

(b) A law school shall provide substantial opportunities to students for:

- (1) law clinics or field placement(s); and
- (2) student participation in pro bono legal services, including law-related public service activities.

*Id.*

32. See Smith, *supra* note 16, at 580 ("Fueled primarily by tuition increases, the rising level of revenues in law schools has underwritten advances in legal education.").

33. See Smith, *supra* note 16, at 586. Dean Smith states:

The ABA has been responsible for requiring improvements in law schools that have led to better legal education. Accreditation by its very nature must prevent institutions from cutting corners where educational quality is harmed, and . . . push schools to improve. For about twenty years, beginning in the mid-1970s, the ABA applied considerable pressure on law schools to improve instructional programs by reducing student-faculty ratios, enhancing facilities and libraries, and increasing student support services.

*Id.*

alleged in its complaint that the ABA's accreditation of law schools violated the Sherman [Antitrust] Act. [Among other things,] [t]he proposed consent decree barred the ABA from (1) conditioning accreditation on compensation to law school faculty and administrators; (2) collecting or disseminating data on salaries of faculty and administrators; or (3) using faculty or administrator compensation in connection with any review of a law school....<sup>34</sup>

### 3. FADING PROSPERITY IN LEGAL EDUCATION

By about 2005, the Golden Age was beginning to fade and law schools were showing signs of strain. The main problem was that legal education had become too expensive.<sup>35</sup> Rising tuition rates far outpaced the consumer price index.<sup>36</sup> In addition, the job market for lawyers had become saturated with increasing numbers of newly minted J.D.s.<sup>37</sup> Legal education was also largely inflexible. The ABA accreditation standards and the limits they imposed on modes of instruction<sup>38,39</sup> (2007 to 2009) and its adverse impact on young lawyers looking for jobs<sup>40</sup> put a

34. Ariens, *supra* note 14, at 316.

35. David Lat, *Law School is Way Too Expensive. And Only the Federal Government Can Fix That*, WASH. POST., Apr. 8, 2015, <https://www.washingtonpost.com/posteverything/wp/2015/04/08/law-school-is-way-too-expensive-and-only-the-federal-government-fix-that/> (last visited Sept. 7, 2020) (“As noted by Professor Paul Campos, “[i]n real, inflation-adjusted terms, tuition at private American law schools has doubled over the past 20 years, tripled over the past 30, and quadrupled over the past 40,” and resident tuition at public law schools has climbed even faster.”).

36. *Cf.* Data Dashboard, Law School Costs, <https://data.lawschooltransparency.com/costs/tuition/> (last visited Sept. 7, 2020) (“[L]aw school tuition increases exceed the inflation rate between 1985 and 2019.”).

37. See Noam Scheiber, *An Expensive Law Degree, and No Place to Use It*, N.Y. TIMES (July 17, 2016), <https://www.nytimes.com/2016/06/19/business/dealbook/an-expensive-law-degree-and-no-place-to-use-it.html> (“Tens of thousands of recent law school graduates [are] caught up in a broad transformation of the legal profession.... Nationally, the proportion of recent graduates who find work as a lawyer is down 10 percentage points since its peak.”).

38. Until recently, ABA Standard 306 imposed limits on how many credits could be earned through distance education. Due to issues raised by the Covid-19 pandemic, Standard 306 was deleted by the ABA House of Delegates in August 2020, and the associated issues were “fold[ed] it into Standard 105, which deals with substantive changes in programs.” See Stephanie Francis Ward, *Law Schools Should Have Flexibility in Responding to “Extraordinary Circumstances,” ABA House of Delegates Says*, A.B.A. J., Aug. 3, 2020, <https://www.abajournal.com/news/article/various-legal-ed-proposals-approved-by-aba-house-of-delegates> (last visited Sept. 7, 2020).

39. See Jim Chappelow, *The Great Recession*, <https://www.investopedia.com/terms/g/great-recession.asp> (last visited Sept. 12, 2020). According to Chappelow:

The Great Recession is a term that represents the sharp decline in economic activity during the late 2000s. This period is considered the most significant downturn since the Great Depression.

The term Great Recession applies to both the U.S. recession, officially lasting from December 2007 to June 2009, and the ensuing global recession in 2009.

40. See Atinuke O. Adediran *et. al.*, *Making the Best of a Bad Beginning: Young New York Lawyers Confronting the Great Recession*, 9 NE. U.L. REV. 259, 296 (2017) (“Lawyers in the private sector experienced layoffs, deferrals, and reductions in work hours. Government lawyers ... experienced pay and hiring freezes and other limitations related to budget cutbacks. Both public

squeeze on law schools. Applications dwindled,<sup>41</sup> enrollment declined,<sup>42</sup> and job opportunities disappeared.<sup>43</sup> In the 2010s, law schools struggled to recruit students<sup>44</sup> and some went out of business.<sup>45</sup> For most law schools, the situation stabilized and they continued to operate much as they had since the mid-1980s, albeit with less panache.

#### 4. THE COVID-19 PANDEMIC AND THE END OF THE GOLDEN AGE

In early 2020, the Covid-19 pandemic arrived. On February 3, the “Trump administration declare[d] a public health emergency due to the coronavirus outbreak . . . 3 days after [the] WHO [World Health Organization] declared a

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interest and government lawyers experienced reduced job opportunities when ‘deferred hires’ from large law firms accepted reduced salaries to work temporarily in these non-firm sectors.”).

41. See Benjamin H. Barton, *The Law-School Crash*, CHRON. OF HIGHER EDUC. (Jan. 3, 2020), <https://www.chronicle.com/article/the-law-school-crash/> (“2009-10 was the high point for LSAT administrations, at 171,514. That figure fell to 101,689 just five years later.”).

42. Data Dashboard, *Law School Enrollment*, <https://data.lawschooltransparency.com/enrollment/all/> (last visited Sept. 7, 2020) (“After 1L enrollment peaked in 2010 at 52,404 new students, enrollment fell dramatically in each of the next three years, which was then followed by four years of even lower, but steady, enrollment between 37,000 and 38,000 new 1Ls. Then in 2018, following a modest increase in demand for law school, 1L enrollment increased by 2.7% (992 students). In 2019, 1L enrollment decreased by 108 students or .3%.”); *id.* (“Compared to the peak in JD enrollment in 2010 (147,525 students), overall JD enrollment was down 23.5% in 2019.”).

43. See Lat, *supra* note 35 (“Only 57 percent of 2013 law school graduates obtained full-time legal jobs nine months after graduation.”); Donald J. Polden, *Leading Institutional Change: Law Schools and Legal Education in A Time of Crisis*, 83 TENN. L. REV. 949, 954 (2016) (“The effects of the recession included significant associate lay-offs, law firm staff terminations, and other downsizing activities. It is generally thought that the economic impact on large American law firms reflected both the consequential decrease in corporate client work (when these corporate clients began experiencing the recession’s effects) and the broader changes in the way that the legal services business was being done.”); Angelique M. Davis, *Descriptive Representation Matters: The Connection Between Access to Legal Education and Nonwhite Lawyer-Legislators in the United States*, 22 BERKELEY LA RAZA L.J. 117, 118 (2012) (“[T]he recession has disproportionately impacted people of color.”); Kirsten A. Dauphinais, *Sea Change: The Seismic Shift in the Legal Profession and How Legal Writing Professors Will Keep Legal Education Afloat in Its Wake*, 10 SEATTLE J. FOR SOC. JUST. 49 (2011) (“The effects [of the Great Recession] on the legal profession have been profound and, increasingly . . . permanent.”).

44. See Smith, *supra* note 16, at 603 (“Legal education is going through what is sometimes described as a ‘crisis’ related to the number of applications, public confidence, and uncertain direction. Applications are down....”); see also *id.* at 592 (“The job market and the public disdain for lawyers and law schools created an atmosphere in which prospective law students may be sensitive to price or decide not to attend law school.”).

45. See Derek T. Muller, Blog, *A Continuing Trickle of Law School Closures* (Mar. 22, 2019), <https://excessofdemocracy.com/blog/2019/3/a-continuing-trickle-of-law-school-closures> (last visited Sept. 7, 2020) (“Some campuses closed (Cooley’s Ann Arbor branch, Atlanta’s John Marshall’s Savannah branch), two schools merged into one (William Mitchell and Hamline), and others announced their closure (Indiana Tech, Whittier, Charlotte, and Valparaiso). In the last year, Arizona Summit . . . announced [its closure].”); See also Barton, *supra* note 41 (“Many law schools have suffered a near-death experience[.]”).



Global Health Emergency.”<sup>46</sup> A few days earlier, on January 27 in China<sup>47</sup> and January 29 in the United States,<sup>48</sup> I had published a column that raised the question of whether America could control the coronavirus. The following months showed that due to a lack of preparedness,<sup>49</sup> the pernicious influence of politics,<sup>50</sup> a disdain

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46. See AM. J. OF MANAGED CARE STAFF, A TIMELINE OF COVID-19 DEVELOPMENTS IN 2020, <https://www.ajmc.com/view/a-timeline-of-covid19-developments-in-2020> (last visited Sept. 7, 2020) [hereinafter “Timeline”].

47. See generally Vincent R. Johnson, *It Will Be a Heavy Lift for the American Law, Can U.S. Really Handle Covid-19?*, CAIXIN MEDIA (China) (Jan. 27, 2020), <http://m.opinion.caixin.com/m/2020-01-27/101508829.html?cxw=Android&Sfrom=Wechat&originReferrer=Androidshare&from=singlemessage&isappinstalled=0> (last visited Sept. 13, 2020) (published in Chinese).

48. See Vincent R. Johnson, *Can America Control the Coronavirus?*, SAN ANTONIO EXPRESS-NEWS (Jan. 29, 2020), <https://www.mysanantonio.com/opinion/commentary/article/Commentary-Can-America-control-the-coronavirus-15014024.php> (“Three matters call into doubt the ability of America to respond effectively to the coronavirus. The first is what a recent cover story in National Geographic magazine called the “War on Science.” The second is the pollution of public discourse by the spread of misinformation. The third is the increasing hostility in many quarters to the plight of disadvantaged people.”). Regarding the role of law in addressing public health crises, I wrote:

Laws play a major role in fighting epidemics and outbreaks....

Laws establish norms for healthy behavior, define the authority of public health agencies, and focus the debates that occur in legislatures, courts and administrative bodies. It is impossible to think clearly about fighting epidemics without framing issues in legal terms.

*Id.*; see also Vincent R. Johnson & Brian T. Bagley, *Fighting Epidemics with Information and Laws: The Case of SARS in China: A Review of Chinese Law on SARS by Chenglin Liu*, W.S. HEIN & CO. 2004, 24 PENN ST. INTL. L. REV. 157, 160–61 (2005) (“Using laws to protect public health and to fight epidemics is not new. During the plagues in London during the early 16th century, an array of legal provisions evolved ‘slowly and laboriously’ to address threats to public health.”).

49. See Jeremy Blackman and Cayla Harris, *Decades-long Underfunding Cost Texas on COVID-19 Data*, SAN ANTONIO EXPRESS-NEWS, Sept. 29, at A1 (“At the height of the coronavirus outbreak this summer, Texas health officials were scrambling to overcome data backlogs and inconsistencies that clouded the toll of the virus and eroded trust among local leaders.”); Amy Schoenfeld Walker and Lisa Waananen Jones, *Conflicting Virus Data In Texas Raises Distrust of the Government*, N.Y. TIMES, Sept. 14, 2020, at A8 (“[P]ublic health authorities place the blame for the state’s data problems on Texas’ antiquated data systems and a reliance on faxed test results.”).

50. See Mark Mazzetti *et al.*, *Behind the White House Effort to Pressure the C.D.C. on School Openings*, N.Y. TIMES, Sept. 29, 2020, at A1 (“Top White House officials pressured the Centers for Disease Control and Prevention this summer to downplay the risk of sending children back to school, a strikingly political intervention in one of the most sensitive public health debates of the pandemic.”); Sheryl Gay Stolberg, *Trump May Reject Tougher F.D.A. Vaccine Standards, Calling Them ‘Political’*, N.Y. TIMES (Sept. 23, 2020), <https://www.nytimes.com/2020/09/23/us/politics/coronavirus-science.html> (“President Trump said on Wednesday that the White House “may or may not” approve new Food and Drug Administration’s guidelines that would toughen the process for approving a coronavirus vaccine.... The pronouncement once again undercut government scientists who had spent the day trying to bolster public faith in the promised vaccine.”); Apoorva Mandavilli, *C.D.C. Reverses Testing Guidelines for People Without Covid-19 Symptoms*, N.Y. TIMES, Sept. 18, 2020, at A9 (“The change comes after widespread criticism of the earlier guideline, as well as reporting ... that the recommendation came from political appointees in the Trump administration and skipped the agency’s usual rigorous scientific review.”); Lara Jakes and Pranshu Verma, *At U.S.A.I.D., Partisan Politics Impeded Pandemic Response for Weeks*, N.Y. TIMES, Sept. 14, 2020, at A9 (“Political appointees from the White House and the State Department wanted the aid agency’s

for science (in some quarters<sup>51</sup>), and an abundance of misinformation,<sup>52</sup> the answer was that America was largely unable to effectively fight the spread of Covid-19. The United States soon had one of the highest coronavirus death rates in the world.<sup>53</sup> More than six months into the crisis, there was no solution at hand. Indeed, “[p]olls show[ed] a troubling drop in the number of Americans who would be willing to take a coronavirus vaccine”<sup>54</sup>—even if one were available and approved for use.

The pandemic has shaken American legal education to its foundations, and has caused chaos and uncertainty in education everywhere, both in the United

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logo affixed to all assistance packages to show the world how much the United States was sending abroad.... Career employees at U.S.A.I.D. argued that the logo and other American symbols could endanger people who delivered or received aid in countries that are hostile to the United States.”).

51. See Peter Baker, *Trump Scorns Own Scientists Over Virus Data*, N.Y. TIMES, Sept. 17, 2020, at A1 (“Mr. Trump publicly slapped down Dr. Robert R. Redfield, the director of the Centers for Disease Control and Prevention, as the president promised that a vaccine could be available in weeks and go ‘immediately’ to the general public while diminishing the usefulness of masks despite evidence to the contrary.”); cf. Apoorva Mandavilli, *C.D.C. Scientists Had No Hand in Controversial Policy, Officials Say*, N.Y. TIMES, Sept. 18, 2020, at A6 (“A heavily criticized recommendation from the Centers for Disease Control and Prevention last month about who should be tested for the coronavirus was not written by C.D.C. scientists and was posted to the agency’s website despite their serious objections.”); Noah Weiland, *Emails Describe Effort to Muzzle Doctors at C.D.C.*, N.Y. TIMES, Sept. 19, 2020, at A1, A8 (describing a “five-month campaign of bullying and intimidation”); Donald G. McNeil, Jr., *Claims of Herd Immunity Called “Nonsense,” as Well as Dangerous*, N.Y. TIMES, Sept. 30, 2020, at A1 (What three epidemiological teams “found runs strongly counter to a theory being promoted in influential circles that the United States has either already achieved herd immunity or is close to doing so and that the pandemic is all but over.”).

52. See Sheryl Gay Stolberg & Noah Weiland, *Study Finds ‘Single Largest Driver’ of Coronavirus Misinformation: Trump*, N.Y. TIMES, Sept. 30, 2020 at A9 (“Of the flood of misinformation, conspiracy theories and falsehoods seeding the internet on the coronavirus, one common thread stands out: President Trump. That is the conclusion of researchers at Cornell University who analyzed 38 million articles about the pandemic.”).

53. See Jake Horton, Becky Dale & Nassos Stylianou, *Coronavirus: Is the US the Worst-hit Country for Deaths?*, BBC NEWS (Aug. 23, 2020), <https://www.bbc.com/news/world-us-canada-53780196> (last visited Sept. 12, 2020) (looking “at three different ways you can measure the rate of Covid-19 deaths, two of which show that while the US is not the worst affected, it’s among those most badly hit.”); see also *Covid-19: New Fear Grips Europe as Cases Top 30m Worldwide*, BBC NEWS (Sept. 18, 2020), <https://www.bbc.com/news/world-54199825> (last visited Sept. 18, 2020) (“A team of infectious disease experts at Johns Hopkins University ... have been documenting the global spread of Covid-19 on its tracking website. According to their data, the U.S. remains by far the worst-hit country in terms of sheer numbers, with more than 6.6 million confirmed infections, and over 197,000 deaths.”).

54. See Stolberg, *supra* note 50, at A4.

States<sup>55</sup> and around the world.<sup>56</sup> Ever-present threats of infection and disease, with their life-endangering consequences, now shape every aspect of legal education, including activities that occur off campus.<sup>57</sup> Vast amounts of time, effort,<sup>58</sup> and money<sup>59</sup> are spent deciding how to address health risks, and on implementing those decisions.<sup>60</sup>

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55. See Frank Bruni, *The Coronavirus May Change College Admissions Forever*, N.Y. TIMES, Sept. 6, 2020, at 6 (“Because the pandemic prevented students from gathering last spring to take the SAT and ACT exams, many selective schools are not requiring them for the time being.”); Giulia McDonnell Nieto Del Rio, *A Growing Number of Catholic Schools are Shutting Down Forever*, N.Y. TIMES, Sept. 6, 2020 (“About 150 Catholic schools have closed.”); Eliza Shapiro, *In-Person Classes Delayed Again for Most New York City Students*, N.Y. TIMES, Sept. 18, 2020, at A4 (“Mayor Bill de Blasio ... once again delayed the start of most in-person classes.... Parents, educators and elected officials almost immediately reacted to the news with outrage and confusion.”); see also Yuriria Avila, *et al.*, *What We Know About Coronavirus Cases In K-12 Schools So Far*, N.Y. TIMES, Sept. 25, 2020, at A6 (“[I]t is nearly impossible to tally a precise figure of how many cases have been identified in schools. There is no federal effort to monitor coronavirus cases in schools, and reporting by school districts is uneven.”).

56. See Uncanny University, *Covid-19 could push some universities over the brink*, THE ECONOMIST (Aug. 8, 2020) at 17, (“Covid-19 has put immense pressure on all universities.”); *The Pandemic Further Weakens Latin America’s Underperforming Schools*, THE ECONOMIST, *The pandemic further weakens Latin America’s underperforming schools* (Sept. 12, 2020), [https://www.economist.com/the-americas/2020/09/12/the-pandemic-further-weakens-latin-americas-underperforming-schools?utm\\_campaign=coronavirus-special-edition&utm\\_medium=newsletter&utm\\_source=salesforce-marketing-cloud](https://www.economist.com/the-americas/2020/09/12/the-pandemic-further-weakens-latin-americas-underperforming-schools?utm_campaign=coronavirus-special-edition&utm_medium=newsletter&utm_source=salesforce-marketing-cloud) (last visited Sept. 12, 2020) (“84% of Latin American universities expect enrollment to fall this year, with half anticipating declines of 10-25%.”); but see Javier C. Hernandez, *How China Bought Nearly 200 Million Students Back to School*, N.Y. TIMES, Sept. 12, 2020, at A1 (“As countries around the world struggle to safely reopen schools this fall, China is harnessing the power of its authoritarian system to offer in-person learning for about 195 million students in kindergarten through 12th grade at public schools.”).

57. Cf. Sarah Watson *et al.*, *A New Phase of America’s Pandemic: College Towns as Hot Spots*, N.Y. TIMES, (Sept. 6, 2020), <https://www.nytimes.com/2020/09/06/us/colleges-coronavirus-students.html> (Listing Iowa City as “one of . . . [many] college towns where infections have spiked.”); Hubler and Hartocollis, *supra* note 5, at A6 (“[W]hat has happened on campus hasn’t stayed on campus”).

58. See Hubler and Hartocollis, *supra* note 5, at A6 (“At the University of Dayton in Ohio, President Eric Spina ... launched an aggressive testing and tracing program after a meeting with students with too few masks caused a cluster of cases, followed by another outbreak in dense student housing on the campus periphery.”).

59. See Hubler and Hartocollis, *supra* note 5, at A6 (“[M]any schools have invested heavily in health measures to bring back at least some students to campus with the promise of in-person classes and independent living in dorm rooms.”).

60. See, e.g., Bittany Britto, *Texas Universities Gear Up for Virus Testing*, SAN ANTONIO-EXPRESS NEWS, Aug. 2, 2020 (discussing plans and costs); Shawn Hubler and Anemoa Hartocollis, *To Stay Open, Colleges Wage War on Parties*, N.Y. TIMES, Aug. 23, 2020, at 1, 5 (discussing strict rules at many universities: “No parties. Mandated coronavirus tests or routine self-checks for symptoms. No setting foot into public spaces without masks.”).

Rules intended to minimize the spread of the contagion, such as face-mask,<sup>61</sup> medical testing,<sup>62</sup> social distancing,<sup>63</sup> and quarantining<sup>64</sup> requirements, and long-<sup>65</sup> or short-term<sup>66</sup> cessation of in-person classes, must be explained, defended, and enforced.<sup>67</sup> The process is tedious, potentially confrontational,<sup>68</sup> and burdensome.<sup>69</sup> Such rules must be consistent with scientific principles, the

61. See Baker, *supra* note 51, at A1 (Dr. Robert R. Redfield, director of the Centers for Disease Control and Prevention, “told a Senate committee that ... masks were so vital in fighting the disease caused by the coronavirus, Covid-19, that they may even [be] more important than a vaccine.”).

62. See Shawn Hubler, *For the Colleges That Beat Back the Virus, Testing Was the Key*, N.Y. TIMES, Oct. 2, 2020, at A1, A6 (“Research indicates that fast, widespread and frequent testing of people with and without symptoms is the best way to pinpoint and stop potential outbreaks.”); Amanda Rosa, *Party Selfies and Hazmat Suits: How N.Y.’s Worst Campus Outbreak Unfolded*, N.Y. TIMES, Sept. 17, 2020, at A8 (“[M]ost experts have agreed that testing should be an important aspect of reopening campuses.”).

63. Center for Disease Control and Prevention, *Social Distancing*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html> (last visited Sept. 23, 2020) (“Social distancing, also called ‘physical distancing,’ means keeping a safe space between yourself and other people who are not from your household....[S]tay at least 6 feet. . . from other people . . . in both indoor and outdoor spaces.”).

64. Natasha Singer, *College Quarantine Breakdowns Leave Some at Risk*, N.Y. TIMES, Sept. 9, 2020, at A8 (“[M]any campuses are subjecting students to one of the oldest infection control measures known to civilization: quarantine.”).

65. See Rosa, *supra* note 62, at A8 (When the State University of New York at Oneonta had the “‘worst outbreak of any college in New York State’ officials cancelled in-person classes for the fall semester and sent students home.”).

66. See *Can Shutdowns Work for Universities Struggling to Contain COVID-19?*, UNIV. BUS. (Sept. 17, 2020) [https://universitybusiness.com/can-shutdowns-work-for-universities-struggling-to-contain-covid-19/?eml=20200918&oly\\_enc\\_id=4802G4409478G2Y](https://universitybusiness.com/can-shutdowns-work-for-universities-struggling-to-contain-covid-19/?eml=20200918&oly_enc_id=4802G4409478G2Y) (“[M]ore universities are trying the two-week pause to overcome outbreaks, as opposed to the more dramatic move of permanently sending students home.... The approach has produced mixed results. It seems to have worked, for now, at the University of Notre Dame, which reinstated in-person classes in early September after a temporary shift to remote instruction.”).

67. See James Barron, *Coronavirus Update: Colleges Crack Down on Scofflaws*, N.Y. TIMES, Sept. 8, 2020 (Eleven students were dismissed at Northeastern University, and others were suspended at New York University, Ohio State, West Virginia University, and Purdue “over violations of rules intended to limit the spread of the virus on campus.”).

68. See Hubler and Hartocollis, *supra* note 3, at A6 (“The University of Alabama ... has penalized more than 600 students for violating a ban on gatherings on or off campus, suspending 33 students.”); *Id.* (At Miami University in Oxford, Ohio, “campus police broke up a house party thrown by a corona-positive student who claimed to be quarantining.”); Rosa, *supra* note 62, at A8 (At SUNY Oneonta, “at least 20 people have been suspended for attending or hosting parties and unrelated arrests.”); *cf.* Christina Goldbaum, *When a Bus Driver Told a Rider to Wear a Mask, “He Knocked Me Out Cold,”* N.Y. TIMES, Sept. 20, 2020, at 6 (“[T]he new culture wars over wearing a mask—or refusing to—have sparked confrontations in retail stores, parks and restaurants.”); UB Staff, *UGA Student Exposed COVID-19 Violations. One Fraternity Responded with Racial Texts*, UNIV. BUS. (Sept. 22, 2020), [https://universitybusiness.com/uga-student-exposed-covid-19-violations-one-fraternity-responded-with-racial-texts/?eml=20200923&oly\\_enc\\_id=4802G4409478G2Y](https://universitybusiness.com/uga-student-exposed-covid-19-violations-one-fraternity-responded-with-racial-texts/?eml=20200923&oly_enc_id=4802G4409478G2Y) (last visited Sept. 23, 2020) (discussing a controversy that arose after photos and videos were posed on Twitter showing “students appearing to flout social distancing guidelines and gathering without masks.”).

69. See Singer, *supra* note 64, at A8 (“University officials say taking care of students with virus infections and exposures is logistically complex, involving dozens of employees from many departments.”); *id.* (“Notre Dame said it had hired security guards to monitor students in quarantine

requirements of federal, state, and local law,<sup>70</sup> and academic freedom,<sup>71</sup> and must be mindful of exacerbating potentially fraught town-gown relations.<sup>72</sup> Consequently, educational administrators must focus on a myriad of coronavirus issues, including the risks of civil lawsuits and liability,<sup>73</sup> rather than on the basic missions of their educational programs. Many college and university students, faculty, and administrators say that “COVID-19 is the thing most [adversely] impacting student success.”<sup>74</sup>

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in hotels and off-campus apartments”); Matt Zalaznick, *University of Michigan Faces Student Strikes Over COVID Safety*, UNIV. BUS. (Sept. 11, 2020), [https://universitybusiness.com/university-of-michigan-strikes-covid-safety-graduate-students-ra/?eml=20200914&oly\\_enc\\_id=4802G4409478G2Y](https://universitybusiness.com/university-of-michigan-strikes-covid-safety-graduate-students-ra/?eml=20200914&oly_enc_id=4802G4409478G2Y) (last visited Sept. 14, 2020) (“The resident advisers went on strike, saying in a press release ... that the university had not responded to their concerns about adequate COVID testing, insufficient personal protective equipment and an inability to enforce social distancing and guest restrictions.”).

70. See Vincent R. Johnson, *Can America Control the Coronavirus?*, SAN ANTONIO EXPRESS-NEWS (Jan. 29, 2020), <https://www.mysanantonio.com/opinion/commentary/article/Commentary-Can-America-control-the-coronavirus-15014024.php> (last visited Sept. 13, 2020) (“Tort-law principles impose liability on those who cause harm by intentionally or negligently transmitting a communicable disease.”); James Barron, *Coronavirus Update*, N.Y. TIMES, Sept. 16, 2020, at A4 (discussing a judge who ruled that an “order capping gatherings at 25 people indoors and 250 outdoors violated ‘the right of assembly enshrined in the First Amendment’”); Andy Thomason, *Boulder Bans Gatherings of 18-to-22-Year-Olds, Citing College-Student Spread*, CHRON. HIGHER EDUC. (Sept. 24, 2020), <https://www.chronicle.com/article/live-coronavirus-updates-heres-the-latest> (last visited Sept. 25, 2020) (The ban “explicitly prohibits students ... from gathering inside dorms ... [and] bars athletes on the Boulder campus from having team practices.”).

71. See Megan Zahneis, *This Tenured Professor Said His College’s Reopening Plans Risked Deaths. That’s Now in His Personnel File*, CHRON. HIGHER ED. (Sept. 10, 2020), <https://www.chronicle.com/article/this-tenured-professor-said-his-colleges-reopening-plans-risked-deaths-thats-now-in-his-personnel-file> (“To Stiffler, an associate professor of history, the letter infringed on his academic freedom, and risked chilling the speech of other faculty members.”).

72. See Andy Thomason, *U. of Wisconsin Chancellor Fires Back at County Over Call to Go Online*, CHRON. HIGHER EDUC. (Sept. 21, 2020), <https://www.chronicle.com/article/live-coronavirus-updates-heres-the-> (last visited Sept. 25, 2020) (“The day after the Dane County executive called on her to move all instruction online at the University of Wisconsin at Madison, the chancellor, Rebecca Blank, responded with a public rebuke, calling on his office to ‘become a partner’ with the university in reducing transmission of Covid-19.”).

73. Cf. Vincent R. Johnson, *As Businesses Reopen, Expect Lawsuits*, SAN ANTONIO EXPRESS-NEWS, Apr. 22, 2020 (“Negligent transmission of an infectious disease is a well-established theory of tort liability. There is case law going back to 1873.”); but see Y. Peter Kang, *Ohio Enacts COVID-19 Liability Shield for Businesses, Others*, LAW360, (Sep. 14, 2020), <https://www.law360.com/articles/1309975/ohio-enacts-covid-19-liability-shield-for-businesses-others> (last visited Sept. 18, 2020) (A new Ohio law, H.B. 606, states that “individuals, businesses, schools and health care providers can’t be held liable for injuries or deaths related to COVID-19 exposure unless it can be established that a defendant committed reckless conduct, intentional misconduct, or willful or wanton misconduct.”); Roger Yu and Melissa B. Robinson, *Universities Hit by Covid-19 Take on Insurers Over Loss Coverage*, BLOOMBERG LAW (Sept. 17, 2020), <https://news.bloomberglaw.com/coronavirus/universities-hit-by-covid-19-take-on-insurers-over-loss-coverage> (“Colleges, like many businesses, are turning to courts to compel insurers to provide coverage for coronavirus-related costs and income losses”).

74. Chris Burt, *Study: Majority of College Students Say They’re Falling Behind*, UNIV. BUS. (Sept. 16, 2020), <https://universitybusiness.com/study-majority-of-college-students-say-theyre-falling-behind/>.

There are many unanswered questions about how the virus spreads and how risks can best be minimized.<sup>75</sup> Even odd options, such as “setting up *al fresco* classrooms,”<sup>76</sup> or testing wastewater for evidence of the coronavirus,<sup>77</sup> have had to be considered at American colleges and universities because the virus has spread widely in higher education.<sup>78</sup> Moreover, the stakes of continuing traditional practices are very high. Simply “welcoming college students back to campuses for the fall semester can lead to Covid-19 outbreaks.”<sup>79</sup> By one estimate, “[c]olleges that reopened for in-person instruction this fall probably contributed more than 3,000 Covid-19 cases a day in their counties that wouldn’t have emerged if they’d remained online[.]”<sup>80</sup> The resulting psychological stress<sup>81</sup> and health concerns have

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75. See Francie Diep, *More Colleges Are Responding to Covid-19 Surges With 2-Week Quarantines. Do They Work?*, CHRON. HIGHER EDUC. (Sept. 17, 2020), <https://www.chronicle.com/article/more-colleges-are-responding-to-covid-19-surges-with-2-week-quarantines-do-they-work?> (“[T]here is no consensus on how colleges should use coronavirus tests to support in-person activities, [Howard K. Koh, a professor of public-health leadership at Harvard University] said. ‘There are no national guidelines and still very, very little research on this.’”).

76. See Barron, *supra* note 67, at A4 (“Some School systems are setting up . . . in schoolyards.”). While I was dean, we discussed whether it would be possible to move law school courses to large event tents that would be erected on the campus in order mitigate health risks by achieving greater air circulation. We concluded that because of problems relating to noise, expense, and lack of educational technology, the idea should not be pursued. *But see* Brittany Britto, *Inside Look at Rice’s Outdoor, In-Person Classrooms*, SAN ANTONIO EXPRESS-NEWS, Sept. 13, 2020, at A4 (At Rice University, “[f]ive large open-air archways . . . provide shade in grassy areas on campus for people to congregate. And four 50-by-90 foot enclosed ‘high performance tensioned’ fabric buildings serve as high tech classrooms”).

77. See Matt Richtel, *Safely Looking to Reopen, Colleges Become Labs for Coronavirus Tests and Tracking Apps Safety*, N.Y. TIMES, at 1 (discussing sewage tests at the Rochester Institute of Technology).

78. See Hubler and Hartocollis, *supra* note 5, at A1 (putting the total “campus infections” at “88,000 since the pandemic began.”).

79. Francie Diep, *“Our Biggest Fear”: What Outbreaks on 3 Campuses Say About the Pandemic This Fall*, CHRON. HIGHER EDUC. (September 3, 2020), <https://www.chronicle.com/article/our-biggest-fear-what-outbreaks-on-3-campuses-say-about-the-pandemic-this-fall> (“Several institutions have reported more than 1,000 cases each.”).

80. Katherine Mangan, *Reopening for In-Person Classes May Have Caused Thousands of Covid-19 Cases a Day, Study Finds*, CHRON. HIGHER EDUC. (Sept. 22, 2020), <https://www.chronicle.com/article/reopening-for-in-person-classes-may-have-caused-thousands-of-covid-19-cases-a-day-study-finds>.

81. See Emma Goldberg, *For Long-Haulers, Covid-19 Takes a Toll on Mind as Well as Body*, N.Y. TIMES, Sept. 7, 2020, at A4 (discussing an expert’s estimate that “between one-third and one-half of Covid-19 patients experienced some form of mental health problems, including anxiety, depression, fatigue or abnormal sleeping”).

detrimentally affected students,<sup>82</sup> faculty,<sup>83</sup> and staff.<sup>84</sup> Thus, as legal employment stagnated<sup>85</sup> and pandemic-related confusion seeped into all areas of law school operations, the Golden Age ended. Somewhere down the road, there may be another Golden Age that will flourish anew, perhaps even greater than ever, but that is now hard to see.

## 5. THE UNCERTAIN FUTURE OF LEGAL EDUCATION

Whatever lies ahead seems certain to differ in fundamental ways from legal education during the past 35 years. To take but one example, during the past three-and-a-half decades, online instruction played only a minor role in American legal education.<sup>86</sup> However, virtually all law professors were forced by the pandemic to

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82. See David Jesse, *University of Michigan President: I Know There is 'Lack of Trust' I Need to Rebuild*, *Detroit Free Press* (Sept. 15, 2020), <https://www.freep.com/story/news/education/2020/09/15/university-michigan-mark-schlissel/5806538002/> (last visited Sept. 16, 2020) (“Students are upset about poor conditions in quarantine housing and about a now-scrapped plan to send armed police officers into off-campus student housing neighborhoods to enforce no-party policies.”); Katherine Mangan, *Covid-19 Pushes RAs to the Breaking Point: Some Are Striking. Others Quit*, *CHRON. HIGHER EDUC.*, (Sept. 18, 2020) <https://www.chronicle.com/article/covid-19-pushes-ras-to-the-breaking-point-some-are-striking-others-quit> (“[T]he already-heavy load on RAs [resident advisors]— typically 19- to 21-year-olds with a few weeks of training — is becoming unbearable for a growing number of them on campuses across the country. The life-or-death stakes of the pandemic have pushed some to strike and others to quit, threatening the public-health measures at colleges that rely heavily on RAs to enforce the rules.”).

83. See Anemona Hartocollis, *Colleges Face Rising Revolt by Professors*, *N.Y. TIMES*, July 3, 2020, at 1 (“Thousands of instructors at American colleges and universities have told administrators in recent days that they are unwilling to resume in-person classes because of the pandemic.”); Nell Gluckman, *George Washington U. Was Embroiled in a Leadership Crisis. The Pandemic Made It Worse*, *CHRON. HIGHER EDUC.*, (Sept. 22, 2020), <https://www.chronicle.com/article/george-washington-u-was-embroiled-in-a-leadership-crisis-the-pandemic-made-it-worse> (quoting the president of the GWU Faculty Association as stating, “I’ve never seen an atmosphere of such contentiousness and low morale among staff, faculty, and students.”); see also Brittany Britto, *Group Call for Colleges to Reveal Virus Case Totals*, *SAN ANTONIO EXPRESS-NEWS*, Sept. 26, 2020, at A4 (“Many [faculty members] feel uninformed and unsure whether students in their classrooms have the virus.... [Faculty members] are risking their health every day, working on campuses, and they are entitled to this information.”).

84. See Rosa, *supra* note 62, at A8 (mishandling of the pandemic at SUNY Oneonta left students and staff “confused and disappointed.”); cf. Tony Czuczka and Yueqi Yang, *Ex-chief of FDA Warns of Virus Fatigue*, *SAN ANTONIO EXPRESS-NEWS*, 2020, at A8 (“people are exhausted.”).

85. See Patrick Smith, *Jobs Report: US Economy Adds 1.4 Million Jobs, Legal Adds ... Nothing* (Sept. 4, 2020), <https://www.law.com/nationallawjournal/2020/09/04/jobs-report-us-economy-adds-1-4-million-jobs-legal-adds-nothing> (“The stagnation of legal industry job growth, which saw the addition of 3,500 jobs in May, 7,500 in June and 1,900 in July after a crushing loss of 64,000 jobs in April, is glaringly close to a trend as growth has slowed even as firms reinstate partner dividends and roll back austerity measures.”).

86. See Max Huffman, *Online Learning Grows Up-and Heads to Law School*, 49 *IND. L. REV.* 57, 57–58 (2015) (“The legal academy has been slow to catch on.... [T]he American Bar Association ..., limits opportunities for online learning in law schools.... Non-ABA-accredited fully online law schools do exist, primarily in California where state-level accreditation is sufficient to allow graduates to sit for the state bar.”).

develop online teaching skills<sup>87</sup> when legal education moved online at every American law school in the spring of 2020.<sup>88</sup> It seems unlikely that online instruction will ever again play only a minor role in the education of new lawyers.<sup>89</sup> This is true, in part, because some students, and some teachers, prefer the flexibility and convenience of online instruction.<sup>90</sup> Increased use of online teaching is likely to have a rippling impact on many aspects of campus life, not to mention on law school and university revenue. Law schools that have long focused on bricks-and-mortar facilities and supplying comfortable, collegial learning environments are concerned that they will be unable to charge the same high tuition rates for courses that are offered online, largely in isolation.<sup>91</sup>

Similarly, “[b]efore the pandemic only 3% of Americans worked from home regularly;” now many persons do [so].<sup>92</sup> At numerous American law schools, a majority of law faculty members have been working mainly from home for months, and many prefer that. In the future, law schools may be less inclined to

87. See Karen Sloan, *ABA Council Contemplates Expanded Powers, New Distance Ed Rules*, LAPOLITICA ONLINE (May 12, 2020), [\(https://www.law.com/2020/05/12/aba-council-contemplates-expanded-powers-new-distance-ed-rules\\_\(last visited Sept. 7, 2020\)\)](https://www.law.com/2020/05/12/aba-council-contemplates-expanded-powers-new-distance-ed-rules_(last%20visited%20Sept.%207,%202020)) (quoting Andrew Strauss, Dean of the University of Dayton School of Law, as stating, “every American law school went all online in response to the COVID crisis.”).

88. See, e.g., Email from Office of the President to Vincent Johnson, Mar. 13, 2020 (“[B]eginning the week of March 23, all St. Mary’s University classes will resume in a fully online format.”) (on file with author); Email from Office of the Provost to Vincent R. Johnson, Mar. 20, 2020, (In the span of 10 days, St. Mary’s University converted more than 950 courses from on-campus to online.) (on file with author).

89. See Stephen R. Alton, *Roll Over Langdell, Tell Llewellyn the News: A Brief History of American Legal Education*, 35 OKLA. CITY U.L. REV. 339, 362 (2010). More than a decade ago, Professor Alton wrote:

A generation from now, law students will be educated in ways that we may find difficult to imagine, thanks, in large part, to the on-going revolution in technology. We are already seeing the advent of classes taught entirely online, which, just a few short years ago, would have been unthinkable—indeed even impermissible—under earlier American Bar Association standards for the accreditation of American law schools. Today, there are even entire online law schools, without any bricks or mortar at all. While none of these virtual law schools, with their virtual classrooms, has yet been accredited by the American Bar Association, that day may well arrive.

*Id.* at 362.

90. But see Chris Villani, *Wary Law Schools Give Remote Learning the Old College Try*, LAW360 (Sept. 16, 2020), <https://www.law360.com/articles/1310870/wary-law-schools-give-remote-learning-the-old-college-try> (quoting New England Law professor Lawrence Friedman stating, “I still think it remains the case that the teaching we do doesn’t translate to an online teaching experience. . .”).

91. See Greta Anderson, *Feeling Shortchanged*, INSIDE HIGHER ED (Apr. 13, 2020), <https://www.insidehighered.com/news/2020/04/13/students-say-online-classes-arent-what-they-paid> (“College students say the online instruction they’re getting in the wake of the coronavirus pandemic is not the education for which they paid. Some students plan to withhold tuition payments; others are demanding partial tuition refunds.”).

92. *The Economist This Week: Our Coverage of the Coronavirus*, THE ECONOMIST (Sept. 12, 2020), <https://view.e.economist.com/?qs=5969473>.



spend vast sums of money on building and maintaining faculty offices, if that expense can be avoided<sup>93</sup>

One positive consequence of the upheaval in legal education caused by the pandemic is that there may be a rethinking about how to make legal education more affordable and accessible.<sup>94</sup> That could utterly transform American law schools. Such a re-evaluation is long overdue.

## 6. AN OPENING IN THE ST. MARY'S DEANSHIP

At age 65, I was appointed Interim Dean and Charles E. Cantú Distinguished Professor of Law at St. Mary's University School of Law. The choice was made by university President Thomas Mengler<sup>95</sup> and Provost Aaron Tyler<sup>96</sup> in what seemed to be a routine transitional year.

Although I was not a close friend of either the President or the Provost, we were certainly acquainted. We had mainly talked to one another at university events,<sup>97</sup> such as alumni dinners. At a gala kicking off the public phase of St. Mary's University's \$130 million capital campaign in 2017,<sup>98</sup> I told Mengler that I had been looking forward to that dinner for 35 years for I knew that fundraising is the way that great institutions are built. On other occasions when our paths

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93. See *Office Politics: The Fight Over the Future of the Workplace Has Just Begun*, THE ECONOMIST, Sept. 12, 2020, at 11 ("Around the world workers, bosses, landlords and government are trying to work out if the office is obsolete—and are coming to radically different conclusions.").

94. See generally Ilana Kowarski, *See the Price, Payoff of Law School Before Enrolling*, US NEWS AND WORLD REPORT, Mar. 18, 2020. The author states:

The average annual tuition and fees at private law schools in the 2019-2020 academic year – \$49,548 – was around \$7,800 higher than the average annual out-of-state tuition and fees at public law schools. The difference between average annual tuition and fees at private schools and average annual in-state tuition and fees at public schools was enormous: around \$21,300.

*Id.*

95. President, ST. MARY'S U., <https://www.stmarytx.edu/about/leadership/president/> (last visited Sept. 5, 2020) ("Thomas M. Mengler, J.D., became the 13th president of St. Mary's University on June 1, 2012." Before that he was the dean at two law schools, the University of St. Thomas School of Law in Minnesota and the University of Illinois College of Law.). See Thomas Mengler, WIKIPEDIA, [https://en.wikipedia.org/wiki/Thomas\\_Mengler](https://en.wikipedia.org/wiki/Thomas_Mengler) (last visited Sept. 5, 2020).

96. See *St. Mary's Drops 'Interim' Tag from Provost's Title*, ST. MARY'S U. (Dec. 9, 2015), <https://www.stmarytx.edu/2015/st-marys-provost/> (Aaron Tyler became Interim Provost in August 2015 and served as Provost and Vice President for Academic Affairs from January 1, 2016 to June 1, 2020).

97. See *President*, *supra* note 95 ("In fall 2017, Mengler publicly announced The St. Mary's Defining Moment Comprehensive Campaign, a \$130 million campaign to enhance excellence throughout the University and provide students with access to scholarships."); See President, <https://www.stmarytx.edu/about/leadership/president/> (last visited Sept. 5, 2020); E-mail from Thomas Mengler, J.D. President, St. Mary's University, to Vincent Johnson, Nov. 20, 2017 (At a dinner at the Marriott Rivercenter in downtown San Antonio held to celebrate the opening of the public phase campaign, I told Mengler that I had been waiting for that dinner for 35 years. A few days later he followed up with a note "mentioning my kind comments.") (on file with author).

98. See *St. Mary's Raises \$138 Million Through the Defining Moment Comprehensive Campaign*, ST. MARY'S U. (Nov. 8, 2019), <https://www.stmarytx.edu/2019/defining-moment-news/>.

crossed, I brought him up to date on the work that I was doing at the London School of Economics during periodic trips between 2013 to 2016.<sup>99</sup>

Mengler and Tyler probably viewed me as a productive scholar and a good teacher, for they had approved my being awarded the South Texas Endowed Professorship in 2017, just two years earlier, shortly after I had graduated from the LSE. However, I have no reason to think that they saw me as the obvious choice for interim dean when a vacancy arose in 2019. Fourteen years had passed since I left the associate deanship, and I was, after all, 65 years of age. None of our eight prior deans had been that old at the time of appointment, with one important exception. My good friend Charles Cantú was 67 years of age when he was appointed interim dean in 2007. He served for seven years and was probably the most successful dean of all.

When it was announced early in April 2019 that Stephen Shepard's five years as dean would come to an end on May 31, and that Mengler and Tyler planned to "appoint an interim dean before the beginning of May,"<sup>100</sup> I drafted a letter expressing interest in the position. Although I had never been a candidate for the St. Mary's law deanship, I thought this opportunity was especially appealing, in part because it was a good chance to re-connect with so many of my former students who are now our alumni. As I said in my letter of application:

The best reason to appoint me is that I have deep and positive connections to the law alumni.... I have taught roughly two-thirds of the living graduates of the law school. That will help me to succeed with important decanal tasks related to fundraising, student recruitment, and graduate placement.<sup>101</sup>

I said that as interim dean my three top priorities would be: "1. Fundraising, Development, and Institutional Reputation.... 2. Consistently Good Performance on the Texas Bar Examination.... 3. Expanded Attention to Social Justice."<sup>102</sup>

As Mengler and Tyler considered my application they were probably reassured by what alumni said. At least thirty of my former students—as well as the three most recent deans of the law school (Bill Piatt, Cantú, and Sheppard—wrote to Mengler and Tyler at my request and urged them to appoint me. What I

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99. See ELLM: Overview, LSE, <https://www.lse.ac.uk/law/study/ellm/overview> (last visited Sept. 5, 2020) ("The Executive LLM is a part-time degree for working professionals who have obtained at least three years post-degree work experience.") I was in the first cohort of students when the LSE Executive LLM program started classes in December 2013). I flew to London every four months to take an intensive week-long course (which normally dealt with international or comparative law), then finished the reading assignments after returning to the US and took an on-line 48-hour final exam or wrote a research paper. When I crossed the stage at commencement exercises in London in December 2016, I was announced as the "first-ever graduate of the LSE's new Executive Master of Laws program."

100. Emily Donaldson, *St. Mary's Law School Dean Steps Down; Search for Successor Begins Soon*, SAN ANTONIO REP. (Apr. 11, 2020), <https://sanantonioreport.org/st-marys-law-school-dean-steps-down-search-for-successor-soon-to-begin/>.

101. Letter from Vincent R. Johnson to Thomas Mengler, J.D. President, St. Mary's University and Aaron Tyler, Interim Provost, St. Mary's University (Apr. 9, 2020) (regarding "Interim Dean of the School of Law").

102. *Id.*

learned from various sources suggested that perhaps half of my faculty colleagues had expressed similar support to the university administration, orally or in writing. I was not aware of any substantial opposition to my candidacy, but there were other good contenders.

If I were appointed, my short tour of duty as the ninth Dean of the law school would be my 38th year on the St. Mary's law faculty.<sup>103</sup> At the start of that year, I would rank as the 8th longest-serving member of the faculty in the law school's 92-year history.<sup>104</sup>

My long record of service at St. Mary's meant there were unlikely to be surprises relating to how I would run the law school. I had served as associate dean for four years under Dean Piatt,<sup>105</sup> co-founded and directed our two prominent study abroad programs in China<sup>106</sup> and Austria<sup>107</sup> for a total of 22 summers, advised the *St. Mary's Law Journal's* editorial boards for almost two decades, and supervised scores of bright law students serving as interns with federal and state judges in San Antonio and Austin.

My faculty colleagues knew from experience that I would fight battles over educational policy when necessary. But no one would have expected a turbulent or chaotic year with me in the dean's office. I was told that the law school staff welcomed my appointment because they believed it would be "low-stress," well-organized, and predictable. The faculty might have had the same expectations. At a retreat during the previous year, I had argued forcefully that the law school administration should not try to micro-manage law programs that had long prospered under loosely supervised faculty guidance. I had also come out against the imposition of ill-fitting, data-driven corporate and social science practices at the law school. Some of my faculty colleagues had been driven to distraction by what they regarded as misguided use of data and statistics by recent administrators.

My experience and predictability probably gave me an edge in winning the appointment because there was something of a leadership vacuum. Sheppard had resigned the deanship. Assistant Dean Mike Barry was leaving to become President and Dean at South Texas College of Law Houston.<sup>108</sup> The Associate Dean for Academic and Student Affairs, Amy Hardberger, was leaving that

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103. See Cantú, *supra* note 19, at 313, 381 (Charles E. Cantú had been a member of the faculty even longer when he was appointed interim dean in 2007, which was his 41st year); Jennifer Lloyd, *St. Mary's Law School Dean Prepares to Leave Post*, SAN ANTONIO EXPRESS-NEWS, Dec. 3, 2013 (Cantú served as dean from 2007 to 2014.).

104. See Johnson, *supra* note 22, at 529 n. 32 (setting forth calculations; tied with my colleague, Geary Reamey).

105. I was Associate Dean for Administration during 2001-02 and Associate Dean for Academic and Student Affairs during 2002 to 2005.

106. See Robert H. Hu, *St. Mary's University Institute on Chinese Law and Business: Remarkable Success in the First Ten Years*, 51 ST. MARY'S L.J. 839, 845 (2020) (discussing the founding).

107. See Johnson, *supra* note 22, at 561-65 (discussing the founding of the summer program at Innsbruck, Austria, which later became the St. Mary's Institute on World Legal Problems).

108. Michael F. Barry, President and Dean, SOUTH TEX. C. OF L. HOUSTON, <https://www.stcl.edu/about-us/administration-leadership/barry/> (last visited Sept. 5, 2020) ("Barry joined South Texas in fall 2019 after serving as assistant dean and practitioner in residence at St. Mary's University School of Law in San Antonio, Texas.") 5, 2020).

position to return to teaching and scholarship.<sup>109</sup> Finally, it was expected that the Assistant Dean for Admissions, Shelli Soto, would soon depart to accept an opportunity in Washington state.<sup>110</sup>

I believed it was a good time to be taking the reins at St. Mary's. My predecessor, Steve Sheppard, an energetic leader, was leaving the law school in good shape. Our advocacy programs were ranked fifth in the nation by the American Bar Association.<sup>111</sup> The widely-cited *St. Mary's Law Journal* had recently celebrated its golden anniversary.<sup>112</sup> Our clinical programs<sup>113</sup> and *The Scholar*,<sup>114</sup> our law review on race and social justice, were effectively carrying forward the great Catholic traditions of caring for the poor and promoting equal rights and fair treatment. Our facilities and educational technology had never been better. Our professors, who are widely regarded by students as excellent in the classroom, were also extensively quoted in the press and actively engaged in law reform,<sup>115</sup> legal scholarship,<sup>116</sup> and building the legal profession.

As I considered the possibility that I might be named interim dean, I envisioned a year of calm seas and blue skies. Black clouds and lightning strikes were nowhere on the horizon. It never occurred to me that I would preside, in San Antonio, over the end of a very prosperous era in American legal education.

109. See E-mail from Amy Hardberger, Assoc. Dean for Acad. and Student Affairs, St. Mary's Univ., to Stephen Sheppard, (Apr. 8, 2019) (announcing her return to teaching and scholarship after completion of three years as associate dean on May 31, 2019) (on file with author).

110. Memorandum from Stephen M. Sheppard to St. Mary's University School of Law Faculty and Staff, (May 2, 2019) (announcing Soto's departure for a position in Washington state).

111. See *Advocacy Program Ranked No. 5 in Nation*, ST. MARY'S U. (May 17, 2019), <https://www.stmarytx.edu/2019/advocacy-program-ranked-no-5-in-nation/>. In the summer of 2020, Professor A.J. Bellido de Luna, the head of the St. Mary's Advocacy program, was elected Vice President on the inaugural leadership team of the National Association of Legal Advocacy Educators. See E-mail from Patricia Roberts to All Law Personnel, July 27, 2020) (on file with author).

112. See Barbara Hanson Nellermeoe, *50 Years of Excellence: A History of the St. Mary's Law Journal*, 50 ST. MARY'S L.J. 1, 2 (2019) ("In Texas, the Journal has been quoted or cited by intermediate courts of appeals in over 800 instances and in about 200 cases decided by the Texas Supreme Court. Outside of Texas, articles or student works published in the Journal have been cited by courts in thirty-one states (including most state supreme courts), by numerous federal courts, and on three occasions, by the United States Supreme Court.").

113. See Clinical Program, ST. MARY'S U. <https://law.stmarytx.edu/academics/special-programs/center-legal-social-justice/clinical-program/> (last visited Oct. 1, 2020).

114. See *The Scholar*, ST. MARY'S U. <https://law.stmarytx.edu/academics/law-journals/the-scholar/> (Oct. 1, 2020) ("The Scholar's mission to 'give a voice to the voiceless' is fulfilled both by shedding light on issues affecting disadvantaged communities and by reaching out to the community at large and informing, educating, sharing, and growing with them.").

115. See generally Frank Garza, *St. Mary's University School of Law Professor Champions Civil Rights, Education Issues*, SAN ANTONIO REP. (Mar. 29, 2020), <https://sanantonioreport.org/st-marys-university-school-of-law-professor-champions-civil-rights-education-issues/> (discussing the work of professor Al Kauffman).

116. See generally Faculty Scholarship, ST. MARY'S U., <https://law.stmarytx.edu/academics/faculty-scholarship/> (last visited Oct. 1, 2020).

## 7. INTERVIEW, OFFER, AND ACCEPTANCE

Despite the university's intention to appoint an interim dean before the start of May, nothing happened fast. My schedule may have presented an obstacle. In my letter of April 9 applying for the interim deanship, I had told the President and the Provost that:

From April 10 to 12, I will be at the University of Notre Dame visiting Nancy Shaffer, the widow of my teacher and mentor, Professor Thomas L. Shaffer,<sup>117</sup> who recently died. From April 18 to May 5, I will be teaching a fifteen-hour course on Legal Ethics at a university in Astana, Kazakhstan, as part of a pro bono Rule of Law program arranged by the Center for International Legal Studies of Salzburg, Austria (CILS).<sup>118</sup>

One of my politically savvy former students advised me to cancel my trip to Kazakhstan. He reasoned that if I wanted a shot at the interim deanship, I had to be available. However, a change of travel plans was never in the cards. I like to travel and had made what I saw as a morally binding commitment to teach an important subject to students who might be the next generation of leadership in a developing country.

As things worked out, my hour-long interview for the interim deanship was scheduled for 4:00 on Wednesday May 8 in the President's office at St. Louis Hall, shortly after my return from Asia. It was a pleasant meeting with Mengler and Tyler—relaxed, optimistic, and upbeat. Before the hour was over, I was offered and had accepted the position. There was no dickering over the terms of the arrangement; what they proposed was fine. As it happened, former Dean Emeritus Cantú was taking me and my wife, Jill Torbert, out to dinner that evening. We celebrated the good news at the Argyle Club,<sup>119</sup> even though the appointment was still not public.

At a follow-up meeting the next day, Mengler and Tyler told me who they had chosen for associate deans at the law school: Ramona Lampley, Associate Dean for Academic and Student Affairs; Colin Marks, Associate Dean for Graduate and International Programs; and David Hague, Associate Dean for Administration and Finance. They were among six potential appointees who I had spoken favorably about the day earlier. Lampley, Marks, and Hague prospered in their new roles. They were well-qualified, and that was important because I intended to follow the example of Cantú. He gave his associate deans broad discretion and authority, which is to say he gave them the opportunity to succeed

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117. See Vincent R. Johnson, Tribute, *Thomas L. Shaffer, Legal Ethics, and St. Mary's University*, 10 ST. MARY'S J. LEGAL MAL. & ETHICS xxix (2019) ("Shaffer ... was one of the giants in the field of legal ethics as it emerged in the last quarter of the twentieth century.").

118. See Letter from Vincent R. Johnson to Thomas Mengler, J.D. President, St. Mary's University and Aaron Tyler, Interim Provost, St. Mary's University (Apr. 9, 2020) (regarding "Interim Dean of the School of Law").

119. See generally History, <https://www.theargyle.com/history> (last visited Oct. 1, 2020) (tracing the history of the Argyle Club since 1854).

and the incentive not to fail.<sup>120</sup> Lampley, Marks, and Hague made good decisions. They were each highly independent. Our views occasionally differed, but I do not think I second guessed any of their decisions. It was a very solid administrative team.

At the second meeting with the President and Provost, it was specified that I could not be a candidate in the forthcoming dean search because, as Mengler explained, that would create a conflict of interest related to how I would perform my duties as Interim Dean. I was not persuaded by the president's rationale but raised no objection. I preferred the certainty of being Interim Dean for a year to the uncertainty of being one of many candidates in the coming search.<sup>121</sup> In any event, I thought, a year might be long enough to occupy the dean's office. Little did I know then how true that would be when in March 2020, the law school, the university, and the rest of American society was sinking into the depths of the Covid-19 pandemic.

A press release was issued by the Provost sometime around May 16 announcing my appointment. The Provost's priorities were clear. He said that I would focus on recruiting quality students, cultivating strong relationships with the law community and alumni, and advancing excellence in education at St. Mary's University School of Law.<sup>122</sup>

At the time of my appointment, there were many unanswered questions about what the year would hold. At the last faculty meeting of the academic year, in mid-May 2019, I was given the final five minutes to offer remarks. I quipped that I was "making a cameo appearance in an unscripted play with a limited run."

At that same meeting, I nudged my colleagues to remember our great tradition of being an "open door faculty," a place where the doors were literally open and students were welcome and encouraged to drop into faculty offices to discuss law or life. I thought that was an important part of being an educational community, particularly at a Marianist university where "community" and "family spirit" are prized.<sup>123</sup> I had seen many faculty doors closed too often in recent years and wanted to emphasize the importance of faculty presence on campus. I did not foresee that before my year in the dean's office came to an end, the four law buildings surrounding the law quadrangle on the St. Mary's University main campus would be a virtual ghost town.<sup>124</sup> Almost all of the faculty doors would be

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120. See Cantú, *supra* note 19, at 383-84 (Cantú explained, "I also decided, early on, that I was going to delegate tasks to my associate deans. I was not going to be a 'one-man show,' as all of the previous deans had been.").

121. E-mail from Albert Kauffman to Fulltime Law Faculty, (Dec. 6, 2019) (Ultimately, the search committee received a "total of more than 30 complete applications.").

122. Draft of Press Release, (press release May 16, 2019) (regarding "Interim Dean Named for the School of Law") (containing my redlined suggested changes).

123. See Chaminade University of Honolulu, *Characteristics of Marianist Universities*, (2006), [https://udayton.edu/rector/\\_resources/files/cmu.pdf](https://udayton.edu/rector/_resources/files/cmu.pdf) ("Known for their strong sense of community, Marianists have traditionally spoken of this sense as 'family spirit.'"); see also Sister Grace M. Walle, F.M.I., *Doing Justice: A Challenge for Catholic Law Schools*, 28 ST. MARY'S L.J. 625, 627 (1997) (discussing the concept of community in biblical justice).

124. A fifth law building—the Center for Legal and Social Justice—is located about a half mile from the campus. It provides the main facility for clinical education programs.

closed for weeks that stretched into months. Students on campus as my year as dean drew to an end would be a rare sight.

#### 8. PASSAGE OF POWER IN CHINA

I was a Fulbright Scholar in China in 1998. That stint as a teacher and cultural ambassador transformed my life in many positive ways that are still playing out. The connections that I made to Chinese scholars and universities during my 31 subsequent trips to China have blossomed, and include the creation of the St. Mary's Institute on Chinese Law & Business,<sup>125</sup> which operates each summer at Beihang University in Beijing.<sup>126</sup>

At the time I was appointed Interim Dean, I was scheduled to teach International Business Transactions in our China program during late May and early June. I saw no reason to change those plans, and the President and the Provost had no objections. Thus, at the exact moment that I became dean, I was in China. Interestingly, precisely eighteen years to the day earlier, when I first became associate dean at St. Mary's, I was also in China—that time I was at Renmin University for a conference.

June 1, 2019 was a bright summer Saturday in Beijing and we had taken our small contingent of students to the Great Wall at Mutianyu.<sup>127</sup> A student from Texas Tech University and I hiked to the western end of that section of the Wall, where the climbing and the views are the most dramatic. I thought that was the place where I transitioned to the deanship. However, when we got back to the village at the base of the mountain, my colleague and good friend Bob Hu told me that I was wrong about the time difference between China and San Antonio. The power of the deanship would pass in the next few minutes during our lunch meal with the students.

The occasion called for remarks, so Bob stood and spoke briefly. Then I was called upon to speak. I had seen one of our prior deans, James N. Castleberry, Jr.—the dean who hired me, and had tried to fire me<sup>128</sup>—issue edicts<sup>129</sup> like thunderbolts from the skies. I thought I would give that a try, but with a lighter, more playful

125. See generally Robert H. Hu, *St. Mary's University Institute on Chinese Law and Business: Remarkable Success in the First Ten Years*, 51 ST. MARY'S L.J. 839 (2020).

126. See China Study Abroad Program, ST. MARY'S U., <https://law.stmarytx.edu/academics/special-programs/china/> (last visited Oct. 1, 2020) (“Beihang University School of Law offers LL.B. and LL.M. degree programs” and is “ranked 15th among over 500 Chinese law schools by the Chinese Ministry of Education.”).

127. See Mutianyu, WIKIPEDIA, <https://en.wikipedia.org/wiki/Mutianyu> (last visited Oct. 1, 2020) (“As one of the best-preserved parts of the Great Wall, the Mutianyu section of the Great Wall used to serve as the northern barrier defending the capital and the imperial tombs.”).

128. See Vincent R. Johnson, *Turning Points in the History of St. Mary's University School of Law (1980-1988)*, 50 ST. MARY'S L.J. 521, See 591-96 (2019).

129. See Charles E. Cantú, *An Oral History of St. Mary's University School of Law (1961-2018)*, 50 ST. MARY'S L.J. 309, 356 (2019) See (“Jim Castleberry carried the one-man rule further than Raba. He started issuing these edicts from the dean's office. For example, ‘No food or drink in the classrooms’....This was shortly followed by another edict that sent the student body almost into revolution. ‘No shorts.’”).

touch.<sup>130</sup> My first edict was that henceforth all women at the law school should wear floor length skirts in the colorful Burmese style. The second edict was that henceforth all men at the law school should wear bow ties. The students seemed amused. We never made much progress on implementing those decrees, although each year some students come to my Torts classes wearing bow ties, mimicking my typical teaching attire.

When we got back to Beijing, Professor Hu, Sister Grace Walle, and I went out to celebrate again (at my expense, not the law school's) with drinks and dinner at an elegant art deco lounge located high in the Pangu 7-Star Hotel.<sup>131</sup> We had a table by the windows, and looked out to the east over the illuminated Bird's Nest Stadium,<sup>132</sup> the Water Cube,<sup>133</sup> and the Olympic grounds<sup>134</sup> as the sun set in the west and the lights of Beijing glowed ever-more brightly in the distance. We talked for three hours. It was an excellent start to a new deanship.

The following day, the tenth anniversary of the St. Mary's University Institute on Chinese Law and Business was celebrated in Beijing with a conference focused on cooperation in international education. As I described the event in an email to the St. Mary's law faculty:

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130. There were other occasions when I tried to add a dash of humor. At the beginning of the fall semester there was idle chatter on campus that I was appointed interim dean because the law school was at risk of losing its accreditation. In the campus newsletter I wrote:

There are no facts to support the chatter. Deanships change hands every few years because that is the natural rhythm of the tug-of-war between continuity and change.

We are in good standing with the American Bar Association and are not even scheduled for a routine site visit by the ABA until 2022-23. That is so far down the road that you will already have graduated and been admitted to the bar.

Beware of fake news. If you hear that Francis is resigning the papacy to become campus minister at the law school, or that Gorsuch is leaving the Supreme Court to open a law office in El Paso, or that Sister Grace has been named to the Federal Reserve Board, give that some thought.

All of the programs at the law school are in great shape. And so is our ABA accreditation.

Vincent R. Johnson, *Fake News at St. Mary's*, THE WITAN, Aug. 26, 2019, at 1.

131. See Pangu Plaza, WIKIPEDIA, [https://en.wikipedia.org/wiki/Pangu\\_Plaza](https://en.wikipedia.org/wiki/Pangu_Plaza) (last visited Oct. 1, 2020) ("Pangu Plaza...is a five mixed used buildings complex....Shaped like a dragon, it is neighbor with many of the 2008 Beijing Olympic venues....Pangu 7 Star Hotel occupies the 'First Block' of the 'Pangu.'").

132. See Beijing National Stadium, WIKIPEDIA, <https://en.wikipedia.org/wiki/BeijingNationalStadium> (last visited Oct. 1, 2020) ("Beijing National Stadium...also known as the Bird's Nest...was designed for use throughout the 2008 Summer Olympics and Paralympics and will be used again in the 2022 Winter Olympics and Paralympics.").

133. See generally Beijing National Aquatics Center, WIKIPEDIA, <https://en.wikipedia.org/wiki/BeijingNationalAquaticsCenter> (last visited Oct. 1, 2020) ("The Beijing National Aquatics Center...colloquially known as the Water Cube...is an aquatics center at the Olympic Green in Beijing, China.").

134. See generally Olympic Green, WIKIPEDIA, [https://en.wikipedia.org/wiki/Olympic\\_Green](https://en.wikipedia.org/wiki/Olympic_Green) (last visited Oct. 1, 2020).



The conference, which lasted three hours, was co-chaired by Bob Hu and a representative of Beihang University. Sister Grace and I, and two of our students, were among the speakers. The conference was attended by representatives of leading Chinese Universities (Peking University, Renmin University, Beijing Foreign Studies University, and Beijing Normal University), as well as all of our law students and one of our Chinese LL.M. graduates.

The cheerful, optimistic tone of the conference stood in marked contrast to the daily news stories about the deteriorating USA-China trade relations.

The conference was followed by a three-hour banquet hosted by Beihang University. Judging from the lively conversations that filled the room—many of which involved American and Chinese law students—the event was a great success.<sup>135</sup>

The next day, June 3, I conducted a workshop at China University of Political Science and Law about “Legal Protection of Privacy in the Digital Age.”

While in China, Professor Hu and I moved forward with what would be the most important international initiative of my year as dean. During a trip to Qingdao (five hours by high-speed train from Beijing<sup>136</sup>), which included eleven St. Mary’s faculty members and students, we reached a tentative agreement to enter into a 3 + 1 agreement with Shandong University of Science and Technology (SUST).<sup>137</sup> Under that arrangement, Chinese students would complete three years of bachelor’s studies at SUST, then finish their final year (or year and a half) of studies at St. Mary’s University School of Law, ultimately receiving a bachelor’s degree from SUST and an LL.M. from St. Mary’s. In a memorandum, I told the Provost:

I think SUST would be an excellent partner. Qingdao is a stunning coastal city, perhaps the most beautiful in China. The SUST campus is large and attractive. The buildings are modern.

In June, eleven of us from the St. Mary’s University summer program in Beijing visited Qingdao for three days. SUST rolled out the red carpet and treated us very well. We had many formal and informal discussions about cooperation.

Our information about SUST’s institutional reputation and reliability is unusually good. The dean of the SUST law school is one of my former students. He participated in the three-week course that I taught at Shandong University in 2001. The same dean is also the former student of my good friend, professor SUN Xinqiang, who has taught for St. Mary’s once in Innsbruck and nine times in China. Sun accompanied our group to Qingdao, took part in the discussions, and says that SUST would be a good partner.<sup>138</sup>

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135. E-mail from Vincent Johnson to Fulltime Law Faculty (June 4, 2019) (on file with author).

136. E-mail from Robert H. Hu to Vincent Johnson, (May 28, 2019) (on file with author).

137. *See generally* Shandong University of Science and Technology, WIKIPEDIA, [https://en.wikipedia.org/wiki/Shandong\\_University\\_of\\_Science\\_and\\_Technology](https://en.wikipedia.org/wiki/Shandong_University_of_Science_and_Technology) (last visited Oct. 1, 2020) (SUST was established in 1951 and has about 46,000 students).

138. *See* E-mail from Vincent Johnson to Robert H. Hu, with attached draft memo to Provost Aaron Tyler (July 8, 2019).

Soon after our return to San Antonio, the St. Mary's University leadership signed a Memorandum of Understanding with SUST, and another similar agreement (engineered by Professor Hu) with Guangdong University of Finance and Economics.<sup>139</sup> I had hoped that these MOUs would lead to new revenue streams for St. Mary's, and new opportunities for academic cooperation. However, when the Covid-19 pandemic struck—first in China,<sup>140</sup> then in the United States<sup>141</sup>—everything was placed on hold, as political relations between China and the U.S. deteriorated.<sup>142</sup>

By the summer of 2020, relations between the two countries were so bad that the U.S. ordered the Chinese consulate in Houston to close based on alleged espionage that had been conducted from the building for “some time.”<sup>143</sup> In response, China forced the U.S. Consulate in Chengdu to close in late July 2020.<sup>144</sup>

It is hard to be optimistic about U.S.-China relations in the short-run. Nevertheless, the Chinese MOUs may yet bear fruit. There have been other rough patches in U.S.—China relations. For example, in 1999, to protest the accidental U.S. bombing of the Chinese Embassy in Belgrade, Serbia, Chinese protesters burned the U.S. Consulate in Chengdu to the ground<sup>145</sup> and extensively damaged the U.S. Embassy<sup>146</sup> in Beijing. Nevertheless, relations between the two countries—including educational exchange programs—prospered for most of the next 15 years.

139. *See generally* About GUDUFE, <http://english.gdufe.edu.cn/1770/list.htm> (last visited Oct. 1, 2020) (“Guangdong University of Finance & Economics (GDUFE) was founded in 1983.... The total enrollment of full-time undergraduate and postgraduate students is over 25,400.”).

140. On January 9, 2020, the World Health Organization announced the existence of a mysterious coronavirus-related pneumonia in Wuhan, China. *See* Timeline, *supra* note 46, at 20.

141. On January 21, 2020, a Washington state resident became “the first person in the United States with a confirmed case of the 2019 novel coronavirus, having returned from Wuhan on January 15.” *See* Timeline, *supra* note 46, at 20.

142. *See* Barbara Plett, *Why US-China Relations are at Their Lowest Point in Decades*, BBC NEWS, July 24, 2020, <https://www.bbc.com/news/world-us-canada-53517439> (“downward spiral”).

143. *See* *China's Texas Consulate Targeted*, SAN ANTONIO-EXPRESS NEWS, July 23, 2020, at A1.

144. *See* Emily Feng & Ryan Lucas, *China Orders U.S. To Close Its Consulate In Chengdu*, NPR MORNING EDITION (July 24, 2020), <https://www.npr.org/2020/07/24/894960595/china-orders-u-s-to-close-its-consulate-in-chengdu> (“The Chinese government ordered the United States on Friday to close its consulate in the southwestern city of Chengdu in retaliation for the U.S. shutting down China's consulate in Houston. Ties between the two countries have plummeted to their lowest point in more than 30 years.”).

145. *See* *Consulate General of the United States, Chengdu*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Consulate\\_General\\_of\\_the\\_United\\_States,\\_Chengdu](https://en.wikipedia.org/wiki/Consulate_General_of_the_United_States,_Chengdu) (last visited Sept. 20, 2020) (“The consulate compound came under attack in May 1999 by crowds enraged by the US accidental bombing of the Chinese Embassy in Belgrade. The Consul General's Residence was heavily damaged by fire.”).

146. I viewed the destruction at the U.S. Embassy in Beijing in person a few days after it had occurred. All of the lamp posts and windows were smashed if they were within reach of projectiles thrown by the university students who were bused in by the Chinese government to inflict the damage.

Several years ago, I visited the new U.S. Embassy in Beijing. Between a tall perimeter wall and the building is a large yard covered with crushed stone. I could see that there were sprinkler heads poking up every few feet. I wondered if that was some kind of water feature. Then I remembered that the Consulate in Chengdu had been burned down in 1999.

During my year as interim dean, I continued to teach<sup>147</sup> and write. I completed a new edition of one of my books,<sup>148</sup> a couple of articles,<sup>149</sup> and several op-eds.<sup>150</sup> I also continued to write a periodic column (monthly or bi-monthly) for Caixin Media. The column is published in China in Chinese.<sup>151</sup> The column is translated into Chinese by Jia Ping, another of my former students from my Fulbright year in China, who now runs a health- and bioethics-related NGO. When one of my recent columns was published in September 2020, I told the St. Mary's law faculty that I was "pleased to report that despite the deterioration of U.S.-China relations on so many fronts, Caixin Media, a major Chinese news outlet, is still willing to publish my periodic column that attempts to explain American legal issues to a Chinese audience."<sup>152</sup>

## 9. THE DEAN'S OFFICE

When I returned to San Antonio in mid-June 2019, I moved into the dean's office in the Law Administration Building. Adjacent to a handsome board-of-directors-style conference room, there is a large, squarish dean's office, with a fireplace, two windows, and a wall of built-in bookcases. My recollection from decades ago is that the entire office has attractive wood paneling which matches the bookcases. However, one of my predecessors wanted more sound-proofing. So, he had the walls upholstered with padding and fabric (including the doors). Later, another one of my predecessors wanted to hang up his diplomas, awards, and photos, so nails had been driven into the fabric. Because different furniture had been installed in the office over the years, the nails and hangers were no longer in the right locations. Once they were removed, the fabric looked like it was riddled with bullet holes.

Thus, pulling the office together with no budget presented unusual challenges. In the end, I was able to effectively camouflage the defects with a few paintings and plants, and some things from my travels, including a large traditional

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147. I taught a 4-credit course in Torts during Fall 2019 and a 2-credit course on Advanced Torts in Spring 2020.

148. See VINCENT R. JOHNSON, *ADVANCED TORT LAW: A PROBLEM APPROACH* (3d ed. 2020).

149. See Johnson, *supra* note 117; Vincent R. Johnson, *The Importance of Doctor Liability in Medical Malpractice Law: China Versus the United States*, 10 ST. MARY'S JOURNAL ON LEGAL MALPRACTICE & ETHICS 2-28 (2019).

150. See Vincent R. Johnson, *Commentary, City Has a Duty to Deter Hate Speech*, SAN ANTONIO EXPRESS-NEWS, May 28, 2020; Vincent R. Johnson, *Commentary, As Businesses Reopen, Expect Lawsuits*, SAN ANTONIO EXPRESS-NEWS, Apr. 22, 2020; *Commentary, Can America Control the Coronavirus*, *supra* note 48; Vincent R. Johnson, *Commentary, Impeachment Should Focus on Criminality, Not Politics*, SAN ANTONIO EXPRESS-NEWS, Nov. 15, 2019; Vincent R. Johnson, *Commentary, Opioid Litigation Should Hold Drug Companies Accountable*, SAN ANTONIO EXPRESS-NEWS, Oct. 9, 2019; Vincent R. Johnson, *Commentary, When Self-driving Cars Crash, Who Pays*, SAN ANTONIO EXPRESS-NEWS, July 16, 2020.

151. See, e.g., Vincent R. Johnson, *Column, Coronavirus Infects Bar Exam*, published in Chinese by Caixin Media (China), Mar. 31, 2020; Vincent R. Johnson, *Column, Understanding America's Opioid Litigation*, published in Chinese by Caixin Media (China), Sept. 19, 2019.

152. E-mail from Vincent R. Johnson to Full-time Law Faculty, Subject: The End of the Golden Age of American Legal Education (Sept. 17, 2020) (on file with author).

Chinese fan and scrolls, a hand-stitched tapestry from Mongolia, a Thai spirit house, and a bright Romanian floor runner, which distracted attention from the damaged wall coverings. It was not the typical dean's office, but I enjoyed it. It was a cheerful and welcoming place to meet guests.

On the fireplace mantle, I placed a bust of President Lyndon Baines Johnson, for it was from his Great Society programs for higher education that the money came to build the first three buildings of the St. Mary's law complex.<sup>153</sup> There was also a bust of Abraham Lincoln and a statue of an ancient Chinese prime minister, Zhuge Liang,<sup>154</sup> who was known for his intelligence, wisdom and political calculation. "Those talents all seemed useful to a dean."<sup>155</sup> Later in the year, I added to the mantle three white marble busts of Harriet Tubman (the anti-slavery activist and famed "conductor" on the underground railroad), Susan B. Anthony (an early women's suffragist),<sup>156</sup> and Alice Paul (a later women's suffragist).<sup>157</sup> Those additions, along with a large display that we rented from the American Bar Association and erected in the Sarita Kenedy East Law Library, helped to mark 2020 as the 100th anniversary of the 19th Amendment.<sup>158</sup>

#### 10. A BLESSING FOR THE NEW ACADEMIC YEAR

At St. Mary's, the annual Red Mass at San Antonio Cathedral, which is normally held in October, is "the most splendid public occasion of the law school

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153. See Vincent R. Johnson, *A Note from the Dean of St. Mary's University School of Law*, Nov. 14, 2019. In this email communication to employees, alumni, and friends of the law school, I explained:

On the mantle in the dean's office sits a bust of President Lyndon Baines Johnson. It is a reminder of the crucial role that LBJ played in the history of the law school.

When then-Dean Earnest A. Raba applied to the federal government in 1965 for funding to build a law center, the application was denied because law schools were ineligible. However, Governor John Connally and Phil Kazen interceded. Within 20 days, the denial was overruled. New legislation passed, which meant that St. Mary's would receive funding to build the round library, the classroom building, and law administration building, where the dean's office sits. LBJ's actions catapulted St. Mary's into a new era of excellence in legal education that we continue to carry forward.

154. See generally *Zhuge Liang*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Zhuge\\_Liang](https://en.wikipedia.org/wiki/Zhuge_Liang), (last visited Oct. 2, 2020) ("He is recognized as the most accomplished strategist of his era" and remembered for "refusing to indulge local elites and adopting strict, but fair and clear laws.").

155. *Id.*

156. See JOHANNA NEUMAN, *GILDED SUFFRAGISTS: THE NEW YORK SOCIALITES WHO FOUGHT FOR WOMEN'S RIGHT TO VOTE* 147 (2017) ("In 1881 Elizabeth Cady Stanton and Susan B. Anthony published the first of their three-volume *History of Woman Suffrage*.").

157. See generally TINA CASSIDY, *MR. PRESIDENT, HOW LONG MUST WE WAIT?: ALICE PAUL, WOODROW WILSON, AND THE FIGHT FOR THE RIGHT TO VOTE* (2019).

158. See KATE CLARKE LEMAY, *VOTES FOR WOMEN: A PORTRAIT OF PERSISTENCE* 217 (2019) (discussing the 19th Amendment and its legacy).

year.”<sup>159</sup> However, Sister Grace Walle, the popular long-time campus minister at the law school, organizes an array of special events all-year-long to address student needs, celebrate student accomplishments, and infuse the law school with a spirit of community and genuine concern for the welfare of others.

At the beginning of my term as dean, Sister Grace suggested that we hold a special gathering to invoke God’s blessing on the new academic year. We had never done that before. On September 10, a good audience comprised mainly of members of the law school staff turned out for the event. Held in the law library, the occasion was billed as a talk about Law School Goals and Priorities.

Having spent fifty years as a student or faculty member in Catholic elementary, secondary, or higher education, I thought a blessing was a splendid idea. I explained to the crowd that deans sometimes make bad decisions, and that makes people mad. I also noted that even when deans make good decisions, that also upsets people, too. Finally, I observed that at almost every law school, a coup is brewing slightly off-stage, getting ready to topple the dean when an opportunity arises. In view of all the risks, I said I needed whatever protection the Church could provide. A blessing was certainly in order. In retrospect, I should have sought divine protection from a global pandemic. But that issue was still months into the future and on nobody’s radar.

#### 11. COMPREHENSIVE REFORM OF THE UPPER-LEVEL CURRICULUM

In recent years, the dean at St. Mary’s has met separately with each member of the law faculty for an annual review. I scheduled these meetings, which occurred in the dean’s office, for the summer months. My main purpose was to thank each of the members of the faculty for everything they do to make St. Mary’s an excellent law school.

However, early on I began to pitch an idea in these meetings to see how faculty members would react. I reminded each visitor that the Texas Supreme Court had recently decided that the old Texas Bar Examination, which tested many Texas-specific subjects, was going to be replaced with the Uniform Bar Examination,<sup>160</sup> effective February 2021.<sup>161</sup> I said that I thought we needed to

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159. See *Johnson, Turning Points*, *supra* note 22, at 557. When I welcomed the students, faculty, alumni, and their families to the 2019 Red Mass at San Fernando Cathedral, I explained:

This ancient tradition originally evolved in medieval Europe. However, the Red Mass is celebrated today in more than sixty American cities. A special votive mass of the Holy Spirit, the Red Mass seeks to invoke God’s blessings on all those who play a role in the legal system.

The Red Mass also reflects the hope that the Rule of Law can be used to build a better world.

160. See National Conf. of Bar Examiners, Uniform Bar Examination, <https://www.ncbex.org/exams/ube/> (last visited Oct. 1, 2020) According to the UBE website:

The Uniform Bar Examination (UBE) is . . . composed of the Multistate Essay Examination (MEE), two Multistate Performance Test (MPT) tasks, and the Multistate Bar Examination (MBE). It is uniformly administered, graded, and scored and results in a portable score that can be transferred to other UBE jurisdictions.

161. See Texas Board of Law Examiners, *Bar Exam*, <https://ble.texas.gov/current-exam> (last visited Oct. 1, 2020) (“Beginning in February 2021, Texas will administer the UBE.”).

undertake a major reform of our upper-level curriculum to give our students the greatest chance of passing the UBE on their first try.<sup>162</sup>

Changes to the St. Mary's J.D. curriculum have often involved hard fought battles. Important alterations to the first-year curriculum had just been made in 2017, and some of the scars from those battles had not yet healed.

There had not been a major reform of the upper-level curriculum since the early 2000s, and such an effort was not to be undertaken lightly. Nevertheless, in my conversations with the faculty, I sensed that there might be enough votes to pass the type of comprehensive upper-level curriculum reform I had in mind.

It was impossible to tell for sure how strong the support was among the faculty, but the associate deans, who occasionally sat in on some of the annual-review meetings, thought I was reading the faculty accurately.<sup>163</sup> That meant there was some reason to hope that enough votes could be put together to pass a solid reform package.

I believed that the key to success was to appoint a special committee with the right chair—someone who was in support of the types of reform I envisioned, and sufficiently skilled and well-respected to muster the broad-based support the curriculum reforms would need. I knew that Professor Mark Cochran, my colleague of more than 30 years, was perfect for the position.

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162. Although our ultimate bar pass rate had been reasonably good in recent years, our first-time bar pass rate has lagged. The members of the St. Mary's law faculty were very aware of this problem. See E-mail from Zoe Niesel to Vincent Johnson and Ramona Lampley, Feb. 12, 2020 (stating St. Mary's 2017 Ultimate Bar Pass Rate as 83.9%); see also Derek T. Muller, *Assessing the Effect of the ABA's New Ultimate Bar Pass Requirement*, Blog: Excess of Democracy, May 20, 2019, <https://excessofdemocracy.com/blog/2019/5/assessing-the-effect-of-the-abas-new-ultimate-bar-passage-requirement> (last visited Oct. 2, 2020) ("The ABA ... finally approved a requirement that 'at least 75% of a law school's graduates who sat for a bar exam must pass within two years of graduation.'").

163. See e-mail from Colin Marks to Ramona Lampley and David Hague (July 7, 2019) (on file with author). Associate dean Marks wrote:

As you both know, Vincent has made it a priority this year to tackle upper level curriculum reform that addresses the Uniform Bar. From talking to multiple faculty during the individual reviews, it appears there is a willingness by the faculty as a whole to tackle this issue.

Vincent's instinct, and I think it is the right one, is to start with a clean slate as many of the current requirements represent compromises made amongst the faculty some . . . [many] years ago, and the current system is overly complex and unnavigable for our students.

To this end, Vincent would like to form an ad hoc committee to look at this issue made up of last year's chairs from the curriculum committee and bar passage committee (Mather and Stevens) plus 5 other faculty and one ex officio.

Rather than charge the committee with this task with no guidance, Vincent would like us to work on a proposed upper level curriculum that both meets ABA requirements (such as requiring experiential learning), but which also tracks the UBE subjects. His thought, and I think it is a good one, is to make this the required curriculum for ALL students, but allowing students to grade out if they are in a certain percentage of the class (which the committee could decide).

I was under no illusion that passing comprehensive reforms that would prioritize UBE-tested subjects would be easy. Some faculty members would vote against the proposal because it might adversely affect enrollment in the courses they teach. Some would oppose it because they are philosophically opposed to requirements. Some would reject the proposal because they honestly believe success on the bar has nothing to do with what courses students take in law school. Once these and other objections were cobbled together, there was certain to be strong opposition. Ultimately, it would be a close vote. Nevertheless, I decided that if I had any capital or goodwill to spend as a lame-duck interim dean, this was where I was going to spend it. I had moral support from the university leadership. The president and provost both indicated that they approved of my plan to re-align the upper-level curriculum with the UBE.<sup>164</sup>

It seemed essential to move fast. By the time fall classes convened in mid-August, almost three months of my interim year had flown by. Whatever power I had as temporary occupant of the dean's office was certain to ebb quickly. The committee that would search for the new dean had been appointed even before I began my term of office.<sup>165</sup> It would not be long before some faculty members would argue that no changes to the upper-level curriculum should be made until the new dean was seated.

I pushed hard to get the process moving. The Cochran Upper-Level Curriculum Special Committee was appointed and charged on September 7.<sup>166</sup> I provided the members with a 41-page packet of materials designed to make their work easier.<sup>167</sup> For purposes of focusing the committee on the task at hand, I included a proposed upper-level curriculum which I had drafted after consultation with the associate deans. In the cover memo, I told the committee that our present upper-level J.D. curriculum was "bewilderingly complex"<sup>168</sup> and that:

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164. See E-mail from Vincent Johnson to Ramona Lampley, David Hague, and Colin Marks (Aug. 1, 2020) (on file with author) ("During my meeting with the President and Provost yesterday, I explained that I planned to appoint a special committee to tackle upper-level curriculum reform. I explained that the goal would be to align our course requirements with the UBE.... The President and Provost said this sounded like a good plan.").

165. See E-mail from Thomas Mengler and Aaron Tyler to St. Mary's University School of Law Faculty and Staff (May 22, 2019) (on file with author) (announcing the members of the search committee).

166. See Memorandum from Vincent R. Johnson to Members of the Upper-Level Curriculum Special Committee (Sept. 7, 2019) (on file with author) (hereinafter "Memorandum").

167. The contents of the packet included: a memo from the interim dean, materials detailing the Multistate Bar Examination subjects, the Multistate Essay Examination subjects, the current first-year curriculum, and current upper-level curriculum, as well as an appendix which included information on the UBE Test Components, the 2020 MEE Subject Matter Outline, the 2020 MBE Subject Matter Outline, and the Multistate Performance Test.

168. Memorandum, *supra* note 166, at 3 ("No wonder our students complain and many are unprepared for the bar exam.").

It is feasible for us to formulate an upper-level ... [curriculum] that will prepare our students in all of the [UBE] subjects and topics not covered by our first-year courses--and still leave room for students to choose a substantial number of electives.<sup>169</sup>

I said that I wanted the committee to “bring to the faculty, for a final vote before the end of the fall semester, a proposal for reform of the upper-level curriculum. As I explained to the committee:

Writing on a clean slate, we have the opportunity to establish a new tradition of passing the Uniform Bar Exam. We need to seize this opportunity.<sup>170</sup>

A faculty retreat on September 20 was devoted to discussion of the upper-level curriculum. I led the discussion and explained what I was asking the special committee to do, and why I believed those changes to the upper-level curriculum were important. The faculty members in attendance were generally supportive of realigning the upper-level curriculum with the subjects tested on the UBE. However, some important voices were missing from the retreat, and those voices were likely to be aligned with the opposition when a proposal came to a faculty vote.

The special committee acted with lightning speed and much-needed decisiveness. It promptly addressed the task at hand and formulated a detailed proposal, which was circulated to the faculty on October 4.<sup>171</sup> However, the committee did not merely rubberstamp the proposal the law school administration had offered for its consideration. Rather, the product that would go to the faculty was shaped by fine-tuning that bore the stamp of faculty independence. I differed with the committee’s choices on some minor points, but in general I thought the proposed reforms were excellent.

Once the committee proposal was public, faculty members who were against the reform began to air their views by email. At least five highly respected members of the voting faculty attacked the proposal in messages that were sometimes quite lengthy. I weighed in at least twice by email, never hoping to convince the opposition, but simply to shore up the support for reform, which I still believed was widespread.

On October 28, we proceeded to debate the proposal at a faculty meeting. Over the years, I had sat through too many faculty meetings that ran longer than necessary. Therefore, at the first meeting of my year as interim dean, I told the faculty I favored the style of Chief Justice William H. Rehnquist, who liked short, efficient meetings.<sup>172</sup> This announcement seemed to make the faculty meetings

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169. *Id.* at 5.

170. *Id.* at 5.

171. See E-mail from Mark Cochran to Law Faculty (Oct. 4, 2020) (on file with author) (asking the dean to place the Committee’s proposal on the agenda for the next faculty meeting).

172. See Minutes of the Meeting of St. Mary’s University School of Law (Aug. 26, 2019) (on file with author) (plan to follow Rehnquist’s lead to keep “meetings moving along”). See WILLIAM H. REHNQUIST, *THE SUPREME COURT: HOW IT WAS, HOW IT IS* 292 (1987) (“Since I have become Chief Justice, I have tried to make my opening presentation of a case somewhat shorter than Chief Justice Burger made his.”). Rehnquist also preferred meals that did not go on too long. See Vincent R.



shorter and more focused throughout the year. Nevertheless, at the meeting where the proposed new upper-level curriculum was on the agenda, I made sure everyone had their say and that nothing was rushed.

I had tried to count the votes to predict how they would fall in the days before the meeting convened. However, that proved to be impossible because the vote would be close and I lacked good information from some quarters. In the end, I had to wait until the votes were counted the day after the faculty met to see if we succeeded or failed.

On October 29—the 90th anniversary of the Wall Street crash that led to the Great Depression—the comprehensive upper-level curriculum proposal passed, 19 in favor, 13 against.<sup>173</sup> Four members of the faculty abstained, so a total of 36 votes had been cast.<sup>174</sup> I did not vote. What little influence I had as a merely interim dean had been spent on a worthy, and ultimately successful, cause. I was delighted.

The university administration, many members of the university board of trustees, and vast numbers of alumni agreed that the reform would benefit St. Mary's law students and place them in a stronger position to pass the Uniform Bar Examination. Nearly two decades had passed since the last major reform of the upper-level J.D. curriculum.

## 12. THE JULY BAR EXAM CRISIS

Aside from the Covid-19 Pandemic, the one true crisis that arose during my deanship was a surprise decision by the Texas Board of Law Examiners (TBLE) to discontinue holding the July bar examination in San Antonio. Their reasons for discontinuing the San Antonio test site were that: (1) the TBLE has a limited staff, and it is difficult to simultaneously supervise multiple testing sites and provide accommodations under the Americans with Disabilities Act; (2) the TBLE has a limited budget, and renting the Houston site alone costs \$90,000 for 1,100 test-takers); and (3) the TBLE had electrical problems at a prior test site in San Antonio.

When I learned of the decision to stop giving the test in San Antonio, I immediately knew I would need to fight to protect the interests of St. Mary's law students. I confirmed that I had the support of the university administration, key members of the board of trustees, and the law faculty. However, it was unclear how far we would have to pursue this issue, if the Board of Law Examiners was resistant to changing course. Some law alumni thought we might need to bus students and supporters to Austin (about eighty miles away) to protest at the State Capitol. Others thought it might be necessary to take the issue to the media. After terse, informal discussions with TBLE personnel failed, I stated our case in a letter

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Johnson, *Rehnquist, Innsbruck, and St. Mary's University*, 38 ST. MARY'S L.J. 1, 33 n.98 (2006) ("Rehnquist usually liked meals to end promptly, rather than linger on. On several occasions, I had to go to the kitchen and beg for the check—and still it often did not come for a long time.").

173. See E-mail from Victoria Mather to Fulltime Law Faculty (Oct. 29, 2019) (on file with author).

174. See *id.*

to the TBLE, which was copied to Justice Brett Busby, the Texas Supreme Court's liaison to the Board.<sup>175</sup> The letter read:

Re: Discontinuation of the July Texas Bar Examination Site in San Antonio  
Members of the Board:

As the dean of St. Mary's University School of Law, I respectfully urge the Texas Board of Law Examiners (TBLE) to reconsider its decision to discontinue holding the July Texas Bar Examination at a site in San Antonio.

I first learned of that decision at a luncheon hosted by the TBLE in Austin for Texas law school deans on November 18, 2019. According to minutes posted on the TBLE website, the proposal was presented to the Board many months earlier at its meeting on June 21, 2019.

At the luncheon in November, the deans were told that the July 2020 exam will be administered in Austin, Houston, DFW, and Lubbock, but that San Antonio and Waco<sup>176</sup> will no longer be test sites. When I immediately inquired whether the decision applied only to the July 2020 examination, I was told that the discontinuation of the exam site in San Antonio may well extend into the future.

To the best of my knowledge, the July bar examination has been administered in San Antonio for decades. Recently, about 300 applicants each year have sat for the July examination in San Antonio.

Discontinuing the examination in San Antonio will have an adverse impact on St. Mary's law graduates, most of whom sit for the exam in San Antonio because that is their home. Those graduates will either be forced by the new policy to travel on test days to and from Austin, or a more distant city, or to incur substantial hotel expenses.

Traveling to and from Austin is a bad option. On a typical weekday, a trip by car in one direction can range anywhere from one-and-a-half hours to more than two-and-a-half hours because of high volume traffic, perpetual road construction, and parking difficulties. A student sitting for the bar exam could not dare to count on smooth traffic on Interstate 35 or to arrive late. Thus, a student commuting between San Antonio and Austin, both ways, will be forced to add perhaps four or five hours of high-stress driving to a day that will already contain six hours of high-stakes testing. That type of stress is likely to take an adverse toll on a commuter's bar examination performance. It is easy to see how test takers living in Austin, Houston, DFW, or Lubbock will have an advantage before the test ever begins.

The alternative of renting a hotel for two nights in high priced locations such as Austin, Houston, or DFW is also a bad option. Most students finish law school with more than \$100,000 of student loan debt, and they are often out of money when they graduate. In many cases, spending hundreds of dollars on a hotel room for the bar examination, after spending thousands of dollars on bar review courses, and hundreds more on bar examination registration fees, will simply not be an option. The poorest students will be hit the hardest. They will have to drive.

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175. Letter from Vincent R. Johnson to Texas Board of Law Examiners with cc. to Justice Brett Busby of the Texas Supreme Court (Dec. 6, 2019) (on file with author).

176. Baylor Law School, which is located in Waco, did not contest the elimination of Waco as a test site.

Discontinuing the Texas Bar Examination in San Antonio also sends the wrong message from the standpoint of discrimination against minorities. As my faculty colleague Al Kauffman has explained, there will be no bar examination locations anywhere near the Texas border [with Mexico] or the heaviest concentrations of Mexican-American population in the state. San Antonio, now the nation's seventh largest city, will be the only large urban area in Texas without a test site.

Nearly a majority of St. Mary's law students are Hispanic. It is easy for me to see how St. Mary's graduates will interpret the discontinuation of the July bar examination in San Antonio as either an intentional barrier, or a thoughtless obstacle, to their efforts to become members of the legal profession.

There is a great deal of unfortunate history related to education in South Texas that should be taken into account.<sup>177</sup> For many years, San Antonio and the border region of Texas were excluded from public higher education. San Antonio was the only major city in Texas without a state university until 1970. According to Professor Kauffman, the border area (including San Antonio to Corpus Christi to Brownsville to Laredo) is still the largest and most populous area in the United States without a Tier 1 university. These deficiencies in higher education exacerbate the pattern of underfunding basic public education in the border area, which includes the highest concentration of underfunded and minority schools in Texas. St. Mary's University School of Law has long struggled to ameliorate the educational deficits that students in South Texas face.

I am not suggesting that the TBLE intended to discriminate against minorities when it voted to discontinue San Antonio as a test site. Rather, I am saying that the decision will have a discriminatory effect and that the TBLE should act now to address that problem. Doing so will not only treat minority law graduates fairly, it will also avert the harm that the elimination of the San Antonio test site will otherwise inflict on non-minority law graduates who live in San Antonio and South Texas.

I appreciate the challenges faced by the TBLE in administering an important examination in multiple sites simultaneously across a large state. Nevertheless, I respectfully urge the TBLE to reconsider and reverse this decision at the earliest possible date.

I request permission to speak to the TBLE at its meeting on Friday January 17 and to invite supporters of St. Mary's University to do the same. Thank you for your consideration.

Sincerely,

Vincent R. Johnson

Interim Dean and Charles E. Cantú Distinguished Professor of Law<sup>178</sup>

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177. See, e.g., Krista Torralva, *Segregation Still Haunts S.A. Schools*, SAN ANTONIO EXPRESS-NEWS (Aug. 8, 2020), <http://digital.olivesoftware.com/Olive/ODN/SanAntonioExpressNewsNIE> (discussing the legacy of “almost 50 years of segregated real estate development in San Antonio—the formal, legal kind common in U.S. cities in the early and mid-20th century.”).

178. Letter from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to Brett Busby, Justice, Tex. Supreme Court, and Texas Board of Law Examiners (Dec. 6, 2019) (on file with author). *Id.*

Chief Justice Sandee Bryan Marion of the Texas Fourth Court of Appeals, which sits in San Antonio, provided valuable comments to me regarding a draft of the letter. She also explained St. Mary's position to Justice Busby, when they had an occasion to talk.<sup>179</sup>

In an email to St. Mary's University President Mengler and Provost Tyler, I reported that "At the suggestion of Justice Marion I called Justice [Paul] Green to let him know" my letter had been dispatched to the TBLE.<sup>180</sup> Justice Green, a St. Mary's alumnus, was the most senior associate justice on the Texas Supreme Court. Later that same day, I advised Mengler that "Justice Green said he plans to raise the issue at the Court's conference on Tuesday."<sup>181</sup> Chief Justice Marion, who had been copied on that message, replied she was "[v]ery glad to hear this."<sup>182</sup>

I knew that we needed to prepare for the possibility that the TBLE would not be swayed by the arguments I had made in the letter, and that we needed to be ready to take further actions. I briefed Jennifer Lloyd, the St. Mary's University Senior Director of Communications, about the issues and actions related to the discontinuation of the July bar examination in San Antonio, then explained:

It is possible that an informal solution may be found this coming week. Otherwise, we will need to enlist the support of students, alumni, and bar organizations, and the issue will become public. If we need to appear at the TBLE public meeting in January, we will want to get this issue into the news. I would be interested in writing an op-ed. Al Kauffman is willing to play an active role and has thoughts about how he can help.<sup>183</sup>

Professor Kauffman was in the process of enlisting the San Antonio media in support of St. Mary's position. He wrote to me explaining that:

Elaine Ayala said she would write a piece on the bar exam siting issue.... Elaine has written extensively for decades about Latinx discrimination issues.<sup>184</sup>

Kauffman also provided me with background information on "higher education discrimination in the border area of Texas."<sup>185</sup>

179. See E-mail from Sandee Marion, Former Chief Justice, Tex. 4th District Court of Appeals, to Steve Jansma, Attorney (Dec. 6, 2019) (on file with author).

180. E-mail from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to Thomas Mengler, President, St. Mary's Univ., and Aaron Tyler, Assoc. Professor of International Relations, St. Mary's Univ. (Dec. 6, 2019) (on file with author).

181. E-mail from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to Thomas Mengler, President, St. Mary's Univ. (Dec. 7, 2019) (on file with author).

182. E-mail from Sandee Marion, Former Chief Justice, Tex. 4th District Court of Appeals, to Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law (Dec. 7, 2019) (on file with author).

183. E-mail from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to Jennifer Lloyd, Senior Dir. of Univ. Comm'n, St. Mary's Sch. of Law (Dec. 7, 2019) (on file with author).

184. E-mail from Al Kauffman, Professor of Law, St. Mary's Univ. Sch. of Law, to Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law (Dec. 7, 2019) (on file with author).

185. E-mail from Al Kaufman, Professor of Law, St. Mary's Univ. Sch. of Law, to Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law (Dec. 10, 2019) (on file with author). *See*

Associate dean Ramona Lampley encouraged me to release the letter I had sent to the TBLE to “public outlets,” such as the newspapers in San Antonio, Houston, and DFW.<sup>186</sup>

A few days later, I received an email from Justice Green stating:

The Court discussed the recent BLE action at our administrative conference yesterday, and the Court is quite interested. Mostly aligned with the concerns expressed in your letter. We have opened an inquiry. Thx for letting us know.<sup>187</sup>

We continued to prepare to do battle in the media, if necessary. The university Office of Communications prepared a “[d]raft statement regarding bar examination site change.”<sup>188</sup> At the same time, we also tried to help the TBLE find a reliable and affordable site in San Antonio, perhaps at the St. Mary’s campus. I wrote to Justice Green to keep him abreast of developments, stating

We have just learned that the St. Mary’s University Athletics and Convocation Center, including the Greehey Arena, is available during the week of the July 2020 bar exam. I think it has everything the TBLE would need. A large flat-floor arena that could seat 300 test takers, two adjacent classrooms for special accommodations that hold about 20 students each, and two other rooms.... There is also convenient parking, lunch facilities, and rest rooms....

To solve the problem with the July 2020 bar exam, we could offer to make the facilities available at a nominal fee (the cost of renting tables and chairs, electrical connections, etc.). It would also be possible for us to reallocate some staff members to assist the TBLE in whatever way they think would be helpful on the site preparation and examination days.<sup>189</sup>

Justice Green said that Justice Busby should have this information about facilities at St. Mary’s.<sup>190</sup> After Green transmitted that information, Justice Busby wrote to me and indicated that he would “visit with the BLE about it.”<sup>191</sup> I thought we were “very close to resolving the problem in a non-public way.”<sup>192</sup> Amy

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generally Albert Kauffman, *Effective Litigation Strategies to Improve State Education and Social Service Systems*, 45 J.L. & Educ. 453452 (2016).

186. E-mail from Ramona Lampley, Assoc. Dean for Acad. Affairs, St. Mary’s Univ. Sch. of Law, to Vincent R. Johnson, Professor of Law, St. Mary’s Univ. Sch. of Law (Dec. 8, 2019) (on file with author).

187. E-mail from Paul Green, Former Justice, Tex. Supreme Court, to Vincent R. Johnson, Professor of Law, St. Mary’s Univ. Sch. of Law (Dec. 11, 2019) (on file with author).

188. E-mail from Jennifer Lloyd, Senior Dir. of Univ. Comm’n, St. Mary’s Univ. Sch. of Law, to Vincent R. Johnson, Professor of Law, St. Mary’s Univ. Sch. of Law (Dec. 11, 2019) (on file with author).

189. E-mail from Vincent R. Johnson, Professor of Law, St. Mary’s Univ. Sch. of Law, to Paul Green, Former Justice, Tex. Supreme Court (Dec. 11, 2019) (on file with author).

190. E-mail from Paul Green, Former Justice, Tex. Supreme Court, to Vincent R. Johnson, Professor of Law, St. Mary’s Univ. Sch. of Law (Dec. 11, 2019) (on file with author).

191. E-mail from Brett Busby, Justice, Tex. Supreme Court, to Vincent R. Johnson, Professor of Law, St. Mary’s Univ. Sch. of Law (Dec. 11, 2019) (on file with author).

192. E-mail from Vincent R. Johnson, Professor of Law, St. Mary’s Univ. Sch. of Law, to Amy Bresnen, Attorney (Dec. 12, 2019) (on file with author).

Bresnen, a recent St. Mary's law graduate who is a lobbyist in Austin, reported after discussing the bar exam matter with a member of the TBLE, that my letter "got their attention" and "moved us way down the road on this."<sup>193</sup>

On December 13, I wrote to two of our well-connected alums, Doug Bineham, president of the St. Mary's Law Alumni Association, and Sara Dysart, president of the St. Mary's University School of Law Board of Visitors, stating:

While efforts continue to quietly reverse the decision to discontinue offering the July Texas Bar Examination in San Antonio, it is important for us to keep up a drumbeat of protest so that the TBLE will know that we are not going away. I would therefore like you to write to your boards (the Law Alumni Association Board of Directors and the Law School Board of Visitors) to invite them to write to the TBLE and its members in support of St. Mary's protest, or to otherwise explore channels for resolving this dispute.<sup>194</sup>

By the time the holiday break ended and classes resumed on January 6, I had not received a formal response to my letter of December 6. In fact, I never received a response. However, during the first week of the new year, we learned that the TBLE had changed course. In an email to the law faculty, university administration, and key supporters, I explained:

It appears that we have won the Battle Over the July 2020 Bar Exam. The Texas Board of Law Examiners website had previously expressly stated that the exam would not be administered in San Antonio and Waco. The website now clearly states (as first reported by [Professor] Zoe Niesel): "UPDATE: The July 2020 Texas Bar Exam will be administered in 6 cities: Houston, DFW-area, Austin, San Antonio, Lubbock, and Waco." It lists the location in San Antonio as "TBD." ....

I provided a list of the many persons who had helped us state our position who needed to be thanked. I wrote:

This victory is great news for our law students.

Thank you all for your help. It appears that we will not need to show up en masse in Austin at the quarterly meeting of the BLE on Friday January 17 to argue our position.

The BLE, and its Executive Director and staff, should be applauded for listening to our concerns.<sup>195</sup>

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193. E-mail from Amy Bresnen, Attorney, to Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law (Dec. 13, 2019) (on file with author).

194. E-mail from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to Doug Bineham, Attorney, and Sara Dysart, Attorney (Dec. 13, 2019) (on file with author).

195. E-mail from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to Full-Time Faculty (Jan. 9, 2020).

I communicated the good news to our thousands of law alumni as part of my dean's newsletter<sup>196</sup> and some wrote to extend congratulations.

The TBLE eventually announced that the July Texas Bar Exam would be held in San Antonio at the Freeman Coliseum Exhibit Hall. Then the pandemic hit. The Freeman Coliseum soon became a testing center for the COVID-19 disease.<sup>197</sup> Ultimately, the July Texas Bar Examination was cancelled and replaced with “a two-day September in-person exam [in Austin on September 9 and 10] ... and ... an alternative online test on October 5 and 6.”<sup>198</sup>

Were our efforts to ensure that the July exam would be held in San Antonio a failed waste of effort? I think not. First, when the September 2020 bar exam was held in Austin, the TBLE paid for two nights of hotel rooms for each of the test-takers. The tests were administered in those rooms. Second, the pandemic will eventually subside and things will return, more or less, to normal. The question will again arise as to whether the July bar exam should continue to be held in San Antonio. The justices and TBLE Board members, if they are still in power, are likely to be more attentive to discriminatory-impact issues in higher education because of the arguments we made.

### 13. CANCELLATION OF EVENTS

In early March, the cultural events that symbolize the vibrant life of the law school quickly began to fall like dominos. On the 13th, I wrote to the students, faculty and staff of the law school stating:

St. Mary's University School of Law has many great traditions....

It was therefore with a heavy heart that I sought guidance from the university, the law faculty, and student representatives about whether ... [many] special events could go forward this year. There was a consensus—not unanimous, but nevertheless unmistakably strong—that these annual rites of springtime have to yield to the healthcare crisis that currently threatens virtually every part of the United States, and

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196. Letter from Vincent R. Johnson, From Professor of Law, St. Mary's Univ. Sch. of Law, to various St. Mary Univ. Sch. of Law Alumni (University School of Law, Feb. 18, 2020). The newsletter stated:

The Texas Bar Examination will again be held in San Antonio in July 2020. The reason this is news is that in November 2019, the Texas Board of Law Examiners unexpectedly announced that the July exam would no longer be administered in San Antonio.

That meant that our graduates would have had to travel to Austin, Houston, Dallas-Fort Worth, or Lubbock to take the exam. Fortunately, with the help of our alumni, the Law School persuaded the BLE to change course.

197. See Nicholas Frank, *Coronavirus Cases Top 6,000 as Freeman Coliseum Testing Site Reaches Capacity*, SAN ANTONIO REPORT (June 20, 2020), <https://sanantonioreport.org/coronavirus-cases-top-6000-as-freeman-coliseum-testing-site-reaches-capacity/> (discussing a surge in cases).

198. Amy Starnes, *Texas Supreme Court Cancels July Bar Exam, Adds October Online Test*, TEXAS BAR BLOG (July 3, 2020), <https://blog.texasbar.com/2020/07/articles/bar-exam/texas-supreme-court-cancels-july-bar-exam-adds-october-online-test>.

indeed much of the world. The advice that I received was that the law school must support the on-going efforts being taken to stem the spread of the COVID-19 disease that has created a global pandemic.

I am therefore announcing that all special law school events between now and the end of April are cancelled. The list of cancellations includes, but is not limited to: The Scholar Banquet, March 20; SBA [Student Bar Association] Golf Tournament, March 21; Law Weekend (alumni event), March 27-28; Leopold Professorship Reception, April 3; Law Journal Banquet, April 3; Fiesta Farewell, April 13; Barristers' Ball, April 16; Sister Grace's End-of-Year Celebration, April 23. ... In addition, no new Law Registered Student Organization Events—on or off campus—will be scheduled until further notice.<sup>199</sup>

The cancellation of important law school events continued for more than six months, until the writing of this article in fall 2020.<sup>200</sup>

#### 14. ANNOUNCEMENT OF THE NEW DEAN

On Thursday, March 19th, Patricia Roberts was announced as the new dean of St. Mary's University School of Law.<sup>201</sup> Although her official duties would not begin until June 1, the power of the deanship began to shift from me to her. It was a very smooth transition, entirely natural and harmonious. I did my best to help her gain an accurate picture of the law school.

I moved out of the Dean's office on Friday May 8, so that it could be cleaned and freshened before Roberts arrived. On June 2, I stopped by the dean's office to take a picture of Roberts in her new digs. The photo shows a cheerful new dean in a forlorn office where the furniture is in place, but everything looks wanting because the boxes of personal effects have not arrived. I had taken a similar photo of Dean Cantú on his first day in the dean's office a dozen years earlier.

Because of the pandemic-driven need for social distancing, all of my communications with Roberts during the six months following the announcement of her appointment were by Zoom, phone, or email, with two very brief exceptions when I stopped by the dean's office. Once to take the photo and for some other minor matter.

#### 15. PASS-FAIL GRADES

Faced with the faculty's decision to jettison letter grades and GPAs for most spring semester courses in favor of a high-pass/pass/fail regime, I wrote a letter to

199. E-mail from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to St. Mary's Univ. School of Law Students (Mar. 14, 2020) (on file with author).

200. E-mail from Office of the Provost to St. Mary's Univ. Faculty and Staff (Sept. 24, 2020) (on file with author). (cancelling in-person exercises and planning a virtual graduation ceremony).

201. See e-mail from Thomas Mengler, President, St. Mary's Univ., to St. Mary's Univ. Cmty. (Mar. 19, 2020) (on file with author).



the law student body entitled “Why Work Hard to Prepare for a Pass-Fail Exam?”<sup>202</sup> It stated:

Passing a pass-fail exam is a cinch, particularly if the professor is not required to give any failing grades. So, why study hard for law school finals this semester? I can think of at least three reasons.

First, working hard is a virtue that you should want to become a habit. If you work hard in every professional context, you are more likely to have a successful career. You have heard the old saying, “luck favors those who are prepared.” That’s true. In the end, mastering law is a matter of personal effort. As John W. Davis, a twentieth-century lawyer-statesman, said:

“What [one] does for [oneself] is more important than what any school can do. . . . If you work hard, you’ll come out quite [a] good lawyer. . . . After all, there are only two classes of lawyers in the world—those who work and those who do not.”

Second, you should work hard to prepare for spring semester exams because you are going to need that knowledge to build a career. Almost all of the courses you are taking are foundational in the sense that they provide the building blocks for being able to think like a lawyer. You will need that knowledge to pass the bar examination, and indeed you will need it in practice.

Third, working hard might just be a great conversation starter. When a potential employer asks you what that peculiar P+ is on your transcript, you can explain that’s a “high-pass” which means you scored in the top 25% in the course. That will make a good impression and may lead to a job.

In these difficult times, it is easy to be distracted and often hard to find a quiet space. Nevertheless, I encourage you to work as hard as you can to prepare for finals.<sup>203</sup>

## 16. DECANAL PORTRAIT

In the Law Administration Building at St. Mary’s, in the hallway leading to the law dean’s office, there is an impressive line of portraits of the first seven deans of the law school who served from 1927 to 2014. On April 21, 2020, I sent the following message to the law faculty and key staff members:

Colleagues:

I will soon be moving back to the Raba Building. The one thing I did not want to lug back to the round building was my “dean’s portrait.” Since the time of my appointment as interim dean, Charles Cantú has thoughtfully urged me to have my portrait made. I followed his advice long ago, and the portrait has been in storage, most recently in the closet in the dean’s conference room.

Becky Adams was in the office today and Bob Hu stopped by. I decided that was a sufficient crowd for a hanging, so I pulled out the portrait and hung it on the wall,

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202. See e-mail from Vincent R. Johnson, Professor of Law, St. Mary’s Univ. Sch. of Law, to all Law Students, Full-Time Faculty, and Senior Staff (Apr. 8, 2020) (on file with author).

203. *Id.*

near the development office. It was a somber but respectful hanging, in keeping with the mood of the coronavirus pandemic. There were no speeches and no applause, just a few smiles. So, you did not miss any festivities.

I mention all of this to explain that no university money of any kind was spent on the project. The portrait was painted by a friend of mine, William M. Hoffman, Jr.,<sup>204</sup> a retired art professor who taught at Rutgers. He has done other pieces for me. I paid for the supplies and framing.

Steve Sheppard [my predecessor in the deanship] will be hung soon. At the moment his portrait is imprisoned by the virus-related shutdown at the framing shop.<sup>205</sup>

If I look a bit younger in my dean's portrait than I ever did when I occupied the dean's office, it may be because I sat for the portrait before I became dean. I was offered and accepted the deanship on Wednesday May 8, 2019. On Friday May 10, I was headed to Pennsylvania on my annual Mother's Day trip to visit the graves of my parents at Unity Cemetery in Latrobe. Because it seemed that I might not make it back to Pennsylvania soon, I contacted the artist, professor Hoffman, and he said to come right over. That was the only sitting. Hoffman's wife Bonnie took several photos.<sup>206</sup> The finished portrait was based on those photos and shipped to San Antonio about three months later.

My portrait is not the first work of art by professor Hoffman that has hung in the Law Administration Building. During my year as dean, a painting by professor Hoffman of Saint Vincent College, my undergraduate alma mater in Latrobe, occupied a prominent place near the entrance to the dean's suite.

## 17. ON-LINE EVENTS

Various law school events that had been cancelled, moved online, often with great success. These included, among others, the presentations of awards that would have occurred at the Law Journal Banquet, Barristers Banquet, and Scholar Banquet.

At the online commencement, after welcoming the graduates and their guests, I said:

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204. See William M. Hoffman, Jr., *About the Artist*, <http://www.wmhoffmanjr.com/FineArt/about-the-artist>. (last visited Mar. 5, 2021).

205. E-mail from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to Full-Time Faculty, Law Instructors, and Senior Staff (Apr. 21, 2020) (on file with author).

206. Early on, I decided I should have worn a different suit and a different tie, so I told Hoffman that and he painted those items of apparel in colors different from the items I had worn for the sitting. The bookcase in the background of my portrait is one that sits in my home office in San Antonio. When I returned to Texas, Jill took some photos of me standing in front of the bookcase and I emailed them to Hoffman. I think the portrait is amazingly accurate in depicting both me and the colors of the book bindings and other objects that sit behind the glass doors of the bookcase that stands behind me in the portrait.

Our virtual celebration today is not the kind that anyone envisioned when you started your journey into legal education. But that does not make the event any less meaningful, or your accomplishments any less impressive.

When you were admitted to St. Mary's University School of Law a short while back, that was because you showed promise. You are here today because you fulfilled that promise in your academic programs through hard work and determined efforts.

During your time at St. Mary's you have also excelled in so many other ways: in the advocacy competitions; on the law journals; as pro bono volunteers; at the clinics; as research assistants and Dean's Research Fellows; as part of the Warrior Defense Project; in campus ministry programs; as international scholars in our Innsbruck and Beijing Institutes; in judicial internships and public service externships; as leaders of the Student Bar Association and dozens of student organizations

You have a right to be proud. You have availed yourselves of the opportunity for a first-class legal education. You now rank among the best educated professionals in the United States.

The faculty and staff are very proud of you. Not surprisingly, we expect great things from you.

We expect you to do your share: to improve the law and the legal system; to make legal services available to all segments of society; to fight discrimination and corruption, and to build a more just world; and to foster stronger communities through leadership of civic institutions.

As the coronavirus pandemic subsides, we hope that you use your talents to rebuild the economy, domestic prosperity, and international trade. Not to mention restoring the arts and protecting the environment.

As lawyers, you will: sort out claims, advise businesses, serve as judges, write new laws, and advance the search for justice.

If this sounds daunting, just remember that these things are what the graduates of St. Mary's University law school have been doing honorably and effectively for nearly a hundred years.

Our thousands of graduates have excelled in countless parts of the legal profession. . . . The degree that you have earned from St. Mary's University means that you have the ability to excel on many fronts and in countless ways. Make the most of it.

## 18. REDUCED REVENUE, LAYOFFS, & FURLOUGHS

When the pandemic hit, dorms were closed, classes moved online, and the vast majority of employees were told to work from home. It soon became apparent to the university leadership, that efforts to recruit students to enroll for the coming year might run into obstacles, particularly because unemployment nationwide reached levels not seen since the Great Depression.<sup>207</sup> Thus, it was necessary to worry about a revenue shortfall for the coming year.

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207. See Greg Iacurci, *Unemployment is nearing Great Depression levels*, CNBC (June 10, 2020), <https://www.cnbc.com/2020/05/19/unemployment-today-vs-the-great-depression-how-do-the-eras-compare.html>. ("The actual figure today may be closer to, or even above, 20%.")

This subject dominated discussion among the leadership at the St. Mary's campus<sup>208</sup> and at colleges across the nation.<sup>209</sup> Some institutions of higher education projected losses of \$100 million in the spring semester and even greater losses in the coming fall.<sup>210</sup> Nationwide, administrators anticipated that "students grappling with the financial and psychological impacts of the virus could choose to stay closer to home, go to less expensive schools, take a year off or not go to college at all."<sup>211</sup> As the pandemic deepened and fears grew about decreased revenue in the coming year, layoffs and furloughs became common in higher education.<sup>212</sup> St. Mary's was no exception. On May 28, I sent an email to all personnel at the law school, stating:

Colleagues:

As part of the financial retrenchment explained by President Thomas Mengler last week, certain personnel decisions were made at the law school (as well as in other parts of the university). Those decisions were implemented yesterday.

During the decision making process, I consulted various associate deans, assistant deans, and directors, as well as the incoming dean. With the approval of university counsel, six persons were permanently laid off at the law school (four at the Clinic, one in Career Strategy, and one in Raba), and one person (in Raba) was temporarily furloughed until August.

The university determined that these reductions in force were essential because of the great financial uncertainties faced by St. Mary's, and indeed by all of American higher education, as a result of the Covid-19 pandemic. There is no reason to expect any further staff layoffs or furloughs at the law school. All of the affected persons were notified yesterday.

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208. Cf. Andres Picon, *Pandemic, Recession Slowing Alamo Colleges Tuition Payments Lag*, SAN ANTONIO EXPRESS-NEWS (Sept. 5, 2020), <https://www.expressnews.com/news/education/article/Pandemic-recession-slowing-Alamo-Colleges-15542047.php> (discussing loss of revenue at colleges in San Antonio).

209. See generally Anemona Hartocollis, *After Coronavirus, Colleges Worry: Will Students Come Back?*, N.Y. TIMES (Aug. 15, 2020), <https://www.nytimes.com/2020/04/15/us/coronavirus-colleges-universities-admissions.html> (discussing anticipated revenue losses related to tuition, sports, room and board, study abroad, bookstores, and foreign students); see also *The Absent Student*, THE ECONOMIST (Aug 8, 2020), <https://www.economist.com/leaders/2020/08/08/covid-19-will-be-painful-for-universities-but-also-bring-change>. ("The IFS [Institute for Fiscal Studies] expects losses at English universities to amount to over a quarter of one year's revenues.").

210. See Hartocollis, *supra* note 209.

211. *Id.*

212. See Daniel McGraw, *et al.*, *As the Virus Deepens Financial Trouble, Colleges Turn to Layoffs*, N.Y. TIMES (July 22, 2020), <https://www.nytimes.com/2020/07/16/us/coronavirus-college-faculty-layoffs.html> ("The University of Akron this week became one of the first schools in the country to make profound cuts in the number of full-time professors on its staff."); see also Jennifer Conn, *University of Akron Faculty Layoffs to Go Forward Following Arbitrator Decision*, SPECTRUM NEWS (Sept. 22, 2020), <https://spectrumnews1.com/oh/columbus/news/2020/09/22/university-of-akron-faculty-layoffs-to-go-forward>. ("An arbitrator has ruled in favor of the University of Akron in a case that decided whether nearly seventy faculty members would lose their jobs. The layoffs were part of a plan to eliminate about \$65 million from the university's \$325 million budget.").

It is natural to feel sad and demoralized by these types of developments, particularly when they are coupled with salary freezes or reductions. However, allow me to suggest a few points that may place things in perspective and help us move forward.

First, this was a very rare occurrence. Nothing like this has happened during my 38 years on the faculty. I hope that it will be at least 38 more years before we have such a dark day.

Second, we should remember all of the good things that the discharged employees did for St. Mary's, and we should strive to carry their best values and traditions forward.

Third, it is useful to note that the law school has overcome other tough times. It survived the Great Depression, when other Texas law schools failed. Fifty years ago, it also survived the opening of a great and inexpensive-to-attend state university, UTSA [University of Texas at San Antonio]. It had been feared at that time that no one would pay the high tuition that St. Mary's charged, and that the collapse of the St. Mary's undergraduate program would drag the law school down, too. That obviously did not happen. In fact, UTSA became one of our most important "feeder" universities.

Fourth, there is no better way to get out of the dumps than to focus on one's work and dig in. I truly believe that the harder you work, the more you achieve, the better you feel, the more you think about the future rather than past defeats. When, as a young faculty member in my fifth year at St. Mary's, I was denied tenure by the university, I took a deep breath and worked harder. For me, that was the right strategy.

Fifth, this is the perfect time for a fresh start. We have a new dean, Patricia Roberts, arriving on Monday. Patty is full of energy and optimism and plans. She has the vision and drive to be a great dean. Let's help her do that.

Finally, we should all remember that the Marianist educational mission is just as important as ever. We should be proud of the part we play in that noble endeavor.

Thank you for everything. Keep up the good work!<sup>213</sup>

## 19. IN RETROSPECT

What part did I like best? Dealing with the alumni was always a great pleasure. During the year, before the pandemic arrived, I participated in development trips where I spoke to law alumni chapters in McAllen, Austin, Ft. Worth, Dallas, Houston, and Corpus Christi. It was great fun catching up with my former students.

I will never forget visiting the law alumni chapter in Dallas. As I looked around the packed room, I was seeing former students I had not seen for ten, twenty, or thirty years. They had all disappeared long ago, but were now present. I felt like I had died and gone to heaven.

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213. E-mail from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to All Law Personnel (May 28, 2020) (on file with author).

When May 31st arrived, I thanked everyone and cheerfully moved off stage.<sup>214</sup> It was nice to have had the chance to lead the law school, albeit briefly. It was also nice to leave. Although I had chaired the COVID-19 Special Committee I had created two months earlier, and had fought to give the Committee broad powers to act on behalf of the faculty during the summer months (with regard to academic standards and related matters), I had made clear that I would cease to be a member of that Committee when June 1 arrived. It was important to give our new dean, Patty Roberts, room to act.<sup>215</sup> As I told Patty in an email:

It is possible that I am the first person to leave the [St. Mary's] dean's office willingly. We know so little about the first two deans, that it is impossible to say for sure. They may have been happy to hand off the duties of building a fledgling law school [between 1927 and WWII]. The tradition for the past 80+ years has been that the incumbent fights hard to keep the position, and that there is a mighty battle, either in the open or behind the scenes, and the dean is toppled.<sup>216</sup>

## 20. CROWD-FUNDING A SCHOLARSHIP

A few months into her three-year term, Dean Roberts led the law school's first crowd-funding effort to raise scholarship funds, honoring my service to the law school. I told her that she was brave and that no one would fault her if the effort failed in the midst of a raging pandemic, record unemployment, and vast economic uncertainties. However, the effort succeeded. More than 100 donors contributed about twenty-six thousand dollars. I thought that was splendid and told the head of development that my wife and I would match those gifts so that a new permanent endowed scholarship could be established to aid deserving students. It

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214. E-mail from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to Thomas Mengler, President, St. Mary's Univ. (May 31, 2020) (on file with author). I wrote: President Mengler, Provost Tyler, and Faculty and Staff of the School of Law:

My one-year appointment as Interim Dean of the School of Law comes to an end today. I want to thank you for this opportunity to serve St. Mary's, and for everything that you did to make the law school happy and productive during this time of change.

Thank you also for your advice, good humor, energy, and ideas. Your work during the past year has made the law school stronger in countless ways.

I look forward to working with you as a member of the faculty in the years ahead.

215. It is possible that I am the first person to leave the dean's office willingly. We know so little about the first two deans, that it is impossible to say for sure. They may have been happy to hand off the duties of building a fledgling law school. The tradition for the past 80+ years has been that the incumbent fights hard to keep the position, and that there is a mighty battle, either in the open or behind the scenes, and the dean is toppled. The only thing close to a willing departure was Charles Cantú, who wanted to stay but knew that he had to leave to avoid a struggle that would have tarnished his reputation as a well-liked peacetime dean.

216. E-mail from Vincent R. Johnson, Professor of Law, St. Mary's Univ. Sch. of Law, to Patricia Roberts, Dean, St. Mary's Univ. Sch. of Law (May 30, 2020) (on file with author) ("The only thing close to a willing departure was Charles Cantú, who wanted to stay but knew that he had to leave to avoid a struggle that would have tarnished his reputation as a well-liked peacetime dean.").

seemed like a good way to look to the future and cap what had been a largely unexpected and interesting year.