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## The First Woman Dean of a Texas Law School: Barbara Bader Aldave at St. Mary's University

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# ARTICLE

## THE FIRST WOMAN DEAN OF A TEXAS LAW SCHOOL: BARBARA BADER ALDAVE AT ST. MARY'S UNIVERSITY

VINCENT R. JOHNSON\*

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### I. TRANSFORMATIVE CHANGE

The deanship of Barbara Bader Aldave<sup>1</sup> at St. Mary's University School of Law lasted for nine years, running from June 1, 1989, to May 31, 1998. During that time, Aldave transformed the law school<sup>2</sup> and re-oriented its focus in a liberal direction.<sup>3</sup> Those developments were cheered by many<sup>4</sup> and decried by others.<sup>5</sup>

Today, some of those who served on the law faculty during the 1990s say that the Aldave revolution was necessary to bring St. Mary's into the

1. See Mary Ann Roser, *Female Law Dean to Lose Her Job*, AUSTIN AMERICAN-STATESMAN, Oct. 28, 1997, at B1 (stating Aldave is “pronounced Al-DAH-vay”); see also Charles E. Cantú, *An Oral History of St. Mary's University School of Law (1961–2018)*, 50 ST. MARY'S L.J. 309, 369 (2019) (discussing the change in pronunciation of Barbara Bader Aldave's surname from an Anglicized version to a Hispanic cadence “[o]nce . . . [Barbara Aldave] was named Dean of St. Mary's Law School, somewhere on the drive from Austin to San Antonio”).

2. See Robert Elder, Jr., Opinion, *What is the Real 'Reality' of a Catholic Law School?*, TEX. LAW., Nov. 10, 1997, at 2 (“The law school is now widely known . . . for an expansive clinical program and expanded course offerings; more minority students, more women and minority faculty members; and a zeal for what Aldave described as ‘the one thing’ that should be ‘of central importance in a Catholic law school’—a commitment to justice, ‘not only justice under the law but justice and fairness in society.’”).

3. See Jeanne Russell, *St. Mary's Law Dean Faced Lots of Trials*, SAN ANTONIO EXPRESS-NEWS, Nov. 3, 1997, at 8A (“Aldave transformed the only law school in South Texas from a nuts-and-bolts training ground for corporate lawyers to a school offering services to immigrants, battered women[,] and others unable to pay.”).

4. Letter from Vincent Johnson, Professor, St. Mary's Univ. Sch. of L., to Barbara Aldave, Dean, St. Mary's Univ. Sch. of L. (Apr. 5, 1989) (on file with author) (“Many, many congratulations on your appointment as Dean. The news has reached me from many quarters and, needless to say, there is a sense of excitement and enthusiasm among my colleagues (myself included) that is unprecedented in my seven years with the school.”).

5. See Bob Elder, *In the Spirit of St. Mary*, TEX. OBSERVER, June 14, 1996, at 11 (“I just don't like the agenda,” says Charles Smith, a former president of the Texas and San Antonio bar associations. “From my view, the faculty and the direction are far too liberal.”).

mainstream of American legal education.<sup>6</sup> Others opine that Aldave's deanship severely damaged the law school, inflicting wounds from which St. Mary's has not recovered.<sup>7</sup>

When Aldave was not reappointed to a fourth three-year decanal term, I was quoted in the press as stating that Aldave was a "larger-than-life" dean and a commanding figure.<sup>8</sup> Today, almost a quarter of a century after Aldave's departure from the dean's office, I stand by that description: Aldave was larger-than-life in the very best sense of the term. In the legal education profession, she was an Olympian. It was entirely characteristic of Aldave that when a judge ruled in her favor in a suit filed against her by a St. Mary's law professor who was denied tenure, she invited all her supporters in the courtroom to join her "for a victory celebration at the best restaurant in the city," which "proved to be both lively and long."<sup>9</sup>

As a dean, Aldave was "brilliant"<sup>10</sup> and confident, charismatic<sup>11</sup> and creative, and energetic<sup>12</sup> and optimistic.<sup>13</sup> But like her two immediate

6. That was my view when Aldave was seeking re-appointment to the third three-year term as dean in 1995. In writing, I told President John Moder that I "absolutely" favored Aldave's reappointment and rated her highly for "[f]airness, intelligence, integrity, vision, energy, and stature." Memorandum from Vincent Johnson, Professor, St. Mary's Univ. Sch. of L., to John Moder, President, St. Mary's Univ. (Jan. 27, 1995) (on file with author). I explained: "Barbara has masterfully moved St. Mary's into the mainstream of legal education. I am proud to serve on her faculty[] and have complete confidence in her leadership abilities." *Id.*

7. As Professor Leopold put it, "I would say [the Aldave deanship] was an academic disaster, which actually I think we haven't recovered from yet to this day fully." Cantú, *supra* note 1, at 374 n.199 (quoting Transcript of Audio Tape: Oral History of Charles E. Cantú, comments of Aloysius A. Leopold to Vincent Johnson (Nov. 9, 2017)).

8. Roser, *supra* note 1, at B1.

9. Barbara Bader Aldave, *My Journey with Caruthers*, 35 U. TOL. L. REV. 535, 535 (2004).

10. According to Dean Emeritus Cantú:

Barbara is one of the most intelligent individuals . . . I have ever encountered. As a matter of fact, . . . it was difficult having a conversation with her, because she was always two or three different thoughts ahead of you. She was well-read; she was very well educated; she had a brilliant mind. She was a breath of fresh air.

Cantú, *supra* note 1, at 369.

11. See Elder, *supra* note 5, at 11 ("[E]ven her critics admit they are vulnerable to the peculiar charms of Aldave, an exceptionally blunt woman who towers over most men and delivers her message in a forceful, Julia Childs-like voice. 'I can put horns on Barbara . . . [and] demonize her, until I get to meet her somewhere,' Charles Smith says. 'Then I start to like her. When I'm with her I really like her.'").

12. See Russell, *supra* note 3, at 8A (describing Aldave as having "relentless energy").

13. See generally Letter from Vincent Johnson, Professor, St. Mary's Univ. Sch. of L., to Frank Glazer (Feb. 8, 1995) (on file with author) (recommending Aldave for appointment to the Board of

predecessors—Ernest A. Raba (dean, 1946–1978)<sup>14</sup> and James N. Castleberry Jr. (dean, 1978–1989)<sup>15</sup>—Aldave was a “strong” dean<sup>16</sup> who tried to hold on to power too long.

During the early years of Aldave’s deanship, I was one of her most loyal supporters on the faculty.<sup>17</sup> I thought her first five years as dean were as close to perfect as anything could be. However, in year six, the skies were darkening fast, and storms were brewing.<sup>18</sup> The last three years of Aldave’s deanship were troubled in many ways that were unproductive and not likely to get better. By 1997, many members of the faculty thought that it was

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Directors of Saint Vincent College, located in Latrobe, Pennsylvania, and describing her as “highly intelligent, extraordinarily articulate, and well-connected to legal education”).

14. See Aloysius A. Leopold, *A Tribute to Ernest A. Raba, Dean (1946–1978)*, *St. Mary's University School of Law*, 40 ST. MARY'S L.J. 3, 3 (2008) (stating Raba, after serving in WWII, returned to San Antonio and was soon thereafter appointed dean).

15. See Ernest A. Raba, *A Tribute to James N. Castleberry, Jr.*, 21 ST. MARY'S L.J. 761, 761 (1990) (noting Castleberry’s achievements as “a great teacher, Associate Dean for Placement and Director of Alumni Affairs, distinguished author of water law and other legal subjects, [and] an able assistant to the Dean in substantial fund raising[.] . . . [which] resulted in his appointment on June 1, 1978, as Dean, a position held by him until June 1, 1989”). Castleberry labored mightily to stay in office. 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, 596–98 (2019) (describing one of Castleberry’s arguments as “a complete exaggeration”). An announcement was made on September 1, 1988, that he would retire from the deanship “after ten years on the job.” Rick Gonzalez, *Law School Dean at St. Mary's Stepping Down After 10 Years*, SAN ANTONIO LIGHT, Sept. 2, 1988, at B3 (“Castleberry, [sixty-seven], who has been with the law school [thirty-three] years, will become dean emeritus June 1, 1989.”). Once the news was public, Castleberry resigned himself to the inevitable. See Office of the Dean, THE DOCKET, Sept. 2, 1988 (responding in a newsletter distributed to the student body, Castleberry stated, “I am very pleased with this change”).

16. See Cantú, *supra* note 1, at 366 (“Raba and Castleberry . . . were each a one-man show when it came to being the dean.”); *id.* at 369 (“Once again, . . . with Aldave the law school had a dean who was a ‘one-man show.’”).

17. The loyalty was natural, not coerced—with one exception. Early in Aldave’s first term, I opposed the hiring of a woman Aldave wanted to join the faculty. On the day of the vote, I received a phone call from Aldave at 7:00 A.M., and she persuaded me to change course by making clear that the matter was important to her personally. Later in the day, I voted with a majority to approve making an offer of employment. The matter involved judgment about whether the candidate’s qualifications fit the law school’s needs. It was not a decision to offer employment to an unqualified person. To make sure there were no hard feelings, I suggested we gather a small group to go down to the Riverwalk that evening to celebrate the faculty’s approval of offering a position to Aldave’s candidate. We did that and had fun. It was a good way to move on. I never had the sense that Aldave demanded loyalty at the cost of independence, but it seems that others had a contrary view. See Robert Elder Jr., *St. Mary's Clinics Continue City's Activist Tradition*, TEX. LAW., at 20 (May 27, 1996) (“Even professors who are enthusiastic about Aldave say she requires loyalty, especially among new hires.”).

18. See Cantú, *supra* note 1, at 374 (“Somewhere in the middle of the 1990s, the Aldave deanship began to falter.”).

again time to search for a new dean. The “tidal wave of goodwill”<sup>19</sup> that had carried Aldave into office was no longer strong enough to propel her forward. Others just as adamantly held a contrary position, believing that Aldave’s continuation as dean was essential to the future success of the law school.<sup>20</sup> Overall, at the end of the turbulent Aldave years, the faculty was deeply divided.<sup>21</sup>

It was appropriately symbolic that Aldave was elevated to the deanship in 1989. That was the year that Communist dictators across Eastern Europe were toppled,<sup>22</sup> the Berlin Wall fell,<sup>23</sup> and many parts of the world were reinvigorated by political change. The same was true at St. Mary’s University School of Law because of the appointment of Aldave. The year 1989 was a landmark year—absolutely transformative. Everything seemed possible.

Before Castleberry was denied reappointment as dean in September 1988, there was some reason to think that popular faculty members were beginning to flee St. Mary’s. As the 1988–1989 academic year began, Douglas Haddock had just completed his visiting professorship at Washington and Lee University; Mark Cochran was a professor in residence at the Office of Chief Counsel for the Internal Revenue Service in Washington, D.C.; John Schmolesky was in South America, having served as a Fulbright Scholar in Brazil; and I was a Judicial Fellow at the United

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19. *See id.* (“Although Barbara came in on a tidal wave of goodwill, there was a steady decline, slowly at first, but it gained momentum.”); Letter from Vincent Johnson, Professor, St. Mary’s Univ. Sch. of L., to Fritz Raber, Professor, Univ. of Innsbruck (Apr. 5, 1989) (on file with author) (“The announcement of . . . [Aldave’s] appointment at a press conference on the St. Mary’s campus two days ago was reportedly greeted with thunderous applause by the more than 200 persons who packed the room.”).

20. *See* Cantú, *supra* note 1, at 377 (“There was an apparent groundswell of grassroots support from the community for Barbara.”).

21. *See id.* at 378 (“With regard to whether Barbara would be reappointed, we again had a tumultuous atmosphere on the campus where the faculty was divided.”); Jeanne Russell, *Aldave’s Tenure at St. Mary’s at an End*, SAN ANTONIO EXPRESS-NEWS, Oct. 25, 1997, at 1B (“To her critics, Barbara Aldave took a fine law school and ran it aground. To her admirers, however, she transformed a conservative club into a place that welcomed women and minorities.”).

22. *See* Wiktor Osiatynski, *Revolutions in Eastern Europe*, 58 U. CHI. L. REV. 823, 823 (1991) (“After the change in the government of Poland and the dissolution of the Communist Party in Hungary, no one could stop the flood of freedom. The pace of events was astonishing—less than a year, if counted . . . to the death of Nicolae Ceausescu and the victory of the revolution in Romania, in late December.”).

23. *See* Inga Markovits, *Last Days*, 80 CAL. L. REV. 55, 56 (1992) (“[I]n the fall of 1989, came the waves of refugees trying to leave [East Germany] . . . . On November 9, 1989, the opening of the Berlin Wall, like a gigantic crack, announced the system’s approaching disintegration.”).

States Supreme Court.<sup>24</sup> In a postcard addressed to me at the Court after Castleberry's forced "retirement"<sup>25</sup> from the deanship was announced, Schmolesky wrote: "I'm enjoying this year more than last—how about you? . . . Maybe we can all go home to [San Antonio] now."<sup>26</sup>

Some younger members of the faculty regarded Aldave's appointment as a "liberation."<sup>27</sup> Indeed, at the conclusion of each of the first four years of her deanship, a group of us celebrated "Liberation Day" on June 1 in the atrium of the Law Administration Building with cake and champagne that I brought to campus in a large wicker basket, toasting the still-new dean and wishing her well.<sup>28</sup> However, nothing had prepared the law faculty, the alumni, or the university administration for this groundbreaking appointment, not to mention the subsequent upheaval. As a senior university official remarked to me when I was writing this article: Aldave was like a lightning rod that attracted controversy: some people loved her; some people hated her; and there was nothing in between.<sup>29</sup>

In an earlier article entitled *Turning Points in the History of St. Mary's University School of Law: 1980–1988*,<sup>30</sup> I discussed Castleberry's deanship, and

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24. Having been denied tenure at St. Mary's, I was certainly in the job market—at least until Aldave was named dean. See Letter from Vincent Johnson, Professor, St. Mary's Univ. Sch. of L., to Jill Goldberger, Intern, U.S. Sup. Ct. (June 20, 1989) (on file with author) ("Last week the Justice Department called to [ask if I was still interested in] the ethics position. I thought hard about it and decided that I want to return to San Antonio to work with our new Dean."). I never had regrets about that decision. During Aldave's fifth month as dean, I wrote to a friend: "It was an absolutely correct decision to return to academia. I am enjoying myself immensely. Our new dean is even better than expected." Letter from Vincent Johnson, Professor, St. Mary's Univ. Sch. Of L., to Noel Augustyn, Admin. Assistant, U.S. Sup. Ct. (Oct. 5, 1989) (on file with author).

25. John DeMour, *Castleberry Retires, Search for New Dean Begins*, RATTLER, Sept. 8, 1988, at 1.

26. Letter from John Schmolesky, Professor, St. Mary's Univ. Sch. of L., to author (Oct. 27, 1988) (on file with author).

27. Cf. Rick Casey, *St. Mary's Students Learn Money Talks*, SAN ANTONIO LIGHT, Oct. 3, 1988, at A1 ("Not only under Castleberry, but under his predecessor [Ernest A. Raba] the school has been restrictive toward faculty and students.").

28. Why did the tradition stop? Initially, it had to be cancelled because Aldave was in trial defending one of the tenure-denial lawsuits that had been filed against the university. See *infra* Part XIII (discussing Dean Aldave's tenure battles and the resulting lawsuits). After that, the event was never rescheduled. The demise of the tradition was natural. Life moved on.

29. Cf. Jeanne Russell, *Aldave Leaving St. Mary's Post with No Apology*, SAN ANTONIO EXPRESS-NEWS, Oct. 28, 1997, at 1B ("Nine years ago, Aldave set out on what critics called a social experiment and supporters said was an effort to make the law school fit St. Mary's Catholic mission of social justice.").

30. See Johnson, *supra* note 15, at 530 (covering the "bulk of the deanship of James N. Castleberry").

life at the law school generally, in the period immediately preceding the appointment of Aldave.<sup>31</sup> This article carries that story forward through most of the next decade.

## II. FIRST WOMAN LAW DEAN IN TEXAS

During the years leading up to Aldave's appointment, members of the law faculty often speculated about when there would be a new dean, whether that person would come from inside or outside the law school, and what *his* priorities for the law school would be. I use the word "his" advisedly because it was assumed that the next dean, like the first four,<sup>32</sup> would be a man. That was a reasonable assumption in 1989 because there had never been a female dean at any of the then eight<sup>33</sup> American Bar Association (ABA)-accredited Texas law schools. Across the nation, there were few women law deans,<sup>34</sup> perhaps only fourteen<sup>35</sup> or fifteen.<sup>36</sup> Between the time I joined the law faculty in August 1982 and the dean search in 1988, which led to the appointment of Aldave, I never heard anyone suggest that Castleberry's successor would be a woman.

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31. See generally *id.* (discussing the era preceding Aldave's deanship).

32. In 1927, Anton N. Moursund "was named the first Dean of San Antonio's St. Mary's University School of Law, a position he held until his retirement in 1938, when he was named Dean Emeritus." WIKIPEDIA, Anton N. Moursund, [https://en.wikipedia.org/wiki/Anton\\_N.\\_Moursund](https://en.wikipedia.org/wiki/Anton_N._Moursund) [<https://perma.cc/56RD-TQ7K>]. Moursund was succeeded by Henry B. Dielmann, whose efforts facilitated the acquisition of between 5,000 and 10,000 volumes. See Ernest A. Raba, *St. Mary's University: From the Bexar County Courthouse to 112 College and the Exodus to the Woodlawn Campus*, 35 TEX. B.J. 917, 919 (1972); *Notes and Personals*, 9 AM. L. SCH. REV. 1245, 1281 (1941). "[Dielmann] . . . was appointed dean in the fall of 1938. He resigned at the beginning of World War II." ERNEST A. RABA, ST. MARY'S UNIVERSITY SCHOOL OF LAW: A PERSONAL HISTORY 41 (1983).

33. When Aldave assumed the deanship, the eight ABA-approved law schools in Texas were: Baylor University; St. Mary's University; South Texas College of Law; Southern Methodist University; Texas Southern University; Texas Tech University; University of Houston; and University of Texas.

34. See Laura M. Padilla, *A Gendered Update on Women Law Deans: Who, Where, Why, and Why Not?*, 15 AM. U. J. GENDER SOC. POL'Y & L. 443, 465 (2007) ("The percentage of women law deans increased marginally from 10.4% in 2000 to 10.9% in 2001, then jumped appreciably in 2003 to 16.1%, with more modest gains through 2005 up to 19%."); see also Tracey A. Thomas, *New Women Law School Deans*, L. PROFESSOR BLOGS: GENDER & L. PROF BLOG (June 8, 2017), [https://lawprofessors.typepad.com/gender\\_law/2017/06/new-women-law-school-deans.html](https://lawprofessors.typepad.com/gender_law/2017/06/new-women-law-school-deans.html) [<https://perma.cc/WEJ4-XS6Q>] ("Women are currently only 30% of law deans. This is a relatively recent increase as just three or so years ago women were 21% of law deans.").

35. See Russell, *supra* note 3, at 8A (describing Aldave as "one of just [fourteen] female law deans in the country").

36. See Russell, *supra* note 29, at 1B ("[Aldave] was one of only [fifteen] female law school deans in the country.").

Of course, times were changing, albeit slowly. When I started to teach at St. Mary's, Bonita Roberts "was the only woman at the law school who held a full-time, tenure-track position."<sup>37</sup> By the time the search for Castleberry's successor was underway,<sup>38</sup> Victoria Mather, Linda Schlueter, and Marsha Huie had joined the full-time faculty. A small number of women also taught on the adjunct law faculty.<sup>39</sup> Nevertheless, between 1982 and 1988, I never once heard any member of the faculty venture that the next St. Mary's law dean might be a woman. Yale and Harvard did not appoint women as law school deans until 2017 (Heather Gerken)<sup>40</sup> and 2003 (Elena Kagan),<sup>41</sup> respectively.

The composition of the St. Mary's law dean search committee in 1988–1989 gave observers no reason to think that the position would go to a woman. On the committee there were twelve men and only one woman (Mather).<sup>42</sup> Ultimately, the hiring decision would be made by the University President Father John Moder, a man, advised by the Academic Vice President Dr. Charles Cotrell, another man.

The search was commenced against a backdrop of student discontent at the law school, which played out in the campus newspaper, the *Rattler*,<sup>43</sup> and in the city's two daily newspapers, the *San Antonio Light*<sup>44</sup> and the *San*

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37. Johnson, *supra* note 15, at 558; See Cantú, *supra* note 1, at 352–53 n.129 ("In the early '80s legal research and writing directors were not accorded much of any status. So, the offer of that tenure track job was unusual in those days." (quoting Transcript of Audio Tape: Oral History of Charles E. Cantú, comments of Bonita Roberts to Vincent Johnson (Nov. 14, 2017))).

38. See Memorandum from John Moder, President, St. Mary's Univ., to Full-Time Members of the Law Faculty (June 13, 1988) (on file with author) (detailing the consultation process).

39. In Volume 21, Issue 1, of the *St. Mary's Law Journal*, which was published in 1989, Ruth W. McCracken was the only woman listed as a member of the "Special Instructional Staff."

40. See Karen Sloan, *Meet Heather Gerken, Yale's First Woman Law Dean*, LAW.COM (Feb. 23, 2017), <https://www.law.com/sites/almstaff/2017/02/23/meet-heather-gerken-yales-first-woman-law-dean/> [<https://perma.cc/3D9X-MWDA>] ("Yale Law School this week named its first woman law dean—[P]rofessor Heather Gerken, a federalism and election law expert . . .").

41. *History of Harvard Law School: A Brief Timeline of Our First Two Centuries*, HARV. L. SCH. <https://hls.harvard.edu/about/history/> [<https://perma.cc/TB2B-MK4N>] ("In 2003, Elena Kagan '86 became the first woman Dean of Harvard Law School.").

42. Memorandum from Charles Cotrell, Acad. Vice President, St. Mary's Univ., to Full-Time Members of the Law Faculty (Sept. 19, 1988) (on file with author).

43. Letter to the Editor, *Law Students Criticize Administration*, RATTLER, Sept. 8, 1988 ("[A]lmost no one in our school thinks the Administration is doing a very good job.").

44. See Dave Loverude, *Law Students' Unrest at St. Mary's Eyed*, SAN ANTONIO LIGHT, Sept. 9, 1988 (referring to a letter that "blasted the law school administration" and a student survey that gathered evidence of student discontent, President Moder admitted there were "legitimate concerns over the direction of the law school").

*Antonio Express-News*.<sup>45</sup> While some of the coverage reflected “a level of [student] frustration that in the 1960s would have ignited the campus,”<sup>46</sup> some of what the students were asking for was sensible and worthy of discussion. For example, the Student Bar Association (S.B.A.) passed a resolution urging the law faculty to “amend their bylaws to permit the S.B.A. president to attend all law faculty meetings.”<sup>47</sup>

Prior to joining St. Mary’s, Aldave held a named professorship at the University of Texas (UT) in Austin, eighty-three miles northeast of the St. Mary’s campus, where she taught from 1974 to 1989.<sup>48</sup> An expert in Business Associations,<sup>49</sup> Aldave split her time between UT and Northeastern University in Boston, one of the most liberal universities in the country.<sup>50</sup> As Aldave proudly explained at a reception held in the first-floor rotunda of the Raba Law Building during the early years of her deanship at St. Mary’s, she was the first female affirmative action appointment to the UT law faculty.<sup>51</sup> It is easy to imagine that she was just as iconoclastic in that role as she was at St. Mary’s when, in 1989, she became

45. See Ginger Hall, *Student Survey Critical of St. Mary’s Law School Dean*, SAN ANTONIO EXPRESS-NEWS, Sept. 15, 1988 (“Most students said they would contribute only if Castleberry were ousted.”).

46. Casey, *supra* note 27, at A1.

47. The “report” that accompanied the “recommendation” stated:

We are calling upon the law faculty to acknowledge and to ensure that the students’ voice is heard in matters that directly affect our school. Why should a student attend such meeting? The S.B.A. President is exposed to the administration’s, faculty’s, and students’ feelings on many issues. He or she can be an invaluable resource of information, suggestions, alternatives[,] and solutions.

... With everyone involved, the contributions made and goals established will create dedication and loyalty between the students, faculty[,] and administration.

Memorandum from Bill McMurrey, Student Bar Ass’n President, St. Mary’s Univ. Sch. of L., to James Castleberry, Dean, St. Mary’s Univ. Sch. of L., and the Law Faculty (Sept. 20, 1988) (on file with author).

48. Press Release, Marquis Who’s Who, Barbara Bader Aldave Presented with the Albert Nelson Marquis Lifetime Achievement Award (Sept. 27, 2019) (on file with author) (stating “[b]etween 1974 and 1989, Ms. Aldave served as a professor at the University of Texas at Austin” where she was “named as a James R. Dougherty co-chair for faculty excellence from 1981 to 1982, a Piper professor in 1982, and a Joe A. Worsham centennial professor from 1984 until 1989”).

49. Aldave drove a red sports car, a Spider, with personalized license plates stating “BA Law”—referring to both her name and her principal legal subject (Business Associations).

50. *Most Liberal Students*, PRINCETON REV., <https://www.princetonreview.com/law-school-rankings?rankings=most-liberal-students> [<https://perma.cc/4WYR-6TZ3>].

51. Cf. JAY BRANDON, LAW AND LIBERTY: A HISTORY OF THE LEGAL PROFESSION IN SAN ANTONIO 87 (Neal Kimmel ed., 1996) (“[Barbara Aldave] was one of the two first women professors at the University of Texas School of Law.”).

the first woman to head any Texas law school,<sup>52</sup> and, as one writer put it, “certainly the only dean to base her law school’s mission on the life of Mary, mother of Jesus.”<sup>53</sup>

### III. SEARCH FOR AN OUTSIDER

The letter nominating Aldave for the St. Mary’s law deanship was unusual—so uncommon that it must have caught the attention of the search committee and everyone else who saw it. The letter was handwritten in labored penmanship and came from a Catholic activist named Spike Zywicki.<sup>54</sup> Zywicki “took a vow of poverty midway through life . . . [and] became a full-time advocate for peace and the rights of disadvantaged persons and Central Americans.”<sup>55</sup> According to the *Washington Post*, Zywicki “volunteered with Network, a national Catholic social justice lobby, and was a plaintiff in a Supreme Court case that reversed a ban on the distribution of political literature outside the Court building.”<sup>56</sup>

Zywicki’s nomination praised Aldave and argued that she would be the perfect dean for a Catholic law school. “Forty-three persons had applied to be considered for the Deanship at St. Mary’s,” and Aldave was the only woman among the six finalists.<sup>57</sup>

Although Aldave had “never been a student at a Catholic educational institution,”<sup>58</sup> she understood and supported the social justice mission of the Roman Catholic Church, and she spoke the Church’s language. Aldave later explained that “Catholic law school[s] could and should be different from” secular schools:

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52. *See id.* (“[I]n 1989, [Barbara Aldave] became dean of St. Mary’s University School of Law, the first woman to hold that position not only at St. Mary’s, but at any law school in Texas.”).

53. Elder, *supra* note 5, at 10.

54. Zywicki left an autobiography of sorts, which is available on the web. *See* SPIKE ZYWICKI, SYNOPSIS: A SPIKE OF LIFE (1998), <https://www.stexboat.com/books/spike.htm> [<https://perma.cc/8CH6-SFN8>] (“Lost to my family at the age of [fourteen] months because of a hospital clerk’s mistake, I was raised in orphanages in New York. Jungles, of up to 1000 kids, formed me. No visitors, and always hungry, I had to eat by hook or crook. The nuns prayed for my reform.”).

55. *Activist Thaddeus Zywicki, 91, Dies*, WASH. POST (July 23, 2003), <https://www.washingtonpost.com/archive/local/2003/07/23/activist-thaddeus-zywicki-91-dies/effae105-27f0-40ea-a63b-c85b13d226af/> [<https://perma.cc/99RG-FPF6>].

56. *Id.*

57. Letter from Vincent Johnson, Professor, St. Mary’s Univ. Sch. of L., to Fritz Raber, Professor, Univ. of Innsbruck (Feb. 13, 1989) (on file with author).

58. Barbara Bader Aldave, *The Reality of a Catholic Law School*, 78 MARQ. L. REV. 291, 291 (1995).

[I]f anything is special about Catholic law schools, it should be that they view the advancement of the reign of God as their principal business—as the ultimate rationale for all that they do. Thus, the real test of their success should not be how much money their graduates earn, on the average, but rather should be how well those graduates, on the average, integrate their religious faith into their professional and personal lives. . . . We can and should explain to our students, without embarrassment or apology, why it is more important for them to act honestly, ethically, and compassionately, and to serve the needs of others, than to amass wealth or power for themselves. We can and should engage in discussions, or collaborate on service projects, or participate in liturgies that allow us, our colleagues, and our students to interact as whole persons. We have the opportunity to live our religious faith openly and authentically, and to demonstrate that it not only can coexist with intellectual and professional excellence[] but can inspire us to be all that we can be, and to do all that we should do.<sup>59</sup>

During the dean search process, this argument appealed to the young University President, Father John Moder,<sup>60</sup> and, not surprisingly, he and Aldave got along well. As Aldave often remembered, when she and Moder had dinner during the interviewing process and were on their second bottle of wine, she knew she had the job.

The only inside candidate for the deanship was Charles E. Cantú, who had served on the faculty with distinction since 1966. However, as Cantú explained in his oral history of the law school, he never had a chance. According to Cantú:

It later became known to me that President John Moder, Academic Vice-President Charles Cotrell, and Tony Kaufmann, who was the Dean of the School of Science, Engineering and Technology, had spent a weekend down on the coast. I believe it was either Port Aransas or Rockport. Someone saw them. They were planning the search and how it was going to proceed. At that meeting, it was decided that the new dean would definitely be an outsider. That was totally unknown to the university community and to me.

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59. *Id.* at 295–96.

60. Moder served as president of St. Mary's University from June 1988 to September 1999. John Moder, LINKEDIN, <https://www.linkedin.com/in/john-moder-2a60894/> [https://perma.cc/7QTQ-P2AS]. He later held an executive position with the Hispanic Association of Colleges and Universities. *Id.*

So, the search was fixed from the outset; there is no question about it. In the end, it was a choice between me and Barbara Aldave, who John Moder fell in love with (they were two very philosophically attuned individuals, very liberal).<sup>61</sup>

According to Professor Aloysius A. Leopold, a long-time member of the law faculty, Moder was “in favor of the university having more say[-]so in the law school” and “was the principal source . . . of appointing Barbara [Aldave] as the dean.”<sup>62</sup> Cantú’s candidacy also faced other obstacles. According to Bonita Roberts:

[A] number of faculty, based on what they told me personally, saw [Cantú] as [Dean Castleberry’s] potential successor. I think that worked against him with the faculty. . . . [H]ad [Cantú] become dean then, [and] that attitude persisted, I think there would have been a continuation of the problems that we faced on the faculty during the last years of [Castleberry’s] deanship.<sup>63</sup>

Eighteen years later, in 2007, Cantú was ultimately appointed dean.<sup>64</sup> He served a very successful seven years, which were marked by collegiality and productivity. It is unlikely that Cantú would have been so successful if he had entered the dean’s office in 1989, at the end of the fraught and divisive Castleberry years.<sup>65</sup>

#### IV. MEETING AT THE SUPREME COURT

I met Aldave for the first time at the United States Supreme Court in the spring of 1989, not long after she had been named the new dean. In January 1988, I had been selected by a federal commission to be a Judicial

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61. Cantú, *supra* note 1, at 367.

62. *Id.* at 368 n.181 (quoting Transcript of Audio Tape: Oral History of Charles E. Cantú, comments of Aloysius A. Leopold to Vincent Johnson (Nov. 9, 2017)).

63. *Id.* at 367 n.180 (quoting Transcript of Audio Tape: Oral History of Charles E. Cantú, comments of Bonita Roberts to Vincent Johnson (Nov. 14, 2017)).

64. *Id.* at 368.

65. *See id.* (“I could not have been as successful as dean then (in 1989) as I was subsequently in 2007. For one thing, I matured. For another thing, after Barbara Aldave and Bill Piatt served as deans, I think the faculty was ready for peace, which I was able to bring. I was also able to take advantage of the contacts I had made in the community to raise more money than all of my predecessors combined.”).

Fellow at the Supreme Court for the 1988–1989 academic year.<sup>66</sup> As a member of the staff of Mr. Noel Augustyn, the Administrative Assistant to the Chief Justice, I assisted Chief Justice William H. Rehnquist, mainly with historical research and speech writing,<sup>67</sup> as well as briefings for visiting foreign dignitaries from around the world.

When I learned that Aldave would be in Washington, I invited her to meet with me in my office at the Marble Palace.<sup>68</sup> I had played no part in the dean search and had almost no information about Aldave. But, during our first meeting, we could not have gotten along better.

We talked for three full hours, mostly in my office on the ground floor, but also as we walked the corridors adjacent to the justices' chambers, and then across Capitol Hill to The Monocle restaurant (at 107 D Street NE) for lunch. Aldave was fifty years old,<sup>69</sup> full of energy, and ready to tackle the world. However, I remember her pausing at one point to confess that as she became better acquainted with St. Mary's she was beginning to realize just how much work there was to be done.

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66. I later served two three-year terms on the Judicial Fellows Commission. At my instigation, the program was renamed the Supreme Court Fellows Program, and the commission became known as the Supreme Court Fellows Commission. Vincent R. Johnson, *Rehnquist, Innsbruck, and St. Mary's University*, 38 ST. MARY'S L.J. 1, 10 n.34 (2006).

67. I provided assistance on fifteen speeches or reports: (1) Judicial Selection for Constitutional Courts, Bicentennial Australian Legal Convention, Aug. 29, 1988; (2) The Old Order Changeth, Australian Bar Association, Sydney, Australia, Sept. 3, 1988; (3) An Independent Judiciary: Bulwark of the Constitution, Northern Illinois School of Law, DeKalb, Illinois, Oct. 20, 1988; (4) Dedication of the Ernest F. Hollings Judicial Center, Charleston, South Carolina, Nov. 11, 1988; (5) Remarks of the Chief Justice: 125th Anniversary of the Gettysburg Address, Gettysburg, Pennsylvania, Nov. 19, 1988; (6) Remarks of the Chief Justice, United States Marshals Service "America's Star Exhibit," United States Supreme Court, Dec. 8, 1988; (7) Year End Report on the Judiciary, Jan. 1, 1989; (8) Remarks of the Chief Justice, Farewell Reception for Charles Fried, Jan 18, 1989; (9) Federal Court System: Future, Reforms & Salaries, American Bar Association Mid-Year Meeting, Denver, Colorado; (10) Separation of Powers, University of Arizona School of Law, Feb. 7, 1989; (11) The Chief Justice's Early Legal Career, Rutgers, Apr. 4, 1989; (12) Reducing the Federal Caseload, Brookings Eleventh Seminar on the Administration of Justice, Apr. 7, 1989; (13) Judicial Salaries, Post Office and Civil Service Committee, May 3, 1989; (14) William O. Douglas, Fiftieth Anniversary of William O. Douglas's Appointment to the Supreme Court of the United States, May 9, 1989; and (15) Daniel Webster and the Oratorical Tradition, Dartmouth College.

68. Cf. Letter from Vincent Johnson to Barbara Aldave, *supra* note 4 (discussing "the chance to get together").

69. See *Barbara Bader Aldave*, PRABOOK, [https://prabook.com/web/barbara\\_bader.aldave/918482](https://prabook.com/web/barbara_bader.aldave/918482) [<https://perma.cc/6JF6-EYDH>] (stating "Barbara Bader [Aldave] was born on December 28, 1938").

Before our meeting ended, I mentioned to Aldave that I was interested in being appointed to direct the law school's summer program in Innsbruck, Austria, which my colleague Geary Reamey and I had founded a few years earlier.<sup>70</sup> Aldave said that former Dean Castleberry had expressed interest in the same position, but that she would appoint me. I thought that was great news for several reasons, particularly because I wanted to be on good terms with the new dean—a part of her team. Additionally, I had been at odds with Castleberry for years and might not have been allowed to teach in the Innsbruck program again if he was the director.<sup>71</sup> Not long after Aldave's appointment, she crossed swords with the former dean when "Castleberry wouldn't immediately give up the dean's office to Aldave, and it required the help of the university president for Aldave to move in."<sup>72</sup> A 1996 article in *Texas Lawyer* later described Castleberry as Aldave's "predecessor and nemesis."<sup>73</sup>

#### V. FACULTY SALARIES

One of the first problems that Aldave encountered as the new dean was that little money had been budgeted for discretionary spending by the dean, and some members of the faculty, like myself, had been scheduled for no salary increase for the second year in a row. This issue was a serious problem for me, such that I raised the issue<sup>74</sup> with Dean Castleberry (which was an

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70. See Johnson, *supra* note 15, at 562–64 (discussing the founding of St. Mary's most successful study abroad program).

71. See *id.* at 591–96 (recalling Castleberry's efforts as dean to terminate "troublemakers" on the faculty).

72. Elder, *supra* note 5, at 11.

73. Elder, *supra* note 17, at 20.

74. Over the course of now forty years on the St. Mary's law faculty, I can recall only one other occasion when I complained about a salary issue. That was when I was leaving the associate deanship in 2005, and there was a question about how my post deanship salary would be calculated. On that occasion, I explained my understanding of past practices, and the leadership of the law school and the university agreed. Overall, I have been treated fairly by St. Mary's University regarding salary matters. If I had been forced to leave the St. Mary's law faculty in 1989 because of inadequate compensation, my departure would not have been unprecedented. In the late 1970s and early 1980s, inadequate compensation caused several experienced law professors to leave the St. Mary's faculty and created vacancies, which brought a new, younger generation of law teachers to St. Mary's between 1980 and 1983. See Johnson, *supra* note 15, at 530–34 (discussing the vacancies and subsequent "hiring boom").

exercise in futility),<sup>75</sup> Academic Vice President Charles Cotrell,<sup>76</sup> and Dean Aldave.<sup>77</sup> Ultimately, Aldave found the funds to raise my salary by \$3,000, bringing my 1989–1990 compensation up to \$54,300.<sup>78</sup> Without Dean Aldave’s help, I would have been stuck with my 1987 salary well into 1990, despite the fact that the yearly inflation rate for consumers was greater than 5%.<sup>79</sup>

Aldave asked those of us who were poorly compensated in comparison to faculty at other law schools to hold on for another year while she pled our case for appropriate salary increases. I was willing to be patient, especially because I trusted Aldave. When my new salary contract arrived in April 1990 for the 1990–1991 academic year, I found that my nine-month compensation had jumped from \$54,300 to \$72,000, which was almost a 33% raise.

Faculty members were required to submit an annual memorandum explaining, with respect to the categories of teaching, scholarship, and service,<sup>80</sup> why they qualified for a merit increase in salary.<sup>81</sup> Aldave did a good job raising salaries throughout the faculty. For several years, those at the top of the merit salary pool got a \$5,000 raise, and in later years the top raises were in the neighborhood of \$3,000 annually. However, in 1995, as part of the settlement of an antitrust action filed by the Department of

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75. Letter from Vincent Johnson, Professor, St. Mary’s Univ. Sch. of L., to James Castleberry, Dean, St. Mary’s Univ. Sch. of L. (Mar. 8, 1989) (on file with author).

76. Memorandum from Vincent Johnson, Professor, St. Mary’s Univ. Sch. of L., to Charles Cotrell, Acad. Vice President, St. Mary’s Univ. (Apr. 19, 1989) (on file with author).

77. Memorandum from Vincent Johnson, Professor, St. Mary’s Univ. Sch. of L., to Barbara Aldave, Dean, St. Mary’s Univ. Sch. of L. (June 5, 1989) (on file with author).

78. See Letter from Barbara Aldave, Dean, St. Mary’s Univ. Sch. of L., to author (June 14, 1989) (on file with author) (“I have submitted to the University Administration a request that your 1989–[19]90 salary be increased by \$3,000, to \$54,300. I am confident that this request will be approved.”).

79. See *1990 CPI and Inflation Rate for the United States*, CPI INFLATION CALCULATOR, <https://cpiinflationcalculator.com/1990-cpi-inflation-united-states/> [<https://perma.cc/737R-6LNW>] (documenting the yearly inflation rate, as of January 1990, at 5.2%).

80. Those three categories were not always prized at St. Mary’s. “Research and publication [were] not a priority during the Raba deanship.” Cantú, *supra* note 1, at 347 n.114. “His interest was classroom performance. He was not interested in publications, he was not interested in any type of service to the bar, or to the community. He was strictly focused on how you p[er]formed in the classroom.” *Id.* at 347 n.114 (quoting Transcript of Audio Tape: Oral History of Charles E. Cantú, comments of Aloysius A. Leopold & Charles E. Cantú to Vincent Johnson (Nov. 9, 2017)).

81. See, e.g., Memorandum from Vincent Johnson, Professor, St. Mary’s Univ. Sch. of L., to Barbara Aldave, Dean, St. Mary’s Univ. Sch. of L. (Jan. 9, 1995) (on file with author) (listing Professor Johnson’s scholarship and service contributions).

Justice against the ABA, the ABA agreed to refrain 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>82</sup> These restrictions substantially weakened the ability of many law school deans, including Aldave, to raise faculty salaries to appropriate levels.<sup>83</sup>

## VI. RECRUITING JUSTICE BRENNAN TO INNSBRUCK

As I wrapped up my year as a Supreme Court Fellow, I had occasion to talk with Justice William J. Brennan Jr. at a reception in the Supreme Court's elegant West Conference Room. Emboldened by Aldave's promise that I would be the director of the Innsbruck program during the summer of 1990,<sup>84</sup> I cajoled Justice Brennan to accept an invitation to teach for St. Mary's in Austria the following year. Brennan seemed interested and agreeable but said only that I should write to him. When I returned to San Antonio in early July 1989, I did just that. Shortly thereafter I received his acceptance.<sup>85</sup> It was spectacular news! I was especially pleased because Justice Brennan's good name had paid for my three semesters of law school at the University of Notre Dame, where I was the William J. Brennan Jr. Scholar.

Aldave, Reamey, and I, as well as many of our colleagues, were amazed and delighted. We quickly planned an outing to Leon Springs, a small town north of San Antonio, where we had an outdoor dinner in a rustic setting and celebrated the good news.<sup>86</sup> Spirits were high. This was a clear sign that the Aldave years were off to a great start.

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82. Michael Ariens, *Law School Branding and the Future of Legal Education*, 34 ST. MARY'S L.J. 301, 316 (2003).

83. *But see* George B. Shepherd & William G. Shepherd, *Scholarly Restraints? ABA Accreditation and Legal Education*, 19 CARDOZO L. REV. 2091, 2257 (1998) (“The law faculty who benefited from the system had captured the ABA committees that established accreditation standards. Lawyers, who are powerful in state legislatures, supported this capture because standards that benefited faculty also benefited lawyers by reducing the supply of new lawyers.”).

84. *See* Letter from Barbara Aldave to author, *supra* note 78 (“You will be appointed the Director of the Innsbruck Program as of the end of this summer term.”).

85. Letter from William Brennan, J., Sup. Ct. of the U.S., to author (Sept. 26, 1989) (on file with author) (“I am highly honored by your invitation . . . and accept with greatest pleasure.”).

86. The dinner in Leon Springs included a dozen or so persons connected to the law school. The plan was for each person to pay for his or her share of the bill. When the money was collected at the end of the meal, the total was much less than what was needed. Eventually, to resolve the problem

I served as director of the Innsbruck program for twelve years, during all of Aldave's deanship and beyond.<sup>87</sup> Aldave gave me (and Reamey, the co-director) largely free reign to build the program, which took on the name it still bears, the St. Mary's University Institute on World Legal Problems. I was careful to keep Aldave informed of significant developments and was pleased when she once commented that I gave her just the right amount of information—enough to know what was going on but not so much as to get bogged down in the details.

As director, I recruited five more justices to teach for St. Mary's in Innsbruck: Chief Justice Rehnquist (1991, 1994, 1998, and 2000), Justice John Paul Stevens (1993), Justice Antonin Scalia (1992), Justice Ruth Bader Ginsburg (1995), and Justice Sandra Day O'Connor (2001). This steady stream of celebrities brought a notable degree of luster to the Aldave years. When I negotiated the details of Rehnquist's initial trip to Innsbruck during a reception at the Supreme Court,

Rehnquist called me over to the side of the Lower Great Hall and said that Mrs. Rehnquist's health had improved to the point that St. Mary's could plan on both of them coming to Innsbruck in the summer of 1991. . . . I called Dean Aldave that evening [from a row of pay phones behind a large statue of John Marshall] to share the good news with her. Notwithstanding the fact that Aldave is a "liberal's liberal" and that Rehnquist was a "conservative's conservative," Dean Aldave was very pleased.<sup>88</sup>

When, during a visit to his chambers for tea in January 1993, Rehnquist told me that he would be happy to teach for St. Mary's again in 1994,<sup>89</sup> I

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in a way that would not dampen the mood, I quietly added forty or so dollars to the pot and paid the bill. I had long forgotten those facts until years later when Dean Aldave recalled the dinner. She had seen how things played out that evening and had not forgotten my generosity.

87. That was not Aldave's only appointment of me to a position that ended up lasting for years. In 1990, Aldave asked me to serve as the faculty coordinator of judicial internships. Now, more than thirty years and five deans later, I am still playing that role. In 1997, Aldave asked me to chair the Law Journal Faculty Advisory Committee. I have held that position for at least twenty of the subsequent years.

88. Johnson, *supra* note 66, at 15.

89. Similar to my experience with Chief Justice Rehnquist, Lance Kimbro documented:

Chief Justice Rehnquist liked Innsbruck and was eager to return to teach again . . . . It was a great escape from the heat of Washington, D.C.

. . . .

again sought out the pay phones on the ground floor to share the news with Aldave. She not only welcomed the news but also ultimately joined with Chief Justice Rehnquist to co-teach his Innsbruck course on the Supreme Court in American History.<sup>90</sup>

Justice Ruth Bader Ginsburg and her husband, Professor Martin Ginsburg of Georgetown University, both taught for St. Mary's in Innsbruck in 1995. The friendships that were made during that trip led Aldave to host a reception in the Ginsburgs' honor in Washington, D.C., in a historic house across the street from the Supreme Court on November 16, 1996. Justice Ginsburg was presented with the Rosewood Gavel Award, which the faculty awards to a distinguished jurist each year. Then called the Sewall-Belmont House,<sup>91</sup> and now called the Belmont-Paul House,<sup>92</sup> the building was once the home of the Women's Party and the site of many efforts that ultimately contributed to the passage of the Nineteenth Amendment, which gave women the right to vote.

Justice Brennan and I had planned to co-teach a course on Comparative Libel Law (United States versus United Kingdom) in 1990, but he never made it to Innsbruck. Brennan's health turned bad around March of 1990, and he was forced to withdraw from all public engagements.<sup>93</sup> Professor Laurence Tribe of Harvard Law School graciously substituted for

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In one conversation, Chief Justice Rehnquist told Judge [David] Ezra: "I have done many programs with St. Mary's because I think so highly of the school and everyone I have worked with there. They all have treated me so well, and I have enjoyed interacting with the students—they have all been receptive and bright." Rehnquist's affinity for the Innsbruck program was so great that upon receiving an invitation to participate in the Summer 2000 program, he responded with a message noting he had tentatively agreed to participate in the American Bar Association (ABA) meeting in London, but informed Professor Johnson in his response: "If I could not do both at the same time, I would probably choose Innsbruck over London."

Lance Kimbro, Tribute, *Ezra, Rehnquist, and St. Mary's University*, 52 ST. MARY'S L.J. xi, xxi–xxii (2020) (footnote omitted) (quoting Johnson, *supra* note 66, at 5 n.17).

90. See Aldave, *supra* note 9, at 536 ("Near the end of June, I flew to Washington, D.C., to meet with Chief Justice William H. Rehnquist, with whom I had agreed to co-teach a week-long course offered by St. Mary's in Innsbruck.").

91. See E-mail from Barbara Aldave, Dean, St. Mary's Univ. Sch. of L., to the Innsbruck Program Faculty (Sept. 25, 1996, 16:23 CST) (on file with author) (discussing the award reception at the Sewall-Belmont House).

92. *Belmont-Paul Women's Equality*, NAT'L PARK SERV., <https://www.nps.gov/bepa/index.htm> [<https://perma.cc/982W-PEZD>].

93. See Letter from William Brennan, J., Sup. Ct. of the U.S., to Barbara Aldave, Dean, St. Mary's Univ. Sch. of L. (Mar. 6, 1990) (on file with author) ("I have no choice but to cancel all . . . engagements.").

Justice Brennan by lecturing not on libel law but on drafting constitutions for the newly free countries of Eastern Europe. While that was not the same as having a Supreme Court justice on the faculty, it was a very respectable “save.” Decades later, while working on a degree at the London School of Economics, I tackled the subject Justice Brennan and I had planned to address and summed up what I learned in an article on “Comparative Defamation Law,” published by the University of Miami.<sup>94</sup>

## VII. PROGRESSIVE SHIFT OF DIRECTION

Aldave’s experience in education—as both a student and a teacher—probably multiplied the chances that, as a law school dean, she would naturally move in a progressive direction. A graduate of Stanford University (B.S., 1960)<sup>95</sup> and the University of California at Berkeley (J.D., 1966), Aldave served as an assistant professor at the University of Oregon from 1970 to 1973 and a visiting professor at the University of California at Berkeley from 1973 to 1974.<sup>96</sup> After leaving the St. Mary’s deanship and law faculty, Aldave served as a visiting professor at Boston College (1999 to 2000), then she rejoined the law faculty at the University of Oregon (2000 to 2013).<sup>97</sup>

The one notable respect in which Aldave was not a typical liberal is that she was not “pro-choice.” That caused her friends on the faculty to lament that she would never be appointed to a vacancy on the United States Supreme Court. Aldave would have been too liberal to be appointed by a Republican president and not liberal enough to be appointed by a Democratic president.

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94. See Vincent R. Johnson, *Comparative Defamation Law: England and the United States*, 24 U. MIAMI INT’L. & COMP. L. REV. 1, 6 (2016) (“[D]uring the past half century, the paths of England and the United States have significantly diverged in the field of defamation. So great are the differences that in recent decades United States courts have refused to enforce English judgments arising from claims for libel and slander.”). See generally MICHAEL ARNHEIM, *ANGLO-AMERICAN LAW: A COMPARISON* 303–23 (2019) (discussing defamation through a comparative lens).

95. Aldave’s undergraduate degree was in chemistry. See Melody Finnemore, *Barbara Bader Aldave, Katina Saint Marie Fight for Women Behind Bars: A Shared Passion*, 72 OR. ST. B. BULL. 44, 44 (2012) (“As a girl growing up in Puyallup, Wash., Aldave developed a passion for math and science. By high school, she was a state debating champion and had already developed an interest in the law as well.”).

96. Press Release, Marquis Who’s Who, *supra* note 48.

97. See Univ. of Or. Sch. of L., *Barbara Aldave: A Legal Legacy*, AROUND THE O (May 12, 2013), <https://around.uoregon.edu/content/barbara-aldave-legal-legacy> [<https://perma.cc/F3FN-EJS2>] (discussing Aldave’s return to Oregon).

Looking back on her arrival at St. Mary's in an article she wrote near the mid-point of her deanship, Aldave recalled:

The [St. Mary's] Law School had been, by anyone's standards, a conservative institution. The curriculum was extremely limited, and most of the course of study was mandatory. In an area of the country in which Hispanics constitute the majority, the student body was overwhelmingly Anglo, and the faculty was almost exclusively white and male. A dress code and strict disciplinary rules were in effect. The place reminded me of a military camp.<sup>98</sup>

After her arrival, it was not long before Aldave began to change the law school in ways great and small. Her first act was to abolish the widely hated rule that, during the Castleberry years, had prohibited students from wearing shorts at the law school.<sup>99</sup>

While serving as dean, Aldave chaired the Texas Supreme Court's Gender Bias Task Force (1991 to 1994).<sup>100</sup> She hosted special lectures at the law school on human rights,<sup>101</sup> civil rights,<sup>102</sup> and international law.<sup>103</sup> Aldave

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98. Aldave, *supra* note 58, at 292.

99. See Cantú, *supra* note 1, at 357 ("When Barbara Aldave became dean in 1989, she abolished the no-shorts rule. When she was moving in, her husband, Raphael, was carrying a box for her from their car and they took it into the law library for storage. Raphael walked in, wearing shorts, with this box and every student in the library at the time stood up and gave him a standing ovation. The ban on shorts lasted about a decade under Castleberry.")

100. Press Release, Marquis Who's Who, *supra* note 48.

101. See, e.g., Barbara Bader Aldave, *Introduction of Thomas Buergethal (Prior to His Address Closing a Human-Rights Symposium Sponsored by St. Mary's University School of Law on February 14-15, 1991)*, 23 ST. MARY'S L.J. 1, 1 (1991) (introducing a guest speaker at one of the human rights symposia).

102. For the inaugural speech in the Dean's Lecture Series, Dean Aldave turned to José Roberto Juárez, a Regional Director of the Mexican American Legal Defense and Educational Fund (MALDEF), who spoke on the topic of "Civil Rights and the Rehnquist Court." Letter from Vincent Johnson, Professor, St. Mary's Univ. Sch. of L., to A. Leon Higginbotham, C.J., U.S. Ct. of Appeals for the Third Cir. (Jan. 11, 1991) (on file with author). Juárez later joined the St. Mary's law faculty, where he served until 2006. José R. (Beto) Juárez Jr., NOVA SE. UNIV., <https://www.law.nova.edu/faculty/administration/juarez-jr-jose-beto.html> [<https://perma.cc/FZQ7-ELVJ>]. Kenneth Starr, the Solicitor General of the United States, spoke at both the law school and the *St. Mary's Law Journal's* banquet on March 23, 1990.

103. Thomas Schoenbaum, the Rusk Professor of Law at the University of Georgia College of Law, addressed labor and environmental issues related to the North American Free Trade Agreement. See generally Thomas J. Schoenbaum, *Agricultural Trade Wars: A Threat to the GATT and Global Free Trade*, 24 ST. MARY'S L.J. 1165 (1993) (contending domestic trade policy was partially responsible for the agricultural crisis of the 1990s).

“emerged as a national leader . . . when she defended affirmative action from attacks in Texas and California.”<sup>104</sup>

With change came criticism. For example, according to an article published in *Texas Lawyer*, former Dean Ernest Raba “said Aldave had created a ‘fungus of neo-paganism’ at the law school.”<sup>105</sup> For a long time, Aldave just shrugged such criticism off. In an article she wrote, she explained to her readers, “Incidentally, back home in Texas, most of those who call me a ‘liberal’ intend to be about as flattering as those who refer to me as a ‘Yankee’ or a ‘feminazi’ or ‘The Wicked Witch of the West.’”<sup>106</sup>

### VIII. OPPOSING THE DEATH PENALTY

Aldave was an energetic opponent of the death penalty. She established an anti-death penalty clinic at the law school, headed by a very capable new faculty member, Jeff Pokorak.<sup>107</sup> Aldave also lent her stature and visibility to the Texas Resource Center, “a community defender organization that recruited and assisted counsel for death-row inmates in federal habeas corpus proceedings.”<sup>108</sup> Aldave invited Sister Helen Prejean,<sup>109</sup> the author of the best seller<sup>110</sup> *Dead Man Walking*,<sup>111</sup> to campus and gave out scores

104. Russell, *supra* note 3, at 8A.

105. Elder, *supra* note 2, at 2.

106. Aldave, *supra* note 58, at 291.

107. “In 1993, Prof. Pokorak joined the faculty at St. Mary’s University School of Law. . . . In 2001[,] he left Texas to join the faculty at Suffolk University Law School.” Jeffrey Pokorak, SUFFOLK UNIV., <https://www.suffolk.edu/academics/faculty/j/p/jeffrey-pokorak> [https://perma.cc/Y88F-4NQQ].

108. Aldave, *supra* note 9, at 535.

109. See *Sister Helen Prejean: Biography*, MINISTRY AGAINST THE DEATH PENALTY, <https://www.sisterhelen.org/biography/> [https://perma.cc/L3WQ-LUUH] (“Sister Helen Prejean is known around the world for her tireless work against the death penalty. She has been instrumental in sparking national dialogue on capital punishment and in shaping the Catholic Church’s vigorous opposition to all executions.”).

110. “*Dead Man Walking* by Catholic nun Helen Prejean was a best seller thanks to the 1995 movie starring Susan Sarandon.” Bob Minzesheimer, *Five Questions for Sister Helen Prejean*, USA TODAY (June 19, 2013), <https://www.usatoday.com/story/life/books/2013/06/19/dead-man-walking-sister-helen-prejean-susan-sarandon/2435349/> [https://perma.cc/Z33G-5HHQ].

111. See *Dead Man Walking* (book), WIKIPEDIA, [https://en.wikipedia.org/wiki/Dead\\_Man\\_Walking\\_\(book\)](https://en.wikipedia.org/wiki/Dead_Man_Walking_(book)) [https://perma.cc/9X4K-HLYP] (“*Dead Man Walking* (1993) is a work of non-fiction by Sister Helen Prejean, a Roman Catholic nun and one of the Sisters of Saint Joseph of Medaille based in New Orleans. Arising from her work as a spiritual adviser to two convicted murderers on death row, the book is set largely at the Louisiana State Penitentiary (Angola) in West Feliciana Parish, Louisiana. It examines moral issues related to the men’s acknowledgement of their crimes and to the state’s use of the death penalty.”).

of copies of Prejean's acclaimed book.<sup>112</sup> Aldave also encouraged the *St. Mary's Law Journal* to focus its 1998 annual symposium on capital punishment,<sup>113</sup> and told the editors to send copies of the printed volume to each of the nine justices on the United States Supreme Court.

In exchange for these humanitarian efforts, Aldave was punished by the Texas legal establishment. At the instigation of an assistant district attorney, Aldave was appointed by a judge to serve as counsel for a death-row inmate, Caruthers Alexander, who had been convicted (twice) of raping and murdering a young woman. It was a role for which Aldave had no relevant legal experience.<sup>114</sup> The appointment was pay-back for Aldave having the temerity and decency to oppose capital punishment.<sup>115</sup> Aldave's initial reaction was disbelief:

I was a full-time academic, a specialist in corporate law and securities regulation. I had handled only one criminal case in my entire professional career, and that case had involved the misuse of a credit card. In short, I was totally unqualified to represent any felon, especially one awaiting execution.<sup>116</sup>

Over the course of more than a half dozen years—long past the end of her deanship—Aldave represented Caruthers, guided and assisted by Pokorak. Aldave was present when her client was executed in January 2001.<sup>117</sup>

Aldave tells this story in vivid, personal terms in an article that appeared in the *University of Toledo Law Review* in 2004. The saga is grim and depressing, and what it “meant” to Aldave was ultimately unclear. As she explained:

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112. See Elder, *supra* note 17, at 20 (“Aldave presses a copy of Prejean’s book into the hands of visitors; the school bought hundreds of copies.”).

113. See generally Carol S. Steiker & Jordan M. Steiker, *The Constitutional Regulation of Capital Punishment Since Furman v. Georgia*, 29 ST. MARY’S L.J. 971 (1998) (following Dean Aldave’s request, the *St. Mary’s Law Journal* focused its symposium on the death penalty).

114. But see Aldave, *supra* note 9, at 538 (“I, who had been a chemist in my youth, found the forensic evidence and expert testimony that had been used against Caruthers to be surprisingly weak.”).

115. See *id.* at 536 (“[T]he deputy district attorney who had originally suggested my appointment informed the reporter that I had been singled out because I opposed capital punishment and served on the board of directors of the Texas Resource Center.”).

116. *Id.* at 535.

117. *Id.* at 543.

I wish I could say that my experience with Caruthers transformed my life, and that I have lived as a[] heroically virtuous woman ever since the date of his execution. In truth, however, even now I do not know what to make of it all. I think of Caruthers often, and my eyes still fill with tears whenever I pause to reflect for more than a few seconds on the hopes and the fears, the triumphs and the tragedies, the good times and the bad, that we shared with each other. Nevertheless, I frequently ask myself[,] . . . “What does it all mean, anyway?”

. . . .

. . . It is hard for me to understand, even now, why I was appointed to be his lawyer. I have no doubt, however, that I was destined from the beginning to be his friend.<sup>118</sup>

The Caruthers story is a sobering tale about the limits of what even an extraordinary and normally optimistic lawyer could do to fight the inhumanity of capital punishment in the nation’s most pro-death penalty state.<sup>119</sup>

#### IX. ENERGY AND CHAOS

In the early part of the Aldave years, there was a definite sense of energy at the law school.<sup>120</sup> Ideas and plans filled the air, relating to such fundamental matters as: innovative teaching;<sup>121</sup> commencement exercises;<sup>122</sup> physical plant improvements;<sup>123</sup> book acquisitions;<sup>124</sup> faculty

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118. *Id.* at 543–44.

119. *Cf. Death Penalty States 2022*, WORLD POPULATION REV., <https://worldpopulationreview.com/state-rankings/death-penalty-states> [<https://perma.cc/9BDK-7JJH>] (“Texas has the highest number of executions . . .”).

120. Letter from Vincent Johnson to A. Leon Higginbotham, *supra* note 102 (“Our new dean, Barbara Bader Aldave . . . had brought great energy to the tasks before her and has given high priority to increasing access by minorities to both legal education and the administration of justice.”).

121. Memorandum from Vincent Johnson, Professor, St. Mary’s Univ. Sch. of L., to Geary Reamey, Assoc. Dean, St. Mary’s Univ. Sch. of L. (Sept. 14, 1994) (on file with author).

122. Memorandum from Vincent Johnson, Professor, St. Mary’s Univ. Sch. of L., to Barbara Aldave, Dean, St. Mary’s Univ. Sch. of L. (June 17, 1994) (on file with author).

123. Memorandum from Vincent Johnson, Professor, St. Mary’s Univ. Sch. of L., to Barbara Aldave, Dean, St. Mary’s Univ. Sch. of L., and Robert Summers, Professor, St. Mary’s Univ. Sch. of L. (Mar. 9, 1993) (on file with author).

124. Memorandum from Vincent Johnson, Professor, St. Mary’s Univ. Sch. of L., to Robert Summers, Professor, St. Mary’s Univ. Sch. of L. (Feb. 5, 1992) (on file with author).

hiring and guest speakers;<sup>125</sup> and summer research grants.<sup>126</sup> When Justice Thurgood Marshall died in January 1993, I showed a documentary at the law school entitled *The Road to Brown*,<sup>127</sup> which pays tribute to Charles Hamilton Houston, the man who successfully litigated the cases leading to *Brown v. Board of Education*.<sup>128</sup> After a student who had studied in Innsbruck suggested that there was a need for outdoor dining facilities at the university, Aldave installed circular tables with umbrellas in the law school courtyard and had a gazebo built by Brother Tom Suda for use as a place to sell sandwiches. Aldave twice persuaded the Association of American Law Schools to hold its annual meeting in San Antonio, which brought thousands of law professors to the city and raised the visibility of St. Mary's University School of Law.

Nothing was more fun than to be invited to dinner at Aldave's Victorian mansion, located in San Antonio's Monte Vista Historic District.<sup>129</sup> The wine flowed, and the stories were endless, and guests were mesmerized by Aldave's wit, charm, and intellect. Aldave presided over meals catered on a long dining room table that seated perhaps twelve people. When Dean Jozef Krukowski of Catholic University in Lublin, Poland, was honored at a dinner at Aldave's home in April 1992, he looked around in amazement and remarked, "This looks like the Kremlin!"

There was also—sometimes—a sense of chaos at the law school. Concerns were raised about building security,<sup>130</sup> the telephone system,<sup>131</sup> course registrations that exceeded classroom seating capacity,<sup>132</sup> and leaks

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125. Memorandum from Vincent Johnson, Professor, St. Mary's Univ. Sch. of L., to Barbara Aldave, Dean, St. Mary's Univ. Sch. of L. (Feb. 4, 1992) (on file with author).

126. Memorandum from Dean Aldave to The Faculty, (Feb. 26, 1991) (on file with author).

127. THE ROAD TO BROWN, (California Newsreel 1990) (documenting the cases leading to *Brown v. Board of Education*). See generally Vincent Robert Johnson, *Teaching Transformative Jurisprudence*, 41 J. LEGAL EDUC. 533 (1991) (reviewing *The Road to Brown*).

128. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

129. "Founded in the late [nineteenth] century, the Monte Vista neighborhood has been a home to thousands of residents over the decades and continues to be a beacon of architectural pride [in San Antonio]." MONTE VISTA HIST. ASS'N, <https://montevistasa.org/> [<https://perma.cc/9AQE-6LWM>].

130. Memorandum from David Dittfurth, Assoc. Dean, St. Mary's Univ. Sch. of L., to the Law Faculty (June 10, 1992) (on file with author).

131. Memorandum from Vincent Johnson, Professor, St. Mary's Univ. Sch. of L., to Barbara Aldave, Dean, St. Mary's Univ. Sch. of L. (May 8, 1991) (on file with author).

132. See E-mail from Vincent Johnson, Professor, St. Mary's Univ. Sch. of L., to Law Administration Faculty (undated) (on file with author) (discussing the "chaos" caused "by registering

in the roof.<sup>133</sup> Many of these problems were just the usual challenges of running a multi-building facility that housed a large educational program. Occasionally, however, there were a few problems that were absolutely frustrating and inexplicable. For example, it took me months to get the law school and university to pay the salaries of visiting faculty members who had taught for St. Mary's in Innsbruck during the summer of 1996. There was no good explanation for the delays.

Aldave encouraged faculty members to take an active role in the Association of American Law Schools and its professional development programs. Associate Dean Geary Reamey added a column to the weekly campus newsletter, the *Witan*, which provided wise avuncular advice to the student body in a manner that very effectively mixed insight with humor.

#### X. FACULTY MEETING RULES

By the mid-1990s, there was some concern within the faculty that monthly faculty meetings during the fall and spring semesters were being misused to deprive members of the voting faculty of adequate notice regarding what issues would be debated and decided. The concern was not so much with routine matters placed on a meeting agenda at the request of a faculty committee but with motions unexpectedly offered at a meeting by faculty members that caught others by surprise. In response to these concerns, the faculty adopted a set of Faculty Meeting Rules on February 14, 1995. The Rules addressed lawyerly concerns, such as the number and length of faculty meetings, the distribution of agendas and minutes, the selection of a parliamentarian, the applicability of Robert's Rules of Order, and the counting of votes. According to the rules, abstentions were ordinarily ignored, and "a motion [was] carried if the yeas outnumber[ed] the nays."<sup>134</sup> How abstentions would be treated in the vote counting was an important issue because there has been a long tradition of at least a few

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too many students for classes," including "seats, chairs, and tables . . . scattered all about the teaching area").

133. Memorandum from Vincent Johnson, Professor, St. Mary's Univ. Sch. of L., to Robert Summers, Professor, St. Mary's Univ. Sch. of L. (Oct. 31, 1990) (on file with author).

134. ST. MARY'S UNIV. SCH. OF L., ST. MARY'S UNIV., ST. MARY'S UNIVERSITY SCHOOL OF LAW FACULTY MEETING RULES 2 (1995) [hereinafter FACULTY MEETING RULES].

abstentions at faculty meetings, particularly on controversial proposals.<sup>135</sup> As initially adopted, the Faculty Meeting Rules provided:

A voting faculty member or committee may request that a matter be placed on the agenda and the agenda shall contain that request. Copies of relevant materials, including any motions that are intended to be offered, shall be distributed to members of the voting faculty . . . at least three (3) business days prior to the meeting. A failure to comply with these provisions precludes a vote on the matter in question. However, the necessity of compliance with this rule may be dispensed with by a vote of 60% of the voting members of the faculty.<sup>136</sup>

The Faculty Meeting Rules have been amended on several occasions and are still in force.<sup>137</sup> One important amendment to the original version of the rules allowed the dean to “refer a matter to [a] . . . committee or administrator, rather than place [it] on the agenda.”<sup>138</sup> The committee or administrator must then report on the matter at the next meeting.<sup>139</sup> “At that meeting, a majority of the faculty may decide to open the issue for discussion and possible action.”<sup>140</sup>

Another very important provision in the rules states, “A vote shall be by secret ballot, if any member of the voting faculty so requests.”<sup>141</sup> This practice, which was followed at faculty meetings long before the written rules were adopted, is intended to protect junior faculty members from retaliation by the dean or another faculty member.<sup>142</sup> In practice, the rule

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135. For example, on a major proposal in October 2019 to overhaul the upper-level course requirements, there were nineteen votes in favor, thirteen opposed, and four abstentions. Vincent R. Johnson, *The End of the Golden Age of American Legal Education: My Year as Interim Dean*, 52 TOL. L. REV. 289, 321 (2021).

136. FACULTY MEETING RULES, *supra* note 134, at 1 n.2.

137. *See id.* at 1 n.1 (“Several provisions have been amended at various times . . .”).

138. *Id.* at 1.

139. *Id.*

140. *Id.*

141. *Id.* at 2.

142. On one occasion, the secret-ballot rule was invoked not to protect faculty members from the dean but to protect the dean from faculty members. In May 1999, when Dean Bill Piatt (Aldave’s successor) was approaching the end of his first year at St. Mary’s, a group of faculty members (generally former Aldave supporters) wanted to topple Piatt by securing a no confidence vote against him at the last faculty meeting of the year. At the beginning of the meeting, Piatt reminded everyone that it was essential that the meeting end at a certain hour because faculty members had to drive about fifteen miles to attend a luncheon at the Dominion Country Club honoring our top law graduates. The no

has worked well. A junior faculty member with concerns normally does not invoke the rule but arranges for a trusted tenured faculty member to do so without disclosing the source of the request.

## XI. WOMEN IN CHARGE

For several months in early 1991, St. Mary's was a law school with a female dean (Aldave), located in a city with a female mayor (Lila Cockrell),<sup>143</sup> in a state with a female governor (Ann Richards).<sup>144</sup> Women ruled. It was much the same on the law school campus.

All three of Aldave's associate deans were men: David Dittfurth (1989 to 1993); Gerald S. Reamey (1993 to 1997), and José Roberto Juárez (1997 to 1998). However, on many matters, Aldave's closest friends and advisors were women. According to Aldave, "Elise Garcia, the Director of Development and Communications" was her "right hand and closest confidante[] during [her] time as dean of St. Mary's University School of Law."<sup>145</sup> Professor Marsha Huie, a competition law expert who often exuded the charm of a good storyteller, could always get the dean's ear and could sometimes nudge a pending decision one way or the other. Mary Stich, the Director of Career Services, was a highly intelligent and congenial lawyer who could get things done. Stich was (and remains) very well connected and respected in the San Antonio legal community.

## XII. THE SCHOLAR

When Aldave joined the St. Mary's law faculty, there was one law review, the *St. Mary's Law Journal*.<sup>146</sup> The *Journal* had established a great reputation

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confidence motion was not presented until well into the faculty meeting. To protect Piatt from the coup, I moved for a secret ballot. Before the ballots could be distributed, collected, and counted, the clock reached the appointed hour, and the meeting was declared adjourned. The coup failed (as it might have done so even if the ballots had been counted) and Piatt successfully served for eight more years as dean.

143. See Carmina Danini & Melissa Fletcher Stoeltje, *Lila Cockrell, San Antonio's First Female Mayor, Left a Long and Pioneering Legacy*, SAN ANTONIO EXPRESS-NEWS, <https://www.expressnews.com/news/local/article/Lila-Cockrell-first-woman-mayor-of-San-Antonio-14399011.php> [<https://perma.cc/JH93-NV9Z>] (describing how "[s]he won [the 1988 election] and served from 1989 to 1991").

144. See *Ann W. Richards*, LEGIS. REFERENCE LIBR. OF TEX., <https://rl.texas.gov/legLeaders/governors/govPage.cfm?governorID=42> [<https://perma.cc/6JS6-6LQR>] (mentioning Richards's term as Governor of Texas was from "January 15, 1991 [to] January 17, 1995").

145. Aldave, *supra* note 9, at 541.

146. See Cantú, *supra* note 1, at 327–28 (discussing the founding of the *St. Mary's Law Journal*).

for producing legal scholarship dealing with issues of practical importance to the bench and bar.<sup>147</sup> Aldave created a second law review that was intended to focus on minority issues.<sup>148</sup> The name of the new periodical was originally intended to be the *Hispanic Scholar*. However, during the time that it took to bring the first issue to print in 1999 (after Aldave's deanship had ended), the name changed to the *Scholar: St. Mary's Law Review on Minority Issues*. The first fourteen volumes were published under that title. Since volume fifteen, the name of the publication has been the *Scholar: St. Mary's Law Review on Race and Social Justice*. Dean Emeritus Bill Piatt, Aldave's successor, published a history of the *Scholar* to mark its twentieth anniversary.<sup>149</sup>

### XIII. STRAIGHTENING OUT TENURE

One of the burdensome tasks that Aldave faced as the new dean was to resolve pending issues related to tenure.<sup>150</sup> This was no small assignment. The rules that applied during the Castleberry deanship were unclear about such basic things as whether the law school had an "up or out"<sup>151</sup> tenure system. Additionally, some faculty members believed that certain faculty candidates had been wrongly denied tenure under Castleberry.<sup>152</sup> Others believed that persons placed on the tenure track by Castleberry were not qualified for tenure. These issues came to a head quickly and demanded attention. Several members of the faculty, including myself,<sup>153</sup> who had

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147. See Jim Paulsen & James Hambleton, *Reviewing the Law Reviews, Texas-Style*, 56 TEX. B.J. 284, 284 (1993) ("[T]he *St. Mary's Law Journal* barely nudges out the venerable *Texas Law Review* for the number one position.").

148. See Cantú, *supra* note 1, at 328 ("Our second law review, [the] *Scholar*, is solely attributable to Barbara Aldave.").

149. See generally Bill Piatt, *Que Viva the Scholar!*, 20 SCHOLAR: ST. MARY'S L. REV. ON RACE & SOC. JUST. 1 (2017) (marking the twentieth anniversary of the *Scholar* by retelling its history).

150. See, e.g., Cantú, *supra* note 1, at 371-73 (discussing the "Tenure Battles" of the early 1990s).

151. At many universities, "[t]enure is an 'up or out' decision: if the applicant is unsuccessful, her career at that institution comes to an end and the process must begin all over again (if at all somewhere else)." James C. Todd, *Track Record: Introduction to Tenure Litigation in Higher Education*, 80 TEX. B.J. 508, 508 (2017).

152. See Letter from Vincent Johnson, Professor, St. Mary's Univ. Sch. of L., to Charles Cottrell, Acad. Vice President, St. Mary's Univ. (Feb. 24, 1989) (on file with author) (indicating "the political environment at the law school would presently preclude any fair consideration of any law professor's tenure application").

153. See Johnson, *supra* note 15, at 591 ("In the spring of 1987, [I] had applied for and been denied tenure.").

been previously denied tenure were now granted tenure. Five other new tenure candidates were denied tenure. Some of the unsuccessful candidates sued the university, and ultimately one of the denials was changed to a grant of tenure.<sup>154</sup>

The issues related to tenure consumed much of Aldave's time as a new dean. The issues were not resolved until sometime in the middle of her deanship. There is no way these difficult issues could have been avoided or easily resolved on terms to which everyone agreed. Inevitably, the tenure battles were bruising and divisive. The best that can be said is that in the more than a quarter century since those battles were fought, there has never been another tenure controversy at the law school. Very close attention is paid to the requirements of the tenure rules and new faculty members are mentored to maximize their chances of being awarded tenure.

At least one of the plaintiffs who sued St. Mary's for denial of tenure made an unfortunate choice of attorney. When Paul Bartlett took a nonsuit on his claim, Aldave noted "with a slight smile" that his lawyer was occupied.<sup>155</sup> A newspaper article clarified that Bartlett's attorney was "accused of trying to kill his ex-wife in a murder-for-hire scheme."<sup>156</sup>

#### XIV. EXPANDING CLINICAL EDUCATION

Aldave's greatest programmatic success as the dean at St. Mary's came in the field of clinical legal education. She established a robust, vibrant, highly professional clinical program that was unlike anything the law school—or San Antonio—had ever seen.<sup>157</sup> Aldave explained her vision and its implementation in the following terms:

A law school can eloquently and effectively express its commitment to justice[] and encourage its students to nourish and develop their highest and best instincts[] by founding and supporting clinical programs that are designed to make the law more responsive to the needs of the poor or to provide legal

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154. This case involved Lee Lytton, who went on to become a popular teacher of property law and ultimately held the James N. Castleberry Jr. Chair for Oil and Gas Law. See Robert L. Summers Jr., *Lee Hargis Lytton III: A Most Extraordinary, Interesting and Instructive Life*, 50 ST. MARY'S L.J. xiii, xv–xvii (2019) (discussing Lytton's successful years at St. Mary's, and his eventual tenure controversy).

155. Elder, *supra* note 17, at 20.

156. *Id.*

157. See Univ. of Or. Sch. of L., *supra* note 97 ("During her tenure as dean, the school established seven legal clinics and won a national award from the American Bar Association for its commitment to preparing its students for public-interest careers.").

services to underrepresented groups of people. Because St. Mary's is a Catholic law school *and* is located in one of the poorest large cities in the United States, I believe that we have a special obligation to do everything possible to introduce our students to the rewards of helping or empowering others. Our first three clinics were a Poverty Law Clinic, which served primarily women, children, the elderly, and inhabitants of homeless shelters; a Juvenile Justice Clinic, which provided representation to young people accused of crime; and a Capital Punishment Clinic, which assisted death-row inmates in habeas corpus proceedings. These three clinics now have been consolidated and expanded into a Civil Justice Clinic and a Criminal Justice Clinic. We have added an Immigration Clinic, and we will open a Human Rights Clinic this fall.

Not all members of the San Antonio community have welcomed the establishment of these clinical programs. . . . Whenever anyone is so bold as to complain directly to me about our clinics, however, I have a ready answer. We at *St. Mary's* University School of Law are virtually obliged to sponsor the particular clinical programs that we have initiated. . . . After all, for whom is our school *named*? Once we strip away the heavily romanticized tradition that surrounds her, what does *Mary* mean to us Catholics? In the early part of the New Testament, Mary is introduced to us as an unmarried, pregnant teenager. When last we hear of her, she is an old woman, at least by the standards of her time—a widow who looks to friends for sustenance and support. Between her major appearances, she has searched for shelter, fled from persecution, and watched the execution of her son. Somehow I have to believe that such a woman, whom I view as a strong and courageous figure, would heartily approve of programs—instituted at the only law school bearing her name—that are designed to aid the poor and the homeless, immigrants and refugees, the young and the elderly, and inhabitants of death row.<sup>158</sup>

Aldave's key role in developing clinical education at St. Mary's is chronicled in a detailed history of the clinical education program written by Sue T. Bentsch, a professor who played a pivotal role in those efforts beginning in 1990.<sup>159</sup> By the time Aldave was starting her third and final term as dean, an article in the *Texas Observer* reported, "Each year dozens of

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158. Aldave, *supra* note 58, at 294–95.

159. See 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 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." (footnote omitted)).

students pass through a [St. Mary's] clinical program unrivaled in Texas for its scope—there are nine lawyer-clinicians overseeing the students—and in its unapologetically progressive tone.”<sup>160</sup> Jon Dubin, who was a member of the St. Mary's law faculty from 1990 to 1999<sup>161</sup> and served as co-director of the clinic, said, “I don't think any school has changed this dramatically . . . and no school has developed a clinical empire this rapidly anywhere in the country.”<sup>162</sup> In the eyes of some, Aldave's robust clinical education program was a good fit for San Antonio. In an article published in *Texas Lawyer*, Robert Elder Jr. wrote:

There's a tradition of public policy work and organizing in the city and its leaders are nationally known: the late Willie Velasquez, head of the Southwest Voter Research and Education Project; [seventy-five]-year-old Maury Maverick Jr., who did groundbreaking civil rights cases in Texas when few others would touch them: MALDEF's Albert Kauffman, lead lawyer in the Edgewood school-finance suits . . . ; [and] Norma Cantú, a former MALDEF attorney who now heads the office of civil rights at the U.S. Department of Education.<sup>163</sup>

The same article listed cases in which the St. Mary's clinicians had achieved notable success. It quoted Maverick as stating that while typical law schools “graduate technicians” who have a “lot in the head but not much in the heart,” Aldave “reversed that trend” by focusing on clinics.”<sup>164</sup>

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160. Elder, *supra* note 5, at 10.

161. See Janet Donohue, *Associate Dean Jon Dubin Receives National Award as Outstanding Advocate for Clinical Legal Education*, RUTGERS UNIV. (May 1, 2014), <https://www.newark.rutgers.edu/news/associate-dean-jon-dubin-receives-national-award-outstanding-advocate-clinical-legal-education> [<https://perma.cc/PQ9G-AUAV>] (noting Dubin began teaching at St. Mary's in 1990 and arrived at Rutgers in 1999).

162. Elder, *supra* note 5, at 10 (internal quotation marks omitted).

163. Elder, *supra* note 17, at 20. Albert Kauffman is now a member of the St. Mary's law faculty. *Albert Kauffman*, ST. MARY'S UNIV. SCH. OF L., <https://law.stmarytx.edu/academics/faculty/albert-kauffman/> [<https://perma.cc/6P6P-PH43>].

164. Elder, *supra* note 17, at 20.

XV. HIRING MEMBERS OF THE CLINICAL FACULTY<sup>165</sup>

The staffing of the expanded clinical program at St. Mary's posed challenges and precisely what occurred is difficult to describe. Traditionally, new professors at the law school were hired to fill slots, such as vacancies in teaching positions for criminal law courses. For each slot, the candidates were normally interviewed with the faculty, and the persons who were hired immediately became full-fledged voting members of the faculty.<sup>166</sup> In contrast, the hiring for the new clinical program was less clearly structured.

One obstacle that Aldave faced in expanding the clinical program related to the issue of what role, if any, the faculty would play in hiring decisions. Under Castleberry (around 1984 to 1985) during a faculty meeting in the new Sarita Kenedy East Law Library, Professor Tom Black suggested that it made no sense to ask the faculty to vote on new faculty candidates after only a brief interview, as was then the customary practice.<sup>167</sup> No one at the meeting raised a serious objection to that view, and, as a result, the faculty voted to give the dean the authority to hire new faculty members, with the faculty playing a role in retention at a later date.<sup>168</sup> That casual decision soon came back to haunt some faculty members who were at odds with Castleberry a few years later because, as dean, he had the power to pack the faculty with persons who would support him.<sup>169</sup> Soon thereafter, the faculty revisited the hiring process and, mindful of recent history, enacted a rule limiting decanal authority in hiring.<sup>170</sup> The new rule provided that no

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165. Some of the material and language in this section is borrowed from one of my earlier articles for a magazine published by the San Antonio Bar Association. Vincent R. Johnson, *The Law Faculty: Two Events That Changed St. Mary's*, SAN ANTONIO LAW., May-June 2002, at 5, 5-8.

166. Johnson, *supra* note 15, at 531-32 n.39 ("There are different types of faculty members, including among other categories, full-time, part-time, and special status. At St. Mary's, the core of the law faculty is comprised of the faculty members who can vote on academic matters at faculty meetings. That excludes instructors, adjunct faculty members, and visiting faculty members. For many years, the voting faculty at the law school has been comprised of tenured professors, tenure-track assistant and associate professors, and clinical professors of law.")

167. *See id.* at 559 ("Tom Black . . . argued that it made little sense to give faculty members a role in the initial hiring process . . .").

168. *See id.* at 560 ("Black's argument was well intentioned, and carried the day, but planted the seeds of trouble.")

169. *Cf. id.* ("As Castleberry's hold on the deanship weakened, he packed the faculty with new hires who were likely to side with him on issues and support his reappointment.")

170. *See id.* at 560-61 ("[O]n November 10, 1987, the hiring rules were amended to state: 5. That no person, regardless of experience, be given an offer or hired as a member of the full-time faculty without first circulating that person's resume to each member of the full-time faculty and obtaining the prior approval of the full-time faculty by at least a majority vote at a faculty meeting called

person could be added as a full-time, voting professor at faculty meetings without prior faculty approval.

In the early years of Aldave's deanship, the faculty generally supported an expansion of the clinical offerings, for they approved some proposals relating thereto. However, on the whole, I believe that most of the faculty were still less committed to clinical pedagogy—a comparatively expensive form of instruction<sup>171</sup>—than the dean.<sup>172</sup>

The clinical faculty grew dramatically between 1989 and 1998 in a manner sometimes direct but more often indirect. On a few occasions the faculty was asked to vote on candidates who would have the same rights and obligations as other faculty members with respect to teaching, scholarship, and service; the only difference being that they would teach mainly in the clinical program, rather than the classroom. Those persons became members of the voting faculty, meaning they could fully participate in faculty governance (setting academic standards, approving new courses, etc.).

More often, Aldave simply hired persons on relatively short-term contracts as supervising attorneys or directors of the new clinics without faculty approval. In one sense that was not surprising because, at modern law schools, persons without faculty rank play important roles in administering a variety of programs related to, for example, pro bono student service or academic support. However, because several persons who were employed on a full-time basis teaching clinical courses had not been approved by the faculty, they were not voting faculty members able to participate in school governance, nor were they eligible for tenure.

By the mid-1990s, discontent simmered at the main campus among the voting faculty about the large clinical program that had developed without much in the way of faculty consultation.<sup>173</sup> Some were concerned about the very substantial commitment of resources being devoted to client-based

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for that purpose.” (quoting Recruiting and Evaluation Procedures for the Faculty of the School of Law (Nov. 10, 1987)).

171. See Paul E. Casseb, Letter to the Editor, *St. Mary's Law School Trying to Do Too Much*, SAN ANTONIO EXPRESS-NEWS, Nov. 18, 1997, at 6B (“[N]either St. Mary's nor the students can afford to continue Aldave's programs.”).

172. Cf. Cantú, *supra* note 1, at 370 (“Barbara used her goodwill to establish our clinical program. There was some hesitancy on the part of the faculty, but she pushed it through.”).

173. Cf. *id.* (“[Aldave] attempted to pack the faculty . . . . In retrospect, that was unwise.”).

teaching. At the same time, down the street at the clinic, the non-voting clinicians were rightfully worried about their status and job security.

These issues finally came to a head in 1996 when the faculty began to debate how to comply with an ABA standard requiring law schools to afford full-time clinical faculty members “a form of security of position reasonably similar to tenure” and an opportunity to participate in faculty governance.<sup>174</sup> Did the ABA Standard mean that, notwithstanding the St. Mary's rule, no person could be added to the voting faculty without a faculty vote and the persons who had been hired by the dean for non-voting, full-time clinical positions were now entitled to vote on all matters? And what about the efforts of some members of the faculty over many years to establish a high standard for scholarly productivity?<sup>175</sup> It is generally agreed that clinical teaching can be so time-consuming as to make research and publication infeasible on a regular basis. Would giving the non-voting clinicians governance rights and job security in some way dilute the expectations for scholarship on the part of non-clinical teachers?

Needless to say, the difficulties caused by the uncertain status of clinicians in the 1990s were substantial and took a toll on the faculty. The best course for resolving the attendant issues was not obvious. Eventually, however, a workable accommodation was reached.

In 1997, the faculty voted to adopt rules that greatly clarified the rights and obligations of clinicians by creating two parallel tracks. A clinician who wishes to opt for the tenure track must meet the same standards as non-

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174. Today, the relevant provision provides in part:

(c) A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members. However, this Standard does not preclude a limited number of fixed, short-term appointments in a clinical program predominantly staffed by full-time faculty members, or in an experimental program of limited duration.

SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2021–2022, at 29 (2021).

175. See Cantú, *supra* note 1, at 348 (“A serious faculty commitment to scholarship and publication was slow in coming.”); see also Johnson, *supra* note 15, at 534 (“One of the important attitudes that some of the new hires brought with them [to St. Mary's] was a strong commitment to research and publication. This might seem to be a rather minor matter, but it is difficult to think of a more fundamental shift in the professorial mindset. . . . The tension that developed between those who expect professors to publish regularly and those who are less committed to that goal has played an important role in many subsequent hiring, promotion, and tenure decisions.”).

clinical teachers with respect to teaching, scholarship, and service. Alternatively, a clinician can opt for “clinical professor of law” status, which provides job security in the form of renewable multi-year contracts (rather than tenure) and entails obligations relating to teaching and service but not scholarship.<sup>176</sup> Clinical professors of law are entitled to vote on all law school issues except those relating to the hiring, promotion, or tenure of tenure-track faculty.<sup>177</sup>

As a result of these changes to the rules and the subsequent decisions of the faculty in approving applications for tenure-track status or clinical professor of law status, many of the persons hired to do clinical work in the early and mid-1990s, without initial approval of the faculty, became full-fledged faculty members. This development ensured that clinical education would be an important part of the law school’s future.<sup>178</sup>

Aldave chose the right time to champion the development and expansion of clinical education at St. Mary’s. On September 20, 1988, just as the dean search that led to her appointment was beginning, the S.B.A. passed a “recommendation,” which stated: “Be it resolved, that the Student Bar Association urge the law faculty to thoroughly investigate and take steps to establish a St. Mary’s University legal-aid clinic.”<sup>179</sup> The “report” that accompanied the recommendation explained:

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176. See ST. MARY’S UNIV., FACULTY HANDBOOK § 2.1.3.6.2 (2021) (discussing Assistant and Associate Clinical Professors of Law); *id.* § 2.2.4.1 (“Clinical Professors of Law employed under a presumptively renewable contract are entitled to annual contract renewal and shall be subject to the terms and conditions of employment that exist at the time of each annual renewal . . .”); *id.* § 2.2.7 (“Clinical Professors of Law are voting members of the law faculty, only subject to the restrictions of Section 2.1.3.6.2.”); *id.* § 2.5.7.2 (“Clinical Professors of Law are encouraged to engage in scholarship.”); *id.* § 2.6.6.2 (“A promotion to the rank of Clinical Associate Professor should be granted only to a Clinical Assistant Professor who has a satisfactory or superior record of clinical teaching and student counseling.”); *id.* § 2.6.6.3 (“A Clinical Associate Professor who is promoted to the rank of Clinical Professor is simultaneously granted a five year presumptively renewable contract. . . . [P]romotion to the rank of Clinical Professor should be granted only to faculty members who have a satisfactory or superior record of clinical teaching and student counseling. An applicant’s record of service to the Law School, the University, the legal profession, and the community may also be considered . . .”).

177. *Id.* § 2.1.3.6.2 (“Clinical Faculty shall be voting members of the law faculty, except that they shall not participate, through voting or committee service, in decisions related to the hiring, retention, promotion, tenure, or in decisions related to the criteria or procedures for such personnel matters.”).

178. See Cantú, *supra* note 1, at 370 (“There was some resistance, but over time, I think, the clinicians have become completely and totally accepted as members of the faculty.”).

179. Memorandum from Bill McMurrey to James Castleberry and the Law Faculty, *supra* note 47.

The purpose of this resolution is to make the faculty aware that the law students want an institution that will take both the intellectual high road and a highly vocational and professional approach. We recognize that the current courses are designed to permit students to grapple [with] the larger questions of law and society, while others teach basic lawyering skills. The legal-aid clinic program would emphasize both the practical day-to-day aspects of being a lawyer and the ethical responsibilities of the profession.

In addition, we would like to see the University enhance its relationship with the San Antonio community. What better way to help this school mission than by the law college offering legal-aid . . . to indigent persons.<sup>180</sup>

#### XVI. ACQUIRING THE CENTER FOR LEGAL AND SOCIAL JUSTICE

Aldave's ambitious clinical program needed a proper home that could accommodate the professional activities of dozens of students and faculty members. Naturally, there were dreams of adding a fifth building to the "Law Center," which, during Aldave's deanship, was comprised of the three original buildings erected in the late 1960s (the Law Classrooms Building, the Law Administration Building, and the Raba Law Building) and the Sarita Kenedy East Law Library, which opened in 1984. However, a new clinical education facility would have cost many millions of dollars, and there were never good prospects for raising that amount of money.

The solution was to "make do" by adapting what was available. Less than a mile from the Law Center on N.W. 36th Street was a retreat center that belonged to the Marianist Sisters, which was no longer needed. That facility was acquired for a few million dollars and renovated to make it suitable to the operation of a clinical education program. The arrangement was not perfect, but it was affordable. And it provided space for multiple classrooms, file storage, faculty and student offices, parking, and a practice courtroom, which had previously served as the Sisters' architecturally dramatic A-frame-style chapel.

The building was re-christened the St. Mary's Center for Legal and Social Justice (CLSJ) on a gray winter day, marked by a spirited procession from

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180. *Id.* Professor Marsha Merrill, the Director of Clinical Internship Program sent a memorandum to the law faculty supporting the S.B.A. proposal. Merrill emphasized that there was a "real need for at least some form of an in-house clinic," arguing that "[i]t adds an important dimension to the law school community that cannot be obtained otherwise." Memorandum from Marsha Merrill, Professor, St. Mary's Univ. Sch. of L., to the Law Faculty (Sept. 21, 1988) (on file with author).

the Law Center. At the time that it opened, the CLSJ facility, with 28,000 square feet of space, was one of the largest clinical legal education facilities in the country.

The CLSJ has required constant repairs and re-investment.<sup>181</sup> Yet, having served the legal needs of hundreds of clients over the past twenty-five years, and having enhanced the education of countless law students, it is easy to argue that Aldave's purchase of the facility was a wise move.

During Aldave's deanship, there were minor renovations to the other law buildings. The lower rotunda in the Raba Law Building was refurbished, and parts of the Law Administration Building and library were reconfigured. But aside from the acquisition of the CLSJ, there were no other major expansions of the law school's facilities. I served as director of the law school physical plant from early 1995 through the end of the Aldave years. There were no building initiatives but plenty of maintenance.<sup>182</sup>

#### XVII. DIVERSIFYING THE FACULTY AND STUDENT BODY

When Aldave arrived at St. Mary's in 1989, there was a clear need to diversify the faculty and student body. She acted decisively to address that problem. As she entered the second half of her nine-year deanship, she could claim notable success. Aldave wrote:

Five years ago, seven percent of the students in our first-year class were members of minority groups; today, thirty-two percent of them are. Of the twelve faculty members who have been appointed to tenured or tenure-track positions during my deanship, five are women, three are Mexican-American, and two are African-American. Four of our five chief administrators are women, and two of them are Hispanic. All of the new folks, in my admittedly biased opinion, are superbly well-qualified.<sup>183</sup>

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181. See Cantú, *supra* note 1, at 370 ("When I became dean, it became very clear to me that the CLSJ facility is a financial black hole. It is in constant need of repair. It's an old building. The electricity, the air conditioning, the foundation, the roof, the carpeting, and the furniture have all required a lot of money.")

182. See Memorandum from Vincent Johnson, Professor, St. Mary's Univ. Sch. of L., to Barbara Aldave, Dean, St. Mary's Univ. Sch. of L. (Feb. 28, 1995) (on file with author) (seeking reimbursement for replacement of "miscellaneous pieces of flatware" that had been "missing for years from the Faculty Lounge and the Staff Lounge").

183. Aldave, *supra* note 58, at 292.

At Aldave's behest, Professor Geary Reamey "spearheaded, for the first time in the . . . history of the law school, an aggressive drive to recruit minority students and . . . provide them with adequate financial assistance."<sup>184</sup> However, some complained that Aldave's outreach went beyond affirmative action and amounted to invidious discrimination. "In a 1994 *Texas Lawyer* survey, law students slammed [Aldave] for 'political correctness' and complained she was 'openly biased against men.'"<sup>185</sup> However, there was good reason to change the status quo. As an article by Bob Elder in the *Texas Observer* noted, "Cox & Smith and Thornton, Summers, the city's largest two homegrown law firms, together employ about one hundred ten lawyers—but just one Hispanic, in a city where Hispanics comprise almost half the population."<sup>186</sup>

On more than one occasion, I heard Aldave joke that until she became the dean, she did not understand President Franklin D. Roosevelt's court-packing plan.<sup>187</sup> Then she realized that it was necessary to pack the law faculty with supporters if she was going to be able to pursue her vision for improving the law school. By the time she was settling into her third term as dean, Aldave had hired "about a third of the law school's [forty-two] teachers and clinical staff" and had been "embroiled in academic wars, and even litigation, with some faculty members who . . . resisted her approach"<sup>188</sup> to running the law school.<sup>189</sup> According to Dean Emeritus Cantú:

Barbara had one serious flaw when it came to being dean, and that is, after a year or two, it became very clear that she had a political agenda. If you were a woman or a minority, you were going to be admitted if you applied, and you were going to be given a place on the faculty if you sought a position. This

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184. Letter from Vincent Johnson to A. Leon Higginbotham, *supra* note 102.

185. Elder, *supra* note 5, at 11.

186. *Id.*

187. See FDR's "Court-Packing" Plan, FED. JUD. CTR., <https://www.fjc.gov/history/timeline/fdrs-court-packing-plan> [<https://perma.cc/PTK8-L236>] ("After winning the 1936 presidential election in a landslide, Franklin D. Roosevelt proposed a bill to expand the membership of the Supreme Court. The law would have added one justice to the Court for each justice over the age of [seventy], with a maximum of six additional justices. . . . [T]he plan was widely and vehemently criticized. The law was never enacted . . .").

188. Elder, *supra* note 17, at 20.

189. See Elder, *supra* note 2, at 2 ("[Aldave] brought on waves of new faculty members, increasing full-time faculty from [twenty-seven] to [forty] and adding many more women and minorities.").

political agenda, I think, was her undoing. But, she was a good choice [to be dean]. She gave us a conscience.<sup>190</sup>

#### XVIII. THE BAR PASSAGE PROBLEM

Beginning in the 1990s, in the middle of the Aldave administration, some St. Mary's law graduates began to have problems passing the Texas Bar Examination. That problem continues to this day, more than a quarter of a century later, even though most St. Mary's graduates find that they are well-prepared for the examination and pass it on their first try.

In 1994, St. Mary's University School of Law was re-inspected and re-accredited by the ABA. Nothing in the ABA reports issued in May and July 1994 suggested that the law school had a bar-passage problem.<sup>191</sup> But it would not be long before the problem was visible and, to some eyes, unmistakable.

The problem first emerged in November 1994 when the July 1994 Texas Bar Examination results were released. The St. Mary's pass rate for first-time test-takers dipped to 79.75% (July 1994), well behind the rates for the first-time test takers from St. Mary's on the prior three July Texas Bar Examinations (87.01% in July 1993; 85.40% in July 1992; and 93.03% in July 1991).

The 79.75% pass rate was alarming because it signaled St. Mary's slippage in the rankings of the then-eight Texas law schools, from 5th place in July 1993 to 7th place in July 1994. In the ten years preceding 1993, which included the July Texas Bar Examinations from 1983 to 1992, St. Mary's had ranked third among the eight Texas law schools on five occasions.

The first five years of Aldave's deanship were thus unfettered by any significant worries about bar passage. However, in the last four years of

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190. Cantú, *supra* note 1, at 369.

191. There is some evidence that concerns about bar passage go back as far as early 1993. See Memorandum from Bob Barton, Professor, St. Mary's Univ. Sch. of L., to David Dittfurth, Assoc. Dean, St. Mary's Univ. Sch. of L. (May 26, 1993) (on file with author) (referring to a memorandum sent by Dittfurth on May 25, 1993, which, according to Barton, was "the first revelation" of information from the administration indicating that St. Mary's students had trouble with Part II of the recent Texas Bar Examination). The Barton memorandum also referred to a recent memorandum sent by Professor David Schlueter, which Barton did not think amounted to a "major academic restructuring." *Id.* (internal quotation marks omitted). Barton's position was "simply that being next to the 'cellar' should be a cause for concern, and we should be concerned enough to determine whether any aspects of our program [were] contributing to that phenomenon." *Id.*

Aldave's deanship, academic conversations were increasingly centered on this issue above all others.<sup>192</sup>

To address student concerns when the bar-passage problem surfaced in 1994, the administration held an open forum with Dean Aldave and Associate Dean Reamey in the atrium of the Law Administration Building. I attended that forum because I wanted to see what the administration would say. Not surprisingly, it downplayed the idea that there was a problem that called for action and reassured students that they were getting a first-class education.

However, the faculty soon weighed in with their views, both in written memoranda and orally at faculty meetings. In the proceeding battle over the bar passage problem during the Aldave years, divergent themes emerged. On the one hand, those who called for action argued that: (1) admissions standards were lax; (2) academic standards for enrolled students had slipped;<sup>193</sup> and (3) new course requirements failed to focus on the subjects tested on the Texas Bar Examination.<sup>194</sup>

On the other side, those who saw no reason to panic argued that: (1) students should be largely free to select what courses they take;<sup>195</sup> (2) the bar exam is only one (rather imperfect)<sup>196</sup> measure of educational success;

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192. Russell, *supra* note 21, at 1B (“[Aldave] oversaw a major drop in bar passage rates.”).

193. According to Professor Leopold, “[T]he reason for [the bar passage problem] was that the . . . academic standards were let down a great deal. So that, literally, I don’t think anybody got flunked out. Our bar passage rate went to pieces.” Cantú, *supra* note 1, at 359 n.147 (quoting Transcript of Audio Tape: Oral History of Charles E. Cantú, comments of Aloysius A. Leopold to Vincent Johnson (Nov. 9, 2017)).

194. See Memorandum from Vincent Johnson, Professor, St. Mary’s Univ. Sch. of L., to Barbara Aldave, Dean, St. Mary’s Univ. Sch. of L., and the Law Faculty (Nov. 7, 1996) (contending “not taking bar courses” and “bar courses not being scheduled at the right times” may have contributed to plummeting bar passage rates).

195. The belief that elective course selection is preferable to set course requirements is a view that has deep roots in American higher education. In establishing the University of Virginia, for example, “Jefferson provided for an entirely elective curriculum.” GARRY WILLS, MR. JEFFERSON’S UNIVERSITY 17 (2002).

196. One faculty member circulated a memorandum dismissing the Texas Bar Examination as “another example of an invalid test” and that “[t]he emperor has no clothes, and we are arguing about whether the emperor’s robe is made of silk or of fur.” Memorandum from José Juárez, Professor, St. Mary’s Univ. Sch. of L., to Bob Barton, Professor, St. Mary’s Univ. Sch. of L. (Nov. 18, 1996) (on file with author).

and (3) there is no correlation between enrolling in a bar course and passing that part of the bar examination.<sup>197</sup>

Divisions soon emerged within the faculty as to what courses students should take to prepare for success on the bar exam and as members of the legal profession. Some favored requiring or encouraging students to enroll in courses that closely tracked the subjects tested on the Texas Bar Examination or were subjects basic to a good legal education. Others favored a less structured, more personalized approach, as was explained to “All First Year Law Students” in a memorandum from Dean Aldave and a dozen of her faculty supporters. That missive told the students:

You have recently received a memorandum from four faculty members regarding your future class selections. That memorandum did not purport to be an official statement of what classes the faculty or administration, as a group, believe you should take in your second or third years. . . . [R]easonable persons can—and do—differ regarding the issue of upper[-]level course choices.

. . . .

There is, obviously, no longer a cookie cutter or one-size-fits-all approach to legal education. . . . As the world has become more complex and diverse, so too has the role of the lawyer. St. Mary’s provides a wide range of courses to meet the educational needs and interests of the lawyers of tomorrow.<sup>198</sup>

“In July 1996, the percentage of St. Mary’s graduates passing the bar exam dropped to its lowest rate in [fourteen] years, prompting calls for Aldave’s

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197. *But see* Katherine A. Austin et al., *Will I Pass the Bar Exam?: Predicting Student Success Using LSAT Scores and Law School Performance*, 45 HOFSTRA L. REV. 753, 777 (2017) (“The authors found that some courses did predict bar performance on the relevant subcomponent of the bar exam . . .”).

198. Memorandum from Barbara Aldave, Dean, St. Mary’s Univ. Sch. of L., and Michael Ariens, Charles E. Cantú, Nora Demleitner, David Dittfurth, John Dubin, Vincent Johnson, José Juárez, Amy Kastely, David Lopez, Victoria Mather, Jeff Pokorak, Raul Sanchez, and John Teeter, Professors, St. Mary’s Univ. Sch. of L., to First Year Law Students (undated) (on file with author). The draft memorandum included a formidable cast of Aldave’s faculty supporters, including four who eventually served as Dean at St. Mary’s (Cantú and Johnson) or other law schools (Demleitner and Juárez) and five who served as Associate Dean at St. Mary’s (Ariens, Dittfurth, Juárez, Lopez, and Mather). I favored bringing some flexibility and choice into the curriculum in the mid-1990s. The persistence of the bar-passage problem ultimately caused me to change my views and favor aligning the upper-level J.D. curriculum with the Uniform Bar Exam, which was adopted in Texas in 2019. Securing faculty approval of that major change was the most significant accomplishment of my year as interim dean. *See* Johnson, *supra* note 135, at 317–21 (discussing upper-level curricular reform).

ouster.”<sup>199</sup> The disappointing results were even more troubling because other Texas law schools had enjoyed improved bar pass rates.<sup>200</sup> The July 1996 results were the last set of July bar results that came out before President Moder decided not to appoint Aldave to a fourth three-year term as dean.<sup>201</sup> In an article about Aldave’s termination, Moder was quoted as saying that he was “concerned about an [8%] drop . . . in [the 1996] bar exam passage rates—[71%] of St. Mary’s students passed the test.”<sup>202</sup> In a memorandum to the dean and law faculty, Professor Leopold wrote:

In the almost [forty] years that I have been associated with this law school I do not recall ever seeing bar passage scores as low as our latest accomplishment of 70%. Over the past several years I have endured criticism from countless graduates as to their perception of the lack of quality of legal education of our students. I have waited with bated breath hoping that changes would result in changes for the better. I believe that it is no longer reasonable to continue such belief.<sup>203</sup>

Leopold outlined his seven-point plan for making legal education at St. Mary’s more rigorous. It involved stricter class attendance rules, a lower median for grades, preferential scheduling of courses tested on the bar exam, more demanding examinations, and limits on participation in clinical programs, externships, and extracurricular activities.<sup>204</sup> Professor Beyer urged “serious consideration” of Leopold’s proposals.<sup>205</sup> Professor Scott

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199. Russell, *supra* note 29, at 1B.

200. See *Bar Exam Pass Rate Improves, Ending Three-Year Skid*, TEX. LAW., Nov. 11, 1996, at 11 (“A three-year decline in the percentage of people passing the July bar exam ended this year when the success rate inched back up by slightly more than two points.”).

201. The performance of first-time test-takers from St. Mary’s on the February 1997 Texas Bar Examination (82.54% pass rate) was substantially better than the law school’s showing on the July 1996 exam (70.59% pass rate), which garnered praise from the press. See, e.g., *Law School Makes Rebound*, SAN ANTONIO EXPRESS-NEWS, June 10, 1997 (“St. Mary’s University Law School’s bar examination passing rate has rebounded to overtake the state average this year after an abysmal showing last summer.”). But February results are typically regarded as unreliable because far fewer students sit for the February exam than for the July exam, and the number of test-takers varies widely among the Texas law schools.

202. See Roser, *supra* note 1, at B1 (describing President Moder’s concern with bar passage rates).

203. Memorandum from Aloysius A. Leopold, Professor, St. Mary’s Univ. Sch. of L., to Barbara Aldave, Dean, St. Mary’s Univ. Sch. of L., and the Law Faculty (Nov. 5, 1996) (on file with author).

204. *Id.*

205. Memorandum from Gerry Beyer, Professor, St. Mary’s Univ. Sch. of L., to the Law Faculty (Nov. 6, 1996) (on file with author).

offered similar proposals related to grades and minimum academic requirements.<sup>206</sup>

In a five-page, single-spaced memorandum, which referred to a “bar passage crisis,” Judge Barton proposed a host of changes related to “(1) admissions, (2) curriculum[,] and (3) teaching (including subject matter, attendance, preparation[,] and grading).”<sup>207</sup> In a seven-page, single-spaced memo, Professor Juárez asserted that the “bar examination is an invalid test” and vigorously opposed Barton’s “proposal to abolish affirmative action in our admissions program.”<sup>208</sup>

In my memorandum to the faculty, I observed that “on aggregate, the quality of teaching at the law school is extraordinarily high,” that “many of our students work very hard,” that the bar passage problem was not “the result of irresponsibility, ill will, or incompetence on the part of any member of the faculty or administration,” and that “we have made tremendous progress institutionally over the past [fifteen] years” and are, “on the whole, a more vibrant, capable institution.”<sup>209</sup> All of that noted, I stated that “the performance of our May 1996 graduates on the July 1996 bar exam was . . . a disaster of the most serious proportions.”<sup>210</sup> I lamented that “every six months[,] widely disseminated information about the bar results is a public relations disaster.”<sup>211</sup> I laid out a list of questions that I thought might be helpful in charting a course to improve student performance on the Texas Bar Examination. The questions asked:

Should we use multiple examinations in place of the usual one exam at the end of [the] semester?

Should we reduce the size of our first[-]year sections, which are now more than twice as large as they were in the 1980s?

Should we establish mentoring programs for our at-risk students?

Should we improve or expand our tutorial programs?

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206. Memorandum from Leonard Wayne Scott, Professor, St. Mary’s Univ. Sch. of L., to the Academic Standards Committee (Nov. 8, 1996) (on file with author).

207. Memorandum from Bob Barton, Professor, St. Mary’s Univ. Sch. of L., to Barbara Aldave, Dean, St. Mary’s Univ. Sch. of L. (Nov. 14, 1996) (on file with author).

208. Memorandum from José Juárez to Bob Barton, *supra* note 196.

209. Memorandum from Vincent Johnson to Barbara Aldave and the Law Faculty, *supra* note 194.

210. *Id.*

211. *Id.*

Should we obtain and distribute to professors (and make available to students) each fall and spring semester copies of the [essay] questions used on the most recent bar exam?

Should we provide better information to students about course selection?

Should we reduce (or at least not expand) the size of entering classes?<sup>212</sup>

Professor Flint asserted that “[t]he continued poor performance on the bar examination by our students is a sign that something is rotting in San Antonio.”<sup>213</sup> He urged the faculty to “immediately reassert its governance role” in the areas of admissions, curriculum, and academic standards.<sup>214</sup>

The Texas media, which has a long tradition of publicizing bar examination pass rates as though they were the results of a horse race or track meet,<sup>215</sup> tagged Aldave with responsibility for “a major drop in bar passage rates.”<sup>216</sup> Aldave and several concerned students were pictured in color and quoted in a lengthy article that appeared in the education section of the *San Antonio Express-News*.<sup>217</sup> The article charged:

A decade ago, St. Mary's University School of Law was firmly entrenched among the top Texas law schools according to bar exam scores—a closely watched measure of how many graduates pass the accreditation test on the first attempt.

But in July, test results ranked the west side school a distant eighth of nine.

The poor showing is seen as an embarrassment by some students and faculty and has sent the school into a tailspin.<sup>218</sup>

Discussing Aldave's response to the problem, the article said: “[Aldave] argue[s] that St. Mary's is teaching students how to think like lawyers” and “believes the faculty should stress to students the importance of taking an

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212. *Id.*

213. Memorandum from Richard Flint, Professor, St. Mary's Univ. Sch. of L., to Barbara Aldave, Dean, St. Mary's Univ. Sch. of L., and the Law Faculty (Nov. 8, 1996) (on file with author).

214. *Id.*

215. *See, e.g., St. Mary's 3rd in Bar Exams*, SAN ANTONIO EXPRESS-NEWS, Nov. 24, 1984, at 1B (pitting law school bar passage rates against each other).

216. Russell, *supra* note 21, at 1B.

217. Russell Gold, *Raising the Bar: Exam Woes at St. Mary's University Raise Concerns*, SAN ANTONIO EXPRESS-NEWS, Dec. 10, 1996, at 4B.

218. *Id.*

expensive bar review course.”<sup>219</sup> To some readers, this must have sounded like an attempt to dodge the problem, rather than solve it.

Of course, Aldave and her administrative team took the bar passage problem quite seriously, studying the relevant data, and trying to understand both the problem and potential solutions. A task force convened under the direction of Associate Dean Geary Reamey reported its results to the Board of Trustees, the faculty, students, and alumni. An eight-page letter sent by Aldave to St. Mary’s law graduates in December 1996 devoted half of its space to a thoughtful discussion of many inter-connected bar-related issues.<sup>220</sup> Aldave was seriously concerned that poor bar passage results would be used by some as an excuse to reduce admissions of minority applicants.

#### XVIX. STRAINED RELATIONS

There were efforts by the Aldave administration to reach out to the law alumni and other members of the San Antonio bench and bar, such as by inviting the members of the Fourth Court of Appeals to hear arguments on campus, which law students preparing for the Freshman Moot Court Competition could attend.<sup>221</sup> But eventually Aldave grew less inclined to court the alumni, particularly male alumni (and even male faculty members) with whom she disagreed on fundamental issues.<sup>222</sup> That made it more difficult for her to raise funds from alumni and other potential donors.<sup>223</sup>

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219. *See id.* (noting Dean Aldave had negotiated with a company to “lower the price from \$490 to \$250”); Jeanne Russell, *St. Mary’s Law Exam Scores Still Lag*, SAN ANTONIO EXPRESS-NEWS, Nov. 6, 1997, at 1B (“Aldave has said that the school seeks to train compassionate and thoughtful practitioners rather than prep students for a test.”).

220. Letter from Barbara Aldave, Dean, St. Mary’s Univ. Sch. of L., to Graduates, St. Mary’s Univ. Sch. of L. (Dec. 1996) (on file with author).

221. *See* Letter from Vincent Johnson, Professor, St. Mary’s Univ. Sch. of L., to Herb Schaefer, Clerk, Fourth Ct. of Appeals (Dec. 16, 1994) (on file with author) (inviting “Chief Justice Chapa and the Justices of the Fourth Court of Appeals” to St. Mary’s to “hear arguments” from first-year students).

222. *See* Cantú, *supra* note 1, at 376 (“I was present at an alumni meeting in St. Louis when a number of our graduates in St. Louis took Barbara on. As a result, we never went back to St. Louis. She had offended some of our graduates.”).

223. *See* Elder, *supra* note 2, at 2 (“Undoubtedly it will be easier for Moder to raise money with Aldave on the way out. She has alienated influential lawyers across the spectrum . . . .”); *see also* Russell, *supra* note 3, at 8A (“The school’s endowment grew from \$6.85 million in May 1989 to \$15 million in May 1997, said Mei-Lin Lee, St. Mary’s assistant comptroller. Only \$1.58 million, however, was from donations, Lee said. The rest came from reinvestment, capital gains[,] and university funding.”). The major fundraising effort during Aldave’s deanship was the Hispanic Initiative. The public phase of the

Aldave also made less of an effort to find a sustainable consensus on hiring and other issues that came before the faculty. "The faculty approved each of Aldave's last three hiring decisions—but on 15–14 votes."<sup>224</sup> On one such occasion, when the vote at a faculty meeting was announced, Aldave triumphantly said that if the vote had been tied, she would have exercised the chair's prerogative to vote, breaking the tie and adding the candidate to the faculty—regardless of the fact that half of the faculty had just found the candidate to be unqualified.

As time passed, stress and incivility began to show within the faculty, often by e-mail. Messages variously impugned the motives of others, demanded apologies, denied accusations, and rebuked disputants for involving the broader faculty in what were sometimes private affairs. The tone of these messages, which occasionally related to disputes among the very persons Aldave had hired, sometimes ranged from imperious to shrill. The same kinds of unprofessional conduct leaked over into in-person meetings, such as a bitter retreat that was held at the Wyndham hotel at the Colonnade near the end of the Aldave years. The situation was unsustainable. There had to be a new dean.

#### XX. "ARE YOU TERMINATING ME?"

Aldave's non-reappointment to a fourth three-year term as dean was a subject of interest and concern not merely in San Antonio but broadly throughout segments of American legal academia. In an e-mail to a LISTSERV group called the "Association of American Law School Section on Minority Groups," Amy Kastely, a member of the St. Mary's law faculty, wrote:

We are going through a crisis at St. Mary's and would be very grateful for your support. On Friday, October 24 [1997], President [John] Moder told Barbara Aldave [that he would renew her contract for only one year instead of the normal three. This was unexpected . . . [and] fueled by the grumblings of old-time faculty and angry young reactors among the student body . . . .

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campaign was kicked off with a dinner at the Hilton Hotel on the Riverwalk. The campaign had limited success and eventually faded from view.

224. Elder, *supra* note 2, at 2.

Barbara responded to Moder by asking “are you terminating me?” and Moder said “yes[,]” and Barbara said “fine, I refuse the one year and will leave in May[] 1998.”

The announcement of Barbara’s termination was received with glee by old-timer faculty, particularly a group of white liberals who have been increasingly disgruntled and vocal with their feelings that Barbara does not give them enough attention and praise. For a large part of the student body, faculty, and community, the termination was heard as a message that St. Mary’s would no longer be committed to diversity and public interest work. On Wednesday October 29, a “town meeting” was held at which Moder affirmed his commitment to the direction set by Barbara Aldave, and specifically committed himself to increasing the diversity of the student body and faculty, to continuing the immigration and human rights clinic, the community development clinic, the civil justice clinic, and the criminal justice clinic, and to continuing the strong international component of our curriculum. Following Moder’s statement, people from the community, alumni, clinic clients, [and] students addressed Moder, telling him that the termination was disrespectful, offensive, unwise[,] etc[.] . . . . It was a moving demonstration of the energy and passion of our shared work.

The town meeting called on Moder to enter negotiations with Barbara and members of the community over the future of the law school. On Friday October 31, Moder issued a statement . . . agreeing to meet with Barbara to discuss the future of the law school . . . .

Moder is listening and is learning . . . . If you would like to express your support for Barbara . . . , please write to President Moder . . . and Dean Barbara Aldave . . . .<sup>225</sup>

According to news reports, the town meeting was a passion-filled, tumultuous affair that attracted about 200 supporters and lasted two-and-a-half hours. In that meeting, which was “part political protest and part prayer vigil, backers offered personal testimonies, letters of support and lists of Aldave’s accomplishments while the Reverend John Moder listened

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225. E-mail from Amy Kastely, Professor, St. Mary’s Univ. Sch. of L., to the Association of American Law Schools Section on Minority Groups (Oct. 31, 1997) (on file with author).

patiently.”<sup>226</sup> “Aldave did not attend the meeting”<sup>227</sup> but “received more than 100 phone calls from well-wishers.”<sup>228</sup>

In an eloquent memo to the participants a day after the town meeting, Moder stated in part:

For me[,] it was a moving show of support for Dean Aldave and[,] even more profoundly[,] a testimony to all the good that has been accomplished through her and through the Law School over these last eight and a half years. I felt very proud of all the good work you have been doing under Barbara's inspiration and leadership. . . . There can be no going back on the progress that has been made.<sup>229</sup>

Before Moder announced his decision not to reappoint Aldave, he followed the traditional practice of inviting faculty members to express their views to him in writing as part of a non-binding consultation process. Although I had enthusiastically supported Aldave's first reappointment in 1992 and second reappointment in 1995, I opposed a fourth three-year term because aspects of the law school's program were moving in the wrong direction. When a decision of non-reappointment was announced, and several my colleagues were trying to engineer a groundswell of support to persuade Moder to change his mind, I wrote to Moder again, stating, “You have made a good decision” and should “stand your ground.” “Stand fast[] and know that in doing so there are many of us who stand with you.”<sup>230</sup>

Although Moder<sup>231</sup> and Aldave<sup>232</sup> agreed to participate in discussions about the future of the law school, whether Aldave would continue to serve

226. Jeanne Russell, *Backers Beg for Aldave to Be Retained*, SAN ANTONIO EXPRESS-NEWS, Oct. 30, 1997, at 1A.

227. *Id.*

228. *See* Russell, *supra* note 3, at 8A (discussing the reaction to Aldave's departure).

229. Memorandum from John Moder, President, St. Mary's Univ., to the Town Meeting Participants (Oct. 31, 1997) (on file with author).

230. Memorandum from Vincent Johnson, Professor, St. Mary's Univ. Sch. of L., to John Moder, President, St. Mary's Univ. (Nov. 4, 1997) (on file with author). I knew that many members of the faculty opposed Aldave's reappointment but had no precise information. My guess was that the faculty was split 50–50.

231. *See* Memorandum from John Moder to the Town Meeting Participants, *supra* note 229 (“I fervently hope to continue dialogue with Barbara about how we can best assure the continuity of the programs and directions she has so well begun.”).

232. *See* Memorandum from Barbara Aldave, Dean, St. Mary's Univ. Sch. of L., to the Town Meeting Participants (Nov. 3, 1997) (on file with author) (“I accept President Moder's call for a dialogue between us . . .”).

as dean seemed to have been settled. In a press release dated October 24, 1997, Moder announced that Aldave would relinquish the post of dean on May 31, 1998, noting that “Barbara’s tenure as dean has been a period of exciting and unprecedented development.”<sup>233</sup> In a memorandum to the law school community, dated October 27, 1997, Moder explained that “[c]hange agents like Barbara are not always the best persons to carry forward the consolidation and institutionalization of the changes they help to bring about.”<sup>234</sup> That same day, Academic Vice President Charles Cotrell was named to head the search committee for the new dean.<sup>235</sup> Additionally, prior to the town meeting, a statement issued by Aldave seemed to have recognized that a decision had already been made. Short and to the point, the statement read:

On Friday, October 25, the President of St. Mary’s University informed me that he was “terminating” my service as Dean of the School of Law.

The moral of the story, I believe, is this: Those who speak truth to power lose their jobs.

I thank everyone who has worked with me, and not against me, during the past nine years.

In general, as one of my colleagues said last Friday, “it has been a good ride.”<sup>236</sup>

In a newspaper interview given at the end of her “nine controversial years”<sup>237</sup> in office, Aldave observed, “The board of trustees has opposed me from the beginning” and “[f]or a long time John (Moder) had the heart to support me, and he finally decided I was more trouble than I was worth.”<sup>238</sup>

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233. Press Release, St. Mary’s University, St. Mary’s University Law School Dean to Relinquish Post (Oct. 24, 1997) (on file with author).

234. Memorandum from John Moder, President, St. Mary’s Univ., to the Law School Community (Oct. 27, 1997) (on file with author).

235. Memorandum from John Moder, President, St. Mary’s Univ., to the University Community (Oct. 27, 1997) (on file with author).

236. Press Release, Barbara Aldave, Dean, St. Mary’s Univ. Sch. of L., Statement of Dean Barbara Bader Aldave (Oct. 27, 1997) (on file with author).

237. Russell, *supra* note 3, at 8A.

238. Russell, *supra* note 29, at 1B (internal quotation marks omitted).

However, the editors of the *San Antonio Express-News* urged that "Aldave's legacy must not be reversed."<sup>239</sup> A few days later, in a seeming response to the editorial, President Moder informed the university community that the Board of Trustees unanimously approved a resolution reiterating support for the law school's "commitment to diversity, development of the clinical programs, the international thrust in programming and personnel, and the furthering of the Catholic and Marianist dimension, all of which the Board sees as consonant with the mission of St. Mary's University."<sup>240</sup>

What Moder was looking for was not a change of academic direction but a less potentially combative leadership style.<sup>241</sup> Moder was described in the press as saying that "he supported Aldave's efforts [to recruit women and minorities] but hoped to usher in a new era of peace without such a controversial leader."<sup>242</sup>

The search for a new dean for St. Mary's University School of Law created "a certain sense of excitement."<sup>243</sup> The law school had the opportunity to take stock and "a chance to rethink its direction."<sup>244</sup>

## XXI. LEGACY

Before Aldave's tenure as dean started, "St. Mary's had a reputation as a [law] school that turns out lawyers who know their way around a courtroom."<sup>245</sup> After Aldave's service had ended, the picture was more complex.

St. Mary's continued to have the well-deserved reputation for teaching excellence that it had long enjoyed. And there were many areas in which the law school could claim special expertise. Those areas included not only trial advocacy and clinical education but also international and comparative law and at least a half dozen subject matter areas in which faculty members had published nationally used textbooks and treatises, including military

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239. Editorial, *The Singer and the Song Cannot Be Separated*, SAN ANTONIO EXPRESS-NEWS, Nov. 3, 1997, at 8A.

240. Memorandum from John Moder, President, St. Mary's Univ., to the St. Mary's University School of Law Community (Nov. 7, 1997) (on file with author).

241. Cf. Cantú, *supra* note 1, at 369 (asserting Aldave "really enjoyed a good fight").

242. Jeanne Russell, *Panel Tells Universities Not to Write Off Affirmative Action*, SAN ANTONIO EXPRESS-NEWS, at 12A.

243. Roser, *supra* note 1, at B1.

244. *Id.*

245. Elder, *supra* note 5, at 10.

justice, criminal law, religious liberty, contracts, torts, and civil procedure. In addition, the *St. Mary's Law Journal* continued to be recognized as one of the law reviews most frequently cited by state and federal courts. However, the bar-passage issue and the faculty's inability to effectively grapple with that problem increasingly cast a shadow over all the excellent work being done at the law school.

The field in which Dean Aldave's legacy is indisputable concerns the diversity of the faculty and student body. The law school and the university have never turned away from those priorities. Indeed, St. Mary's University School of Law is an example of a law school that is much more diverse today than when Aldave was made dean.<sup>246</sup> Today, minority, female, and international students—just like majority students—play an important role and find success in every aspect of the law school's educational operations and extracurricular opportunities. Dean Aldave laid the foundation for this productive and happy state of affairs. That, as much as anything, is her great legacy at the law school.

## XXII. A GRACIOUS DEAN

Even near the end of Aldave's long run as dean, she could be supportive and gracious. On a lark, I applied for a Fulbright Scholar award in China. When I was offered the position, I needed to get Aldave's permission to teach on the other side of the world during the coming semester. Aldave groused about the scheduling problems that my absence would create but acquiesced with my plan when I lined up Michael Ariens to teach my Torts classes. My Fulbright Scholarship in China changed my life for the better in a hundred different ways. That would not have been possible without Aldave's help.

Shortly before I left for China in February 1998, I saw Aldave walking across the law school courtyard. That was the last time I saw her, with one exception. About eleven years after leaving St. Mary's, Aldave returned for the first time, to be honored at a faculty luncheon. I only saw her from a distance. We had spoken three times by phone over the intervening years

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246. See Press Release, Vincent Johnson, Dean, St. Mary's Univ. Sch. of L., A Note from the Dean of St. Mary's University School of Law (Feb. 18, 2020) (on file with author) ("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 [in] . . . fall [2019] was 53% female, 50% Hispanic or Latino, 38% Caucasian, 4% black, 3% Asian, and 1% Native American.").

when she called to get my reaction to some ethics question she had encountered while working on a case as an expert or giving free advice to someone.

When I served as interim dean at St. Mary's during the 2019–2020 academic year, I placed a photo on the fireplace mantle in the dean's office that was taken in 1991 at our summer program in Innsbruck, Austria. It showed Aldave as a young dean with some of her key supporters—David Dittfurth, Geary Reamey, Marsha Huie, and myself. The photo was a memory of happy times and a reminder of just what a visionary dean could do to build a great law school—and of how much resistance she might encounter. I will always think of Barbara Aldave as a great dean.<sup>247</sup>

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247. During the lengthy drafting process of this Article several letters and memoranda—mostly from 1988 to 1989—were lost, precluding cite checking of some authorities.