



NEW MEXICO LAW REVIEW

Volume 41
Issue 2 *Fall*

Fall 2011

Front Matter

New Mexico Law Review

Recommended Citation

New Mexico Law Review, *Front Matter*, 41 N.M. L. Rev. i (2011).
Available at: <https://digitalrepository.unm.edu/nmlr/vol41/iss2/1>

This Front Matter is brought to you for free and open access by The University of New Mexico School of Law. For more information, please visit the *New Mexico Law Review* website: www.lawschool.unm.edu/nmlr

Copyright © 2011 by the New Mexico Law Review

Volume 41, No. 2, Fall 2011

ISSN 0028-6214

Published by the students of the University of New Mexico School of Law

Visit us on the Internet at <http://lawschool.unm.edu/nmlr>

New Mexico Law Review

University of New Mexico School of Law

MSC11 6080

1 University of New Mexico

Albuquerque, NM 87131-0001

EDITORIAL OFFICE

Phone: (505) 277-4910 — Fax: (505) 277-8342 — e-mail: lawrev@law.unm.edu

SUBSCRIPTIONS & BACK ISSUES

Rate: \$40 per year domestic; \$45 per year foreign, \$15 per single copy; postage included. Subscriptions are for the calendar year only and are automatically renewed and billed annually. Cancellations must be received in writing and are by calendar year only. No discounts offered.

Address requests to “Attn: SUBSCRIPTIONS/SALES” at the above address, or:

Phone: (505) 277-0089 — Fax: (505) 277-0068

e-mail: nmlrsubscriptions@law.unm.edu (please enter Subject as “NMLR Subscriptions”)

CLAIMS (note: Subscriber claims for undelivered issues must be received *within ninety (90) days of mailing date of issue claimed*). Address requests to “Attn: CLAIMS” at the above address, or:

Phone: (505) 277-4910 — Fax: (505) 277-8342

e-mail: lawrev@law.unm.edu (please enter Subject as “NMLR Claims”)

DUPLICATION/REPRINT INFORMATION

Please contact the Editorial Office by snail mail, e-mail, or fax regarding requests for permission to duplicate or reprint. Except as otherwise expressly provided, permission is hereby granted to copy materials from this publication for classroom use, provided that (1) copies are distributed at or below cost and (2) author and journal are properly identified.

The views expressed herein are those of the authors and do not necessarily reflect those of the Editorial Board, the Law Faculty, or Regents of the University of New Mexico.

Printed by Joe Christensen, Inc.

This text stock is 30% pcw and acid free.

THE UNIVERSITY OF NEW MEXICO SCHOOL OF LAW
Albuquerque, New Mexico

REGENTS OF THE UNIVERSITY

THE HONORABLE SUSANA MARTINEZ, Governor of New Mexico, ex officio

JACK L. FORTNER, *President*

DON L. CHALMERS, *Vice President*

CAROLYN J. ABEITA, *Secretary/Treasurer*

J.E. (GENE) GALLEGOS

JAMES H. KOCH

LT. GENERAL BRADLEY C. HOSMER

JACOB P. WELLMAN

DAVID JAMES SCHMIDLY, PRESIDENT OF THE UNIVERSITY

SCHOOL OF LAW

KEVIN K. WASHBURN, Dean

BARBARA E. BERGMAN, Associate Dean for Academic Affairs, Professor of Law

APRIL LAND, Associate Dean for Clinical Affairs, Professor of Law

CAROL A. PARKER, Associate Dean for Finance and Administration, Professor of Law

MEGAN DUNNING ARGO, Legal Analysis & Communication, Lecturer III

MARSHA BAUM, Professor of Law

NORMAN BAY, Professor of Law

REED D. BENSON, Professor of Law; Faculty Advisor, *Natural Resources Journal*

PAUL BIDERMAN, Director, Institute of Public Law

BARBARA BLUMENFELD, Director, Legal Research & Writing; Lecturer III

SHERRI L. BURR, Professor of Law

CAMILLE CAREY, Assistant Professor of Law

EILEEN COHEN, Associate Librarian, Professor of Law Librarianship

BARBARA CREEL, Associate Professor of Law

JAMES W. ELLIS, Professor of Law

DENISE FORT, Professor of Law

CHRISTIAN G. FRITZ, Professor of Law

EILEEN GAUNA, Professor of Law

ERIK F. GERDING, Assistant Professor of Law

LAURA E. GÓMEZ, Professor of Law

MARQUITA HARNETT, Business Operations Librarian

STEVEN K. HOMER, Legal Research & Writing, Lecturer III

SCOTT HUGHES, Professor of Law

JOHN P. LAVELLE, Professor of Law; Director, Indian Law Program

ERNESTO A. LONGA, Associate Professor of Law Librarianship

ANTOINETTE SEDILLO LOPEZ, Professor of Law

NATHALIE MARTIN, Professor of Law

JOSE L. MARTINEZ, Associate Professor of Law

ALFRED D. MATHEWSON, Professor of Law

MAX MINZNER, Associate Professor of Law

MARGARET E. MONTOYA, Professor of Law

JENNIFER MOORE, Professor of Law

DANIEL ORTEGA, Research Professor of Law; Director, International Law Programs

SERGIO PAREJA, Professor of Law

ELIZABETH RAPAPORT, Professor of Law

ROBERT L. SCHWARTZ, Professor of Law
DAWINDER S. SIDHU, Assistant Professor of Law
THERESA STRIKE, Law Librarian, Assistant Professor of Law Librarianship
CAROL M. SUZUKI, Professor of Law
SHERRI THOMAS, Law Librarian, Assistant Professor of Law Librarianship
CHRISTINE ZUNI CRUZ, Professor of Law; Editor-in-Chief, *Tribal Law Journal*

EMERITI

MICHAEL B. BROWDE, Professor Emeritus of Law; Faculty Advisor, *New Mexico Law Review*
ROBERT J. DESIDERIO, Professor Emeritus of Law
CHARLES T. DUMARS, Professor Emeritus of Law
WILLIS H. ELLIS, Professor Emeritus of Law
MYRON FINK, Professor Emeritus of Law
W. GARRETT FLICKINGER, Professor Emeritus of Law
RICHARD A. GONZALES, Professor Emeritus of Law
G. EMLÉN HALL, Professor Emeritus of Law
FREDERICK M. HART, Professor Emeritus of Law
MICHELE S.G. HERMANN, Professor Emerita of Law
RUTH L. KOVNAT, Professor Emerita of Law
WILLIAM T. MACPHERSON, JR., Professor Emeritus of Law
PAUL NATHANSON, Research Professor Emeritus of Law
J. MICHAEL NORWOOD, Professor Emeritus of Law
MARIO E. (TED) OCCHIALINO, Professor of Law
THEODORE PARNALL, Professor Emeritus of Law
LEO M. ROMERO, Professor Emeritus of Law
GLORIA VALENCIA-WEBER, Professor Emeritus of Law
PETER A. WINOGRAD, Professor Emeritus of Law
SHERYL SCHEIBLE WOLF, Professor Emerita of Law

NEW MEXICO LAW REVIEW

Published Two Times Per Year

By the University of New Mexico School of Law, Albuquerque, New Mexico

Volume 41
Tomo 41

Fall 2011
Otoño 2011

Number 2
Numero 2

Editors-in-Chief

Jennifer Duprez
D'Ontae Sylvertooth

Managing Editors

Aaron Holloman & Genia Lindsey

Professional Articles Editors

Summer McKean
Ana Romero Jurisson
Melanie Stambaugh

Student Articles Editors

Taina Colón
Tara Kinman
Andy Scholl

Manuscript Editors

Loren Foy
Heather Hansen
Jason Martinez

Maryl McNally
Maria Padilla
Dean Palacios

Staff Members

Nicole Banks
Karen Chase
Frank Davis
Brett Eaton
Amber Fayerberg
Katie Gleeson
Chris McNair

David Odegard
Jaya Rhodes
Lysette Romero
Lindsay Ruska
Ethan Thomas
Taylor Watrous Lueras

Faculty Advisor

Michael B. Browde

UNMSOL Managing Editor

Lynne Arany

Business Manager

Marquita Harnett

Member of the *National Conference of Law Reviews*

NEW MEXICO LAW REVIEW

Published by the University of New Mexico School of Law, Albuquerque, New Mexico

Volume 41

Fall 2011

Number 2

CONTENTS

INTRODUCTION	ix
--------------------	----

PROFESSIONAL ARTICLES

Drug User Fee Reform: The Problem of Capture and a Sunset, and the Relevance of Priorities and the Deficit <i>Margaret Gilhooly</i>	327
Identifying the Crucial Elements of States' Collaboration Over the Long Haul: The Transportation of Nuclear Waste to New Mexico <i>Kerry E. Rodgers</i>	361
The Due Process Rights of Residential Tenants in Mortgage Foreclosure Cases <i>Henry Rose</i>	407
The Failure of Parole: Rethinking the Role of the State in Reentry <i>Christine S. Scott-Hayward</i>	421

STUDENT NOTES & COMMENTS

Relieving the Tension: New Mexico's Departure from the Federal Position That There Is No Requirement to Present Exculpatory Evidence to the Grand Jury <i>Brett Eaton</i>	467
To Presume or Not to Presume Prejudice? <i>Kilgore v. Fuji Heavy Industries</i> Changes the Way New Mexico Analyzes Juror Misconduct <i>Catherine (Katie) Gleeson</i>	501
<i>Edward C. v. City of Albuquerque</i> : The New Mexico Supreme Court Balks on the Baseball Rule <i>Christopher McNair</i>	539
One Person, No Vote? How State Courts After <i>Bush v. Gore</i> Ensure Uniform Interpretation of Voter Intent Statutes Without "Unnecessary" Voter Disenfranchisement <i>David Odegard</i>	571

Why English-Only Notice to Spanish-Only Speakers Is Not Enough: The Argument for Enhancing Procedural Due Process in New Mexico <i>Lysette P. Romero</i>	603
INDEX: VOLUME 41	633
TITLE INDEX	634
AUTHOR INDEX	635
STUDENT ARTICLES	636
CASE NAMES (STUDENT ARTICLES)	636
SUBJECT INDEX (WITH SUBJECT TOPICS LIST)	638

INTRODUCTION

Welcome to the second issue of Volume 41 of the *New Mexico Law Review*. This issue completes our volume year and is filled with a broad range of articles written by both professional and student authors. Consistent with issue No. 1 of Volume 41, these articles primarily focus on issues that impact the state of New Mexico. It is our hope that the legal scholarship in this issue will provide pleasurable reading as well as enhance your understanding of New Mexico law.

First, in *Drug User Fee Reform: The Problem of Capture and a Sunset, and the Relevance of Priorities and the Deficit*, Margaret Gilhooley delves into the Prescription Drug User Fee Act, exploring its potential drawbacks and offering mechanisms for reform. This issue continues with Kerry E. Rodgers' article, *Identifying the Crucial Elements of States' Collaboration Over the Long Haul: The Transportation of Nuclear Waste to New Mexico*. In her article, Professor Rodgers highlights the strengths of the collaboration between state regional organizations and the U.S. Department of Energy in promoting the safe transportation of transuranic radioactive waste to the Waste Isolation Pilot Plant located in Carlsbad, New Mexico. Professor Rodgers then uses these strengths to create a model for effective state and federal collaboration in other policy areas.

Next, in *The Due Process Rights of Residential Tenants in Mortgage Foreclosure Cases*, Henry Rose examines the potential weaknesses of the Protecting Tenants at Foreclosure Act and their impact on the due process rights of tenants to receive notice and an opportunity to be heard when foreclosure threatens to terminate their tenancies. Following Professor Rose's article, Christine S. Scott-Hayward—in *The Failure of Parole: Rethinking the Role of the State in Reentry*—discusses the crucial question of whether parole is the appropriate institution for providing reentry services to people released from prison. Ms. Scott-Hayward concludes her article by offering various ways in which the reentry process may be improved.

The issue continues with a variety of student articles covering complex legal issues in New Mexico. First, in *Relieving the Tension: New Mexico's Departure from the Federal Position That There Is No Requirement to Present Exculpatory Evidence to the Grand Jury*, Brett Eaton provides an in-depth analysis of the grand jury system with an emphasis on New Mexico's approach. Following, in *To Presume or Not to Presume Prejudice? Kilgore v. Fuji Heavy Industries Changes the Way New Mexico Analyzes Juror Misconduct*, Catherine (Katie) Gleeson delves into the world of jury misconduct and examines the way in which courts have dealt with extraneous information reaching the jury.

Christopher McNair, in *Edward C. v. City of Albuquerque: The New Mexico Supreme Court Balks on the Baseball Rule*, explores the issue of baseball stadium operators' liability for spectator injuries and the unique rule applied in New Mexico courts. Next, in *One Person, No Vote? How State Courts After Bush v. Gore Ensure Uniform Interpretation of Voter Intent Statutes Without "Unnecessary Voter Disenfranchisement,"* David Odegard analyzes New Mexico's method of balancing uniformity and disenfranchisement when determining voter intent and compares New Mexico's method with those employed by other states.

Our issue concludes with Lysette P. Romero's *Why English-Only Notice to Spanish-Only Speakers Is Not Enough: The Argument For Enhancing Procedural Due Process in New Mexico*. Ms. Romero contends that under New Mexico's Due Process Clause, the notice requirement as it pertains to Spanish-only speakers is insufficient when such notice is provided solely in English.

The Editorial Board and Staff are proud to publish this issue of the *New Mexico Law Review*. We have worked hard toward our goal of rededicating the journal to issues that impact New Mexico, and we hope you enjoy the following articles as much as we enjoyed working on them.

Happy Reading!

—Jennifer Duprez & D'Ontae Sylvertooth, Co-Editors-in-Chief