



# NEW MEXICO LAW REVIEW

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## Introduction

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## INTRODUCTION

It is my pleasure to introduce Issue 1 of Volume 40 of the *New Mexico Law Review*. This issue is special for several reasons. It marks the first issue of *New Mexico Law Review*'s fortieth anniversary year and as such, it is a testament to the hundreds of students who have worked on the journal during the last four decades. It contains articles that continue the journal's tradition of publishing local, regional, national, and international legal scholarship. Most importantly, this issue is dedicated to a beloved member of the New Mexico legal community, retired New Mexico Supreme Court Justice Gene E. Franchini, who passed away less than a year ago on November 4, 2009, while concluding an address to University of New Mexico School of Law's first year students (UNMSOL Class of 2012).

We begin the issue with a commemorative article, *Gene E. Franchini: Reflections on a Man of Justice*, written by New Mexico Supreme Court Justice, Richard C. Bosson. Justice Bosson and Justice Franchini served on the New Mexico Supreme Court together in 2002 before Justice Franchini retired from the bench, but their professional relationship began much earlier. Justice Bosson uses two themes in his article, Franchini's integrity and commitment to justice, to bring his memories of Justice Franchini to life. For those of us who did not know Justice Franchini, I am thankful that others, who were close to him professionally and personally, are willing to share their memories and to pass on the lessons he taught them. For those readers who did know him, Justice Franchini's broad range of contributions guarantees that there are memorable stories about him you have not heard before—such as those included in Justice Bosson's article.

I recently met with Glynnie Franchini, Justice Franchini's wife, to talk about Justice Franchini and about her reflections on Justice Bosson's commemorative article. Through that meeting, I was, first of all, touched and inspired by Mrs. Franchini's joy in recalling her shared life with her husband. Then, I found that her stories reinforced what is also clear from Justice Bosson's article: Justice Franchini's hand touched numerous and important initiatives within the New Mexico judiciary, from the Judicial Performance Evaluation Commission to the state's drug courts. Justice Franchini seems to have embraced the state's legal system from end to end, by acting in capacities from mediator to trial judge, New Mexico Supreme Court justice to district court trial advocate, and at the same time through working to improve the system from within. His work did not stop at the boundaries of New Mexico, however. Relatively early in his career he argued the famous *Morton v. Mancari* case in front of the U.S. Supreme Court. Later, he became a giant in the National High School Mock Trial Competition arena—the competition recently renamed its “Golden Gavel Award” (previously awarded *to* him) the “Justice Gene Franchini Golden Gavel Award.” He also traveled extensively to speak with lawyers from other states. Although Justice Franchini was not a fan of footnotes, the board hopes those included in the commemorative article will serve to preserve his memory by enabling our readers to learn more about him.

Our second article is authored by Mr. Howard L. Brown and the Honorable Raymond D. Austin, *Twenty-Fifth Anniversary of the Navajo Preference in Employment Act: A Quarter-Century of Evolution, Interpretation, and Application of the Navajo Preference in Employment Act*. With the Navajo Nation in New Mexico's northwestern corner and the Navajo Preference in Employment Act (NPEA)

affecting multiple states' employees and employers, this article has both local and regional application, and likely even broader significance—through analogy to other Indian preference legislation. Through this article, Mr. Brown and Justice Austin have provided not only a historical and cultural context for the NPEA, but they also a thoughtful legal analysis. They give recommendations for NPEA-compliance to employers, and suggest NPEA amendments for the Navajo Council to consider. The article is valuable for students, Indian law practitioners, businesses in the region, and the Navajo government.

Professor Andrea Coles-Bjerre authored our next article, *Ipsa Facto: The Pattern of Assumable Contracts in Bankruptcy*, identifying converging themes in the federal courts' application of the U.S. Bankruptcy Code, in relation to the invalidation of ipso facto clauses in executory contracts. Professor Coles-Bjerre identifies four contexts in which judges have similarly invalidated such clauses, without direction to do so originating from federal statute: (1) contracts under which a non-debtor promised to make a loan or other "financial accommodation" to the debtor; (2) contracts imposing on the debtor a nonmonetary obligation on which the debtor has defaulted, when the nonmonetary default is "immaterial;" (3) cross-default clauses with an insufficient relationship to the contract a debtor seeks to assume; and (4) the "hypothetical" test for assumption of executory contracts. Professor Coles Bjerre does not suggest that the identified applications of the Bankruptcy Code should be codified, but rather that the existing pattern should be noted and appreciated for its actual orderly application within a complicated area of law.

Professor Stephen K. Urice's *Between Rocks and Hard Places: Unprovenanced Antiquities and the National Stolen Property Act* is a commentary on the National Stolen Property Act (NSPA) and its application to antiquities trade, particularly within the international context. Professor Urice's frames his article by looking to search warrants issued for several large art museums, positing that a conviction in the cases for stolen antiquities would cause the existing possession of many antiquities collections to be a federal crime. He argues that application of the NSPA to cases involving unprovenanced antiquities (objects lacking a known history, such as when and by whom the object was made, who owned it, and its record of publication, public exhibition, and restoration or conservation) risks both the protection of the global archeological record and museums' abilities to promote their charitable and educational missions. Professor Urice concludes his article by suggesting three alternatives to the existing NSPA to combat undesirable unprovenanced antiquities trafficking.

With such a breadth of topics and in-depth analysis, I hope these articles will provide our readers with fresh perspectives, legal assistance, and philosophic frameworks from which they may better appreciate, understand, and apply the law.

—Erin McSherry, Editor-in-Chief