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Introduction

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INTRODUCTION

Welcome to the second issue of Volume 42 of the *New Mexico Law Review*. With the recent celebration of the New Mexico centennial, we reached out to the New Mexico bench and bar to contribute articles relevant to the history of New Mexico's unique legal landscape. We were grateful for the enthusiastic response we received from so many in our legal community. We hope that you find the following articles interesting and informative.

We have three articles of particular relevance to New Mexico's legal history. In *Territory of New Mexico vs. Paula Angel: One Woman's Tragic Journey Through Territorial Justice in 1861*, Chief Judge M. Christina Armijo provides a moving recollection of the case of Paula Angel, the first woman sentenced to death in New Mexico, as told to her by her grandfather, Luis Armijo. Chief Judge Armijo obtained the original copies of the jury instructions, which are included in her article.

In *A Well-Tread, Disfavored Shortcut: A History of Summary Judgment in New Mexico*, Nicholas Sydow explores the history of summary judgment in New Mexico following the New Mexico Supreme Court's recent decision in *Romero v. Phillip Morris*, in which the court refused to adopt the federal summary judgment standard. Sydow contends that while New Mexico purports to apply a more stringent summary judgment standard, in practice this has not been the case.

In *A Eulogy for New Mexico Reports: The Evolution of Appellate Publication From 1846 to 2012*, New Mexico Supreme Court law librarian Robert Mead celebrates the history of the New Mexico Reports. In honor of the final volume of the New Mexico Reports, Mead provides a comprehensive and fascinating history of appellate publication in New Mexico.

Continuing with a focus on issues relevant to New Mexico, Professor Christopher Brown discusses the recent *National Pork Producers Council v. United States Environmental Protection Agency* decision. Professor Brown contends that the decision hampers the EPA regulatory scheme governing the discharge of pollutants into groundwater systems by confined animal feeding operations. As Professor Brown notes, with the prevalence of dairies in New Mexico, this decision, and further developments in this area of law, could result in major consequences for both our environmental resources and our dairy industry.

In *Iqbal is Not a Game Changer for Discovery in Civil Rights Cases*, Professor George Bach and Matthew Garcia argue that federal courts have misconstrued dicta in *Iqbal* as requiring a stay of all discovery upon the filing of a motion for qualified immunity. Professor Bach and Mr. Garcia propose that rather than stay discovery pending resolution of the

defendant's motion, federal district courts should "take a peek" at the motion and appropriately tailor discovery when necessary.

This issue also contains four student notes. In *What's Right is Wrong and What to Do About It After Oldham v. Oldham*, Mark Cox explores the complicated dynamic between New Mexico's Uniform Probate Code and the domestic affairs statute. Ultimately, Cox suggests that although the New Mexico Supreme Court was left with few alternatives in *Oldham*, the holding of the case frustrates the public policy supporting New Mexico's domestic affairs statute.

Next, in *State v. Mendez: Restoring the Admissibility of Statements Made for the Purposes of Medical Diagnosis or Treatment in the Context of Child Sexual Abuse*, Charles Kraft explains why the New Mexico Supreme Court's holding regarding the admissibility of statements made by children to Sexual Assault Nurse Examiners was proper. Kraft analyzes why such a statement should be an exception to the rule against hearsay as a statement made for the purposes of medical diagnosis or treatment as well as offers a working definition of the term "treatment."

In *State v. Ochoa: The End of Pretextual Stops in New Mexico?* Mike Sievers discusses the 2009 New Mexico Court of Appeals decision wherein the court held that pretextual stops are unconstitutional under the New Mexico Constitution. With New Mexico being among the small minority of jurisdictions to prohibit pretextual stops—traffic stops undertaken to investigate criminal activity unrelated to the traffic violation—Sievers explains why New Mexico took a step forward in providing broader protections under the New Mexico Constitution.

Finally, Alexandra Wilson discusses a recent constitutional challenge to the New Mexico Tort Claims Act's damages cap in *Wachocki v. Bernalillo County Sheriff's Department: Renewed Challenges to the New Mexico Tort Claims Act Cap*. Wilson provides an overview of previous constitutional challenges to the cap and contends that challenges to the cap under the New Mexico Constitution could result in more favorable outcomes for plaintiffs in the future.

It is our hope that you enjoy this issue of the *New Mexico Law Review*. We encourage all of those interested in contributing to the continued development of the New Mexico legal landscape to consider publishing with the *New Mexico Law Review*. Happy reading!

—Katie Gleeson & Chris McNair,
Editors-in-Chief