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Foreword: Reflections on the Legacy of Justice Pamela B. Mizner

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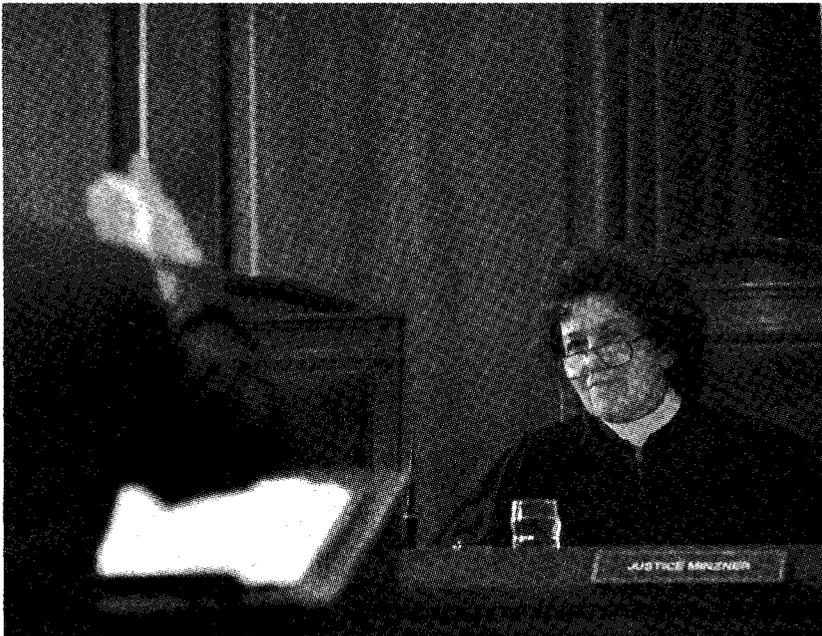
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This special issue is dedicated to
PAMELA B. MINZNER



1936–2007
¡Adelante!



The University of New Mexico
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Albuquerque, New Mexico

P B M | FOREWORD

FRED HART*

Pamela B. Minzner was an important person. A graduate of the Harvard Law School, she was a lawyer; a tenured full professor at this law school; an author; a New Mexico Court of Appeals judge, and the court's Chief Judge; a justice on the New Mexico Supreme Court, and its Chief Justice. Volume 141 of the *New Mexico Reports* is dedicated to her, a new courthouse will be named for her, and a professorship at the University of New Mexico School of Law will bear her name. She has received many awards, and her influence on the law of New Mexico, the professionalism of the bar, and upon her students has been immense.

Her many accomplishments are noted in the articles that follow: her work is not neglected. But I suggest that what the writers tell you is more about Justice Minzner as a person. It can be said simply: she was admired for what she accomplished, but she was loved for who she was.

I had the privilege of being Pamela's colleague for the decade that she was on the law school faculty. I will say, very simply and without elaboration, that she was an excellent teacher and a fine scholar. But like those who have written in this issue, that's not what I truly want to say. Let me, as does Professor Laurence, briefly relate some stories.

One day soon after Pamela joined the faculty when I was dean, she stopped in my office in the morning, probably just to chat. I must have been in a complaining mood, and I must have told her that it wasn't going to be a good day. When I returned from lunch, sitting on my desk was a plant with bright orange flowers and a note: "I hope this brightens your day a bit. Pam."...

One of our children who lived in California was diagnosed as having cancer soon after Pamela learned that she had it as well. My wife went to be with our daughter in those awful first few days when we received the news. I was home with our other children, and late in the afternoon Pamela, who had just been discharged from the hospital, came to the door. We talked for a half hour or so....

The year after I quit being dean, I taught the basic property course for the first time. Pamela not only had the job of teaching the other section, but also of teaching me. At least twice a week she would tutor me for an hour or so. When we were about to start the difficult subject of estates in land, I had spent a good bit of time reading the first two or three cases. After I told her my understanding of them, in a very kind way she said something like, "That is a very imaginative and interesting take on the case. However, I think that they are generally regarded as holding something different."...

* Professor Emeritus Frederick M. Hart is a thirty-seven-year faculty member of the University of New Mexico School of Law. In addition to teaching, he served as dean from 1971 to 1979 and from 1985 to 1986. Professor Hart has had a profound influence on this Law School, particularly through the pivotal role he played in creating a more diverse faculty and student body during his time as dean.

These stories show that Justice Minzner's humanity was a significant part of the legacy that she left behind. The articles that follow reinforce that aspect of her legacy and highlight others: her judicial opinions continue to influence New Mexico's legal landscape; her superb teaching abilities continue to have an impact on property students in law schools around the world; her achievement continues to inspire women in the legal profession to reach ever higher in their quest for equality. Perhaps most importantly, Justice Minzner's gracious manner continues to shape the way that many members of New Mexico's legal community approach each other, as they unconsciously pass on the kindness that came to her so effortlessly. Finally, you will see her legacy in the lives of her two sons, Max and Carl—accomplished legal scholars and professors in their own right—whose words join those of Chief Justice Chavez, Robert Laurence, and Maureen Sanders in this special section.

Initially her student and later her colleague on the New Mexico Supreme Court, Chief Justice Chavez begins his article, *Pamela B. Minzner: From Professional Promise to New Mexico's Iconic Leader in Professionalism*, by quoting an inscription on a dictionary awarded to Justice Minzner by her college, Miami University in Ohio, predicting her "Professional Promise." He then reviews some of Justice Minzner's accomplishments and discusses a selection of cases that she authored, indicating their importance not only to the development of the law in New Mexico, but also the extent to which they have been persuasive in courts of other states.

More significant than the Chief Justice's discussion of her work are his comments about her as a person: "It was her kind and gentle voice that so often offered words of encouragement..."; "[W]hat we all marveled about was Pam's reservoir of genuine thoughtfulness and unassuming respect for everyone"; "Pam was always able to find something positive to write about those with whom she was expressing disagreement..."; "[F]or Pam, it was more than the use of the phrase 'I respectfully dissent.' She always wrote with respect...." The Chief Justice concludes that Pamela "more than exceeded the promise of being a professional" in everything that the term connotes.

A second student of Justice Minzner's, Professor Robert Laurence was also her co-author on one of the best-selling student texts ever published by Matthew Bender. In his article, *Some Personal Reflections on the Life and Work of Pamela B. Minzner*, he tells two stories from the perspective of Justice Minzner's "mentee":¹ one involving the book that they co-authored, the other relating to correspondence they had over the significance of cases in which a lower court was affirmed by an appellate court's equally divided vote. The theme that runs through the two stories is similar to Chief Justice Chavez's observation of her respect for contrary views in her dissents, but Professor Laurence tells the stories to illustrate his belief that Justice Minzner was a strong believer in the value of consensus. Although she may have preferred that portions of their book be written somewhat differently, she was content to sublimate her desires to achieve harmony. Similarly,

1. As you will see from the introduction to his article, Professor Laurence would approve of the use of that word.

she disagreed with Professor Laurence's criticism of the result when courts were evenly divided because she believed consensus was an important characteristic in a court and that dissenting judges should work toward it. Professor Laurence concludes that the lesson that Justice Minzner was gently teaching him was one of humility.

Maureen Sanders was also Justice Minzner's student at the law school, and her friend for over thirty years. In her article, *A Women for Her Time and Our Future*, Ms. Sanders initially places the career of Justice Minzner in the context of the emergence of women in the legal profession and notes that her time as a law professor coincided with the recognition of women's civil rights on the national stage. Ms. Sanders then discusses two cases decided by Justice Minzner while on the supreme court. Early in her career she wrote the opinion in *State ex rel. Clark v. Johnson*,² a controversial case in which the court decided that compacts signed by the governor and certain tribes were invalid because the governor's action infringed upon the role of the legislature. In the second case, *New Mexico Right to Choose/NARAL v. Johnson*,³ the court, with Justice Minzner writing, found constitutional problems with the action of the executive in limiting payments to Medicaid-eligible women for abortions based upon New Mexico's equal rights amendment. The two cases are offered as evidence of the thorough and careful analysis common to Justice Minzner's opinions and her approach to judging. Ms. Sanders concludes her article with an extensive quotation from a speech by Judge Linda Vanzi discussing the history of women, including Justice Minzner, and the law in New Mexico.

In his article, *Revisiting Hooper*, Professor Max Minzner discusses one of Justice Minzner's opinions. *Hooper v. Bernalillo County Assessor*⁴ was written by then-Judge Minzner soon after she joined the New Mexico Court of Appeals. In an unusual move, the U.S. Supreme Court heard an appeal from the decision and reversed the court of appeals, even though the New Mexico Supreme Court had denied certiorari.⁵ Professor Minzner asks whether his mother and the other court of appeals judges "could have gotten [it] right," and whether his mother's opinion could have been written in a way to prevent reversal. He concludes that upon a reasonable interpretation of Supreme Court cases decided at the time, the decision was right, and that its reversal resulted from the Court's change in approach to the right to travel. Professor Minzner convincingly shows that the approach of his mother was consistent with the existing law, and, as he says, a contrary opinion "would have been a very aggressive act of judicial interpretation...very much outside my mother's judicial temperament."

In his contribution to this issue, *Judicial Disciplinary Systems: The Imperial Chinese Heritage Lives On*, Professor Carl Minzner provides an extensive discussion of the Chinese court responsibility system which imposes sanctions on Chinese judges. Under the Chinese system, judges may be sanctioned for behavior that would also be subject to discipline in the United States, including for example,

2. 120 N.M. 562, 904 P.2d 11 (1995).
3. 126 N.M. 788, 975 P.2d 841 (1998).
4. 101 N.M. 172, 679 P.2d 840 (Ct. App. 1984).
5. 472 U.S. 612 (1985).

illegal or unethical dealing with parties, inappropriate courtroom behavior, and neglect of their duties. In addition, in accord with long established traditions, but contrary to the decisions of the Chinese Supreme People's Court, judges on some local Chinese courts are penalized when they are reversed by superior courts. The practice of penalizing judges for their rate of reversal has led judges to seek "advisory requests" from the reviewing courts indicating how a pending case should be decided. Professor Minzner explores the difficulties that this causes for the reviewing courts and for the judicial system. He also discusses the efforts being made to reform the practice of advisory requests, concluding that reform of the practice will only be successful if it is in the context of altering the standards by which Chinese judges are evaluated. Professor Minzner's article directly relates to one of Justice Minzner's primary concerns: professionalism of the bench and bar.

* * *

Although these articles catch much of Pamela, there are omissions. Nothing is said about her quick sense of humor; the enjoyment she took in laughing, and how her laugh would cheer anyone who heard it. Nothing is said about her love for her family, her husband, and her two boys; in spite of all of her accomplishment, her family came first. Nothing is said about the intensity with which she listened; her facial expression that conveyed her interest in what you were saying.

Pamela was indeed an important person. But, if you talked to her you would never know it. She always treated you as the important one. She was always interested in hearing what you had to say, rather than in hearing herself talk. She made you feel that you were someone special, when actually she was the special person.

I invite you to read on. You will learn much about Pamela B. Minzner and why she was that special person.