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Pamela B. Minzner: From Professional Promise to New Mexico's Iconic Leader in Professionalism

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P B M | PAMELA B. MINZNER: FROM PROFESSIONAL PROMISE TO NEW MEXICO'S ICONIC LEADER IN PROFESSIONALISM

EDWARD L. CHÁVEZ,* CHIEF JUSTICE
SUPREME COURT OF NEW MEXICO

On the corner of a desk sits a black book that is obviously worn from use. The edges of the black leatherette cover and the spine are cracked, showing the brown cardboard underneath, but the gilt lettering on the spine still shines. Scotch tape—a late addition—holds together the top left corner of the spine. The gold-leafing on the edges of the pages has held up better than some of the pages themselves. Countless pages have bent corners, at one time marking important pages to which the reader must have intended to return. Many pages have eraser rubbings scattered between them, signifying the careful attention given the words by the reader, perhaps temporarily summarizing an understanding of the content, only later to be erased. Embossed on the lower right-hand corner of the book in faded green letters is the name “Pamela Burgy.” The book is a 1965 edition of *Webster’s Seventh New Collegiate Dictionary*, published by G. & C. Merriam Company in Springfield, Massachusetts. This dictionary was a thoughtful award—thoughtful, because instead of just another certificate, it was a book that could receive lifelong use. It was given to Pamela Minzner, then Pamela Burgy, by her undergraduate school, Miami University in Oxford, Ohio. On the first page of the dictionary is a bookplate, which reads:

Department of Government
Miami University
Atlee Pomerene
Award
Presented to
Pamela Burgy
In Recognition of
Outstanding Academic Performance
And Professional Promise
Oxford, Ohio, 19 May 1965

“Professional Promise.” The percipience of Miami University in awarding Pamela Burgy the Atlee Pomerene¹ Award is remarkable. “Promise” is an “expectation...of success, improvement, or excellence.”² “Professional” has at least

* Chief Justice Edward L. Chávez, born in Santa Fe, New Mexico, has served on the New Mexico Supreme Court since March 7, 2003. His colleagues elected him chief justice on January 10, 2007. Chief Justice Chávez received his B.B.A. from Eastern New Mexico University in 1978, and his Juris Doctorate from the University of New Mexico School of Law in 1981. He volunteer teaches at the UNM School of Law as an Adjunct Instructor in Evidence and Trial Practice. Some of his recognitions include serving as an elected member of the American Law Institute, and being a Fellow in the American College of Trial Lawyers and in the International Academy of Trial Lawyers.

1. Atlee Pomerene was an attorney in Ohio, whose many accomplishments included service as a U.S. Senator. Biographical Directory of the United States Congress, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=P000420>.

2. WEBSTER’S SEVENTH NEW COLLEGIATE DICTIONARY 682 (1965).

two meanings: “engag[ing] in one of the learned professions,” law of course being one, and “characterized by or conforming to the technical or ethical standards of a profession.”³ It is beyond question that Pamela Burgy more than exceeded the promise of being a professional under both meanings of the word. Her consummate professionalism is evident both in her career accomplishments and how she conducted herself as a jurist.

Yes, she was a gifted lawyer and jurist, but what we all marveled about most was Pam’s reservoir of genuine thoughtfulness and unassuming respect for everyone. She had a sincere interest in people. She did not stand on ceremony.⁴ She lived as if she were unrecognizable. Although many knew who she was, she always introduced herself as “Pam.” She was loved, respected, and admired on the New Mexico Supreme Court. Justice Petra Jimenez Maes recalls how freely Pam revealed her respect for others.

In her comments at my swearing-in ceremony, she welcomed me by referring to me as “my sister on the Court.” At that time we did not know each other very well, only having met at a few events. Her comment was sincere and honest and we got to be good friends. I saw her treat everyone with the same respect and love she showed to me.⁵

Pam enjoyed the unconditional respect and admiration of the entire legal community, not just of the court. She brightened our lives with her soft smile, amazing grace, and kind and gentle voice. It was her kind and gentle voice that so often offered words of encouragement to everyone. “*Adelante*,” which is a plea to keep making progress and keep moving forward, was the word Pam said to close so many of her speeches, whether a graduation speech, a swearing-in ceremony, or a campaign speech. Even some of the notes that she was famous for writing closed with that word. You always knew that Pam meant every word she wrote to you, because at times even the pre-printed wording on the card was carefully edited. Justice Patricio M. Serna, who served with Justice Minzner on the supreme court for almost eleven years, also received these notes regularly. He comments:

During my many years of service on the Supreme Court with Justice Minzner, I often received wonderful cards from her with thoughtful personal messages of encouragement, appreciation, holiday greetings, and birthday wishes, all in her elegant handwriting. She also sent cards offering me solace in sad times. She was undoubtedly the most thoughtful person I have ever met.⁶

As Pam traveled throughout New Mexico to campaign or as part of her ambassadorship responsibilities for the court, people she met often seemed to be utterly amazed that a brilliant and accomplished woman, whose mannerisms and speech were the very essence of compassion, could travel the rural communities of our land of enchantment and connect with everyone—displaying her sincere interest

3. *Id.* at 680.

4. Which is why Pam would not be happy to read that I have referred to her as an “iconic leader in professionalism” or mentioned that she has received so many posthumous recognitions, including having the Court of Appeals Annex at the UNM School of Law named after her.

5. 141 N.M. XLIII (2007).

6. 141 N.M. XLIV (2007).

in them—urging them to reach for the stars. Pam could confidently pump her fist in the air and call out *adelante* because she symbolized progress. She always moved forward, paving the way for others to succeed. She was a trailblazer. Justice Richard C. Bosson, who worked with Pam on both the court of appeals and the supreme court, describes her as a “lamplighter”:

The lamplighter is, of course, a metaphor, a way of exhorting us to use our energy and talents to inspire, to teach, to set a good example, to light the mental fires in those around us to become everything they can be.

How appropriate to employ such a metaphor in describing the life of Justice Minzner.⁷

Pam went from Miami University to Harvard Law School, where she joined twenty-one other women who made up less than 5 percent of the student body,⁸ graduating in 1968. This accomplishment fulfilled one definition of “professional”: that of engaging in one of the learned professions. She practiced law in Boston with Bingham, Dana & Gould and in Albuquerque with Cotter, Hernandez, Atkinson, Campbell & Kelsey. She then became a member of the faculty of the University of New Mexico School of Law, teaching from 1973 to 1984. I was one of her many adoring property law students as I attended UNM Law School from 1978 to 1981. Continuing in her service to New Mexico, in January 1984, Pam was appointed by Governor Toney Anaya to the New Mexico Court of Appeals where she worked for ten years, serving as chief judge of the court of appeals from 1993 to 1994.

The first reported decision in which she participated on the court of appeals was a case involving an issue of first impression.⁹ The opinion was written by then Chief Judge Thomas A. Donnelly and concurred in by Judge William R. Hendley, who had served on the court since 1972, and Judge Minzner, who had been appointed to the court of appeals only weeks before the opinion was filed. In *McNeely*, the defendant appealed a verdict in favor of his former mother-in-law, who was awarded \$85,200 in damages for her claims of negligence and assault and battery.¹⁰ The defendant argued that it was error to permit an economist to opine about the value of his mother-in-law’s lost household services as an element of damages, separate and apart from her lost earning capacity, when she was a single person.¹¹ Whether a single person can recover damages for the value of the loss of ability to perform household services was a matter of first impression in New Mexico.¹² The court affirmed, noting that New Mexico recognizes a right of recovery for loss of household services on behalf of the community.¹³ Therefore, considering equal protection principles, the court was loath to find any valid justification to deny a single person the same right.¹⁴

7. 141 N.M. XLI (2007).

8. Mary J. Mullarkey, *Two Harvard Women: 1965 to Today*, 27 HARV. J.L. & GENDER 367, 369 (2004).

9. *McNeely v. Henry*, 100 N.M. 794, 797, 676 P.2d 1359, 1362 (Ct. App. 1984).

10. *Id.* at 795–96, 676 P.2d at 1360–61.

11. *Id.* at 796–97, 676 P.2d at 1361–62.

12. *Id.* at 797, 676 P.2d at 1362.

13. *Id.*

14. *Id.*

Pam's first opinion to be published in the *New Mexico Reports* was *State v. Jasper*.¹⁵ In *Jasper*, two district attorneys and two police officers appealed their criminal contempt citations for negligently failing to comply with a court order regarding discovery.¹⁶ The officers filed their appeal one day late.¹⁷ However, Judge Minzner, writing for a unanimous panel, held that the appeal was timely because the trial court neglected to advise the plaintiffs that they had a right to an appeal and could proceed at state expense if they were indigent.¹⁸ The court of appeals reversed the contempt citation on the merits, holding that the finding of negligence did not support a contempt citation.¹⁹ To support a contempt citation, proof of willful conduct is essential.²⁰

What is most remarkable about her first opinion is Pam's respectful style of writing. Pam was always able to find something positive to write about those with whom she was expressing disagreement, which became a hallmark of her professionalism. She concluded her analysis in *Jasper* by writing:

We believe that there is insufficient evidence that his failure to bring the order and terms to the attention of the police was a conscious act which represented an indirect criminal contempt, although *we respect the efforts of the trial court judge* to deter future instances of non-compliance with disclosure rules.²¹

Judge Minzner's contributions to New Mexico as a court of appeals judge were substantial and immediate. Within months of her appointment she authored *Wellborn Paint Manufacturing Co. v. New Mexico Employment Security Department*,²² which would be the first of twenty first-impression cases she would author on the court of appeals. In *Wellborn*, filed on July 10, 1984, she wrote in scholarly fashion about the right of employees engaged in a lockout to receive unemployment compensation benefits during the lockout. At issue was section 51-1-7 of the New Mexico Statutes, which provided that "An individual shall be disqualified for, and shall not be eligible to receive, benefits...for any week with respect to which the department finds that his unemployment is due to a labor dispute at the factory...."²³ Whether a lockout is a labor dispute as contemplated by section 51-1-7 was an issue of first impression, which Judge Minzner answered affirmatively for a unanimous panel.²⁴ In doing so she reversed the district court, and as would become almost habitual, she wrote sincerely and respectfully about the trial court:

15. 103 N.M. 447, 708 P.2d 1048 (Ct. App. 1984), *rev'd in part* by *State v. Wisniewski*, 103 N.M. 430, 708 P.2d 1031 (1985). While serving on the court of appeals, Judge Minzner's first published opinion was actually *St. Sauver v. N.M. Peterbilt, Inc.*, 101 N.M. 84, 678 P.2d 712 (Ct. App. 1984), a case involving the standing of the New Mexico State Highway Department to contest its employee's motion to dismiss a negligence action against him which arose in the course and scope of his employment. However, this opinion was actually filed on March 8, 1984, approximately two weeks after *Jasper*.

16. 103 N.M. at 449, 708 P.2d at 1050.

17. *Id.*

18. *Id.*

19. *Id.* at 453, 708 P.2d 1054.

20. *Id.*

21. *Id.* (emphasis added).

22. 101 N.M. 534, 685 P.2d 389 (Ct. App. 1984).

23. *Id.* at 536, 685 P.2d at 391 (internal quotation marks omitted).

24. *Id.*

The trial court's findings and conclusions evidence a concern that an interpretation of the statutory term "labor dispute" that includes lockouts and does not recognize an impasse exception permits unilateral and unreasonable conduct by the employer. We respect that concern, but we believe the federal statute provides significant protection against such conduct.²⁵

This opinion also reflects what would become her fidelity to statutory construction principles, refusing to add language to a statute, particularly when the statute makes sense as written.²⁶

In November 1994, Governor Bruce King appointed Pam to the New Mexico Supreme Court, and in the 2002 general election she was elected to an eight-year term. As a jurist, she was a tireless legal scholar. She was also gifted with an uncanny instinct for knowing what is right and an unmatched ability to build consensus.

On the supreme court, the protocol for case deliberations requires the justice with the least seniority who is not assigned to author the opinion to begin the discussion, followed by the remaining justices, in order of increasing seniority, with the author speaking last. During conference, as we deliberated cases, Justice Minzner quietly took notes, listening carefully to what her colleagues were saying. When it came her turn to discuss the issues, she always calmly analyzed the parties' arguments, explaining how she would vote. She was as quick to compliment a justice on what she considered to be a well-articulated position as she was to respectfully voice her disagreement with a position. She never made her disagreements personal. She had a way of making one gain confidence in his or her position when she was in agreement, and her calm approach to disagreement was likely to make one revisit his or her position. In the end, she always kept an open mind and was very capable of changing her mind on the result of a case. When she did change her mind, she always explained why, never leaving to speculation the rationale for her change in position. These talents no doubt account for why she participated in a total of 939 published opinions²⁷ and dissented only thirty-two times.

Of her 321 published opinions, 122 were as a supreme court justice, and sixteen were cases addressing issues of first impression. The first supreme court case on which I participated was authored by Justice Minzner and involved an issue of first impression.²⁸ The clarity and thoroughness of her writing, together with the respect with which she treated the parties, was a great learning experience for me.

In *Lozoya v. Sanchez*, the supreme court held that a claim for loss of consortium is not limited to married partners.²⁹ Evaluating the cause of action for loss of consortium, Justice Minzner wrote that a person brings such a cause of action "to recover for damage to a *relational* interest, not a legal interest."³⁰ The linchpin is

25. *Id.* at 540, 685 P.2d at 395.

26. *Id.* at 539, 685 P.2d at 394.

27. Both the New Mexico Court of Appeals and the New Mexico Supreme Court file decisions that are not published, so I do not know how many cases Pam participated in on either court.

28. See *Lozoya v. Sanchez*, 2003-NMSC-009, 66 P.3d 948, *abrogated in part by* *Heath v. La Mariana Apartments*, 2008-NMSC-017, 180 P.3d 664.

29. *Id.* ¶ 1, 66 P.3d at 951.

30. *Id.* ¶ 20, 66 P.3d at 955.

whether there is adequate proof of a close familial relationship.³¹ Because this was a case of first impression under New Mexico law, Justice Minzner was careful to set out factors that might be pertinent to defining the extent of the relationship:

That standard must take into account the duration of the relationship, the degree of mutual dependence, the extent of common contributions to a life together, the extent and quality of shared experience, and...whether the plaintiff and the injured person were members of the same household, their emotional reliance on each other, the particulars of their day to day relationship, and the manner in which they related to each other in attending to life's mundane requirements.³²

However, in crafting the opinion for the court, Justice Minzner was cautious to take into consideration and specifically address the concerns expressed by the defendants.

Due to Defendants' concerns that we should not create an unworkable standard, we think that further limits are appropriate. First, a person can only have an intimate familial relationship with one other person at any one time. That is to say, if a person is married to a different person than the victim of the tort, the claim will be barred. In the case of claims by unmarried cohabitants, the relationship between the claimant and the victim must be demonstrated to be committed and exclusive. Second, the burden of proving that an intimate familial relationship existed will be on the claimant, with a presumption that this exists if the parties were engaged, married, or met the general test for common law marriage. The defendant should not have the burden of "fighting off" multiple claims for loss of consortium.³³

Such was her style of writing, invariably seeking to address each point raised by the litigants so they would be sure to understand that even if they did not prevail, their arguments were given due consideration.

Pam's opinions have been influential, both within New Mexico and in other jurisdictions. Two of her opinions cited frequently by other states involved important questions of Indian Law and the extent of governmental powers. In the case of *State ex rel. Human Services Department v. Wayne R.N.*,³⁴ Judge Minzner was faced with termination proceedings related to a child subject to the Indian Child Welfare Act (ICWA). One of the key issues in the case was whether jurisdiction should have been transferred to the tribal court in Oklahoma. Under the ICWA, once a party files a petition to transfer jurisdiction, the trial court must consider whether good cause exists not to transfer the case.³⁵ Judge Minzner set out a number of factors to consider under this test, including the timeliness of the petition, the location of the parties and witnesses, and the reach of the tribal court's subpoena power.³⁶ She also applied a modified doctrine of *forum non conveniens*, as

31. *Id.* ¶ 26, 66 P.3d at 957.

32. *Id.* ¶ 27, 66 P.3d at 957 (quoting *Dunphy v. Gregor*, 642 A.2d 372, 378 (N.J. 1994)).

33. *Id.* ¶ 29, 66 P.3d at 958 (citation omitted).

34. 107 N.M. 341, 757 P.2d 1333 (Ct. App. 1988).

35. *Id.* at 343, 757 P.2d at 1335.

36. *Id.* at 344, 757 P.2d at 1336.

suggested by the legislative history leading up to the passage of the ICWA.³⁷ *Wayne R.N.* has been cited twenty-one times in fourteen different states for Judge Minzner's analysis of these factors and her application of modified forum non conveniens under the ICWA.³⁸

In another case involving a federal statute, Justice Minzner wrote to resolve a dispute between the State Legislature and Governor Gary Johnson over implementation of the Indian Gaming Regulatory Act (IGRA).³⁹ Under the IGRA, Congress allowed Indian tribes to establish casinos if they were located in a state that permits gaming, and they negotiated a compact with the state in which they were located.⁴⁰ Governor Johnson had negotiated compacts with a number of Indian tribes located in New Mexico.⁴¹ Two legislators and a taxpayer sought to block implementation of the compacts with a writ of mandamus, arguing that adopting the compacts would create law and thus violate the separation of powers between the legislative and executive branches of government.⁴² Justice Minzner agreed that the compacts created new law, but recognized that the real test was "whether the Governor's action disrupts the proper balance between the executive and legislative branches."⁴³ Because the Legislature has the authority to regulate gaming within New Mexico, and because the Governor acted "in the absence of *any* action on the part of the legislature," Justice Minzner held that the Governor could not enter into the compacts "solely on his own authority."⁴⁴ Approximately seven other states, in sixteen different opinions, found Justice Minzner's reasoning useful in resolving similar separation of powers questions related to the IGRA.⁴⁵ The opinion is referenced by thirty-eight journal articles, most of them dealing with Indian gaming.⁴⁶ The opinion has also been influential in New Mexico, having been cited twenty-three times for its discussion of the separation of powers doctrine and its description of mandamus powers.⁴⁷

In January 1999, she became the first woman elected by her colleagues to the position of Chief Justice of the New Mexico Supreme Court. She served in that position until January 2001 and continued to serve as senior justice until losing her valiant battle with cancer on August 31, 2007. The last supreme court order bearing

37. *Id.*

38. *See, e.g., Ex parte C.L.J.*, 946 So. 2d 880, 890 (Ala. Civ. App. 2006).

39. *See State ex rel. Clark v. Johnson*, 120 N.M. 562, 904 P.2d 11 (1995).

40. *Id.* at 566, 904 P.2d at 15.

41. *Id.* at 567, 904 P.2d at 16.

42. *Id.* at 568-70, 904 P.2d at 17-19.

43. *Id.* at 574, 904 P.2d at 23.

44. *Id.*

45. *See, e.g., Fla. House of Representatives v. Crist*, No. SC07-2154, 2008 WL 2669767, at *6 (Fla. July 3, 2008); *McCartney v. Attorney Gen.*, 587 N.W.2d 824, 827 (Mich. Ct. App. 1998); *Saratoga County Chamber of Commerce, Inc. v. Pataki*, 798 N.E.2d 1047, 1054 (N.Y. 2003).

46. *See, e.g., Katie Eidson*, Comment, *Will States Continue to Provide Exclusivity in Tribal Gaming Compacts or Will Tribes Bust on the Hand of the State in Order to Expand Indian Gaming*, 29 AM. INDIAN L. REV. 319, 335 (2004); Rebecca Tsosie, *Negotiating Economic Survival: The Consent Principle and Tribal-State Compacts Under the Indian Gaming Regulatory Act*, 29 ARIZ. ST. L.J. 25, 78 (1997); Heather A. Weckbaugh, Comment, *Federal Indian Law*, 76 DENV. U. L. REV. 845, 855 (1999).

47. *See, e.g., Gallegos v. Pueblo of Tesuque*, 2002-NMSC-012, ¶¶ 13-21, 46 P.3d 668, 674-76; *State ex rel. Sandel v. N.M. Pub. Util. Comm'n*, 1999-NMSC-019, ¶¶ 11-12, 980 P.2d 55, 60; *State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶¶ 14-17, 23-25, 961 P.2d 768, 773, 775.

her signature reflects what we had all come to love about Pam; she always wanted to celebrate the accomplishments of others, never needing to be in the spotlight herself. On August 28, 2007, an order was entered that reads as follows:

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NO. 07-8500

IN THE MATTER OF HONORABLE MARY COONS WALTERS,
HONORARY CHIEF JUSTICE OF THE NEW MEXICO SUPREME COURT

ORDER

WHEREAS, Justice Mary Coons Walters served as Justice of this Court from January 13, 1984, to December 31, 1988;

WHEREAS, this Court recognizes the historical significance of Justice Walters as the first woman appointed and elected as a Supreme Court Justice of the State of New Mexico; and

WHEREAS, this Court further recognizes her unwavering dedication to the administration of justice in New Mexico.

NOW, THEREFORE, the honorary title of Chief Justice of the New Mexico Supreme Court hereby is bestowed posthumously upon Mary Coons Walters; and

IT IS ORDERED that the Supreme Court Building Commission shall cause to have her official portrait permanently displayed in the Hall of Chief Justices.

IT IS SO ORDERED.

Done at Santa Fe, New Mexico, this 28th day of August, 2007.

Signed by: Chief Justice Edward L. Chávez

Justice Pamela B. Minzner

Justice Patricio M. Serna

Justice Petra Jimenez Maes

Justice Richard C. Bosson⁴⁸

I believe that the alternative definition of “professional” best defines Pamela Burgy Minzner as a person, wife, mother, lawyer, professor, and jurist. If Miami University attributed more to “professional promise” than just the recipient engaging in a profession, they chose wisely in granting the award to Pam. Academic excellence alone can advance a person into a profession. However, the consummate professional is not only one engaged in a profession but one who conforms to the ethical standards of a profession. Among Pam’s many accomplishments during her term as chief justice, was the creation of the Commission on Professionalism, established in May 2000, on which she served as co-chair. It was the Commission on Professionalism that drafted New Mexico’s Creed of Professionalism.⁴⁹ During

48. Order No. 07-8500 (2007) (copy on file with the *New Mexico Law Review*).

49. See State Bar of New Mexico, Creed of Professionalism, <http://nmbar.org/Attorneys/creed.html> (last visited Sept. 22, 2008).

its annual meeting in July 2007, the State Bar of New Mexico gave Pam its Professionalism Award, which is the highest award the Bar offers to the attorney or judge who exemplifies the epitome of professionalism. This award came as no surprise to the legal community, from whom she had unconditional respect and admiration. Her legacy is professionalism, having had a natural and unyielding commitment to the Golden Rule, “Do unto others as you would have them do unto you.” Pam’s professionalism continues to be honored, as evidenced by the University of New Mexico Law School’s establishment of the Pamela B. Minzner Chair in Professionalism.

The considered manner in which Pam wrote about lower courts or litigants carried over to her dissents, which she wrote with the utmost respect. You need only read her dissenting opinions to capture not only her legal genius, but also the consideration with which she expressed herself, never demeaning those who disagreed with her. Her dissents invariably began with the sentence, “I respectfully dissent.”⁵⁰ Use of the word “respectfully” was extremely important to her. I recall circulating a draft for review, concurring in part and dissenting in part, to an opinion authored by Pam.⁵¹ Pam visited me after she read the draft dissent, concerned that I was upset about the majority opinion. I was not, but was curious to find out why she asked. She told me that in my dissent I had not indicated that I had “respectfully” dissented, which suggested to her that I was upset. I asked if the tone of the dissent was harsh, and she said it was not—it was simply the omission of the word “respectfully,” an omission I had not made before, which suggested to her that I was upset about the majority opinion. After I apologized for my inadvertent mistake, she explained that the word “respectfully” was very important to include in a dissent. I corrected the language in the dissent, and it is a lesson I do not ever intend to forget.

But for Pam, it was more than the use of the phrase “I respectfully dissent.” She always wrote with respect, oftentimes finding something about the majority opinion to compliment. For example, in *State v. Jernigan*,⁵² on the issue of whether the trial court erred in not instructing the jury on attempted voluntary manslaughter, she wrote, “Although I agree with most of the analysis in Section II, I am not persuaded that Defendant was entitled to an instruction on attempted voluntary manslaughter.”⁵³ With respect to whether the defendant had preserved his argument, she introduced her disagreement with the majority opinion by writing, “I appreciate the careful way in which the Majority Opinion discusses the issue of preservation with Section II(A). Nevertheless, I am not persuaded that the issue on which the Majority Opinion reverses Defendant’s conviction for attempted second-degree murder was preserved.”⁵⁴

50. See, e.g., *Doe v. Santa Clara Pueblo*, 2007-NMSC-008, ¶ 50, 154 P.3d 644, 657 (Minzner, J., dissenting).

51. The case was *State v. Lopez*, 2005-NMSC-036, 123 P.3d 754, *overruled by State v. Frawley*, 2007-NMSC-057, 172 P.3d 144.

52. 2006-NMSC-003, 127 P.3d 537.

53. *Id.* ¶ 32, 127 P.3d at 546.

54. *Id.* ¶ 37, 127 P.3d at 547–48.

Her ability to compliment something about a majority opinion with which she disagreed began early in her career as an appellate judge. *State v. Padilla*⁵⁵ is the first published opinion to which then court of appeals Judge Pamela Minzner filed a dissenting opinion. In *Padilla*, the defendant, who was indicted for murder, appealed his conviction of the lesser offense of voluntary manslaughter, arguing that there was insufficient evidence of provocation to warrant an instruction on voluntary manslaughter.⁵⁶ Because the instruction was given at the defendant's request and over the state's objection, the issue was reviewed for fundamental error.⁵⁷ The majority affirmed the conviction, reasoning that fundamental error had not occurred because the state did not request the instruction; therefore, there was no state action, which is a prerequisite to a claim of denial of due process.⁵⁸ As would become her standard practice, Pam began her dissent with the words, "I respectfully dissent."⁵⁹ In her discussion of fundamental error, she wrote, "The majority rightly suggests that we ought not apply fundamental error to situations in which the values that doctrine protects are not involved."⁶⁰

A final example is drawn from the case of *TPL, Inc. v. New Mexico Taxation & Revenue Department*.⁶¹ "The central issue in this case [was] whether TPL [was] liable for gross receipts taxes on payments received" for its services from an out-of-state buyer.⁶² Key to the decision was whether the transformation of munitions into components by TPL was a "product of service" that the buyer did not initially use or take delivery of in New Mexico.⁶³ If it was a product of service either used or delivered in New Mexico, then TPL could not avoid liability for gross receipts taxes under section 7-9-57⁶⁴ of the New Mexico Statutes.⁶⁵ The majority found in favor of TPL.

In responding to the discussion in the majority opinion about what constituted a product of service, Justice Minzner wrote:

The majority takes the position that the product of the service was "wholly intangible," perhaps because it cannot point to any object that IOC physically received as a result of TPL's service. The majority, therefore, identifies the product of the service as "freedom from responsibility for dangerous munitions." Majority Op. ¶ 16. *The logic of this conclusion is somewhat appealing*, because this freedom from responsibility is a clear end result of the contract between IOC and TPL. In my view, however, it would be more appropriate to identify a tangible product, both because such a product does exist

55. 104 N.M. 446, 722 P.2d 697 (Ct. App. 1986).

56. *Id.* at 448, 722 P.2d at 699.

57. *Id.* at 449, 722 P.2d at 700.

58. *Id.* at 448, 722 P.2d at 699.

59. *Id.* at 452, 722 P.2d at 703 (Minzner, J., dissenting).

60. *Id.* at 453, 722 P.2d at 704.

61. 2003-NMSC-007, 64 P.3d 474.

62. *Id.* ¶ 9, 64 P.3d at 477.

63. *Id.* ¶ 12, 64 P.3d at 478.

64. NMSA 1978, § 7-9-57 (1989).

65. TPL, 2003-NMSC-007, ¶¶ 9, 19, 64 P.3d at 477, 481.

in this case, and because once we do this, the determination of where the buyer initially used that product becomes possible.⁶⁶

That Pam respectfully complimented something about the majority opinion with which she disagreed is ample proof of her professionalism and respect for the other members of the court.

Her respect and professionalism continue to be an inspiration to the legal community. I asked Justice Charles W. Daniels, who was inspired to public service by the legacy of professionalism left by Justice Minzner, for his remarks:

In the reception area of my Supreme Court chambers—the former chambers of Justice Pamela Minzner—hangs the framed cover of a tribute published in her memory. Set against a plain white background, it combines a simple photograph capturing her in deep thought on the bench, a single red rose and the scripted words, “With Love from the State Bar of New Mexico.” Although the complete publication contains an outpouring of heartfelt expressions from lawyers and judges who knew her and were inspired by her, the cover alone captures the respect and affection she had earned during her lifetime among so many people whose lives she touched. There is no person in New Mexico legal history who provided a more shining example of dedication, respect and true professionalism. She left us with an extraordinary standard of character and responsibility that should always be a goal for those who serve the law and the civilized society it protects.

New Mexico was truly blessed that Pam served on the appellate courts of New Mexico. Our jurisprudence is all the better because of her contributions over the years. If justice is the art of equality, goodness, and fairness, Pam Minzner was the Georgia O’Keeffe of the judiciary, not only because she was a member of our profession, but more importantly because her heart and mind embodied the very essence of professionalism. Pam fulfilled the professional promise recognized by Miami University. May we in New Mexico honor her memory as a professional by fulfilling our own professional promise. *¡Adelante!*

66. *Id.* ¶ 37, 64 P.3d at 485 (Minzner, J., dissenting) (emphasis added).