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Some Personal Reflections on the Life and Work of Pamela B. Minzer

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PBM | SOME PERSONAL REFLECTIONS ON THE LIFE AND WORK OF PAMELA B. MINZNER

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I. BACKFORMATION

"Mentrix" is said to be a backformation.[1] A quaintly feminized form of "mentor," constructed on the mistaken assumption that the "-or" at the end of "mentor" is a suffix on the root "ment-," to teach. It's not. Mentor, or more properly, Μέντωρ, was a Greek teacher, a friend of Odysseus,[2] so the "-or" is not a suffix at all.

But wait. Maybe Homer took Μέντωρ's name from the Greek root "μέν–," "of the mind," and/or from the noun "μένος," meaning "strength or courage." So "μέντωρ," "a strong one who teaches," may have led to the naming of the character Μέντωρ, and not the other way around. Returning to the root, this gives us "mentrix," "she who strongly teaches."[3]

Never mind. Either way, I like the word. Backformations in general show the steady, if untidy, evolution of our language. ("Monologue" is a backformation; so is "to laze around."[4]) And this one captures a status much higher than a mere teacher: advisor, colleague, friend, wise counselor. (Even though we were about the same age, Pamela B. Minzner, whom I shall call "PBM" throughout, always seemed to have so much more *sense* than I.) And it renders her gender relevant to the status, which it was.[5]

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1. *Cf.* Robert C. Cumbow, *Pet Peeves*, (Sept. 2003), http://www.wsba.org/media/publications/barnews/2003/sept-03-cumbow.htm (last visited Nov. 11, 2008); Alan Peterson, *Words: Poppycock and Folklore*, THE SYDNEY MORNING HERALD, Jan. 7, 1995, at 10; The Volokh Conspiracy, *Is Not A Word*, http://www.volokh.com/posts/1187887242.shtml (Aug. 23, 2007 12:40); Wikipedia, *Mentor*, http://en.wikipedia.org/wiki/Mentor (last visited Nov. 11, 2008).

I have used the "*cf.*" signal above because all of these discussions, and many more, deal with the word "mentee," not "mentrix." I should note that one common criticism of the word "mentee" is that it is an unnecessary replacement for the existing word "protégé." *See, e.g.*, Cumbow, *supra*. But one cannot, I think, designate oneself a protégé; that must be done by others. On the other hand, and as this essay shows, I believe it is proper for one to designate one's mentor or mentrix on one's own, without, indeed, the approval of she who is designated. So there.

2. *See* HOMER, THE ODYSSEY bk. 2, l. 225 (Edward McCrorie trans., The Johns Hopkins University Press 2004) (*circa* 800 B.C.E.). Most other references to Μέντωρ in THE ODYSSEY are actually to Athena's impersonation of him, leading William Safire to conclude "[a]cross the millenia [sic], the poet warns us to watch out for mentors." William Safire, *On Language: Perils of the Fast Track*, N.Y. TIMES MAGAZINE, Nov. 2, 1980, at 18. But I'm not that cynical. Professor Julie Oseid of the University of St. Thomas School of Law thinks that Μέντωρ was Athena all along. *See* Julie A. Oseid, *When Big Brother Is Watching [Out for] You: Mentoring Lawyers, Choosing a Mentor, and Sharing Ten Virtues from My Mentor*, 59 S.C. L. REV. 393, 399 (2008). But my niece thinks she's wrong.

3. Much of the information in this paragraph was provided by two classicists, Professor Daniel Levine of the University of Arkansas, and Karen A. Laurence, a Ph.D. candidate at the University of Michigan. The former is my colleague and one-time modern Greek instructor; the latter is my niece and present-day corrector of my Greek spelling, which has always been spotty. Thanks to both, and errors in interpretation are mine, not theirs.

4. "Monologue" is backformed from "dialogue" on the mistaken notion that the "di-" in "dialogue" means "two" as in "diploid," "dioxide," and "dichotomy," when it actually means "across" as in "diameter," and "diagonal." *See, e.g.*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE 499, 1138 (4th ed. 2000) (entries "di-," "dia-," "monologue"). "Laze" is backformed from "lazy" as if "haze" were formed from "hazy" instead of the other way around. *See, e.g.*, *id.* at 994, 131 (entries "laze" and "backformation").

5. Some will find the "-ix" suffix objectionable. Professor Levine does, on the grounds that it is a Latin feminization attached improperly to a Greek root. *See* e-mail from Daniel Levine, Professor, University of Arkansas, to Robert Laurence, Professor, University of Arkansas (May 2, 2008) (on file with author). My niece Karen might have different concerns: will I call her a "professetrix"? "Doctorette"? Surely not. But years from now she is likely to be an "Emerita."

They were three—Anne Bingaman, Pamela Minzner, and Helene Simson—the women on the permanent faculty of the University of New Mexico School of Law when the class of '77 arrived, with me in it, in the fall of 1974.[6] Simson taught in the clinic, far removed at the time from the first-year classrooms, but I had Bingaman and Minzner, both not long out of law school themselves, both the wives of future politicians, for Con Law and Property.[7] (Law was my second career, which is why I showed up, almost her age, in PBM's Property class.) Thus it was that she became my mentrix, a term she would have thought overblown, totally apart from its shady etymology.

I, of course, am far from unique. There are many who knew her better, who worked more closely with her, who worked with her longer: her colleagues at UNM and on the court; her law clerks; her husband's law partners; judges from other courts; other, later, students. She was unique *to me*—my mentrix, my Property teacher, my co-author. My advisor. My conscience. My exemplar. But others could write this article, or one like it, as well. Or better. I am honored to have been asked, and will offer two stories, which I will try to interrelate at the end. By then, readers will have learned more about me than her, a revelation that will surprise no one, for I am on thin ice. My mentrix is not here to advise me.

II. UNINTENDED CONSEQUENCES

Arriving with, or near, the class of '77 in the fall of '74 was a new idea that came to be called "academic support," "academic assistance," or sometimes "academic retention."[8] The concept was straightforward: the law school admitted no one who could not do the work, graduate, pass the bar exam, and competently practice law. Not all would, but all *could*. But the only two mathematical predictors of any reliability, LSAT score and undergraduate grade point average (UGPA)—and they

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All of this is related, if only tangentially, to the question of whether it diminishes Amelia Earhart's stature to call her an "aviatrix," as she commonly was when she was flying. I concede the point to be debatable. Consider Ms. Earhart's accomplishments: she is well-known to have been the first female to fly solo across the Atlantic. DORIS L. RICH, AMELIA EARHART: A BIOGRAPHY, 129–39 (1989). Less well-known is that she was only the second *person*, after Lindbergh, to do that. *Id.* at 45–52. Even less well-known is that she was the first *person*, man or woman, to fly twice across the Atlantic; the first time was as the captain, but not the pilot, of a three-person crew. *Id.* at 53–62. To diminish her role on that first flight to that of "passenger," as is sometimes done, is to reject well after the fact the analogy between airplanes and ships that was common in the early days of flying. Rarely is the captain of a ship described as a passenger, even if he or she never touches the wheel.

Now which of these three accomplishments is the greatest? I leave that to the reader, along with the question of whether calling her an "aviatrix" advances or retards the debate.

6. This information is gleaned from some old Course Offering sheets provided to me by the editors of the *New Mexico Law Review*.

7. Bingaman was senior, having joined the faculty in the fall of 1972. Actually, PBM was on the faculty that year, but only as an adjunct professor, teaching Legal Writing, or "Intro to Advocacy" as it was called then; she did not join the permanent faculty until the fall of 1973. Simson too was hired in the fall of 1973. There was also a June Wooliver who taught in the fall of 1974 as a visiting professor, as well as a number of female adjuncts, but I am referring in the text to the permanent, tenure-track faculty.

8. *See generally* Kristine Knaplund & Richard Sander, *The Art and Science of Academic Support*, 45 J. LEGAL EDUC. 157 (1995) (reviewing existing academic support programs in general and focusing on an empirical analysis of academic support programs at UCLA); Paul T. Wangerin, *A Little Assistance Regarding Academic Assistance Programs*, 21 J. CONTEMP. L. 169 (1995) (reviewing LAW SCHOOL ADMISSION COUNCIL, AN INTRODUCTION TO ACADEMIC ASSISTANCE PROGRAMS (1992)).

weren't all that reliable[9]—still predicted that some students would struggle and might have to leave before they got the hang of law school. No matter how good the class, there would always be a group whose numerical predictors were lower than their classmates. Hence, programs were designed to help retain these students, these "low predictors," for want of a better term.

ASIDE

Allow me, if you will, a rather lengthy aside regarding the phrase "low predictor," a term I coined, which was never PBM's and which is not in wide circulation. I use it to capture the notion that, while the mathematical predictors of first-year success are not very good, they are too good to ignore.

Perhaps an analogy from Thoroughbred horse breeding will help.[10] For those who follow horse racing, it sometimes seems as if a horse's breeding is all. Every runner's sire, dam, and broodmare sire seem to be at the fingertips of every race watcher, player, handicapper, or commentator. But how much success on the track can be related to pedigree? There are people to whom this is a science, and I am not one of them, but here is one statistic out of many: Danzig, a well-known and successful sire, now deceased, sired 1,074 foals, of whom 199 were stakes winners, meaning they won at least one important race.[11] So, about 20 percent of Danzig's foals meet one definition of success at the track, a percentage that is not substantially different from the predictive confidence we have in the LSAT and UGPA.[12] Not very good, really, and we all know that many horses are a good deal better than their genes. Big Brown, for example, the 2008 pretender to the Triple Crown, is the son of Boundary (himself a son of Danzig), who produced a mere twenty-three stakes winners before being pensioned in 2005.[13] Thus, in the present parlance, Big Brown would be a "low predictor." Notwithstanding that status, he beat many horses with better pedigrees; the doomed Eight Belles, for example, was

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9. *See* David A. Thomas, *Predicting Law School Academic Performance from LSAT Scores and Undergraduate Grade Point Averages: A Comprehensive Study*, 35 ARIZ. ST. L.J. 1007 (2003). Professor Thomas was studying one particular law school and concluded that, at that law school:

> The predictive power of any of these measures [*i.e.*, the LSAT, the UGPA or a combination of the two] is not strong, and only the most general patterns may be discerned. Entering law students should not feel that their future academic success is either unduly limited or assured by the quality of their academic credentials.

Id. at 1011. He also reports that the Law School Admission Council, which administers the LSAT, placed for the year 2001 a median correlation coefficient between LSAT and first-year grades for all law schools participating at .41, rising to .49 when LSAT and UGPA were combined. *Id.* at 1009. The usual rule of thumb is that one should square the correlation coefficient to obtain the coefficient of determination which explains the variation that one sees between the two sets of figures. *See* JAMES T. MCCLAVE ET AL., A FIRST COURSE IN BUSINESS STATISTICS 523–25 (6th ed. 1995). Hence, something between 16 percent and 25 percent of the variation that one sees in first-year grades is explained by LSAT and UGPA.

10. Analogies to humankind from Thoroughbred horse breeding are historically, if not inherently, suspicious, for the notorious and soundly discredited theories of human eugenics derived at least partially therefrom. *See generally, e.g.*, W.E.D. STOKES, THE RIGHT TO BE WELL BORN, OR HORSE BREEDING IN RELATION TO EUGENICS (1917). The fact that I know its sick history keeps me, I hope, from misusing the analogy or from taking it too far.

11. Horse racing is a sport awash in such statistics. *See 2007 Leading Sires*, THE BLOOD-HORSE, Jan. 12, 2008, at 176. While Danzig is dead and producing no more foals, his offspring are still running, so the 1,074 is a fixed number, but the 199 may increase over the next couple of years.

12. *See supra* note 9.

13. *2008 Leading Sires*, THE BLOOD-HORSE, May 10, 2008, at 2470.

the daughter of Unbridled's Song, who has already produced three times the stakes winners as Boundary, and counting.[14]

So, pedigree, like LSAT and UGPA, counts for something, but not everything, not nearly everything. "Low predictors" compete, and they win.
END ASIDE

The movement for academic retention was nationwide; not surprisingly, UNM was at the forefront.[15] Here, in the early '70s, it was called, for reasons that are now lost to my memory, "Programmed Studies."[16]

The pedagogic questions involved in any academic retention program are many; the preliminary ones are (1) whether it will be voluntary or mandatory, (2) whether it will be an overload or will replace some other course, and (3) if a replacement, then what shall it replace? At UNM, Programmed Studies was, I believe, mandatory for the "low predictors," though Fred Hart, Bob Desiderio, and other decision-makers at the time would know better than I. And it was wisely, in my view, determined not to burden these students with an overload, so where to put it?

In those days, the late Jerrold Walden's Legal History course was required in the first semester, and the faculty determined that, for the class entering in the fall of '74, a couple dozen students would be opted out of History to make room for Programmed Studies.[17] History was a large, one-section class in a lecture format, so their absence and the corresponding stigma would be reduced. And, as insightful as Professor Walden's lectures on the forms of action at common law—*quare clausem fregit* and the rest—as stirring as his story of Edward Coke versus James I, as significant as the evolution of assumpsit into contract, still and all, the Programmed Studies students would survive without it, to the eventual benefit of their legal careers.

Whoops. Those of us in History also got our first introduction to that most esoteric of subjects: estates in land and future interests. Once over lightly, learn some terms: contingent remainder, executory interest, fee tail, life estate. Property was coming second semester, in which the whole thing would be done again when it counted; the minor introductory topic in History became a main ingredient of Property.

The Law of Unintended Consequences was at work. By opting the Programmed Studies students out of History, they were deprived of their introduction to estates in land, so in Property class they were at a positive disadvantage compared to their non-Programmed Studies classmates, exactly the opposite result from the one intended.

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14. *Id.*

15. *See generally* Leo M. Romero et al., *The Legal Education of Chicano Students: A Study in Mutual Accommodation and Cultural Conflict*, 5 N.M. L. REV. 177 (1975). The UNM experience is described *id.* at 223–25.

16. Well, the reasons *were* lost to my memory until assiduous *New Mexico Law Review* editors suggested that I track them down. The course was named for the materials used: CHARLES KELSO, A PROGRAMMED INTRODUCTION TO THE STUDY OF LAW (1965). *See* Romero et al., *supra* note 15, at 224.

17. In addition to the study of Professor Kelso's materials, the Programmed Studies course consisted of practice examinations, tutorials, and pre-examination reviews. *See id.* at 224.

During my third year, in the fall of 1976, I was PBM's research assistant and she was in charge of Programmed Studies. She—or perhaps the dean or the faculty or some committee—decided to cure the unintended problem by inserting a unit on estates in land into the Programmed Studies curriculum, four clock-hours worth, which was about what Walden used for his once-over in History. And she gave to me the task of putting four lectures together for her to give. I had taken to the topic as her Property student, as odd as that sounds, and had begun drawing pictures of the various estates while studying for her exam. Thus:

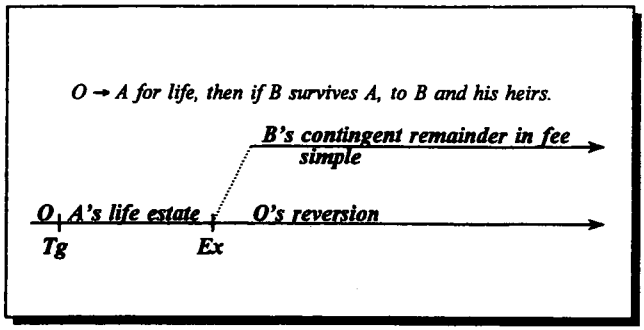

FIGURE 1: Print version of author's original diagram *(copyright © 1993 Matthew Bender).*

We made some transparencies for her to use on an overhead projector, considered advanced pedagogic technology in those days, and voilà! Maybe her presentation was clearer even than Walden's introduction, and her Programmed Studies students had an advantage in the spring of '77 Property class, though I doubt if anyone ever studied the matter carefully.

In any event, life went on. Estates in land, with or without diagrams, depending on the teacher, became part of the Programmed Studies curriculum until some years later, when the entire academic retention concept was re-worked, and Programmed Studies bit the dust. I went off to the University of Illinois to launder my degree, and eventually became a Property teacher myself at the University of North Dakota, where Jerry Walden had once been dean, small world, and used my notes from PBM's Property class as a teacher's manual.

To teach estates in land, I turned to the Programmed Studies lectures, liked the way the diagrams worked in class, wrote the whole thing up, and sent it to PBM as a first draft. She expanded the legal history, moved this and that here and there, and we decided to add lots of problems and answers. Carol Kennedy came on board to execute the diagrams and to make the thing look like a book. Somewhere along the way we started calling it "A Student's Guide to Estates in Land," and, PBM told me, her husband Dick dubbed it "the comic book of the law." The publishers to whom we sent it over the transom reacted much the same way, and it appeared destined to be a Xeroxed aid for our own students. But Fred Hart used it and liked it, and prevailed upon Matthew Bender, his publisher, to give it a read. It became

their bestseller.[18] We earned sizable royalties which, I'm told, helped pay her boys' tuition at some fancy schools, and bought me some pretty exotic airplane tickets. To the end, we'd occasionally laugh about "our comic book," and the luck we had hitting a market without competition for many years, all the unintended consequence of opting Programmed Studies out of History.

III. EQUALLY DIVIDED COURTS

In the spring of 1981, I was invited to visit Fayetteville, Arkansas, to talk about joining the faculty there, an invitation based in part, I trust, on the recent publication of the *Student's Guide*. In that, or any March, Fayetteville had an unfair climatic advantage over Grand Forks; the red buds were emerging in the Ozarks while winter held its iron grip on the Red River of the North. So, as kind as everyone had been in North Dakota, I left for Arkansas, more or less 1,000 miles directly to the south.

Many things change on that drive south, things that make the climatic difference seem small. One fairly insignificant one was that Arkansas had an intermediate court of appeals, made up of six judges, sitting en banc. Occasionally the court divided 3–3 and, in conformity with the practice everywhere, in all such cases it affirmed the court below.[19] However, and unlike the practice I had understood to be universal, the Arkansas judges wrote opinions when they divided equally, and sometimes the three judges voting to reverse would call the three judges voting to affirm "the majority."[20] Hmmmm. Even more puzzling was that sometimes later judges would give *stare decisis* precedential value to the opinion of the three judges voting to affirm in preference to the opinion of the three judges voting to reverse.[21] Hmmmm, again.

I got curious, so I started looking into the treatment law gives to the opinions of equally divided courts and found that treatment not to be universal at all, but more complicated than meets the eye.[22] I eventually found my way to a case in which the Supreme Court of Pennsylvania divided equally on the treatment to be given the opinions of equally divided courts.[23]

Well now. It was as if St. Scholastica herself had reached down from Heaven and touched my legal pad, this being in the days before computers.[24] How could one *not*

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18. ROBERT LAURENCE & PAMELA B. MINZNER, A STUDENT'S GUIDE TO ESTATES IN LAND AND FUTURE INTERESTS (2d ed. 1993).

19. *See, e.g.*, Ellis v. State, 590 S.W.2d 309 (Ark. Ct. App. 1979). *See generally, e.g.*, Ohio *ex rel.* Eaton v. Price, 364 U.S. 263 (1960) (opinion of Brennan, J.).

20. *See, e.g.*, Nowden v. State, 792 S.W.2d 621, 623 (Ark. Ct. App. 1990) (Cooper, J., dissenting).

21. *See, e.g.*, Johnson v. State, 642 S.W.2d 324, 327 (Ark. Ct. App. 1982) (citing Ellis v. State, 590 S.W.2d 309 (Ark. Ct. App. 1979) (opinion of Wright, J.)).

22. One such complication is this: in a collateral attack on a criminal conviction via habeas corpus it is generally not permitted to re-litigate issues actually adjudicated in the case-in-chief. Thus, suppose a defendant is convicted, appeals, and the state supreme court affirms by equal division. May the defendant now seek habeas corpus review and raise the issue that previously divided the court equally? *See* Neil v. Biggers, 409 U.S. 188, 190–92 (1972) (holding that an equal division is not an actual adjudication of the issue).

23. *See* Commonwealth v. James, 427 A.2d 148 (Pa. 1981).

24. St. Scholastica was the twin sister of St. Benedict, and lived in the late fifth and early sixth centuries, C.E. Her actual date of canonization is lost to Church memory, as are most of the details of her life. Notwithstanding her name, she is not the patroness of scholars and law teachers, but of convulsive children, a difference that to some will seem a minor detail. *See* Patron Saints Index, Saint Scholastica, http://saints.sqpn.com/saints06.htm (last visited Nov. 11, 2008).

write an article about that? I did.[25] Maybe I sent a copy to PBM; probably not. She was not yet on the bench, and the narrowness of the issue was stunning even to me.

Years passed. PBM was appointed to the court of appeals, then to the supreme court, then elected in her own right. She gave up teaching for deciding cases, students for lawyers and litigants, a choice I never understood. Life went on; the book sold well. She got sick, then, we thought, better.

And then the Arkansas Court of Appeals began to sit in panels of three, with the statute requiring that if there was a dissent in the panel, the case would be reheard by the court en banc.[26] And—what do you know—my equally divided cases disappeared. No, not "disappeared," but they became measurably less frequent.[27] It seemed as though to avoid the inconvenience of hearing a case again, the judges had stopped dissenting, how else to explain the diminishment of 3–3 splits? There came to be almost two-thirds fewer equal divisions, all for administrative convenience. So I wrote a second, disapproving article,[28] saying that the development of the law was more important than the convenience of the judges, and a panel judge who disagreed with his or her colleagues should say so, even if it meant an automatic rehearing of the case. With PBM now on the bench herself, I sent her a copy of this one.

She wrote back, disagreeing with my disapproval and my conclusion.[29] Consensus, she wrote, was an important characteristic in a court, any court. The would-be dissenting judge in the panel should work toward common ground with his or her colleagues. Even to the extent of concurring with an opinion that is not quite right; because the consensus, however uneasy, built for today's case will benefit tomorrow's, and the course of the law will be made both smoother and wiser. The inconvenience of the rehearing is not the real issue, she thought. It was, instead, the positive attributes of consensus and the way strong dissents—principled or persnickety—opposed those attributes.

She did not write then, and I must not write now, that all dissents are bad. She herself wrote dissents, though they were rare.[30] But she was committed in her

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25. Robert Laurence, *A Very Short Article on the Precedential Value of the Opinions from an Equally Divided Court*, 37 ARK. L. REV. 418 (1983).

26. ARK. CODE ANN. §§ 16-12-109, 16-12-113 (1999 & Supp. 2007) (repealed 2003).

27. Before panelization, if that's a word, which I doubt, the court of appeals divided equally about eight times a year. After panelization, about three times a year. *See* Robert Laurence, *Four Observations and an Inquiry About the Practice and Frequency of Dissenting Votes by the Judges of the Arkansas Court of Appeals*, 1994 ARK. L. NOTES 89 app. at 89–90.

28. *Id.*

29. I no longer have the letter, so this is total hearsay, which you will find trustworthy or not under the usual standards.

30. I find only one written dissent in her ten years on the New Mexico Court of Appeals. *See* State v. Padilla, 104 N.M. 446, 452, 722 P.2d 697, 703 (Ct. App. 1986) (Minzner, J., dissenting). In the supreme court, she dissented more often than she had in the court of appeals, and more frequently in her later years, averaging fewer than three per year, from a low of none in 1999, to a high of six in both 2002 and 2007. *See* TPL, Inc. v. N.M. Taxation & Revenue Dep't, 2003-NMSC-007, ¶ 34, 64 P.3d 474, 484 (Minzner, J., dissenting); State v. Frank, 2002-NMSC-026, ¶ 25, 52 P.3d 404, 410 (Minzner, J., dissenting); State v. Urioste, 2002-NMSC-023, ¶ 19, 52 P.3d 964, 971 (Minzner, J., dissenting); Tercero v. Roman Catholic Diocese of Norwich, 2002-NMSC-018, ¶ 30, 48 P.3d 50, 60 (Minzner, J., dissenting); State v. Gaitan, 2002-NMSC-007, ¶ 32, 42 P.3d 1207, 1216 (Minzner, J., concurring in part, dissenting in part); State v. Trujillo, 2002-NMSC-005, ¶ 69, 42 P.3d 814, 837 (Minzner, J., concurring in part, dissenting in part); State v. Grogan, 2007-NMSC-039, ¶ 22, 163 P.3d 494, 500 (Minzner, J., dissenting); State v. Moya, 2007-NMSC-027, ¶ 22, 161 P.3d 862, 867 (Minzner, J., dissenting); State

judicial career to work toward unanimity, even at the cost of purely logical jurisprudence, and certainly at the cost of judicial inconvenience. She did not mention in her letter Chief Justice Earl Warren's careful construction of unanimity in *Brown v. Board of Education*,[31] but she might have.[32] Her concerns predated the damaging division in *Bush v. Gore*,[33] but that case as well as any shows her prescience.

Recently Justice Antonin Scalia advanced the anti-Minzneric position as frankly as it could be done. In an interview on National Public Radio, Nina Tottenberg quoted some of the strong language Justice Scalia has used against his colleagues in dissent. Tottenberg then asked the Justice "if using that kind of language in written opinions is wise; whether, in fact, it might not alienate potential allies on the Court." Justice Scalia responded, "When it is wrong, it should be destroyed." At this point, there was laughter on the NPR soundtrack. Tottenberg: "Destroyed." Scalia: "I think all of the reasons it is wrong should be pointed out, and pointed out forcefully. And I don't mind people doing that to my opinions. A good hard-hitting dissent keeps you honest."[34]

In the end, PBM did not convince me, mentrix or no, though hearing Justice Scalia so annoyingly agree with me years later brought her letter, and her wisdom, back to my mind. She had made me see that her view from the bench had become different from mine in the classroom. There was more to law, she showed me, than jurisprudence. (Justice Scalia might well disagree, and he would have benefitted from a couple of hours of judicial talk with PBM, as who wouldn't?) My guess is that it was occasionally maddening to be her colleague on the court, especially if one thought that *this* is a dissent worth writing, while she continued to work to create unanimity. Sure, there is a certain dramatic feel to the phrase "Holmes and Brandeis, dissenting" then, or "Scalia and Thomas, dissenting" these days. But I now see a somewhat more mysterious drama in reading a unanimous New Mexico Supreme Court case, whose opinion she did not author and in which her name is never mentioned, speculating upon how much of that unanimity was her doing behind the scenes. More, I suspect, than we'll ever know. She's no longer here to tell us, and wouldn't have in any event.

IV. LATTER-DAY THOUGHTS

The connection between my two stories only dawned on me as I was preparing these remarks, as it may have dawned upon you reading them, and as it may have been certain to Dick Minzner years and years ago. My co-author, committed, I learn, to the bottom of her professional soul, to the positive attributes of consensus, chose

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ex rel. Richardson v. Fifth Judicial Dist. Nominating Comm'n, 2007-NMSC-023, ¶ 26, 160 P.3d 566, 573 (Minzner, J., concurring in part, dissenting in part); Luna v. Lewis Casing Crews, Inc., 2007-NMSC-020, ¶ 17, 159 P.3d 256, 260 (Minzner, J., dissenting); Salazar v. Torres, 2007-NMSC-019, ¶ 32, 158 P.3d 449, 457 (Minzner, J., concurring in part, dissenting in part); Doe v. Santa Clara Pueblo, 2007-NMSC-008, ¶ 50, 154 P.3d 644, 657 (Minzner, J., dissenting). I am only counting here opinions she wrote, which, of course, does not reflect all of the times she was not with the majority.

31. 347 U.S. 483 (1954).

32. *See* RICHARD KLUGER, SIMPLE JUSTICE 679–99 (1976).

33. 531 U.S. 98 (2000).

34. *Morning Edition*, (National Public Radio Apr. 28, 2008).

to relate to me that her husband thought our book was "the comic book of the law." Why in the world did she tell me that?

I thought at the time that she was teasing Dick for failing to see the brilliance of our pedagogy. Or for being a stuffy traditionalist, too much Harvard and not enough UNM and UND. But how much more believable, I now see, that she was trying to nudge me gently toward a more traditional approach to the topic of estates in land. One without the diagrams, perhaps, which, she understood, had been my principal contribution to the whole project. I wonder. I don't know that she ever used the diagrams as much as I did in class. To her, maybe, words were enough. Her Property professor at Harvard, whose book she famously shredded at the conclusion of the course,[35] but whose book she and I both used as teachers,[36] would never have thought it necessary to *draw*, for God's sake, a springing executory interest in fee, or a vested remainder subject to divestment in fee tail male.[37] I wonder.

It is a great tragedy that I can no longer ask her what she meant, not that I would trust her answer. Even now, years later, her inclination would be to maintain consensus in our little authors' team. She nudged me, perhaps, away from the comical diagrams and toward pure text, a nudge I was much too self-absorbed to feel, but for the sake of the partnership, she would have then, and now, swallowed her misgivings and kept the project going, to be saved from the dustbin, eventually, by Fred Hart and Matthew-Bender.

The irony is that, if the tragedy had been averted and she were with us still, I would not have written these reminiscences. If things had turned out as they should have, I would have departed first and gone happily upon my way without ever suspecting how the first project I ever did with PBM was so influenced by her commitment to the positive attributes of consensus, which I learned from her much later.

V. FAREWELL

When she was in the final stages of her dreadful disease, a court in Maryland thought something I had written to be worthy of quotation, an occurrence rare enough to be subject to remark. Not knowing how sick she was, I wrote her a note, with the case citation, cryptically saying that she might be interested in the case, but not saying why. I suspect that she was by then too sick to have the energy to look up the case, and it was the only note I ever sent her to which she did not reply.

I think she would have been proud of my citation, even as I also think that she was occasionally embarrassed by the success of the *Student's Guide*. It was not in her nature, it seems to me, to hold herself out in front, a rare enough commodity in someone who ran for public office. It was, rather, in her nature to make us all work

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35. *See* Mary J. Mullarkey, *Two Harvard Women: 1965 to Today*, 27 HARV. WOMEN'S L.J. 367, 371 (2004).

36. A. JAMES CASNER & W. BARTON LEACH, CASES AND MATERIALS ON PROPERTY (various editions). I forget if she had Casner or Leach.

37. For what it's worth, Elizabeth Bennett's father owned their home in an estate something like the second of these. Mr. Collins owned the reversion, which was to become possessory on the imminent failure of Mr. Bennett's male line, all of which understandably contributed to Mrs. Bennett's nervous spells. *See* JANE AUSTEN, PRIDE AND PREJUDICE 31, 147, 340 (Cambridge University Press 2006) (1813).

together, whether in a court of law, a law school faculty, or a little project with two writers and a graphic designer. She was proud, surely, of what she added to the body of the law as judge, author, and teacher, but she was not prideful, a difference of theological, literary, and equestrian significance.[38] To have witnessed that, and, in some small way, to have been part of her professional life, does me honor. In choosing one's mentrix, one could do no better.[39]

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38. In his book *Mere Christianity*, C.S. Lewis calls pride "The Great Sin," and then goes on at considerable, and largely inscrutable, length, trying to distinguish "pride" from "being proud of." C.S. LEWIS, MERE CHRISTIANITY 121–28 (HarperCollins 2001) (1952).

More succinctly, though in early nineteenth century English that now sounds rather stilted, Mary Bennett, the sensible one, has it this way:

> "Pride," observed Mary, who piqued herself upon the solidity of her reflections, "is a very common failing I believe. By all that I have ever read, I am convinced that it is very common indeed, that human nature is particularly prone to it, and that there are very few of us who do not cherish a feeling of self-complacency on the score of some quality or other, real or imaginary. Vanity and pride are different things, though the words are often used synonimously [sic]. A person may be proud without being vain. Pride relates more to our opinion of ourselves, vanity to what we would have others think of us."

AUSTEN, *supra* note 37, at 21.

It is unclear to me whether C.S. Lewis read Jane Austen, but he should have. His understanding of women appears to be, how shall I put this?, not fully informed. *See, e.g.*, LEWIS, *supra*, at 104–14.

Menenius Agrippa had pride figured out this way: "I know you can do very little alone, for your helps are many, or else your actions would grow wondrous single: your abilities are too infant-like for doing much alone. You talk of pride: O that you could turn your eyes toward the napes of your necks, and make but an interior survey of your good selves. O that you could!"

WILLIAM SHAKESPEARE, CORIOLANUS, act II, sc. 1. ll. 34–40 (Philip Brockbank ed., Methuen 1976) (*circa* 1623).

The owners of the 1982 Kentucky Oaks (gr. I) winner had the concept that Lewis struggles with down even more concisely than Mary, if less eloquently than Shakespeare, when they named their filly "Blush with Pride." *See* Lenny Shulman, *Honour Thy Mother*, THE BLOOD-HORSE, June 7, 2008, at 2956.

Thanks to John Laurence and Nancy Flynn, buffs of the Bard, for the quotation from *Coriolanus*, to Jennifer Croxton Cole for introducing me to the uncertain charms of C.S. Lewis, and to Kolláth Katalin for helping to overcome my reluctance to try Jane Austen.

39. And how often I fall short of her example. It was, of course, the rankest sort of the vanity of which Mary Bennett speaks that had me start off this little essay using the Greek alphabet.