



# NEW MEXICO LAW REVIEW

---

Volume 39  
Issue 3 *Summer*

---

Summer 2009

## Front Matter

New Mexico Law Review

### Recommended Citation

New Mexico Law Review, *Front Matter*, 39 N.M. L. Rev. i (2009).  
Available at: <https://digitalrepository.unm.edu/nmlr/vol39/iss3/1>

This Front Matter is brought to you for free and open access by The University of New Mexico School of Law. For more information, please visit the *New Mexico Law Review* website: [www.lawschool.unm.edu/nmlr](http://www.lawschool.unm.edu/nmlr)

Copyright ©2009 by the New Mexico Law Review

Volume 39, No. 3, Summer 2009

ISSN 0028-6214

Published by the students of the University of New Mexico School of Law

**How to Reach Us:**

New Mexico Law Review

School of Law

MSC11 6070

1 University of New Mexico

Albuquerque, NM 87131-0001

Publications Director: Lynne Arany

Business Manager: Jessica Leary

Editorial Office: (505) 277-4910

Business Office: (505) 277-8659

FAX: (505) 277-8342

Email: lawrev@law.unm.edu

Visit us on the Internet at: <http://lawschool.unm.edu/nmlr>

**Subscriptions/Sales**

Address requests to "Attn: Subscriptions/Sales" at the above address.

Current Subscription Rate: \$35 per year, \$15 per single copy; postage included.

Subscriptions are for the calendar year only and are automatically renewed and billed annually. Cancellations must be received in writing and are by calendar year only. No discounts offered. Subscriber claims for undelivered issues must be received within ninety (90) days of mailing date of issue claimed.

**Duplication/Reprint Information:**

Except as otherwise expressly provided, permission is hereby granted to copy materials from this publication for classroom use, provided that (1) copies are distributed at or below cost and (2) author and journal are properly identified. Please feel free to contact us by mail, email, or fax regarding requests for permission to duplicate or reprint.

***The views expressed herein are those of the authors and do not necessarily reflect those of the Editorial Board, the Law Faculty, or Regents of the University of New Mexico.***

**The University of New Mexico** is an Affirmative Action/Equal Opportunity institution. In accordance with the Americans with Disabilities Act, this material is available in alternate formats upon request.

*Printed by Joe Christensen, Inc.*

This text stock is 30% pcw and acid free.

THE UNIVERSITY OF NEW MEXICO SCHOOL OF LAW  
Albuquerque, New Mexico

REGENTS OF THE UNIVERSITY

|   |             |
|---|-------------|
| THE HONORABLE BILL RICHARDSON, Governor of New Mexico,<br><i>ex officio</i> ..... | Santa Fe    |
| RAYMOND G. SANCHEZ, <i>President</i> .....  | Santa Fe    |
| JACK L. FORTNER, <i>Vice President</i> .....                                      | Farmington  |
| CAROLYN J. ABEITA, <i>Secretary/Treasurer</i> .....                               | Albuquerque |
| DON L. CHALMERS .....   | Rio Rancho  |
| JAMES H. KOCH .....   | Santa Fe    |
| DAHLIA DORMAN .....   | Albuquerque |
| DAVID JAMES SCHMIDLY, PRESIDENT OF THE UNIVERSITY .....                           | Albuquerque |

SCHOOL OF LAW

|   |  |
|---|--|
| KEVIN K. WASHBURN, Dean   |  |
| LAURA E. GÓMEZ, Associate Dean for Faculty Development, Professor of Law                            |  |
| ANTOINETTE SEDILLO LOPEZ, Associate Dean for Clinical Affairs, Professor of Law                     |  |
| J. MICHAEL NORWOOD, Associate Dean of Academic Affairs, Professor of Law                            |  |
| MEGAN DUNNING ARGO, Legal Analysis & Communication, Lecturer III                                    |  |
| MARSHA BAUM, Professor of Law   |  |
| NORMAN BAY, Associate Professor of Law  |  |
| REED D. BENSON, Professor of Law; Faculty Editor-in-Chief, <i>Natural Resources Journal</i>         |  |
| BARBARA BERGMAN, Professor of Law   |  |
| PAUL BIDERMAN, Director, Institute of Public Law  |  |
| BARBARA BLUMENFELD, Director, Legal Research & Writing; Lecturer III                                |  |
| SHERRI L. BURR, Professor of Law  |  |
| EILEEN COHEN, Associate Librarian, Professor of Law Librarianship                                   |  |
| GARY B. CONINE, Research Professor, Judge Leon Karelitz Chair in Oil and Gas Law                    |  |
| BARBARA CREEL, Professor of Law   |  |
| JAMES W. ELLIS, Professor of Law  |  |
| DENISE FORT, Professor of Law   |  |
| CHRISTIAN G. FRITZ, Professor of Law  |  |
| EILEEN GAUNA, Professor of Law  |  |
| ERIK F. GERDING, Assistant Professor of Law   |  |
| MARQUITA HARNETT, Law Librarian   |  |
| STEVEN K. HOMER, Legal Research & Writing, Lecturer III   |  |
| SCOTT HUGHES, Professor of Law  |  |
| APRIL LAND, Professor of Law  |  |
| JOHN P. LAVELLE, Professor of Law; Director, Indian Law Program                                     |  |
| ERNESTO A. LONGA, Law Librarian, Assistant Professor of Law Librarianship                           |  |
| NATHALIE MARTIN, Professor of Law   |  |
| JOSE L. MARTINEZ, Associate Professor of Law  |  |
| ALFRED D. MATHEWSON, Professor of Law   |  |
| MARGARET E. MONTOYA, Professor of Law   |  |
| JENNIFER MOORE, Professor of Law  |  |
| MARIO E. (TED) OCCHIALINO, Professor of Law   |  |
| DANIEL ORTEGA, Research Professor of Law; Director, International Law Programs                      |  |
| SERGIO PAREJA, Assistant Professor of Law   |  |
| CAROL A. PARKER, Associate Dean for Library and Information Technology; Keleher Professor<br>of Law |  |
| ELIZABETH RAPAPORT, Professor of Law  |  |
| LEO M. ROMERO, Professor of Law   |  |
| ROBERT L. SCHWARTZ, Professor of Law  |  |
| THERESA STRIKE, Law Librarian, Assistant Professor of Law Librarianship                             |  |

CAROL M. SUZUKI, Associate Professor of Law  
SHERRI THOMAS, Law Librarian, Assistant Professor of Law Librarianship  
GLORIA VALENCIA-WEBER, Professor of Law  
CHRISTINE ZUNI CRUZ, Professor of Law; Editor-in-Chief, *Tribal Law Journal*

#### EMERITI

MICHAEL B. BROWDE, Professor Emeritus of Law; Faculty Advisor, *New Mexico Law Review*  
ROBERT J. DESIDERIO, Professor Emeritus of Law  
CHARLES T. DUMARS, Professor Emeritus of Law  
WILLIS H. ELLIS, Professor Emeritus of Law  
MYRON FINK, Professor Emeritus of Law  
W. GARRETT FLICKINGER, Professor Emeritus of Law  
RICHARD A. GONZALES, Professor Emeritus of Law  
G. EMLÉN HALL, Professor Emeritus of Law  
FREDERICK M. HART, Professor Emeritus of Law  
MICHELE S.G. HERMANN, Professor Emerita of Law  
RUTH L. KOVNAT, Professor Emerita of Law  
WILLIAM T. MACPHERSON, JR., Professor Emeritus of Law  
PAUL NATHANSON, Research Professor Emeritus of Law  
THEODORE PARNALL, Professor Emeritus of Law  
PETER A. WINOGRAD, Professor Emeritus of Law  
SHERYL SCHEIBLE WOLF, Professor Emerita of Law

# NEW MEXICO LAW REVIEW

Published Three Times Per Year

By the University of New Mexico School of Law, Albuquerque, New Mexico

---

**Volume 39**  
**Tomo 39**

**Summer 2009**  
**Verano 2009**

**Number 3**  
**Numero 3**

---

*Editor-in-Chief*

Neil R. Bell

*Managing Editors*

Daniel M. Alsup & Erin Garcia

*Professional Articles Editors*

Dave Gordon & Kyle Wackenheim

*Student Articles Editors*

Jaclyn M. McLean & Kevin D. Pierce

*Manuscript Editors*

Megan M. Kalm  
Koo Im Tong

Jonathan Tsosie  
Shona Zimmerman-Burnett

*Staff Members*

Aaron Baca  
Tom Bunting  
Amanda Connor  
Derek Connor  
Sean Cunniff  
David Ferrance

Hajra Malik  
Erin McSherry  
Maggie Murray  
Stevie Nichols  
Shannon Sherrell

*Faculty Advisor*

Michael B. Browde

*Journals Publications Director*

Lynne Arany

*Business Manager*

Jessica Leary

Member of the *National Conference of Law Reviews*

NEW MEXICO LAW REVIEW

Published by the University of New Mexico School of Law, Albuquerque, New Mexico

Volume 39

Summer 2009

Number 3

INTRODUCTION ..... ix

CONTENTS

State v. Padilla: An Aggravated Reading of the State’s Aggravated Fleeing a Police Officer Statute
Aaron Baca..... 485

Is Your Bedroom a Private Place? Fornication and Fundamental Rights
Amanda Connor ..... 507

Texas v. United States: Mind the Gap
Sean Cunniff..... 527

Economic Interests and Jacobsen v. Katzer: Why Open Source Software Deserves Protection Under Copyright Law
David Ferrance..... 549

Raiding the American Workplace: Federal Preemption and States’ Rights in Curbing Unlawful Alien Employment
Hajra I. Malik ..... 577

The Proposed State Ethics Commission Act: Reform for New Mexico’s “Wild West” Politics, or Simply a Mirage?
Erin McSherry..... 597

Determining a Psychiatrist’s Liability When a Patient Commits Suicide: Haar v. Ulwelling
Maggie Murray..... 641

GPS, the Fourth Amendment, and the New Mexico Constitution
Shannon Sherrell ..... 667

INDEX: VOLUME 39 ..... 697