This issue of the New Mexico Law Review is dedicated to

**GENE E. FRANCHINI**

1935–2009

“We cannot always recognize justice, but injustice is almost always recognizable. It happens mostly to those people who we as lawyers pledge to protect: the poor, the disenfranchised, the young, the ignorant, the angry, the misinformed, the misguided, and the despised—those without much help, if any, from anybody.”

—**GENE E. FRANCHINI**

The University of New Mexico
School of Law
Albuquerque, New Mexico
THE UNIVERSITY OF NEW MEXICO SCHOOL OF LAW
Albuquerque, New Mexico

REGENTS OF THE UNIVERSITY

The Honorable Bill Richardson, Governor of New Mexico, 
ex officio .............................................................. Santa Fe
Raymond G. Sanchez, President .................................................... Santa Fe
Jack L. Fortner, Vice President ........................................................ Farmington
Carolyn J. Abetta, Secretary/Treasurer .............................................. Albuquerque
Don L. Chalmers ........................................................................ Rio Rancho
J.E. Gallegos ........................................................................ Santa Fe
James H. Koch ........................................................................ Santa Fe
Emily Wisdom ........................................................................ Albuquerque

David James Schmidly, President of the University ...................... Albuquerque

SCHOOL OF LAW

Kevin K. Washburn, Dean
Laura E. Gomez, Associate Dean for Faculty Development, Professor of Law
Atoinette 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, Natural Resources Journal
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. Gerdning, 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 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. EMLEN 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 40 Winter 2010 Number 1
Tomo 40 Invierno 2010 Numero 1

Editor-in-Chief
Erin McSherry

Managing Editors
David Ferrance & Shannon Sherrell

Professional Articles Editors
Aaron Baca (fall)
Derek Connor (spring)
Sean Cunniff (fall)

Student Articles Editors
Hajra Malik
Maggie Murray

Manuscript Editors
Aaron Baca (spring)
Tom Bunting
Amanda Connor

Derek Connor (fall)
Stevie Nichols

Staff Members
Taina Colón
Jennifer Duprez
Loren Foy
Heather Hansen
Aaron Holloman
Tara Kinman
Genia Lindsey
Jason Martinez
Summer McKea
Maryl McNally
Maria Padilla
Dean Palacios
Ana Romero Jurisson
Andy Scholl
Melanie Stambaugh
D’Ontae Sylvertooth

Faculty Advisor
Michael B. Browde

Journals Publications Director
Lynne Arany
Business Manager
Jessica Leary

Member of the National Conference of Law Reviews
CONTENTS

INTRODUCTION ................................................ ix

THIS FORTIETH ANNIVERSARY ISSUE IS DEDICATED TO
JUSTICE GENE E. FRANCHINI
MAY 19, 1935–NOVEMBER 4, 2009
Gene E. Franchini: Reflections on a Man of Justice
Justice Richard C. Bosson ......................... 1

The Twenty-Fifth Anniversary of the Navajo Preference in
Employment Act: A Quarter-Century of Evolution,
Interpretation, and Application of the Navajo Nation’s
Employment Preference Laws
Howard L. Brown & Honorable Raymond D. Austin ...... 17

Ipso Facto: The Pattern of Assumable Contracts in Bankruptcy
Andrea Coles-Bjerre ........................................ 77

Between Rocks and Hard Places: Unprovenanced Antiquities and
the National Stolen Property Act
Stephen K. Urice .......................................... 123