

*IN MEMORIAM**

Perhaps because our time together was so short, I clearly recall the day I met Mike Brophy. About two weeks after I began working for the natural resources group at Ryley Carlock & Applewhite, he ambled into my office and began “interviewing” me. Although until that moment I had never met him in person, I already knew Mike by reputation. I knew that he was well-respected, brilliant, and exacting. I knew that he had been gravely ill over the past year and that I might not have the opportunity to work with him because of his illness. I knew that he knew stuff I really wanted to know.

I was a bit unnerved by Mike’s post-hoc interview, and I frankly thought it odd, considering I already had the job. Much later I would witness him conduct a similar interview of a young woman who had recently joined the firm as a file clerk. And after Mike’s death, one of his clients told me of receiving similar treatment during their initial meeting. By that time I had come to recognize this tendency as an expression of Mike’s genuine interest in other people and to count it among the many qualities I appreciated about him.

Indeed, as I got to know Mike better, I guess I would have to say that he lived up to his reputation, sort of. He was brilliant and exacting. By virtue of having come of age as a lawyer during that magical post-*Arizona v. California* era when the state literally was charting the course of its water future, he knew stuff about water law that was not, as far as I have been able to determine, written down in any book anywhere (although if it was, he could tell you from memory exactly where to find it). He also was extremely humble, good-natured, curious, creative, funny, sometimes downright silly, and always, always more concerned for the welfare of others than he was for himself—even when the circumstances would seem to demand otherwise. Mike definitely knew a few things about water law. But he knew a lot more about life and how it should be lived, and it is no accident that in the days and weeks after his death we heard more about those qualities than we did about his many accomplishments as a water lawyer.

* Michael John “Mike” Brophy, a water lawyer of national renown and a shareholder at Ryley Carlock & Applewhite, died unexpectedly just three weeks before the symposium that produced the papers printed in this issue. Mike was an esteemed colleague and cherished friend of many of the symposium’s participants, and shortly after his death symposium chairs Carla Consoli and Mark McGinnis requested that the *Arizona Law Review* dedicate this issue to Mike. Jenny J. Pelton authored the dedication. Thanks to Mike Brophy’s tutelage, she is a shareholder at Ryley Carlock & Applewhite. Mike’s long-time law partners Sheryl Sweeney, L. William Staudenmaier, Cynthia Chandley, and Michele Van Quathem contributed their memories and stories, as did Mike’s wife and partner in life, Marilyn Brophy.

Mike himself wanted it that way. Those closest to him have said that Mike wished to be remembered not for what he did, but for who he was. Being somewhat too close to the subject, he probably did not realize just how seamless those two parts of the whole appeared to the rest of us. For example, one of Mike's defining characteristics and a key to his success as a lawyer was his ability to see the big picture, to take the long view of whatever—or whomever—was before him at a given moment. Yet this trait was evident well before Mike became a lawyer. Just ask his wife, Marilyn.

Michael John Brophy met Marilyn Pritchard in the early 1970s in Tucson, Arizona, where they both lived. Mike, then the tender age of 25, was a banker; she was a librarian. They began dating. Marilyn, though not much older than Mike at the time, already had developed a healthy skepticism when it came to young men, and she was unimpressed. Mike told her much later that in his own mind the die was cast when he met her, but he knew a formidable hurdle when he saw one, so after a few dates he quit calling. Then he arranged to accompany another young woman to a party at which he knew Marilyn would be present. Not long after this maneuver, Mike succeeded in getting Marilyn to the altar.

In 1974, Mike and Marilyn moved to Phoenix so that Mike could attend law school at Arizona State University. Mike distinguished himself at ASU, where he was Editor-in-Chief of the Arizona State Law Journal and upon his graduation *cum laude* received the Armstrong Award as the Outstanding Graduate of the Class of 1977. After law school he joined the law firm of Ryley Carlock & Ralston (now Ryley Carlock & Applewhite), where he distinguished himself further, creating the firm's natural resources practice and later serving as the firm's managing partner.

Mike's work as a water lawyer eventually included acting as legal counsel to private corporations with significant water interests in Arizona, California, and Nevada, helping to conceptualize and implement interstate water banking arrangements in the Lower Basin of the Colorado River, evaluating interstate effects of the decree in *Arizona v. California*, evaluating tribal water rights claims for the State of Oklahoma, serving as a consultant to the United States Department of Interior in evaluating the effects of the Colorado River Compact and Upper Colorado River Basin Compact, and serving as counsel to claimants in the Little Colorado River and Gila River General Stream Adjudications. Very heady stuff for us water folk, yet, like his marriage to Marilyn, Mike's foray into water law began somewhat inauspiciously. In 1980, as the legislature was working to pass the Groundwater Management Act, Mike recalled spending the evening waiting anxiously in the hallway outside of a committee room. At about midnight, the door to the committee room opened and someone tossed a copy of the newly-minted Act out onto the floor for him.

Just two decades later, as Chairman of the Western States Water Council, Mike would host a briefing session for senate, congressional and administration staff to discuss new mechanisms for funding Indian land and water rights settlements. The briefing was attended by Senators Domenici (N.M.), Campbell (Colo.), and Kyl (Ariz.). Of course, by that time Mike could add to the list of his accomplishments that he had negotiated and secured the enactment of legislation

settling numerous Indian water rights claims in Arizona, including the Salt River Pima-Maricopa Indian Community Water Rights Settlement Act of 1988, the Fort McDowell Indian Community Water Rights Settlement Act of 1990, the San Carlos Apache Tribe Water Rights Settlement Act of 1997, and the Ak-Chin Water Use Amendments Act of 2000.

It is unsurprising that Mike considered these settlements to be among his most important work. As he explained in a 1998 interview with the *Arizona Business Gazette*, the settlements dealt with both the state's fundamental history and its economic future and "provided an opportunity to become acquainted with members of various Indian communities and to come to know and understand these communities' history, culture, outlook and importance to the state." In all that he did, Mike had a sense of community and of his role in it. This was evident in the larger setting of negotiating the settlement of claims that had been the subject of bitter and contentious litigation for decades and it was evident in the much smaller setting of his day-to-day interactions with other lawyers and staff in the office.

Although he probably would not appreciate the moniker, to those who worked with him, Mike was the quintessential "senior partner." He took seriously his role as a teacher and mentor to younger lawyers. He taught us how to think creatively about the problems our clients face and the solutions to those problems. He helped us grow by pushing us to take on tasks that we secretly thought we might not be ready to handle. He encouraged us to relate to each other and to our clients as people. He selflessly helped build the careers of numerous water lawyers, including those of most of his partners and of many others at other firms. As managing partner he took seriously his obligation to the hundreds of families that depended on the success of the firm, and he fostered a strong sense of community and common purpose that endures to this day. Toward the end of his life, he showed us what true courage and humility really look like as he fought and won battle after battle with cancer.

In the 1998 *Business Gazette* interview, Mike identified Marilyn and their sons, Tom and Matt, as the most influential people in his life. Mike viewed his life in terms of his relationships with others, and that fundamental principle was the thread that joined his personal to his professional life. As Marilyn told me recently, "There was no Mike at the office and Mike at home. There was just Mike." That strikes me as a particularly important lesson for lawyers, who struggle constantly to balance the demands of their personal and professional lives, and who all too often tend to see them as mutually exclusive spheres. Mike embodied qualities for which we all strive, not just as lawyers but as people, and from the many cards and letters we received after his death it is clear that he will be remembered not just for what he accomplished, but for how he went about it.

Perhaps the relational aspect of water law was what drew Mike to the practice. Virtually everything lawyers do on behalf of a client in this area ripples outward and touches others. We must be keenly aware of this phenomenon in order to succeed—we must consider the past, the present, the future, and who else might have a stake in what we are doing. Symposia like this are an excellent way to help bring that aspect of the practice into sharper focus. As Professor Joseph

Feller notes in his contribution to this symposium, Mike Brophy pointed out long ago that there is no easy way out of the difficulties that characterize these issues. But there is a way through. In water, as in life, it may be that what matters at the end of the day is not getting out the other end, but how we go about it. Let us try to go about it, as Mike did, with honesty, integrity, courage, grace, dignity, respect, wit, and compassion—taking the long view, and keeping in mind the community of which we are all a part.