



## A Conversation with Award of Merit Recipient Mark Fogg

BY CHARLES MCGARVEY

**M**ark Fogg is driving to Montana for a fishing trip when I catch up with him. I've called to ask him his thoughts on receiving this year's CBA Award of Merit. There's a worry that the cell reception may be spotty at times, but our connection stays clear.

"I appreciate the Mr. Fogg, but please call me Mark." There's a laid back, relaxed quality to his voice. I can tell he's enjoying the wide-open spaces.

**Q:** You've had a long relationship with the Colorado Bar Association, and over the years you've seen a lot of esteemed attorneys receive the CBA Award of Merit. How does it feel to be included in that group? And what does the CBA Award of Merit mean or represent to you?

**A:** The thing is, I've gotten so much help during my career. I've tried to be a helper to other folks. So many people have been good to me, helped me, and positively influenced me. I've really enjoyed the colleagues in my

Right to left: Mark Fogg with sons Mike and Jim, wife Pat, Jim's wife Becca, daughter Becca and her husband Zach—and pups Gus, Bozie, and Berkley.

life. They are very special. I think this award is more of a composite of all those good lawyers who helped and taught me over my career.

**Q:** Prevalent throughout the many nominations for this award, as well as in articles and profiles previously written about you, are mentions of your elevated sense of morality and civility and your ability to navigate ethical issues. How do you think you developed such a well-calibrated moral compass?

**A:** Certainly, as a foundation, through the upbringing by my parents. Great people. But if we were to put it into a legal context of somebody who really helped me understand what it means to be a lawyer and what our ethical duties are toward others—fellow attorneys and clients as well as laypeople —Brooke Wunnicke in the Denver District Attorney's Office.

I wasn't a hardcore hippy, but I was a child of the early 70s who came out here from Detroit and was a law student at CU. Frankly, I needed a job to pay for law school. A job opened up



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at the Denver District Attorney's Office. There were two guys who were good friends and there happened to be three positions available working as interns in the Appellate Division. We agreed to take the jobs together.

I think that was probably late winter of 1978. And, holy cow, the lawyer who was the head of the Appellate Division was a woman named Brooke Wunnicke. She had an unbelievable ability to mentor her law students and show new lawyers how to act ethically in difficult trial situations and develop great stand up skills. She had the ability to pass on to new lawyers an understanding of the profound effect on others you will have in your career. There were about 80 of us who were her direct mentees. She called us her children. A lot of these people have gone on to some very prestigious positions in Colorado. Brooke also taught the importance of humility. Never tempt the trial gods. You need to be client-centric. The work is all about the client. Brooke was able to instill all of that in us. I've always considered her to be a key mentor who helped set the right course in my legal career.

**Q:** You have had a long, influential, and fruitful relationship with the CBA. What successes from that relationship are you most proud of?

**A:** Being involved in the Colorado Attorney Mentoring Program, now known as CAMP. I worked on that with a lawyer who was in my law firm named Margrit Parker. I'm a very conceptual idea guy. Unless I have another lawyer sitting next to me with very concrete skills, my ideas just sort of float out into the universe. Margrit is a great example of an excellent, practical lawyer. She doggedly went through 20-something mentoring programs throughout the country and determined what worked, what didn't work, and what would work in Colorado. We would talk daily about it. We met with a dream team committee of volunteer lawyers, such as Rich (now Justice) Gabriel, who were also passionate about mentoring. I applaud the CBA for giving us the resources to develop this program. This was all back in 2011.

I also applaud then Chief Justice Mike Bender because we went to him and said, look, this is just not going to get off the ground unless you



Mark and Pat in the Pyrenees following their daughter's wedding in France last July.

hire an executive director to shepherd this. He agreed, and the Supreme Court hired John Baker as the first executive director of CAMP. John was great. John's got a lot of heart and is just a good human being. He really got it going. Ryann Peyton is the current executive director. Ryann has taken CAMP to the next level. A wonderful colleague. All the projects I'm working on now, like the Colorado Task Force on Lawyer Well-Being that Justice Monica Márquez put together, I immediately recruited Ryann. The reason the mentor program is what it is and flowered into a great program is because of the different skill sets of all these folks.

**Q:** Along that same topic, having been a driving force behind CAMP, what do you think is the most important duty of a mentor?

**A:** Time. Give time. You know, that's the hardest part because we've all got a million things to do. Sitting down with a new lawyer and explaining, "This is why I did what I did," or "Here is maybe a way you could think about drafting or writing this better," or "Hey, what have you thought about for potential solutions to this problem?" and thinking through things with them, that all takes time. My first real trial mentor, Norm Early, would quiz me on how I planned to develop the next case. Time is the



Mark with the Healing Waters group last July. The group volunteers to take wounded vets out fly fishing, one-on-one. Other CBA notables pictured here include John Vaught, Jim Benjamin, Jim Fogg, Tom Kresl, and Rich Caschette.

most precious commodity a lawyer can give. It is absolutely essential.

**Q:** Speaking of time, another common thread throughout the nominations for this award is the time that you've given to the bar association. And not just your time, but how you've been able to encourage others to participate. How do you motivate people to get involved?

**A:** I look back on the people who helped me. There were key times when other lawyers saw in me some potential and they reached their hand out to me.

Chuck Turner, former CBA executive director, was one. I still remember to this day Chuck taking me out to breakfast in the year 2000 and saying, "We'd really like for you to chair the Professionalism Committee." That conversation started my very active engagement with the CBA. You see the potential in other lawyers. You see interest and you reach your hand out and say, "You know what, you should think about doing this, I think it would be very meaningful to you."

Daniel Pink, who wrote the book on motivation, *Drive: The Surprising Truth About What Motivates Us*, writes that there are three great motivators. One is mastery, which means you feel confident in what you do and want to get

better. The second is autonomy, meaning that it's important to be self-directed and have the ability to exercise independent judgement. The third is purpose—the desire to do something that has meaning and is important. Lawyers thirst for purpose. Lawyers can help new lawyers and colleagues find that purpose in the law. That's clearly what Brooke, John Baker, Justice Rich Gabriel, and Chuck Turner did for me along with so many others—they helped me find purpose in the law. There are very few things on earth that are more beautiful than helping other human beings find purpose.

**Q:** In your 2012 profile with *Colorado Lawyer*, you are quoted as saying that you moved to Colorado because you "liked the idea of living in the West." What was it about the West that drew you here? And what advice or cautions would you give to someone who has recently relocated here or who is just starting out?

**A:** You know, the wide-open spaces were a big deal to me. Right now, I'm in a car with three other guys heading to Montana to go fly fishing. Clearly, Colorado has filled up a lot and it's changed since the 70s when I came out here, but there are still plenty of places to find your passion. For me, one was a guy handing me a

fishing rod in 1977 in the District Attorney's Office and saying, "Hey, you ought to try this." And here I am. On the way up to Montana we've spent 80% of our conversation talking about fish that we've caught and places that we've fished over the last 40 years. My oldest son, Jim, is in the back seat. He didn't have much of a chance but to be obsessed with it like I am. We've fished together hundreds of times in our beloved Colorado. It's still a very energetic and outdoor-oriented state. I really love that.

As for the practice of law, you probably have to be more specialized in practice now than when I started out. I think it's more difficult because when my career began I probably knew 25% to 50% of the lawyers I was dealing with. I either knew them well from prior cases or I knew of them and their reputation. Now it's harder because there are so many lawyers you don't know. It does stretch the professionalism limits sometimes. But that's why each of us has to be reliant on our own belief system in civility and professionalism because then, whoever you meet in the legal profession, you're going to treat them appropriately, civilly, and professionally. You need to trust and expect the same from them.

I believe an unfortunate thing we do as lawyers is we demonize each other, especially in the adversarial system. We don't give the other lawyer the benefit of the doubt as often as we should. To explain why someone did what they did, we often fill it in with negative color from the narrative in our head, which may not have any basis in reality. If someone is late to a deposition, we say, "Wow, they are trying to control the situation. They are trying to get the upper hand." But actually, you know what, their kid may have thrown their phone in the toilet and they had to take time to dry it out. A very difficult thing to do as a lawyer is to start with a position of trust in the professionalism of another lawyer. Fortunately, I received guidance from some of the icons in the bar, such as Ben Aisenberg, who taught me that we are all part of something greater which demands our professionalism.

**Q:** The CBA Award of Merit is often thought of as a lifetime achievement award. How does that resonate with you? And how do you feel



such an award pertains to where you are in your life right now?


**A:** I feel incredibly privileged. I'm very grateful for it. I'll be 65 in November, so, number one, I've lived to be 65. And, sad to say, that age escapes a lot of people in this world. My Dad used to say, "Never complain about getting old, it is a privilege denied to many." Second, I've had good parents, great kids, and I have a wonderful wife. You asked me what's the best advice anyone ever gave me? Again, it was Brooke Wunnicke. The first time she met my wife—it was back in 1979, we were on one of our early dates—and Brooke looked right at me and said: "You need to marry that woman." Of everything I've done in my life, marrying who I married was the best decision I ever made. We've been so supportive for each other. You talk about all this community service stuff, well guess who attended all those rubber chicken

dinners with me and guess who sat at home alone when I had to go to these things by myself? We still raised three great kids who are all great adults. As we're getting older, Pat's growing even more joyous. It's almost Biblical. She's getting lighter in her being.

I feel very privileged that I'm still active in the profession. I feel very privileged that I've been able to do so many things professionally. I've met so many great people. I now have a very unique gift at this point in my career in that I have the freedom to choose what I want to do. I can look back on my career and say, okay, I was a DA and tried a lot of cases, I was in private practice with a great group of lawyers, I was president of our law firm, I was general counsel for a successful company, I was president of the CBA and the DBA, and I've been active in numerous national legal organizations. I sit on the state committee of the American College

of Trial Lawyers. So now I can really look back on my career and say, "In my heart of hearts, what did I really enjoy doing? I want to do that some more." I don't think very many people get that choice. I worked with so many great human beings who happened to be lawyers. So, although my job as general counsel has been terrific, I'm returning to private practice with a bunch of my old law partners next year at Childs McCune.

More than anything, I want to convey a sense of gratitude. I've tried to help a lot of clients, lawyers and legal staff, but it pales in comparison to how many others have taught me over my career and how they have contributed to my finding purpose in the law.

Thank you so much, Mark. I really do appreciate your time. And I hope you catch some really big fish! 



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