



## Mr. Original

John B. Draper faces down a water law tsunami

BY KATRINA STYX



**John B. Draper**

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### Did You Know?

In Kansas, the Arkansas River's name is pronounced "Ar-KAN-sas," while in Colorado, Oklahoma and Arkansas, it sounds like the state's name, a point noted in Chief Justice William Rehnquist's 1995 opinion.

A river, two states and a disagreement that goes back to the early 1900s. That's what put John B. Draper in front of the Supreme Court of the United States—not once, but three times.

The case, *Kansas v. Colorado*, is all about the Arkansas River, which begins in Colorado and flows into Kansas. The two states have been at odds over water rights for over a century. Draper got involved in 1990, after Kansas claimed Colorado had violated their water compact. "We were making the argument that the upstream state, Colorado, was interfering with water that should have come down to Kansas," says Draper, the co-founder of Draper & Draper in Santa Fe.

A case like this one would often be argued by the state's attorney general, but Kansas' AG brought in Draper, because he'd studied engineering before law school and had a wealth of relevant technical knowledge. "Sometimes, the justices would have some notion that could be easily dispelled if I was right there at the podium to point out that they weren't thinking of it right," he says.

Because the dispute was between states, SCOTUS was the first and only court to hear the case.

Draper's first argument came in March of 1995, after weeks of preparation. He had one particular advantage: "The attorney general of Kansas would convene judges of the Kansas Court of Appeals and justices of the Kansas Supreme Court to sit as a moot court for me. And we would do it in the Supreme Court chamber of the state," he says. "It was such a great advantage to have sitting judges—who would never hear this case, because it's in the exclusive jurisdiction of the U.S. Supreme Court—give me real-time feedback."

At the same time, there's nothing like standing in front of those nine justices. "I just felt like I was looking at a tsunami that was coming at me," Draper says. "At one level, I was just holding on for dear life. And each time I argued, the level of that tsunami got lower and lower. And so it wasn't so much nervousness or intimidation, but knowing that you weren't going to get very much out before they started asking questions."

The court ruled unanimously in favor of Kansas, but the case wasn't completely resolved until 2009. Draper returned to argue specific details of the case in March 2001 and October 2004. He was also the counsel of record for two more water rights cases: *Kansas v. Nebraska* and *Colorado and Montana v. Wyoming and North Dakota* in 2018.

Draper's repeated appearances helped him build a rapport with some of the justices—which came in handy when one justice asked a question so simple Draper struggled to answer it without sounding condescending. "I looked at the chief justice and he could see my situation. He said 'Oh, well, that's handled by ...' and explained it [to the other justice]. I didn't even have to answer."

He also got to know the court personnel. "There was one officer of the court, who, when he would see me in the courthouse, would greet me as 'Mr. Original' since I had been there on so many occasions," Draper recalls.

The justice who stood out most for him was Chief Justice John Roberts. "He has this uncanny sensitivity to these issues," he says. Other justices also made an impact. "Justice Scalia was a very active questioner, and it was a very challenging thing to appear before him and a very exhilarating experience, really, to see if you were up to it and to take part in that conversation, which we mortals don't get to do very often."

Draper has more cases in the pipeline that involve SCOTUS, though he's not certain if he will argue there again. "I would love to have the opportunity," he says, "but that doesn't happen to too many people, and I've had three chances already. And I've had a great time."



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