INTERVIEW WITH PROFESSOR DANIEL GIBBENS
NOVEMBER 19, 2008

KEK: Well, hello, my name is Karen Kalnins, I’m a reference librarian at the Oklahoma City University Law Library and today is Wednesday, November 19, 2008 and I am here in Oklahoma City, Oklahoma. And today I will be speaking with Professor Daniel Gibbens, he is a professor of law at the University of Oklahoma School of Law and he was gracious enough to come in to, well, he was in Oklahoma City anyway for the Oklahoma Bar Association meeting and he was gracious enough to stop by here at the Oklahoma City University Law Library and wanted to participate in the interview. And this interview is part of the oral history project that the Oklahoma City University Law Library is sponsoring where we are interviewing attorneys and judges throughout the state of Oklahoma. So, welcome Professor Gibbens.

DG: I feel welcome.

KEK: Well, as I do with most of my narrators, I wanted to start off and just ask you, what drew you to the law?

DG: I was in the Navy ROTC so when I graduated from college, I was a Yale graduate, 1954, so I was committed to the Navy for two years. And I really had not, at that point when I left Yale, decided what I wanted to do. I figured there were three things that I might do. One was to get into teaching and one was to get into the ministry, and one was to get into law school. So basically, I didn’t really make up my mind until sometime during that two years and my wife was with me in Hawaii, I was on board a ship and we had a dwelling in Honolulu. Anyway, it was during that period that I had to make the decision and so I did. And, I’m not sure that there’s any particular reason why, I had to choose and I chose. Now, my family does have lawyers in it, my father was a lawyer, his father was a lawyer although he died before I was born. I have three older brothers and one older sister, I’m the baby of the family and older brothers, one was a doctor, surgeon, one was a lawyer, one was a Methodist minister, and my sister basically was a homemaker although she did some teaching in high school. So, there was a variety of exposures and I’m not sure why I went to law school but I thought that’s what I should do. Maybe, the second father to me, in a way, was my older brother, ten years my senior, who was the lawyer and he was also a Yale and had got his degree from Harvard Law School, practiced in Oklahoma City, he passed away in December of last year.

KEK: Oh, I’m so sorry.

DG: Well, he needed to go; he had a year of dementia. So anyway, I was interested enough so that after I made my decision, I enjoyed Honolulu and so I thought it would be fun to see if law firms in Honolulu would be interested in employing me after I graduated from law school and so I talked to two main law firms there and went over to Hilo because my brother Jim knew somebody over there, on the main island, and talked to a lawyer over there. Basically they all said that sure, they would be open to the possibility that I could come back to Honolulu if I otherwise was attractive to them. And, so I was thinking about it, at least that seriously at that time. The decision that was next was
where to go to law school and I was admitted at Yale and at University of Michigan and at Harvard. And decided to go to the University of Oklahoma because I figured more than anything else, the likelihood, I had been out of state for six years, college and Navy, and that more than likely I would want to practice in Oklahoma and there’s some value I think, in not being gone for a long period of time and then trying to establish yourself. My brother Jim had no problem so I shouldn’t have worried about it but he advised me that it would be good. So, anyway, I’m glad that I went to the University of Oklahoma law school.

**KEK:** Were you originally from Oklahoma?

**DG:** Yes, grew up in Oklahoma City. My wife and I were both born in St. Anthony’s Hospital.

**KEK:** Interesting.

**DG:** Classmates at Classen High School.

**KEK:** Oh my gosh, so are you high school sweethearts?

**DG:** We dated in high school and off and on after that.

**KEK:** Very interesting. Who was the Dean of the University of Oklahoma when you went?

**DG:** Sneed, Earl Sneed.

**KEK:** And what was the composition of your class, were there any women in your class at the time?

**DG:** In my graduating class there were two. One who had come into law school the same year we did and one was Marjorie Mosburg Downing who has been on your faculty here and she actually started the year before we did but finished up in our year and she was number one in our class. One of my best friends was number two and if Marge hadn’t dropped back a year why he would have been number one.

**KEK:** And, what, what year did you graduate?

**DG:** Fifty-nine.

**KEK:** Okay, and it took you three years to graduate?

**DG:** Three years.

**KEK:** And what were your plans then after you, after law school?
DG: Basically, to try to find a place to practice in Oklahoma City.

KEK: Did you still, you said you had inquired in Hawaii about working after you finished up law school. Did the thought ever occur to you to go back to Hawaii?

DG: After my first year of law school, I did correspond with the firms, or at least one of the firms. One of the firms said encouraging things back to me in correspondence. My wife and I, one of the things we enjoyed most about Hawaii was the friends we developed out there in the Navy and of course all of them are gone. And, both of our parents lived in Oklahoma City, so we put all that together and figured we would really enjoy life more in Oklahoma City.

KEK: Fair enough. And, what was your first job or first position after you graduated?

DG: I was a law clerk for Judge Murrah.

KEK: And, tell me about that experience.

DG: It was not something that I had planned to do but at a law school party, he was there and came up and asked me if I’d like to be his law clerk. Now, why did he do that? Well, his son was also a Yale, he graduated a year or two after me. And, I had a good record, I had been Editor-in-Chief of the Law Review but, if it hadn’t been for the connection with his son I don’t know why he would have picked on me. I don’t know, because he just came up to me and asked me. So I had to think about it. I had already done some exploring of job opportunities which was an interesting experience and had some other opportunities but it seemed like a good thing. There is a very special thing about being a law clerk.

KEK: Tell me about that, about being a law clerk. How is that special?

DG: You become a part of a judge’s life, in a very real way and how decisions are made and how the courts work. You’re not really focused on court procedures; you’re focused on decision making. Murrah was of course on the Tenth Circuit Court of Appeals, he was actually Chief Judge at the time that I was there. And, one of his idiosyncrasies was that his law clerks always drove him to and from work. So, I did that every day and it was most enjoyable. We didn’t talk a lot about law; we talked about whatever came up. He was always interested in watching attractive women walking on the sidewalk and he explained to me that if he watched them, then they would be complimented. This is the kind of thing that happened going to and from work and we became well-acquainted and good friends. But we didn’t really discuss cases going to and from work, that was not his deal.

KEK: So, it sounds like he wanted to leave work at work?

DG: I think that’s a fair statement.
**KEK:** And, how was he otherwise to work for and to work with?

**DG:** Demanding, and he didn’t want you to be particularly relaxed. There was one time when I was clipping my fingernails and he said, “You don’t need to be doing that down here.” So, I didn’t. He was a delightful personality and fun to work for and when he was deciding cases we would sit around a table, much like this table, and the secretary would be down at one end and I would be across from the judge, we talked about how the decision ought to be made and frequently there was a draft that he had developed or a draft that one of the other judges on the particular case, the Court of Appeals is a three judge, federal three judge court and so I got a very intimate picture of how cases are decided. It was a one year position, and one of the reasons that I took it was because although I had some good opportunities out of law school, I was advised by other advisors probably, I think more so than probably my brother that in that position you have a good opportunity to look at practice opportunities and make a better choice after having looked over the practice of lawyers in Oklahoma City. So, I did.

**KEK:** And, did he assign opinions to you to write?

**DG:** Yes, but he never used them. I mean he really didn’t, he wrote his own stuff, or dictated it to his secretary, who was quite a character. And, I would write paragraphs and sometimes he would use paragraphs. But he was the decision maker but he wanted me to argue with him. If I didn’t argue with him that would be a problem when he was going through the process of what to put down for an opinion relating to a decision in a case. One of the things of course also was that I got to watch the court in action. He took me to Denver with him. I think all the sessions that I went with him, all of the sessions that year were in Denver, the court does travel out occasionally. I learned that the way in which cases were decided, on this particular court, was the three judges that heard the case after, at the end of the day, would go back and sit around a table, just the three of them, and say, “How do we decide the case?” And, they would basically I think not talk about it a lot but just see who voted for what. And, whoever was then, usually the three of them would agree but it was not unusual for them to be split and in that case whoever, two to one, one of the two would be assigned to write the opinion, or agreed to write the opinion. The Chief Judge I suppose was the tiebreaker on who should do it. One of the interesting things was that when the draft of the opinion came from one of the other judges, the opinion occasionally would be one that would not be agreeable and so Murrah would dissent or the other judge would dissent. Or, the thing that sometimes happened was that the other two decided that they didn’t want to decide that case that way anyway after they saw the opinion. This was unusual but it did happen. They would vote at the end of the day and then one of them would be assigned to write the opinion. And one of the things that also happened and I thought this was interesting, and I’ve told this to students, one of the things that happened is that the judge that was assigned to write the opinion would communicate back to the other two judges, “The opinion will not write.” And, somebody else needs to write this opinion if we’re going to decide it this way. And so they worked it out as to get somebody to write the opinion that they could do it and make it convincing.
KEK: And, what did that mean, “The opinion will not write,” just that a judge couldn’t…..

DG: The law didn’t fit, the supporting authorities were not there.

KEK: Okay.

DG: Or, the supporting authorities didn’t convince him or he got the opposing authorities and thought they were more convincing. This didn’t happen very often but it did happen more than once and that’s the phrase that they used, “The opinion will not write.” And, Murrah of course being Chief Judge would have to resolve the problem of who’s going to write it or do we have him write the opinion on the other side? And that happened once or twice.

KEK: What about en banc opinions? Were those decided any differently, well obviously there was a larger panel that heard the case?

DG: The reason for the pause is that I’m not sure we had any en banc cases. I don’t really think we did. Let me add that they’re real people and they do what makes sense to them.

KEK: Now, were you the only law clerk at the time for Judge Murrah?

DG: Yes.

KEK: So, he only had one law clerk at a time?

DG: Right, at that time. He later on would have more than one law clerk. And he always told his law clerks and this was one of his traditions that he would tell each law clerk, “You’re the best law clerk I’ve ever had.” And he would make you think, “Gosh, he really means that.” Now you know it was not true but that was one of his deals. This was something you had to deal with.

KEK: Well, he was trying to make you feel good.

DG: Yeah, he was a fun guy. When I was in law school, the professor who taught constitutional law was a nationally known scholar, Maurice Merrill, and taught constitutional law. And one of the things that I remember him saying (after I went to work for Murrah) was that federal judges being appointed for life, it does make a difference. When they become a judge they may take on a different personality and become really serious legal scholars. Murrah was a classic example, he was appointed to the bench I think as the youngest federal judge that had ever been appointed at that time when he was appointed as a district judge. Josh Lee was the guy that he supported for the United States Senate; Josh Lee won, got him appointed to the judgeship. Merrill’s story was when a person gets that kind of responsibility, they tend to take it seriously and
Murrah was his example as one of the best judges that we have on the bench at that time. Even though he really had been appointed with no particular qualifications to be a judge.

KEK: But it sounds like he rose to the challenge.

DG: No doubt about it. Merrill thought so and of course I thought so, he was generally recognized across the country, he became, they started up a federal judicial center maybe after I was his clerk, but not long after that. He was named the, he was the top administrator although he didn’t really move to Washington, he was maybe in charge of a Board of Directors or some such thing. But he was recognized as being an extraordinarily fine judge. But his nickname was Fish Murrah and his wife was Babe. Everybody that knew him for a long time called him Fish and his wife Babe.

KEK: Wonderful, and where did the nickname come from, do you know?

DG: One can only guess.

KEK: Right, right. What was the thing that stands out for you the most, what did you learn, do you think, the most important thing that you learned from Judge Murrah?

DG: How the law works, how decisions are made. And that decisions are tough and they’re taken seriously and the judges appointed for life, I think that’s obviously, in my judgement, a very valuable thing because it leaves them free to draw on what they really think is right, and not what they think the public will like. And, if you’ve got to be reelected, you’ve got to worry about what the public thinks. There were not any really controversial cases that I was associated with as his clerk and I don’t remember really that Murrah ever was involved in a decision that was publicly controversial. But, I was impressed that their independence was important ant they really did work to try to do the right thing.

KEK: Did you learn anything from any of the attorneys that you watched in oral argument or from any of their briefs?

DG: Well, I learned that their briefs are frequently lousy. And I hear that still from law clerks ever since. The lawyer does the best he or she can, they have time constraints. But there are lawyers who do submit excellent briefs and the judges knew who they were. And there was one guy in Wichita in particular that they had a very high opinion of, I don’t remember his name.

KEK: Oh, if you learned anything from the attorneys, either from their oral arguments or from their briefs?

DG: Just to do a good job, I think that’s the only thing that it’s important whether it’s in writing or whether it’s before the court. And when he was appointed to the bench, Luther Bohannon became another perfect example of how someone who gets that kind of
responsibility, takes it seriously, he was the judge that made the controversial decision on Oklahoma City school desegregation, on the rights of inmates, and he was quite a guy.

KEK: It sounds like it, it sounds like it. And then he made some very important decisions.

DG: Made some very important decisions.

KEK: What did you do after your clerkship with Judge Murrah?

DG: During the year I did examine some opportunities and had some good opportunities. One that I chose was with a young firm, the senior partner was forty-one years old, the other three partners, he was forty-one, one was thirty-three, one was thirty, and Marge Mosburg’s husband I think was twenty-eight. And the firm was Fuller, Smith, Mosburg, and Davis. I think, why did I go with them, they were young and they were on the way up. I mean, you got that feeling. And, they were good people. The main other opportunity I had was with a good lawyer who was an oil and gas attorney and had a good reputation, and it was a tough choice. But I think the people and perhaps Lewis Mosburg, I knew he was number one in his class and very bright, that since he was in this firm, why would it not be a good place to be. And the senior partner, G.M. Fuller was, among other things, kind of a politician, a delightful gentleman, and had good connections in the legislature, and did a good bit of lobbying. John Smith was a good, all-around lawyer, did some good criminal law work. There was one of the criminal law novel writers who had a fund where he would employ lawyers to go and do critical cases. He got ahold of John Smith to represent a client who had been sent to prison in Oklahoma, and he had already done twelve years of his sentence and Smith got into it and got him released because the evidence was insufficient. Ted Davis was also an interesting character, after the firm he went on to be Executive Director or Chief Lawyer for the World Bank. He also represented Bill Atkinson, when running for the Governor. Atkinson sued, I think, the Daily Oklahoman for publishing lies that lost Atkinson the election. Charlton Heston and another national figure headed a march down Oklahoma City Main Street during this time, in protest against the segregation of facilities. And Ted was one of the ones that was in that and had us all watching out the window. Ted was much interested in social welfare, and John Smith was too, we all were, it was that kind of a firm. During the two years that I was with them, I was the fifth lawyer. Marge Mosburg was also number five, but she didn’t have an office, she did her work at home. The story was that each morning there would be a truck full of abstracts that would stop and leave them and at the end of the day or the next morning they would come and pick those up. Anyway, I was the fifth guy and they went to fourteen lawyers in two years. It was oil and gas boom-time and all but two or three of us did nothing but oil and gas work, title examinations, corporation commission work, this kind of stuff. So, the firm really grew and there were basically three things that made for going into, for enjoying your work. That you enjoy the people you’re working with, the money is okay, and the work is challenging. And, there was no doubt that all of those were present. They made me a partner after a year and a half and the money was not great, but it was good.
KEK: And, what years did you work there, from?


KEK: And, this was, again, it sounds like there was a lot of, or there was a lot going on in terms of the civil rights movement and the folks in your office were pretty active in that.

DG: To say that there was a lot going on doesn’t quite fit. It was beginning, and it was important. And, the people that were interested in it, Ted Davis was one of them, he was very active and John Smith was also there. And, the whole firm was interested. But, as far as a lot going on, there really was not, there was this march because there were still facilities on Main Street that were segregated, where you couldn’t go in and get lunch.

KEK: Were there any African American attorneys at the time that you came into contact with?

DG: No.

KEK: And, what did you learn from your fellow attorneys in the office, what do you think are some of the lessons that you learned from them?

DG: It always helps to get somebody else to, when you have something written, that’s important, legally, it’s important once you think you have it just right to have somebody else look at it. I learned that divorce work was fun. Out of the eight to fourteen lawyers, fourteen when I left, there were three of us that did all the other stuff. I did some labor law work, I did six divorces, and I got an injunction against some picketing and the story was in the newspaper. The main labor lawyer in town who was a marvelous gentleman called me up the next morning and said, “How did you do that?” And so, I learned that if you worked at it, you got somebody else to look at your stuff, good things happened. It’s challenging work and that was part of the fun. The divorces were interesting.

I didn’t have any labor law in law school but during the year I was with Murrah he assigned me to work on seven different labor law cases so I had a little bit of feel for it. I had not had a course in domestic relations so when I got assigned my first divorce case I said, “What do I do?” And I didn’t get an answer from any of the firm guys. So I went and talked to one of the clergyman that I knew very well. I said, “What am I supposed to do?” And he said, “Well, Dan, what you really ought to do is to ask them, specifically, why they want a divorce. And you remind them that they now think they’ve made a mistake and they need to make sure, in getting the divorce, that they don’t make another mistake.” Now, you’re not trying to talk them out of it, and I didn’t talk any of them out of it. But in the process of finding out why they really wanted a divorce, it was more colorful than what you get in the afternoon soaps.

KEK: I’m sure it was.
DG: And so I’ve told law students over the years that divorce work is really very interesting because it was. And you get the feeling that all your clients are never happy with you, basically. I did a couple of adoptions and the people that you do adoptions for are always very happy.

KEK: Any other memorable cases from that time period?

DG: Yeah, the one that was most memorable, there was a guy named John Burke who had some property up in northwest Oklahoma City that backed up to Lake Hefner and he was going to develop that residentially. And, OG & E decided that they wanted to run 66,000 volt lines across the back of those lots between where the homes would be and the lake, and ruin the beautiful effect of living by the lake and looking out over the lake. So, when John came to see me, I guess he came to see me when I was still working for Murrah, I’m not sure, but it was certainly before I quit, and I may have told him to talk to a law firm. Anyway when I was with the firm, I did the work for him and we lost in five different forums. We lost in the state trial court and there was no appeal available, at the time anyway. We went to federal court, same thing happened in federal court, lost in trial court, no trial but in the summary judgment process. We tried to get an interlocutory appeal and that didn’t work. So we took it to the city council, the city was the Village (that is the name of the town) it is on the northwest part of Oklahoma City. We lost there. One thing that was important was that when Burke asked us to start working for him, we got the word that he had had some other lawyers. And so, we made the deal with him that he will pay us by the month, and we are going to charge him by the hour because the case is one that we don’t know if we will win or not. What are the chances? Well, it’s kind of like the weathermen, well maybe fifty-fifty, forty-sixty, who knows? So we made the deal and he paid us by the hour, and we made good money. After he lost and the OG&E people came across the property, this was on the front page of the Daily Oklahoman, the OG&E people were driving one of their trucks to set up the poles and the poles were high poles and John Burke put his body down in front of a truck so that they couldn’t go without carrying him off. So they called the police and carried him off. And he got his picture on the front page of the Daily Oklahoman lying on the ground in front of the truck. That was the most colorful case I worked on. And Burke said he appreciated the effort we had put in for him.

KEK: It sounds like it was a great case.

DG: We lost in five forums.

KEK: Well, but you tried, that was the main thing.

DG: Yes, that was what he wanted. He was a good friend after that. We did all that we could, I think he knew that we did.

KEK: I think so, I think so. And where did you go after this particular law firm?
DG: One of the OU law faculty was Bill Bandy. He was the one who taught criminal law. He died of a heart attack at the age of forty-four. And so the Dean called up John Smith because he had a good reputation as being a good criminal lawyer and knew the stuff. He called John up and asked him to come down and finish teaching the course, or teach the course, I think maybe it was a course that was coming up and he went down to teach the course at the beginning of the semester. And, during the semester John had one of his clients that wanted him to go over to Berlin for two weeks and so John said to me, “Would you like to go down and cover for me, for the two weeks teaching criminal law?” And so I did, and at the end of that time I said to the Dean, “This was fun, if you have any more short stints, don’t hesitate to call me.” At the end of that semester he called me and said, “Dan, I’ve got a new position and it’s half-time drudgery work, we’ll call you an Assistant Dean, I’ve never had an Assistant Dean, you’ll be my first Assistant Dean, and you will do the drudgery, nonsense work that I don’t want to do and you will be a half-time teacher.” I think he said that I would be “Assistant Dean in Charge of Latrines.” This was the major decision I guess in my life because I was enjoying what I did. I mentioned the three things that make for a happy work environment, so when this came up one of the main thoughts that I, obviously my wife and I talked a great deal and I talked also with my brother Jim and I talked with Gene Kuntz who is a professor at the law school and who was a good advisor for me, and probably my priest, and I don’t know who else. The firm knew I was thinking about it and so they said, “Dan, we really don’t want to be sitting around here ten years from now and you’re a frustrated academician. What you need to do is, if you think you might want the job, we’ll give you one year down there, and you will not lose your place in the firm, and go get it out of your system” And so I went down for one year and never went back.

KEK: So you never took them back up on their offer of re-joining the law firm? Any regrets about doing that?

DG: Oh no.

KEK: So who was the Dean that you initially worked for?

DG: Earl Sneed.

KEK: Okay, what did you think of your first year there?

DG: It was hard. And you have these stories that you’ve told too many times and I’ve told this story to new faculty people. One of the experienced faculty people at that time was George Frasier, the “Tiger,” because he was of the old style, interrogating people in class like Kingsfield, he was good at it, he really was. And I was one among many who thought he was a super teacher. One day in that first year I was down at the bottom of the stairs, I was coming back from class or going to class, and I ran into George and George said, “Well Dan, how’s it going?” And I said, “I think it’s going good but I never really feel like I’m fully prepared.” And George said, “Don’t worry about that, I’ve been doing this teaching work for ten years and I still feel that way.”
KEK: What was your reaction to that?

DG: It made me feel comfortable to just keep working at it, work hard, and do the best I could. There’s always more that you can do like when you’re writing an article, there’s always more that you can do, but you’ve got to cut it off somewhere. And, it’s still true with my teaching at age 75. This particular fall I’m doing some teaching at our continuing education center at OU that is for senior citizens, it’s called a Senior Seminar I’ve never done that before. There are six sessions, each one is an hour and a half, and I finished the last one on Tuesday of this week. I do a handout for each session and I try to make sure the hour and a half is useful. But it’s my habit, which is not entirely pleasing to my wife, but I always have to cut off preparation, I’m never quite ready and I haven’t done all of the things that I want to do and I cut it off, and go and do the teaching. And so, I learned that from George Frasier, you never are really quite prepared.

KEK: Exactly. I think that’s absolutely right and there’s always more you can learn. But that’s a good thing, it’s a positive thing.

DG: Yes, that’s what makes it interesting.

KEK: Exactly.

DG: Oh, and I’ve loved it. I enjoyed the last six weeks, it was a fun group. Very small, basically nine people, old people.

KEK: How did you become interested in that particular topic?

DG: First Amendment religious freedom?

KEK: Well, just sticking with your, with the seminar that you’ve been teaching for the seniors.

DG: Well, that’s just the one time that I did that.

KEK: Right, this one time.

DG: My favorite law school course that I picked up in 1982 is a seminar in “Church-State Relations” - First Amendment religious freedoms. And, seminars, I think the standard definition of a seminar is you don’t lecture but you engage, stimulate conversation among the students. And you have conversations with them. So I started doing that in 1982 and limit it to sixteen students and there’s some details that I can fill in to the extent that you want but the seminar was very enjoyable and I did it every year up until I retired in 2005. And I told the Dean many times I’m sure that after I retire I would pay good money to teach this course because it’s that much fun. And of course after I retired he continued to employ me and I got paid appropriately, but of course not a lot. That’s not what I am doing it for and he knew it. So, I continued to enjoy it until I retired
and they let me continue to do it so I’ve done it every academic year. I’m scheduled to teach it this next spring semester.

**KEK:** Excellent. And what about that topic interests you so much? Why have you been, I mean you’ve been doing it since 1982, what keeps you going?

**DG:** The issues, in all the years since 1982 except three, the United States Supreme Court has come out with a new case on First Amendment religious freedoms. It’s an area of law in which there’s ongoing controversies. For example, prayer in the public schools was controversial for a long time, and actually there are people who still say that the Supreme Court took prayer out of the public schools. Well, that’s nonsense but there are, the evangelicals or radical right religious people who are good people but they really do not understand that we have a constitutional arrangement where there’s not a complete separation of church and state, but there is important separation. And, there’s no wall, but there is important separation and so the issues coming up keep coming up. The issue that is currently the most colorful and has not gotten to the Supreme Court and may not get there. There was a district court case in Pennsylvania two years ago, the *Dover* case, in which the trial judge wrote a fifty page opinion which was, you know, why would he write so much? But anyway, he pretty much settled the law on this issue, which is to what extent is it appropriate to teach evolution in the public schools without also teaching something about the biblical stories of creation? And, this has been an issue that goes back into the twenties. So, that’s the kind of issue that I especially enjoy. Also, many years, one of the things that I do and have for a long time-the university has a speakers program and I’ve signed up for it and the topics that I’ve listed have to do with religious freedom. And so, each year I’ve had a number of opportunities to go talk to groups, civic groups, religious groups, bar associations for CLE (continuing legal education for lawyers) all on First Amendment religious freedoms, fun stuff. There is almost always a fresh U.S. Supreme Court case. And, probably it makes a difference that I’m a traditional church-goer, very much committed to my religious faith. And, this is kind of typical, yesterday in my last class this semester in this hour-and-a-half session, one of the topics that I planned at the beginning to touch on was gender equity and religion. And there were three other topics that I was going to touch on that I never got to. On gender equity, Roman Catholics do not have any women priests, the Jewish lady in the class didn’t know if there were ever any women rabbis, and the Episcopalians, and that’s what I am, have as our top national bishop (the term is “presiding bishop”) a woman who was elected in 2006. She is a former scientist, an oceanographer, she’s married, has one child who’s in the Air Force, a woman who is an Air Force pilot. And so, there was a disk when she was, I think she actually made it before she was elected. I think it ran about twenty minutes and she told her story, what she thought about it. And I had it but I lost it. What I did was go to the Web and all of her speeches are there and I got a couple of them pulled off by the guru at the law school and put them on a disk, so I used those in my seniors seminar. But that’s, that was yesterday and that was not the whole session. We talked also about polygamy and the definition of religion.

**KEK:** It sounds like it’s very interesting and very engaging and a lot of changes always.
DG: And I always learn from the people in the seminar. It’s an old people’s group but I learned from them.

KEK: What do you think about the students? Now, you …

DG: There’s one other thing you’ve got to know about this religious freedom stuff.

KEK: Okay, okay.

DG: Frequently I, the talks that I’ve made have been under the heading, “Are We a Christian Nation?” That is a question that goes back, to our colonists. There is a simple answer that I always give and it’s always on a handout, is that historically and traditionally, but not exclusively, …

KEK: Okay, this is Karen Kalnins, and it is still Wednesday, November 19th, 2008, and I am still sitting here speaking with Professor Daniel Gibbens. And it is about three forty-two or so in the afternoon and we were rudely cut off here with the recorder but we are back. So, please Professor Gibbens, continue on, you had one more thought to say about religious freedom.

DG: Are we a Christian nation? We are historically and traditionally, but not exclusively. And, legally and politically and officially we are not. And that covers a lot of people’s concerns in that it’s not an answer that solves any problems but it’s good to get people to thinking, are we a Christian nation? And there’s some arguments to say that we are, but it’s not honest to say that we are. We are not governmentally and officially and politically. One other thing, whenever I go out and do this talk, and for example this fall I was back for the fifth time at the Westminster Presbyterian Church in Oklahoma City, a Sunday School class for seniors. I always start off with this dumb joke that I’ve used in my talks forever and ever. Two guys were traveling cross-country in a hot air balloon, and they were navigating by the ground with a road map, and it got cloudy so they couldn’t see the ground. And so obviously this was very troublesome to them so they went down lower and lower and there was a break in the clouds and down there was a guy. And so they said, “Hey, where are we?” And the guy down there said, “You’re up in a hot air balloon.” And the clouds came back and the one guy said to the other guy in the balloon, “Isn’t that just like a lawyer?” And the other guy said, “What do you mean?” He said, “Well, he answered the question we asked him, his answer was 100% accurate, and it didn’t help us a damn bit.” So, I always start off with that.

KEK: It’s a wonderful joke.

DG: I heard Justice O’Connor tell the same joke once when she was speaking down at OU, sometime about five years ago. She used the same joke so it’s not mine.

KEK: Well, it’s a common lawyer joke. Continuing on with the subject of religious freedom, do you believe in the separation of church and state?
DG: Sure, but not a wall of separation. There is some separation, and it’s important separation, the main example where there is not separation is that we have paid clergymen in the military. And, nobody thinks there’s anything wrong with that. The government is paying their salaries, they are government employees, they are in the military as military officers and so there’s not complete separation. That’s the main example, now, there’s all kinds of situations where there is important separation and one of those that is most controversial is the extent to which in the public school tradition, there can be Bible reading or some kind of prayer exercise at the beginning of the school day for students. And the Supreme Court held that that was improper back in two cases, in 1962, and in 1963. That’s when people started saying, “Oh, the Supreme Court is taking religion and prayer out of the public schools.” Well, anybody with any sense knows that anybody can pray in public schools whenever they want to. And it’s just that you cannot make it a part of the school program. Now, where does that come from constitutionally, and this is just a part of the standard drill. The language of the First Amendment: “Congress shall make no law respecting the establishment of religion or prohibiting the free exercise thereof.” Two clauses, Congress shall make no law, sometime along in the middle of the nineteenth century it was recognized that the restriction on Congress was mainly a restriction on the federal government, and that it was done that way because the people that put the Constitution together (1787) recognized that such power had never really been given to the people like they were doing, and it was scary, and they ought to have some restraints on the powers of government and so they wrote the Bill of Rights (1791). And their main concern was the will of the people going through Congress. So Congress shall make no law alright, and it was recognized that they were really concerned about this. Along in the middle of the nineteenth century or the latter part of the nineteenth century, it became generally recognized that this was a restriction on all of the federal government, not just Congress. When the 14th amendment was adopted after the Civil War, in 1868, key language is “no state shall” do certain things. One such thing was of them was deny people equal protection of the laws, one was to deny due process, and another was to take away their privileges and immunities. “No state shall,” and so the Supreme Court over a period of time and really starting in a 1920s case, but not many cases until the 1960s cases about prayer in the public school - applied the First Amendment restrictions on government to our state governments. And the point is that no state shall, what is the state? What is the government? Is that just the legislature, just the court system? Well, it is not just those parts of government. In addition it’s really all the agencies, the Tax Commission, the Board of Education, they are created by statutes. And the Board of Education as a part of government, how do they act? Well, they act through principals and public school teachers. And so, believe it or not, public school teachers are a part of government so they cannot be involved in promoting religion or in discouraging religion. That’s my whole lecture.

KEK: No, it’s very interesting. Just as you said, the topic is just very engaging and it engages you on various levels. Okay, so what year did you start at OU?

DG: Law school was in 1956.
**KEK:** Okay, but what year did you start working there?

**DG:** 1962.

**KEK:** How was the, you talked a little bit about your first year of teaching, how was that first year and your first experience in administrative work, how was that, being an administrator?

**DG:** It was interesting, it was kind of a flunky job but there were problems that needed to be dealt with and some of them were stupid problems, some more interesting. I was a little bit of a job advisor and there’s the guy up in Enid, Steven Jones, who is well-known attorney nationally for various reasons and apparently I advised him that it would be good if he went and worked for the governor. He’s given me credit ever since then. I mean, that’s just one example.

**KEK:** It sounds like you were trying to give him career options. Did you like being an administrator?

**DG:** I only did it really for the two years, maybe part of a third year. Dean Sneed encouraged me to go do graduate work in law. So, after my first two years I went to Columbia on a LLM program and was there for a year. And, when I came back, I think he had already gotten somebody to be Assistant Dean and so I think when I came back in 1965, I think maybe I was not Assistant Dean anymore. Administrative work, in 1977 I was asked to represent the university with the NCAA and in the Big Eight conference. Every college that has sports programs in the NCAA and there’s actually a thousand schools although there’s categories, and the category for large universities has one hundred and seventeen. In any event, all such schools have a “faculty athletics representative,” that is the title, and the idea is that you get no money from the athletics department and so your judgement can be impartial and you can let the president know what is going on, and you go and vote at meetings, make rules, and try to solve problems that continue to be problems in the world of intercollegiate athletics. And so, that’s kind of administrative work. A lot of paperwork, and a lot of variety of issues that come up. I did that from 1976 until I retired in 2005. When I started, I wasn’t going to do it any longer than three years. You serve at the pleasure of the president; I really wasn’t going to do it more than three years. But, at the end of three years, I was still having fun. The President was happy to have me continue and so, year by year, why, I continued on until 2005. Now, you know the President doesn’t say every year, oh, continue on. It’s just that they were obviously happy to have me work for them. A bunch of Presidents, interesting people. And, really interesting work.

**KEK:** It sounds fascinating, what kinds of issues did you deal with while you were on, or working with that group?

**DG:** I don’t know that there’s a typical issue. We got three years of probation, I think it was in 1988, and there was basically two and a half years of investigation by the NCAA before that and they did a lot of interviews and the NCAA people would come in and do
interviews on campus of student athletes and of administrators, and of supporters, anybody that anything to do with intercollegiate athletics. And I sat in on all of those interviews, and I was the only person involved with “compliance” at that time. And, you asked me for an example, well, I sat in on interviews with people who were trying to find out whether we were obeying the rules. Well, we got three years of probation, I became very well-acquainted with Barry Switzer and still am, he’s a good friend, he considers me a good friend. I was in his home about two weeks ago to get some footballs signed for a charity and we had a nice conversation. I had heart surgery in 1992, and in the process of recovery he came over and picked me up and took me to the stadium so that I wouldn’t miss a football game and got me on the elevator with my wife so that we could watch the football game without getting in the seats. Good friends. There’s not anything typical. Dusty Dvorcheck had his eligibility taken away from him because of some bad behavior probably in 2003 or something like that. So he lost his eligibility but the coach was willing to take him back on if I could get him eligible. And I took the issue to the Big Twelve and there were reasons that I really thought would justify giving him back his eligibility. Great player, but also, basically, a good guy. But he had an anger problem, that was his deal. But anyway, the Big Twelve did not vote in favor of giving him his eligibility back. Five to six was the vote, and so, the guy that was then commissioner, the new commissioner of the Big Twelve, Stan Beebe who is now commissioner. And he’s the one that did the last two years of investigation when we were getting investigated. We sat together on all the interviews, we became very well acquainted. So, he’s a good friend. So, because he was still very well connected at the NCAA when Dvorcheck’s case came along, he got the issue to the NCAA and they gave Dvorcheck his eligibility back. And despite the fact he didn’t get it from the Big Twelve, got it from the NCAA. Now, I don’t know that that’s a typical example, but interesting, interesting things. And Dvorcheck would call me up while his case was pending and this was probably four, five weeks, maybe longer. He would call me up at least three times a week and say, “Dan, how’s it going?”

KEK: Just to get a status on what was going on. Now, this NCAA is completely different from your other interests and religious freedom, how, are there any similarities as to why you kept going so long.

DG: Interesting problems, I think that’s the common thing. And when I started off doing it, I kept time records when I was in practice by tenths of the hour and you needed to log in telephone calls, keep track of your time exactly, for billing purposes. And so when I started with the athletics program I started keeping time records of the same specific kind. My wife would do the tallying and I did that for a number of years. I ended up slacking off in later years and didn’t do it in the last ten years. But, we got a good idea of how much time I was spending and literally over year after year for no particular good reason it would come out as about nineteen hours each week I would spend on athletics administration stuff, averaged over fifty-two weeks a year. Not counting when you go to games. So, it was basically half-time work. I was the only person involved in compliance work when I started in 1976. Now and this is typical of schools like OU, there are nine people in the Athletics Department at the University of Oklahoma involved
in compliance work and they are employees of the Athletics Department, but there still is a faculty athletics representative.

One set of interesting problems related to rules compliance, in the mid-90s, the NCAA commenced an accreditation program, labeled “Certification”, providing for each of the 100 or so Division I-A schools to be evaluated periodically by a team of four people active in athletics at other schools, chaired by a university president. These teams would spend four days at the school being evaluated, performing evaluation tasks specified by the NCAA. In the years that followed, I was a member of teams evaluating seven schools -- Wisconsin, S.M.U., Virginia, Colorado State, Houston, Virginia, and the Military Academy at West Point. In addition, I chaired the group at OU preparing our detailed report for two certifications.

Undoubtedly the most memorable set of problems related to the NCAA long-time restriction on football telecasts – no more than three games on any Saturday. The bottom line was a 1984 U.S. Supreme Court decision declaring this restriction a violation of federal antitrust law.¹ The result is obvious today – many, many games on any Saturday during the college football season. The case was brought by O.U. and U. Georgia, representing the 60-odd members of the College Football Association. I did not do any of the legal work. I chaired the CFA Television Committee that generated the case, and was actually on one of the major network shows the morning after the court’s decision explaining the result. The law firm that did the work was Crowe and Dunlevy in Oklahoma City. The guy who did the argument before the Supreme Court was Andy Coats, then a member of that firm, and now many years dean of our law school. One direct result of the decision was the combination of the Big Eight Conference with the Southwest Conference, in 1996 I think. We needed to cover a sufficient geographical area that had enough population to justify a national TV contract. And I chaired the committee that developed the rule book for the new conference. So probably it’s an understatement to say that what kept me in the faculty rep role for 29 years was the interesting problems.

**KEK:** Does the faculty athletics representative still come from the law school?

**DG:** My predecessors, Dean Sneed was faculty athletics representative for about 10 years while he was Dean. David Swank, one of my law school classmates, and who actually served as President of OU for a time, he took it up from Dean Sneed so there were lawyers. He did it basically for ten years and when I picked it up, here we had another lawyer. And so it kind of was traditional that the faculty athletics representative would come from the law school. So when it came time I decided I really should retire and stop it all, teaching and athletics at the same time, there was a particular woman who would have been an excellent faculty athletics representative, member of the faculty. And she actually went to a Big Twelve football game with me, my wife and her husband, and she didn’t know what a first down was. I mean, she really didn’t but I didn’t know any rules for volleyball so that doesn’t make any difference and she would have been an excellent

faculty rep. But, the details are unimportant, she ended up going to the University of Minnesota, on the law faculty up there, and there was some thought that she would come back but she has not. And so the person that I recommended then was not a law faculty person but a person who I had become well-acquainted with in athletics work. The current faculty rep is Connie Dillon, she is a Professor of Education Leadership, she had been Chair of the Faculty Senate, she had been heavily involved in our athletics certification, accreditation program in the 2000 period. So I recommended her and the president appointed her-so it's no longer a lawyer. There were never more than, in the twelve faculty representatives in the Big Twelve, more than three lawyers.

KEK: Well, very interesting. Now what, you said you started teaching your seminars on religious freedom in 1982, what classes did you teach before then?

DG: I taught, when I started off, a lot of teachers when they started off in the Sixties would be happy to get to teach a spread of courses. They don’t do that anymore but at the beginning I taught contracts and torts, taught criminal law, taught commercial transactions, practice court. I got back from the year at Columbia in 1965 and I don’t really remember what I was teaching at that time but I was not teaching commercial transactions anymore because the guy that taught it while I was in New York was enjoying it and I didn’t really care for the course anyway. So, it was about that time I took up constitutional law. And then I got into, that is probably when I started teaching criminal law and procedure. It was a course that covered the law of crimes and also the procedures involving the Fourth Amendment, this kind of stuff. It may have been two courses, I don’t remember. But anyway, my main teaching over the years was in the area of criminal procedure, Fourth Amendment, Fifth Amendment, this kind of stuff. I developed my own course materials, taught out of my own course materials for many years, Supreme Court cases and state law and enjoyed that very much. So, constitutional law and criminal procedure were the main things that I taught most of the time. There was a demand that there be a sports law course and so, sometime, I don’t remember the date, probably in the Seventies sometime, I started teaching a course in sports law and it was okay but it was not as much fun.

KEK: What did you enjoy most about the criminal law and criminal procedure?

DG: The constitutional issues and protection of individuals’ rights, interested also in effective prosecutions of course. I did some seminars involving current criminal law problems and the Special Agent in charge with the FBI in Oklahoma City would come down and meet with my students. I had some other good relationships related to effective law enforcement. The problems with crime are like the problems with health and I’ve used this example many times. It’s just like health, we keep finding more remedies that help people stay healthy longer but nobody ever thinks you’re going to get rid of death. And so it’s the same deal in criminal procedure, we keep working on more effective law enforcement, more effective protection of rights, but we’re never going to get rid of crime. And it’s in that context that you’re working to try to see if you can teach right, and also along the way make things a little better. Interesting cases.
**KEK:** Absolutely. Now, as a follow up, I didn’t ask you, what did you get your LLM degree in?

**DG:** It was just in education, legal education.

**KEK:** Do you think that degree helped you as a law professor?

**DG:** Yes.

**KEK:** In what ways?

**DG:** It put me in a different context, for a year, with my family in New York City and the family value was a great thing but the value of the education was also getting exposed to two particularly extraordinary faculty people. There was one seminar, legal education, and one seminar, jurisprudence, that we were required to do and the faculty member for each one of those was, just to be around them, was stimulating. To see them work, to experience their work product, it was a valuable experience.

**KEK:** Now, you obviously, you have a great deal of teaching experience and you’ve seen a lot of students and been involved in legal education for a long time, what do you think about the quality of legal education today as compared to either when you attended or when you first started teaching at the University of Oklahoma?

**DG:** As you probably know, this is a question on which faculty people differ. My view is that I think the students are equally or more focused on getting properly educated than they were when I was in law school. One of my best faculty friends thinks just the opposite, but I really do think that. They’re serious, they are there with a purpose and they work hard to do the right thing. And they turn into good students and all the people that make it through are good students obviously and they’re doing good work out there. And I think they’re serious.

**KEK:** What kind of advice would you give somebody who is just graduating from law school?

**DG:** Be open to possibilities. You don’t have to feel like you’re making a decision for your whole life, you don’t know what’s coming down the road.

**KEK:** Excellent advice. And what is the best piece of advice that you’ve gotten?

**DG:** Yes, I saw that on your questionnaire. I never did come up with an answer. I know that in trying to make a decision about employment whether it was to go with Murrah, whether it was to go into this firm, or whether it was to go into teaching that I think more than anything else, my ten-year-older brother who is the lawyer may have had more influence. I talked to several people but, and his advice was be open to the opportunities. Now, the other way to answer the question is I’ve probably gotten more good advice from my wife than from anybody else. And it goes on, and I give her advice too. We’ve
been married fifty-four years and one of the main things that’s going on right now, we have two sayings that we’re pushing right now. And one is, you should tell the other person anything that any idiot would know. And the other one is, “You’re sure not perfect, but you’re very good.”

KEK: Both of those are wonderful, wonderful sayings. Now you said you retired in 2005 officially from teaching, are you still involved in teaching either at the University of Oklahoma or elsewhere?

DG: Each academic year I’ve taught the First Amendment Religious Freedoms seminar once. I taught it, the last time I taught it was in the fall of 2007, that academic year. I didn’t teach it this fall of 2008 but I am going to teach it in the spring.

KEK: Now, tell me a little bit about the, you said that you were just wrapping up a seminar for senior citizens, how did you get involved with that?

DG: I like to go out and talk on my favorite subject. And they have a, there was a flyer that came out on “mornings with the professor.” And so, I submitted my topic, “Are we a Christian Nation?” So, I got picked for a mornings with the professor thing, that was probably in 2005 or so. That was fun since I was not teaching this fall, they had another flyer that came out about this senior seminar thing. So I put in my application and I got to teach that.

KEK: And, how were the students different in this group than say, your traditional law students?

DG: They feel freer to ask questions. They don’t have to be good questions. They like to ask questions and then we have conversation and they give me a very positive response and of course that helps. With law students there’s a positive response but it’s not so, what’s the right word, it’s not so fanciful or unpredictable or whatever, I don’t know.

KEK: Do you have any regrets Professor Gibbens?

DG: No, I’ve been blessed, blessed in many ways.

KEK: Now, is there anything that I have not asked you that you would like to say or that you would like to talk about?

DG: Well, the one other part of my life I guess that I’ve, I don’t need to say this, my marriage has been very important to me, it’s the most important part of my life, but another important part of my life is my church work. And I’ve been involved in that, I’m on the governing committee for Episcopal churches, the Vestry, there are three year terms and I’m finishing up a three year term this year. I don’t know how many times I’ve been on the Vestry, there are times in between but that is just one example of church work that I’ve been involved with. I have gone to Diocesan conventions representing my church,
probably fifteen or so of those. And, I am a regular Sunday church-goer. It is a very important part of my life.

KEK: It sounds like it. Why do you think your church work is such an important part of your life?

DG: There’s no simple answer to that, two or three things that come to mind, one is and this is peculiar to the Episcopal Church, it’s tied into history, you’ve got to have a real interest and commitment to the importance of history and that’s important. There’s one saying that’s really not peculiar to the Episcopal Church, but it came from one of the old, medieval times theologians, is that the greater the faith, the greater the doubt. And the idea is that our faith is very much like that. Probably the thing that happened is that my family were church-goers, my father was very much involved in the church in Oklahoma City, that’s where I also met my wife.

KEK: Were you raised as an Episcopal?

DG: No, a Methodist. One of my brothers is a Methodist minister, he’s eight years older than I am and he is now retired and he is also a very important person in my life. By the way my father, Myron Gibbens, was on the OCU governing board many years.

KEK: What caused you to convert to, to become an Episcopal?

DG: Well, two things, during the two years that I was in the Navy over in Honolulu I was out at sea for about half that time so Carol got involved with a group of other women who were, whose husbands were out at sea, and they went to the Episcopal church. And she enjoyed that. When we got back to Oklahoma, to Norman and at that time the Methodists were still preaching abstinence as far as alcohol goes. And I thought that was kind of phony and so the combination of her interest and my feeling like, well, you know I’d like to have something a little more honest than what the Methodists are doing, so that’s what happened.

KEK: Well, very interesting. Was there anything else about your time at the University of Oklahoma law school that is memorable for you, either a time period, or an event, or a student?

DG: Karen, there’s no one thing, I’ve been blessed. It’s just been a lot of fun. One of the things, this has nothing to do with anything, one of the guys had advised me when I was trying to decide whether to become a law teacher and he was a favorite teacher of mine when I was in law school, a fellow named Gene Kuntz. He was a national authority on oil and gas and a marvelous gentleman, he and his wife became good friends of me and my wife and for many years we went to the Texas game in Dallas on a rental bus that we arranged and we would have some drinking going down and some singing going down and Gene was always a part of that. He even played the bass fiddle and brought the bass fiddle on the bus one time. Gene developed the little pattern of when something good happened, Gene would say, “Okay, here we go, hip, hip, you say hooray, hip, hip, you
say hooray, I say ziggedy zig, and you say boom, boom.” So, I picked it up and I started doing that, we do that in my church now. But the time that it was most memorable was when Gene died and the funeral service was at his church—-the congregation was full of people. And there were three of us that agreed that at the end of the service—-we had each been asked to say a few words—-and we would be up there in front, and we would say, “Okay, are you all ready? Hip, hip…” The congregation all knew that, and his wife was sitting in the front row and she was just delighted.

**KEK:** That’s wonderful. Well, because you gave a living testament to him.

**DG:** Yes. And I still do that at my church. All I have to say is, “Are you all ready?”

**KEK:** And they know what’s coming. Anything else Professor Gibbens?

**DG:** No, I’ve talked too long.

**KEK:** No, you were wonderful. Thank you so much for your time today. And for coming here and stopping in. I really appreciate it.

**DG:** Well, I am like a lot of the human race; I enjoy talking about myself more than I should.

**KEK:** I think it’s quite natural. Thank you again, I really appreciate your time today.

**DG:** I appreciate your work, and keep it up.

**KEK:** Thank you.