Interview with Judge Gary E. Payne

January 12, 2008

KEK: Hello, my name is Karen Kalnins. I am a reference librarian at the Oklahoma City University Law Library and today is Monday, January 12, 2009 and it is about, almost 10:30 in the morning and I am here in Oklahoma City, Oklahoma speaking with Judge Gary E. Payne and he is the Chief Administrative Law Judge here at the Oklahoma Department of Health. And today I’ll be interviewing him as part of the oral history project that the Oklahoma City University Law Library is sponsoring where we are interviewing judges and attorneys throughout the state of Oklahoma and getting their stories. So, welcome Judge Payne.

GEP: Thank you.

KEK: Thank you very much for agreeing to this interview.

GEP: Glad to do it.

KEK: Well, let’s just start off; what drew you to the law?

GEP: Well, there are several things. I had an aunt and uncle who were both attorneys and I admired them a great deal and I’m sure they had an influence on my life. And then I’m a real history buff and studying the early history of America and seeing how many of our great leaders were attorneys; that had an influence on me as well.

KEK: And when, when did you decide to become an attorney?

GEP: Probably while I was in high school. You always want to be an Indian, a fireman, an astronaut, and all those things or a cowboy but I finally in high school decided that I wanted to be an attorney.

KEK: And, what steps did you take to meet that goal?

GEP: Well, I went to undergraduate school at the University of Oklahoma, pardon me, at Oklahoma State University and majored in political science. At the time I was in college you could go to law school after three years and after you finished your first year of law school you were granted your Bachelor’s degree. And I think I’m probably the last person in Oklahoma to ever do that. But I was prompted to leave OSU not because, I absolutely loved college, but I just really couldn’t afford it. Well, I thought, I’m saving a year. So, I did it, and after my first year I got my Bachelor’s degree and then went on and got my law degree at OU.

KEK: And what did you think, actually, let me backtrack, what year did you start your studies at OU?
GEP: I started in the fall of ‘65, and I graduated in January of ‘69. It took me an extra semester and summer school because while I was in law school I was a Ford Foundation legislative intern and we were limited to how many hours we could take so it took me a little longer to get out.

KEK: Tell me about that internship.

GEP: That was a very fortunate chapter in my life. During the sixties the Ford Foundation legislative interns were paid for of course by the Ford Foundation and I believe they engaged four a year. And I heard about it and it paid an astonishing salary of I think $225 dollars a month or something like that but it was just a really good opportunity to learn the legislative process, learn about how laws are made, and I was the last class. They terminated the program when our group finished. But I got the privilege of being, I actually worked a little bit longer than a year because of the way the school worked out. But it was just a wonderful experience.

KEK: What do you feel like you learned from that experience?

GEP: Well, I learned how laws are made; I learned that the legislature is certainly not a big, monolithic body where everybody agrees on everything. I learned how bills not only are drafted, but the process they have to go through and the art of compromise and I learned a lot about the people involved, and how state government works.

KEK: And did you meet any colorful personalities while you were interning?

GEP: Well, I met some very, very colorful personalities. The late sixties were probably, the middle to late sixties were probably a time of change in the legislature when we, when the paradigm was changing and the old demagoguery system was changing, the power broker system was changing. About the time that we, well while I was there, the most powerful speaker in the history of the state was indicted and a new speaker was chosen. I also got to work on the Supreme Court scandal, I was doing a little auditing for one of the committees that was investigating and that was very interesting.

KEK: That sounds very interesting. Did you get to meet any of the folks, the personalities involved in that scandal?

GEP: Actually, they stuck me in a vault with stacks of checks and receipts. I had no accounting background to speak of other than what you’re required to have to go to law school. I basically just sat in a room and drew up spreadsheets on who paid who what. But I did meet some interesting people as far as legislators and I grew up in a family that was interested in politics and from an area of the state that was very political so that was a great interest in my life.

KEK: Did this internship any way influence you later on and give you an interest maybe in becoming a legislator?

GEP: It did and it certainly helped. It gave me an opportunity. While I was in law school, I got elected to the legislature. I did my internship and then actually I believe it was the next election
cycle, I actually ran for the House of Representative and was elected. I was in the legislature while I finished my law school career and took the bar exam.

**KEK:** Wow, and what district did you represent?

**GEP:** At that time it was House District twenty, which was Love County, Marshall County, Atoka County, and part of Bryan County.

**KEK:** And how long did you serve in the legislature?

**GEP:** I was in the legislature for eight years.

**KEK:** And what, what kinds of things did you work on while you were there?

**GEP:** Well, I had a very interesting legislative career, I truly loved it. But I was Chairman of the House Insurance Committee at one time and I was Assistant Majority Leader and I was also on the Rules Committee and the Appropriations Committee. So, the work was pretty varied. I got involved also with some national concerns; with housing and trying to grasp a new concept at that time called zero base budgeting that came out of Jimmy Carter’s administration when he was Governor. We also, my first session in the legislature, we grappled with reapportionment which I guess that was maybe the second or third time that the legislature really reapportioned itself seriously in Oklahoma.

**KEK:** And what do you feel like was your lasting contribution while you were there?

**GEP:** Well, that’s a good question, you know my role in state history was probably a minor one but I was Chairman of the Committee that impeached John Rogers while he was Secretary of State and that had some degree of notoriety. I was author of a bill that reinstated the death penalty in the state of Oklahoma after the Supreme Court had tossed it out. Some of the more fruitful things in my opinion that I did were some that probably went unnoticed but I helped and encouraged a lot of young people to go on and get their education, through summer jobs at state agencies or other ways. I authored several bills I was pretty proud of, I authored the first anatomical gift act bill in the state of Oklahoma. We’re talking about so many years ago it’s hard for me to remember everything because I left the legislature in 1976. But it was a very exciting time, I got to meet people I would not otherwise have met. I did a lot of things I would not otherwise have gotten to do. I had lunch in the White House and things, you know, an average citizen doesn’t get an opportunity to do.

**KEK:** Well, it sounds wonderful. Tell me about that impeachment, that whole process, because right now, as we’re speaking there is another Governor being impeached or about to be impeached in Illinois. And of course, you were on the committee to impeach the Secretary of State, what do you remember about that experience?

**GEP:** Well, it was a very interesting experience because we got together and most, but not all, of the members of the committee were attorneys and we tried to establish some early ground
rules that we wouldn’t impeach somebody unless we thought that there was a basis in law for what would be equivalent to filing criminal charges against somebody. John Rogers was Secretary of State, he was a real colorful, flamboyant prissy, little guy and the truth of the matter was that not very many people liked him. And his father had been auditor and inspector for years and they both served together which is kind of unique, having a father and son both holding major statewide offices. He was charged with allegations involving some bribery and horse racing. In fact, he closed his office one day and went fishing so somebody couldn’t file an initiative petition. And just several acts of impropriety, absolute, hard-core evidence of which was never presented. We conducted a lot of hearings, we used court reporters and put people under oath, we had subpoena power and we had private investigators working for us. What it all boiled down to, to make a long story short, was the legislature accepted the minority report from the committee and the House voted impeachment against John Rogers basically because they didn’t like him which kind of emphasizes the fact that an impeachment proceeding is as much political as it is legal. And, when the Senate got ready to try John Rogers I stepped down rather than, I was asked to be the prosecutor in the case. Since I lived far away from the Capitol and had some other things going on that summer I really couldn’t afford to spend the summer here and do that. I think probably, as the impeachment trial began, John Rogers went ahead and resigned.

KEK: So, he resigned in lieu of getting, of going through the …

GEP: The process is that once the House votes an impeachment resolution, the Senate sits as a, like a, the judges in a case. And the House acts as the prosecutor and appoints a committee of prosecutors and then the Senate actually would vote based on the evidence whether or not impeachment should be granted. If they’re impeached, they’re out.

KEK: Very interesting, well, very interesting indeed. Now, did you practice at the same time that you were a legislator?

GEP: Yes. I got elected to the legislature in the fall of 1968, August of ‘68. I graduated from law school in January of ‘69 and then had to take the Bar Exam so I was in the legislature and going to law school at the same time.

KEK: How was that, trying to juggle both of those?

GEP: Well, it was pretty hard because number one I was only about twenty-one or twenty-two and you have very modest assets and trying to be here in Oklahoma City, study for the Bar Exam, be in the legislature, go home and walk the streets every weekend. It was challenging. There were two other guys in the legislature at that time that were also in law school so it was kind of an interesting group.

KEK: And after you finished law school, what did you do, I mean besides serving as a legislator, did you open up your own practice or what did you do?
GEP: I was never quite sure if I’m legally an attorney or not because we were sworn in on April Fool’s Day 1969. I immediately just opened up my own office, never worked for another attorney in my life. So, I just opened my own office and went to work.

KEK: Where did you open the office?

GEP: I opened an office in Atoka which was in my legislative district and I was from Medill, but I really didn’t want to go home and practice law in my hometown where everyone knew me. Atoka was fifty miles away, still part of the same legislative district and, I don’t know, it just felt like that would be a better situation.

KEK: And where, just for folks that are not familiar with Oklahoma and the geography and layout, where is Atoka?

GEP: Atoka is on United States Highway 69 halfway between Durant and McAlester, sort of in southeastern Oklahoma.

KEK: Okay, good to know. And so, you had the practice in Atoka, what kinds of cases did you have?

GEP: I was just in general practice. I did a lot of real estate work, some divorce work, criminal work, and just contracts, things like that. Later after I got out of the legislature, the focus of my practice somewhat changed and I became a lobbyist and I was driving back and forth a lot. And because I had been Chairman of the House Insurance Committee I learned a lot about insurance, became a lobbyist for an insurance trade association and then when I moved my practice to Oklahoma City in 1984, my main area of, I was still a generalist, but my main area of concentration was corporate and commercial law. And primarily representing insurance companies in regulatory matters and representing a lot of small corporations, businesses.

KEK: Sounds very interesting. So, when did you become a lobbyist, what year was that?

GEP: I think it was in 1977. I became a lobbyist for an insurance trade association and through the years represented several different clients at the legislature.

KEK: And, what, what made you decide to become a lobbyist?

GEP: Well, of course lobbying back then wasn’t as big business like it is nowadays. It was just an opportunity to make a little money, stay involved in the legislative process, be around people I knew and liked, and it was just kind of a healthy diversion for me from the practice of law.

KEK: And, what were your goals as lobbyist?

GEP: Well, you always want to pass your own bills and beat the rest, that’s the bottom line for a lobbyist. In our process, a big part of it is education. A legislator obviously cannot be an expert in every subject and you have to depend on people that have some real expertise to offer you
opinions and they hope that you offer them good information, unbiased information, that you are truthful with them. So, that’s what you try to do, your reputation is built on your reliability, on the information that you give them, and that is what a good lobbyist is trying to do is just give a legislator all the information they need to make up their mind and do what’s right.

**KEK:** And how did you prepare for say, a legislative office visit? Did you actually do the research and come up with sort of policy sheets or talking points or did you have somebody help you with that?

**GEP:** Most of what I did in terms of the background information was provided to me by the trade association that I represented at the time. Although you know I had a certain historical knowledge or certain immediate information about what goes on here and who, what, and why, kind of thing, that fit into the equation. And it was always different you know, people would introduce bills and sometimes for good reasons, sometimes just because of whatever. I had an example one time with a legislator that introduced a bill and there was one sentence in that bill that would have put an entire segment of the insurance industry out of work in Oklahoma. And he didn’t realize what he was doing. It was something he had never heard of, he didn’t know they existed. So, I worked with him and we corrected that and everybody was happy. And he accomplished his goal and we kept twelve, fifteen hundred people employed.

**KEK:** So you definitely reached your goal with that one.

**GEP:** Yeah, and that’s what you try to do. The insurance industry is a kind of a delicate thing because you’ve got trial lawyers on one side and the insurance industry which is often aligned with medicine or chamber of commerce type interest and there’s a crossover between insurance being a contractual matter or being a mandated matter. A lot of it is an educational thing because most people don’t know much about insurance.

**KEK:** That’s true and you really, you don’t really start asking questions until you need insurance.

**GEP:** Well, that’s true and sometimes it’s too late. People don’t, like the reason you use fluoride is to keep your teeth in good shape instead of waiting until after they fall out to go to a dentist. So, it should be the same with any consumer product.

**KEK:** Absolutely, absolutely. What do you think are some of the qualities that would make a good lobbyist?

**GEP:** I think integrity is number one and intelligence. I mean you obviously have to be able to understand and explain your program and sometimes legislation is pretty complex. You have to be a person people can trust, it’s not, in the old days the backroom cigar-filled rooms, all that, it’s definitely not that way.

**KEK:** What do you think of lobbying today, both on the state level and federal level, I don’t know, how long did you lobby?
GEP: Oh, I lobbied for about twenty years off and on. It was strictly part-time. Lobbying, number one, has become very big business. And people, who at one time were engaged only in lobbying in Washington, D.C., now are lobbying in every state, like the drug industry and things like that. And, term limits have had a big effect on the activity of lobbyists because legislators really aren’t there long enough to learn a lot and they depend on staff and they depend on lobbyists. So I would say the lobbyist’s role in some respects has increased over the last few years.

KEK: What do you think about that increased role?

GEP: I think it’s good if everybody understands it, if you understand also we’ve had a great shift in the paradigm of government. The government now is more open than it used to be, the legislature is not as well-organized as it used to be, everybody is more of an individualist, they’re not related to a strong man type situation where you used to have strong committee chairmen, strong House and Senate leadership, that’s all disappeared because of term limits, a lot due to term limits. I don’t know, it’s a different world, it really is a different world and mostly for the best.

KEK: Now you said you lobbied for about twenty years and you did it part-time and so, all this time while you were lobbying, you were also practicing?

GEP: Practiced law, I was just a very hard-working attorney.

KEK: It sounds like it because you had the practice and you had the lobbying as well. And then you said you moved up to Oklahoma City, what year was that?


KEK: And what prompted you to move?

GEP: There were a number of things. I wasn’t satisfied with a small town general practice in the direction it was going, it was fruitful in terms of economics but it just wasn’t enjoyable and I wanted a better education for my children. And I had an opportunity to do some other things so I thought it was a good move.

KEK: And how did your practice change once you moved up to Oklahoma City?

GEP: Well, it changed a lot. Different type of clientele, I shifted more into the corporate and commercial world and although you never quite through with the, you always swear you are never going to do another divorce case and one of your old clients has a son or daughter that needs one and things like that. So you always do it. I got more into representing corporations and small businesses and insurance companies and doing regulatory work, administrative law work and it was just very enjoyable to me.

KEK: So, did you enjoy this new shift that your practice had taken?
GEP: Very much. It was just very good for me at that stage in my life it was a very good transition.

KEK: And were you still a solo practitioner at this point or did you have partners or associates?

GEP: Well, I’ve had some small partnerships through the years, I’ve been in an office with other attorneys through the years but most of what I’ve done has just always, you know even when I’ve had partners. You know at one time I had two partners and one time I had a loose association with three other attorneys in an office but always pretty much did my own thing.

KEK: And you never wanted to work for a large law firm?

GEP: You know, I never really did. And there’s nothing wrong with large law firms, I have many friends who I greatly admire that are members of large firms. And I was with a large firm, not a large firm but a medium-sized firm downtown for a while as of-counsel status. It just wasn’t for me and most of my clients didn’t enjoy it.

KEK: Very good. You know yourself and your likes and your dislikes; that is important. And, how long then were in practice here in Oklahoma City?

GEP: Well, I was in practice until I became, you know, full-time practice with other little things on the side that I delved into until I took this job in April of 2006, 2007, excuse me. So I practiced law from ‘84 until April of 2007.

KEK: Wow, that’s a very long time. Were there, was there any, any case that you remember that was very challenging or that struck you as very difficult?

GEP: I had several. I handled several large case litigation issues for insurance companies when they were sued those were always very challenging. I had one case one time where we marked 10,000 documents in the first week of discovery so obviously it was hard to keep track. I had a class action lawsuit that I was involved in, it went on for about twenty years. We went to the Supreme Court three or four times, that was probably the, one of the most difficult, probably built the largest stack of paper of any case I ever had. I had an interesting case, when I tried the first civil rights case that was ever tried in the Eastern District of Oklahoma and that was a challenge because it was new ground.

KEK: And what, what were you arguing in those civil rights cases?

GEP: We had a couple clients who, they weren’t the most savory characters in the world but they had been illegally imprisoned for three or four days so we sued the Sheriff of Bryan County and won a $35,000 judgement which back in that time in the Eastern District wasn’t bad.

KEK: A nice judgement. Now you, you really were in practice for more than thirty years, how did you see the practice of law change from when you started to when you became an administrative law judge?
GEP: Well that's a good question. For one thing technology changed tremendously. When I first started practicing law I think I had an electric typewriter and onion skin and carbon paper, didn’t even have a copying machine. And so obviously computers have changed the whole world of processing documents and of course now we have all the software. Back in the old days it was a nightmare to do a bankruptcy because you had to buy printed forms, type them all in, and nowadays you have a computer program that adds and subtracts and does everything. The research capability has certainly improved because of Westlaw and the Internet, that sort of thing. Just communications in general are better than they used to be. The law has certainly changed and it does, it goes through evolutions, since I’ve been practicing I think we’ve had a new civil procedure code, we’ve got a new evidence code. The law continues to evolve and stay on top of that.

KEK: And what, what do you think, what are some of the qualities that someone might need to be in private practice, doing the kind of work that you did?

GEP: Well I think one thing, you can’t be lazy. I don’t know of any lawyer in private practice that can earn a living working eight hours a day. And the old story that the law is a jealous mistress, I think it’s quite true when it comes to earning a living. The law certainly has some great rewards but it’s not an easy way to earn a living, you have to work pretty hard at it. And I think that you really have to study the law and some advice I got was, “There’s a whole bunch of those green books and there’s something important in every one of them.” In other words, when you get a case you better go to read the law and when I practiced law the person that worked the hardest usually won the case.

KEK: So you think that hard work really does pay off?

GEP: Absolutely. That, and choosing your clients carefully.

KEK: So, you did not take every client that walked in the door?

GEP: No, and I was like most attorneys, it’s hard to say no and attorneys need to do that more often probably.

KEK: And, how did you, how did you go about screening your cases?

GEP: Well, it sort of depended on the cash flow, to be honest with you. Sometimes you screened them more carefully than others, it depended on the ability of the client to pay which sounds awful but it’s true. And there were people if I just, my way of doing it had to do with whether I liked them or not. I just wouldn’t represent someone I didn’t like.

KEK: Well, that sounds fair enough. Well, we’ve been going almost a half hour so I’m going to stop the recording so that the file doesn’t get too large and then we’ll continue on with the second half.

GEP: Okay, thanks.
KEK: Thanks.

KEK: Hello, this is Karen Kalnins again. I’m a reference librarian at the Oklahoma City University Law Library and this is the second half of the interview with Administrative Law Judge Gary E. Payne here in Oklahoma City, Oklahoma. It is still Monday, January 12, 2009, it’s almost eleven o’clock and we are now in the second half of the interview. And we stopped with him detailing his adventures in private practice and now I just wanted to ask him what, well first, I wanted to ask him, what made him or what caused you Judge to apply for this job, as Administrative Law Judge?

GEP: Well, I had really become tired of practicing law, I had been a solo practitioner, got to feeling more or less like a dinosaur in this day and age and I had been looking around for another opportunity and I have a background as a part-time administrative law judge and had been well-schooled. I had been to several courses at the National Judicial College and some other things, I just felt like it was sort of a calling. And it was fortunate, I just applied for the job out of the blue and they hired me.

KEK: Well, wonderful. And, when, when were you a part-time administrative law judge?

GEP: Well, many years ago when I lived in Atoka I was municipal judge for Atoka and Colgate, two little towns. And in the seventies, late seventies, George Nigh was Governor of Oklahoma and he appointed me to an appellate administrative law judge position on the Board of Review for the Employment Security Commission that was a part-time thing. I was on that board for about ten years, received a lot of training, a lot of experience. It was a time of economic difficulty in Oklahoma, high unemployment, banks failing, ……… so we were very busy and I learned a lot. And at one time I was a, Oklahoma City hired private attorneys to come in and kind of help out with the overload for Oklahoma City Municipal Courts so I did some things like that. I got a lot of experience in representing parties before, I represented clients before just about every administrative body there is in the state of Oklahoma so I had pretty good insight into administrative law. And I think that really made a difference when I was asked to take this job because not very many people have that much experience and background in administrative law.

KEK: Um, hm, absolutely, absolutely. And what role do you think administrative law plays overall in the legal system or in the judicial system?

GEP: Well, it really plays a huge role in, it’s sort of an unrecognized role until the person finds himself part of the process. Due process has been around, it is one of the most ancient theories of law there is, it goes all the way back to ancient Egyptians, some of the early codes of the ancient world. Basically every time a state or federal government agency that regulates or licenses anyone, decides that the person violated some rule they start a due process proceeding and with the intention of depriving that party of life, liberty, or assets, they are entitled to be represented and come before an administrative law judge. Every federal and state agency that regulates and licenses is required to offer administrative hearings.
KEK: Do you think that attorneys or even law students now in law school understand the importance of administrative law and the role it plays?

GEP: By and large they do not. There are a few attorneys that specialize in certain areas of administrative law like taxation or social security or practicing oil and gas law before the Corporation Commission or something like that where they do, there are a lot of really unique, very rewarding I would call them specialized or boutique type practices that get involved in those areas. But a lot of attorneys that come out here, I know in my experience, they don’t even know that there is an Oklahoma Administrative Procedures Act. They don’t know that there are rules and regulations that are posted with the Secretary of State that every state agency has. So, there is a lot of ignorance among attorneys about administrative law.

KEK: Do you try to educate the attorneys or do you feel like that is their job when they come before you?

GEP: Well, it is their job up to a certain point, but I don’t believe that the Oklahoma Administrative Procedures Act is a device to be used to ambush citizens. Certainly the attorneys that represent most state agencies are well-schooled in the laws of that agency and a lot of times people come before state agencies that aren’t well-educated or very sophisticated and they shouldn’t be ambushed on some technical error. So, I try to educate and I make speeches around the state and I’ve published several papers on administrative law and I just think that the public has a right to be, to at least know what’s going on. And I’ll be gentle on attorneys as long as they’re conscientious.

KEK: And how many cases a week do you hear?

GEP: It varies, and the types of cases we hear are sometimes just very simple and sometimes extremely complex. Administrative law is unique in that the decision writing process for administrative law is really more difficult than it is for district court or state courts. Administrative judges are required to make findings of fact and conclusions of law so sometimes our decisions can run thirty, forty pages alone. That would not be uncommon in a case where you had a two or three day trial. So, there are some differences. And this agency is really unique in that we regulate about fifty different kinds of industries so trying to be an expert on all of those is challenging.

KEK: Yeah, no, it certainly sounds like it. What types of issues do you deal with mostly?

GEP: The Health Department regulates nursing homes, restaurants, nurse aids, licensed professional counselors, barbers, the legislature has passed individual pieces of legislation through the years as kind of a patchwork, quilt pattern type thing and they’ll come up with a new law and then they just, sometimes you think they just throw a dart and see which state agency should get it. But I have a lot of nurse aid cases and they’re important in that nurse aids are very low on the food chain in terms of employment and if they’re found guilty of abuse or negligence, or something like that then they’re prohibited by law from ever working as a nurse aid again. So, it’s important to them and I don’t take it lightly. We get a lot of cases involving just nursing
home violations, a lot of cases involving restaurant sanitation cleanliness. We’re getting a lot more cases involving licensed professional counselors.

**KEK:** Very interesting. Do you sit by yourself or do you sit with a panel?

**GEP:** I sit by myself. The way administrative law works is there are different models. In some state agencies you have a commission or a board that hears the cases. Some state agencies you have the executive director or the head of the agency. In this case and in some others, the Commissioner of Health for the state of Oklahoma designated me to hear cases and issue final orders. Under the Administrative Procedures Act, any final order is subject to review by the agency and can be appealed to the district court.

**KEK:** So, if someone disagreed with your decision they would then file an appeal with district court?

**GEP:** Normally they would just file an appeal with district court, yeah.

**KEK:** And at that point, they would have quote, unquote exhausted their administrative remedies?

**GEP:** Exactly. And, we’re required by law to keep an electronic recording of every proceeding and that is the official record and it goes with the case. It’s kind of funny because a lot of attorneys, I had a friend in Tulsa who had a case not long ago where the attorney just came in and sat down and the judge told him, “You may proceed,” and he said, “Oh judge, I’m just here to exhaust.” So, some people don’t quite understand the meaning of that.

**KEK:** Certainly sounds like that attorney needed a little bit of clarification there.

**GEP:** That attorney is probably not an attorney any longer.

**KEK:** Yeah, a little bit of clarification there on the doctrine of exhaustion. What has been, well, if you can talk about it, one of your most challenging cases while being a judge, I realize you’ve only been on the bench here since 2007?

**GEP:** Well, as far as this job is concerned, administrative law judges don’t have the liberty to inject sociological ideas or whatever into their decisions. We are bound to follow strictly, adhere strictly to the legislation and to the rules. The rules are not always as exhaustive or comprehensive as they could be. So that makes it a little difficult in some cases. Everybody kind of knows what the law should be. It’s basically the people that are regulated should be honest, ethical, and not step outside the boundaries of their expertise or their training. So, sometimes we have difficulty. I had a case not too long ago where a licensed professional counselor was, basically invited a pastor into a counseling session to perform a, what you could call an exorcism of a client. And, we really don’t have a regulation that covers that.

**KEK:** No, I mean, so I guess you just do your best, right?
GEP: Well, you have to apply a little common sense to the situation. And basically my goal is to protect the public and do what I can within the boundaries of the law to take care of the public, private citizens who deserve protection.

KEK: How do you think an administrative law judge, how do you think that role differs from say a district court judge or an appellate court judge, either an appellate court judge in state court or federal court? How do you think those roles are different?

GEP: Well, the rules of evidence and the rules of civil procedure are different. And, we’re not bound by the strict rules of evidence or the strict rules of civil procedure so some of the things like for example in district court you can offer the defense of laches which normally wouldn’t apply here. We’re more attuned to, although district court, but both are subject to due process requirements but I mentioned earlier that we have to make findings of fact and conclusions of law and in most, most district court cases they don’t have to do that. So, our decision writing is a little bit more complicated here. We don’t have, administrative law judges, we don’t have the authority to grant attorney fees, we can’t hold somebody in contempt although we can certify them in district court to be held in contempt so there are some differences. We’re generally not courts of record although we do maintain an official record. And some state agencies like the Corporation Commission, they do use court reporters full-time and all of their court proceedings are recorded. So, it varies from agency to agency, they’re not all the same.

KEK: So, there’s not, not all Oklahoma state agencies follow the same…?

GEP: Not exactly. We all have to follow the Oklahoma Administrative Procedures Act certainly, and certain rules of civil procedure do apply, but each agency does things a little bit uniquely to them. The Tax Commission procedure is a little bit different than what I use for example, the Corporation Commission really is, they have just full-time courts. But it’s like a Third World country because the law there is so different from what it is most places.

KEK: Sounds like it. Now, how many judges serve with you here at the Department of Health?

GEP: I’m the only one now. I have a lady who is an attorney who can fill in for me when need be and we have the authority to contract if we have to. When I came here they had three part-time contract administrative law judges so they changed the program, now they just have one full-time.

KEK: Do you feel like that’s enough, I mean, I don’t know what is your caseload like?

GEP: It’s enough, I’m kind of a workaholic, you know, I can handle it.

KEK: Sounds like it, sounds like it. Well, judge, you have a very interesting letter here in your office framed and with a picture of Bill Murray and it looks like the letter is written by Bill Murray, can you tell me about the letter?
GEP: Yes. The original state senator from Atoka County was a man named C.B. Meminger who had been a state senator in Nebraska with William Jennings Bryant and followed the railroad as Oklahoma’s railroad attorney. And prior to statehood, after the United States Congress had passed the enabling act, the political parties had to get together and organize and have candidates ready to run for office and assume office when Oklahoma became a state which was a very exciting and interesting time. So, Mr. Meminger, who was going to be the first state senator from Atoka County, corresponded back and forth with Bill Murray who was Chairman of the Constitutional Convention and was destined to be Oklahoma’s first Governor. And, Mr. Meminger’s son was also a state senator back in the twenties. When I started practicing law, he was a little bit of a mentor to me, he was a very elderly gentleman and when he passed away, they gave me his law office. And it was like an old movie set out of an old western, they gave me the contents. Among the contents were these files showing how the Democratic Party had been organized in Oklahoma and I have, I hold a set of letters and the one I have framed here is one of the letters out of that set.

KEK: Very interesting, so you still have those, that archive?

GEP: I wish I had kept more things like that but I probably didn’t appreciate it back then as much as I do now at that age but his law office was just like a museum because Mr. Meminger was in his eighties when he died. And everything in his office were things that had belonged to his father, it was an incredible place but and having both he and his father both having been in the state senate, they had a lot of interesting things in their office.

KEK: Oh, I’m sure. Did you get a chance to talk to him about his experiences?

GEP: I did, I talked to the son, not the father, he had been long deceased. But the son, Mr. Meminger when I met him was in his eighties, just an extremely intelligent and perfect gentleman, very knowledgeable about the law, and kept his office although he really wasn’t able to practice then. Yeah, I had a lot of conversations with him about the early day history of southeastern Oklahoma.

KEK: Sounds very interesting. Well, judge, what, you mentioned earlier some advice that someone gave you at some point, was there any other advice that sticks out in your mind that someone has given you along the way that has helped you in your practice?

GEP: Well, I am trying to condense or digest what people said over time, but I just hold to be an honorable person and to use common sense. Most ethics are based on just doing what’s right you don’t have to go look them up every time. If you do what in your gut you think is right you’re probably going to be okay. That’s, that’s the way I’ve always tried to be.

KEK: And what, what kind of advice would you give somebody just starting out nowadays?

GEP: I would tell them, first of all, any time you have a case read the law. Don’t just assume anything and know, make sure you know each essential element of anything you’re presenting in court. So many lawyers don’t and most lawyers nowadays are very poorly trained in
constitutional law. They just don’t have the background for legislative interpretation and things like that which gets them into a lot of trouble and makes them do work that is unnecessary. So I would tell them to understand the rules of construction, the elements of whatever action it is they’re doing and just delve into the law. You know in English they call it deviling and that’s what we should do.

KEK: Very good, very good. Do you have anything, or have I, do you have anything to say or comment on that I haven’t asked you about?

GEP: Well I really can’t think of anything here, I just, I think the law is a noble profession, it’s a hard thing, I think it would be very hard in this day and age to be in general practice. If you want to have a career in law, then you need to consider specializing in one field or the other.

KEK: So you don’t think general practice at this point is practical?

GEP: Well, it’s hard, unless, it’s hard to be a generalist because it’s hard to be all things to all people. And you wind up facing so many specialists, I think you need to concentrate on being really good at something.

KEK: Okay, fair enough. And what continues to motivate you judge? Because you could certainly, well, you could have certainly retired after private practice instead of coming here and being a judge, why, why do it?

GEP: Well, I love the challenge. Number one I like public service. I enjoy, I feel like I’m here to help the people, I enjoy that a lot and coming to work, I don’t dread coming to work. The law is a challenge because it’s changing, the laws we use here are complicated, they’re interesting, it’s just very stimulating. As long as I can feel good about it, as long as I don’t get bored, I’ll come to work.

KEK: Very good. And I didn’t ask you but I meant to, was your professional, you said that you had written some papers about administrative law and that you’ve spoken about administrative law, what are some of the professional things, your service types of activities that you have participated in? Say, with the bar association, have you served on any committees there or have you participated in trainings or that kind of thing?

GEP: Yes, I see. Well, I’ve taught courses for various colleges around here in business law and government. And I’ve had several articles published in the Oklahoma Bar Journal and Oklahoma City Bar Journal and some other trade publications about administrative law, due process, and things like that. I’ve made several speeches to everything from Rotary clubs to legal groups. I’ve actually organized, we founded an Oklahoma Administrative Law Judge Association now, Oklahoma Society for Administrative Hearing Officials, so that we can all come together and share our mutual concerns and provide education and training. So, kind of raise the level of administrative law bar here. I’ve served on the Ethics Committee of the Bar Association and President of the Committee on Uniform State Laws and a couple of others. I’ve tried to serve the Bar Association through the years, probably not as actively as a lot of attorneys
do because when you’re out there alone you don’t have as much time. So, I’m probably more active now than when I was before.

**KEK:** Well, fair enough, fair enough. Judge, do you have anything else?

**GEP:** No, it’s just been a pleasure to talk to you and I appreciate you doing this. I hope there will be some value to somebody in the future.

**KEK:** I’m sure there will be, thank you again very much for your time today, I appreciate that.

**GEP:** Thank you.