

Interview of David Price by Rex Buchanan and Mike Lennen, October 2, 2023, Kansas Oral History Project Inc.

Rex Buchanan: Good morning, I'm Rex Buchanan, the former director of the Kansas Geological Survey. Today is October 2, 2023. Mike Lennen, the former chair of the Kansas Corporation Commission and former secretary of Revenue, is here with me for this interview of retired professor David Pierce for the Kansas Oral History Project. Our videographer is former Representative Dave Heinemann.

We're at the [Washburn University School of Law](#) and we thank the Law Library for allowing us to use their new reading room for this interview. We're here to interview Professor Pierce, who is widely recognized as an expert in energy and environmental law, especially in the areas of oil and gas law. Professor Pierce is author and co-author of numerous books, monographs, and journal articles on those subjects and served as co-editor of the *Oil and Gas Law Reporter* for many years. In addition, Professor Pierce has been recognized by his peers for his teaching and service to the legal profession.

Professor Pierce graduated from Kansas State College of Pittsburg in 1974, a few years before the school's name was changed to Pittsburg State University. He received his legal education at Washburn Law School and at the University of Utah College of Law. He taught at Washburn from the early 1980s until his retirement in 2020.

This interview is part of the Kansas Oral History Project series examining the development of public policy at the nexus of energy and the environment during the late 20th and early 21st centuries. In these interviews, we explore those policies through the eyes of experts, executives, administrators, legislators, environmentalists, and others. The Kansas Oral History Project is a non-profit corporation created to collect and preserve oral histories of Kansans who were involved in shaping and implementing public policy. Recordings of transcripts of those oral history interviews are accessible online at [KsOralHistory.org](#) and through the [Kansas Historical Society](#) and the [State Library of Kansas](#). The Kansas Oral History Project is supported by donations from generous individuals and grants from ITC Great Plains, Evergy, and Humanities Kansas.

Thank you, Professor Pierce, for agreeing to share your perspective today, and thank you Mike for being here and helping with this.

RB: Professor Pierce, let's begin a little bit with some of your background, where you grew up, and maybe how that might have influenced some of the interests that you had professionally.

David Pierce: Well, I grew up in Pittsburg, Kansas, graduated from high school from there. My grandparents were coal miners, both sides were deep miners in the early years, strip miners in the later years. I always had an interest in the environment. When I went to college, I basically studied biology and political science. Dr. Bill Powell was there, who kind of had an influence on

me, creating an interest in environmental issues. That's when I started thinking about law school. Actually, my wife suggested I should think about law school, thought that would be a good fit for me. As usual she was right, I think. That's when I went to Washburn and, again, was interested in environmental law and energy law. At that time there was a lot of this sort of problem with energy shortages and environmental issues, it was just a good time to be going to law school. When I graduated from law school, I wanted to be a solo practitioner. I went to [Neodesha](#), Kansas and opened an office there. I was city attorney for the city of [Cherryvale](#), Kansas. Then I kind of knew I wanted to teach at some point and that's when I had a chance to visit at Washburn my first time in 1981. Then I decided to go for a Master of Law program. I actually picked University of Utah because they had a new Energy Law Center, the energy Master of Law degree. I was not the first one to begin the program, but I was the first graduate to finish the program. As luck would have it, Joe Morris, who by the way this library's named after, he was general counsel at Shell Oil Company when I graduated, and I called him up and told him I was interested in oil and gas and energy and environmental issues. I went to Houston, interviewed, and came home and told my wife, no way I would move to Houston. We were living in a town of 2500 at the time and the phone rang and it was Joe Morris and he said he wanted me to come work for him, I said OK. We ended up in Houston and from there I went to my first tenure track teaching position, which was at Indiana University in Indianapolis. Then ultimately taught at University of Tulsa for two years, and then got back to Washburn.

RB: In some respects, when you're an undergraduate, the environment is kind of a top-of-mind issue at that point. It's almost sort of in the air, so to speak. Yet environmental and energy law in some respects is a relatively new field.

DP: Yeah. It first really started in the mid-1970s when they started to deal with oil shortages and focusing on coal as a solution at that time. It was interesting, during that energy crisis coal was viewed as one of the major solutions to the problem and a lot of the laws, the Fuel Use Act and things of that sort, were keyed toward getting away from oil and gas and going to coal. Then we see in subsequent years the focus on trying to get away from oil and gas and go to solar and wind. But yeah, it was just the beginning of starting to inject the energy side. The energy side really started to become more of an issue at that time. When I went to Utah, at that time they were talking about the [Intermountain Power Project](#), they were thinking that they were going to have a substantial need for more electricity in the west and they were looking at coal as being the main source for that. Then basically because of changing in a lot of the oil and gas pricing, prices collapsed. You started to see a total change in the environment on how they approach those issues.

RB: I remember a period about then where [coal gasification](#) becomes a real issue and a possible solution. It didn't last very long, but it was a reflection of what you're talking about.

DP: Everything's a matter of what are we running out of at the moment. I think that one of the issues and one of the impacts on Kansas I think we'll talk about is how that sort of scarcity issue impacts policies. Of course, the scarcity goes away in a few months but the policies last for decades. That's one of the problems.

RB: I have one last sort of background question before we change tack a little bit. You lived in Neodesha for a while. You grew up obviously in southeastern Kansas. How did that form your knowledge and background in terms, both of coal but especially in terms of oil and gas because the oil and gas business in southeastern Kansas is very different from the oil and gas business in the rest of the state.

DP: Well, I guess I didn't focus much on the oil and gas part until I started thinking about what I wanted to specialize. I was very deliberate. I thought about what kind of areas might be interesting to go into and this was when I was looking at a potential master's program in 1980. And I deliberately chose oil and gas as one of those areas that I thought would be of interest for a couple reasons. One, it was one of those key energy areas that there was a lot of focus on. And second, it has all kinds of environmental issues surrounding it that you don't have in other areas. Oil is a good example. Oil itself is a major pollutant if it's not properly managed. It just seemed like it was a more difficult resource to develop and had a very complex ownership system. It just seemed to fit for the things that I was interested in.

RB: What were some of the first major issues related to that that you had to deal with professionally?

DP: I would say when I was at Shell a lot of the work I did dealt with development on federal public lands. That was a new introduction to me because I'd studied that at Utah, but I'd never been exposed to it in Kansas. That added a whole other layer of complexity and problems to try to solve to get something done. I'd say probably the federal land, working through the federal regulations, realizing there was this whole additional body of oil and gas law that you had to deal with in order to develop the resource.

RB: Yeah, when you come back to Kansas, public lands, are not really all that much of an issue here.

DP: No. Kansas has always been an easy place to do business in I think for the oil and gas industry. The land titles are simpler than they are in a lot of other states. The private side of it is more workable and then the public side of it, the regulatory systems that we have in Kansas I think are far superior to those in other states. At least it works great for Kansas, and I think part of that is a decision that we're going to regulate to control the negative aspects of oil and gas development instead of regulate to try to prevent it from occurring.

RB: It's interesting you say that because coming from a non-legal perspective, Kansas oil and gas law looks pretty complicated to me. Particularly not only on the environmental side

but just simply on the issues of ownership royalties, correlative rights, pricing. It's complex.

DP: All oil and gas law is complex because all of those private ownership issues are complex. But Kansas probably compared to, for example, Texas, a Kansas title is much easier to do than a Texas title. A lot of that is just sort of historic development in the state subdivision and the properties. A lot easier than Oklahoma because you don't have the Indian title issues, you don't have the fractionization that you have in a lot of those places. It's just kind of the way that it's evolved in the state. There's a tendency for farmers to hold larger tracts of land and for those to be owned in smaller groups of owners. That's what makes it simpler. But the law that governs it is equally complex from state to state.

RB: Yeah, I have a friend who after working in Kansas then tried to put together some deals in Illinois and really struggled with size and parcels and owners and that sort of thing. In terms of the Kansas side, what was the first big issue that you had to deal with here do you think?

DP: Dealing with state law I would say that the perennial problem of unplugged wells was probably one of the main regulatory issues and one that impacted the eastern part of the state much more than it did the western part. But still a problem.

RB: Talk about that a little bit. In terms of why southeastern Kansas is so different from the rest of the state, but also why is it a legal issue?

DP: Well, I mean, the progression and development in the [state](#) and also the geological contours of the state as you start out with the late 1800s, most of the development of the eastern part of the state. Then, the 1920s you get into kind of central part of Kansas, and then after that you get into the western parts of Kansas. The producing structures are much shallower in eastern Kansas than they are in western Kansas. You typically drill more wells. They've been drilling longer there. They were drilling long before they kept records on any of this stuff. Drilling a lot with cable tools, drop a wedge and chip away at it so you have a lot bigger holes often times and literally thousands of wells drilled and really no record of where they are. You just kind of stumble on to a lot of them. In later years obviously we got a system where permitting was there. We knew where everything was at, or pretty much. But we still had that historic issue to deal with.

RB: Only question was, who has to pay to plug them?

DP: That's the legal issue. We've had a statute, a version of it, it's [K.S.A.] [55-179](#). It's been around in some form for a number of years, and the issue has always been under that statute, who are the liable parties. The Commission [Kansas Corporation Commission ([KCC](#))] has kind of varied from time to time as to how broadly they would read that. That's a problem with the statute. You would have different commissioners at the Commission and different legislators, I imagine, saying, why don't you plug these wells or find the people that are responsible for this instead of spending the plugging funds. There's been that pressure. It varies from time to time,

again, I think depending upon the makeup of the Commission. But it's the same issue that came up over and over again, and that is should you be, if I go out and just take a lease on a property... Maybe back up a little bit. In Kansas, as well as everywhere, typically you'll have the landowner, the farmer, and usually in Kansas they will also own the mineral interest, not always but more often than not they will. Then you'll have the developer that goes to them in a contract, an oil and gas lease will get the rights to develop it. That lease might last, I mean, we've got leases in Kansas right now that were entered into the 1890s that are still the original lease that governs that property. That lease may be transferred, and you may have different people through the ages that own that and different issues coming up about plugging wells. Or the lease terminates, because all these leases are made so that if you cease producing from the property, the lease will automatically terminate normally, unless there's a provision that provides for that situation. But if I just go out and take a new lease on a property and it has an unplugged well on it, am I going to be held responsible for that. For a period of time one of the phases of the regulatory focus was to try to make anybody who took a lease [responsible]. This was mainly during the coalbed methane development in eastern Kansas when a lot of larger companies came back into the state for the first time and took leases on 300,000 acres sometimes and then the issue was, should they be responsible for any unplugged well on the lease. Those things seemed to come to a head, and they would be heard by the Commission and each time it would kind of open up the problem. I think I saw where in 2021, I believe, there was the most recent amendment to that statute, again, to try to identify what I refer to as culpable parties, or causation, [who] have some relationship with the property sufficient to justify and requiring them to pay for the plugging.

RB: But there's been much more of an effort in recent times to provide funding just to go out and plug those wells regardless of what the history of the ownership is because nobody's going to buy a piece of property if it turns around that they have a bunch of liability and expense for plugging wells that they didn't drill.

DP: That was one of the points I made at the Commission at the time, is that if you're going to impose that liability, you're basically condemning all of eastern Kansas, nobody's going to develop there. Not anybody that would have any money that would do something there. I think they pretty much backed off on that aspect of it and started looking for more culpable parties. Sometimes they just don't exist. Most of them are just insolvent. The real problem that's always existed and it's the one that the industry never likes me to talk about and that's the bonding aspect. Usually when you develop a well, you'll collect dry hole money, which is sufficient to plug the well if it turns out to be a dry hole. If it doesn't turn out to be a dry hole, well then you don't spend that money to plug it. An efficient bonding system would be to just basically put the money up for that well and that money stays with that well until it's plugged. But the industry doesn't like that because that means you got that chunk of money that's out there that could be deferred, maybe 30, 40 years until the well actually needs to be abandoned. So that's part of the stress. But there's probably an easy solution to it if you wanted to go that route. Nobody goes that route, by the way.

Mike Lennen: I might just follow up. In terms of southeast Kansas and the abandoned wells in that area, in looking at the Corporation Commission records to the extent there are records that go back a long ways, there are about 5200 or so abandoned wells that have been identified in the state and 4900 or 5000 of them are located in the eastern or southeastern part of the state. In terms of explaining just exactly why that happened, if you could.

DP: Two things. One was timing and the other is that those are shallower wells, so they're cheaper to drill so you drill more of them. The geology was such that you might have one well that drains two and a half acres. In order to drain 640 acres, you got to have a whole bunch of wells drilled and then also just that early timing. The science of geology at that time was if you drill a hole and get something, you drill a hole next to it to see if you can get some more. That was kind of the way that it turned into a pin cushion in eastern Kansas.

RB: But it does have environmental consequences, not just the problem with there being an open hole in the ground, it also allows for ground water contamination. There are all sorts of reasons to plug those. One of the problems with southeastern Kansas is it doesn't feel like you ever get ahead of the game. Every time you plug a well, somebody finds another one that they didn't know about. That number that you're talking about, Mike, never seems to go down.

DP: The more you look, the more you find.

ML: That's exactly it. The state did get some federal funding recently that should be helpful to make sort of a quantum leap forward in terms of plugging those wells.

DP: There should be some private industry actor scanning every inch of the ground looking for unplugged holes with the federal funding.

RB: So how did you get involved with an issue like well plugging? What was your role? How did you get engaged with it?

DP: Yeah, through the years I always tried to stay attuned to the oil and gas practitioner and being an academic, I wanted to have that sort of contact so that I felt relevant to what I was talking about. I did a lot of continuing legal education work for a lot of years but I also, early on, associated with the [Eastern Kansas Oil and Gas Association](#). They're kind of the, I always describe them as the hard scrabble oil and gas developers in Kansas because they're mainly dealing with eastern Kansas wells that don't produce much. They're oftentimes hard to produce and it's just a different industry. Throughout the years I worked for them on a pro bono basis. I just basically wanted to help them out, so that I could see what the issues were, it would give me a platform to be involved in some of the work that was going on. So much of it I worked through with them. Some of it I did just with students, getting them involved and supervising them where we didn't have a client, we didn't deal with anybody but we basically just showed up at the Commission and caused trouble. The Commission actually, I remember, I wanted to have one of

the students do all the cross examination at the hearing, and we actually got a special order from the Commission allowing that. It wasn't covered by the practice rule for the Supreme Court and allowed students to practice. We just picked out issues and plugging was always one of those that was a fun one to deal with.

RB: A lot of people outside the oil and gas industry don't understand that Kansas is really dominated by independent producers, not big oil companies. In southeastern Kansas those independent producers a lot of times, I call them mom and pop operations. There's a single person out there running a family business. But it's small oil wells that produce at best a barrel or two a day.

DP: Or week.

RB: It's not what a lot of people think of as the oil business. Working with them would be very different than working with Shell, for example, I would think.

DP: It is. I think it's much more challenging working with the small, independent operators than it is with the major just because you have unlimited resources when you're dealing with a major company. If I needed something about unitization or something I could probably find the person that taught that at Harvard or somewhere. If I had some issue about a well log, I could probably find the person who held the patent on [the logging tool] that was one of the people that worked for Shell. Then if you go to eastern Kansas, you literally are dealing with a husband, wife, and children.

RB: You just mentioned unitization. Let's talk about pricing and leasing a little bit. One of the big issues that I've always been interested in is the [Hugoton](#) natural gas area, because it's kind of the 800 [pound] gorilla when it comes to Kansas energy production, biggest natural gas field, one of the biggest in North America and produces beginning in the 1950s. But then in the 1980s things really change in terms of pricing. Were you involved with that and could you walk us through that a little bit?

DP: Yeah, and we really need to go back before that because I think Kansas has been negatively impacted by federal regulation of the gas part of the world since the 1930s and actually since the beginning of the Hugoton reservoir. It's actually one of the problems of being to the game earlier first. You mentioned we've got the landowners out there. They enter into oil and gas leases with the lessee, they go out there, they discover wells, they discover this huge gas field but it's sitting in the middle of nowhere in southwest Kansas. There are no industries around that need the gas, so you got to have a pipeline to get it anywhere. In the early years they build a few local pipelines to Dodge City and places like that. But nowhere, there was no way to tap that until the large interstate pipelines came in. They came in in the 1930s. Of course, their business model was, OK, we're going to lay all this steel out to southwestern Kansas, millions of dollars worth of steel in the 1930s. We got two risks that we need to deal with. One is the geologic risk, and they assume that. They assume that that field was big enough. They waited long enough to see

how it developed. They knew the gas was there. They knew the market was going to be somewhere east of there. They were going to have to get that gas to Kansas City, St. Louis, New York City, and everywhere. They basically came to the producers of the gas and said, you got a bunch of gas in the ground right now, but it's only valuable if you can market it. We'll market it. Not for you, but we'll create a market, we'll buy it. We'll buy it under our gas purchase contract. So, you got the landowner that's entered into an oil and gas lease with the oil and gas lessee that, by the way, gives that lessee the ability to contract to sell that production to a third party. Then the lessee turns around and sells it to those pipeline companies. And the pipeline company is going to require at least a 20-year contract, maybe 30. A lot of the contracts out in Hugoton were life-of-lease, so as long as the lease was still producing, that gas was dedicated to that particular gas contract. So that all took place in the 1930s. Most of that gas was contracted up by the pipeline companies by 1930s, 1940s and at prices that were whatever the going price was for it at that time, two or three cents, maybe less and under terms that were a buyer's terms. That meant that, oh I can lock this up for 20, 30 years but I don't have any obligations to take any minimum amount at any given time. You'd basically turn that reservoir into a storage reservoir for the pipeline company. Most of the Hugoton was contracted out in that fashion at that time. Then you had federal regulation come along a little later. But backing up a minute, one of the things about the federal regulation, that kind of foundation is the [Commerce Clause](#) [of the U.S. Constitution]. One of the early cases was a case called [West vs. Kansas Natural Gas Company](#), it was 1911. They discovered another huge gas supply in Oklahoma. The state of Oklahoma decided we're not to send the gas across state lines because if we do, you'll use it to build factories and stuff, so we're going to prohibit any Oklahoma gas to run across state lines into Kansas or Missouri or elsewhere. Because we want, if you want to build a plant that uses gas, come to Oklahoma. That went to the United State Supreme Court and the United States Supreme Court said, nah, the Commerce Clause prohibits you, this is interstate commerce wanting to move it across state lines and you do not have the ability to limit that. So, OK, it was going to go across state lines. About ten years later another case comes up, [Missouri vs. Kansas Natural Gas Company](#) [1924], and they were moving the gas across the state line and they were selling it to the local gas company that then were reselling it to their customers. They asked them to provide them with some background on what it cost them to provide that gas and they said, no, we're not going to give you any information. We don't have to. They also, at the same time, said, oh by the way, we're raising the price ten cents an mcf, which at that time was about a 30 percent increase. The issue then was, could the state regulate that and the answer was no. So, you ended up with, it was interstate commerce, it was a sale to the local distribution company for resale and the Supreme Court held that that was not subject to state regulation. It was only subject to federal regulation. But Congress had not acted. There was no control. That meant the pipeline company could charge whatever they wanted to for the gas, buy low from the producer because you have this monopsony [a purchaser with monopoly purchasing power] purchasing power, you're the only buyer in the field. Then jack up the price and sell it for whatever you want at the other end because you got monopoly power at that end.

RB: In effect because the Hugoton was sort of stranded gas, it gave those companies...

DP: The classical stranded gas, it was as stranded as you could get.

RB: In effect the landowners didn't have any leverage in that process. They would sort of take whatever they could get because they didn't have a lot of choice.

DP: Right, and their main concern probably at that time was, gee, you can get two or three cents for that, we can get 1/8th royalty for those two or three cents, why aren't you out there selling it.

RB: I don't know if you agree with his characterization of gas being in the middle of nowhere.

ML: [Laughing] I know.

RB: Considering where you're from, not exactly a big urban environment where you're from.

DP: In terms of factories or manufacturing I was thinking the dead center of the United States in the sense that you have to go a long way to get to it to any kind of market.

ML: I did have a follow up question.

DP: You were going to ask where Pittsburg, Kansas is? What metropolitan monster was that?

ML: In terms of continuing with this federal price regulation and how that particularly affected production in the Hugoton field in terms of limitations. If you could just talk a little bit about that.

DP: The pipelines are there early, they get a contract at low prices, maybe not low at that time but it turned out to be low and favorable contracts to the pipeline companies. Along comes federal regulation, and the reason federal regulation came along was not because of anything between the producers and the pipelines, it all had to do with the pipeline selling that gas to the local distribution companies and not being able to regulate that price. It's what's called the Negative Commerce Clause. If Congress hadn't regulated on it, then it means it should not be regulated under the Commerce Clause, so the states can't fill that gap. The [Natural Gas Act](#) was passed in 1938 to fill that gap, and that's where they basically said that if it's a sale for resale of gas, it's subject to the Natural Gas Act. If it's transportation and interstate commerce, that's subject to the Natural Gas Act. But if it's not one of those it's still subject to state authority. They had a production or gathering exemption that largely let the conservation work proceed at the state level. And the intrastate transportation, intrastate sale, so that's kind of the approach. If it was interstate transmission or interstate sales for resales the federal government regulated it. Of course, that's exactly what all the Hugoton was at the time, because we had the interstate pipelines taking it across state lines. They were selling it for resale to the local distribution companies. That was the monopoly part, what they were able to charge for the gas. They regulated that and they basically said, it's good that we have one big pipeline out there serving this particular area. We're going to regulate this like a public utility. You got to get permission to

provide the service, certificate of public convenience. We're going to regulate the nature of the service and we're going to regulate the price that you charge for the service, and we're going to limit your ability to cease providing the service unless you get permission from us to do that. Now it becomes important in later years. So, you have the pipeline there with this. But the one thing they didn't regulate is they didn't regulate the monopsony power of the pipeline because that was working to the benefit of the consumers at the other end of the pipeline. In pre-utility, before the Natural Gas Act, the way they operated the pipeline, buy low, sell high. After regulation, the pipeline would buy low, pass that price through, so it wasn't buy low, sell high, it was buy low, and whatever you pay, the least amount you pay rolls into your overall cost of providing that service to the people that are at the other end of the pipeline. Consumers got the benefit of the low price. And we could basically say industrial east got the benefit of those low prices at the expense of the producers, the operators, and the state of Kansas at that time. That was the regulatory regime that kicked in. It was brought to sort of a ludicrous set of circumstances in 1954. They had the [*Phillips Petroleum Company vs. Wisconsin*](#) case. It held that, wait a minute, if you're a lessee out here in Stevens County Kansas and you're selling gas to this pipeline company and they're reselling it downstream to this local distribution company, well, that's a sale for resale so you must be a public utility too and you're subject to price regulation under the Natural Gas [Act]. All of a sudden you went from about 20 regulated monopolies to 10,000. That was kind of the effect of that court decision. There was a specific provision in the Act that said that production or gathering would remain state authority, but the court kind of blinked, they got caught up in this what do we need to do to protect the consumer at the other end of the pipeline thing and they said, well this would help the consumer at the other end of the pipeline. That was the rationale in the 1950s, and by the way, that's going to come back in the 1980s and crater it because at the time, by the 1980s they couldn't get gas out of the pipeline.

RB: But in effect, it's a method of price control.

DP: Oh exactly, yeah.

RB: That, then, has an influence in terms of how active people are going to produce to drill in Hugoton because if the prices don't justify it, they're not going to go do it.

DP: Right. The thing about the pricing regime under the Natural Gas Act in 1938, and then the next major pricing provision federal level, the [*Natural Gas Policy Act of 1978*](#), they didn't learn much in between there. They basically left Kansas at the lowest price, they basically said, they already drilled those wells out there, we're already getting the gas, so we don't need to provide them any incentive to do it because they'll continue producing it as long as they can make enough to cover their cost of operation, plus a small profit. Kansas becomes from 1930s up until basically 1990 the lowest priced gas in the nation. It even gets a little bit more insulting to the state as well because when the Natural Gas Policy Act came along, we were in a gas shortage situation. You had governors telling public utility commissions and others, go out and get gas.

They were able to go out and get gas in new places like [Wyoming Tight Sands](#) and things of that sort. They were paying eight, nine, ten dollars an mcf for that gas. At the same time, you were paying in Kansas maybe 30 cents for the same exact commodity. You got ten dollars; you got 30 cents. It even gets worse because then the gas market craters. The Natural Gas Policy Act in 1978 was designed to deal with the gas shortage. It must have done a heck of a job because six months later they realized that they should have just left the market alone. What happened was the price fell out and it went to a dollar basically in many areas. Then you had these same pipeline companies that developed Kansas and elsewhere that entered in the long term 20-year contracts in Wyoming to buy the gas for 10 dollars an mcf. They also entered into something that was not in the Kansas contracts and that was a take or pay provision. In the Kansas contracts because of the vintage, the time frame of which they took those they agreed to buy the gas, but they didn't agree to have to buy the gas. We got the right to buy the gas without the obligation to take any, but if take some we'll give you the 30 cents, if we don't, that's fine. We'll do whatever we need to do so the lease stays alive. You had those folks, so you got a gas company that's got a contract in Kansas for 30 cents with no take or pay. They got a contract in Wyoming to take the gas for eight, nine dollars an mcf, but also those contracts, since they couldn't negotiate a price of more than the maximum offered price that was set, which was eight, nine dollars, the only thing they could negotiate over was take or pay. They had 90 percent take obligation. You had to take 90 percent of that gas or pay for it even if you don't take it. What they did, many of them, was they didn't take any of the Kansas gas, they just left it here. That's why Kansas became the biggest storage reservoir of all time. Then they took the gas. They were able to delay the day of reckoning in a lot of ways because they were able to roll in all the prices for the consumer price. If I pay \$10 here, I pay 30 cents here, depending on volumes I put together what I'm selling here might be two or three dollars, but at some point, that consumer price is going to be way higher than what the market price is.

RB: But all of that changes then in the 1980s when, in effect, price deregulation allows people to go back in and afford to drill wells.

DP: Yeah, and in the interim there's some games being played – I call them games – they're all regulatory games in a way because the Natural Gas Policy Act had different incentive pricing. So, the well that you have in Hugoton would typically be called a 104 gas well. But, if I drilled an [infill well](#) into the same reservoir and you could justify an infill well, I could charge 103 prices, which was about three times what the other price was. There was always this regulatory incentive. It's kind of like, why do we have all these windmills around here. Well, there's a government incentive to cause them to do those sorts of things. And infill drilling was one, they wanted them to do it under the Act, to find more gas, and this was one way to do it.

RB: The people in my world talk about the bell-shaped curve of production, it always goes up and then comes back down again. But natural gas in Kansas starts back down, and in the 1980s when that changes it goes right back up. It doesn't go up to where it was in the

1950s, it comes back up quite a ways. It basically throws that bell shaped curve temporarily out the window.

DP: Sure. This is why the whole [peak oil](#) stuff was . . . I never bought into any of that because the peak oil stuff didn't consider prices; it didn't consider price increases; and it didn't consider technological advances. Then you've got [hydraulic fracturing](#) [fracking] techniques that have been perfected and you got [horizontal drilling](#). You've got just the incentive to go drill and that's what this provided, and which proved, there's a lot of gas out there. Part of it too was you had some new purchasers that came in and acquired those properties. You had some folks that were the legacy owners that developed it and nothing looked exciting out there and they were just caretakers. They didn't want to drill any more wells. They didn't want to spend any money on it. Then you had some other folks that came from outside that wanted, this was something they wanted to develop. Infill drilling provided them with a mechanism to do that as well as the pricing incentives.

ML: When you talk about infill drilling the significance of that was that the KCC had regulations in place, field orders covering the Hugoton field that permitted one well to be drilled in every 640 acres in the Hugoton field and then there was an application that was filed, by OXY I believe, to permit infill drilling so there could be a second well on those 640 acres, which would do two things. I mean, there may be some additional access to the reservoir that didn't exist, but also it permitted the opportunity for some price increases you have discussed.

DP: Yeah, there was clearly a geologic justification for it in the sense that you had stranded gas that was there that wasn't being produced. Because how did they select the original 640-acre tract for the drilling? Well, it was to have orderly development of some fashion without making it uneconomic to develop and it gave you information and it's exactly the way it should have operated. After years of exploiting that on a 640-acre basis, if you see opportunities on a smaller basis, then you should take them. But the additional incentive there was the pricing too, the idea that I probably would have never drilled any of those wells if I was going to get 30 cents an mcf, but I'd probably drill a bunch of them if I was going to get about \$1.40. I think all of that kind of came together. There was clearly the geological prevention of waste sort of justification at the state level and in also the federal price incentive.

RB: In effect it's just a more efficient way of draining the reservoir.

DP: Yeah.

RB: You might as well go do that, because if you don't do that, 20 years from now if you haven't drilled a well you may not come in and drill for a smaller amount of gas. How did you get involved with this issue? Did you get involved in the same way as you talked about with plugging abandoned wells? Did you get involved in it working with locals, with the KCC. How did you get hooked up into this?

DP: I was on the sidelines for this, just kind of as an observer, but I'd work heavily in the federal regulatory side of things. I understood that. I taught a lot of that to other lawyers and things. So, this was kind of watching it unfold. But I remember going to one of the early hearings, in fact [Tim McKee](#) had called me and said, "you've got to come down and see this." It was at the old Supreme Court building and it was full of lawyers and technical folks, and they were talking about the available pay in a particular well bore and I thought, this is going to take a while. It did, I think. It took like several months, didn't it, for the hearings to be completed?

ML: It did as I recall. I was on the Commission at that time. The Commission finished on a Friday the Wolf Creek [nuclear power plant] rate case, if you can imagine, after several months, and I believe started on Monday, this infill drilling hearing. There may have been a week in between. I'm not certain. But that [infill drilling hearing] did go on for months. Some of the hearings were here in the old [Kansas] Supreme Court chambers and then some of them were also in Wichita.

DP: It had to be funner than the Wolf Creek thing, right. *[Laughter.]*

ML: I'll tell you, they were both grueling.

RB: I want to ask something that actually may be a question for both of you, and that is you sort of talk about this shift from interstate regulation. When does the KCC take over that role historically? When do they become the regulatory agency for oil and gas in the state?

DP: There was that production and gathering exemption of the Natural Gas Act and the purpose for that was to recognize that the state regulates all the drilling of wells, all the private relationships between the parties, contractual relationships. So, drilling the wells and operating the wells, that has generally been all state. Now, Kansas has been the one state that's had the most impact in defining what that sort of law of conservation is, state conservation law and federal regulation. It started in 1964, I think, with the Northern Natural Gas case. In Kansas, because there were no "take obligations" under most of those contracts, a pipeline company would go, and they could take from whoever they wanted to and if they had their straw in the reservoir, they could take it from them, and that straw would work, and the others wouldn't. Part of it was to try to figure out some way to force those pipeline companies to take ratably. OK, we're not going to tell you what your price is going to be, we're not going to tell you how much you got to take, but we at least want you to take ratably from everybody in the field. Well, that went to the United States Supreme Court, and they said, nope, you can't do that because that would impact, could impact the price that they paid for the gas if they were forced to take from everybody else. Well, then the state of Kansas regrouped and came up with the idea of, well, then we're going to have to regulate the producers. If we can't regulate the purchasers out there and the purchaser is taking the gas from the reservoir, we're going to have to figure out some way to

regulate what can be produced. And that's when they came up with the pro-rationing approach, the proration order for the Hugoton reservoir that individually on individual producers limited the amount that they can produce. The idea being is that well, if I can only produce "X" mcf and the pipeline purchaser needs more, they're going to have to take from me and somebody else, and ideally everybody else in the field. You'd have the pipelines that would make nominations of how much they thought they were going to take in a month and then you would have that be used to define the allowable with the idea that at least in theory everybody could produce if they wanted to from that reservoir. Since the reservoir was all connected since you had this porosity and permeability within the reservoir so that if somebody's able to produce it creates a low-pressure zone, it's going to cause stuff that's not producing to move from those high-pressure areas to the low-pressure zone. This was a way to try to regulate that. When the Natural Gas Policy Act was enacted, that again went to the United States Supreme Court and the issue was, well isn't Kansas really just doing what we told them they couldn't do in 1964 by limiting what these people can produce. It might have some impact on the purchasing practices of the pipeline and the ultimate price of gas. And in the interim, there was another case, the Transco case out of Mississippi that looked at some conservation issues. The Kansas Supreme Court said, no, we think this is lawful. The Kansas Corporation Commission can impose prorationing. In the interim this Mississippi case came down and the United States Supreme Court, when the Kansas case was pending, said, you know we just handed down this decision striking down the conservation laws of Mississippi, don't you want to reconsider it before you do it. The great, it's probably one of the most sort of gratifying things for your state Supreme Court to tell the [U. S.] Supreme Court, nah, we'll just hold with what we got. We'll stay right where we are, we're not moving. It goes to the United States Supreme Court, and they come back, and they adopt the Kansas decision. Essentially it carved out and protected that role for state conservation regulation in trying to deal with these correlative rights. Kansas has always been at the forefront of that because we've always been here in this situation with these interstate pipelines and all these sorts of issues.

ML: You mentioned the term "correlative rights" a couple of times. Would you want to give a definition?

DP: Sure. Yeah. That was kind of my last big academic hurrah was we've always defined ownership of oil and gas as whoever owns the surface owns the reservoir, the rock structure and the oil and gas that's beneath it or within it. The only problem is that rock structure is porous and permeable rock structure, which means if you drill into it, [the oil or gas] has the ability to migrate towards the well bore from another person's property. So, you have different ownership theories. In Kansas we follow the ownership in place theory, which it really isn't because if you don't develop your oil and gas beneath your property, it can be lawfully developed by your neighbors if they drill wells and it causes that gas to migrate or oil to migrate to their wells. Correlative rights was a concept that was developed to protect the reservoir initially from doing things that would damage the reservoir so that others couldn't exercise the right of capture, their

ability to drill a well. If I drilled into the [reservoir] and I was negligent and let it blow out and it blew out all kinds of oil and gas, that would be a violation of the other parties' correlative rights. That's one context. The early context was our first plugging law in Kansas [that] was actually designed to protect correlative rights. It was not designed to keep oil out of water; it was designed to keep water out of oil so you wouldn't flood those oil zones. That's the same one that used a two-foot hedge post as a plugging technique on that. But that was the origin of the plugging law, that oil producers were saying, hey we got to have control of these people that bust in these water wells, so they don't despoil our oil. Correlative rights to protect the reservoir is one context. The other context is the state regulatory context, recognizing that it is connected, if you want to drill, we're going to come up with some basic game rules that you can use so that everybody plays nice in the reservoir and nobody gets more than their share, in theory. You're always going to get more than your fair share if you're first and you're more diligent than the other folks, but you can't just stand back and not do anything. But for people who want to drill that's what we end up with. We basically divide the world into squares and rectangles, so we have spacing laws that have a minimum amount of acreage that you have to have in order to get a permit to drill a well. Hugoton's a good example. It was originally developed on 640-acre tracts, so it was you've got a section of land, you can get a drilling permit for that. You'd have one well for that. Then all the people, if the ownership within that section varied, say somebody owns a half of that, the other one owns a quarter, the other one owns a quarter then they would pool that together. All that pooling in Kansas took place by voluntary pooling, by agreement. Kansas is the only state that doesn't have a compulsory pooling statute. I've advocated for a long time that that's a great thing. If you look at Oklahoma it has the most complex pooling statute. It creates a whole other echelon of stuff. Of course, Kansas, we have a simpler ownership system. We don't have much diversity of ownership in the tracts. But I've contended that the way we pool in Kansas is with a checkbook usually, and that just makes the incentive... Either you get the authority up front in the lease with a pooling clause. If you don't have it, then you try to get it through voluntary agreement.

ML: You buy it.

DP: You buy it, or you convince them that, I'm going to drill this well and do these things it's going to benefit you.

RB: You touched on this some, but I think one real interesting thing here is, how does Kansas regulation differ from other states and why? How is the Corporation Commission different from other states that you've looked at, what works, what doesn't, and why are we the way we are?

DP: Go back to my first lesson as City Attorney in [Cherryvale](#) [KS]. There was oil and gas drilling around the area, and we didn't have an ordinance that regulated it. The commissioners got together and said, yeah, we need an ordinance to regulate this.

RB: City commissioners?

DP: Yeah. And my first question to them was, because it could be done either way. First question was, do you want to allow it or not? I think that's the critical thing for so much regulation is, are you regulating to permit it to occur in a reasonable manner or are you just trying to stop it. Once you get past that... and I think Kansas has clearly made the decision that [it's] going to regulate to allow the industry to develop oil and gas in a responsible manner. Then you get to the point of, the next step is, OK, what do we need to do? My experience in Kansas has been that you probably have the most hands-on regulation probably because we don't have that many wells being drilled. Hands-on in a positive sense. I mean, if I needed to get a drilling permit, an oil and gas lease often times has a habendum clause or a clause that basically says, unless you commence drilling operations by "X" day, the lease terminates. A lot of times you can get into a position where you acquire a lease and go, oh gosh, I got 10 days, or I got a day, to drill a well. If you start drilling, then you maintain the lease. If you don't start drilling then it's dead. In Kansas, at least it used to be, if you needed to, you could probably get a drilling permit in a day's time and not be cutting any corners with it. I imagine in Colorado it might take six months to a year or more to get a permit. Of course, then you have to get past the first hurdle, do we want to allow drilling in the first place? I think that's the critical thing. I think it's an easy system to work with. But also, you might be drilling a well out there and there's a Commission person standing there watching it. You plug a well, there's a Commission person standing there watching it. Particularly I think about eastern Kansas, it's this way everywhere in the state, everybody knows everybody and they know how to work with one another. They probably know the people they got to watch closer than others. Under normal circumstances, when you don't have folks coming from out of state in droves like you would with the coalbed methane or the Mississippi lime stuff, or things of that sort, you're dealing with people that you deal with on a regular basis.

RB: Let's talk about it. First of all, your remark about do you want to permit it or not reminds me of when earthquakes kicked off during the [Mississippi limestone play](#) and I went to [Harper](#), Kansas, the first two things they said to me were, we want the earthquakes to go away, but we want to keep producing oil and gas. In some respects, what you're saying is that regulatory regime is a reflection of what the people want around the state.

DP: Oh yeah, I think so. I think that's probably reflective of why some of the other states' regulatory systems are fundamentally different.

RB: Colorado, as opposed to Kansas?

DP: Yeah. If there's a consensus here, and obviously we've grown up, everybody's grown up with oil and gas development in the state and I think they viewed it as a positive or at least benign thing when it's properly regulated. I don't think anybody advocates wide open, wild west sort of approach to any of this. I think once that happens, then the industry suffers because then you're going to have a backlash. I've also found that too. I think there's a feeling amongst many of the participants in the industry that we want to know who the bad actors are because we know

that the things that they do are going to reflect on us and it's going to result in all kinds of bad things that we don't want.

RB: Is there any danger – and I've heard that same comment – that Kansas is just easier to operate in than other states? People that are new to the state will say that routinely. Is there any danger that it's too easy to operate in?

DP: No, not if you've made the basic decision that you want to allow oil and gas development. Because I think in the environmental side of things, I think we've always been, certainly in recent years, I'd say in probably the past 20 years or so, we've got most of the environmental problems under control. The historic things where we had pits and things of that sort to deal with. Everybody pretty well knows what they need to do and how to do it. You always have new things coming up. You have the problems with the earthquakes, you've got new techniques horizontal drilling that require special focus. But all those things, as I saw them, got the special focus and I think came out with workable systems that did not cut corners. It's a matter of what makes sense to allow the development to occur but still protect the air, water, and rights of the individual in the process.

RB: From having both an energy and an environmental perspective, is there some big gap on the environmental side when it comes to energy production in Kansas that doesn't feel like it has been filled from your perspective, if you understand?

DP: Yeah, I do. We could use that bonding. That would take care of the historic part of it. I think, you know, I think we've responded well. I think of times when I started out, when I was in college. I mean, we didn't have regulation of anything. It was 1970 when we got the [federal] [Clean Air Act](#), 1972 when we got the [federal] [Clean Water Act](#), those were the first two real regulatory systems. The 1980s we get the [federal] [Resource Conservation Recovery Act](#) and all the hazardous waste stuff, [federal] [Oil Pollution Act of 1990](#). The progression has been pretty good. All of those statutes have been the result of some horrible situation that has required a lot of catch up. I think we've done that catch up but I'm sure there'll always be things. I think the seismic issues with the earthquakes. You look at the environmental regulation there, the federal statute tells us that the proper thing to be done with produced oil or produced water is to shove it down a hole in the ground. That is why we have that whole [federal] UIC [[Underground Injection Control](#)] program is because you cannot discharge that stuff on surface water. But that created other problems because we didn't know what the impact of that was and hopefully now, we've got to have a handle or get a handle on that. There'll be things like that. Do I think fracking is a problem? No, not at all. I don't think there's any looming sort of problem with the new technologies that are out there that can't be addressed with the way we've been regulating.

RB: The only issue I had out of all that was that when there was damage from the earthquakes, it was really hard for a landowner to figure out who to go to for resolution because a lot of companies were operating and you can't figure out which well caused your

harm. So how does an individual have recourse in that setting, especially because we're not talking about huge amounts of money. A cracked foundation may be only \$30,000 or \$40,000 but it's still harm.

DP: It's probably not covered by your home insurance.

RB: That struck me as a real hole that legally, that those landowners were harmed and had no good recourse. There was a class action suit in Oklahoma, but nobody in Kansas did anything like that. I felt like that was a failure on the legal system's part.

DP: That's the other major area of policy in the oil and gas, most of the policy in those areas are made by courts. All the lease issues, all the development issues and stuff are really outside the regulatory regime, they're regulations made by courts and decisions. The liability issue, the causation issues could be difficult. It is true that an individual litigant for a \$10,000 cracked foundation claim isn't going to be able to bring a lawsuit against anybody themselves, because you'd spend \$100,000 to do that and maybe lose, probably lose. So that is a problem. They tried to address that somewhat in the Oil Pollution Act by setting up an administrative system, but that only works in those catastrophic situations. So that is just a failing of the legal system.

RB: The only reason that I brought it up is I took some of those phone calls and I had genuine sympathy with those on the other end and never had an answer for them.

DP: Nobody has more sympathy for people like that than attorneys that . . . [*Laughter*] really, that represent them. You just kind of sit there, you think, yeah, you're right, this is bad and there's not a thing that I can really, as a practical matter, do for you other than just say get over it. That was kind of like when people would come in with personal problems, you'd want to just tell them, take a baseball bat to...

RB: Well, it sort of fell under the, nobody said life was fair rule. But that's not a very good answer if you're somebody that didn't have a lot of money and now, you're out \$20,000 to people who are making money and causing you trouble in the process. I don't mean to dwell on this too much. Mike?

ML: I was just going to have a follow up question. This whole seismic issue is a product of a horizontal drilling effort, fracking and reinjecting water in south central Kansas, in [Harper](#) and [Barber](#) counties primarily. It occurred during the 2010s, I guess primarily, the thought was that this may be Kansas's [Bakken](#) field, something like that. You have some familiarity with that effort, if you could just...

DP: Yeah. It was great, I mean, it was one of those things where... You just assumed that eastern Kansas was dead for the oil and gas development, and then along came the [coalbed methane](#) stuff, and that livened it up and that was fun. Then you think, well, where's the next [El Dorado field](#). Kansas has a history of having huge, the Hugoton gas field is huge, the El Dorado field's another good example. It provided nine percent of the world's oil in 1918. We may have been a different world in World War I had we not had the El Dorado field and also the coal mines in

southeast Kansas. They both contributed huge to that, but then along comes the Mississippi lime play, you think, ah finally, Kansas is going to get in on some shale and some horizontal drilling. Then you see the majors come in like Shell and you think welcome back and this is going to be fun. Then it just doesn't live up to their expectations. They did the development that they said they were going to do, they evaluated it and said, no, it's not enough. With that said, horizontal drilling is going to help Kansas. It's already helped Kansas. You talked about infill drilling when we started talking about Hugoton. Think about it, you drill a hole this big into the ground and you're going to connect up with however much reservoir connects to that. You can frack it and extend that a little bit, but just think, if you can get in that reservoir and just go for a mile and then have that, and then frack that and have that available. I think there are still other surprises in Kansas just like there are for other states.

RB: There's no question a combination of fracking and horizontal drilling changed the natural gas market dramatically, it drove prices dramatically lower, changed the entire energy picture when that came along in ways that we're still trying to figure out how to deal with. Maybe in some respects [that] might be part of the delay in moving to renewable energy because natural gas is so cheap as a result. But nobody saw that coming.

DP: Or maybe accelerated the carbon management world too.

RB: Yeah. Are there any other big picture issues we haven't touched on here that you think we should have talked about or that we should talk to other folks about as we go through this process?

DP: The industry always seems to be boom [or] bust sort of situation and Kansas has experienced that as much as anybody. There's new technology that we probably can't even think of at the moment. It would be interesting to talk to some sort of the folks that are on the edge of the technical side of the production and exploration and things of that sort because I think that's where you're going to find people coming back and looking at Kansas and seeing what's there. Kansas has a lot at stake. We have a [state] [severance tax](#), and all Kansans benefit from the production that we find here. It's important that we continue to do that and do it in a responsible manner. Hopefully be able to enjoy the market prices when it does take place on that, unlike the past.

RB: Your comment about peak oil is an example of that, that everybody thought, well we're on the downside of that bell curve and nothing could change that. Horizontal drilling and then fracking come along and throw peak oil how many decades off in the future?

DP: Yeah. Even somebody just drilling somewhere they didn't think to drill before just because the price is higher. I figured peak oil, if it really lived up to its expectation as you entered into the decline, prices would increase substantially and that would create all kinds of incentives to go out. I mean, the folks are pretty good at finding oil and gas that do it. They're real good at it. I think it's just a matter of having the right incentives to do it.

RB: Prices do seem like they've been fairly stable in the oil business here for a little while. Sort of slowly come back compared to last time prices went down. Mike, any other areas that you want to pursue?

ML: Just one question. Going back to the Hugoton field and Deep Horizons legislation [[K.S.A. 55-223](#) through [55-229](#)] in terms of looking in new places, what was the genesis for that particular piece of legislation?

DP: Yeah, that's an interesting, that's where judicial policy, they tried to supplement judicial policy with legislative policy. In an oil and gas lease, particularly the ones in Hugoton, because of the vintage of them, it basically, if I drill a well and get production, it maintains the entire lease as to the entire arial surface and all depths below it forever, as long as I got production from that well. Then we have a body of law that developed in the judicial system called implied covenant law that said, you know, if a prudent operator would conduct more development of that property, and you haven't done it, then we may just cancel that part of the lease and give it to somebody else. But that's an uphill battle. That's another one of those things where you'd be sitting there telling the client, yeah, yeah, this is what you could do, but the chances are, maybe, not good. And you're going to have to have \$100,000 to be able to start it. Well at Kansas legislature, this is in part, and I ought to mention the [Southwest Kansas Royalty Owners Association](#) . . .

RB: I was going to ask you.

DP: Yeah, I mean, talk about an organization that has done something for their membership, that group was formed in the 1940s. Gus Kramer was one of the early people that dealt with it, Bernie Nordling and the Nordlings carried it on. That's one of those organizations that has pressed a lot of buttons through the years and forced courts and producing companies, lessees, to look at stuff. Essentially what that is, it's a group of landowners that have leased their land, most of them are in the Hugoton area, originally, certainly, and these issues such as develop more wells, are you getting the right price, are you calculating my royalty properly. All those issues come up. Well, as an organization and a group, they are able to basically pool those resources so that they can then typically seek their recourse either through negotiation with the companies or through the courts. They've been very successful through the years. I can't think of any organization of that sort that's done more for their membership than the Southwest Kansas Royalty Association. That's one important group. This whole Deep Horizons issue was one that, Mike mentioned it too, they've been very successful in the legislative world too. I mean, they lobby and they're getting legislation passed. One of those was this Deep Horizons Act that basically said that if you've got a depth, you go below the deepest depth that you've drilled, and if you haven't developed those after 15 years it changes the judicial presumption that the burden of proof shifts to the oil company to demonstrate that a prudent operator would nor further develop. Whereas before, the judge-made law was that the burden was always on the plaintiff. Even the threat of that caused a lot of companies to take a closer look at their property. My theory on that was always I told my

students you ought to have your clients send a demand letter to their oil company lessee every year and just see what's going on and keep them on their toes and keep them looking at your file and also creating a record so that if after ten years or whatever they haven't done anything, you got something there that you can use. But this helped in the deeper zones. You mentioned helium field.

ML: Yeah, that was my next question. You couldn't talk about Hugoton without helium.

DP: One thing in Kansas, the Hugoton reservoir is one of the few places where it produces half of a percent or more of helium, but it's all bound in with that natural gas stream. Kansas was ground zero for all the helium litigation. The landowners originally came in, this was the Southwest Kansas Royalty Owners Association actually, and said, oh that helium that's not covered by our oil and gas lease. We still own all that helium, so you all have been stealing it all these years, give us a gazillion dollars. It went to the court and Judge Brown who was the federal district court judge that heard all these cases, he said, nah, you passed it in the oil and gas lease, so it came up with the rule – and I think the correct rule – that under the oil and gas lease the language is broad enough that it includes gas in any constituent that produces it. Because you have to have a billion-dollar plant to separate it once you get it out of the ground. So that meant that the lessee owned it. But they would owe a royalty on it. But the lessee entered into those long-term gas contracts that we started this discussion with, with those pipeline companies. And if you read the dedication clause of those contracts, all of which I've read of every one of them, it's pretty clear, I think, it would have encompassed the helium, no doubt about it. That's what Judge Brown held the first couple times, but it got reversed by the 10th circuit. I got a feeling that the 10th circuit was saying, gee, there's all this valuable helium and we really shouldn't let the pipeline companies have it all. I mean, this is nothing that they said, but this is my take from it: We think because there was the Natural Gas Act, and pricing regulation, and there's the Helium Act, we think that actually that gas was part of the gas that is owned by the lessee, but the pipeline company did not take ownership of it. Therefore, they got to share. Judge Brown worked through, I don't know the helium litigation lasted 30, 40 years.

ML: Something like that.

DP: Good thing Judge Brown lived to be 104 and you just about needed somebody on the bench that long to be able to get through the litigation. The way it washed out is that the landowners got the royalty, the lessees got their piece of it, and the pipeline company got a piece of it. But Kansas remains one of the major sources of helium, which was much more significant in the 1950s and 1960s when they were using it for nuclear issues.

RB: There's still shortages that show up from time to time and comes back in the news. I'm just going to say that southwestern Kansas may be the middle of nowhere, but obviously it's southwest Kansas.

DP: You're not going to let me get away with that. You're waiting for the key statement. I wish I could say I said it just to tweak [interviewer] Mike [Lennen].

ML: Just one quick point, our videographer is from Garden City.

RB: But that [Southwest Kansas] Royalty Owners Association has been a very effective group and when I've spoken to them, they are an engaged group of folks because they've got very direct economic concerns growing out of the kinds of things that you're talking about.

DP: They've been educated well. They've been represented well. The Fleeson Gooing [law] firm has represented them through the years and Bernie Nordling and the whole Nordling [law] firm has been there through the years, and they've been very effective.

RB: Absolutely. Well, I think we've covered a lot of territory. There are some other questions I've still got but I think we've done pretty well. I appreciate you taking the time to do this and thank you too, Mike. It's been interesting.

DP: Thank you.