

Judicial Profile

CHRISTOPHER M. PARENT

Hon. Deanell Reece Tacha Chief Judge, U.S. Court of Appeals for the Tenth Circuit

EVEN THE MOST loyal Jayhawk would admit that the journey from Scandia, Kansas, to Lawrence, Kansas, is a tedious one. Even though the route is marked by the beauty of the open space that is endemic to America's heartland, the roads are flat and the scenery dull.

The journey that has taken Deanell Reece Tacha from her hometown of Scandia to her longtime home of Lawrence, where she presides over the U.S. Court of Appeals for the Tenth Circuit as chief judge, has been anything but boring. Judge Tacha has remained true to her Kansas roots, even though her path to becoming one of the country's most powerful jurists has been filled with as many twists and turns as a Kansas tornado.

The Student

After graduating from Scandia Rural High School in 1964 as the "entire top 10 percent" of her class,

as Judge Tacha describes it, she headed "east" to attend college at the University of Kansas. Like other college campuses at the time, the University of Kansas, or KU, was undergoing great reform, especially in the area of women's rights. At the forefront of this movement at KU was Emily Taylor, who served as the university's dean of women at the time and whom Judge Tacha fondly remembers as an inspirational force and early role model in her life. "We were all Kansas kids," says

Tacha, "who got sort of plucked out, if you will. And she made all the difference." Before attending KU, Judge Tacha had been exposed only to women whose careers were "quite traditional." Emily Taylor encouraged Judge Tacha to explore the possibilities that lay beyond those traditional roles. According to Tacha, Dean Taylor "took these relatively untested, Kansas mostly, women and managed to make out of us a group of women with far greater aspirations than we could ever have conceived when we set foot on this campus."

As she approached her graduation from the University of Kansas, Judge Tacha was faced with making a decision about her future. The story behind her decision to pursue a legal career reflects the common-sense approach she has taken throughout her career on the bench. Based in part on Taylor's encouragement, Tacha took all postgraduate tests, including the LSAT, MCAT, and GRE. She opted to attend law school because she scored the highest on the LSAT.

Her decision to attend law school, although based on sound rationale, was not necessarily an easy one, however. Her trepidation in pursuing the law was exacerbated by her father's lack of support for her career choice. According to Judge Tacha,

I applied to several law schools and got into most of them. So, by this time, I had to inform my family and my friends that I was really thinking about this. And one of the hardest parts was that my father, in particular, really resented this. He's a man of tremendous support and encouragement but looking at it through his lens, he essentially thought that I was selecting a professional path where it would be very difficult for me to succeed. That was a legitimate viewpoint at the time.

Over her father's objections, Tacha decided to pursue her legal education at the University of Michigan, where, according to Tacha, "there were precious few women" at the time of her enrollment. But the numbers changed dramatically over the course of her three years there because of the decrease in the number of males who might have otherwise enrolled at University of Michigan's Law School on account of the Vietnam War.



The Attorney

Tacha's decision to attend law school paid off. She excelled at Michigan, and her efforts were rewarded when she was selected as a White House Fellow upon graduation. Tacha's assignment was at the Department of Labor, where she served as a special assistant to the department's secretary, James D. Hodgson. At the conclusion of her fellowship and before joining the Washington-based law firm of Hogan & Hartson, Tacha stayed on to assist the Nixon administration during the 1972 election.

Although Tacha shies away from offering her political sentiments, it is clear that politics and her experience in the nation's capital have had a profound effect on her life. Tacha feels that civility in Washington, D.C., has, to some extent, waned over the past few years — a development that was perhaps best reflected by the recent confirmation hearing of Justice Samuel Alito and by other debates surrounding the judiciary.

I think it is something to be worried about. First of all, I have the highest regard for the constitutional scheme where the President has the right to nominate and the Senate has the advice and consent authority. Thus, I have enormous respect and defer to that, but what I worry about in the tone and tenor of confirmation hearings in recent years is that they may have given the public the wrong view about how judges make their decisions. When questions are asked that seem to imply that a judge is making his or her decision on the basis of personal opinions, that misleads the public, and doesn't do a good job educating the public about the role of an independent judiciary. I believe that all public servants in the three branches of government, wherever they find themselves, have a duty to help educate the general citizenry. When what we do may give a skewed understanding to the public, I think that's detrimental to the republic.

Tacha's sentiments reflect her view of the judge's need to be a pure jurist, whose political viewpoints are irrelevant when it comes to deciphering the facts at hand.

I'm one of those judges who believes very strongly in sticking to the cases and the issues. It may be a lesson by example, that is to say, judges do not make policy; judges do not do anything except interpret the law as best they can, given the statutes, the Constitution, the regulations, and the facts relevant to the issues of the case before them. I think it is important for judges to be limited in how they perform their functions so that it gives the public the proper understanding of the role of the judge within

the country's political framework. We are not elected. The elected branches, not the judiciary, establish policy.

Back Home to Kansas

Forces out of her control forced Tacha to reconsider where her burgeoning legal career would develop. In the midst of her early success at Hogan & Hartson, the law firm that has produced such alumni as Chief Justice John Roberts, love intervened in Judge Tacha's plans. "So here I am practicing law in Washington at a very, very highly respected firm, and doing very well, but the love of my life was in Concordia, Kansas, and he wasn't about to move to Washington, D.C." Thanks to John Tacha, the judge's stint at Hogan & Hartson was a relatively short one. The firm's loss, however, was Concordia's gain.

For a professional who had traveled the world side by side with the secretary of labor and who had later experienced the inner workings of the White House, the journey back to Kansas was nothing short of overwhelming. While in the nation's capital Tacha had also become somewhat of a pioneer for women's rights in the field of law and had sought to carry on Emily Taylor's plea to serve as a role model for other women in the field of law. "I did what I did at that time with some trepidation," says Tacha, "because when you're one of the first women to have the opportunity to be with one of the big name firms and do all the kinds of things I was doing, you feel that doing the personal thing is troublesome for women coming along."

Unfortunately for Tacha, her concerns about returning to Kansas were not initially quelled. Concordia was not a hotbed for jurisprudential activity. Nor did it provide female attorneys with the same opportunities that other cities like Washington did. Notwithstanding Tacha's early trepidations, however, Tacha's stint in Concordia was ultimately fruitful, because it offered her formidable training in the field of law. Some time after arriving in Concordia and finding that the job prospects were bleak, Tacha joined forces with a solo practitioner. "I was a general practitioner in a small town. And so, literally everything that walked in off the street, I took. It was really marvelous."

While in Concordia, Tacha appeared a number of times before Marvin Brummett, a judge whom Tacha describes as one of her principal role models. Not only did Judge Brummett embody Tacha's concept of the ideal judge, but he also served as a model citizen, serving the people with honor, dignity, and class. Judge Brummett "was a man of exceptional professionalism, exceptionally thoughtful temperament," Tacha fondly remembers.

Now and throughout her career, when presiding over hearings, Tacha attempts to offer attorneys appearing before her the same respect that Judge Brummett showed her while she was a young attorney appearing in his court, and she offers an example:

I was in my first contested divorce case, and I had prepared and prepared and learned everything I possibly could. I went into court on the day of the divorce and I asked all these smart questions and did all the right things, except at the end of my examination of my client, this good judge looked over at me and said, "Counsel, you may wish to ask her where she lives." I failed to establish domicile, which is, of course, the most important thing of all, but my client never knew that was a big deal. It was a lifelong lesson in teaching and yet doing it in a way that wasn't embarrassing or demeaning. And so, it has always been for me the model of how a judge works with young attorneys with respect to courtroom demeanor.

From the perspective of a 20-year veteran of the bench, Tacha believes that the judicial system too often does not receive the respect it deserves and that Judge Brummett preached in his own courtroom.

We see a lack of respect in all directions. Occasionally, lawyers do not treat each other with respect and more importantly don't treat each other's arguments with respect. You know, if it's in our court, there is some merit to what everybody is saying. Perhaps even more serious, some attorneys do not treat the clients with respect. Whether they are present or not, it's their lives and fortunes that are at stake. Denigrating anybody in the system — the litigant, the lawyers, the judge, the court below — is to denigrate the whole system. We do see it and it is very troubling. We also see a lot of disrespect in briefs. I don't know whether lawyers think that we don't read that stuff or that the strident tone will convince us, but it simply undercuts the lawyer's credibility.

The Educator

In 1974, shortly after getting her private practice off the ground, Tacha was offered a teaching position at the University of Kansas Law School. She accepted the job and was uprooted once again, but this time returning to the familiar confines of Lawrence, Kansas.

Tacha's ties to KU and the town of Lawrence are inextricable. "Jayhawk fervor is really in my blood. My grandmother graduated from the first nursing class from the University of Kansas Medical School, which was at that time known as Bell Memorial. And every generation of my family since then has included KU graduates."

At KU Law School, Tacha took on a diverse course load, including teaching classes in administrative law and oil and gas law as well as a seminar on the First Amendment. But her most rewarding role at the law

school, Tacha remembers, was as head of its legal aid clinic. "I worked with students in court and out, and with disadvantaged clients all the time. That was a wonderful experience because I saw parts of the law that I probably wouldn't have seen otherwise. I still say my legal aid work was among the most rewarding work I ever did. You see a side of what the law does that is just so incredibly important."

In 1979, Tacha moved to an administrative role within the university, serving as the school's associate chancellor. In 1981, she became vice chancellor for academic affairs, a position she held until 1985.

Judge Tacha has never really left her academic robes behind, however. For her teaching has always been ingrained in her persona; moreover, she has seen it as one of her responsibilities since she was appointed to the bench. "I do a lot of work in high schools, colleges, elementary schools, and civic clubs. I do everything I can possibly do — not to talk about my viewpoint on issues at all but, rather, to talk about the constitutional scheme — what the ideas were behind the constitutional scheme and how the government operates. I am deeply disturbed by what is now a clearly documented lack of understanding of the government by the general populace."

The Judge

While at the University of Kansas, Tacha was pressed by an old family friend, Sen. Bob Dole, to consider a nomination for a seat on the U.S. Court of Appeals for the Tenth Circuit. Tacha initially declined Sen. Dole's offer; she thought that accepting the position would require moving elsewhere because Lawrence did not have a federal courthouse. "I had other opportunities to go off and be the chief officer of a university but, by that time, I had a family and my husband was well-established in business here. It was not time for us to move again."

Sen. Dole pressed on, ultimately persuading Tacha to reassess her position after the Senate leader suggested the possibility of legislation that would make Lawrence, Kansas, a site for holding federal court. Although it took more than two years for the legislation to pass, Tacha was able to return to Lawrence after working in Topeka in the interim.

Tacha was actually in Colorado in 1985 when she had first heard the news that President Ronald Reagan had selected her to serve on the Tenth Circuit. Judge Tacha remembers the moment she heard about the nomination:

I was vacationing in Rocky Mountain National Park with my family in August of '85 and literally the rangers came after me and said I was needed on the telephone. Well, it was the White House saying that they were going to interview me for possible nomination to the Tenth Circuit

but that I needed to come into Washington that weekend. So, here I am, jeans and sweatshirts and little kids somewhere up in Rocky Mountain National Park. I had to get myself to Denver, figure out how to get professional clothes, which I didn't have on vacation, and fly to Washington for my sessions there.

The Tenth Circuit

Judge Tacha has no regrets about accepting Sen. Dole's offer. Looking back on the decision she made 20 years ago, Tacha is well aware that with the appointment she had found a vocation that melds her roles as teacher, attorney, and public servant.

Over the course of her 20 years on the Tenth Circuit, Judge Tacha has been at the forefront of a number of important legal issues of our time. Tacha and the rest of the Tenth Circuit, for example, were deeply affected by domestic terrorism long before the events of Sept. 11, 2001. At the time of the attack on the Alfred P. Murrah Federal Building in Oklahoma City, it housed a number of federal officers, as well as their children who died while in the building's day care center. That event had a profound impact on Tacha, who is the mother of four children. "It's still hard for me to talk about it — the staff people and the children. I was down there just a few days later and the site of the rubble was beyond imagination, as was the knowledge of what an atrocious act it was."

Despite her personal feelings about terrorism, when discussing her judicial philosophy, Tacha is careful to emphasize the Constitution's guarantee of a fair trial. For Tacha, it is not the judge's role to legislate from the bench based on his or her personal values. It is, instead, necessary to strictly construe the facts at hand as required by the Constitution. "Whether it's a very high profile case like [Oklahoma City]," says Tacha, "or whatever case is before us, we need to be extremely careful to limit ourselves to the issues in the case in front of us — not be involved in the policy questions, but to handle carefully the public's right to know and the rights of the defendants, victims, and their families. Those are very delicate and challenging balances."

In addition to terrorism, Tacha cites immigration as the next issue on which her circuit will spend a considerable amount of time. The Tenth Circuit "has had and will continue to have many challenges because of our border. We have a border in New Mexico. Whatever immigration policy is adopted will require the courts to interpret that policy and react in appropriate ways when the cases come to us."

A particular and continuing challenge facing Judge Tacha, who has served as chief judge since 2001, has been the Tenth Circuit's crowded dockets. As chief judge, a role given to the most senior active judge on the circuit, Tacha serves on the Judicial Conference of the United States, assigns opinions, and has authority over the business operations of the circuit. "We need

to move the case load as rapidly as we possibly can while maintaining a high level of quality. A challenge we always face is that we are so far-flung geographically. But I think we have responded to that admirably in that we continue to have our court weeks when all the circuit judges gather at the same time." The administrative issues that Judge Tacha confronts on a daily basis are eased by the relationships forged among the Tenth Circuit judges. "I'm very proud that our circuit is known as one that is, if not the most collegial, one of the most collegial in the country. We are often applauded for that. I like to think that's just kind of in the nature of Midwesterners."

In 2007, Judge Tacha's term as chief judge of the Tenth Circuit will end, and the next judge in line will assume the role of chief judge in January 2008. She intends to remain engaged in Tenth Circuit business and to continue to teach in and serve the Lawrence community as she has since a college student under the tutelage of Emily Taylor. For Tacha, balancing the national interests as a circuit judge and the local ones of her community will come naturally to her, because it is something she has done throughout her life.

The Legacy

"Life is a series of location questions," says Judge Tacha reflectively. In 1968, as she headed east to KU for college, Deanell Reece Tacha began a journey — one that would transform a small-town girl from Scandia, Kansas, into chief judge of the Tenth Circuit. While the twists and turns have been many, the values instilled in the Kansas heartland have served as her compass, guiding her on the road of success. Judge Tacha explains, "My husband and I both are the descendants of pioneers who came here before this was a state and all of whom went to the western part of the state, which was hard scrabble times. That legacy lives on, I think it's fair to say, in both of us."

Somewhere, the likes of Emily Taylor and Judge Brummett are smiling. **TFL**

Christopher M. Parent is an attorney in the Intellectual Property & Technology Law Practice Group of Brownstein, Hyatt & Farber PC, in Denver, Colo. He serves as the secretary of the FBA's Colorado Chapter.