

INTERVIEW OF JUDGE DEANELL REECE TACHA BY JIM CONCANNON, APRIL 12, 2023.
KANSAS ORAL HISTORY PROJECT, INC.

Jim Concannon: Today is April 12, 2023. My name is Jim Concannon. I was a professor of law at Washburn University School of Law for forty-seven years, including thirteen years in which I was dean. In those roles, I had wonderful opportunities to work with this remarkable person that I get the chance to interview today, retired Judge Deanell Reece Tacha. We are at the University of Kansas School of Law where she taught in the mid-1970s and early 1980s. Our videographer, as he is for this entire series of interviews, is David Heinemann who was a state representative from Finney County for twenty-seven years.

Before I give a brief introduction of Judge Tacha's career, I should place this interview in context. It is part of the Kansas Oral History Project's series entitled "Kansas Courts and the Rule of Law" which examines the judicial branch of government in the last quarter of the twentieth and first decades of the twenty-first centuries. These interviews examine the courts, including their relationship to the executive and legislative branches of government, told through the eyes of those who were directly involved.

The Kansas Oral History Project is a not-for-profit organization, created to collect oral histories of Kansans who were influential in shaping and influencing public policy. The project is supported by donations from individuals, and in the case of the court series, a grant from Humanities Kansas, a nonprofit cultural organization. Although this interview will focus on Judge Tacha's service in the United States Court of Appeals for the 10th Circuit, including as its chief judge from 2001 to 2007, her career has touched nearly every aspect of the legal profession. Following graduation from law school in 1971, she served as a White House Fellow and Special Assistant to the Secretary of the Department of Labor. She then practiced law in the oldest major law firm in Washington DC before returning home to Kansas to become a small-town lawyer in Concordia engaged in the general practice of law. Then in 1974, she joined the faculty of the University of Kansas School of Law, serving for three years as the director of the school's Douglas County Legal Aid Clinic, and thereafter teaching for many years in various courses such as administrative law. She was for a time Associate Dean of the law school and later served as the university's Vice Chancellor for Academic Affairs.

Deanell was not yet forty years old when President Ronald Reagan in 1985 nominated her to the Court of Appeals on which she served until 2011. She was only the second woman to serve on the 10th Circuit. But her leadership in the federal courts extended far beyond the 10th Circuit. She was a member of the Judicial Conference of the United States. She was appointed by then Chief Justice Rehnquist as Chair of the Committee on the Judicial Branch which oversees the Federal Judiciary's relationship with Congress and the executive branch and later was appointed by Chief Justice Roberts to the executive committee of the conference.

Time doesn't permit me to recite all of the many recognitions Judge Tacha has received, but I have to mention one example. She was the 2008 recipient of the Devitt Distinguished Service to Justice Award. It's an award that's been made every year since 1983, and it's the highest honor that is given to an Article III federal judge for lifetime service and the advancement of the rule of law.

Judge Tacha, I want to thank you for agreeing to share your perspective for this oral history series. I'm sure as we go along, we'll highlight additional aspects of your career as we do. To

start though, you're a native Kansan raised in a small town, but your parents were active in public affairs, particularly your mother. Would you like to talk about that and how your background there affected the perspective you brought to cases you heard as a judge?

Deanell Reece Tacha: Well, I have always considered it a privilege that I was a child of a small-town Kansas community. It was Scandia, a little Scandinavian community where my dad had a highway construction company, and public service was just simply in everybody's blood in my family. Mother was quite a friend of [Frank Carlson](#) and had worked with Kansas politicians for a long time. But my dad was also quite instrumental, especially at the beginning of the interstate system, and one of my earliest memories is standing by the side of the road near Abilene, Kansas with then-President Eisenhower, opening the first stretch of what became Interstate 70 where my dad and granddad had done some of the work.

So I sort of always had in my mind that you simply served your nation. It was the North Star of my family, and thankfully, I had the opportunity and the privilege to do that. But that little town and the farmers and the Republican River Valley very much influenced my upbringing and my perspective, I think it would be fair to say.

Also I should say my mother grew up in Kanorado, which is as far west as you can go and still be in Kansas. Out there, of course, it's just straight flat wheatland or was at that time. It actually has changed a bit. So I always felt like I was one of the wheat harvest people because we always went to Sherman County for the wheat harvest. So I guess Kansas roots are my blood in every way there is. [laughs]

JC: Of course, your mother was Republican National Committee woman from Kansas for many years. I would assume you got to meet an awful lot of national leaders through that connection.

DRT: Oh, yes. Somehow, Scandia was on the beaten path of all the politicians, and my parents entertained them, held political fundraisers, had meeting after meeting. So, in the early, early days, for example, when [Bob Dole](#) ran for the House of Representatives, my mother was on his campaign committee. We had a name at the time, the very young girls at the time, who worked for him were called Dolls for Dole. Now that doesn't seem very correct these days, but I watched as he began his path of leadership for the nation and was so impressed by his, what I call "Russell, Kansas kindness." And he never forgot you. Of course, I like to think I got to the court on merit, but Bob Dole was part of my merit.

JC: We'll talk about that in a bit. Before we get that, I'd really like to focus on what led you to a career in law. Your family was active in public affairs, but they weren't lawyers. Was their involvement in public affairs what led you to choose to go to law school, or was it other factors?

DRT: No, in fact, one of the hardest parts of my personal history is my dad was always horrified that I was a lawyer. His contact with lawyers had been anything but pleasant in the construction industry. I would say the greatest influence for me to go to law school was [Emily Taylor](#) who was the Dean of Women here at the University of Kansas at the time. And she was relentless at

an earlier time than one would have predicted that women should go into, if you will, the male professions at the time. And relentless in making us think through where our aptitudes and interests and just passions were.

So she very much encouraged me to study political science, to study history, to study government, and then she just would not take no for an answer when it came to choosing what to do. So in my last couple of years at KU, I did a lot of investigating of law schools, really without telling my family at all because even to his dying day, my dad would say out of the side of his mouth, "She's the lawyer." He never really supported—well, I think he did quietly, but he never was for that choice. It was pretty much KU and the wonderful mentoring that Emily Taylor did that influenced me.

JC: You went to KU for undergraduate school, got your bachelor's degree here, and I know that you bleed crimson and blue.

DRT: Oh, yes.

JC: What led you to choose to go to law school at the University of Michigan when otherwise we might have been classmates at KU?

DRT: Indeed. You know, that now is one of those sort of humorous parts of my history, because my parents were not all that excited about it, I will tell the story. When I called home to tell my folks that I decided to go to law school, I thought I was going to get an outburst, but instead it went very quiet on the line, and I went about my business that night and went to bed, and five hours later, which is exactly what it takes to drive from Scandia to here, my dad was at the door of my living room and took me out for breakfast and tried to talk me out of this crazy decision. His quote, which has stayed with me all my life was, "When you could do anything you want to, why would you pick a place you can't succeed?"

Well, his last ditch was, "Well, if you're going to go to law school, you'll at least go to KU, won't you?" Well, I already knew that I was in several very prestigious places, and I was pretty comfortable at KU, and so I said, "Dad, I don't think so. I know I could do well at KU, and I love it at KU, but I need to challenge myself."

As you probably know, it was well before very many women were going to law school. So the fact that I'd even been accepted at some of the finest law schools in the country was noteworthy. So Dad's last ditch was, "Well, you will go to a state university, won't you?" and I agreed. So I went to the University of Michigan.

JC: That's great. You're right. There were relatively few women, a tiny percentage, entering law school, either at Michigan or any of the other law schools in the fall of 1968, and that's been true throughout your career. The legal directory suggests that you were just the third woman to be an associate attorney in a seventy-five-person law firm in Washington, DC, Hogan and Hartson, where all thirty-seven partners were men.

DRT: That's right.

JC: Then you get to Concordia, and you're the only woman lawyer not just in Cloud County, but in all six counties in the 12th Judicial District and probably a good deal more of North Central Kansas. What were the challenges that women faced then going to law school, entering a law practice?

DRT: They were substantial. It's hard to describe now, even in polite terms how we were treated. The women in my class at Michigan stayed fairly close. As a postscript, the men in our class dedicated a scholarship to us this last year and gave a substantial amount of money, recognizing the treatment that we had had from such things as being called on in criminal law before several hundred for the goriest details of the cases.

And then trying to get hired was very difficult. I was fortunate that there was a Kansas City firm that no longer exists, but two of the partners, Herb Kahn and Tom Van Dyke, I'll say who they were, took a chance on me and gave me a summer internship in Kansas City after my second summer in law school. But then when I was ready to graduate, I had a number of offers around the country. I think I could have gone back there, but I got to be a White House Fellow. And then I went to Hogan and Hartson, and you're right, there were very few—three of us, and we were quite close.

But then I did what you should never do when you're the token woman. I married the high school basketball coach in Concordia, Kansas, with whom I'd been in love for some time and went back to Concordia Kansas. And I confess I thought my career was over. It was in some ways a very difficult time for me. No one would hire me. It was not only lonely; it was like shocking.

But one lawyer in Concordia allowed me to office share with him and took me on, Tom Pintner, and he helped me, but the person who helped me the most was one of the literally deans of the Kansas judiciary, Marvin Brummett, who was the district judge out there. I shall never forget that he was the one who mentored me.

I could tell about my very first court appearance before him was just a kind of a regular divorce case, and I had prepared and I had done everything, and I knew everything. But at the end of it, very kindly, Judge Brummett said, "Counsel, you may wish to ask her where she lives" because, of course, in a domestic case, domicile is everything, but my client never knew that was a ridiculous mistake, and Judge Brummett taught me a very good lesson in the most kindly and gentle way. So when I think about the sort of persona of a judge, I always see Judge Brummett.

JC: You didn't practice in Concordia all that long. Back in those days, there weren't very many women on law faculties either. How did you come to move from Concordia to be on the faculty here at KU?

DRT: Well, of course, people who were inside the law school at the time would probably know more than I do, but I know that there were several Michigan graduates at the time—Dean Dickinson, Mike Davis, George Coggins. We kind of called ourselves the Michigan Mafia at a time at the law school. So I give Dean Dickinson enormous credit because he kind of found out I was out at Concordia, and I came in. I drove one day a week that spring semester and taught Media and the Law here, and then they gave me the permanent offer that fall.

So to their credit, they took a chance on me, but I was not first. Louise Wheeler preceded me and did so in very fine fashion. So I wasn't the first. In fact, I always said I was so fortunate. I wasn't the first in most places. I was the second on my court, the second on this [KU] faculty, the second one, Chief Judge of my court. So I had very, very good role models in the women who preceded me.

JC: We've made substantial progress. The two 10th Circuit judges appointed from Kansas after you were women. You've always been an advocate for the legal profession and the judiciary to reflect the diversity of the society they serve. I know you're on the American Bar Association Commission on women and the profession. Where do you think we stand on all of those issues now? Are there steps we still need to take to further that goal?

DRT: Oh, we clearly need to continue to work on it. I will refrain from political statements, but there are issues before the nation and the world that relate so directly to women and their ability to be employed, to be good mothers, to be good community members, all of those things. And in some ways, I worry about it more today than I did a decade or so ago because it's so subtle, the discriminatory practices and just actions are so subtle, but they affect women in the workplace.

I was so fortunate that I had an entirely supportive spouse, and I had a guardian angel who helped with the child care. So I was one of the very privileged women who was free to do what I wanted to do. Now it wasn't always easy, but to your question, the income divide at the moment, the difficulty of finding child care, the rancor that's abroad in our society I think doesn't allow people to try to put themselves in each other's shoes, and that has its discriminatory impact. And some of it is so subtle and so little talked about on the surface that I worry that we won't continue to be as vigilant as we should be.

For me, these are scary times. It's not just women. It's people of color. It's the income divide, people without means. I worry about Kansas. It used to be being from rural Kansas was sort of salt of the earth, and now it's a part of the political divide, which I just dislike terribly, and as you probably know, I do a lot of church work. It's dividing the churches. It's dividing the bedrock institutions of our culture. When that happens, it hurts some groups of people more than others.

JC: Let's jump ahead to your nomination as judge of the Court of Appeals. Was becoming a judge something that was always a goal for you?

DRT: Oh, no. I was vice chancellor of the university. I loved university administration. I loved being around young people and in the educational process generally. So, as a matter of fact, I was contacted quite a few times and said no, no, no. Also for the position that I ultimately got, there were at least two other candidates who were considerably senior to me and had great experience and were quite distinguished who both very much wanted the position, and I knew that. So I kept saying no.

I do not know what went on behind the scenes, but finally I get this call from Bob Dole who said, "This is the time to do it. Kansas has a new position." He said, "I'm really interested in you getting it." And I said, "All right, if you can prove to me the other two people will not get this position." Five minutes later, I had a phone call from a very high federal officer saying, "You're the one we want to nominate," and I had to put my money where my mouth was.

So, no, it had not been an aspiration, and indeed, jumping far forward, it's probably—I've been asked many times, "Why would you leave and go off and be dean again?" Because I loved it. I loved university administration, crazy as it is.

So, no, it wasn't a lifelong aspiration although I now know in retrospect it was exactly the right place for me.

JC: You mentioned the role that Senator Dole had in all of that, and maybe we should focus a little bit on process. The other judges that have been interviewed for this series were all justices of the Kansas Supreme Court, and they described the [nonpartisan selection](#) method that Kansas uses to select its Supreme Court justices with a nominating commission of a mix of lawyers and non-lawyers who vet applicants and produce a list of three candidates from which the governor then selects a nominee. The federal process is obviously different, and maybe it would help to have you describe the differences in those processes, and the roles the senators and others can play in all of that.

DRT: Well, let me start with that last question. Everybody who aspires to a judicial position in the federal judiciary should know that the senators, of course, and the representatives, I might add, have a very important role to play, and that's as it should be. The advice and consent clause of the Constitution, especially in the Senate, makes that very important. It was very important then. It still is.

When I came through, it was not nearly as politically, shall I say "charged," as it seems to be now. It was political, and there were—I have many, many anecdotes about what happened. I will say that when I came through, you were nominated. You were summoned to the Justice Department. You were asked a bunch of questions, and I remember it very clearly because I had all of these little kids, and we were hiking in Rocky Mountain National Park when a park ranger came for us and said, "She's supposed to be in Washington on Monday." This was on like Saturday or Friday.

We had to hike it back out of Rocky Mountain National Park. I had to get on an airplane. I came back to Lawrence because I didn't even have clothes to go to Washington to go for an interview. And to his enormous credit, Professor Frances Heller who taught constitutional law, spent a Sunday afternoon with me because I'd been running a university. I hadn't been keeping up with con law. He spent a whole Sunday afternoon actually in this building just prepping me for what the hot constitutional law issues were at the time, and what I might be asked, and that kind of thing.

And it was perfect. I, within an afternoon, had the whole of recent constitutional law. I went to Washington. I was never asked in those interviews how I would rule on anything. I was asked very good questions about the Constitution and about the federal division of power and a whole lot of very appropriate questions at the Justice Department. It was in what I think is still the Office of Legal Counsel, and they were hard, and they were interesting, and they were kind of debate-style questions, but they were not, insofar as I discerned, targeted towards how I might rule on anything. I hope that hasn't changed. I get the sense that there may be some change in that process, but for me, it was an interesting, very challenging, very interesting process.

At my confirmation hearing, which now, of course, they seem to be much more politically charged as well, but there were very, very few questions. I did have one detractor show up from KU who wanted to complain about how the university treated the hiring of various kinds of people. But other than that, the questions were quite soft, and in fact, Senator [Strom] Thurmond was chair of the Judiciary Committee at the time. He asked a question that now would have him run out of there about how somebody with such a little baby was going to be able to handle this big job. And my answer to that was always, "Well, I was running a university with a 70-million-dollar budget. This seems easy." But they were very softball questions that I got.

JC: It sounds like your confirmation hearing was pretty benign as compared to the tumultuous hearings and bitter confirmations we've seen, certainly at the Supreme Court level. But it has trickled down even to the Court of Appeals and the District Court, hasn't it?

DRT: Oh, yes, it has, and I've watched those with great care. My concern actually is not with how the senators are reacting or how the nominee is reacting. My concern is that the public is getting a skewed notion of what judges do. Judges don't decide cases on their own beliefs. Public education is such a critical part of self-governance that when the public gets the wrong idea about how decisions are made or are led to believe that what I believe at x issue is how I'm going to rule on something, then they don't understand the judicial role. I hope every single one of those nominees will be deciding on the facts of the law because that's what they need to be doing, but I worry that those very volatile confirmation hearings send the wrong message to the public.

JC: I suppose in a bit of a follow-up on that in the context of Kansas, when you left the court, it was three years before [Nancy Moritz](#), who was then a justice of the Kansas Supreme Court, was confirmed to be your successor, and the vacancy created when [Judge Briscoe](#) became a senior judge in March 2021 now is the vacancy that's been open the longest of all of the federal courts

of appeals. President Biden's nominee for that, [Jabari Wamble](#), the first person of color from Kansas to be nominated, expired with the end of the last Congress. Is there a reason, a sense why we've had these problems in Kansas? What impact both on public confidence and on the working of the courts does that have?

DRT: I'm not naive. I understand that politics will play a big role. In my view, it's playing too big a role. What you should look at is whether the person is qualified, whether they're dedicated, whether they have the right attributes of citizenship, of demeanor, of all the things that would be required.

I was so dismayed. I thought I would be replaced immediately, or I might have made some different decisions. It just never occurred to me that in Kansas, they wouldn't be able to come up with a qualified great person. At the time, I had my own favorite. But that aside, it took some long.

And now for Judge Briscoe's position, it's taking so long. I guess the good and the bad of that is the court will keep on working. They won't quit. No matter how short-staffed that they get, they will keep the workload up. But it deprives Kansas of that—it's not representation, but it is in a way on the court. And the Kansas lawyers who appear before court do not have that context. You know, I said I was a Kansas wheat farm person. That means something.

I will never forget sitting in the Judicial Conference in the United States, and I won't name the judge, but giving a very distinguished judge a lesson on what alfalfa is. It's just differences of where we come from. And I think that deprives this state and all of the states that are laboring under this from what was supposed to be their representative on the court.

JC: Given the problems with the confirmation process trickling down to the lower levels, some folks at the state level have argued that we ought to replace the nonpartisan selection system that Kansas has with the federal model, of just flat-out gubernatorial appointment and Senate confirmation. Are there differences, or is that a good or a bad idea?

DRT: Oh, I think we should keep the retention system that we have with all the committees or commissions that look at qualifications. When I was out in California, I did a fair amount of work there because there was some pushback to try to go to fully political appointments and think about that in California.

So when Kansas began to raise that question, and it threatened to be on the ballot, I went to work along with [Senator Kassebaum](#) and a number of other people because I think that system of weighing the qualifications but giving the executive a prerogative is really an important system and avoids at least to some extent some of the, for lack of a better word, in terms of some warfare that goes on in trying to pick judges because the best judges out there are the judges that are going to read the law, look at the facts, look at the precedent, look at what the situation is, and decide it as closely as they can what that precedent is. So you don't want to get too far away from that merit selection process.

JC: We've been referring a lot to the Court of Appeals as being from the 10th Circuit. For the benefit of non-lawyers who might be watching this interview, could you explain how the federal courts are organized by circuits, what the composition of judges on the court is, and how the court goes about conducting its business when the judges are all over the place and not in the same place?

DRT: Sure. Just sort of a basic lesson in the judiciary: the federal judiciary is divided into—first there are district courts, and in each state, there are federal district courts. In Kansas, we have actually more than most people know because all of the forts are also places of holding court, and we have a lot of forts in Kansas. But principally, it happens in Wichita, Kansas City, and Topeka, where our federal district courts are.

Then appeals from those federal district courts go up to a geographic circuit that consists of several states. In the case of the 10th Circuit, it's six states, principally Rocky Mountain and the Prairie State, but we are Kansas, Oklahoma, New Mexico, Colorado, Wyoming, Utah. But each part of the country is divided into geographic circuits that is numerically numbered.

So, for example, the First Circuit is up in the Northeast, principally Boston, but in the Northeast. Then the Second Circuit is in New York and the surrounding areas. Then the Third Circuit, you go down to Florida and the South. And the Fourth Circuit is in the eastern part of the middle of the country. It goes that way to the ninth circuit, which is in California and Arizona and Washington and Oregon and Guam and Hawaii.

The appeals from each state district court go into these geographic circuits, and the Circuit Courts of Appeal, you get an appeal of right. So everyone can take their appeal from the district court to the circuit court. That is not true at the next step.

At the next step, to go from the Circuit Court to the United States Supreme Court, which is the next step, it takes a petition for a writ of certiorari, which says they decide whether they take the appeal or not. But in the Circuit Courts of Appeals, it is an appeal of right.

And then to the point of how you do your work remotely, now that probably has changed even since I was on the court, but what we did is did our work in our home chambers. I had mine here in Lawrence as does Judge Briscoe. But then we did it by mail or phone. Now I'm sure it's email. It's probably something even more sophisticated than that. I don't know how they're doing it exactly, but anyway, the remote exchange of ideas.

And then you go to Denver in the case of the 10th Circuit for the oral arguments. But COVID even changed that a bit so that now some of the oral arguments are still being done remotely. And judges could always, if they had an illness or some kind of family emergency, you could always vouch in and watch the videotapes of the arguments. So it works, and it's very efficiently actually.

I always enjoyed the terms of court because getting to know your colleagues, both in the courtroom and outside the courtroom was really one of the benefits of the job.

JC: So you have judges on the court from all these different states. What was the process then - I assume it hasn't changed - of how you decide which judges are going to hear which cases?

DRT: That's an important question, and it was sort of a hotly discussed question. In the 10th Circuit, and now I think in all the circuits, but I don't know that for sure, it is a total random draw. Well, it's probably by computer now, but anyway, you put the name of the case into the hopper, and you draw out three judges.

We liked that system a lot. I don't think it was always done that way in the 10th Circuit, but certainly almost all the time I was there, it was done by random draw. And I'll just never forget the day, we didn't announce until the morning of the arguments who was on the panel, and I'll never forget the day that it was an all-female panel for the first time ever in the 10th Circuit. And the lawyers took a look at the docket, and we took a look at each other because we were "Oh!" We got out on the bench, and then later, I think it was the *Denver Post*, one of the newspapers quoted lawyers as saying, "Well, they asked very good questions." Shocker! But it's always random, and now I think they announce the panels a little ahead of time.

JC: I suppose what that means was the fact that a case was tried in the US District Court of Kansas, when it gets appealed to the 10th Circuit, there may be none of the judges from Kansas who are on the panel, even if the case is one based on state law and that is only in federal court because the parties are from different states.

DRT: That's correct. You're never promised somebody from your home state. In fact, that's the purpose of the Circuit Court of Appeals, to provide a little bit higher level view of the law that's being applied or whatever the kind of case it is, although I always really love the 10th Circuit because of the variety of case load.

When you think about those states, think about the natural resources, the Indian reservations, the military installations, the wonderful national parks, the diversity of the case load in the 10th Circuit, the religious diversity, New Mexico, Kansas. you get a lot of different religious perspectives. So I found that really inspiring to be involved in this judicial decision making in such a diverse circuit.

JC: I want to touch on one thing before we go on to the cases. In Kansas, the justices don't have lifetime appointments. They're subject to retention votes periodically whether to retain them or not. In the federal system, it's a lifetime appointment, but judges can become senior judges if they meet certain criteria. Maybe it would help if you'd describe that process and how that helps the court.

DRT: Yes. Very clearly, in the federal courts, there is a lifetime appointment, and what is good about that is you are simply free of any political pressure of any kind, and you can't take

donations. It's totally different from the political process. And the lifetime appointment says you're going to get paid even if you make a really unpopular decision so that you aren't influenced by the winds of political sort of change, this issue today and another issue tomorrow. You can kind of keep along that line of already established precedent. The law moves at glacial speed, and that's how it ought to be because if it moved any differently, it would be way too upsetting to the public order. So the lifetime appointment is very much a cog in that wheel of making sure we move at an appropriate speed without any political pressure at all.

Now that is different from the states. Various states have different mechanisms. But that lifetime appointment is extremely important. Then when you get to age sixty-five and have served a number of years, you can take senior status so that your position can be filled with a probably younger person, and that's important, too, to keep the lifeblood of the courts kind of streaming in, or you can retire, and then your salary becomes your pension when you retire. And then when you retire totally, which is what I did when I went to Pepperdine, you can get back in the mix of things, and then your salary stays at whatever it was when you left the bench.

As I think I've already said, I might not have retired if I'd known they'd leave that position open for so long. People always ask me why I did that. There were probably a myriad of reasons. One of them was I really believed that we need to make room for new ideas and new people. I may think that I have all the answers, but I don't. It's clear to me in this technological age I don't. But new people with new experiences and new backgrounds and new ways of looking at how you do your work. As we all know, we do our work the way we do our work, and it's really hard to change.

So that was one of the reasons. I thought, "It's just time for new thoughts and ideas." The other was the one I mentioned. I loved university administration, and the opportunity to—I never lived, other than Washington DC, I'd never lived outside Kansas. So going to California was quite a new experience.

JC: You indicated that a senior judge has the option to continue hearing cases or not. I assume if they do, that helps deal with—

DRT: The vacancies.

JC: And the volumes of cases. You've mentioned the appeals to the Court of Appeals are of right as long as you have a final judgment or the like. Were there difficulties when you were Chief Judge — or really the whole time — in managing the volume of appeals that you had?

DRT: Yes, it was always a challenge because it comes in fits and starts. But the criminal law load was always heavy. The habeas corpus load was always heavy. All six of our states had the death penalty along with the federal death penalty which came in while I was on the bench. Those cases simply must be dealt with. So trying to keep the civil docket going along with the criminal docket is a challenge, but you know, you just find ways to work with that.

One of the things that happened to me, and it's always been a source of some laughter in our circuit is when I first came on the court, there was a huge backlog of cases, and we were very far behind. My memory is we were one of the slowest circuits in the nation. I couldn't stand it. It just drove me crazy.

So one time we simply all went to Denver. This was before everything's computerized. We all went to Denver and had the staff bring those files in on these giant carts and for a whole week, we just put them in, oral argument, non-oral argument, sent it to the staff, all kinds of categories. Well, within a year, we'd gotten caught up. But everyone who was at that retreat remembers that I said, "All right, we're going to take the whole load, and we're going to divide it up." And we got caught up.

JC: That's being proactive. I can imagine that you'd be one to do that. You mentioned some of the categories of cases that would be a bit unique to the 10th Circuit. What were the cases, your categories of cases that were the most challenging or difficult for the court?

DRT: Well, of course, the most difficult are always the death penalty cases. You wouldn't be a good judge if you didn't say that, and if you didn't mean that. I think we all gave more than the full measure of our attention to those. but when you go into the civil docket, I found the oil and gas and mineral cases just fascinating, and often they were colliding with either the landowners or an Indian tribe or competing interests for the mineral resources. I found those very interesting.

Water cases were of course very, very important to our circuit. I always found endangered species cases interesting, and George Coggins would love to hear me say that. I like to say that I think I know more about the grey wolves than the biologists know about them because they kept coming in and out of Yellowstone and Glacier National Parks. And then there were some very interesting military installation cases that came along that because we had so many bases out here in the middle of the country. Those were interesting as well.

But then we just had the run-of-the-mill diversity cases or a federal question. We had a lot of federal question religion cases in this circuit. I remember clearly the statue cases long back now it seems when they were putting up religious depictions in parks and things like that. Those were really interesting cases, and they were early on. I'm watching right now all the freedom of speech cases that are bubbling up around the country because we had addressed those long, long ago when there wasn't a lot of guidance yet. We had *New York Times v. Sullivan*, and we had some of the early cases, but now there've been a lot more. I'd say they were a lot more complex cases now.

JC: You're the only federal judge on either of the courts that has been subject to one of these interviews. It may be worth dealing with some of the misconceptions folks have about what cases the federal courts hear and what they don't. I know there are a lot of folks who think every case that has any issue of federal law in it can be filed in federal court and that every case that's based on federal law has to be filed in federal court.

DRT: Right.

JC: Go back to your law professor days and tell us why those are misconceptions.

DRT: Well, they are misconceptions because the federal court, getting back to basic civics, but the federal courts are courts of limited jurisdiction. The state courts have very broad jurisdiction reserved to the states, the power is to the states. So every time you hear 11th Amendment or something, we are reserving to the states a whole lot of power under this Constitution.

So what the federal courts are given jurisdiction over are those cases where the litigants are from more than one state, diversity of citizenship, plus a given dollar amount, and that changes from time to time, and over federal question jurisdiction, but that's not necessarily decided in federal court. That can be decided in the state court as well. Again, federal court's limited jurisdiction, state courts have broad, wide jurisdiction statewide.

And then I guess I should say a third category is federal habeas corpus. The federal courts do have authority to review what's called habeas corpus, which is a big fancy legal term. It essentially means is this person improperly held by the state or the federal government. It's an incarcerated person. So your sort of last point in the appeal process in a federal criminal case is the right to appeal to the federal courts, saying there's a constitutional violation and that it should be remedied in the federal courts.

Now those are numerous in number, not many granted because the state courts do a good job. They are quite capable of doing that. Once in a while, once in a long while, there is a habeas corpus case that has merit and that needs to be given very serious consideration.

JC: But outside the area of habeas corpus, you could have a federal issue that comes up in a state case, and the state decides it one way, and the same issues comes up in a wholly separate federal case, and your court could decide it differently.

DRT: That's right.

JC: And the state is not bound by your decision.

DRT: They don't have to go by what we see. These days, there are some competing federal circuits at the moment on some very important issues, and it's going to be interesting to see how those get resolved.

JC: That's one of the reasons why the Supreme Court might grant certiorari when there is that kind of a conflict.

DRT: That's right.

JC: Between circuits or between states.

DRT: Yes. In fact, it's something the public should know. In writing an opinion in a case like that where it's a matter of broad national concern, it's the judges always try to, if you will, flag in the opinion, not privately, but in the opinion that this is one where we differ in the Second Circuit or somebody else, or we differ from a state court so you kind of give the United States Supreme Court a little peek as to whether the petition of certiorari should be granted. It is one of the areas where they, I think, try very hard to resolve splits that are of national importance.

JC: In the introduction, I mentioned your appointment to the United States Judicial Conference. Would you describe its role in the administration of federal courts and specifically the committee you chaired on the judicial branch?

DRT: Yes, the Judicial Conference of the United States is chaired by the Chief Justice, and it consists of the chiefs of each of the circuits plus an elected district court judge from each circuit. So there are two judges from each circuit on the judicial conference, and it does the whole of the administration for the federal courts—adoption of rules, adoption of timetables, approval of courthouse projects, approval of staff changes, whatever it takes to administer a big institution.

Now, we of course have the Administrative Office of the Courts in Washington that does—the Judicial Conference makes the decision, and they carry out whatever that decision is. The committee that I chaired was a committee on the judicial branch because one of the things that's so important in our system of government is that the three branches talk among each other, and there aren't really good mechanisms for that. The Chief Justice gives his State of the Judiciary address every year, but there are ongoing thing.

I'll give an example. When I was on the conference, the first Violence Against Women Act was in the Congress. The Judicial Congress of the United States was not—their concern was with how that would be administered through the courts because it removed from the state courts a wide range of behavior that had been in the state courts and would move to the federal courts. So the concern of the Judicial Congress was about how we would handle in the federal courts that sort of change in jurisdictional reach.

So we had to go visit with Congress and the appropriate committees and so on and kind of work out what the issues were among our branches. Similarly, with the Justice Department, we've got US attorneys all over the place, and when things would get a little out of kilter administratively, then we'd have to work with the Justice Department.

So my committee's job was to do that interaction with the other two branches of government. It was very interesting. There you do see the three branches at work—the elected branch responding to the politics. The executive branch—of course they respond to politics, too, but theirs is more, "How do we get this done?" Once Congress says we have to do it, once the courts say it's okay, how do we effectively get it done?

One of the best examples of that is how many public defenders do you need around the country to try to keep up with what the AUSAs are doing. It's just fascinating inter-branch cooperation. I worked with a couple of judges who are excellent at that, both of whom now unfortunately are gone, but one had been in the Congress. So he knew really how to do it, and one had worked as a Congressional staffer. [Justice Breyer](#) is very good at that because he worked on the Hill. I worked with him when I was on the sentencing commission because he had worked in the drafting of the United States sentencing guidelines. So we had the opportunity to kind of see behind the scenes why and how those guidelines were implemented.

So that committee, in my judgment, the most interesting committee of all, because you were interacting all the time, and we'd have, once a year, I think it was, we'd have an inter-branch conference in which the chairs of the committees and the chairs of the Judicial Conference, the attorney general and his or her designee would be there. So it was fascinating to see from the perspective of all three branches of government.

JC: The classic room where it happened.

DRT: Yes, or didn't as the case may be.

JC: Your work to improve the legal profession has also included your involvement with the [American Inns of Court](#), which seeks to enhance lawyer ethics and professionalism and civility. You helped start the Inn in Lawrence and served on the National Board of Trustees and as president of the American Inns of Court Foundation for four years. Would you like to talk a bit about that and why you're so passionate about how that movement can help the profession?

DRT: Well, this is where I really am forever the optimist. Despite all the political rhetoric, despite all the jousting that goes on in the courtroom, I really believe that the legal profession is the instrument for civil discourse, and when I say "civil discourse," it is trying to take the most intractable of our problems, whether it's a courtroom case or whether it's something pending in Congress, or whether it's a worldwide issue, lawyers are trained to take those hard and emotional and sort of passion-inspiring issues and argue civilly, argue thoughtfully, listen carefully to the other side, treat each other with respect. I believe that if lawyers will behave, they are professionally required to behave with civility, with respect, with the kind of fully educated understanding of the issue, that we could help not just this nation, but the world try to address some of the problems we have.

No one has all the right answers. Nobody knows better than a judge that there are way more than one side of a case, and one viewpoint on an issue. Early on, [Chief Justice Burger](#) actually asked me to start the Supreme Court Fellows program. I didn't do that, but he did convince me, he along with Judge Christensen from Utah, convinced me way back in the early seventies that the thing was to have an American Inns of Court movement that talked about these values of professionalism, civility, all of the professional ethics that are required of a lawyer.

Now do we live up to those standards? Most of us try. But I have been really just wholeheartedly devoted to that because I think Chief Justice Burger and Sherm Christensen were right, and never more than now. I don't like to bash anybody, but when it gets to be a sound bite on the media, then it's hard for thoughtful discussion to occur, and I'd like the lawyers to be the catalyst for that thoughtful discussion.

JC: And we're fortunate to have five American Inns of Court in Kansas.

DRT: In Kansas, yes. They're thriving, by the way. They're doing very well. I'm very proud.

JC: You mentioned the international element. I can't quit without asking you about your work in Albania, developing the system there, which must have given you a new perspective about our Constitution and our legal system. Would you like to talk about this?

DRT: Yes. I was called to be part of a—I think it was a five-person delegation that went to Albania just after the Velvet Revolution, and I'll try to do this very quickly. That was one time when Albania had the most repressive dictatorship in the world, and that's saying something. So we were asked to go in. There was a law professor. There was a president of the American Bar Association, two judges, really, really a distinguished group going in to help them write a constitution.

I probably should have written a book about this experience, but just to give you a flavor of it, but when we landed, a) you weren't on a commercial—they hadn't had commercial flights in there for very long, and when you landed there, you landed on what you see on TV, the old World War II octagonal brick runways with grass in-between them, bouncing along into the Tirana airport.

The Tirana airport was open. There were no windows. In fact, most of the government buildings, there were no windows. You would see cars and trucks being pulled by donkeys. There was no gasoline and all that.

So here we are, meeting with this delegation in Tirana to try and build a constitution. Well, you don't realize what you take for granted about our system for government when you go into one that has none. I will never forget the question early on, "Where do people get elected from?" And, of course, in our naive, we go, "Well, counties and"—then we realized. There are no political subdivisions. It is just a country. And so trying to get into the minds and history and traditions of another country where they've been under these terrible conditions and say, "Oh, you're elected from counties. Well, we don't have counties." Or "We elect them from school districts." "No, we don't have those."

So you're building from the very building blocks of government, which we so take for granted. We're bickering about whether it's the judges or the Congress that will decide this or someone way up at the tip of the iceberg rather than the grassroots development that we so take for

granted—our roads. That’s where being the daughter of a contractor—you go, “Hey, we’ve got to have the Interstate Highway Act.” We’ve got to have this and that.

So it was amazing. Someone had given me the advice to take Chiclets to me. So I took Chiclets. I was like the Pied Piper. They hadn’t seen colored candy. Those little children were after me everywhere for the Chiclets. I have so many stories. They had been under such repression. People who had tried to escape were shot. The bunkers across the country were there to keep their people in.

I have a story. I guess I will tell it. You can take it out if you want. I kept getting these scraps of paper with a name or maybe a town or a state or something. I couldn’t understand it. I couldn’t figure it out. Well, finally, the only woman in that delegation took me aside very quietly and very surreptitiously because she was afraid as well. She said, “My sister and her husband swam to Corfu, and we know they got out to Corfu because they got on Radio Free Europe to try to tell about the plight of the Albanians.” And she said, “Here is her name, and it’s somewhere in New Jersey. We don’t know if she made it or not, but here’s what we think”—and I don’t know how they knew that.

Anyway, I get back to the United States, and I say to my secretary, “On Friday afternoons on my dime”—this is back when it cost to do a telephone call—“we’re going to try to find these people in these states, and we’re starting with this person.” This was before Google. This was before anything.

Sure enough, there were three names in this one New Jersey town by this name. So I call one of them and a very American, a very youngish voice answered, and I said, “Have you ever heard of”—she said, “That’s my husband’s mother.” I said, “Is she alive?” She said, “Yes, she’s very elderly.” Then I tell my story. “I’m a federal judge. I’ve been to Albania. I’ve seen her sister.” There’s this gasp. “She is alive. She is alive.” So she said, “Wait, don’t call the older woman until I get my husband to go over there to be with her when you call her.”

So, sure enough, I waited fifteen minutes. I called, and this woman in very broken English, very elderly, just was in tears. They didn’t know if each other were alive. There’s a lot more to that story, but anyway it was just a phenomenal experience.

And as you probably know, in retrospect, Albania has tried to adopt a constitution many times and many iterations. Clearly, we got the discussion going, but whether we accomplished what we hoped to accomplish remains for the ages. I don’t know.

JC: But it shows we’re pretty lucky to have what we have.

DRT: Oh, you come home with the sense of “Oh, my land, are we fortunate.” Every time I’ve seen *Hamilton*, which I’ve seen many times, I think, “Those”—they were men mostly—“men left us a legacy that we cannot appreciate fully.”

JC: Hard to follow up on that. You have mentioned that although you could have been a Senior Judge and still hearing cases, you elected to give up a lifetime appointment for the one job in the world that is not a lifetime appointment, Dean of the Law School. You talked about why you did that. What were the challenges there? How was legal education better and worse than it had been when you left it in 1985?

DRT: That is a subject for a lot of conversation. It's better in that there's a lot more—I ran the Legal Aid Clinic here, and we always had the Defender Project here at KU. But clinical legal education was not really in the mainstream when I left legal education. It now is definitely in the mainstream, and that is a good thing. I have the sense—I know it's true—that COVID with all of the moving to online platforms has made law schools, well, all of education, really rethink how we do our business.

But I'd say that that's one wonderful difference. I think at Pepperdine, they'd say that's—I had a part in making sure that a lot of that clinical education happened, and they do a great job out there. They do a lot of arbitration and mediation out there, and I kind of want to see that side of litigation, and they're absolutely excellent at that. So that part has changed for the good.

What has changed for the terrible is how much it costs. The escalating price of a legal education is pricing a lot of very qualified people out of the legal market. Now I am hoping that whatever happened after COVID will maybe recalibrate who we think about the cost of education and how we maybe don't do it over three years. Maybe we do it over less, or maybe we do it over more.

I was on a task force in California. I'm so fortunate. I get to California, and all of a sudden, I'm appointed to all of these things in California, but I was on a Bar Task Force where we looked at revising, revamping the California law school curriculum, and a lot of that was about clinical education, but also it had to do with cost.

The other thing I think is bad, and apparently now it's going by the boards, and that was all the power that *US News and World Report* had. As you know from your Dean days, you just died for that day when those rankings came out, and then you died to be one or two above somebody else, which is ridiculous. Now it sounds like to me that we're retreating from that a little bit, which is a really good thing because various law schools are good for various kinds of students, and cost is so driven by trying to outdo from #56 to #whatever, 52. So that had changed the landscape. It wasn't near as important when I was in legal education earlier. I don't even know if we paid much attention to it, but certainly they were paying now.

JC: It certainly has an impact on cost because the *US News* drives schools to give scholarships, not on the basis of need or to diversify the profession, but to try to drive the numbers. It was a real sacrifice for you to go to Malibu, I suppose, to be Dean at Pepperdine, but happily you stayed involved in Kansas public affairs while you were there in many ways and returned to Kansas when you retired as Dean. It's impossible to imagine you not being active. Would you like to share what you're doing today? You have so many things going on.

DRT: I am delighted to be in Kansas. When you haven't lived in California, you have no idea the traffic and the people and the trying to get from Point A to Point B. I go now out on the roads in Kansas, and it's just like I was liberated. I get to drive. I'm not waiting on an off and on ramp. So that part I'm just delighted. As you may or may not know, my husband didn't move with me. We kept our home in Lawrence. I really keep very much involved in this community and in the state.

But what I'm doing now, well, first and foremost, I'm being a grandmother, which I love. I just had my seventh grandchild, and I'm just over the moon about that. So I love that and love watching what my children are confronting in the economy, in schools, in things that were such givens in my lifetime are not such givens for them. They have lots of choices, but economics is really a big piece of it.

I'm doing some arbitration. I'm doing some mediation. I'm doing some neutral consulting, which means just helping people think through what they should do with a case. I'm doing a lot of—I'm a United Methodist. I'm on the United Methodist Judicial Council, which has its challenges. So I'm doing a lot of that work right now.

But I'm also just enjoying being back in Kansas. We have a little farm in Decatur County, where my husband was born, and we still have the house he was born in. So we go to Decatur County every few weeks and just spend a few days on the farm, not as farmers, I might add, but we very proudly have a family of organic farmers out there that we just are very proud of the work they're doing.

And I keep very involved in Lawrence and in state issues generally. It's fun. I miss the court. I miss my colleagues. The case load, there are other people who can handle the case load and be better than I did, but I miss my colleagues. The people in the federal judiciary that I know and knew are among the most dedicated public servants I've ever seen. They never get another dime except their salary. They never get much attention. You say they're a federal judge, but who can name them? It's pretty much out of the spotlight and unlike the political branches. But they work so hard, and they're such good people, especially my colleagues on the circuit. So I miss that.

JC: I can imagine. My fear preparing for today was that my questions would fail to give you an opportunity to mention other accomplishments that you've had that have had a major impact or to say what you think is important to be said about the courts and the rule of law and where the legal system ought to be going. So as we wind this down, I was to give you a chance to do that.

DRT: Well, thank you. I think in a way you did ask with the American Inns of Court question. I am so concerned about the contentious nature of public discourse. We will not solve problems by throwing grenades. We will not solve problems by saying, "I'm better than you are" or "My ideas are better than you are." We will not solve problems by telling people how to act or what to do or what not to do or what kind of person to be. We simply will not. Human beings coming in all shapes and sizes, all kinds of differentiation, and that's a good thing. If my faith has taught me anything, and if my time on the bench has taught me anything, it is that everyone has value,

and everybody's troubles to them are big troubles, and that we need a really thoughtful discourse that respects every single opinion and every single circumstance.

When you read a case and you read about the circumstances of individuals let's say in the criminal courts or under some kind of protectors or whatever, you realize you have not been in their shoes. So I think the only way to get there is through thoughtful, civilized discourse. I don't want to end this pessimistically. I look around at the much younger generation. I might skip one or two, but much younger generation who are open to so many new things, can do so many things. My little grandchildren can run the TV better than I can. It gives me enormous hope when I watch these astronauts that are going to go to the moon. There they are, sitting at the Final Four game. The whole thing is so energizing.

But my perspective on the world clearly marked before 9/11 and after 9/11. On the morning of 9/11, I was in the Supreme Court conference room with the Judicial Conference of the United States, Chief Justice, chairs of the Judiciary Committees, head of the FBI, chief judges of all the circuits. It was, if you got a room together of powerful folk, it was that room.

And at 9:00, we had our coffee, and at 9:10, the Chief Justice told us to leave the room, leave everything on the table, and of course, you can imagine, you've seen the bedlam that ensued. But for me, I could well have been the target. In fact, we thought we might be, and I lost some dear friends in that attack.

So for me, it's lawlessness or lawful discourse. We only have one choice, one choice for humankind to find ways to live together peacefully. And I think the lawyers can help us do that.

JC: Judge Tacha, this has been a great privilege for me to listen to you and be inspired by you. You've done that with law students countless. You've always been very generous, going back to the universities here, and speaking at Inns of Court. just a genuine inspiration, and I'm glad we get to share this with many more Kansans.

DRT: Thank you. It was a privilege to work with you. Thank you. And, Dave, you as well.

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