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## **INAUGURAL DISTINGUISHED JURIST-IN-RESIDENCE ADDRESS**

### **Introduction of The Honorable Deanell Reece Tacha**

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Today, we launch one of the most important programs a young law school can initiate: a distinguished jurist-in-residence program. Traditionally, law schools invite distinguished judges to participate for a few days in the intellectual life and educational mission of their school. A jurist in residence will teach classes, give a school-wide presentation, meet with members of the local judiciary and bar association, and converse with faculty. As a result, the law school community gains access to invaluable insights from those who are shaping the law and providing leadership to our legal institutions. Today, Chapman University School of Law joins this long-standing tradition of merging legal education and judicial wisdom.

Layered on top of the law school tradition is a tradition unique to Chapman University. The University has long identi-

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fied certain “guiding spirits,” distinguished role models such as Albert Schweitzer and Martin Luther King, Jr., whose ideals and achievements are models for students, faculty, staff, and alumni. However, the advent of both a law school at Chapman and a distinguished jurist-in-residence program gives us a new opportunity to identify and learn from *living* role models: judges who grapple daily with what it means to live out the principles of justice, truth, and integrity. The prophet Micah identified one of the three primary characteristics of the good life is to “do justly.”<sup>1</sup> We at Chapman University School of Law seek to honor and learn from those who actively apply the principles of justice in their professional and personal lives.

We are honored today by the presence of our first such role model, the Honorable Deanell Reece Tacha, Circuit Judge of the United States Court of Appeals for the Tenth Judicial Circuit. With her distinguished record of public service, her commitment to the integrity of the judicial role, and her warm and winsome manner, Judge Tacha is the ideal choice to inaugurate our distinguished jurist-in-residence program.

In 1985, then-President Ronald Reagan appointed Deanell Tacha to a newly-created Tenth Circuit judgeship when she was only 39 years old. Despite her youth, Judge Tacha had already established an impressive record of academic and professional success. Having grown up in a small Kansas town, she attended the University of Kansas, received her Bachelor of Arts degree in American Studies with Honors in 1968, and was elected to Phi Beta Kappa. She received her Juris Doctor degree from the University of Michigan in 1971. She was selected for a prestigious White House Fellowship following graduation from law school, through which she was assigned as a Special Assistant to the Secretary of Labor. Following her year as a White House Fellow, Judge Tacha was in private practice in Washington, D.C., and Kansas. In the fall of 1974, she was appointed to the faculty of the University of Kansas School of Law, eventually becoming Associate Dean of the Law School and, in 1981, the University’s Vice Chancellor for Academic Affairs. As a former legal educator and university administrator, Judge Tacha values the role that institutions of higher education play in improving the institutions of justice and preparing the future leaders of the legal profession. In addition to teaching in jurist-in-residence programs at numerous law schools, she has continued to publish articles in a variety of law reviews.<sup>2</sup> Her scholarly writings include thoughtful reflec-

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<sup>1</sup> *Micah* 6:8 (King James).

<sup>2</sup> See, e.g., Deanell Reece Tacha, *Judges and Legislators: Renewing the Relationship*, 52 OHIO ST. L.J. 279 (1991) [hereinafter, Tacha, *Renewing*]; Deanell Reece Tacha, *Tenth Circuit Procedure and Expectations*, 33 WASHBURN L.J. 43 (1993); Deanell Reece Tacha,

tions on the role of the judiciary and the ethical commitments of lawyers and judges.

Judge Tacha is one of the most influential federal appellate judges in the United States for two reasons. First, she served from 1994 to 1998 as a member of the United States Sentencing Commission, which is responsible for the mandatory guidelines governing federal criminal sentencing. Second, Judge Tacha was a key voice of the federal judiciary, before Congress, the legal profession, and the public, at a time when the courts faced crucial needs to fill vacant judgeships and add judgeships under burgeoning case loads, to adequately staff and fund the judicial branch, and to reform procedures and standards.<sup>3</sup> She chaired the United States Judicial Conference Committee on the Judicial Branch from 1990 to 1994, and the Judicial Administration Division of the American Bar Association from 1995 to 1996. In these roles, she was a leader of the long-range planning efforts of the federal judiciary. She was also a strong advocate for both judicial independence and enhanced cooperation between Congress and the federal courts. Her work and her writings have been shaped by an understanding of the legal system as an essential element of our democratic system of governance, requiring dialogue with the executive and legislative branches. Simultaneously, the legal system is a guardian of individual rights and the rule of law, requiring impartiality and freedom from even the appearance of impropriety.<sup>4</sup> Judge Tacha's personal political skills and unquestionable integrity model the necessary balance between the political and apolitical aspects of the courts.

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*Judges and Legislators: Enhancing the Relationship*, 44 AM. U. L. REV. 1537 (1995) [hereinafter, Tacha, *Enhancing*]; Deanell Reece Tacha, *Independence of the Judiciary for the Third Century*, 46 MERCER L. REV. 645 (1995) [hereinafter, Tacha, *Independence*]; Deanell Reece Tacha, *The "C" Word: On Collegiality*, 56 OHIO ST. L.J. 585 (1995) [hereinafter, Tacha, *Collegiality*]; Deanell Reece Tacha, *James K. Logan: Colleague, Mentor, Friend, Jurist, Scholar, Teacher, Small-Town Kansas Kid*, 43 U. KAN. L. REV. 493 (1995) [hereinafter, Tacha, *Logan*]; Deanell Reece Tacha, "W" *Stories: Women in Leadership Positions in the Judiciary*, 97 W. VA. L. REV. 683 (1995) [hereinafter, Tacha, *Women*]; Deanell Reece Tacha, *Serving This Time: Examining the Federal Sentencing Guidelines After a Decade of Experience*, 62 MO. L. REV. 471 (1997).

<sup>3</sup> See, e.g., *Hearings on H.R. 4357 Before the Subcomm. on Intellectual Property and Judicial Administration of the House Comm. on the Judiciary*, 103d Cong. (1994) (statement of the Honorable Deanell Reece Tacha on behalf of the Judicial Conference Committee on the Judicial Branch, concerning the Federal Courts Improvement Act of 1994).

<sup>4</sup> See generally Tacha, *Renewing*, *supra* note 2 (calling for enhanced dialogue between judicial and legislative branches to advance common sense notions of the common good); Tacha, *Enhancing*, *supra* note 2 (discussing ways of enhancing communication between judicial and legislative branches and highlighting the impact of politics on the necessarily apolitical federal courts); Tacha, *Independence*, *supra* note 2 (exploring the contours of judicial independence). See also *Professional Responsibility: Comments on Recusal*, 73 DEN. U. L. REV. 919, 920 (1996) (interview comments of Judge Tacha discussing the standard for recusal as avoidance of the appearance of impropriety).

Judge Tacha's published opinions on the Tenth Circuit reflect a legal pragmatism like that advanced by Justice Oliver Wendell Holmes, Jr.<sup>5</sup> To Judge Tacha, the law is not a test of fidelity to abstract theory or rigid logic. Instead, the law is practical and functional. Application of legal principles depends very much on the social and factual context of the case.<sup>6</sup> Nevertheless, this pragmatism is bounded by Judge Tacha's clear and strong belief that the role of the courts is to adjudicate disputes, not to make policy.<sup>7</sup> The practical insights of judges like Judge Tacha help law schools bridge the gap between legal education and the legal profession.<sup>8</sup>

Judge Tacha also models public service. She is serving or has served on over 30 boards or committees related to the legal profession, the status of women in the legal profession, community and social needs, educational institutions, the arts and humanities, and her church.

Finally, Judge Tacha is ideal to initiate our distinguished jurist-in-residence program because she simply cares so much about people. This quality corresponds to Chapman's commitment to personalized education and ethical lawyering. Judge Tacha has frequently urged lawyers not to become so enthralled with high-

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<sup>5</sup> OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 1-2 (1923). See also Thomas C. Grey, *Holmes and Legal Pragmatism*, 41 *STAN. L. REV.* 787 (1989). For examples of Judge Tacha's pragmatism, see *Tome v. United States*, 3 F.3d 342, 350-51 (10th Cir. 1993) (determining the relevance of a prior consistent statement under a balancing approach focused on factual context and practical concerns about the propensity to lie), *rev'd*, 513 U.S. 150 (1995); *United States v. Soto-Cervantes*, 138 F.3d 1319, 1322-23 (10th Cir. 1998) (holding that several factors, each individually insufficient to justify detention of a suspect, may be considered together as reasonable law enforcement suspicion legitimizing investigative stop of suspect); *Penry v. Federal Home Loan Bank of Topeka*, 155 F.3d 1257, 1262-63 (applying common sense totality-of-circumstances test to review the evidence of hostile work environment, instead of a mechanical approach to reviewing the evidence). See also David E. Rovella, *Pleas: Justice or Bribery? 10th Circuit Hears Arguments on Whether to Outlaw Federal Plea Bargains that Require Testimony*, *NAT'L L.J.*, Nov. 30, 1998, at A1 (quoting oral argument questions of Judge Tacha indicating that federal bribery statute's application to plea bargaining must be considered in light of practical and historical need of government to have freedom in charging).

<sup>6</sup> For discussions of the contextualism and instrumentalism of pragmatic legal thought, see Thomas C. Grey, *Freestanding Legal Pragmatism*, 18 *CARDOZO L. REV.* 21, 24-26 (1996); Steven D. Smith, *The Pursuit of Pragmatism*, 100 *YALE L.J.* 409, 411, 448 (1990).

<sup>7</sup> See *United States v. Nichols*, 841 F.2d 1485, 1491-92 (10th Cir. 1988) (discussing judicial restraint in statutory interpretation and review for constitutionality). *Trujillo v. Grand Junction Reg'l Ctr.*, 928 F.2d 973, 975-76 (10th Cir. 1991) (refusing to recognize new remedy under 42 U.S.C. § 1981 for discriminatory discharge cognizable under Title VII); *Sac and Fox Nation v. Hanson*, 47 F.3d 1061, 1063 n.3 (10th Cir. 1995) (refusing to abandon precedent). For a synthesis of pragmatism and judicial restraint, see *Strickland Tower Maint., Inc. v. AT&T Communications*, 128 F.3d 1422, 1426 (10th Cir. 1997) (viewing the economic-duress doctrine as a functional application of business ethics to market transactions, limited by historical practice, the economic value of hard bargaining, and judicial self-restraint).

<sup>8</sup> Cf. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 *MICH. L. REV.* 34 (1992).

power law practice that they forget the everyday people whom lawyers and legal institutions are supposed to serve.<sup>9</sup>

More importantly, Judge Tacha gives of herself to others. She has written that she regretted not having strong women role models in the legal profession when she was an undergraduate considering law school in the late 1960s.<sup>10</sup> She has also written that she valued the mentorship of the Dean of the University of Kansas Law School, James Logan, later her colleague on the Tenth Circuit, as he encouraged and supported her decision to attend the University of Michigan Law School.<sup>11</sup> These experiences shaped her strong commitment to being a mentor, role model, and friend to students, lawyers, fellow judges, and law clerks. I have been privileged that Judge Tacha has greatly influenced me for the past 16 years, ever since I was a freshman at the University of Kansas. I worked with her on academic issues at KU, and worshipped with her and her family at church. She has given me wise counsel, and inspired and encouraged me to pursue a career in law and legal education, and even successfully nominated me for a national honor from *Time* magazine. When I was a Stanford law student, she offered me a judicial clerkship. I turned it down in favor of an offer from her Kansas colleague on the Tenth Circuit, Judge Logan, who had been her mentor. I did so for one simple and completely selfish reason; if I clerked for Judge Logan, I could have the benefits of both Judge Logan's and Judge Tacha's guidance. Despite my decision, Judge Tacha, with grace and understanding, has remained my mentor, role model, and friend. It is a testament to her giving nature.

Over the next three days, Judge Tacha will have a similarly tremendous influence on many at Chapman University School of Law. In a moment, she will share keen insights about the future of the federal courts in the 21st century, but the greatest insights will come from learning how she lives out the principles of justice as a federal judge and member of the legal profession. For these reasons, we welcome and honor Judge Deanell Reece Tacha as our inaugural Distinguished Jurist in Residence.

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<sup>9</sup> *E.g.*, Deanell Reece Tacha, *The Tale of Widget and P: A Story of the Legal Profession*, KAN. J.L. & PUB. POL'Y, Spring 1993, at 127. Judge Tacha has also urged judges to become involved in educating the citizenry about the judiciary and constitutional principles. See Deanell Reece Tacha, *The Community of Courts: The Compleat Appellate Judge*, J. KAN. BAR ASS'N., May 1996, at 4.

<sup>10</sup> Tacha, *Women*, *supra* note 2, at 683-85.

<sup>11</sup> Tacha, *Logan*, *supra* note 2, at 493-94.