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## Posted 12:00 AM by Howard Bashman

**20 Questions for Chief Judge Deanell Reece Tacha of the U.S. Court of Appeals for the Tenth Circuit:** "How Appealing" is so very pleased that Chief Judge Deanell Reece Tacha of the U.S. Court of Appeals for the Tenth Circuit has agreed to participate in this Web logï¿½s recurring monthly feature, "20 Questions for the Appellate Judge."

Tacha joined the Tenth Circuit in December 1985 at the age of 39. She attended undergraduate school at the University of Kansas and law school at the University of Michigan. Following law school, she served as a White House Fellow. For the next several years, she engaged in the private practice of law, first in Washington, DC and then in Concordia, Kansas. In 1974, she joined the faculty of the University of Kansas School of Law, where she remained until she joined the Tenth Circuit in 1985. From 1974 through 1977, she also served as director of the Douglas County Legal Aid Clinic in Lawrence, Kansas. In addition to teaching law, Tacha also served in several administrative positions at the University of Kansas, culminating in her service from 1981 through 1985 as Vice Chancellor for Academic Affairs.

On January 26, 2001, Judge Tacha became the Tenth Circuitï¿½s Chief Judge, a post that she will remain entitled to hold through January of 2008. Chief Judge Tacha has her chambers in Lawrence, Kansas, and the Tenth Circuit has its headquarters in Denver, Colorado.

Questions appear below in italics, and Chief Judge Tachaï¿½s responses follow in plain text.

*1. Although several former chief judges of federal appellate courts have participated in this "20 questions" feature, you are the first currently-serving chief judge to participate. Please explain how the role and responsibilities of the chief judge of a federal appellate court differ from the role and responsibilities of other judges in regular active service. In the course of your answer, perhaps you could touch on whether you have reduced your caseload due to your other responsibilities as chief judge, whether you have taken advantage of the ability to have an extra law clerk, your role in considering judicial misconduct complaints, and your participation as the Tenth Circuit's representative in the Judicial Conference of the United States.*

Although I have served in leadership capacities in many organizations, serving in leadership in the federal judiciary is one of the greatest challenges and most interesting assignments I have ever taken on. Sometimes it is said that trying to lead federal judges is like "herding cats." I prefer to think of it as convening and facilitating the work of a group of remarkably bright, committed, and interesting colleagues. Sometimes reaching consensus on a policy or administrative matter among such an appropriately independent and knowledgeable group is a good crucible in which to hone one's administrative skills! With all due respect, I have found no shrinking violets in the federal judiciary. Unlike the corporate world -- or even the law firm world -- there is simply no "bottom line" in the administration of justice other than trying to provide the fairest possible system in which judges are free

to exercise their independent judgment as fully as possible in the context of the constraints of budget, staff, space, and all of the other necessary support systems in the institution. I have greatly enjoyed this challenge and have grown from the experience.

The Chief Judge of a federal circuit is charged with significant administrative responsibilities in addition to a regular caseload. As chief judge, I serve as Chair of the Judicial Council of the Tenth Circuit and as a member of the Judicial Conference of the United States. It is an honor to serve on both. I have enjoyed so much working under the leadership of Chief Justice Rehnquist and the many able chairs of the Executive Committee of the Judicial Conference. Judge Carolyn King, the current chair of the Executive Committee, has shown remarkable leadership in this very difficult past year. Among the many other administrative responsibilities that chief judges carry are responsibilities relating to space and facilities, security, libraries, budget and resource allocation, personnel, judicial conferences, judicial misconduct issues, and a host of representative ceremonial duties. For example, in the current budgetary climate, we are each working with our Circuit Executives to make tough budgetary decisions for the various units within our courts. I welcome these many challenges. Before I came to the bench, I was the Vice Chancellor for Academic Affairs at the University of Kansas, so I have had significant administrative experience. More important, I have been fortunate to have had a very able Circuit Executive and great assistance from the Administrative Office of the United States Courts in fulfilling my administrative duties.

I have slightly reduced my caseload, but I consider it very important to keep an almost full caseload so that I continue to assist my court. Although I am entitled to an additional law clerk, I have not taken advantage of that. I felt it more important to use that position to assist the whole circuit. Following the lead of the two chief judges ahead of me in our circuit, Judges Monroe McKay and Stephanie Seymour, we "donate" that law clerk position to the central circuit staff.

Perhaps one of the most important responsibilities of the chief judge is working with judicial misconduct complaints. These matters are very important to the judicial system and to the administration of justice generally. I think I can speak on behalf of all of the chief judges in the nation in saying that we take these complaints very seriously, and that we are cognizant of our special duty to foster the public's trust in the judiciary. Therefore, we devote a great deal of time to these matters and vigilantly investigate every complaint. The rule of law depends, under our system of government, on an independent judiciary that is in fact impartial, free from bias or pressure from outside sources, dedicated to its public service, and is so perceived. Safeguarding the public's trust in our judicial system is one of my most important duties as chief judge.

*2. What are your most favorite and least favorite aspects of being a federal appellate judge?*

I would list several things as my most favorite aspects of being a federal appellate judge. The first is that I never get bored! Almost every set of briefs raises issues that require me to learn something new or something more about a particular legal issue. Judging is the quintessential job that requires you to keep up with developments in the law. Indeed, we have the great luxury of confronting cases that often are

on the cutting edge of societal controversies and must learn as much as we possibly can about the facts and law that underlie those controversies. Second, I like the fact that federal judges are generalists. I often say that judges may be the last generalists left in professional life, and I have resisted mightily any suggestion that the federal courts become specialized in any particular area. Third, I like what I can only best describe as the inferno of the real world. When you are charged with the responsibility of deciding cases that affect the lives and fortunes of the litigants and many others, you inevitably feel the weight of those decisions. You, therefore, impel your intellect and energy toward trying to do the very best you can in interpreting the law and reaching an appropriate result. When you are constantly aware of the responsibility with which you have been entrusted, I think you cannot avoid pushing yourself to do more -- more research, more work, more thought, more analysis.

I also list among my favorite aspects of the job the opportunity to work with my law clerks. I have had a series of extraordinarily bright, very personable, and just terrific people as law clerks. They are like part of my family. I keep in regular touch with all of them. My personality and preferred way to operate is very informally and very openly with my law clerks. Thus, we form a team in my chambers that is very rewarding to me. I learn as much from them as they do from me. In my relationship with my law clerks, I always try to model a well-rounded professional life. I encourage them to do things other than their law clerking responsibilities -- community service, church work, family time. I am the mother of four, the youngest of which was born right before I came on the bench. As far as she is concerned, all mothers are federal judges. As I have observed attorneys and judges, I have become increasingly aware that the legal profession is a hard taskmistress and that, unless we are very deliberate, we can allow our professional responsibilities to obscure or even obliterate those other aspects of our personalities that brought us to our positions in the profession. I feel very strongly that lawyers and judges alike have a responsibility to their communities, the nation, their families, and their profession to devote significant time outside of their work responsibilities to these other endeavors. It is very easy to become so immersed in work as lawyers and judges that we lose touch with personal and community ties. Thus, in my work with my law clerks, I attempt to encourage them early in their careers to develop habits that foster excellent legal work and a broad range of personal interests.

My least favorite aspect of being a federal judge is related to my commitment to public service and other responsibilities outside of the judicial realm. I work with many philanthropic groups. I find it at times taxing to always draw the appropriate lines between my judicial duties and my philanthropic activities -- especially with social service and education agencies that must raise money for their causes. I am like a broken record when I am asked to be on nonprofit boards or commissions. I always have to remind them that I cannot raise money and cannot be involved in any fundraising efforts. Although I think I have been meticulous in trying to draw these lines, it is a difficult and confining aspect of the job always to remain outside of the vital fundraising aspects of the work of these wonderful charitable organizations -- especially for a naturally gregarious person.

*3. Identify the one federal or state court judge, living or dead, whom you admire the most and explain why.*

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I have two favorite judges. They are at opposite extremes of the spectrum. One of my favorite federal judges historically was Justice John Harlan. I admire him for several reasons. His position on the United States Supreme Court at that time was a very important one but one that found him in dissent on some very important cases. I have often been reminded of a time when I sat with Judge Leon Higginbotham on a moot court panel at Yale when he said something like, "Think how the course of history would have been changed had John Harlan been in the majority in *Plessey v. Ferguson*." I also think of his dissents in *The Civil Rights Cases*, in several Commerce Clause cases, and many others. In my view, although he often found himself in dissent during his tenure on the Court, history has proven that his was a strong intellect and one of the Court's more influential jurists.

The other judge that I admire was a state district court judge in Concordia, Kansas. I had been with Hogan & Hartson in Washington, D.C., working on some fairly significant securities matters. When I returned to Kansas, I went in with one other lawyer and had not been to court really at all. The Honorable Marvin Brummett was the local district judge. There had, of course, not been any women attorneys in that town in the early 1970s, so I was a bit of a novelty. Judge Brummett treated me with the utmost respect and professional care, and, more important, he modeled a judicial demeanor that I have attempted to emulate since that time. He was dignified, kind, entirely professional, and ever so thoughtful. My best example of his demeanor is the first time I went into court on a divorce case. I had over-prepared entirely and thought that I was on top of all of the appropriate questions and issues. After I had fully questioned my client on the stand, Judge Brummett very quietly and thoughtfully said, "Counsel, you may wish to ask her where she resides." Of course, I had failed to ask the most important question in a divorce case -- the domicile question. Instead of embarrassing me in front of the client, Judge Brummett so thoughtfully educated me without a shred of disrespect. I always remember that incident when I think about how to treat lawyers and how to educate them in the norms of the profession.

*4. How did you come to President Ronald Reagan's attention as a potential nominee to serve on the U.S. Court of Appeals for the Tenth Circuit?*

I am absolutely certain that it was Senator Bob Dole who brought me to the attention of President Reagan. Senator Dole was an influential majority leader at the time and had been a friend of my family since I was a very young child. Indeed, my mother worked on his first campaign for the House of Representatives. I was very happy as Vice Chancellor for Academic Affairs at the University of Kansas, but the Senator called me on a number of occasions urging me to put my name in the hat for the court of appeals position. At the time, there were at least a couple of other people in the State of Kansas who were interested in the position. I was junior to them and they had been important to my career, so I hesitated to throw my name into competition with them. I finally was convinced to do so, and both Senator Dole and Senator Nancy Kassebaum were extraordinarily supportive of my candidacy. In light of some of the confirmations in recent years, I have felt very fortunate indeed to have had that kind of support.

*5. The confirmation process that nominees for U.S. Court of Appeals vacancies must undergo is quite a*

*bit more politicized today than it was when you experienced it in 1985. Does the current tenor of the confirmation process cause you any concern as a sitting federal appellate judge, and what if anything realistically can be done to improve the nomination and confirmation process?*

I share the concern that many have expressed about the apparently more politicized confirmation process than I experienced in 1985. The tenor of that process concerns me for a very different reason than the effect that it has on the judge. I worry about how it affects the public. There is ample evidence that the public has very little understanding of the court system, the judicial process generally, and even of the way that we decide cases. When candidates for the judiciary are so publicly questioned about their personal views on various controversial issues of our day, I feel that the public is increasingly convinced that judges base their decisions on their personal views rather than case law, statutes, and relevant facts. In my view, the confirmation process is an excellent example of one of the places where the public could be educated appropriately about the role of an independent judiciary, the true meaning of a government of laws and not of people, and some of the basic tenets upon which this nation was founded. Regrettably, when the public is only exposed to such rancorous questioning about personal viewpoints, it reinforces the cynicism about whether the judicial process is fair for all people. I fully recognize and applaud the constitutional role that the Senate has in the confirmation process. I only wish that all three branches of government would spend some time taking the high ground of educating the public about some of the basic first principles upon which this nation was founded. Regrettably, I think the confirmation process as it stands today is counterproductive in that respect.

*6. Seventh Circuit Judge Richard A. Posner has described his own judicial philosophy as "pragmatic." How would you describe your judicial philosophy, and what sort of cases do you find the most difficult to decide?*

I have always found "judicial philosophy" questions troublesome and difficult to answer. I know that I am described in various publications with some of the labels that people inevitably place on judges. I think this whole question of judicial philosophy is a much overblown concept. In my view, if judges are doing their jobs appropriately, they adhere with careful precision to the law and facts of the case before them. They do not stray into policy or what should be. They stick with the text of the Constitution, statute, or regulation that they are interpreting. Judges quite simply cannot fix problems in our country. Judges can only decide the controversies in front of them. I have found very few cases in which I thought there was ever the legitimate flexibility in the applicable law to bring to bear anything other than that law itself.

I am not, however, naive. I understand that the vantage point from which we see some of these issues may affect our interpretation, but that is why we have a diverse group of judges who bring unique backgrounds and experiences to the questions before them. On any federal appellate court, there will be judges who were appointed by several administrations and who come from a host of different backgrounds and beliefs. In my judgment, this is a somewhat hidden check in the court system that the public, and perhaps even the lawyers, rarely appreciate. It is that mix of analytical vantage points that is one of the great strengths of the federal courts.

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With respect to what cases are the most difficult to decide, I find it difficult to identify any one category of cases. I think it should be said, however, that almost any judge in the nation would say that death penalty cases are among their hardest and greatest responsibilities. The law in these cases is typically quite well established, but I think a judge would be remiss indeed if he or she did not single out death penalty litigation as among the most difficult things that we do.

*7. What is your view on whether the Ninth Circuit -- which now is authorized to have twenty-eight active judges and might soon be expanded to thirty-five active judges -- should be split into two or more smaller circuits, and is there a particular manner of dividing the Ninth Circuit that you view as best? Also, one proposal under consideration for dividing the Ninth Circuit would involve moving the State of Arizona into the Tenth Circuit. Does the Tenth Circuit have any official view on whether putting Arizona into the Tenth Circuit is a good idea, and if so what is it? And please share your own individual thoughts about whether, and why or why not, moving Arizona from the Ninth Circuit to the Tenth Circuit ought to occur.*

I take no position on the split of the Ninth Circuit. I think that Ninth Circuit judges and policymakers are in the best position to make that judgment. I will say, however, that some of the proposals include adding some of the Ninth Circuit states to the Tenth Circuit. My circuit and I oppose those proposals. This position against adding any states to our circuit is not an objection to any particular judges or states but rather a strong view that the size of the Tenth Circuit is about right. We currently have twelve active judges and seven senior judges. We continue to be able to read each other's proposed opinions and keep up fairly adequately with the development of the law in the circuit. Consistency within the circuit is, to me, one of the highest values, and I believe that increasing the size of our circuit could endanger this highly desirable value.

*8. In your role as Chair of the Committee on the Judicial Branch, you have no doubt worked tirelessly to convince Congress to authorize much-needed pay raises for members of the federal judiciary. Once again, however, Congress has failed to take any action. What if anything more can the federal judiciary do to press its case for pay raises, and how much hope to you hold out for improvements in the short term?*

As Chair of the Committee on the Judicial Branch, I have been very much involved in the effort to address the inadequacy of judicial compensation. We were gratified indeed that the Volcker Commission last year identified federal judicial salaries as "the most egregious example of federal compensation policies." There is absolutely no doubt that many lawyers in practice choose not to come into the judiciary because the sacrifice for their families is too great. Similarly, an increasing number of Article III judges have left the judiciary because the opportunities in the private sector were so attractive and the sacrifice for their families so great. We all understand that public service requires some sacrifice. The question is, however, whether the sacrifice has become so great that it threatens the quality of the judiciary. In my judgment, it is incumbent upon those of us who see this problem from the inside to communicate the problem to Congress and to the people of the United States. That is what we attempt to do in our work on the Committee on the Judicial Branch. We recognize that members of Congress,

too, are making extraordinary sacrifices financially. We have remained committed to the proposition that senior people in all three branches of government should be paid adequately to ensure the continuing quality of public servants. The President this year recognized the problem, and he and the Chief Justice recommended to Congress that judicial salaries be increased by 16.5%. Although we were disappointed that Congress failed to act on this recommendation, we are hopeful that by continuing to talk with members of Congress about this important issue we will make some progress in upcoming years.

*9. Judge Richard A. Posner last month in his "20 questions" interview stated, with respect to federal judicial salaries, "in any event there ought certainly be a cost of living differential to reflect the very large difference in the cost of living between large cities and semi-rural areas." As someone who does not reside in a large city, what is your reaction to that proposal? And to what extent, if any, is it relevant to the quest for higher federal judicial salaries that several well-known lawyers in private practice have agreed to accept federal appellate court nominations at the cost of forgoing millions of dollars of earnings that they would have received had they remained in private practice?*

With all due respect to my colleague, Judge Richard Posner, I oppose vigorously any attempt to provide cost of living adjustments to the judiciary on the basis of some difference in cost of living between large cities and semi-rural areas. I recognize fully that this is somewhat self-serving on my part! I think, however, that there are a very important philosophical and pragmatic problems with such an approach. The philosophical issue is that we should treat all Article III judges equally. We have equal responsibility. We have equal duties. Our votes each count the same. It would be, in my judgment, antithetical to the entire Article III underpinnings to distinguish in salary among judges who have been appointed and confirmed in exactly the same way. The pragmatic problem is that although it is obviously true that there is a difference in cost of living between Lawrence, Kansas, and Chicago, Illinois, that does not change the fact that many of our children go away to college all over the country. The single most troubling aspect of the salary issue has nothing to do with our living arrangements and basic necessities as judges. It has everything to do with what we are able to do for our children and families. The two issues most often cited are paying for college education and the ability to leave some estate for those we love. The judges I know are far less worried about where they live and what they eat personally than whether they have provided as fully for their families as they had the potential to do. I live in Lawrence, Kansas, but I have four children -- two of whom are currently in private education and one of whom has been in private education. I know firsthand about the agonizing questions that a judge must ask about whether the sacrifice is too much. Though I love my job and have no intention of leaving, I have experienced several fairly sleepless nights over how to meet various tuition responsibilities. Therefore, I think that this is much more than a cost of living issue.

I cannot respond to how many well-known lawyers in private practice have accepted federal court nominations, but I know that there is something of an increasing trend toward nominees who have already been in public service or in academic life. Although these people often make excellent judges, it is important to the diversity on the federal bench that some of our judges come from private practice. Some of the very best judges on my court are those who have had active private practices and have a

very firm understanding of litigation in the private law firm context. It would be a serious blow to the federal judiciary if those people were less inclined to come into the judiciary.

*10. What qualities do you look for in deciding whom to hire as a law clerk, and are there any sorts of candidates you wish were applying but havenï¿½t been? Also, how if at all did the new "Law Clerk Hiring Plan" change for better or worse your experience in hiring law clerks who will be reporting to work in the fall of 2004?*

Although their academic credentials are, of course, important, I look to hire law clerks that have exhibited interests that go well beyond the law. Many of my clerks have received other advanced degrees and have done significant community and volunteer service. Also, because I received my entire education at public institutions, I feel a real responsibility to look carefully at applicants who come from public institutions. My experience as a faculty member and as a judge tells me that there are excellent candidates who come from a wide range of schools. As is no doubt evidenced from my list of law clerks, I also tend to be as loyal as I can be to those institutions with which I have been affiliated. So far as I can tell, I am getting exactly the kind of applicants that I would like to hire. Indeed, for me, the hardest part is saying no to some who apply.

I very much like the new Law Clerk Hiring Plan. I received exactly the same kind of applicants I always have, but I had much more information on which to rely. I think it is exceedingly important to wait until well after the second year to hire law clerks. I am not among those who think that there is any particular downside to the new hiring plan. I appreciate the work that Judges Ed Becker and Harry Edwards have done on that plan and support it fully. In the interest of fairness, I should say that there are judges on my court who dislike the system and think that it has some regional disadvantages. My personal experience, however, is that we get excellent law clerk applicants no matter what the plan is.

*11. The committee in charge of considering amendments to the Federal Rules of Appellate Procedure is in the process of approving a new rule that would allow citation to unpublished, non-precedential decisions in briefs filed in all federal appellate courts. That proposed rule appears to mirror in substance a local rule currently in effect in the Tenth Circuit. Where do you stand on the question of allowing citation to "unpublished" opinions? And do you believe that federal appellate court panels should be able to designate some of their rulings as "nonï¿½precedential" upon issuance, or should the precedential value of an opinion be left to later panels to determine; and why?*

The Tenth Circuit local rule on unpublished opinions is, as I understand it, consistent with the proposal being considered. I like our rule. I think it is important to have the opportunity to cite to unpublished opinions but that they should not be precedential. I, however, make it a personal practice rarely to cite to unpublished cases in my opinions.

I do have a personal "gripe" about unpublished opinions. Unpublished decision should be very short and limited strictly to the facts of that particular case. To the extent that they add any new gloss to the law, I think the opinion should be published.

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*12. What three suggestions would you offer to attorneys concerning how to improve the quality of their appellate briefs?*

Suggestions to improve the quality of briefs: (1) Make them concise; (2) work on clarity; and (3) do not obfuscate.

*13. Similarly, with respect to oral argument, what suggestions can you offer that might help a good appellate advocate become even better?*

My suggestions are much the same as above. I would only add do not argue as if arguing to a jury. Have a relaxed conversation with the bench and answer all questions directly.

*14. Perhaps it is simply my misimpression, but while certain federal appellate courts appear to be in the national headlines regularly, the Tenth Circuit does not seem to be one of them. In researching your court, one of the themes that I found regularly repeated was the court's very high level of collegiality, a trait that would be welcome, but is not currently always found, throughout the entire federal appellate court system. What to your mind distinguishes the Tenth Circuit from the rest of the federal judicial system, do you think your court's relative anonymity in the minds of political operatives at the national level has helped in gaining the confirmation of four judges during George W. Bush's tenure as President, and perhaps you can say a few words about how your circuit reacted to and rebounded from one of the greatest tragedies ever perpetuated against a federal judicial building when the Alfred P. Murrah Federal Building was attacked in April 1995.*

The Tenth Circuit has worked very hard to maintain a high level of collegiality among our judges. For the most part, I think we have been very successful. It is important to stress that this collegiality is not about agreeing or even necessarily getting along. It is instead about fostering an atmosphere of mutual respect and understanding, encouraging open dialogue, and facilitating opportunities for the judges to be together to discuss both legal and non-legal issues. Much has been written about the importance of collegiality on an appellate court, so I will not repeat that. I will, however, say that I believe that after almost eighteen years of watching this process, I am increasingly convinced that this elusive but important concept of collegiality makes a difference in the quality of the law. We work very hard at attempting to find consensus. We make suggestions about opinions -- both when we are and are not on the panel. We exchange views openly. By and large, the exchange is refreshingly professional, thoughtful, and careful.

We engage in several practices that help maintain collegiality. We schedule all of our oral argument sessions for the same week when all of the judges in the circuit gather in Denver. We have regular administrative meetings together and many social opportunities that most or all of the judges attend. Although some might label this superficial, we find it a very helpful way to become better acquainted and to understand more fully the perspective of each judge. Kindness and professional behavior is simply easier among friends.

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I am somewhat surprised that you have asked about our court's anonymity. When you look back over some of the major cases of the last decade, and indeed of the last century, it is important to be reminded that the Tenth Circuit was the place where *Brown v. Board of Education* arose, where the Oklahoma City bombing case arose, and the no-call list cases were filed -- to just cite a few! I prefer to think of our reputation not as anonymous but as one that is low on controversy. The collegiality to which I have referred saves us from some of the internal court issues that have plagued other circuits. The fact that we have recently added four new judges speaks more, it seems to me, about good nominees and good political support than about anything internal to the court.

Perhaps the darkest day in Tenth Circuit history was the day of the bombing of the Alfred P. Murrah Federal Building in 1995. The namesake of the building, Alfred P. Murrah, was one of the most revered federal judges in our circuit during his time on the bench. I remember exactly where I was when I learned about it -- just as I do those infamous dates of the Kennedy assassination and September 11. We all lost friends. Our judges were profoundly affected. Indeed, Judges William Holloway and Robert Henry, both from Oklahoma, were personally affected. In some ways, we knew ahead of the rest of the nation of the horrors of terrorism. I think the experience of that day and the resulting litigation had a sobering and thoughtful impact on all of the courts in the circuit. We understand with great clarity the enormous responsibility that courts have to make sure that we accord defendants all of the constitutional and statutory protections while, at the same time, providing the victims a full and fair adjudication of even the most egregious criminal acts. All of the judges involved in the resulting litigation bore their responsibility with great dignity and seriousness.

*15. I understand that you are working with federal judges throughout the nation to encourage increased contact between the judiciary and the press. What is the goal of that effort, and in what ways do you currently view the press as doing a good or not so good job of covering the courts? Also, if I may return to the topic of judicial misconduct complaints, some have criticized the process of investigating and resolving such complaints as too cloaked in secrecy. Do you agree?*

Working with the Freedom Forum and the First Amendment Center, the Committee on the Judicial Branch has hosted small colloquia around the country between judges and journalists. These have been very successful meetings in which prominent judges and journalists have convened to discuss issues of common interest to the press and the judiciary. As I indicated above, in my view, the public's perception of the role of judges and the judicial process is exceedingly important to continuing respect for and understanding of the law. Thus, we have been working with journalists around the country to understand each other's vantage points on covering court proceedings and court issues.

Coverage of court issues varies considerably around the country. In some media markets, court coverage is a very high priority while in others less so. In general, I think the national coverage of the United States Supreme Court is reasonably good. I do not, however, know what the Justices would say about that. We find that coverage of the courts is particularly difficult for the broadcast media because of the need for "sound bites" in broadcast. These short sound bites are rarely long enough to give the

proper context to the complex issues that courts address. On the whole, we have found these judge/journalist seminars to be very effective ways for judges to learn more about the concerns of journalists and vice versa.

On the issue of judicial misconduct complaints, I think it is exceedingly important that these continue to be done internally and without any publication. The vast majority of judicial misconduct complaints are meritless or are more properly the subject for a motion for disqualification rather than a judicial misconduct complaint. In either case, it would be an extreme disservice, both to the judge and to the system, to publicize the fact of a complaint. Any publication would give an entirely misleading sense of the seriousness of the issue. In those misconduct complaints that have merit and are not related to the merits of litigation, chief judges and judicial councils are involved in very important investigation and analysis. It is many times most constructive for the judge and the council to have a full and candid evaluation that occurs principally between the chief judge and the judge involved. Very few of these misconduct complaints would ever reach the level of impeachable offenses. Thus, the interests of the public and the interests of the judiciary are best served by constructive remedial action rather than by any public disclosure. Finally, and perhaps most important, our system of government requires an independent judiciary. Thus, it falls to the judiciary to make certain that it investigates fully every complaint, but that it does so without compromising the independence of a judge or of the judiciary as a whole.

*16. Recently there has been press coverage that cutbacks in the federal judiciary's budget have necessitated and will necessitate the elimination of non-judicial positions within the federal court system. Can you explain whether these job losses are expected to impact the ability of the federal courts to deliver justice in a timely and cost-effective manner, and what effort, if any, is underway to try to obtain additional funding from Congress to avoid these or other threatened cuts?*

The federal judiciary is exceedingly concerned about its budgetary status for 2004. The Budget Committee, under the able direction of Judge John Heyburn, has worked tirelessly to try to communicate with Congress about the essential nature of some of the tasks of the judiciary. A current supplemental request is pending. If there are job losses, we will make every attempt to assure that the federal courts can deliver justice as fully and effectively as possible, but it is inevitable that budgetary cuts will impact service. For example, it is essential that we continue to be able to provide defense counsel where necessary, to provide adequate security, to have safe and efficient courtrooms, to provide probation and pretrial services, and to keep up with the civil caseload. These are very large orders in the current budgetary climate.

*17. You previously served on the U.S. Sentencing Commission, which among other things is involved in issuing and amending the U.S. Sentencing Guidelines. Some current and former federal judges have spoken out in opposition of the so-called "Feeney Amendment," a recently-enacted law that has been perceived as further restricting judicial discretion under the Sentencing Guidelines. As simply a matter of policy, what are your views on that amendment?*

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My immediate concern with the Feeney Amendment is more process-oriented than substance. I share the concern of the Judicial Conference that the Feeney Amendment was promulgated without sufficient consultation with the judiciary. As I understand it, the appropriate committees of the Judicial Conference and the judiciary in general were not informed prior to the promulgation of the Feeney Amendment. As with almost all matters affecting the courts, I firmly believe that the nation is best served when all three branches of government work together prior to the passage of statutory changes -- particularly those that affect the criminal justice system so profoundly.

I also share the concern expressed by many of my colleagues regarding the collection of downward departure information on individual judges. Although it is important for Congress to have information about how the Sentencing Guidelines operate as they make legislative judgments on possible amendments to the Guidelines, my experience is that the Sentencing Commission fulfills this function ably. I believe that we should view the authority of Congress to legislate and gather information in the important context of the duty of every judge to perform his or her judicial duties without a hint of intimidation or retribution. Judges cannot be removed from office for their judicial acts. Systematic collection of judge-specific data carries the unfortunate implication of some effort to affect the judge's performance of his or her judicial duties. Certainly, Congress would have been better informed about this important concern if a dialogue between Congress and the Judiciary had occurred prior to the passage of the Feeney Amendments.

*18. During your tenure on the Sentencing Commission, a proposal was considered to eliminate the disparity in sentencing between drug offenses involving crack cocaine and powder cocaine. As I understand it, a majority on the Commission agreed with the proposal, and you were among a minority that dissented in favor of retaining some degree of longer sentences for offenses involving crack, as opposed to powder, cocaine. These disparities in sentencing have been challenged as racially discriminatory in their impact. Would you please explain the arguments for and against having longer sentences for crack-related offenses, and also whether you continue to believe that crack-related offenses are deserving of longer sentences under the Guidelines.*

Rather than respond, I simply provide you a copy of that dissent. [The dissent can be accessed here, at "How Appealing Extra."]

*19. What is the proper pronunciation of your name?*

I have been asked often about the derivation and pronunciation of my last name. Tacha is my married name. My husband's family is Czech and the surname is of Czech derivation. We are told that the name originally in Bohemia was spelled "Ptacha." At some point during their immigration to America, the family dropped the "p" but kept the "c." The "c" is silent so Tacha is pronounced "Ta-ha." I have wished many times that they had dropped the "c" out of it as well. It would have made pronunciation much easier. My maiden name is Reece ï¿½ a good Welsh name which is much easier to pronounce! My first name also confounds many people. Rather than being a misinformed corruption of the French "Danielle," it is a very Americanized combination of my two grandmothers' names: "Dean" and "Nell"!

20 July 2012. < http://howappealing.law.com/20q/2004_01_01_20q-appellateblog_archive.html>

*20. What do you do for enjoyment and/or relaxation in your spare time, and please be sure to mention your enthusiasm for Kansas Jayhawks basketball?*

Everyone who knows me knows that I am an absolutely fanatical Kansas Jayhawk basketball fan. I attend every game that I possibly can and follow the facts and lore of college basketball with great commitment. In my spare time, I am involved in a number of community activities. I am currently chairing the sesquicentennial celebration of Kansas's entrance into the United States as a territory. With the passage of the Kansas-Nebraska Act in 1854, the Kansas territory became the site of some of the bloodiest early battles that predated the Civil War. Several East Coast newspapers described Kansas as the crucible in which the Civil War boiled. Indeed, in 1863, Quantrill's Raiders came to Lawrence and burned the entire city down and murdered countless people. This is also the year of the fiftieth anniversary of *Brown v. Board of Education*, which will be commemorated throughout the year 2004. I am enjoying working with Kansas's rich history and with the many people involved in that endeavor. I have been active in many arts and educational organizations and currently serve on the Board of Trustees of the University of Kansas Endowment Association and am actively involved in the work of the United Methodist Church. In my true spare time, I love to cook, get away to the lake, and just be with my husband and children whenever I can.