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## Foreword

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## FOREWORD

BY CHIEF JUDGE DAVID T. LEWIS

On behalf of the judges of the United States Court of Appeals for the Tenth Circuit, I express our appreciation to the *Denver Law Journal* for initiating an annual report and analysis of our cases. The undertaking is an ambitious one and its continuing value is entirely dependent on the scholarly care and conscientious study that the faculty and participating students reflect in their work effort. Appellate judges recognize early in their careers that destructive dissents are the easiest of all legal writing and that fair, constructive dissent is perhaps the most difficult of our tasks. As a consequence of this experience and the fact that members of our court do not consider themselves as being in competition with each other, the so-called "bitter dissent" is unknown in the Tenth Circuit. I would hope, of course, that the *Journal* will recognize that its contribution to the growth of the law should lie in a positive approach and will avoid, as the court itself does, the academic cheap hit. This does not mean that the court wants or expects an alter ego in the *Journal*. Our judges are seldom, perhaps never, completely satisfied with their decisions and the *Journal* can certainly spotlight the areas for improvement. Perhaps the ideal function of this report and analysis would be to keep the court neither complacent nor irritated, simply alert.

The position of a circuit judge is the least comfortable in the Federal Judicial System. The Supreme Court, by definition, makes no mistakes and the trial judge can take some comfort in the knowledge that his mistakes can be reviewed and perhaps corrected. Our mistakes are seldom corrected—only annotated. And we must live with them, sometimes with belated recognition of error. The *Journal* can serve well in hastening that recognition or in helping the court to eliminate some mistakes altogether.

We wish, however, that we could present our cases to the *Journal* from a substantially better working background. During my federal<sup>o</sup> judicial tenure the judge power of the Tenth Circuit has increased from five to seven judges. During that same period the caseload has risen from 250 cases per year to approximately 1000 cases. In addition to this startling and staggering increase in workload the Tenth Circuit has been further faced with prolonged loss of judge power during the late 1960's and early 1970's through vacancies. During one period the court had but 4 judges,

and for several years had vacancy days exceeding 650. Necessity mandated adjustment through adoption of limited summary procedures, extensive preargument screening of cases, restricted time for oral argument, and other such innovations. But no amount of internal change can keep abreast of a mushrooming caseload, part of a national increase of 73 percent in caseload since June 30, 1968, with no increase in authorized judge power. Nor is such change conducive to judicial writing at its best. The Ivory Tower has become a production line. We wish it were otherwise.

We welcome the basic undertaking of the *Journal* and pledge our continued cooperation to its efforts.