

In Memoriam

for

THE HONORABLE DAVID T. LEWIS

Chief Judge, United States Court of Appeals
for the Tenth Circuit

United States Courthouse
Salt Lake City, Utah
May 17, 1985
12:30 p.m.

Present:

HON. WILLIAM J. HOLLOWAY, JR.

Chief Judge, presiding

HON. JAMES E. BARRETT

HON. MONROE G. MCKAY

HON. JAMES K. LOGAN

HON. STEPHANIE K. SEYMOUR

HON. JOHN P. MOORE

Circuit Judges

HON. OLIVER SETH

HON. ROBERT H. MCWILLIAMS

HON. WILLIAM E. DOYLE

Senior Circuit Judges



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Proceedings

CHIEF JUDGE HOLLOWAY: Good afternoon. We are convened today for a special ceremony of the United States Court of Appeals for the Tenth Circuit. This ceremony is to commemorate the service of the late David T. Lewis, Chief Judge of this Court, to honor his memory and to express our profound gratitude for his leadership and his distinguished judicial career. I would like to open these proceedings by reading a letter from our Circuit Justice, the Honorable Byron R. White.

"Marion and I must be here rather than in Salt Lake on May 17th, but we shall be thinking of Marie and her family and remembering Dave Lewis, who was such a wise, engaging and effective Judge. His service as Chief Judge especially proves his mettle and the quality of his leadership. Marion and I always found it a great pleasure to be with Dave and Marie. And most people wish they had Dave's delightful sense of humor. Best regards, Byron R. White."

First, at this time I would like to recognize the family of Judge Lewis who are with us. Mrs. David T. Lewis, Marie Lewis, if you would please rise. Thank you. The sons of Judge Lewis who are here with their families, Mr. David Lewis, Mr. Kent Lewis, Mr. Frank Lewis. We are also pleased that the sister of Judge Lewis is here, Mrs. Hancock.

We are grateful that there are the justices of the Supreme Court of Utah who are with us, Chief Justice Hall. We are also pleased that there are other retired justices of the Supreme Court of Utah and district judges of the state. We are honored that district judges of the District Court of Utah are with us as is Judge Baldock from the District of New Mexico, who has been sitting with us this week. We will at this time hear some remarks which have been requested to be made. First, the family of Judge Lewis has asked that the longtime friend of the Judge, the Honorable Calvin Rampton, former governor of the State of Utah, address us. We are pleased now to recognize Governor Rampton.

GOVERNOR RAMPTON: If it please the Court, I knew Dave Lewis for almost 45 years as a fellow practitioner of the law, as a lawyer in his court on both the state and federal level, and as a close personal friend. It's as a friend that I'm here today. Dave and I first came to know each other in the year immediately preceding World War II. We were both then working at the Utah

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State Capitol, I as an assistant attorney general, and he as counsel for the Utah State Tax Commission. While lasting friendship developed between us it's difficult to say why because we agreed on almost nothing. When we had a difficult decision to make affecting the legal rights of the state, you could almost depend that he and I would have different points of view. I was an ardent Democrat, and he was an unreasonably biased Republican. But friends we were.

Our friendship even survived a term, that Dave spent in the state legislature immediately after we had both returned from military service and I was back in the Attorney General's office. I recall arriving at an opinion to the effect that a bill which Dave was sponsoring in the legislature was unconstitutional. That was a twist in view of the reverse situation in which we found ourselves on fairly frequent occasions late in our lives when he was on the bench and I appearing in his court. It's unfortunate that I did not have the contempt power to protect myself against the blistering criticism he leveled at my opinion. On one occasion in the state district court when Dave was on the bench, another lawyer and I got into a shouting match over a disputed point. Judge Lewis took it as long as he could and then stopped us and proceeded to reprimand us impartially. Because I felt I was the offended party, I was fuming and waited until a recess and stormed into his chamber. Without even looking up from whatever he was doing he said, "You get out of here before we both say something for which we'll be sorry." I left and the matter was never mentioned again.

In spite of his preoccupation with the law, Dave was an ardent sportsman. He loved baseball, and for several years while he was on the state bench and for about a year after he went on the federal bench he managed a little league baseball team. It was something he loved and something that gave him an outlet for his emotions, which were usually so carefully guarded. He wrote an article on the problems of the little league manager which was nationally syndicated. But his great love was golf. As often as his judicial duties would permit, he could be found on the golf course either at our own country club or a guest at some other club. Dave used woods exclusively except for a pitching wedge. He had a ten wood which he would use from about 110 yards out and with which he was deadly accurate. It was a peculiar looking club with about the same pitch as a grubbing hoe. I can recall once in the early '60's Dave and I were playing as a two-man team in a best ball tournament in Las Vegas. We were paired with a twosome of fairly good golfers from somewhere in the Midwest. On the first hole, which was a fairly long par 4, Dave was a little more than a hundred yards short of the green on his second shot. He took out this ugly

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ten wood and assumed his unconventional stance. When he addressed the ball with his short club, he sort of squatted like he was getting ready to walk under a hitching rail. In fact, there's a substantiated rumor that the curious piece of statuary in front of the Federal Building at First South and State Street was patterned after Dave's golf stance. (laughter)

Our two opponents chuckled audibly, but their smiles faded when Dave put his approach shot within a foot of the flag and proceeded to putt for a par. During the entire proceedings Dave exhibited no emotion of any kind.

Our friendship became closer after I was elected governor and while he was, of course, on the federal bench. Both of us held positions of some isolation, and in such a position, as members of this Court know, easily proffered friendships have to be viewed with some suspicion. But Dave and I did not have this problem. He knew that I would not be appearing before his court, and I knew there was nothing he wanted from the State of Utah. We sort of used each other as a sounding board. I would seek his reaction to certain problems which faced me as governor of the state, while he would discuss with me in an abstract manner certain legal matters. We usually rode in the same golf cart, and often others in our foursome and too often individuals in carts behind would become mildly irritated because our preoccupation would sometimes slow down the play. Nonetheless, his reaction to my problem had a distinct effect upon certain programs of Utah state government, while I would frequently recognize in one of his opinions a principle of law which we might have discussed months before without my being aware of the parties to the case.

Lucy Beth and I enjoyed a good social relationship with Dave and Marie. We remember fondly times we were their guests at various judicial conferences. Their youngest son, Frank, and my youngest son, Vince, were born a few days apart, and for a few days Lucy Beth and Marie were together in the maternity section of the same hospital. Dave and I frequently boasted to each other of the accomplishments of our children. Neither of us were very modest fathers, but we listened to one another. It was sort of an unspoken agreement: "If you'll listen to my stories I'll listen to yours."

In addition to his love for Marie and his sons, Dave respected and honored his father to a degree that approached veneration. Dave's father had been on the bench before I came to the practice, but I remember him as a small, very neat appearing, very courteous gentleman who was greatly respected by the Bar. In fact, not until Dave had been on the bench for a substantial number of years did the term Judge Lewis come to mean to people who heard it young

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Judge Lewis rather than the older Judge Lewis. One of the greatest satisfactions Dave got from his service in the judiciary was the knowledge that it pleased his father.

Dave was not an effusive person. Those that did not know him well probably considered him austere. However, to those to whom he gave his friendship he was a warm and caring person. As his health was failing, when he could no longer swing a golf stick, he often came out to the club and rode around in a cart to watch the play. He was always welcomed as a nonplaying companion.

Never in my life have I seen him do anything in bad taste, and that applies to the way in which he endured his debilitating illness. He didn't complain and remained up until the end a delightful companion and conversationalist. Dave was not a church man but he was a religious man. Not only did he value the ethical teachings of the great religions, but he also believed in a power greater than man's. I recall one day a month or two before his death he said to me, "I'm not afraid to be dead because I don't think that's going to be the end of me. I don't enjoy the prospects of getting there, but everybody has to do it and I think I can handle it." And handle it he did with grace and dignity. When my time comes, whenever it is, I hope I can go as he did to the same place and in the same manner. Thank you. (applause)

CHIEF JUDGE HOLLOWAY: We are grateful also to have with us some of the distinguished host of law clerks who served under Judge Lewis. To speak for this group and to represent them, we are now glad to recognize Mr. Mike Murphy.

MR. MURPHY: Thank you, Your Honor. I am honored to be here to speak on behalf of the former law clerks of Judge Lewis. In preparing my remarks I was looking for approaches to take, and one possible approach was to come up with a series of adjectives or descriptive phrases to describe this man, this complex man, this man of substance. Some of the phrases I came up with were: A private person, at times shy. A man serious of nature, but with a profound yet subtle sense of humor. A man of few words, as we all know. A storyteller. A man with the perfect sense of propriety. An eminent jurist.

This approach really just did not seem right, however, because no one phrase or definition seemed to give full enlightenment of Judge Lewis, this complex man, this man of substance. So my next approach was to keep on a legal pad a series of anecdotes and stories I remember about Judge Lewis all the time that I knew him. And over the last ten days or so this list got longer and longer and longer. And I have selected a few of those anecdotes to share with you because I think they reflect the complexity of this man, this

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man that I refer to as a man of substance. These anecdotes may not be the most humorous ones; they may not be the most significant ones. In fact, your reaction to them may be, "Why is he telling this?" You must have been there to understand that one.

I came to Salt Lake from Wyoming, and the first encounter I had with Judge Lewis was when he hired me. After he hired me, of course, my ego was boosted up and I thought, well, obviously, the reason why he hired me was because I was the very best candidate. But well into my clerkship he straightened me out on that. He indicated to me that in selecting law clerks he liked to have a diversity from various law schools. He had never had a clerk from the University of Wyoming, and there was no one else from that school that applied for 1972. (laughter)

Now, in applying for this position, I really went after it. I wanted to be a clerk, and I specifically wanted to be a clerk for Judge Lewis. So I had this friend of mine who was the administrative assistant to then Senator Clifford Hansen from Wyoming, and I asked him, "Do you think you could get the Senator to send a letter of reference to Judge Lewis?" Of course, a letter came through, and never once while I was interviewing Judge Lewis did he mention that. And it was a few months into my clerkship before the subject ever came up. The judge had just returned from Washington, D.C. He came into the office the next day. As he was prone to do, he came out of his office into the area where the clerks worked and planted himself in that green stuffed chair, and he just sat there, of course with our undivided attention, but didn't say a word for ten minutes. Then he got up and walked over to the window overlooking State Street, and he was glancing out the window. And then as if to address the window and not me, he said: "I ran into Senator Hansen on my way back from D.C. on the airplane, and I went up and I introduced myself to him, told him you were clerking for me, and his reaction. . . He feigned acquaintance with you, but the man obviously did not know who you were." Judge Lewis then related how he then told Senator Hansen that the only reason he had hired me was because of that letter of reference he sent. And I never did dare query Judge Lewis to determine whether that was one of Judge Lewis's tall tales. If I had I would have deservedly gotten one of his patented looks which law clerks received a lot.

He had this habit, as I mentioned to you, of planting himself in this green stuffed chair, and at times he'd do it and he'd sit there and talk for hours, and other times he'd sit there for maybe 30 minutes just thinking and he wouldn't say a word. And the two clerks were there facing him, and in both circumstances, believe me, he had our rapt attention. He referred to that chair when we first

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came in to clerk as Archie's chair, and if he came out of his office and into the clerks' area and there was a clerk sitting there or a clerk's friend or Catherine Agey or Marlene or one of the secretaries or anybody, for that matter, he'd walk over to them, and it just took the look to indicate that was Archie's chair and he'd just motion them out.

I remember one day when I was clerking with Gordon Gee, who at the time was looking into a position following his clerkship at BYU Law School, and Gordon had a visitor who was then Dean of the BYU Law School, Rex Lee, now the Solicitor General of the United States. And Dean Lee stayed there for 30 or 45 minutes talking to Gordon, and I noticed Gordon was extremely nervous and fidgety. During this time Judge Lewis came out of his office into the area where the clerks were and very appropriately addressed Dean Lee, said how are you, and then saw that things were busy and went back in the office. And I just heard this sigh of relief coming out of Gordon Gee, and I asked him about it. And he said, "Well, I was afraid he was going to come over to Dean Lee and motion him out of the chair."

I appeared before Judge Lewis only twice as an advocate. One occasion I recall involved an appeal of a substantial antitrust judgment. My co-counsel at oral argument was Dan Stewart, now Justice Stewart of the Utah Supreme Court, and we had decided that we would split our time in argument. And I believe the Tenth Circuit at that time was generous enough to offer us 45 minutes, so Dan and I basically had 20 minutes apiece to present our case. We went in in the morning to sign in at the clerk's office as you're supposed to, and it was at that time that I first saw that Judge Lewis was on the panel and I was just immediately ill. And I remembered a story he had told me or a conversation we'd had about how judges treat their former clerks when they appear in front of them. And he had given me numerous examples, and he gave me one example of a circuit judge, I believe, out on the Atlantic coast area who evidently was just unmerciful to his former clerks who appeared before him. And he never told me what his standard was, and had I asked him, it would have been highly inappropriate because I would have gotten one of those patented Judge Lewis looks.

So we went in and we proceeded with the case. We had argument, and Justice Stewart, as he is prone to do, went over his time. And when it came my time I had about 10 minutes left to present 20 minutes of material, and I didn't know how I was going to do it, but I went into it. I was halfway into it when Judge McWilliams interrupted me, and his questions consumed the rest of my time. I had no time left, so I understood the rules and I said, "I

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guess I'll have to conclude my argument; my time is consumed." I was ready to sit down when Judge Lewis interjected and said, "just take five minutes and address the rest of the issues that you should in this case."

I will leave to people who are better able to do this a discussion of some of the more important cases that Judge Lewis has handled. Let me mention one and how it affected me later. It was the Rainbow Bridge case. In that case the majority was based on a theory of implied repeal of a federal statute. Judge Lewis didn't agree with that view, and he commissioned his law clerks to research every case known to man from the Supreme Court where the theory of implied repeal had been referenced in any way by that court. And you have to remember, this is in the days before Lexis, and that was quite a task. We did the research. We turned it over to Judge Lewis. He used the research. He studied the cases, and he wrote a very, very discerning dissent, in my view, of the role of judges in the governmental process. And I was very proud just about two years ago to be able to use that dissent as the intellectual source in a case I had before the Ninth Circuit where I was trying to convince that court to overrule one of its precedents implying a private cause of action in a federal statute.

I've overstayed my welcome, but since Judge McWilliams interrupted me before, I have some rights to take some of his time. These few anecdotes maybe, I'm certain, do not do justice to Judge Lewis, but I think they give us a few glimpses of this complex man, this man of substance. I've attempted to be as brief as Judge Lewis would in a similar role. To the extent I've been unsuccessful, I think I've verified Judge Lewis' view that law clerks are verbose. It was this very concern that was the basis of his banning of all dictation equipment from his chambers when I was there.

Now, rather than risk an order from Judge Lewis himself today, let me conclude. I am a better person today, I'm a better lawyer today for having known Judge Lewis. I suggest that all of his clerks are better people and are better lawyers as a result of having known him. Judge Lewis would be satisfied merely knowing that he was perceived as and was in fact a good and decent man. Would that more men's epitaphs could boast of such lofty principles. They might not use with such frequency rooms like this, the types of rooms where Judge Lewis made some of his many marks. Thank you, Your Honors. (applause)

CHIEF JUDGE HOLLOWAY: Among his associates on the bench there is one special friend who worked most closely with Judge Lewis. The family has requested him to express his personal thoughts for this occasion. I am pleased to recognize Judge Robert H. McWilliams.

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JUDGE McWILLIAMS: I have been given the very pleasant duty of speaking for the court at this session of court where we honor Judge David T. Lewis. My comments will be limited to Judge Lewis' years on the Tenth Circuit. Dave Lewis at the age of 44 was appointed in 1956 by President Dwight D. Eisenhower to the Tenth Circuit, the first Utahn to ever serve on the Court of Appeals. He succeeded the legendary Judge Orie L. Phillips, who at that time had just taken senior status. When Judge Lewis took his seat on this court, other members were Judges Bratton of New Mexico, Huxman of Kansas, Murrah of Oklahoma, and Pickett of Wyoming. To an already strong court, Judge Lewis brought additional strength. Over the 21 years that he later served as an active judge of the Tenth Circuit, Judge Lewis served with Judges Breitenstein, Hill, Seth, Hickey, Holloway, Barrett, Doyle, and myself.

In 1970 when Judge Murrah took senior status, Judge Lewis became the chief judge for the circuit, and he continued in that position until he himself assumed senior status in 1977. For several years thereafter he continued to sit with us until ill health forced him to forego that which he dearly loved, hearing cases, writing opinions, and generally participating in court business.

In describing the workings of a circuit court, Judge Lewis once wrote as follows: "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 comfort in the knowledge that his or her mistakes can be reviewed and perhaps corrected. Our mistakes, however, are seldom corrected, only annotated," he said, "and we must live with them sometimes with the belated recognition of error."

Judge Lewis' style in writing court opinions was a model for the rest of us. His opinions were generally short and right to the point. He really did believe in brevity and practiced it. His statement of the facts contained only relevant matter. He got to the issues quickly and then decided them in very understandable language. Over the years Judge Lewis participated, of course, in many unique and unusual cases which in succeeding years he frequently referred to in his conversations with me. I'll mention only a few of those cases and in only moderate detail. However, I feel that such does give us an insight into the man and his philosophy.

The first, *Continental Marketing Corporation v. The Securities and Exchange Commission*, does not sound like a very exciting case, but I assure you it was to Judge Lewis. Continental Marketing was engaged in the business of selling investment contracts providing for the sale, care and management of live beavers for the purpose of sale and for the purpose of their breeding more beavers. The issue in the case was whether Continental's activities

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were subject to the Securities Act of 1933 and the Security Exchange Act of 1934. The panel of this court, with Judge Lewis authoring the panel's opinion, held that Continental was subject to the security laws. Judge Lewis concluded his opinion with the following: "In this setting we hold that the transactions in question involved the sale of investment contracts and therefore 'securities' within the meaning of the applicable acts and apply, with approval of the High Court, 'a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.'"

In private conversations with Judge Lewis he had some other comments on beavers and their habits, but since those statements are not contained in the original opinion they will not be repeated here.

Another case that intrigued Judge Lewis was the so-called skinny dipping case, *United States v. Hyman*s. I sat on that case along with Judges Lewis and Pickett. At the time I'd only been on the bench a short time, and Judge Lewis as the presiding judge on the panel assigned the case to me for a proposed opinion. Judge Lewis was generally very helpful to a new judge. On that occasion he wasn't much help to me. At the time of oral argument the panel was somewhat uncertain as to the ultimate outcome of the appeal, so when he assigned the case to me for a proposed opinion, he told me to be very careful just how I wrote that opinion because, he added, whichever way I wrote it, he said he was going to dissent. Well, I wrote it and he did not dissent, and Judges Lewis, Pickett and I took a very firm stand, I assure you, against skinny dipping holding that skinny dipping in a national forest near a public campground with other people in the immediate vicinity and in an area of concentrated recreational use with posted signs prohibiting public nudity did constitute indecent conduct prohibited by an administrative regulation. For several years after our opinion Judge Lewis somehow found some way to weave the skinny dipping case into his public utterances.

Judge Lewis was quite persuasive, and his views generally became the prevailing view of the panel of the court when we sat en banc. But an exception was the case that Mr. Murphy alluded to, *Friends of the Earth v. Armstrong*, the *Rainbow Bridge* case, where he dissented from the majority. The majority holding was that the Colorado River Storage Act of 1956 did not prohibit any water from Lake Powell entering any part of the Rainbow Bridge National Monument. Judge Lewis disagreed with that, wrote a stirring dissent, as Mr. Murphy already mentioned, and he concluded the dissent with the following: "In simple summation the court

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has done that which the Congress has many times refused to do and has, to all practical effect, enacted legislation which is actually pending before Congress for its consideration. Such judicial action is unprecedented and while the decision may be heralded by some as a good pragmatic solution to a difficult and controversial problem this is not a judicial prerogative. Current events in other unrelated fields indicate that more problems are created than solved by a softening of the basic concept of a firm and strict application of the doctrine of separation of powers."

Any discussion of unique or unusual cases involving Judge Lewis must include the Gary Gilmore case immortalized in book form by Norman Mailer. This was a serious matter for all concerned including the court. Gilmore had been convicted of murder, several in fact, and sentenced to death by a state court in Utah. Gilmore himself did not wish to contest the death sentence, but others did and brought suit in federal court in Utah to prevent or at least forestall Gilmore's execution. The execution was set for a Monday morning, and at about 11:00 p.m. on the preceding Sunday evening a federal district judge sitting in Salt Lake stayed the execution date. The State of Utah immediately filed notice of appeal, and argument was held on the matter in Denver, Colorado, on the following morning commencing around 6:00 a.m. Judge Lewis and opposing counsel flew to Denver in a National Guard plane, and Judge Lewis, Judge Breitenstein and myself heard the matter, vacated the trial court's stay order, and only minutes later Gilmore was executed.

As I said, the Gilmore case was not a pleasant one and that's true, of course, with any capital punishment case. But it did have a lighter aspect. As mentioned, I was on the panel that heard the Gilmore case, and I learned about the fact of the hearing about 2:00 a.m. on the Monday morning in question when Judge Lewis awakened me out of a deep slumber with a telephone call. Judge Lewis advised me that he was about to take off by plane from Salt Lake City to Denver and he wanted me to sit on the panel. Judge Doyle, who sits on my right, would undoubtedly have served as the third judge on the case, he being an active judge at the time, but he was in Wichita where he was to hear a case on that same Monday morning. So Judge Lewis decided to ask Judge Breitenstein, who sits immediately on my left, then a senior judge, to serve as a member of the panel. I recall quite clearly suggesting to Judge Lewis that he as the chief judge should be the one to call Judge Breitenstein. Judge Lewis declined, saying facetiously or otherwise, and I'm not sure which, that he was actually afraid of Judge Breitenstein, and that he wouldn't dare call Judge Breitenstein at 2:00 in the morning with a request of this sort. So I was the one

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who had the dubious honor of calling Judge Breitenstein at 2:00 in the morning and telling him that court would open in about four hours. Just to complete the record on this particular matter, Judge Breitenstein, despite Judge Lewis' fears, was most gracious, even at 2:00 in the morning when awakened by my phone call, and he accepted the difficult assignment without protest of any sort.

As a chief judge for this circuit, Judge Lewis governed with a loose rein, but at the same time he was in charge and was at all times conversant with the day-to-day operation of the court. He was truly interested in the well-being of his fellow judges, and their problems were his problems. If something worried one of us, he was concerned too. Judge Lewis was not just a dominant figure in the Tenth Circuit. He also enjoyed a most favorable national reputation. As chief judge he served for several years on the Judicial Conference of the United States, which group is the policy making body for the entire federal judiciary consisting of 25 federal judges and chaired by the Chief Justice. Further, in 1974 there were eleven chief judges of circuit courts in the entire country, and that year those eleven chief judges organized a body known as the Conference of Chief Judges with a select membership of only eleven. That body selected as its first chairman Judge Lewis, which shows the esteem with which Judge Lewis was held by his peers.

Judge Lewis was a great judge, and he dearly loved the Tenth Circuit. He's made his mark on this court and upon each of us who have served with him. He was a good man in every sense of the word. A good husband to his beloved wife, Marie, a good father to his three fine sons, Kent, David and Frank, and their families, I might add, and of course a good colleague of those who had the privilege of serving with him. We are all better for having known Dave Lewis. He was my good friend and yours, too. (applause)

CHIEF JUDGE HOLLOWAY: One of the law classmates of Judge Lewis is here, a distinguished attorney of Salt Lake City, and I would like at this time to recognize him for an announcement. Mr. Arthur Nielsen.

MR. NIELSEN: May it please the Court, Mrs. Lewis, honored guests and friends: It is a distinct privilege for me today to represent the classmates of Judge Lewis in making an announcement which I think will give opportunity for all of you to express your appreciation as well. In the class that Judge Lewis and I attended in law school, there are only ten of us left, as I have been able to count them. And we are approaching our 50th anniversary of our graduation from the University of Utah College of Law. And inasmuch as the law school is engaged in an effort for fund raising for the purpose of excellence in teaching and research, it

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occurred to us as his classmates that we would like to initiate a particular endowment to the university law school in the name of David T. Lewis. In discussing that with the Dean, we arrived at the determination that it would be called the David T. Lewis Distinguished Judge in Residence Program in honor of Judge Lewis as well as other members of our class who have attained the distinction of judgeship. Judge Lewis is one of three of our small class that became district judges on the state circuit. And we were pleased that we could as classmates of Judge Lewis inaugurate that program. Mrs. Lewis has accepted it graciously as members of the family have, and we will, therefore, have this announcement to make that we are starting this program. Because of the limited period of time that we had to initiate this program before these services, we have not been able to do more than get verbal commitments. But as of the moment we have received in excess of \$15,000 in commitments to this program from Judge Lewis' classmates. And we hope that by the time of our 50th anniversary that we will have exceeded \$50,000 for that. And so I wish to announce that, and I'm pleased, Fred, that the Law School would accept this commitment for this endowment. Thank you. (applause)

CHIEF JUDGE HOLLOWAY: As mentioned by Mr. Nielsen, Professor Fred Emery is here and will acknowledge the receipt of this gift.

MR. EMERY: May it please the court, Mrs. Lewis: On behalf of the University of Utah and its College of Law, I am honored to accept the gift and the responsibility for this new program. On behalf of the university and the college, let me thank the Class of '37 not only for the funds, but for initiating an exciting new program that complements and will add excellence to a new curriculum development in the University of Utah Law School that will begin next fall, and more important, for associating in perpetuity with the law school the name of a respected alumnus and an outstanding jurist. And I commit the energies of all my colleagues of the law school to create an excellent program, indeed, a program of such high excellence that it will bring honor to the memory and the name of Judge Lewis. Thank you. (applause)

CHIEF JUDGE HOLLOWAY: We are grateful to each of you for coming today to honor our beloved Chief Judge Lewis. We especially want to acknowledge to the family our profound respect for Judge Lewis. He meant in his special way much to each of us and to the court as a whole. His warm wit, his encouragement to us in our work, his strong leadership of the court all will have a lasting impact. Judge David Lewis gave us all an example that has challenged us, one of strong intellect, of tireless dedication and

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unquestioned integrity. In all, Judge Lewis is an imperishable page in the ongoing history of this court and of the courts of the nation.

This concludes our memorial ceremony, and the court will be in recess subject to call.

(Ceremony concluded.)

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The following letter by consent is made a part of the record of these proceedings.

May 13, 1985

The Honorable Monroe G. McKay
United States Circuit Court of Appeals
Tenth Circuit
6012 Federal Building
Salt Lake City, Utah 84138

My Dear Judge McKay:

I was honored by you and members of the Court to be asked to represent Judge Lewis' clerks on this special day. I know of no other occasion that I would rather attend, but responsibilities as president of West Virginia University during Graduation weekend require my attention. No one would understand my absence better than Judge Lewis, for he personified duty and loyalty.

My memories of Judge Lewis are deep and fond. As a newly minted lawyer, fresh from the Columbia Law School and having completed a doctorate, Judge Lewis took on this "liberal pinko" (as he used to call me). I suspect he did so because I was at Columbia during the height of the student riots and he was assured that, despite my unique demeanor, I was the instigating force. Quite frankly, at first Judge Lewis scared the hell out of me. He was a man small in stature yet his presence filled the room. There was never a doubt who was in charge. From his favorite green chair in the clerk's office (that I used to affectionately call the Archie Bunker chair) he would expound on everything from Little League baseball to the political issues of the day. One would never interrupt, despite the fact that he had the habit of engaging in pregnant pauses. Often in the middle of the sentence he would stop, stroke his chin a bit, stare straight ahead, and then for what seemed an eternity would say nothing. Yet, he would pick up the middle of the sentence as if nothing had occurred. On reflection, it was evidence of so much going on in that mind of his. He cracked with ideas and intellect.

I also remember working on opinions with him. I underline with because, even though as I have already suggested, the Judge was clearly always in charge, he also allowed his clerks to have rein.

IN MEMORIAM

We would work on an opinion, submit it to the Judge, and then it would come back, often rewritten in an embarrassingly better way. At the same time, he would take time to discuss the issues with us. I would like to believe that I won an argument once in a while, but if that did occur, it has faded from memory. His opinions were simple and brilliant. I have taken the occasion over the past several months to reread a number of his opinions in anticipation of this day. As one who has taught law for a number of years, I can tell everyone in this courtroom that his opinions are some of the best crafted and most thoughtful that can be found anywhere in the Federal Reporters.

And, what a sense of humor. He was a font of great stories which he could only tell in his irrevocable fashion. At first, I did not dare laugh. Later, after a rising comfort level, I looked forward to the daily dose of good humor with great anticipation. If imitation is the greatest form of flattery, then Judge Lewis still receives high praise from me for I have adapted a number of his stories for use on the alumni and athletic circuit.

You will hear today that the Judge was a man who truly cared. You will hear of his honesty and integrity. But perhaps what you will not hear is that quiet but forceful influence that he had on many lives who touched his. As I have thought across the spectrum of my own life, I can truly say that no single individual, other than my parents had a greater influence on me than Judge Lewis. He became a quiet advisor and friend. I trusted his judgement. I hope that a part of him still lives in me.

Finally, in thinking of Judge Lewis, particularly his later years and the many honors that were bestowed on him externally, I believe them secondary to the honor that inhered to him for having a successful run at life in times and against conditions that would have defeated lesser men. In the last analysis, the real competition in life is with the course itself. In that competition, Judge Lewis mastered the course. In the distant past I also learned a line from Pindar. Loosely translated, it ran—"For the truly just man, time is a great champion." What Pindar took to be true is still true, and exemplified in the life of David Lewis.

Cordially,
E. Gordon Gee
President

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