

Memorial Service

for

THE HONORABLE ORIE L. PHILLIPS

Senior Circuit Judge
U. S. Court of Appeals, Tenth Circuit

Hilton Inn
Santa Fe, New Mexico
July 25, 1975



HONORABLE ORIE L. PHILLIPS

In Memoriam

MR. JUSTICE BYRON R. WHITE: The Tenth Circuit has been extremely fortunate in having great Judges and especially great Chief Judges. One of the most distinguished was Orie L. Phillips. The late Orie Phillips was a Federal Judge for 51 years, all of them as a Circuit or District Judge of this Circuit. He was Chief Judge of this Circuit for nearly 16 years. I think by common acclaim, he was a giant among us and a giant among all Judges of the country. It is very appropriate that we honor his memory here today. We have some very appropriate people to recall to our minds some of the salient facts about the career of this man.

Before we begin, however, I should like to introduce to you Judge Phillips' sister, Mrs. Mary Farmer, of Albuquerque, New Mexico. Mrs. Farmer, would you stand, please? Mrs. Farmer is accompanied by her daughter and son-in-law, Mr. and Mrs. Woodrow Wilson. We are very glad to have all of you here today.

We have three gentlemen to speak to us about Orie Phillips. First, Judge Howard C. Bratton, District Judge for New Mexico and a native of this great State.

JUDGE HOWARD C. BRATTON: Mr. Justice Stewart, Mr. Justice White, Chief Judge Lewis, distinguished guests, ladies and gentlemen:

It is a great privilege for me to participate in this memorial to the Honorable Orie L. Phillips. My father and he served together for 30 years on the Tenth Circuit Court of Appeals, and it pleases me greatly to offer these remarks about one of whom my father thought very highly, and for whom I had great respect.

As the New Mexican among those who will speak today, I will address myself to Judge Phillips' early years in New Mexico and to his personal life, leaving the professional aspects of his distinguished judicial career to others.

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Judge Phillips was born in 1885 and reared on a farm near Viola, Illinois. He had a younger brother, Earl, and a sister, Mary. His brother died shortly after returning from Naval service in World War I. As you have heard, Mrs. Mary P. Farmer and her family are here with us today to hear these respects paid to her brother.

Judge Phillips came to New Mexico in 1908. Like many others who migrated here, he suffered from asthma with a tendency toward tuberculosis. His move to New Mexico was primarily motivated by health reasons.

He had graduated from Knox College in Illinois in 1904 and had attended Michigan Law School, but economics forced him to leave law school. He read law in an office in Galesburg, Illinois, and had a small office in Viola for a time. When he came to New Mexico, he opened his own law office.

He settled in northern New Mexico in a little town named French. This town, which no longer exists, was located between Springer and Raton, and consisted of approximately 200 souls. The town served the outlying farms, and, because of the limited population in the area, Judge Phillips also taught school to make a living.

Judge Phillips built a small house in French and in 1910 went to Topeka, Kansas, where his childhood sweetheart, Helen, and her family were living. Helen and he were married there, and their honeymoon consisted of moving from Topeka to French.

While the Phillips lived in French, Judge Phillips established such a fine reputation as a lawyer that he drew the attention of Mr. Crampton, a leading lawyer in Raton. He was invited to join the firm.

Another partner, a man named Darden, joined the firm about the same time. Mr. Crampton told his two new lawyers to flip a coin to decide whose name would appear second in the firm name. Darden won the toss, and the firm became Crampton, Darden and Phillips. It was a most prestigious law firm in

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northern New Mexico, representing the important mining interests in that part of the State, and banks and commercial interests in Raton. In addition to his private practice, Judge Phillips also served as an Assistant District Attorney and as a Referee in Bankruptcy.

As the Phillips prospered in Raton, they planned and began to build a fine new home. During this period, Judge Phillips also ran for and was elected to the State Senate, and his future in Raton looked very promising. Wide respect was fast developing for his achievements in the legal and political fields.

At this same time, an opening occurred on the Federal trial bench in New Mexico. Judge Phillips was a strong supporter of another person for the post, so he was surprised when he himself was considered for and ultimately selected for the position.

As a result of his appointment as United States District Judge in 1923, Judge Phillips and his wife never lived in their new home in Raton. It was completed just as his appointment was made, and he and his wife moved first to Santa Fe, and then to Albuquerque.

In 1929 he was appointed a Judge of the first Tenth Circuit Court of Appeals when it was formed by the division of the Eighth Circuit.

In 1931 he moved to Denver and lived there until 1956. Upon taking senior status, he moved to Naples, Florida, where he lived until his death in 1974, returning to Denver for several terms of court each year.

Throughout his life and in all the locations in which he lived, Judge Phillips had certain interests which he consistently pursued in addition to his family and profession, which were always foremost. He was a devout member of the Methodist Church all of his life. In the early years in Raton, he was the Superintendent of the Sunday School at his church, and, at the end of his life, was on the finance committee at his church in Naples. Especially

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during his more vigorous years, he loved to hunt, to fish, and to play golf and bridge. He and his wife belonged to a Viennese waltz club in Denver. He loved animals and, in fact, raised Chesapeake Bay retrievers. One of these was named Buddy, and Judge Phillips was exceptionally fond of this young dog. It was struck and killed by a car one Christmas Day, and Judge Phillips, I've been told, spent most of the rest of that day by himself down in the basement.

The Phillips family was extremely close. As Judge and Mrs. Phillips had no children, they largely adopted the family of his sister as their own. For several years Judge Phillips came every Christmas to Albuquerque to be with his sister's daughter and husband and their son.

After I had assumed the bench, I came to expect, during each Christmas season, the always welcome sight of an energetic man, still in his topcoat and hat, standing in my office reception room and dictating letters to my secretary. It always meant that Judge Phillips was in town to be with his family, but that he was still conscientiously attending to his duties. In fact, on one occasion he was so intent on some problem that he actually started dictating before he walked in the front door.

Many distinctions were conferred upon Judge Phillips during his life. Among other things, he was honored by the American Bar Association in 1950 for conspicuous service to the cause of American jurisprudence, and he was elected by that body to the Legal Hall of Fame. He was awarded honorary degrees by Michigan University, the Colorado School of Mines, Denver University, Knox College, and Trinity College. In a life crowded with honors, however, perhaps the finest tribute was paid Judge Phillips by his sister, who said during my interview with her, "Others may know him in other capacities and so be able to say he was a good Judge and a good lawyer, but I can say with certainty that he was the best brother anyone ever had."

MR. JUSTICE BYRON R. WHITE: Our second speaker needs no introduction to all of us. He is another giant in not only this Circuit but throughout the country.

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JUDGE ALFRED P. MURRAH: Mr. Justice White, Chief Judge Lewis, Sir Desmond and Mrs. Farmer, whom I am privileged to call Mary:

Someone has said that the greatest honor that can come to anyone is to be invited to eulogize a friend. I was greatly honored when Chief Judge Lewis asked me to represent the Court on this occasion. This is surely the most appropriate place and occasion to talk about Chief Judge Orie L. Phillips as a Judge, for he, Chief Judge John J. Parker and Chief Judge John H. Biggs had more to do with the establishment of the Circuit Judicial Conference than anyone else. Phillips and Parker were born on the same day in the same year and worked together closely in the American Bar Association and the Judicial Conference of the United States. They usually agreed, but when they disagreed, it was an interesting battle to witness. Chief Judge Parker was eloquent, but Phillips was a master of the facts and often prevailed because of his complete knowledge and mastery of the subject matter. Phillips and Parker were both seriously considered for the Supreme Court. They stood tall among men of stature in the law.

For more than 15 years, Chief Judge Phillips presided over these Circuit Conferences and today they are conducted largely in his image. Some of the Circuits select representatives of the Bar to be members of the Conference, but Chief Judge Phillips insisted on making membership available to any member of the Circuit Bar who declared his intention to become a member. The bar has responded magnificently to make it a vital force in the administration of justice in this Circuit.

During the six years he served on the district bench here in New Mexico, he was frequently invited to sit on the Eighth Circuit, and probably wrote as many opinions as any active Circuit Judge. I have heard him say that in one year he wrote 62 opinions for the Eighth Circuit. He has written more than fifteen hundred opinions for this and other courts; and when he left us last November, he had submitted an opinion which was approved and published after his death.

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When I came to it, the Court was composed of Phillips, Bratton, Huxman and Murrah for the next nine years and until John C. Pickett was appointed as the fifth Judge of the Court. For 15 years, Judge Phillips was the Chief Judge and administrative head of the Court. During that time he not only conducted the affairs of this Court, but he was a recognized leader in the Judicial Conference of the United States serving as a chairman of a number of the Conference committees, authoring and drafting resolutions, and appearing before Congressional committees. He served as a member of the Conference under four Chief Justices. During the span of his tenure as an active and senior Judge, he served with six of the 15 Chief Justices. He presided over the Court with great dignity and decorum. He was a Judge's Judge and a lawyer's Judge. He respected the bar as indeed the bar respected him. He was never impatient. His powers of concentration were amazing. I have walked with him from the Courthouse in Denver to the Denver Club for lunch and returned to our respective chambers without uttering a word. His associates always marvelled at his uncanny ability to lead the lawyer to the jugular vein of his lawsuit and then discuss it with him until the points were exhausted. The lawyer left the Bar of the Court with the assurance that the Court understood his case. He was never unkind to a lawyer, but he made sure that the lawyer didn't waiver from his points.

One memorable case will illustrate his faculty for bringing the lawyer to his point. One time a West Virginia lawyer appeared in our Court on a lawsuit which Chief Judge Phillips was quick to grasp. The lawyer was tall and lean with a deep voice; and it was soon apparent that he intended to rely more on noise than cases. He opened his argument by reading the mottos around the ceiling of the courtroom, such as "Reason is the Soul of All Law" and other like axioms. Chief Judge Phillips quietly and respectfully reminded him that the Judges had read those mottos many times and were quite familiar with them. But the lawyer insisted on reading all of them with positive and dramatic gestures. Phillips brought him to the point more than once explaining that as the Court understood the lawsuit, there was only

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one point involved, and invited the lawyer to come to it. But the West Virginia lawyer went merrily on his oratorical way without even coming to the only point in the lawsuit. Finally, Chief Judge Phillips reminded him that his time was exhausted without getting to the point of his lawsuit and that the Court would give him a few minutes to make his point. Whereupon the old lawyer looked to the Court with wild eyes and with one emphatic gesture exclaimed, "Your Honors, you just wait until I get to that and I will tear it up like new ground." Chief Judge Phillips replied with a whimsical smile, "You'll have to do your plowing in West Virginia. Your time is up." and stopped him abruptly.

There was another case I shall never forget. The Court had been in session for two weeks. The last case was a habeas corpus in which we had appointed a fine young lawyer. With typical helpfulness, Chief Judge Phillips explained to the young lawyer that we had looked at his case and that we understood the points and indicated that he should be able to present them very quickly. The young lawyer proceeded to state the facts in detail and to argue with zeal the Constitutional point in the lawsuit. The Court was a bit impatient both because the point was a constantly reoccurring one with which we were quite familiar and because we were weary from a long week and a long day. Chief Judge Phillips indicated two or three times that we had the point. Each question from the Court was an invitation to the young lawyer to conclude his remarks. Finally the young lawyer looked up at the Court and with a voice cracking with fear exclaimed, "If it please Your Honors, you apparently don't think much of my client's cause, but you appointed me to represent him and after briefing the law very carefully, I am convinced that my client is unlawfully incarcerated in Leavenworth, Kansas; and unless Your Honors require me to be seated, I should like to present it as I think justice requires." Whereupon, Chief Judge Phillips apologetically replied, "Why, of course counsel, proceed as you wish", and this young lawyer proceeded to take his full 45 minutes. It has always been the custom to express the Court's appreciation for the willingness of appointed counsel to undertake the case.

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On this day, the appreciation was more than formal. Chief Judge Phillips addressed counsel: "Counsel, I have been a lawyer for more than half a century and a Federal Judge for a long time. I have always been proud of my profession and the members of the bar. But today you have made me prouder to be a lawyer than all the days of my professional life. You have represented your client with zeal, skill and courage and with full credit to the profession. You have the gratitude of this Court."

Judge Bratton has told you that Judge and Mrs. Phillips had no children. But they adopted young men, especially his law clerks, as their very own. The late Robert Cartwright was his law clerk until he became the Clerk of this Court and served it with complete devotion for 30 years. Chief Judge Phillips was always generous and attentive to the Cartwright children.

He was always in demand to speak to bar associations and other professional organizations. He received all of the honors within the gift of the organized bar, including the American Bar Association's gold medal, the Justice Award of the Judicature Society, of which he was president for a number of years. The Institute of Judicial Administration, the American Law Institute and other professional organizations paid tribute to him in recognition of his constant interest and devoted service.

He had a poem that he often recited in his speeches. It represented the philosophy and purpose of his whole life, and in closing I should like to quote it today.

THE BRIDGE BUILDER

An old man going a lone highway
Came at the evening, cold and gray,
To a chasm vast and wide and steep,
With waters rolling cold and deep.
The old man crossed in the twilight dim,
The sullen stream had no fears for him;
But he turned when safe on the other side,
And built a bridge to span the tide.

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"Old man," said a fellow pilgrim near,
"You are wasting your strength with building here.
Your journey will end with the ending day,
You never again will pass this way.
You've crossed the chasm, deep and wide,
Why build you this bridge at eventide?"

The builder lifted his old gray head.
"Good friend, in the path I have come," he said,
"There followeth after me today
A youth whose feet must pass this way.
The chasm that was as nought to me
To that fair-haired youth may a pitfall be;
He, too, must cross in the twilight dim,
Good friend, I am building this bridge for him."

Mr. Justice, Mr. Chief Judge, he built bridges for most of us.
Thank you.

MR. JUSTICE BYRON R. WHITE: Very eloquent, Your Honor.
Our third speaker will be Robert B. Yegge, Dean of the University
of Denver Law School.

MR. ROBERT B. YEGGE: Mr. Justice White, Chief Judge
Lewis, Mrs. Farmer, Mr. and Mrs. Wilson, and the many other
friends and colleagues of Orie L. Phillips, humanist:

"It is not what a lawyer tells me I *may* do; but what humanity,
reason and justice tell me I *ought* to do."

While a lawyer and a scholar of the law, Orie L. Phillips was
a humanist as well. He was not guided solely by the dictates
which compel most lawyer-craftsmen. A lawyer-craftsman, in-
deed; yet a man who asked, continually, whether the law was
reasonable, whether it was just. In this sense, he was the per-
sonification of what a lawyer should be; he was not simply guided
and directed by the certainty and comfort of the past; he was
only comforted and made certain by an impulse to see that justice
was seen to be done, not simply assumed to be done.

A humanist, it is said, is one who deals with the universe of
human values—the range and diversity of which make our lives

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full, complete, worthwhile. Values are the subject matter of the humanities; and their study does not assume that values are static. Values are what make a difference between people and other forms of life. They are precious, and thoughtful values are precious few. Orie L. Phillips was a humanist and he understood the substance of his professions in a way especial for us who follow and remember him.

As a young boy going to Steck Grade School in Denver, Colorado, I first remember Orie Phillips as a neighbor. He was a busy and important man, yet he had the time to deal with the developing values of this boy. To my late father, a lawyer, he was an idol.

From that image, even as a youth, I listened to what he said. I would go to his home on errands for my mother to help in the projects which my mother and Helen M. Bissell, Judge Phillips' beloved wife, knew to be important: as Red Cross Gray Ladies in World War II. And, as I did my errands, I realized, as did my father, that Judge Phillips was a special person, not simply the revered Judge of highest stature in Colorado. Again, he had the time for that little boy.

In the later years, when I, too, was a lawyer, I learned to appreciate fully the reverence for Judge Phillips' reputation among our colleagues. But I had known him in another way in earlier years. And, I learned to know him in a way not legally connected in those later years, too. He had served many devoted years as a trustee of my law school Alma Mater, The University of Denver. His friend and colleague, and my boss, Chancellor Chester M. Alter, relied heavily on his insightful judgment. On several occasions, I learned to know that he was deeply interested in the education of our generation, in every respect. He devoted a substantial amount of his life to the improvement of quality of that education. Rightfully, he earned the Doctor of Laws degree from the University of Denver in 1951, where he served faithfully as a trustee from June 2, 1952, until his death November 13, 1974 (22 years). But it was not just the University of Denver that recognized his dedication to the education of those who will

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always inherit the earth. From his own law school, the University of Michigan, he earned the Doctor of Law degree in 1935; from the Colorado School of Mines, he earned the Doctor of Engineering degree in 1940; from Colorado College, he earned the Doctor of Law degree in 1951; from Knox College, his own undergraduate Alma Mater, he earned the Doctor of Laws degree in 1955; and from Trinity College, he earned the Doctor of Law degree in 1955, at the hand of Albert Jacobs, then President of Trinity College, whom he had earlier guided successfully as the Chancellor of the University of Denver in the years past.

The contributions to the legal profession and the law which Judge Phillips made are almost too numerous to mention. In their totality, they bespeak of his concern for individual dignity and the values of human beings. In each endeavor, he was the leader. He led Commissions for the improvement of law in treatment of youth offenders, in other areas of dealing with the problems of crime and punishment, of the fair handling of persons incarcerated; he was an early prophet in the administrative area; he was concerned about the problems of persons who may have been victims of the economic order; and constantly he was concerned about the fair and equal treatment of citizens under law; as only one example, he was a member of the Board of the National Conference of Commissioners of Uniform State Laws for nearly 50 years. It was foregone that he would receive the American Bar Association Gold Medal for "Conspicuous Service to the Cause of American Jurisprudence" in 1950.

For the profession, his contributions are singular. From 1937 to 1958, he was a member of the Council of the American Law Institute; from 1939 to 1955, he was a director of the American Judicature Society and served as its Chairman from 1955 to 1958. In his service for the American Judicature Society, I shall always remember the pride of my lawyer-father when Orie L. Phillips personally invited him to become a member of the American Judicature Society; I think it was one of the most coveted honors which my father received; he knew that the source of the invitation and that the cause for which the invitation was issued had deep and lasting meaning.

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He was a man of certainty, a man of conviction, a man who knew that law was not an end, but a means of accomplishing the greatest goal: the continuance of human dignity in a free and adaptable society.

"Those are most desirous of honor and glory who cry out the loudest of its abuse and the vanity of the world."

I remember, with great pride and enduring memory, Orie L. Phillips, the humanist.

MR. JUSTICE BYRON R. WHITE: I thank each and every one of you, and I think that all of the members of this Conference are deeply grateful for your recall of the salient points about this former Chief Judge who gave us such great service here in the Circuit. I now return control of the meeting to the Chief.

CHIEF JUDGE DAVID T. LEWIS: This has been a very humbling day in my life. I grieve for Chief Judge Phillips and shall for the rest of my life.

When I was before the Judiciary Committee in the Senate for my own nomination, a Senator said, "So you wish to replace Orie Phillips." I said, "Sir, that I cannot do." He said, "What do you mean by that?" I said, "I don't think there is anyone in the nation who can replace Orie Phillips. Someone must succeed him and that I would like to do. However, I don't think anyone can replace him."

I did succeed him and during the course of my early years on the Court, he took me under his wing as a protégé and gave me much sage advice. Throughout the years, I have tried the best I could to follow that advice.

He was a man of great integrity, great ability, compassionate and lovable; but a realist. He once told me when I was fretting over a particular case that being a Judge requires two things: you should have a satisfactory legal education and you should have common sense. I am satisfied that you have your share of common sense.

During your career, you will find, if you haven't already found this as a trial judge, that these problems will always work out

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because a knowledge of the law and common sense will lead you to the correct answer ninety percent of the time.

But five percent of the time, your common sense will desert you, and the other five percent of the time, you're going to run into some awful bad law that's going to mislead you. These words of wisdom have proven themselves over and over to me.

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I thank each and every mbers of this Conference salient points about this great service here in the eting to the Chief.

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Resolution

Adopted by Judicial Council
for the Tenth Circuit

Honoring

THE HONORABLE ORIE L. PHILLIPS

Read at Judge Phillips' Funeral Service
In Denver, Colorado
On November 18, 1974
By Chief Judge David T. Lewis

*

Resolution

With overwhelming sorrow the Court notes the death of Judge Orie L. Phillips on November 13, 1974, in Naples, Florida, after a short illness. Judge Phillips was born November 20, 1885, in Illinois. After receiving a J.D. degree from the University of Michigan, he moved to New Mexico in 1910 and in the same year married Helen M. Bissell who died in 1968. They had no children. He practiced law in Raton, New Mexico, and for four years was a member of the state senate.

In 1923 he was appointed United States District Judge for the District of New Mexico and served until 1929 when he became a United States Circuit Judge for the newly created Tenth Judicial Circuit. In 1931 he moved to Denver to assist Chief Judge Robert E. Lewis in the administration of the court. He served as chief judge of the circuit from 1940 to 1955 when he took senior status. He continued to participate actively in court affairs and at the time of his last illness was working on cases which had been assigned to him.

Because of his interest in legal education, Judge Phillips taught as a visiting professor at several law schools. He was active in professional organizations including the American Bar Association, which in 1950 awarded him its medal for conspicuous service, and the American Law Institute which honored him by appointment to its governing council. A long-time member of the Judicial Conference of the United States, Judge Phillips served on many of its committees and chaired several of them. He had a strong influence in the deliberations and activities of the Judicial Conference. Many of the improvements which the Conference has made in judicial administration resulted from his efforts. During his long career Judge Phillips was a leader in the legal profession and a devoted supporter of the federal judicial system.

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Judge Phillips loved the outdoor life and perhaps was happiest when either fishing or hunting. Skillful in each activity, he could hook the wary trout and bring down the jumping antelope in circumstances which would have defeated the less adroit.

The impact which Judge Phillips had on the Court of Appeals of the Tenth Circuit cannot be overly emphasized. For twenty-four years he fashioned its course through the myriad of problems which arose. His skill in organization and his abounding energy effectively aided the court in the successful adoption and use of many innovations which subsequently were accepted in other circuits.

Judge Phillips was an outstanding judge whose judicial work deservedly gained national recognition. Thoroughly trained in the law he kept abreast of recurring judicial and statutory changes. Often he astounded his associates by his ability to produce a pertinent decision which he would identify not only by title but also by volume and page of the published reports. His first concern in any case was with the facts which he zealously searched out of even the longest and most complex record. He was a fair and careful judge who patiently listened to and considered every side of every case. His wise and courageous decisions brought him the respect of both lawyers and litigants. With a quick and incisive mind he swiftly reached the heart of a controversy and prided himself in the prompt disposition of the court's work. His superlative production of scholarly opinions won the admiration of his associates and solidified his recognized position as leader of the court. With devotion and dedication he served not only the people of the Tenth Circuit but also those of the United States.

In the annals of the court on which he served for so many years his position of preeminence goes unchallenged. His associates all honor him as a man and as a judge and cherish their many memories of him.

BE IT RESOLVED that the foregoing summation of the life and accomplishments of Judge Orie L. Phillips is adopted by the court as an expression of its pride in, and regard for, its departed member. He is truly an immortal of the Tenth Circuit.

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IT IS ORDERED that this resolution be spread on the records of the court.

Done at Denver, Colorado, November 18, 1974.

David T. Lewis
Alfred P. Murrah
John C. Pickett
Jean S. Breitenstein
Delmas C. Hill
Oliver Seth
William J. Holloway, Jr.
Robert H. McWilliams
James E. Barrett
William E. Doyle