

In Memoriam

E. J. L. Taber

PROCEEDINGS
IN THE
SUPREME COURT OF THE STATE OF NEVADA

FRIDAY, May 23, 1947.

Present—HON. CHAS. LEE HORSEY, Associate Justice:
HON. MILTON B. BADT, Associate Justice.

Committee, and Officers of the Court.

Justice Horsey:

We regret to announce that our Chief Justice, Hon. EDGAR EATHER, is ill and unable to be here today, although he would very much like to be here.

Members of the Court and Bar, relatives and friends of the late Justice and Chief Justice of this Court:

This is the time heretofore set by the Court for the committee appointed to draft appropriate resolutions expressing the sentiments of the Court and Bar upon the death of Hon. E. J. L. TABER, formerly a Justice and Chief Justice of this Court, to present to this Court their memorial. I will ask Mr. Wm. J. Forman, chairman of the committee, to kindly present the memorial.

Whereupon Wm. J. Forman, Esq., chairman of the committee, presented the following:

MEMORIAL

To the Honorable, the Supreme Court of the State of Nevada:

The Committee heretofore appointed by this Honorable Court for the purpose of drafting suitable resolutions expressing the high esteem in which the late Justice TABER of this Court was universally held, and the sorrow of the members of the State Bar of Nevada because of his passing, respectfully submits the following:

HONORABLE E. J. L. TABER

Justice E. J. L. TABER was born November 29, 1877, at Austin, Nevada, the son of Joseph Milo Taber and

Cecelia Agnes Taber, pioneer residents of Austin. He was educated in the public schools at Elko, Nevada, and the Lincoln Grammar School and Lowell High School of San Francisco, California. His higher education was received at Santa Clara University in California and St. Paul Seminary of St. Paul, Minnesota. He graduated from the Law School of Columbia University.

He was married on December 27, 1904, to Frances Mildred Smiley, who survives him. To this marriage were born three children, William F. and Wallace E. Taber, born September 20, 1905, and March 20, 1907, respectively, both of whom survive him, and Frances Dorothy Taber, born July 9, 1911, who died in 1939.

Upon his graduation in law he returned to Elko, Nevada, where he was associated in the practice of law with his stepfather, the late Honorable E. S. Farrington, later one of the outstanding Federal Judges in our country. This association was to have a profound influence on Justice TABER'S later public and judicial career.

He was, in his early legal career, elected to the office of District Attorney for Elko County, in which office he served with distinction. Thereafter, in 1911, he was elevated by his constituents to the office of District Judge for the Fourth Judicial District, which District at that time included Elko, Lincoln, and Clark Counties. He held the office of District Judge for three terms, the last two terms in the District consisting of Elko County. He retired from the District Bench after serving twelve years, and resumed private practice in Elko County. In November of 1934 he was elected to the office of Justice of the Supreme Court of Nevada, and continued in that office until his death on February 6, 1947.

During his high school and collegiate days Judge TABER was very active in athletic pursuits, being particularly adept in baseball, tennis, and on the track. This interest in sports he continued throughout his life, and his continued participation in athletics with the younger people of his community made him very, very influential in the development of the character of those

young associates. His interest in baseball had drawn him into close contact with a number of the famous baseball figures of the country, whose friendship he held throughout his life.

He was a devoted husband and father, and his family life was ideal.

As a lawyer he was recognized as one of the leaders of our Bar. As a trial judge he was patient, humane, and possessed a remarkable ability to reach exact justice in the matters submitted to him. As an appellate judge he was hard working, conscientious, studious, and at all times influenced by that same sense of justice. His long service on this Court is the best evidence that he gave to the Bar and litigants everything that they might ask of an appellate judge. His kindness and courtesy endeared him to all members of the Bar.

His decisions in this Court rank with the best of those delivered by a long line of distinguished jurists of this Court.

The Bench and Bar of this State deeply appreciate the splendid contribution made by Justice TABER to the judicial history of the State, and deeply mourn his passing.

Now, Therefore, Be It Resolved, That this Court be requested to cause this memorial to be spread upon the records of this Court as a mark of the esteem and respect of the Bench and Bar of this State; that a copy thereof be published in the next volume of the Nevada Reports, and that a certified copy thereof be forwarded to the family of Justice TABER.

WM. J. FORMAN,
Chairman.

WM. D. HATTON,	CHAS. A. CANTWELL,
A. L. HAIGHT,	HARVEY DICKERSON,
ALAN BIBLE,	W. HOWARD GRAY,
JOHN E. ROBBINS,	MERWYN H. BROWN.

The following resolution of Reno Post Number 407, Veterans of Foreign Wars of the United States, was also presented, by Ned A. Turner, Clerk of the Court.

RESOLUTION

February 10, 1947.

WHEREAS, The Supreme Commander of the Universe has seen fit to call to his last reward E. J. L. TABER, Associate Justice of the Supreme Court of Nevada; and

WHEREAS, During his lifetime Mr. Justice TABER has served the State of Nevada faithfully and well; and

WHEREAS, The State of Nevada and its people have suffered a great and irreparable loss in the death of Mr. Justice TABER; now, therefore, let it be

Resolved, That Reno Post Number 407, Veterans of Foreign Wars of the United States, feels keenly the loss of such an outstanding son of the State of Nevada, who has been a faithful and conscientious public servant, and who did so much to promote the welfare of the State and its people; now let it be further

Resolved, That these resolutions be spread in full upon the minutes of the proceedings of this meeting of Reno Post Number 407, Veterans of Foreign Wars, and that engrossed copies be transmitted to the family of Mr. Justice TABER, and to the Clerk of the Supreme Court of the State of Nevada.

H. WELLS KILBOURNE, *Adjutant*.

FRANK BACIGALUPI, *Commander*.

In addition to the above memorial and resolution, members of the Bar and of the Court addressed the Court as follows:

A. L. Haight, Esq.:

I knew Judge TABER for more than thirty-five years and our acquaintance was always on the intimate side.

We first met during the time he was practicing at Elko and I at Ely. He used to get over to Ely occasionally and we always had a standing engagement for an evening of billiards there at the old University Club.

I have also seen him on various other occasions which have left a lasting impression on me, and a few of which I shall mention.

I recall the first time he ate at our home. My young son until then had more or less taken it for granted that his dad was the greatest fellow in the world. However, he and the judge took to each other to the extent that for years the boy would quote Judge TABER as authority for this or that and would recount the sleight-of-hand tricks which the judge had performed to his complete bewilderment. He had a wonderful influence over youngsters.

I have sat in his chambers both at Elko and in Carson City, and we have discussed everything from baseball to the state of the world—and always with the greatest enthusiasm on his part. The breadth of his knowledge of an immense variety of subjects entirely unrelated to his life work was always a matter of amazement to me.

During the period he served as a Justice of this Court, I was a member of the Board of Bar Examiners, and from the time of his elevation to this Bench he took the greatest interest in the problems of our board and always displayed a most sympathetic attitude toward the men and women seeking admission to practice. He continually urged that our Bar examination be made as practical as possible and that grading be done in the light of the examiners' years of experience in the practice of law, and not by too severe and technical standards.

I recall the Judge at a meeting of the Bar Examiners Section of the American Bar Association in San Francisco about seven years ago. He entered that meeting unknown to everyone present except a few from Nevada and he left it one of the best known and highly respected men in that large group. With all his modesty, his wisdom and his understanding of the matters under discussion were almost instantly recognized, and many lingered after the adjournment to seek his views on other problems.

I also recall listening to him address a service club at a noonday luncheon, and one could not fail to be

deeply impressed with the innate goodness and sincerity of the man, and with his strong religious convictions and high moral standards.

Throughout the many years of his public life, his unflinching courtesy, his high integrity, his great ability and his untiring patience and loyalty have been continuously and increasingly manifested to all with whom he has come in contact.

With the passing of Judge TABER our State has lost a fine citizen and an outstanding public servant, and I, personally, have lost one of the friends I have liked best and admired most.

Harvey Dickerson, Esq.:

Your Honors—The eloquence of the gentleman whose remarks preceded mine expressed far more adequately than any words of mine could do, the extreme sorrow that the State of Nevada feels at the passing of Judge TABER.

I was born in this great State and I have had the friendship and counsel of the great men who have sat upon this Bench, and who have been called by our Divine Judge to a higher Court than any we may know upon this earth. Judge TABER was one of these friends.

I first met Judge TABER at a time when his father-in-law, the late Judge Farrington, presided over our Federal Court, and my respect and admiration for him have grown throughout the intervening years.

Southern Nevada joins with the rest of the State in mourning the passing of this noble jurist. He was one of our first District Judges and his work in our section of the State has been commemorated by a plaque on our Court House, and his photograph hangs on the wall of our Judicial Chambers. A fitting and proper testimonial to his career has been drafted by the Clark County Bar Association and has been spread upon the minutes of the Eighth Judicial District Court.

His nobility of purpose, his clarity of thought and his judicial discernment have been preserved in his deci-

sions. Judge TABER'S career might well be an inspiration to the young men of this State who aspire to climb the ladder of success.

Yes, Judge TABER has passed from among us, but the memory of the many happy hours we spent with him is as verdant as the evergreens which cloak Nevada's hills. He has left a heritage of which his family, his friends and the State of Nevada might well be proud.

Alan Bible, Attorney General of Nevada:

The preceding tributes, it seems to me, reveal justly the very fine qualities of our late beloved Judge TABER, both as a jurist and as a man. I fully concur in them.

It has been my pleasure to have known Judge TABER and his family very well for many years. I first became acquainted with him when I entered the Attorney General's office. At that time he was a member of this Court. Since that time we became very intimately associated. I was in contact with him, as was each member of my staff, and saw him in this office building almost every day.

I know, from my association with Judge TABER, of his constant devotion to and love of his family. I know of the sorrows and troubles he had; his philosophy of life and his unceasing and laborious industry. I learned to know him as a man of tremendous energy, clear understanding, and firm attachment to the fundamentals of law. Those attributes, it seems to me, have characterized his record upon this Bench.

It has also been my pleasure to sit with him, for a number of years, as a member of the Board of Pardons and Paroles, and from that association I further learned, not only of his seriousness of purpose, but of his thoroughness, in passing upon the numerous applications for consideration and clemency presented to that board. On occasion he could be stern when the case demanded it, subordinating a natural charity to the demands of justice.

Personally, I shall miss Justice TABER; the State shall

lose a faithful servant; his family a loving husband and father; but we shall all cherish his memory and profit by his example.

Hon. Wm. D. Hatton, Judge of the Fifth Judicial District Court:

My acquaintance with Justice TABER developed at about the time he entered upon the Bench of this Court. In the same year, my work on the District Bench began. In the following twelve years I had opportunities, from time to time, to visit with Justice TABER. I remember particularly one of my visits with him when I had just returned from a vacation of travel by auto, and I told him of some of the travel scenes. He seemed to be so keenly interested that ever after I had the impression of Judge TABER as a man who loved the out-of-doors—whose interests were by no means confined to the cloister of the student and the scholar. He loved our rugged mountains, our rolling hills and beautiful green valleys. Our own writer and poet, Sam Davis, says of Nevada, at the end of one of his poems—

*You will sigh for a sight of the beetling crags,
Where the Storm King holds his sway,
Where the sinking sun with its brush of gold
Tells the tale of the dying day—*

*And when you die you will want a grave
Where the Washoe zephyr blows.
With the green of the sagebrush above your
head,
What need to plant the rose!*

Justice TABER brought to his judicial labors a high degree of learning, and to his State, his family and his friends he brought the gifts of love and loyalty.

Wm. J. Forman, Esq.:

I have nothing to add to what has already been expressed here, in the memorial resolution and in the remarks of those who have preceded me.

I was requested by Judge Merwyn H. Brown, Senator

John E. Robbins, and Mr. W. Howard Gray, the members of the committee who are not present, to express their regrets at not being able to be here today.

W. T. Mathews, Special Assistant Attorney General:

It was my privilege to have become acquainted with Justice TABER many, many years ago. In fact, when I was studying law I received much sound advice and encouragement from him. After admission to the Bar, I tried my first case in his Court, with he as presiding Judge. I look back with pleasure to Justice TABER's occupancy of the Bench in the Fourth Judicial District Court, his career at the Bar after leaving that Court, and followed his career as Justice of this Court. There can be no question in my mind, or anyone's mind, of his profound learning in the law and his ability to interpret it. As a lawyer and as a Judge, he had the happy faculty of winnowing the chaff from the wheat and thus analyzing the cases brought before him, and he exercised that fine faculty as Justice of this Court.

To my mind, one of the outstanding characteristics of Justice TABER was his kindly attitude toward his fellowmen. Many, many times in Elko I have seen him going to the old swimming hole in the Humboldt River surrounded by a coterie of little fellows, whom he was teaching to swim, and there is many a man in Elko today who learned to swim under Justice TABER's tutelage.

Just the other evening I stood on the main street of Carson City gazing at the old Mint Building, built to withstand the ages. It stands there today as it has stood for seventy years, foursquare to all the winds that blow. Likewise was the character and life of Justice TABER, who was faithful to his God, to his country, to his family, and to his State; he, too, stood foursquare to all the winds that blow. We shall miss him.

Justice Milton B. Badt:

Mr. Acting Chief Justice HORSEY, Gentlemen of the Bar, Friends:

Your presence here today and the feelings to which you have given such eloquent voice testify to the great love and esteem that the people of this State and the West had for the late Chief Justice Honorable E. J. L. TABER. If I add a word it will be entirely informal, and possibly of a more personal nature, as for many years I had constant and personal contact with Judge TABER. I refer particularly to the twelve years during which he occupied the district bench at Elko, and during all of which period I was an active practitioner there. It means much to note the unvarying patience and courtesy manifested by Judge TABER to counsel, to litigants, to witnesses and jurors during that period—for that time included periods of great stress and much important litigation—cases involving irrigation litigation, mining suits, receiverships of corporations and partnerships, contested probate matters, banking cases, trespass cases and much important litigation growing out of land and livestock transactions. That these cases were hotly fought will be clear from the mere naming of the attorneys that tried them—men who were fanatically loyal to the interests of their clients, and contested every step of every case. I have in mind Senator Charles B. Henderson, Edwin E. Caine, Carey Van Fleet, Judge B. F. Curler, Frank S. Gedney, Judge James Dysart, Otto T. Williams, Judge H. U. Castle, Governor Morley Griswold, Charles A. Cantwell, Senator E. P. Carville, Judge J. M. McNamara, Senator John E. Robbins and, during a somewhat later period, Deputy Attorney General W. T. Mathews, C. B. Tapscott, D. A. Castle, Milton J. Reinhart, and others of the Elko Bar whom I do not now call to mind. Eminent counsel from Reno and other parts of the State participated in these trials. Some of them are in the courtroom today. These were cases that tested not only the learning, ingenuity and fairness of a trial judge, but his patience and his serenity of mind. In all of these, Judge TABER stood the test unflinchingly, seriously and objectively considering every ruling, opinion and decision that had to be made, with an

uncanny ability to sift out the true facts, but with all humanness and kindness.

After he retired from the district bench he practiced for a period in Elko, and during that time displayed the same ability, the same humanness, the same kindness, particularly the faculty to recognize the rights of both sides. This ability resulted in the settlement out of court of many cases that would otherwise have resulted in long, expensive and tedious litigation.

After such private practice he was, as you know, elected to this Bench, where he served for twelve more years, and where he manifested the same qualities so evident during his tenure as district judge—but in a wider field and in a court of last resort. I shall not refer to the high character of his opinions, already touched upon here, which greatly enhanced the respect in which this high Court is held throughout the country. During those years I argued many, many cases to him and to his Associate Justices, and always received the same earnest and courteous consideration that I had received from him as District Judge.

Mention has been made today of his athletic ability in his younger days. There are not many, however, who knew him later, when he had taken on such great weight, who realize that he was a ten-flat man in his youth, that as a basketball player he had few equals, that there were not many professionals who could match him in covering first base, that he was a remarkable “place-hitter,” that he could lay down a bunt almost at will half way from the first base line or the third base line, and often beat the throw to first.

During the period when I was attending the grammar school at Wells, and later when I attended Lowell High School (which was also his high school) at San Francisco, long before the Boy Scout movement was evident, it was his practice in the summer time to take the Elko boys to the old Eshelman Dam in the Humboldt River, at Elko, almost daily, and he taught virtually a generation of Elko boys how to swim. Nor did their parents

have any concern for their safety. They knew that the boys would be brought safely home, for Judge TABER taught them, not only how to swim and dive, but all of the safety measures that Boy Scouts are being taught today.

His great love, outside of that for his family and friends, was the Ruby Mountain range. There, year after year, he traversed those dizzy heights that reached into the clouds. When his growing weight made this a great physical stress and a strain on his great heart, he persevered in walking the trails of the Rubies, and as his feet trod those rocky heights amidst the eternal snows and lightening blasted pines, so did his intellect, so did his great spirit and his great moral sense. There, in peace and serenity, his spirit communed with God, with Whom it now resides.

Justice Chas. Lee Horsey:

My first real acquaintance with our departed friend and associate, Justice E. J. L. TABER, commenced in 1911, when he assumed the office of District Judge of the Fourth Judicial District, which then embraced Elko, Lincoln, and Clark Counties. I personally appeared, as attorney, in many cases before his court, and learned to know him well. I succeeded him as District Judge in Lincoln and Clark Counties in 1915, and soon thereafter he invited me to preside for him in certain cases in the District Court of Elko County.

When practicing before Justice TABER in those earlier years, and later, after he was elevated to this Court, I became greatly impressed with certain fine attributes of character which he possessed—particularly, the extreme conscientiousness and carefulness with which he so diligently searched for the correct course and the right result in the cases before him for decision. Many years passed between this association and my appointment to this Court, in October 1945. During the sixteen months of my association with Justice TABER, as a member of this Court, the friendship and mutual respect begun in those earlier years was greatly strengthened

and deepened by the companionship and close relationship because of our mutual duties and responsibilities. More clearly with each passing day, I could discern, and more fully appreciate, Justice TABER'S intense devotion to high principles and the accomplishment of justice in the performance of his judicial duties. In spite of physical infirmity, Justice TABER'S strong devotion to duty impelled him to perform prodigious labor, involving not only the sacrifice of his convenience, but the further impairment of his health.

In every case concerning which Justice TABER entertained any doubt as to the correct result, he would pursue his studies and research until every uncertainty, insofar as humanly possible, had been removed. He was not satisfied until assured by his inner consciousness that he had then discerned the light of truth, and by its rays could see the pathway of justice and of right.

On Monday, February 3d, only three days before his untimely passing, Justice TABER, seeing me approaching, stopped his car, waited, and, in his kindly way, invited me to ride. Observing that he did not look so well, I asked concerning his health, and he said, "I am not so well today—I worked several hours yesterday, and came back and worked last night, and I am tired." He stated that he had read more than two hundred cases pertaining to the particular case upon which he was then engaged, in order to make sure the Court was right in an order previously made in that case. When he passed on, the opinion was about one-half completed, and I had the honor to complete it, and, with the concurrence of Chief Justice Eather, same became the decision of this Court. Here was a man slowly, but surely, dying, who must have realized the end was near, working far into the night, on a holiday, to make certain that the decision served the cause of justice and of right. He had no other motive. This was an example of devotion to duty, in spite of illness, seldom paralleled, I believe, in civil office. It was not prompted by the glamour, excitement or necessity of war, but occurred in the calm of peaceful surroundings, and was the fine response of a worthy

soul to the still, small voice of conscience calling to duty a willing servant, in order that, through him, justice and right might prevail in the particular case.

Justice TABER was, very truly, a great man. He was a profound scholar, an eminent and able jurist, and a patriotic and high-minded public servant. Personally, he was kindly, generous, gentle and lovable, devoted to his countrymen, friends, home and family. May the dear ones, whom he has left for a little while, take comfort in the fact that he has left to them the priceless heritage of a splendid record of service to his State, and to his fellow men and women, of which they may always feel justly proud. They may also cherish the thought that he possessed the love and affection of all who knew him well.

To me personally, Justice TABER'S untimely passing was, indeed, a great loss. I shall miss, more than any words of mine can express, his wise and able counsel and the helping hand of a true friend.

May our Heavenly Father rest his soul in peace until the dawn of a more perfect day.

Chief Justice Eather had prepared for today some remarks he intended to make, and I am going to ask Justice Badt if he will kindly read them for us, what Chief Justice Eather would have said had he been able to be present.

Chief Justice Edgar Eather (Prepared remarks read by Justice Badt) :

The Bench joins the Bar in deploring the loss of this distinguished jurist, who formerly was a Justice and Chief Justice of this Court.

Justice TABER passed from this high Court on February 6, 1947, for a great new destination to serve at the Court of his Maker. The death of Justice E. J. L. TABER, after more than twelve years of service on this Bench, has revived a flood of grateful memories to mitigate the feeling of deep regret that a good and venerated figure has passed forever from our midst.

It was my privilege to have known Justice TABER for more than thirty-eight years. It seemed to me years ago—and I have never had any reason to revise my impression—that Justice TABER embodied in a large measure all that a judge should be. His example did much to implant in me love for the law as a great profession, and instill in me respect for the courts.

He was a profound legal scholar; however, he would have been the last to claim any such distinction. He excelled in dealing with facts, and brought to that work a remarkable knowledge of human nature, and a lively imagination. He had that invaluable quality in a judge, as Chief Justice Holmes once put it, of “realizing how the law takes hold of people in life.”

In his administration of justice, though he was not one to condone wrongdoing or compromise with evil, his sympathetic instincts and compassionate nature were much in evidence.

He possessed the confidence and respect of the Bar, and its affection as well. I never heard a lawyer complain that he was deprived of a full, fair and patient hearing in his Court. Neither did I ever hear one of his decisions criticized as affected by political bias or inspired by religious prejudice, nor condemned as influenced by friendship for lawyer or partiality toward litigant.

A man of broad tolerance, he meted out justice without respect for persons, and with that scrupulous impartiality and understanding sympathy which exemplified the spirit of democracy at its best. He was always ruled by a high sense of judicial ethics. He realized that respect for the law and respect for those who administer it go largely hand in hand. He was governed in his work by the fundamental truth that in the last analysis the character of a judge is at least one of the major guarantees of justice.

Justice TABER presided over this Court with “modest dignity and calm content.” He was, at all times, a gentleman of the robe, which is to say he was patient,

courteous and considerate with whomsoever he had to deal. His kindly nature showed itself to strong advantage in his treatment of young practitioners, with whose difficulties he was always sympathetic, and with whose faults he was always indulgent.

I often ask myself: what is the test of an individual's personal and social worth? That he shall be sincerely missed by those among whom he lived and worked, has seemed, to me, at least one good answer—"Though lost to sight, to memory dear."

Certainly, by such a test Justice TABER ranked high as a man, judge and citizen. No man in the State was better loved or respected.

I shall never forget the few months we spent together in this Court. They brought us into the closest friendship. I shall miss him in the daily round of life, as one familiar and beloved.

Judge TABER in life seldom had time to do the things he wanted to do; he was too busy with his work and doing things for others. Today he can sit and rock and loaf, around God's throne.

We extend to his stricken wife and family our deepest sympathy. He was devoted to them, and we know the sorrow that must be in their hearts. May time soon soften their sorrow; may they feel consolation for having his devotion and tender care so long; and be comforted by the thought that he leaves to them the rich inheritance of a spotless name.

And now speaking to him personally as he sleeps, we can only say, in conclusion,

"Fare thee well, our brother," and breathe a prayer that, far beyond the grave's dark shadow, in the realms of heavenly light, his soul has found a safe, a happy, and an eternal home.

This is our tribute to our former friend and associate.

Justice Horsey:

Mr. Forman and other members of the committee, and each and every one of you who have addressed the Court,

we thank you for the splendid service you have rendered, and for the kind words you have spoken, so richly deserved by our departed friend and brother.

Mr. Clerk, as a mark of the esteem and respect of the Bench and Bar of this State, it is now ordered that the resolutions this day presented by the committee of the State Bar of Nevada, appointed for that purpose, and the resolution of Reno Post Number 407, Veterans of Foreign Wars of the United States, be received, filed and entered at length upon the records of this Court, and to remain always on its records; that certified copies of them be sent to the family of the deceased and to the Secretary of the State Bar of Nevada, and that said resolutions be published in the next volume of the Nevada Reports.

And as a further testimonial to the revered and honored memory of Justice E. J. L. TABER, this Court, in which he so ably served and presided for so many years, now stands adjourned until Tuesday, June 3, 1947, at ten o'clock a. m.