

A SPECIAL SESSION
of the
SUPREME COURT
of the
STATE OF NEVADA
Monday, October 5, 1959

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A special session of the Supreme Court of the State of Nevada, commencing at ten a. m., Monday, October 5, 1959.

Present: Chief Justice McNamee (presiding), Justices Badt, Merrill, and Pike; Officers of the Court; Relatives and Friends.

MCNAMEE, C. J. :

Ladies and gentlemen, this session of court has been called for the purpose of paying tribute to our Justice Charles M. Merrill who leaves the bench after a long period of service to the bench and bar of the State, and also to welcome Justice Miles N. Pike who joins the court today.

Of course we cannot help but be filled with deep emotion, as is natural when a happy period of relations comes to an end, but, on the other hand, in the future as we look back on our close, friendly and warm association with Justice Merrill we will forget this present emotion and remember with pleasure the minutes, hours and days we have spent together.

At this time I would like to call on Mr. Douglas Busey, President of the State Bar of Nevada.

MR. DOUGLAS BUSEY (President, State Bar of Nevada) :

May it please this Honorable Court, Chief Justice McNamee, Justice Badt, Justice Pike and Retiring Justice Merrill, Ladies and Gentlemen:

The selection of Justices of the Supreme Court is made by election in some states, such as in Nevada. In other states the selection is made by exercise of the power of appointment. In the latter jurisdictions it is contended that sound reason supports the system of selection by

executive appointment, as it is asserted that the quality, ability and integrity of the appointee is almost uniformly upon the highest level. Nowhere in the United States today is there superior demonstrative evidence supporting the existence of this assertion than in the personnel of the Supreme Court of Nevada. Justice Badt was appointed by Governor Vail Pittman. Chief Justice McNamee was appointed by Governor Charles Russell. Justice Pike was appointed by Governor Grant Sawyer. Of the quality, ability and integrity of these men I have personal knowledge. I had the privilege of serving for many years on the Board of Bar Examiners with Justice Badt, and thereafter the opportunity of appearing before him on many instances as a Justice of this Honorable Court. I had the opportunity of appearing before Chief Justice McNamee at a time when he was Judge of the District Court of Clark County on numbers of occasions and, in addition, I have had a personal acquaintanceship with him extending back to the Thirties.

During the years 1925 to 1929, Justice Pike lived at 634 South Virginia Street in Reno. During those same years I lived at 21 Thoma Street, just around the corner. Jack always walked to work, winter and summer. I had 7:45 classes at the University of Nevada. On many occasions I walked with Jack from his home to what is now the First National Bank Building, First and Virginia Branch, where Jack practiced his profession in the law offices of Albert Ayres and Bill Gardiner. He was my first personal contact with a lawyer. I have known him well since in the lawyers' world in Reno. Several years ago I had the opportunity of seeing and hearing Justice Pike, as the then United States Attorney, prosecute an important criminal case during a three-week trial in the United States District Court. He conducted as able a prosecution in that case as I have ever witnessed in any case. So I say here today, on behalf of the State Bar of Nevada, that once again there has been elevated to this Honorable Court a man of the highest character, ability and integrity.

In the departure to the United States Court of Appeals for the Ninth Circuit of Justice Charles M.

Merrill, the people of this State as well as of the State Bar of Nevada have suffered a great loss. In the appointment to this Honorable Court of Justice Pike, the people of the State as well as the State Bar have realized a great gain.

We of the State Bar of Nevada know that Justice Pike will serve with wisdom, ability and integrity. Upon the subject of the wisdom of judges there is a story of a judge of old. Phillip of Macedon was called upon to divide a piece of land between two brothers, left to them by a deceased father. His decision was, "Let the first brother divide the land. Let the second brother have the first choice." Justice Pike will serve with that same high degree of wisdom and impartiality.

We are deeply regretful in the departure of Justice Merrill who has served us for so many years. We are deeply affected by his loss to us. We are, at the once, proud of and deeply pleased with the appointment of Justice Miles N. Pike to the Supreme Court of Nevada.

(Mr. Busey concludes.)

MCNAMEE, C. J. :

Thank you very much, Mr. Busey.

I would like to call on Mr. Clark Guild, Jr., representing the Washoe County Bar Association.

MR. CLARK GUILD, JR. (President, Washoe County Bar Association) :

Your Honors, Ladies and Gentlemen :

I take issue with my partner, Mr. Busey, only in one respect. I think that this should be considered one of the most festive occasions in the history of the legal profession and the judiciary of the State of Nevada.

We from the Washoe County Bar who have, for many years past, had close personal association with Mr. Justice Merrill and with Mr. Justice Pike, welcome them both to their new positions.

To you, Mr. Justice Pike, I can safely say that you look well in the robe that you wear. You sit well in the seat that you occupy.

To Mr. Justice Merrill, we are happy that you are stepping into a new position that you have sought and to which the people of the United States through their elective officers and their President have appointed you. We reserve, Mr. Chief Justice, the right to say further words on Thursday, October 8, at 3:00 P. M. on behalf of Mr. Justice Merrill.

At this time we can only say that we are indeed gratified to see Mr. Justice Pike sitting in the seat he now occupies.

Thank you.

(Mr. Guild, Jr. concludes.)

MCNAMEE, C. J. :

Thank you, Mr. Guild.

Mr. Homer Angelo, would you say a few words, representing the Ormsby County Bar?

MR. HOMER ANGELO (President, Ormsby County Bar Association) :

Mr. Chief Justice, Members of the Court, Ladies and Gentlemen.

Like my colleagues of the Washoe Bar, I also speak with mixed feelings today. First, on behalf of the members of the bar of the First Judicial District and the citizens of Ormsby County, Justice Merrill, we have a genuine feeling of regret that you are leaving. In the past few years we have come to know you, your family, your warmth, your integrity. We have also come to learn a bit of our own war between the states and we will miss the opportunity of being refreshed on that series of incidents as you have related it to us. We also join in expressing our sense of honor in your appointment, and the Ninth Circuit Court's gain is our honor, even though it is our loss.

Justice Pike, we wish to welcome you—to re-welcome you—because we have felt in Ormsby County you have belonged here from your early years in this area, your work as United States Attorney, your family relationships in Carson City. You are really one of us as well as

one of Washoe County. We welcome you to the bar of the First Judicial District. As we mentioned when Justice McNamee came on the Supreme Court bench, you are now at the site of the least formal bar association in the world; we have no officers and no dues. (Laughter from the audience.)

It is also my pleasure this morning to speak on behalf of the State Bar of California of which you are a member. On behalf of the bar of our sister state, we wish to congratulate you, Justice Pike, upon your elevation to the bench of this Court.

Also I wish to speak, in addition to my responsibilities on behalf of the citizens of Ormsby County, for the veterans' organizations of the State. Justice Pike is one of our foremost veterans. We are proud of your elevation to this responsibility in this highest court.

Thank you, Your Honors.

(Mr. Angelo concludes.)

MCNAMEE, C. J. :

Thank you, Mr. Angelo.

There are many prominent lawyers and laymen in the audience. Perhaps a representative of the Attorney General's office, Mr. Attorney General Foley, would you like to say a few words?

ATTORNEY GENERAL ROGER FOLEY :

Mr. Chief Justice, Justices, Mr. Justice Pike. I hadn't anticipated this honor, but I think that I might say on behalf of the members of the Clark County Bar Association that they send you their heartiest congratulations. I heard the thought expressed a moment ago how well the robe befits you and the chair befits you, and the same thought had occurred to me when I first saw you come in.

On behalf of myself, and my brothers, and the staff of the Attorney General's office, and your good friend Judge Foley, we all are very happy to see you here today.

Thank you.

(Attorney General Foley concludes.)

MCNAMEE, C. J.:

Thank you, Mr. Foley.

At this time I am sure that Justice Badt would like to say a few words.

BADT, J.:

Thank you, Mr. Chief Justice.

Again the personnel of the Supreme Court has changed. Again we say, "Hail and farewell!" "Vale, vade." And I think the emotions must be mixed, despite the slight discrepancy and conclusions come to by Mr. Busey and Mr. Guild, because the situation is too poignant a one to divorce from our minds the new associations that are beginning, the old associations that are being broken.

To Judge Pike we extend the hand of greeting and express our confidence and our pride. We know that with Mr. Justice Pike on the bench here the high traditions of the Court will be carried on. Never have we fallen from those high traditions, and I trust that the Court never will fall from those high traditions. We are confident we shall not. With the Chief Justice, with myself, and with Justice Pike we think we can carry on. The burden is a very heavy one and a constantly increasing burden, entailing additional work, additional time spent, but we have no hesitation in stepping into the arduous duties of the Court under those conditions.

And to Mr. Justice Merrill who leaves us, it is hard to express even to the bar, let alone to a layman, the closeness of association between members of the Court. Mr. Justice Merrill has sat with us here, or with me, let us say, because Mr. Chief Justice McNamee has been a member of the bench only since last December. We have sat side by side for some eight years listening to arguments by counsel, and then retiring to our chambers for the real work that we do in the consideration of the arguments of counsel, with the briefs that have been filed, and the further research we do, on our own behalf, of the authorities. There we do our work, in chambers, there we argue out the case and come to our decisions.

In that period of eight years of association with Justice Merrill, I think I can say without any hesitation at all that I have never encountered and worked with a keener mind, a more analytical mind, a mind more attuned to not only the abstract justice of the case but to the logic of the arguments of counsel, cutting through many of the issues that have been raised and going unerringly to the meat of the case. That has been evidenced time and time again during oral argument here, with members of the Court questioning counsel and pinpointing the questions of law that are raised here. Sometimes counsel have been a bit perturbed by that, and disturbed, in their arguments. In most cases counsel who have well prepared their cases before arguing here, welcome such questions and are glad the questions are asked and pinpointed. There are many issues of the case which they then accentuate more fully to the Court.

On all of these occasions, as I say, I have never observed at work a keener or more analytical mind than has been constantly evidenced by Justice Merrill. Not that we always agreed! We have sometimes had strenuous arguments in chambers, and I think even since Chief Justice McNamee has been with us some of the cases have been submitted to pretty strenuous arguments and occasional dissents, but in most cases a gradual bringing together of views of all three, to the end that a proper opinion might be written which will not only decide the case but will not violate any principle of law and will not endanger the nature of the opinion as precedent for future cases. We are going to miss Justice Merrill tremendously.

You have some very important shoes to fill, Mr. Justice Pike. I know you will be equal to the occasion. Your reputation among the bench and bar of the State is of the very highest, and it is with great delight we have had so many members of the bar come to us and say, "This was a fine appointment. We know Justice Pike will do a great job on that bench. We know that you will appreciate and enjoy your association with him." I am sure that we will.

So, again (turning to Mr. Justice Pike), welcome, and (turning to Mr. Justice Merrill), farewell.

(Mr. Justice Badt concludes.)

MCNAMEE, C. J. :

Thank you, Justice Badt.

In saying goodbye to you, Justice Merrill, as a member of this Court, I want you to know I have appreciated the wisdom and the help you have shown me as the new member of the Court, and your consideration and tolerance with my expressions of opinion since I have been sitting here. At this time I wish you would say a few words.

MERRILL, J. :

Thank you, Mr. Chief Justice.

It is not an easy thing for one who has been on this Court as I have for more than the past eight years (with the associations which I have known here, the personnel of the Court, and of the various Court attachés), to leave this Court and this Courtroom. This has been without question the happiest and most stimulating and exciting period of my life, and my experiences on the bench here in Carson City will live with me the rest of my life.

I appreciate very much what Justice Badt said with reference to the process by which our Court ordinarily arrives at agreement, because I have never found anyone with whom I enjoyed the process of argument and discussion more than with Mr. Justice Badt, and I have never found anyone who made it easier for one eventually to agree that he was in error and that Mr. Justice Badt was correct in the conclusions reached. (Laughter from the audience.) It was even an enjoyable process with him which certainly cannot be said to be true in most cases where lawyers differ.

I am looking forward with great excitement and interest to my new duties, but I do know this: that they certainly cannot compare with what I have known here

in congeniality and the quality of my associates, my colleagues on the bench. I don't think that anything could ever compare with that.

The one part of my leaving that does give me pleasure is the fact that Mr. Justice Pike will be now sitting on this Court. Justice Pike was the first lawyer I met in the State of Nevada. I liked him when I met him. My respect for him was immediate and has grown ever since with the passing of the years. Our two law firms were very closely associated, and the occasions for my being in touch with Jack Pike were frequent and very close. I simply cannot explain to the members of the bar the feeling of gladness that touched the Court when we heard who it was who had been nominated to this Court. Of course it is extremely important to the members of this bench to know with whom they are to serve, and when the news became public it was certainly welcome news here in this Court and in this Courthouse.

Jack Pike has a background of wide experience in various areas of the law important in this State. He has shown his ability as an attorney, as a lawyer's lawyer. He has also had occasion frequently to show his dedication to public service. We know of his judicial temperament and integrity. He has everything that a judge should have, and I know will add greatly to the Court in his duties here.

I am sorry only that I will not myself have the opportunity to serve on the bench with Mr. Justice Pike. I am sure it would be a happy experience. But I have had my measure of joy in my associations with Mr. Justice Badt and in Mr. Chief Justice McNamee and in former Justice Edgar Eather. I certainly could not have chosen finer companions on the bench, and they will be missed, as well as all of the personnel in connection with the Court.

I thank you, Mr. Chief Justice McNamee, for having me here today. I appreciate this opportunity very much. Thank you.

(Mr. Justice Merrill concludes.)

MCNAMEE, C. J. :

Thank you.

Mr. Justice Pike, I want you to know that we are looking forward now to continuing the work of this Court to the very best and highest of its traditions, and we have great confidence that that will continue with you on this bench. At this time I would like to hear, and all of us would like to hear, a few words from you.

PIKE, J. :

Mr. Chief Justice McNamee, Justice Badt, Retiring Justice Merrill. For the first time in some 30 years I am addressing the Nevada Supreme Court while sitting. This in no way indicates any change in my respectful attitude for this Court. It is the existing protocol, as a member of the Court.

It has been my fortunate experience through these many years to appear before Federal and State courts of Nevada, before judges whose ability, understanding, fairness, and integrity were impressive not only to the members of the bar but to the people of this State and our neighboring commonwealths. Likewise, through that same period of time, it has been my pleasure and privilege to associate with members of the bar who could be similarly characterized. All this has been a source of deep and lasting personal friendships.

In coming to the bench it was through the circumstance of Justice Merrill being elevated to the post of Justice of the Ninth Circuit Court of Appeals, the Federal appellate court that has appeal jurisdiction over many of these western states including our states of Alaska and Hawaii. In assuming that responsibility, he will sit as a member of the court which is just below the highest court of the land, the United States Supreme Court which convened today for its fall session. Our acquaintanceship has gone back many years when we were both starting to practice law. Through that time Justice Merrill advanced to every recognition that could have been accorded one. As a practicing attorney he was

obliged to meet many responsibilities in which he demonstrated not only his ability but his full consideration of the human rights involved in various complicated situations. This was in connection with his work not only as attorney before the courts but as a member of the important committees and functioning arms of the self-governing body of the State of Nevada. Throughout the State he has received the endorsement and the acclamation of the judges and members of the bar and the public. With this recognition he is the second man from the State of Nevada in the history of our State, designated by the President and confirmed by the Senate of the United States, to serve on this high court under a lifetime appointment. It is significant that Nevada, relatively small though its population be, has had two members on that Court. In our recent meeting of the Bar Association, many of us again had the pleasure and privilege of mingling with Senior Circuit Court Judge William E. Orr, now retired in a sense from the Ninth Circuit Court of Appeals, who has never in any way lost his ties and affections for the State of Nevada and returns at every opportunity as we are sure Justice Merrill will.

For myself, the Clerk of this Court opened the door behind these chairs of the Court and let me look into the Courtroom from the other side, and that is the first time I have come in from the other side of the bench. I can't say that it is different. It is the same Courtroom. For not an inconsiderable part of my years of practice I have looked at judges and wondered what they were thinking about, and I must say that, to date, that mystery has not been solved. (Laughter from the audience.) As an incoming member of the Court I have no doubt that there will be ample work directed to my attention to help me work in that direction to see how a particular line of thinking develops.

This morning I am in the presence of Justice Merrill who is leaving, but not too far away, Chief Justice McNamee and Justice Badt, and of men that I have

respected and whose friendship I have enjoyed for many years. The same is true of the personnel of the Court. None of them are strangers. In the presence of you friends, members of the bar, and relatives, I say to you simply that the responsibilities and duties of this office are known to me and that, within my capabilities, I most certainly shall do my best to meet and discharge them properly.

Thank you very much.

(Mr. Justice Pike concludes.)

MCNAMEE, C. J.:

Thank you, Mr. Justice Pike.

If you will arise, I will administer the oath.

(Mr. Justice Pike arises, and the Oath of Office of Justice of the Supreme Court of Nevada is administered to him by Chief Justice McNamee.)

MCNAMEE, C. J.:

The Court, for this session, stands adjourned.

(Whereupon Court adjourned at 10:40 a. m.)

ANNA REBOL, *Official Reporter.*
