



This portrait of Judge Ethan Allen Doty hangs in a City Hall courtroom.

# *A Man of Many Primes* **JUDGE ETHAN ALLEN DOTY**

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By Michael J. Carroll

**I**f Psalms 90 allows three score and 10 – 70 years of life – Judge Ethan Allen Doty beat the Biblical odds. Not just in being alive two decades beyond his due, but in fully living his years.

I did not know Judge Doty in his prime. Let me rephrase. I did not know him in his prime as a young man or even in his middle-age prime. A man like Ethan Allen Doty must have had many primes. I knew him in his elderly prime. His senior judge prime. I knew him when he was in his 80s and then 90s. I knew him in one of his primes.

Physically, he was a small, slight figure by then. A shrinking figure, as aging men tend to be, but with a twinkle of life in his eyes. He was not at all ready to leave life, not even ready to leave the bench. At the risk of invoking clichés – which are sometimes quite accurate and useful – there was a bit of the giant in and about him. I don't know whether it is accurate to say moral giant or just a giant of personality. Maybe a giant who had spent four score and 10 years in this world working hard, fairly and honorably.

I do not know what he was like in the Clark/Dilworth reform years in 1950s Philadelphia. Probably more of a politician than in later years. The record lists him as a delegate to the 1948 Democratic Convention that was held in Philadelphia. That was the year that Democrat Harry Truman was supposed to lose to Thomas E. Dewey who was nominated by the Republicans in their own Philadelphia convention. Truman, who had succeeded Franklin D. Roosevelt when he died in

office, forgot to read the polls, or at least declined to follow them and was elected to his own term as president.

At that '48 Convention, Henry Wallace, another former vice president under Roosevelt, challenged Truman from the party's left. Dixiecrat segregationist Strom Thurmond challenged Truman from the right, before storming out in a states-rights huff. That was Ethan Allen Doty's convention.

I suppose it is generally known how one becomes a Philadelphia judge. Often the process is not easy or pretty. Ethan Allen Doty was appointed to the Philadelphia bench in 1958, nominated without opposition in 1959 and re-elected in 1969. He served until 1996, almost 40 years on the bench.

Politician, patrician reformer, or both, inside that young man must have been the core of the old man I came to know.

A dean of the Philadelphia criminal defense bar who began to practice law around the time the Judge Doty was appointed to the bench, recalled the judge as tough, sometimes even rigid in his early years on the bench, and much more understanding of the prosecution than of the defense. One story said that he threatened to fine a member of the court staff for putting two initials instead of his full first and middle name on the brass nameplate that rested on the bench and identified the judge to the world. Fact or legend, right, wrong, or somewhere in between, people change over time, sometimes seemingly drastically. But a good seed did not likely germinate on barren ground.

Judge Doty was "The Arbitration Judge" when I first appeared before him. Arbitration in the Philadelphia Court of Common Pleas is intended to resolve cases without a time-

consuming and costly trial before a judge or jury. Arbitration panels made up of three lawyers hear and decide cases relatively quickly and cheaply. Either side can appeal to a judge or jury if unhappy with the decision.

Lawyers being lawyers and the law being the law, there were sometimes disputes that threatened to delay or bring things to a halt. That is where Judge Doty came in. To keep things moving smoothly and fairly and if that failed, to at least keep things moving. Judge Doty was there to umpire, to make quick calls and force the players back into the game.

I have represented poor residential tenants for somewhere between one and two score years. I met the judge because eviction appeals were then heard by arbitration panels. More than once he was charged with deciding whether my tenant client could present a defense to eviction and stay in the rented home while she defended. In law as in life, things often come down to money. Whether my client could avoid eviction into the street sometimes depended on whether she had deposited the required rent money during the appeal.

Alas and alack, my clients were all poor. Sometimes all the money that should have been deposited was not. I remember one February day when two eager young associates of a big firm scurried into Judge Doty's court to pursue the speedy eviction of my tenant client who had the misfortune of living in a house owned by the wife of a senior partner of the firm. Their arms looped under stacks of books seldom seen in landlord tenant court. Eager, beyond eager, they were thrilled to be going into a courtroom to do something more than carry the bag of a senior attorney and slide across the tabletop documents demanded. They were going to try a case, or at least make a sound, persuasive and scholarly legal argument to a judge. An elderly judge to be sure and not as sharp to their own hungry eyes as the Olympus-dwelling partner who dispatched them on their eviction mission. Likely bidding them to return with their law book victory shields or on them like the Spartans of old.

"Your Honor," the tall lanky one began.

"Your Honor, this tenant is abusing the court and the legal system. She remains in my client's property during the appeal without paying rent. We now doubt... we allege and aver... that she is not depositing the required rent into an escrow account. We demanded proof, but she refused to provide it. She has given us no proof of payment because...because... ah...on information and belief, she does not have the money. We ask that Your Honor terminate the supersedeas, the stay of eviction, and that she be evicted immediately. We ask that my client be restored to possession of the house she owns."

I rose to respond. What to say? He was right that my client did not have the money. She had no money for escrow or for anything else. But I had to say something. Had to break his

flow, if flow it was. Besides, I was tired of listening to him.

"Your Honor, I feel it is important to point out..."

I paused for a moment and reflected again upon what exactly I could point out. Hardship? Usually true with my clients. Certainly true with this worn, rail thin, middle-aged woman from one of the river wards, who looked up at me calmly with a hapless smile on her too soon age-weathered face.

Before I could resume my own brilliant legal argument I heard the judge gently interrupting me.

"Now, now counselor, just hold for a moment. You can sit down. I have a question myself for your adversaries."

"Gentlemen," he began as he swiveled his chair and then leaned his body in their direction.

"Gentlemen, if you please, what is the temperature out there?"

Stunned silence from the young legal eagles. They scanned each others eyes for help but found none. They looked at the stack of law books. No help there either.

I saw my opening.

"Your Honor, it was 17 degrees this morning when I came to work."

"Seventeen degrees...17 degrees..." he repeated, as his eyes narrowed and his grey-topped head began to move slowly from side to side. He swiveled again in his chair and rolled ever so slightly in the direction of my client.

He seemed to look mostly at her as he again started to speak.

"I am not putting anyone out when it is 17 degrees. When can we bring this case back?"

"Two weeks, judge," a short stout woman shot back from her seat at the small side table placed perpendicular to what passed for a judge's bench at the Arbitration Center.

"Very well, gentlemen. I will see you all back here at 10 a.m. two weeks from today."

The two young associates muttered as they shoved books into

wide rectangular leather-covered boxes with handles, boxes that were one part briefcase and two parts suitcase. I had considerably less to carry in my own small bag as I slid my free hand lightly under the elbow of my client and led her outside.

"And by the way gentlemen," the judge called as the lawyers headed for the door.

"The time to check out a tenant is before you rent. Once the tenant is in... well, if you have problems, then it's too late. If you don't check out the tenant, you have only yourself to blame."

The advice was lost on the young landlord attorneys. Frustration with losing before an old judge – four score years by reason of strength. Losing with a judge who did not fully understand their sound, perhaps brilliant legal argument, had left them deaf to advice.

In the busy hallway the associates recovered the cynical

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banter and bluster they had displayed before the hearing. They rolled eyes and made faces to each other as they cast a backward glance at the judge. I would have liked to be a fly on the wall to hear their scathing critique of an old senile judge when they returned to the office. No points scored with the senior partner that day.

Maybe it was not written so clearly in the law books. Certainly we should be a government of laws and not men. Was the judge's decision based on law? Likely. Based on equity? Most probably. Resting on justice? Certainly. In addition to law and equity, shouldn't the law have a heart, a warm heart on a frigid Philadelphia day?

Back in the courtroom the clerk quickly and efficiently steered the next set of litigants to the judge. She was so much more than a passive assistant in the judge's courtroom. She sometimes had to step in to protect her nonagenarian boss. A few months earlier, after a hotly contested hearing the judge had made his ruling. The losing side tried to prod, bully and confuse the old judge into changing his mind and his ruling. The judge with eyes almost closed, seemed

to be considering that for a moment until he was interrupted by the whisper of his assistant.

"You've ruled now judge and that's it. You're only going to get yourself in trouble."

The judge blinked a few times, stared off at something only he seemed to see, then came back strongly with both feet in bounds.

He cleared his throat and then bounced his recovered and renewed voice from the front to the back of the courtroom:

"The court has ruled. You have 30 days to appeal, if you wish."

Case closed.

There was also the day that the same court attendant disarmed the landlord who had a holstered handgun on his hip. He was using it to not so subtly intimidate his cowed tenant just outside Judge Doty's courtroom. As soon as the judge's courtroom assistant found out what was going on, she approached the armed landlord who eclipsed her greatly in height and bulk. He towered over her as she unrolled a brown paper

bag and fanned her hand back and forth inside it to give it shape and space.

"You put that gun in there right now, sir," she firmly ordered.

Like a young schoolboy caught with contraband chewing gum by the principal, he quickly and sheepishly complied.

"You'll get it back when you leave court. Not before."

One of my last memories of the judge was in the then famous, now largely forgotten "Ice Storm '94." Several inches of thick clear ice covered the city with a smooth slippery January shell. Beautiful, dangerous, and for a few, deadly. Traffic came to a near standstill and hospital emergency rooms filled with patients with broken bones to be set. One old judge braved the sidewalks of Center City, moving briskly through City Hall and then the various downtown court buildings, searching in vain for a courtroom that needed a judge. None needed because there were no jurors, lawyers, or clients. There was almost no one there at all but the judge – by reason of strength.

## Judge Doty a Mentor for a Lifetime

I first met Judge Ethan Allen Doty in the early 1970s, when I had just entered my teens. I was a young stamp collector and he was president of the Philadelphia Stamp Club. He was a gentle man who became a longtime friend. At that point, the fact that he was a judge really didn't impress me. What did impress me was his calm, and his love of stamp collecting. Interestingly, Judge Doty collected stamps and other material from the Civil War, yet he preferred to avoid "controversial material."

When I passed the bar, Judge Doty seemed to be involved in all aspects of my career. We first crossed paths when he served as administrative judge for the Arbitration Center. Whenever I appeared before the judge, he seemed to rule against me – which I always attributed to his desire not to show favoritism toward me.

It was in 1986, just after my wedding, that Judge Doty took on a new role in my life – a guardian angel. Upon graduating from law school in 1984, I had worked for a small personal injury firm, and was miserable. As a result, I left that position and began a search for greener pastures. My search led me back to Judge Doty, who suggested calling Ed Chacker, whose firm, Gay & Chacker, was hiring. Ed and I hit it off, and I was offered a job; but I was also offered a position at another firm. It was Judge Doty who

strongly advised me to go to Gay & Chacker, which he called an "up-and-coming firm." I took the position, became a partner, and spent 15 years there. Although I have since left the firm, I remain close friends with my former colleagues, and it is clear that my career owes much to Judge Doty.

But it remains the less public memories of Judge Doty that linger with me. In stamp collecting, he found a peaceful respite, but he became very upset when some members of his stamp club, including me, chose to leave because other members of the club had created an atmosphere of bigotry and hatred. Judge Doty worked hard to mend fences and it is because of him that the club still exists.

And finally, I remember vividly his devotion to his wife Bea. She was a lovely, quiet and charming woman, whom he adored. Bea died in 1995, but had been ill for many years, and Judge Doty visited her and was by her side, regardless of whether she knew he was there. He was never the same after she died. When Judge Doty died in 1997 at the age of 91, the memorial service was held at the Unitarian Society of Germantown. Although many of the judge's contemporaries had passed, attendees included members of the bench and bar from many generations. Each had a similar memory – of a gentle man and a judge, who wanted nothing more than to treat every person in his courtroom, or in his stamp club, or wherever he met them, with fairness and grace.

- By Daniel J. Siegel



Finally, a different sort of memory, maybe one more connected to the young Ethan Allen Doty convention delegate than to Judge Doty. A memory I am still trying to figure out. Maybe if my father had been alive he could have decoded it for me since he dabbled in politics as a young man, when politics as the cliché goes, was a contact sport. I refer to the time that the judge invited me to address his social club. Like many American men's clubs of that generation, it was named for a large wild animal. To this day, I am not sure why the judge asked me to come to the meeting. Maybe it was a slow night. Maybe the original invited speaker cancelled at the last minute. I will never know.

I see that night now though a soft warm lens, a bit like the James Joyce story, "Ivy Day in the Committee Room." Unlike in the short story, no one at the judge's gathering was trying to coax to life a fire to ward off the damp chill. No one was licking wounds over election losses, complaining about not being paid for canvassing, or mourning past national political heroes betrayed and ruined. Yet the political and emotional atmosphere was somehow similar.

The meeting was just outside the city in a roadside 18th century inn, in a room that had been so altered that it passed easily for mid 20th century. The lighting was subdued to dimness. Bits of ancient woodwork clashed with inexpensive modern wooden paneling. Unfolded and arranged in rows were more grey metal chairs than members in attendance.

Floating in the air was a scent of dated, almost extinct politics. A Philadelphia last hurrah. Everybody except for the judge was no longer a somebody, but had once been a somebody. I being the only apparent exception, not ever having been a somebody or in danger of becoming one.

Several club members – and truth be told – there were only several all together – several were former officeholders and by definition politically savvy and connected, or at least connected once. A former sheriff...a former ward leader...

What did the judge have in mind in inviting me? An opportunity to meet people who might do something for me, help me along in life? Give them a chance to size me up? It was a pleasant meeting but there was no follow up on either end. Nice old guys, something to aspire to be.

I still have the small statuette of the animal for which their club was named, presented to me by the smiling judge as I bowed away from the podium. His paternal smile was complemented by that twinkle in his eyes as he shook hands.

There was modest polite applause and thanks at the end. A statuette souvenir of the night and possibilities? Maybe closer to it, a paraphrase of Freud's cigar remark. Sometimes a statuette is just a statuette. The days of our years are after all numbered. ■

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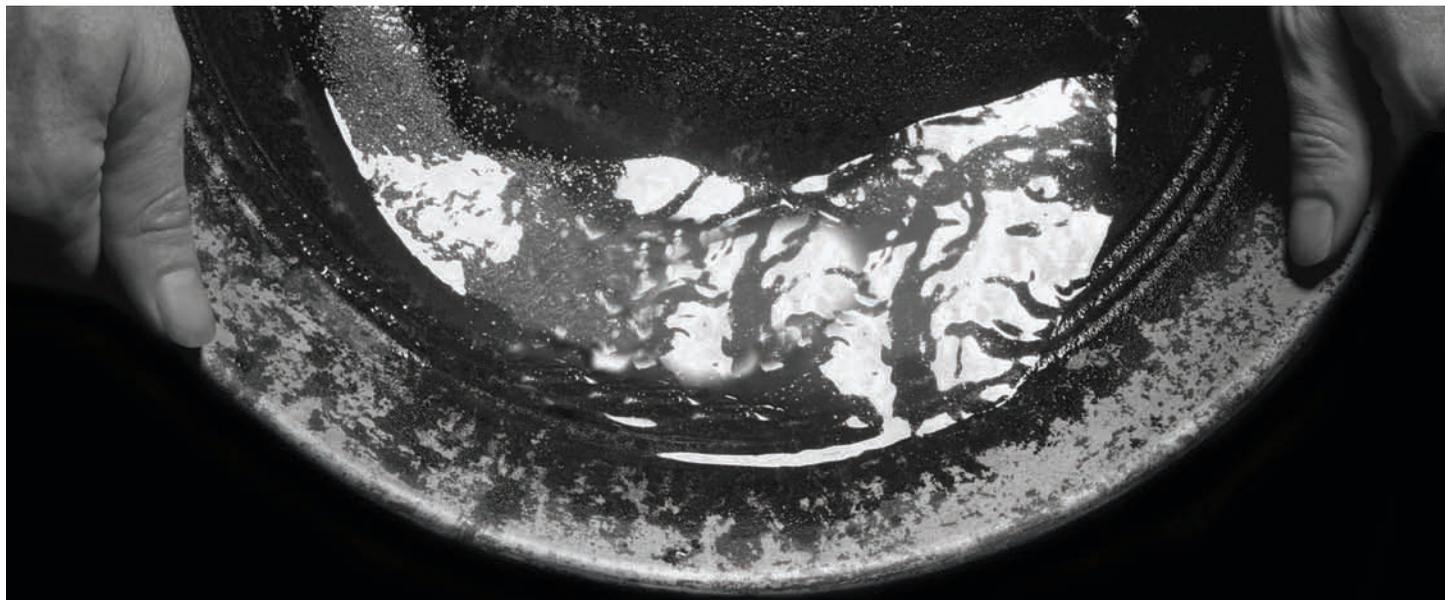
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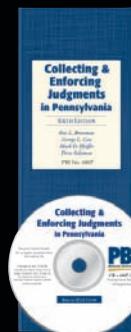
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