

Denver Law Review

Volume 90

Issue 5 *Symposium - Forty Years since Keyes v. School District No. 1: Equality of Educational Opportunity and the Legal Construction of Metropolitan America*

Article 5

December 2020

Personal Memoir: Indelible Memories of My Clerkship with Judge William E. Doyle

Jane Michaels

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Jane Michaels, Personal Memoir: Indelible Memories of My Clerkship with Judge William E. Doyle, 90 *Denv. U. L. Rev.* 1115 (2013).

This Article is brought to you for free and open access by Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

PERSONAL MEMOIR: INDELIBLE MEMORIES OF MY CLERKSHIP WITH JUDGE WILLIAM E. DOYLE

JANE MICHAELS[†]

ABSTRACT

The author is a former law clerk for Judge William E. Doyle of the United States Court of Appeals for the Tenth Circuit. She reflects on her clerkship experience with a brilliant jurist whose decision in the controversial *Keyes* case arose from his passion for justice and dedication to the protection of constitutional rights.

TABLE OF CONTENTS

I. INTRODUCTION	1115
II. LIFE AS A LAW CLERK.....	1115
III. A GLIMPSE AT JUDGE DOYLE'S PERSONAL QUALITIES.....	1116
IV. THE <i>KEYES</i> CASE: DESEGREGATING DENVER'S PUBLIC SCHOOLS	1118
V. JUDGE DOYLE'S LEGACY	1120

I. INTRODUCTION

The unmistakable white hair. That toothy grin. The way blood rose slowly upward from his neck to his forehead when the Irish temper started to flare. Aside from these inimitable physical traits, what I remember most about Judge Doyle was his passion for justice, his innate analytical instinct, and his profound love of the law.

Judge Doyle was a force. A brilliant, compassionate jurist, he left a lasting imprint on the minds and lives of the young lawyers who had the good fortune to serve as his law clerks. I am grateful to have been one of them.

II. LIFE AS A LAW CLERK

In the 1970s, each Tenth Circuit judge had two law clerks. My co-clerk was Norm Haglund, now a district court judge for Colorado's second judicial district. Judge Doyle divided cases so that one of us took

[†] Ms. Michaels is a Partner at Holland & Hart LLP. Currently the Chair of Holland & Hart's Trial Practice, Ms. Michaels has been recognized by *Benchmark Litigation* as one of the "Top 250 Women in Litigation" in the United States. She was honored by *Lawdragon* in its publication highlighting the 500 leading lawyers in America. Ms. Michaels is a graduate of Wellesley College, Harvard University, and Boston University School of Law. She is ranked in Chambers USA for her expertise in both intellectual property litigation and commercial litigation. In recognition of her trial skills, Ms. Michaels was inducted as a Fellow of the *American College of Trial Lawyers*, the *International Academy of Trial Lawyers*, and the *International Society of Barristers*.

responsibility for researching and preparing bench memos on even-numbered cases and the other took responsibility for the odd-numbered cases.

Judge Doyle had an uncanny knack for *knowing* that there must be a case on point supporting a proposition that he deemed determinative. I remember sitting in chambers across from his massive desk, summarizing my research and debating the salient issues with him. On several occasions, I recall being encouraged to “dig a little deeper” for relevant case law on an issue in dispute. When Judge Doyle had analyzed the facts and the law and had reached a carefully considered conclusion, it was an indomitable task to change his mind. But it did happen—well, maybe once or twice. Whether writing a majority opinion or a dissent, Judge Doyle dictated his opinions from start to finish to his secretary, Carolyn. I marveled at his ability to dictate flawless prose, with very few pauses, in short, pithy sentences.

One of my favorite clerkship memories was attending Tenth Circuit oral arguments. Judge Doyle was an active jurist and never hesitated to pepper lawyers with tough questions. I saw him engage in an intellectual pummeling of one of his former law clerks during an appellate argument. To his credit, the lawyer did not shrink from answering Judge Doyle’s barrage of brilliant questions. Having clerked for Judge Doyle, the lawyer knew that he had a better chance of ultimately prevailing if the judge could test and retest the strength of the legal theories and the intellectual underpinnings of the arguments he was advancing.

III. A GLIMPSE AT JUDGE DOYLE’S PERSONAL QUALITIES

Much can be written about Judge Doyle’s legal scholarship and his opinions on cutting-edge issues of constitutional, statutory, or common law import. But I would like to reflect on Judge Doyle’s qualities as a human being. Born in west Denver in 1911, Judge Doyle came from modest means. He attended West High School, played tackle on the football team, and became an accomplished amateur boxer. Judge Doyle waited tables and worked other odd jobs throughout high school and college.¹ He never forgot his roots.

Although he was in his sixties when I clerked for him, Judge Doyle continued to challenge himself physically as well as mentally. He went to the YMCA gym downtown almost every day at lunchtime. Some of his former male law clerks had joined him in working out at the YMCA during their clerkship year. I was Judge Doyle’s second female law clerk and the first female law clerk to accompany him to the YMCA. Ahead of his time in so many ways, Judge Doyle relished the fact that I would run

1. John L. Kane, Jr. & Harry F. Tepker, Jr., *William E. Doyle*, COLO. LAW., July 1998, at 21, 21.

on the track with him. My big quandary was whether to run at his glacial pace or to pass him on the track. In the end, it didn't matter. Our trips to the YMCA were more about the walk to and from the gym than about the exercise once we got there. Judge Doyle knew almost everyone who went to the YMCA in those days, and he stopped to talk with many of those acquaintances during our slow sojourn to and from the YMCA building.

His chattiness during our daily trips to the YMCA was in striking contrast to his general reluctance to socialize with lawyers. He lived his professional life in self-imposed isolation. As a result, Judge Doyle distanced himself—far more than his judicial position would have required—from the many attorneys in Denver who would have gained so much from his wisdom.

Isolation from the outside world made our daily world within chambers all the more significant and impactful. Although he could be gruff, Judge Doyle was a deeply religious and caring human being. He cared about his young law clerks. He cared about the staff in the clerk's office. He cared about his friends and was fiercely loyal to them. He had empathy for the downtrodden and deep respect for those who had overcome adversity.

Judge Doyle enjoyed skiing into his sixties. However, waking up early in the morning during that time in his life was not his strong suit. His secretary, Carolyn, teased him that he should wear his ski clothes to bed in order to be ready to leave the house when I arrived there at 6:30 a.m. to give him a ride to the slopes. Like his running style, Judge Doyle's skiing was decidedly slow but deliberate, and he was determined to ski each run as many times as he could muster.

His steady, dogged determination on the slopes mirrored his persistent pursuit of excellence on the bench. As an athlete, Judge Doyle never shied away from a challenge. As a jurist, Judge Doyle never sidestepped the difficult cases. He handled some of the most controversial cases in decades.² He was one of the first judges in the country to order school integration. He was a guardian of the Constitution. Throughout his judicial career, Judge Doyle earned a stellar reputation for the scholarship of his opinions. As a human being, he was admired for his humility, compassion, and fearless independence.

When he died in 1986, the *New York Times* wrote an article describing him as the judge who "presided over a landmark desegregation case in Denver."³ His courageous ruling in that case subjected him to threats and bomb scares. Yet, he remained resolute in interpreting constitutional

2. See, e.g., *Keyes v. Sch. Dist. No. 1*, 313 F. Supp. 61, 83 (D. Colo. 1970).

3. George James, *William E. Doyle Dies at Seventy-five; Judge in Denver Busing Case*, N.Y. TIMES, May 4, 1986, at 44.

rights. As a testament to his fairness, counsel for both parties in the *Keyes* case agreed that Judge Doyle, then on the appellate bench,⁴ should preside as the trial judge on remand. As the trier of fact on remand, Judge Doyle was responsible for hearing testimony and rendering a decision that would outline a desegregation plan to be implemented in the Denver Public Schools. It was a formidable task, but he accomplished it with diligence and dedication to justice. His decision endeavored to reach "a just, equitable and feasible plan for the desegregation of the schools in accordance with the mandate of the Supreme Court."⁵

IV. THE *KEYES* CASE: DESEGREGATING DENVER'S PUBLIC SCHOOLS

As Judge Doyle noted in the opinion he issued in April 1974, during the year that I clerked for him, the scope and magnitude of the problem were best evidenced by the raw numbers. These statistics reflected extreme concentrations of minority students at the north end and western portions of the school district and equally high concentrations of white students in the middle and southern part of the school district. In light of the court's prior finding of de jure segregation, the Supreme Court's mandate "required . . . desegregation 'root and branch.'"⁶

Judge Doyle ordered counsel for both parties to submit a plan for the desegregation of the Denver schools. He permitted each side to object to the opposing party's plan and then conducted hearings, with evidence presented concerning the tendered plans.

After extensive analysis of each party's proposal, the court rejected both plans. Among other flaws, the court concluded that the school district's plan was inadequate because it sought to close eleven inner city schools, resulting in a transfer of thousands of students to other facilities and disrupting neighborhoods, while not directly addressing or attempting to ameliorate endemic segregation. Judge Doyle also found the plaintiffs' proposed plan to be unsatisfactory because of its complexity and extensive busing. The court noted:

[A] movement of minority students to a non-integrated Anglo school would oftentimes carry not only minority students but many Anglo students as well. The opposite would also be true. The movement of Anglo students would in many instances carry with it minority students to what had been a minority school.⁷

After hearing all of the evidence on the respective plans, the court expressly determined that the Denver Public Schools Board of Education

4. In 1972, Judge Doyle was elevated from the U.S. District Court for the District of Colorado to the U.S. Court of Appeals for the Tenth Circuit.

5. *Keyes v. Sch. Dist. No. 1*, 380 F. Supp. 673, 674 (D. Colo. 1974).

6. *Id.* at 675.

7. *Id.* at 681.

had failed to propose a constitutionally acceptable desegregation plan, stating:

[T]he Board has for the past four years and even in the recent past, notwithstanding the mandate of the Supreme Court of the United States, consistently resisted and opposed every desegregation effort and has sought to avoid the effects of such orders. The court finds, therefore, that the Board of Education has not in the past shown a willingness to formulate a desegregation plan; that it now refuses to do so; and that according to every probability it will continue to avoid and refuse to desegregate the school system. The court finds that further efforts to compel them to do so would be unavailing.⁸

Having reached that conclusion, Judge Doyle determined that the court must exercise its equitable powers to produce its own plan in order to provide constitutional relief. Enlisting the assistance of an expert, Dr. John A. Finger, Judge Doyle proceeded to formulate a desegregation plan that would be “meaningful and therefore effective,” in addition to being “feasible and realistic” as well as “fair in relationship to the objectives to be achieved and the manner of achieving them.”⁹

As law clerks, we assisted Judge Doyle and Dr. Finger in formulating a meaningful, feasible, and realistic desegregation plan. I have fond memories of a multitude of maps spread out on every flat surface in every room of Judge Doyle’s chambers. All of the elementary, junior high, and high schools were located on these maps, showing the boundaries for each school. During the time that we researched the applicable law and assisted with the desegregation plan, Norm and I could easily recite the name of every school in Denver as well as the percentage of Anglo and minority students in attendance at each school.

Work on the desegregation plan was tedious and painstaking. It involved analyzing computer print-outs and rezoning school boundaries in an effort to utilize the ethnic populations within each neighborhood as equitably as possible while minimizing the need for disruptive busing. This detailed analytical process culminated in the creation of the Finger Plan, which became the basis for Judge Doyle’s April 24, 1974 order desegregating Denver’s public schools. That order was the result of Judge Doyle’s tireless efforts to provide every child the opportunity of an education—“a right which must be made available to all on equal terms.”¹⁰

8. *Id.* at 684.

9. *Id.* at 685.

10. *Id.* at 695.

V. JUDGE DOYLE'S LEGACY

I attended the memorial service for Judge Doyle when he died in May 1986. Judge Alfred Arraj of the U.S. District Court for the District of Colorado, one of Judge Doyle's closest friends, spoke at the service and offered the following eloquent tribute to him:

I have come to know the fibre of this man—his strength of character—his depth of perception—his industry—his courage—his intellect and his capacity for friendship. . . . No judge who ever sat on our court did so with greater respect for the obligations of such occupancy. His constant wish was that he gain the light to see and to do right.¹¹

11. Kane & Tepker, *supra* note 1, at 23 (omission in original) (quoting James R. Carrigan, In Memoriam: The Hon. William E. Doyle 1 (May 20, 1986) (unpublished manuscript)) (internal quotation marks omitted).