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**President, Police and Judge
on Collision Course**

Contempt and Love for the Law: President Nixon, Philadelphia Police, Protestors, and Judge Huyett on Collision Course

By Daniel B. Huyett, Esquire

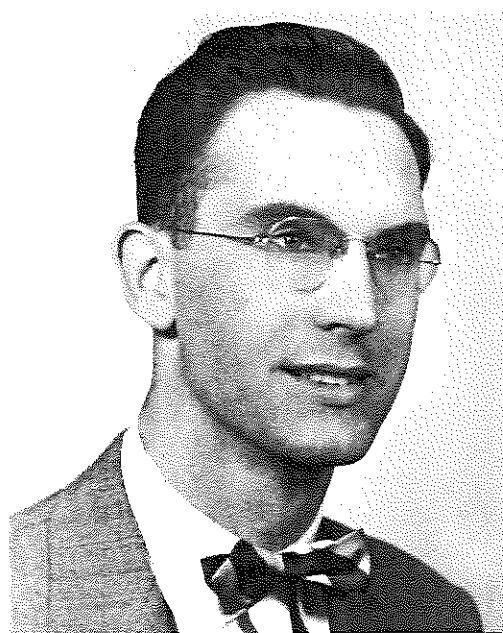
It was October 1972. President Richard M. Nixon was planning to come to Philadelphia to sign one of his signature legislative programs into law. His visit would set into motion a series of events at Independence Square in Philadelphia, and the federal courthouse, blocks away, involving the mayor, the police commissioner, protestors, and one federal judge. The President's visit would test the meaning of dissent in wartime, just months after the Watergate break-in and during the calm before the storm, which would gather steam and break the following year.

Also planning for Nixon's Philadelphia visit was a group of war protestors. The Vietnam War was still raging. The United States had just bombed North Vietnam airfields. That July, Jane Fonda had visited Hanoi and broadcast anti-war messages over Hanoi Radio.

Earlier that year, Frank Rizzo had been elected mayor of Philadelphia, riding his campaign slogan "firm but fair" into office. Unlike his rivals, Rizzo had refused to issue position papers. Previously Philadelphia's police commissioner, Rizzo earned a reputation for his unstinting commitment to law and order. Outspoken and flamboyant, Rizzo was famously filmed leaving a black-tie event to quell a neighborhood riot, armed with a night stick that was nestled in his cummerbund.

1972 was a presidential election year. And just two months after his mayoral election, as a Democrat, Rizzo—in an unprecedented move—endorsed Nixon, a Republican, over the Democratic nominee and anti-war candidate, Senator George McGovern. A New York Times article noted that Rizzo "pledged to hold Mr. Nixon's losing margin in heavily Democratic Philadelphia to no more than 100,000 votes to insure a Nixon victory in Pennsylvania."

In June 1972, several months before Nixon's visit to Philadelphia, Nixon's "White House Plumber's Squad" had



In 1951 Daniel H. Huyett, 3rd became Reading City Solicitor with just three years of experience as an attorney

broken into the Democratic National Committee's Watergate office in Washington, D.C., and planted a bug, a crime that would unravel over the next year and a half, lead to sixty-nine indictments, and drive Nixon from office.

Selecting Philadelphia for this campaign stop in the midst of the controversial Vietnam War was not serendipitous. John Dean, White House Counsel during the Watergate break-in and later-turned government witness against Nixon, testified in June 1973 that one of the major preparations for a presidential visit was to ensure that the demonstrators were neither seen nor heard by Nixon. Dean testified that both legal and illegal means were employed to deal with demonstrators. With Rizzo at the helm of the City of Brotherly Love, Independence Square was perfect for Nixon's October 1972 visit. The presidential election was just under three weeks away.

Turbulent times these were. It was the baby-boomer generation, the hippie generation—long-haired and tie-dyed. In 1972 the Rolling Stones released "Exile on Main Street." "Dirty Harry," starring Clint Eastwood, was a box office hit; and M*A*S*H, the Korean War situation comedy, heliographed onto TV screens each week. In September 1972, just a month before Nixon's visit to Philadelphia, eleven Israeli athletes and coaches, along with a German police officer, were murdered at the Olympic Games in Munich, West Germany, by a Palestinian terrorist group calling itself "Black September."

For his Philadelphia appearance on October 20th, Nixon selected Independence Hall as the backdrop for his speech, where both the Declaration of Independence and the United States Constitution were debated and signed. Only the Liberty Bell and a small park called Independence Mall separated Independence Hall from the twenty-two-story United States Federal Courthouse looming at 6th and Market Streets.

Daniel H. Huyett, 3rd, was commissioned a United States



Mayor Frank Rizzo armed with a night stick in his cummerbund

District Judge for the Eastern District of Pennsylvania on October 15, 1970, after being nominated by President Nixon. Born in Reading in 1921, a World War II veteran and a University of Pennsylvania Law School graduate, Judge Huyett had been active in Berks County Republican politics for years, serving as Chairman of the Berks County Republican Party from 1962 until he was nominated by President Nixon to serve on the federal bench.

Judge Huyett's qualifications for judicial appointment, as it turned out, were a unique blend of legal skills and character born out of the rough and tumble politics of Berks County in the 1950s and 1960s. After graduating from the University of Pennsylvania's Law School in 1948, he was admitted to practice law in 1949 in Berks County.

Politics was his passion, though, and as a young lawyer in Reading he dove into the local scene. But as a Republican in Berks County—then overwhelmingly monopolized by the Democratic Party—he found himself more on the losing side than the winning one. 1952 proved to be an aberration, when a Republican was elected Mayor of the City of Reading. Judge Huyett's work on behalf of the winning candidate earned him an appointment as City Solicitor, at age 31, with just three years' experience as a lawyer.

In 1963, only a year after his election as Chairman of the Berks County Republican Party, Judge Huyett staged one of the greatest political upsets in county history. Democrats still monopolized county and city government, holding all possible elected offices. But, after federal prosecutors uncovered systematic political corruption in Berks, Judge Huyett's "Sweep Clean" campaign resulted in the election of every single Republican then running for office, except for City Treasurer. Included in this group was W. Richard Eshelman, later a judge on the Court of Common Pleas, who was elected District Attorney.

Though thoroughly partisan as a lawyer and politician, Judge Huyett always had a high regard for the judiciary. In 1968, as Party Chair, he arranged for Republican Governor Raymond Shafer to nominate Frederick Edenharter—a Democrat—to the

Berks County Court of Common Pleas. The next year, facing his first election to the bench, Judge Edenharter—still a Democrat—ran on the Republican ticket as the Republican candidate, and with Judge Huyett and the Berks County Republican Party's endorsement, was elected. He is today recognized, along with Judge Eshelman, as among Berks County's foremost jurists.

On the day of President Nixon's visit to Philadelphia, October 20, 1972, and with just two years on the federal bench, Judge Huyett was the emergency judge tasked with hearing emergency matters, such as requests for injunctions.

Early that morning, protestors were flashing anti-war and anti-Nixon placards on the north side of Chestnut Street, across from Independence Hall where Nixon was to speak in the early afternoon. At 7:00 a.m., Philadelphia police ordered the protestors to either relinquish their signs or leave the area. When they refused, sixteen of them were arrested, taken into custody, and hauled to a cell room in the police administration building. No charges were brought against them, nor would there ever be.

At 11:00 a.m., the sixteen protestors filed a lawsuit in federal court along with an emergency motion for a temporary

Continued on page 12

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Contempt and Love for the Law...

Continued from page 11



Berks Republican Chair Huyett's "Sweep Clean" campaign in 1963 was a major success

restraining order, asking the federal court to stop the Philadelphia police immediately from interfering with their First Amendment right to protest President Nixon's visit. As a matter requiring immediate attention, the lawsuit was assigned to Judge Huyett.

After he read the court papers in his chambers on the 12th floor of the federal courthouse at 6th and Market Streets, just blocks from the protests, Judge Huyett summoned each side's lawyers for an immediate hearing. At 12:40 p.m., he issued a TRO forbidding police interference with any protestor's peaceful exercise of his or her First Amendment rights, including the right to carry signs, in areas open to the public near Independence Hall. Shortly later, the Philadelphia City Solicitor and police were informed of Judge Huyett's TRO.

At 1:00 p.m., Gary Thomas, a member of Vietnam Veterans Against the War, showed police officers a certified copy of Judge Huyett's court order, but because he was carrying his organization's sign, police denied him entry to Independence Mall.

Dale Cunningham entered Independence Mall with a sign protesting the President's policies in Vietnam, only to have police seize his sign. He was arrested and taken into custody when he began to photograph police officers seizing other similar signs.

Isaac Stetson, leaflets tucked under his arm, was refused entry

to the Mall by police, and after he protested, he was arrested, searched, and placed in a police car.

Lawrence Manuel was refused entrance with his sign, and was kept out even after he gave up his sign. When he challenged the authority of the officers blocking the steps, he was taken into custody, fingerprinted, photographed, and searched, and finally released at 8:00 p.m. without any charges filed against him.

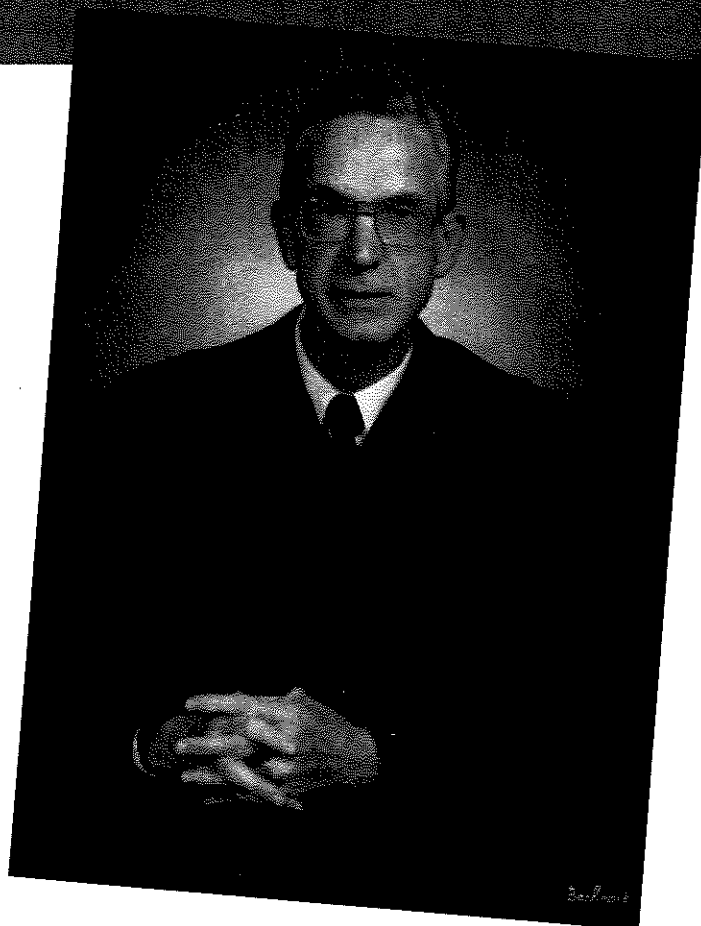
Testimony later showed that many other protestors with anti-war signs and leaflets were denied access to Independence Mall by Philadelphia police, notwithstanding Judge Huyett's restraining order. A number were arrested and put into custody without the city pressing any criminal charges. Many were released at 4:00 p.m., well after President Nixon had left the Independence Hall area. Judge Huyett later found that the police's policy to restrict signs to areas outside President Nixon's eyesight was "disturbingly successful."

Seven days later, on October 27, 1972, a group of protestors filed a Petition for Civil Contempt for violation of Judge Huyett's TRO against Police Commissioner Joseph O'Neill and Police Lieutenant George Pencil, commanding officer of the Philadelphia Police Disobedience Squad, among others.

A Philadelphia Inquirer editorial on November 2nd described the scene under the heading "An Ominous Kind of Politics": "October 20 was, as we have said before, a sad day for constitutional liberty in Philadelphia. In indisputable violation of the First Amendment and in specific defiance of a restraining order by Federal District Judge Daniel H. Huyett, 3'd, Philadelphia policemen arrested and detained 40 citizens. ... [The Mayor's actions were] an out-of-hand police force caught violating the law." The editorial also commented on Mayor Rizzo's remarks during an October 23rd press conference, observing that "[t]he tone and style of Mr. Rizzo's ... press conference were vindictive and contemptuous of the very essence of dissent." The editorial underscored Police Commissioner O'Neil's pre-visit remarks that on October 20 "his men would arrest all placard carriers even if someone carried a sign 'Christ is King.'"

On November 10, 1972, Judge Huyett convened hearings on the contempt petition, entertaining testimony for several days. On June 22, 1973, he decided the civil contempt petition, holding in "contempt for the law ... those officials charged with maintenance of the law." He determined that the police had a policy to exclude sign-carrying protestors from the area across from Independence Hall, and that this policy was not intended to protect the President, but was "an attempt to limit visible dissent to an area where it would be inconspicuous and, thereby, ineffective."

The protestors, according to Judge Huyett, "assert[ed] the right to peacefully demonstrate by means of inoffensive signs against certain governmental policies. The display of these signs was to take place in a public square, open to the public on that occasion." The First Amendment of the Constitution, according to Judge Huyett, guaranteed these protestors the right to



The Honorable Daniel H. Huyett, 3rd served as a United States District Judge for the Eastern District of Pennsylvania from October 15, 1970 until his death on May 1, 1998, having assumed senior status on May 1, 1988

peacefully express their ideas.

Judge Huyett spoke of the irony of the location of the constitutional violations:

"Persons were arrested that day while peacefully demonstrating with anti war signs in an event open to the public. . . . These actions transgressed the spirit of The Declaration of Independence and the letter of The Bill of Rights, which documents are also closely associated with the buildings on Independence Square."

Later that week, on June 27, 1973, the Philadelphia Inquirer printed excerpts of Judge Huyett's opinion and echoed his remarks that the police transgressions took place "literally in the shadows of the buildings" that birthed the United States' foundational documents.

While Judge Huyett found the police defendants in contempt and liable for compensatory damages, he did not impose any damages at the time of his June 22nd decision. Later, the damages issues were settled out of court.

Three weeks after Nixon's Philadelphia visit, Nixon won a second term. The New York Times recounted Mayor Rizzo's jubilation under the heading "Rizzo Bolstered By Nixon Victory, President Sends 'Warmest Thanks' to Democrat": "I'm thrilled," [Rizzo] told newsmen and friends in his gold-carpeted office Tuesday night. "This is a bigger night for me than my own election." Nixon carried all but two wards Rizzo had won the previous year, cutting the losing

margin in Philadelphia for a Republican presidential candidate to its lowest margin since 1948.

Below the fold, in the same article, the Times recounted the tale of Judge Huyett's TRO, the confiscations and arrests, and the contempt of court hearings, noting that three days after the arrests, "When Senator George McGovern spoke in Philadelphia, an equal number of protestors were on hand. None were detained, fingerprinted, photographed or moved to protect the Democratic candidate, who the mayor had denounced as a 'radical.'"

It was traditional for the President who appointed a federal judge to provide the judge with a personally signed photograph. When Judge Huyett later requested the favor of President Nixon, Nixon refused. Ironically, within a year, the United States Supreme Court would order President Nixon to turn over tape recordings of sixty-four White House conversations as evidence in the unfolding Watergate scandal. On August 8, 1974, Nixon resigned from office. ■

Daniel B. Huyett, Esquire, is co-chair of the Stevens & Lee's litigation department. His father, Judge Daniel H. Huyett, 3rd (1921-1998), never spoke about the events in this article to his son, who was away at law school—with the sole exception of the anecdote about Nixon's photograph.

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