

1992

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*United States Court of Appeals for the Second Circuit*

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### Recommended Citation

J. Edward Lumbard, *Kevin Thomas Duffy: A Judge in Action*, 3 Fordham Intell. Prop. Media & Ent. L.J. 5 (1992).

Available at: <https://ir.lawnet.fordham.edu/iplj/vol3/iss1/2>

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# Kevin Thomas Duffy: A Judge in Action

J. Edward Lumbard\*

On October 1, 1972, just seven weeks before Kevin Thomas Duffy became a United States District Judge, the Southern District of New York adopted the individual calendar system. This radical change meant that every newly filed case, whether civil or criminal, would be assigned by lot to a particular judge who would be responsible for the case until judgment.

Judge Duffy was well qualified by training and temperament to operate under a system that allowed for constant supervision and action by the judge. As an Assistant United States Attorney trying criminal cases, as an active litigator in private practice, and as Regional Administrator of the New York office of the S.E.C., he knew that justice delayed—all too often—is justice denied.

Under the individual calendar system, each newly filed civil case is assigned to one of 13 different wheels, depending on the nature and complexity of the case. The court clerk then picks at random the name of the judge to whom the case will be assigned.

When Judge Duffy is selected, he immediately receives the complaint and thereafter any papers that are filed. With the case before him, Judge Duffy calls counsel to chambers for a pre-trial conference. At the conference, he makes it clear that the case must move along with deliberate speed, and delay will not be tolerated. Judge Duffy allows three months for pre-trial proceedings after which time the parties are expected to be ready for trial.

Judge Duffy acts speedily where prompt action is needed. In 1973, the Great Atlantic & Pacific Tea Company ("A & P") sought to enjoin a tender offer by Gulf & Western to purchase A & P stock, alleging that the Gulf & Western offer announced on February 1 violated the securities laws. Judge Duffy signed an

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Order to Show Cause February on 6, held a hearing February 9, and filed a 21 page opinion granting a preliminary injunction on February 18. By expedited appeal the Court of Appeals heard argument on March 8 and affirmed Judge Duffy on March 12.<sup>1</sup>

Inevitably, as a result of pre-trial proceedings, cases are settled or motions are made for summary judgment. Judge Duffy does not hesitate to grant summary judgment where he finds no material issue to be tried. If plaintiff fails to provide necessary information or attempts to mislead, he does not hesitate to dismiss the complaint or to apply appropriate sanctions. Judge Duffy does not hesitate to penalize inexcusable delays. Thus, in *525 Fulton Street Holding Corp. v. Mission National Insurance Co.*,<sup>2</sup> where the plaintiff failed for over two years to give details of claimed losses to defendant insurance company, he dismissed the complaint. Where counsel removed a complaint to federal court by misleading allegations, he remanded the case to state court and imposed sanctions of \$7,500 against the party and counsel.<sup>3</sup>

When the defendant is arraigned in a criminal case, the magistrate takes from the wheel, appropriate to the nature and complexity of the case, the name of the judge to whom the case is to be assigned. After assignment, Judge Duffy has a conference within three weeks of the arraignment to discuss scheduling of trial. He sees to it that the case is simplified for trial to a jury in order to shorten the trial and improve the consideration by the jury and the court.

For example, in 1985, Paul Castellano and 23 others were indicted for conspiracy to violate racketeering, narcotics, stolen property and civil rights laws. Judge Duffy's handling of this case required constant labor to prevent a far lengthier trial and a proliferation of evidence and issues that would result in unnecessary pressures on counsel, the jury and the court. He required the

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1. *Gulf & W. Indus., Inc. v. Great Am. Atl. & Pac. Tea Co.*, 356 F. Supp. 1066 (S.D.N.Y.), *aff'd*, 476 F.2d 687 (2d Cir. 1973).

2. 610 F. Supp. 72 (S.D.N.Y. 1985).

3. *Polanco v. 21 Arden Realty Corp.*, 121 B.R. 425, 1990 U.S. Dist. LEXIS 14631 (S.D.N.Y. 1990).

government to reduce the indictment from 91 pages and 78 counts to only 9 pages and 23 counts, charging only ten of the defendants with conspiracies to violate property and civil rights laws.<sup>4</sup> After a six month trial, the jury convicted all of the defendants still on trial, Castellano having been murdered during trial. The remaining 14 defendants were later convicted after a 13 month trial before a different judge.

In the Southern District, about 90% of all civil cases are concluded without a trial. In criminal cases, even more than 90% are disposed of without trial. By his active supervision, Judge Duffy insures that cases assigned to him move along quickly so that he is able, without delay, to try those cases that require trial. By constant attention, Judge Duffy has kept his caseload low and has been able to try those cases which must be tried within a relatively short time after their commencement.

It is in the district courts that the most important work of the federal judiciary is done. This work is best done when cases are disposed of with a minimum of delay. Over the past 20 years, Judge Duffy's labors, in the supervision of his calendar, have been a major contribution to the outstanding record of the Southern District of New York.

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4. *United States v. Gaggi*, 632 F. Supp. 1019 (S.D.N.Y. 1986), *aff'd in part and rev'd in part*, 811 F.2d 47 (2d Cir.), *cert. denied*, 482 U.S. 929 (1987).

