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The Tributes to Judge Kevin Thomas Duffy: A Good Friend

Georgene M. Vairo*

If thou seest a man of understanding, get thee betimes unto him, and let thy foot wear the steps of his door.¹

I searched for some time to find a quote that best described what Judge Kevin Thomas Duffy has meant to countless law clerks, colleagues, lawyers and me. It is my privilege to sum up the series of Tributes written on the occasion of the twentieth anniversary of Judge Duffy's appointment to the United States District Court for the Southern District of New York.

Judge Kevin Thomas Duffy goes by many names, only some of which I can tell the reader about. Recently, when I had to miss a class, Judge Duffy kindly agreed to substitute teach for me. He was to lecture my Federal Courts class on the subject of implied rights of action. I did not have a chance to call Judge Duffy after the class to find out the precise scope of his lecture. So, the first question I asked my upon my return was: "What did Judge Duffy teach you?" There was a pause and then a response: "He told us that if we wanted him to imply a cause of action we had to address him as Your Worship."²

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1. *The Apocrypha* 6:36.

2. This remark is emblematic of Judge Duffy's wit and insight as a jurist. Any federal jurisdiction aficionado knows that for the last twenty years it has been difficult to persuade federal judges to imply new causes of action because of the judges' recognition of their limited role in this area vis-à-vis the legislative branch. The touchstone for implication is whether Congress intended the courts to imply a private statutory remedy. *See, e.g., Touche Ross & Co. v. Redington*, 442 U.S. 560 (1979). On the other hand, a federal judge who viewed his or her power more expansively, i.e., as "Your Worship," would exercise more readily the power to imply a private cause of action notwithstanding the Congressional intent test applied today.

In any event, I'm not supposed to call His Worship "Judge Duffy." Rather, he has

Those who have seen Judge Duffy in the courtroom and who have read his opinions know of his wisdom, scholarship, and (sometimes quirky) humor. Few, however, may know the depths of his knowledge of language, different cultures and religious traditions, and world history. The Tributes in this series describe Judge Duffy's remarkable career and especially his years on the bench. The reader finds in these pages a man who has committed himself to discharging his judicial duties fairly, firmly, expeditiously, and compassionately. Beyond his legal talents and judicial accomplishments, one also finds in these pages the true measure of the man: a trusted friend.

I remember my first real encounter with Judge Duffy. Shortly after I began teaching at Fordham Law School, I was invited to speak on a panel before a group of about 200 lawyers and federal judges. I had plenty of experience teaching students who knew next to nothing, but I had no experience lecturing professionals. I was to be the third speaker, and I was scared to death. Judge Duffy sat next to me on the dais. My anxiety must have been apparent, for Judge Duffy leaned over and told me to relax. That made me even more nervous. Judge Duffy then proceeded to regale me with whispered anecdotes, jokes, and a running commentary on the other panelists. This, of course, distracted me, and I was no longer nervous about my coming presentation. Instead, I now worried that my hard-to-conceal laughter would be evident to the other panelists and the audience. Before I knew it, it was my turn to speak, and I did just fine. At least Judge Duffy told me as much.

Since that time, I have been the frequent beneficiary of Judge Duffy's wit. More importantly, however, I have come to rely on Judge Duffy for advice on many of my most difficult professional challenges. Time and again he has provided a sense of calm and a keen understanding of the issues at hand. His good counsel has helped me develop a practical and just approach to dealing with

ordered me, under penalty of contempt, to call him "Kevin." Because this is written for a law journal, however, I am sure that "Judge Duffy" will excuse the formality, and this footnote.

numerous and varied problems and concerns. Thus I, and others I am sure, plan to let our feet wear the steps of his door for many years to come.

