

2021

Tribute to Judge Duffy | Clerk Recollections, Stories, and Vignettes

Judge Duffy's Former Clerks
Multiple

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flo>



Part of the [Law Commons](#)

Recommended Citation

Judge Duffy's Former Clerks, *Tribute to Judge Duffy | Clerk Recollections, Stories, and Vignettes*, 90 Fordham L. Rev. 83 (2021).

Available at: <https://ir.lawnet.fordham.edu/flo/vol90/iss1/14>

This Essay is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review Online by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

CLERK RECOLLECTIONS, STORIES, AND VIGNETTES*

In his forty-four years on the bench, Judge Duffy had sixty-five law clerks, each with their own stories about his inimitable courtroom presence, keen intellect, tremendous heart, and unique sense of humor. In addition to the longer tributes, we wanted to include at least a small sampling of the rich variety of heartfelt remembrances of Kevin Thomas Duffy (“KTD”) that have been shared among his scores of clerks since the Judge’s passing. We also asked our clerk community for the five words that come to mind when they think of the Judge. We have included a Word Cloud that displays the results of that input and helps to capture some of our reflections on the beautiful life of our beloved KTD. All of us will be forever grateful for having been included in his chambers family.

BEVERLY CHASE, 1974-1976

Judge Duffy had a sixth sense about a defendant’s contrition. He had an ultimate commitment to deciding legal issues in a fair way, unconstrained by precedent, if necessary, or by clever lawyerly arguments. That meant he also had a brash willingness to stick it to the Second Circuit and take his chances on reversal (and sometimes delight in doing so).

When I think of Judge Duffy, I also think of his many catchphrases, including:

- Never assume a God-damned thing.
- Are you free? No but I’m reasonable.
- Put it in Mother Goose language: Tell us the facts and the law and then we can screw it up for ourselves—with credit to Judge Hand.
- Rachmones I got. Meshuga I’m not.

SHELLEY LORENZEN, 1980-1981

I learned during my clerkship that being a federal district court judge is a tough and lonely job. Day in and day out, a S.D.N.Y. judge deals with an astounding array of issues, ranging from murder and mayhem, to mafia crimes, to petty civil disputes, to constitutional matters of incredible magnitude. I also learned that Judge Duffy survived all this successfully by

* Many thanks to Denis McInerney, Kevin Ainsworth, and Francesca Brody for compiling these memories.

being dedicated to doing justice, by having an unflinching and irreverent sense of humor, and by being willing to go where angels fear to tread. I'd also like to think that befriending and having lots of fun with his clerks helped as well.

Judge Duffy did his best to bring out the best in each of us. He allowed us to work to the fullest extent of our capabilities and reined us in only when we were going astray. He instilled in us the importance of being extremely careful in what we did and never to assume anything. All of his lessons have served me well in my life, both professionally and personally.

Judge Duffy was much more than the judge I clerked for. He was my friend, my advisor, my justice of the peace, and my son's godfather. Fear struck my heart on September 11th when I couldn't reach the Judge or anyone else who might have known whether he was safe. I worried for two weeks and then finally got the call. With his inimitable sense of humor, the Judge told me that the marshals had taken him on an unexpected trip the morning of 9/11 on the theory that he was better off as a moving target. But then, he said, he had gotten bored. So he was back at work, selflessly volunteering to handle the World Trade Center terrorist trials so that his colleagues would be spared the restraints that had been imposed on his life.

Judge Duffy once said about Judge Lumbard (the judge he had clerked for), that "he's one helluva judge, one helluva teacher and one of the best men I've ever known." I would say the same about KTD, with one modification: he was one helluva judge, one helluva teacher, and one of the best men I've ever known, and he was also one of the best friends I've ever had.

STEVE ROONEY, 1980-1982

Every Judge Duffy law clerk remembers vividly the interviews (two in my case) that led to their selection. Suffice it to say, the Judge had unique approaches to sizing up candidates. To this day, I thank the Lord for my luck in having survived the process and been selected. One of the dominant themes in the interviews was loyalty. As a twenty-five-year-old law student, I interpreted his reference to loyalty to mean his law clerks being loyal to him, mainly by preserving the confidentiality of the workings of chambers. But within just a few days of the clerkship I came to realize that the Judge meant equally his loyalty to his law clerks.

When I started in August 1980, the Judge had before him the consolidated cases (ninety-six in all) known as the Iranian assets litigation. Pursuant to a presidential order, Iranian assets located in the United States were frozen and subject to lawsuits and attachment orders. Plaintiffs moved to confirm these attachments and the Iranian defendants asserted sovereign immunity among other defenses. During my first week on the job, the Judge received a phone call from the State Department. Secretary of State Warren Christopher wanted to meet with the Judge in chambers to deliver a private message directly. At the time, fifty-two Americans were in their ninth month of being held hostage at the U.S. embassy in Tehran. On the day of Secretary

Christopher's visit, the Judge summoned me and fellow clerks, Chuck LaBella and Mike Chepiga, into his office and instructed us to "have a seat." In walked Secretary Christopher with two other officials. The Judge invited them to also take a seat, and Secretary Christopher opened the conversation by saying, "Judge, I came to speak to you about a matter of utmost national importance." Looking askance at us law clerks, Secretary Christopher added, "I prefer that we speak alone." The Judge did not hesitate: "Mr. Secretary, whatever issues you would like to talk to me about today, my law clerks will stay with me. Where I go, they go." Secretary Christopher looked befuddled and a bit frustrated, but we stayed and the meeting went forward.

The litigation raised important constitutional issues and that meeting was a reminder of the Judge's respect for the separation of powers. But it mainly revealed to me for the first time what the Judge had meant in our interviews about loyalty: his loyalty to his clerks. And from that day and for the next forty years, the Judge displayed unwavering loyalty to me and to my fellow clerks as a mentor, an educator, occasionally a therapist, but most importantly, a friend.

MARGARET GROBAN, 1981-1983

Judge Duffy was a self-defined mercurial jurist. He was never predictable and unsusceptible to typecasting. His maxim of a fair trial with a fair sentence led some to believe he was too defense-oriented during trial and too prosecution-oriented during sentencing. But he was consistent in the education of his clerks. We were expected to be present in the courtroom during proceedings, as he appreciated that the best education comes from watching lawyers perform both well and badly. His notes passed solemnly down from the bench would provide, at times, commentary on the quality of the lawyering we were witnessing! He also instilled in his clerks a respect for all court personnel, from the court reporter to all courthouse staff. He presided over high-profile cases with the same calm demeanor as less publicized cases and did his best to ensure fair play regardless of the defendants or the charges. I feel honored to have begun my legal career in his chambers.

LAURA RAINOFF, 1986-1988

Judge Duffy was the smartest person in the room. He invited us to share in every aspect of his work. He was absolutely hilarious. He was a true and generous friend to his clerks.

EVAN SHAPIRO, 1987-1989

Judge Duffy always had a sparkle in his eye and he loved to make mischief. He was tough on the lawyers who appeared in his courtroom, but to those he

viewed as his family at law, he was supportive, thoughtful, and generous with his time and advice. Clerking for KTD meant joining a family that included lawyers of all ages, from all walks of private and public practice, prosecutors and defense lawyers, support staff throughout the courthouse, and, after a time, his security guards. Below are a few of my many treasured memories from chambers.

The first time that an opinion I worked on for the Judge was reversed, I was devastated. I felt that it was my fault for not doing a good enough job on the opinion. KTD took me out to lunch and proceeded to tell me stories about mistakes made by each one of the judges on the reversing panel.

While I was working for KTD, we had a criminal trial during which a police detective, on cross-examination, was baited into making a statement indicating that the case was part of a much larger criminal conspiracy. The defense immediately moved for a mistrial. After taking a break to consider the issue, KTD granted the motion for a mistrial, while bemoaning that retrying a case was like “putting on a wet bathing suit in a cold room.”

One St. Patrick’s Day, KTD wore a tie with a button that, when pressed, played the tune “When Irish Eyes Are Smiling.” There was a plea hearing that day and the tune was accidentally activated during the defendant’s allocution. KTD didn’t miss a beat, however. He simply kept a straight face throughout the allocution while the perplexed prosecutor looked around, trying to determine where the music was coming from. As the tune continued, my co-clerk was compelled to crinkle up some paper and drop it on the floor so that she would have an excuse to duck her head below the table to hide her laughter.

One of my favorite parts of KTD’s approach to the job was his courtesy to jurors. After every trial, before the jury was released, he would go into the jury room and take off his robe. He would give the jury some basic instructions about their right to talk or not to talk to the lawyers or press, and thank them for their service. He would note that he had no control over their financial compensation for their service but, in appreciation, would give them a “free shot” to ask him any questions they liked. Jurors’ questions often focused on the case they had just tried and “guesses” they had about the evidence, but they were sometimes more wide ranging, especially in the days of the Bess Mess and then United States Attorney Rudolph Giuliani’s attacks on Judge Duffy for his insistence that cases before him be tried in the courtroom, not in the press.

JASON PICKHOLZ, 1994-1995

One of my favorite stories about Judge Duffy does not involve a newsworthy case, high profile parties, outrageous antics, or any of the jokes or witticisms that the Judge is famous for. Rather, it involves two ordinary people, a blue-collar worker and his wife, who were suing the husband’s former employer for unpaid retirement benefits or something like that. During the first status conference in the case, the husband and wife clearly

looked overwhelmed and intimidated. Both of their hands shook visibly. The husband's voice trembled as he tried to explain what he was asking for. When the husband finished, Judge Duffy asked the company's lawyer if the company owed the husband the money as claimed. The company's lawyer responded, "Yes, but you see . . ." Judge Duffy cut him off and called the parties into his robing room. I will not discuss what was said during the sixty seconds that we were in robing room, but in less than a week, the company had paid the couple in full.

Fairly or unfairly, the legal system has long been criticized as being inaccessible to, stacked against, and insensitive to the poor and unrepresented. Yet, in just a few short minutes, through his keen insight, ability to get to the heart of a matter, and willingness to take action to see the right thing done, Judge Duffy swept those criticisms aside and proved that his courtroom would provide fair justice to everyone, no matter who they might be. That small case, involving as close to no legal proceedings as you can get, for two ordinary people, made me feel prouder—then and now—to have clerked for Judge Duffy than any other case that I worked on for him.

ED O'CALLAGHAN, 1995-1996

When I think of Judge Duffy, this is what comes to mind: unpredictability and loyalty. While these two traits may seem contradictory, KTD melded them with ease. He accomplished the first trait, unpredictability, on a daily basis by living according to his ethos of "call it like you see it"—he did the right thing no matter what others might have expected him to do or how others may have reacted to what he did. He exuded the second trait, loyalty, every day through his unwavering dedication to his family, his deep concern for longtime friends and colleagues, and his defense of hockey pucks who might slip up on an assignment, needed some sound career advice, or faced personal challenges, long after their service in chambers had ended. This is a difficult dance to emulate, but one I aspire to accomplish in my life.

JOEY MOLKO, 1998-1999

The time I spent in Judge Duffy's chambers as a law clerk was—without a doubt—the seminal professional experience of my life. I probably learned more, laughed more, did more meaningful work, and had more fun than all the remaining years of my career combined. Trying to summarize that entire experience and my relationship with the Judge in a few words seems impossible (or as KTD might have put it in a note to one of his clerks from the bench, "NFW").

The Judge often said (in his self-effacing way) that he "wasn't too smart, but was good at remembering things." Yes, he had a memory like a steel trap. But, he also was among the most intelligent jurists ever to walk the halls of Foley Square, even if his humility would never allow him to admit it.

The defining characteristic of his intelligence was his insatiable curiosity. Whether it was religion, language, history, or the best driving route through the Bronx, there was rarely a subject that KTD hadn't thoroughly (and joyfully) studied at some point. But, the subject that always seemed to capture his most rapt attention was people—their stories and motivations. His curiosity about people made him a great judge—thoughtful, fair, empathetic—and an even better friend.

Like all the hockey pucks, I wouldn't be where I am (or who I am) today without Judge Duffy's friendship and mentorship. I miss him terribly, and I hope to live up to the standards of curiosity and friendship that he set for all of us.

CHRIS LAVIGNE, 2004-2005

When I think of Judge Duffy I think of him teaching us to use our common sense as lawyers and to treat everyone with respect. Simple concepts, but ones that are not always easy to follow like Judge Duffy did. He reminded us to “speak in Mother Goose language,” not paragraphs, and that his job and oath was to do justice, be fair, and not fear reversal. He followed these principles every day, no matter how complicated, high-profile, or precedent-setting the case was. When it came to work, Judge Duffy treated the lawyers appearing before him, the court reporters and staff at 40 Foley, and the staff at the “Mick” the same. He had more patience with me—a green “hockey puck” trying to keep up—than warranted, and reassured me after slip-ups. His mentorship and guidance continued long after my clerkship. I will never forget the lessons he taught me in chambers or over lunch at Forlini's.

AMY SPENCER, 2008-2010

Judge Duffy told his clerks that he brought us into his chambers family in the hopes we would become lifelong friends. More than anything, I'm so thankful for his friendship and the friendships that he created among us through our mutual connection to St. Kevin. I hope he knew that was the greatest gift he gave all of us.

Not a day goes by that there isn't something I wish I could ask or share with Judge Duffy. Sitting in the brown leather chair next to his desk, the Judge generously brought me, and so many of us, into his world. He shared stories about himself and his friends and family—born and chosen—at some of the most pivotal moments in New York, United States, and world history, and at some of the most deeply personal moments. And, he listened, listened to my tsuris (he taught me the word), both big and small, and he helped me understand myself and those around me from the depths and breadths of his perspective, firmly, but gently reminding me, “Amy, you must cease being surprised.” He never hesitated to call out incompetence or injustice wherever he saw it—especially when wielded by the powerful against the less powerful. He also had a special way of lighting up any room with his smile,

laughter, and twinkling, mischievous eyes. The joy he took in telling a joke, mostly about himself, or in humming “Hail to the Chief” whenever Judge Preska walked in the room, was infectious. I know my life was just one of the thousands he changed with his presence and my marriage one of the many over which he presided, but I’ll forever be grateful to be among those he called a friend.

JENNIFER NAEGER, 2009-2010

When I think of Judge Duffy, I think of someone who truly embodied the Admiral McRaven doctrine of establishing a high standard of excellence and holding others accountable for reaching it. He valued holding his team, and the attorneys who appeared before him, to high standards. Be prepared and be a strong advocate for your client. If you failed to meet those standards, he’d call you out, and we all respected him for that. Judge Duffy was a remarkable leader and an even better human being.

ELAINE LOU, 2011-2012

Judge Duffy loved to learn and loved to share all that he knew with his clerks. During my two-hour interview for a clerkship with the Judge, I was breathless from the range of topics we covered, from the Egyptian Coptic Church to the gargoyles on St. John the Divine and Notre Dame of Paris (miniature replicas of which he displayed on his bookcase), to name just a few. Feigning knowledge about a topic was at your peril and a mistake you only made once—better to admit ignorance when Judge Duffy was so generous with his teaching. And, given his self-study, he encouraged the same in his clerks, often directing us to the large leather-bound dictionary propped open on a pedestal next to his desk to the last word we had looked up together in a prior meeting. It’s not every day that you meet a Bronx born Irish Catholic whose bottomless thirst for knowledge from all sources led him to translate the Quran into English in his free time, and I continue to be inspired by that curiosity.

Judge Duffy was also a creature of habit. He liked what he liked, to such an extent that all of his clerks to this day know exactly how he took his coffee every morning (decaf with two packets of sweetener), what he ate for breakfast (a buttered roll), where he sat and what he liked at Forlini’s, and that his soda should have “No Fruit, No Ice.” Those constants may seem predictable to others, but I like to think that they united those of us who were lucky enough to know Judge Duffy and are little, comforting reminders of the man that we love and miss every day.

FARAJ BADER, 2014-2015

“An interesting soul.” Something that I think about often is the way Judge Duffy used the phrase, “an interesting soul” to describe people. When invoked in a reverent tone, it could be the highest compliment, describing a thoughtful and intelligent person who lived a varied, fascinating, and inspiring life or perhaps one who had overcome their own adversity to live a life in the service of others in need. But, used with a slightly raised eyebrow or an almost imperceptibly clenched jaw, it could signal gentle disapproval or puzzlement. Once in a while, it could hold both meanings simultaneously. It’s a phrase that I have borrowed for my own occasional use. It also serves as a mental doorway for me to recall Judge Duffy’s friendship, because he was such an interesting soul himself: a son of immigrants, born during the Great Depression, who attended law school at night and became a federal trial judge, overseeing some of the most consequential trials in U.S. history. Through his eighty-seven years on earth, he never stopped learning or being curious about the world or the people in it. He was a person who would read the Bible or the Quran while commuting to work downtown on the New York City subway and would observe the reactions from other riders that his choice of readings produced. He was as adept at sharing a funny joke or anecdote as he was at sharing a comforting word of encouragement to a friend in need.

It is a gift to have been able to call Judge Duffy a friend. It is a gift that I am reminded of daily, whether while reading a judicial opinion that probably could have been clearer and more concise, enjoying a scoop of chocolate ice cream, or learning something new about the world that Judge Duffy would have found interesting and humorous.

FRANCESCA BRODY, 2014-2016

Judge Duffy was endlessly curious about other people, their cultures, and religions—it’s one of the things I admired most about him. He had seemingly infinite capacity to retain foreign languages and loved to share stories from his travel. He even kept a Yiddish phrase book by his desk. Once, he conveyed this quote: “If you don’t have something nice to say, say it in Yiddish,” laughing as he said it.

Judge Duffy also loved New York and to be in and of this city. He was a proud son of the Bronx and Fordham graduate. Often, we would travel to Katz’s and have pastrami sandwiches for lunch, and on the ride, he would comment on the federal-style architecture dotting lower Manhattan. He loved Chinatown (and the Chinatown Ice Cream Factory), classic New York establishments like the Grand Central Oyster Bar, obviously, Forlini’s, and newer places that offered mac and cheese in many varieties. I am so grateful to have spent some time in Judge Duffy’s New York City.

