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*Southern District of New York*

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# Some Thoughts on Judge Kevin Thomas Duffy

John F. Keenan\*

It is fitting and proper that the *Fordham Entertainment, Media & Intellectual Property Law Forum* dedicate this issue to the Honorable Kevin Thomas Duffy on the occasion of his twentieth anniversary as a federal judge. All who know him can attest that he is entertaining, and a study of any one of his 915 reported decisions will convince the reader that he is intellectual. His relationship with the media is for the reader to decide near the end of this piece.

When Judge Duffy was appointed a United States District Judge for the Southern District of New York on October 17, 1972, he became the youngest member of the federal judiciary. After graduation in 1958 from Fordham Law School, his preparation for judicial service included work as an Assistant United States Attorney in the Southern District from 1958 until 1961, during which period as Assistant Chief of the Criminal Division. After a successful stint in private practice, he served from 1969 until 1972 as Regional Administrator for New York of the Securities and Exchange Commission. During his twenty years as a member of the federal judiciary, Judge Duffy has impressed litigants, lawyers, jurors and his colleagues as a jurist of rare legal acumen who gets right to the core of a case, a human being of unusual common sense, humor and humility.

Kevin Thomas Duffy is not the only judge in the Duffy household. His charming and witty wife, Irene, is a judge of the Family Court of the State of New York, assigned to sit in the Criminal Term of the Supreme Court in Bronx County. Federal Judge Duffy refers to State Judge Duffy in conversations with third

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parties as the "R.J." (as in "Real Judge"). The Judges Duffy were deserving co-recipients of the Fordham Law School Alumni Medal of Achievement in 1984, which made their three sons and one daughter properly proud.

In 1973, as a new member of the Southern District, Judge Duffy was assigned one of the most complicated and difficult organized crime narcotics cases ever tried in Manhattan federal court. The case was *United States v. Tramunti*.<sup>1</sup> Carmine Tramunti and thirty others were charged with a massive conspiracy to violate the federal narcotics laws in connection with many sales of heroin. Several defendants pleaded guilty; some cooperated and testified; three became fugitives prior to trial; one was murdered before trial; another, who was on bail, fell down a flight of stairs and fractured his skull during trial; and, an attorney for another of the defendants died suddenly during trial. With the exception of these events, it was a normal criminal trial. Through it all, the young and relatively inexperienced Judge Duffy presided with poise, calm and good grace. Ultimately, the trial convictions of thirteen defendants were affirmed in a thirty-four page decision in the small single-spaced print of the Federal Reporter, 2d Series. Trials such as the *Tramunti* case require a level and degree of expertise and dedication by a trial judge which is difficult for some non-lawyers to comprehend and which only a few who are trial lawyers can truly appreciate.

During Judge Duffy's career on the federal bench, he has had case after celebrated case, similar in complexity to the *Tramunti* case. A few examples may be appropriate.

In the summer of 1983, he presided over a trial involving a series of armored truck robberies, three murders in Rockland County and the escape from prison of the Black Liberation Army leader, Joanne Chesimard. This was another difficult, multi-defendant case in which eleven defendants were charged with RICO violations, bank robberies, murders, the escape and related crimes. The trial lasted five months. One of the lawyers did

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1. 513 F.2d 1087 (2d Cir.), cert. denied, 423 U.S. 832 (1975).

everything imaginable—and unimaginable—to try Judge Duffy's patience; in spite of it all, the Court of Appeals for the Second Circuit, in *United States v. Ferguson*,<sup>2</sup> concluded its lengthy opinion with the following sentence: "Accordingly, all of the judgements of conviction are affirmed."

In the fall of 1985, Judge Duffy began a complicated multi-defendant trial involving the then-alleged leader and other members of the Gambino organized crime family. In an insightful pre-trial decision, he severed many defendants in the case, pointing out that if trial were held on the original indictment, the case would have been much too unwieldy and cumbersome and would have lasted more than a year. In this decision, in *United States v. Castellano*,<sup>3</sup> the Judge anticipated by several years the ruling of the Second Circuit in *United States v. Casamento*,<sup>4</sup> requiring severance in mega-trials. But even with the severance, the *Castellano* trial was an extremely difficult case to manage. The reader will recall that on December 16, 1985, Paul Castellano, the alleged Gambino leader, and his bodyguard were gunned down outside of Sparks Steak House on East Forty-sixth Street in Manhattan. Headlines followed; mistrial motions ensued; and through it all, an older and more experienced Judge Duffy presided with the same poise, calm and good grace he exhibited with *Tramunti*.

Judge Duffy has a way of getting to the point quickly, and making that point clearly and succinctly. Permit me to supply the reader with three instances of his clarity and brevity.

In the *Tramunti* case, there was a pre-trial hearing on a motion to suppress certain physical evidence seized from an automobile during the arrests of the two defendants. A New York City detective, one John Spurdis, was a witness at the hearing. Judge Duffy began his decision with the following: "John Spurdis is a

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2. 758 F.2d 843 (2d Cir.), *cert. denied*, 474 U.S. 841 (1985).

3. *See United States v. Gaggi*, 632 F. Supp. 1019, 1021 n.3 (1986) (No. 84 Cr. 0063 (KTD)), *aff'd in part and rev'd in part*, 811 F.2d 47 (2d Cir.), *cert. denied*, 482 U.S. 929 (1987) [successor case to *United States v. Castellano*, after the murder of Castellano during trial].

4. 887 F.2d 1141 (2d Cir. 1989), *cert. denied*, 493 U.S. 1081 (1990).

liar.”<sup>5</sup> Even the most obtuse and dense reader of that opinion understood Judge Duffy’s conclusion concerning the detective’s credibility and the weight his Honor accorded the testimony of Detective Spurdis.

In the late 1970’s, the Judge was presiding over a criminal case that featured a difficult and trying defense counsel. Defense counsel suddenly asked for a conference in the robing room in order to place something on the record. The court reporter, the prosecutor, the Judge’s two law clerks, the Judge and the defense lawyer assembled in the robing room. The defense counsel stated, “I distinctly heard you call me a son-of-a-bitch in front of the jury.” Judge Duffy, knowing that he had made no such statement, was nevertheless his usual calm and restrained self. He turned to the court reporter and said, “Did you hear me call defense counsel a son-of-a-bitch in front of the jury?” “No,” responded the court reporter. Turning to his law clerks, he inquired as to whether they heard him make such a statement. “No,” they both replied. Finally, the judge asked the prosecutor if he had heard the statement. “No,” answered the prosecutor. “Well, there you have it counsel,” said the Judge, “I may have thought it, but I didn’t say it.”

On March 4, 1987, no less a publication than the *New York Times* ran a story about the sentencing proclivities of the judges then sitting in the federal district court in Manhattan.<sup>6</sup> Five of us were viewed as soft or lenient, five of us (including the writer) as severe or stiff sentencers. Then the story went on to gratuitously state, “And some judges are regarded as difficult to rank because lawyers find them to be unpredictable, even erratic, a label frequently given to Kevin Thomas Duffy.” When Judge Duffy read this unfair assessment he reacted in typical fashion. He went to the Press Room and quietly observed to the reporter who had authored the story that there was a serious typographical error in the *New York Times*—the article, said the Judge, should have

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5. 377 F. Supp. 1 (S.D.N.Y. 1974).

6. Arnold H. Lubasch, *Judge Shopping in Federal Court: Lawyers’ Quest for Leniency*, N.Y. TIMES, Mar. 4, 1987, at B1.

referred to him as “EROTIC” not “erratic.”

So there you have it! Judge Kevin Thomas Duffy is a thinking, independent, bright and dedicated member of the federal judiciary with whom it is an honor to serve. I don’t just think it—I say it and I proclaim it to all!

Congratulations to Kevin Thomas Duffy, his charming wife, Irene—the “R.J.”—and their four children on his twenty years of distinguished judicial service!

