Hon. Kevin Thomas Duffy

U.S. District Judge, Southern District of New York

by Kevin N. Ainsworth

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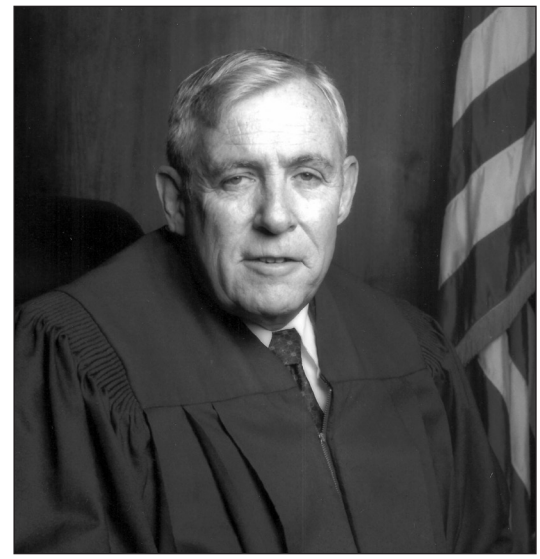
"Judge Duffy has impressed litigants, lawyers, jurors and his colleagues as a jurist of rare legal acumen who gets right to the core of a case, a human being of unusual common sense, humor, and humility."[1] Hon. John F. Keenan wrote those words of praise 24 years ago, on the 20th anniversary of Judge Kevin Thomas Duffy as a U.S. district judge. Judge Duffy is now in his 44th year on the bench, and Judge Keenan's description remains as apt as it did in 1992.

The "Early Years"

The first 20 years of Judge Duffy's judicial career were famously marked by large, complex, criminal trials involving organized crime, narcotics, murder, extortion, and RICO charges, as well as crimes arising from domestic terrorism by the Black Liberation Army.[2] Upon his appointment, he was the youngest member of the federal judiciary. And in his first year on the bench, he was assigned "one of the most complicated and difficult organized crime narcotics cases ever tried in Manhattan federal court" (i.e., *United States v. Tramunti*, which had 31 defendants).[3] All of the convictions were affirmed.

Ten years later, he conducted a five-month trial of six defendants in connection with a racketeering enterprise involving a 1981 Brinks armored-truck robbery, other armored-truck robberies, two murders, and the prison escape of the Black Liberation Army leader. The defendants sought to take advantage of the trial publicity to advance their political views. The conduct of one defense attorney was so outrageous that Judge Duffy twice cited him for criminal contempt, holding: "[Counsel's] contumacious behavior was not part and parcel of a vigorous defense of his client but instead was intended to cause significant disruption of the proceedings."[4] That conviction was affirmed, as were the convictions at trial.

In 1985, he handled another large organized crime case, *United States v. Castellano.* Two and a half months into that trial, defendant Paul Castellano was gunned down outside of Sparks Steakhouse in Manhattan. The publicity of that murder caught the



jurors' attention, and the other defendants sought a mistrial. Judge Duffy, after a careful voir dire of the jurors, proceeded with the trial. The Court of Appeals agreed that the trial was fair and affirmed the resulting convictions.

He also had some exceptionally interesting civil cases, including the "Iranian assets litigation," which required him to "decide whether [President Jimmy Carter] was acting within his constitutional and statutory powers when he entered into an agreement with Iran and issued executive orders [requiring courts to nullify orders of attachment over Iranian assets] in order to effect the release of the American hostages."[5]

In an unusual copyright case early in his career, he granted a preliminary injunction in favor of Walt Disney Productions to stop the use of the "Mickey Mouse March" music in *The Life and Times of the Happy Hooker*. He rejected a parody defense, stating that "[w]hile defendants may have been seeking in their display of bestiality to parody life, they did not parody the Mickey Mouse March."[6]

That was 20 years before I clerked for him, but we still found it amusing when he called to offer me a job as his clerk—and I returned his call while in Walt Disney World. He asked me, no doubt while grinning: "How

would you like to work for a real Mickey Mouse outfit?"

The second 20 years of his judicial career were quite a wild ride. They began with cases of even greater notoriety—and an unfortunate focus on international terrorism.

An Era of Terrorist Trials

On Feb. 26, 1993, the World Trade Center (WTC) was bombed. Six people were killed, and hundreds were injured. Four of the perpetrators were quickly captured, and the case was assigned to Judge Duffy. That series of events, and the subsequent terrorism cases, would eclipse much of his prior career.

Very quickly after the WTC bombing, Judge Duffy turned his attention to that trial, which lasted six months. The jury returned a guilty verdict on March 4, 1994, one year after the bombing. But the mastermind of that bombing, Ramzi Yousef, had not yet been caught. He would later be caught and tried before Judge Duffy for the WTC bombing and another terrorism conspiracy.

In the period between the two WTC bombing trials, I had the great pleasure and honor of being his clerk, or as he says, "assistant judge." During that short era, Judge Duffy conducted a hearing to determine whether the United States could grant Israel's request to extradite Abu Marzook (a leader of the Islamic resistance movement, Hamas) to stand trial for murder and other charges related to acts of terrorism there. Judge Duffy held that Abu Marzook could be extradited.[7] (Israel, however, later dropped the extradition request.[8])

Then followed the first trial of Ramzi Yousef. After six months of testimony, the jury convicted him and two others of the Manila bombing conspiracy (also known as the Bojinka plot), in which they had planned to bomb 11 747 airliners over the Pacific Ocean. (Evidence also suggested that Yousef had planned to assassinate Pope John Paul II, though that conspiracy was not charged.[9]) In the middle of that trial, TWA Flight 800—a 747—exploded over the Long Island Sound in New York while en route to Paris from New York's John F. Kennedy Airport. Some members of the media speculated that the explosion was related to, or in retaliation for, the trial of Yousef. As with Castellano's murder, Judge Duffy conducted a mid-trial voir dire of the jury, concluded that the trial would be fair, and continued with the trial.

In 1997, Judge Duffy conducted a trial for Yousef and another defendant for their involvement in the 1993 WTC bombing. Again, the jury convicted.

Appeals followed, and the convictions were affirmed, with the Court of Appeals for the Second Circuit commenting, "Judge Duffy carefully, impartially, and commendably conducted the two lengthy and extraordinarily complex trials from which these appeals were taken. The fairness of the proceedings over which he presided is beyond doubt."[10]

Even after assuming senior status in 1998, Judge Duffy continued to handle terrorism cases. As recently as 2010, he expertly handled post-trial motions after the convictions of al Qaeda terrorists Wadih El-Hage and Mohamed Rashed Daoud al-'Owhali for their roles in bombings of two U.S. embassies in Africa in 1998.[11] The Second Circuit praised his conduct of those difficult post-trial motions involving issues of first impression:

> The post-conviction proceedings, including extended evidentiary hearings, were conducted with equal thoroughness by Judge Kevin Thomas Duffy. Our review of this complex and difficult case leaves us confident that defendants received a fair trial, and we commend the two district judges who presided over these proceedings for their learned and thorough rulings on the numerous issues—some of first impression—raised in this complicated case. We also recognize their conscientious efforts to ensure that the rights of defendants and the needs of national security were equally met during these proceedings.[12]

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A Sense of Duty

Death threats have not deterred Judge Duffy. In 1993, the U.S. Marshals Service determined that there was a credible threat to his life and began providing round-the-clock security for him and his wife, Judge Irene J. Duffy (née Krumeich). The Judges Duffy lived with that imposition—the ever-present guard detail and lack of personal privacy—for 10 years. Judge Kevin Thomas Duffy, however, was nonchalant. When Yousef used the death threats as a basis for asking him to recuse himself, Judge Duffy denied that motion, stating:

> It is of particular note that Yousef's threats made absolutely no change in my life. I have received death threats for the last quarter century. Such are well known to trial judges. Like most of my colleagues, such threats do not inhibit the fulfillment of our oath of office to "faithfully and impartially discharge" the duties of our office.[13]

Judge Duffy's 43 years (and counting) on the bench, and his dedication in the face of death threats, say plenty about his character. But there is much more to say. He has dedicated more than 53 years in public service: first as a bailiff and then law clerk for Hon. J. Edward Lumbard of the U.S. Court of Appeals for the Second Circuit (1955–58); then as an assistant U.S. attorney and assistant chief attorney for the Criminal Division of the U.S. Attorney's Office for the Southern District of New York (1958–61); then as regional administrator of the New

York office of the Securities and Exchange Commission (1969–72); and finally as a judge (1972–present).

His longevity and industriousness do not fully portray his sense of duty. While it may seem a minor point overall, his character is also revealed in his reluctance to transfer cases—as if doing so would be shirking his duty and giving *his* work to someone else to perform. The other side of that coin, and far from being minor, is his willingness to take on other judges' caseloads. After Hon. Henry F. Werker was stricken with cancer in 1983, "Judge Duffy immediately and quietly assumed his friend's full caseload. He adopted Judge Werker's law clerks as if they were his own and, working nights and weekends, managed both dockets for almost a year."[14]

During the trial of the WTC bombing, he was particularly worried about the jurors and insisted on extra measures to maintain their confidentiality. After the trial, he invited each of them to handwrite their names and addresses so he could send them a handwritten letter thanking them for their service on the jury, and he promised to destroy their handwritten information after mailing the letters.

So it was no surprise that, when Hon. John Sprizzo later became ill, Judge Duffy also took over his cases and adopted his clerks.[15] It is fitting, here, to invoke the words of the late Judge Sprizzo, spoken long before he became ill: "With friends like Kevin Duffy, you don't need many friends."[16]

On a lighter note, and before drifting too far from the topic of his longevity, here are two interesting factoids. Judge Duffy has been on the "Mother Court" nearly 20 percent of its existence. And of the 154 judges who have served on the court, he has known 80 percent.

A Sense of Justice

"Avenger!" was the *New York Daily News* headline accompanying Judge Duffy's photograph after he sentenced the WTC bombers to imprisonment for 240 years with no possibility of parole.[17] He crafted the prison sentence to be symbolic of the cumulative life expectancies of the deceased bombing victims.[18]

What is the role of a judge? Judge Duffy answers:

> The job of a judge is to seek justice. We all have built into us a feeling of perfect justice. We're not going to get it, but we try. After we understand that the law is a tool in seeking justice, it's much easier. … I suggest to people entering the law, study hard, but seek justice. And to those on the bench, we're there to seek justice.[19]

When it comes to sentencing criminals, in his view, justice requires that punishment fit the criminal, not necessarily the crime. He explains:

> Imagine two men each stole a loaf of bread. One man was the poorest man in town and stole the bread to feed his family. He left that loaf on his table and went to find his family. Along came the richest man in town who saw the loaf and took it because he wanted the poor man to suffer. Both stole a loaf. Should they get the same punishment? Any law that would require the same sentence for both is unconstitutional.

He has always had strong views about sentencing and decided early on that the Federal Sentencing Guidelines were unconstitutional because they did not allow judges to exercise discretion. In an oral ruling in 1987, he apparently was the first U.S. judge to reject the mandatory provisions of the guidelines, stating: "I had always thought prior to this time that the object of a sentence could be rehabilitation, general deterrence or specific deterrence, safety of society, or retribution. It seems now, however, that a sentence is to be solely a retribution, an eye for an eye."[20] Judge Duffy accurately predicted that mandatory sentences would cause overcrowding in prisons: "The way the guidelines were set up makes it obvious to me … that there will be an explosion in the prison population."[21]

Nearly 20 years later, in 2005, the U.S. Supreme Court finally struck the mandatory provisions of the sentencing guidelines and held that they are merely advisory.

A Sense of Humility

While believing that we each have an inherent "feeling of perfect justice," he recognizes that his sense of justice does not inexorably lead to perfect decisions. This recognition is apparent in the closing words of his opinion regarding post-trial motions of Wadih El-Hage, who was convicted of participating in the 1998 bombings of U.S. embassies in Africa. During the trial, the U.S. Marshals Service had suppressed evidence. When that suppression was later discovered, Judge Duffy stated that it caused "grave concerns that El-Hage must be retried." But after evaluating the evidence, Judge Duffy held that "none of the undisclosed material is powerful enough to displace the government's other evidence of El-Hage's guilt," and thus he denied El-Hage's motion for a new trial.[22] Judge Duffy's humility and sense of justice are apparent in the closing words of his opinion:

> I finally note that resolving this Motion has required me to decide several issues in areas where the relevant legal boundaries are not well marked. Although I have done my best to determine the just contours of the law in these areas, and to resolve the related issues correctly, I am hopeful that the parties will expeditiously bring this matter to the attention of the Court of Appeals.[23]

An appeal was taken, and his rulings were affirmed.[24]

In a less public manner, but of tremendous import, his sense of humility impacts how he relates to jurors. He is, in their eyes, the face of the court. He treats them gently and with respect. He enjoys talking with them

after trials to hear their thoughts. And jurors adore him.

During the trial of the WTC bombing, he was particularly worried about the jurors and insisted on extra measures to maintain their confidentiality. After the trial, he invited each of them to handwrite their names and addresses so he could send them a handwritten letter thanking them for their service on the jury, and he promised to destroy their handwritten information after mailing the letters.[25]

Why does he relate so well to jurors? Maybe because he's just a "poor Irish kid from the Bronx who went from bailiff to judge!"[26] He worked his way through high school and college and attended law school at night because he could not afford to go full-time during the day.[27] Those experiences strongly influence his view of the court and his treatment of jurors and attorneys.

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The following is excerpted from a speech by Hon. Kevin Thomas Duffy, upon accepting the 13th Annual Hon. John E. Sprizzo Award by the Manhattan Chapter of St. John's School of Law Alumni Association, June 18, 2012, at the New York Athletic Club, New York, NY.

Over the years, I have too often seen lawyers come to court so preoccupied with the lawsuit that the only human being he recognizes is his client and his associates. On many occasions, they even forget the associates. But people who do that miss the many other human beings in the process. People who can make or break the lawyer and his career.

Among the sometimes invisible people in a courtroom is the court reporter. Do you realize how few lawyers actually speak in sentences much less in perfect syntax? All a lawyer has to do to look foolish is to alienate the court reporter, who will then truly transcribe the lawyer's statements verbatim. That means that every false start or belch or "ooh" or "ahh" or whatever goes on, will duly be recorded for the court of appeals and for posterity to note. I have sat in the court of appeals and when I see a record like that, it is easy to know the measure of that lawyer by the court reporters.

It doesn't take much effort to say good morning to the court reporter and maybe even remember his or her name. It doesn't take much effort for a lawyer to have a list with the case name, the lawyer's name, his client's name, the names of the people he will mention and any technical words along with their correct spelling. Such a list, when given to the court reporter, makes a mere lawyer into a wonderful, charming, brilliant, knight in shining armor. It also makes the lawyer's life a little easier.

Many lawyers come into a courtroom and do not recognize that the courtroom deputy clerk is also a human being. Many, indeed, have no conception that the deputy is generally a long-time employee of the judge, and a friend. …

Some people come to a courtroom and have no conception whatsoever of what the law clerk is there for. The law clerk is nothing more or less than an extension of the judge. I had one lawyer come in and ask my law clerk how he could stand working for that "so-and-so" (referring to me). It took less than five minutes for me to be notified of that lawyer's estimation of me. I don't have to tell you how I reacted!

Lawyers sometimes make the mistake of treating their opponents as if they were less than human beings. If your opponent is really a slime bucket, I assure you that the judge and the jury will figure it out themselves and will be more firm in that knowledge especially if they might feel it is their own discovery.

Needless to say, you should recognize that the judge is also a human being.

You should have some empathy for the judge. I don't think you should feel sorry for her because, after all, she has a lifetime job or at least steady employment for a long term, but at least you can understand his or her problems. For example, understand that your case is not the only one he has. When I arrived at the courthouse, they gave me 636 cases. My chambers were called the kennel, because it was where all the old dogs were. Consider the type of case that the judge has to hear every day. Many of them are terribly boring. Consider the fact that the judge is truly overworked and at least he believes that he's underpaid.

When you walk into a courtroom in the morning and look at a judge, assume that his spouse hates him, or his girlfriend has just left him, and the dog bit him on the way out of the house that morning, and he is hungover. He may not be suffering from all of these things, but if you view all judges in that light, you will recognize judges are human beings.

Before you walk into court, try to know a little bit about your judge. Find out where they went to school, find out their background, find out whether they were rich, poor, or whatever. Find out their former area of specialization. Find out if they have any peculiarities and I assure you, most of us do. …

This recognition of the fact that your world is populated by other human beings should not be restricted just to the courthouse. Your partners, your bosses, your associates are all just as human as you. The person whom you call an "administrative assistant" or (if you are older than I am) the "secretary" is first of all a fellow human being.

Remember the golden rule—"Do unto others as you would have them do unto you."

In the courthouse, you may have the judge watching you, but in your whole life there is a much, much higher judge watching you.

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The Federal Lawyer is looking to recruit current law clerks, former law clerks, and other attorneys who would be interested in writing a judicial profile of a federal judicial officer in your jurisdiction. A judicial profile is approximately 1,500 to 2,000 words and is usually accompanied by a formal portrait and, when possible, personal photographs of the judge. Judicial profiles do not follow a standard formula, but each profile usually addresses personal topics such as the judge's reasons for becoming a lawyer, his/her commitment to justice, how he/she has mentored lawyers and law clerks, etc. If you are interested in writing a judicial profile, we would like to hear from you. Please send an email to Sarah Perlman, managing editor, at *sperlman@fedbar.org*.

A Sense of Dignity

Judge Duffy was well aware that his pronouncements in the terrorism cases would be read by much of the world and would reflect upon the United States. He explained the significance of this to me when he was called upon to decide whether the United States could extradite Abu Marzook to Israel. The issue raised by the extradition request was simple—did Israel make a showing of probable cause that Marzook had committed an extraditable offense (in his situation, the alleged crimes included murder, attempted murder, manslaughter, and conspiracy to commit a felony)? Probable cause hearings occur virtually daily in the court—seemingly as a matter of routine. Yet Judge Duffy treated it as far from routine. He authored a lengthy decision (28 pages in the Federal Supplement reporter) and meticulously addressed the evidence and arguments.[28] Explaining why he went to such effort, he said: "It is important not only to do justice, but also to give the appearance of doing justice."

In a similar vein, he criticized a prison warden for overzealously depriving Yousef of personal items, including toothpaste and the Quran. Yousef was, at the time, being held for trial in connection with multiple acts of terrorism. Judge Duffy not only recognized and protected Yousef's rights as an accused, but he delivered a message to the executive branch regarding the geopolitical realities of their conduct: "This case has international ramifications and is being watched by the entire civilized and perhaps uncivilized world."[29]

He generally is reputed to hold the government to a high standard in criminal cases. In 1988, *The New York Times* reported that "Judge Duffy, like many prosecutors-turned-judges, is known to make prosecutors work hard for everything."[30] Anecdotes abound.[31] Most recently, in December 2014, he reportedly scolded an AUSA: "I think I should start with something. On the front hall of the Department of Justice is engraved the whole section of United States against Berger about how the job of the Justice Department is to see that justice is done. Justice is founded in truth. … It is to the benefit of the people of the United States to have justice done—not just another scalp on the wall."[32]

In a very real, personal sense he takes seriously the dignity of the court. His extended family—including clerks, judges, and lawyers—gathered to celebrate his 40th anniversary on the bench and 80th birthday (the "40/80 party"). A theme of his remarks was a request to us—his family and friends—to tell him, as he advances in age, if we think he lacks the requisite mental ability and should retire.

A Sense of Religion

Judge Duffy is Catholic. He attended parochial schools, Fordham College (class of 1954), and Fordham University School of Law (1958). He currently is active in the Archdiocese of New York, where he serves as a member of a committee that reviews allegations of sexual misconduct by the clergy.

He has an impressive interest in and knowledge of other religions as well, including Judaism and Islam. His intellectual curiosity and studies of religion perhaps made him ideally suited to handle the wave of terrorism cases, as he rejects any effort to equate Islam to terrorism. Here is an excerpt from an award-acceptance speech he delivered in 2003, in which he stated that terrorism is not religious in origin:

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> We are at war—not just the Iraqi campaign—but we are at war with organized terrorism which is not restricted to Iraq, nor, perhaps, even to al-Qaida. Organized terrorism is not religious in origin—it has nothing to do with religion. Organized terrorism is founded on ignorance and envy. Envy of this great country and its riches and its freedoms. Ignorance of the fact that the proper way to share in those riches and freedoms is through education and hard work rather than terrorism.[33]

Judge Duffy made a similar point at the sentencing of Ramzi Yousef, calling him a pretender of Islam and an "apostle of evil:"

> You, Ramzi Yousef, came to this country pretending to be an Islamic fundamentalist, but you cared little or nothing for Islam or the faith of the Muslims. Rather, you adored not Allah, but the evil that you yourself have become. And I must say that as an apostle of evil, you have been most effective.[34]

A Sense of Curiosity

"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."[35] Those were Judge Keenan's words in 1992. Professor Constantine Katsoris of Fordham Law School commented: "Judge Duffy is a scholar in every sense, even though he has never cited any of my articles."[36] (For better or for worse, another 23-plus years have elapsed, and Judge Duffy still has not cited a Katsoris article.)

The breadth of Judge Duffy's knowledge and his ability to discuss almost any topic in depth are astounding. While interviewing me for a clerkship, he noted that I had majored in physics and began discussing the Bernoulli Principle. Fortunately, I was able to keep up with him (or he let me think so). He also suggested that I should read more literature—go to the New York Public Library, ask for a list of must-read books, and read them. It was terrific advice.

In recent years, he has been learning Mandarin.

Now age 83, he recently showed me his iPhone's list of "Great Courses" lectures that he recently had enjoyed. The list included:

- Classical Mythology
- The Dead Sea Scrolls
- Great Minds of the Eastern Intellectual Tradition
- Life Lessons from the Great Books
- Philosophy, Religion, and the Meaning of Life
- Masters of Greek Thought: Plato, Socrates, and Aristotle

He also described, with fascination, the writings of the Islamic intellectual/philosopher al-Farabi concerning Plato.

When I said that I might mention those lectures in this profile, to demonstrate his intellectual curiosity and scholarship, he chuckled and said, "I admit to being curious, [laugh] but not a scholar."

A Sense of Humor

We have shared many laughs together, sometimes in tears! All of his friends can say the same, no doubt. He is witty. And often irreverently so. Any "judicial profile" that did not mention his wit would be incomplete. So here are a few anecdotes and quotes that let his sense of humor shine:

On Being the Youngest Federal Judge

The day after I was sworn in, I was on the judge's elevator coming from the garage and a judge from the Second Circuit got on—he looked at me strangely and opined, "Young man, I don't think law clerks should be riding the judges' elevator." I smiled at him and said, "I agree—and if I find one on here—I'll throw his rump right off."[37]

On Appellate Judges

I am sure that [Judge] Joe McLaughlin will have something to say about me before the evening is over. My only solace is to remind you that all of the wisdom of the ages has led our system of justice to prohibit circuit court judges from making any findings of fact. This is so only because their work deals only with the concepts of the law and certainly does not involve finding the truth.[38]

On the Clarity of His Decisions

I want you to know since I was a judge for 10 years before Stanley [Sporkin] was, I taught Stanley practically everything he knows when it comes to surprising litigants and the press. As federal judges, neither Stanley nor I receive million-dollar salaries. A long time ago, I discovered that in place of the money, we should at least have some fun. And one of the greatest sources of fun is to leave the litigants and the bar without a clue as to which way the decision will come out until the decision is actually rendered—and in my case maybe even after.[39]

On His Reputation as a Tough Judge

After Judge Sprizzo became sick the first time, I took all of John's cases and got rid of a fair number of them. John insisted that it was only through my assumption of his docket that the bar of the City of New York prayed long and hard for his speedy recovery.[40]

And while sitting by designation in the Middle District of Florida, Judge Duffy wrote:

Every case that I touch settles or pleads out. One fellow plead to a 30-year-to-life count rather than go to trial in front of me. Do I really look that tough?

On Taking Senior Status

Shortly after taking senior status, Judge Duffy explained that he is required to maintain a docket half the size of a district judge's docket. He then quipped, "My question is, 'Do I get to pick the district judge?'"

On My Career Aspirations

Knowing that I had an interest in a career of patent, trademark, and copyright litigation, Judge Duffy found an opportunity to give career advice to me as his clerk during a hearing in a copyright infringement case. The plaintiff's product was a toy—a little, furry, caged monkey—that held the bars of its cage and shook while making sounds. The defendant's product was a similar, albeit not identical, caged monkey. While the parties argued over the similarities and nuances of the monkey's eyes and smile, Judge Duffy handed me a note saying, "*This* is the career you want?"

On George Orwell and New York City's "Human Rights Commission"

[The NYC Human Rights] Commission sought to dictate how the Parade sponsors would express their thoughts. Such activity (telling citizens what they must think and how they must express themselves) is something one would expect from the

"Thought Police" described by George Orwell. The humor of naming the thought police the "Human Rights Commission" is particularly Orwellian.[41]

The Appellate Judge Duffy

Beginning in 2005, Judge Duffy started frequenting the U.S. Court of Appeals for the Ninth Circuit, sitting by designation on many appeals. Most recently, he sat there again in May and October 2015. Before sitting on the Ninth Circuit, he had limited judicial experience on a court of appeals, having sat on the Second Circuit Court of Appeals once in 1975 and again in 1993—on the day before the WTC bombing. He returned to the Second Circuit again in 2013 and 2014.

It may seem ironic, or perhaps amusing, that a President Richard Nixon-appointed "conservative" New York judge would feel welcome on the reputedly liberal Ninth Circuit, but Judge Duffy greatly enjoys his time on that court. He has been quite productive there too. He has sat on hundreds of panels, is named in more than 80 published appellate decisions of that court, and has authored 15 of those majority opinions and four dissenting opinions.

The topics of his opinions have spanned a spectrum from constitutional rights (e.g., whether inmates of the Wiccan faith have a right to have a paid chaplain made available to them) to matters involving arbitration to issues peculiar to California law (e.g., what is the appropriate trigger of a statute of limitations for a habeas corpus petition for a misdemeanor under California law?).

A Teacher — His Advice to Lawyers

Judge Duffy's love of teaching permeates everything he does and is expressed in many ways: His instructions to jurors. His study tips to interns and my assistant (while she was a law student). His relationships with his clerks. His adjunct professorships (he has had many!). And his willingness to provide constructive criticism to attorneys after a trial.

He has sage advice for lawyers who appear before him, or in any court for that matter. Here are a few gems that he has shared over the years:

Use Mother Goose Language. He tells how Hon. Learned Hand sat down with him in 1958, on the last day of his clerkship with Judge Lumbard, and lectured him about how to handle a case in the court of appeals.[42] Learned Hand summed up his advice by saying: "Kevin, what you do is tell us the facts and you tell us the law. Put it in Mother Goose language. That way we'll understand it. After we understand it, we'll screw it up for ourselves."[43]

Write Compelling Statements of Fact. At a memorial ceremony for Judge Lumbard, Judge Duffy described this lesson: "After lining up all the pertinent facts, Judge Lumbard insisted that we put together a statement of fact which was simple, direct and complete. The Judge insisted that if the facts were properly told, the results should become obvious."[44]

Treat Everyone in the Courthouse Kindly and With Respect. The courtroom deputy, the law clerks, the judge's secretary, and the court reporter are friends of the judge. If you treat them with respect, the judge may not hear about it, but if you treat them poorly, the judge will hear about it. Introduce yourself to the court reporter and make his or her job easier by being prepared.[45]

Understand That the Judge Is Human. When you go to court, assume the judge had a bad morning—it very well may be true.[46]

Civility Is Expected. Reacting to the notion that clients want lawyers to behave like cowboys or Rambo in the courtroom, Judge Duffy states: "Does such incivility really help the client? No, no, a thousand times NO!"[47]

The accompanying excerpt of an award acceptance speech given by Judge Duffy (*see* sidebar on page 23) neatly summarizes his lessons and their humanity and higher purpose.

The Court's Good Fortune

In 1972, in support of the nomination of Kevin Thomas Duffy to be a U.S. district judge, Sen. James L. Buckley presciently stated: "[B]ecause of his youth we can anticipate from him many, many years of service in the best tradition of this particularly distinguished Court."[48] Amen! ⊙

Endnotes

[1]John F. Keenan, *Some Thoughts on Judge Kevin Thomas Duffy*, 3 Fordham Ent., Media, & Intell. Prop. L.F. 9 (1992) [hereafter "Keenan"].

[2]The first 20 years of Judge Duffy's judicial career are described in a collection of articles in a 20th anniversary tribute published in the Fordham Entertainment, Media & Intellectual Property Law Forum. 3 Fordham Ent., Media & Intell. Prop. L.F. 1 et seq. (1992).

[3]Keenan, at 10.

[4]*United States v. Shakur*, 570 F. Supp. 336, 337 (S.D.N.Y. 1983).

[5]*Marschalk Co. v. Iran Nat'l Airlines Corp.*, 518 F. Supp. 69, 72 (S.D.N.Y. 1981).

[6]*Walt Disney Prods. v. Mature Pictures Corp.*, 389 F. Supp. 1397, 1398 (S.D.N.Y. 1975).

[7]*Marzook v. Christopher (In re Extradition of Abu Marzook)*, 924 F. Supp. 565 (S.D.N.Y. 1996).

[8]*See* www.edition.cnn.com/WORLD/9704/03/israel.hamas/index.html (last viewed by author June 1, 2015).

[9]*United States v. Yousef,* 327 F.3d 56, 82, 118 (2d Cir. 2003).

[10]*United States v. Yousef*, 327 F.3d 56, 173 (2d Cir. 2003).

[11]*See United States v. Bin Laden*, 397 F. Supp. 2d 465 (S.D.N.Y. 2005); *United States v. Bin Laden*, S7R 98 Cr. 1023 (KTD), 2005 U.S. Dist. LEXIS 1669, 2005 WL 287404 (S.D.N.Y. Feb. 7, 2005); *United States v. al-'Owhali*, 691 F. Supp. 2d 441 (S.D.N.Y. 2010).

[12]*United States v. Odeh (In re Terrorist Bombings of U.S. Embassies in E. Afr.)*, 552 F.3d 93, 155 (2d Cir. 2008). Judge Leonard B. Sand conducted the trial and received equal praise from the Court of Appeals.

[13]*United States v. Yousef*, No. 93 Cr. 180 (KTD), 1999 U.S. Dist. LEXIS 13983, at *8-9 (S.D.N.Y. Sept. 13, 1999).

[14]Denis J. McInerney, *A View from Below,* 3 Fordham Ent., Media, & Intell. Prop. L.F. 17, 20 (1992). McInerney is KTD Clerk No. 16.

[15]Speech by Hon. Kevin Thomas Duffy, June 18, 2012, upon receiving the 13th Annual Honorable John E. Sprizzo Award by the Manhattan Chapter, St. John's School of Law Alumni Association, June 18, 2012, at the New York Athletic Club, New York, N.Y. [hereafter "Sprizzo Award acceptance speech"].

[16]John D. Feerick, *Honoring Kevin Thomas Duffy on the Occasion of His 20th Anniversary on the Federal Bench*, 3 Fordham Ent., Media, & Intell. Prop. L.F. 1, 3 (1992).

[17]New York Daily News, May 25, 1994.

[18]www.nytimes.com/1994/05/25/nyregion/trade-center-bombers-get-prison-terms-of-240-years.html;www.nytimes.com/1998/01/09/nyregion/mastermind-gets-life-for-bombing-of-trade-center.html.

[19]Audio recording of interview by Hon. P. Kevin Castel, U.S. district judge (KTD Clerk No. 5), on Oct. 15, 2010, [hereafter "Interview by Hon. P. Kevin Castel"].

[20]Tr. of Ct. Conf. held April 11, 1998, in *United States v. Martinez*, 87 Cr. 1020, filed June 13, 1988, at 6.
[21]*Id.* at 4.
[22]*U.S. v. Bin Laden*, 397 F. Supp. 2d 465, 473, 518 (S.D.N.Y. 2005).
[23]*Id.* at 519.
[24]*In re Terrorist Bombings of U.S. Embassies in E. Afr.*, 552 F.3d at 155.
[25]Interview by Hon. P. Kevin Castel.
[26]Speech by Hon. Kevin Thomas Duffy, at the closing of 40 Foley Square Courthouse for renovation, May 11, 2006, New York, N.Y..
[27]Interview by Hon. P. Kevin Castel.
[28]*In re Extradition of Abu Marzook*, 924 F. Supp. 565.
[29]*Warden Scolded on N.Y. Bomb Suspect's Treatment,* Washington Post, June 1, 1995, at page A3.
[30]David Margolick, *The Law: At the Bar*, The New York Times, Jan. 29, 1988.
[31]Almanac of the Federal Judiciary—Second Circuit—New York, Kevin Thomas Duffy, senior judge; New York, Southern District (2015).
[32]www.observer.com/2014/12/federal-judge-blasts-yet-another-federal-prosecutor-for-lying-to-the-court/#ixzz3aVt2vXQC.
[33]Speech given by Hon. Kevin Thomas Duffy, accepting the Federal Bar Council's Emory Buckner Medal for Outstanding Public Service, Nov. 26, 2003, at the Waldorf Astoria, New York, N.Y.
[34]www.nytimes.com/1998/01/09/nyregion/excerpts-from-statements-in-court.html.
[35]Keenan at 9.
[36]Constantine N. Katsoris, *A Tribute to Kevin Thomas Duffy,* 3 Fordham Ent., Media, & Intell. Prop. L.F. 15, 16 (1992).
[37]Remarks by Hon. Kevin Thomas Duffy to the Multi-District Litigation Panel, Oct. 22–24, 2001, Palm Beach, Fla.
[38]Speech by Hon. Kevin Thomas Duffy accepting the New York County Lawyers Association's Public Service Award, Dec. 8, 1994, Waldorf Astoria, New York, N.Y.
[39]Speech by Hon. Kevin Thomas Duffy accepting the Securities and Exchange Commission's Lifetime Achievement Award, Mar. 2, 1995, Washington, D.C.
[40]Sprizzo Award acceptance speech.
[41]*New York County Bd. of Ancient Order of Hibernians v. Dinkins*, 814 F. Supp. 358, 369 (S.D.N.Y. 1993).
[42]Interview by Hon. P. Kevin Castel.
[43]*Id.*
[44]Remarks by Hon. Kevin Thomas Duffy at the memorial service for Judge J. Edward Lumbard, Sept. 22, 1999.
[45]*See* Sprizzo Award acceptance speech.
[46]*Id.*
[47]Speech by Hon. Kevin Thomas Duffy to Merrill Lynch, May 21, 1991.
[48]Transcript of meeting of Subcommittee on Nominations of the Committee of the Judiciary, Oct. 5, 1972, at 4 (Sen. Roman Hruska presiding). Judge Duffy was nominated by President Richard Nixon with support of both Sens. Jacob Javits and James Buckley.