

## A LAW CLERK'S REMEMBRANCE OF THE HONORABLE KEVIN THOMAS DUFFY

*Tom Lenhart\**

I had the privilege to serve as the first law clerk to The Honorable Kevin Thomas Duffy—known forever to me simply as “the Judge.” In the fall of 1972, we both started new careers: Judge Duffy, as a federal district judge in the U.S. District Court for the Southern District of New York, and me as a newly minted lawyer just out of law school.

Judge Duffy was then the youngest federal judge in the country, often mistaken for a law clerk—sometimes in chambers and even on the “judges only” elevator in the old Federal Courthouse in Foley Square. Judge Duffy had a wonderfully teasing sense of humor and made light of such mistakes. He once explained to Second Circuit Judge Paul Hays, who had mistaken him on the judge’s elevator for a law clerk, that “if I find a law clerk on the elevator I will kick his ass off”—all said over his shoulder as the elevator doors closed behind him and without identifying himself. Several months later in my presence, Judge Duffy and Judge Hays were formally introduced. At that time, Judge Hays remarked that he had been trying to figure out for months who that person on the elevator was—“the biggest smartass law clerk in the building or perhaps an irreverent new judge.” After a handshake, they were to get to know each other, serving that very day on a three-judge panel.

A little more than a decade in age separated Judge Duffy and me. However, while I was an unvarnished rookie, the Judge was an experienced and gifted professional and, as I was to learn, wise beyond his years. It was evident immediately and proven over the next forty-four years that Judge Duffy was meant to be a judge. The profession just fit him. With real humility, he considered it an honor to sit on the bench every day. Others can write about the Judge’s jurisprudence, and his special ability as a trial judge to handle the most challenging—and often high visibility cases—as well as the less challenging ones with uncommon skill. Others also can write about his talent as a lawyer and prosecutor. I want to talk about what it was like to clerk for the Judge.

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\* Tom Lenhart (Columbia University AB and JD and Harvard University M Div.) was the Honorable Kevin Thomas Duffy’s first law clerk, starting in the fall of 1972. For the next thirty years Lenhart was an associate and then a partner in the Washington D.C. firm of Shaw Pittman (now known as Pillsbury Winthrop Shaw Pittman LLP). Subsequently, he became an ordained minister serving as the Senior Minister of the First Congregational Church in Chappaqua, New York and later as Interim Senior Minister of Plymouth Church in Brooklyn, New York. He continues to do ministry part-time. He wishes to thank Lynn Lenhart and Robert Hillman for their comments on this remembrance.

Certainly for me, and I am sure for my fellow clerks (all of us affectionately called “hockey pucks” by the Judge), our time with Judge Duffy was educational, exciting, and memorable. And, although we worked hard and much was expected from us, the experience was tremendously fun. His wisdom and lessons about the law, about being a lawyer and, perhaps most important, about how to treat others were gifts of immeasurable value.

The Judge believed fiercely in the importance of the law. He valued precedent and wanted his opinions to be intellectually rigorous, but also accessible and understandable. I was reminded on more than one occasion that his opinions were not principally for an academic or a judicial audience, but for the parties so that they would know what the court had decided and why. Judge Duffy avoided legal terms and jargon when plain English sufficed. He was fond of quoting Judge Learned Hand, who told Judge Duffy when he joined the U.S. Attorney’s office that if he ever argued before the circuit court, “to put it in ‘mother goose’ language and let us screw it up.” Simple, straightforward language was the desired goal.

The Judge published his opinions when they addressed a new point or took a position different from other decisions. He refrained from publishing decisions, however, that simply relied on well-established principles and precedent. He believed that they added little to jurisprudence but added much to an unfortunate proliferation of decisions in the Federal Supplements.

Judge Duffy had a remarkable breadth of legal knowledge, but never allowed that to substitute for a thorough examination of the briefs and cases. Not surprisingly, on occasion he changed his view of a case after careful study. One of his favorite comments to me was: “Don’t assume anything.” He reminded me time and again that when I became a practicing lawyer to always read the cases, review the actual facts, and examine witnesses closely, including my clients. This advice would serve me well in private practice.

While it was important to Judge Duffy that his decisions and opinions were analytically sound, he emphasized to me that the law fundamentally dealt with real situations and real people. Deciding cases was not simply an intellectual exercise. The parties faced difficult real-world situations with much riding on the decision of the court or the verdict of the jury.

Most important to Judge Duffy was that doing justice required fairness to every party regardless of their circumstances. Early in his first year on the bench a criminal matter came before the Judge. A postal worker had stolen a social security check from the mail. She was caught on camera and pled guilty. Echoing a refrain heard from the bench in other cases, an Assistant U.S. Attorney argued that the sanctity of the mail depended upon jail time for those who steal from the mail. Defense counsel argued for probation.

The sentencing hearing was set for that same day. The Judge took me aside when he left court and asked me to research whether he had flexibility to sentence the defendant to minimal probation. When I met later with the Judge, I showed him the pertinent requirements. I asked him what he had decided to do. He said he was going to sentence the postal worker simply to check-in with the probation department immediately after the hearing. I

asked him why. He said she already faced significant punishment. He noted that she would never get another job in the government and, indeed, would find it difficult to obtain work anywhere. The Judge asked if I knew the personal circumstances of the postal worker, which I did not. He told me she had a child with cerebral palsy and that the facts suggested that she stole the money because she could not pay both the family's medical bills and her rent. Judge Duffy then asked rhetorically: "Who will take care of this child if her mother goes to prison?"

As he was to do often, Judge Duffy had reminded me by his words and actions that justice requires understanding all of the circumstances and at times requires that it be tempered with mercy. More than once, he told me that the hardest part of being a judge was sentencing. I saw how he labored hard with this challenge, sometimes coming to the courthouse after a long night of wrestling with an upcoming sentence, trying to balance the many factors involved—the nature of the crime, the circumstances of the victim, and the circumstances and remorse of the defendant, among others.

Although Judge Duffy respected lawyers and understood the challenges of the profession, he could be demanding on them at times. What bothered him was unprepared lawyers. Their lack of diligence skewed the process of justice and did a disservice to clients.

More significant than all of the lessons about the law and lawyering was the example the Judge set for me and all his clerks in his dealings with people. Without regard to station in life or personal circumstances, he showed respect and affection for those he encountered. He knew everyone in the courthouse by name. Many on the bench and many who practiced before the Southern District were his friends. And he genuinely liked the courtroom deputies, the court reporters, and the courthouse security staff and they liked him. Years later when I would tell a security guard that I was in the courthouse to see Judge Duffy, I would get a special smile and a subtle nod.

And that respect extended in full measure to his clerks. Within days of being sworn in, Judge Duffy received twenty-five cases from each of the other district judges. The stack of case files in his first chambers was soon many feet high, reflecting the more than 500 mostly ancient cases he received. After looking at the stack, the Judge said that the two of us (the Judge had not yet selected a second law clerk) should identify any motion pending for more than three months. Deciding these matters, he added, was a priority because the parties deserved nothing less.

Because the Judge wanted to get his orders and decisions out quickly, he said, "I will take a first crack at drafting most of them." And then he added, "After I prepare my drafts, I want you to read them, because no opinion, decision, or order goes out of my chambers without two sets of eyes reviewing it." Here I was, fresh out of law school, and yet, a federal judge was asking me to read his drafts. I was stunned. This request reflected a reality that I was to appreciate daily—the Judge truly respected his law clerks. He was always interested in our thoughts, ideas, and perspectives.

On a personal level, he genuinely liked his “hockey pucks” and spent time with us, often taking a law clerk or two to lunch at one of his favorite haunts. Even after we left clerking, he took an interest in our professional and personal lives. His respect and affection for his law clerks was matched only by their great and enduring affection for him. It is a cliché, but in truth we would have walked over hot coals for him. Each of Judge Duffy’s law clerks, I think, would agree that we proudly carry and cherish our time with the Judge and always will.

Ralph Waldo Emerson<sup>1</sup> wrote:

To laugh often and much; to win the respect of . . .  
people; to earn the appreciation of honest critics . . . ;  
to appreciate beauty; to find the beauty in others;  
to leave the world a bit better . . . ;  
to know that one life has breathed easier  
because you lived here. This is to have succeeded.”

By all measures, Kevin Thomas Duffy succeeded remarkably as a judge and as a generous, kind, and thoughtful human being.

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<sup>1</sup> Versions of this poem have been attributed to both Ralph Waldo Emerson as well as Bessie A. Stanley. *See He Has Achieved Success Who Has Lived Well, Laughed Often and Loved Much*, QUOTE INVESTIGATOR, <https://quoteinvestigator.com/2012/06/> [<https://perma.cc/W5A2-232T>] (last visited Mar. 31, 2022).