



# Hon. John F. Keenan

## U.S. District Judge for the Southern District of New York

by Ross Galin



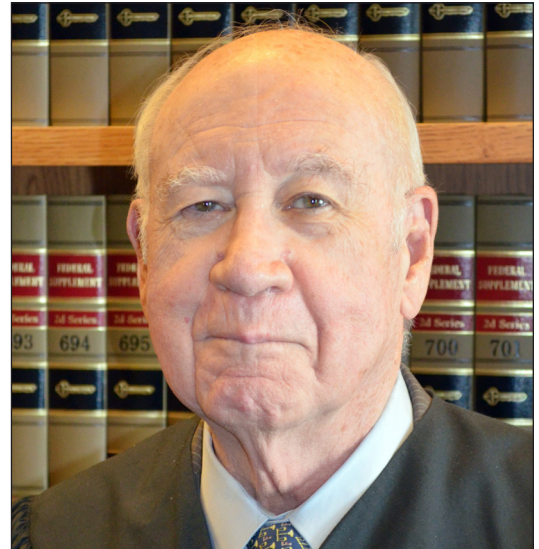
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For generations of lawyers, the Southern District of New York has been the “Mother Court,” and not just because it is the nation’s oldest federal tribunal—the first to be seated under the Judiciary Act of 1789. The sobriquet speaks equally to the iconic jurists who have presided over the district’s landmark cases—judges like John F. Keenan, who since 1983 has honored and extended the Mother Court’s tradition of legal excellence and judicial independence, and in so doing earned the reverence of those who have served with and appeared before him. “I do not know of another judge who is as uniformly liked as he is,” offers former colleague and longtime friend Michael Armstrong, now of McLaughlin & Stern. “In anyone’s list of the best three judges in the Southern District of New York at any time over the past 25 years, John Keenan is going to be one of them.”

Yet Judge Keenan’s time on the bench is only one part of a distinguished legal career that has spanned six decades, almost exclusively in the public sector. Whether as a prosecutor, the chair of New York’s Off-Track Betting Corp., or an informal adviser to—and occasional replacement for—his peers on the federal bench, Judge Keenan has demonstrated tremendous skill and intelligence, paired with unquestioned integrity and sound judgment. All of which traces back to stories told to a young boy over dinner.

### An Early Attraction to Criminal Law

Judge Keenan’s fascination with the law—and criminal law in particular—developed early in life thanks to an opportunity seized by his father. A bank loan officer, the senior Keenan happened to handle the account of Murray Gurfein, who at the time headed the Manhattan District Attorney’s Rackets Bureau (and would later serve on the Southern District of New York and Second Circuit benches). With an assist from Gurfein, Judge Keenan’s father was appointed to a New York County Grand Jury. He would come home from a day of hearing testimony and tell young John about the cases and the smart assistant district attorneys who put the cases into the grand jury. As Judge Keenan has recalled: “It was because of my father’s stories about



the grand jury and about Gurfein and the assistants that appeared before the grand jury that I first became interested in the law.”<sup>1</sup>

In 1951, Keenan graduated from Manhattan College, the first Keenan to earn a degree. Not wanting to stop there, he enrolled in Fordham Law School. The relationship with Fordham that began 64 years ago, when Keenan first walked through the law school’s doors at 302 Broadway, continues to this day. Judge John Keenan “is the epitome of all that a judge should be,” says Michael M. Martin, dean of Fordham Law School. “His commitment to serving the public and his dedication to ethical principles are as unquestionable as his loyalty to Fordham Law School. He has made immense contributions to the Fordham community for over 50 years. We are very fortunate to call him a graduate and friend.” These contributions have included serving as vice president of the school’s alumni association, being a member of search committees for new deans, teaching trial advocacy, and judging moot court competitions.

As a student, it was a moot court competition that first provided Keenan the opportunity to demonstrate his courtroom skills. He led his Fordham team to the finals of the Sutherland Cup Moot Court Competi-

tion, where he argued before Justice Felix Frankfurter and District of Columbia Circuit Court judges George T. Washington and Barrett Prettyman. Although the Fordham team had to settle for second place (some have suggested the team from Catholic University may have benefitted from a hometown advantage), Keenan had found his passion and earned an award confirming his talent.

Keenan's legal career would have to wait, however, because shortly after graduation he joined the U.S. Army, where he was assigned to the Army Security Agency and stationed in Tokyo during the Korean War, from 1954 to 1956. Even as he served his country overseas, those who knew that Keenan would one day make an excellent lawyer were thinking of his future. Fordham's then-dean, Judge William Hughes Mulligan, contacted Keenan to let him know the Manhattan district attorney's (DA) office had openings and encouraged him to apply. Unfortunately, by the time Keenan returned to civilian life, the DA had already filled those slots. With a marriage on the immediate horizon, he needed a job and took one with Halpin, Keogh & St. John. The four months he spent there would prove to be the entirety of Keenan's time in private practice.

### **The District Attorney's Office**

At the end of 1956, Keenan got the opportunity he had wanted since listening to his father's grand jury stories. He joined the office of Manhattan District Attorney Frank Hogan, a man Judge Keenan still refers to as "The Boss," and began what would be a 20-year career as an assistant district attorney. It was a remarkable tenure that would ultimately see Keenan rise to chief assistant district attorney under the legendary Robert Morgenthau, with stops along the way as the chief of the Homicide Bureau and what is now known as the General Trial Bureau.

As a homicide prosecutor, Keenan truly distinguished himself. In the words of Armstrong, himself a former state and federal prosecutor, Keenan was "the most prominent homicide prosecutor in the state of New York." In that role he showcased the skills that became the hallmarks of his legal career: a keen intellect, attention to detail, and courtroom savvy. All those skills were on display when Keenan set out to convict the killer of Janice Wylie and Emily Hoffert—young roommates found brutally slashed and stabbed to death in their apartment on Aug. 28, 1963—in what became known as the "Career Girl Murders," the most sensational New York crime of its day. A high-profile prosecution of a double homicide of two young, Upper East Side women would have presented a fair number of challenges in its own right, but Keenan's task was made significantly more difficult by the arrest and confession of a man who Keenan and his colleagues in the DA's office suspected did not commit the savage crimes.

Police had arrested a 19-year-old laborer of limited intelligence, George Whitmore Jr., for the attempt-

ed rape of a nurse. In his wallet was a photo, which Whitmore initially said he found in a garbage dump, of a young woman police believed to be Wylie. Interrogated for almost 24 hours without legal representation, Whitmore signed a detailed, 61-page confession implicating himself in a string of crimes, including the Wylie-Hoffert murders. Keenan and his colleagues were troubled, however, by certain details of Whitmore's confession, including the fact that Whitmore did not know the women were dead. An investigation driven by the DA's office led to the actual woman in the picture from Whitmore's wallet; Whitmore had taken it from a photo album the woman had thrown away. Investigators then learned from a Philadelphia mother and daughter that they had spent the day of the murders watching TV with Whitmore in Wildwood, N.J. They were certain of the date: Martin Luther King Jr. was being broadcast from the steps of the Lincoln Memorial, giving his "I Have Dream" speech. Together, these developments led the DA's office to the inescapable conclusion that Whitmore's confession was bogus. This belief was buttressed by the emergence of a far more likely suspect, a convicted burglar named Richard Robles who lived on the Upper East Side and was fingered for the crime by a fellow junkie.

At trial, Keenan had to prove not only that Robles had murdered the women but also that Whitmore, who had been indicted and paraded before the press as the killer, was innocent. This meant cross-examining the police officers who secured Whitmore's confession and who, when called as witnesses, continued to believe Whitmore was the killer. Keenan had to deal also with the fact that the person who had identified Robles was a junkie facing his own murder charge for killing a heroin dealer. Despite these obstacles, on Dec. 1, 1965, a jury convicted Robles of the murders, a conviction affirmed by the appellate court. The Wylie-Hoffert case has since been the subject of books and the premise for the pilot of the *Kojak* television series.

That Judge Keenan would be involved in the exoneration of an innocent man is not a surprise. "His integrity stands out," remarks Armstrong. "You can count on John like the Rock of Gibraltar." Armstrong came to know this well in 1969, chief counsel on Judge Whitman Knapp's commission on police corruption. After the commission's key witness, police officer William Phillips, testified against his New York Police Department brethren, Phillips was indicted by the DA's office for the murders of a pimp and a prostitute. Phillips complained that he was being framed—retaliated against as a whistleblower. Armstrong, sympathetic to Phillips's claim, asked commission attorney and DA's office alum Nicholas Scoppetta whether it could be true. Scoppetta, upon learning that the prosecutor handling the case was Keenan, assured Armstrong that the charges had to be legit. (Phillips was convicted of the murders and served 32 years in prison.)

Since watching him handle the case, Armstrong has been among Keenan's biggest fans, and although to this day the two good friends do not agree on whether Phil-

lips was the killer, they no longer argue about it (each being set in his opinion and knowing all of the other's arguments too well). In 1973, when Armstrong was appointed Queens County District Attorney, he persuaded Manhattan DA Hogan to loan Keenan to him. "He was, as chief assistant, the person I relied on to really run the office," says Armstrong.

In addition to integrity, Keenan came to be known for his intelligence and savvy as a prosecutor. As told in *Mr. District Attorney: The Story of Frank S. Hogan and the Manhattan DA's Office*, Keenan once lured a murder suspect and his girlfriend into discussing the crime on a wire-tapped phone. He did it by fabricating an *Irish Echo* newspaper article and mailing it to them anonymously—a ploy that Hogan called "[t]he cleverest thing I ever saw." Another former colleague of Keenan's in the DA's office, James Gill of Bryan Cave, says of his friend, "He's been around, and he is savvy."

### Continued Public Service

Keenan returned to Manhattan—and was elevated to chief assistant district attorney—after Armstrong declined to seek election to a full term as Queens County District Attorney. In 1976, Gov. Hugh Carey and New York Attorney General Louis Lefkowitz named Keenan to serve as the deputy attorney general, special prosecutor of corruption, in New York City. The position had been created by Gov. Nelson Rockefeller "to dispel completely any cloud that threatens the public's respect and confidence in those who uphold the law." *The New York Times* profile of Keenan upon his ascension to the post began with the following quotes about him: "Thoughtful, careful, decent," "a guy of absolute integrity," and "tough but fair." During his tenure—in which he oversaw a talented team of lawyers, many of whom went on to New York state judgeships and other influential positions—Keenan both lived up to those descriptions and helped fulfill Gov. Rockefeller's vision for the job.

In 1979, Keenan was again tapped for public office. This time it was to serve as chairman and president of the New York City Off-Track Betting (OTB) Corp. In friend and former colleague Gill's mind, it was a fitting job for Keenan. "He loved the horses," Gill notes, before quickly adding, "He is not, however, as effective a horse player as he was a trial lawyer."

### A Seat on the 'Mother Court'

Keenan's time presiding over OTB was followed by a stint as criminal justice coordinator for the City of New York. He served only briefly in this role, because when Judge Lloyd MacMahon took senior status, President Ronald Reagan, on Sen. Alfonse D'Amato's recommendation, nominated Keenan to the Southern District of New York. In the 1983 *New York Times* article reporting the nomination, District Attorney Robert Morgenthau praised Keenan as "[a]n outstanding trial lawyer, a super guy. Very calm and one of the few first-rate trial lawyers without a huge ego." Bronx District Attorney Mario

Merola called it "[p]robably the finest appointment from a criminal-law standpoint."

There was no questioning Keenan's criminal-law expertise, but at the time of his nomination, he had no civil litigation experience. Former U.S. Attorney Robert Fiske, the American Bar Association Judicial Committee member responsible for screening Second Circuit candidates, recalls that this gap in experience was the only question the committee had. After meeting with him, however, Fiske and his fellow committee members became convinced Keenan would have no problem handling civil cases. The committee rated Keenan "Well Qualified," the highest rating available at the time. The committee's rating was almost immediately validated when Keenan was assigned the litigation from the deadly Union Carbide gas leak in Bhopal, India. "He handled it beautifully," Fiske says, "and justified our confidence."

Navigating the unfamiliar terrain of civil litigation proved much less challenging than one of Judge Keenan's first criminal cases. In *United States v. Persico*, he presided over the prosecution of members of the Colombo organized crime family, including its leader, the infamous Carmine "The Snake" Persico. The trial, which began with 13 defendants, was months long and disrupted by a parade of health-related complications, including a lawyer who had a stroke and had to be replaced, a defendant who died during trial, and another defendant who had a stroke in the courtroom—at which point he "stood up, did a pirouette like he was a ballet dancer, and then did a head-first dive on the lap of Juror No. 5," recalls Judge Keenan. Through great skill, Judge Keenan managed to shepherd the case through all the craziness to a verdict. Each of the defendants was convicted.

"Judge Keenan is a great trial judge because he was such a great trial lawyer," Fiske explains. "He has total control of his courtroom and is usually one step ahead of the lawyers. That, plus his easygoing demeanor, is a great combination in a judge."

Not surprisingly, Judge Keenan has distinguished himself as someone his fellow colleagues turn to when they encounter a thorny issue and want guidance. A recent *New York Times* article, "Faced with Legal Puzzles, Judges Often Turn to Fellow Jurists," singled out Judge Keenan as someone whose advice several judges acknowledged seeking. Southern District of New York Chief Judge Loretta Preska speaks for many when she says, "Judge Keenan is the consummate gentleman, the picture of judicial modesty and temperament. With his vast experience, he is the wisdom and judgment of the court. I often seek Judge Keenan's advice on all kinds of matters, from jury questions to court governance to multidistrict litigation issues. He is a splendid colleague."

Judge Kevin Duffy shares the chief judge's assessment. "Thirty years ago, when I was relatively new to the bench and only had about 10 years on the bench, Milton Pollack invited me to lunch," Judge Duffy recalls. "During the conversation, Judge Pollack asked me a

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simple question: ‘If you had a major personal problem, who would you contact for advice among all of the judges in the Southern District?’ Later, toward the end of Judge Pollack’s life, I had occasion to be at lunch with him again. This time I asked Milton the same question he asked me so many years before. Milton’s reply was simple: ‘There is only one answer to that question, Kevin. Everybody would agree that it is John Keenan.’ No matter what you may think of individual judges at 500 Pearl Street, it’s rare that you would find they are unanimous about anything, and you have to admit that a unanimous court shows good judgment picking John Keenan.”

Judge Keenan’s willingness to be a resource is one way in which he repays the kindness and mentorship that Judges Whitman Knapp, Charles Brieant, Pierre Leval, and William Connor provided him as a new judge.

### Judicial Appointments

The faith judges have in Judge Keenan is demonstrated not only in the informal advice they seek from him but also the formal assignments he receives from them. In 1994, Chief Justice William Rehnquist appointed Judge Keenan to serve on the U.S. Foreign Intelligence Surveillance Court. Judge Keenan served for seven years on this important panel, which has the difficult task of helping to protect both the security of the nation and the civil liberties of its citizens. The chief justice also asked Judge Keenan to serve on the Judicial Panel on Multidistrict Litigation. In addition to those assignments, Judge Keenan served on the Advisory Committee on Criminal Rules of the Judicial Conference of the United States for two terms, first in the 1980s and 1990s, and again from 2008 through 2013.

Likewise, Judge Keenan has proved to be a go-to replacement for recused judges. In 2005, this meant handling a terrorism case in Chicago, *United States v. Gale Nettles*. The defendant, while serving time in Mississippi for counterfeiting, told a cellmate that he wanted to blow up Chicago’s 28-story Everett McKinley Dirksen U.S. Courthouse, which houses the Seventh Circuit, the Northern District of Illinois, and the district’s U.S. Attorney’s Office. When he was released, Nettles attempted to purchase explosives with counterfeit funds. His supplier turned out to be an undercover FBI agent. When he went to Chicago to pick up the explosives, Nettles was arrested.

Nettles’ attorney moved to recuse the judge assigned to the case because she sat in the building Nettles was accused of trying to destroy. Although the motion was denied, the Seventh Circuit reversed and recused the entire district court, all the rest of the district judges in the circuit, and even itself. In need of an outside judge to try the case, Chicago turned to Judge Keenan. Tried over two weeks in 2005, the case ended with a conviction and praise for Judge Keenan from the lawyers on each side. Assistant U.S. Attorney Joe Cordaro, then the

clerk who assisted him with the trial, recalls that Judge Keenan had a different measure of success—none of the press reports mentioned his name.

A few years later, Judge Keenan would again be asked to preside over a case in which all the local judges had to recuse themselves. Because *United States v. Joseph Romano* was being tried in Brooklyn, though, he needed only to cross the East River to handle that trial. The defendant, angered by a 15-year sentence for engaging in a fraudulent scheme to overinflate the value of collectible coins, had agreed to pay \$40,000 to an undercover police officer, posing as a hit man, to kill the judge and prosecutor. As with the Chicago case, all the Eastern District of New York judges were forced to recuse themselves, and Judge Keenan ably stepped in. Romano was convicted and is serving a life term.

### A Legacy Carried On

Judge Keenan’s legacy would be a special one were it confined simply to the cases he tried and won as a prosecutor and those he presided over as a federal judge, but even more enduring than those accomplishments may be the imprint his example has left on others. Generations of lawyers have worked for him as prosecutors or law clerks, each of whom today carries Judge Keenan’s lessons into their law practices. Among his protégés are judges, prosecutors, leaders in public interest efforts, and law firm partners.

“Judge Keenan is one of the most talented—yet most humble—people I know,” says U.S. Magistrate Judge Leda Wettre, a former Judge Keenan clerk. “All of his former clerks have tried to emulate him. None of us will ever achieve that combination of intelligence, humor, common sense, and compassion that makes him so special, but we are all better lawyers and people for having tried.” Another former clerk, Kostelanetz & Fink partner Sharon McCarthy, whose own impressive career has included 13 years as an assistant U.S. attorney and service as special counsel to the attorney general for the New York State Police Investigation, adds, “Throughout every step of my career, I have sought Judge Keenan’s wise counsel, and he has always made time for me. His advice and support have been incredibly valuable to me.”

Despite these well deserved accolades, Judge Keenan remains typically modest. Asked what he considers his greatest accomplishment, he answers on cue: “The fact that I’ve convinced my wife to stay married to me.” John and Diane Keenan have been married for more than 59 years. They have a daughter, Marie, who is married with two sons in Maryland. ☺

### Endnote

<sup>1</sup>Several of Judge Keenan’s quotes come from an excellent interview conducted by Sharon McCarthy. The author is in tremendous debt to her for her help.