

## **Almanac of the Federal Judiciary - Second Circuit - New York, Robert W. Sweet, Senior Judge; New York, Southern**

*Litigation > Judicial Research > Almanac of the Federal Judiciary > Federal District Courts > Second Circuit > New York > Southern District Court > Robert W. Sweet, Senior Judge; New York, Southern*



Senior Judge; New York, Southern  
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### **Biographical Information**

Spouse: Adele Hall  
Children: Robert, Jr., Deborah, Ames, Eliza  
Born 1922; appointed in 1978 by President Carter  
**Education** Yale Univ., B.A., 1944, LL.B., 1948  
**Military Service** Lt.(j.g.), United States Naval Reserve, 1943-45

**Private Practice** Simpson, Thacher & Bartlett, 1948-53; Partner, Casey, Lane & Mittendorf, 1955-65; Partner, Skadden, Arps, Slate, Meagher & Flom, 1970-77

**Government Positions** Assistant United States Attorney, S.D.N.Y., 1953-55; Deputy Mayor under Mayor John V. Lindsay, N.Y. City, 1966-69

**Professional Associations** Assn. of the Bar of the City of New York

**Pro Bono Activities** New School for Social Research

**Noteworthy Rulings** 1980: Sweet temporarily barred the Lorillard tobacco company from using certain comparative ad claims for Triumph cigarettes. The suit was brought by Philip Morris, Inc., which asserted that the claims were false and hurt Philip Morris's sales. *Philip Morris, Inc. v. Loew's Theaters, Inc.*, 511 F. Supp. 855 (S.D.N.Y. 1980).

1981: Sweet issued a temporary restraining order barring a statewide lockup of 23,000 inmates. A state official had ordered that the inmates in 33 state prisons be locked in their cells so that guards could attend the funeral of a strangled guard.

1982: Sweet dismissed a class-action suit that sought to close a shelter for homeless men on Ward's Island. *Seide v. Prevost*, 536 F. Supp. 1121 (S.D.N.Y. 1982).

1982: Sweet ruled that two FBI agents who infiltrated organized crime could not conceal their names when they testified in a federal racketeering trial. *United States v. Napolitano*, 552 F. Supp. 465 (S.D.N.Y. 1982).

1984: Sweet ruled that the FBI could keep secret evidence about the slayings of four American churchwomen in El Salvador (which evidence was sought by their families under the Freedom of Information Act) because the information might be needed for a trial in El Salvador. *Donovan v. FBI*, 579 F. Supp. 1111 (S.D.N.Y. 1984), *appeal dismissed as moot*, Nos. 84-6102, 84-6114 (2d Cir. 1984).

1985: Sweet ordered Universal City Studios, Inc., to pay \$1.6 million to Nintendo Co. Ltd. for alleging that the Donkey Kong video game had infringed upon Universal's trademark. Sweet ruled Universal had sued in bad faith because it had no trademark rights. At one point during the trial, Sweet said, "This is a terrific case. I love this case. Marvelous lawyers, fascinating issues. Everything would be perfect if it didn't have to be decided." *Universal City Studios, Inc. v. Nintendo Co., Ltd.*, 615 F. Supp. 838 (S.D.N.Y. 1985), *aff'd*, 797 F.2d 70 (2d Cir. 1986), *cert. denied*, 479 U.S. 987 (1986).

1987: Sweet sentenced lawyer Ilan Reich to a prison term for securities fraud, against the urging of 32 of Reich's friends, clients and former partners who wrote letters on Reich's behalf. Sweet cautioned: "A breach of trust at this level...requires a jail term as a deterrent, as a statement by our society that its rules must be obeyed and that personal integrity remains a paramount requirement for our society, particularly for those who are responsible for the enforcement and interpretation of our laws. You have, it is very sad to say, become a symbol of the sickness of our society and of that loss of integrity which cannot be condoned, whatever the cost." AMERICAN LAW., Mar. 1987.

1988: Sweet settled the antitrust suit brought by New York Citizens for Cable TV against Manhattan Cable TV, the principle cable television system in Manhattan, for monopolizing pay-movie programming and failing to live up to franchise agreements. Time Inc., owner of Manhattan Cable, which had previously refused to carry pay-movie network competitors, agreed to add two nonaffiliated pay TV services. The settlement was considered a major victory for Manhattan cable viewers, because it provided for the addition of new pay-movie programming. The case also set a precedent that allows cable subscribers to sue to enforce their rights in franchise agreements, and independent programmers to sue for access to cable networks. According to some, the case demonstrates how cable companies can abuse their power. Noting that the Supreme Court had ruled that the first amendment recognizes that the rights of viewers to diverse programming are superior to those of broadcasters, Sweet extended that principle to cable operators. He concluded that both those who subscribe to cable TV and those who program it have open access to cable networks. NEW YORK TIMES, Mar. 18, 1988.

1990: Sweet quashed a subpoena, issued to a defendant who had been indicted on tax fraud and conspiracy charges, for "any and all diaries, appointment books and telephone and address books" kept by the defendant during a specified period. Sweet ruled that personal, non-business records are protected from disclosure under the Fifth Amendment privilege against self-incrimination. *In re Grand Jury Subpoena Duces Tecum Dated May 9, 1990*, 741 F. Supp. 1059 (S.D.N.Y. 1990), *aff'd without opinion*, 956 F.2d 1160 (2d Cir. 1992).

1991: Sweet ruled that makers of designer jeans known for placing logos conspicuously across the fly could not assert trademark infringement against other clothing designers who similarly attach their labels. *Wall Street Journal*, Apr. 22, 1991.

1992: In sentencing a woman who defrauded her clients out of \$1.6 million to five years probation and to make restitution to the clients, Sweet departed greatly from the federally mandated sentencing guidelines. The guidelines called for a sentence of 33 to 41 months. But Sweet took into account the fact the woman was the sole provider and single parent to her two teenage daughters. According to Sweet, the "guidelines failed to adequately address the situation of a defendant who is the sole care provider of her children." *Wall Street Journal*, Feb. 3, 1992; *United States v. Gerard*, 782 F. Supp. 913 (S.D.N.Y. 1992).

1992: Sweet held that a state law that criminalized public begging was unconstitutional and ordered an injunction barring police from enforcing the law. The law was challenged by a 1990 class-action suit begun by two homeless people. Sweet wrote: "A peaceful beggar poses no threat to society. The beggar has arguably only committed the offense of being needy." *Wall Street Journal*, Oct. 2, 1992; *Loper v. New York City Police Department*, 802 F. Supp. 1029 (S.D.N.Y. 1992), *aff'd*, 999 F.2d 699 (2d Cir. 1993).

1995: In a class-action filed by four deaf inmates, Sweet ruled that New York State had violated the constitutional rights of the prisoners. He ordered the state to provide deaf prisoners with sign-language interpreters, typewriter-like devices for communicating by telephone, closed caption televisions and other services. The inmates argued that their inability to communicate isolated them from the world, made it impossible for them to understand disciplinary, grievance and parole hearings, and prevented them from participating in educational classes. Sweet found that the prisons had violated the Americans with Disabilities Act and had denied deaf prisoners their right to fair hearings and the constitutional guarantee against cruel and unusual punishment. *New York Times*, June 20, 1995; *Clarkson v. Coughlin*, 898 F. Supp. 1019 (S.D.N.Y. 1995).

1996: Sweet ruled that Mayor Rudolph W. Giuliani's plan to remove 16,300 outmoded fire alarm boxes and replace them with public telephones violated the civil rights of the city's deaf and hearing-impaired residents. Sweet said that deaf people were unable to use payphones to call for help, and so were denied equal access to public services, which was guaranteed by the Americans with Disabilities Act. Sweet did not order the city to reconnect the 4,039 alarm boxes that had been disconnected in the program to measure the impact on several neighborhoods, but said the study should be concluded. Attorneys for the city said they would not appeal Sweet's ruling, but would attempt to prove that the new phone system was usable by the deaf. *New York Times*, Feb. 14, 1996; *Civil Association of the Deaf v. Giuliani*, 915 F. Supp. 622 (S.D.N.Y. 1996).

1996: Sweet, questioning the constitutionality of banning cameras from federal civil trials, departed from the stated policy of the federal judiciary and permitted the broadcast of a civil proceeding in his courtroom. Citing local Rule 7, Sweet wrote, "The First Amendment requires that court proceedings be open to the public, and by extension the news media, absent the most clearly articulated and compelling reasons for closing them in a particular circumstance." Sweet said that "there can no longer be a meaningful distinction between the print press and the electronic media." Sweet is the second federal judge in Manhattan to allow cameras in the courtroom after the Judicial Conference of the United States stated that its policy would be not to allow the broadcast of proceedings in district courts. Sweet wrote, "While the recent action of the Judicial Conference is persuasive, the Court is not required to defer to it." *Legal Times*, May 6, 1996; *Katzman v. Victoria's Secret Catalogue (In re Courtroom TV Network)*, 923 F. Supp. 580 (S.D.N.Y. 1996).

1998: Sweet awarded more than \$144 million in fees and \$4.4 million in expenses to a team of class-action lawyers who negotiated a \$1 billion settlement from over 36 Wall Street brokerage houses. The brokerage houses were accused of illegally fixing prices of stocks traded on Nasdaq. Sweet also approved an antitrust

settlement, allowing the attorneys to submit a plan for redistributing the money to investors. The lawyers originally sought 17.5 percent of the settlement, but Sweet awarded them 14 percent. *New York Times*, Nov. 10, 1998.

1999: Sweet found that the New York City Department of Transportation's methods of handling requests to temporarily rename city streets violated the Constitution. In his ruling, Sweet found that the city violated the First Amendment rights of a group that wanted to temporarily rename part of a Manhattan street in support of independence for East Timor. *New York Times*, Nov. 5, 1999; *East Timor Action Network, Inc. v. City of New York*, 71 F. Supp. 2d 334 (S.D.N.Y. 1999).

1999: Sweet found that an arbitrator's failure to hold oral hearings did not amount to the "denial of fundamental fairness" required to vacate the arbitral award. *In re Griffin Industries, Inc.*, 72 F. Supp. 2d 365 (S.D.N.Y. 1999).

2002: Sweet dismissed a lawsuit brought by two New York girls who claimed that McDonald's was to blame for their obesity and health problems. Sweet found there was no evidence that McDonald's had concealed information about its ingredients. He wrote, if customers know the risks, "they cannot blame McDonald's if they, nonetheless, choose to satiate their appetite with a surfeit of supersized McDonald's products." Sweet did suggest one avenue by which such a suit might proceed. He said that a seller may be held liable if an item is substantially less healthy than it appears. He gave Chicken McNuggets as an example. "Rather than being merely chicken fried in a pan, they are a McFrankenstein creation of various elements not utilized by the home cook." "It is at least a question of fact," he wrote, whether a reasonable consumer would know that a McNugget contained twice the fat of a hamburger. *New York Times*, February 6, 2003

**Media Coverage** 1989: Sweet called for the legalization of all drugs in a speech he gave at Manhattan's Cosmopolitan Club. With this proclamation, Sweet became the first federal judge calling for drug legalization. He stated that drugs should be treated like alcohol, and sold at state-run stores. Pharmaceutical companies, the judge said, could manufacture the drugs. Sweet claimed that he came to his conclusion as a result of sitting on the bench for 11 years and "seeing our justice system overwhelmed by a social phenomena." In response to his statements, the Washington Legal Foundation, a conservative organization, filed a judicial misconduct complaint against Sweet, calling for him to resign or stop handling drug cases. *New York Times*, December 13, 1989; *Washington Post*, December 23, 1989.

**Lawyers' Evaluation** Sweet is a smart and wise judge, lawyers interviewed said. "He's a very smart judge." "He's smart and capable." "He has excellent legal ability." "He's a very smart and clever judge and he's a hard worker." "He's a good judge." "He's in the 'A' category." "He's wise." "I'd rate him the very highest. He's very smart and wise." "His legal ability is very good to excellent." "I think he's slowed down because of his age but he's still very solid." "He's a fine, a very good jurist. He understands the facts and is completely prepared." "He's extremely smart but he's results oriented."

Lawyers said Sweet is polite to attorneys. "He has a good demeanor; he's professional and approachable." "He has an excellent demeanor." "He has a good demeanor." "He's very nice to lawyers." "I don't think there is a person alive who says he isn't nice. He's the world's nicest human being." "He's very polite to attorneys." "He's professional and pleasant." "He's a very nice man." "He's funny if you get his sense of humor. He is all about quips and droll commentary. He's a silver spoon guy. He is polished, funny, and self-deprecating, but astute." "He treats lawyers with extreme civility and conducts himself with courtesy."

Lawyers interviewed said Sweet is a fine judge to appear before. "He is O.K. with rescheduling and deferential to the parties. He's gracious with his time and will give all the parties their time. He will throw in a remark giving an indication of what he's thinking, but he will not cut you off unfairly." "He's a hard worker." "He's a wonderful judge to appear before. He lets you try your case." "He let us handle our case just fine." "He's fine." "It's hard to get a rise out of him; he's even-keeled and patient." "He is quite old but very sharp." "Speak loudly because he's very old." "He's hardworking."

Sweet encourages settlement, lawyers interviewed said. "He encourages settlement. He didn't try to do it himself; he had the parties discuss it among themselves." "He doesn't try to settle." "He pushed for resolution. From the outset, the parties thought they could settle and he gave them time." "He doesn't try to settle." "He

didn't get involved in my experience." "He would do it himself to a large extent. He asks you about it, then sets a trial date." "He pushes a little. He doesn't bang you over the head but he wants to know where you are and he occasionally sends it to a magistrate." "He hasn't tried to do anything."

Civil lawyers said Sweet is middle of the road. "He has no bias that affects his decisions." "I didn't see any bias." "He has no bias that's been evident." "I don't think he has a bias." "It's hard to tell with him. I don't think he's a biased guy. He's well versed in the law."

Criminal defense lawyers said Sweet is evenhanded and fair. "He had no bias that I saw." "He's generally liked by the defense bar." "He's evenhanded." "He has no bias that affects his decisions." "He has no bias, he's seen it all."

Criminal defense lawyers said Sweet is a good sentencer for the defense. "He'll depart downward." "He's very fair, some would even say he's good." "I can't believe he wouldn't be a pleasure to appear before. He gives appropriate sentences."

Lawyers advised that Sweet is a good draw. "You're lucky to have him if you get him." "He's well respected. You want him in a criminal case." "Read his sentencing opinions, they can give you insight." "He'll be prepared and you would certainly suffer if you're a fool." "Speak up." "You've got to have a case with merits for him to side with you." "Exhale when you get your case assigned to him. He's good." "He's a great jurist." "He understands and will have read everything. He has questions and will bring you into a conference. He is an active jurist." "He's very entertaining. It's a pleasant experience."

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## II. CIVIL AND CRIMINAL PRACTICES AND PROCEDURES

### A. Commencement of Action and General Procedures

#### 1. Initial Status Conference

Specific information not provided.

#### 2. Initial Scheduling Order

Specific information not provided.

#### 3. Policy Concerning Contacts with Judge and Clerks

Does not allow for ex parte contact. Any necessary communication, except emergency matters, must be made by letter.

#### 4. Motions and Briefs

Requires that a courtesy copy of all motion papers be delivered to chambers.

#### 5. Electronic Case Filing

Specific information not provided.

### B. Pretrial Procedures—Civil

#### 1. Motion Practice

Hears oral argument of all motions except in pro se matters, motions for reargument, applications for attorneys' fees, and motions for reduction of sentences.

## **2. Settlement**

Specific information not provided.

## **3. Discovery Motions**

Specific information not provided.

## **4. Pretrial Conference/Pretrial Orders**

Pretrial conferences, discovery disputes, and any other matters relating to calendar status may be raised at the call of the pretrial calendar on Wednesdays at 4:30 p.m.

Conducts a pretrial conference to discuss settlement, to explore contemplated motions, to arrange a discovery plan and schedule, for stipulating facts, and to set a time for trial.

Utilizes his own standard pretrial order form which requires a statement of the case, disputed factual issues, witness lists, stipulations, exhibit lists, depositions, a statement of damages, proposed voir dire questions, and proposed jury instructions.

## **C. Pretrial Procedures—Criminal**

### **1. Bail Procedures**

Specific information not provided.

### **2. Discovery Procedures**

Specific information not provided.

### **3. Pleas**

Specific information not provided.

## **D. Trial**

### **1. Trial Date**

Specific information not provided.

### **2. Trial Briefs**

Specific information not provided.

### **3. Voir Dire**

The court conducts voir dire. Requests for voir dire questions must be submitted to the court in advance and in writing.

### **4. Decorum**

Specific information not provided.

## **5. Opening Statement**

Specific information not provided.

## **6. Stipulations**

Specific information not provided.

## **7. Marking Exhibits**

Requires that all exhibits are pre-marked with tags supplied by the courtroom deputy and exchanged one week before the plaintiff's submission of the pretrial order.

## **8. Depositions**

Specific information not provided.

## **9. Use of Experts**

Specific information not provided.

## **10. Courtroom Technology**

Specific information not provided.

## **11. Objections**

Specific information not provided.

## **12. Daily Transcripts**

Specific information not provided.

## **13. Closing Arguments**

Specific information not provided.

## **14. Jury Procedures**

Specific information not provided.

## **15. Sentencing Practices**

Specific information not provided.

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## **Financial Disclosure Reports**

### **2000**

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