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# OHIO STATE LAW JOURNAL

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### A Government of Laws and Also of Men: Judge William K. Thomas

R. LAWRENCE DESSEM\*

*Judge William K. Thomas served for more than forty years as a common pleas judge and as a judge for the United States District Court for the Northern District of Ohio. During his service on the state and federal bench, Judge Thomas epitomized the qualities of fairness, integrity, justice, and compassion that we expect in our judiciary. This article highlights some of the qualities that made Judge Thomas a truly great judge, as well as some of the highlights of his judicial career. It is written as a memorial tribute by one of his former law clerks.*

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Judges, like people, may be divided roughly into four classes: judges with neither head nor heart—they are to be avoided at all costs; judges with head but no heart—they are almost as bad; then judges with heart but no head—risky but better than the first two; and finally, those rare judges who possess both head and a heart . . . .<sup>1</sup>

In recent years, there have been a great number of efforts to expand and improve the laws—procedural and otherwise—by which justice is administered in the federal district courts. Significant amendments to the Federal Rules of Civil Procedure have become almost routine, with amendments having become effective in 1980, 1983, 1985, 1991, 1993, and 2000. Congress, too, has gotten into the act, most notably with the passage of the Civil Justice Reform Act of 1990,<sup>2</sup> by which Congress attempted to prescribe for individual federal district courts and individual federal district judges the precise manner in which the “just, speedy, and inexpensive determination of every action” should be achieved.<sup>3</sup> Although rules matter, however, they matter significantly less than the men and women who administer those rules. A case in point is Judge William K. Thomas, who, before his recent death at age ninety,

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<sup>1</sup> ROBERT TRAVER, ANATOMY OF A MURDER 313–14 (1958).

<sup>2</sup> Judicial Improvements Act of 1990, Pub. L. No. 101-650, 104 Stat. 5089 (1990) (current version at 28 U.S.C. §§ 471–482 (1994)).

<sup>3</sup> FED. R. CIV. P. 1.

presided for more than forty years on the state and federal trial benches in Ohio.

His obituary lists the basic facts of his lengthy judicial career, including the significant cases over which Judge Thomas presided.<sup>4</sup> He was appointed to the Common Pleas Court of Geauga County in 1950, accepting a ninety percent pay cut in order to take this position. Three years later he was appointed to the Common Pleas Court of Cuyahoga County, on which he served until 1966, when he was appointed to the United States District Court for the Northern District of Ohio by President Lyndon Johnson.

Throughout his judicial career he honored, and was honored by, The Ohio State University, most recently when The Ohio State University Moritz College of Law awarded him its first Distinguished Jurist Award.<sup>5</sup> As a law student at Ohio State, William K. Thomas helped to found the Student Bar Association, served as its president, and worked with his classmates to found this very law journal.<sup>6</sup> Two of the first student articles published in this journal were authored by Judge Thomas, both of them revealing his life-long interest in labor law and the labor-management issues of the 1930s.<sup>7</sup> He loved to tell about the time when, as a common pleas judge, he mistakenly sentenced a criminal defendant to serve time in the "Ohio State University" rather than in the "Ohio State Penitentiary."<sup>8</sup>

Judge Thomas won the universal respect of the Cleveland Bar and all other attorneys who were fortunate enough to appear before him.<sup>9</sup> This was, in large measure, because of his even-handed manner and his devotion to the law. As an elected common pleas judge in 1954, Judge Thomas granted bail to Sam Sheppard at a time when the press and the public were howling for Sheppard's incarceration and summary conviction. In his oral opinion granting bail, Judge Thomas stated:

This Court cannot indulge in any surmise or conjecture. I am dealing with this point as a Judge, and as a principle of law. . . . [There being no evidence presented that bail should be denied,] having in mind that this is an American court, still carrying out American principles of law, still following our Constitution and Bill of Rights,

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<sup>4</sup> Richard M. Peery, *William K. Thomas, Judge in Kent St., Sheppard Trials*, CLEV. PLAIN DEALER, Mar. 22, 2001, at 7-B.

<sup>5</sup> After his death, this Distinguished Jurist Award was named in honor of Judge Thomas.

<sup>6</sup> 1 OHIO ST. L.J. 15, 17-20 (1935).

<sup>7</sup> William K. Thomas, *Supreme Court—Organized Labor vs. Capital*, 1 OHIO ST. L.J. 102 (1935); William K. Thomas, *Collective Bargaining Since the New Deal*, 1 OHIO ST. L.J. 214 (1935).

<sup>8</sup> Judge William K. Thomas, Speech at the Cleveland Patent Law Association (Nov. 9, 1976) (on file with author).

<sup>9</sup> See Thomas S. Andrzejewski, *62% of Judges Rated 'Adequate' in Poll of Lawyers*, CLEV. PLAIN DEALER, Feb. 15, 1973, at A1 (reporting that 87.7% of lawyers rated Judge Thomas "excellent," with the next highest excellent rating among the other seven federal judges being 41.7%); see also *Federal District Judges: The Best and Worst*, AM. LAW., July-Aug. 1983, at 99, 106 (finding Judge Thomas the best federal district judge in the Sixth Circuit).

the application for bail will be granted.<sup>10</sup>

Throughout his distinguished judicial career, there never was any question that Judge Thomas would deal with every point “as a Judge, and as a principle of law.” His attitude was comparable to that of Learned Hand, whom many consider to be the greatest judge never to sit on the United States Supreme Court. When he served as law clerk to Judge Hand, former Watergate Special Prosecutor Archibald Cox recalled Hand one day asking him, “to whom am I responsible?”<sup>11</sup> After a long pause, Learned Hand pointed to the law books arrayed around them and replied, “[t]o those books about us. That’s to whom I am responsible.”<sup>12</sup> So, too, with Judge William K. Thomas.

Judge Thomas was always conscious of, and somewhat awed by, the traditions of the Anglo-American legal system in which he initially practiced law and ultimately served as a judge. Behind his bench in the federal courthouse was a huge mural entitled “The Law” that depicts the development of the law and great law-givers such as Moses, Mahomet, Justinian, and Lord Mansfield. Judge Thomas offered a written description and explanation of this mural to visitors to his courtroom. As someone who had represented labor unions and working people before ascending to the bench, Judge Thomas also would note that it was in the same courtroom in which he presided in the 1960s, 1970s, and 1980s that the Socialist leader Eugene Debs was convicted under a federal espionage act for speaking in opposition to the United States’ participation in World War I.<sup>13</sup>

William K. Thomas, himself, served his country in World War II, and his devotion to the country and system that he had fought to defend was evident in the citizenship naturalization ceremonies over which federal judges periodically preside. These ceremonies are always quite moving, as individuals from around the world are sworn in as United States citizens. Judge Thomas, though, was perhaps unique as a federal judge because he wrote separate prepared remarks for each and every ceremony. He brought the same diligence and enthusiasm to these ceremonies that he brought to his other judicial duties, and they became true celebrations of our country, our people, and our newest citizens.

In addition to his profound respect for the law, Judge Thomas was relentless in his pursuit of the facts underlying the disputes that came before him. He would challenge his law clerks as follows: “You can choose any rule of law that you like and, if I can choose the facts, my client will always prevail.” This was a revelation to such new attorneys who had spent their legal educations immersed in “the law” as represented by appellate opinions. As a former plaintiffs’ lawyer and experienced trial

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<sup>10</sup> *State v. Sheppard*, oral op. on application for bail at 3 (Ohio C.P. Cuyahoga County 1954) (on file with author).

<sup>11</sup> KEN GORMLEY, ARCHIBALD COX: CONSCIENCE OF A NATION 46 (1997).

<sup>12</sup> *Id.*

<sup>13</sup> *See Debs v. United States*, 249 U.S. 211, 216 (1919).

judge, Judge Thomas realized that the law changed over time as parties presented new factual patterns to judges responsive to the communities in which they presided.

His desire to “get the facts” caused Judge Thomas on occasion to question witnesses so that he, or perhaps a jury, could get a clearer picture of their testimony. The judge, himself, had an almost insatiable desire to understand “how things worked.” This caused him, for instance, to purchase a chemistry textbook while on vacation to better understand a patent case that he would try upon his return to Cleveland. In another case, the Humane Society challenged a rodeo for allegedly using a harness that painfully pinched its horses so that they bucked; the judge himself tried on the harness to see just how painful it would be to the horses.<sup>14</sup>

Judge Thomas presided over many “big cases” during his judicial career and, though he loved to preside at trial, he was most pleased when the parties were able to voluntarily settle their differences short of a jury verdict or a judicial decree. His own tireless work with the parties in the civil lawsuit stemming from the Kent State shootings (typing out ten separate drafts of a joint settlement statement on his manual typewriter) led to the ultimate resolution of those judicial claims—thus averting the years of trials and appeals that otherwise would have ensued.<sup>15</sup>

Well before the Kent State case, Judge Thomas pioneered pretrial procedures to encourage voluntary settlements and better-trying lawsuits. His development of pretrial procedures at the state level became a national model for civil pretrial, at a time when very few court systems had focused on this area of judicial administration.<sup>16</sup> It was not until 1985 that Federal Rule of Civil Procedure 16 was amended to specifically set forth many of the objectives and techniques that Judge Thomas had utilized for many years as a state and federal trial judge.

What made Judge Thomas a truly great judge, though, was not his focus on the governing law or his attention to the smallest factual detail, but the fact that he never lost sight of the people involved in the cases that he tried. After dismissing the case of a woman who sought unsuccessfully to challenge her divorce decree in federal court, Judge Thomas personally called a state court judge to see whether that judge might be able to appoint a lawyer to represent her in her state-court case. Well beyond the point at which other judges would cut parties off, Judge Thomas permitted individuals to “tell their stories” in his courtroom. Long before judicial studies showed this to be the

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<sup>14</sup> Rosemary Armao, *As Judge or Just Plain “Bill,” He Wins Respect*, CLEV. PLAIN DEALER, July 5, 1987, at 1-B.

<sup>15</sup> Christine J. Jindra, *Kent Decision Took Maneuvering*, CLEV. PLAIN DEALER, Jan. 7, 1979, § 1, at 27.

<sup>16</sup> See Louis Banks, *The Crisis in the Courts*, FORTUNE, 87, 92 (Dec. 1961) (“William K. Thomas . . . speeds the administration of justice with pre-trial sessions and tight calendar control in Cuyahoga County (Cleveland) Court of Common Pleas.”); see also William K. Thomas et al., *Pretrial’s Part in Evaluating Damages in Personal Injury Cases*, 21 OHIO ST. L.J. 144 (1960); William K. Thomas, *The Story of Pre-trial in the Common Pleas Court of Cuyahoga County*, 7 WES. RES. L. REV. 368 (1956).

case,<sup>17</sup> the judge recognized that litigant satisfaction is influenced not only by whether an individual wins or loses her case, but also by whether she believes that she has been fairly heard.

Lawyers relished the opportunity to try cases before Judge Thomas, because they knew that they would be permitted to try their cases in their own fashion, they would not be rushed or bullied by the court, and they and their clients would be treated with the utmost respect. During one major trial in the 1970s, a young attorney from a major Philadelphia law firm began his witness examination while sitting at the counsel table. This was, in fact, the practice in Philadelphia, but definitely not the practice in Cleveland. One would have expected the judge to respectfully tell this young attorney to stand when examining his witness, but several other senior lawyers in his firm and his client were in the courtroom. Judge Thomas therefore asked the young attorney to approach the bench and—quietly, off-the-record, and outside the presence of his senior partners and client—told the attorney that the practice in Cleveland was to stand when examining a witness.

There was even a mutual respect between Judge Thomas and the criminal defendants whom he tried and sentenced over the years. The judge carried on a long-standing correspondence with Eddie Watkins, whom he sentenced for bank robbery in 1967. In 1975, “Fast Eddie” escaped from prison, took hostages at a Cleveland bank, and then requested that Judge Thomas attempt to negotiate a settlement (which he did). In addition to their correspondence before and after this hostage taking, Judge Thomas sent Eddie Watkins painting supplies in prison so that he could develop his artistic talents, and one of Watkins’ paintings hung in the chambers of Judge Thomas.<sup>18</sup> On another occasion, a man whom the judge had sentenced returned to tell Judge Thomas how, due to the judge’s compassionate sentencing, he had turned his life around (bringing pictures from his work as a Santa Claus at Randall Park Mall).

Judge Thomas held all criminal defendants to the same standards, whether they were rich or poor, well-educated or illiterate, or represented by expensive defense counsel or a court-appointed attorney. His 1985 sentence of Jacob Butcher, prominent banker and twice candidate for governor of Tennessee, received national attention. In sentencing Butcher to two concurrent twenty-year prison terms for bank fraud, Judge Thomas told Butcher: “The fact that you used multiple frauds to illegally obtain millions from your own banks warrants a sentence comparable to one that would be imposed on a person who used violence or the threat of violence to obtain a smaller amount of money from one of your banks.”<sup>19</sup>

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<sup>17</sup> E. ALLEN LIND & TOM R. TYLER, *THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE* 94–101 (1988); BARBARA S. MEIERHOEFER, *COURT-ANNEXED ARBITRATION IN TEN DISTRICT COURTS* 65–67 (1990). See generally JOHN THIBAUT & LAURENS WALKER, *PROCEDURAL JUSTICE, A PSYCHOLOGICAL ANALYSIS* (1975).

<sup>18</sup> Ken Myers, *Fair Praise*, *PLAIN DEALER MAGAZINE*, Mar. 13, 1994, at 14, 17.

<sup>19</sup> James Sterngold, *Tennessee Banker is Given 20-Year Jail Term*, *N.Y. TIMES*, June 4, 1985, at A1.

Judge William K. Thomas was, in the words of former Justice John D. Voelker of the Michigan Supreme Court, one of those “rare judges who possess both head and a heart.”<sup>20</sup> We pride ourselves upon a legal system premised upon “a government of laws, and not of men,”<sup>21</sup> and we continuously amend and refine governing substantive and procedural rules to ensure well-trying lawsuits in our state and federal courts. However, regardless of the laws under which it operates, our legal system requires judges such as William K. Thomas if it is to achieve true greatness and provide the “equal justice under law” to which Judge Thomas devoted his judicial career.

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<sup>20</sup> TRAVER, *supra* note 1, at 314. Justice Voelker used the pen name Robert Traver in writing his novel.

<sup>21</sup> *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803).