

FRANK G. THEIS

By John A. Price¹

He was a wordsmith with a strong command of the English language and a unique flair for colorful expression. He was an avid fisherman, a devoted husband, and a beloved father of and friend to his two sons. He was outgoing, gregarious, and compassionate. His personality and heart matched his large physical stature. When he entered a room, everyone was immediately drawn to him, and he never failed to make each person feel noticed and appreciated. He loved a good story, especially if punctuated with a humorous finale, and his booming voice and the boisterous laugh he always tacked onto his own stories made them ever more enjoyable to his listeners. He could readily cut through seeming complexity to reach the crux of any legal issue, and he had a wonderful facility for clearly and concisely conveying his thoughts. He was intolerant of intolerance, pomposity, self-centeredness, cruelty, and unfairness. He had a passion for the rule of law, and he was devoted to the fair and even-handed administration of justice for all those who appeared before him. He was liked and respected by lawyers and their clients, court personnel, and his fellow jurists. To his law clerks, he was a master teacher, counselor, and friend. To all those who knew him, he is fondly remembered and sorely missed.

Born June 26, 1911, Frank Gordon Theis was the only son of a country physician in small coal towns in southeast Kansas. He was fond of noting that early in his life he went to Yale, Princeton and Harvard (all small towns in Kansas), and that he was finally fortunate to be able to matriculate to the University of Kansas and on to Ann Arbor. At KU, he majored in political science and was a member of Phi Beta Kappa, graduating cum laude in 1933. He then attended the University of Michigan receiving his law degree with high honors in 1936. Returning to Kansas to practice law, he was soon asked to go to work for the State Tax Commission which was tasked with the responsibility for administering Kansas tax laws. Theis served as director of the Inheritance Tax Division and assistant to Delmas C. “Buzz” Hill (later a federal district and 10th Circuit judge) in handling litigation for the Tax Commission. Between 1942 and 1946, Theis served a deputy county attorney for Cowley County, Kansas. Until his appointment to the federal bench in 1967, he engaged in the private practice of law in Arkansas City, Kansas. In addition, in 1951 President Truman appointed him as chief counsel for the Office of Price Stabilization (OPS) in Kansas, a position which he held for two years. Over the years, Theis gained valuable trial experience in a wide variety of both civil and criminal cases, including cases which took him to courts throughout the state.

After commencing work with the Tax Commission in the late 30’s, Theis became active in the Democratic Party in Kansas (his mother had come from a family of “Missouri Democrats”). He joined the Young Democrats where he met his wife Marj, became a delegate to the national Young Democratic Convention in Indianapolis in 1938 (where he met Hubert Humphrey, John Bailey, and other future national party leaders), and served as president in 1942. He was chairman of the Democratic State Committee from 1955 to 1960, a delegate to three Democratic

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National Conventions, served as Democratic National Committeeman for Kansas from 1956 to 1964, and twice acted as chairman and vice-chairman of the Kansas delegation. Between 1956 and 1958, he also served as a member of the national advisory group on political organization of the Democratic National Committee.

In 1960, Theis made a run for the United States Senate on the Democratic ticket against the Republican incumbent Andrew Schoeppel (former Governor of Kansas and U.S. Senator since 1949). Being one of the first U.S. Senate candidates to utilize television advertising, Theis conducted a vigorous, spirited, issues-oriented campaign. As one Kansas newspaper noted in endorsing his candidacy: "Frank Theis is a Democrat's Democrat. He is more than that.... He has Stu Symington's height. Eleanor Roosevelt's teeth. Harry Truman's knack for giving them hell. Andrew Jackson's rough-hewn ugliness. Adlai Stevenson's bald head. Jack Kennedy's abiding confidence in winning. Lyndon Johnson-size feet. Estes Kefauver's endless energy." In commenting on Theis' ultimate defeat, President Truman stated in a letter to him: "I surely wanted you to win, but prejudice and the Devil were on the other side. You could have beaten one, but not both!"

Following the 1960 election, President Kennedy made known his intention to nominate Theis as federal district judge in Kansas. At that time, a practice known as "senatorial privilege" was in vogue whereby a U.S. Senator could effectively stop a nomination for a federal judgeship in his state by indicating his lack of support on a piece of paper known as a "blue slip." Senator Schoeppel (who had defeated Theis) was opposed to his nomination, and he convinced his conservative allies in the Senate to threaten holding up an omnibus bill sponsored by the Kennedy Administration providing for some 76 judicial positions if Theis' name was sent to the Senate for confirmation. In light of the opposition, Robert Kennedy advised Theis that his nomination would not be forthcoming at that time. In 1964, Theis became coordinator of the successful presidential campaign of Lyndon B. Johnson in Kansas -- the first Democratic presidential candidate to win the state since FDR in 1936. In 1967, President Johnson nominated him for a federal district judgeship in Wichita, and the Senate confirmed the appointment.

In his 30 years on the federal bench, Judge Theis was noted for his warmth, open-mindedness, unwavering fairness, quick wit, brilliant and incisive mind, patience, and respectful and even-handed treatment of everyone who entered his court. He always maintained strict control over the proceedings, but let lawyers freely try their cases without undue interference. He avoided making demeaning or critical remarks regarding any lawyer's behavior before jury or client, saving any criticisms or constructive advice to side-bar conferences, and he was vigilant in avoiding any behavior which might be interpreted as indicating his personal views. Viewing jury duty as one of the very highest forms of personal service to the country, he went to great lengths to insure that jurors were treated with the utmost of respect and kept fully informed of the proceedings, including what was occurring when they were excused from the courtroom, and he always made himself accessible to juries at the conclusion of each case to personally thank them and to answer any of their questions. When the circumstances warranted, he had the ability to put everyone at ease by injecting a light and/or humorous antidote. As aptly put by Gerry Spence after appearing in Judge Theis' court: "[w]hen things get tight in court, (Judge Theis) can always come up with an appropriate comment to loosen things up. ... I expect that Mark Twain and he

would be good friends.” In 1980, he was given the Judicial Merit Award by the Association of Trial Lawyers of America as the “Outstanding Federal Trial Judge of the Year.”

Given the sheer number and breadth of cases handled by Judge Theis, it is difficult to even begin to summarize them. He presided over the famous *Silkwood v. Kerr McGee* case [involving the mishandling of plutonium], the “Leavenworth Brothers’ trials [involving riots, murder, and assaults at the Leavenworth Federal Penitentiary], two *Smut* and *Screw* obscenity trials, the case involving the interstate transportation of weapons and explosives from the Wounded Knee Indian uprising in South Dakota, the Helium cases, an international civil suit involving the death of an infamous Nazi’s stepson in an airplane crash, and innumerable other notable civil and criminal cases. He also spent some 20 years as a judge of the Multidistrict Litigation Panel, including judicial management of the Wichita State University air crash case, 1,000 Dalkon Shield cases [involving product liability for a defective intrauterine device], and the stripper well litigation [involving the conservation and pricing of crude oil in which over one billion dollars was impounded under the court’s order]. He also traveled to other federal jurisdictions to relieve congested court dockets, hearing cases in Colorado, New Mexico, Oklahoma, and Florida. In Florida, where he most frequently traveled to act as a visiting judge, his trials involved Columbian cocaine trafficking, alien smuggling, extortion, bribery, and criminal racketeering. Judge Theis also occasionally sat, by assignment, with the Tenth Circuit Court of Appeals.

One of Judge Theis’ early law clerks appropriately labeled him “the gentle giant.” He was a giant in many ways. He left an indelible mark on politics, the judiciary, the legal profession, and all those who were fortunate enough to cross his path. Judge Theis died suddenly on January 17, 1998. He is survived by his son Franklin, a state district judge in Topeka, Kansas, and his son Roger, a practicing attorney in Wichita, Kansas.