

DOCUMENTS OF THE GENERAL FACULTY

**REPORT OF THE MEMORIAL RESOLUTION COMMITTEE FOR
W. PAGE KEETON**

The special committee of the General Faculty to prepare a memorial resolution for W. Page Keeton, Professor Emeritus, School of Law, has filed with the Secretary of the General Faculty the following report.

John R. Durbin, Secretary
The General Faculty

**IN MEMORIAM
W. PAGE KEETON**

On January 10, 1999, Page Keeton, dean emeritus and W. Page Keeton Chair Emeritus in Tort Law at The University of Texas School of Law, died in his sleep at his home in Austin. He was 89. Dean Keeton was survived by his wife, Madge Stewart Keeton; his daughter, Carole Keeton Rylander, the Comptroller of the State of Texas; his son, Richard Page Keeton, a prominent Houston attorney; his sister, Willie R. Keeton Spencer of Dallas; two brothers, the theologian and educator Dr. Morris T. Keeton of Columbia, Maryland, and U.S. District Judge Robert E. Keeton of Boston; seven grandchildren; and four great-grandchildren.

During his fifty-eight years of service to The University of Texas School of Law — twenty-five of them (1949-74) as its dean — Page Keeton became "fabled" for his remarkably varied and lasting achievements as law school dean, teacher, torts scholar, lawyer, and public citizen. In the words of the current dean, Michael Sharlot, Keeton was unquestionably "the greatest dean this school ever had." Another of Page's successors, Mark Yudof, now president of the University of Minnesota, says that "Page built one of the great law schools in America." Former Texas Chief Justice Jack Pope, who was taught by Keeton, calls Page "one of the great American educators." The former dean of the Yale Law School, U.S. Circuit Judge Guido Calabresi, states: "When the history of tort law in the last half of the twentieth century is written, no person will loom larger than W. Page Keeton." Former Texas Chief Justice John Hill notes that Page was "a giant among lawyers." And on top of it all, as Charles Alan Wright once wrote, Dean Keeton was simply "a great human being." Page was deeply admired by virtually everyone who knew anything about him. And thousands of us whose lives he touched in person loved him. At her swearing-in ceremony as Comptroller of the State of Texas, Carole Keeton Rylander might have been speaking for all of us when she put it so movingly: "Page Keeton is my real-life hero."

Roots and Early Education: The 89-pound handball champ.

Werdner Page Keeton was born in McCoy, Texas — an unincorporated northeast Texas community in Red River County about five miles southwest of Clarksville — on August 22, 1909. McCoy consisted of a few homes, a Methodist church, a one-room schoolhouse, and Page's father's general store. Page, the second of five siblings, attended the one-room schoolhouse through fourth grade. Thereafter he went to school in Clarksville, graduating in 1925 at the age of 15. Both of Page's parents were college graduates, and it was taken for granted that Page would go to college and enter a profession. By the time he entered high school, Page knew he wanted to be a lawyer, and in his words he "didn't ever change, never had any questions about it." When a mathematics professor at The University of Texas urged him to pursue a career in that field, Page was flattered but unswayed: "I had already made up my mind. Nobody could change my course at that point in time."

In the late summer of 1925 when Page got off the train and saw Austin for the first time, he was a "homesick" 16-year old who weighed "89 pounds stripped" and was "about the greenest freshman that ever came to The University of Texas." Austin was "a huge place, about 30,000 people." The university had

between three and four thousand students. At that time one could enter the law school with two years of college work, but, according to Page, "I was 16 and not very bright, so I decided to take the three-year [prelaw] program." During those years Page lived on summer earnings, the proceeds of loans, and a little help from his parents, but "[I] didn't have to work while I was going to school. I concentrated on my studies," which emphasized courses in economics and government. He also concentrated on bridge and handball, becoming "a real good bridge player" and in handball "comparable to the best at the university. I'm quick, and [handball] didn't call for much strength. It just called for agility, and quickness, and things of that kind."

As Page remembered it in a recent oral history interview, when he entered The University of Texas School of Law in the fall of 1928 there were eight faculty members and about 300 students. Because the standards for admission were so low, "close to two-thirds of the [entering] class were unqualified to study law." The faculty, on the other hand — which included Dean Ira Hildebrand and Professors Frank Bobbitt, Bryant Smith, Robert Stayton, George Stumberg, and A. W. Walker — were "outstanding." Because so many of the students were unqualified, "we weren't the great law school that we could've been." But because of the strength of the faculty, "it was a great deal better law school than it was recognized to be nationally. I didn't know it then. But I know now it was, because I know what those people were, I know what they did, and I know what people are today, and I'm around them all the time."

Page was an extremely successful law student, publishing three law review pieces and ultimately graduating first in his class. But graduation year, 1931, "was the depth of the Depression" and there were no jobs. "The only ones that got jobs were sons of lawyers, who had law firms, and who could bring them into their establishment."

Early Career: "We're going to learn this together."

In June of 1931, Page Keeton was a stellar graduate of The University of Texas School of Law, not yet 22 years old, and jobless. He went to West Texas — to Vernon, in Wilbarger County, where his parents had moved — and persuaded a lawyer there to let him share office space. He intended to scramble for whatever legal work he could find and to run for county attorney.

But destiny intervened. Mastin White, a law professor at the university, announced that he would be leaving at the end of the 1931-32 academic year to become general counsel of the Department of Agriculture. Page, whose "very good average at the law school [had] impressed the faculty," was invited to fill the vacancy. "So I came back." During the 1931-32 academic year, Page stood by to take up the faculty post by working as research assistant to Professor Stayton and as business manager of the Texas Law Review. During that year he wrote a law review article, "and it's always good for somebody to have an article written if he's joining the faculty. So that went well. And hell, I got [paid] about \$150 a month," at a time when the few beginning lawyers who could find jobs were being paid \$50 or less. "I guess if there'd been good times and been jobs available, I'd have been a practicing lawyer. But I ended up on the law faculty." In the fall of 1932, Assistant Professor Keeton, age 23, faced his first torts class, feeling extremely lucky to have the opportunity. And fortune was indeed smiling; one of the students in Page's first torts class was Madge Anna Stewart, his future wife. (Madge and Page were married in 1934.)

While a law student, the idea of teaching had (emphatically) "never" occurred to Page, "but I liked it after I got into it." The fact that he was no older than most of his students caused him no problems. "We got along very well. I never attempted to indicate that I knew it all, and I started out saying, 'We're going to learn this together.' No, we never had any problems."

After teaching for three years, Page followed Dean Hildebrand's advice and took a leave of absence in 1935-36 to do graduate work at Harvard, where he wrote a thesis under the supervision of the torts scholar Warren Seavey. Seavey liked Page's work so much that he invited Page to be a coeditor of a forthcoming edition of Seavey's leading torts casebook. Many years later, Page reminisced: "The point is, you never know what's going to happen to you that's good for you. But it just turned out that my association at Harvard was the best thing that ever happened to me nearly." Page "jumped at the opportunity . . . to get some national recognition" by coediting the Seavey book, which eventually became the famous Keeton and Keeton torts coursebook, currently in use at more than sixty law schools.

By the time he had completed his year at Harvard, Page had opportunities to teach at law schools then considered better than Texas, but he "didn't have any desire to go anywhere except back. I wasn't talking to anybody else. I wasn't negotiating with anybody else. I wanted to come back to The University of Texas."

Back at UT, Page continued to teach successfully and to publish often. In 1940, Dean Hildebrand resigned and was succeeded by Charles T. McCormick, who immediately appointed Keeton as assistant dean. By that time the school's enrollment had grown to around 750 students, and Page was "primarily in charge of students, and their registration, and their problems." He believed his relative youth was an advantage in this job: "I wasn't so far removed myself, and so I think I understood [the students'] problems. I don't think there ever was a rule that a faculty could adopt that didn't need some equity in the administration thereof. . . . I got pretty well acquainted with dealing with problems of that kind. And later on, when I became dean, I got an assistant dean that operated the same way. That's the only way I would've had one."

The War Years: "Foolish requirements" and policy decisions.

After Pearl Harbor, the law school's enrollment fell from 750 to about 50. Most of the faculty left for military service or other wartime work. Page tried to get a military commission, but the military's "foolish requirements" led to his rejection on grounds of imperfect eyesight and high blood pressure. So in 1942 he went to work as counsel for the Fuel Division of the Office of Price Administration, a lawyering job. After a year or so with the OPA, Page shifted to become pricing executive of the Petroleum Administration for War. This was an administrative post, where Page supervised people who had been oil and gas executives and "made the policy decisions." He liked the importance of the work and the satisfaction of achieving something so meaningful, and (as he later said laughingly) he enjoyed the occasional controversy. In this powerful position, administering the wartime program of fixing oil and gas prices, Page "got a good deal of experience in administration and . . . concluded that administering a law school might be fun."

At the end of the war, Page turned down a number of offers of positions in the oil and gas field — positions with law firms practicing oil and gas law, executive positions with oil companies, and the position of general counsel for the Federal Power Commission — to return to his professorship at The University of Texas School of Law. He later indicated that this was not an uncomplicated decision, but nevertheless it was an easy one: "Madge wanted to come back to Austin."

The Oklahoma Deanship: Refusing to participate in "an unsound step."

Madge's plan for the Keetons to live in Austin soon suffered a mild setback. Back at The University of Texas for the 1945-46 academic year, Page resumed his teaching, now facing huge classes of postwar law students. ("I taught contracts in the spring of '46 to 250 students in one room. They were hanging out the windows.") During this year he was offered the deanship at the University of Oklahoma Law School. While Oklahoma "wasn't nearly as good as this [University of Texas] law school, I wanted to experience running a law school. [So] I decided to take it, and we moved to Oklahoma in June of '46."

When the 36-year-old Keeton arrived in Norman, the University of Oklahoma's most obvious and immediate problems were postwar overcrowding, underfunding, and the turmoil of the early days of racial integration. Page played key roles on all these fronts. He served as chair of the Space Allocation Committee for the entire university, thereby presiding over (and enjoying) a series of relatively insignificant but nevertheless heated controversies. He began private fund-raising for the law school — over the objections of the university administration, who distrusted the potential loss of control. And he took a strong hand in trying to implement and smooth the process of racial integration.

Three of Page's actions in the integration struggle are especially revealing of his character, personality, administrative style, and legal skill. First, he testified "calmly and rationally" on behalf of the black student applicants that the State of Oklahoma's hastily-assembled "separate but equal" law school for blacks was anything but equal. Second, he saved the job of a colleague who testified to the same effect — but who started "the wolves to howling" by giving his testimony "emotionally and in many ways poorly" — by writing a long letter to the chair of the University Board of Regents ("who was general counsel of Phillips Petroleum Company, and a very able and progressive individual"), pointing out the disastrous consequences to the school's national reputation of such a firing. (Page's letter concluded with the sentence: "After all, one of his forebears lit the lantern that sent Paul Revere on his famous ride." This claim, Page

later insisted, was true. In any event, the colleague did not get fired.) Finally, after first securing the permission of the university president, Page steadfastly refused to have anything to do with setting up the ersatz "separate but equal" school. His explanation for refusing was characteristic of Keeton: "I just didn't want to participate in what I regarded as an unsound step."

Early Years as the Texas Dean: "It's better to have money and problems than no money."

In the fall of 1948 Charles McCormick announced his intention to resign as dean of The University of Texas School of Law at the end of the 1948-49 academic year. In May of 1949, Keeton was named as McCormick's successor. Immediately on taking over, Page had to decide how to maintain the institution's peace and decorum while overseeing the court-ordered racial integration of the university. In September of 1949, Heman Marion Sweatt was admitted to the law school pursuant to court order. The situation was extremely volatile, involving protests from irate parents of law students, strenuous objections from a handful of the students themselves, and the importunities of those whom Page considered sensation-seeking journalists. He handled all of these matters in the same way in which he had dealt with similar events at Oklahoma — calmly but forcefully. For example, Page told a group of journalists who (correctly) saw the moment of Mr. Sweatt's enrollment as a unique photo opportunity: "I'm not going to allow it. We're going to enroll him, we're going to enroll him calmly and without fanfare, and I don't want the people stirred up over this thing." When the journalists persisted and indicated that they meant to come in any case, Page said: "I've got a bunch of law students around here that says you're not." No fanfare occurred.

Incoming Dean Keeton was determined that Texas would achieve national recognition as an excellent law school. The biggest problem was the lack of sufficient funding "to recruit and keep scholars of distinction" on the faculty. Page attacked that problem on multiple fronts, including direct appeals to the university administration, to the legislature, and to his many friends and supporters among the law school's alumni. He also implemented the formation of an official alumni association and instituted a highly visible and ambitious program of continuing legal education. But he later thought that "the greatest contribution perhaps I made to the law school" was the formation of The University of Texas Law School Foundation.

Page's experience at Oklahoma had taught him that The University of Texas administration would not look kindly on separate fund-raising efforts on behalf of the law school. He also foresaw the danger that any success in raising funds for the law school would produce a corresponding diminution in financial support from the administration. So, he "didn't just run the fund-raising through the [dean's office] by appointing someone." Instead, he oversaw the creation of the Foundation, a separate educational corporation with a "powerful board, [one] that the administration just couldn't brush off." The members of the Foundation Board were prominent and successful lawyers who could contribute funds, raise funds, assure other alumni that their gifts would be used for the law school and not some other purpose, and resist efforts by the university administration and the legislature to reduce the law school's funding in response to its successes in fund-raising. As Page later summarized his thinking, "it pays to have a power structure of your own." When the chancellor of the university objected to the fact that the existence of the Law School Foundation's Board alongside the University's Board of Regents meant "that you'd have two boards to deal with, and you'd multiply your problems," Page responded: "Look, it's better to have money and problems than no money."

Slowly and steadily, Page began to get the money, and he used it to build a nationally-ranked faculty by hiring some promising beginners and, more dramatically, by attracting outstanding people like Charles Alan Wright away from other law schools. It should be noted that, while Page was willing to delegate some of his administrative responsibilities, he "never delegated the responsibility . . . of the employment of faculty . . . I had a [faculty recruitment] committee to help, but . . . I participated in all of [its] discussions, and no one ever got appointed to the faculty that I didn't approve."

Resisting Pressures for Political Orthodoxy: "I think I succeeded in educating regents and all on the importance of academic freedom."

On several occasions in the 1950s and 1960s, Dean Keeton had to deal with efforts by various persons of power and influence to police the ideological and political climate at the law school. In this arena, Page's rock-ribbed integrity, potentially pugnacious stubbornness, and political adroitness had perhaps their finest showcase. For example, the university administration once directed Dean Keeton to prepare a list

classifying each faculty member he had hired as liberal or conservative. (Recalling this occurrence years later, Page remarked, "Can you imagine!") Page wrote back "that 'under no circumstances would I do that, because it's irrelevant. We appoint people over here on the basis of their ability — competence to teach and write.' And we had all kinds of viewpoints on the faculty. And I wasn't about to do that, and if they tried to do anything of the kind, I would make it public." He heard nothing further.

Several years later, the Board of Regents set out to penalize the law school for having hired too many faculty members who were perceived in some circles as "radicals or extremists" by freezing the law school's budget at the previous year's level. In what he later referred to as "my usual style," Page thwarted this effort by contacting his many friends in the Law School Foundation and in the legislature and by making a series of speeches to alumni and student groups in which he defused the fears of radicalism by putting a human face — essentially, his own — on the matter. As Page later described this basic speech:

So I said to the alumni — let's see: 'Now let me deal with the accusation about radicals. We have a faculty — carefully selected, and without reference to race, religion, or political philosophy — of diverse viewpoints. If it were not so, we would be subject to criticism, because our students should be subjected to a competition of ideas. For example, we have such radicals, employed since I became dean, as Woodfin Butte — a rank conservative — Frank Elliott, Bill Gibson, Stan Johanson, Albert Jones, Ernie Smith, John Sutton, and Henry Wilkinson.' I was just mentioning those. Everybody out there and the youth were more conservative than I was. 'Then [laughing] we have right-thinking people like myself, that I would describe as a liberal conservative.'

Over the years Dean Keeton dealt in similar fashion with a number of individual instances in which a prominent alumnus or powerful politician would urge him to silence or get rid of faculty members who were espousing unpopular or unorthodox political and social ideas. Page would say:

Well, we have people on the faculty that feel just as you do about the [particular social] issue that you're talking about, except for one thing. They believe in the idea that we ought to have freedom of thought on the faculty, and we ought to tolerate people on the faculty that disagree . . . In other words, they agree with your position on this issue, except they don't agree with your position that nobody else ought to be on the law faculty with a different position.

As Page later put it, "it's pretty hard to answer" that kind of argument. "I think I succeeded in educating regents and all on the importance of academic freedom."

How to Teach Brilliantly and Publish Often and Wisely While Building a Great Law School: Start at 7 a.m.

When Page was asked in 1986 to describe how he had "managed to balance the various requirements of teaching, of scholarship, and of administering the law school," he answered by first describing his approach to teaching. His torts class was always scheduled for 9 a.m., and he would arrive at the law school no later than 7:00 to prepare for class. "When I got up here at 7:00 in the morning, I wasn't getting up here to study the law. I was getting up here to think about how I was going to present that day's lecture — how I was going to go about trying to get across to students what I wanted to get across and trying to induce them to think through some of the concepts that we were going to be talking about. [I tried] to use [each assigned case] as a basis for [getting students to think] about the problem that the judge was dealing with. And I'd use hypotheticals all over the place as to what this case meant with respect [to related problems]. We were there for the purpose of talking about the problem, rather than just a lecture. You don't need but ten minutes [to prepare for class] if you're going to lecture all hour."

Respecting research and writing, Page explained that he did most of his work on weekends and during the summers. He believed that his relatively frequent publications set a crucial example for the rest of the faculty. "If I could write [a leading article a year, on average], as busy as I was, I didn't understand why a member of the faculty, [doing] his job, couldn't likewise do so. [B]y example, [I] indicated to them what they ought to be doing."

A Life of Extraordinary Achievement.

Page served as dean of The University of Texas School of Law from 1949 to 1974. Thereafter he continued to teach and write, and he began engaging in a considerable consulting law practice. Prominent among his publications during this later period is his lead authorship of the most-cited torts treatise in the world, *Prosser & Keeton on Torts* (1984). Page's professional accomplishments and many honors — far too numerous to detail here — include A.B. and LL.B., 1931, The University of Texas; S.J.D, 1936, Harvard; LL.D., 1964, Southern Methodist University; national president of the Association of American Law Schools; national chair of the Council of Legal Education Opportunity; Torch of Liberty Award of the Anti-Defamation League; member of the Advisory Committee on Revision of the Restatement (Second) of Torts; member of President Johnson's Labor Management Policy Committee; chair of the State Bar of Texas Penal Code Revision Advisory Committee; chair of the State of Texas Medical Professional Liability Study Commission; chair of the Texas Ethics Advisory Committee; consultant to the U.S. Senate Committee on Commerce, Science, and Transportation; American Bar Association Award of Excellence as Educator.

Page was frequently honored with banquets, colloquia, festschrifts, symposia, proclamations, and the like. (Today the address of The University of Texas School of Law is 727 Dean Keeton Street.) At the huge banquet marking his retirement as dean, he concluded his brief remarks with a seemingly simple statement that — for those of us who knew and loved him so well and owed him so much — somehow managed to convey the unique blend of affection, pride, modesty, generosity, courage, and downright brilliance that made him such a great human being. What he said, as we remember it, was this: "If I had it to do all over again, I don't know that I could do near as well."

This memorial resolution was prepared by a special committee consisting of Professors David W. Robertson (chair), David A. Anderson, and Charles Alan Wright.

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