IN MEMORIAM

ROBERT WELDON STAYTON

Robert Weldon Stayton, a member of the faculty of the School of Law of
The University of Texas for more than thirty-eight years, died in his sleep on
November 15, 1963, in the seventy-eighth year of his age. "Judge" Stayton, as he
was known to all his friends and acquaintances within the profession and to many
of his layman friends as well, had been in failing health for a year or more and
had only recently been confined to the hospital, but had been able to take up his
work again shortly before his death, and his passing came as a shock to his friends.

Judge Stayton was born in Victoria, Texas, on December 17, 1886. He at-
tended the public schools in Victoria and later in San Antonio, and entered The
University of Texas in 1904. He received his B.A. degree from the University in
1907, and remained in Austin until 1909 studying in the Law School. During his
stay at the University he was a member of the Phi Delta Theta social fraternity and
Phi Delta Phi and Order of the Coif, legal fraternities. After admission to the
bar he practiced law in San Antonio for a short time, and then he moved to Corpus
Christi, Texas, where he practiced until 1923 with the firm of Kleberg & Stayton.
His success at the bar and the esteem with which he was regarded by the leaders in
the profession are attested by his appointment to the Board of Legal Examiners in
1921. Further recognition came in 1923 when he was selected by the Governor to
become a member of the Commission of Appeals, a court created by statute to assume
a part of the burden of the Supreme Court, which was limited by the Constitution
to a membership of three judges. With a fine natural intellect, rich experience,
deep scholarship, and, above all, an objectivity of mind and an uncompromising sense
of fairness and justice, he was extremely well endowed for a judicial career. A
strong sense of family tradition doubtless made the work more satisfying to him,
since his grandfather had been Chief Justice of the Supreme Court.
The year 1924 brought to Judge Stayton an additional honor. In July of that year he was elected to the presidency of the State Bar Association. He served in that capacity with characteristic vigor and resourcefulness. Then in February of 1925, it was announced that he had accepted an invitation to become a member of the faculty of the Law School.

Other men in the Law School field have testified to the difficulties faced by the lawyer who takes up teaching after practicing at the bar two decades or more. If Judge Stayton did not make the transition with ease, the stress he experienced was not observable. There were already indications that the seed had been planted in his mind which produced such a fruitful harvest in the field of procedural reform during his years on the law faculty. In November, 1923, he had delivered a lecture at the Law School in Austin on the subject of the new appellate briefing rules, and in the Law Review for December, 1923, he published a penetrating article on the same subject.* In this early article he stated the principle which, in his later work in civil procedure was to become for him a categorical imperative: "The historical trend of procedure is said to be from form to substance." A number of years earlier, in 1915, the first published volume bearing his name had appeared. This was the first edition of his form book; a work which, in its last edition, has grown to ten volumes.

Judge Stayton's teaching, especially in the earlier years, covered a wide range of subjects, although most of his courses were in the public law field. But his natural inclination led him to emphasize the procedure courses, and his great work has been in that field. It was only natural that he should be appointed a member of the Texas Civil Judicial Council, created by statute in 1929, "for the continuous study and report upon the organization, rules, procedure and practice of the civil judicial system of this State." He remained a member of the Council until 1946.

*2 Texas Law Review 30.
Equally pertinent to the subject which had become Judge Stayton's major professional interest was his appointment in 1940 as a member of the Supreme Court Advisory Committee on Rules of Procedure. The Committee was appointed to aid the Court in the preparation of a code of civil procedure under a mandate from the legislature which invested the Court with the full rule-making power. Judge Stayton was a member of the Rules Committee until 1961, and the index of leading articles in the *Texas Law Review* and the *Texas Bar Journal* afford evidence of the time and effort he devoted to this great work of procedural reform during the twenty-one years he was a member of the Committee. It is well to quote what another member of the Committee, Judge Robert W. Calvert, now Chief Justice of the Supreme Court of Texas, has said about Judge Stayton's work on the Rules Committee:

Judge Stayton was, without question, the dominant figure in the transposition of procedural rule making power from the Legislature to the Supreme Court. He was a fervent advocate of the legislation of 1939 which authorized the transposition. He was a member of the Advisory Committee of thirty-one professors, judges and lawyers appointed by the Supreme Court to write the *Texas Rules of Civil Procedure*, and he remained a member of the committee for amending and revising the Rules as long as he lived. He successfully espoused the broad policy of converting procedural statutes into rules with only such changes as were required for removing major roadblocks to justice, so that the shock of change on legislators and lawyers would not endanger acceptance. He planned and organized the work of the original committee through subcommittees. In debating proposed changes with other committee members he was at once an insistent advocate, a patient professor and a droll humorist. Once the Rules were approved and accepted, he was a jealous guardian of the Supreme Court's power to keep them in absolute custody, opposing with all of his powers of persuasion every bill by which the Legislature sought to temper with them. Truly it may be said of him that he was the Father of the *Texas Rules of Civil Procedure*.

Judge Stayton's work in the field of judicial reform did not end with the long year and ardent labors with the Judicial Council and the Rules Committee. The work of the later years of his life is described by an associate, Marian Boner, who worked closely with him on various research projects:
Judge Stayton combined a fervent belief in the importance of his work with great personal humility. He disclaimed any idea that his own contribution to law reform and judicial administration would be of lasting importance, but held it to be vital and he should explore every possible source that might contribute to the total knowledge of the subject.

He possessed that rare quality, a completely unbiased approach to his problems. For the last few years of his life he wrote and studied extensively on the possibility of a "plastic code"—an exclusively authoritative code, subject to continuous emendation, with case law nonbinding; but he was simultaneously conducting two other studies on ways of improving traditional case law. He brought no pre-conceived ideas as to which of these approaches, if any, would ultimately prove successful, but had for all of them the true scholar's enthusiasm.

He exhibited an unbelievable patience and meticulous attention to detail in all his studies, and was content to let a thought or a concept lie dormant in his mind perhaps for years until he judged the time had come to develop it further. It was not unusual for one of his study groups to spend from twenty to thirty weekly meetings in discussion and analysis of a single short judicial opinion. And, rather than inconvenience one of his co-workers, or show any semblance of pressure on them, he was always ready to postpone one of the meetings for a week or more.

He had a great love of, and respect for, the English language. He would spend infinite pains in choosing exactly the right word for his purpose; and once he had found it would use it exactly as the authoritative definition indicated it should be used, whether it accorded with the popular conception of the word or not. However, this respect for language did not preclude his inventing a word where the language unaccountably failed him. Generations of students have received his distributed "mimeograms" and discussed in his classes whether a cause is "venuable" in the county of domicile. He was pleased and amused to discover that Jeremy Bentham indulged in the same sort of invention.

He had a quick sense of humor and a keen appreciation for human foibles, but was never moved to mirth at anything that outrated his feeling for the dignity of the law and the court. To him, humor was out of place in a judicial opinion, whatever the inherent absurdity of the facts in the case.

I never heard the Judge use any language stronger than "Oh, pshaw!" but he could put a wealth of feeling into that mild expression.

I never knew anyone with as strong and confident belief in the constant improvement of mankind in general and legal institutions in particular. His disappointment when some project for improving judicial administration failed to pass the legislature or otherwise lacked success never interfered with his belief that the setback was only temporary and that some still better plan would eventually succeed. He was truly one who "held we fall to rise, are baffled to fight better, sleep to wake."
The improvements he helped to bring about in the system of administering justice will benefit all those who live under it. A richer heritage he left for those to whom it was given to know him while he yet lived. In a brief article about Judge Stayton which appeared a few years ago in The Alcade, publication of the University Ex-Students' Association, an old friend was quoted as saying that "the Judge 'has an air of gallantry about him that one senses in few men.'" The writer continued to characterize him as a man "possessed of an old-world courtesy and unfailing kindness." For another old friend, it was sufficient to say that "Bob Stayton was a splendid lawyer, a true gentleman, and a loyal friend."

The faculty extends condolence to Judge Stayton's wife, Hallie, of Austin; four Daughters, Mrs. Eleanor Gammon, Mrs. Hallie Evans and Mrs. Ann Lewis, all of Austin, and Mrs. Betty Elwell, Tallahassee, Fla.; one brother, George Stayton, Monahans; and thirteen grandchildren.

[Signature]
Norman Hackerman, Vice-Chancellor for Academic Affairs

[Signature]
Eugene W. Nelson, Secretary
The General Faculty

These Resolutions were prepared by a Special Committee consisting of Professor E. W. Bailey, Chairman, Dean Page Keeton and Professor Gus M. Hodges.