A Tribute to Warren E. Burger

Harry A. Blackmun
A TRIBUTE TO WARREN E. BURGER

The Honorable Harry A. Blackmun†

I knew Warren Burger for over eighty years—from the days our respective mothers packed us off to Sunday School at five or six years of age. (He was fourteen months older than I and always used the fact, teasingly, to impress me with his seniority.) Eighty years indeed is a lifelong friendship. He did me the honor of asking me to stand with him when he and Elvera Stromberg were married in Saint Paul on a cold late fall day, November 8, 1933. I almost felt as though a friend had been taken from me as they drove off, headed for Washington, D.C., in what, as I recall, was a Model A Ford. But that, as is nearly always the case, did not end our friendship.

Each of us grew up in a modest blue-collar neighborhood on Saint Paul's east side. We went to the same elementary school. Neither of us had very much, but I am not sure that we were fully cognizant of that. In any event, we were not bothered by it. We were far more interested in the fact, among others, that his paternal grandfather—"Captain" Burger—had lost an arm in the War Between the States and made occasional visits to our school to speak of that sad and convulsive struggle, and of patriotism.

There were four of us—all of whom, save me, are gone now—who were close friends, who went through the school years together, and who enjoyed, or at least endured, the social life and routine amenities of those years. That we went to separate high schools—a story in itself—did not make much difference. We went to camp together in the summer and eventually became counselors there, at a site beautifully located on the Wisconsin bluffs overlooking the Saint Croix River.

Warren from the start always wanted to be a lawyer. He was more persuaded than I was, for another of our quartet was just as determined to go into medicine and influenced me greatly. Warren knew what he wanted and surely achieved his goal.

Warren Burger always was a person of strong beliefs and

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abundant energy. These attributes took him a long way, but they also created some opposition, as leadership does. He did not achieve by smooth or gentle or patient tactics. This often proved troublesome, not only for him, but for me, too, as his friend and, most of the time, as his confidant. It was not always easy to keep him out of scrapes that seemed unnecessary because the results desired could be achieved in other ways.

Much already has been written—and there is more yet to come—about Warren as Chief Justice of the United States, of his interest in prison reform, and of his desire to make the existing system work as it was intended to work. Less will be written and said, perhaps, about his contributions to the basic substance of the law and its development. Contrary to the expectations of many, the advances of the Warren Court were not destroyed or even limited very much during his years as Chief Justice. Indeed, those precedents generally were accepted and were built upon and refined; perhaps it could even be said that such excesses as did exist were appropriately contained.

Surely his seventeen years can be described, if not as a period of startling new developments in the law, at least as a period of settling and rethinking and stabilizing. Warren Burger employed his talents where they were most effective. He was what he was and therefore must be accepted as an influential Chief Justice. Not all of us have identical abilities.

Of course, Chief Justice Burger and I disagreed now and then as to the results to be reached in submitted cases. When we did, the disagreement often was basic and, on occasion, emphatic. He had little patience for disagreement. I do not know what he expected, but surely he could not have anticipated that I would be an ideological clone. He knew me better than that. But when disagreement came, his disappointment was evident and not concealed. The situation was not comfortable, but it was inevitable in multiple-judge sittings.

At the time of my appointment to the Supreme Court, my mother observed: “Harry, this will affect your friendship with Warren Burger.” I was astonished at this remark and protested. Her only response was: “Wait and see.” She was right, of course, and wiser than I. The friendship was affected but not destroyed. That it was affected perhaps was not a disaster, for it served to balance relationships among the nine.

So Warren Burger is gone now. He has put in his seventeen
years of service and made his record. Evaluators will find it good, for he has contributed to the cause of justice in this country and to its dispensation. That is a large "plus" that the rest of us will be hard put to match.

Eighty years is not only a lifetime. It is a particularly long lifetime. I was privileged to have shared most of it with him.