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Michael J. Wahoske

For seventeen years, Warren Burger was Chief Justice of the United States. Longer than any other person in this century, "the Chief" (as we all called him) held the most powerful judicial office in the land.

It was three offices, really. As Chief Justice of the United States, he was the chief judicial officer of the nation, head of the judicial branch. He took that job seriously, perhaps more so than any of his predecessors. In that job, he oversaw the nation's court system, and from the beginning he worked hard, with innovation and insight, to make that system better.

He was also, of course, a Justice of the Supreme Court. More than a full-time job in itself, and the only job with which his eight colleagues had to deal.

And, of course, he was also the Chief Justice. That meant not only presiding in Court, and assigning opinions in conference, but being responsible for running the institution of the Supreme Court, with 300 employees, a treasure of a public building, and all the headaches that come with being, ultimately, in charge.

A hallmark of this Chief Justice was that he took each of these jobs seriously. His work to improve the nation's courts, to bring them forward toward the twenty-first century, is well-known. Less well-known, but equally in character, was seeing the Chief, during a stroll around the Supreme Court building to stretch his legs, popping into an unoccupied room in which someone had left on the lights and turning them out, because there was an energy crisis at the time. It was under his leadership that the Supreme Court Historical Society was formed, that the Court got a Curator to preserve and display its history, and

† Remarks delivered at the Memorial Service for Chief Justice Burger, Landmark Center, Saint Paul (Oct. 16, 1995).

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that the ground-floor hallways of the Supreme Court building were given over to public displays of the role of the Court and the Constitution in our nation's government.

Another hallmark of this Chief Justice is that, in the important respects, he kept these jobs separate. An innovator with the court system, as a Justice he took his cue more from history and common sense than from current trends and novel theories. His ground was the Constitution, the wisdom that had informed it and the test of time that had validated it. For seventeen years, on issues ranging from executive privilege to the legislative veto, from the Establishment Clause to the exclusionary rule, the Chief judged with a view that the rule of law, not the exigencies of the moment, was the genius of the Constitution he so loved; that the rights enumerated therein came with responsibilities that also had to be honored if those rights were to be preserved; and that the constitutional paradox of ordered liberty was what had made, and now kept, our country the great example of constitutional democracy to history and to the modern world.

That world saw him only as Chief Justice, saw only the great dignity with which he carried himself—not, as we knew, for the sake of pomp, but out of the tremendous and genuine respect he had for the institution of the Court and the high office entrusted to him. We who served as his law clerks were also privileged to see him as a person. We saw a man who loved to make bean soup on a little stove in his back office on Saturdays, and to call us all in for a two-hour lunch to chat about everything from the issues of the day to his memories of running a relay race through the streets of Saint Paul. We saw a man who got tears in his eye and a catch in his voice talking about what it must have been like for his grandfather, who fought in the Civil War, to go into the horrors of that war at the age of fourteen. (That grandfather, by the way, was awarded the Medal of Honor, the nation's highest military award; that grandson, the Chief, by the way, was awarded the Medal of Freedom, the nation's highest civilian award.) We saw a man who enjoyed sharing wine from his own cellar with his Court family—his law clerks and their spouses—while he hosted us for dinner on a winter's night in the Justices' Dining Room at the Court, with a fire ablaze and under the watchful eye of two portraits the Chief had, no doubt with a twinkle in his own eye, ordered hung side
by side, each eyeing each other in that room where during the week the Justices dined—portraits, of course, of William Marbury and James Madison.

We saw all that and a Chief Justice as well. We especially saw a man who deeply loved, and firmly believed in, the Constitution of the United States. None of us thought it was mere coincidence that the Chief and the Constitution shared September 17 as a birthday. The Chief loved the Constitution, and he loved being its Chief Justice. Yet this man who so loved his job, after seventeen years and in full command of all his considerable powers, laid it all aside. He put aside the gavel and the robe and the conference room and the center chair and stepped down from the highest bench . . . to talk to school kids, to lead us all in “a national history lesson” about our Constitution as we celebrated the 200th year of its birth. May we all know ourselves so well. May we all, when we sense the time is right, lay our own power so gently aside. May we all be as true to what we believe in, as was Warren Earl Burger, the fifteenth Chief Justice of the United States.