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A TRIBUTE TO WARREN E. BURGER

The Honorable Sandra Day O'Connor†

A Chief Justice is always a special figure in American history, and indeed, only sixteen Justices have held that position since our Constitution was ratified. Warren E. Burger was the fifteenth Chief Justice, and his seventeen years in that capacity were distinguished by his energy and his efforts to improve the judicial system throughout the United States. His life and his service as Chief Justice have left their imprint on many aspects of our legal system.

Chief Justice Burger graduated magna cum laude in 1931 from Saint Paul College of Law, the earliest forerunner of William Mitchell College of Law. He was the president of his law school fraternity, Phi Beta Gamma, which, in uncanny foresight, conferred upon him the title of “Chief Justice.” Warren Burger could not have attended a traditional day law school. He had married and started a family and found it necessary to hold a full-time job in the insurance industry to support his family. If it were not for the opportunity that Saint Paul offered him to attend law school classes at night, he would have been unable to enter the legal profession.

Throughout his career, Chief Justice Burger had a profound interest in raising the quality of the work of the judicial branch by improving the management of the courts. As Chief Justice, he worked to make the Supreme Court—and all courts—more responsive to the needs of those who used them. He left a legacy to the most fundamental aspect of the law—its inner workings, the machine itself. He understood that justice involves not only making good law but also administering it swiftly and efficiently. To Chief Justice Burger, this meant a judicial system in which the procedures by which justice is dispensed are as expedient as the system allows. It also meant a system in which the participants are professionally as well as ethically trained, and where they have studied and mastered their craft.

Chief Justice William Rehnquist has called his predecessor

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the greatest judicial administrator of our time. Chief Justice Burger left his mark on every facet of our judicial system. He presided over the Court during a time when caseloads were increasing and the bar and the federal judiciary were growing rapidly. Yet the system within which they operated had remained unchanged, partly out of neglect, partly out of a reverence for tradition that sometimes hampers our progress. As early as his confirmation hearings, the Chief Justice was reflecting on how he might deploy that office in the cause of improving the operation of our legal system. When a Senator asked his views on the duties of the Chief Justice, he answered that he would, of course, be responsible for deciding cases. But he went on to add that

the Chief Justice of the United States is assigned many other duties, administrative in nature. I would think he has a very large responsibility to try to see that the judicial system functions more efficiently. . . . I would expect to devote every energy and every moment of the rest of my life to that end should I be confirmed.¹

The Chief Justice did indeed, as he sought, “ma[ke] our system work better.” Where he saw potential for reform, he identified the precise need, offered specific proposals to address it, and produced concrete results. This task was not easy. In a system built on precedent and tradition, and in an area without an obvious constituency to attract the attention of legislators, change is hard-won. Chief Justice Burger wisely preferred that he risk some false starts rather than make no starts at all.

The Chief Justice recognized that the responsibilities of the bench had grown tremendously, and that judges were dedicating more and more precious time to administrative duties. Soon after assuming office, the Chief Justice gave his first speech to the American Bar Association. In those remarks, which led to the establishment of his Annual Report on the State of the Judiciary, he pointed out the need for professional administrators who would provide “careful planning and definite systems and organization” to ensure more efficient administration of

justice, and who would permit judges to concentrate on their essential task of judging. To achieve that goal, he urged the creation of an Institute for Court Management. Today, the Institute has trained hundreds of court administrators employed throughout the state and federal judicial systems. He was also involved in creating the offices of circuit executives and state court administrators, who have further alleviated the administrative burdens of federal and state judges and improved the efficiency of the courts.

In recognition of the fact that it was not only the execution of administrative tasks but also the efficiency of court procedures that could be restructured, Chief Justice Burger became instrumental in working to expand the jurisdiction of federal magistrates, who have proven invaluable in the critical and time-consuming procedures of issuing warrants, conducting pretrial discovery, and providing information to those who use the courts. He also perceived that the practice of assigning different aspects of the same case to different judges was an uneconomical, as well as needlessly depersonalizing, procedure. As a result, he promoted the current, much-improved method of consolidating and assigning all aspects of a case to a particular judge.

Sensitive to the fact that the health of the entire legal system—both state and federal—depends on a strong state judiciary, Chief Justice Burger identified the need to strengthen state courts. He therefore proposed the National Center for State Courts, now in Williamsburg, Virginia, which makes available data and research relating to matters of importance to the state judiciary.

And when Chief Justice Burger became concerned that Congress was less responsive than it might be to the needs of the judicial branch, he began a personal campaign of letters to and meetings with members of Congress, in order to communicate better the needs of the judiciary. In response, Congress authorized a substantial increase in new district and appellate court judgeships. It also created the Commission on Revision of the Federal Court Appellate System which has studied, among other things, proposals to restructure the circuit courts.

Chief Justice Burger did not devote his efforts solely to judges and the courts. He was also an intense proponent of

heightened ethical and professional standards for the practicing bar. In a keynote address to the American Inns of Court, he voiced his view that members of the legal profession are "quasi-public servants"—"officers of the court" with a grave responsibility: "What [i]s imperatively needed [i]s more emphasis on professional ethics, on manners and deportment in the courtroom and in the practice; in short, the necessity for civility in what is inherently a contentious human enterprise." The Chief Justice demonstrated his own commitment to the legal profession by pressing for meticulous ethical training, so that lawyers, like doctors, would be equipped with the ability to identify symptoms that reflect serious underlying problems. And he advocated certification of trial lawyers, based on the English model in which trial lawyers—barristers—are trained in advocacy. The American Inns of Court are themselves the product of the Chief Justice's idea for improving the skills of the working bar.

Warren Burger reminded us often that it is "the law school . . . where the ground-work must be laid." Legal education today is conspicuous for its breadth. We have seen the development of interdisciplinary offerings, which recognize the contributions that economics, psychology, literature, philosophy, and sociology can make to the law. But it is essential, in the face of these innovations, that law schools continue to insist on acquisition of the fundamental skills that every lawyer should master. Chief Justice Burger tenaciously adhered to the view that "laws[] are not ends in themselves but a means to an end—a tool." Only advocates who know expertly how to use the tools of procedure, legal analysis, and advocacy will be equipped adequately to represent their clients and to help to shape and refine our legal principles.

These positions may hardly sound controversial today; now we see the need for many of the reforms which he suggested. But at the time they were proposed, some of these ideas were greeted with skepticism, disagreement, sometimes even anger.

3. Warren E. Burger, The Legal Profession is a Monopoly, Address Before the American Inns of Court (June 1, 1990).
The Chief Justice's efforts to employ administrative officers in
courts were meant to ease the judiciary's workload, but many
judges were loathe to cede any part of their responsibilities to
administrative staffs. And imagine the response from the bar
when the Chief Justice stated that "people suffer because lawyers
are licensed, with very few exceptions, without the slightest
inquiry into their capacity to perform the intensely practical
functions of an advocate." Some legal academics were pro-
voked by the Chief Justice's assertion that law schools should
offer practical training to their students, and that lawyers, like
carpenters and electricians, must learn their craft.

But, as with most of the Chief Justice's campaigns for
reform, his ideas, unpopular as they may have been initially,
were necessary examinations of serious problems. They pro-
duced much-needed improvements to our legal system. The
Chief Justice's efforts on behalf of more efficient courts have
produced a corps of career administrators who have been
invaluable in bringing organization and promptness to the way
in which routine tasks are handled. The lack of courtroom
training for lawyers has met with a much-acclaimed remedy. As
a result of the attention he called to the need for improving the
quality of advocacy in our courts, the American Bar Association,
the American College of Trial Lawyers, and the Association of
Trial Lawyers of America jointly sponsored the creation of the
National Institute for Trial Advocacy. And it is in part as a result
of the Chief Justice's urgings that clinical opportunities were
widely introduced in law schools as an educational tool.

It is quite possible that it was in law school that the Chief
Justice conceived many of his ideas. The William Mitchell
campus of today is a starkly different setting from the modest
structure at 365 Sixth Street in Saint Paul where the Chief Justice
spent his evenings. He attended law school in a four-bedroom
house; the library was in the building's attic. But there is one
aspect of the law school that continues as in the past. While
William Mitchell now has a full-time faculty, the law school still
has an able adjunct faculty which draws on judges, practicing
attorneys, and business people—just as Saint Paul did in the days

of the Chief Justice. Its professors bring their worlds, as the Chief Justice's teachers brought their own, to their classrooms. The law school's clinical programs augment these efforts by allowing students to participate in handling actual legal disputes. Indeed, the Chief Justice himself taught classes at the law school for a number of years after his graduation.

It is just this sort of teaching that the Chief Justice was interested in implementing when he criticized modern legal education. "The shortcoming of today's law graduate," he said, "lies not in deficient knowledge of law but that he has little, if any, training in dealing with facts or people—the stuff of which cases are really made." 7

And, of course, at the same time that he was spearheading reform in both the administration of courts and in the legal profession, Chief Justice Burger was fully engaged in leading the United States Supreme Court through a time of important development. During his years of active service, he wrote more than 250 opinions for the Court, many of which stand out as landmarks. In an area of special interest to me, the Chief's opinion in Reed v. Reed marked the Court's first decision striking as unconstitutional under the equal protection clause a state law discriminating against women on the basis of gender. 8 The Reed decision signified the Court's first solid departure from its consistent affirmation of governmental authority to classify by gender. To mention only a very few of his opinions, his work on the Nixon tapes case averted a constitutional crisis by compelling the President to release his tapes of conversations. 9 And Chief Burger's opinion for the Court in INS v. Chadha was a landmark case in the separation of powers context. 10

The contributions of the Chief Justice that I have mentioned are well known to this community. What is perhaps not as well known is his deep love of history and of the Court, which he served for seventeen years as Chief Justice. In 1974, the Chief Justice founded the Supreme Court Historical Society. He also created the position of Curator of the Court and began a Supreme Court documentary history project. He transformed

7. Id. at 168.
the interior of the Court building into a vastly more attractive space which now includes displays of historical documents, portraits of the retired Justices, and busts of the retired Chief Justices. There are many treasures in the Court which the Chief Justice secured, and one in particular that we owe to him personally. In the Court's John Marshall Dining Room, where the Justices occasionally have lunch, there is a handsome bas-relief of Chief Justice Marshall. This was not commissioned by the Chief Justice, but sculpted by him.

The Chief Justice was a man of unusual talents and special qualities. He always had time to offer his colleagues a cup of tea and to share with them some conversation. He loved to relax and reminisce with his law clerks. His former clerks recall Saturdays, regular working days, on which the Chief would prepare soup for them in a small kitchen off of his study. He would even insist on washing the dishes. He enjoyed a capacity for unstinting hard work, and the vision to set long-term goals.

After his retirement as Chief Justice, he continued forcefully and effectively to express his vision of an efficient legal system, staffed by capable lawyers and judges. He greatly enjoyed serving as chairman of the Bicentennial Commission to commemorate the bicentennial of the writing and ratification of our Constitution, the establishment of our three branches of government, and the adoption of the Bill of Rights. He helped to reeducate the nation about the origination of the Constitution, an event that he described as "one of the greatest stories . . . in the history of human liberty." 11

Throughout his stewardship of the entire legal system and his leadership of the Supreme Court, he returned year after year to William Mitchell College of Law to offer his allegiance and support, dropping in on a classroom to offer words of encouragement, or putting on a hard hat to inspect the progress of the new library. When asked why he was so dedicated to the development of the law school, his answer was simple: "Where would I be without it?"
