

EULOGY FOR THE HONORABLE WARREN E. BURGER  
CHIEF JUSTICE, SUPREME COURT OF THE UNITED  
STATES

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Given By

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OF THE UNITED STATES

I met Chief Justice Burger in 1979 in Arizona. He was there to address the Conference of State Supreme Court Chief Justices. John and I then joined him, with mutual friends and his administrative assistant, Mark Cannon, for a three-day tour of Lake Powell by houseboat. He had a wonderful time on that most beautiful of lakes. There I began a friendship with, and a respect for, Warren Burger that never dimmed.

John and I learned the story of his remarkable life during that Lake Powell journey. We learned of his humble origins in St. Paul, Minnesota; of his marriage to his beloved Vera, who was also from St. Paul; of his hard work in the insurance industry and his study of law at night at the William Mitchell College of Law; of his early years in the practice of law; of his volunteer work doing research and writing reports for America's youngest governor, Harold Stassen of Minneapolis—which eventually led to his position in the Civil Division of the Department of Justice in Washington.

Little did I think in 1979 that I might one day serve as an Associate Justice and have an opportunity to know and work directly with the Chief Justice until his retirement in 1986. He was so kind and considerate to me when I arrived at the Court. From my investiture in September, 1981, when he took my arm

and led me down the steps at the front of the Court to confront the battery of press, until his retirement, he was always willing to discuss the issues and the problems, and to share his common sense and practical ideas.

I have always believed that one can serve God by trying to improve the world about us, by caring for our families and others, and by serving our community and our nation. Warren Burger did all of this and more—as well as anyone could.

He loved his family—his son Wade, his daughter Margaret Mary, his granddaughters, and, of course, his wife Vera, who passed away a year ago. Indeed, her death contributed to his own declining health in the months since. He missed her greatly and wanted to join her again.

He loved being a lawyer and a judge. Among his happiest years were those spent as Assistant Attorney General in the company of two of his closest friends, Bill Rogers and Herb Brownell.

Chief Justice Burger has left his mark on every facet of our judicial system. He presided over the Court during a time when the bar, caseloads, and the federal judiciary were growing rapidly. Yet the system within which they operated 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 thinking of how he might deploy his office in the cause of improving the operation of our legal system. He said then that

[t]he Chief Justice of the United States is assigned many duties, administrative in nature. I would think it was the duty of the Chief Justice to make our system work better. And I would expect to devote every energy and every moment of the rest of my life to that end should I be confirmed.<sup>1</sup>

The Chief Justice did indeed “make our system work better.” It was not easy. In a system built on precedent and tradition, and in an area without the obvious constituency to attract the atten-

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1. *Hearing on Nomination of Warren E. Burger to be Chief Justice of the United States Before the Senate Committee on the Judiciary*, 91st Cong., 1st Sess. 5 (1969).

tion of legislators, change is hard-won. But he wisely preferred that he risk some false starts rather than make no starts at all.

At the same time that he pursued administrative reforms in the courts and sought heightened ethical and professional standards for the practicing bar, Chief Justice Burger was fully engaged in leading the Supreme Court itself through a time of change and of great importance. He wrote more than 250 opinions for the Court during his years of active service. Many of them stand as landmarks. In an area of special interest to me, the Chief's opinion in *Reed v. Reed*<sup>2</sup> 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. The *Reed* decision marked the Court's first solid departure from its consistent affirmation of governmental authority to classify by gender. (Incidentally, my colleague Justice Ginsburg participated as a lawyer in that case.) His work on the *Nixon Tapes* case<sup>3</sup> averted a constitutional crisis by compelling the President to release his tapes of conversations. And Chief Justice Burger's opinion for the Court in *INS v. Chadha*<sup>4</sup> was a landmark case in the separation of powers context.

The contributions of the Chief Justice that I have mentioned are well-known to all of us. 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. I am reminded of the Chief Justice every day as I admire the transformation of the interior of our 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. In the Court's John Marshall Dining Room, where we 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

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2. 404 U.S. 71 (1971).

3. *United States v. Nixon*, 418 U.S. 683 (1974).

4. 462 U.S. 919 (1983).

qualities. He always had time to offer his colleagues a cup of tea and to share with them some conversation. A glass of good wine to celebrate a Justice's birthday. He enjoyed a capacity for unstinting hard work, and he had the vision to set long-term goals.

After he retired as Chief Justice, he continued to forcefully and effectively express his vision of an efficient legal system, staffed by capable lawyers and judges. He performed splendidly 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 what he described as "one of the greatest stories in the history of human liberty"<sup>5</sup>

Longfellow put it best when he once wrote:

"The heights by great men reached and  
kept  
Were not attained by sudden flight,  
But they, while their companions slept,  
Were toiling upward in the night."<sup>6</sup>

Warren Burger was a great man who toiled upward in the night from his days as a law student until a few months before he passed away. The Court over which he presided and our country which he served were improved and enriched by his life of service. And I am sure that he is now once again toiling upward to make even heaven a better place.

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5. Warren E. Burger, *Foreword* to CATHERINE D. BOWEN, *MIRACLE AT PHILADELPHIA* ix, x (1986).

6. HENRY WADSWORTH LONGFELLOW, *The Ladder of St. Augustine*, in *THE COMPLETE POETICAL WORKS OF HENRY WADSWORTH LONGFELLOW* 186, 187 (Horace E. Scudder ed., 1908).