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# A Tribute to Warren E. Burger

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## A TRIBUTE TO WARREN E. BURGER<sup>†</sup>

The Honorable Paul A. Magnuson<sup>††</sup>

The average citizen in this country has a fundamental respect for our judicial system and recognizes its importance to our society. This is despite daily reports to the contrary following a recent criminal case in California. Warren E. Burger considered public confidence in the judiciary to be a fundamental strength of our country. But he also knew that the average person does not distinguish between federal and state law or federal and state courts. Perhaps more than any other person in this century, Burger also knew that the Chief Justice of the United States embodied the judicial system in the eyes of the general public without regard to jurisdictional boundaries, and he accepted that responsibility.

Burger had a keen sense and awareness of the many shortcomings of the American judicial system and was convinced that state and federal courts had to advance, improve, communicate, and provide justice together as part of a single national purpose. In 1969, during his first year as Chief Justice, he proposed to the American Bar Association that the National Center for State Courts be established as a catalyst for improvements in the administration of justice at the state and local level. He envisioned the National Center as a clearinghouse for innovative ideas and a conduit for resources desperately needed by the states. At the same time, he recommended that the Federal Judicial Center be reenergized and refocused to bring modern technology to bear on the problems of the federal courts.

In 1970, he urged the chief justice in each state to create an informal, ad hoc state-federal judicial council. The purpose was to develop cooperation, reduce tensions, and create workable solutions to many mutual problems in American justice. I am pleased to say that such a judicial council was created that year

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

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in Minnesota.

Burger established the appellate judges' seminar and a special summer session for federal and state supreme court judges. He also was instrumental in securing valuable postgraduate training of judges, so that by 1980, ninety percent of all federal judges and more than 1500 state judges received advanced training each year. The Chief Justice originated the idea of circuit executives, a position we take for granted today.

The creation of the Institute for Court Management exemplified Burger as a man of action. Realizing that the judiciary needed to begin training its own corps of administrative professionals, Burger envisioned the Institute for Court Management while on vacation in September 1969, just three months after being appointed Chief Justice. With his urging, the American Bar Association appointed a task force to study the concept, and just four months later, the Institute was created with a Ford Foundation grant. It continues today as the leading producer of professionally-trained administrators for state and federal courts.

In speaking to law school students, the Chief Justice frequently admonished attorneys not to structure all of their clients' needs in adversarial terms. A favorite theme of Burger's in the 1960s and 1970s was that lawyers should learn from the medical profession and strive to be perceived by the public as healers. He encouraged law schools to teach the concepts of alternative dispute resolution, negotiation, client counseling, and prevention. He bristled at the notion of lawyers being "legal warriors" and "hired guns."

The Chief Justice spoke out frequently and passionately about the need to raise professional standards in the legal profession, to modernize legal education, and to improve professional certification and discipline practices.

But above all, Burger's approach to judicial administration and the judicial process was well-balanced, and he never forgot that the goal of the judiciary was justice—not *efficiency*. He frequently reminded court reformers that efficient management of the courts was a tool and not the goal.

Now that I have recited just a few of the many visionary and dramatic administrative changes Warren Burger brought to the judiciary, I hope you will appreciate the following story about Burger told by his longtime administrative aide, Mark Cannon.

Soon after his appointment as Chief Justice in 1969, Burger handed his secretary a document and asked her to make a copy of it. The secretary gave Burger a blank look and said, "But there is no copy machine in the building." Astonished that an office device so common in the business world was not available in the United States Supreme Court, Burger called the president of Xerox Corporation and asked him to send one to the Court immediately. For a man whose life was dedicated to innovation, progress and change, we can only imagine Burger's *next* reaction upon learning that the highest court in the land *not only* did not have a photocopy machine, it did not even have electric typewriters! At that point, Burger's realization about how much he had to do to modernize the judiciary must have been sobering indeed—if not downright depressing!

Many in this audience are practicing lawyers who appear regularly in state and federal courts. Others of you have been consumers of judicial services as parties to lawsuits, or have been involuntary participants in the judicial process as witnesses and jurors. If your involvement or contact with any court in the past ten years was handled properly, promptly, and with respect for your rights, your dignity, and your time and expense, you have Warren E. Burger to thank. He tried very, very hard to improve our judicial system.

