

REMARKS IN HONOR OF
CHIEF JUSTICE WARREN E. BURGER
SUPREME COURT OF THE UNITED STATES

THE HONORABLE J. MICHAEL LUTTIG*

Warren Burger believed, perhaps more so than anyone to hold his high office, that he had an obligation to represent the American legal system abroad. He, unlike any before him, appreciated that his office was that of Chief Justice of the United States, not Chief Justice of the Supreme Court. He believed that his responsibilities as surely transcended the borders of the United States, as they transcended the four walls of the Supreme Court building.

But it was not this simple recognition of responsibility that accounted for his enormous success in championing the rule of law. It was that he passionately, *passionately* believed in law—in particular the Constitution—and that he *truly believed* that we in the United States could learn from others, just as they could learn from us.

The Chief Justice's commitment to the American system of justice was unmatched. As much as anyone I have ever known, the Chief believed in our system of law, and in the freedoms that system protects—and he believed with fiery passion. Warren Burger was utterly convinced that, although it was not perfect, Americans had created the best system of governance known to man, a system, he was so fond of saying, that loosed man's creative spirit to the fullest extent consistent with ordered liberty, making possible the creation of this most powerful nation in the world. He devoted his entire life to that law and to

* The author is a judge on the United States Court of Appeals for the Fourth Circuit. These remarks were originally delivered at the Mentor Group dinner, April 29, 1996. The Mentor Group was established in Boston in 1983 as a non-profit, privately supported research institute to initiate distinctive constitutional, legal-economic, and political-economic comparative studies. Mentor fosters partnerships between scholars and statesmen in the United States and their counterparts in Europe and Russia.

the preservation of those freedoms. It was to him a faith, a labor of love.

But as fervently convinced as the Chief was of the genius behind the Constitution—its separated powers, its checks and balances, its bold articulation of fundamental rights—he also believed that our system could always be improved upon, and that we could gain from the insights of other countries no less than they could gain from ours. Never assuming that we had all the answers, he was always willing to believe that others had ideas from which we Americans could benefit. He was not even afraid of a revolutionary idea, now and then. As he told one audience, “I probably do not look much to you like a revolutionary, but I am, as are all Americans. And our revolution didn’t end 200 years ago. It is a continual, and a steady, and a peaceful revolution.”

I am convinced that it was this willingness to believe that America still had much that could be learned from others that made this public servant so successful an ambassador for the rule of law. It was this humility, if you will, that enabled the people of other countries to share with him their thoughts about the American system of law and about their own legal systems, and, ultimately, to open themselves to the American ideal.

One could see this open-mindedness, this receptiveness, in both the way the Chief prepared for his foreign travels and the way he conducted himself while abroad.

Before every one of his many trips, he would immerse himself in the history, the culture, the politics, the economy, the way of life of the country that he was to visit. By the time he arrived in that country, it seemed as if he knew as much about its people as he did about the American people.

And once there, he approached every official meeting—indeed, every person he encountered on the street—with that same thirst for understanding.

He conversed not just with the leaders of other countries, but with the entire people of those countries, as if there were no such thing as cultural differences or barriers, as if there were no language impediments, as if there were no political differences—as if we *were* one.

And those he met instantly understood. They understood that he had taken the time to understand them, their past, their

present, their hopes for the future—and in turn they poured out themselves to him.

In this way, did he forge the enduring friendships across barriers that others found impassable.

At no time was the Chief Justice's gift for reaching others more apparent than during his 1977 visit to the Soviet Union at the invitation of President Brezhnev—the first such trip by a Chief Justice of the United States. As a young man in my early twenties, I was very fortunate, largely due to the unselfish efforts of Dr. Mark Cannon, to be able to accompany the Chief on this and others of his foreign travels.

The Soviet visit began, like so many that had preceded and would follow, long before the Chief stepped foot aboard an airplane. Months earlier, the Chief had begun consuming what seemed to be every book that had ever been written on that powerful nation: *The Russians* by Hedrick Smith, *Russia: The People and the Power* by Robert Kaiser, books and pamphlets from *National Geographic*, State Department materials, and an endless array of other books and publications from within and without the United States.

By the time that he stepped off the plane onto Soviet soil, I had the uncanny sense that he knew the Soviet people as if he had lived there for years.

When we arrived in Leningrad, the City of Heroes, we did not go first to a court, to an embassy, or even to our hotel. Instead, in the dark of that rainy night, we went first to the Memorial to the Siege of Leningrad. So steeped in the history of that nation was the Chief, that tears welled up in his eyes as he saw for the first time the site of that historic tragedy, where more than one million lost their lives. To my young eyes, it seemed as if he were almost reliving those 900 endless days.

The Chief's days were thereafter completely filled from early morning until late, late night, as he attempted to take in every facet—public and private—of that great nation.

He visited the museums, the shops, the factories, the courts, the prisons, the halls of government. He wanted to see it all: the Summer Palace, the Hermitage, Pushkin Palace, the ballet, the Kremlin, Zagorsk (where he lunched with the Archbishop), the Labor Colony outside Moscow, the Tretyakov Art Gallery, the Tomb of the Unknown Soldier. The Chief even led the children from the Palace of Young Pioneers in song, and toasted the

Chief Justice of the Georgian Supreme Court with ceremonial mountain goat horns overflowing with wine. And each day, he would insist upon ending with a late-night stroll around the city we were in, be it Moscow, Leningrad, or Tbilisi.

At long last, he remarked to Chief Justice Smirnov, his Soviet counterpart: "Finally, I understand how the Soviets defeated Germany: by walking them to death!"

At the same time that the Chief was listening to the people of the Soviet Union, he was of course speaking to them as well—speaking of judicial independence, of limited government, of free commerce, free speech, free press, and freedom of religion, ideas that were of particular relevance in light of Soviet efforts at that time to revise their own constitution. Everywhere he went, he explained that "our Constitution was not a gift from any government or any political party to the people. It was a grant of power from the people to the government. And the chains were not placed on the people, but rather on the government."

The Chief Justice's visit to the Soviet Union epitomized his passion for our system of law and his commitment to the rule of law, and it was, to him, in many ways the most special of his foreign travels. But it was only one of his many such visits abroad. Indeed, one could not even begin to catalog the countries he visited. Among his very favorites were Austria and Ireland, both of which he visited frequently. But he visited almost every other—England, China, Japan, Italy, the Scandinavian countries. The list is endless.

And from each of these countries he returned, as he had from the Soviet Union, with fresh ideas as to how the American system of justice could be improved, whether through mediation, small dispute resolution, jury modification, or prison reform. And in each of these countries, he planted the seeds for a universal rule of law.

As he taught so many Americans about the Constitution, through his service as Chief Justice and as Chairman of the Constitution's Bicentennial, so also did he work to teach the world about that Constitution and the freedoms it embodies.