



Life Story: Warren E. Burger

A Minnesota lawyer from a working-class family who served as Chief Justice for 17 years and reformed the Judicial Branch

Warren Earl Burger was born on September 17, 1907 near St. Paul, Minnesota. He was the fourth of seven children. His father, Charles, was a railroad cargo inspector and a traveling salesman. His mother, Catherine, was a homemaker. The family lived in a working-class neighborhood. Warren started working at a young age to contribute to the family's finances, taking a variety of jobs including a paper route, track coach, farm hand, lifeguard, truck driver, and camp counselor. These jobs marked the beginning of a strong work ethic that he embodied throughout his life.

Warren fell ill with **polio** when he was in elementary school. Though he recovered, the disease kept him home for a year and gave him lifelong back problems. While he was sick, Warren occupied himself by reading history books that family and teachers brought him. As a high school student, Warren participated in several extracurricular activities. He was the student body president and the editor of the school newspaper. He also participated in five sports and played two instruments. In the classroom, Warren's teachers thought highly of him and offered him important mentorship. One teacher in particular, Ms. Edna Moore, helped him get accepted to Princeton University. Though he received a scholarship, he turned down the offer because he felt obligated to stay home and help support his younger siblings.

From 1927 to 1929, Warren worked full-time as a life insurance salesman while attending night school at the University of Minnesota. In between balancing his work and studies, he started dating Elvera Stromberg, a fellow St. Paul native. The couple, who met in high school, enjoyed visiting art galleries and browsing antique shops together. They married on November 8, 1933 and had two children, Wade and Margaret Mary. Harry Blackman, Warren's childhood best friend and a fellow future Supreme Court Justice, served as best man in the Burgers' wedding.

Warren graduated with honors from St. Paul College of Law (now the William Mitchell College of Law) in 1931. Immediately afterward, the college offered him a job as a professor. He taught contract law from 1931 to 1953. At the same time, he passed the Minnesota bar and started practicing law at a local firm, where he stayed for 21 years.

Warren was actively engaged with his community. When the United States joined World War II in December 1941 and the military rejected him because of a spinal condition, he served as a member of his state's emergency war labor board. After the war, he served on the governor's interracial commission from 1948 to 1953. He also organized the St. Paul Council on Human Relations. As the organization's first president, Warren led efforts to improve relations between police and racial minorities. The council also created a committee to provide relief for Japanese Americans, who were

forcibly removed from the West Coast of the United States and incarcerated during World War II. In addition to Warren's regular duties on the committee, the Burgers hosted a displaced family in their home for nearly a year.

In 1934, Warren founded Minnesota's first Young Republican organization. This led to his involvement in campaigning. He worked on Harold Stassen's successful campaign for governor of Minnesota in 1938, then on Stassen's presidential campaign in 1952. When Stassen lost the Republican nomination to General Dwight D. Eisenhower, Warren supported the Eisenhower campaign. He played a crucial role in the General's election by helping to deliver key delegates at the convention, especially from Minnesota. After winning the election, President Eisenhower appointed Warren to be Assistant Attorney General of the Civil Division. He served in this position from 1953 to 1956. Notably, Warren oversaw the implementation of *Brown v. Board of Education* (1954) in Washington D.C. He submitted a brief urging the city to implement the decision to desegregate schools "as soon as possible," one year before the Supreme Court directed states to implement desegregation with "all deliberate speed" in *Brown II* (1955).

President Eisenhower appointed Warren Burger to the U.S. Court of Appeals for the District of Columbia Circuit in 1955, where he served as a federal judge for 13 years. Earl Warren resigned as Chief Justice of the United States in 1969, and it was President Richard Nixon's responsibility to appoint a new Chief Justice. During his presidential campaign, Nixon criticized some of the Court's recent decisions about criminal law, such as *Miranda v. Arizona* (1966). Nixon stated, "I think some of our judges...have gone too far in assuming unto themselves a mandate which is not theirs, and that is to put their social or economic ideas into their decisions." Some of the language in Judge Burger's opinions for the Circuit Court reflected similar concerns. In *Frazier v. United States* (1969), for example, Burger commented on "the seeming anxiety of judges to protect every accused person from every consequence of his voluntary utterances." President Richard Nixon nominated Burger to be Chief Justice of the United States on May 21, 1969.

Burger voted with the majority 80 percent of the time during the first 13 years of his tenure, including in several key civil rights cases. In the first major case during his time as Chief Justice, *Alexander v. Holmes County Board of Education* (1969), the Court addressed school desegregation. The Supreme Court's decision in *Brown v. Board of Education* (1954) had outlawed segregated schools, but implementation was ongoing 15 years later. In *Alexander*, the Court issued a *per curiam* decision that ordered the state of Mississippi "to terminate dual systems at once and to operate now and hereafter only unitary schools." Then, in *Swann v. Charlotte-Mecklenburg County Board of Education* (1971), Burger's majority opinion affirmed lower courts' ability to use methods like busing students to schools outside their neighborhood to achieve desegregation. The same year, the Court addressed gender discrimination for the first time. In *Reed v. Reed* (1971), Burger wrote a unanimous decision holding that an Idaho law giving preference to men over women as estate administrators violated the **Equal Protection Clause** of the **Fourteenth Amendment**.

During this time, the Court also addressed the scope of the **First Amendment** to the Constitution. In *Miller v. California* (1973), Burger's majority opinion stated that the First Amendment's protection of free speech and expression does not apply to obscene material. Then, in *Wisconsin v. Yoder* (1974), members of the Amish church challenged a state law that required parents to send their children to school until at least age 16. The defendant claimed the law violated the First Amendment's protection of freedom of religion, as sending children to school past the eighth grade was incompatible with their religious practices. Burger wrote the majority opinion for the unanimous decision, holding that the law violated the First Amendment.

Another issue addressed during Chief Justice Burger's tenure was separation of powers among the three branches of government. During the **Watergate investigation**, a grand jury **subpoenaed** audio tapes that contained recordings of President Nixon's conversations in the Oval Office. Nixon claimed **executive privilege** made him immune from the subpoena. In *United States v. Nixon* (1974), Burger wrote for a unanimous Court that there were limits to executive privilege, and thus the president needed to comply with the subpoena. Nixon resigned 16 days after the release of the tapes.

As Chief Justice, Burger was responsible for the administration of the procedures by which the Court selects cases and hears them argued, assigns and writes opinions, and hands down decisions. At the time, the judicial system was overloaded. The Court was hearing about 150 cases per Term and the Justices were overburdened. By contrast, today, the Court hears less than 75 cases per Term. Burger addressed this in several ways. For example, he reduced oral argument time limits from two hours per case to one hour per case. Additionally, summaries, instead of complete decisions, were now read from the bench to save time. He also hired new employees to take over administrative tasks at the Court, allowing Justices to focus on their case work.

Many of Burger's lasting and significant achievements as Chief Justice were in judicial administration. He made enormous efforts to improve the efficiency of the federal judicial system. He created several organizations in pursuit of this goal, such as the Institute for Court Management, the National College of the Judiciary, the American Institute of Courts and the National Center for State Courts. Additionally, Burger established the National Institute of Corrections—he was an early advocate for prison reform and for teaching prisoners skills to help them reenter society. Burger also promoted the creation of State-Federal Judicial Councils to improve communication between state and federal judges. Additionally, he persuaded Congress to increase funding for the federal courts. Between his appointment in 1969 and 1980 (the first 11 years of his tenure), Congress doubled the number of active federal judges and increased the federal courts' budget by five times. Burger also held leadership roles in the Judicial Conference of the United States and the Administrative Office of the United States Courts. His contributions through creating and participating in these organizations reformed the federal judiciary.

Preserving the history of the Court and the Constitution were important to Burger. In 1974, he founded the Supreme Court Historical Society. He said, “much of the history of the Supreme Court can be found in memorabilia, art, and documents that have gathered dust for too long in storerooms and attics,” and hoped that the Society “will acquire significant materials and preserve them for future generations. In 1986, President Ronald Regan appointed Burger to chair the Commission on the Bicentennial of the Constitution. Recognizing that this appointment would essentially be a full-time job, Burger retired from the Court on September 26, 1986. In an interview with CBS News, he stated, “I consider that celebration more important than my staying on the Court another couple of years.” The 200th anniversary of the Constitution, September 17, 1987, also happened to be Burger’s 80th birthday. He led the commission until it disbanded in December 1991.

Warren E. Burger died on June 15, 1995 of congestive heart failure at age 87. During his 17 years as Chief Justice, he drew upon his work ethic to improve the efficiency of the judicial branch, preserve the Court’s history, preside over an enormous workload at the Court, and issue several landmark opinions. Fellow Supreme Court Justice Sandra Day O’Connor eulogized him as “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.” He was buried alongside his wife Vera, who died in 1994, in Arlington National Cemetery.

Vocabulary

- **Polio** – an illness caused by a virus that mainly affects nerves in the spinal cord or brain stem.
- **Per curiam** – refers to a (generally brief) decision attributable to an entire court, rather than to a specific judge. A per curiam opinion can resolve cases promptly, often without oral argument.
- **Equal Protection Clause** – The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides that no state may deny to any person within its jurisdiction the equal protection of the laws.
- **Fourteenth Amendment** – ratified in 1868, granted citizenship to all persons born or naturalized in the United States—including formerly enslaved people—and guaranteed all citizens “equal protection of the laws.”
- **First Amendment** – states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”
- **Watergate Investigation** – Investigation of a White House political scandal that came to light during the 1972 presidential campaign, growing out of a break-in at the Democratic Party headquarters at the Watergate apartment-office complex in Washington, D.C. After congressional hearings, President Nixon resigned in 1974.
- **Subpoenaed** – required to appear or submit material before a court or other deliberative body

- **Executive privilege** – the authority of the President to withhold documents or information in his possession or in the possession of the Executive Branch from the Legislative or Judicial Branch of the government, described in Article II of the Constitution.

Discussion Questions

1. How did Burger's background prepare him to serve on the Supreme Court?
2. Which of Burger's mentioned cases do you believe is the most significant? Why?
3. How did Burger improve the judicial branch? Give three examples.
4. When Burger announced his resignation from the Court to chair the Commission for the Bicentennial of the Constitution, he said "I consider that celebration more important than my staying on the Court another couple of years." Why do you think he felt this way?
5. How would you describe Burger's legacy?

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