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A TRIBUTE TO DAVID DORTCH WARRINER

*Theodore J. Burr, Jr.**

I first met David Dortch Warriner in the spring of 1976 when I called him at his Emporia, Virginia office to see if he had a position available in his law firm for a lawyer just out of law school. Although I had not met him prior to my call, I knew a little of him because he was a district chairman in the Republican Party of Virginia at the time.

When I called to see if he had an opening he replied, "I might" with no follow-up. The short reply caught me off guard, and after what seemed a long period of silence, I gathered my thoughts and asked for an interview which was to begin a sixteen-year close friendship with him. The short unusual reply was to be a precursor of his way of saying and doing things to see what response he would receive.

I moved from the Richmond area to Emporia and began to learn the practice of law under his tutelage. I found him to be a stern individual, but a fair one, and from my standpoint he was an excellent teacher of the law. He was a stickler for detail and emphasized constantly that when practicing law, as in most things, there was no substitute for preparation and research.

In my early years in association with him, on those traumatic occasions when I made mistakes in drafting pleadings or documents or in trying a case, he would naturally point out those mistakes, but there was not a single occasion that I can recall on which he raised his voice or in any way belittled me. There were plenty of opportunities for him to have taken a harsher approach. His criticism of me as a young and inexperienced attorney was always calmly dispensed and constructive in nature. I have never forgotten that.

I recall one other aspect of his teaching which he emphasized from the first day I met him, and which I believe epitomizes his whole life. He would never compromise on questions or matters of

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ethics. If there was a decision to be made which had the possibility of leading to an unethical position, he would always resolve the matter in favor of the ethical position, even when such matters could fall into the "gray area" or when an argument might otherwise be made supporting a different decision. He had a strong sense of "right and wrong," and he would follow what he believed was the right path, even though it might not be the easiest path or the way of least resistance. While at times not popular with others with whom he was dealing because of his strict adherence to the canons of ethics, he would nevertheless sacrifice popularity for that which he believed to be right. He was an unusual person who placed principle above expediency.

He was an excellent trial attorney and truly a student of the law. He thoroughly enjoyed the challenges of finding answers to tough legal questions and enjoyed researching the law to find those answers. What some found drudgery, he enjoyed. As an orator, in my opinion, he was excellent. He had a superb grasp of the English language and the ability to use it while on his feet and under pressure. In the early seventies he had to argue a case before the United States Supreme Court in a school desegregation case. The Court ruled against his client, the defendant in the case, in a five-four split decision, but it is my understanding it was the first split decision by that Court in a school desegregation case since the *Brown v. Board of Education* decision of 1954. I subsequently heard that some of the Justices commented that his oral argument was one of the finest they had heard during their tenure on the Court.

D. Dortch Warriner was a believer in our system of government and particularly the concept that our government is one of laws rather than of men. He took this view with him to the bench in 1974 when he became a United States District Court judge for the Eastern District of Virginia. I remember a discussion with him some time after he rendered a decision I thought was contrary to certain of his basic beliefs. He pointed out to me that his decision was one consistent with the law as he understood it and not necessarily consistent with his personal or political views. Of course, he was right in holding the way he did, and it was this approach to the law which, in my opinion, set him apart from many other judges.

Judge Warriner had a sharp mind and was highly intelligent, but he had one other characteristic which made him unusual; he was

blessed with the ability to temper his intelligence with common sense and good judgment. The combination of high intelligence and common sense is what made him different from many others. He loved a good debate. Quite often he would lead a person into a discussion just to see where it might lead. He seemed to particularly enjoy doing this with me. After he became a judge, I visited him in his office one day and we were discussing a recent decision of another court. My initial position was to criticize the decision. He argued in support of the decision and kept pecking away at my argument with probing questions until he finally had me cornered. Instead of stopping he continued, and before I realized it he had turned our initial positions around and was arguing my side of the case, and I his. When I realized he had come to my original position, I thought I had him and pointed this out to him. He broke out laughing, and I realized too late that I was the one who had been had.

Among his many other contributions to society, he gave of his time and money to further his beliefs for better government. Prior to going on the bench, he worked for years in the Republican Party of Virginia. He had a strong desire for common sense in government and strongly believed the Republican Party was the best means to that end. He believed Virginia needed a strong two-party system and spent many years working toward that goal.

In addition to his other fine traits, he had a wonderful sense of humor. He enjoyed hearing jokes and enjoyed telling them even more. He was a master storyteller, whether telling funny stories to adults or to children. Whenever our family visited him, we would invariably leave with smiles on our faces because of some joke or story he had passed on to us.

To some, he was a stern and unyielding person. But to many of us who knew him well, he was a person who loved people and truly cared about them as individuals. He could relate to them regardless of their background or station in life. He was reared and spent most of his life in the heart of "Southside Virginia" and loved its people. He opposed racial discrimination and segregation at a time when it was not popular to do so among certain segments of the population. He believed everyone should be treated with respect and dignity and practiced those beliefs. Several people who knew him over a long period of time have commented to me that, even though he rose to positions of prominence and prestige in politics and government, he never lost his concern for the common man.

He was never too important to talk with people, regardless of their position in life, and was to do so as their equal and not their superior. The last verse of lines from Rudyard Kipling's poem "*If*," I believe, says it better:

If you can talk with crowds and keep your virtue,
Or walk with kings—nor lose the common touch;
If neither foes nor loving friends can hurt you;
If all men count with you, but none too much;
If you can fill the unforgiving minute
With sixty seconds' worth of distance run—
Yours is the Earth and everything that's in it,
And—which is more—you'll be a Man, my son!

He was truly a "Man" in this sense.

Dortch Warriner was devoted to his family; was a person who had a deep belief in God; an excellent attorney; an intelligent judge who exercised common sense, fairness and judicial restraint; a person who cared for others; a person whose character, integrity and honesty cannot be questioned; and a very dear friend. I shall miss his warm and friendly humor, his friendship and sound counseling. My family and I have been blessed to have known him, and his loss is deeply felt. He made all of us better individuals for having known him.