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## Tribute to Wade McCree

Warren E. Burger

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## WADE MCCREE

*Warren E. Burger\**

Wade McCree was both a warm friend and a colleague, and in both roles we agreed on the basic concepts important to our system of ordered liberty. His serious, sensitive concerns did not weigh down on him. On one occasion when he was indulging his fondness for limericks, I challenged him to create a limerick around the declaration “Equal Justice Under Law” emblazoned over the entrance to the Supreme Court building. In the course of our conversation he discovered the task was not easy—just as fulfilling the promise of that declaration is not always easy.

I teased him with a parsing of those words suggesting that they exhibited a certain verbosity. “Equal” is unnecessary, I suggested, because if we do “justice” it must be equal; and if a society truly does justice, are the words “under law” necessary? In short, why not simply “Justice” or, since he was a Latin school man, why not “Iustitia”?

When we turned from the light side to the serious we agreed that “Equal” did help because it reminded everyone of the critical concept of equality and that “under law” would tell judges—and jurors—that justice is not to be emotional or visceral but according to standards under a plan and scheme that has evolved over centuries of human experience—from Magna Carta and its permutations to the Mayflower Compact, Connecticut Resolves, Virginia Declaration of Rights, and the Constitution.

Although he came up with no limerick, we were engaged in one of his favorite past-times—and having fun too. This light side of Wade McCree was one of his facets that made him such an attractive human being. He did not, however, let lightness of touch interfere with his serious, analytical approach to problems. He was serious and dedicated about the law and about justice—that was his life.

In his work on committees, in his briefs, and in oral arguments as Solicitor General, the thoughtful, analytical man emerged. I have known and observed every Solicitor General for over thirty-five years. They have uniformly been lawyers of talent, character and professional skill; yet none exceeded the performance of Wade McCree. His background in practice and his long judicial experience made him understand what goes

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\* Chairman, Commission on the Bicentennial of the Constitution; Chief Justice of the United States, 1969-1986.

on in a trial court, something essential to both superior judicial ability and superior advocacy.

His advocacy was analytical and balanced and his style low key, not confrontational. He could acknowledge a weakness in a part of his position without surrendering his central theme. As Solicitor General he had a large measure of control over what the Government brought to the Court and he exercised that discretion well; he was a true "Minister of Justice" as well as an advocate, but he never forgot he was Government's advocate in the Supreme Court, not the Supreme Court's representative in the Department of Justice.

I have no hesitation in recording what I often stated in private conversations, that he would have graced any tribunal on which he sat and would have enriched our jurisprudence as a Supreme Court Justice.