sas law in such a way as to put the others in jeopardy.

The supposed justification for Arkansas' legislated featherbedding was safety, but the court was not impressed. "We find," said the judges unanimously, "that freight trains have been operated and switched throughout the country for the past number of years with crews of five men or less and that the operations have been conducted with safety. It follows automatically that such operations can be conducted safely with fewer than six men." The court then granted the request of six railroads and threw out the law as being "unreasonable and oppressive," in violation of due process and an "unconstitutional burden" on interstate commerce.

THE SUPREME COURT

The Chief

Few U.S. citizens have led lives unaffected by what the Supreme Court has wrought since Earl Warren became Chief Justice in 1953. The very words "the Warren court" summon in many an instant surge of anger or admiration. Much of that emotion is directed toward Warren personally. "Biggest damfool mistake I ever made," Dwight Eisenhower said privately some years after appointing him. "The greatest Chief Justice of them all," Lyndon Johnson wrote affectionately before Warren's birthday party last year.

Paradoxically, though, the court's spirit, philosophy and thrust have often been credited to Justices Black and Douglas—or to almost anyone but Warren. Little has been said about the Chief Justice's role. Now that Warren, at 76, has begun his 15th term, two new biographies, by former Newspaperman Leo Katcher and Freelance Writer John Weaver, have just been published. Though both are somewhat sprawling and unfocused, they suggest that the Warren court owes much of what it has accomplished to Earl Warren.

Less on Precedents. Under Warren's leadership, the court has left its greatest marks in three areas: 1) civil rights, starting with the 1954 school-desegregation decision; 2) one-man, one-vote reapportionment; and 3) widened protection for the criminal defendant, promulgated most notably in the *Mapp, Gideon, Escobedo, Miranda* series.

Warren's deep involvement in the court's major cases began almost immediately after he ascended the bench on October 5, 1953. His first big test was *Brown* v. *Board of Education*, the school-desegregation case. It was quickly apparent to him that a majority of the court was going to strike down the separate-but-equal rule, which had been challenged in Kansas and three other states. Well aware that an order to desegregate all public schools would be a nation-shaking step, the new Chief was anxious that the decision be unanimous, without any separate concurrences. He

PICTORIAL PARADE

WARREN COURT'S OFFICIAL 1967 PORTRAIT*
Practitioner in the art of the possible.

set out to write that single opinion himself, and after many conferences, revisions and shifts, he brought it off. Separating Negro children "from others of similar age and qualifications solely because of their race," said Warren, "generates a feeling of inferiority that may affect their hearts and minds in a way unlikely ever to be undone."

From that moment, it was apparent that the Chief was to be a judge whose concern and feeling for the individual tended to outweigh his reliance on specific precedents of the law. During oral arguments before the court, it became his custom to break into a lawyer's taut legalistic reasoning and ask: "Yes, but is it fair?" In *Reynolds* v. *Sims*, which in 1964 extended "one man, one vote" to both houses of state legislatures, he wrote for the majority: "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. To the extent that a citizen's right to vote is debased, he is that much less a citizen. The basic principle of representative government remains, and must remain, unchanged—the weight of a citizen's vote cannot be made to depend on where he lives."

Last year Warren again moved to the support of the individual in the *Miranda* decision. In setting down broad new rules requiring police to tell a suspect of his right to remain silent and to have an attorney present, Warren wrote that the police "interrogation environment is created for no purpose other than to subjugate the individual to the will of his examiner. This atmosphere carries its own badge of intimidation. A recurrent argument is that society's need for interrogation outweighs the privilege" against self-incrimination. But "the Constitution prescribed the rights of the individual when confronted with the power of government when it provided in the Fifth Amendment that an individual cannot be compelled to be a witness against himself. That right cannot be abridged."

The Organizer. In running the court, Warren applies pragmatic talents to achieve his ends. His essential contribution has been that of the canny organizer, practicing the "art of the possible" on his colleagues. As Chief, he can schedule the order in which cases come up during the weekly discussions in the handsome, oak-paneled conference room next to his chambers. By tradition, he speaks first on each case and decides how much time can be allotted to it. Though no Justice would ever cut another off, Warren, as a longtime court watcher puts it, "simply doesn't schedule any wrangling time." He also assigns the writing of decisions when he is part of the majority. By choosing a Justice slightly less doctrinaire in a touchy case, he can often hold together a shaky majority.

Yale Law Professor Fred Rodell writes that what Warren "cares about are results, and preferably unanimous or near-unanimous results, rather than fine or fancy phrases which may trigger dissents." Indeed, though there is still much disagreement among the Justices, the Warren court last term returned 32% of its written decisions unanimously, compared with the 18% recorded by the court under Warren's predecessor, Chief Justice Fred Vinson, in his final term (1952-53).

Those Long Opinions. Warren's unconcern for fine phrases, however, is part of what prompts the most serious criticism directed at him.* To many, his opinions lack convincing clarity and contain less than excellent supportive legal argument. "He doesn't have the intellectual qualities to be on the faculty of any good law school," grumps one law professor. The University of Chicago's Philip Kurland, editor of the *Supreme Court Review*, adds that the court's opinions have "too much rhetoric and too little reasoning. They don't have time to write short opinions; so they write long ones." The result is a lack of precision.

Despite his admiration of Warren, whom he extravagantly calls "the greatest Chief Justice after John Marshall," Harvard Law Professor Archibald Cox argues that this lack is an important failing. Only by virtue of how well the court explains itself can it command consent. Its prestige comes "from the belief that the major influence in judicial decisions is not fiat but principles which

* Seated: Harlan, Black, Warren, Douglas, Brennan. Standing: Fortas, Stewart, White, Marshall.

* Less serious criticism may well be muted henceforth. Robert Welch recently announced that his John Birch Society was shelving its "Impeach Earl Warren" campaign for lack of public response.

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bind the judges and apply consistently among all men." In addition, lack of precision leads to confusion, and confusion leads to the necessity of reinterpretation. Though the Warren court is by no means the first to spend time interpreting what it has already said, it has had to do a large amount of this work. And sometimes the clarification can lead to new uncertainties, as did *Miranda,* which was meant, said Warren, "to give concrete constitutional guidelines" in answer to the questions raised by *Escobedo.*

Primarily Political. Warren had a long career in public life before coming to the court. In all three major areas where the court has left its mark, Warren had previously taken opposite stands. During 23 years as deputy district attorney, then D.A. of Alameda County and attorney general of California, he was, as he puts it, "a hard prosecutor." As for civil rights, he outspokenly backed the infamous internment of all California residents with Japanese blood during World War II. Finally, as three-term Republican Governor, he vigorously expressed his opposition to a more representative reapportionment of voting districts; it would have meant less power for his party.

Still, Justice William O. Douglas has observed that "we all come to the court with our bags fully packed." And Warren's bags contained one overriding asset: his finely honed skill as a politician and administrator. A big, friendly man who has been described as a "Swedish Jim Farley," he has in reality as much political toughness as geniality. Warren obviously believes that in vital areas where the legislative and executive branches will not or cannot move, it is up to the court. Under him, the court has taken the Bill of Rights and extended it in every direction in behalf of the individual.

UPI

DISTRICT ATTORNEY WARREN (1936)
With his bags already packed.