EARL WARREN, 1891-1974

"Perhaps the most lonesome day . . . was the day I arrived at the Supreme Court."

After his retirement, Earl Warren reflected on his 16 years at the Supreme Court in a conversation with historian Abram Sachar, nationally televised by the Public Broadcasting Service. Their talk excerpted below was taped at Boston's WGBH on May 3, 1972, when the former Chief Justice received the Saul and Minna Dretzin Prize for distinguished contribution to contemporary life.

Q: *You were in the political world; you were the governor of California, even though it was a bipartisan nomination—both the Democrats and Republicans wanted you there.*

A: They did that once — only once.

Q: *And then you were part of the national ticket with Tom Dewey, running for the vice presidency. From that political world, with all of its turbulence, you move into the Supreme Court as the chief justice and divest yourself completely, not only in actuality but in mode of thinking, of any political involvement. What kind of a psychological readjustment did that require of you, especially at the beginning?*

A: Well, it was the most difficult adjustment I had ever made in my life, before or since. I've always thought that perhaps the most lonesome day I ever had in my life was the day I arrived at the Supreme Court. I had been told by the President four days before he appointed me that he was going to appoint me, and he told me that he felt that it was necessary for his appointee to be there on the opening day of the term, the first Monday in October. And he asked me if I could come by that time and I said, "Well, it isn't exactly the way a governor would like to leave his administration after almost 11 years, to get up and leave in four days, but, Mr. President, if it has to be done it can be done, and I will be there." "Well," he said, "I have talked to some of the senior members of the court and they have told me that there are important cases on the calendar that call for a full court." And he said, "I would like to see you there if you accept it," and I said, "I will be there."

So I was there on Monday morning, I walked in about 10 o'clock in the morning, and court didn't convene then until noon, and so I walked into the office of the chief justice and there was Mrs. McHugh, who had been the secretary for Chief Justice Vinson, and there were three law clerks, one of whom had been with Chief Justice Vinson for one year, and two he had employed but had not yet seen because the court term hadn't opened. And there were two old messengers there. And that was my staff, that's all there was, and here I came on four days' notice, with no preparation and no knowledge of anything that was in the court at that time—some 400 cases that had come in during the summer months, don't you know. And to make the adjustment to the Supreme Court from what I had done before was really an adjustment.

Q: *That was mainly a physical readjustment, but the psychological readjustment of moving out of political thinking into an objectivity that is Olympian. . . . How did you adjust to the serenity and the Shangri-la atmosphere of the court after being in politics so long?*

A: Well, serenity was something I didn't have to get along with for very long be-

By Charles Del Vecchio—The Washington Post

cause we were in the segregation cases in November, just three or four weeks after I came on there. And it was anything but serene throughout, particularly throughout the McCarthy days when he was complaining that so many cases were in favor of communism, you know, and things of that kind. And there was a great disturbance in the Congress over the segregation cases.

But the thing that was hard for me to get over was this: For all my life I had been dealing with people, dealing with their individual and their group problems, talking them over as you and I are talking today, learning from actual contact with people before I made a decision on anything. When I came to the Supreme Court it was altogether different. I never saw an individual who was involved in any litigation. We never see a litigant in the court. All we know is that printed record that we get of the testimony in the trial, the printed briefs of counsel, and maybe a half hour of argument, or an hour of argument on each side at the podium in our court. And the change from dealing with human beings to what you might call statistics only, was really a shock for me and it took a long time to overcome it. But I did it just by dropping everything else and paying no attention to politics or current events and just sticking to our legal work.

Q: *You wouldn't say that the political world was an easier world for you to adjust to than the judicial world because of the criticism that came?*

A: Well, I think I would because in politics a man can stand up and defend himself. If he's accused on the rostrum of doing something wrong, or of not doing something that he should do, he has the right to get on his own rostrum and tell his story and defend himself and explain thing so people can understand, and that the news media will normally carry, and he releases the tension that he has by so doing. But when you're on the Supreme Court, you can't do that. You can't explain anything you did, you can't temper the thing in any way, you just have to accept it without any answer of any kind. And that's one reason why the courts are traduced so much in this country, because they can be used as the whipping boy, don't you see, they have no way of talking back, whereas a man who's in politics can fight just as hard as he wants to do it.

Q: *That must have been pretty hard on Mrs. Warren.*

A: Well, it really was a lot harder on her than it was on me and the thing that she couldn't abide were the big signboards that we'd see along the highway saying "impeach Earl Warren." And I became used to that very quickly and they didn't bother me, but it took a long time for her to become accustomed to it. But a few years before I retired, why, she got so she could smile at them too when she saw them.

Q: *In the Supreme Court, when decisions are being hammered out, is it as serene as the public sometimes imagines, or are there some pretty tough hassles when the decision is being talked through?*

A: I think it is. Conditions in the Supreme Court are far more serene than the public has an idea of, because we read very often in the press about the great controversy that's going on in the court. I remember when the *Brown* case was under submission, we had all kinds of speculation that went around and just about 10 days before the decision was announced in May, one prominent writer had written an article to the effect that I was a middle man in the thing, and that I was being pulled and hauled by four on each side to decide with them, and that I couldn't make up my mind which way I wanted to go, and that that was holding up the opinion.

Q: *And it was natural, since you let so long a time pass without permitting a vote, because you had to have a thorough discussion.*

A: Well, they seize upon anything they can to show that there is difficulty inside. Now I can say, honestly, that in the 16 years I was there I don't believe there were 16 times, let's say, during that period, when anyone's voice was raised above normal in that conference room. That didn't mean there wasn't serious disagreement because we did have serious disagreement, but when you are going to serve on a court of that kind for the rest of your productive days, you accustom yourself to the institution like you do to the institution of marriage, and you realize that you can't be in a brawl every day and still get any satisfaction out of life. And so it is there—if we're going to produce anything, we can't be brawling all the time in the conference room. And the men I sat with were thoroughly conscious of that and just, oh, an occasional flare of temperment, you know, maybe occurred, but it was very, very rare that it did and all the rest of the time we argued the things, we debated them fully, but without any rancor or any harsh words in the conference room.

Q: *Well, every once in a while you do bring in a junior member, of course, when a vacancy is filled. And is he assimilated quickly?*

A: Oh yes, oh yes.

Q: *Are you sometimes surprised at the extraordinary change that takes place in a man who comes in as a Frankfurter comes in, as a flaming liberal, and becomes a conservative, or as a Hugo Black comes in, as a conservative, and becomes a liberal? Do you see that process taking place as you work with him?*

A: Well, it's pretty hard to answer that question unless you know the whole man, and what prompted him to be talking in lib-

eral terms and conservative terms here. Now, a man might be a very great liberal in political life, and he might be equally as conservative in judicial process, because they're entirely different. You see, in the political process, the legislative bodies have the oversight, within constitutional limits, of everything in their jurisdiction. And if they see something they don't like, something that needs to be remedied, they can single that out, and bring it in and try to legislate on it. And they're what you might call free-wheeling to advocate anything they want that accomplishes that purpose. And if they can't get the whole loaf, why, they settle for a half-loaf, and if they can't get a half-loaf, they may settle for a quarter, and if they can't get that, maybe they'll bypass the whole thing and let it go to another time.

But the court is not a self-starter in that respect. It can never reach out and grab any issue and bring it into court and decide it, no matter how strongly it may feel about the condition it's confronted with. It is a creature of the litigation that is brought to it. And in every piece of litigation there must be a plaintiff, there must be a defendant, independent entirely of the court, or what the court might think about it. And that wends its way through the trial court and through the court of appeals, and then, if it's a state court, through the supreme court of the state, and then direct to the Supreme Court. So when they come to the Supreme Court the members of the Court have no way of determining what they want to hear, they have to determine what they get. And so many people can't understand that, because they believe that a lot of the people come here committed to a definite course of conduct and action depending upon their views, their political views. And they think if they see something they don't like, they just pull it into the Court and decide it. But that is not true—the Court is very limited in its jurisdiction, and depends upon the kind of litigation that is in vogue at the time.

Q: *The most important Supreme Court decision which affected education was probably the 1954* Brown v. Board of Education *in Topeka. The court was made up of tough individualists, they came out of very diverse backgrounds, they had very strong individual convictions, and you presided over a judgment which came out unanimously. How did you do it?*

A: Well, I didn't do it. It was done by nine men, nine men who were there, and who had the same belief that I did of the importance of the decision in the case. And it had been argued you know, the term before I came, and it had been put over for re-argument. They had had a long time to think about it, and, I don't know just why they didn't decide it the first time, I don't know what division on the Court was, but in all events, there was some division, but I think there had been a lot of thought given to it before it was even argued during my time. But in order that we might not get polarized on the great issue and not be able to work it out in a unanimous way, we decided that for some time we would not take a vote on how we stood.

Normally, every Friday after a series of arguments in the Court, we got into conference and there we decide what we're going to do with each of the cases. And we take a vote on them, and we determine who's in the majority and who's in the minority for the writing of opinions. But in this case we decided that we would just discuss the arguments that we had heard, the arguments we had studied from the briefs, and from our own knowledge of the situation, and our own research, and without committing ourselves, one way or another, we would continue to discuss it. So week after week on the agenda each week, I would find the time to discuss *Brown v. Board of Education* and the other cases that were heard in the middle of November, and we didn't take a vote on it until the middle of February.

Q: *Were there sharp divisions at the beginning?*

A: Well, they weren't noted if they were, but each justice would pick out a point that he thought was debatable and that it ought to be considered, you know, and we would discuss it in that light without anybody announcing that he felt this way or felt that way. And so, by the end of February, by the middle of February, it seemed to me that we had thoroughly discussed it, and I inquired of them if they were ready to vote, and they said they were. And we took a vote, and the vote was unanimous. And I think it was the fact that we did not polarize ourselves at the beginning of it that gave us more of an opportunity to come out unanimously on it than if we had done otherwise.

Q: *You did have several justices on the court who came from the South. Was there any special problem of adjustment for them?*

A: Well, I would think they were terrific. They didn't complain nor have they ever complained since about it, but I know what the problems of some of them were. For instance, I think Justice Black was not welcomed in Alabama for a good many years after the *Brown* decision. And I know some of the people in East Texas were very much disturbed about Tom Clark, the way he voted. And Stanley Reed, the gentle soul that he is, I know it was a great strain on him to de-

termine the case the way he did, because in Kentucky they've always had segregation in the schools. And I've always said that while some people who didn't like the decision condemned me for having dominated the rest of them, and other people who were favorable to it praised me for having brought them all into reconcilement on it, but I'm not the one who is deserving of either of those things to any marked degree. I think those men who had to face up to that grave question at home in the light of the cultural background and the mores of the communities were the men who were really entitled to the credit for making that unanimous.

Q: *Did it take considerable work to evolve that brilliant phrase, "all deliberate speed?"*

A: No, no, no, that took no . . . that wasn't our phrase.

Q: *Oh, it wasn't?*

A: No, that was used by Holmes, I think, in the case of *Virginia v. West Virginia.* And it's an old admiralty phrase that was used in England, oh, I think for centuries before that, but very rarely known or used in this country. But it was suggested that that would be a way to proceed in the case because we realized that under our federal system there were so many blocks preventing an immediate solution of the thing in reality, that the best we could look for would be a progression of action, and to keep it going, in a proper manner, we adopted that phrase, "all deliberate speed."

Q: *Well, the phrase might not have been original, but the application of it to this particular judgment was real statesmanship, as it turned out.*

A: Well, I think it was an appropriate thing. In these days, though, you'll find a lot of people who are saying that that phrase should not have been used, that they should have said, "These people must be allowed to go to this school." Well, if they had, it was the opinion, my opinion and most of us, that it would have solved nothing. We would have one or two negroes go to a white school, but that would be all there was to it. So we treated it as a class action, so that everyone in the same situation as they were would be treated in the same manner judicially. And from that we knew that covering all the school districts in the country, and under different statutes and different organizations of educational process, it would take a long time to work it out. I remember the first time we discussed how long we thought it would take, I remember someone suggested — I can't remember who it was—wouldn't it be wonderful on the centennial of the 14th Amendment that it would be a reality all over this country. And I've always remembered that and thought about it many times. It didn't become a reality by then, but still much more has been accomplished than most people realize.

Q: *What, in your 16-year experience as the chief justice of the United States, was the most important decision that came before you and that had the largest influence?*

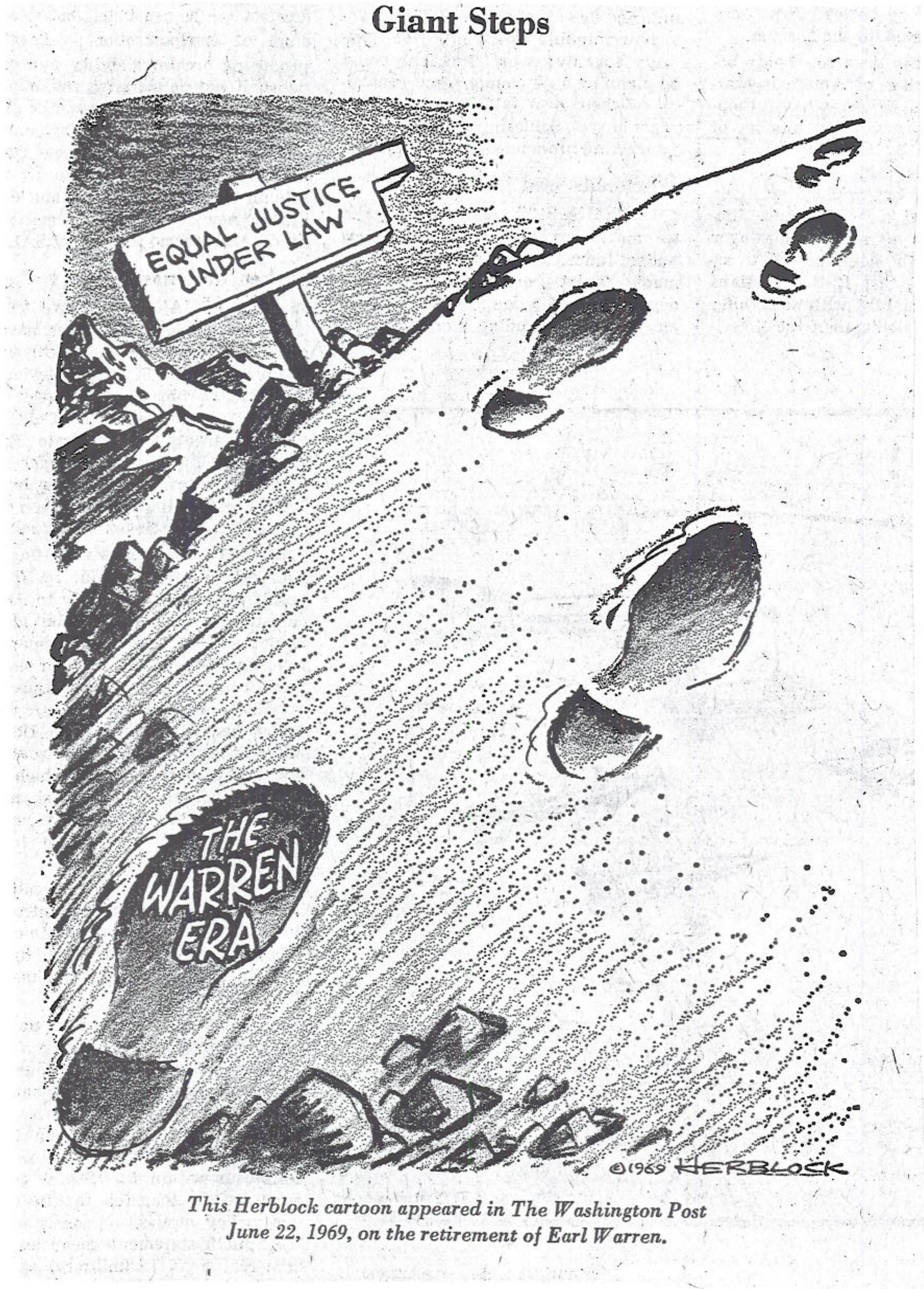
A: Doctor, that is not a new question to me—it has been asked of me many, many times, and I think a great many people are surprised when I tell them what case I believe it is. But in my mind the most important case that we have had in all those years was *Baker v. Carr,* which is what we might call the parent case of the one man, one vote doctrine, which guarantees to every American citizen participating in government an equal value of his vote to that of any other vote that is cast in the particular election. And the reason I say that is not because it decided any particular issue at that time but the courts had vacillated on that question for a great many years and there were decisions that ended up 3, 3 and 3, without a majority of the vote in any of them, and the net result of which were to stratify the situation in states where the legislature was grossly malapportioned. And some places it remained that way for 60 or 70 years and there was no way that the people of the state could get a constitutional amendment on which to vote, because the people who were the malapportioned legislators wouldn't submit that kind of an amendment to them, and there was no way under their state government for the people to initiate such a measure.

So in that case, the court determined that whether a legislature or any elected body was properly apportioned so far as voting strength is concerned was a judicial matter and could be decided by the courts. Theretofore, there had been great doubts as to whether it was a political question or whether it was a judicial question. And we held in *Baker v. Carr* that it was a judicial question, and that the courts, therefore, had jurisdiction. And as a result of that we had the cases of *Reynolds v. Simms* and all the rest of them which determined that legislatures must be apportioned in accordance to population and that in a manner that will enable every man's vote to be equal to every other man.

And I believe that if we had had the decision shortly after the 14th Amendment was adopted, that most of these problems that are confronting us today, particularly the racial problems, would have been solved by the political process where they should have been decided, rather than through the courts acting only under the bare bones of the Constitution. And if the blacks and everybody else could vote, the people who were in the majority in these various states had an opportunity to elect their people instead of having some district with large votes that were just about like the old so-called rotten boroughs over in England.

And I think that while that didn't help either side, either the Republicans or the Democrats, no one knows just who will be benefited by it in the future, whether it

Giant Steps



This Herblock cartoon appeared in The Washington Post June 22, 1969, on the retirement of Earl Warren.

will be the people in the cities, or the suburbanites, or the people in the farming areas. Still, if we believe in our institutions, if we believe that we're all supposed to be equal, every man's vote should be worth the same as every other man's vote, and that eventually our problems will be solved in that manner.

Q: *It's because, of course, that decision was recognized as so important that so many attempts have been made to find loopholes in it, and even to overturn it by a constitutional amendment.*

A: That's right, you'll find the same kind of opposition that you find to the *Brown v. Board of Education* and the other cases. But that seems to me to be the most basic off all the cases we have tried. And I say that because I do have faith in our institutions and, like our late lamented friend, Justice Brandeis, I believe in our institutions because I believe in our people. And I believe that they are capable of solving their own problems if we will take off of them all of the handcuffs—I speak of handcuffs not in the criminal sense, but I mean all the things that handicap them—and give them a free opportunity in our American life to decide their own questions.