

Chief Justice Warren: His

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By nearly every standard that can be said to measure judicial stature, Earl Warren must be counted among the great chief justices of the United States—the greatest, in all probability, since John Marshall.

Like John Marshall, Earl Warren presided over the Supreme Court during a period of dramatic change in the character of American life. The "Marshall court" at the inception of the Republic wrote upon a clean slate in giving vitality to the United States Constitution and in delineating for itself a decisive role as a shaper of the national destiny. The "Warren court" adapted the institutions of a developing society to the needs of a fully developed nation, a great military and economic power in a world made intimate by scientific and technological advances altogether beyond the imagination of the Constitution's framers.

It is apt to be misleading to designate a court by the name of a Chief Justice who is, after all, but *primus inter pares* among its members. But in the case of Earl Warren as in the case of John Marshall, the designation seems justified not alone as the mere indication of a time period but as a recognition of leadership and influence.

The court over which Warren presided was an extraordinarily vigorous one, replete with powerful personalities. He was surpassed by several of its members in legal learning, in felicity of expression, in depth of judicial perception and philosophy. As administrator of the court's affairs, however, he gave the disparate justices a measure of unity and a sure sense of the tremendous political role the court had to play in its time.

In ceremonies marking the conclusion of Warren's term as Chief Justice and the installation of Warren E. Burger as his successor, President Richard M. Nixon remarked: "Sixteen years have passed since the Chief Justice assumed his present position. These 16 years, without doubt, will be described by historians as years of greater change than any in our history."

A society once overwhelmingly rural in residence and agricultural in occupation had become predominantly urban and industrial. This shift was accompanied by a vast migration from small towns and villages into great metropolitan centers and brought with

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it a social upheaval entailing immense alterations in social values and immense problems of social adjustment. An important part of the population movement involved great numbers of Negroes uprooted by technological change from the Southern cotton fields where they had worked first as slaves and later as sharecroppers and who now found themselves penned in the decaying slums of inner cities wholly unequipped by reason of illiteracy and ignorance to compete for a livelihood in an advanced industrial economy.

These black Americans were clamoring for civil rights and for economic opportunity. Migration to the cities made the disproportionately rural representation in state legislatures seem altogether inequitable and anachronistic. Education, police authority, social institutions, media of communication, esthetic and moral values, even religion, were all undergoing dramatic changes. The law, indeed the whole relation of the state to the individual, had to change with them. And it was over that transformation of the American community that the Warren court presided.

"No decade in American history has brought to the Supreme Court such a diversity of deeply troublesome and controversial questions," this newspaper commented editorially on the 10th anniversary of Warren's appointment as Chief Justice. And a member of Congress remarked, not happily, that "our entire way of life in this country is being revised and remolded by the nine justices of the Supreme Court."

Earl Warren was born in Los Angeles, Calif., on March 19, 1891, the second child of a railroad worker named Methias H. Varran, brought to this

country in infancy from Norway. The name was anglicized to "Matt Warren." Matt was not a man of much education but he was intensely interested in reading and in learning—for his children no less than for himself. The family fortunes were not resplendent. John D. Weaver, in a biography of Earl Warren, says that the boy once asked his father why he had no middle name. "Son," Matt Warren answered, "when you were born, we were too poor to enjoy any luxury of that kind."

But Matt Warren was industrious and provident, saving money and investing it shrewdly. He was determined that his children should have the education he had missed. He worked his way up on the Southern Pacific from a mechanic to a master car builder. In 1938, when Matt had retired from his railroad job and when his son, Earl, was district attorney of California's third largest county, the body of the father, then 73 years old, was found in the kitchen of his home, bludgeoned to death with a lead pipe. It was a case of robbery—evidently by someone who supposed the old man had concealed wealth on his premises. The murderer was never found.

Earl did odd jobs when he was young, working for a while as a call boy for the railroad. He did well enough in school but was more interested in sports than in study. He put himself through college and law school at the University of California.

Warren spent about three years in private practice after his graduation from law school and before he enlisted in the Army upon America's entry into the first world war. He saw no service overseas but he rose to the rank of second lieutenant. Following his discharge from the Army, he obtained an appointment as a deputy in the Alameda County district attorney's office and remained a public employee for all the rest of his working years until his retirement as Chief Justice of the United States.

Warren was elevated to the office of district attorney in 1925 and, in the course of 13 years in that post won a reputation as a crusading prosecutor,

tough but compassionate and fair. "The only way the racketeers can get control in any community," he once said, "is by alliance with politics, and control of your public officials, your courts, your sheriff, your police chief, your district attorney, and other law enforcement agencies."

Earl Warren was a strict law and order man, known much more for his personal probity and prosecutorial skill than for any sociological pioneering. During Prohibition, he became a teetotaler, not out of any dislike of drinking but out of a disciplined sense of duty. "How can I drink bootleg liquor at a party on Sunday night," John Weaver quotes him as having said, "and then on Monday morning send my deputies to prosecute bootleggers?"

Politically, he was aligned with the right wing of the Republican Party in California. He was an ardent champion of states' rights. As attorney general he was vehement in his denunciation of Communist radicals and as governor vociferously supported the military decision, after the attack on Pearl Harbor, to remove all persons of Japanese ancestry from the West Coast and put them in detention centers in the interior of the country.

He grew prodigiously in office, however. In 1945, during his first term as governor, he became convinced that California needed a state program of prepaid medical insurance. The California Medical Association regarded this, of course, as "socialized medicine" and fought it ferociously. No doubt the sheer irrationality of its opposition served to move the governor into even more shocking forms of progressivism. He undertook the reorganization of the state's antiquated Department of Mental Hygiene, inaugurating a modernization of mental institutions which put California in the forefront in this field. He put through the legislature stringent legislation regulating lobbyists. He fought the petroleum interests to a standstill in obtaining enactment of an equitable highway development bill and in the face of bitter opposition from the private power lobby championed the Central Valley project for the public development of hydroelectric energy.

When Warren ran for a second term as governor of California in 1946, he did so on a record of legislation which extended enlightened and progressive help to the state's unemployed, handicapped, elderly and mentally ill. Moreover, the state was free of debt, and taxes had been cut by above 15 per cent. He won the nomination of both major parties and was resoundingly re-elected—the second governor to serve a second term in a century of California experience.

A Democratic governor who served California some years later — Edmund G. (Pat) Brown—said of Earl Warren: "He was the best governor California ever had. He faced the problems of growth and social responsibility and met them head on. He felt the people of the state were in his care, and he cared for them."

Warren had by then, of course, become something of a national figure and certainly the outstanding Western



Mr. and Mrs. Earl Warren attending a dinner party in Washington in 1971 after his retirement as Chief Justice of the United States.

Republican politician. Somewhat reluctantly, as a matter of party loyalty, he accepted the GOP nomination for the vice presidency in 1948 as the running mate of Gov. Thomas E. Dewey. They went down to defeat. It was the only election Warren ever lost. But Warren had a third term to serve in the gubernatorial mansion in Sacramento.

In 1952, Warren was a serious contender for the GOP presidential nomination at a convention in which Gen. Eisenhower and Sen. Taft were considered the frontrunners. The California delegation, including the state's junior senator, Richard M. Nixon, was pledged to the governor.

According to John D. Weaver, "Nixon was suspected by the governor's political tacticians of having made a deal to deliver to the general the secondary strength he would have had to demonstrate if he had failed to get the nomination on the first ballot." The first ballot nomination, in any case, went to Eisenhower, and the nomination for the vice presidency went to Nixon. Whatever the merits of the matter, an enduring coolness developed between Nixon and Warren.

In the final days of his third term as governor, Warren announced that he would not be a candidate for re-election. A few days after this announcement, in September, 1953, Fred M. Vinson, then Chief Justice of the United States, died. President Eisenhower

promptly nominated Gov. Warren for that great office, remarking that he made the choice on the basis of the governor's "integrity, honesty, middle-of-the-road philosophy . . ."

Warren came to a court diminished in prestige and deeply divided not alone by ideological differences but by personal hostilities among its members. It was a measure of his qualities of leadership that the new Chief Justice managed, from the very outset of his tenure, to heal, or at least to bridge, these divisions. He won at once the warm regard as well as the respect of all his associates. The achievement contributed immeasurably to a restoration of the court's prestige and influence.

One of the great controversies of American history came before the court at the very beginning of Warren's chief justiceship: the question whether state-enforced segregation of Americans on the basis of race is constitutionally impermissible because it entails a denial of the equal protection of the laws.

Historically, the court had held that racial segregation was not unconstitutional provided the facilities afforded the two races were essentially equal. For more than a decade, however, the court had recognized in a series of decisions that the schools, hospitals and other public facilities provided for

Negroes were, in fact, markedly inferior to those provided for white persons.

Brown v. Board of Education came before the court in Warren's first term. When it was decided on May 17, 1954, the opinion of the court, written by the new Chief Justice himself, had the unanimous concurrence of his associate justices and represented one of the great landmarks in American jurisprudence. "We conclude," Warren wrote, "that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal . . ."

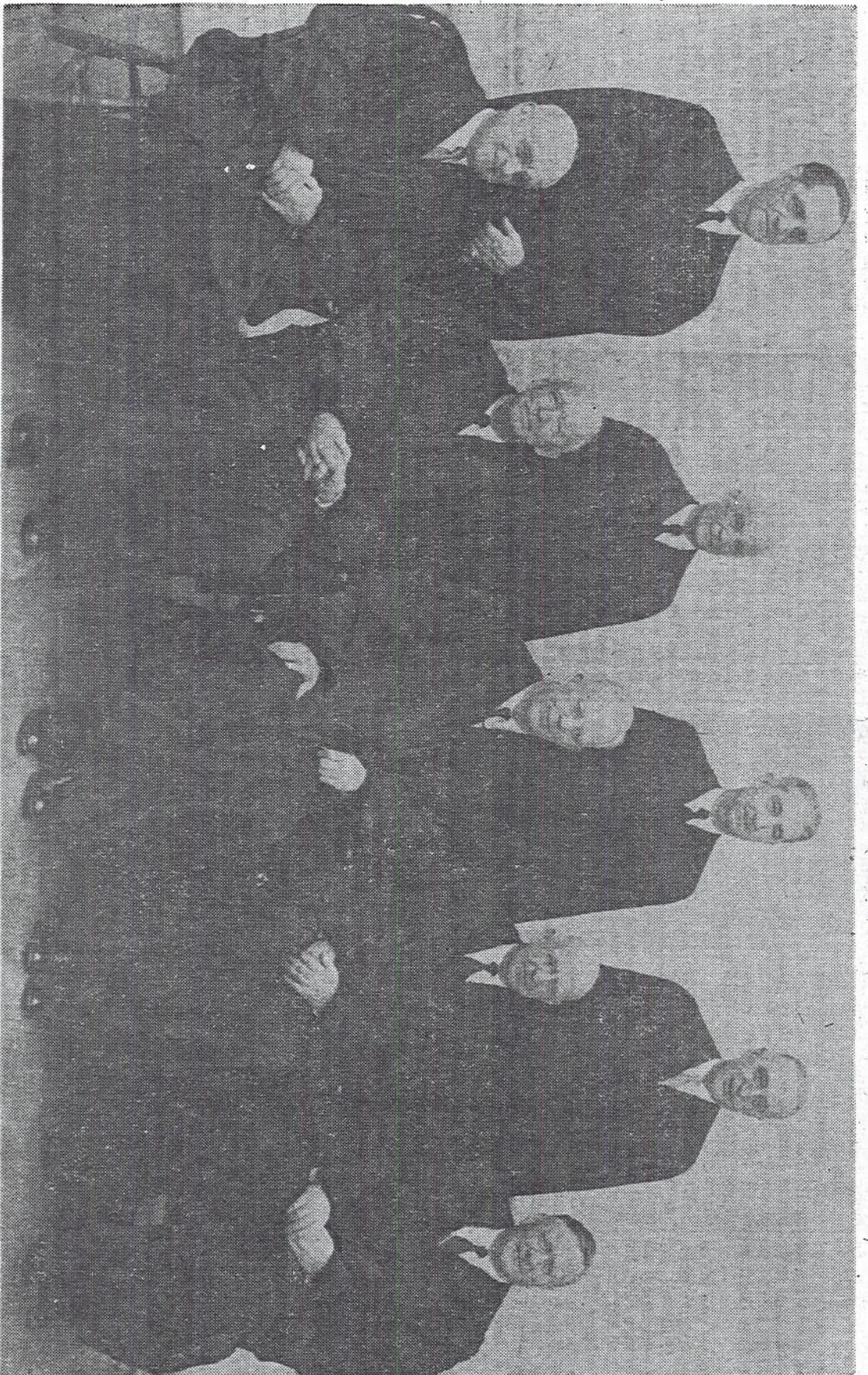
The ruling was soon applied, of course, and with continuing unanimity to fields other than public education. The unanimity of the court achieved under Warren's leadership was a testimonial to his judicial statesmanship and contributed significantly to the impact and effectiveness of the dramatic change in race relations required by the decision. That impact and effectiveness were diminished, however, by the failure of the Eisenhower administration to give the court moral and political support. Massive resistance to the decision began to develop in the Southern states; and from that time forward the Chief Justice became the target of vicious attacks by demagogues and reactionaries, including even a campaign, sparked principally by the John Birch Society, for his impeachment.

A decade later, in 1964, the Chief Justice wrote opinions for the court in six cases decided simultaneously in which the residents of half a dozen states challenged the validity of apportionment in legislatures where sparsely populated rural districts enjoyed the same representation as much more populous urban districts. Under this arrangement, rural residents of the states wielded much more political power than city dwellers.

For a court divided this time 7 to 2, Warren held that this inequality violated the constitutional promise of equal protection. He ruled, moreover, that the requirement of population equality in election districts applied to both branches of bicameral state legislatures, rejecting any analogy between them and the national Congress where the federal Constitution provided for equal representation of states in the Senate regardless of their size or population.

"Legislatures," Warren wrote, "represent people, not acres or trees. Legislators are elected by voters, not farms or cities or economic interests . . . The weight of a citizen's vote cannot be made to depend on where he lives."

This decision was quite comparable in importance and in political impact to the school desegregation ruling and evoked an almost equal sense of outrage among those who viewed it as a judicial intrusion into the legislative domain. It confirmed the view of Warren's critics that he was an inveterate judicial activist. On the other hand, it corrected a political injustice and imbalance that, given the rural ascendancy in state legislatures, had no real



THE WARREN COURT IN 1955: Standing, from left, are Associate Justices Sherman Minton, Harold H. Burton, Tom C. Clark and John M. Harlan; seated from left, are Associate Justices Felix Frankfurter

and Hugo L. Black, Chief Justice Earl Warren, and Associate Justices Stanley F. Reed and William O. Douglas. Of this group, only Justice Douglas is still on the Supreme Court.

possibility of correction through legislative action.

The Warren court outraged conservative sensibilities in one additional area, the field of criminal law. Over a decade or more the court wrought a revolution in extending to defendants in state courts the protections guaranteed to them in federal courts by the Bill of Rights. The Chief Justice's most signal contribution in this process was in regard to the admissibility of confessions. A confession, no matter how reliable, must be excluded from a criminal prosecution, he ruled, if it were obtained by coercion, threat or trickery of any sort. "The abhorrence of society to the use of involuntary confessions," he wrote in *Spano v. New York*, decided in 1959, "does not turn alone on their inherent untrustworthiness. It also turns on the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves."

The strongly held views of the Chief Justice regarding the rights of persons charged with crime found its culmination in what was perhaps the most controversial of all his opinions, handed down in the *Miranda* case in 1966. The decision held that the police must warn any arrested person, before questioning him in connection with a crime, that he has a right to remain silent, that any statement he makes may be used against him and that he is entitled to consult an attorney (to be provided for him by the state if he cannot afford to hire one himself) before or during any interrogation. Omission of any of those requirements would make a confession inadmissible.

These procedural rights have been an immemorial part of the folklore of American justice. How far they were from observance in reality was attested by the tornado of indignation that the Warren opinion generated from law enforcement officers and district attorneys. It is perhaps profoundly significant, however, that the opinion came from a judge who had had long and ripe experience as a public prosecutor.

To Chief Justice Warren, Anthony Lewis remarked in a distinguished monograph, "justice consisted not of providing a fair mechanism of decision but of seeing that the right side, the good side, prevailed in the particular case . . . Often the framework of the argument seems ethical rather than legal . . ." This appraisal seems in large measure just as discerning. In a speech delivered in 1962, the Chief Justice spoke of law as floating "in a sea of ethics." In a profoundly conscientious sense, he thought of the Supreme

Court as a force for "good."

The whole of his career was devoted to public service in an activist sense of the term. He believed, above all else, in righting wrong. His thinking was robust and healthy rather than subtle or sinuous; and it rested on elementary American values—confidence in the good sense of the people, in the utility of freedom, in the ultimate triumph of truth over error. "A prime function of government," he wrote in the only book he ever published—"A Republic, If You Can Keep It"—"has always been . . . to protect the weak against the strong."

Warren's devotion to the public service was marked by an impeccable personal integrity. It is perhaps unique

among public men, and certainly unusual, that from the moment he entered public service in California, Earl Warren never took a dime from anyone for a speech, article or any other kind of private or public activity. And once he accepted appointment to the chief justiceship he never manifested the slightest interest in any political office or influence. His commitment to the court was all-embracing.

If his opinions were not particularly notable for elegance or eloquence, they were nevertheless soundly reasoned and made powerful by the feeling of decency and compassion that informed them. At least in the fields of politics and law enforcement, where he had rich experience, his views commanded great respect and influence.

As the leader of an embattled court engaged in adapting the law to new economic and political circumstances, moreover, he displayed a high degree of judicial statesmanship. He was a man of clear conviction and of granitic strength. Once he quit elective office for the bench, he became wholly indifferent to popular favor and to public exhortation. He will be counted, undoubtedly, as one of the titanic figures in the history of the Supreme Court.

Once he joined the court, the only major interruption in his work came when President Johnson persuaded him to become chairman of the commission to investigate the assassination of President Kennedy. The Chief Justice undertook that assignment reluctantly. He apparently believed that a member of the court should not engage in non-judicial activities, but had been convinced by President Johnson that his personal prestige and the prestige of his office was needed to calm public fears that the investigation would be a whitewash. The report of the commission did much to quash fears that the assassination was part of a large conspiracy.

After stepping down as Chief Justice in 1969, Warren remained active in judicial affairs, speaking largely on matters of judicial administration and working at his office in the Supreme Court building. He maintained his lifelong interest in sports and was a regular spectator at football games of the Washington Redskins.

In 1925, Warren married Nina Palmquist Meyers, the widow of a musician who had died when their son, James, was three weeks old. Her mother had died when Nina was three years old, her father when she was 13; and she had been self-supporting ever since. James was adopted by his stepfather, and the family was enlarged in succeeding years by the birth of Virginia in 1928, Earl Jr. in 1930, Dorothy in 1931, Nina Elizabeth (known as Honey Bear) in 1933 and Robert in 1935. It was an extraordinarily close and loving family, retaining its sense of warm unity throughout the whole of Earl Warren's life.