

Earl Warren's Way: "Is It Fair?"

One man, one vote. If Earl Warren had to choose one memorial, it would undoubtedly be the decisions of his Supreme Court affirming that principle. There were others—school desegregation and the broadening of criminal suspects' rights, for instance—that also changed political and judicial history.

Yet Warren was not an ideologue or a radical. Rather he was a pragmatist who came to the bench with no preconceived vision or grand design, no strongly held or elaborately developed theory of society or even the law itself. He did right as he learned to see the right; the key word was learned.

Warren's long public career spanned nearly half of the 20th century. He served as a county district attorney, state attorney general and three times as Governor of California, but he will be remembered for his turbulent tenure as Chief Justice of the United States. As power came to him, he used it to advance the high dream of American democracy, which he took literally: that all men must be equal before the law. When Warren died last week of heart disease at 83, the evidence was already in: during his 16 historic years as head of the Supreme Court (1953-69), he had joined the small company of men who wrought fundamental changes in U.S. society. He had more impact on his time—and on the future—than many Presidents.

So deep were these changes that both Warren and the "activist" court that bore his name inevitably became national issues. The far-reaching decisions on racial discrimination and individual rights, beginning with the *Brown v. Board of Education of Topeka* school desegregation ruling of 1954, were applauded by civil libertarians—and just as vigorously denounced by a variety of critics. Segregationists and John Birchers put up billboards demanding IMPEACH WARREN; religious traditionalists protested the court's 1962-63 bans on classroom prayers and urged the court to "put God back in the schools." Law-and-Order Candidate Richard Nixon invariably drew cheers in 1968 when he accused the court of rulings that freed "patently guilty criminals on the basis of legal technicalities."

Union Member. Warren's trademark on the bench was to interrupt a counsel's learned argument citing precedent and book with the simple, almost naive question: "Yes, but is it fair?" He believed that social justice was more important than legalisms: "You sit up

there, and you see the whole gamut of human nature. Even if the case being argued involves only a little fellow and \$50, it involves justice. That's what is important."

Warren always remembered what it was like to be in the little fellow's place. His father, an immigrant from Norway (the original family name was Varran), was a railroad worker in Los Angeles when Earl was born. The elder Warren joined the American Railway Union and was blacklisted in 1894 when he went on strike. He moved the family to Bakersfield, where he got a job and began working his way up the economic



ladder to the comfortable perch of prosperous landlord. But young Earl had a keen understanding of the workingman's problems. As a teenage clarinet player, he joined the musicians' union and also worked as a freight-yard helper and truck driver.

He attended the University of California at Berkeley, and later its law school. After World War I, from which Warren emerged as an infantry first lieutenant, two old chums recommended him as a law clerk to the California assembly's judiciary committee. He was in public life for good.

As Alameda County district attorney, and later as state attorney general, Warren was a zealous law-and-order prosecutor, but he also had a scrupulous regard for the rights of the prosecuted. "I never heard a jury bring in a

verdict of guilty but that I felt sick at the pit of my stomach," he admitted.

Warren's success as a prosecutor inexorably pushed him toward a political career. Bluff, blond, big as a bear (6 ft. 1 in., over 200 lbs.), with a reassuring Scandinavian air of wholesomeness, he came across as the ideal public man. He had a family to match. In 1925 he married a widow of Swedish descent, Nina Palmquist Meyers, adopted her son and then sired five children of his own. An inveterate joiner (Masons, Elks, *et al.*) with a loose, easy "How are yuh, good to see yuh" handshaking style, he was a Republican whose personal constituency crossed party lines. In 1946 he won both the G.O.P. and Democratic gubernatorial primaries.

As Attorney General and then as Governor of California, Warren wrote a record with only one indelible blot on it: his stand on the treatment accorded Japanese Americans in the hysterical months after Pearl Harbor. He became one of the most urgent advocates of evacuating all of them to inland "relocation" (*i.e.*, concentration) camps. But, always the learner, Warren outgrew this extremist taint, and after the war's end proposed one of the nation's first fair-employment acts, "to break down artificial barriers that give rise to demonstrations of racial prejudice."

The proposal was in line with Warren's stance as a pragmatic progressive. After an expensive hospitalization for a kidney infection, he wondered, "If it hits me this hard, and I make a Governor's salary, how can the man who earns so much less pay his bills?" He proposed compulsory medical and hospital insurance, 20 years before Medicare became law.

From the time he was first elected Governor in 1942, there was talk that he might some day be President. He led a favorite-son delegation to the 1944, '48 and '52 G.O.P. conventions and let himself be talked into being Thomas Dewey's running mate in 1948, though he had no real interest in the vice presidency: "I can't spend my years sitting up there calling balls and strikes in the Senate." Warren was always the political independent. Even in 1952, when Eisenhower needed only nine more votes to beat Robert A. Taft for the G.O.P. nomination, Warren held California's 70 votes to the last minute.

Within a year, Warren's career took a sudden, decisive turn. In September 1953 Chief Justice Fred Vinson died. President Eisenhower was under pressure to name a successor before the court convened in October. As Associate Justice William O. Douglas tells it, Vice



DRAMA AT LITTLE ROCK: SOLDIERS SUPERVISING SCHOOL INTEGRATION, 1957
Brown v. Board of Education was no panacea for racial inequality.

President Nixon and Senator William Knowland went to Ike and urged him to choose Warren as a means of breaking his grip on California politics. In any case, Warren met basic requirements. He was a Republican and his philosophy and common sense "pleased" Eisenhower. Later, dismayed that Warren turned out to be a controversial participant rather than a bland umpire, Ike described the selection as "the biggest damn fool mistake I ever made."

Eight months after the 63-year-old Chief Justice arrived on the bench, the court disturbed the peace of Ike's first term by handing down its historic decision in *Brown v. Board of Education*, which overturned rulings going back to 1896 and required an end to *de jure* segregation in the nation's schools.

The opinion that Warren wrote for the unanimous court characteristically relied less on legal precedent than on sociological analysis, for which the court was much criticized. He argued that "to separate [black children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." His conclusion not only made integration an enduring national issue but also helped launch a tumultuous era of minority-rights efforts in many fields.

Curbing Rancor. Although some of his fellow justices carped about Warren's lack of legal scholarship, he transformed the sometimes fractious atmosphere of the Vinson Court by a mixture of charm, tact and candor. One law clerk, quoted in Leo Katcher's Warren biography, said: "What was lacking was a spirit of 'collegiality.' ... Warren's job was to try to bring personalities together, not beliefs. He couldn't ask anyone to abandon a deeply held belief, but to accept opposition without rancor."

Warren's driving concern was individual rights for individual Americans. After *Brown* came a number of rulings against racial discrimination in voting, public parks, housing and other

areas. The court virtually wrote a new constitutional code of criminal procedure, with the high point coming in *Miranda v. Arizona* (1966), which accorded a suspect in custody the rights to keep silent and to have an attorney before being interrogated.

The decision of which Warren was most proud was *Reynolds v. Sims* (1964), which extended the one-man, one-vote principle. His majority opinion on *Reynolds*, which forced nearly every state to redraw its electoral boundaries, showed Warren at his most eloquent: "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests ... A nation once primarily rural in character becomes predominantly urban. But 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."

Reynolds v. Sims prompted a dissent that crystallized the criticism of Warren's approach to the court's role.

Did the court have the right to impose electoral rules on state legislatures? Said Justice John Harlan: "This [majority] view, in a nutshell, is that every major social ill in this country can find its cure in some constitutional 'principle,' and that this court should 'take the lead' in promoting reform when other branches of government fail to act." Yale's Professor Alexander Bickel complained that the court "seems to lack a sense of the limitations of the institution."

Eroded Majority. Characteristically, Warren defended his way in human rather than legal terms. Writing in *FOR-TUNE*, he protested that "our judges are not monks or scientists, but participants in the living stream of our national life, steering the law between the dangers of rigidity on the one hand and of formlessness on the other ... Our system faces no theoretical dilemma but a single continuous problem: How to apply to ever changing conditions the never changing principles of freedom."

In 1969 Warren retired, at a relatively robust 78. Living in Washington recently, he had been working on an autobiography. Deaths, resignations, other retirements and Nixon's appointment of conservatives have eroded the involved, liberal majority that was the core of the Warren Court. The hopes raised by some of the decisions now may seem simplistic. *Brown*, for instance, was not the panacea for racial inequality that many may have envisioned. In their concern for citizens' rights however, the decisions were peculiarly American and epic. They survive, and so will Earl Warren's place in U.S. history. Early in the Republic, the court's great challenge was to ensure the strength and capacity of the Federal Government. Warren's opportunity, and mission, was to protect individual citizens from the enormously expanded power of Government. That was, as Warren might say, only fair.

CALIFORNIA'S GOVERNOR-ELECT WARREN, WIFE NINA, & THEIR SIX CHILDREN, 1942

