Earl Warren—A Tribute

HARRY S. TRUMAN

I regret that my time commitments preclude the writing of an extensive appraisal of Chief Justice Earl Warren. But, I could not forego this opportunity to offer a comment, albeit a brief one, to his Alma Mater.

I first began to take serious note of Earl Warren when, as Governor of the politically turbulent state of California, he revealed a unique capacity to govern with firmness, decisiveness, independence and what was most characteristic of him, a deep concern for the rights and aspirations of all the people—especially those who were less privileged.

In the campaign of 1948, when Governor Warren of California was nominated on the opposition ticket, I steadfastly refused to make any derogatory statement about him despite the urgent pleading of some of my political advisers. I countered their claims that the practical realities of campaign strategy required me to do it, with this statement:

> Governor Warren is a good man and an excellent public servant. I cannot, and will not, hurt him to gain the Presidency.

We have been good friends with a common interest in human welfare through the years that followed. The Warren record as Chief Justice has stamped him in the annals of history as the man who read and interpreted the Constitution in relation to its ultimate intent. He sensed the call of the times—and he rose to the call.

I would make this further comment about the Chief Justice. He has labored long and hard and withstood burdensome pressures. He is entitled to a measure of release. But, at my urging, he recently accepted the Chairmanship of the International Board of Overseers of the International Center for the Advancement of Peace, which bears my name. I know of no one better equipped by experience, example and outlook to take a hand in this staggering problem of man's search for a solution to the mounting threat to his survival.

WILLIAM O. DOUGLAS[1]

Earl Warren came to the Court in October 1953 and served until June 1969. One who sat with him may not be the best judge of the

1. Associate Justice of the United States Supreme Court.

man; but in my view he will rank with Marshall and Hughes in the broad sweep of United States history.

That rating goes to men who, seeing or sensing the strong tides of events, strive to keep the Constitution modern by making it responsive to current needs. There is always the opposed view, representing the status quo. Even today there are those who have the plantation state of mind, resisting the drive by minority racial groups for equality in the constitutional sense. Sixty years ago the issues coming to the Court were different. The idea of *laissez-faire* governed the mind of business and predominantly the judicial mind as well. The right to run one's business as he chose became, constitutionally speaking, "liberty" which was protected against state action by the due process clause of the fourteenth amendment. One hundred and sixty years ago the status quo was articulated by advocates of states' rights against the federalism being adumbrated by Marshall under the commerce clause.

While I have oversimplified the problems of those three periods of Supreme Court history, they illustrate the task of a Chief Justice who seeks to obtain a consensus for an evolving as distinguished from a retrogressive or frozen Constitution. A Chief Justice has as associates men who are sovereign in their own right, not men picked, like Cabinet officers, to do his bidding. Russia used to give her Chief Justice two votes; but ours has only had one. So his tact and persuasiveness are his only appeal.

American tradition calls for a per curiam opinion, as opposed to the seriatim opinions of the British. That means bringing a majority into a consensus. A man has to be short on dogma and long on the practicalities of problems to find common ground among men whose diverse views must somehow blend into a consensus. Warren—like Marshall and Hughes—had those subtle qualities of the spirit as well as of the mind that enabled him usually to reach an agreement with his Brethren by which the constitutional compass could be reset, if necessary, to avoid dangerous shoals that were appearing.

The judicial task which I describe is, of course, narrow in scope. In time, judicial construction may be inadequate for the task, as when the problems are so new or so shattering that a constitutional amendment is needed. But until such crises occur, the challenge of judicial statesmanship is to find, if possible, within the generalities of the existing Constitution the guidelines for resolving tempestuous conflicts and thus preserving the viability of our society.

It was in this role that Earl Warren served with conspicuous success, risking of course the demands of extreme spokesmen of the status quo for his impeachment.

ARTHUR J. GOLDBERG[2]

It will be said of Earl Warren in the perspective of time and history, as it was said of Chief Justice John Marshall, that he "never [sought] to enlarge the judicial power beyond its proper bounds, nor [feared] to carry it to the fullest extent that duty requires."

Like Abraham Lincoln, the Chief Justice was subjected to unparalleled abuse in the conduct of his office. Being a warm and very human person, these attacks must have made his heart ache. But he has taken this abuse philosophically and has never showed in demeanor or decisionmaking that they affected him in any way.

For, again, like Lincoln, the Chief Justice holds malice toward none and compassion for all. And surely, from the richness of the experience of more than 50 years of public service, Earl Warren understands full well, as did Benjamin Franklin, that public officials worth their salt "must not in the course of public life expect immediate approbation and immediate grateful acknowledgment of [their] services. [They must] persevere through abuse and even injury. The internal satisfaction of a good conscience is always present, and time will do [them] justice in the minds of the people, even of those at present the most prejudiced against [them]."

The Chief Justice in a recent interview said that he regarded his reapportionment decision to be the most important contribution he made during his 16 years on the Court. I am sure that all here recall that historic opinion in which I was proud to join. It is replete with Warrenisms and reflective of his pragmatic philosophy and profound understanding of our democratic institutions:

> Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.

I agree with the Chief Justice that the reapportionment decision will be recorded in the annals as a holding of the greatest significance. But I disagree with the Chief that this was his greatest contribution to the Court and to our country.

In my view, the Chief will be remembered not primarily for any particular decision but for his steadfast view that the least possible justification for the Court to avoid deciding a citizen's substantial claim of constitutional rights is that the Court may injure itself if it decides that case and vindicates those rights. For him, this is but another way of

2. Associate Justice of the United States Supreme Court, 1962-1965.

saying that the Court in its own interests should avoid unpopular decisions. The Chief Justice, throughout his tenure on the High Bench, conceived that whatever the justification in other ages or times for seeking out ways of avoiding decisions on the merits of a case, the tenor of the modern world demands that judges, like men in all walks of public and private life, avoid escapism and frankly confront even the most controversial and troublesome justiciable problems.

Earl Warren regarded it to be the first duty of any judge worthy of the office to abjure popularity in decisionmaking. His creed is that expressed by Lord Mansfield long ago:

> I will not do that which my conscience tells me is wrong to gain the huzzahs of thousands, or the daily praise of all the papers which come from the press; I will not avoid doing what I think is right, though it should draw on me the whole artillery of libels, all that falsehoods and malice can invent, or the credulity of a deluded populace can swallow . . . once for all let it be understood that no individuals of this kind will influence [me].

Our posterity will evaluate the great contribution to our country and to the free air of American life made by Earl Warren during his 16 years as Chief Justice of the United States.

I who sat with the Chief beloved by all his brethren need not await the verdict of history to state my own appraisal.

Chief Justice Earl Warren did his part in the "sacred stir towards justice" and the "flame burned bright while the torch was in his keeping."

ALBERT C. WOLLENBERG[3]

We are certainly paying greater attention to the *goodness* of those we call to the bench. We are less concerned than formerly with our judges' familiarity with the nuts and bolts of the law, though we know this is important, or even to their political predilections, though these are quire relevant. Rather we ask for men not only with unblemished private lives but also with an inner sense of the right which accords with that which we assume still runs strong in the American tradition. And I expect that as we find this quality harder to come by, we will remember all the more fondly Chief Justice Earl Warren.

For Warren not only referenced his decisions to an inner sense of the right, but was also convinced that this sense was shared by the

3. Assistant United States Attorney for the Northern District of California, 1928-1934; member of the California Assembly, 1940-1947, Chairman of the Ways and Means Committee, 1943-1947; Judge of the Superior Court for the City and County of San Francisco, 1947-1958; Judge of the United States District Court for the Northern District of California since 1958.

people as a whole. Therefore, he felt, the legally correct decision would in the long run be that which was at once politically wise and in the public interest.

As a judge he thus seemed ready at times to sweep aside carefully reasoned technical analyses in favor of ethically grounded considerations. Similarly, as a politician he often ignored the shifting winds of opinion and the importunities of the self-interested to grasp at some deeper intuition of what was "right." Once, shortly after being elected Governor for the first time, Warren was paid a visit by a group of Montgomery Street nabobs who tried to influence an upcoming decision by reference to how their prestige had helped the Governor. They got short shrift: "There will be another election in four years and in the meantime I am governor of all the people of California, not just those who voted for me, and it is their interests I am concerned with." So long as his decisions were referenced to the interest of the whole people, Warren had faith that the next election presented no great problem.

The man's deep faith in and affection for the whole people led him to seek out his fellows, enjoy their company, and listen to them. During Warren's campaigns I would often find my best laid plans gone awry because the Governor would not appear at scheduled appearances. Retracing my steps I would often find him, the last to leave the hall, or standing on the sidewalk, chatting with an old farmer or a grizzled hobo or whoever else had caught his interest. He would do this as Chief Justice, too, stopping to chat with all manner of folk, be they black children seeking his autograph or white and proper Birchites seeking his impeachment. From this contact came a mutual enrichment which for Warren took the form of a knowledge of and a respect for the deepest feelings of the people. Often a local politico who tried to tell him what hometown opinion was on a given issue would be met with a sharp, "That isn't the case; I *know* what the farmers in Willits [or Redding, or Colusa, or wherever] feel, and I know that they are right."

I would say that nothing changed with his accession to the bench. His greatest decisions, reapportionment, desegregation, criminal rights, were made on behalf of persons otherwise without a voice, that is, on behalf of the underdog whose plight is what, the American experiment in great measure, is about. The man who fought the Ku Klux Klan in Alameda County during the thirties was not different from the man who decided that black children should no longer be ghettoized by their government.

The wheels of Mr. Warren's justice did not grind exceeding fine, then; for to him justice was a large concept identifiable with a sense of the right common to all of use. It was not the intellectuality of a

Frankfurter or the eloquence of Holmes, but a conviction that men's laws reflected deeper convictions shared by all, and that the legal, the prudent, and the just decision were most often one and same thing. It is this humanity the rarity of which will make him all the more esteemed tomorrow than he is today.

THOMAS H. KUCHEL[4]

Earl Warren, in all the chapters of his long and illustrious career, has ever epitomized the finest kind of dedicated service to the people. His has been the simple motivation of a sense of duty. He truly believed that public office is a public trust. No selfish or powerful few guided his conduct, nor dictated his decisions, in any of his public responsibilities; and his private life has always been under the comforting spell of a happy, loyal wife and family. Neither friendship or fraternity was permitted to encroach upon public duty as he saw it. As Attorney General of California, he unswervingly enforced the law. There were no escape hatches available for any favored few. As Governor, he made policy decisions on the sole basis of what he believed was in the best interests of the state as a whole. And at the capstone of his public career, in his finest hour, as Chief Justice of the United States, he followed the majestic American maxim, chiseled in stone above the entrance to the Supreme Court, "Equal Justice Under Law." And so, with Earl Warren, equal justice and equal respect for every constitutional freedom staked out the path he sought, as a judge, to trod.

"The acid test of our system," the Chief Justice said on one occasion, "is the extent to which our ideals are given concrete reality in the lives of our people . . . Many a person who believes implicitly that the Constitution is designed to protect him in the enjoyment and use of his property, has little patience with those who insist on freedom of expression, freedom to teach, freedom of association, freedom from discrimination, and freedom to participate fully in their government."

We are better as a nation because of this extraordinary man and because of his lifelong labors. Evenhanded justice with Chief Justice Warren has been a way of life. The standards have been high, and he never failed to hold himself to them. Duty, as I say, has always come first.

I remember the dark days which came in the wake of the monstrous act in Dallas. A gallant President had been felled by an assassin. The country was full of fear. People were sorely troubled. Was there a giant conspiracy? The distraught new President determined that a

4. Member of the California Assembly, 1937-1940; member of the California Senate, 1940-1946; California State Controller, 1946-1953; appointed to the United States Senate by Governor Warren, 1953, served until 1968.

true "blue ribbon" commission should be created to sift the facts and report its findings to the American people, and, hopefully, to reassure them. He determined that the group should be led by a citizen whom the people could trust. He chose the Chief Justice. The Chief Justice demurred, for many reasons. But the President, citing the unprecedented situation, put the call to Earl Warren on the level of duty to his country. With a tear in his eye, Warren accepted, and a truly "blue ribbon" commission—each member with an impeccable national reputation—came into being. Its thorough, painstaking hearings, and its subsequent persuasive findings represented a real contribution to the welfare of the Republic. And, to the credit of all the members of the Commission, a sense of duty to their country motivated each of them to assume this sad and heavy burden of service to the American people.

The high standards he set for himself, he set also for those who worked with him. Public service, to him, demands the best—the very best—in those chosen to serve. I remember his appointments of many men to public office during his years as Governor. I remember the questions he invariably asked concerning his prospective appointees. Aside from their professional abilities, he was interested in their reputations, their habits, their families, their ties, their capacity to perform their public chores free from bias or prejudice or pressures or politics. And I recall that it has been said many times, by Bench and Bar and public, that Warren-appointed judges in the judiciary of our state represented—as a class—the very embodiment of judicial excellence.

Earl Warren was a partisan, but not a blind one. The fact, for example, that a lawyer of standing and repute was not a registered Republican did not disqualify him for consideration as an appointee to the non-partisan bench. The theory was that a judge served all the people with the same brand of justice. But even in those state constitutional offices which were partisan and which, when vacant, were filled by gubernatorial appointment, Warren insisted on qualification and competence as the indispensable prerequisites. And in at least one constitutional vacancy I recall Warren, finding no qualified member of his political party available, did not hestitate to appoint a qualified citizen who was registered in the opposing party.

I certainly remember Earl Warren appointing me to the United States Senate, one of the most moving and profound moments of my life. I may truthfully say that I did not seek, nor did I have any ambition for, the appointment. I was happy as State Controller, to which office he had also appointed me, and I may frankly say I had other hopes and aspirations in those days. Anyway, he told me he wanted to appoint me Senator and, deeply moved, I told him I would accept. He laid down one basic rule for me to follow. It was, in

substance, the same rule he gave to every man or woman he appointed to public office. He said to me: "Tom, determine what should be done for the benefit of the people, for it is the people—all the people—you shall represent."

Earl Warren sought to build no political dynasty in our state. He had no permanent political organization, and I rather think the very thought of a political machine was nauseating to him. He was what he was, and he wished to be judged by his political party and by the entire electorate on that fact alone. He liked people, for he is by nature a friendly man. Campaigning—in terms of meeting and speaking to the people—was for him a pleasant task. But creating a campaign organization was a difficult and vexing chore. Earl Warren steered clear of the professional "pols," those who were available for sale and who were relatively unfettered by principle. He was really allergic to them. He did not solicit the "aid" of party hacks in his campaigns. One would be a volunteer in a Warren campaign simply and solely because he believed in good, clean, forward-looking government.

It was part of the Warren philosophy that anyone aspiring to public office should inform the people of his views on public questions so that the people might register an informed and discriminating choice. Thus, as Warren would view it, more than simply a party label was required as a basis for success at the polls. Obviously, there were vastly different kinds of people, good and bad—and completely different philosophical and political views—represented in each of the two major political parties; and, therefore, a party label by itself was hardly a sufficient basis on which to form a judgment at the polls.

Thus, the Warren philosophy did not look with favor on "coattail riding." Again, if you wished to gain the faith of the people, as Warren saw it, you should demonstrate to the people why you believed you merited that faith. When Governor Warren appointed me State Controller, just a few months before the primary election, he said to me, "Now you're on your own. Go out and wage your own campaign." And while that is what I did, I was not unmindful of the enormous running start which any Warren appointee to elective office most certainly enjoyed.

Many people, I am among them, believe that Earl Warren should have been President, and that, had the Dewey-Warren ticket in 1948 been the other way around, he would have been. It was not to be. But his role as Chief Justice will surely leave an indelible and benign stamp on our country and its future. And it is far more comforting and rewarding to recall what was than try to contemplate what might have been. The Warren Court served in a turbulent era, when our

country faced great new human controversy, and the world's problems assumed new, unbelievable dimensions. And it served well. Americans may be eternally grateful to the long career of public service which Chief Justice Warren has given us.

EDMUND G. BROWN[5]

In my public life as Governor, Attorney General and District Attorney, I had the good fortune of enjoying friendly relationships with John Kennedy, Lyndon Johnson, Richard Nixon, Harry Truman, Robert Kennedy and leaders of the entire world. Each, in his own way, had characteristics that permitted them to move into the history of this country and the world. None were greater public servants than Earl Warren.

During the last three years of Earl Warren's administration as Governor of California I was the Attorney General of California and legal advisor to the Governor. The principal office of the Attorney General was in San Francisco, but I made frequent trips to Sacramento and made it a point to visit with Governor Earl Warren. These visits were most enjoyable. He always had time to sit in his office, turn off the telephone and discuss the legal matters affecting the state. During my incumbency as Governor, I wondered how he had found the time for leisurely discussion of so many subjects. His was an orderly mind that permitted intrusions on the business of state.

He was a Republican, I was a Democrat, but political subjects were not forbidden. I was pleased that his views on people and things were so close to my own philosophy. He was always sensitive to those that needed help from government. His program for medical insurance were the best ever employed. He was aware of the limitations of government and a governor. Earl Warren is a great duck hunter and he returned shots in government as he took shots at ducks. Great politicians and great statesmen have this tremendously important sense of timing.

During the campaign of 1950, Earl Warren was running against James Roosevelt for Governor, Richard Nixon was running for United States Senator against Helen Ghahagan Douglas and I was running against Edward Shattuck and Frederick Howser for Attorney General. I had been District Attorney of San Francisco and had tried to run a good District Attorney's office. Earl Warren had been District Attorney of Alameda County and Attorney General and knew the problems that I faced in San Francisco. When I became District Attorney in

5. District Attorney for the City and County of Sau Francisco, 1944-1950; Attorney General of California, 1951-1958; Governor of California, 1959-1967.

1944, he was then Governor. We had met and discussed law enforcement at the district attorney's convention. Earl Warren had been Chairman of the Republican State Central Committee, but in state government, he prided himself on his nonpartisanship. He took no part in the campaign for Attorney General, even though the Republican State Chairman was the Republican nominee. There was tremendous pressure on him to endorse the Republican, Ed Shattuck, but he said nothing; there was no endorsement. This was of great help to me because if he had asked for a Republican Attorney General, the people undoubtedly would have given him the Republican nominee and I would have been defeated. He never told me why he refused to support Shattuck, but I have always felt that he thought my experience as District Attorney would make me a better Attorney General than my Republican opponent who possessed no criminal law experience. Furthermore, he practiced what he preached—nonpartisanship—not only in this contest, but in all of his opportunities.

In 1948 and 1949, Governor Warren had a Crime Commission studying organized crime in California. The incumbent Attorney General, Fred Howser, and members of his staff had come under attack by this Crime Commission. I promised that there would be no need for a Crime Commission if I were elected Attorney General. To my surprise, after I was elected and before I took office, I received a call from Earl Warren. He advised me that in his inaugural message to the Legislature he intended to ask for another year of life for the Commission. I told him on the telephone that it was the Attorney General's job to enforce the laws of the State of California and that the Commission had done a good job, but there was no longer any need for such an extra-curricular organization and that I wanted the credit for cleaning up organized crime or the blame if I couldn't do it. He told me he felt the Crime Commission would be of help to me during my first year in office. I told him politely, but firmly, I didn't think I needed any help. He said it was already in his message and he intended to deliver the message to the Legislature at the opening session on the first Monday in January. After some discussion, he invited me to Sacramento to discuss the continuance of the Commission. I accepted.

Accompanied by the man who was to be my chief deputy, Bert Levitt, a Republican, I went to Sacramento to see the Governor. I was determined not to yield on my opposition to the Commission.

Earl Warren was very, very friendly and very warm. I must state I was impressed at this meeting. After some discussion he told me why he wanted the Commission and I told him why I didn't. I am afraid I became a little irate. He never raised his voice or seemed to

get angry, but neither did he retreat in the slightest degree. I said I was sorry I was going to have to oppose the continuation of this Crime Commission. At this point, he rather calmly stated to me, "now Pat, there are 25 reporters outside ready to deliver to 12 million newspaper readers, headlines reporting that before you even take your oath of office, Pat Brown quarrels with Governor Warren, the third term Governor. Do you want this to happen? Do you want a break with the Governor before you even have entered the office?" This hadn't even occurred to me because I was so determined to do the job of chief law officer of California. It was clear, however, that it would be bad for the state and bad for me, and misunderstood by the people if we did disagree at the very beginning of my career as Attorney General. I quietly stated, "Mr. Governor, I am glad you are going to have this Commission and I am going to work very closely with it." I then went out and faced the press and they were told that the Governor and Attorney General of the state would work very closely together and, incidentally, that there would be a Commission. We did work closely together during the ensuing three years and it was one of the most pleasant periods of my entire life. He was helpful to me and I think I was helpful to him.

I well remember the lunches we had at the Del Paso Country Club when he would sit and by the hours reminisce about his experiences in law enforcement and in the Attorney General's office and the District Attorney's office. I would tell him about the tough problems in water and crime, welfare and race relations. He was thoughtful, patient and intelligent in his advice. I am happy I had the good sense to accept it. I know I made a better Attorney General and Governor because of it.

This friendship, that really began when I was his Attorney General, continued during the period he was Chief Justice of the United States and I am happy to say that I regard him not only as a great jurist and great man, but a great friend.

JAMES H. OAKLEY[6]

It was early in 1925 that Earl Warren was appointed to a vacancy in the office of District Attorney of Alameda County. At the time I was a very junior deputy in the office when "the Chief," as we invariably addressed him, gave me a bit of fatherly advice—an effort on his part, I'm sure, to ease the pain of standing up in court and presenting a case.

He told me how as an embryo lawyer in San Francisco he was so

6. Deputy District Attorney of Alameda County, 1925-1939; Attorney General of California, 1939-1943; Executive Secretary to the Governor of California, 1949-1953; Judge of the Superior Court for Sacramento County, 1953-1964 (appointed by Governor Warren).

nervous at having to make a court appearance that on the streetcar journey to city hall he heartily wished that something, most anything, would happen—that the streetcar might get into an accident or some other violence might occur—anything to prevent his arriving at that court room. When he did get there and rose to argue a simple demurrer his mouth was so dry he could scarcely utter a word, his knees shook and he had that awful feeling in the pit of his stomach. He assured me also that his predecessor, Ezra Decoto, had confided to him a similar early experience. The Chief thought any person who didn't suffer such tortures simply lacked imagination. These were comforting words, in a way, although I shortly discovered that they didn't altogether relieve those inevitable "butterflies."

I often thought of this account of the Chief's in later years when he made public appearances, wondering if any vestiges of that early nervousness survived. It particularly came to mind one night during a presidential campaign when he calmly addressed a crowd of some 100,000 in the Los Angeles Coliseum and a nationwide radio audience of some millions.

As District Attorney the Chief drove himself hard, maintaining close touch with everyone on his staff and carefully supervising the work. He instituted staff meetings that took place four mornings each week. In spite of his concentration on administrative duties and the many other demands upon his time, he personally was able to handle the most important trials.

He was generally regarded as an able trial lawyer. He seemed especially proficient in developing a rapport with a jury. One of the ways he accomplished this was by urging the jurors to apply the simple and familiar thought processes of everyday life in deciding the issues presented to them.

In a murder case where circumstantial evidence was an important factor, he used a homely illustration to explain to the jury how in some circumstances such evidence may be more reliable than that of an eye witness. Suppose, he said, I arrive home to find my small son Bobby with jam on his face, a kitchen chair alongside the cupboard where Mrs. Warren keeps the jam, dirty footprints across the floor and on the chair, a bit of jam smeared here and there on the shelf and the jar of jam itself showing evidence of recent invasion. Observable circumstances such as these—without need of verbal confirmation and possibly in the face of a denial by the culprit—are likely to convince a parent that his son has conducted a raid on the cupboard.

Presence of mind in unusual circumstances and real understanding of human nature are assets not always displayed by men in public life. An incident in the Chief's prosecuting days gives proof that he possessed

such characteristics—and in the following instance they may have saved his life. It happened during the course of a grand jury investigation into a particularly gruesome murder. A man was accused of hacking his wife to death and then cutting up the body and disposing of the remains. It was a tough case for the police to solve. The two detectives from homicide had worked long and diligently to ferret out evidence establishing the defendant's complicity. One officer was called by the grand jury to testify as to the evidence developed. After identifying himself, he startled everyone by refusing to testify. The Chief, rather than showing impatience or surprise, asked him why. The officer said he knew that the District Attorney (Earl Warren) was trying to "frame" him and to fasten the responsibility for the murder on him. The Chief promptly accepted this explanation, assured him he would not press him to testify and excused him as a witness. Warren went to the door of the court room where he asked Captain Helms, Chief of Detectives, to talk to the officer.

The officer again asserted to the captain the belief he was being framed and added that he had made up his mind that if the District Attorney gave him a bad time for declining to testify he would draw his gun and shoot him dead. What had happened, obviously, was that the man had simply broken down under the strain and worry of a difficult investigation. Psychiatric examination later confirmed this and the officer received appropriate treatment. But what might have resulted but for the Chief's quick perception that there was something abnormal about the man is an interesting subject for speculation.

I worked in this man's office during most of the 27 years when he was District Attorney, Attorney General and Governor of the State of California and have always considered him an inspiring leader (though not an easy task master) and a thoroughly sincere and efficient public servant whose aim and effort was devoted to improving human welfare through the intelligent application of sound principles.

HORACE M. ALBRIGHT

I have known Chief Justice Earl Warren for over 60 years. We came to the Berkeley campus in August, 1908, he from Bakersfield, and I from Inyo County. We were in classes together as undergraduates and in all courses in the School of Jurisprudence, which in our time included the senior class of 1911-12. We graduated in May, 1912, and continued in the graduate School of Jurisprudence.

I do not recall any incidents out of ordinary attendance of classes that involved Earl Warren more than any other classmate. He was a tall, handsome boy, well liked by his fellows, very attractive to the co-eds, and always good-natured and friendly.

After college days were over, Earl Warren was on hand for all reunions of his class. The 45th reunion was held in Berkeley at the new Boalt Hall, after Earl had been Chief Justice for four years. The Warrens and the Albrights were at the Claremont Hotel and we went to the University together. On leaving the car I suggested to Earl Warren that we try to see our old professor, "Captain" A.M. Kidd, who had taught us criminal law. Earl agreed we should do so at once. On the way I remarked, "Of course, we all like the old Captain, but I never quite forgot that he gave me the only 3 (like a C) I ever received in a law course." Warren replied, "Did you get only one 3? Well, I got mostly 3's in my courses every year!" I asked him what it meant, and he answered, "You should be Chief Justice."

The next reunion was our 50th, in 1962. Earl Warren was in Ireland and suddenly realizing he barely had time to fly to Berkeley for the gathering of his classmates, he quickly departed without his hat, which probably is still being worn by some Irishman.

For over 20 years, while in business with headquarters in New York and offices in Rockefeller Center, I was pleased that first Governor Warren, then vice presidential nominee Warren, and lastly, Chief Justice Warren would visit me and go to lunch with me in the Rockefeller Center Club. Members of my office staff and the employees of the Club all looked forward to the visits of the big, cheery, famous man. One day about 1945, Governor Warren and I stepped into a Rockefeller Center elevator. The operator of this elevator, whom we knew as "Eddie" motioned me to him and asked if the man with me was Governor Warren. I said he was and I introduced Eddie to him. In 1948, during the campaign of that year, Earl and I again happened to find ourselves in Eddie's elevator. Before he could say anything, Earl stretched out his hand and greeted him: "I'm glad to see you again Eddie." Eddie was so taken aback and overwhelmed that I feared for the safety of all of us in the elevator.

On the morning that the news of the death of Chief Justice Vinson reached New York, I happened to step into Eddie's elevator. It was quite full of men and women going to their offices, but Eddie called to me: "Did you know that the Chief Justice is dead?" Then he added, "Eisenhower has got to give that job to Governor Earl Warren." The President did, and our classmate was elevated to the top of one of the three great branches of the United States Government. Then came the decisions of the "Warren Court." New ground was plowed in constitutional and other fields of the law. I could not bring myself to agree with a few of these decisions, and once or twice I told Earl Warren I thought the Court went too far in a certain

direction. His answer was, "Horace, you haven't read the decision itself. You get your information from the newspapers. Why don't you read the decision itself; you learned how to do that at Berkeley!" We never argued about a matter. The Chief Justice just went that far with his old friend, then laughed and we talked about something else.

Chief Justice Warren stands today as one of the most famous jurists in the Nation's history; also as a former Governor whose record will be praised through the ages. But he is still the handsome, genial, friendly, good fellow of college days at Berkeley, and no alumnus or alumna could be more devoted to the University of California than he is, 62 years after arriving there as almost the youngest freshman.

JOSEPH W. BARTLETT[7]

The following discussion might, I suppose, fit neatly into a footnote to an extended, heavily referenced thesis exploring the judicial philosophy of Earl Warren. It is, however, submitted without apology as an attempt to make at least a small dent in the body of myth which seems to have enveloped the activities of the Supreme Court and Chief Justice Warren during the last 16 years. The following vignette lacks, to be sure, the depth of analysis presumably required to shake the hardy assumptions of previous analysts on the reasoning and objectives of the Chief Justice. My small hope is that many of those who have written so facilely, and often so wrongly in my opinion, about the Chief Justice will take the occasion of his retirement to reexamine their stereotype, perhaps to reflect in light of events on precisely what it was that Earl Warren was trying to accomplish as Chief Justice of the United States during the difficult period of his stewardship.

The Chief Justice's favorite aphorism, borrowed from Al Smith, was to the effect that "no matter how thin you slice a pancake, there are always two sides." It is ironic that the sense of this remark appears to have been rejected or ignored by most of the critics of the man who has lent his name and stamp to the "Warren Court." In the eyes of his detractors, ranging from Southern politicians to senior professors at the leading law schools, it appears to be the singular view that the Chief Justice suffers from an overdose of "liberalism." Even some supporters seem to have reached agreement with the detractors on one point: that Earl Warren was the epitome of the sentimental activist, quick to overturn established precedents in favor of personal notions based on an intuitive and impulsive sense of what is fair,[8] on what the

7. Law Clerk to Chief Justice Warren, 1960 Term.

8. It is a source of personal bemusement to me that Chief Justice Warren's supposed perennial question from the bench—"But, is it fair?"—has been often quoted condescendingly, as if the Chief Justice's tendency to pose the question reveals a

idealistic position should be on an issue.

If any have publicly announced a conflicting perception—that the Chief Justice throughout his judicial career evidenced a profound conservatism in his thought and reported decisions—that announcement has escaped my attention. Nevertheless, I think there is truth in that observation; I think the general thrust of the Chief Justice's philosophy can be characterized as "conservative" and I will attempt to outline the skeleton of my thesis in the remainder of this piece.

Terms such as liberal, conservative, activist, are, of course, catch words without concrete meaning until and unless they are elaborately defined. Moreover, it is often dangerous and misleading to saddle a Supreme Court Justice, or any man, with a single adjective, no matter how carefully it has been articulated. Mr. Justice Clark's opinions, for example, afford ample evidence to confound those who would pigeonhole him as a reactionary during his years on the bench. Further, much of the Court's work is misinterpreted, or perhaps overinterpreted, by those who enjoy reasoning from the result and rationale in each case to the personal philosophy of the opinion writer. Opinions of the Court are products of a committee process; they can evolve in curious ways, as any law clerk knows, and each opinion is not necessarily a personal statement, as that term is currently used, of its purported author.

These caveats, and the brevity of this space, lead me to concentrate on a personal definition of the term "conservative" as I propose to apply it to the Chief Justice's thought. I would suggest that it is at least symptomatic of a conservative in today's society that he is deeply concerned with the faceless, seemingly randomly and capriciously directed activities of the gigantic institutions which influence the direction of modern life. Under this definition, a conservative is one who worries that the balance of power in this nation has shifted in favor of oversized corporations, government agencies, labor unions, universities, foundations and institutionalized groups which draw together shifting combinations of some or all of these. A conservative is troubled that the agents of giant agglomerations of men unknown to the public can enter into, perhaps even accidentally, arrangements of the type uncovered in the Dixon-Yates affair. A conservative is offended that the administration of civil and criminal justice has been nonresponsive to individual needs, so that eccentric and dilatory trial procedures begin to baffle and enrage the litigant and the defendant. A conservative of this stripe takes alarm at the almost casual nature in which over-

naive lack of legal understanding. The underlying assumption of the writers in such instances, I suppose, is that fairness and the law—in particular, due process of law—have little to do with each other. Parenthetically, that famous question was never overheard by me.

reaching by peace officers in a particular case is defended on numerical grounds, the thought apparently being that fairness to a particular citizen must be balanced against statistical evidence (inadmissible at the trial) that crimes (by persons other than the individual at the bar) are on the increase. A conservative is principally concerned that the individual is losing his democratic franchise in that his last and best weapon, his vote, can be cheapened by clandestine tradeoffs between secretive politicians.

The preceding exercise, attempting as it does to label a man by identifying his fears and concerns, may be entirely too broad in that many of us, regardless of how we style ourselves, can slip comfortably into the described category. The difference is that the tangible decisions of the Chief Justice on which his reputation as a jurist will depend, as opposed to the conversation of those of us who pay lip service to individual rights, are generally consistent with the definition as posed. To the extent the decisions of all Justices are result-oriented, the results of the Chief Justice's important opinions are aptly explained, I think, by reference to the ideas and concerns I have attempted to outline.[9]

To the extent the foregoing analysis has weight, it, of course, would be aided by extensive elaboration, based, perhaps, on a case by case analysis of the decisions and opinions of the Court and of the Chief Justice during the Warren era. I, however, must confess to having persuaded myself that the above is a statement worthy of repetition more by osmosis than a painstaking dissection of reported cases. For better or for worse, nevertheless, I propose the following summary as one man's opinion of Chief Justice Warren's contemporary thought.

Earl Warren's major decisions generally have involved instances in which the rights of a single individual or small group of individuals conflicted with the rights, privileges or property of the state or one or more large institutions. If a bias is detectable in his majority and dissenting opinions, we all can agree it is in favor of the individual over the institution. This bias is not, however, explainable as the product of emotional, bleeding heart liberalism. Nothing in the Chief Justice's career would remotely suggest his sympathy with that mode of thinking

9. Let me hasten to add that almost none of the above is based on my conversations with the Chief Justice. He has never been given to lecturing his clerks on abstractions or attempting to warp the decision in a particular case away from its facts and in the direction of a neat and symmetrical single theory of jurisprudence. The Chief Justice, in my recollection, was not haunted by Emerson's hobgoblin of little minds; his experience, I think, has taught him that there are vast differences between the conceptual purity of a learned law review article and the practical dynamics of a case before the Supreme Court. Hence, the first to disagree with my thesis may well be the Chief Justice himself.

and expression. Rather, his attitudes were and are, I believe, based on a hard headed conclusion that many aspects of contemporary society are out of phase with conservative and enduring constitutional values, and that the Court, to the extent it has a duty to oppose legislative and administrative excess, must exercise that duty to decide cases brought before it in accordance with such values. If the state and the institutions it fosters threaten to dehumanize its citizens, then the Court cannot be restrained. The Court must move to preserve the power, such as it may remain, of a single citizen to stand in the path of a mindless institution. The Court must be the forum to which aggrieved individuals can turn for a disinterested (perhaps sympathetic) hearing when a group finds their presence unpopular or inconvenient. If the Court on all but rare occasions were to line up with the group, be it state or private, then the Constitution would be in fact a different instrument than its conservative framers anticipated.

DAVID E. FELLER[10]

The retirement of Earl Warren as Chief Justice of the United States has brought forth a veritable mountain of words about the "Warren Court." I do not propose to add to it, nor am I competent to express a judgment as to precisely how much of the Court's accomplishments may be attributed to the Chief Justice personally. On the one hand, in the words of Charles Evans Hughes, the Chief Justice is "but one of nine judges having no greater authority than any of his brethren in the decision of cases."[11] On the other hand, Earl Warren clearly can be identified as a member of the majority on most issues decided during his tenure. But only those privy to the conference and to "the intimate relations of the judges"[12] can make an assessment with certainty as to the extent to which the quality of the decisions of the "Warren Court" reflected the character and personality of its Chief Justice.

In one sense, however, the Chief Justice is more than a first among equals. He presides both at the conference and at the public sessions of the Court. And it is to the manner of his public presiding which I wish to speak.

It is in this role that one can say with certainty that Earl Warren brought his own distinctive qualities to the office of Chief Justice.

The least, and I think not the most, that can be said of the Warren Court is that it was a humane court. Even those who attack its activism

10. Professor of Law, University of California, Berkeley. Frequent advocate before the Supreme Court in labor law cases.

11. C.E. HUGHES, THE SUPREME COURT OF THE UNITED STATES 56 (1928).

12. *Id.*

and question its success in elaborating rational standards for its judgments in traditional legal terms, must concede its sensitivity to humanitarian values. And it was this same quality of humanity which characterized Earl Warren's performance as the Court's presiding officer.

To most lawyers, the Court is indeed an awesome institution. The setting is enormously impressive. From the moment when the Marshall admonishes all those having business before the Court to draw nigh, its procedures are designed to impress and, indeed, even to intimidate those who heed that call. Everything about the way in which the Court conducts its public business, from the swallowtail coats worn by the more eminent members of the bar (and by all government attorneys) to the discreet little printed cards which are distributed to those who make the mistake of unbuttoning their coats and exposing an unvested shirt, is apparently designed, and rightly so, to make it clear that this is no ordinary institution to be treated casually and without respect. It *is* the Supreme Court of the United States and its embodiment is the Chief Justice of the United States, who presides over it.

Earl Warren, as Chief Justice, did not in any way disturb the tradition of solemn grandeur which characterizes the Court's operations. To the contrary, he insisted upon the maintenance of the most rigid standards of dignity and decorum. But he managed to do so while, at the same time, infusing the Court's proceedings with a remarkable sense of warmth and of concern for the individuals appearing before it.

In some respects, the rules were changed. Within two years of his accession, the Court terminated the practice, inhumane to the Justices, of conducting its conferences on Saturday and, consequently, eliminated arguments on Friday. In 1961 the Court's opening hour was changed from noon to 10:00 a.m. so that lunch could take place at noon rather than at the traditional (and peculiar) time of 2:00 p.m.

But it was not so much in the change in the rules, but in the way in which they were administered that the essential qualities of the Chief Justice were demonstrated. It used to be said of Chief Justice Hughes that when a lawyer's time had expired, he would be cut off in the middle of the word "if." With Chief Justice Warren, one could not only finish a word, he could even finish a sentence. If an advocate's oral argument had been utterly torn to shreds by questions from the bench so that he was unable to put forth even the barest outline of his prepared discourse, the Chief Justice would, on occasion, grant him an additional few minutes in view of the extensive questioning to which he had been subjected. The rules were there, and they were enforced, but those who appeared before the Court were given to understand not only by the actions of the Chief Justice, but also by the way in which those actions were taken, that rules have a purpose, and flexibility in

application often served the purpose better than slavish adherence for the sake of adherence. Above all it was always clear that considerations of courtesy and kindness need not be forgotten in the administration of justice.

This was perhaps most clearly demonstrated in the way Earl Warren conducted what, on any logical analysis, must be the most unimportant of the Court's functions: the hearing of motions for admission to the bar of the Court. On every day that the Court sits the first order of business is admissions. The process is entirely mechanical and, analytically, meaningless. The requirements for admission are minimal and are routinely administered by the Clerk's office. All that is required is a certificate from the highest court of a state evidencing the applicant's admission to its bar more than three years ago and his current good standing and a personal statement endorsed by two members of the Supreme Court bar.

There is one final requirement: an oral motion made in open court by a member of the Supreme Court bar. These are the motions which occupy the first minutes of the Court's time at virtually every session. The movant usually is not one of the endorsers of the applicant and indeed may have been hurriedly introduced to him only moments before. The motion itself is pure ritual and is set forth on the little card supplied by the Clerk. After addressing the Court formally, the movant says: "I move the admission of Mr. Albert Jones of Ohio. I am satisfied that he possesses the necessary qualifications."[13] After the motion is made, the movant retires and the applicant is directed to the Clerk's desk, where he waits while additional motions are made. The process is repeated until a sufficiently large group of applicants is gathered in front of the Clerk's desk and the oath is administered. Then, if there are more applicants than can be handled easily in one batch, the process begins again. On occasion the admission of large groups is moved *en masse* after a suitable introduction.

Many thousands of admissions are moved during each term of court. The vast majority of the applicants, of course, have no intention of practicing before the Court. But the fee is small (it has remained at 25 dollars since 1943) and the certificate is a nice one to hang on the office wall back home. The result is that the number of admissions bears no relationship to the business of the Court, and, indeed, varies with the season. The occurrence of some other event in

13. The form used to be longer and to require the movant to say, "Mr. Albert Jones, a member of the bar of the highest court of the State of Ohio," and one method of consuming the time while waiting for the process to be concluded was to keep count of how many movants in a day would inadvertently shorten the form so as to designate the applicaut as a member of the judiciary.

Washington which will bring large numbers of lawyers from the hinterlands (Inauguration Day, or a convention of the Bar Association) will enormously increase the number of admissions moved.

On rational and purely logical grounds, it would seem that there is simply no reason to continue this practice. It occupies the time of the Court and of those who are in attendance to get the business done of presenting argument to the Court. And even to the local Supreme Court watchers who attend regularly to hear cases argued or to listen to oral opinions, the practice undoubtedly appears to be an archaic remnant of earlier and more leisurely days. But to the applicant, who usually has never been in the Supreme Court of the United States before and, in most cases, never again will be, it is an important moment. He knows about the Court. He may even, from time to time, have read some of its opinions. But, at this moment, he sees it in the flesh and the impression which this simple appearance makes must, inevitably, in some subtle degree influence his conception of the Court and its processes.

The critical part of that impression is the part created by the Chief Justice. He calls on the movant by name (from a list supplied by the Clerk) and then, after the motion has been made in the prescribed form (although occasionally with slight variations, stemming sometimes from the movant's nervousness and sometimes from a desire to add some particular color to the motion), he responds on behalf of the Court. And in every case, Earl Warren would respond, with a warmth and a friendliness that seemed almost impossible to achieve under the circumstances. He did not merely acknowledge the motion and direct the applicant to the Clerk's desk. In each case, he would welcome the applicant by name to the Bar of the Court. The welcome was warm and genuine and uttered almost in a fatherly fashion. If there was the slightest occasion for variation, such as the simultaneous admission of a father and a son, he would take note of the fact and add a little grace note to the occasion. What would be expected to be a perfunctory and meaningless gesture was somehow transformed into a humane and compassionate greeting directed individually to the applicant for admission.

This little scene, repeated day after day, in some way I think symbolized Earl Warren's approach to the law, to the Court, and to the Bar. To a hard-thinking, logic-chopping, cost-benefit analyst, the entire procedure might appear to be a bore and a waste of time and resources. Certainly its product nowhere appears in the *United States Reports* nor figures in the scholarly analysis of the Court's performance. Insofar as the Court's quality is measured by those standards it would be better if the time of the Chief Justice and the other Justices were

expended in polishing opinions and the process of admission were delegated to the Clerk, or to a machine. But by infusing the relationship between Court and bar with a sense of his appreciation of the individual and of the importance of human relationships, Earl Warren symbolized and gave expression to values perhaps more enduring and more important than those susceptible of precise analytical measurement.

JACK GREENBERG[14]

Various images and concepts come to mind from having appeared before Earl Warren from the beginning to the end of his Chief Justiceship: the picture of the Chief Justice in the center of and looking bigger than the rest of the Court, his voice and manner, the feeling of arguing before him.

He always wore a slight smile even during dull, routine admissions to the bar and his words of greeting to each new member, though stereotype, conveyed a sense of personal interest in each applicant. "Mr. _____, we welcome you to the bar. You may step to the Clerk's desk and take the oath with the others." The "others" would sometimes number a hundred. But each welcome was unquestionably personal. One can see why he was a successful politician: everyone he greeted had to feel he cared. So far as he affected it, a serenity and sense of concern permeated the argument. Even when he sharply questioned or criticized, it was with an even handed gentleness. While many of the other Justices spoke to one another during argument or appeared to be distracted with books or writing, he usually sat back, his attention fixed on counsel at all times. Such a demeanor, of course, does not necessarily indicate he had more interest in what was going on than the other Justices. Justice Frankfurter was in constant motion during an argument—turning pages, spinning in his chair, talking to colleagues and counsel. Justice Frankfurter would often lean way back, out of sight, and then quickly move forward to speak. I often thought he spun, weaved, and struck, like a cobra. The Chief conveyed more of a feeling of repose.

I have wondered (not alone) what difference the argument, the briefs, or the records made—to him and to the other Justices—and particularly in constitutional law, how the facts, the law, and the presentation of the case relate to other factors affecting the outcome, such as the needs of the times, the language of statutes and the Constitution, precedents, and so forth. The Chief's place as one Justice and one vote among others dealing with such a multitude of influences can be

14. Assistant Counsel, N.A.A.C.P. Legal Defense and Education Fund, Inc., 1949-1961; Director Counsel since 1961. Advocate before the Supreme Court in the *School Segregation* and other cases.

found in his votes and opinions and will be studied by many constitutional scholars for years to come. It cannot be defined in a few pages and probably not so soon after his stewardship.

To focus on the personal experience of argument and observing argument may be self-centered and not very useful. But it can be best done now, soon after his tenure. And while of uncertain importance, perhaps it should be reflected on by those few who have had the experience.

The role of any oral argument is disputable. I have heard lawyers who appear frequently before the Supreme Court say that only rarely have they seen a case in which they thought the outcome was affected by oral argument. But all judges have predispositions or philosophies, and these may be affected or triggered by a variety of considerations. Oral argument sometimes can help make sure that the facts, law, consequences, logic, emotional factors—or the absence thereof—which make a difference to particular judges, are called to their attention. I once lost a case in a court of appeals because my opponent incorrectly informed the court of circumstances which he said made the case moot. I thought he was so obviously wrong that there was no point in rebutting what he said—the court could see for itself. The decision against me referred to his uncontradicted assertion.

Arguing before the Supreme Court is unique in that not only does counsel try to get across ideas and impart information, but the Justices themselves participate actively in seeking them out. They ask about facts and law and often become protagonists for one set of ideas or one side or another, sometimes one Justice against others. The most satisfying and effective argument before that Court, more so than before other courts, in which there is only one judge, or a shifting panel of judges, is one which prompts a dialogue and evokes questions, comments, and interchange among the Justices so that counsel can know what concerns them and address himself to it. Of course, the Justices' philosophies usually are no mystery. They have been expressed in opinions and other arguments. But the weight accorded some things, and the division of views among the Justices, sometimes appears only in the interchange between counsel and the court. In some cases issues are so novel that concerns and interests may become evident only at argument, and counsel is fortunate if he gets a chance to speak to them.

Over the past 20 years the Justice who did most to shape oral argument by questions and comments from the bench was Felix Frankfurter. He spoke incessantly. I once counted up the questions and comments of Justices during the *School Segregation* arguments: Justice Frankfurter spoke about twice as often as the other eight. While his commentary ranged over the landscape, counsel knew—or ought to

have known—he should come prepared on such matters as exhaustion of state remedies, exhaustion of administrative remedies, abstention in the case of political questions, mootness, federal jurisdiction generally, and so forth. One of Justice Frankfurter's principal concerns, demonstrated in his opinions as well, was whether a case was appropriate for action by the Supreme Court of the United States at all. Consequently, many oral arguments were directed at that range of considerations. Those problems were what the Justices heard about and one would imagine, talked about, and thought about, in coming to decision. One would have known from the opinions, of course, that these questions were important. The argument made sure that every case came to grips with that range of issues.

Those seeking to persuade the Court not to act had to face the questions of Chief Justice Warren. I have, for this article, recently reviewed some of the transcripts of oral argument before the Supreme Court in civil rights cases, and have excerpted below a number of the Chief's comments. They are characterized by realism, it could be called judicial realism, in the jurisprudential as well as the ordinary sense of these words. He addressed the *reality* of situations argued before the Court. He sought to penetrate legalism, circumlocution, and even dishonesty, when they were employed to make things appear other than they were. Again, counsel should have known from opinions that the Court or some part of it was interested in the subjects of the Chief's questions. But, the argument made sure that his interests were put before all the Justices.

One of the early episodes in which this kind of expression appears was in the *School Segregation Cases.* He was concerned with what school districts would do if ordered to desegregate. During the 1955 arguments be began to inquire about this of counsel for Clarendon County, South Carolina, and immediately ran into a professed disposition of the school board to act dishonestly. His reaction was lacomic and outraged:

> THE CHIEF JUSTICE: . . . Is there any basis upon which we can assume that there will be an immediate attempt to comply with the decree of this Court, whatever it may be?
>
> MR. ROGERS: Mr. Chief Justice, I would say that we would present our problem, as I understand it, if the decree is sent out, that we would present our problem to the district court and we are in the Fourth Circuit. Our opposition has just told this Court how the Fourth Circuit has been—he has no fear of the Fourth Circuit. I feel we can expect the courts in the Fourth Circuit and the people of the district to work out something in accordance with your decree.
>
> THE CHIEF JUSTICE: Don't you believe that the question as to

whether the district will attempt to comply should be considered in any such decree?

MR. ROGERS: Not necessarily, sir. I think that should be left to the lower court.

THE CHIEF JUSTICE: And why?

MR. ROGERS: Your Honors, we have laid down here in this Court the principle that segregation is unconstitutional. The lower court we feel is the place that the machinery should be set in motion to conform to that.

THE CHIEF JUSTICE: But you are not willing to say here that there would be an honest attempt to conform to this decree, if we did leave it to the district court?

MR. ROGERS: No, I am not. Let us get the word "honest" out of there.

THE CHIEF JUSTICE: No, leave it in.

MR. ROGERS: No, because I would have to tell you right now we would not conform—we would not send our white children to the Negro schools.[15]

One can only speculate what effect, if any, such reply had on the outcome.

In subsequent school cases he returned to the theme of honesty once more. In *Green v. New Kent County Board of Education*,[16] the issue was whether a freedom of choice plan constituted compliance with *Brown v. Board of Education*. Under freedom of choice, relatively few Negro children attended white schools, for reasons that need not be elaborated here, and for similar reasons no white children attended Negro schools.

Respondent argued that freedom of choice constituted integration, that anyone could go to any school he desired. The Chief Justice realistically addressed himself to the purposes and effect of freedom of choice.

MR. CHIEF JUSTICE WARREN: Isn't the experience of three years in that county, where there never has been a white child go to a Negro school, isn't that some indication that it was designed for the purpose of having a booby trap for them, that they couldn't, didn't dare to go over?

MR. GRAY: . . . I say to you, sir, that there is not a child in New Kent who can stand before this Court and say that the school board of New Kent County is denying me anything. Every facility is open to him, and I say to him, if integrated education is what the colored plaintiff wants, I can provide it for him this morning, if he is in the room. He need ouly sign that form and check the New

15. ARGUMENT: THE ORAL ARGUMENT BEFORE THE SUPREME COURT IN BROWN V. BOARD OF EDUCATION OF TOPEKA, 1952-55, at 413-15 (L. Friedman ed. 1969).

16. 391 U.S. 430 (1968).

Kent School, and he will have a fully integrated education.[17]

. . .

MR. CHIEF JUSTICE WARREN: When you say to us that there are no community attitudes that pervade that county, which would militate against the Negro child saying that he wanted to go to the white school, can you say that to us *honestly?*[18]

Note the recurring concern with "honesty." The Chief's comment presaged the opinion of the Court.

In some of the sit-in cases the issue was whether respondents were disturbing the peace. The Chief Justice probed the argument of counsel for the State to learn whether there were in fact disturbances. He would not accept conclusory characterizations:

THE CHIEF JUSTICE: Mr. Ward, suppose the man has a store in a State which does have a custom of segregation, but he doesn't want to offend the Negroes to the point that they won't come into his store and buy his other articles, and when a thing of this kind happens he says, "Well, it is not my practice or my custom to do this, but I don't want to offend these people, and I am not going to order them out of my place, I will just tell them that it isn't my custom to serve them," and he takes that attitude and objects no further to their being there, and the police come in, there being no disturbance of any kind, and put the people in jail for disturbing the peace; is that a violation of the law?

MR. WARD: You would have that situation, Your Honor, only in the Garner case.

THE CHIEF JUSTICE: In the Garner case, yes. But you defend the Garner case very strongly, and I just want to know how you do it, and that is the reason I am asking you these questions. Isn't that the Garner case?

MR. WARD: I don't know, in reading the testimony of Mr. Willis, the owner of Sitman's Drug Store in which the Garner case took place—

THE CHIEF JUSTICE: Yes, sir.

MR. WARD: (Continuing)—that you can draw the conclusion necessarily from the testimony that he was not asking them to leave.

We are contending he was, even though he didn't say the specific words, "Please get up and leave."

We contend the only inference you can draw from that testimony, the only conclusion you can draw is that he was, in fact, asking the person to leave, because he had no place to serve him and he was taking up space which his other customers might have been using.

THE CHIEF JUSTICE: He didn't say that.

17. Transcript of Proceedings at 30.
18. *Id.* at 41.

MR. WARD: No, that is correct.

In so many words, specifically, he did not.

THE CHIEF JUSTICE: But if you have two inferences that can equally be drawn, one of them of guilt and one of them of innocence, which one do you choose in your state?

MR. WARD: Normally in criminal cases, you choose the presumption of innocence.

THE CHIEF JUSTICE: Yes, sir. That is what we have here.[19]

In another of the demonstration cases, *Wright v. Georgia*,[20] the question arose whether Negro boys playing on a basketball court in a "white" park breached the peace thereby. Counsel for the State made a particularly obtuse and offensive comparison between racial segregation and separation of men and women in an orthodox synagogue. The Chief Justice not only went to the pont that state action was the essence of the problem, but was somewhat sardonic in expressing annoyance:

MR. GARFUNKEL: . . . Let us take this: I am Jewish. I am a member of the Orthodox faith. There is a big difference between the Orthodox and the conservative. The main difference is the seating, mixed seating. In the Orthodox you have separate seating, and in the conservative you have mixed seating.

In an orthodox congregation where they have separate seating, you have a member of the synagogue who thinks that it should have mixed seating.

So on a Saturday morning he comes dressed with his wife and they go down and sit in the middle of the synagogue peaceably without doing anything, asking for a prayer book, and they want to engage in prayers. They are not doing anything unlawful. They are not disturbing the peace per se. But I believe that you would have a tremendous reaction in a truly orthodox synagogue by these people so sitting in the section reserved exclusively for men.

THE CHIEF JUSTICE: You think if an Irish policeman came in there and said, "Get out of here"—

MR. GARFUNKEL: I think—

THE CHIEF JUSTICE: You think they would not have a right to say by what authority?[21]

Many other examples are available. The point, however, is that a lawyer seeking to uphold a state racial practice could not get away with arguing in terms of deceptive legalisms. He could not try to obscure the real facts and the real legal issues without probably getting a question from the Chief Justice exposing them. That is not to say that other Justices might not ask similar questions. But the Chief could

19. Transcript of Proceedings at 87-89, Garner v. Louisiana, 368 U.S. 157 (1961).

20. 373 U.S. 284 (1963).

21. Transcript of Argument at 387.

be counted on to do so.

It has been suggested that the Chief Justice's attention to such considerations was not lawyerlike, or not worthy, or somehow or other inappropriate. But in cases which turn on interpretation of the fourteenth amendment, or powers of a court of equity, and similar issues, fundamental fairness and actual consequences must be explored. Indeed, if courts were to decide cases under the fourteenth amendment without taking such considerations into account, the decisions often would be beside the point. The Chief's questioning made certain that few arguments would end without most such problems having been exposed for consideration.

The consequences of the questions in the oral argument and their effect upon case outcomes are open to question. The questions might be symptoms of concern of the Justices, and of the times, or they might exercise no independent influence. Maybe in some cases they did and in some they did not. No one can know. But lawyers argue cases to make a difference, and they shape their arguments by what the Justices say and think. Maybe that shaping makes a difference. I think it often does. The Chief's influence in the episodes described above during the history of those law suits—indeed, during this history of the development of the Constitution—has been to focus on "honesty," to require consideration of fairness, and to wash away legal forms which often have obscructed considering substance.

One of the questions Chief Justice Warren often asked, but which I have not had time to find in transcripts available to me now, was: "But is that fair?" Every case that came before the Court during the time he presided as Chief Justice was held up to that standard.

ADRIAN A. KRAGEN[22]

Working for and with Earl Warren is an experience which materially affects the lives of those who have had that opportunity. I came with the Chief Justice when he was Attorney General of the State of California. I had practiced for five years and, upon recommendation of Professor (now Chief Justice of California) Roger Traynor, was appointed a deputy attorney general. My prehiring interview was characteristic of the Chief and of my later relationship with him. Although he was the leader of the Republican party in California, he made no effort to ascertain my party affiliation. He was interested in my educational background and my legal experience and in whether I was prepared to devote myself wholeheartedly to the work of the Office of

22. Deputy Attorney General of California, 1940-1944. Professor of Law, University of California, Berkeley.

the Attorney General. In my four years with him I never saw an instance where preference was given to a deputy because of his political affiliation; nor was there ever any pressure on us to support Republican candidates and causes. The Chief was interested only in our doing the best job we could in the pursuit of our assigned duties.

Although Warren was fair in his treatment of everyone in the office he could be a man of terrible temper if a task was negligently or carelessly done or if there was evidence of a lack of loyalty to the office. Those who bore the imprint of his wrath came away with scars that took a long time to heal.

Warren demanded excellence in performance. He believed that the State deserved this and he sought highly qualified lawyers as deputies to ensure that the quality of the legal work of the State would be what he considered it should be. When he assumed the office of Attorney General the deputies were allowed to practice privately. He quickly determined that this was not compatible with the best service to the State and he pushed through salary increases on the basis of which private practice was abolished. Warren believed in giving his staff full responsibility for the handling of matters assigned to them. He did not look over their shoulders but rather relied on their ability and integrity. Of course, the deputy who failed to live up to the Chief's expectations had a short life in the office. Under his leadership the office became a public legal office second to none and a model for the offices of attorneys general throughout the United States. The staff worked hard but, due to the attitude of the Attorney General, it had a real pride in the office and a real affection for its head.

I have heard critics of the Chief Justice suggest that he became a liberal in the area of human rights only when he no longer had to run for public office. Those of us who had the fortune to sit around the Attorney General's office on Saturday afternoons (when the University of California wasn't playing football) and hear him discuss his ideas on such matters as equal opportunities, economic and educational, adequate medical care for all, and many other related subjects, know that his interest in humanity has always been one of his outstanding and endearing qualities.

The mention of football reminds me that attendance at a football game with the Chief was a bruising affair. He was, and is, intensely interested in the game and was prone to move up and down the field with the team while sitting in the stands. The result—if you were in the same row—might well be a seat in the aisle for you.

The Chief Justice was a "quick learner." With the multitude of tasks assigned to the Attorney General he could not possibly become familiar with everything that transpired in the office. However, he

could read a memorandum or have a brief conversation on some matter and his subsequent discussion of it demonstrated a remarkable understanding of the subject. I recall that when he was Governor I was asked to write a memorandum on a very complicated tax bill. When he later held a hearing to determine whether he would sign it I was asked to attend. I expected the Governor to call on me to answer the tough and technical questions I had discussed in the memorandum. Instead he handled them all himself—with accuracy and clarity.

When the Chief asked me to recommend a law clerk from the West for him each year I asked him what qualifications he wished me to consider. His answer was that he wanted a top flight student who would be able to think for himself and who was not biased either toward the right or the left. He was not interested in anything but the ability to do the job in the best possible manner.

There are many memories that I cherish from my association with Chief Justice Warren. One, however, stands out more than any other. I believe it characterizes this great man more than any other example of which I have personal knowledge. The Chief Justice has always been a very political person. He has a great awareness of the requirements of a political life and he has a political knowhow which has enabled him to achieve victory in this arena. However, his unswerving adherence to principle and his fidelity to his obligations as a public officer have always come before politics and his own desire for political recognition. My experience, I believe, illustrates this basic characteristic of the Chief.

In 1942, Earl Warren, then Attorney General, was running for Governor in a very tough campaign against Governor Culbert Olsen. I was a deputy attorney general handling tax cases. A month or so before the election I was asked by the Attorney General to come to his office. I entered and saw assembled about five lawyers, representing one of the most powerful interests in the state, one whose support was very important to any political candidate. Warren told me the lawyers had requested him to drop a case involving a comparatively small sum. The reason for this request was that I had informed the Board of Equalization that a judgment against the state in the pending case would, in my opinion, necessitate holding taxable transactions by the lawyers' clients which had previously been considered exempt. Although they believed my interpretation was incorrect, it was their position that the pending case did not justify the long and costly litigation which could result if we attempted to tax the previously exempt sales. Attorney General Warren asked me if I thought the case was important and should be continued. I answered in the affirmative and

he quickly turned to the lawyers and said, "Gentlemen, you have your answer."

It has been a rare privilege for me to have known and worked with the Chief Justice and his example has been of vital importance to me in the pursuit of my career.

HELEN R. MACGREGOR[23]

"Has Earl Warren changed?" This is a question often asked and asked with the implication that he has changed from a vigorous prosecutor to a humanitarian. He has of course grown; but basically he has not changed. I recall a conversation between him and a priest. He said, "Father I envy you. You can spend your whole life helping people, but I have to prosecute men before they can be helped." Prosecution was then his role and responsibility, a role which he carried out with such ability and fearlessness that state and national recognition came to him. He was determined to do all in his power to ensure that the individual would be safe in his person and his home.

Sixteen years have passed since I ceased to be a member of Earl Warren's staff. My awareness of his stature has deepened with the passage of time and I have often speculated on what qualities made him a great, an accepted leader in public affairs. The invitation to have a part in the *California Law Review* tribute to him prompts me to offer a few of my thoughts.

That he was a leader of the people of California was proved again and again by his election three times as District Attorney, once as Attorney General, and three times as Governor. Twice he won the nomination of both the Republican and Democratic parties—in 1938 for Attorney General, when he also won the nomination of the Progressive Party, and in 1946 for Governor. (In those years a candidate could be nominated by more than one party provided he received the nomination of his own party.)

These political victories were achieved without an "image maker" on his team. The image was the man himself. Somehow the voters sensed the ability and integrity of the man. He talked to the people at meetings, on radio, and later on television. As Governor he had an excellent press secretary, Verne Scoggins, but there was no organization "selling" him. The word was passed around that here was a leader who could be trusted, and this confidence spread to new voters as

23. Secretary to the District Attorney and Deputy District Attorney of Alameda County, 1935-1939; secretary to the Attorney General and Deputy Attorney General of California, 1939-1943; private secretary to the Governor, 1943-1953; member of the California Youth Authority, 1953-1957 (appointed by Governor Warren).

California's population grew from 6,907,000 in 1940 to 10,586,000 in 1950.

He cared about people and their children and what happened to them. He was especially concerned with the circumstances that could cause great hardship or even wreck a man's life. As District Attorney he saw the disastrous consequences of usurious interest and the piling up of interest as old loans were refinanced; these practices dealt a heavy blow to the man with limited means and no bargaining power. He provided leadership in the fight before the Legislature to establish maximum rates of interest on small loans. Similarly, his awareness of the disastrous consequences of heavy hospital and doctors' bills led him to propose in 1944 a system of compulsory health insurance.

During his years as District Attorney and Attorney General he was incensed by the granting of pardons to ex-convicts with powerful friends or money to hire skilled attorneys and the contrasting helplessness of the poor and friendless. Early in his first year as Attorney General he presented a paper at the first National Conference on Parole[24] in which he presented his idea of a pardon based on a certificate of rehabilitation. Asked Attorney General Warren, "But what of the post-parole period? Are they to go through life as ex-convicts or shall we offer them some incentive for the future—something that would be a continued inducement to lead a law-abiding life? I believe that every man who passes out of the gates of our penitentiaries should have the right to obtain a full and complete pardon . . . by working for and earning it." In his first message to the Legislature in 1943 he recommended the enactment of such a law, and it was passed.[25]

Earl Warren was determined that the poorest and most friendless person should have the same rights and protection as the richest or most powerful. As District Attorney he had an ironclad rule that the influence of a defendant would not affect the prosecution. During the 1938 campaign for Attorney General, a politican from another county came to the office to intercede for a man charged with embezzlement. Mr. Warren was away and it fell my lot to interview the man. When I said the case could not be dismissed, the reply was: "Mr. *X* has a lot of influence politically." He was incredulous when I said that could make no difference.

Earl Warren cared about people, not only as fellow citizens but also with a warmth of friendship for individuals. He remembered their names and their families. I have heard tales of his going to meetings in

24. PROCEEDINGS OF THE FIRST NAT'L PAROLE CONFERENCE 70 (1938).

25. Inaugural Address of Earl Warren, Governor of California 9, Jan. 4, 1943. Ch. 400, [1943] Cal. Stats. 1922, *adding* CAL. PENAL CODE §§ 4852.01-.21 (West 1956).

remote sections of the State and calling each person by name!

He always listened attentively to both sides of an issue. If someone attempted to pressure him to do something he deemed questionable, I have seen him stand up and say, "It's not right. It's not right. I'm not going to do it." I am reminded of a hearing on the question of whether, as Governor, he should sign a bill. After he announced his decision those who lost came out of the office grumbling. One man stopped and said to one of our secretaries, "But there is a real man." Of course, he made enemies, but his fairness and straight forwardness kept them to a minimum.

What did it mean to be a member of his staff? Hard work and long hours that matched his own. This was true in each of the offices where I served, District Attorney, Attorney General, and Governor. Very few of us left. Why did we stay? Perhaps each would give a different answer, but I believe it was because in each office he gathered a group of men and women who believed in his goal of giving good government and we realized that we could make the contribution of our own lives effective under his leadership. This devotion was characteristic not only of the professional staff and department heads but also of the stenographic and clerical staff.

He expected the best work and the most responsible recommendations from each of us, but he seldom gave praise. The big exception was the Christmas party in the Governor's Office. Then he thanked us for the year's work and said we had enabled him to do his work as Governor. When he left to become Chief Justice, his tribute to all the state employees was touching.

What qualities made Earl Warren a great Governor? Historians will try to identify and discuss them. I would like to add a few to those already described.

His careful preparation for action was equally characteristic of his work as District Attorney and Attorney General. For example, he knew that the penal system of California had to be reorganized. He had accumulated evidence of abuses over the years and in November of 1943, his first year in office, he appointed the Governor's Investigating Committee on Penal Affairs under the chairmanship of the late Burdette Daniels, his legislative secretary. The Committee outlined the inherent defects of the existing structure and presented a summary of abuses and a plan of reorganization.[26] The Legislature met in special session, on the call of the Governor, to consider the report on January 27, 1944, and within four days the recommended measures were

26. REPORT OF GOVERNOR'S INVESTIGATING COMMITTEE ON PENAL AFFAIRS, in J. CAL. SENATE, 3D EXTRA SESS. 39 (1944).

passed and the foundation of California's correctional system was adopted.[27]

His action on penal reform illustrates another important quality—his sense of timing. Public indignation was high because a dangerous convict, imprisoned at Folsom, had been placed on a farm and on weekends was visiting his girl friend in San Francisco. The Governor immediately appointed the investigating committee; public attention and support were assured.

Earl Warren has the ability to absorb complex and unfamiliar material and remember it. His memory is phenomenal. Engineers in the Department of Public Works often expressed amazement at his grasp of engineering data and his ability to cross-examine them.

A great strength of the Governor lay in his appointments to executive and judicial positions. He always sought the person best qualified, without regard to political considerations or the appointee's previous support of Earl Warren. Many of his appointees commented, "The Governor never asked me what my politics were." If he didn't know the person who was best qualified to head a department, he appointed a committee of experts in the particular field to find the person, or, as in the case of the first Director of Corrections, he asked the State Personnel Board to give a nationwide competitive examination. To those chosen he gave his confidence and his friendship. There are great stories to be told about the development of state departments under these men; but they are beyond the scope of this piece.

My closing comment is that each of the offices he headed was a "happy ship;" a taut ship, but a happy one. It was marked by loyalty to Earl Warren and by loyalty of the staff to one another. Remarkably, each office became an office of friends, and the friendships have lasted to this day.

ARTHUR H. SHERRY[28]

In the mid-thirties, the office of the District Attorney of Alameda County was on the second floor of the old two-story court house at Fifth and Broadway in Oakland. The building reflected the traditional design of its day for such structures, but long years of service had brought it to such a precarious state that it could no longer support its principal ornament, a great, imposing figure of Justice, complete with scales and blindfold, which had been removed from the rooftop to a

27. Ch. 2, § 1, [1943 3d Extra Sess.] Cal. Stats. 13, *adding* CAL. PENAL CODE §§ 5000 *et seq.* (West 1956).

28. Deputy District Attorney of Alameda County, 1933-1939; Assistant Counsel to the California Study Commission on Organized Crime, 1950-1957 (appointed by Governor Warren). Professor of Law, University of California, Berkeley.

less conspicuous but safer position on the front lawn. It was in this unimpressive setting located in a political subdivision almost completely obscured by its famous neighbor, San Francisco, that Earl Warren earned the first badges of recognition for professional competence, integrity and distinguished public service that have marked his long and often controversial career.

This recoguition did not come by accident. It did not depend upon any one sensational event. It was the product, rather, of an exceedingly strong devotion to a number of firmly held concepts or ideals of public service. These include a high commitment to honesty in government, to the redress of whatever appeared to be wrong, and to unruffled adherence to decisions made in conscience in spite of the appeals of expediency.

These are high standards. Throughout his professional occupations, Earl Warren served them well. In political life, this requires a substantial measure of courage and independence of spirit. To those who served with him in the District Attorney's office, his possession of these qualities made it clear that in the unlikely event that Earl Warren ever became a judge, his impact upon the judiciary and the administration of justice would be considerable. Unlike many of his close friends who were not participants in the memorable Saturday morning staff meetings, his deputies and assistants in those days were not surprised, in more contemporary times, that the nation's high tribunal became known as the "Warren Court." Some were taken aback by what appeared to be a new and stronger judicial stance. In this, of course, they had much company. Nonetheless, most, if not all, expected that the new Chief Justice would bring the same qualities of independence and forthrightness to the Court that characterized Earl Warren as District Attorney, Attorney General and Governor of California.

The forthright approach became manifest at the outset of Warren's years as prosecutor. Although a very young and politically insecure office holder, he opened his administration with an investigation of a well-entrenched bail bond broker racket which had spread corruption through the then existing police and justice's courts and a number of the county's several law enforcement agencies. Those who were his targets were politically strong where he was weak, influential in the community where he was untested or unknown and quite capable of effective retaliation should his mission fail. Their practices were the accepted custom, their victims helpless and voiceless and the cause against them not one that engaged any great measure of public concern.

The District Attorney was successful and he achieved local public renown. He had also made enemies whose ranks were thereafter augmented by the successful prosecution of a city administration that

had been corrupted by the bribes of some theretofore respected members of the business community. A final prosecution of members of the sheriff's department, led astray by their opinions about the prohibition of liquor, finally made it clear that the people of Alameda County were through with the old tolerance of political graft and that they were proud of their young District Attorney.

In the years that followed, there were other campaigns. A number of these had statewide ramifications, particularly a series of prosecutions against fraudulent issuers and promoters of security interests in purported petroleum bearing land in Southern California. To those engaged in these swindles, it soon became known that Alameda County was not safe territory for operations. The effect of this activity was to give Alameda County and its District Attorney a statewide dimension. It provided a base for stimulating legislative action which Warren was quick to exploit. Revisions of the Corporate Securities Act were made which finally curbed fraudulent securities sales and parallel revisions of the Insurance Code, following an Alameda County investigation of sales of insurance policies in nonexistent insurors, ended the great frauds of the thirties.

These were difficult and troubled years, apart from problems of crime and criminality. These were the years of the Great Depression. Labor legislation of the new Democratic administration in Washington provided a powerful stimulus for labor union strike and organizational activity. This was accompanied by a high level of violence throughout the country and Alameda County was no exception. To Earl Warren, extortion by a labor official was as unlawful as extortion by anyone else. He took the same view of homicide, assault and riot. Inevitably this brought him into sharp conflict with organized labor and with those so sympathetic with labor's cause that they considered any means to achieve those ends an adequate justification for violating the law. Their opposition was formidable. It remained until Warren became Governor. Labor then learned that although he would not tolerate violence and illegality, he believed strongly in the social utility of organized labor and the necessity for securing fair and stable relationships between labor and industry.

All of these accomplishments make up a familiar record and, indeed, a record that follows patterns that have long been defined in the political history of the United States. What, then, is its relevance to Earl Warren, Chief Justice, constitutional innovator and discoverer of new political horizons?

Its relevance, I think, becomes apparent in considering Warren in the context of his early professional experience and in relationship to his generation. In Earl Warren, District Attorney, Earl Warren, Chief

Justice, is discernible. Perhaps this is best brought into focus by pointing out that during his years in public office in Alameda County, he was but one of California's 58 county prosecutors. He was one of at least six of these whose jurisdictions were as important or more important than his own. The conditions which he fought so successfully to correct did not exist in Alameda County alone. They were conditions that could be described accurately as typical of all of the state's urban and semi-urban areas. His attacks on corrupt local government and on organized criminality were more than unique—they were audacious. Because of this, they attracted an enormous amount of public attention, stimulated parallel efforts in other parts of the state and initiated an era of legal and governmental reform whose influence remains important to this day.

Although first as Attorney General and next as Governor he was immersed in the great problems and responsibilities of high state office, Earl Warren remained ever conscious of the obstacles and handicaps that sapped the ability of local law enforcement to protect the public from criminality that extended beyond individual county boundaries. It was this concern that led him to devise means and institutions through which local law enforcement could be made more effective through state assistance without impairing the values of local control. Thus the legislation which he initiated or supported to this end cast the state and its agencies in the role of advisor, provider and technical assistance operator of a statewide law enforcement communications network and general coordinator of intercounty law enforcement operations.

This interest in the administration of criminal justice, however, was not a narrow one. He did not view it simply in terms of police and prosecution but rather as a complex of checks and balances between the necessity for the protection of society against crime and recognition of constitutional protections of individual liberties. He was, for example, a stout supporter of the office of public defender. During the early years of his incumbency as District Attorney, he was instrumental in making his county the second in the state to follow the pioneering effort of Los Angeles County in establishing the office of public defender, now a commonplace function of county government.

He was also deeply interested in the integrity of the judicial system long before his position as Chief Justice of the United States gave him an immediate and continuing responsibility to oversee the operations of the federal courts. It will be remembered that the careful and meticulous procedures for the appointment of judges which he inaugurated while Governor have remained as a standard which has been followed with reasonable and commendable consistency by his successors.

Finally, it is significant that District Attorney Earl Warren was highly conscious of the great legal and social problems involved in the disposition of the criminal offender. He was never a harsh or vindictive prosecutor. He was keenly conscious of the risk of convicting an innocent person, a consciousness that was forcefully imparted to the members of his trial staff, and he was quite skeptical of the notion that locking up those convicted of crime was the most suitable and appropriate penal sanction.

For these reasons, it was his general policy to leave the task of sentencing solely to the court without prosecutorial suggestion, to cooperate with the probation department and to make prompt and vigorous investigations of any charge that a conviction might be a miscarriage of justice. Ultimately, as Governor, Warren carried out a major reform of the state's prison system. He caused the establishment of the Department of Corrections and gave his unwavering support to that department's outstanding endeavors to achieve the technical proficiency which has won it world-wide renown.

Much more could be said about Earl Warren, District Attorney, the talented staff which he led and the administrative techniques by which his personnel were recruited, trained and supervised. A great deal, too, should be said about Earl Warren, professional associate and friend. But these are not within the bounds of this piece. For present purposes, let it be noted that the distance between the second floor of the old court house, and the Supreme Court building was not nearly as far as many of us thought.