PROCEEDINGS IN THE SUPREME COURT OF THE UNITED STATES IN MEMORY OF MR. CHIEF JUSTICE WARREN*

TUESDAY, MAY 27, 1975

Present: MR. CHIEF JUSTICE BURGER, MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, MR. JUSTICE WHITE, MR. JUSTICE MARSHALL, MR. JUSTICE BLACKMUN, MR. JUSTICE POWELL, and MR. JUSTICE REHNQUIST.

THE CHIEF JUSTICE said:

The Court is in special session this afternoon to receive the Resolutions of the Bar of the Supreme Court in tribute to the late Chief Justice Earl Warren.

Mr. Solicitor General Bork addressed the Court as follows:

Mr. Chief Justice, and may it please the Court:

The resolutions unanimously adopted are as follows:

The members of the Bar of the Supreme Court have met today to record our respect and admiration for Earl Warren, who served as Chief Justice of the United States from October 5, 1953, until his retirement on June 23, 1969.

It is impossible to capsulize Chief Justice Warren's extraordinary contribution to the life of this Nation, or adequately to express what he meant to the many mil-

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*Mr. Chief Justice Warren, who retired from active service on June 23, 1969 (395 U. S. VII), died in Washington, D. C., on July 9, 1974 (418 U. S., p. v). Services were held at Washington National Cathedral prior to his interment at Arlington National Cemetery on July 12, 1974.

lions of people—both in the United States and elsewhere—who knew him or knew of him. Earl Warren's retirement as Chief Justice represented the culmination of 52 years of official public service in local, State, and National governments. His public service hardly lessened, however, upon his retirement from the Court—it simply became unofficial. He originally intended to devote his years of retirement to writing; and, indeed, he completed one book after he left the Court and made substantial progress on others. In recognition of the affection and support that he had received throughout the years from his wife, Nina Warren, and their large family—a marriage and a family that were crucially important and a bulwark to him—he dedicated that book "[t]o one of the most important segments of our citizenry, the millions of American mothers—including my wife, Nina—whose fondest hope is that their children will be responsible citizens, and whose faith in humanity and love of freedom sustain their belief that this will be achieved." [1]

Chief Justice Warren's desire for more direct contact with the people whom he had served for so long and his interest in the youth of this Nation were too great, however, and he spent most of his retirement traveling to colleges and universities throughout the country—explaining the work of the Court and affirming his faith in our system of justice, his respect for international law and the role of the United Nations and his confidence in the capacity of the American people to assist in the universal realization of all the rights guaranteed by the Constitution. The richness of his legacy, which even today cannot be completely appreciated, will undoubtedly ensure him an important place among the great figures in our Nation's history.

Chief Justice Warren presided during a period often regarded as one of the most turbulent in the Supreme

[1] E. Warren, A Republic, If You Can Keep It (1972).

Court's history, and it was perhaps inevitable that the Court's record during those years should have become so closely associated with him. The decisions handed down during the period of Earl Warren's service as Chief Justice are often referred to as decisions of the "Warren Court." Earl Warren objected to this characterization. And it is true, of course, that Chief Justice Warren was only one among nine; ultimately, with only one vote to cast in conference with his Brethren. Earl Warren was ever mindful of this fact. Indeed, during the ceremonies attending his retirement from the Court, Chief Justice Warren chose to emphasize that the Supreme Court had been manned during his tenure by wholly independent Justices. But he was convinced that this diversity was an important ingredient of the Court's strength. Speaking extemporaneously, Chief Justice Warren noted:

> "We do not always agree. I hope the Court will never agree on all things. If it ever agrees on all things, I am sure that its virility will have been sapped because it is composed of nine independent men who have no one to be responsible to except their own consciences." [2]

But Earl Warren's recognition of and respect for the independence of his Brethren was a foundation for, rather than a relinquishment of, his leadership role on the Court. Of course, those not privy to the Court's ultimate deliberations can never know precisely what occurs there. We do know, however, that during Earl Warren's tenure as Chief Justice the Supreme Court rendered decisions among the most important in the Nation's history and that those who served with him on the Court consistently have acknowledged their great respect for the strength and effectiveness of his leadership.

During his tenure Chief Justice Warren became the personification of the Supreme Court. He became the focus for the gratitude of those who approved of the

[2] 395 U. S. xi (1969).

Court's pronouncements and for the criticism of those who did not. The simple courage and dignity that he displayed upon being thrust into this role was of immense public significance, and was in itself a source of institutional strength.

Like Abraham Lincoln, the Chief Justice was subjected to almost unparalleled abuse in the conduct of his office. He was a very human person and these attacks must have made his heart ache, but he never showed in either his demeanor or his decisionmaking that it affected his resolve in any way.

The Chief Justice's courage and dignity characterized his entire public life. Whether as the crusading District Attorney for Alameda County or the Attorney General of California, or as the dedicated and innovative three-term Governor of California, Earl Warren had always refused to compromise principle in the face of public or private criticism and had conducted himself according to the dictates of his conscience.

No one who attended a session of the Supreme Court while Earl Warren was presiding could have failed to be impressed with his attentiveness to the arguments of counsel or to the courtesy and fairness with which proceedings were conducted there under his stewardship. He believed deeply that the Supreme Court belonged to the people, that its continuing vitality depended in the final analysis upon its remaining a "responsive forum of last resort." [3] He labored mightily to make this conception of the Court a reality, and the success of those labors is reflected in the decisions of which he was so inseparably a part.

Even the most painstaking effort to categorize 16 years of Supreme Court litigation, calling for literally hundreds of thousands of individual judgments by mem-

[3] E. Warren, Address at New York University Law School Convocation on October 4, 1968; quoted in Mitchell, The Warren Court and Congress: A Civil Rights Partnership, 48 Neb. L. Rev. 91, 100 (1968).

bers of the Court, cannot escape being inadequate in many respects. We wish, nevertheless, to focus particularly upon three interrelated themes sounded repeatedly in decisions of the Supreme Court during Chief Justice Warren's tenure: first, the concern with ensuring that the civil rights of all the people would be respected; second, the effort to strengthen democratic processes of self-government; and, third, the structuring of an equitable system of criminal justice consistent with elemental human dignity. It was perhaps pre-eminently in these three areas that the Warren Court in general, and Earl Warren in particular, were recognized to be both the product and a producer of a profound moral and constitutional revolution.

I

If there was a single societal impulse informing more significantly than any other the development of constitutional law under Earl Warren, it was the civil rights movement. The rising social consciousness of racial minority groups—partially manifest in their demands for equality under the law—was at once the principal impetus and the result of many of the Supreme Court's decisions during those years. The era began dramatically with *Brown* v. *Board of Education*,[4] which was reargued scarcely two months after Earl Warren assumed office. The opinion written by Chief Justice Warren for a unanimous Court in *Brown* was more auspicious than many observers realized at the time because its reasoning became the foundation of many other decisions and set the tenor for much of what was to follow.

Formally at issue in *Brown* and its companion cases were claims by Negro plaintiffs that state law requiring racially segregated public schools deprived them of equal protection of the laws under the Fourteenth Amendment. For nearly 60 years, such claims had been rejected on the authority of the "separate but equal"

[4] 347 U. S. 483 (1954).

doctrine of *Plessy* v. *Ferguson*.[5] In the several years immediately preceding *Brown*, however, the Court's opinion in *Plessy* v. *Ferguson* had been substantially eroded—in part because the Court began increasingly to emphasize the "equal" half of the doctrine in assessing the constitutionality of racially segregated educational systems.[6] But so long as the "separate but equal" doctrine retained any vitality, most objections to educational systems premised upon race could be met at least in theory by reallocating resources, and without sacrificing the principle of racial separateness.

One of the impressive aspects of Chief Justice Warren's opinion for the Court in *Brown* was its definitiveness. The Court announced that *Plessy* had no further application in the field of public education, and the form of the Court's statement left little room to suppose that *Plessy* would retain any vitality in other contexts:

> "To separate [Negro children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone. . . .
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> "We conclude that in the field of public education the doctrine of 'separate but equal' has no place. Separate educational facilities are inherently unequal." [7]

The Chief Justice's opinion in *Brown* also sounded other notes that were subsequently to recur. One was its emphasis on the relationship between education and successful participation in the community's life and its democratic processes:

> "Today, education is perhaps the most important function of state and local governments. Compul-

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[5] 163 U. S. 537 (1896).

[6] *E. g.*, *McLaurin* v. *Oklahoma State Regents*, 339 U. S. 637 (1950); *Sweatt* v. *Painter*, 339 U. S. 629 (1950).

[7] 347 U. S., at 494–495.

> sory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. . . . It is the very foundation of good citizenship. . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity to an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms." [8]

The Court's decision in *Brown* unleashed a flood of school desegregation cases. Resistance to the decision was massive and immediate; and in the process of dealing with this resistance, the authority of the Court was challenged as it had not been since the days of John Marshall. Had the resolve—or even the unanimity—of Chief Justice Warren and his Brethren wavered in the face of this resistance, the results could have been disastrous. But they did not waver: while permitting a phased accommodation to the basic principles announced in *Brown*, bounded by the command that compliance occur "with all deliberate speed," [9] the Court in subsequent opinions repeatedly reaffirmed those principles and marked out the area of the constitutional prohibition of racial discrimination countenanced by state law. One of the most notable of the school desegregation opinions following *Brown* was *Cooper* v. *Aaron*.[10] In that opinion, unprecedented in that it was signed by all nine Justices (including those appointed after *Brown* was decided), the members of the Court jointly stated:

> "It is, of course, quite true that the responsibility for public education is primarily the concern of the States, but it is equally true that such responsibilities, like all other state activity, must be exercised

[8] *Id.*, at 493.
[9] 349 U. S. 294, 301 (1955).
[10] 358 U. S. 1 (1958).

> consistently with federal constitutional requirements as they apply to state action. . . . Since the first *Brown* opinion three new Justices have come to the Court. They are at one with the Justices still on the Court who participated in that basic decision as to its correctness, and that decision is now unanimously reaffirmed. The principles announced in that decision and the obedience of the States to them, according to the command of the Constitution, are indispensable for the protection of the freedoms guaranteed by our fundamental charter for all of us. Our constitutional ideal of equal justice under law is thus made a living truth." [11]

The disposition of the school desegregation cases inevitably undermined the legitimacy of other practices premised upon the policy of racial separateness. During the years following the decision in *Brown,* the Court received scores of petitions involving claims of racial discrimination in violation of the Fourteenth Amendment. The petitioners in many of those cases sought to overturn state criminal convictions arising out of their participation in civil rights demonstrations of various kinds. In reversing these convictions, the Court—often speaking through Chief Justice Warren—progressively narrowed the scope of permissible state involvement in racially discriminatory conduct.

An important example was *Peterson* v. *City of Greenville.*[12] There, the petitioners had been arrested for criminal trespass after having peacefully integrated a lunch counter reserved for whites in a privately owned department store and having refused to leave when ordered to do so by the manager of the store. Arguing in support of the convictions, the State contended that the racial discrimination complained of was the store manager's private policy rather than a consequence of

[11] *Id.,* at 19–20.

[12] 373 U. S. 244 (1963).

the city's segregation ordinance, and hence that it did not violate the Fourteenth Amendment's prohibition of state-sanctioned racial discrimination. Chief Justice Warren, writing for the Court, rejected this contention:

> "[T]hese convictions cannot stand, even assuming, as respondent contends, that the manager would have acted as he did independently of the existence of the ordinance. The State will not be heard to make this contention in support of the convictions. For the convictions had the effect, which the State cannot deny, of enforcing the ordinance passed by the City of Greenville, the agency of the State. When a state agency passes a law compelling persons to discriminate against other persons because of race, and the State's criminal processes are employed in a way which enforces the discrimination mandated by that law, such a palpable violation of the Fourteenth Amendment cannot be saved by attempting to separate the mental urges of the discriminators." [13]

The Court reached the same result in *Lombard* v. *Louisiana*,[14] even though in that case there was no state statute or city ordinance forbidding the desegregation of restaurant facilities. Chief Justice Warren's opinion for the Court in *Lombard* noted, however, that the refusal to serve petitioners had taken place against the backdrop of public statements by city officials to the effect that segregation of restaurant facilities was city policy and that violations of that policy would not be tolerated. In reversing petitioners' convictions, Chief Justice Warren declared that if discrimination mandated by an ordinance may not stand "[e]qually the State cannot achieve the same result by an official command which has at least as much coercive effect as an ordinance." [15]

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[13] *Id.*, at 248.

[14] 373 U. S. 267 (1963).

[15] *Id.*, at 273.

Chief Justice Warren's abiding concern to put an end to discriminatory treatment of persons because of their race was also expressed in his opinion for the Court in *Loving* v. *Virginia*.[16] At issue in *Loving* was the constitutionality of the State of Virginia's antimiscegenation statutes. The principal argument advanced in suport of the statutes was that they did not constitute invidious discrimination based upon race because they applied equally to both participants in an interracial marriage. Chief Justice Warren rejected this contention, noting that "we deal [in this case] with statutes containing racial classifications, and the fact of equal application does not immunize [them] from [a] very heavy burden of justification" under the Fourteenth Amendment.[17] Turning then to the justifications proffered by the State of Virginia, the Chief Justice stated:

> "There is patently no legitimate overriding purpose independent of invidious racial discrimination which justifies this classification. The fact that Virginia prohibits only interracial marriages involving white persons demonstrates that the racial classifications must stand on their own justification, as measures designed to maintain White Supremacy. We have consistently denied the constitutionality of measures which restrict the rights of citizens on account of race. There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause." [18]

II

Chief Justice Warren—himself a successful Governor and on one occasion his party's nominee for the Vice Presidency—had an abiding confidence in the capacity

[16] 388 U. S. 1 (1967).
[17] *Id.*, at 9.
[18] *Id.*, at 11–12.

of the American people for enlightened self-government. He firmly believed that the Nation's problems can best be solved through the political process—so long as that process is democratic in fact as well as in name.

It is not, therefore, surprising that in his judgment the single most important case to be decided by the Supreme Court during the Warren years was *Baker* v. *Carr*[19]—the first case to hold that the right to equal political representation can be secured through court action.[20] Indeed, as Chief Justice Warren observed following his retirement, there might well have been no need for a *Brown* v. *Board of Education* if the political process had functioned fairly in the post-Civil War years:

> "[I]f we had had the [*Baker* v. *Carr*] decision shortly after the Fourteenth Amendment . . . most of these problems that are confronting us today, particularly the racial problems would have been solved by the political process where they should have been decided, rather than through the courts acting only under the bare bones of the Constitution. And if the Blacks and everybody else could vote . . . [and] if we believe in our institutions, if we believe that we're all supposed to be equal, every man's vote should be worth the same as every other man's vote, and . . . eventually our problems will be solved in that manner." [21]

Baker v. *Carr* opened a new era of concern for the fairness of our political processes. Chief Justice Warren himself wrote the Court's opinion in *Reynolds* v.

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[19] 369 U. S. 186 (1962).

[20] Recollections of Mr. Justice Warren, Trial Lawyers Quarterly, Vol. 9, No. 4, pp. 5, 9–10 (fall 1973) (excerpted from Chief Justice Warren's video-taped conversation with Dr. Abram Sacher, Chancellor of Brandeis University, Dec. 11, 1972).

[21] *Id.*, at 9–10.

Sims [22]—probably the most far-reaching of the 170 majority opinions he wrote during his 16 terms on the Court. The core of *Reynolds* v. *Sims* was the holding that the Constitution guarantees equal representation in state legislatures, to be measured generally by the formula "one man, one vote." The rationale of the Court's holding in *Reynolds* was set forth by Chief Justice Warren in common-sense terms that every citizen can understand:

> "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. . . .
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> . . . . . .
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> "To the extent that a citizen's right to vote is debased, he is that much less a citizen. The fact that an individual lives here or there is not a legitimate reason for overweighting or diluting the efficacy of his vote." [23]

Thereafter, Chief Justice Warren joined in Justice Douglas' opinion for the Court in *Harper* v. *Virginia State Board of Elections*,[24] invalidating state laws making the payment of a poll tax a prerequisite to voting in state elections. He also joined in Justice Black's majority opinions in *United States* v. *Mississippi*,[25] holding that the Attorney General of the United States had the authority to challenge devices utilized by the State of Mississippi to disenfranchise blacks, and in *Louisiana* v.

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[22] 377 U. S. 533 (1964).
[23] *Id.*, at 562, 567.
[24] 383 U. S. 663 (1966).
[25] 380 U. S. 128 (1965).

United States,[26] invalidating the "interpretation test" employed in the State of Louisiana for a similar purpose.

When Congress enacted the Voting Rights Act of 1965, a far-reaching measure designed to speed the full realization of minority voting rights in those States and localities in which the problems of disenfranchisement had been most persistent, it was Chief Justice Warren who wrote the Court's opinion in *South Carolina* v. *Katzenbach*,[27] upholding the challenged provisions.

The principal issues in the case turned on the proper interpretation of Section 2 of the Fifteenth Amendment, which gives Congress the power to enforce the proscription contained in Section 1 forbidding the States to deny United States citizens the right to vote on account of race or color. Chief Justice Warren stated that "[t]he basic test to be applied in a case involving § 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of Congress in relation to the reserved powers of the States." [28] He then quoted the classic statement of his illustrious predecessor, Chief Justice Marshall:

> " 'Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.' " [29]

He concluded with the deeply felt hope that:

> "[M]illions of non-white Americans will now be able to participate for the first time on an equal basis in the government under which they live. We may finally look forward to the day when truly '[t]he right of citizens of the United States to vote

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[26] 380 U. S. 145 (1965).
[27] 383 U. S. 301 (1966).
[28] *Id.*, at 326.
[29] *Ibid.*

> shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.' " [30]

III

Prior to his appointment to the Court, much of Earl Warren's life had been devoted to the administration of criminal justice. His vigor and evenhandedness as a state prosecutor had contributed significantly to his early electoral successes in California and, to a somewhat lesser extent, his national prominence. This background gave him an understanding of the practical problems of criminal law enforcement that made him confident that strong enforcement of the law could be achieved within the bounds of constitutional guarantees of liberty. He deeply believed that the ultimate protection of our society required that law enforcement officers, no less than others, be held to observance of the legal strictures on their conduct.

During Earl Warren's tenure as Chief Justice, an important series of decisions evolved, almost inexorably, into a principle that the Fourteenth Amendment's command that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law" applies in full measure to state law enforcement efforts most of the more specific constitutional restrictions on federal criminal procedure. Extensive reform of the Nation's criminal law enforcement has been the result. If there was an identifiable starting point, it was *Griffin* v. *Illinois*.[31] Justice Clark has simply and ably reconstructed the events from that point:

> "[Griffin] made a simple demand and one that everyone would agree had merit. It was that a transcript or authentic record of some kind should

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[30] *Id.*, at 337.

[31] 351 U. S. 12 (1956).

be furnished to indigent defendants on their conviction and appeal. People with money could get a transcript and, it was argued, to deny one to the convicted poor was an invidious discrimination. The Court agreed. I, for one, never dreamed that *Griffin* would trigger so many serious constitutional questions under the sixth amendment in such a short time. Yet in one decade cases were filed in the Court and *decided* that overturned our whole concept of criminal justice. The lawyers reasoned after *Griffin:* What good is a transcript to a poor person if he does not have a lawyer?

"This led to *Gideon* v. *Wainwright,* which required counsel to be appointed for indigent defendants in felony prosecutions. The question then posed was: What good a lawyer unless he is available at every vital point in the prosecution? And *Escobedo* v. *Illinois,* in the very next year, answered: The lawyer must be available when the suspect is 'focussed' upon as the accused. Finally, the sixty-four dollar question was: When does the 'focus' occur? And the answer was: Before interrogation, which led to the warnings of *Miranda* v. *Arizona.* It was written by Chief Justice Warren." [32]

It would unduly lengthen these resolutions were we to attempt to catalogue more completely even the major decisions of the Supreme Court under Chief Justice Warren dealing with the administration of criminal justice. It may be sufficient to recall that the basic reforms effected invariably had the Chief Justice's full support—a support that stemmed from his conviction that society's highest aspirations could not be realized unless its governors and its governed alike were required to observe the law. The Chief Justice expressed this conviction

[32] Clark, Dedication to Chief Justice Earl Warren, 48 Neb. L. Rev. 6, 11 (1968).

with great eloquence in the opinion he wrote for the Court in *Spano* v. *New York*,[33] a case involving a claim that the petitioner's conviction had been secured in part through use of an involuntary confession. The Chief Justice stated that Spano's claim called upon the Court

> "to resolve a conflict between two fundamental interests of society; its interest in prompt and efficient law enforcement, and its interest in preventing the rights of its individual members from being abridged by unconstitutional methods of law enforcement.
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> . . . . . .
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> "The abhorrence of society to the use of involuntary confessions does not turn alone on their inherent untrustworthiness. It also turns on the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves." [34]

As Chief Justice of the United States, Earl Warren was for 16 years the principal custodian of the legal institutions and processes which—along with our right to self-government that he so notably fostered—are America's most hallowed treasures. He was acutely conscious of the magnitude of his responsibilities as Chief Justice, and for all of those years he devoted his enormous energies to performing his responsibilities as Chief Justice as effectively as possible. Only the most insistent urgings in the name of the national interest—as with his chairing of the Warren Commission—were permitted to intrude upon his devotion to his duties as Chief Justice; but even during the period when the work of the

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[33] 360 U. S. 315 (1959).

[34] *Id.*, at 315, 320–321.

Warren Commission was in progress, Chief Justice Warren continued his full workload at the Court. Always, his reverence for the Constitution was the devoted faith of a man dedicated to two linked tasks—"to . . . establish Justice . . . and secure the Blessings of Liberty to ourselves and our Posterity."

WHEREFORE, it is RESOLVED that we, the Bar of the Supreme Court of the United States, express our profound sense of loss at the passing of Chief Justice Earl Warren; we have been made a better people by the dignity, courage, and wisdom that he brought to his duties; and we shall forever be strengthened in our resolve to respect the rights of others by his insight that the rights of each of us depend upon the rights of all; and it is further

RESOLVED, that the Solicitor General be asked to present these resolutions to the Court and that the Attorney General be asked to move that they be inscribed upon the Court's permanent records.

THE CHIEF JUSTICE said:

Thank you, Mr. Solicitor General and I recognize the Attorney General of the United States.

Mr. Attorney General Levi addressed the Court as follows:

Mr. Chief Justice, and may it please the Court:

The Bar of this Court met today to honor the memory of Chief Justice Earl Warren. During the years of his stewardship, which spanned the 16 terms beginning in 1953, the Court confronted issues among the most important in its history—issues profoundly affecting the quality of our lives. Chief Justice Warren brought to this task human values of inestimable importance: common sense, unswerving personal integrity, great courage, dig-

nity, an abiding respect for those liberal and egalitarian tenets that are distinctive features of our conception of government.

Earl Warren came to this Court with almost 35 years' experience in state government. As a District Attorney and Attorney General of California he earned a reputation as a firm and fair enforcer of the law, gaining insights into the practical aspects of law enforcement, and building a basis for an assured approach—which grew throughout the years—of necessary guidelines for official conduct.

As Governor of California, Earl Warren proposed programs to promote dignity and opportunity for every individual—programs to ease the problems of the aged, to provide universal medical care through a system of compulsory health insurance, and to reduce racial barriers to full and equal employment.

His success in elective politics was perhaps less attributable to particular programs than to what a Los Angeles Times editorialist described as "the character of the man." He wrote:

> "Earl Warren is an authentic leader. The people recognize him as such. In his philosophy of public service he truly represents the people as a whole. This, too, the people recognize. He is a trained, earnest, competent, successful servant of the people."

So, too, the measure of Earl Warren's contributions as Chief Justice cannot be fully explained or truly appreciated in terms of any particular decision or group of decisions in which he participated. He remained throughout his lifetime an "authentic leader," dedicated to the betterment of the people as a whole. He perceived the cases before him as human problems, not abstract issues. He clearly understood the Court had a responsibility to speak not only to the Bench and Bar, but to all the people as well. His own opinions were written in lan-

guage all could understand—particularly in the most important cases.

Earl Warren's commitment to promoting the dignity of every individual and his interest in communicating that message to all is simply, but eloquently, illustrated by his statement in *Brown* v. *Board of Education* that:

> "To separate [children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority . . . that may affect their hearts and minds in a way unlikely ever to be undone." 347 U. S. 483, 494 (1954).

Earl Warren retained a basic faith that the legal process established by the Constitution remained the best means of protecting the individual, thus promoting the public good. He never doubted that our democratic processes were the best approach to government and that the inherent resiliency of American life could find solutions under law for our most serious problems. He believed that individual citizens, working together, could solve society's most pressing difficulties, that the basic goodness of the people would lead ultimately to general recognition of humanitarian innovation, and that one of government's principal responsibilities was to remain sufficiently accessible to permit and to foster self government.

His faith, his commitment, his vision of the responsibilities of government were expressed by him after his retirement as follows:

> "Where there is injustice, we should correct it; where there is poverty, we should eliminate it; where there is corruption, we should stamp it out; where there is violence, we should punish it; where there is neglect, we should provide care; where there is war, we should restore peace; and wherever corrections are achieved we should add them permanently

to our storehouse of treasures." E. Warren, A Republic, If You Can Keep It 6 (1972).

On the Court, Chief Justice Warren drew upon his experiences in state government in many ways—most notably in his efforts to make our democratic processes work better. For the individual citizen he felt the need to review and refine the protective processes of the law to assure that fairness was more nearly achieved. As he favorably quoted from *Weems* v. *United States,* 217 U. S. 349, 373 (1910), in *Miranda* v. *Arizona:*

> "'[O]ur contemplation cannot be only of what has been but of what may be. Under any other rule a constitution would indeed be as easy of application as it would be deficient in efficacy and power. Its general principles would have little value and be converted by precedent into impotent and lifeless formulas. Rights declared in words might be lost in reality.'" 384 U. S. 436, 443 (1966).

He was alert to urge that the constitutional protection offered every individual be made meaningful by procedural safeguards. Thus in *Miranda,* the privilege against self-incrimination was deemed by him to be secured only if a defendant was informed of his right to remain silent and to have the assistance of counsel. So also, the Court in *Gideon* v. *Wainwright,* 372 U. S. 335, 344–345 (1963), reversed its earlier decision and determined that the right to counsel in a criminal trial is indeed a fundamental right, because the "'right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.'"

Chief Justice Warren's emphasis upon the effectiveness of the political process as essential for representative self government caused him to characterize *Baker* v. *Carr,* 369 U. S. 186 (1962), and *Reynolds* v. *Sims,* 377 U. S. 533 (1964), establishing the principle of one man, one vote, as the most important in which he participated.

"I believe," he stated in 1972, "that if we had had the [*Baker* v. *Carr*] decision shortly after the Fourteenth Amendment was adopted that most of the problems that are confronting us today, particularly the racial problems, would have been solved by the political process where they should have been decided, rather than through the courts acting only under the bare bones of the Constitution." Recollections of Mr. Justice Warren, Trial Lawyers Quarterly, Vol. 9, No. 4, pp. 5, 9–10 (fall 1973). He felt the courts had to address the problem of grossly malapportioned state legislatures because there was no way under the state political process for the people to correct this condition.

Implicit in Warren's confidence in our system was the firm belief that our government is accountable to individual citizens. This is reflected in his opinion for the Court in *Flast* v. *Cohen,* 392 U. S. 83 (1968), holding that federal taxpayers have standing to challenge the constitutionality of federal expenditures which they allege to violate the Establishment Clause of the First Amendment. Like the reapportionment cases and *Powell* v. *McCormack,* 395 U. S. 486 (1969), *Flast* also exemplifies his effort to open the courts and the process of representative government to wider access.

Chief Justice Warren brought to the Court a perception of the human and social dimensions of cases. In a speech he delivered in 1965 at a meeting of the American Law Institute, he spoke eloquently of the many and tragic causes of crime. Among them he included low standards of law enforcement. He understood the need for determined law enforcement. In such cases as *Terry* v. *Ohio,* 392 U. S. 1 (1968), which dealt with constitutional implications of police use of tactics of "stop and frisk," he sought to bring into balance the necessity to protect society and its law enforcement officers and the rights of the suspected or accused. His opinions frequently reflected his conviction that it was precisely

when the lawfulness of an individual's conduct was being officially challenged that the Court's responsibilities as expositor and guardian of the constitutional guarantees are at their greatest.

Seven years ago, I had the privilege to speak at the dedication of the Earl Warren Legal Center, in the presence of Chief Justice Warren. I then said: "In the history of our country the record of the Supreme Court of the United States under the leadership of Chief Justice Warren is unparalleled in the effective attention given to constitutional doctrines to safeguard the dignity of the individual. The accomplishment is awesome. It ranges from the basic rights of accused defendants, to the reapportionment of legislatures, to the protection of free speech, assembly, teaching and association, to freedom of conscience, to the right to equal education. And any lawyer could add to this list. The Court has thus been concerned with the well springs of our society .... But I am sure the Chief Justice would agree that many of the decisions point directions for work which cannot be accomplished by the Court by itself. New tasks have been presented for the Bar and for public and private agencies; new responsibilities have been imposed upon the individual citizens."

To many in this country and throughout the world, Chief Justice Warren was a legendary figure: a man who understood and endeavored to give substance to the aspirations of the poor, the disenfranchised, the disillusioned. He was a man who remained calm and resolute in the midst of controversy, and used his craft as judge and statesman to recreate the ideals we hold as a people. Now his memory towers, the controversy fades, and history and we can claim him as one of the great judges who have renewed the strength of our law.

May it please this Honorable Court, and in the name of the lawyers of this Nation, and particularly of the Bar of this Court, I respectfully request that the resolu-

tions presented to you in honor and memory of the late Chief Justice Earl Warren be accepted by you, and that they, together with the chronicle of these proceedings, be ordered kept for all time in the records of this Court.

THE CHIEF JUSTICE said:

Thank you, Mr. Attorney General. The Court accepts today, with deep appreciation, the eloquent resolutions of the Bar of the Supreme Court and their tributes to our late brother, the Honorable Earl Warren, Fourteenth Chief Justice of the United States.

Your resolutions depict so well the unique public life of this remarkable man that it is difficult to find more to add by way of response.

Perhaps, both for the present occasion and for the future, we can appropriately add to the general content of these resolutions by drawing on some of our own personal contacts with him in the more intimate relationship that is reserved to those who inhabit this place as Members of the Court.

When Chief Justice Warren paid tribute to his predecessor, Chief Justice Vinson, 21 years ago, he said this of him:

> "His life glowed so brightly in all the positions he held with such distinction that even before coming to the Chief Justiceship he had devoted practically all his mature life to rendering valuable services to his country."

Surely those words form a fitting description of Earl Warren's life and service, as you have summarized them in these resolutions.

There was indeed much in common between the careers of the Thirteenth and Fourteenth Chief Justices, for each had, in a very literal sense, given his entire life to his country, foregoing the obvious success that each

would have achieved in private life, with its material rewards and privacy and freedom from the burdens of public life.

When Earl Warren came to this Court in 1953, it was under the difficult circumstances that you have alluded to, Mr. Solicitor General and Mr. Attorney General, arising, as we know, out of the sudden death of his predecessor shortly before the opening of the Term of Court.

Only those who have been part of this Court's work can understand the burdens attendant on the opening or the closing of a Term of the Court.

For a new Justice, and particularly for a new Chief Justice, to assume these responsibilities on one week's notice, four days after reaching Washington, as Earl Warren did in 1953, after having only a few days to wind up his affairs and duties as Governor of the great State of California, was a task of almost overwhelming dimensions. But his colleagues of that time watched him make the transition from executive to judicial office quietly and calmly.

It is sometimes said that we conduct our work in seclusion and secrecy. And to the degree that this is true, it is simply because there is no other way the Court can function. That very seclusion, and our concentration on each of the problems at hand, means that we are thrown together in a relationship far more intimate than that of members of the Cabinet, for example, or of the Congress.

By October 1953 the trend for a new social, economic, and political balance in American life, to which the resolutions have alluded, and which had begun after World War I and accelerated after World War II, was ready to press new problems on the courts in a greater degree than ever before in our history.

As the resolutions have noted, one crucial facet of the search for a new balance emerged in the administration of criminal justice. As we know, few lawyers in America

who ever came to this Court had a broader exposure or better understanding of the day-to-day functioning of the criminal law than Earl Warren.

Because criminal justice has such a high visibility and affects so many people, and because of the reality that thousands of years of effort by the human race have not produced effective solutions, there is a sharp divergence of opinion as to the ways and means to administer justice, even when there is a consensus on objectives.

The popular wisdom is that Justices are constantly locked in mortal combat with each other, within these walls. When that folklore was within reasonable bounds, Earl Warren could chuckle over it at lunch with his colleagues, and, drawing on his lifetime of combat in the political arena, he would remind them that there would be little to write about if the Court's work were faithfully depicted, and that news stories must color the reality to achieve readership. The truth, he would often remind his colleagues, is that, literally described, our activities are quite dull, even though not so to us.

In his 16 years here, there were numerous verbal attacks on Earl Warren and on the Court. They were not easy for him, for his family, or for the Court. Yet these attacks helped make him a symbol of what many others saw as the best about America. And this was particularly true as to the people in the emerging countries of Africa and Asia and other parts of the world.

As the resolutions have noted, the *Brown* holding came in his first year on the Court. And just as that marked a beginning, not an end, the changes in criminal law and procedure continued for most of the 16 years he presided over the Court.

Fortunately, a new attitude was beginning to emerge in the legal profession itself toward some of these changes. One example was on the right to counsel in criminal cases. For the legal profession, as for Earl Warren, the holding in the *Gideon* case, as one example,

important as it was, presented little or no difficulty. As a prosecutor and as Governor of California, he had supported the Public Defender concept.

Sometimes it was said of him that, as Chief Justice, he turned his back on all that he had stood for as a prosecutor; and, of course, few things could be a warmer compliment to a prosecutor who had become a judge. With Justice Jackson, who was once confronted, I believe, in these Chambers with a position he had previously asserted as Solicitor General, Earl Warren could say in effect: "When I was a prosecutor, I did my duty as a prosecutor; but now I am a judge."

Some people have expressed surprise that in assessing his years on the Court Earl Warren ranked *Baker* v. *Carr* and *Reynolds* v. *Sims* above even the *Brown* case, as the Attorney General has just noted. I have a feeling that he thought the result in the *Brown* case was so obvious and so overdue that he did not consider the basic decision a difficult one, and surely it was not a difficult one for him, even though he was well aware of its importance and conscious that its implementation would take a long, long time.

This was also true of the *Gideon* case, whose significance he recognized, but whose result was so clearly inevitable that it gave him no difficulty. Later, when a unanimous Court decided *Argersinger* v. *Hamlin,* 407 U. S. 25, in 1972, extending the *Gideon* principle to all cases involving imprisonment, he welcomed that holding warmly.

The reapportionment cases, of course, brought into focus his vast understanding of the American political process, and with it his passion for fairness. When we consider that the three areas that dominated the Court's attention during his tenure, as the Attorney General has pointed out, were: reapportionment, the civil rights of minorities, and criminal justice, we see that these were the problems that had engaged his attention for all of

his mature life; and in each of these areas the State of California had worked out solutions that commanded widespread and bipartisan support.

The fact that Justices disagree on the construction of a statute or the meaning of the words of the Constitution rarely has any effect on the personal relations within the Court. And with the other Justices, particularly over the lunch table, he could have a hearty laugh at a news story depicting two Justices as being enraged over their opposing positions.

Perhaps the most difficult adjustment he had to make, and it was one that he and I talked about on several occasions, was the change from being a political leader and Governor, where he was free and even obligated to respond to attack, to being Chief Justice, bound by the tradition of silence. Up to 1953, as Governor, he could answer an attack directly, or he could call on members of his party or of the legislature to state the true facts in response to an incorrect story or an opposing editorial.

He told me several times how frustrating it was when a false news account was published concerning the work of the Court, or the activities within the Court, and he could not pick up a telephone and call some responsible person to give the facts as an answer, as he was able to do while he was Governor or Attorney General.

He felt that the legal profession had some obligation to respond to attacks on the Judiciary, and he pointed to the great work done by the bar in defense of the Court, when the Court-packing episode occurred in the 1930's.

I first met Earl Warren in 1945 or 1946, when he was Governor, and we happened to stay at the same hotel in Chicago, where he was attending a meeting of State Governors. He was about to have breakfast alone in the dining room, at quite an early hour, and he asked me to join him. We quickly reached a topic of common interest concerning his then-current work on correctional

problems, and his program to overhaul the California penal system which was attracting much attention in correctional circles. He had called in a group of the best penologists in the United States and asked them to study the problems of California and recommend solutions. He then secured legislation and appropriations and brought in an outstanding penologist, Richard McGee, as the Director of penal institutions in California.

He did much the same in improving the California courts, and his nonpartisan, nonpolitical, merit appointments to the bench gave California one of the best state judicial systems in the country.

Various members of the Court recall personal kindnesses of Earl Warren, and a few of them will illustrate his thoughtfulness. When Justice Stewart was appointed to the Court in 1958, he received a call from Earl Warren asking about his travel plans and insisting on sending his car to meet him at the Union Station. When the Stewart family arrived, sometime before 7 a. m., they were met not only by the Chief's car and driver but by the Chief himself. And that presented some small logistical, practical problems, because there were six Stewarts in the party.

Another example of his thoughtfulness occurred when he was arranging to go to Florida for the dedication of a new law school at Gainesville, named for his old friend, Senator Spessard Holland, with whom he had worked in the Governors' Conference years before. In those days of frequent airplane skyjacking, a Government plane was made available to the Chief Justice for travel. And when he learned that I was on the dedication program, he called and invited me to accompany him on the plane. In the course of the trip, we talked about my view, expressed in a then-recent law school lecture, that some of the changes in criminal procedure, resulting from opinions of the Court, would perhaps better have been left to the rulemaking process.

We discussed my view that this would enable the rules of procedure to be made on the basis of a broad investigation, rather than on the narrow record of a particular case. And that it would also have the advantage of gradually developing a body of support within the legal profession and the public, affording a greater degree of acceptance of the end result when it was reached. We did not agree fully by any means in the course of that 2-hour or 2½-hour plane ride, but I think each of us returned from the trip with a better understanding of the other's position, and, for my part, a better understanding of the whole problem as it can be seen only from this Court.

On the day that I was confirmed for this Court, I telephoned and asked if Mrs. Burger and I could call to pay our respects, which we did the following day, at the Warren apartment. From that day forward, his door was always open to me, up to the time of his last illness. He always responded to my requests for advice and counsel, but rarely ever volunteered. And his wise counsel was always very helpful to me. He leaned over backward, sometimes I thought unnecessarily so, to avoid the slightest appearance of wanting to participate in dealing with the administrative problems that crossed my desk.

The transition in 1969 presented small problems that would have been of no consequence if separated from the pressures attending the final two weeks of the Term of the Court. We resolved them over lunch in several conferences. And I could not help but realize that his departure was, in some respects, as difficult as his taking office in 1953 on four days' notice.

In June 1969, he had presided over the Court for a full year after he had made the decision to retire, with all the emotional and other stresses attending such a step. When I asked him if he would administer the oath of office to me, and said that I wanted to do it in the

Court in order to emphasize the continuity of the Court as an institution, at a time when there was far too much loose talk about prospective changes in the Court, he agreed. And after the ceremony on June 23, 1969, he said to me in the conference room, with great feeling, that he hoped all of our successors would follow that pattern. Then he and Mrs. Warren graciously provided a reception in the east conference room.

In the five years that followed we consulted frequently on the problems of administration and matters before the Judicial Conference of the United States. He had enlarged the functions of that Conference, and he had prevailed upon the Congress to add to it one district judge representative from each of the circuits, an important change that was long overdue. He had also enlarged the committee structure, so as to draw nearly 200 judges into the work of the Conference advisory committees.

When it became clear that a comprehensive program of seminars for the training of new judges and for all judges on special topics was not feasible under the structure of the Administrative Office of the United States Courts, he along with Warren Olney, then the Director of that office, worked out the blueprint for the Federal Judicial Center, which has contributed so much to improving the work of the courts since it began operations in 1968, under the directorship of Justice Tom Clark. That institution, the Federal Judicial Center, stands as tangible evidence of his foresight and his concern to improve the work of the courts.

In one of our many talks he commented on how much he enjoyed the flower bed that had been placed just outside his windows. Knowing that as a Californian he was accustomed to very colorful flowers most of the year, I had asked the gardener to put masses of color in that particular bed. In some way he became aware of this. He then jokingly asked how I found time to worry about flowers. When I reminded him that I walked around

the building almost daily to relax and to relieve my frustrations, just as he went to football games and went duck hunting, he laughed heartily and said: "You'd better find a bigger place to walk; this place is not large enough to work off the frustrations of a Chief Justice."

When he came to the Court, Earl Warren, like his predecessors, Taft, Hughes, and Vinson, divorced himself totally from the political world in which he had been a foremost figure for three decades, and devoted all of his great energies to judicial work.

The sole exception in 16 years, as the Attorney General has noted, was to accept appointment as Chairman of the Commission to investigate the murder of President Kennedy. The attacks on the report of that Commission did not disturb him unduly, partly because others could and did respond, as he said, and because political murders were so common in human history that there were always people around to exploit the conspiratorial explanation. He accepted that assignment from President Johnson with great reluctance, but he performed it superbly in the minds of all thoughtful people.

The memorial resolutions have referred to Nina Warren's place in Earl Warren's life, and in his public career. We on the Court know her as a most private person, one who planned and dedicated her life to help him carry the heavy burdens of his public career.

Our response today would not be complete without an acknowledgment of how much his accomplishments were the product of a truly joint enterprise and, because of Nina Warren, a most happy one.

In an interview shortly before his last illness, Earl Warren made a statement that expressed the essence of his philosophy. He said: "I believe that every generation of Americans has a greater opportunity than those who preceded. I have confidence in our country, in our people, and in our institutions; and I believe we can and will go on to still greater things."

It is axiomatic that the life and services of a significant public figure cannot be fully or accurately assessed in his lifetime. Not until the passage of time insulates judgments from contemporary events can this be done objectively. Yet it is very clear that Earl Warren's contribution can safely and fairly be assessed now, to give him a foremost place among the 15 Chief Justices and more than 80 Associate Justices who have served on this Court since 1790. That assessment is bound to grow with the passage of time.

Those who sat with him up to June 23, 1969, and those of us whose contacts with him were chiefly in the five years that followed mourn the loss of a friend and colleague. Yet even as we do that, we take pride in his rich life and in his selfless service to our country.

Mr. Attorney General, Mr. Solicitor General, the Court thanks you for your presentations here today in memory of Earl Warren.

We ask you to convey to the Chairman and to the Committee on Resolutions our deep appreciation for their work. Your motion that these Resolutions be made part of the permanent records of the Court is hereby granted.