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Dedication

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THE HONORABLE EARL WARREN
CHIEF JUSTICE OF THE UNITED STATES

EARL WARREN

We are proud to dedicate this issue of the *Law Review* to The Honorable Earl Warren, Chief Justice of the United States.

Earl Warren came to the Court from California with a strong reputation as an able Attorney General and Governor, but he had never before served in a judicial capacity. As a moderate Republican, he had run for Vice President with Governor Thomas E. Dewey in 1948. President Eisenhower appointed him as the fourteenth Chief Justice of the United States in 1953. It was widely assumed that a good and moderate Republican was being rewarded for party loyalty.

However, from the very beginning, Earl Warren failed to fit any stereotype. Instead he became the ideal Chief Justice: a leader setting a high standard for the highest Court in the land. Earl Warren abandoned partisan politics, moderate Republican or otherwise, and became a force for fairness, for "Equal Justice Under Law." Chief Justice Warren has been very simply a Constitutionalist. However, that, considering the truly radical doctrines of equality embodied in that revolutionary document, remains extremely inflamatory to this day. It seems clear that in future years the decisions on individual liberties and civil rights of the "Warren Court" will be recognized for their historical awareness, not for any historical indifference. For underneath Earl Warren's opinions can be found a deep recognition that the Constitution is a living document, in need of preservation by a Court of understanding, concern and compassion.

Consequently, the true and lasting monument to the Chief Justice will be the impact of the decisions of the "Warren Court," many of which bear Earl Warren's name, for years to come. For in the final analysis, the "Warren Court" has been dedicated to promoting justice and protecting individual rights and that, ideally, is what America is all about.

After fifteen years of service on the Court, Chief Justice Warren sought retirement. Ironically, it was his greatest critics who prevented the United States Senate from even voting on the question of confirming the nominated successor. As a result, Earl Warren has begun his sixteenth year on the Court as Chief Justice of the United States. It is with deep respect and admiration that we wish him many years of continued successful service.

In recognition of this good and gentle servant's past contributions and continuing endeavors, we are proud to dedicate this issue.

THE EDITORS

TEXT OF THE PRESIDENT'S LETTER TO THE CHIEF JUSTICE

JUNE 26, 1968

My dear Mr. Chief Justice:

It is with the deepest regret that I learn of your desire to retire, knowing how much the Nation has benefited from your service as Chief Justice. However, in deference to your wishes, I will seek a replacement to fill the vacancy in the office of Chief Justice that will be occasioned when you depart. With your agreement, I will accept your decision to retire effective at such time as a successor is qualified.

You have won for yourself the esteem of your fellow citizens. You have served your nation with exceptional distinction and deserve the Nation's gratitude.

Under your leadership, the Supreme Court of the United States has once again demonstrated the vitality of this Nation's institutions and their capacity to meet with vigor and strength the challenge of changing times. The Court has acted to achieve justice, fairness, and equality before the law for all people.

Your wisdom and strength will inspire generations of Americans for many decades to come.

Fortunately, retirement does not mean that you will withdraw from service to your Nation and to the institutions of the law. I am sure that you will continue, although retired from active service as Chief Justice, to respond to the calls which will be made upon you to furnish continued inspiration and guidance to the development of the rule of law both internationally and in our own Nation. Nothing is more important than this work which you undertook so willingly and have so well advanced.

Sincerely,

/s/ **Lyndon B. Johnson**

The Honorable Earl Warren
The Chief Justice
of the United States
Washington, D. C.

DEDICATION TO CHIEF JUSTICE EARL WARREN

Those of us who have served with Earl Warren are too close to make an enduring historic judgment of the role of the man in the sweep of American history.

Many of us, however, feel that in time he will be ranked with Marshall and Hughes.

Earl Warren's life and experience belie the common assertion that members of the Court should be chosen from the hierarchy of federal courts or from state courts. It is only a myth that prior judicial experience qualifies one for service on the Court.

The Court is in essence the referee of the federal system. No other court has that role; and on no other court is experience as a referee obtained.

Earl Warren's background was not only law but public administration and politics. These are experiences that season one's judgment and enable him to see the powerful cross-currents at work in a country of the size and diversity of the United States. The law of the Constitution, as applied by the Court, is not to be found in books alone but through insight into the actual operation of principles as vague as "due process" and "equal protection." The law books give a measure of the thinking of the prior age on these problems. Yet each generation faces not maintenance of the *status quo* but adaptation and change to new conditions. It is that resilience in our Constitution that has made it enduring. The process is timeless and ageless. It is by that standard that Earl Warren will be judged as Chief Justice.

That is why I think he will be classified with Marshall and Hughes, who also saw the United States in large dimensions and recognized that the quality of justice is the measure of a nation's worth.

/s/ **WILLIAM O. DOUGLAS**

Associate Justice
United States
Supreme Court

DEDICATION TO CHIEF JUSTICE EARL WARREN

The history of a society is chronicled in its courts. Its greatness is measured by the quality of its criminal justice.

Early societies determined criminal responsibility through compurgation; later through wager of battle, ordeal or torture; and, finally, by one's peers.

The jury concept reached its attainment in Athenian days. The Court of the Heliasts, while presided over by the King-Archon, was attended by a jury varying from 101, 501 or 1001 talismen. The duty of deciding guilt and assessing punishment was for the jury. Socrates was found guilty of impiety and of corrupting Athenian youth by a majority of 60 of 501 jurors who heard his case.

Some eighteen hundred and eighty years later, Joan of Arc was tried for heresy before a French ecclesiastical court divined by letters patent of Henry VI of England. She had neither counsel, witnesses nor jury upon which to place herself. Indeed, the English themselves, in order to secure jurisdiction over her person, bought Joan from the custody of Philip of Burgundy for ten thousand English pounds in gold, plus some fringe benefits. Found guilty of claiming that she was sent by God with divine secrets given her by St. Michael and St. Gabriel, she was burned at the stake.

Mary, Queen of Scots, was taken in custody in 1568 where she remained until 1586 when she was formally charged by Elizabeth's Commissioners. She was found guilty of aiding and abetting the Conspiracy of Babington to overthrow the English throne and was beheaded by a bungling executioner who took three thrusts of the ax to consummate her sentence.

Galileo was convicted before the Holy See for espousing the Copernican Theory, that the earth revolves around the sun. His was also the offense of heresy, in that by submitting nature to law he questioned God's free will. Unlike the fate suffered by Joan of Arc convicted of a related offense, Galileo was confined to the Pope's prison in the Holy Office on an indeterminate sentence.

By 1692 the Salem Witchcraft trials in New England were mute evidence of the extent to which these punitive uses of the old world had migrated to our shores. The hanging of countless women and the *peine forte et dure* sentencing of men until they spoke or died resulted without the benefit of counsel and solely through self-incrimination.

However, it was not too long before the colonists revealed that their courage extended beyond voyaging to unknown shores. They dared to destroy in the new world the growing restrictions that royalty was placing on the printing press: the continual effort to control speech and assembly. It was in 1737 that John Peter Zenger suffered arrest in New York for seditious libel. He had printed the truth about Governor Cosby. After waiting in jail for nine months before he was tried, he came clear before a jury that had the courage to find that his publication against the Governor was true and, therefore, not libelous. This was the dawn of a new day. A free press began its never failing effort to inform the people and to reform their processes. It was the start of the pamphleteer—whose befriending hand unlocked many a jail door and proved to be freedom's most potent weapon.

The result was that the Bill of Right's first amendment guaranteed freedom of speech, press and religion; the fourth protected one's papers and effects from unreasonable search and seizure, the fifth outlawed self-incrimination, the sixth granted the right to counsel in criminal cases and the seventh secured the ancient privilege of trial by jury. However, these safeguards ran against the federal government alone. Not until over three quarters of a century later—and then only after the Dred Scott decision had removed the slavery issue from the political forum to the battlefield—was the fourteenth amendment adopted. And even though its due process clause protected the individual's "fundamental rights, specially secured by the Federal Constitution"[1] from invasion by the State, the amendment proved to be little more than a symbol of justice and equality. Indeed, the Court found as late as 1922—54 years after the amendment's adoption—that "neither the 14th Amendment nor any other provision of the Constitution of the United States imposes upon the States any restrictions about 'freedom of speech' . . . ."[2]

While the Court evidenced concern for the freedom of the individual from the "meddlesome interference" of the State in economic matters, it again and again struck down legislation supporting personal liberty, public welfare and national survival.[3]

One might say that it was not until 1925 that the fourteenth amendment was given any force and effect as to *human rights* as

[1] Rogers v. Peck, 199 U.S. 425, 434 (1905).
[2] Prudential Ins. Co. v. Cheek, 259 U.S. 530, 543 (1922).
[3] Adkins v. Children's Hospital, 261 U.S. 525 (1923); Tyson & Brother v. Bantons, 273 U.S. 418 (1927); Ripnik v. McBride, 277 U.S. 350 (1928); R.R. Retirement Board v. Alton R.R., 295 U.S. 330 (1935); United States v. Butler, 297 U.S. 1 (1936).

distinguished from those to *property*. The break in the dike came in *Gitlow v. New York*,[4] where the Court declared the above language of *Prudential Insurance Co.* to be merely an 'incidental' reference and proceeded to *assume*—not to hold "the freedom of speech and of the press... are among the fundamental personal rights and 'liberties' protected by the due process clause of the 14th Amendment from impairment by the state." There followed a series of cases that specifically applied the entire first amendment to the States through the due process clause of the fourteenth amendment.

This is not to say that in the criminal field the Court gave the amendment no recognition. In *Powell v. Alabama*,[5] the requirement of counsel in state prosecutions in capital cases was announced. This was followed in 1936 by *Brown v. Mississippi*,[6] which continued the "special circumstances" doctrine of *Powell*. In *Betts v. Brady*,[7] the Court specifically held that the sixth amendment's command as to assistance of counsel in criminal cases applied only to federal trials and the "special circumstances" doctrine was made the rule of decision in such cases. This created an anachronism in the Constitution—its protections depended upon the gravity of the circumstances and of the charge. This rule was to be the law of the land for over a score of years.

Slight rays of light in the school segregation area only began in 1938. In *Gaines v. Canada*,[8] Missouri was required to admit Gaines to its law school "in the absence of other and proper provision for his legal training within the State." This final thrust by Chief Justice Hughes was most unfortunate. It extended for the first time the "separate but equal" doctrine of *Plessy v. Ferguson*[9] to education and delayed the integration of public schools for some twenty years.[10] Tests of this doctrine, however, continued at the graduate school level and in 1950 the leading case of *Sweatt v. Painter*[11] found it inapposite and thereby paved the way for integration in not only the graduate but the preparatory schools.

Previously, in 1948, another landmark case in the area of segregation had sparked hope for eventual equality in housing. *Shelley v. Kraemer*,[12] written by Chief Justice Vinson, declared that the

[4] 268 U.S. 652, 666 (1925).
[5] 287 U.S. 45 (1932).
[6] 297 U.S. 278 (1936).
[7] 316 U.S. 455 (1942).
[8] 305 U.S. 337, 352 (1938).
[9] 163 U.S. 537 (1896).
[10] *But cf.* Cuming v. Board of Education, 175 U.S. 528 (1899).
[11] 339 U.S. 629 (1950).
[12] 334 U.S. 1 (1948).

judicial enforcement of restrictive covenants in deeds was "state action" prohibited by the fourteenth amendment's equal protection clause. This was the forerunner of a series of cases coming on in the sixties that have tempered the strict construction of the doctrine of "state action" as enunciated in the *Civil Rights Cases*.[13]

Chief Justice Warren came to the Court at the beginning of the October 1953 Term. He was 62 years old, was a graduate of the University of California Law School and had been admitted to the Bar since 1914. His public service began as a Clerk to the Judiciary Committee of the California Assembly and embraced the offices of Deputy City Attorney of Oakland, District Attorney of Alameda County, Attorney General of California and Governor of the State for eleven years, when President Eisenhower appointed him the Chief Justice of the United States.

"Laissez faire" was the tag placed on the Court during the period of the "nine old men." Not since the time of Chief Justice Fuller, along with Justices Field and Brewer, had the Court followed the "leave things as they are" course as conscientiously and faithfully. In fact, it had been elevated into a constitutional policy. Beginning with *West Coast Hotels v. Parrish*,[14] and the line of cases overruling *Adkins*, it was whittled down somewhat before Chief Justice Warren's appointment. This was especially true in the area of congressional and executive action as well as "state action" in the segregation field. However, as was true of the whittling on sticks of old men sitting around town squares on Saturdays, there was more talking done than whittling.

"Activist" is the handle given the Court under the Chief Justiceship of Earl Warren. But unlike an executive or a legislature, a Court can hardly initiate action. Even though the Chief Justice's long service in state office had been marked with progress in the area of criminal justice and social improvement, he was faced with a much different situation on the Court. As Chief Executive of the state he could initiate action or seek statutory reform where necessary. He did not have to wait or depend upon any one else. On the Court he not only was obligated to wait—sometimes for years—for cases to reach the Court and be prosecuted but after submission he could do nothing affirmatively without the concurrence of at least four other justices. But, purely by happenstance, the stage had been set for action in the segregation field. When he arrived, *Brown v. Board of Education*[15] had been set for re-argument by an

[13] 109 U.S. 3 (1893). *See* Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961) and United States v. Guest, 383 U.S. 745, 762 (1966).
[14] 309 U.S. 379 (1937).
[15] 347 U.S. 483 (1954).

order of the Court dated June 8, 1953, along with four other cases with which it had been consolidated.[16] And it was argued on December 7th-9th, only 63 days after he took his seat. His unanimous opinion for the Court in the case was announced five months later. The Court overruled the old *Plessy* doctrine, which had been seriously eroded, and extended the *Sweatt* case to the grade and high schools. The Chief Justice depended not only upon *McLaurin v. Regents*[17] and *Sweatt* but quoted with approval findings of the trial courts of Kansas and Delaware that segregation bred a "sense of inferiority" in the Negro children that directly "affects the motivation of a child to learn" and "has a tendency to [retard] the educational and mental development of Negro children . . . ."[18] *Brown* started a rash of school cases that soon led into other segregated areas, such as public accommodations, transportation, restaurants, etc.[19] Several hundred cases accumulated in the Court involving sit-ins, lie-ins etc., which were being held awaiting decision on controlling questions already submitted. Finally, Congress enacted the Civil Rights Act of 1964 prohibiting discrimination in places of public accommodation, and the Court held that this abated all of the convictions, as well as prosecutions, where the places involved came within the requirements of that Act.

The Court, as I have indicated, cannot reach out and announce a rule of law. It must await the filing of a justiciable controversy involving a substantial federal question. But as we have seen one decision in a given field—such as segregation in education—spawns other questions in related quarters. This is the reason that hundreds of cases on the segregation issue reached the Court in the first ten years of Chief Justice Warren's tenure. They started with *Brown* and its companion cases in education but quickly spread to other segregated areas. The Court did not reach out for the cases. They were filed with it—action was demanded of it and the Court was obligated to act. In fact it had already delayed the school cases for some three years before the 1954 decisions came down.

Criminal cases—both state and federal—are filed in the Supreme Court most every day. Less than seven percent of them are

[16] The consolidated cases were *Brown* from Kansas, Briggs v. Elliott, from South Carolina, Davis v. County School Board from Virginia, Gebhart v. Belton from Delaware and Bolling v. Sharpe from the District of Columbia. The cases were consolidated on June 8, 1953 and set down for argument for the October 1954 Term on December 7-9, 1953.

[17] 339 U.S. 637 (1950).

[18] *See* note 15 *supra*, at 494.

[19] *See* Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964); Cox v. Louisiana, 379 U.S. 536 (1965); Lombard v. Louisiana, 373 U.S. 267 (1963); Edwards v. South Carolina, 372 U.S. 229 (1963).

ever heard. Still among them often came cases involving serious questions under our Federal Constitution. Such a case was *Griffin v. Illinois*.[20] It made a simple demand and one that everyone would agree had merit. It was that a transcript or authentic record of some kind should 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*,[21] 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*,[22] 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*.[23] It was written by Chief Justice Warren.

A third arena and, perhaps the most far-reaching of all, in which the Court was called upon to act was in the reapportionment cases. Prior to *Baker v. Carr*,[24] the Court had refused to take jurisdiction of these cases on the ground that they raised political questions rather than justiciable controversies.[25] However, the impasse that faced Tennessee was too much for the Court to stomach. Tennessee had written into its Constitution that its legislative and congressional districts must be reapportioned every ten years. At the time *Baker* was argued in 1961 no district had been reapportioned despite the command of the Constitution sixty years before. The Court, therefore, held that the question was justiciable and directed the trial court to hear it. This led to a downpour of cases which, I daresay, involved practically every state of the Union.

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[20] 351 U.S. 12 (1956).
[21] 372 U.S. 335 (1963).
[22] 378 U.S. 478 (1964).
[23] 384 U.S. 436 (1966).
[24] 369 U.S. 186 (1962).
[25] *See* Colegrove v. Green, 328 U.S. 549 (1946).

After *Baker* put the Court in what Mr. Justice Frankfurter called "a political thicket," perhaps the most far-reaching of the many opinions on the subject was *Reynolds v. Sims*.[26] It was written by Chief Justice Warren and enunciated the "one man, one vote" rule and applied it to both houses of the legislature. This case alone has controlled the disposition of at least twelve cases from as many states, seven of which were per curiam opinions.[27]

There are many other branches of the law where the Chief Justice has written the opinions of the Court. To some they may appear more important than the ones we have mentioned. It is sufficient to say that our forefathers conceived this nation as an escape from tyranny and its Founders devised its basic charter as a protection to the unalienable rights of both the rich and the poor, the ignorant and the educated, the black and the white. And, in that instrument, they created the Court as every man's protector of those national privileges. The cases that I have mentioned, therefore, have a universal bearing and impact.

However, there is one more case that I must mention. It was the last opinion that Chief Justice Warren handed down.[28] Ever since 1923 the Court has held that a taxpayer, as such, is without standing to challenge the constitutionality of a statute.[29] The Chief Justice in his opinion for the Court in *Flast* struck down this old rubric. This opinion will go down, I say, as the most far-reaching holding pronounced by the Chief Justice. It was long overdue and will open the court to test cases on constitutional questions that heretofore were often nigh unassailable.

In my eighteen years of service on the Court, I have not only continuously studied its cases but those of other nations. If a civilization is ranked according to its system of justice, I submit that ours is the most enlightened civilization in history. Moreover, the fifteen-year period covering Chief Justice Warren's tenure has added more stature to our judicial system than any era in our history. Beyond question, the rights of man have been enlarged and extended further and given more constitutional protection than ever before. This is not to say that the Chief Justice brought this

[26] 377 U.S. 533 (1964).

[27] *See* Lucas v. 44th General Assembly, 377 U.S. 713 (1964); Maryland Committee v. Tawes, 377 U.S. 656 (1964); Davis v. Mann, 377 U.S. 678 (1964); Roman v. Sincock, 377 U.S. 695 (1964); and the per curiams: Hill v. Davis, 378 U.S. 565 (1964); Meyers v. Thigpen, 376 U.S. 902 (1964); Pinney v. Butterworth, 378 U.S. 564 (1964); Williams v. Moss, 378 U.S. 558 (1964); Germano v. Kerner, 375 U.S. 991 (1964); Hearne v. Snylie, 378 U.S. 563 (1964); Marshall v. Hare, 378 U.S. 560 (1964).

[28] Flast v. Cohen, 392 U.S. 83 (1968).

[29] *See* Frothingham v. Mellon, 262 U.S. 447 (1923).

about singlehandedly. He would be the first to say that it was the Court that accomplished it. But as one who was on the Court, I add that it might well have never been done without him. As I have noted, he is a man of action. By this, I mean that he never dodged any of the issues nor hid behind any of the technicalities that afford avoidance and delay. He met the question head-on, considered all of its ramifications and came up with his own honest and sincere answer. He was an indefatigable worker in the vineyard—an equal among equals—but always responding to the duties of Chief Justice with that humility, friendliness and integrity that was his hallmark. His was an example that not only endeared him to each of us but stimulated greater achievement in all of us.

When he told me of his retirement, I was sad. But selfishly I was glad because I knew we could put in more time together fishing, swimming, walking, attending spectator sports and just prognosticating, as old folks do. And now that he is moving his chambers down next to mine and our Brother Reed, we welcome him to the ranks of the retired—an honorable estate—where together we—like the Three Musketeers—can continue to work, perhaps harder than ever, for a more effective administration of justice.

It is most fitting that the Nebraska Law Review honor the Chief Justice through this dedication. John Stuart Mill once said:

> The worth of a state, in the long run, is the worth of the individuals composing it... a state which dwarfs its men, in order that they may be more docile instruments in its hands even for beneficial purposes—will find that with small men no great thing can really be accomplished.[30]

The worth of the United States—in the long run—and the worth of the individuals composing it will be the greater for Earl Warren having been their Chief Justice.

TOM C. CLARK

Associate Justice,
United States Supreme Court

[30] J. MILL, *On Liberty* 144 (Oxford Univ. Press 1942).

DEDICATION TO CHIEF JUSTICE EARL WARREN

The appointment of the Chief Justice and the decision in *Brown*[1] shaped our lawyer lives. Just as we were children of the Roosevelt years we were to become lawyers whose entire experience would be shaped by rulings of the Warren Court and the American response to them.

As law students, racial questions had been limited to briefing a few cases in Constitutional Law. All of our fellow students at the University of Alabama were white. Most of us were zealous middle class seekers of fortune in corporate practice or successful political careers. A few of us, too few, were interested in criminal and government practice.

A school desegregation case, *Lucy v. Adams*,[2] to culminate in riots in 1956 and a school house door stand in 1963 was wending its way through the courts. But the white South of pre-1954 liberalism was bracing for the inevitable. Some of us welcomed it.

Louisiana State University and the University of North Carolina had done *It* with grace. They had integrated without violence and so could we—we thought.

Wrong as we were about that, we were right about the rule of law, the use of law as a precursor of social change in America. There were others waiting in the wings, the anti-Hill-Sparkman-Folsom Democrats who knew that the politics of race would make leadership falter, then fail and fall from power.

Working in the Birmingham post office during one Christmas holiday I seriously asked a Negro co-worker why he didn't become the first Negro to enroll at the University of Alabama School of Law rather than Howard University where he was then a student.

He laughed.

"My family fought to eat in the Depression," he said. "In the war it was a fight to stay alive."

"Man, I'm tired of fighting."

But fight he would as would we all, for every generation must fight for freedom. At first it was the complicated matter of enlistment, of choosing sides. *Brown* was the catalyst and after May 17, 1954, young men and women were forced to choose sides.

The Warren Court made life difficult for those of us with a vested interest in the southern way of life, community acceptance, social prestige, corporate practice, and, perhaps, political office.

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[1] Brown v. Board of Education, 349 U.S. 294 (1954).
[2] 350 U.S. 1 (1955).

But the law, if relevant, and its practice, if important, makes for no easy life. Justice lies in trials, not trivia, not in the antiseptic avoidance of social controversy. The corporate board room produces secretaries of state; courtroom advocacy provides protection from the state itself. Across the South white lawyers were confronted with decisions to be made in cases having "racial overtones," and, from those decisions almost inevitably, the road led to acceptance of cases embodied in the spat out phrase "civil rights."

Slowly a few white lawyers joined the ranks of Negro attorneys on the lonely road that began in the courtrooms of the Deep South and ended in the Supreme Court.

These lawyers, the southern Warren Court lawyers, say thank you Mr. Chief Justice for the opportunity to face hard decisions, to do the right thing, to take the "wrong" cases and the less than easy way.

But *Brown* and its progeny do not stand alone.

On August 26, 1961, in the United States District Court for the Middle District of Alabama, we filed *Sims v. Frink.*[3]

Later after the District Court entered the nation's first provisional reapportionment order[4] calling for an election under a court-drawn plan, the Judge of Probate of Dallas County, (Selma) Alabama, B. A. Reynolds, appealed to the Supreme Court. Intervenors appealed and *Reynolds v. Sims*[5] was born.

In *Reynolds* the Chief Justice wrote:

> "Legislators represent people, not trees, or acres. Legislators are elected by voters, not farms or cities or economic interests."[6]

This correctly stated what should have been and was to be true. But before *Reynolds* legislators did not in fact represent people.

Reynolds was one more giant stride by the Warren Court to make America live by its own promise, to make the system work *on its own terms.*

In the other great field of power, equality in the administration of justice, the Constitution was made to come alive.

The Warren Court moved to strengthen and make fair the three great instruments of power in a democratic society—the right to vote; the right to speak, to listen, to write, to read, to learn; and the right to be tried fairly.

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[3] 205 F. Supp. 245 (M. D. Ala. 1962).
[4] Sims v. Frink, 208 F. Supp. 431 (M. D. Ala. 1962).
[5] 377 U.S. 533 (1964).
[6] *Id.* at 562.

The Court has been condemned and praised for being "activist". It was not "activist"; it was fair and true to the promise of the Constitution. Perhaps since 1937, the executive and legislative branch of our government had merely moved to contain ferment. The Warren Court made possible the free and peaceful expression of the people's will in a time of world and national change. Now men who desired peaceful democratic change had hope. And first the President, then the Congress, followed their Court and made their "promises to keep".

Friends have been killed in these years. But neither bombings, nor burnings, nor staccato shots in the night, nor assassination will still the promise of a united America.

But there is more to the Warren Court than the leadership it gave to the nation. There is Earl Warren himself. He outlasted those words on Twentieth Street in Birmingham. The first message, "Impeach Earl Warren," eventually gave way to "Support Your Local Police." When they were right they were supported. When wrong they were told so, and, they too will be stronger and more efficient for the efforts of Earl Warren. He had persistence and courage and courtesy and hope and humor, ability, honor, integrity, and political skill. These are essential for a great Chief Justice.

And he has warmth: indeed you did know him when you saw him. You felt that warmth when he smiled and welcomed you to the Bar of the Court. You felt it in the courtesy of his questioning, in his comment during arguments.

But most of all the Warren Court gave us the feeling that we too were a part of the system of justice and we too would make this system work.

Those on the other side of our Constitution can feel that. It was not we "outsiders" who were outsiders, it was they. Racism, separatism, brutality, discrimination, attempting to quiet the speaker in or out of the legislature or the newspaper editor, or the standing of a lonely, illiterate man against the state without counsel, and the deprivation to some men by others of a voice in determining their own affairs is now abroad in our land. The Warren Court gave hope to the poor, the oppressed, and the weak. It defended them against the tyranny of the majority and, it defended the majority against the tyranny of an electoral minority.

Mr. Chief Justice Warren understands the political America, the workings of local, state and national government and the capacity of our institutions. He is refutation of the belief that no man

should be a judge who has no judicial experience. His years have proved that bar association control of judiciary selection would sap life from the courts as institutions responsive to change in a complicated society. It was from the rough and tumble of politics that the Chief Justice came. It was from this life that his understanding of America came.

So thank you Mr. Chief Justice for fifteen years of building Constitutional walls of protection and bridges of equal access for all Americans.

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Several years ago I took my wife and our then eleven year old son to the ball game at Yankee stadium. Searching for a taxicab to the airport we stood near the Yankee club house exit.

Hundreds of children clamored for autographs from Ralph Houk and shouted "Yogi!" "Yogi!". You and two other men walked unnoticed to a waiting automobile.

My son waved at you. You waved back.

I felt it strange that children sought the Yankee catcher and let the Chief Justice of the United States, out-of-uniform and unrecognized, walk by.

But those children, were happily seeking their own heroes at an age when others not too long ago marched stiff-legged as a part of the Hitler Youth.

Our children do not yet have an equal chance to grapple with the opportunity that is the hope of this land but the Warren Court has opened doors and kept alive the chance that their dreams may be realized. And perhaps our children will do more to make a still better life for all of us.

And then, I thought—why should those children have recognized you. It sometimes takes time for men, let alone children to recognize those who've fought their battles for them and kept them free.

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