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Chief Justice Earl Warren

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CHIEF JUSTICE EARL WARREN

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Before one can discuss the contribution of any specific Justice of the Warren Court to equal protection, he faces the difficult task of separating that individual's work from the whole. This is particularly true with the Warren Court because it, possibly more than any other Court, has come to bear the appellation of its Chief Justice. I believe, however, that as an individual, Chief Justice Earl Warren had a great impact on shaping the expanded role the Court assumed during its sixteen year tenure, and he especially influenced the two most significant decisions of that Court, and perhaps of our time, *Brown v. Board of Education*[1] and *Baker v. Carr*.[2]

On May 17, 1954, Chief Justice Earl Warren read to a packed and expectant Courtroom the words that would ignite the torch in the final assault on discrimination and segregation in this country, not only in education, but in every facet of society that operated upon the public functioning of the citizenry of this nation.[3] The rallying cry of the die-hard, unreconstructed segregationist was that once blacks achieved integration in the schools, they would next want to marry their white daughters. While their focus of the next black thrust was obviously erroneous, these persons were eminently correct in perceiving that school desegregation would not be the final goal, and that once this objective were attained there would be assaults launched on all the remaining vestiges of racism until they, indeed, had been removed root and branch.

Just as *Sweatt v. Painter*[4] pointed inexorably toward *Brown*, those

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1. 347 U.S. 483 (1954).
2. 369 U.S. 186 (1962).
3. Brown v. Board of Educ., 347 U.S. 483 (1954).
4. 339 U.S. 629 (1950). *Sweatt* was actually the last in a series of carefully planned cases in which the NAACP chipped away at the underpinning of segregated education. The NAACP deliberately chose to concentrate its efforts in the arena of higher education, primarily at the graduate and professional level, because it correctly perceived that integration at these levels would be met with less resistance than in the public schools. *Sweatt* was the first case to reach the Supreme Court where in the Court could deal squarely with the issue of whether a separate facility was actually equal. In holding that the newly created black law school at Texas State University was not the equivalent of that at the University of Texas, the Court cleared the way for a frontal assault on all segregated education.

who would stay the hand of progress toward full participation of blacks in the public society and body politic of this country well knew that the tide could not and would not be turned at the schoolhouse door.[5] As we now reflect upon what must have been in the mind of Earl Warren in October 1953, as he prepared to assume the position of Chief Justice, we must conclude that he approached his task fully cognizant that as momentous as the striking down of segregation in the public schools might be, it would be but a first step in the process of acquiring equality for the black man.

Brown is significant for what it states and for what it does not state, but equally significant, and perhaps even more important, is the role played by Chief Justice Earl Warren in fashioning a decision that would unite a divided Court so that the decision could be a unanimous pronouncement of the Court.

Reading the final two paragraphs of the Court's decision, the Chief Justice stated: "We conclude . . . ."[6] At this point, Chief Justice Warren departed from the printed text before him to insert the word "unanimously."[7] This pronouncement sent a sound of muffled astonishment eddying around the Courtroom. He continued, "[I]n the field of public education the doctrine of separate but equal has no place. Separate educational facilities are inherently unequal."[8] In those simple but dramatic words the Chief Justice was proclaiming to all that the plaintiffs in all the cases consolidated under the heading of *Brown v. Board of Education* had been denied equal protection of the laws as guaranteed by the fourteenth amendment.[9]

More important than the written words of the text was the one inserted word "unanimously." There must have been much speculation regarding the decision, and certainly there must have been a considerable amount of guessing by Court watchers as to how each Justice would vote. But probably no one, other than the members of the

5. The provision of universal "free" public education is a uniquely American idea and is rooted in the notion of our constitutional form of participatory democracy. Blacks have traditionally viewed education as a means of achieving greater participation in the social, economic, and political fabric of this society. I cannot but believe that whites who fought so vehemently against integration also perceived that the disestablishment of segregated public schools would lead to a further erosion of their control over the black populace in these other vital areas and, thus, their opposition, although neatly cloaked in constitutional arguments about states rights, was generated as much, if not more, by this concern.

6. 347 U.S. at 495.

7. R. KLUGER, SIMPLE JUSTICE 707 (1976).

8. 347 U.S. at 495.

9. The companion cases included: Briggs v. Elliott, 103 F. Supp. 920 (1952); Davis v. County School Bd., 103 F. Supp. 337 (1952); Gebhart v. Belton, 33 D. Ch. 144, 91 A.2d 137 (1952).

Court, was prepared to hear that the decision was a unanimous one.[10] There were no concurring opinions, and most assuredly there was not even one dissenting voice.

Much has been said and written about *Brown* and its progeny. The internal drama which led to this unanimous decision and the important role played by the Chief Justice is less well known. With the perfect vision of hindsight it is rather easy to believe that a single decision mandating immediate disestablishment of the segregated school systems was the better course. However, let us look at the man, Earl Warren, and his participation as Chief Justice in the development of that unanimous decision and consider whether there was any other choice realistically available to the Court, given the circumstances under which that decision was fashioned and the political climate of the day.

First, let us look at the man Earl Warren before we consider him as the Chief Justice. Earl Warren was born in Los Angeles in 1890.[11] His father, Matt, was a Norwegian immigrant who came to the United States shortly after the Civil War.[12] Earl Warren attended both undergraduate school and law school at the University of California at Berkeley.[13]

In 1925, he became the district attorney for Alameda County where he was a vigorous prosecutor, well respected by all.[14] He even stopped drinking so that he could feel comfortable in his prosecution of bootleggers during the era of prohibition.[15]

As a result of his dedication, Earl Warren was elected Attorney General of the State of California[16] thirteen years later in 1938. In this capacity, he became one of the first to express the notion of a "yellow peril" posed by the Japanese-Americans living on the West Coast.[17] This is one of the ironies in the life of Chief Justice Earl Warren—a man whose name would identify a Court that would be considered synonymous with civil liberties. That he was a strong supporter of the effort to remove the Japanese is evidenced by his testimony before a special California House Committee on the desirability and the wisdom of removing the Nisei from the West Coast and relocating them in

10. The importance of this unanimity cannot be overstated; those who were to desperately oppose the implementation of the integration of the schools would clutch at the flimsiest of straws in support of their position. Thus, even one dissenting opinion would have made the excruciatingly difficult task ahead all the more difficult.

11. R. KLUGER, *supra* note 7, at 659.

12. *Id.*

13. *Id.* at 659-60.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* at 661. *See* Korematsu v. United States, 323 U.S. 214 (1944).

detention camps.[18] He stated that "the Nisei had an 'entirely different' cultural background from that of other Americans, including those of German and Italian extraction, and [he] produced maps of the California coast showing that 'virtually every important strategic location and installation' from Marin County to the Mexico border had one or more Japanese-American land owners in the immediate vicinity."[19] He concluded his testimony by proclaiming, "It is a situation fraught with the greatest danger and under no circumstances should it ever be permitted to exist."[20]

The final irony in this situation lies in the fact that just two weeks before the decision was issued in *Brown*, Chief Justice Warren wrote an opinion in a case involving jury discrimination against Mexican-Americans.[21] In this opinion, he stated that the fourteenth amendment clearly provides protection to "any delineated class" and that those protections are to be extended to any class that is singled out for discrimination.[22]

Chief Justice Warren never really apologized for his role in the removal of the Nisei from the West Coast and, perhaps, that indicates another measure of the man. Although he considered the action regretable, even in his later years he viewed it as necessary, given the emotional feelings against the Japanese. In defense of Chief Justice Warren, it should be pointed out that President Roosevelt ordered that the step be taken;[23] Tom Clark was sent by the Justice Department to oversee the relocation;[24] and the Supreme Court, in a 6 to 3 opinion authored by Hugo Black (who was the foremost civil libertarian of that Court), eventually sanctioned it as an emergency war measure.[25] Notwithstanding all of that, it should not be overlooked that the relocation of the Japanese was more racially inspired than it was dictated by any military expediency. Also, as late as June 1943, then Governor Earl Warren was still supporting the removal of the Japanese.[26] In a

18. R. KLUGER, *supra* note 7, at 661.

19. *Id.*

20. *Id.*

21. Hernandes v. Texas, 347 U.S. 476 (1954).

22. *Id.* at 478. Obviously the Chief Justice recognized that although Texas had classified Mexican-Americans as "white," they, nevertheless, were capable (primarily by surnames) of being singled out as a delineated class. It was this singling out for special treatment that constituted a denial of equal protection. In *Hernandes*, it was held that the state had denied equal protection to citizens of Mexican ancestry by systematically excluding them from juries. Perhaps Chief Justice Warren chose this case, just as he was to later choose *Baker v. Carr* as a vehicle to exorcise one of the demons of his political past. For a discussion of his involvement with *Baker v. Carr*, see text accompanying notes 64-65, 68-70 *infra*.

23. R. KLUGER, *supra* note 7, at 662.

24. *Id.*

25. Korematsu v. United States, 323 U.S. 214 (1944).

26. R. KLUGER, *supra* note 7, at 662.

meeting of governors held that year in Ohio, he stated: "We don't propose to have the Japs back in California during this war if there is any lawful means of preventing it."[27] Again to his credit, however, during the closing months of the war when the Nisei were permitted to return to the coast, Governor Warren convened emergency meetings of state officials to insure that the Japanese-Americans would be allowed to resettle peaceably and would be given the "full protection of the law."[28] He was not, however, to express regrets over his participation in this relocation effort until his autobiography more than thirty years later.[29]

These events are pointed out not to disparage the man, but to indicate that his had not been the type of history that would have indicated the kind of Chief Justice he was to become or the kind of liberal record his Court was to establish. In fact, had his record not indicated that he would follow a conservative judicial philosophy, the man accused of having presided over the most activist Court in our history quite probably would never have been selected.[30]

Perhaps the greatest contribution that President Dwight Eisenhower made to the civil rights movement in this country was the appointment of Earl Warren to the position of Chief Justice of the Supreme Court on October 5, 1953.[31] In the spring of 1952, the *Pittsburgh Courier* interviewed Dwight Eisenhower and Earl Warren, both candidates for the presidential nomination, concerning their respective positions on civil rights matters.[32] General Eisenhower was noncommittal and showed a complete lack of knowledge of the legislation necessary to deal with the area.[33] On the other hand, Earl Warren made his position completely clear when he stated, "I am for sweeping civil rights programs, beginning with a fair employment practices act . . . . I insist upon one law for all men."[34] Thus, the final irony in the selection and elevation of Governor Earl Warren to the position of Chief Justice of the highest court lay in the fact that he was chosen by a president whose record on civil rights was virtually nonexistent and who later was to comment that Chief Justice Warren's selection was possibly his single greatest mistake during his presidency.[35]

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27. *Id.*
28. *Id.*
29. E. WARREN, THE MEMOIRS OF EARL WARREN (1977).
30. It is something of a sad indictment of our political system that often persons who are later to perform magnificently have to live with unprincipled decisions they had to make in order to survive as popular public figures.
31. R. KLUGER, *supra* note 7, at 665.
32. *Id.*
33. *Id.*
34. *Id.*
35. *Id.* Perhaps Eisenhower was unaware of the remarks made by candidate Warren. If so, perhaps he chose to accept them as campaign rhetoric and elected to rely on his overall record rather than his recent pronouncements as a predictor of what kind of Chief Justice he would

Everyone connected with *Brown* must have been anxiously awaiting the naming of the new Chief Justice. All were probably aware that the Court was divided on how to deal with the issues presented during the first argument.[36] Although Chief Justice Warren had never served as a judge prior to his ascension to the Supreme Court, he nevertheless took with him a wealth of experience that had developed in him a sense of supreme self-confidence. His ability to organize the Court into a single-minded approach was an accomplishment of no little moment. Although he will probably never be accorded the accolades of having been a great legal scholar, his judicial philosophy and his thorough preparation and knowledge of the Court insured that his position in history will be along side other great luminaries who have served upon the Supreme Court.

Chief Justice Warren took a very pragmatic view regarding the function of the Court.[37] What appealed to him most about serving on the Court was that he "understood the Supreme Court to serve a function beyond the letters of the law, and it was that higher purpose—as ultimate framer of just solutions to profound disputes—that most appealed to him."[38] It was precisely this attitude that he used in fashioning a decision in *Brown* that could be agreed to by all.

Brown had been set for reargument on December 7, 1953, and on that day the line started to form early outside the Court. "At one o'clock in the morning . . . a seventy-six-year-old black man named Arthur J. Smith took his place proudly outside the front door of the Supreme Court. He was the first in line."[39] Shortly after daybreak, he was joined by the Reverend J. A. Delaine of Lake City, South Carolina, who was the organizer of *Griggs v. Elliott*,[40] one of the four cases consolidated under the heading of *Brown v. Board of Education*.[41]

During reargument, the Chief Justice gave little indication of his position.[42] He asked no substantive questions and said very little.[43] The Justices' first conference on the case convened on Saturday morning, December 12.[44] It is clear that by the time of the conference, the Chief Justice had decided upon what he perceived to be the only conclusion

become. It is great irony that Warren, the consummate liberal, was forced to make harsh and repressive choices as a politician and that it was this record that made him acceptable to the conservative Eisenhower.

36. *Id.* at 666.
37. *Id.*
38. *Id.*
39. *Id.* at 667.
40. 347 U.S. 497 (1954).
41. 347 U.S. 483 (1954). *See* note 9 *supra*.
42. R. KLUGER, *supra* note 7, at 678.
43. *Id.*
44. *Id.*

that the Supreme Court could reach regarding segregated schools.[45] According to the notes taken by Justice Burton, Chief Justice Warren made it very clear to the other members of the Court that he did not see how *Plessy v. Ferguson*[46] could be sustained on any theory other than one expressing a belief that members of the Negro race were inferior to those of the white race.[47] Although the Chief Justice expressed the view that there was no alternative under the three civil war amendments but to reach the decision that segregated schools had to be disestablished, he nevertheless expressed the sentiment that it would be unwise to engage in precipitous action that would inflame the situation more than necessary.[48]

The Chief Justice knew that a year earlier four of the Justices—Black, Douglas, Burton, and Minton—had indicated a willingness to overturn segregation.[49] Adding his vote to theirs, he knew that there was a majority of the Justices who would vote to overturn the segregated school systems in the South.[50] However, because he felt that a narrow majority would not serve the best interests of those involved in the case, he postponed the vote at that particular conference.[51] The Chief Justice was quite concerned about the impact and effect that a narrow majority opinion would have on this country.[52] He certainly must have feared that such a decision would only encourage those persons in the South who were violently opposed to any integration. Additionally, he felt that it would be equally disastrous to have even concurring opinions, and he had a special abhorence to the possibility of any dissenting votes.[53]

After the Chief Justice distributed his draft opinion to the other Justices, he called for a vote.[54] According to Justice Burton's diary, on May 8 the Chief Justice won enthusiastic approval. Justice Burton recorded: "He has done, I believe, a magnificent job that may win a unanimous Court. . . ."[55] It seems quite probable that the carefully crafted draft had also won over Justice Clark. Although Justices Frankfurter, Clark, and some of the others had only minor suggestions on revising the draft, there was still the task of satisfying Justice Jack-

45. *Id.*
46. 163 U.S. 537 (1896).
47. R. KLUGER, *supra* note 7, at 679.
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.* at 683.
52. *Id.*
53. *Id.* The Chief Justice was not alone in his desire to unify the Court. From the beginning, Justice Felix Frankfurter had been working for a unified Court. *Id.* at 696.
54. R. KLUGER, *supra* note 7, at 694.
55. *Id.* at 696.

son and winning over the would-be-dissenter, Justice Reed.[56] The Chief Justice personally took on the task of convincing Justice Reed of the wisdom of joining in the opinion.[57] He put the issue to him squarely by informing him that he now stood alone and that he must decide what was really the best thing for the country.[58] Justice Reed no doubt realized, being a southerner, just what effect his lone dissent would have on giving hope to those who were sworn to continued resistence. Apparently, Justice Reed did extract one condition from the Chief Justice for his vote, and that was a pledge that the implementation decree would allow for a gradual dismantling of the segregated school system.[59]

Justice Burton was to further note in his diary that "it looks like a unanimous opinion. A major accomplishment for his leadership."[60] He further noted that "the man from California had won the support of every member of the Court."[61] Thus, *Brown v. Board of Education* was decided. The case was to return, however, and the Court was again to issue a unanimous decision.[62]

While it is inevitable that debates over the propriety of these decisions will long continue among those who like to play the game of "what if" with great historical events, it must be accepted that the notion of equal protection gained added strength and renewed vigor as a result of these decisions. The magnificent role played by the "Super Chief" in hammering out this unanimous decision must also be acknowledged. Given the resistance and violence triggered by the *Brown* decision, it is not difficult to imagine how much greater it would have been had it not been for the unanimous opinion, and for that we must be eternally grateful to Chief Justice Earl Warren.

Interestingly enough, after leaving the Court, Chief Justice Warren was to reflect his belief that *Baker v. Carr*[63] and its progeny were more important than the monumental decision in *Brown*: "The reason I am of the opinion that *Baker v. Carr* is so important is because I believe so devoutly that, to paraphrase Abraham Lincoln's famous epigram, ours is a government of *all* the people, by *all* the people, and for *all* the people."[64] In *Reynolds v. Sims*[65] he stated it this way:

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56. *Id.* at 698.
57. *Id.*
58. *Id.*
59. *Id.* This concession no doubt led to the inclusion of the term "all deliberate speed" in the final order. Brown v. Board of Educ., 349 U.S. 294, 301 (1955).
60. R. KLUGER, *supra* note 7, at 698.
61. *Id.*
62. 349 U.S. 294 (1955).
63. 369 U.S. 186 (1962).
64. E. WARREN, *supra* note 29, at 308.
65. 377 U.S. 533 (1964).

> The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.
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> . . . .
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> 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."[66]

Chief Justice Warren's position that the Supreme Court was to serve as the "ultimate framer of just solutions to profound disputes"[67] was certainly evident in the Court's approach to the reapportionment cases. The first decision was *Baker v. Carr*,[68] where the Court held that the fourteenth amendment guarantee of equal protection of the laws gave each citizen a right to equal representation in a state legislature and that this right of representation was enforceable by the federal judiciary. Thus, *Baker v. Carr* raised the eternal issue of the proper role of the Supreme Court in our system of government.

Regardless of the extent of malapportionment of various districts within the political system, many legal scholars argue that the Supreme Court has no basis for exerting jurisdiction in this area and that the only solution a political one.[69] Many of the political systems and the methods of electing representatives to various state legislatures had been in existence since colonial times and thus, perhaps, the reasons for their erection had been lost in the antiquity of their historical justification. Nevertheless, many scholars argue that because of the traditional notions of separation of powers, the Supreme Court should not assert jurisdiction.[70] While this position might have some basis in the strict sense of the Court's jurisdiction, it clearly overlooks the practical problems of effectuating a change throughout the same political processes and political powers that had become entrenched in the very system needing change. Professor Archibald Cox states, "A Counsel of Wise Men, charged with doing whatever is good, or just, or wise, would have found no difficulty in voiding the apportionment of the Tennessee

66. *Id.* at 555, 562.

67. R. KLUGER, *supra* note 7, at 666.

68. 369 U.S. 186 (1962).

69. For example, in his dissenting opinion in *Baker*, Justice Frankfurter advanced just this rationale. Baker v. Carr, 369 U.S. 186, 266 (1962) (Frankfurter, J., dissenting).

70. *See, e.g.*, Bickel, *Forward: The Passive Virtues*, 75 HARV. L. REV. 40, 47 (1961).

legislature which was at issue in *Baker v. Carr*."[71] He further points out that it would be impossible to defend these gross inequities as a matter of sound government or abstract justice.[72] In fact, Justice Frankfurter was to place this specific issue in sharp focus in his dissenting opinion in *Baker v. Carr*: "The Court's authority—possessed of neither the purse nor the sword—ultimately rests on sustained public confidence in its moral sanction. Such feeling must be nourished by the Court's complete detachment . . . from political entanglements and by abstention from injecting itself into the clash of political forces in political settlements."[73]

Chief Justice Warren took the position that it was the role of the Supreme Court to fashion a remedy in this "political" area.[74] He felt a special need of personal involvement in these cases.[75] He could not simply join in the opinion of other Justices because of the political stand that he had taken when he was Governor of California.[76] As a matter of political expediency, he had opposed the redistricting of the state along more equitable lines, and thus he had participated in continuing the malapportionment there.[77] In his memoirs he stated: "I wrote the opinion in *Reynolds v. Sims*. It held that our form of government required fair representation; that fair representation meant equal representation in which one man's vote had the same value as every other, and that legislatures not elected on that basis were unconstitutionally organized."[78] The degree of controversy created by *Reynolds* is evidenced by the fact that the Council of State Government went so far as to propose a constitutional amendment that would negate the decision.[79] The decision also added fuel to the fires of the movement to impeach Chief Justice Earl Warren.[80]

The impact of *Baker v. Carr* and *Reynolds v. Sims* has been tremendous. Much of the progress made by blacks and other minorities toward gaining elective and appointive offices has been a direct result of those decisions. Although no black had served in the Texas legislature since Reconstruction, two blacks were elected in 1966 as a result of redistricting.[81] One of those was Barbara Jordan, who was elected to the state senate. As a result of further redistricting of the congressional

71. A. Cox, The Warren Court 115 (1968).
72. *Id.*
73. 369 U.S. 186, 267 (1962).
74. E. Warren, *supra* note 29, at 310.
75. *Id.*
76. *Id.* at 309-10.
77. *Id.*
78. *Id.* at 310.
79. *Id.*
80. *Id.* at 303-06.
81. Graves v. Barnes, 343 F. Supp. 704, 726 n.17 (1972).

district, she was elected to the United States Congress in 1972.[82] The overall impact of the redistricting that was mandated by *Baker v. Carr* and *Reynolds v. Sims* can be measured by the fact that at the present time there are more than 3,500 blacks serving in various state legislatures and in other local elective positions.[83] The number of blacks serving in Congress has increased from five to seventeen.[84] One could argue that the redistricting has indirectly, if not directly, led to an increased number of blacks and other minorities in appointed positions, including judgeships at both the state and federal levels.

Once the district boundary lines were changed and minorities were elected to legislative offices, it logically followed that they would have a dramatic effect upon the overall political process. It is also obvious, however, that the judiciary, while often ahead of the legislative bodies in recognizing the need for social change through law, is not the most effective agency to bring about that change. The hard fought battles and hard won victories in the judicial arena have all too often been diluted, if not totally avoided, by dilatory tactics.[85] Additionally, the time and effort that has been expended to effectuate even the most minute change through the judicial process is often totally outstripped by one piece of legislation.[86] The involvement of blacks and other minorities in the deliberative process in the legislative councils has undoubtably made a substantial difference in the laws that now govern people in the South and throughout this nation.

It is clear that the torch of liberty for blacks was lit by *Brown*, and it is also clear that once that torch was lit it was inevitable that it would light the way to victories in areas other than school desegregation. Therefore, it is not difficult to understand why Chief Justice Warren would cite *Baker v. Carr* and not *Brown* as the most significant decision of the Supreme Court during the time that he served as Chief Justice.

It would be patently inaccurate to state that the gains of blacks in elective and appointive offices were made possible simply on the basis of the "one man-one vote" decisions. The enactment and implementation of the Voting Rights Act[87] was a necessary part. It is, I believe,

82. Fleming, *The Black Role in American Politics: Part I, The Present*, in THE BLACK AMERICAN REFERENCE BOOK 580 (1976).

83. JOINT CENTER FOR POLITICAL STUDIES, 9 NATIONAL ROSTER OF BLACK ELECTED OFFICIALS X & XI (1979).

84. *Id.*

85. This is illustrated by the necessity of an implementation decision after Brown v. Board of Educ., 347 U.S. 483 (1954). Without the second *Brown* opinion, 349 U.S. 294 (1955), the goal of segregationists would have been maintained in spite of the result in *Brown I*.

86. An example of this type of legislation can be found in the Education Amendments of 1974 which established a priority of remedies to be used by federal courts and agencies in implementing desegregation. 20 U.S.C. §§ 236-46 (1976).

87. Voting Rights Act of 1965, 42 U.S.C. §§ 1973-1973p (1976).

accurate to state that without the "one man-one vote" decisions, the newly enfranchised black electorate would have found it extremely difficult to avoid being gerrymandered out of effective participation in the political process. Even in those geographical areas where blacks now constitute a significant portion of the electorate, without *Baker* and *Reynolds* it would be possible to vastly dilute their vote through malapportionment. In *White v. Register*,[88] a case arising in my own state of Texas, the Supreme Court relied on *Reynolds v. Sims*,[89] *Whitcomb v. Chavis*,[90] and others, to frustrate the last efforts of that state to dilute the vote of minorities. The Court decreed that multi-member legislative districts in Dallas and Bexar Counties could not be justified on the basis of any state interest.[91]

CONCLUSION

Earl Warren was a man for the season, a supremely confident pragmatist who was able to transcend the politically expedient decisions of his past and able to unite a divided court. He viewed the role of the Court not as an applier of narrowly drawn legalistic decisions, but as a dispenser of just solutions within the broad perameters of the Constitution.

88. 412 U.S. 755 (1973).
89. 377 U.S. 533 (1964).
90. 403 U.S. 124 (1971).
91. 412 U.S. at 769.