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BY

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BEFORE

CHIEF JUSTICE EARL WARREN MEMORIAL SERVICE

2:00 P.M.

TUESDAY, MAY 27, 1975

GREAT HALL

U.S. SUPREME COURT

WASHINGTON, D.C.

Mr. Chief Justice, 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, dignity, 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 language 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.

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.

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* in *Miranda v. Arizona*:

. . . Our 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 precedents into impotent and lifeless formulas. Rights declared in words might be lost in reality.

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* 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 and Reynolds v. Sims, establishing the principle of one man-one vote, as the most important in which he participated. "I believe," he wrote in 1972, "that if we had the (Reynolds v. Sims) decision shortly after the Fourteenth Amendment was adopted that most of the problems 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." 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, 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, 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, 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: In the name of the lawyers of this Nation, and particularly of the Bar of this Court, I respectfully request that the resolutions 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.