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BOOK REVIEW

THE MEMOIRS OF EARL WARREN. BY EARL WARREN.
New York: Doubleday & Co., 1977. Pp. xii, 394. \$12.95.

WILLIAM F. SWINDLER *

It is unique in the literature of the Supreme Court when one of its members — indeed, a leading figure in its history — breaks the tradition of judicial silence and publishes an autobiographical commentary on his career that discusses the work of the Court during his tenure. Almost nothing is comparable, and very little is even analogous in the writings of other Justices. Assiduous editors coaxed Oliver Wendell Holmes¹ and Felix Frankfurter² into expressing their views and revealing some of their personal histories. During the period between his services as Associate and Chief Justice, Charles Evans Hughes published a series of lectures on the workings of the Court,³ and his “autobiographical notes” also have been published.⁴ Students of such luminaries as Louis D. Brandeis,⁵ Hugo L. Black,⁶ and William O. Douglas⁷ have published collections and interpretations of their judicial writings. There also are a fair number of biographies of

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1. HOLMES-LASKI LETTERS (abr. ed. M. Howe ed. 1963); HOLMES-POLLOCK LETTERS (2d ed. M. Howe ed. 1961).

2. FELIX FRANKFURTER REMINISCES (H. Phillips ed. 1960); FROM THE DIARIES OF FELIX FRANKFURTER (J. Lash ed. 1975); ROOSEVELT & FRANKFURTER: THEIR CORRESPONDENCE (M. Freedman ed. 1967).

3. C. HUGHES, THE SUPREME COURT OF THE UNITED STATES (1928). *See also* Chief Justice Taft's articles on the need for reform in the organization of the judiciary. Taft, *Possible and Needed Reforms in Administration of Justice in Federal Courts*, 8 A.B.A.J. 601 (1922); Taft, *Three Needed Steps of Progress*, 8 A.B.A.J. 34 (1922).

4. THE AUTOBIOGRAPHICAL NOTES OF CHARLES EVANS HUGHES (D. Danelski & J. Tulchin eds. 1973).

5. A. BICKEL, THE UNPUBLISHED OPINIONS OF MR. JUSTICE BRANDEIS (1957); THE WORDS OF JUSTICE BRANDEIS (S. Goldman ed. 1953). *See also* LETTERS OF LOUIS D. BRANDEIS (M. Urofsky & D. Levy eds. 4 vols. 1971-75).

6. ONE MAN'S STAND FOR FREEDOM (I. Dilliard ed. 1963).

7. V. COUNTRYMAN, THE DOUGLAS OPINIONS (1977).

individual Justices, including two on Chief Justice Earl Warren.⁸ In Warren's case another unique resource for the study of the man and his career exists in the substantial collection of transcripts assembled by the Earl Warren Oral History Project at the University of California at Berkeley.⁹ The controversial and cataclysmic era of the Warren Court also has produced a steady flow of books and periodical literature.¹⁰ Accordingly, the *Memoirs* may be placed in perspective from the outset, and a comparison of Warren's viewpoints with those of others on the same subjects is possible. This is fortuitous particularly in the case of an autobiography; by its very nature such a volume, however frank and intellectually honest it attempts to be, is essentially an *apologia pro sua vita*.

Frequently an autobiography may be the only source for certain fundamental insights into the thoughts and convictions of a man like Warren.¹¹ All too often, the papers that a jurist or political leader leaves for public study prove to be innocuous and insubstantial,¹² and on the rare occasion when a biographer discovers and exposes some truly revealing material from such papers, the revelation tends to make others more secretive than before.¹³ How much can be learned

8. L. KATCHER, *EARL WARREN: A POLITICAL BIOGRAPHY* (1967); J. WEAVER, *WARREN: THE MAN, THE COURT, THE ERA* (1968).

9. Under the direction of the Regional Oral History Office of the Bancroft Library of the University of California, the Warren Project has tape recorded interviews with a large number of individuals associated with Warren's California career. Transcripts of interviews are available from the Bancroft Library. Some also are available for study in the Library of the College of William and Mary's Marshall-Wythe School of Law, where an east coast collection of the transcripts is being assembled. Hereinafter, references to the transcripts are to the collection at the University of California. An additional resource for the study of Warren may be found in the five volume collection of the Chief Justice's speeches that is located in the law library of the Supreme Court of the United States.

10. Among the more informative studies are A. BICKEL, *POLITICS & THE WARREN COURT* (1965); A. COX, *THE WARREN COURT* (1968); J. FRANK, *THE WARREN COURT* (1964). See Swindler, *The Warren Court: Completion of a Constitutional Revolution*, 23 *VAND. L. REV.* 205 (1970); books cited at note 15 *infra*.

11. For example, Warren noted of one California governor, William Stevens: "He was a wholesome man, but not an activist . . ." E. WARREN, *THE MEMOIRS OF EARL WARREN* 56 (1977) [hereinafter cited as *MEMOIRS*].

12. This reviewer constantly has been disappointed when searching for Executive Department and Supreme Court documents that must have existed at sometime, somewhere. Presidential libraries characteristically offer bulging file folders containing the most routine records and correspondence, with only microscopic traces of substantive documents. See W. SWINDLER, *COURT & CONSTITUTION IN THE 20TH CENTURY: THE NEW LEGALITY, 1932-1968*, at 500 (1970).

13. At least one reviewer criticized the publication of Chief Justice Stone's more controversial comments in A. MASON, *HARLAN FISKE STONE: PILLAR OF THE*

about the Chief Justice from the *Memoirs* largely depends upon how the original manuscript was edited. The editors are not identified, but response to an inquiry indicates that they are members of the publisher's staff who worked closely with Warren after he had prepared the original draft. Apparently, their principal concern was to help the Chief Justice enliven the text, which still retains a certain prosaism. Warren obviously saved his eloquence for opinions and face-to-face dialogues.¹⁴

The passions generated during Warren's tenure on the Supreme Court are still strong. The books published since his death have continued to debate the issues in the famous decisions and have kept the controversies of his Chief Justiceship in the forefront of awareness of new generations of students.¹⁵ Only four members of the Warren Court, Justices Brennan, Marshall, Stewart, and White, remain on the bench; this prompts recurrent pronouncements by journalistic savants that the Warren constitutional doctrines have become a minority view.¹⁶

Warren's contemporary critics frequently complained that his practical professional experience was limited, but the record demonstrates that, before he was elected governor of California, he served for twenty years as district attorney of Alameda County and as the state attorney general. His two principal biographers devoted substantial portions of their books to this period,¹⁷ and the impressive anti-crime record he compiled in those positions contrasts with the criticism that the Court became "soft" on criminals under Warren. The Chief Justice himself viewed both the evolution of the law and his resulting con-

LAW (1956). Westin, Book Review, 66 YALE L.J. 462, 468-69 (1957). See also Kurland, Book Review, 70 HARV. L. REV. 1318, 1323 (1957).

14. Warren's only other writings appear in a collection, THE PUBLIC PAPERS OF CHIEF JUSTICE EARL WARREN (H. Christman ed. 1959), and in a succinct commentary on the modern Constitution. E. WARREN, A REPUBLIC, IF YOU CAN KEEP IT (1972).

15. See, e.g., G. DUNNE, HUGO BLACK AND THE JUDICIAL REVOLUTION (1977); R. FUNSTON, CONSTITUTIONAL COUNTERREVOLUTION (1977); C. KILGORE, JUDICIAL TYRANNY (1977); L. GRAGLIA, DISASTER BY DECREE (1976); L. LUSKY, BY WHAT RIGHT? (1975).

16. See, e.g., Kurland, 1970 Term: Notes on the Emergence of the Burger Court, 1971 SUP. CT. REV. 265; Swindler, The Court, the Constitution, and Chief Justice Burger, 27 VAND. L. REV. 443, 445, 449-50 (1974); cf. R. HARRIS, JUSTICE 237-38 (1970). As to Warren's observations on the media's coverage of the Court, see text accompanying note 58 *infra*.

17. L. KATCHER, *supra* note 8, at 29-78; J. WEAVER, *supra* note 8, at 34-50. See generally PERSPECTIVES ON THE ALAMEDA COUNTY DISTRICT ATTORNEY'S OFFICE (U. Cal. 3 vols. 1972-74).

ceptions of it as the logical consequences of the changing constitutional frames of reference from the twenties to the fifties.¹⁸

As district attorney, Warren led movements to develop a school for the better education and training of police — the first of its kind in the United States¹⁹ — to establish family courts and remove domestic cases from the criminal process,²⁰ and to provide a public defender's office for indigents.²¹ As attorney general, he found immediate opportunity for crime fighting; on his first day in office, after receiving evidence of a busy traffic in the sales of pardons for convicts with influential outside connections, Warren arranged for the indictment, prosecution, and conviction of the leader of the activity, a newly appointed state judge.²² One of Warren's major criminal prosecutions as district attorney involved violent radicalism in the waterfront labor movement. The man who later, as Chief Justice, would be accused of being "soft" on Communism, secured convictions of several radical union participants who had been connected with a "goon squad" murder of an unsympathetic supervisor.²³

Before his service on the Court converted him into a liberal hero, one of the persistent criticisms of Warren concerned his role in the Japanese-American relocation during World War II.²⁴ The pre-Warren Court reluctantly extended the relocation a constitutional vindication,²⁵ but Warren himself wrote: "I have since deeply regretted the removal order and my own testimony advocating it . . ." ²⁶ The sincerity of this statement and the convictions of the Chief Justice were attested by his efforts supporting legislation to withdraw

18. See MEMOIRS, at 117, 316-17.

19. *Id.* at 106-08.

20. *Id.* at 121.

21. *Id.* See generally Interview with Willard W. Shea, Recollections of Alameda County's First Public Defender, in Oakland (Jan. 26, Feb. 9, 18, & March 18, 1970), reprinted in 1 PERSPECTIVES ON THE ALAMEDA COUNTY DISTRICT ATTORNEY'S OFFICE 4-18 (U. Cal. 1972).

22. MEMOIRS, at 127-29.

23. *Id.* at 113-16. See generally LABOR LEADERS VIEW THE WARREN ERA (U. Cal. 1976); LABOR LOOKS AT EARL WARREN (U. Cal. 1970); THE SHIPBOARD MURDER CASE: LABOR, RADICALISM & EARL WARREN, 1936-1941 (U. Cal. 1976). At the conclusion of a chapter on "Crime, Violence & Dissent," Warren notes the relative peace that since has come to industrial labor relations. E. WARREN, *supra* note 14, at 97-108.

24. See generally JAPANESE-AMERICAN RELOCATION REVIEWED (U. Cal. vol. 1 1976, vol. 2 1974).

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

26. MEMOIRS, at 149.

from the Attorney General the power to impound suspected subversives in peacetime.²⁷ Nevertheless, Warren's wartime actions placed him in a position that contributed to distinct ambivalences at the time of his confirmation in 1953.²⁸

The *Memoirs* only briefly acknowledge this contradiction in public images. With respect to the claim that "there was nothing in my background to presage my so-called 'liberal' decisions on the Supreme Court," Warren states that it was always "something of a mystery to me."²⁹ He describes a rather awkward moment in a conversation with former President Eisenhower who, while accompanying the Chief Justice to Winston Churchill's funeral, complained about all "those Communist cases" (which Eisenhower admitted that he had not read) :

I tried to explain that in the judging process we were obliged to judge Communists by the same rules that we applied to all others. He refused to accept this statement, and I asked him :

"What would you do with Communists in America?"

"I would kill the S.O.B.s," he said.³⁰

Despite the unpleasantness of this exchange, Warren indicates that it was valuable because it had provided him with his first opportunity to explain to Eisenhower his concept of the distinction between judicial and political moderation :

Through politics, which has been defined as the art of the possible, progress could be made and most often was made by compromising and taking half a loaf where a whole loaf could not be obtained. The opposite is true so far as the judicial process was concerned. Through it, and particularly in the Supreme Court, the basic ingredient of decision is principle, and it should not be compromised and parceled out a little in one case, a little more in another, until eventually someone receives the full benefit. If the principle is sound and constitutional, it is the birthright of every American, not to be accorded begrudgingly or piecemeal or to special groups only, but to everyone in its entirety whenever it is brought into play.³¹

If the foregoing quotation may be taken as a summation of Warren's philosophy, it provides some support for the observation that

27. *Id.* at 149-50.

28. See SWINDLER, *supra* note 12, at 222; 5 THE SUPREME COURT OF THE UNITED STATES: HEARINGS & REPORTS ON SUCCESSFUL & UNSUCCESSFUL NOMINATIONS OF SUPREME COURT JUSTICES BY THE SENATE JUDICIARY COMMITTEE, 1916-1972 (R. Mersky & J. Jacobstein comps. 1975) (Nomination of Earl Warren).

29. MEMOIRS, at 4-5.

30. *Id.* at 6.

31. *Id.*

the later Warren Court made broad judicial pronouncements but failed to consider adequately the precise contours and applications of its decisions.³² The filling-in of details, however, is inherently a piecemeal process that is accomplished through the sound practice of judicial restraint, permitting a logical development of the law through a case-by-case approach.

In the Eisenhower context, however, the predisposition of the President to "parcel out" constitutional guarantees was strikingly evident before *Brown v. Board of Education*³³ was decided:

I have always believed that President Eisenhower resented our decision in *Brown v. Board of Education* and its progeny. Influencing this belief, among other things, is an incident that occurred shortly before the opinion was announced. The President had a program for discussing problems with groups of people at occasional White House dinners. When the *Brown* case was under submission, he invited me to one of them. I wondered why I should be invited because the dinners were political in nature, and there was no place for me in such discussions. But one does not often decline an invitation from the President to the White House, and I accepted. . . . I was . . . within speaking distance of John W. Davis, the counsel for the segregation states. During the dinner, the President went to considerable lengths to tell me what a great man Mr. Davis was. [After dinner, Eisenhower] took me by the arm, and, as we walked along, speaking of the Southern states in the segregation cases, he said, "These are not bad people. All they are concerned about is to see that their sweet little girls are not required to sit in school alongside some big overgrown Negroes."³⁴

Warren unequivocally believed that the President's reluctance to offer any executive support for the Court's holding in *Brown* merely contributed to the aggravated racial tensions existing after that decision.³⁵ When the administration finally was forced to invoke its authority in the Little Rock school case, Warren was disappointed with Eisenhower's failure to make a direct public statement that the law as pronounced by the Supreme Court was to be upheld.³⁶

32. See, e.g., Cox, *Chief Justice Earl Warren*, 83 HARV. L. REV. 1, 3 (1969); Swindler, *supra* note 16, at 449. Fred Graham discusses the sweeping declarations of the Warren Court's major criminal procedure decisions in F. GRAHAM, *THE DUE PROCESS REVOLUTION* (1970).

33. 347 U.S. 483 (1954).

34. MEMOIRS, at 291.

35. *Id.* at 289-91.

36. *Id.* at 289-90 n. †. For Warren's view on the problem of racial relations generally see E. WARREN, *supra* note 14, at 49-57.

Warren comments frankly on the controversies of his Chief Justiceship, most of which are discussed in a remarkable penultimate chapter subtitled "The Court and its Castigators."³⁷ He does not settle definitively the question of how the office was offered to him in September, 1953, but speculation on this issue probably has exaggerated its importance.³⁸ The Chief Justice discusses in greater detail, however, the sequence of events that led him to resign from the American Bar Association (ABA).³⁹ The difficulties began in 1957 when the ABA arranged a pilgrimage to London to engage in joint meetings with the British bar. The Chief Justice was invited by the national organization to lead the delegation, but during the convention's first morning in London, the ABA released a committee report to the press on "Communist Tactics, Strategy and Objectives":

It told little about those matters; rather, it was a diatribe against the Supreme Court of the United States, charging it with aiding the Communist cause in fifteen recent cases. It listed the allegedly pro-Red cases, giving biased outlines of their facts and the Court's holdings, then arguing that they gave great joy and comfort to the Communists. Finally, it recommended that Congress enact legislation to protect the nation from the effect of these sinister Supreme Court decisions.⁴⁰

The report was prepared before the trip, and Warren concluded that its release had been postponed to stimulate attention for an otherwise uneventful junket.⁴¹ Although there was no debate on the report and despite the subsequent deletion of its more virulent parts from the ABA's permanent record, the Association took no action to correct misleading assertions by the press that the report represented the view of the organization.⁴² During the convention the ABA rejected another Supreme Court doctrine in recommending that the district courts be permitted to imprison summarily for contempt those persons who refused to respond to inquiries of the House Un-American Activities Committee; together, these two actions by the Association provided the grounds for Warren's resignation.⁴³

37. *Id.* at 321-49.

38. *Id.* at 270-71. See EARL WARREN: THE CHIEF JUSTICESHIP (U. Cal. 1977).

39. MEMOIRS, at 321-31.

40. *Id.* at 322.

41. *Id.* at 323-24.

42. *Id.* at 324.

43. *Id.* at 324-25. "The combination of these reports did much disservice to the Supreme Court . . . [I] . . . concluded that I could no longer be a member of an organization of the legal profession which would . . . deliberately and trickily contrive to discredit the Supreme Court which I headed." *Id.* at 325.

Unfortunately, the Association was unrepentant, and the Court again was chastised during the ABA's 1958 national convention, which Warren had agreed to attend to demonstrate that his resignation was not tendered because of personal pique:

It was a great mistake. While there with four other Justices of the Supreme Court, I attended a dinner given by one of the committees, and without warning Chief Justice John R. Dethmers of the state of Michigan, a vitriolic fellow, gave the U.S. Supreme Court a lambasting the like of which I had never heard. That, of course, attracted the news media and produced reportage highly derogatory to the Court.⁴⁴

Although later ABA presidents sought to atone for the Association's behavior during these years,⁴⁵ Warren, on behalf of the Supreme Court, never accepted the excuses:

If the Court cannot rely upon the main national body of the legal profession to treat it fairly in times of stress, whether it be the Communist scare, the racial question, the "law and order" crisis, or the so-called "strict constructionist" theory of the Constitution, it is, indeed, defenseless against the most powerful and reactionary interests in the nation.⁴⁶

During this period, anticommunist hysteria obviously had influenced legal conservatives. This was not the first instance, however, in which the ABA failed to recognize and respond to the country's changing societal needs because of its close ties with the corporate establishment. Indeed, nearly twenty years earlier, the ABA had reached the verge of barratry in offering its services to defend private enterprise from New Deal legislation. Warren accounted for this failure of leadership by explaining that the Association's long-standing commercial and geographical interests were too influential and entrenched to be disturbed.⁴⁷ These strong interests have forced the ABA to give inadequate consideration to fundamental principles in competing areas of the law, especially with respect to individual rights.⁴⁸ As a result, Warren suggested that two broadly based legal organizations be created: one oriented toward the traditional commercial and industrial interests and the other committed to the protection of human rights.⁴⁹

44. *Id.* at 328.

45. *Id.* at 329-30.

46. *Id.* at 330.

47. *Id.*

48. *Id.* at 331.

49. *Id.* at 330-31.

Warren's last major disclosure, second in significance only to the Eisenhower commentary on segregation, reveals an attempt by the early Nixon administration to influence the outcome of certain wiretapping cases.⁵⁰ An emissary of the Justice Department gave Warren and Justice Brennan the gratuitous assurance that, despite the Court's recent decision against the Government in *Alderman v. United States*,⁵¹ the Attorney General, John Mitchell, "would do anything at all that would help the Court avoid a congressional reaction which might either lead to a Constitutional Amendment or some legislation to curtail the Court's jurisdiction."⁵² Because neither possibility had been proposed in Congress, the Chief Justice concluded that the message's purpose was to reveal "an undisclosed objective of the new Administration."⁵³ Warren decided against exposing the clumsy threat because he believed no purpose would be served through a confrontation with the administration; he also reasoned that, because of Nixon's previous anti-Court animus, a revelation could be criticized as more vindictive than meritorious.⁵⁴

In contrast to his silence in the wiretapping intrigue, Warren did publicize a different machination that was intended to undermine the early reapportionment decisions.⁵⁵ Speaking at the dedication of the new Duke Law School building in 1963, he criticized the legal profession's failure to examine and debate the recently proposed "confederating" amendments to the Constitution.⁵⁶

Actually, Warren initiated a leadership role for the Chief Justiceship, since expanded by his successor, in the modernization of the judicial process.⁵⁷ Unfortunately, the substantial extra-judicial accomplishments of both Warren and Chief Justice Burger have drawn little

50. *Id.* at 337-42. Attorney General John Mitchell wanted to limit the reach of *Alderman v. United States*, 394 U.S. 165 (1969), so that the Government would be successful in a group of subsequent wiretapping cases. The Court nevertheless rejected the Attorney General's argument in *Giordano v. United States*, 394 U.S. 310 (1969).

51. 394 U.S. 165 (1969).

52. *MEMOIRS*, at 339.

53. *Id.*

54. *Id.* at 341. Subsequent evidence of government misconduct caused Warren to question the wisdom of his decision to not expose the threat by the Department of Justice. *Id.* at 342.

55. *Reynolds v. Sims*, 377 U.S. 533 (1964); *Baker v. Carr*, 369 U.S. 186 (1962).

56. Warren, *Dedication of the New Duke Law School Building*, 1963 *DUKE L.J.* 387, 393-94. Warren discusses the proposed amendments in *MEMOIRS*, at 309-12. For an analysis of the proposals see Swindler, *The Current Challenge to Federalism: The Confederating Proposals*, 52 *GEO. L.J.* 1 (1963).

57. See Swindler, *The Chief Justice & Law Reform, 1921-1971*, 1971 *SUP. CT. REV.* 241.

notice outside the profession; reporters, instead, have preferred to comment on items such as the type of transportation utilized by the Justices.⁵⁸

The Court, of course, is not the only institution that suffers from superficial journalistic treatment, but given the fundamental importance of this least understood branch of government, the failure of the media to interpret its function and decisions consistently and intelligibly disturbs many members of the bench and bar. For example, Warren has stated:

The reason [the Court's] activities are not better known is because the media does not consider the Court's work newsworthy until it makes a decision which stirs emotion on the part of great numbers of people on the losing side. Then the media gives a superficial judgment which is often wide of the mark, and leaves the matter to the public in that unsatisfactory condition. This is largely because news gatherers are not deeply concerned with the proceedings before the Court until decision day; their homework is thus generally inadequate.⁵⁹

Although a few reporters are highly informed and very competent in their interpretations of judicial doctrine,⁶⁰ generally, the sporadic and often garbled reporting of Court actions over many years has offset the accomplishments of these individuals.

The final chapter in the *Memoirs* discusses, somewhat defensively, Warren's controversial chairmanship of the commission selected to investigate the assassination of President Kennedy.⁶¹ The Chief Justice was aware that the inadvisability of jurists serving in non-judicial capacities potentially conflicting with their primary duties had been demonstrated convincingly.⁶² Justice Jackson's role as American prosecutor at the Nuremberg war crimes trials, for instance, evoked internal dissension among the members of the Court.⁶³ These traditionally reasonable objections to Warren's service on the assassination commission were amplified by the activities of those persons who

58. Warren discusses the Court's automobile problem in *MEMOIRS*, at 347-48. As to the Chief Justice's dealings with the press, see *id.* at 343-44.

59. *Id.* at 335.

60. One of the more astute court reporters is Fred Graham, who is also an attorney. He has written a book analyzing the Warren Court's impact on criminal procedure. F. GRAHAM, *supra* note 32.

For a discussion of the tension between the government and the fourth estate see *PRESS FREEDOMS UNDER PRESSURE* (20th Century Fund 1972).

61. *MEMOIRS*, at 351-72.

62. *Id.* at 356.

63. Warren notes the difficulty created by Jackson's absence. *Id.* See generally W. SWINDLER, *supra* note 12, at 157-62.

later claimed to possess proof of suppressed or newly discovered evidence. Nevertheless, President Johnson overcame Warren's reluctance to participate in the investigation and drafted the Chief Justice into service as the chairman of the commission.⁶⁴

Warren's participation in the Kennedy investigation is a cloud over the record of the Warren Court itself, and some of the public still regards his actions with the same enmity that they hold for the Court's constitutional doctrines. The Chief Justice, however, did not absorb all the animosity: some was directed at the commission as a whole, primarily by those who could not bring themselves to abandon a conspiracy theory when the final report found Oswald solely responsible for the murder.⁶⁵ Reaffirming the commission's findings in the *Memoirs*, Warren drew upon his long experience as a prosecutor and declared that "had it not been for the prominence of the victim, the case against Oswald could have been tried in two or three days, with little likelihood of any but one result."⁶⁶

According to the editors' epilogue, the manuscript was incomplete at the time of Warren's death, and a number of additional comments were left unwritten.⁶⁷ Nevertheless, the *Memoirs* give a far more detailed view behind the judicial curtain, and a more significant revelation of Warren himself, than heretofore has been available to students of the Court and this Chief Justice. His discussion of *Brown* and its arguments both before the bench and in judicial conference carries an authoritativeness that could be given only by one in his position.⁶⁸ He regarded the busing problem as a false issue and believed that busing is a useful tool of the judiciary that ultimately should stimulate efforts to make all schools equal.⁶⁹ Finally, the Chief Justice provided an insightful discussion of the circumstances surrounding the development of the reapportionment doctrine.⁷⁰

64. *Id.* at 357-58.

65. *Id.* at 362-63, 366-67, 370-71. In describing the work of the Commission, Warren stated:

The facts of the assassination itself are simple, so simple that many people believe it must be more complicated and conspiratorial to be true. If the sole responsibility of the Commission had been to determine who shot and killed President Kennedy, it would have taken very little work; the time-consuming and painstaking job was running down the wild rumors.

Id. at 362.

66. *Id.* at 367.

67. *Id.* at 373-74.

68. *Id.* at 281-302.

69. *Id.* at 301-02.

70. *Id.* at 307-12.

CONCLUSION

Commenting on his Court, Warren wrote in summation :

The Supreme Court is particularly subject to criticism because most of its decisions are, as they say in athletic events, "close calls" and "judgment calls." Also, as a case wends its way to the Supreme Court, it becomes charged with emotion from the publicity given it and the discussion that follows. In addition, the questions presented to the Court are public questions which normally affect large groups of people. Add to these things the fact that its decisions are final, and one can easily see why the Supreme Court would attract more criticism than other courts. Also, the criticism becomes effective because it is a one-sided affair. Justices must take it in silence, leaving it to the people to form their own opinions concerning the Court's actions.⁷¹

In his *Memoirs*, Warren felt sufficiently freed from the restraints normally incumbent upon sitting Justices to attempt, some years after the fact, to rebut some of the more flagrant attacks on his previous administration. The editors' conclusion that Warren "was an anomaly in the American governmental system"⁷² is indisputable. "He stood for all the storied nineteenth-century virtues,"⁷³ and therefore may not have been entirely in tune with changing twentieth-century societal attitudes. This was probably the Chief Justice's greatest attribute. His career on the Supreme Court represented an attempt to identify the basic human values inherent in the American system and applicable in any century.

71. *Id.* at 319.

72. *Id.* at 375.

73. *Id.*