Pearl Warren: A Judicial Biography

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Earl Warren has been perhaps one of the most controversial Chief Justices that this nation has ever seen. "Not since the turbulent days of Chief Justice John Marshall (1801-1835) has the Court made so many bold basic changes in the legal, social, and political structure of the United States." He served sixteen years as the head of 8 very independent, prima donnas. It was mainly through his leadership and personality that enabled them to work together. He became the symbol, or if you will, the embodiment, of the Court during his tenure. From 1953 to 1969, the Court was highly visible. Indeed it seemed to be sitting in the eye of a hurricane that raged around them as a result of their decisions. At times, even the relative calm at the eye of the storm saw some rough weather as different philosophies and personalities clashed.

Earl Warren was a liberal judge heading one of the most liberal courts in history, yet many commentaries at this time felt that there was little they could say about him and little in his past to explain or even indicate his stance while on the Supreme Court. Indeed, many were surprised by his liberal activist stance since they had mistakenly taken him for a moderate, including President Eisenhower, who appointed him. His success was attributed to luck and his average man appeal. Commentators stopped at the surface of Warren, which
for them, reflected a bland personality, and a man of limited intellectual abilities. John Gunther wrote in 1947:

Earl Warren is honest, likable, and clean: he will never set the world on fire or even make it smoke; he has the limitations of all Americans of his type with little intellectual background, little genuine depth or coherent political philosophy: a man who has probably never bothered with abstract thought twice in his life. ³

I have no doubt that many wish this statement were true in the wake of his decisions. This view of Earl Warren is an oversimplification, it stops at the surface. He appeared as an average, moderate unassuming man and the public bought it lock, stock, and barrell. Earl Warren was the type of man who valued his privacy and appearing as average, kept the public out of his life. He laid a false trail, for there was a powerhouse man and personality behind his genial, hearty exterior that he kept hidden. One can see this if his life is carefully examined.

His early childhood and subsequent actions in public office indicate the type of person he truly was and provide a blatant clue to his liberal stance on the Court. His later views were an outgrowth of earlier ones. Furthermore, the decisions he participated in and particularly the opinions he wrote reflect elements in his life and his unique unorthodox jurisprudence. In his memoirs, he said, "I am certain that my life experiences, even some of the earliest ones, have had an affect on the decisions I have rendered— not deliberately, but because human nature compels it. A jurist's mind cannot operate in a vacuum." ⁴
I will trace Earl Warren throughout his life up to and including his years on the Supreme Court. I will be a quick look at his early life with emphasis on the most important aspects. Warren was an extremely active man. It is impossible to give a complete picture unless one desires to write a book. Next, I will look at his Supreme Court years concentrating on the development of his jurisprudence and comparing it to the opinions in Brown v. Board of Education Topeka, Kansas (1954), Baker v. Carr (1962) and Miranda v. Arizona (1966). I wish to reveal how his past experiences contributed to his stance on the Court, and how these 3 cases mirror his personal experiences, values and jurisprudence.

**Early Years: Bakersfield and Berkley**

Earl Warren was the second child born to Methias (Matt) and Christine (Chrystal) Warren in Los Angeles, California on March 19, 1891. He grew up in Bakersfield, California where the family moved to in 1894. He remained in Bakersfield until 1908 when he went to the University of California at Berkley. The family moved to Bakersfield after Matt Warren was blackballed by the Southern Pacific Railroad for participating in the nation wide Pullman Strike. Earl's father was eventually rehired by the railroad and would stay in its employment until his retirement in 1929. At this time in California, the Southern Pacific Railroad dominated the economic and political life. It was seen as a gigantic octopus with its tentacles touching every aspect of California life. It is most likely from his father's experience with the dominating influence of the railroad that Earl gained such a dislike for being
in a subservient position. In all of his positions save for a few times, he was his own boss. Warren was a leader.

Bakersfield was still very much a typical western town when Warren grew up. It had its fair share of saloons, gambling halls and brothels, and it had its occasional gun fight between the good and the bad guys. This was the atmosphere of his youth. He saw all the bad in the town, and at home he learned the values that would sustain him for a lifetime. Earl's parents didn't moralize. Their values and beliefs were taught to their children by example. Warren credits his parents especially his father with teaching him lessons on: frugality, integrity, independence, personal forebearance, family and education. Matt Warren was an emphatic believer in the liberating force of education, and for that reason, he pushed his children to get the education he never had. Warren would also later retain this same belief in education. He would support it as California's Governor and as Chief Justice in the landmark decision of Brown v. Board of Education. At the time he grew up though, Earl was more concerned with the action in town especially at the courthouse. One could never say he was a scholar, yet he had a capacity for intellectual and personal growth and a phenomenal memory.

From the age of 9 on, Earl Warren worked doing a variety of odd jobs such as an ice delivery boy, selling newspapers and as a call boy for the railroad. The job as call boy had a great impact on Warren. He would carry the lessons he learned from this particular job with him all his life. His duties were to hunt down and inform railroad workers of a train's imminent departure. It took him to the more colorful parts of town giving him a first hand view of the destructive capacity of vices such
as alcoholism, gambling and prostitution. The gambling and prostitution were sanctioned by the authorities. Through this job, he saw the indifferent mighty railroad dominate men's lives. He saw men laid off without pay or notice so as to increase dividends; minorities fleeced of their pay, and the injured man receive no compensation. Warren took it all in. "The things I learned about monopolistic power, political dominance, corruption in government, and their effect on the people of a community were valuable lessons that would tend to shape my career throughout life." He realized that the average man has no protection against the abuse of power by government or special interests. He used these lessons coupled with those from his father in his positions as district attorney, attorney general, governor and as Chief Justice.

In 1908, Earl Warren left Bakersfield and childhood to join the student body at Berkley. Upon arriving, he stayed with La Junta Club which later became a chapter of Sigma Phi Fraternity. It seems that it was at Berkley that Warren really picked up his code of integrity and honesty. He tells in his memoirs of how as a school boy he and classmates would get even with a suspicious principal by cheating on assignments. It was a prank. It was from a La Junta Club member that Warren was privately informed of the Berkley code of honor and self-government. "I was deeply touched by the kind manner in which he talked to me, and promised him I would never violate the honor system." At Berkley, he majored in political science with the desire of becoming a lawyer—a trial lawyer. His conception of the law was one of court room advocacy which came from his visits to the local courthouse as a youth.
He was active in politics in the sense that he helped classmates with their elections; however, he himself never ran for or held an office during his college years. He saw politics as a means of companionship. He felt the same way about the university. "I was more interested in the university as a community of lively, stimulating people than as a community of scholars." Berkley was a time of companionship at the local restaurant over a beer.

While a student Warren became involved in the Progressive reform political movement that was gaining force in California in 1909 and 1910. Warren offered his services in gubernatorial candidate Hiram Johnson who promised to reform California politics by breaking the dominance of the Southern Pacific Railroad, and its unholy alliance with political bosses. This reform appealed to Warren as he was already acquainted with the railroad. Warren worked in the campaign as a poll watcher. In his memoirs, Warren didn't spend much time on the Progressive movement other than noting how he had benefited from its political reforms. He didn't discuss how the movement may have influenced him. On the other hand, G. Edward White in his biography Earl Warren: A Public Life, identifies Warren more as a Progressive than a Republican throughout his career. White believed the Progressive movement had a tremendous impact on Warren's life; he followed its tenets wholeheartedly.

The new movement obtained members from both the major parties. The movement placed emphasis on good open government, a revival of morality, integrity, honesty, opposition to the railroad and political bosses. It brought a different set of political values into public affairs. It brought
forward looking programs, honesty, openness, affirmative action by government, nonpartisanship and opposition to special interests. Warren would later exemplify these values and use them to his advantage in public office. White felt they fit with his early lessons from his father. They complimented each other and were a reaction against the dominance of the railroad. Warren was ideologically committed to the values and reforms of the Progressive movement which Hiram Johnson put into effect after winning his gubernatorial race. His reforms centered on cross-filing for elections, the creation of a civil service and nonpartisanship. These reforms allowed a man to get into office without the necessity of mortgaging himself to some interest. The public caught on to these reforms; Hiram Johnson served 2 terms as governor.

Warren did in fact employ many of the Progressive reforms later in life. He cross-filed on party tickets in his campaigns. He tried to restore honest, openness and integrity to government. And his programs were affirmative, forward looking and reform oriented. One can easily see the fit that exists between Warren and the Progressive movement. It is indeed an adequate explanation of Warren's political philosophy. He, in my view, was clearly more of a Progressive than a Republican. Furthermore, his liberal activist stance on the bench seems to be an extension of Progressivism and in particular affirmative governmental action.

During his senior year at Berkley, Warren entered the university's law school. It later became known as Boalt Hall Law School. It derived its name from the buildings in which
classes were held. At the law school, students were to receive their legal training primarily through the study of caselaw. For Warren, this wasn't adequate, and as such he obtained outside employment with a law firm against university policy to further his education in the law.17

Upon graduation and entry to the bar in 1915, Warren obtained a position in the law department of Associated Oil Company in San Francisco. Warren didn't have a good relationship with the older cantankerous Edmund Tauske, the only other man in the law department. Not only did Tauske represent Warren's work as his own, but he also used Warren as a servant. In his memoirs, Warren said, "...the thing I resented most was that whenever he had a conference with others in his office and was out of cigars, he would press the buzzer for me and on my entry would hand me some money saying, 'Go downstairs to the cigar store and get me a half a dozen Coronas.'"18 Warren left after 1 year and took a job in the Oakland law firm of Robinson & Robinson. In this position, he took care of the firm's calendar, conducted research and was a legmen. The salary was meager; he was again in a subordinate position, and as such, it wasn't long before he desired to be out on his own. In 1917, he and 2 other Boalt Hall graduates along with an established trial lawyer decided to go into practice together. Their plans were never finalized; a gliche in the form of World War I developed. As a result, Warren would never be in private practice.19

Warren had a strong sense of patriotism. He immediately applied for a commission after the war broke out. However, he was twice denied once because of overapplication, and the second
due to an operation. So, he entered as an enlisted man proud to serve his country in any capacity. During his stint in the army, he was in charge of troop instruction, training and supervision of facilities. He eventually became an officer and was discharged on December 19, 1918.  

**California Public Life**

Soon after being discharged, he met up with 2 friends (Leon Gray and Charles Kasch) both of whom were assemblymen in the state assembly. They arranged a clerks position for Warren with the Judiciary Committee. This began his career in public service. And according to some Warren observers, this episode coupled with the unusual manner that he obtained a position in the Alameda County District Attorney's Office were the pieces of luck that marked his career. Everyone has at one time or another a break in their career that they attribute to being in the right place at the right time. However, Warren's career in public life was not in any fashion marked by an abundance of "luck." He worked extremely hard and cultivated people making his own breaks. His time at the legislature allowed him the opportunity of observing the inner workings of the legislature—the lobbying, the tricks and the corruption. Warren was still looking at private practice, and upon the advice of Alameda County Assemblyman Frank Anderson, he began to consider working in a district attorney's office as a means of gaining trial experience.

At about this time Ezra Decoto Alameda County District Attorney needing another deputy, petitioned the legislature to create the position. Warren's friends then tried to force Decoto
to appoint Warren as the deputy. Decoto demurred as the position was promised to another. Warren after learning of the situation, wanted no part of the deal. He apologized to Decoto, and then used an interesting psychological technique putting Decoto on his side. In his memoirs, Warren remembers it this way: "I told him that while I would very much like to be in his office, I would not accept the position if he were under such duress."\textsuperscript{23}

Warren's strategy paid off. Decoto left with a favorable impression of Earl Warren. In May, 1920, Warren filled a vacancy in Decoto's office at his request. He joined the office after serving as a deputy Oakland city attorney.

In the district attorney's office, Warren worked tirelessly. He was out to gain a few years of experience and move on. He stayed 18 years. He had his nose stuck in everything in the district attorney's office. He soon rose to become one of Decoto's top assistants in 1923, the chief deputy. As chief deputy, he was assigned to work with the Alameda County Board of Supervisors which led him into the area of government administration. He experience all sides of the office law, enforcement and administration. In 1925, Decoto resigned to accept another position. Warren was appointed to succeed Decoto as district attorney by the County Board of Supervisors. The Board had 2 rural votes, and the 3 urban votes were controlled by the Mike Kelly machine which supported Frank Shay the other candidate. Because of John Mullin's belief that Kelly planned to play tricks with the office, he crossed over and voted with the 2 rural votes giving Warren the position. Mullins and the 2 rural supervisors felt Warren was honest and above board.
The position was his until the next election in 1926 which he overwhelmingly won. Mullin's cross-over vote cost him his position as supervisor the following year. Warren was Alameda County's District Attorney. He would be re-elected to the position each time he ran for it.

District Attorney

As district attorney, Warren became very visible and made great strides in cleaning up the county while streamlining the office. "Public office is a great responsibility carrying with it the duty to preserve its dignity and to use its powers so that the needs of constituents are met with efficiency, honesty and fairness to all." To ensure the responsibility of public office was met, he reorganized the office making the deputy positions nonpartisan and full-time to avoid conflicts of interest. He made the staff a team holding daily conferences. As the boss, he set up his own standards of law enforcement which encompassed honesty and integrity. He tried to abide by it and insisted the staff do so as well. As district attorney, he coveted public support and ran the office on a nonpartisan basis because politics had no business in law enforcement. As time went on though, he did become involved in Republican party politics; however, he kept it out of the office. He was also active in social organizations. This built up support for him.

As he cleaned up the office, he also cleaned up the county to rid it of the graft and the corrupt practices of public officials especially in the police departments where bribes were quite common. He didn't delude himself as to the morality of elected officials having seen enough in his short career to
realize that power corrupts when limits are absent. This is a precursor to his 1966 decision in *Miranda v. Arizona* which imposed certain procedures to remedy abusive police practices. He sought to professionalize law enforcement to make it more effective by encouraging coordination and cooperation. As chairman of the Board of Managers for the California Bureau of Criminal Identification, he advocated and actively supported the police training programs. "I always urged that emphasis be placed on developing police work into a thorough going profession and maintained that the best way to achieve this is to employ enlightened and fair procedures which the public would respect." The training program brought together and fostered goodwill between the city police, the county sheriff and the district attorney's office. Warren's office was involved in everything in Alameda County. He expansively read his authority, as he would do in his other positions. Warren also formed a law enforcement lobby group and kept track of bills in the legislature that were of concern to law enforcement.

Warren was a forward looking district attorney who insisted on integrity in the office and took an active interest in what went on around him. The more involved he became, the more public service appealed to him. He saw himself as a law enforcement officer. With this view, the next logical position for him was state attorney general which he hoped to attain.

The most notable case of his career as district attorney was the murder investigation and trial of George Alberts, the chief engineer on the SS. Point Lobos on March 22, 1936. This case was extremely controversial. Warren's office was accused of
coercing confessions and a frame-up. This is ironic when one considers the decisions of his Court on criminal procedure which ended with the authoritative decision that statements are inadmissible unless the defendant has been warned of his rights and has effectively waived those rights. But then at that time, the procedures were accepted. And Oscar Jahnsen, one of Warren's deputies quotes Warren as saying, "(b)e fair to everyone, even if they are breaking the law. Intelligence and proper handling can get confessions quicker than force...Get the facts and then proceed, but get the facts honestly, and do not color them. If they are there, you will get them; if not, you don't want them." Meaning of course, that Warren didn't approve of coerced confessions and was concerned with fairness which would be consistent with his later decisions. Yet there were elements in the handling of the case that bespoke of psychological coercion, lack of counsel and illegal searches. Warren would probably put it down to a human error in judgment.

The case involved a conspiracy in which 3 members of the Marine, Fireman, Oilers, Watertenders and Wipers Union (MPOW) were accused of hiring 2 other union members to beat up Alberts to teach him a lesson for firing a worker without giving him his overtime pay. The beating turned into murder. Alberts was supposedly weeding communists out of the union. The case had a communist overcast to it. Warren, like other Californians, was fearful of radical thought which was identified with communism. On the Supreme Court, Warren would alter that view. He would no longer assumed the two were synonymous. But at the time he did, and this may account for the charges of coerced
confessions. Acting on leads, Warren's investigators bugged a hotel and found that Albert Murphy had received a letter from one of the murderers in Texas. The room was searched; the letter was found, and Murphy confessed what he knew which resulted in the arrest of 2 of the conspirators, Earl King and Ernest Ramsay. The third conspirator was brought back from Seattle and made a confession due to police pressure without an attorney. The letter also led to the arrest of George Wallace one of the murderers the other was never apprehended. Wallace confessed due to psychological coercion also. They were all convicted. Warren would be plagued by the case in later years.

The last couple of years a Alameda County District Attorney, Warren turned his attention to the attorney general's office. He "could see a great opportunity for developing it into an extremely important arm of the state government." His approach to office holding was one of expansive jurisdiction, but that would not be possible in the attorney general's office unless amendments were passed to strengthen the office. It was a part-time position with a frozen salary and operating in an efficient manner. Warren undertook to correct this.

As the Secretary of the District Attorney's Association in 1934 and as Vice-Chairman of the State Bar Committee on the Administration of Justice, he called for amendments to strengthen the attorney general's office and to modernize the method of locating and apprehending criminals. He had an incredible sense of timing and used public opinion to insure passage of the amendments after a lynching occurred in which the authorities looked on and after a series of train robberies that were never solved due to a lack of cooperation among officials.
Because of the amendments, the attorney general's office would be able to provide support to local law enforcement agencies. And the attorney general was given the authority to displace local law enforcement if the situation warranted it.

The scope and responsibilities of the office were expanded. Warren's next move was to use the same technique he used on Ezra Decoto on Attorney General Ullysses S. Webb. He went to Webb telling him he wanted the position but only when Webb retired. The technique worked again. Webb was favorably impressed with Warren and informed Warren when he no longer wanted the position. It was in 1938 that Warren and the office were ready for each other.34

While he was district attorney, he met and married his wife Nina. She was a widow with a young son Jim who was adopted by Warren. Earl Warren was a family man in every sense of the word. His family was an important aspect of his life. He was extremely paternalistic and traditional. He tried to protect and shield his family from public life. Warren separated his public from his private life and would continue to do so as a member of the Supreme Court. At times, Warren's paternalism was bestowed upon the disadvantage, too. The Warren's had a grand total of 6 children: Jim, Virginia, Dorothy, Earl Jr., Nina Elizabeth (Honey Bear) and Robert. They were all very close and loving. An unbeatable family.35

Attorney General

Warren ran for attorney general in 1938. He won the election with over 2 million votes. He ran on the basis of his past accomplishments and his nonpartisan status. He cross-filed
on all 3 party tickets and won all 3 nominations. When Warren got into office he resigned his position as a Republican National Committeeman. Politics had no business in the attorney general's office; however, Warren would soon realize that he would have to deal with politics in the office as a matter of necessity. The amendments that were passed allowed him to expand his jurisdiction and continue the pattern of his office holding. On the Supreme Court it would turn into judicial activism.\textsuperscript{36}

After getting into office, he immediately became involved in shutting down the illegal dog tracks and gambling ships doing business in California and being ignored by the local authorities. He first tried the direct method of informing offenders of their illegal activities and requesting them to voluntarily cease or be put out of business. His direct method worked with the dog tracks; however, he was forced to shut down the gambling through a show of force. Warren favored the first method as it saved time, money and effort. This method also worked well when he made a foray into local jurisdiction. People much prefer directness and honesty than behind the back deals. Warren made combating crime a major theme in his office. He even established an organization of local and state law enforcement to expose crime, racketeering and for exchanging information between levels of government.\textsuperscript{37}

Civil defense was another of Warren's themes during his years as attorney general. He was actively involved in civil defense after the bombing of Pearl Harbor and marginally before the attack. He had attended several conferences on civil defense. After Pearl Harbor, Warren became involved in the Japanese
American Relocation Project. He was actively involved. The entire state was infused with an anti-Japanese sentiment that stemmed not only from the war but also from the anti-oriental sentiment that was part of California's culture dating back to the railroad coolies. Warren had "come to the conclusion that the Japanese situation as it exits in (the) state today, may well be the Achilles' heel of the entire civilian defense effort."38 One couldn't tell if the Japanese had been assimilated into American culture because they retained so much of their own culture. There was also the fear of saboteurs and fifth columnists. However, Warren was not all anti-Japanese as Morton Grodzin noted in his book Americans Betrayed: Politics and the Japanese Relocation. "Attorney General Warren's record (was) characterized, on one side, by a scrupulous regard for the legal status of resident Japanese and, on the other, by a determination to foster the evacuation by every possible lawful means."39 Warren would later come to regret his assistance in the relocation.

During the war, Warren had his second and third falling out with Democratic Governor Olson. The first rift in their relationship came when Olson played an instrumental role in paroling some of the Point Lobos defendants. Warren still contended that they were communist murderers. The second and third came in the area of civil defense. Olson felt Warren was after his position and as such tried to prevent Warren from taking an active role in the civilian defense program. And he refused Warren's request for an appropriation of funds to cover the expense of civil defense. Given Olson's attitude and Warren's
strong sense of patriotism, Warren decided that he could either stay in office and let Olson run all over him, quit and join the war effort or run against Olson in the next election. He decided to run for the Governor's mansion in 1942.  

**Governor**

Warren ran a strong campaign, taking his case to the people. Again, he ran on a nonpartisan basis and won the election. He would remain in the governor's office until 1953. He served 3 terms. The first governor in California's history to do so. Warren had a direct appeal to the people. He was nonpartisan and free and clear of any special interests as he had never used a special interest to get elected to office. He didn't even have a permanent campaign organization. He used volunteers and only the money available.  

Warren's administration was forward looking. His programs were the beginning of long range plans to prepare for a population estimated at 20 million in 25 years. He supported programs in public health, conservation, education, prison reform and youth programs, industrial development, aging and hospital renovation. Many of his programs were in response to a social need. His was a government of affirmative action. He did not sit on the sidelines. He took action. It really should not have surprised anyone when he became a liberal activist on the Court. He was following a life long pattern. And for Warren, "(l)iberalism was progressivism with a special emphasis on civil rights and equality of opportunity."
National Politics

While Governor, Warren became involved in Republican National Politics, but in his own way. He was highly visible and came from a large state that was strategically placed in the eyes of the Republican Party. He could not help but get involved. In 1944 he accepted the vice-presidential position on the Thomas Dewey ticket after he had delivered the keynote speech at the Republican National Convention. The campaign was tailor-made and unexciting. Warren and his wife made a whistle stop tour of the country giving speeches. Truman won the election and Warren returned to state politics.44

After winning his third election for Governor, the press became interested in Warren. He was continually questioned about running for the Presidency. On November 14, 1951, he announced his Presidential candidacy. According to Senator Nixon," I would say Senator Taft and General Eisenhower are the front runners with Governor Warren the strongest dark horse.45 This was indeed an accurate description. Warren would get the nomination only by a deadlock. As the result of a controversy surrounding the seating of delegates, Eisenhower was able to emerge as the front runner at the convention. Warren released his California delegates to Eisenhower and actively supported Ike's candidacy. Warren appeared in the press with Eisenhower to calm the fears of the Westerners over Ike's programs. Warren was instrumental in carrying the states of Washington, Oregon, and California for Eisenhower. Because of his help with the three states, his continued support of the ticket after Nixon's campaign
fund controversial and his help at the convention, Eisenhower was in Warren's corner. Ike didn't owe Warren anything, however, he was grateful for Warren's help so he offered him the first vacancy on the Supreme Court. It was probably Ike's gratitude to Warren, his belief in Warren as a moderate Republican, and the recommendation of Herbert Brownell, (Ike's Attorney General) that put the Chief Justiceship of the Supreme Court in Warren's lap.46

**Supreme Court**

After the 1950 Presidential election, Warren returned to California and its business. He had taken President Eisenhower's promise about appointing him to fill the next vacancy on the Court as fact and was planning to enter the Department of Justice as Solicitor General. It would be a grooming position for an eventual entrance to the Court. Fred Vinson, who was the current Chief Justice, died unexpectedly of a heart attack, changing everyone's plans. Eisenhower did not immediately appoint Warren to the Court. He didn't feel his promise necessarily meant the Chief Justiceship, and he considered other candidates like John Foster Dulles, Arthur Vanderbilt and John J. Parker.47 It was rumored that Warren had declared he would accept only the Chief Justiceship, although in his memoirs he declared that was not true. "If the President had chosen to appoint some existing member of the Court to be Chief Justice and had offered me the vacancy...I would have accepted readily."48 In any case, he was appointed to the position of Chief Justice of the United States in October, 1953. A position
for which he was perfectly suited, despite claims of inex-
perience. Earl Warren was a leader capable of filling
the void left by Chief Justice Vinson, putting the Supreme
Court back to work.

His Supreme Court years were filled with many different
kinds of cases. Many of them were landmark decisions which
caused quite a bit of controversy in and out of the Court.
However, Warren seemed to take everything in stride, including
the "Impeach Earl Warren" signs that sprang up around the
country. According to one of his sons, "It really breaks him
up."49

The most important cases of the Court dealt with segregation,
reapportionment, criminal procedure, obscenity, school
prayer, and the so-called Communist cases. Warren with the aid
of his Court was able to make sweeping changes in Constitutional
Law. However, if there hadn't already been a liberal bloc
on the Court, it is doubtful whether the changes would have
been made.

When Warren came on the Court, there were clearly two
different blocs on the Supreme Court. The liberal bloc
was led by Justice Hugo Black and the other bloc by Justice
Felix Frankfurter, whose philosophy was more conservative.
By the time that Warren resigned from the Supreme Court,
he had a clear liberal majority in Justices Black, Douglas,
Brennan, Marshall and Fortas.
Jurisprudence

Earl Warren did not come to the United States Supreme Court with his judicial philosophy in tack. He was a novice and it took him several terms to orient himself and discover his own philosophy. It did not take him long though to choose between the two competing philosophies of activism and judicial restraint that the Court reflected. Warren had set a pattern of activism all of his life, and as such he soon oriented himself toward judicial activism and away from judicial restraint as reflected by Mr. Justice Felix Frankfurter. His jurisprudence was in full force by the end of the 1956 term. In their biographies of Earl Warren, Bernard Schwartz and G. Edward White discuss Warren's theory of jurisprudence. White's view seems to embellish on certain aspects of the view that Schwartz gives. Warren's jurisprudence will be compared to his opinions in *Brown v. Board of Education, Topeka, Kansas*, *Baker v. Carr* and *Miranda v. Arizona*.

When, as was previously said, Warren became Chief Justice, he was a novice. As such he moved slowly feeling his way until he could be sure of himself as a judge. At first, his cautiousness resulted in his following Justice Frankfurter's philosophy of judicial restraint. Frankfurter's philosophy:

equated effective judging with judicial restraint, either as manifested in a cautious exercise of the judiciary's power vis-a-vis other law making branches, or as manifested in judicial efforts to suspend bias and to justify decisions on a principled doctrinal basis with principled denoting the qualities of rationality, impartiality, and intelligibility. 50
As soon as Warren was on the Court, Frankfurter latched on to him in hopes of converting him to a philosophy of judicial restraint. As time went on, Warren's stance evolved into liberal activism as could be expected from his past pattern of office holding, and Frankfurter became disillusioned with Warren. Warren's activism left a sour taste in Frankfurter's mouth. Their relationship developed into open animosity. According to one Justice, "Felix was like a mouse, and Warren like an elephant, and they had the same effect upon each other." Warren, always a man of expansive jurisdiction, decision and action, simply couldn't reconcile himself with the tenets of judicial restraint. The more activist he became, the more he realized that the Court could "act to enforce the constitutional guarantees involved in these cases, 'or we let them go and sweep them under the rug, only to leave them for future generations.'" This was unthinkable. Judicial restraint was merely a way for a judge to abdicate performing his duty.

Warren's intense reaction against judicial restraint led him to adopt a liberal activist philosophy founded upon such values as fairness, justice, flag and family. His morals were reflected in his philosophy. He would take appropriate affirmative action when the other branches failed to act or when he thought it necessary for government to protect the rights of the disadvantaged. A concern for individual rights was a cornerstone of his philosophy for interpreting the Constitution. At times reaching a fair result would be more important than a well thought out opinion. Because
of this, he was accused of not having sound legal reasoning in his opinions.\textsuperscript{55}

Warren's jurisprudence was predominately based on fairness. He tended to use fairness as the polester of his judicial approach. When he felt that fair play had not been observed, he didn't hesitate to take a position.\textsuperscript{56} Fairness and justice were not abstractions for Warren, and he tried to ensure they were not abstractions for citizens either. His concerns for fairness can be seen when he would break in on an advocate's oral argument and ask, "'yes, but were you fair?'\textsuperscript{57}

White embellished on the Schwartz's view of Earl Warren's jurisprudence in \textit{Earl Warren: A Public Life}. According to White, Warren was an unorthodox legal technician with his own unique theory of judging, which relied on a deep commitment to a set of ethical principles. He put aside the traditional judicial process values such as stability, intellectuability, craftsmanship, and analytical skill for his own enlightened theory of judging based on ethics.\textsuperscript{58} If one tries to analyze Warren's opinions through traditional processes, the opinions often seem unanalytical.

A set of ethical values (fairness, decency, justice, equality, honesty, dignity, and individuality) formed the underpinnings of the Constitution. These ethical imperatives were the essence of American Democracy and must be considered in judicial decision making. They require as much attention as the specific language in the Constitution.\textsuperscript{59} His perspective was an ethical one. He placed an ethical shadow around the Constitution. The shadow was a law beyond the law. Warren
argued, "law...presupposes the existence of a broad area of human conduct controlled only by ethical norms. There is thus a law beyond the law."60 The law beyond the law was a natural law perhaps harkening to Locke's theory of natural rights. This natural law contained ethical imperatives from which a judge can derive constitutional principles and apply them to specific cases.61 Warren was guided by the ethical imperatives that the Constitution rested upon. "Warren repeatedly emphasized that he had a duty under the Constitution to see that his understanding of its imperatives (were) implemented."62 He was the protector of these values. As a Justice, his duty was to decide cases not to avoid them. This makes him as an activists concerned primarily with ethics. He "set no doctrinal limits on the protection of individual rights against state action and no institutional limits on the power of the judiciary to protect those rights."63

With this view that the Constitution is shadowed by and rests upon ethical imperatives, his opinions can best be understood by discovering the ethical values if any, he sought to apply to a case. The results he obtained are consistent with the ethical imperatives of the Constitution. Warren held the same values he saw in the Constitution as his own personal values. They guided his life and he felt them necessary for the existence of enlightened government also. His progressivism crops up again. The progressives had values such as honesty, fairness, openness, integrity, which reinforced his childhood values and were applied to government. His progressive values merged with liberalism, and he saw those
same values reflected in the Constitution.

Warren had an unorthodox manner of judging. His philosophy of judging was based on ethics. The problem is "when one divorces Warren's opinions from their ethical premises, they evaporate. No overreaching doctrinal unity binds them." 64

Indeed, White's view seems to be an adequate explanation of Warren's jurisprudence. It ties elements of his life together making it a cohesive package. The overriding value that can be consistently seen in his opinions and easily seen in his life is fairness. He searched for fairness and justice. He tried to make these concepts more than mere abstractions. It seems one can understand his decisions only through a mix of his ethics and activism.

What follows is a direct quote from the memoirs of Earl Warren in which he expresses his opinion on judicial activism and his view of his duty under the Constitution:

I do not register myself with those who, in the political jargon of today, classify themselves as 'strict constructionists.' Neither do I agree with so-called doctrine of 'neutral principles.' It too, is a fantasy and is used more to avoid responsibilities than to meet them. As the defender of the Constitution, the Court cannot be neutral...the Court sits to decide cases, not to avoid decisions, and while it must recognize the Constitutional powers of the branches of government involved, it must also decide every issue properly placed before it...The problems...are so complex and their special circumstances are so far beyond the vision of even the wisest of the Founding Fathers that it would be impossible to find specific words in precedent cases to justify every decision reached. 65

Warren's liberal activism as reflected in the above quote can readily be seen in Brown, Baker, and Miranda which shall be discussed next.

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Note, all citations for the cases mentioned in the next section can be found in the appendix at the end of the paper on page 43 if the reader cares to view the actual text of the case.

The ethical imperatives upon which Warren saw the Constitution as being founded revealed themselves during his first term on the Court in the historic case of Brown v. Board of Education (1954). This case was a leftover from the Vinson Court. When he entered the Court, Brown was up for reargument. Justice Frankfurter had convinced the Vinson Court that more information on the historical intent of the Fourteenth Amendment was needed before a vote could be taken. It was during this time before reargument that Chief Justice Vinson passed away. Earl Warren entered the picture and was confronted with this difficult case demanding that the "separate but equal" doctrine of Plessy v. Ferguson be overturned. In this decision, he demonstrated his willingness to be an activist judge. 66

Warren wrote the opinion in Brown after having led the entire Court to an unanimous decision. The facts of Brown are quite simple. Black children in Kansas requested and were denied admission to an all white state public school. Public schools were racially segregated by state law. Segregation of the races was the result of the decision in Plessy. Appellants contended that segregation amounted to racial discrimination, and that their children were being denied equal protection of the laws as required by the Fourteenth Amendment. 67 The record showed that the tangible factors such as teachers, curriculum and buildings were being equalized.

The Court held after looking at the legislative history and intent of the Fourteenth Amendment, the relevant cases, the need for education and the effect of segregation on children
that "segregation of children in public schools solely on the basis of race...deprive(s) the children of the minority group of equal educational opportunities." The Court sought to justify its looking at intangible factors by noting that in previous segregation cases (*Sweatt v Painter* and *McLaurin v Oklahoma State Regents*) the Court took into consideration intangible factors. The Court went on to say, relying on empirical evidence, that to separate school children "because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." This feeling of inferiority affects the motivation to learn hence denying equal educational opportunities when segregation has the sanction of law. Based on this empirical evidence, the Court concluded that separate educational facilities deny equal protection of the laws. With this, *Plessy v Ferguson* was struck down. However, the Court didn't fashion a decree at the time of its initial decision. Given the impact the decision would have, it was decided that reargument was needed with state and federal participation to fashion an appropriate decree.

The *Brown* decision can be analyzed from the standpoint of the ethical imperatives found in the opinion that according to Warren biographers guided his decision. One would be equality and liberty. Our system is based upon them from the Declaration of Independence through the Constitution. "We hold these truths to be self-evident, that all men are created equal, that they are endowed...with certain unalienable Rights...Life, Liberty and the pursuit of Happiness." Equality and liberty
are a law beyond the law from the founding. It is a natural law. We are a nation of equals. It means something to us; it is valued. The Thirteenth, Fourteenth and Fifteenth Amendments were passed to ensure equality. When there is inequality of treatment or opportunities as is the end result of separate educational facilities, then the Constitution must provide a solution. A judge is duty bound to remedy the injustice. In the conference discussion of Brown, Schwartz quoted Warren as saying "'separate but equal rests upon a concept of the inherent inferiority of the colored race.'" Warren reduced the problem to a moral question. Do we believe blacks are inferior, unequal to the white race? He answered no, for if one truly believes in the law that resides beyond the law, then everyone is equal: "'I don't see how in this day and age we can set any group apart from the rest and say that they are not entitled to exactly the same treatment as all others.'" And if liberty means anything, it means the ability to go where the rest of society goes with no unnecessary, unreasonable restrictions placed on the freedom of movement. Liberty encompasses the right to receive an education. Segregation restricts liberty.

Another value found in his opinion and which runs through Warren's own life is the value of education. Children have, and I believe Warren would have agreed, an almost fundamental right to an education. He might have deemed it fundamental if he could have gotten the other justices to go along with him. Warren had been brought up by his father to fervently believe in the economic liberation that an education provides. Even
though he was never an academician, Warren believed wholeheartedly in education. As governor, he was a board member of the University of California supporting higher education. He took great interest in the public schools and supported public education throughout his years as governor. He knew that with a population estimated at 20 million a plethora of attention was needed in the area of public education. 

Education was essential for success in later life and good citizenship. The segregation of the races prevented most black children from achieving their full potential and seizing opportunities. In addition, Warren believed that education was the "principle instrument in awakening the child to cultural values...and in helping him adjust normally to his environment." 

Education should be a liberating force, and it wasn't under segregation.

Warren's paternalistic nature was revealed in the Brown opinion also. He was very familiar with the role of protector. He had assumed that role with his family. In Brown, he brought the defenseless black children under his paternalistic protection to ensure that they received a good education. He would require no less than the best education for his children, and he could do no less than the same for disadvantaged black children. "The separate educational facilities deny equal opportunities. Segregation denies to black children the best education possible. It was an injustice pleading for correction."

Warren was more than willing to correct it. He was a man familiar with decisions and action. He led the Court to what was for him the only logical, reasonable and morally correct solution. Furthermore, the problem of unequal education had
been going on for over half a century, and since the other branches had not taken steps to correct it, the judiciary would by whatever means necessary. This is an expression of his activism. In Warren's ethical jurisprudence, the moral values involved in the case came first followed by constitutional justifications in the Fourteenth Amendment equal protection of the laws clause.

Brown and the cases that followed it were the end for the Jim Crow laws that separated the races in all walks of life. In many instances, the Court didn't discuss the application of Brown to other public and private facilities. They simply cited it believing that it said it all. This became another criticism of the Warren Court. Scholars wanted the logic behind the decisions extending Brown.76 Soon after the Brown decision came down, Warren began receiving hate mail containing many criticisms and the Impeach Earl Warren campaign began. The desegregation caused by Brown is still controversial today.

Baker v. Carr 369 U.S. 186; 82 S.Ct. 691; 7 L.Ed.2d 663, (1962)

By the time that Baker v. Carr was handed down on March 26, 1962, Earl Warren had definitely assumed the position of a liberal activist leading the liberal bloc of the Court which included Black, Douglas, and Brennan. After the retirement of Justice Frankfurter in 1963, Warren received a clear majority when Arthur Goldberg joined the Court. He was most definitely in Earl Warren's corner an even more willing to expand the principles of the Constitution.77

Baker v. Carr, a case which came out of Tennessee, dealt with the apportionment of the state legislature. The Supreme
Court held in this case that the courts have jurisdiction to hear and decide cases dealing with malapportionment. This was done despite the belief by some of the justices that apportionment was a political question with ought not to be decided. The opinion was written by Justice Brennan, Warren's lieutenant on the Court. It was a 6-2 decision, and Warren happily joined the majority. Warren's vote was based on the ethical imperatives lurking in the shadows of the Constitution and on his personal experiences and philosophy of activism.

In this case, appellant argued that through the 1901 Tennessee Apportionment Act, he and others so situated were denied equal protection of the laws because of the debasement of their votes. The lower court dismissed for a lack of subject matter jurisdiction and a lack of a justiciable cause of action. The Court reversed holding that the lower courts have subject matter jurisdiction, apportionment presents a justiciable cause of action, and appellants have standing. 78

The Tennessee State Legislature had not been reapportioned since 1901, despite changes in growth and population. The result of the changing conditions and lack of reapportionment was the debasement of some votes. The Supreme Court declared in the opinion that a cause of action existed under Article III, Section 2 of the Constitution. It was a case or controversy. Appellants alleged that the system of apportionment denied them equal protection of the laws, in violation of the Fourteenth Amendment. The case was not "so attenuated and unsubstantial as to be absolutely devoid of merit...since the complaint plainly sets forth a case arising under the Constitution," 79 there was subject matter jurisdiction. And the case of
Colegrove v. Green, was without authority in this instance.

The remainder of Brennan's opinion dealt with the justiciability of the subject matter. It was argued that what was involved was a nonjusticiable political question. This was firmly rejected by the majority. It was not beyond the Court's authority. The political question doctrine is based on the separation of powers in the Constitution which makes a distinction between subjects committed to other branches and the Court. The following are categories that have been held to constitute political question beyond the reach of the Court in most cases:

1. questions dealing with foreign relations;
2. dates of duration of hostilities;
3. validity of enactments;
4. status of Indian tribes; and
5. Republican form of government.

The Court distinguished the facts in Baker from the 5 categories. It made a distinction between political questions and political cases, holding that the nonjusticiability of political questions "has nothing to do with their touching upon matters of state governmental organization," which was involved in Baker. The Court sent the case back down for trial and judgment. Justice Frankfurter gave a stinging dissent "...(t)here is not under our Constitution a judicial remedy for every political mischief..." The decision opened the door for further attacks on malapportionment.

The question now to be answered, is what made Earl Warren vote the way he did in this particular case? What motivated him? Why didn't he simply avoid the question as he obviously could have done by simply stating it presented a nonjusticiable political question? The answer to these question is his jurisprudence.
Baker is best viewed as a forerunner to Warren's decision in Reynolds v. Sims (1964) in which he announced the one-man-one vote rule. The ethical imperative behind Baker and Reynolds is the value of participation in the affairs of government. By putting himself in Baker's position, he became a citizen qualified to vote but whose vote does not count or mean the same as Joe Smoe's over in the next county. The system of apportionment had changed and was destroying the ethical imperative that "ours (be) a government of all the people, by all the people, and for all of the people." By virtue of the debasement of their vote, some citizens aren't represented in the government. They are not "participating." They have no voice, and this is partly why we fought the Revolutionary War. We wanted a voice in government. By voting with the majority to correct the malapportionment, the ethical imperative will be vindicated and restored. In Super Chief, Bernard Schwartz notes that some of the justices in the majority, Warren included, were willing to go further with the Baker decision; however, it was decided that the better course of valor in this instance was a touch of restraint. Brennan and Warren wanted a strong majority with only watered down concurrences. A marrow cautious decision was the appropriate route to go in securing this.

I believe that Warren's past experiences in California played a major role in his decision in Baker. From his early experiences with the Southern Pacific Railroad, Warren developed a strong dislike for special interests controlling state legislatures as was the case when he grew up. Perhaps he drew
an analogy between his early experiences and the facts in Baker. In Baker, the few by reason of the malapportionment were able to control the legislature at the expense of other citizens who were unable to remedy the situation. It was a classic case of special interests controlling the legislature, and it needed to be corrected. His vote is ironic in this case considering his actions as governor when he went along with the legislature in preventing reapportionment. In his memoirs, he states "it was...a matter of political expediency." He would have been unable to change the system in any case seeing how the legislature was as happy as a lark with the present system. He undoubtedley saw his vote as a mean of remedying a situation he was unable to in California.

Another way to explain Warren's vote is on the basis of his philosophy of judicial activism. Warren was born to make decisions. If he saw an injustice in society, he used his authority to remedy it. He didn't let doctrine stand in his way as we have seen. For him, the doctrine of political questions was probably a mere technicality that wouldn't stop him. The right involved in Baker was far more important than allegiance to the restraint inherent in the political question doctrine. For to adhere to it would mean an abdication of a duty he had sworn to uphold.

Furthermore, his action in this case filled the void that the state courts and legislature refused to fill. It was clear to Warren that state legislators obviously were not going to correct the system from which they derived great benefits. And the courts refused jurisdiction. It was up to the Supreme Court...
Justice Frankfurter found this reprehensible as can be seen in this comment to Justice Harlan. It was said in 1957, but I've no doubt whatsoever that Frankfurter felt the same way after *Baker v Carr*. "The real truth of the matter is that some of our brethren play ducks and drakes with the jurisdictional requirements when they want to reach a result because they are self-righteous do gooders, unlike Holmes who spoke of himself 'as a judge whose first business it to see that the game is played according to the rules whether I like them or not.'" 86

*Miranda v Arizona* 384 U.S. 436; 86 S.Ct. 1602; 16 L.Ed.2d 694

Like *Brown* and *Baker*, the decision in *Miranda v Arizona* on June 13, 1966 was a landmark decision. And it too is representative of Warren's jurisprudence. The opinion was written by Warren. It was a 6 to 3 split. The result was that the police were now required to inform an accused of his constitutional rights for an incustody statement to be admissible in state court as evidence. To say that this case caused a controversy in state law enforcement is not to say enough. The Court was accused of being a lawmaker, of being soft on criminals and handcuffing the police and of allowing criminals to go free. 87

The *Miranda* opinion decided four cases that were all similar. In each case, defendants were questioned incommunicado without being effectively advised of their rights. The interrogations resulted in confessions or statements that were later used against them. In the lead case, Ernesto Miranda, seriously disturbed, was taken from his home to the police station where
he underwent 2 hours of intensive questioning before making a written confession. He was convicted of rape and kidnapping. On the basis of the Fifth Amendment right against self-incrimination and weaving the Sixth Amendment right to counsel into it, Warren created a series of procedural rights for the police to read to suspects. Warren's opinion went into a detailed examination of current police practices, the relationship of the privilege against self-incrimination to confessions, interrogations and a discussion of the new procedures. 88

Warren based his opinion on the privilege against self-incrimination, which is the root of America's Criminal Justice System. From this privilege, he constructed a series of procedural safeguards to ensure compliance with the Constitution, and an end to the lazy, barbaric, deceitful police practices. Mr. Justice Clark felt the opinion "(went) too far on too little." 89 And the other dissenters felt it was poor law. However, Warren obviously did not think so. He wanted to ensure that the guarantees in the Constitution were not mere words.

The police were left with the Miranda Warnings:

...(p)rior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive...these rights...voluntarily, knowingly and intelligently... (90)

And an admonishment of sorts to cleanup their acts.

Behind his decision in Miranda was his ethical jurisprudence with emphasis on fairness, justice, integrity, dignity and humanity coupled with activism. Miranda is the epitome of
of fairness. The Constitution is based on it, and judges must ensure that fair procedures are used in criminal procedures otherwise injustice wins. "(I)n the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves." The United States does not have a tradition of a court of star chamber secretly handing out justice, conducting investigation and interrogating people. In America trials and police investigations are to be above board and reproach infused with the concept of fairness. Warren's polestar is fairness. It is an ultimate value that needs protection. The criminal justice system is to perform its function, but in a manner conducive to fairness and justice insuring that "precious Fifth Amendment rights" are protected. The law is not to be broken to be enforced. Warren had first hand knowledge of how coercive interrogations could be from his days as a District Attorney. The Point Lobos case is a good example, as his office was accused of taking involuntary confessions. People can be easily influenced "custodial interrogation exacts a heavy toll on individual liberty and trades on the weakness of individuals." (A quote taken from the opinion.) Injustice is the result when the law is broken by police officers.

Warren had an intense dislike for corruption. When he became District Attorney, he actively tried to clean up the county, getting rid of graft and corruption. He tried to establish enlightened procedures in the office that would ensure honesty, integrity and dignity. For Warren, the current police
practices was: like the corruption of his day. The practices destroyed integrity, dignity and fairness. It bought the policeman down to the level of the criminal. The procedures were necessary to reform the police practices. Whatever else the accused is, who passes through the criminal justice system, he is a human being deserving of fair and honest treatment.

Warren knew from experience and long observation that the police tactics weren't changing fast enough and some weren't changing at all. "Unless a proper limitation upon custodial interrogation is achieved...there can be no assurance that practices of this nature will be eradicated in the foreseeable future." Miranda rules were essential. The police, despite a long list of cases foreshadowing Miranda, had continued their practices. When it became evident that the other branches weren't acting quick enough, it became the duty of the judiciary to take an activist stance and compel affirmative state action. The police had an opportunity to act, but when they didn't, it fell to the Court. The Court had given the police a message in their opinions from Powell v Alabama to Escobedo v Illinois. When the states refused to voluntarily reform their practices, Warren decided to step in and do it for them. This was reminiscent of Attorney General Earl Warren. In a similar way, the decisions in Brown and Baker reflect aspects of his past life as a California Public official.

Summary and Conclusion

The opinions in Brown, Baker, and Miranda share other similar characteristics besides reflecting Warren's past life
as a California public official. They each reflect his unique jurisprudence of ethics mixed with activism. Indeed, the holding in each case required affirmative governmental action in one form or another. In addition, all three cases were landmark decisions for the Court. They had far reaching and lasting effects on American society. They sparked a controversy when they came down from the Court, and it is still going on today. And Warren was no less controversial than his opinions. People still feel strongly about him 16 years after his retirement and 11 years after his death.

His opinions were ethical, and when divorced of their ethics, nothing tied them together; there was no overriding doctrinal unity left standing. Critics believed his opinions were based on too much ethics and not enough on the Constitution. Warren didn't mind though as long as the end result was fair and just; only others minded. Brown, without the ethic of social equality of the races, Warren's personal experiences and the empirical evidence, is left standing on a weak interpretation of the equal protection of the laws clause of the Fourteenth Amendment. He doesn't go very deeply into the rational behind the decisions of why the equal protection clause invalidates public school segregation. He concentrates more on the empirical evidence and the conclusion that segregation injures the black child psychologically. Baker was based on what a six man majority believed was a case or controversy under the Constitution, and what presented a justiciable cause of action regardless of the doctrine of
political questions. It is almost as if the majority up and decided that in 1962 questions of malapportionment no longer represent issues beyond the Court's authority. The fair result of providing compensation to debased voters became more important than the precedent behind the doctrine of political question. Warren's ethics and activism show through again. And finally, *Miranda* really falls apart without the ethical value of fairness coupled with Warren's experiences. He tied the *Miranda* Warnings solely to the Fifth Amendment privilege against self-incrimination with a little bit of the Sixth Amendment thrown in. The Constitution no where explicitly requires that defendants be affirmatively warned of their rights. It was Warren who believed that the Warnings were necessary for justice to be served and to put law enforcement and criminals on an equal footing with one another. No one should have an advantage in the criminal justice system. Without the ethics, the opinions begin to sag right in the middle. There is too little to sustain their weight.

I am left with a terrible ambivalence concerning Earl Warren. I went into the research with the belief that Warren was some type of demigod. Anthony Lewis has said, "Earl Warren was the closest thing the United States has had to a Platonic Guardina." He did become a Platonic Guardian handing out (what was for him) justice from the bench. He tried to give the American people a sense of justice and fairness. I no longer see him as a demigod incapable of error. I see him now as a human being possessing like everyone human frailties. He tried to come up with what he thought were
fair or just results and succeeded in creating controversies that still rage in society. He move too fast for many people. Our system is based on slow incremental change. The decisions in Brown, Baker and Miranda might have gone down easier with a gradual application of their principles. I readily support the end results of his opinions, however, I find myself incapable of agreeing with the reasoning. The reforms were needed. They did fill a void. Yet, I still have mixed feelings about him. A statement by law professor Philip B. Kurland sums up my ambivalence toward Earl Warren:

Don't shoot the piano player. He's doing his best. It is still possible, however, to wish that he would stick to the piano and not try to be a one-man band. It is too much to ask that he take piano lessons. 96

I do wish though that he had taken at least a few lessons. I don't think that it is too much to ask considering the position in question--the Chief Justiceship of the United States Supreme Court.
APPENDIX OF CASE CITATIONS


Endnotes


3. Weaver, p. 16.


8. White, Earl Warren, pg. 11-12.

9. Ibid., p. 12.


11. Ibid., p. 35

12. Ibid., p. 36.


16. Ibid., pg. 17-21.


18. Ibid., p. 44.


22. Weaver, pg. 35-36.

23. Warren, p. 56.

24. Weaver, pg. 38-42.

Endnotes Continued

26. Weaver, pg. 42-43.
27. Warren, p. 117.
29. Ibid., pg. 41-44.
30. Schwartz, p. 11.
31. Weaver, pg. 84-94.
32. White, Earl Warren, p. 32.
33. Ibid., pg. 30-34.
34. Weaver, pg. 50-54.
35. Ibid., pg. 39-40.
37. Weaver, pg. 129-139.
38. Ibid., p. 105.
39. Ibid., p. 106.
41. Weaver, pg. 96-102.
42. Warren, pg. 182-198.
43. White, Earl Warren, p. 103.
44. Ibid., pg. 130-134.
45. Weaver, p. 178.
47. White, Earl Warren, pg. 146-149.
48. Warren, p. 27.
49. Schwartz, p. 281.
52. Ibid., p. 257.
Endnotes Continued

54. Ibid., pg. 191-208.
55. Schwartz, pg. 117-120.
56. Ibid., p. 199.
57. Weaver, p. 9.
59. Ibid., p. 358.
60. Ibid., p. 225.
62. Ibid., p. 218.
63. Ibid., p. 224.
64. White, Earl Warren, p. 367.
66. Schwartz, pg. 75-83.
68. Brown, p. 880.
69. Ibid., p. 880.
71. Schwartz, p. 86.
72. Ibid., p. 86.
75. Brown, p. 880.
76. Schwartz, pg. 125-127.
77. Ibid., pg. 446-449.
Endnotes Continued

80. Baker, pg. 6-12-684.
81. Ibid., p. 6-16.
82. Weaver, p. 254.
83. Warren, p. 308.
84. Schwartz, p. 272.
86. Schwartz, p. 272.
87. Ibid., pg. 588-590.
89. Miranda, p. 737.
90. Ibid., p. 707.
92. Miranda, p. 713.
93. Ibid., p. 712.
96. Weaver, pg. 6-7.
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