

# *COURTING HARRY*

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by Lee Blessing

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## CHARACTERS

HARRY BLACKMUN ----- A man in late middle age

WARREN BURGER ----- The same

All other roles are played by four actors, two men and two women who are designated thus:

ACTOR A ----- A man of thirty-five or so

ACTOR B ----- A man in his twenties

ACTOR C ----- A woman of forty

ACTOR D ----- A woman in her twenties

## TIME

Several years after the death of Justice Blackmun

## PLACE

The theatre in which the play is being performed

(Two men in a spotlight. One is HARRY BLACKMUN, nominee for Supreme Court Justice. The other is RICHARD NIXON, played by ACTOR A. HARRY's unassuming, bespectacled, about sixty. The Midwesterner in him is forever inextinguishable)

NIXON

What about your daughters?

HARRY

My daughters?

NIXON

You have three daughters: twenty, twenty-two, twenty-six? Any of them "hippies"?

HARRY

No, I wouldn't say so. One's still in college . . .

NIXON

You have pictures?

(HARRY pulls out his wallet, shows pictures.  
NIXON studies them, suspicious)

NIXON (cont'd)

Guess they look all right. Sorry. Have to be careful. Have to get this one right, after those mess-ups with Haynesworth and Carswell.

(emitting a sharp, frustrated sigh)

The President can't afford to take strike three, can he?

HARRY

No, sir.

NIXON

Chief Justice Burger thinks a great deal of you.

HARRY

It's always nice to—

NIXON

He likes the way you see the law. A lot like him, he says.

HARRY

Well—

NIXON

How long have you known each other?

HARRY

Oh, um . . . forever. Over fifty years.

NIXON

Amazing. Not many marriages last that long.

HARRY

I suppose not.

NIXON

Pat and I will.

HARRY

I'm sure you will.

NIXON

How much are you worth?

HARRY

What?

NIXON

Hundred thousand? Less? Getting so we have to put paupers on the Supreme Court these days. Nobody trusts a rich judge. Hell, I was only worth forty-two grand when I left the Vice-Presidency. Plenty went away millionaires, believe me. A man's either honest or he's not. You agree?

HARRY

Um . . .

NIXON

Look out at the Rose Garden with me, Harry.

NIXON (cont'd)  
(looking out a window)

Pretty, eh?

(as HARRY's about to answer)

Right now, you're independent, ready to vote your own conscience. But I tell you, that Georgetown crowd's going to go all out. Think you can resist?

HARRY

If what you mean is —

NIXON

In Washington there's three parties: the Republican party, the Democratic party and the cocktail party. I need to know you can stay your own man — that you can *resist*.

HARRY

Yes, I can resist.

NIXON

Can your wife?

HARRY

Yes.

NIXON

This is important, Harry. There are two members of the Supreme Court right now who couldn't resist.

HARRY

We can resist.

NIXON

You're sure your daughters aren't hippies?

HARRY

I'm sure.

NIXON

Well, that's fine.

(suddenly pulling HARRY into an awkward embrace, then releasing him)

That's . . . that's just fine.

(Lights dim. NIXON disappears as HARRY comes forward and addresses the audience)

HARRY

(to audience)

Who on earth was that with President Nixon, you're probably asking. No reason to remember – it was a while ago. I've been dead since – well, it's hard to keep track. You know what I was thinking about while I was talking with Richard Nixon? The strangest thing.

(Suddenly we hear, very dimly, WARREN's voice from far offstage)

WARREN (off)

Harry!

HARRY

(continuing, not seeming to notice)

I was thinking about a giant mural, in the rotunda of the state capitol of Minnesota – in St. Paul, where I grew up. It's from the Civil War. The Battle of Gettysburg.

WARREN (off)

(a little closer, but still faint)

Harry!

HARRY

It shows a charge by the First Minnesota Regiment. They'd been held in reserve that day, didn't expect to go into battle. But things happened, mistakes were made, and before they knew it they were charging straight into a much larger force of Confederates.

(WARREN enters. He's been hurrying, and he's out of breath. WARREN's a distinguished-looking man, when he isn't fighting for air. Well dressed)

WARREN

Harry –!

HARRY

Hi, Warren. I was just telling them about –

WARREN  
What are you doing out here?!

HARRY  
I'm talking about the Civil War.

WARREN  
(very aware of the audience)  
The Civil War? We're not that old.  
(to the audience)  
I'm sorry. My friend seems to have, um—  
(to audience, grabbing HARRY's arm)  
Excuse us.

HARRY  
(quietly, to WARREN)  
What are you doing? I'm talking to these people.

WARREN  
No, you're not.

HARRY  
I most certainly am.

WARREN  
About what?

HARRY  
About my life.

WARREN  
Your *life*—?! Do they even know your name?

HARRY  
(suddenly realizing)  
Oh—right! I forgot to introduce myself—

WARREN  
Good.

HARRY  
(as WARREN again tries to usher him out)

Hey —!

WARREN  
(to audience )

Sorry to have bothered you all.

HARRY

You can't —!

WARREN  
(to audience)

We'll be back later. In a few years.

HARRY  
(tearing away)

Let me go!

(to audience)

I'm Harry Blackmun, former associate justice of the United States Supreme Court.

(An awkwardly silent moment)

WARREN  
(with gentle sarcasm)

And a lightning-bolt of recognition electrifies the crowd. Can we go now?

HARRY

No. *No.*

(to audience)

This is Warren Burger.

WARREN

It's no use —

HARRY

He was Chief Justice when I was on the Court. *Long* after the Civil War.

WARREN

Why are you doing this?



HARRY

Stop interrupting!

WARREN

(to audience)

I apologize for Harry. He hasn't been dead as long as I have —

HARRY

Interrupt all you want, then — I'm still talking. And I'm talking about the First Minnesota.

WARREN

(to audience)

He's disoriented —

HARRY

I'm no such thing. The story of the First Minnesota Regiment popped into my mind when I was talking with President Nixon.

WARREN

*Why?*

HARRY

Who knows why? But it made me think about Minnesotans and duty.

(to audience)

If those soldiers hadn't done their duty, hadn't charged that very moment, the Battle of Gettysburg — the Civil War *itself* — could have been lost.

WARREN

Don't go overboard.

HARRY

You can look it up.

WARREN

Fine. And your point?

HARRY

My point? My point is, they did charge. They did.

(Another silent beat. WARREN waves to the audience)

WARREN

Thanks for a wonderful evening, everybody. You've been great —

(WARREN tries to steer HARRY out, but fails)

HARRY

(to audience)

In the first five minutes, they lost eighty-two percent of their men. Highest Union casualty rate of the war. Why did I think of them? Because it happens to illustrate how so many Minnesotans wind up doing something important.

WARREN

Which is?

HARRY

By accident. But then . . . with great dedication.

WARREN

*This* Minnesotan did not do things by accident.

HARRY

I don't mean both of us. I'm describing me more.

WARREN

So you're comparing yourself with soldiers who gave their lives?

HARRY

Of course not. But . . . then again yes, in a way. I mean, doesn't everyone give his life? Eventually?

WARREN

It's not the same thing. They *sacrificed*.

HARRY

We did too. We sacrificed. We spent our last decades plunged into controversies at an age when other people are out sitting in the sun —

WARREN

How was serving on the Supreme Court a sacrifice?

(to audience)

The Court was my life's crowning achievement.

HARRY  
I got death threats.

WARREN  
Who didn't?

HARRY  
So you enjoyed the arguments, the in-fighting—?

WARREN  
That's how a court—

HARRY  
Nine different people pulling in nine different directions? I didn't even want to be on the Court. You talked me into it.

WARREN  
I did not!  
(controlling himself)  
Harry, can we please go? We don't want to reach the point of—

HARRY  
The point of what?

WARREN  
Of doing . . . damage. For God's sake, that can't be what you want.

HARRY  
I'm not sure what I want, I just . . . Damn it, I've lost something, and I need to find out . . . how.

WARREN  
What on earth are you talking about? What have you lost? It's not a contact lens; you've always insisted on wearing those glasses—

HARRY  
You. I lost you.

WARREN  
I'm starting to get embarrassed for you, Harry.

HARRY

Aren't you curious? Don't you ever wonder what happened?

WARREN

I know what happened –

HARRY

But how; how could it happen? That's what I want to know.

WARREN

(to audience)

I apologize for Harry's self-dramatizing. He's not used to being onstage. Neither am I, for that matter. That's why we're leaving.

HARRY

We're not leaving, damn it! Sit down!

(HARRY gestures, and a chair slides on upstage. WARREN stares at the chair, then at HARRY, then starts out)

HARRY (cont'd)

Please.

WARREN

(of the stage)

Why here?

(pointing at the audience)

Even the ones who know you, probably can't remember why.

(to audience)

Harry wrote the Supreme Court's original *Roe versus Wade* opinion. How many knew that? Show of hands.

(without counting hands, starting out again)

I rest my case.

HARRY

So you're a coward.

WARREN

(stopping)

Is that what you're going to tell them?

HARRY

You're running out.

WARREN

They'd hate us for going into it. It's abortion. No one's going to change their minds.

HARRY

This is not about abortion –

WARREN

Is it in the program? I bet it is. I bet you slapped "abortion" all over the poster, just to get people in here.

HARRY

I did not!

WARREN

(to audience)

Folks, there are some wonderful restaurants in this neighborhood –

HARRY

You killed our friendship. Abortion was only part of it.

WARREN

We agreed on abortion. We voted together.

HARRY

At first. What about later? When it *counted*?

WARREN

So we disagreed; it was a matter of philosophy –

HARRY

You abandoned me! You acted like you had nothing to do with that first decision.

WARREN

Ridiculous.

HARRY

Like it was all my idea. The fact is, you made me write it.

WARREN

I did not.

HARRY

*Roe versus Wade*. You assigned it to me.

WARREN

I had to assign it to someone. God knows, *I* wasn't going to write it.

HARRY

So you dropped it in my lap—your oldest friend. The biggest black-and-white issue of our time. You told me to find the gray area.

WARREN

You didn't complain back then.

HARRY

Did you even think about what it might do to us? Over time?

WARREN

I didn't have a crystal ball.

HARRY

You didn't have a care, that's what you didn't have.

(a beat)

*Roe versus Wade* became my whole life, the only thing people knew me for. For the next twenty years, I had a target on my back. And you just disappeared. Where were you?

WARREN

Following my conscience.

HARRY

Which told you what? "Screw Harry. You've used him—now throw him away"?

WARREN

I needed someone I could trust!

HARRY

Someone who was in your pocket.

WARREN

There were *worse places to be*. You should have stayed there — you'd have been happier!  
(after a silence, to audience)

Well. Who doesn't love a big, long, endless reminiscence? Luckily, you folks were never there, so there's no way to prove anything.

HARRY

Actually, there is.

WARREN

What do you mean?

(Suddenly library shelves filled with countless cardboard file boxes are rolled in by ACTORS A through D. The shelves fill the upstage area)

WARREN (cont'd)

What in blazes — ?!

HARRY

This is why we're here tonight. It's my fault, Warren. It's — what should I call this? — this is my foible.

(The ACTORS — all RESEARCHERS at the moment — fall to their knees, open the boxes and examine the loose documents therein)

WARREN

Your . . . *foible*?

HARRY

(to audience)

We've all got 'em.

ACTOR D

I kept my baby blanket.

ACTOR C

I save old lottery tickets.

ACTOR B

I collect presidential bobble-heads.

HARRY

(to audience)

Warren had his own foibles. He was an Anglophile. Used to strut around his farm in Northern Virginia with a sort of shepherd's crook like an English country squire.

WARREN

What's wrong with that?

HARRY

I might have felt superior, except for this: my own foible.

(with a gesture that takes in everything upstage)

I kept everything I ever wrote down.

(ACTOR B rushes off as the others continue feverishly looking through the trove)

ACTOR A

More than half a million items, in one thousand five hundred and eighty-five boxes!

ACTOR C

Six hundred feet of shelf space!

ACTOR D

This is only a sample!

HARRY

It may not be the most important collection of papers by a retired Supreme Court justice, but it's —

ACTORS A-D

(as ACTOR B re-enters, pushing in a small library table)

The biggest!

WARREN

Oh, Harry . . .



(ACTORS A through D start to move the papers from the floor to the table, creating a new mountainous pile there. HARRY has crossed up to the wall of boxes, where he watches them with mild amusement)

HARRY

I didn't turn this collection loose on the public immediately. I stipulated a five-year waiting period.

WARREN

Five years! That's nothing! I set twenty for mine. Have you no sense of decorum?!

ACTOR C

It's not about decorum.

ACTOR B

No, sirree.

ACTOR A

It's about who publishes *first!*

(HARRY knocks over the box he's been leaning on. Scores of papers spill onto the floor)

HARRY

Here you go.

ACTORS A through D

*Thank you!*

(ACTORS A through D all jump onto the new pile. They try to transfer it to the table, but there are too many papers. The ACTORS sweep the small table clean and push it offstage. They return with a much larger conference table, and spread the mountains of material on it)

WARREN

(to HARRY)

I'll never forgive you for this.

HARRY

Guess we can add it to the list.

(to audience, of the papers)

These are in the Library of Congress now. I started saving things when I was a boy.

(ACTOR C, reading from a journal, instantly  
becomes HARRY's mother THEO)

THEO

Harry, I don't hear you practicing!

(HARRY mimes playing piano. SOUND of an *etude*)

HARRY

(as a boy)

Just resting my fingers, Mother!

(to audience)

I was never any good at the piano.

WARREN

(suddenly rushing forward)

No. No! Stop. Stop it now! We are not going through your childhood.

HARRY

Just the high points.

WARREN

No one cares about your youth. Supreme Court justices aren't considered alive until they're fifty.

HARRY

(to the audience, still playing)

We were a quiet, Methodist family –

(WARREN stops HARRY'S hands.  
SOUND of the piano stops)

WARREN

Scratching out a living in Dayton's Bluff, an unfashionable part of St. Paul. We both were. Why on earth does it matter?

HARRY

Because back then, we liked each other.

(as WARREN lets go of his hands, to audience)

The Blackmuns were poor, but Warren's family was even poorer.

WARREN

We were not. All right, we were. So what? Nothing you wrote down about us can prove anything. It's just your opinion. So. Mediocre at piano. Are we through with your early years?

HARRY

Not quite. There was the first important meeting of my life.

WARREN

When was that? Law school?

ACTOR A

(reading from a journal)

Kindergarten.

WARREN

Oh, for —!

HARRY

(to audience)

Where I met, for the first time, a little boy named Warren E. Burger.

(becoming a kindergartener, friendly and eager)

Hi!

WARREN

(as HARRY looks at him expectantly)

No! Good God, *no!* I'm not doing it!

HARRY

They're *my* papers.

WARREN

This is humiliating!

HARRY

What are you going to do to me when yours come out?

WARREN

I don't care! The battles of the Supreme Court were not won or lost on the playgrounds of Dayton's Bluff, for God's sake!

HARRY

Don't you want to be kids together?

WARREN

No! Childhood – especially a poor childhood – is something you survive. Not to be revisited.

HARRY

If that's how you feel. We had a lot of fun back then.

WARREN

I don't care.

HARRY

When I look at you even now, I can see the five-year-old. It's in your eyes –

WARREN

Get on with it!

HARRY

Why don't you have a seat? This'll only take a minute.

(to audience, as WARREN sits upstage)

Warren was a year and a half older than me. We lived six blocks apart and went to Sunday school together. He was better at sports; we played a *lot* of tennis. We fished, camped – practically *lived* in each other's houses. The Burgers were poorer than we were.

WARREN

You said that.

HARRY

Warren was the leader of us kids. Older. Taller. Better at sports.

WARREN

Handsome.

(to audience)

Harry had glasses. I think he was born wearing glasses.

HARRY

(to audience)

Later we double-dated. We thought about being doctors. In those days you could work your way through school. Warren didn't like blood, though.

WARREN

That wasn't true. I merely pointed out we could get a law degree faster and apply it to anything.

HARRY

You wanted to start a firm together, remember? Blackmun and Burger.

WARREN

Burger and Blackmun. We should have done it, too. We'd have been happier.

HARRY

You think so?

(to audience)

We went to different law schools.

WARREN

You're not getting into that. You're not.

HARRY

It's relevant.

(to audience)

Warren went to night school—

WARREN

(rising, coming downstage)

I am a proud graduate of the William Mitchell College of Law in St. Paul, Minnesota. That's what Harry's trying to say.

HARRY

I was just about to say it—

WARREN

On your way to saying that you graduated from Harvard Law!

HARRY

(to audience)

Scholarship. Lucky break.

WARREN

You never let me forget you were an Ivy Leaguer.

HARRY

I hardly ever mentioned it.

(to audience)

I did do well in school, though. *Summa cum laude* in math, *phi beta kappa*—

WARREN

As an *undergraduate*.

(to audience)

Middle of his class at Harvard Law. He won't mention that.

HARRY

Now I don't have to.

(to audience)

Don't get us wrong. We were still great friends. When I was trying to decide whether to enroll in law school—since it would mean a lot more debt—Warren wrote me a very encouraging letter.

WARREN

(as HARRY picks up a letter from the pile)

You *kept* that?

HARRY

(handing the letter to ACTOR B)

I kept everything.

WARREN

My God.

ACTOR B

(reading)

"Stay by the guns for the last lap".

(HARRY can't help laughing. WARREN's embarrassed)

WARREN

So I mixed a metaphor. So what? You pounce on my awkward sentences – you always did. You pounce on them and sit. Give me that.

(ripping the letter from ACTOR B's hand)

I also wrote this. You could have quoted this:

(reading)

“Believe me, old man, I have no end of admiration for your courage and determination. The day is not far off when you will come to a place as high in life as you are now in the esteem of your friends”.

(WARREN stalks back to his chair upstage)

HARRY

You could hit the note every now and then. Never said you couldn't.

(to audience)

Anyway, while I was at Harvard Law –

WARREN

(mockingly)

“While I was at Harvard Law –”

HARRY

I did sink a little.

(to audience again)

Enough to lose the chance of a big corporate position in the East. I went home to Minnesota, studied for the bar exam over a weekend, passed it –”

WARREN

(as before)

Good God, Harry. Can't we do without this?

HARRY

It's where we're from, who we are. Look at all this: from you alone, a lifetime of letters –

WARREN

Only now am I beginning to understand what “eternity” means.

(rising, indicating the audience)

Our backgrounds aren't relevant. Our lives were about the law, about how we helped shape a system – a system that works. Logical. Dependable. With *limits*.

HARRY

And that's it, eh? Nothing else?

WARREN

Nothing.

HARRY

So . . . our early careers, how we felt about each other — ?

WARREN

Historically unimportant.

HARRY

Friends, families — ?

WARREN

Incidental. We were on the Supreme Court, that's what matters. No one remembers anything else; no one has to. Leave it in the family album.

HARRY

(idly paging through a diary on the table)

How we got through the Depression — ?

WARREN

Cloying.

HARRY

I was best man at your wedding —

WARREN

(reaching to close the diary)

No one cares!

ACTOR D

(grabbing the diary, to the other RESEARCHERS)

This is from that day! Look! Harry's diary.

(reading)

"How worthwhile it seems to have kept one's self clean and pure and to have someone who loves you as dearly as you do her. There are a few things in life worthwhile after all."



ACTORS A-C

Aw-w-w-w . . .

WARREN

You wrote that? The day I was married?

HARRY

Yes.

WARREN

What a dip.

HARRY

So where do you suggest I pick up the narrative, Warren? What's a good spot for you?

WARREN

Nowhere! And if that's not an option, then . . . I suppose the 1952 Republican National Convention.

HARRY

All right.

(to audience)

By 1952, Warren had decided the only way he was going to get ahead was —

WARREN

No, no — you're getting it wrong; let me.

(to audience)

I'd been doing better than Harry for some time. He'd been a bachelor for years. Dinner over at our house — that sort of thing. Finally he married some girl he met on a tennis court.

HARRY

Dottie.

WARREN

Whatever.

(to audience)

I'd been rising for a long time at a solid law firm in St. Paul, and unlike Harry, I'd gotten myself into politics.

HARRY

You sure had.

WARREN

Meanwhile, Harry was the only man in America who managed to be slowed down by a Harvard Law degree. He was scrabbling along over in Minneapolis –

HARRY

At a big law firm –

WARREN

Making no particular mark.

HARRY

That's not true!

ACTOR C

(reading again from HARRY's diary)

"Am I falling behind?"

HARRY

Sure, I had self-doubts. Who doesn't?

WARREN

In your case, the self-doubts were justified.

(to audience)

All through those years I was grabbing at life while Harry only . . . dithered.

HARRY

I did not!

WARREN

(to audience)

Harry may have been more intelligent than me –

HARRY

At least you admit it –

WARREN

(to audience)

But I was the one with personality, which even then counted for so much more.

ACTOR B

(reading from HARRY's diary)

"An attractive, public energy, an endless faith in himself."

WARREN

(to HARRY)

Is that about me? Well observed.

(to audience)

In any case, when you have these qualities, you believe in yourself. You believe in where you *ought* to be. Harry didn't think he deserved to be anywhere, except grinding along in the same old rut.

HARRY

You're mixing metaphors.

WARREN

And loving it.

(to audience)

Harry's only fault, besides the glasses and being short, was that he would not take a risk. Back in 1934 he got an offer to go to Washington and work in the Labor Department. Lucrative, connected – all sorts of possibilities. I'd have given my eyeteeth for it. What did he do? Turned it down.

HARRY

I got to Washington. I argued a tax case before the Supreme Court in the 1930's –

WARREN

And wore mismatched socks and lost by unanimous vote. Years at Harvard, but you never got the hang of the East. You never said, "I'm ready for the big leagues".

(to audience)

Know what I called him? "Wary Harry".

(to HARRY)

Too wary for your own good. And what did it get you? Very nearly a life sentence in the Midwest.

HARRY

There was more to our lives than just ambition –

WARREN

(emphatic)

Like what?!

HARRY

Friendship.

WARREN

Which means nothing if people aren't fulfilling their potential.

HARRY

Potential for what? What about personal potential? We were lifelong friends —

WARREN

*Almost* lifelong. Why don't you have a seat for a minute? Let me take over. I'm sure I can be more efficient.

(HARRY hesitates, then goes upstage and sits. WARREN gestures to the ACTORS)

WARREN (cont'd)

What else is in there? Anything pertinent? Any good news for Harry?

ACTOR C

(flipping quickly through the diary)

Well, um . . .

WARREN

*Skim.*

ACTOR C

"My third daughter is born —"

WARREN

No, no, no. What else?

ACTOR A

(reading something else)

The Mayo Clinic in Rochester, Minnesota offered Harry a newly-created position? Resident counsel?

WARREN

Yes, good. And what did Harry do?

ACTOR B

(looking at something else)

Um . . . weeks of indecision –

ACTOR D

(holding up something else)

List of pros and cons –

WARREN

Exactly. And you dithered along Harry, until you finally said –

ACTORS A-D

(together)

“Yes!”

WARREN

Hallelujah! Of course, all it meant was you decided to dig an open grave for your career in Rochester, Minnesota instead of Minneapolis –

HARRY

I loved that job!

WARREN

Of course you did; it didn't challenge you.

HARRY

Nine years of my life –

ACTOR C

A hundred boxes.

WARREN

For Rochester alone? Really. My God, what an ego! You know Harry, *I* should have had the Harvard education. At least I'd have known what to do with it.

(to the ACTORS)

This is too depressing. Let's move on to 1952.

ACTOR A

(reading one of the new documents)

1952. “Warren Burger becomes a party man.”

WARREN

(to audience)

At the Republican convention I supported Harold Stassen. He couldn't win the nomination, so I helped swing my delegation to Eisenhower. As a reward, I was invited to the inauguration.

HARRY

You certainly wrote me about *that*.

WARREN

What I wrote was unimportant —

HARRY

(going to the table, looking among papers)

I wouldn't say that. I think they'd like to hear.

WARREN

I was young —

HARRY

You were forty-five.

(finding a letter)

Ah! Here we go.

(reading)

"Every minute of Eisenhower's inauguration was actually spine-tingling!"

WARREN

I was new to Washington.

HARRY

(reading on)

"And J. Edgar Hoover! The force of character! Piercing blue eyes! He looks like one of those Holland Dutch fellows that Rembrandt immortalized."

WARREN

(snatching the letter from HARRY)

Eisenhower liked my attitude! It worked, too. He offered me a job.

ACTOR A

(pointing to the letter)

Assistant Attorney General.

WARREN

With a hundred and eighty lawyers under me. Know why, Harry? Because I *tried*. I walked up to the front, like *Oliver Twist*, and asked for more. I didn't dither. I grabbed.

(to audience)

I moved to Washington and never looked back. What were you around then? President of the Rotary Club?

HARRY

(to audience)

Yes, actually.

WARREN

(to audience)

After two years at Justice, I was nominated for the U. S. Court of Appeals for the District of Columbia Circuit. It was, if I may say, a meteoric rise.

(to HARRY)

And you know why, Harry?

HARRY

Your great personality?

WARREN

Exactly!

HARRY

(to audience)

Actually, I attended the swearing-in. We were all proud of Warren. I remember he said—

ACTOR B

(reading from HARRY's diary)

"It's like you're my best man again."

WARREN

It was. Oh, you'd like everyone to believe that I had no humility about it, but I did.

(to ACTORS A through D)

Here, find it. It's got to be here someplace.

(to HARRY, as they search)

I wrote you about it all the time.

(as ACTOR A shows him a letter)

Ah! Yes. There.

ACTOR A

(reading)

"I don't know, Harry. Sometimes I wonder whether I'm qualified for this damned job. I feel like a guy who woke up married to Marilyn Monroe."

WARREN

(taking it from his hand, continuing)

That's right. "Everybody envies him, but he's not all that sure he wanted to *marry* her."

(to audience)

You have to understand. The D.C. court was full of the worst kind of liberals. I was surrounded by FDR and Truman appointees. Bunch of phonies.

(as ACTOR C hands him another letter)

What? Not this one. We don't need this.

HARRY

What is it?

WARREN

Nothing.

(HARRY grabs the letter, looks at it and laughs)

HARRY

Oh— *this* one.

WARREN

It's completely unimportant.

HARRY

But it's so much fun.

(reading)

"Harry, I have spent my whole mature life as roughly in the 'pusher-forward' category, and now find myself a 'holder-backer' just to maintain a thoughtful progress in the law. Being a 'holder-backer' is far less fun." Was English your native tongue?

WARREN

(grabbing back the letter)

My meaning is perfectly clear!

(gesturing at the piles of documents)

I should never have participated in this. You just get petty; that's all that happens.



HARRY

And you don't?

WARREN

You envied my success. Admit it!

(HARRY is silent. WARREN crumples up the letter and throws it on the floor. ACTOR C quickly retrieves it and carefully smooths it out again. WARREN moves upstage and sits)

HARRY

(to audience)

We were both almost fifty. We knew the factory had long ago stopped turning out lifelong – or almost lifelong – friends. I knew there wouldn't be another Warren Burger in my life. He knew there were no more Harrys. So we held on. Didn't seem so hard. Living far apart. Done with all the big changes in our lives.

WARREN

Hah!

HARRY

(to audience)

But then – out of the blue, it seemed – I was nominated for a Federal judgeship on the Court of Appeals for the Eighth Circuit.

WARREN

Dakotas to Arkansas, inclusive – very chic.

HARRY

(to audience)

I got out a legal pad and wrote down the pros and cons.

WARREN

That's the spirit. Dither away.

ACTOR D

(looking at the document)

He wrote down seventeen pros –

ACTOR B

And seventeen cons.

HARRY

(to audience)

On the pro side, things like—

ACTOR C

“Better use of my talents, a little travel, service to U.S. and public.”

HARRY

(to audience)

On the con side—

ACTOR A

“Loss of excitement, possibly a terminal appointment, loneliness.”

HARRY

(to audience)

Five weeks in St. Louis every year—

WARREN

What’s the second prize?

HARRY

(to audience)

Hearing arguments. A cut in pay—by nearly half. It would be harder to put our girls through college. Still, Burger for some reason *loved* the idea.

WARREN

It was at least a start.

HARRY

I think you wanted me to take it because you thought it would make *you* look better.

WARREN

What’s wrong with that? It had a nice sound. “My friend Harry’s also a federal appellate judge.”

HARRY

“Of course, he’s in the Midwest.”

WARREN

Whatever else I thought, I thought you'd be a great judge – back then. I wrote you something. I'm sure I did. Wasn't it positive?

(to ACTORS A through D)

What was it? What did I call Harry?

(The ACTORS storm through documents.  
ACTOR B finds it and reads)

ACTOR B

"A gem among friends – the rarest jewel of all."

WARREN

I even said you'd be a better appellate judge than I was. Didn't believe it, but I said it.

HARRY

(to audience)

In the end, I took the job. Decided I was as worthy as Warren to decide the fates of my fellow man. And woman.

WARREN

It wasn't your job to determine anyone's fate; your job was to interpret the law.

(coming downstage, to audience)

I have to admit, Harry did a creditable job on the Eighth Circuit Court. He wrote a clever majority opinion that allowed those above him to overrule and increase housing rights for blacks, for example. Also, because of Harry men are no longer whipped in the prisons of Arkansas –

ACTOR A

*Jackson versus Bishop.*

HARRY

(to audience)

I swear, it was like the Middle Ages back in the 'Sixties.

WARREN

(to audience)

He was very effective. Still, if you read Harry's opinions – which I did, but not carefully enough – there were red flags.

ACTOR C

(reading a document)

“Constitutional standards are evolving and not static.”

WARREN

And—

ACTOR D

(same)

“A court’s conscience is necessarily the product of prevailing public opinion.”

WARREN

And—

ACTOR C

(same)

“We must look at present-day concepts.”

WARREN

(to audience)

Seemed so innocent when applied to a case like that. Still, it contained the seeds of a disturbing tendency.

HARRY

What are you talking about?

WARREN

“Prevailing public opinion”? What kind of standard is that?

HARRY

We shouldn’t care about what the public thinks?

WARREN

Opinion can change tomorrow. Give an ad executive three minutes with the American public, and opinion will be whatever he wants it to be. The standard is the *law*, which is made slowly and changed carefully.

HARRY

So men should still be whipped in prison?

WARREN

No, *I* should be whipped for helping you.

HARRY

Helping me what?

WARREN

Helping you *up*. There are things we do for friendship which . . . Well. To say it makes us blind is an understatement.

HARRY

(to audience)

Anyhow, once again we thought that was it. Appellate Court judges 'til we died.

WARREN

Once again, speak for yourself.

(with a sudden sigh)

Still, when I think of where it all ended up, maybe we should have formed that law firm after all.

HARRY

Blackmun and Burger, you mean?

WARREN

No, the other one.

HARRY

We might've been happier. I wonder why we didn't do it? Were we afraid? Little too close for comfort?

WARREN

Who knows?

HARRY

(to audience)

Being more than a thousand miles apart had its advantages. We could be boosters for each other, write letters full of inflated praise.

ACTOR A

(reading a letter)

“You have many things I lack. You make an excellent impression. You think well on your feet. You are an excellent advocate. You stand out in a group.”

HARRY

(to audience)

Me to Warren on his sixtieth.

WARREN

You saying you didn’t believe that?

HARRY

No, no – you stood out.

(to audience)

He had this mane of shiny, white hair.

WARREN

Harry –

HARRY

(to audience)

Word was he shampooed with beer –

WARREN

Image means something!

(to audience)

Still, I suppose we were sort of pitiful, in a way. Two men, deep in their middle age, feeling the need to pump each other up like teenagers.

ACTOR B

(reading yet a different letter)

“We’re alike in certain ways. “We abhor the phony. Despite our humble backgrounds we are not impressed with the material things of life, beyond a certain point.”

WARREN

Who wrote that one, you or me?

HARRY

Who remembers?

(to audience)

The whole time I was on the Eighth Circuit Court, Warren kept pestering me to go to Europe.

WARREN

You and me—just the two of us.

HARRY

I resisted. Maybe because it seemed so important to him.

(to WARREN)

Does that make me perverse?

WARREN

Yes. *And* uncaring.

HARRY

Maybe just careful.

WARREN

I don't want to do this, Harry.

HARRY

(gently handing WARREN a letter)

Actually, I thought you made some very good points.

WARREN

(hesitating, then reading)

"What about Lisbon? Harry, we've got to do this *sometime*. If I could get you to realize that a) we're mortal and b) we're not getting younger and c) we need to have at least a once-a-year binge . . . "

(At this point the two men go directly into it, no longer reading from the letters)

HARRY

I'll think about it.

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WARREN

You always say that! You know, there's a very wise book titled "Revolt of the Middle Ages" and it's *not essentially history*.

HARRY

(to audience)

And I'd always let it drop. But he never took the hint.

WARREN

For twenty dollars a day we could spend a month traveling through Belgium, Denmark, Germany, France and Spain!

HARRY

Warren—

WARREN

If we only eat two meals a day, we can lose weight at the same time.

HARRY

I don't—

WARREN

We could each get a Mercedes at a discount—

HARRY

I don't want a—

WARREN

Harry, I made a discovery a few years ago. It's a profound one. We are not going to live forever. I've kept this to myself; I don't want to disturb my contemporaries. Even worse, we're not going to be young forever.

HARRY

Even so—

WARREN

I was old at eighteen. I've tried to get more flexible since then. I don't know how you feel, but—

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HARRY

I'm sorry.



WARREN

Harry –

HARRY

Maybe next year.

WARREN

Listen to me. All you need are twelve hundred dollars, one dress shirt and suit, four wash-and-wear shirts –

HARRY

I don't –

WARREN

Two sets of underwear and pjs, a raincoat, *no* hat –

HARRY

Warren –

WARREN

And a passport.

HARRY

Maybe next year.

(Silence. The two men stare at each other,  
back in the present)

HARRY

Why did you never stop asking?

WARREN

Why did you never say yes?

HARRY

(to audience)

Luckily this was an argument by correspondence. Otherwise, it would have been unbearable.

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WARREN

(picking up another letter)

I'm depressed, saddened. I feel a selfish disappointment. Each of us needs an "escape" kind of holiday right now, and I mean right now.

HARRY

(to audience)

We can only guess at the pressures in another person's life, I suppose. Even our best friend's.

WARREN

(as both men read again from letters)

This is like postponing a cancer operation, Harry. I'm so depressed. Have been for a long time. And it doesn't cure itself. I need to climb a mountain somewhere. I need to dissolve these feelings in clean, clear air.

HARRY

Maybe—

WARREN

Maybe next year. Is this just a Harvard man's way of saying, "Don't bother me"? You're making a mistake— as large a one as I made when I let myself be conned into becoming a judge.

HARRY

Do you want me to come to Washington? I could visit for a couple days—

WARREN

I feel let down; I feel deeply, abnormally hurt.

HARRY

Warren?

WARREN

People think I'm strong, decisive— impervious to the "slings and arrows". How completely I've failed to reveal myself to those who should know what fragile porcelain can reside within a man.

HARRY

(to audience)

Didn't know what to think of *that*. Would you have gone with him? Then he wrote—

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WARREN

Please don't be concerned. I needed to take the "inner cork" out even for a moment. It's safely restored now, and will be released as the need dictates.

HARRY

We all have our frailties, Warren. I concede that I have erred on the side of too thick a bottle perhaps, and too tight a cork.

WARREN

(to audience)

I went to Europe alone that summer. Judicial conference at The Hague. Helped, a little.

HARRY

(to audience)

I never went. Warren said he was too philosophical to be mad.

(to WARREN)

Was that true?

WARREN

What do you care?

HARRY

(to audience)

Men at the end of their sixth decade, wondering what's left in life.

WARREN

The Supreme Court. That's what's left.

HARRY

Oh, yes. The Supreme Court. Mustn't forget that.

(to the audience)

Warren didn't have much trouble getting on the Supreme Court. He'd been sucking up to the Republicans for fifteen years —

WARREN

It was the only way I stood a chance! When Nixon appointed me, he knew I would work hard and be loyal.

HARRY

(to audience)  
Warren had been completely disingenuous. Claimed he wasn't interested in serving on the Court.

WARREN  
Are you kidding? That's how you get it.

HARRY  
(to audience)  
Said it was dominated by liberals.

WARREN  
I swear Harry, you're as political as a head of lettuce.

(HARRY nods at ACTOR D, who reads a letter)

ACTOR D  
"Oh Harry, what can one man do to stop the nonsense? Who knows what the extent of their subversion of the law has been?"

HARRY  
(to audience)  
I wrote him when he was appointed. Said it was a great day for him and for all his friends, great day for America – blah, blah, blah, blah, blah.

WARREN  
You didn't consider me qualified.

HARRY  
For Chief Justice? No one did. Not really.

WARREN  
I suppose you thought you'd have been better? Well, guess what? You couldn't have been considered, because you had done none of the groundwork. People laugh at mediocrity, but I'll tell you something: sometimes mediocrity works harder. When it does, merit doesn't stand a chance. It's called Natural Selection – try to keep up.

HARRY  
Maybe that's what I was doing, trying to keep up. I wrote Warren:

(reading a letter)  
"My support is yours for the asking at all times".

WARREN

Talk about sucking up.

HARRY

Did I want something bigger? Did I want you to help me?

WARREN

Of course you did.

HARRY

I don't remember. It had to have been unconscious.

WARREN

Because you, of course, are pure.

HARRY

Be fair. You were asking me for help.

ACTOR D

(reading a letter)  
"Harry, I need your help. I want your ideas. I never sought this job, but now here it is and *we will do it!*"

HARRY

We?

WARREN

Who wouldn't need help in that situation?! I was in charge of a bunch of Harvard and Princeton types who were being asked to kowtow to a graduate of the William Mitchell College of Law. All those glittering educations looking down on me. Yet they were the ones who'd gone so far from reality for so long! Bastards.

HARRY

(to audience)

Soon after, there was another opening on the Court. Nixon nominated Clement Haynesworth Jr., who wasn't liberal enough for congress and G. Harrold Carswell, who I guess had been a tad racist as a young man. So Nixon was screwed.

WARREN

And I knew it. I waltzed right in there and suggested you, the perfect man. You never offended anyone.

HARRY

It was flattering. Even coming from you.

(to audience)

I drew up another list of pros and cons –

WARREN

Of course.

HARRY

Only on this one, there were only cons.

(to audience)

For some reason – maybe a reason I'll never know – I said yes.

WARREN

No one says no, Harry. It's the Supreme Court – the chance to judge everyone else. We all think we're qualified for that.

HARRY

(to audience)

I had even less trouble getting confirmed than Warren. I suppose it would be harder now, since I was a moderate. I was so moderate, I was nominated by Richard Nixon and endorsed by Hubert Humphrey.

WARREN

Are you proud of that? It means you don't stand for anything.

HARRY

The press didn't know what to do with me. They decided I was like you. Called us the Minnesota Twins.

WARREN

It was appropriate, at first. We voted together a lot.

HARRY

I was still feeling my way.

WARREN

So you voted with me just because you were new?

HARRY

Some of my views were still evolving –

WARREN

Good, God. You were over sixty! How long does it take you to evolve?

(to the ACTORS)

Where's that letter I wrote Harry when he was confirmed?

(to HARRY, as the ACTORS search avidly)

I spelled it all out for you. I couldn't have been clearer.

ACTOR A

(reading)

"The largest problem is to draw away from the attitude that everything unwise or wicked is unconstitutional –"

WARREN

You're not doing it justice.

(reading on)

". . . and that if we but search, we'll find some long-hidden meaning in Due Process or Equal Protection or whatnot. All good ideas do not spring from the Constitution, and all dubious ones are not prohibited by it. It's not a code. We must not demand too much of it – more than it was built to carry."

HARRY

(to audience)

It was sort of a welcome *and* an instruction manual.

WARREN

It was good advice, which *should* have stuck.

HARRY

It did. For awhile.

(to audience)

My mother was eighty-five years old when I went on the Court.

ACTOR C

(as an old THEO BLACKMUN)

Your relationship with Warren will change. You mark my words.

HARRY

Mother, it can't. We've been friends so long.

ACTOR C

Wait and see. Just wait and see.

HARRY

(to audience)

Mothers. How do they know?

(Suddenly ACTORS A through D move HARRY's papers from the table back onto The library shelves and the upstage floor as well. Silent, WARREN and HARRY stare at the empty table. WARREN produces a top hat. He fondles it and smiles at HARRY)

WARREN

Guess that old law firm idea of ours is coming into fruition in a way we never dreamed. Welcome to Washington.

(He shakes HARRY's hand and presents HARRY with the top hat)

HARRY

What's this?

WARREN

A hat. To mark the occasion.

HARRY

Looks like a target for snowballs.

WARREN

Put it on.

HARRY

I don't think so.

WARREN



Put it on your mantel, then. A big hat for a big-wig.

HARRY

Thanks.

WARREN

Oh, by the way . . .

(WARREN gestures toward offstage.  
ACTORS B and D shift armfuls of papers –  
legal case files – from the shelves and put  
them on the conference table in a stack in  
front of one of the chairs)

WARREN (cont'd)

We've had eight justices on the court for far too long. Lots of deadlocked cases for you to look over.

HARRY

Oh. All right . . .

WARREN

Now, I mean. Now.

(WARREN pats HARRY on the back and exits.  
HARRY sits down, completely obscured by the files)

HARRY

(to audience)

I read cases all through the summer heat. Dottie and I moved into a high-rise in Arlington – which did *not* have a mantel.

(tossing the hat offstage)

Fall came – my first session.

(ACTORS A through D carry the legal files  
back to the shelves as WARREN reenters)

WARREN

Here's how it works, Harry. After each week of hearing arguments, we meet in conference around this table. As Chief, I sit here at the end, and the senior associate justice –

(unenthusiastically)

Hugo Black, sits over there.

(ACTOR D enters and sits in the other chair at the opposite end of the table)

ACTOR D

(as JUSTICE HUGO BLACK, to audience)

I'm Hugo Black. I'm a Southerner, and I'm old. And I'm cranky.

WARREN

The other Justices are assigned to the rest of the seats. You're right here.

(WARREN indicates the chair just to the left of his. HARRY sits as ACTORS A through C enter and sit. They carry nine briefcases, which they place on the floor. These provide whatever documents are needed)

WARREN (cont'd)

We speak and vote in order of seniority, except that as Chief I always go first. I summarize the case and announce my own vote. Or I may pass, if it suits me better.

HARRY

I see.

WARREN

(pointing at the appropriate chairs)

Then the others vote – down the line of seniority:

(WARREN makes clear with his tone of voice what he thinks of each justice as he recites their names. He's negative about Black, Douglas, Brennan and Marshall, positive about the others)

WARREN (cont'd)

Justices Black, Douglas, Harlan, Brennan, Stewart, White, Marshall – and finally all the way down to you.

(pointing offstage)

Oh – and please note the door over there. As the junior justice, you’re also the official doorkeeper.

HARRY

(to audience)

I had to get up and open the door whenever anyone came with a message, even if I was in the middle of my own comments.

WARREN

We all pay our dues, Harry.

HARRY

You didn’t.

WARREN

I was *Chief* Justice. After we vote, we assign someone to write the opinion. I assign it if I’m in the majority. If not, the senior justice in the majority assigns it, which is why I like being in the majority.

(moving around the table)

Our votes are tentative; we change our minds all the time, some of us for God knows what reason. New majorities form. Months can go by as we slug it out.

HARRY

You make it sound violent.

WARREN

It’s a dockside brawl, in which there’s never so much as a raised voice.

HARRY

(to audience)

I *was* still behind on cases. Once, when I was slow with an opinion, Justice Black circulated a letter to the entire Court.

ACTOR D

(as HUGO BLACK, writing a letter)

“Without criticizing anyone on the court, I believe we are further behind than we have ever been in more than thirty-three years.”

HARRY

(to audience)

He even spelled my name wrong. Justice Black was a hero of mine. I apologized, and he wrote back –

ACTOR D

(as BLACK, with infuriating Southern gentility)

If you obtained any idea of any kind or character that I was critical of you, please remove such thoughts from your mind.

WARREN

This is all very colorful, Harry. Does it have a point?

(to audience, handing a newspaper to ACTOR B)

This might be useful. Early on, when Harry voted with me regularly, the papers said:

ACTOR B

“Blackmun Rated More Conservative than Burger: Together they’re Turning the Court Around.”

WARREN

The Minnesota Twins. We could have made a difference.

HARRY

A difference for whom?

WARREN

What do you mean?

HARRY

The Pentagon Papers – there’s an example. Newspapers wanted to publish secret documents about our strategies in Vietnam. The liberals on the Court were all for it.

ACTOR D

(as HUGO BLACK)

When it says that Congress will make no law abridging freedom of the press, no law means *no law*.

HARRY

But who did I vote with? My hero? No. I voted with you.

WARREN

We didn't prevail.

HARRY

But we agreed. And what did I get for it? People said we jumped through Nixon's hoops like two trained poodles. I was painted as Nixon's toady and your clone.

WARREN

That was just the public's early image of you. It would have matured —

HARRY

(pulling a letter from his briefcase)

Read this. End of my first term.

WARREN

(taking the letter, reading)

"Harry, you have flowered here. We have carried our share, and I'm sure you have no regrets."

HARRY

You didn't ask me how I felt; you told me. You know what I really heard when I read those words? "Harry, I have brought you onto this court to be a tributary to the great river of my legal philosophy".

WARREN

You'd have been better off! If you'd followed my lead, you'd be better remembered today.

HARRY

No, just less controversial.

WARREN

You *liked* controversy. That's what I finally realized — too late.

HARRY

I didn't enjoy controversy —

WARREN

It's always the quiet ones —

HARRY

And I couldn't help it that abortion got to the Supreme Court exactly when I did.  
(to audience)

Can you imagine? It was 1973, and no one on the Supreme Court had ever heard an abortion case.

WARREN

Bunch of old men in black robes. What did we know?

HARRY

I'd had to think about abortion once before, when our daughter Sally got pregnant.

ACTOR D

(as SALLY BLACKMUN, to audience)

I wasn't the hippie – that was Susan. I was in my sophomore year at Skidmore. I never really considered abortion, though I'm sure with his connections, Dad could have arranged it.

(as HARRY shrugs, then hesitantly nods)

But I decided not to. I dropped out of school and married my boyfriend. Three weeks later, I had a miscarriage, and . . . we got divorced.

HARRY

Later you went back to school.

ACTOR D

(as SALLY, to audience)

Yes. Got a law degree, married again, had two daughters. My folks were great through all of it. Thank you, Dad.

(ACTOR D kisses HARRY on the cheek,  
starts back to the table, stops)

ACTOR D (cont'd)

(as SALLY, to audience)

It was a lot of huge decisions, all at once.

HARRY

(to audience, as ACTOR D sits again)

Not much hits a human life harder than an unexpected pregnancy. One day you're in the arms of someone you love, or someone you've just met, or someone you're trying to fight off. A few weeks later you may be begging a physician to commit a criminal act.

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HARRY (cont'd)

That's how it was, in many places. The state invades your home, your bedroom, your body – it's not yours anymore. Maybe it never was.

WARREN  
(as HARRY sits at the table)

I hated abortion cases.

ACTOR A

*United States versus Vuitch.*

WARREN  
(as though summarizing the case for the others)

Dr. Vuitch was charged with breaking a 1901 law which permits abortion only where "necessary for the preservation of the mother's life or health". He appealed, saying the word "health" was far too vague a term.

ACTOR D  
(as HUGO BLACK)

"Health" is simply the state of being sound in body or *mind*. Viewed in this light, the term "health" presents no problem of vagueness.

HARRY  
(to audience)

It was the first abortion case to reach the Supreme Court, and Justice Black had cited –

ACTOR D  
(as HUGO BLACK, to audience)

Webster's Dictionary.

HARRY  
(to audience)

Not the Bible.

WARREN  
(a bit ruefully, to audience)

The day that decision came down, we took up two new cases.

(to the others at the table)

Gentlemen, we have accepted *Doe versus Bolton* and, um . . . let me see . . .

(checking his notes)

*Roe versus . . . Wade*. We will schedule arguments for late in the fall.

HARRY

(to audience)  
However, in September –

ACTOR D  
(as HUGO BLACK)

*I died.*

HARRY  
(to audience, as ACTOR D exits)

Soon after, Justice Harlan died as well. So there were only seven of us. We went ahead with *Roe* and *Doe* anyway. We agreed that *Roe*, the Texas law which allowed abortion only to save the life of the mother, was too restrictive. Justice William O. Douglas said –

(The ACTORS look at each other in momentary confusion. Then all rise and move a seat over. ACTOR A now occupies HUGO BLACK's old spot. They pause a moment – something's still not right. Someone whistles, and ACTOR D reenters and takes another chair)

WARREN  
(to audience)  
Justice William O. Douglas said –

ACTOR A  
(as WILLIAM O. DOUGLAS)  
A doctor has to have absolute immunity when he seeks to protect the life or *health* of the woman.

HARRY  
(to audience)  
Justice White observed –

ACTOR C  
(as JUSTICE BYRON WHITE)  
I think abortion has to be permitted for health problems. This law makes no mention of that, and we've just upheld it in *Vuitch*.



I had a separate question.

HARRY

Oh, yes.

(to audience)

Warren wondered in the case of a married woman seeking an abortion, did the husband have to consent?

WARREN

(as they all look at him, troubled  
by this new complication)

Isn't that part of this?

ACTORS A THROUGH D

No.

WARREN

Oh. Harry, we're not really going through this step by step, are we?

HARRY

Do you know a better way?

WARREN

Yes.

(to audience)

After nearly a year of wrangling and complications, we voted 7-2 to strike down the Texas law, *Roe*. I regret to say I voted in the majority. The Georgia law, *Doe*, ended up being a legal footnote – which is the way the historical cookie crumbles. There. Done.

HARRY

Done? You left out everything.

WARREN

I gave them the decision; that's the only thing that matters.

HARRY

How about the fact that you assigned the opinion to me?

WARREN

I knew you'd keep the opinions narrow and not take us into a whole quagmire of issues. I could see what was out there.

HARRY

You were trying to control me.

WARREN

You had medical experience. All those pointless years at the Mayo Clinic. Finally they were worth something. You should have thanked me.

(WARREN rises, moves to the upstage chair, away from the table. HARRY immediately takes the seat at the end of the table. HARRY and ACTORS A through D mime eating dinner)

HARRY

(to audience)

While I was writing the opinion, Dottie and I had a visit from our daughters. I'd spent a lot of my life having dinner with four women. Should have known not to bring it up.

(to the ACTORS)

What are your views on abortion?

(The ACTORS all stop eating and stare at HARRY)

ACTOR C

(as DOTTIE BLACKMUN)

I believe in choice, Dear. But there should definitely be restrictions.

HARRY

Sally? You've been through this, after all.

ACTOR B

(as SALLY BLACKMUN)

I think I'm just right on the fence, Dad.

HARRY

Nancy? What are the prevailing views at Radcliffe?

ACTOR A

(as NANCY BLACKMUN)  
Painfully intellectual. Left-wing. You really want to hear 'em?

HARRY

Susan?

ACTOR D  
(as SUSAN BLACKMUN)

*It's my body! It's MY BODY – !!!*

ACTOR C  
(as DOTTIE)

Susan!!

HARRY

It's all right –

ACTOR C  
(as DOTTIE)

Respect your father!

ACTOR D  
(as SUSAN)

I do. But it's *my body!*

HARRY  
(pushing back from the table)

I think I'll go lie down. Getting a headache.

(HARRY exits. Everyone glares at ACTOR B)

ACTOR D

It *is*.

WARREN  
(rising as all but ACTOR A exit, to audience)

By now it was 1972 – election year. President Nixon made our lives more difficult by coming out strongly against abortion.

ACTOR A

(rising, as NIXON)

Abortion on demand does not square with my personal belief in the sanctity of human life – including the life of the yet unborn.

WARREN

Thanks, Dick.

ACTOR A

(as NIXON, exiting)

Anytime.

WARREN

(to audience)

“Abortion on demand” – that was the key phrase. Rhetorical genius, really. We don’t refer to other medical procedures that way. Who ever heard of “appendectomy on demand”?

(as HARRY re-enters)

Headache gone?

HARRY

(reentering, to audience)

By early 1972 we had two new justices: Lewis Powell, Jr. and William Rehnquist.

(ACTORS B and D reenter behind him.

As HARRY’s about to sit, ACTOR D taps him on the shoulder. HARRY realizes he’s now in the wrong seat)

HARRY (cont’d)

Oh, yes – sorry.

(to audience)

It was wonderful not to have to answer that damn door anymore.

(shaking hands with ACTOR B)

Great to see you, Bill.

(a knock offstage)

Oop – better get that.

(to audience, sitting as ACTOR B exits)

WARREN

We were still arguing over *Roe*. Some interesting things were being said.

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ACTOR C

(as WILLIAM BRENNAN, as ACTOR B returns)

If the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.

WARREN

(to audience)

Did you hear that? Were you listening? Because there it was: the right of privacy, which the Earl Warren court – and this court, despite my best efforts – seem to find embedded in the Constitution.

HARRY

I thought it was pretty significant.

WARREN

Slippery ground; that's what it was.

HARRY

I'm not so sure. The Constitution is a living document.

WARREN

What on earth does that mean? It's a piece of paper; we wrote a bunch of things on it. They don't change.

HARRY

We change. And we . . . we look at it differently. It's inevitable.

WARREN

I'm like Alice in Wonderland with all this distortion of *facts*.

(to audience)

There was one case around this time – a drug-dispensing case –

HARRY

Birth control.

WARREN

(to audience)

Where I couldn't even get Harry to come along with me.

(to HARRY)

I was the only dissenter. You left me out there alone.

HARRY

No more Minnesota Twins?

WARREN

We may as well have been the Chicago White Sox.

HARRY

(to audience)

While I was writing the *Roe* opinion, I actually thought when we did strike down these restrictive abortion laws that state legislatures would all rush to follow suit –

WARREN

Proving that age is no defense against *naivete*.

HARRY

William O. Douglas said he liked the opinion I wrote.

ACTOR A

(as DOUGLAS)

Excellent job.

HARRY

Even Rehnquist sent a note.

ACTOR B

(as REHNQUIST, reading his note)

“I have to take my hat off to you for marshalling as well as I think could be done the arguments on your side.”

HARRY

Powell approved.

ACTOR D

(as POWELL, of the opinion)

Impressive scholarship

HARRY

And then you said –

WARREN

What about the possible need to deal with whether husbands have rights in this area?

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(HARRY and the ACTORS let out

a long, exasperated sigh)

ACTOR A

(as WILLIAM O. DOUGLAS)

That's not the issue here. There's no mention of it in either case.

WARREN

There will be someday. There will.

ACTOR A

(as WILLIAM O. DOUGLAS)

And we'll deal with it then.

HARRY

(to audience)

We were set to announce the decision, but Warren delayed us.

WARREN

Why do you say "us" that way? I was part of us.

HARRY

You said you wanted to write a separate opinion. Perhaps by Christmas – which came and went, of course. You were waiting until after you swore in Nixon for his second term.

WARREN

I didn't want to embarrass the man.

HARRY

(to audience)

Finally we got your concurrence. The last sentence was –

WARREN

(reading)

"Plainly, the Court today rejects any claim that the Constitution requires abortions on demand."

(to audience)

I wasn't going to burn *all* my bridges.

(as the others roll their eyes, to audience)

WARREN (cont'd)

The next day we were hearing from the Catholic Church – three Cardinals and yes, the Vatican.

HARRY

(to audience)

The day after that, I flew to Cedar Rapids to give a speech. When I got off the plane, there were protesters.

ACTOR A

*Baby killer!*

ACTOR D

God will strike you down!

HARRY

(to audience)

William O. Douglas got letters from people who hoped his pacemaker would fail. I had always abhorred abortion. Now, people were acting like I invented it.

WARREN

What did you expect?

HARRY

Respect would have been nice. I was a hard-working public servant. All of us were.

(to audience)

I was at work by seven every day. Drove myself there in my little blue VW. Worked 'til seven at night. Took home a full briefcase.

(to WARREN)

We worked hard, even you. Some of us worked too hard.

ACTOR A

(as WILLIAM O. DOUGLAS to audience)

November, 1975. I had a stroke.

WARREN

(as ACTOR A rises and exits)

It happens, Harry. We're old; we drop like flies.

HARRY



Three of us? In my first four years? It was hard to lose Bill Douglas.

WARREN

No, it wasn't.

(to audience)

Gerald Ford replaced him with John Paul Stevens. Back then, it was an improvement.

(ACTOR A reenters immediately and sits in the "new guy" seat. The others move over)

ACTOR B

*Planned Parenthood of Missouri versus Danforth.*

WARREN

Are we going to drag through all the challenges to *Roe* now, Harry? Is that your idea?

HARRY

There were challenges – nonstop.

WARREN

What do you care? It made you an icon.

HARRY

Icon?

WARREN

"Heroic defender of women's rights." If only they knew the truth.

HARRY

What do you mean?

WARREN

Who objected – strenuously – when we voted to change the traditional address from "Mr. Justice" to "Justice"?

HARRY

That was a year before Sandra Day O'Connor showed up!

WARREN

Which only makes it worse.

HARRY

I only meant until there actually *was* a woman justice –

WARREN

Say whatever you like, now. Or maybe you should look over your memos in *Reed v. Reed*. That was women's rights. Didn't you call that case – ?

ACTOR C

(reading)

"Much ado about nothing".

WARREN

And what was it you wrote about Ruth Bader Ginsburg's brief?

ACTOR D

(reading)

"Mildly offensive and arrogant".

HARRY

Those were notes to myself. Those were private!

WARREN

(gesturing toward the piles of HARRY's papers on the library stacks)

Not anymore!

HARRY

I *evolved*! Just like a lot of people in the 'Seventies. The problem with you is, every time I evolved you saw it as a direct attack on our friendship.

WARREN

Friends are loyal.

HARRY

Not to the death!

WARREN

The longer you served, the more profligate you became.

(to audience)

You know why lawyers can advertise on Craig's List now? 'Cause of Harry.

HARRY

What's wrong with that?

WARREN

It's crass — that's what. Because of you, doctors and pharmacists hawk their wares right alongside grocers and beauticians.

HARRY

I'm sure society will survive.

WARREN

No, it won't. That's what you never understand. If we continue to drop our standards forever, we will eventually have none. We won't be a society; we will be a mass of people.

HARRY

So you're saying I should never have disagreed with you?

WARREN

What I'm saying is, there was a trend.

(WARREN gestures to the ACTORS, who quickly find a document)

ACTOR D

(reading)

"In his first five years on the Court, Harry Blackmun voted with Warren Burger in eighty-seven percent of close cases."

ACTOR B

(rising, looking over ACTOR D's shoulder)

"Over the next five years, it was less than half."

ACTOR C

(the same)

"In the final years, less than a third."

WARREN

You made me look like a fool, Harry — the more you disagreed. You were my man. I vouched for you.

HARRY

I was a Supreme Court justice.

WARREN

That doesn't mean you couldn't be reasonable!

HARRY

(gesturing to ACTOR B)

Speaking of reasonable—!

ACTOR B

*Planned Parenthood of Missouri versus Danforth.*

HARRY

You finally got your “husbands” case.

WARREN

(sitting, summarizing for the others)

This is a sensible law that simply requires the husband's written consent to any abortion not necessary to save his wife's life.

HARRY

The majority of us didn't think so. But this time—for the first time on an abortion case—you and I were on opposite sides. Why, Warren? Why did you go away?

WARREN

I didn't go away. I always felt like that.

HARRY

Like what?

WARREN

That there are limits. The state has rights. More than you're willing to grant.

HARRY

I think what you felt was the heat. I think you saw people screaming, and shooting and constructing one legal bar after the other, year after year, and *you lost your nerve.*

WARREN

That's ridiculous.

HARRY

I think you were gutless, Warren. I think you didn't care who was feeling the pressure as long as it wasn't you. You know the case that really got me? *Harris versus McRae*.

WARREN

I was in the majority on that one!

HARRY

And shame on you. It upheld the Hyde Amendment. It meant women with money could get abortions while poor women couldn't.

WARREN

Just because a state can't stop abortions doesn't mean it has to pay for them.

HARRY

So the states can do indirectly what *Roe v. Wade* said they couldn't do directly?

WARREN

Harry . . .

HARRY

Don't "Harry" me. The idea that a poor woman can somehow magically find the money –

WARREN

You're in the minority on this one, Harry.

HARRY

And you should have been, too. You grew up poor! With me. Why weren't you with me on this one, Warren? Why? Remember the dissent I wrote on that case?

WARREN

No.

(HARRY gestures to ACTOR A)

ACTOR A

(reading)

"There's another world out there, the existence of which the Court either chooses to ignore or fears to recognize."

WARREN

Of course, the main thing about a dissent is, no one has to listen to it.

HARRY

So this means nothing to you?

WARREN

Not legally. Admit it, Harry; you were being sentimental. You were prone to it.

HARRY

I was not.

WARREN

Oh, please. "Poor Joshua"? I remember *that* dissent. I don't know if you've noticed, but pity is no foundation for the law —

HARRY

He was a four-year-old boy who was beaten by his father for over a year. A social worker visited *monthly*, saw the bruises and did nothing.

WARREN

Just because a case is horrific —

HARRY

He's retarded, Warren. Beaten into a coma, from which he emerged retarded for life. His government did not intervene. Do you even remember his last name?

WARREN

I'd left the Court by then —

HARRY

"DeShaney. Joshua DeShaney."

(to audience)

The Supreme Court wouldn't hear the case. We implied that Joshua's government did not bear any responsibility to keep him safe. So I howled. I howled my dissent. Poor Joshua!

(to WARREN)

I don't regret it, Warren. Not for an instant. When *we* can't protect them from their own government, who can?

WARREN

(quietly)

There was no right to sue on constitutional grounds.

HARRY

You really believe that?

WARREN

Of course.

HARRY

Then I don't know what the Constitution is for you.

WARREN

A foundation. Nothing more.

HARRY

A gravestone. Marking where our ability to change and grow died.

(with a deep-fetched sigh)

Why did I think it was a good idea to serve on the Court with you? Every term produced some new opportunity to disagree, or insult each other or –

WARREN

Rewrite my opinions?

HARRY

I never did that.

WARREN

*United States versus Nixon?* Watergate? The Nixon tapes? Ring a bell?

(as HARRY turns away)

We all agreed, all of us, that Nixon would have to surrender the tapes. I chose to write the opinion myself, circulated it, invited suggestions –

HARRY

You admit it.

WARREN

I didn't expect any! I didn't *want* suggestions. I *liked* my opinion.

HARRY

They didn't. (of the other justices)

ACTOR D  
(as LEWIS POWELL, reading a paper)  
Analytically weak. Justice Stewart?

ACTOR A  
(as WILLIAM O. DOUGLAS, also distressed  
by what he reads)  
Oh, God. Justice Brennan?

ACTOR C  
(as WILLIAM BRENNAN, reading)  
The statement of facts is not so much inaccurate as . . . confusing.

ACTOR A  
(as DOUGLAS)  
It's garbled. Someone needs to rewrite this.

ACTOR C  
(as BRENNAN)  
Who?

ACTOR A  
(as DOUGLAS)  
Harry.

ACTOR D  
(as POWELL)  
Harry.

ACTOR C  
(as BRENNAN)  
Definitely Harry.

ACTOR D  
(as POWELL)  
They're friends. The Chief will take it better if Harry does it.



Two weeks later, the opinion was issued, listing me as the sole author.

HARRY

Did it really matter?

WARREN

Everyone's fingerprints were on it! It was a carnival of revision! I felt like King John, surrounded by his barons. "Here, Chief—just sign this."

HARRY

We made it clearer.

WARREN

It was my court! None of you respected me—you especially, Harry. You should've taken my part.

HARRY

I couldn't.

WARREN

Why not?!

HARRY

It was incompetent.

(WARREN is speechless, stunned)

This was the Nixon tapes. We had to be at our best.

WARREN

All I wanted was respect, Harry. Just the appearance.

(WARREN moves upstage and sits)

HARRY

(to audience)

Warren and I disagreed more and more on abortion—just like the rest of the country. The challenges never ended. We got thousands of letters from the public, pro and con. One I remember from an ER nurse:

ACTOR C

(reading)

"I want to thank you. We used to have women come in here all the time having been butchered by illegal abortions. No more."

HARRY

(to audience)

At one point, Potter Stewart retired.

(as ACTOR C strides briskly out)

Ronald Reagan named Sandra Day O'Connor. She'd been on both sides of the abortion issue, so she was anathema to all sorts of people. We case-by-case types get a lot of flak, since it comes from both sides. Still, she was confirmed, and history was made.

(ACTOR C returns and takes ACTOR A's place in the "new guy" seat. She looks at the others around the table)

ACTOR C

Hello, boys.

HARRY

(to audience)

A dozen years after *Roe*, a bullet shattered the window of our home.

(Sound of a GUNSHOT SHATTERING GLASS)

HARRY (cont'd)

Dottie was terrified. The police said it was a random shot, still I wondered if impulses like "impeach Earl Warren" had morphed into "shoot Harry Blackmun".

WARREN

It does give a person pause.

HARRY

(to audience)

The police even asked me to stop driving myself to work –

WARREN

You should have done it years before. You looked ridiculous driving up in that VW Beetle of yours. I always expected a bunch of clowns to jump out.

HARRY

I missed that car. Missed feeling like a Midwesterner.

WARREN

Members of the Supreme Court should be driven. In limos. We've earned it.

(a beat)

In 1986, I retired. You brag about evolving, but I was the one whose vote on abortion changed.

HARRY

We were barely speaking by then, trading rancorous notes.

WARREN

Getting in our last digs.

HARRY

What will the Court be like without you?

WARREN

More conservative, with any luck.

HARRY

More organized.

WARREN

(scowling at HARRY, to audience)

Reagan chose Justice Rehnquist to replace me. Replacing Rehnquist was Antonin Scalia. Wish he'd been on *my* court.

(WARREN exits. HARRY look at the others.  
The ACTORS rise, trying to decide where to sit)

HARRY

(to audience)

A year later, Lewis Powell left.

(as the ACTORS all throw up their hands)

Reagan chose Judge Robert Bork –

(as ACTOR D quickly starts out)

Who threw his chances away –

(as ACTOR D stops)

By denying the Constitution contained any right to privacy.

HARRY (cont'd)

(as ACTOR D returns)

Next, Reagan chose Judge Douglas Ginsburg –

(as ACTOR D stops)

But withdrew the nomination when it was alleged he'd smoked pot at Harvard –  
Ginsburg I mean, not Reagan.

(as ACTOR D makes a face at HARRY and starts out)

The third choice was Judge Anthony Kennedy, a moderate conservative from  
California –

(as ACTOR D waits)

Who endorsed a right of privacy and was confirmed unanimously.

(as ACTOR D returns)

I thought I'd always be the only "Old Number Three" on the Court – you know, third  
choice? Now we had another one.

(ACTOR D, now as ANTHONY KENNEDY,  
shakes hands with HARRY and takes the  
"new guy" seat. ACTOR B, as REHNQUIST,  
takes the Chief's seat. ACTORS A and C sit elsewhere)

HARRY

So there they were: O'Connor, Scalia, Kennedy – Reagan's new cabal. With Rehnquist  
and White it was five votes.

ACTOR A

*Webster versus Reproductive Health Services.*

ACTOR B

(as REHNQUIST, summarizing the case)

This is a Missouri law that prohibits abortions in public facilities. The Bush  
Administration has filed a brief – it quotes you from an earlier case, Harry; that's a nice  
touch –

HARRY

(to audience)

I wasn't listening. I was already working on my dissent.

(reading)

"Today, a majority of this Court disservices the people of this Nation, and especially the  
millions of women who have lived and come of age since the decision in *Roe v. Wade*."

(WARREN reenters, drink in hand, and

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sits upstage, viewing the scene from afar.

For the first time, he looks relaxed)

WARREN

(to audience)

Picture me on my porch, contemplating a Virginia sunset and a second cocktail, as those poor bastards sweat over their first abortion case without me. Rehnquist did in fact consider overthrowing *Roe*.

ACTOR B, as REHNQUIST

"We do not see why the State's interest in protecting potential human life should come into existence only at the point of viability".

HARRY

(to audience)

But then something happened. Something unexpected.

ACTOR C

(as O'CONNOR)

I have my own opinion.

(as they all look at her)

I see no need to decide a constitutional question. When a State's abortion statute actually turns on the constitutional validity of *Roe v. Wade*, there will be time enough.

(They all stare. ACTOR B, as REHNQUIST, groans)

HARRY

(to audience)

The first woman on the Court stopped the new Chief in his tracks. She created a majority to uphold the Missouri law *without* overturning *Roe*.

WARREN

Nothing stays more tenaciously on the books than bad law.

HARRY

(to audience)

Gratefully, cautiously, I rewrote.

(reading)

"For today at least, the law of abortion stands undisturbed . . . Women . . . still retain the liberty to control their destinies. But the signs are evident and very ominous, and a chill wind blows."

WARREN

What we *should* have done was deny *Roe* in the first place and dump it all back on the states. Legislators, governors – *they* should be the fall guys.

HARRY

Then it would be your way. In most states, anyway.

WARREN

Shouldn't that tell you something?

HARRY

About tyranny of the majority.

(to audience)

Bill Brennan had a small stroke and left the Court.

(as ACTOR B slips into the "new guy" seat)

David Souter, who'd never had an abortion case, replaced him. Then it was Thurgood Marshall. He was replaced by Clarence Thomas, who claimed he had never formed an opinion on abortion or touched Anita Hill. All I ever wrote about the Clarence Thomas hearings was –

ACTOR C

(reading, with exasperation)

"The Clarence Thomas hearings!"

HARRY

(to audience)

I was the last member of the original *Roe* majority. And then it came.

ACTOR D

*Planned Parenthood versus Casey.*

HARRY

(to audience)

Rehnquist did his best. Said *Roe* was mistaken, that women have no fundamental right to terminate a pregnancy. I thought the struggle was over. Just a numbers game.

WARREN

But then Kennedy and O'Connor showed their true colors, and once again our constitutional right to make unconstitutional decisions was preserved.

HARRY

(to audience)  
I couldn't believe it. All I could write, on a piece of Supreme Court memo paper, was —  
(picking up a memo and reading)  
"Roe sound."

WARREN  
The vote was five to four. They'll be back.

HARRY  
Maybe. But the longer it's the law, the more it's the law. That's how it works in our system. *Roe* was respected because it had already been decided.

WARREN  
Until the day it's undecided.  
(to audience)  
A few months after that, William Clinton became President. I need another drink.

HARRY  
(as WARREN exits, to audience)  
I'd been defending *Roe* for twenty years. Justice White retired, Ruth Bader Ginsburg replaced him.  
(as ACTOR A starts to rise)  
Don't bother. Oh, go ahead.

(ACTOR A sits down in the "new guy"  
seat as RUTH BADER GINSBERG)

ACTOR A  
Hello, boys.

HARRY  
(to audience)  
By the end of the '94 term, when I was eighty-five, I was done.

WARREN  
(reentering, with a new drink)  
Quite a journey, Harry. I'd like to say it broke my heart to see you go, but —

Never heard a single word from you about my retirement. No “congratulations”. No well – or even badly – done. Nothing.

WARREN

My wife Vera died the next month. Didn’t see you at her funeral.

(to audience)

A year later, I died. Heart failure.

HARRY

(to audience, picking up a journal)

All I wrote was, “W.E.B. dies”. I’d known Warren for eighty years. Longer than I’d known my wife. Longer than I knew my mother.

WARREN

Four years later, you went.

(to audience)

The morning of Harry’s funeral it snowed. Private service. Arlington National.

Oh – here’s a folksy touch: the family rented a blue Volkswagen Beetle, the same kind he always drove to work, to carry his ashes to the cemetery.

HARRY

(to audience)

Police kept waving it out of the procession of limousines. Thought it didn’t belong.

WARREN

Did it? I wonder how much impact you really had, Harry. Hundreds of opinions, yet you’ll only be remembered for one. When that’s overturned –

HARRY

It’s not going to be. It shouldn’t be.

WARREN

Get a grip. Your legacy’s already being dismantled.

(ACTOR A rises and exits. HARRY and WARREN notice and watch as ACTOR C rises and exits. As soon as she’s off, ACTOR A returns and sits in the “new guy” seat)



(as the changes continue)  
Look at 'em come and go. And they're all political now – more than I ever was.  
Conference is changing. Majority opinion wins, whether it's "tyrannous" or not.

(ACTOR B rises and exits. As he leaves,  
ACTOR C returns and sits in the "new  
guy" seat. ACTOR A moves over)

HARRY

Don't gloat.

WARREN

I'm not gloating. *Roe* was my decision, too. The difference is, I grew.

HARRY

You didn't grow; you capitulated.

(ACTOR B returns, unnoticed this time,  
and takes the "new guy" seat)

WARREN

I listened to what my country wanted. You were stubborn. You made a mistake and  
dedicated the rest of your life to defending it.

(with small laugh)

Sometimes I think you took positions just because they were the opposite of mine.

HARRY

That's ridiculous.

WARREN

You were never my friend. Took me years to see it.

HARRY

What are you talking about?

(Suddenly, swiftly, the ACTORS rise, place  
briefcases and chairs on the conference table  
and roll it offstage. Almost instantly they  
return as RESEARCHERS, returning to the  
wall of library shelves filled with cardboard

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boxes. These they open and begin pulling out

documents in the same exuberant spirit they showed at the beginning of the play. Soon papers are flying everywhere)

WARREN

Thoughtful people – friends – throw things away, Harry. They think about the feelings of those they've known for *eighty years*. They don't leave documentary evidence of their treacheries.

HARRY

Treacheries?

WARREN

(as the ACTORS A-D start to laugh)

My draft opinions, *littered* with your derisive notes in the margin?

ACTOR D

(reading and laughing, as RESEARCHER)

"The expert in psych!"

ACTOR B

(the same)

"A regular law review article!"

ACTOR C

(the same)

"Warren did not write this!"

HARRY

Those were notes!

WARREN

And now they're history. Junior-high sniping! And you kept it – for anyone to read. You *graded* my opinions!

ACTOR A

(laughing along with the others)

"C-minus!"

WARREN

And now everyone knows!

HARRY

Warren—

WARREN

Did you or did you not encourage your law clerks to speak disrespectfully of me?

HARRY

Once or twice.

(ACTORS A-D laugh)

WARREN

*Always.*

ACTOR B

(reading another document)

“Needless to say, I think the Chief’s comments on this case are ridiculous.”

ACTOR D

(same)

“Like the Bourbons, the Chief forgets nothing and he learns nothing.”

(All the ACTORS laugh)

WARREN

You laughed at how excited I got at inaugurations, joked about me openly with White and Rehnquist—

HARRY

It wasn’t important—

WARREN

If you had no respect for me, why would they? You gave secret interviews to Woodward and Armstrong when they wrote *The Brethren*.

HARRY

I wasn’t the only one.

WARREN

Your law clerks talked with them, too. You know how I came out in that book.

HARRY

It was a balanced view.

WARREN

If you think I'm a *nincompoop*!

HARRY

It wasn't my fault.

WARREN

Why?

HARRY

It just wasn't.

WARREN

*Why!?*

HARRY

Because you were *terrible*! You were a terrible Chief, and it put pressure on us all, and we had to let off steam somewhere! You want evidence? Here – notes I made in conference.

(pulling out a memo and reading)

"CJ – that's you, Chief Justice – keeps yapping."

(tossing it, reading another)

"Talk, talk."

(tossing it, reading another)

"The CJ cannot control the conference."

WARREN

I was overworked –

HARRY

You were disorganized! Bill Rehnquist and I almost never agreed, but at least he could run the Court! And you know what? We *respected* each other!

WARREN

People respected me –

HARRY

Nobody did!

WARREN

*Even if that was true—!*

(after a beat)

Even if it was true and I wasn't as . . . efficient as . . . Why didn't you *talk* to me about it? You could have helped me. I would have let you. You could get through my defenses. You could have made me better.

HARRY

(more gently)

I tried. We all did. You didn't have the capacity, Warren. You didn't get better because you couldn't.

WARREN

I was still Chief. I was still your friend. Are you saying that I didn't do my best?

HARRY

Of course not. You did the best you could.

WARREN

So how did I betray you? How . . .? If I was . . . if I was in good faith . . .?

(after a silence)

I was in good faith, Harry. Such a long time, and you were so willing to wind up with nothing?

(a beat)

We should've built the law firm. We might have stayed friends forever. You might have treated me with more . . . moderation.

HARRY

When did you ever treat me that way?

WARREN

What do you mean?

HARRY

Our whole lives, what was I to you? An appendage. A little guy with glasses you could take under your arm. Someone to dazzle, admire your achievements. When I finally did get on the Court—

WARREN

When I put you there –

HARRY

When you made the mistake of your life – and I did, too – did you really think I would be your parrot for twenty years? Your assistant? Your fan?

WARREN

Why not?

HARRY

Why *not*?!

WARREN

Every friendship has a dominant partner, Harry. Someone leads and someone follows. Sure, we esteem each other equally, but life is a narrow door. We go through it one at a time – in *order*.

HARRY

And you can ask how you betrayed me?

WARREN

You spent your whole life nursing a grudge.

HARRY

Not my whole life. I did something about it.

WARREN

You never said, “Warren, let’s talk”. You moaned and snickered behind my back. You sneaked around, avoiding open conflict – then, when no one was looking, you slipped the knife in.

HARRY

*I progressed!* What did you expect me to do? Wait around forever for the child in you to grow up?

WARREN

You were the child, not me. You thought people could only “grow” in your direction.  
(of the papers all around them)

WARREN (cont’d)

Now here we are, knee-deep in betrayal. And no way back. Humans have friendships for only one reason, Harry – because we’re terrified not to. When we lose those friendships . . . that really is the definition of eternity.

(to audience)

I hope you’re all hungry. I know a great Thai place, just around the corner.

(WARREN takes one more look at HARRY,  
then starts out)

HARRY

I’m sorry.

(as WARREN slows)

HARRY (cont’d)

I’m sorry.

WARREN

(stopping, taking in HARRY as though  
seeing a stranger for the first time)

Do I know you?

(WARREN exits. The ACTORS return and  
box up the papers. HARRY stares at them)

HARRY

(to audience, of the boxes of documents)

Don’t know what else is in there. Maybe I betrayed all sorts of people.

ACTOR D

(as RESEARCHER, avidly)

With any luck!

HARRY

(to audience)

Doesn’t matter now. Successes, failures – I kept it all. Guess you’ll be the judge. You know what just popped into my mind? The funniest thing.

(Lights shift as ACTOR A moves to HARRY.  
ACTOR A is now a beaming BILL CLINTON.  
He and HARRY shake hands in a spotlight)

CLINTON

Happy retirement, Harry. Hope my comments out there did you justice.

HARRY

You were too generous, Mr. President.

CLINTON

Call me Bill. Gonna miss your voice on the Court.

HARRY

I know you can replace me.

CLINTON

I doubt it, but we sure will try.

(An awkward moment. CLINTON suddenly sweeps HARRY into an embrace, then lets him go again – creating yet another awkward moment)

CLINTON (cont'd)

You take care of yourself, now.

HARRY

Thanks.

(CLINTON exits. Lights slowly fill the now empty stage as HARRY moves downstage)

HARRY (cont'd)

(to audience)

Did you know it wasn't until our fourth Chief Justice, John Marshall, that the Supreme Court even claimed the right to declare laws unconstitutional? We've been exercising that power now for over two hundred years, yet it's nowhere to be found in the Constitution itself. Maybe it's like the right of privacy – between the lines.

(a beat)

There's one more thing I can't get out of my mind: those years at Mayo. Warren never came to visit us in Minnesota. Wish he had come, though. He'd have enjoyed it.

(closing his eyes)

Summer there, driving with Dottie up over the river bluffs, out through the cornfields with the windows open. The air buffeting through the car, thick and clean . . .

HARRY (cont'd)



Good night.

(He's there for a moment. Then his eyes  
open again, and he smiles)

(Lights slowly fade)

**THE END**