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Book Notes

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BOOK NOTES

UNLIKELY HEROES. By *Jack Bass*. New York: Simon & Schuster. 1981. Pp. 352. \$14.95.

The landmark desegregation decision in *Brown v. Board of Education* ushered in a period of turmoil in the South, as local leaders mobilized immediately in opposition to its holdings. Using language reflecting much of the South's attitude toward *Brown*, Senator James O. Eastland of Mississippi told an audience "On May 17, 1954, the Constitution of the United States was destroyed because the Supreme Court disregarded the law and decided that integration was right. You are not required to obey any court which passes out such a ruling. In fact, you are obligated to defy it" (p. 17).

At the same time, no one was quite sure what form implementation of *Brown* would take. Nor was it clear that *Brown* could ever be implemented effectively on a large scale over widespread local resistance. One thing was certain: the Supreme Court alone had neither the time nor capabilities to effectively implement its decision in the South.

Unlikely Heroes chronicles the manner in which four judges of the United States Court of Appeals for the Fifth Circuit responded to this uncertainty. The four judges—Elbert P. Tuttle of Georgia, John Minor Wisdom of Louisiana, John Robert Brown of Texas, and Richard Taylor Rives of Alabama—were determined to carry out the Supreme Court's mandate in the most difficult arena imaginable—a judicial circuit comprised of six States of the old Confederacy. The author asserts that their efforts, coupled with those of District Court Judges Frank M. Johnson, Jr. of Alabama and J. Skelly Wright of Louisiana, were indispensable in transforming *Brown* from dream to reality. Further, by clearly signalling that the federal judiciary would not bow to local pressure in vindicating minority rights, the judges achieved this transformation with minimum violence. Aggrieved parties chose to pursue their rights in the courts, not the streets.

Unlikely Heroes details the high personal costs endured by judges who insisted on implementing *Brown*. For example, Judge Rives' family had lived in Montgomery, Alabama for generations. He was a lifetime member of Trinity Presbyterian Church, where his son was buried, his daughter married, and in which he had occupied the

same pew week after week. But after several unpopular decisions, he was forced to leave the church; his son's grave was strewn with garbage (p. 80). In New Orleans, two federal marshals accompanied J. Skelly Wright twenty-four hours a day, and old friends would cross the street to avoid speaking to him (p. 115).

Each of the judges was a highly visible target for the irrational responses of citizens whose long-established way of life was suddenly threatened with extinction. The author notes that moderation on racial issues became political suicide for Southern leaders, and many actively opposed the efforts of the Fifth Circuit judges. The response of Mississippi officials to James Meredith's efforts to gain admission for black students to the University of Mississippi demonstrates the extent of the conflict with the federal judiciary. The governor and lieutenant governor actively interfered with court orders and were charged with criminal contempt of court. Their resistance contributed to a riot in which two persons were killed and 160 federal marshals injured. The flavor of the resistance can perhaps be best captured in the title of a resolution passed by the Mississippi legislature:

A Concurrent Resolution Declaring It to Be the Sense of the Legislature That Each and Every Act of the Sovereign State of Mississippi, as Performed Through and by Its Proper Officials, in Connection with the Matter of James Meredith, Has Been Legal Under the Laws of the State of Mississippi and Under the Constitution of the United States of America, and That Every Act of the Attorney General and the President of the United States in This Matter Has Been Illegal and in Direct Violation of Certain Articles of and Amendments to the Constitution of the United States of America (p. 173).

Under the leadership of Chief Judge Tuttle, the four judges used procedural reforms to ensure meaningful enforcement of plaintiffs' rights. Several reforms were instituted to combat delaying tactics. Delay became a familiar tactic in civil rights cases because the cases were frequently so clearcut that delay was the only defense possible. The procedural reforms put defendants on notice that dilatory tactics would no longer be effective. More importantly, Tuttle signalled the many federal judges dragging their heels on desegregation that delay would not be tolerated. For example, Rives and Brown changed Fifth Circuit law by ruling that a denial of a temporary restraining order by a district court was an appealable final order. This ruling prevented recalcitrant district court judges from bottling up such motions (p. 216). When District Court Judge Harold Cox of Louisi-

ana attempted to evade the ruling by refusing to rule on a motion for a temporary restraining order, Tuttle and Wisdom were joined by Judge Hutcheson in declaring that such refusal amounted to an appealable denial. The panel proceeded to issue its own injunction under the authority of Federal Rule of Civil Procedure 62(g), a procedure which the author termed "almost breathtaking" (p. 218). This procedure subsequently came into wide use in school desegregation cases (p. 220).

Other rulings eased removal of civil rights cases from state to federal courts (p. 253), and provided for emergency three-judge panels when speed was critical to defuse potentially violent situations (p. 226). A more controversial method of ensuring fairness to civil rights litigants was Chief Judge Tuttle's practice of not assigning civil rights cases to judges who had demonstrated unwillingness to implement *Brown's* clear precedents. While eliminating the need for unnecessary appeals to the Supreme Court, this practice upset the judges who felt their independence threatened (p. 225).

On the whole, *Unlikely Heroes* chronicles the post-*Brown* turmoil in the South with unusual effectiveness. Mr. Bass brings the momentous legal questions to life by providing a vivid glimpse of the social political pressures brought to bear on the Fifth Circuit judges. The reader never loses sight of the fact that the judges were, for the most part, lifelong Southerners, wedded to the same culture which now repudiated them. The sensitive inclusion of personal, social, and political factors conveys to the reader a strong sense of the wide discretion—and accompanying responsibility—borne by federal judges.

Perhaps the only weakness in this very readable book is the author's tendency to overstate the role of the four judges in bringing about change in the South. Certain segments of the book suggest that the judges were largely responsible for transforming the region from what Franklin Roosevelt called "the nation's number one economic problem" into the thriving Sunbelt of the 1980's (p. 18). But this is a minor criticism of a well-written and extremely worthwhile book. Mr. Bass has provided a valuable work that will enrich his readers' understanding of a critical period in American history.

Paul M. Gales