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Unlikely Heroes by Jack Bass

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BOOK REVIEW

Unlikely Heroes. Jack Bass.* New York: Simon and Schuster, 1981, Pp. 351. \$14.95.

*Reviewed by Ronald G. Marquardt***

Unlikely Heroes is the second book in recent years written by a journalist(s) which attempts to explain the internal decision-making process of a collegial court. The first work, *The Brethren* by Woodward and Armstrong which focuses on the U. S. Supreme Court, will undoubtedly sell more copies. Although *The Brethren* has its strong points, for serious scholars Bass's work is the much sounder and better documented effort.

The unlikely heroes of Bass's book are the four judges of the Fifth United States Court of Appeals—Elbert Tuttle, John Minor Wisdom, John R. Brown and Richard Rives—who led the battle to implement both the letter and spirit of *Brown v. Board of Education* in the South. Also included as key figures in this effort and thus given attention in the work are federal district court judges Frank Johnson and J. Skelly Wright. All six judges, according to Bass, played significant roles in ending *de jure* segregation across that broad expanse of southern land from Texas to Florida which at that time constituted the Fifth Circuit.

Realizing the great amount of localism present in selecting federal judges at the trial and appellate levels, Bass finds it surprising, given the political and legal culture of the period, that these judges were willing to take such a strong equal protection stance. The author, however, perhaps supplies the answer in the vignettes he provides of each of the judges. At least four of the six judges had some background experience that might account for their being out of step in civil rights matters with more parochial colleagues.

Judge Tuttle, for example, grew up in racially mixed Hawaii and attended a multi-racial school. He attended Cornell Law School, served on the Board of Directors of Morehouse

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College, and before assuming the bench was the lawyer in such constitutionally notable cases as *Herndon v. Lowry* and *Johnson v. Zerbst*. Judge Wisdom, the New Orleans aristocrat, came to the bench with experience in working with some of the best legal talent in America during World War II and had educational tenures at Washington and Lee University, Harvard Graduate School and Tulane Law School. Judge Brown spent his childhood in Nebraska and attended law school in the North at Michigan University. Judge Johnson, although educated locally, hailed from that atypical, Republican section of Alabama known as the Free State of Winston. Only Judges Wright and Rives fit the pattern which political scientists cite as often characterizing federal court appointments: native of a state, educated locally, and active in local politics. Perhaps, according to the extremely complimentary portrait of them as painted by Bass, the book might have been more accurately labeled, "Likely Heroes."

The strength of the book, however, rests not with the background anecdotes about the judges. Nor is the primary value of the book the rehash of the events which took place in the 1950's and 1960's in Montgomery, Birmingham, and Oxford. Instead, the real contribution of the book is the insight it provides into the dynamics of what would be placed under the rubric of the "judicial process." There is in such policy/judicial decision-making, as described here, a full panoply of forces at work.

Bass describes the interplay and tension between the forces involved. Lawyers, politicians, lay persons, law clerks, fellow judges on a collegial bench, higher court judges, and a judge's background all may push and tug on a decision before it is safely tucked away in the official-looking court reporter. Although judicial realists have been positing such a realization for the past fifty years, few law-related books encompass these human-oriented arrangements. Studies about the law too often treat it as a "brooding omnipresence in the sky," or worse, become entangled in procedural concerns that take on a *Jarndyce*-like quality.

Bass is able to escape both dilemmas and present a book that has value for the lawyer, historian, and political scientist. (It would be an excellent selection for a judicial process course.) Also, the book reads smoothly enough to hold the lay reader's attention. Perhaps the work possesses such qualities

because Bass's own occupation fits into none of the above categories. Thus, he escapes the pitfalls of going overboard into the concepts and terminology of any one profession.

In addition to giving examples of how judges are willing to work with other actors in the system—such as United States attorneys, attorneys general and politicians—to accomplish their goals, the book also provides some interesting insights into judicial decision-making. Judge John Minor Wisdom, for example, explained to Bass that he approached judicial decisions by first determining what is “right” and then looking for a law to support his decision. Such public, candid observations, although certainly not adhered to or admitted to by all judges, increase the understanding of the role of the appellate judge in the judicial process.

There are, however, some deficiencies in the work. The avid law review reader will find the footnote style somewhat relaxed. The copy has several spots where footnotes would assist the reader who is interested in follow-up research.

Secondly, Bass appears to fall into the trap which is common to judicial biographers. That is, he fails to adhere to the caution Cromwell gave his portrait artist, to paint him as he was “warts and all.” No doubt that the subjects of the work were bright and courageous judges, but too much praise raises the question of the author's becoming too enamored with his subjects.

Finally, the book suffers somewhat from problems of organization. Bass digresses at some points and in his discussion of Governor Ross Barnett's contempt case postpones the description of the outcome of the matter for an entire chapter. Nevertheless, *Unlikely Heroes* is a work which portrays clients, lawyers, and judges as possessing all the attributes of real persons in the judicial arena. This recognition plus chronicling the web of interaction that takes place between these persons, makes *Unlikely Heroes* a fascinating book and an important contribution to judicial decision-making literature.

