Focus Questions For Unlikely Heroes

These focus questions are intended to aid you in the active reading of Jack Bass’s “Unlikely Heroes,” one of the books selected by the faculty of the Syracuse University College of Law to help prepare you for your time studying law. This book was chosen by Professor James Baker.

The questions are written with the intention of helping you. You won’t be tested on your answers and you can feel free to read the book without them should you choose. And there aren’t any correct answers for these questions. It’s more important to question the text and reflect on what the answers might be than to seek for a definitive “correct” answer.

The questions are designed to model the process of active reading, which is a skill with which you should already be familiar. Active reading is a crucial skill for doing well in law school, and the more adept you become at it before you come to school, the better you will do during your time here. If you would like to learn more about active reading, there will be content discussing the topic in more depth on the Legal Writer’s Toolkit site.

You shouldn’t assume that these questions indicate a point of view or that they’re trying to steer you to answer them in a particular way. Rather, they’re intended to provoke you to think critically about what you read and to help you form your own conclusions, based on the information the author gives you about the topics discussed in the book.

We hope you enjoy Unlikely Heroes, and we look forward to meeting you and working with you over the course of the next few years.
PREFACE

1. This book was written in 1981. As you read it, consider if it would have been written differently today and, if so, how would it have been different?

2. As you read this, consider how many women judges or judges of color are mentioned in the text. Would this still be true if the book was written about the actions of the federal courts today?

3. This book describes the intersection between life and the law in the south during the 1950s and '60s. As you read the book, consider what is different and what is the same today. To the extent things are the same, what role can and should the federal courts play to effect change?

4. Had you considered that it might be possible, or meaningful, to describe the Fifth Circuit Court of Appeals as the “institutional equivalent of the civil rights movement itself”?

5. A great deal of attention has been paid to the Supreme Court's Brown decision, and doubtless you have learned much about that decision. Had you considered how that decision might be implemented or what the implantation of a Supreme Court decision might look like? It’s important to note that this book will be about much more than just the Brown decision, vital though that decision was.

6. Have you heard the term “judicial activism” before? What are your thoughts about judges who are described as judicial activists? Will this book change your opinion?

PRELUDE

1. In the second paragraph of this chapter is a description of a black woman picking cotton in a field. Does the word the author uses to describe this woman carry racist overtones? Is it a racist term? If the book were to be written today would that word be acceptable? Does the author’s use of the term concern you for how the rest of this book will be written?

2. The author describes a racist encounter between two NAACP lawyers and a white store owner. After describing it, the author asserts that “a different South is emerging from the relatively peaceful civil rights revolution that occurred a century after the Civil War.” Were these words true in 1981? Are they true today?
CHAPTER ONE

1. The author describes John Minor Wisdom as a “southern Republican leader.” In 1954, did the political designations “Republican” and “Democrat” mean the same thing as they do today? From this description of John Minor Wisdom, what do you think his political views might be? With which political party was Chief Justice Warren affiliated?

2. Do you know much about the Circuit Court of Appeals? Do you know which states fall under each circuit? Do you know under which circuit your home state falls? Syracuse?

3. The author refers to the Supreme Court “granting cert.” in a case and explains the term and the process briefly in a footnote. Had you heard this term before? Are you comfortable you know what it means now? If not, what will you do to learn more about it?

4. The author describes the injunction and some of the uses to which it can be put. Have you heard the term before? Did you know what it means? Do you now?

CHAPTER TWO

1. The author mentions the Supreme Court’s phrase “all deliberate speed” from the second Brown decision. What do these words mean? Why would the Court use such a phrase in as important an issue as school desegregation?

2. The author describes the events leading up to the nomination of President Eisenhower in 1952. Were you aware of this history? Does it surprise you?

3. The author describes two men turning down federal judgeships because of financial concerns. Does this surprise you? Do you think such concerns still exist today?

4. The author describes some of the political aspects of judicial nomination. Are you surprised to read of this or had you assumed that the process by which judges and Supreme Court justices are nominated and confirmed was as intensely political as the author describes?

CHAPTER THREE

1. You have doubtless heard of Rosa Parks but have you studied the events that followed her actions on December 1? Have you studied the legal aspects of those events?

2. The author quotes Dr. King expressing comfort that issues were being considered by federal rather than state judges. Had you thought before about the distinction between federal and state court?
3. Are you surprised to learn that Winston Country in Alabama voted to secede from Alabama after Alabama voted to secede from the Union?

4. The author describes Judge Rives as someone who never went to law school. It is highly unlikely that someone like Judge Rives could become a federal judge today. Is this a good thing? Is the law missing something by only having law-school-trained lawyers sitting as judges? Are there any judicial positions, state or federal, occupied by non-lawyers today?

5. The author outlines the legal arguments used by Judge Rives in his opinion in Browder. These arguments will make more sense to you after you study Constitutional law, but can you follow Judge Rives’ analysis here?

CHAPTER FOUR

1. This chapter outlines the abuse, ostracization, and hostility experienced by federal judges committed to ensuring that civil rights laws were complied with. Are we experiencing something similar today, with lawyers who worked for unpopular political administrations finding it difficult to secure jobs after their political work is over? Is this appropriate?

2. Would Judge Johnson’s actions, described by the author in this chapter, fall under the charge of judicial activism? Was the judge wrong to assert jurisdiction over so many aspects of Alabama’s state organizations?

CHAPTER FIVE

1. This chapter discussed Judge Cameron and his devotion to the principles of states’ rights. Judge Cameron apparently based his position on the language of the Tenth Amendment. Was Judge Cameron right or wrong to believe as he did? Why? What in the language of the Constitution supports your answer?

2. The author notes that Judge Cameron did not believe that Brown was based on legal precept. Does this belief matter when a judge sits on a court that is directly below the Supreme Court? What should a judge who doesn’t believe that a Supreme Court ruling is correct, or justifiable under the Constitution, do about that belief?

3. This chapter quotes, at length, several letters that passed between Judges Rives and Cameron. Are you surprised to learn that judges write to each other in this way? What do you think about the tone of that correspondence? Would the language used by the judges be the same if these letters were written today? Would such letters be written today or would communications like this be written using email or text? What effect, if any, would the change
in medium have on the nature and tone of the communication? Would we have a record like this of what the judges wrote to each other?

4. Suppose you failed to put money in a parking meter and, at a court hearing for failing to pay for the parking ticket that resulted from your actions, you asserted Judge Cameron’s position that parking meters are unconstitutional. How successful would that argument be before a court?

5. To what “unbroken improvement in relationships which has taken place in the last eight decades” do you imagine Judge Cameron was referring in 1961? Do you agree with his assessment?

CHAPTER SIX

1. The author describes Judge Jones’ belief that his oath “required him to follow the law, not to do justice.” Assuming these two positions are in conflict, which do you think a judge should follow? Why?

2. In the aftermath of the 2020 elections, voting and voting rights have become important topics of discussion in this country. What do you think Judge Brown would say about the various pieces of legislation that have recently been enacted or that are under consideration regarding voting in this country?

3. The author notes that Judge Brown wrote that “the business of judging in constitutional fields is one of searching for the spirit of the constitution in terms of the present as well as the past, not the past alone.” Do you agree with this statement? Many judges believe that the Constitution should be interpreted strictly according to the meanings of the words in which it was written. Can this position be reconciled with Judge Brown’s approach?

CHAPTER SEVEN

1. Judge Wright is quoted in this chapter as saying, “I guess I am an activist, but I want to do what’s right.” Who decides what is right? Would segregationist judges be protected from criticism because they were doing what they thought was right? Should they be protected from such criticism? If not, should we applaud or criticize Judge Wright for his position on activism?

2. The author notes that Judge Wright’s candor might shock lawyers and law professors. Does it shock you? Did you assume this was how judges reached decisions? What did you imagine the judicial process might be? Had you thought about it before?

3. This chapter, perhaps more than others in this book, assumes some knowledge of the Constitution and, in particular, the Constitution’s supremacy clause. Do you know anything
about the supremacy clause? Has the author given you enough information to understand this chapter? Do you understand what the author writes about the interposition doctrine?

4. Imagine the events described in this chapter were happening today. Would you view them as being more serious, less serious, or as serious as the political turmoil the country is experiencing at the moment? Do the events of the late 1950s and early 1960s provide some context for today’s political issues?

CHAPTER EIGHT

1. You likely have read about, and perhaps even studied, the events described in this chapter. The author provides a level of detail about the political process, though, that might be unfamiliar to you. How much of what you read in this chapter was known to you? If these issues came up today, what would be the political response?

2. This chapter, and this book, exposes some of the process by which court decisions are enforced. Had you assumed that court orders were automatically followed or had you assumed that it would be necessary to go through the type of process discussed here?

3. In discussing Judge Sobeloff’s eventual confirmation to the Fourth Circuit, the author notes that “the political code of the Senate recognized Presidential prerogative to select circuit court judges.” Do you think this statement is still true today?

CHAPTER NINE

1. This chapter discusses the circumstances surrounding one of the central events in the civil rights movement, the admission of James Meredith to the University of Mississippi. It reveals another example of the delays caused by the Supreme Court’s “all deliberate speed” language. Had you appreciated the problems that the Supreme Court’s language had caused? Do you think the Court knew the problems that would result from its choice of language? Why did the Court write its opinion in this way?

2. At one point in this chapter the author uses the word “battleground” to describe the events surrounding Mr. Meredith’s enrollment. Does this term seem like an exaggeration, or is it an appropriate description of events?

3. The author makes the point that federal courts have only the force of law to enforce their orders, and that law enforcement lies within the responsibility of the Executive branch of government. Had you considered this? What happens when a federal court’s order is defied and the Executive branch declines to act? What happens if the order is directed at the Executive branch?
CHAPTER TEN

1. This chapter gives you an insight into the strategy employed by the civil rights movement and into the actions of the Justice Department. Did you know of these details before reading this chapter? Would you advise the various groups the author writes about in this chapter to pursue the same actions if you were advising them? If not, what would you advise them to do differently? As you write, please try to put yourself into the Birmingham of the early 1960s.

2. Before you read further, consider Judge Tuttle’s actions in hearing an appeal on his own, without calling in two other circuit judges. Was this a wise action? Was it appropriate? Do his actions suggest that he had decided how he would rule before hearing the appeal? Is it correct for a circuit court judge to signal a possible ruling even before seeing the order being appealed? Was it necessary to see the order or does the nature of the order reveal enough for an appellate judge to reach a decision?

3. Historical note. This book was written in 1981. In 1994, spurred in part by Medgar Evers’ widow’s insistence that his murder be investigated again, and in part on reporting by the Jackson Clarion-Ledger, Byron de la Beckwith was prosecuted for a third time. This time he was found guilty and sentenced to life imprisonment. He died in 2001 after being transferred from prison to the University of Mississippi Medical Center.

CHAPTER ELEVEN

1. Are you surprised to learn that judges weigh what are apparently political considerations when they consider cases? Compare Judge Tuttle’s concern over the pace of litigation with the Supreme Court’s “all deliberate speed” language. Were both the Fifth Circuit and the Supreme Court acting politically when they acted as they did? Was one court justified in its actions but not the other? Was there another way for justice to be achieved in this situation?

2. Had you considered how long the appellate process takes? The author is writing about the early 1960s. How long do you think it takes for an appellate court to reach a decision today? For a case that makes its way to the Supreme Court, how long does that case take, from initial filing of a complaint in the District Court to enforcement of the final order?

3. The author notes Judge Tuttle’s use of Rule 62(g) of the Federal Rules of Civil Procedure to restore an injunction in a case. Had you considered the importance of civil procedure rules in constitutional litigation?
4. The author describes the Fifth Circuit’s use of the All-Writs Act as “almost breathtaking.” This is not a question, because it would be unfair to ask you about this obscure Act, but rather a comment. The author is correct. As I read this book to prepare these questions, I gasped in shock when I read what the court had done. This was an audacious and bold action.

5. The author writes about the issuance of a writ of mandamus. Without comment, it is suggested that you remember this term – and the extraordinary nature of this writ – when you study Constitutional law.

CHAPTER TWELVE

1. This chapter deals, in part, with Judge Tuttle’s refusal to allow Judge Cameron to sit on civil rights cases. Should the assignment of judges to hear appeals be random? Was Judge Tuttle correct in his actions because he believed that Judge Cameron was partial to one side in these cases? Was the resolution achieved by the Fifth Circuit the correct one?

CHAPTER THIRTEEN

1. This chapter discusses the apparent inconsistencies in Supreme Court opinions on the issue of juries in criminal contempt cases. Do different facts justify different results or should the law be the same regardless of the underlying facts of a case?

2. Was the court correct to void the criminal contempt hearing against Governor Barnett? What would you have done if you were sitting on the Fifth Circuit at the time? What would have been the likely consequences of your actions?

CHAPTER FOURTEEN

1. This chapter suggests that civil rights discrimination in this country was effectively dealt a death blow by the Civil Rights and Voting Rights Acts. Was this correct in 1981, when the book was written? Is it correct today?

CHAPTER FIFTEEN

1. The author has spent the previous few chapters criticizing judges who sought to avoid enforcing various Supreme Court decisions. In this chapter he appears to approve of the Fifth Circuit judges who “drove around” the Supreme Court’s roadblock on jury discrimination. Is this a contradictory position for the author to take? Does the end, in this case, justify the means? If so, who determines the validity of the means or the end?
2. The author quotes a 1964 opinion in which the Fifth Circuit notes that a defendant was given a “Hobson’s choice.” What is Hobson’s choice? Have you heard this term before? Where does it come from? Are there metaphors in use today that might not communicate anything to future generations? Should lawyers and judges be careful to not use contemporary phrases that might not have meaning to future generations? How will they know what these phrases might be?

CHAPTER SIXTEEN

1. This chapter uses, as an incipit, the famous line from King Henry VI, Part II, IV:2 – “The first thing we do, let’s kill all the lawyers.” Have you heard or read this quote before? Have you read the play? Do you know the context in which this line is spoken? Do you know the true meaning of this phrase? As you read this chapter, does the meaning of the phrase, in the context in which it is spoken, become apparent?

CHAPTER SEVENTEEN

1. The author notes the importance of Brown as a class action. Did you know that Brown was a class action? What is a class action? What would have been the difference if Brown had been a single plaintiff lawsuit?

CHAPTER EIGHTEEN

1. This chapter mentions two letters – one by the Secretary of the Department of Health, Education, and Welfare and one containing an order by Chief Justice Burger, mailed to federal judges – and suggests that the mailing of both letters was a shocking act. Do you see why the author asserts this? Were you surprised to learn of such attempts to influence federal judges?

2. Based on what you’ve read in this book, do you think the Fifth Circuit’s actions represent judicial activism? After reading this book, have you revised your opinion on what “judicial activism” means?

3. Do you agree with James Meredith’s assessment of how much, or how little, change has happened since the days in which he was enrolled at the University of Mississippi?