

Reality behind the robes of Justice: 'Brethren' takes an unflinching look at the nation's most powerful court

By TOM MOORE

Bob Woodward and Scott Armstrong

The Brethren

Bob Woodward and Scott Armstrong's book on the first seven years of the Burger Court, *The Brethren*, has become a controversy of sorts. Is the book good investigative reporting (it uncovers no major scandals within the Court) or is *The Brethren* merely filled with trivial gossip to be used as fuel in cocktail-party banter?

Former Attorney General Griffin Bell recommends *The Brethren* only to readers "who are obsessed with attacks on our institutions or who enjoy reading about the faults of others or even the details of the illnesses of others."

Bell's comment is typical of those who attack the book. Admittedly, *The Brethren* does contain quite a few trivial anecdotes about the lives of the nine old men, but the book is a welcome work because it is the first popular account of how the Supreme Court makes law.

The Brethren begins with Warren Burger's appointment as chief justice in 1969. The other justices had mixed feelings about Burger. The liberals feared his coming would ruin the reforms the court made under Earl Warren. The more conservative members looked to Burger for leadership in changing the liberal trend of the Warren Court. It was not long until the entire Court became dissatisfied with Burger. Burger's "intellectual inadequacies and his inability to write coherent opinions bothered Justice Lewis F. Powell Jr." the authors report. When he saw

Burger's draft opinion in the Detroit school busing case, he was distressed at the inadequate research and drafting. "If an associate in my law firm had done this," Powell told a clerk, "I'd fire him."

The other judges were also miffed at the way Burger frequently changed his vote in a case so he could remain in the majority and assign the case opinion.

Books

The Court began to turn away from Burger for leadership. "Warren E. Burger (in Justice Potter Stewart's view) was a product of Richard Nixon's tasteless White House, distinguished in appearance and bearing, but without substance or integrity. 'On ocean liners,' Stewart told his clerks, 'they used to have two captains. One for show, to take the women to dinner. The other to pilot the ship safely. The Chief is the show captain. All we need now is a real captain.'"

With Burger's inept leadership the four moderates on the Court—Justices Stewart, Byron White, Powell and sometimes Harry Blackmun—took over. The moderates could force the way any case was decided because they controlled the majority of the votes.

The book attacks Burger strongly, but none of the other justices escapes such ripping scrutiny. All are shown to have their faults—each voting on a case more with their hearts than with their minds.

When John Paul Stevens joined the Court in 1975, he became distressed with the very faults of the

THE BRETHREN

INSIDE THE SUPREME COURT

Bob Woodward
COAUTHOR OF ALL THE PRESIDENT'S MEN

Scott Armstrong



Court that *The Brethren* points out. "Stevens thought that the nation's highest Court picked its way carelessly through the cases it selected. There was too little time for careful reflection. The lack of interest, of imagination and of open-mindedness was disquieting," Woodward and Armstrong write.

Woodward and Armstrong interviewed more than 170 law clerks and several justices for *The Brethren*. None of these interviewed are named in the book, just like most reporting by investigative journalists. The reason Woodward and Armstrong don't list their sources is obvious; nobody wants to get in trouble, but the secret-source practice is a bit dangerous because of the trust we have to put in Woodward and Armstrong to get at the truth, there is not way to tell how slanted the book is (a complaint of several justices and clerks). The authors admit that they didn't interview Burger; he refused to talk to them. That *The Brethren* takes a critical look at all the justices suggests that Woodward and Armstrong are relatively unbiased in their reporting and claims that the book is an attack on Burger are unfounded. *The Brethren* merely is a much needed expose that shows the makings of justice in this country to be less than just. □

Tom Moore is a staff writer for *The Daily Tar Heel*.

PEKING GARDEN RESTAURANT 北京

A Franklin Street Gourmet's "Gourmet's Choice" for the third year in a row . . .

Franklin Street Gourmet, p. 23
The Student Consumer Action Union

- Dine amid the art of China
- Gourmet food from all four corners of China—Peking, Szechuen, Canton, Shanghai
- Over 100 dishes
- Quality meats & produce
- Private party rooms available

A WIDE SELECTION OF MIXED DRINKS NOW AVAILABLE

TAKE-OUT SERVICE AND SPECIALS AT LUNCH

All lunches served with fried rice egg roll, choice of entree and soup.
11 a.m. - 2 p.m. Monday - Friday

WE ALSO SERVE REGULAR MENU AT LUNCH

Lunch: Weekdays 11 am-2 pm
Sat. & Sun. 12-2:30 pm
Dinner: 5-10 pm daily

Every Monday is Lady's Night

1404 EAST FRANKLIN ST. CHAPEL HILL 942-1613

ENERGY. We can't afford to waste it.

FREE

ICED TEA!

With Purchase of \$1.00 or more

Offer Expires January 31, 1980

University Square, Chapel Hill